Constituent Assembly Debates (Proceedings)
(9th December,1946 to 24th January ,1950)

- **Volume I** (9th December to 23rd December 1946)
- **Volume II** (20th January to 25th January 1947)
- **Volume III** (28th April to 2nd May 1947)
- **Volume IV** (14 July to 31st July 1947)
- **Volume V** (14th August to 30th August 1947)
- **Volume VI** (27th January 1948)
- **Volume VII** (4th November 1948 to 8th January 1949)
- **Volume-VIII** (16th May to 16th June 1949)
- **Volume IX** (30th July to 18th September 1949)
- **Volume X** (6th October to 17th October 1949)
- **Volume XI** (14th November to 26th November 1949)
- **Volume XII** (24th January, 1950)

HOME

LIST OF MEMBERS OF THE CONSTITUENT ASSEMBLY

(AS IN NOVEMBER, 1949)

MADRAS
BOMBAY
WEST BENGAL
UNITED PROVINCES
EAST PUNJAB
BIHAR
CENTRAL PROVINCES & BERAR
ASSAM
ORISSA
DELHI
AJMER-MERWARA
COORG
MYSORE
JAMMU AND KASHMIR
TRAVANCORE-COCHIN
MADHYA BHARAT
SAURASHTRA
RAJASTHAN
PATIALA AND EAST PUNJAB STATES UNION
BOMBAY STATES
ORISSA STATES
CENTRAL PROVINCES STATES
UNITED PROVINCES STATES
MADRAS STATES
VINDHYA PRADESH
COOCH BEHAR
TRIPURA AND MANIPUR
BHOPAL
KUTCH
HIMACHAL PRADESH

MADRAS

O.V. Alagesan
Mrs. Ammu Swaminadhan
M. Ananthasayanam Ayyangar
Moturi Satyanarayana
Mrs. Dakshayani Velayudhan
Mrs. G. Durgabai
Kala Venkatarao
N. Gopalaswamy Ayyangar
D. Govinda Das
Rev. Jerome D'suuza
P. Kakkan
K. Kamaraj
V.C. Kesava Rao
T.T. Krishnamachari
Alladi Krishnaswami Ayyar
L. Krishnaswami Bharathi
P. Kunhiraman
M. Thirumula Rao
V.I. Muniswamy Pillay
M.A. Muthiah Chettiyar
V. Nadimuthu Pillai
S. Nagappa
P.L. Narasimha Raju
B. Pattabhi Sitaramayya
C. Perumalswamy Reddy
T. Prakasam

S.H. Prater
Raja Swetachalapati Ramakrishna Renga Roa of Bobbili
R.K. Shanmukham Chetti
T.A. Ramalingam Chettiyyar
Ramanath Goenka
O.P. Ramaswamy Reddiyar
N.G. Ranga
N. Sanjeeva Reddi
K. Santhanam
B. Shiva Rao
Kallur Subba Rao
U. Srinivasa Mallayya
P. Subbarayan
C. Subramaniam
V. Subramaniam
M.C. Veerabahu
P.M. Velayudapani
A.K. Menon
T.J.M. Wilson
Mohamed Ismail Sahib
K.T.M. Ahmed Ibrahim
Mahboob Ali Baig Sahib Bahadur
B. Pocker Sahib Bahadur

BOMBAY

Balchandra Maheshwar Gupte
Mrs. Hansa Mehta
Hari Vinayak Pataskar
B.R. Ambedkar
Joseph Alban D'Souza
Kanayalal Nanabhai Desai
Keshavrao Marutirao Jedhe
Khandubhai Kasanji Desai
Bal Gangadhar Kher
M.R. Masani
K.M. Munshi
Narhar Vishnu Gadgil
S. Nijalingappa
S.K. Patil
Ramchandra Manohar Nalavade
R.R. Diwakar
Shankarrao Deo
G.V. Mavalankar
Vallabhbhai J. Patel
Abdul Kadar Mohammad Shaikh
A.A. Khan

WEST BENGAL

Monomohan Dass
Arun Chandra Guha
Lakshmi Kanta Maitra
Mihir Lal Chattopadhyay
Satis Chandra Samanta
Suresh Chandra Majumdar
Upendranath Barman
Prabhudayal Himatsingka
Basanta Kumar Das
Mrs. Renuka Ray
H.C. Mookherjee
Surendra Mohan Ghose
Syama Prasad Mookerjee
Ari Bahadur Gurung
R.E. Platel
K.C. Neogy
Raghib Ahsan
Jasimuddin Ahmad
Naziruddin Ahmad
Abdul Hamid
Abdul Halim Ghuznavi

UNITED PROVINCES

Ajit Prasad Jain
Algu Rai Shastri

Balkrishna Sharma
Banshi Dhar Misra
Bhagwan Din
Damodar Swarup Seth
Dayal Das Bhagat
Dharam Prakash
A. Dharam Dass
R. V. Dhulekar
Feroz Ganhdi
Gopal Narain
Krishna Chandra Sharma
Govind Ballabh Pant
Govind Malaviya
Har Govind Pant
Harihar Nath Shastri
Hriday Nath Kunzru
Jaspat Roy Kapoor
Jagannath Baksh Singh
Jawaharlal Nehru
Jogendra Singh
Jugal Kishore
Jwala Prasad Srivastava
B.V. Keskar
Mrs. Kamala Chaudhri
Kamalapati Tiwari
J.B. Kripalani
Mahavir Tyagi
Khurshed Lal
Masurya Din
Mohan Lal Saksena
Padampat Singhania
Phool Singh
Paragi lal
Mrs. Purnima Banerji
Prurshottamadas Tandon
Hira Vallabha Tripathi
Ram Chandra Gupta
Shibban Lal Saxena
Satish Chandra
John Matthai
Mrs. Sucheta Kripalani
Sunder Lall
Venkatesh Narayan Tivary
Mohanlal Gautam
Vishwambhar Dayal Tripathi
Begum Aizaz Rasul
Hyder Hussain
Hasrat Mohani
Abul Kalam Azad
Muhammad Ismail Khan
Rafi Ahmad Kidwai
Mohd. Hifzur Rahman

EAST PUNJAB

Bakshi Tek Chand
Jairamdas Daulatram
Thakurdas Bhargava
Bikramlal Sondhi
Yashwant Rai
Ranbir Singh
Achint Ram
Nand Lal
Sardar Baldev Singh
Giani Gurmukh Singh Musafir
Sardar Hukam Singh
Sardar Bhopinder Singh Mann

BIHAR

Amiyo Kumar Ghosh
Anugrahnarayan Sinha
Banarsi Prasad Jhunjhunwala
Bhagwat Prasad
Boniface Lakra
Brajeshwar Prasad

Chandika Ram
K.T. Shah
Devendra Nath Samanta
Dip Narain Sinha
Guptanath Singh
Jadubans Sahay
Jagat Narain Lal
Jagjivan Ram
Jaipal Singh
Kameshwara Singh of Darbhanga
Kamaleshwari Prasad Yadav
Mahesh Prasad Sinha
Krishna Ballabh Sahay
Raghunandan Prasad
Rajendra Prasad
Rameshwar Prasad Sinha
Ramnarayan Singh
Sachchidananda Sinha
Sarangdhar Sinha
Satyanarayan Sinha
Binodanand Jha
P.K. Sen
Sri Krishna Sinha
Sri Narayan Mahtha
Syamanandan Sahaya
Hussain Imam
Saiyid Jafar Imam
Latifur Rahman
Mohammad Tahir
Tajamul Hussain

CENTRAL PROVINCES & BERAR

Raghu Vira
Rajkumari Amrit Kaur
B.A. Mandloi
Brijlal Nandlal Biyani
Thakur Cheedilal
Seth Govind Das
Hari Singh Gour
Hari Vishnu Kamath
Hemchandra Jagobaji Khandekar
Ghanshyam Singh Gupta
Lakshman Shrawan Bhatkar
Panjabrao Shamrao Deshmukh
Ravi Shankar Shukla
R.K. Sidhva
Shankar Tryambak Dharmadhikari
Frank Anthony
Kazi Syed Karimuddin

ASSAM

Nibaran Chandra Laskar
Dharanidhar Basu-Matari
Gopinath Bardoloi
J.J.M. NIchols-Roy
Kuladhar Chaliha
Rohini Kumar Chaudhury
Muhammad Saadulla
Abdur Rouf

ORISSA

B.Das
Biswanath Das
Krishna Chandra Gajapati Narayana Deo of Parlakimedi
Harekrushna Mahatab
Lakshminarayan Sahu
Lokanath Misra
Nandkishore Das
Rajkrishna Bose
Santanu Kumar Das

DELHI

Deshbhandhu Gupta

AJMER-MERWARA

Mukut Bihari Lal Bhargava

COORG

C.M. Poonacha

MYSORE

K. Chengalaraya Reddy
T. Siddalingaiya
H.R. Guruv Reddy
S.V. Krishnamurthy Rao
K. Hanumanthaiya
H. Siddaveerappa
T. Channiah

JAMMU AND KASHMIR

Sheikh Muhammad Abdullah
Motiram Baigra
Mirza Mohmmad Afzal Beg
Maulana Mohammad Sayeed Masoodi

TRAVANCORE-COCHIN

A. Thanu Pillai
R. Sankar
P.S. Nataraja Pillai
Mrs. Annie Mascarene
K.A. Mohamed
P.T. Chacko
P. Govinda Menon

MADHYA BHARAT

V.S. Sarwate
Brijraj Narain
Gopikrishna Vijayavargiya
Ram Sahai
Kusum Kant Jain
Radhavallabh Vijayavargiya
Sitaram S. Jajoo

SAURASHTRA

Balwant Rai Gopalji Mehta
Jaisukhlal Hathi
Amritlal Vithaldas Thakkar
Chimanlal Chakubhai Shah
Samaldas Laxmidas Gandhi

RAJASTHAN

V.T. Krishnamachari

Hiralal Shastri
Sardar Singhjhi of Khetri
Jaswant Singhji
Raj Bhadur
Manikya Lal Varma
Gokul Lal Asava
Ramchandra Upadhyaya
Balwant Sinha Mehta
Dalel Singh
Jainarain Vyas

PATIALA AND EAST PUNJAB STATES UNION

Ranjit Singh
Sochet Singh
Bhagwant Roy

BOMBAY STATES

Vinayakrao Balshankar Vaidya
B.N. Munavalli
Gokulbhai Daulatram Bhatt
Jivraj Narayan Mehta
Gopaldas A. Desai
Paranlal Thakurlal Munshi
B.H. Khardekar
Ratnappa Bharamappa Kumbhar

ORISSA STATES

Lal Mohan Pati
N. Madhava Rau
Raj Kunwar
Sarangadhar Das
Yudhishthir Misra

CENTRAL PROVINCES STATES

R.L. Malaviya
Kishorimohan Tripathi
Ramprasad Potai

UNITED PROVINCES STATES

B.H. Zaidi
Krishna Singh

MADRAS STATES

V. Ramaiah

VINDHYA PRADESH

Avdesh Pratap Singh
Shambu Nath Shukla
Ram Sahai Tiwari
Mannulalji Dwidedi

COOCH BEHAR

Himmat Singh K. Maheshwari

TRIPURA AND MANIPUR

Girja Shankar Guha

BHOPAL

Lal Singh

KUTCH

Bhawani Arjun Khimji

HIMACHAL PRADESH

Y.S. Parmar

Back

HOME

HOME

FIRST DAY IN THE CONSTITUENT ASSEMBLY

The Constituent Assembly met for the first time in New Delhi on 9 December, 1946 in the Constitution Hall which is now known as the Central Hall of Parliament House. Decorated elegantly for the occasion, the Chamber wore a new look on that day with a constellation of bright lamps hanging from the high ceilings and also from the brackets on its walls.

Overwhelmed and jubilant as they were, the hon'ble members sat in semi-circular rows facing the Presidential dias. The desks which could be warmed electrically were placed on sloping green-carpeted terraces. Those who adorned the front row were Pandit Jawaharlal Nehru, Maulana Abul Kalam Azad, Sardar Vallabhbhai Patel, Acharya J.B. Kripalani, Dr. Rajendra Prasad, Smt. Sarojini Naidu, Shri Hare-Krushna Mahatab, Pandit Govind Ballabh Pant, Dr. B.R. Ambedkar, Shri Sarat Chandra Bose, Shri C. Rajagopalachari and Shri M. Asaf Ali. Two hundred and seven representatives, including nine women were present.

The inaugural session began at 11 a.m. with the introduction of Dr. Sachchidananda Sinha, the temporary Chairman of the Assembly, by Acharya Kripalani. While welcoming Dr. Sinha and others, Acharyaji said: "As we begin every work with Divine blessings, we request Dr. Sinha to invoke these blessings so that our work may proceed smoothly. Now, I once more, on your behalf, call upon Dr. Sinha to take the Chair."

Occupying the Chair amidst acclamation, Dr. Sinha read out the goodwill messages received from different countries. After the Chairman's inaugural address and the nomination of a Deputy Chairman, the members were formally requested to present their credentials. The First Day's proceedings ended after all the 207 members present submitted their credentials and signed the Register.

Seated in the galleries, some thirty feet above the floor of the Chamber, the representatives of the Press and the visitors witnessed this memorable event. The All India Radio, Delhi broadcast a composite sound picture of the entire proceedings.

SOME FACTS

The Constituent Assembly took almost three years (two years, eleven months and seventeen days to be precise) to complete its historic task of drafting the Constitution for Independent India. During this period, it held eleven sessions covering a total of 165 days. Of these, 114 days were spent on the consideration of the Draft Constitution.

As to its composition, members were chosen by indirect election by the members of the Provincial Legislative Assemblies, according to the scheme recommended by the Cabinet Mission. The arrangement was: (i) 292 members were elected through the Provincial Legislative Assemblies; (ii) 93 members represented the Indian Princely States; and (iii) 4 members represented the Chief Commissioners' Provinces. The total membership of the Assembly thus was to be 389. However, as a result of the partition under the Mountbatten Plan of 3 June, 1947, a separate Constituent Assembly was set up for Pakistan and representatives of some Provinces ceased to be members of the Assembly. As a result, the membership of the Assembly was reduced to 299.

On 13 December, 1946, Pandit Jawaharlal Nehru moved the Objectives Resolution

1.This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Soverign Republic and to draw up for her future governance a Constitution;

2.WHEREIN the territories that now comprise British India, the territories that now form the Indian States, and such other parts fo India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Soverign India, shall be a Union of them all; and

3.WHEREIN the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution, shall possess and retain the status of autonomous Units, together with residuary powers and exercise all powers and functions of goverrnment and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom; and

4.WHEREIN all power and authority of the Soverign Independent India, its constituent parts and organs of government, are derived from the people; and

5.WHEREIN shall be guaranteed and secured to all the people of India justice, social economic and political : equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and

6.WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and

7.WHEREBY shall be maintained the integrity of the territory of the Republic and its soverign rights on land, sea, and air according to justice and the law of civilized nations; and

8.this ancient land attains its righful and honoured placed in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind.

This Resolution was unanimously adopted by the Constituent Assembly on 22 January 1947. Late in the evening of 14 August, 1947 the Assembly met in the Constitution Hall and at the stroke of midnight, took over as the Legislative Assembly of an Independent India.

On 29 August, 1947, the Constituent Assembly set up a Drafting Committee under the Chairmanship of Dr. B.R. Ambedkar to prepare a Draft Constitution for India. While deliberating upon the draft Constitution, the Assembly moved, discussed and disposed of as many as 2,473 amendments out of a total of 7,635 tabled.

The Constitution of India was adopted on 26 November, 1949 and the hon'ble members appended their signatures to it on 24 January, 1950. In all, 284 members actually signed the Constitution. On that day when the Constitution was being signed, it was drizzling outside and it was interpreted as a sign of a good omen.

The Constitution of India came into force on 2 6 January, 1950. On that day, the Assembly ceased to exist, transforming itself into the Provisional Parliament of India until a new

Parliament was constituted in1952

Sessions of the Constituent Assembly

First Session: 9-23 December, 1946
Second Session: 20-25 January, 1947
Third Session: 28 April - 2 May, 1947
Fourth Session: 14-31 July, 1947
Fifth Session: 14-30 August, 1947
Sixth Session: 27 January, 1948
Seventh Session: 4 November,1948 - 8 January, 1949
Eighth Session: 16 May - 16 June, 1949
Ninth Session: 30 July - 18 September, 1949
Tenth Session: 6-17 October, 1949
Eleventh Session: 14-26 November, 1949

[The Assembly met once again on 24 January, 1950, when the members appended their signatures to the Constitution of India]

IMPORTANT COMMITTEES OF
THE CONSTITUENT ASSEMBLY AND THEIR CHAIRMEN

Name of the Committee	Chairman
Committee on the Rules of Procedure	Rajendra Prasad
Steering Committee	Rajendra Prasad
Finance and Staff Committee	Rajendra Prasad
Credential Committee	Alladi Krishnaswami Ayyar
House Committee	B. Pattabhi Sitaramayya
Order of Business Committee	K.M. Munsi
Ad hoc Committee on the National Flag	Rajendra Prasad
Committee on the Functions of the Constituent Assembly	G.V. Mavalankar
States Committee	Jawaharlal Nehru
Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas	Vallabhbhai Patel
Minorities Sub-Committee	H.C. Mookherjee
Fundamental Rights Sub-Committee	J.B. Kripalani
North-East Frontier Tribal Areas and Assam Exluded & Partially Excluded Areas Sub-Committee	Gopinath Bardoloi

Excluded and Partially Excluded Areas (Other than those in Assam) Sub-Committee	A.V. Thakkar
Union Powers Committee	Jawaharlal Nehru
Union Constitution Committee	Jawaharlal Nehru
Drafting Committee	B.R. Ambedkar

STATEWISE MEMBERSHIP OF THE CONSTITUENT

ASSEMBLY OF INDIA AS ON 31 DECEMBER, 1947

PROVINCES-229

S.No.	State	No. of Members
1.	Madras	49
2.	Bombay	21
3.	West Bengal	19
4.	United Provinces	55
5.	East Punjab	12
6.	Bihar	36
7.	C.P. and Berar	17
8.	Assam	8
9.	Orissa	9
10.	Delhi	1
11.	Ajmer-Merwara	1
12.	Coorg	1

INDIAN STATES-70

1.	Alwar	1
2.	Baroda	3
3.	Bhopal	1
4.	Bikaner	1
5.	Cochin	1
6.	Gwalior	4
7.	Indore	1
8.	Jaipur	3
9.	Jodhpur	2
10.	Kolhapur	1
11.	Kotah	1
12.	Mayurbhanj	1
13.	Mysore	7
14.	Patiala	2

15.	Rewa	2
16.	Travancore	6
17.	Udaipur	2
18.	Sikkim and Cooch Behar Group	1
19.	Tripura, Manipur and Khasi States Group	1
20.	U.P. States Group	1
21.	Eastern Rajputana States Group	3
22.	Central India States Group (including Bundelkhand and Malwa)	3
23.	Western India States Group	4
24.	Gujarat States Group	2
25.	Deccan and Madras States Group	2
26.	Punjab States Group I	3
27.	Eastern States Group I	4
28.	Eastern States Group II	3
29.	Residuary States Group	4
	Total	299

Back

HOME

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME I

Constituent Assembly of India

Monday, the 9th December 1946

The first meeting of the Constituent Assembly of India took place in Constitution Hall, New Delhi, on Monday, the 9th December 1946. at Eleven of the Clock.

ELECTION OF TEMPORARY CHAIRMAN

Acharya J. B. Kripalani (United Provinces: General): (in requesting Dr. Sachchidananda Sinha to take the Chair as temporary Chairman, said)-

*[Friends, at this auspicious occasion of historical importance I invite, on your behalf, Dr. Sachchidananda Sinha to be the temporary Chairman of this Assembly. Dr. Sinha needs no introduction. You all know him. He is not only the oldest among us but also the oldest parliamentarian in India, having served, as you know, as a member of the Imperial Legislative Council from 1910 to 1920. The entered the Central Legislative Assembly in 1921 not only as one of its members, but ;,'Is Deputy President also. He was then entrusted with the portfolio of an Executive Councellor and Finance Member of the Government of Bihar and Orissa. So far as I remember Dr. Sinha was the first Indian who was ever appointed as a Finance Member of a Province. He has a particular taste for education having been Vice-Chancellor of the Patna University for eight years. Over and above all this, Dr. Sinha is the oldest Congressman among us. Up till 1920 he was a member of the Congress, being at one time its Secretary.

After the year 1920 when we started on a new way to gain freedom he parted company with us. He, however, never wholly left us. He has always been helping us. He never joined any other organization and his sympathies were ever with us. Such a person is entitled to be the temporary Chairman of this Assembly. His work is brief but it is all the same most important. It is inaugurating the proceeding of this House. As we begin every work with Divine blessings we request Dr. Sinha to invoke these blessings so that our work may proceed smoothly. Now, I once more, (in your behalf, call upon Dr. Sinha to take the Chair.]

(Acharya J. B. Kripalani then conducted Dr. Sachchidananda Sinha to the Chair, which he then occupied amidst acclamation.)

MESSAGES OF GOODWILL

The Chairman (Dr. Sachchidananda Sinha): Hon'ble Members, I shall read out to you this morning three messages which have been received by me from responsible State Officials of America, China and the Government of Australia. The American Charge d'Affaires writes:

"My dear Dr. Sinha,

It gives me great pleasure to transmit herewith a copy of a telegram have just received from the Honourable Dean Acheson, the Acting Secretary of State of the United States.

The telegram received is as follows:

'From the Acting Secretary of State,

Washington, D. C.

Dr. Sachchidananda Sinha,

Provisional Chairman of the Constituent Assembly,

New Delhi.

With the approach of December 9, I extend to you as Provisional Chairman of the Constituent Assembly, and through you to the Indian people, the sincere good wishes of the United States Government and of the people of the United States for a successful conclusion of the great task you are about to undertake. India has a great contribution to make to the peace, stability, and cultural advancement of mankind, and your deliberations will be watched with deep interest and hope by freedom loving people throughout the entire world.' " (*Cheers*).

The next message is from the Embassy of the Republic of China-"New Delhi.

Dr. Sachchidananda Sinha Provisional Chairman Constituent Assembly: 'On the auspicious occasion of the opening of the Indian Constituent Assembly I have the honour to extend to Your Excellency in the name of the National Government of China my heartiest congratulations. sincerely hope that your great Assembly will succeed in laying a solid foundation for a democratic and prosperous India.

WANG SHIH CHIEH,

Minister of Foreign Affairs of the Republic of China.' (*Cheers*)

The third and last message I have to read out to this Assembly is one from the Australian Government to the Members of the Indian Constituent Assembly.

"Australia has watched with keen interest and sympathy the course of events which have given the people of India their rightful place in the community of nations. The Australian Government, therefore, greets the opening of the Constituent Assembly as an outward sign of a new era for India and offers the delegates of the Constituent Assembly their best wishes for success in their task." (*Cheers*).

I am sure the House will authorize me and permit me to convey its thanks to the representatives of these Governments who have sent us such cheering and inspiring messages. I may further add that this is Every auspicious sign for the success of your work. (*Cheers*).

ELECTION PETITION FROM KHAN ABDUS SAMAD KHAN OF BRITISH BALUCHISTAN

The Chairman: The next thing which I have to bring to the notice of the House is that I have received an election petition from Khan Abdus Samad Khan of British Baluchistan challenging the validity of the election of Nawab Mohammad Khan Jogazai as a member of the Constituent Assembly representing British Baluchistan. The House will doubtless look into this matter, in due course, after the election of the permanent Chairman. But my ruling at this stage is that the gentleman declared elected will continue to be regarded as a Member of this House until the matter is disposed of, at a later stage, by the House, after the election of the permanent Chairman.

The next item on the agenda is the provisional Chairman's inaugural address. I will do my best to read out the whole of the address, but if I feel the strain too much, you will kindly permit me to hand over the typescript to Sir B. N. Rau, who has very kindly undertaken to read it for me. But I hope there will be no occasion for it.

CHAIRMAN'S INAUGURAL ADDRESS

HON'BLE MEMBERS OF THE FIRST INDIAN CONSTITUENT ASSEMBLY:

I am deeply beholden to you for your having agreed to accept me as the first President of your Constituent Assembly, which will enable me to assist you in transacting the preliminary business before the Ho such as the election of a permanent President, the framing of the Rules of Business, the appointment of various Committees, and settling the question of giving Publicity to, or keeping confidential, your proceedings-which will ultimately lead you to crown your labours by formulating a suitable and stable constitution for an Independent India. In expressing my sense of appreciation of your great kindness, I cannot conceal from myself that I feel comparing small things with great-that I am, on the present occasion in the position in which Lord Palmerston found himself when Queen Victoria offered him the highest Order of Chivalry, namely, the Knighthood of the Garter. In accepting the Queen's offer, Lord Palmerston wrote to a friend as follows:-

> "I have gratefully accepted Her Majesty's gracious offer as, thank God, there is no question of any damned merit about the honour conferred on me."

I say I find myself more or less in the same position, for you have agreed to accept me as your President on the sole ground that I age, the senior-most member of this Assembly. Whatever the ground however, on which you have chosen to have me as your first President, I am nonetheless profoundly grateful to you. I have had, in my fairly long life, several honours conferred on me in recognition of my services as a humble worker in public interest, but I assure you that I regard your mark of favour as a signal honour, which I shall cherish throughout the rest of my life.

On this historic and memorable occasion, you will not grudge, I am sure, if I venture to address to You some observations on certain aspects of what is called a Constituent Assembly. This political method of devising a constitution for a country has not been known to our fellow-subjects in Britain, for the simple reason, that under the British Constitution, there is no such thing as a constituent law, it being a cherished privilege of the British Parliament, as the sole sovereign authority, to make and unmake all laws, including the constitutional law of the country. As such, we have to look to countries other than Britain to be able to form a correct estimate of the position of a Constituent Assembly. In Europe, the oldest Republic, that of Switzerland, has not had a Constituent Law, in the ordinary sense of that term, for it came into existence, on a much smaller scale than it now exists, due to historic causes and accidents, several centuries back. Nevertheless, the present constitutional system of Switzerland has several notable and instructive features, which have strongly been recommended by qualified authorities to Indian constitution-makers, and I have no doubt that this great Assembly will study carefully the Swiss Constitution, and try to utilise it to the best advantage in the interest of preparing a suitable constitution for a free and independent India.

The only other State in Europe, to the constitution of which we could turn with some advantage, is that of France, the first Constituent Assembly of which (called "The French National Assembly") was convoked in 1789, after the French Revolution had succeeded in overthrowing the French monarchy. But the French Republican system of Government had been changed since then, from time to time, and is even now, more or less, in the melting pot. Though, therefore, you may not be able to as much advantage from a study of the French system of constituent law as that of the Swiss, that is no reason why you should not seek to derive what advantage you can in the preparation of the task before you, by a study of it.

As a matter of fact, the French constitution-makers, who met in 1789 at the first Constituent Assembly of their country, were themselves largely influenced by the work done but a couple of years earlier in 1787, by the historic Constitutional Convention held at Philadelphia by the American constitution-makers, for their country. Having thrown off their allegiance to the British King in Parliament, they met and drew up what had been regarded, and justly so, as the soundest, and most practical and workable republican constitution in existence. It is this great constitution, which had been naturally taken as the model for all subsequent constitutions not only of France, but also of the self-governing Dominions of the British Commonwealth, like Canada, Australia, and South Africa; and I have no doubt that you will also, in the nature of things, pay in the course of your work, greater attention to the provisions of the American Constitution than to those of any other.

I have referred above to the self-governing constitutions of the great Dominions of the British Commonwealth being based on, to a large extent, if not actually derived :from, the American constitutional system. The first to benefit by the American system was Canada, the historic Convention of which country, for drawing up a self-governing constitution, met in 1864, at Quebec. This Convention drew up the Canadian Constitution, which was subsequently embodied in what is still on the Statute Book as the British North American Act, passed by the British Parliament in 1867. You may be interested to hear that the Quebec Convention consisted of only 33 delegates from all the provinces of Canada, and that Convention of 33 representatives issued as many as 74 resolutions, which were afterwards duly incorporated in total in the British North American Act, under the provisions of which the first self-governing Dominion of the British Commonwealth of Canada, came into existence, in 1867. The British Parliament accepted tile Canadian Convention's scheme in its entirety, except for making only one drafting amendment. I hope and pray, Hon'ble Members, that your labours may be crowned with a similar success.

The American constitutional system was more or less adopted in the schemes prepared for framing the Constitutions of Australia and South Africa, which shows that the results achieved by the American Convention held at Philadelphia in 1787, had been accepted by the world as a model for framing independent federal constitutions for various countries. It is for these reasons that I have felt justified in inviting your attention to the American system of constituent and constitutional law as one-which should be carefully studied by you-not necessarily for wholesale adoption, but for the judicious adaptation of its provisions to the necessities and requirements of your own country, with such modifications as may be necessary or essential owing to the peculiar conditions of our social, economic and political life. I have done so as according to Munro--a standard authority on the subject-the American Constitution is based on "a series of agreements as well as a series of compromises". I may venture to add, as a result of my long experience of public life for now nearly half a century, that reasonable agreements and judicious compromises are nowhere more called for than in framing a constitution for a country like India.

In commending to you for your careful consideration and acceptance, with reasonable agreements and judicious compromises, the fundamental principles of the American system, I cannot do better than quote the striking observations on the subject of the greatest British authority namely Viscount Bryce, who in his monumental work, called "The American Commonwealth", writes as follows, putting in a very few lines the substance of the fundamental principles of the American Constitution:-

> "Its central or national- is not a mere league. for it does not wholly depend on the component communities which we call the States. It is itself a Commonwealth, as well as a union of Commonwealths, because it claims directly the obedience of every citizen, and acts immediately upon him through its courts and executive officers. Still less are the minor communities, the States, mere sub-divisions of the Union, mere creatures of the National Government, like the counties of England, or the Departments of France. They have over their citizens an authority which is their own, and not delegated by the Central

Government."

It may possibly be that in some such scheme, skillfully adapted to our own requirements, a satisfactory solution may be found for a constitution for an Independent India, which may satisfy the reasonable expectations and legitimate aspirations of almost all the leading political parties in the country. Having quoted the greatest British authority on the great, inherent, merits of the American Constitution, you will, I hope, bear with me a fairly long quotation from the greatest American Jurist, Joseph Story. In concluding his celebrated book, called "Commentaries on the Constitution of the United States", he made certain striking and inspiring observations which I present to you as worthy of your attention. Said Story:--

> "Let the American youth never forget, that they possess (in their Constitution) a noble inheritance, bought by the toils, and sufferings, and blood of their ancestors; and capable, if wisely improved, and faithfully-guarded, of transmitting to their latest posterity all the substantial blessings of life, the peaceful enjoyment of liberty, property, religion, and independence. The structure has been erected by architects of consummate skill and fidelity; its foundations are solid; its compartments are beautiful, as well as useful its arrangements are full of wisdom and order; and its defences are impregnable from without. It has been reared for immortality if the work of man may justly aspire to such a title. It may, nevertheless, parish in an hour by the folly, or corruption, or negligence of its only keepers, THE PEOPLE. Republics are' created-these are the words which I commend to you for your consideration-by the virtue, public spirit, and intelligence of the citizens. They fall, when the wise are banished from the public councils, because they dare to be honest, and the profligate are rewarded, because they flatter the people, in order to betray them."

To quote yet one more leading authority on the almost ideal Constitution of America, James (at one time Solicitor-General of the United States) says in his highly instructive book, called, "The Constitution of the United States-Yesterday, Today, and Tomorrow"--

> "Constitutions, as a governmental panacea, have come and gone; but it can be said of the American Constitution, paraphrasing the noble tribute of Dr. Johnson to the immortal fame of Shakespeare, that the stream of time which has washed away the dissoluble fabric of many other paper constitutions, has left almost untouched its adamantine strength. Excepting the first ten amendments, which were virtually a part of the original charter, only nine others have been adopted in more than one hundred and thirty years. What other form of government has better stood the test of time?"

Hon'ble Members, my prayer is that the Constitution that you are going to plan may similarly be reared for 'Immortality', if the work of man may justly aspire to such a title, and it may be a structure of 'adamantine strength, which will outlast and overcome all present and future destructive forces.

Having invited your attention to some aspects of the question of constitution-making in Europe and America, I may now profitably turn to some aspects of the question in our own country. The first definite reference to a Constituent Assembly (though not under those words or under that particular name) I have found in a statement of Mahatma Gandhi, made so far back as 1922. Mahatmaji wrote:-

> "Swaraj will not be a free gift of the British Parliament. It will be a declaration of India's full self-expression, expressed through an Act of Parliament. But it will be merely a courteous ratification of the declared wish of the people of India. The ratification will be a treaty to which Britain will be a party. The British Parliament. when the settlement comes, will ratify the wishes of the people of India as expressed through the freely chosen representatives."

The demand made by Mahatma Gandhi for a Constituent Assembly, composed of the "freely chosen representatives" of the people of India, was affirmed, from time to time, by various public bodies and political leaders, but it was not till May, 1934, that the Swaraj Party, which was then formed at Ranchi (in Bihar), formulated a scheme in which the following resolution was included:-

> "This Conference claims for India the right of self-determination, and the only method of applying that principle is to convene a Constituent Assembly, representative of all sections of the Indian people, to frame an acceptable constitution."

The policy embodied in this resolution was approved by the All-India Congress Committee, which met at Patna-the capital of Bihar-a few days later, in May, 1934; and it was thus that the scheme of a Constituent Assembly for framing the Indian Constitution was officially adopted by the Indian National Congress.

The above resolution was confirmed at the session of the Congress held at Faizpur in December 1936. The confirming resolution declared that--

> "The Congress stands for a genuine democratic State in India where political power has been transferred to the people, as a whole, and the Government is under their effective control. Such a State can only come into existence through. a Constituent Assembly having the power to determine finally the constitution of the country."

In November, 1939, the Congress Working Committee adopted a resolution which declared that-

> "Recognition of India's independence and the right of her people to frame their constitution through a Constituent Assembly is essential."

I may add that in the resolutions from which I have quoted above (those adopted at the Congress Working Committee of November 1939, and at the Faizpur session of the Congress of 1936) it was declared that the Constituent Assembly should be elected on the basis of adult suffrage. Since the Congress gave a lead on the subject in 1934, the idea of a Constituent Assembly had come to prevail argely as an article of faith in almost all the politically-minded classes in the country.

But until the adoption of the resolution on Pakistan, in March 1940, by the Muslim League, that political organization had not favoured the idea of a Constituent Assembly as a proper and suitable method for framing a constitution for this country. After the adoption of that resolution, however, the attitude of the Muslim League seems to have undergone a change in favour of the idea of a Constituent Assembly-one for the areas claimed by the League for a separate Muslim State, and the other for the rest of India. Thus it may be stated that the idea of a Constituent Assembly, as the only direct means for the framing of a constitution in this country, came to be entertained and accepted by the two major political parties in 1940, with this difference that while the Congress desired one Constituent Assembly for India, as a whole, the Muslim League wanted two Constituent Assemblies, in accordance with its demand for two separate States in the country. Any way, whether one or two, the idea of a Constituent Assembly being the proper method for the framing of a constitution had clearly dawned by that time on public consciousness in the country, and it was with reference to that great mental upheaval that Pandit Jawaharlal Nehru declared that "it means a nation on the move, fashioning for itself a new

Government of its own making, through their elected representatives".

It remains to add that the conception of a Constituent Assembly as the most appropriate method for framing the constitution of India had also found favour with the members of the Sapru Committee in the report of which, issued last year (1945), is formulated a definite scheme for the composition of a Constituent Assembly. We are meeting, however in Assembly today, under the scheme propounded by the British Cabinet Mission, which, though differing from the suggestions made on the subject by the Congress, the League, and other political organizations, had devised a scheme which, though not by all, had been accepted by many political parties, and also by large sections of the politically-minded classes in the country, but also by those not belonging to any political partly, as one well worth giving a trial, with a view to end the political deadlock, which had obtained for now many years past, and frustrated our aims and aspirations. I have no desire to go further into the merits of the British Cabinet Mission's scheme as that might lead me to trespass on controversial ground, which I have no, desire to traverse on the present occasion. I am aware that some parts of the scheme, propounded by the British Cabinet Mission, have been the subject of acute controversies between some of the political parties amongst us, and I do not want, there-fore, to rush in where even political angles might well fear to tread.

Hon'ble Members, I fear I have trespassed long on your patience, and should now bring my remarks to a close. My only justification for having detained you so long is the uniqueness of this great and memorable occasion in the history of India, the enthusiasm with which this Constituent Assembly had been welcomed by large classes of people in this country, the keen interest which matters relating to it had evoked amongst various communities, and the prospect which it holds out for the final settlement of the problem of all problems, and the issue of all issues, namely, the political independence of India, and her economic freedom. I wish your labours success, and invoke Divine blessings that your proceedings may be marked not only by good sense, public spirit, and genuine patriotism, but also by wisdom, toleration, justice, and fairness to all; and above all with a vision which may restore India to her pristine glory, and give her a place of honour and equality amongst the great nations of the world. Let us not forget to justify the pride of the great Indian poet, Iqbal, and his faith in the immortality of the destiny of our great, historic, and ancient country, when he summed up in these beautiful lines:

Yunan-o-Misr-o-Roma sabmit gaye jahan se,

Baqi abhi talak hai nam-o-nishan hamara.

Kuch bat hai ke hasti mit-ti nahin hamari,

Sadion raha hai dushman daur-e-zaman hamara.

It means: "Greece, Egypt, and Rome, have all disappeared from the surface of the Earth; but the name and fame of India, our country, has survived the ravages of Time and the cataclysms of ages. Surely, surely, there is an eternal element in us which had frustrated all attempts at our obliteration, in spite of the fact that the heavens themselves had rolled and revolved for centuries, and centuries,, in a spirit of hostility and enmity towards us." I particularly ask of you to bring to your task a broad and catholic vision, for Rs the Bible justly teaches us--

"Where there is no vision the people perish." (*Applause*).

NOMINATION OF DEPUTY CHAIRMAN

The Chairman (Dr. Sachchidananda Sinha): I have a proposal to make to you on purely personal grounds, and I hope You will kindly approve of it. For many years past, under medical advice, I have not been able to do any work in the afternoons, and I do not propose to sit after the luncheon recess. So for the time I am temporary Chairman, while the House is going on with the presentation of credentials and the signing of the register in the afternoon, I propose to request the House to give me the assistance of a Deputy Chairman, and I propose that Mr. Frank Anthony be nominated by you. (After a pause). I declare the motion carried.

DEATH OF MR. PRASANNA DEB RAIKUT

The Chairman (Dr. Sachchidananda Sinha): Next, I am informed that a member of our Constituent Assembly, who had been duly elected, had passed away, Mr. Prasanna Deb Raikut from Bengal, and I desire on behalf of the Constituent Assembly to convey our condolence to his relations. I think I may take it as carried.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The Chairman (Dr. Sachchidananda Sinha): Now I think we shall start the formal business which is the presentation of credentials and the signing of the Register. I will present my credentials to myself. Though Hon'ble Members must pass through certain formalities, I have cut out from the procedure the coming of members to the platform to shake hands with the Chairman after signing the Register. We tested this matter yesterday, and found that it would take about a minute and a half, f not two minutes, if after signing his name each member were to ascend this platform by the circuitous route, and shake hands with the Chairman, and then return to this seat. So, I have thought that that formality may be dispensed with. The Secretary will now call out the names of Hon'ble Members, who will come up, present to him their credentials, sign the Register, and go back to their seats.

The following Members then presented their credentials and signed their names in the Register:-

MADRAS

1. The Hon'ble Sri C. Rajagopalachariar.
2. Dr. B. Pattabhi Sitaramayya.
3. The Hon'ble Sri T. Prakasam.
4. The Hon'ble Dewan Bahadur Sir N. Gopalaswami Ayyangar.
5. Diwan Bahadur Sir Alladi Krishnaswami Ayyar.
6. Shrimati Ammu Swaminathan, M.L.A. (Central).
7. Mr. S. H. Prater, O.B.E., J.P., C.M.Z.S., M.L.A. (Bombay).
8. Dr. P. Subbarayan.
9. Raja of Bobbili.
10. Sri M. Ananthasayanam Ayyangar, M.L.A. (Central).
11. Professor N. G. Ranga, M.L.A. (Central).
12. Sri T. A. Ramalingam Chettiyar, M.L.A. (Central).
13. Sri K. Kamaraja Nadar, M.L.A.
14. Sri K. Madhava Menon, M.L.C.
15. Sri B. Shiva Rao.
16. Sri K. Santhanam.
17. Sri T. T. Krishnamachari.
18. Sri B. Gopala Reddi, M.L.A.
19. Shrimati Dakshayani Velayudan, M.L.C. (Cochin).
20. Sri V. 1. Muniswami Pillai, M.L.A.
21. Sri K. Chandramouli, M.L.A.
22. Sri D. Govinda Doss, M,.L.A.
23. Rev. Jerome D'Souza, S.J.

24. Sri Ramanath Goenka.

25. Sri H. Sitarama Reddi, M.L.A.

26. Sri U. Srinivasa Mallayya.

27. Sri Kala Venkata Rao, M.L.A.

28. Sri P. Kunhiraman.

29. Shrimati G. Durgabai.

30. Sri P. Kakkan,M.L.A.

31. Sri N. Sanjeeva Reddi, M.L.A.

32. Sri O. P. Ramaswami Reddiyar, M.L.C.

33. Sri C. Perumalswami Reddi, M.L.C.

34. Sri M. C. Veerabahu Pillai.

35. Mr. T. J. M. Wilson, M.L.A.

36. Sri P. L. Narasimha Raju, M.L.A.

37. Sri S. Nagappa, M.L.A.

38. Sri L. Krishnaswami Bharathi.

39. Sri O. V. Alagesan.

40. Sri V. C. Kesava Rao.

41. Dr. V. Subrahmanyam.

42. Sri C. Subrahmany.

43. Sri V. Nadimuthu Pillai.

BOMBAY

1. The Hon'ble Sardar Vallabhbhai J. Patel.

2. The Hon'ble Mr. B. G. Kher.

3. The Rt. Hon'ble Dr. M. R. Jayakar, P.C.

4. Mr. K M. Munshi.

5. Mr. Shankar Dattatraya Deo.

6. Mr. Narhar Vishnu Gadgil.

7. Mr. S. K. Patil.

8. Mrs Hansa Mehta, M.L.C.

9. Dr. Joseph Alban D'Souza, M.L.A.

10. Mr. M. R. Masani,M.L.A. (Central)

11. Mr. R. M. Nalavade. M.L.A.

12. Mr. B. M. Gupta, M.L.A.

13. Mr. S. Nijalingappa.

14. Mr. R. R. Diwakar,

15. Mr. S. N. Mane, M.L.A.

16. Mr. Khandubhai Kasanji Desai.

17. Mr.H. V. Pataskar, M.L.A.

18. Mr. Kanayalal Nanabhai Desai, M.L.A.

19. Mr. K. M. Jedhe.

BENGAL

1. Mr, Sarat Chandra Bose,

2. Dr.B. R. Ambedkar.

3. Mr. Kiran Shankar Roy, M.L.A.

4 Mr. Frank Reginald Anthony, M.L.A. (Central)

5. Mr. Satya Ranjan Baksi.

6. Dr. Prafulla Chandra Ghosh.

7. Sir Uday Chand Mahtab, K.C.I.E., M.L.A.

8. Dr. Suresh Chandra Banerjee, M.L.A.

9 Mr. Debi Prosad Khaitan, M.L.A.

10. Mrs. Leela Ray.

11. Mr. Damber Singh Gurung, M.L.A.

12. Dr. Syama Prasad Mookherjee, M.L.A.

13. Mr. Ashutosh Mallick, M.L.A.

14. Mr. Radhanath Das, M.L.A.

15. Mr. Promatha Ranjan Thakur, M.L.A.

16. Mr. Hem Chandra Nasker, M.L.A.

17. Mr. Somnath Lahiri.

18. Mr. Rajkumar Chakravarty.

19. Mr. Priyaranjan Sen.

20. Mr. Prafulla Chandra Sen.

21. Mr. J. C. Majumdar.

22. Mr. Surendra Mohan Ghose.

23. Mr. Arun Chandra Guha.

24. Mr. Dhananjoy Roy, M.L.A.

25. Mr. Dhirendra Nath Datta, M.L.A.

26. Mr. Prasunnadas Raikut - Passed away before taking his seat in the Assembly.

UNITED PROVINCES

1. Acharya J. B. Kripalani.

2. The Hon'ble Pt. Govind Ballabh Pant.

3. The Hon'ble Shri Purushottam Das Tandon.

4. The Hon'ble Pt. Hirday Nath Kunzru.

5. Shri Govind Malaviya, M.L.A. (Central).

6. Pt. Shri Krishna Dutt Paliwal, M.L.A. (Central).

7. Shri Mohan Lal Saksena, M.L.A. (Central).

8. Acharya Jugal Kishore, M.L.A.

9. Mrs. Purnima Banerji, M.L.A.

10. Shri Sri Prakasa, M.L.A. (Central).

11. Shrimati Sucheta Kripalani.

12. Sardar Jogendra Singh, M.L.A. (Central)

13. Shri Damodar Swarup Seth, M.L.A. (Central).

14. Shri Algu Rai Shastri, M.L.A.

15. Shri Banshi Dhar Misra, M.L.A.

16. Shri Bhagwan Din, M.L.A.

17. Shri Kamlapati Tiwari, M.L.A.

18. Shrimati Kamla Chaudhri.

19. Raja Jagannath Bakhsh Singh, M.L.A.

20. Shri Harihar Nath Shastri, M.L.A.

21. Shri Gopal Narain, M.L.A.

22. Shri Feroze Gandhi.

23. Shri Jaspat Roy Kapoor.

24. The Hon'ble Pt. Jawaharlal Nehru.

25. The Hon'ble Mr. Rafi Ahmad Kidwai.

26. Sir S. Radhakrishnan.

27. Shri Dayal Das Bhagat, M.L.A.

28. Shri A. Dharam Das, M.L.A.

29. Shri Gopi Nath Srivastava.

30. Shri Dharam Prakash.

31. Shri Ajit Prasad Jain, M.L.A.

32. Shri Ram Chandra Gupta, M.L.C.

33. Shri Pragi Lal M.L.A.

34. Shri Phool Singh, M.L.A.

35. Shri Masuria Din, M.L.A.

36. Shri Shibban Lall Saksena.

37. Shri Khurshed Lall.

38. Shri. Sunder Lall.

39. Shri Har Govind Pant, M.L.A.

40. Shri R. V. Dhulekar, M.L.A.

41. Shri Vishwambhar Dayal Tripathi, M.L.A.

42. Shri Venkatesh Narayan Tivary, M.L.A

PUNJAB

1. Diwan Chaman Lall, M.L.A. (Central).

2. Sardar Harnam Singh.

3. Sardar Kartar- Singh, M.L.A.

4. Sardar Ujjal Singh, M.L.A.

5. The Hon'ble Mr. Mehr Chand Khanna.

6. Sardar Pratap Singh, M.L.A.

7. Bakhshi Sir Tek Chand.

8. Sardar Prithvi Singh Azad, M.L.A.

9. pandit Shri Ram Sharma, M.L.A.

10. Rao Bahadur Chaudhri Suraj Mal, M.L.A.

11. Dr. Gopi Chand Bhargava, M.L.A.

12. Chaudhri Harbhaj Ram, M.L.A.

BIHAR

1. The Hon'ble Dr. Rajendra Prasad.

2. Mrs. Sarojini Naidu.

3. The Hon'ble Mr. Jagjivan Ram

4. The Hon'ble Mr. Shri Krishna Sinha.

5. Mr. Satyanarayan Sinha, M.L.A. (Central).

6. The Hon'ble Maharajadhiraja Sir Kameshwara Singh, K.C.I.E., of Darbhanga.

7. Dr. P. K. Sen.

8. The Hon'ble Mr. Anugrahnarayan Sinha.

9. Mr. Banarsi Prasad Jhunjhunwala, M.L.A. (Central).

10. The Hon'ble Rai Bahadur Sri Narain Mahtha.

11, Mr. Deshbandhu Gupta, M.L.A. (Central).

12. Mr. Ramnarayan Singh, M.L.A. (Central).

13. Mr. A. K. Ghosh, M.L.A.

14. Mr. Bhagwat Prasad, M.L.A.

15. Mr. Boniface Lakra, M.L.C.

16. Mr. Rameshwar Prasad Sinha, M.L.A.

17. Mr. Phulan Prasad Varma, M.L.A.

18. Mr. Mahesh Prasad Sinha, M.L.A.

19. Mr. Sarangdhar Sinha, M.L.A.

20. Rai Bahadur Syamanandan Sahaya, M.L.A., C.I.E.

21. Mr. Brajeshwar Prashad.

22. Mr. Jaipal Singh.

23. Mr. Chandrika Ram, M.L.C.

24. Mr. Kamleshwari Prasad Yadav, M.L.A.

25. Mr. Jagat Narain Lall, M.L.A.

26. Mr. Jadubans Sahay, M.L.A.

27. Mr. Guptanath Singh, M.L.A.

28. Mr. Dip Narayan Sinha, M.L.A.

29. Mr. Devendra Nath Samanta, M.L.C.

30. Dr. Sachchidananda Sinha, M.L.A.

C.P. AND BERAR

1. The Hon'ble Pt. Ravi Shankar Shukla.

2. Dr. Sir Hari Singh Gour.

3. The Hon'ble Mr. Brijlal Nandlal Biyani.

4. Mr. Rustom khurshedji Sidhwa, M.L.A.

5. Seth Govinddas, M.L.A. (Central).

6. Thakur Chhedilal, M.L.A.

7. Mr. Hari Vishnu Kamath.

8. Mr. Cecil Edward Gibbon, M.L.A.

9. Mr. Shankar Tryambak Dharmadhikar.

10. Guru Agamdas Agarmandas, M.L.A.

11. Dr. Punjabrao Shamrao Deshmukh.

12. Mr. B. A. Mandloi, M.L.A.

13. Mr. H. J. Khandekar.

14 L. S. Bhatkar, M.L.A.

ASSAM

1. The Hon'ble Srijut Gopinath Bardoloi.

2. The Hon'ble Rev. J. J. M. Nichols-Roy.

3. Srijut Omeo Kumar Das, M.L.A.

4 The Hon'ble Srijut Basanta Kumar Das.

5. Srijut Dharanidhar Basu Matari, M.L.A.

6. Srijut Rohini Kumar Chaudhury, M.L.A. (Central).

7. Babu Akshay Kumar Das, M.L.A.

N.-W. F. PROVINCE

1. Maulana Abul Kalam Azad.

2. Khan Abdul Ghaffar Khan.

ORISSA

1. The Hon'ble Sri Hare-Krushna Mahtab.

2. Mrs. Malati Chowdhury.

3. Sri Biswanath Das.

4. Sri Bodhram Dube, M.L.A.

5. Sri Lakshminarayan Sahu, M.L.A.

6. Mr. B. Das.

7. Sri Nandakishore Das.

8. Sri Raj Krushna Bose, M.L.A.

9. Sri Santanu Kuram Das, M.L.A.

The Chairman (Dr. Sachchidananda Sinha): It has been brought to my notice that there is no Speaker in Sind as there is no legislature there now. Under the circumstances, the Secretary of the Assembly there, has signed the credentials certificates. They may be accepted.

SIND

1. Mr. Jairamdas Daulatram.

DELHI

1. The Hon'ble Mr. M. Asaf Ali.

AJMER-MERWARA

1. Pt. Mukut Bihari Lal Bhargava, M.L.A. (Central).

COORG

1. Mr. C. M. Poonacha, M.L.C.

The Chairman (Dr. Sachchidananda Sinha): If any Hon'ble Member's name has not been called through oversight, he will stand and his-name will be called out. He will then come and sign his name in the Register.

(No one stood up.)

The Chairman (Dr. Sachchidananda Sinha): That finishes our, agenda for today. Therefore, there will be no sitting in the afternoon. The Assembly will meet tomorrow. A new agenda will be Prepared, which is not yet ready. I have asked the Constitutional Adviser's Office to circulate the agenda to Hon'ble Members, if possible by this evening, and I hope it may be done. If you so desire, the Assembly will meet at 11 A.M. or 11-30.

Many Hon'ble Members: 11 A.M.

The Chairman (Dr. Sachchidananda Sinha): We shall meet at 11.

The Assembly then adjourned till Tuesday, the 10th December 1946, at 11 A.M.

---

*[ ] English translation of Hindustani Speech.

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME I

Tuesday, the 10th December, 1946

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eleven of the Clock, the temporary Chairman (Dr. Sachchidananda Sinha) in the Chair.

The Chairman (Dr. Sachchidananda Sinha) : If any Hon'ble Member has arrived since yesterday afternoon, who has not yet signed the Register nor presented his credentials, he may do so 'now.

(Nobody came forward).

The Chairman (Dr. Sachchidananda Sinha): I shall now take up item No. 2 which is the moving of a Resolution prescribing procedure for the election of a permanent Chairman. I understand that Acharya Kripalani will move this resolution. I invite him to do so.

PROCEDURE FOR ELECTION OF PERMANENT CHAIRMAN

Acharya J. B. Kripalani (United Provinces: General): Sir, with your permission, I propose to move the following resolution prescribing the procedure for the election of the permanent Chairman whom we propose to call as the President of the Constituent Assembly. The resolution thus:

"The Assembly hereby resolves that the following rules for the election of Chairman be adopted.

(1) At any time before 2-30 P.m., today any member may nominate another member for election by delivering to the temporary Chairman or to a person appointed by him a nomination paper signed by the proposer and by a third member as seconder and stating--

(a) the name of the member nominated, and

(b) that the proposer has ascertained that such member is willing to smallest number

of votes shall be excluded from the election.

(2) At any time to be the temporary Chairman, the temporary chairman shall read of to the Assembly the names of the member a who have been duly nominated together with those of their proposers and seconders and, if only one member has been so nominated, shall declare that member to be duly elected.

If more than one member has been so nominated the Assembly shall proceed to elect the Chairman by ballot on a date to be fixed by the temporary Chairman.

(3) For the purpose of rule (2) a member shall not be deemed to have been duly nominated or be entitled to vote, if he and his proposer and seconder have not signed the Assembly Register as members of the Assembly.

(4)Where only two candidates are nominated, the candidate who obtains at the ballot the larger number of votes shall be declared elected. If they obtain an equal number of votes, the election shall be by the drawing or lots.

(5) Where more than two candidates have been nominated and at the first ballet no candidate obtains more votes than the aggregate votes obtained by the other candidates, the candidate who has obtained the smallest number of votes shall be excluded from the election, and balloting shall proceed, the candidate obtaining the smallest number of vote, at each ballot being excluded from the election, until one candidate obtains more votes than the remaining candidate or than the aggregate votes of the remaining candidates, as the case may be: and such candidate shall be declared elected.

(6)Where at any ballot any of three or more candidates obtain an equal number of votes and one of them has to be excluded from the election under rule (4) the determination as between the candidates whose votes are equal of the candidate who is to be excluded shall be by the drawing of lots'."

This resolution for the Procedure of election of the President needs no words from me to recommend itself to the House. These are the usual rules applied in a., legislative assemblies.

The Hon'ble Pandit Jawahar Lal Nehru (United Provinces : General) I beg to second ,lie resolution.

The Chairman (Dr. Sachchidananda Sinha): The resolution has been duly moved and seconded. I shall put it to the vote now.

Dr. P. S. Deshmukh (C. P. and Berar: General): Sir, may I suggest some verbal alterations?

The Chairman (Dr. Sachchidananda Sinha): The Hon'ble Member is fully entitled to make any suggestions he desires, and we shall consider them after they have been noted down. Will the Hon'ble Member come to the rostrum before making his suggestions?

Dr. P. S. Deshmukh. (after having come to the rostrum) I suggest that in paragraph (1), line 4, the word "third" be substituted by the word " another", and that in paragraph 3, in the last but one line of that paragraph the word "and" in both places in that line be substituted by the word "or". I think these changes are, in my opinion, necessary.

The Chairman (Dr. Sachchidananda Sinha): Does, Acharya Kripalani accept these changes?

Acharya J. B. Kripalani: There is no objection.

Sri K. Santhanam (Madras: General) : It means that the seconder may mean a non-member.

The Chairman (Dr. Sachchidananda Sinha): I am not here to interpret it. Interpretation is a most dangerous thing. If the House will permit me. I shall read out the proposed amendments. The first amendment proposed is that in paragraph (1) for the word "third' the word "another" be substituted. Does Acharya Kripalani accept it?

Acharya J. B. Kripalani: So far as I am concerned I accept it; I have no objection.

The Chairman (Dr. Sachchidananda Sinha) : Is there any objection on the part of any Hon'ble Member to the word "third" being changed into, it another"?

Sri M. Ananthasayanam Ayyangar (Madras: General)- I have got objection to this amendment. The inconvenience of accepting this change is this. There are already in the earlier portion of the paragraph the words " another member" in the second line of the paragraph, and if you accept the present amendment, it means that a person who is to be the Chairman, has himself got to be the seconder, and that is an absurdity. I therefore oppose this amendment. The original word "third" should'. continue and there is no meaning in this amendment.

The Chairman (Dr. Sachchidananda Sinha): Do you desire that the original word in Acharya Kripalani's amendment should stand, and that no change should be made?

Sri M. Ananthasayanam Ayyangar: Yes.

Dr. P. S. Deshmukh: I see the objection to my amendment. and do not press it. But, I think it would sound far better if the first word "another" is changed into "a" and the word "third" altered into "another". I am afraid that it might look as if I am suggesting too many changes. But we are making a constitution, and I do not want. that anything should go out of this House....

The Chairman (Dr. Sachchidananda Sinha): It is not a matter of constitution at all. You first made one proposal that the word "third"' be changed into "another". If you bring up another proposal before your first proposal is disposed of, that is not fair to the House. Now the only question before the House is, whether the word "third" as put down in Acharya Kripalani's resolution, should be changed into "another"- After this is disposed of, you may bring up any other proposal that you like.

Dr. P. S. Deshmukh: This is a consequential suggestion. I will read out to you....

The Chairman (Dr. Sachchidananda Sinha): No.

Acharya J. B. Kripalani: I think the thing as it stands is the best, I accepted the amendment in order to avoid a controversy.

The Chairman (Dr. Sachchidananda Sinha): If I may advise the House, I think there is no substantial difference in the meaning. The word may stand as it is, but it is for the House to decide.

The Hon'ble Sri C. Rajagopalachari (Madras: General): The mover of the amendment is under a misapprehension, I fancy. It is not a matter of elegance of language. The points that are covered by the words as they stand in the original Resolution are these. There should be a proposer distinct from the man proposed. Again, the other point is that the seconder should be distinct from either of these two. Therefore the word "third" is precise and necessary and any change will lead to a mistake.

An Hon'ble Member: When the mover of this Resolution has already accepted the amendment suggested, I don't think any further discussion is necessary.

The Chairman (Dr. Sachchidananda Sinha): But you may certainly permit the mover of a Resolution to change his mind subsequently. It would do no harm. You would not prevent him from doing that. I think as a result of this discussion, which we have had on this point, the word "third" may be left it is.

An Hon'ble Member. Sir, it was moved formally by Acharya Kripalani that the name of the chairman should be the "President". That was not put to the vote. I don't know if it is necessary to put it to the vote, and if it has been adopted.

The Chairman (Dr. Sachchidananda Sinha): No. It has not yet been adopted. I have been advised by the Constitutional Adviser that according to the procedure in Parliament we have to use the word "Chairman" both for me, as the acting Chairman, and the permanent Chairman, but the Rules Committee, which will come into existence before long, will decide this matter. It will be opened to the Rules Committee to adopt the word "President". Therefore the word "Chairman" may be left as it is for the time being.

We shall now take up the third sub-section of Acharya Kripalani's resolution.

"For the purpose of rule (2) a member shall not be deemed to have been duly nominated or be entitled to vote if he and his proposer and seconder have not signed the Assembly Register as members of the Assembly. "

The amendment is that. the word "and", in the two places in this particular clause, should be substituted by the word "or". I should like to ask Acharya Kripalani whether he is prepared to accept that.

Acharya J. B. Kripalani: I submit that it makes no difference in the meaning, but "and" is more appropriate here.

The Chairman (Dr. Sachchidananda Sinha): I understand that you would prefer to adhere to the word "and" rather than have it changed into "or", though you say that practically they make the same thing?

Acharya J. B. Kripalani: Yes, Sir. I adhere to the words that are in the

Resolution.

The Chairman (Dr. Sachchidananda Sinha): What is the sense of the House?

Some Hon'ble Members: "Or" is proper.

Many Hon'ble Members: No change.

The Chairman (Dr. Sachchidananda Sinha): The sense of the House seems to be that there is no need to change the word "and" into "or", and that the Resolution should stand as it is ,

Mr. H. V. Kamath (C. P. and Bearer: General): Sir, I wish to say a few words on this Resolution. There is no provision for withdrawal of a contesting candidate.

The Chairman (Dr. Sachchidananda Sinha): I think the Hon'ble Member who has now come to address us wants to say that in an such rules there is provision for withdrawal of a member from an election contest. I think that is true. He says there should be-though necessity may not arise for it-but there should be a provision added that if any member nominated for election desires to withdraw himself from the contest he may do so at some time. I don't think there is any harm in adding that.

Mr. H. V. Kamath: With your permission, Sir, I wish to recommend the insertion of this clause "Where more than one candidate has been nominated, the Chairman will fix a date and time for the withdrawal of one or more of such candidates if he or they so desire."

The Chairman (Dr. Sachchidananda Sinha): Quite right. I shall try to put in clear language as well as I can, the substance of your suggestion. It may be added.

Well now, all the amendments having been disposed of, I put it formally to the House now that Acharya Kripalani's Resolution be carried.

The Resolution was adopted.

The Chairman (Dr. Sachchidananda Sinha) : I declare Acharya Kripalani's resolution duly carried.

PROVISIONAL ADOPTION OF CENTRAL LEGISLATIVE ASSEMBLY

RULES AND STANDING ORDERS

The Chairman (Dr. Sachchidananda Sinha): Now I would invite the Hon'ble Pandit Jawahar Lal Nehru to move the first of the three resolutions remaining to be moved.

The Hon'ble Pandit Jawahar Lal Nehru (United Provinces: General): Sir, I beg to move this formal resolution which I hope will facilitate the business of the House, namely-

"That the- Assembly do adopt, with such modifications as the Chairman may in his absolute discretion Permit, the Rules and Standing Orders of the Central Legislative Assembly pending the framing by the Constituent Assembly of its own Rules of Procedure."-'

As the House knows, this Constituent Assembly has started without any rules and regulations made by any outside authority. It has to make its own rules. I am later moving a resolution in the House asking for the appointment of a Committee to make the rules. Presumably that Committee will take two or three days to finish the work. Now we have to function during these few days before our own rules have been made. It is desirable therefore that we should have something to fall back upon. And the easiest method is to adopt the rules of the Central Legislative Assembly in their entirety, not absolutely, because then it might give rise to considerable difficulty. But we should adopt them and give the right to the Chairman to modify them, if necessary, to suit the occasion.

The Chairman (Dr. Sachchidananda Sinha): Win the Hon'ble mover kindly modify the words "the Chairman may in his absolute discretion permit" something to be done. I suppose it means the permanent Chairman.

The Hon'ble Pandit Jawahar Lal Nehru: Whoever is presiding at the time.

The Chairman (Dr. Sachchidananda Sinha): Very well.

The Hon'ble Pandit Govind Ballabh Pant (United Provinces: General): I second the resolution.

The Chairman (Dr. Sachchidananda Sinha): Hon'ble Members may now offer amendments or suggestions, if any.

Sri Biswanath Das (Orissa: General): Sir, I wish to point out. The Chairman (Dr. Sachchidananda Sinha): May I know if the Hon'ble Member is going to move any amendment?,

Sri Biswanath Das: I see certain difficulties in the wording of the Resolution. I wish him to consider the position and see if it is not possible or desirable to withdraw the Resolution.

The Chairman (Dr. Sachchidananda Sinha): I must apologise to you, but I could not follow What YOU said.

Sri Biswanath Das: I propose to point out certain difficulties, as I see them, in this, Resolution in its actual working.

The Chairman (Dr. Sachchidananda Sinha): In other words, you are objecting to the Resolution as drafted and moved.

Sri Biswanath Das: Yes.

The Chairman (Dr. Sachchidananda Sinha) : Directly negativing the proposition? I hope the Hon'ble Mover will follow that. The speaker foresees, certain difficulties In the way of carrying out the Resolution moved 'by the Hon'ble Pandit Nehru and he, therefore though he does not use the word 'Oppose', is really opposing the Resolution.

Sri Biswanath Das: I am very sorry I have to undertake a job which is very unusual with me. Need I state in this connection that I have been a silent supporter of the lead given by the Working Committee and by the Hon'ble Pandit Jawahar Lal Nehru. But I see certain difficulties, in giving practical application to this Resolution. It proposes two or three things. Firstly, it says 'with certain modifications as the Chairman in him absolute discretion permits'; secondly, it says "the rules of, the Central Legislative Assembly may be given application". Sir, in the first Place, the Rules Committee is going to be appointed very shortly. I believe it, will, at best, take only two or three days to frame the rules and place them before the House. Let me hope that in the meanwhile we do not transact important business. Therefore the temporary proposals will not be very helpful despite the difficulties that are bound to arise in their application with various points of order.

Then, Sir, the Resolution leaves a lot of discretion to the Chair. I would appeal to my leader to consider whether It is not desirable and fair to leave the whole thing-the entire regulation of the business to the chair for two or three days within which period the regular rules will be framed and placed before the House. I suggest that if, in the meanwhile, the House proposes to do any business, let thy work be regulated by the Chair in his absolute discretion, is being permitted in the Resolution itself.

Thirdly, it is difficult for us to know the Procedure and the Rules and Standing Orders of the Central Legislature. For myself I do not know and I believe there are many Hon'ble Members here who have absolutely no knowledge of the Rules of Procedure of the Central Legislature. The rules differ in very important respects from Province to Province. It will take two or three days for members to acquaint themselves with the rules of the Central Legislature. Instead of putting the Hon'ble Members to this difficulty, I think it is better, to leave it to the Chair to regulate the business, if any, till such time as our own Committee frames rules.

Lastly, Sir each one of the 220 members of this House may have to be supplied with a copy of the Rules of the Central Assembly. I do not know whether the Central Legislature may be able to supply so many copies of the Rules now, at short notice. In view of these difficulties I believe there is no harm if Pandit agrees to withdraw this Resolution and leave the entire option to the Chair as it is proposed in the Resolution. I have nothing more to say. I am very sorry that I have to 'oppose' it as you, Sir, put it though it is not my purpose to do. so.

The Chairman (Dr. Sachchidananda Sinha): I may inform Mr. Biswanath Das that, whatever term it might suit him to use, I, as Chairman, have no option but to call his attitude as one of opposition.

Sri Biswanath Das: That may be so; but I have not spoken in any spirit of opposition.

Shri Sri Prakasa (United Provinces: General): I would like to support the Resolution moved by the Hon'ble Pandit Nehru. If my Hon'ble Friend Mr. Biswanath Das were to read the Standing Orders and Rules of the Central Legislature he will find that they are almost perfect. They cannot be improved upon. I am sure when our own Committee has sat and deliberated in the matter, it will find that it cannot make any changes therein Sir, if your Secretary will circulate a copy of the Rules and Standing Orders of the Central Legislature to Hon'ble Members,-it does not cost very much-- Mr. Biswanath Das and everyone else will find that the Rules that are good enough for the Central Legislature will be good enough for us also. I think it will be mere waste of time if we adjourn the business of this House in order to frame our own Rules of Business. I do not think you, Sir, as temporary Chairman, will find that these rules do not cover all possible contingencies that might arise in the course of our debate. I support my Hon'ble Friend, Pandit Jawahar Lal Nehru.

The Chairman (Dr. Sachchidananda Sinha): I am more concerned with knowing whether anyone is supporting Mr. Biswanath Das. (Laughter). I am concerned with the technical aspect of the question that the proposal of Mr. Biswanath Das has not even been seconded. I think, the sense of the overwhelming majority of the House is that Pandit Jawahar Nehru's Resolution be adopted.

Mr. N. V. Gadgil (Bombay: General): I want to make a request that all the members of the Constituent Assembly be supplied with a copy of the Manual of Rules of Business and Standing Orders of the Central Legislative Assembly.

The Chairman (Dr. Sachchidananda Sinha): I do not know whether there are as many copies available. We may not have; however, I shall try my best to meet your wishes.

I now put the Resolution of Pandit Nehru to the vote...... I declare it carried.

Now I shall request Pandit Nehru to move the next resolution, No. 6.

CONFIRMATION OF EXISTING ORGANISATION OF CONSTITUENT ASSEMBLY OFFICE

The Hon'ble Pandit Jawahar Let Nehru (United Provinces: General): Mr. Chairman, Sir, I beg to move the following resolution, namely.-

"That this Assembly do confirm the existing Organisation of the Office of the Constituent Assembly, pending the final decision of this Assembly."

The House probably knows that for the last many months the Office of the Constituent Assembly has been functioning and has organised all that has gone before us, before the meeting of this Assembly. Much-of their work has been completely behind the scenes and possibly few members realise the hard work that has preceded this meeting. In any event, the Office. has to continue till the Assembly decides otherwise. Some kind of Office obviously the Assembly is going to have. It may choose to continue this Office, it may choose to expand it or to vary it but it must continue, and my Resolution is in a sense to legalise the continuation of this Office until such time as the Assembly thinks otherwise. I beg to move, Sir.

The Chairman (Dr. Sachchidananda Sinha): Is this Resolution seconded?

The Hon'ble Mr. M. Asaf Ali (Delhi): I have very great pleasure in seconding this resolution of Pandit Nehru.

The Chairman (Dr. Sachchidananda Sinha): I have very great pleasure in putting it to the vote. (Laughter). Am I not entitled to make any observation without provoking laughter? (*Renewed laughter*).

I would like to say, in support of your observations, Pandit Nehru, that in the few days that it has been my privilege to work with Sir B. N. Rau and his staff, I have received the greatest possible assistance, and I am sure they will continue to give the same valuable assistance to my successor...... I declare the Resolution carried.

Acharya Kripalani will now move resolution No. 7.

COMMITTEE ON RULES OF PROCEDURE

Acharya J. B. Kripalani (United Provinces: General): Sir, we have assembled here, having no Rules of Procedure. Therefore it was that Pandit Jawahar Lal Nehru moved his first resolution so that till we are able to make our rules, the rules that apply in the conduct of business in the Central Assembly may be applied in any resolution that we might discuss here before we have made our rules. These rules require very careful consideration. For that purpose I propose that a Committee be appointed. I therefore beg leave to move the following resolution that

"This Assembly resolves-

(1)to appoint a committee consisting of a Chairman and 15 others members to report on the following matters:

(a) Rules of Procedure of the Assembly."

You will find in the copy you have got the words "Sections and Committees'. Sections and Committees are part of this Assembly, and the words therefore appear to me to be superfluous. I have therefore taken them off So-

"(a) Rules of Procedure of the Assembly;

(b) Powers of the Chairman;

(c) Organisation of the work of the Assembly, including the appointment and powers of Office-bearers

other than the Chairman; and

(d) Procedure for the declaration of the Committee;

(2) that the Chairman shall be the Chairman of the Committee;

(3) that the Members of the Committee be elected in the manner prescribed in the Schedule; and

(4) that, fending the decision of the Assembly in that behalf, the Chairman shall--

(a) fix the allowance of the Members of the Assembly;

(b) in the case of the servants of the Government of India or any Provincial Government whose services are placed at the disposal of the Assembly fix their salaries and allowances in consultation with the Governments concerned; and

(c) fix the salaries and allowances of all other persons recruited for the business of the Assembly.

Schedule

1.The Members of the Committee shall be elected according to the principle of proportional representation by means of the single transferable vote. The election shall be conducted as nearly as possible in accordance with the regulations in force in this behalf in the Central Legislative Assembly.

2.The Chairman shall fix and announce a date and time for the holding of the election (if necessary) of the Members of the Committee.

3.Notice may be given by any member desirous of Proposing a member or members for election to the Committee. Notice shall be given in writing addressed to the Secretary and signed by the Member giving notice and shall be left at the Notice Office before 12 NOON on a day to be fixed by the Chairman. The member giving notice must satisfy himself that the Members he proposes are Willing to serve if elected."

After this I have added another paragraph. It runs as follows: It is not given in the paper you have got but it may be added:

"If within the time appointed by the Chairman any candidate proposed desires to withdraw his name, he shall be free to do.

4.If the number of candidates so nominated is less than the number of vacancies to be filled, the, Chairman will appoint a further period within which the notice aforesaid may, be given and may thereafter appoint additional further periods until the number of candidates it not less than the number of vacancies to be filled.

5.If the total number of candidates nominated is equal to the number of vacancies to be filled, the Chairman shall declare all the candidates to be duly elected.

6.If the total number of candidates nominated exceeds the number of vacancies, an election shall be held in the manner prescribed. in rule 1.

7.For the purpose of these rules, a member shall not be deemed to have been duly nominated or be entitled to vote if he and his proposer have not signed the Assembly Register as members of the Assembly."

An Hon'ble Member. No seconder required for these nominations? All that is mentioned is the proposer and the candidate.

Rai Bahadur Syamanandan Sahaya (Bihar: General): The Rules just now proposed do not include a seconder. I just wanted to make it clear if a seconder is required for these nominations or a proposer will do.

The Chairman (Dr. Sachchidananda Sinha): Rai Bahadur Syamanandan Sahaya wants to know whether the nominations to be made to the election of the Committee will require only a proposer or also a seconder.

Acharya J. B. Kripalani: Sir, no seconder is necessary.

The Chairman. (Dr. Sachchidananda Sinha): Very good.

Mr. H. V. Kamath. (C. P. and Berar: General): I submit, Sir, that here again there is a pretty serious-lacuna with reference to the disposal of election petitions. This Assembly, in my opinion, Sir, must appoint a Tribunal for the disposal of election petitions, where such elections have been challenged by Hon'ble Members. For instance, yesterday, the Baluchistan election was challenged. That was an the Agenda yesterday. But there is no provision for the appointment of a Tribunal.

The Chairman (Dr. Sachchidananda Sinha): The Committee, I understand, will frame certain rules for that purpose. I advise them to keep in mind, that they should frame rules also for going into election cases.

Dr. Suresh Chandra Banerjee (Bengal: General): Is it the intention of the Mover that the Rules should also apply to Sections? In my opinion 'Section' should be specifically mentioned here because you know there are difficulties with particular Sections.

Dr. Syama Prasad Mookherjee (Bengal: General): I also support the proposal made by Dr. Suresh Chandra Banerjee. I think it will be safer to accept it. If it is the intention of the Mover that the Rules Committee will also frame rules for Sections and Committees, it is desirable to include Sections and Committees specifically in the Resolution, so that it may read like this "Rules of Procedure of the Assembly, including Sections and Committees."

The Chairman (Dr. Sachchidananda Sinha): Dr. Syama Prasad Mookherjee is making a suggestion to you that you may kindly accept his proposal to include or add one word there.

Acharya J. B. Kripalani: I think that the Rules of Procedure of Assembly, Sir, include the ruler, for Sections and Committees and I do not see wily this superfluous addition be made in the draft as I have presented before the

House.

Dr. Syama Prasad Mookherjee: May I just explain, Sir, that it is very necessary that the words 'including Sections and Committees' should be mentioned here? When the Sectional Assemblies will meet each may frame its own Rules of Procedure. The question may then arise whether the Constituent Assembly as such had the authority to frame Rules of Procedure for the Sections at all. Reference has then to be made to the Resolution which gave authority to the Rules Committee to frame rules and then the only mention which will be found will be that this Committee was appointed to frame Rules of 'Procedure of the Assembly. It will then be a question of interpretation whether the Rules Committee was at all entitled to frame rules for the Sections. If your intention is that this Rules Committee will also frame rules for the Sections, why not say specifically "including Sections and Committees' so that there- may not be any ambiguity or doubt whatsoever when Sections start doing their work.'

The Hon'ble Shri Purushottamdas' Tandon (United Provinces: General): I support the amendment of Dr. Mookherjee.

The Chairman (Dr. Sachchidananda Sinha): Have you any objection to substituting or adding that word 'including' there to make, as they contend, the sense clear still?

Acharya J. B. Kripalani: I think if there are additional rules necessary for the Sections, it will be laid down that the Sections will not make any rules inconsistent with the rules of the whole Assembly. Mr. submission, Sir, is that this Rules Committee will make general rules of a very broad nature and these will apply to Sections and Committees. If any Committee or if any Section wants any additional rules, they shall be made by it subject to this that such rules shall not be inconsistent with the general rules that this Committee has made. Therefore, I would like this section of the Resolution to stand as it is.

Sardar Harnam Singh (Punjab: Sikh): Mr. Chairman, I have got two points to put before this House regarding the Resolution proposed by Acharya Krinalani- One relates to para. 1(a) of the resolution. I agree with Dr. Syama Prasad Mookherjee that instead of the words in para. 1 (a) of the resolution, "Rules of Procedure of the Assembly" it should be "Rules of Procedure of the Assembly, its Sections and Committees". That is my first proposal. The Cabinet Mission in their elucidations always referred to the Sections as Sections of the Constituent Assembly. Therefore, my proposal is that in para, 1 (a) of the rule must be read as "Rules of Procedure of the Assembly, its Sections and Committees".

Now there is another matter. Acharya Kripalani, in moving the Resolution stated that the words, "Sections and Committees", were superfluous and therefore he was for deleting them. In the proposed Rules of Procedure for the Assembly, it is therefore understood that the Rules of Sections and Committee are included. One of the Committees that you will be setting up in this preliminary session is the Advisory Committee for certain purposes outlined in paragraph 20 of the Cabinet Mission's proposals. The Cabinet Mission have clearly stated that the Advisory Committee must have full representation of the minorities. Now, when the Rules of Procedure for that Committee are to be framed by a Committee which is to be elected by this House, according to paragraph 1 of the Schedule, I fear that minorities will not have any say in the Rules which are to regulate the procedure of the Advisory Committee. Therefore, my second proposal is that para. 1 of the Schedule, must read "Ten of the members of the Committee shall be elected according to the principle of proportional. representation by means of the single transferable vote" and I wish to add a second para. That second para. would be, "The remaining five shall be nominated by the Chairman of the Assembly so as to give adequate representation on the Committee to important minorities." Otherwise, I, fear the work of the Advisory Committee might be regulated in such a way as may go to the detriment of some important Sections of this House, namely, the minorities. These are my two proposals and I submit that clause (1) may be amended as suggested and an additional para. may be added to the Schedule as para. 2 and instead of seven paragraphs in the Schedule, we may have eight.

Mr. K. M. Munshi (Bombay: General): Mr. Chairman, I rise to support the amendment moved by Mr. Suresh Chandra Banerjee and supported by Dr. Syama Prasad Mookherjee. The business of this Assembly, to borrow the phraseology of the House of Commons, would naturally include the business of its Sections and Committees. Therefore, if the words stood as they are, "Rules of Procedure of the Assembly," there would be strictly no need to mention Sections and Committees. There is no doubt about that. But at the same time, we have not yet a clarification of the State Paper about this matter and it would be extremely unwise, I submit, Sir, to omit the words "Sections and Committees" because that would show that this Constituent Assembly is not a self-determining and self-governing institution which we insist it is. We may lay ourselves open to the argument that any part or any section of it or any Committee of it can function independently or frame its own rules. Acharya Kripalani, him-. self mentioned that if we left the thing as it is, rules could be made, whereby we can lay down that the Sections and Committees will not have the power to make rules which are contrary to or inconsistent with the rules made by this Committee. That argument itself shows that it is competent for this Procedure Committee to regulate to some extent the procedure of the Sections and Committees. In view of the discussion which has already taken place here, it is much better that the words 'Sections and Committees' should stand rather than their absence lead to further discussion on the interpretation of our Resolution. I envisage a point of order. Suppose this Procedure Committee starts considering questions about Sections or even incorporating a rule, as Acharya Kripalani desired, a point of order is sure to be raised whether the word "Assembly" includes 'Sections and Committees'. At that time, it would be the Chairman of the Procedure Committee who will have to give the ruling. It is better that that point should not be left merely to the decision of the Chairman of the Procedure Committee, who may be the permanent Chairman. It should be laid down definitely by this House that the pointed out are Sections of the Assembly, and that they do not form independent bodies which can provide for procedure inconsistently with the rules of the Constituent Assembly. I therefore submit that it is necessary, particularly now as the question has been raised on the floor of this House, that the scope and extent of this resolution should be made clear by adding the words "Rules of Procedure of the Assembly including its Sections and Committees".

The Hon'ble Srijut Basanta Kumar Das (Assam: General): Mr. Chair man, Sir, much of what I was going to say has been anticipated, by Mr. Munshi. I would like to raise at this stage a point of order on the fundamental question as to whether this Constituent Assembly will have any right to scrutinize the work of the Sections and of, Advisory Committees. This is necessary, Sir, in view of the principle that underlies the amendment that has been moved for including the Sections and Committees within the scope of the Resolution. Different functions have been allotted to the Sections and to the Advisory Committees. A Section will Provincial Constitution and also a Group Constitution. The Advisory, Committee will advise on the fundamental rights of citizens, on the way as to how the interests of minorities are to be protected and as to the scheme to be formulated for the administration of Excluded Areas. Now whatever the Section and the Advisory Committees do, they may say that this Constituent Assembly, the Plenary Session will have no right to scrutinize their acts. I would therefore request you, Sir, to give a ruling on this point as to how far the Constituent Assembly will be entitled to give direction or to examine the work of the Sections and of the Advisory Committees. Therefore, Sir, before this Resolution is adopted and before all the points that have been discussed in connection with the Resolution and the amendments moved on it, are further discussed, I would like to ask from you a ruling on this point.

The Chairman (Dr. Sachchidananda Sinha): I have no desire that my ruling should be dragged into the Federal Court. Therefore, instead of giving a ruling which I have no desire to do. I shall invite Pandit Jawahar Lal Nehru to express his views

The Hon'ble Pandit Jawahar Lal Nehru (United Provinces: General): Mr. Chairman, Sir, this Resolution was considered to be a formal resolution but from the trend of the discussions held, it seems: there is a certain misapprehension in the minds of Hon'ble Members. Some hold strong views about it. Undoubtedly anything that is done in the Sections Will have to be considered by this House. I think the original draft was a Proper draft but when this matter was brought up in the shape of an ,amendment, then obviously it becomes entirely a different matter. There is opposition and an amendment has been asked to be carried out. If that becomes the expression of the view of the House because that amendment is opposed to the Resolution as originally drafted, it was supposed to give full powers to that Committee to consider the matter. Now an Hon'ble Member from Assam brought in the Advisory Committee into the picture. The Advisory Committee obviously and patently has to report to the Constituent Assembly. There is no doubt about it. I do not think anybody else will have any doubt about it and I take it that all Committees of this House should report to this House. Therefore I wish only to suggest to this 'Hon'ble House that this is hardly is suitable time at this stage for us to consider the whole scope of this matter when the House is agreed on the main issue. I would therefore suggest that 'the mover of this resolution, Acharya Kripalani, do accept the amendment that has been put forward.

Acharya J. B. Kripalani: I accept the amendment.

Shri R. V. Dhulekar (United Provinces: General): *[Mr. Chairman, I desire to the amendment that the intended, Procedure Committee ....]*

The Chairman (Dr. Sachchidananda Sinha): *[May I respectfully ask whether the Hon'ble Member does not know English.]*

Shri R. V. Dhulekar: *[I know English, but I want to speak in Hindustani.]*

The Chairman (Dr. Sachchidananda Sinha): *[Many of the members such as Mr. Rajagopalachari do not know Hindustani.]*

Shri R. V. Dhulekar.*[People who do not know Hindustani have no right to stay in India. People who are present in this House to fashion out a constitution for India and do not know Hindustani are noteworthy to. be members of this Assembly. They had better leave.]*

The Chairman (Dr. Sachchidananda Sinha): *[please say what you wish to say.]*

Shri R. V. Dhulekar: *[1 desire to move that the Procedure Committee should frame all rules in Hindustani which may be translated into English.]*

The Chairman (Dr. Sachchidananda Sinha): *[Order, order you are not permitted by me to address the House on the question of bi-lingualism, and printing of papers in two or more languages. You are completely out of order, You came to speak on the amendment to Acharya Kripalani's resolution.]*

Shri R. V. Dhulekar: My amendment is that the procedure committee should frame rules in Hindustani. They may then be translated into English. When a member, discusses a rule he will read its Hindustani version and demand a decision on the basis of that version and not English. I am sorry...]*

The Chairman (Dr. Sachchidananda Sinha): Order, order!

Shri R. V. Dhulekar: *[I am moving an amendment to Acharya Kripalani's resolution. As a member of the house I have a right to do so.I move that the Procedure Committee should frame rules in Hindustani and not in English. As an Indian I appeal that we, who are out to win freedom for our country and are fighting for it, should think and speak in our own language. We have all along been talking of America ,Japan Germany, Switzerland and House of commons.It has given me a headache. I wonder why Indians do not speak in their own language. As an Indian I feel that the proceedings of the House should be conducted in Hindustani. We are not concerned with the history of the world. We have the history of our own country of millions of past years.]*

The Chairman (Dr. Sachchidananda Sinha): Order, order!

Shri R. V. Dhulekar: *[I request you to allow me to move my amendment.]*

The Chairman (Dr. Sachchidananda Sinha): Order, order *[I do not permit you to proceed further. The House is with me that you are out of order.]*

Acharya J. B. Kripalani: I submit that if it Will help the House to cut short the discussion, I would accept what has been suggested.

The Right Hon'ble Dr. M. R. Jayakar (Bombay: General): I want to say a few words on this Resolution. I am not sure whether the views I am now putting before this Assembly will not be regarded as too cautious, but I am bound to point out a few considerations which I want the House to note carefully. These considerations are against the express mention of the words "Sections and Committee". My view is no doubt actuated by a feeling of caution, which I think is desirable at the present stage. Remember the word "Sections". You are asked by express terms to legislate for them in advance of their future formation. Remember "Sections" include 'B' and 'C' Sections. Remember further that in 'B' and 'C' Sections there is likely to be-almost certainly to be--a preponderance of a certain group of men who are not present here today and who may be present at 'the late when these Sections begin to function. That group of men are not present here today under a feeling of suspicion, if not hostility. Would you like to legislate for them in advance at this stage, or would you not let the matter remain where it is, namely, that as the word 'Assembly' prima facie would include 'Sections' no rules can be framed by Sections 'A, ' 'B' and 'C' which are in conflict with the rules of the Assembly? This Would be the usual constitutional rule. Would you not rather let matters rest at this, or would you go further and rub the point in by making an express mention of Sections implying there by that we here today in the absence of that group, make it obligatory by express words that the rules framed by the Assembly shall apply to the Sections. Such rubbing in is absolutely unnecessary, 'because the rules of the Assembly would prima facie include rules of the, Section Remember that this group of men is not present here today and is, besides, watching these proceedings with jealousy and suspicion to discover whether, you are taking anything out, of their hands and deciding it finally in advance of their arrival? If you do so may it not interfere with their future arrival here in a. friendly and trustful atmosphere? 'I therefore suggest that the words as they stand in the original Resolution of Acharya Kripalani, may be accepted instead of going further to make an express mention of Sections, and Committees.

Mr. Debi Prosad Khaitan (Bengal: General): Mr. President, Sir, I had no desire to speak on this motion, but in view of one word used by Mr. Munshi in the course of the amendment, namely, to add the word "its" and the subsequent speech delivered by my estimable friend, Dr. Jayakar, I felt inclined to speak a few words. I shall first deal with the suggestion made by Mr. Munshi, namely, the inclusion of the word "Its". I hope. that the Hon'ble Mover of the amendment, Dr. Syama Prasad Mookherjee, will not accept that suggestion. The use of the word "its" in the course of this Resolution might put upon it an. interpretation which is not intended either by Dr. Mookherjee of Acharya Kripalani. It might be interpreted to mean that the word "its" limits the scope to Committees appointed by the Assembly and not appointed by the Sections. Therefore, I suggest, Sir, that the amendment as moved by Dr. Syama Prasad Mookherjee, namely, "Assembly including Sections and Committees" be accepted by this House.

As regards the fear expressed by Dr. Jayakar, I would only suggest, as explained by Pandit Jawahar Lal Nehru and Acharya Kripalani, that this Assembly is one entitled to make rules governing the procedure not only of the Union Constituent Assembly as such but also governing the 'procedure of all

Sections and Committees that may, be brought into operation by it. I have not the slightest doubt that, whether any group of members be present in this House or not, this Assembly has got to proceed with its work in its entirety. Irrespective of the question whether that group decides to join or not to join, we have got to carry on our work, and I do hope that as time passes that group of men will see fit to serve the interests of the country as a whole by joining it and advising us how to shape the destiny of the country. But, so long as they are not here, I repeat my submission that we should go on with our work, with our heart in it and looking to the interests of the country as a whole. I therefore hope that no fears will be felt or expressed. Let us include in this Resolution the words "Sections and Committees" to avoid future complications. I hope the House as a whole will accept that amendment.

Mr. S. H. Prater (Madras: General): Mr. Chairman, I would like completely to support what was being said by Dr. M. R. jayakar. I feel that while this House might frame general Rules of Procedure it ought not at this stage to interfere with or frame rules for Sections. Dr. Jayakar has pointed out the implications of that, and it would be good politics to follow what Dr. Jayakar has said. We all want to do these things, but not at this stage. There is time for it. Therefore I wholeheartedly support that the Resolution as originally moved by Acharya Kripalani do stand.

Mr. Sarat Chandra Bose (Bengal: General): Mr. Chairman. I think it would conduce to clarity if the words suggested by my friend Dr. Suresh Chandra Banerjee, and which suggestion was supported by my friend Dr. Syama Prasad Mookherjee, were introduced into this Resolution and accepted by the House.

An Hon'ble Member: The words "including its Sections and Committees".

Another Hon'ble Member: Not "its".

Mr. Sarat Chandra Bose: The word "its" does not improve the position and I am quite ' satisfied if the words "including Sections and Committees"' are introduced into the Resolution. Acharya Kripalani In moving the Resolution said that it was his intention that the Rules of Procedure of the Assembly should govern the Sections and Committees as well. But as the point has been raised from different sides of the House, whether it should be done or not done, I think it will settle all future disputes if we accept the addition of these words. I would desire to refer in-this co to what Dr. Jayakar said. I do not think it would introduce any conflict at all in future if this Assembly were to lay down Rules of Procedure which would govern not only the main Assembly but its Sections and Committees as well. On the contrary, I feel that it would resolve many a conflict in advance. I do not desire to say more than this that if we are thinking that any conflicts would arise between the main Assembly and the Sections, we had better resolve the conflict here and now by introducing the words "including Sections and Committees".

The Chairman (Dr. Sachchidananda Sinha): I think we have discussed this long enough.

The Hon'ble Mr. B. G. Kher (Bombay: General): I have a suggestion to make ....

The Chairman (Dr. Sachchidananda Sinha): I hope the Hon'ble Member's suggestion will not be accompanied by a long speech.

The Hon'ble Mr. B. G. Kher: I am not very anxious to make a speech at all. We ought not to leave doubt in the minds of this Assembly or the world outside that, this Assembly is supreme in so far as its Sections and its procedure are concerned. After the debate and the various fears that have been now expressed, I think it would be impolitic to refuse to accept the words "Sections" as also "Committees". We are not at all certain to-day whether the Sections are coming in or whether the Sections are going to sit. A good way out of it would be to add the words "with power to co-opt", so that when other people do come, if these rules are not acceptable or if these rules are required to be amended, or if any suggestions are made, it would be possible to amend them. I suggest, therefore, that it would be best to give the Committee which we are now going to appoint power to co-opt so that they- may from time to time be able to suggest amendments and alterations which could be afterwards confirmed, ratified or rejected by the House. So that I think we should at present accept the amendment-of Dr. Sayama Prasad Mookhrjee with this further addition "with power to co-opt". If that is done, I feel that We shall meet the needs of the situation much better.

Mr. Jairamandas Daulatram (Sind: General): I do not wish to take much time of the House at this late stage of the debate. I will say very briefly whatever I have to say. I think everybody should take the stand that this Constituent Assembly is the supreme body. It must have the right to frame rules for its Sections and Committees. I do not think that it is wise to keep simply the word "Assembly" and then leave it to be interpreted that we intended the word to include Sections and Committees. "Intentions" and their "interpretations", as experience has shown us, are a dangerous thing' We ought to make everything as clear as possible. At the same time we have got, to deal with the possibility of those friends who are absent to-day joining us at a later stage. If that development does take place we may provide for it. Therefore, I support what my friend, Mr. Kher has said. At the same time, the word "including" is, in my opinion, inappropriate. If the original form is retained, then the little rubbing in which the word "including" involves would also be removed. Again we need not frame all the rules at once. It may be that with regard to the Sections, rules may have to be framed later, or we frame rules now with this understanding that if any changes or amendments become necessary, they will be made by the Procedure Committee, and if it has got the power to co-opt additional members, all the difficulties and possible developments will have been met.

Acharya J. B. Kripalani: There seems to be some misapprehension about the scope of the work of this Committee and also the time for which this Committee will be in existence. As I pointed out, while submitting this resolution before you, the rules that are required to be made are for the conduct of business now and here. We have absolutely no rules, we are writing on a clean slate. I also said that the rules would be more or less such as guide the proceedings of all Assemblies, and these would be of a general nature. There is no doubt in my mind that more rules will have to be framed by

Committees themselves and by Sections. They may be called by-rules or by any other name. This Committee will not frame exhaustive rules. As for the question of co-option, it need not arise at this; stag;,. 'This Committee is not going to be permanent. When any section of the House that is absent today decides to come in, then, if they have any objection to the rules that have been framed, this House can always order that they be revised. Therefore this question of co-option also does not arise. I think it is a bad method to appoint a Committee and to give it powers of co-optic-n when that Committee has been formed by the method of the single transferable vote. I do not know, Sir, Whether you have admitted an amendment that ten people be selected by single transferable vote and five be co-opted from minorities. We have already made provision that the members of this Committee be selected by the method of the single transferable vote. That should bring in all Minorities. It is should be appointed by a body of ten people. Therefore I appose that amendment if you, Sir, have allowed it.

As for including the words 'including Sections and Committees' as there is a large body of opinion in favour of it, I accept it. (*Cheers*)

The Chairman (Dr. Sachchidananda Sinha): A resolution was moved by Acharya Kripalani. Dr. Suresh Banerjee has moved an amendment to it. There has been prolonged discussion over these and all aspects of- the question have been fully thrashed out. Acharya Kripalani has now declared in his final reply that he accepts the amendment proposed by Dr. Suresh Chandra Banerjee. I will now put the proposition to the vote of the House.

Sardar Ujjal Singh (Punjab: Sikh): What about the amendment about nomination by the President or co-option by members?

The Chairman (Dr. Sachchidananda Sinha): That has not been moved. I do not think I can permit at this stage any amendment the text of which is not before me.

The amendment before the House now is this: In clause (a), after the word 'Assembly', insert the words 'including Sections and Committees'.

The amendment was adopted.

Sardar Ujjal Singh: Sir, I move:

> "That in line 2, after the words '15 other members'. the words 'with power to co-op' be added."

In moving this amendment my object is this: Under the method of proportional representation, certain important minorities may not be represented. Acharya Kripalani was pleased to say that that method had been provided to give representation to all minorities Perhaps he has overlooked the fact that out of a House consisting of 212 members, you have to elect 15 and that if a group consists of only four or five members, it may not get representation at all. A member of that group may net get the necessary quota and it will not possible for that group to find a seat on the Committee. The only means of giving representation to that small minority will be, either nomination by the President or co-option-. With that end in view, I propose this amendment. I thought it would be quite suitable if this question of addition of members of certain groups that are unrepresented is left to the Chairman. That would be enhancing the power of the Chairman. But if that is not possible or acceptable to the House, I would suggest that this power be given to the Committee itself. A 'similar procedure exists in various bodies wherein it is not possible to give representation to the various interests to be represented. With these few words I move my amendment.

The Chairman (Dr. Sachchidananda Sinha): The Amendment proposed by the Mover is to the effect that, after the word 'Members' in line 2, the, words with powers to co-opt.' be added.

Sardar Harnam Singh (Punjab: Sikh': I suggest, Sir, that we add, if necessary not more than five'.

Sardar Ujjal Singh: I accept the amendment to my amendment.

Mr. S. H. Prater: I second the amendment.

The Chairman (Dr. Sachchidananda Sinha): Mr. Mohanlal Saksena, who has given notice of an amendment, will kindly move it briefly.

Shri Mohan Lal Saksena (United Provinces: General): *[I move the amendment that in para. 4 of Schedule........]*

The Chairman (Dr. Sachchidananda Sinha): *[Which para. does the Hon'ble Member mean?]*

Shri Mohan Lal Saksena: *[I move that in para. 4 after the word

"Chairman" the following may be added:]*

"To the members..................

[The present proposal is that if the number of nominated members is less than those of the elected members, a fresh nomination shall be allowed and the process shall continue such time as the number of nominated member fills up or exceeds the vacancies. The usual method of such cases is that if the number of nominated members falls, short, Members who are already nominated are taken as elected and for nominated seats, fresh proceedings are undertaken. This is the object of my amendment. I hope the House will accept it. Acharya Kripalani has greed to it]

The Chairman (Dr. Sachchidananda Sinha): The amendment proposed by Mr. Mohan Lal Saksena is that in paragraph 4 of the Schedule after the word "Chairman" the following words be added "shall declare the persons so nominated is duly elected and for the remaining vacancies". Is any one seconding it?

An Hon'ble Member: I second this amendment, Sir. It is important and

necessary.

Mr. F. R. Anthony (Bengal: General): I did not hear the last part, Sir.

The Chairman (Dr. Sachchidananda Sinha): You could not hear the last part. Sir B. N. Rau will kindly read it out.

Sir B. N. Rau (Constitutional Adviser): After the word 'Chairman' in paragraph 4 of the Schedule, the following words be added: "shall declare the persons so nominated as duly elected and for the remaining vacancies". if you like me to read the amended paragraph, I would be glad to do so.

The Chairman (Dr. Sachchidananda Sinha): Yes, Sir Narsing.

Sir B. N. Rau: The paragraph as amended reads: "If the number of candidates so nominated is less than the number of vacancies to be filled, the Chairman shall declare the persons so nominated as duly elected and for the remaining vacancies will appoint a further period within which the notice aforesaid may be given and may thereafter appoint additional further periods until the number of candidates is not less than the number of vacancies to be filled".

Mr. F. R. Anthony: On a point of information, Sir. I do not know exactly what happened to the amendment proposed by one of my Sikh colleagues.

The Chairman (Dr. Sachchidananda Sinha): That was carried.

An Hon'ble Member: "With power to co-opt not more than five" was carried.

Acharya J. B. Kripalani: Sir, I was never consulted in the matter, whether I accept that or not.

The Chairman (Dr. Sachchidananda Sinha): You were never consulted on the amendment to your resolution?

Acharya J. B. Kripalani: I did not know that the amendment had come before the House. It was only proposed and seconded but that has not been carried by the House.

The Chairman (Dr. Sachchidananda Sinha): Carried by the good sense of the House.

Acharya J. B. Kripalani: Even that was not allowed. (*Interruptions*)..

The Chairman (Dr. Sachchidananda Sinha): Order, order. The amendment was adopted.

Dr. P. C. Ghosh (Bengal: General): That was not put before, the House for voting at all. You simply stated from your Chair that it was carried.

The Chairman (Dr. Sachchidananda Sinha): The work of the House must necessarily be carried on with a certain amount of speed, and if the Hon'ble Member is not sufficiently vigilant, he will have to- thank himself.

I am reading out the amendment of Mr. Mohan Lal Saksena. I hope I will not be charged with rushing the business of the House through again as has been done this time. I read it out once, and it was read out again by Sir B. N. Rau. If the House desires, I shall read it out again. In paragraph 4 of the Schedule after the word "Chairman" the following words be added: (*Interruption*)........

When I am in the midst of addressing the House, I do not like to be interrupted. The amendment is: "the Chairman shall declare the persons so nominated as duly elected and for the remaining". Whatever it may mean, that is the amendment. Those who are in favour of it will kindly raised their hands to express their assent to the proposition. Will you kind, count, Mr. Iengar?

The Hon'ble Pandit Jawahar Lal Nehru: It is not necessary unless anyone is opposed to it, Sir.

Mr. H. V. R. Iengar (Secretary of the Constituent Assembly): 50 for.

The Chairman (Dr. Sachchidananda Sinha): How many against it?

Mr. H. V. Kamath: I have submitted a verbal amendment. May I come The Chairman (Dr. Sachchidananda Sinha): Your verbal amendments 1. The amendment was- adopted.

Mr. H. V. Kamath: I have submitted a verbal amendment. May I come along?

The Chairman (Dr. Sachchidananda Sinha): Your verbal amendments are more dangerous than other people',., formal. amendments. You desire that in clause 1(c) after the word "appointment" add the word "functions". The clause will read as follows:

> "(c) Organisation of the work of the Assembly, including the appointment functions and powers of Office--bearers other than the Chairman."

Also that in Clause (d) after the word "filling". added the word "in". You, will kindly come along. You generally succeed in carrying your point by making very short speeches.

Mr. H. V. Kamath: Sir in clause (c) I desire that after the word appointment" the word "functions" may also be inserted so that the clause will now read thus: "including the appointment, function, and powers of Office-bearers other than the Chairman".

The next amendment that I wish to make is in clause (d). With due deference to the framer of this Resolution, I submit, Sir, that the more correct phrase is "filling in" and therefore move that the clause should read-

> "procedure for the declaration and filling in of vacancies in the Assembly."

and in the Schedule accordingly some corrections might have to be made wherever "fill" "filled" or "filling, occurs. I submit with due deference again, Sir, to the framer of the Resolution that the correct phrase is "filling in"

An Hon'ble Member: Why not "filling up"?

Another Hon'ble Member: I would like to make one amendment.

The Chairman (Dr. Sachchidananda Sinha): Mr. Kamath's amendment, which I read out, and which he has again read out, has been duly seconded. Is there any serious opposition to it?

Mr. K. M. Munshi: We have not heard it.

The Chairman (Dr. Sachchidananda Sinha): I am a fairly loud speaker. If you did not hear me, I will again read it out once more.

Diwan Chaman Lall (Punjab: General): I am opposed to the use of the phrase "filling in" of vacancies. It is neither correct, nor is it found in the Rules of Procedure adopted by other Assemblies. The expression "filling of vacancies is perfectly correct. Again, in regard to the amendment of my hon'ble friend that after the word "appointment" the word "functions" should be included, there can be no difficulty about that although it. is obvious that the powers of Office-bearers will also include the functions of the Offfice-bearers. if it is sought to be made more clear, there can be no objection to it. The objection to the "filling of vacancies" cannot be accepted as I do not think we can start off with ungrammatical or unidiomatic expressions.

The Chairman (Dr. Sachchidanada Sinha): Mr. Munshi, I think, would like to have the proposition read out again.

In clause (c) of rule I after the word 'appointment' add 'functions' so that the clause will read 'the appointment, functions and powers of Office--bearers other than the Chairman.' The addition is pro ' posed for the word 'functions' means between the words 'appointment' and 'powers.' The House., if T. am not wrong in interpreting its mood, is not unwilling to accept this amendment........ I declare it carried.

There is a second amendment of Mr. Kamath in Clause (d). After the word 'filling' add the word 'in' so, that it may read 'filling in of vacancies'. It is a question of filling in.

Many Hon'ble Members: No, no.

The Chairman (Dr. Sachchidananda Sinha): The sense of the House is against it. I, is no accepted. Any other amendments?

Mr. H. J. Khandekar (C. P. and Berar: General): In Clause 7 after the word 'he', there should be 'or she' because there are lady members in the louse and nothing is mentioned about them. The meaning of "Member' conveys the impression that there are no lady members and therefore after the word 'he' there should be 'or she' and after the word 'his' should be 'or her'.

The Chairman (Dr. Sachchidananda Sinha): The amendment sought to be proposed that we should make out position clear as regards the lady members of this House by using the specific word 'she'. My ruling is that 'he' includes 'she.

The Hon'ble Pandit Jawahar Lal Nehru: Sir, the Resolution as a whole has not been put to the vote.

The Chairman (Dr. Sachchidananda Sinha): That is what I was saying. The amendments having now been disposed of, I am putting to the vote, but not reading it for a second time the long Resolution. If he so desires, Acharya Kripalani may read it out again. We have discussed these fully, and I declare it carried with all the. amendments made.

ANNOUNCEMENT REGARDING NOMINATIONS FOR CHAIRMAN AND COMMITTEE

The Chairman (Dr. Sachchidananda Sinha) I have two announcements to make today. Firstly, the nominations for this Committee will be by 12 noon on the 11th of December in the Secretary's room (Mr. Iengar's). All nominations should be filed by 12 o'clock tomorrow at the latest, and the date and time for the election shall be 4 P.m. tomorrow In the. Under Secretary's room. I do not know the reason why the Secretary's room is intended for One purpose, and the Under Secretary's for another. Perhaps the Secretary's room is larger, I do not know. The ballot boxes are there, and I shall be absent at the time. Mr. Anthony will kindly be present on my behalf.

The only other announcement I have got to make is about the nominations for the permanent Chairman. The nominations for that purpose, namely, for the election of the permanent Chairman, is fixed today at 2-30 P.m. in the Secretary's room, and if the election would be necessary, arrangements will be made for that. That finishes our work today. There is no work in the afternoon.

Mr. Sarat Chandra Bose (Bengal: General): As regards the nomination of a permanent Chairman, the Resolution says that the nomination paper has to be delivered to you or to a person appointed by you.

The Chairman (Dr. Sachchidananda Sinha): I have appointed the Secretary, Mr. Iengar, to receive the nomination papers.

Bakhshi Sir Tek Chand: Up to 2-30 today or tomorrow?

The Chairman (Dr. Sachchidananda Sinha): Today. It is now just I o'clock and one and a half hours remain for the purposes of nomination. The time for withdrawals shall be 2 P.m. today. Tomorrow the House will meet as it suit you at eleven or half past eleven.

Many Hon'ble Member: 11 o'clock.

The Chairman (Dr. Sachchidananda Sinha): The House is adjourned till Eleven of the Clock, on Wednesday, the 11th December 1946.

The Assembly then adjourned till Wednesday, the 11th December 1946, at 11 A.M..

---

*[ ] English translation of Hindustani speech.

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME I

Wednesday, the 11th December, 1946

The Constituent Assembly of India met in Constitution Hall, New Delhi, at Eleven of the Clock, the temporary Chairman Dr. Sachchidananda Sinha), in the Chair.

The Chairman: If any Hon'ble Member has not yet his are dentials nor signed the Register, he may do so now.

(None)

REPLY TO MESSAGES OF GREETINGS TO THE CONSTITUENT ASSEMBLY

The Chairman: Though it is not in the agenda, I thought it best, on my own responsibility, to bring before the House the reply which I pose to end to the Governments of the United States of America, the Republic of China, and the Australian Government, in reply to the messages received from them, through there representative in Delhi which messages I read out to you on the opening day of the session. MY' draft is Subject to your approval, of course.

> "On behalf of myself, and of the Constituent Assembly of India, I desire to thank you most warmly for your exceedingly kind message of good will and good wishes which has been highly appreciated by the Constituent Assembly, and the country. It is a source of great encouragement to us to feel that the Government and the people of the United States, China and Australia (as the case may be) are watching our deliberations with keen and sympathetic interest; and we feel sure that their sympathy will stand us in good stead in evolving a democratic constitution for India."

Subject to your approval, Hon'ble Members. (*Applause*).

ELECTION OF THE PERMANENT CHAIRMAN

The Chairman: The next item of today's agenda is the election of the permanent Chairman.

I have received the following nomination papers :--

> "I propose the name of Dr. Rajendra Prasad, Member Constituent Assembly, the Chairmanship of the Constituent Assembly. I have secured the consent of the nominee.

Proposer.-J. B. Kripalani.

Seconder.-Vallabhbhai Patel.

I agree to the nomination. Rajendra Prasad."

This nomination paper is valid, and is in order There, is another nomination paper.

"I propose Dr. Rajendra Prasad as Chairman of the Assembly and I have ascertained that he is willing to serve if elected.

Proposer.--The Hon'ble Shri Harekrushna Mahtab.

I second the above. Nand Kishore Das."

This nomination also is in order.

The other two proposals received are invalid. One of them sent by the Hon'ble Mr. Prakasam was sent in beyond time, and I do not see the name of any seconder.

Similarly, I have got before me another proposal by Sir S. Radhakrishnan. That also. I fear, is not in order, because it has got no seconder; and neither of these two documents (the one sent by the Hon'ble, Mr. Prakasam and the other sent in by Sir S. Radhakrishnan) has got any endorsement from Dr. Rajendra Prasad that he is willing to serve. However, as the other two proposals are perfectly valid and in order, and there is no other nomination paper before me,. I hereby declare the Hon'ble Dr. Rajendra Prasad, as the duly elected permanent Chairman. *(Cheers).*

My next duty as temporary Chairman is to request that Acharya Kripalani and Maulana Abul Kalam Azad Sahib will kindly approach, on behalf of the Constituent Assembly, the duly elected President of this House now, and bring him up to the platform to sit on the chair by my side. *(Cheers).*

(The Hon'ble Doctor Rajendra Prasad was conducted to the chair by Acharya Kripalani and Maulana Abul Kalam Azad Sahib.).

The Chairman: Hip hip hurrah, hip hip hurrah.

Hon'ble Members: Inquilab Zindabad, Inquilab Zindabad. Jai Hind, Jai Hind.

The Chairman: Now that the permanent elected Chairman of the House has taken his seat, it is open to Hon'ble Members to offer to him their congratulations. I call upon Sir S. Radhakrishnan to be the first speaker.

CONGRATULATIONS TO THE PERMANENT CHAIRMAN

Sir S. Radhakrishnan (United Provinces: General): Mr. President, Sir, I consider it a great honour to be, called upon to be the first speaker after the election of the permanent, Chairman of the Constituent Assembly. I offer to him, on behalf of this House, our most respectful congratulations on the unique honour that has been conferred on him.

This Constituent Assembly has met here to frame the constitution, to effect the withdrawal of British control, political, economic and military and to establish a free independent India. If successful, this transfer of authority will be the biggest and the least bloody of all transfers in human history *(Cheers).*

The first Britisher to arrive in this country was a Jesuit Missionary in 1579. He was followed by merchants who came to trade but stayed to rule. In 1765 the authority was transferred to the East India Company, Later it was gradually subordinated to and replaced by the authority of Parliament and it has been continuing till now on the famous principle enunciated by Cecil Rhodes-the principle fundamental to imperialism, philanthropy *plus* 5 per cent. On that principle it has worked. Right through however there were protests against the British rule. All these protests became canalized when the Indian National Congress was established in 1885. It adopted mild methods till the advent of Mahatma Gandhi when it became aggressive and dynamic. In 1930 the Resolution for the Independence of India was passed at Lahore and we are now here to give effect to that resolution. The British are empirics from beginning to end. It was Lord Palmerston who said 'we British have no eternal principles, we have only eternal interests'. When they adopt any particular line of action you may take it that it is not a willing surrender of power or authority but it is response to the historic necessities of the case. When the discontent grew up they gave us the Morley-Minto Reforms and they introduced the principle of communal electorates and these communal electorates were intended to keep, the people apart. The higher mind of Britain advised the local officials that they would betray the trust placed upon them if they foisted communal electorates. They would inject a poison into the very body politic which could be removed if at all, at the cost of a civil war. We know how those anticipations are getting realized today. We had after that the Montford Reforms and then the 1935 Act, the Cripps' proposals and now the Cabinet Plan. The latest Statement of His Majesty's Government on this question indicates how it is not in human nature to surrender power easily. (*Hear, hear*) Playing off one section against another is unworthy of a great people. It is much too clever to be permanent and would embitter the relations of this country and Great Britain. (*Hear, hear*). It is essential for the British to understand that if an act is done it must be done with the utmost grace. All the same we are here assembled to draw up a constitution for future India. A constitution is the fundamental law of the nation. It should embody and express the dreams and passions, the ideals and aspirations of the people. It must be based on the consent of all, and respect the rights of all people who belong to this great land.

We have been kept apart. It is our duty now to find each other. We all deplore-speakers yesterday and day before yesterday deplored-the abstention of the representatives of the Muslim League from this Constituent Assembly. We take it that it will only be temporary, for their cooperation is absolutely essential for the success of any constitution which we may lay down. But in approaching these matters our attitude should be one of realism. Take the problems from which we suffer; our hunger, our poverty, our disease, our malnutrition-these are common to all. Take the psychological evils from which we suffer-the loss of human dignity, the slavery of the mind, the stunting of sensibility and the shame of subjection,-these are common to all; Hindus or Muslims, Princes or peasants. The Chains may be made of gold but they-are still chains that fetter us. Even the Princes will have to realise that they are slaves in this country. (*Hear, hear*): If they have a sufficient sense of self-respect and exercise a little self-analysis, they will find how much their freedom is fettered.

Again, the, people-Whether they are Hindus or Muslims, Princes or peasants,-belong to this one country. Earth and Heaven have combined to make them belong to one another. If they try to disown it, their gait, their cast of countenance, their modes of, thought, their ways of behaviour, they will all betray them. (*Hear, hear*). It is not possible for us, to think that we belong to different nationalities. Our whole ancestry is there.

It is essential for any constitution which is drawn up to make all the citizens realise that their basic privileges--education, social and economic are afforded to them; that there will be cultural autonomy; that nobody will be suppressed; that it will be a constitution which will be democratic in the true sense of the term, where, from political freedom we will march on to economic freedom and equity, Every- individual should feel that he is proud to belong to this great, land.

Apart from all these, a nation does not depend on identity of race, or sentiment, or on ancestral memories, but it depends on a persistent and continuous way of life that has come down to us. Such a way of life, belongs to the very soil of this land. It is there indigenous to this country as much as the waters of the Ganges or the snows of the Himalayas. From the very roots of our civilization down in the Indus Valley to the present day, the same great culture is represented among Hindus and Muslims, we have stood for the ideal of comprehension and charity all these centuries.

I remember how Anatole France went up to the Musse Guimet on the first of May 1890 in Paris and there in the silence and simplicity, of the gods of Asia reflected on the aim of existence, on the meaning of life, on the values which peoples and Governments are in search of. Then his eyes fell on the statue of the Buddha. France felt like kneeling down and praying to him as to a God, the Buddha, eternally young, clad in ascetic robes, seated on the lotus of purity with hip two fingers upraised admonishing all humanity to develop comprehension, and charity, wisdom and love, *prana* and *karuna.* If you have understanding, if you have compassion, you will be able to overcome the problems of this world. Asoka, his great disciple, when he found his Empire inhabited by men of all races and religions said-

"Samavaya eva sadhuh".

"Concord alone is the supreme good".

India is a symphony where there are, as in an orchestra, different instruments, each with its particular sonority, each with its special sound, all combining to interpret one particular score. It is this kind of combination that this country has stood for. It never adopted inquisitorial methods. It never asked the Parsis or the Jews or the Christians or the Muslims who came and took shelter there to change their creeds or become absorbed in what might be called a uniform Hindu humanity. It never did this. "Live and let live"--that has been the spirit of this country. If we are true to that spirit, if that ideal which has dominated our cultural landscape for five or six thousand years and is still operating, I have no doubt that the crisis by which we are faced today will be overcome as many other crises in our previous history have been overcome. Suicide is the greatest sin. To murder yourself, to betray yourself, to barter away your spiritual wealth for a mess of pottage, to try to preserve your body at the expense of your spirit-that is the greatest sin. If we therefore stand out for the great ideal for which this country has stood, the ideal which has survived the assaults of invaders, the ideals to which the unheeding world today is turning its attention, if we are able to do it, the flame which has sustained us in overcoming foreign rule, will fire our efforts to build a united and free India.

It is not an accident that our temporary Chairman, Dr. Sachchidananda Sinha and our permanent Chairman, Dr. Rajendra Prasad, both come from Bihar. They are both impregnated with the spirit of the *vihara*-the invincibility of gentleness, the gospel of India. The Mahabharata says*:*

Mrduna darunum hanti, mrduna hanti adarunam nasadhyam mrduna

kinchit tasmat tiksnaram hi mrduth.

Gentleness can overcome the hardest things; it can overcome the softest things. There is nothing impossible to be overcome by gentleness, and therefore the sharpest weapon we have is gentleness.

Softness, gentleness,-that is the greatest weapon which will wear out the highest kind of opposition. We have not been true to It. We have betrayed and done wrong to millions of our own fellow beings. It is now time for us to make atonement for all our past guilt. It is not a question of justice or charity, it is atonement-that is how I would put it.

In Dr. Rajendra Prasad we have one who embodies this spirit of gentleness. (*Cheers*). He is the soul of goodness, he has great patience and courage, he has suffered. It is not an accident that this year which remarks the sixtieth year of the Indian National Congress, is also the year of the opening of the Constituent Assembly. We have to remember with gratitude all those great souls who worked and suffered for the freedom of this country, for the dawn of this day. Thousands died, more thousands suffered privation, imprisonment, and exile, and it is their suffering that has cemented and built up this great edifice of the Indian National Congress. (*Hear, hear*). We have to remember them all, Rajendra Prasad is the suffering servant of India, of the Congress, who incarnates the spirit for which this country stands. I only hope that this spirit of amity, concord and harmony which has come down to us from the image of Siva in the Indus civilization down to Mahatma Gandhi and Dr. Rajendra Prasad, will inspire our efforts. *(Applause.)*

Shri Sri Prakasa (United Provinces: General): May I know who is the Chairman?

The Chairman (Dr. Sachchidananda Sinha): I am the Chairman.

The Hon'ble Diwan Bahadur Sir N. Gopalaswami Ayyangar (Madras: General): Mr. Chairman, I desire to add my small tribute to Dr. Rajendra Prasad who has been elected unanimously by this Assembly as the permanent Chairman. My tribute, I dare say, will sound prosaic after the eloquence of my friend Sir S. Radhakrishnan, one of the foremost Indian orators in the English language.

Dr. Rajendra Prasad's election is a supreme mark of the unstinted confidence that this Assembly and the country as a whole repose in him. It is not so much an honour to him; he is really honouring us by accepting the invitation that we have extended to him. *(Cheers).* We have therefore really to felicitate ourselves on his allowing himself to be persuaded to take the Chair of this Assembly as permanent Chairman.

Dr. Rajendra Prasad is taking over a very onerous responsibility. His life has been a life of dedication--dedication to the service of the country. It has been consecrated by unique sacrifice. It is unnecessary for me to speak of his great erudition, deep scholarship, wide knowledge of men and affairs,-qualities which fit him eminently for the task in which he will have need for requisitioning all this equipment in the solution of the many baffling and intricate problems that are sure to confront him. I have known him in person and have come into contact with him personally only during the last few days. That has made me regret that I had not known him earlier and more intimately than I do. But I have known about him, I had read about him, and during the few days that I have since seen of him. I have seen enough to realise that, while all his great qualities of brain and his knowledge have commanded and will continue to command the respect and admiration of his countrymen, what really has established and will maintain the unique hold he has on the affections of his countrymen, irrespective of community, class and creed, are his great human qualities. His innate courtesy, for instance, the manner of his approach to problems, which manner almost compellingly disarms in controversy people inclined to develop temper or heat, the soft word that turned away wrath-these will be inestimable assets in contributing to the success of the task that he has so willingly, perhaps after some reluctance, taken upon himself.

With his election to the Chairmanship, the Constituent Assembly may be said to have really started on its fateful career. Before it accomplishes its full task, It is bound to be confronted by situations and difficulties which will try the capacity even of so uniquely equipped a person as Dr. Rajendra Prasad. He will no doubt, and we have every confidence that he will, conquer them all. He will of course maintain the dignity and prestige of this Assembly and the privileges of its members--that goes with out saying. But the most onerous of his tasks will be to defeat all attempts, direct or indirect, at weakening or whittling down the sovereign Powers of this Assembly. This is not the occasion for me to develop in any elaboration the proposition that, for the task which this Assembly has taken upon itself, it is sovereign in every sense of the word. That its members have been brought together by a machinery employed by the present Government of India does not detract from that sovereignty. (*Hear, hear*): The task of the Assembly is, in the not very elegant word that the Cabinet Mission has employed in its Statement, the "settling" of the constitution for all India-all India, including not merely the Union but the units and, if this Assembly and its Sections should so decide, the Groups, if any, are to be formed at all.

The statement of the Cabinet Mission, I would describe as the law of the constitution of this Assembly. That constitution derives its authority not from the fact that its authors were three Members of His Majesty's Government but from the fact that the proposals made therein have been accepted by the people of this country. Any limitations on the powers of this Assembly which are indicated in that Statement are thus self-imposed-- imposed by ourselves on this Assembly; and the document, and its subsequent exposition by its authors have made it clear that this Assembly has got the constituent power of amending this constitution, of varying or adding to what is provided for in that document, not excluding even what are declared to be its fundamentals.

The law of the constitution of this Assembly does not vest in any outside authority, Judicial or otherwise, the interpretation of any of its provisions. In one single instance alone does it require that the Chairman should obtain the advice of the Federal Court at the request of the majority of either of the major communities in the Assembly before he takes a decision on the issue. It follows therefore that the decision of all questions of interpretation of the law of the constitution of this Assembly will be in the Chairman's hands, subject to such directions as this Assembly itself may give. Reference to an outside authority for decision or even advice in respect of other matters could be made only on authority given by a decision of this Assembly and no such decision could be binding on this Assembly unless it has agreed to abide by it. The idea, therefore, adumbrated in a recent statement of His Majesty's Government, that 'either side', those are the words used, is free to ask an outside authority to decide matters of interpretation and that the Assembly should accept whatever decision it may give, cannot be implemented except on the authority of a resolution of this Assembly. (*Hear, hear*). The suggestion made in this statement, if implemented without an affirmative resolution of this Assembly, would detract from its sovereign powers and I have no doubt that Dr. Rajendra Prasad will resist such an attempt to his utmost. *(Applause) :*

I would, before closing, refer only to one other aspect of this idea of the sovereignty of this Assembly. The task before the Assembly is not merely one of settling of the constitution, it also includes deciding the method of its implementation so far as India and her people are concerned. In other words, we have to take over power from those who are in possession of it: the method of that taking over of power will be one to be decided by this Assembly. The fact that His Majesty's Government claim to decide the mechanics of the transfer of power, to which in substance they are already committed, does not, in my view, detract from the sovereignty of this Assembly so far as its task is concerned. I do not wish to take any more of the time of this Assembly.

Sir, we are proud to have you as the permanent Chairman of this Assembly and we wish all success to you during your term of office in that capacity. *(Loud cheers).*

The Chairman (Dr. Sachchidananda Sinha): Two of the most eminent Members of this House, our greatest philosopher and educationist, Sir

Sarvapalli Radhakrishnan, and the highly distinguished administrator, Sir N. Gopalaswami Ayyangar have addressed the House congratulating Dr. Rajendra Prasad, and they have incidentally expressed their views on certain aspects of the question which Dr. Rajendra Prasad will be concerned with. I will now ask the other speakers who follow to speak briefly mainly about Dr. Rajendra Prasad (*laughter*) and leave the Constitution to take care of itself.

I will now call upon Mr. F. Anthony to address the House.

Mr. F. R. Anthony (Bengal: General): Mr. Temporary Chairman, it was only a few minutes ago that I was asked whether I would join in giving a message of welcome and congratulations to Dr. Rajendra Prasad, I very gladly and cordially accepted that invitation.

Sir, I have not had the privilege of knowing Dr. Rajendra Prasad personally; but I have known of him and it is not necessary for me to comment on his qualifications and his widely-known very able record of work. The Office to which he has been unanimously elected is not only a unique and high office, but I believe it is equally onerous also. It will be his continuing duty and care to hold the scales evenly between the different interests which go to make up this great country. What we require today in our leaders, more than anything else, is tolerance, breadth of vision and liberality of outlook. I believe, from what I have heard of Dr. Rejendra Prasad, that he is one of those leaders who possesses these qualities in a pre-eminent degree. I believe also that it is the natural and fervent impulse of every Indian, irrespective of community, to strive increasingly for the increasing greatness of our mother country. (*Applause*). I also believe that whatever difference of language, of community or of social life that must inevitably exist in a great country such as ours, leaders possessing the quality of liberality and breadth of vision will succeed ultimately in joining all these different communities into one stream which will carry on its course, surging forward irresistibly, enabling this country to take her place, her rightful place in the vanguard of the great nations of the world. Finally, I believe I am expressing the consensus of opinion in this House when I express the belief that Dr. Rajendra Prasad win fill this high Office to which he has been elected not only with dignity, but with Distinction. *(Applause).*

Sardar Ujjal Singh (Punjab: Sikh): Mr. Chairman, Sir, I have very great pleasure in associating myself with the chorus of tributes paid to Dr. Rajendra Prasad on his unanimous election to the Presidentship of this Assembly. In fact, I believe, no better choice could have been made for the Presidentship of this unique and historic Assembly. By his unparalleled service and sacrifice, his learning, his ability, his gentleness and, above all, his spotless character, he has become the idol not only of the people of Bihar but of the whole of India. I feel certain that this House will have a sense of satisfaction that with Dr. Rajendra Prasad in the Chair, no limitations on the sovereignty of this Assembly will be allowed to be placed beyond those which we have already accepted. A man of his unimpeachable honesty, character and humility can command and, I feel certain, will command the confidence of one and all in this House. I know there is a party which is not present in this House today, but I can say that even that party whose members may be called Dr. Rajendra Prasad's political opponents, can rely upon his sound and good judgment and his impartiality in conducting the business of this House. Sir, I hope and trust that under his able guidance and inspiration this House will succeed not only in framing a constitution but establishing an independent and sovereign state of Indian Republic. I pray the God may give him strength to, carry on his onerous duties and heavy responsibilities as Food Member and as President of this unique and historic Assembly.

The Chairman. (Dr. Sachchidananda Sinha): I will now request Lt.-Col, Sir Kameshwara Singh, Maharajadhiraja of Darbhanga, to speak.

The Hon'ble Maharajadhiraja Sir Kameshwara Singh of Darbhanga (Bihar: General): Mr. Chairman, this is indeed a proud day for all of us. The accredited representatives of our countrymen have chosen Dr. Rajendra Prasad, an illustrious son of India, to be the custodian of the dignity and power of this august Assembly. In doing so, they have paid the highest tribute not only to his own greatness but also to our province whose brightest jewel he happens to be. I rejoice at this recognition. His character, ability, tact, scholarship, culture, services and sacrifices, and above all, his self-effacement in the cause of our motherland can never fail to attract people to him, and he commands as love, respect and admiration of even those who, strictly speaking cannot be described as his political adherents. I salute him as one of those rare saints who are honoured by all even in their own homes. I realise that the task before him is stupendous. From bondage he shall have to lead this country to freedom. He shall have to help us to proceed on the right path and cross the innumerable hurdles that lie on our way. He shall have to protect us whenever there may be any encroachment on our rights and privileges from any quarter and make everyone feel the force of his justice, impartiality and firmness. Knowing as I do his personal charm, devotion to duty, broadmindedness, and other great qualities, I have no doubt that he will satisfactorily manage the affairs of the high Office-perhaps one of the highest offices in the gift of the people of this country-in which he has been, by common consent, installed. May God grant him health and long life so that he may successfully discharge his onerous duties and enjoy the fruit of his labours. Sir, I congratulate him, wish him luck, and hope that he will have the loyal co-operation of everyone of us who have assembled here to work under his guidance for the achievement, by peaceful means, of our cherisher goal, Swaraj.

The Chairman (Dr. Sachchidananda Sinha): Dr. Joseph Alban D'Souza.

Dr. J. A. D'Souza (Madras: General): Mr. Chairman, I join with pleasure in the chorus of congratulations to Dr. Rajendra Prasad on his election as the permanent Chairman of this historic Assembly. The temporary Chairman, Dr. Sachchidananda Sinha, with his keen grasp of essentials, his happy diction and above all his entrancing and fascinating humour has finished his work magnificently during the last two days. He has navigated the good ship "Constituent Assembly" through the harbour, with waters none too easy. He has brought the ship on to the high seas of political constitution and handed it over to our permanent Chairman. I have said high seas of political constitution. What these seas are going to mean and what they are going to be, it is difficult for us at this stage to say or to define. There is no doubt that the permanent Chairman has before him a role of a most responsible nature.

I am and probably will always be an ardent believer in the true and good old saying, "every cloud has a silver lining". Clouds, varying in density, have appeared over the constitution of this Assembly. Yet because of the silver lining I am confident of the future of India, proximate and remote.

Dr. Sachchidananda Sinha has stated that it will not be for those who succeed the first two speakers to refer to anything historical or constitutional. May I crave his permission to make one small reference?

May I submit that this Constituent Assembly and the work it has before it-the framing of a constitution for India, was presaged if not prophesied more than a hundred years ago? I say "Presaged" and not "Prophesied" because a prophecy connotes something favourable to the prophet as well as to the people but presaging signifies a sort of it was presaged more than a hundred years ago when Burke, referring to the imperial control of England over her Indian Empire, applied to it the doctrine of trusteeship. He declared that as soon as the child India comes of age the trusteeship must end.

The question therefore arises: Has India not come of age? Is India still a minor? When I cast a glance along the first benches of this great Assembly I note that there are great personalities who could play the role of a Churchill or a Roosevelt or a Stalin and not only play the role but even go one better. This is so far as the top ranks of the citizenhood of India is concerned. What about the lowest ranks, the ryot in the voltages? If our leaders were to go now to the ryot, who some years ago was steeped inabysmal ignorance in regard to his rights, privileges and needs, and speak to him of independent India, he would turn round and 'tell them: "if you are unable to achieve this for us, we shall do so on our own". He realises that it is due to him. He knows it is his birth-right.

This Constituent Assembly, to my mind, is a celebration of India's coming of age and as such it ought to be a subject matter over which all India, Hindus, Muslims, Sikhs, Christians, Parsees, Scheduled Classes and all, ought to join hands and work with one sole idea: of achieving, independency as early and as soon as it possibly can be obtained.

And in this work I am sure, the permanent Chairman we have selected will lead us and help us. During the short period he has worked in the Interim Government he has already given us an earnest of his capability by his masterly, control of the food situation in India. He has given it, an earnest of the zeal and ability with which he will conduct the affairs of the great Assembly: On behalf of you all I wish our permanent. Chairman, health and energy in order to carry on with the stupendous work he has undertaken in accepting the Chairmanship of this Assembly,.

Sir V. I. Munishwami Pillai (Madras: General): Mr. Chairman , I feel it a proud privilege to stand before this august Assembly and convey to you. Sir, the greetings and affectionate Congratulations on your unanimous election to the Chairmanship of this sovereign body. I convey to you, Sir, on behalf of the 60 millions of untouchable classes, the tillers of the soil and hewers of wood, who, have been in the lowest rungs of the ladder of political and economical Status of this country. It was in 1890, when one of our revered leaders of our Province sent in open letter to the Hon'ble Members of the House of Commons showing the helplessness of the untouchable classes but it was given to

Mahatma Gandhi, Sir, in the year 1932 to chalk out in what way these communities could be helped. It was on that memorable occasion, Sir, that I came in contact with you and came to know the sympathy you have towards these Scheduled-Castes. From that time, Sir, I know, as a matter of fact and all those who represent the Harijans in this august Assembly will bear testimony to the great services you have done to these Harijan communities. On behalf of these people, Sir, I feel that the position to which you have been elected will give equal status in the sovereign body and see that whatever constitution may be framed for this great continent, that the right place for the Harijan is given and I know you will hold this position with great honour and dignity and do justice to these Scheduled Classes-so that they may be equal in ill status with other communities. Sir, the 60 millions of untouchables form the backbone of Hinduism and I am sure, that in your deliberations in framing the constitution you will see that all the disabilities of the Harijans are taken note of and remedied in a manner that they may enjoy equal privileges in this great country.

Khan Abdul Ghaffar Khan (N.W.F.P.: Muslim): *[Mr. Chairman Brothers and Sisters: I had no intention of taking part in the debates of this Assembly. You all know that I do not like making speeches and praising persons; but some of my brethren have compelled me to say something at this occasion I congratulate Babu Rajendra Prasad on your behalf and on behalf of North-West Frontier Province for the great honour done to him by this House.

I know Babu Rajendra Prasad well. People who happen to live together in prisons and in other places of pain and sorrow get good opportunity to know each other. I am proud that I have lived a long time in prison with Babu Rajendra Prasad. I know him well. I know his habits and I can say that the greatest quality he possesses, and which every Indian should possess, is that his mind is free from communal bias. Unfortunately, people in India have different prejudices. You all know of Hindu food and Muslim food. Babu Rajendra Prasad is free, from all prejudices.

I feel with great sorrow the absence from this House of our Muslim League brethren. I regret to say that my Muslim brethren are displeased with the people of the North-West Frontier Province, especially with me. They say that I am not with them. Many a time while travelling in the train I am told such things, I always tell them that I am always with Muslims, never separating myself for one moment from them. Where, however, they say that I am not with the League, I tell them that the League is a political party and it is not necessary that one should be with it. Every man is free to have his own opinion. No one should be compelled in ways which are employed these days. Everybody has a right to do what he honestly considers good for his country and people. Nobody has got the right to ask me why I am on the side of the Congress. I admit that the people of the North-West Frontier Province are much behind you in literacy and in wealth. Our Province is a small one while yours are larger but I can say that the people of the North-West Frontier Province, if not ahead, are in no way behind you in many things.

When we read the history of India prior to the advent of the, British and compare it with the conditions prevalent now, I find the villagers of this once prosperous India steeped in poverty and want. One thing, which causes me great sorrow is that whenever we try to do something for the welfare of our countrymen, impediments are placed in our way. The country and its people are being exploited and ruined. This has caused disappointment to the people of the North-West Frontier Province and they feel utterly helpless. We have been forced to think that we can do nothing for the good of this unfortunate country until we make it free. I desire to tell my Indian brethren why we are with (Mahatma) Gandhi. We believe that the Congress is trying to free this country and that the Congress can remove the poverty of this country. We are with the Congress because we are tired of slavery. It is true that we are behind you in education but in the war of non-violence of 1942, only our Province fought it in non-violent ways. You all know we possess more weapons of violence than any other Part of India and yet we adopted non-violent methods. Why ? There are many responsible people present here and I see that even the Congress people are being swayed by violent feelings. That is why we walk the way of non-violence. Let us see what violence is and what is non-violence. I tell you that whether we are Hindus or Muslims we can win the people only by being non-violent because violence breeds hate and non-violence creates love. You cannot bring peace to the world by violence. One war will compel us to fight a second war more disastrous than the first. Violence begets hate in the minds of people. I am glad Badu Rajendra Prasad believes in non-violence and I am sure that, if he guides this House to tread the path of non-violence, he Will guide it to success. Before I finish I desire to speak briefly to my brethren in the House and to Babu Rajendra Prasad, about our Province. I will not go into details. Our Province is the only Muslim Province which desires to end the British rule and drive them out of India. It is not easy to realize what difficulties, what hardships and what affliction will befall us. I, therefore, earnestly appeal to Babu Rajendra Prasad to keep this in mind. We cannot succeed until the road-blocks created by the British are removed from our way. I hope my prison friend, Babu Rajendra Prasad, who has been elected the Chairman of this House and who loves us, will not forget our difficulties and help us to remove them.]*

The Chairman (Dr. Sachchidananda Sinha): I will now ask Mr. Poonacha from Coorg to speak for a few minutes.

Mr. C. M. Poonacha (Coorg): Mr. President, Sir, I deem it a great pleasure and great honour to associate myself with the sentiments expressed by the previous speakers. Coming from Coorg, Sir, I would like to convey to you, Dr. Rajendra Prasad, our respectful felicitations on behalf of the people of Coorg. As President of the Indian National Congress, you have once visited our Province and extended to us good advice which was a great fillip to us in our freedom movement. Sir, I do not intend making a long speech but would like to cut it short and express once again my respectful congratulations to you and trust that under your Chairmanship the efforts of this Assembly will be a complete success. Sir, I have done. *(Cheers).*

The Chairman (Dr. Sachchidananda Sinha): Mr. H. V. Kamath will now kindly address the House.

Mr. H. V. Kamath (C. P. and Berar: General): Mr. Chairman, Sir, will you permit me to join in the chorus of tributes that has flowed from all parts of this august Assembly? This Constituent Assembly is the first Assembly of its kind in India. On this occasion, at once happy and solemn, when we have elected to the high office of permanent Chairman, Deshratna Rajendra Prasad, it is well for us to remember that we have come to this stage in our history through the united will and labours of the Indian nation, through the brave-struggle and suffering of the Indian National Congress under the leadership of Mahatma Gandhi, as well as by the heroic was waged by the "Azad Hind Fauj" under the leadership of Netaji Subhas Chandra Bose. It is not for me to dilate upon the qualities of head and heart of Deshratna Rajendra Prasad. He embodied in himself the spirit of India, the spirit which has animated our sages and our rishis to preach the ancient gospel, the ancient but ever new-(*sanatano nitya nutarih*) the gospel of universalism: that spirit Deshratna Rajendra Prasad embodies in himself. When I look at him, I am reminded of a poem of Gurudev-Rabindra Nath Tagore, wherein he says 'Give me the strength to make my love fruitful in service. Give me the strength to surrender my strength to thy will with love'. At this moment of our history we welcome Deshratna Rajendra Prasad to this high office. I pray to God Almighty that in His Grace abounding, He may endow Deshratna Rajendra Prasad with strength and health, with energy and fortitude to steer this barque of our Constituent Assembly to the fair haven of peace, freedom and harmony. Friends, I have done. Before I conclude, I only want to say this that it is well for us to take to heart and to bear in mind the ancient message-

Uttisthata jagrata prapya varannibodhata

"Awake. arise and stop not till the goal is reached." *Jai Hind.*

The Chairman (Dr. Sachchidananda Sinha): Mr. Somnath Lahiri will now address the House.

Mr. Somnath Lahiri (Bengal: General): Let me congratulate Dr. Rajendra Prasad on his election as permanent Chairman of this House and I congratulate him on behalf of the Communist Party which I have the honour to represent.

Well, Dr. Rajendra Prasad, when you happened to be the President of the Indian National Congress we, the Communists, noticed in you your patience, tolerance and your eager desire to know the view-points of the other parties and other points of view. Well, Sir, I hope you will continue to exercise the same qualities as the Chairman of this Assembly and will allow us facilities equal to that of anyone else to express our points of view fully. Sir, one great thing to remember is that British imperialism is still sovereign over us and whatever may be the colour of any member in this Assembly, I am sure that everyone of us burns with the desire to be free, absolutely free, immediately from the clutches of British imperialism which has sucked our blood for the last 200 years and which still retains its grip over us with its army, with its British Viceroy, with its white bureaucracy, with its economic and financial strangleholds and with the aid of its allies-the Indian Native Princes. Well, Sir, some would expect you to be non-partisan as the Chairman of the Assembly. I would not in the sense that you are a patriot, one of the tried patriots of this country and in the matter in which we have to assert our sovereignty, sovereignty not against a section of our own people, not by quarreling over phrases of Sections and Committees but sovereignty against British imperialism, asserting our sovereignty by asking and compelling the British Viceroy to quit, by asking and compelling the British army to quit. I am sure we could declare or sovereignty here and now by calling upon our people to wage a struggle and to begin that struggle by declaration from this august Assembly that we are free, we no longer recognize the authority of the British Government, of the British Viceroy, of the diplomatic words, etc. I wish we could declare from this Assembly that we are not to be led by the illusions created by British imperialism and its Cabinet Mission plan regarding transfer of power. But I know that illusions die hard. I hope we will have your help in dispelling those illusions and making the people of India again wage the most determined and united struggle against a Plan, a diabolical Plan, which has already reduced us to become a laughing stock of the world. We are already meeting under the dark pall of death and fratricidal warfare which has been the result of this Cabinet Plan........

The Chairman (Dr. Sachchidananda Sinha): Mr. Lahiri, permit me to interrupt you. You may say something now about Dr. Rajendra Prasad. *(Laughter).*

Mr. Somnath Lahiri: I know that. That is exactly the point for which I have praised Dr. Rajendra Prasad and hope he will extend to us the same consideration for placing our point of view as you would to any others, because it has always been our experience that when it comes to a question of our placing our views we are invariably asked to be brief. As a matter of fact, I have already been asked twice to be brief even before I got up to speak in this Assembly. However, I don't mind that. What I would expect of Dr. Rajendra Prasad as permanent Chairman of this Assembly is to help us in dispelling our countrymen's illusions, to help us to place our point of view in full, to throw away this Cabinet Mission's Plan and all its award and everything else and be united and fight.

The Chairman (Dr. Sachchidananda Sinha): Hon'ble Members will agree that I am not infallible. I shall therefore now call on Mr. Jaipal Singh to address you for a few minutes, He represents the aboriginal tribes of Chhota Nagpur.

Mr. Jaipal Singh (Bihar:General): I thank you, Sir, for giving me an opportunity to speak as representative of the aboriginal tribes of Nagpur. I want to say a few words in congratulating Dr. Rajendra Prasad, especially on behalf of the community I represent. So far as I have been able to count, we are here only five. But we are millions and millions and we are the real owners of India. It has recently become the fashion to talk of "Quit India". I do hope that this is only a stage for the real rehabilitation and resettlement of the original people of India. Let the British quit. Then after that, all the later-comers quit. Then there would be left behind the original people of India. We are indeed very glad that we have Dr. Rajendra Prasad as the permanent Chairman of this Assembly. We feel that, as he belongs to a Province where there is, in the southern portion of it, the most compact aboriginal area in the whole of India perhaps, that we, in presenting our case, will at least get sympathetic hearing from him. I do not wish to say anything about his merits. They are already too well known. Let me therefore end by saying that we hope that the rest of the House will, while Dr. Rajendra Prasad gives us his sympathy, also reciprocate with him. *(Cheers).*

The Chairman (Dr. Sachchidananda Sinha): I shall now request bulbul-i-Hind, the Nightingale of India, to address the House (*laughter and cheers*) not in prose but in poetry.

(**Mrs. Sarojini Naidu** then went up to the rostrum amidst acclamation.)

Mrs. Sarojini Naidu (Bihar: General): Mr. Chairman, the manner of your calling me is not constitutional. *(Laughter).*

The Chairman (Dr. Sachchidananda Sinha): Order, order. No reflection on the Chair please *(continued laughter).*

Mrs. Sarojini Naidu: It reminds me of some lines of the Kashmiri poet who said:-

"Bulbul ko gul mubarak, gul ko chaman mubarak,

Rangeen tabiaton ko range sukhan mubarak"

and today we are steeped in the rainbow coloured tints of speeches in praise of my great leader and comrade Rajendra Prasad. (*Cheers*) I do not know how even poetic fancy can add yet another tint to the rainbow. So I will be modest, emulating the example of Rajendra Babu himself and confine myself, as a woman should, to purely domestic issues. (*Laughter*). We have all been taken in the chariot of oratory by our great philosopher Sir Radhakrishnan who seems to have evaporated from the scene. *(Laughter).*

Sir S. Radhakrishnan: No, no. I am here; *(Renewed laughter).*

Mrs. Sarojini Naidu: He has poured very eloquent wisdom on us. And also all the other speakers representing different provinces, sects, religions, communities and the gentleman who is asking all of us to quit India after the British, tracing his claim to the original people of this land, have all spoken in their turn, and one thing they have all been unanimous is the question of Rajendra Prasad himself. Some time ago I was asked to compress an epic into an epigram about Rajendra Prasad. I was asked to say a line about Rajendra Prasad, and I said that I could only do so if I had a pen of gold dipped in a pot of honey because all the ink in the world would not suffice to explain his qualities or adequately to pay tribute to has qualities. Very rightly one speaker reminded us, though I agree with one part of it, that both the temporary Chairman and the permanent Chairman were born in Bihar and that both have assimilated some of the qualities of the Great Buddha who was born in Bihar. I say that I agree on one point, not on the other. The point which I wish to agree with is that Rajendra Prasad has certainly descended spiritually from the great Buddha, the embodiment of compassion, understanding, sacrifice and love. For many years, I have been privileged to be associated with him. He is my leader, he is my comrade, he is my brother, but much younger brother. That I knew on his birthday, I found that he is over five whole years younger than I am-and therefore, I am in a position to give him my blessings as well as my tribute of praise. In this House where every one has said with conviction that he would be the guardian and the father of the House. I conceive him not as one with the flaming sword but an angel with the lily which wins victories over the hearts of men, because in him there is essential sweetness, that is part of his strength, there is essential wisdom, that is part of his experience, there is essential clarity of vision, creative imagination and creative faith that brings him very near the feet of Lord Buddha himself. I see gaps in this House and my heart is sore because of the absence of those Muslim brothers to whose coming I am looking forward under the leadership of my old friend Mr. Muhammad Ali Jinnah. I think if any persuasion were necessary, if any fine wand of magic were necessary to bring them in, it would be the essential sweetness, the essential wisdom, the essential creative faith of Dr. Rajendra Prasad. I am hoping and I believe I am right in hoping that my friend Dr. Ambedkar who is so bitter today will soon be one of the most emphatic supporters of this Constituent Assembly in all its purposes and that through him his adherents of many millions will realise that their interests are as safe as the interests of more privileged people. I hope those that call themselves the original masters of this land, the tribal people will realise that there is no distinction of caste, creed, ancient or modern, status in this Constituent Assembly. I hope the smallest minority in this country will, whether represented politically, or I do not know by what other means they may be represented,--I hope they will realise that they have a jealous, vigilant and loving guardian of their interests who will not permit the more privileged to encroach by, a hair's breadth on their birth-right of equity and equal opportunity in this country. I hope also that the Princes of India, many of whom I count among my personal friends, who are so hurried, so anxious, so uncertain or so afraid today, will realise that the constitution for India is a constitution for the freedom and emancipation of every human being in India, whether Prince or peasant. I want that realisation to be carried home, and in no better manner, in no more convincing manner can it be carried than through the guidance and guardianship of Dr. Rajendra Prasad. I have been asked to speak-for how long? But I believe that I must disprove the age old proverb that woman has not only the last but the longest word. I have the last word not because I am a woman but because I am acting today as the hostess of the Indian National Congress which has so gladly invited those who are outside its fold to come and participate with us in framing the constitution, that is to be the, immortal charter of India's freedom.

Friends. I, do not praise or command Rajendra Prasad. I affirm that he is the symbol of India's destiny to-day. He will help us in framing that charter that restores to our Mother-our Mother still in fetters,-her rightful place as torchbearer of liberty, love, and peace

Standing in the immemorial house with its roof of snow and walls of sea, once again in the history of humanity she will rekindle her lamp of wisdom and inspiration to illuminate the world on its onward march to freedom. So. will she be justified of her children and the children be justified of her,

The Chairman (Dr. Sachchidananda Sinha): Hon'ble Members, the last speaker has practically closed me for all time together by declaring that she as a woman must have the last word, and many of you who are lawyers here know that there can be no last word after the last word. I shall therefore not detain you long. If I choose to do so, I could hold your attention till the small hours of the next morning, for of all the people present here in this great gathering I am the one who has had the privilege, the great privilege, the greatest privilege, of knowing intimately Dr. Rajendra Prasad for a period of now 44 long years; since he passed his matriculation in the year 1902, and stood first in the first division in the whole of the Calcutta University of those days, extending from Assam to the Punjab and the North-West Frontier. I remember that when he passed the matriculation examination standing first in the Calcutta University, I wrote an editional note in the *Hindustan Review* (which I was then conducting, and which I am still conducting after 47 years), to the effect that to a man with the brilliant powers of Rajendra Prasad nothing could be denied. I said, we may predict that he will one day be the President of the Indian National Congress, and while delivering the presidential address, like Sir Narayan Chandavarkar at the previous year's session of the Congress, held at Lahore, will receive a communication from the Viceroy of India offering him a High Court Judgeship. That was what I predicted about him then He has lived to be the President of the Indian National Congress more than once. But he has profoundly disappointed me by not being a High Court Judge, Why was I so anxious that he should be a High Court Judge? Because he would have handled properly the British bureaucracy on the executive side, with his independence of judgment and trenchant criticism of their conduct. But if Dr. Rajendra Prasad has not been a High Court Judge, he has lived to be elected the permanent Chairman of the Constituent Assembly of India. And to day it is my proud privilege now-the highest privilege I hoped to have achieved in my life-of inducting him into the Chair (which I have so unworthily occupied for the last few days) as the first permanent Chairman of this Constituent Assembly. (*Applause*) I now vacate this Chair, and I shall ask Dr. Rajendra Prasad, in the name of this great gathering to come and occupy this Chair which he so worthily deserves.

(Cries of Inquilab Zindabad, Rajendra Babu Zindabad).

(The temporary Chairman, Dr. Sachchidananda Sinha, then vacated the Chair. The Chair was then occupied by the Hon'ble Dr. Rajendra Prasad amidst acclamation).

Acharya J. B. Kripalani (United Provinces: General): *[Mr. Chairman there have been many speeches in English and I feel that I should speak in Hindi. I spoke in Hindustani when I invited Dr. Sachchidananda Sinha to be our temporary Chairman. I now congratulate him, on your behalf, for performing his work so successfully.

I could not at first believe that Dr. Sinha was older than I. I am younger than him and I am proud of my hair but Dr. Sinha's hair are 'a shade blacker than mine'.

He called the meeting to order in a strong voice which did not at all show that he was older than us. He conducted the whole proceedings with a zeal which may be called the fervour of youth. Sometimes, he gave short shrifts to our amendments. Once he remarked on an amendment-"I hope the good sense will prevail".

This kept us silent, fearing that if we said anything, our good sense would he suspected. Thus he performed his work well and I congratulate him on it. I hope he will sit with us in the House in the same spirit in which he conducted the preliminary proceedings of the House.]*

Mr. Chairman (The Hon'ble Dr. Rajendra Prasad): *[Brothers and sisters, pardon me if I say that I feel overwhelmed with the burden you have placed on my shoulders by entrusting me with this most important duty. By electing me for this high rank you have bestowed upon me an honour which is the highest honour for an Indian. Allow me to say that in this country of castes and creeds, you have, as it were, cast me out of your caste. Depriving me of a seat among yourselves you have compelled me to sit on a different Chair, and it does not end there. I believe all of you expect me to do nothing in this House which will show that I belong to a particular part or sect; you will expect that whatever I do here, will be done in a spirit of service to you all. I shall try to carry the honour conferred on me in a manner which will gladden the hearts of all of my brethren and my elder sister here, who have felicitated me at this occasion. I am aware that my path is beset with obstacles. The work of this Constituent Assembly is most arduous. Various problems will come before it and it will be confronted with questions which will not yield easily to solution. I know I will not be able to solve them but I have full confidence in you that you will help me at each step with the same kindness and liberality with which you have elected me here.

The Constituent Assembly is meeting at a most critical time. We all know that other constituent assemblies, whenever and wherever they met, were confronted with similar difficulties. They had also to contend with internal differences which were placed before them with great vehemence. We also know that many of these constituent assemblies were held amidst strife and bloodshed; even their proceedings were conducted amidst quarrels and fights. In spite of all these obstacles those assembles carried on their work to the end. Their members joined together and with courage, kindness, generosity, tolerance and regard for one another's feelings framed constitutions which were then readily accepted by the people of the countries for which they were framed. Even at this time the people of those countries consider them their most valuable possession. There is no reason why our Constituent Assembly, in spite of the obstructions in its way, should not succeed in doing its work. If we are sincere, if we respect each other's opinion, we shall develop so much insight that we will not only be able to understand each others thoughts, but also be able to go deep to the root and understand each others real troubles. We will then function in a manner that no one will give no one cause to think that he has been ignored or that his opinion has not been respected. If this comes to pass and if this strength is born in us, I have full faith that in spite of all obstruction we will succeed in our work.

This Constituent Assembly has come into being a number of limitations, many of which we will have to bear in mind as we proceed. But, it must also be borne in mind that the Assembly is a sovereign body and is fully competent to conduct its proceedings in the manner it chooses to follow. No outside power can meddle with its proceedings. I also believe that it is competent to break the limitations attached to it at its birth. It should be our effort to get free of these limitations and frame a constitution which will assure all men and women of this country, no matter of what religion, province or shade of opinion, that their rights are fully protected. If such an effort is made in this House and we succeed in it, I believe that it will be such a landmark in the history of the world that it will be hard to rival.

It is also to be remembered and we, who are present in the House, cannot forget it even for a moment that many of the seats are vacant in this meeting.

Our brethren of the Muslim League are not with us and their absence increases our responsibility. We shall have to think at each step what would they have done if they were here? We have to proceed keeping all these things in view. We hope they will soon come and take their places and share in the deliberations for framing a constitution for their country which will give it freedom, that they will join us in our march for freedom. But if unfortunately these seats continue to remain unoccupied, it will be our duty to frame a constitution which will leave no room for complaint from anybody.

We have been fighting for the freedom of our country for a long time. This Constituent Assembly has been brought into existence by three forces. First, the sacrifice of our patriots. Many men and women gave their lives, bore hardships and persecution and after hard and continuous struggles ushered in the present stage. Second, the history of the British nation; their selfishness and their generosity. Third, the present world conditions and serious situation and the forces that are raging in the world. All these combined together to bring into being our Constituent Assembly. These forces will continue functioning while we are proceeding with our work. It is quite possible that some of them may draw us to one side and others to the other side. I am, however, confident that success will be ours. I pray to God that he may give us foresight, so that we may understand each other's mind, and that, united together, we may free our country.

I thank my brothers and sisters who have congratulated me. I was overwhelmed with embarrassment and I wished, I had not been present during their speeches. My particular thanks are due to Dr. Sinha who continued in the Chair and did not throw additional burden upon me at that time. I once more thank you all for the inspiring sentiments that have been expressed. I assure you that in the proceedings of this House. I shall freely give you whatever strength God has bestowed upon me, whatever little wisdom has been given to me and whatever experience of the world I have. In return I hope you will unstintingly give me the help that you can give me.]*

Friends, I just want to say a few words in English for the benefit of those of you who have not been able to follow my speech in Hindi. Hon'ble Members will not consider it ungracious on my part if I tell them that at the present moment I feel more overwhelmed by a sense of the burden of responsibility which they have placed on my shoulders than by a sense of elation for the great honour which they have conferred upon me. I realize that the greatest honour which an Assembly like this could confer on any Indian, you have been pleased to confer on me, and I am not using merely the language of convention when I say that I appreciate it greatly and I am grateful to you for it.

I know the difficulties which I shall have to face in the discharge of the heavy responsibilities which I have undertaken on your behest. I know the work of the Constituent Assembly is beset with various kinds of obstacles, but I know too that in the discharge of my duties, I can count upon your unstinted support and the same kind of generosity which you have exhibited in electing me to this high honour. Our Constituent Assembly is meeting in difficult circumstances. We see signs of strife in many places in this unfortunate land. But other countries too, when they elected their constituent assemblies and asked them to frame a constitution for them, were faced with similar difficulties. We can take comfort in the fact that in spite of those difficulties, in spite of the differences in view-points which exhibited themselves with vigour, sometimes with trouble and turmoil, the assemblies were able, in spite of them, to frame constitutions which were acceptable to the people at large and which have become in course of time an invaluable heritage for the people in those lands. There is no reason why we also should not succeed similarly. All that we need is honesty of purpose, firmness of determination, a desire to understand each others view-point, that we shall do justice, that we shall behave as fairly, as squarely as possible towards everyone else--and with that determination, with that resolve, I cannot see why we should not be able to overcome the obstacles in our way. I am aware that this Constituent Assembly has been born with certain limitations placed on it from its very birth. We may not forget, disregard or ignore those limitations, in the course of our proceedings and in arriving at our decisions. But I know too that in spite of those limitations the Assembly is a self-governing, self-determining independent body with the proceedings of which no outside authority can interfere, and the decisions of which no one else outside it can upset or alter or modify. Indeed it is in the power of this Constituent Assembly to get rid of and to demolish the limitations which have been attached to it at its birth and I hope you, Ladies and Gentlemen, who have come here for framing a constitution for an independent and free India, will be able to get rid of those limitations and to place before the world a model of a constitution that will satisfy all our people all groups, all communities, all religions inhabiting this vast land, and which will ensure to everyone freedom of action, freedom of thought, freedom of belief and freedom of worship, which will guarantee to everyone opportunities for rising to his highest, and which will guarantee to everyone freedom in all respects.

I hope and trust that this Constituent Assembly will in course of time be able to develop strength as all such assemblies have done. When, an Organisation like this sets on its work it gathers momentum, and as it goes along it is able to gather, strength which can conquer all difficulties and which can subdue the most, formidable obstacles, in its path. Let me pray and hope that our Assembly too will gather more and more, strength as it goes along.

It is a most regrettable thing that I find many seats unoccupied to-day in this Assembly. I am hoping that our friends of the Muslim League will soon come to occupy there places and will be glad and happy to participate in this great work of creating a constitution for our people creating a constitution which according to, the experience of all other nations of the world, which according to our own experience and which according to our own traditions and our own peculiar conditions, will guarantee to every one all that can be guaranteed, all that need be guaranteed and all that require to be guaranteed, and will not leave any room for any complaint from any side. I am hoping also that you all will do your best to achieve this great objective.

Above all, what we need is freedom and as some one has said "Nothing is more valuable than the freedom to be free". Let us hope and pray that as a result of the labours of this Constituent Assembly we shall have achieved that freedom and we shall, be proud of it. *(Applause.)*

ELECTION OF THE COMMITTEE FOR RULES OF PROCEDURE

Mr. Chairman: This, brings us to the close of our proceedings for the day, but I will ask Hon'ble Members to bear with me for a minute or two. You will recollect that yesterday we decided to have a Committee for framing Rules, and 12 O'clock was the time fixed by which all nominations had to be put in. We had to elect 15 members. I find that nominations of only 15 members have been put in. That obviates the necessity of having an election by ballot, and I declare the following persons, who have been proposed, to be duly elected.

The Hon'ble Mr. Jagjivan Ram.

Mr. Sarat Chandra Bose.

Mr. F. R. Anthony.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar.

Bakhshi Sir Tek Chand.

The Hon'ble Mr. Rafi Ahmad Kidwai.

Shrimati G. Durga Bai.

Dr. Joseph Alban D'Souza.

The Hon'ble Diwan Bahadur Sir N. Gopalaswami Ayyangar.

The Hon'ble Shri Purushottam Das Tandon.

The Hon'ble Srijut Gopinath Bardoloi.

Dr. B. Pattabhi Sitaramayya.

Mr. K. M. Munshi. The Hon'ble Mr. Mehr Chand Khanna.

Sardar Harnam Singh.

They are declared duly elected to the Rules Committee.

There is one thing more. On the first day, Dr. Sinha, to save time and for the convenience of the members, did away with the process of hand shaking with every member. I would like to go round and meet every member before you all leave this place. I know there are many with whom it has been by privilege to work for years. I know others with whom I have not been so intimately associated, but whose faces are known and in some cases names too. But there are at least some whom I have not known and I would like to make their acquaintance today, if you don't mind.

After that we disperse for the day. The House remains adjourned till Eleven of the Clock tomorrow morning.

(Mr. Chairman went round and shook hands with an the members present).

The Assembly then adjourned till Thursday, the 12th December 1946, at Eleven of the Clock.

---

*[] English translation of Hindustani speech.

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME I

Thursday, the 12th December, 1946

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eleven of the Clock, Mr. Chairman (The Hon'ble Dr. Rajendra Prasad) in the Chair.

Mr. Chairman: If there are any Members who have not yet signed the Register, they may do so now.

(Nobody came forward.)

It seems there is nobody who has not yet signed. We now proceed to the next item. The first item that we have is a Resolution by Pandit Jawahar Lal Nehru. I understand that there are some Members who feel that they have not had sufficient time to consider this important Resolution. There is no doubt that the Resolution is a very important one and I would not like any Member to feel that he has not had sufficient time to consider it fully. If the House so desires, I am prepared to adjourn this discussion till tomorrow.

Hon'ble Members: Yes.

Mr. Chairman: Then there is another matter in this connection in regard to which I should like the advice of the House. We have got a Rules Committee and its members should meet to prepare the Rules which they will place before us. They should have time separate from the general session of the Assembly. If you agree, they will meet after this House is adjourned and we shall do as much as we can do. But if it cannot complete the work, the Rules Committee will have to meet tomorrow, and I would like to know whether the House would like to sit in the morning from 11 or in the afternoon because I would suggest that we should have one session only, either in the morning or afternoon, so that the Rules Committee may get the other half of the day for its work. If the House want the morning session, then we can meet in the morning.

Some Hon'ble Members: We want morning sessions.

Some Hon'ble Members: Afternoon sessions.

Mr. Chairman: I am afraid in this matter it is difficult for me to come to a decision. I have to trouble the members to raise their hands-those who would like the morning sessions may please raise their hands.

(More members raised their hands in favour of the morning session.)

It seems the morning session is preferred by a large number of people. We shall have the session at 11 tomorrow morning concerting this Resolution and in the afternoon we may have, if necessary a meeting of the Rules Committee. If any Members have got any amendment to the Resolution to move, I would request them to hand over the amendments to the Secretary in the course of the day and we shall take up the discussion tomorrow. The Secretary will take care, if possible, to circulate the amendments also to Members.

An Hon'ble Member: Are we sitting on Saturday ?

Mr. Chairman: I think we should be sitting on Saturday. That is my view but that is entirely in the hands of the House. I think we will be sitting on Saturday too.

The Hon'ble Pandit Hirday Nath Kunzru (United Provinces: General): I think we should not, meet on Saturday. Let us have a day off for quiet discussions of the problems between ourselves.

Shri Sri Prakasa (United Provinces: General): I think we should not meet on Sundays and that should be sufficient for quiet discussions for Pandit Hirday Nath Kunzru.

Mr. Chairman: We shall consider that tomorrow., So far as the House is concerned, I think we have to adjourn now till 11 A.M. tomorrow and I would like the Members of the Rules Committee to meet say half-an-hour later. In the meantime we shall fix up some room where they shall meet.

The House stands adjourned till 11 A.M. tomorrow.

Dr. Sir Hari Singh Gour (C. P. and Berar: General): It seems to me that it will serve a useful purpose if the Hon'ble Mover of the Resolution formally moves and expresses his views to enable the Members here to understand the full import of the Resolution, so that we can frame amendments accordingly and these can be taken up tomorrow or the day after.

Mr. Satyanarayan Sinha (Bihar: General): The House has, already been adjourned.

Mr. Chairman: Sir Hari Singh Gour has suggested that the Resolution might be moved by the Mover today who in his speech could explain his own point of view so that the other Members may be in possession of that and the discussion might take place tomorrow. I had myself at first thought of that but then I felt that the members would like to consider the whole thing tomorrow.

Some Hon'ble Members- Tomorrow.

Mr. Chairman: There seems.to be a difference of opinion and I do not like to take a. vote on this question especially as I have already declared the House adjourned. So we shall now 'adjourn. The House stands adjourned till tomorrow, 11 O'Clock.

The Assembly then adjourned till Eleven of the Clock, on Friday, the, 13th December, 1946.

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME I

Friday, the 13th December, 1946

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eleven of the Clock, Mr. Chairman (The Hon'ble Dr. Rajendra Prasad) in the Chair.

RESOLUTION RE: AIMS AND OBJECTS

Mr. Chairman: Pandit Jawahar Lal Nehru will now move the Resolution which stands in his name.

The Hon'ble Pandit Jawahar Lal Nehru (United Provinces: General): *[Mr. Chairman, this Constituent Assembly has not been in session for some days. It has done much formal business, but more is yet to be done. We have been cutting our way and clearing the ground on which we Intend to erect the edifice of a constitution. It, however, seems proper that before we proceed further we should clearly understand where we are going and what we intend building. It is apparent that on such occasions details are unnecessary. In building, you will, no doubt, use each brick after mature consideration. Usually, when one desires to construct a building, one must have a plan for the structure that one wishes to erect and then collect the material required. For a long time we have been, having various plans for a free India in our minds , but now, when we are beginning the actual work, I hope, you will be at one with me when I say, that we should present a clear picture of this plan to ourselves, to the people of India and to the world at large. The Resolution that I am placing before you defines our aims, describes an outline of the plan and points the way which we are going to tread.

You all know that this Constituent Assembly is not what many of us wished it to be. It has come into being under particular conditions and the British Government has a hand in its birth. They have attached to it certain conditions. We accepted the State Paper, which may be called the foundation of this Assembly, after serious deliberations and we shall endeavour to work within its limits. But you must not ignore the source from which this Assembly derives its strength. Governments do not come into being by State Papers. Governments are, in fact the expression of the will of the people. We have met here today because of the strength of the people behind us and we shall go as far as the people not of any party or group but the people as a whole--shall wish us to go. We should, therefore, always keep in mind the passions that lie in the hearts of the masses of the Indian people and try to fulfil them.

I am sorry there are so many absentees. Many members who have a right to come and attend the meeting are not here to-day. This, in one sense, increases our responsibility. We shall have to be careful that we do nothing which may cause uneasiness in others or goes against any principle. We do hope that those who have abstained, will soon join us in our deliberations, since this Constitution can only go as far as the strength behind it can push it. It has ever been and shall always be our ardent desire to see the people of India united together so that we may frame a constitution which will be acceptable to the masses of the Indian people. It is, at the same time, manifest that when a great country starts to advance, no party or group can stop it. This House, although it has met in the absence of some of its members, will continue functioning and try to carry out its work at all costs.

The Resolution that I am placing before you is in the nature of a pledge. It has been drafted after mature deliberation and efforts have been made to avoid controversy. A great country is sure to have a lot of controversial issues; but we have tried to avoid controversy as much as possible. The Resolution deals with fundamentals which are commonly held and have been accepted by the people. I do not think this Resolution contains anything which was outside the limitations laid down by the British Cabinet or anything which may be disagreeable to any Indian, no matter to what party or group he belongs. Unfortunately, our country is full of differences, but no one, except perhaps a few, would dispute the fundamentals which this Resolution lays down. The Resolution states that it is our firm and solemn resolve to have a sovereign Indian republic. We have not mentioned the word 'republic' till this time; but you will well understand that a free India can be nothing but a republic.

On this occasion, when the representatives of the Indian States are not present, I desire to make it clear how this Resolution will affect the Indian States. It has also been suggested, and the suggestion may take the form of an amendment laying down that since certain sections of the House are not present, the consideration of the Resolution may be postponed. In my opinion, such an amendment is not in keeping with the spirit of the times, because if we do not approve the first objective that we are placing before ourselves, before our country and before the world at large, our deliberations will become meaningless and lifeless, and the people will have no interest in our work. Our intention regarding the States must be early understood. We do desire that all sections of India should willingly participate in the future Indian Union but in what way and with what sort of government rests with them. The Resolution does not go into these details. It contains only the fundamentals. It imposes nothing on the States against their will. The point to be considered is how they will join us and what sort of administration they will have. I do not wish to express my personal opinion on the matter. Nevertheless I must say that no State can have an administration which goes against our fundamental principles or gives less freedom than obtaining in other parts of India. The Resolution does not concern itself with what form of government they will have or whether the present Rajas and Nawabs will continue or not. These things concern the people of the States. It is quite possible that the people may like to have their Rajas. The decision will rest with them. Our republic shall include the whole of India. If a part within it desires to have its own type of administration, it will be at liberty to have it.

I do not wish that anything should be added to or substracted from the Resolution. It is my hope that this House will do nothing that may appear in

Papers, so that, at no time, should people, who are concerned with these problems but who are not present here, be able to say that this House indulged in irregular talk.

I desire to make it clear that this Resolution does not go into details. It only seeks to show how we shall lead India to gain the objectives laid down in it. You will take into consideration its words and I hope you will accept them; but the main thing is the spirit behind it. Laws are made of words but this Resolution is something higher than the law. If you examine its words like lawyers you will produce only a lifeless thing. We are at present standing midway between two ears; the old order is fast changing, yielding place to the new. At such a juncture we have to give a live message to India and to the world at large. Later con we can frame our Constitution in whatever words we please. At present, we have to send out a message to show what we have resolved to attempt to do. As to what form or shape this Resolution, this declaration will ultimately take, we shall see later. But one thing is, however, certain: it is not a law; but is something that breathes life in human minds.

I hope the House will pass the Resolution which is of a special nature. It is an undertaking with ourselves and with the millions of our brothers and sisters who live in this great country. If it is passed, it will be a sort of pledge that we shall have to carry out. With this expectation and in this form, I place it before you. You have copies of it in Hindustani with you. I will therefore not take more of your time to read it one way, or, I will, however, read it in English and speak further on it in that language.]*

I beg to move:

"(1)This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution;

(2)WHEREIN the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all; and

(3) WHEREIN the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the Law of the Constitution, shall possess and retain the status of autonomous Units, together with residuary powers, and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom; and

(4) WHEREIN all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people; and

(5)WHEREIN shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith worship, vocation, association and action, subject to law and public morality; and

(6)WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and

(7)WHEREBY shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea, and air according to Justice and the law of civilised nations, and

(8)this ancient land attains its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind."

"Sir, this is the fifth day of this first session of the Constituent Assembly. Thus far we have laboured on certain provisional and procedural matters which are essential. We have a clear field to work upon; we have to prepare the ground and we have been doing that these few days. We have still much to do. We have to pass our Rules of Procedure and to appoint Committees and the like, before we can proceed to the real step, to the real work of this Constituent Assembly, that is, the high adventure of giving shape, in the printed and written word, to a Nation's dream and aspiration. But even now, at this stage, it is surely desirable that we should give some indication to ourselves, to those who look to this Assembly, to those millions in this country who are looking up to us and to the world at large, as to what we may do, what we seek to achieve, whither we are going. It is with this purpose that I have placed this Resolution before this House. It is a Resolution and yet, it is something much more than a resolution. It is a Declaration. It is a firm resolve. It is a pledge and an undertaking and it is for all of us I hope a dedication. And I wish this House, if I may say so respectfully, should consider this Resolution not in a spirit of narrow legal wording, but rather to look at the spirit behind that Resolution. Words are magic things often enough, but even the magic of words sometimes cannot convey the magic of the human spirit and of a Nation's passion. And so, I cannot say that this Resolution at all conveys the passion that lies in the hearts and the minds of the Indian people today. It seeks very feebly to tell the world of what we have thought or dreamt of so long, and what we now hope to achieve in the near future. It is in that spirit that I venture to place this Resolution before the House and it is in that spirit that I trust the House will receive it and ultimately pass it. And may I, Sir, also, with all respect, suggest to you and to the House that when the time comes for the passing of this Resolution let it be not done in the formal way by the raising of hands, but much more solemnly, by all of us standing up and thus taking this pledge anew.

The House knows that there are many absentees here and many members who have a right to come here, have not come. We regret that fact because we should have liked to associate with ourselves as many people, as many representatives from the different parts of India and different groups as possible. We have undertaken a tremendous task and we seek the co-operation of all people in that task; because the future of India that we have envisaged is not confined to any group or section or province or other, but it comprises all the four hundred million people of India, and it is with deep regret that we find some benches empty and some colleagues, who might have been here, absent. I do feel, I do hope that they will come and that this House, in its future stages, will have the benefit of the co-operation of all. Meanwhile, there is a duty cast upon us and that is to bear the absentees in mind, to remember always that we are here not to function for one party or one group, but always to think of India as a whole and always to think of the welfare of the four hundred millions that comprise India. We are all now, in our respective spheres, partymen, belonging to this or that group and presumably we shall continue to act in our respective parties. Nevertheless, the time comes when we have to rise above party and think of the Nation, think sometimes of even the world at large of which our Nation is a great part. And when I think of the work of this Constituent Assembly, it seems to me, the time has come when we should, so far as we are capable of it, rise above our ordinary selves and party disputes and think of the great problem before us in the widest and most tolerant and most effective manner so that, whatever we may produce, should be worthy of India as a whole and should be such that the world should recognise that we have functioned, as we should have functioned, in this high adventure.

There is another person who is absent here and who must be in the minds of many of us today--the great leader of our people, the father of our Nation (*applause*)--who has been the architect of this Assembly and all, that has gone before it and possibly of much that will follow. He is not here because, in pursuit of his ideals, he is ceaselessly working in a far corner of India. But I have no doubt that his spirit hovers over this place and blesses our undertaking.

As I stand here, Sir, I feel the weight of all manner of things crowding around me. We are at the end of an era and possibly very soon we shall embark upon a new age; and my mind goes back to the great past of India to the 5,000 years of India's history, from the very dawn of that history which might be considered almost the dawn of human history, till today. All that past crowds around me and exhilarates me and, at the same time, somewhat oppresses me. Am I worthy of that past? When I think also of the future, the greater future I hope, standing on this sword's edge of the present between this mighty past and the mightier future, I tremble a little and feel overwhelmed by this mighty task. We have come here at a strange moment in India's history. I do not know but I do feel that there is some magic in this moment of transition from the old to the new, something of that magic which one sees when the night turns into day and even though the day may be a cloudy one, it is day after an, for when the clouds move away. we can see the sun later on. Because of all this I find a little difficulty in addressing this House and putting all my ideas before it and I feel also that in this long succession of thousands of years, I see the mighty figures that have come and gone and I see also the long succession of our comrades who have laboured for the freedom of India. And now we stand on the verge of this passing age, trying, labouring, to usher in the new. I am sure the House will feel the solemnity of this moment and will endeavour to treat this Resolution which it is my proud privilege to place before it in that solemn manner. I believe there are a large number of amendments coming before the House. I have not seen. most of them. It is open to the House, to any member of this House, to move any amendment and it is for the House to accept it or reject it, but I would, with all respect, suggest that this is not moment for us to be technical and legal about small matters when we have big things to face big things to say and big things to do, and therefore I would hope that the House would consider this Resolution in this big manner and not lose itself in wordy quarrels and squabbles.

I think also of the various Constituent Assemblies that have gone before and of what took place at the making of the great American nation when the fathers of that nation met and fashioned out a constitution which has stood the test of so many years, more than a century and a half, and of the great nation which has resulted, which has been built up on the basis of that Constitution. My mind goes back to that mighty revolution which took place also over 150 years ago and to that Constituent Assembly that met in that gracious and lovely city of Paris which has fought so many battles for freedom, to the difficulties that Constituent Assembly had and to how the King and other authorities came in its way, and still it continued. The House will remember that when these difficulties came and even the room for a meeting was denied to the then Constituent Assembly, they be took themselves to an open tennis court and met there and took the oath, which is called the Oath of the Tennis Court, that they continued meeting in spite of Kings, in spite of the others, and did not disperse till they had finished the task they had undertaken. Well, I trust that it is in that solemn spirit that we too are meeting here and that we, too, whether we meet in this chamber or other Chambers, or in the fields or in the market-place, will go on meeting and continue our work till we have finished it.

Then my mind goes back to a more recent revolution which gave rise to a new type of State, the revolution that took place in Russia and out of which has arisen the Union of the Soviet Socialist Republics, another mighty country which is playing a tremendous part in the world, not only a mighty country but for us in India, a neighbouring country.

So our mind goes back to these great examples and we seek to, learn from their success and to avoid their failures. Perhaps we may not be able to avoid failures because some measure of failure is inherent in human effort. Nevertheless, we shall advance, I am certain in spite of obstructions and difficulties, and achieve and realise the dream that we have dreamt so long. In this Resolution which the House knows, has been drafted with exceeding care, we have tried to avoid saying too much or too little. It is difficult to frame a resolution of this kind. If you say too little, it becomes just a pious resolution and nothing more. If you say too much, it encroaches on the functions of those who are going to draw up a constitution, that is, on the functions of this House. This Resolution is not a part of the constitution we are going to draw up. and it must not be. looked at as such. This House has perfect freedom to draw up that Constitution and when others come into this House, they will have perfect freedom too to fashion that constitution. This Resolution therefore steers between these two extremes and lays down only certain fundamentals which I do believe, no group or party and hardly any individual in India can dispute. We say that it is our firm and solemn resolve to have an Independent sovereign republic. India is bound to be sovereign, it is bound to be independent and it is bound to be a republic. I will not go into the arguments about monarchy and the rest, but obviously we cannot produce monarchy in India out of nothing. It is not there. If it is to be an independent and sovereign State, we are not going to have an external monarchy and we cannot have a research for some local monarchies. It must inevitably be a republic. Now, some friends have raised the question: "Why have you not put in the word "democratic" here. Well, I told them that it is conceivable, of course, that a republic may not be democratic but the whole of our past is witness to this fact that we stand for democratic institutions. Obviously we are aiming at democracy and nothing less than a democracy. What form of democracy, what shape it might take is another matter? The democracies of the present day, many of them in Europe and elsewhere, have played a great part in the world's progress. Yet it may be doubtful if those democracies may not have to change their shape somewhat before long if they have to remain completely democratic. We are not going just to copy, I hope, a certain democratic procedure or an institution of a so-called democratic country. We may improve upon it. In any event whatever system of Government we may establish here must fit in with the temper of our people and be acceptable to them. We stand for democracy, It will be for this House to determine what shape to give to that democracy, the fullest democracy, I hope. The House will notice that in this Resolution, although we have not used the word 'democratic' because we thought it is obvious that the word 'republic' contains that word and we did not want to use unnecessary words and redundant words, but we have done something must more than using the word. We have given the content of democracy in this Resolution and not only the content of democracy but the content, if I may say so, of economic democracy in this Resolution. Others might take objection to this Resolution on the ground that we have not said that it should be a Socialist State. Well, I stand for Socialism and, I hope, India will stand for Socialism and that India will go towards the constitution of a Socialist State and I do believe that the whole world will have to go that way. What form of Socialism again is another matter for your considerations. But the main thing is that in such a Resolution, if, in accordance with my own desire, I had put in, that we want a Socialist State, we would have put in something which may be agreeable to many and may not be agreeable to some and we wanted this Resolution not to be controversial in regard to such matters. Therefore we have laid down, not theoretical words and formulae, but rather the content of the thing we desire. This is important and I take it there can be no dispute about it. Some people have pointed out to me that our mentioning a republic may somewhat displease the Rulers of Indian States. It is possible that this may displease them. But I want to make it clear personally and the House knows. that I do not believe in the monarchical system anywhere, and that in the world today monarchy is a fast disappearing institution. Nevertheless it is not a question of my personal belief in this matter. Our view in regard to these Indian States has been, for many years, first of all that the people of those States must share completely in the freedom to come. It is quite inconceivable to me that there should be different standard and degrees of freedom as between the people in the States and the people outside the States. In what manner the States will be Parts of that Union that is a matter for this House to consider with ,the representatives of the States. And I hope in all matters relating to the States, this House will deal with the real representatives of the States. We are perfectly willing, I take it, to deal in such matters as appertain to them, with the Rulers or their representatives also, but finally when we make a constitution for India, it must be through the representatives of the people of the States as with the rest of India. Who are present here. (*Applause*). In any event, we may lay down or agree that the measure of freedom must' be the same in the States elsewhere. It is a possibility and personally I should like a measure of uniformity too in regard to the apparatus and machinery of Government. Nevertheless, this is a point to be considered in co-operation and in consultation with the States. I do not wish, and I imagine this Constituent Assembly will not like, to impose anything on the States against their will. If the people of a particular State desire to have a certain form of administration, even though it might be monarchical, it is open to them to have it. The House will remember that even in the British Commonwealth of Nations today, Eire is a Republic and yet in many ways it is a member of the British Commonwealth. So, it is a conceivable thing. What will happen, I do not know because that is partly for this House and partly for others to decide. There is no incongruity or impossibility about a certain definite form of administration in the States, provided there is complete freedom and responsible Government there and the people really are in charge. If monarchical figure-heads are approved by the people of the State, of a particular State, whether I like it or not, I certainly will not like to interfere. So I wish to make it clear that so far as this Resolution or Declaration is concerned, it does not interfere in any way with any future work that this Constituent Assembly may do, with any future negotiations that it may undertake. Only in one sense, if you like, it limits our work, if you call that a limitation, i.e., we adhere to certain fundamental propositions which are laid down in the Declaration. Those fundamental propositions, I submit, are not controversial in any real sense of the word. Nobody challenges them in India and nobody ought to challenge them and if anybody does challenge, well, we accept that challenge and we hold our position. *(Applause).*

Well, Sir, we are going to make a constitution for India and it is obvious that what we are going to do in India, is going to have a powerful effect on the rest of the word, not only because a new free independent nation comes out into the arena of the world, but because of the very fact that India is such a country that by virtue, not only of her large size and population, but of her enormous resources and her ability to exploit those resources, she can immediately play an important and a vital part in world affairs. Even today, on the verge of freedom as we are today, India has begun to play an important part in world affairs. Therefore, it is right that the framers of our Constitution should always bear this larger international aspect in mind.

We approach the world in a friendly way. We want to make friends with all countries. We want to make friends in spite of the lung history of conflict in the past, with England also. The House knows that recently I paid a visit to England. I was reluctant to go for reasons which the House knows well. But I went because of a personal request from the Prime Minister of Great Britain. I went and I met with courtesy everywhere. And yet at this psychological moment in India's history when we wanted, when we hungered for messages of cheer, friendship and co-operation from all over the world and more especially from England, because of the past contact and conflict between us, unfortunately, I came back without any message of cheer, but with a large measure of disappointment. I hope that the new difficulties that have arisen, as every one knows, because of the recent statements made by the British Cabinet and by others in authority there, will not come in our way and that we shall yet succeed in going ahead with the co-operation of all of us here and those who have not come. It has been a blow to me, and it has hurt me that just at the moment when we are going to stride ahead, obstructions were placed in our way, new limitations were mentioned which had not been mentioned previously and new methods of procedure were suggested. I do not wish to challenge the bona fides of any person, but I wish to say that whatever the legal aspect of the thing might be, there are moments when law is a very feeble reed to rely upon, when we have to deal with a nation which is full of the passion for freedom. Most of us here during the Past many years, for a generation or more have often taken part in the struggle for India's freedom. We have gone through the valley of the shadow. We are used to it and if necessity arises we shall go through it again. (Hear, hear). Nevertheless, through ill this long period we have thought of the time when we shall have an opportunity not merely to struggle, not merely to destroy, but to construct and create. And now when it appeared that the time was coming for constructive effort in a free India to which we looked forward with joy, fresh difficulties are placed in our way at such a moment. It shows that, whatever force might be behind all this, people who are able and clever and very intelligent, somehow lack the imaginative daring which should accompany great offices. For, if you have to deal with- any people, you have to understand them imaginatively; you should understand them emotionally; and 'of course, you have also to understand them intellectually. One of the unfortunate legacies of the past has been that there has been no imagination in the understanding of the Indian problem. People have often indulged in, or have presumed to give us advice, not realising that India, as she is constituted today, wants no one's advice and no one's imposition upon her. The only, way to influence India is through friendship and co-operation and goodwill Any attempt at imposition, the slightest trace of patronage, is resented and will be resented. (Applause). We have tried, I think honestly, in the last few months in spite of the difficulties that have faced us, to create an atmosphere of co-operation. We shall continue that endeavour. But I do very much fear that that atmosphere will be impaired if there is not sufficient and adequate response from others. Nevertheless, because we are bent on great tasks, I hope and trust, that we shall continue that endeavour and I do hope that if we continue, that we shall succeed. Where we have to deal with our own countrymen, we must continue that endeavour even though in our opinion some countrymen of ours take a wrong path. For, after all, we have to work together in this country and we have inevitably to co-operate, if not today, tomorrow or the day after. Therefore, we have to avoid in the present anything which might create a new difficulty in the creation of that future which we are working for. Therefore, so far as our own countrymen are concerned, we must try our utmost to gain their co-operation in the largest measure. But, co-operation cannot mean the giving up of the fundamental deals on which we have stood and on which we should stand. It is not co-operation to surrender everything that has given meaning to our lives. Apart from that, as I said, we seek the co-operation of England even at this stage which is full of suspicion of each other. We feel that if that co-operative is denied, that will be injurious to India, certainly to some extent probably more so to England, and to some extent, to the world at large. We have just come out of the World War and People talk vaguely and rather wildly of new wars to come. At such a moment this New India is taking birth-renascent, vital, fearless. Perhaps it is a suitable moment for this new birth to take place out of this turmoil in the world. But we have to be cleared at this moment, we, who have this heavy task of constitution building. We have to think of this tremendous prospect of the present and the greater prospect of the future and not get lost in seeking small gains for this group or that. In this Constituent Assembly we are functioning on a world stage and the eyes of the world are upon us and the eyes of our entire past are upon us. Our past is witness to what we are doing here and though the future is still unborn, the future too somehow looks at us, I think, and so, I would beg of this House to consider this Resolution in this mighty prospect of our past, of the turmoil of the present and of the great and unborn future that is going to take place soon. Sir, I. beg to move. *(Prolonged Cheers).*

Mr. Chairman: Shri Purushottam Das Tandon will second the Resolution.

The Hon'ble Shri Purushottam Das Tandon (United Provinces: General) *[Mr. Chairman, I fully support the Resolution moved by my brother Pandit Jawahar Lal Nehru. Today's session of the Constituent Assembly is an historical occasion. After centuries such a meeting has once more been convened in our country. It recalls to our mind our glorious past when we were free and when assemblies were held at which the Pandits met to discuss important affairs of the country. It reminds us of the Assemblies of age of Asoka. We have dim impressions of those days before our eyes. We are also reminded of Assemblies of other ,countries such as, America, France and Russia. Our Constituent Assembly will be remembered with those others which met to frame the constitutions of other free nations. We have met here to frame a constitution which will show to the world that India is determined to live honourably not in isolation but as a part, of the world. It will co-operate with other countries and help them in their difficulties and assist them in all those affairs which make for the general progress of the world. We hope that what we are doing today will be a historic event which will be, counted those great events which have helped in the progress of the world.

India has been under the sway of the British for the last 150 years. We do not wish to go into things against which we have continuously raised our voice ever since the advent of the British Raj. We will not at present speak of the injuries done to India during this one and a half century. They not only deprived us of our freedom but also created disunity among us. We are not to go into these things today. We, however, cannot ignore the struggle. and sacrifices of our leaders. In the beginning our leaders demanded freedom by passing resolutions with explanations and submitting them to the Government. We were subjected openly to high-handedness and the Government were everywhere openly favouring the British. We earnestly appealed to our rulers to treat us with justice. Our leaders referred them to their high ideals, to the ideals of Burke and Mill. They were steeped in British ideals and they hoped that the British would do them justice and give them freedom. That time is now gone. Our experience has shown us that freedom cannot be had by requests and appeals and that drastic steps are unavoidable. The pages, of our history show that new movements were started and open opposition began to be offered to the British. The movement of 1905-6 helped our country to ascend a few rungs higher on the ladder of progress. At that time our brave Bengali leaders and youths did act which will be written in golden letters in our history. We forged ahead. Our national leader, Mahatma Gandhi appeared in the field of politics and changed the methods of our struggle. He taught us new ways and we started afresh. British laws were not only openly defied but were also openly contravened without minding the dire consequences which were likely to follow such action. Thousands of our people broke the laws and went to jails. The pictures of those, who gave their lives of lingered for years in prisions, stand before our eyes. The more recent movement--the movement of 1942 is, in fact, the creator of this Assembly. This movement played a most important role in making the British Government call this Constituent Assembly. It opened a new field for our further advance. The eyes of the British Government were opened and the world was confronted with the fact that the British Government could no longer stay in India. Other countries did not help us openly. We have, however, to admit that in addition to the expression of our strength, which is the Main thing which will carry us towards-our goal, we were helped by powers which are today engaged in uniting the world. The world has seen, that oppression perpetrated in its remotest corner, has far-reaching repercussions involving the oppressor's country and its neighbours. This has been proved by the last two world wars. Now the great leaders of the world are thinking of the means to save the world from the ravages of a third world war. They desire to make it a paradise, to turn it into a place where no more wars will be fought, no more human blood will be shed, where no great distinction will exist between the rich and the poor, where everybody will get food and amenities, where people will be allowed to live according to their ideas, where every child has a right to be educated, where ideals will become noble and nobler and where spiritual ties will grow between the sons of man. Wise people are trying to bring out laws which will extricate the world from the slough in which it is at present wallowing and which will give equal rights to all countries. The time is swiftly changing and world forces are contributing towards these new ideas. We, too, living in this world cannot escape them. We ardently welcome the new forces which have always been the basis of our high hopes. It can be particularly said about India that its people have always considered the whole of mankind as one family and the whole world as one country. The best people among us never made any distinction between the people of the world. Many foreigners came to our country. We received them with open arms. We never practiced the policy, which some countries have adopted against the people of our country. Our history shows that we welcomed all those who came from other countries and gave them whatever help they needed, assisting them to stay in our country. How did the people of England first come to this country? They found here protection and refuge. There have been quarrels and strifes; but on the whole our history shows that we have always protected human' rights. We do not consider it right to divide brother from brother nor do we make any distinction in their political rights. We have no doubt, had and still have shortcomings; and we cannot ignore them.

Our past history urges us to go forward. We have to reach the point where we may place the ideal of equality not only before our own country but before the world at large. On this historical occasion it is quite, natural that our thoughts dwell on our past history and to the events which occurred in our country. On our struggles, our sacrifices and help that we have received from other nations which have brought us here together and we must take strength from them. We have come here to frame a constitution which will give our country peace and tranquillity. We aim at giving equality to each and every inhabitant of our motherland.

The Resolution placed before you today has equality as its underlying theme. The different sections of the country have been given autonomy and India as a whole remains one with full sovereignty. We shall stand united in affairs which demand our unity. The one important thing in the Resolution is the recognition of India as a free country. Our country is one and yet we shall give full freedom to its various sections to have for themselves whatever administration they liked. The present division of our country into provinces may change. We shall do justice to all communities and give them full freedom in their social and religious affairs.

There is an amendment to the Resolution asking for a postponement of its consideration until such time as the Muslim League joins the Assembly. We should not ignore the fact that for every action there is a proper time. If we postpone the Resolution today, when will it again come before us? We are not certain as to when the League would come in. We have gathered together today; should we disperse without doing anything? Should we not have at least an objective for our future proceedings? Should we go away after merely appointing a Procedure Committee? Our brethern advise us to postpone the consideration of the Resolution to some other time. If they wanted not to do anything in the absence of the Muslim League, why have they met here at all?

We do want the Muslim League to co-operate with us; but can we contribute to the present aims and aspirations of that body? We shall try our utmost not to hurt the cause of the Muslim League; and, I point out to you, that the Resolution takes note of this fact. There are many of us who are against giving residuary powers to the provinces. Personally, I would oppose the grant of residuary powers to the provinces in the best interests of my country, especially in view of the conditions prevalent in the provinces owing to this Hindu-Muslim problem. We all know what has happened in Bengal and in other provinces. Residuary powers and political rights, which may conduce to unity and progress in the country, should lie with the Central or Federal Government. The Resolution, however gives residuary powers to the provinces so that the Muslim League may not say that we have done in their absence what as we pleased. Moreover, the State Paper issued by the Cabinet Mission, which is the foundation of the Constituent Assembly, also said that the residuary powers should go to the provinces. We accepted it in the hope that this will enable the Muslim League to work with us. We went as far as we could to make the Muslim League co-operate with us; nay, I would rather say, we want farther than was needed, because the Muslim League aims at certain objectives which are absolutely against our objectives and this will cause a lot of trouble in the future. For the sake of securing Muslim League's co-operation we have been accepting many things against our ideals. We should now put a stop to that and should not ignore our fundamental principles for the sake of coming to an agreement with the Muslim League. I am opposed to the postponement of the Resolution, and I am sure, the House realises the importance of this Resolution. Constituent Assemblies in other countries began with their objectives before them. If you postpone this Resolution, what will the world think? When they hear of this Resolution they would think that India was going to be free; that the fight of 'Quit India' against the British started by Indians in 1942, was being won. This Resolution will lend a great importance to your cause of freedom, and its postponement I think, is not expedient.

There are other amendments to the Resolution. It has been clearly pointed out in the Resolution that power shall entirely vest in the people. Some members suggest to substitute 'working people' for 'people.' I am opposed to this. The word 'people' means all the people. I am myself a servant of the farmers. To work with them is my highest glory. The term 'people' is comprehensive and contains all the people. It is, therefore, my opinion that no adjective should be attached to it. There are amendments asking for universal compulsory education and so on. These are petty matters. Times have changed. Provincial Governments have enacted laws to enforce these things. For the nonce we should concentrate on larger issues. All these amendments are non-essential and should not be moved.

As I have already said we have got this of making a constitution after passing through many ordeals. We obtained some privileges in 1935. We continued the fight until we came to 1942. Now, as a result of these struggles, we have gathered here to frame a constitution and we do not yet know what will be the result of our efforts. Our path is still full of obstructions. Our friends in London send us their advice. Sir Stafford Cripps, while speaking of certain principles, advises us to accept the formula that the majority should frame its own constitution, while the minority should also have the right to have its safeguards against any obstructions from the majority. I am sorry to say though Sir Stafford professes to help us, his real aim is to erect obstacles in our way. The history of our relations with the British show that Hindu-Muslim differences are purely a British creation.

The differences on which the British harp upon have been created by them. They were not in existence before their advent. Hindus and Muslims had a common civilization and lived amicably. Can the British say that the situation now obtained in India is not of their creation and is not backed by them? Those who are opposing us under the instigation of the British are our brethren and we certainly desire their co-operation; but in order to have them on our side, we cannot sacrifice these basic principles to which we have been wedded till now and which go to make a nation. Sir Stafford warns us of civil war and advises us to co-operate with each other to avoid it. No patriot would like civil war and shedding the blood of his own countrymen. Congress has always tried to unite all the sections of the population to fight for the freedom of their country. Our leaders have never indulged in communal bickerings. Congress is the only body in which Hindus, Muslims, Parsees, Jains and Buddhists can unite. In politics it refuses to recognize any difference on account of religion. To say that such and such sections be separated from the country on religious basis, is no religion but pure politics--politics which destroy the unity of a country. We ask Sir Stafford and other British leaders: "If a hundred years or, for that matter, twenty years ago, the right of separate elections were given to different sects of your country what sort of Government you would have had today?" Again, we ask America: "if the right of separate elections was given to different communities and Christian sects of your country, would you have had the same form of government as you now have? Would you not have had continuous civil wars in your countries?" The possibility of civil war in our country has been created by the British Government. The British Government is playing the old game. The Cabinet's Statement shows the same mentality. The interpretation given by them stresses the point that the different groups of the Indian Federation shall have full power to frame whatever constitution they liked for them. They say, as they said before, that a province will have full option to remain in a group or not; but at the same time they qualify this statement with conditions which preclude the possibility of a province using that right. You tell a province that it was free to remain in a group or not but at the same time you say that all the people of a group should join together to frame its constitution. The North-West Frontier Province will have to attach itself to the Punjab, Sind and Baluchistan, and Assam to Bengal. Their constitutions will be framed by 'B' and 'C' groups. The group consisting of Punjab, Sind and Baluchistan will frame constitutions for N.W. F. Province and Bengal for Assam. Is it honest? You say that a province has the right to go out of a group but you frame a constitution that precludes its going out of it. In the Cabinet Mission's Statement, it was clearly said that a province will have option to join a group. The option to go out is given at the end of the Statement. The meaning of the first part is that at the time of the formation of groups a province will have free option to be in the group or not. We understood it as such and so the Congress accepted it; but now it is said that a province has no option ,even at the time of formation of groups to remain out of its group not does it have the right to frame its constitution. It will be framed by the delegates of the whole group. This means that we should accept the division of India and deliver the N.W. F. Province and Assam into the hands of persons who openly assert that they are out to divide India into two parts. If civil war is unavoidable, let it come. We cannot be coerced to do a wrong thing by threats of civil war. It is quite possible that civil war may occur in a comer of India and we may have to fight the British, too. They threaten us with civil war; but the fact is that they are sowing the seeds of civil war among us. They wish that we should fight so that they may rule over us. I feel pained when I say these things. I have a great regard for the British people. They are far advanced in the field of politics and they are wise and freedom-loving. We have learnt many things from them. I have not a trace of hatred in my mind for them. I was happy that a new era had dawned in England, that the Government had passed to the Labour Party who would reverse the old policy. For the last hundred years the policy of the British Government had been one of selfishness and cunning towards countries, while in their own country they are very liberal and have a great regard for each other. For the benefit of their own people they consider it expedient to coerce and exploit other people. It was expected that with the advent of this new government and the defeat of the old Tories their policy would be entirely reversed and the foreign policy of England would be based on honesty but I am disappointed to see that some of the recent statements aimed only at creating a breach among the people of India.

I admit that the Congress had come into the Assembly by accepting the Cabinet Mission's Proposals but I want to point out that Constituent Assembly after meeting may adopt an altogether a different course. In France people met on the invitation of King Louis. When they saw they could not do what they wanted to do, they began their own procedure. The King who had called them for granting him money, seeing their intentions, wanted to disperse them but they refused to disperse. Our Constituent Assembly has met on the invitation of the British Government but we are free to carry on the work as we please. Some of us were against the Congress participation in this Assembly. They were afraid of British tactics. The Congress, however, had full confidence in itself. My humble voice was also for coming into the Assembly I believed in the power and determination of my colleagues. The occasion was not to be lost. If we could not succeed on account of obstructions from the British Government we shall at least show the world the sort of constitution we want. Our Chairman in his speech made many good points. I was elated to hear him say that we would not subject ourselves to limitations laid down by the British Government.

In this House we cannot accept the British Government's proposals to divide India into sections and to give that right of framing constitution for provinces into the hands of persons who are bent upon dividing India. I do not like to say these things but I feel it my duty to say that the British Government shows a lack of honesty in assertions which it makes on behalf of the Muslim League.

Somebody has rightly said that the League was the British Government's Front (morcha). Pandit Nehru said the other day in the Congress that the League members who had come in the Interim Government were acting as the King's Party. The fact is that the League is being duped by the British Government. They are our countrymen and our brethren and we are always prepared to come to an agreement with them. Today the British are using them as their morcha from behind which they are throwing arrows upon us. We know the British arrows and We have to protect ourselves. In the Constitution that we would frame, we would try to save ourselves from these arrows. In doing so, if we have to fight the British and their proteges, we are prepared to do so. We are sure we will, surmount all obstacles. It is the time of our trial. when success comes nearer a host of difficulties crop up. When *yogis* begin to ascend higher in their *yogas* they are beset by apparitions, spectres and evil spirits. They threaten them and try to dupe them. We are nearer the success and many evil spirit have arisen to make us deviate from our purpose. It is our duty that we should neither fall to their machinations or should we feel afraid of them.

In framing the Constitution we should remember that whatever plans, of progress we make, we should never yield to the proposal of dividing India. India should remain one. Thus protecting our past civilization, we may proceed forward and take the greatest part in bringing peace to the world.

Mr. Chairman: The Resolution has been moved and seconded. I have received notice of a large number of amendments. I think I have got more than 40 amendments already before me and therefore I do not think it necessary to give any more time for giving notice of more amendments. I think all who wanted to put in amendments have already done so, taking into consideration the number of amendments.

It is now 1 o'clock and I think we may rise. But before we rise, I desire to point out to the House that from the next day, I may have to do the unpleasant duty of imposing some sort of time-limit on the speakers. This being the first day, I did not like to interfere and I allowed the speakers to have full time.

Tomorrow being, Saturday, I would not like that the House should meet. It is not as if I am laying down a rule that we shall not meet on Saturdays. We are not meeting this Saturday for the reason that we are meeting in the Rules Committee and I want the Committee's work to be finished as soon as possible. So to allow the Members of the Committee full time tomorrow, we are not meeting here. We meet on Monday, and on Monday we shall meet in the afternoon from 3 o'clock, not in the morning. The House stands adjourned to 3 o'clock on Monday.

The Assembly then adjourned till 3 P.m. on Monday, the 16th December, 1946.

[English translation of Hindustani speech begins]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME I

Monday, the 16th December, 1946

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Three of the Clock (afternoon), Mr. Chairman (The Hon'ble Dr. Rajendra Prasad) in the Chair.

RESOLUTION RE: AIMS AND OBJECTS--contd.

Mr. Chairman: We proceed now with the further discussion of the Resolution moved on the 13th December. The number of amendments is very large but I understand that some of them will not be moved. I call upon Dr. Jayakar to move his amendment.

The Right Hon'ble Dr. M. R. Jayakar (Bombay: General): Mr. Chairman and friends, before I move my amendment I would like to say a few words to tender my congratulations for the excellent speech which Pandit Jawahar Lal Nehru made in moving the Resolution. Its lucidity, modesty and gravity were very impressive and as I listened to it, my thoughts went back to the old days when, a few yards from here, under the guidance and the leadership of his distinguished father, we carried on legislative fights which, viewed back from the dignity of the present Assembly now seem to be so diminutive and unreal. I always considered Pandit Motilal Nehru a very fortunate man in the sense that he had two children, each of whom has become very distinguished after his death--(*cheers*)--Pandit Jawahar Lal Nehru, the guiding soul of the present Assembly, and that distinguished lady whom we are waiting to receive after her achievement at the U.N.O. at New York.

Before I read the terms of my amendment to the Resolution I would like to remove a few misunderstandings which have arisen about its purposes. Many distinguished and loving friends have come and said to me, in all earnestness, that I ought not to move this Resolution. I would like to remove all misunderstandings about my reasons in moving this amendment. It was said that it will divide this Assembly, which is bad tactics at the present moment. When you hear my speech I hope you will agree that my motion is not intended to nor is it likely to cause a division in the sense these friends meant. Some others said that I was deliberately appeasing the Muslim League. I see no harm in that, if it is necessary for the purpose of making successful the work of this Assembly. One friend went the length of saying that I am supporting Mr. Churchill of all people in the world, the one person whom I tried to expose in my cross-examination at the Round Table Conference Committee. There is no possibility of MY supporting Mr. Churchill by any means. Some friends touched me to the quick by saying that all my life, having been a champion of Hindu interests, I now propose to support and placate the Muslims. In reply I said that

I saw no conflict between the two. Because I support Hindu interests it does not mean that I should trample on what I consider the just rights of another community. My real purpose in moving this amendment is to save the work of this Assembly from frustration. I fear that all the work we shall be doing here is in imminent danger of being rendered infructuous. I am anxious that the work of this Constituent Assembly should not be made futile and ineffective by our neglecting one or two difficulties which lie in our way. One friend said: 'You have been elected on the Congress ticket'. I recognise the generosity of that step and when the invitation came I accepted it at some personal inconvenience; but if the obligation of that step means that my services, which you have a right to demand at every step, must always take the form of popularity, then I am afraid it is not possible. I am here to render you as much co-operation and service as I can, but I cannot guarantee that such service will always be, in a form, popular with you. It may sometimes assume a painful form, e.g., of asking your attention to some pitfalls and difficulties in the way.

The points which I make are two-fold, Sir. One is a purely legal point and after putting it in brief, I shall leave it to you, Sir, in the Chair and to the Constitutional Adviser whom I have known for the last 10 years as a man of great constitutional knowledge, rectitude of behaviour and stern independence. It is an advantage, if I may say so, from my place here that we have got the assistance of a person like Sir B. N. Rau and I have no doubt that the point, which I am putting before you, Sir, today will receive his best attention. I do not want to raise this as a point of order but I am now raising it as indicating a legal difficulty in our way. I have no doubt that in the time which you have at your disposal you will consider it very carefully and give such decision on it as you choose. The point which I propose to raise is that in this preliminary meeting of the Constituent Assembly at this stage no question like laying down the fundamentals of the Constitution can be considered. That the Resolution is intended to lay down the fundamentals of the Constitution, even Pandit Jawahar Lal Nehru has admitted. It is a very vital resolution and it lays down the essentials of the next Constitution. If you examine it, a cursory glance will reveal to you that the several things which are mentioned here, are fundamentals of the Constitution. For instance, it speaks of a Republic; of a Union; it talks of present boundaries, and the status of Provincial Authorities; Residuary powers, all powers being derived from the people, minorities Rights, fundamental rights-all these can be accurately described as fundamentals of the Constitution. My point is that within the limits of the power which the Cabinet Mission's Statement of 16th May accords to this preliminary meeting, it cannot validly lay down fundamentals, however sketchy they may be, of the Constitution. That must wait until after we meet in the Sections and the Provincial Constitution have been prepared. At that stage, the two other partners, the Muslim League and Indian States, are expected to be present. At our present preliminary meeting our work is cut out and, limited by express terms which I shall presently read out to you and those express terms do not include the preparation or acceptance of the fundamentals of the Constitution which must await until we reach that stage which I have just mentioned. We are no doubt a sovereign body as you, Sir, very rightly remarked but we are sovereign within the limitations of the Paper by which we have been created. We cannot go outside those limitations except by agreement and the two other parties being absent, no agreement can be thought of. Therefore, we are bound by those limitations. Of course, if the idea of some people is to ignore those limitations altogether and convert this Constituent Assembly into a force for gaining political power, irrespective of the limitations of this Paper, to seize power and thereby create a revolution in the country, that is outside the present plan, and I have nothing to say about it. But as the Congress has accepted this Paper in its entirety, it is bound by the limitations of that Paper. If you will just permit me a few minutes to read to, you the relevant parts of the Paper....

Mr. Kiran Sankar Roy (Bengal: General): Mr. Chairman, on a point of order. I would like to know whether Dr. Jayakar is raising a point of order or moving his amendment. If he is raising a point of order, we feel Sir that that point of order should be disposed of first before he can proceed to move his amendment.

Mr. Chairman: I think Dr. Jayakar has said that he is not raising a point of order, but he is pointing out the difficulties in the way of accepting this Resolution and I take it that he is proceeding in that way. As I understand it, he is not raising a point of order.

Dr. B. Pattabhi Sitaramayya (Madras: General): May I take it Sir, that this is a motion for adjournment of the consideration of the Resolution, as I make it out to be?

Mr. Chairman: I don't think it is a motion for adjournment either. He wants the Resolution to be discussed, but wishes to place before the House his own point of view with regard to the advisability or otherwise of the Resolution at this stage, and in doing so he points out certain difficulties in the way of accepting it.

Dr. B. Pattabhi Sitaramayya: May I respectfully suggest that he does not want us to proceed with the consideration of this subject. It is clear from the wording of his amendment. I invite your attention to the wording Sir.

Shri Mohan Lal Saksena (United Provinces: General): On a point of order. Under the Assembly rules, the mover of an amendment has to move his amendment before he makes his speech. I would suggest that Dr. Jayakar should be asked to move his amendment before he goes on to make his speech.

The Right Hon'ble Dr. M. R. Jayakar: Well, I will read the amendment. I wanted to save your time by a few minutes. This is the amendment:

> "This Assembly declares its firm and solemn resolve that the Constitution to be prepared by this Assembly for the future governance of India shall be for a free and democratic Sovereign State; but with a view to securing, in the shaping of such a constitution, the co-operation of the Muslim League and the Indian States, and thereby intensifying the firmness of this resolve, this Assembly postpones the further consideration of this question to a later date, to enable the representatives of these two bodies to participate, if they so choose, in the deliberations of this Assembly."

In substance, my amendment means that the further consideration of this Resolution should be postponed to a later stage, the stage of Union constitution-making at which, I take it, the Indian States and the Muslim League are expected to be present. I am not raising this as a point of order, but I am raising it as a difficulty which we have get over before we proceed to a consideration of this question, and this is an argument for the purpose of postponing the further discussion of this question. I am merely pointing out the legal difficulty in the way of this Constituent Assembly adopting this Resolution at this preliminary meeting. Therefore, the point I am making is that our power to transact our business at this stage of a preliminary meeting is limited. It is limited by express words and those limitations being accepted by us, this Assembly has no power at this stage to adopt any fundamentals of the Constitution. I would invite your attention, Sir, to a few paragraphs in the State Paper. I shall begin with Clause 19. Sub-clause (i) mentions the way the representatives of the several bodies are to be elected. Then follows Sections 'A', 'B' and 'C'. Then comes the note about Chief Commissioners' Provinces, etc. I shall leave that out. Then comes sub-clause (ii) which relates to the States. Then comes sub-clause (iii) which says that "representatives thus chosen", i.e. the Hindus, Muslims and the Negotiating Committee for the States, (I will leave the Negotiating Committee out for the moment) "shall meet at New Delhi as soon as possible". We have met. Then comes the preliminary meeting which is the meeting we are holding today. That it is a preliminary meeting cannot be disputed. In this connection, I may ask your attention to the letter of invitation, dated the 20th of November, which you received from the Viceroy to attend here this meeting. There it is described as the meeting. Therefore this is the preliminary meeting mentioned in sub-clause (iv). Then let us see what this preliminary meeting is entitled to do:

> "A preliminary meeting will be held at which (1) the general order of business will be decided (2) a chairman and other Officers elected and (3) an Advisory Committee (see paragraph 20 below) on rights of citizens, minorities and tribal and excluded areas set up...."

I understand that this is soon going to be done. Apart from this, there is not a word there about passing either the essentials or the fundamentals or even a sketchy outline of any constitution.

Sri K. Santhanam (Madras: General): On a point of order, Sir. If the Hon'ble Member's argument is correct, the first sentence of his amendment is as much not within the power of this Assembly as the original Resolution by Pandit Jawahar Lal Nehru.

The Right Hon'ble Dr. M. R. Jayakar: I think having regard to the difficulty which one finds in hearing from a distance, it will be more convenient if after my speech is ended all objections to it may be raised by members walking up to this rostrum. It will be more easy to hear them at that time and nothing is going to happen in the meantime. I am not going to engage you very long. Whatever objections you may have to urge against my speech, they may be presented by members coming here and I shall then reply to them if I am given a chance, instead of members now interfering. Therefore,. my submission, right or wrong, is that the powers of the preliminary meeting are limited to these steps.

Mr. Chairman: Order, order. What is your point of order, Mr. Santhanam?

Sr. K. Santhanam: My point of order is that if the Hon'ble Member's argument is correct, then the first sentence of his amendment is outside the powers of this meeting of the Assembly.

Mr. Chairman: Mr. Santhanam says that the first sentence of your amendment (turning to Dr. Jayakar), according to your own argument, is out of order.

The Right Hon'ble Dr. M. R. Jayakar: If that is your view, it can be deleted. I am willing to do so. I do not want to waste the time of the House in arguing against this view. I am prepared to delete that portion if necessary and let the remaining portion stand. It is sufficient for my present purpose.

Dr. B. Pattabhi Sitaramayya: That is why I submitted at the very outset that this was a motion for postponing the consideration of the Resolution.

Mr. Chairman: That really creates a difficulty--it is the first part of your amendment which makes it an amendment by bringing it within the four corners of the Statement. If your argument is correct, and if that is omitted, then the result is that your amendment becomes only a motion for adjournment.

The Right Hon'ble Dr. M. R. Jayakar: Supposing for a moment that you treat this as a motion for adjournment, can I not move it at this stage? It is a motion which should be taken up before any other amendment on merits is considered. Therefore, even supposing you treat it as, a motion for adjournment, I can urge it now.

Mr. Chairman: I seek the assistance of Members of this House on this point. The difficulty is that, if Dr. Jayakar's argument is correct on the legal point. The Resolution moved by Pandit Jawahar Lal Nehru is out of order. This question should have been raised at the time when the Resolution was moved. But at, this stage I do not think that that point of order can be raised. Therefore, we take both the amendment and the Resolution as being in order, and we proceed with the discussion.

The Right Hon'ble Dr. M. R. Jayakar: Then can I urge this as a legal question?

Mr. Chairman: I think this legal question would not arise. You put it on merits.

The Right Hon'ble Dr. M. R. Jayakar: I was mentioning to you, Sir, that at this stage the fundamentals of the Constitution cannot be considered or adopted. I will read out to you a few clauses more. Clause (v) says:

> "These sections shall proceed to settle provincial constitution for the provinces included in each sections."

I understand these will meet in March or April. next. I leave the other irrelevant portions. Then comes clause (vi)-which relates to the stage at which quest-Ions relating to the Constitution can be settled.

"The representatives of the Sections and the Indian States shall reassemble for the purpose of settling the Union Constitution."

That is the stage at which the fundamentals of the Constitution can be settled, because at that stage the States and the Congress and the Muslim League will all be present. This is so because the Scheme considers it necessary that all these three elements should have a chance of having their say on matters relating to the Constitution. That Stage has not been reached yet. Therefore, my submission is, that this question at the present time cannot be considered or finally decided. I am however suggesting a way out of the difficulty if you like to adopt it.

Mr. N. V. Gadgil (Bombay: General): There is no prohibition in clause (iv).

The Right Hon'ble Dr. M. R. Jayakar: That is implied there. If you take clauses (iv) and (vi), the meaning is clear that the preliminary meeting shall be concerned only with a few things and the settling of the constitution shall be postponed till we come to clause (vi). Otherwise clause (vi) becomes absolutely redundant and is in conflict. Therefore, taking the two clauses together, it is clear that what is intended to be done at the stage of clause (iv), is clearly and expressly mentioned in that clause. All that concerns the Union constitution either by way of an elaborate settlement or a sketchy outline of the fundamentals--all that must wait till the stage in clause (vi) is reached.

Now I come to clause (vii) which throws more light on this question. It provides that if any major communal issue arises, it will be dealt with as provided in that clause. There is no party here who is likely to raise the question of a major communal issue. Therefore, if you look back on clause (vii), its sense is clear in the way I have mentioned. This is my brief submission on the law point.

Apart from this legal point I want to urge before you a few considerations of practical expediency for postponing the consideration of this question to a later stage. As a way out of this difficulty I suggest that the Resolution, having been discussed during all this time and the object of public ventilation being served, this Assembly should not vote on it for the present but defer its consideration to the stage mentioned in clause (vi) so than when deliberating on it afresh at that time with the view of taking a final vote on it, they may be present here, to take part in such deliberations, the representatives of the two parties who are absent here now. I suggest this as an alternative course, to meet the difficulty.

Mr. R. K. Sidhwa (C. P. and Berar: General),: I rise to a point of order, Sir. Dr. Jayakar's amendment says:

"...this Assembly postpones the further consideration of this question to a later date, to enable the representatives of these two bodies (Indian States and Muslim League) to participate, if they so choose, in the deliberations of this Assembly.

" He has quoted clause (ii) of paragraph 19. That clause says:

"It is the intention that the States would be given in the final Constituent Assembly appropriate representation...."

" That stage has not been reached, and therefore, raising an objection that the Indian States are not represented here now cannot hold water. Again, if you further see.........

Mr. Chairman: That is not a point of order. That is an argument against what has been said.

The Right Hon'ble Dr. M. R. Jayakar: May I proceed, Sir?

Mr. Chairman: Yes.

The Right Hon'ble Dr. M. R. Jayakar: The plea which I am urging is this: This Constituent Assembly, as it is formed today, is not complete. Two persons are absent: The Indian States for no fault of theirs, because they cannot come in at this stage; that is the true position. The Negotiating Committee has been formed by the States, but we have not yet formed our Negotiating Committee. When we have done so, the two Committees will meet; that is the stage at which the States can come in according to the terms of this Document. As for the Muslim League, the position is different and the difference is very great.

The Muslim League has recently obtained three or four important concessions. Whether it is by superior strategy or any other means, it is not for me to say here. They have got three or four important points in their favour.

There are two points for interpretation, one is about voting and the other is about grouping into Sections. I understand that that question is going to be referred to the Federal Court. As an ex-Judge of the Federal Court and a sitting Member of the Superior Tribunal, namely, the Judicial Committee of the Privy Council, I recognise the necessity of not saying anything more about the proposed reference to the Federal Court or whether it is right and proper. I will only say that I wish you good luck I congratulate you that you will have on your side the services of one of the ablest constitutional lawyers you can engage for your purpose, namely, my friend, Sir Alladi Krishnaswami Ayyar. Beyond that I do not want to say anything about the reference to Federal Court. But it is clear that, although you may go to the Federal Court for getting the interpretation, viz., relating to grouping and voting, you cannot go to the Federal Court on the last, point gained by the Muslim League, viz., the provision that if a large section of people is not represented at the constitution-making. His Majesty's Government will not be willing to force such a constitution upon unwilling parts of the country. That is not a question of interpretation. It is a fresh concession which has been given to the Muslim League by way of addition to the Statement of May 16. I do not think that you can refer that point to the Federal Court. It is a substantive point which has been conceded the Muslim League *viz.*, that contrary to the Statement of Mr. Attlee, the Prime Minister, on 15th March this year, in the House of Commons, to the effect that though minorities will be protected, they will not be allowed to veto the progress of the majority. That was the position enunciated by no less a person than the Prime Minister in March 1946. That is gone. Now the position is very different indeed.

The Hon'ble Sardar Vallabhbhai J. Patel (Bombay: General): May I know, Sir, if the Right Hon'ble Gentleman is interpreting here the policy laid down by His Majesty's Government? All those so-called concessions which the Right Hon'ble Gentleman is referring to, are in addition to or over and above the Statement made in the White Paper. We have not accepted them and this House is not going to accept any addition, or alteration in the Document of May 16th *(Applause).*

The Right Hon'ble Dr. M. B. Jayakar: I am only pointing out the difficulties in your way. I am not asking you to admit any addition. I am pointing out the advantage, freshly found by the Muslim League, which creates a great difficulty in your way and the necessity for holding up matters until the Muslim League comes in. On that point, my remarks are quite relevant. If the Hon'ble Sardar Patel thinks that any addition like this will be rejected by the Congress, they are welcome to do so.

Now, Sir, what does it mean? What follows from it if a community like the Muslim community is not represented here at the constitution making. The words 'unwilling parts of the country' have also been interpreted by Sir Stafford Cripps. He says that the words mean any part of India where the Muslims are in a majority. On such parts, if they are unwilling, the constitution which you may frame in the absence of the Muslim community, will not be forced. The words used are "unwilling parts of the country". Whether any other community can take advantage of this provision, I do not know. That is a matter that may have to be cleared up. But this much is certain, and it was so expressly stated by Sir Stafford Cripps in the debate in the House of Commons. That those parts of the country where Muslims are in a majority, will not be forced to accept a constitution at the making of which they are not represented. Mark the words: "they are not represented", i.e., they are not present.

Now, this particular addition has been hailed with delight in England by certain schools of thought. Mr. Churchill calls it 'an important milestone in the long journey'. Whether it is an important milestone or a dangerous milestone, we are not concerned with. The fact is there that the Muslims have secured this right at the present moment.

So, the position is this that, if they choose to remain absent from your deliberations for whatever reasons, they can make your work futile and fruitless. All your efforts will fail to bind them. Whatever constitution you may frame in their absence here will be binding upon perhaps willing portion like Section 'A'; I am very doubtful whether it will affect Sections 'B' and 'C'. The result is that whatever you may do in the way of providing a constitution for the whole of India here and now, as this Resolution proposes, if you accept it today in the absence of the Muslim League, your effort is not going to bind the Muslim League at all. That raises the question whether it win not be wise, merely as a means of saving your trouble and labour, to postpone to a future date, the further consideration of these constitutional points. To put it at the lowest, it will save labour.

If you look at the constitution suggested in the Resolution, there are points in it with which the States and the Muslims are most intimately concerned. You speak of a Republic. I personally have no objection.

Dr. Suresh Chandra Banerjee (Bengal: General): On a point of information, Sir. If the Muslims do not come at all, how long are we to wait? How long are we to sit quiet? They could have come in. They have not come of their own accord.

The Right Hon'ble Dr. M. B. Jayakar: That is not a point of order.

Dr. Suresh Chandra Banerjee: That information should be given by Dr. Jayakar.

Mr. Chairman: That is an argument which the Hon'ble Member may advance when his turn comes.

The Right Hon'ble Dr. M. R. Jayakar: If the Hon'ble member had not interrupted me and had waited for a little while, I would have given an answer to the query.

Sir, the result is that merely by adopting the simple device of not being present here, the Muslim League can make the whole of your work useless. What does it mean? It means further that if the Muslim League does not come in, the States may not come in. They have made it clear more than once. And, in the House of Commons, it was stated clearly that the States might not deal with a Constituent Assembly which is composed of one party only. Therefore it is clear that if the Muslim League chooses to remain absent, and we provoke it by our action to do so, the States may not come in.

The Hon'ble Pandit Govind Ballabh Pant (United Provinces: General): How is it the Right Hon'ble Member said that it was made abundantly clear in the House of Commons that if the Muslim League did not come in, the States will not join the Constituent Assembly?

The Right Hon'ble Dr. M. R. Jayakar: yes.

The Hon'ble Pandit Govind Balabh Pant: I differ from the Right Hon'ble Gentleman in the interpretation of what was said there.

The Right Hon'ble Dr. M.R Jayalar: I place My interpretation on that and the Hon'ble Member is free to place his interpretation on that.

The Hon'ble Pandit Govind Ballabh Pant: Dr. Jayakar has no right to represent the States' view here unless the States representatives or the Negotiating Committee make the position clear.

The Right Hon'ble Dr. M. R. Jayakar: I am, not stating the view of the States. I am stating what was stated in the House of Commons. If the Muslim League does not come in, the States may not, come in. The States may not conceivably like to deal with a Constituent Assembly which is composed of one party only. If so what will be the result?*(Interruption).*

Mr. Chairman: I think it will be better if we allow Dr. Jayakar to continue.

The Right Hon'ble Dr. M. R. Jayakar: Won't you allow me to go my own way for about 20 minutes? The whole of this week, I understand, is going to be at your disposal to pick holes in my speech.

The Hon'ble Pandit Govind Ballabh Pant: We will have something more to do than pick holes in your speech.

The Right Hon'ble Dr. M. R. Jayakar: If the Muslim League does not come in, then in all probability the States will not come in. What happens? Probably you will frame a constitution for Section 'A'. Perhaps you will be framing a constitution for a Union Centre for the Provinces in Section 'A'. You may like to have a Union Centre for those Provinces. It is certain however that you will be unable to frame a constitution for Section 'B', the majority there being of the Muslim League. The result will be that there will have to be another Constituent Assembly, as Mr. Jinnah is wanting, for the purpose of framing a constitution for Sections 'B' and 'C'. Whether the minorities in those Sections can take advantage of the formula that unwilling parts will not be forced to accept the constitution, whether the Hindus and the Sikhs of the Punjab and the Hindus of Bengal and Assam can take advantage of that provision, I do not know. I can express no opinion on that. It may be that they will be able to take advantage of the principle of this dictum and say, "We had no hand in framing this constitution. Therefore that constitution should not be forced on us." That is a possibility. This much however is certain that our endeavour to frame a constitution for the whole of India as a Union will be defeated, The possible result of that will be that there may be one constitution for Hindus and another constitution for the Muslims and if this happens, there will be a third constitution for the States, and instead of having one United India, we may be forced to the necessity of having a Hindustan constitution, a mild, abbreviated, or qualified Pakistan Constitution and a Rajasthan constitution also. Your Union at the Centre will go. It will not be established. At present you have got at least this advantage that even though some form of Pakistan will be established in Sections 'B' and 'C', you have got a Union Centre, attenuated though it may be. Therefore the obvious necessity of the present occasion is that every effort ought to be made to invite the Muslims to come in here, and we should not make it more difficult. This is mainly because our work has to bear fruit. I admire in this behalf the sentiments expressed by Pandit Jawahar Lal Nehru in moving the Resolution. He said in effect that we seek the co-operation of the Muslims. We must continue to make an endeavour, though, in the past, our efforts did not evoke enough response. I do not think that my plea can be put in better words. It is clear that you cannot do any constitution-making at least till April next. Therefore, where is the harm in deferring the further consideration of this resolution for a few weeks more until at least you know that the Muslim League, by a formal resolution, has declared its intention not to come in. They must declare their intention during the next few weeks. I read the statement of Sir Stafford Cripps in the parliamentary debate that it was understood that, when Mr. Jinnah went back to India, if the Congress accepted the Statement of 6th December, he would call a meeting of the Muslim League and decide on this question. That was a statement made on the floor of the House of Commons. After you know that by an authoritative formal resolution, the Muslim League has decided not to come in, you can then decide what to do. One hurdle would have been crossed; but I am not disposed to take it for granted that the Muslim League will not come in. It is not practical politics. A friend came to me this morning and said: "Until yesterday, Dr. Jayakar, I was entirely in favour of your Resolution but Mr. Jinnah's Press Conference in London as made the whole difference." I said, "what difference has it made ?" He said, "Mr. Jinnah has now stated that lie will never come into this Constituent Assembly." I do not think that Mr. Jinnah has made such a statement, and even if so made, I am not disposed to take that statement as the final, authoritative, deliberate, formal decision of the Muslim League. What is the harm in postponing the final vote on this Resolution till then ? You are not in any event going to do anything substantial at least until the 20th January, that is four weeks from now. At least till then you should keep the way clear for the Muslim League to come in and take part in the proceedings. One answer to my plea is, "We are not doing anything to which the Muslim League can legitimately object." That does not touch my point. It is not a question of doing anything to which the Muslim League does not object. It is a question of giving it the right and the opportunity to be present here during the deliberations on this Resolution. That is what I am trying to obtain. Then it is said that there is nothing here which is contrary to the White Paper. That again does not touch my point. My object is to save the work of this Constituent Assembly from becoming infructuous. Wait, go slow. A few weeks are not going to make any substantial difference. It is not going to cause any great harm if you, instead of passing this Resolution in the present session, deferred it to a few weeks hence. The fact is that you are going to adjourn till the end of January but you will not do so, not in compliance with the terms of my amendment. That is a significant fact. Why don't you wait for a little while and thereby make it less difficult for the Muslim League to come in. I am told what is the grievance. The Muslim League can come in later after we pass this Resolution. My reply is that it is their right to be present at these deliberations, and to make their contribution. Please remember that the Muslim League leader has already raised the grievance in his Press Conference in London. "I do not want to be presented with a *fait accompli*", he complains. Will you now give him the opportunity of justly complaining that an important and vital question, like laying down the fundamentals of the Constitution, has been finished in his absence, knowing that he was likely to come in? Are you not thereby making it more difficult for the Muslim League to come into the Constituent Assembly? What I am urging on your attention is this: that as you are doing a good deal of what my amendment wants you to do, what is the harm in accepting my amendment? I say, "go slow". What is the harm? Do you wish to say we shall go slow, but not in compliance with your amendment i.e., not for enabling the Muslim League to come in? That is hardly dignified. It looks so petty. It will be a graceful gesture, if you say 'we are postponing because we wish to give the Muslim League of chance of coming in, so that this question may be discussed and finally adopted in their presence'. This is the position Sir, as Pandit Jawahar Lal Nehru said, there is great need of the spirit of co-operation and accommodation at the present time, having regard to the great difficulties through which we are passing. I have explained to you the difficulties and also the danger of this work becoming fruitless. In the light of that possibility and danger, I would urge, with all the words at my command, that the words of Pandit Jawahar Lal Nehru ought to be translated into action. We seek Muslim co-operation, we go out of our way to seek it by postponing this Resolution. Sir, miles away from here is working that solitary figure, whose steps we claim to follow, the great Mahatma;-alone, stinted of sleep, stinted in food and stinted in health, grieved and solitary, he is trying to win the Muslim community by friendly co-operation and goodwill. Why can we not follow his example here? Sir, if I may say so, I am glad you are here to preside over the deliberations of this august Assembly, and from what I have known of you all these years, your great capacity for goodwill, your gentleness, your spirit of accommodation and your ability to see the opposite point of view, having regard to all these virtues, I think, it is very significant that at this time you are in the Chair and my effort is for establishing that atmosphere in which your efforts, with your particular gift of fascination, can best thrive. Therefore, I am making this plea that we should defer the consideration of this Resolution so that you will have the chance of obtaining Muslim co-operation. But it is said we will after the Resolution when they come in. it is neither wise nor easy to alter deliberately-adopted Resolution. The substance of my plea is to allow the Muslim League an opportunity to take part in the deliberations, sit by your side, make speeches not *ex post facto*, but before and during the passing of this Resolution. That is real co-operation and not asking them after they want to come in and accept what you have done.

From this view I fear many of you will differ. I was warned, "you are making yourself extremely unpopular." But I said to my friend. "unpopularity has been my guerdon since my childhood." I have passed through many unpopularities. When I helped to start the Swaraj Party, I was unpopular. When I started the Responsive Co-operation Party, I was unpopular. When I went to the Indian Round Table Conference in London, I was unpopular. When I joined in passing the 1935 Act, I was unpopular--that piece of legislation which you, very thoughtlessly in my opinion, turned down. Having done that you are now borrowing out of that detested legislation, four important features, a Federation, an attenuated Centre, Autonomous Provinces and lastly residuary powers in Provinces. May I say, however, that my unpopularities have, with lapse of time, swollen into bulky majorities. Unpopularity does not therefore frighten me at my age and with my experience. My duty is to tell you that the course you propose to adopt is wrong, it is illegal, it is premature, it is disastrous, it is dangerous. It will lead you into trouble. As I am elected on your ticket, I am bound to tell you frankly that there is danger ahead, danger of frustration, danger of discord and division, which it is our duty to avoid, Sir, I have done.

Mr. Chairman: Sir Hari Singh Gour has given notice of an amendment. This appears to me to be out of order, but before ruling so, I would ask Sir Hari Singh Gour to point out how it becomes relevant. The amendment is this:

"That in the said Resolution for the words:

"This Assembly postpones the further consideration of this question to a later date to enable the representatives of these two bodies to participate, if they so choose in the deliberations of this Assembly."

The following words be substituted:

"This Assembly is of the opinion that the demand made by the Muslim League is suicidal in view of the history of Pakistan elsewhere and that it is in the interests of the Mussalmans and the other communities to constitute joint electorate reserving for the minority communities their equality of status for the next five years and providing a further safeguard that no member of one community shall be deemed to have been duly elected unless he holds a certain percentage of the votes of the other community.",

It may seem that this amendment goes much beyond what is contained in either the original Resolution or the amendment of Dr. Jayakar. I am therefore inclined to say, it will not be in order, but I am not giving my ruling at this stage. I will ask him to point out how it is in order.

Dr. Sir Hari Singh Gour (C. P. and Berar: General): Mr. Chairman. The point that at present I am called upon to reply to, is the question of my amendment to the Hon'ble Dr. Jayakar's amendment being in order. I wish to submit that if Dr. Jayakar's amendment is in order, my amendment to that amendment is in order. It must be assumed that I have not done anything more than pointing out the legality or orderliness of that amendment. I have always been feeling that if Dr. Jayakar wants the whole thing to be shelved, it cannot possibly come in as an amendment. An amendment means correction. The Hon'ble Dr. Jayakar's amendment therefore means that the Hon'ble Pandit Nehru's original Resolution should be passed as corrected by him. That may mean an amendment. If you wish to completely obliterate the main Resolution and want that there should be no further discussion for an indeterminate period, I fail to understand what Dr. Jayakar is trying to amend. He had better amend his own amendment first. I assume that amendment may go through and therefore I have given notice of my amendment. But, Mr. Chairman, you will further find that with some mental reservation about the legality of his amendment and mine, I have supplemented it by giving notice of another amendment to the original Resolution, which substantially reproduce the terms of my present amendment. Now, briefly stated, my case is this. If this amendment of the Hon'ble Dr. Jayakar is in order and is to be, discussed, I am entitled to correct it. If on the other hand, that amendment is ruled out of order, I do not wish to move my amendment.

In that case I would move the second amendment of which I have given notice.

Mr. Chairman: We shall deal with the second amendment when the time comes.

The amendment of Dr. Hari Singh Gour would make the Resolution as a whole read as follows:

> "This Assembly declares its firm and solemn resolve that the Constitution to be prepared by this Assembly for the future governance of India, shall be for a free and democratic Sovereign State; but with a view to securing in shaping such a constitution, the co-operation of the Muslim League and the Indian States and thereby intensifying the firmness of this resolve, this Assembly is of opinion that the demand made by the Muslim League is suicidal in view of the history of Pakistan elsewhere and that it is in the interests of the Muslims and other communities to constitute a joint electorate reserving to the Minority communities a particular quota of seats for the next five years, providing a further safeguard that no member of one community shall be deemed to have been duly elected unless he polled a certain percentage of the votes of the other community."

I am afraid Dr. Hari Singh Gour has not been able to connect the two parts of the Resolution, and it is out of order.

I propose to ask the Members who have given notice of amendments one after another to move them if in order. The Resolution and amendments may be discussed together. I think that will save time.

Dr. B. Pattabhi Sitaramayya: The Hon'ble Dr. Jayakar's amendment being in the nature of an adjournment motion of the consideration of the Resolution, it should gain priority both in discussion and in decision over the other amendments which are amendments of a substantive nature to the proposition.

Diwan Chaman Lall (Punjab: General): Dr. Jayakar's amendment is also a substantive one. It is not a procedural one. It also speakes of democracy, eliminating the word Republic and although it says that further consideration may be postponed, it cannot be considered merely as a procedural amendment.

Mr. Chairman: We have treated it as an amendment. The next amendment of which notice is given is by Mr. Somnath Lahiri. With regard to that amendment also, my view, as at present advised, is that it is not in order. I will ask him to show how it is in order.

Mr. Somnath Lahiri (Bengal: General): Mr. Chairman, the original Resolution, to which mine is an amendment, resolves the aim of the Constituent Assembly to declare India as an Independent Sovereign Republic. My amendment would be considered an amendment for the very simple reason that it deal with the same subject and it does not go contrary to the main idea of the original Resolution. It is always within the scope of an amendment to extend the scope of the original Resolution.

Mr. Chairman: The objection that was taken to your amendment is that it lays down certain action to be taken that is not in the main Resolution. For instance, it wants to declare a Republic here and now. It calls upon the Interim Government to act in a particular way and there are several other matters of this character. It is a resolution which directs action to be taken here and now and in that sense it is suggested that it is out of order.

Mr. Somnath Lahiri: I think that if in furtherance of the objects of that Resolution, some action is suggested, that certainly is within the scope of the amendment. For instance, you have allowed in Dr. Jayakar's resolution certain things about the Muslim League and other things which are not contained in the original Resolution moved by the Hon'ble Pandit Jawahar Lal Nehru. Just because he thinks that the Muslim League and others should be given an opportunity to come in, action to the extent of postponing this Assembly should be taken; and he has suggested his amendment and you have agreed that it is quite in order. Just as postponing is a kind of action, any other thing which may be suggested is also certainly in order. If I may remind you, Sir, of an incident in 1939, when you were the President of Congress, at the time of the declaration of War, a resolution came up at the A.I.C.C., where Pandit Jawahar Lal Nehru moved a resolution asking the British to declare their war, aims, and laid down certain conditions as a basis of co-operation, on which we could cooperate in the war. I remember myself having moved an amendment which said that we must prepare the country for a struggle and I remember that you, as Chairman, said it was quite in order although the Hon'ble Pandit Jawahar Lal Nehru pointed out that the intention of the amendment was just contrary to what was conveyed in the original resolution.

An Hon'ble Member: Is it a reported case ?

Mr. Chairman: I am afraid that cannot go in as a precedent. *(Laughter).*

Mr. Somnath Lahiri: This is my submission. If in spite of this you think that it should be ruled out of order, then I may be given an opportunity to speak on the main Resolution so that I can express my views.

Mr. Chairman : I think the amendment is out of order. I would give you an opportunity to speak on the main Resolution later.

I have received intimation that a number of the amendments, of which notice had been given by the members, have been withdrawn. I will only call upon those members who have not expressed such desire to move their amendments if they wish to. So, the next amendment which has not been withdrawn is that Rai Bahadur Syamanandan Sahaya, who may please come forward to move his amendment if he so wishes.

Rai Bahadur Syamanandan Sahaya (Bihar: General): Mr. Chairman, Sir, I Move:

"That for the 1st and the 2nd paras. of the Resolution the following be substituted:---

"This Constituent Assembly declares its firm and solemn resolve to constitute India, within the shortest time, into an Independent Sovereign Republic, comprising initially of--

(a) The territories that now form British India, and as soon as possible, also of,

(b) The territories that now form the Indian States,

(c) Such other parts of India as are outside British India and Indian States, and

(d) Such other territories as are willing to join the Independent Sovereign Republic of India,

and further resolves that a constitution for the future governance be framed and laid down'."

It is not, Sir, without a certain amount of diffidence that I stand here to move my amendment. After the great and magnificent speech of the Hon'ble the Mover of this Resolution it took me a great deal of thought and vacillation before I decided to send in this amendment especially because I thought my amendment perhaps achieved the objective which the Hon'ble the Mover had rather than stand in the way of it. I have an apprehension that perhaps attempts might be made by interested parties to isolate those of us who constitute the Constituent Assembly to-day but whatever happens, it is my desire--my extreme desire, as I know it is the desire of every one assembled here--that this Constituent Assembly shall Proceed with its task. The Hon'ble Dr. Jayakar in his speech made eferences to several difficulties. One of the difficulties pointed out, was that we have to work under the limitations laid down by the Cabinet Mission. I am no where near him in the matter of knowledge of constitutional law but I heard the Chairman of this Constituent Assembly saying in his speech that although there may be limitations placed on the Constituent Assembly, it has the inherent right of getting over them. I have based part of my amendment on this consideration. I will now try to point out, Sir the difference between the original Resolution and the amendment as I have put it, for it will be necessary to explain why is it that I have introduced certain changes in the Resolution. In the first place, I have altered the word 'proclaim' into 'constitute'. I shall give my reason for doing so at a later stage and I would point out now only what the difference is between the Resolution and the amendment. Then I have omitted the word 'Union'. I have introduced the words "within the shortest time" and I have said that the Constitution should not only be framed but should be laid down. These are some salient points of difference between the Resolution as proposed and my amendment. I have read the Resolution carefully and I had, on one occasion, an opportunity of placing my views to a certain extent before the Hon'ble the Mover of the Resolution, who agreed that the wording of the Resolution at certain places looked archaic. Perhaps in laying down a law or framing a constitution, it is necessary to use terms which were used 100 years before either by the framers of the American Constitution or the constitutions of other countries but I think, in our case, it might be more useful and more helpful to be precise and to state our view-point clearly in unambiguous and in easily understandable language rather than use words only because they were used in previous constitutions. I will now try to explain the reasons for the changes, I propose, I think the word "proclaim" is not exactly what you would like this Constituent Assembly to do. Proclamation of independence, I suppose, has been made on other occasions before this. It is now our duty to actually constitute the State into an Independent Sovereign Republic and therefore I introduced the word "constitute", instead of the word "proclaim". I have also, Sir. left out the word "Union". I believe that India is India. It needs no Union. It has got a providential Union, and I would not like even to reiterate it now as it might be interpreted that the Union of India was still to be achieved. It is quite another matter that for the time being, we may be able to enforce the Constitution we frame on only a part of India. But we look forward at the earliest possible moment to introduce it on other parts also. As such I would, if it were left to me, stick to India as such and lot introduce the word "Union" where the word "Union" has been used in other countries there has been good reason for using that term. Here, I suppose we would be better advised to leave out the word "Union". Then, as I said, I have used the words "frame and lay down". I have heard it said in this House before that the Constituent Assembly has got the sanction behind it to enforce the Constitution that it frames. I have also read carefully the Declaration of May 16. It does not in any way state that this Constitution that is passed here will require the sanction of the British Parliament. The two essential conditions laid down are that a treaty will be entered into between England and India and that the minorities will be protected. I take it, therefore, that we assembled here, have not merely the right and the power to frame a constitution, but also to lay down the Constitution and enforce it. That is why I have omitted the word "draw up." and used in its place the words "frame and lay down".

The other important change, Sir, which I have made in the amendment is that I have tried to specify different stages when the Constitution will come into force on the whole of India. Even in the original Resolution, I may point out, there are certain territories envisaged which perhaps might ome into the Union at a very late stage. I refer, Sir, to the two territories described as territories outside both British India and Indian States, and such other territories as might like to join the Union. Now these two parts of the Union surely are not going to come in now and here. Therefore different stages of the formation of the complete Union have been envisaged even in the original Resolution and I have tried in my amendment to clarify that the Independent Sovereign Republic will comprise initially of the territories that now form British India, and, as soon as possible, also of the territories that form the Indian States. My whole purpose in moving this amendment is, as I said before, to see that in framing the first Resolution we should so word it that it may not have to be altered at any stage. After all, it is the first act of this Assembly and no one would like, that circumstances developing later on, might require the Resolution to be altered. An Independent Sovereign Republic for the territories that form British India has been accepted in the past by the majority elements constituting that territory. There may be difficulties pointed out by others. We shall probably have to take note of those difficulties and try to solve them. I therefore, introduced in the Resolution stages by which we could form the Independent Sovereign Republic ultimately in its entirety. But even if we may not be able to secure the association of people whose association we definitely seek and are anxious to secure, even then the march to independence will not be hindered and we shall not have to wait for all the territories to agree before the Constitution can be laid down. These, Sir, are the reasons which led me to move this amendment. I am very sorry that the Hon'ble the Mover of the Resolution is not here today. As a matter of fact my desire entirely was to bring to his attention the points which I had in mind and to request him to consider whether it might be possible to accept the amendments or portions of it that might not be in conflict with the original idea which he advocated.

Mr. Chairman: The next amendment which has not been formally withdrawn and of which notice has been given is by Shri Govind Malaviya. He is absent, but I have his authority--he had told me himself--that he would not like to move his amendment. So I take it that is also withdrawn.

Then, there is another amendment by Rai Bahadur Syamanandan Sahaya.

Rai Bahadur Syamanandan Sahaya: The second amendment, Sir, which stands in my name is that in para. 4 of the Resolution, the following words be omitted:

> "of the Sovereign Independent India, its constituent parts and organs of Government."

The original Resolution reads as follows:........

Professor N. G. Ranga: (Madras: General): Is a member entitled to speak more than once on 'the same Resolution? When he has got two or three amendments, let him move the whole lot of them and make one speech.

Rai Bahadur Syamanandan Sahaya: The amendments have been recorded according to the several paragraphs of the Resolution.

Mr. Chairman: He has got one other amendment in his name. He may move both of them.

Rai Bahadur Syamanandan Sahaya: The other amendment, Sir, is as follows:

> "That in para. 5 of the Resolution the words 'of protection under the law' be substituted for the words

'before the law'."

I shall not move this.

Now, Sir, my reason for bringing this amendment asking the House to omit the words-

"Sovereign Independent India, its constituent parts and organs of Government."

was to avoid an impediment in the way of the smooth working and functioning of this Constituent Assembly and not to do anything before the other parts of it join this House which might frighten them here at the early stage.

Paragraph (4) says:

"Wherein all power and authority of the Sovereign Independent States, its constituent parts and organs of government, are derived from the people."

Among its constituent parts are territories that now form Indian States. I suppose the attention of most members of this House has been drawn to the recent statement in the Legislative Assembly (or whatever the name may be, of Bikaner wherein the Prime Minister said that so far as the States are concerned the power is derived from the sovereign and not from the people. I submit that these are matters on which there can be a difference of opinion and it would not be proper to pass a resolution containing such statements which might give the other important elements of this Constituent Assembly a real grievance to keep out. The Resolution as amended by me will read:

"wherein all power and authority are derived from the people."

I have purposely omitted the words "Sovereign Independent India, its constituent parts and organs of government". With regard to the constituent parts I have pointed out the difficulty and the reason why I move the amendment. Even the amended Resoluiion retains the purport of the Hon'ble Mover's Motion as it says,

"wherein all power and authority are derived from the people."

without in any way specifically bringing in the constituent parts. The Hon'ble Mover of the Resolution in his speech said that even in the Republic which ha envisaged, there will be room for ruling chiefs and States where there is a system of monarchy or kingship. That being so, it would not be advisable to pass a resolution saying that all power and authority of the constituent parts also are derived from the people. Perhaps members of the House have noticed the statement which was broadcast last night in which the representatives of the different States made a statement signifying some objection to the Resolution and complaining that there had been no consultation about it before. In view of all that, and in view of this extreme desire of every one assembled here to carry this difficult work through, I think we ought to avoid passing a resolution or making statements which might give reasonable cause for an honest difference of opinion.

I do not move amendment No. 30 because that is only a verbal change and I shall not move it. There is one other amendment (No. 43) also standing in my name and I am not moving it.

Mr. Chairman: The next amendment stands in the name of Sir Uday Chand Mahtab-No. 25.

Maharajadhiraja Bahadur Sir Uday Chand Mahtab of Burdwan (Bengal: General): I do not propose to move the amendment.

Mr. Chairman: I find that the movers of all other amendments given notice of here have withdrawn their amendments. I suppose there is no mistake here, and if there is any, Hon'ble Member may point it out to me. There is one amendment of which notice has been given by Dr. Sir Hari Singh Gour, but unfortunately that was received only this morning. I had already put a definite limit to the time for giving notice of amendments and as Dr. Sir Hari Singh Gour has exceeded that limit, I am unable to allow his amendment.

Now, the Resolution has been moved, and also amendments to it have been moved. The Resolution and these amendments are now for discussion by the House.

I will ask Hon'ble Members to confine their speeches to as short a time as possible because we have already had two days on this, and though I do not wish to curtail the right of any Hon'ble Member to speak, I will ask Members to bear my remark in mind. I have got a list of names here who will take part in the debate, but I take it, it is not a complete list. There may be some other members who may be willing to speak, but I shall proceed according, to this list and interpose other speakers also if they wish to speak. The first name that I have got here is Mr. Shri Krishna Sinha.

The Hon'ble Mr. Shri Krishna Sinha (Bihar: General): Mr. Chairman Sir, I stand here to support the Resolution as originally moved by Pandit Jawahar Lal Nehru: In my opinion, it is really unfortunate that a resolution of such a sacred nature should have been subjected to amendments. I purposely call it sacred because by this Resolution an attempt is made to give expression to that aspiration to be free which has stirred us for the last several years.

Sir, the Resolution, if carefully analysed, comes to this. It gives a picture of the vision of future India. That India of the future is to be a democratic and, decentralised republic, in which the ultimate sovereignty is to lie with the people and in which fundamental rights are too be safeguarded to minorities inhabiting this land. Now, Sir, these are the three fundamental features of this Resolution and it is because of these three fundamental features that I call this Resolution sacred. I shall try to be brief. Yet I cannot refrain from reminding this House that we are all assembled here in Assertion of a right, a cherished and valuable right which mankind has achieved for itself after undergoing untold sufferings and sacrifices. Some sort of political structure is required in every society to make life therein possible. A careful analysis of the process of evolution of States in this world shows that the nature of these has changed with the change in the conception of life. Sir, I was not a little surprised to hear just now from an Hon'ble Member of a House which has assembled in assertion of the constituent power of the People that there can be honest difference of opinion regarding the place where political sovereignty resided in society. Certainly, Sir, not long ago, the world did not believe that all individuals composing society had an equal right to liberty and happiness. Society was composed of classes and the individual had no place in society. The place of man in society was determined by the class to which he belonged and so there was no individual liberty to be safeguarded. Poverty was not thought to be a disease which society must get rid of. Some of the great thinkers of the 18th century France, were of the opinion that the presence of poverty in society was necessary for the proper production of wealth. In such a society, Sir, there could be no place for the principle of the sovereignty of the people. Sovereignty belonged to the King whose privilege it was to rule. The people existed merely to pay the taxes demanded of them by the king and obey the laws enacted by him. But with the lapse of time, the conception of society and life changed. Men came to believe that every individual has an equal right to liberty and happiness. With this change in the conception of life, a change in the structure of the State became necessary. But those who held political power were reluctant to part with it and effect a change in the political structure. There was thus a clash between the ideologies which swayed the people and those which swayed the men in power. There were revolutions on both sides of the Atlantic at the end of the 18th century in which the principle that the power belonged to the People was vindicated. Even after this, there were rulers who would not recognise this principle and so another blood-bath in the shape of a revolution had to be gone through to get finally sanctioned the principle that political power belonged to the people. It was to achieve this constituent power that we in this country have been fighting British Imperialism for the last several years. It is this which moved this country from one end to the other in 1921 and made its millions rally under the banner of revolt raised by Mahatma Gandhi in that year. It was for asserting this basic right of a people that hundreds mounted the scaffold, thousands faced bullets and men, in lakhs swarmed the jails. There was a wide gap between the political ideals on which the Government of India was based and the political ideology which swayed the people, and the result has been strife. So, Sir, we are not here in this Assembly because the British Government in a fit of generosity have thought it proper to ask us to take over power. I have been in a position from where I can form my own opinion as to whether there is any sincerity behind all this talk of peaceful transfer of power. We are here because we have succeeded in compelling those who still entertain the dream of governing India according to the political ideals embodied in the Government of India Act, to give up that dream. We have succeeded because of that spirit of rebellion which spread all over the country in 1942. It is as a result of the 1942 rebellion that we are here in this Constituent Assembly. Gathered together in such an Assembly it should be our first duty to draw up a picture of future free India and present it to our people. The Right Hon'ble Dr. Jayakar who spoke eloquently, has drawn a picture of the difficulties which the absence of our Muslim League friends will cause. I do not think that we required a speech from a man of the eminence of Dr. Jayakar to point out these difficulties. We know what those difficulties are. If I understood him aright, however, he did not give us a counsel of despair. He has actually advised us to go on with our work if our friends of the Muslim League do not come in after some time.

Sir, our leader, the Hon'ble Pandit Jawahar Lal Nehru, has made it quite clear that we are anxious to see our Muslim League friends occupying their rightful place in this Assembly. Every one of us is equally anxious to see them come back. But I fail to understand how this particular Resolution would stand in the way of their so coming here at a future date. If we have understood the political ideology of the Muslim League correctly, if we understood the Cabinet Declaration correctly, there is one matter in which all are agreed and that is that the future India is to be, a United India and that that India might also be outside the British Commonwealth of Nations, if the Indian people so decide. From the pronouncements made from time to time by Muslim League leaders I think we can rightly draw the conclusion that the Muslim League also stands for a free and independent India. So, Sir, according to all of us including the League, the future India is going to be an independent free India. In that independent free India the source of authority is going to vest in the people who inhabit this land. That is the cherished right which has been won for the people inhabiting this globe by those who have gone before. That is the principle for which we have been fighting all along. Now when this Constituent Assembly meets and we draw up a declaration, I think the first thing to be included in that declaration should be this elementary right of a people which decides to be free, and therefore to this feature of the Resolution no one can have any objection.

Now, Sir, the Union which we are going to have in India is going to be a Union of all the parts of India. This certainly means that the future India is going to be a united India. I will again say that the shape of that future India which this Resolution envisages certainly shows that the framers of this Resolution have taken pretty good care to see that nothing is said in this Resolution which can create difficulties in the way of our friends of the Muslim League coming into this Assembly at some later date. I know, Sir, there are members in this Assembly--and I must confess that I am one of those, who believe that-- there has arisen in Indian, an Indian nation, an Indian nation with an Indian culture and an Indian civilisation. Such men certainly are only too anxious to have a republic of the unitary type in this country. There has been such a tremendous increase in the economic forces of production in the world that if full use is to be made of these forces in this world, it is necessary that we should have still larger political units which will transgress the national boundaries of national states. It is a realisation of this truth which makes many Indians feel that India must have a centralised republic. But in spite of that, if we by this Resolution want to have a republic in India which will be democratic and at the same time decentralised, it is because the framers of this Resolution have taken care to take into account the feelings of our Muslim League friends. Sir, there was a time when because of the historical circumstances prevailing in the world of those days, States of large sizes, containing populations homogeneous in language and religion, could be erected. There can be no doubt that a national state with a homogeneous population is a force and a living force. But unfortunately at a time when there is a tendency for these national states to pass out of existence, we have to deal with a bitter legacy left behind by them and that is the legacy of small nationalities, consisting often of a few thousands or a few lakhs, clamouring for separate states of their own. This has been creating havoc in this world. The whole of Eastern Europe has become the zone for breeding wars because in that portion of Europe are living small nationalities so intermixed that they cannot be divided into small states, and yet they clamour for separate political existence.

Sir, this Resolution gives expression also to the aspiration that India shall have her place, her rightful place, among the nations of the world. Every Indian legitimately aspires that one day India will drive a lead to the whole of Asia and we can give this lead now by successfully constructing a state which will be a democratic republic, and, at the same time decentralised so that different cultural groups based on language, on religion, may be integrated in a vast republic. It is hoped that very soon the flood of Western Imperialism will retreat from the lands of Asia, and no sooner it has retreated, these lands will have to solve the problem of erecting independent states of their own. This question of nationalities is bound to raise its head even in those countries. They have such problems in Palestine, in the Arab world, and in the small islands in the south-eastern portion of Asia. If we are to lead them rightly so that like the Balkans these Asiatic lands may not also become the battleground of the Imperialisms of the West, it is very necessary that we should set an example by having a state in India which will be a state for the whole of India and at the same time provide safeguards for cultural minorities. This is what this Resolution contemplates by further making provision for the fundamental rights of the individuals and groups living in this country and for safeguarding the fundamental rights of the minorities.

Sir, it is because of these features of this Resolution that I said that the Resolution was of a sacred nature and one which is bound to rank with those declarations which were made on similar occasions in the past by peoples just after they had shed their shackles of slavery. It not only is sacred, it is arduous also, arduous not only because of the difficulties pointed out by Dr. Jayakar, but arduous because of the attitude of British statesmen over there in England. I have just now told you that from my personal experience as an administrator I do not feel that the Britishers have made up their mind to peacefully transfer power to the people of India. Only the other day you had the speech of Mr. Churchill. Not one word of cheer from that great imperialist. At a time like this in the history of our country when so many of us have assembled here to advise a constitution for this land, instead of giving a word of cheer, he was again at his old game. He had a fling at the Congress, he had a fling at Pandit Jawaharlal Nehru. In the advent of Pandit Jawaharlal Nehru into the Interim Government he sees the butchery of innocent men in Bihar. To Mr. Churchill, living seven seas across, I will say, you have been supplied with a lie by some interested person ad you have made yourself the willing tool for the propagation of that lie. The Government of Bihar did not hesitate for one single moment to use force and it used force, whatever force it had, to give protection to the lakhs of Mussalmans living in that Province. The Bihar Government is a proud Government. It is not going to have dictations from the Government of India, so long as it is constituted under the Government of India Act, 1935. Pandit Jawahar Lal Nehru is our leader and so lie went to Bihar. He is a source of inspiration to us. I may tell Mr. Churchill that during his strenuous tours of a few days through the Province he gave the people a bit of his mind. I told the greatest official of this country that he could not restore order in Bihar in the short period in which we did it. Order could be speedily restored, not because of the bayonets that the Government of Bihar had or because of those bayonets that were lent to them by the Government of India. It was the dynamic personality of Pandit Nehru, the saintly presence of Dr. Rajendra and the spectre of a fast unto death by the Mahatma that restored order Quickly in Bihar. Mr. Churchill has done great mischief by giving currency to such lies. I have taken much of your time. But I must tell you that before you pass this Resolution you must try to visualise the difficulties that may come in your way. I have not studied this declaration of the Cabinet from the point of view of a lawyer. Spurn to look at it from the point of a lawyer. I have been a soldier all my life and I would look at it from the point of view of a fighter. The statements of British statesmen are not quite helpful. It is just possible that not because of the difficulties that have been dangled before us by Dr. Jayakar but because of the difficulties which may be created in our way by those in power. This Constituent Assembly may one day have to go the way the Constituent Assembly of France in 1799, had to go, because of the attitude of the King and statesmen. of that time. So before I sit down, I would remind Hon'ble Members of the House that before they make up their minds to vote in favour of this Resolution they trust realise the difficulty that they may have to face in giving effect to their resolve. If we pass this Resolution we must at the same time take a firm resolve to tear down that political edifice which owes its existence in India to the Government of India Act, 1935--a monument of constitutional jugglery--and build on it a Republic of the type which this Resolution envisages, whatever may be the difficulties that may come in the way.

Mr. Chairman: It is already past five. I would like to know whether the Hon'ble Members would like to sit till half past five.

Many Hon'ble members: Half past five.

Mr. Chairman: Opinion is divided.

The Hon'ble Sardar Vallabhbhai J. Patel: Opinion is unanimous for five.

Mr. Chairman: Those who are in favour of half past five will please raise their hands............

Those who are not in favour of half past five will now raise their hands.

Mr. Chairman: The "fives" have it. The House will now adjourn till Eleven of the Clock tomorrow.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 17th December, 1946.

Monday, the 16th December, 1946

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Three of the Clock (afternoon), Mr. Chairman (The Hon'ble Dr. Rajendra Prasad) in the Chair.

RESOLUTION RE: AIMS AND OBJECTS--contd.

Mr. Chairman: We proceed now with the further discussion of the Resolution moved on the 13th December. The number of amendments is very large but I understand that some of them will not be moved. I call upon Dr. Jayakar to move his amendment.

The Right Hon'ble Dr. M. R. Jayakar (Bombay: General): Mr. Chairman and friends, before I move my amendment I would like to say a few words to tender my congratulations for the excellent speech which Pandit Jawahar Lal Nehru made in moving the Resolution. Its lucidity, modesty and gravity were very impressive and as I listened to it, my thoughts went back to the old days when, a few yards from here, under the guidance and the leadership of his distinguished father, we carried on legislative fights which, viewed back from the dignity of the present Assembly now seem to be so diminutive and unreal. I always considered Pandit Motilal Nehru a very fortunate man in the sense that he had two children, each of whom has become very distinguished after his death--(*cheers*)--Pandit Jawahar Lal Nehru, the guiding soul of the present Assembly, and that distinguished lady whom we are waiting to receive after her achievement at the U.N.O. at New York.

Before I read the terms of my amendment to the Resolution I would like to remove a few misunderstandings which have arisen about its purposes. Many distinguished and loving friends have come and said to me, in all earnestness, that I ought not to move this Resolution. I would like to remove all misunderstandings about my reasons in moving this amendment. It was said that it will divide this Assembly, which is bad tactics at the present moment. When you hear my speech I hope you will agree that my motion is not intended to nor is it likely to cause a division in the sense these friends meant. Some others said that I was deliberately appeasing the Muslim League. I see no harm in that, if it is necessary for the purpose of making successful the work of this Assembly. One friend went the length of saying that I am supporting Mr. Churchill of all people in the world, the one person whom I tried to expose in my cross-examination at the Round Table Conference Committee. There is no possibility of MY supporting Mr. Churchill by any means. Some friends touched me to the quick by saying that all my life, having been a champion of Hindu interests, I now propose to support and placate the Muslims. In reply I said that I saw no conflict between the two. Because I support Hindu interests it does not mean that I should trample on what I consider the just rights of another community. My real purpose in moving this amendment is to save the work of this Assembly from frustration. I fear that all the work we shall be doing here is in imminent danger of being rendered infructuous. I am anxious that the work of this Constituent Assembly should not be made futile and ineffective by our neglecting one or two difficulties which lie in our way. One friend said: 'You have been elected on the Congress ticket'. I recognise the generosity of that step and when the invitation came I accepted it at some personal inconvenience; but if the obligation of that step means that my services, which you have a right to demand at every step, must always take the form of popularity, then I am afraid it is not possible. I am here to render you as much co-operation and service as I can, but I cannot guarantee that such service will always be, in a form, popular with you. It may sometimes assume a painful form, e.g., of asking your attention to some pitfalls and difficulties in the way.

The points which I make are two-fold, Sir. One is a purely legal point and after putting it in brief, I shall leave it to you, Sir, in the Chair and to the Constitutional Adviser whom I have known for the last 10 years as a man of great constitutional knowledge, rectitude of behaviour and stern independence. It is an advantage, if I may say so, from my place here that we have got the assistance of a person like Sir B. N. Rau and I have no doubt that the point, which I am putting before you, Sir, today will receive his best attention. I do not want to raise this as a point of order but I am now raising it as indicating a legal difficulty in our way. I have no doubt that in the time which you have at your disposal you will consider it very carefully and give such decision on it as you choose. The point which I propose to raise is that in this preliminary meeting of the Constituent Assembly at this stage no question like laying down the fundamentals of the Constitution can be considered. That the Resolution is intended to lay down the fundamentals of the Constitution, even Pandit Jawahar Lal Nehru has admitted. It is a very vital resolution and it lays down the essentials of the next Constitution. If you examine it, a cursory glance will reveal to you that the several things which are mentioned here, are fundamentals of the Constitution. For instance, it speaks of a Republic; of a Union; it talks of present boundaries, and the status of Provincial Authorities; Residuary powers, all powers being derived from the people, minorities Rights, fundamental rights-all these can be accurately described as fundamentals of the Constitution. My point is that within the limits of the power which the Cabinet Mission's Statement of 16th May accords to this preliminary meeting, it cannot validly lay down fundamentals, however sketchy they may be, of the Constitution. That must wait until after we meet in the Sections and the Provincial Constitution have been prepared. At that stage, the two other partners, the Muslim League and Indian States, are expected to be present. At our present preliminary meeting our work is cut out and, limited by express terms which I shall presently read out to you and those express terms do not include the preparation or acceptance of the fundamentals of the Constitution which must await until we reach that stage which I have just mentioned. We are no doubt a sovereign body as you, Sir, very rightly remarked but we are sovereign within the limitations of the Paper by which we have been created. We cannot go outside those limitations except by agreement and the two other parties being absent, no agreement can be thought of. Therefore, we are bound by those limitations. Of course, if the idea of some people is to ignore those limitations altogether and convert this Constituent Assembly into a force for gaining political power, irrespective of the limitations of this Paper, to seize power and thereby create a revolution in the country, that is outside the present plan, and I have nothing to say about it. But as the Congress has accepted this Paper in its entirety, it is bound by the limitations of that Paper. If you will just permit me a few minutes to read to, you the relevant parts of the Paper....

Mr. Kiran Sankar Roy (Bengal: General): Mr. Chairman, on a point of order. I would like to know whether Dr. Jayakar is raising a point of order or moving his amendment. If he is raising a point of order, we feel Sir that that point of order should be disposed of first before he can proceed to move his amendment.

Mr. Chairman: I think Dr. Jayakar has said that he is not raising a point of order, but he is pointing out the difficulties in the way of accepting this Resolution and I take it that he is proceeding in that way. As I understand it, he is not raising a point of order.

Dr. B. Pattabhi Sitaramayya (Madras: General): May I take it Sir, that this is a motion for adjournment of the consideration of the Resolution, as I make it out to be?

Mr. Chairman: I don't think it is a motion for adjournment either. He wants the Resolution to be discussed, but wishes to place before the House his own point of view with regard to the advisability or otherwise of the Resolution at this stage, and in doing so he points out certain difficulties in the way of accepting it.

Dr. B. Pattabhi Sitaramayya: May I respectfully suggest that he does not want us to proceed with the consideration of this subject. It is clear from the wording of his amendment. I invite your attention to the wording Sir.

Shri Mohan Lal Saksena (United Provinces: General): On a point of order. Under the Assembly rules, the mover of an amendment has to move his amendment before he makes his speech. I would suggest that Dr. Jayakar should be asked to move his amendment before he goes on to make his speech.

The Right Hon'ble Dr. M. R. Jayakar: Well, I will read the amendment. I wanted to save your time by a few minutes. This is the amendment:

> "This Assembly declares its firm and solemn resolve that the Constitution to be prepared by this Assembly for the future governance of India shall be for a free and democratic Sovereign State; but with a view to securing, in the shaping of such a constitution, the co-operation of the Muslim League and the Indian States, and thereby intensifying the firmness of this resolve, this Assembly postpones the further consideration of this question to a later date, to enable the representatives of these two bodies to participate, if they so choose, in the deliberations of this Assembly."

In substance, my amendment means that the further consideration of this Resolution should be postponed to a later stage, the stage of Union constitution-making at which, I take it, the Indian States and the Muslim League are expected to be present. I am not raising this as a point of order, but I am raising it as a difficulty which we have get over before we proceed to a consideration of this question, and this is an argument for the purpose of postponing the further discussion of this question. I am merely pointing out the legal difficulty in the way of this Constituent Assembly adopting this Resolution at this preliminary meeting. Therefore, the point I am making is that our power to transact our business at this stage of a preliminary meeting is limited. It is limited by express words and those limitations being accepted by us, this Assembly has no power at this stage to adopt any fundamentals of the Constitution. I would invite your attention, Sir, to a few paragraphs in the State Paper. I shall begin with Clause 19. Sub-clause (i) mentions the way the representatives of the several bodies are to be elected. Then follows Sections 'A', 'B' and 'C'. Then comes the note about Chief Commissioners' Provinces, etc. I shall leave that out. Then comes sub-clause (ii) which relates to the States. Then comes sub-clause (iii) which says that "representatives thus chosen", i.e. the Hindus, Muslims and the Negotiating Committee for the States, (I will leave the Negotiating Committee out for the moment) "shall meet at New Delhi as soon as possible". We have met. Then comes the preliminary meeting which is the meeting we are holding today. That it is a preliminary meeting cannot be disputed. In this connection, I may ask your attention to the letter of invitation, dated the 20th of November, which you received from the Viceroy to attend here this meeting. There it is described as the meeting. Therefore this is the preliminary meeting mentioned in sub-clause (iv). Then let us see what this preliminary meeting is entitled to do:

> "A preliminary meeting will be held at which (1) the general order of business will be decided (2) a chairman and other Officers elected and (3) an Advisory Committee (see paragraph 20 below) on rights of citizens, minorities and tribal and excluded areas set up...."

I understand that this is soon going to be done. Apart from this, there is not a word there about passing either the essentials or the fundamentals or even a sketchy outline of any constitution.

Sri K. Santhanam (Madras: General): On a point of order, Sir. If the Hon'ble Member's argument is correct, the first sentence of his amendment is as much not within the power of this Assembly as the original Resolution by Pandit Jawahar Lal Nehru.

The Right Hon'ble Dr. M. R. Jayakar: I think having regard to the difficulty which one finds in hearing from a distance, it will be more convenient if after my speech is ended all objections to it may be raised by members walking up to this rostrum. It will be more easy to hear them at that time and nothing is going to happen in the meantime. I am not going to engage you very long. Whatever objections you may have to urge against my speech, they may be presented by members coming here and I shall then reply to them if I am given a chance, instead of members now interfering. Therefore,. my submission, right or wrong, is that the powers of the preliminary meeting are limited to these steps.

Mr. Chairman: Order, order. What is your point of order, Mr. Santhanam?

Sr. K. Santhanam: My point of order is that if the Hon'ble Member's argument is correct, then the first sentence of his amendment is outside the powers of this meeting of the Assembly.

Mr. Chairman: Mr. Santhanam says that the first sentence of your amendment (turning to Dr. Jayakar), according to your own argument, is out of order.

The Right Hon'ble Dr. M. R. Jayakar: If that is your view, it can be deleted. I am willing to do so. I do not want to waste the time of the House in arguing against this view. I am prepared to delete that portion if necessary and let the remaining portion stand. It is sufficient for my present purpose.

Dr. B. Pattabhi Sitaramayya: That is why I submitted at the very outset that this was a motion for postponing the consideration of the Resolution.

Mr. Chairman: That really creates a difficulty--it is the first part of your amendment which makes it an amendment by bringing it within the four corners of the Statement. If your argument is correct, and if that is omitted, then the result is that your amendment becomes only a motion for adjournment.

The Right Hon'ble Dr. M. R. Jayakar: Supposing for a moment that you treat this as a motion for adjournment, can I not move it at this stage? It is a motion which should be taken up before any other amendment on merits is considered. Therefore, even supposing you treat it as, a motion for adjournment, I can urge it now.

Mr. Chairman: I seek the assistance of Members of this House on this point. The difficulty is that, if Dr. Jayakar's argument is correct on the legal point. The Resolution moved by Pandit Jawahar Lal Nehru is out of order. This question should have been raised at the time when the Resolution was moved. But at, this stage I do not think that that point of order can be raised. Therefore, we take both the amendment and the Resolution as being in order, and we proceed with the discussion.

The Right Hon'ble Dr. M. R. Jayakar: Then can I urge this as a legal question?

Mr. Chairman: I think this legal question would not arise. You put it on merits.

The Right Hon'ble Dr. M. R. Jayakar: I was mentioning to you, Sir, that at this stage the fundamentals of the Constitution cannot be considered or adopted. I will read out to you a few clauses more. Clause (v) says:

> "These sections shall proceed to settle provincial constitution for the provinces included in each sections."

I understand these will meet in March or April. next. I leave the other irrelevant portions. Then comes clause (vi)-which relates to the stage at which quest-Ions relating to the Constitution can be settled.

> "The representatives of the Sections and the Indian States shall reassemble for the purpose of settling the Union Constitution."

That is the stage at which the fundamentals of the Constitution can be settled, because at that stage the States and the Congress and the Muslim League will all be present. This is so because the Scheme considers it necessary that all these three elements should have a chance of having their say on matters relating to the Constitution. That Stage has not been reached yet. Therefore, my submission is, that this question at the present time cannot be considered or finally decided. I am however suggesting a way out of the difficulty if you like to adopt it.

Mr. N. V. Gadgil (Bombay: General): There is no prohibition in clause (iv).

The Right Hon'ble Dr. M. R. Jayakar: That is implied there. If you take clauses (iv) and (vi), the meaning is clear that the preliminary meeting shall be concerned only with a few things and the settling of the constitution shall be postponed till we come to clause (vi). Otherwise clause (vi) becomes absolutely redundant and is in conflict. Therefore, taking the two clauses together, it is clear that what is intended to be done at the stage of clause (iv), is clearly and expressly mentioned in that clause. All that concerns the Union constitution either by way of an elaborate settlement or a sketchy outline of the fundamentals--all that must wait till the stage in clause (vi) is reached.

Now I come to clause (vii) which throws more light on this question. It provides that if any major communal issue arises, it will be dealt with as provided in that clause. There is no party here who is likely to raise the question of a major communal issue. Therefore, if you look back on clause (vii), its sense is clear in the way I have mentioned. This is my brief submission on the law point.

Apart from this legal point I want to urge before you a few considerations of practical expediency for postponing the consideration of this question to a later stage. As a way out of this difficulty I suggest that the Resolution, having been discussed during all this time and the object of public ventilation being served, this Assembly should not vote on it for the present but defer its consideration to the stage mentioned in clause (vi) so than when deliberating on it afresh at that time with the view of taking a final vote on it, they may be present here, to take part in such deliberations, the representatives of the two parties who are absent here now. I suggest this as an alternative course, to meet the difficulty.

Mr. R. K. Sidhwa (C. P. and Berar: General),: I rise to a point of order, Sir. Dr. Jayakar's amendment says:

"...this Assembly postpones the further consideration of this question to a later date, to enable the representatives of these two bodies (Indian States and Muslim League) to participate, if they so choose, in the deliberations of this Assembly.

" He has quoted clause (ii) of paragraph 19. That clause says:

"It is the intention that the States would be given in the final Constituent Assembly appropriate representation...."

" That stage has not been reached, and therefore, raising an objection that the Indian States are not represented here now cannot hold water. Again, if you further see..........

Mr. Chairman: That is not a point of order. That is an argument against what has been said.

The Right Hon'ble Dr. M. R. Jayakar: May I proceed, Sir?

Mr. Chairman: Yes.

The Right Hon'ble Dr. M. R. Jayakar: The plea which I am urging is this: This Constituent Assembly, as it is formed today, is not complete. Two persons are absent: The Indian States for no fault of theirs, because they cannot come in at this stage; that is the true position. The Negotiating Committee has been formed by the States, but we have not yet formed our Negotiating Committee. When we have done so, the two Committees will meet; that is the stage at which the States can come in according to the terms of this Document. As for the Muslim League, the position is different and the difference is very great.

The Muslim League has recently obtained three or four important concessions. Whether it is by superior strategy or any other means, it is not for me to say here. They have got three or four important points in their favour.

There are two points for interpretation, one is about voting and the other is about grouping into Sections. I understand that that question is going to be referred to the Federal Court. As an ex-Judge of the Federal Court and a sitting Member of the Superior Tribunal, namely, the Judicial Committee of the Privy Council, I recognise the necessity of not saying anything more about the proposed reference to the Federal Court or whether it is right and proper. I will only say that I wish you good luck I congratulate you that you will have on your side the services of one of the ablest constitutional lawyers you can engage for your purpose, namely, my friend, Sir Alladi Krishnaswami Ayyar. Beyond that I do not want to say anything about the reference to Federal Court. But it is clear that, although you may go to the Federal Court for getting the interpretation, viz., relating to grouping and voting, you cannot go to the Federal Court on the last, point gained by the Muslim League, viz., the provision that if a large section of people is not represented at the constitution-making. His Majesty's Government will not be willing to force such a constitution upon unwilling parts of the country. That is not a question of interpretation. It is a fresh concession which has been given to the Muslim League by way of addition to the Statement of May 16. I do not think that you can refer that point to the Federal Court. It is a substantive point which has been conceded the Muslim League *viz.*, that contrary to the Statement of Mr. Attlee, the Prime Minister, on 15th March this year, in the House of Commons, to the effect that though minorities will be protected, they will not be allowed to veto the progress of the majority. That was the position enunciated by no less a person than the Prime Minister in March 1946. That is gone. Now the position is very different indeed.

The Hon'ble Sardar Vallabhbhai J. Patel (Bombay: General): May I know, Sir, if the Right Hon'ble Gentleman is interpreting here the policy laid down by His Majesty's Government? All those so-called concessions which the Right Hon'ble Gentleman is referring to, are in addition to or over and above the

Statement made in the White Paper. We have not accepted them and this House is not going to accept any addition, or alteration in the Document of May 16th *(Applause).*

The Right Hon'ble Dr. M. B. Jayakar: I am only pointing out the difficulties in your way. I am not asking you to admit any addition. I am pointing out the advantage, freshly found by the Muslim League, which creates a great difficulty in your way and the necessity for holding up matters until the Muslim League comes in. On that point, my remarks are quite relevant. If the Hon'ble Sardar Patel thinks that any addition like this will be rejected by the Congress, they are welcome to do so.

Now, Sir, what does it mean? What follows from it if a community like the Muslim community is not represented here at the constitution making. The words 'unwilling parts of the country' have also been interpreted by Sir Stafford Cripps. He says that the words mean any part of India where the Muslims are in a majority. On such parts, if they are unwilling, the constitution which you may frame in the absence of the Muslim community, will not be forced. The words used are "unwilling parts of the country". Whether any other community can take advantage of this provision, I do not know. That is a matter that may have to be cleared up. But this much is certain, and it was so expressly stated by Sir Stafford Cripps in the debate in the House of Commons. That those parts of the country where Muslims are in a majority, will not be forced to accept a constitution at the making of which they are not represented. Mark the words: "they are not represented", i.e., they are not present.

Now, this particular addition has been hailed with delight in England by certain schools of thought. Mr. Churchill calls it 'an important milestone in the long journey'. Whether it is an important milestone or a dangerous milestone, we are not concerned with. The fact is there that the Muslims have secured this right at the present moment.

So, the position is this that, if they choose to remain absent from your deliberations for whatever reasons, they can make your work futile and fruitless. All your efforts will fail to bind them. Whatever constitution you may frame in their absence here will be binding upon perhaps willing portion like Section 'A'; I am very doubtful whether it will affect Sections 'B' and 'C'. The result is that whatever you may do in the way of providing a constitution for the whole of India here and now, as this Resolution proposes, if you accept it today in the absence of the Muslim League, your effort is not going to bind the Muslim League at all. That raises the question whether it win not be wise, merely as a means of saving your trouble and labour, to postpone to a future date, the further consideration of these constitutional points. To put it at the lowest, it will save labour.

If you look at the constitution suggested in the Resolution, there are points in it with which the States and the Muslims are most intimately concerned. You speak of a Republic. I personally have no objection.

Dr. Suresh Chandra Banerjee (Bengal: General): On a point of information, Sir. If the Muslims do not come at all, how long are we to wait? How long are we to sit quiet? They could have come in. They have not come of their own accord.

The Right Hon'ble Dr. M. B. Jayakar: That is not a point of order.

Dr. Suresh Chandra Banerjee: That information should be given by Dr. Jayakar.

Mr. Chairman: That is an argument which the Hon'ble Member may advance when his turn comes.

The Right Hon'ble Dr. M. R. Jayakar: If the Hon'ble member had not interrupted me and had waited for a little while, I would have given an answer to the query.

Sir, the result is that merely by adopting the simple device of not being present here, the Muslim League can make the whole of your work useless. What does it mean? It means further that if the Muslim League does not come in, the States may not come in. They have made it clear more than once. And, in the House of Commons, it was stated clearly that the States might not deal with a Constituent Assembly which is composed of one party only. Therefore it is clear that if the Muslim League chooses to remain absent, and we provoke it by our action to do so, the States may not come in.

The Hon'ble Pandit Govind Ballabh Pant (United Provinces: General): How is it the Right Hon'ble Member said that it was made abundantly clear in the House of Commons that if the Muslim League did not come in, the States will not join the Constituent Assembly?

The Right Hon'ble Dr. M. R. Jayakar: yes.

The Hon'ble Pandit Govind Balabh Pant: I differ from the Right Hon'ble Gentleman in the interpretation of what was said there.

The Right Hon'ble Dr. M.R Jayalar: I place My interpretation on that and the Hon'ble Member is free to place his interpretation on that.

The Hon'ble Pandit Govind Ballabh Pant: Dr. Jayakar has no right to represent the States' view here unless the States representatives or the Negotiating Committee make the position clear.

The Right Hon'ble Dr. M. R. Jayakar: I am, not stating the view of the States. I am stating what was stated in the House of Commons. If the Muslim League does not come in, the States may not, come in. The States may not conceivably like to deal with a Constituent Assembly which is composed of one party only. If so what will be the result?*(Interruption).*

Mr. Chairman: I think it will be better if we allow Dr. Jayakar to continue.

The Right Hon'ble Dr. M. R. Jayakar: Won't you allow me to go my own way for about 20 minutes? The whole of this week, I understand, is going to be at your disposal to pick holes in my speech.

The Hon'ble Pandit Govind Ballabh Pant: We will have something more to do than pick holes in your speech.

The Right Hon'ble Dr. M. R. Jayakar: If the Muslim League does not come in, then in all probability the States will not come in. What happens? Probably you will frame a constitution for Section 'A'. Perhaps you will be framing a constitution for a Union Centre for the Provinces in Section 'A'. You may like to have a Union Centre for those Provinces. It is certain however that you will be unable to frame a constitution for Section 'B', the majority there being of the Muslim League. The result will be that there will have to be another Constituent Assembly, as Mr. Jinnah is wanting, for the purpose of framing a constitution for Sections 'B' and 'C'. Whether the minorities in those Sections can take advantage of the formula that unwilling parts will not be forced to accept the constitution, whether the Hindus and the Sikhs of the Punjab and the Hindus of Bengal and Assam can take advantage of that provision, I do not know. I can express no opinion on that. It may be that they will be able to take advantage of the principle of this dictum and say, "We had no hand in framing this constitution. Therefore that constitution should not be forced on us." That is a possibility. This much however is certain that our endeavour to frame a constitution for the whole of India as a Union will be defeated, The possible result of that will be that there may be one constitution for Hindus and another constitution for the Muslims and if this happens, there will be a third constitution for the States, and instead of having one United India, we may be forced to the necessity of having a Hindustan constitution, a mild, abbreviated, or qualified Pakistan Constitution and a Rajasthan constitution also. Your Union at the Centre will go. It will not be established. At present you have got at least this advantage that even though some form of Pakistan will be established in Sections 'B' and 'C', you have got a Union Centre, attenuated though it may be. Therefore the obvious necessity of the present occasion is that every effort ought to be made to invite the Muslims to come in here, and we should not make it more difficult. This is mainly because our work has to bear fruit. I admire in this behalf the sentiments expressed by Pandit Jawahar Lal Nehru in moving the Resolution. He said in effect that we seek the co-operation of the Muslims. We must continue to make an endeavour, though, in the past, our efforts did not evoke enough response. I do not think that my plea can be put in better words. It is clear that you cannot do any constitution-making at least till April next. Therefore, where is the harm in deferring the further consideration of this resolution for a few weeks more until at least you know that the Muslim League, by a formal resolution, has declared its intention not to come in. They must declare their intention during the next few weeks. I read the statement of Sir Stafford Cripps in the parliamentary debate that it was understood that, when Mr. Jinnah went back to India, if the Congress accepted the Statement of 6th December, he would call a meeting of the Muslim League and decide on this question. That was a statement made on the floor of the House of Commons. After you know that by an authoritative formal resolution, the Muslim League has decided not to come in, you can then decide what to do. One hurdle would have been crossed; but I am not disposed to take it for granted that the Muslim League will not come in. It is not practical politics. A friend came to me this morning and said: "Until yesterday, Dr. Jayakar, I was entirely in favour of your Resolution but Mr. Jinnah's Press Conference in

London as made the whole difference." I said, "what difference has it made ?" He said, "Mr. Jinnah has now stated that lie will never come into this Constituent Assembly." I do not think that Mr. Jinnah has made such a statement, and even if so made, I am not disposed to take that statement as the final, authoritative, deliberate, formal decision of the Muslim League. What is the harm in postponing the final vote on this Resolution till then ? You are not in any event going to do anything substantial at least until the 20th January, that is four weeks from now. At least till then you should keep the way clear for the Muslim League to come in and take part in the proceedings. One answer to my plea is, "We are not doing anything to which the Muslim League can legitimately object." That does not touch my point. It is not a question of doing anything to which the Muslim League does not object. It is a question of giving it the right and the opportunity to be present here during the deliberations on this Resolution. That is what I am trying to obtain. Then it is said that there is nothing here which is contrary to the White Paper. That again does not touch my point. My object is to save the work of this Constituent Assembly from becoming infructuous. Wait, go slow. A few weeks are not going to make any substantial difference. It is not going to cause any great harm if you, instead of passing this Resolution in the present session, deferred it to a few weeks hence. The fact is that you are going to adjourn till the end of January but you will not do so, not in compliance with the terms of my amendment. That is a significant fact. Why don't you wait for a little while and thereby make it less difficult for the Muslim League to come in. I am told what is the grievance. The Muslim League can come in later after we pass this Resolution. My reply is that it is their right to be present at these deliberations, and to make their contribution. Please remember that the Muslim League leader has already raised the grievance in his Press Conference in London. "I do not want to be presented with a *fait accompli*", he complains. Will you now give him the opportunity of justly complaining that an important and vital question, like laying down the fundamentals of the Constitution, has been finished in his absence, knowing that he was likely to come in? Are you not thereby making it more difficult for the Muslim League to come into the Constituent Assembly? What I am urging on your attention is this: that as you are doing a good deal of what my amendment wants you to do, what is the harm in accepting my amendment? I say, "go slow". What is the harm? Do you wish to say we shall go slow, but not in compliance with your amendment i.e., not for enabling the Muslim League to come in? That is hardly dignified. It looks so petty. It will be a graceful gesture, if you say 'we are postponing because we wish to give the Muslim League of chance of coming in, so that this question may be discussed and finally adopted in their presence'. This is the position Sir, as Pandit Jawahar Lal Nehru said, there is great need of the spirit of co-operation and accommodation at the present time, having regard to the great difficulties through which we are passing. I have explained to you the difficulties and also the danger of this work becoming fruitless. In the light of that possibility and danger, I would urge, with all the words at my command, that the words of Pandit Jawahar Lal Nehru ought to be translated into action. We seek Muslim co-operation, we go out of our way to seek it by postponing this Resolution. Sir, miles away from here is working that solitary figure, whose steps we claim to follow, the great Mahatma;-alone, stinted of sleep, stinted in food and stinted in health, grieved and solitary, he is trying to win the Muslim community by friendly co-operation and goodwill. Why can we not follow his example here? Sir, if I may say so, I am glad you are here to preside over the deliberations of this august Assembly, and from what I have known of you all these years, your great capacity for goodwill, your gentleness, your spirit of accommodation and your ability to see the opposite point of view, having regard to all these virtues, I think, it is very significant that at this time you are in the Chair and my effort is for establishing that atmosphere in which your efforts, with your particular gift of fascination, can best thrive. Therefore, I am making this plea that we should defer the consideration of this Resolution so that you will have the chance of obtaining Muslim co-operation. But it is said we will after the Resolution when they come in. it is neither wise nor easy to alter deliberately-adopted Resolution. The substance of my plea is to allow the Muslim League an opportunity to take part in the deliberations, sit by your side, make speeches not *ex post facto*, but before and during the passing of this Resolution. That is real co-operation and not asking them after they want to come in and accept what you have done.

From this view I fear many of you will differ. I was warned, "you are making yourself extremely unpopular." But I said to my friend. "unpopularity has been my guerdon since my childhood." I have passed through many unpopularities. When I helped to start the Swaraj Party, I was unpopular. When I started the Responsive Co-operation Party, I was unpopular. When I went to the Indian Round Table Conference in London, I was unpopular. When I joined in passing the 1935 Act, I was unpopular--that piece of legislation which you, very thoughtlessly in my opinion, turned down. Having done that you are now borrowing out of that detested legislation, four important features, a Federation, an attenuated Centre, Autonomous Provinces and lastly residuary powers in Provinces. May I say, however, that my unpopularities have, with lapse of time, swollen into bulky majorities. Unpopularity does not therefore frighten me at my age and with my experience. My duty is to tell you that the course you propose to adopt is wrong, it is illegal, it is premature, it is disastrous, it is dangerous. It will lead you into trouble. As I am elected on your ticket, I am bound to tell you frankly that there is danger ahead, danger of frustration, danger of discord and division, which it is our duty to avoid, Sir, I have done.

Mr. Chairman: Sir Hari Singh Gour has given notice of an amendment. This appears to me to be out of order, but before ruling so, I would ask Sir Hari Singh Gour to point out how it becomes relevant. The amendment is this:

"That in the said Resolution for the words:

"This Assembly postpones the further consideration of this question to a later date to enable the representatives of these two bodies to participate, if they so choose in the deliberations of this Assembly."

The following words be substituted:

"This Assembly is of the opinion that the demand made by the Muslim League is suicidal in view of the history of Pakistan elsewhere and that it is in the interests of the Mussalmans and the other communities to constitute joint electorate reserving for the minority communities their equality of status for the next five years and providing a further safeguard that no member of one community shall be deemed to have been duly elected unless he holds a certain percentage of the votes of the other community.",

It may seem that this amendment goes much beyond what is contained in either the original Resolution or the amendment of Dr. Jayakar. I am therefore inclined to say, it will not be in order, but I am not giving my ruling at this stage. I will ask him to point out how it is in order.

Dr. Sir Hari Singh Gour (C. P. and Berar: General): Mr. Chairman. The point that at present I am called upon to reply to, is the question of my amendment to the Hon'ble Dr. Jayakar's amendment being in order. I wish to submit that if Dr. Jayakar's amendment is in order, my amendment to that amendment is in order. It must be assumed that I have not done anything more than pointing out the legality or orderliness of that amendment. I have always been feeling that if Dr. Jayakar wants the whole thing to be shelved, it cannot possibly come in as an amendment. An amendment means correction. The Hon'ble Dr. Jayakar's amendment therefore means that the Hon'ble Pandit Nehru's original Resolution should be passed as corrected by him. That may mean an amendment. If you wish to completely obliterate the main Resolution and want that there should be no further discussion for an indeterminate period, I fail to understand what Dr. Jayakar is trying to amend. He had better amend his own amendment first. I assume that amendment may go through and therefore I have given notice of my amendment. But, Mr. Chairman, you will further find that with some mental reservation about the legality of his amendment and mine, I have supplemented it by giving notice of another amendment to the original Resolution, which substantially reproduce the terms of my present amendment. Now, briefly stated, my case is this. If this amendment of the Hon'ble Dr. Jayakar is in order and is to be, discussed, I am entitled to correct it. If on the other hand, that amendment is ruled out of order, I do not wish to move my amendment.

In that case I would move the second amendment of which I have given notice.

Mr. Chairman: We shall deal with the second amendment when the time comes.

The amendment of Dr. Hari Singh Gour would make the Resolution as a whole read as follows:

> "This Assembly declares its firm and solemn resolve that the Constitution to be prepared by this Assembly for the future governance of India, shall be for a free and democratic Sovereign State; but with a view to securing in shaping such a constitution, the co-operation of the Muslim League and the Indian States and thereby intensifying the firmness of this resolve, this Assembly is of opinion that the demand made by the Muslim League is suicidal in view of the history of Pakistan elsewhere and that it is in the interests of the Muslims and other communities to constitute a joint electorate reserving to the Minority communities a particular quota of seats for the next five years, providing a further safeguard that no member of one community shall be deemed to have been duly elected unless he polled a certain percentage of the votes of the other community."

I am afraid Dr. Hari Singh Gour has not been able to connect the two parts of the Resolution, and it is out of order.

I propose to ask the Members who have given notice of amendments one after another to move them if in order. The Resolution and amendments may be discussed together. I think that will save time.

Dr. B. Pattabhi Sitaramayya: The Hon'ble Dr. Jayakar's amendment being in the nature of an adjournment motion of the consideration of the Resolution, it should gain priority both in discussion and in decision over the other amendments which are amendments of a substantive nature to the proposition.

Diwan Chaman Lall (Punjab: General): Dr. Jayakar's amendment is also a substantive one. It is not a procedural one. It also speakes of democracy, eliminating the word Republic and although it says that further consideration may be postponed, it cannot be considered merely as a procedural amendment.

Mr. Chairman: We have treated it as an amendment. The next amendment of which notice is given is by Mr. Somnath Lahiri. With regard to that amendment also, my view, as at present advised, is that it is not in order. I will ask him to show how it is in order.

Mr. Somnath Lahiri (Bengal: General): Mr. Chairman, the original Resolution, to which mine is an amendment, resolves the aim of the Constituent Assembly to declare India as an Independent Sovereign Republic. My amendment would be considered an amendment for the very simple reason that it deal with the same subject and it does not go contrary to the main idea of the original Resolution. It is always within the scope of an amendment to extend the scope of the original Resolution.

Mr. Chairman: The objection that was taken to your amendment is that it lays down certain action to be taken that is not in the main Resolution. For instance, it wants to declare a Republic here and now. It calls upon the Interim Government to act in a particular way and there are several other matters of this character. It is a resolution which directs action to be taken here and now and in that sense it is suggested that it is out of order.

Mr. Somnath Lahiri: I think that if in furtherance of the objects of that Resolution, some action is suggested, that certainly is within the scope of the amendment. For instance, you have allowed in Dr. Jayakar's resolution certain things about the Muslim League and other things which are not contained in the original Resolution moved by the Hon'ble Pandit Jawahar Lal Nehru. Just because he thinks that the Muslim League and others should be given an opportunity to come in, action to the extent of postponing this Assembly should be taken; and he has suggested his amendment and you have agreed that it is quite in order. Just as postponing is a kind of action, any other thing which may be suggested is also certainly in order. If I may remind you, Sir, of an incident in 1939, when you were the President of Congress, at the time of the declaration of War, a resolution came up at the A.I.C.C., where Pandit Jawahar Lal Nehru moved a resolution asking the British to declare their war, aims, and laid down certain conditions as a basis of co-operation, on which we could cooperate in the war. I remember myself having moved an amendment which said that we must prepare the country for a struggle and I remember that you, as Chairman, said it was quite in order although the Hon'ble Pandit Jawahar Lal Nehru pointed out that the intention of the amendment was just contrary to what was conveyed in the original resolution.

An Hon'ble Member: Is it a reported case ?

Mr. Chairman: I am afraid that cannot go in as a precedent. *(Laughter).*

Mr. Somnath Lahiri: This is my submission. If in spite of this you think that it should be ruled out of order, then I may be given an opportunity to speak on the main Resolution so that I can express my views.

Mr. Chairman : I think the amendment is out of order. I would give you an opportunity to speak on the main Resolution later.

I have received intimation that a number of the amendments, of which notice had been given by the members, have been withdrawn. I will only call upon those members who have not expressed such desire to move their amendments if they wish to. So, the next amendment which has not been withdrawn is that Rai Bahadur Syamanandan Sahaya, who may please come forward to move his amendment if he so wishes.

Rai Bahadur Syamanandan Sahaya (Bihar: General): Mr. Chairman, Sir, I Move:

"That for the 1st and the 2nd paras. of the Resolution the following be substituted:---

"This Constituent Assembly declares its firm and solemn resolve to constitute India, within the shortest time, into an Independent Sovereign Republic, comprising initially of--

(a) The territories that now form British India, and as soon as possible, also of,

(b) The territories that now form the Indian States,

(c) Such other parts of India as are outside British India and Indian States, and

(d) Such other territories as are willing to join the Independent Sovereign Republic of India,

and further resolves that a constitution for the future governance be framed and laid down'."

It is not, Sir, without a certain amount of diffidence that I stand here to move my amendment. After the great and magnificent speech of the Hon'ble the Mover of this Resolution it took me a great deal of thought and vacillation before I decided to send in this amendment especially because I thought my amendment perhaps achieved the objective which the Hon'ble the Mover had rather than stand in the way of it. I have an apprehension that perhaps attempts might be made by interested parties to isolate those of us who constitute the Constituent Assembly to-day but whatever happens, it is my desire--my extreme desire, as I know it is the desire of every one assembled here--that this Constituent Assembly shall Proceed with its task. The Hon'ble Dr. Jayakar in his speech made eferences to several difficulties. One of the difficulties pointed out, was that we have to work under the limitations laid down by the Cabinet Mission. I am no where near him in the matter of knowledge of constitutional law but I heard the Chairman of this Constituent Assembly saying in his speech that although there may be limitations placed on the Constituent Assembly, it has the inherent right of getting over them. I have based part of my amendment on this consideration. I will now try to point out, Sir the difference between the original Resolution and the amendment as I have put it, for it will be necessary to explain why is it that I have introduced certain changes in the Resolution. In the first place, I have altered the word 'proclaim' into 'constitute'. I shall give my reason for doing so at a later stage and I would point out now only what the difference is between the Resolution and the amendment. Then I have omitted the word 'Union'. I have introduced the words "within the shortest time" and I have said that the Constitution should not only be framed but should be laid down. These are some salient points of difference between the Resolution as proposed and my amendment. I have read the Resolution carefully and I had, on one occasion, an opportunity of placing my views to a certain extent before the Hon'ble the Mover of the Resolution, who agreed that the wording of the Resolution at certain places looked archaic. Perhaps in laying down a law or framing a constitution, it is necessary to use terms which were used 100 years before either by the framers of the American Constitution or the constitutions of other countries but I think, in our case, it might be more useful and more helpful to be precise and to state our view-point clearly in unambiguous and in easily understandable language rather than use words only because they were used in previous constitutions. I will now try to explain the reasons for the changes, I propose, I think the word "proclaim" is not exactly what you would like this Constituent Assembly to do. Proclamation of independence, I suppose, has been made on other occasions before this. It is now our duty to actually constitute the State into an Independent Sovereign Republic and therefore I introduced the word "constitute", instead of the word "proclaim". I have also, Sir. left out the word "Union". I believe that India is India. It needs no Union. It has got a providential Union, and I would not like even to reiterate it now as it might be interpreted that the Union of India was still to be achieved. It is quite another matter that for the time being, we may be able to enforce the Constitution we frame on only a part of India. But we look forward at the earliest possible moment to introduce it on other parts also. As such I would, if it were left to me, stick to India as such and lot introduce the word "Union" where the word "Union" has been used in other countries there has been good reason for using that term. Here, I suppose we would be better advised to leave out the word "Union". Then, as I said, I have used the words "frame and lay down". I have heard it said in this House before that the Constituent Assembly has got the sanction behind it to enforce the Constitution that it frames. I have also read carefully the Declaration of May 16. It does not in any way state that this Constitution that is passed here will require the sanction of the British Parliament. The two essential conditions laid down are that a treaty will be entered into between England and India and that the minorities will be protected. I take it, therefore, that we assembled here, have not merely the right and the power to frame a constitution, but also to lay down the Constitution and enforce it. That is why I have omitted the word "draw up." and used in its place the words "frame and lay down".

The other important change, Sir, which I have made in the amendment is that I have tried to specify different stages when the Constitution will come into force on the whole of India. Even in the original Resolution, I may point out, there are certain territories envisaged which perhaps might ome into the Union at a very late stage. I refer, Sir, to the two territories described as territories outside both British India and Indian States, and such other territories as might like to join the Union. Now these two parts of the Union surely are not going to come in now and here. Therefore different stages of the formation of the complete Union have been envisaged even in the original Resolution and I have tried in my amendment to clarify that the Independent Sovereign Republic will comprise initially of the territories that now form British India, and, as soon as possible, also of the territories that form the Indian States. My whole purpose in moving this amendment is, as I said before, to see that in framing the first Resolution we should so word it that it may not have to be altered at any stage. After all, it is the first act of this Assembly and no one would like, that circumstances developing later on, might require the Resolution to be altered. An Independent Sovereign Republic for the territories that form British India has been accepted in the past by the majority elements constituting that territory. There may be difficulties pointed out by others. We shall probably have to take note of those difficulties and try to solve them. I therefore, introduced in the Resolution stages by which we could form the Independent Sovereign Republic ultimately in its entirety. But even if we may not be able to secure the association of people whose association we definitely seek and are anxious to secure, even then the march to independence will not be hindered and we shall not have to wait for all the territories to agree before the Constitution can be laid down. These, Sir, are the reasons which led me to move this amendment. I am very sorry that the Hon'ble the Mover of the Resolution is not here today. As a matter of fact my desire entirely was to bring to his attention the points which I had in mind and to request him to consider whether it might be possible to accept the amendments or portions of it that might not be in conflict with the original idea which he advocated.

Mr. Chairman: The next amendment which has not been formally withdrawn and of which notice has been given is by Shri Govind Malaviya. He is absent, but I have his authority--he had told me himself--that he would not like to move his amendment. So I take it that is also withdrawn.

Then, there is another amendment by Rai Bahadur Syamanandan Sahaya.

Rai Bahadur Syamanandan Sahaya: The second amendment, Sir, which stands in my name is that in para. 4 of the Resolution, the following words be omitted:

> "of the Sovereign Independent India, its constituent parts and organs of Government."

The original Resolution reads as follows:........

Professor N. G. Ranga: (Madras: General): Is a member entitled to speak more than once on 'the same Resolution? When he has got two or three amendments, let him move the whole lot of them and make one speech.

Rai Bahadur Syamanandan Sahaya: The amendments have been recorded according to the several paragraphs of the Resolution.

Mr. Chairman: He has got one other amendment in his name. He may move both of them.

Rai Bahadur Syamanandan Sahaya: The other amendment, Sir, is as follows:

> "That in para. 5 of the Resolution the words 'of protection under the law' be substituted for the words

'before the law'."

I shall not move this.

Now, Sir, my reason for bringing this amendment asking the House to omit the words-

> "Sovereign Independent India, its constituent parts and organs of Government."

was to avoid an impediment in the way of the smooth working and functioning of this Constituent Assembly and not to do anything before the other parts of it join this House which might frighten them here at the early stage.

Paragraph (4) says:

> "Wherein all power and authority of the Sovereign Independent States, its constituent parts and organs of government, are derived from the people."

Among its constituent parts are territories that now form Indian States. I suppose the attention of most members of this House has been drawn to the recent statement in the Legislative Assembly (or whatever the name may be, of Bikaner wherein the Prime Minister said that so far as the States are concerned the power is derived from the sovereign and not from the people. I submit that these are matters on which there can be a difference of opinion and it would not be proper to pass a resolution containing such statements which might give the other important elements of this Constituent Assembly a real grievance to keep out. The Resolution as amended by me will read:

> "wherein all power and authority are derived from the people."

I have purposely omitted the words "Sovereign Independent India, its constituent parts and organs of government". With regard to the constituent parts I have pointed out the difficulty and the reason why I move the amendment. Even the amended Resoluiion retains the purport of the Hon'ble Mover's Motion as it says,

"wherein all power and authority are derived from the people."

without in any way specifically bringing in the constituent parts. The Hon'ble Mover of the Resolution in his speech said that even in the Republic which ha envisaged, there will be room for ruling chiefs and States where there is a system of monarchy or kingship. That being so, it would not be advisable to pass a resolution saying that all power and authority of the constituent parts also are derived from the people. Perhaps members of the House have noticed the statement which was broadcast last night in which the representatives of the different States made a statement signifying some objection to the Resolution and complaining that there had been no consultation about it before. In view of all that, and in view of this extreme desire of every one assembled here to carry this difficult work through, I think we ought to avoid passing a resolution or making statements which might give reasonable cause for an honest difference of opinion.

I do not move amendment No. 30 because that is only a verbal change and I shall not move it. There is one other amendment (No. 43) also standing in my name and I am not moving it.

Mr. Chairman: The next amendment stands in the name of Sir Uday Chand Mahtab-No. 25.

Maharajadhiraja Bahadur Sir Uday Chand Mahtab of Burdwan (Bengal: General): I do not propose to move the amendment.

Mr. Chairman: I find that the movers of all other amendments given notice of here have withdrawn their amendments. I suppose there is no mistake here, and if there is any, Hon'ble Member may point it out to me. There is one amendment of which notice has been given by Dr. Sir Hari Singh Gour, but unfortunately that was received only this morning. I had already put a definite limit to the time for giving notice of amendments and as Dr. Sir Hari Singh Gour has exceeded that limit, I am unable to allow his amendment.

Now, the Resolution has been moved, and also amendments to it have been moved. The Resolution and these amendments are now for discussion by the House.

I will ask Hon'ble Members to confine their speeches to as short a time as possible because we have already had two days on this, and though I do not wish to curtail the right of any Hon'ble Member to speak, I will ask Members to bear my remark in mind. I have got a list of names here who will take part in the debate, but I take it, it is not a complete list. There may be some other members who may be willing to speak, but I shall proceed according, to this list and interpose other speakers also if they wish to speak. The first name that I have got here is Mr. Shri Krishna Sinha.

The Hon'ble Mr. Shri Krishna Sinha (Bihar: General): Mr. Chairman Sir, I stand here to support the Resolution as originally moved by Pandit Jawahar Lal Nehru: In my opinion, it is really unfortunate that a resolution of such a sacred nature should have been subjected to amendments. I purposely call it sacred because by this Resolution an attempt is made to give expression to that aspiration to be free which has stirred us for the last several years.

Sir, the Resolution, if carefully analysed, comes to this. It gives a picture of the vision of future India. That India of the future is to be a democratic and, decentralised republic, in which the ultimate sovereignty is to lie with the people and in which fundamental rights are too be safeguarded to minorities inhabiting this land. Now, Sir, these are the three fundamental features of this Resolution and it is because of these three fundamental features that I call this Resolution sacred. I shall try to be brief. Yet I cannot refrain from reminding this House that we are all assembled here in Assertion of a right, a cherished and valuable right which mankind has achieved for itself after undergoing untold sufferings and sacrifices. Some sort of political structure is required in every society to make life therein possible. A careful analysis of the process of evolution of States in this world shows that the nature of these has changed with the change in the conception of life. Sir, I was not a little surprised to hear just now from an Hon'ble Member of a House which has assembled in assertion of the constituent power of the People that there can be honest difference of opinion regarding the place where political sovereignty resided in society. Certainly, Sir, not long ago, the world did not believe that all individuals composing society had an equal right to liberty and happiness. Society was composed of classes and the individual had no place in society. The place of man in society was determined by the class to which he belonged and so there was no individual liberty to be safeguarded. Poverty was not thought to be a disease which society must get rid of. Some of the great thinkers of the 18th century France, were of the opinion that the presence of poverty in society was necessary for the proper production of wealth. In such a society, Sir, there could be no place for the principle of the sovereignty of the people. Sovereignty belonged to the King whose privilege it was to rule. The people existed merely to pay the taxes demanded of them by the king and obey the laws enacted by him. But with the lapse of time, the conception of society and life changed. Men came to believe that every individual has an equal right to liberty and happiness. With this change in the conception of life, a change in the structure of the State became necessary. But those who held political power were reluctant to part with it and effect a change in the political structure. There was thus a clash between the ideologies which swayed the people and those which swayed the men in power. There were revolutions on both sides of the Atlantic at the end of the 18th century in which the principle that the power belonged to the People was vindicated. Even after this, there were rulers who would not recognise this principle and so another blood-bath in the shape of a revolution had to be gone through to get finally sanctioned the principle that political power belonged to the people. It was to achieve this constituent power that we in this country have been fighting British Imperialism for the last several years. It is this which moved this country from one end to the other in 1921 and made its millions rally under the banner of revolt raised by Mahatma Gandhi in that year. It was for asserting this basic right of a people that hundreds mounted the scaffold, thousands faced bullets and men, in lakhs swarmed the jails. There was a wide gap between the political ideals on which the Government of India was based and the political ideology which swayed the people, and the result has been strife. So, Sir, we are not here in this Assembly because the British Government in a fit of generosity have thought it proper to ask us to take over power. I have been in a position from where I can form my own opinion as to whether there is any sincerity behind all this talk of peaceful transfer of power. We are here because we have succeeded in compelling those who still entertain the dream of governing India according to the political ideals embodied in the Government of India Act, to give up that dream. We have succeeded because of that spirit of rebellion which spread all over the country in 1942. It is as a result of the 1942 rebellion that we are here in this Constituent Assembly. Gathered together in such an Assembly it should be our first duty to draw up a picture of future free India and present it to our people. The Right Hon'ble Dr. Jayakar who spoke eloquently, has drawn a picture of the difficulties which the absence of our Muslim League friends will cause. I do not think that we required a speech from a man of the eminence of Dr. Jayakar to point out these difficulties. We know what those difficulties are. If I understood him aright, however, he did not give us a counsel of despair. He has actually advised us to go on with our work if our friends of the Muslim League do not come in after some time.

Sir, our leader, the Hon'ble Pandit Jawahar Lal Nehru, has made it quite clear that we are anxious to see our Muslim League friends occupying their rightful place in this Assembly. Every one of us is equally anxious to see them come back. But I fail to understand how this particular Resolution would stand in the way of their so coming here at a future date. If we have understood the political ideology of the Muslim League correctly, if we understood the Cabinet Declaration correctly, there is one matter in which all are agreed and that is that the future India is to be, a United India and that that India might also be outside the British Commonwealth of Nations, if the Indian people so decide. From the pronouncements made from time to time by Muslim League leaders I think we can rightly draw the conclusion that the Muslim League also stands for a free and independent India. So, Sir, according to all of us including the League, the future India is going to be an independent free India. In that independent free India the source of authority is going to vest in the people who inhabit this land. That is the cherished right which has been won for the people inhabiting this globe by those who have gone before. That is the principle for which we have been fighting all along. Now when this Constituent Assembly meets and we draw up a declaration, I think the first thing to be included in that declaration should be this elementary right of a people which decides to be free, and therefore to this feature of the Resolution no one can have any objection.

Now, Sir, the Union which we are going to have in India is going to be a Union of all the parts of India. This certainly means that the future India is going to be a united India. I will again say that the shape of that future India which this Resolution envisages certainly shows that the framers of this Resolution have taken pretty good care to see that nothing is said in this Resolution which can create difficulties in the way of our friends of the Muslim League coming into this Assembly at some later date. I know, Sir, there are members in this Assembly--and I must confess that I am one of those, who believe that-- there has arisen in Indian, an Indian nation, an Indian nation with an Indian culture and an Indian civilisation. Such men certainly are only too anxious to have a republic of the unitary type in this country. There has been such a tremendous increase in the economic forces of production in the world that if full use is to be made of these forces in this world, it is necessary that we should have still larger political units which will transgress the national boundaries of national states. It is a realisation of this truth which makes many Indians feel that India must have a centralised republic. But in spite of that, if we by this Resolution want to have a republic in India which will be democratic and at the same time decentralised, it is because the framers of this Resolution have taken care to take into account the feelings of our Muslim League friends. Sir, there was a time when because of the historical circumstances prevailing in the world of those days, States of large sizes, containing populations homogeneous in language and religion, could be erected. There can be no doubt that a national state with a homogeneous population is a force and a living force. But unfortunately at a time when there is a tendency for these national states to pass out of existence, we have to deal with a bitter legacy left behind by them and that is the legacy of small nationalities, consisting often of a few thousands or a few lakhs, clamouring for separate states of their own. This has been creating havoc in this world. The whole of Eastern Europe has become the zone for breeding wars because in that portion of Europe are living small nationalities so intermixed that they cannot be divided into small states, and yet they clamour for separate political existence.

Sir, this Resolution gives expression also to the aspiration that India shall have her place, her rightful place, among the nations of the world. Every Indian legitimately aspires that one day India will drive a lead to the whole of Asia and we can give this lead now by successfully constructing a state which will be a democratic republic, and, at the same time decentralised so that different cultural groups based on language, on religion, may be integrated in a vast republic. It is hoped that very soon the flood of Western Imperialism will retreat from the lands of Asia, and no sooner it has retreated, these lands will have to solve the problem of erecting independent states of their own. This question of nationalities is bound to raise its head even in those countries. They have such problems in Palestine, in the Arab world, and in the small islands in the south-eastern portion of Asia. If we are to lead them rightly so that like the Balkans these Asiatic lands may not also become the battleground of the Imperialisms of the West, it is very necessary that we should set an example by having a state in India which will be a state for the whole of India and at the same time provide safeguards for cultural minorities. This is what this Resolution contemplates by further making provision for the fundamental rights of the individuals and groups living in this country and for safeguarding the fundamental rights of the minorities.

Sir, it is because of these features of this Resolution that I said that the Resolution was of a sacred nature and one which is bound to rank with those declarations which were made on similar occasions in the past by peoples just after they had shed their shackles of slavery. It not only is sacred, it is arduous also, arduous not only because of the difficulties pointed out by Dr. Jayakar, but arduous because of the attitude of British statesmen over there in England. I have just now told you that from my personal experience as an administrator I do not feel that the Britishers have made up their mind to peacefully transfer power to the people of India. Only the other day you had the speech of Mr. Churchill. Not one word of cheer from that great imperialist. At a time like this in the history of our country when so many of us have assembled here to advise a constitution for this land, instead of giving a word of cheer, he was again at his old game. He had a fling at the Congress, he had a fling at Pandit Jawaharlal Nehru. In the advent of Pandit Jawaharlal Nehru into the Interim Government he sees the butchery of innocent men in Bihar. To Mr. Churchill, living seven seas across, I will say, you have been supplied with a lie by some interested person ad you have made yourself the willing tool for the propagation of that lie. The Government of Bihar did not hesitate for one single moment to use force and it used force, whatever force it had, to give protection to the lakhs of Mussalmans living in that Province. The Bihar Government is a proud Government. It is not going to have dictations from the Government of India, so long as it is constituted under the Government of India Act, 1935. Pandit Jawahar Lal Nehru is our leader and so lie went to Bihar. He is a source of inspiration to us. I may tell Mr. Churchill that during his strenuous tours of a few days through the Province he gave the people a bit of his mind. I told the greatest official of this country that he could not restore order in Bihar in the short period in which we did it. Order could be speedily restored, not because of the bayonets that the Government of Bihar had or because of those bayonets that were lent to them by the Government of India. It was the dynamic personality of Pandit Nehru, the saintly presence of Dr. Rajendra and the spectre of a fast unto death by the Mahatma that restored order Quickly in Bihar. Mr. Churchill has done great mischief by giving currency to such lies. I have taken much of your time. But I must tell you that before you pass this Resolution you must try to visualise the difficulties that may come in your way. I have not studied this declaration of the Cabinet from the point of view of a lawyer. Spurn to look at it from the point of a lawyer. I have been a soldier all my life and I would look at it from the point of view of a fighter. The statements of British statesmen are not quite helpful. It is just possible that not because of the difficulties that have been dangled before us by Dr. Jayakar but because of the difficulties which may be created in our way by those in power. This Constituent Assembly may one day have to go the way the Constituent Assembly of France in 1799, had to go, because of the attitude of the King and statesmen. of that time. So before I sit down, I would remind Hon'ble Members of the House that before they make up their minds to vote in favour of this Resolution they trust realise the difficulty that they may have to face in giving effect to their resolve. If we pass this Resolution we must at the same time take a firm resolve to tear down that political edifice which owes its existence in India to the Government of India Act, 1935--a monument of constitutional jugglery--and build on it a Republic of the type which this Resolution envisages, whatever may be the difficulties that may come in the way.

Mr. Chairman: It is already past five. I would like to know whether the Hon'ble Members would like to sit till half past five.

Many Hon'ble members: Half past five.

Mr. Chairman: Opinion is divided.

The Hon'ble Sardar Vallabhbhai J. Patel: Opinion is unanimous for five.

Mr. Chairman: Those who are in favour of half past five will please raise their hands...........

Those who are not in favour of half past five will now raise their hands.

Mr. Chairman: The "fives" have it. The House will now adjourn till Eleven of the Clock tomorrow.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 17th December, 1946.

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME I

Tuesday, the 17th December, 1946

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eleven of the Clock, Mr. Chairman (The Hon'ble Dr. Rajendra Prasad) in the Chair.

The following Member presented, her credential and signed the Register. The Hon'ble Mrs. Vijayalakshmi Pandit.

Mr. Chairman: I am happy to welcome Srimathi Vijayalakshmi Pandit after the great work she have been able to achieve in the International Conference in America. (*Cheers*). I am sure the whole House will join me in that welcome as is apparent from the cheering. (*Applause*).

Is there any other member who wishes to sign the Roll?

(None.)

RESOLUTION RE: AIMS AND OBJECTS-contd.

Mr. Chairman: We shall proceed to the discussion of the Resolution and the amendments. I have got a long list of members who wish to speak. The list covers more than 50 names. I do not know how I can accommodate all the 50 speakers who have sent in their may. There may also be some others who wish to speak. I would therefore select according to me own choice. I am not sure that that may not cause complaint in some quarter or other, but I suppose that that is the only way. I want to suggest to the speakers to be as brief as they can, because after all we have got to go through this work, finish this Resolution and take up other business. Sitting, as we are doing now for two hours a day, if every speaker takes 15 minutes, that means 6 days and if we sit both in the morning and evening, it means 3 days. I do not think we can afford so much time on this Resolution. I would therefore request the speakers to be as brief as they can without my fixing any time-limit. Ten minutes may be taken as a reasonable limit. I would call upon Mr. Masani.

Mr. M. R. Masani (Bombay: General): Mr. Chairman, in rising to speak on this Resolution, I would like to make it clear at the outset that I do so, not as a member of one of the several communities, into which unfortunately, our nation is today divided, but as an Indian first and last. (*Hear*). I do so even though I owe my origin to the very smallest or tiniest of our national minorities. It was one of those groups of people who received that welcome, that hospitality and that protection to which Babu Purushottamdas Tandon referred in his speech in seconding this Resolution. I hope, Sir, that these minorities which exist in our country, will, along with the majority, continue their progress towards becoming a nation, a process which in this ancient country was happening through the absorption of new groups that came into it through the centuries, but a process which seems to have been retarded through the rigidity of caste and through the exclusiveness of society in the past few centuries. I would only observe at this stage that the conception of a nation does not permit the existence of perpetual or permanent minorities. Either the nation absorbs these minorities or, in course of time, it must break up. Therefore, while welcoming the clause in this Resolution which promises adequate safeguards for the minorities, I would say that it is a good thing that we have these legal and constitutional safeguards, but that ultimately no legal safeguard can protect small minorities from the overwhelming domination of big masses, unless on both sides an effort is made to get closer and become one corporate nation, a homogeneous nation. That process has been shown to us by the United States of America, where peoples of different races have, with one unfortunate exception, been absorbed into one nation.

There must have been indeed very few members of this House who were not deeply moved, and who did not feel elevated, by the noble speech with which the Mover of this Resolution introduced it In this House. He peered into the future and tried to see what shape the destiny of the people of India would take and, in response to the appeal which he made that we should consider this Resolution as something fundamental and avoid legal disputes and quibbling over its terms. I would like, in the very few minutes that, Sir, you have placed at my disposal, to draw the attention of this House to what I might call the social or long-term aspect of this Resolution and to try to understand what kind of society or State, what way of life this Resolution offers to the people of this country. I feel, Sir, that immediate disputes aside, that is the part of the Resolution at which the common people of the country will look with the closest attention.

I approach this part of the Resolution, Sir, as a Democratic Socialist, a Socialist who feels that democracy needs to be extended from the Political to the economic and social spheres and that, if socialism does not mean that, then it means nothing at all. I welcome this Resolution in spite of the fact that neither the word 'Democracy' nor the word 'Socialist' finds a place in its Preamble. It is perhaps just as well that those words have been avoided because, as one of us here put it in his Presidential Address at the Meerut Congress, terms like Socialism or Democracy can be made to cover Multitude of sins. The fog of words often covers realities. We know the French Revolution was made in the name of fraternity but, towards the end of that Resolution a cynic remarked--

> "When I saw what men did in the name of fraternity, I resolved if I had a brother to call him cousin"

That I fear, is true of other revolutions as well.

As a Socialist, Sir, I welcome this aspect of the Resolution because, as the Mover has rightly pointed out, the content of economic democracy is there although the label is not there. The 'Resolution, in my view clearly rejects the present social structure, it rejects the social *status quo*. There can be no other meaning to the words in clause 5 which refer to justice-- social, economic and political. I do not think anyone here would argue that the present state of our society is based on justice. I think it has an estimated that today if our national income were to be divided into three equal thirds, 5 out of 100 Indians get one third of our national income, another 33 get the second third and the big mass of 62 get the remaining portion. That surely is not social or economic justice and, therefore, as I understand this Resolution, it would not tolerate the wide and gross inequalities which exist in our country. It would not tolerate the exploitation of a man's labour by somebody else. It certainly means that every one who toils for the common good will get his fair share of the fruits of his labour. It also means that the people of this country, so far as any constitution can endow them, will get social security--the right to work or maintenance by the Community. The Resolution also provides for equality of opportunity. Equality of opportunity, Sir, presupposes equal facilities in education and in the development of the talent that is latent in each one of us. Today, among our masses a fund of latent talent exists which has no chance to come out and contribute to our national good. Equality of opportunity certainly assumes that every child in this country, every boy and girl, will get an equal opportunity to develop those faculties which he or she possesses in order contribute to the common good.

That, Sir, is the socialist aspect of the Resolution. It does not provide for Socialism. It would be wrong to provide for such a thing, because this House has no mandate to go in for far-reaching economic changes in the country. Those changes can be brought about by a properly constituted Parliament when it comes into existence with the mandate of the people. All that we can do as an Assembly here, is to frame a constitution which will allow those far-reaching changes which are necessary to be made and I submit, Sir, that this Resolution goes as far as it can in satisfying the most ardent socialist amongst us.

As I said, Sir, I approach this as a Democratic Socialist and, if Socialism is there, so is Democracy or the content of Democracy included in the Resolution. I do not think the word 'Republic' there is adequate. As Pandit Jawahar Lal Nehru himself has stated; it is concievable that a Republic may not be democratic. If we cast our eyes around the globe to-day, we shall see several instances of this and therefore, apart from saying that we shall be a Republic, it is necessary that we should make it clear, as clauses 4 and 5 do, that in our view Democracy does not mean a Police State, where the Secret Police can arrest or liquidate people without trial. It does not mean a totalitarian State where one party can seize power and keep opposition parties suppressed and not give them the freedom to function freely and with equal facilities. It cannot mean a Society or State where an individual is made a robot or where is reduced to "a small screw in the big machine of State". Pandit Jawahar Lal Nehru has pointed out that this Resolution is based on Democracy, and that all our past bears witness to the fact that we stand for Democracy and for nothing. less. But it is not only our past which is a guarantee if our democratic faith. It is also our present.

Our national life has many different trends in it but, almost unanimously, we all stand for the freedom of the individual and for a democratic State. And to show how widely differing schools of thought in our midst can agree with almost one voice on this desire to distribute power to our common people, to distribute political and economic power so widely that no one man or group of people can exploit or dominate the rest, I will cite to you first the testimony of one who is not present amongst us, one who, was referred to by the Mover as the Father of our Nation. I refer to Mahatma Gandhi. (*Cheers*). These are his words as quoted in 'A Week with Gandhi' by Louis Fischer:-

> "The centre of power now is in New Delhi, or in Calcutta and Bombay, in the big cities. I would have it distributed among the seven hundred thousand villages of India...."

> "There will then be voluntary co-operation between these seven hundred thousand units, voluntary co-operation-not co-operation induced by Nazi methods. Voluntary co-operation will produce real freedom and a new order vastly superior to the new order in Soviet Russia......"

> "Some say there is ruthlessness in Russia, but that it is exercised for the lowest and the poorest and is good for that reason. For me, it has very little good in it."

And as if to find an echo of that in a thinker of a very different school, I shall now cite a sentence or two from a recent Picture of Socialism drawn by the leader of the Indian Socialist Party, Jai Prakash Narain. I regret, Sir that he has not joined us in our labour here, but this is what he says and it sounds almost like an echo of Gandhiji's thought:

> "The State under Socialism threatens, as in Russia, far from withering away, to become an all-powerful tyrant maintaining a strangle-hold over the entire life of the citizen. This leads to totalitarianism of the type we witness in Russia today. By, dispersing the ownership and management of industry and by developing the village into a democratic village republic, we break this strangle-hold to a very' large extent and attenuate the danger of totalitarianism. Thus my picture of a socialist India is the picture of an economic and political democracy In this democracy, men will neither be slaves to capitalism nor to a party or the State. Man will be free."

Sir, it is a fashion of our day to argue that the social and economic changes that are at present required cannot be made unless individual liberty and democracy are first destroyed and an all-powerful State can push its programmes through. This Resolution, if I read it aright, is a refutation of that thesis. It envisages far-reaching social changes-social justice in the fullest sense of the term but'it works for those social changes through the mechanism of political Democracy and individual liberty. To those defeatists who say that this cannot be done, this Resolution says it can be done, and we have the intention and the determination to do it. The central problem of our times is whether the State is to own the people or the people are to own the State. Where the State belongs to the people, the State is a mere instrument subordinate to the people and it serves the people. It only takes away the liberty of the individual to the extent that the people really desire it. Where the State owns the people, the people are mere robots in a big machine-pushed about here and there by the whims of an all-powerful dictator or an all-powerful party. It is because I believe, Sir, that this Resolution points the direction to a constitution where the people will be in power, where the individual will occupy the centre of the stage and the development of the individual personality will be the main aim of our social good, that I support this part of the Resolution, this aspect of it, for I believe that, as the fathers of the United States Constitution put it, every individual Indian has an "inalienable right to Life, Liberty and pursuit of Happiness'. *(Cheers.)*

Mr. F. R. Anthony (Bengal General): Mr. President, Sir, I have risen to support the amendment moved by Dr. Jayakar. I have given the most earnest consideration to the Resolution involved by Pandit Nehru and to the amendment as it has been moved by Dr. Jayakar. I appreciate the solemn character of the main Resolution, and I am not going to support the amendment purely by arguing technical or legal reasons in support of it. I appreciate the fact that the first part of that man Resolution affirms our solemn resolve to proclaim India as an independent Sovereign Republic. That, I realise, is an article of faith with the Congress Party. It represents the supreme objective for which they have fought so long and so arduously. No one could, should, more than that. would dare ask them not to reiterate that pledge of theirs on this, the first and the most appropriate occasion. Apart from that, I think it is a pledge which is enshrined in the heart of every Indian. I also appreciate the fact that constitutional precedent shows that assemblies such as ours have at the very first opportunity declared their main and fundamental objective. And ours is to proclaim India as a Sovereign Independent Republic. Pandit Jawahar Lal Nehru has asked us, quite rightly, not to read into this word "Republic" any unnecessary bogeys. It is only meant to indicate a constitution in contradistinction to a monarchical form of government. At the same time, he emphasised that it does not preclude units, autonomous units, from joining this Republic and retain- in to themselves a monarchical form of government. The reason why I have supported Dr. Jayakar's amendment are that, I believe that it fulfils essentially both these things. The amendment respects the Congress pledge. it affirms our solemn resolve to frame constitution for A free and democratic Sovereign State. The words used may not be identical. I would prefer the words to have been adopted from the man Resolution, but I believe that from the constitutional point of view, the connotations of these two phrases are virtually identical. Further, Dr. Jalyakar's amendment meets the second need, to proclaim at this first stage our fundamental objective of framing a constitution for a free and democratic Sovereign State. What I believe Dr. Jayakar's amendment really seeks to do is to ask us to defer a declaration on the remaining parts of that main Resolution. That is, those parts relating to the Indian States, to the powers and functions of the Provinces and to the powers and functions of the Union. That, I believe is the intention of this amendment-to ask us to defer a declaration, however just it may be a declaration which may expose us to the charge, however baseless, that we are prejudging matters of detail which have to be traversed in this Assembly and on which decisions should be made after they have been fully canvassed and discussed here. That is why, Sir, I feel that Dr. Jayakar's amendment should be supported. It ought to be adopted because it is dictated, if I may say so, with all humility, by considerations of statesmanship, by the desire of every one of us to see the greatest measure of agreement and goodwill between the two major parties and by the desire of every one of us to see this great country of ours embracing, giving strength to and being given strength by those who make up her children.

Dr. Syama Prasad Mookherjee (Bengal: General): Mr. Chairman, Sir, I believe in the course of the chequered history of our country, we have often passed motions and resolutions from different political parties and platforms embodying our demands for an Independent Sovereign State for our motherland. But so far as today's Resolution is concerned, it has :a deep and special significance. It is for the first time in the history of our country, since we came under British rule, that we have met to frame our own constitution. It is a great responsibility-in fact, as the Hon'ble the Mover of the Resolution reminded us, it is a solemn and sacred trust which we Indians have agreed to perform and we propose to do so to the best of our ability. Now,. Sir, the amendment which has been moved by Dr. Jayakar raises certain questions of fundamental importance. I am sorry I cannot support the amendment. The effect, of the amendment practically is that we cannot pass a resolution of this description at all until the Sections have met and made their recommendations. Dr. Jayakar wants that we should not pass this Resolution until both the Indian States and the Muslim League are enabled to attend the Constituent Assembly. So far as the Indian States are concerned, they cannot come even if they wish to, until the Sections have met and settled the provincial constitutions, which means how many months none can foretell. So far as the Muslim League is concerned, no doubt, every one regrets that the Muslim League has not found it possible to attend the preliminary session of the Constituent Assembly. But what guarantee is there that, if this Resolution is postponed till the 20th January next, as Dr. Jayakar suggests, the Muslim League will come and attend the session?

I feel, Sir, that the question should really be looked at from a different point of view. Does this Resolution raise issues which are in any way inconsistent with the Cabinet Mission's Scheme of May the 16th?-If it does raise issues which are inconsistent with that scheme, then obviously we are prejudging matters, we are raising matters which, it may be said, we have no right to do at this stage. Now, that document to my mind is something like a puzzle picture. You can interpret it in so many ways looking at it from different angles of vision. But looking at the Resolution as it stands, what is the declaration that it is making now? It enumerates certain fundamental things which are within the framework of the Scheme itself. I know that if we go into some details. I have to refer to at least one matter on which many of us hold divergent views, namely, the question of residuary powers. But that is a matter which the Cabinet Mission's Scheme has included within the contemplated framework of the Constitution. That is a matter on which the Indian National Congress has expressed its opinion; that is a matter. I believe, on which the Muslim League also has expressed its opinion. Some of us differ from that standpoint and urge a stronger Centre in India's paramount interest. We shall do so at an appropriate stage later on. Pandit Jawahar Lal Nehru, as the mover of the Resolution, has also made it clear that we are not now framing a constitution for India; we are only passing a resolution at this stage, at the preliminary stage, outlining generally the shape that the future constitution of India should take. In other words, when the time actually comes for us to frame the Constitution, I believe, Sir, it will be open to any one to, bring up any matter that he chooses before the House as an amendment to any proposal that may be made and which is bound to be considered on its merits. The passing of this Resolution, I take it, can be no legal bar whatever against any member bringing forward any amendment to the draft Constitution that this Assembly may frame at a later stage. If assurances are forthcoming, on these two issues, namely, that the Resolution as drafted does not go against the main features of the Cabinet Mission's Scheme, and also that it does not commit the Constituent Assembly in a definite manner with regard to the details of the Constitution that is yet to come. I see no reason why any obstacle should be put forward to passing the Resolution at this stage.

The Resolution has an importance of its own. After all, we are sitting here not in our individual capacity, but we claim to represent the People of this great land. Our sanction is not the British Parliament; our sanction is not the British Government; our sanction is the people of India (*cheers*). And if that is so, we have to say something, not merely to frame rules and regulations,-we have to say something concrete to the people of India as to why we have assembled here on the 9th December 1946. If what Dr. Jayakar says had been the correct position,. then this Constituent Assembly should not have been called at all; in fact, Dr. Jayakar need not have attended the meeting. He should have informed the Governor General,--"I regret I cannot accept your invitation because I feel you are doing wrong in calling the Constituent Assembly as the Muslim League and the Indian States are not attending." But having come here, for us to raise this issue is practically to walk into the trap, of the Muslim League and to strengthen the hands of reactionaries in Great Britain. I know that Dr. Jayakar will be the last man to do such a thing. I admire his courage of conviction; in fact, every one who feels that a certain thing should be done, must be able to come forward and present his view point. But we may also respectfully point out to Dr. Jayakar the great danger that lies in the innocent looking amendment that he has put forward before the House, and I hope that he will. withdraw the amendment in due course when the time comes.

I would like just to say a few words with regard to another aspect of the question. The Resolution is there, but, how are we going to implement it? What are the impediments that we already see before us which may prevent us from carrying this Resolution into effect? Now, one, of course, is the status of the Constituent Assembly in the absence of the Muslim League. Dr. Jayakar yesterday referred to some analogy of a dinner party. He said, "If guests are invited and some guests do not come, then how can you have the dinner party?" But he forgot to say what will be the fate of the guests who have already arrived? If he is going to be the host and invites six guests, suppose five of them come and one is absent, is he then going to starve those five guests of his and turn them out of his house and say, "the sixth has not come and you are not going to get your food?" Obviously not. Here also the hunger for freedom for those who have come has to be satisfied. Mr. Churchill said that the absence of the Muslim League in the Constituent Assembly was something like the absence of the bride in the Church when the marriage was going to take place. I do not know, when the Indian States come in and also the Muslim League, how many brides the Constituent Assembly is going to have ultimately. In any case, if that is Mr. Churchill's point of view, he should not play the role of a seducer. He should have asked Mr. Jinnah to go back to India and join the Constituent Assembly and place his point of view before the people of India. No one has said that the Muslim League should not come. In fact, we want that the Muslim League should come so that we can meet each other face to face. If there are difficulties, if there are differences of opinion, we do not wish that we should carry only by majority votes. That may have to be done as a last resort, but obviously, every attempt must be made, will be made to come to an agreement as regards the future Constitution of India. But why is the Muslim League-being prevented from coming? My charge is that the Muslim League is not coming because of the encouragement it receives from British attitude. The Muslim League has been encouraged to feel that if it does not come, it may be able to veto the final decision of the Constituent Assembly. The power of veto in some form or another has again passed into the hands of the Muslim League, and that is the danger that threatens the future activities of this great Assembly. Sir, I am not going to discuss in detail, because this is neither the time nor the occasion when I can discuss, the various provisions of the British statements. But, I would certainly say this: that "his Constituent Assembly, although it is a British creation for the time being, once it has come into existence, it has the power, if it has the will, to assert its right and to do what is best and proper for the attainment of India's freedom, for the good of the people of India irrespective of caste, creed or community. *(Hear, hear).*

Now, Sir, we have said, at any rate, the Indian National Congress has said-because that was one of the major parties with whom negotiations went on-that they stand by the Cabinet Mission Scheme of May 16. It gladdened my heart yesterday when the Hon'ble Sardar Vallabhai Patel got up, interrupting Dr. Jayakar, and said that the Congress has not accepted anything beyond the Statement of May 16, 1946. (*Cheers*) That I consider to be an announcement of fundamental importance, We have got to make it clear as to what we are here for. I say that our attitude should be something like this: We shall give the Cabinet Mission Scheme of May 16, a chance; genuinely, honestly we shall see if we can come to an agreement with the other parties and elements on the basis of the Scheme on May 16, 1946. But subsequent interpretations, if any, we are not going to accept. Or if any party chooses to deviate from the Scheme and break away, we shall proceed and frame the Constitution as we wish.

There has been considerable difference of opinion with regard to one clause of the Statement of May 16, 1946, and that is with regard to the question of grouping. Now, it is for the Congress to decide, as one of the major parties involved, what interpretation it is going to accept ultimately. If the interpretation as given by His Majesty's Government is not accepted, and if the Congress considers that the interpretation put upon that portion of the Statement by it (the Congress) is correct, then of course a crisis may come. That is a question which has to be decided apart from a discussion on this Resolution. In fact, the greater the delay in making a decision on that question, the greater will be the atmosphere of unreality; so far as the proceeding of this House are concerned. But, after that question is decided, supposing the interpretation put by His Majesty's Government is accepted, whether by a reference to the Federal Court, or not, I need not go into, then we shall go on. We shall proceed with our work. The Muslim League may come or may not come if it comes, well and good; and even if it does not come, it cannot retard India's freedom and we must claim to proceed with our business in This I feel, Sir, that if a crisis does come, as I visualise, it is likely to come, if our country is to be free, it is not going to be in accordance with constitutional means. In view of the developments that have taken place during the last few days, our task will not be performed so easily. But let me emphasise that whatever has to be done, it has to be done through the agency of this Constituent Assembly and none other. If ultimately we have to functional we shall function on our own responsibility and prepare a constitution which we shall be able to place before the bar of world opinion and satisfy everyone that we have treated the people of India, minorities and all, in a just and equitable manner.

After all, what happened with regard to the South African question? We have today in our- midst, the Hon'ble Mrs. Pandit, who has come back to her motherland after a great victory. But even there she was not supported by our self-constituted trustee-His Majesty's Government in Great Britain. In fact the vote went against India so far as Great Britain was concerned. But she won. The Indian Delegation won before the bar of world opinion. Similar may be the case with regard to the Constituent Assembly also. If we take courage in both hands and frame constitution which will be just and equitable to all, then we shall be able, if need be, to declare this Constituent Assembly as the first Parliament of a Free and Sovereign Indian Republic. (*Loud cheers.*) We then may be able to worm our own National Government and enforce our decision on the people of this land. As I said a few minutes ago, our sanction is not the British people of the British Government. Our sanction is the, people of India and therefore we have to make the ultimate appeal to the people of our country.

Sir, when we talk about minorities, it is suggested as if the Muslim League represents, the only minority in India. But that is not so. There are other minorities. Coming from Bengal with all her tragic suffering, let me remind the House that Hindus also constitute a minority in at least four Provinces in India and, if minority rights are to be protected, such rights must affect every minority which may vary from Province to Province.

Only last night, Lord Simon made the startling announcement that the Constituent Assembly sitting in Delhi consists of Only Caste Hindus. So many false-statements have been uttered during the last few days in England that it is difficult to keep count of them all. But who are represented 'xi this House today? There are Hindus; there are some Muslims too. At east there are Muslims from one Muslim province who come as representatives of a Government which is functioning there in spite of the Muslim League. There are the representatives of the Province of Assam which is supposed to be part and parcel of Mr. Jinnah's Pakistan-to-come. That Province is also officially represented by the majority of the people of that province. You have the Scheduled Castes. All the Scheduled Caste members Who have been elected to the Constituent Assembly are here. Even Dr. Ambedkar who may not agree with us in all matters is present here, (*applause*) , and I take it, it will be possible for us to convert him, or reconvert him and to get him to our side, (*renewed applause*) when we go to discuss in detail the interests of those whom he represents. There are other Scheduled Caste members also present here. The Sikhs are present here; all of them. The Anglo-Indians are present and so are the Indian Christians. So, how did it lie in the mouth of Lord Simon............ (A Voice: Parsis also are present here.) Yes, last but not least, the Parsees also are present here. So, how did it lie in the mouth of Lord Simon or anybody else. (A Voice: The Tribal representatives are here). Tribal areas and the Adibasis are here represented by my friend Mr. J. Singh. In fact, every element that has been elected to the Indian Constituent Assembly is here barring the Muslim League. The Muslim League represents a section. I take it a large section, may be a very large section of the Muslim community, but it is absolutely false to suggest that this Constituent Assembly consists only of one section of the people, the Caste Hindus, as though Caste Hindus have been born only to o I oppress the others and to fashion out something which will be disastrous to the interests of India. Now, is it suggested that if one section of the Indian people chooses to be absent from the Constituent Assembly, India should continue to remain a slave country? (A Voice: "No"). That reply has to be given to the people of this country who are absent and also their instigators. I would say, Sir, that we should say to the British people once and for all, "We want to remain friendly with you. You started Your career in this country as traders. You came here as supplicants before the Great Mughal. You wanted to exploit the wealth of this country. Luck was in your favour. By forgery, fraud and force, you succeeded in establishing-these are all matters of history-your Government in this country, but not with the willing co-operation of the People of this land. You introduced separate electorates, you introduced religion into Indian politics. That was not done by Indians. You did it, only to perpetuate your rule in this country. You have created vested interests in this country which have become powerful enough now and which cannot be destroyed with their own willing co-operation. In spite of all these, if you really want that you and India should remain as friends in the future, we are prepared to accept your hand of co-operation. But for heaven's sake, it is not the business of the British Government to interfere so far as the domestic problems of India are concerned. Every country will have its own domestic problems and unfortunately India has her domestic problems too, and those domestic problems must ultimately be settled by the people of this country." I hope, Sir, as we are not framing a constitution now, as we are only laying down a general outline of the things that we want to do in the future, the House will refuse to listen to narrow technicalities. We shah' go ahead with our work in spite of all difficulties and obstacles and help to create that great India, united and strong, which will be the motherland of not this community or that, not this class or that, but of every person, man, woman and child, inhabiting this great land, irrespective of race, caste, creed or community, where everyone will have an equal opportunity, an equal freedom, an equal status so that he or she could develop himself or herself to the best of his or her talents and serve faithfully and fearlessly this beloved common motherland of ours.

Mr. Chairman: Dr. Ambedkar.

Dr. B. R. Ambedkar (Bengal: General) : Mr. Chairman, I am indeed very graceful to you for having called me to speak on the Resolution. I must however confess that your invitation has come to me as a surprise. I thought that as there were some 20 or 22 people ahead of me, my turn, if it did come at all, would come tomorrow. I would have preferred that as today I have come without any preparation whatsoever. I would have liked to prepare myself as I had intended to make a full statement on an occasion of this sort. Besides you have fixed a time limit of 10 minutes. Placed under these limitations, I don't know how I could do justice to the Resolution before us. I shall however do my best to condense in as few words As possible what I think about the matter.

Mr. Chairman, the Resolution in the light of the discussion that has gone on since yesterday, obviously divides itself into two parts, one part which is controversial and another part which is non-controversial. The part which is non-controversial is the part which comprises paragraphs (5) to (7) of this Resolution. These paragraphs set out the objectives of the Future constitution of this country. I must confess that, coming as the Resolution does from Pandit Jawaharlal Nehru who is reputed to be a Socialist, this. Resolution, although non-controversial, is to my mind very disappointing. I should have expected him to go much further than he has done in that part of the Resolution. As a student of history, I should have preferred this part of the Resolution not being embodied in it at all. When one reads that part of the Resolution, it reminds one of the Declaration of the Rights of Man which was pronounced by the French Constituent Assembly. I think I am right in suggesting that, after the lapse of practically 450 years, the Declaration of the Right.% of Man and the principles which are embodied in it has become part and parcel of our mental makeup. I say they have become not only the part and parcel of the mental make-up of modern man in every civilised part of the world, but also in our own country which is so orthodox, so archaic in its thought and its social structure, hardly anyone can be found to deny its validity To repeat it now as the Resolution does is, to say the least, pure pedantry. These principles have become the silent immaculate premise of our outlook. It is therefore unnecessary to proclaim as forming a part of our creed. The Resolution suffers from certain other lacuna. I find that this part of the Resolution, although it enunciates certain rights, does not speak of remedies. All of us are aware of the fact that rights are nothing unless remedies are provided whereby people can seek to obtain redress when rights are invaded. I find a complete absence of remedies. Even the usual formula, .hat no man's life, liberty and property shall be taken without the due process of law, finds no place in the Resolution. These fundamental set out are made subject to law and moralist. Obviously what is law, what is morality will be determined by the Executive of the-day and when the Executive may take, one view another Executive may take another view and we do not know what exactly would be the position with regard "to fundamental rights, if this matter is left to the Executive of the day. Sir, there are here certain provisions which speak of justice, economical, social and political. If this Resolution has a reality behind it and a sincerity, of which I have not the least doubt, coming as it does from the Mover of the Resolution, I should have expected some provision whereby it would have been possible for the State to make economic, social and political justice a reality and I should have from that point of view expected the Resolution to state in most explicit terms that in order that there may be social and economic justice in the country, that there would be nationalisation of industry and nationalisation of land, I do not understand how it could be,, possible for any future Government which believes in doing justice socially, economically and politically, unless its economy is a socialistic economy. Therefore, personally, although I have no objection to the enunciation of these propositions, the Resolution is, to my mind, somewhat disappointing. I am however prepared to leave this subject Where it is with the observations I have made.

Now I come to the first part of the Resolution, which includes the first for paragraphs. As I said from the debate that has gone on in the House, this has become a matter of controversy. The controversy seems to be centered on the use of that word 'Republic'. It is centered on the sentence occurring in paragraph 4 "the sovereignty is derived from the people". Thereby it arises from the point made by my friend Dr. Jayakar yesterday that in the absence of the Muslim League it would not be proper for this Assembly to proceed to deal with this Resolution. Now, Sir, I have got not the slightest doubt in my mind as to the future evolution and the ultimate shape of the social, political and economic structure of this great country. I know to-day we are divided politically, socially and economic-,ally; We are a group of warring camps and I may go even to the extent of confessing that I am probably one of the leaders of such a camp. But, Sir, with all this, I am quite convinced that given time and circumstances nothing in the world will prevent this country from becoming one. (*Applause*): With all our castes and creeds, I have not the slightest hesitation that we shall in some form be a united people. (*Cheers*). I have, no hesitation in saying that notwithstanding the agitation of the Muslim League for the partition of India some day enough light would dawn upon the Muslims themselves and they too will begin to think that a United India is better even form them. *(Loud cheers and applause).*

So far as the ultimate goal is concerned, I think none of us need have any apprehensions. None of us need have any doubt. Our difficulty is not about the ultimate future. Our difficulty is how to make the heterogeneous mass that we have to-day take a decision in common and march on the way which leads us to unity. Our difficulty is not with regard to the ultimate, our difficulty is with regard to the beginning. Mr. Chairman, therefore, I should have thought that in order to make us willing friends, in order to induce every party, every section in this country to take on to the road it would be an act of greatest statesmanship for the majority party even to make a concession to the prejudices of people who are not prepared to march together and it is for that, that I propose to make this appeal. Let us leave aside slogans, let us leave aside words which frighten people. Let us even make a concession to the prejudices of our opponents, bring them in, so that they may willingly join with us on marching upon that mad, which as I said, if we walk long enough, must necessarily lead us to unity. If I, therefore, from this place support Dr. Jayakar's amendment, it is because I want all of us to realise that whether we are right or wrong, whether the position that we take is in consonance with our legal rights, whether that agrees with the Statement of May the 16th or December 6th, leave all that aside. This is too big a question to be treated as a matter of legal rights. It is not a legal question at all. We should leave aside all legal considerations and make some attempt, whereby those who are not prepared to come, will come. Let us make it possible for them to come, that is my appeal.

In the course of the debate that took place, there were two questions which were raised, which struck me so well that I took the trouble of taking them down on a piece of paper. The one question was, I think, by my friend, the Prime Minister of Bihar who spoke yesterday in this Assembly. He said, how can this Resolution prevent the League from coming into the Constituent Assembly? Today my friend, Dr. Syama Prasad Mookherjee, asked another question. Is this Resolution inconsistent with the Cabinet Mission's Proposal? Sir, I think they are very important questions and they ought to be answered and answered categorically. I do maintain that this Resolution whether it is intended to bring about the result or not, whether it is a result of cold calculation or whether it is a mere matter of accident is bound to have the result of. keeping the Muslim League out. In this connection I should like to invite your attention to paragraph 3 of the Resolution, which I think is very significant and very important. Paragraph 3 envisages the future constitution of India. I do not know what is the intention of the mover of the Resolution. But I take it that after this Resolution is passed, it will act ax a sort of a directive to the Constituent Assembly to frame a constitution in terms of para' 3 of the Resolution. What does para. 3 say? Para. 3 says that in this country there shall be two different sets of polity, one at the bottom, autonomous Provinces or the States or such other areas as care to join a United India. These autonomous units will have full power. They will have also residuary powers. At the top, over the Provincial units, there will be a Union Government, having certain subjects for legislation, for execution and for administration. As I read this part of the Resolution, I do not find any reference- to the idea of grouping, an intermediate structure between the Union on the one hand and the provinces on the other. Reading this para. in the light of the Cabinet Mission's Statement or reading, it even in the light of the Revolution passed by the Congress at its Wardha session, I must confess that I am a great deal surprised at the absence of any reference to the idea of grouping of the provinces. So far as I am personally concerned, I do not like the idea of grouping (*hear, hear*) I like a strong united Centre, (*hear, hear*) much stronger than the Centre, we had created under the Government of India Act of 1935. But, S.r, these opinions, these wishes have no bearing on the situation at all. We have travelled a long road. The Congress Party, for reasons best known to itself consented, if I may use that expression, to the dismantling of a strong Centre which had been created in this country as a result of 150 years of administration. and which. I must say, was to me a matter of great admiration and respect and refuge. But having given up that position, having said that we do not want a strong Centre, and having accepted that there must be or should be an intermediate polity, a sub-federation between the Union Government and the Provinces I would like to know why there is no reference in para. 3 to the idea of grouping. I quite understand that the Congress Party, the Muslim League and His Majesty's Government are not ad idem on the interpretation of the clause relating to grouping. But I always thought that,-I am prepared to stand corrected if it is shown that I am wrong,- at least. it was agreed by the Congress Party that if the Provinces which are placed within different groups consent to form a Union or Sub-federation, the Congress would have no objection to that proposal. I believe I am correct in interpreting the mind of the Congress Party. The question I ask is this. Why did not the Mover of this Resolution make reference to the idea of a Union of Provinces or grouping of Provinces on the terms on which he and his party, was prepared to accept it? Why is the idea of Union completely effaced from this Resolution? I find no answer. None whatever. I therefore say in answer to the two questions which have been posed here in this Assembly by the Prime Minister of Bihar and Dr. Syama Prasad Mookherjee as to how this Resolution is inconsistent with the Statement of May 16th or how this Resolution is going to prevent the Muslim League from entering this Constituent Assembly, that here is para. 3 which- the Muslim League is bound to take advantage of and justify its continued absentation. Sir, my friend Dr. Jayakar, yesterday, in arguing his case for postponing a decision on this issue put his case. if I may say so, without offence to him, somewhat in a legalistic manner. The basis of his argument was, have you the right to do so? He read out certain portions from the Statement of the Cabinet Mission which related to the procedural part of the Constituent Assembly and his contention was that the procedure that this Constituent Assembly was adopting in deciding upon this Resolution straightaway was inconsistent with the procedure that was laid down in that Paper. Sir, I like to put the matter in a somewhat different way. The way I like to put it is this. I am not asking you to consider whether you have the right to pass this Resolution straightaway or not. It may be that you have the right to do so. The question I am asking is this. Is it prudent for you to do so? Is it wise for you to do so? Power is one thing; wisdom is quite a different thing and I want this House to consider thus matter from the point of view, not of what authority is vested in this Constituent Assembly, I want this House to consider the matter from another point of view, namely, whether it would be wise, whether it would be statesmanlike, whether it would be prudent to do so at this stage. The. answer that I give is that it would not be prudent, it would not be wise. I suggest think another attempt may be made to bring about a solution of the dispute between the Congress and the Muslim League. This subject is so vital, so important that I am sure it could never be decided on the mere basis of dignity of one party of the dignity of another party. When deciding the destinies of nations, dignities of people, dignities of leaders and dignities of parties ought to count for nothing. The destiny of the country ought to count for everything. It is because I feel that it would in the interest not only of this Constituent Assembly so that it may function as one whole, so that it may have the reaction of the Muslim League before it proceeds to decision that I support Dr. Jayakar's, amendment-we must also consider what is going to happen with 'regard to the future, if we act precipitately. I do not know, what plans the Congress Party, which holds this House in its possession, has in its mind? I have no power of divination to know what they are thinking about. What are their tactics, what is their strategy, I do not know. But applying my mind as an outsider to the issue that has arisen;, it seems to me there are only three ways by which the future will be decided. Either there shall have to be surrender by the one party to the wishes of the other-that is one way. The other way would be what I call a negotiated peace and the third way would be open war. Sir, I have been hearing from certain members of the Constituent Assembly that they are prepared to go to war. I must confess that I am appalled at the idea that anybody in this country should think of solving the political problems of this country by the method of war. I do not know how many people in this country support that idea. A good many perhaps do and the reason why I think they do, is because most of them, at any rate a great many of them. believe that the war that they are thinking of, would be a war on the British. Well, Sir, if the war that is contemplated, that is in the mind,% of people, can be localised, circumscribed, so that it will not be more than a war on the British, I probably may not have much objection to that sort of strategy. But will it be a war on the British only? I have no hesitation and I do want to place before this House in the clearest terms possible that if war comes in this country and if that war has any relation to the issue with which we are confronted to-day, it will not be a war on the British. It will be a war on the Muslims. It will be a war on the Muslims or which is probably worse, it will be a war on a combination of the British and the Muslims. I cannot see bow this contemplated war be, of the sort different from what I fear it will be. Sir, I like to read to the House a passage from Burke's great speech on Conciliation with America. I believe this may have some effect upon the temper of this House. The British people as you know were trying to conquer the rebellious colonies of the United States, and bring them under their subjection contrary to their wishes. In repelling this idea of conquering the colonies this is what Burke said :-

> "First, Sir, permit me to observe, that the use of force alone is but temporary. it may subdue for a moment; but it does not remove the necessity of subduing again; and a nation is not governed, which is perpetually to be conquered.
>
> "My next objection is its uncertainty. Terror is riot always the effect of force an amendment is not a victory. If you do not succeed, you are without resource for, conciliation failing, force remains; but, force failing, no further hope of reconciliation is left. Power and authority are sometimes bought by kindness; but they can never be begged as alms by an impoverished and defeated violence....
>
> "A further objection to force is, that you impair the object by you very endeavours to preserve it. The thing you fought for Is not the thing which you recover; but depreciated, sunk, wasted and consumed in the contest."

These are weighty words which it would be perilous to ignore. If there is anybody who has in his mind the project of solving the Hindu-Muslim problem by force, which is another name of solving it by war, in order that the Muslims may be subjugated and made to surrender to the Constitution that might be prepared without their content. this country would he involved in perpetually conquering, them. The conquest would not be once and for ever. I do not wish to take more time than I have taken and I will conclude by again referring to Burke. Burke-- has said somewhere that it is easy to give power, it is difficult to give wisdom. let us, Prove by our conduct that if this Assembly has arrogated to itself sovereign powers it is prepared to exercise them with wisdom. That is the only way by which we which we can carry with ,is all sections of the country. There is no other way that can lead us to unity. Let us not have no doubt on that point

Sardar Ujjal Singh (Punjab: Sikh): Sir, I stand here to support the Resolution which was so ably and eloquently moved by Pandit Jawahar Lal Nehru. Sir, the Resolution places before this Assembly the objective which we must have in view before we start on our labour. This is undoubtedly a unique and solemn occasion in the history of India when the chosen people of this country have assembled here to prepare a charter of liberty and a scheme of governance for the people and by the people. Sir, before we sit to work we must send a message of hope and cheer to the dumb millions of this country and to the world outside whose eyes at this moment are fixed upon us. And I believe this Resolution win give a new hope of an early realization of their dreams to the teeming millions, the dumb masses of this country, who have been struggling hard for the last many years to achieve freedom. Sir, in this matter of the fight for freedom, as in many others, history repeats itself. Ours is not the only country which has to struggle so long and so hard. The Goddess of Liberty must take her due toll of sacrifice from everyone. It may be that the struggle is violent and has been violent elsewhere, and nonviolent in this country. For this and for many other things for which this country stands today and hopes to achieve in the future, we owe a great :debt of gratitude to that master-mind, Mahatma Gandhi, whom Pandit Nehru described as the Father of the Indian Nation.

Sir, the Constituent Assembly is the culmination of the final stage of the struggle for freedom. The Resolution before this House is an expression- of the pent-up emotions of the millions of this country. It can be divided into three parts. The first part deals with the declaration of an Independent Sovereign Republic of India. 'The' second deals with autonomous units, having residuary powers with a Union of them all i.e., including the Indian States. The third part deals with social and economic freedom and justice to all and with adequate safeguards for the minorities, backward classes and tribal areas. Opinions may differ. with regard to the. exact wording of the Resolution or its brevity in certain respects, but taken as a whole its is an expression of the will of the people of this country.

Sir, my Hon'ble friend, Dr. Jayakar, for whom I have got the, highest respect, objected to this Resolution being moved and taken into consideration on the floor of this House at this stage on the ground that we are. a' this preliminary session, precluded from taking into consideration any other matter excepting those three which are set out in paragraph 19 of the Cabinet Mission's Statement. He further suggested that the House would be well advised to take this matter on the 20th of January, when we meet again after we adjourn for the Christmas. My Hon'ble friend probably knows, when we meet again on the 20th of January for completing our unfinished business, we will be meeting again in a preliminary session and if he objects to this Resolution being taken into consideration today, his objection holds good also when we meet again on the 20th of January. *(Hear, hear).*

Sir, the second point that lie suggested was that we should postpone its consideration for a few weeks so that the Muslim League and the States may have an opportunity to have their say on this matter. I am one of those who regret very much that the Muslim League is not present here today in this House and also value and seek the co-operation of the Muslim League. But it is not the fault of this House that those friends are absent today and we do not know when they may join us. It is not, therefore, fair to this House, having assembled here, to wait indefinitely without knowing when the other party is coming in. With regard to the States, if my Hon'ble friend were to study the State Paper, he- would find that it is clearly laid down that States will come at the last stage when we. after completing our provincial constitutions, reassemble for the Union Constitution making. Are we to postpone a resolution of this nature to the very last stage when a good part of our constitution has been framed? A resolution of this importance must be considered and adopted at the beginning of our work.

Another objection to this Resolution was taken by Dr. Ambedkar that he did not find the word "grouping" mentioned anywhere. Dr. Ambedkar should know that grouping is an optional matter and, if I may say so, almost all of us are against grouping. Even the State Paper leaves it to the option of the Sections or the Provinces. In a resolution of this kind the Mover could not put in what the Sections may decide otherwise or the Provinces may decide otherwise.

The Indian States may find some objection to the word "Republic" being used in the Resolution. Indian States have been used to the monarchical system of government and they may have some fears on that score but in the light of the speech of Pandit Nehruji those fears are entirely unjustified. In an Indian Republic the people of the Indian States. If they so choose can retain a monarchical form of government in their own part. of the country.

I believe, Sir, that the exact scheme when it emerges from the labours of the Constituent Assembly will be such as will be acceptable to all the elements in Indian life and will be suited to the talents and the peculiar conditions of this country.

The second portion of the Resolution deals with the Union and the autonomous units, residuary powers being given to the units. Some of us may have serious objection to the residuary powers being given to the Units, but this proposal is in accord with the State Paper Scheme and is an essential part of paragraph 15. It may be a bitter pill for most of us, but it has got to be swallowed.

The third part of the Resolution gives an assurance to the minorities and the backward classes that their interests will be adequately safeguarded. Now, Sir, in this connection my community feels that the safeguard,, should not only be adequate but should be satisfactory to the Sikhs and the other minorities concerned. With your permission, Sir, I would like to acquaint the House with the solemn assurances given to the Sikhs in the Congress Resolution of

December 1929, passed at the Lahore Session of the Indian National Congress. The relevant portion of the Resolution. which related to the Sikhs and the minorities read, as follows:

> "No solution thereof (i.e., the communal problem) in any future constitution of India will be acceptable to the Congress which does not give full satisfaction to the Muslims, Sikhs, other minorities."

Ever since this resolution was passed, the Sikhs have made a common cause and have fought the country's battle for freedom side by side with the Congress. Unfortunately, when the British Mission came and formulated their proposals, i.e., the Statement of May 16, although they admitted the Sikhs to be one of the three main communities in India, they completely failed to provide any protection or safeguards for the Sikhs In the case of the Mussalmans, the Mission pointed out that there was a real apprehension of their culture, and political and social life becoming submerged in a unitary India, in which the Hindus would be a dominant element. They however entirely failed to realise the same plight of the Sikhs in the Punjab which is the Holy Land and the Homeland of the. Sikhs under a Muslim majority. It was the height of injustice on the part of the Cabinet Delegation not to have provided similar safeguards for the Sikhs in the Punjab and the 'B' Section, as they had provided for the Muslims in the Union. Sir Stafford Cripps, while speaking in the House of Commons the other day, remarked that they could not give similar rights to the Sikhs in the Punjab and the 'B' Section as they had given to the Musalmans in the Union, as a similar right would have had to be given to other minorities. May I ask whether the Mission took into consideration the other minorities when they provided safeguards for the Mussalmans in the Union Centre? They did not consider the Sikhs although they were admitted to be one of the main communities of India. On the other hand, I feel that the Sikhs have a stronger claim for having similar safeguards in the Punjab than the Mussalmans have in the Union Centre. I also feel and believe that any safeguards given to the Sikhs in Section' B' and in the Punjab will be a guarantee for the protection of the rights of other minorities in that area. As nothing was done by the Mission, a wave of indignation went throughout the entire Sikh community and their indignation rose to the highest pitch. A resolution was passed by the Sikhs at a special meeting held at Amritsar-their holy centre, that the Constituent Assembly should be boycotted and the Sikhs did boycott the Assembly. The Congress, however, accepted the proposals of the Cabinet Mission, and eminent leaders of the Congress appealed to the Sikhs to accept the proposals also. Sardar Patel particularly pleaded the cause of the Sikhs at the All-India Congress Committee session in Bombay and our sincere thinks are due to, him. In the House of Lords on the 18th July last, while speaking on a debate, the Secretary of State made significant reference to the Sikhs in the following words:

> "It is, however, essential that fullest consideration should be given to their claims for they are a distinct and important community, but on population basis adopted they lose their weightage. This situation will, to some extent, we hope, be remedied by their full representation in the Advisory Committee oil Minorities set up under paragraph 20 of the Statement of May 16."

He further said:

> "Over and above that, we have represented to the two major parties who were both most receptive in this matter that some special means of giving the Sikhs a strong position in the affairs of the Punjab or in

the N.-W. Group should be devised."

This assurance though satisfactory in some respects was not sufficient to change the attitude of the Sikh community towards the Constituent Assembly. Then on the 9th August, the Congress Working Committee passed a resolution appealing to the Sikhs to reconsider their position. The resolution stated:

> "The Committee are aware that injustice has been done to the Sikhs and they have drawn attention of the Cabinet Delegation to it. We are, however, strongly of the opinion that the Sikhs would serve their cause and the cause of the country's freedom better by participation in the Constituent Assembly than by keeping out of it. It therefore appeals to the Sikhs to, reconsider their decision and express their willingness to take part in the Constituent Assembly. The Working Committee assures the Sikhs that Congress will give them all possible support in redressing their legitimate grievances and in securing adequate safeguard.

"The Sikhs reviewed the whole position on the 14th August. The resolution of the Congress Working Committee carried the greatest weight with them, and it was on that account that the Panthic Board, which was called at a special meeting, decided to lift the ban on participation in the work of the Constituent Assembly. The resolution of the Panthic Board decided to give the Constituent Assembly a trial to secure for the Sikhs similar safeguards as were given to the. Mussalmans in the Union. The Sikh members are here assembled according to, that mandate. I have great faith in the Congress leaders and sincerely hope that the assurances given to the Sikhs will be implemented without delay as the time has come for the translation of those solemn words into action.

I am sorry to take the time of the House in going in a little detail into the Sikh position, but I thought it my duty to acquaint the House with the Sikh case. Let me, however, make it clear that the safeguards which the Sikhs demand for their due and strong position in the Punjab and the North West, are meant to be provided within the Indian Republic and not outside. They are anxious that all communities may live together in harmony and peace. They are prepared to live happily with their Mussalman brothers in the Punjab and the North West, even treating them as elder brothers, but not as a superior ruling race or a separate nation. The Sikhs, therefore, cannot tolerate the partition of this great and ancient land. They will stoutly oppose the establishment of Pakistan and all that it implies or stands for.

Sir, if I may be permitted to say, the Sikhs have a burning passion for freedom. No single community in the history of India has struggled so long and so, hard as the Sikhs have done to drive away foreign hordes from this land; and in recent times, their record of sacrifice in the battle of country's freedom is second to none. They will continue to march with the Congress in its fight for independence with unabated zeal and vigour. (Hear, hear). They, however, want their separate entity and position to be maintained and strengthened so that they may be able to contribute their full quota to the service of the country.

Sir, I realise that it is a stupendous task that this august Assembly has set itself to accomplish. There are hurdles and obstacles in our way, but I feel certain that we will be able to cross those hurdles and overcome all those obstacles if we deliberate with caution, act with decision and, if need be, oppose with firmness. With these words, Sir, I support the Resolution *(Cheers)*.

Seth Govind Das (C. P. and Berar: General): *[Mr. Chairman, in the Central Assembly and in the Council of State I speak in English as the Rules demand it; but hereafter so many English speeches I would like to speak in the language of my country.

I have came to speak for the Resolution and against the amendments. While speaking in favour of the Resolution I cannot resist the desire to offer my thanks to the Hon'ble Dr. Jayakar for his beautiful speech. I was surprised to hear of Dr. Jayakar's amendment yesterday. Dr. Jayakar and I have been friends since the days of the Swaraj' Party- I can understand his amendment. I can understand his desire to defer voting on the Resolution until the Muslim League joins; but I fail to understand the logic of the arguments advanced by him in support of his contention. I do not want to speak on the legal aspect of his arguments. That is the work of the lawyers. What surprises me is his assertion that if we passed the Resolution now, we will finish our work without achieving what we desire. That puts me in mind of the days prior to 1920; when our Moderates were at a loss to know what to do and saw everywhere nothing but frustration and disappointment. We have not met here simply to sit together, talk a lot and then disperse without achieving any result. It will be our duty to see that we achieve results. Just at present it is not necessary to say what we are going to do and how far we are going to proceed. Suffice it to say that we shall achieve speedy and substantial results. Dr. Jayakar has spoken of war. The Congress people and the people who believe in the principle of Satyagraha always desire peace and no war. They, however, want true peace and not the peace of the graveyard.

The greatest gift that Mahatmaji has, given to the world is Satyagraha. Satyagrahis want peace but when they see that true peace is Impossible without having resort to war they , get ready to give their lives in a war of Ahinsa. I, therefore, say we do not want war. We want peace. We neither want to fight with the Muslims nor with the British Government. If, however, the British Government wishes to fight with us making Muslims their Shikhandi; we will not do what Bhisham Patama did. We will not lay down our arms because Shikhandi is made to stand against us. We do desire our brethren of the Muslim League to come and cooperate with us. If, however, with all our solicitations, with all our patience and with all our desire for peace, they do not come, we are not going to stop our work for them. Dr. Jayakar has not told us whether our Muslim brethren would join us if we postponed the consideration of the Resolution till the 20th January. If we were assured that they would join us, Pandit Jawahar Lal Nehru, I think, would perhaps, be the first person to say that if his Muslim brethren were coming in, he would postpone Resolution. Panditji told us in so many words that the Resolution was an undertaking--a pledge. When one signs a pledge, he signs it with full sense of responsibility of what he was doing. As this Resolution is a pledge when we pass it, we will pass it with a full sense of our responsibility.

The Resolution speaks of a Republic. There may be a difference of opinion whether the Republic should be a democratic republic or a socialist republic. But, to discuss it at this juncture, would be meaningless. Whenever the world is in need of a thing it creates it. Keeping in view the condition of the world and the plight of India, we can say that our republic will be both democratic and socialist. I desire to tell the people, who feel chary of socialism and tremble at hearing of its tenets, that not only the people who have nothing are miserable but the people who possess everything, are also in sorrow. The former are miserable because they labour under the desire to possess everything and the later are unhappy because they have to resort to hundreds and thousands of knaveries and evasions. They perform acts that are not in the least considered fair in the eyes of Justice. If these people, while ignoring justice, pretend to protect and champion ;It, I tell you, they never get true happiness. I am myself of the people who possess everything; but I feel that if true peace is to be realized. it can only be realized through socialism. No other system can give us true peace. There can be no doubt that our republic will be both democratic and socialist.

As to preventing us doing this work; I desire, to make it known that both' the British Government and the Muslim League cannot stop us from doing what We intend to do. Our country is so vast and its population is so great that even the British Government cannot now put obstacles in the way of its freedom and progress.

To my brethren of the Muslim League, I desire to say some thing; and say it with all the emphasis at my disposal, that if the British, who are foreigners, put obstacles in the path of our freedom, nobody, in history, will held them blameworthy; but, if persons, who are born in this country Who are bred in it, and who consume its produce, try to come in the way of its freedom they will be censured by their own progeny. As for the British, they cannot block our way to freedom; but so far as our Muslim League brethren are concerned, they may take it from me in plain words that if they allied themselves with the British to keep this country in slavish sub fugation, future generations will hold them blameworthy and they will gel' this stigma without stopping us from achieving our freedom.

If the British Government adhering to the Statements issued in the last few days, tried not to enact a new Government of India Act, in the light of the decisions of this Constituent Assembly, I tell them that their efforts in ,his respect are doomed to failure. They have always tried to keep India and other countries under their subjugation by not allowing them to solve their own problems. If, they played the same game will this country now, the time will perhaps never come for the presentation of a Government of India Act in the British Parliament and no Indo-British Treaty will ever be signed. I do not say this on behalf of the Congress. I see the future, when, if the British failed to translate the decisions of this Constituent Assembly into some solid form of action, a parallel government will be set up here and the whole of England will have to fight it. People coming from across the seven seas will not be able to win our war of Ahimsa. I fully believe in it.

I do riot want to take more time; but before the chit comes to me asking me-to stop, I appeal to you that you should pass this Resolution not as, a resolution but as a pledge with full sense of responsibility of what you do and go forward in the manner of a free country.]*

Mr. Chairman: It is now 1 o'clock. The House stands adjourned till Eleven o'clock tomorrow morning. In the afternoon we ,have got a meeting of the Rules Committee and we shall not be able to meet here.

The Assembly then adjourned till Eleven of the Clock, on Wednesday, the 18th December, 1946.

[English translation of Hindustani speech begins]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME I

Wednesday, the 18th December, 1946

The Assembly met in Constitution Hall, New Delhi, at Eleven of the Clock, Mr. Chairman (The Hon'ble Dr. Rajendra Prasad) in the Chair.

PROGRAMME OF BUSINESS

Mr. Chairman: I have received a note from Mr. Mohan Lal Saksena asking me to make a statement with regard to the progress that has been made in the Rules Committee. I think it would be helpful to the Members in making their future programme if I made that statement today. We have been discussing drafts which had been prepared before and we have gone through a great part of the work, but some work still remains to be done and the final draft will have to be considered by the Rules Committee before being placed before this House. I hope we shall be able, to complete this work by Friday and I propose to hand over to Members the rules in their final form as passed by the Rules Committee on Saturday, so that we may take them up for consideration by this House on Monday next. Monday happens to be the 23rd and after that we have the Christmas holidays. I do not think we shall be able to complete the rules in one day. They will take at least two days or it may be three days. If the Members agree I propose that we observe Christmas holidays for two days 24th and 25th and then the Assembly continues sitting thereafter. So on the 26th and 27th we may discuss the rules and finish them by the 27th and anything else arising out of the rules we may do thereafter. I do not think we should finish this preliminary session before passing the rules and before appointing certain committees which it is the intention of the preliminary session to appoint. This is the programme as I envisage at present. It all depends upon the House. Hard pressed as we are for time, I do not think we could afford to go without any work during the whole of the Christmas week. I think we should take holidays on the 24th and 25th of this year,

Sri M. Ananthasayanam Ayyangar (Madras: General): We would like to have the whole week of Christmas as holiday and we would like to go back during this period and meet again after the beginning of next year.

Mr. Chairman: It is not expected that the Members should go home if we have only a holiday of two days.

The Hon'ble Pandit Hirday Nath Kunzru (United Provinces: General): Mr. Chairman it was expected by most of us when the session commenced that it would end before Christmas and on that footing we have made engagements which will keep us busy during Christmas week. I am not asking for any holidays at all. I should be quite prepared to do without them altogether, but having accepted engagements which are of a somewhat important character, it would not be possible for many of us to attend the session if it is continued after the 23rd of December. I hope, therefore, that you will be good enough to take this into consideration before deciding when the Constituent Assembly should meet again in order to pass the rules and appoint those committees to which you have referred.

Mr. Dhirendra Nath Datta (Bengal: General): Mr. Chairman, Sir, you have just told us that the rules should be placed before us on the 23rd of December and considered on the 26th, but some time is necessary for putting in amendments. I do not know what is the practice here but in the legislatures elsewhere, at least 4 or 5 days' time is given. So it is impossible to begin the consideration of the rules on the 26th and I think under the circumstances, it is desirable that we should meet on the 2nd of January.

The Hon'ble Rev. J. J. M. Nichols-Roy (Assam: General): Mr. Chairman, Christmas holidays are very important for Christians and we usually get holidays on the 24th, 25th, 26th and 27th and we shall be glad if this Constituent Assembly will meet again on the 2nd or 3rd of January. Then we can carry on as long as we want, but if we meet during this year after the 25th i.e., during the Christmas holidays, it will be very inconvenient for the work of this Assembly and will also disturb many of our engagements which we have already made during the Christmas holidays. That is all I have to place before this House, Sir.

Mr. D. P. Khaitan (Bengal: General): Sir, I am rather surprised at the way in which the Members of the Constituent Assembly have not agreed with your programme as announced by you. The work before the Constituent Assembly must gain precedence over every other work and we should proceed with as much speed as we possibly can. We should not desperate before we have passed the Rules of Procedure which are so essentially necessary. Therefore, through you, Sir, I appeal to all the Members of the Constituent Assembly to lay aside all other work and give precedence to the important work that lies ahead of us.

Shri Mohan Lal Saksena (United Provinces: General): Mr. Chairman, I would like to make the suggestion that in order to facilitate the work of the Procedure Committee this House may not meet tomorrow and it may meet the day after tomorrow in the afternoon, so that we may have the report of the Committee in full and consider the rules from Saturday and if possible we might finish it on Monday.

Mr. R. K. Sidhwa (C. P. and Berar: General): I think the House is entitled to have a number of days for studying the report and also presenting amendments. In our party meetings also we shall have to consider them. It may take two or three days. It may not be possible to finish the work in two or three days as Mr. Mohan Lal Saksena says. I would therefore support the motion that we meet on the 2nd or 3rd January after presenting the report of the Committee on 21st or 23rd.

Mr. Chairman: There are certain other public functions, which have been announced very long before, which take place in the first week of January. It was for this reason that I was anxious to complete the work of this Assembly before the year is out. For example, the Science Congress is going to begin on the 2nd January next. Eminent scientists from all over the world are coming and Pandit Jawahar Lal Nehru is going to have a very important function there, and there may be other members also who may be interested in it. Similarly, there are other functions which have been fixed. I was therefore anxious not to disturb those public function, which have been announced already and to complete our work as much as possible within this year. Of course it rests with the members of the Assembly. If they do not , wish to sit beyond the 23rd, we shall leave to take that also into consideration and go into the next year. The difficulties, that confront us, I have placed before you. In January, there will be a further difficulty; some Provincial Assemblies will meet.

The Hon'ble Shri Purushattam Das Tandon (United Provinces: General): The business of the Provincial Assemblies can be adjusted suitably.

The, Hon'ble Sardar Vallabhbhai J. Patel (Bombay: General): Sir in a House consisting of about 300 important members it is difficult to suit the convenience of all. We have the Budget Session of all the Provinces also.

There is the Budget Session of the Central Assembly. It is not possible to meet the convenience of all. As has been rightly suggested, precedence should be given to the work of the Constituent Assembly. We will not be able to make any progress with the work of the Constituent Assembly till we have passed the Rules. The Rules we must finish before we disperse and then we can adjourn. The preliminary session may not be finished during this month or even in the first week of January. Therefore to suggest that we should meet on the 3rd or 4th January is not practicable. With all the inconvenience that we may have to put up with, we must finish the Rules. Therefore, if as the Chairman has suggested, the Rules are ready on the 23rd, either we give up the holidays on 24th and 25th or we come on the 26th and 27th and finish the Rules. Then we can fix the date for adjournment. Without the programme being fixed, we will not be able to dispose of our work. Therefore, let us provisionally fix the programme and then consider other matters.

Sri K. Santhanam (Madras: General): I wish to suggest that the Rules may be placed before the Assembly as they are ready. Why should we wait till all the Rules have been completed. We can take them up from tomorrow or this evening. I am really surprised that the Committee should not have been able to draft even a portion. We can take up portions and go on passing them. When they are completed, we shall have also completed.

Mr. Chairman: I do not think it is possible to take up the Rules piecemeal. We have to take them as a whole.

The Hon'ble Shri Purushottam Das Tandon: I suggest, Sir, that we should keep in view that a large number of members have already entered into engagements for the Christmas week. It is no good-telling us now that we had no business to enter into such engagements. Ordinarily, it is supposed that during the Christmas week, we will not be working here actively. Of course, members will give some part of their time to the Rules if presented to them before we disperse. They should be given some time to think over them. As has been pointed out, possibly the Parties also may have to consider them in their party meetings. I think, Sir, we should not take up the question of rules during the Christmas week; sufficient time should be given to the members to think over them, to digest them and to send in amendments. We can meet some time in the first week of January.

Mr. Chairman: Now we have heard different speakers and their opinions. We shall take some decision tomorrow after consideration of these points. In the meantime, we will proceed with our business. We take up the discussion of the Resolution and the amendments.

RESOLUTION RE: AIMS AND OBJECTS-contd.

The Hon'ble Rev. J. J. M. Nichols-Roy (Assam: General): Mr. President Sir. thank you for giving me this opportunity to speak on this Resolution. I stand here to support the Resolution moved by Pandit Nehru, with all the force that I can command. This Resolution contains all the principles that need to be enunciated in such a kind of Resolution to be placed before this House. First of all, it has stated the objective that we all in India have in our minds, that is, to proclaim at a certain date the independence of India. Here we have only resolved that we shall proclaim the independence of India and we have that firm resolve in our mind to get the independence of India. That is the desire of every one in India. I cannot imagine that there will be anybody in India from one end of India to the other end, who will be against that kind of objective. Then it proclaims also that the kind of Constitution that we shall make will be a republican form of Government,--a democratic form of Government,--a Government by the people and for the people. That is surely the desire of all the people of India. It is true that there are some monarchies in India but we envisage the time when all these monarchies will become at least wholly constitutional monarchies like the Monarchy of England, and we believe that even the people of all the States envisage that in their own States, there will be a democratic form of Government. Therefore there can be no objection at all to these declarations that we have in this Resolution. Then it speaks of the territories which will be included in the Union of India and it is comprehensive enough. Then in the third para it speaks of autonomous units--that those autonomous units which are now autonomous according to present boundaries or with such other boundaries as they may have afterwards,--these units or territories will remain autonomous units together with residuary powers and will exercise all powers and functions of government and administration, save and except such powers which are assigned to the Central Government. This is our desire, this is the desire of all the people of this country. It is the object before us that each Province will be autonomous. In this connection, Sir, I want to say that it is very unfortunate that the idea of Sections was introduced in the Cabinet Mission Declaration and that in a Section according to the latest interpretation given by His Majesty's Government a certain Province will he outvoted by the Majority of members of another Province. I speak especially in connection with Section 'C' which relates to Assam: Assam is a non--Muslim Province. There are 7 non-Muslims who are representatives of Assam in this Constituent Assembly and 3 are Muslims. I am sorry that my Muslim friends are not present here, in this Assembly. I wish they were here. In Bengal, Sir, there are 27 non--Muslims and 33 Muslims. If we are brought into a Section, there will be 36 Muslims and 34 non-Muslims and if the voting in that Section will be by a majority vote, a simple majority vote as interpreted by His Majesty's Government, it will mean that our Constitution, our Assam Constitution, will be framed by the Majority of the people of Bengal, that is the Muslim League. We cannot conceive of anything that is so unjust as this, Sir, (*Cheers*). It is a matter which should be considered by all the members of this Constituent Assembly. When the Cabinet Mission made its Declaration, we in Assam thought that such kind of interpretation might be given in the future but we took it for granted that the Cabinet Mission would not be so unreasonable as to place Assam which is a non-Muslim Province to come under a Muslim Province and that our constitution would be framed by the majority of the members in the Section. We never thought that it would be like that, because we considered that it is unjust for the people of Assam to be placed in such a position. In the month of June 1946 we had a public meeting in Shillong. I happened to be the Chairman of that meeting'. We were discussing about the Declaration of the Cabinet Mission and in that meeting I said this:-

> "From this paragraph 15 (v) of the Cabinet Mission's Declaration I, understand that each Province has freedom to form or not into a group suggested by the Cabinet Mission. Secondly, that the grouping will be, as independent provinces, to discuss what subjects could be taken as common subjects to be dealt with by the grout. Thirdly, that it a province does not agree in regard to subjects which may affect it vitally, there will be no group constitution as recommended by para. 19 (v) of the Declaration. Fourthly, that if one province, in the discussion, finds it impossible to settle the question in the group, it will not be forced by a majority vote of the members of another Province. Fifthly, that the whole question will be brought before the whole Constituent Assembly which will have the power to decide finally."

That is what we understood by the Declaration of the Cabinet Mission, and, I believe, Sir, that was also the view which the Congress took at that time. I was very much gladdened by the, declaration of Sardar Vallabhbhai Patel the other day that the Congress had not up to the present time accepted the interpretation of His Majesty's Government. Sir, we still hold that position. It appears to me that the British Cabinet Mission has changed its mentality from what it was when they were here in India. When they were in India they were under certain circumstances and were influenced by the opinion at that time in this country. When they have gone back to England they are placed under a different-circumstance, influenced by the Conservative Party there, and the force which Mr. Jinnah has placed upon their minds. They have changed their opinion altogether. That is what appears to me. I would like to know from Lord Pithick-Lawrence whether in reality there was that idea in the minds of the Cabinet Mission when they were here in India. There was nothing in any of their declarations, in any of their writings that said that the vote in the Sections would be by a simple majority vote. The principle of driving by force a non-Muslim province to come under a Muslim Province is absolutely wrong. Mr. Jinnah has forced His Majesty's Government to commit this great injustice to our Province, and we feel, Sir, that we shall have the sympathy and support of this august body, that our Province may not be driven to that pitiable condition. I want Mr. Jinnah and the League Members to be here and I want them to come here to take part in the framing of the constitution of India. I will expect him and all the others to be just. I do not want anything else except that they will act like gentlemen and be just. It is unjust, everybody knows, that we should be forced into such a position in which we are now placed by the recent interpretation of His Majesty's Government. We are an autonomous province and a non-Muslim province. Why should we be forced to go to that kind of a Section which could outvote the province of Assam and frame the Constitution according to the desire of the majority, created artificially. Now, Sir, it may be said that this will at once bring a conflict between the British Government and this Constituent Assembly. This need not be. Someone said to deviate from the four walls of the Declaration of May 16th and to give a different interpretation would be revolutionary. This Constituent Assembly need not adopt that attitude at all. I believe that we can adopt a friendly attitude. We shall say to the British Government: "We thank you for the good effort you made to bring a compromise between the Hindus and the Muslims. You have been to us good advice and made good recommendations. You have acted as makers of peace. We shall, as far as practicable, implement your recommendations, but we shall, like responsible persons, be free to deviate from them whenever we find it is impracticable and unjust to carry out literally to the letter any of your recommendations. We shall frame a constitution which will do justice to all minorities and which shall not overlook any community. If the members of the Muslim League will co-operate, we shall heartily welcome them. After we have finished framing the constitution, the whole of India will get the opportunity to, see what kind of constitution this Constituent Assembly has framed; we request you, British gentlemen, not to, make speeches in Parliament which will suggest revolutionary activities in India. Kindly co-operate with us quietly until we finish our work, and then judge our work." Then only the British Government will have the opportunity to see what kind of a constitution this Assembly has framed. Then, and not till then, can they say that this Constituent Assembly has been just or unjust to a certain community or to the Muslims. We do expect that the Muslim community will come here and co-operate in framing the Constitution of India. There is no one who wishes their attendance here more than I do. I have some very, good friends of mine among the members of the Muslim League and I would like to see them come here and co-operate with this Assembly.

I now turn to another portion of this Resolution. Namely, paragraph 5 and before I do that, I must point out another thing. I envisage that in the autonomous Provinces there will be units in a Province which will be self governing and which will be connected with a Province. This will be necessary do doubt, in a Province like Assam.

Now, to turn to paragraph 5. In this paragraph we have provisions regarding justice and freedom,-social justice, justice in the economic and political, field, ensured to all. Political justice, no doubt, will mean that every community will get representation in the legislatures as well as in the administration of the country. Therefore, there need be no fear in the mind of any community that this Constituent Assembly will not look after their interests.

Then there is mention,there, of the freedom of thought, expression, belief, faith and worship. There was a propaganda made in this country by some parties that when there will be self-government in India, some religious faiths will not be allowed to propagate their faith. This is really false propaganda. This Resolution has declared that this will not be the case. There will be provision in the Constitution of India for the freedom of all religious faiths and for the propagation of those faiths according to their own desire. I am particularly glad that this para. speaks of association and action, subject to law and public morality. Public morality needs to be protected by Government and righteousness needs to be exalted. "Righteousness exalted a nation, but sin is a reproach to any people'.

I would like to speak on other points of this Resolution but, I don't think I need dwell on them at all. There are difficulties and hindrances before us. India is not an exception to difficulties of this nature; such difficulties confronted Canada, Australia and even the United States-when they were engaged in the work of framing their constitutions, and some parts of those countries did not come into the constitution at the beginning, although they came in afterwards. That very same thing may be repeated here in India. We shall have to go on framing the constitution and then when that is placed before the world and before this country, it will then and then only be the proper time for the people of England or the British Government to say that it is not a constitution according to their Declaration. Before that happens, they should not try to prejudge what this Constituent Assembly will do and thus cause obstruction to its work.

Mr. Chairman: The Hon'ble Member has exceeded his time.

The Hon'ble Rev. J. J. M. Nichols-Roy: I want to speak on only one more point, which has impressed me from the speech of Viscount Simon in the House of Lords. Viscount Simon has said that this Constituent Assembly, if it carries on the work of framing a constitution for India, will "threaten" India "with a Hindu Raj". I was very much surprised when I saw these words in a newspaper this morning. When I was in Western countries-in England and also America, I was impressed by the fact that some people in those countries had an idea that a Hindu is a man who is steeped in his caste system and who worships a cow. If this is the idea which Viscount Simon has when he refers to a 'Hindu Raj' i.e., that the people of India will be forced to perpetuate the caste system and to worship a cow, then he is entirely wrong. If the people who are assembled here,-whether they be Hindus, Muslims, or Christians, or whatever other religion they may profess--if they frame a constitution which will be a democratic constitution, which will do justice to everybody, why should that constitution be called a Hindu Raj? And if by 'Hindu' is meant people who live in India, surely we should have constitution for the people of India. That is exactly what we want: we want a constitution to be made by the people of India, but if some people in India do not want to come into the constitution just now, they will come afterwards and I envisage a time when they will all enter into this constitution and make India one country--one united country,-with a democratic form of government. I have faith that all these hindrances will be removed by prayer to God. Let us follow the example of Mahatma Gandhiji--our Bapuji and pray to God. Let us pray to God that all these hindrances may be removed from our way and that we may be able to carry on the work of framing a constitution which will be a blessing to our whole country.

Mr. R. R. Sidhwa (C. P. and Berar: General) : Mr. Chairman, Sir. the demand made by the Indian National Congress for framing a constitution for free India has now become an accomplished fact. We are here to frame a constitution for India and we are sure--whether our friends the Muslim Leaguers whom we welcome--speaker after speaker has stated that they miss their presence here--whether they come in or not, let me state, that with all the threats that have been now thrown at us by the Britishers during the last four or five days in the House of Commons and the House of Lords we shall proceed with our business and shall frame a constitution which they dare not refuse to implement. If they choose not to implement it when the occasion arises for them to do so, then we know how to implement it. Sir, if poverty as to be eradicated from India, to bring human happiness to this country and our constitution should be based an the socialist principle and such a constitution. I am confident when it is completed will be welcomed by all in this country and also outside this country. Much fetish has been made many a time about the minority question. Sir, all reasonable safeguards and all interests will be reasonably considered while framing this constitution but I do not understand why the question is brought to the forefront. In this very resolution, in paragraph 3, you will see how we have safeguarded, without anybody else's telling us, the interests of the minorities. Paragraph 4 relates to residuary powers, which we have accepted, not because the British Delegation want us to do so. This matter had been receiving the serious consideration of the Congress as you know, Sir, for a number of years, and to allay the fears of the Muslim Leaguers, we came to a decision in August 1942 that there should be residuary powers in the provinces. Many of us even to-day do not like the residuary powers to be vested in the provinces; we want a strong Central Government. If a free vote is taken in this House or in the country, they will oppose residuary powers being vested in the provinces. But simply because we want to allay the fears of the Muslim League, imaginary or real, we respect their feeling and accepted that residuary powers shall vest in the provinces. May I ask who came forward to safeguard the interests of the minorities? It is the Congress and the majority community that have said that the provinces shall have residuary powers. Whether leaguers are here or not, as Hon'ble Congressmen we will stick to that resolve. We do not want to go back, even if the Muslim League choose to remain absent upon that pledge; even though we do not like it, we shall implement it. That is one instance that I want to point out to the Britishers when they tell us how we are ourselves alert in safeguarding the interests of the minorities. But if you make unreasonable demands, it is certainly not possible for the majority community to be converted into a minority community. In this very paragraph there is a reference regarding redistribution of provinces. I am a firm believer in the redistribution of the present provinces. (*Hear, hear*). The present heterogeneous way in which, without any thought, or without any sense these provinces have been formed, requires immediate revision. Coming from the Province of Sind, as I do, I know ten years ago when we were separated from Bombay there was 22 crores of rupees of debt to the Government of India. We have wiped off that debt in 7 years--I do not want to enter into the details of the advantages that we have achieved by separation.

But what I would state is that this paragraph is so guardedly framed as to respect the feelings of the Mussalmans, so that the present provinces may be taken into consideration in going into Sections. If I were free I would suggest an amendment that the provinces should he redistributed straightaway and the boundary commission appointed immediately and then the constitution should be framed. But here also we want to keep to our promise to go into Sections within the framework of the Declaration of May 16. I point out these things in order to show to the world that without any interference or dictation or advice that has been given to us day in and day out in the House of Commons and in the House of Lords the mischievous statements and mischievous speeches that are being heard from the British to-day,--we do our legitimate duty. We cannot tolerate this kind of propaganda, which have falsely raised the question of minorities and raised the usual bogey of communal disturbances. When the

Delegation came they were in a different mood because there were political riots. The army, the navy and the air force were in revolt before they came. It was a political riot. Now, Sir, the Services in India feel that their days are numbered. They have started making capital of communal disturbances. Now that there is communal tension the British Cabinet want to go back upon what they stated when they came over here. The British Government have told us that, if we do not frame the constitution according to their interpreting clause 15, it shall not be forced upon the minority community. I come from the minority communities, it is a very small minority comparatively an insignificant number, but still that community, as the world knows, although we are a lakh of Parsis only--the Parsi community is known all over the whole world. As Babu Purushottam Das Tandon pointed out in seconding the Resolution, in the earlier days of this country's history, whosoever came in this country were welcome. 1300 years ago when we were driven away from Iran so the history say, and were wandering in the sea for three months, nobody gave us a shelter excepting the Jadhwa Rana of Sanjan in Gujarat. We are grateful to him. We have had no grievance against the Hindu community, so long as we have been here. The Parsis have taken prominent part in politics, social and industrial enterprises; amongst the founders of the Indian Congress that great man Dadabhoy Naoraji was one. (*Cheers*). In 1909 from the presidential address in Calcutta he coined the word "Swaraj". Parsis were the pioneers in the industry of shipbuilding and textiles. They were the first to introduce female education, so in charitable Organisation like hospitals irrespective of caste and creed. As recently as 30 years ago the Iron and Steel industry of India which is the second largest in the whole world was started by the Tata family. I do not say all this to glorify my community. All I want to show is that the majority community have never forgotten us; and on our part we have not lagged behind in taking part. We were forced by the British people to ask for separate electorates. We have refused. In the general electorate our community's interests are absolutely safe. I know of an instance where 30 years ago the mischief of separate representation was forced for the purpose of upholding British rule in this country. In Sind we had in the local bodies general representation without any communal representation. The then Commissioner of Sind called some of the Mussalmans to the Government House and told them secretly. "You give us a representation demanding separate electorates and I shall recommend to the Government of Bombay". Such representation was given and ever since there are separate electorates in our Sind Municipality. Thus, we have seen with our own eyes how mischief is played by the British by dividing one community against another. Parsis have been asked many a time to demand separate electorates. We have refused and replied, "We are quite safe with our majority community." See the goodness of the majority community in this very Assembly. We have all been all elected by their votes. May I say that those who opposed our cherished goal of achieving freedom were opposed to our goal for they have also been elected by the majority community. We do not consider anybody a foe although they may have opposed our cherished views or cherished demand, I mean the Anglo Indians, yet we have elected them. This is a Magnanimity which one ought to appreciate. What kind of safeguard do the Britishers want unless it is to create the usual old mischief? But let me tell the British Government, the time has come when this mischievous propaganda that is being carried on intentionally to-day to disturb the Constituent Assembly work cannot help them. We shall proceed with our work. We shall proceed in spite of the difficulties and hurdles and machinations that have been carried on in season and out of season, particularly at this juncture. Instead of Sir Stafford Cripps or the Secretary of State telling Mr. Jinnah "You got the interpretation of particular clause, as you want and you must stop the propaganda of Pakistan." The Cabinet Mission discussed, investigated and have come to the conclusion that Pakistan is neither feasible practicable nor advisable and therefore that question is buried once and for all. Yet now in the Parliament during the recent debate have you said a single word to Mr. Jinnah, to stop making speeches of pernicious, poisonous propaganda on Pakistan? Mr. Jinnah day in and day out, whenever he goes either to a press conference or in his statements, goes on reiterating the story of Pakistan. We do not know therefore what he wants notwithstanding the decision that the British Delegation has given in their Statement of May 16.

Unless the British Government want to go back upon it, they should tell Mr. Jinnah to stop this propaganda, poisoning the minds of the people which causes communal disturbances in this country. Instead of telling him so, they have the effrontery to give advice to the minority community. We cannot understand what is it that they really want and what is it that is working in their mind. Was it to frustrate our object of meeting here on 9th December that they invited the Muslim League to London? But, all honour to our leaders; they stuck to their decision to hold the first meeting of the Constituent Assembly on 9th December despite the fact that the Hon'ble Pandit Nehru had to go to England the previous week, assuring us that he would return on 9th December and participate in the opening ceremony of the Constituent Assembly. We have been thwarted in many ways. They want to stop our work. That is clear from the speeches delivered in the Parliament. A day ago we were told "You can go to the Federal Court, and take decision soon". Next day the Secretary of State says: "You may go to the Federal Court; but we were not bound by any decision that the Court takes". Have we not met here in very large numbers in this Assembly? We will go on with our work. We will face any difficulty that arises and try to solve it as we have done in the past. We have already prevented great harm being done to the major community. We have done that in the past and we shall do that again in order to bring about solidarity and drive away the British people from this country. We can do that.

But let me ask why is the Muslim League remaining out? They want the British people to tell us that even if we assemble here and frame a constitution, they would not implement it. Let them say so. We will draw up a constitution and place it before the bar of public opinion. We have in this world unbiased countries of unbiased mind who will judge our actions rightly, justly and truly. Only a jaundiced eye will see everything yellow and wrong. In the South African dispute the United Nations Organisation Delegates supported our just cause although Britishers opposed us. Our cause is just, we shall proceed with our work and prepare a Constitution which will be one to be proud of. *(Applause).*

Sri Biswanath Das (Orissa) : Sir, I support the Resolution on behalf of the delegates from Orissa. The Resolution moved by the Hon'ble Pandit Jawahar Lal Nehru is divided into four parts. The first part contains the main objective for which we have been fighting. The second part refers to the territorial jurisdiction of a free, independent republic of India including land, air and sea. The third is a declaration that we derive power and authority from the people, while the fourth is a very necessary and essential one, beginning with individual freedom in safeguards for tribal areas and the rest.

Sir, these are the necessary preliminaries to any constitution. It would be therefore unfair and undesirable if we do not face the problem at the start. There is no opposition to this Resolution, as the amendment moved by the Right Hon'ble Dr. M. R. Jayakar only seeks to adjourn its consideration for a month. The Hon'ble Member admits that he fully agrees with the subject matter of the Resolution. I fail to understand how a month's adjournment would make any difference.

Sir, a substantial contribution to the discussion was made by my friend, Dr. Ambedkar. He said he has no objection to the other paragraphs of the Resolution except paragraph 3 which has left out the word 'grouping'. Sir, in this connection I have to make an appeal to him. The objection to the omission of the word 'grouping' need not be taken seriously, because we have stated nothing in the Resolution against grouping. That very fact keeps the matter of grouping open, absolutely wide open. I would at this stage refer my friend, Dr. Ambedkar, to paragraph 19 (5) of the Cabinet Mission's Scheme wherein it has been specially stated that the Sections are to decide whether any group constitution shall be set up. Sir, we all know that the Working Committee of the Indian National Congress gave an alternative proposal regarding this. The Cabinet Mission criticised this proposal of the Working Committee and their comments are in para 14(2). Under, this scheme, if the Provinces wish to take part in any economic and administrative planning on a large scale, they would cede to the Centre optional subjects in addition to the compulsory ones mentioned by them. Having stated the position taken up by the Working Committee of the Indian National Congress, the Cabinet Mission offers its comments. The Mission say it would be very difficult to work a central executive and legislature in which some ministers who deal with compulsory subjects are responsible to the whole of India, while other ministers who deal with optional subjects would be responsible only to those provinces. Sir, with this objection the Cabinet Mission has ruled out the suggestion offered by the Working Committee. It will be very difficult, if not impossible, for small provinces to rise to their full stature if they do not have the guidance of the Centre. In this connection, I am not referring to Sections 'B' and 'C'. I am referring to Section 'A' where provinces like Orissa, 'Bihar, C.P., Madras and the rest are concerned. Sir, the Congress acceptance- of the division of India into linguistic provinces means the creation of a number of small provinces. A number of small provinces like Orissa, Kerala, Karnataka and the like will be put to the greatest handicap if they have to make their own plans, administrative and economic. Under these circumstances, it may be that there provinces will cede all the connected powers to the Centre. There is thereafter no reason why there should be any objection. These and many other such considerations may come up later on in Sections. If the door is open without being shut it is for such proposals which may be made later on. Under these circumstances, I believe my hon'ble friend. Dr. Ambedkar, will see that it was not with any, ulterior purpose that the word "Group" was omitted. It is done to afford opportunity to those provinces who come under Group 'A' I believe this explanation will satisfy Dr. Ambedkar and he will have no objection to the omission of the word "Group".

In the Resolution that has been moved, the Hon'ble the Mover has very frankly placed all his cards on the table. There is no hide and seek. All the points are placed so that the States and the Provinces will find it convenient to see at a glance. Sir, I see that, the Secretary of the States' Negotiating Committee has made a statement objecting to this Resolution. Their objections, are based on two points. The first is that they object to the term "independent sovereign republic". Secondly, their objection is centred round the fact that power derives from the people. They would not admit that power is derived from the people in the Indian States. Sir, paragraph 14 of the Cabinet Mission's Statement lays down that after the withdrawal of Britain, paramountcy disappears. In Great Britain, it has been recognised by Statutes that power emanates from the people. Parliament derives its power from the people of Britain and the same Parliament is exercising the power of paramountcy. That being the position, I do not see any reason why the State Rulers and their representatives should object to these expressions. Sir, after the withdrawal of Britain, there is no reason for anyone to think that India would think any other form of State than a republic. A republic does not necessarily mean the wiping off the States. That apprehension is unfounded. The Cabinet mission's Statement lays down that these are left to negotiations. Frankly, there is no reason for any apprehensions. They have appointed their Negotiating Committee and we have to appoint our Committee. The whole thing is thus left to negotiation.

Having said so much about the Resolution, I come to the question of certain statements made in the House of Commons. Sir, you know that a discussion on India has been thrust on the British Parliament by the Conservative Party. The leader of that party and a number of other important members of the party have contributed to the discussion, although both Labour and the Liberals stated that a discussion at this state was unfortunate. Sir, important members of the Conservative Party have stated that this is a Caste Hindu Constituent Assembly. I am very glad that the representatives of the minority communities in India have already given their reply to this unwarranted suggestion, and I hope that other representatives of minorities will by their speeches give a decent burial to this suggestion which has been manufactured for consumption at Home and for foreign consumption and propaganda. Sir, we have in this great Assembly not only the representatives of the Hindu population of the Hindu majority provinces but also the representatives of Hindu minorities in Muslim majority provinces. We have also the representatives of the Scheduled Castes, Christians, Sikhs, Parsis, Anglo-Indians, and of Tribal and partially-excluded areas. We have amongst us also the representatives of the great Muslim community barring the leaders of the Muslim League. Under these circumstances, it is most unfair and unfortunate to call--and more so to utilise the forum of the British Parliament for foreign propaganda--that this great Assembly, the representatives of the Great Indian nation, is a Caste Hindu institution. Much has been made in the speeches in Parliament on the score of minorities. I should like to know a country which has no minorities. Even England has got her own minorities. Are not the Welsh a minority. So also are the Scots. The Welsh people are of a different race and language and are distinctly separate from Britain. In the U.S.A. we have got linguistic and a racial minorities. So also in the U.S.S.R. Under these circumstances, it is unfair for the Conservative leaders in England to carry on propaganda against this country and the Constituent Assembly. It has been clearly seen that Mr. Jinnah and Mr. Churchill have become strange friends. My own surprise is that a statesman like Mr. Jinnah should have fallen into the trap of Conservatives and particularly that of Mr. Churchill. Everyone knows and the history reveals how the Conservative Party have made use of persions and institutions in every dependent country. That being the position, it is easy for Mr. Jinnah to realise how he and the League have been made use of by the British Conservatives. It remains therefore for us to see who utilises whom and to what extent. Let us hope that the Conservatives pay in the long run to find to their surprise that they and they alone pay in the long run and Mr. Jinnah comes out sane and sober.

The Hon'ble Pandit Hirday Nath Kunzru (United-Provinces: General.): Mr. Chairman, judging from some of the speeches delivered in this House, it seems that the amendment before the House has been treated by some speakers as having been inspired by a spirit of hostility. As I view it, however, its object is not to obstruct but to facilitate the work of this Assembly. Its purpose is to create an atmosphere which will enable us to realise rapidly and smoothly the great aim that we have set before ourselves. I think I shall not be far wrong in saying that there are men in every part of the House who sympathise with the amendment moved by Dr. Jayakar. This very fact should suffice to convince every unprejudiced man that the object of the amendment is not to place unnecessary obstacles in our way but to pave the way to certain success. I go further and say that if the newspaper reports are correct that the next session of the Assembly will take place towards the end of January, it shows that the House feels that it ought to postpone the decision of important questions for a while on psychological grounds. The object of such a move can only be to assure all those whose interests are affected by any decisions that we may take that they will have an opportunity of expressing their views before those decisions are taken. I congratulate all those who are responsible for this decision. It is wise on our part to make every section of the people in India realise that we do not want to impose our will on any party or community, but that such decisions as we may arrive at will be the result of joint discussion carried on with the sole object of enabling India to achieve her independence and protecting the just rights of the minorities and the backward classes. This amendment seeks to do nothing more than those who are responsible for the decision that I have already referred to. It only pleads for that comprehension for which Sir Radhakrishnan pleaded so eloquently in his stirring address and which he said was one of the dominant characteristics of the ancient civilization of India.

Sir, Dr. Syama Prasad Mookerjee asked us yesterday whether, if the view embodied in the amendment is accepted by the House, it will be able to do anything for a long while. Would it, for instance, be able to do anything till the representatives of the States were able to take part in the drafting of the Union Constitution? I do not personally think that this objection has any force. If the object on which stress is laid in the Resolution before the House is to be realised, it is obvious that it can be realised in a large measure only by the Union Constituent Assembly which will draw up the constitution of the union.

The resolution may, in some measure, give a lead to the Section Committees; but even Section Committees are hardly likely to meet before April or May next. In any case the principal body whose work will be guided by the directive embodied in this resolution will be the Union Constituent Assembly and it will meet only after the Section Committee have done their work. It is obvious, therefore, that a postponement of the discussion of Pandit Jawahar Lal

Nehru's resolution will not retard the work of the Assembly in the slightest measure. Since its main purpose is to guide the deliberations of the Union Constituent Assembly, no harm will be done if its discussion is postponed for a while so that we may enable all those sections whose interests are affected by the resolution to have an opportunity of expressing their views. Some of the States representatives have already protested against the immediate acceptance of the resolution by this Assembly. Their views may be right or wrong. We are not in the slightest degree concerned with this. What will have ample opportunity later of affirming the objectives outlined in the resolution. There need be no fear that postponement of the resolution would mean the torpedoing of the purposes embodied in it. Indeed, I feel that a slight delay will strengthen our hands in dealing with this important Subject.

Sir, there is another question of considerable importance which Dr. Syama Prasad Mookerjee put to us yesterday. He asked us whether we accepted the position that unless the Muslims agreed to participate in the work of the Assembly, nothing should be done. I feel that the real reason for the opposition to the amendment is this feeling voiced by Dr. Syama Prasad Mookerjee that any postponement of the resolution would bring the work of the Assembly to a standstill. Dr. Mookerjee rhetorically asked Dr. Jayakar why, holding the views that he does, he agreed at all to join the Constituent Assembly at this time. I think Sir, that it would have been most unwise to lend any Countenance to those who desired that the convocation of the Assembly should be indefinitely postponed. We have, I think, achieved a great deal by compelling the Viceroy to adhere to the, date originally fixed for convening the Assembly. Had the Assembly not been convened, its future would have depended on the discretion of the executive. That discretion has, however, now passed out of the hands of the Viceroy or even the British Government. It now rests with this House and with you, Sir, as to when its next session should take place, or how and by what stages its work should be brought to a completion. As regards, Sir, the question whether this Assembly can do anything in the absence of Muslims, my reply to it will be very brief. It has been supposed by a good many speakers that if we admit the right of the Muslim League and the Indian States to participate in the discussion of the resolution before us, we shall be giving them absolute power to block the work of the Assembly. I think this shows a misapprehension of the existing position. Judging from the speeches delivered in the House of Commons and the House of Lords by the spokesmen of the British Government all that the British Government desire is that there should be agreement with regard to the procedure to be followed regarding the formation of Provincial Constitution and groups. The interpretation of para. 19 of the Statement of May 16 is the only point at issue. I understand that the matter will soon be referred to the Federal Court. I hope therefore that the way will soon be open for the participation of the Muslim League, in the Constituent Assembly. If, however, this is not the only ground on which the League is abstaining from joining the Assembly, and if even after agreement has been arrived at with regard to the procedure to be followed by Section Committees, the League representatives refuse to come here, I do not think that they will be entitled to ask that the proceedings of this Assembly should be adjourned sine die.

The last para of the Statement issued by the Cabinet on 6th December has created a good deal of apprehension. In the present political situation it is obvious that it might be taken advantage of by those in whose interest it might be to prevent this Assembly from functioning properly. But on the whole it seems to me that the speeches delivered in the House of Commons and House of Lords disclose no such sinister intention on the part, of the Labour Government. If the Muslims insisted on any condition not contained in the Statement of May 16th. I agree with Sardar Vallabhbhai Patel that we should refuse to agree to it. We cannot allow ourselves to be frustrated by the intransigence of any party. We are prepared to take into account all its reasonable demands but we cannot agree, in any circumstances, to allow it to decide the fate of this Assembly. Should such a situation unfortunately present itself, we shall be entitled to remind the British Government of Mr. Attlee's promise that the minorities will not be allowed to veto the progress of the country. The Secretary of State for India has himself reiterated this pledge. We need therefore have no fear that if the Muslim League representatives referred to attend the Assembly even after agreement had been arrived at with regard to the interpretation of paragraph 19 of the Statement of May 16th, that their intransigence will be allowed to hold up the work of the Assembly. Sir, for these reasons, I give my hearty support to the amendment that is before us. My support, however, should not be misunderstood as implying that I am in favour of the clause in the Statement of May 16th which relates to grouping. I personally see no reason why any province should be compelled to enter a group. I see in particular no justification whatsoever for compelling Assam to form a common Government with Bengal- for any purpose. What has happened in Noakhali and which has led to the deplorable events that recently occurred in Bihar has justifiably increased the apprehensions of the people of Assam. But grouping as the Cabinet Mission have here been pointing out almost since the very day on which their statement was issued, is an essential feature of their plan. Without agreement on this point, they assert, the Assembly will not enjoy that moral authority which a gathering of this kind ought to. This is not satisfactory from our point of view but we shall be able to deal with the Position of the Provinces that are compelled against their wish to become members of a group later on when the reports of the Section Committees are before us. I repeat, Sir, with all the strength that I can command that the insistence of the British Government on driving unwilling Provinces into groups is normally speaking completely unjustified. But as I have already said before, we shall have time to consider the Constitution as it emerges from the Section Committees and the Union Constituent Assembly later on.

For the time being Sir, we are only concerned with the question whether the discussion of this Resolution should be proceeded with immediately and whether any harm would be done if it were postponed. I have shown that no harm whatsoever will be done if we waited till the representatives, of the Muslim League and the States are able to participate in the discussion of this important question. Even if we pass this Resolution now, shall we morally be able to say 'no' to the representatives of these interests, should they ask us later on that the fundamental questions to whole the Assembly might assent by passing this Resolution should be re-considered. I am sure, Sir, that should such a position arise we shall not find it in our hearts to refuse the request, of the Muslim League representatives and the Indian States.

One word more, Sir, and I have done. There are plenty of difficulties in our way, both in India and in England. There are still men like Lord Linlithgow who think that British authority can be reasserted in India. They are suffering from a dangerous delusion. If England allows itself to be guided by such men, it will be confronted with a far more serious position than any that she has been faced with during the last 25 years. It may for a while and only for a while, be able to keep India down by force but it will not be able to govern it even for a day. I am sure that the Labour Government realizes this and has no intention of accepting the advice given to, it by men like Mr. Churchill and Lord Linlithgow or even by men like Lord Simon who are Conservatives in the guise of Liberals. Never the less, Sir, in view of the difficulties, both internal and external, which we have to overcome it will be wise on our part to act in such a way as to add to the moral authority of this Assembly. We have plenty of friends not merely in this country but also in England. Let us proceed in such a way as to strengthen their hands. Let us not think of what we are entitled to do under the terms of the Statement of May 16th. Rather let us think of what it is in our interest to do on this important occasion. We may consider ourselves completely justified in passing Pandit Jawahar Lal Nehru's Resolution but of what use will be for us to exercise our rights if they only add to that discontent and unrest which it is our desire to allay? I hope, therefore, Sir, that we shall act in such a way that India may, with the assent of all sections of the people--and if that unfortunately is not forthcoming--with the assent of all those who accept the right of the country to move forward, be able to march rapidly towards the aim that we have set before ourselves, *viz.*, that of freedom and unity *(Cheers).*

The Hon'ble Diwan Bahadur Sir N. Gopalagwami Ayyangar (Madras: General): Mr. President, Sir, I have come forward to support the Resolution and I would add that I have come forward to urge with all the strength in my power that this Resolution be pushed to its conclusion at these sittings (*Cheers*). Sir, my respect for Dr. Jayakar and Pandit Kunzru is very great I have considered with very great care all that they have said in support of this amendment proposing an adjournment of this discussion until the representatives of the Muslim League and the representatives of the Indian states have joined us. There is only one compliment I have to make against this motion for adjournment. I consider, Sir, that it lacks imagination. I say so without disrespect to my friends. Say it lacks imagination because it forgets that we have just launched ourselves on a very big task and it is necessary that we should impress our country and the world that we mean business.

Now, Sir, look at this Resolution. It is a Resolution which sets out the objectives that we have to place before. ourselves in framing our constitution. Is such Resolution to be postponed till we reach the last stage of our work in this Assembly? Is it not a Resolution which must preface everything that we propose to do in this Assembly? That, I think, Sir, is a complete answer to this motion for adjournment. The Mover and supporters of the amendment have urged reasons for postponing the consideration of this Resolution, but in doing, so they have themselves admitted that there is nothing in this Resolution to which either of them is prepared to take exception. I appeal to them, Sir, that if they believe in this Resolution they must pass it at this series of sittings and before we commence real business and not postpone it till we have practically completed all our business. I know that Dr. Jayakar, towards the close of this speech, suggested that the consideration of this Resolution might be postponed only for about a month or so by the end of which he hoped that the representatives of the Muslim League would have joined us. But what about the representatives of the Indian States? For no fault of this Constituent Assembly, the representatives of the Indian States have not come into this Assembly at the start, as I consider it is their right to do. But the procedure has been so regulated that they come in only at the final sitting of this Constituent Assembly. Are we to wait for them, and after all, the most vocal objection to this Resolution that has come from outside this House has come from people who represent the Indian States.

Now, taking the representatives of the Muslim League themselves, are we doing any injustice to them in proceeding with this Resolution? Their main objection to what we are doing today is the different interpretation they have put upon the clause relating today grouping. We are not discussing grouping. We are discussing this Resolution which lays down the objectives of our work--a matter in respect of which they have a perfect right to come and participate in this debate. What prevents them from coming and taking their seats here and debating with us here the other questions that we are taking up as a preliminary to the more important work that will follow? Their main objection will arise only when this Assembly, towards the end of the first session, proposes to split into Sections, and as I shall show in a minute, Sir, it is quite possible for them to arise all the issues that they want to raise at that stage. *(Hear, hear.)*

Now, Sir, the question as regards grouping has entered a new phase with the Statement made by His Majesty's Government on the 6th of this month, but I would not go into the merits of what they have said in that Statement. The only thing I would say is that it is a most astonishing Statement to be made by so august a body as His Majesty's Government at this stage of the controversy. Be that as it may, I do not intend to go into its merits. Now, let us see what flows from that Statement. His Majesty's Government have said that their interpretation of the Cabinet Mission Plan and the interpretation of the Muslim League agree, but they say: "Since you have agreed to refer the matter to the Federal Court, or since you say that the Constituent Assembly will do so, you may do so." And then, we have the statement of Lord Pethick-Lawrence made only. Yesterday, clinching the matter by saying: "His Majesty's Government would not budge an inch from their position even if you appeal to the Federal Court." Now, Sir, what is the position? If we go to the Federal Court and the Federal Court gives a decision in favour of the view taken by the Congress, the Muslim League has categorically stated that it would not accept it. His Majesty's Government say they would not budge an inch from their own view of the matter. Of course it is not within the jurisdiction of His Majesty's Government, in my opinion, to say whether they would accept the Federal Court's view or whether they would not, because it is entirely out of their hands. The Constituent Assembly makes the reference to the Federal Court and it is for the Constituent Assembly to say before it makes the reference that it will abide by the decision of the Federal Court. What will happen then? Assuming that the Federal Court's decision is in favour of the view taken by His Majesty's Government, what will be the position of those who have taken a contrary view? The only thing they can do in view of all the commitments they have-made to individual Provinces and communities, is to move this Assembly for a modification of paragraph 19, which would more clearly express their view. The main difficulty is the method of voting in the Sections as the Secretary of States said in the House of Lords. If you leave paragraph 19 (v) as it is, it is certainly an arguable point that in the absence of any modification of the wording of that clause the voting must be by individuals and a simple majority would decide the question. It is certainly an arguable point. If we want that voting should be by provinces, it is necessary that we should propose a modification of that clause, and that modification can, I think, be done by this Assembly on a motion properly made. Now, are we going to do that? I suggest that, in view of what has come from His Majesty's Government both in the Statement of December the 6th and in the speeches made in the two Houses of Parliament--I suggest that, in the new circumstances that have been created, the wiser thing to do is not to send a reference to the Federal Court but to take the other course which I have indicated, namely, that you bring up a resolution in this Constituent Assembly proposing a modification of clause 19 (v) which will provide that the method of voting should be by provinces, in the Sections so far as the grouping matter is concerned.

Mr. Dhirendra Nath Datta: Please save us from such prayerful resolutions

The Hon'ble Diwan Bahadur Sir N. Gopalaswami Ayyangar: The Resolution I am suggesting is to be moved in this Assembly; we are to take a decision on it. It is quite possible--and I think it would be an arguable position for the Muslim League representatives to come here and raise the question that such a modification involves a major communal issue. If you decide, Sir, it is a major communal issue, or, if after obtaining the advice of the Federal Court, you decide that it involves a major communal issue, it will be open to the Muslim League to contend that you cannot carry out that modification without a majority of each of the major communities. Why, I ask should we not take that step? We shall take that resolution into consideration at an adjourned sitting of this Assembly, even those who have not presented their credentials and signed the Register the members of the Muslim League-that we shall consider and move a resolution of that sort. That must be a sufficient indication to them to come and occupy their places in this Assembly and defeat what they consider to be an unconscionable suggestion from the other side. That is one point I wish to suggest to those who may have to take a decision in this matter. Going to the Federal Court is absolutely useless, and so far as I can see, it will solve none of our troubles.

Then, on this main issue of adjournment, I do not propose to deal with the point of law that my Hon'ble Friend, Dr. Jayakar, took. I should like only to refer to some of the other criticisms that have been received. Before proceeding to that I should only like to suggest that, in considering points of interpretation of the document, namely, the Statement of May 16, let us not forget that we are not working under a provincial enactment or as members of a provincial legislature, of the Central Legislature working under a Statute of Parliament. We are in a Constituent Assembly, and whatever is not said in the document under which we have gathered here, is not prohibited to us. We have the residuary powers in full for accomplishing the task which we have undertaken.. (*Hear, hear*). That being so, what I would suggest is that we should not rivet our eyes to particular clauses in this document and say, "this is not said in this particular clause, that is not said in the other clause, and therefore we cannot do anything which is not said in those clauses." I think whatever is not said but is necessary for the accomplishment of our task, is within our powers to regulate.

I will leave the rest of the objections to the consideration of this Resolution on the point of law to people who can deal with legal matters more efficiently than I can. I desire in the few minutes that still remain to me to deal only with the objections that have been raised on be-half of the States. There are mainly three objections that, on behalf of the Chamber of Princes, have been made public. The first is that the Resolution is objectionable because it is proposed lo be considered and passed in the absence of the States representatives. Well, Sir, that I have dealt with already. The second is to the use of the ,words "Independent Sovereign Republic". I do not propose to occupy your time in dealing with that matter as it has beendealt with already by other speakers. I should like to deal a little more fully with the third objection to clause (4) of this Resolution. This clause says :

> "wherein all power and authority of the Sovereign Independent India, its constituent parts and organs of Government, are derived from the people."

Exception has been taken to this in a statement issued by a distinguished Indian who has a right, I think, to speak on behalf of the Rulers of Indian States, in any case, of some of them. He says:

> "Such a doctrine may or may not be incontestable, but there is no point in taking it for granted in Indian India, especially when we remember that in legal theory this doctrine is only imperfectly applicable even in England."

I do not propose to undertake an examination of this doctrine in relation to legal theory. I would rather confine myself to its constitutional aspects. It is definitely incontestable that in spite of a hereditary monarch as head of the State from whom, in the forms of law, all authority is supposed to flow, the substance of real power and authority in England is derived from the people.

Now what is the case in Indian States? I would only quote from two documents which have the authority of committees established in the two most important Indian States. The first is from Mysore and is from a document which was published nearly a quarter of a century ago. This is what is said in that Reforms Report:

> "In such a polity, the head of the Sate, whether a hereditary ruler or an elected President, exercises, as representing the people's sovereignty, a double prerogative, namely, one, in the sphere of legislation, the prerogative of ratification including the veto, and secondly, in the sphere of executive government, the prerogative of creating and uncreating the organ of Government, namely, the Ministry. And both these prerogatives are exercised much more fully, really and substantially than by the constitutional head of a limited Monarchy under responsible government."

Then, here is an extract from a Report of a Committee on Reforms in Hyderabad:

> "The British Constitution has grown out of England's long history and is, the result of centuries of strenuous struggle between its King and its Parliament. There, the two-part system, sustained by the spirit of compromise and the conception of the sovereignty of the people, has struck deep roots into the soil. The peculiarity, on the other hand, of the Indian States is this: The Head of the State represents the people directly in his own person and, his connection with them, therefore, is more natural and binding than that of any passing elected representatives. He is both the supreme head of the State and the embodiment of the people's sovereignty. Hence it is that, in such a polity the head of the State not merely

retains the power to confirm or veto any piece of legislation, but also enjoys a special prerogative to make and unmake his executive or change the machinery of Government through which he meets the growing needs of his people."

Those two views of where the sovereignty rests in Indian States tally. The hereditary ruler is supposed to embody in his person the sovereignty of the people, but, in actual fact, he has exercised the sovereign powers in disregard of the people's interest in several cases.

The Cabinet Mission stated that, on the conclusion of the labours of the Constituent Assembly and on the framing of a constitution for India. His Majesty's Government will recommend to Parliament, such action as may be necessary for the cession of sovereignty to the Indian people. Even under existing conditions, the Provinces of British India and Indian States have a common Centre which administers such subjects as, under any unitary or federal constitution for India as a whole, must stand ceded to the Centre. Broadly speaking, sovereign powers over India as a whole now vest in His Majesty subject to the provisions of the Government of Indian Act, 1935. Those powers are exercisable both over British India and over Indian States, though the quantum of those powers and the manner of their exercise differ in the two cases. The act of ceding sovereignty, that is transfer of the power which Britain now wields in this country will, therefore, relate to the whole of India. When the Cabinet Mission therefore spoke of cession to the people of India, they must be held to have included the people of Indian States also. (*Hear, hear.*) The Mission's statement, therefore, that when British power is withdrawn, the States become independent, should be construed to mean that such sovereignty as His Majesty in fact exercises over Indian States will stand ceded back to the people of those States.

In this connection it is significant that paragraph 5 of the Memorandum on States, Treaties and Paramountcy Rights issued on 20th May, 1946, which deals with the extinction of paramountcy, speaks throughout only of the Indian States and not merely of their rulers. The rulers of States have, however, up to date, both claimed and exercised full internal sovereignty in their States subject only to the politically inescapable limits set by the paramountcy of the British Crown. The paramountcy of the British Crown really means suzerainty, in other words, the ultimate sovereignty of the British Crown in certain matters. In the assertion of this claim, the rulers have throughout ignored the idea of any sovereign powers vested in the people of the States. They have claimed to exercise both the ordinary legislative power and the constituent power within the sphere in which they claim sovereignty, and any constitutional powers which the people of certain States exercise through their representatives have been a matter of gift from the rulers to them.

Now, this feature of the relations between the ruler and the people in the States is absolutely inconsistent with the idea underlying the framing of a constitution by a Constituent Assembly consisting of representatives of the people in whom the constituent power is deemed to vest. When the cession of sovereignty from His Majesty to the Indian people takes place, the people of the States will, together with the people of what is now British India, be entitled to exercise sovereign powers in respect of the subjects assigned to an All-India Union Government. The exercise of the sovereign powers as regards the subjects vested in Provinces will be in the hands of the representatives of the

Provinces in the case of the subjects retained by them and, by the people in the groups, if any, to whom any provincial subjects might have been assigned by the Provinces. This is fairly clear.

The Resolution that is now under consideration puts the Indian States on the same level in regard to the subjects not ceded by them to the Union Centre as the Provinces are, in respect of provincial subjects; that is to say, it asserts that all the power and authority of Indian States as constituent parts of the sovereign independent India are derived as such from the people of the States as similar power and authority are in provinces derived from the people of the provinces. It would be extremely anomalous if the constituent power in Indian States is vested in respect of union subjects in the people of the States, and, in respect to Unit subjects, in the rulers of the States. In the process of building up a new federal structure for India through this Constituent Assembly, it will be found necessary that written constitutions of such States as already have them deserve to be overhauled as in the case of Provinces, and that written constitutions should be newly framed for States which do not have them now. It is possible to defer this work and leave it over for subsequent accomplishment provision being made in the Union Constitution prescribing the I steps to be taken and the procedure to be followed in this connection,

If the representatives of the States in the Constituent Assembly so, desire, the Union Constitution should guarantee the territorial integrity of the States as they exist today, subject to any modifications of boundaries which might be effected later on according to prescribed procedure and with the consent of the people of the States and other areas affected. The constitution of a State settled by the people of the State in association with the ruler; might make provision for hereditary succession to the headship of the State in the dynasty which is in possession now of the State, and the Union Constitution might contain a provision that, if the State's Constitution does say so, it will not be interfered with, though a stipulation would be necessary that, in the overhaul of an existing written constitution or in the framing of a new one in any particular State, the hereditary head of it should be, or in the quickest, possible time in the future, should become, a constitutional monarch presiding over at executive responsible to a legislature, the members of which are democratically elected.

Now, Sir, I wish to refer to only one point in order to stress the need for the provision in clause 4 of the Resolution. The existing written constitutions of individual States almost invariably contain a section that all rig authority and jurisdiction that appertain or are incidental to the government of the territories included in the States are vested in and exercisable by the ruler, subject to the provisions of the constitution which is granted by the fiat of the Ruler himself. With a view to emphasising the unlimited nature of the sovereign powers claimed by the rulers, such constitutions contain also another provision which enacts that, notwithstanding anything contained in the Constitution Act or in any other Act, all powers, legislative, executive and judicial, are, and have always been, inherent and possessed and retained by the Ruler and that nothing contained in any such Act shall affect or be deemed to affect the right and prerogative of the ruler to make laws and issue proclamations, orders and ordinances by virtue of his inherent authority. Such provisions in States constitutions are remnants of an all-pervasive autocracy and deserve to be swept away and replaced by a provision which declares that all powers of

Government, legislative, executive and judicial, should be deemed to be derived from the people and exercised by such organs of State including the hereditary ruler as may be designated in the written constitution and to the extent authorised by that constitution.

I am afraid, Sir, my time is over. I do not wish to take up any more time, but I hope I have tried to show how necessary it is that this inclusion of the States in clause 4 should remain in this Resolution. As a matter of fact, unless we get into this Assembly the representatives of the people of the States, they cannot really participate in the work of the Assembly and help in the making of a constitution for their own States as well as in the making of a Union Constitution.

Mr. Chairman: It is already quarter past one. The House is adjourned till Even of the Clock tomorrow morning.

The Assembly then adjourned till Eleven of the Clock on Thursday, the 19th December, 1946.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS)- VOLUME I

Thursday, the 19th December 1946

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eleven of the Clock, Mr. Chairman (The Honourable Dr. Rajendra Prasad) in the Chair.

PROGRAMME OF BUSINESS

Mr. Chairman: Yesterday I told the Members that I would be able to give some decision with regard to the programme of the work of the Assembly this morning. I have been considering that matter and some Members have seen me also in that connection. The work we have to get through is this. We have this Resolution, which we are considering. Then we have got the rules to pass. Then there is another question with regard to the reference of the, disputed point of interpretation to the Federal Court, with regard to which the Assembly may have to express some opinion and lastly, we must have to elect at any rate some of the Committees which will be provided for in the rules. So, these are the four items that we have to finish before we go home after this session.

The Rules have been practically considered and the final shape in being given to them. I propose to place them before the Rules Committee tomorrow morning and if the rules are finally passed by the Rules Committee, they will be Presented to this House day after tomorrow, i.e., Saturday. If the Members so desire, we can take up the question of referring the point of interpretation to the Federal Court on Saturday and thereafter we may take up the rules. That will take, I think, about two days or so. I think it all depends on the number of amendments which the Rules may evoke. Thereafter we may give a day for the appointment of the Committees. Now in this way if we work on Saturday, also on Sunday and on Monday, we might, possibly finish all this work if Members have some sort of self-denying ordinance and all who speak little and take as little time as possible. If we cannot complete by Monday, then in that case we shall have to go on after Christmas, that is to say, we shall have to take some days in this month after the 25th. I find that 24th, 25th and 26th are public holidays and we cannot sit on those three days. So we can take up the discussion again on the 27th and 28th. 29th is a Sunday and 30th again is a public holiday for Sikhs in connection with the birthday Anniversary of Guru Govind Singh. So unless the Members are prepared to sit on a Sunday and to work harder on Saturday and on Monday, there is no chance of finishing the work before Christmas and I do not like to go over to the next month, i.e., the next year. I want to complete the work within this month. I would therefore suggest that we take, up this programme. We start discussing the rules say in the afternoon of Saturday and if Christian Members, particularly have no objection, we should every men sit on Sunday and then on Monday we may complete the whole thing. That would be rushing the business to some extent, if you want to avoid sitting after the 25th otherwise we shall have to sit after the 25th and go on until we finish it, in this matter this is the difficulty which I have placed before the Members and I should like to know which they would prefer. Personally, I would like to finish it by Monday, if possible.

Many Hon'ble Members: This is much better.

Mr. Chairman: Let us hope we finish on Monday. First of all, to work during the Christmas week would be very hard on Christians. I hope we will be able to sit on Saturday, Sunday and Monday and finish it. Otherwise we shall have to sit during Christmas week.

Mr. F. R. Anthony (Bengal: General): It is quite impossible. I am personally prepared to sit as long as the Members are ready to sit but not after the 26th.

The Hon'ble Pandit Jawahar Lal Nehru (United Provinces: General): I want to bring to your notice a fact that may interest the House, that the United Nations General Assembly did sit even on Sundays, both the Committees and the General Assembly, in order to expedite its work.

Mr. Chairman: Today we shall sit only up to 1 O'clock, so as to give us time to complete the work in the Rules Committee and tomorrow we do not sit at all. We sit again on Saturday morning. I hope I shall be able to place the Rules in the hands of Members by Friday evening, but in any case they will be available on Saturday morning and in the morning session we might take up the question of reference to the Federal Court and in the afternoon you might commence discussing the Rules. That is the programme now fixed.

Mr. F. R. Anthony: Mr. Chairman, I am afraid the Christian members feel very strongly on this matter. We are prepared to work the whole of Sunday and we will work on Monday. I would only ask that we should not meet on the 27th and 28th, between Christmas and the New Year. It will be quite impossible for the Christian members to attend then. That is the only time in the year when they insist on being with their families. This is very important. We are prepared to work all night and the whole of Sunday. I would ask you not to reconvene the Assembly between the 27th and the 1st.

Mr. Chairman: I hope we shall be able to finish by Monday evening.

Mr. F. R. Anthony: Let us have night sessions.

Mr. Chairman: We shall have it if necessary.

Mr. Kiran Shankar Roy (Bengal: General): Mr. Chairman, I think that the Members should have copies of the Rules at least two or three days before general discussion so that they may consider the Rules. If the Committee has taken so much time to draft the Rules, surely, it would be unfair to rush through the rules in this house in this fashion. It will be very optimistic to think that we would be able to pass the Rules in two or three days when we have not been able to pass this Resolution in three or four days. I think the passing of the Rules would take at least a week. I therefore suggest that you should give us sufficient time to consider the Rules. It is no use thinking that we shall be able to finish the Rules in two days.

Mr. Chairman: That upsets the whole programme.

The Hon'ble Mr. B. G. Kher (Bombay: General): May I be permitted to say that the drafting of the Rules is more or less technical matter for lawyers and 15 men with long experience of drafting rules, with a competent secretariat, have framed the Rules. Are we going to quarrel and debate about a word here and a word there? I would submit that you should fix a time and say that by 5 o'clock on Monday all those who have important amendments will be allowed to move their amendments and vote on them, and by 5 o'clock, the guillotine should be applied, and by 7 o'clock all the Rules may be passed, and we should get on with the other business. Another alternative, Sir, is to sit throughout the night. I would suggest that we should sit up to 11 P.M. every day and finish the rules. I do make a strong plea not only on behalf of the Christians, but there are so many other people who, have come long distances to attend this session, having made engagements on the assumption that the work will be finished by the 23rd and that they will not be required to sit during Christmas. I do not want to mention names. We are all having engagements of equal importance. But there are some people who find it extremely hard, having come to India after a long time, to sit here during Christmas when they would like to be with their families. We can sit long hours by night and by day and finish it before Monday afternoon.

Mr. Chairman : This seems to be general sense of the House.

Dr. Syama Prasad Mookherjee (Bengal: General): I think we should not meet during the Christmas week. We have very important engagements during the Christmas week which were fixed weeks, months ago and it is not fair that we should be compelled to upset our programme. If we can finish the work, well and good. Otherwise, we must find some day in January. The passing of the Rules will not be quite so easy a matter. They must be circulated to the members who would like to have a reasonable time to study and also propose amendments. It will be left to your discretion whether the time so given is sufficient to enable members to propose amendments and discuss them. If we cannot finish by Monday or Tuesday, we should meet some time in January.

Mr. Chairman: We shall make an attempt to finish the consideration of the Rules and other business also by Monday. If we fail, we shall then think at what other time we will sit.

In the Rules Committee, we have 15 Members representing various groups and shades of opinion and we have been taking time because we have been trying to arrive at conclusions which will be acceptable to all, and that is why the Rules Committee has been taking so much time. As regards, drafting, that is left in the hands of persons who are experts in that work and I suppose there will not be as much difficulty as Mr. Kiran Shankar Roy anticipates. If any discussion arises on a question principle, I shall give time for discussion; but for mere words, I will except members to leave that matter to the Committee which has spent a lot of time over it.

Now, we shall proceed with the Resolution. Mr. Somnath Lahiri.

RESOLUTION RE. AIMS AND OBJECTS-contd.

Mr. Somnath Lahiri (Bengal: General) : Mr. Chairman, The Right Hon'ble Dr. Jayakar, grown grey in the service of interpreting British Imperialist laws, has probably interpreted the limitations of the Cabinet Mission Plan correctly. The limitations, as he says, are probably correct. But we need not be frightened by them. Dr. Jayakar wants to wait for their Highnesses, the Princes, to come in and have a hand in distorting our future freedom. We need not have that. We do not want the Princes, the autocratic Princes, to come in and have a hand in distorting our future. Of course, so far as the Muslim League is concerned, that is on a different footing altogether. But I am not sorry that the Muslim League is not here; I am only sorry that the Congress also has not gone out of the British Plan and left the British Plan to itself, to stew in its own juice. Agreement with the Muslim League for gaining independence of our country and for drafting a really free constitution of our country, is essential. But if you think that by waiting for the Muslim League, or by the Congress remaining here and the Muslim League remaining outside, you will be able to have a properly framed constitution, I am afraid you are sadly mistaken and you are counting without your host, the British imperialist, who have made this Plan. You have seen the example of the Interim Government. Both the League and the Congress are there, but that has not solved the problem of our quarrels and internecine warfare in this country. It has happened there just as the British wanted it to happen, that is, they wanted the parties to fight against each other with the prospect of the British giving support in one party's favour against the other with the result that in between these quarrels the British become more firmly entrenched.

Well, the Interim Government has not brought peace nor freedom to our country. Similarly, whether the Congress is inside this British-made. Constituent Assembly and the Muslim League is out or whether the Congress and the Muslim League are both inside this British-made Constituent Assembly and working the British plans as the British should like it to be worked out, then also the same thing will follow, viz., the quarrelling that is there to-day in the country, will only get more intensified inside this Assembly also. That is all and nothing else. Therefore, Sir, I am not sorry that the League is not here but I am only sorry that the Congress also has not gone out leaving the plan to stew in its own juice.

Well, Sir, I must congratulate Pandit Nehru for the fine expression he gave to the spirit of the Indian people when he said that no imposition from the British will be accepted by the Indian people. Imposition would be resented and objected to, he said and he added that if need be we will walk the valley of struggle. That is very good, Sir--bold word, noble words. But the point is to see when and how are you going to apply that challenge. Well, Sir, the point is that the imposition is here right now. Not only has the British Plan made any future Constitution-provided you are able to evolve out something which I--very much doubt--even if you were able to evolve out something, not only is it dependent on a treaty satisfactory to the Britisher but it suggests that for every little difference you will have to run to the Federal Court or dance attendance there in England or to call on Attlee or someone else. Not only is it a fact that this Constituent Assembly, whatever plans we may be hatching, we, are under the shadow of British guns, British Army, their economic and financial stranglehold which means that the final power is still in the British hands and the question of power has not yet been finally decided, which means the future is not yet completely in our hands. Not only that, but the statements made by Attlee and others recently, have made it clear that if need be, they will even threaten you with division entirely. This means, Sir, there is no freedom in this country. As Sardar Vallabhbhai Patel put it some days ago, we have freedom only to flight among ourselves. That is the only freedom we have got and the only other freedom that I noticed is on the order paper of the day where Pandit Nehru is the Hon'ble Pandit Nehru and I suppose Pandit Nehru has not even the freedom to drop that honour. Therefore I say it is no use your thinking that from within the limitations of this British Plan, one part of which is the Interim Government and the other part of which is the Constitution-making procedure, I don't think you will be able to get any independence out of it. The insolence of the Britishers, as you have recently seen, and to which expression has been given by various Members of the House, why is this insolence so growing, it is for the patriots to see. The insolence is growing because they find that the great parties of our country, the Congress and the Muslim League, go on thinking that in getting our parties, may party's claim as against the other party, I will be able to get the help of the British. They want you to go on quarrelling with the only result, that fatricidal fights follow, as it has happened to-day throughout the country, as it is happening everyday before your very eyes. Our strength against the British gets decimated and nothing of freedom comes our way. Only we kill each other as if we are enemies instead of being brothers and Mr. Alexander gets the cheek to say in this month of 1946 in the House of Commons that the use of the Special powers of the Viceroy has not been changed and whatever power is available there, it is there to back it. Therefore, our humble suggestion is that it is not a question of getting something by working out this Plan but to declare independence here and now and call upon the Interim Government, call upon the people of India to stop fratricidal warfare and look out against its enemy, which still has the whip hand, the British Imperialism--and go together to fight it and then resolve our claims afterwards when we will be free. As a matter of fact, Sir, we have found in the long history of our struggle for the freedom, of the country that, when we are faced to the British, even though we might disagree very much among ourselves, quarrels are generally resolved, no obstacles are put to the man who is fighting the British. It is a way out of the present fratricidal impasse. Mr. Chairman, Sir, and the Mover of this Resolution, I would address him also, that Doctor Jayakar, the fine logician and a cruel logical that he is, has placed before you the only alternatives when he has told you that either we have to work through the limitations of the British Plan or you have to go forward to the seizure of power, revolutionary seizure of power. These are the alternatives and good old constitutional liberal that he is, he has rightly grasped it and playing upon the fear of revolution that some of you might have got, he has asked you to follow his constitutional path and told you 'I know Congress also is not going to revolutionary seize power'. Yes, Sir, these are the only alternatives before Indian people today and before this Constituent Assembly today, that either you try to follow the British Plan, put one party's claim against the other and get sunk into the morass of fratricidal warfare everyday with the result that finally the British may be as strong over you as before, or you go forward to the revolutionary seizure of power. I say, you go forward first of all to drive out the British, to drive the British Viceroy, to drive out their troops, etc., which are holding their guns even now over our heads.

Sri Raj Krushna Bose (Orissa: General): We have a right to know whether the speaker is supporting the Resolution or opposing it. I am afraid all that he is saying at this time is not relevant.

Mr. Somnath Lahiri: That is for the Chairman to decide. I hope I represent a political party which is the third largest in the country....(*Laughter from Back Benches*). Mr. Chairman, I hope you will let me continue without interruption. Our party got 7 lakhs of votes....(*Interruption*) . ... in the last General Election. It is true that it is not a big party but it is the third largest party surely (*Renewed laughter*).

Mr. Chairman: I hope the House will allow the Speaker to proceed. (To Mr. Lahiri) But I would remind you of the time-limit and also of the fact that you should confine yourself to the subject in question.

Mr. Somnath Lahiri: Yes, Sir. I am coming to the point. I hope you will allow me, Sir, the same facilities as you allowed to Dr. Ambedkar or other party leaders. (*Laughter from Back Benches*).

Mr. Chairman: It is true that I did show some leniency to them, but the House was in a mood to listen to them, but it does not seem to be in that mood now. I have to be guided by the mood of the House.

Mr. Somnath Lahiri: Whether the House likes what I say or not, it is for you to let me, as the representative of an independent view-point, to express my views in full.

Mr. Chairman: You may go ahead.

Shri Vishwambhar Dayal Tripathi (United Provinces : General): Sir, we must know whether he is supporting the Resolution or he is supporting the amendment.

Mr. Somnath Lahiri: The more interruptions there are....

Mr. Chairman: Members will draw their own inferences as to whether he is supporting the Resolution or opposing it or doing neither.

Mr. Somnath Lahiri: I will make it quite clear. You will know it when you listen to my Speech. Sir, coming to the third para of the original Resolution, I understand that you desire the unity of India. It is out of that desire you have given this right of autonomy and residuary power in paragraph three but refused right of session to linguistic, etc., units. I am also as much eager for the unity of India as you are, but the point is: can you get that unity by means of force or by compulsion? I come from Bengal. Look at Bengal. In Bengal the overwhelming majority of the population who are peasants and amongst whom the overwhelming majority is Muslim, are ground down under the double slavery of British Imperialism and the Hindu Upper Class. Now, Sir, in the image of freedom that the Bengal peasants and the Bengali Muslim has before his mind's eye, if he wants that neither British Imperialists nor Hindu Upper Class can exploit him, if he wants that his land--the Bengali speaking territory--should be free and sovereign, free from the control of any other part of India--can you deny that right of freedom to him? You cannot. And if the Muslim League--the reactionary section of the leadership of the Muslim League--are able to distort this freedom urge of the Bengali Muslim into religious separatism, or into demanding the Assamese speaking territory, I should say the responsibility for this is on the Congress leadership. Why? Because the Congress has never unequivocally recognised this right of separation of the nationalities on national-linguistic basis and whatever recognition there was in the ruling of the Congress President that no territorial unit of India will be compelled against its wish to come into the Indian Union, You have given the final good-bye to that in this Resolution. You have said here that no unit however strong its wish might be to go out of India, can go out. The utmost it can hope for is residuary powers and autonomy. Well, Sir, this is not the way by which you would hope to win over the Muslim population of Bengal. This is not the way you would hope to win over the other nationalities which will come into the forefront as time goes by. So you cannot achieve the unity of India by forcing a unitary constitution on them and if you look at the constitutions of recent days in the world you will find as in Yugoslavia, in Czechoslovakia, etc. that the recognise the rights of self-determination including that of separation. For instance, in Yugoslavia the very first article of their new Constitution gives the right of self-determination and separation to the Serbs, Croats, Slovenes, Montenegrins, etc., to the full. That is why today in Europe you find that though Yugoslavia is a small ,country, yet it is the most united and advancing most rapidly.

Now, Sir, I have heard some Congressmen say that "Well, this right of separation and self-determination we will give, but only later, if the Muslim League presses for it". Now, Sir, would it not be worst political opportunism to haggle with the rights of peoples across the bargaining counter if the bargain was pressed? Is it not better that you put it clearly and in unequivocal terms not for the leaders but for the people the Muslim people to see for themselves and have some faith, Some guarantee that they may safely come into the Indian Union?

The next point that I would deal with is paragraphs 4, 5 and 6 of Original Resolution. Well, Sir, here you have formulated certain fundamental principles on which the equality and the rights of the people of India would be based. Good, Good intention. Nobody denies the good intention. But the path to hell is often paved with good intentions and the intentions here may mean everything or may mean nothing. It all depends on how you interpret those Principles, in the light of the past and the future. You have said everybody will be equal before law. You have said that full legal rights will be given to everybody. At the same time history tells you there are popular Ministries in this country, the Congress has got Ministers, and even then you find in Bombay people being externed, even women being externed as good as without bringing them into court. At the same time, you find in U.P. a law being framed whereby detentions can take place without trial. At the same time, you find in Bengal a law being framed under the name of communalism which takes out the liberty of every newspaper and everybody. Now, Sir, people will look at your formulations here in the light of their past experience and if you want these things to be really what you wanted them to be, you ought to have been more explicit and stated clearly what you want. Similarly about the Depressed Classes. You have said that adequate safeguards will be provided. Good. But who is going to determine and when are they going to determine whether the safeguards are adequate or not? Everybody deplores the religious separatism that obtains today in our country. Everybody deplores that, but what is the political provision that you have been in your Resolution to them and to their aspirations?

An Hon'ble Member: What do you suggest?

Mr. Somnath Lahiri: Well, I would suggest proportional representation with adult suffrage and joint electorates in any election that might take place in the future and thereby each party, whether it be a communal party or a political party, on the basis of the total votes gained by it, will get its representation assured and then the parties, the communal parties like Muslim League and the Scheduled Castes Federation, who would have been assured of their proper representation, could not have any complaint. At the same time, it would give a fillip to the political parties also to get their proper representation, so that we can gradually cut across the religious separatism that has grown in our country, and healthy politics on the basis of political division and political struggle would develop. But you have not made the point clear. I hope you will make it clear when you draw up the fundamentals of the Constitution. You must remember that the people will judge you by your past, --by your immediate past which I am sorry to say, in spite of the good programme of the Congress, in spite of the hard struggle of the Congress, has not been up to its professions. I hope that they will be remedied when you are drawing up the future Constitution.

Mr. H. V. Kamath (C. P. and Berar: General): I submit, Sir, that Mr. Lahiri when speaking on his own amendment was ruled out of order by you, and is he in order now in doing the same?

Mr. Somnath Lahiri: I have every right to develop my argument. However, I have almost finished and I will take only a minute or two. This Resolution, apart from the generality and the good thing that is in it--I should have liked that you had made the proclamation here and now of our independence. Every Indian would agree with the first paragraph that India should be a sovereign independent power. Apart from these things, your Resolution, to sum up politically, is a resolution of pressure. Part of the pressure is against the British. It tells the British, "Look here. If you think we are going to listen to you, to whatever you dictate, you are very much mistaken. We are going to evolve a constitution of our own for India." Good. Put that more strongly if you like, but the other part of the Resolution is against the Muslim League, "Look here, if you think that there is separation waiting for you, you are mistaken. We are going to evolve out a unitary constitution for India and there is no scope in it for separation." That is pressure against the Muslim League. I do not think the second pressure helps you to increase the first pressure. The more we press against our brothers, the more we fight against the Mussalmans, the more the

British are able to deny us what we want. You increase the pressure as much as you can against the British, but do not increase this pressure against your own brothers. Well, Sir, Pandit Jawahar Lal Nehru has spoken of the magic of the moment. Yes, magic. But it is the magic of the British with which lulls patriots to sleep, the magic of the British witch from whose bloody talons the blood of countless martyrs is dripping and yet she is able to make the patriot think that he will get his claim against the other party by working her magic Plan. I hope that the Congress patriot will remember that and go forward in his struggle against the witch's plan, against British imperialism and not against the Mussalmans.

Mrs. Hansa Mehta (Bombay : General): Sir, I consider it a proud privilege to speak in support of this historic Resolution so ,ably moved by Pandit Jawahar Lal Nehru. I do not wish to refer to the issue raised by Dr. Jayakar or speak on the speeches made six thousand miles away by people who either mean mischief or are totally ignorant of the real situation. I wish to offer a few remarks on that of this Resolution,-=the fundamental rights which affect a section of the people, namely, women.

It will warm the heart of many a woman to know that free India will mean not only equality of status but equality of opportunity. It is true that a few women in the past and even today enjoy high status and have received the highest honour that any man can receive, like our friend, Mrs. Sarojini Nadu. But these women are few and far between. One swallow does not make a summer. These women do not give us a real picture of the position of Indian women in this country.

The average woman in this country has suffered now for centuries from inequalities heaped upon her by laws, customs and practices of people who have fallen from the heights of that civilisation of which we are all so proud, and in praise of which Dr. Sir S. Radhakrishnan has always spoken. There are thousands of women today who are denied the ordinary human rights. They are put behind the purdah, secluded within the four walls of their homes, unable to move freely. The Indian woman has been reduced to such a state of helplessness that she has become an easy prey of those who wish to exploit the situation. In degrading women, man has degraded himself. In raising her man will not only raise himself but rise the whole nation. Mahatma Gandhi's name has, been invoked on the floor of this House. It would be ingratitude on my part if I do not acknowledge the great debt of gratitude that Indian women owe to Mahatma Gandhi for all that he has done for them. In spite of all these, we have never asked for privileges. The women's organisation to which I have the honour to belong has never asked for reserved seats, for quotas, or for separate electorates. What we have asked for is social justice, economic justice, and political justice. We have asked for that equality which can alone be the basis of mutual respect and understanding and without which real co-operation is not possible between man and woman. Women form one half of the population of this country and, therefore, men cannot go very far without the co-operation of women. This ancient land cannot attain its rightful place, its honoured place in this world without the co-operation of women. I therefore welcome this Resolution for the great promise which it holds, and I hope that the objectives embodied in the Resolution will not remain on paper but will be translated into reality. (*Cheers*).

Mr. P. R. Thakur (Bengal: General): Mr. Chairman, Sir, Dr. Ambedkar did not say anything last time about the Depressed Classes. So, I consider it a great honour to speak to the Members of the Constituent Assembly on behalf of the Scheduled Castes in general of India. I stand here to support the Resolution moved by Pandit Jawahar Lal Nehru. After analysing the whole of the Resolution and examining it in detail, I find that it is the best document that has ever extended hopes to the minds of the people of India for freedom. Some of my friends who have spoken before have pointed out some defects in it. Nevertheless, the Resolution as it stands before us will serve to solve many of the problems that have got to be solved before drawing up a constitution. I do feel there are many obstacles in our way, but we know we shall have to surmount them. If we look back into the history of the democratic nations of the world, we would see that every constitution-making body had to face very many difficulties and sometimes difficulties. But still, they were successful at the end.

It is a pity that our Muslim League friends have kept themselves out and are not taking part in the deliberations of this Assembly. But when we know that we, Hindus and Muslims will have to live in this country of ours, we shall have to solve our differences amicably by some way or other. It is hoped that the Muslim League members will, sooner or later, take up their rightful places in this Assembly, join in the deliberations and help in framing a Constitution that, will be acceptable to all.

Sir, in this big august House of the Constituent Assembly we belonging to the Depressed Classes, are very few in number, but in the country as a whole our population is 60 millions. We are no doubt a part and parcel of the great Hindu community. But our social status in the country is so very low that we do feel that we require adequate safeguards to be provided for us. Firstly, we should be considered as a minority--a minority, not in the sense in which a community is a minority on religious or racial grounds, but a minority which is a separate political entity. It is needless however to, point out that we are a separate political entity. I think those who have got themselves interested in the uplift of the Depressed Classes will admit, as Mahatma Gandhi himself has admitted by his words and deeds, that adequate safeguards are necessary for these classes for their political salvation. The Poona Pact is Mahatma Gandhi's creation, and his writings in the 'Harijan' amply prove that the interests of the Depressed Classes must be carefully looked after.

The Cabinet Mission's Statement of May 16 does not say anything about the Depressed Classes; but the Press Conference that the British Cabinet Ministers had, after the publication of the Statement in Delhi, clearly shows that the Depressed Classes should be regarded as a minority. The subsequent debates on India in the House of Commons as well as in the House of Lords have also laid stress on the importance of providing safeguards for the Depressed Classes as a minority.

Sir. the minority problem is one of the most intricate problems, specially in a country like India, where so many elements live together with so many different kinds of interests. I believe this Constituent Assembly will have to face very important problem in regard to the minorities and find satisfactory solution for them. If this is done the House will have no difficulty in framing a constitution ultimately. We the members of the Depressed Classes do hope that this Constituent Assembly will do justice to us. There are Depressed Class in all the Provinces and in the States of India. They want representation on a population basis in the Legislatures in the Centre, Provinces and the States. They do not claim any weightage, but if any weightage is given to any community, they demand proportional weightage for them.

Para. 4 of the Resolution says that--

> "all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people."

I think this is the best part of the Resolution: It would infuse real strength into the minds of the common people of India. The people of India might not be as much politically conscious as the people of other democratic countries; but the very idea that all the power of the State will come from the people will make the Depressed Classes of India politically conscious quickly. Para. 7 of the Resolution says--

> --"Whereby shall be maintained the integrity of the territory of the Republic...."

This is also very important. We the Depressed Classes are the original inhabitants of this country. We do not claim to have come to India from outside as conquerors, as do the Caste Hindus and the Muslims. As a matter of fact, India belongs to us and we cannot tolerate the idea that this ancient mother country of ours, will be divided between the Muslims and the Caste Hindus only.

I come from Bengal. Many of you might have heard of the civil disturbances over there. The Depressed Classes were the worst sufferers. We strongly repudiate any claim of the Muslim League to take away our beloved Bengal and constitute her into Pakistan. We also oppose the idea of grouping. We shall fight tooth and nail to maintain the integrity of India intact. I hope better sense will prevail on Muslim League soon.

In this connection I cannot but say that the leaders of the Muslim League in Bengal are trying to get the support of a section of the Depressed Classes by joisting leaders of their choice over them. I think they are doing it just to pave the way for their fantastic Pakistan. But, fortunately, this section of the Depressed Classes is very small. I do hope that this Constituent Assembly will see that nothing is done in regard to Bengal without the consent of the Depressed Classes. They are of overwhelming number.

Lastly, I cannot but express my joy that very soon India will be free. The time has come for it. There is no power on earth which could stop it. Some of my friends, especially Dr. Ambedkar, said that there would be civil war in the country before India gets freedom. The Depressed Classes will be very glad to meet it. As a matter of fact they are ready to face it.

With these few words I support the Resolution moved by the Hon'ble Pandit

Jawahar Lal Nehru.

Mr. Chairman: I propose to call upon Sir Alladi Krishnaswami Ayyar to speak next; but as he is not in a position to stand up and speak, I permit him to sit and speak. I hope the House has no objection to that

Honourable Members: No objection.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar (Madras: General): Sir, after the eloquent speech of our leader The Hon'ble Pandit Nehru, on the main Resolution and the eloquent speeches of other speakers on the amendment of the Right Hon'ble Dr. Jayakar, I shall try to be as brief as possible.

In support of his amendment, my Right Hon'ble Friend Dr. Jayakar has raised various Points, not all of which, I am, afraid, are consistent with one another. His first Point was that at this session, it was only competent for the Constituent Assembly to determine the order of business and that it should immediately resolve itself into 'A', 'B' and 'C' sections, as the Statement of the Cabinet Mission did not contemplate the transaction of any other business than merely determining the order of business. Secondly, he raised a doubt as to whether it is at all competent for this Assembly and in any event advisable to pass a resolution before the representatives of the Muslim League decided to come in. Lastly, he raised a point that before the State representatives come in, it may not be right for this Assembly to pass such a Resolution.

None of these points, I venture to say, has any validity. In regard to the first, the Statement of the Cabinet Mission is not in the nature of a Statute which purports to lay down every detail as to the steps to be taken by the Constituent Assembly in the matter of framing a constitution for India. In the language of the Cabinet Mission themselves, their object was merely to settle a machinery whereby a constitution can be settled by Indians for Indians. It is inconceivable that any constitution can be framed or steps taken in that regard without a directing objective which the Assembly has to set before itself. The formulating of such a directing objective does not of course in any way involve this Assembly deviating or departing from the main principles of the Cabinet Statement. You may search in vain for the proceedings of any Constituent Assembly or Convention which has not formulated such a purpose at the commencement of its proceedings. I do not therefore propose to further elaborate the point as to what exactly is the connotation of the expression 'order of business' in the Cabinet Statement.

Now as to the merits of the Resolution itself: There is nothing in the terms of the Resolution to which either the Muslims or the States can take exception if they decide to come in. In fact, neither of these two parties would have a place, in this Assembly unless they subscribe to the objective of an independent India. The Statement of the Cabinet Mission in several paragraphs declares that the Constituent Assembly "is committed to the task of framing a constitution for an independent India". They make an appeal in paragraph 24 of the Statement that "the leaders of the people of India have now the opportunity of complete independence" and they say that "they trust that the proposals will enable the people of India to attain their independence in the shortest time". The Statement of the Cabinet Mission, in so many terms, declares that the new independent India may choose to be a member of the British "Commonwealth or not" and in any event they express the hope that "India will remain in close and friendly association with the British people". There is nothing to prevent republican India from being a member of the British Commonwealth as is the case with Ireland. In fact, it is common knowledge that the conception of British Commonwealth is undergoing change year by year and day by day owing to the force of international events. The Muslim League has, on several occasions, expressed itself that it is as strongly for independence as the Congress, We have no right in this House to read between the lines and presume that Muslim India does not mean what it says for this purpose. The only issue that was raised by the Muslim League was in regard to Pakistan. On that, the Cabinet Mission's Statement is definitely committed to a single Indian Union. It is only if the Muslim League subscribes to the article of a single Indian Union that the Members of the Muslim League have or could have any place in the Constituent Assembly. There is no guarantee nor any indication that the postponement of the Resolution to some day next month will be a factor in the Muslim League making up their mind in joining the deliberations of this Assembly. The argument, therefore, derives from the Muslim League staying away from the present Constituent Assembly and the possibility of their coming in at a later stage has no validity on the propriety of the Resolution before the House.

Then as to the Slate: Here again, the States or the States Representatives have a place in this Assembly only if they Subscribe to the creed and article of an independent India and if they are committed to the task of framing a constitution for an independent India. Otherwise, they have no place. They must choose to be constituent parts of an independent India or not. If they come in, it can only be on the footing that they are as much committed to the ideal and purpose of framing a constitution for an independent India as we in what is now British India. While I realise that there may be a certain incongruity in the States coming in only at a later stage in the proceedings of this Assembly--that is not our making--it cannot stand in the way of this Assembly formulating its objective in the form of a resolution at this stage, a resolution which does not commit this Assembly to anything beyond what is contained in the Statement of the Cabinet Mission. Has this Assembly begun to function or not? Or is it in a state of suspended animation until the State representatives choose to come in? We have elected our Chairman; we are proceeding to frame rules of business and we have begun the work of framing a constitution for an independent India? How can it be said that this Assembly has not begun to function? Is there any logic in the argument that the Assembly must not formulate its objective until some other party comes in or can come in? An independent India cannot, as was forcibly pointed out by Pandit Nehru, be a monarchy. The executive head of the Union cannot be a hereditary monarch, Hindu, Muslim or Sikh. He can only be an integral part of a Republic constitution.

There is no substance either in the objection raised on behalf of the States in certain quarters outside the House to paragraph 4 of the Resolution that--

> "all power and authority of the sovereign independent India, its constituent parts and organs of Government are derived from the people."

Is it suggested that in respect of the sovereign independent India, the authority of the provincial parts is derived from the people, and, so far as States are concerned, from the hereditary rules of the States? The constitution of a sovereign independent India is the concrete expression of the will of the people of India as a whole conceived of as an organic entity, and even in regard to the units themselves, the authority of the rulers can rest ultimately only on the will of the people concerned. The State machinery, be it monarchy or democracy, ultimately derives its sanction from the will of the people concerned. The Divine Right of Kings is not a legal or political creed in any part of the world at the present day. I do not believe that it will be possible for hereditary monarchs to maintain their authority on such a mediaeval or archaic creed. The Cabinet Mission was quite alive to this and in their Statement, reference is made throughout to Indians, meaning thereby Indians both of the Indian States and British India, deciding the future constitution of India, no distinction being drawn between Indians in what is now British tract and what is now native State territory. I need only refer to paragraph 1, 3, 16 and 24 of the Statement of the Cabinet Mission.

There was one other minor point which formed the subject of criticism, *viz.*, non-reference to groups in the Resolution, by Dr. Ambedkar, who I am glad to say has made a most useful contribution to the debate by giving his unqualified support to a United India. A close examination of the Cabinet Mission's Statement will point to the conclusion that the formation of groups is not an essential part of the constitutional structure. In the most material parts, the main recommendations are that there should be a Union of India dealing with certain subjects, that all subjects other than the Union subjects and residuary powers should vest in the Provinces and in the States, the States being assimilated to the position of provinces tinder the Cabinet Mission Scheme. There is nothing in the terms of the Resolution to prevent Provinces from forming themselves into Groups as contemplated by the Cabinet Mission. There was a further comment as to the reference to 'justice, social, economic and political', being too thin. The expression 'justice, social, economic and political' while not committing this country and the Assembly to any particular form of polity coming under any specific designation, is intended to emphasise the fundamental aim of every democratic State in the present day. The Constitution framed will, I have no doubt, contain the necessary elements of growth and adjustment needed for a progressive society. After all, we have to remember that what we are dealing with is a Resolution setting out the main object of this Assembly and not a Preamble to a Statute.

Without embarking upon a meticulous examination of the different parts of the Resolution, what is important is that at this session we must be in a position to proclaim to our people and to the civilised world what we are after. It has to be remembered that the main object of this Assembly is not the fashioning of a constitution of a Local Board, a District Board or making changes in the present constitution of this or that part of the country but to give concrete expression to the surging aspirations of a people yearning for freedom by framing a constitution for a free and independent India for the good of the people, one and all, of this great and historic land, irrespective of caste., class, community or creed, with a hoary civilisation going back to several centuries. More than any argument, as the resolution before the House has received the blessings and support of Mahatma Gandhi, the architect of India's political destiny, from the distant village in Eastern Bengal, I trust that it will be carried with acclamation by the whole House without dissent and my respected friend, the Rt. Hon'ble Dr. Jayakar, will see his way to withdraw his amendment unless he has very strong conscientious objection to the course suggested. (*Applause*).

Mr. Jaipal Singh (Bihar: General): Mr. Chairman, Sir, I rise to speak on behalf of millions of unknown hordes--yet very important--of unrecognised warriors of freedom, the original people of India who have variously been known as backward tribes, primitive tribes, criminal tribes and everything else, Sir, I am proud to be a *Jungli*, that is the name by which we are known in my part of the country. Living as we do in the jungles, we know what it means to support this Resolution. On behalf of more than 30 millions of the Adibasis (*cheers*), I support it not merely because it may have been sponsored by a leader of the Indian National Congress. I support it because it is a resolution which gives expression to sentiments that throb in every heart in this country. I have no quarrel with the wording of, this Resolution at all. As a *jungli*, as an Adibasi, I am not expected to understand the legal intricacies of the Resolution. But my common sense tells me, the common sense of my people tells me that every one of us should march in that road of freedom and fight together. Sir, if there is any group of Indian people that has been shabbily treated it is my people. They have been disgracefully treated, neglected for the last 6,000 years. The history of the Indus Valley civilization, a child of which I am, shows quite clearly that it is the new comers--most of you here are intruders as far as I am concerned--it is the new comers who have driven away my people from the Indus Valley to the jungle fastnesses. This Resolution is not going to teach Adibasis democracy. You cannot teach democracy to the tribal people; you have to learn democratic ways from them. They are the most democratic people on earth. What my people require, Sir, is not adequate safeguards as Pandit Jawahar Lal Nehru has put it. They require protection from Ministers, that is position today. We do not ask for any special protection. We want to be treated like every other Indian. There is the problem of Hindusthan. There is position of Pakistan. There is the problem of Adibasis. If we all shout in different militant directions, feel in different ways, we shall end up in *Kabarasthan*. The whole history of my people is one of continuous exploitation and dispossession by the non-aboriginals of India punctuated by rebellions and disorder, and yet I take Pandit Jawahar Lal Nehru at his word. I take you all at your word that now we are going to start a new chapter, a new chapter of Independent India where there is equality of opportunity, where no one would be neglected. There is no question of caste in my society. We are all equal. Have we not been casually treated by the Cabinet Mission, more than 30 million people completely ignored? It is only a matter of political widow-dressing that today we find six tribal members in this Constituent Assembly. How is it? What has the Indian National Congress done for our fair representation? Is there going to be any provision in the rules whereby it may be possible to bring in more Adibasis and by Adibasis I mean, Sir, not only men but women also? There are too many men in the Constituent Assembly. We want more women, more women of the type of Mrs. Vijayalakshmi Pandit who has already won a victory in America by destroying this racialism. My people have been suffering for 6,000 years because of your racialism, racialism of the Hindus and everybody else. Sir, there is the Advisory Committee. My people, the Adibasis--they are alto Indians are deeply concerned about what is going to happen about the selection to the Advisory Committee. When I was first given a copy ,of the Memorandum, as first submitted by the Cabinet Mission, in section 20 the language read as follows:-

> "The Advisory Committee on the rights of citizens, minorities and tribal and excluded areas should contain full representation (mark you 'should contain full representation') of the interests affected........"

Now, when I read a reprint of that in Command Paper 6821, the same paragraph 20 seems to read differently. Here it reads:

> "The Advisory Committee on the rights of citizens, minorities and tribal and excluded areas will contain due representation."

Sardar Harnam Singh (Punjab: Sikh): Just a misprint. The original text contained the words "should contain full representation of the interests affected."

The Hon'ble Pandit Jawahar Lal Nehru: Is it so?

Sardar Harnam Singh: I am definite.

Mr. Jaipal Singh: I want to be quite clear on that point. I think there has been juggling of words going on to deceive us. I have heard of resolutions and speeches galore assuring Adibasis of a fair deal. If history had to teach me' anything at all, I should distrust this Resolution, but I do not. Now we are on a new road. Now we have simply got to learn to trust each other. And I ask friends who are not present with us today, that they should come in, they should trust us and we, in turn must learn to trust them. We must create a new atmosphere of confidence among ourselves. I regret there has been too much talk in this House in terms of parties and minorities. Sir, I do not consider my people a minority. We have already heard on the floor of the House this morning that the Depressed Classes also consider themselves as Adibasis, the original inhabitants of this country. If you go on adding people like the exterior castes and others who are socially in no man's land, we are not a minority. In any case we have prescriptive rights that no one dare deny. I need say no more. I am convinced that not only the Mover of this Resolution, Pandit Jawahar Lal Nehru, but every one here will deal with us justly. It is only by dealing justly, and not by a proclamation of empty words, that we will be able to shape a constitution which will mean real freedom. I have heard pronouncements made by Pandit Jawahar Lal Nehru in different parts of the country. More particularly was I impressed by what he said during his visit to Assam during the elections. When he was in Ramgarh, I invited him to come and address the sixty thousand Adibasis who were assembled at Ranchi, only 30 miles away. Unfortunately, work kept him busy and he was unable to come. Very fine things have been said. Now, Sir, I would like, for example, to quote, if I may, what Maulana Abul Kalam Azad said at Ramgarh:

> "The Congress does not want to dictate its own terms. It admits the fullest right of the minorities to formulate their own safeguards. So far as the settlement of their problem is concerned, it would not depend on the word of the majority."

Sir, the solutions to the various problems of the Adibasis are obvious to my mind and these solutions will have to be thrashed out at some later date. Here I can only adumbrate what is my faith in what seems to be the just solution and it is by a realignment by a daring redistribution of provinces. The case of my own area has been very well put, Sir, by yourself when you were the Chairman of the Reception Committee of the Ramgarh session of the Congress. May I just read out the words of cheer that you gave them?

> "That portion of Bihar where this great assemblage is meeting today has its own peculiarities. In beauty it is matchless. its history too is wonderful. These parts are inhabited very largely by those who are regarded as the original inhabitants of India. Their civilisation differs in many respects from the civilisation of other people. The discovery of old articles shows that this civilisation is very old. The Adibasis belong to a different stock from the Aryas and people of the same stock are spread towards the south-east of India in the many islands to a great distance. Their ancient culture is preserved in, these parts to a considerable extent, perhaps more than elsewhere.' Sir, I say you cannot teach my people democracy. May I repeat that it is the advent of Indo--Aryan hordes that has been destroying that vestiges of democracy. Pandit Jawahar Lal Nehru in his latest book puts the case very nicely and I think I may quote it. In his Discovery of India' he says, talking of the Indus Valley Civilisation, and later centuries "There were many tribal republics, some of them covering large areas."

Sir. there will again be many tribal republics, republics which will be in the vanguard of the battle for Indian freedom. I heartily support the Resolution and hope that the members who are now outside will have the same faith in their fellow countrymen. Let us fight for freedom together, sitting together and working together. Then alone, we shall have real freedom. (*Applause*).

Mr. Chairman: I want to say just one word. The reprint of the Statement of May 16th, 1946 was taken exactly as it was presented to the houses of Parliament.

Mr. Jaipal Singh: The one that was given to me bears the signature of the Governor of Bihar.

Mr. Chairman: I do not know who has made the alteration. This book contains the Statement as was presented to the Parliament in the Command Papers.

Dr. Suresh Chandra Banerjee (Bengal: General): May I know what is the correct word Sir ? 'Due' or 'Full'.

Mr. Chairman: "Due" is the word I find printed.

Dr. Suresh Chandra Banerjee: The word "Full" has been used in the book given to us.

Mr. Chairman: There seems to be some confusion. I have to find out how it has arisen. This is exactly what was presented to the Parliament.

Dr. Suresh Chandra Banerjee: The book we have got, Sir.......

Mr. Chairman: I shall make enquiries about it. The Statement as it is printed in this book is, I understand, exactly as it was presented to the Parliament.

Mr. Jaipal Singh: Before presenting to the Parliament, the word was "Full".

Mr. Debi Prosad Khaitan (Bengal: General): Mr. Chairman, Sir, representing the mercantile community, I want to look at this proposal from the businessman's point of view. From that standpoint, I heartily support the proposal that has been put forward by Pandit Jawahar Lal Nehru, and oppose the proposal that has been put forward by the Right Hon'ble Dr. Jayakar. Dr. Jayakar, after reminding us that he has been a Judge of the Federal Court and is a sitting Member of the Privy Council, has given us some *orbiter dicta* which are perhaps not supported either by the Statement or the circumstances of the case. In my humble opinion, what the Cabinet Mission did was to recognise the aspirations of the people to attain independence, put some fetters on the deliberations of the Constituent Assembly and leave the rest to the talent and genius of the representatives of this country. There are many lacunae in the Cabinet Mission's Statement which we are entitled to fill and shape our constitution in such a manner as we think will give to the people their aspiration and give us a good constitution. Dr. Jayakar seems to think that at this stage we can do nothing but elect the Chairman, and lay down the general order of business. But I am afraid, Sir, that he interprets the words "general order of business" in a very narrow manner. Unless we are prepared to lay down the general objective which we have got to achieve, unless we are prepared to appoint certain Committees which are necessary for the purpose of shaping the constitution of this country, unless we are prepared to appoint a committee and define the central subjects, I do not see how it is possible for us to go ahead with the shaping of the constitution of India. According to Dr. Jayakar's argument, at this preliminary session, we would not even be able to appoint a Committee to deal with the Central subjects; I fail to understand how we can go ahead without doing so. if we do not define the central subjects at this period of time, it will not be possible for the Provinces or the Groups to frame their own constitution. They may assume to themselves powers which may ultimately have to be taken over by the Central Government. It is therefore absolutely necessary that apart from laying down the objective, we should find out what in meant by the central subjects and what finances are necessary to administer them. Similarly we shall have to lay down other principles, appoint an Advisory Committee to deal with the rights of minorities, how to safeguard their interests and do any other things that are desirable and endeavour, in my opinion, to lay down for the purpose of framing the constitution. He fears that if we put forward the objective now, Mr. Jinnah and his party may not come into the Constituent Assembly. I very humbly differ from his opinion, We have so often approached Mr. Jinnah. Have we ever succeeded in melting his heart for the purpose of joining us sincerely and honestly for the purpose of attaining independence? Even when the Interim Government was formed, he would not accept the invitation of Pandit Jawahar Lal Nehru to join the Interim Government but stated to the contrary that he was accepting the invitation of the Viceroy. When the Congress time and again approached him to reach a settlement, he asked Mr. Churchill-his friend-to get himself invited to London for the purpose of clearing up certain misunderstandings--I call them misunderstandings-between the Congress and himself. Even now as we are proceeding with the work of the Constituent Assembly for the purpose of shaping the destiny of our country, he is spending his time at Cairo for the purpose of spreading a disease which I may call Hindu-phobia, that Hindu Raj will extend to the Mid-East. I am not sorry or surprised that he is engaged in the Propaganda at Cairo. If he thinks that the Hindus are strong enough to extend their dominions to the Mid-East, it is all the more reason for him to come back to his own country and join us in framing a constitution for attaining independence with due regard to the interests of all minorities consistently with peace and progress. I hope, Sir, we shall not suffer from a disease that I may call Jinnah--phobia and always out of fear of Mr. Jinnah and his Muslim League, make ourselves absolutely helpless and delay the framing of our much needed constitution. We should muster up courage. We should see to it that the Constitution that is framed is reasonable to safeguard all interests so that the economic and political freedom of our country may be achieved as early as possible. If we simply go on delaying, I do not know what further troubles may arise. For the purpose of avoiding trouble in the future, I would submit to this House to take courage and go ahead with the framing of the Constitution in order that we may attain independence as quickly as we possibly can. I hope, Sir, that we shall not lose time but go ahead with our work and I therefore support the Resolution as moved by Pandit Jawahar Lal Nehru. (*Cheers*).

Mr. Damber Singh Gurung (Bengal: General) : Mr. Chairman, Sir, I understand here today as the only representative of 30 lakhs of Gurkhas permanently domiciled in India. It is 30 lakhs, near about the population of the Sikhs, still I am the solitary representative here in this House. I need not give any introduction as to who these Gurkhas are. They have made themselves sufficiently known to the world by their excellent fighting qualities. It has been proved to the hilt during the last World War No. 1 and No. 11 that they are the greatest fighting race in the World.

It is on behalf of these valiant Gurkhas that I, as the President of the All India Gurkha League, wholeheartedly support the Resolution moved by Pandit Jawahar Lal Nehru. It is high time that we should take such a strong step. If we adopt the policy of wait and see as has been advocated by Dr. Jayakar and supported by Ambedkar, we will never reach our goal. The Interim Government which is functioning to-day would not have come into existence if we had adopted that policy. Fortunately these two Doctors are not Doctors in Medicine, otherwise they would have killed the patient by delaying the operation. (*Laughter*). We have waited too long and we should riot wait any longer. It will be simply our weakness.

Sir, it has been very often said that the Gurkhas have been the stumbling block on the path to freedom. It may be true if it is viewed from that angle of vision but it must always be remembered that, especially in the Military Department, duty first and duty last, and the discipline is the most essential thing without which no nation can rule. Now in Free India you will ask us to do the same thing as we were asked to do under the British Government, if there be any disrupter of the constitutionally established Government, and you will praise them for maintaining that discipline.

Sir, the problem of the Gurkhas is quite different. They are scattered throughout India. It is only in the district of Darjeeling and the Province of Assam that they are concentrated to a certain extent. Their number in these two areas is about 14 lakhs and the rest are scattered throughout India. They are very very backward educationally and economically. Though we were made to do the dirtiest work in India for which we have been even called butchers by Indians, though hundreds and thousand of Gurkha lives were sacrificed to keep the British rule in India and elsewhere, nothing has been done by the British Government so far for the uplift of the Gurkhas. We have been very sadly neglected. Only at the time of War they remember the Gurkhas. It has always been the policy of the British Government to keep us backward and ignorant so that we may be sacrificed any time, anywhere they liked.

The Gurkhas are apprehending whether the same policy will be followed by the Congress too. There is strong ground for this apprehension. Before the election of Members to the Constituent Assembly, the 'All India Gurkha League approached the Congress High Command to give adequate representation to the Gurkhas too in the Constitution Assembly but our claim was totally ignored and not a single seat was given for 30 lakhs of Gurkhas, whereas as many as 3 seats were given to the Anglo-Indians whose population is only 1 lakh 42 thousand in India. I do not think that Gurkhas will, any more, tolerate this kind of injustice. I have, very recently been to Nepal, leading a delegation of the All-India Gurkha League to His Highness the Maharaja of Nepal and I hope Nepal will not allow any such exploitation of the Gurkhas. Sir, the demand of the Gurkhas is that they must be recognised as a minority community and that they must have adequate representation in the Advisory Committee that is going to be formed. When the Anglo-Indians with only 1 lakh 42 thousand population have been recognised as a minority community, and Scheduled Castes among the Hindus have been recognised as a separate community, I do not see any reason why Gurkhas with 30 lakhs population should not be recognised as such. The Gurkhas whose total population including Nepal is 15 millions shall have to play a very very important part in Free India. I request the leaders to consider this very seriously.

Lastly, I would like to say a word, Sir. If Mr. Jinnah thinks himself to be an Indian, I would request him to come to India and settle the differences here, as this is our domestic quarrel. Why should he seek the help of those who kept us in slavery for centuries? I would think that a kick from a brother is more palatable than a hypocrite pat from an outsider. If the major party does not do any justice to the cause of the minorities, we will combine together and revolt and make India a hot bed and I am afraid, the ancient history of India may be repeated. But I must make one point clear, that no minority will support the fantastic claim for Pakistan of Mr. Jinnah. We stand for a United India.

In spite of all this, if Mr. Jinnah goes on throwing the challenge of civil war, I ask the country-men to accept that challenge and let us fight it out. As for the Gurkhas, we will fight along with those who want one India and oppose those who want to divide it.

Dr. Sir Hari Singh Gour (C. P. and Berar: General) : Sir, as I listened to the speeches of the Hon'ble Members, my mind has been ranking with three different propositions. The first is the Hon'ble Pandit Jawahar Lal Nehru's well-considered and well-phrased Resolution. The second is my friend Dr. Jayakar's blocking motion in the form of an amendment. And the third is the frequent cry against Mr. Jinnah's Pakistan. And the fourth-incidentally-is a mention of the Indian States.

May I, Sir, at the outset refer to the Resolution itself ? It has been said that this is only a Preliminary session of the Constituent Assembly and we are not entitled to go into the question of this Resolution. With due respect to those who take this view. I wish to point out that the Constituent Assembly has been described-and rightly described--as a Sovereign Body. If it is the Sovereign Body of India, it is entitled to pass this Resolution, which sets out the basic principle of the whole constitution of future India. Hon'ble Members seem to think that the Constituent Assembly is the creature of the British Cabinet Mission to India and that it is conditioned by the terms of the document known as the Cabinet Mission's Statement of May, the 16th. I wish respectfully to point out that the Constituent Assembly is the voice of the people of India (*Hear, hear*) and is not the creature of the British Cabinet Mission in this country, and as the voice of India, it owes its duty to the people of India and when that voice became strong and inflexible the British-Cabinet yielded to the pressure of India to give to India, what India had been demanding for several years-the right to frame its own constitution for this Assembly. Let us not, therefore, dismiss from our minds that while we pay due respect to the wishes of the Cabinet Mission we are not bound by the conditions that they may have laid down, and that our primary duty and our sole duty is to discharge our responsibility to our masters-the people of India. If this fact is kept in view, the other questions will recede into the background.

One of them is the terms of reference and Mr. Jayakar's consequential amendment. I beg to submit that the Constituent Assembly would lose its prestige and dignity if it was going about hankering for the support of our friends of the Muslim League. If we have a duty to the public of India that duty must and shall be performed, regardless of whether Mr. Jinnah or Pandit Jawahar Lal Nehru or anybody else comes in or goes out. These are personal accidents and incidents, but our Constituent Assembly must carry on its work regardless of people who come in and people who go out of it. (*Hear, hear.*) Supposing Messrs. Jinnah & Co. had come in on the first stage and for reasons of their own-and for very good reasons, I assure you-they walked out of the Assembly, would that be any ground for adjourning this Assembly to run after them and catching them by their coat tails and saying to them "Please don't run out; come in and if you run out, we also will run out with you" (*Laughter*). I submit no Constituent Body-much less the Constituent Body of Aryavarth--shall demean itself into this position of humiliation and self-negation.

Mr. Jinnah, according to the newspapers, is now at Cairo-influencing the Muslim opinion in favour of Pakistan. I have written to Mr. Jinnah before, and I wish once more to remind this Ho-use that we might send him a message that he may perhaps prolong his visit to the ten Pakistans which have been and are enforced for a thousand years in Iraq, Iran, Libya and the rest-let him see and visualise for himself the dreams of these Pakistans and having. done that, he will come back to this country, a sadder but a wiser man, thoroughly humiliated and convinced that Pakistan is not suited to the best interests of our fellow-countrymen, the Muslims of India. If India were to be divided into Pakistan and Hindustan, how many hours will this Pakistan be free, and will not be a morsel to the surrounding powers as have been the Pakistans throughout the Musilm world.

Sir, as a student of history, I was reading the history of Turkey and saw how Kemal Pasha Ata--Turk saw the futility and unwisdom of combining politics with religion. The first thing he did was to put an end to Pakistan and establish the Republic of Turkey. And Turkey, of all Muslim countries, is probably the only independent country in the configuration of nations from Iran right up to

Palestine. Let our friends the Muslims realise this fact and remember it and they will have no difficulty whatever in renouncing. Pakistan as a dangerous and suicidal move on the part of Mr. Jinnah.

Then, Sir, up to now the majority community has been denouncing Pakistan on the ground that we are for the unity of India. But we are for the unity of India, not from any sentimental grounds; we are for the unity of India because we have often offered-and I wish on behalf of my friends to offer once more from the floor of this House--a constructive suggestion specially designed to benefit the Mussalmans of India. Let there be joint electorates and let the Muslims keep their quota of seats, but let there be a provision in the electorates that no member of one community shall be deemed to have been duly elected unless he polls a certain percentage of votes of the other community. In this way we shall have introduced democratic and territorial elections instead of communal elections, and the severity of caste and communal differences win begin to disappear in course of time. If this proposal is acceptable to the Muslim League, I have no doubt that the majority community and the Congress will probably consider the proposal favourably, as being both democratic and non-communal, and our reintroducing the principle of territorial elections in this country. My friends on the Muslim side ought to have a constructive policy, not for dividing and disuniting India but for the purpose of creating a homogeneous solidarity between the various castes, communities and classes in India so as to bring about a united free India.

Sir, in America we have really fifty different nationalities of all kinds and all grades, but the moment the American war of independence was fought and won, they never thought of thinking their freedom with religion, and this is why America has become now the master race of the world. And India, let me tell you, will equally be not the master but the chief servant of all Asiatic countries, if it remains united and strong for her self-defence.

Another section of the Indian people, the Indian States, are still lingering on the fence. They say, you should postpone the Constituent Assembly till we come in. I beg to submit, as a student of law, that the position of Indian States is extremely simple and it is this. They say they have their treaties with the Crown. I will assume that they or everyone, one and all of them have their treaty with the Crown and that these treaties go far back to hundred or a hundred and fifty years. But what was the Crown of England 150 years ago? It was the voice of the ruling Government, of the British Cabinet, and, consequently, when they speak of their having had treaties with the Crown, what they do mean is that they have had their treaties with the Government of England for the time being in power. It is an ordinary platitude if I say-if the Crown of England accepted the advice of the British Cabinet 100 or 150 years ago, is it wrong for the Crown of England to-day to act on the advice of the Indian Cabinet? Can the Indian Princes complain that the Crown has got no right to choose its own advisers now? Therefore, their position is a futile one when they speak of their treaties with the Crown. Then, they say that the Crown has got the right of paramountcy. But they forget that the British Government in India has got the right of protecting all the Indian States, from the big State of His Exalted Highness the Nizam of Hyderabad to the smallest State in Kathiawar. And he who has the right of protection enjoys *de facto* the right of paramountcy. The defence of British India, having been transferred to the Interim Government, the Interim Government became responsible for the security of the Indian Princes, and, consequently, *pro tanto* that right of paramountcy has passed from the King of England or the Parliament of England to the Interim Government.

The third point that I wish to draw the attention of the Indian Princes to is, even assuming that there was a figurative continuance of paramountcy in the King, it was pointed out in the course of debates in the House of Lords that when the transfer of power to India takes place, that paramountcy will lapse, and, consequently, the Indian States must either join hands with the Interim Government in India or remain isolated and aloof as a subordinate creature of that free India. I therefore advise my friends of the Indian States that they are waiting in vain for an invitation from the Constituent Assembly to come in. If they wish to come in, they are welcome to do so. As regards treaties with the Indian Princes in the later stages, that again is a matter on which the Constituent Assembly will have a final say. I therefore think that the question of Pakistan and that of Indian States need not worry us. Let us go ahead with our duty, but remember it that this Constituent Assembly has been misunderstood even by the High Command of the Congress, as if we were a creature of the British Government or of the British Mission. It is not the creature of the British Government or of the British Crown. (*Hear, Hear.*) It has come into existence by reason of the fact that the political consciousness of the country has grown to an extent that the British Government will either face the constitutional freedom of India or the coercive freedom. Either force or persuasion is left to the British Government. The late Viceroy, Lord Linlithgow in the House of Lords, only the other day, pointed out that the British Government cannot hold on to India unless it has behind it the moral claim of the British support. It has no support in Great Britain and it certainly has ceased to have support in India. Consequently, it has become a question of political necessity; and the British Mission and the British Labour Party are now pledged to grant freedom to this country. Freedom will come. It shall come. But when we are sitting here to frame the future Constitution of India, let us not look askance and cast our eyes as to what the Muslim League would think or what the British Government will think and refer our doubts to the Federal Court.

I do not wish to anticipate the decision of this House on the subject of reference to the Federal Court, but I do wish to repeat once more that this House should be sufficiently self-respecting to carry out its duties regardless of the opposition it may meet and the criticisms it might arouse from whatever source they might come. (*Loud applause*).

Shrimati Dakshayani Velayudan (Madras: General): Mr. Chairman, before I express my views on the Resolution, let me pay my humble homage to our Revolutionary Father, Mahatma Gandhi (*applause*). It is his mystic vision, his political idealism and his social passion that gave us the instruments to achieve our goal. I submit that a Constituent Assembly not only frames a constitution, but also gives the people a new framework of life. To frame a constitution is an easy job, because there are many models for us to imitate. But to renew a people on a new foundation requires the synthetic vision of a planner. The Independent Sovereign Republic of India plans a free society. In our ancient polity, there were conflicts between absolutism and republicanism. The slender flame of republicanism was snuffed out by the power political

States. The Lichavi Republic was the finest expression of the democratic genius of our ancients. There, every citizen was called a Raja. In the Indian Republic of tomorrow, the power will come from the people......

We could understand the attitude of the Princes in this matter from the statement made by the members of the Negotiating Committee who represent the Chamber of Princes. But here comes a Maharaja with a historic message to his people. I mean the Maharaja of the Cochin State, which is one of the most advanced States in India and I am proud to say that I belong to it. Here is a part of the message:

> "I believe in pure constitutional rule and, throughout my life, I have sedulously cultivated an attitude towards life and institutions which are antipathetic to autocracy and personal rule."

From this message it is obvious that the power comes from the people. In the Indian Republic there will be no barriers based on caste or community. The Harijans will be safe in a Republican State of the Indian, Union. I visualise that the underdogs will be the rulers of the Indian Republic. I therefore appeal to the Harijan Delegates of this Constituent Assembly that they should not harp on separatism. We should not make ourselves the laughing stock of our future generations by harping on separatism. Communalism, whether Harijan, Christian, Muslim or Sikh, is opposed to nationalism. (*Hear, hear.*) What we want is not all kinds of safeguards. It is the moral safeguard that gives real protection to the underdogs of this country. I am not at all afraid of the future of the Harijans. It is not safeguards that go to improve the status of the Harijans.

The other day we heard Mr. Churchill waxing eloquent over the question of the Harijans. He said that the British Government is responsible for the life and welfare of the so-called Scheduled Castes of India. I would like to ask him one question. What has the British Government done to improve the social status of the Harijans? Did they ever pass any legislation to remove the social disabilities of the Harijans except producing some chaprassis and butlers? And Mr. Churchill also complained that the Harijans were thrown at the mercy of the Caste Hindus, their oppressors. Mr. Churchill cannot take the 70 million Harijans of this land to Great Britain to give them protection. He may give protection to a few communalists who might fly to England. Mr. Churchill should understand that we are Indians. The Harijans are Indians and they have to live in India as Indians and they will live in India as Indians. We also heard recently that the Scheduled Castes are considered as a minority. Nothing of the sort is mentioned in the State Paper of May 16. 1 refuse to believe that the 70 million Harijans are to be considered as a minority. Neither Lord Pethick-Lawrence, the Secretary of State for India, nor even the Prime Minister, Mr. Attlee, nor even the Leader of the Opposition, Mr. Churchill, is going to improve the condition of the Harijans What we want is the removal, immediate removal, of our social disabilities. Only an Independent Socialist Indian Republic can give freedom and equality of status to the Harijans. Our freedom can be obtained only from Indians and not from the British Government.

Let me make a personal appeal to Dr. Ambedkar to join the nationalist forces of this country. He is the only leader of the Harijan community and his non-co-operation with the nationalist forces is a great tragedy to the Harijans;

his co-operation with the nationalist forces will enhance the emancipation of the Harijans. Here is a unique occasion for you Sir, (addressing Dr. Ambedkar) to place your services before the country.

The Harijans will be free only in a Socialist Republic India, and let us all support the Resolution and work for its implementation even if it demands the utmost sacrifices from us.

Regarding the amendment brought forward by the Right Hon'ble Dr. Jayakar, I think those who support the amendment get their inspiration from Whitehall and not from the people of this land. Recently we heard much about the postponement of the Constituent Assembly from different quarters Lord Wavell pleaded for it, Mr. Jinnah insisted on it. I feel that Dr. Jayakar by moving this amendment, is questioning the very validity of the Constituent Assembly and is strengthening the argument put forward by Mr. Churchill the other day in the House of Commons.

Dr. Jayakar also expressed a pious sympathy for the people of the States. If by the term 'States' the Hon'ble members means the real representatives of the States, I can assure the Hon'ble Member that the people of the States are behind the Congress and the Constituent Assembly, (*applause*) and any decision made by the Constituent Assembly will be acceptable to the people of the States.

I think I should make some reference to the views expressed by the Communist leader. In the historic Resolution moved by Pandit Jawahar Lal Nehru, I think every provision is made for the development of every individual in this land. And now the Party which called the war as the People's war, has come here to advise the Constituent Assembly to postpone the consideration of this Resolution for some time. If I am wrong there, I may be excused. The so-called Communists, instead of emancipating the Harijans, are only exploiting them. They promise pieces of land to the Harijans and in that way they try to take them away from the nationalist forces. I think the Communist Party is getting its inspiration from some outside quarter and so it is not for us to accept the views of the Communists. We cannot depend on such a party for our emancipation and our emancipation lies in the national forces which are represented in this Assembly. I therefore hope that in the future independent India the Harijans 'will have an honourable place as every other citizen of this land.

Mr. Chairman: It is already quarter past one. The House will now adjourn till day after tomorrow, 11 o'clock.

The Assembly then adjourned till Eleven of the Clock, on Saturday, the 21st December 1946.

Saturday, the 21st December, 1946

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eleven of the Clock, Mr. Chairman (The Hon'ble Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

Mr. Chairman: The House, would join me in welcoming another Lady Member who has appeared for the first time this morning, having been away attending an International Conference. I request Rajkumari Amrit Kaur to sign the register.

The following members then presented their credentials and signed the Register.

Rajkumari Amrit Kaur (C.P. and Berar: General);

Sir Padampat Singhania (United Provinces: General).

RESOLUTION RE: ELECTION OF CONSTITUENT ASSEMBLY NEGOTIATING COMMITTEE

Mr. K. M. Munshi (Bombay: General) : Mr. Chairman, Sir, I beg to move the following Resolution:-

This Assembly resolves that the following members, namely,-

(1)Maulana Abul Kalam Azad.

(2)The Hon'ble Pandit Jawaharlal Nehru,

(3)The Hon'ble Sardar Vallabhbhai Patel,

(4)Dr. B. Pattabhi Sitaramayya,

(5)Mr. Shankarrao Deo, and

(6)The Hon'ble Sir N. Gopalaswami Ayyangar,

do constitute a committee to confer with the Negotiating Committee set up by the Chamber of Princes and with other representatives of Indian States for the purpose of-

(a) determining the distribution of the seats in the Assembly not exceed in number which, in the Cabinet Mission's Statement of 16th May, 1946, are reserved for Indian States, and

(b) deciding the method by which the representatives of the States should be returned to this Assembly.

The Assembly further resolves that not more than three other Members may be added to the Committee later and that they be elected by the Assembly at such time and in such manner as the President may direct".

Mr. Somnath Lahiri (Bengal: General) : I should like to know what is the procedure for submitting amendment to this Motion. I presume that We should be given some hours at least to move amendments.

Mr. Chairman: Is it an amendment with regard to the substance of the Motion or with regard to the names?

Mr. Somnath Lahiri: With regard to the substance of the Motion.

Mr. Chairman: We shall see.

Shri Sri Prakasa (United Provinces : General) : It would be best to fix 1-15 P.m. as the hour by which the amendments may be moved and in the meantime we may go on with the Resolution.

Mr. Chairman: I suppose the mover and the seconder will take a little more than an hour and in that time you will be able to move the amendment.

Mr. K. M. Munshi: This is more or less a formal motion for the simple reason that the Cabinet Mission's Statement as well as Lord Pethick--Lawrence's speech both contemplate that there should be a committee appointed by this Assembly in order to negotiate with the States for the purposes mentioned in this Resolution. I may refer in this connection, Sir, to the recent remarks of Lord Pethick-Lawrence. Lord Pethick--Lawrence said that-

> "The manner in which the seats representing the States should be filled in the Constituent Assembly was to be negotiated between the Committee appointed by the Indian States and a committee appointed by the British India side of the Constituent Assembly. The States had appointed the Committee and when the Committee has been appointed by the British India part of the Assembly, Negotiations could begin."

It is necessary, as the House will easily see, to begin these negotiations at the earliest possible date. It is for that reason that this Resolution has been placed before the House today. The number has been restricted at present to 6 because this Committee, having to deal with delicate negotiations, has to be as small as it possibly could be. Further the purposes, for which the Committee is being appointed, are fully set out in the Statement. I therefore commend this Resolution for the acceptance of the House.

Dr. Sachchidananda Sinha (Bihar: General) : I second it.

An Honourable Member: Will the result of the negotiations be placed before the Assembly?

Mr. K. M. Munshi: I mention for the information of the Hon'ble Members that so far as the Cabinet Mission's Statement is concerned, it provides for Negotiating Committee on behalf of the States. The Negotiating Committee on behalf of the Constituent Assembly will meet it and will decide the nature of the State representation to the Assembly. That so far as I understand is the meaning of the Cabinet Mission's Statement. But certainly the matter will be brought before this House and. I have no doubt the House will have an opportunity to express itself upon it.

Mr. P. R. Thakur (Bengal: General) : Sir, I want to move an amendment that after the name of the Hon'ble Sir N. Gopalaswami Ayyangar, the name of one of the Depressed class members of We House be added.

I press this point merely because it is important that in this Committee which is going to determine the distribution of the seats in the Assembly reserved for the States, and decide the methods by which the representatives of the States should be selected, a member from the Depressed Classes should be added. There are Depressed Classes in the States and their condition, both social and Political, is worse than that of the Depressed Classes in the Provinces. request the House therefore to add one member of the Depressed Classes from this House.

Mr. Chairman: Have you got any name?

Mr. P. R. Thakur: The House will decide who will be there.

Mr. Somnath Lahiri: I have two amendments, Sir. My first amendment is to make the point clear which was not made clear by the mover of the Resolution whether decisions of the Committee will be subject to ratification by this Assembly.

The amendments are:

(1)Add the following to the Resolution immediately before the last para:

"After the necessary negotiations and consultations the Committee shall place before this Assembly for ratification their final recommendations regarding the distribution of seats to the different States and the method by which the representatives of the States may be returned."

(2) At the end of item (b) of the functions of the Committee add the following:

"The Committee, however, should negotiate under the clear understanding that this Assembly recognises only the subjects of the States as being eligible to send States representatives to this Assembly and on the basis of direct election."

These are my two amendments. The objects of these amendments, especially the first is to fix the question of States representatives which, as you know, is something which is not yet fixed. I know that most of the members of the Committee whom you have proposed and most of the members of this House also realise that it is the States People who should have representation rather than the autocratic Rulers of the States. Unfortunately the State paper does not make this clear. There have been different interpretations on it, as was pointed out the other day by, I think, Sir N. Gopalaswami, Ayyangar. We should make it quite clear that we do not want the Princes and the Rulers of the States to determine what should be the representation of the States in this Assembly, because we fear that they, being autocratic Princes on the one hand and tools of British imperialism on the other, they would like to whittle down whatever little freedom constitutionally we may try to evolve. It is neither fair to the people of the States as a whole.

You know, Sir, at present throughout most of the States, a terrible regime of repression is being conducted by the Rulers of the States. You have seen how in Kashmir even Mrs. Aruna Asaf Ali's meeting was disturbed by the authorities and how the whole National Conference is being thwarted by repression even though election is supposed to be going on there under democratic rules, or whatever it may be. We have also heard how at Hyderabad, during the last few months, 7,000 people, men, women and children have been butchered by the Military and Police of the Hyderabad State. We certainly do not want that these Rulers should come here and negotiate with us and have a hand in framing our constitution. It is for this reason, Sir, that I move the second amendment that the Committee however should negotiate on the clear understanding that this House recognises only the subjects of the States as being, eligible to send States representatives to this Assembly and on the basis of direct election.

I do not doubt that the representatives whom you have chosen will have the needs of the States people in their mind. But it is something which is finally for the people of the States themselves to decide. Therefore, keeping my good faith in the members chosen, but keeping the final ratification to this Assembly, in the light of future developments, in the light of what attitude the Rulers of the States might take up and in the light of what demands the people of the States might make, I have moved that it should be subject to ratification by this Assembly.

Mr. K. M. Munshi: May I say one word, Sir?

Mr. Chairman: The resolution has been moved and the amendments have been moved. The whole thing will be for the discussion of the House.

The Resolution and the amendments are now open for discussion. Any member, who wishes to speak may come.

Sri K. Santhanam (Madras: General) : I wish to move another amendment. I wish to move that after the words "for the purpose of" the following words be added: "formulating recommendations regarding. And then in (a) and (b), the words "determining" and "deciding" be deleted,

The purpose of my amendment is that this House should not delegate to any Committee whatsoever, the final determination of any matter. It is a matter of principle, not that I have distrust in the Committee Members. I have full confidence in the members proposed. But still this is a vital matter and I strongly object to any final delegation to any Committee whatsoever.

Mr. Chairman: I think your amendment is covered by Mr. Lahiri's amendment.

Mr. K. Santhanam: I have made it simpler.

Mr. Chairman: It is covered by Mr. Lahiri's amendment.

Mr. K. Santhanam: My amendment would read better. The principle that this House should be the final determining authority should be admitted and should be followed in every Committee we appoint and in every other proceeding. Of course my amendment covers practically the ground of the amendment moved by Mr. Lahiri. But the reading of the Rule will be much better if my amendment is accepted.

Mr. Dhirendra Nath Datta (Bengal: General) : Mr. Chairman, Sir, I rise to oppose the amendment that, has been moved by my friend Mr. Somnath Lahiri. I have full sympathy with the sentiments expressed in the amendment but Mr. Lahiri has forgotten one thing. This is a Consultative Committee. If you refer to paragraph 19, Clause (ii) it has been stated in the Statement of 16th May, that-

"It is the intention that the States would be given in the final Constituent Assembly appropriate representation which would not, on the basis of the calculation of population adopted for British India, exceed 93; but the method of selection will have to be determined by consultation. The States would, in the preliminary stage be represented by a, Negotiating Committee."

So the method of selection is to be determined by consultation, and Mr. Chairman, Sir, it is clear that there should be a Consultative Committee. The States have appointed a Negotiating Committee and we are bound to appoint another Consultative Committee to consult with the States Negotiating Committee. It is impossible to believe that the whole House will be consulted with the Negotiating Committee for the purpose of determining the number and for the purpose of determining the method. So it is necessary that a Consultative Committee should be appointed and the Consultative Committee should be very few in number. The object of the Resolution will be frustrated if the amendment be accepted by us because the consultation should be made between the two small Committees, one appointed by us and another appointed by the States. Therefore, Sir, I oppose the amendments that have been moved by my friend, Mr. Lahiri, though I am in full sympathy with the sentiments expressed therein. With these words, I support the Resolution moved by my friend Mr. K. M. Munshi and oppose the amendments that have been moved by

Mr. Lahiri.

Mr. Jaipal Singh (Bihar: General): Mr. Chairman, Sir, I would make a request to my friend Mr. Lahiri to withdraw his amendments. I think he must have got a copy of the work that has been done by the Procedure and Rules Committee. Therein already is indicated that everything that the Committees may do, will be submitted at one stage or another to this House and it would be for the House to accept the recommendations or otherwise. That being the case, Mr. Lahiri's point is met.

A member of the Depressed Classes--I do not know what the difference is between Depressed Classes and Scheduled Castes--has pleaded that one Depressed Member should be in this Committee. As far as I am concerned, I have no quarrel with the names that have been suggested by the authors of this Resolution at all. They are eminent men, they are men who have worked in the States and they know the States. But, Sir, I humbly submit that I do not think they know much of the Eastern States. The Indian States People's Conference has dealt generally with States in Northern India. Southern India and a part of Western and Central India. They have had hardly anything whatever to do with the Orissa States Agency or the Agencies of Bengal and the North East Frontier. The House must forgive me if I blow my trump a bit. Ever since my return from British West Africa, I have been traversing a lot amongst the Adibasis in the Adibasi Tracts and, in the last 9 years, I have traversed 1,14,000 miles and it has given me an idea of what the Adibasis need and what this House is expected to do for them. There are, in Indian India, in Rajasthan, the Princely India, where you have a population of a little of 90 million people, you have 17 million Adibasis, 17 million tribes. Sir. I suggest that with such a large population, there should be an Adibasi in this Negotiating Committee. I think he will be able to help the Committee. I am not obstructing the work of the Committee but I want that an Adibasi should be there to fight for the Adibasis. You need an Adibasi when you fight for Adibasis and he will fight along with the authors of this Resolution that they do include an Adibasi and make it 'We Are Seven'.

The Hon'ble Mr. B.G. Kher (Bombay: General): Mr. Chairman, Sir, I yield to none in my concern for the Depressed Classes or for the Adibasis but to press for a representative either of the Adibasis or the Depressed Classes or the Christians or for the matter of that of any other community in this Committee is to misunderstand the whole purpose and object of this Resolution. The Princes are going to set up a Negotiating Committee and if you refer to the letter that the Chancellor of the Chamber of Princes wrote to the Viceroy on the 19th June, 1946, in para. 4 it says--

"The Standing Committee have decided, in response to Your Excellency's invitation, to set up a Negotiating Committee whose personnel is given in the enclosed list. The Committee did their utmost to keep the number small, as desired by Your Excellency but they felt that it would not be possible for them t reduce the number, I shall be grateful if I am informed as early as possible of the time and place when the Committee is expected to meet, and the personnel of the Corresponding Committee which may be set up by the representatives of British India on the Constituency Assembly. The result of these negotiations are proposed to be considered by the Standing Committee of Princes, the

Committee of Ministers and the Constitutional Advisory Committee, whose recommendations will be placed before a General Conference of Rulers and Representatives of States."

Now if we refer to the terms of this Resolution what it says is -

> "This Committee is to be constituted to confer with the Negotiating Committee set up by the Chamber of Princes and with other representatives of Indian States with the limited purpose, viz., to determine the distribution of the seats in the Assembly not exceeding 93 in number and secondly to decide the method by which the representatives of the States should be returned to this Assembly."

So that, Sir, we have now to elect on behalf of British India those who have up to now shown their interest not only in the best interests of the people of British India but also of Indian India. There is Pandit Jawahar Lal Nehru who is the President of the States People's Conference; there is Dr. Pattabhi Sitaramayya, Shankarrao Deo and others. Now, a mover of an amendment said that there are Depressed Classes residing in the States and therefore they should be represented on this Committee. If that is so, then there are also Sikhs, Indian Christians and Anglo-Indians residing in the States. The Committee is only a body for determining the method by which the representatives of the States should be given representation in this House. For this limited purpose, it is not necessary to bring in the principle of communal representation. The wording of the Resolution makes it clear that our Committee will confer with the Negotiating Committee and the Mover of the Resolution has made it clear that the result of their negotiations will come up before this House for final assent. I therefore do submit the movers of the amendments, including Mr. Santhanam, to withdraw their amendments. The scope of the Committee is so limited. The other considerations of communal representations, etc. do not, in my opinion, affect the main purpose. There may be some States, the population of which is so small, that to represent a group of them, there may be only one representative. We know there are about 650 States and we cannot expect that there should be 650 representatives. It is for the purpose of giving proper representation to all these States that this Committee has been formed; it is not right to fetter their discretion and I would once again appeal to the movers of the amendments to withdraw them. I support the proposition moved before the House and hope that it will be passed unanimously.

Mr. K. Santhanam: If it is the ruling of the Chairman that the proposals of this Committee will come before this House for ratification, then I would gladly withdraw my amendment.

Mr. Chairman: Pandit Jawahar Lal Nehru

Mr. Somnath Lahiri: If you can give a ruling, Sir, that the proposals of this Committee will be subject to ratification, then I also withdraw my amendments.

Mr. Chairman: I will give my ruling in time. Pandit Jawahar Lal Nehru.

The Hon'ble Pandit Jawahar Lal Nehru (United Provinces : General): Mr. Chairman, Sir, the Resolution that has been placed by Mr. Munshi before the House is a very limited Resolution. It is meant only to fix the method of representation in this Assembly for the representatives of the States, and not to deal with the innumerable problems which the States have in common with the rest of India. Mr. Lahiri mentioned the case of one or two States where political struggles are going on. Obviously, this Committee will have nothing to do with the internal structure of the States. That matter will have to be considered, I hope, by us when the States representatives come. We can confer with them and discuss and settle these matters; so we have for the presently only to consider the method of their representation.

Now, Sir, the amendments that have been moved in regard to members of the Depressed Classes or the Adibasis coming in, seem to ignore the fact that we are only considering this limited problem. Obviously, the Depressed Classes have their particular interests to be protected, but that question does not come in before this Committee. This Committee representing, if I may say so, that part of India which is not the States, will meet representatives of the Rulers - I might say frankly that we have to meet the Rulers Negotiating Committee. I think there should have been on the Negotiating Committee representatives of the peoples of the State and I think even now that Negotiating Committee. If it wants to do the right thing, should include some such representatives but I feel that we cannot insist upon this at this state. Unless we appoint a Committee to negotiate this matter the proper representation of the States representatives may not be secured. Therefore, in this Resolution we have said not only that we shall meet the Negotiating Committee set up by the Chamber of Princes but also the representatives of other States who are probably not included therein, and as I have already explained, the object of our meeting them is to ensure a proper method of representation for the State people. If that is so, and if you try and think of the States, as they are, you will see that apart from some States which are big, there will be many small States whom we may have to get represented by doing some kind of grouping or some other way of representing them, because for each State we may not be able to give one representative. Just see how many States there are how many will be required. States like Hyderabad and Kashmir will get adequate representation on the population basis. Some of the big States may get two, three or four, but most of them just barely one. Many of them may not even get that one. We may have to group them or devise some method. These are our problems. Apart from these, no other problem affecting any particular class or even affecting the internal structure of the States will come up before this Committee. Those problems will have to come up before this Assembly at a later stage, when the State representatives are also here.

I submit that the question of any particular group--communal, provincial or State--coming into this Committee will not arise. We should take of course, competent men who are here, but in this particular matter you cannot enter into group representation, because if we do there is no particular reason why we should deny that representation to the many separate interests that exist here. If you take the Travancore State, thinking only or religious lines, you will find a very great part of the population of the State consists of Christians--Roman Catholics. Now, Travancore is a very important State, the people of which have often come into conflict with the Government authorities. Kashmir, of course, is another important State. In this way, you will get into enormous difficulty if you are going to think of people being represented on a communal basis in this small Committee. (Obviously, this committee ought to be a small Committee because it will be very difficult to deal with the representatives of the Rulers if it is a large committee). This Committee should not, therefore, be formed on the basis of separate interests, as suggested by some people.

Now, Mr. Jaipal Singh made a statement, from which I beg to differ, and that is that the States People's Conference is not taking sufficient interest in the Orissa States. The States People's Conference has not done all that it should do because the problem is a vast one, but as a matter of fact the Orissa States have been frequently before the States Peoples' Conference and one our members of the Standing Committee of the States Peoples' Conference comes from there.

Now, some of the amendments moved by Mr. Santhanam and others say that this final authority should remain with this House. They agree, however, to withdraw them if the Chair could give a ruling in this matter. I have no doubt in my mind that the final decision on such matters should vest in this House, and that this Committee should only be a Negotiating Committee, that it should negotiate and report to this House. If this House does not agree with anything that they have done, they have got to go back and negotiate still further. Of course, in all such matters, a certain discretion is given. For instance, you do give a large measure of authority to your plenipotentiaries to go and negotiate with other countries. The countries have got a right to accept or reject, but normally speaking, when the representatives of two parties come together and discuss a matter and come to an agreement, unless a vital principle is involved, the agreement is accepted because third parties are concerned in it. That will apply to our case also. But I suggest, if possible,--I have not the wording before me,--that is might be possible to have some such words as that the Committee should report to the House.

Shri Ajit Prasad Jain (United Provinces : General) : May I ask a question? This Resolution contemplates three bodies, a Negotiating Committee set up by this House, another Negotiating Committee set up by the Princes, whose, names have been announced, and a third, other representatives of the States. How are these bodies going to function and to reconcile differences? Supposing the Princes take up one attitude and other representatives of the States take up a different attitude and other representatives of the States take up a different attitude and so on, how are they going to work?

Mr. Chairman : I suppose it is the function of the Negotiating Committees to reconcile differences, and this Committee and the other Committee, that you refer to will work in that way, I think.

Dr. P.S. Deshmukh (C.P. and Berar : General): If I may reply to my Hon'ble friend that is exactly the purpose of this Resolution. If there are differences of opinion between various representatives of the States, we know, Sir, that differences of opinion exist in this Assembly as between various sections of the people of India, as well as States and the people of British India. This Resolution proposes to set up a body, in whom we have confidence, and it will deal with the representatives of the States who have been elected or selected to a Negotiating Committee. It is precisely because this house cannot be expected to enter into negotiations with the Rulers and representatives of the people of States that this small committee has been proposed. Mr. Chairman, Sir, I am here to support the Resolution as it stands and oppose all the amendments that have been moved. Most of the points made have been met by speakers who preceded me and I am not going to repeat them. I want to draw the attention of the House to one particular factor, and that is, the limit within which this Committee is expected to work. In doing so, I would like to draw attention of the Hon'ble Members to the exact wording in paragraph 19(ii) of the Cabinet Plan. You will be pleased to observe that this Committee is to enter into negotiation with the Negotiating Committee which has already been selected by the States or is likely to be selected. The wording is, "the method of selection will have to be determined by consultation". It is very likely that the word "selection" will have to be interpreted in several different ways. The States representatives may probably place a different interpretation from the one we may put on it and so on. So, it is no good tying he hands of this Committee one way or the other or insisting on a particular method of representation. We must leave it to the negotiators. So, I also submit, Sir, that Mr. Somnath Lahiri's amendment directing what the Committee should do is out of order, because actually it negatives the Resolution as a whole. When we want a committee to act in a particular way it will cease to be a negotiating committee because it will have really to carry out a pre-determined dictate of our own. We cannot afford to antagonise many sections of the people of India, and in spite of the feeling in this House that the representatives of the people of the States alone are entitled to speak to us, we will have to approach the subject cautiously and this Committee will have to work very cautiously. We should not pre-judge or prejudice the issue at this stage, and the Committee should be left to itself to determine what is the best method of attaining the object in view and serving the interests of the people of India as a whole and those of the States people. If we want to comment on their decisions there will be ample opportunity as Panditji has assured us, for this House to place our opinion before this House. So, I submit that the House should pass the Resolution and that the amendments moved should be withdrawn.

Shri V.I. Muniswami Pillai (Madras: General): I come here to support the resolution moved by Mr. Munshi. When an amendment is moved for the inclusion of a representative of Depressed Classes. I find a hue and cry being raised that communal representation is being pressed in time and out of time. I may inform the House that the condition of Depressed Classes in the State is worse than what is obtaining in other parts. The other day when my sister from Cochin was speaking about social conditions of Harijans, she did not take into account the appalling economic and political condition of the people in the States. I may instance the case of Nayadis in Cochin State, a community which is not only untouchable and unapproachable, but unseeable. This community cannot pass through the King's highways. So I would like to urge on the Committee that has been chosen to negotiate with the representatives of the States that they should take care to have at least a few Depressed Class representatives or somebody who will represent the real needs of the Scheduled Castes.

Sri Dayal Das Bhagat (United Provinces: General): *[Mr. Chairman, I wish to draw your attention to the fact that I do not know English. I know Hindi and many of my worthy friends here know that language only. This we understand nothing useful from the proceedings of the House. I pray you to request those of the friends, who know Hindi, to speak in that language so that we may understand easily.]*

Sri V.I. Muniswami Pillai: This Resolution seeks to determine the number and distribution of seats and I would respectfully request my friends to see that the interests of these untouchable communities are properly safeguarded.

Diwan Chaman Lall (Punjab: General) : Though the point has been made perfectly clear by the Hon'ble mover, Mr. K. M. Munshi, to set at rest any doubts that there may still be, I should like to move an amendment to sub-para (b), *viz.*, for the word 'deciding', substitute--and word 'fixing' and, after the word 'Assembly', add the following -'and thereafter to report to the Constituent Assembly the result of such negotiation'.

As some doubt has been expressed as to whether the result of the Negotiating Committee's efforts would be brought before the House or not, to make the position clear, I have moved the amendment.

Then, Sir, the word 'determining' in sub-para (a) of the Resolution, may also be changed to 'fixing'.

I need not say anything in regard to this matter except to emphasise the fact that it is necessary to make sure that whatever negotiation the Committee may enter into, would naturally be brought before this House and a report made to this House in order that this House may be fully seized of all the negotiations that have taken place without the knowledge of this House, between the Negotiating Committee set up by this House and the Committee set up by the Princes Chamber. I think it is necessary that this authority, which vests in the Constituency Assembly, should be stated specifically in the body of the Resolution.

Mr. K.M. Munshi: Mr. Chairman, I made it abundantly clear when I moved the Resolution that whatever the result of the negotiations, it will be placed before the House and there is no reason to fear that this Committee will decide something which this House may not approve. Now that the Hon'ble Member, Diwan Chaman Lall, has moved an amendment making it quite clear that the report of this Committee will come before this House. I have no hesitation in accepting the amendment.

The second point made was that one Member of the Scheduled Classes should be added to the Committee. The Hon'ble Pandit Jawahar Lal Nehru has replied to that point. This is not a representative committee of all sections and minorities. This is a small committee with very limited functions and only intended to negotiate on a certain basis. And the Committee's report will be placed before the House.

There was another point made by one Hon'ble Member over there (in the rear seats). He asked why it was necessary to state "to confer with the Negotiating Committee set up by the Chamber of Princes and with other representatives of Indian States......". There is a valid reason why the Resolution has been worded in this manner. The Cabinet Mission has stated

thus:

"It is the intention that the States would be given in the final Constituent Assembly appropriate representation which would not, on the basis of the calculation of population adopted for British India, exceed 93; but the method of selecting will have to be determined by consultation. The States would, in the preliminary stage, be represented by a Negotiating Committee."

Therefore it is the function if the Negotiating Committee representing the States to determine the representation. The House has been informed that a Negotiating Committee has been appointed by the Chamber of Princes. Neither the House nor I have any information as to whether the Committee that has been appointed by the Chamber of Princes represents all the States and whether all the States have agreed to treat the Negotiating Committee as their representative. Therefore, inconceivable circumstances it may become necessary for our Negotiating Committee not only to negotiate with the Negotiating Committee appointed by the Chamber of Princes, but also with individual States. That is the reason why the words, have been used in the manner as in the Resolution. I therefore submit, Sir, that the amendment moved by the Hon'ble Member, Diwan Chaman Lall, may be accepted by the House.

An Hon'ble Member: I look at the question from a different point of view. A Negotiating Committee has been set up by the Chamber of Princes. If there are other representatives of the States, will they be in addition to those on the Negotiating Committee? I expected a reply from the Mover.

Mr. K.M. Munshi: I have made the position amply clear. We want to give our Negotiating Committee complete freedom to deal with the Negotiating Committee on the other side or with any individual States as they think proper. We do not want to fetter their right to come to any decision which they might think fit. The Resolution as it stands is very clear on this point.

(Mr. P.R. Thakur rose to speak)

Mr. Chairman: The Mover has already replied.

(Mr. P.R. Thakur came to the rostrum)

An Hon'ble Member: Sir, is it competent for any Member to make a speech after the Mover has replied?

Mr. Chairman: Mr. Thakur is withdrawing his amendment.

Mr. P.R. Thakur: In view of the statement made by the Hon'ble Pandit Jawahar Lal Nehru, I want to withdraw the amendment that I have moved. But I want to mention......(Voices: 'No, no') one thing only. (Several Members: 'No, no'). I want this assurance that at least five out of the 93 seats will be given to the Depressed Classes.

Mr. Somnath Lahiri: Sir, I withdraw my amendment in view of the amendment already accepted.

I want Diwan Chaman Lall's amendment to be read out in full so that we can understand it properly.

Mr. Chairman: Sub-para. (b) of the Resolution as amended would read thus:

"fixing the method by which the representatives of the States should be returned to the Assembly and thereafter to report to the Constituent Assembly the result of the negotiation".

The Resolution with the amendment accepted by the Mover, Mr.K.M. Munshi, will read thus:

"This Assembly resolves that the following members, namely,--

(1) Maulana Abul Kalam Azad,

(2) The Hon'ble Pandit Jawahar Lal Nehru,

(3) The Hon'ble Sardar Vallabhbhai Patel,

(4) Dr. B. Pattabhi Sitarammayya,

(5) Mr. Shankarrao Deo, and

(6) The Honble Sir N. Gopalaswami Ayyangar,

do constitute a committee to confer with the Negotiating Committee set up by the Chamber of Princes and with other representatives of Indian States for the purpose of--

(a) fixing the distribution of seats in the Assembly not exceeding 93 in number which, in the Cabinet Mission's Statement of 16th May, 1946, are reserved for Indian States, and

(b) fixing the method by which the representatives of the States should be returned to the Assembly, and thereafter to report to the Constituent Assembly the result of such negotiations.

The Assembly further resolves that not more than three other members may be added to the committee later and that they be elected by the Assembly at such time and in such manner as the President may direct".

Now, what about the other amendment of Mr. Lahiri?

Mr. Somnath Lahiri: In view of the fact that we will be able to consider the report of the negotiations and at that time press the claims of the States people, if they had not been fully realised, I withdraw the other amendment of mine.

Mr. Chairman: All the amendments have therefore been disposed of.

The Resolution, as amended, was adopted.

STATEMENT BY PRESIDENT POSTPONING CONSIDERATION OF RESOLUTION ON AIMS AND OBJECTIVES

Mr. Chairman: The next item is the consideration of the report of the Committee on the Rules of Procedure. Before we go to that, I desire to make one statement which I think I should have made earlier in the day but I did not make it by oversight. We were discussing the Resolution moved by Pandit Jawahar Lal Nehru day-before-yesterday when we rose, and the discussion on that Resolution has not been completed. The list of names of the proposed speakers is very large. I have about 50 names still before me. It is obviously not possible to carry on that discussion any further without holding up the other important work of this Assembly. I, therefore, interrupted the discussion on that Resolution, and now I propose to allow these other important items to be interposed. If we have time thereafter, we may take up further discussion on that Resolution. It may be that before we rise for Christmas, there will be no more time for discussing that Resolution. So further discussion will be taken up when we meet again. In the meantime we may have the advantage of others, who are not present here today, coming in, and we may have the advantage of their views also on that Resolution. So, further discussion remains suspended till we meet again.

CONSIDERATION OF THE REPORT OF THE COMMITTEE ON RULES OF PROCEDURE

Mr. Chairman: Mr. Munshi will present the report of the Rules Committee.

Mr. Somnath Lahiri: I should like to know the time limit during which amendments to that Resolution may be accepted.

Mr. Chairman: By this evening.

Mr. Somnath Lahiri: Tomorrow morning, 11 o'clock.

Mr. Chairman: Yes, tomorrow morning 11 o'clock. But we shall not stop the discussion. We shall go on. If there is any amendment, we may reconsider that point, but I will not stop the discussion. We shall go on discussing the Resolution.

Mr. K.M. Munshi: Mr. Chairman; Sir, I have the honour to present to the House the Report of the Rules Committee. A copy of the Report is already before the Members of this House, and I only propose at this stage to draw the attention of the House to a few of the important features of the Rules. But before I do so, I invite the indulgence of the House towards the Rules Committee. The Rules Committee have been working under great pressure. As the House, Sir, knows very well, it is highly essential that before we disperse, we should have the Rules adopted and the organisation set functioning in order to complete the organisation of the Constituent Assembly. The Members of the Committee, I may mention, have devoted careful attention to every aspect of the Rules and we have had the assistance of the able and distinguished jurist, our Constitutional Adviser, Sir B.N. Rau. The Committee had done its best to give it as perfect a shape as is possible. But I dare say there may be many defects still left, and the House may find some discrepancies. I am sure, points of view may have been omitted; I seek therefore the indulgence of the House. These are the Rules of the Assembly. They can be altered or added to when we next meet. We can always add new points of view if some one are omitted. But it is highly essential that we should adopt the Rules and appoint one or two committees which would keep the organisation of the Constituent Assembly going.

With these remarks, I would now shortly deal with some of the important points in the Rules so that the structure of the organisation which it is proposed to set up may be clear to the members of this House.

Sir, I may refer the house to Rule 2, Clause (d). We have altered the nomenclature of this extent that our permanent Chairman will be styled the President. The reason is two-fold. First of all, there are going to be a number of Chairmen, Chairmen of Sections, Chairmen of Committees, Chairmen of the Advisory Committees, and so on. It is necessary that the permanent Chairman should have a name which is easily distinguishable from other Chairman. The second reason is that we are functioning as an independent body. For the moment, an organisation has been lent to this Assembly by the Government of India, but immediately the Rules are passed, we will have an organisation of our own, and the President will naturally be the highest executive authority of the organisation. The word 'Chairman' therefore would be inappropriate in its application to our Chairman as the head of the organisation. In this connection, I may perhaps refer to Rule 27, sub-para. (8)--

> "The President shall be the Guardian of the privileges of the Assembly, its spokesman and representative and its highest executive authority."

It is for this reason that the Rules Committee proposed that the permanent Chairman should be styled 'President'.

Chapter II deals with admission of members and vacation of seats. It is more or less mechanical, if I may so put it.

Chapter III deals with the business of the Assembly. It largely deals with the procedure to be adopted in conducting the business of the Assembly and its several branches. The only important provision is the one on page 5, containing Rule 7.

"The Assembly shall not be dissolved except by a resolution assented to by at least two-thirds of the whole number of members of the Assembly."

As the Chairman was pleased to say in his inaugural speech, we are a sovereign body, and as such it must solely depend upon us whether to dissolve the Assembly or not. This has been made clear in this Rule.

The next important rule to which I would like to draw your attention in Rule 15. Rule 15 lays down the quorum not only for the Assembly but for its branches. When a provincial constitution is being settled, it is required that the quorum should be at least two-fifths of the representatives of that province.

The next important point to which I would like to draw the attention of the House in Rule 18. It lays down that--

"In the Assembly, business shall be transacted in Hindustani (Hindi or Urdu) or English, provided that the Chairman may permit any member unacquainted with either language to address the Assembly in his mother tongue. The Chairman shall make arrangements for giving the Assembly, whether he thinks it, a summary of the speech in a language other than that used by the member and such summary shall be included in the record of the proceedings of the Assembly."

Only a few minutes ago there was a complaint from a member who did not know English that he did not understand what was going on. This Rule is intended to obviate that difficulty. Sub-clause 2 of the Rule says this;

"This official records of the Assembly shall be kept in Hindustani (both Hindi, and Urdu) and English".

"The result is that our official record will be kept in 3 languages, Hindi, Urdu and English."

The next important point is dealt with in Rules 23 and 23-A on page 9. This follows the procedure laid down in the Cabinet Mission's Statement.

"In all matters relating to the procedure of the conduct of business, the decision of the Chairman shall be final:

Provided that when a motion raises an issue which is claimed to be major communal issue, the Chairman shall, if so requested by a majority of the representatives of either of the major communities, consult the Federal Court before giving his decision."

That forms part of the Statement.

"Provided further that no Section shall trespass upon the functions of the Union Assembly or vary any decision of the Union Assembly taken upon the report of the Advisory Committee referred to in paragraph 20 of the Statement."

The Advisory Committee's functions have been set out in detail in Rule 23-A.

"It shall be the exclusive function of the Advisory Committee referred to in paragraphs 19 and 20 of the Statement to initiate and consider proposals and to make a report to the Assembly upon fundamental rights, clauses for the protection of minorities and the administration of tribal and excluded areas; and it shall be the exclusive function of the Assembly to take decisions upon such report and further to decide the question of the incorporation of these rights in the appropriate part of the Constitution."

The function of the Advisory Committee is to deal with the specific matters in view of India as a whole, as also in view of the provincial difficulties. And therefore according to Rule 20 they have to be considered by the Union Assembly when it meets.

Chapter IV dealt with the President and the procedure for filling up vacancies if and when it arises. These are more or less formal as the House will see.

Chapter V deals with the Vice-Presidents, and it is proposed that there should be 5 Vice-Presidents. Two should be elected by the House, while the President of each Section, when a section elects its Chairman, will be an *ex-offcio* Vice-President of the Assembly, with the result that the President and the 5 Vice-Presidents will meet together and co-ordinate all the activities of the Assembly and its different branches.

Chapter VI deals with the office of the Constituent Assembly. It is divided into two branches, the Advisory Branch and the Administrative Branch; the Constitutional Advisor will be the head of the Advisory Branch, while the full time Secretary shall be the head of the Administrative Branch.

Chapter VII deals with the Committees and the first and perhaps the most important of the Committees is the Steering Committee, and as Hon'ble Members will see, in Rule 39, the functions of the Steering Committee have been defined. The business of the Steering Committee, as constituted therein, is to group similar motions and amendments and secure, if possible assent of the parties concerned to composite motions and amendments; and to act as a general liaison body between the Assembly and its Office, between the Sections *inter se*, between Committee *inter se* and between the President and any part of the Assembly. Thus it becomes the central administrative organisation which will coordinate the different activities of the Assembly in all its branches.

Then follows the constitution of the Staff and Finance Committee. The Credentials Committee have also to be appointed for the purpose of deciding questions relating to the validity of the title of elected or other members. There is provision also made for other Committees.

Chapter VIII deals with the Budget.

Chapter IX deals with salaries and allowances which have to be approved by the staff and finance committee .

Chapter X deals with doubts and disputes as to elections. Those provisions are more or less mechanical and follow the general lines of those legislation which deal with disputed elections in India. The only important point which is let out is dealt with in Rule 55. Rule 55 says:

"Where such a recommendation has been made, the President shall appoint an Election Tribunal consisting of one or more than one person to inquire into the petition."

Now so far as the matters to be dealt with by the Tribunal are concerned, they cannot form part of the Rules. What is will be doing is to adjudicate upon the Status of a Member of this House and it is felt that that could only be done by an Ordinance, so that it can become part of the law. Otherwise serious difficulties are likely to arise. It will be therefore for the President to move the appropriate authority for the purpose of issuing the necessary Ordinance.

Chapter XI deals with certain provisions about taking the opinion of the whole country and the provincial constitution. As the House can see, Rule 58 (1) deals with provisions to give an opportunity to the several Provinces and States through their legislatures to formulate their views upon the resolutions of the Assembly, outlining the main features of the Constitution, or, if the Assembly so decides upon the preliminary draft of the Constitution.

Then clause 2 provides a similar opportunity to the Provinces concerned to formulate their views on their respective Constitution. It says--

> "Before the constitution of any province is finally settle, an opportunity shall be given to it to formulate, within such time as may be fixed for the purpose, its views, upon the resolutions and the decisions of the Sections, etc."

This naturally gives the whole country an opportunity to consider the various proposals that may be discussed by the Assembly, the Sections or any other Committee dealing with parts of the Constitution.

Rule 59 deals with the application of the principle of proportionate representation to all our elections. The amendment of the Rules is dealt with in Rule 61, and Rule 62 provides that the provisions of these Rules shall apply *mutatis mutandis* to the Sections and the Committees of the Assembly. The Sections may make standing orders not inconsistent with these rules.

Rule 63 gives the power to the President to deal with difficulty, if any, which may arise in carrying out these Rules. This is the general framework of the Rules and I hope it will meet with the acceptance by the House. I therefore now formally present the report of the Committee to the House and I further beg to move also that, in order to secure informality of discussion and despatch, the House do go into a Committee of the whole Assembly and that its proceedings may be held in camera.

Shrimati G. Durgabai (Madras : General) : I second it.

(The motion was adopted)

Shri B. Shiva Rao: (Madras : General) Sir, I want to make a suggestion to the House, which I know, has a fair amount of support of several members.

The Report reached us late last night or early this morning and most of us have not had an adequate opportunity of looking through the Report. The suggestion I want to make is this. Let not the House meet this afternoon, so that those of us who are interested in the Rules may have an opportunity of meeting for ourselves, sorting out our amendments and picking out the major ones to be discussed in the House tomorrow morning. It is possible that if we adopt this procedure, a great many of the amendments which might be moved here today would be disposed of at the preliminary stage, and we might be able to get through the whole work tomorrow itself. Therefore, I suggest that we may not meet this afternoon but meet only tomorrow morning.

Mr. Chairman: Personally, I have no objection. Then, we shall have tomorrow only for dealing with the Rules. The day after tomorrow we have to elect some Committees which are provided for in the Rules. If the House thinks that it will be able to go through the Rules and pass them tomorrow and the day after, I have personally no objection. But I do not know if any one will be able to give an undertaking on behalf of the House that we shall be able to complete the work.

An Hon'ble Member : We shall sit tomorrow.

Shri M. Ananthasayanam Ayyangar (Madras : General) : Sir, I got the Rules only this morning. I went through the Rules and I find, Sir, most of the Rules are non-contentious. There is nothing to which we can add except those contentious portions in Rules 20, 23 and 23-A, which are more in the nature of substantial amendments. Therefore, let us not waste time by asking for an adjournment. Tomorrow never comes, let us go on today.

Mr. Somnath Lahiri: Sir Hon'ble Gentleman has said that there is nothing to add. At any rate, we have got to go through them to make the same discovery that the Hon'ble Member has made.

Mr. K.M. Munshi: Sir, I beg to oppose the proposal made by my Hon'ble friend, Mr. Shiva Rao. After all there is no point in adjourning. Tomorrow, we will be sitting and there will be a free and full discussion. As an Hon'ble Member said just now, most of the Rules have been drawn up with care. There may be some defects which may be corrected. Only questions of principle or controversy will take time. As to others we will take up rule by rule and if there is no controversy, we can easily adopt them. I submit this is the shortest way to deal with the Rules.

Sri M. Ananthasayanam Ayyangar: Sir, my Hon'ble friend, Mr. Munshi will read rule by rule and stand for a while, and we will adopt it immediately if there is nothing to add. Then we will pass on to the next rule. Whichever rule is contentious may be passed over till tomorrow. By that time we may find out if any amendment is necessary.

Mr. Chairman: May I take it is the wish of the House that we will go on with the consideration of the Rules?

Many Hon'ble Members: Yes.

Mr. Chairman : Those who are opposed?

(None).

Mr. Chairman: We shall take up the Rules. As there is only half an hour more for 1 o'clock, we began at half past two or three o'clock.

Many Hon'ble Members: Three o'clock.

Mr. K.M. Munshi: We may be able to do a few Rules in half an hour.

Mr. Chairman: We shall begin at 3 o'clock and then in camera, the House will go into a Committee and meet at 3 o'clock.

The Assembly then adjourned for Lunch till 3 p.m.

The Assembly re-assembled after Lunch, at Three of the Clock,

Mr. Chairman (The Hon'ble Dr. Rajendra Prasad), in the Chair

------------------.

(The Proceedings were then conducted in *camera*.)

[] English translation of Hindustani speech.

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME I

Monday, the 23rd December 1946

The Assembly then met in Plenary Session at Thirty five minutes past One of the Clock, on Monday, the 23rd December, 1946, Mr. Chairman (The Hon'ble Dr. Rajendra Prasad) in the Chair.

ADOPTION OF RULES OF PROCEDURE

Sri M. Ananthasayanam Ayyangar (Madras: General): Sir, I beg to move....

Mr. Chairman: The Committee stage is over. We are meeting in full House now. Mr. Munshi moves that the Rules as passed by the Committee be passed.

Sri M. Ananthasayanam Ayyangar: I would like to move that:

> "Notwithstanding anything to the contrary in the Rules that we have passed all the proceedings till now taken in this Assembly shall be valid and regular."

We have passed Rules and regulations for the conduct of elections, etc., for the appointment of officers and so on. Whatever we have done till now, whatever may be these Rules all that we have done, will be valid.

Mr. Chairman: That will arise after the Rules have been passed.

Mr. K.M. Munshi (Bombay: General): I move that the Rules, as accepted by the Committee of the House, be now adopted by the Assembly in its plenary Session.

Dr. P. Subbarayan (Madras: General): I second it.

Mr. Chairman: I put the Rules to the House.

The Rules, as accepted by the Committee of the House, were adopted.

Sri M. Ananthasayanam Ayyangar: I beg to move, Sir, that --

> " Nothwithstanding anything to the contrary in the Rules as passed today, all proceedings taken by this Assembly till now, shall be deemed valid and proper and be binding."

Mr. K.M. Munshi: I submit all things that have been done by the House are by majority. The Rules have been adopted by a majority, and they come into force only on adoption. Therefore, whatever we have done before need not be validated.

Mr. President: I think it is unnecessary.

Now that we have passed the Rules, there are certain Committees which have to be elected under the Rules. Yesterday I announced that you may propose names for these Committees up to 1 o'clock today. We could not pass the Rules before 1 o'clock. It is already 1.35. I would give the Members time till 2 o'clock to make any nominations. They may be handed over to the Secretary.

We will meet at 4 o'clock for the purpose of holding elections and any other matter that may still have to be done.

Rai Bahadur Syamanandan Sahaya: Some members may like to know when the next sitting of the Assembly will be.

Mr. President: That will be announced later.

The Assembly then adjourned for Lunch till 4 P.M.

The Assembly re-assembled after Lunch, at 4 of the Clock, Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair.

Mr. President: As the meeting is now in open session after 2 days, I want to know if there are any members who have not signed the Register. If there are, they may kindly sign the Register now. I think there is none.

ELECTION OF COMMITTEES

CREDENTIALS COMMITTEE

Mr. President: According to the Rules which we have not adopted there are certain Committees which have to be elected and I had fixed 2 o'clock as the time by which nominations for those Committees were to be put in. I will take now each of the Committees and say if we should have election. If we have got only as many names as are required, election will not be necessary. First, I take the Credentials Committee. There are five members to be elected to that Committee and the names which have been proposed are these-

Mr. Sarat Chandra Bose--proposed by Mr. Satyanarayan Sinha.

Dr. P.K. Sen--proposed by Mr. Satyanarayan Sinha.

Bakshi Sir Tek Chand--proposed by Mr. Satyanarayan Sinha.

Sir Alladi Krishnaswami Ayyar--proposed by Mr. Satyanarayan Sinha.

Mr. F.R. Anthony--proposed by Mr. Satyanarayan Sinha.

These are the only 5 names which have been proposed. These nominations are valid. As there are only 5 names proposed, there is no need for election. These five are elected. (*Cheers*).

HOUSE COMMITTEE

Mr. President: Then the House Committee. Under the Rules, eleven members to be proposed, one for each of the eleven Provinces. These are the names proposed:-

Mr. Radhanath Das--proposed by Mr. Satyanarayan Sinha (from Bengal).

Mr. Akshay Kumar Das--proposed by Mr. Satyanarayan (from Assam).

Mr. Dip Narayan Sinha--proposed by Mr. satyanarayan Sinha (From Bihar).

Khan Abdul Ghaffar Khan--proposed by Mr. Satyanarayan Sinha (From N.W. F.P.).

Mr. Jairam Das Daulatram--proposed by Mr. Satyanarayan Sinha (from Sind).

Mr. Nandakishore das--proposed by Mr. Satyanarayn Sinha (from Orissa).

Mr. Mohan Lal Saksena--proposed by Mr. Satyanarayan Sinha (from U.P.).

Mr. H.V. Kamath--proposed by Mr. satyanarayan Sinha (from C.P.).

Mr. R.R. Diwakar--proposed by mr. Satyanaran Sinha (from Bombay)

Srimati Ammu Swaminathan--proposed by Mr. Satyanarayan Sinha (from Madras).

Pandit Shri Ram Sharma--proposed by Mr. Satyanarayan Sinha (from Punjab).

These are the eleven names proposed for the Committee As there is no contest, these are declared to be elected.

FINANCE AND STAFF COMMITTEE

Mr. President: Then we come to the Finance and Staff Committee. There are to be nine members but there are ten names proposed. I will read the names:

Mr. Satyanarayan Sinha--proposed by Mr. Kala Venkata Rao.

Mr. Jaipal Singh--proposed by Mr. Satyanarayan Sinha.

Mr. V.I. Muniswami Pillai--proposed by Mr. Satyanarayan Sinha.

Mr. C.E. Gibbon--proposed by Mr.Satyanarayan Sinha.

Mr. N.V. Gadgil--proposed by Mr. Satyanarayan Sinha.

Seth Govind Das--proposed by Mr. Satyanarayan Sinha.

Mr. Sri Prakasa--proposed by Mr. Satyanarayan Sinha.

Raj Kumari Amrit Kaur--proposed by Mr. Satyanarayan Sinha.

Sardar Harnam Singh--proposed by Mr. Satyanarayan Sinha.

Maharajadhiraja Bahadur Sir Uday Chand Mahtab of Burdwan--proposed by the Hon 'ble

Maharajadhiraja Sri Kameshwar Singh of Darbhanga.

These ten names are proposed and there are nine seats. There may have to be election in this case.

(At this stage certain speeches were made which were ordered by the President, with the consent of the House, to be expunged.)

(The Maharajadhiraja of Burdwan withdrew his candidature)

Mr. President; The number of nominations being now equal to the number of Members of the Committee, I now declare the nine Members elected. *(Cheers).*

PRESIDENT's STATEMENT ABOUT REFERENCE TO FEDERAL COURT-THE STATEMENT OF MAY 16 FOR INTERPRETATION.

Mr. President: There is one other matter that I must mention. I said on a previous occasion that we may have to consider the question of referring certain doubts and disputes with regard to the interpretation of the Statement to May 16, to the Federal Court. I have waited these days to get some motion or some suggestion from any member of the House to that effect. So far, no intimation of that kind to refer the matter to the Federal Court has been received. I take it that the wish of the House is that it is not necessary to refer that matter to the Federal Court. (*Cheers*) So, the question does arise now.

That brings us to the close of the business which we had to transact during this session of the Assembly. We shall now have to adjourn. Under the Rules which we have adopted, the President has no power to adjourn a session of the Assembly for more than three days. If he wants to adjourn the House for more than three days, the Assembly has the authority to do so. I suggest that the House do adjourn till the 20th January, 1947, at 11 A.M. If that is the wish of the House, you might indicate that.

Hon'ble Members: "Yes".

Mr. President: The House will now adjourn till 11 a.m. on the 20th January, 1947.

The Assembly then adjourned till Eleven of the Clock, on Monday, the 20th January, 1947.

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME II

Monday, the 20th January, 1947

The Constituent Assembly of India met in the Constitution Hail, New Delhi, at Eleven of the Clock, Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following Members presented their Credentials and signed the' Register:

1. Dr. H. C. Mookherjee.

2. Shri Balkrishna Sharma.

STATEMENT BY PRESIDENT *RE:* ALLEGATIONS IN PARLIAMENT ABOUT THE REPRESENTATIVE CHARACTER OF THE CONSTITUENT ASSEMBLY

Mr. President: Before we begin, I should like to make two statements in connection with certain matters.

In the course of the debates on India in the House of Commons and in the House of Lords in December last, certain statements were made detracting from the representative character of this Assembly during its last session. Notable among those who spoke in this strain were Mr. Churchill and Viscount Simon. Mr. Churchill observed that the Assembly, as it was meeting then, represented "only one major community in India". Viscount Simon was more specific and referred to the Assembly as "a body of Hindus". He went on further to ask "whether this meeting of Caste Hindus at Delhi can be regarded by the Government as the Constituent Assembly they meant at all".

Both these gentlemen have held the highest offices of responsibility and have had a long and intimate connection with the affairs-of India; and whatever may be their views on current political controversies, they would not, I am sure, like to make statements which are wholly contrary to facts and lead to mischievous inferences. It is for this reason that I have considered it necessary in this occasion formally to state the facts. Out of a total of 926 Members who were to take part in the preliminary session, 210 Members attended. These 210 Members consisted of 155 Hindus out of a total of 160, 30 Scheduled Caste representatives out of a total of 33, all the 5 Sikhs, 5 Indian Christians out of a total of 7, all the 5 representatives of Backward Tribes, all 3 Anglo-Indians, all 3 Parsis and 4 Muslims out of 80. The significant absence is of course that of the representatives of the Muslim League--an absence which we all deeply regret. But it is clear from the figures I have quoted that, with the exception of representatives of the Muslim League, every community in India, whatever the party affiliation of the persons representing that community, was represented in the Assembly; and, therefore, to describe the Assembly as representing "Only one major community in India" or as "a body of Hindus" or as a "meeting of Caste Hindus" is a complete travesty of facts. (Cheers).

STATEMENT BY PRESIDENT *RE:* THE DISCREPANCY BETWEEN THE CABINET MISSION'S STATEMENT OF MAY 16, 1946, AS PUBLISHED IN INDIA AND THE PRINTED PAMPHLET CIRCULATED TO MEMBERS

Mr. President: Members may recollect that, in the course of the debates in the Constituent Assembly on Pandit Jawaharlal Nehru's Resolution, Mr. Jaipal Singh pointed out that there was a discrepancy between the Cabinet Mission's Statement of May 16, 1946, as published in India, and the printed pamphlet circulated by the Assembly Office. The discrepancy referred to was in paragraph 20 of the Statement. His compliant was that whereas the Statement originally published in India referred to *full* representation of the interests affected, our reprint referred only to *due* representation. I have had the matter investigated since.

The Principal Information Officer of the Government of India, who originally published the Statement in India, and who has been consulted, has informed us that it was printed exactly in accordance with the copy handed over to him by the Information Officer of the Cabinet Mission. Our own pamphlet is an exact reprint of the White Paper submitted to Parliament. It appears that the Statement as published in India, underwent some small alterations at the hands of the Cabinet Delegation before being presented to Parliament.

The discrepancy pointed out by Mr. Jaipal Singh is not, the only one; there are a few others also. I am, however, satisfied that in practically all cases these changes are purely verbal. Whether the change in paragraph 20 is also purely verbal or not is a matter of opinion. I personally do not think that any material difference has been introduced.

RESOLUTION *RE:* STEERING COMMITTEE

Mr. President. The next item on the Agenda is the motion by Shri Satyanarayan Sinha.

Shri Satyanarayan Sinha (Bihar: General): Mr. President, I beg to move the following motion which stands in my name:

> "Resolved that the Assembly do proceed to elect, in the manner required under Rule 40(1) of the Constituent Assembly Rules, eleven members (other than the President) to be members of the Steering

Committee."

Sir, with your permission, I should like to read out to the House the Rules which we have passed regarding this Committee in the last session.

"The Assembly may from time to time elect, in such manner as it may deem appropriate, besides eleven members, eight additional members, of whom four shall be reserved for election from among the representatives of the Indian States.

The President shall be an *ex-officio* member of the Steering Committee and shall be its *ex-officio* Chairman. The Committee may elect a Vice-Chairman from among its members to preside over the Committee in the absence of the President.

The Secretary of the Assembly shall be *ex-officio* Secretary of the Steering Committee.

Casual vacancies in the Committee shall be filled as soon as possible after they occur by election by the Assembly in such manner as the President may determine.

41.(1) The Committee shall ---

(a) arrange the order of business for the day;

(b) group similar motions and amendments and secure, if possible, assent of the parties concerned to composite motions and amendments;

(c) act as a general liaison body between the Assembly and the Sections, between the Sections *inter se*, between Committees *inter se*, and between the President and any part of the Assembly; and

(d) deal with any other matter under the Rules or referred to it by the Assembly or the President.

(2) The President may make Stameting orders for the conduct of the business of the Steering Committee."

If the House accepts my motion, the President will announce the date and time of receiving nominations and also of the election to be held, if necessary.

Shri Mohanlal Saksena (United Provinces: General): I second it.

Mr. President: Does any one want to speak on this motion? .... As nobody wants to speak, I will put the motion to the vote of the House. The motion is:

"Resolved that 'the Assembly do proceed to elect, in the manner required under Rule 40(1) of the Constituent Assembly Rules, eleven members (other than the President) to be members of the Steering Committee".

The motion was adopted.

Mr. President: I have to inform Hon'ble Members that nominations for the Steering Committee will be received in the Notice Office up to 5 P.M. today. Elections, if necessary, will be held in the Under Secretary's room (Room No. 24, Ground Floor, Council House) between 3 and 5 P.M. on the 21st January.

RESOLUTION *RE:* AIMS AND OBJECTS- *contd.*

Mr. President: We will now take up the discussion of the Resolution moved during the last session by the Hon'ble Pandit Jawaharlal Nehru.

Sir S. Radhakrishnan (United Provinces: General): Mr. Chairman. Sir, I have great pleasure in commending this Resolution to the acceptance of the House. From the list of amendments tabled, I see that there are three different questions raised: whether a declaration of this character is essential; whether this is the proper time for considering such a declaration; and thirdly, whether the objectives included in this Resolution are matters of general agreement or they require modification or Amendment.

I believe that such a Declaration is essential. There are people who are suspicious, who are wavering, who are hostile, who look upon the work of this Constituent Assembly with considerable misgivings. There are people who affirm that, within the Cabinet Plan, it will not be possible for us to effect either real unity in the country or true freedom or economic security. They tell us that they have seen before squirrels move round in a cage, and that within the limits of this Cabinet Statement, it will not be possible for us to effect the revolutionary changes which the country is aiming at. They argue from history that revolutionary chances are generally effected by violent action overthrowing established Governments. The British people were able to end monarchical despotism that way; the United States of America attained her primary freedom through direct action; the French, the Bolshevist, the Fascist and the Nazi revolutions were also effected by similar methods. We are told that we can not effect revolutionary changes through peaceful methods, through negotiation and discussion in constituent assemblies. We reply that we have similar ends; we wish to bring about a fundamental alteration in the structure of Indian society. We wish to end our political and economic dependence, but those who are strong of spirit, those who are not short of sight, take their chances --they make their chances. Here is a chance that is open to us and we wish to use this to find out whether it will be possible for us to gain the revolutionary ends by methods which are unusual so far as past history is concerned. We want to try whether it will not be possible for us to effect a smooth and rapid transition from a state of serfdom to one of freedom. That is the undertaking which this particular Assembly has on hand. We wish to tell all those who are abstaining, from this Assembly that it is not our desire to establish any sectional Government. We are not here asking anything for a particular community or a privileged class. We are here working for the establishment of Swaraj for all the Indian people. It will be our endeavour to abolish every vestige of despotism, every heir loom of inorganic tradition. We are here to bring about real satisfaction of the fundamental needs of the common man of this country, irrespective of race, religion or community. If the trumpet gives an uncertain sounds, we cannot rally the people to our support. It is therefore essential that our bugle call, our trumpet-sound, must be clear, must give the people a sense of exhilaration, must give the suspicious and the abstaining a sense of reassurance that we are here pledged to achieve full independence of India, where no individual will suffer from undeserved want, where no group will be thwarted in the development of its cultural life. Therefore I believe that a declaration of objectives of this character is essential and it is not necessary for us to wait till this Assembly is fuller than it happens to be at the present moment.

Now let us turn to the objectives themselves. We resolve that India shall be an Independent, Sovereign Republic. On the question of independence there is no difference of opinion. Premier Attlee, in his first statement, made on 15th March, said:

> "I hope that the Indian people may elect to remain within the British Commonwealth. I am certain that she will find great advantages in doing so; but if she does so elect, it must be by her own free will. The British Commonwealth and Empire is not bound together by chains of external compulsion. If, on the other hand, she elects for independence, in our view she has a right to do so."

The Muslim League and the Princes have all agreed to it. In the Memorandum on States' Treaties and Paramountcy, presented by the Cabinet Mission to the Chancellor of the Chamber of Princes on the 12th May, 1946, it is said that--

> "The Chamber has since confirmed that the Indian States fully share the general desire in the country for the immediate attainment by India of her full stature. His Majesty's Government have now declared that, if the Succession Government or Governments in British India declare independence, no obstacle would be placed in their way. They effect of these announcements is that all those concerned with the future of India wish her to attain a position of independence within or without the British Commonwealth."

All those concerned with the future of India, the Congress, the Muslim League, and other organisations and the Princes also, they all desire independence for India within or without the British Commonwealth.

Mr. Churchill, in the House of Commons, referring to His Majesty's Government's offer of independence, said on the 1st of July, 1946--

> "However, it is another matter when we try to short-circuit the process and my 'Take independence now'. That is what the Government are going to get and they are going to get it very soon. They should not blind themselves to the idea. There is going to be no hesitation on the part of those with whom the Government is dealing in taking full and immediate independence. That is what is going to happen."

This Resolution on the objectives does not wish to disappoint Mr. Churchill. (*Hear, hear*). It tells him that the expected is happening. You gave us the choice to get out of the British Commonwealth. We are electing to go out of the British Commonwealth. May I say why? So far as India is concerned, it is not a mere Dominion like Australia, like New Zealand or Canada or South Africa. These latter are bound to Great Britain by ties of race, religion and culture. India has a vast population, immense natural resources, a great cultural heritage and has had an independent career for a very long time, and it is inconceivable that India can be a Dominion like the other Dominions.

Secondly, let us consider the implications of what happened at the United Nations Organisation, when the Indian Delegation, headed by our distinguished colleague, Mrs. Vijayalakshmi Pandit, so ably defended--the rights of Indians in South Africa--look at the attitude that was adopted by Great Britain. Great Britain along with Canada and Australia supported South Africa, New Zealand abstaining from voting. It shows that there is a community of ideals between Great Britain and the other Dominions in which India has no share. There is no sense of belonging in the British Commonwealth. We do not feel that we are all members, enjoying similar rights as parts of the British Commonwealth. Some of you may also have heard of the recent move launched by Mr. Churchill and Lord Templewood for a European Union under the fostering care and leadership of Great Britain. That also shows in what way the wind is blowing.

Yet, even though India may elect to quit the British Commonwealth, there are a hundred different ways of voluntary co-operation, ways of mutual collaboration, in trade, in defence, in matters of culture; but whether all these forms of mutual co-operation are going to develop in a spirit of friendship, trust and harmony, or whether they will be allowed to die out in mutual distrust and recrimination, depends entirely on the attitude which Great Britain will adopt in this crises. This Resolution about the Indian Republic seems to have irritated Mr. Churchill and his followers. Our Chairman today referred to one statement by Mr. Churchill and I will refer to some others.

When the debate on Burma took place, Mr. Churchill stated that the annexation of Burma happened during his father's Secretaryship, and that now Burma is given the liberty to get out of the British Commonwealth. He seems to look upon Burma and India as parts of his ancestral estate and now when they are passing out, he seems to be terribly disheartened.

On the debate on India, he asked His Majesty's Government to remember its obligations "to the Muslims, numbering 90 millions, who comprised the majority of the fighting elements of India" --truth is not rated high in Indian debates and international intercourse-- "and of untouchables of anything from 40 to 60 millions." He refers to the representatives of the Great Congress Party as the mouthpiece "of actively organised and engineered minorities who, having seized upon power by force, or fraud or chicanery, go forward and use that power in the name of vast masses with whom they have long since lost all effective connection." A party of men who have braved the perils of life, who have suffered for their patriotism whose love of country and capacity for sacrifice are second to none in the whole world who are led by one who is today leading a lonely trek in a far off corner of India, bearing on his aging shoulders the burden of a nation's shame and sorrow, to talk of that party in the way in which Mr. Churchill has done is I do not know how to describe it (*Cries of shame*). Mr. Churchill's outbursts are bereft of dignity or discretion. Provocative and irrelevant remarks, sneers of derision in regard to our communal divisions, have punctuated his speech on that occasion and on other occasions. I shall only say here that such speeches and such statements cannot prevent the end but can only postpone it and thus prolong the agony. The British connection will end, it must end. Whether it ends in friendship and goodwill or in convulsions and agony, depends upon the way in which the British people treat this great problem.

Republic is a word which has disturbed some of the representatives of the States in this country. We have said from this platform that a Republican India does not mean the abolition of Princely rule. Princes may continue; Princes will be there so long as they make themselves constitutional so long as they make themselves responsible to the people of the States. It the great paramount power which is sovereign in this country by conquest. is now transferring responsibility to the representatives of the people, it goes without saying that those who depend on that paramount power should do what the British have done. They must also transfer responsibility to the representatives of the people.

We cannot say that the republican tradition is foreign to the genius of this country. We have had it from the beginning of our history. When a few merchants from the north went down to the south, one of the Princes of the Deccan asked the question. "Who is your King?" The answer was, "Some of us are governed by assemblies, some of us by kings."

Kecid deso ganadhina kecid rajadhina.

Panini, Megasthenes and Kautilya refer to the Republics of Ancient India. The Great Buddha belonged to the Republic of Kapilavastu.

Much has been said about the sovereignty of the people. We have held that the ultimate sovereignty rests with the moral law, with the conscience of humanity. People as well as kings are subordinate to that. Dharma, righteousness, is the king of kings.

Dharmam Kshatrasya Kshatram.

It is the ruler of both the people and the rulers themselves. It is the sovereignty of the law which we have asserted. The Princes--I count many of them amongst my personal friends--have agreed with the Cabinet Statement and wished to take their share in the future development of this country, and I do hope that they will realise that it is their duty to take notice of the surging hopes of their peoples and make themselves responsible. If they do so, they will play a notable part in the shaping of our country. We have no ill-will towards the Princes. The assertion of republicanism, the assertion of the sovereignty of the people, do not in any manner indicate any antagonism to the Princely rule itself. They do not refer to the present facts of past history of the Indian States but they indicate the future aspirations of the peoples of the States.

The next thing that we find in this Resolution is about the Union of India. The Cabinet Statement has ruled out the partition of India. Geography is against it. Military strategy is against it. The aspirations of Hindus, Muslims and Sikhs from the very beginning have been against it. The present tendency is for larger and larger aggregations. Look at what has happened in America, in Canada and Switzerland. Egypt wishes to be connected with Sudan, South Ireland wishes to be connected with North Ireland. Palestine is protesting against any division. Again nationalism, not religion, is the basis of modern life. Allenby's liberating campaigns in Egypt, Lawrence's adventures in Arabia, Kemal Pasha's defiant creation of a secular Turkey, point out that the days of religious States are over. These are the days of nationalism. The Hindus and Muslims have lived together in this country for over a thousand years. They belong to the same land, speak the same language. They have the same racial ancestry. They have a common destiny to work for. They interpenetrate one another. It is not a kind of Ulster, which we can separate; but our Ulster is a ubiquitous one. Even if we have two States, there will be large minorities and these minorities, whether really oppressed or not, will look across their frontiers and ask for protection. This will be a source of continual strife which will go on, as long as we do not have a United India. We realise that while a strong Centre is essential to mould all the peoples into one united whole, on account of the grievances real or imaginary, we have to be satisfied with a Centre which is limited to the three subjects, which the Cabinet Plan has put before us. Therefore, we are proceeding on the principle of Provincial Autonomy, with the residuary powers to the Provinces themselves. Events that have happened in Bihar and Bengal, tell us that there is an urgent need for a strong Centre. Yet as there are these difficulties, we propose to develop a multi-national State which will give adequate scope for the play of variations among the different cultures themselves.

Grouping has given us a lot of trouble. But grouping is subject to two essential factors--which are the integral parts of the Cabinet Plan,--a Union Centre and residuary powers in the Provinces; and in these Groups also we will have large minorities. Those who are insistent on the rights of minorities will have to concede these rights to others who happen to be included in the Groups. In a statement made by Sir Stafford Cripps on July 18, 1946, he said:

> "A fear was expressed that somehow or other the new Provincial Constitutions might be so manoeuvred as to make it impossible for the Provinces afterwards to opt out. I do not myself see how such a thing would be possible, but if anything of that kind were to be attempted, it would be a clear breach of the basic understanding of this Scheme."

That is what Sir Stafford Cripps said. If any attempt is made to so manipulate electorates as to make it difficult for the Provinces to opt out, then that would be, in the words of Sir Stafford Cripps, "a clear breach of the basic understanding of this Scheme". After all we have to live together and it is impossible to impose any constitution against the wishes of the people who are to be governed by that Constitution.

There is also a reference to fundamental rights in this Resolution. It is a socio-economic revolution that we are attempting to bring about. It is therefore necessary that we must re-make the material conditions; but apart from re-making the material conditions, we have to safeguard the liberty of the human spirit. It is no good creating conditions of freedom without producing a sense of freedom. The mind of man must have fall liberty to flower and mature and to grow to its fullest Stature. The progress of man is due to the play of his mind, now creating now destroying, always transmuting. We must safeguard the liberty of the human spirit against the encroachments of the State. While State regulation is necessary to improve economic conditions, it should not be done at the expense of the human spirit.

We are actors today in a great historical drama. We are involved in it and therefore we are unable to perceive the large contours of it. This declaration, which we make today, is of the nature of a pledge to our own people and a pact with the civilized world.

The question was put by Mr. Churchill to Mr. Alexander whether this Assembly is functioning validly. Mr. Alexander said:

> "I repeat the scheme for elections for the Constituent Assembly was carried out. If the Muslim League abstained from going there, bow can you prevent a duly elected Assembly from going on to do its business?"

That is what Mr. Alexander said. There was some difficulty about the interpretation of the grouping. Much against its will, the Congress has accepted His Majesty's Government's interpretation. The only two clauses that remain are adequate safeguards for minorities, and a treaty on the problems which arise out of transfer of power. The Constituent Assembly is legally functioning. Every part of the State Paper has been completely accepted and if we are able to frame adequate safeguards for minorities, safeguards which will satisfy not so much the British or our own people, but the civilized conscience of the world, then while yet the British have the power to put it into action, they must give this Constitution the force of law. It is essential that they should do so If after all these conditions are satisfied, if some excuse is invented for postponing the independence of India, it would be the most callous betrayal of history. If, on the other hand, the British argue that the Constituent Assembly has started functioning on the basis of the Cabinet Plan and they have accepted every clause of the State Paper of May 16, and have provided adequate safeguards for all minorities and therefore they should implement it, then it will be an achievement of history which will secure the co-operation and goodwill of two great peoples.

In that very speech which Mr. Attlee made as the Prime Minister on March 15th, he said:

> "In the mass of Asia, an Asia ravaged by war., we have here the one country that has been seeking to apply the principles of democracy. I have always felt myself that political India might be the light of Asia..."

may, the light of the world giving to its distracted mind an integral vision and to its bewildered will an upward direction.

Here are the two alternatives. Accept the Constituent Assembly. Take its findings. Find out whether there are adequate safeguards for minorities or not. If they are there, give them the force of law and you may get cooperation. If, after all these conditions are fulfilled, you still try to make out that something is lacking, the British will be understood as violating the spirit of the whole State Paper, and the dark possibilities which will lie ahead of us in the present world conditions, I do not wish to contemplate.

Mr. N. V. Gadgil (Bombay: General): Mr. Chairman, I have great pleasure in supporting the Resolution which has been moved by The Hon'ble Pandit Jawaharlal Nehru. In the course of the discussion it was pointed out that this Constituent Assembly was not competent to pass a resolution of this character. In this connection, I respectfully draw the attention of this House to the opening paragraph of the Statement in which a quotation from the speech of the Premier Mr. Attlee is given. Therein he says that--

> "My colleagues are going to India with the intention of using their utmost endeavours to help her to attain her freedom as speedily and fully as possible. What form of Government is to replace the present regime is for India to decide; but our desire is to help her to set up forthwith the machinery for making that decision."

It is clear, Sir, that this Assembly is here to evolve not only the form of Government but to lay down what the content of the same will be. I wish to state here , Sir, that we are not here as mere drafters of a constitution or choppers of logic. We are here, as a matter of fact, as a council of action, and this meeting of the Constituent Assembly is a stage in the progress of the struggle for freedom. It may possible be the penultimate battle or the last battle that will end the war of freedom, which has been carried on for over 75 years or more, from generation to generation. An inheritance of struggle has been left to us by our predecessors; but I do hope that when this generation is over, the inheritance it will leave, will not be an inheritance of struggle, but an inheritance of creative effort, whereby the future society of India will be built up.

Sir, there is a clear necessity for defining the objective. In the past those who have really contributed to this struggle are not the few professors and Privy Councillors, but they are the people who have been toiling in poverty, in ignorance. They have got to know what is it that they have fought for so far, and what is it in the ultimate they will be asked to fight for in case the Constitution we may frame here is not acceptable to the British Government. Now, Sir, in this Resolution, as I see it, there is nothing to which any person or any party, who is anxious to have freedom, can take objection. In the first place, the main objective is defined as an, Independent Sovereign Republic. As far as I know, Sir, from the various resolutions that have been passed by the Muslim League in the course of the last six years or more, they have always stated that they are for democratic freedom. In fact, the Islamic country that leads the Islamic world, namely, Turkey, today, is a Republic. Therefore, there is nothing in this to which the Muslim League can take any objection. Let us therefore see what are the merits in this proposition and if it can be pointed out that there is anything objectionable, then, certainly, it is a matter which can be adjusted when those who want to take objection are here. But as far as I am able to see there is nothing, no phrase, no clause in this Resolution to which anybody can take objection.

Taking the several sub-paragraphs in this Resolution, the main thing that is provided for is one State, one Union. At the same time here is enough scope for every province to grow and expand and there is nothing to prevent any province from reaching its utmost goal, consistent with the common obligation. At the same time, I wish to point out that it provides a field which gives wider scope for higher statesmanship, for higher scholarship, for better commerce and larger industries. If there is such a Union, it means there is greater political security and the Union will have economically more bargaining power. Viewed from any point of view, a State covering all the geographical unit, known as India, is a necessity for every province, for every constituent State that may go to constitute this Union. By joining they will have nothing to lose and, in my humble opinion much to gain.

Now, Sir, it also provides for fundamental rights and these fundamental rights are, what are most cherished by the common man. It provides freedom of association, freedom of speech and all other civil liberties which are to found in the Constitution of every country. Some objection was raised because many things are not clear. Obviously, all things cannot be included in a Resolution of this kind. But if one carefully goes through the relevant portion which deals with fundamental rights, it lays down that there will be economic justice, which can only he secured if the production in the country ultimately comes to be socially owned. Private enterprise may be there, but in a limited manner. If economic justice is to be secured, it can. only be, if the means of production come to be owned by the State as such. Therefore, if matters today appear somewhat not very clear, I am sure, that when these principles are incorporated in the sections of the Constitution, these matters will be made perfectly clear.

Sir, this is a sort of building. The whole Resolution has a unity just as this hall in which we are assembled. The dome is standing on the various arches down below. Similarly, the freedom contemplated is supported by the various principles which are incorporated in the Resolution and that has given balance and poise to the structure. As I said, this Resolution is absolutely necessary and though textually it may not be a part of the Constitution, that may come ultimately to be framed, it is a sort of a spiritual preamble which will pervade every section, every clause and every schedule and as I said, Sir, it is necessary. It is a sort of a dynamic, a driving power which will be available to those who will be charged with the framing of the Constitution in detail. This is in fact the foundation. People will know what they are to get. It will be a constitution which will evoke the necessary loyalty from every citizen whom it is to govern. For no constitution can evoke loyalty, no constitution can evoke the necessary sentiment unless it offers every citizen sufficient inspiration to defend it, if it comes to it, by laying down his own life.

Sir, as I said, this is not an assembly in which are gathered mere drafters of the Constitution; it is a sort of a council of action. We are here because of the struggle that has been carried on by the people, and we have to frame the Constitution. If that Constitution is framed and not granted, people ask what is the sanction. To that my humble answer is that there are two kinds of sanctions, one, the moral sanction and the other physical. If our Constitution is just and fair to every legitimate interest in this country, that provides the first kind of sanction; and the second kind of sanction is the determination of the people to see that whatever form of Government they have decided to adopt, is there, and if it is not granted by any power, then that determination will not be merely academic but it will work in concrete forms, though the forms may be stated today. I submit that as the Constitution proceeds from clause to clause and section to section, people will gradually know how things are moving and in fact, I feel, Sir, that there will be created such an atmosphere in the country that the necessary temper for revolution will be augmented and will be ready for use. I submit that as we proceed from clause to clause and section to section, British power in this country will be withering and by the time we reach the last schedule, we will find that the British State, so far as India is concerned, has withered away. What will be left then, will be a formal repeal of the British power, for do we not read the writing on the wall, do we not see that the pictures of those who ruled India with repression ruthless repression, with extraordinary laws and Ordinances gone? Where are the pictures? They are all gone. There you can see the writing on the wall. Mr. President, it has been pointed out that the Britishers are very anxious to leave this country. In fact years ago, Macaulay wrote that it would be a glorious day for Britishers when Indian people would ask them to vacate. We have been asking them so long; but apart from what Lord Macaulay has said, the Empire that had begun in perjuries and forgeries of Clive and Hastings, sustained throughout by broken promises, and which is still sought to be continued by diplomatic clarifications, by fleeting and flexible explanations, must end. These explanations will not make it survive a day more. There must be an honest deed of transfer in favour of the masses who have suffered so long and so much under the foreign rule. The day must come when they must come into their own. If the transfer is peaceful, well and good; but if it does not come peacefully, and if a struggle becomes necessary and history demands that there must be a struggle, I can only say that we do not want to fight but if we have to, then we have got the men, we have got the material and we have got the mind too. But in that case what will happen? Britishers will go--stocks and shares, shops and workshops, --they will leave nothing behind, not even goodwill or good memories. Their trade and flag both will disappear. It is for them to decide whether they want to live upto their great ideal which was stated by Lord Macaulay or they still want to cling and ultimately meet the fate which I have just visualized.

Mr. President, we have come to a stage when it becomes necessary to say in the clearest possible terms what we want to have. We have been told that other questions, such as minorities are there, difficult of solution, I want to make it clear, Sir, that this is a problem which is the creation of foreign power. Nobody has ever succeeded in preventing the coming together of the waters of Jumna and Ganges beyond Allahabad (*hear, hear*); because there the three streams Ganges, Jumna and Saraswati (*Wisdom*) join and after that nobody can distinguish the waters of Jumna from the waters of Ganges. The time has come when wisdom will dawn on both the communities and the result will be that they will form a higher unity, a higher synthesis, in which everybody will have his opportunity to rise to the highest level of life and personality. Now it has been said that it will not be possible in the near future to get what we desire. It may be a short or a long struggle but whether it is a long struggle or a short struggle although We do not want it or invoke it, if it comes, everyone of us must be prepared for it. Sir, the task that has been cast on these representatives who are gathered here, is great and historic. I have no doubt that they will rise to the occasion and lead this ancient country to its goal of freedom. They will bring into existence a society where men will be valued not by what they have, but by what they are, where men will be measured in terms of character and not in terms of coin, where pride will be a back number and prejudice will be tongue-tied, where men and women can hold their heads high, where they will be happy, because they will be equal, where religion will not be a battle-field, for all will be the worshippers or one Goddess--the Goddess of Duty, where race will not evoke arrogance on one hand and inflict humiliation on the other, for all will belong to one race., viz., the race of workers, where creeds will not disintegrate the people, for their creed will be of service to all, where freedom and plenty will be available, for none will have the monopoly of power or prosperity. All will be happy because all will be equal. It is a vision no doubt but a vision is necessary if one wants to live a life, a life with aim and purpose and for that one must have a vision; otherwise it will be the life of a crow.

Kakoni Jivati Chiraya Balimcha Bhunkte. "Even a crow lives long on crumbs".

We do not want that sort of life. It is a vision no doubt. All I can say in conclusion is, that unless we have vision, we cannot progress, for a people without vision perish. *(Cheers.)*

The Hon'ble Mrs. Vijayalakshmi Pandit (United Provinces: General): Mr. President, it was my privilege in 1937 to move the first resolution after the inauguration of Provincial Autonomy in my Province, demanding a Constituent Assembly to draw up a constitution for an independent India. Today, ten years later, that Constituent Assembly is meeting here. This is a historic milestone in our progress toward freedom and yet, Sir, freedom remains just a little beyond our grasp. Imperialism dies hard and even though it knows its days are numbered, it struggles for, survival. We have before us the instance of what is happening in Burma, in Indonesia, in Indochina, and we see, how in those countries, in spite of the desperate efforts that the peoples are putting up to free themselves, the stranglehold of imperialism is so great that they are unable easily to shake it off. Reactionary elements in every country are getting together, Sir, under the guise of seeking protection, clinging to the Imperialist power and trying thereby to strengthen it. We have seen the sorry spectacle of what happened in San Francisco when the United Nations Organization was being born. The Asiatic nations assembled there, were dominated by the Imperialist powers and could not speak independently but only echoed the voice of their respective Imperialist powers. The result has already been seen in the fact that in spite of the brave words of the Charter, that came into existence at that time, no implementation of that Charter was possible because there was not enough strength behind it. The peoples of Asia were silent and could not insist upon its implementation. Even today, Asia is far behind the peoples of Europe in representation in the United Nations and it was perhaps the first time in history that at the last United Nations Assembly, a country, not free itself, was able to raise its voice for the freedom of oppressed and dependent peoples all over the world. (*Cheers.*) The fact, that the United Nations Assembly has recognized this, is because India even today has shown within herself the power of giving a lead to the world. An Independent India would no doubt assume leadership not only of Asia but of the world, and so when we meet here in this Assembly to draw up the future Constitution of our country, we must not forget that it is not only to ourselves we owe a duty but also to the world which looks to us.

The Resolution before us stresses complete freedom for the individual and concedes guarantees to every legitimate group. Therefore in this there is no justification for fear for the minorities. Even though certain minorities have special interests to safeguard they should not forget, that they are parts of the whole, and if the larger interest suffers, there can be no question of real safeguarding of the interest of any minority. In an Independent India minorities will not be able to look to outside powers for help without being termed 'traitors'. We have had too much Calk of rights in recent years and very little about obligations. This approach to any problem is unfortunate. The Resolution before us deals with problems which are fundamental to all of us and only to the extent that they are solved, can we safeguard the rights of any special minority. The Resolution indicates clearly that in an independent India the fullest social, economic and cultural justice to individuals and groups will be conceded and through our design for living, we shall be helping other nations to decide the pattern of their own lives. Our own design must therefore be right and must be made with the co-operation and strength of the entire country.

Of all the Asiatic countries, India alone has stood for democracy throughout the years. In all our chequered history we have fought for the. will of the people to triumph. In recent years, even at great peril and at personal sacrifice, the people of this country have adhered to the ideal of democracy, and, today, we are in a position of showing to the world that we can implement our ideals. The Resolution under discussion is clear in substance and in wording, but I would like to stress two points.

We have before us two aspects--the positive and the negative. The negative aspect is concerned with the ending of the imperialist domination of our country and in that we all agree. But the more important side to the question is the positive side, which means the building up in our country of a social democratic State which will enable India to fulfil her destiny and point the path of lasting peace and progress to the world. At this moment in our national history, we cannot afford to fritter away our energies in any talk or action which will defeat our objective, nor must we indulge in unreasoning fears. We must accept the challenge that has been offered and march together in order to realize the positive side of this picture.

The end of the War has created many problems, difficult in themselves and made more complex by the fact that individual demands are placed before the interest of the whole; that many nations, being still dependent, are unable to raise their voice in support or protest. But India is in a position to contribute substantially to a solution of the present problems and also in maintaining peace and security in the world. A free India becomes a power for the forces of progress. In this age of the building up of one world, we cannot talk of separate nations. We have to work in order to build up one world, of which India shall be a worthy partner. India has the right to lead because of her heritage, and also because of her present, when, in the face of the complexity of her own problems, she has stood up and estimated values and not let go all those ideals which she had placed before her. Our contribution to the future is one of neutralisation of political and social discontents and to that end, we must work by the establishment of freedom in our own country and helping all those who strive for freedom in the world. Unless Asia comes into her own, the world cannot function as a whole. A world which is divided into groups cannot be secure. A famous American has said, "No nation can exist half slave and half free". The same applies to the world, since freedom is not divisible. India must free herself socially, economically and then free others, and in the Resolution before us we find an attempt to work towards that end. By it, we redeem the pledge we have taken. I appeal to the Members of this House to pass the Resolution in order to show that this ancient land is conscious of the challenge that has been presented to her and can live up to the ideals and heritage of her past.

Prof. N. G. Ranga (Madras: General): Mr. Chairman and friends, I am extremely glad to be able to support this Resolution. It does not mean that I am quite satisfied with it; but so far as this Resolution goes, it places before us the most effective, the most comprehensive and liberal idea of the future that our people can look forward to, once our new Constitution comes into existence. But it is much more than a liberal view of things, because it is not content with placing high ideals and noble ideas before our people. It also takes into consideration the need for assuring to our people the actual enjoyment of the rights that are stated herein, and it is in this manner that this Resolution goes far beyond similar resolutions that had been moved in other constituent assemblies and similar ideas incorporated in other constitutions of the world.

There is one other respect also in which this Resolution is very much in advance. While in other constitutions, no specific mention has been made to assure the people the right of freedom of action in pursuance of their ideals, in pursuit of their aims, this Resolution makes it perfectly clear that our people will have the right to act whenever they find it necessary, provided such action is within the law and also in conformity with the moral standards of our people. That is a very important matter, because from time to time, both in this country and in other countries, governments used to come forward to deny the right of the people to rebel against any particular law, any particular ordinance, nay particular dictate of that particular government, and threatened the people and fold them that they had absolutely no right whatsoever to go against the established law. But, Sir, while political philosophers were merely content in other countries, philosophers like Harold Laski and others, with exhorting the people to be ever ready to stand up to their rights, their obligations and civil liberties, here in India alone, the opportunity has been given--thanks to the leadership of Mahatma Gandhi to-- offer *satyagraha* on a mass scale and to claim that right not only for large bodies of people, organised and unorganised, but also for individuals. Again and again, we have been able to reiterate our right to rise against injustices to go against any particular law or system of laws and thus maintain that only in that way can the civil liberties of the people and also all their personal and individual rights be maintained. The State as well as human beings are liable to err and there must be some safeguard against their mistakes, and the only safeguard that can be found will be *satyagraha*. Therefore, Sir, I welcome this Resolution for that reason also.

Several people in this country have been complaining that such and such parties have not taken part in this Assembly and such and such other sections have not been able to come into the orbit of this Assembly and its work, and therefore, we have no right whatsoever to consider a resolution like this. Is it necessary, Sir, that all the members in a family should be present in council where the point for consideration is that the total property of that family should be increased, should be augmented? Can there be a member of any family who would be opposed to the increase of the moral and material prosperity and the rights of that particular family? This Resolution is nothing but that. We are here assembled to consider in what manner the rights and obligations, the powers and duties of every individual in this country, groups of people and the whole country, can be raised, increased and augmented. At this juncture it does, not matter, if some of us are not able to be in this House. It may be that for various reasons of their own, certain parties have kept themselves away; but that need not prevent us from trying to go ahead in order to increase the total heritage of our people, in order to augment the total rights and strength of our country.

Sir, at the same time, I said this is not enough and I would like to say a few words about that. It is all very well to go back to our villages and to our friends and tell them that we have passed a resolution like this and that in future all their rights will be safeguarded and they will have no fears in regard to the future. But will it be enough if those people get the right to live, to have full employment, to gain their fundamental rights, if they are only told that they will be able to have their meetings, their conferences, their associations and various other civil liberties? Is it not necessary to enable them to create such conditions in life as will enable them to enjoy these rights that we have enumerated here? It is a fact, Sir, it is a miserable fact, that millions and millions of our countrymen are not yet able to take advantage of the various liberties that we have laid down here, the various privileges, that we say, are being thrown open for everyone to enjoy. They are not educated. Economically, they are oppressed and suppressed also, and socially, they are backward and down-trodden. For all these people, so many more things have to be done, may be for some time to come, before they come to enjoy these rights. They need props. They need a ladder by which they can reach on to the stage when it will be possible for them to come to appreciate the value of the rights that we are placing before them and enjoy them.

Sir, there is a lot of talk about minorities. Who are the real minorities? Not the Hindus in the so-called Pakistan provinces, not the Sikhs, not even the Muslims. No, the real minorities are the masses of this country. These people are so depressed and oppressed and suppressed till now that they are not able to take advantage of the ordinary civil rights. What is the position? You go to the tribal areas. According to law, their own traditional law, their tribal law, their lands cannot be alienated. Yet our merchants go there, and in the so-called free market they are able to snatch their lands. Thus, even though the law goes against this snatching away of their lands, still the merchants are able to turn the tribal people into veritable slaves by various kinds of bonds, and make them hereditary bond-slaves. Let us go to the ordinary villagers. There goes the money-lender with his money and he is able to get the villagers in his pocket. There is the land-lord himself, the zamindar, and the *mal-guzar* and there are the various other people who are able to exploit these poor villagers. There is no elementary education even among these people. These are the real minorities that need protection and assurances of protection. In order to give them the necessary protection, we will need much more than this. Resolution.

But it is quite possible that we cannot incorporate all those things in a resolution of this character. It is the spirit of the Resolution that has got to be taken into account; it is in that light that the Constitution has got to be formulated. And in framing that Constitution we will have to see that there is a charter of fundamental rights. We are agreed upon that, but that will not be enough. Several other countries also have had their charters of fundamental rights. Yet these fundamental rights have been neglected by their own Governments. Therefore we will have to stipulate certain provisions in our own Constitution, by which it will be possible for our masses to invoke the aid of the law as against the State, as against the Government and its incumbents from time to time in order to see that these fundamental rights are actually enforced. For instance, in France they had noble ideals of equality, fraternity and liberty, and they laid it down that no Member of Parliament could possibly be put in jail while the House was in session. Yet that right was denied. Several Deputies of the French Parliament were put in jail and there was no safeguard against it. In America, before the law all the people are equal, but yet you know how depressed are the Negroes in that country. We have to prevent a repetition of that sort of thing in our country. In order to be able to do that, we must enable our own workers, our own peasants, our own ordinary masses to demand from the State necessary financial assistance to go to the Courts, the Supreme Court of the country and to seek its protection. Poor men, as you know, are not able to go to Court, and when they have to fight against the State, it is impossible for them to think of it at all. Just as you provide for a poor man's lawyer in criminal cases, so also if you were to make a similar provision for enforcement by the ordinary masses of the fundamental rights that we formulate, then there might be some safeguard.

The masses are the real minorities, and yet they are not asking for all these safeguards, and even when they ask for the safeguards they do not make it a condition precedent to constitutional progress. What is more, they care more for the country, for our own national progress and therefore, they not only say, let us go ahead, but they exhort us to go ahead. They stand by us, and I appeal to our own so-called religious minorities to take a lesson from these people. Whom are we supposed to represent? The ordinary masses of our country. And yet most of us do not belong to the masses themselves. We are of them, we wish to stand for them, but the masses themselves are not able to come up to the Constitutional Assembly. It may take some time; in the meanwhile, we are here as their trustees, as their champions, and we are trying our best to speak for them. While we are doing this, our friends, the Muslim Leaguers, wish the rest of the world to believe that we are trying to do them some harm therefore they cannot hope to come over here, they cannot be expected to come over here. I wish to tell them from this forum, it would be the greatest possible tragedy not only for the Muslim masses but also for the masses of the country in general, if the Muslim League were to follow this policy of non cooperation, this policy of do-nothing. What more can the Indian National Congress be expected to do in order to concilliate them than what it has already done? Our friends, the Muslim Leaguers, instead of trying to come to us and negotiate with us, reason with us or argue before us--they have gone over to the Britisher. They have tried to gain one after another a number of concessions. Each one of these concessions has come down as a sort of black curtain in blotting out the vista of freedom and Swaraj that this country is aiming at; and in addition they have done enough to embitter the people of this country. In spite of all this, the Indian National Congress has chosen to accept all these various safeguards and rights and various other things that they have been gaining from the British with the only hope, with the only intention, with the only appeal to our Muslim League friends, to come over here and co-operate with us in the shaping of the Constitution for our country. If they do not come, are we going to stop where we are? Certainly not. They ought to know, and other people also who are backing them ought to know, that the Indian National Congress cannot be stampeded in this fashion. We are making history, we have been making history for the last 25 years. Again and again, in spite of our constitutionalists who have been telling us. "For God's sake do not go against the law, these things will not get us Swaraj, you negotiate with the British, work with the British", we have resorted to saytagraha on many an occasion in order to safeguard the rights and privileges of our people. We have made progress,--who can deny that? Could we have been in this Constituent Assembly if we had not been able to launch direct struggles? Could there have been even this possibility for the Muslim League to try and obstruct as they are doing now, if it had not been for the sacrifice and struggle that we have been carrying on all these years? We have reached a stage when it is impossible for British imperialism to prevent us from making progress. British imperialism goes to the pitiable plight of trying to have some allies in order to arrest our progress--may be for a day, may be for a few minutes. But British imperialism will not succeed, and these allies of British Imperialism cannot succeed. What is more, our own masses will soon be in a position to set aside not only British imperialism but also their allies in this country and go ahead and help us to go ahead. What has been the position of the Muslim League itself? There was a time when Mr.

Jinnah used to say that independence was a sort of mirage, that it was absurd for India to claim independence for India. He himself said that direct action was an absurdity, and yet he has himself come to claim independence for India, he has declared himself in favour of independence. He has himself come to declare from the Muslim League rostrum the "Quit India" slogan, though he would like to have it, as "divide the country between us, and quit India." Nevertheless he followed in our own footsteps. He wants today two Constituent Assemblies, whereas not long ago he was not prepared to think of any Constituent Assembly at all. What does this show? I say, that if we go ahead, the Muslim Leaguers also are obliged to go ahead for the simple reason that the ordinary masses, whether Hindus or Muslims, to whichever community they belong, are impelling their political leaders, in spite of their own peculiar partisanship, to go ahead in the manner in which alone India can go ahead. Therefore, I appeal to our Muslim Leaguers, at least in the name of their own masses, to come into this House and co-operate with us, if they are not for their own vested interests, for their Nawabs, or for their Jagirdars.

Mr. Jinnah and others have been claiming in recent past that they are also as democratic as the Indian National Congress. If they are democratic, let them think over the fact as to which of the communities contains the largest number of poor people. Among the Hindus a good percentage are not poor, but among the Muslims, the rich people can be counted on your fingers. The poorest among our people are the Muslim masses. They need most urgently a free India without which there is no chance for the Tribal people or for the *Harijans* or for the Muslim *Mazdoor* or the *Kisan*, and, the longer Mr. Jinnah and others prolong this agony of slavery, the longer they will be delaying the possibility of their own masses making any progress.

Lastly, I wish to appeal to this House to see to it that the necessary provisions are made in the Constitution proper in order to enable our people to enjoy the various rights indicated in this Resolution. Without such provisions this Resolution will have become useless. It will only be a sort of pious hope and nothing more. It is true that, when it comes to be incorporated in our text-books and our boys and girls read them in their lessons, it will do a lot of educational work. But that will not be enough. Similar work was done in America and yet the ordinary rights of the people were set at naught by the Government. Therefore we should take care to incorporate the necessary sanctions in the Constitution in order to safeguard the interests of the masses and to ensure to them the necessary opportunities which are needed to enable them to enjoy these rights.

Dr. P. K. Sen (Bihar: General): Mr. President, Sir, I rise to accord my heart-felt support to the Resolution. A great many speakers have spoken before me during this session as well as in the last and a great many aspects have already been discussed fully. I do not with to go over those aspects again or repeat any of their observations. But I do feel that this Resolution, in all its different branches, is very very necessary before we undertake to it down and frame a constitution for an Independent India. It is also important that we should proclaim, as the Resolution does, India an independent Sovereign Republic.

As the Hon'ble Member, who spoke first today observed, there are many who may be regarded as doubters, waverers and scoffers. It is necessary, therefore, that we should proclaim to the world our determination to carry out our undertaking and frame a constitution for an Independent Sovereign Republic --a Republic in which the ultimate power is vested in the people and all power and authority are derived from the people. There can be no doubt at all today that all sections of people are agreed on this point. Whether we speak of our friends of the Muslim League or of the Congress or of the different 'minorities', so-called, or of the Untouchables --a word that I hate--or the suppressed, depressed to oppressed people,--indeed, all are our brothers who have been put under Schedule Castes' classes. Take any of these sections of political opinion,--is there any doubt whatsoever today that their common, objective is Independence? Even the British Government, which is now prepared to transfer power, has definitely declared the objective as being Independence and Freedom. Under these circumstances it is incumbent upon us to frame our Resolution in these terms.

I remember some of the words with which the Hon'ble Mover introduced this Resolution,--they are ringing in my ears. He said: "It is a resolve, an undertaking, a dedication...." Yes, it is a dedication. We have just come to the threshold of our work--we have not as yet crossed the threshold. We are, as it were, pilgrims gathered together in the vestibule and on the point of crossing the threshold to the temple. Now is the time and the moment for a vow of dedication and self-consecration to the task which we have taken upon ourselves. A tremendous responsibility rests upon our shoulders and it is but meet and proper that, at, this moment, before we have actually commenced the work, we should make a firm resolve in our mind to discharge our duty, as befits the worthy representatives, of framing a constitution for a free and independent sovereign republic.

There is another aspect of the matter which the Hon'ble Member touched upon and that I think is a very important one. If what I have already spoken of is the subjective side of the Resolution, this is the objective side of it. We have to think not only of ourselves, but of those who are not here yet. Behind the 'visible We' are the 'invisible We--our friends of the Muslim League, and the representatives of the States are yet to be ascertained. Even when they are here, when this House is fully constituted and is full to capacity, the 400 million people whom we represent will not be here. Therefore, I repeat, in the work that lies before us, we have always to be intensely conscious that this 'visible We' is not all that constitutes the Constituent Assembly, but that it has the 'invisible We' behind it. Then only shall we be able to frame a constitution which will really confer upon this nation at large, true freedom, true right of living as human beings,--call it fundamental rights, call it rights of minorities, or call it what you like. It is only when we realise that we are framing a constitution for an Independent Indian Republic that, as we get along with the work, these problems will gradually clear up and we shall see with a clearer vision further problems that await solution. In all the work we cannot help feeling every moment the presence with us in spirit, of Mahatma Gandhi, that lone but luminous figure who carries on his shoulders the sorrows and afflictions which spring from narrow-mindedness, envy, jealousy, suspicion and distrust, between man and man, and community and community; but who carries in his heart the hope that springs eternal from faith in the Province that shapes our ends. There can be no doubt that in this Constituent Assembly is visible the hand of Providence that shapes the destinies of this country, as of others. Inspired by that conscious hope and trust, I have no doubt this Resolution will be passed unanimously with our heart-felt support.

Sri S. Nagappa (Madras: General): Mr. Chairman, Sir, I have great pleasure in supporting the Resolution moved by our Hon'ble Vice-President of the Interim Government, Pandit Jawaharlal Nehru. This is a resolution Sir, that gives wide scope for all the communities and classes of this country. Sir, some of my friends who were speaking prior to me have been expressing some sorrow for the sections that are not present here. I think Sir that we should not have any sorrow for the people who are not present. Really speaking, they do not deserve to be here because they are not Indians. They are more Arabs than Indians; they are more Persians than Indians; they are more Turks than Indians. That is why they look towards foreign countries than towards the independence of this country. If they were really interested in the independence of this country, they would have been present here in this august body and helped this country to be free. Now, Sir, I think those of my friends who felt sorrow for them, can also vacate and go out, if they like. We, the Harijans and Adivasis are the real sons of the soil, and we have every right to frame the Constitution of this country. Even the so-called Caste Hindus who are not real Indians, can go, if they want. (*Interruptions.*) Sir, today we are asking the Britisher to quit. For what reason? Is he not a human being? Has he not a right to live in the country? We ask him to quit because he is a foreigner. So, Sir, we have also a right to ask the Aryan, the migrator to go. We have a right to ask the Mohammedan, the invader, to go out of this country. There is only one consideration. The Caste Hindus of this country do not have any other place to go to. That is the only consideration that they deserve. Sir, now we are all Indians. Everyone of us must feel like that. With fellow feeling, we must all join together and help to see our country free as early as possible. None of us want to be a slave to a third person or a second person. Everyone wants to be free. Now, Sir, this Resolution gives equal opportunities to all. Equal opportunities should not be in the statute book only. They must be translated into action. Every individual of this country must realise that he is the administrator of the country. He must be made to realise, he must be made to understand that he is the real ruler of this country.

Now, Sir, I need not dwell on the safeguards for the unfortunate children of the soil. Ever since we were defeated by the Aryans, we have been slaves of these people. We have been suffering, but we are prepared to suffer no more. We have realised our responsibilities. We know how to assert ourselves.

Now, Sir, much has been said by so many friends who spoke, before me as regards the minorities. Well, Sir, I do not claim that we are a religious minority or a racial minority. I claim that we are a political minority. We are a minority because we were not recognised all these days and we were not given our due share in the administration of the country, but that cannot be for ever, You know, Sir, what has been our position? This Resolution gives us a scope and a chance and an opportunity to be equal, to feel like. equals and take our due share in the administration of the country.

Now, Sir, we are one-fifth of the population of the whole country. It is impossible for a democratic country to ignore one-fifth of its population. My friends who are outside this House, or who are not taking part in this august Assembly, it is for them to realize. Congress has gone too far in order to facilitate them. Even in accepting this Statement, I fear, Sir, we have been granting what all they have been asking. Our aim should not be simply because a particular section cries, we must be liberal and go on granting whatever they want. It looks as if you have been going on in order to placate a particular community or a section. You have been so tolerant, so liberal, even without caring for your own interest, you have been granting. Now, Sir, what I would request you is that you must be fair to all. If you give any weightage to any minority, that itself gives a scope and chance for other minorities to ask. At that rate I ask you is it possible for any majority to satisfy all such minorities? So I want you to be firm, to be strong, to be fair to all communities. Simply because one section asks, we should not go on granting. It has been said here--I am glad Panditji was kind enough to accept and include in the Resolution safeguards shall be provided for minorities, Backward and Tribal Areas and Depressed and Backward Classes. This gives equal opportunity to all communities, irrespective of their races or religions. I do not understand, why a particular section should go on asking what is not due, and what is not fair. Simply because they ask, you have been granting. Now it gives an opportunity for the minorities to ask for more and more. What all is said is clear and the Resolution has been very carefully worded, and my only humble request will the to say that every word of it, with all the spirit behind it, be translated into action. There is no use of simply passing a resolution and allowing it to be a resolution. The Resolution must find a place cent. per cent. in action. Only then it has the value of a resolution. It is said, "Equality of status and of opportunity." I must say, Sir, that equal opportunity means, one day or other, even a Harijan should be the Premier of India. That sort of opportunity must be there. Equal opportunity must be translated into action. That must be the motive. There is ,one more thing I would like to place before this Assembly, when I support this Resolution. The masses have been looking forward to this august body when they are shaping the destiny of 400 millions and I hope, Sir, every letter, every word, that has been included in this Resolution, will be translated fully into action.

Mr. Jagat Narain Lal (Bihar: General): Mr. President, Sir, I consider it a great privilege to be called upon to accord my support to this Resolution. It is in the fitness of things that this memorable Resolution should have been moved by Pandit Jawaharlal Nehru. For it was he, at whose instance the Madras Congress, in the year 1926, passed the Resolution for complete independence. It was under his Presidentship, that, in the year 1929, the Congress adopted the complete independence of India as its creed. Again speaking in 1934, Pandit Jawaharlal Nehru said 'politically and nationally if it is granted, as it must be, that the people of India are to be the sole arbiters of India's fate and must therefore have full freedom to draw up their constitution, it follows that this can only be done by means of a constituent assembly elected on the widest franchise. Those who believe in independence have no other choice. Therefore, Sir this Resolution moved by Pandit Jawaharlal Nehru on this memorable occasion in the Constituent Assembly on behalf of this country has a particular value. I consider, Sir, this Resolution as a pledge and a solemn resolve on the part of each one of us sitting in this Assembly and on the part of the country as a whole. Now since this Constituent Assembly has started its sittings and even before it started its sittings, we have noticed a certain amount of change in the mentality of the British Government. Well, we would like to say there have been several constitutions, evolved by Constituent Assemblies of different varieties in this century and in the previous centuries. It is for the British Government itself to choose what variety of Constituent Assembly it would like this Assembly to be and what variety of constitution it would like this Assembly to adopt. There is, for example the instance of the United States of America, framing its constitution after the War of Independence, which was waged in the year 1774-75. That was a violent revolution, as we would like to call it. The Constitution that was framed after the War of Independence was one of those-constitutions. Later on we find in the 19th century a number of constitutions being evolved by negotiation. In 1867 the Dominion of Canada became a Federation. It was through a peaceful negotiation that the Constitution of this Dominion was framed and evolved and accepted by the British Government. Again in 1900, the Australian Commonwealth was brought into being and that also by a constitution which was negotiated peacefully. We have another instance of the Union of South Africa. It became a Commonwealth in 1909 and that also through a constitution framed and accepted peacefully. The latest instance thereafter, is that of Ireland. In 1921 Ireland was asked to enter into a treaty with the British Government. That was after a guerilla war-fare and after the Sinn Fein agitation, a prolonged agitation, and after the British Government had done all it could do, to bring about Ulster into being. The case of Ireland Is the latest instance and is one which ought to be borne in mind by the British Government and by the present British Cabinet. The sores that are rankling in the minds of the Irishmen will remain fresh as ever and the vault has been an alienation which has not yet ceased to exist. If India is to sit in this Constituent Assembly, and if India is to frame a constitution I again repeat, it is for the British Government to decide whether that Constitution will be of the Irish model, whether that Constitution will be of the U.S.A. model or whether that Constitution will be evolved peacefully. Signs are that the British Government have not ceased to try the Ulster methods which they tried in Ireland and so many other counties. If they insist on pursuing those methods, the results will be of the Irish model. I will therefore repeat, I will therefore warn the British Government, that it will be better if it brought about all its methods of persuasion and diplomacy. into making this Constituent Assembly a success, by its own efforts combined with that of ours.

Well, Sir, I do not like to say much more at this late stage. I want again to repeat that I treat this Resolution as a pledge and as a solemn resolve to bring an independent India into being and that resolve is backed by sanction, The sanction is our own will and our own determination and the will and determination of the entire country which has sent us here. I hope Sir, when the time comes, as it will, we shall see this Constituent Assembly. evolving a constitution for a free and independent India which will come into being peacefully or if not peacefully, by any other method Which the British Government choose or we find it necessary to adopt. I have not much more to say, Sir; I support this Resolution and I hope that at the end, the amendment which was moved by Dr. Jayakar, which has, no more purpose in being left to stand now, will be withdrawn when the time comes for it.

Shri Algurai Shastri (United Provinces: General): *[Mr. President, I am here to support the Resolution moved by Pandit Jawaharlal Nehru, the beloved leader of our country. No Indian is more fortunate than those who have assembled in this House to frame the Constitution for a free and independent

India. What more proud privilege can there be for an Indian than to fashion the Constitution for his country in this House? Every Indian is eager to support the sentiments and words contained in tile Resolution. The noble ideas and sentiments embodied in the Resolution have been the, cherished desires of Indians for centuries. There was a day when our country was great, glorious and independent. For centuries India has been in bondage and the young men and women of this country and its told people have been struggling hard, with a burning desire to break the chains of slavery. At last the moment has come when we have assembled here today to declare our land free and independent as stated in the first para of this Resolution. Nothing can be more desirable today than the declaration of independence of our country. Here, we are not declaring India actually independent, but from a practical point of view, we announce that we are going to declare the land independent. It is our firm determination to declare it free and independent. It has been stated in the Resolution that the country, which we declare here independent, shall include all the territories unfortunately termed today as British India. British India is not India but India as a whole is India. I wish, not only the parts of India having at present British governance, but the territories outside British India termed as Indian states, constituting separate units under paramountcy, should also be included in this great and free country and the Resolution declares so. The territories such as Pondicherry, God, Daman, and Diu, at present under foreign domination, also form parts of India. I wish these all together with Nepal, Bhutan and Sikkim, which constitute our frontier, should also be included in this free land. Such is the conception of this Resolution. All the human ideals of ages--equality, fraternity and brotherhood--are embodied in this Resolution. In the eighth. 'Mandal' of the 'Rig Veda' is a hymn which says:

"All human beings are equal. The King should have the same regard for his subject that a mother has for her sons."

I am glad that all such higher ideals, we have been taught for ages, are enunciated in the Resolution and therefore I am here to support it.

The Resolution visualises a State where there is no dearth of food and cloth and distribution is equitable. It embodies scientific socialistic ideals when it says "to each according to his needs and from each according to his capacity". All the ideals of a State conceived in the 'Bhagwat' are embodied in the Resolution. It is the sacred duty of a State to provide its people with all their necessities, says the 'Bhagwat':

Annadeh Samuibhagah Prajanam Yathahitah.

The Resolution affirms the equality of men. We wish to eliminate all class distinction existing at present. The behaviour of men with one another should be on the basis of equality. The Resolution affirms this equality and hence I support it. The Resolution does not visualise the creation of a State which will remain isolated from the world and indifferent to its good and bad. But it says that this great land, independent according to its ancient principles, will fulfil its aspirations for advancement and prosperity. Our country and all its resources shall be used for the good of the world and we will have our relations with the world on the basis of the fundamental principal of human welfare and equality. We shall try to live up to the high human ideals enunciated in the 'Rig Veda'--

Devahitam Yadayuh.

Our powerful, advanced and flourishing State shall not exist for its own welfare; rather it shall use all its resources for the welfare of the world. The Resolution places before us a very noble ideal. The most important feature of the Resolution is that it declares that the State we are going to create will have its complete independence of which it has been deprived. To preserve the independence thus regained, we shall protect the State well . The determination embodied in the Resolution is consistent with the ancient high ideals enunciated in the 'Rigveda'--*Indrastwa Bhiraksatu*.

No State, even having gained its independence, can survive and protect itself if it is weak in military power. This truth is accepted in the Resolution and hence I support it. Only the State which has the backing of the people can enjoy a sure existence. When the Resolution promises social and economic equality to all, it visualises a purely democratic State with the people's Government. In the Resolution we picture a State with power of legislation vested in the people and with no discrimination between the ruler and the ruled. According to the famous poet Kalidas, an ideal State, like a father, provides its people with protection, education and maintenance.

Only such a State can claim to be an ideal one where the present deplorable discrimination between the ruler and the ruled does not exist, where the people are not oppressed and exploited by the rulers. The people will imagine and desire a State which is based upon these high ideals of the 'Rigveda'. The Resolution before the House visualises such a State and hence I support it. This Resolution enables us to show to the world that the independence we conceive is not to serve selfish ends and to rule the people against their will. We find all the Vedic ideals embodied in the Resolution. The noble ideals of state-protection and maintenance of subjects, held high during the Muslim regime, beginning from the reign of Hazrat Umar to Bahadur Shah, are embodied in this Resolution. When Muhammad Bin Qasim had conquered and occupied Sind he sent a letter to the then Caliph asking for his directions as to how he should rule the conquered people. The letter from the Caliph in reply is an important document and a treasure in History. The Caliph's directives, based on the ideals held by Hazrat Umar, said that he (Muhammad Bin Qasim) should treat the subjects with paternal feelings and protect their life, and property and places of worship. Humayun too, following these very ideals, taught his son Akbar to rule the people. In the *Ain-e-Akbari* by Akbar, where the relations between the ruler and the ruled are defined, we find nowhere that the people should be oppressed and deprived of their freedom. The former rulers acted on these ideals and we are here to revive them and the Resolution leads us to this noble task.

The Members from Madras follow us easily when we express ourselves in English, and the proceedings of the House also receive convenient publicity. But I thought I should here speak in Hindi. I hear the voices of the sons of Bahadur Shah, now lying in their graves, saying "In what language are you expressing yourself? You are here to fulfil our desire cherished for centuries. Please express yourself in such a manner that we also may follow." The spirits of Jayasi, Prithviraj and Sanyukta are eager to hear what we say in this House, they are eager to know that we are here far; they want to know your aspirations and ideals. We are here not to address the people of England but that of India.

Numerous dynasties and empires are lying in the old tombs on all sides of Delhi. These tombs and the ashes therein ask us to tell them what we are here for. I want to tell them that we are here to go ahead in spite of all obstacles, with the ideals in defence of which the sons of Bahadur Shah laid down their lives, the Mutiny of 1857 was enacted and for which many old and young men and women, of India have been sacrificing their lives for centuries. We are, firm in our pious determination; nothing can daunt us; no power can bend us. The spirits of our ancestors resting in their graves are calling upon us to address them in their own language. This is their wish and this is why I have attempted to address you in Hindi.

The Resolution before you is acceptable from all points of view. Dr. Jayakar had pleaded for its postponement and so far as the question of reconciliation is concerned we did so. Dr. Ambedkar had also advised its postponement and agreeing to his pleas, we did postpone. But if anyone wants to stop us his policy of obstructions, certainly we will not stop. The fight for freedom once begun, though baffled often, is ever won. We will march on and for the sake of reconciliation we will not give up the task we have undertaken. The waves of our ambitions and determination have risen and subsided; today they are immovable like a mountain and cannot be cowed down by the attacks of the British Imperialism.

Mr. Shyama's amendment to this Resolution is a patch of hession on this Kashmiri *pashmina*. His amendment and that of Dr. Jayakar too, should be rejected and the Resolution, in its original form, should be passed.]*

Mr. President: The meeting now adjourns till 11 a.m. to-morrow.

The Assembly then adjourned till Eleven of the Clock, on Tuesday, the 21st January, 1947.

---

* [English translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME II

Tuesday, the 21st January, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eleven of the Clock, Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair.

ELECTION OF THE STEERING COMMITTEE

Mr. President: I have to inform the Hon'ble Members that the names of the following thirteen members have been validly proposed for election to the Steering Committee:

1. The Hon'ble Maulana Abul Kalam Azad.

2. The, Hon'ble Sardar Vallabhbhai J. Patel.

3. Sardar Ujjal Singh.

4. Shrimati G. Durgabai.

5. Mr. S. H. Prater.

6. Mr.Kiran Sankar Roy.

7. Shri Satyanarayan Sinha.

8. Sri M. Ananthasayanam Ayyangar.

9. Mr. S. N. Mane.

10. Mr. K. M. Munshi.

11. Diwan Chaman Lall.

12. Mr. Somnath Lahiri.

13. Sri Lakshminarayan Sahu.

Only eleven members are to be elected, and if there are no withdrawals, an election will be held in accordance with the principle of proportional representation by means of the single transferable vote in the Under

Secretary's room (Room No. 24, Ground Floor, Council House) between 3 and 5 p.m. today.

The next item is the Resolution to be moved by Pandit Jawaharlal Nehru I do not find him here. We shall therefore proceed with the discussion and wait for this to be taken up at a later stage.

Mr. Rajkumar Chakravarty (Bengal: General): May I enquire what is the time for withdrawal of candidature for the Steering Committee?

Mr. President: Any time before the actual voting commences at 3 p.m. today.

Then we shall proceed with the discussion of the Resolution. Mr. Madhava Menon.

RESOLUTION *RE:* AIMS AND OBJECTS - *contd*

Sri K. Madhava Menon (Madras: General): Mr. President, Sir I stand here to support the Resolution moved by Pandit Jawaharlal Nehru, I know, it does not require much more support from anybody, as very little opposition has been made to the proposition. It is absolutely necessary that we pass this Resolution without any further delay. As Sir Alladi pointed out in his speech, you may search the proceedings of any constituent assembly in vain to find that no such Resolution had been moved or passed before the other business of the Assembly began. We have already waited too long in this matter and I think we shall be failing in our duty if we delay it any further. We must realise that the whole country is looking towards us with hope, as to what we are going to do for them. The only objection, if I can call it an objection, is the amendment moved by Dr. Jayakar. In principle, Dr. Jayakar's amendment does not differ much from the Resolution moved, except that Dr. Jayakar wants us to wait, or if I may say so, give an opportunity for those who are absent here, to partake in the Resolution. Dr. Jayakar says that two of the partners are absent, one for reasons not known to us, the other being impossible for it to come here. It is fair that we should wait for them. He mentioned why not we wait till the 20th January, when we are meeting again. We have waited, Sir, as he wanted and we hope that he will have no reason to complain that his request has been disregarded by us.

The objection raised by Dr. Jayakar that under the terms of May 16 Statement of the Cabinet Mission, we are precluded from passing a resolution like this at the preliminary meeting, is contradictory to his own resolution which says what the objects and aims of this Assembly should be. Dr. Jayakar said that the fundamentals of the Constitution need not be mentioned here, and I do not think we have mentioned fundamentals of the Constitution here, but have only mentioned our objects and aims. He said --and I was rather surprised when he said it--that if the Muslim League will not come in, the States also will not come in, and Dr. Jayakar mentioned or rather visualised, that if we passed this Resolution here before the Muslim League comes in, there will be a

Hindustan, a Pakistan and a Rajasthan in this country. I felt that his imagination was running riot when he visualised the coming in of three sthans-Hindustan, Pakistan and Rajasthan. I am sure that no such contingency is going to come and no such contingency should frighten us from passing this Resolution. If we delay further on the ground that others are absent here, I am afraid we are only putting a premium on intransigence. I wish we will not do so but proceed with the Resolution and pass it without further delay.

Mr. B. Das (Orissa: General): Mr. President, some of us were hesitating during the last session that this Resolution may be adjourned to a later date so that the absent ones can come; not that I was not wholeheartedly for the Resolution. As a Congressman and as an Indian, I concur wholeheartedly with the principles enunciated in the Resolution of Pandit Jawaharlal Nehru. Not that it was not enunciated before, but at the beginning of our constitution-framing career we wanted that an enunciation of our goal and objectives should be made in this House, in which all the Members of this House should take part. It is my sorrow, however, that the Muslim League, some of whom have been our co-workers in public life, are absent. At that time, foolishly some of us thought that they will come now and participate in the declaration of our national objectives and rights and at the same time take a willing share of the joys of the coming dawn of freedom. But that is not to be. One cannot understand how the members of the Muslim League, who are our friends intimate friends, intimate associates and intimate co-operators in our life-time for the last twenty-thirty years, how they can abstain from coming in at this stage.

I cannot understand what they want. It is said that they want two nations; they want Pakistan. Mahatma Gandhi, the other day has said, let them have the Pakistan provinces or a Pakistan country whereby we will know what is the greatest ideal of the Muslim nation, whereby they can show that a Pakistan country is a better governed country than the Hindustan or the Panthistan that the Sikhs want. What are our Muslim friends afraid of, and why is it that they are not here? Sir, there are three parties concerned, the British, the Muslim League and the Congress. The British Government are the stumbling block in our way. Even the Declaration of His Majesty's Government's further clarification of the Statement of May 16, by their Statement of December 6th, shown that the British are not helping India to achieve independence. What is it that is obstructing our Muslim friends? Sir, the Qaid-e-Azam has been my political guru at the beginning of my career in the Indian Legislative Assembly. I still admire him as a friend. But I cannot understand him as a leader of the party. I do not understand what he wants. There are members in the Working Committee of the Muslim League who are my personal friends, and friends of many of the people who are here. I cannot understand how Abdul Matin Chaudhury or Nawab Ismail Khan or Raja Ghazanfar Ali Khan or Hussain Imam and others, cannot live with Hindus in Hindustan or in the Union of India as brothers. Unfortunately, I am sorry I find that most of the leaders of the Muslim League live in the so-called Hindustan. I have not yet found any Muslim Leaguer of the Pakistan Provinces of Bengal or Punjab who has got great political principles for the guidance of this country or the world, or has enunciated his principles. I am not here to point cut the differences between the Congress and the Muslim League. I am here to appeal to the Muslim League from this forum that it is high time that they, who are our friends outside, should be friends in this House. If they differ from us on the point of Pakistan, let them give us their views. Let them tell us whether they want an independent Republic Pakistan or whether they want a Dominion Pakistan? What do they want? I want to appeal to my friends in the Muslim League to think of their old, old associations, the old neighbourly feelings and to come early to this House so that we can all take part in securing independence for India which is so dear to our hearts.

I have said nothing on the main Resolution because I agree with everything that is enunciated there. That has been our dream for these years. I conclude my speech again with an appeal to Mr. Jinnah and my Muslim League friends to come and tell us where we are making a mistake, to tell the Hindus also where the Hindus are making a mistake and are not allowing Mr. Jinnah to build up an independent nation. With that I conclude my remarks.

Mr. Devendranath Samanta (Bihar: General): Mr. President, I thank you for kindly giving me an opportunity of expressing my views regarding the memorable Resolution moved by our revered leader, Pandit Jawaharlal Nehru.

Sir, I feel happy to rise to give my whole-hearted support to the Resolution. The Resolution has already received support from a large number of speakers who have preceded me, and they have discussed the necessity, the utility and propriety of moving and passing the same. They have discussed the Resolution from various points of view, and I do not want to take the precious time of the House by repeating the same arguments; I would simply like to make a few observations with your permission while supporting the Resolution.

It has been admitted in all quarters, that the Constituent Assembly which is to frame a constitution for a free India, is the outcome of untold suffering and immense sacrifice of the masses of this country. Therefore the Constitution to be framed should be such as to promote the interests of the masses and to benefit the country as a whole.

The framers of the Constitution, who are the elected representatives of the people, are highly responsible persons and they would, in the due discharge of their responsible duties, frame the Constitution cautiously and wisely for the best interests of all concerned.

We should have full confidence in the sincerity, honesty and integrity of the members who have undertaken this responsibility of producing a Constitution which will fulfil the aspirations of our countrymen and will promote peace and prosperity of the country.

The principles to be followed in framing the Constitution and the provisions to be made herein have been enunciated by the Resolution.

It has been fortunately and appropriately laid down in the Resolution that in the Constitution shall be guaranteed and secured to all the people of India Justice social, economic and political, equality of status, of opportunity, etc, which indicate that all people will be afforded suitable facilities for development.

It has also been laid down that in the Constitution adequate safeguards shall be provided for minorities, Backward and Tribal Areas and Depressed and other Backward Classes, and this should be quite sufficient to allay the suspicions entertained, if any, of the minorities and others whose safeguards are so assured.

I should like to point out that in certain quarters apprehension arises from alleged inadequate representation in the Constituent Assembly, but in connection with this, my respectful submission is, that the framing of a constitution suitable or unsuitable to a particular minority, does not depend upon the extent of representation only but upon the good will of the masses who ultimately guide and control the framing of the Constitution. So, in my humble opinion, it is the goodwill of the masses that counts much and hot the strength of representation of a particular community in the Constitution-framing body.

So any minority community making a grievance of the fact that the community is, inadequately represented is not right in making a grievance of this fact on this ground alone that they cannot get effective representation. Because representation, a little more or less, will be of no use if the community alienates the sympathy of the other communities upon whom the decision of a particular matters will depend to a great extent.

Having faith in the integrity and honesty of the framers of the Constitution, the minor communities, namely the Scheduled Classes, the Adibasis, Sikhs, Indian Christians Anglo-Indians and Parsis have rightly cooperated in framing the Constitution in spite of their small and- inadequate representation in the Assembly. Now the aspirations of the people and their strength will be the guiding factors in framing the Constitution.

One section, namely, the Muslim League, could also have joined the Constituent Assembly in framing the Constitution, had they not been under the impression that vivisection of India and formation of Pakistan would promote their interests best. I would like to point out that, barring the Muslim League, no one in the country favours the idea of vivisection of the country. It is hoped that in future the necessity of United India will be appreciated by every section of the people.

Sir, there is no necessity now for or pressing the amendment moved by the Right Hon'ble Dr.Jayakar, and it is to be expected that the mover of the amendment will find his way to withdraw the amendment.

Sir, our great country, which has unfortunately been subjected to foreign domination and which has been exploited in every possible way by the British Imperialists, may soon have the chance of being independent and free from all sorts of exploitation.

The Adibasis, Sir, who along with other have been exploited to the greatest extent by the Britishers and their agents, are happy to think that in future they will be free from such exploitation and will get a chance of developing socially, economically and culturally.

Now, Sir, as the Resolution has already got support from a large number of Hon'ble Members, I should not like to take much of the precious time of the House. With these few observations, Sir, I support the Resolution, and, I hope that it will be unanimously accepted and passed.

ELECTION OF THE STEERING COMMITTEE

Mr. President: Before calling on the next speaker to address the House, I have to announce that Srijut Somnath Lahiri and Sri Lakshminarayan Sahu have withdrawn their candidature. (*Applause*). So, the following Members are declared elected to the Steering Committee:

1. The Hon'ble Maulana Abul Kalam Azad.
2. The Hon'ble Sardar Vallabhbhai J. Patel.
3. Sardar Ujjal Singh.
4. Shrimati G. Durgabai.
5. Mr. S. H. Prater.
6. Mr. Kiran Sankar Roy.
7. Mr. Satyanarayan Sinha.
8. Sri M. Ananthasayanam Ayyangar.
9. Mr. S. N. Mane.
10. Mr. K. M Munshi.
11. Diwan Chaman Lall.

They are declared elected. There is no voting in the afternoon.

RESOLUTION *RE:* AIMS AND OBJECTS *-contd.*

Rev. Jerome D'Souza (Madras:General): Mr. President, I wish to pay a warm and sincere tribute to the spirit which has animated this momentous Resolution of the Hon'ble Pandit Jawaharlal Nehru. Sir, it is the custom among all sections of our people to accept in an unquestioned manner the democratic creed as universally applicable to us. But I do not know, Sir, if people who make this verbal profession realise all the implications of it and are prepared to carry it out in every way in practical life to the extent to which such profession really does imply.

Sir, whatever may be the objections that may have been raised against this or that part of the Resolution, I take it as an adequate, as a careful, and as an entirely acceptable profession of the democratic creed, of the Government of the people, for the people, and by the people. I think, Sir, that if the spirit that animates it, continues to be applied to the details of the Constitution that this great Assembly will draw up, if it is applied in the daily administration of the Provinces and of the Centre, there will be no section of our people that will have reason to complain, and contentment is bound to follow.

Dr. Ambedkar remarked in the course of his speech, that the ideological or the theoretical part of it contained an expression of opinion which is accepted by all, almost implying that it was something of a common-place in political and journalistic thought. I am not sure, Sir, if that is quite true for any part of the world, and even if it were broadly true, there are occasions when these ordinarily accepted things need to be repeated and asserted solemnly and forcefully. It is said of a great European statesman, Talleyrand, that, when a certain sentiment was declared to be unnecessarily repeated, that "it went without saying," he remarked that "it would go all the better for being repeated, once again". I take it, Sir, that on this solemn, occasion, this profession of our democratic belief is made in a solemn, public, and irrevocable manner. In this sense I believe that every section of our people will welcome the very carefully-weighed and poised manner in which these convictions have been expressed. No doubt, Sir, all this will require amplification, elucidation. Permit me, Sir, to draw the attention of this House to a double danger which, I think, it is necessary to be prepared against . On the one hand, in applying those principles of individual liberty, for which ample provision has been made in this preambulary declaration, it will be difficult to resist, I say it will be difficult to resist from the very motive of love of country and the desire for rapid improvement and progress in our land, the desire to do things more by force and regimentation, more by the authority and power of the Central State, than by agreement, than by persuasion. It is a temptation to which many great men and lovers of their country have succumbed. But in the manner in which provision will be made to prevent such suppression of individual liberties, I hope and trust, that our great country may give an example of a consistent adhesion to those principles of agreement and consensus of opinion, and not overweight the power of the State in a manner, as one of the previous speakers said, that will reduce the individual to a mere robot. That is one danger, Sir.

The other danger, undoubtedly present, is one which affects us as :members of a minority community. The danger would be not that the minorities would have any of their special rights or necessary safeguards overridden by any mistaken some of jealousy or opposition or lack of fairness;--I do not think that the great majority communities of India or any of their most honoured representatives would be guilty of all that unfair overriding of privileges and safeguards; but by a genuine, though mistaken love of country and desire for unanimity and homogeneity, which it is not possible to have and which perhaps is not even necessary, they may try to pass measures which will seriously wound and grieve the minorities or special groups.

In the last session of this Assembly one speaker said, among things -which were acceptable to every part of the House,--used an expression in regard to minorities which I respectfully submit we could not possibly accept. It was said that no nation, no great people could prosper and survive with permanent minorities within, that, somehow or other, they have got to be "absorbed", and he quoted the example of the United States as a country in which this process of absorption is taking place. I do understand, Sir, the sense in which this was said, viz., that there should be a certain degree of homogeneity and that there should be a common recognition of common interests and rights and that the State and the nation should be organised on the recognition of these common Tights and interests. This is essential. But, Sir, "absorption" in the sense of cultural or religious or any other absorption is something against which it is necessary for us to guard, and it is, I am sure, not the wish of the majority communities nor the sober reflecting opinion of this great House, that they should impose any thing on any minority, which would lead to such absorption. Sir, I wish the example of a country like Switzerland is borne in Mind. Even in the United States, in spite of their common language and a universally accepted Constitution, linguistic minorities are permitted to develop the culture of their motherland, whether it be Germany or Italy or France. There remain still, in the great Commonwealth of Canada, two sections of people, Scottish and English on the one hand, and the ancient French community on the other, living in complete amity following the customs and the spirit of their own motherlands and developing their own literature. One section of the Commonwealth of Canada finds it easy to cooperate and collaborate with the other sections and world for the glory and success of a country which is recognised to be a single nation. In Switzerland, three groups with three languages and with a difference of religion, sometimes sharply pronounced, are maintained in a confederation which has known how to defend itself against the onslaught of envious people and has defended itself in no uncertain manner through centuries. I am sure, Sir, that the strength of this land will be based upon the strength of individual members of the different communities. And they will not achieve their full strength unless they base themselves upon convictions and ideals which are their very own. Cultural autonomy for which I am pleading and which has been promised as far as it is not inconsistent with national strength, even though it may an appear in some sense as opposed to national unity, is still consistent with if undoubtedly there is a way of exaggerating these cultural peculiarities. I am sure that quite apart from subscribing to different beliefs, it is possible for members of all communities, Hindu, Muslim, Christian and Parsi, to accept the common heritage of this great land and secure that degree of uniformity, that degree of common agreement, on the basis of which national unity can be built up. I know, Sir, speaking for my own community, the Christian community, that there have been times when our countrymen looked upon this community and religion as being unduly associated with a culture that was not Indian, unduly identified with what has been called Europeanising ways, but I should like to assure great Assembly that it is not necessary, that it has not always been the case, that again and again people of my persuasion, whether they came from another land or whether they were from this land, have acted in complete conformity with the finest traditions of this country. On the opening day, Sir, the esteemed Vice-Chancellor of the Benares University, Dr. Sir S. Radhakrishnan, referred to the first Englishman who had come to this land, the Jesuit Thomas Stevens, and said that after him there came merchants and conquerors and that now we see that end of that "invasion" I should like to assure this House, Sir,--what I am sure, Sir S. Radhakrishnan knows--that the merchants, the traders and the conquerors had nothing to do with the Jesuit who preceded them. On the contrary, Sir, he came to India at a moment when there was no hospitality for him in his own land, from where he was banished under the threat of persecution. This great country offered him hospitality and he made this land his own, learnt its language and has written a book which Marathi scholars tell me is a classic, the "Purana" of Thomas Stevens. It is in that spirit, Sir, that the adherents of that faith wish to come here and it is in that spirit that we wish to collaborate in the task of national reconstruction for the Prosperity and the greatness of this land.

I should not like to take the time of the House much longer but, I cannot avoid saying something upon another point about which much, has been said, but I hope to be able to say something about it, which may perhaps be a new point of view. Much has been said about the sovereignty of the people, about the possibility of that principle being inconsistent with the principle of monarchy, and about the dangers and difficulties which might arise therefrom. Sir, this doctrine of the sovereignty of the people is not a new doctrine. It is not a 19th century doctrine. The history of political thought in Europe shows that the was a struggle round about that doctrine in the 16th century when certain kings claimed the Divine Right of Government; and against them, it may interest this House to know, even conservative thinkers, thinkers who were monarchists, asserted the sovereignty of the people. St. Robert Billarmine and Suarez asserted this against James I of England, though they interpreted it in a different way from Rousseau, who in later times conceived that the power of the State came from the people by the pooling and the coalescing of all the rights of the people which they are imagined to surrender. But the State, Sir, is not a sort of undesirable excrescence resulting from the surrender of individual liberty. The State is a natural outcome of the nature of man who has to perfect himself in social and community life, with a necessary central authority. That authority comes as Sir S. Radhakrishnan stated, from the moral law and that is the the basis upon which the rights of individuals and of the State have to be maintained. That ultimate authority, Sir, some would prefer to express it as coming from Almighty God as the author of nature and of all moral law. I cannot help expressing a regret, Sir, that the name of Almighty God finds no place in this momentous declaration. I understand, Sir, the reasons which moved the hon'ble framer and mover of this Resolution in not bringing in anything which may look like a religious profession, but you will permit me, Sir, to Say before concluding my remarks, that if by some way in this momentous preambulary declaration the name of Almighty God had been brought in, it would have been in conformity with the persuasion, with the convictions, with the spirit of this vast land of ours and its ancient civilisation. Sir, although it has not been brought up here, I do believe that the State ultimately receives from Him that sanction and approbation which gives it a certain sacredness. I am not pleading here for a doctrine by which the State is made divine. But I do mean that the subjects of the State, when they accept that State and are citizens of it, must obey it conscientiously, must feel that it is their duty to accept the authority of the Government of their land. Sir, we believe in Providence; we believe that the unfolding of History with all its vicissitudes still reveals a Providential design. Even though His sacred name is not here, I sincerely believe that we have met here under the covert of His protection and His Grace which alone moves the hearts of men. We hope and pray that the deliberations that we have begun this solemn and preambulary declaration will be taken to their legitimate conclusion by the same grace and that the land for which we are labouring will rise Again with new strength, with new prosperity, with new happiness.

Mr. H. J. Khandekar (C. P. and Berar: General): *[Mr. President, I am here to support the Resolution moved by the Hon'ble Pandit Jawaharlal Nehru. We are going to frame the Constitution for India today. The people of India and we sought for such an opportunity to frame it ourselves and I am glad the occasion has come now. When the Constitution for India is going to be framed by us, it should be drafted in our national language. It is our duty and in pursuance of this I am delivering my speech in Hindustani. I belong to a community which has been backward and depressed in India for many thousands of years. I am a Harijan and I shall place before you the voice of 90 millions of Harijans in India. The Harijan Community is accepting this Resolution with great pleasure for the sole reason that the Resolution, embodies safeguards for all the minorities in India. Speaking against this Resolution and for Dr. Jayakar's amendment, my friend. Dr. Ambedkar said that India should remain united and have a strong central government. He was not happy and satisfied with his recent visit to England. I am very pleased by the Speech he has delivered on his return to India and I hope he will stick to it.

I hope, God grants him a little more good sense, he will give up the demand for separate electorates and also stop saying henceforth "I am not a Hindu" which he has been telling up till now. I pray to God to give him good sense and I have hopes that He will.

If I describe to you the condition of Harijans, you will be moved. They have been and are still being subjected to endless oppressions and cruelties. We endured these cruelties with patience and never thought of abandoning our faith. We are Hindus, will remain Hindus and will secure our rights as Hindus. We will never say we are not Hindus. Undoubtedly we are Hindus and we will, as Hindus, fight the Hindus and secure our rights. We know that 90 per cent. of the victims of the atrocities committed in Noakhali and East Bengal were Harijans. Their houses were burnt, their children were killed and women were molested. Above all, many thousands a Harijans had to submit to forcible conversion. If any community is given weightage more than in proportion to its numerical strength, certainly Harijans will also fight for weightage according to their numerical strength. What was done to the community. which is backward and down-trodden today? I remind you of the Poona Pact. I place before you the example of my own province. In Central Provinces where we constitute 25 per cent. of the population and we are entitled to twenty-eight seats, we are given only twenty seats in pursuance of the Poona Pact. Where have our eight seats gone? In my province our Muslim brethren form four per cent, of the population. On the basis of their numerical strength in the Province, they are entitled to get six seats only. But I am sorry the eight seats of Harijans were taken away from them and given to Muslim brethren and thus they got fourteen seats instead of six. Harijans cannot tolerate such injustice. They should be given representation according to this numerical strength. May be, your census records shows the number of Harijans in India as 40 or 50 millions but I can emphatically say that our population is never less than that of Muslims. We are ninety millions and we should get representation according to our numerical strength.

One thing is wanting in the Resolution, and, if the mover agrees, it can be modified. The Resolution promises safeguards and rights to all the minorities. But unfortunately there are 10 million people in India who, without any fault on their part, are described as criminal tribes from their very birth. Hundreds of thousands of men and women in India were declared as criminal tribes according to the current law. To deprive them of their rights they are declared so. No matter whether they are criminals or not, from their very birth they are made criminals. Some provision to abolish this law must be embodied in this Resolution. I hope the mover will realise it and provide some safeguards for this Class in the Resolution.

The Congress has passed a resolution accepting the grouping clause in the Cabinet Mission Plan. Though a Congressman, I feel apprehension as to what would happen to the Depressed Classes in "B" and "C" groups. I have been thinking over it since the Congress accepted it. Though directly there is no Pakistan in Bengal today, still Harijans were subjected to great atrocities there. The members here, who have witnessed the happenings there, are greatly surprised. From the newspapers it appears that to the extent of ninety per cent it was the Harijans who were subjected to cruelties there. I am afraid no untouchable will remain alive in regions where Pakistan is established after the acceptance of the grouping clause. The Harijans of those regions, where the establishment of Pakistan is dreamt of, will have to accept either forced conversion or death. They are weak and are likely to be subjected to various atrocities and even at present people Commit atrocities on them. Every community is increasing its strength to achieve its political demand. A day will come when because of the grouping provision our numerical strength will be weakened and that of other communities will be strengthened. And with the growth of their strength, no Harijan will exist in their provinces. Therefore, when considering this Resolution we must provide special safeguards for the Harijans of those Provinces, where they are in such plight. It is in view of this fact that Dr. Ambedkar has pleaded for a strong central government. If in Provincial Legislatures the Harijans are not given representation according to their numerical strength, the fears which we feel in the case of Bengal, and to which I have been an eye witness, will continue to remain. If we are given full representation in the Central Legislature, all such fears will vanish. I support the Resolution whole heartedly and hope that all the members in the House will do their best to restore the rights, of which our backward community has been deprived for thousands of years. Wherever the question of allotting seats arose, we were given one or two seats. This is happening in the case of local bodies in many provinces. Many times we demanded representation according to our numerical strength. But laws have been enacted merely to the effect, that if no Harijan is elected, one should be selected and if this is not possible, a nomination should be made.

Even where the Harijans form more than fifty per cent. of the population, there also only one member from them is selected or nominated. It shows that the attention of the people has not yet been drawn towards us. Therefore whenever occasion arises attempts should be made to secure us representation according to our numerical strength. And then alone we can feel that you are doing something for us. If you want to satisfy us, by giving one or two seats, that will not do. The Harijan Community is awakened now; it is politically conscious of its rights, to secure which, it will throw in its full strength. With these words I conclude my speech and hope you will pay due consideration to our rights and will not let us remain in the position in which we have been so long. With this hope I support the Resolution.]*

Shri R. V. Dhulekar (United Provinces: General): *[Mr. President, the Resolution moved by the Hon'ble Pandit Jawaharlal Nehru has been seconded; many speeches have been delivered on it and many objections have been raised to the clauses of the Resolution. Dealing with the speeches made and objections raised, I shall express my views in support of the Resolution.

Mahatma Gandhi has summarised the philosophy of human life in two words--truth and non-violence. Truth is justice, right action and that which is obligatory; truth and non-violence is not to injure others, not to deprive others of their liberty and possessions and is to protect live; and the social rights of others.

These two, truth and non-violence, are the essence of the teachings of the *Vedas* and *Upanishads*, the two form the creed of the Congress and the Resolution before the House is based on them. The Resolution is the true expression of the sentiments, ambitions, good intentions and objects of the people of India. The Resolution is a picture of what the country, which is at present under the British domination, wants to do and how it wants to exist in the world after it has attained independence.

The important clauses of the Resolution are :--]*

"This, Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution"

"WHEREIN the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as aft outside British India and the States as well as such other territories, as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all; and

WHEREIN the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the Law of the Constitution, shall possess and retain the status of autonomous Units, together with residuary powers, and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom; and

"WHEREIN all power and authority of the Sovereign India, its constituent parts and organs of government, are derived from the people, and

WHEREIN shall be guaranteed and secured to all the people of India justice, social, economic and political: equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and

* * * * * * * * * * * * * * * *

WHEREBY shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea, and air according to justice and the law of civilised nations, and

This ancient land attain its rightful and honoured place in the world and makes its full and willing contribution to the promotion, of world peace ad the welfare of mankind."

Mr. Deshbandhu Gupta (Delhi) : On a point of order, Sir, is it open to an Hon'ble member to read from manuscript?

Mr. President: I do not think he is reading. He has got copious notes. (*Laughter*).

Mr. R. V. Dhulekar: *[I can always speak as if I am reading. Mr. President, no right thinking man can entertain any objection to any of the clauses of the Resolution. The Resolution guarantees the rights of the people of the whole of India; it provides safeguards for, the minorities and promises to remedy injustice done to the Backward and Depressed Classes; it promises them full opportunity for their advancement.

As for Indian States, the Resolution gives them complete freedom in regard to their internal administration and assures that all their just and legitimate rights will be safeguarded. Of course, their present unjust and despotic rule will no more be allowed to continue. Despotism and Democracy are, at variance and the two cannot go together. I believe that no longer will any ruler venture to suppress the fundamental rights of his people. Neither the people of the States will allow such irresponsible government to function, nor this Assembly can render any assistance to the ruler in their unjust cause. An objection has been raised as to the necessity of such a resolution and it is suggested that if the Resolution is at all necessary, it should not be moved till the States' representatives participate. It is said that the States, representatives, have not had enough time to consider the Resolution. The objection raised about the absence to the States' representatives has no foundation at all. According to clause 19(2) of the Statement of the British Cabinet Mission, the representatives of the States cannot participate in the Assembly at the preliminary stage. To deal with all the matters relating to the States, the Assembly will negotiate with the Negotiating Committee formed by the States. It is unwise not declare our aims and objects to the rulers of the States, to the people of India and to the people of the world at large. If we do not so now; many false fears and vicious thoughts may arise. The Resolution conveys our basic principles to the world. Every one should consider and weigh them well and then give us his co-operation.

An objection to this effect has also been raised that the Muslim League members are absent and, therefore, the Resolution should not be moved for the present. Firstly, this objection is groundless. When the League has taken part in the election of the Constituent Assembly and has already elected its members to this body in pursuance of the Cabinet Missions Plan, it is improper on the part of the League members not to participate in the Assembly. The League's demand of representation on the basis of numerical strength and separate electorates having been accepted, the responsibility for their absence rests with them. The House has no power of force its members to be present here. If one does not participate, he the Constitution to be framed should be such as to promote the interests deprives himself of his rights. The members that are present cannot be blamed for it. Apart from this, their absence causes harm to their own electorates.

Secondly, after the H. M. G.'s Statement of the 6th December, 1946, there can be no objection whatsoever to the Resolution. The Congress accepted the said Statement by passing a resolution and gave the Muslim League a chance to direct its representatives to join the Constituent Assembly. The preliminary session of the Constituent Assembly along with this Resolution, was postponed for month. I am sorry the Muslim League did not accept the hand of goodwill and friendliness extended by the Indian National Congress. May be, the Muslim League has though of extending its co-operation but has not yet had enough time to come to a final decision. I still hope, the League representatives will soon take their right place in the House and help to make India an Independent Sovereign Republic.

Enough opportunity has been provided by us to our adversaries to cast on us the undeserved blot that we are divided and can never be united Still, there is time to remove this blot and, with all humility, I would request my brethren in the Muslim League to be earnest about it.

Some selfish Englishmen including the notable statesmen, Lord Simon and Mr. Churchill, throw unjustified aspersions on this Assembly. They say that this Assembly is a truncated body in the absence of the Muslim League representative, that its decision carries no weight and that the British Government should neither accept the Constitution framed by the Assembly nor work it. What a baseless and mean charge it is! It is much below culture and civilization and against all canons of wisdom and statesmanship. Such "Wise" fools of politics lost and destroyed big empires that had been acquired by dint of wisdom and power. We have Seen with our own eyes the downfall of Tsarism and the dictatorships of Hitler, Mussolini and the Mikado. The mightly armada of British Imperialism is gradually going down under the onslaughts of the mass upsurge. The British Empire cannot escape the doom, It will be fortunate if Mr. Attlee, the political pilot of England, could save his land and the people by taking a lesson from the recent history of Germany, Italy and Japan. It is my duty to offer this reasonable advice but it is up to them to pay heed to it or not.

Human history is itself a book. Endlessly it writes and writes the hard facts alone. It makes no discrimination between the strong and the weak. Yudhisthir the embodiment of truth, only once in his life told a half truth *"Narova Kunjaro va"*; and for this minor untruth, the cruel pen of *Vyasa*, the celebrated author of the famous epic, the *Mahabharat*, lined him with the bars and made him undergo the sufferings of hell.

There is now the occasion before Great Britain to do justice to the four hundred million people of India. It is with British either to loge or use the chance of acquiring the friendship. It will be useless to repent when the game is over.

I wish to address the representatives of the minorities and the Depressed classes a few words with regard to the Clauses embodying safeguards for them. The question of safeguard arises when there is any fear of injustice. In absence of such fear, no one wants safeguards. If you turn the pages of Indian history you will find the existence of some disabilities or discriminations that have been created by the society itself out of either foolishness or selfishness. Take for example, untouchability. To turn a major part of community into untouchables and to deprive them of human rights is a crime that can never be excused. The only atonement for this is to acknowledge their rights and to return the same to them. We are resolved to do so. But the point, to which I wish to draw your attention, is this, that no doubt our country or community stands guilty for creating social barriers and divisions but the Britishers aggravated these evils in order to establish and consolidate their imperialistic hold, on us and thereby created a sense of hatred and ill-feeling between us. They never made any attempt to solve the complicated problems which they had themselves created; on the contrary, they intensified them. With their duplicity they created a gulf between the Brahmins and the non-Brahmins, between touchables and untouchables, between the Hindus and the Muslims, between the Sikhs and Muslims, even between man and woman, brother and brother. Are we to shoulder the responsibility for their guilt? If so, I am ready to 'own the entire responsibility single-handed. But to continue the safeguards and perpetuate the division is not a wise course. I wish to tell you and tell you rather bluntly, "Please wake up."? The English played their game under the cover of safeguards. With the help of it they allured you to a long lull. Give it up now. When are you going to frame the Constitution yourself and remove these disparities? Now there is no one to misguide you. Safeguards cannot remove the existing disparities and divisions. You cannot make the ground even by preserving pits and mounds. Let us to bold and make united efforts to remove the disparities so that one and all may enjoy equal rights. Please remember that a larger representation cannot be a guarantee of safety. On the contrary, the tussle for representation will create conflict.

In 1916, The Indian National Congress conceded to the Muslims their demand for separate electorates and reservation of seats. Within the last thirty years, this vicious system has brought the country to the verge of civil war and partition it made the two sister communities thirsty for the blood of each other. The trick played by Lord Minto in 1906 proved successful.

Some say that the Constituent Assembly is not a sovereign body; it is a creation of the British; its very existence has no meaning and the Constitution drawn up by it has no importance. I cannot have the audacity to say that they are devoid of sense but I do say that they are ignorant of Indian history. I need not dwell much on this point. One thousand years ago, India, for some reason, was decentralised or divided and failing to withstand the invasions of foreigners came under their sway. Since that very time the fire of freedom has been, constantly blazing in the hearts of the Indian people. It was never extinguished. On the one hand, this fire appeared in the form of sages. Swami Ramdas, Goswami Tulsidas, Guru Nanak, Swami Dayanand, Ram Krishna Paramhansa, Vivekanand and Ram Teerath are symbols of this very fire. On the other hand, statesmen and politicians like Shivaji, Guru Govind Singh, Rana Pratap Rani of Jhansi, Rani Lakshmi Bai, Raja Ram Mohan Roy, Lokmanya Tilak, Motilal Nehru and Subhash Chandra Bose were also political symbols of this very fire. Mahatma Gandhi and Khan Abdul Ghaffar Khan are saints and politicians both. The Indians owned Babar, Humayun and Akbar to the extent they indentified themselves with India. During the British regime in India not a single day has passed that has not seen some torture done to some Indian in jail for his zeal of freedom. The fight for freedom has been going on continuously for the--last two hundred years. The sixty years history of the Congress is a history of sufferings and sacrifices. Khudiram Bose, Bhagat Singh, Rajguru, Chandrashekhar Azad and many other patriots in thousands sacrificed their lives for the cause of India's independence. Millions of Indians have shown wonderful heroism and patience because of the sacrifices made by Congressmen, England is gradually conceding power. The Acts passed in 1899, 1909, 1919 and 1935 go to prove that Indians have been gradually snatching power from the British. The national movement of 1940-52 and the international situation created by the recent Great War, have forced England to quit India. This Constituent Assembly represents the power that has been forcibly taken from the British. It is not their gift. The hands of Britain are not strong enough to take it back. England will have to accept the Constitution framed by us. There is no doubt about it. The recent triumph of India in the Assembly of the United Nations proves that India is no more a family concern of the British Imperialism. India has attained the status of a free and powerful nation. I can find no word to praise the unique work done by Mrs. Vijayalakshmi Pandit in this direction. She has held the head of India high and the immortal glory of Mrs. Pandit shall ever remain in the history of India in golden letters.

Mr. President, I will not take much more time; two words more, and I have concluded my speech.

All the Indians and particularly the Muslims, the Sikhs, the Depressed Classes and other minorities should have no fear. Their rights are safe in the hands of leaders like Mahatma Gandhi, Khan Abdul Gaffar Khan, Pandit Jawaharlal Nehru and Sardar Patel. Through this Resolution the Assembly declares and promises equal treatment and justice to all.

Other nations had also felt the necessity of such declarations; I would commend the Declaration of the 21st January 1919, by the Trish Republic to the members.

I wish to tell the members of the Assembly that India is determined like a rock to attain her freedom. England should take note of these words of mine.

With these words, I support the Resolution.

Dr. H. C. Mookherjee (Bengal: General): Mr. President, so far as my own community is concerned, I have always tried to adhere to the principle contained in that English proverb "Little children should be seen and not heard". On this particular occasion, I feel compelled to support the Resolution moved by Pandit Jawaharlal Nehru because I submit it is absolutely essential that the world should know that behind this Resolution we not only have the great Indian parties but also small, minute minorities, religious and social groups to one of which I belong. That is the reason why I am standing here. Those who have preceded me have amplified in much detail everything that can be said upon the Resolution in question. What is of special interest to me, is to be found in the 5th and 6th paragraphs of the Resolution. These are the things which appeal to me, because I believe, that the leadership which has come hitherto from the Congress, will be retained by the Congress so long as it adheres to the principles laid down therein.

So far as other points are concerned, I am not immediately interested in them, but what strikes me with great grief, is the fact that difficulty should have arisen amongst ourselves and inside India. I shall not specify the different parties but is seems to me that so far as the difficulties of minorities, whether major or minor, are concerned, the difficulties are to be found as regards enjoyment of civic and political rights. These rights are fundamental and would be applicable to every social and religious group. So far as religious rights are concerned, we have freedom of worship. Every religion today is militant. Those days are gone when the Christian missionary, the Muslim *maulvi* or the Sikh *guru* could afford to make inroads upon the great Hindu majority community with impunity. Every religion is militant today and enjoys the power of converting people into its own fold. I do not see why we should be doubtful in this matter, I am referring to the Christian group--about our rights in the matter of propaganda.

The Congress has been the spear-head of nationalism and A long as it looks to the progress of the country, I will not question it. It will not only gain the allegiance of the rest of India but also of the smallest of minorities including my own.

Mr. Promatha Ranjan Thakur (Bengal: General): How long are we to go on with this Resolution?

Mr. President: I do not know. *(Laughter)*

Shri Balkrishna Sharma (United Provinces: General): Can anybody move the closure here?

Mr. President: Of course, anybody can move closure.

Mr. H. V. Pataskar (Bombay: General): Mr. President, I rise to support this Resolution moved by the Hon'ble Pandit Jawaharlal Nehru. Many persons of diverse interests and political thought have already expressed their views on this Resolution. I wish to confine myself to only a few aspects of this question, and that, too, in as few words as I possibly can.

The first and most important question is why this Resolution is necessary at this stage. The simple answer is that the enormity and the complex nature of the task, with which we are faced, is the principal reason why it is necessary to pass such a resolution at this stage. Let us, Sir, look at the task before us. We are burdened with the task of framing a constitution which will be suitable for 40 crores and odd of the people of India, who form one-fifth of the human race. Then again, these 40 crores are divided religiously into Hindus, Muslims, Christians, Jains, Sikhs and various other sects and sub-sects. One-third of the Indian territory is covered by what we call States. They are an anachronism, and they are about 516 in number. They, again, are different and divergent in their economic status. Some of them have an income of only, I am told, less than Rs. 100 per year. Again, in the matter of administration, some of these administrations are highly despotic and there is personal rule. In other States we find there is some sort of attempt at constitutional government. Then again, these 40 crores of people inhabiting this land are in various stages of evolution, as we know from the various claims that have already been put forth on behalf of Backward Classes and Tribal Areas and so forth. Economically, also we are divided, and while we have some multimillionaires on the one hand, there are also people who are on the verge of starvation or are actually starving. Administratively also, the foreign rule is responsible for dividing our country into non-homogeneous provinces, and that has again created so many problems with which we are faced. It is for such a large mass of people, so divided and cross-divided and subdivided, partly by foreign aggression in pre-British days, and largely, by British imperialism, that we have to frame a constitution, which will be suitable or acceptable to many of these elements, or at any rate which will satisfy the needs and aspirations of as many of them as we possible can.

Naturally, when we begin the task of framing a constitution for such a mass of people, these divisions, sub-divisions and cross-divisions multiply themselves. There is, in fact, a scramble for securing the interests of this division or that sub-division of this cross-division. Many of these interests are mutually conflicting as we have seen from many of the views expressed even on the floor of this House. India, we know, is a land of ignorance and poverty, and it is very easy in this state of the country to exploit religious fanaticism for so-called political activities of certain people. There is no modern and efficient constitution in the world which is based on a particular religion. The basic principle of every religion is to make a better order of society, throughout the world, irrespective of territorial boundaries. We postulate 'God' by whatever name called, in order that humanity may be formed into a true and real brotherhood. Religion which thus starts with the object of raising humanity to a higher and nobler level, is being used as an instrument to perpetrate the worst horrors by man against man and for degrading man to the level of a beast.

We have, thus, before us a problem of such complex and vast nature. We have, the problem of antagonism between the Muslims and the Hindus, the antagonism between Hindus and Hindus, the problem of the Christians, the Anglo-Indians, the Depressed Classes, the Backward Classes; and lastly, there is the problem of the rights of women.

Every section and cross-section thinks of its own individual rights and claims a charter for itself. Sir, I am afraid, in the general scramble for different charters for different sections, the charter for the common man is likely to be lost sight of--the charter for the common man which is the thing, most needed. This Resolution, Sir, embodies the charter for the common man. As I understand it, the purpose of this Resolution is to make it clear not only to all Indians, but also to those who are interested in the welfare of the world as a whole, what we propose to do. More than any statements or counter-statements of various political leaders either in India or outside, this Resolution must satisfy all those who have any doubts regarding our intentions. They should look at this comprehensive statement and feel convinced that the interests, of every Indian, irrespective of caste, creed, religion, sex; and social or economic status, will be safeguarded in the future Constitution which we propose to frame. If this does not satisfy those who have chosen to stay out, nothing else can satisfy them. We shall try to be fair and just to every section. But we shall also see that we are not coerced into any wrong action by threats of any nature. Having made our objectives clear, we shall march forward with our task and on our way to independence fearlessly, and we shall face all difficulties that may be placed in our path. We shall achieve our goal of independence; and a free independent India will play an important role in stabilising the world conditions which are in ferment to-day.

With these words, Sir, I support the Resolution which has been moved by the Hon'ble Pandit Jawaharlal Nehru.

Mr. S. H. Prater (Madras: General): Sir, in an earlier stage of the debate on this Resolution, a representative of my community supported an amendment of Dr. Jayakar for the Postponement of this Resolution. We now feel that such postponement is no longer valid or justifiable (*hear, hear*), and this House should proceed forthwith to accept and pass this Resolution.

This Resolution embodies what should be the objective of this Assembly--to create and establish a system of government which will give India the status of an independent sovereign State. And in accepting this Resolution, this Assembly will be taking the first step in implementing this purpose, by declaring our will to vest India with complete control and authority in her domestic affairs, and to vest her with complete independence of action in the field of international relationship.

The attainment of this independence will depend upon our solving for ourselves the problem of self-government. The terms of this Resolution lay down the basis of this solution. It is a resolution of compromise. Its terms fall completely within the Cabinet Mission's Proposals, which are designed to provide a *via media* between opposing claims of the Congress and the Muslim League. These proposals may be repugnant to this party or that. But the need of to-day is the need for men to recognise those truths which they most dislike and to sacrifice their Several ideals to the common good. There are; two truths which must be recognised, and those truths are embodied in the terms of this Resolution--one, that any constitution that we build up, must be based on provincial autonomy, and two, that there must be a union of all the--autonomous States and Provinces. The history of India teaches that, from the time of the Mauryas down to the days of the British, India has remained a country of separate States, Kingdoms and Provinces with separate national identities, separate national cultures, which engender and have always engendered strong local patriotism. It is not the communal differences of the hour, but it is these local patriotisms which have governed the political evolution of India, as we know it to-day. A strong unitary government, a confirmed policy of centralisation which marked the earlier stages of British administration and rule, had to give way before these inexorable forces to decentralisation, to the increasing devolution of power from the Centre to the Provinces and to the increasing independence of provincial administrations. Provincial autonomy came to us not as an extraneous proposition, it was directed by the peremptory need of a country, composed of various States and Provinces, peopled by various races, whole cultural, economic and political needs could only be met by autonomous rule. The grant of provincial autonomy and residuary powers to the Provinces as envisaged in this Resolution meets this need. But if history teaches that provincial autonomy can be the only basis upon which we can build a new constitution, it equally proves that there must be a union of these provinces in a single State governed by a single central authority. Whenever such supreme power was absent to hold the balance between the various provinces, there was always struggle and strife, with its disastrous consequences to the country as a whole. It is only by a Union such as this Resolution envisages that we can secure mutual peace and common prosperity of the peoples of this country. It is only by such a Union that we can secure their integrity from foreign aggression. It is only by such a Union that the peoples of India can, as a group, become a dominant power in world politics. This Union, whatever the factors against it, will be established, because it arises from and is based on reality and truth. It is, based on deep human needs. But if this Union of ours is not to be a mere geographical name, but a real union of the hearts and minds of men, it must be founded not on suspicion, not on the advantages that this political party or that may gain, but on a spirit of sympathy understanding and compromise which is the essence of true statesmanship.

And this brings me to the question of minorities. The Resolution advocates the fundamental rights of every citizen in this country. It also advocates the fullest protection to the minorities. This is a question which not only concerns the smaller minorities, it is a question which also concerns the major elements of the population, Hindus and Muslims, who may relapse into the position of minorities in various areas of the country. As such, the protection of minorities becomes the key to the framing of the whole Constitution, because if we are aiming at unity, such unity can only be achieved by measures which will give to the minorities in the Provinces and in the groups of Provinces the fullest protection for social, economic, religious and cultural needs. Eventually, the whole question will depend upon the goodwill, sympathy and understanding of this Assembly. We are a sovereign body, but let us approach our task, not in the spirit of legislators moved by no emotion, but by a majority vote. Let us approach our task rather in the spirit of negotiators, who in every decision that we make seek to obtain the acceptance of those whom those decisions will most affect. Once we establish such a convention, I think our work will go smoothly. In this Assembly we have the means of reaching a common measure of agreement between all elements of this country. Let us by common effort, common endeavour, in a spirit of true compromise, endeavour to achieve the common good. *(Cheers).*

Mr. President: I understand that the Right Hon'ble Dr. Jayakar wishes to make a statement in regard to his amendment. He may do that now.

The Right Hon'ble Dr. M. R. Jayakar (Bombay: General): Sir, I am very grateful to you for giving me a few minutes to make a short statement in connection with the amendment which I moved at a very early stage of this debate. The Assembly will recall that that amendment was dictated by a few considerations, mainly, the desire to make it easier for the Muslim League and the Indian States to take part in our deliberations. In connection with the Muslim League I can, say that the Assembly practically accepted the proposal which was contained in my amendment. It postponed its deliberations to the 20th of January. It has gone further and accepted the Statement of His Majesty's Government of the 6th December. Though it did all this, the Muslim League has still not come in. Whether they propose to, come in, nobody knows. They have held their cards up to the 29th January knowing full well that on the 20th of the month, nine days before they meet, we shall meet here. In the course of my speech I suggested as a compromise one course, namely, that if this Assembly was not willing to wait until the stage was reached according to the terms of sub-clause 6 of paragraph 19 of the Cabinet Mission's Statement after the sections had met and framed their Constitutions,--I said that if this Assembly was not prepared to wait till then because that stage would be reacted at a very late date,--I suggested that we should at least wait until the date of our next session, namely, 20th January, which I thought would give the Muslim League enough time to make up its mind. I, having made that suggestion, and the House having accepted it, realize that I am in honour bound not to press my amendment any further. (*Cheers.*) I do not want however to appear as if I was backing out of the considerations which prompted my amendment, but as the House accepted the proposal I definitely made, the contract is complete. I do not therefore, propose to press my amendment. But in doing so, I may be permitted to urge a few considerations before the House. If those considerations appeal to the House, it might, of its own motion, take such course as it thinks best. Those considerations are just a few and I ask for your patience for a few minutes.

Mr. President: Is it any new proposal that the Right Hon'ble Member is making now?

The Right Hon'ble Dr. M. B. Jayakar: Sir, I am not making a new proposal. I wish only to suggest that in considering the Resolution now before the House a few considerations......

The Hon'ble Pandit Govind Ballabh Pant (United Provinces: General): Sir, may I just submit that Dr. Jayakar has, I understand, withdrawn his amendment? Having withdrawn his amendment, it is not, I think, proper and also not regular that he should make a fresh speech now. He has had his opportunity to express his views fully on the day, he spoke during the last session. Now, having withdrawn his amendment.... (Voices: 'Go to the microphone, please')...... I was submitting that Dr. Jayakar had now withdrawn his amendment. A person who has already delivered a speech may be allowed a special opportunity for withdrawing his amendment if he chooses to do so. Having withdrawn his amendment he should not however complicate the situation further by proposing, in some form or other a new and a fresh amendment at this stage. Whether he puts his idea forward in the precise form of an amendment or otherwise, makes no difference. In any case, if he chooses to make a new suggestion now and thus put the Assembly in an awkward and embarrassing position, the difficulty is not met by his refraining from calling it an amendment. It remains an amendment nonetheless. The stage for that is past. So, I submit it is not open to him to make any fresh proposals now, whether under the guise of remarks or observations. He has exhausted the opportunity, the special opportunity that was given to him. Now he may well be requested to resume his seat. (A *voice*: Is there any new proposal?)

Mr. President: Now new proposals at this stage. I only allowed Dr. Jayakar to declare his position in withdrawing his amendment.

The Right Hon'ble Dr. M. B. Jayakar: While withdrawing my amendment and explaining my reasons, I am entitled to place before the House some points for its consideration.

Dr. P. S. Deshmukh (C. P. Berar: General): I should like to point out that the Hon'ble Member should be permitted to complete his statement. (*Hear, hear.*) The mere fact that he has stated that he has withdrawn his amendment should not debar him from making a statement. The opportunity that was given by the Chair was for him to make a statement. He is not proposing any fresh amendment, and he should be at liberty to complete the statement he wants to make, supposing he had chosen not to use the sentence that he was withdrawing his amendment till the end of his speech, would the Hon'ble Member, who has opposed the continuance of his speech, have been in order? So, the mere fact that Dr. Jayakar has used the sentence that he was withdrawing the amendment, should not debar him from completing his speech and making the observations he wishes to make. He should be at liberty to do so and we are prepared to hear him.

Mr. R. K. Sidhwa (C. P. Berar: General): Mr. President, I differ from the last speaker on this question. Dr. Jayakar has definitely stated that he wants to make two suggestions. Now, Sir, if you allow him to do so, you would necessarily have to give an opportunity to other members to speak on those suggestions--on the merits of those suggestion. Therefore this House would be put in an awkward position as was rightly pointed out by the Hon'ble Mr. Pant. Dr. Jayakar distinctly stated that he wants to make two suggestions. I do not know what those suggestions are. They may be good or they may be bad. But it should not be allowed to remain on record, unless an opportunity is given to other members to give their opinion on the matter. I therefore second the suggestion made by the Hon'ble Mr. Pant.

Mr. President: I do not think it necessary to have any further discussion on this point. I understand the position. I think Dr. Jayakar has exhausted his right of making a statement with regard to the amendment.

I will now put to the House whether it allows the amendment to be withdrawn.

The amendment was, by leave of the Assembly, withdrawn.

Mr. C. M. Poonacha (Coorg): Mr. President, Sir, I wish to express myself wholeheartedly in support of the Resolution moved by the, Hon'ble Pandit Jawaharlal Nehru. In doing so I have to draw the attention of the House to the discussions that have taken place outside this Assembly. There has been a sort of question of the competence of this Assembly so far as the passing of a resolution of this kind is concerned before addressing ourselves to the tasks ahead, I think it is necessary for us to take up for consideration, a resolution setting out the objectives for which we are assembled here. For that purpose I do feel that our action in this respect is not contrary to what is already contained in the State Paper. We are by this Resolution, more or less, attempting to cross the t's and dot the i's of what is contained in the Statement of May 16, 1946. We are not doing anything beyond the limits of the framework of what is stated in the said State Paper.

So far as the other points are concerned, I would like to draw the attention of the House to the fact of the sovereign rights vesting with the people of India. Here seems to be some controversy going on as regards these sovereign rights, particularly in Indian States. They do not contest the fact that in British India sovereignty vests with the people of British India and when that is so, there can be no argument against the sovereignty of the people in the Indian States as well. It is a historical truism, Sir, that there are States with Rulers ruling over people, and also States administering rules without the Rules. But there cannot be Rulers without the people. Therefore, it conclusively proves that the sovereignty of the people is a recognised fact of human activities which is demonstrated not merely by a resolution of this type but from history which has proved all along that it is the people who own the State and who confer the the administrative headship on Rulers and Kings.

Much has been said, Sir, about minorities. Instead of claiming that we are a minority of so many millions or that we are a minority of so many cores, I would suggest that we should better consider about the many more millions that are yet to be born. We are not here purely for the purpose of drawing up a constitution for the present generation only. We are here for framing a constitution for the coming generations also. So, the task of framing a free-India constitution for ourselves, as well as for the coming generations, makes our duty all the more onerous. Therefore we will have to be more considerate, more responsible, more specific about our intentions. In doing so, it is within our competence, it is within our province, within our jurisdiction to set before us the objectives which we are working for. Not only to ourselves and to our poor millions, but also to the world, let us better state now, for what we stand and for what purpose we have assembled here. This Resolution clearly expresses our cherished intentions and, so, Sir, I wholeheartedly support this Resolution.

Shri Vishwambhar Dayal Tripathi (United Provinces : General) *[Mr. President and friends :When we are going to frame the Constitution for our land, it is but natural that we should think on what basic principles our future constitution --the constitution for a free and independent India --should be framed. Therefore, I support the Resolution on the fundamental principles on the Constitution moved by the Hon'ble Pandit Jawaharlal Nehru. I want to draw your attention to some of the important clauses of the Resolution. Besides other things, basic principles are embodied in paras, 4 and 5 of the Resolution. As far as the basic principles embodied in the above-mentioned paragraphs are concerned, I am in complete agreement with them. But I would like to tell you that these principles are enunciated not only in our constitution but they are accepted by almost all the countries in their respective Constitutions. But in spite of the embodiment of these basic principles in the Constitutions of various countries, and despite the declaration by their politicians that their Constitutions would function according to them, we find that these principles are never practised. If you go through the Constitutions of England, France, America and Netherlands or pursue the declarations made by their politicians and administrators, you will find that these principles, in some way or other, are accepted by them also. But in spite of this we find that these empires do not practise them. Throughout Asia, Indo-China, Java, Burma and India, we find that the European Imperialism do not care to work according to these principles, though they are present in their respective Constitutions. Therefore, it is essential for us to consider in what way we can put them in practice. This is an important desideratum for us.

As I have said before, I want to draw your special attention to three paragraphs. In the 4th paragraph it is stated that we will frame a constitution for a sovereign and independent India, wherein all powers and authority are derived from the people. So far as this principle is concerned, it is very sound and every one will welcome it. But those who are students of politics know how these principles were misused in many countries. One of my friends just referred to the Constitution of England and said how the same had been misused there. Many centuries ago, the renowned politician of England, Mr. Hobbes, had established the principle that all powers of State are derived from the people. But the monarchs of England misused this principle. The monarchs indeed accepted that all powers and authorities are derived from the people, but at the same time they told the world that once the people delegated the powers and authorities to the rulers, those powers no more remained with the people. The evil consequence of this we find in the theory of the "Divine Right of Kings" in history. Therefore, it is very essential that, where we say "all powers and authorities are derived from the people," we must also make it clear that the same shall remain always vested in the people. And for this reason I attempted to put in an amendment to this effect. But for many reasons, the amendment could not be put in. Therefore, when we draft the Constitution later on, we must think over it and embody this in our Constitution.

So far as the 5th and the 6th paragraphs are concerned, the principles embodied in them are very attractive and desirable. In some way or other, they are present in the Constitutions of almost all the countries, but they are never practised. And, therefore, we must consider well as to how we should translate these principles into action, and, when drafting the Constitution, we should pay particular attention to it. It is stated here, that the Constitution which will be drawn up and the State which will be established on the basis of that Constitution, will guarantee social economic and political justice to all the people. No doubt it sounds very good. But you know that the body, which is vested with power and authority, interprets the term 'justice' in its own way. If, in our country, the power and authority tomorrow passes on to the capitalists, they will interpret the term 'social, economic and political justice' in their own way. But, if, in reality the power and authority are vested in the people, their representatives will interpret it correctly. Therefore, it is necessary that we embody in the Constitution some such safeguards that the body vested with the power and authority may not interpret these principles in their own arbitrary way. To achieve this end there is only one way and it is this. When we frame the Constitution, we should declare it beforehand that our constitution shall not be framed, and the State created under that Constitution shall not be established on a capitalistic basis. If we do not do so now, the rulers may later on interpret these principles in their own arbitrary way and against the best interests of the people.

Much has been said before you about the Muslim League and Mr. Jinnah and most of it is correct. But I would like to tell you that if before drawing up the Constitution, you declare that our constitution shall be drawn up on socialistic lines, undoubtedly many of our Muslim brethren will be gladly willing to cooperate with us.

All the minorities, whether Muslims or Harijans, have doubts and fears in their hearts as to how the rulers would interpret these principles after the Constitution is drawn up. Therefore, if we are to remove their doubts and fears, we should declare it now, that our constitution shall be framed and the government to be created under the Constitution shall be formed in a socialistic and positively not on a capitalistic basis. We should make this clear. For this reason, I had put in an amendment and had suggested that the word `socialistic' should be added before 'India' in the Resolution. Again, I would say that if we want the principle, embodied in the Resolution to be put into practice, the only way to secure this end is to draw up the Constitution on a socialistic basis. The Hon'ble Pandit Jawaharlal Nehru, in his speech delivered in the beginning, referred to my amendment and said something. He clearly said that he wants to draw up the Constitution on socialistic lines later on and that he did not want any with respect that there is no question of controversy. If really we mean to do some good to the people, if we want not only to remove the British rule but to build such a social and economic structure, whereby the people may get full opportunity for their advancement, it is very essential that we draw up our Constitution on socialistic lines. I think this will solve all the existing problems of minorities whether they be Muslims, Harijans or others. No doubt there are many among us who do not favour socialistic principles, but so far as the Congress is concerned, it has already accepted them. It declared in its election manifesto that it stands for the abolition of the zamindari system, and the nationalisation of the key industries. Therefore, when the Congress has already accepted these principles, it becomes our duty to frame the Constitution on the basic of these very principles. Some may have objections to it, but I think ninety-nine or ninety-eighty per cent of the people will have no objection at all. The public will be fully benefited when we accept socialistic ideals and draw up the Constitution on that basis.

I want to draw you attention to one more fundamental thing. When we are declaring our solemn resolve to establish an Independent Sovereign Republic State in our land we should also decide whether this Constituent Assembly is a sovereign body or not. If it has no sovereign rights, it cannot frame a constitution embodying sovereign rights. It has been said in the Resolution that this Constituent Assembly resolves to declare India an Independent Sovereign Republic. Under these circumstances, we should also declare by another resolution that this Constituent Assembly is a sovereign body. The State Paper of May 16 has placed various limitations and restrictions on our functions. I need not got into details. All of you know it well. But I want to tell you one thing in this connection. We have assembled in this house, not because the Constituent Assembly, owes its creator to the State Paper, but because it is the outcome of the sufferings and sacrifices of the country made during the last fifty or sixty years, and particularly during the last five or six years. The sufferings and sacrifices made by the country have compelled the British politicians to form this. Assembly and to speak of the transference of power to you. I want to make it perfectly clear to you that we have assembled here not as a result of the State Paper, but as a result of the great agitation the country made during last five or six years.

This Constituent Assembly is the result of the movement of 1942 when the Congress passed the 'Quit India' Resolution it is the result of the heroic deeds of the Indian National Army, the exploits of which are before us; it is the result of the heroic deeds of our respected great revolutionary leader, Shri Subhash Chandra Bose, who showed how we can organise and fight the big powers for the liberation of our land. Therefore, it is totally wrong to attribute the existence of this Assembly to the State Paper. This Assembly is the outcome of the work done by our country in side and outside the land within the last five or six years. I want to make it clear that it has derived its power and authority from the people and not from the British Parliament. Therefore, we should now declare that this Constituent Assembly is a Sovereign body. It has derived its power and authority from the people and not from the British Parliament and we are not prepared to accept any limitation that the British Parliament and we are not prepared to accept any limitation that the British Parliament may unconstitutionally impose upon it. I hope, in order to translate the principles embodied in the Resolution into practice, we will adopt all such measures that may enable us to establish an independent State in our land. It is crystal clear that our Independent State shall be established on socialistic lines so that the poor people of our land may be fully benefited.

I do not want to take any more of your time and support the Resolution with these words.]*

Mr. President : We have had discussion for several days on this Resolution. As far as I have been able to judge, members now wish that this discussion should be brought to an end. So, tomorrow morning I hope we shall complete this discussion and finish this Resolution.

The House will now adjourn till Eleven of the Clock tomorrow.

Tomorrow we shall take up the other Resolution of which notice has been given by Pandit Jawaharlal Nehru and which has not been taken up today.

Sri K. Santhanam (Madras : General) : Is the Budget coming tomorrow?

Mr. President : It may come tomorrow. It is in the agenda.

The Assembly then adjourned till Eleven of the Clock, on Wednesday, the 22nd January, 1947.

[English translation of Hindustani speech ends.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME II

Wednesday, the 22nd January, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eleven of the Clock, Mr. President (The. Hon'ble Dr. Rajendra Prasad) in the Chair.

RESOLUTION *RE:* AIMS AND OBJECTS-*contd.*

Mr. President: There are three items in the Agenda to-day--

1. Discussion of the Resolution that has been going on for some days.

2. Another Resolution about Bhutan and Sikkim to be moved by Pandit Jawaharlal Nehru, and

3. Budget.

I think we had better complete the discussion on the Objectives Resolution which has been moved by Pandit Jawaharlal Nehru. I noticed yesterday that Members wanted closure on that and if that is the feeling of the House, then I would ask Pandit Jawaharlal Nehru to straightway say what he has to say in reply and complete the discussion.

Mr. H. J. Khandekar (C. P. and Berar: General): *[I want to express my views on the Resolution before the House later on. The Independence Day falls on the 26th of January. This Resolution seeks to make India free and therefore the decision on it should also be taken on 26th January. Though 26th January is a holiday. I would propose, that a resolution of so great importance should be passed on the Independence Day. Therefore. I request that the Assembly should meet on that day, may be, for a few minutes only.]*

Rai Bahadur Syamanandan Sahaya (Bihar: General): Sir, I beg the leave of the House to withdraw the two amendments which stand in my name. *(Hear, hear.).*

Mr. President: Rai Bahadur Syamanandan Sahaya had moved two amendments to the Resolution. He wants leave of the House now to withdraw them. Do I take it that the House agrees?

Hon'ble Members: Yes.

Mr. President: Those two amendments are withdrawn. We have now got only the main Resolution. There is no other amendment.

A suggestion has just been put forward by Mr. Khandekar that we should pass this Resolution on the 26th, but unfortunately that happens to be a Sunday.

Mr. H. J. Khandekar: There should be a session of the Assembly for a few minutes because this Resolution is an important resolution and should be passed on the Independence Day. 26th is a Sunday and I therefore request the Chair to have the session for a few minutes to consider this Resolution and pass it.

Mr. President: We shall see about it after Pandit Jawaharlal Nehru has spoken. I shall take the vote of the House whether it should be passed today or not.

H**on'ble Members:** Today.

Mr. President: Then 22nd has to become 26th. Pandit Jawaharlal Nehru.

The Hon'ble Pandit Jawaharlal Nehru (United Provinces: General): *[Mr. President, six weeks have passed since I moved this Resolution. I had thought then that the Resolution would be discussed and passed within two or three days, but later the House decided to postpone it in order to give time to others to think over it. The decision to postpone an important Resolution like this was probably not to the linking of others like me, but I did not doubt that the decision was sound and proper. The anxiety and impatience in our hearts was not for the passage of the Resolution, which was simply a symbol, but to attain the high aims which were enshrined in it. It is also our intense desire to march on with all others and reach our goal with millions of Indians. Therefore, it was advisable to postpone the Resolution and to afford ample opportunity not only to this House but also to the country in general to think over it. The sense of all amendments and specially the amendment moved by Dr. Jayakar was generally for postponement. I am grateful to Dr. Jayakar for the withdrawal of his amendment and I thank the others also who have withdrawn their amendments. Many Members have spoken on the Resolution. Their number may be thirty of forty or more. Almost all of them have supported it without any criticism. Some. of them, of course, have drawn our attention to some particular matters. I am of opinion, that if a plebiscite of the crores of people of India is taken, all of them will be found to stand for the Resolution; though there might be some who would lay more or less emphasis on some particular aspect of the Resolution. The Resolution was meant to clothe in words the desire of crores of Indians and it was very carefully worded so as to avoid any strongly controversial issue. There is no need to say a great deal about this but with your permission, I would like to draw your attention to some points. One of the reasons for the postponement of the Resolution was that we wished that our brothers who bad not come here, should be in a position to decide to come in. They have had a full month to consider the matter but I regret that they have not yet decided to come. However as I have already said at the outset, we will keep the door open for them and they will be welcomed up to the last moment, and we will give them and others, who have a right to come in, every opportunity for coming in. But it is clear that while the door remains open, our work cannot be held up. It has, therefore, become indispensable- for us to proceed further and carry the Resolution to its logical conclusion. I have hopes that even at this stage those, who are absent, would decide to come in.

Some of us, even though they are in agreement with this Resolution, were in favour of postponing some other business , too so that the absentees might not find any obstacle in their way to come in. I am in sympathy with this suggestion but in spite of this I am at a loss to understand how this suggestion could be put forward. That is a question of waiting, not that of postponing the Resolution. We have waited for six long Weeks. This is no matter of weeks; ages have slipped by while we have been waiting. How long are we to wait now? Many of us who waited have since passed away and many are nearing the end of their lives. We have waited enough and now we cannot wait any longer. We are to further the work of the Assembly, speed up the pace and finish our work soon. You should bear in mind that this Assembly is not only to pass Resolutions, I may point out, that the Constitution, which we frame, is not an end by itself, but it would be only the basis for further work.

The first task of this Assembly is to free India through a new constitution to feed the starving people and cloth the naked masses and to give every Indian fullest opportunity to develop himself according to his capacity. This is certainly a great task Look at India today. We, are sitting here and there in despair in many places, and unrest in many cities. The atmosphere is surcharged with these quarrels and feuds which are called communal disturbances, and unfortunately we sometimes cannot avoid them. But at present the greatest and most important question in India is how to solve the problem of the poor and the starving. Wherever we turn, we are confronted with this problem. If we cannot solve this problem soon, all our paper constitutions will become useless and purposeless. Keeping this aspect in view, who could suggest to us to postpone and wait?

A point has been raised from one side that some ideas contained in the Resolution do not commend themselves to the Rulers of the States, because they conflict with the powers of the Princes. A suggestion has also been made to postpone the decision about the States in the absence of their representatives. It is a fact they are not present here but if we wait for them it is not possible for us to finish the work even at the end of the Constituent Assembly according to the plan. This is impossible. Our scheme was not that they should come in at the end. We invited them to come in at the beginning. If they come, they are welcome. No body is going to place any obstacles. If there is any hesitation, it is on their part only. A month ago you formed a Committee to get into: touch with 'their representatives. We were always anxious to discuss with them although we did not get any opportunity for it. That is no fault of ours. We did not ask for time. We want to finish our work as early as possible. I am informed they complain of the following words contained in the Resolution.

"Sovereignty belong to the people and rests with the people"

That is to say, the final decision should rest with the people of the States. They object to this. It is certainly a surprising objection. It may not be very surprising if those people who have lived in an atmosphere of mediaevalism do not give up their cherished illusions, but in the modern age how can a man believe for a moment in the divine and despotic rights of I a human being? I fail to understand how any Indian, whether he belongs to a State or to any other part of the country, could dare utter such things. It is scandalous now to put forward an idea which originated in the world hundreds of years ago and was buried deep in the earth long before our present age. However, I would respectfully tell them to desist from saying such things. They are putting wrong thing before the world and by doing so they are lowering their own status and weakening their own position. At least this Assembly is not prepared to damage its, very foundation and, if it does so, it will shake the very basis of our whole constitution.

We claim in this Resolution to frame a free and democratic Indian Republic. A question may be asked what relation will that Republic bear to other countries of the world? What would be its relations with England, the British Commonwealth and other countries? This Resolution means that we are completely free and are not included in any group except the Union of Nations which is now being formed in the world. The truth is that the world has totally changed. The meanings of words too are changing. Today any man who can think a little, will come to the conclusion that the only way to remove the doubts and dangers from the world, is to unite all the nations and ask them to work together and help each other. The organisation of the United Nations is not free from big gap's and fissures. Thousands of difficulties lie ahead and a great deal of suspicion exists between countries. I have already said that we are not thinking in terms of isolating ourselves from the world. We will work in complete cooperation with other countries. It is not an easy thing to work in cooperation with England or the British Commonwealth, and yet we are prepared to do so. We will forget our old quarrels, strive to achieve our complete independence and stretch our hands of friendship to other countries, but that friendship shall in no case mar or weaken our freedom.

This is not a resolution of war; it is simply to put our legitimate rights before the world; and in doing so if we are challenged, we will not hesitate in accepting that challenge. But after all, this is resolution of goodwill and compromise, among the people of India, whatever their community or religion and with the different countries of the world including England and the British Commonwealth of Nations. The Resolution claims to be on friendly terms with all and it has been put before you with that motive and intention. I hope you will accept it.

A friend has suggested that it would be advisable to move the Resolution just on the eve of the Independence Day which is due to come after four days only. But I will ask him if it is proper to delay a proper thing even for a moment? Not a moment's postponement is advisable and we should finish our work as soon as possible.

This Resolution which has, been put before you is in a new form and in a new shape, bat I would like to tell you that it has a long trail of resolutions pledges and declarations including the world-famed resolutions of "Independence" and "Quit India' behind it. It is high time to fulfill our pledges which we made from time to time. How are these pledges to be fulfilled? The right answer lies with you and I hope you will not only accept the Resolution but also fulfill it as you fulfill a solemn pledge.

One thing more I would like to tell you. We have been confronted and will again be confronted with various questions. Persons of various groups, communities, and interests would look at it from different points of view, and diverse questions and problems would be raised by them, but we should all bear in mind that we should not, on the eve of Independence, allow ourselves to be carried away by petty matters. If India goes down, all will go down; if India thrives, all will thrive and if India lives, all will live including the parties, communities and groups.

With your permission I would like to say something in English also.]*

Mr. President, it was my proud privilege, Sir, six weeks ago, to move this Resolution before this Hon'ble House. I felt the weight and solemnity of that occasion. It was not a mere form of words that I placed before the House, carefully chosen as those words were. But those words and the Resolution represented something far more; they represented the depth of our being; they represented the agony and hopes of the nation coming at last to fruition. As I stood here on that occasion I felt the past crowding round me, and I felt also the future taking shape. We stood on the razor's edge of the present, and as I was speaking, I was addressing not only this Hon'ble House, but the millions of India, who were vastly interested in our work. And because I felt that we were coming to the end of an age, I had a sense of our forbears watching this undertaking of ours and possibly blessing it, if we moved aright, and the future, of which we became trustees became almost a living thing, taking shape and moving before our eyes. It was a great responsibility to be trustees of the future, and is was some responsibility also to be inheritors of the great past of ours. And between that great past and the great future which we envisage, we stood on the edge of the present and the weight of that occasion, I have no doubt, impressed itself upon this Hon'ble House.

So, I placed this Resolution before the House, and I had hoped that it could be passed in a day or two and we could start our other work immediately. But after a long debate this House decided to postpone further consideration of this Resolution. May I confess that I was a little disappointed because I was impatient that we should go forward? I felt that we were not true to the pledges that we had taken by lingering on the road. It was a bad beginning that we should postpone even such an important Resolution about objectives. Would that imply that our future work would go along slowly and be postponed from time to time? Nevertheless. I have no doubt, that the decision this House took in its wisdom in postponing this Resolution, was a right decision, because we have always balanced two factors, one, the urgent necessity in reaching our goal, and the other, that we should reach it in proper time and with as great a unanimity as possible. It was right, therefore, if I may say with all respect, that this House decided to adjourn consideration of this Motion and thus not only demonstrated before the world our earnest desire to have all those people here who have not so far come in here, but also to assure the country and every one else, how anxious we were to have the cooperation of all. Since then six weeks have passed, and during these weeks there has been plenty of opportunity for those, who wanted to come, to, come. Unfortunately, they have not yet decided to come and they still hover in this state of indecision. I regret that, and all I can say is this, that we shall welcome them at any future time when they may wish to come. But it should be made clear without any possibility of misunderstanding that no work will be held up in future, whether any one comes or not. (*Cheers.*) There has been waiting enough. Not only waiting six weeks, but many in this country have waited for years and years, and the country has waited for some generations now. How long are we to wait? And if we, some of us, who are more prosperous can afford to wait, what about the waiting of the hungry and the starving? This Resolution will not feed the hungry or the starving, but it brings a promise of many things--it brings the promise of freedom, it brings the promise of food and opportunity for all. Therefore, the sooner we set about it the better. So we waited for six weeks, and during these six weeks the country thought about it, pondered over it, and other countries also, and other people who are interested have thought about it. Now we have come back here to take up the further consideration of this Resolution. We have had a long debate and we stand on the verge of passing it. I am grateful to Dr. Jayakar and Mr. Sahaya for having withdrawn their amendments. Dr. Jayakar's purpose was served by the postponing of this Resolution, and it appears now that there is no one in this House who does not accept fully this Resolution as it is. It may be, some would like it to be slightly differently worded or the emphasis placed more on this part or on that part. But taking it as a whole, it is a resolution which has already received the full assent of this House, and there is little doubt that it has received the full assent of the country. *(Cheers.)*

There have been some criticisms of it, notably, from some of the Princes. Their first criticism has been that such a Resolution should not be passed in the absence of the representatives of the States. In part I agree with that criticism, that is to say, I should have liked all the States being properly represented here, the whole of India--every part of India being properly represented here when we pass this Resolution. But if they are not here it is not our fault. It is largely the fault of the Scheme under which we are functioning, and we have this choice before us. Are we to postpone our functioning because some people cannot be here? That would be a dreadful thing if we stopped not only this Resolution, but possibly so much else, because representatives of the States are not here. So far as we are concerned, they can come in at the earliest possible moment, we will welcome them if they send proper representatives of the States. So far as we are concerned, even during the last six weeks or a month, we have made some effort to get into touch with the Committee representing the States Rulers to find a way for their proper representation here. It is not our fault that there has been any delay. We are anxious to get every one in, whether it is the representatives of the Muslim League or the States or any one else. We shall continue to persevere in this endeavour so that this House may be as fully representative of the country as it is possible to be. So, we cannot postpone this Resolution or anything else because some people are not here.

Another point has been raised: the idea of the sovereignty of the people, which is enshrined in this Resolution, does not commend itself to certain rulers of Indian States. That is a surprising objection and, if I may say so, if that objection is raised in all seriousness by anybody, be he a Ruler or a Minister, it is enough to condemn the Indian States system of every Ruler or Minister that exists in India. It is a scandalous thing for any man to say, however highly placed he may be, that he is here by special divine dispensation to rule over human beings today. That is a thing which is an intolerable presumption on any man's part, and it is a thing which this House will never allow and will repudiate if it is put before it. We have heard a lot about this Divine Right of Kings we had read a lot about of it in past histories and we had thought that we had heard the last of it and that it had been put an end to and buried deep down into the earth long ages ago. If any individual in India or elsewhere raises it today, he would be doing so without any relation to the present in India. So, I would suggest to such persons in all seriousness that, if they want to be respected or considered with any measure of friendliness, no such idea should be even hinted at, much less said. On this there is going to be no compromise. *(Hear, hear).*

But, as I made plain on the previous occasion when I spoke, this Resolution makes it clear that we are not interfering in the internal affairs of the States. I even said that we are not interfering with the system of monarchy in the States, if the people of the States so want it. I gave the example of the Irish Republic in the British Commonwealth and it is conceivable to me that within the Indian Republic, there might be monarchies if the people so desire. That is entirely for them to determine. This Resolution and, presumably, the Constitution that we make, will not interfere with that matter. Inevitably it will be necessary to bring about uniformity in the freedom of the various parts of India, because it is inconceivable to me that certain parts of India should have democratic freedom and certain others should be denied it. That cannot be. That will give rise to trouble, just as in the wide world today there is trouble because some countries are free and some are not. Much more trouble will there be if there is freedom in parts of India and lack of freedom in other parts of India.

But we are not laying down in this Resolution any strict system in regard to the governance of the Indian States. All that we say is this that they, or such of them, as are big enough to form unions or group themselves into small unions, will be autonomous units with a very large measure of freedom to do as, they choose, subject no doubt to certain central functions in which they will co-operate with the Centre, in which they will be represented in the Centre and in which the Centre will have control. So that, in a sense, this Resolution does not interfere with the inner working of those Units. They will be autonomous and, as I have said, if those Units choose to have some kind of constitutional monarchy at their head, they would be welcome to do so. For my part, I am for a Republic in India as anywhere else. But whatever my views may be on that subject, it is not my desire to impose my will on others; whatever the views of this House may be on this subject, I imagine that it is not the desire of this House to impose its will in these matters.

So, the objection of the Ruler of an Indian State to this Resolution becomes an objection, in theory, to the theoretical implications and the practical implications of the doctrine of sovereignty of the people. To nothing else does any one object. That is an objection which cannot stand for an instant. We claim in this Resolution to frame a constitution for a Sovereign, Independent, Indian Republic--necessarily Republic. What else can we have in India? Whatever the States may have or may not have, it is impossible and inconceivable and undesirable to think in any other terms but in terms of the

Republic in India.

Now, what relation will that Republic bear to the other countries of the world, to England and, to the British Commonwealth and the rest? For a long time past we have taken a pledge on Independence Day that India must sever her connection with Great Britain, because that connection had become an emblem of British domination. At no time have we thought in terms of isolating ourselves in this part of the world from other countries or of being hostile to countries which have dominated over us. On the eve of this great occasion, when we stand on the threshold of freedom we do not wish to carry a trial of hostility with us against any other country. We want to be friendly to all. We want to, be friendly with the British people and the, British Commonwealth of Nations.

But what I would like this House to consider is this: When these words and these labels are fast changing their meaning and in the world today there is no isolation, you cannot live apart from the others. You must co-operate or you must fight. There is no middle way. We wish for peace. We do not want to fight any nation if we can help it. The only possible real objective that we, in common with other nations, can have is the objective of co-operating in building up some kind of world structure, call it 'One World', call it what you like. The beginnings of this world structure have been laid down in the United Nations Organisation. It is feeble yet; it has many defects; nevertheless, it is the beginning of the world structure. And India has pledged herself to cooperate in that work.

Now, if we think of that structure and our co-operation with other, countries in achieving it, where does the question come of our being tied up with this Group of Nations or that Group? Indeed, the more groups and blocks are formed, the weaker will that great structure become.

Therefore, in order to strengthen that big structure, it is desirable for all countries not to insist, not to, lay stress on separate groups and separate blocks. I know that there are such separate groups and blocks today and because they exist today, there is hostility between them, and there is even talk of war among them. I do not know what the future will bring to us, whether peace or war. We stand on the edge of a precipice and there are various forces which pull us on one side in favour of co-operation and peace, and on the other, push us towards the precipice of war and disintegration. I am not prophet enough to know what will happen, but I do know that those who desire peace must deprecate separate blocks which necessarily become hostile to other blocks. Therefore India, in so far as it has a foreign policy, has declared that it wants to remain independent and free of all these blocks and that it wants to cooperate on equal terms with all countries. It is a difficult position because, when people are full of fear of each other, any person who tries to be neutral is suspected of sympathy with the other party. We can see that in India and we can see that in the wider sphere of world politics. Recently an American statesman criticised India in words which show how lacking in knowledge and understanding even the statesmen of America are. Because we follow our own policy, this group of nations thinks that we are siding with the other and that group of nations thinks that we are siding with this. That is bound to happen. If we seek to be a free, independent, democratic republic. It is not to dissociate ourselves from other countries, but rather as a free nation to co-operate in the fullest measure with other countries for peace and freedom, to cooperate with Britain, with the British Commonwealth of Nations, with the United States of America, with the Soviet Union, and with all other countries, big and small. But real co-operation would only come between us and these other nations when. We know that we are free to cooperate and are not imposed upon and forced to co-operate. So long as there is the slightest trace of compulsion, there can be no co-operation.

Therefore, I commend this Resolution to the House and I commend this Resolution, if I may say so, not only to this House but to the world at large so that it can be perfectly clear that it is a gesture of friendship to all, and, that behind it there lies no hostility. We have suffered enough in the past. We have struggled sufficiently, we may have to struggle again, but under the leadership of a very great personality we have sought always to think in terms of friendship and goodwill towards others, even those who opposed us. How far we have succeeded, we do not know, because we are weak human beings. Nevertheless, the impress of that message has found a place in the hearts of millions of people of this country, and even when we err and go astray, we cannot forget it. Some of us may be little men, some may be big, but whether we are small men or big, for the moment we represent a great cause and therefore something of the shadow of greatness falls upon us. Today in this Assembly we represent a mighty cause and this Resolution that I have placed before you gives some semblance of that cause. We shall pass this Resolution, and I hope that this Resolution will lead us to a constitution on the lines suggested by this Resolution. I trust that the Constitution itself will lead us to the real freedom that we have clamoured for and that real freedom in turn will bring food to our starving peoples, clothing for them, housing for them and all manner of opportunities of progress, that it will lead also to the freedom of the other countries of Asia, because in a sense, however unworthy we have become--let us recognise it--the leaders of the freedom movement of Asia, and whatever we do, we should think of ourselves in these larger terms. When some petty matter divides us and we have difficulties and conflicts amongst ourselves over these small matters, let us remember not only this Resolution, but this great responsibility that we shoulder, the responsibility of the freedom of 400 million people of India, the responsibility of the leadership of a large part of Asia, the responsibility of being some land of guide to vast numbers of people all over the world. It is a tremendous responsibility. If we remember it, perhaps we may not bicker so much over this seat or that post, over some small gain for this group or that. The one thing that should be obvious to all of us is this that there is no group in India, no party, no religious community, which can prosper if India does not prosper. If India goes down, we go down, all of us, whether we have a few seats more or less, whether we get a slight advantage or we do not. But if it is well with India if India lives as a vital free country, then it is well with all of us to whatever community or religion we might belong.

We shall frame the Constitution, and I hope it will be a good constitution, but does anyone in this House imagine that, when a free India emerges, it will be bound down by anything that even this House might lay down for it? A free India will see the bursting forth of the energy of a mighty nation. What it will do and what it will not, I do not know, that it will not consent to be bound down by anything. Some people imagine, that what we do now, may not be touched for 10 years or 20 years, if we do not do it today, we will not be able to do it later. That seems to me a complete misapprehension. I am not placing before the House what I want done and what I do not want done, but I should like the House to consider that we are on the eve of revolutionary changes, revolutionary in every sense of, the ward, because when the spirit of a nation breaks its bonds, it functions in peculiar ways and it should function in strange ways. It may be that the Constitution, this House may frame, may not satisfy that free India. This House cannot bind down the next generation, or the people who will dully succeed us in this task. Therefore, let us not trouble ourselves too much about the petty details of what we do, those details will not survive for long. If they are achieved in conflict. What we achieve in unanimity, what we achieve by co-operation is likely to survive. What we gain here and", there by conflict and by overbearing manners and by threats will not survive long. It Will only leave a trail of bad blood. And so now I commend this Resolution to the House and may I read the last para of this Resolution? But one word more, Sir, before I read it. India is a great country, great in her resources, great in her man-power, great in her potential, in every way. I have little doubt that a Free India on every plane will play, a big part on the world stage, even on the narrowest plane of material power, and I should like India to play that great part in that plane. Nevertheless today there is a conflict in the world between forces, in different planes. We hear a lot about the atom bomb and the various kinds of energy that it represents and in essence today there is a conflict in the world between two things, that atom bomb and what it represents Find the spirit of humanity. I hope that while India will no doubt play a great part in all the material spheres, she will always lay stress on that spirit of humanity, and I have no doubt in my mind, that ultimately in this conflict, that is confronting the world, the human spirit will prevail over the atom bomb. May this Resolution bear fruit and may the time come when in the words of this Resolution, this ancient land attains its rightful and honoured place in the world and makes its full and willing contribution to the promotion of world peace and the welfare of mankind.

Mr. president: The time has now arrived when you should give your solemn votes on this Resolution. Remembering the solemnity of the occasion and the greatness of the pledge and the promise which this Resolution contain, I hope every Member will stand up in his place when giving his vote in favour of it.

I will read the Resolution:

This Constituent Assembly declares its firm and solemn resolve to proclaim India as an independent Sovereign Republic and to draw up for her future governance a Constitution :

(2)WHEREIN the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India shall be a Union of them all; and

(3)WHEREIN the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to law of the Constitution shall possess and retain the status of autonomous units, together with residuary powers, and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom; and

(4)WHEREIN all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people; and

(5)WHEREIN shall be guaranteed and secured ;to all the people of India justice, social, economic, and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and

(6)WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and

(7)WHEREBY shall be'-maintained the integrity of the territory of the Republic and its sovereign rights on land, sea and air according to justice and the law of civilised nations; and

(8)this ancient land attain its rightful and honoured place in the world -and make its full and willing contribution to the promotion of world peace and the welfare of mankind.

(The Hon'ble the President then read a Hindi translation of the Resolution.)

I have got the Urdu translation also. Unfortunately I am not able to read it. I shall be glad if some other Member could, read it for me.

(Shri Mohanlal Saksena then read the Urdu translation of the Resolution.)

Mr. President: I will request Members now to stand in their places and vote in favour of this Resolution.

The Resolution was adopted, all members standing.

RESOLUTION TO INCLUDE BHUTAN AND SIKKIM WITHIN THE SCOPE OF THE NEGOTIATING COMMITTEE

Mr. President: We have got the next resolution relating to Sikkim and Bhutan. Pandit Jawaharlal Nehru will move this.

The Hon'ble Pandit Jawaharlal Nehru: Mr. President, Sir, I beg to move the following Resolution:

> "This Assembly resolve that the Committee constituted by its Resolution of December 21, 1946 (to confer with the Negotiating Committee set up by the Chamber of Princes and with other representatives of Indian States for certain specified purposes) shall in addition have power to confer with such persons as the Committee thinks fit for the purpose of examining the special problems of Bhutan and Sikkim and to report to the Assembly the result of such examination."

May I point out, Sir, that the copy of this Resolution that has been circulated should be varied slightly in the penultimate line, to read, for the purpose of examining the special problems of Bhutan and Sikkim. and to report to the Assembly"............

The House will remember that we passed a resolution in December last appointing a Committee consisting of Maulana Abul Kalam Azad, Sardar Vallabhbhai Patel, Dr. Pattabhi Sitaramayya, Mr. Shankarrao Deo, Sir N.

Gopalaswami Ayyangar and myself to confer with the Negotiating Committee set up by the Chamber of Princes and with other representatives of Indian States for the purpose of--

(a) fixing the distribution of the seats in the Assembly not exceeding 93 in number which, in the Cabinet Mission's Statement of 16th May, 1946, are reserved for Indian States, and

(b) fixing the method by which the representatives of the States should be returned to this Assembly, and thereafter to report to the Constituent Assembly the result of such negotiations. Further it was resolved that not more than three other Members may be added to this Committee later. This Committee was to consider two matters, fixing and distribution of seats for States and fixing the method by which the representatives of the States should be returned to the Assembly. The question has arisen as to how we have to deal with certain areas which are not Indian States. In this Resolution before us, Bhutan and Sikkim are mentioned.

Bhutan is in a sense an Independent State under the protection of India. Sikkim is in a sense an Indian State but different from the other. It is not proper to think of Bhutan therefore in the same category as an Indian State. I do not know what the future position of Bhutan might be in relation to India. That is a matter to be determined in consultation and in co-operation with the representatives 'of Bhutan. There is no question of compulsion in the matter. Now the terms of reference of the Committee you have appointed on the last occasion will not entitle it to tackle any such problem. Those terms are limited to the method of representation in this Assembly and the distribution of seats. I would like to say that there is some objection raised on the part of the Indian Princes to Negotiating Committee as to why the terms of reference have been so limited by us. They have been limited for obvious reasons--that all the later problems of the Indian States are going to be dealt with by those representatives of Indian States when they come a and it would be absurd for us to come to final decisions with regard to the main problems before the representatives are here. Therefore deliberately we limited the functions of our Negotiating Committee. But in limiting them we prevented them from dealing with other problems which may arise in regard to territories which are not Indian States, specially Bhutan and Sikkim, and this Resolution gives them authority to meet representatives of Bhutan and Sikkim and discuss any special problems that may arise. I want to make it clear, on the one hand, that this Constituent Assembly has every right to discuss problems with even Independent States, if necessary. There is nothing to limit our right to discuss our future relations with the Independent States but for the moment I am not dealing with that problem. Whatever the position of Bhutan might be, there is no question that we have the power and authority to deal With their representatives. This is in no way trying to lessen the status of Bhutan's present position. Whatever this may be it will be recognized to be something entirely different, to that of Indian States. We are simply empowering our Committee to deal with the representatives and then to report to this Constituent assembly the result of those negotiations.

I beg to move this Resolution, Sir.

The Hon'ble Pandit Govind Ballabh Pant (United Provinces : General): I second the Resolution.

Mr. President: The Resolution has been moved and seconded. If anyone wants to speak, he can do so....... (After a pause)...... May I take it that no one wishes to speak about this Resolution? I will put the Resolution to vote.....

The Resolution was adopted.

Mr. President: There are two motions regarding the Budget of the Assembly.

Mr. H. V. Kamath (C. P. & Berar: General): May I invite your attention, Sir, To the request made by a large section of this House that as a mark of tribute to Netaji Subash Chandra Bose, whose golden jubilee falls tomorrow, this House shall not meet tomorrow for the transaction of any business?

Mr. President: Mr. Kamath, as I understand, we have not got anything ready for tomorrow; so, in any case we are going to have a holiday tomorrow. *(Cheers)* Mr. Gadgil.

BUDGET ESTIMATES OF THE CONSTITUENT ASSEMBLY

Mr. N. V. Gadgil (Bombay: General): I beg to move--

> "Resolved that the Assembly do accord sanction to the estimated expenditure of the Assembly for the years 1946-47 and 1947-48 as shown in the attached statements prepared by the Staff and Finance Committee in pursuance of rule 50 (1) of the Constituent Assembly Rules."

Sir, as laid down in the Rules.........

Sri K. Santhanam. (Madras: General): I move that this thing may be taken up in Committee. It is not desirable that we should discuss the Budget in the presence of visitors. So I move that we go into Committee.

Prof. N. G. Ranga (Madras: General): I second it.

Sri Biswanath Das (Orissa: General): I also support it.

Mr. Somnath Lahiri (Bengal: General): It deals with public money. I do not see any reason why we should be afraid of discussing in public.

Mr. President: Let the motion be moved and then we shall consider whether the consideration will be in Committee.

Sri K. Santhanam: The Motion has been moved. He is going to make a speech. Therefore we want it in *camera*. There is nothing to be hidden or to be afraid of but we want to have the freedom to speak freely.

Mr. President: I had better then take the sense of the House. Those who want it in Committee form later on will please say 'Aye'.

The Hon'ble Mr. B. G. Kher (Bombay: General): The whole House may be turned into Committee.

Mr. president: Those who are in favour of Committee may say 'Aye' ....

The motion was adopted.

Mr. President: We shall then go into Committee and as the Committee meetings are private, I would request the visitors to withdraw.

(The galleries were then cleared)

(The proceedings were then conducted in *camera*).

[English translation of Hindustani speech ends.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME II

Friday, the 24th January, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eleven of the Clock, Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair.

Mr. President: We shall commence the proceedings now. When, we rose day before yesterday, we were sitting in Committee to discuss the Budget. There are certain Resolutions which have to be placed before the House. I would suggest that we first take those Resolutions and dispose of them and then, later on, if we have time, shall go into Committee again and discuss the Budget.

I hope Members approve of this.

Mr. Satyanarayan Sinha (Bihar: General): Mr. President, Sir, When we adjourned last time, we had gone into Committee. It is therefore necessary formally to move that the House do now come into open plenary session of the Assembly.

Mr. President: I hope the House accepts the suggestion.

The motion was adopted.

Mr. President: As the House has accepted the suggestion, we will go into open session and take up the Resolutions.

I now call upon Mr. Satyanarayan Sinha to move the motion standing in his name.

ELECTION OF VICE-PRESIDENT

Mr. Satyanarayan Sinha: Mr. President, Sir, I beg to move the following motion which stands in my name:-

> Resolved that this Assembly do proceed to elect a Vice-President in accordance with sub-rule (1) of Rule 12 of the Constituent Assembly Rules.

Sir, with your permission, I would read to the House the Rules of Procedure regarding the Vice-Presidents which we passed in the last session.

"The Assembly shall have five Vice-Presidents. Out of the five Vice-Presidents, two shall be elected by the Assembly as a whole, from among its members in such manner as the President may prescribe.

Chairmen elected by the Sections shall be ex-officio, Vice-Presidents of the Assembly."

Now, Sir, according to Rule 16, if there is no Vice-President to preside over the Assembly, the Assembly may choose any member to perform the duties of the Chairman. So, even if you are absent for a short time, on such occasions the Assembly will have to elect one of its members to preside over the deliberations. It is therefore expedient that we should have atleast one Vice-President elected during this session. Therefore I move this motion and hope that the House will accept it.

The Hon'ble Pandit Govind Ballabh Pant (United Provinces: General): I second the motion.

Mr. President: The motion has been moved, and seconded. I do not think any debate is required.

The motion was adopted.

Mr. President: Nominations will be received by the Secretary upto 5 p.m. today. If an election becomes necessary, it will be held between 11 am. and 12 noon tomorrow morning in the Under Secretary's room, Room No. 24, on the Ground Floor.

ELECTION OF THE ADVISORY COMMITTEE

The Hon'ble Pandit Govind Ballabh Pant: Sir, I beg leave to make the motion standing in my name which runs thus:

"This Assembly resolves that in pursuance of paragraph 20 of the Cabinet Mission's Statement of May 16, 1946, an Advisory Committee be constituted as hereinafter set out:--

1.(a) The Advisory Committee shall consist of not more than 68 members who may include persons who are not members of the Assembly.

(b) (i) It shall consist initially of 52 members who shall be elected by the Assembly in accordance with the principle of proportional representation by means of the single transferable vote.

(ii) The Assembly may elect in such manner as the President may deem appropriate up to 7 members.

(c) The President may at any one time or at different times nominate members to the Committee not exceeding 9.

2. The Advisory Committee shall appoint Sub-Committees to prepare schemes for the Administration of the North-Western Tribal Areas, the North-Eastern Tribal Areas and the Excluded and Partially Excluded Areas. Each of such Sub-Committees may co-opt not more than 2 members from the particular tribal territory under its consideration for the dine being, to against it in its work In relation to that territory.

3. The Advisory Committee may appoint other Sub-Committees from time to time as it may deem

necessary.

4. The Advisory Committee shall submit the final report to the Union Constituent Assembly within three months and may 'submit interim reports from time to time.

5. Casual vacancies in the Advisory Committee shall be filled as soon as possible after they occur in the manner in which the seat in respect of which the vacancy had arisen was originally filled.

6. The President way make standing orders for the conduct of the proceedings of the Committee.

Sir, this Resolution not only follows the scheme outlined in the Statement of May 16th but it also adopts the phraseology of that Scheme. The Scheme provides for one single Committee to deal with the rights of minorities, with the rights of citizens and with questions relating to the administration of the Tribal and Excluded and Partially Excluded Areas. Left to ourselves, we would have preferred a Committee for each of these subjects and perhaps two Committees for dealing with the problems relating to the North-West Frontier and the North-Eastern Frontier, but as the Scheme envisaged one Committee, we thought it better not to depart from that direction or proposal. The Committee has consequently become bigger than it would have been, had there been a separate Committee to deal with each of the subjects. This Committee, Advisory Committee as it is called is being appointed under paragraph 19, clause (iv). It runs thus:--

"A preliminary meeting will be held at which the general order of business will be decided, a chairman and other officers, elected and an Advisory Committee on rights of citizens, minorities and tribal and excluded areas set up."

Thus according to the procedure prescribed here, in the Ordinary course, we were expected to take up this item immediately after the election of the President. We refrained from doing so out of regard for the members. We wanted to facilitate the entry of the members of the Muslim League and to secure their co-operation in the deliberations of this Assembly. It is a matter for regret that our efforts in that direction have not succeeded so far. Not only did we postpone the consideration of this item which was necessary in order to proceed further with the course chalked out for us by this Statement, but the Congress went further and accepted the interpretation put by His Majesty's Government and the Muslim League on some of the contentious clauses of that Statement, and also accepted a large part of the declaration made by the British Cabinet on the 6th December. The Congress on the 5th of January unequivocally declared its acceptance of the interpretation put on the grouping clauses by the League. This Assembly met an the 20th. There were fifteen days in between. We had postponed the consideration of this item. Not only has the Muslim League not passed any formal resolution in favour of their entry into this House, but the statements made by persons who claim to be in a position to know the mind of the League, still point the other way. No suggestion has been made to the office bearers of this Assembly to the Secretary or anybody else, by any responsible representative of the Muslim League for the postponement of this Assembly or of any item of business included in the Order Paper. Under the circumstances, we cannot but proceed with the business that has been already prescribed, determined and formulated for us. The responsibility for the course that is being adopted, if it embarrasses or inconveniences anybody, rests on those who have chosen to keep aloof, I think every responsible and dispassionate person will accept that the Congress and the Hon'ble Members of this House have done more than what could be expected of them in order to facilitate the participation of the Muslim League in the deliberations of this Assembly. But they have all the same stuck to their original attitude of negation and have not cared to join this Assembly in the great and sacred task that lies ahead.

I consider it necessary to make these remarks, especially in view of some articles that have appeared in the press and in one of the local papers. It is unreasonable on the part of any person-I am using a mild expression--to suggest further postponement of this item, which ought to have been taken up at the very outset. The tender solicitude shown by the Hon'ble Members of this House for the absentee Members has not only not been appreciated, but it has been misunderstood. There is another aspect of this question. The people of this country, millions are scanning the proceedings of this Assembly in order to see what Progress we are making and how near we are to the goal which we have before us. Every day's delay is causing them disappointment; and on the other side, there is vigorous propaganda, suggesting that this Assembly will end in smoke, that all its efforts, deliberations and endeavours will prove futile, and nothing will come out of them. In the circumstances, any one interested in the success of this Assembly must realize the responsibility that rests on the shoulders of the Hon'ble Members of this House. They cannot afford to put off indefinitely the business of this House, and they cannot allow that hope be deferred till hope is stilled altogether. So, I trust Hon'ble Members will unanimously accept the Motion that I have placed before them.

As they know, provision has to be made for the determination of fundamental rights, the rights of minorities and for the administration of Tribal and Backward Areas. The number of representatives has been fixed with due regard to the tasks that lie in front of this Committee. Ours is a vast country and the numbers living here now exceed 400 millions. In the circumstances, howsoever one may try to reduce the strength of a Committee of this character, one cannot go below a certain minimum, and we have tried to do justice to all interests and to all elements and at the same time to limit the figure to a reasonable and workable limit. There is provision for 72 members, but originally it was 68. Hon'ble Members know that there is provision to be made for citizens' rights. For that purpose, we want representatives of the General Body. Fundamental rights are the concern of all, and no question of minority or majority can arise in connection with those rights. In fact the Secretary of State in his speech in the House of Lords last month definitely stated that such members, to look after the question of the citizens' rights, would be there. Then you have to elect members for looking after the minority rights. Hon'ble Members are aware we have got a number of minorities. Ours is a rich variety of cultures and luckily we have got a number of groups who supplement and complement each other in order to build the complete whole known as the Indian nation. So we have provided in this Resolution for an initial Committee of 52 members, but according to the amendment which Will be moved by Mr. Munshi, the number is to be 50 and not 52. Out of these 50 only 12 will be representatives of the general sections. Others will represent the minorities and the Tribal and Excluded Areas. The minorities will be represented in the following manner:

The Hindus of Bengal, Punjab, N.W.F.P., Baluchistan and Sind will have	7 representatives
The Muslims of the 7 Provinces of U.P., Bihar, C.P., Madras, Bombay,Assam and Orissa will have similarly	7 representatives
The Depressed Classes or the Schedule Castes will have	7 representatives
The Sikhs will have	6
The Indians Christians will have	4
Paris will have	3
Anglo - Indians will have	3
and the Tribal areas and Excluded Areas will have	13

In addition there will be 10 nominations by the President. In the Resolution the number is higher. Out of the persons now to be nominated according to the amendment, that will be moved by Mr. Munshi, 5 will be set apart for the Tribal Areas, 7 for the Muslim minority Provinces and the rest 10 in number will be at the disposal of President, so that he may nominate such persons as may conduce to the successful working of this Committee, and whose contribution may be helpful in reaching sound and satisfactory decisions. In this way this Committee will be formed. In any case, whatever be the number, the voice of the minorities and the representatives of the Excluded and Tribal Areas will preponderate in this Committee. They will be in a position to record their decisions and no section will be in a majority. So this Committee will fully reflect the opinion of the minorities and the Backward Tracts and will I hope be able to reach decisions which will fully secure their position and ensure the protection of their rights. Paragraph 2 of this resolution proposes that Sub-Committees should be appointed for the administration of the North-Western Tribal Areas, the North-Eastern Tribal Areas and the Excluded and Partially Excluded Areas. It will be necessary to appoint small Sub-Committees for this purpose as they call for close study on the spot, and, unless the questions are examined very closely by qualified persons and local opinion is fully consulted, it will not be easy to reach conclusions that may suit the requirements of the particular areas. Besides the appointment of some Sub-Committees. The Resolution also empowers these Sub-Committees to co-opt two members from the specific territory whose questions may be under consideration for the time and to the extent such co-option, is considered necessary for the consideration of the problems relating to such territory.

Clause 4 prescribes the time-limit within which the final report should be submitted by this Advisory Committee. This should be done within three months. If Hon'ble Members will refer to paragraph 20 of the Statement, they will find there these words:

> "The Advisory Committee on the rights of citizens, minorities and Tribal and Excluded Areas will contain due representation of the interests affected and their function will be to report to the Union Constituent Assembly upon the list of fundamental rights, clauses for protecting minorities, and a scheme

for the administration of Tribal and Excluded Areas, and to advise whether these right's should be incorporated in the Provincial, the Group of the Union Constitutions."

It is necessary to conduct the business of this Advisory Committee speedily so that its recommendation may reach this House with the least possible delay or loss of time. Neither any Section nor any Group nor the Central Union Assembly can frame any constitution until and unless it has before it the proposals that may emerge as a result of the deliberations of the Advisory Committee. The Central Union Assembly should consider this report so that the task of framing Provincial and Group Constitutions, if any, and the Central Constitution may start in right earnest. So it is desirable that the report of this Committee should reach at an early date and that is why this provision has been made.

I have tried to give a factual narrative and analysis and a certain degree of elucidation of the Resolution that is tinder consideration. With the permission of Hon'ble Members and the President, I should like to make a few remarks of a general character. The question of minorities everywhere looms large in constitutional discussions. Many a constitution has foundered on this rock. A satisfactory solution of questions pertaining to minorities will ensure the health, vitality and strength of the free State of India that will come into existence as a result of our discussions here. The question of minorities cannot possibly be overrated. It has been used so far for creating strife, distrust and cleavage between the different sections of the Indian nation. Imperialism thrives on such strife. It is interested in fomenting such tendencies. So far, the minorities have been incited and have been influenced in a manner which has hampered the growth of cohesion and unity. But now it is necessary that a new chapter should start and we should all realise our responsibility. Unless the minorities are fully satisfied, we cannot make any progress; we cannot even maintain peace in an undisturbed manner. So, all that can possibly be done should be done. We should have, in fact, proposed a Committee of this type, even if there had been no mention of it in the Statement of May 16th. If Hon'ble Members will refer to the Objectives Resolution which was passed unanimously by this House, they will find these words in clauses (5) and (6):

> "Wherein shall be guaranteed and secured to all the people of India justice, social, economic, and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and wherein adequate safeguards shall be provided for minorities Backward and Tribal Areas, and Depressed and other Backward Classes."

So, the House has already accepted the fundamentals of this Resolution and it has done so unanimously. It is a matter which should hearten the minorities. The essence of these rights has already been conceded and conceded voluntarily and unanimously by all the Members of this House. I hope every effort will be made In this Advisory Committee to reach decisions that will fully satisfy the minorities. Hon'ble Members may be aware, and if they are not, I believe I will not be disclosing a secret when I tell them, that the entire strength of this Committee has been fixed in accordance with the wishes of one and each of every one of all the minorities in this House. It represents their complete agreement. We have subordinated every other consideration in order to secure contentment and satisfaction. The task of constitution making is a practical one and we should not be lost in the doctrinaire maze; we should look at problems from a realistic point of view and see that the decisions that we take are not only just, but are also regarded as just by those affected thereby. We trust that in this Committee every regard will be paid to the wishes of the different minorities and the decisions taken will be fully satisfactory to them.

In this connection, I should also like to remind the minorities of some of the historical developments of recent years. As Hon'ble Members may be aware, after the termination of the first World War, a number of States were set up, especially in Eastern Europe and provisions for the protection of minorities were incorporated in the Constitutions of these States such as Czechoslovakia, Austria, Bulgaria, Poland and others. Not only were such provisions incorporated in the Constitutions, but they formed part of solemn stipulations in the treaties entered into between the Associated and Allied powers, as they were called, and these new States that were then brought into existence. Guarantees were given by the Allied and Associated Powers to the minorities in these various States. Declarations were also made at International Conferences and by the League of Nations. They were assured by outside authorities and guarantees were given by treaties entered into by them with these Associated Powers. But, what was the result. No minority had been the victim of greater and more ruthless tyranny and oppression, atrocities and brutalities than the minorities that lived in these States and some of them have perhaps completely faded away and disappeared since. Let not the minorities look to any outside power for the protection of their rights. This will never help them. Let not the lesson of history be lost. It is a lesson which should be burnt deep in the hearts and minds of all minorities that they can find their protection only from the people in whose midst they live and it is on the establishment of mutual goodwill, mutual trust, cordiality and amity that the rights and interests no, only of the majorities but also of the minorities depend. This lesson of history, I hope, will not be forgotten.

It is not for me to attempt any dissertation on the various aspects of minorities or fundamental rights. I cannot however refrain from referring to a morbid tendency which has ripped this country for the last many years. The individual citizen who is really the backbone of the State, the pivot, the cardinal centre of all social activity, and whose happiness and satisfaction should be the goal of every social mechanism, has been lost here in that indiscriminate body known as the community. We have even forgotten that a citizen exists as such. There is the unwholesome, and to some extent a degrading habit of thinking always in terms of communities and never in terms of citizens. (*Cheers*.) But it is after all citizens that form communities and the individual as such is essentially the core of all mechanisms and means and devices that are adopted for securing progress, and advancement. It is the welfare and happiness of the individual citizen which is the object of every sound administrator and statesman. So let us remember that it is the citizen that must count. It is the citizen that forms the base as well as the summit of the social pyramid and his importance, his dignity and his sanctity, should always be remembered. If you bear this in mind, I think we shall understand and appreciate the importance of the fundamental rights. Because, on the proper appreciation of these rights has depended the progress of humanity. The Atlantic Charter with its Four Freedoms, the Charter of rights of men from the time of Pains and Wells to that of the Declaration made last year represent the noble advance in the history of human race. After all we must remember the goal and objective of all Human activity is a World State in which all citizens would possess the cosmopolitan outlook, would be equal in the eye of the law and would have full and ample opportunity for economic, social and political self-fulfilment. We find that in our own country we have to take particular care of the Depressed Classes, the Scheduled Castes and the Backward classes. We have to atone for our omissions--I won't use the word commissions. We must do all we can to bring them up to the general level and it is a real necessity as much in our interest as in theirs that the gap should be bridged. The strength of the chain if, measured by the weakest link of it and so until every link is fully revitalised, we will not have a healthy body politic. I hope this Advisory Committee will place before itself the ideals for which humanity has worked. It will try to forge such sanctions and such rights as will enable this Assembly not only to frame a constitution but to achieve the independence of India. We are here not only for a formal task but for a real one and that has to be fulfilled. Let us hope that this Advisory committee will bring concord and amity, goodwill and trust, in place of mutual strife, that occupies the political stage to-day and that as a result of the deliberations of this Committee we will have prepared the ground for Independent India for which we live, for which many have died and, for which alone life is worth living. *(Loud Cheers.)*

Mr. President: Sardar Harnam. Singh is going to second this.

Sardar Harnam Singh (Punjab: Sikh): Mr. President the Advisory Committee which has to be formed under the provisions of the Statement of May 16 is a very important Committee from many points of view. All of us know that it is the minorities problem, in India that has held up the progress of this country for a number of years and a satisfactory solution of this problem, I believe, will lead to the prosperity of the country. We have laid down, in the Objectives Resolution that in the future Constitution of India, an adequate provision for the protection of all minorities has to be provided for. As far as the Congress is concerned, beginning with 1922 when the demand was made for a Constituent Assembly of India, several resolutions have been passed in which it has been laid down by the Congress that provisions for the protection of minorities have to be made to the satisfaction of the minorities concerned. Therefore I am glad that the Congress Party in this House has agreed to the constitution of this body which has commended itself to all members in the Constituent Assembly of India. As to what the ultimate solution of the communal problem proposed by this Advisory Committee may be nobody can say at this stage. But we all know that the whole of the communal problem is before this Minority Committee. The clauses for the protection of minorities which have to be framed by this Advisory Committee, have some relation to existing facts. The clauses for the protection of minorities pertain to the religious, cultural, economic, administrative and political spheres. Communities in India have heretofore laid stress on certain provisions in the Government of India Act, as provisions which may be retained for the proper protection of minorities. Whether the Advisory Committee would make its report on those lines it is not for me to say at this stage. Those provisions all of us know. We know that Anglo-Indians have got section 242 of the Government of India Act. Certain other communities have laid stress on the weightage provided to them. Other communities have insisted on the retention of separate electorates. Some of these provisions may have done mischief in years past, but I do believe that this Advisory Committee will consider the question of the protection of minorities from all there various points of view and, whatever is good in the larger interests of the country and also in the interests of the minorities, that will find a place in the report of this Advisory Committee.

Sir, for a proper understanding of this Advisory Committee and its functions, we have to go into all that lengthy correspondence which passed between Maulana Abul Kalam Azad, Mr. M. A. Jinnah and Lord Pethick Lawrence. In one of the letters that Maulana Abul Kalam Azad wrote to Lord Pethick Lawrence he insisted that for a proper solution of the communal problem there must be consent of all the parties affected, and in fact, on the 12th May 1946 when the Congress formulated eight points as a basis for agreement, point No. 6 was that as far as the minority problem was concerned, the Congress stood for the consent of communities concerned for a satisfactory solution of the problem. Therefore I hope that when this Advisory Committee sits to initiate and formulate proposals for the protection of minorities and fundamental rights, the whole field would have been covered and it would be covered in such a way that it would be fair to the larger as well as the smaller interests so that all communities--big or small--would feel satisfied with the recommendations of this Advisory Committee. With these few words, Sir, I second the Resolution moved by Pandit Govind Ballabh Pant.

Mr. President: I find that in the Order Paper, notice has been given of several amendments. I think the most convenient course would be to ask the amendments to be moved on each particular clause. Therefore, all those members who have got any amendment on any particular clause will move the amendment when I name the particular clause.

The first is clause I (a). Mr. Munshi has given notice of an amendment.

Mr. Damber Singh Gurung (Bengal: General): On a point of information, Sir, before any amendments are moved, may I know whether any time has been given for giving notice of amendments? This Resolution has been circulated only just now. Members have to be given some time.

Mr. President : I understand this Resolution was circulated several days ago.

Mr. Damber Singh Gurung : But this has been circulated here to the members just now. It may have been circulated several days ago in the party meeting.

Mr. President: No, no. The Resolution which has been moved by Pandit Pant was circulated to Members several days ago.

Mr. Damber Singh Gurung : My point is: now there is no Muslim League here. This thing was circulated in the party meeting.

Mr. President: No. I think you are under a misunderstanding. I am referring to the Resolution which was moved by Pandit Govind Ballabh Pant. Notice, of that Resolution was given to members several days ago. No other amendment has yet been moved.

Mr. Damber Singh Gurung: But this Resolution was just given to the members.

Mr. President: Here in the House? I am afraid you are referring to some other Resolution. This one was circulated several days ago. Yes, Mr. Munshi.

Mr. K. M. Munshi (Bombay: General): Sir, I beg to move that in subparagraph (a) of paragraph 1 of the Resolution, substitute the number "72" for the number "68". As already explained by Mr. Govind Ballabh Pant, it is necessary to increase the number in order to accommodate the seats which are duly provided for in the other part of the Resolution. I therefore move this amendment.

Mr. President: Is there any other amendment to clause 1? .... Nothing else. I put Mr. Munshi's amendment to vote.

The amendment was adopted.

Mr. President: Now, we go to the next one. I find Rev. Nichols-Roy, has given notice of an amendment.

The Hon'ble Roy. J, J. AL Nichols-Roy (Assam General): I shall not move it.

Mr. President: Then we will go to (b) (i). Mr. Santhanam has given notice of a amendment.

Sri K. Santhanam (Madras: General): I do not want to move it.

Mr. President: Then Mr. Munshi:

Mr. K. M. Munshi: Mr. President. Sir, I beg to move the following amendment to clause (b)(i). My amendment reads thus:

"That in sub-paragraph (b) (i). of paragraph 1 of the motion for the words beginning with 52 members--the words are these:

'52 members who shall be elected by the Assembly in accordance with the principle of proportional representation by means of a single transferable vote substitute:

"The following members"

The names are given in the amendment. The clause will read like this:

"It shall consist initially of the following members."

and then the names will follow. I will read the names. The different categories have already been placed before the House by the mover of the Resolution and I will read the names, indicating the nature of the seats.

Mr. Jairamdas Daulatram from Sind,

The Hon'ble Mr. Mehr Chand Khanna, N.W.F.P.,

Dr. Gopi Chand Bhargava from the Punjab,

Bakshi Sir Tek Chand also from the Punjab,

Dr. Profulla Chandra Ghosh from Bengal,

Mr. Surendra Mohan Ghose from, Bengal,

Dr. Syam Prasad Mookherjee from Bengal.

Then comes a group representing the Scheduled castes:

Sardar Prithvi Singh Azad,.

Shri Dharam Prakash,

Mr.H. J. Khandekar,

TheHon'ble Mr. Jagjivan Ram

Mr.P. R. Thakur,

Dr.B. R, Ambedkar,

Shri V. I. Muniswami Pillai.

The next group of six names are those of Sikhs:

Sardar Jogendra Singh,

The Hon'ble Sardar Baldev Singh,

Sardar Pratap Singh,

Sardar Harnam Singh,

SardarUjjal Singh,

Sardar Kartar Singh,

The next four names are those of Indian Christians:

Dr. H.C. Mookherjee,

Dr. Alban D'Souza,

Shri Salve,

Shri Roche-Victoria.

The next three names are of Anglo-Indians:

Mr. S. H. Prater,

Mr. Frank Reginald Anthony,

Mr. M. V, N. Collins

The next three names are of Parsis:

Sir Homi Mody,

Mr. M.R Mazni

Mr. R.K.Sidhwa

Number 31, Shri Rup Nath Brahma represents the plains tribes of Assam.

Number 32, Khan Abdul Ghaffar Khan represents the North-Western tribal area. Two other members to represent that area have to be nominated by the President.

Khan Abdul Samad Khan represents Baluchistan.

The Hon'ble Rev. J. J. M. Nichols-Roy.

In Number 35, the name is wrongly spelt, it should be Shri Mayang Nokcha.

I do not know how to pronounce it. He represents the North-Eastern tribal areas. Then follow three names of persons who represent the Excluded and Partially Excluded areas:

Shri Phool Bhan Shaha.

Mr. Davendra Nath Samanta,

Mr. Jaipal Singh, representing the excluded areas in Bihar, and three others have to be nominated by the President.

Then come twelve general names:

Acharya J. B. Kripalani.

The Hon'ble Maulana Abul Kalam Azad,

The Hon'ble Sardar Vallablibhai Patel,

The Hon'ble Shri C. Rajagopalachariar,

Rajkumari Amrit Kaur,

Shrimati Hansa Mehta.

The Hon'ble Pandit Govind Ballabh Pant,

The Hon'ble Srijut Gopinath Bardoloi,

The Hon'ble Shri Parushottamdas Tandon,

Sir Alladi Krishnaswami Ayyar.,

Shri K. T. Shah and

Mr. K. M. Munshi.

I move this amendment, Sir.

Acharya J. B. Kripalani (United Provinces: General): Sir, I second it.

Mr. President: Is there no other amendment? Mr. Munshi, there is one other amendment in your name?

Mr. K. M. Munshi: That does not arise now, Sir.

Mr. President: There are several others; you don't move them also?

Mr. K. M. Munshi: No, Sir.

Mr. President: There is another amendment, notice of which has been given by the Rev. Nichols-Roy.

The Hon 'ble Rev. J.J.M. Nichols-Roy: Sir, I wanted to add one or two more names, but I find that that will disturb the number which has already been passed in this House. So I shall not move my amendment.

Mr. President: The Resolution has been moved, as also the amendments. The matter is now for discussion.

Rai Bahadur Syamanandan Sahaya (Bihar: General): Sir, I would like to make a submission with regard to the amendment. In the Rules that we have adopted, it is clearly laid down in Rule 46, (2)--that:

> "The members of every such committee shall, unless the motion by which the -committee is set up otherwise provides, be elected according to the principle of proportional representation by means of the single transferable vote."

I submit, Sir, that this is a very- salutary provision which aims to give general satisfaction to all sections of this House. In a House constituted as his one is, I think; it will be desirable if this correct method of selecting members for committees is followed. I find that the amendment of Mr. Munshi, however, gives definite names, and naturally, the names will have to be voted upon if other names are proposed. What would be the procedure for election, I ask? This is a matter, Sir, to which I win draw your special attention because it lays down for the future a precedent which might not be very helpful when we come to decide more delicate matters. As such I would appeal to you, and also I appeal to Mr. Munshi to allow the original motion to be adopted and then to propose names and the names could be voted upon by the procedure laid down, namely, proportional representation by means of the single transferable vote. This is an important matter and I will not only draw your personal attention to the matter but also draw the attention of the whole House and every section of the House to it. It is a departure which, I think, is not a healthy departure and must not be acted upon by this House.

Mr. Jaipal Singh (Bihar: General): Mr. President, now that the names have been combined in the Resolution of Pandit Govind Ballabh Pant, I feel I must say a few words from the tribal point of view. I strongly resent the insinuation by Pandit Pant. He said that the Tribal Areas and minorities look to a foreign country.

The Hon'ble Pandit Govind Ballabh Pant: I never said so. Please do not put in my mouth words I never said.

Mr. Jaipal Singh: We look to our own countrymen. We look to our own leaders to give us a fair and square deal. We have not gone abroad. We did not go to London for negotiations. We did not go to meet the Cabinet mission for provisions for our rights. We look only to our own countrymen to give us a fair and equitable deal. For the last six thousand years we have been shabbily treated.

Mr. Kiran Sankar Roy (Bengal: General): How many years?

Mr. Jaipal Singh: Six thousand years, Mr. Kiran Sankar Roy, that is the time you, Non-Adibasis, have been in this country.

Sir, the mover and the seconder have indicated how the disposition, the distribution has been made in this Advisory Committee. This is a matter of life and death for the tribal people in particular. I congratulate the Indian National Congress leaders; I congratulate also those minority communities who have been able to get more seats than are due to them numerically. That cannot be denied. Number for number, the Sikhs, the Christians, the Anglo-Indians and the Parsis have been given more than is their due. I do not grudge them all this; but, the fact remains that they have been given many more seats than is their due, whereas when we come to my people, the real and most ancient people of this country, the position is different. But I do not grumble. For my purpose, it would be quite enough to have Panditji only; but he is not a member. I would entrust the future of every tribal people in this country, in the hands of Pandit Jawaharlal Nehru, and rather be not there myself. Let me assure you, that we are not dependent on numbers--the number of votes that will be given in the Advisory Committee. We have been inarticulate. I led no deputation to Sardar Patel, or to you, Mr. President, about our rights, about our claims and about our dues. I leave it to the good sense of the House and of the Advisory Committee, that, a long, last, they will right the injuries of six thousand years. In another place, once when I said that a particular group of our Indian nation had been heavily weighted, my remarks were resented by that particular group, I tell you that it does not worry us at all if the Sikhs get 60 seats in this Particular Advisory Committee, or anywhere else. I congratulate them. We thank the Indian National Congress for saying that the minority, question cannot be over-rated, as Pandit Govind Ballabh Pant said. But has it been over-rated as far as the tribals are concerned? Can it be honestly said that you have in any way over-rated their position? I am not pleading for anymore seats; I have not submitted any amendment, I am not moving any amendment, but I must draw the attention of this House and of this country, if I may say so, that here we are all on trial. Hitherto it has been very easy for us to say it is the British--it is the British who have kept you in a zoo by making for you Partially Excluded Areas and Excluded Areas. Are you behaving any differently? I ask this question. I ask the Advisory Committee. I find my own name in it. While I find my own name in it, I am bound to point out that there is no name of any tribal woman in the Advisory Committee. How has that been left out? There is no tribal woman member in the Advisory Committee. That never occurred to the people who were responsible for the selection of members of the Committee. I am not saying that she should be included, but it is significant that the thing has not been seriously considered. Similarly, as I repeat thirteen or whatever the figure is that has been fixed--I accept that, I do not say any more, but I do want to expose the ignorance that is exposed in the suggestion of this figure, or for that matter, in the nomination of the Tribal Areas members. Look at the disposition of the tribal population throughout India, I have no quarrel. With the muddling that has been made in the census enumeration at every decennial reckoning. The latest figure is 254 lakhs, I accept that. Now in that we find that the largest tribal group in India are the Munda-speaking tribe. If you add up their 1941 figures, you will find that they are something like 43 lakhs. The next in magnitude are the Gonds. Now we have been given a Gond representative; I am glad there is one. The next come Bhils, 23 lakhs. No Bhil is on this Committee. Like that, we go on to Oraons, with 11 lakhs, there is no Oraon on this Committee. Mr. President, time is valuable. Pandit Jawaharlal Nehru elsewhere said that every day we take it costs something like Rs. 10,000. I think the life of 25 million tribals is worth more than Rs. 10,000 a day. This is an opportunity where I must have my say, if you will permit me. I note also that, for some reason or other, there is no tribal member at all in the Fundamental Rights Committee.

The Hon'ble Pandit Govind Ballabh Pant: There is no separate Committee. There is only one Committee.

Mr. Jaipal Singh: In the speech you have envisaged that some were going to be put in the committee to deal with the fundamental rights of citizens.

The Hon'ble Pandit Govind Ballabh Pant: No. That depends on the Advisory Committee. It may form such Sub-Committees as it likes.

Mr. Jaipal Singh: Very well. I accept that. As I say, there is no way to include every tribal group. There are altogether listed in India in the 1941 census 177 tribes. Obviously, it would be impossible to have 177 members, But whatever the number that has been allotted--I say I accept that, Mr. President, but I am, in duty bound to my people, to point out to the House that we would have to deal with this tribal question, as Pandit Jawaharlal Nehru told us when speaking on the Independent Sovereign Republic Resolution,--that this problem would have to be dealt with imaginatively and emotionally. This House is on trial; let us see what happens.

The Hon'ble Pandit Govind Ballabh Pant: All will do well

Mr. President: There was some misunderstanding with regard to the other amendments on the Order Paper. I was under the impression that there was no other amendment. I find that there are some more amendments. All the other amendments may be moved.

Mr. K. M. Munshi: To (b) or (c)?

Mr. President: All the amendments to the whole motion.

Mr. K. M. Munshi: The next amendment that stands in my name is this:

"That sub-paragraph (b) (ii) of paragraph I of the motion be deleted."

That sub-paragraph runs as follows:

"The Assembly may elect in such manner as the President may deem appropriate up to 7 members."

As the House will see, provision has been made later for increasing the number of nominations by the President by 7, that is, to raise the number from 9 to 22. So I shall also move at the same time the amendment which stands in my name with reference to sub-paragraph (c) of paragraph 1 of the motion.

"That in sub-paragraph (c) of paragraph I of the motion, the number '22' be substituted for the number 9 and the words 7 of whom shall be Muslims representing the Provinces of Madras, Bombay, the United Provinces, Bihar, the Central Provinces, Orissa and Assam be added."

The object is that there are what are called Hindu majority Provinces and Muslim minorities in, these Provinces have to be elected on this Committee. That was the original idea, but as this preliminary sitting is going to be adjourned for the time being, if the Muslim League comes in, it may be difficult to convene a preliminary sitting again only for the purpose of electing seven members. Therefore, it is that I move this amendment. If the preliminary sitting is adjourned to April or any other date, and the Muslim League comes in, seven Muslim members representing the seven Hindu majority Provinces may be nominated by the President and may join this Committee. I submit that they could all be accepted by the House. So I move all the amendments at the same time.

Mr. President: Is there any other amendment ? Paragraph 2 ? None. Paragraph 3? None.

I understand that Sir N. Gopalaswami Ayyangar has got an amendment.

The Hon'ble Sir N. Gopalaswami Ayyangar (Madras: General): Mr. President, under Rule 48 of the Rules of Procedure, every motion by which a Committee is to be set up shall state the quorum necessary to constitute a meeting of the Committee. This has not been done in the motion that has been moved. It is a mandatory provision and in order to supply the omission I request your permission under Rule 26 that I may be permitted to move this new amendment of which I have no given notice. The amendment is this:

After para 3 of the Resolution, the following shall be inserted as para 3(a), namely, "the quorum for the Committee and its sub-committees shall be one-third of the total number of members for the time being of the Committee or of the subcommittee concerned."

Mr. K. M. Munshi: I have to move an amendment to paragraph 4. Para 4 as it stands reads thus:

"The advisory Committee shall submit the final report to the Union Constituent Assembly within three months and may submit interim reports from time to time"

The change my amendment seeks to, effect is this:

In paragraph 4, between the words "three months" and the word "and" add the words "from the date of this Resolution". Then again, after the word 'time' substitute a comma for the full stop and add the words "but shall submit an interim report on Fundamental Rights within six weeks and an interim report on minority rights within tea weeks of such date."

Sir, Clause 4 as amended will run thus:

The Advisory Committee shall submit the final report to the Union Constituent Assembly within three months from the date of this Resolution and may submit interim reports from time to time, but shall submit an interim report on Fundamental Rights within six weeks and an interim report on minority rights within ten weeks of such date.

My next amendment, Sir, is to paragraph 5. It is this:

"In paragraph 5 of the motion, for the words beginning with 'in the manner' up to the end of the paragraph, the words 'by nomination by the President' be substituted."

Paragraph 5 as originally drafted reads:

Casual vacancies in the Advisory Committee shall be filled as soon as possible after they occur in the manner in which the seat in respect of which the vacancy had arisen was originally filled.

The object of this amendment is to provide for a certain contingency. When this preliminary sitting of the Assembly is adjourned, the Committee is going to function. If, in the meantime, there is any vacancy, it will be impossible to fill it up till the next meeting of the Constituent Assembly. Therefore it is better to give this power to the President so that in the case of a vacancy arising, he can appoint a member to fill up that vacancy.

Sir, these are the amendments that I have to move.

Mr. F. R. Anthony (Bengal: General): Mr. President, Sir, I had absolutely no intention of entering this discussion, but unfortunately, a remark of a previous speaker, which included the Anglo-Indians among those to whom, he alleged, over-representation had been given, has brought me to my feet. I have always been reluctant, although a communal leader, to, pursue communal ham and I am even more reluctant to enter into any unseemly communal dog-fights.

But I think there is some misunderstanding on the part of some members of the House about the State Paper and about the real intention of the authors of that Paper. Sir, if it was felt that there was no need for an Advisory Committee on Minorities I would subscribe to it. But so long as you have a committee on minorities, so long as other minorities are insisting on their rights, alleged or real, then, certain minorities, particularly the smaller minorities have, in self defence to ask for certain representation. I agree with what Mr. Jaipal Singh said, viz., that most of the minorities would gladly allow their interests to be taken care of by a leader of the stature of Pandit Nehru. I would be the first to say: 'Leave it in his hands'. But, unfortunately, these matters are not being decided at such a high level. All persons in this country are not of that stature. Unfortunately there is a tendency today for communalism to become even more intransigent and clamant than it has been in the past and I wish this obsession on numerical proportions to be slightly effaced.

Sir, we are dealing with a specific State Paper. We are dealing with paragraph 20 of the Cabinet Mission's Statement. The intention in paragraph 20 was set out in detail in Sir Stafford Cripps' official explanation. He was not concerned, the Cabinet Mission was not concerned with numerical proportions. This question of numerical proportion has become rather a favourite slogan in this country. Sir Stafford specifically mentioned that this Advisory Committee had been set up in order to give an opportunity not to the minorities but to the smaller minorities of influencing the provisions concerning the minorities. He specifically mentioned that it was their (the Cabinet Mission's) intention that, representation should be given particularly to the Indian Christians, to the Anglo-Indians and to the Tribal Areas; and although we have, for the sake of amity and a friendly atmosphere, accepted the representation that was granted to the minorities, it was made clear that perhaps the real intention of the Cabinet Mission had not been implemented in the allotment of seats that was made, at any rate, to my community. I want to disabuse the House of any feeling that my minority has been over-represented was the obvious intention of the Cabinet Mission to give the smaller minorities that have been specified--the Indian Christians, the Anglo Indians and the Tribal Areas--an opportunity of influencing minority decisions through this Advisory Committee. No Other smaller minorities have been mentioned The point whether the intention was implemented in introducing other minorities, I am not going to labour at this stage. But the Cabinet Mission obviously had something at the back of their minds when they made this provisions They had the cases of the different minorities before them. They realised that certain minorities, although numerically small, had vital interests to be protected in the general political structure and their sole purpose in setting up this Advisory Committee was to give the minorities particularly these three minorities, that they have specified, an opportunity of influencing minority decisions.

Mr. Damber Singh Gurung: Mr. Chairman, Sir in the list of names of the Advisory Committee proposed by Mr. K. M, Munshi, I do not find any name of a Gorkha representative here. I do not want to refer to the terms of clause 20 of the Cabinet Mission's Statement of May 16, but Must pointedly draw the attention of the House to the Resolution on Objectives moved by Pandit Jawaharlal Nehru and passed by this House a few days ago. Paragraph 6 of that Resolution says,--

"WHEREIN adequate safeguards shall be provided for minorities, Backward and Tribal Areas, and Depressed and other Backward, Classes."

It is the function of the Advisory Committee to give advice to the Constituent Assembly as to the manner in which the safeguards for the minorities, backward and tribal peoples are to be provided. Presumably, in the Advisory Committee there must be representatives of all these classes of people. Now, Sir, if there is no Gorkha on the Advisory Committee, who will speak for them and how will their interests and rights be safeguarded? It is a fact that the Gorkhas form a distinct minority group and no one can deny the fact that they are the most backward people in India. If Gorkhas, as such, are not represented they have a right to be represented here as people living in the Excluded Areas and Partially Excluded Areas, because Darjeeling District, where there are more than 3 lakhs of Gorkhas, is a partially Excluded Area, and even as tribals because the Gorkhas have been classed as tribals in the Census Report of 1941 in Bengal. If the Gorkhas are not represented in the only body that has been provided for devising means to safeguard in the interests of oppressed and backward peoples, I, as a Gorkha, do not see any advantage in my being a member of the Constituent Assembly. The other day President Kripalani told me that the Gorkhas would fight with their swords. I quite agree. The Gorkha fought with their swords for the rulers of India, but now the Gorkhas have decided to fight for the freedom of India and will fight for free India, but at the same time I must appeal to the House that their case also must be considered, as they are very backward educationally and economically and as the Advisory Committee is the only Committee where all these things can be brought up and discussed. I appeal to the House to consider this point.

Mr. K. M. Munshi: Sir, may I reply as the mover of the amendment?

Mr. President: (To Sri K. Santhanam) Do you want to speak?

Sri K. Santhanam: Sir, I wish to make two points with reference to this Resolution. I am anxious that this Advisory Committee should not expand its scope of work to an undue extent. It should not try to encroach upon the functions of the whole Assembly or the Sections. For instance, if it goes into such matters as joint *versus* separate electorates or the quantum of representation, I think it will make the work of this Assembly very difficult. I do not want to expatiate on the point and make the Committee's work difficult but I simply leave it for their consideration.

The second point I wish to mention is about the way in which we have to deal with the report. Ordinarily the report is to be presented to the House, but if we wait for the presentation of the report till this Assembly meets, then we shall have to wait 10 or 15 days for its consideration. It will mean a waste of time of the House. So I suggest that you take the permission of the House to circulate the report as soon as it is received from the Committee so that, when we assemble, all of us may come ready prepared and the time of the House may not be wasted. Otherwise, there may be legitimate ground for complaint, as it is not sufficient to give one day's, two days' or three days' notice. We must have at least a fortnight's notice. If you wait for the report to be presented to the House and then wait for fifteen days you know the expense, the confusion and the difficulty.

So I make these two suggestions for your consideration.

Rai Bahadur Syamanandan Sahaya: I want to raise a point of order. The motion as amended by Mr. Munshi does not lay down any method by which subsequent elections to this Committee will be made because the original provision that elections will be conducted in accordance with the principle of proportional representation by means of the single transferable vote has been dropped by the amendment of Mr. Munshi. That being so, if one or two names are suggested in addition to the names already suggested by Mr. Munshi, what will be the method adopted for election? This amendment of Mr. Munshi might circumvent the procedure laid down under the Rules of Procedure. I hope you will not permit it to happen. I would therefore like to have your decision as to what will be the method by which election will be made in case one or two names are also suggested apart from the names already suggested in the amended resolution.

Mr. K. M. Munshi: With regard to the point of order, Rule 46 makes it perfectly clear that it would be competent for this House to alter the method of election. This is how the Rule runs:

> "The members of every such committee shall unless the motion by which the committee is set up otherwise provides, be elected according to the principle of proportional representation by means of the single transferable vote."

Therefore, Sir, it will be seen there is no point of order.

Rai Bahadur Syamanandan Sahaya: I only want to say that the procedure outlined in Rule 46(2) could have been met if Mr Santhanam had moved his amendment by which he wanted to substitute the words "by ordinary distributive vote" in place of the words in the original motion. Mr. Santhanam, not having moved that amendment, there is no procedure laid down. Therefore, Rule 46(2) does not apply.

Mr. President: In my opinion, clause (2) of Rule 46 makes It quite clear that the amendment which has been moved by Mr. Munshi is in order.

Srimati Dakshayani Velayudan (Madras: General): Mr. President, I wish to bring to the notice of this House that there is provision for 7 members to represent the Hindus in the Muslim provinces. Sir, I find that no Harijan's name is included among the Hindus. We, Harijans, consider ourselves one with the Hindu community and we have every right to represent the Hindus in the Muslim Provinces. We have every right to represent the Hindus in Bengal or the Hindus in Sind or in the Punjab. Somebody remarked now that there are already 7 members of the Harijans in the list. That does not mean that the Harijans have no right to represent the Hindus in the Muslim majority provinces. So I simply wanted to bring to the notice of this House that they should not go with the impression that the Harijans here have come only to represent the Harijans of India. We claim that we belong to the Hindu fold. It is the duty of the Caste Hindus to see that the promises that they made should be put into practice by including a Harijan in the list, to represent the Hindus in the

Muslim majority provinces. But nobody should be under the impression that I came to speak in this manner here in order that my name may go into the list. I have no desire of that sort, because I do not want to represent those provinces, but there are Harijans, who have come from the Muslim majority Provinces, who have every right to represent the Hindus in their Provinces. So I hope that this House will take into consideration that my opinion is not against the fundamental principle that we are expected to follow.

Sri Lakshminarayan Sahu (Orissa: General): Mr. President, Sir, I stand here to inform the House that Orissa has been neglected in this suggestion of Mr. K. M. Munshi. We always feel that because we are a docile people, we are always neglected. Now the claim for inclusion of names from Orissa is so great that I hope that this House will accept it. In the first place about two-thirds of Orissa are Partially Excluded and Excluded Areas, and yet though there are 13 names given by Mr. K. M. Munshi, there is no name from Orissa. Again there is another point for consideration by the House. According to Mr. Munshi's list, there is no Hindu from Orissa and yet one representation will be given to a Muslim. That is really unfair. The majority party there goes unrepresented, whereas we give representation to a minority. I hope that this House will pay its best consideration to this question. I should go in for the Hon'ble Pandit Govind Ballabh Pant's Resolution but as you said that Mr. Munshi's motion was in order, I do not want to refute it, but I still feel, as Rai Bahadur Syamanandan Sahaya has pointed out, that in such a, matter, which is very important, we should adopt the Procedure of single transferable vote. That will solve the question to the satisfaction of all.

Mr. Jairam Das Daulatram (Sind: General): I want to say as briefly as I can that, looking to the importance of this Committee and the delicate issues with which it will have to deal, it would not be proper by any discussion here to attempt to restrict the scope of its work. There are members on it representing minorities and majorities, from practically every part of the country, and they should, I think, in terms of all that has been said both in the Statement of May the 16th and elsewhere, be left free to discuss and to decide as to what are adequate provisions or clauses for the protection of minorities. Since the matter is such that a fuller discussion on the point here would raise more and more controversy, I shall confine myself to these remarks only for I expect that the Advisory Committee will look at the matter both from the minority point of view, and the general point of view and try to reconcile the requirements of the minorities with the needs of the national sentiment of the country, as a whole.

Sri S. Nagappa (Madras: General): Mr. President, Sir, now, I just want to bring to the notice of this House that out of these 50 members some communities particularly have been given over-representation. If it is equal to all communities as it is said, seven for Hindus, seven for Muslims and seven for Scheduled Classes, I do not know on what basis these figures were drawn up. For instance, if you say there are seven Muslim Provinces that are in a majority, so the Hindus of that province ought to be safeguarded and again because there are seven Hindu Provinces where they are in a majority, the seven Muslims must be there in the Committee to safeguard their interests, it is a good thing. But what about the Harijans. They are in a minority in, almost every province. Moreover, if you take the population of these Provinces, then all the Hindus put together in the Muslim majority Provinces, they are not as many as Harijans, and the same thing with the Hindus. And now, Sir, the Parsis is a new minority community that has been brought. That community was not seeking to be a minority community all these days. All of a sudden in this Minority Advisory Committee this particular community has been classified as a minority community, I do not know, Sir, what protection this Parsi community especially seeks? It is well placed in society, economically and educationally. What are the particular safeguards this particular community wants? So also the Anglo-Indian community. Their numbers are very few, but their representation on the Committee is too great. I would suggest it would have been fair if the representation for the Depressed Classes had been 11 Instead of 7. Now, if anything cannot be done at this stage, I would request all the Members that are now elected to see that they should not go there in order to champion the cause of a particular community. They must feel one and see that they work for the benefit of all the communities for the homogeneity of all communities and for the prosperity of all the communities. With this motive, they must see that particularly such communities which are not represented properly according to their numbers must be safeguarded. Now only a few days ago we have passed a Resolution declaring our objects and our motives in framing this Constitution. We must stick to the spirit and see that every community got its proper place, though for instance out of 50 only 7 Harijans are there. They are only about one seventh of the present members. They might fight for their community interests and yet they are in a minority, Their voice may not be heard. So I appeal to all Members who are elected in spite of their majority, to understand the Harijans properly, and if what they want is reasonable, to satisfy if not their complete demand, at least the minimum of the demands put forward by them. With this hope I congratulate the Members that have been elected, and hope they will see that they do full justice especially to such communities as have been suffering for ages, and that what they deserve is given.

The Hon'ble Rev. J. J. M. Nichols-Roy: Sir, the number of members that have been listed here are 50. I wanted to add two more to this number. But after a discussion with Mr. Munshi, I decided not to disturb the number that has already been listed here. But, Sir, I want to say this: the minorities in Assam are many. The Tribal Areas there also are very different from the tribal Areas in other parts of India. Each Tribal area has As own ways and methods of living and culture which would need to be represented in a Committee like this. But I find in paragraph 2 that the Sub-Committees which will be appointed by the Advisory Committee can co-opt some members. This probably will solve the difficulty. I read here:

> "The Advisory Committee shall appoint sub-committees to Prepare schemes for the administration of the North-Western Tribal Areas, the North-Eastern Tribal Areas and the Excluded and partially Excluded Area. Each of such subcommittees may co-opt not more than 2 members from the particular tribal territory under its consideration for the time being, to assist in its work in relation to that territory."

This no doubt, will help the Tribal Areas to get representation and to tell the Advisory Committee what their desire is. In view of this, Sir, I think that the Resolution as presented before the House is quite satisfactory.

I should like to add one more point. I would have liked very much if another

Indian Christian had been added to this list. I find that Orissa has not been represented at all.

An Hon'ble Member: What about Andhra?

The Hon'ble Rev. J. J. M. Nichols-Roy: I would like very much one Christian from Orissa be represented. The President may consider the question of Orissa in regard to representation from the Christian community there. That would add only one more member to the four Indian Christian Members who have been listed here. With this request, Sir, I believe that this Resolution is acceptable to the House and it is quite satisfactory as far as it goes. Some of the minorities which have not been represented at all may be given representation by nomination by the President and by co-option by the Sub-Committees.

Mr. B. Das (Orissa: General): Sir, the atmosphere this morning in this House and the atmosphere in New Delhi these three or four days reminds me of the atmosphere in 1930-31. In the light of my past experiences I think that the minorities have been given more weightage than before. Murmurings will always be there. It is very very unfortunate that the minority communities do not demand mere justice, equity and fairplay but claim safeguards and weightages under the third party domination. The minority problems should not and must not overshadow the main issue--that of Independence of India.

One thing was stressed by previous speakers--namely, that the majority Hindu provinces have not found representation for their majority community in the Advisory Committee. I am one with them and I demand such representation for the majority Hindu population of Orissa. Orissa must participate in the discussions to enable her to assess those undue burdens that she may have to shoulder for her minority communities.

The Advisory Committee will very likely come to a dead-lock later. I do not anticipate its decisions and I am not a member of that Advisory Committee. But the minorities will still demand safeguards, economic advantages and reservations and weightages to an All-India pattern. All India patterns and decisions may work disaster to a poor province like Orissa, if minimum obligatory expenditure on minority communities be laid down. And yet, a minimum amount of money must have to be spent for the Scheduled Castes and for the Tribal people. The minimum standard in Bihar before separation from Orissa is the maximum standard of Orissa today. Rupees two and annas eight or something like that is the *per capita* income in Orissa; in other provinces the *per capita* income goes up to Rs. 20 or more. I am not merely pleading here that a Hindu representative from Orissa should be there in the Advisory Committee.

I visualise that the provinces will have residuary powers in an Independent India. Do my colleagues here appreciate that handicaps may be fashioned on minor provinces and stupendous difficulties--administrative and financial--may be imposed on poorer provinces under the cry of safeguards and weightages? It may even break the administrations.

The Advisory Committee should be wide enough to have representatives of

Hindus from the Hindu majority provinces, so that it can know the financial and economic position of those provinces. We will have to stoutly oppose any decision of people in the Advisory Committee who do not understand our economic and financial situation in Orissa and we will not accept any safeguards, economic or otherwise, and any undue burdens and handicaps.

Mr. Satyanarayan Sinha: I move that the question be now put.

Mr. B. K. Sidhwa (C.P. & Berar: General): May I say a few words, Sir?

Mr. President: Closure has been moved. The motion is: that closure be applied.

The motion was adopted.

Mr. President: Mr. Pant, it was your Resolution. Do you accept the amendments?

The Hon'ble Pandit Govind Ballabh Pant: Sir, I accept the amendments moved by Mr. Munshi. On the whole the reception that has been accorded to my Resolution has exceeded my expectations. It is a delicate matter, especially where the question of nomination of individuals comes in. There are many embarrassing aspects of such problems which cannot be easily got over, and which cannot be tackled at any rate in an altogether impersonal manner. So, I would not have been surprised if there had been more vigorous criticism than that displayed by Mr. Jaipal Singh when he spoke. I saw that he was chafing and the vehemence of his utterances seemed to me to compensate for the poverty of his ideas. I did not make any suggestion whatsoever against the tribal people. I believe that they have not received that attention and active service at our hands to which they were entitled. I think we owe them a duty and we should do all we can to raise their general level. There is absolutely no issue between him and me. When I suggested that it is unwise to look to any external authority for the protection of the rights of the minorities, I had no particular individual, group or section in mind.

I wanted to utter a word of warning on a subject which is of considerable importance and which often arouses consuming passion. That was my only apology for referring to the developments that had taken place in recent years and I believe that those experiences of Poland, Bulgaria, Czechoslovakia, Austria and other Eastern European States are worthy of being borne in mind in these times when we are going to frame our own Constitution. It was suggested that the election should have been held according to the principle of proportional representation. It had in fact been held according to that principle. As I indicated at the outset in the course of my opening speech, the members of every group had been virtually elected by their own communities and comrades within each and belonging to each Group. We wanted to have the seal of approval of this entire Assembly as the Advisory Committee will be dealing with very great problems and we wanted to give every member of the Committee that sense of confidence which the approval of the membership of the Committee by the entire House is bound to create and convey. So it was to create a sound moral foundation for this Committee that this method was devised but as I said, the elections were unanimous. All members of this House also, barring very few who were not there, agreed to these names but before the names were put before the general body individually, the members of each group had by themselves selected their representatives. I do not see how any method more satisfactory could possibly have been devised. It augurs well for the deliberations of this Advisory Committee that its personnel should have been selected not only by the different groups that it was intended to represent but also by every member and by all the members of this House. That given them a position which I think they would covet and they would appreciate. Sir, some omissions from certain Provinces have been mentioned. Well, I readily admit that many more members could have been profitably added to this Committee. We have here talent and public spirit represented in abundance, and everyone who could be added, would have made very useful contribution. But there are practical limitations in matters of this type and you have to see that the structure does not break down by virtue of its weight, even of too many good people. There should be some limitations even as regards excellence in order that men may move, in order that even defects may be tolerated; otherwise if you were to look for a Utopia or for 'the establishment of Plato's Republic, you will never be able to do anything practical. So it is only the hard realities of the situation which have constrained us to limit this figure to something about 70 and even that is apparently a number big enough for serious deliberation. So it is not because we do not appreciate all that has been said, not because we would not like to have the assistance of the other Hon'ble Members in this House but because this Committee would not stand the strain of heavier weight that We had to restrict the number, There need not be any misgiving in any quarter on that account. After all the decisions in such Committees are not ordinarily taken by vote. Everyone is expected to appreciate the point of view of other colleagues of his. There should be a spirit of accommodation and give and take. So we look forward to unanimity in the decisions and not to majority voting in a Committee of this type. I admit that it is possible for the Hon'ble Members to argue that the numbers allotted to different groups are not strictly in accordance with their population. In matters of this type you cannot have a yard-stick for measuring millions of people and their interests, and would it have made any difference, if there had been two more of the Scheduled Castes or even one less of the Anglo-Indians? I do not think. One worthy representative like Dr. Ambedkar or like Mr. Anthony can, I think, do, as much as half-a-dozen or more. It is not go much number as calibre and the spirit which inspires the members which ought to count in matters of this character. Let me hope that there will be no occasion for any regret when this Committee begins to function and that all will join together in congratulating this Committee when it has completed its labours.

Mr. President: Pandit Pant, you have not said anything regarding the amendment moved by Sir Gopalaswamy Ayyangar.

The Hon'ble Pandit Govind Ballabh Pant: I accept that amendment.

Mr. President: The Resolution has been moved and after that the amendments have been moved and accepted by the Mover. Therefore the amended Resolution will now read thus:

This Assembly resolves that in pursuance of paragraph 20 of the Cabinet Mission's Statement of May

16, 1946, an Advisory Committee be constituted as hereinafter set out :

1.(a) The Advisory Committee shall consist of not more than 72 members who may include persons who are not members of the Assembly.

(b) It shall consist initially of the following members

1. Shri Jairamdas Daulatram.

2. The Hon'ble Shri Meherchand Khanna.

3. Dr. Gopi Chand Bhargava.

4. Bakshi Sir Tek Chand.

5. Dr. Profulla Chandra Ghosh.

6. Shri Surendra Mohan Ghose.

7. Dr. Syama Prashad Moorkherjee.

8. Shri Prithvi Singh Azad.

9. Shri Dharam Prakash.

10. Shri H. J. Khandekar.

11. The Hon'ble Shri Jagivan Ram.

12. Shri P. R. Thakur.

13. Dr. B. R. Ambedkar.

14. Shri V. I. Muniswami Pillai.

15. Sardar Jogendra Singh.

16. The Hon'ble Sardar Beldev Singh.

17. Sardar Pratap Singh.

18. Sardar Harnam Singh.

19. Sardar Ujjal Singh.

20. Gyani Kartar Singh.

21. Dr. H. C. Mookherjee.

22. Dr. Alban D'Souza.

23. Shri Salve.

24. Shri Roche-Victoria.

25. Mr. S. H. Prater.

26. Mr. Frank Reginald Anthony.

27. Mr. M. V. H. Collins.

28. Sir Homi Mody.

29. Shri M. R. Masani.

30. Shri R. K. Sidhwa.

31. Shri Rup Nath Brahma.

32. Khan Abdul Gaffar Khan.

33. Khan Abdul Samad Khan.

34. The Hon'ble Rev. J. J. M. Nichols-Roy.

35. Shri Mayang Mokcha.

36. Shri Phool Bhan Shaha.

37. Shri Devendra Nnath Samanta.

38. Shri Jaipal Singh.

39. Acharya J. B. Kripalani.

40. The Hon'ble Maulana Abul Kalam Azad.

41. The Hon'ble Sardar J. Vallabhbhai Patel.

42. The Hon'ble Sri C. Rajagopalachariar.

43. Rajkumari Amrit Kaur.

44. Shrimati Hansa Mehta.

45. The Hon'ble Pandit Govind Ballabh Pant.

46. The Hon'ble Sriju Gopinath Bardoloi.

47. The Hon'ble Shri Purushottamdas Tandon.

48. Diwan Bahadur Sir Alladi Krishnaswami Ayyar.

49. Shri K. T. Shah.

50. Shri K.M. Munshi.

(c) The President may at any time or at different times nominate members to the Committee not exceeding 22, 7 of whom shall be Muslims representing the Provinces of Madras, Bombay, the United Provinces, Bihar, the Central Provinces, Orissa and Assam.

2. The Advisory Committee shall appoint Sub-Committees to prepare schemes for the administration of the North-Western tribal areas, the North-Eastern tribal areas and the excluded and partially excluded areas. Each of such Sub-Committees my co-opt more than 2 members from the particular tribal territory under its consideration for the time being, to assist it in its work in relation to that territory.

3. The Advisory Committee may appoint other Sub-Committees from time to time as it may deem necessary.

3-A. The quorum for the Committee or any of its Sub-Committees shall be one third of the total number of members for the time being of the Committee or of the Sub-Committee concerned.

4. The Advisory Committee shall submit the final report to the Union Constituent Assembly within three months from the date of this Resolution and may submit interim reports from time to time, but shall submit an interim report on Fundamental Rights within six weeks and an interim report on minority rights within ten weeks of such date.

5. Casual vacancies in the Advisory Committee shall be filled as soon as possible after they occur by nomination by the President.

6. The President may make standing orders for the conduct of the proceedings of the Committee.

I shall now put the Resolution, as amended, to vote.

The Resolution, as amended, was adopted.

Mr. President: We shall meet again in the afternoon at 3 o'clock and at that time we shall take up the budget in Committee. Therefore visitors need not take the trouble of attending the afternoon session.

The Assembly then adjourned for Lunch till Three of the Clock.

The Constituent Assembly re-assembled in Committee, after Lunch, at Three of the Clock, Mr. President (The Hon'ble Dr. Rajendra. Prasad) in the Chair.

[Discussion of Budget estimates was concluded.]

The Constituent Assembly then met in plenary session at fifty five minutes past Three of the Clock.

BUDGET ESTIMATES OF THE CONSTITUENT ASSEMBLY

Mr. President: Mr. Gadgil will formally move the Resolution.

Mr. N. V. Gadgil (Bombay: General): I formally move the Resolution. As a matter of fact, it was moved in the open session and after it was formally moved the House resolved itself into a Committee.

An Hon'ble Member: I second it.

Mr. President: The Resolution has been formally moved and seconded. I put the Resolutions to vote. I will read them once again.

"Resolved that the Assembly do accord sanction to the estimated expenditure of the Assembly for the years 1946-47 and 1947-48 as shown in the attached statements prepared by the Staff and Finance Committee in pursuance of rule 50 (1) of the Constituent Assembly Rules."

"Resolved that the Assembly do fix, under rule 51 (1) of the Constituent Assembly Rules the allowances of members of Assembly as in the attached Schedule approved by the Staff and Finance Committee".

I need not read the whole Schedule because the members know the Schedule.

I put the resolution to vote.

The Budget is passed.

The Budget was adopted.

Mr. President: This brings us to the close of the business of the day.

Mr. Deshbandhu Gupta (Delhi): May I ask one question, Sir? Has anything been decided as to whether the Government Service Rules will apply to the servants of the Constituent Assembly?

Mr. President: Nothing has been decided. Our servants are not Government servants.

Mr. Deshbandbu Gupta: Will the Government Service Rule apply to them or not?

Mr. President: We may have our own Rules. We have nothing to do with Government Rules. Those who have been borrowed from the Government may have loyalty and allegiance in their own way.

We shall meet again tomorrow in open session. Some resolutions will be taken up.

We adjourn till Eleven of the Clock tomorrow.

The Assembly then adjourned till Eleven of the Clock, on Saturday, the 25th January 1947.

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME II

Saturday, the 25th January, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eleven of the Clock, Mr. President (The Hon'ble Dr. Rajendra Prasad), in the Chair.

ELECTION OF VICE-PRESIDENT

Mr. President: Dr. H. C. Mookherjee is the only candidate who has been validly nominated for Vice-Presidentship. I accordingly declare him duly elected.

Dr. Pattabhi Sitaramayya will move the Resolution that is standing in his name.

ELECTION OF BUSINESS COMMITTEE

Dr. B. Pattabhi Sitaramayya (Madras: General): *[Mr. President, I read out the Resolution which I am going to move in English, first]*

"This Assembly resolves that a Committee consisting of--

1. The Hon'ble Sir N. Gopalaswami Ayyangar,

2. Mr. K. M. Munshi and

3. Sri Biswanath Das,

be appointed to recommend the order of the further business of this Assembly in framing the Constitution for all India and to submit its report before the commencement of the next session of this preliminary meeting of this Assembly".

*[I shall explain to you the Resolution in Hindustani. The Resolution seeks to appoint a committee consisting of three elderly persons. The function of this Committee is to consider and recommend the order of business of this Assembly and to submit its report before he commencement of the next session of the Assembly.

The Resolution appears very ordinary but it is very important. We have so far traversed a part of our journey. Imagine a man who sets out on a journey;

he travels the first stage of it easily. But when he embarks on the second stage he meets many hurdles and difficulties. Now what is the best course for him? He postpones his journey and sends a vanguard in order to acquire an idea of the difficulties he is likely-to meet on his way. What we want to do now is exactly that. We want to appoint a committee to guide us as to how we should proceed further with our business. Perhaps, you remember that an Advisory Committee was appointed yesterday. To-day we are going to appoint another committee. With the help of this Committee we are to know as to what- should be the order of the further business of this Assembly. With these words, I put the Resolution before you. I need not say anything more on it.]*

B. Gopal Reddi: *[I second the resolution.]*

Mr. President: Does anyone want to speak about this?

Dr. B. Pattabhi Sitaramayya: There is a small amendment to this, Sir.

Mr. President: Mr. Satyanarayan Sinha has given notice of an amendment.

Mr.Satyanarayan Sinha (Bihar: General): Mr. President---

Sir, I beg to move--

"That at the end of the motion add the following new paragraph --

"The Assembly further resolves that the presence of not less than two members of the Committee shall be necessary to constitute a meeting of the Committee."

Mr. President:- Dr. Pattabhi Sitaramayya, do you accept the amendment ?

Dr. B. Pattabhi Sitaramayya: I accept the amendment.

Mr. President: Then I put the amended Resolution to vote.

The Resolution, as amended, was adopted.

COMMITTEE ON SUBJECTS ASSIGNED TO THE UNION CENTRE

The Hon'ble Sri C. Rajagopalachariar (Madras: General): I beg to move the Resolution standing in my name, which reads as follows:

WHEREAS In paragraph 15(i) of the Cabinet Delegation's Statement of May 16, the subjects assigned to the Union Centre are generally and compendiously indicated under four broad categories,

AND WHERERAS an understanding of the scope of these subjects is necessary for the purpose of framing the Union and other Constitutions, of avoiding as far as possible overlapping and conflicts between the provisions in the Constitution relating to the Union and those in the Constitutions referred to in clause (v) of paragraph 19 of the Statement, and of bringing all the said Constitutions into line with each other.

AND WHEREAS it is necessary to draw up lists of matters included in and interconnected with the subjects assigned to the Union before the framing of the Constitutions referred to in clause (v) of paragraph 19 of the Statement is taken up for consideration;

This Assembly resolves--

(a) that a committee consisting initially of twelve members, elected according to the principle of promotional representation by means of the single transferable vote, be constituted to examine the above matters and to report to the Assembly not later than the 15th of April, 1947, and

(b) that the President may add ten more persons to the committee, and that the selection of all or any of these ten additional members be made at such time and in such manner as the President may determine.

Sir, I might take the matter a little in advance and mention that there are three amendments that are going to be proposed to this motion of mine, and those amendments deal with subsidiary matters, Mr. Munshi and Mr. Satyanarayan Sinha will move them in due course and I propose to accept them. So, in order to make the matter easier to understand I shall read the Resolution as it will stand when these amendments are accepted. The first part of the Resolution i.e., the preamble, stand as before, but the operative part would read like this

"This Assembly resolves-

(a) that a committee consisting of the following members:

1. The Hon'ble Pandit Jawaharlal Nehru....

Mr. C. E. Gibbon (C. P. and Berar: General): On a point of order, Sir, Until such time as the amendments are officially moved and the mover of the Resolution accepts them, how could he incorporate them in the original Resolution ?

Mr. President: He has not incorporated any part of the amendment. He is only reading it out.

Mr. C. E. Gibbon: He is accepting it before it is moved.

Mr. President: He said he proposes to accept it.

The Hon'ble Sri C. Rajagopalachariar: I have read the Resolution as it stands in the Paper and I have referred to the amendments circulated and I think t would save time it I explained to the members in advance that I propose to accept those amendments, and in order that the matter may be clearly understood, I am reading it. If permitted, I shall go on.

Mr. President: Yes.

The Hon'ble Sri C. Rajagopalachariar: The operative part would read like this:

"This Assembly resolves-

(a) that a committee consisting initially of the following members:

1. The Hon'ble Pandit Jawaharlal Nehru
2. Mr. Sarat Chandra Bose
3. Dr. Pattabhi Sitaramayya
4. The Hon'ble Pandit Govind Ballabh Pant
5. Mr. Jairam Das Daulatram
6. Sri Biswanath Das
7. The Hon'ble Sir N. Gopalaswami Ayyangar
8. Bakshi Sir Tek Chand
9. Diwan Bahadur Sir Alladi Krishnaswami Ayyar
10. Mr. D. P. Khaitan
11. Mr. M. R. Masani
12. Mr. K. M. Munshi.

be constituted to examine the above matters and to report to the Assembly not later than the 15th of April, 1947,

(b) that the President may add ten more persons to the committee, and that the selection of all or any of these ten additional members be made a' such time and in such manner as the President may determine,

(c) that the quorum for the Committee shall be one-third of the total number of members for the time being of the Committee, and

(d) that casual vacancies in the committee be filled as soon as possible after they occur by nomination by the President from among the members; of the Assembly".

Sir, the object of the Resolution is to help this Assembly in framing the Constitution so as not to leave for the future any overlapping or conflicts that might occur if various proceedings took place without correlation in different Sections of the Assembly or otherwise. I may be permitted, therefore, to explain exactly what the possibilities are which we wish to avoid.

This Assembly, Sir, has been entrusted with a very serious task, perhaps more onerous than any Constituent Assembly in the world has had to deal with. The number of differences that have to be settled are enormous; the population that has to be satisfied is enormous; and the problems that are before he Assembly are as difficult as any which any other Assembly has had before it. The British Government's Statement has put things in a fairly clear way, but not quite as clearly as we would desire it. If we examine-the British Government's Statement, on which this Assembly's programme is based, we will find few matters settled clearly.

No. 1-it is decided that we are to frame a constitution for a united India.

No. 2-we have to frame a constitution where the Centre is given the powers over Defence, Communications and Foreign Affairs and also powers necessary to raise the finances required for the above subjects.

And then thirdly another principle has been laid down that the residuary powers, that is to say, all powers which have not been transferred to the Central Government, should remain in the Provinces. Then fourthly, a subsidiary point is laid down also, that such powers as the Provinces agree to transfer to any Groups they may form would go to the Groups. All subjects other than the Union subjects and all residuary powers should vest in the Provinces. The States will retain all subjects and powers other than those ceded to the Union. This is (3) and (4) of Clause 15 of the State. It is further laid down that there will be a ten-year revision of this Constitution and the initiative for that revision is vested in the Provinces. These are the broad principles laid down in Clause 15:

But let us examine this a little more closely. We find in sub-clause (1) that:

> "The Union should have all the powers necessary to raise the finances required for the above subject."

Now, what are powers, unless we mean the power actually to enforce the law as prescribed for raising the finances and that would include, Sir, the power of collection and probably also the power of securing the services of a proper judiciary wherever required. No provision has been put down for this purpose. Again, if we examine clause 19 which gives the procedure for carrying out the principles set out in clause 15, we find, strangely enough, a lacuna. In sub-clause (v) of clause 19 it is stated that the Sections shall proceed to settle Provincial Constitutions and then they shall also decide whether any Group Constitution shall be set up, and if so with what provincial subjects the group shall deal. Then the representatives of the Sections and the Indian States shall re-assemble for the purpose of setting the Union Constitution. Now, there is no provision as to how and when the Group Constitution shall be settled. Beyond stating that whether any Group Constitution shall be set up may be decided in the Sections and also that the Sections shall set out the provincial subjects with which the groups should deal there is no provision for settling the Group Constitution itself.

Then, again, if we examine the provisions as to the Advisory Committee on Minorities, we find this. The Advisory Committee shall report to the Union Constituent Assembly upon the list of fundamental rights, clauses for protecting minorities and a scheme for the administration of Tribal and Excluded Areas, and it should advise whether these rights should be incorporated in the Provincial, the Group or the Union Constitutions. Now, it follows logically that when the Advisory Committee has reported to the Union Assembly, the Union Assembly should have the power to see whether it should be incorporated in the Provincial or in the Group or in the Union Constitutions. If the Provincial and Group constitutions should be settled beforehand, and at a later sitting of the Union Assembly, they decide that it should be incorporated in the Provincial or

Group Constitutions, what is the procedure to be followed? Therefore, there is a great deal of correlation to be done before we can carry out the intentions of the Cabinet Mission's Statements, or the Resolutions of this Assembly. If we interpret the programme laid down in clause 19 literally and assume that what is asked to be done at the various sittings should be the only things done at this stage and nothing else, we will be landed in a great deal of difficulty at the end in carrying out the explicit intentions of the Cabinet Mission's Statement. Considering all these matters, it has been found necessary, we have found it necessary, Sir, to make this motion for the appointment of a committee which shall do the required thinking on these matters and report to this House before we end the preliminary session so that we may frame our programme of future work.

This Assembly has to consider, as I said before, very serious matters, and we will have to do a great deal of thinking. We cannot do our work on the assumption that we are here only to register previously arrived at decisions, opinions and programmes. We have to do a lot of substantial thinking in this Constituent Assembly; and in the nature of things, therefore, we require the assistance of a select Committee to consider and advise us on the difficulties that may arise in the course of our work. It is with that object that this Committee has been proposed. It is not with the object of undermining the essential intentions of the Cabinet Mission's Statement or anything of that kind. It is to help us to think out our difficulties and to find solutions for those difficulties.

Sir, If I may venture to put it that way, it is not only a matter of culture or good-breeding, but it is statesmanship to think of those who are absent, to think of other people than ourselves, when we deal with any matter. That is why in proposing every motion, Hon'ble Members have dealt with the intentions and purposes of those who are not yet present in this Assembly. We find a great many possibilities of misunderstanding and we try to anticipate those difficulties and remove possibilities of misunderstanding as far as we can. In this connection I would mention, therefore, that those who are absent should not misunderstand the purpose of this Committee that I am proposing. The Muslim League policy has been to secure a separate, sovereign State of their own. Now, this Constituent Assembly has taken up its task on the basis of the Cabinet Mission's Statement and if one thing is more clearly decided in His Majesty's Government's Statement than anything else, It is this, that there shall be only one sovereign state in India. It has been decided clearly beyond all possibility of doubt that a division of India into two sovereign states is not to be thought of in this connection. That explains many of the things that we are doing and will remove many of the misunderstandings that are likely to arise. If I may put it that way, the League has gone the wrong way for securing their objective. If they had only restricted their claims to what legitimately should be asked in pursuance of their policy, possibly they might have achieved their object and they would not have been in the present difficulty. Let me put it frankly. The greatest difficulty for the Muslim League now is that they have to join this Assembly and thereby, once for all and beyond doubt, accept the single sovereign State of India. That is why they find it difficult to come in, and that is why these postponements. That is why the League fixes its date always after the meetings that the other major parties have programmed for their consultations. That is why we find to-day, even after the last adjournment, the

League has been unable to make up its mind and join us. Let us understand the difficulties of the other side. If the League comes in, they come in on the express understanding that India shall be only one sovereign State, abandoning their separatist policy. This is difficult for them to do at once. Let us realise these difficulties and not misunderstand even the delays. We desire to proceed with the work as fast as possible, understanding very well the difficulties of the Muslim League members in the way of their coming and joining us at this stage. Let them think it over. Let us give them ample time to come. But that does not mean that we stop our work that we stop thinking, that we stop doing anything whatsoever, until they, make up their minds. That would lead to indefinite postponement. Hence, Sir, I have no hesitation in recommending this Resolution that we should appoint this Committee of twelve members as proposed, so that they may think out all the difficulties and advise us so that we may frame a constitution for India which will create no difficulties for those who have to work it, and which will be a stable, strong constitution for the Centre with stable and strong constitutions for the provinces, to work under the Centre and in the single State that is being contemplated. Therefore air, I move that this Resolution be accepted by the House. As I said before, there are two amendments. One is to replace the election by proportional representation, by twelve members definitely named to the House; and the other is to provide for quorum and another is to provide for casual vacancies. I commend the Resolution with these amendments.

Mr. President: Mr. Munshi can move his amendment.

Mr. Satayanarayan Sinha: May I be permitted to move it?

Mr. President: Yes.

Mr. Satyanarayan Sinha: Sir, I beg to move the amendments which stand in the name of Mr. Munshi, as permitted by you:

"That in clause (a) of the motion, for the words beginning with 'twelve members' and ending with 'the single transferable vote, the following be substituted:--

'the following members:

1. The Hon'ble Pandit Jawaharlal Nehru.
2. Mr. Sarat Chandra Bose,
3. Dr. Pattabhi Sitaramayya
4. The Hon'ble Pandit Govind Ballabh Pant,
5. Mr. Jairam Das Daulatram,
6. Sri Biswanath Das,
7. The Hon'ble Sir N. Gopalaswami Ayyangar,
8. Bakhshi Sir Tek Chand,

9. Diwan Bahadur Sir Alladi Krishnaswami Ayyar,

10. Mr. D. P. Khaitan,

11. Mr. M. R. Masani, and

12. Mr. K. M. Munshi."

If you will permit me, Sir, I will move the other amendment also.

Mr. C. E. Gibbon: Sir, on another point of order. When Mr. Munshi, who has given notice of these amendments is not present in the House, can anybody else move them in his absence?

Mr. President: I suppose any one else can move them if permitted by the Chair.

Mr. Satyanarayan Sinha: The second amendment which is in the name of Mr. Munshi and which I move is as follows:

"That the word 'and' at the end of clause

(a) be deleted and at the end of clause

(b) the full stop be changed into a comma and the following be added :-

'(c) that casual vacancies in the committee be filled as soon as possible after they occur by nomination by the President from among the members of the Assembly'."

"That the word 'and' at the end of clause

(a) be deleted and at the end of clause

(b) the full stop be changed into a comma and the following be added as a new paragraph:

'(c) that the quorum for the committee shall be one-third of the total number of members for the time being of the committee'."

Mr. P. R. Thakur (Bengal: General): This is an important Resolution and this Committee which is going to be appointed will consider the subjects that will be reserved to the Centre. My Hon'ble friend, Mr. Rajagopolachariar, did not say anything about the maintenance of peace throughout the country and the prevention of famines. These two things are essential and I say so, because we, Bengalis, are the worst sufferers; we had recently communal rioting in Bengal and there was also famine. We asked for help from the Local Government but the Government was not able to give it, and we could not make any appeal to the Centre. Another thing is that when the Interim Government was formed, His Excellency the Viceroy said that this Government would not interfere with Provincial Governments. If the Centre cannot interfere in cases where there is communal disturbance or there is famine, then we will have to consider what will happen to the people of those Provinces. I hope the Committee will take this into serious consideration so that steps may be taken to maintain peace throughout the country and also to prevent famines. Another thing that I want to bring to the notice of the Congress High Command through this Assembly is this Somehow or other there is a feeling that this High Command is not sympathetic towards the people of Bengal: they want to have independence at the cost of Bengal. I hope this Committee will consider this aspect seriously so that Bengal may not be affected in future either by famine or by communal disturbances.

Mr. Jaipal Singh (Bihar: General): Mr. President, this is a very imposing list and I personally have no quarrel. I know the names are of eminent men that have been proposed by Mr. Satyanarayan Sinha, but I do feel some concern, now that explanation has been given by Mr. Rajagopalachariar that under (b) the President may add ten more persons to the Committee. That implies that he is leaving room for our absent friends. Had he pointed out that the President would have discretion to nominate members from parties or groups that has been left out in the twelve names that had already been proposed, I would not have anything to say. Looking at the list, it seems to me that the plan is not for unity but for uniformity. I would have liked to see, for instance, the names of persons like Dr. Jayakar, Dr. Ambedkar and Dr. Deshmukh in the list.

The Hon'ble Sri C. Rajagopalachariar: Will you, Mr. President, request the speaker to come closer to the microphone and speak? I am unable to hear him.

Mr. Jaipal Singh: When I shouted yesterday, Pandit Govind Ballabh Pant thought I was being too vehement, and I said to myself I would be a little mellow this morning. But, for the benefit of Mr. Rajagopalachariar. I shall shout despite what Pandit Govind Ballabh Pant may feel. I will raise my voice for Mr. Rajagopalachariar's benefit.

Mr. President: It is not so much shouting that is required as speaking in front of the microphone.

Mr. Jaipal Singh: If there were microphones all around, then I need not come near the microphone, but look at members on all sides, I submit that, when Mr. Rajagopalachariar said that the ten members that the President would nominate subsequently were reserved for our absentee friends, I was concerned that no room had been left to accommodate sections, groups and parties who were not among the twelve people named herein. I know that as far as the fate of my own people is concerned, the temper of this House seems to be, as it has been in the past, that they should be permanently excluded from all the good things of life! This is a very important thing. That is the impression I get; although that may not be true. Less important committees may give us a fair deal--I do not know, but I see no reason why here also some tribal representation could not have been given. I am not moving an amendment, I am only expressing my opinion when I say that I would like to have seen persons of the eminence of Dr. Jayakar, Dr. Ambedkar and Dr. Deshmukh on this Committee. I do think that they can render a s good service as the twelve members who are named here. I am not moving an amendment, but I am bound to say that I am surprised that Tribal Areas are completely left out of the picture; so are our eminent men whose names I have already mentioned.

Sardar Harnam Singh (Punjab: Sikh): I do not propose to make a speech on this Resolution. But I do want to say that this is not a committee on which communal representation or tribal representation is very, very necessary. This Committee, as the Resolution states, is simply formed for the purpose of understanding the scope of the Union subjects. It is not a committee even for defining the scope of the Union subjects. Therefore, I put before the House that no member of this House should insist on communal or tribal representation. The best men of this House must come on this Committee to make a report to the House as to the compass and scope of the Union subjects, and when that report will be before the House, we will be in a position to make any suggestions that we may like.

Prof. N. G. Ranga (Madras: General): Mr. President I wish to suggest that Dr. Ambedkar's name should be included in this list, and I appeal to one of the members whose names are suggested to offer to withdraw in his favour.

The Hon'ble Sri C. Rajagopalachariar: Sir, I would beg of the House to look at it rather from the point of view which Shri Harnam Singh put before the House than from any other point of view. After all, if you once more read these names, you will find among them men who are absolutely non-partymen, who have given their time to considerations of issues and drafting difficulties and people who may more or less be described as experts in the art of bringing laws into existence. Clause (b) provides that the President may add ten more persons to the Committee. Now, the President is not invested with this authority for nothing. He is invested with this power to make up for defects. The President will consider the position when the Muslim League members, who are now absent, come in. We will know then how the position stands. It is not intended really that the President should exercise this nomination power in an arbitrary manner. He is going to get the opinion of the Muslim League members when they join and get them to elect their representatives and they will come in.

There is another absent element, the States. The President will consider who will best represent the States in this particular task and take them in and, if there is room,, I have no doubt the President will add other eminent constitutionalists who are in the House, some of whose names have been mentioned and then the Committee will be a strong Committee. Relying upon this, I ask the House to accept the Resolution as it stands, with the amendments proposed.

Mr. President: I have now to put this Resolution to the vote of the House. Is it necessary to read out the Resolution once again? (Hon'ble members: No, no.)

An Hon'ble Member: What about Mr. Ranga's amendment?

Mr. President: Mr. Ranga did not move any amendment, He only made a suggestion. I will now put the Resolution, as amended, to vote.

The Resolution, as amended, was adopted.

Mr. President: I find on the Order Paper a motion in the names of Shrimati

G. Durgabai and Shri M. Ananthasayanam Ayyangar. I understand that they do not propose to move it.

Mr. Satyanarayan Sinha (Bihar: General): I beg to Move the following motion which stands in my name:

> "This preliminary meeting of the Assembly do stand adjourned to such day in April as the President may fix."

I may mention, Sir, that at the next meeting of the preliminary Session we will consider the general order of business and also the report of the Union Committee and other matters that may come up before the Assembly.

Sri K. Santhanam (Madras: General): On a point of order, Sir. I do not think it can be left vague like that, because Rule 21 says in the first proviso that the President shall not adjourn the session....

Mr. President: Please come to the microphone.

Shri Mohanlal Saksena (United Provinces: General): I second the motion.

Seth Govind Das (C. P. and Berar: General): *[Mr. President, I want to point out that there is no necessity for such a resolution. It is the President who is to decide as to when the sitting of the Constituent Assembly should be next held. When the previous session of the Assembly was adjourned, was any resolution passed for this? No. Therefore, I think there is no necessity for this Resolution. The current session of the Assembly is going to be adjourned. You have the right to summon it whenever you find it necessary.]*

Mr. President: According to Rule 21, the Assembly shall sit on such dates as the President may from time to time direct; provided that the President shall not adjourn the session for more than three days at a time except with the consent of the Assembly: Provided further that the Chairman may adjourn he session to the next working day. So, under this Rule the consent of the House is required for adjourning it for more then three days.

Sri K. Santhanam: My point is that the adjournment with the consent of the Assembly should be to a particular date. It cannot be to an indefinite date; otherwise the President gets the discretion of thirty days, while his discretion is limited to three days. I am not objecting to the motion on merits. Seeing that the Rules Committee have made the Rules somewhat rigid, I do not think it would be right if we do not interpret them correctly.

Mr. President: Rule 21 says that the Assembly shall sit on such dates as the President may from time to time direct; provided that the President shall not adjourn the session for more than three days at a time except with the consent of the Assembly. It is not indicated in the Rule that the adjournment should be to a particular date. All that it says is that if the House is to be adjourned for more than three days, the consent of the House has to be taken.

An Hon'ble Member: Rule 68 gives you ample power.

Mr. President: I think Rule 21 is quite enough.

Mr. H. V. Kamath (C. P. and Berar: General): While I do not object to the Resolution in principle, I desire that it should be more explicit and clear. When we met in December we hoped that the preliminary meeting would be over in that month.... (Hon'ble Members: 'No, no'). We adjourned to January. Now again we are adjourning to April. It means that the preliminary meeting will be going on for over six months. It must be made clear to Hon'ble Members who happen to be absent today that this Assembly resolves that no further adjournment of the Assembly shall be made. We were eager to get the co-operation of members at the preliminary meeting. We are desirous of getting the co-operation of those who are absent today and we wish that they co-operate with us in the task of constitution-making. But all the same, just because some are absent we cannot go on adjourning the preliminary meeting. I wish that the idea that the meeting shall not be adjourned beyond April and that there will be no further adjournment of this preliminary meeting may be incorporated in the motion.

Mr. President: Do you move any amendment?

Mr. H. V. Kamath: I shall move an amendment if you desire it.

Mr. President: I have no desire in the matter.

Mr. H. V. Kamath: I shall move it.

The Hon'ble Sri N. Gopalaswami Ayyangar (Madras: General): Sir, I beg of you to reconsider the views to which you have given expression already on this matter. I think Mr. Santhanam's point is quite sound. The operative portion of Rule 21 is:

"The Assembly shall sit on such dates as the President, having regard to the state of business of the Assembly, may from time to time direct.........."

The next sentence is merely a proviso to that part of the Rule, viz.--

"Provided that the President shall not adjourn the session for more than three days at a time except with the consent of the Assembly."

This proviso, I am afraid, Sir, does not give the President the discretion not to fix a date. It only means that the date that he may fix, if it is beyond three days from the date on which we adjourn, requires the consent of the Assembly. But the fixing of the date, I am afraid, is obligatory. In order to avoid possible legal or other difficulties, I suggest that we may fix a date in April for this proviso.

Mr. President: A point of order has been raised on it and I have given my ruling. I do not think it is necessary that at the time we adjourn, I should fix the date. I may fix the date even later. That is what has just now been suggested.

The Hon'ble Sri C. Rajagopalachariar: The leave of the House being taken for adjourning beyond three days, the President shall have the power from time to time to fix any date beyond three days.

Mr. H. V. Kamath: By your leave, Sir, I move that after the word 'fix', a comma be inserted and then the following words added, "and no further adjournment of the preliminary meeting of this Assembly shall be made."

Seth Govind Das: *[Mr. President, I oppose the amendment put in by Mr. Kamath. Conditions constantly change. Today we think that we should not adjourn this preliminary session of the Assembly beyond April. But if at that time we feel that the session should be adjourned further we will not be able to do so because of the binding of such a resolution. The amendment is unwise, and, therefore, I think we should accept the Resolution moved by Mr. Satyanarayan Sinha. We should not fix any date for the next sitting of this Assembly in April nor should we undertake that it will not be adjourned in future. Therefore, I oppose the amendment moved by Mr. Kamath.]*

Mr. President: Does anyone else wish to speak?

Hon'ble Members: No.

Mr. President: Mr. Satyanarayan Sinha, do you wish to reply?

Mr. Satyanarayan Sinha: When the Resolution was drafted, we took an aspects of the question into consideration and decided not to make any mention about whether or not there will be any occasion to summon any further meeting of this Preliminary Session. I appeal to Mr. Kamath to withdraw his amendment. I do not think any purpose will be served by his insisting on this amendment.

Mr. H. V. Kamath : The position as it stands......

Hon'ble Members: Order, Order.

Mr. H. V. Kamath: I am going to withdraw the amendment.

Mr. President: I now put the Resolution to vote.

The motion was adopted.

CONGRATULATIONS TO VICE-PRESIDENT

Mr. President: This brings us to the close of our business. There is a suggestion made by some friends that we should give an opportunity to members to congratulate Dr. Mookherjee on his election as Vice-President. I desire to offer him my congratulations in the first place before anybody else does. Does anyone wish to speak?

Rev. Jerome D'Souza (Madras: General): Mr. President, I have very great Pleasure in offering--I am sure in offering them I am also voicing the sentiments of this Hon'ble House--our sincere congratulations to Dr. H. C.

Mookherjee on his election to the Vice-Presidentship of this august Assembly. Dr. Mookherjee is one who has gained the esteem of all the sections and communities of our land. He has been associated very closely with meritorious work as an educationist in Bengal. He belongs to a Christian body which has worked in close collaboration with other Christian bodies. His judgment, his patriotism, his amiable and attractive manners are known to all, and I am sure, Sir, that, if the occasion should come for him to direct the proceedings of this House, he will do it in a manner, I will not say brilliant, but in a way which will be in keeping with the manner which you, Sir, have set up as a tradition. I do not wish to take the time of the House more on this matter. Once again, with our hearty congratulations to Dr. Mookherjee, I offer him our goods wishes for his success in this work.

Sri Biswanath Das (Orissa: General): Sir, I offer my hearty congratulations to Dr. H. C. Mookherjee on his election to the Vice-Presidentship of the Constituent Assembly. Dr. Mookherjee richly deserves this place. His election goes to prove that the minorities need not have any apprehensions in their mind about the majority communities. His election is an honour done to the minorities as also to Bengal. As President of the All-India Christian Association, I know several attempts were made to drag him into the field of communalism. He has all along resisted those attempts and resisted them successfully, I have no hesitation in saying that he will carry out this tradition and make his office a success. We on our part will give him full co-operation. I wish him godspeed.

Mr. H. J. Khandekar (C. P. and Berar: General): *[Mr. President, I congratulate Dr. Mookherjee. I represent the community known today as Harijan. They are approximately ninety millions in India. On behalf of this community I offer my congratulations to Dr. Mookherjee. I hope he will render much help in the deliberations of the Assembly and tackle all problems that may arise. With these words, I conclude my speech.]*

Dr. Joseph Alban D'Souza (Bombay : General): Mr. President, I endorse every word that has fallen from my Hon'ble friend Reverend Jerome D'Souza, in what he has expressed in connection with the appointment of Dr. H. C. Mookherjee as Vice-President, the first Vice-President amongst the five Presidents that would be appointed in the near future to this great Assembly. Sir, I may be pardoned if I connect Dr. H. C. Mookherjee particularly with the community to which I belong at present, the Indian Christian Community of this great nation. I think and I feel, Sir, that the appointment of Dr. H. C. Mookherjee is really an honour conferred upon the Indian Christian Community of India.

Sir, may I refer on this occasion to the Advisory Committee representation of the Indian Christians? We have adequate representation in that Committee and I am looking forward to Dr. H. C. Mookherjee to grant to that section of the Advisory Committee every assistance and aid in order to put through the affairs of the Indian Christian Community section to the best of his ability and to the satisfaction of the entire Indian Christian Community of this great nation. As Father Jerome has already in formed you, his acquirements have been very great indeed. In the Province of Bengal, he has shown that in matters of statesmanship and in every other direction he is a luminary in that section of

India.

Sir, it is quite possible that he might have one day to preside over the deliberations of this House and as Father Jerome has said it, I am sure, if it comes to that, he will do his duty as well, Sir, as you have had the honour of doing it during the time this Assembly has been in action. I congratulate Dr. H. C. Mookherjee, and in congratulating him, I say once again, that I congratulate the Indian Christian Community for the honour that has been conferred upon it. Thank you very much.

Mr. H. C. Mookherjee (Bengal: General): Mr. President, Ladies and Gentlemen. I trust that you will accept in advance an apology because I am going to place before you a history of the way in which from a Christian Communalist I became a Christian Indian Nationalist. It was merely an accident that brought me into politics. It was a case of *zid* and nothing else. Some people had egged me to seek election, but at the last moment deserted me and I was determined to show that though I have been a school-master all, through my life, It was possible for a schoolmaster to be a better man than the black-mailing voter. It so happened that the gentleman against whom I was fighting was a more experienced man with a longer record of service to the community than myself. It also happened that in those days it was more profitable to appeal to communal than to national feelings. I admit with a sense of the deepest shame that I dabbled with the matter. He appealed to communalism. I appealed even more strongly to communalism and that is how I got Into politics. But when as President of the All-India Council of Indian Christians the members requested me that I should go and visit poor Christians it was then and then only that I found out that the cause of the poor Christian Indian was no better than the cause of the equally poor Hindu Indian and the equally poor Mussalman Indian. It was then that from a Communalist I became a nationalist and if today you have done me the honour of putting me into the position of the Vice-President. Be sure that while I am there, I shall not act as a communalist, but I shall remember the duty which I owe to the poor masses of my country. I am not a lawyer. I am not even a politician, Forty-two years of my life have been Passed as a teacher or as a student. I do not know whether I am qualified to discharge the duties with which you have entrusted me but I do know one Win. that I shall try to do it honestly and thereby I hope to add to the dignity of the House and add to the reputation of my community, which has hitherto had at least one thing in its favour. and that is, that It has never stood directly or indirectly against the political progress of my country. *(Loud cheers.)*.

MR. S. LAHIRI'S LETTER TO THE PRESIDENT

Mr. H. V. Kamath: Mr. President, Sir, before we bring our business to a close, permit me to invite your attention to the fact that several of us have received copies of a letter addressed to you by my Hon'ble friend, Mr. Somnath Lahiri. I submit, Sir, that we are not here concerned with the politics of the Indian Communist Party, with which most of us are at variance.

Sardar Harnam Singh: On a point or order, Sir, the Resolution proposed by Mr. Satyanarayan Sinha that the House stands adjourned to some day in April has been passed. Therefore, no work can be done now.

Mr. President: I have permitted Mr. Kamath to place before the House one fact which needs to be brought to the notice of the House. Some days ago, I received a letter from Mr. Somnath Lahiri, in which he Complained that his house had been searched and papers relating to the proceedings of this Constituent Assembly and the notes which he had prepared for his speeches here have been seized by the Police and he raised the question of privilege whether that kind of, action was justified or whether I could do anything to protect him. That is the matter which he is now mentioning. Therefore I permitted him to mention the matter. The fact is that after receiving the letter, I referred it to the Constitutional Adviser because it involves a question of law and I received his note only this morning, which I have not yet been able to study. So I have not been able to make up my mind as to what steps can be taken or need be taken in this matter. I shall consider this matter when I have studied that and if any steps are called for, I will take those steps and if I find that I have no power, I will leave the matter there.

Mr. Somnath Lahiri (Bengal: General): May I remind you, Sir, that you are not only the President of this Assembly, but also a Member of the Interim Government?

Mr. President: In this House, I am nothing else.

The House will now stand adjourned to such date in the month of April as I may fix later on.

The Assembly then adjourned to such day in the month of April as -the Hon'ble the President might fix.

[English translation of Hindustani speech]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME III

Monday, the 28th April 1947

The Third Session of the Preliminary Meeting of the Constituent Assembly of India commenced in the Constitution Hall, New Delhi, at Eleven of the Clock, Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following Members presented their credentials and signed their names in the Register:

1. Sir Brojendra Lal Mitter (Baroda).

2. Mr. Gopaldas Ambaidas Desai (Baroda).

3. Mr. P. Govinda Menon (Cochin).

4. Sir T. Vijayaraghavacharya (Udaipur).

5. Sir V. T. Krishnamachari (Jaipur).

6. Pandit Hiralal Shastri (Jaipur).

7. Mr. C. S. Venkatachar (Jodhpur).

8. Mr. Jainarayan Vyas (Jodhpur).

9. Sardar K. M. Panikkar (Bikaner).

10. Raja Lal Shiva Bahadur Singh, Rao of Churhat (Rewa).

11. Mr. Lal Yadhendra Singh (Rewa).

12. Sardar Jaidev Singh, (Patiala).

13. Sardar Gian Singh Rarewala (Patiala).

14. The Hon'ble Dr. Kailash Nath Katju (U.P.: General).

15. Professor K. T. Shah (,Bihar: General).

16. Mr. Mahavir Tyagi (U.P.: General):

17. Mr. Upendra Nath Burman (Bengal: General).

18. Mr. P. M. Velayudapani (Madras: General).

PRESIDENT'S ADDRESS

Mr. President: We are meeting just three months after the last session of the Assembly. In the meantime some important events have happened to which I consider it necessary to make a short reference. Before doing that T have to give to the House the sad news of the death of three of our Members :

1. Raja Maheshwar Dayal Seth from U.P.
2. Sir Azizul Haque from Bengal, and
3. W. K. L. Mazumdar from Baroda.

The death of the last named gentleman has come as a shock because of the tragic circumstances in which it took place. I understand that he was on his way to attend this Session of the Assembly and the railway compartment in which he was traveling caught fire as a result of which he lost his life. I seek the permission of the House to convey to the members of the bereaved families our sympathy with them in their bereavements.

I may on behalf of the House be permitted to extend a cordial welcome to the representatives of the States who are attending this Session and I hope representatives of other States will also be coming soon to assist in the great work which this Assembly has undertaken. I need hardly point out that the tremendous task in which we are engaged requires and expects assistance from all sons and daughters of this country whether they are living in States or in British India and whether they belong to one community or another. The future of the country very largely will depend upon the Constitution which we are able to frame and not only the people of this country but people all over the world are watching our efforts with interest not unmixed with anxiety and it is upto us, to whatever class or community and whatever part of India we belong, to make our contribution towards the accomplishment of this task.

News has come from our neighbour and erstwhile partner Burma that a Constituent Assembly has been elected there with objects similar to our own. May I on behalf of the House convey to that august body our greetings and good wishes and our great interest in the accomplishment of the task and the attainment of the object of a free Burma that the people of that country have before them ?

Since we met last the British Government have declared their intention to transfer power to Indians by June, 1948. This has naturally added urgency to our work and we must proceed in a business-like way to draw up our Constitution in, as short a time as we can. The British Government is pledged to take preparatory measures for transfer of power in advance and while this is being done on one hand, we must be ready with our Constitution well in advance of the date-line to assume responsibility in accordance with the Constitution framed by us. I am, therefore, hoping that the Assembly will proceed with all expedition. There are undoubtedly difficulties which the

Assembly will have to face but if we proceed with determination we shall be able to conquer them.

It will be recalled that the Assembly appointed several Sub-Committees. The Reports of four of these Committees will, I understand, be placed before the House in due course. I suggest that the Assembly should proceed to appoint Committees to formulate the principles on which the Constitution to be framed will be based and when those principles have been approved the work of drafting the Constitution could be undertaken by a suitable agency and finally the Constitution so drafted could be considered in detail by this Assembly. My suggestion to the Assembly will be that the Sub-Committee for framing the principles should be asked to submit its report in time for consideration by the Assembly some time in June or July and after the report has been considered by the Assembly, the drafting could be done and the Assembly itself could meet in September and finalise the Constitution by the end of October. This is roughly the time-table as the Order of the Business Committee and I envisage it. It is necessary that the Constitution should be finalised as early as possible so that there may be time thereafter for the process of transfer to be completed within the time fixed by the British Government. What I have suggested is tentative as developments are taking place and no one can say for certain what steps the Constituent Assembly may have to take to fulfil its functions. We have already defined our objective and the Constitution that has to be framed will naturally have to conform to it.

Whatever the nature of the Constitution that may have to be drafted whether for one undivided India or only for parts of it, we shall see to it that it gives satisfaction to all coming under its jurisdiction. While we have accepted the Cabinet Mission is Statement of 16th May which comtemplated a Union of the different Provinces and States within the country, it may be that the Union may not comprise all the Provinces. If that unfortunately comes to pass, we shall have to be content with a constitution, for a part of it. In that case we can and should insist that one principle will apply to all parts of the country and no constitution will be forced upon any unwilling part of it. This may mean not only a division of India but a division of some Provinces. For this we must be prepared and the Assembly may have to draw up a constitution based on such division. Let us not be daunted by the immensity of the task or diverted from our purpose by developments which may take place but go ahead with faith in ourselves and the country which has sent us here. I understand some members would like to say a few words. I request Sir B. L. Mitter to begin.

Sir Brojendra Lal Mitter (Baroda) : Sir, I thank you for the cordial terms in which you have welcomed us, the representatives of the States who are here today. I wish more had come in. I have every hope, however, that at the next Session, few of the States' seats will remain unoccupied. Sir, the Baroda Delegation has suffered a serious loss by the tragic death of one of its members who was on his way to the Constituent Assembly.

Sir, thisAssembly is framing the Constitution of Free India. We, the States, are an integral part of India and we shall share the freedom with British India. We, therefore, want to share the responsibility of framing the Constitution. (*Hear, hear*).

We are hereby right of being Indians and not by sufference. We claim that we are in a position to make substantial contribution to the common task. A hundred and fifty years of unitary British rule has resulted in a measure of uniformity in British India, but in the States there is still a great variety. Some States are as advanced as British

India, where the people are associated with the administration. Some are absolute monarchies. Some are feudal and some are primitive. All these have to be fitted into the Indian Constitution, because our 93 millions of population are included in the Indian total of 400 millions. We do not want to disturb the main design, as indicated in the first Resolution of this Assembly; but we want to introduce a variety in the pattern so that we may fit into it according to our capacity.

We want unity in diversity. I appeal to our British Indian colleagues to exercise a little patience with us. We want to march along with them but the pace has to be regulated without impeding the forward move. We are at one with you in that the Indian Union should be strong in the Centre so that India may hold her head high in the comity of nations. We do not believe in isolated independent existence, which can only weaken the Union. We shall join you wholeheartedly in a spirit of co-operation and not in any spirit or securing special privileges at the cost of the Union. We shall endeavour to make the Constitution develop according to the genius and capacity of the different units, so that the development may be natural and healthy.

Sir, I thank you again.

Sardar K. M. Panikkar (Bikaner) : Mr. President, Sir, following what Sir Brojendra Mitter has so very eloquently said, I also, on behalf of the representatives of States who have joined and taken seats today, wish to express our thanks to you, Sir, for the welcome you have extended to us. This was indeed the day to which we have been looking forward. It is a dream which has come true, for at no time in India's history has a representative gathering of people who can speak on behalf of the whole of India met and taken counsel. There have been occasions in the past when sections of India have met. We in the States have also been meeting frequently; but never in the history of India, so far as I can remember, has there been an occasion when representatives from all parts of India have met together in order to decide their future. Therefore, I consider that the taking of seats of certain representatives of Indian States today has a symbolic value which far outweighs the actual number of representatives who have joined, or the insignificance of members who have themselves joined. This is indeed a symbol of the unity to come and from the work that begins today, in co-operation between the representatives of the States and those of the Indian Provinces, we can really hope to look forward to the emergence of a Union of India.

Before I proceed to any other matter, I must say a few words of thanks to the work of the Negotiating Committee which made it possible for us to come and sit here. No doubt a Report of that Committee's work will be made to you in a few minutes and it is not for me to say anything about it, but this much I think I might say that, but for the wisdom, courage and vision with which your representatives approached the question of Indian States, it would not have been possible for those of us who desired from the beginning to actively associate themselves with this work to take our place here. Therefore, on behalf of those of us who are here, I must thank the Negotiating Committee for having made this possible. It is true that we represent only a certain number of States. All of us who represent 93 millions in Indian States have not come here today. But one thing I should like to say, that we are by no means an insignificant minority. We, who have come here, represent no less than 20 million people out of 93 million people of Indian States and those who have formally and publicly announced their intention of joining the Constituent Assembly, form more than another 10 to 15 million people, so that actually when we come to think of it, a very substantial portion of the people of Indian States are represented in the Constituent Assembly today.

I should like to say one thing here and now, that we are not here by any means as a result of coercion or of any pressure that has been placed upon us. There has been no occasion for any pressure or any force to be used in regard to the States. This is a voluntary association that has been made clear from the very beginning. Any person, however highly placed who declares that our presence here is due to coercion or undue influence, I think, speaks without knowledge of facts. To such precious gentlemen, as would advise us to pause on account of alleged coercion, I have to say clearly and unequivocally that their insinuation is an insult to our intelligence. Are we less patriotic in matters connected with India ? Are we less concerned with the future of India that we have to be coerced to take part in a cause in which it is our right and duty to take part ? Therefore, I want to say firmly here and now, that there has been no coercion and it will not be in the wisdom of things or in the interest of things to talk about coercion of one part by the other.

One other point I desire to say. It is not by way of controversy or anything of the, kind. We are not here as a matter of favour. We have a right to be here for the purpose of co-operating in the great task of organising India's freedom. We consider that we have as much right in that matter as any one else. We are indeed asked by some people to wait and see. This is indeed a strange doctrine, because we can only wait and see what happens to others. Are we to wait and see as indifferent observers what happens Ourselves ? That being so, we consider that organising India's freedom as much our duty as it is of others. Looked at from that point of view, where can be no question of our waiting and seeing. We want no favour nor do we want to confer obligations. All that we want is that our problems should be viewed sympathetically by this august body in a sense of friendliness as affecting a large part of India. We, on our part, promise in all humility, to work for the betterment of India and for the Union which we all desire to see established. Sir, I thank you.

Mr. P. Govinda Menon (Cochin) : Mr. President, I am happy in that I have been invited to take part in the deliberations of this historic Assembly. During the last few months, discussions, controversies and negotiations were going on as to whether Indian States should send their representatives to this Assembly; if so, when and how ought they to be selected ? Much of this could have been avoided and the question would have been a most simple one if the question was tackled from the correct perspective, namely, from the perspective of the people of the Indian States.

They had never any doubts in the matter. The hundred millions of people of the Indian States never felt nor do they feel now, that they form an entity or group different from their 300 million brothers and sisters living in what is known as British India. For the last 27 years under the leadership of Mahatma Gandhi and other great leaders, India had been fighting for her independence. In that fight the people of the Indian States have always taken their due share, The people of the States did not feel nor did they take up the attitude that their lot lies elsewhere.

Now, after 25 years of war, when the nation sits down to frame the future Constitution we feel that it is our duty and our right to participate in the deliberations therefore. The people of the States, Sir, are one in their desire to participate in the Constituent Assembly.

Objections, doubts, questions come not from the people. They come when they do from Dewans, Ministers, Rulers, who by no means, except under the theory of Divine Right, can represent the people. Let me hope, Sir, that before the next Session of the Assembly, all the States would have taken the firm decision to collaborate with all of us and would send their representatives to this House.

In the matter of joining this Assembly as in many other matters, the attitude of my State, Cochin. has been unequivocal from the very beginning. The people of Cochin, like the people of all other States, wanted from the very beginning to join this Constituent Assembly and desired that their representative or representatives shall be elected. Cochin has been fortunate in that her Ruler has been of the same view. Long before questions of States' representation in this Assembly began to be actively considered, on the 29th July, 1946, the Maharaja of Cochin in a message to the Legislative Council said as follows :

> "The only other point remaining to be considered is about the Constituent Assembly and the representation of Cochin in it. It has not been settled yet how many representatives Cochin could send to this Assembly However, to set at rest all doubts about the method of representation, I am glad to announce that, after mature consideration, I have decided to allow the people to elect their representative or representatives. This election will be by the Council."

The above statement was made at a time when the question of States representation had not begun to be actively considered. No State had then said that it would stand independent and would have nothing to do with the Indian Constituent Assembly. Recently some such statements have been made. Cochin's position remains unchanged even after such attractive doctrines have been dangled before her. Her reaction cannot better be expressed than in the words of the Maharaja himself who, while opening the Aikya Kerala Convention at Trichur the day before yesterday, said as follows :-

> "Now let me come to the question of Cochin's relation to the rest of India. This Convention has met here for considering ways and means of establishing United Kerala. The Travancore Government has said that it does not favour this idea and has declared its intention of assuming independence after June, 1948. Its relations with the Central Government are going to be governed by Treaties. You would like to know in these circumstances what Cochin's attitude is in this respect. I have no hesitation to declare that Cochin would continue to remain part of the mother country. It is joining the Constituent Assembly at one. No word or act of mine shall usher in a day when a Cochinite finds, he has lost the right to call himself an Indian."

Because we are Indians, Sir, and because we want to share in the destinies of this great country, we have with pleasure and gratefulness accepted your kind invitation to take part in the deliberations of this historic Assembly. Sir, I thank you.

Sir T. Vijayaraghavachariar (Udaipur): Sir, I am glad to find myself in Delhi today. The old saying was that Delhi is at a great distance. I never felt the truth of it until this occasion. Previously I found Delhi so very near but on this occasion I find it has been very far and I am glad I am able to find myself here today, and I am glad that I am here today on a historic occasion. Cold as the winds that blow in December in Simla, and hard as flint like the rocks over which aeroplanes fly over the Baluchistan hills towards the west, must be the heart of the Indian who is not thrilled today at this sight of this Assembly, the Assembly which I feel certain will go down in history down the corridors of time. My feeling is that though we may come from different provinces and different States we are not here on behalf of any particular part of India; we are members of all India and that is quite clear. It is in that spirit that I feel certain that we shall all do our work here, not on behalf of any parochial interests, not on behalf of any narrow sectarian interests but on behalf of the broad interests of the one nation of India. I do not propose to refer to any local problems here; our local problems ought to be solved locally. This place is for all-India problems, and I do hope that all of us will so put our heads together and so do our work that our children and our grand-children and generations yet unborn, will say, "Our fathers and our grand-fathers sat in the year 1947 at Delhi and framed a constitution which has stood the test of time", and on which history will say, "Blessed are these men; they did their work and they laid the foundations rightly, and on those foundations will the future history of India evolve". It is not for us here to take any narrow views; we will take large views, and let us so conduct ourselves that in the future history of India they will say that we did our work properly and that we acquitted ourselves like men, like true sons of India and not true sons of any particular part of India.

I thank you, Mr. President, for the very kind words of welcome you have uttered.

Mr. Jainarayan Vyas (Jodhpur) *[Mr. President, on behalf of the people of the States and in their own language, I thank you for the welcome you have accorded to the representatives of the States.

We, the subjects of the States, had some status up to 1933, for in that year the Government of India Bill did refer to us in the expression 'The Princes and their subjects. Unfortunately, after that our existence was ignored. No mention of the States subject was made in the Government of India Act of 1935. When Sir Stafford Cripps came to India we were again forgotten. Nor were we referred to in the Cabinet Mission Proposals. We were placed under such circumstances as would have prevented us from sitting and working in this Assembly with you unless the Princes and their Governments decided to associate us with themselves. It is a pleasure that we are today making history. We are sitting together with (the representatives of) the British Provinces and the representatives of the Rulers (of the Indian States). Had not our Rulers come forward to include us among the States Representatives or had not the Negotiating Committees insisted on our being represented (in the Assembly) it was very likely under the conditions in which we were placed at the time that we would not have been here (in the Constituent Assembly). But it is a pleasure to find that we are here in sufficient numbers with you; and we assure you that we will co-operate with you in all Possible ways in making the future Constitution not merely in our self-interest but in that of the whole of India. We consider ourselves as parts of India, although some outsiders had raised walls between us. But these unnatural walls are crumbling today, and we hope that within a short time India would be absolutely one single unit. Once again, I thank you.]*

Raja Lal Shiva Bahadur (Rewa) : Sir, I join my friends in thanking you for the very cordial welcome you have extended to us. I represent one of the very big States in Central India, and if the Rewa State had not taken the lead, Central India would have gone unrepresented. I hope, Sir, in a very short period my friends in other States and our neighbouring States will definitely decide to join this historic House. The Rewa State will not lag behind in rendering all possible service to the mother country.

I thank you Sir.

MESSAGE OF GOOD WISHES FROM COORG

Mr. President: The Coorg Legislative Council have passed a Resolution which has been communicated to me by the Chief Commissioner, Coorg, for being communicated to this House. I will read it:

> "That this Council resolves to offer its prayerful wishes to the President and Members of the Constituent Assembly of India for the speedy and successful termination of their efforts to prepare an agreed constitution for India and recommends to the Chief Commissioner that these wishes be conveyed to the President of the Constituent Assembly, New Delhi."

REPORT OF THE STATES COMMITTEE

Mr. President: The next item is the Resolution which will be moved by Pandit Jawaharlal Nehru.

The Hon'ble Pandit Jawaharlal Nehru (United Provinces: General): Sir, I beg to move

> "The Constituent Assembly, having taken the report of its States Committee into consideration, resolves that it be recorded.
>
> The Assembly welcomes the States representatives who have already been chosen and expresses the hope that other States who have not chosen their representatives will take immediate steps to do so in accordance with the agreed procedure."

I understand that copies of the Report have been circulated to all the Members; I shall not therefore take up the time of the House in reading that Report. That Report is a brief summary of the activities of the Negotiating Committee appointed by this House. We have tried to make it as precise a summary as possible and it shows what took place and what we did, so that the House may be acquainted with the procedure we adopted and all that was said on those occasions. I might add, however, that if it is the wish of the House and if Members desire to see a fuller report of our proceedings, there is a verbatim Report in existence and this Report can be consulted in the Library of the House. I say this because sometimes all manner of rumours get about and people are misled and sometimes people imagine that we are not trying to put all the facts before the public. We have nothing to hide in this matter; indeed we could not possibly do so from this House; and therefore the verbatim Report of everything that was said on the occasions that we met with the Negotiating Committee, of the Princes is available for reference to any Member of the House in the Library. It is too long a report for us to have it printed and circulated, nor is it normally desirable to have such reports published in the public press. But there can be no secret as between the Committee of this House and the Members of this House, and therefore, while that document is not meant for publication, I should like to remind the Members, that it is there to be consulted by any Members of this House in the Library.

The House will remember that this Committee was appointed for a specific purpose--for fixing the distribution of seats of the Assembly not exceeding 93, and for fixing the method by which the representatives of the States should be returned to the Assembly. These were the definite directions given to us and we proceeded accordingly, but when we met the negotiating Committee appointed by the Chamber of Princes, other questions were raised. We were confronted by various Resolutions passed by organizations of the Princes. We informed them that we had no authority to deal with any other matter Our authority was limited to dealing with these two specific matters. Indeed we went a little further. We said we rather doubted the authority even of the Constituent Assembly to deal with all manner of other matters, that is to say, the Constituent Assembly as it is constituted at present. But in any event we were so anxious to get going, so anxious to remove any misapprehensions that might exist, that some of us had further conversations with them and some doubts that they raised were removed in the course of those conversations; some questions that were asked were answered informally, personally if you likes on our behalf because it was not open to us to go beyond the terms of the mandate that you gave us. You will see a reference to that in the Report that is presented to you, in particular because--I am bound to make this point perfectly clear--a few important points were raised by them in the course of those discussions. As it happened, what I said in reply to those questions had more or less been said by me in this House before or by other Members of this House, and therefore, I had no difficulty in saying it to them because otherwise I would have had this great difficulty of saying anything which the House might not approve, or might disapprove as wrong. All of us have certain views in this matter and on one of the occasions when I addressed this House in connection with the Objectives Resolution, I referred also to the States and to the Princes and made it clear that while I, in my individual capacity, held certain views, those views did not come in the way of my stating what the Constituent Assembly stood for, and what its range of activities was going to be. I said then that, while we were deciding in favour of a Republic for the whole of India, that did not bar any State from continuing the monarchical form of Government so far as that State was concerned, provided, of course, that they fitted in the larger picture of freedom and provided, as I hope that there was the same measure of freedom and responsible government in the State. So when these questions were raised. I had no particular difficulty in answering them because in effect they had been mentioned in this House previously.

What were those questions ? First, of course, was--it was an unnecessary question--as to the scope of our work, that is to say, how far we accepted the Cabinet Mission's Statement of May 16,1946. We have accepted it, and we are functioning in accordance with that Statement. There the matter ends. I do not know what future changes may take place and how these changes might affect our work. Anyhow, we have accepted that Statement in its fullness and we are functioning accordingly.

That leads inevitably to another conclusion, *viz.*, that such subjects, as did not come within the scope of the Union, were subjects to be dealt with by the Units--by the States and the Provinces --and that has been clearly laid down in the Cabinet Mission's Statement. So we said there and we made that clear. What the Union subjects might or might not be is a matter for careful consideration by this House now. But any subjects which did not come within the scope of the Union subjects necessarily are subjects left over to the Units.

Further it was stated that the business of joining the Constituent Assembly or accepting the. Scheme or not accepting it was entirely their own. As Mr. Panikkar has pointed out, there was no coercion, there can be no coercion either to a State, a Province or to any other part of India, which is participating in this Assembly. There can be no coercion, except, of course, the coercion or compulsion of events and that is certainly a compelling factor and a very big factor which none of us can ignore. So there is no question of compulsion; but at the same time it is true that if certain units or parts of India decide to come in, accepting their responsibilities, they get certain privileges in return, and those who do not come in do not get those privileges as they do not shoulder those responsibilities. That is inevitable. And once that decision has been taken by a Unit, State or other, other consequences inevitably follow, possibly widening the gulf between the two : that is the compulsion of events. Otherwise it is open to any State to do as it chooses in regard to this matter of coming in or not coming in. So that matter has been made clear.

The only other important matter that was raised in this connection was the monarchical form of Government in the States. As I stated in this House previously, in the world today this system of rule by monarchy, whatever good it may have done in the past, is not a system that might be considered to be popular. It is a passing institution : how long it will last I do not know. But in this matter my opinion is of little account. What counts in what this Assembly desires in this matter : what it is going to do : and we have made it clear on a previous occasion that we do not wish to interfere in the internal arrangement of the States. It is for the people of the States to decide what they want and what they do not want. The question, in fact, does not arise in this Assembly. Here we are dealing with Union matters, subjects of fundamental rights and the like. Therefore this question of the monarchical form of Government in the States did not arise here and I told them that so far as we were concerned we were not going to raise that particular subject here.

Lastly, there was the question or rather the misapprehension due to certain words in the Objectives Resolution of this Assembly, where some reference has been made to territorial boundaries being changed. The House will remember that that had no connection with the States as such. That was a provision for future adjustments as they are bound to be Involved. Further it was a provision for suitable units to come into existence, which can be units of this Indian Union. Obviously one cannot have very small units or small fractions of India to form part of the Union. Some arrangement has to be made for the formation of sizable units. Questions arise today and will arise tomorrow even about the division of Provinces. There is very, strong feeling about it. We are discussing today, though for other reasons, about the division of certain Provinces like the Punjab and Bengal. All these have to be considered but this has nothing to do with the provision in the Objectives Resolution. The point has been settled in the Negotiating Committee that any changes in territorial boundaries should be by consent.

Those were the statements I made on behalf of our Negotiating Committee to the other Committee and those statements removed a number of misapprehensions and we proceeded ahead with the consideration of other matters.

Among the other matters was, firstly, the question of the distribution of seats. We decided to refer this matter to the two Secretariats--the Secretariat of the Constituent Assembly and that of the Chamber of Princes. We referred this matter, I think, at 1-30 P.M. one day. Those two Secretariats met, I think, at 3 P.M. the same day and 5 P.M. they arrived at an agreed procedure. That was rather a remarkable thing which is worth remembering. It is true that the rules governing the distribution were to some extent laid down in the Cabinet Mission's Scheme--one seat per million, that is, 93 seats in all. Unfortunately these matters of distribution are difficult and often arouse great controversies and arguments. Nevertheless these two Committees met together and I am very glad that the Secretariat of the Constituent Assembly was helped by the representatives of the States to come to an agreed solution within two hours. That showed that if we approach any of these apparently difficult problems with good will, we find solutions and we find rapid solutions too. I do not mean to say that that solution in regard to the distribution of these seats was a perfect one. Since the agreement was reached certain objections have been raised and criticisms have been made in regard to the grouping of the States here and there. Ultimately we left it to a sub-Committee--a joint Committee of our Negotiating Committee and the States Negotiating Committee--to consider this matter and to make such minor alterations as they thought fit and proper. Now because of these grouping difficulties, a number of States, which might be represented here, are not here. That is to say, the States concerned want to come in and they are quite prepared to de so but the group has not begun to function. Therefore individually they are prevented from coming in. Only yesterday I was informed that one important State, the State of Cutch, was eager and anxious to come in but they formed part of a group of Kathiawar and other States, rightly or wrongly, and till the whole group gets into motion, they do not know how to come in separately. This is a matter to be considered by the sub-Committee. But the point I want to put before the House is this that in this matter as soon as we came to grips with the subject and gave up talking in vague generalities and principles or rights of this group and that group, we came to a decision soon enough and that is a good augury for our work in future, whether it relates to the people of the States or to the rest of India or to any group in India.

We, who meet here, meet under a heavy sense of responsibility--responsibility not only because the task which we have undertaken is a difficult one or because we presume to represent vast numbers of people, but because we are building for the future and we want to make sure that that building has strong foundations, and because, above all, we are meeting at a time when a number of disruptive forces are working in India pulling us this way and that way, and because, inevitably and unfortunately, when such forces are at work, there is a great deal of passion and prejudice in the air and our whole minds may be affected by it. We should not be deflected from that vision of the future which we ought to have, in thinking of the present difficulties. That is a dangerous thing which we have to avoid, because we are not building for; today or tomorrow, we are making or trying to make a much more enduring structure. It is a warning which the House will forgive me, if I repeat--that we must not allow the passion and prejudice of the moment to make us forget what the real and ultimate problems are which we have to solve. We cannot forget the difficulties of the present because that come in our way all the time. We have to deal with the problems of the present, and in dealing with them, it may be, unfortunately that the troubles we have passed through all these years may affect us, but, nevertheless, we have to get on. We have to take quick decisions and final decisions in the sense that We have to act on them. We have to be realists and it is in this spirit of realism, as also in a spirit of idealism, that I say that our Negotiating Committee approached this task.

The House knows that some of the members of the Committee have been intimately associated with the struggle of the peoples of the States for their freedom. The more I have been associated with that struggle, the more I have seen that it cannot be separated from the all-India problem; it cannot be isolated. It is an essential and integral part of the all-India problem, all-India structure, just as the States are an integral part of India. You cannot separate them. And with all my anxiety to further the progress of the peoples of the States with such strength as is in me in my individual or other capacities, when I met the Negotiating Committee I had to subordinate my individual opinions because I had to remember all the time that I was representing this Constituent Assembly. I also had to remember that, above all, we had gone there not to bargain with each other, not to have heated argument with each other, but to achieve results, and to bring those people, even though they might have doubts, into this Assembly, so that they might come here and they might also be influenced by the atmosphere that prevails here. For me it was the solemnity of the task which we had undertaken, and not to talk in terms of results, or individuals or groupings, or assurances. What assurance do we seek from each other ? What assurance is even this House going to give to anybody in India, except the assurance of freedom ? Even that assurance will ultimately depend on the strength and wisdom of the Indian people afterwards. If the people are not strong enough and wise enough to hold together and proceed along the right path, the structure that you have built may be shattered. We can give no assurance to anybody.

With what assurance have we sought freedom for India all these years ? We have looked forward to the time when some of the dreams that we were indulging in might become true. Perhaps, they are coming true, perhaps not exactly in the shape that we want, but, nevertheless, they will come true. It is in that conviction that we have proceeded all these years. We had no guarantees. We had no assurances about ourselves or about our future. Indeed, in the normal course of events the only partial guarantee that most of us had was the guarantee of tears and troubles, and we had plenty of that. It may be that we shall have plenty of that in the future too; we shall face them. This House will face it and the people of India will face it. So, who are we to give guarantees to anybody ? But we do want to remove misapprehensions as far as possible. We do want every Indian to feel that we are going to treat him as an equal and brother. But we also wish him to know that in the future what will count is not so much the crown of gold or of silver or something else, but the crown of freedom, as a citizen of a free country. It may bee that a time may come soon when it will be the highest honour and privilege for anybody, whether he is a Ruler or anybody else, to be a free citizen of a free India and to be called by no other appellation or title. We do not guarantee because we guarantee nothing to anybody, but that is the thing which we certainly hope to achieve and we are certain to achieve. We invite them to participate in that. We welcome those Who have come, and we shall welcome those others when they come. And those who will not come--we shall say nothing about them. But, as I said before, inevitably, as things are, the gulf will widen between those who come and those who do not come. They will march along different paths and that will be unfortunate I am convinced that, even so, those paths will meet again, and meet sooner rather than later. But, in any event, there is going to be no compulsion. Those who want to come, will come, and those who do not want to come, do not come. But there is this much to be said. When we talk about people coming in and people who do not come in, let it be remembered, as Mr. Govinda Menon said, that the people of the States--I say with some assurance and with some authority in the matter--want to come into this Assembly, and if others prevent them from coming, it is not the fault of the people, but breaks and barriers are put in their way. However, I hope that these questions will not arise in the future and that in the coming month or two nearly all the States will be represented here, and, jointly we shall participate in the final stages of drawing up the Constitution.

I am placing this Resolution before the House to record the Report. There has been some argument about this matter too and people attach a great deal of importance to words and phrases and assurances and things like that. Is it not good enough that I have put it to the House ? If it is not good enough, I may repeat what has been stated. Even if that is not good enough, what we have stated is there in the verbatim Report of the meetings; we have nothing to add to it, we shall stand by that. We do not go back. But the procedure to be adopted must be a correct procedure. When this

Committee was appointed you asked us to report and we have reported. We had got to do something, and we tried to do that and did it. Now, if this matter was to come up for ratification before this House before it could be acted upon, obviously, representatives of the States who are here now would not have been here. They would have been sitting at the doorstep or somewhere outside waiting for ratification, waiting for something to happen till they came in. That was not the way in which we understood our directions. We understood that we had to come to some honourable agreement and act up to it so that representatives of the States might come in as early as possible. We were eager in fact that they should join the Committees of this Assembly the Advisory Committee, the Fundamental Rights Committee, the Union Powers Committee and the other Committees which we have formed. It is not our fault that there was delay. At the very first joint meeting of the Negotiating Committees we requested the States Committee to join quickly, indeed to send their representatives to these Committees of the Constituent Assembly as soon as possible. We were asked for assurance at every stage and there were delays. But the way we have understood your mandate was that we had to go ahead and not wait for ratification of every step that we had taken. We acted accordingly, and I am happy that some of the States' representatives are here today and I hope more will come. So the question of ratification does not arise so far as this Committee's work is concerned. The Report is before you. If you disapprove of any single step that we have taken, express your disapproval of whatever might have happened, or otherwise give your directions.

The resolution I have moved is for your adoption. I shall not go into the details in regard to the distribution of the seats and the manner of selection of the delegates from the States. It was a sort of compromise. Naturally it was my desire, as it was the desire of my colleagues that the representative of the States should be elected by the people of the States, partly because it was the right way, and partly because it was the way in which they could be fitted with the other elected elements of this House. On the other hand, I considered it right and desirable that the States governments should also be represented here to bring reality to the picture. The correct way and the right way ultimately will be for the State government itself to be representative of the people and then come in to represent them here. But we have to take things as they are. The States governments, generally speaking, do not represent the people in the democratic sense. In some places they partially represent them. Anyhow, we did consider it desirable that the State governments as such, should also be represented though we would have liked the largest number of representatives to come from the people. Ultimately after a great deal of discussion it was decided that not less than 50 per cent of the representatives should be elected by the elected members of the assemblies where they exist, or by some other method of election which may be devised. We came to a compromise on this proportion, thought we would have liked the proportion to be higher. Some of the States have actually acted as if the proportion were higher. I submit that this comprise that we came to was an honourable compromise for all parties concerned and I think it will lead to satisfactory results so far as this House is concerned, and I commend the resolution to the House.

Mr. President: The motion is:

"The Constituent Assembly having taken the report of its States Committee into consideration resolves that it be recorded.

The Assembly welcomes the States representatives who have already been chosen and expresses the hope that other States who have not chosen their representatives will take immediate steps to do so in accordance with the agreed procedure."

Members who wish to say anything about this motion may now speak.

(At this stage Dr. Kailas Nath Katju approached the rostrum.)

Mr. Somnath Lahiri (Bengal: General) : On a point of information Sir, of the representatives of the States who have come to participate in this House, how many have been elected and how many nominated by the States?

Mr. President: The Secretary will give you this information. In the meantime, Dr. Kailas Nath Katju will please proceed with his speech.

The Hon'ble Dr. Kailas Nath Katju : (U.P. : General): Mr. President, I ventured to come here for a few minutes and address you on this Resolution because I am connected with one of the States in Central India and also with some in Rajputana; and I have made my home in the United Provinces by adoption. I am, therefore, intensely interested in the endeavour which you are making and I venture to congratulate the Negotiating Committee on the great results that have been achieved.

There are a great variety of States, and there are hundreds of them. Some of the States go back and are rooted in the history of our race. Others are of very, recent origin, going back only a century or so and with little of tradition and little of moral authority behind them. I do not wish to pursue this topic at any great length; but I have no doubt in my mind that it is for the good of the States and it is for the good of the people of the States that they should join this great Indian Union of which Pandit Jawaharlal has spoken so eloquently. I have no doubt in my mind that the course of Indian history teaches us that a union of this great country is an inevitability. When I hear of some Provinces or some States or territorial units claiming to be sovereign States or claiming authority for themselves, I wonder whether they have ever considered the drift of Indian history. There is no shadow of doubt in my mind that within the course of the next fifty years, whatever we may do today, or whatever we may say today, the course of events will compel the people to bring about one united Government, one united Centre in India. It is good therefore for the people of the States, it is good for the people of all States, it is good for the Rulers of these States that they should come in and join in this great endeavour. Instead of the Rulers relying upon their so called strength, I think their safety, their integrity and their very existence lies in relying upon the affection, and upon the trust of their own people. If they rely upon that, they may continue, otherwise most of these States will disappear without much regret on the part of their people or on the part of the rest of India. With these words, I commend this Resolution to the care of the House and I should join in the appeal which has been made to every section of the House that in a short time, we will see almost all the States come in and join this Assembly.

Mr. President: Mr. Lahiri desires to know when notice of amendments should be given. He complains that notice of this Resolution was received by him last night. I am afraid it is now too late now for him to give notice of amendment.

I shall now put the Resolution to the House:

The question is:

"The Constituent Assembly having taken the report of its States Committee Into consideration resolve that it be recorded.

The Assembly welcomes the States representatives who have already been chosen and expresses the hope that other States who have not chosen their representatives will take immediate steps to do so in accordance with the agreed procedure."

The motion was adopted.

Mr. President: I desire to give the information wanted by Mr. Lahiri. Out of sixteen members representing the States who are attending today, five are nominated and eleven are elected.

ELECTION OF ADDITIONAL MEMBERS TO STEERING COMMITTEE

Shrimati G. Durgabai (Madras: General): Sir, I consider it my proud privilege to be able to stand here today and move the motion which stands in my name. Before I do so, I may be permitted to express my great joy at the presence of the representatives of some of the Indian States who are here today in our midst on this occasion. My heart-felt and sincere thanks are due to those States which have extended their co-operation and joined us in our work.

With your leave, Sir, I move:

"Resolved that this Assembly do proceed to elect, under sub-rule (2) of Rule 40 of the Constituent Assembly Rules, two additional members to the Steering Committee from among the representatives of the Indian States, in accordance with the principle of proportional representation by means of the single transferable vote."

Sir, sub-rule (2) of Rule 40 of the Constituent Assembly Rules lays down the procedure for election of members to the Steering Committee. It says :

"The Assembly may from time to time elect, in such manner as it may deem appropriate, 8 additional members of whom four shall be reserved for election from among the representatives of the Indian States."

Sub-rule (1) of Rule 40 lays down:

"A steering committee shall be set up for the duration of the Assembly and shall consist of eleven Members (other than the President) to be elected by the Assembly in accordance with the principle of proportional representation by means of the single transferable vote."

Sir, I may be permitted to state in this connection that in accordance with these Rules, eleven members were initially elected to this Committee on 20th January and the Committee has been functioning with these members. According to sub-rule (2), eight additional members are to be elected from time to time out of whom four are reserved for election from among the representatives of Indian States. It is considered desirable at present that only two out of four will be elected now and that the election of the two other members shall be postponed to a future date. We would have been happy had all the four members been elected on this occasion. But we thought it desirable to elect only two members at present and postpone the election of two other members to a subsequent date, when we will be fortunate enough to have a much larger representation of Indian States on this Assembly and an present here. We fondly hoped that some of the leading States like Hyderabad, Travancore, Mysore and some other States would have made up their minds to join us here in our work and co-operate with us. But I am sadly disappointed to find that they are not able to come and see eye to eye with us and that they are still pursuing a policy of "wait and see". I hope that it will not be before long, that they will follow the noble example set up by States like Baroda, Bikaner, Rewa, Gwalior, Cochin, Udaipur, Jodhpur and some other States, whose representatives we have here in our midst and send their representatives also to help us in this great task of forging a constitution for this great country. I extend a hearty welcome to those representatives who will be elected to this Committee, to function on this Committee to help us with their advice and guidance in our work. With these words, I commend this motion for the acceptance of this House.

Mr. President: Motion moved:

> "Resolved that this Assembly do proceed to elect, under sub-rule (2) of Rule 40 of the Constituent Assembly Rules, two additional members to the Steering Committee from among the representatives of the Indian States, in accordance with the principle of proportional representation by means of the single transferable vote."

Mr, H. V. Kamath (C. P. & Berar: General) : Sir, under sub-rule (2) of Rule 40, four seats have been reserved for election from among the representatives of the Indian States. You have just now been good enough to tell us that today only sixteen representatives are present and seventy-seven are absent. In fairness to the members who are absent, I would suggest that only one seat may be filled today and the other three seats may be filled up later on.

Mr. President: The amendment of Mr. Kamath is that in place of two seats, one seat should be filled by election today.

The Hon'ble Pandit Jawaharlal Nehru: Sir, the Steering Committee has to work from day to day, and if you keep seats vacant for those people who are not here, it is neither good for them nor for the House nor for the Steering Committee. The work of the Steering Committee does not really Involve matters of high principle, but it is very important work and it does affect the business of the House. I think it is not fair that the places of those who do not come here should be kept vacant and we should go on waiting. Of course I do not want anything to be done which might be injurious to their interests, and therefore any important matter can be raised again. Now that we have a chance to take them in, we should do so. It is open to the House to reconsider any matter of vital importance later. At the present moment it is desirable to give full opportunities to those who will come to take part in the business.

Mr. H. V. Kamath: Sir, in view of the assurance given by the Hon'ble Pandit Nehru that the number of seats will be increased at a later date I beg to withdraw the amendment.

Mr. President: I now put the resolution to vote.

The motion was adopted.

Mr. President: Nominations will be received up to 2 P.M. tomorrow and elections, if any, will be held from 4 to 5 P.M. in Room No. 24.

REPORT OF THE COMMITTEE ON UNION SUBJECTS

Mr. President: Presentation of the Report of the Committee appointed by the Resolution of the Constituent Assembly of the 25th January, 1947, to examine the scope of Union subjects.

Mr. B. V. Kamath: Sir, is it only the presentation of the Report or is a motion being moved ? There is no notice of a motion.

Mr. President: If the Hon'ble Member will wait and hear, he will know what it is.

The Hon'ble Sir N. Gopalaswami Ayyangar (Madras: General): Sir, I come forward to perform a merely routine and prosaic duty of presenting the Report of the Committee on Union subjects. It is not intended that any motion on this Report should be placed before this House today. This Committee was appointed on the 25th January for the purpose of examining the scope and content of the subjects assigned to the Centre in the Statement of the Cabinet Mission of May 16th and to draw up lists of matters included in and interconnected With the subjects so assigned. The Committee started with a strength of twelve and power was reserved to you, Sir, to nominate ten more, the intention being that some seats should be filled by nomination of representatives of the Muslim League if they came in, and others should be assigned to representatives of the Indian States. As it is, the Muslim League has not so far come in, and as Pandit Jawaharlal explained to you a little while ago, strenuous attempts were made to get the full quota of nominations for representatives of the Indian States being filled in, if possible. But it was not possible to do so. In the later stages of our deliberations, however, we have had the assistance of two distinguished representatives from Indian States.

Now, Sir, I said I was only performing this prosaic duty; I was not going to perform the function which my Hon'ble friend, Mr. Kamath, would have liked me to perform today. Copies of this Report, I believe, have been circulated to Members. It is not, therefore, necessary that I should read the Report; and in connection with mere presentation of reports in a deliberative assembly of this kind it is not usual to make a speech on the contents of such a report except on an occasion such as the one mentioned by Mr. Kamath, for instance, on a motion for taking the Report into consideration. That motion is not to be made today, nor is it intended by those to whom has been entrusted the task of steering the business of this Assembly. It is not their intention that such a motion should be placed before the House during the current Session. There are several reasons why this decision has been taken. In the first place, Sir, the subject is a very important one; it is a vital matter connected with the framing of the Constitution, and it is only desirable that this Report on so important a subject should be read through and studied carefully by Members of this House before it is taken into consideration. And then we have got to remember that the Committee had to work on the Cabinet Mission's Plan. That Plan contains some very unusual features, the unusualness really resulting from the desire to satisfy the wishes of the Muslim League if it ever decided to come in. The coming in of the Muslim League is not yet officially ruled But; there is still a possibility of their coming in, though the probability is perhaps very small. Should this possibility materialise it would be only just and reasonable that the debate on so important a subject, as the subjects and powers to be assigned to the Union centre, should be held in a House which contains a full representation of the Muslim League. Whether they will come in or not will by definitely known before the June-July Session of this Assembly. And that is one main reason why we are not taking up the discussion of this matter in this current Session.

Then, Sir, there are the Indian States--a number of representatives of Indian States have joined us today but there is a very large number still to come in. Those have not come in because they require time for going through the procedure prescribed for the purpose of choosing them and sending them to this Assembly. The Indian States have got a very vital interest in the matter which is covered by the Report of this Committee, and it is desirable that as full a representation of the Indian States as possible should be in the Assembly before we begin to discuss so important a matter. Thirdly, Sir, there is the question of the present political conversations. The decisions on those conversations are not available yet: they will be available in all probability before we meet again in the June-July Session. The decisions will be of the most important character, and I think the House will agree with me in thinking that those decisions will have very important repercussions on the plan of work which this Constituent Assembly will have to adopt in framing the Constitution for the country if that decision should, as it is feared, take the shape of anything like the division of India into two or more independent States it may become necessary for this Assembly to deviate from rigid conformity to the Cabinet Mission's Plan. It is unnecessary for me to say now in what directions this deviation might become necessary. The nature of those deviations must necessarily depend upon the political decisions that are taken but apart from such deviations the number of subjects that have to be assigned to the Centre, their scope and content, the definition of a field of concurrent jurisdiction between the Union and the Units, and the relations between the Union and the Units as regards the exercise of legislative and administrative powers, will all be matters which would require a fresh and thorough examination. This examination will so far as I can visualize have to be done in close collaboration between the Committee on Union Subjects and the two Committees which are proposed to be set up in the course of the current Session--one for the purpose of determining the principles of the Union Constitution, and the other for determining the principles of a model provincial constitution. These three Committees will have to work in close collaboration, and it is necessary that before they enter into such collaboration, they must have before them the political decisions that will have been reached before them.

Now, Sir, taking all these facts into consideration, it is, I think, very necessary that the debate on the Report of the Committee on Union Subjects should be postponed beyond this Session, to the next Session, and therefore it is that I am not placing before you any motion for taking this Report into consideration today.

There is one matter about which I think I must ask the permission of the House to approve of what this Committee has done. In the original Resolution appointing this Committee, it was asked to submit its Report before the 15th of April. As a matter of fact, the Committee signed its Report on the 17th of April. I do hope, Sir, that the House will excuse this delay of two days.

There is another matter which I might mention. This Report should not be taken as the final Report of the Committee on Union Subjects. I have already placed before you considerations which will necessitate the matter being reviewed and overhauled by the same Committee in collaboration with other Committees. There are matters, for instance, connected with Indian States, which require perhaps more consideration than it was possible to give them during the time that this Committee met between its appointment and today. The representatives of the States who wish to give us the benefit of their views feel that there are some matters which require further investigation before they could finally commit themselves, and there are also other matters and certain questions connected with the subjects which have been listed in this Report about which greater consideration, it is considered by certain members of the Committee, would be necessary. And apart from that there is looming before us the political decision which will necessitate our overhauling the entire Report if it comes to that, Therefore, Sir, I request the permission of the House to let this Committee submit a further Report if it becomes necessary. With these words, I merely present the Report of the Committee to the House.

Mr. President: The Report has been presented. I think the House will condone two days delay in signing it, and will also give permission to the Committee to submit another Report if it finds it necessary to do so.

This was unanimously agreed to.

Mr. R. K. Sidhwa (C.P. & Berar: General) : When the subsequent Report is presented, may I know whether this Report will also be open to discussion. We have not read even a single sentence of this Report which has been presented to the House.

Mr. President: We are not entering into any discussion on this Report. Me Hon'ble Member will read this Report, and we can then discuss it during the next Session.

We will meet at 8-30 tomorrow morning and we will go on until 12-30 when we will adjourn. Any Member who has any amendments to suggest to the Report of the Fundamental Rights Committee should do, so before 5 o'clock this evening. The Report will be taken into consideration tomorrow. The House now stands adjourned until 8-30 A.M. tomorrow.

The Assembly then adjourned till half past Eight of the Clock, on Tuesday, the 29th April, 1947.

[English translation of Hindustani speech]

APPENDIX A

CONSTITUENT ASSEMBLY OF INDIA

Report of the Committee appointed to negotiate with the States Negotiating Committee

By a resolution of the Constituent Assembly passed on the 21st December 1946, the following members, *viz.*

(1) The Hon'ble Pt. Jawaharlal Nehru

(2) The Hon'ble Maulana Abul Kalam Azad

(3) The Hon'ble Sardar Vallabhbhai J. Patel

(4) Dr. B. Pattabhi Sitaramayya

(5) Mr. Shankarrao Deo

(6) The Hon'ble Sir N. Gopalaswami Ayyangar

were appointed as a Committee to confer with the Negotiating Committee set up by the Chamber of Princes, and with other representatives of Indian States, for the purpose of

(a) fixing the distribution of the seats, in the Assembly not exceeding 93 in number, which in the Cabinet Mission's Statement of May 16, 1946, are reserved for Indian States,

(b) fixing the method by which the representatives of the States should be returned to the Assembly,

and thereafter to report the result of such negotiations. By a further resolution passed on the 21st January, 1947, we were empowered to confer with such persons as we thought fit, for examining the special problems of Bhutan and Sikkim, and to report to the Assembly the result of such examination. This report deals only with the negotiations conducted by us in pursuance of the resolution of the 21st December.

2. The first series of our joint meetings with the States Negotiating Committee were held on the 8th and 9th February, 1947. The discussion largely centered on the scope of subjects to be negotiated between the two committees. It was urged by the States Negotiating Committee that there had been no decision yet on the part of the States to enter the Constituent Assembly, and that it would not be possible for them to decide this issue till they received satisfactory assurances on a number of points mentioned in the resolution adopted on the 29th January, 1947, by the General Conference, of Rulers (Appendix A). On the other hand, we pointed out that most of those points could only be discussed by a fully constituted Constituent Assembly including the representatives of the States; they were in any case clearly beyond our competence as a Committee, our own functions being limited to the matters laid down in the resolution of the Constituent Assembly passed on the 21st December, 1946. But while we were not prepared as a committee to discuss matters going beyond our mandate, we raised no objection to discussing, in a friendly and informal manner as individuals, certain difficulties, and to removing certain misapprehensions which seemed to be causing concern to the Princes. The more important of the points cleared up in the course of these discussions were summarised by Pandit Nehru as follows:-

"The first thing to be clear about is to proceed with the full acceptance of the Cabinet Mission's Statement. Apart from the legality of that Statement one thing also seems to me obvious, namely, that the scheme is essentially a voluntary one, where no compulsion, except, as I said, compulsion of events, is indicated. No doubt, so far as we are concerned, we accept it as a voluntary scheme where people may join as individuals, as groups, or Rulers or otherwise. We are not trying to force any to join if they do not want to. It is a matter for negotiation throughout......

"Now, to go back, apart from the acceptance of the scheme which is basic, some points were raised yesterday. One was about the monarchical form of Government. That question has not arisen at all in the Constituent Assembly nor, so far as we can see, does it arise at all from the Statement. But it has been repeatedly stated on our behalf in the Constituent Assembly as outside that we have no objection to it we accept that, and we do not want to come in the way of the monarchical form of Government at all. This has been made perfectly clear.

"Another point that we raised in our discussion yesterday was about some apprehension about territorial readjustments. I tried to point out that the Resolution passed by the Constituent Assembly had no reference in the minds of those who framed the Resolution or who proposed it there, to any change regarding the States. It has no relation to the States. It was an indication that there will be provision- made in the constitution or in the process of re-grouping units, etc., where some changes may have to be made. It had no reference to changing boundaries. I can concede territorial boundaries being changed for economic reasons, for facilitating governmental purposes, etc., but any such territorial readjustments, we are quite clear, should be made with the consent of the parties concerned, and not be forced down. I say, for the moment we are not thinking in terms of any such thing, but if this question arises, it should be essential that the parties concerned should consent to it.

"The scheme, as has already been stated, is a voluntary one, and whether in regard to the entry into the Constituent Assembly or subsequently when the Constituent Assembly decides and comes to conclusions, there will be no compulsion, and the States will have the right to have their say at any stage just as anybody else will have the right to have their say at any stage. So the coercive factor must be eliminated from that.

"In regard to some confusion which has possibly arisen in regard to subjects and powers, we go on what the Cabinet Mission's, Statement specifically says. The Cabinet Mission's Statement said. "The States will retain all subjects and powers other than those ceded to the Union." That is perfectly clear, we accept that statement, we accept that entirely. Generally speaking, those are the matters that came up yesterday in the course of discussion, and perhaps we might proceed on that basis and consider matters now."

We further explained that the Constituent Assembly could not possibly take up the position that they were not prepared to discuss matters with States not represented on the Chamber of Princes Negotiating Committee; or with representatives of States peoples, as that would involve an element of compulsion which was contrary to their conception of the scheme.

3. A general understanding having been, arrived at. as a result of the above exchange of views, the States Negotiating Committee proceeded to consider the two matters on which we had been asked to, negotiate by the Constituent Assembly. After a preliminary discussion, it was decided that the question of the distribution of the 93 seats should be referred to the Secretariats of the Constituent Assembly and the

Chamber of Princes, and their recommendations placed before the next meeting of the two committees on the 1st March, 1947.

4. In the meanwhile, the Dewan of Baroda, had asked for direct negotiation with us on the representation of Baroda in the Constituent Assembly. We accordingly met Sir B. L. Mitter on the 9th February. In the course of our discussion, he made it clear that it was the decision of the Baroda State, both the Ruler and the people, to give the fullest cooperation to the Constituent Assembly in its work and that they were prepared to take steps forthwith for the selection of representatives so that these could take part in the work of the Assembly at the earliest possible date. It was agreed between us and the Dewan that Baroda should, having regard to its population, send three representatives and that these should be elected by the Dhara Sabha (the State legislature) on the principle of proportional representation, by means of the single transferable vote, and that only its elected and nominated non-official members should take part in the election.

5. The next joint meeting of the two committees was held on the 1st March, 1947. At this meeting we urged that H.M.G.'s declaration of the 20th February had introduced an additional element of urgency in our task and that it would be greatly to the advantage of the States no less than to the British Indian representatives in the Constituent Assembly if States' representatives could join the Assembly during April session. We pointed out that there was nothing in the State Paper of the 16th May which operated as a bar against States doing so. We also suggested that it would be to our mutual advantage if States' representatives could function forthwith on some of the committees set up by the Constituent Assembly, particularly the Union Powers Committee and the Advisory Committee on fundamental rights, etc. The States Negotiating Committee, however, expressed their inability to take these steps in the absence of a mandate from the General Conference of Rulers whom they promised to consult at an early date.

6. The discussion then turned on the method of distribution of the 93 seats allotted to the States. The Committees approved of the distribution as proposed by the two Secretariats, (Appendix B) and authorised the making of such minor modifications as are considered necessary by the parties concerned.

7. After this, we discussed the method of selecting representatives. Various proposals were made and discussed in a joint sub-committee set up for the purpose. Eventually, after a consideration of the sub-committee's report, the following formula was accepted by both Committees, *viz.,* that not less than 50 per cent. of the total representatives of States shall be elected by the elected members of legislatures or, where such legislatures do not exist, of other electoral colleges. The States would endeavour to increase the quota of elected representatives to as much above 50 per cent. of the total number as possible.

This formula has since been ratified by the General Conference of Rulers held on the 2nd April. A copy of the resolution. passed by the Conference is attached (Appendix C).

We pointed out that in regard to two States, viz., Hyderabad and Kashmir elections to their legislatures had been boycotted by important organisations representing the people of the States concerned, and the legislatures therefore could not be considered to represent the people as they were intended to do. In the cases of these two States, we suggested that a suitable method of electing representatives for the Constituent Assembly should be devised. The Chancellor said that he would communicate the suggestion to the States concerned.

8. A Committee consisting of the following members: (1) Dr. Pattabhi Sitaramayya; (2) Sir N. Golpalaswami Ayyangar; (3) Sir V. T. Krishnamachari; (4) Sir Sultan Ahmed; (5) Sir B. N. Rau; (6) Mir Maqbool Mahmood; (7) Mr. H. V. R. Iengar was set up to consider the modifications referred to in para. 6 above and other matters of detail that might arise from time to time and to report, if necessary, to the two Negotiating Committees.

We have been informed that the States of Baroda, Jaipur, Jodhpur, Rewa, Cochin and Bikaner have already selected their representatives in accordance with the agreement arrived at. These representatives have been invited to take their seats at the forthcoming session of the Assembly. The States of Patiala, Udaipur, Gwalior and Bhavnagar have also announced that they will take part in the work of the Constituent Assembly

JAWAHARLAL NEHRU.

A. K. AZAD.

VALLABHBHAI PATEL.

N. GOPALASWAMI.

SHANKARRAO DEO.

B. PATTABHI SITARAMAYYA.

NEW DELHI

24th April, 1947.

[Enclosure 1 to Appendix A]

TEXT OF RESOLUTION PASSED AT PRINCES MEETING HELD ON 29-1- 47.

1. This meeting reiterates the willingness of the States to render the fullest possible co-operation in framing an agreed Constitution for, and in the setting up of, the proposed Union of India in accordance with the accepted plan; and declares:-

(a) that the following fundamental proposition inter alia form the basis for the States' acceptance of the Cabinet Mission's plan--

(*i*) The entry of the States into the Union of India in accordance with the accepted plan shall be on no other basis than that of negotiation, and the final decision shall rest with each State. The proposed Union shall comprise, so far as the States are concerned, the territories of only such States or groups of States as may decide to join the Union, it being understood that their participation in the constitutional discussions in the meantime will imply no commitments in regard to their ultimate decision which can only be taken after consideration of the complete picture of the constitution.

(*ii*) The States will retain all subjects and powers other than those ceded by them to the Union. Paramountcy will terminate at the close of the interim period and will not be transferred to or inherited by the new Government of India. All the rights surrendered by the States to the Paramount Power will return to the States. The proposed Union of India will, therefore, exercise only such functions in relation to the States in regard to Union subjects as are assigned or delegated by them to the Union. Every State shall continue to retain its sovereignty and all rights and powers except to the extent that those rights and powers have been expressly delegated by it. There can be no question of any powers being vested or inherent or implied in the Union in respect of the States unless specifically agreed to by them.

(*iii*) The Constitution of each State, its territorial integrity, and the succession of its reigning dynasty in accordance with the custom, law and usage of the State, shall not be interfered with by the Union or any Unit thereof, nor shall the existing boundaries of a State be altered except by its free consent and approval.

(*iv*) So far as the States are concerned, the Constituent Assembly is authorised only to settle the Union Constitution in accordance with the Cabinet Mission's plan, and is not authorised to deal with questions bearing on the internal administrations or constitutions of individual States or groups of States.

(*v*) His Majsety's Government have made it clear in Parliament that it is for the States to decide freely to come in or not as they choose. Moreover according to the Cabinet Mission's Memorandum of 12th May, 1946, on States Treaties and Paramountcy "Political arrangements between the States on the one side and the British Crown and British India on the other will be brought to an end" after the interim period. "The void will have to be filled either by the States entering into a federal relationship with the successor Government..... in British India, or failing this, entering into particular political arrangements with it."

(*b*) that the States Negotiating Committee, selected by the Standing Committee of the Chamber of Princes and set up at the request of His Excellency the Viceroy in accordance with paragraph 21 of the Cabinet Mission's Statement of the 16th May, 1946, is the only authoritative body competent under the Cabinet Mission's- plan to conduct preliminary negotiations on behalf of the States, on such questions relating to their position in the new Indian Constitutional structure as the States might entrust to It.

(*c*) that while the distribution *inter se* of the States' quota of seats on the Constituent Assembly is a matter for the States to consider and decide among themselves, the method of selection of the States representatives is a matter for consultation between the States Negotiating Committee and the corresponding Committee of the British India portion of the Constituent Assembly before final decision is taken by the States concerned.

2. This meeting--

(*a*) endorses the Press Statement issued on 10th June, 1946, by the Standing Committee of the Chamber of Princes in consultation with the Committee of Ministers and the Constitutional Advisory Committee, in regard to the attitude of the States towards the Cabinet Mission's plan; and

(*b*) supports the official statement of the views communicated by the States Delegation to the Cabinet Mission on 2nd April, 1946, which *inter alia* associated the States with the general desire in the country for India's complete self-government or independence in accordance with the accepted plan.

3. This meeting resolves that, in accordance with this Resolution and the instructions and Resolutions of the States' Constitutional Advisory Committee as endorsed by the Standing Committee of Princes and the Committee, of Ministers, the States Negotiating Committee be authorised to confer with the corresponding Committee of the British India portion of the Constituent Assembly, as contemplated and declared by His Majesty's Government in Parliament in order to negotiate (a) the terms of the States' participation in the Constituent Assembly when It reassembles under paragraph 19(6) of the Cabinet Mission's Statement and (b) in regard to their ultimate position in the All-India Union, provided that the results of these negotiations will be subject to the approval of the aforesaid States' Committees and ratification by the States.

[Enclosure 2 to Appendix A]

NOTE ON THE PROPOSED ALLOCATION OF SEATS AMONG STATES

1. The allocation of seats proposed in the annexure has been prepared by the Secretariats of the Constituent Assembly and the Chamber of Princes and is intended as a basis of discussion for the Committees concerned.

2. As in British India, seats to individual States have been allotted generally on the basis of one seat for one million of the population, fractions of three-fourth or more counting as one and lesser fractions being ignored. In the case of groups, fractions of more than half have been counted as one, lower fractions being ignored.

3. States so desiring may pool or share their proportion of the allotted representation, whether individual or grouped, with that of any other State or group of States by mutual agreement, provided:--

(a) that the total representation of the States and/or the groups affected is not disturbed, and

(b) that geographic proximity, economic considerations and ethnic, cultural and linguistic affinity are duly kept in view.

ANNEXURE

A

SINGLE STATES

Division as shown in the Table of seats appended to Part II of the First Schedule to the Govt. of India Act, 1935	Names of State	Population in millions	Number of seats in the Constituent Assembly
1	2	3	4
I	Hyderabad	16.33	16
II	Mysore	7.32	7
II	Kashmir	4.02	4
IV	Gwalior	4.00	4
V	Baroda	2.85	3
IX	Travancore	6.07	6
IX	Cochin	1.42	1
X	Udaipur	1.92	2
X	Jaipur	3.04	3
X	Jodhpur	2.55	2
X	Bikaner	1.29	1
X	Alwar	0.82	1
X	Kotah	0.77	1
XI	Indore	1.51	1
XI	Bhopal	0.78	1
XI	Rewa	1.82	2
XIII	Kolhapur	1.09	1
XIV	Patiala	1.93	2
XIV	Bahawalpur	1.34	1
XIV	Mayurbhanj	0.99	1
	20	611.86	60

B

FRONTIER GROUPS

Division	Names of States in the Group	Population in millions	Number of Seats in the Constituent Assembly
XIV	Kalat	0.25	1
	Las Bela	0.07 0.66	
	Kharan	0.03	
XIV	Khairpur	0.31	
VII	Sikkim	0.12 0.7	1
XV	Cooch Behar	0.64	
XV	Tripura	0.51	1
XV	Manipur	0.51 1.23	
XVII	Khasi States	0.21	
XVII	Amb	0.25	1
XVII	Chitral	0.10	
XVII	Dir.	0.35 0.67	
XVII	Swat	0.26	
XVII	Phulra	0.01	
3.32 4			

C

INTERIOR GROUPS

Division	Names of States in the Group	Population in millions	Number of seats in the constituent Assembly
VIII	Rampur Benares	0.93	1
IX	Pudukottai Bangnapalle Sandur	0.49	Included in residuary Group XVII below.
X(13 States)	Bharatpur		3

	Tonk	2.86	
	Dholpur		
	Karauli		
	Bundi		
	Sirohi		
	Dungarpur		
	Banswara		
	Partapgarh		
	Jhalawar		
	Jaisalmer		
	Kishengarh		
XI	Shahpura		
XI (26 States)	Datia		
	Orchha		
	Dhar		
	Dewas (Senior)		
	Dewas (Junior)		
	Jaora		
	Ratlam		
	Panna		
	Samthar		
	Ajaigarh		
	Bijawar		
	Charkhari		
	Chhatarpur		
	Baoni		
	Nagod		
	Maihar		
	Baraundha		
	Barwani		

	Ali Rajpur	3.11	3
	Jhabua		
	Sailana		
	Sitamau		
	Rajgarh		
	Narsingarh		
	Khilchipur		
XVII	Kurwai		
XII(16 States)	Cutch	3.65	4
	Idar		
	Nawanagar		
	Junagadh		
	Dharangadhra		
	Gondal		
	Porbandar		
	Morvi		
	Radhanpur		
	Wankaner		
	Palitana		
	Dhrol		
	Limbdi		
	Wadhwan		

	Rajkot		
XII-A(15 States)	Jafrabad	1.69	2
	Rajpipla		
	Palanpar		
	Cambay		
	Dharampur		
	Balasinor		
	Baria		
	Chhota Udepur		
	Sant		
	Lunawada		
	Bansda		
	Sachin		
	Jawhar		
	Danta		
XIII	Janjiri		
XIII(14 States) Pudukottai - Banganapalle and Sandur	Sangli	1.56	2
	Savantvadi		
	Mudhol		
	Bhor		
	Jamkhandi		
	Miraj (Senior)		
	Miraj (Junior)		
	Kurundwad (Senior)		
	Kurundwad (Junior)		
	Akalkot		
	Phaltan		
	Jath		
	Aundh		
	Ramdurg		
XIV(14 States)	Kapurthala	2.70	3
	Jind		
	Nabha		
	Mandi		
	Bilaspur		

	Suket		
	Tehri Garhwal		
	Sirmur		
	Chamba		
	Faridkot		
	Malerkotla		
	Loharu		
XVII	Kalsia		
	Bashahr		
XVI(25 States)	Sonepur	4.25	4
	Patna		
	Kalahandi		
	Keonjhar		
	Dhenkanal		
	Nayagarh		
	Talcher		
	Nilgiri		
	Gangpur		
	Bamra		
	Seraikela		
	Baud		
	Bonai		
XVII	Athgarh		
	Pal Lahara		
	Athmalik		
	Hindol		
	Narsingpur		
	Baramba		
	Tigiria		
	Khandpara		
	Ranpur		
	Dasplla		
	Rairakhol		
	Kharsawan		
XVI-A(14 States)	Bastar	2.81	3

	Surguja		
	Raigarh		
	Nandgaon		
	Khairagaon		
	Jashpur		
	Kanker		
	Korea		
	Sarangarh		
XVII	Changbhakar		
	Chhuikhadan		
	Kawardha		
	Sakti		
	Udaipur		
XVII	A-1 other states including three states mentioned in Division IX, *viz*	4.26	4
		27.82	29

[Enclosure 3 to appendix A]

TEXT OF THE RESOLUTION PASSED AT PRINCES MEETING HELD IN BOMBAY ON 2-4-47

1.This conference reiterates the support of the States to the freedom of the country, and their willingness to render the fullest possible co-operation in framing an agreed constitution and to all genuine efforts towards facilitating the transfer of power on an agreed basis. The conference reaffirms the resolution adopted by the General Conference of Rulers and representatives of States on January 29, 1947

2.It ratifies the general understanding reached between the States Negotiating Committee and the corresponding Committee set up by the Constituent Assembly in regard to the allocation of the States' quota of seats in, and the method of selection of the State representatives to, the Constituent Assembly, and on the fundamental points discussed at their meetings held on February 8 and 9 and on March I and 2, subject to the acceptance of the aforesaid understanding by the Constituent Assembly.

3. It reiterates the previous decisions of the States to adhere strictly to the Cabinet Mission's plan, under which the representatives of such States as may so desire, may join the Constituent Assembly at the appropriate stage when that Assembly meets, in accordance with the Cabinet Mission's plan to settle the Union constitution, provided

that such participation in preceded by acceptance by the Constituent Assembly, of the general understanding reached between the two Negotiating Committees in regard to the fundamental points, and other matters referred to in the second resolution.

4. The conference is glad to note that Mr. Attlee's statement of February 20, 1947, further confirms the declaration made by the Cabinet Mission that paramountcy will cease at the close of the interim period. This means that all the rights surrendered by the States to the paramount power will revert to them, and they will be in a position, as independent units, to negotiate freely in regard to their future relationship with others concerned.

5. This conference reaffirms its previous recommendations in regard to internal reforms, and emphasizes the urgency and importance of suitable action being taken without delay, where needed, with due regard to local conditions.

6. In view of the element of urgency introduced by Mr. Attlee's statement of February 20, 1947, this conference authorizes the Chancellor and the Standing Committee of the Chamber of Princes to conduct negotiations through the States' Negotiating Committee or such other sub-committees as the Standing Committee may appoint, in regard to questions affecting the States in general: (a) with the Crown Representative in regard to matters relating to the lapse of paramountcy, and those arising out of the proposed transfer of power, so far as they affect the States; (b) with Interim Government and the competent British Indian authorities in regard to matters referred to in Paragraph 4 of the Cabinet Mission's memorandum of May 12, 1946, on the States' treaties and paramountcy, provided that (1) these negotiations will be conducted in accordance with the resolution adopted by the General Conference of Rulers on January 29, 1947, and the instructions and resolutions of the States Constitutional Advisory Committee as endorsed by the Standing Committee of Princes and the Committee of Ministers; (2) the results of these negotiations will be subject to the approval of aforesaid States' Committee and ratification by the States.

7. This Conference requests His Highness the Chancellor to address His Excellency the Crown Representative with a view to ensuring early and satisfactory settlement by His Majesty's Government of questions relating to individual States prior to the transfer of power.

APPENDIX B

CONSTITUENT ASSEMBLY OF INDIA

REPORT OF THE UNION POWERS COMMITTEE TO THE CONSTITUENT ASSEMBLY

We, the undersigned, members of the Committee appointed by the resolution of the Constituent Assembly of the 25th January to examine the scope of Union Powers, have the honour to submit this our report. Sir V. T. Krishnamachari and Sir B. L. Mitter were nominated to the Committee on 10th April, 1947, and the rest of us have had an opportunity of going over the entire ground again with them.

2. We consider that the scope of the subjects, Defence, Foreign Affairs and Communications in the Cabinet Delegation's Statement of the 16th May covers the following:--

A-- "Defence" connotes the defence of the Union and of every part thereof and includes generally all preparation for defence, as well as all such acts in times of war as may be conducive to its successful prosecution and Communications in the Cabinet Delegation's Statement of the 16th "Defence" includes--

(1) The raising, training, maintenance and control of Naval, Military and Air Forces and employment thereof for the defence of the Union and the execution of the laws of the Union and its Units; the strength, Organisation and control of the existing armed forces raised and employed in Indian States;.

(2) Defence industries;

(3) Naval, Military and Air Force works;

(4) Local self-government in cantonment areas, the constitution and powers within such areas of cantonment authorities, the regulation of house accommodation in such areas and the delimitation of such areas;

(5) Arms, fire arms, ammunition and explosives;

(6) Atomic energy, and mineral resources essential to its production.

We recommend further that in order to enable the Union Government effectively to discharge its responsibility for defence, it should be vested with the powers similar to those contained in Sections 102 and 126-A of the Government of India Act, 1935.

B--"Foreign Affairs" connotes all matters which bring the Union into relation with any foreign country and in particular includes the following subjects :--

(1) Diplomatic, consular and trade representation;

(2) United Nations Organisation;

(3) Participation in international conferences, associations and other bodies and implementing of decisions made thereat;

(4) War and Peace;

(5) The entering into and implementing of treaties and agreements with other countries;

(6) Trade and Commerce with foreign countries;

(7) Foreign loans;

(8) Naturalisation and aliens;

(9) Extradition;

(10) Passports and visas;

(11) Foreign jurisdiction;

(12) Admiralty Jurisdiction;

(13) Piracies, felonies committed on the high seas and offences Committed in the air against the law of nations;

(14) Admission into, and emigration and expulsion from, the Union;

(15) Port quarantine;

(16) Import and export across customs frontiers as defined by the Union Government;

(17) Fishing and fisheries beyond territorial waters.

C-The term "Communications" although it is wide enough to cover any connection between place should for the present purposes of the Union, in our opinion, include the following:--

(1) Airways;

(2) Highways and waterways declared by the Union to be Union highways and waterways;

(3) Shipping and navigation on inland waterways, declared by the Union to be Union waterways, as regards mechanically propelled vessels, and the rule of the road on such waterways; carriage of passengers, and goods on such waterways;

(4) (a) Posts and Telegraphs:

Provided that the rights existing in favour of any individual State unit at the date of the establishment of the Union shall be preserved to the unit till the same are modified or extinguished by agreement between the Union and Unit concerned, subject however to the power of the Union to make laws for the regulation and control of the same.

(b) Union telephones, wireless, broadcasting and other life forms of communications; the regulation arid control of all other telephones, wireless, broadcasting and other like forms of communication;

(5) Union railways; the regulation of all railways (other than minor railways) in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway

administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the ad ministration of such railways as carriers of goods and passengers;

(6) Maritime shipping and navigation, including shipping and navigation on tidal waters; Admiralty jurisdiction;

(7) Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein;

(8) Aircraft and air navigation; the provision of aerodromes, regulation and Organisation of air traffic and of aerodromes;

(9) Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft;

(10) Carriage of passengers and goods by sea or by air;

(11) Union Meteorological Services;

(12) Inter-Union quarantine.

D-The expression "the powers necessary to raise the finances required" for the Union subjects in the Cabinet Delegation's Statement necessarily includes the power, to raise finances by taxation and loans. In existing circumstances, we recommend the following sources of revenue for the Union :--

(1) Duties of customs, including export duties;

(2) Excise duties;

(3) Corporation tax;

(4) Taxes on income other than agricultural. income;

(5) Taxes on the capital value of the assets, exclusive of agricultural land of individuals and companies; taxes on the capital of companies;

(6) Duties in respect of succession to property other than agricultural land;

(7) Estate duty in respect of property other than agricultural land;

(8) Fees in respect of any of the matters in the list of Union Powers, but not including fees taken in any Court, other than the Union Court.

We realise that, in the matter, of industrial development, the States are in varying degrees of advancement and conditions in British India and the States are in many respects dissimilar Some of the above taxes are now regulated by agreements between the Government of India and the States. We, therefore, think that it may not be possible to impose a uniform standard of taxation throughout the Union all at once

We recommend that uniformity of taxation throughout the Units may, for an agreed period of years after the establishment of the Union not exceeding 15, be kept in abeyance and the incidences, levy, realisation and apportionment of the above taxes in the State Units shall be subject to agreements between them and the Union Government. Provision should accordingly be made in the Constitution for implementing the above recommendation.

This is in addition to the recommendations of the Sub-Committee on Fundamental Rights regarding internal customs duties.

3. It is impossible to enumerate the powers implied or inherent in or resultant from the express powers of the Union. We think that in any case the following powers come within the category :--

(1) Union judiciary;

(2) Acquisition of property for the purposes of the Union;

(3) Union agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies;

(4) Census;

(5) Offences against laws with respect to any of the matters in the list of Union powers;

(6) Enquiries, surveys and statistics for the purposes of the Union;

(7) Union Services;

(8) Industrial disputes concerning Union employees;

(9) Reserve Bank of India;

(10) Property of the Union and the revenue therefrom;

(11) Public debt of the Union;

(12) Currency, coinage and legal tender;

(13) All subjects in respect of Union areas;

(14) Powers to deal with grave economic emergencies in any part of the Union affecting the Union.

4. We are of the opinion that provision should be made in the new constitution for the recognition throughout the, Union of the laws and public acts Laid records of the judicial proceedings of the Units and for judgments and orders delivered in one Unit being enforced in other Units. We note that a provision to this effect has already been made in the list of Fundamental Rights.

5. In addition to the above subjects which, in our view, come within the scope of Union powers in accordance with the Cabinet Delegation's Statement, we hope that the following subjects will also be included in the Union List by agreement:--

(1) Insurance;

(2) Company Laws;

(3) Banking;

(4) Negotiable Instruments;

(5) Patents; trade marks, trade designs; copyright ;

(6) Planning;

(7) Ancient and Historical Monuments;

(8) Standard Weights and Measures.

Such an arrangement will ensure uniformity, throughout the territories of the union, in matters bearing on trade and commerce as has in fact been recognised in many federal constitutions. We have included Planning in the above list for the reason that, although authority may rest in respect of different subjects with the Units it is obviously in their interest to have a coordinating machinery to assist them.

6. We recommend the insertion in the constitution of a provision on the lines of Article (*xxxvii*) of Section 51 of the Australian Constitution Act.

7. We also recommend that by agreement there may be a list of concurrent subjects as between the Union and the Units.

(Sd.) JAWAHARLAL NEHRU

„ **GOVIND BALLABH PANT**

„ **B. L. MITTER**

„ **JAIRAMDAS DAULATRAM**

„ **N. GOLASWAMI AYYANGAR**

„ **K. M. MUNSHI**

„ **V.T. KRISHNAMACHARI**

„ **B. PATTABHAI**

SITARAMAYYA

,, **BISWANATH DAS**

,, **A. KRISHNASWAMI AYYAR**

New Delhi;

17th April, 1947.

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME III

Tuesday, the 29th April, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at half past Eight of the Clock, Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair.

EXTENSION OF TIME LIMIT FOR THE REPORT OF THE ADVISORY COMMITTEE

The Hon'ble Sardar Vallabhbhai Patel (Bombay: General) : Sir, I move:

> "That the Constituent Assembly do extend the time fixed for the presentation of the report of the Advisory Committee appointed by the resolution of the Assembly of the 24th January, 1947 until such date or dates as the President may choose in his discretion."

The House is aware that when this Resolution was passed we were required to submit an interim report on Fundamental Rights within six weeks, an interim report on Minorities Rights within ten weeks and our final report within three months from the date of our appointment. We have tried our best to adhere to this time table, but regret that it has not been possible for us to carry it out. At our first meeting held on the 27th February, 1947, we decided unanimously to request you to extend the time limit for the submission of the reports in anticipation of the sanction of the Assembly.

We are full conscious of the necessity of completing our work with the utmost dispatch, but we fear it is not possible to work to a rigid time table. We request therefore that the Assembly may be moved to extend the time limit to such date or dates as you may choose in your discretion.

Mr. President: The question is:

> "That the Constituent Assembly do extend the time fixed for the presentation of the report of the Advisory Committee appointed by the resolution of the Assembly of the 24th January, 1947 until such date or dates as the President may choose in his discretion."

The motion was adopted.

INTERIM REPORT ON FUNDAMENTAL RIGHTS*

The Hon'ble Sardar Vallabhbhai Patel: Sir, I move:

> "That the Constituent Assembly do proceed to take into consideration the interim report on the subject of Fundamental Rights submitted by the Advisory Committee appointed by the resolution of the Assembly of the 24th

January, 1947."

Sir, this is a preliminary report or an interim report, because the Committee when it sat down to consider the question of fixing the fundamental rights and its incorporation in the Constitution, came to the conclusion, firstly, that the fundamental rights should be divided into parts--the first part justiciable and the other part non-justiciable. Even while considering the first part it came to the conclusion that we could not come to a final decision as to what fundamental rights are to be incorporated in the Constitution. Considering all the circumstances that exist today and that may arise within the course of the consideration of the various Committees' reports and the drafting of the Constitution, points may arise for suggesting additional fundamental rights and also for making minor alterations or suggestions that may be considered advisable. This report is a draft report. I may also suggest for the consideration of the House that in considering the various clauses that have been recommended by the Advisory Committee, the House may not strictly consider the wording of each clause of the rights suggested. Certain changes may be required while actually legally drafting the clauses, and it would be better to leave the drafting to the Drafting Committee which will make such changes as may be necessary to put them in proper phraseology. What I would submit to the House to do today is generally to accept the principles of each of the clauses that have been suggested for consideration, so that we may not have to devote more time in considering the technical legal details of the phraseology to be adopted.

We have now suggested for the consideration of the House those rights that are justiciable. The second chapter we have ourselves not been able to consider. The Fundamental Rights Sub-Committee met and considered this matter for a fortnight and devoted considerable labour and time. After that, the Report was passed on to the Minorities Rights Sub-Committee. That Committee also sat over this Report and anxiously considered various clauses and made certain changes and those changes were adopted. They sat for three days, and then this report was again placed before the Advisory Committee for its consideration. The Advisory Committee sat for two days and at their two sittings they considered the whole thing over again--so, the House will see that this is not a haphazard Report, it has been considered in all its various aspects. It is quite possible to make suggestions, alterations and additions and move amendments, but the House may not have that time which the Committees had, I would humbly submit to the House carefully to consider the various clauses that have been suggested, and when amendments are put forward before the House, they will also be carefully scrutinised. There are about 150 amendments, I hear and scrutiny of the amendments will take some time. The Office has been able to scrutinise about 25 or 30 amendments and that will perhaps take the whole of today's meeting. I move that the Report be taken into consideration, and if that motion is adopted, then we can go and consider the rights clause by clause.

Mr. President: Motion moved:

"Resolved that the Constituent Assembly do proceed to take into consideration the interim report on the subject of Fundamental Rights submitted by the Advisory Committee appointed by the resolution of the Assembly of the 24th January, 1947."

The Hon'ble Pandit Hirday Nath Kunzru (United Provinces: General) Mr. President, the Report before us purports to deal with only those fundamental rights that are enforceable by the courts, but a close study of it shows that it refers to matters which cannot be included under the head "Fundamental Rights", and that it deals with those fundamental rights which are not justiciable. To give an instance, Sir, If a matter which does not fall under the category of fundamental rights, I shall refer to clause 10 which makes "trade, commerce and intercourse among the units by and between the citizens" absolutely free.

Sri L. Krishnaswami Bharathi (Madras: General): On a point of order, Sir. I should like to know whether Pandit Hirday Nath Kunzru is opposing the motion or supporting it. He objects to a particular clause, but this is not the time for it. I should like to know whether he is supporting the motion, for consideration or opposing it.

Mr. President: If you just allow the Hon'ble Member to complete his speech, you will be able to know whether he is supporting the motion or opposing it.

The Hon'ble Pandit Hirday Nath Kunzru: This is the stage at which according to the rules followed by the Legislatures, general observations can be made, and I hope I am strictly in order in dealing with the Report generally. It is not necessary for me to say whether I agree to the main provisions of the Report, or whether I want it to be rejected as a whole. All that I can be fairly called upon to do at this stage is to state my point of view and to ask the House to be careful in dealing with some important matters which are included in this Report.

Sir, to illustrate my first point, I refer to clause 10 of the Report which deals with what may roughly be called freedom of inter-State commerce. It may be a very desirable thing in itself, probably every one here will want that trade between the different Units of the Indian Union should be absolutely free, but I doubt whether a clause like this can be included among fundamental rights. Clause 10 deals with a matter which impinges directly on the rights of the Provinces. You may deal with it when you come to settle the powers of the Union and the Provinces; but I submit that you cannot take so important a matter outside the purview of the Committee that will consider the Union and the Provincial Constitutions by calling the freedom of inter-State commerce a fundamental right.

Again, Sir, it is stated in one of the provisos to this clause that nothing in this section shall prevent any Unit from imposing on goods imported from other Units the same duties and taxes to which the goods produced in the Unit are subjected by them. Now, I should like this to be clearly explained. If there is to be absolute freedom of commerce and trade between the different units, how can any unit be allowed to tax the goods of.....

Mr. F. R. Anthony (Bengal: General): On a point of order, Sir. Can all of us make our respective comments on the provisions of the Fundamental Rights at this stage?

The Hon'ble Pandit Hirday Nath Kunzru Sir, Mr. Anthony is a Member of the Central Assembly and he knows very well that in making general observations, say, on a Bill, one can refer to a few clauses to illustrate one's point of view. I am astonished that he should get up and object to my observations, which are of a general character, though he may think that they refer to matters of detail. I am sure that on many occasions he has exercised in the Central Assembly the right which I am exercising here now.

Sir, there are other examples of this kind that I could give; but I do not think that I need do so in order to illustrate what I have in mind. Now, I will give an illustration or two to show where matters which can hardly be called justiciable have been included in the Report. Clause 8 deals with certain familiar fundamental rights; the freedom of speech, the right to assemble peaceably and without arms and the right to form associations. But they have all been made subject to certain safeguards, which, generally speaking, have been considered necessary in every country. But it is well known, Sir, that these safeguards practically make the rights that I have just mentioned non-justiciable. You may confer general rights on the citizens of India, but if they are to be surrounded with the restrictions mentioned here, and I submit that they will have to be surrounded with some such restrictions--then the right will in practice cease to be justiciable. They will be no more than directive principles of a policy, and there seems to me to be no advantage in considering such matters at this stage when, according to Mr. Patel, we should be considering only those rights that are, strictly speaking, enforceable by the courts.

I shall give another instance, Sir, in order to make my point of view still clear. I refer, Sir, to clause 8, sub-clause (e), which deals with the right of every citizen to reside and settle in any part of the Union, to acquire property and to follow any occupation, trade, business or profession. This is subject to the condition that "provision may be made by law to impose such reasonable restrictions as may be necessary in the public interest including the protection of minority groups and tribes." Now, Sir, it is very desirable, in general, that there should be freedom of movement; but I do not think that we can accept without qualification the right of the people of one province to settle in another province. The Government of the province concerned must be given the power.... (*Cries of* "We cannot hear, the microphone is not working), Sir, I can make myself heard without the aid of the microphone. I was dealing with clause 8, sub-clause (e). This clause states that every citizen has the right to reside and settle in any part of the Union. My submission is that while freedom of movement in the Union is desirable and essential, the right to reside and settle in any part of the Union cannot be called non-controversial.

Mr. President: The microphone is now working.

The Hon'ble Pandit Hirday Nath Kunzru: Thank you, Sir, but I think I can make myself heard without it. The province, I was saying, must have the right to decide, in view of its resources what the size of its population at any time should be. No Provincial Government can fairly be asked to allow an unlimited influx of immigrants from another province in pursuance of the principle enunciated here. Let us take the case of Assam, to understand this fully. Will anybody force the Government of Assam at the present time to allow an unlimited number of people from any of the neighbouring provinces to enter Assam and settle down there ? That Government is faced with an extraordinary difficult problem and clause 8(e) shows a strange disregard of the existing state of things there. I think, Sir, that this right can be conferred only under certain conditions which will have to be clearly defined.

Dr. B. R. Ambedkar (Bengal: General) : I do not wish to interrupt the speaker; but in dealing with clause 8(e), he is rather giving a wrong impression of the whole clause.

Dr. B. Pattabhi Sitaramayya (Madras: General): Instead of giving illustrations to make his points clear, he is going into a discussion of the merits.

The Hon'ble Pandit Hirday Nath Kunzru: As a parliamentarian, Sir, you understand what I am doing. As regards Dr. Ambedkar's objection, I may say--and I am sure you will bear me out,--I read out the entire clause including the proviso.

Mr. President: I would request the Member to confine himself to the point which he wants to illustrate and not go into the merits of the proposal.

The Hon'ble Pandit Hirday Nath Kunzru: I have given only two illustrations so far and this is only the third illustration that I am giving in order to explain clearly to the House what I have in mind. I am not discussing each and every clause. Sir, I have already read out the proviso to clause 8(e) but in order to satisfy Dr. Ambedkar, shall read it out again:

"Provision may be made by law to impose such reasonable restrictions as may be necessary in the public interest including the protection of minority groups and tribes."

Probably Dr. Ambedkar's contention is that this phraseology is such as to enable a province to decide whether it would allow people coming from outside to reside and settle down within its jurisdiction. If so, a special interpretation will have to be placed on these words. Again, if the proviso is so wide as Dr. Ambedkar contends it is, then the right conferred by clause 8(e) virtually ceases to be a justiciable right.

Sir, I think I have said enough in order to indicate my point of view. I need not therefore labour the point further, but, before I sit down, I may say again that there seems to be no particular advantage in considering many provisions of this Report at the present time. They can be considered along with the other fundamental rights which have yet to be dealt with by the Fundamental Rights Sub-committee. But if the House wants to proceed with the consideration of this Report, it will have to take special care to see that only those matters are included in it which are really justiciable.

Mr. Promatha Ranjan Thakur (Bengal: General): Sir, this is a list of fundamental rights which are only justiciable. I do not understand why economic fundamental rights should not be included in these justiciable rights. Economic rights are essential while framing a country's constitution and they must also be made justiciable. I do not understand why mines, key industries and basic industries should not be nationalised. Moreover, this list of fundamental rights should have been considered in the light of reports of the Minorities Sub-committee. The Minorities Sub-committee sat only for two days and they could not go into details as regards safeguards required for minority communities. You know that Minority Sub-committee's Report is very much connected with the list of fundamental rights.

Another point to which I wish to refer is in relation to clause 6--regarding 'untouchability' where it is said that--

"Untouchability in any form is abolished and the imposition of any disability Oil that account shall be an offence."

I do not understand how you can abolish untouchability without abolishing the very caste system. Untouchability is nothing but the symptom of the disease, namely, the caste system. It exists as a matter of caste system. I do not understand how this, in its present form, can be allowed to stand in the list of fundamental rights. I think the House should consider this point seriously. Unless we can do away with the caste system altogether there is no use tinkering with the problem of untouchability superficially. I have nothing more to say. I hope the House will consider my suggestion seriously.

Mr. President: I take it that the Hon'ble Member does not wish to move his amendment.

Mr. Promatha Ranjan Thakur: I do not move my amendment.

Mr. Somnath Lahiri (Bengal: General): I agree with what Pandit Kunzru suggested because it is rather difficult to make a fine distinction between what are justiciable rights and what are not. For instance, when we make a provision that people should have the right to work, that is, unemployment should not be allowed to exist in our country, it would be a social right. If you make it an inalienable provision of our fundamental rights, naturally it will have to be justiciable. Similarly, take the question of nationalisation of land. If we want to say that land belongs to the people and to no body else, that would be a social and fundamental right no doubt. But, nevertheless, it will also be a justiciable right, if that is to be given effect to. Therefore, it is rather arbitrary to make any fine distinction between what are justiciable rights and what are social and economic rights. Therefore, we would be in a better position to consider the whole thing if the full Report was forthcoming so that we might know what is in it. Otherwise, there is the danger that when we might put certain things as essential, we would be told that social and economic rights will come up not now but later on. Therefore, I support Pandit Kunzru's suggestion for taking all these things together. I do not see any great hurry for getting these few fundamental rights passed just now. I was surprised to read this Report submitted by the Committee. Before this Report was submitted by the Committee, I got a circular from the Congress Party section of the Constituent Assembly enumerating certain rights. Many good points were contained in them. Afterwards, when we received this Report, we find that many of the good points which were mentioned in that circular have been omitted. Let me put it a little more strongly. I feel that many of these fundamental rights have been framed from the point of view of a police constable and many such provisions have been incorporated. Why? Because you will find that very minimum rights have been conceded and those too very grudgingly and these so-called rights are almost invariably followed by a proviso. Almost every article is followed by a proviso which takes away the right almost completely, because everywhere it is stated that in case of grave emergency these rights will be taken away. Now, Sir, what constitutes a 'grave emergency' God alone knows. It will depend on the executive obtaining at a particular period of government. So, naturally anything that the party in power or the executive may not like would be considered a grave emergency and the very meagre fundamental rights which are conceded in this resolution will be whittled down. Therefore, it is necessary for us to see the whole thing together and see what people are going to get. I should like to mention one or two things as examples. What should be our conception of fundamental rights? Apart from the knowledge that we can gather from the experience of other countries, there is also the knowledge born out of our own experience, that is, there are certain rights which we have been denied in the past by an alien and autocratic government. We have come up against those difficulties. We want to incorporate every one of those rights which our people want to get. One vital thing which our people have been suffering from in the past has been the curtailment of the liberty of the press by means of securities and by other methods. The press has been crushed completely. This is a thing against which every patriotic Indian is up in arms, including every congressman, and, therefore, in his heart of hearts every Indian feels that in a free India in order that people may feel freedom and act up to it, there should not be such drastic curtailment of liberties of the press. But what do we find? There is not even a mention of the liberty of the press in this whole list of fundamental rights submitted by the Committee, except a solitary mention made at one place that there will be liberty of expression. Sir, this is something which goes against our experience and must be protected.

Similarly, there is another thing that we have found all along that a Government which does not depend on the people and which rules the country by autocracy and by means of force, detains people without trial, without having to go through a judicial process. This is a thing against which Indians have been entertaining the bitterest feelings and they have been agitating against this from the Congress and every other platform. But in the fundamental rights that have been cooked up by this Committee we do not find this right. That is why I am constrained to say that these are fundamental rights from a police constable's point of view and not from the point of view of a free and fighting nation. Here whatever right is given is taken away by a proviso. Does Sardar Patel want even more powers than the British Government an alien Government, an autocratic Government which is against the people--needs to protect itself? Certainly not. Sardar Patel has the support of the overwhelming masses of the people and, therefore, he can do with much less powers to rule the country than an autocratic government would require. But here we find that none of the existing provisions of the powers of the executive has been done away with; rather in some respects those powers are sought to be increased. And if some of the amendments are passed--specially that of Sri Rajagopalachariar-- it will in certain cases be even worse than the conditions obtaining at present. I will give one example. Here according to Patel a seditious speech is a punishable crime. If I say at any time in the future, or the Socialist Party says, that the Government in power is despicable, Sardar Patel, if he is in power at that time, will be able to put the Socialist Party people and myself in jail, though, as far as I know, even in England a speech, however seditious it may be, is never considered a crime unless an overt act is done. These are the fundamental bases of the, fundamental rights of a free country, but here a seditious speech also is going to be an offence; and Sri Rajagopalachariar wants to go further. Sardar Patel would punish us if we make a speech, but Rajaji would punish us even before we have made the speech. He wants to prevent the making of the speech itself if in his great wisdom he thinks that the fellow is going to make a seditious speech.

Dr. B. Pattabhi Sitaramayya: Sir, we cannot anticipate amendments.

Mr. Somnath Lahiri: I will not discuss any more of the amendments.

We thus find that the feeling among Congressmen in general, as evidenced by this circular of the Constituent Assembly section of the Congress Party, is for extended fundamental and civic rights which will enable the country to function in a free manner and for political oppositions to grow. What is the necessity of fundamental rights in a bourgeois national democracy which you are trying to have? There one of the fundamental objects is that a political opposition must have full freedom to express its views, to draw its own conclusions and to say anything it likes. If I am in the opposition or if some one else is in the opposition it is certainly his business to say that the existing Government is despicable; otherwise he would not be in the opposition. Why should my right to say that be curtailed and at the same time we should assume that political opposition will grow and democracy will develop? It cannot; it will have to depend on the sweet will and the tender mercies of the party in power or the executive in power. That is not the basis of democracy.

Sir, I would request the Committee to consider the amendments very liberally and try their best to accommodate the amendments so that we can have really good and democratic fundamental rights which will give our people a real feeling of freedom and from which our country will go on gathering strength. Otherwise, if we lay down fundamental rights and then insert provisions in every clause for taking away those rights, we will simply make ourselves a laughing stock before the whole democratic world.

Mr. R. K. Sidhwa (C.P. and Berar: General): Sir, I will deal with Mr. Lahiri's statement first. He has misinformed the House by stating that the Committee has absolutely ignored the economic rights and the fundamental rights in various aspects. Sardar Patel in moving his motion made it clear that this is only a preliminary report or rather an interim report; the motion regarding economic and political rights is not here and will be taken up hereafter. Mr. Lahiri must know that we are not unmindful about this matter. We are much more keen on these economic and political rights of the citizens than he imagines; and therefore to say that those rights should have been presented to us now in this document and that failing that we would be making a laughing-stock of ourselves to the world is not fair to this House.

Now, coming to Dr. Kunzru, I was really very sorry to find him stating that some of the clauses in this statement do not come within the purview of fundamental rights or justiciable rights. If any one has studied the various constitutions of other countries he will find that there are chapters and chapters and clauses and clauses dealing with economic, commercial and trading rights of the people. And for Dr. Kunzru to state that this is not a fundamental right or a justiciable right is not fair to this House. I will quote a few paragraphs from some constitutions to show that commerce and trade and economics are considered justiciable fundamental rights. In Germany, Part 2 of Art. 138 says :

> "Property and other rights of unions in respect of a property devoted for public purposes, social and commercial, are guaranteed."

Then in Art. 151 it says :

> "Freedom of trade and industry is guaranteed in accordance with the provisions of the laws of the Reich."

A number of these may be quoted but I. will content myself with just a few. Art. 156 says :

> "The Reich may by legislation in case of present necessity and in the economic interest of the community oblige economic undertakings and associations lo combine in a self-governing basis for the purpose of ensuring the co-operation of all productive factors of the nation, associating employers and employees in the management and regulating the production, manufacture, distribution, consumption, prices and the import and export of commodities upon principles determined by the economic interests of the community."

Then further take South Africa. Section 136 says:

> "There shall be free trade throughout the Union, but until Parliament otherwise. provides the duties of customs and of excise leviable under the laws existing in any of the colonies at the establishment of the Union shall remain in, force."

Clause 10 and clause 8, to which Dr. Kunzru has made reference, refer to trade within the Units and the Union, and I see no reason why such a clause should not stand for the protection of the various trades that would move about from Unit to Unit and from Unit to Union. As regards clause 8(e) it says :

> "The right of every citizen to reside and settle in any part of the Union, to acquire property and to follow any occupation, trade, business or profession.'

It is considered a justiciable and fundamental right. If a right to reside and settle is not a justiciable or fundamental right, I do not know what else it could be. Under the circumstances I do feel that the objections of Dr. Kunzru are untenable and I agree with Mr. Lahiri that in some respects this Report is certainly not complete, and we have to give elaborate personal and political rights. It is not that we have ignored that part. There are various amendments on the order paper; I have moved some of them and other Hon'ble Members have also done so. They will be considered by this House. I might also state that the Committee had suggested that the secrecy of correspondence should be guaranteed and that there should be no kind of interception of correspondence, telegrams and telephones, but the main Committee has deleted it. Therefore, it is unfair to say that the Fundamental Rights Committee did not consider this question. We have now moved amendments to that effect, and it is for the House to consider those amendments. Mr. Lahiri should not have made all those general remarks; he should have confined himself to the amendments which have been moved. Therefore, I contend, Sir, that these fundamental rights are justiciable, and I do feel that the objection of Dr. Kunzru is not justifiable and that Mr. Lahiri, in his anxiety to move more amendments to protect the rights of every citizen, made an uncalled for remark that we will be making this country a laughing-stock of the world. This is too much indeed.

Prof. N. G. Ranga (Madras: General): I wish to congratulate this Committee on having produced this very valuable document and presented it to this House.

I think it is not worthy of any member of this House to describe this as a sort of cooked-up document from a responsible Committee like this. But I am not surprised that this remark, unworthy as it is, has fallen from the lips of one of our members, considering the political history of the member as well as the antecedents of his party.

Mr. President: Please do not make any personal remarks.

Prof. N. G. Ranga: I have said enough about it.

We are told that this document is prepared from the view point of a policeman. I do not know where the policeman comes in except by way of our attempt to keep him out of the exercise of our fundamental rights. That is exactly the main object with which this charter of Fundamental Rights has been prepared. We have had such a bitter experience of policemen in this country that the authors of this document have had to formulate these clauses in such a way as to have the least possible interference of policemen. If there are any provisions, they are intended to see that those people who believe in liberalism at one end and communism at the other will not be enabled to take advantage of these rights to pave the way for totalitarianism. It happened like that in several States of Europe between the two wars. They took advantage of the fundamental rights there to the extent that they came to power and paved the way for Nazism on the one hand and for communism on the other. We want to safeguard ourselves against such a menace. We have had this experience before us and it is the duty of any responsible body like this to make provision for such provisos as will enable a democratic parliament in this country to prevent any mischief-monger--organized or unorganized--from demoralizing our own democratic State to such an extent as to pave the way and effectively achieve a totalitarian State in this country.

A reference has been made to the absence of any reference in this particular document to freedom of the press. But if a little care had been exercised, it would have been found that this has been provided for in the very first clause--sub-clause 8(a):

> "The right of every citizen to freedom of speech and expression." Expression' includes freedom of the press.

Now come to the other point--where is the provision for the functioning of the opposition party in these fundamental rights, we are asked ? To draw your attention to a very small thing I need only say that the Congress Party itself is such a democratic body as to make it possible for people like Rajaji to give notice of one set of amendments and people like so many us to give notice of other amendments which may be diametrically opposite to them, and yet we are able to digest these, consider them all and come to an agreeable decision, a decision which will be democratic and which may come to be acceptable to all parties in the House. We have to make it possible for various political parties to function in our country; we all agree on that. It does not come to us as a sort of a new thought from abroad or from other country, but what I wish to remind this House as well as the member concerned is this : in that country which is upheld as a sort of an ideal to us all, where is there any scope for the opposition party? Is there any scope for the opposition party at all ? Indeed in Soviet Russia, people are not allowed to organize themselves into free trade unions. Here in in this country we are already enjoying these rights and we are epitomizing them in this great document. Look at it from every point of view and You will find that this document proposes to give to our masses in this country more democratic, more liberal, more comprehensive, and more fundamental rights than are being enjoyed in any other country, not even excluding Soviet Russia.

There is another point raised by my Hon'ble friend, Dr. Kunzru, namely that several of these things are not justiciable. I am not a lawyer, and, therefore, I do not wish to go into the technical side of it. All that I say is to express my extreme satisfaction with regard to clause 22(1) and 22(2) wherein the right is given to the ordinary citizen to move the Supreme Court by appropriate proceedings for the enforcement of any of the rights guaranteed by this part. This is a very important privilege that is being conferred on our citizens. The only additional privilege that I wanted to be conferred upon them is that--as I said on an earlier occasion--those citizens who are so poor as not to be able to move the Supreme Court, should be enabled under proper safeguards, of course at the cost of the State, to move the Supreme Court in regard to the exercise of any of these fundamental rights. With all these provisos Dr. Kunzru told us that the very essence of these fundamental rights is being lost and Mr. Lahiri has agreed with him. It is rather amusing how Liberalism and Communism can come together and coincide with each other. We have our experience of the way in which the Public Safety Ordinances were enforced in this country. We know that those Ordinances were very arbitrary; they conferred terrible powers, unquestionable powers upon the executive. Are we to be told now that in the same way we should not have any of these provisos at all but that simply power should be conferred upon the Government and that any order made under this particular clause or that particular clause cannot be questioned in a court of law? That is how it is. We were detained and the orders that were passed to detain us could not be questioned at all in any court of law. But in spite of that there were noble judges. Hon'ble judges of the Calcutta High Court and also of the Central Provinces, who had the courage of their conviction, who were able to look in between the words of those very same ordinances as well as the Public Safety Act and were able to save many people from the gallows by setting aside the judgments of the so-called Special Courts. Similarly, it must be possible and it would be possible, when this document becomes a part of our own Constitutional Law. This document has been so carefully drafted as not to give arbitrary powers but to give just as much power as can possibly be digested in the organisational or institutional exercise of his rights by the ordinary citizen in this country, either organisedly or individually--as much power as possible to those people to see that these individuals, these organisations or institutions are given every possible safeguard or protection. Therefore, these provisos are not going to make these rights nugatory at all. These provisos are intended to prevent our democracy being demoralised or degraded into a dictatorship. These rights are intended to protect our citizens, our law-abiding citizens who believe in democracy from those who believe in dictatorship but only pretend to work for the cause of democracy in order to establish their own dictatorship.

Dr. B. Pattabhi Sitaramayya: Sir, I now move for closure being applied to the discussion

Mr. President : I think we have had sufficient discussion on the motion.

The question is:

> "That the question be now put."

The motion was adopted.

The Hon'ble Sardar Vallabhbhai Patel: Sir, when I moved my motion for the consideration of this Report I did not anticipate any long debate on this question. I thought that there would be plenty of opportunities for scrutinising the clauses, omitting some clauses, if necessary, that may be considered objectionable or improving any if need be. Now that the debate has taken place I want to place before the House certain aspects of the proceedings of the Committee which will give the House an idea that this is neither a haphazard Report nor a report cooked or uncooked. It is carefully considered Report. There were two schools of thought in the Committee and there was a large number of very eminent lawyers who could scrutinise every word of every sentence, even commas and semi-colons, from a very critical point of view. These two schools viewed the matter from two different angles. One school considered it advisable to include as many rights as possible in this Report--rights which could straightaway be enforceable in a court of law, rights in regard to which a citizen may without difficulty go straightaway to a court of law and get his rights enforced. The other school of thought considered it advisable to restrict fundamental rights to a few very essential things that may be considered fundamental. Between the two schools there was considerable amount of discussion and finally a mean was drawn which was considered to be a very good mean. It must not be understood, because this Report is called an Interim Report, that the second Report will be much bigger, or that many more important things will come under the subsequent report. It cannot, in the nature of things, be that the principal report which comes before the House would be containing less important things. Very essential things have been included in this Report. But there is another report which has to be considered and that is the report on fundamental rights which are non-justiciable. There may be other points that may strike this House or may be suggested from outside which may have to be considered and the Committee may take them into account. But I may inform the House that this Report has gone through three Committees. Of course the third school of thought was absent in the Committee. That school would require that under the fundamental rights which were provided for a free India there should be no police, there should be no jail, there should be no restrictions on the press, the baton, the lathi or the bullet. Every body should be free in a free India to do what he likes. That school was absent in the Committee. But the two schools of thought that considered this Report studied not the fundamental rights of one country alone but of almost every country in the World. They studied all the Constitutions of the world and they came to the conclusion that in this Report we should include as far as possible rights which may be considered to be reasonable. On that there may be difference of opinion in this House and this House is entitled to consider every clause from a critical point of view and to suggest alterations, modifications or omissions but what I have moved in this House, now is, that this Report may be taken into consideration. Therefore, I thought that any elaborate speech was not necessary and hence I suggested that whatever has to be considered, or whatever suggestions have to be made, may be made at the time when clauses are considered. As I told the House there are about 150 amendments, though the time given was about ten hours or so. The House contains members who are very studious, very critical and very well-informed and therefore it is to the credit of the House that we have got as much as 150. amendments in such a short space of time. I think if we proceed at this rate we will debate perhaps for a much longer period than we expect. So, I suggest that the Report be taken into consideration, and if that is accepted, we may take clause by clause.

Mr. President: The question is:

"That the Constituent Assembly do proceed to take into consideration the interim report on the subject of Fundamental Rights submitted by the Advisory Committee appointed by the resolution of the Assembly of the 24th January, 1947."

The motion was adopted.

CLAUSE 1--DEFINITIONS

Mr. President: We now proceed to consider the Report clause by clause. Clause 1.

The Hon'ble Sardar Vallabhbhai Patel: Clause I is a clause which gives the definition:

"Unless the context otherwise requires--

(i) 'The State' includes the legislatures and the governments of the Union and Units and all local or other authorities within the territories of the Union.

(ii) 'The Union' means the Union of India.

(iii)'The law of the Union' includes any law made by the Union legislature and any existing Indian law as in force within the Union or any part thereof."

I do not think that this clause requires any speech in support of it. Therefore I formally move this clause for the consideration of the House.

Mr. President: I have got notice of several amendments to clause 1. Mr. Kamath.

Mr. K. M. Munshi (Bombay: General): I have given notice of certain verbal amendments to this clause. I could do this only this morning, and if you will be pleased to give me leave...

Some Hon'ble Members: Louder, please.

Mr. K. M. Munshi: I have submitted to the Office certain verbal amendments to clause 1, which I have already presented to you, and I beg leave under our rules to move these amendments. They are not amendments of substance; they merely make some verbal changes. If you will be pleased to give me leave I may also move them.

Mr. President: I am afraid I have not seen those amendments. But if they are only verbal amendments, I suppose the House will have no objection to their being moved. But I should like to say that I would not allow substantial amendments to be taken up without due notice. (To Mr. Munshi), I shall take up your amendments a little later, unless they can be covered by Mr. Kamath's or any other amendment.

The Hon'ble Sardar Vallabhbhai Patel: Are there any amendments to this clause?

Mr. President: I have got notice from two Hon'ble Members.

Mr. K. M. Munshi: Before Mr. Kamath moves his amendment, may I say that mine is a verbal amendment to clause 1(i). If that is permitted to be moved, it will remove any doubt that there may be.

Mr. President: You can move yours. (To Mr. Munshi).

Mr. K. M. Munshi: I beg to move that in clause 1 sub-clause (i), insert the words "for the purpose of this Annexure" between the words "State" and "includes". The reason of this amendment is very clear. In order to have one convenient phrase only for the purpose of this annexure we have to use the word "State ". The word "State" has been used here only for the purpose of verbal convenience and only for the purpose of this Chapter. If it be left as it is, it might lead perhaps to an impression that this is the definition of "State" in the Constitution Act. Therefore, I submit that the words "for the purpose of this Annexure", that is, for the purpose of the preliminary report in this Annexure, be inserted as I have moved above.

An Hon'ble Member: Then how will the clause read?

Mr. President: Clause 1, sub-clause (i) will read thus:

"The State' for the purpose of this Annexure includes the legislatures and the governments of the Union, etc., etc."

(To Mr. Munshi). In other places the word "Part" is used, and the word can be used in place of "annexure".

Mr. K. M. Munshi: I will accept that.

Mr. President: Sub-clause (i) will read as follows:

"The State' in this Part includes the legislatures and the governments of the Union, etc., etc.".

The Hon'ble Sardar Vallabhbhai Patel: I accept this amendment.

Sri L. Krishnaswami Bharthi: I submit that amendment of Mr. Munshi may appropriately be prefixed to the first sentence itself to cover all the three definitions of that clause. We can say--

"Unless the context otherwise requires, and for the purpose of this Part--"

and than give the definitions as in the clause.

Mr. President: Instead of putting in-the words "for the purpose of this Part" after the word "State". let those words come in the beginning. Then it will read as follows:

"In this Part, unless the context otherwise requires--

(i) 'The State' includes the legislatures and the governments of the Union and the Units and all local or other authorities within the territories of the Union........"

and so on.

Mr. K. M. Munshi: I have no objection, Sir. "Union" must mean the Union of India wherever it is.

Sri K. Santhanam (Madras: General): The amendment is to the definition of "The State" and not to any other definition.

Mr. President: Mr. Munshi's amendment as recast by me has been accepted by the Mover. Does the House accept the amendment?

The amendment was adopted.

Mr. K. M. Munshi: I have an amendment to clause 1, sub-clause (iii), that is purely verbal. Sub-clause (iii) says:

"The law of the Union' includes any law made by the Union legislature and any existing Indian law as in force within the Unior any part thereof."

I want to delete the word "as" in the phrase "as in force".

The Hon'ble Sardar Vallabhbhai Patel: I accept this amendment.

Mr. K. M. Munshi: It was felt by many that if the word 'as' is put in, it would mean something as may be in force. Otherwise the word 'as' should be deleted.

Mr. Promatha Ranjan Thakur: Sir, the words "The law of the Union" include any law made by the Union. Sometimes the Union executive may pass orders which have got the force of law. I think the orders made by the Union executive must also be included in this clause.

Mr. President: Did you move an amendment?

Mr. Promatha Ranjan Thakur: No, it is not an amendment.

Mr. President: Mr. Munshi's amendment wants the word 'as' to be omitted and the mover has accepted this amendment. Can I take it that the House accepts this amendment?

The amendment was adopted.

Mr. President: Mr. Kamath will please move his amendment.

Mr. H. V. Kamath (C. P. and Berar: General): Mr. President, since I sent in my amendment I have learnt that the terms whose definitions have been incorporated in this clause have been arranged in alphabetical order and I am further told that in the matter of definitions the alphabetical order should and does take precedence over any other order. In these circumstances, I do not desire to move my amendment and beg leave of the House to withdraw the same.

Mr. President: Dr. Syama Prasad Mookherjee may move his amendment.

Dr. Syama Prasad Mookherjee (Bengal: General): Sir, in view of Mr. Munshi's amendment, it is not necessary for me to move my amendment.

Mr. President: Mr. Chaudhury may move his amendment.

Srijut Rohini Kumar Chaudhury (Assam: General): Sir, I beg to move that in clause 1, the following new definitions be inserted:--

> "(iv) 'School' means any educational institution."

"In these clauses dealing with the fundamental rights, we find the word 'school' and also the words 'educational institutions' being used at different places, leading one to think that some distinction is intended. I would like it to be clearly stated that by school we mean any educational institution. I am referring to clause 18 sub-clause (2) where it is stated--

> "No minority whether based on religion, community or language shall be discriminated against in regard to the

admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them."

Here the words used are "State educational institutions". In sub-clause (3) (a) it is laid down--

"All minorities whether based on religion, community or language shall be free in any Unit to establish and administer educational institutions of their choice."

Here we have the words "educational institutions". And in sub-clause (3) (b) the word 'schools' is used--

"The State shall not, while providing State aid to schools, discriminate against schools under the management of minorities whether based on religion, community or language."

This is likely to lead to confusion and my amendment is intended to avoid this confusion.

We have to safeguard our rights in the schools also. Some like you, Sir, are extremely good at their studies and knock off all the prizes. But others there are who have other kind of memories of their school days. They remember standing on the bench, standing on the floor, kneeling down on the floor, kneeling under the bench, and all that. We do not want any such things to happen again, because the clauses here are not clear. They should apply equally to schools and to all educational institutions. Therefore, I suggest it may be put down that schools mean any educational institutions.

Mr. K. M. Munshi: In clause 18 (3) (b) the word "schools" has not been used to narrow down the scope of the clause but to discriminate them from other educational institutions. This question, I think can best be dealt with when we come to clause 18. Actually sub-clause (3) (b) was intended to apply only in regard to the system of primary education.

Mr. President : Shall I put the amendment to vote now ? The amendment is--one part of it--

That in clause 1, the following new definitions be inserted:--

'School' means any educational institution.

The amendment was negatived.

Srijut Rohini Kumar Chaudhury: The second part of my amendment is, for defining untouchability, it may be clearly stated that.

" 'Untouchability' means any act committed in exercise of discrimination on, grounds of religion, caste or lawful vocation of life mentioned in clause 4."

Sir, in the fundamental rights, it has been laid down that untouchability in any form should be an offence punishable by law. That being so it is necessary that the offence should be properly defined. As it stands, the word 'untouchability' is very vague. It should be defined in the manner in which I have put it, or in some other better form. which may be decided upon by the House.

Dr. S. C. Banerjee (Bengal: General): Mr. President, the word 'untouchability' actually requires clarification. We have been accustomed to this word for the last 25 years, still there is a lot of confusion as to what it connotes. Sometimes it means merely taking a glass of water and sometimes it has been used in the sense of admission of 'Harijans' into temples, sometimes it meant inter-caste dinner, sometimes inter-caste marriage. Mahatma Gandhi who is the main exponent of 'untouchability', has used it in various ways and on different occasions with different meanings. So when we are going to use the word 'untouchability', we should be very clear in our mind as to what we really mean by it. What is the real implication of this word? I think we should make no distinction between untouchability and caste distinction, because as Mr. Thakur has said, untouchability is merely a symptom, the root cause is caste distinction and unless and until the root cause, that is caste distinction is removed, untouchability in some form or other is bound to exist and when we are going to have an independent India, we should expect everyone to be enjoying equal social conditions. It is incumbent on us that we should be very clear as to make it explicit that in the future independent India, there should be no distinction between man and man in the social field. In other words, caste distinction must be abolished. Of course there is difficulty as to whether we can make it justiciable or not. I have thought over it for a long time. I do really believe that in place of untouchability, some other word, such as, 'caste distinction' should be used or the word 'untouchability' should be clearly defined so as to leave no doubt in the mind of any one as to what we really mean by it.

Mr. K. Munshi: Sir, I oppose this amendment. The definition is so, worded that if it is accepted. it will make any discrimination even on the ground of place of birth or 'caste or even sex Untouchability. What does the definition say ?

> "Untouchability' means any act committed in exercise of discrimination on grounds of religion, caste or lawful vocation of life mentioned in clause 4."

Now, Sir, clause 4 does not deal with untouchability at all. It deals with discrimination regarding services and various other things. It may mean discrimination even between touchables and untouchables, between people of one province and another. The word 'untouchability' is mentioned in clause 6. The word 'untouchability' is put purposely within inverted commas in order to indicate that the Union legislature when it defines 'untouchability' will be able to deal with it in the sense in which it is normally understood.

The present amendment will be extending the scope of the definition of untouchability. Sir, I oppose the amendment.

Mr. Dhirendra Nath Datta (Bengal: General): Sir, it seems to me that whether the definition suggested by Mr. Rohini Kumar Chaudhury is accepted or not, it is necessary that there should be some definition put in. Here it is said that 'untouchability' in any form is an offence. A magistrate or a judge dealing with offences shall have to look to the definition. One magistrate will consider a particular thing to be untouchability, while another magistrate may hold a different thing to be untouchability, with the result there will be no uniformity on the part of the magistracy in dealing with offences. It will be very difficult for the judge to decide cases. Moreover, untouchability means different things in different areas. In Bengal, untouchability means one thing, while in other provinces, it means an entirely different thing. So, unless a definition is put in, it would be impossible for the judiciary to deal with offences coming under untouchability. Whether you accept the amendment of Mr. Rohini Kumar Chaudhury or not, some definition must be there. This question may be left to the Drafting Committee to find out some suitable definition of the word 'untouchability'. I strongly feel that unless there is a definition it cannot be dealt with as an offence. We all feel that untouchability should be made an offence and it should be done away with. I also feel with my friend Mr. Thakur that the root cause of untouchability, namely, the caste system, in Hindu society should be abolished altogether. Unless the caste system is abolished, untouchability will persist in some form or other. It has been said times without number by our leaders that unless Hindu society is drastically reformed by abolishing the caste system, it is bound to perish. Caste system should be abolished. So, if we Are to deal with 'untouchability' as an offence, there should be some definition and I hope it would be left to the Drafting Committee to frame suitable definition so that it will be placed before the House for discussion. With these words, I support the amendment.

Mr. President: I should like to draw the attention of the House to clause 24 which says :

> "The Union Legislature shall make laws to give effect to those provisions of this part which require such legislation and to prescribe punishment for those acts which are declared to be offences in this part and are not already punishable."

I take it that the Union legislature will define the word 'untouchability' so that the courts might prescribe proper punishment.

Srijut Rohini Kumar Chaudhury: I beg leave to withdraw the amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: I do not propose to put to vote of the House clause by ,clause. We will discuss each clause and the House will come to certain decisions. These decisions will be reviewed when the whole Constitution is ready. Suitable alterations will be made in the light of what precedes and what follows, so that there might be no discrepancy between one part and another. Therefore, the House need not be very meticulous about words now.

The Hon'ble Sardar Vallabhbhai Patel: There shall be no duplication of debates and it shall not be open to reopen the whole thing. There shall be only reconciliation between various clauses, in the matter of phraseology.

Mr. President: I do not suggest any duplication or any second discussion clause by clause. When. the whole draft comes back we shall see how each clause fits and that there is no discrepancy. Subject to that I think the House can take clause by clause into consideration.

Srijut Rohini Kumar Chaudhury: Sir, on a point of information, I should like to know whether a separate Bill like the Bill of Rights will embody all these provisions and then will be presented to this House. In that case it Will be unnecessary to discuss these amendments.

Mr. President: We are now discussing that very thing. As I, said, we shall see at the end that all conflicts and discrepancies are removed; not that we shall discuss the whole thing over again.

Sri M. Ananthasayanam Ayyangar (Madras: General): Sir, you should put the question that clause 1, as amended, be passed.

Mr. President: I am not taking formal votes because it will not then be open to review later on. Therefore, I am taking up the consideration of the clauses one after another.

The Hon'ble Sardar Vallabhbhai Patel: Sir, unless it is accepted by the House there is no point in going through, the whole Report. When the whole Report is gone through, if is understood that the necessary adjustments will be made. But if you leave the whole thing open without taking votes there is no point in going through the Report.

Mr. N. V. Gadgil (Bombay: General): Does a vote mean that it is finally accepted and there is no further scope of any further suggestions even in the matter of principle?

Sri K Santhanam: Sir, some of the rules may be changed afterwards and you can ask the House to change anything. But let us accept the clauses.

Mr. President: It is always open to the House to review its own decisions and in that way every decision that we take today will be open to review. But I was suggesting that even without reopening the whole thing we might remove all conflicts and discrepancies which may appear later on by making the necessary adjustments. In any case I will put clause 1 to vote.

The question is that clause 1, as amended, be passed.

The motion was adopted.

CLAUSE 2-APPLICATION OF LAWS

The Hon'ble Sardar Vallabhbhai Patel: Sir, I move that clause 2 be accepted. The clause runs thus :

> "All existing laws, notifications, regulations, customs or usages in force within the territories of the Union inconsistent with the rights guaranteed under this part of the Constitution shall stand abrogated to the extent of such inconsistency, nor shall the Union or any unit make any law taking away or abridging any such right."

If we make a fundamental right justiciable this is not a necessary corollary of it but in this connection I should like to draw the attention of the House to paragraph 7 of the Report which says:

> "Clause 2 lays down that all existing laws, regulations, notifications, customs, or usage in force within the territories of the Union inconsistent with the fundamental rights shall stand abrogated to the extent of such inconsistency. while the course of our discussions and proceedings we have kept in view the provisions of existing

Statute law, we have not bad sufficient time to examine in detail the effect -of this clause on the mass of existing legislation. We recommend that such an examination be undertaken before this clause is finally inserted in the Constitution."

Therefore, this clause is subject to examination of its effect on the existing laws and this should be done before the Constitution is finally drafted and the clause finally adopted.

Sir, I move.

Sri K. Santhanam: Sir, I gave notice of an amendment but I will move it in a somewhat modified form in terms of a suggestion made by Sardar Patel. I move that in clause 2 for the words "nor shall the Union or any unit make any law taking away or abridging any such right", the following be substituted:

"Nor shall any such right be taken away or abridged except by an amendment of the constitution."

The only reason is that if the clause stands as it is then even by an amendment of the Constitution we shall not be able to change any of these rights if found unsatisfactory or inconvenient. In some constitutions they have provided that some parts of the Constitution may be changed by future constitutional amendments and other parts may not be changed. In order to avoid any such doubts I have moved this amendment and I hope it will be accepted.

The Hon'ble Sardar Vallabhbhai Patel: Sir, I accept the amendment.

Mr. Promatha Ranjan Thakur: Sir, the words are "nor shall the Union or unit .... etc." "Union" has been defined in the first clause but not "unit". That also should be defined.

Mr. President: The word "unit" does not occur in Mr. Santhanam's amendment and so the question does not arise.

The Hon'ble Rev. J. J. M. Nichols-Roy (Assam: General): Sir, we understand that there will be provincial constitutions and each province will frame its own constitution. If so, the amendment of any law relating to a province should be left to the provinces instead of to the Union. The power to amend the Provincial law must lie in an autonomous province. If it is true, as we understand now, that the Union will deal with certain subjects only like Defence, External Affairs and Communications, we do not want that any provincial power should be limited by any fundamental right or any of its powers to be taken by the Union of India. Therefore, it seems to me that this amendment will be dangerous. I suggest that we should deal with all the fundamental rights first and take up this clause 2 last. I want to see whether any provision in the fundamental rights, does not encroach on the powers of an autonomous province or State.

Mr. B. Das (Orissa: General): I am inclined to agree with the Hon'ble Rev. Nichols-Roy, and I cannot accept Mr. Santhanam's amendment. We cannot delegate that power to the Union Legislature or the Provincial Legislature. That means that the future Constituent Assembly be called upon to make such fundamental changes that are implied by the amendment of Mr. Santhanam. I would suggest to the House to see to whom we are delegating this power before we accept this amendment and leave the

Provincial Legislature to do any thing it likes.

The Hon'ble Sardar Vallabhbhai Patel: The amendment suggested would make all the fundamental rights obligatory because it is absolutely essential that this clause should be passed if these rights are considered justiciable and fundamental. If these are not justiciable then they are not consistent. But if it is considered that those clauses which confer rights on citizens which could be enforced in law, then it is necessary that any act, custom, regulation or notification which takes away or abridges this right, must be abrogated. Otherwise, it is meaningless. Therefore, Sir, I oppose the postponement of the motion. I have of course accepted Mr. Santhanam's amendment.

Mr. President: The mover of the Resolution has accepted Mr. Santhanam's amendment. The question now is:

> "That in clause 2 for the words 'nor shall the Union or any unit make any law taking away or abridging any such right, the following be substituted:
>
> 'nor shall any such right be taken away or abridged except by an amendment of the constitution'."

The motion was adopted.

Mr. President: The question is--(I will now read the amended clause)--

> "All existing laws, notifications, regulations, customs or usages in force within the territories it the Union inconsistent with the rights guaranteed under this part of the constitution shall stand abrogated to the extent of such inconsistence, nor shall any such right be taken away or abridged except by an amendment of the constitution."

The Constitution will provide rules for its own amendment, and the Constitution will be amended in accordance with the rules which will be provided in the Constitution. This clause also, if necessary, may be amended in the same way as any other clause in the Constitution.

The motion was adopted.

CLAUSE 3--CITIZENSHIP

The Hon'ble Sardar Vallabhbhai Patel: Now I will take up clause 3:

> "Every person born in the Union or naturalised in the Union according to its laws and subject to the jurisdiction thereof shall be a citizen of the Union."

To this should be added:

> "Further provision governing Union citizenship may be made by the laws of the Union."

That was originally passed by the Committee but in printing it was Omitted. by mistake. It will be moved by Mr. Munshi.

Mr. K. M. Munshi: These words were originally in the Report which was placed before the Advisory Committee, but it seems due to some oversight they did not find a place in the final Report. The idea is that the Union will not only have to make laws with regard to naturalisation but with regard to citizenship further provisions may also have to be made. So those words have to find a place in this particular clause; otherwise the whole idea will remain incomplete. I therefore move that the following words may be added at the end of this clause:

"Further provision governing Union citizenship may be made by the laws of' the Union."

Mr. Promatha Ranjan Thakur: The clause as it stands is rather vague. It reads--

"Every person born in the Union or naturalised in the Union according to its laws... "

I do not understand how a person can be born according to law. There should be a comma after 'Union'; you must not leave it vague.

Mr. B. Das: This clause is the only outstanding fundamental right a citizen can claim--political equality. 'Every person born in the Union..' will include any non-Indian--a German, or a Japanese who will enjoy the rights of Indian citizenship from the 14th to 21st year unless he declares that he is not an Indian. I would like a provision should be made that--

"a person born in the Union can declare for the nationality open to him by virtue of descent."

It seems that the Fundamental Rights Committee has not bothered about this aspect of the question.

European born sons and daughters will seek occupation in State and private services and later they can turn as aliens. Lord Roberts was born in India and yet. he was one of the greatest satraps to keep down Indians. Of course only one European, Pierre Loti, was born in India and he remained a friend of India throughout. I do agree with my leaders as far as they are thinking on the right lines, *viz.*, that they will bring further provisions by legislation to define fundamental rights. It appears to me that the present draft of citizenship is very wrong as it concedes economic exploitation to aliens on some pretext. Nowhere have you defined nationality, as has been suggested by Mr. Sidhwa. We do see that the Fundamental Rights Committee had to race against time and that they had no time to take into consideration certain factors which they have ignored so far. I do hope that this House will look into that aspect of the matter and will not agree to exploitation of Indian citizens in any shape or manner, by aliens or alien-born I feel very unhappy over this lacuna of exploitation.

Mr. K. M. Munshi: Sir, on a point of personal explanation I was in error in stating that this clause was omitted by mistake. I looked into the Minutes and I find that it was dropped in the Advisory Committee. I was under a wrong impression.

Mr. President: The point that has been raised by Mr. Das deserves consideration and I want the mover to consider it. The wording of the clause as it stands is--

"every person born in the Union shall be a citizen of the Union."

Mr. Das says that the wording is too wide and may include the child of any foreigner born in this country, as he would acquire the right of citizenship by the mere fact of his birth.

Mr. K. M. Munshi: May I point out that the wording is "subject to jurisdiction"-- That is the doctrine of allegiance. Persons born of foreigners, consuls and diplomats, will not be included.

Mr. President : "Subject to jurisdiction" will not include allegiance. I am not quite sure about it but the lawyers in this House have to help us on that.

Mr. K. M. Munshi: "Subject to jurisdiction" has been defined by several authorities and it means persons born of persons who owe allegiance to the Union. If necessary, I will satisfy the Hon'ble Member who has put forward this point of view. The wording "subject to jurisdiction" has been taken from the American Constitution and has been expressly construed to mean this.

Mr. President: Our Constitution should be self-contained as far as possible. We should not depend on the interpretation of clauses in other constitutions, as it may lead us to any amount of confusion.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar (Madras: General): Sir, this clause has been borrowed from the American Constitution. There axe two ideas of citizenship. In the Continental countries citizenship is based upon race: it has nothing to do with the birth of a person in any particular place. In the Anglo-American system if a person is born in a particular place, he gets his citizenship. If you want to adopt a different system you may. Under the American system if a Hindu goes to America even today, he becomes an American citizen, though if it is a question of naturalisation there are difficulties in the way of such naturalisation. So the question of birth stands on a different footing from the question of naturalisation. If I may say so, with respect to my friend, Mr. Munshi, that phrase "subject to jurisdiction" is put in for a purpose different from what he stated. Supposing a consul is here and a child is born to him, the child will not get citizenship, because the consul or his child will not be subject to the jurisdiction of the Union. That, is why "subject to jurisdiction" is used here, because a person born to a consul here is supposed to be born in his own country. So far as any ambassador or consul or any other person holding a similar status is concerned, the child will not get the citizenship. That is why the expression "subject to the jurisdiction" occurs in that clause. Therefore the main principle underlying this clause is that if a person is born here be must get the citizenship, even if he is a foreigner. That is the principle obtaining in England -in America and in every other country in which Anglo American jurisprudence prevails.

So far as continental countries are concerned citizenship is based upon blood: it is based upon race: and therefore wherever that person may be if he is the son of a person of a race he has to get citizenship. That is the principle. No doubt difficulties have been expressed in regard to this principle of birth, when people leave their country and children are born to them. That is why provision is made in the British Nationalities Act in regard to birth of children to British citizens abroad and an appropriate provision may be made in the Union laws to cover such cases. The first part of the clause commits the Constitution to the fundamental principle that every person who is born in this Union is a citizen of the Union. The second part of it refers to naturalisation and then both of them are subject to the jurisdiction thereof. Other cases where children are born to nationals who go abroad from this country will have to be provided for by the Union law. That is the exact position. This is merely the principle obtaining in the Anglo-American law, *viz.,* that if a person is born within the jurisdiction he shall get the citizenship. If you want to depart from it, it may land you in difficulties. You may borrow the whole of the continental system--either the German, French or the Italian system of nationality. But we thought that it would be much better to follow the Anglo-American system, a system with which we are acquainted.

Mr. President: I want to ask one question. Suppose a Jap by birth is travelling through this country and while travelling a child is born to him. What happens?

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: In spite of the language of the clause the American Supreme Court has held on this very clause that a casual visitor like that will not come within the language of the Constitution.

Sri M. Ananthasayanam Ayyangar: Why not ?

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: My answer is that the Supreme Court of America construing this particular clause has held that. I think it is a reasonable exception which can be made. I have looked into this particular point yesterday thinking that this point would come up for consideration, because even a lady passenger in a railway train may Live birth to a child, and an exception should be made to cover that class of person who is transiently present in this country to whom a child is born, that that person shall not have citizenship. But then what exactly is the meaning of 'transient presence'? That will have to be provided for and it will be very difficult. Under those circumstances there is no great hardship felt in America by adopting the rule that birth determines citizenship. Otherwise you must have a detailed provision as in the British Nationalities Act, where there are four special clauses to cover such cases. You must borrow all the clauses of the British Nationalities Act, which provides a more comprehensive definition than this. But we thought that on the whole it would be better. to adopt the shorter form as in the American Constitution which can find a place in a chapter on Fundamental Rights.

Mr. President: It seems to be a very important question and we should thrash it out. What would happen to a man who is not simply passing through the country but stays in this country, say, for some years for trade purposes or some other purpose ?

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: His son will become a citizen, but political rights are distinct from civic rights. There is no general rule of law that a citizen is entitled to political rights, because we know as a fact that according to the American law of citizenship the citizen is only entitled to civic rights. It does not stand in the, way of the Constitution being so framed as not to concede political and other rights to the citizen. Citizenship by itself does not carry anything like minimum rights. Citizenship may confer certain rights in particular cases. If you think that those clauses should not be extended to all the citizens, it is for you to make a distinction. Citizen right by itself normally under the American law from which it borrowed--does not connote any minimal rights, Though the Eighteenth Amendment is applicable to every State in U.S.A., the citizen does not possess political and other similar rights in various States in the Union. Certain rights we have extended to all people. So far the area of fundamental rights of citizens has been considerably reduced and no considerable difficulty can possibly arise in regard to citizenship in matters relating to religion, protection of property, protection of person, protection of organisation and some safeguards as to public order and all that. But the difficulty is likely to arise by importing the idea of political rights into citizenship. Otherwise, we must consider the question whether we have to borrow this principle at all or depart from it altogether. We have got that very thing in the British Nationality Act itself. Or we shall, have to have some concept of citizenship distinct from the British Nationality Act, distinct from the American law, borrowing from the German or Italian conception or we must have our own idea of what citizenship is. That is how the matter stands.

Mr. President : Personally, I do not like that we should follow the precedent of any other country. We should have our own citizenship and formulate what that citizenship connotes.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: While I greatly appreciate that, I cannot altogether forget the fact that citizenship will carry with it protection in the international field. In dealing with citizenship we have to remember we are fighting against discrimination and all that against South Africa and other States. It is for you to consider whether our conception of citizenship should be universal, or should be racial or should be secretarian. That is a question of politics on which I am not so competent as some other people here. But so far as this is concerned, I merely state the law as it is and the principles on. which the Fundamental Rights Committee has proceeded.

Sri M. Ananthasayanam Ayyangar: Take the case of a Japanese who comes into this country and stays here for some time and a son is born to him. Does he lose the citizenship which he inherits from his mother in Japan or he does not do so and he continues to be a citizen of both countries.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: The problem of double nationality is one of the most difficult questions which international jurists have to face. All that we can provide for is a kind of citizenship. We cannot try to remove all the complications that will arise out of the problem either of statelessness or double nationality. Owing to conflict between the continental and Anglo, Saxon systems differences might arise. You might provide for a particular person choosing his citizenship in cases where such conflict arises, but you cannot possibly provide in a chapter on fundamental rights all the complications that may arise on account of the problem of double citizenship, statelessness and all those considerations.

Sri M. Ananthasayanam Ayyangar: In clause 4 it is said:

> "The State shall make no discrimination against any citizen on grounds of religion, race, caste or sex."

Therefore, that is an unqualified citizenship and this a fundamental right. This can only be modified by a modification of the Constitution, not even by the law of a unit or of the Union Legislature. Therefore, you are not making a discrimination between citizenship rights and political rights. Is it not desirable that we should not leave this definition in an indefinite form as it now stands in this paper?

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: The clause relating to discrimination in the context can only refer to civic right. It will be for the Provincial and the Union Constitution to give franchise in any form. You can make it subject, if necessary, to qualifications as to franchise both in the Provincial and the Union

Constitutions. I may also say that in fact some members of the Committee were anxious to say that every right must be a human right. I hope I am not disclosing any secret when I say that Mr. Masani went to the length of saying that most of the rights should be extended to human beings who are in this country; that was the stand he took up. As a matter of fact, there is nothing novel in that. The first Ten Amendments of the American Constitution are not confined to citizens. Whatever may be the interpretation put upon them by the Supreme Court, the first Ten Amendments of the American Constitution are not confined to citizens. It extends to every human being generally. Of course, the word "discrimination" has been understood not to extend to Political right, and it is Only confined to civic right ordinarily exercised by the citizen. We are not doing anything novel.

Shri R. V. Dhulekar (United Provinces: General): I submit there is no provision made for any child which has been born outside the Union of parents who are citizens of the Union. I should like to know whether that child will also obtain the right of citizenship or not?

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: That is why provision has been made that the law of the Union may provide for it.

One other suggestion I would like to make. When we draft the Union Constitution you may consider, it. If you accept the view, that normally speaking we have to adopt the general principle in Anglo-Saxon or American jurisprudence subject to necessary modifications or modifications that may be, introduced by the Law of the Constitution for the time being, especially in view of what has already fallen from you, we will consider the whole thing in juxtaposition with other provisions of the Constitution, and if it is likely to come into conflict, that may be considered. But one thing. Are we going to bring in race idea, namely, only those who are born of parents--you call them Indians or other people--are entitled to citizenship or are you going to subscribe to the principle that birth settles citizenship, though necessary exception will have to be engrafted for the purpose of providing for children of Indian nationals who are born abroad? I am not at all suggesting that you must rigorously follow the principle of what you call *lex soli,* that is, place of birth? The two principles are *lex soli* and *lex sanguinis*. *Lex soli* means the law of the place of birth arid *lex sanguinis* means according to blood. These are the two different principles in the field of international law.

Mr. R. K. Sidhwa: When this question was considered in the main Advisory Committee, the clause read thus:

> "Every person born in the Union or naturalised in the Union shall be a citizen of the Union."

I moved an amendment there that the citizenship clause being very vague should be made more clear as you have rightly pointed out. I put a definite period. I said, whoever is not naturalised for at least ten years in this country shall not be considered a citizen.

On this the following words were added:--

> "According to the laws and subject to the jurisdiction thereof."

I was told that this would cover my point; although I was not satisfied as commonsense man I felt --that this did not cover the view point I raised. I was, however, helpless before the views of the legal luminaries. It is, therefore, very necessary that we should have a clear definition of the word 'citizen', and it should be put down in the Constitution and not left to be dealt with when we are making laws hereafter. I suggest that it should be explicitly defined here, and that this clause be postponed and dealt with tomorrow.

Mr. Jagat Narain Lal (Bihar: General): Sir, I feel that the definition of citizenship given in the Constitution of the Irish Free State may be useful in this connection. The definition there is--

> "Every person, without distinction of sex, domiciled in the area of the jurisdiction of the Irish Free State at the time of the coming into operation of this Constitution, who was born in Ireland or either of whose parents was born in Ireland or who has been ordinarily resident in the area of the jurisdiction of the Irish Free State for not less than seven years, is a citizen of the Irish Free State."

I think, Sir, if some such time limit, as seven years for domicile is laid down, that will solve our difficulty.

Sri M. Ananthasayanam Ayyangar: Sir, I find that the words in this definition are taken, almost word for word, from the American Constitution. In the American Constitution it reads thus--

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are the citizens of the United states and of the State wherein they reside."

But this definition of 1868, we are told, has been given various interpretations during the subsequent years. I would therefore request this matter to be left over for being dealt with tomorrow. It is one of the most important clauses. On the question of citizenship there have been lots of quarrels all over the world, in Jerusalem, for instance. This is a matter on which there is scope of difference of opinion. For example, if a Japanese child is born in this country, should it be allowed to become a citizen of this country or become a national of this country merely because of the fact that it was born here ? Or can we lay it down that if a man lives in this land for a period of 10 or 15 years, he should get the right of being a citizen of this country ? I do not think we should make any distinction between foreigners in the matter of citizenship in this country. I feel it is not contemplated in the fundamental rights, it is an innovation. These are matters which require deep thought. I would, therefore, suggest leaving this question over till tomorrow when we will sit together and find out how to modify the present definition.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: Sir, I would only invite the attention of the House to the definition of a British citizen and even this has given rise to difficulties and they have had to make special provision for married women. It is not an easy thing to produce a Nationality Act by tomorrow morning.

The definition says:--

(1) The following persons shall be deemed to be natural born British subjects, namely:-

(a) Any person born within His Majesty's dominion and allegiance; and

(b) Any person born out of His Majesty's dominions whose father was, at the time of that person's birth, a British subject, and who fulfills any of the following conditions, that is to say, if either,

(i) his father was born within His Majesty's allegiance; or

(ii) his father was a person to whom a certificate of naturalisation had been granted; or

(iii) his father had become a British subject by reason of any annexation of territory; or

(iv) his father was at the time of that person's birth in the service of the crown; or

(v) his birth was registered at a British consulate within one year or in special circumstances, etc.

(c) Any person born on board a British ship whether in foreign territorial waters or not.

Even this Act had caused difficulty in the case of married women. Therefore, if at least one thing is decided upon and if we generally accept the general principle, that will be better. My friend, Mr. Ananthasayanam Ayyangar is more hopeful than myself. I do not think it will be possible to come with a ready-made solution of this difficulty by tomorrow coming. For the time being, let us accept the general principle. The exact qualifications and modifications necessary may be considered later. We need not overnight manufacture a law of nationality before 11 o'clock tomorrow morning.

Mr. President: May I make one suggestion for the consideration of the mover? As it is a very important matter--and it is one to which I myself attach great importance--if an amendment like this could be accepted, it might remove most of our difficulties. You begin the sentence like this:

"Save as otherwise provided by the law of the Union, every person born in the Union or naturalised in the Union according to its laws and subject to the jurisdiction thereof shall be a citizen of the Union."

Now, as the clause reads, apart from what the American precedent is,, about which I do not know, t seems to me that it is so wide that every one born in this country will be a citizen of the Union, and the rights of a citizen are specifically given, in clause 9.

The Hon'ble Sardar Vallabhbhai Patel: There are two ideas about nationality in the modern world, one is broad-based nationally and the other is narrow nationality. Now, in South Africa we claim for Indians born there South African nationality. It is not right for us to take a narrow view.

Mr. President: We claim for Indians in South Africa the nationality of that country not merely by birth but by reason of settling there.

The Hon'ble Sardar Vallabhbhai Patel: Yes. This Constitution is for a period of ten years after which it will be subject to revision. We have added a proviso which covers all our difficulties. I suggest for your consideration how many foreign men and women come to India for giving birth to children to acquire Indian nationality. It is a curious idea that, for that purpose you introduce racial phraseology in our Constitution. It is important to remember that the provision about citizenship will be scrutinised all over the world. They are watching what we are doing. We will be undergoing great risk if you postpone this matter and raise legal controversies. By commenting on every word in this, you will never come to an end. This is a simple problem. We must always have a few foreigners coming here. This will be accidental nationality--If by the accident of birth, some one comes and stays here, subject to the proviso which we have enacted, we can control double citizenship by our legislation. We can always control that.

The Hon'ble Sri C. Rajagopalachariar (Madras: General): We must remember that this clause is intended for the positive purpose of creating a unitary citizenship of India. We should not be obsessed by foreign accidental possibilities.

The Hon'ble Dr. Kailas Nath Katju (United Provinces: General): Mr. President, it is hardly necessary for me to add to the illuminating exposition of Sir Alladi Krishnaswami Ayyar. I suggest that in the definition as it stands we might add something on these lines. Under the present law every person who is born in British India today has Indian citizenship. If a person is born anywhere outside India, then he becomes an Indian subject because he is the son of an Indian subject. That ought to be made quite beyond controversy. That should not be left to the proviso. Wherever the subject of the Indian Union goes to any part of the globe and if a child is born to him there, then that child becomes the subject of the Indian Union. I understand that to be the law. If that is not the law, then it ought to be the law of the Union. We are now sending a number of Ambassadors abroad in order to establish contacts with all foreign countries. It would be lamentable if Indian people who go there and if a child is born to them, then that child should not be treated as an Indian subject. This ought to be added to the definition. I do not wish to say anything about double nationality. The law is quite clear. It was very much stressed during the trials of the Indian National army personnel. It was then found that it sometimes happens that if a child of a non-British subject is born in India, then that child may have double nationality of the country where he is born and of the country of his parents. When he becomes a major, it is open to him to accept one nationality and renounce the other. Speaking for myself, whoever is born on Indian soil should be welcomed as a subject of the Indian Union. That is a plain and intelligible proposition. I think we should accept it.

Mr. K. M. Munshi: As has been suggested by Dr. Katju, every child born of Indian parents should have the citizenship of the Union. Now as a matter of fact, the clause as originally sought to be inserted, has this provision that children would he citizens of India, if when they are born the parents are Indian citizens. But it was felt that if you once start introducing various elements and considerations in this clause, then we will be engaged in enacting a nationality law here and now. Therefore the amendment, which I moved, was inserted, *viz.*, that further provisions required for these different cases will be made by a law of the Union. After all we are not making a law of nationality. We are only enacting two indispensable conditions, namely, persons born in India and naturalised according to the law of the Union shall be citizens. The world is divided between the ideas of racial citizenship and democratic citizenship, and therefore, the words 'born in India' become necessary to indicate that we align ourselves with the democratic principle.

The Hon'ble Sardar Vallabhbhai Patel: As I have already explained all these different points of view can be easily provided for under the clause,--

> "Further provision governing Union citizenship may be made by the law of the Union."

All the difficulties suggested from various points of view can, be covered in this. It is open to the Union to make any law governing citizenship, if it is necessary. After all how many people are going outside? A few people. Supposing some children are born outside and if there is any such necessity, this proviso amply covers such difficulties. The difficulties on the opposite side also are covered. Therefore, our general preface or the general right of citizenship under these fundamental rights should be so broad-based that any one who reads our laws cannot take any other view than that we have taken an enlightened modern civilised view. The citizenship clause has been taken from the American model which is more or less consistent with the English. And therefore we should not disturb this and we need not be frightened about it because it is not going to create any difficulties in the intervening period of ten years. If we find any difficulties after our experience of the working of the Constitution for ten years one can easily change it. But I have no doubt that there is going to be no intricacy or difficulty. It is a simple clause which will be fit and proper for the first Constitution of free India, and we need not have any suspicions.

The Hon'ble Sri C. Rajagopalachariar: Sir, I think it should be "further provisions". It must be plural and not singular.

Mr. President : Even after listening to the learned discourses that have been given to us by eminent lawyers, I confess that I am not yet convinced that the clause as it is, has been rightly put. But it is of course open to the House to accept it in this form.

Srijut Rohini Kumar Chaudhuri: Sir, I suggest that the consideration of this clause may be further postponed.

Mr. President: I am afraid that is not possible. The words--

"Further provisions governing Indian citizenship may be made by the law of the Union."

would not improve matters, because "further" means in addition to and not in modification of. Therefore, that would not in any way take away from the amplitude of the clause as it is in the first part of it. But, as I have said, I do not like to influence the House beyond expressing my own opinion, and I leave it to you to give your vote.

Several Hon'ble Members: The clause may be held over.

The Hon'ble Sri C. Rajagopalachariar: Sir, will you permit me to say a word ? There is some misunderstanding.

Mr. President: I do not think it would be right at this stage to allow any member to speak on this clause. There is a suggestion which seems to come from many members that the consideration of this clause may be postponed.

The question is:

"That the consideration of this clause be postponed."

(Votes were taken by show of hands).

The motion was adopted.

Mr. President: I will particularly request lawyers and jurists who are members of this House to give their attention to this clause and to give us something which will be acceptable to all. If they too feel that the clause as it stands should be accepted, I have no doubt that the House will accept their opinion with the respect which is due to them.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: Sir, we have a big Committee and it is an unworkable proposition for twenty people to discuss the question of citizenship. The whole point has been discussed and I suggest that a small Committee may be appointed to consider this clause.

Mr. K. M. Munshi: That will be better; they can meet and have a discussion because this is a purely technical discussion.

Mr. President: This is a purely legal matter and, therefore, I should like to leave it to the lawyers to give us a draft.

Mr. K. M. Munshi: Three Committees have discussed this question thread-bare and you can now nominate any persons you like and they can discuss it with you.

Mr. President: It is not as if I alone am not convinced about it but a great part of the House is doubtful about this. So there is no use discussing with me alone; even if I am convinced and if the House is not convinced that would not take matters very far.

Shri R. V. Dhulekar: Sir, I propose that a small Committee consisting of Sir B. L. Mitter, Dr. Katju and Mr. K. M. Munshi be appointed to go into this.

The Hon'ble Pandit Jawaharlal Nehru: I think it should be left to the President and the Chairman of the Committee.

Mr. President: If it is left to me I will ask the lawyers to go into it.

Dr. B. Pattabhi Sitaramayya: I suggest that in addition to three lawyers one man of common sense may also be added.

Mr. President: I do not exclude lawyers from the category of people with common sense.

CLAUSE 4--RIGHTS OF EQUALITY

The Hon'ble Sardar Vallabhbhai Patel: Sir, I beg to move clause 4 which runs as follows:

"4. (1) The State shall make no discrimination against any citizen on grounds of religion, race, caste or sex.

(2) There shall be no discrimination against any citizen on any ground of religion, race, caste or sex in regard

to-

(a) access to trading establishments including public restaurants and hotels;

(b) the use of wells, tanks, roads and places of public resorts maintained wholly or partly out of public funds or dedicated to the use of the general public:

Provided that nothing contained in this clause shall prevent separate provision being made for women and children."

This is a non-discriminatory clause which is provided in almost all constitutions and adjustments have been made here to suit the special conditions of our country. There may be various points of view and in the Committee also there was a full discussion on this question and I am sure there will be discussion in this House also. A proviso has been made which was found to be necessary because even in a non-discriminatory clause it would be necessary in the present condition of our country to make special provision for women and children.

Some amendments have been given notice of to remove doubts. In clause (2) (a) the words "and places of public entertainment" were suggested in the course of discussion to be added; and in clause 2(b), the words "State funds" are sought to be substituted for "public funds", Public funds may be by subscriptions or private arrangements; the clause is meant to apply to State funds. In clause (1) it is suggested that for "make no discrimination" the words "not discriminate" should be substituted. I shall accept these amendments when they are formally moved.

The Hon'ble Shri Purushottamdas Tandon (United Provinces: General): Is Sardar Patel himself putting forward these amendments?

The Hon'ble Sardar Vallabhbhai Patel: I said that when these are formally moved I shall be prepared to accept them.

Shri Mahavir Tyagi (United Provinces: General): May I know one thing from the Hon'ble the mover ? Allay I know why he thought it necessary to repeat in sub-clause (2) what he has already said in subclause (1)-I mean the words--

"There shall be no discrimination against any citizen on any ground of religion. race, caste or sex...."

The Hon'ble Sardar Vallabhbhai Patel: It is very simple. The first clause is about the State obligation; the second clause deals with many matters which have nothing to do with the State, such as public restaurants--they are not run by States; and hotel--they are not run by State. It is an entirely different idea, and therefore, it is absolutely essential.

Shri Mahavir Tyagi: It does not satisfy me. The second clause pertains to hotels and restaurants. To say that restaurants and hotels shall do this or that and there shall be no discrimination against any citizen on any ground of religion, race, caste or sex in regard to access to trading establishments including public restaurants and hotels, is including such establishments which are not included in the State. It is their outlook . But if we are also to enact for those which are not included in the State, then we should make it clear. Could we not put it in one clause that no discrimination shall be allowed against any citizen in regard to restaurants, hotels, well, tanks, roads, and so on? The clause as it stands does not mean this. Either the language should be slightly different, or perhaps I have not exactly followed the meaning of this clause.

Mr. R. K Sidhwa: The words 'Hotels and public restaurants' have been mentioned for special reasons and specific purposes. They are used by the public and even at present licence from the local bodies is necessary before they are allowed to function. It is very necessary that these public places of entertainment--hotels, and restaurants--should be specifically mentioned, so that the owners may not say that A shall be allowed and B shall not be allowed. These words have a definite and special meaning, and they are absolutely necessary. I, therefore strongly suggest that the words be retained as the Hon'ble Sardar Patel has moved.

Mr. K. M. Munshi: Mr. President, Sir. I move:

1. "That in clause 4 (1) the words 'not discriminate' may be substituted in place of 'make no discrimination'."

It is merely a matter of phraseology.

2. "That in clause 4, sub-clause (2) (a) the following words may be added: 'and places of public entertainment'."

A doubt was raised whether places of public entertainment could be treated as trading establishments. In order to make it clear that places of public entertainment are trading establishments, this amendment has been moved:

3. "That in clause 4, sub-clause (2) (b) substitute the words 'State funds' for public funds'."

"Public funds" might be construed differently; it may be even money raised by public subscription for specific purpose. This amendment will clear this doubt.

Mr. President: We have received notice of a number of other amendments to this clause.

Mr. P. S. Deshmukh (C. P. and Berar: General): May I say a word as a matter of general observation on this clause'? In drafting such a long clause we are throwing a shadow of untouchability over the whole Constitution of India. In this particular clause, I submit to the House, if we merely say that--

"the State shall not permit any discrimination against any citizen on grounds only of religion, race, caste or sex."

It should be quite sufficient, and it will leave ample opportunity to the Union Government to make specific provisions with regard to hotels, restaurants, parks, theatres, etc. I think, therefore, that the whole of the second part should be omitted. We should not forget that we have to confine ourselves to the rights which are and must be fundamental. This is not the place to enumerate all the various rights a citizen should have. We are here concerned with only justiciable fundamental rights and it would be improper to burden the clauses with a detailed list of places which should be accessible to all. I, therefore, suggest, Sir, that it will serve our purpose if we merely substitute in the place of the whole clause the following--

"That the State shall not make nor permit any discrimination against any citizen, on mere grounds of religion, race, caste or sex."

Mr. Somnath Lahiri: Sir, I support the original motion but there should not be any discrimination on the ground of political creed. The whole idea of these clauses is that discrimination should not be exercised by the State or by other public bodies in respect of religion, caste etc. In the unnatural circumstances of today in India, religious, communal, caste and similar distinctions loom large. But when things have settled down political differences are sure to come to the forefront and there may be a tendency on the part of the State or public bodies to discriminate against members of political parties on the basis of difference in political creeds. In every country in the world you will find that measures are taken generally to obviate this kind of discrimination on the ground of political creed or party. Therefore I want to move:

"That in sub-clause (1) of clause 4, after the words 'grounds of', the words 'political creed' be inserted."

Similarly, I beg to move:

"That in sub-clause 2 of clause 4, after the word 'caste' the word 'creed be inserted."

I support also Mr. Kamath's amendment to the same sub-clauses of clause 4.

Mr. President: Have you moved both the amendments ?

Mr. Somnath Lahiri: I have moved both the amendments, Sir.

Mr. H. V. Kamath: Sir, in moving this amendment I seek to draw a distinction between religion and creed. I think the word religion is not comprehensive enough to include in its scope creed as well. For instance, a person may not accept any religion in the conventional or formal sense of the term, yet he may have a creed. A man may say that he has no religion, yet he may say that he is a rationalist or a free-thinker and that I suppose is a creed which anybody can profess and still he may say that he does not belong to the Hindu, Muslim or Sikh religion, or for the matter of that to any other religion. Therefore, I think that the word creed should be inserted in this clause.

I do not subscribe to my friend Mr. Lahiri's suggestion regarding political creed. I do recognise that times may arise when we may have to discriminate against persons who hold a creed which seeks to subvert the State by violence or similar objectionable methods. We may have to impose discrimination against such persons. But I submit that the word 'creed' has a different connotation from the words 'political creed'.

As regards 'colour' perhaps it is included in the word 'race'. Yet I have my own doubts on that point as well. Personally, I do not think that the word 'race' should find a place here, as that would mean that we recognise a multiplicity of races in India--a doctrine to which I do not subscribe. Yet if ethnologists who are present here think that there are many races in India and the word 'race' must be there, I will yield to them on that point. But I think in that case the word colour should find a place in this clause.

An Hon'ble Member: What do you mean by colour?

Mr. H. V. Kamath: 'Colour' means colour of your complexion. Two persons may belong to the same race but may have different colours physically. Therefore to make it comprehensive I move:

> "That in sub-clause (1) and (2) of clause 4, after the word 'caste' the words 'colour, creed' be inserted."

Srijut Rohini Kumar Chaudhuri: Sir, I beg to move:

> "That in sub-clause (2) of clause 4, after the word "sex', the following words be inserted:
>
> 'or of dress worn by any nationality'."

It seems almost a laughing matter. But even today when we are on the threshold of independence there are hotels which do not welcome people dressed in Indian style. I know of an instance which recently occurred when four Indian gentlemen of my province were not allowed to live in a hotel because they wore Indian dress. I am not afraid that in future the same restriction will be observed by any hotel owners. Today of course unfortunately there are some European-owned or European-managed hotels which do not take in Indians in Indian dress or make it a condition that they must not come to their dining rooms in that dress. I am not afraid of the future, because I believe that when India is independent such restriction would disappear. But what I am afraid of is a reprisal or a revenge taken against such European minded people and people in European dress may not be allowed to come into hotels. For that reason particularly I want that this amendment should be accepted by this House.

Mr. Dhirendra Nath Datta: Sir, I do not want to move the amendment which stands in my name. (Amendment No. 12 on Supplementary List, dated 28th April 1947).

Sri D. Govinda Doss (Madras: General): (Spoke in Telugu). Sir, I move:

> "That in sub-clause 2 (b) of clause 4, after the word 'roads' the words 'Schools, temples or places of worship' be inserted."

Sri V. C. Kesava Rao (Madras: General): I move:

> "That in sub-clause 2 (b) of clause 4, after the word 'roads' the words 'Schools, hostels, temples or places of worship' be inserted."

I want to say that though some schools are thrown open to the Harijans in the villages, they are not allowed to sit along with the caste Hindu students. They are asked to sit on the floor or at a distance. I would like to say in this connection that education is the birth-right of every citizen. So a Harijan or an untouchable should be given the same right as every other citizen. As regards temples, I may submit that untouchables are made to worship God only from a distance and not before God. Even though the untouchables are saying that they are Hindus for the last so many centuries, they are being denied this right and they are made to worship God only from a distance and not within the temple itself. I think that untouchability is the sole cause for the non-admission of untouchables into temples. I request that these things may be taken into consideration.

Mr. President: There is another amendment in the name of Shri P. Kakkan. But that is covered by the amendments that have already been moved by Mr. Govinda Doss and Mr. Kesava Rao, and it is not necessary to move that amendment (that is, amendment No. 15).

Shri Ajit Prasad Jain (United Provinces: General): I beg to move:

"That in sub-clause (2) (b) of clause 4, after the word 'roads' the words 'educational institution, hospital or dispensary', be inserted; and after the word 'resort' the words 'built or' be inserted."

The speaker who preceded me just now has spoken about educational institutions. It is not necessary for me to repeat those arguments. I have also included hospitals and dispensaries among the places in regard to which no discrimination should be made provided they receive aid from State funds. Educational institutions, dispensaries and hospitals are very necessary for the moral, mental and physical, development and my opinion is that any public institution which receives any assistance from State funds should he open to all persons irrespective of their religion, caste, race or sex. In this connection, I would like to refer to paragraph 18 (3) (b) which says:

"The State shall not, while providing State aid to schools, discriminate against schools under the management of minorities whether based on religion, community or language."

Now, the amendment which I have suggested would negative this provision, for I would make it compulsory that any educational institution, hospital or dispensary, if it receives any aid or assistance should be thrown open to all persons. Secondly, I want the words "built or" to be inserted after the word "resort", for the States assistance may take the form of a lump sum or a periodical amount for the purpose of maintaining the thing. The present clause as it stands will not include institutions which receive any lump sum aid for construction and, therefore, my second suggestion is that the words "built or" be inserted after the word "resort", so that both the institutions which have been built or are maintained by the State funds may come within the mischief of this clause.

Mr. R. R. Diwakar (Bombay: General): I beg to move:

"That in sub-clause (2) (b) of clause 4 for the word 'and' a comma be substituted, and after the word 'resort', the following words be inserted:--

and schools, colleges and other institutions."

I should like to bring to the notice of the House that this is a question of equal opportunity. Equal opportunity to all should be given in schools, colleges and other institutions which are State-aided, so that people may not be shut out from any institution on account of race, creed, religion, etc. There may be some apprehension that if this amendment is accepted certain schools which are denominational or run by certain sections or communities may be flooded, or entry may be demanded by all into such schools. But I may state that there is a sufficient safeguard in the phrase which says, "dedicated to the use of the general public". Unless the institutions are run wholly or partly by State funds and are dedicated to the use of the general public, there is no such danger arising by the acceptance of this amendment. Therefore, I request the House to accept it.

I also move:

"That after the words 'general public' at the end of sub-clause (2) (b) of clause 4, the following be added: --

'and (c) the use of all kinds of public conveyances'."

I do not think it necessary for me to say anything about it.

Srijut Rohini Kumar Chaudhuri: I beg to move:

"That the following explanation be added at the end of clause 4:--

'Explanation : A place of public resort includes a yard or house attached to any temple where musical and dramatic performances, cinema shows or other entertainments are held for entertainment of general public'."

There are many temples which have got attached to them houses called Nat Mandirs. During festivals and on other occasions also dramatic performances and cinema shows are held there. The performances are sometimes given by people belonging to what you call the Harijans, but the Harijans themselves are not allowed to go. This is very galling to the people. Therefore, whenever any show or any dramatic performance takes place in any place attached to the temple, all members of the public must have access to it.

Mr. President: Have you a new clause to be added, or is it an amendment to clause 4 ?

Srijut Rohini Kumar Chaudhury: It has been misplaced, or wrongly placed. It should be under clause 6 as an amendment.

Mr. President: You can take it up with clause 6.

Now all the amendments of which notice was given have been moved. Therefore, the motion as well as the amendments are now open for discussion.

Mr. K. M. Munshi: Sir, regarding adding the words "schools, etc." to clause 4, I submit that this matter be left over till we come to clause 18. Otherwise the discussion on clause 4 will drift to other matters which are connected to this subject. If it becomes necessary as a result of discussion, to make some modification in clause 4, that may be made later. The discussion will be more cognate so far as education is concerned, if it is taken up with clause 18.

As regards the amendments relating to temples, they relate to untouchability and I submit that they should be taken up with clause 6. This particular clause--clause 4, relates only to rights of citizens with regard to places of public use.

I, therefore, submit that permission may be given to members to deal with these amendments under clause 18 and clause 6.

Mr. R. R. Diwakar: In view of the suggestion by Shri Munshi, I hold over my amendment regarding schools.

Sri M. Ananthasayanam Ayyangar: I would like to submit that there are sources of water supply other than wells, tanks, etc., such as channels, and I think these also should be covered by clause No. 4. Therefore, I think it necessary to add the words "and other sources of water supply" after the word "tank". Otherwise, there will be a lacuna.

Then again, there may be discrimination in giving medical relief, on grounds of religion, etc. That will be a dangerous thing. Therefore, Sir, if you do not think want of notice a serious objection against it, I would request you to permit me to add the words "and medical institutions" after the word "public resort". It will then read:-

> "the use of wells, tanks, roads and places of public resort and medical institutions maintained wholly or partly out of public funds or dedicated to the use of the general public."

Mr. R. K. Sidhwa: I want to have one point clarified, Sir. Suppose a well is constructed by a philanthropic person at a public place in a small village, but he has not dedicated it for public use, and allows everyone to use it, except a few persons in the village, he has used a public place but not dedicated for public use, what will happen? What will be the position then ? As it is, this clause is not happily worded, and the House might like to have it worded in a better way.

Mr. President: I would request the mover to give his reply now.

The Hon'ble Sardar Vallabhbhai Patel: The first amendment is from Mr. Somnath Lahiri. He wants that there should be no discrimination on grounds of political creed. I do not know what discrimination he has in view. The non-discrimination clause is restricted to, or is provided for on grounds of religion, race, caste or sex. He wants 'political creed' also to be included. I think it is an absurd idea to provide for non-discrimination as regards a political creed. Political creed may be of any kind. There may be some political creeds highly objectionable. Some may not be deserving of discrimination, but may actually be deserving of suppression altogether. So, I think it does not fit in here. The other amendment relates to colour. I do not know what is the meaning of it. There are different kinds of colours among Indians themselves. Have we got to provide for all of them. Therefore, I do not think all these amendments are necessary at all. The amendment relating to schools and colleges can be provided for when we come to discuss a separate clause relating thereto.

I am glad that on the whole the House is of opinion that this clause is aptly drafted.

Now there is only amendment left of Srijut Rohini Kumar Chaudhury. I do not think this is really necessary. There is no bar against any particular kind of dress. In my present dress I go to the Viceroy's house as well as to the abode of the humblest peasant. There is now no discrimination on account of dress.

Srijut Rohini Kumar Chaudhury: In some hotels and restaurants there is ban against the entry of Indians dressed in Indian national costume.

The Hon'ble Sardar Vallabhbhai Patel: All the foreigners are going. You need not be obsessed on that account Such things as dress cannot be put in the fundamental rights. If the world at large should read such provisions in our fundamental rights, then they would naturally conclude that we do not even know how to treat our nationals and how to treat our fellow beings. I may assure my friend that there is no discrimination now on account of dress. I do not think such things should be provided for in fundamental rights.

Srijut Rohini Kumar Chaudhury: What about the ban of entry of Indians in some hotels and restaurants because of their dress?

The Hon'ble Sardar Vallabhbhai Patel: The whole conception is born out of the idea of slavery. That idea of slavery has been haunting some of our people. Not even a shadow of it is left now.

Mr. President: Mr. Deshmukh has suggested that it would be sufficient if you put one clause as follows:

"The State shall not make or permit any discrimination merely on the ground of religion, etc:........"

The idea is if you put it like that, that would cover all cases and the second sub-clause will not be necessary. It would cover cases of private institutions as well as State institutions. We can have one comprehensive clause.

The Hon'ble Sardar Vallabhbhai Patel: If there is no formal amendment, I should prefer the present clause to stand as it is.

Mr. President: Now, I will put the amendments one by one. The first amendment of Mr. Munshi is:

"For the words, 'the State shall make no discrimination', the words 'the State shall not discriminate' be substituted."

The Hon'ble Sardar Vallabhbhai Patel: I accept the amendment.

Mr. President: The question is that above amendment be adopted.

The motion was adopted.

Mr. President: The second amendment is.

"In sub-clause (2) (a) of clause 4, after the word 'hotels', add the words 'and places of public entertainment'."

The Hon'ble Sardar Vallabhbhai Patel: I accept the amendment. The word 'and' before 'hotels' should be omitted and should be placed after 'hotels'.

Mr. President: The amendment:

"In sub-clause (2) (a) of clause 4, omit the word 'and' before hotels and add the words 'and places of public entertainment' after the word 'hotels'."

The motion was adopted.

Mr. President: The next amendment is in sub-clause (2) (b) of clause 4, for the words 'public funds' substitute the words 'State funds.'

The Hon'ble Sardar Vallabhbhai Patel: I accept the amendment.

Mr. President: The question is:

"In sub-clause (2) (b) of clause 4 for the words 'public funds' substitute the words 'State funds.'

The motion was adopted.

Mr. President: The question is:

"That in sub-clause (1) of clause 4 after the words, 'grounds of' the words 'political creed' be inserted."

The motion was negatived.

Mr. President: The question is:

"That in sub-clause (2) of clause 4 after the word 'caste' the word 'creed' be inserted."

The motion was negatived.

Mr. H. V. Kamath : Regarding my amendment No. 10, I desire to withdraw so far as it relates to the insertion of the word 'colour'. With great respect I am still not convinced that religion and creed are the same and so I press that portion of the amendment relating to the insertion of the word 'creed'.

Mr. President: A similar amendment in the name of Mr. Lahiri has just been put to the House and negatived.

Mr. President: The question is:

"That in sub-clause (2) of clause 4, after the word 'sex' the following words be inserted :

'or of dress worn by any nationality'."

The motion was negatived.

Mr. President: The question is:

"That in sub-clause 2 (b) of clause 4, after the word 'roads' the words ,schools, hostels, temples or places of worship' be inserted"

The motion was negatived.

Mr. President: Amendment No. 14 covers the same ground and is therefore lost.

The question is:

"That in sub-clause (2) (b) of clause 4, after the word 'roads' the words educational institution, hospital or dispensary' be inserted."

The motion was negatived.

Mr. President: The question is :

"That in sub-clause (2) (b) of clause 4, after the word 'resort' the words 'built or' be inserted."

The motion was negatived.

(Mr. Diwakar's amendment about public conveyances was withdrawn.)

Mr. President: No. 19 is withdrawn. The question is:

That the following explanation be added at the end of clause 4:--

"*Explanation:* A place of public resort includes a yard or house attached to any temple where musical and dramatic performances, cinema shows or other entertainments are held for entertainment of general public."

The motion was negatived.

Mr. President: The question is that clause 4, as amended, be passed.

The motion was adopted

CLAUSE 6

The Hon'ble Sardar Vallabhbhai Patel: Sir, I request that clause 5 may be held over because it requires some further consideration and I may be allowed to move clause 6 which runs thus:

"6. 'Untouchability' in any form is abolished and the imposition of any disability on that account shall be an offence."

There can be no difference of opinion on this question. This is now an accepted proposition all over and should be provided for in the fundamental rights, and any one who suffers a disability on this account should have the right to go to a court of law and have redress. I hope there will be no amendment on this.

Mr. H. V. Kamath: Sir, I move that in clause 6, after the word "Untouchability" the word "unapproachability" be inserted, and after the word "any" the words "and every" be inserted.

By this amendment I want to make the clause more comprehensive because in some parts of India the practice of unapproachability besides untouchability used to obtain some years ago, to my own knowledge, in some places like Malabar specially; I do not know what it is now. So I though it that if you include the word "unapproachability" it would make the clause more comprehensive. The other small amendment that I propose is purely verbal. It does not change the meaning but only emphasises the clause.

Sri S. Nagappa (Madras: General): Sir, I move that in clause 6, for the words "imposition of any disability", the words "observance of any disability" be substituted. My reason is that imposition implies that one party that imposes it on another is guilty but I suggest that if the untouchability is observed by any person it must be an offence. Unless this amendment is made I do not think the provision made here is enough to punish a person. So I request the House to see that by accepting my amendment observance of untouchability is made a punishable offence.

Sri P. Kunhiraman (Madras: General): Sir, I move that in clause 6 after the word "offence" the following words be inserted:

"punishable by law."

The original clause makes it an offence and implies that it will be punishable; I want to make it more explicit. It is just a verbal amendment and I commend it for acceptance. Moreover, if we only say that it is an offence it may be interpreted later on in the sense that it is not a legal offence. So it is necessary that it should be made explicit.

Mr. President : The motion and the amendments are now under discussion.

The Hon'ble Sardar Vallabhbhai Patel: The first amendment is by Mr. Kamath. He wants the addition of the word 'unapproachability'. If untouchability is provided for in the fundamental rights as an offence, all necessary adjustments will be made in the law that may be passed by the Legislature. I do not think it is right or wise to provide for such necessary corollaries and, therefore, I do not accept this amendment.

The other amendment is by Mr. Nagappa who has suggested that for the words "imposition of any disability'' the words "observance of any disability'' may be *substituted*. I cannot understand his point. I can observe one man imposing a disability on another, and I will be guilty I have observed it. I do not think such extreme things should be provided for. The removal of untouchability is the main idea, and if untouchability is made illegal or an offence, it is quite enough.

The next amendment was moved by Mr. Kunhiraman. He has suggested the insertion of 'punishable by law'. We have provided that imposition of untouchability shall be an offence. Perhaps his idea is that an offence could be excusable, or sometimes an offence may be rewarded. Offence is an offence; it is not necessary to provide that offence should be punishable by law. Sir, I do not accept this amendment either.

Then, it was proposed that for the words 'any form', the words 'all forms' be substituted. Untouchability in any form is a legal phraseology, and no more addition is necessary.

Mr. H. V. Kamath: In view of the explanation given by the Hon'ble Sardar Patel I leg leave of the House to withdraw the amendments moved by me.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That in clause 6, for the words 'imposition of any disability', the words observance of any disability' be substituted."

The motion was negatived.

Sri P. Kunhiraman: Sir, in the light of the observations made by the Mover of the Resolution I beg leave of the House to withdraw the amendment moved by me.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is that clause 6 be accepted.

The motion was adopted.

Mr. President: I have received a request from several Members that they should be permitted to give notice of amendments to the clauses which have not yet been considered, and their ground is that yesterday they received the Report rather late and they could not send in their amendments before 5 o'clock. We have already got a large number of amendments, and I do not know if the House would like to extend the time to receive more.

Shri Mahavir Tyagi: It does not matter because your disposal is so fast.

Mr. President: It is not my disposal, but it is done by the House.

If we get the amendments up to 5 o'clock then there is this difficulty. The amendments have to be tabulated, typed and cyclostyled, and there is very little time in the evening because of the Curfew Order. On previous occasions they had to work up to late at night. Now they find it difficult to work at night. If, the Members waive their right of getting copies of these amendments, I might accept their request.

Rai Bahadur Syamanandan Sahaya (Bihar: General): They may be amendments which were received in office after 5 o'clock yesterday....

Mr. President: Those which have already been received will be accepted and even today if notice of amendments is received up to 2 o'clock they will be taken in. But after that it win be very difficult. In any case, amendments to amendments can be handed in until the Session begins tomorrow morning.

As regards the time, we met at half past 8 o'clock today and we have carried on for 4 hours. But I am told that time is not convenient to, some Members, and it is still more inconvenient to our Office people, some of whom live in distant parts of the city. They have to work from 8 o'clock in the morning to late in the evening. If the House agrees we might meet at 9 o'clock tomorrow morning.

Several Hon'ble Members: Yes, yes.

Mr. President: The House now stands adjourned.

The Assembly then adjourned till Nine of the Clock on Wednesday, the 30th April 1947.

---

*Appendix at end.

APPENDIX

CONSTITUENT ASSEMBLY OF INDIA

No. CA/24/COM/47

Council House,

New Delhi, the 23rd April, 1947.

FROM

THE HON'BLE SARDAR VALLABHBHAI PATEL,

Chairman. Advisory Committee on Minorities,

Fundamental Rights, etc.

To

THE PRESIDENT,

Constituent Assembly of India.

SIR,

On behalf of the members of the Advisory Committee appointed by the Constituent Assembly of India on the 24th January, 1947, I have the honour to submit this interim report on fundamental rights. In coming to its conclusions, the Committee has taken into consideration not merely the report of the Sub-Committee on fundamental rights but also the comments thereon of the Minorities Sub-Committee.

2. The Fundamental Rights Sub-Committee recommended that the list of fundamental rights should be prepared in two parts, the first part consisting of rights enforceable by appropriate legal process and the second consisting of directive principles of social policy which, though not enforceable in Courts, are nevertheless to be regarded as fundamental in the governance of the country. On these latter, we propose to submit a subsequent report; at present, we have confined ourselves to an examination only of the justiciable fundamental rights.

3. We attach great importance to the constitution making these rights justiciable. The right of the citizen to be protected in certain matters is a special feature of the American constitution and the more recent democratic constitutions. In the portion of the Constitution Act, dealing with the powers and jurisdiction of the Supreme Court, suitable and adequate provision will have to be made to define the scope of the remedies for the enforcement of these fundamental rights. These remedies have been indicated in general terms in clause 22 of the Annexure.

4. Clause 20 of the Statement of May 16, 1946, contemplates the possibility of distributing fundamental rights between the constitutions of the Union, the Groups, if any, and the Units. We are of the opinion that fundamental rights of the citizens of the Union would have no value if they differed from Group to Group or from Unit to Unit or are not uniformly enforceable. We recommend that the rights set out in the Annexure to this report be incorporated in the constitution so as to be binding upon all authorities, whether of the Union or the Units.

5. Clause 10 deals with the freedom, throughout the Union, of trade, commerce and intercourse between the citizens. In dealing with this clause, we have taken into account the fact that several Indian States depend upon internal customs for a considerable part of their revenue and it may not be easy for them to abolish such duties immediately on the coming into force of the Constitution Act. We, therefore, consider that it would be reasonable for the Union to enter into agreements with such States in the light of their existing rights, with a view to giving them time, up to a maximum period to be prescribed by the constitution, by which internal customs could be eliminated and complete free trade established within the Union.

6. We have made a special provision in regard to full faith and credit being given to the public Acts, records and judicial proceedings of the Union in every Unit and for the judgments and orders of one Unit being enforced in another Unit. We regard this provision as very important and appropriately falling within the scope of fundamental rights.

7. Clause 2 lays down that all existing laws, regulations, notifications, custom or usage in force within the territories of the Union inconsistent with the fundamental rights shall stand abrogated to the extent of such inconsistency. While in the course of our discussions and proceedings we have kept in view the provisions of existing Statute law, we have not had sufficient time to examine in detail the effect of this clause on the mass of existing legislation. We recommend that such an examination be undertaken before this clause is finally inserted in the constitution.

8. The Fundamental Rights Sub-Committee was of the opinion that the right of the citizen to have redress against the State in a court of law shall not be fettered by undue restrictions. That Sub-Committee was not able, however, to draft a suitable formula as the matter requires more investigation than was possible in the time at its

disposal. It was also suggested during our deliberations that certain additional fundamental rights should be inserted in the constitution. We have not had the time to consider these matters; we shall do so in due course and incorporate any recommendations we may have to make on them in our next report.

9. The Fundamental Rights Sub-Committee and the Minorities Sub-Committee were agreed that the following should be included in the list of Fundamental Rights :--

"Every citizen not below 21 years of age shall have the right to vote at any election to the legislature of the Union and of any Unit thereof, or, where the legislature is bicameral, to the lower chamber of the legislature, subject to such disqualifications on the ground of mental incapacity, corrupt practice or crime as may be imposed, and subject to such qualifications relating to residence within the appropriate constituency, as may be required, by or under the law.

(2) The law shall provide for free and secret voting and for periodical elections to the legislature.

(3) The superintendence direction and control of all elections to the legislature, whether of the Union or of a Unit, Including the appointment of Election Tribunals, shall be vested in an Election Commission for the Union or the Unit, as the case may be, appointed, in all cases, in accordance with the law of the Union."

While agreeing in principle with this clause, we recommend that instead of being included in the list of fundamental rights, it should find a place in some other part of the constitution.

I have the honour to be,

Sir,

Your most obedient servant,

(Sd.) **VALLABHBHAI PATEL,**

Chairman,

Advisory Committee on Minorities,

Fundamental Rights, etc.

ANNEXURE

JUSTICIABLE FUNDAMENTAL RIGHTS

Definitions

1. Unless the context otherwise requires--

(i) "The State" includes the legislatures and the governments of the Union and the Units and all local or other authorities Within the territories of the Union.

(ii) "The Union" means the Union of India.

(iii) "The law of the Union" includes any law made by the Union legislature and any existing Indian law as in force within the Union or any part thereof.

Application of Laws

2. All existing laws, notifications, regulations, customs or usages in force within the territories of the Union inconsistent with the rights guaranteed under this part of the Constitution shall stand abrogated to the extent of such inconsistency, nor shall the Union or any unit make any law taking away or abridging any such right.

Citizenship

3. Every person born in the Union or naturalised in the Union according to its laws and subject to the jurisdiction thereof shall be a citizen of the Union.

Rights of Equality

4. (1) The State shall make no discrimination against any citizen on grounds of religion, race, caste or sex.

(2) There shall be no discrimination against any citizen on any ground of religion, race, caste or sex in regard to--

(a) access to trading establishments including public restaurants and hotels,

(b) the use of wells, tanks, roads and places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public:

Provided that nothing contained in this clause shall prevent separate provision being made for women and children.

5. There shall be equality of opportunity for all citizens in matters of public employment and in the exercise of carrying on of any occupation, trade, business or profession.

Nothing herein contained shall prevent the State from making provision for reservations in favour of classes who, in the opinion of the State, are not adequately represented in the public services.

No citizen shall on grounds only of religion, race, caste, sex, descent, place of birth or any of them be ineligible for public office or be prohibited from acquiring, holding or disposing of property or exercising or carrying on any occupation, trade, business, or profession within the Union.

Nothing herein contained shall prevent a law being made prescribing that the incumbent of an office to manage, administer or superintend the affairs of a religious or denominational institution or the member of the Governing Body thereof shall be a member of that particular religion or denomination.

6. "Untouchability" in any form is abolished and the imposition of any disability on that account shall be an offence.

7. No heritable title shall be conferred by the Union.

No citizen of the Union and no person holding any office of profit or trust under the State shall, without the consent of the Union Government, accept any present, emoluments, office, or title of any kind from any foreign State.

Rights of freedom

8. There shall be liberty for the exercise of the following rights subject to public order and morality or to the existence of grave emergency declared to be such by the Government of the Union or the Unit concerned whereby the security of the Union or the Unit, as the case may be, is threatened:--

(a) The right of every citizen to freedom of speech and expression:

Provision may be made by law to make the publication or utterance of seditious, obscene, blasphemous, slanderous, libellous or defamatory matter actionable or punishable.

(b) The right of the citizens to assemble peaceably and without arms :

Provision may be made by law to prevent or control meetings which are likely to cause a breach of the peace or are a danger or nuisance to the general public or to prevent or control meetings in the vicinity of any chamber of a Legislature.

(c) The right of citizens to form associations or unions:

Provision may be made by law to regulate and control in the public interest the exercise of the foregoing right provided that no such provision shall contain any political, religious or class discrimination.

(d) The right of every citizen to move freely throughout the Union.

(e) The right of every citizen to reside and settle in any part of the Union, to acquire property and to follow any occupation, trade business or profession :

Provision may be made by law, to impose such reasonable restrictions as may be necessary in the public interest including the protection of minority groups and-tribes.

9. No person shall be deprived of his life, or liberty, without due process of law, nor shall any person be denied the equal treatment of the laws within the territories of the Union:

Provided that nothing herein contained shall detract from the powers of the Union Legislature in respect of foreigners.

10. Subject to regulation by the law of the Union trade, commerce, and intercourse among the units by and between the citizens shall be free:

Provided that any Unit may by law impose reasonable restrictions in the interest of public order, morality or health or in an emergency :

Provided that nothing in this section shall prevent any Unit from imposing on goods imported from other Units the same duties and taxes to which the goods produced in the Unit are subject:

Provided further that no preference shall be given by any regulation of commerce or revenue by a Unit to one Unit over another.

11. (a) Traffic in human beings, and

(b) forced labour in any form including beggar and involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted; are hereby prohibited and any contravention of this prohibition shall be an offence.

Explanation.--Nothing in this sub-clause shall prevent the State from imposing compulsory service for public purposes without any discrimination on the ground of race, religion, caste or class.

12. No child below the age of 14 years shall be engaged to work in any factory, mine or any other hazardous employment.

Explanation.--Nothing in this clause shall prejudice any educational programme or activity involving compulsory labour.

Rights relating to religion

13. All persons are equally entitled to freedom of conscience, and the right freely to profess, practise and propagate religion subject to public order, morality or health, and to the other provisions of this Chapter.

Explanation 1.--The wearing and carrying of Kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation 2.--The above rights shall not include any economic, financial, political or other secular activities that may be associated with religious practice.

Explanation 3.--The freedom of religious practice guaranteed in this clause shall not debar the State from enacting laws for the purpose of social welfare and reform.

14. Every religious denomination shall have the right to manage its own affairs in matters of religion and, subject to the general law, to own, acquire and administer property, movable and immovable, and to establish and maintain institutions for religious or charitable purposes.

15. No person may be compelled to pay taxes, the proceeds of which are specifically appropriated to further or maintain any particular religion or denomination.

16. No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in the religious instruction that may be given in the school or to attend religious worship held in the school Or in premises attached thereto.

17. Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law.

Cultural and Educational Rights

18. (1) Minorities in every Unit shall be protected in respect of their language, script and culture and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect.

(2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them.

(3) (a) All minorities whether based on religion, community or language shall be free in any Unit to establish and administer educational institutions of their choice.

(b) The State shall not, while providing State aid to schools, discriminate against schools under the management of minorities whether based on religion, community or language.

Miscellaneous Rights

19. No property, movable or immovable, of any person or corporation including any interest in any commercial or industrial undertaking, shall be taken or acquired for public use unless the law provides for the payment of compensation for the property taken or acquired and specified the principles on which and the manner in which the compensation is to be determined.

20. (1) No person shall be convicted of crime except for violation of a law in force at the time of the commission of that act charged as an offence, nor be subjected to a penalty greater than that applicable at the time of the commission of the offence.

(2) No person shall be tried for the same offence more than once nor be compelled in any criminal case to be a witness against himself.

21. (1) Full faith and credit shall be given throughout the territories of the Union to the public acts, records and judicial proceedings of the Union and every Unit thereof, and the manner in which and the conditions under which such acts, records and proceedings shall be proved and the effect thereof determined shall be prescribed by the law of the Union.

(2) Final civil judgements delivered in any Unit shall be executed throughout the Union subject to such conditions as may be imposed by the law of the Union.

Rights to Constitutional Remedies

22. (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of any of the rights guaranteed by this part is hereby guaranteed.

(2) Without prejudice to the powers that may be vested in this behalf in other courts, the Supreme Court shall have power to issue directions in the nature of the writs of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari* appropriate to the right guaranteed in this part of the Constitution.

(3) The right to enforce these remedies shall not be suspended unless when, in case of rebellion or invasion or other grave emergency, The public safety may require it.

23. The Union Legislature may by law determine to what extent any of the rights guaranteed by this part shall be restricted or abrogated for the members of the armed forces or forces charged with the maintenance of public order so as to ensure fulfillment of their duties and the maintenance of discipline.

24. The Union Legislature shall make laws to give effect to those provisions of this part which require such legislation and to prescribe punishment for those acts which are declared to be offences in this part and are not already punishable.

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME III

Wednesday, the 30th April, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair

----

Mr. President : We shall now proceed with further consideration of the Interim Report on the subject of Fundamental Rights. We have passed clause 6. We have held over clause 5. Before we go on, I desire to make the following announcement.

ELECTION TO STEERING COMMITTEE

Mr. President: For the two seats to be filled on the Steering Committee from among representatives of Indian States in accordance with the resolution of the House of the 28th April, only two nominations have been received, namely, those of Mr. P. Govinda Menon (Cochin) and Mr. C. S. Venkatachar (Jodhpur). I accordingly declare these two members duly elected to the Steering Committee. *(Cheers).*

INTERIM REPORT ON FUNDAMENTAL RIGHTS-*contd.*

CLAUSE 5.--RIGHTS OF EQUALITY

Mr. President: Hon'ble Sardar Vallabhbhai Patel.

The Hon'ble Sardar Vallabhbhai Patel (Bombay: General): Yesterday we had held over clause 5*, because we wanted some time to consider it. We have given thought to the matter and now I proposed to move clause 5. We have made some changes, but they are only formal changes. Some portions are dropped and formal amendments for the changes will be moved. Clause 5 will now run as follows:

> "There shall be equality of opportunity for all citizens in matters of public employment."

The words "and in the exercise of carrying on of any occupation, trade, business or profession" have been taken over to some other clause at a later stage. We are dropping those words now. Mr. Munshi will move an amendment for that. Then we put the third sub-clause of the clause as follows :

> "No citizen, shall on grounds, only of religion, race, caste, sex, descent, place of birth or any of them be ineligible for public office."

As regards the subsequent words of this sub-clause we have come to the conclusion that they are unnecessary here and they will be taken over to some other place. Therefore, this portion as I have read, remains and as regards that, formal amendments will be moved. Then comes the proviso which is sub-clause 2 of this clause. It runs as follows:

"Nothing herein contained shall prevent the State from making provision for reservations in favour of classes who, in the opinion of the State, are not adequately represented in the public services."

Then the last sub-clause remains:

"Nothing herein contained shall prevent a law being made prescribing that the incumbent of an office to manage, administer or superintend the affairs of a religious or denominational institution or the member of the Governing Body thereof shall be a member of that particular religion or denomination."

This is clause 5 as I move it, and if there are any amendments to be moved, we shall discuss them afterwards. I formally move.

Mr. President: I have got notice of a number of amendments to this clause. Some came to us day before yesterday and others reached us yesterday. I think there are ten or twelve amendments and I propose to take them one after another. Mr. Munshi's amendment will come first.

Mr. K. M. Munshi (Bombay: General): I move:

"1. In clause 5 paragraph I may be marked '(a)', and paragraph 3 may be marked '(b)'.

2. Paragraph 3 may be placed immediately after paragraph 1.

3. Delete from paragraph 1 the words 'and in the exercise of carrying on of any occupation, trade, business or profession', and from paragraph 3 the words 'or be prohibited from acquiring, holding or disposing of property or exercising or carrying on any occupation, trade, business, or profession within the Union'."

This amendment is intended to classify the two heads of rights under two different clauses. As the House will be pleased to see, clause 5 deals not only with public employment but also with occupation. trade, business or profession, and the right to acquire, hold and dispose of property. The same right occurs once again in clause 8 and proviso has been put in at the end of clause 8 permitting Government by law to restrict this freedom under certain circumstances. It was felt that these two clauses were overlapping, and for the purpose of having a proper logical division, clause 5 is now being only restricted to public employment, while freedom to carry on occupation, trade, business or profession and freedom to acquire, hold and dispose of property have been transferred to clause 8 (e). The result of all this change is that this clause will stand only with regard to public employment, and the right with regard to trade, occupation, etc., and with regard to property will come under clause 8 (e). Sir, I move.

Mr. B. Das (Orissa : General) : In paragraph (e) of clause 5 it is said :

"No citizen shall on grounds only of religion, race, caste, sex, descent. place of birth, or any of them be ineligible for public office or be prohibited from acquiring, holding or disposing of property or exercising or carrying on any occupation, trade, business, or profession within the Union."

I have got the experience of many Afghan Princes in India. These Afghan Princes were punished by the King of Afghanistan and sent to India as State Prisoners. There are still some prisoners in India, but some of these Princes cannot hold any office in India, and they can not carry on any business. In my public career, I have met some of these Afghan Princes, they have come and told me that they were having trouble and they could not get a job even under the old India Government, because the British in league with the Afghan Government, did not allow them to function as free citizens at all. I want to know whether Indian-born Afghan Princes, most of whom are prohibited from going to Afghanistan and have got to live in India,--whether they will be allowed as Indian citizens to hold public office or will be eligible for the same. I want to know whether the draftsman of this clause has envisaged such a contingency.

Some Hon'ble Members: We have not followed what Mr. Das said, we could not hear him.

Mr. President: Mr. Das, the members have not followed what you said. Will you please come to the mike and explain ?

Mr. B. Das: What I was saying was this. There are some Afghan Princes in India who are banished by the Afghan Government and in league with the British Government of India they are to remain in India under certain conditions. They are the sons and grandsons of Afghan Princes, but they are not allowed to get any job in British India. Will they be allowed to get jobs in India if the present interpretation of clause 3 of citizenship is accepted and they become citizens of India ? Up to now there is a political ban on these people and they cannot hold any office in British India. I have met dozens of them. I would like to know what the intention of the draftsman is in this matter.

Mr. President : I will take up the amendments of which notice was given day before yesterday.

Mr. Rajagopalachariar has come up with an amendment which suggests the rearrangements of the paragraphs.

The Hon'ble Sri C. Rajagopalachariar: (Madras: General): That amendment has been agreed to by Mr. Munshi.

(Amendments Nos. 23 to 28 of the Supplementary List I were not moved.)

Mr. Somnath Lahiri (Bengal: General): My amendment (*i.e.* No. 29 of the Supplementary List I) is on the same grounds as my amendment of yesterday, relating to political creed. So I do not want to labour the point further.

Mr. President: Amendment No.30.

Mr. H.V. Kamath (C.P. & Berar: General): Sir, after what happened to my amendment yesterday, I do not wish to repeat that amendment today.

(Amendments Nos.31 to 33 of the Supplementary List I were not moved.)

Mr. President: Shri Mahavir Tyagi.

Shri Mahavir Tyagi (United Provinces: General): *[Mr. President, Sir, my amendment reads as follows:

"That in clause No.5, after the words, "There shall be equality of opportunity for all citizens in matters of public employment and in the exercise or carrying on of any occupation, trade, business or profession", the following proviso may be added after the first para:

'Provided that a Unit may frame rules where under in the matter of public employment it may give preference over others to such citizens as are *bona fide* or domiciled residents of its own territory."

Sir, I have only to submit that for those who are employed at present in the Government offices of different provinces, it is desirable that they should be residents of that province, so far as possible. I think, to establish self-government in the true sense of the word, it is most essential that in any part of the world, only the residents of that part should be government servants and officials. If there are open chances for the residents of one province to serve in another, it means that the residents of that province shall not be able to enjoy self-government. My real intention is that so far as possible, the administration of a province should be run by officers and employees who are residents of that province. This province and the unit, in which the staff is required, should employ mostly the descendants of the residents of that place. According to the form to which this rule is being framed there is no consideration of the domicile of the candidate, or his place of birth. There shall be freedom to serve anywhere. This may create troubles that in order to secure service the residents of one province will compete with the residents of another. By this the self-sufficiency of an autonomous unit will be destroyed. Now-a-days there are restrictions of domicile and residence in all provinces. In our U.P. in every advertisement of the Public Service Commission, a condition is laid down that only those who are domiciled in U.P., Rampur, Benaras or Tehri States can apply for the posts. If this condition is waived and no preference is given to birth-place, then there may be a danger that people of other parts of the province may compete and capture subordinate and higher posts. This will go against the real spirit of Swaraj. Perhaps the clause as moved by Sardar Vallabhbhai Patel may provide that the provincial Governments can give preference to their residents. If this is so, I will not move my amendment, but I would request Sardar Patel to put it on record in today's proceedings that:--

"That there shall be no restrictions in giving preference to place of birth for recruitment to Government Service."

It would mean that provincial Governments will be able to give preference to their residents over others. If, in the proceedings of this House, it is recorded that the right of allowing privileges to its domiciles will vest in every province and in matters of employment it shall be able to allow privileges to its residents over those of other provinces, then I need not move any amendment. I hope that this will be possible. I shall not have to move my amendment if the mover or any other member of this Committee admits that the freedom of the provinces in running their administration through their residents is maintained so for as possible.]*

Mr. R.K. Sidhwa (C.P. & Berar: General) : Sir, which is the amendment he is dealing with?

Mr. President: He is moving his amendment to clause 5, which is amendment No. 2 in the list circulated this morning (Supplementary List II).

Mr. President: Amendment No. 3 of the Supplementary List II by Mr. Munshi.

Mr. K.M. Munshi: That has been incorporated in the one that has been moved.

Mr. President: Rao Bahadur Chaudhri Suraj Mal.

Rao Bahadur Chaudhri Suraj Mal (Punjab: General): *[Mr. President, with your permission, I wish to move the following amendment:

"That in clause 5, the following be added after the third paragraph:

'Provision may be made by law to impose such reasonable restrictions as may be necessary in the interest of agriculture'."

My object, in moving this amendment is that India is an agricultural country, where we have many "petty proprietors", who are commonly known as Bisvadars or petty Zamindars. Their number is very large, and larger still in the Punjab. There are many petty zamindars or Bisvadars in Ambala and Jullundur Divisions. In our Punjab, restrictions of this sort exist even now. It appears from para. 5, that these restrictions may be excluded from the operation of law in future. Therefore, my object in moving this amendment is to give such powers to the Units, which in the interest of agriculture will enable them to protect the petty zamindars and "Bisvadars" from the big Landlords, Capitalists and wealthy people, who do not cultivate the land themselves. In my opinion, such restrictions are very essential for the benefit of the whole country. I hope that such powers will be given to the Units, which will enable them to protect their cultivators.

Secondly, I want to point out, in particular, that the petty Zamindars or "Bisvadars", who inhabit our area, belong particularly to martial classes and are in the army in large numbers even now. I think, and rightly so, that if they do not possess these lands, they will be reduced to the status of mere peasants. The spirit of self-respect is inherent in them. They can fight with courage and the name which they have earned, they will not be able to earn in future. May I point out to you that you may issue statements, publish messages in papers and deliver speeches; but this is the age of the sword. Only that man will rule, who has power in his hands. Therefore, it is necessary that the children of those who are in the army, should be treated well and should not be allowed to grow weak, because their services shall be required. Their support will be needed to enforce the Constitution, which is being framed for the future. Therefore, I submit that such restrictions should be imposed, which will debar wealthy people from acquiring the lands of the weak. I appeal to Sardar Vallabhbhai Patel, because he is a well-wisher of the Zamindars. I hope that he will keep this in view and add some provision in the Constitution, in order to protect them from the operations of the existing laws. Once the peasantry is destroyed, it can not be recouped. As an English poet has said, once a peasant is destroyed, it is very difficult to rehabilitate him. With these words, I move this amendment.]*

(Amendment No. 6 of the Supplementary List II was not moved.)

Mr. President: *[There is another amendment in your name]*

Rao Bahadur Chaudhri Suraj Mal:*[Sir, the object of the second amendment is also the same. As I have already moved a similar amendment, the second one is unnecessary.]*

Mr. President: *[Then you do not move it.]*

The clause and the amendments have been placed before the House. They are now open for discussion. Those who wish to speak may do so.

Sardar Prithvi Singh Azad (Punjab: General): *[Mr. President, I stand to oppose the amendment moved by Rao Bahadur Suraj Mal. There is a black law in the Punjab, which is known as "Land Alienation Act." The purpose of this amendment is to preserve this law. It is highly detrimental to our depressed and other non-agricultural classes. It has allowed those who go under the name of Zamindars or label themselves as peasants to permanently enslave a large section of people in the Punjab. If this amendment of R. B. Chaudhri Suraj Mal is accepted, it would mean that those communities, which have been forced to live under the tyranny of Zamindars for centuries, and which by the help of the black law of "Land Alienation Act" have been kept in the clutches of the Zamindars will not be able to recover for centuries. Hence in this age when we are formulating such a law that all should be provided with the same facilities and opportunities, and every one should have equal rights, it is not proper that this black law should be maintained. Hence, on behalf of the depressed classes, I oppose Mr. Chaudhari's amendment in strong words and appeal to the House that this amendment should not be accepted in any form, for this amendment will amount to injustice and tyranny for the depressed and other non-agriculturist classes. If you now adopt this amendment, it means that you would be perpetuating that tyranny which we are present here to end. I oppose the amendment with these words.]*

The Hon'ble Sardar Vallabhbhai Patel: Sir, almost all the amendments have been withdrawn and there is not much room for debate. I wish to give a reply to one or two points that have been raised by some of the members.

Mr. B. Das has some doubts about the Afghan Princes who have been deported from Afghanistan, and he wants to know whether they and their children will be eligible for office. I do not know that this is going to create any difficulty for us. If the children of the Afghan Princes propose to stay here, it is quite possible they will get themselves naturalised if they have been deported from their country. After all, the clause makes provision for eligibility, but it does not restrict the right of provinces to impose restrictions by legislation on the question of employment. It only says that no citizen can be declared ineligible for office on only the following grounds, that is, on the ground of race, religion, sex, descent, etc. Therefore, there is no reason to have any apprehension on that account. Now, Mr. Tyagi also raised a similar point though of a different type-that preference should be given to the residents of the province and provinces should have opportunity to give preference by legislation to the residents of the provinces. This does not deprive the province of its rights to legislate. This simply removes ineligibility of a citizen; that should be so, and therefore it is provided in the Fundamental Rights. So on that score also, there is no difficulty.

Mr. Chaudhri Suraj Mal has raised a point in which he is afraid that persons having agricultural holdings may be affected. He has in his mind that the Punjab Land Alienation Act which is working, gives some protection to these persons and he thinks they will be deprived of their protection. Now, in this connection, I can only suggest for his satisfaction that there is an amendment to this clause moved by Mr. Munshi, which I proposed to accept, as I have explained in the beginning. This clause so far as it concerns the acquiring, holding or disposing of property is removed from there and is going to be taken over to another clause that follows, that is clause 8, but in that clause also the provision clause that follows, that is clause 8, but in that clause also the provision has been made that this can be done only on grounds of, I think, public interest. Therefore, in this clause even if the principle is there, it is to be to be restricted, but in this clause this principle is to be removed. In the other clause the principle is discussed and as the principle is restricted only to cases of public interest, I think there is no difficulty and his difficulty is also removed. I, therefore, think that this clause 5, as amended, should be passed by the House.

Mr. President: Now I take Mr. Munshi's amendment. The clause as amended by Mr. Munshi will read like this:

"(a) There shall be equality of opportunity for all citizens in matter of public employment.

(b) No citizen shall on grounds only of religion, race, caste, sex, descent, place of birth or any of them be ineligible for public office.

(c) Nothing herein contained shall prevent the State from making provision for reservations in favour of classes who, in the opinion of the State, are not adequately represented in the public services.

(d) Nothing herein contained shall prevent a law being made prescribing that the incumbent of an office to manage, administer or superintend the affairs of a religious or denominational institution or the member of the Governing Body thereof shall be a member of that particular religion or denomination."

The question is that the amendment of Mr. Munshi be adopted.

The motion was adopted.

Mr. President: There is only one amendment which has been moved and that amendment is by Rao Bahadur Chaudhri Suraj Mal. His amendment related to holding or disposing of property, etc., and that part of the clause has been deleted. So his amendment does not arise and no vote will be taken on that. Now the clause, as amended, will be put to the vote.

The clause, as amended, was adopted.

CLAUSE 7.-- RIGHTS OF EQUALITY

The Hon'ble Sardar Vallabhbhai Patel: Now Sir, I beg to move clause 7. As it stands, it runs thus:-

"No heritable title shall be conferred by the Union."

We have discussed this at length in the Committee and there was difference of opinion in the various committees in which this question was discussed and adopted. It was a very controversial matter. The matter was settled after a prolonged debate and we came to this formula. But the word 'heritable' became a matter of controversy and it was agreed after considerable discussion that that word should also be dropped, and there would be a formal amendment for that purpose. So what will remain will be-

"No title shall be conferred by the Union."

This is the general public opinion in the country. Outside also, in many free countries, it is disappearing. The title is often being abused for corrupting the public life of the country, and, therefore, it is better that it should be provided in the Fundamental Rights. I do not know if there will be any objection or any prolonged controversy over this matter. I move this clause.

Mr. President : There are several amendments to this clause, of five or six of which notice was given the day before yesterday and of one or two of which notice was given yesterday.

I think Mr. Masani's amendment is the most comprehensive one. I will ask him to move.

Mr. M.R. Masani (Bombay: General): Mr. President, the amendment of which I have given notice is an amendment to the amendment given notice of by Mr. Santhanam. It reads as follows:

"No title other than one denoting an office or profession shall be conferred by the Union.

No citizen of the Union shall accept any title from any foreign State.

No person holding any office of profit or trust under the State shall, without the consent of the Union Government, accept any present, emoluments, or office of any kind from any foreign State."

In sentence, 1, paragraph 1, the words, "other than, one denoting an office or profession" may be deleted, so that the clause would read "No title shall be conferred by the Union." In paragraph 3 "or title" should be added in the last line of the clause so as to read:

"No person holding any office of profit or trust under the State shall, without the consent of the Union Government, accept any present, emoluments, office or title of any kind from any foreign State."

That is, I understand, the consensus of opinion. If the House would permit this modification to be made, it will perhaps become a non-controversial amendment.

Mr. President: Mr. Masani has given notice of an amendment and he just wants the permission of the House to drop a few words in the amendment as he has suggested, so that his amendment would read like this:

"No title shall be conferred by the Union.

No citizen of the Union shall accept any title from any foreign State.

No person holding any office of profit or trust under the State shall, without the consent of the Union government accept any present, emoluments, office or title of any kind from any foreign State."

Mr. M.R. Masani: In commending this amendment to the House, I would point out that changes made in the present clause are in two directions. The first, which is an important one, is that the word "heritable" be dropped. This will mean that the Free Indian State will not confer any titles of any kind, whether heritable or otherwise, that is, for the life of the incumbent. It may be possible for the Union to honour some of its citizens who distinguish themselves in several walks of life like science and the arts, with other kinds of honours not amounting to titles; but the idea of a man putting something before or after his name as a reward for service rendered will not be possible in a Free India. I think, Sir, the House will support this principle, because it has been found not only in subject countries but even in so-called free countries, that titles become dangerous and a source of corruption both to those who bestow them and to those who accept them. Therefore relying on patriotism, self-respect and the motive of service, we shall do without titles of any kind.

The other modification is to distinguish between citizens of the Union and those holding office under the State. Citizens of the Union, in the clause as amended, will not be free to accept any title from any foreign State while persons holding any office of profit or trust under the State would be able to accept emoluments or presents from foreign Governments only when their own Government permits it. That, Sir, would permit diplomats and others who might be permitted by their own Government to accept tokens of respect or appreciation from foreign Governments. I take it, Sir, that the meaning of the amendments has been made clear and I do hope that in the interest of equality between human beings and of democracy, the change which drops the word "heritable" will be accepted as well as the other change which I have indicated.

Shri Sri Prakasa (United Provinces: General): I think, Sir, that my amendment is included in the amendment which was moved by Mr. Masani. There is now no need for my amendment to be moved at all. I am not moving it.

Mr. H.V. Kamath: In view of the change in the clause as indicated, I think there is no point in pursuing my amendment.

Shri K. Santhanam (Madras: General): My amendment has been included in Mr. Masani's amendment.

Mr. R.K. Sidhwa: In view of the amendment moved by Mr. Masani, I do not think any necessity arises for me to move my amendment. I have stated that with the exception of academic degrees, no titles of any kind shall be conferred by the Union. I am told academic degrees will not be considered as titles; these could be given by the Universities or institutions. In view of this, Sir, I do not desire to move my amendment.

Seth Govind Das (C.P. & Bearer: General): *[Mr. President, the resolution that has been moved is clear regarding future titles. But nothing has been said about those who already possess titles. It is an accepted fact that most of the title-holders have been so honoured by the foreign Government which has been ruling this country for the last two hundred years. If we look into the history of other countries, we find that after the French and Russian revolutions, all the titles were withdrawn. So far this Government has also been doing the same. If any of its title-holder participated in any political activity, it withdrew his title. Although I am not proposing any amendment in the matter, I wish to ask Sardarji if he does not want to redeem the people from medals of slavery.

I want that even the titles held by people at present should be withdrawn. The present title-holders should live in free India just as other people live.]*

Shri Balkrishna Sharma (U.P: General): *[Mr. President, I oppose this sub-section which lays down that no title shall be conferred in free India. I consider this against the tradition of my country and against the psychology of its people.

We have time and again tried to honour the dignitaries of this country in so many ways. We call some one 'Acharya', and Mr. President, we call you 'Deshratna'. We call Mahatma Gandhi by the name of 'Mahatma'. I consider it improper to make a decision against honouring our leaders as this tendency is inherent in our minds, our hearts and our culture. Therefore I oppose it.

Mr. Masani and other friends have expressed a contrary view but there is a reason behind it. The present democratic feeling compelled them to say that there should be no titles in our country. But I think that if in our free India some persons of our country do such work as deserves respect , there is no reason why we should not honour such great men with national titles on behalf of our countrymen. In Russia itself where socialism was first experimented upon, it was felt necessary after some time that the country should honour its generals, its military leaders and its distinguished workers with titles and medals. Therefore, I urge that before passing this resolution this House should seriously consider this matter, and should realize that the resolution is against our psychology and against our tradition. Therefore it should be rejected.]*

Shri Sri Prakasa: Mr. President....................

(At this stage the speaker was asked by the President to come to the loud Speaker).

I think Sir, the acoustics of this hall are perfect, if only members knew not only what to say but how to say it. Sir, my esteemed friend Pandit Balkrishna Sharma has gone off the rails completely. (*Hear, hear*). He says that it is against the tradition of our country to abolish all titles and that we are very fond of such titles. What he forgets is that we are not claiming it as a fundamental right that no one could be given a title or an honour unofficially. What we object to is the State having the power to grant titles. (*Hear, hear*). You cannot prevent a whole people from paying their spontaneous homage to their liberator by calling Gandhiji, Mahatma Gandhi. While the State refuses to recognize that title, while the State puts him to long terms of imprisonment, the people go on calling him Mahatma Gandhi and cursing the State that puts the great man in prison.

There is difference between the two titles. The receiver of a spontaneous title from the people feels embarrassed at it. He asks the people not to call him Mahatma or Deshratna or such things, while the person who receives a title from the State is most anxious that he should be called what the State gives him the privilege to call himself. Sir, I was horrified at the last session when you yourself referred to a member from your Province as "Rai Bahadur Sahib". I felt that the parents of the poor dear had forgotten to give him a name, and he had to wait for long years for the State to step in to give him one and ensure his being called "Rai Bahadur" for ever. While one title embarrasses the receiver, the other title makes him feel vain and proper. I think it is necessary in the name of freedom to ask for freedom from the imposition of such titles from the State and freedom from having to curry favour with the authorities in order to get a distinction from them.

Sir, I should like to make it plain that this clause does not prohibit even the State from bestowing a proper honour. We are distinguishing between titles and honours. A title is something that hangs to one's name. I understand it is a British innovation. Other States also honour their citizens for good work but those citizens do not necessarily hand their titles to their names as people in Britain or British-governed parts of the world do. That is all that this clause seeks to do. If the State wants to honour a citizen, if a citizen has done particularly good work, then there are a thousand ways in which that State can honour the citizen. If the people want to honour a leader, then they can also honour him; but we want to abolish this corroding, corrupting practice which makes individuals go about currying favour with authority to get particular distinctions.

We all know that long lists are printed or used to be printed every six months saying so and os is to be so and so, and many anxious people used to scan these list with great anxiety to find if their names were included or not. We want to stop all that practice. It is well known the Government did honour certain very deserving persons. In fact, when Mahatma Gandhi's name was included in the Honours' List, it was definitely stated by one of the leading papers that the Honours' List it was definitely stated by one of the leading papers that the Honours' List itself was honoured--that lustre was shed on the Honours' List--by the inclusion of the honoured name of Mahatma Gandhi in it. Later on, Mahatma Gandhi found it necessary to throw away that title in disgust, but the title of Mahatma still adheres to his great name and he has not thrown that away. Pandit Balkrishna Sharma, myself and all of us can go on and will go on calling him by that dear name and no one can prevent us from doing so. We must distinguish between the title as imposed on an individual by the State and the honour that the people give spontaneously to one of their great men. I hope, Sir, that it would be clear to all sections of the House that it is most essential that the system of bestowing titles by the State should disappear. I also hope, Sir, that, the amendment moved by Mr. Masani will commend itself to the unanimous acceptance of the House. (*Hear, hear*).

Shri R. Dhulekar (U.P.: General): *[Mr. President, it is painful to me that my friend Mr. Balkrishna Sharma should have made such criticisms against the tradition of Indian civilisation, which were never to be expected of him. In ancient days our State authorities considered the sages outside their jurisdiction. If Panditji (Balkrishnaji) has looked through our ancient books, he would know that the religious places of the Hindus were outside the jurisdiction of the State.

I beg to submit that such observations and particularly from such a gentleman are not desirable. At a time when India is going to be liberated, it is improper for us to say that we should continue the old slave mentality; it is utterly unbecoming of us to say that since we are doing this for the welfare of the world, we should be rewarded with honour in our life-time. I beg to tell the House that it has always been the tradition of sages in India that they considered God as their guide and with all sincerity and humility did their work. I believe India is the only country in the world where deeds are not actuated by selfish motives. Even religious devotees in India do not pray to God for any selfish purposes. I want to tell the House that Indians want this ancient way of life to be followed in the world. We want to tell the world that we Indians work for the welfare of the whole world and want nothing in return. What Panditji has said will prove that we want some return for the work we do for the benefit of the public. Therefore, I would say that it is not fair on his part to make such an observation. I support the amendment moved by Mr. Masani and appeal to the House to accept it.]*

Mr. H.V. Kamath: Mr. President, Sir, I rise to support my hon'ble friend, Seth Govind Das. The issue raised by him is to my mind an important one inasmuch as, while we are thinking about the future, we have given no consideration as to what we shall do about the titles that have already been conferred by the alien imperialist Government who have been all these years suppressing our freedom movement and who have been conferring titles on these people who have aided them in suppressing our freedom movement. This point is, to my mind, a vital one. I am very well aware that in this House we have got a few title holders. I do not seek to cast any aspersions or any reflections upon them individually, but today let us remember that we are standing between two worlds, one dead, the other struggling to be born, and we are trying to usher in a FREE INDIA which will redress the balance of the old decrepit world. Our "Quit India" resolution is fast coming to a successful close, and while we are seeing that the British Government is going lock stock and barrel, we eager, nay, anxious--that all associations, all connections with that foreign Government should also go with it. Therefore, I support my hon'ble friend Seth Govind Das and submit that all titles conferred by the alien Government, by the foreign imperialist Government, shall be void at the time of the inauguration of the free Indian Union.

The Hon'ble Sardar Vallabhbhai Patel: Closure.

Shri Sri Prakasa: If Seth Govind Das's amendment is accepted, will the name of his palace at Jubbulpore also be changed? (*Laughter*.)

Mr. President: We will settle that later. (*Laughter*).

Mr. R.K. Sidhwa: On a point of order, Sir, may I ask whether we can give retrospective effect to this clause?

Mr. President: That question does not arise as no amendment has been moved.

The Hon'ble Sardar Vallabhbhai Patel: Sir, I do not see any point in discussing this matter of giving retrospective effect by people who have no title to surrender. But in the first place, I will read the motion as it runs after the acceptance of some of the amendments that have been moved. The motion is:

> "No title shall be conferred by the Union.
>
> No citizen of the Union shall accept any title from any foreign State.
>
> No person holding any office of profit or trust under the State shall, without the consent of the Union Government, accept any present, emoluments, office or title of any kind from any foreign State."

Now, this in effect becomes the motion, and if, it is passed by the House, instead of our discussing what happened in the past, it would work automatically and therefore we need not go into the discussion of past events or try to give retrospective effect. After all, many titles have been surrendered during the last year or two and and titles have lost their value. What we are legislating really is for the future and not for the past. But there are still some people who have got that attitude, that frame of mind; because of what happened in the past they still think of the past. It is unnecessary to dilate on this matter. It may show an attitude which may be resented by some and which may be interpreted as a sign of spiteful feeling. I do not think we should discuss this matter at all: after all, some of the people who have got titles may even carry them after their death. They have spent so much and have worked so hard for it. You do not know--you have no idea--how titles are got. Therefore we cannot put all of them on the same line. Let us leave them alone. Let us forget all about past titles. What we now want to do is to think about the future. One Hon'ble Member from Benaras says: " I oppose this Resolution." Another Hon'ble Member from the same city says: "I am in favour of it." I do not understand this. What is this? Who is going to prevent people from conferring a title or take away a title conferred by the people? They are not titles really. They are attributes of virtues, which people see in them. If Mahatma Gandhi is called "Mahatma Gandhi", it is not because people want to confer any title on him, but they see in him something divine, some virtues they see in him which they admire and respect and therefore the State has nothing to do with it. We are legislating, or trying to legislate, on that the State will do or what the State should do, not on what the people can or should do. There may be sections of people who want to give titles. For instance, which State will prevent the Muslims from conferring the title of "Qaid-e-Azam" on Mr. Jinnah? It is an absurd idea. We should not think about it. People will do what they think proper to do. But these titles are conferred by the State. There may be party governments; there may be other governments. They should have no authority to give any inducements or to corrupt people in order to build up their party or to obtain or derive strength by unfair means. Therefore there is no need for discussion on this question and I move that the clause as amended--I accept the amendments--be passed.

Mr. President: I will read the amendment first:

"No title shall be conferred by the Union.

No citizen of the Union shall accept any title from any foreign State.

No person holding any office of profit of trust under the State shall, without the consent of the Union Government, accept any present, emoluments, office or title of any kind from any foreign State."

I now put the amendment to vote.

The amendment was adopted.

Mr. President: This becomes now the amended clause. I put the amended clause to vote.

The clause, as amended, was adopted

Clause 8- Rights of Freedom.

Mr. President: Then we go on to Clause 8*

The Hon'ble Sardar Vallabhbhai Patel: I move clause 8 which reads thus:

*8. There shall be liberty for the exercise of the following rights subject to public order and morality or to the existence of grave emergency declared to be such by the Government of the Union or the Unit concerned whereby the security of the Union or the Unit, as the case may be, is threatened:--

(a) the right of every citizen to freedom of speech and expression:"

I do not move the proviso to be found in the Report:

"(b) The right of the citizens to assemble peaceably without arms."

Hence again I do not propose to move the proviso:

"(c) The right of citizens to form associations or unions."

The proviso to this sub-clause also I am not moving:

"(d) The right of every citizen to move freely throughout the Union:"

(e) The right of every citizen to reside and settle in any part of the Union, to acquire property and to follow any occupation, trade, business or profession".

To the proviso to this sub-clause, there is a small formal amendment to be made which I will move presently. It will be moved later. This proviso is on the lines of clause 5. It reads:

"Provision may be made by law to impose such reasonable restrictions as may be necessary in the public interest including the protection of minority groups and tribes."

The word 'reasonable' may have to be omitted after discussion on an amendment that is expected to be moved.

I see that there are some amendments to this motion. When they are moved I shall give my reply.

Mr. President. I now call upon Shri Ajit Prasad Jain to move his amendment.

Shri Ajit Prasad Jain (U.P. : General): Sir, I have given notice of an amendment to this clause, but I do not propose to move it. I would, however, request the Hon'ble Mover to make it clear that the declaration of an emergency should be done under authority derived from law. It is not now clear as to who will be the authority that is empowered to declare an emergency. I wish that the Legislature should have the right to declare an emergency and no other body. If the power to declare an emergency is placed in the hands of the executive, it may on occasion, work harshly. It is with this object that I sent up this amendment.

Mr. President: Do you or do you not move the amendment?

Shri Ajit Prasad Jain: I do not move the amendment, Sir.

Rai Bahadur Syamanandan Sahaya (Bihar: General): Sir, before we proceed with the amendments I should like to make a submission. Actually we are considering the Report at present and the proposition moved was that the Report be taken into consideration. The Hon'ble Mover, in moving Clause 8, suggested dropping all the three provisos and, in fact, did not move their adoption at all. The proper thing to do, it seems to me, is to move for their omission by way of an amendment and not simply to say that they are not being moved. This forms part of our proceedings. If we simply omit the provisos in the manner suggested by the Hon'ble Mover, one may not know how and why they were omitted. I simply want to draw the attention of the mover to this position.

The Hon'ble Sardar Vallabhbhai Patel: I have no objection to the course suggested. It may be taken that I have formally moved for the omission of the provisos to (a), (b) and (c).

Mr. Somanth Lahiri: Sir, as I have amendments to all the sub-clauses of clause 8, I request you to allow me to move all of them together. Some of them have become redundant now in view of the fact that the Hon'ble Mover has dropped the first three provisos.

Sir, my amendment to the proviso 8 (a) to delete the word 'seditious' has become unnecessary, because the whole proviso is to be deleted.

My next amendment is to substitute for the whole of clause 8 (b), the sentence "The right of the citizen to assemble". Here also, except two or three words, the rest have already been proposed to be deleted.

My last amendment runs thus:

"After clause 8 the following new clauses be added and existing clause 9 be renumbered as clause 14, and consequential changes be made in the subsequent clauses:-

9. No person shall be detained in custody without trial.

10. (a) Liberty of the press shall be guaranteed subject to such restrictions as may be imposed by law in the interests of public order or morality.

(b) The Press shall not be subject to censorship and shall not be subsidised. No security shall be demanded for the keeping of a Press or the publication of any book or other printed matter.

11. The privacy of correspondence shall be inviolable and may be infringed only in cases provided by law.........

Mr. Dhirendra Nath Datta (Bengal: General): The Hon'ble Member is suggesting new clauses. We are now dealing with clause 8. He may at best move his amendments to clause 8 and not move new clauses.

Mr. Somanth Lahiri: All these clauses have reference to the subjects' right to freedom and so on. I can move them now or later on. Both mean the same thing.

Mr. R.K. Sidhwa: I rise to a point of order. If Mr. Lahiri is allowed now to move all his amendments, similar opportunities may have to be given to other members also. I submit that the consideration of all these new clauses may be held over till we finish the main business. It will otherwise be doing an injustice to us.

Mr. Somanth Lahiri: Even if you ask me, Sir, not to move this amendment now, as soon as this is over you will have to ask me to move it. So it comes to the same thing.

Mr. K.M. Munshi: May I rise to a point of order ? Clause 8 has been moved. The House is considering a number of amendments to clause No.8. Now, Mr. Lahiri wants to suggest certain additions. Really speaking, they are independent matters, and as such they require independent consideration. They have nothing to do with clause No.8, and as such, they should be treated as independent motions. The House is now considering the Report and after the Report is finished, if there are any additional matters, they may be considered by the House. In the Report itself, it has been mentioned that several fundamental rights have not been brought before the House and that the Advisory Committee is considering them. The appropriate procedure would be for all these new matters to be sent to the Advisory Committee for its consideration. This is what clause 20 of the May 16 Statement contemplates.

Mr. Somnath Lahiri: I have already said that, since I have put up these amendments, I have to be called after clause 8 has been finished. The clauses that I have moved also refer to the same subject "Rights of Freedom". Therefore I am quite in order in asking to be allowed to speak now.

Sri K. Santhanam: Many of us have got similar clauses to be added. For the convenience of the House, I propose that all the new clauses be taken up later on after the Report has been considered.

Mr. Somnath Lahiri: If you give a ruling like that, Sir, I have no objection.

Mr. President: There are two view points placed before the House. Mr. Lahiri has a number of fresh proposals which are not exactly amendments, but which are new proposals which he wants to be added to the fundamental rights. The question is whether they should be taken as independent resolutions at this stage or later on.

Mr. K.M. Munshi: Later on, Sir.

Mr. President: Those who would like these new clauses to be taken up at the end of the discussion with regard to fundamental rights will please say 'Aye'--those against will say 'No'.

The motion was adopted.

Shri Balkrishna Sharma: (United Provinces: General): I submit this is a matter for your ruling, Sir, not a matter for voting, Sir.

Mr. Somnath Lahiri: I do not take part in the voting as a protest, Sir, because I think this is not a votable matter.

Mr. President: Your amendments now.

Mr. Somnath Lahiri: My amendments are Nos. 48,49 and 52 of Supplementary

List I.

No. 48-"That in clause 8 for the words 'security of the Union' the words 'defence of the Union' be substituted."

No. 49- "That in clause 8 (a) the word 'seditious' be deleted."

No. 52-"That for the whole of clause 8 (b) the following be substituted:--

'The right of the citizens to assemble'."

I am glad that the Mover of the Resolution has agreed to the delegation of some of the provisos of this clause. I am especially glad because the Congress party members did not take the advice of Professor Ranga who thought that democracy and liberty are harmful to India, because democracy and liberty are supposed by him to have helped Nazis to power in Germany. Anybody who knows a little bit of history knows that Nazism was not the result of having too much of democracy. Nazism came into power in Germany because the rights and liberties that were given under the Weimar Constitution were challenged by force by the capitalist classes in Germany with the help of Hitler's Nazi gangsters, and the Social Democratic Party failed to rally the working classes of Germany to challenge that force with force. That was the main reason why Nazism came into power there, not because there was an extra amount of freedom.

I am very glad, Sir, that these provisos against which I fought--may be, very bitterly for which I express my regrets also--have been done away with. That is very good. That means that my amendment No. 49 will not be necessary and No. 52 also will not be necessary. Only 48 will be necessary. The clause reads:

"There shall be liberty for the exercise of the following rights subject to public order and morality or to the existence of grave emergency declared to be such by the Government of the Union or the Unit concerned whereby the security of the Union or the Unit........"

I want it to read, "defence of the Union" instead of "security of the Union". The word 'security' is a very vague term and may mean anything. In the past we have seen the Government taking advantage of the vagueness of this term. Defence of the Union is certainly a thing which should be guarded and for this special power may be needed. It is an important amendment. I have got nothing more to say:

Mr. R.K. Sidhwa: My amendment which is in relation to clause (c) on the agenda reads thus. Sub-clause (c) says:

"The right of citizens to form associations or unions,"

My amendment is to the following effect: Add at the end of the sub clause the words:

"for the purpose of safeguarding and ameliorating economic condition and the status of workers and employees shall be guaranteed."

As this is considered a new clause, I reserve my right to move it at the appropriate time.

With regard to provisions to (a), (b) and (c) as the motion for deletion of the same stands in my name, with your permission, I would move that these provisos be deleted. My point is that when we are giving the right to every citizen the freedom of speech, it is certainly desirable that we should not restrict this liberty by these provisos. I do not think that it is necessary, because the clause is otherwise self-explanatory. While we are prepared to give certain rights to every citizens the provisos make those rights nugatory. I therefore, propose that they may be deleted.

As regards Mr. Lahiri's amendment regarding the substitution of "defence" instead of "security", I do not understand how defence could be secured without security in the country. Security is essential in the State and in the Union. Therefore, security is very necessary and I do feel that the original wording, as it stands, should remain.

Shri Mahavir Tyagi: Sir, I am rather in a fix about my amendment. There is already an amendment before the House which seeks to remove all the three provisos that occur after sub-clauses (a), (b) and (c). If this amendment is carried my amendment would be redundant. But if the House thinks otherwise and remains the said provisos, then I should suggest that the words "or to prevent or control meetings in the vicinity of any Chamber of a Legislature" occurring at the end of the proviso to sub-clause (b) be deleted. Sir, I deem it a privilege of the people to hold meetings even immediately in the vicinity of any Chamber of a Legislature and thus make their legislators feel what their voters want them to do. In short, I beg to request you, Sir, to take into consideration my amendment only if the House decides not to delete the said provisos altogether.

The Hon'ble Rev. J. J. Nichols-Roy (Assam: General): Mr. President, Sir, the amendment which stands in my name has two parts, namely, - (1) that in the first line of the proviso to sub-clause parts, namely,-- (1) that in the first line of the proviso to sub-clause (e) of clause 8, the word 'reasonable' be deleted; and (2) that after the word 'tribes' the words 'and tribal areas' be added. I want to move only the first part. I do not want to move the second part. So the proviso as I propose will read thus:

> "Provision may be made by law to impose such restrictions as may be necessary in the public interest including the protection of minority groups and tribes."

The word "reasonable" will create a great deal of contention and confusion. If a State or a Unit will impose restrictions some one may go to the Supreme Court as provided in clause 2 and say they are not reasonable. So I consider that protection to be made by law for groups and tribes is not a proper and safe protection. At present there is a great deal of misapprehension in the minds of the people in the tribal areas and in the partially excluded areas of Assam that their coming in with India will partially being them under the exploitation of the people of other parts of India and that the present protection which they have for their lands will be withdrawn. So many of them are afraid to be brought within the new Constitution of India. When we, the Sub-Committee of the Advisory Committee were in the Lushai Hills, some of the Lushai people expressed an idea that it might be better for them to be connected with Burma instead of being connected with the Province of Assam. Though they are now in Assam, yet they are afraid that in the new Constitution all the protection which they have up to the present received from the British Government might be withdrawn. In order to remove this suspicion, it will be very necessary that an authoritative statement be made by the Member of the Interim Government, Pandit Jawahar Lal Nehru, who is in charge of these Tribal Areas, that the protection which the tribes in

Assam now have for their land will not be withdrawn. I shall indeed be very thankful for such a statement if it will be made in this House or somewhere else. I understand that this provision is purposely put in here in order to safeguard the land and other interests of minorities and tribal people. But this provision will be misunderstood and misinterpreted in some quarters especially on account of the privileges given by the main sub clause (e) to every citizen in India- and therefore it will create a great deal of confusion in their minds. For that reason I do request again that such an authoritative statement be made by Pandit Jawahar Lal Nehru. This will greatly help the Sub-Committee who will visit these tribal areas, during their course of enquiry.

Prof. K.T. Shah (Bihar: General): I do not move my amendment (No.18 of Supplementary List II) at this stage.

Mr. Jaspal Singh (Bihar: General): Mr. President, there was hardly an hour between our rising yesterday and the time fixed by you for submission of amendments. I have to apologise to the House for the wording of my amendment No. 19* of Supplementary List II, not being exactly as a draftsman would have put it.

The whole idea behind my amendment is to point out to the House that the Sub-Committees appointed to go round the Excluded and Partially Excluded Areas have not yet submitted their findings and their report has not yet gone to the bigger Advisory Committee. Here we have a clause with a provision which is vital to Adibasi millions and which should depend upon our knowledge of the recommendations of these two subcommittees, particularly the Sub-Committee which has to deal with the Tribal Areas of the North East, shall I say, the Bengal-Assam Group. Until we know what their recommendations are, it seems to me unwise, inexpedient and premature that we should be seems to me unwise, inexpedient and premature that we should be discussing a clause and its provisions at the present moment. I would like to suggest, Mr. President, if I may, that this clause be held over till the reports, particularly of the two Tribal Sub-Committees, are submitted. Then we would know what their recommendations were.

Mr. President, I have said on another occasion previously on the floor of this House that land is the bulwark of aboriginal life. Here we are dealing with a provision which is going to mean the life or death not only of the 34 Tribal areas which are now known as fully Excluded or Partially Excluded Areas, but of many more millions living outside these tracts. Take, for example, Bengal. There you have very nearly 20 lakhs of Adibasis who are in neither the Excluded nor the Partially Excluded Areas. Their problem also will have to be considered by these two Sub-Committees although technically they are supposed to deal only with those tracts that are called Excluded or Partially Excluded Areas. I have no desire at this interim stage to press my amendment. I only want to point out that we are trying to arrive at a decision, even though we may call it an interim decision,--I am told at the present moment all this will come under review, --we are simply multiplying our work, wasting time by trying to come to a decision on an issue that must depend on the recommendations about to be submitted by these two Sub-Committees. This is my humble submission. I am relieved to hear that the mover has no objection to the deletion of the word "reasonable". If you read the wording of the amendment I have submitted, it falls into two parts. First, I want an unequivocal assurance, either here or somewhere else, which will make it absolutely clear to the nearly 30 million tribal people in India,--this is according to the 1941 Census, and whether it is right or wrong, that is beside the point--a definite assurance that the protection that obtains for Adibasis under the existing laws shall continue. The clause, as it stands, has already created a very very serious fear in the minds of the tribal people. The two Sub-Committees will have to go again to Assam; they have still to go to areas like Chota Nagpur. I want to stress from the Adibasi point of view, that land is and must be the bulwark of aboriginal life. I think the Premier of Assam will bear me out when I say that it will be impossible for him and the Sub-Committees to go about Excluded and Partially Excluded Areas unless this assurance is given that this clause is in no way going to affect their present protection. The Honourable Member preceding me has, in a way, stressed that point. There is already much misunderstanding. I would rather that this clause stood over till the report of the Sub-Committees were submitted. For example, wherever we have been, it has been urged upon us that for several years to come, the aboriginals land must be inalienable. If I were to fight for that particular, shall we say, protection, most members would laugh. A friend of mine, only this morning when I was talking to him, said, "Do you want for eternity that aboriginal land should remain inalienable?" That is how some of the demands vital to Adibasis are ridiculed. We have been talking about equality. Equality sounds well; but I do demand discrimination when it comes to holdings of aboriginal land. That is why I urge that this particular clause be held over till the reports of the particular Sub-Committees which have to deal with the people whose rights will be affected are received before we come to any decision however temporary or interim it might be. I appeal to the Mover, Sardar Vallabhbhai Patel, that this clause and its provisos be held over. I have no desire at this stage to press my amendment.

Shri Khurshed Lal (United Provinces: General): In view of what has been said already I do not move my amendment (No.20 of the Supplementary List II).

Dr. Suresh Chandra Banerjee (Bengal: General): In view of the decision taken just now, I shall move my amendment (No.21 of the Supplementary List II) at the appropriate time.

Shri Khurshed Lal: I desire to reserve my right to move my amendment at a later stage. It was put in as an independent clause after clause 8. I wish to reserve my right of moving if after the Report has been considered.

Mr. K.M. Munshi: Mr. President, Sir, now that the other provisos to Clause 8 are gone, the only proviso that is left is the proviso to sub-clause (e); but before I refer to it, I should like to move my amendment with reference to sub-clause (e):

"(1) That the following words be added in Clause 8 (e):

'Hold or dispose of' between the words 'acquire' and 'property';

'(2) Substitute the words "exercise or carry on" between "to" and "any occupation",".

With these changes, the sub-clause will run as follows:--

"The right of every citizen to reside and settle in any part of the Union, to acquire, hold or dispose of property and to exercise or carry on any occupation, trade, business or profession."

This is, all those portions which were omitted in clause 5 by reason of this amendment will be carried into this clause. Then I understand there is another amendment moved with regard to the deletion of the word "reasonable". My third amendment is to the same effect. With regard to the last sub-clause, there was a reference to an amendment that "tribal areas" should be used there instead of "tribes". The word '"tribes" has been used in the proviso for this reason that there may be tribes which may not be in tribal areas and it is necessary that the proviso should cover both, *viz.*, tribes which are in tribal areas as well as those outside it. There is no need of any apprehensions with regard to it. If I may mention, Sir, this proviso fully covers the doubts raised by my friend, Mr. Jaipal Singh. It does not say that all the existing rules would be abrogated. On the contrary, under clause 2 all the existing laws in force in the Union or any part thereof will continue unless they conflict or are inconsistent with the Fundamental Rights.

Dr. P.S. Deshmukh (C.P. & Bearer: General): I rise to support the amendment which seeks to delete the word 'reasonable' from the proviso, I also support the suggestion made by my friend, Mr. Jaipal Singh regarding deferment of the whole of the clause for further consideration. I have, however, no objection to retaining the first portion of the sub-clause, that is to say, "the right of every citizen to reside and settle in any part of the Union". The other part of the sub-clause should however, be held over. In supporting my friend, Mr. Jaipal Singh, in this particular matter, I have some very strong considerations in view. I would like to point out to you, Sir, and to the House that the whole of India and especially the masses of India expect the Indian constitution to have a definite socialistic bias. If this clause is retained in the form in which it is put down here, I am sure we will be strengthening the suspicion of the Indian masses that this Constituent Assembly is so inalienably wedded to the vested interests that they have no hope of any socialistic principles being embodied in the Indian Constitution. Here, Sir, we have a very curious provision indeed. I do wish to avoid the use of strong words, but it is strange that we should set out to protect the minority groups, in the matter of acquisition of property. I think it should be a matter of common knowledge that the vast majority of the population of India which consists of agriculturists and labourers has everywhere been exploited by small minority groups. This is so great an evil that the majority is crying for protection against them. In the Fundamental Rights before us we are trying to protect precisely those very minority groups against whom we want protection against whom the labouring classes and the peasants want protection. My submission to this House is that we must give this matter a little more consideration. Although Sardar Vallabhbhai Patel stated that the Interim-Report presented to the House was not haphazard. It was admitted that the Committee did not have time to consider properly every possible point of view. With that statement of the situation, Sir, and with all the things that have been mentioned in the forwarding letter of Sardar Patel it is clear that the Report contained many things which will lend themselves to further consideration. So far as this clause is concerned, it is the labour who requires protection, it is the agriculturists who require protection against unlimited acquisition of property. It is also worth investigating if this matter could not be left to the Provinces to legislate upon; I would certainly welcome this. In my opinion the Centre should not interfere because the effect of this would be that while you are not going to have socialism at the Centre, you will be preventing it from being introduced in the future Indian Provinces also.

Mr. Somnath Lahiri: Sir, I support the suggestion of Mr. Jaipal Singh regarding special protection to the tribal people. These people are down trodden and backward and need special provisions for their protection. It is not even, as Prof. Shah seems to suggest, a question of socialistic bias, but even in a bourgeois democracy the tribal people should have the existing and future provisions for their protection to bring them up, at least to a minimum level. That is why I support Mr. Jaipal Singh's suggestion.

Srijut Rohini Sahay Chaudhury (Assam: General) : I oppose the amendment which was moved by my Honourable friend, Mr. Jaipal Singh. I consider that it would be extremely unwise to have that amendment accepted by the House.

Mr. Jadubans Sahay: (Bihar: General): On a point of order, Sir. Is it a fact that Mr. Jaipal Singh has not pressed his amendment and that he has made certain general observations only?

Mr. President: I think he did move an amendment.

Srijut Rohini Kumar Chaudhury: I want to refer to that. I support the main motion as amended by the Hon'ble Mr. Nichols-Roy, but I would like to make some alteration as regards the proposal which was made that special protection of existing laws should be maintained. There is a regulation called Chin-Hill Regulation. I wonder how many Honourable Members of this House know about it. That Chin-Hill Regulation entitles any political officer to evict from its precincts anyone who may be considered undesirable. That regulation has now been withdrawn in some places, but it is still in force in most of the places in the Hills. I only desire to point out that such curtailment of liberties in towns and other places where people can be evicted should be looked into.

They were not intended *bona fide* to protect the tribal people, but were meant to isolate them from their brethren in the plans so that there could be greater exploitation by British people.

The Hon'ble Pandit Jawaharlal Nehru (United Provinces: General): Sir, I confess I am a little confused. I do not know where we stand after all this welter of amendments which have been moved and not moved and withdrawn and not withdrawn. I do not know how other Members stand in this matter, but there is utter confusion in my mind as to what is being discussed. As far as I can make out, the present position is this. The clause stands with the first three provisos omitted and with certain other minor changes. In regard to (e) the proviso remains with this difference that the word "reasonable" is sought to be removed, and certain other changes have also been sought to be made. So much has been said which has no reference to the clause. I do not know if I am correct in understanding the position as that. I am supporting for clause, that is to say, without those three earlier provisos, with the last proviso to clause (e) being retained and with the removal of the word "reasonable" from that proviso.

It seems to me that there is also confusion in regard to another matter. Honourable Members seem to forget that we are dealing with fundamental rights. We are not legislating at the moment in regard to any matter. Various things have been brought to our notice--very desirable things which should be done or should not be done, but they having nothing to do with fundamental rights in a constitution, we can consider them separately; we can lay them down even as a part of the Constitution, if you like--or much better, a law could be framed accordingly. There is this confusion, this overlapping, and hence I think a great deal of difficulty has been brought into the picture. A fundamental right should be looked upon, not from the point of view of any particular difficulty of the moment, but as something that you want to make permanent in the Constitution. The other matter should be looked upon-- however important it might be--not from this permanent and fundamental point of view, but from the more temporary point of view.

Now Mr. Jaipal Singh moved an amendment which I gather he did not press. As far as I am concerned, I entirely agree with him, but I do not see what it has to do with fundamental right. I completely agree that the tribal areas and the tribal people should be protected in every possible way (*Hear, hear*), and the existing laws--I do not know what those laws are, but certainly the existing laws should continue and may be, should be, added to when the time comes. But thinking of this in terms of a fundamental right would be, I submit, entirely wrong. Mr. Nichols-Roy called upon me not once but several times to speak here and make clear my position apparently in some other capacity than I possess here. He referred to the Interim Government and to the External Affairs Department. Well, Sir, I need not remind the House that I am not here as a Member of the Interim Government or as a Member in charge of the External Affairs Department. I am here as representing the people of the United Provinces. But forgetting my representative capacity, I should like to say-- and I am quite sure the House will agree with me, and indeed, the House, in accepting the first Objectives Resolution, made this point clear even then,--that every care should be taken in protecting the tribal areas, those unfortunate brethren of ours who are backward through no fault of theirs, through the fault of social customs, and may be, ourselves or our forefathers or others; that it is our intention and it is our fixed desire to help them as much as possible; in as efficient a way as possible to protect them from possibly their rapacious neighbours occasionally and to make them advance. I can assure Mr. Nichols-Roy that in so far as I have any say in this matter in any Government or otherwise, I shall try to do that. I think, however, that it is not a question of my desire or someone else's desire. I think it is bound to be the policy of any Government of India because that is likely to be an accepted principle of Indian politics today and I do not think any Government even if it was not keen on this issue would very well go against it. So I submit, Sir, that people interested in tribal areas should rest assured completely because, if any person ceases to be vigilant in the defence of any right or freedom, that freedom or right is likely to be swept away. So I want them to be vigilant, but nevertheless, I want them to feel sure that they have the sympathy of the whole of India with them. (*Cheers*).

Mr. K.M. Munshi: May I in the interest of a little more accuracy suggest a change of wording? I find that there is a defective word used in the first Preamble:

> "There shall be liberty for the exercise of the following rights subject to public order and morality or to the existence of grave emergency."

I move this verbal change that instead of the words "to the existence of grave emergency"--that does not sound much sense--we use the words "except in grave emergency".

The Hon'ble Sardar Vallabhbhai Patel: Now, Sir, I accept Mr. Munshi's verbal amendment in the first paragraph. I also accept that the word "reasonable" be dropped in the last proviso. So the clause is as I moved dropping the proviso to clause (a), proviso to clause (b) and proviso to clause (c) and in clause (e) there is an addition which Mr. Munshi has moved which I accept. Mr. Nichols-Roy said something about the tribal areas. Now, there remains another amendment by Mr. Lahiri about the word "security". Mr. Lahiri has moved an amendment to substitute for the words "security of the Union", the words "defence of the Union". I strongly oppose it. Mr.

Lahiri has an acute mind. He knows that internal security is more necessary than security outside. However, he puts "defence" instead of "security", so that there will be defence outside and internally there may be chaos. The word 'security' was selected deliberately and it should not be replaced.

The Hon'ble Rev. Nichols-Roy, was concerned about the protection of minority groups and tribes and Mr. Jaipal Singh had some apprehensions about the tribal areas. Now, with regard to the word 'tribes', my own feeling is that it is not an appropriate word. The expression 'protection of tribal areas', similarly, is not a happy one. This expression will convey the meaning that we are now concerned with the protection of certain areas. That is, if some external trouble is expected or if some encroachment is going to be made there, 'the protection of tribal areas', will carry a different meaning.

Mr. Jaipal Singh has apprehensions that the present laws which afford protection and security to the tribal people will be removed. I do not see why there should be any such apprehension. We are not here legislating or doing anything by way of repealing the existing Acts. This clause relates to Fundamental Rights. It does not do away with the existing laws. Existing legislation is left untouched except in so far as it abrogates the fundamental rights for the protection of the Constitution. Therefore there is no reason to entertain any fear about it. But I would like to make one thing clear. Is it the intention of people to defend the cause of the tribals to keep the tribes permanently in their present state? I do not think it is in their interest to do so. I think that it should be our endeavour to bring the tribal people to the level of Mr. Jaipal Singh and not keep them as tribes, so that, 10 years hence, when the Fundamental Rights are reconsidered, the word 'tribes' may be removed altogether, when they would have come up to our level. It is not befitting India's civilization to provide for tribes. What is the meaning of tribes. What is it that the word means, and is it so? It means something and it is there because, for two hundred years, attempts have been made by foreign rulers to keep them in groups apart with their customs and other things in order that the foreigners' rule may be smooth. The rulers did not want that there should be any change. Thus it is that we still have the curse of untouchability, the curse of the tribes, the curse of vested interests and many other curses besides. We are endeavouring to give them all fundamental rights. It should be our endeavour to remove these curses. Therefore, ten years hence, when we reconsider the position, we hope to be in a position to replace the word. All the laws that have been given them protection are there. But have they protected them? It is not our desire to keep the tribes in their present condition. It is not the existing laws that are going to protect them. It is our own work, our own action and our own sincerity that will give them protection. Therefore, I would appeal to Mr. Jaipal Singh not to entertain any apprehension. In free India there would be no occasion for fear haunting them as it has done during the last 200 years.

Mr. Jaipal Singh: On a point of order, Mr. President, may I say that I have no apprehensions of the kind regarding the tribal areas attributed to me by the Hon'ble Sardar Patel? He has, I am sorry to say, put his own interpretation on what I said. It may be true that the lot of the tribes might be improved hereafter. They may come to my level. But that does not mean that the policy we are pursuing should not be more protective and sympathetic. I know that we are going to reconsider it after ten years.

Mr. President: I shall now put the amendments first. As most of the amendments have been accepted by the Mover, I take it that the House assents to them. (*Voices*:

'Yes')

The amendment for the deletion of the provisos to 8(a), (b) and 8(c) was adopted.

The Assembly also accepted the amendment to substitute the words "except in" for the words "to the existence of" occurring in line 2 of clause 8.

Mr. President: I shall now put Mr. Lahiri's amendment to the House. The amendment seeks to substitute the words "defence of the Union" for the words "security of the Union" occurring in the first para of clause 8. As amended, it will read:

"There shall be liberty for the exercise of the following rights subject to public order and morality or to the existence of grave emergency declared to be such by the Government of the Union or the Unit concerned whereby the defence of the Union or the Unit, as the case may be, is threatened."

The amendment was negatived.

Mr. President: Then I come to amendment to sub-clause (e). As amended it will read:

"The right of every citizen to reside and settle in any part of the Union, to acquire. hold or dispose of property add to exercise or carry on any occupation. trade, business or profession."

The amendment was adopted.

Mr. President: I shall now put the whole clause. I suppose it is not necessary that it should be read out.

Clause 8, as amended, was adopted.

CLAUSE 9-RIGHTS OF FREEDOM

Mr. President: Then we come to Clause 9*.

Mr. K.M. Munshi: I move that for the words "the equal treatment of the laws" the words "equality before the law" be substituted.

The amendment was adopted.

Mr. President: As regards the proviso there is a formal amendment to drop it. Then there are some amendments of which notice has been given.

(Messrs. Diwakar, Mohanlal Saksena and Mahavir Tyagi did not move their amendments.)

Mr. President: Then I come to the amendment saying that the proviso be dropped.

Mr. K.M. Munshi: I move that the proviso be dropped.

The amendment was adopted.

Mr. President: I put Clause 9 as amended.

Clause 9, as amended, was adopted.

Mr. President: Now, we shall take up the Report of the Order of Business Committee. We shall take up the discussion of the further clauses of the Fundamental Rights tomorrow. Now, Mr. Munshi will move his Resolution.

REPORT OF THE ORDER OF BUSINESS COMMITTEE

Mr. K.M. Munshi: Mr. President, Sir, I beg to move the following motion:

> "Resolved that the Constituent Assembly do proceed to take into consideration the report of the committee appointed by the resolution of the Assembly of the 25th January, 1947, to recommend the order of the further business of the Assembly."

In moving this motion I have a few remarks to make. The report is before the House and I need not trouble the House at this late hour by reading it. The Report, as has been explained, is an interim report. We were expected to make a final report of the order of business, but we found it impossible to make a final report, and are seeking the permission of the House to submit a final report at a subsequent stage. The reason is obvious to all the Members. The political conditions in this country are changing fast and these changes naturally have their repercussions on the programme of this Assembly. Therefore, the Committee found it impossible to submit a final report.

Two factors, as has been already referred to by you, Sir, and also by Panditji have come into the forefront during the last few weeks. The first is the overwhelming insecurity in two of the provinces of India-Bengal and the Punjab--and this brought to the forefront the question about the partition of those unfortunate provinces, already referred to by you in your preliminary remarks. This might entail certain changes in the programme of the Assembly and this was one of the factors which prevented us from submitting our final report. The second factor has been the unfortunate fact that the Muslim League has not seen its way to come into the Constituent Assembly even now, and there does not appear to be any prospect of an immediate change, though every concession has been made and every consideration shown and though even the largest party in the country has given an invitation to it. This requires largest party in the country has given an invitation to it. This requires certain changes of programme on the part of the Constituent Assembly.

The Constituent Assembly as well as the Congress have over and over again said that they do not desire to impose any constitution on unwilling parts of the country, and if any unwilling areas stay out, it is not desirable that the Constituent Assembly should wait for ever for them. Now certain changes in the programme of business have become necessary and therefore it was impossible to set out a programme right to the end. Of course, it does not mean, so far as I understand it, that the Constitution that this House will form will not take into account the whole of India. We do hope to make the Constitution on the basis that a time might come when even the unwilling areas who are staying out, or who want to stay out, will, within a short distance of time, come into the Union of India. The Constitution that we propose to formulate must be such as to enable the prodigal sons to return and they will be welcomed whenever they choose to come in. In view of these factors the Committee wants time to submit our final report.

The second consideration which was weighed with the Committee in formulating its programme has been the statement that His Majesty's Government made in Parliament on 20th February, 1947. That puts a time-limit. The Committee has, therefore, submitted that the Constituent Assembly must finish its work of framing the Constitution by the 31st October at the latest. This time-limit is essential in order that our work should be expedited and that the work should be done with promptness. If the House approves of this Report, a resolution will be moved that two Committees may be appointed. These Committees will perform work of an exploratory nature, and will work side by side. One of them will deal with the main principles of the Union Constitution, and the other with the principles of a model Provincial Constitution. It is expected that these two Committees as well as the other Committees, except perhaps the one dealing with tribal areas, will be ready with their reports by the third week of June. The programme that is envisaged in the report therefore is that all these reports not only of the Minorities Committee, the Advisory Committee, but also of these two Committees, should be before the House in its June-July sessions in the shape of, if I may use a well-known expression, a White paper. Then decisions will be taken on the broad outlines of the Constitutions of the Union as well as of the Provinces.

According to the Rules of the Constituent Assembly, we have to circulate our preliminary decisions to the provinces in order that their respective legislatures may consider them and give the House the benefit of their opinions. That will take about a couple of months, and possibly the period between the middle of July and the middle of September will be taken up in Provincial legislatures considering those proposals. Then it is proposed that we should meet somewhere about the middle of September or end of September so that we can complete our task before the 31st October. In the interval, after the House has taken decisions with regard to the main outlines of the Constitution it is intended that the drafting of the Acts should begin side by side so that in the October Session we may have a full and complete draft of the Constitution placed before the House. This is the general sketch of the programme and I hope that it will meet with the approval of the House.

Mr. President: I suppose nothing is to be said about the report. There is nothing more to be done I believe.

Mr. K.M. Munshi: The report has to be adopted.

Mr. President: I put the report to the vote of the House.

Sri K. Santhanam: There is nothing to vote about. The report may be recorded.

The Hon'ble Sri C. Rajagopalachariar: It is a report of another body to us. We record it.

Mr. K.M. Munshi: I beg your pardon. What I moved was consideration by the

House because we want the permission of the House to make a subsequent report at a later date. There must be a decision of the House. Therefore, I move formally, if necessary, the adoption of this Report by the House.

Sri K. Santhanam: That means we accept the whole Report. The Honourable Member can move a motion for the appointment of the Committees, but the Report may be recorded. We accept the proposal for the Committees, but about the actual contents of the report, we need not commit ourselves to any particular date or any particular paragraph.

Mr. H.V. Kamath: The motion is for consideration and not adoption. It only says, "proceed to take into consideration the report..."there is no question of adoption.

Mr. R.K. Sidhwa: This report is merely for the information of the House. But if we want a decision of the House, there is one thing to which I would like to make a reference regarding the date. It is apparently stated that the work should be completed by the end of October. We all wish that it should be done by that date, but there are yet many factors to be taken into consideration. Under the Rules, the Constitution in the draft form has to go to the various provinces, and we do not know whether the Provinces will adhere to the dates we fix. I also wish that the work should be finished as scheduled but our experience has shown that the dates fixed have had to be changed frequently. It will not be proper to consider every time an extension of the date. I submit that we should respect the laws we make ourselves and the rules which we have made and stick to the date, but in view of the existing conditions it is better not to fix a date.

Mr. President: I take it that the Report is to be recorded. Is that the view of the House?

The Assembly agreed.

The Report was recorded.

Mr. President: There are one or two points in the Report which the House will have to consider. One is that the Committee wants permission to submit a subsequent report. I hope the House agrees.

The second is that the Committee recommends that two separate Committees be appointed one to report on the main principles of the Union Constitution and the other to report on the principle of a model Provincial Constitution.

Dr. B. Pattabhi Sitaramayya (Madras: General): That will come up as a separate resolution.

Mr. President: Shall we take that up now?

Dr. B. Pattabhi Sitaramayya: It will be a fuller resolution because the strength of the Committees has to be mentioned.

Mr. President: Shall we take that up now?

Mr. R.K. Sidhwa: The motion may be made tomorrow.

An Hon'ble Member: You may take it up now.

Mr. K.M. Munshi: I move:

"This Assembly resolves that in accordance with the recommendations contained in the Report of the Order of Business Committee the following Committees be nominated by the President with instructions to report before the next Session of the Assembly:

1. A Committee consisting of not more than fifteen members to report on the main principles of the Union constitution, and

2. A Committee consisting of not more than twenty-five members to report on the main principles of a model provincial constitution."

"That carries out the recommendation at page 2 of the Report.

Mr. President: The motion before the House is:

"This Assembly resolves that in accordance with the recommendation contained in the Report of the Order of Business Committee the following Committees be nominated by the President with instruction to report before the next session of the Assembly:

1. A. Committee consisting of not more than fifteen members to report on the main principles of the Union constitution, and

2. A Committee consisting of not more than twenty-five members to report on the main principles of a model provincial constitution."

Mr. C. M. Poonacha (Coorg): Mr. President, Sir, I have a suggestion to make in connection with the terms of reference of the proposed two Committees which we are going to constitute, one for determining the principles of the Union Constitution and the other to prepare a model Provincial constitution. Sir, we have now in India four Chief Commissioners' provinces which are centrally administered. When the future principles of our Union Constitution are going to be determined, it obviously means that the question whether the future Union Government should have under its authority such centrally administered areas or not will have to be incidentally examined. The Cabinet Mission Statement of May 16,1946, has reserved only defence, foreign affairs and communications for the Union Government. On that basis, I think, the Union government in future will have nothing to do with the details of administration of any province including the Chief Commissioners' provinces. That being the position, the Committee that we are going to set up naturally will have to go into the question and give its recommendations thereon. Therefore, while determining the principles of the future Union Constitution, this problem will certainly have to be dealt with.

Coming to the functions of the other Committee, *viz.*, that which would draft a model Provincial Constitution, I am of the opinion that the existence and functions of the present Chief Commissioners' provinces will have to be incidentally covered because, while determining the minimum area, population and revenue, judiciary, principles of taxation, representation, administration and such other matters, the case of these small administrations will naturally be affected. Thus, it is clear--and I take it to be so to everyone here,--that the scope of both these Committees will certainly include the problem of the Chief Commissioners' provinces. Therefore, Sir, I would like to suggest that a small sub-committee of three-one from the Union Constitution Committee and two from the Model Provincial Constitution Committee--be constituted to examine the case of the existing Chief Commissioners' provinces by visiting each Chief Commissioner's province and help the above committees to formulate their report. Such a procedure will also help us to deal with these subjects quickly in our Sectional meetings. We have the Chief Commissioners' Provinces of Delhi, Ajmer-Merwara and Coorg in Section A and the Chief Commissioner's province of Baluchistan in Section B. A detailed examination and suitable recommendations thereon will not only be useful but will also help us to speed up our work in the Sections.

Speaking about my own stand, Sir, I have given an assurance at the time of my election to this Constituent Assembly, stating that before deciding about the future of Coorg one way or the other, the people of Coorg will be consulted. So, the visit of a committee to these areas will also give an occasion to contact public opinion in these provinces while making a study of the various aspects connected therewith.

With these remarks, Sir, I suggest that the question of the Chief Commissioners' provinces be specifically included under the terms of reference of these two Committees and for that purpose a small subcommittee of these two Committees, as explained already be constituted. Sir, I have done.

Dr. B. Pattabhi Sitaramayya: Sir, I welcome the proposal to appoint these two Committees and I wish to bring to your notice that I have given notice of a proposition relating to the linguistic redistribution of provinces. That will be discussed in due course. I do not know whether I shall be in order in referring to the proceedings of the Party, but the Party has been good enough to say that that the subject would be referred to these two Committees. I think it is opportune now for us to say that these two Committees will not only go into these questions which have been associated with them but that it would also be competent for these Committees to go into the question of the redistribution of provinces on a linguistic basis.

Mr. President: Do you want to reply? (To Mr. Munshi.)

Mr. K.M. Munshi: This does not require a reply.

Mr. President: There are two points which have been raised one--by Mr. Poonacha that these, Committees should go into the Constitution of the Chief Commissioners' provinces and that there should be a sort of sub-committee of these two Committees to deal with the question of the Chief Commissioners' provinces. There is another suggestion by Dr. Pattabhi Sitaramayya that this Committee should be authorised to deal with the question of the creation of linguistic provinces. I take it that these two Committees when constituted will take into consideration all these and other matters so far as they arise and will make their recommendations in due course. It will be remembered that what is wanted is only a sort of model constitution for the provinces and a constitution for the Union. The model provincial constitution might apply equally to any number of linguistic provinces that might be created. The model constitution need not necessarily require linguistic provinces for that purpose. It is just possible this may fall within the purview of the other Committee which will deal with the general principles of the Union Constitution and that Committee may suggest ways and means for the creation of linguistic provinces. I take it that this Committee will take into consideration all these questions and the question of the Chief Commissioners' provinces will also naturally arise before them.

Prof. N. G. Ranga (Madras: General): Does that mean that, supposing these two Committees come to the conclusion that this question need not be discussed at all and that they need make no detailed suggestions, this House will not be able to have any say in the matter?

Mr. President: Nothing of the sort. The Committees will make their recommendations. It is always open to the House to correct any errors and remove any defects in their recommendations.

Now this motion is put to the House.

The motion was adopted.

Mr. President: I think we shall disperse now and meet tomorrow morning at 9 o'clock.

The Assembly then adjourned till Nine of the Clock, on Thursday, the 1st May,1947 a Legislature.

---

* 5. There shall be equality of opportunity for all citizens in matters of public employment and in the exercise of carrying on of any occupation, trade, business or profession.

Nothing herein contained shall prevent the State from making provision for reservations in favour of classes who, in the opinion of the State, are not adequately represented in the public service.

No citizen shall on grounds only of religion, race, caste, sex, descent, place of birth or any of them be ineligible for public office or be prohibited from acquiring, holding or disposing of property or exercising or carrying on any occupation, trade, business, or profession within the Union.

Nothing herein contained shall prevent a law being made prescribing that the incumbent of an office to manage, administer or superintend the affairs of a religious or denominational institution or the member of the Governing Body thereof shall be a member of that particular religion or denomination."

Rights of freedom

*8. There shall be liberty for the exercise of the following rights subject to public order and morality or to the existence of grave emergency declared to the such by the Government of the Union or the Unit concerned whereby the security of the Union or the Unit, as the case may be, is threatened:-

(a) the right of every citizen to freedom of speech and expression:
Provision may be made by law to make the publication or utterance of seditious, obscene, blasphemous, slanderous, libellous or defamatory matter actionable or punishable.

(b) The right of the citizens to assemble peaceably and without arms:
Provision may be made by law to prevent or control meetings which are likely to cause a breach of the peace or are a danger or nuisance to the general public or to prevent or control meetings in the vicinity of any chamber of

(c) The right of citizens to form associations or unions:
Provision may be made by law to regulate and control in the public interest the exercise of the foregoing right provided that no such provision shall contain any political, religious or class discrimination.

(d) The right of every citizen to move freely throughout the Union:

(e) The right of every citizen to reside and settle in any part of the Union, to acquire property and to follow any occupation, trade, business or profession:

Provision may be made by law to impose such reasonable restrictions as may be necessary in the public interest including the protection of minority groups and tribes.

* That at the end of Clause 8, the following be inserted:--

"Existing laws for the special protection of Tribes shall continue and further provisions may be made by laws to impose such restrictions as may be necessary in the public interest including the protection of Tribes and minorities."

*9. No person shall be deprived of his life, or liberty, without due process of law, nor shall person be denied the equal treatment of the laws within the territories of the Union.

Provided that nothing herein contained shall detract from the powers of the Union Legislature in respect of foreigners.

*[ ] Translation of Hindustani speech.

APPENDIX

CONSTITUENT ASSEMBLY OF INDIA

Report of the Order of Business Committee

We, the undersigned, members of the Committee appointed by the Resolution of the Constituent Assembly dated the 25th January, 1947, to recommend the order of the further business of the Assembly, have the honour to submit this our report.

We met on the 5th March, and on the 21st, 23rd and 27th April, 1947. Pandit Jawaharlal Nehru was, by special invitation, present at all the meetings of the Committee except the one held on the 23rd.

The Statement of His Majesty's Government made in Parliament on the 20th February, 1947, has imported an element of urgency into the work and proceedings of the Assembly and, in our opinion, it is essential that the constitution should be prepared well before the end of this year. The task of arranging the order of business and of framing a time-table is, however, by no means easy. The political situation is developing with great rapidity, and the changes that are taking place inevitably affect the work of the Assembly. We are not, therefore, in a position at this stage to make final recommendations except in regard to the immediate future; and we request that we be permitted to submit a further report at a subsequent stage.

We understand that when the Assembly meets on the 28th April, it will have before it the reports of the following Committees:--

(1) The States Committee appointed by the Constituent Assembly on 21st December, 1946.

(2) The Union Powers Committee appointed by the Constituent Assembly on 25th January, 1947.

(3) The Advisory Committee appointed by the Constituent Assembly on 24th January, 1947, but only on the subject of Fundamental Rights.

After the business connected with these reports has been disposed of by the Assembly, we recommend that two separate committees be appointed one to report on the main principles of the Union Constitution and the other to report on the principles of a model Provincial constitution. We consider that there are many advantages in having two committees, perhaps with an element of common membership, working side by side and considering the interrelated principles of the Union and the Provincial constitutions. The work of the committees will be of an exploratory nature to facilitate and expedite the work of the Union Assembly or the Sections thereof, as the case may be. After the committees have been set up, we recommend that the meeting be adjourned to a date to be fixed by the President at his discretion. We suggest this flexible arrangement partly in order that the Assembly may avoid difficulties likely to arise from the fixation of a date in advance and partly because experience has shown that committees are not always able to work up to a rigid time-table.

The constitution Assembly should complete its work by the end of October this year. A meeting will be necessary at the end of June or the beginning of July to consider the reports of the various committees and thereafter the matter of going into Sections. A meeting of the Assembly to finalise the constitution should be held in September.

K.M. Munshi,

N. Gopalaswami,

Biswanath Das,

New Delhi, the 27th April, 1947.

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME III

Thursday, the 1st May, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair.

INTERIM REPORT ON FUNDAMENTAL RIGHTS-contd.

Mr. President- We shall proceed with the discussion of the remaining clauses.

CLAUSE 10-RIGHTS OF FREEDOM*

The Hon'ble Sardar Vallabhbhai Patel (Bombay: General): Clause 10 reads as follows :

"Subject to regulation by the law of the-Union trade, commerce, and Intercourse among the Units- by and between the citizens shall be free:--

Provided that any Unit may by. law impose restrictions in the interest of public order, morality or health or in an emergency;"

In paragraph 2 we have dropped the word "reasonable."

"Provided that nothing in this section shall prevent any Unit from sin on goods imported from other Units the same duties and taxes to impression the goods produced in the Unit are subject;"

After this word "subject", We have decided to add the words, "and under regulations and conditions which are non-discriminatory."

"Provided further that no preference shall be given by any regulation of commerce or revenue by a Unit to one Unit over another."'

So these are the few changes that are suggested and in order to cut short the discussion and save the time of the House I have mentioned these changes which were reached after certain discussions. I move.

Mr. K. M. Munshi (Bombay: General): Mr. President, Sir, I beg to move the ' following amendment to clause 10.

"In paragraph 2, clause 10, delete the word 'reasonable'."

The word "reasonable" gives a certain amount of vagueness and therefore it is not necessary. The second amendment which I beg to move is :

"That after the word 'subject' in the 3rd paragraph of clause 10, add the words 'and under regulations and conditions which are non-discriminatory'."

The proviso contemplates that a Unit can impose certain customs duty with a view to bring up the level of the price of goods imported to the level of the price of the goods manufactured in the Unit itself. Otherwise, the goods produced in other Units will flood that particular Unit. With that view only has this proviso been added. Provinces, therefore, can impose certain duties and taxes on goods imported from other units with a view to bring up the value to the level of goods manufactured in the Unit itself. But it was felt, Sir, that this was incomplete. Such regulations and conditions may be made as to favour the goods produced in the Unit and, therefore, the words 'and under regulations and conditions which are non-discriminatory' have to be added, so that conditions must not be such as to force up the price of the goods imported. Therefore, the whole point is that there should not be any regulation or any conditions of such a nature which would favour the goods produced in the Unit as against those produced and imported from outside.

Sri K. Santhanam (Madras: General): Sir, I have given notice of an amendment. It was more or less to meet the point raised in it that Mr. Munshi has moved the present amendment. But, in my opinion, the amendment moved by Mr. Munshi does not fit in with the clause, because the point of my amendment is that when a Unit imposes certain conditions besides duties on goods within its own frontiers, it should be able to insist that the goods coming from other Units should also conform to the same conditions. For example, there may be regulations about packing, labeling, disclosure of the materials used in an article and many other conditions and the goods produced from other Units should not have in these matters any advantage over goods produced in the same Unit. As Mr. Munshi's amendment stands, it will be subject to regulations and conditions which are non-discriminatory, but it does not say that the Unit concerned will have the right to impose these regulations on goods produced from other units. Therefore, either his amendment should be properly integrated with the clause or my amendment which says that in the second proviso to clause 10, for the words 'the same duties and taxes' the words 'the same regulations, duties and taxes' be substituted should be accepted. I am quite willing Jo accept any amendment which makes it clear that the Unit can impose the same conditions and regulations on goods produced from other Units as on the goods produced in the Unit. Therefore, I move my amendment.

Prof. K T. Shah (Bombay: General) : I do not propose to move the amendments in my name.

Mr. President: So we have, as a matter of fact, two amendments before us, one moved by Mr. Munshi and the other moved by Mr. Santhanam.

The Hon'ble Sardar Vallabhbhai Patel: There is one thing to which I wanted to draw the attention of the House that is paragraph 5 of the Report which I forgot, which provides for the different condition prevailing in the States for which provision has to be made. We have mentioned in the Report, para 5:

> "We, therefore, consider that it would be reasonable for the Union to enter into agreement with such States, in the. light of their existing rights. with a view to giving them time, up to a maximum period to be prescribed by the constitution. by which internal customs could be eliminated and complete free trade established within the Union."

About the amendment of Mr. Santhanam, I think Mr. Munshi's amendment which I propose to accept, satisfies the requirements because it is non-discriminatory. I do not think any further discussion on this is necessary.

I therefore move the clause as amended for the acceptance of the House.

There is a clerical error in the third proviso. The words "by a Unit" are unnecessary. The clause will read:

"Provided further that no preference shall be given by any regulation of commerce or revenue to one Unit over another."

Mr. President: Now, I will put this clause to vote.

"Subject to regulation by the law of the Unit trade, commerce, and intercourse among the units by and between the citizens shall be free."

There is no amendment to this clause.

The clause was adopted.

Mr. President: First Proviso:

"Provided that any Unit may by law impose reasonable restrictions in the interest of public order, morality or health or in an emergency"

The amendment proposed is that the word "reasonable" should be dropped.

The amendment was adopted.

Mr. President: Second Proviso:

"Provided that nothing in this section shall prevent any Unit from imposing on goods imported from other Units the same duties and taxes to which the goods produced in the Unit are subject."

There are two amendments to this, one by Mr. Santhanam and the other by Mr. Munshi. I shall put Mr. Santhanam's amendment first. As amended, it reads:

"Provided that nothing in this section shall prevent any Unit from imposing on goods imported from other Units the same duties, taxes and restrictions to which the goods produced in the Unit are subject."

He had at first used the word "regulations". He has changed the word "regulations" into "restrictions". The last portion will read-

"the same duties, taxes and restrictions to which the goods produced in the Unit are subject."

The other amendment of Mr. Munshi is:

"Provided that nothing in this section shall 'prevent any Unit from imposing on goods imported from either Units the same duties and taxes to which the goods produced in the Unit are subject and under regulations and conditions which are non-discriminatory."

Shri M. Ananthasayanam Ayyangar (Madras: General): I, would like to add the word "similar". Otherwise, it is meaningless.

Mr. President, I have not got your amendment. (To Mr. Ananthasayanam Ayyangar).

Mr. Santhanam's amendment was negatived.

Mr. Munshi's amendment was adopted.

Mr. President: Third Proviso:

"Provided further that no preference shall be given, by any regulation of commerce or revenue by a Unit to one Unit over another.'

Here there is a verbal change suggested. We are asked to omit the words "by a Unit" because they are unnecessary. The proviso will read like this:

"Provided further that no preference shall be given by any regulation of commerce or revenue to one Unit over another."

As amended the proviso is put to the House,

The proviso, as amended, was adopted.

Mr. President: I shall now put the whole clause as amended. Mr. C. Rajagopalachariar suggests that the first proviso should come last and the other should be changed.

The Hon'ble Sri C. Rajagopalachariar (Madras: General): The reason is this. The restrictions to be imposed in the interests of public health will certainly differ from Unit to Unit. If we say in the second proviso that there shall be no discriminatory restrictions, it will mean that when there is infection, you will have to impose on all Units whatever you impose on one Unit. That will be avoided if you add the special proviso as the last proviso instead of that being the first.

Mr. President: I put the whole clause as amended with the change in the order of provisos.

Sri L. Krishnaswami Bharathi (Madras: General): The word "further" must be added so as to read "Provided further."

Mr. President: The amendment is:

"That the word 'further' be added to the first proviso which becomes the third."

The amendment was adopted.

Mr. K. M. Munshi: It is only a matter of arrangement. I do not want to argue. At the time of drafting the Act, it will be placed here.

Mr. President: The clause, as amended, is put to the House.

The clause, as amended, was adopted.

CLAUSE 11.-RIGHTS OF FREEDOM

The Hon'ble Sardar Vallabhbhai Patel: Clause 11 is as regards forced labour and it reads:

"11. (a) Traffic in human beings, and

(b) forced labour in any form including *begar* and involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted,are here by prohibited and any contravention of this prohibition shall be an offence."

Explanation--

"Nothing in this sub-clause shall prevent the State from imposing compulsory service for public purposes without any discrimination on the ground of race, religion, caste or class."

Now we have to try to discuss this and abridge it and put it in a comprehensive form instead of separate clauses and put it in one clause "traffic in human beings".

Mr. President: The suggested amendments have not been circulated to the Members and they do not know what changes are suggested. I would request that you move the clause and then the amendments may be moved.

The Hon'ble Sardar Vallabhbhai Patel: Then I move this clause.

Mr. President: I have got notice of a number of amendments to this clause. Mr. Munshi's amendment has not been circulated. I have got this only two minutes ago. Still we have to go on with the work. I will take the other amendments first.

Mr. M. R. Masani (Bombay: General): It is very difficult to decide whether to move the other amendments until Mr. Munshi's amendment is moved. I would suggest that the agreed amendment be moved.

Mr. President: I am not aware of any agreed amendment.

Mr. K M. Munshi: Mr. President, Sir, the amendment I move is the following--

"That for clause II the following be substituted:

"Traffic in human beings, and *begar*, and other similar forms of forced labour are prohibited, and any contravention of this prohibition shall be an offence."

The object is to deal in one sentence with both subjects.

The Explanation has to be dropped because in view of the shortening of the whole sentence, the Explanation is not necessary at all. The object of this is that if there is any sort of forced labour like *begar*, it will be prohibited. Traffic in human beings will be prohibited. But the other forms of labour e.g. labour for educational purposes or for any other purpose of public service, will be regulated by legislation.

Mr. P. R. Thakur (Bengal: General): The word *'begar'* should be in italics.

Mr. President: The clause, as amended, if the amendment is accepted, will read thus-

> "Traffic in human being and begar and other similar forms of forced labour are prohibited and any contravention of this prohibition shall be an offence,"

The Explanation to the sub-clause (b) is dropped, and so the whole thing will be much shorter and more comprehensive.

There are a number of amendments of which notices have been received. I will call the members to move one after another.

The Hon'ble Mr. Jagjivan Ram (Bihar: General): In view of this amendment, I do not want to press my amendments. (Nos. 27 and 28 of the Supplementary List II).

Mr. H. V. Kamath (C.P. and Berar: General): In the event of acceptance by the House of Mr. Munshi's amendment, there is no necessity for my amendment. (No. 29 of the Supplementary List II). If it is not accepted, I will reserve the right to move my amendment later on.

Mr. M. R. Masani: Mr. President, I had given notice of an amendment (No. 36 of the Supplementary List II) in order to safeguard the rights of Concientious Objectors in view of the very wide powers given to the State by the Explanation.

I am glad to see that the Explanation has been dropped. I do not, therefore, wish to press my amendment at this stage.

Mr. President: Now the motion and the amendment are open for discussion.

Dr. B. R. Ambedkar (Bengal: General): The point that I want to make is this, that, while I have no objection to the redrafting of sub-clause (a) and (b) in order that they may run in a compact manner, I have a certain amount of doubt as to whether the dropping of the Explanation is in consonance with the desire of the majority of the members of the Advisory Committee that the State should not have power in any way for introducing compulsory service. Mr. Munshi suggests that, if the clause stands as redrafted and if the Explanation is omitted, nonetheless, the State will have the right to introduce compulsory military service. I have not had sufficient time to apply my mind to the consequences of the proposed change, i.e., the dropping of the Explanation but I fear that the dropping of the Explanation and retaining the clause in the form in which it is stated may have opposite and serious consequences. Because '*begar*' is also something which is imposed by the State. So far as I know, in Bombay, *'begar'* is demanded by the State for certain public purposes, and if the State is prohibited from having *'begar'* it is perfectly possible for anybody to argue that even compulsory military service is *begar*. I am, therefore, not quite satisfied that the dropping of the Explanation is something which is advisable at this stage. I am not in a position to suggest any definite course of action in this matter, but I think I shall be sufficiently discharging my duties if I draw the attention of the House to the doubt which I have in mind about the effect which the dropping of the Explanation may have on the right of the State in regard to compulsory service either for military purposes or for social purposes for the State. MY suggestion would be that at this state we should not drop the Explanation, but leave it as it is and have the whole matter reconsidered the Provincial Constitution and he Federal Constitution are when drafted in their final form.

Shrimati Dakshayani Velayudan (Madras: General) Mr. President, I have great pleasure in commending Clause 11 because it is a clause which mostly relates to a community, a vast regiment of people who are subjected to untold miseries for so many centuries. Sir, even nowadays we find traffic in human beings in some parts of India and this clause will have a great effect on the underdogs of this land who will have a voice when India gets her independence. This clause will bring about an economic revolution in the fascist social structure existing in India. All the disabilities of the underdogs of this land are mainly due to the economic backwardness of the unfortunate brethren of the neglected community. It is unfortunate that a section of the people of this land will have to work without getting any remuneration whatsoever, even for their daily maintenance and the people who work in the fields or in other places-- will have to go back to their homes even without getting a single pie. They have not got the right to demand the wages even though they will work for day and night. If the people are called upon to work and if they do not go for that work they will get punishments. That is what we find in certain Provinces of India like the United Provinces. Even if there is not the system of *'begar'* in other parts of India, almost a similar sort of compulsion exists throughout India and the majority of the people are subjected to exploitation economical and in all sorts of ways. The underdogs of this land are deprived of the facilities that make life happy. This System ought to have been, abolished even before the Provinces got self-government. Even if there are rules and regulations regarding this in certain provinces, the system still prevails and the people who are subjected to the system have no voice whatsoever in deciding their fate. So, this clause when it comes into existence will give great relief to a great number of people who are subjected to economic exploitation. When this sort of economic exploitation is eliminated from this land, the underdogs also will rise up and will be in a position to assert their rights and keep up their self respect and dignity and they too will have a right to enjoy like the people belonging to the upper class and upper caste. I have great pleasure in supporting this clause.

Mr. B. Das (Orissa: General): I have great pleasure in supporting Mr. Munshi's amendment to Clause 11. I accept the new draft of the clause. Sir, I have studied a good deal of forced labour problems since 1929. I was a member of the Forced Labour Convention in Geneva in 1929. India accepted the Forced Labour Convention in 1930, but the Indian States, with certain exceptions, did not accept it. That practice does not exist among the major States whose representatives I find today in this House. Sir, in my part of the country forced labour has been taken advantage of by most of the small Indian States. They receive grants from the Government of India for the construction of roads and utilise the money for their own purposes and by means of forced labour they construct roads and other civil works. Therefore, Sir, I do not apprehend the trouble which my friend Dr. Ambedkar has just now voiced. In case of national emergency the State must come forward and everybody must compulsorily work for the country, be it war or famine or drought. But I do not want any lacuna left over which will allow some of the Indian Princes to use forced labour for their own gains.

Sir, one point I am not satisfied with is whether traffic in human beings includes women traffic. Sir, some of us have studied this problem about women's traffic for the last ten years or more. Unfortunately, every year thousands of women of Orissa and the Province of Bengal, where there are surplus women, are carried away to other parts of India. There is a regular traffic going on by crooks and gangsters who carry away these women to some outside Provinces. I do not know whether they are regular house-wives or whether they lead the life of shame. We do know that in provinces like the Punjab and the Frontier the number of women is less than the population of men.

Sir, we had the painful experience during the Bengal famine when lakhs of women were spirited away. Whether these women were taken to the provinces where there are less women or whether they were used to supply women to the huge British army that was then in the eastern part of India, that is a problem that social workers must work out, But I would have been happy to see "traffic in women" being specifically mentioned in the clause. Those of us who belong to the eastern part of India still apprehend that in spite of this provision in the Fundamental Rights, traffic in women will be carried on by unscrupulous moneymakers. I, therefore, want Sardar Patel to assure me whether he has in contemplation some kind of legislation by which this traffic in women may be stopped for ever.

Sir, I want a further assurance from the representatives of the Indian States here whether they will persuade their colleagues in the less advanced States to abolish forced labour which is a source of profit and gain to many small principalities in India.

Dr. P. K. Sen (Bihar: General): Sir, might I be permitted to point out some of the difficulties that would present themselves if we put the, clause in the truncated form suggested ? First of all, there can be no question, nobody can doubt for a moment that forced labour in any form must go. But there were certain qualifying explanations in the original form of the clause which have now been omitted. Those are--

> "involuntary servitude except as punishment for crime whereof the party shall have been duly convicted."

Now, it is well known that it is not only from children in the reformatory schools or from adolescents in the Borstal institutions, but also from adults--grown up people who may be regarded as under State tutelage, during their incarceration-it is right and legitimate, in fact, necessary, to exact labour according to the rules of the prisons. All that may really become very difficult if we put the clause in the form, that *begar* or forced labour shall be prohibited and any contravention of this rule would be regarded as an offence. I quite agree with my friend, Dr. Ambedkar, that the only way of getting out of this difficulty would be to retain the Explanation and then such cases would come under the expression "for public purposes", because even in jails and prisons or any other organisations where people are under State tutelage, forced labour can legitimately be exacted for the good of the inmates and also for the good of the State. If there is still any doubt, we can add the words "in the case of those under the State tutelage" or some such expression as that. But the amendment as it has been put, i.e., Traffic in human beings, and begar and forced labour in any form are hereby prohibited...."

Mr. K. M. Munshi :There are also the words "other similar forms".

Dr. P. K. Sen: 'Similar' is a very vague word. I really cannot imagine what difficulty or objection there can be in the way of retaining the Explanation. The

Explanation is quite innocuous, and it only says that for certain public purposes as in all civilized countries, it is necessary to get compulsory service from the citizens, for their own good and for the good of the State. I, therefore, submit that the Explanation either in the form as it stands or with any requisite modification may be accepted. Otherwise, all sorts of complications might arise.

Dewan Bahadur Sir Alladi Krishnaswami Ayyar (Madras: General): Mr. President, going into the question as to whether there is necessity for the retention of the Explanation or not, I am quite clear in ray mind. So far as the first sub-clause is concerned, it will not preclude military conscription. In the Committee, there was a special clause inserted by Mr. Masani to the effect that there shall not be military conscription; but that has been omitted. In spite of the existence of the slavery and anti-slavery clause in the United States Constitution, the Supreme Court of the United States has held that there is nothing to prevent military conscription being introduced. The learned Judges referred to various writers on international law and they pointed out that the very existence of the State depends upon military force, and the slavery and antislavery or servitude clause cannot be construed as precluding the United States of America from introducing conscription. Therefore, the words '*begar* and similar forms of forced labour' cannot possibly be interpreted as excluding conscription. That is my view and I do not think that the future legislatures will be precluded from introducing conscription by reason of a clause like this. The word "similar" occurring in the clause makes it quite clear that it cannot have in view a military conscription law. Therefore, under those circumstances, there need not be any apprehension. That does not, however, mean that I am opposed to the retention of the Explanation. The retention, it was pointed out yesterday in the Committee, might give rise to considerable difficulties is the working of the village economy and village institutions, and no harm would result by the omission of the Explanation, and therefore, yesterday, in the course of the discussions in the Committee, it was omitted. I do not think there is any danger of military conscription being ruled out as a power inherent in the Union by reason of the forced labour clause as it stands.

Sri M. Ananthasayanam Ayyangar: I was also of the same opinion as Sir Alladi Krishnaswami Ayyar, when in the party meeting I consented to the change of the present clause, but I find on reconsideration that the original clause might stand. I shall presently give the reasons. The reasons are these. Two points referred to in the clause are, one, traffic in human beings is prohibited, and, secondly, forced labour ought not to be allowed. Both these are already provided for in the Penal Code. Section 370 of the Indian Penal Code prohibits traffic in human beings, and section 374 makes it an offence to compel any person to labour against his will, but the word "unlawful" is used there. "Unlawful" means, it is lawful for any legislature to pass a law that for particular purposes labour may be enforced, as when a person is convicted of a crime and he is sentenced to penal servitude. Or in the interests of village administration when there are floods, the villagers may be obliged or forced to repair breaches in tanks, etc., it also allows compulsory military service. Now, that these two provisions which are already in the general law under sections 370 and 374 of the Indian Penal Code are raised to the status of fundamental rights, we have to be a little careful. When we are giving the status of fundamental rights, unless we add other explanations allowing the State to make an exception to these two fundamental rights which are now being given, it might appear, and courts may also interpret that by taking these out of the ordinary law and placing them in the Statute Book as fundamental rights--that the States jurisdiction to legislate for such purposes, for forced labour even under an emergency has been taken away. If Mr. Munshi who has moved this amendment has at the back of his mind that the State Ought not to be prevented from introducing conscription whenever or wherever necessary, let the matter be cleared here and now. I do not see any objection to having an Explanation or even having the original clause as it stands. There is no need to make the amendment. Let us be clear in our minds. Otherwise, it will mean that we have given up, irrespective of any considerations requiring conscription, or irrespective of other considerations requiring any local legislature or any particular unit to compel persons to come and help by way of forced labour-irrespective of all these considerations the fundamental right has been given, and that means that the right of the State has been abrogated once and for all. There is much force in the argument of Dr. Ambedkar, and I am not in favour of this amendment. The original clause as it stands may stand. Let us be clear in our minds whether we want conscription here and now or not. Let us not leave it to the judges to decide. Sir Alladi Krishnaswami Ayyar said that it has been interpreted by the American Court. The American Law was framed so long ago, and therefore, it is necessary to interpret it from time to time to enlarge its scope. We know too well that the Justinian Code running into 150 volumes has been developed by interpretation of the Twelve Tables. People are not in favour of' modifying the statute from time to time, but lawyers have introduced various things as interpretations and have been evolving new law out of that. Now, that we are making a statute, why should we rely upon the future interpretation and leave it to the judges to decide? I oppose the amendment and I am in favour of retaining the original clause.

Dr. B. R. Ambedkar: May I make a suggestion? We have heard the arguments of Sir Alladi Krishnaswami Ayyar who has said that according to his reading of the rulings of the Supreme Court of the United States, even if the Explanation was not there, the State would be permitted to have compulsory military service. Fortunately, for me I also happened to look into the very same cases which I am sure Sir Alladi has in mind. I think he will agree with me, if he looks at the reasoning of the judgment given by the Supreme Court, he will find that they proceeded on the hypothesis that in a political Organisation the free citizen has a duty to support the Government and as every citizen has a duty to support the Government therefore compulsory military law was doing nothing more than calling upon the citizen to do the duty which he already owes to the State. I submit that that is a very precarious foundation for so important a subject as the necessity of compulsory military service for the defence of. the State.

I submit that we ought not to rest content with that kind of reasoning which the Supreme Court in India may adopt or may not adopt. Therefore, my, suggestion is this, that, just as in the case of the other clause dealing with citizenship you were good enough to remit the matter to a small committee to have it further examined. It will be desirable that this question as to whether the Explanation should be retained or not may also be remitted to a small committee which should report to this House. It will then be possible for the House to-take a correct decision in the matter.

Mr. President: I think it is not necessary to have any further discussion if the suggestion which has been made by Dr. Ambedkar is acceptable to the House.

Mr. R.K. Sidhwa (C.P. and Berar: General) : The question regarding compulsory military service may be discussed here.

Mr. President: We are not deciding here whether we ought to have conscription or not. The question is whether under fundamental rights conscription is prohibited. I think it is best to refer it to the game committee to which the other clause has been remitted.

An Hon'ble Member: The whole clause 11.

Mr. President: Yes, the whole clause 11.

The clause was remitted.

CLAUSE 12--RIGHTS OF FREEDOM.

Mr. President: Clause 12.*

The Hon'ble Sardar Vallabhbhai Patel: I move clause 12. Clause 12 says :

> "No child below the age of 14 years shall be engaged to work in any factory, mine or any other hazardous employment."

It is proposed to delete the Explanation. But I move the clause as it is, and deletion of the Explanation may be moved as an amendment.

Mr. K. M. Munshi: I move that the Explanation be deleted. The Explanation says:

> "Nothing in this shall prejudice any educational programme or activity involving compulsory labour."

That has nothing to do with sub-clause and I submit it should be deleted.

Mr. President: Amendment No. 37-Mr. Kamath.

Mr. H. V. Kamath: I am told that this clause deals only with children below 14, and that, therefore, expectant mothers and old people are out of place. I shall reserve my right to move my amendment at a later stage. I do not move it now.

Mr. B. K Sidhwa: As regards amendment No. 43, they are all new clauses, and as decided by the Honourable House yesterday, I will take them at the end of all these clauses.

Mr. President: These are the amendments. I will put the amendment of Mr. Munshi for deletion of the Explanation, to the House.

The amendment was adopted.

Clause 12, as amended, was adopted.

CLAUSE 13-RIGHTS RELATING TO RELIGION

The Hon'ble Sardar Vallabhbhai Patel: Sir, I move the adoption of clause 13, *viz.*, "All persons are equally entitled to freedom of conscience, and the right freely to profess, practise and propagate religion, subject to public order, morality or health, and to the other provisions of this Part.

Explanation 1.--The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation 2.--The above rights shall not include any economic, financial, political or other secular activities that may be associated with religious practice.

Explanation 3.--The freedom of religious practice guaranteed in this clause shall not debar the State from enacting laws for the purpose of social welfare and reform."

I see that there are a number of amendments on the Order Paper. I shall speak on them when they are moved and, if there is any that could be accepted, I shall accept.

Mr. K. M. Munshi: Sir, I move an amendment to the effect that, after the last Explanation, the following words be added:-

"and for throwing open Hindu religious institutions of a public character to any class of section of Hindus."

After the Explanation above was drafted it was thought that the practice of religion referred to should not be of such a character as will interfere with the right of the Legislature to legislate on social questions. The question arose with regard to the throwing open of all temples to all classes of Hindus, whether it would be religious practice. In order to prevent any, such construction of clause, it was decided that the throwing open of Hindu religious institutions shall not be held to contravene the practice of Hindi religion.

Mr. President: I shall now call upon Members who have given notice of amendments to this clause, to move them ....(after a pause......) As I find that there is no amendment moved to the clause I shall put it to the vote of the House.

Mr. H. J. Khandekar (C. P. and Berar): Sir, in case Mr. Munshi's amendment to this clause is accepted, it may be necessary to have a definition for "places of public worship". Unless this is done it may be difficult for people to know which is a place of public worship. Even where admission to people of all classes is given, depressed classes are not allowed. Even when there is a written record that a certain temple is open to worship by depressed classes, the pujaris obstruct and say that that temple is a private one and, therefore, not open to depressed classes. So, Sir, if there is definition of "places of public worship" there will be no difficulty. I suggest, therefore, that there should be a definition for "places of public worship".

Mr. President: May I know in which clause that expression occurs?

Mr. H. J. Khandekar: Explanation 3.

Mr. President: I do not find this expression there. There is no mention of any place of public worship there.

Mr. H. J. Khandekar: I want a definition for "religious institutions of a public character".

Mr. President: Mr. Khandekar wants some explanation of the term "religious institutions of a public character" so that it may be clear what religious institutions are referred to.

Shri L. Krishnaswami Bharathi: Sir, the clause reads: "other provisions of this Chapter". It should read "other provisions of this Part".

The Hon'ble Sardar Vallabhbhai Patel: The word "Chapter" has been substituted by the word "Part".

I accept Mr. Munshi's amendment and I congratulate the House on agreeing to pass this very controversial matter which has taken several days in the Committees and gone through several Committees. There might be differences of opinion, but on the whole we have tried our best to accommodate all sections of the people. I move that this clause as amended be passed.

Mr. President: I am putting to the vote first the amendment to Explanation No. 3. The amendment is:

"That the words 'and for throwing open Hindu religious institutions of a public character to any class or section of Hindus be added at the end of- Explanation No. 3'

The amendment was adopted.

Mr. President: Now I put the clause as amended to the House.

Clause 13, as amended, was adopted.

Mr. President: Now we go to clause.

CLAUSE 14.

The Hon'ble Sardar Ballabhbbai Patel: Now I move clause 14.

"Every religious denomination shall have the right to manage its own affairs in matter of religion and, subject to the general law to own, acquire and administer property movable and immovable, and to establish and maintain institutions for religious or charitable purposes."

There is a little addition by way of an amendment which Mr. Munshi will move. I move this clause for the acceptance of the House.

Mr. K. M. Munshi: Sir, I move an amendment that in clause 14 the words "or a section thereof" be added between the word "denomination" and the word "shall". It was felt that the use of the term "religious denomination" may prevent a section of a denomination from being protected.

Sri K. Santhanam: What is meant by "general law".

Mr. K. M. Munshi: There is a general law of the country as apart from any special legislation. When the word 'law' is used, it means the law of either the Unit or the Union according to the power which is being exercised. If it is a Union subject, it is

Union law. If it is a Unit subject, it is Unit law.

Mr. President: Has the word "general" any special significance here, Law is law.

Mr. K. M. Munshi: The intention was that any specific legislation was to be excluded. There are certain legislations specifically intended for certain classes of people. If the desire of the House is that it should be 'law', I have no objection.

Some Hon'ble Members: "............subject to 'law'."

Mr. President: Mr. Santhanam, there is an amendment to be moved by you, amendment No. 63.

Sri K. Santhanam: No, Sir. I am not moving it.

Mr. President: Mr. Rajagopalachariar, you have an amendment.

The Hon'ble Sri C. Rajagopalachariar: No, Sir. I am not moving it.

Mr. President: The clause and the amendment are now open for discussion.

Sri M. Ananthasayanam Ayyangar: I oppose the omission of the word 'general' which is opposed to special or local laws which are defined in the Indian Penal Code as relating to a particular subject or a particular part of British India. There ought to be no restriction on the acquisition of rights and property by any religious institution under any special law. The same definition relating to special and local laws will be found in the General Clauses Act also. I, therefore, want the retention of the word 'general'. I think the framers of the clause were right in including it.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: The General Clauses Act and the Penal Code will not apply to the interpretation of our Constitution. We must have an interpretation clause in our Constitution when the Constitution is finally framed.

Mr. H. V. Kamath: I could not hear a word of what Sir Alladi said.

Mr. President: Sir Alladi's view was that the General Clauses Act and the Penal Code will not apply to our Constitution and, therefore, We need not attach any importance to them.

Mr. D. N. Datta (Bengal: General): If the words "existing Indian law" are there, the General Clauses Act will apply.

Mr. President: You are at liberty to differ from Sir Alladi.

The Hon'ble Sri C. Rajagopalachariar: Apart from the question of how words should be interpreted, it is very necessary that this special right that we are giving to religious denominations should be subject to all the laws that will be enacted and, therefore, the expression should be only 'law' and not any particular portion of the law.

Sri M. Ananthasayanam Ayyangar: We are trying to get these on the statute book. What is the meaning of taking these technical objections?

Mr. President: As a matter of fact, the point has been discussed, and if there is anything else, then the Drafting Committee will attend to them.

Now I will put the various amendments. The first amendment I will put is that the words "or a section thereof" be added between "denomination" and "shall". That part of the clause will read as follows :

"Every religious denomination or a section thereof shall have the right to manage its own affairs.

and so on.

The amendment was adopted.

Mr. president: The next amendment is that the be omitted.

The amendment was adopted.

Mr. President: The clause as amended will read:

"Every religious denomination or a section thereof shall have the right to manage its own affairs in matters of religion and, subject to law, to own, acquire and administer property movable and immovable, and to establish and maintain institutions for religious or charitable purposes."

I put the clause, as amended, to the House.

Clause 14, as amended, was adopted.

CLAUSE 15

The Hon'ble Sardar Vallabhbhai Patel: Clause 15.

"No person may be compelled to pay taxes, the proceeds of which are specifically appropriated to further or maintain any particular religion or denomination."

I do not think that there is any amendment to this clause and I move this clause for the acceptance of the House.

Mr. President: As there is no amendment to this clause, I put it to the vote of the House.

Clause 15 was adopted.

CLAUSE 16

The Hon'ble Sardar Vallabhbhai Patel: Clause 16. This clause was passed in the Advisory Committee, but I think that it may be referred back to the Advisory Committee, because there are some difficulties and it has been suggested that it may be referred back. The House agrees that this clause may be referred back to the

Advisory Committee.

Mr. President: Then you formally move it.

The Hon'ble Sardar Vallabhbhai Patel: I formally move:

"No person attending any school maintained or receiving aid out of public funds shall be compelled to take parts in the religious instruction that may be given in the school or to attend religious worship held in the school or in premises attached thereto."

Mr. President: On the vote of the House this clause is referred back to the Advisory Committee.

CLAUSE 17

The Hon'ble Sardar Vallabhbhai Patel: Sir, I move Clause 17.

"Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law."

Mr. K. M. Munshi: Sir, I beg to move the following amendment,

"That for clause 17 substitute the following clause:

"Any conversion from one religion to another of any person brought about by fraud, coercion or undue influence or of a minor under the age of 18 shall not be recognised by law."

The additions that are made to the clause as it is originally moved are there. First of all, the word 'fraud' is added to the words, 'coercion' and undue influence'. The second matter is with regard to the conversion words "the general" of a minor. As a matter of fact, it was proposed by one of the other Committees in some form or other, and it is the general feeling that this clause should be restored in this form,--any conversion of a minor under the age of 18 shall not be recognised by law. The only effect of non recognition by law would mean that even though a person is converted by fraud or coercion or undue influence or be converted during his minority he will still in law be deemed to continue to belong to the old religion and his legal rights will remain unaffected by reason of his conversion. The idea behind this proposal is that very often, if there are conversions by fraud or undue influence or during minority, certain changes in the legal status take place, certain rights are lost. This will have only this effect that the rights will remain exactly the same as at the moment a person was converted by fraud or coercion or undue influence and in the case of a minor at the moment of conversion.

If Hon'ble Members desire I will read the whole clause. The whole clause is put in this form.

"Any conversion from one religion to another of any person brought about by fraud, coercion or undue influence or of a minor under the age of 18 shall not be recognised by law."

Srijut Rohini Kumar Chaudhury (Assam: General): May I ask you to explain as to what is meant by the words "undue influence"? Is it used in the sense laid down in the Contract Act or in the general sense ?

Mr. K. M. Munshi: It is difficult for me to say, but I am sure "fraud" is fraud all the world over and in all systems of jurisprudence. There is no difference between the two words coercion and undue influence as understood in India and in other countries. There may be little shades of difference but the free India will form its definitions and it may not be different from the Oxford dictionary meaning so far as I can see.

Shri Phool Singh (United Provinces: General): In view of the amendment moved by Mr. Munshi, my amendment will not fit in. But I suggest. Sir, that conversion by coercion should be made an offence. I would suggest he might move an amendment to this effect.

The Hon'ble Mr. Jagjivan Ram: I am not moving my amendment (No. 72 of the Supplementary List II).

Mr. President: Amendment No. 73 of the Supplementary List II

Mr. B. K. Sidhwa: This is a new clause. It may be taken up later.

Mr. F. B. Anthony (Bengal: General): Mr. President, my amendment, is with specific reference to Mr. Munshi's amendment, "or of a minor under the age of 18". To this part of the clause I want to add these words: "except when the parents or surviving parents have been converted and the child does not choose to adhere to its original faith". This was more or less the form in which the particular clause was accepted by the Minorities Sub-Committee. We discussed it at length and it was felt that in the form, I have sought to re-introduce, it would best serve the interests that we were considering there.

I agree that conversion under undue influence, conversion by coercion or conversion by fraud should not be recognised by law. I am only interested in this question, Sir, on principle. My community does not propagate. We do not convert, nor are we converted But I do appreciate how deeply, how passionately millions of Christians feel on this right to propagate their religion. I want to congratulate the major party for having, in spite of its contentious character, retained the words "right to practise and propagate their religion". Having done that, I say that after giving with one hand this principal fundamental right a right which is regarded as perhaps the most fundamental of Christian rights, do not take it away by this proviso, "or of a minor under the age of 18". I say that if you have this particular provision, or if you place an absolute embargo on the conversion of a minor, you will place an embargo absolutely on the right of conversion. You will virtually take away the right to convert. Because, what will happen ? Not a single adult who is a parent, however deeply he may feel, however deeply he may be convinced, will ever adopt Christianity, because, by this clause you will be cutting off that parent from his children. By this clause You will say, although the parents may be converted to Christianity, the children shall not be brought up by these parents in the faith of the parents. You will be cutting at the root of family life. I say it is contrary to the ordinary concepts of natural law and justice. You may have your prejudices against conversion; you may have your prejudices against propagation. But once having allowed it, I plead with you not to cut at the root of family life. This is a right which is conceded in every part of the world, the right of parents to bring up their children in the faith that the parents want them to pursue. You have your safeguards. You have provided that conversion by undue influence, conversion by fraud, conversion by coercion shall not be recognised by law. I have gone further, and unlike the position in other parts of the world, I have even given discretion to the child provided it has attained the age of discretion, to adhere to its original faith. The wording is "and the child does not choose to adhere to its original faith". If both the parents are converted and if they want their children to be brought up as Christians, if these children have reached the age of discretion and say that in spite of the conversion of their parents, they do not want to be brought up as Christians, under the restriction which I have introduced, they will not be brought up in the Christian faith.

I have also added the word "surviving parent". for this reason, I say that if you restrict it to both the parents,--What will happen? If a widow, let us assume, adopts Christianity, do you mean to say that if she wants to bring up her children in the Christian faith, and if those children themselves want to be brought up in the Christian faith, you are placing an embargo on this? If you do not use the word "surviving parents", if the father who happens to be a widower adopts the Christian faith, and the children wish to be brought up as Christians, it may be said that since both the parents are not alive, the father cannot bring up the children in his faith. He will automatically be cut off from his children.

I realise how deeply certain sections of this House feel on this question of conversion. But I do ask you, having once conceded the right to propagate, to concede this in consonance with the principles of family law and in consonance with the principles of natural law and Justice.

Mr. P. R. Thakur: Sir, I am a member of the Depressed Classes. This clause of the Fundamental Rights is very important from the standpoint of my community. You know well, Sir, that the victims of these religious conversions are ordinarily from the Depressed Classes. The preachers of other religions approach these classes of people, take advantage of their ignorance, extend all sorts of temptations and ultimately convert them. I want to know from Mr. Munshi whether "fraud" covers all these things. If it does not cover, I should ask Mr. Munshi to re-draft this clause so that fraud of this nature might not be practised on these depressed classes. I should certainly call these "fraud".

The Hon'ble Rev. J. J. M. Nichols-Roy (Assam: General): Mr. President, Sir, it appears to me that the clause as it came out of the Advisory Committee is sufficient and should not be amended at all. The amendment seeks to prevent a minor, who is of twelve years of age, or thirteen years of age, up to eighteen years of age from exercising his own conscience. The age limit may be quite right in law. But to think that a youth under the age of eighteen does not have a conscience before God and, therefore, he cannot express his belief is wrong. That side of the question must be appropriately considered. There is a spiritual side in conversion which ought to be taken notice of by this House. Conversion does not mean only that a man changes his form of religion from one religion to another I or adopts a different name of religion, such as, a Hindu becomes a Christian. But there is the spiritual aspects of conversion, that is, the connection of the soul of man with God, which must not be overlooked by this House. I know there are those who change their religion being influenced by material considerations, but there are others who are converted being under the influence of spiritual power. When a boy feels that he is called by God to adopt a different faith, no law should prevent him from doing that. The consciences of those youths who want to change their religion and adopt another religion from a spiritual standpoint should not be prevented from allowing these youths to exercise their right to change their legal status and change their religion. We know, Sir, in the history of Christianity, there have been youths, and I know personally, there have been many youths, who, have been converted to Christianity, who are ready to die for their conviction and who are ready to lose everything. I myself was converted when I was about fifteen years old when I heard the voice of God calling me. I was ready to lose anything on earth. I was ready to suffer death even. I did not care for anything save to obey and follow the voice of God in my soul. Why should a youth who has such a call of God be prevented by law from changing his religion and calling himself by another name when he feels before God that he is influenced by the Spirit of God to do that end is ready even to sacrifice his life for that. This part of the amendment about minors is absolutely wrong when we consider it from the spiritual standpoint, From the standpoint of conscience I consider that it is altogether wrong not to allow a youth from the age of twelve to eighteen to exercise his own conscience before God. It will oppress the consciences of the youths who want to exercise their religious faiths before God. Therefore, I am against this amendment as it is. The clause should be left as it was before. The legal and other aspects have been discussed by Mr. Anthony regarding the conversion of the children of the converted parents. Certain minors should be allowed to follow their own conviction if they have any, and should not be forced to do anything against their own conviction. Why should the law not allow them if they themselves do not care for their former legal status? Why should they one Prevented from changing their religion? Why should their consciences be oppressed? That is a very important point, Sir, to be considered by this House. This freedom I consider to be a Fundamental Right of the, Youths. No law should be made which will work against good spiritual forces. India, especially, is a country of religions, a country where there is religious freedom. If this amendment is carried in this House, it will only mean that in making a law to prevent the evil forces our minds lose sight of the real religious freedom which the youths of this land ought to have. Therefore, I am against this very principle of forcing the youths by not allowing them to exercise their religious conviction according to their consciences. I would suggest, Sir, that if in the amendment moved by Mr. Anthony the words 'or save when the minor himself wants to change his religion' are included, then I do not object to this amendment. I am against any conversion by undue influence or by fraud or coercion. When we make a law against all these evils we should be careful to see that that law does not oppress the consciences of the youths who also need freedom.

The Hon'ble Shri Purushottamdas Tandon (United Provinces: General) : *[Mr. President, I am greatly surprised at the speeches delivered here by our Christian brethren. Some of them have said that in this Assembly we have admitted the right of every one to propagate his religion and to convert from one religion to another. We Congressmen deem it very improper to convert from one to another religion or to take part in such activities and we are not in favour of this. In our opinion it is absolutely futile to be keen on converting others to one's faith. But it is only at the request of some persons, whom we want to keep with us in our national endeavour that we accepted this. Now it is said that they have a right to convert young children to their faith. What is this? Really this surprises me very much. You can convert a child below eighteen by convincing and persuading him but he is a child of immature sense and legally and morally speaking this conversion can never be considered valid. If a boy of eighteen executes a transfer deed in favour of a man for his hut worth only Rs. 100, the transaction is considered unlawful. But our brethren come forward and say that the boy has enough sense to change his religion. That the value of religion is even less than that of a hut worth one hundred rupees. It is proper that a boy should be allowed to formally change his religion only when he attains maturity.

One of my brethren has said that we are taking away with the left hand what we gave the Christians with our right hand. Had we not given them the right to convert the young ones along with the conversion of their parents they would have been justified in their statement. What we gave them with our right hand is that they have a right to convert others by an appeal to reason and after honestly changing their views and outlook. The three words, 'coercion', 'fraud' and 'undue influence' are included as provisos and are meant to cover the cases of adult converts. These words are not applicable to converts of immature age. Their conversion is coercion and undue influence under all circumstances. How can the young ones change their religion? They have not the sense to understand the teachings of your scriptures. If they change their religion it is only under some influence and this influence is not fair. If a Christian keeps a young Hindu boy with him and treats him kindly the boy may like to live with him. We are not preventing this. But the boy can change his religion, legally only on attaining maturity. If parents are converted why should it be necessary that their children should also change their religion? If they are under the influence of their parents they can change their religion on maturity. This is my submission.

With your permission, Mr. President, I would like to address a few words in English that such of my friends who do not know Hindi may follow me.]*

Sir, I am astonished at the manner in which some Christian friends have advanced the claim to convert minors. We have agreed to the right of conversion. Generally, we, Congressmen do not think it at all right--I say so frankly--that people should strenuously go about trying to convert peoples of other faith into their own, but we want to carry our Christian friends with us--friends who feel that they should have the right to make conversions--and we have agreed on their insistence to retain this formula about "propagation". They know that we are opposed to it, yet we have agreed.

Mr. C. E. Gibbon (C.P. & Berar: General): It is quite wrong.

The Hon'ble Shri Purushottamdas Tandon: I am speaking, Sir, as a Congressman. I say that the majority of Congressmen do not like this process of making converts (interruption), but in order to carry our Christian friends with us....

Mr. C. E. Gibbon: On a point of order, Sir.

The Hon'ble Shri Purushottamdas Tandon: There can be no point of Order. There may be a point of opinion.

Mr. C. E. Gibbon: I do not think, Sir, that the Speaker is competent to speak for all Congressmen.

Some Hon'ble Members: Why not?

Mr. President: That is no point of order.

Shri Balkrishna Sharma (United Provinces: General): The Speaker has every right to speak on behalf of most of the Congressmen. He is most certainly entitled to do so.

The Hon'ble Shri Purushottamdas Tandon: I know Congressmen more than my friend over there. I know their feelings more intimately than probably he has ever had an opportunity of doing, and I know that most Congressmen are opposed to this idea of "propagation". But We agreed to keep the word "propagate" out of regard for our Christian friends. But now to ask us to agree to minors also being converted is, I think, Sir, going too far. It is possible that parents having a number of children are converted into some other faith but why should it be necessary that all these children who do not understand religion should be treated as converts? I submit it is not at all necessary. The law of guardianship will see about it. Guardians can be appointed to look after these children, and when they grow up, if they feel that Christianity is a form of religion which appeals to their minds they will be at liberty to embrace it. That much to my Christian friends.

I understand, Sir, that it is possible that difficulties may be raised by some lawyers. What is the legal difficulty about this matter ? The ordinary law of guardianship will see about this. When we say that minors cannot be converted, that implies that when parents go to another faith and they have a number of children to look after, the law of the country will take care of those children. You can always enact a law of guardianship and you can, if necessary, add to the laws which at present exist on the subject so that in such cases the minors should be taken care of. I do not, Sir, therefore, see that there is any legal difficulty in the way of the amendment which Mr. Munshi has proposed being accepted. I heartily support Mr. Munshi's amendment.

(Mr. Dhirendra Nath Datta rose to speak).

Sri Ramnath Goenka (Madras: General): Mr. President, I rise on a point of order.

Mr. President: But Mr. Datta has risen before you on a point of Order.

Mr. P. N. Datta: Mr. President, I would not have risen but for the speech of the previous speaker......

Mr. President: I thought you were raising a point of order.

Mr. D. N. Datta: No, Sir. I do not raise a point of order.

Mr. President: Then, please wait. Yes, Mr. Goenka.

Sri Ramnath Goenka: My point of order is, Sir, that under clause 13 which we have passed, all persons are equally entitled to freedom of conscience. "All persons" must necessarily include at least those persons who have attained the age of discretion. It is not necessary that they must attain the age of 18 before developing conscience, it may be at the age of twelve, fifteen, sixteen or seventeen. If we pass clause 17 and prescribe the age of 18, then it will be inconsistent with clause 13. We have said in clause 13 "all persons". They must, I think, attain freedom of conscience any time before 18. So if we pass this clause 17 and prescribe the age of 18, it will be inconsistent with clause 13 which we have just now passed.

Mr. President: But what is the point of order ? (*Laughter*)

Sri Ramnath Goenka: It is that it will be inconsistent with clause 13 which we have passed.

Mr. President: That is on the merits of the thing. You do not say that the House cannot take it up because it is inconsistent.

Sri Ramnath Goenka: I say the amendment is out of order.

Mr. President: Which amendment?

Sri Ramnath Goenka: The amendment moved by Mr. Munshi. It is out of order if you agree with me that the age of discretion will be any time before eighteen years. Sir, my point of order is that the amendment of Mr. Munshi will be out of order.

Shri Mahavir Tyagi (United Provinces: General): But Mr. Munshi is above that age.

Sri Ramnath Goenka: It is not a question of Mr. Munshi being over eighteen. (*Laughter*).

Mr. President: I take it that the point of order raised by Mr. Goenka is that we have already taken a decision with regard to clause 13 and, therefore, the House is not entitled to take-up this amendment moved by Mr. Munshi. But I believe the House is always free to revise its own decision

Sri Ramnath Goenka: Certain, Sir. But as long as clause 13 stands as it is, this amendment will be out of order.

Mr. K. M. Munshi: May I reply to this, Sir?

Mr. President: Yes.

Mr. K. M. Munshi: Sir, my friend, Mr. Goenka, I think should not have ventured in the region of construction. If you look at clause 13, you will see that is says--

> "All persons are equally entitled to freedom of conscience, and the right freely to profess-practise and propagate religion subject to public order, morality or health and to the other provisions of this Part."

This provision is generally subject to the other provisions of this Part and if the House passes this clause, that freedom will be subject to this particular clause. The matter is as plain as a pikestaff.

Sri Ananthasayanam Ayyangar: Sir, I want to pose this point of order raised by Mr. Goenka in a different way. The mover of this point of order said he has no objection to persons who are of the age of discretion being converted. But the age of discretion has not been defined anywhere. It is open to this Assembly to say that the age of discretion is eighteen. Therefore, there is really no point of order, or there is no point in this point of order.

Mr. President: I think this amendment is in order. Now we can discuss the motion as well as the amendment.

Mr. D. N. Datta: Mr. President, Sir, I feel that the whole of this clause 17 should go into the Fundamental Rights Committee and I would be glad if the whole clause could be deleted. I know the reasons for enumerating this under Fundamental Rights, because we are now working under the present setting. But as it is going to be enumerated in the fundamental rights, it has to be seen, Sir, whether the amendment of Mr. Munshi is to be accepted or the amendment of Mr. Anthony should be accented. Mr. Anthony wants that the option of the minors to join the religion they like on attaining majority, should be retained, just as the choice is given to Mohammadan children given in marriage during minority to repudiate the marriage on attaining majority,--What we call the option of puberty. A similar right he intends to be given to the children of the parents who have been converted. On attaining majority the child shall have the right of declaring whether he adheres to his original faith or whether he will join the faith of his parents who were converted. I for myself, do not see any reason, why that right should not be given to the child on attaining majority. On attaining, he may declare, if he was a Hindu, that he will adhere to Hinduism or if his parents have taken to Christianity, whether he will become a Christian. I think this right should not be taken away. It should be given and how it is to be given, it is for the Drafting Committee to determine. For that, Sir, I suggest that the whole clause should go to the drafting Committee, or, better still, that it should go to the Fundamental Rights Committee to determine whether this clause should remain or how it should remain.

And before I go, I must say that the remark of Mr. Tandon that the majority of the Congress members are not in favour of introducing the word 'propagate' in clause 13 is not correct. This matter was discussed yesterday and the majority were in favour of keeping the word 'propagate'. Therefore, the contention of Mr. Tandon is not correct.

Sri Lakshminarayan Sahu. (Orissa: General): Mr. President; Sir, I welcome this clause in the Fundamental Rights, but I have a little doubt to start with, as to what should be called a minority. I think that doubt may be cleared afterwards. As the conditions are today, I would like to point out to the House how in the Midnapore District, half of which is Oriya speaking, the language has been killed there from 1891 to 1931. I will give the census figures for that. In 1891, the number of Oriyas in the District of Midnapore was 6 lakhs. Ten years after, in 1901 it was less than 3 lakhs. From 6 lakhs it went down to about 3 lakhs. And in 1911.....

Mr. President: Mr. Sahu we are not on the question of language now, we are dealing with clause 17, about religion, and not clause 18.

Sri Lakshminarayan Sahu: I am sorry.

Rev. Jerome D'Souza (Madras: General): Mr. President; I regret, Sir, that this discussion should have taken a turn which makes it look as if it is almost exclusively a minority problem, and as a result of that, a degree of heat has been imported into it which most of us regret very much indeed. Sir, when this matter was discussed at the committee stage, quite independently from the question of minorities, legal difficulties with which this question bristles were brought home to us by men of the highest authority like Sir Alladi. As far as the minority rights, are concerned, I can only say this, that the way in which clause 13 has been handled by this House is so reassuring and so encouraging to the minorities that we have no reason at all to quarrel or to ask for stronger assurances. That attitude must provoke on the part of the minorities an equally trustful attitude which I hope will inspire future relations and future discussions. I appreciate Mr. Anthony's stand that this is a question of a wider nature of principle and family authority. I assure you I am speaking from that point of view. This question of conversion of minors may affect not only majorities in relation to minorities but the minorities among themselves,--one Christian group in relation to another Christian group, as Catholics and Protestants, and so on. But among all sections, in regard to the authority of a man over his family, I think certain rights should be assured and must be part of fundamental rights. We have nothing in these fundamental rights that safeguards or encourages or strengthens the family in an explicit way, and indeed I do not think this is necessary at this stage, because that is not a justiciable right. There are certain constitutions where the wish of the State to protect and encourage the family is explicitly declared. I hope in the second part, among these fundamental rights which are not justiciable, some such declaration or approbation of the institution and rights and privileges associated with family We will be introduced. It may perhaps be thought that in our country such a declaration is not necessary because among us the strongest family feeling is universal; we have not merely individual or unitary families but we have also joint families. I believe the discussion on this point has been partly influenced by that background of the joint family system. I am sure that Tandonji, if I may be permitted to refer to him by name, when he was speaking of the minor child of converted parents, was thinking really in terms of the joint family where there are people ready to take over and bring up such children. But we are legislating for all sections of our people, for those also who are not in joint families but in unitary families. We are legislating for them, and, therefore, some provisions must be made which, in the last analysis, will safeguard the authority of the parent, both parents or the surviving parent, in particular, as Mr. Anthony has said in regard to babies in the arms of their mothers. To take them away from the mother or father who are one with them, practically identified physically and juridically with them, is to introduce into our legislation an element which certainly weakens the concept of the authority and sanctity of the family. On this ground, as well as on the legal implications to which attention has been drawn. I mean difficulties in connection with the death, the marriage, the succession rights, of these minors, I oppose Mr. Munshi's amendment as it, stands. Take the question of marriage. Marriage is permitted before 18 years. Now Mr. Munshi has carefully explained that his amendment does not prevent the minor children from going with the parents. But it they are to be married, under what law, by the ceremonies of which religion will they be married ? If they follow their conscience and the religion they have adopted, whether they be Hindus, Muslims, or Christians, the question of the validity of that marriage will come in. All this is bristling with legal and juridical difficulties, quite apart from those other considerations into which, as I said, I regret we have entered with undue warmth. While I want to support Mr. Anthony's motion, I am more inclined to support the suggestion of the speaker who immediately preceded me, and ask the House to refer the entire clause back to the Advisory Committee so that the wording of it may be most carefully weighed. It can be brought back to this House just as we have decided, to bring back three or four other controversial matters. That is my suggestion and I would request......

The Hon'ble Mr. B. G. Kher (Bombay: General): You may refer it to the other Committee which the President has appointed.

Rev Jerome D'Souza: I accept it. I want it to be discussed in a very much calmer manner. I suggest that it may go back to the Committee which the President has already appointed.

Mr. R. K. Sidhwa: I do not want it to be sent back to the Committee.

Mr. President: I have got a list of a number of names of members who wish to speak on this amendment. I take it that my eye catches members in the order in which I have received the requests. So, I call upon Shri Algu Rai Shastri.

Shri Algu Rai Shastri (U.P.: General):*[Mr. President I stand here to support the amendment moved by Mr. Munshi. I believe that by accepting the amendment we shall be doing justice to those minors who have perforce to enter the fold of the religion which their parents embrace out of their greed. This practice is like the one prevailing in the transactions of transfer of land and which is that 'trees go with the land'. It is on some such basis that the minor children who do not understand what change of religion or coercion or religious practices mean, have to leave their old faith along with their parents. This evil practice has a very bad effect, on the strength of our population. It is proper for US that we, who are framing the charts of Fundamental Rights, should safeguard their interests and save them from such automatic conversion. The dynamic conditions of our society make it more important than ever that we should incorporate such a provision in our. Constitution as will prevent such practices. Such minors on attaining majority often regret that they were made to change their religion, improperly. Where ever the Europeans or the white races of Europe, who rule practically over the whole world, have gone, they have, as Missionaries. A study of the 'Prosperous India' by Digby shows that 'cross was followed by the sword'. The missionary was followed by the batons, the swords and the guns, It was in this way that they employed coercion for spreading their religions and for extending their Empire. At the same time, they put economic and political pressure on the indigenous tribes and consolidated the foundations of their dominion. We want such an amendment in this clause of Fundamental Rights that a person who wants to change his religion should be able to do so only after he is convinced through cool deliberation that the new religion is more satisfactory to him than the old one. For example it is only when I am convinced that Sikhism is preferable to Hinduism, that I should be able to change my religion. This right I believe we have. But no one should change religion out of greed and temptation. When the followers of one religion employ, sword and guns to attack a family consisting of a few members, the latter have no option but to accept the religion of the aggressors in order to save their lives. Such a conversion should be considered void and ineffective because it has been brought about through coercion and undue influence. In view of such conditions which exist today, conversion brought about through temptation and allurement is, in fact, not a conversion in the real sense of the term. I have a personal experience extending over a period of 24 years as to how the elders of the family are induced through prospects of financial gain to change their religion and also with them the children are taken over to the fold of the new religion. It appears as if some are taking the land physically in his possession and the helpless trees go with it to the new master.

One particular part of the country has been declared as an "Excluded Area" so that a particular sect alone may carry on its propaganda therein. Another area has been reserved for the "Criminal tribes". Similarly, other areas have also been reserved wherein missionaries alone can carry on their activities. In Chhattisgarh and other similar forest areas there are tribes which follow primitive faiths. There the Hindu missionaries cannot carry on their activities. These are called "Excluded and partially Excluded Areas", and no religious propaganda can be carried on in these areas except by the missionaries. This was the baneful policy of the Government. We should now be delivered from this policy of religious discrimination. In his book "Census of India-1930" Dewton writes that the Christian population of Assam has increased 300 times and attributes this increase to certain evils in Hindu Society. It is these evils which gave other missionaries opportunities to make conversions. In his book "Census of India-1911" Mr. S. Kamath has said that the missionaries of one particular religion are reducing the numbers of another by exploiting the evils of that group. They convert some influential persons by inducement and persuasion. The bitterness of the present is due to such activities. I am conversant with what Christian missions have done for the backward classes and I have also seen their work among such classes of people. I bow to them with respect for the way in which they (missionaries), have done their work. How gracious it would have been had they done it only for social service I found that the dispute, if and when it occurs, between members of such castes as the sweepers or the *chamars* on the one side and the land-lords or some other influential persons on the other have been exploited to create bitterness between them. No effort has been made to. effect a compromise. This crooked policy has been adopted to bring about the conversion of the former. Similarly, people of other faiths have intensified and exploited our differences in order to increase their own numbers. The consequence is that the grown-up people in such castes as *Bhangies* and *chamars* are converted, and with them their children also go into the fold of the new religion. They should be affectionately asked to live as brothers. This is what has been taught by prophets, angels and leaders. But this is not being practised, today. We are in search of opportunities to indulge in underhand dealings. We go to people and tell them "you are in darkness; this is not the way for your salvation". Thus every body can realise how all possible unfair means have been adopted to trample the majority community under feet. It is in this way that the Foreign bureaucracy has been working here, and has been creating vested interests in order to maintain its political strangle-hold over the people. If we cannot remove this foundation whom are we going to give the Fundamental Rights ? To these minors who are in the lap of their parents ? If we permit minors to be transferred like trees on land with the newly embraced religion of their parents, we would be doing an injustice. Many fallacious arguments are offered to permit this. We must not be misled by these. We know that our failure to stop conversion under coercion would result in grave injustice. I have a right to change my religion. I believe in God. If I realise tomorrow that God is a farce and an aberration of human mind then I can become an atheist. If I think that the Hindu faith is false, I, with my gray hair, my fallen teeth and ripe age, and my mature discretion can change my religion. But if my minor child repeats what I say, are you going to allow him also a right to change his religion (at that age)? Revered Purushottam Das Tandon has said in a very appealing manner that if a child transfers his immovable property worth Rs. 100 the transaction is void. How unjust it is that if a minor changes his religion when his parents do so, his act is not void? It has an adverse effect on innocent children. This attempt to increase population has increased religious bitterness. The communal proportion has been changed so that the British bureaucracy may retain its hold by a variation in the numbers of the different communities. I am saying all these things deliberately but I am not attacking any one community in particular. The sole interest of the government in the illusory web of the census lies in seeing a balance in the population of the communities so that these may continue to quarrel among themselves and thereby strengthen its own rule. This amendment of Mr. Munshi is directed against such motives. Nothing can be better than that, and, therefore, I support it.

In my opinion this majority community should not oppress the minority. We respect and honour all and we give an opportunity to every body to propagate his religion. Those who agree with you may be converted. But convert only those who can be legitimately converted. Improper conversions would not be right. You tempt the innocent little ones whom you take in your lap, by a suit of clothes, a piece of bread and a little toy and thus you ruin their lives. Later, they repent that they did not get an opportunity to have a religion of their choice. I, myself, am prepared to change my religion. But some one should argue with me and change my views and then convert me. Surely, I should have no right to change the religion of my children with me--specially children below a certain age. Those children are considered to be minors who are under teens, i.e., below eighteen.]*

Mr. H. V. Kamath: *[Under teens includes nineteen.]*

Shri Algu Rai Shastri: *[However if it is nineteen, it is all the better. Even if it is not possible they should extend minority by a year of grace. The age limit fixed for minors and majors should be adopted in religious matter as well. They say that there would be no incentive for conversion if people have to forego their children. I hear that in Japan the father has one religion and the child another. What does religion mean ? Does the mother feed her baby so that the child's religion might change? If the mother's love is true she will surely feed her baby. Does the mother's milk change the religion? We do not wish to snatch away the child from the mother's lap, but we wish to give to the baby a right to record his (natal) religion in the report of the Census and any other government records, till he attains majority and declares his (new) religion. We give him things right in this amendment. Parents need the company of their children. If they have changed their religion discreetly, let them educate their children. But the change in the religion of the children may be considered (only) on their declaration at reaching majority. This is the purpose of this amendment and I support it, and I strongly oppose the view that this right should not be given to children.]*

Mr. Jagat Narain Lal (Bihar: General): *[Mr. President, I was expecting that after the acceptance of clause 13, no representative of any minority in this House will have any ground for any objection. Clause 13 lays down that--

> "All persons are equally entitled to freedom of conscious, and the right freely to profess, practice and propagate religion subject to public order, morality or health or to the other provisions of this Chapter."

This goes to the "farthest limit". If you look to any of the best of "modern" world Constitutions, you will find that nowhere has this right to propagate been conceded. If you look at Article 50 of the Swiss Confederation, it lays down that "the free exercise of religion is guaranteed within limits compatible with public order and morality." It ends there. If you, look at Article 44 sub-clause (2) 1 of the Irish Free State, you will find there--

> "Freedom of conscience and the free profession and practice of religion are subject to public order and morality, guaranteed to every citizen."

If you refer to Article 124 of the Constitution of the Union of the Soviet Socialist Republics you will find--

> "In order to ensure to citizens freedom of conscience, the Church in the U.S.S.R. is separated from the State and the school from the Church. Freedom of religious worship and freedom of anti-religious propaganda is recognised for all citizens."

If I place before you all the clauses pertaining to "Freedom of professing religion," it will tax your patience. I do not want to waste more of your time in this connection. My submission is that this House has gone to the farthest limit possible with regard to the minorities, knowing well the fact that there are a few minorities in this country whose right to carry, on propaganda extends to the point of creating various difficulties. I do not want to go into its details. The previous speaker had referred to certain things in this connection. I submit that that should be sufficient. Hon'ble Tandonji by his observation that on reading the mind of most of the Congress members of this House he did not want to keep "right to do propaganda" (on the statute), has rightly interpreted the mind of most of us. The fact is that we desire to make the minorities feel that the rights which they had been enjoying till now shall be allowed to continue within reasonable limits by the majority. We have no desire to curtail them in any way. But we do not concede the right to do propaganda. I want to appeal to those who profess to speak for the minorities not to press for too much. They must be satisfied with this much. It will be too much to press for more. That would be taking undue advantage of the generosity of the majority. That will be very regrettable. It is difficult, rather impossible, for us to go to that limit. I think that the amendment tabled by Mr. Munshi becomes essential if the right to propagate is conceded. The House should, therefore, accept it. Various arguments have been advanced in the House, and so I do not want to comment upon them again. With these words I support Mr. Munshi.]*

Dr. B. R. Ambedkar: Mr. President, Sir, I am sorry to say that I do not find myself in agreement with the amendment which had been moved by Mr. Munshi relating to the question of the conversion of minor children. The clause, as it stands, probably gives the impression to the House that this question relating to the conversion of minors was not considered by the Fundamental Rights Committee or by the Minorities Sub-Committee or by the Advisory Committee. I should like to assure the House that a good deal of consideration was bestowed on this question and every aspect was examined. It was, after examining the whole question in all its aspects, and seeing the difficulties, which came up, that the Advisory Committee came to the conclusion that they should adhere to the clause as it now stands.

Sir, the difficulty is so clear to my mind that I find no other course but to request Mr. Munshi to drop his amendment.

With regard to children, there are three possible cases which can be visualised. First of all, there is the case of children with parents and guardians. There is the case of children who are orphans, who have no parents and no guardians in the legal sense of the word. Supposing you have this clause prohibiting the conversion of children below 18, what is going to be the position of children who are orphans ? Are they not going to have any kind of religion? Are they not to have any religious instruction given to them by some one who happens to take a kindly interest in them ? It seems to me that, if the clause as worded by Mr. Munshi was adopted, *viz.*, that no child below the age of 18 shall be converted it would follow that children who are orphans, who have no legal guardians, cannot have any kind of religious instruction. I am sure that this is not the result which this House would be happy to contemplate. Therefore, such a class of subjects shall have to be excepted bum the operation of the amendment proposed by Mr. Munshi.

Then, I come to the other class, *viz.*, children with parents and guardians. They may fall into two categories. For the sake of clarity it might be desirable to consider their cases separately; the first is this: where children are converted with the knowledge and consent of their guardians and parents. The second case is that of children of parents who have become converts.

It does seem to me that there ought to be a prohibition upon the conversion of minor children with legal guardians, where the conversion takes place without the consent and knowledge of the legal guardians. That, I think, is a very legitimate proposition. No missionary who wants to convert a child which is under the lawful Guardianship of some person, who according to the law of guardianship is entitled to regulate and control the religious faith of that particular child, ought to deprive that person or guardian of the right of having notice and having knowledge that the child is being converted to another faith. That, I think, is a simple proposition to which there can be no objection.

But when we come to the other case, *viz.*, where parents are converted and we have to consider the case of their children, then I think we come across what I might say a very hard rock. If you are going to say that, although parents may be converted because they are majors and above the age of 18, minors below the age of 18, although they are their children, are not to be converted with the parent, the question that we have to consider is, what arrangement are we going to make with regard to the children ? Suppose, a parent is converted to Christianity. Suppose a child of such a parent dies. The parent, having been brought up in the Christian faith, gives the Christian burial to the dead child. Is that act on the part of the parent in giving a Christian burial to the child, to be regarded as an offence in law ? Take another case. Suppose a parent who has become converted has a daughter. He marries that daughter according to Christian rites. What is to be the consequence of that marriage ? What is to be the effect of that marriage ? Is that marriage legal or not legal ?

If you do not want that the children should be converted, you have to make some other kind of law with regard to guardianship in order to prevent the parents from exercising their rights to influence and shape the religious life of their children. Sir, I would like to ask whether it would be possible for this House to accept that a child of five, for instance, ought to be separated from his parents merely because the parents have adopted Christianity, or some religion which was not originally theirs. I refer to these difficulties in order to show that it is those difficulties which faced the Fundamental Rights Committee, the Minorities Committee and the Advisory Committee and which led them to reject this proposition. It was, because we realised, that the acceptance of the proposition, namely, that a person shall not be converted below the age of 18, would lead to many disruptions, to so many evil consequences, that we thought it would be better to drop the whole thing altogether. (*Hear, hear*). The mere fact that we have made no such reference in clause 17 of the Fundamental Rights does not in my judgment prevent the legislature when it becomes operative from making any law in order to regulate this matter. My submission, therefore, is that the reference back of this clause to a committee for further consideration is not going to produce any better result. I have no objection to the matter being further examined by persons who feel differently about it, but I do like to say that all the three Committees have given their best attention to the subject. I have therefore, come to the conclusion that having regard to all the circumstances of the case, the best way would be to drop the clause altogether. I have no objection to a provision being made that children who have, legal and lawful guardians should not be converted without the knowledge and notice of the parents. That, I think, ought to suffice in the case.

The Hon'ble Sardar Vallabhbhai Pate: Sir, this is not a matter free from difficulties. There is no point in introducing any element of heat in this controversy. It is well known in this country that there are mass conversions, conversions by force, conversions by coercion and undue influence, and we cannot disguise the fact that children also have been converted, that children with parents have been converted and that orphans have been converted. Now, we need not go into all the reasons or the forces that led to these conversions, but if the facts are recognised, we who have to live in this country and find a solution to build up a nation,--we need not introduce any heat into this controversy to find a solution. What is the best thing to do under the circumstances ? There may be different points of view. There are bound to be differences in the view points of the different communities, but, as Dr. Ambedkar has said, this question has been considered in three Committees and yet we have not been able to find a solution acceptable to all. Let us make one more effort and not carry on this discussion, which will not satisfy everybody. Let this be therefore referred to the Advisory Committee. We shall give one more chance.

Mr. President: Do I take it that it is the wish of the House that this clause be referred back to the Advisory Committee for further consideration ?

The clause was referred back to the Advisory Committee.

CLAUSE 18--CULTURAL AND EDUCATIONAL RIGHTS

The Hon'ble Sardar Vallabhbhai Patel: I move clause 18 now.

"(1) Minorities in every Unit shall be protected in respect of their languages, script and culture, and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect.

(2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction. be compulsory imposed on them.

(3) (a) All minorities whether based on religion, community or' language shall be free in any Unit to establish and administer educational institutions of their choice.

(b) The State shall not, while providing State aid to schools, discriminate against schools under the management of minorities whether based on religion, community or language."

I move this clause for the acceptance of the House.

Shri Mohanlal Saksena (United Provinces: General): Sir, with your, permission, I would like to move that this clause be referred back to the Advisory Committee for reconsideration. There are certain aspects which require reconsideration, and, on the whole, I think it would be much better that this whole clause be referred to the Advisory Committee for their reconsideration.

Mr. President: Mr. Mohanlal Saksena has moved that this clause also be referred back to the Advisory Committee for further consideration.

Mr. D. N. Datta: Mr. President, with regard to sub-clause (1) of clause 18, it has been stated that--

"Minorities in every unit shall be protected in respect of their language, script and culture, and no laws or regulations may be enacted that may operate oppressively or Prejudicially in this respect."

I want to illustrate my point. If in a particular Unit....

Mr. President: You are going into the merits of the clause.

Mr. D. N. Datta: I am not going into the merits. I want clarification.

Mr. K. M. Munshi: I have got an amendment to move.

Mr. President: There is a motion by Mr. Mohanlal Saksena. He wants that the clause be referred back to the Committee. If that is accepted, no amendment need be moved.

Mr. D. N. Datta: I do not know if my request for clarification will be fulfilled even if the clause be referred back to the Committee. If you would allow me to speak....

Mr. President: If the House wants to refer back the Clause to the Committee the discussion will not be of much help.

Mr. D. N. Datta: If the House intends that this clause shall be referred back, I need not speak. I am not moving any amendment.

Mr. K. M. Munshi: Is it worth while moving any amendment if Mr. Mohanlal Saksena's suggestion is carried ? If that is accepted no amendment need be moved.

Archarya J. B. Kripalani (United Provinces: General): If after discussing we find there are any serious difficulties, then we may send the clause back to the Advisory Committee. If there are no serious difficulties and the House is practically united, then we may proceed with this.

Many Hon'ble Members: That is right.

Mr. President: I take it that the House wishes to discuss this clause. The amendments will be moved. We may take up the suggestion of Mr. Mohanlal Saksena at a later stage.

Mr. K. M. Munshi: I move that sub-clause (2) of clause 18 be referred back to the Advisory Committee. It was the general sense of many of the members that this clause should be reconsidered in the light of discussion that took place.

Mr. President: There are other amendments of which I have got notice. I shall ask the Hon'ble members to move the amendments.

Sri V. C. Kesava Rao (Madras: General): I do not move my amendment. (No. 76 of the Supplementary List No. II).

Dr. Suresh Chandra Banerjee (Bengal: General): In view of the amendment that sub-clause (2) be referred back to the Advisory Committee, I do not see any object in moving my amendment, and I do not propose to move it.

Sri R. Santhanam: I am not moving my amendment. (No. 78 of the Supplementary List No. II).

Shri Phool Singh: I am not moving amendment. (No. 80 of the Supplementary List No. II).

Shri Algu Rai Shastri: *[I do not want to move my amendment.]*

Dr. Suresh Chandra Banerjee: In view of the assurance given by Mr. Munshi, I am not moving amendment No. 72 in the List.

The Hon'ble Shri Jagjivan Ram: I am not moving my amendment (No. 83 of the Supplementary List No. II).

Mr. R. K. Sidhwa: My amendment, i.e., No. 84, is a new clause. It may be taken afterwards.

Mr. D. N. Datta: Amendment No. 85 seeks to introduce new clauses. It may be taken up later.

Mr. President: All the amendments of which I have got notice have been disposed of; they are not moved.

Mr. Munshi's amendment and the clause are now both open for discussion. There is a suggestion that the whole clause be referred back and the amendment is that only sub-clause (2) be referred back.

Shri Mahavir Tyagi: Sir, I rise to support the motion of Mr. Mohanlal Saksena. He has only proposed that this clause be referred back to the Advisory Committee. I think, Sir, we are taking this document lightly. It may be that in matters like these, i.e., cultural and educational rights, they could be defined only as far as they appertain to individuals and the question of minorities had better be left for the future Governments. I think we are binding the hands of our future Governments too much. We should leave them free to do according to the times and the situations they face.

Now, Sir, the question of guaranteeing the rights of minorities with regard to culture and education privileges, I would suggest that in future occasions may arise when the Governments belonging to the Union may have to negotiate with other units and may have to know from them as to what is happening to the minorities that reside in the areas which have not chosen to join the Union. Now, supposing the Governments of the Units which belong to the Union are committed by means of this clause 18 to a certain policy towards the minorities, the people here may feel the necessity of knowing as to what is happening to the minorities who reside in those units which have refused to join the Union and belong to Pakistan or any other parts of India which may organise themselves separately. My suggestion is that on the question of minorities we may not be committed here and this question be left over for the time when we may definitely know as to whether the whole of India is going to be one Unit or is going to be partitioned into two. If there is to be a partition, we must know what is happening to the minorities on the other side, in the other units.

Therefore, the question is not so easy to solve just now. I submit that the whole House will support me when I say that this question had better be hanging fire till we definitely know as to what is going to be the final shape of India and how the Units are going to treat the minorities. I therefore support the motion of Mr. Mohanlal Saksena that the consideration of this clause be put off.

Seth Govind Das (C.P. & Berar: General): *[Sir, I think the motion before us contains no such clause which can be considered controversial. Mr. Mahavir Tyagi has said that we do not know till now whether India is to remain one or is to be Partitioned. For reasons which lead him to think that this should be sent to the Advisory Committee, I feel that it should be passed by us today. Whether there is one Hindustan or Pakistan, undivided or divided India--the phantom of this thought sticks to us and we look at all problems when they come up, obsessed with that view.

While supporting the resolution of Pandit Jawaharlal Nehru I said that we should not care whether our Muslim League brothers enter the to say that we Assembly or not. On the same grounds I again wish should not care whether India is to remain undivided or is to be divided. We want one India. We want that India should remain one. We are not to stop any of our efforts. I am even against Mr. Munshi's amendment, for I cannot see anything in this whole clause against any caste or community, As I have said that without looking--to what is going to happen to India in future, we should pass this resolution keeping in view as to what our duties are and what should be done in this Assembly.]*

Mr. D. N. Datta: Mr. President, Sir, clause 18, sub-clause (1) says--

> "Minorities in every unit shall be protected in respect of their language, script and culture, and no laws or regulations may be enacted that may operate oppressively or prejudicially in this-respect."

I shall illustrate my point. Suppose in a certain unit there are different communities residing, using different scripts, and that unit intends to make a law that there should be one script instead of different scripts now prevailing. I feel that there may be necessity for the unit to promulgate a law that there should be one script for that particular unit for the benefit of the unit itself, and if that is not allowed by the Fundamental Rights, I think the interests of the Unit will suffer. I cannot suggest what should be the language of the clause under which such laws can be promulgated so that there should be one script for the benefit of the whole Unit. I suggest that this matter may also be referred to the Drafting Committee of the Fundamental Rights Sub-Committee because it is a very fundamental matter. The minority must have a right, but at the same time the Unit itself should also have a right to promulgate such a law--that there should be one script for the whole Unit or province. So, I consider that this matter should be considered by the. Fundamental Rights Sub Committee or by Sardarji.

Srijut Rohini Kumar Chaudhury: Mr. President, Sir, I wish to draw attention to sub-clause (2) of clause 18:--

> "No minority whether based on religion community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them."

It refers to the compulsory imparting of religious instruction Clause 16 which also refers to compulsory participation in religious instruction in school has already been referred by this Hon'ble House to the Advisory Committee. So it is only reasonable that we should agree to refer this clause to the same Advisory Committee which will consider clause I6.

I submit, Sir, that other sub-clause of this clause are not inoffensive or free from difficulty as they may seem on surface.

Take for instance, sub-clause (1) which speaks of scripts. Most of the tribal people in our Province have lost their original script. Some have taken to Assamese language and script, but Roman scripts have been recently imposed on them and now most of them are willing to take Hindi scripts which they would not be able to adopt if the sub clause stands as it is.

Then turning to sub-clause (3) (b), if the clause stands as it is, it will seriously interfere with proper distribution of grants. So, on the whole, I think, instead of remitting sub-clauses piece-meal. It will be wise to refer the whole clause 18 to the Advisory Committee.

Shri Rajkrushna Bose (Orissa: General): I suggest, Sir, that clause 18 as moved by Sardar Patel and the amendment of Mr. Munshi, should be taken up for consideration now and the House should come to a decision in the matter. It seems that there is a move to refer clauses like this back to the Advisory Committee and it has become a little too catching and therefore we are not in a position to do anything here but refer back to the Advisory Committee. Let us not forget that before these clauses passed through the Committee, they had passed through two other Committees, *viz.*, the Minorities Rights Sub-Committee and the Fundamental Rights Sub-Committee. Clause 18 which we are now considering is so very simple and innocuous that it really needs no referring back to the Advisory Committee again. Three sub-clauses are attached to it, one is that the language, script and culture should be preserved and no laws or regulation may be enacted that may operate oppressively or prejudicially in this respect. If we are going to have one script in India as was suggested by Mr. Datta, it may create difficulties and any unit which wants to have a common script for the whole unit will have difficulties if this sub-clause is kept.

Well, my contention is that the sub-clause should be retained as it is, just because, if today we raise the question of wiping out languages or scripts when we are framing our first independent constitution, there may be any number of complications and difficulties and misunderstandings and at a time when we are having a lot of other difficulties we should not invite any more now. Therefore, we ought, to keep the first sub-clause as it has been kept in the original. Then sub-clause (3) (a) reads :

> "All minorities whether based on religion community or language, shall be free in any Unit to establish and administer educational institutions of their choice."'

This is a right, Sir, which I think no country can take away and ought to take away and all constitutions should concede this right to the minorities. It is such a simple thing that it needs no reference back to the Advisory Committee again. Now, sub-clause (3) (b) reads:

> "The State shall not, while providing State aid to schools discriminate against schools under the management of minorities whether based on religion, community or language."

This again is such a simple question. If any minority wants to start a school of its own in any unit or in any part of the Union, certainly you are not going to forbid them from doing so, or pass laws whereby they cannot have this ordinary right. If you are going to do that, all your claim to give protection to the minorities will be reduced to a farce. Therefore, I do not see why this simple clause, namely clause 18, with all its sub-clauses should be referred back to the Advisory Committee. Of course, a point has been raised by one of the members that the consideration of matters relating to minorities should be put off till we know the mind of the Pakistanists in the matter and the rights they are going to concede to the minorities in their areas. Well, Sir, if, knowing fully well that those who oppose India's independence today like the Muslim League are adopting dilatory tactics to delay our freedom we put off our business till Doomsday or wait till they have made some decisions, we shall have to wait indefinitely. If, say for instance, they go beyond June 1948 to reach a decision with regard to these matters, are we to postpone our decisions on matters so simple and ordinary. I think, Sir, that it will be foolish on our part to delay decisions on matters like these, and therefore clause 18 as moved by Sardar Patel and amended by Mr. Munshi should be adopted by the House.

Dr. B. R. Ambedkar: Mr. President, Sir, I confess that I am considerably surprised at these amendments-both by Mr. Munshi as well as Mr. Tyagi, They have, I submit, given no reason why this clause 18 should be referred back to the Committee. The only reason in support of this proposal--one can sense--is that the rights of minorities should be relative, that is to say, we must wait and see what rights the minorities are given by the Pakistan Assembly before we determine the rights we want to give to the minorities in the Hindustan area. Now, Sir, with all deference. I must deprecate any such idea. Rights of minorities should be absolute rights. They should not be subject to any consideration as to what another party may like to do to minorities within its jurisdiction. If we find that certain minorities in which we are interested and which are within the jurisdiction of another State have not got the same rights which we have given to minorities in our territory, it would be open, for the State to take up the matter in a diplomatic manner and see that the wrongs are rectified. But no matter what others do, I think we ought to do what is right in our own judgment and personally I think that the rights which are indicated in clause 18 are rights which every minority, irrespective of any other consideration is entitled to claim. The first right that we have given is the right to use their language, their script and their culture. We have stated that "there shall be no discrimination on the ground of religion, language, etc." in the matter of admission into State educational institutions. We have said that "no minority shall be precluded from establishing any educational institution which such minority may wish to establish". It is also stated there that whenever a State decides to provide aid to schools or other educational institutions maintained by the minority, they shall not discriminate in the matter of giving grant on the basis of religion, community or language. Sir, I cannot understand how there can be any objection to these rights which have been indicated in clause 18. At any rate, nobody who has supported the motion that this may be referred back to the Committee has advanced any argument that either these rights are in excess of what a minority ought to have or are such that a minority ought not to have them. Therefore, it seems to me a great pity that the labours of three Committees which have evolved these provisions should be so brusquely set aside simply because for some reasons people want that this matter should be referred back to the Committee. I do not know what objection my friend Mr. Munshi has to sub-clause (2) as it stands, but if it is necessary that this sub-clause may be referred back to the Committee I certainly would raise no objection. That sub-clause may be referred back because I understand that we have limited this matter to State educational institutions and we have said nothing about those which are only State-aided. If that point needs to be further clarified the matter may be referred back, but, because there may be something to be said in favour of the reference back of sub-clause (2) I do not see that the same logic could be extended to the whole of the clause. I submit therefore that the clause as it stands, should be passed, barring sub-clause (2) which may, if necessary, be referred back to the Committee for consideration.

Shri Lakshminarayan Sahu: Mr. President, Sir, while I was speaking some time before, I was just telling that I welcomed this clause 18 in the Fundamental Rights, because this is the first time that minorities will feel happy that they have got some definite rights. I was referring to the question of who should be called a minority about which I have my doubts. But I hope they will be cleared by further discussions. But as it is, I welcome this clause. I want to show that in Midnapore district the population of Oriyas has been mutilated to a very great extent so much so that today we do not find in the census figures any Oriya as such. In 1891 the census number of Oriyas was 6 lakhs. In 1901 it was reduced to 3 lakhs and in 1911 it was reduced to less than 2 lakhs. In 1921 it was 1,40,000 and in 1931 the figure is only 45,000.

Now, the same thing has happened in the southern portion of Orissa. The Utkal Union Conference for over 40 years agitated to get a separate province for Orissa only in order to get their minority rights, because as minorities they were not safe in any of the provinces, and when they got a separate province they were very happy. Now the question has come about the language. Referring to only one district there, out of the six districts of Orissa,--to Ganjam,--there is great language difficulty there. The Vizagapatnam, District Gazetteer of 1906 writes:

> "The language of the district forms a veritable bable. In Gunjam 940 out a 1,000 speak Telugu in their houses, 14 talk Oriya, 9 Khond. 7 Gadaba, 5 Hindusthani. But among the same number in the Agency, 451 speak Orya, 204 Khond, 180 Telugu, 56 Savara, 30 Poroja. 23 Gadaba, 11 Koya 3 Hindustani, 3 Gondi and 5 other vernaculars such as Labadi, Bastari, Hindi, Chhatiskari, etc."

This difficulty about language has been felt in our province because a section of the people are Andhras and they are claiming that their children should be educated right up to the college stage through the medium of their own mother-tongue. And this should be decided clearly. I hope that by a clause like this these difficulties will be removed and our culture will be intact in those places where the Oriyas will be left outside their province; and so also the culture of other people who will be left in the province of Orissa will be properly safeguarded. But I would like to know what should be the language of the province and also the language of the different aboriginal people who are in the province of Orissa. As I have already said, there are any number of aboriginals speaking any number of different languages. Some of the aboriginal workers who are coming up claim that their language must be respected. In Orissa, if we respect every language it will be very difficult for the provincial Government to run the administration.

Quite apart from all the above difficulties which may be solved by the Units, I welcome this clause 18 which safeguards our cultural and educational rights.

Mr. President: We have two amendments. One is from Mr. Mohanlal Saksena.

Shri Mohanlal Saksena: Sir, I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then the other is from Mr. Munshi to refer back subclause (2) to the Committee.

The Hon'ble Sardar Vallabhbhai Patel: I accept it.

The amendment of Mr. Munshi was adopted.

Mr. President: Then I put the amended clause to the House now leaving out sub-clause (2) and retaining sub-clause (1) and sub-clause (3) (a) and (b)

Clause 18, as amended, was, accepted.

Mr. President: I think we have just come nearly to 12-30. So we shall stop to-day and take up the work again at 9 o'clock tomorrow.

The Assembly then adjourned till Nine of the Clock on Friday, the 2nd May, 1947.

---

*10. Subject to regulation by the law of the Union trade, commerce, and intercourse among the Units by and between the citizens shall be free:

Provided that any Unit may by law impose reasonable restrictions in the interest of public order, morality or health in or in an emergency:

Provided that nothing in this section shall prevent any Unit from imposing on goods imported from other Units the same duties and taxes to which the goods produced in the Unit are subject:

Provided further that no preference shall be given by any regulation of commerce revenue by a Unit to one Unit over another.

*12. No Child below the age of 14 years shall be engaged to. work in any factory, mine or any other hazardous employment.

Explanation: Nothing in this shall prejudice any educational programme or activity involving compulsory, labour.

[English translation of Hindustani speech]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME III

Friday, the 2nd May, 1947

The Constituent Assembly' of India met in the Constitution Hall, Now Delhi, at Nine of the Clock, Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair.

INTERIM REPORT ON FUNDAMENTAL RIGHTS-contd.

Mr. President- We shall resume further discussion on the remaining clauses of the Fundamental Rights. Clause 19.

Clause 19.-Miscellaneous Rights.

The Hon'ble Sardar Vallabhbhai Patel (Bombay: General): I beg to move clause 19. The clause runs thus:

> "No property, movable or immovable, of any person or corporation including any interest in any commercial or industrial undertaking, shall be taken or acquired for public use unless the law provides for the payment of compensation for the property taken or acquired and specified the principles on which and the manner in which the compensation is to be determined."

I do not expect any amendments to this motion, but if there are any, we shall consider them in time.

(Amendments Nos. 86 and 87 were not moved.)

Raja Jagannath Bakhsh Singh (United Provinces: General): I do not move amendment No. 88. Sir, I shall, with your permission, move amendment No. 89. I move:

> "That in clause 19, after the words 'the payment of' the word 'Just' be inserted."

I congratulate the Advisory Committee on the labour they have devoted to the difficult and complicated question of framing the fundamental rights. Clause 19 provides:

> "No property, movable or immovable, of any person or corporation, including any interest in any commercial or industrial Undertaking, shall be taken or acquired for public use unless the law provides for the payment of compensation.

I have no doubt that the Advisory Committee had in their mind that, whenever an occasion arises to take property, movable or immovable, it should be after payment of compensation which is just compensation. But I think that without the insertion of the word "just" which I am moving, the meaning of the clause may be left a little vague.

Then, Sir, there are a number of precedents in support of my contention. I believe the Advisory Committee had in their view the American constitution in , framing the fundamental rights. In paragraph 3 of the Report of the Advisory Committee it is stated:

> "We attach great importance to the constitution making these rights justiciable The right of the citizen to the protection in certain matters is a special feature of the American Constitution and the more recent democratic constitutions."

If you look at Article V of the American Constitution, 1791, the, last two lines read thus:

> " .... nor shall private property be taken for public use without just compensation."

This makes it clear that the American Constitution lays particular emphasis on this word "just" in qualifying the word "compensation". Next, Sir, if we look at the Constitution of Danzig-I am referring to the Third Series of Constitutional Precedents, page 69, you will find:

> "The right, may only be effected in accordance with the provisions of the law and for the benefit of the whole, community, and in return for due compensation, in case of dispute with regard to the amount of compensation recourse may be had to the law-courts."

Further, if I have your permission to quote one more constitution, namely, that of Australia, it will be found that in section 51 of the Constitution of the Commonwealth of Australia the following provision is incorporated:

> "The acquisition of property on just terms front any State or person in respect of which the Parliament has, power to make laws."

I do not wish to take the time of the House in reading the Constitutions of other countries, but I may add that the House will find in the Constitutions of Belgium, Bulgaria, Denmark, Finland, Albania, and Yugoslavia--in a number of these countries the word "just" qualifies "compensation", in others a similar expression has been used. I, therefore, submit that so far as precedents are concerned, I am well supported in my motion. I think it is unnecessary for me to put before the House all the arguments in support of this amendment, as I know the House is pressed for time. Therefore, Sir, with these words I commend my amendment for the acceptance of the House.

Prof. K. T. Shah (Bihar: General): Mr. President, I have given notice of an amendment to add the following proviso to clause 19:

> "Provided that-no rights of individual private property shall be recognised in forms of natural wealth, like rivers or flowing waters, coastal waters, mines and minerals, or forests."

But as this raises many complicated issues, I do not move it but suggest that this should go back to the Advisory Committee.

Mr. President: Do you move the amendment ?

Prof. K. T. Shah: No, Sir.

Mr. President: There is only one amendment to this clause. The clause and the amendment are both for discussion.

Shri S. Nagappa (Madras: General): Mr. President, I rise to offer my support to this clause proposed by the Hon'ble Mover of this Report. This is a clause that gives some hope to the poor tiller of the soil. This clause gives a promise to the people of the, country that the Union Government or the Unit Governments are going to acquire property, landed or other sort of property, from either individual or corporations or from industrialists or commercial, concern, in the public interest and that, when they do so, they are going, to compensate them. Now Sir, what sort off compensation is to paid ? There are difficulties in the way of settling this matter. I want that in paying compensation we must be reasonable. Now the question arises as to what is reasonable compensation. It seems, to me, Sir, that when we are acquiring landed property from a zamindar, we need not pay as much as he wants. We need pay only what is reasonably required to enable him to maintain himself and his family for one or two generations. That is the only thing necessary to do to fulfil the kind of assurance which the Congress has given to these zamindars and jagirdars in their election manifesto. My humble request that the Government should accept my interpretation of what reasonable compensation is. For instance, if a poor man's property is acquired for a particular purpose, then, in giving him compensation, care must be taken to see that it is reasonable in the particular case. In such a case the Government must pay him the cost of the land and something more even. But when the Government acquire lands from a zamindar, they need not pay the actual market rate or the local rate to make the compensation paid reasonable. You have to fix the compensation keeping in view the manner in which the zamindar acquired that property. That is my contention, Sir.

Then, Sir, I submit that when once you acquire land, you must see that the tiller of the soil is made the owner of the soil. Then alone we will be able to give a kind of encouragement to the toilers and make them increase the produce and the national wealth for the maintenance of the country. I hope this clause will not stand in the way of, the provinces pushing forward land legislation which they have in some cases already undertaken. For instance, my respected leader of Andhradesa, Sri T. Prakasam, has already done a lot for the abolition of the zamindari system in Madras and the Madras Government are pushing forward legislation for the abolition of zamindaris. Once the zamindaris are abolished and the Government acquire their properties, it must be their endeavour to make the best use of such properties. The Government must see to it that collective farms are formed and that, through them, the maximum is produced and the tiller is given sufficient for what he does. These are the hopes which the particular clause gives to the poor tillers of the soil.

Now, Sir, so far as the industries are concerned, I have been day in and day out asking in the Madras Legislative Assembly, for their nationalisation. That does not mean that we need not encourage private bodies to take to industrialisation. We have to go forward in this respect. Our country is very backward industrially. If we are to move quickly forward, we must go to the extent of granting subsidies to our industries and nationalise them as soon as possible. When private enterprise has fully developed and when the country thinks that particular industries should be taken over by the

Government for public benefit, reasonable compensation must be paid. In these cases it would be reasonable compensation if we offer the persons who started those industries ample funds to fall back upon. That is my interpretation of the word 'reasonable' in this respect.

Sir, these are two main points that should be borne in mind when legislation is undertaken for the abolition of zamindaris and nationalisation of industries.

Once again, I offer my thanks to the Hon'ble Mover for bearing in mind this particular class of tillers of the soil who would be getting their due share of the results of their labours. I also thank you, Mr. President, for giving me this opportunity to speak on this motion.

Dr. Suresh Chandra Banerjee (Bengal: General): Mr. President, Sir, I had naturally hoped that we would make some progress towards socialisation at least when we gained our independence within a few months, but in these fundamental rights nothing has been put in regard to socialisation. I would have been really happy, had the amendment of Prof. K. T. Shah been accepted, because there is an element of socialisation there. I feel that in a country like India where poverty is so acute, where general condition of the workers and peasants is so miserable, nothing but socialisation can give some hope of improvement in the future. So, I would have been happy if the House had accepted the amendment of Prof. Shah. But I know, Sir, the difficulties with which we are faced at present. We know, Sir, how many interests are represented here. Here, we have to consider the case of the Indian Princes, we have to consider the case of the Anglo-Indians, of the Christians and so many other people. As a matter of fact, it is a matter of great consolation to us that we have been able to find out a solution for reconciling so many interests. So, in the present context, we cannot press for any amendment like this, but still I do hope that in the near future when India gets her independence, it will be possible to have some kind of socialisation. With these words, Sir, I support the clause as it stands.

Shri Ajit Prasad Jain (United Provinces: General): I rise to make a few observations on this clause. I had given an amendment for the total deletion of this clause, but it became unnecessary to move that amendment for I could express my ideas during the course of general discussion. This clause reproduces a part of Section 299 of the Government of India Act, 1935, with a certain amount of amplitude. It says that no property, whether movable or immovable, shall be acquired for public use unless the law provides for the payment of compensation. We have some experience of the working of Section 299 of the Government of India Act. The House must be aware that in several Congress Provinces measures for the abolition of zamindari system are under consideration. In the United Provinces we passed a resolution for the abolition of zamindari system on payment of equitable compensation. That resolution follows the line laid down in the Congress Election Manifesto. In working out how the compensation should be calculated, we were faced with great difficulties. There was the question of the financial capacity of the State. If we fix compensation at a figure which the State could not pay, it would mean that the zamindari should continue to exist. We had also to see how much profits the landlords have made in the past from the zamindari. The question of the origin of zamindari also became relevant. Some of the zamindaris in our provinces have been acquired for helping the British by acts of treachery during the first war of independence in 1857. We could not ignore the market price of the zamindari either. After a careful consideration of these various factors we are trying to fix compensation for the zamindaris. On the other hand the landlords have been interpreting the word 'compensation' to mean full compensation, i.e., the market price of the land. Some of them have threatened that they will go to the Federal Court for interpretation of the word 'compensation'. We have no manner of doubt that it is impossible for the State to pay full compensation. Then the choice before us is to leave the zamindari as it is. Sir, land acquisition may take either of two shapes. It may be acquisition of a specified for a specified purpose. In that case the State may pay not only its full value but something more for the compulsory acquisition as is provided in the Land Acquisition Act. There may be other cases in which property may not be acquired as a solitary thing. It may take the shape of a measure of social or economic reform for the welfare of the society. For instance, we may have to acquire factories, mines and industries for nationalisation. In such cases the acquisition of the property will be for social use for the upliftment and betterment of the society. The property is being acquired in the interest of the large masses of the people. And in such cases considerations which may prevail in the cases of isolated acquisition will not apply. The State may not be in a position to pay full, compensation. In fact, there may be only a nominal compensation, or no compensation at all. This clause, if accepted as it stands, will stand in the way of large scale social and economic reforms. It will cover all the cases where property, is being acquired for social or economic improvements. It is none of my intentions that the State should act as a robber or a bandit and arbitrarily seize properties of the people, but measures of social reforms stand on quite a different level. That is the reason why a number of amendments, which were not moved, had been tabled in the direction pointed out by me. Fundamental Rights in my opinion are embodied in the Constitution with a view to protect the weak and the helpless. The present clause will have just the contrary effect. It will protect the microscopic minority of propertied class and deny rights of social justice to the masses. I am, therefore, totally opposed to this clause and I do hope that the Hon'ble Mover will keep this in mind and refer the clause back to the Advisory Committee so that any provision which we pass today may not stand in the way of social and economic reforms which are necessary to bring prosperity and plenty to the country. With these few remarks, I commend my point of view for the consideration of the House.

Mr. R. K. Sidhwa (C.P. and Berar: General): Mr. President, Sir, one would have expected that under the present economic conditions prevailing in the country, there would be a clause for acquiring property in a different manner. It is very deplorable that at the present moment when various legislatures are out to abolish the jagirdari and zamindari systems by payment of a small compensation or no compensation under this clause we are asked to pay compensation for any property that is ping to be acquired. In free India where we should expect the property clause to be more liberal and beneficial to the people, we find that we are helping the upper class people by passing this clause.

Sir, the word 'property' is very vague. "Property" includes public utility concerns like electric corporations, transport organisations, etc. We are well aware that in many provinces these public utility concerns are being nationalised and I am sure that in a very short time to come almost all the public utility concerns will be nationalised. In fact, under the bureaucratic system of Government, all the railways have been nationalised by payment of any 'goodwill' that may have been specified under the agreement. I know, Sir, that the agreements with local bodies under which some electric concerns are working, provide for acquiring such concerns without any compensation being given. If you pass this clause, it would mean that although the agreements do not provide for it, we have to pay compensation, to these public utility concerns when we acquire them. Is it fair, may I ask, that the public utility concerns which are for the benefit of consumers and the people, and which in all countries eventually may become the property of the people, are to be taken over by paying the actual invested capital plus compensation even if there is no clause as to the payment of compensation ? I do feel, Sir, that this clause requires amendment at least as far as the public utility concerns are concerned. But, Sir, I am helpless as I could not move an amendment I would have been desired that this clause should have been amended or have gone back to the Advisory Committee under the circumstances I mentioned. If it is not going, I hope that this will receive the consideration of the Mover, because it will be really doing great injustice to the consumers,--that though in the agreement there is no clause of compensation we shall be bound to give it and in a small province they would have to take over concerns by paying them the actual amount invested plus compensation.

Mr. President: Do you mean to say that an agreement will be affected by this clause ?

Mr. R. K. Sidhwa: Yes, Sir, No property shall be taken or acquired for public use unless the law provides for the payment of compensation, says the clause. Now, Sir, the law will be made certainly in accordance with this clause and a demand for compensation will be made even if there is nothing in the agreement.

Mr. President: The acquisition itself will be provided for in the agreement.

Mr. R. K. Sidhwa: If the law provides that a compensation is to be paid and if in the agreement there is no clause, then, we will be bound down. I, as a common sense man, feel--of course, the legal luminaries may say, if they enlighten me I shall welcome it, but, as a common sense man, I feel that, if there is an agreement in which there is no clause for compensation and if you are enacting an Act for giving the compensation, they will claim from us the compensation. And owner of the property in that event will go to the Supreme Court and get his demand fulfilled under the clause.

Shri Vishwambhar Dayal Tripathi: *[Mr. President, I stand here to oppose the amendment moved by my friend, Raja Jagannath Bakhsh Singh. His amendment says that the word "just" should be added before the word 'compensation' here. I oppose this most emphatically. So far as this clause is concerned, not only I but most of my friends apprehend, that its wordings are such that their effect, particularly the legal effect, would not be to the good of the country to the same extent as it ought to be. I want that the words in the clause be changed so that it may not go against the interests of the country as apprehended by us. I would appeal to the gentlemen who drafted this clause to reconsider it and put before us a new "formula".

It is proper and I accept it that when we acquire property of any one it is necessary to give compensation for it. This too I accept that in most cases compensation should correspond to the value of the property. But at the same time I also believe that we must also see as to how the property was originally acquired by the person concerned. If it was acquired justly, compensation ought to be given according to its value. If the property was not acquired justly or if the holder has earned sufficient profit from the same it is wrong to give him full compensation or to pay its full price. If we want to change the existing social order, if we want to change the present order of zamindari and capitalism and at the same time say that full compensation should be given for the property taken by the State, it would mean that we would not be able completely to do, away with the present social order. If we have really to change this order, if we really want to implement the resolution passed by A.I.C.C. on 8th August, 1942, which promised to frame a constitution wherein the real power is vested in the workers in farms and factories, we have to reconsider these clauses. If this clause is left as it is, undoubtedly various obstacles will come up in our way of fulfilling the promises and declarations made by us before the country from time to time. Therefore, I again request the framers of this clause to reconsider it.

We have before us the question of ending zamindari in several provinces. We have also before us the question of payment of compensation to the Zamindars. There are all kinds of difficulties before us. I am a member of the U.P. Zamindari Abolition Committee which has to deal with such questions. I can say with all the authority at my command that if we have to pay the compensation for zamindari according to its market value, I have no doubt that it will be almost impossible for us to end zamindari: and even if it could be made possible, it would result in the peasantry remaining burdened for another 20 or 25 years to the same extent as they are today. After all from what source the compensation will be paid ? It will be taken from the pockets of the poor. Under these circumstances for another 20 or 25 years the peasants will have to remain under the same financial burden which they have to bear today. They will not benefit in any way for this period of 20 or 25 years. Besides the statement of Raja Sahib that "just" compensation should be paid is rather extremely odd. Is Raja Sahib prepared that a general examination of the titles of the Zamindars in respect of their landed property be undertaken to verify as to how many of these titles can be termed just ? If he agrees to this his amendment may be considered. There are many estates in the country and particularly in Oudh, to which province Raja Sahib belongs, which were acquired by the present holders as rewards for their traitorous support to the English during the Mutiny of 1857. The recipients of these estates had no estate previously. The Englishmen gave them these estates for their treachery against India. Raja Jagannath Bakhsh Singh claims that the Zamindar participated in the war of liberation of 1857. I welcome those who had fought for freedom and I do recommend that they should be given the maximum concessions. Raja Sahib knows that there are instances of many who betrayed their countrymen and in return for their treachery received big estates. Such people have no right to demand compensation. Many of them enjoy exemption from payment of revenue, and have been continuously enjoying the profits of these estates for the last 90 years. They have been realising rent from the tenants for the last 90 years without having had to pay even a pie of land revenue. If any body had even paid the price for it, he has already received five times its value. Those who acquired these estates as a reward for their betrayal of the country now demand compensation. The question of 'just' compensation does not arise so long as we have not examined the validity of the titles to these estates. Even if the word 'just' is not added here the clause as it stands, can be widely interpreted to include compensation to those who were never entitled to receive these estates, who have been receiving the profits of the estates for nearly 90 years and many of whom had not even to pay any land revenue to the Government. It would be improper to pay any compensation to these people. There is a 'saving grace' in this clause that the Government would consider the principles and basis on which compensation should be given.

It is my frank opinion that they should be given something as maintenance allowance for some years so that they may be able to live in, and adjust themselves to, the new and changed circumstances. I have no objection to this. I do not like, and nobody would like, that many of these people should be reduced to destitution and starvation. Therefore, if compensation can be supported it can be only on the basis that zamindars and capitalists should be given some amount for maintenance for a few years so that they may keep themselves alive without difficulties in the new economic set-up. If we want that the existing order of zamindari and capitalism should be done away with, it is desirable that compensation should be given on the basis of maintenance for a few years. But what I fear and suspect is that the clause in question may be legally so interpreted that our economic progress may be retarded, and the Congress and other important public organisations may not freely advance in the direction they intend to. Therefore, I oppose the amendment moved by Raja Sahib and at the same time request my respected friends, who have framed this clause, to reconsider it. If it is accepted as it is, disastrous consequences may follow. Therefore I beg to put these two requests of mine before you and hope that the Hon'ble President and my other friends would accept them.]*

Shri V. C. Kesava Rao (Madras: General): Mr. President, Sir, I stand to support the clause, but I want to make some observations on that.

This clause provides compensation to the citizen whose property will be acquired for the use of the public. When the State acquires any person's property, it is only for the benefit of the public and not of any individual. If such acquiring deprives a citizen of his livelihood, it is necessary to pay compensation equivalent to the property one loses. And I think nobody disputes such a compensation.

We are framing a constitution for free India. We are asking the British to quit India though they came here 200 years ago. We know that the British acquired India by foul, means and not by hard labour. As the owners of this country, we have the right to ask them to leave the country, and in response to our demand, they are quiting India by June, 1948. In free India nobody wishes to be exploited by another. The big landlords and the Zamindars, did not get their land and property by hard labour. In this respect there is no difference between the Zamindar and the British imperialist. The British acquired Empires and the Zamindars acquired large fortunes-both by means of exploitation.

In Free India it is necessary to keep all the citizens on the same footing. This may not be possible for some time to come due to the system prevalent in this country. The common cry of the tenant is that, he whole produce collected by him is taken away by the landlord even though he requires some of it for the maintenance of his family. There is no other way for him except starvation. Is the State prepared to give him any livelihood or a compensation for the loss of his energy and for his labour ? But if a Zamindar who exploits the Door and amasses wealth is deprived of a portion of his property for the benefit of the public, the State thinks of giving compensation for the loss, though it is not a loss to him actually. The present day request of a tenant is the reduction of rent for his land. But this request will lead to the snatching away of the little land he has been cultivating and maintaining his family with. The Zamindar is prepared to keep the land waste and not to reduce the rent. Thus he allows his tenant to starve.

Lastly, I wish to point out that the Indian National Congress has been fighting for the abolition of the system of Zamindari and even in the last election, it gave an undertaking to the masses that the Zamindari system will be abolished as soon as the Congress comes into power. And accordingly, the Congress Provincial Governments have prepared their Bills for the abolition of it. Now, when we are asked to frame the Constitution for Free India, we want to compensate them in the manner in which the law fixes. The law will be always in their favour and they get more than what is

necessary.

In view of the above facts, I request the House to consider and amend the clause in such a way that only a nominal compensation may be payable for acquisition of the property of a citizen or a Corporation.

Rai Bahadur Syamanandan Sahaya (Bihar: General): Sir, I would like to make a few submissions in connection with the amendment which has been moved by my hon'ble friend, Raja Jagannath Bakhsh Singh, His amendment only suggests the addition of the word "just" before the word "compensation". I have been anxiously and carefully listening to the debate and I must say, I have heard nothing so far that there should be no justice exercised in the matter of the payment of compensation. No one has suggested, and I dare say, no one will suggest, that once we accede to the principle that acquisition of private property must be preceded by the payment of compensation, such compensation should be an unjust one. This, I submit, cannot be the contention of anybody in an august assembly like this. After all, the future of this country depends on the justice and fair-play that we exercise in dealing with the different problems confronting us here and in the tact and ability that we display in dealing with the affairs of international policy. I submit, Sir, whatever may be said about those who own lands at present, it cannot be denied that at one time they were the pioneers in building up the economic structure of this country a couple of centuries ago. They have earned and they have made money, but is that a ground for now taking away the property from them and paying them no compensation and even going to the extent of incorporating in the fundamental rights that they should get compensation and then arguing that it should be an unjust compensation. I do not think that any such proposition can be placed before this House, and even if it is placed, I do not think it will find acceptance in this House.

Well, Sir, what is the demand that the amendment puts forward ? It says the word "compensation" should be qualified. The Hon'ble Mover has referred to other constitutions in the world where the word "compensation" has been qualified by the word "just". This is not the only word which has been used. If we refer to the constitutional series on Fundamental Rights which was circulated to us by Sir B. N. Rau, it will be found that even in the German Constitution the words used are "due compensation". It is said there-

> "Expropriation may be effected only for the benefit of the general community and upon the basis of law. It shall be accompanied by due compensation."

I therefore submit, Sir, that the use of the word "just" could only indicate, the real purpose behind what is embodied in the Report of the Fundamental Rights Sub-Committee, unless some members are prepared to argue that you might as well put the word "compensation" there but be prepared to face the fact that it might be unjust compensation in certain circumstances. I contend, Sir, that that cannot be a correct and a proper approach to the problem nor a valid argument.

Then, Sir, he whole argument of all those who have opposed the amendment has centred round the question of the acquisition of the Zamindari. These friends unfortunately have either ignored knowingly or failed to appreciate that this compensation clause does not cover Zamindari alone. It covers the whole field of movable and immovable property in the country,--in the Union or in the Units. It may be necessary in the larger interest of the country at a later stage even to acquire

"Kashtakari", i.e., tenants' lands. If you want to introduce cooperative farming or communal farming, it may be necessary to acquire even the tenants' lands. Would you deny them a just compensation? A proposition therefore like. this which covers such a wide field-not merely Zamindari but even commercial interests and so many other interests, must, I submit, be placed beyond all doubts and suspicions. If I may submit, Sir, the right to private property and the protection of private property are the acceptance of the principle of right over might. You may choose to do away with it if you like, but we shall then all slowly drift towards jungle laws rather than good laws meant to keep society together. Some friends have also referred to the fact that certain zamindars got all their property for anti-national work during 1857 Revolution. The Hon'ble Mover of the amendment has questioned this remark. I will go a little further and submit that these hon'ble friends have probably incomplete knowledge of the Zamindari system and therefore it is that they have come to the conclusions that many or most of the Zamindars acquired their property as a gift after the 1857 Revolution. They forget that in certain parts of the country the Permanent Settlement Act was enacted as early as 1793 much before the 1857 Revolution. It cannot be said of them that they got their Zamindari because of certain anti-national work. There may have been some people, whose conduct may not have been such as one would like, but you are dealing with a community and not individuals. You are dealing with the whole land problem, and when you are doing that, it is essential that the whole question and the entire picture must be within your consideration. There are also a large number of people who have paid good money and purchased Zamindari--not a hundred years before as some think. Zamindaris have been bought and sold every day. People have bought Zamindari only this year by paying good money, earned money which they have accumulated as their life's savings. Who does not know that until only a few years ago our main investment out of our savings was only in lands ? It will certainly be unfair not to give them compensation--and a compensation which is just and fair. My suggestion, Sir, to the Hon'ble the Mover of the main clause and to the Mover of the amendment will be that the word "compensation" itself means "just and fair, compensation". Compensation cannot be, in my opinion, unjust and unfair, and I submit that if the Hon'ble Mover of the main clause feels precisely as I do, that compensation means just and fair compensation, then my advice to the Hon'ble the Mover of the amendment would be that he need not press his amendment.

Raja Jagannath Bakhsh Singh: In view of the discussion that has taken place, Sir, I would not like to press my amendment. I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Now, the discussion will only be about the whole clause.

Sri Lakshminarayan Sahu (Orissa: General): Mr. President, Sir, while I approve of the clause as it stands now, I want to make certain observations especially with regard to Orissa Zamindaris. In Orissa the state of tenants is very bad and that is due to the people of Orissa receiving English education a little latter than the people of Bengal and elsewhere. What happened was the Zamindaris that were in Orissa were transferred to the hands of absentee landlords in Bengal and the result has been that two-thirds of North Orissa--as it is called now--i.e., the districts of Balasore, Cuttack, Puri and Sambalpur two-thirds of the land in these districts are in the hands of absentee landlords and the result has been extremely disastrous. When they bought these Zamindaris they did not purchase them for a fair price. In fact, the Government records say that there was broad day-light robbery and that is how these Zamindaris were purchased, I, therefore do not see why we should give any compensation to such Zamindars who bought these lands by a fluke or acquired them by broad day-light robbery.

Secondly, I want to draw the attention of the House to another Zamindar, the Zamindar of Jeypore. Now Jeypore Zamindari constitutes the whole of the Koraput District, which is one of the six districts of Orissa. It is a great pity that the Zamindari gives 16,000 rupees per annum to the Government but enjoys an income of Rs. 16 lakhs per annum. This state of things is extremely bad and it must be cured. It is very difficult to run the administration in the presence of such Zamindars. I, therefore, say that while giving compensation--and I also say while giving just compensation--we should be very just to these absentee landlords of Bengal and also to such landlords as the landlord of Jeypore Zamindari in Orissa. These are the things that I wanted to say, in particular, about Orissa.

Another thing I want to say is that in future when trying to build up a democratic State, we cannot bear that such a state of things as the existence of these Zamindars, which is very galling, should be allowed to continue for some time more to come. The sooner the Zamindars are paid off the better. I have nothing more to say except to add that out of 100 zamindars at least 99 today have a very bad name and the duties that have been imposed on them are not performed by them. Take, for instance, one duty of the Zamindar. It is a part of their duty laid down by Government that they should look after the interests of the cultivators. They never look to the interests of the cultivators. On the other hand, the cultivators are rack-rented too much. There are so many illegal cesses which they take. If I were to narrate them one after another, it would make a very long list. In fact, there has been great agitation 'in one of the Zamindaris in Orissa--i.e., the estate of Kanika where 64 different kinds of illegal cesses, were taken. Now, in spite of agitation the same situation exists even today. The tenants are harassed in many ways. Therefore, when we are promised a democratic republic and that too very soon, I say we cannot bear the oppression of Zamindars. The sooner the Zamindars are paid off the better.

Mr. Satyanarayan Sinha (Bihar: General): I move: Sir, that the question be now put. The matter has been sufficiently discussed.

Mr. President: I have got some more names. Mr. Phool Singh.

Shri Phool Singh (United Provinces: General): *[Mr. President, Sir, several speeches have been made from the floor of the House, which go to show that some compensation is proposed to be given in lieu of the abolition of Zamindari. It is true, as Bishwambhar Dayal Tripathi has said, that many people acquired their zamindari by being traitors to the country. In reply to that a Raja Sahib has said that some of them have also helped in the freedom-struggle of the country. I submit that no reward has been given to men who helped the country. In that war, lands were forfeited. It would be an unusual case if one was granted an estate for fighting against the Government. Anyway, the question just now is one of compensation. One of the reasons that is constantly advanced in favour of granting compensation is the Government of India Act of 1935, and whenever any person raises the point that no compensation should be paid then he is told that it can only be done after the repeal of the Government of India Act of 1935. But today the very same clause is being passed by the Constituent Assembly, and I think, by putting it, not in the country's Constitution but in the list of its Fundamental Rights, the question is being closed once for all. Many people have spoken on the question of zamindari, but there is a much bigger problem than zamindari. It is industry. Who does not know that during the last five or six years of the war, many Mill-owners have earned profits several times more than their invested capital? Take the Textile Industry in which, on the paid-up capital of nearly fifty crore rupees; some hundred crores of rupees have accrued as profits. It would not be very proper to compare this country with others. During this war capitalists of no other country have reaped as much profits as Indian capitalists. Therefore, what I want to say is that by passing the clause in its present form we would be running the risk of permanently obstructing the possibility of reform in this country for ever. I appeal to my elders and others, who guide the thinking of this House, to ponder again over this clause and to re-shape it in a way so as not to make it impossible for the coming generations to introduce reforms if they choose. Section 16 in its present form, as it has been placed before the House, if passed, will make nationalisation of industry very difficult, if not impossible. I do not want to take any more time of this House, but I request you to refer this clause back for further consideration.]*

Sri Rajkrushna Bose (Orissa: General): Sir, I move that the question be now put.

Mr. President: There is a motion that the question be now put. I think we have had enough discussion and I would like to take the sense of the House. The question is:

"That the question be now put."

The motion was adopted.

Mr. President: Sardar Patel will give his reply.

The Hon'ble Sardar Vallabhbhai Patel: Sir, the discussion on this question has gone on a wrong track. An amendment was moved by somebody, which has been subsequently withdrawn, but those who took part in the debate assumed that this clause was intended for the purpose of acquiring Zamindaris. That is, to say the least, not understanding the real meaning of the clause. Land will be required for many public purposes, not only and but so many other things may have to be acquired And the State will acquire them after paying compensation and not expropriate them. That is the real meaning of the clause. But the Zamindars or some of their representatives thought that their interests must be safeguarded by moving an amendment or by making a speech here. But they are not going to safeguard these interests in this way. They must recognise the times and move with the times. This clause here will not become the law tomorrow or the day after; it will take at least a year more, and before that, most of the Zamindaris will be liquidated. Even under the present Acts or laws in the different provinces legislation is being brought in to liquidate Zamindaris either by paying just compensation or adequate compensation or whatever the legislatures there think fit. Therefore, it is wrong to think that this clause is Intended really for them. It is not so. The process of acquisition is already there and the legislatures are already taking steps to liquidate the Zamindaris. Therefore, we must not or need not go into the question whether the Zamindars have in the past been patriotic or a nuisance or anything of that kind. It is all irrelevant and we need not go into the past.

There is no amendment to this clause and, therefore, I do not have to say anything by way of answer. I move that the clause as moved by me be passed.

Mr. President: I put clause No. 19 to the House.

Clause 19 was adopted.

Mr. President: We now come to Clause 20.

CLAUSE 20

The Hon'ble Sardar Vallabhbhai Patel: I move clause No. 20.

"(1) No person shall be convicted of crime except for violation of a law in force at the time of the commission of that act charged as an offence, nor be subjected to a penalty greater than that applicable at the time of the commission of the offence.

(2) No person shall be tried for the same offence more than once nor be compelled in any criminal case to be a witness against himself."

I do not suppose there will be any amendment to this clause, and I move that this clause be accepted.

Mr. President: I have got notice of several amendments to this clause also. I will ask the movers if they want to move them. Mr. Kamath.

Mr. H. V. Kamath (C.P. & Berar: General): Sir, as regards amendment No. 95 subsequent scrutiny shows that my point comes under clause 9 and therefore there is no necessity to move my amendment. As regards my amendment No. 96, I would like to reserve my right to move it later.

Mr. President: Shri Rohini Kumar Chaudhury, No. 97.

Srijut Rohini Kumar Chaudhury (Assam: General): I may move my amendment now if you would permit. This relates to the important question of possession of fire-arms and abolition of death sentences. But if this is treated as a new clause, it would be better to move it with other new clauses.

Mr. President: It will be a new clause.

Srijut Rohini Kumar Chaudhury: Then I do not move.

Mr. President: That means there are no amendments to this clause. I put the clause to the House.

Clause 20 was adopted.

Mr. President: Then we come to clause 21.

CLAUSE 21

The Hon'ble Sardar Vallabhbhai Patel: Sir, I move clause 21:

"(1) Full faith and credit shall be given throughout the territories of the Union to the public acts, records and judicial proceedings of the Union and every Unit thereof and the manner in which and the conditions under which such acts, records and proceedings shall be proved and the effect thereof determined shall be prescribed by the law of the Union.

(2) Final civil judgments delivered in any Unit shall be executed throughout the Union subject to such conditions as may be imposed by the law of the Union."

I move this formally for consideration of the House.

Mr. President: I have got no notice of any amendments to this clause. So I shall put the clause.

Clause 21 was adopted.

Mr. President: Clause 22.

CLAUSE 22-RIGHT TO CONSTITUTIONAL REMEDIES

The Hon'ble Sardar Vallabhbhai Patel: Sir, I move clause 22:

"(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights guaranteed by this part is hereby guaranteed.

(2) Without prejudice to the powers that may be vested in this behalf in other courts. The Supreme Court shall have power to issue directions; in the nature of the writs of *habeas corpus, mandamus, prohibition, quo warranto and certiorari* appropriate to the right guaranteed in this part of the Constitution.

(3) The right to enforce these remedies shall not be suspended unless when. in cases of rebellion or invasion or other grave emergency, the public safety may require it."

There may be some amendments to this clause, Sir.

Mr. President: There are several amendments of which I have got notice. There is one from Sir B. L. Mitter.

Sir B. L. Mitter (Baroda): I am assured that this matter will be considered when the Judiciary Report comes up. In view of this assurance I do not move my amendment.

(Amendments Nos. 99 to 101 were not moved.)

Sri K. Santhanam (Madras: General): I move:

"That in sub-clause (3) of clause 22, after the word 'emergency', the following words be inserted:

"declared to be such by the Government of the Union or of the unit concerned'."

This is an obvious slip and I think it is acceptable to the mover. I do not want to say anything more. I move the amendment.

(Amendments Nos. 103 to 106 were not moved.)

Mr. President: There is only one amendment which has been moved.

Mr. K. M. Munshi (Bombay: General): There is one amendment of which I have given notice this morning. That is a purely verbal amendment, just re-arranging the wording. The amendment that I am moving is only to remove a little inelegance of language in sub-clause (1) of clause 22. The sub-clause says:

> "The right to move the Supreme Court by appropriate proceedings for the enforcement of any of the rights guaranteed by this part is hereby guaranteed."

The word "guaranteed" appears twice, and it is felt that it is not an elegant phraseology. I therefore move the following amendment:

> "In clause 22(1), for the words 'any of the rights guaranteed by this part is hereby guaranteed substitute the words 'any of the rights provided for in this put is hereby guaranteed."

Mr. President: The two amendments and the clause are open now for discussion.

Sri K. Santhanam: I am afraid that the clause, as has been framed, is very defective, and it is one of those clauses which require careful consideration and revision. I understand that this is one of those things which will be considered by the Committee which is dealing with the judiciary. I wish this clause had also been left to them. As it stands, it is liable to serious misinterpretation. For instance, sub-clause (1) says :

> "The right to move the Supreme Court by appropriate proceedings for the enforcement of any of the rights guaranteed by this part is hereby guaranteed."

It might possibly imply that the Supreme Court is to be vested with exclusive original jurisdiction on all the matters governed by the fundamental rights, or it may mean that it is invested with concurrent original jurisdiction with another court. I would like to ask Dr. Ambedkar what it means--"the right to move the Supreme Court is guaranteed". I can come at any time to the Supreme Court and move the Court on any of the matters connected with this. It may be by way of original jurisdiction, it may be by way of appellate jurisdiction. The matter is not clear, and therefore it is one of those things which ought to be made clear. Then in paragraph (2) of the clause, we have:

> "Without prejudice to the powers that may be vested in this behalf in other courts."

Which is the authority to vest it? Is it the Union legislature or the Unit' legislature ? I think in matters of interpretation of the Constitution or enforcement of fundamental rights the vesting of powers in the courts should be purely a Union matter and it ought not to be given to the units, because the units may particular defeat the exercise of these fundamental rights in two may different ways. For instance, if they all original jurisdiction shall be in the Supreme Court, the ordinary citizen will not be able to go up every time to the Supreme Court. Or if they vest it in the magistracy, then he will have to get redress only by way of appeal, which is always dilatory and inconvenient. Therefore, the vesting of jurisdiction is an important matter for the citizen. I think all original jurisdiction in the matter of enforcement of fundamental rights should be vested only in the High Court of the Unit. It should not be given either to inferior courts, or to the Supreme Court except in matters concerning the Unit and the Union of inter-Unit matters. Therefore the High Courts in. the Units should be the lynch-pin for the enforcement of these rights. I think this matter must have been made clear. I hope it will be made clear. As it stands, it is very defective and I reserve my right to ask for a review of this clause when the matter comes up again.

The Hon'ble Sardar Vallabhbhai Patel: This is a clause which provides a judicial remedy. If we provide for fundamental rights, it is necessary that we must provide also for a remedy. But it does not mean that this excludes or appropriates the jurisdiction of other courts or High Courts. It has nothing to do with that. When the whole judicial set-up will be considered, everything will be considered in proper order and in an appropriate manner, and, therefore, Mr. Santhanam's apprehensions are unnecessary. He reserves his right; everybody has reserved his own right, but reservations are unnecessary because the whole thing will have to be incorporated in the Constitution, and the final clause will have been considered several times before they are inserted in the Constitution. There is no reason to apprehend anything of that kind. I, therefore, move that the clause be accepted with the amendments which have been moved. I accept the two amendments.

Mr. President: The Mover is prepared to accept the two amendments--one moved by Mr. Santhanam and the other by Mr. Munshi.

The two amendments were separately put and adopted.

Clause 22, as amended, was adopted.

Mr. President: Clause 23.

CLAUSE 23

The Hon'ble Sardar Vallabhbhai Patel: I move clause 23:

> "The Union Legislature may by law determine to what extent any of the rights guaranteed by this part shall be restricted or abrogated for the members of the armed forces or forces charged with the maintenance of public order so as to ensure fulfilment of their duties and the maintenance of discipline."

This is a clause on which there can be no controversy and I hope there will be no amendment. I move.

Clause 23 was adopted.

Mr. President: Clause 24.

CLAUSE 24

The Hon'ble Sardar Vallabhbhai Patel: Sir, I move clause 24:

> "The Union Legislature shall make laws to give effect to those provisions of this part which require such legislation and to prescribe punishment for those acts which are declared to be offences in this part and are not already punishable."

This is a consequential clause and therefore there will be no amendments to it. I commend it for the acceptance of the House.

Clause 24 was adopted.

Mr. President: Now there are two clauses that had been referred to a committee of five. We may now take them up one by one. The new clause 3 may now be moved.

Mr. K. M. Munshi: I move that the following clause be substituted for the original clause:--

> "Every person both in the Union and subject to its jurisdiction, every person either of whose parents was at the time of such person's birth, a citizen of the Union, and every person naturalised in the Union shall be a citizen of the Union.
>
> Further provision regarding the acquisition and termination of Union citizenship may be made by the law of the Union."

The reasons have already been given fully in the Report of the Ad Hoc Committee. I have nothing to add to it.

Sri K. Santhanam; Sir, I move that the following be added at the end of the first paragraph of this clause:

> "Every person born or naturalised in India before the commencement of the Union and subject to its jurisdiction shall be a citizen of the Union."

The necessity for this amendment is simply this: You are conferring citizenship on people who are to be born hereafter and on those who are born citizens on the date the Union comes into existence. That means that unless any of us are born within the territories of the Union, we shall not be citizens. I have consulted Sir Alladi Krishnaswami Ayyar. This clause only covers the cases of persons who are born citizens on the day the Union comes into existence. Under the Cabinet Mission Plans, Union territories were expected to be co-extensive with the territories within the frontiers of India. In that case my amendment may not be necessary. But there is the possibility that the Union territory will be much smaller than the present territories. Supposing there is a man in the Union born in Sind. According to this definition he will not be a Union citizen. He will become an alien. Do you want that consequence to happen ? I want to say that, at the beginning of the Union, anybody who has been born in India and who is subject to the jurisdiction of the Union, shall be a Union citizen. After the Union has come into existence I have no objection to this clause. Therefore it is a fundamental point. I hope it will be fully considered and, either in this form or in some other form, provision will be made to see that those who are citizens of India at the time of the commencement of the Union are treated as citizens and not deprived of citizenship simply because they are born outside territories of the proposed Union.

The Hon'ble Sardar Vallabhbhai Patel: It is not necessary to consider such questions at this stage. We are at present providing for citizenship for people residing in the Union. Nobody can now say what will be the situation when the Constitution is finally drafted. Nobody can now say whether any part of India is going to be separated from the rest. When finality is reached in regard to these matters we can consider what should be the adjustment to be made between the parts if there are to be parts.

It is unnecessary to consider it at this stage. I hope the Mover will withdraw his amendment.

Sri M. Ananthasayanam Ayyangar (Madras: General): What about persons born in the Union ?

The Hon'ble Sardar Vallabhbhai Patel: You will be considered to have been born in the Union when the Constitution is passed.

The Hon'ble Sri C. Rajagopalachariar (Madras: General): The point to be covered is not a ridiculous or simple thing as has been imagined.

The Union will consist of defined areas. It may not consist of the whole of India, but of certain parts of India only. Let us admit that. Now I will cite a concrete case. Suppose I am born in Mysore. I am a man who was born in Mysore. Mysore does not join the Union. Let us take it like that. Then, I shall not have been born in the Union according to the clause by any process of legal construction which is to be provided for legally. Therefore it is that it is suggested that any person who is born in any part of India at the time of the commencement of the Union shall be deemed, when by long previous residence he becomes subject to the jurisdiction of the Union, to be a citizen.

This is a very substantial question. Probably under this category will come a considerable section of the present population who should automatically be taken to be citizens of the Union so soon as it is formed. It does not depend merely on a process of interpretation or explanation. It has to be definitely provided for. This has to be considered and included.

Mr. R. K. Sidhwa: Sir, as stated by Mr. Santhanam, if the position is left as it is, this clause will deprive many persons who are born in the Union, which is going to be defined later on,--I hope it will comprise all parts of India--of their rights of citizenship of the Union. What will be their position ? I am born in Sind. Supposing Sind is not going to be part of the Union, what will be my position ? Am I to lose my citizenship of the Union ? That is a point which has to be considered later on. As I said the other day, citizenship right is a fundamental right. Why should a law hereafter provide for that ? The right of citizenship has a first place in the Fundamental Rights. Foreigners who come to India for their own personal interest and gain can make an application for citizenship and can get it immediately, whereas those who are born in India will be under a disadvantage. For the foreigners a period of ten years must be mentioned. If the State is satisfied that after ten years they have their stake in India they can have the right of citizenship. This matter was discussed for a number of hours in this Chamber yesterday. We did not like to treat this matter lightly. We wanted to give this matter very serious consideration and you, Sir, were good enough to impress upon those who differed from us the need for giving this matter sufficient consideration and warned us against ignoring it in view of the fact that every person should have the right to become a citizen of this country. After all, we want to be in the Union. We cannot forget that we are Indians, that we were born here. If India is to be divided into parts, what kid of rules are we going to make for citizenship ? I consider, Sir, that Rise who were born here before the Union should be given full guarantee that they are citizens of the Union and that they would not be deprived of their citizenship.

Then, about naturalisation. Any man who comes here from a foreign country for his personal gain, for his personal benefit, has only to say, "I want to be naturalised" to become a citizen of the Union. I am born in India but I am to be deprived of my citizenship. A foreigner by simply giving a, declaration that he wants to become naturalised, gets all the rights of citizenship.

With due deference to the framers of this clause, I do not think this matter has been given due consideration although it has been stated that:

"Further provision regarding the acquisition and termination of Union citizenship may be made by the law of the Union."

I do not want any law to provide for my citizenship. Therefore, this matter should be discussed here, Sir.

Dewan Bahadur Sir Alladi Krishnaswami Ayyar: (Madras: General): I think, Sir, there is some force in Mr. Santhanam's argument. We did not, it must be admitted, consider in the Committee this particular question now before the House, but it may not be wise to put in an amendment on the spur of the moment. If a person was a resident of India, and makes the Union his home after the Union comes into existence, in such a case he might get citizenship. The mere accident that he was born in India or British India but not in the Union cannot give him the right of citizenship. We might have to add a further condition to this clause saying that they must make the Union of India their permanent residence.

So far as the term "born in the Union" is concerned, I do not think there need be any difficulty. Union: there is a geographical concept. It is not a political concept. No man can be born in a political concept. "Born in the Union" only means "born in the territories comprising the Union".

There is certainly some force in the objection raised by Mr. Santhanam. We do not want suddenly to disenfranchise any persons, possibly very distinguished people born in a Native State but today permanent residents of British India. Therefore, so far as that particular class is concerned, we might consider an appropriate formula. We may not be in a position to give the right of citizenship to every person born in any part of India. Suppose some of the States keep out of the Union, we may have to consider whether we should give the rights of citizenship to the people of those States. Therefore, we will carefully consider this aspect and put in an appropriate clause. In the Committee--I am a member of the Committee and Dr. Ambedkar is a member--we did not consider this particular complication that might arise. I think we should not push through an amendment on the spur of the moment.

But so far as the general principle is concerned, there cannot be any exception. "Every person born in the Union and subject to the jurisdiction; every person either of whose parents was, at the time of such person's birth, a citizen of the Union, and every person naturalised in the Union", so far as that part is concerned, there can be no exception. That was considered by the Committee in all its aspects. This particular class of people which Mr. Santhanam mentioned will have to be separately dealt with and provided for. On the understanding that this class of people will be provided for, this clause should be passed, or the whole clause might stand over, I have no objection. But so far as the main principle is concerned, we are all agreed and there is, absolutely no difference of opinion. It was discussed threadbare by the Committee which was appointed by this House and we unanimously came to the conclusion that this should be adopted.

Shri M. Ananthasayanam Ayyangar: I do not agree with Sir Alladi. He says that Union means Union territory. The clause says, "subject to the jurisdiction thereof". Is it subject to the jurisdiction of the territory or the Government of the territory? Mere territory is not enough. I therefore urge upon the House to remit this clause for the reconsideration of the Expert Committee.

Diwan Bahadur Sir Alladi Krishnaswami Ayyar: We may have remittance or re-remittance but I do not think that that Committee can throw any additional light on this. If there is any other class to be provided for, we will provide for them. I am merely answering the suggestion of remittal and all that. I was stating that it was not fair to that Committee to remit. This is a political question and not a legal question. We must come to a conclusion on that point. We were only anxious to get the help of that Committee for the purpose of determining the question whether 'birth' shall be the foundation of a nationality or not, and that Committee has given its opinion. We may have any number of committals and re-committals, so far as the Committee of this House is concerned. The Committee which considered this consisted of Members of this House and also persons who are not members of this House. Under these circumstances, I would suggest that we have had all the help from people who are not members of this House and from the gentleman who was the President of that Committee. I do not think it will be fair to that Committee to remit it as if they had not considered any particular aspect of the question. It is a new question that has cropped up before the Committee and let us deal with it squarely. And before we next meet, there will be no difficulty in providing so far as that particular class of cases is concerned. This general principle may be passed and the other clause may be brought in later on or the whole thing may stand over. I am not wedded to either one theory or another, but let it be clearly understood that so far as the main principle is concerned, we accept the recommendation of the Committee presided over by a very distinguished lawyer.

The Hon'ble Sri C. Rajagopalachariar: I am sorry Sir, the discussion has proceeded on lines which create a certain amount of confusion. I wish that attention should be bestowed on one important and entirely non-controversial matter, namely, that there are numerous persons in India today, who will be within the jurisdiction of the Union, however restricted it may be, however small it may be, who were born in other parts of India and who are now resident within the territories which are going to be in the Union. The formula as it stands today will exclude those large classes of people, not intentionally, but unintentionally. Therefore, the formula has to be corrected. It has to be corrected so as to give automatic citizenship to those large numbers of people who are born in various parts of India, as we today understand it, and who will be old and permanent residents of the areas which will be comprised within the Union. That exclusion would be wholly unintended and wrong. Therefore, the formula has to be revised. I myself believe that it can be revised, if Sir Alladi and Dr. Ambedkar sit at it, in the course of 15 minutes; but if it is considered difficult, the whole thing should be remitted, because if we pass a clause like this solemnly in the Constituent Assembly, it cannot be added to afterwards without much ceremonial. I would suggest that it be deferred. Sir Alladi and Dr. Ambedkar may meet today, discuss and finish it in a few minutes. If they do not think so, let them take their own time, but it cannot be simply ignored on the ground that it is a small matter. It is too large a matter to be put aside.

Mr. K. M. Munshi: Nobody suggests for a moment that this is not an important matter. The Committee did not consider it, but when the original draft was placed this difficulty was present in my mind. But this, as Sir Alladi very rightly said, is not a question of fundamental rights only. It is a question which will have to be decided in future in the setting of the political situation at the time when we finally draft the Constitution. Of course, it is very easy to move an amendment, but we do not know today what is going to be the position of the Union with regard to its territory, whether it is going to be the whole of India, or part of it, or whether some portions are going to be hostile. The second question that has to be considered is whether people born in the Union, who are residing in other parts of, India, will have rights as regards citizenship in those territories. An instance was given of Mysore. I will restrict myself to that case. Suppose Mysore stays out of the Union and makes a law like this, that any Indian born in any other part of India, though residing in Mysore for a whole life-time shall not be a citizen. This House will be in a position to consider those intricate problems not merely as a matter of fundamental right but as a question dependent upon the political situation at the time we pass it finally. This fundamental right, as drawn up, is the minimum right, the basic right. The fluctuating situation today is such that you cannot possibly draft any amendment to this clause. Let us, therefore, see the political situation between now and the day when the situation is going to be finally considered. At that time it will be possible to produce a proper formula which will find a Place either in the Fundamental Rights or in some other convenient place. It has been said that several fundamental rights are going to be considered hereafter. It has also been said that this is a preliminary draft and any situation arising hereafter will be considered. I, therefore, submit that we should take the clause as it is, and with regard to the amendment of Mr. Santhanam, it should be referred to the Advisory Committee together with the other amendments which are going to be referred, so that a proper aspect of the question may be brought before the House again.

Dr. B. R. Ambedkar (Bombay: General): Mr. President, Sir, I think there can be no doubt that the point raised by Mr. Santhanam is a point of great importance and we have to take this matter seriously. The difficulty that has arisen will be seen easily if one reads the very first sentence of the clause as drafted by the Committee. The draft says, 'every person born in the Union'. Obviously that has reference to future, those who will be born in the Union after the Union is formed. The question is this. What is going to be the position of people who are born in India, but who are born before the Union has come into being ? In my Judgment, in order to cover that case, we shall have to introduce another clause. I am not suggesting an amendment, I am putting forth an Idea. The new clause shall have to be something like this :

"All persons born in India, as defined in the General Clauses Act and who are residing in the Union and subject to the jurisdiction of the Union shall be citizens of the Union."

I think that a clause somewhat on these lines is necessary and it will cover the case of people who are born in India, who will be the subjects of the Union, when the Union comes into being. Without this clause, large numbers of people will be denationalised. They will have no nationality at all. I, therefore, suggest that it may be as well to send the whole clause back for further consideration.

Mr. President: A suggestion has been made that the whole clause be held over for further consideration.

Mr. R. K. sidhwa: This is not a matter for lawyers only. This question has a bearing on every ordinary person.

Mr. President: The Advisory Committee will be free to consider it, and if it so feels, it can put forward any suggestions at the next sitting.

Do I take it that the House agrees that this clause be held over for further consideration ?

Many Hon'ble Members: Yes.

Mr. President: It is held over. Now we take up clause 11.

CLAUSE 11

Mr. R. M. Munshi: The clause which has emanated from the Committee to which it was referred runs in thus.

> "Traffic in human beings, and *begar* and other similar forms of forced labour are prohibited and any contravention of this prohibition shall be an offence."

The Explanation which was dropped is in the view of the Committee necessary in order that the wording "forced labour" may not have a controversial interpretation. Sir, there was a conflict of opinion in several sections of the House as regards the Explanation and this Report was placed before the House only this morning. I, therefore, submit that it will be fair that this clause also should stand over till we meet again, because, I believe, certain Members would like to move amendments. I, therefore, feel it will not be proper that this clause should be considered today. It should stand over.

Mr. President: Instead of moving it, do you suggest that it should be held over ?

Mr. K. M. Munshi: Yes.

Mr. President: Is it the wish of the House that this clause also should be held over ?

Many Hon'ble Members: Yes.

Mr. President: It stands over.

We had a number of new propositions which were sought to be put forward in the form of amendments by certain Members, and it was decided by the House that they should be taken up after the clauses were disposed of. We have got a large number of such clauses which have not been considered. I do not know in what form the House would like to take up these.

Seth Govind Das (C.P. and Berar: General): I move, Sir, that all these new clauses be referred to the Advisory Committee so that the Advisory Committee may first consider them and then they may be brought before this House.

Mr. President: Seth Govind Das has made a suggestion that these clauses be referred to the Advisory Committee for consideration and that they may be brought up here with the Report of the Advisory Committee. May I take it that it is the sense of the House that all these clauses be referred to the Advisory Committee ?

Hon'ble Members: Yes.

Mr. President: All these clauses are referred to the Advisory Committee.

Mr. B. K. Sidhwa: Sir, paragraph 9 of the Report of the Chairman of the Advisory Committee states:

"The Fundamental Rights Sub-Committee and the Minorities Sub-Committee were agreed that the following should be included in the list of Fundamental Rights :--

"every citizen not below 21 years' of age shall have the right to vote at any election........"

"While agreeing in principle with this clause, we recommend that instead of being included in the list of fundamental rights it should find a place in some other part of the Constitution."

The opinion of the House has to be taken whether it is in favour of putting this clause in the Fundamental Rights or whether it should form part of the Constitution. That question has to be decided and discussed here. Otherwise, what would be the effect of paragraph 9 of the Report of the Chairman of the Advisory Committee which has been submitted to you ? Does it automatically go into the Constitution ? The Chairman of the Advisory Committee by this para. desires to know the view of the House.

Mr. President: What is your suggestion? Do you move any proposition?

Mr. R. K. Sidhwa: I have no objection to this clause forming part of the Constitution.

Mr. President: What is your suggestion, whether this should form or should not form part of the Constitution ?

Mr. R. K. Sidhwa: It should form part of the Constitution.

The Hon'ble Sardar Vallabhbhai Patel: We have stated in the Report while agreeing in principle with this clause, we recommend that instead of being included in the list of fundamental rights, it should find a place In some other part of the Constitution."

Mr. President: This is the Report of the Committee and the House has to express itself on this part of the Report. That is why I asked Mr. Sidhwa whether this should be accepted and it should find a place in some other part of the Constitution.

Mr. R. H. Sidhwa: I said it should form part of the Constitution.

Mr. President: Mr. Sidhwa's proposition is that that paragraph should be adopted.

Does any one wish to speak on this?

(None).

I put it to the House that paragraph 9 of the Report be adopted.

Paragraph 9 of the Report was adopted.

CLAUSE 2

Sri Biswanath Das (Orissa: General): I propose to invite the serious attention of the House to the implications of clause 2. It has been laid down:

> "All existing laws, notifications, regulations, customs or usages in force within the territories of the Union inconsistent with the rights guaranteed under this part of the Constitution shall stand abrogated."

In this connection, I wish to refer to paragraph 7 of the Report wherein they have stated that they had not sufficient time to examine in detail the effect of this clause on the mass of existing legislation.

Mr. President: We have already considered clause 2 of the Fundamental Rights.

Sri Biswanath Das: I am not proposing to revise the clause. I am only referring to something which arises out of the acceptance of clause 2. I am going to suggest what further action is necessary as a result of the acceptance of clause 2. A thorough examination of its implications is necessary in the sense that we have got local laws and Indian laws and the extent to which these laws and regulations, etc., are going to be abrogated as a result of the acceptance of these fundamental rights, will have to be examined. This could be examined either by the Government of India and the Provincial Governments or by a committee of this House. It is rather unfortunate that we members; of the Agenda Committee could not go into this question because it was not before us. In these circumstances, I beg to suggest that it is necessary for us to take note of this question and to examine the implications in full before we again assemble in this House. Unless we fully examine the extent of abrogations, it will not be possible for this House to realise the full implications and to make any interim arrangements in the Constitution. I am only referring to certain circumstances flowing from the acceptance of clause 2 and offering certain suggestions.

Mr. President: I take it you are referring to the last sentence of paragraph 7 of the Report which says:

> "We recommend that such an examination be undertaken before this clause is finally inserted in the Constitution."

It has been accepted. We are going to have an examination as suggested.

Mr. H. V. Kamath: My suggestion is that it should be undertaken immediately so that we may have a report as to the implications before us.

Mr. President: When the House has accepted it, that means that action will be taken.

Mr. H. V. Kamath: How will these clauses go to the Committee?

Mr. President. They will go as they are. The Secretariat will refer them to the Advisory Committee.

PRESIDENT'S REMARKS REGARDING THE RESOLUTIONS RELATING TO LINGUISTIC AND CULTURAL PROVINCES AND THE LANGUAGE OF THE CONSTITUTION TO BE FRAMED.

Mr. President: There are one or two matters to which I should like to make a reference. Hon'ble Members will recollect that notice was given of Resolutions regarding the formation of linguistic and cultural provinces by several Members in the last Session of the Assembly and those Resolutions were held over and it was expected that they would be taken up in this Session. But as we have already under Resolution of this House decided to constitute two Committees, one for drawing up the principles of the Union Constitution and another for drawing up a model Constitution for the provinces, I announced the other day that those Committees would take into consideration those Resolutions also. I take it that that would be done and nothing further need be done now regarding those Resolutions.

Then there is one other matter about which I have been feeling bit worried and I wish to share that worry with the House--not that expect any answer to it just now but I would like the Members to take that into consideration. All our proceedings are being conducted in English because there are many Members who are not acquainted with the national language and so the drafts also are being prepared in the English language. In the drafts there are many expressions used which may be called terms of art, that is to say, technical language, taken from some constitution or other. Some of these constitutions have been subjected to legal interpretations, and by using that language we are in a way attracting the operation of those interpretations also to our constitution. In future--I do not say immediately, but in the future--a time may come when we shall probably cease to depend upon English as our language, and if the Constitution is passed today in the English language, then that remains the original constitution and any question of interpretation will have to be with reference to the language used in that constitution as it is passed today. The question arises whether we shall, continue for ever in future to interpret our Constitution in English language and whether we shall expect our judges in future always to be acquainted with English language so that they might interpret our Constitution in the future. If the Constitution is passed in the English language, I suppose that will be the natural consequence. It is difficult at the present moment to make a suggestion which will resolve this difficulty. I was wondering whether we could have a translation made of this Constitution as it is drafted as soon as it is possible, and ultimately adopt that as our original Constitution. (*Cheers*). In case of any ambiguity or any difficulty arising as to interpretation, the English copy will also be available for reference, but I would personally like that the original should be in our main language and not in English language, (*Loud Cheers*), so that our future judges may have to depend upon our own language and not on a foreign language. *(Cheers).*

As I said, I do not expect an answer to a question like this, but I would like Members to take this matter into consideration, and in the meantime, if I have your permission, I Shall try to get the Constitution as it is drafted translated into our language as soon as possible. I realize the difficulty of putting it in a form in which it will have the same interpretation, because appropriate terms of art will not be found in our language and we have naturally to add clauses which will explain those expressions of art. But if I have your permission, we might make an attempt. I am afraid our present staff the staff we have got for translating these things, is not adequate for this purpose and we shall have to take the help of persons who are really persons of a very high order and who can do that. I do not know if it will be possible for me to do it, but if I have your leave, I might attempt it. I thought I might bring this to your notice for your consideration because, if this Constitution is going to be a Constitution which is expected to last, at any rate, for some time, then we cannot expect to have it in a language which is not our language. We must provide for a time when we shall have to depend on our own language, and that, at a not very distant date. Therefore I have brought this to the notice of the House so that Members might also take this into consideration and offer their suggestions, if not today, at least at a later stage before we have actually finalized our Constitution.

(Some Members at this stage rose to speak.)

Mr. President: I did not expect any discussion on this. I simply expressed what I was feeling and I expect this thing would be taken into consideration at a later stage.

There is one other matter.

Shri Vishwambhar Dayal Tripathi (United Provinces: General):*[In this connection I have to...]*

The Hon'ble Mr. B. G. Kher (Bombay: General): On a point of order, Sir. This is discussing.

Mr. President: Anyway, let him finish.

Shri Vishwambbar Dayal Tripathi: *[I do not wish to say any thing in this connection. But rules provide that all the proceedings of the Assembly *e.g.*, agenda, etc., will be supplied to Members in Hindustani. True, there are difficulties. Nevertheless it is very important. I would request that some arrangements should positively be made for this in future.]*

Mr. President: *[Yes. I tell you why this could not be done. Our Hindustani Staff was not yet complete but arrangements are being made and I think it should be possible to arrange for it at an early date.]*

Shri Balkrishna Sharma (United Provinces: General): Without in any way going against the orders which have already been given in regard to the subject, may I just know whether the arrangement that is going to be made for the translation of the Constitution in our language will be in Hindi, Urdu or will be in a language which will be a conglomeration of both ?

Mr. President: It will be in a language which will be intelligible. *(Laughter).*

Mr. President: Then, one other matter which I think we have to decide, *i.e.*, the next session of the Assembly. At the last session the House passed a Resolution fixing the month of April for this meeting. I would suggest that instead of fixing any date or even a month the House should leave it to me to fix the time of the next meeting.

Hon'ble Members: Yes.

Mr. President: I can give this undertaking that I shall do it as soon as I feel that we have got material ready for the meeting.

Sri K. Santhanam: I suggest, Sir, that a formal motion to this effect may be moved.

Mr. President: That is what I am also suggesting. A formal motion may be moved.

Shri Vishwambhar Dayal Tripathi: *[In this connection, I would like to add....]*

Mr. President: *[Let this be over.]*

Mr. Satyanarayan Sinha: Mr. President, Sir, I move that this Constituent Assembly do adjourn till such date as the President may fix.

Mr. President: The motion is that the Constituent Assembly do adjourn till such date as the President may fix. Do I take it that the House accepts the proposition ?

The motion was adopted.

Mr. R. K. Sidhwa: I wish to make one request. That is, now that the date has been left to you, Sir, will you kindly see that the agenda is supplied to us in sufficient time at our residence, so that we may study it?

Mr. President: I have told you at the very beginning that I will fix the time when I have got the material ready for discussion.

(To Mr. Tripathi), You wanted to say something.

Shri Vishwambhar Dayal Tripathi: *[I have only to repeat what Mr. Sidhwa has said before you and nothing else.]*

Mr. President: I think we have now finished our work. So the House now stands adjourned till such time as I may fix.

The Constituent Assembly then adjourned till such time as the President might fix.

[English translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME IV

Monday, the 14th July, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock on Monday, the 14th July 1947, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

Mr. President: Members who have not yet presented their credentials and signed the Register will do so now.

(The Secretary then called out the name of Haji Abdul Sathar Ham Ishaq Sait.)

Mr. Deshbandhu Gupta (Delhi.): Mr. President, may I rise to a point of order?

Before the Honourable Member is called upon to sign the Register, I would like to know whether it would not be fair to this House to ask whether he still subscribes to the Two-Nation theory or not? I take it that, as a sovereign body, and in view of the Partition that has been decided upon, we should review the whole question and lay down that a Member who does not subscribe to the Objectives Resolution that has been passed cannot sign the Register.

I want your ruling, Sir.

Mr. President: An interesting point has been raised. But I do not consider it is a point of order at all. It is a question of the right of Members who have been elected to the Constituent Assembly under the procedure laid clown. Any one who has been elected is entitled to sit in this House as long as he does not resign. Therefore I do not think I can prevent any Member who has been elected duly from signing the Register.

The following, Members then presented their Credentials and signed their names it, the Register:

Madras

1.Haji Abdul Sathar Haji Ishaq Sait

2.B. Pocker Sahib Bahadur

3.Mahboob Ali Baig Sahib Bahadur

4.K. T. M. Ahmed Ibrahim Sahib Bahadur

Bombay

5.The Honourable Mr. Ismail Ibrahim Chundrigar

6.Dr. B. R. Ambedkar

7.Mr. Abdul Kadar Mohammad Shaikh

West Bengal

8. Pandit Lakshmi Kanta Maitra

9. Mr. Debi Prosad Khaitan

10.Mrs. Renuka Ray

11.Mr.Damber Singh Gurung

12.Mr. R. E. Platel,

13. Mr.Prafulla Chandra Sen

14. Mr.Upendranath Barman

15. Mr.Raghib Ahsan

16. Mr.Nazirudin Ahmad

17. Mr.Abdul Hamid

18.Mr. Satish Chandra Samanta

19.Mr. Suresh Chandra Majumdar

20.Mr. Basanta Kumar Das

21.Mr. Surendra Mohan Ghose,

22. Mr.Arun Chandra Guha

United Provinces

23.Chaudhri Khaliquzzaman

24Nawab Muhammad Ismail Khan

25.Mr. Aziz Ahmad Khan

26.Begum Aizaz Rasul

27. Mr. S. M. Rizwan Allah

East Punjab

28.The Honourable Sardar Baldev Singh

29.Diwan Charnan Lall

30.Maulana Daud Ghaznavi

31. Gyani Gurmukh Singh Musafir

32. Sheikh Mahoob Elahi

33.Sufi Abdul Hamid Khan

34.Chaudhuri Ranbir Singh

35.Chaudhuri Mohd. Hassan

36.Shri Bikramlal Sondhi

37. Prof. Yashwant Rai

Bihar

38.Mr. Tajamul Hussain

39.Mr. Saiyid Jafar Imam

40.Mr. Latifur Rahman

41.Mr. Mohd. Tahir

C.P. & Berar

42.Kazi Syed Karimuddin

Assam

43. Saiyid Muhammad Saadulla.

STATES

Mysore

44.Dewan Bahadur Sir A. Ramaswamy Mudaliar

45.Mr. K. Chengalarya Reddy

46.Mr. H. R. Guruv Reddy

47.Mr. S. V. Krishnamurthi Rao.

48.Mr. H. Chandrasekharaiya.

49. Mr.Mahomed Sheriff.

50.Mr. T. Channiah.

Gwalior

51.Mr. M. A. Sreenivasan.

52.Lt. Col. Brijraj Narain,

53.Shri Gopikrishna Vijavargiya

54.Shri Ram Sahai

Baroda

55.Mr. Chunnilal Purshottamdas.-, Shah.

Udaipur

56. Dr. Mohan Sinha Mehta.

56-A. Mr. A. Manikyalal Varma.

Jaipur

57.Raja Sardar Singhji Bahadur of Khetri

.

Alwar

58.Dr. N. B. Khare.

Kotah

59. Lt.-Col. Kunwar Dalel Singhji.

Patiala

60.Sardar Jaidev Singh.

Sikkim & Cooch Behar

61.Mr. Himmat Singh K. Maheshwari.

Tripura, Manipur and Khasi States

62.Mr. G. S. Guha.

Rampur and Benares

63.Mr. B. H. Zaidi.

Eastern Rajputana States

64.Maharaja Mandhata Singh.

65.Maharaj Nagendra Singh.

66.Mr. Gokul Bhai Bhatt.

Western India & Gujarat States

67.Col. Maharaj Shri Himmat Singhji.

68.Mr. A. P. Pattani.

69.Mr. Gaganvihari Lalubhai Mehta.

70.Mr. Bhawanjee Arian Khimjee.

71.Khan Bahadur Pheroze Kothawala.

72.Mr. Vinayakrao B. Vaidya.

Deccan States

73.Mr. M. S. Aney.

74.Mr. B. Munavalli.

Eastern States

75.Rai Sahab Raghuraj Singh.

76. RaiBahadur Lala Rajkanwar.

77.Mr. Sarangdhar Das.

78.Mr. Yudhisthir Misra.

Residuary Group

79. Mr. Balwant Rai Gopalji Mehta.

Mr. President: Is there any other member who has not signed the Register yet? I take it that there is no one here who has not signed the Register yet.

Shri Balkrishna Sharma: (United Provinces: General): *[Mr. President: Before you proceed to take up the business of the day I beg co put forward, with your permission, some questions for consideration. Sir, have I your permission ?]*

Mr. President: *[The practice so far has been that, when any question is brought forward, it is considered whether permission to debate any matter relating to it is to be given or not. No question has been raised so far. I do not know what you intend saying. I think that permission will be given if what you intend saying is found to be proper and in order.] *

Shri Balkrishna Sharma: *[Though no question has so far been raised yet my prayer is that I may be permitted to explain my purpose, and a discussion may follow on it thereafter.]*

Mr. President: *[I do not know what you intend saying. If you had seen me and explained your purpose before, I may have given you permission. As no question has been so far raised, I do not see how I can give you the permission to speak at this moment.]*

Shri Biswanath Das (Orissa: General): Mr. President, before you go on to the other items of the agenda I beg to invite your attention to the communique issued under the authority of Government on the decision regarding allotment of Armed Forces as per recommendations of the Sub-Committee. Sir, the decision is said to be final. It is said that it is a rough and ready division on communal basis based on the unanimous recommendation of the Armed Forces Reconstitution Sub-Committee, and it is said that this relates to allotment of ships etc., and that the requirements of each Dominion have been kept in view.

Mr. President: Mr. Das, I do not think the Constituent Assembly as such is concerned with any statement in any newspaper, at any rate, at this stage. Therefore the question does not arise.

Shri Biswanath Das: I am only submitting to you the contents to judge the relevancy of it. This concerns important questions of division of assets of India and has made us all anxious. This is practically the Legislature and Sovereign body. This matter is agitating the minds of all people.

Mr. President: I think you are suffering under a misapprehension. We are not yet the Legislative Assembly. We are still only the Constituent Assembly as it has been functioning so far. If this were the Legislative Assembly you might perhaps bring that in. Now I do not think that question arises.

Mr. H. R. Guruv Reddy (Mysore State): On behalf of the Mysore chosen representatives, I would like to bring to the notice of the President that we have not yet been supplied with any literature, particularly the Rules of Procedure. We have made the request to the Office but we have not so far been supplied. We do like to take part in the proceedings but we are unable to take part on account of this. We request you kindly to give necessary instructions to the Office.

Mr. President: The Secretary will take note of that and do the needful.

Mr. H. J. Khandekar (C. P. and Berar: General): On a point of information, I would like to know how many Scheduled Caste members have signed from the Indian States out of those who have presented their Credentials.

Mr. President: I am afraid this office is not in a position to answer this question. Perhaps at a later time you may get full information from the Secretary.

Mr. Tajamul Husain (Bihar: Muslim): May I know from you, Sir, if any member from Sylhet is present here to-day?

Sardar K. M. Panikkar (Bikaner State): On a point of order. Is there a question time for this Constituent Assembly?

Mr. President: There is no time fixed. I have given that latitude to the members. I hope it will not be abused.

ADDRESS BY PRESIDENT

Mr. President: *[Hon'ble Members, we are meeting today after an interval of two and a half months. During this period many important events have occurred to which I believe I should refer. The most important of these was the statement of His Majesty's Government made on June, the 3rd. This statement has profoundly affected Indian politics. One of its results has been the division of India, and it has also been decided to partition two provinces. Further, as a consequence of this, discussions are taking place, so far as I know, in the Government of India and the Provinces, concerned regarding the details of the Partition, and actual work relating to Partition is also proceeding. Besides this, changes in the membership of this Constituent Assembly have occurred. In Place of the members who formerly represented Bengal and Punjab some new and some former members have been returned in the new elections held in these two (which have now become four) provinces. Many States which had so far kept aloof from this Assembly have now sent in their representatives. The members belonging to the Muslim League who had so far remained absent are also attending the Assembly now.

The Constituent Assembly had appointed a number of Sub-Committees. Reports of these Sub-Committees have appeared in the Press and also been sent to the members. These reports, as they are now ready, will be placed before the House from time to time and you will be called upon to give your considered decisions on them. One of these Sub-Committee had been appointed to draft a model Constitution for the Provinces. Another was appointed to determine and recommend to us the principle on which the Union Constitution was to be based, and to prepare a rough draft of the Union Constitution as well. A third Committee was appointed to consider and determine the powers of the Union and submit its report relating to them. The reports of all the three Committees are now ready. One of these reports has been presented to the House for consideration and the reports of the other committees will be presented in due course, and I hope that the House will take its decision on them after due consideration during this session. It is my suggestion and I believe you will approve of it, that after the House has accepted the reports some persons may be appointed to prepare the detailed draft of the Constitution, and that a Committee be appointed to go through this draft carefully and to submit its opinion on it to this House when it meets again. The draft will then be introduced in this House for detailed consideration and acceptance. Thus the Constitution would be finalised.

Another committee known as the Advisory Committee had been appointed, but it has not completed its work. It has set up the following Sub-Committees--Minority Sub-Committee, Fundamental Rights Sub-Committee, Tribal and Excluded Areas Sub-Committee. These Sub-Committees are parts of the former. One of these Sub-Committees has submitted its report, but the reports of the other two are not ready as yet. I hope that very soon the reports of these Sub-Committees will also, be submitted, so that when the Constitution is drafted these may be incorporated therein and the Constitution when finally accepted may be complete in all respects.

It is my hope, that, if all this is done properly, we shall be able to pass the Constitution finally after due consideration in the October meeting of the Assembly, I want that the work of the Constituent Assembly should be speeded up, because, as you are aware, according to the proposed Indian Independence Bill the Constituent Assembly would also function as the Legislative Assembly, and already there are many matters pending before the Legislative Assembly which must be taken into consideration. After some time the Budget Session would also be due. Consequently, the earlier we finish the work of the Constituent Assembly the sooner we shall have the opportunity to take in hand the work of the Legislative Assembly. But I do not want that the work of the Constituent Assembly should be done in such a hurry as to spoil any part of it. Every matter will have to be decided after full consideration. In placing this proceed hurriedly to finish the work early, irrespective of whether its consequences are good or bad. On the other hand, you must devote go much time to each matter as you consider desirable. But if you keep in view that we have to do, sitting as the

Legislative Assembly, other work also, we must finish our present work as early as possible.

I welcome all the new members, and they are many, who are present today. I hope that all of us together will finish, as early as possible, the work of the Constituent Assembly and will give a Constitution that shall be agreeable and acceptable to all.]*

Mr. H. V. Kamath (C.P. and Berar: General): *[Mr. President, could you kindly inform the House as to how many of the States representatives are elected and how many nominated?]*

Mr. President: *[I am unable to do so now. The information asked for will be supplied later on.]*

ELECTION CHANGES FROM BENGAL AND PUNJAB

Shri Sri Prakasa (U.P. General): *[Mr. President, so far as I know it was said at the time the elections to this Constituent Assembly were held that no outside authority had any control over it. I would like to be informed whether you were consulted about the changes that have taken place in Bengal and Punjab. Have these changes taken. place according to the rules made by this Assembly? So far as I am aware members of this Assembly lose their membership when they submit their resignation. I would like to know if the members for Bengal and Punjab, who are no more members, lost their membership by submitting their resignation or as a result of the Viceroy's statement which led to new elections being held. If this is what has happened, and this appears to be the actual case, I would like to know your opinion and this matter and whether you consider all this proper and regular or not. We were told that once the Constituent Assembly was elected, neither any changes would be made in its constitution nor could any outsider have any authority or control over it. It appears to me that all these changes have taken place according to the statement of the Viceroy--a proceeding which is improper, unjust, illegal and contrary to the rules.]*

Mr. President: *[Your statement that these changes are the result of the Viceroy's statement and the consequential action taken by him on it is correct. But I believe that everyone has consented to these changes being made and so also have we done. The question of invalidity, therefore, does not arise. Moreover, now no one from among the members who had been formerly elected and have now lost their membership has submitted any petition against the termination of his membership. The newly elected members are members of this Assembly and shall continue to take part in its proceedings.]*

Shri Balkrishna Sharma: *[Mr. President: I want to draw the attention of the House to a point arising out of your statement. It is this. You have in your opening statement welcomed the new members and have expressed the hope that they will make their contribution to the proceedings of this Assembly and will help in the framing of such a constitution for our India............]*

Mr. President: *[Are you making a speech or asking a question?]*

Shri Balkrishna Sharma: *[Sir, I am asking a question.]*

Mr. President: *[Please ask the question now.]*

Shri Balkrishna Sharma: *[My question is that when you expressed this hope it must not have escaped you that the election of some members, and their number is appreciable, has been through a special procedure and that they are participating in the Assembly while putting faith in the two nation theory...........]*

Mr. President: *[You have started making a speech; or are you asking a question?]*

Shri Balkrishna Sharma: *[Have you been given the assurance that those who have been elected on the basis of the two-nation theory, will associate in your work after renouncing the two-nation theory and cooperate in furthering the common task?]*

Mr. President: *[A similar point was raised by Shri Deshbandhu Gupta. I then said in reply that I had no authority to forbid the members who had been duly elected from attending. I have therefore asked for no assurance and no assurance has been given to me. I have accepted all those who have been duly elected as members and on this we are acting. What all of you do here will show the intensions of each and all.]*

An Honourable Member: We could not follow your reply, Sir, in Hindi.

Mr. President: The question has been put in Hindi and I have to answer it in Hindi. If any one puts a question in English I will answer it in English.

Pandit Govind Malaviya (United Provinces: General): Sir, I would like to ask a question in order to clarify a point. My Honourable friend Mr. Sri Prakasa has raised a question, *viz.,* that this Constituent Assembly being a sovereign body and in view of the fact that members who had been previously elected had not resigned, how have other's taken their places. You, Sir, were good enough to say that everybody seemed to have acquiesced in this position and therefore it was right. I want to ask you, Sir, whether the position is not this that if any parts of the country decide to go out of the country, or secede from it, as, happily or unhappily, parts of two provinces have by their own vote decided to, the members from those parts of the country no longer have the right to continue as members of this Assembly? I want to get this point clarified, for, in future, it will be very important. I submit that the moment any part of the country decides not to remain part of India, automatically it loses all rights with regard to this Assembly.

Mr. President: I take it that any member elected from a part of a Province which has succeeded is not entitled to sit here: and I do not think any member like that is here.

Mr. H. J. Khandekar: What about Mr. Sidhwa?

Mr. President : Mr. Sidhwa was your representative. (Laughter), and elected by you from the C.P. and Berar.

MESSAGE FROM THE CHAIRMAN OF THE BURMA CONSTITUENT ASSEMBLY

Mr. President: We shall now go to the next item of business.

I am sure the Assembly will be glad to hear the message we have received from the Chairman of the Burma Constituent Assembly, in reply to the message that we had sent them.

"On behalf of myself and the Constituent Assembly of Burma, I desire to thank you most warmly for your very kind message of goodwill and good wishes which has been most deeply appreciated by the Constituent Assembly and the country. Such cordial greetings and sincere good wishes from you and the Members of the Constituent Assembly of India, at the outset of our deliberations, would be a source of inspiration and encouragement to us in the task of framing a Constitution for a free and united Burma. I can assure you that a free Burma will regard it as its special duty and privilege to maintain most cordial and friendly relations with your country and to make all possible contributions to the peace and happiness of the world.

May I avail myself of this opportunity to thank you and Sir. B. N. Rau for all the kind help and assistance accorded to our Constitutional Adviser during his short stay at New Delhi and for the free gift of your publications which are found to be most valuable in our work?

May I also take this opportunity on behalf of the Constituent Assembly 'of Burma and the people of this country to send you and through you to the Members of your Constituent Assembly and the people of India our sincere good wishes, for the successful conclusion of your labours and speedy realisation of your cherished aim of establishing a free and united India?" *(Cheers).*

REPORT OF THE ORDER OF BUSINESS COMMITTEE

Mr. President: The next item on the Agenda is the motion to be moved by Mr. Munshi.

Mr. K. M. Mushi (Bombay: General): Sir, I beg to move the following resolution:

"Resolved that the Constituent Assembly do proceed to take into consideration the further Report* of the Order of Business Committee appointed by the Resolution of the Assembly of the 25th January, 1947."

I have great pleasure, Sir, in moving this Report of the Order of Business Committee. As the House will see, this Report is quite different from the one submitted to the last sittings of the Assembly. Many and momentous have been the changes that have occurred in this country since, the last sittings, and this Report has become necessary as a result of these changes. Some parts of the country have seceded from India and from the jurisdiction of this Constituent Assembly. By the end of this week, the British Parliament would have adopted legislation which would set India free by the 15th of August, 1947--an event for which we have been waiting for centuries; and lastly, the fetters that were imposed upon this Constituent Assembly by the plan of May 16 have fallen. These changes, therefore require that the programme of this

Constituent Assembly should be reorientated in the new atmosphere to meet the new situation which has arisen.

Sir, I may take the liberty of pointing out that the May 16 Plan has now gone for all practical purposes and that we as a sovereign body are moving towards reconstruction the constitution of the future in an atmosphere of complete freedom. I will take the liberty of mentioning in greater detail the change which has been referred to in a paragraph of the Report. The plan of May 16 had one motive--to maintain the unity of the country at all costs. A strong Central Government was sacrified by the May 16 plan at the altar of preserving the unity which many of us, after close examination of the Plan found to be an attenuated unity which would not have lasted longer than the making of it. There were two stages envisaged in the Plan of May 16. The stages were the preliminary stage and the Union Constituent Assembly stage. A number of committees, which the House was pleased to set up, struggled to get some kind of a strong Government of India, a Government worth the name, out of these difficulties, but, the struggle, I am, free to confess, was not very successful. As a matter of fact, very often if I may express my own sentiment, while examining the plan of May 16 over and over again the plan looked to me more like the parricide's bag which was invented by ancient Roman law. As you know, under the ancient criminal law of Rome, when a man committed a very heinous crime he was tied up in a bag with a monkey, a snake and a cock, and the bag was thrown into the Tiber till it sank.

The more we saw the plan the more we found the minority struggling to get loose, the sections gnawing at the vitals and we had the double majority clause poisoning the very existence. Whatever other Members may feel. I feel-thank God--that we have got out of this bag at last. We have no sections and groups to go into, no elaborate procedure as was envisaged by it, no double majority clause, nor more provinces with residuary powers, no opting out, no revision after ten years and no longer only four categories of powers for the centre. We therefore feel free to form a federation of our choice, a federation with a Centre as strong as we can make it, subject of course to this that the Indian States have to be associated in this great task on a footing of the four categories powers and such further powers as they choose by agreement to cede to the centre. Therefore, Sir I personally am not at all sorry that this change has taken place. We have now a homogeneous country, though our frontiers have shrunk--let us hope only for the moment--and we can now look forward to going on unhesitatingly towards our cherished goal of strength and independence. And therefore the report that was submitted to the House had to be revised.

Members will be pleased to se? that the bulk of the work is already done. The Provincial Constitution Committee's Report on the main structure of the constitution has been circulated to the Members of the House and it will be taken up in a day or two in due course. Then the Union Constitution Committee has already prepared a Whit? Paper--if I may say so--on the structure of the Union Constitution and that will also be placed before the House at this sitting.

I may remind the House that the report of the Union Powers Committee was placed before the House last session. It contained the details of the powers which were implied in the four categories which we're mentioned in the May 16 plan. In view of the change, these powers had to be re-examined, and a supplementary report of the Union Powers Committee will also be placed before the House for consideration. In the report it is suggested that when these principles have been accepted by the House they will be forwarded to a drafting committee appointed for the purpose which will perform the task of framing the necessary Bills for a Constitution of the Union of India.

With regard to paragraph 3 of the Report, as the House knows, several proposals for new fundamental rights have been referred back to the Advisory Committee. The Minorities Committee has still to examine several points, particularly the principles to be adopted in relation to minorities. Further, the Tribal Special Committees are at work; some of them have not completed their work and I do not know whether the work of some of them will be carried on at all. All these matters have yet to be decided by the Advisory Committee. They will go before the Advisory Committee and the report will come.

In the last sentence of paragraph 3 it is suggested that the Advisory Committee should complete its task in August and the recommendations may go straight to the Drafting Committee which will draw up the necessary provisions of the Act and then they will come before this House at a later session in the form of certain provisions of the Bill. But Mr. Santhanam has moved an amendment to this Resolution of mine which I find is favoured by a considerable section of the House. The view, which I understand, is taken by fairly large numbers in this House, is that so far as the principles to be adopted in the constitution in relation to minorities are concerned, they should not be sent to the Drafting Committee straightway but that they must be placed before this House at this session; and after the principles are settled they should go before the Drafting Committee for being shaped into appropriate provisions. If that is the view of the House the Resolution of Mr. Santhanam will be accepted qualifying the last sentence in paragraph 3.

Paragraph 4 of the Report suggests that the Assembly should complete its work by the end of October of this year. It is highly necessary, Sir, as you were pleased to point out that the work of Constitution making should be completed at the earliest possible moment and that if possible by November we should complete our Constitution-making work. At one time the rules were framed on the footing that we may take longer. They dealt with the question of sections and groups and various other things. At the time the rule was framed--old Rule 63--it was intended that after the general lines of the Constitution were approved by this House they should be circulated to the members of the legislature. It is not necessary to indulge in that elaborate procedure, first because the office of the Constituent Assembly has circularised a set of questionnaire's to which replies have been given by members of the several Legislatures in this country and the opinions are therefore before the Committees. Secondly, things are moving so fast that we cannot, go, on at the pace at which we intended to go before. By the, 15th August India will be a free and independent Dominion. We want to attain that stage as early as possible and to secure a constitution of our own which will give us the necessary strength. We must not forget the fact that in the Dominion Constitution which comes into existence on the 15th August the States' representatives have no place. We want that the Constitution of the Union therefore must come into existence at the earliest possible time. If that is so we shall have to eliminate this unnecessary procedure of circulating the decision to the members of this, House. This House is sufficiently representative of all interests and there is no reason why we should unnecessary lengthen out the proceedings. Further, we know that this House is working under high pressure and within a limited time. For that purpose Members will find that in the Report of the Union Constitution Committee a provision has been made to this effect that within the first period of three years the constitution could be amended easily. In framing a Constitution as we are doing under great pressure, there are likely to be left several defects; and it is not necessary that we should have a very elaborate and rigid scheme for amending these provisions, in the first three years. Therefore, the point that is placed before the House by the Report is that on the one side the Advisory committee will continue to complete its task, on the other hand the Drafting Committee will take up the Constitution Bill and by the middle or the end of October next will be ready with the Bill for being placed before the House. It is of great importance that this Constitution should be framed as early as we possibly can do it.

One other point. We have today with us the representatives of the, Muslim League. I have no doubt that they an here as loyal and law abiding citizens of India and that they will co-operate with us wholly in framing as speedily as we can a Constitution for the Union in which hope I they will get and honoured place as a minority. Secondly, I may refer to the representatives, of the States who have come here and I will make only one appeal to them. The time is very short. The report envisages the formation of the Union by the end of October or at least by the end of November. The House naturally expects the co-operation of Members and the representatives from the States as to partners in this argent work of framing a Constitution.

As regards the manner of the States coming into the Union, I am sure, with ever doubts they felt in the beginning, must have been dispelled by the way the Assembly has been working and by the statement issued a few days ago by the Honourable Sardar Vallabhbhai Patel which gives the fullest assurance to the States.

As far as the Members of the Constituent Assembly are concerned, they want the States to come in. On the basis of the May 16 Plan, I am sure the representatives from the States will be equally glad to come to an early decision.

I only want to say one thing. Time is of the essence of our activities here. We have to face the world with the determined purpose of framing a Constitution for a strong India which will be great and powerful. The world, I am afraid, is moving towards another crisis, and when that crisis comes--may it never come--it should not find us unprepared.

With these few words, I place this Report before the House for its consideration.

I have no Objection whatever to accept the amendment which Mr. K Santhanam is proposing to move.

Shri K. Santhanam (Madras: General): Sir, I beg to move:

"Add the following at the end of the motion:

'Resolved further that with the exception of para. 3, the Report be adopted and the Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas be called upon to formulate at an early date and if possible before the end of this session the general principles to be adopted in the Constitution in relation to minorities for Consideration and decision of the Assembly prior to their incorporation in the draft of the Constitution and when the principles are so approved, the procedure proposed in para. 3 may be followed'."

I need not say much about the need for this amendment. We all know how our minds are greatly exercised about the principles to be followed regarding the safeguarding of the rights of minorities. If they are incorporated in the Draft Constitution, we shall find ourselves greatly handicapped in changing them. There will be a great deal of heart-burning if any important changes are sought to be made After the Draft is published, circulated and even commented upon in the press and on the platform. Therefore, it is essential that, like the other principles of the Constitution, the principles regarding electorates franchise and similar matters should first be approved and then only they should be put in the Draft.

Mr. President: Does any Member wish to speak on the motion before the house?

Mr. Naziruddin Ahmad: (West Bengal: Muslim): Mr. President. Sir, I am a new-comer to this House. I find from the motion moved by K. M. Munshi that what is proposed to be taken into consideration is the 'further Report' of the Order of Business Committee. It means that there was an earlier report. We have no copy of it. This puts us under a handicap.. It is very necessary for us to know what has been done already.

Secondly, we should have official copies of the May 16 Statement and also of the June 3 Statement. Although everybody has read them, we should like to have official copies of the same. Only then will it be possible for us to proceed in a systematic manner.

The Mover of the Resolution has appealed to the Members of the Muslim League to be loyal and law-abiding citizens of India. I should have thought that there was no need for any doubt whatever regarding the fact that we have come here as loyal and law-abiding citizens of India. (*Applause*). I submit with due humility that we have come here to take part in the deliberations of this House in framing a Constitution as quickly and as reasonably as we can. But we, the new-comers, require a little time to study the previous report, the debates and other relevant papers, before we can take a useful part in the House.

Shri R. V. Dhulekar: (U.P.: General): *[I agree with the Report submitted by Mr. Munshi and with what has said regarding the work that this Constituent Assembly should have done so far. I want to speak about some matters which will come before the House. The first is that recently some changes have occurred, with the result that some have ceased to be members of the Constituent Assembly and new ones have been elected, in their place. The new members, who have come here, will take some time to understand all that we have done. Thus we have to review the work that this Constituent Assembly has done during the past six months, and so long as we do not take into consideration what has been already accomplished we cannot proceed further. We have to think over it. We find that India has now been divided into two and we have to see whether the Constituent Assembly should stick to the views it adopted at the time of its inception or whether it should change them. We have to consider that also, because there are many things which are proper at a particular time which cease to be so when the times have changed. The first thing that we have to note in the proceedings of the past few months is that we promised in the Objectives Resolution, which was moved in the House, that the people residing in India would be protected in every way and their culture, language and civilization would be fully safeguarded. We have to consider now whether the significance of these safeguards should continue to be what it was when they were accepted or it has to be altered. In my opinion it is necessary now to change our point of view and I think it necessary to amend the resolution that we have passed and also change the views expressed in discussing that resolution. At that time I raised the point that this Constituent Assembly should adopt Hindustani as its language. Now I submit that we have to reconsider the question of our language and script. The second thing that has been recorded in the Report relates to the month of October or November. It is said that this Constituent Assembly will now be converted into Central Assembly and we have to consider as to what will be the position of those who are members of the Provincial Legislature and have been returned to the Constituent Assembly. Some people say that the members of Provincial Assemblies, who have come here, will be requested to go back..........]*

Mr. President: *[Mr. Dhulekar, I think you have strayed far from the matter under consideration.]*

Shri R. V. Dhulekar: *[No, Sir; I am not far from the point.]*

Mr. President: *[I have been under the impression that I was doing my job and I feel that you have strayed far from the point. The question before us is whether we accept the programme or the time-table submitted to us in this Report. You are raising too many questions and this is not the time for you to raise constitutional issues.]*

Mr. R. V. Dhulekar: *[Sir, I am sorry but I beg to point out that the programme submitted by Mr. Munshi makes the Business Committee, which is in existence, feel that no matters, such as new elections, should be brought up as might cause delay. Therefore, I suggest that the present members of the Constituent Assembly should continue till the Constitution has been framed.]*

Mr. President: *[The question as to who should continue to be its members and who should not, does not arise, The simple and straight question is whether or not you accept the time-table now submitted by the Committee. Nor is the question of language before us. Your remarks in this connection are, irrelevant. What have you to say about the time-table and the other questions before the House?]*

Shri R. V. Dhulekar: *[I am sorry, but I beg to submit that it would suit the convenience of the Constituent Assembly that the existing members who have devoted all the their time to it should continue till October by which time the Constitution would be ready.]*

Mr. President: *[Again the same question I have already told you and the whole House that up to the time the members do not resign they continue. If anybody intends to remain as a member this question will arise.]*

Shri R. V. Dhulekar: *[Sir, I am satisfied, I wish to say one word more that some opportunity should be given to the House in its present meeting to have an idea of the work already done and to be done in future. I have to say only this much.]*

Haji Abdul Sathar Haji Ishaq Sait (Madras: Muslim): I just want to call the attention of the House to the fact that this important amendment was not circulated to members of the House. I am not objecting to the amendment. It is an important amendment and I am in favour of it but it is very difficult to understand it without having a copy. May I therefore request your help to see that such important amendments, as far as possible, are circulated to members, in good time?

Mr. President: I entirely agree with you that all important amendments should be given notice of in due time so that members may have an opportunity of studying them.

The Hon'ble Pandit Hirday Nath Kunzru (United Provinces: General): May I request you, Mr. President, to talk a little louder?

We Could not hear you even when you were speaking through the microphone.

Mr. President: I am very sorry, but nobody complained before.

The Hon'ble Pandit Hirday Nath Kunzru: We can hear you now.

Mr. President: But I don't think I have raised my voice now.

The Hon'ble Pandit Jawaharlal Nehru: (U. P.: General): It is a matter of the distance between you and the mike.

Shri M. Ananthasayam Ayyangar: (Madras: General): I want to say a word or two about what Mr. Munshi said in moving his resolution. I do not feel very happy over what has happened, though I and others of my view have reconciled ourselves to this solution as the best, in the circumstances. I am glad, Sir, that the members of the Muslim League have come here in so far as they are residents of the Union of India. I am glad too that many States have come in. I would have been gladder still if entire India had been represented here. I am really surprised that my friend, Mr. Munshi, who stood for Akhand Hindustan, is now equally supporting this solution. I personally think that the May 16 solution was the best. I am sorry that solution has been given up. But let us not float over what has happened. Even though what has happened is the best in the circumstances, we should all hope for the day when we will come again together. If the May 16 solution which was unanimously approved had bean adhered to, the partition of Bengal, the partition of the Punjab, the secession of the North-West Frontier Province, the giving away of Sylhet, all these would have been avoided,

Mr. President: I entirely agree with you, but it is no use taking Mr. Munshi to task for that.

Mr. S. H. Prater: (Madras: General): Sir, I rise to support the amendment. We are considering the principles of a new Provincial Constitution which deeply affect the position of the minorities and decisions may be taken at this session accepting these principles. I therefore propose that the Minorities Committee be given early opportunity to consider them and their views may receive due consideration by this Assembly before decisions are finally adopted. I therefore support the amendment.

The Hon'ble Mr. Jaipal Singh: (Bihar: General): Mr. President, I have great pleasure in supporting the amendment moved by Mr. Santhanam. While we all fully appreciate the urgency of expedition in the carrying on of our business here. I feel that it is quite impossible for the Report of the Excluded Areas Sub-Committee to be presented during this session. It has been suggested that big principles right be decided during this session. But, as it is, the Sub-Committee on Excluded Areas has yet to visit the Excluded and Partially Excluded areas of the provinces of Bihar and the United Provinces. While these two Provinces cannot possibly be visited during the rainy season, I do not see how the Adibasi problem and the big things that are going to affect them can possibly be decided during this session, as Mr. Munshi suggests. I think as Mr. Pratar has pointed out, it is very necessary that no 'section'--I regret I have to use the word 'section'--no portion of people of this Union should be left out when matters which vitally affect them are being considered. I wish only to point out that the Report of the Tribal Sub-Committee cannot possibly be ready till the end of August.

Mr. Aziz Ahmad Khan: (U. P.: Muslim): *[Honourable President, I oppose the Resolution which has been moved by Mr. Munshi and support the amendment. Sir, agree with you, that as in the process of this glorious task we have to solve scores of important problems, it does not behove us that we should conclude the proceedings in haste without considering them thoroughly. Sir, you have said that we should remember that the time at our disposal is short and work is long, but at the same time, we should keep in mind that we have to frame the constitution of India with due care. Contrary to this, I find in this Resolution that the Mover is of opinion that the Reports of the three Committees, which are extremely important, need not be submitted to this Assembly even after their completion. Accordingly, they are inserting the sections in the Constitution of India. The Resolution runs thus:

> "We propose accordingly that the Assembly authorise the President to summon a session sometime in October, preferably in the, early part of this month, for the purpose of considering the Draft Constitution."

Sir, so far as Fundamental Rights are concerned, we ought to get an opportunity to express, our opinion after careful consideration and then to hand over suggestions to the framers of the Constitution.]*

Mr. President: *[So far as Fundamental Rights are concerned, the Constituent Assembly has considered them very carefully. Now, only the Reports of Minority Committee and Tribal Areas Committee remain to be considered.]*

Mr. Aziz Ahmad Khan: *[If this is so, I think the wording of the resolution is wrong, because in the original resolution the Committee on Fundamental Rights has been clearly mentioned. So far as the Committee on Tribal Areas is concerned I think, in the present circumstances perhaps that would almost useless. Why will it be useless? You know the reason better. But before the Minorities Committee Report is inserted in the Constitution, it is desirable that it should be placed before the Constituent Assembly and we should get the fullest opportunity to discuss it and after we have given our best thought to it, it should be drafted in accordance with the procedure laid down in this connection. Therefore, as the Honourable President in his inaugural address has pointed out, in these matters we should not be in such a hurry ad to make a mess of the whole thing. Taking my stand on this. I oppose this resolution and support the amendment].*

Mr. Mohan Sinha Mehta (Udaipur State): Sir, I understood from Mr. Munshi's speech-- I may be wrong--that he had anticipated and accepted Mr. Santhanam's amendment.

Mr. President: Mr. Munshi had said that he had already accepted the suggestion of Mr. Santhanam, Although he had not formally moved the amendment Mr. Munshi has already accepted the amendment.

The Honourable Pandit Jawaharlal Nehru: * [Mr. President, I have listened attentively to all the speeches that have been made hitherto, but I fail to understand why so many speeches have been made on this subject. Unfortunately, I could not follow even Mr. Munshi's speech. In any case, it is a simple matter that we must determine our programme and the principles involved therein. We are not concerned with whether the work is finished in this session or the next. But we must have a concrete plan before us. Mr. Munshi has now put a plan before us, and we have to take a decision on it. After all what is the debate about? We will try to finish as much work as we can during this session and take up the remainder in October or November.]*

Mr. Mahomed Sheriff: (Mysore State): *[Mr. President, I endorse what has been said by Maulvi Aziz Ahmad. He has stated in his speech that no resolution, no law, and no plan can be of much use without granting adequate and satisfactory safeguards to the minorities. The principle to which the Maulvi Saheb has drawn your attention is very important. You know that if the resolution is accepted, an atmosphere of opposition and mistrust will be created among the minorities. So it is better to decide it (the minority question) at our earliest. So long as we do not find its solution, I think it would be premature to support the resolution. I, therefore, oppose this resolution and fully support the position taken up by Aziz Ahmed Saheb.]*

Shri Sri Prakasa: Mr. President, will you please, read out the Amendment again?

Mr. President: The amendment moved by Mr. Santhanam runs thus: This is to be added at the end of the motion.

"Resolved further that with the exception of para. 3 the Report be adopted and the Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas be called upon to formulate at an early date and if possible before the end of this session the general principles to be adopted in the constitution in relation to minorities for consideration and decision of the Assembly prior to their incorporation in the draft of the Constitution and when the principles are so approved, the procedure proposed in para. 3 may be followed."

B. Pocker Sahib Bahadur: (Madras: Muslim): Mr. President, first of all, I must confess the disability under which I am suffering namely that I have not been able to follow most of the proceedings which have taken place, to the extent to which they are in languages other than English. Therefore, I would appeal to the President to make provision for rendering into English the proceedings that take place here. Otherwise, it would very difficult for us to follow and participate in the proceedings. No doubt, I do agree that it is necessary to have a common language, a *lingua franca*, a national language. I agree with all that. But we have to take facts as they are. As the Constituent Assembly is now constituted, it consists of members who are acquainted with various languages. All of us know that all the members of this Assembly are not familiar either with Hindi or with Urdu. There may be some members who are not familiar with English. But I take it that most of the members are familiar with English and therefore it would be a very useful procedure if the President finds his way to make the proceedings known to us all.

Now, Sir, as regards the proposition before the House, before dealing with that subject itself, I would like to say just one word as to the circumstances under which we the Muslim League Members have come here and have decided to participate in these proceedings. Now, Sir you will agree that we have met here after an unprecedented event in the history of the world, namely the securing of independence for both India and for Pakistan without shedding a drop of blood.

Many Honourable Members: No. No.

B.Pocker Sahib Bahadur: I know quite well that there are several members.............

Mr. Debi Prosad Khaitan: (West Bengal: General): I rise to a point of order, I submit the speech of the Honourable Member is absolutely irrelevant to the proposition before the House. I would submit, Sir, that he should be asked to restrict himself to the motion before the House.

Mr. President: I would ask Honourable Members to leave that part of the task to me.

B. Pocker Sahib Bahadur: I know the feeling, Sir, perhaps a very painful feeling in many quarters, that what was known as India before has been reduced in extent and another kingdom namely Pakistan has been..

Mr. President: Will you please confine yourself to the motion before the House?

B. Pocker Sahib Bahadur: Sir, why I referred to that fact is only this. We have met here now after an event which has no precedent in the history of the world.

We are all very glad that we have met here and I congratulate Mr. Munshi for the excellent speech and for the excellent spirit in which he made it,--a speech which will be conducive to the united work of all the people concerned. I am very sorry to note that another Honourable Member has made a note of discord in his speech and I do believe that it was not quite wise on his part to have done so. We have to take the facts as they are and I may say that, so far as division is concerned, it is a matter of agreement between the two important bodies, the two great organisations in this country, namely, the Congress and the league. Both the organisations having agreed to the division, there is nothing to cry over.

Mr. President: May I remind the Honourable Member to confine himself to the motion before the House? I am afraid he has gone much beyond that.

B. Pocker Sahib Bahadur: I am only dealing with the point that has been dealt with by Mr. Munshi and referring to the reply given by another Honourable Member. If I am out of order in these circumstances, certainly I bow to your ruling and I do not want to say anything further. I have only made a reference to that. Mr. Munshi made an appeal to the members of the Muslim League to be loyal citizens of India and to cooperate. Certainly this assurance has been there and the Muslim League members will be loyally co-operating with this Constituent Assembly and they also expect a responsive co-operation from the other side.

Now, Sir, so far as the resolution before the House is concerned, certainly the resolution has to be carried. As regards the amendment of Mr. Santhanam, I wholeheartedly support it.

Many Honourable Members: The question be now put.

The Honourable Pandit Govind Ballabh Pant (U.P.: General): I was going to move that the question be now put.

Mr. President: I accept that motion. I think the House does not want any further discussion.

I put Mr. Santhanam's amendment to the House.

The amendment was adopted.

Mr. President: The motion, as amended, is put to the House.

The motion, as amended, was adopted.

AMENDMENT OF RULES

Mr. President: The next item is a series of resolutions relating to amendment of the Rules of the Constituent Assembly. I will ask Mr. Munshi to move.

Mr. K. M. Munshi: Mr. President, Sir, the amendments which I have the honour to move on behalf of the Steering Committee really follow the lines which have been adopted in the Report. With your permission, Sir, I will take Rule by Rule. Sir I move:

"That the following amendments to the Constituent Assembly Rules be taken into consideration:

'*Rule 2*:-In clause (b), *delete* the words 'Sections or' *Delete* clause (f) 5-55."

Mr. President: Does anyone wish to say anything? I put this motion which has been moved by Mr. Munshi.

(At this stage some members stated that they had not been supplied with copies of the Rules of Procedure).

I am told that copies have been sent to the addresses of the members but still such copies as are available in the office will be supplied to the new members.

Mr. Sarangdhar Das (Eastern States Group 1): We might take up the discussion tomorrow.

Diwan Bahadur Sir A. Ramaswami Mudaliar (Mysore State): Sir, I would like to support the suggestion that the Rules may be taken up tomorrow for consideration.

Mr. President: The amendments are of a formal character. But if members want it tomorrow, I am afraid I shall have to adjourn the House We can take up the Resolutions. As there is some objection on the part of some members that they have not got copies of the Rules of the Assembly and they would like to have them before the amendments are moved, I am afraid there is no option but to adjourn discussion of the Rules till tomorrow. There are certain other motions that we can take up.

ELECTION OF MEMBERS TO COMMITTEES

Mr. President: The next is regarding the election of Vice-Presidents. It cannot be taken up today because it is consequent upon a change in the Rule. So that also will have to be put off till we pass the amendments to the Rules.

Mr. Satyanarayan Sinha will move the next Motion.

Dr. B. Pattabhi Sitaramayya (Madras: General): To say that two Vice Presidents will be elected is not opposed to the Rule. We may proceed to do that.

Mr. President: He can take that up later.

Mr. Satyanarayan Sinha (Bihar: General): The motion which stands in my name, Mr. President, is of a formal character:

> "Resolved that this Assembly do proceed to elect, in the manner required under Rule 41(1) of the Constituent Assembly Rules, two member to be members of the Staff and Finance Committee."

You know, Sir, last time we had elected the Staff and Finance Committee by this House. Since then some of the members who were originally elected cease to be members of this House and under the Rules, when they cease to be members of the House, they cease to be members of the Committee. Therefore, there are vacancies on this Committee and the manner in which the vacancies are to be filled up is to be determined by the President. I therefore commend to this motion for your acceptance.

Mr. President: This Resolution has been moved by Mr. Satyanarayan Sinha.

> "Resolved that this Assembly do proceed to elect, in the manner required, under Rule 42(1) of the Constituent Assembly Rules, two members to be members of the Staff and Finance Committee."

The motion was adopted.

Mr. Satyanarayan Sinha: Sir, I move:

> "Resolved that this Assembly do Proceed to elect, in the manner required under Rule 44(3) of, the Constituent Assembly Rules, three members to be members of the Credentials Committee."

I have to say the same thing which I said in regard to the first motion. The members originally elected for this Committee have ceased to be members of this House. Therefore, the House has got to elect three members from amongst its present members in the manner to be determined by the President.

An Honourable Member: We have not got the Rules.

Mr. President: The motion is only that certain members have to be elected according to rules to certain Committees. If we adopt the motion, then we will elect them according to the rules and before we elect them you will get the rules, I supposes! *(Laughter.)*

I do not think any discussion on this either is necessary. I shall put the motion to vote.

The motion was adopted.

Mr. Satyanarayan Sinha: Sir, I move:

"Resolved that this Assembly do proceed to elect, in the manner required under rule 45 (2) of the Constituent Assembly Rules, three members to be members of the House Committee."

I have to say the same thing as I said in regard to the previous motion, because, the original members elected to this Committee have ceased to be members of the House since.

Mr. President: I put this also to vote now.

The motion was adopted.

Mr. Satyanarayan Sinha: Sir, I move:

"Resolved that this Assembly do proceed to elect. in the manner required under rule 40(2) and (5) of the Constituent Assembly Rules, nine members to, be members of the Steering Committee."

In this connection, I would like to invite your attention, Sir, to Rule 40 which says:

"A Steering Committee shall be set up for the duration of the Assembly and shall consist initially of eleven members (other than the President) to be elected by the Assembly in accordance with the principle of proportional representation by means of the single transferable vote."

Last time we had elected 11 members. Out of the original members elected by the House, three have ceased to be members of this House. Therefore, there are three casual vacancies. You will find under the same rule, sub-rule (2) the following:

"The Assembly may from time to time elect, in such manner as it may deem appropriate, eight additional members, of whom four shall be reserved for election from among the representatives of the Indian States."

Out of these additional eight members, four seats were reserved for the States. Out of those four, last time we had elected two from amongst the members of the States, so that there are two vacancies to be filled up out of the seats allotted to the States. The other four seats we have got to fill up by election of members' from the General Constituency. Now these six vacancies have to be filled by the method of proportional representation and the three casual vacancies in the manner to be determined by the President. What I am suggesting is that just as we elected two Members from among the States representatives by the method of proportional representation, so I would commend to this House that they will accept that the other six vacancies may also be filled by proportional representation and out of these six, two will be reserved for the States representatives. The other three vacancies will be filled up like other committees by election in a manner to be determined by the President, as he deems fit.

Mr. President: Is it necessary to have any discussion on this? I put the motion to vote.

The motion was adopted.

ELECTION OF VICE-PRESIDENTS

Mr. President: Now, there is one Resolution which we have to consider and that is with regard to election of two Vice-Presidents, Under the Rule as it stands at present, there are two Vice-Presidents to be elected by the House and there were to be three Vice-Presidents ex-officio who would have been the Chairmen of the three Sections. Now the amendment that is proposed is that since Sections are not going to meet, all references to Sections should be omitted from the Rules and therefore those three Vice-Presidents will not now be Vice-Presidents at all because there will be no Sections whose Presidents would have been ex-officio Vice-Presidents of the Constituent Assembly. Dr. H. C. Mookerjee was the Vice-President who was elected last time, but after the new set-up he ceased to be a member of the Constituent Assembly because all members of the Constituent Assembly from Bengal have ceased to be members. He has been re-elected. But since he ceased to be a member so he ceased to be the Vice-President also. Now, someone has to be elected in his place. I do not know whether members may like to re-elect him, but that is a different matter. What I am suggesting is that there is no real difficulty because the is no intricate question. The motion is merely that two Vice-Presidents have to be elected. Of course, the election may take place tomorrow or day after, but' at present all you have to say is that these two places of Vice-Presidents should be filled up. If the members have no objection, then I might ask the mover to move the Resolution, but if there is any objection on the part of any member I would rather put it off.

Honourable Members: There is no objection.

Mr. President: Then, Mr. Satyanarayan Sinha, you may please. move this.,

Mr. Satyanarayan Sinha: Sir, I move:

> "Resolved that this Assembly do proceed to elect two Vice-Presidents in accordance with the provisions contained in the Constituent Assembly Rules."

Sir, you have already explained that we have got to elect only two Vice-Presidents. Last time we elected only one Vice-President and left the other seat to be filled up later. Dr. Mookerjee was unanimously elected Vice-President of this House. He ceased to be a member of this House on account of the Bengal Partition. I am glad that he has been reelected to this House, but under the Rules the position has not changed. He is after all a newly elected member and we have also to elect another Vice-President. The manner in which the election will be held will be determined by the President.

Dr. N. B. Khare (Alwar State): Sir, while I support the Resolution, I would suggest that out of the two Vice-Presidents.......

Honourable Members: Mike, please.

Dr. N. B. Khare: I am speaking very loud (*laughter*)--one seat--should be from the

States Group.

Mr. President: I am sorry, Dr. Khare, I have not heared what you said. (*Renewed laughter.*)

Dr. N. B. Khare: While supporting this Resolution I would respectfully suggest that out of the two Vice-President one should be from the States representatives.This does not mean that I want this on the basis of proportional representation for the, States.

Mr. President: I put the motion to vote.

The motion was adopted.

Mr. President: I would now make some announcements. Now that we have decided that all these elections should take place I have to fix a time for putting in nominations and also for voting if it becomes necessary. I am fixing the times as follows:

Nominations will be received by the Secretary up to 1 P.M. on the 16th. I have given 48 hours from now for the nominations. The elections, if necessary, will be held in accordance with the principle of proportional representation by means of single transferable vote between 3 and 4 P.M. on the 17th in the Under Secretary's room, No. 25 ground-floor. This relates to the various Sub-Committees with regard to which we have just passed Resolutions.

With regard to the Vice-Presidents, there is no question of proportional representation there, but we have certain rules, according to which that election will take place. I have fixed 5 P.M. tomorrow for receiving nominations and the elections will take place on the following day, if necessary, at 4 P.M. in the same room, mentioned above.

There is one thing more which I would like to mention to the House before we adjourn to-day and that is with regard to the timing of our sessions from to-morrow onwards. The Secretary, according to our usual procedure has notified that tomorrow we will begin at 10 O'clock. I was suggesting that it would be better if we sit in the afternoons every day *i.e.* from 3 to 6 P.m. That would give members plenty of time to consider the various proposals that will be coming up; they will have the whole of the morning at their disposal for this purpose. Therefore, I would suggest that we have our sessions from 3 to 6 P.M. from tomorrow onwards.

Mr. Tajamul Husain: Sir, I would like to point out that to have the sittings from 3 to 6 P.M. would be rather inconvenient to the members because that will be a very hot time. We have to come from long distances and in order to be here by 3 we have to leave our houses by say 12 or 1 P.M. The best time would be the mornings as we have had today. We may, if necessary, have the sittings from 11 A.M. to 1 or 1-30 P.M.

Mr. President: I may point out that Delhi is quite hot even at 1 o'clock--the time of going back. It will not make any difference if you go at 1 o'clock at about 2 P.M.

Begum Aizaz Rasul (U.P.: Muslim): May I point out that the month of Ramzan will be starting in a few days' time and it would be very inconvenient for Muslim members to sit from 3 to 6 P.M. because the-time for breaking the fast will be soon after that? So I would suggest that the morning time would ,be the best for all.

Mr. President: I do not know when Ramzan commences. We can consider the question again when Ramzan begins. We shall in any case be finishing of at 6 P.M. which is at least one hour before sun-set. Here the sun sets after 7 P.M. I take it that the House accepts my suggestion.

The House stands adjourned till 3 P.M. tomorrow.

The Assembly their adjourned till 3 P.M. on Tuesday, the 15th July, 1947.

[English translation of Hindustani speech]

*APPENDIX

No. C.A./22/Com/47

CONSTITUENT ASSEMBLY OF INDIA

REPORT OF THE ORDER OF BUSINESS COMMITTEE

COUNCIL HOUSE,

New Delhi, 9th July, 1947.

From

THE CHAIRMAN,

ORDER OF BUSINESS COMMITTEE

To

THE PRESIDENT,

CONSTITUENT ASSEMBLY OF INDIA.

SIR,

During the last session of the Assembly, we submitted a report which was necessarily tentative because of the fluid political circumstances then obtaining. Since then, momentous changes have occurred and the position has become crystallised. His Majesty's Government has issued a fresh statement on June the 3rd which has been accepted by all the principal political parties; and as a result of the decisions taken in pursuance of that statement, certain parts of the country will secede from India. These changes have revolutionised both the procedural and the substantive parts of the scheme on the basis of which we have been working hitherto. So far as the procedural aspect is concerned, it is no longer necessary, for the Assembly to split into Sections and to consider the question of groups, and the double majority provisions in regard to matters of major communal importance are no longer operative.

It is against this background that we held a meeting on the 3rd of July. Pandit Nehru was present at the meeting at our request and we are grateful to him for the help he gave us.

2.We understand that during the next session,-- the Assembly will have before it three reports for consideration--those of the Union Constitution Committee, the Union Powers Committee and the Provincial Constitution Committee. Between them these reports will deal with a large majority of questions that would have to be decided by the Assembly. We recommend that the Assembly take decisions on these reports in the July Session and direct that the work be taken up at once of drafting the Constitution Bill. We recommend also that the Assembly appoint a Committee of members to scrutinise the draft before it is submitted to the Assembly and its subsequent session.

3.The matters that will remain outstanding at the end of July Session will be the reports of the Advisory Committee on Fundamental Rights, Minorities and the Administration of the Tribal and Excluded Areas. We suggest that the Advisory Committee complete its work in August and the recommendations made by the incorporated by the Draftsman in his Bill notwithstanding that no decisions will by then have been taken on them by the Assembly. Any changes which are subsequently considered necessary could be incorporated in the draft Bill by suitable amendments.

4. In our last report, we had suggested that the Assembly should complete its work by the end of October this year. We reiterate this recommendation; and, having regard, to the progress made by the committees, we think this is quite practicable. We propose accordingly that the Assembly authorise the President to summon a session sometime in October, preferably in the early part of the month, for the purpose of considering the draft of the Constitution.

5.We do not think it necessary in the altered circumstances for decisions taken in the July Session to be circulated in accordance with Rule 63 of the Constituent Assembly Rules.

6.Our recommendations will involve an amendment to the Rules which we request the Steering Committee to take into consideration.

I have the honour to be,

Sir,

Your most obedient servant,

K.M. MUNSHI,

Chairman.

(on behalf of the Committee)

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME IV

Tuesday, the 15th July, 1947

The Constituent Assembly of India met in the Constitution Hall,. New Delhi, at Three of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following Members presented their Credentials and signed the Register:

1.The Honourable Mr. Hussain Imam (Bihar: Muslim).

2.Mr. N. Madhava Rao (Eastern States Group-III).

3.Rao Raja Jayendra Singh Jue Dev (Central India States Group).

4.Pandit Thakur Das Bhargava (East Punjab).

5.Mr. Jasimuddin Ahmed (West Bengal: Muslim).

AMENDMENTS OF THE RULES

Mr. President: I shall now take up the amendments of the Rules.

RULE 2

Mr., K. M. Munshi (Bombay: General): Sir, I propose to move my amendments rule by rule. Perhaps that would be more convenient to the House. Sir, I move:

> "That in clause (b) of Rule 2 the words 'Sections or' be deleted and also that clause (f) be deleted."

As the House will see both these clauses refer to Sections. Rule 2, clause (b) says:

> "'Chairman' means the person who for the time being presides over the Assembly or any of its Sections or Committees."

There are to be no sections and therefore the word "Sections or" have to be deleted. Also clause (f) which refers to Sections should be deleted from the Rules.

Mr. President: The question is:

"That. in clause (b) of Rule 2 the words 'Sections or' be deleted and also that. clause (f) be deleted."

The motion was adopted.

RULE 3

Mr. K. M. Munshi: Sir, I move:

"That in Rule 3 the words 'or any Section thereof' be deleted."

Mr. President: The question is,

"That in Rule 3 the words 'or any Section thereof' be deleted."

The motion was adopted.

RULE 4

Shri K. Santhanam (Madras: General): Sir, I have an amendment to Rule No. 4. I move:

"That the Proviso to Rule 4 be deleted."

This is consequential to the abolition of the Indian Legislative Assembly and the proviso ceases to have any meaning. Therefore I move for its deletion.

Mr. K. M. Munshi: Sir, I accept the amendment moved by Mr. K. Santhanam.

Shri Sri Prakasa (U.P.: General): What happens to the Members who represent these constituencies (Delhi or Ajmer-Mewara) at the present moment in the Constituent Assembly?

Mr. K. M. Munshi: The present members will continue but in case there is a vacancy a provision is being made in the amendment that is going to be moved by Mr. K. Santhanam to Rule No. 5 Special provision has been made for it.

Mr. President: The question is:

"That the Proviso to Rule 4 be deleted."

The motion was adopted.

RULE 5

Mr. K. M. Munshi: Sir, I move:

"'That in sub-rule (2) of Rule 5, delete the words 'or the appropriate authority in British Baluchistan'."

"That for sub-rule (6) the following be substituted:

'(6) As soon as may be after the receipt of the request mentioned in sub-rule (2)'the Speaker of the Provincial Legislative Assembly concerned--

(a) shall appoint by suitable notification a person to be the Returning Officer for the election and may also in like manner appoint any person who may, subject to the control of the Returning Officer, perform all or any of the functions of the Returning officer at any such election, and

(b) shall also appoint by suitable notification--

(i) a date, not later than fifteen days after the date of, notification for the nomination of candidates ;

(ii) a further date, not later than the third day after the first-mentioned. date, for the scrutiny of nominations ;

(iii) a further date, not later than two days after scrutiny, for withdrawal of his candidature by a candidate; and

(iv) a further date, not later than twenty-one days from the date fixed for withdrawal on which a poll shall if necessary, be taken'."

The reason for these amendments is that no provision was made for the appointment of a Returning Officer and it has been found that such a provision is necessary.

Mr. President: The question is:

"'That in sub-rule (2) of Rule 3,delete the words 'or the appropriate authority in British Baluchistan'."

"That for sub-rule (6) the following be substituted:

(6)As soon as may be after the receipt of the request mentioned in sub-rule (2)the Speaker of the Provincial Legislative Assembly concerned.

(a) shall appoint by suitable notification a person to be the Returning Officer for the election and may also like manner may. subject to the control of the Returning Officer, perform all or any of the functions of the Returning Officer at any such election and

(b) shall also appoint by suitable notification--

(i) a date, not later than fifteen days after the date of notification, for the nomination of candidates;

(ii) a further date, not later than the third day after the first-mentioned date, for the scrutiny of nominations;

(iii) a further date, not later than two days after scrutiny, for withdrawal of his candidature by a candidate; and

(iv) a further, date, not later than twenty- one days from the date fixed for withdrawal, on which a poll shall, if necessary, be taken."'

The motion was adopted.

Shri Santhanam: Sir, I move:

"That in sub-rule (2) of Rule 5, after the words 'as the case may be' the words the Advisory Councils of Delhi and

Ajmer-Merwara' be inserted."

"That in sub-rule (5) of Rule 5, after the words 'in any part of India', the words 'which is participating or entitled to participate in this Assembly' be inserted".

"That for sub-rule (11) of Rule 5, the following be substituted: "The foregoing rules shall apply in relation to Delhi and Ajmer-Merwara subject to the following modifications, namely:

(a) that for the 'the Provincial Legislative Assembly' there shall be substituted 'the Delhi Advisory Council or the Ajmer-Merwara Advisory Council as the case may be; and for the 'the Speaker of the Provincial Legislative Assembly' there shall be substituted 'the Chairman of the Delhi or Ajmer-Mewara Advisory Council as the case may be'.

(b) that instead of a section of the Provincial Legislature taking part in the election, the non- official members of the or the Ajmer-Merwara, Advisory Council shall 'take part in it'."

These are all consequential to the changes that have been made and I do not think any further explanation is needed.

Mr. K. M. Munshi: Sir, I accept the amendments moved by Mr. Santhanam. They carry out the idea that the representatives of Delhi and Ajmer-Merwara have to elected by the respective Advisory, Councils.

Mr. President: The question is:

"That in sub-rule (2) of Rule 5, after the words 'as the case may be' the words 'the Advisor-.- Councils of Delhi and Ajmer-Merwara' be inserted."

"That in sub-rule (5) of Rule 5, after the words 'in any part of India', the words 'which is participating or entitled to participate in this Assembly' be inserted"

"That for sub-rule (11) of Rule 5, the following be substituted:

"The foregoing rules shall apply in relation to Delhi and Ajmer-Merwara subject to the following modifications, namely:

(a) that for 'the Provincial Legislative Assembly' there shall be substituted 'the Delhi Advisory Council or the Ajmer-Merwara Advisory Council as the case may be'; and for 'the Speaker of the Provincial Legislative Assembly' there shall be substituted 'the Chairman of the Delhi or Ajmer- Merwara Advisory Council as the case may be'.

(b) that instead of a section of the Provincial Legislature taking part in the election, the non- official members of the Delhi or the Ajmer-Merwara Advisory Council shall take part in it."'

The motion was adopted.

Mr. K. M. Munshi: Sir, I move:

"That after sub-rule (6) of Rule 5 the following new sub-rule be inserted:

'(6)A. The Speaker of the Provincial Legislative Assembly concerned shall, if a poll is taken, by suitable notification fix the hour at which the poll shall commence and the hour at which it shall close on the date fixed under sub-clause (iv)' of clause (b) of sub-rule (6) and the place at' which the poll shall be taken.'"

"that the following be added at the end of sub-rule (9) of Rule 5:

'where any such rules or regulations exist, it shall be competent for the Speaker of the Provincial Legislative Assembly concerned to make, with the previous approval of the President, such modifications therein as may be necessary for the purposes of this sub-rule.'"

This completes the mechanism for holding the election. In Rule 5 we have added a provision with regard to the Returning Officer. With a view to completing the whole mechanism of election it is necessary that the Speaker should be authorised to have a poll taken, if required. Also, there may be rules which may be required to be modified and it may not be possible to come to the Constituent Assembly. In order to complete the elections therefore, the Speaker may be authorized with the previous approval of the President, to modify the rules.

Mr. K. Chengalaraya Reddy (Mysore State): Sir, when the previous amendment was moved, I stood up to raise a question as to What was the provision made for filling up a vacancy, if it arose in an Indian State. I was told by an Honourable friend that the provision was incorporated in the Rules, and I then sat down. But now, an amendment, has been moved laying down the procedure to fill up vacancy by by-election. On a cursory reading of the Rules I do not find that any provision has been made for filling up a vacancy; if it arose, in an Indian State. I therefore suggest that a suitable provision may be made in the Rules of Procedure.

Mr. K. M. Munshi: There is some misunderstanding. As regards elections with respect to Indian States, a Standing Order has been made by the President and they will be governed by the Standing Orders.

shall commence and the hour at which it shall close on the date Axed under sub-clause (iv) of clause (b) of sub-rule (6) and the place at

These relate to the Chief Commissioners provinces.

Mr. President: The question is:

"That after sub-rule (6) of Rule 5 the following new sub-rule be inserted:

'(6)A. The Speaker of the Provincial Legislative Assembly concerned shall, if a poll is taken, by suitable notification fix the hour at which the poll which the poll shall be taken'."

'That the following be added at the end of sub-rule (9) of Rule 5:

'where any such rules or regulations exist, it shall be competent for the Speaker of the Provincial Legislative Assembly concerned to 'make. with the previous approval of the President, such modifications therein as may be necessary for the purposes of this sub-rule.' "

The motion was adopted.

RULE 10

Mr. K. M. Munshi: I come to rule No. 10. that Is with regard to the convening of a meeting of the Sections. I move that the whole of the rule be deleted.

Shri Sri Prakasa: I sent notice of an amendment this morning for the insertion of a new rule after Rule 5.

Mr. President: I understand that this notice was received this morning.

Shri Sri Prakasa: I could not sent it earlier. I sent it today at 10 o'clock.

Mr. President: Is it not too late?

Shri Sri Prakasa: I think the amendment is an important one because it fills in a lacuna in the existing rules. If you will permit me I shall move it.

Mr. K. M. Munshi: May I rise to a point of order? Our Rule 66 states that "No new rule shall be made nor shall any of these rules be amended or deleted except after a reference of the proposal so to make. amend, or delete the rule to the Steering Committee which shall report to the Assembly within two weeks of the of the receipt of the reference".

Shri Sri Prakasa: I am in your hands. I am only trying to fill in a lacuna. New elections have taken place. Rules 4 and 5 have been violated by an outside authority. All the new elections that have taken place in Bengal and the Punjab will Otherwise be *ultra vires.*

Mr. President: Will you please. wait till we have finished the other Rules? In the meantime, I shall consider it-

The question is:

"The rule 10 be deleted."

The motion was adopted.

RULE 11

Mr. K. M. Munshi: Sir, I move:

"That in Rule 11 for the words 'five Vice-Presidents' the words 'two Vice-Presidents' be substituted, and the following be inserted at the end of this rule.

'who shall be elected by the Assembly from amongst its members in such manner as the President may prescribe'."

Rule 11 provides for five Vice-Presidents, and this is interconnected with Rule 12 which says that the Chairman of each of the sections shall be an *ex-officio* Vice-President of the Assembly. As there are; no sections now all this becomes unnecessary. In the result there will be two Vice-Presidents both of whom will be elected by the Assembly as a whole. Sir, I move.

The motion was adopted.

RULE 12

Mr. K. M. Munshi: Sir, I move that Rule 12 be deleted. That is consequential Sir, I move:

The motion was adopted.

RULE 13

Mr. K. M. Munshi: Sir, I move:

"That in Rule 13 for the words 'Rule 12(1)' the words 'Rule 11' be substituted."

Rule 13 the election of two Vice-Presidents is referred to as being under Rule 12 (1). Now Rule 12 having gone and the matter having been incorporated in Rule 11, Rule 13 should be amended accordingly. Sir, I move.

The motion was adopted.

Rule 14

Mr. K. M. Munshi: Sir, I move:

"That in sub-rule (2) of Rule 14 for the words 'an elected' the, word 'a' be substituted and that the words 'as a whole' be deleted."

Rule 14 says that a Vice-President shall cease to hold office as such if he ceases to be a member of the Assembly. "Any vacancy in the office of an elected Vice-President of the Assembly shall be filled by election by the Assembly as a whole." In view of the changes that have already been made there is no reason to have the words "in elected" because both the Vice-Presidents are elected. Also there is no reason to keep the words "as a whole" because both the vice-presidents are going to be elected by the House as a whole. Sir, I move.

The motion was adopted.

Rule 17

Mr. K. M. Munshi: Sir, I move:

"That in Rule 17 'sub-rule (6)' be deleted, and in sub-rule (8) the words 'or a Joint Secretary' be deleted."

Sub-rule (6) provides for the Secretary of the section and it lays down that the Secretary of the section shall be a Joint Secretary of the Assembly. As there are no Joint Secretaries the sub-rule should be deleted. Further the words "Joint Secretary" appeal in sub-rule (8)and these words should be deleted. Sir, I move.

The motion was adopted.

RULE 18

Mr. K. M. Munshi: Sir, I move:

"That in Rule 18 the words 'sections and the' be deleted."

The motion was adopted.

RULE 19

Mr. K. M: Munshi: Sir, I move:

"That in Rule 19, 'sub-rule 1(iii)' be deleted and in sub-rule 1(iv) the words 'or the sections' be deleted."

The motion was adopted.

RULE 23

Mr. K: M. Munshi: Sir, I move:

"That after Rule 23 the following be inserted as Rule 23A--

23A. (1) The presence of at least one-third of the whole number of members shall be necessary to constitute a meeting of the Assembly or any of its committees.

(2)If the Chairman, on a count being demanded by a member at any time during a meeting, ascertains that one-third of the whole number of members are not present, he shall adjourn the Assembly or the committee, as the case may be, for fifteen minutes, and if on a fresh count being taken after that period it is founds that there is still no quorum he shall adjourn the Assembly or the committee as the case may be, till the next day on which it ordinary sits.'"

On the last occasion the question of quorum was not decided by the rules and it was left over to be incorporated in an additional rule. Sir, I Move.

Shri K. Santhanam: Sir, I am not moving the amendment that stands, in my name.

Shri Sri Prakasa: Sir, may I know if these amendments of Mr. Munshi and the further amendments moved by Mr. Santhanam had been referred to the Steering Committee and if all this is in the nature of a. note by, the Steering Committee?. Or are Mr. Munshi and Mr. Santhanam; moving these off their own bat?

Mr. K. M. Munshi: These rules are not my Own; the are the report of the Steering Committee which I am placing before the House. They were initiated by the Steering Committee and I am moving them on behalf of the Committee.

Shri Sri Prakasa: Then what about Mr. Santhanam's amendments?

Mr. K. M. Munshi: These are amendments of the rules as proposed by the Steering Committee and so they are not covered by Rule 66; they are not new rules.

Shri Sri Prakasa: Sir, I do not know if you are satisfied with what Mr. Munshi says. I am not. I feel that you may just as well permit my amendment to be moved which is before you and which I think is very important.

Mr. President: I have asked the Honourable Member to wait till the end; the question of moving it does not arise at this stage.

Shri Sri Prakasa: An occasional reminder will be helpful. (*Laughter.*)

Shri Jaspat Roy Kapoor (U. P.: General): Sir, I do not propose to move my amendment.

Mr. R. K. Sidwa (C. P. & Berar: General): I am also not moving my amendment.

Mr. President: Then the amendment of Mr. Munshi will be put to the vote.

The question is:

"That after Rule 23 the following be inserted as Rule 23A--

'23A.(1) The presence of at least one-third of the whole number of members shall be necessary to constitute a meeting of the Assembly or any of its committees.

(2) If the Chairman, on a count being demanded by a member at any time during a meeting, ascertains that one-third of the whole number of members are not present, he shall adjourn the Assembly or the committee, as the case may be, for fifteen minutes, and if on a fresh count being taken after that period it is found that there is AM no quorum, he shall adjourn the Assembly or the committee. as the case may be, till the next day on which it ordinarily sits."

The motion was adopted.

RULE 31

Mr. K. M. Munshi: I now come to Rule 31. I move:

"That sub-rule (3) of this Rule be deleted."

Rule 31 says:

"(1) A matter requiring the decision of the Assembly, shall be brought forward by means of a question put by the Chairman.

(2)In all matters requiring to be decided by the Assembly; the Chairman shall exercise a vote only in the case of an equality of votes.

(3)Any question relating to a matter referred to in paragraph 19(vii) of the Statement shall be decided as laid down therein."

Now, Sir, this sub-rule (3) has no efficacy. It has no meaning. I therefore move that it be deleted.

Mr. M. S. Aney (Deccan States): Will the Honourable Mover read out paragraph 19(vii) of the Statement.

Mr. K. M. Munshi: It reads:

"In the Union Constituent Assembly resolution varying the provisions of paragraph 15 above or raising any major communal issue shall require a majority of the representatives present and voting of each of the two major communities. The Chairman of the Assembly shall decide which, if any, resolutions raise major communal issues and shall, if so requested by a majority of the representatives of either of the major communities, consult the Federal Court before giving his decision."

This is a double majority clause which, as I said, has lost its efficacy.

Mr. President: The question is:

"That sub-rule (3) of Rule 31 be deleted."

The motion was adopted.

RULE 35

Mr. K. M. Munshi: Sir, I move:

"That the two provisos to Rule 35 be deleted."

The rule and the provisos run as follows:

"In all matters relating to procedure or the conduct of business of the Assembly, the decision of the Chairman shall be final:

Provided that when a motion raises an issue which is claimed to be a major communal issue, the Chairman shall, if so requested by a majority of the representatives of either of the major communities, consult the Federal Court before giving his decision:

Provided further that no Section shall deal with matters which fall within the purview of the powers and functions of the Union Constituent Assembly or vary any decision of the Union Constituent Assembly taken upon the report of the Advisory Committee referred to in paragraph 20 of the Statement."

For the reasons which I gave yesterday, these provisos become entirely useless. I move therefore that these two provisos may be deleted.

The motion was adopted.

RULE 36

Mr. K. M. Munshi: I now come to Rule 36. I move first that the word 'exclusive' in the first line be deleted. It says: 'It shall be the exclusive function of the Advisory Committee referred to in paragraphs 19 and 20 of the Statement to initiate and consider proposals...... Now that that Statement is gone, this Statement becomes useless.

I move next that the words "Union Constituent" wherever they occur in this Rule and the words "shall be binding on the Sections and" be deleted.

Mr. President: You omit only the words "Union Constituent"?

Mr. K. M. Munshi: Yes, Sir, The word "Assembly" remains.

Mr. President: The question is:

"That in-Rule 36,--

(i) the word 'exclusive';

(ii) the words 'Union Constituent', wherever they occur; and

(iii) the words 'shall be binding on the Sections and'

be deleted.

The motion was adopted.

RULE 41

Mr. K. M. Munshi: Sir, Rule 41 deals with the functions of the Steering Committee. Sub-rule (1) (c) runs thus: "act as a general liaison body between the Assembly and the Sections, between the Section *inter se*, between Committees *inter se*, and between the President and any part of the Assembly;" I propose that in sub-rule (1) (c), the words "between the Assembly and the Sections, between the Section *inter se*" be deleted. These words are not longer necessary.

The motion was adopted.

RULE 42

Mr. K. M. Munshi: In sub-rule (1) (b) of this Rule, for the word 'five', substitute the word 'two'. As there are only two-Vice-Presidents now, this change has become necessary.

The Honourable Pandit Hirday Nath Kunzru (U. P.: General): May I know from Mr. Munshi how the amended Rule 41 (1) (c) reads?

Mr. K. M. Munshi: The Committee shall act as a general liaison body between Committees *inter se,* and between the President and any part of the Assembly.

The Honourable Pandit Hirday Nath Kunzru: Liaison between the Assembly and the Committees?

Mr. K. M. Munshi: No Between the committees.

Pandit Govind Malaviya: (U. P.: General): Will Mr. Munshi, Sir, explain what is meant by liaison between any part of the Assembly and the President? I can understand liaison between the committees.

Mr. K. M. Munshi: I am not responsible for that.

Mr. President: I am afraid the question of interpretation 'has been raised too late. When it becomes necessary to interpret it, we shall do so.

The Honourable Mr. Hussain Imam (Bihar: Muslim): If any absurdity becomes apparent it is within the competence of the House to make the necessary consequential change.

Mr. President: It does not arise out of the amendment now moved.

Mr. Munshi's amendment is to Rule 42.

In clause (b) of Sub-rule (1) substitute the word "two" or "five".

The motion was adopted.

RULE 45

Mr. K. M. Munshi: I now come to Rule 45. I move that in sub-rule (2), delete the words "one representing each Governor's Province". This is also consequential. Sub-rule (2) reads as follows:--this is about the House Committee:

> "The Committee shall consist of eleven members, who shall be elected by the Assembly, one representing each Governor's Province in the manner to be prescribed by the President."

Now there are not eleven Governor's provinces, and the amendment would mean that there may be eleven members but not each representing a Governor's province. I move the amendment.

The motion was adopted.

RULE 46

Mr. K. M. Munshi: The next amendment is to Rule 46 which relates to other Committees. I move:

> "That the words 'or a Section according as the business of the Committee relates to the Assembly or the Section' be deleted."

This is also consequential.

The motion was adopted.

RULE 47

Mr. K. M. Munshi: I move that in Rule 47 the words beginning with "and the Secretary of any Section, etc." to the end of the rule be deleted.

Mr. President: This is also consequential.

The motion was adopted.

RULE 48

Shri K. Santhanam: I move, Sir, that in Rule 48 for the word "shall" the word "may" be substituted. This is purely consequential to the amendment with regard to quorum which the House has adopted today. As the rule stands, it says:

> "The motion by which a Committee is to be set up shall state the quorum necessary to constitute a meeting of the Committee."

Because we had no rule regarding quorum, it was obligatory to state the quorum. Now we have got a rule which lays down the quorum as one-third. Therefore, this obligation is no more necessary. My amendment is that the motion by which a, committee is to be set up may state the quorum, as quorum has already been provided for.

Shri Sri Prakasa: May I draw your attention, Sir, to Rule 66? Has this been referred to the Steering Committee?

Mr. President: I do not think that the Steering Committee has been consulted, but this amendment follows from the other amendment which you have accepted. It is only consequential.

Shri Sri Prakasa: I hope the same ruling will apply in my case.

Mr. President: The question is:

"That in Rule 48 forth word 'shall' the word 'may' be substituted'.

The motion was adopted.

RULE 49

Mr. K. M. Munshi. I move:

"That in Rule 49 the words 'or to the Section concerned, as the case may be' be omitted."

The motion was adopted.

Rule 63

Mr. K. M. Munshi: I move that Rule 63 be deleted. This is with regard to the consideration of the draft constitutions by the Provincial Legislatures. I gave my reasons when I presented the report of the Order of Business Committee and I need not repeat them now.

Mr. President: Mr. Munshi's amendment is that Rule 63 be deleted Does anyone wish to say anything about it?

The motion was adopted.

Shri Sri Prakasa: Before Mr. Munshi moves his amendment to Rule 67, I move that Rule 66 be deleted, even if it has not gone to the Steering Committee, as it is purely a consequential amendment. I hope you will permit this amendment to be moved. I think, Sir, that this Rule should go, and the Constituent Assembly should be able to exercise its inherent powers to change the rules instead of members having to go to the Steering Committee every time. I have a precedent for this in this afternoon's Proceedings themselves inasmuch as the amendments to the original rules moved by Mr. Santhanam were in no. way amendments to Mr. Munshi's amendments. If you will see, Sir, the amendments moved by Mr. Santhanam to Rules 4 and 5, you will find, that they were absolutely new amendments and that they did not go to the Steering Committee. Since you permitted these amendments to be moved here, I hope you will permit me also to move this amendment.

Mr. President: Your amendment is out of order. The amendments to which reference has been made referred to amendments placed before the House and which had come here in due course after being passed by the Steering Committee. Therefore those; amendments were perfectly in order. This Rule has never gone before the Steering Committee and therefore your amendment is altogether out of order.

RULE 67

Mr. K. M. Munshi: Coming to the last amendment with regard to Rule 67, I move:

> "That the words 'the Sections and' in the first sentence and the whole of the sentence be deleted."

This is also a consequential amendment.

Mr. President: Does anyone wish to say anything on this?

Shri Jaspat Roy Kapoor: Mr. President, I am raising a point of order. Rule 617 is the rule on which Mr. Munshi has been relying so far. Rule 67, Sir, lays down that every proposal must go before the Steering Committee and the Steering Committee must consider it and must submit its report to the Assembly. Now, Sir, all these proposals which have so far been placed before us by Mr. Munshi have I understand been considered by the Steering Committee but in addition to that the Steering Committee must submit its report to the Assembly. So far no report of the Steering Committee has been placed before us. Now, Mr. Munshi is proposing an amendment to Rule 67. I would like to know what is the report of the Steering Committee. With regard to this proposal of Mr. Munshi, if there is no report of the Steering Committee before us, I think it is out of order for him to make any proposal to amend Rule 67.

Mr. President: As I understood from Mr. Munshi, all these amendments which he has been proposing were on behalf of the Steering Committee, and though they are put in the form of amendments it is really the report of the Steering Committee.

The Honourable Pandit Hirday Nath Kunzru: Was the President informed that these were the amendments to the rules which had been proposed by the Steering Committee?

Mr. President: There was a meeting of the Steering Committee in which all these rules and amendments had been considered and they are, coming from there.

Shri Jaspat Roy Kapoor: My submission is that there must be a report of the Steering Committee before us. On the agenda paper all that we have is that Mr. Munshi shall move the proposal as are contained in the Order Paper. There has been no report of the Steering Committee before us. The report of the Steering Committee must be presented in a proper form to the Honourable the President of the Assembly either by the President or by the Secretary of the Committee. Mr. Munshi is neither the President nor the-Secretary of the Steering Committee.

The Honourable Sardar Vallabhbhai Patel (Bombay: General): On a point of order I would like to ask how this could be raised after the rules have been passed. It should have been asked at the initial stage.

Mr. President: I agree. The question was raised at an earlier stage and it was answered that the amendments had been considered by the Steering Committee. Probably the mistake has arisen because it is not so stated in the agenda that this is a report from the Steering Committee. Otherwise, so far as the substantial compliance with the rules is concerned that has been done.

Shri Jaspat Roy Kapoor: Then, as a matter of fact, is there any report of the Steering Committee?

Mr. President: It is not stated as a report but it is a report submitted by the Steering Committee, Mr. Munshi has been authorised by the Steering Committee to put these amendments before the House on behalf of the Steering Committee.

The Honourable Sardar Vallabhbhai Patel: The Chairman of the Steering Committee is the President of the Constituent Assembly and the reference may be oral.

Mr. K. M. Munshi: The position is that the President of the Constituent Assembly is the *ex-officio* Chairman of the Steering Committee. Naturally he cannot place the report. The *ex-officio* Secretary is not a member of this House and the Steering Committee has asked one of its members as a Reporter to place its decisions before this House. these rules were the rules which emanated from the Steering ,committee and which the Steering Committee authorised me to place before the House.

Mr.-President: I have already ruled that the amendment is in order. Now I put the amendment which hag been moved by Mr. Munshi to vote.

The question is:

"That in Rule 67 the words 'the Sections and' in the first sentence and the Whole of the second sentence be deleted."

The amendment was adopted.

Mr. President: There was an amendment which Mr. Sri Prakasa wanted to move. That has not gone to the Steering Committee, but I understand that the amendment which he proposes to move rectifies a lacuna in our rules. I therefore ask the permission of the House to let him move the amendment. If the House agrees, I would permit him to move it.

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): May I suggest that he be asked to send it to the Steering. Committee and it may be taken up later?

Mr. President: It is after all more or less a formal business. It rectifies a lacuna which exists in our rules which we have discovered, So, it may not be necessary to go through the formality and send it, to the Steering Committee, if the House permits it.

Diwan Chaman Lall (East Punjab: General): Are we bound by the rules we have made?

Mr. President: We are certainly bound by the rules.

Diwan Chaman Lall: There is no rule under which the President can ask the permission of the House. I want to know what is the proper procedure to amend the rules passed by the Steering Committee.

Mr. President: After hearing the amendment if the House still thinks that it should be put to the Steering Committee, then I will do so. Mr. Sri Prakasa, will you kindly read out the amendment?

Mr. M. S. Aney: Rule 66 seems to be very imperative and leaves no discretion to anybody. Unless some power under the rules is given to President to suspend the operation of any rule on account of emergency, I think the President cannot call upon this House to accept any amendment in order to infringe these rules.

Mr. President: I thought the House had power to dispense with its own rules when it liked and therefore I must not take upon myself to permit this amendment to be moved. As far as I can see there is no provision for allowing the House or the President to suspend any of the rules, but I take it that it is inherent in the House to suspend any of the rules for the time being and to permit any member to move anything which does not strictly fall within these rules.

Shri Jaspat Roy Kapoor: May I draw your attention to Rule 26 which says:

> "Unless otherwise directed by the Chairman, notice of every motion , accompanied by a copy of the motion shall be given at least three clear days before the day on which the motion M to be moved in the Assembly........"

Mr. President: That only lays down the time for giving notice of any motion. That is why I said that if 'the House does not wish to take this up, I am not going to allow it. But if the House permits. I shall have no Objection. Therefore, I put it to the House.

Will Shri Sri Prakasa read his amendment?

Shri Sri Prakasa: After Rule 5, insert the following new rule:

> "Not withstanding the provisions of Rules 4 and 5 above, the Governor-General of India may, in pursuance of the statement of His Brittanic Majesty's Government of 3rd June 1947, order fresh elections to the Constituent Assembly from. the areas mentioned in paras 4 to 14 of that statement and thereupon the members already elected from the said areas whether or not they have taken their seats in the Assembly in the manner prescribed in Rule 3, shall be deemed to have vacated their seats and the members newly elected shall be deemed to have been duly elected as members of the Assembly. This rule shall have retrospective effect from June 3, 1947."

I think, Sir, that this rule is self-explanatory. The fact is that the Viceroy acted in a manner which was contradictory to the rules that the Constituent Assembly had framed for itself. Rules 4 and 5 definitely prescribe the manner in which seats will be vacated and filled. These rules were grossly violated during the last few months and new elections were held. Many members of this House were deemed to have vacated their seats without having resigned their membership. We have all acquiesced in that.

Now, Sir, in order to vindicate our own honour, I think it Is imperative that we should pass a rule so that all that has happened may be sanctioned formally. If we do not pass this rule, I submit, Sir, most respectfully that the presence of the new members from Bengal and the Punjab cannot be allowed. I therefore think that it is essential that this rule should be passed. I hope the House will agree.

Mr. President: I would like to know whether the House would permit this amendment to be taken up. We are not now going into the merits. The question is whether it Should be allowed to be discussed.

The Honourable Pandit Jawaharlal Nehru: I am not saying anything on merits. What I was going to say is this. Even if it is taken up, this is something which the Steering Committee must consider. This is a long drawn out Rule which, even if accepted on merits, has to be looked into by lawyers and others. The question is how it should be accepted. It cannot be taken up in this manner. Otherwise, instead of removing a difficulty we might be creating other difficulties. I submit the proper course is to send it to the Steering Committee.

Mr. President: I am putting it to the House.

The motion to permit the amendment being taken up was negatived.

Shri Sri Prakasa: Am I to take it that this amendment is lost?

Mr. President: It is not lost. It is not taken up. You can send it to the Steering Committee and it may come up in due course.

Shri Sri Prakasa: May I respectfully enquire what will be the position of the new members who have been elected and who have taken their seats? In the light of Rules 4 and 5, will their presence be allowed.

Mr. President: I allowed them to take their seats yesterday. They will continue.

The Honourable Pandit Jawaharlal Nehru: May I point hat the question that Shri Sri Prakasa has raised is an important question? The question is how to, do it. The bringing up of an informal amendment to the Rules is an improper way. Possibly it will be open to the House to pass a resolution or if it is necessary to change the Rules we may change them. But it must be considered by the appropriate authority. My only submission is that it cannot be taken up in this casual way.

Shri Sri Prakasa: We have admitted members in a casual way.

Mr. President: We may now pass on to the next item.

Mr. H. V. Kamath (C.P. & Berar: General): I submit that in the light of the new rules that have, been made and the old rules that have been amended or deleted all the rules be renumbered omitting all A's etc.

Mr. President: We shall do that. I think the House has no objection to the re-numbering of the Rules consequent on the amendments. I take it that this is agreed to.

Pandit Govind Malaviya: Sir I think the right course will be, that the rules should all be correctly re-numbered, and then in a formal manner put before the House en bloc and adopted without any further discussion. That will regularise things.

Many Honourable Members: Why?

Mr. President: We shall now pass on to the next item.

Mr. Deshbandu Gupta (Delhi): Before the next item is taken up, Sir, may I know what has happened to the amendment 'of which notice had been given by me?

Mr. President: That shares the same fate as that of Mr. Sri Prakasa.

Mr. Deshbandhu Gupta: In view of the important nature of the amendment, may, I submit that it may be taken up now with the permission of the House.

Mr. President: I think there is no use of repeating that experiment You had better leave it.

We shall now go on to the next item in the agenda. Sardar Vallabhbhai Patel will move the motion standing in his name.

Mr.Tajamul Husain (Bihar: Muslim) Before we proceed with the motion, I would like to know what happened to the resolution which I had sent about four days ago in connection with the motion about to be moved now?

Mr. President: I take it that you are referring to the dissolving of the Committee which has already completed its function and submitted its report. Is that the resolution you are referring to?

Mr. Tajamul Husain: That is the only resolution I have sent you.

Mr. President: I have ruled it out of order because the function of the Committee is already over and it has made its report.

Mr., Tajamul Husain: May I know if it is the custom of the House not to inform an Honourable Member who sends a resolution that it has, been disallowed? I have had no information of this up till now.

Mr. President: I have ruled it is out of order.

Mr. Tajamul Husain: I accept your ruling. I am asking why I was not informed of it. Is it the practice, when an Honourable Member sends a resolution and you disallow it, that you do not inform the member concerned?

Mr. President: I shall take care in the future to inform members if I disallow any resolution.

REPORT ON THE PRINCIPLES OF A MODEL PROVINCIAL CONSTITUTION

The Honourable Sardar Vallabhbhai Patel: Sir, I move that this Constituent Assembly do proceed to take into consideration the Report* on the principles of a model Provincial Constitution submitted by the Committee appointed in pursuance of the resolution of the Assembly of the 30th April, 1947.

This Committee has submitted its report which has been circulated amongst all the members of this House since about a fortnight and the report is in the possession of all the members. What I wish to point out in moving this motion is that report is not the final draft of the provincial constitution. According to the instructions given to the Committee, it has settled certain principles of the provincial constitution, and therefore, this House need not go into the verbal details or into the exact legal form or constitutional form of these clauses that have been submitted in the memorandum. If the various clauses in the report are, after consideration, adopted, or improved upon, then, it will be the function of the draftsmen or the lawyers who will be entrusted with the work of drafting the constitution to put them the proper form. Therefore, the House need not waste its time on going into a consideration of the language of the various clauses.

It should also be remembered that this report contains roughly about 85 per cent of the draft or 85 per cent of the principles of the provincial constitution that has to be framed. Because, you will remember that this House has appointed an Advisory Committee which has to submit its, report after that Reports of the Minorities Committee and the Tribal and Excluded and Partially Excluded Areas Committee are received. These Reports have not yet been received. When they are received, in due course, the Advisory Committee will meet and consider these Reports when the question of protection of minorities rights and interests will be taken into account. It has been agreed that this Advisory Committee should meet during the course of this month and submit its report before this House disperses or meets again. Therefore, that report will come at a later stage.

Now, in dealing with the memorandum that is before you. I shall, I briefly touch upon the salient features of the draft. The first question we had naturally to consider was whether the provincial constitution shall be of a unitary type or shall be of a federal type, and as there was a little difference of opinion on this question, the Committee thought it proper to have a joint session of the Provincial Constitution Committee and the Union Constitution Committee. Both these Committees met and they came to the conclusion that it would suit the conditions of this country better to adopt the parliamentary system of constitution, the British type of constitution with which we are familiar. The two Committees have agreed and the Provincial Constitution Committee has accordingly suggested that this constitution shall be a parliamentary type of Cabinet.

Some misunderstanding may arise on some of the items mentioned in Clause 9. Clause 9 provides four items under the note. The first one says, the prevention of any grave menace to the peace and tranquality of Province or any part thereof. It means that the Governor is probably given powers in the case of a grave menace to the peace and tranquillity in the province, which, I may say, is not exactly the intention of the Committee. The Committee, in setting this question, intended to convey that the Governor shall have only the authority to report to the Union President about the grave Situation arising in the province which would involve a grave menace to the peace of the province. It was not their intention that this power or authority, as to be exercised by the Governor which may perhaps bring a conflict between the Ministry and the Governor. The Governor having no control over the services, the authority of administration entirely vests in the Ministry and therefore, although there, was considerable difference of opinion on this question on account of the Prevailing conditions in the country,--some thought that it would be advisable under the present peculiar unsettled conditions in the country to give some limited powers to the Governor--eventually the Committee came to be conclusion that sit would not be workable, that it would create deadlocks and therefore, the proper course would be to limit his powers to the extent of authorising him to report to the President of the Union. What steps, or, what authority the President of the Union exercise would be a matter for the Union Powers Committee to provide in the Union Constitution. But, so far as the provincial constitution is concerned, it was agreed that this limited power of reporting only should be given to the Governor.

Then, you will sea the second item in Clause 9, the summoning and dissolving of the Provincial Legislature (Clause 20 of this Part). This is a normal power which is given in every constitution to a Governor and therefore there is nothing special about it.

The third item provides for the superintendence, direction and control of elections. In this matter, I think the Fundamental Rights Committee made a recommendation that in order to ensure fair elections, there should be, appointed a Commission by the President of the Union Constitution, so that it should be above party influences and fair elections in all provinces can be ensured. This, I think, was adopted by this House when the Fundamental Rights were adopted and therefore this clause will have to be brought into line with the former resolution adopted by this House.

There is then the fourth item the appointment of the Chairman and members of the Provincial Public Service Commission and of the Provincial Auditor General. In this matter also, the appointment of the Chairman and the members of the Provincial Service Commission is generally made on the recommendation of the Cabinet or Ministry.

Therefore, when we analyse Clause 9, practically the only powers left to the Provincial Governor is the power to report to the Union President when a grave emergency arises threatening menace to the peace and tranquillity of the province and the summoning and dissolving of the Provincial Legislature.

When we have dealt with Clause 9, we then come to the recommendations of the Committee which deal with the constitution of the legislature whether there should be two Houses or one House. The Committee generally agreed that there should be only one House of Legislature. But it was also agreed that if any of the Provinces wanted a bicameral legislature, it should be open to the province to setup, such a legislature, but that the constitution of the Upper House would be, according to the opinion of the Committee, on the Irish model, where a certain percentage is to be elected on functional representation and a certain percentage to be nominated and provision has to be made for election. Now, the recommendation of the Committee regarding the Second House is a departure from the existing Act in so far as half of the members are to be elected by functional representation. There will be representation in the Lower House for special interests such as, women, labour, commerce, industry, etc. This appears to be a reasonable provision and is in accordance with the Irish model.

The Committee have given special attention to the appointment of Judges of the High court. This is considered to be very important by the Committee and as the judiciary should be above suspicion and should be above party influences, it was agreed that the appointment of High Court Judges should be made by the President of the Union in consultation with the Chief Justice of the Supreme Court, the Chief Justice of the Provincial High Court and the Governor with the advice of the Ministry of the provinces concerned. So there are many checks provided to ensure fair appointments to the High Court. These are the special features. The principle settled by the Committee is contained in the memorandum and for the rest of the Constitution it was agreed that drafting should be made on the adaptation of the present 1935 Act, by making suitable alterations. Therefore, I move that this report of the committee be taken into consideration and if the House agrees, the Report may be taken clause by clause.

Maulana Hasrat Mohani : (United Provinces: Muslim): *[Sir, my Honourable friend Sardar Patel has presented the Report before you and with due respect to him I raise an objection to it. It is that till the Report on Union Constitution is presented before the House, consideration of this Report seems quite inappropriate. The reason is not this, as Patel Sahib has himself said, that it is not final and the mistakes, if any, could be rectified later on. If only verbal changes were intended I would never have raised this point. I want to tell you, and through you, my nationalist and national-socialist friends, who are present here, that my objection is a vital and far-reaching one. If you lightly pass over this objection, then I am sure you will have to repent this action of yours and regret it some day.

Looking around, I find that except Nationalist members no one else it present here. There was one Communist member from Bengal, but somehow he has been ousted. From amongst the Forward Blockists, Sarat Chandra Bose has resigned from the membership. Mr. Tripathi of U.P. and one Forward Blockist of C.P., though they have not designed their seats, for some unknown reasons they are not present in the House. I feel it my duty to place the view-point of such of my friends before you.]*

The Honourable Sardar Vallabhbhai Patel: On a point of order. The debate is going on a wrong track and I do not understand what has the question of whether the Constitution shall be a Republican Constitution or not, to do with the Provincial Constitution and whether, there should be a Dominion Constitution also has nothing to do with it because we are today setting the principles of a Provincial Constitution and when the question as to whether there should be a Dominion Constitution or Republican Constitution comes. Maulana Hasrat Mohani can move any amendment or say anything. To-day we deal with only the Provincial Constitution draft which can fit in with an Independent India which has nothing to do with Dominion Status and which can fit in with the Republican Constitution according to the Resolution which has been passed by the Constituent Assembly. Therefore, he may not be allowed to cover a wide range which has nothing to do with our present motion.

Maulana Hasrat Mohani: *[Had there been some ulterior motives behind it, I would not have put it up in this way. For example, if I had done all this with communal feelings and dilatory tactics. I would have asked you to withhold this Report until the report on Minorities is put up before us. But in fact, the question is simply this that you should proceed on some principles and do not put up the Provincial Constitution before the Union Constitution is put before the House.

No doubt, Pandit Nehru has moved the Objectives Resolution of the Republic, but it has not been made clear as yet whether the proposed Republic would be of unitary type or of Federal type. Again it has not been as yet decided in case it is a Federal Republic, whether the Government would be centrifugal or centripetal.

If you do not accede to my request, my party will line up with the Leftist groups and with the aid of the Communists and Forward Blockists it will compel you to accede to our demand. Let me explain this also in this way, that, unless there is some change in the Union Constitution and the Constitution of the Union is not made satisfactorily, till then the condition of the Provinces will remain unchanged and, it will not go beyond provincial autonomy, and we will, as an Indian saying has it; "we would always remain shoe-makers that we were",

In the Report which Sardar Saheb has just now put up, he has very intelligently stated in it that they wanted to appoint Governors. You will see that with this word only, the whole constitution of the Union is defaced and distorted.

Even if we accept the suggestion of Sardar Patel, the clear meaning would be simply this that the Provinces would get Provincial autonomy only, and if this is so, I will say that all the years of your sacrifices, labours and the 'Quit India' Resolution, one and all will be rendered useless.]*

Mr. President: I think Maulana Hasrat Mohani's amendment is in order. It is open to the House to throw it out.

Maulana Hasrat Mohani: *[All the time you were telling us that we, would establish an Independent Republic and parties shall be formed not on the basis of religion, but on socialistic principles.]*

Mr. President: *[This is not the question. For the present, the simple question is whether the Report should be considered or not.]*

Maulana Hasrat Mohani: *[What I mean is that this you want to pass the Provincial Constitution by the back door.]*

Mr. President: *[You have already stated the reasons. You forgot that this is not occasion to discuss your Republic and all sorts of questions.

So far this amendment is concerned, you have already stated, the grounds on which you want to move it; and I feel that other questions should not be discussed.]*

Maulana Hasrat Mohani: *[Sir, I will conclude my statement within a short time. All the Forward Block and Communist members are absent, therefore, on their behalf, I will protect their rights, and if by your voting strength in this House, you pass anything as you like, then I will adopt other methods to protect their rights. Once again I submit that all your actions should be based on principles and that you should protect the rights of all.]*

An Honourable Member: on a point of order, Sir. Is the Honourable Member in order in calling this a packed House? Is it parliamentary? He may be asked to withdraw the expression.

Maulana Hasrat Mohani: I did not use any unparliamentary expression. I only said that somehow or other people here are all nationalists and as such were deaf. I did not mean and discourtesy to the House.

The Honourable Pandit Jawaharlal Nehru: *[Mr. President, if the Report of the Union Constitution Committee had been under consideration at this time, I would be standing here in a special capacity. But I rise now to remove the misunderstandings that have arisen in the minds of some of the members. It may be that I may not wholly succeed in my object. It is quite possible that I may fail to convince Maulana Hasrat Mohani who is rather a deep person and claims to be at once the representative and spokesman of both the Communists and Forward Blockists. It is quite obvious that if my fear comes true he would suffer from considerable perplexity. But what I intend saying is nothing very incomprehensible and technical. It is quite correct to say that we would be acting improperly if we took up the consideration of the Provincial Constitution without keeping in view the ideals we seek to realise and the goal we seek to reach. We have, it is true, taken up the consideration of the Provincial Constitution, first.

Six months ago this House passed a Resolution which placed before it the plan and the ideals. These were approved. When once the outline of anything has been drawn, the order in which the several problems involved therein are to be taken in hand had to be decided. In this case it so happened that the question of the Provincial Constitution arose earlier and the Report of the Provincial Constitution Committee also was ready earlier. Consequently, members got sufficient time to study this Report. The other Report, however, has been sent to the members only six or seven days ago. Consequently, keeping in view the fact that the members would not have sufficient time to study it, it was considered proper for their convenience not to submit that Report to the House for the time being, but to present the Report of the Provincial Constitution Committee which had been already sufficiently studied. Honourable Members have all received the Report of the Union Constitution Committee. If the President permits, I am ready to present it to the House immediately. The only difficulty in doing so is that the members may complain that they had no time to study it sufficiently, and that even if time be given for studying it would mean the waste of two or three days in doing so now. It was in view of this that it was considered proper to present the report which was ready and had been thoroughly studied. The other report will also be presented to the House just as this one has been. All of you should know that there is no intention of concealing anything or acting in an underhand manner in following this procedure.

In the present report the term 'Governor' occurs. This has completely upset the Maulana, I admit that the term 'Governor' has come down to us from the previous regime and that our associations with it are not very happy. But at present we are not concerned with the question of terminology. We do not know whether our Constitution would be in the English or any other language. So far as the term itself is concerned, you are all aware of there being Governors in America as also of the powers and authority they wield. I, therefore, submit that this does not violate in the least the ideas and the principles we have in view. It is my submission that there is no question of principle involved in it. The only question is of the convenient working of this House. If you and Sardar Patel so desire, I am prepared to present the Report of the Union Constitution Committee to the House.]*

Mr. Mohd. Tahir (Bihar: Muslim): Mr. President, Sir, I rise to support the amendment moved by Maulana Hasrat Mohani, firstly on the basis of a logical formula, *viz.*, what is true of the whole is true of the part. Sir, up till now we do not know as to what form of constitution this House will decide on regarding the Union of India, Certainly, the provinces are parts of India and unless we know the constitution of the Indian Union, it would not be fair to consider the principles of the provincial constitution. Just now, the Honourable Pandit Jawaharlal Nehru, Sir, has said that the constitution of the Indian Union is also ready and every member has got a copy of it. But, Sir, I would submit that having the copy of the constitution with the members is one thing and that taking of decisions by this House is another. Besides this, Sir, the Honourable Pandit Jawaharlal Nehru has just now said that he even prepared now to put the principles of the Indian Union Constitution before the House, and that it was by chance that the principles of the provincial constitution have been placed before the House beforehand. This clearly indicates that he also realises that the consideration of the constitution of the Indian Union should be taken up first.

My second point, Sir, would be that we do not know anything about the Report of the Minorities Committee, the Tribal Area Committee, etc., and the recommendations of those committees are to be incorporated in the constitution. Unless those reports are received it would not be fair to take up the consideration of the provincial constitution.

With these words, Sir, I support the amendment moved by Maulana Hasrat Mohani.

Shri Balkrishna Sharma (United Provinces: General): Mr. President, Sir, I rise to oppose the amendment which has been moved by Maulana Hasrat Mohani. When a minute before he was trying to act as a 'Khudai Fausdar', I was reminded of his very famous saying that he is either a Communist or a Communalist. (Some Honourable Members: "Both"). Now, he has become both a communist and a communalist and thereby he has tried to bridge the gulf between Karl Marx and Jesus Christ. The Maulana is a very great man. We have all looked upon him with reverence and respect all our life for his itegrity of purpose and honesty, but I have always felt that he is one of those men who have always refused to work in a team. He is a man who is a solitary figure ploughing his lonely furrow. Even in the Muslim League which he joined after a great deal of confabulation, the Maulana, even though he was included in the High Command, remained a solitary figure. Now the amendment which he has moved is a very funny amendment, funny for the very simple reason that it really makes very little difference whether we consider the Union Constitution first or the provincial constitution first, because we have already got our objectives before us by a resolution of this House and anything that is not in consonance with that objective any member of the House is at perfect liberty to point out either in the model constitution for the provinces or in the Union Constitution, and therefore there is very little difference whether we consider the provincial constitution first or the Union Constitution first. The Maulana really raised a fundamental question as to whether we should have the provincial constitution in nature of merely giving provincial autonomy to provinces or a republican constitution. If the Maulana thinks that the House will fall in line with him, he can certainly bring forward amendments to the provincial constitution, deleting the words which he does not like, making the Governor the President, if he so likes, and giving all sorts and manner of powers that he wants to give to the provincial legislature. If his amendments are not accepted by this House, naturally it will not help him to bring in the Union Constitution for consideration first. Where is the difference, I fail to see. Let it be clearly understood that we have made up our minds not to follow any of the constitutions in a slavish way, neither the American Constitution, nor the British model, nor any other model. We are going to evolve a constitution according to our needs and we shall see to it that we do not fall a victim either to this or to that pattern.

The Maulana has talked blibly about the U.S.S.R. Perhaps the Maulana forgets the very great difference between the U.S.S.R. and this unfortunate land where the Maulana is trying to fly at my throat and I have been trying to fly at his throat. We have got to take into consideration the situation in which we are placed. I think that, if our country wants to evolve a constitution which is mid-way between federation and a unitary form of government, we must be at perfect liberty to do so. In a country like ours which is always inventing all sorts and manners of divisions--this fissiparous tendency is a historical tendency--I think we must be very careful that we do not give so much power to the provinces as would lead to further division of the country.

It does not make the slightest difference whether we consider the provincial constitution first or the Union Constitution first. If the Maulana thinks that the House will agree with him in making the Provincial Constitution a model republican constitution, he is at perfect liberty to place his views before the House, but if he tries to monkey with it, he will succeed in doing so.

Sir, I strongly oppose the amendment which has been placed before the House by the Maulana.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I beg to support the original motion, namely, that the Provincial Constitution be now taken into consideration. The amendment really is to the effect that the Provincial Constitution should not be taken up before the Report on the Union Constitution is considered. I submit, however, that the Provincial Constitution and the Union Constitution are two different things. It does not matter which constitution is taken first. If there are defects, if there are points of difference, if there are points on which any Member feels any objection, it will be open to him to raise the same and move the necessary amendments in the House. As has already been pointed out the Union Constitution Proposals are already circulated and so we know what the Union Constitution proposals are likely to be.

The House therefore has a complete picture of what the Union and the Provincial Constitution would be like. I submit that on a matter like this we should not take the time of the House any further and the Question as to which constitution is taken up first is quite immaterial. With these few words, I support the original motion.

Pandit Govind Malaviya: Sir, I move closure of this debate.

Mr. President: Closure has been moved. The question is:

"That the question be now put."

The motion was adopted.

Mr. President: The Mover of the resolution will reply to the debate.

The Honourable Sardar Vallabhbhai Patel: The amendment to the motion moved by Maulana Hasrat Mohani is that this motion should be taken up after the consideration of the Union Constitution Committee Report. The Maulana has perhaps seen the Union Constitution report as well as the Provincial, Constitution report, because he has been closely following what is going on in this Assembly and he has seen the objectives resolution of this Constitution that has been passed in the initial stage. Now I ask the Maulana whether this draft motion which I have moved contravenes the fundamentals in any manner of that objective. If it does not contravene in any way the original resolution that has been passed by this House, I do not see how he could have any doubts whether this constitution shall be a Republican Constitution or a *Shariat* Constitution or a Democratic Constitution. The real point is whether it is better to stand on the legs or on the head and we prefer to stand on the legs. We start with the provinces and we will come to the top, but some people occasionally try acrobatic feats and it is open to them to do so. The Maulana says that the Mover has done some sort of a trick by cleverly moving this resolution I do not understand what trick I have done nor do I understand where the trick lies. The simple question is whether the draft which has been moved by me should be considered or not. He does not show by any argument that this motion should not be taken today. He suspects that there must be something in the Union Constitution and if he finds anything in the Union Constitution Report, when the report is taken, he will have ample time and opportunity to make any suggestions or alteration or modifications. There is nothing in this motion which gives room for suspicion or doubt and a simple motion like this should not be used for the purpose of taking any more time of this House. An Mr. Naziruddin Ahmad made it quite plan it will lead to an unnecessary waste of time of the House. The two are separate. One does not encroach upon the province of the other and therefore, they can conveniently be taken according to the order in which the order of the business is settled and the motion therefore before the House should be adopted without any division.

Mr. President: The Motion is:

"That the Constituent Assembly do proceed to take into consideration the Report on the principles of a model Provincial Constitution submitted by the Committee appointed in pursuance of the resolution of the Assembly of the 30th April 1947. "

To this an amendment has been moved:

"That the Report on the principles of a model Provincial Constitution be not taken into consideration before the Report on the principles of the Union Constitution."

I put the amendment to vote.

The amendment was negatived.

Mr. President: The amendment is lost. I will put the original proposition to vote.

The question is:

"That the Constituent Assembly do proceed to take into consideration the Report on the principles of a model Provincial Constitution submitted by the Committee appointed in pursuance of the resolution of the Assembly of the 30th April 1947."

The motion was adopted.

Chapter I

CLAUSE--1

Mr. President: We shall proceed to take the report clause by clause.

The Honourable Sardar Vallabhbhai Patel: Now with your permission, Sir, I move the first clause of the report--Chapter I--the Provincial Executive,

"*Governor*--1. For each Province there shall be a Governor to be elected directly by the people on the basis of adult suffrage.

(NOTE.--The Committee were of the opinion that the election of the Governor should, as far as possible, synchronise with the general election to the Provincial Legislative Assembly. This may, be difficult to provide by statute, because the Legislative Assembly may be dissolved in the middle of its term.)"

Now in this clause two important points are involved. The first thing is that for each province there shall be a Governor. That principle is an important one. The other important principle is that he shall be elected by adult franchise. Now in the Provincial Constitution you may have seen that very limited powers are given to the Governor, and yet he has to be elected by a process which is very. cumbersome and therefore the question may naturally arise that if the Governor has got limited, powers, why do we go through the process of election which involves so much difficulty because an election in a province by the process of adult franchise is a very difficult job? Yet it is considered necessary because of the dignity of the office which a popular Governor will hold and naturally a Governor who has been elected by adult franchise of the whole province will exert considerable influence on the popular ministry as well as on the province as a whole. His dignity and status also demands that he should have the unanimous and general support of all the sections of the people in the country. Therefore, two principles are involved in this motion. One is the appointment of a Governor considered necessary in all the provinces according to the Model Provincial Constitution Report and the other is adult franchise and therefore I move.

Mr. President: I have received notice of a number of amendments to this clause. Many of them are printed and have been circulated, but I am getting amendments even now. I do not propose to take the amendments which I am getting now.

An Honourable Member: With your permission, Sir may I ask a question? Sardar Vallabhbhai Patel referred in the course of his speech to the fact that a joint meeting of the Provincial Constitution Committee and the Union Constitution Committee was held and that as a result of the deliberations of that Committee certain changes are to be made. May I know whether this clause was also considered and is it a fact that that Committee was of opinion that the election of Governor should not be held directly by adult franchise but he should be elected by the Provincial Legislature in accordance with the principle of proportional representation by a single transferable vote?

Mr. President: That is a question which the Mover may answer if he wishes.

Shri T. A. Ramalingam Chettiyar (Madras: General): I want one point to be made clear. That is whether this model constitution which has been framed for the provinces is the one which the Provinces will have to adopt necessarily or whether the Provinces are free to adopt them with such changes as they would like. This is a matter on which I would like to have elucidation.

Mr. President: All these questions will be replied to by the Mover if he wishes to answer them.

Dr. P. S. Deshmukh (C. P. & Berar: General): Sir, I would like to say a word about the amendments which have been received by you now. I would like to point out that although we were told to send the amendments early, the substantial motion has only just been made and it is only after a motion has been made that members are entitled to send any amendments. Therefore, I would request you, Sir, that these amendments which have been sent to you now and would be Sent to you up to 6 o'clock today should be admitted and considered. It would be somewhat unfair not to admit them.

Mr. President: Do I understand, Dr. Deshmukh, that we should adjourn the House for allowing members to give notice of amendments which would be taken up later?

Dr. P. S. Deshmukh: No, Sir, I am suggesting that we should go on with the amendments already printed, but if there are any amendments which are sent in during the day they might also be considered. The very first clause has numerous amendments and it will take a long time to consider them; so no time will be lost in admitting the fresh ones.

Mr. President: If there are any amendments which you have given notice of and which, although not printed, members have had occasion to consider, then I will not stand in the way, but I will not admit amendments put before the House without proper notice, and giving opportunity to members to consider them.

Shri Mahavir Tyagi (U.P. : General): On a point of order, Sir.

Mr. President: The point or order arises on what?

Shri Mahavir Tyagi: I want to put a question to you with regard to the interpretation of the rules. Now, Sir, there is a rule that notice of amendments has to be sent one clear day in advance of the date on which the motion is made. I want to know if by the word "motion" the whole report is meant or each clause is a motion in itself. As far as I know, in our provincial legislature motion means a question put to the House or discussed before the House. Each question is a motion in itself. So, Sir, if I choose to send an amendment to, say, Clause 21, of this Report which will I expect come up day after tomorrow and give notice of an amendment today, I think, Sir, that amendment will be In order because there will be one clear day's notice.

Mr. President: Rule 32 lays down:

> "Except as permitted by the Chairman, notice of any amendment to a motion en at least one clear day before the motion is to be moved in the Assembly."

The motion which has been moved was circulated and given notice of, I think, several days ago and members have had ample time to give 24 hours notice of amendments. Therefore, I say, I cannot take up, any amendment of which notice is given just now.

Shri Mahavir Tyagi: Sir, I was asking whether the moving of Clause 21 three days afterwards will be a motion in itself or not. The House will be in possession of that motion and be discussing it after three days. That being so, I submit I am entitled to bring in an amendment now because it will be more than one clear day in advance.

Mr. President: As I have said, if I get notice of an amendment in time for circulation to the members so that they may have an opportunity to consider it before coming to the House, I may accept it; but I cannot accept an amendment which cannot be printed and circulated to the members beforehand. If, however, notice is given now of an amendment to a motion which will come three days later, I do not mind it.

Shri Mahavir Tyagi: Thank you, Sir, my point is achieved.

Mr. President: We shall take up the amendments.

Mr. Naziruddin Ahmad: Sir, I submit that copies of the amendments were received by us only this morning. The matters dealt with are of an extremely difficult and abstruse nature and we have had no sufficient time to consider the amendments. I submit, therefore, that we may please be given at least twenty four hours' time to go through the amendments and then get ready to say yes or no or offer observations. That is the only thing I ask for.

Mr. President: I understand these amendments were circulated last night?

Mr. Naziruddin Ahmad: But we have received them only this morning. Some of us, I understand, got them today oncoming to the House.

Mr. President: I allowed members time up to yesterday evening to send in the amendments, and it has taken time to get them printed and circulated to the members. Some of them have received the copier, rather late. If members think they have not had enough time to consider the amendments we may put off their consideration. But we have about 40 minutes more, and I suggest that we may take up their consideration now. We may not be able to take up more than one or two amendments, and if there is any difficulty we shall consider postponing them.

Nawab Muhammad Issmail Khan (United Provinces: Muslim): These amendments were laid on the table only this afternoon and we have had no time to consider the bill in the light of these amendments and I think it is only right that the members should get an opportunity to study the bill in the light of the amendments and thereafter the amendments may be taken one by one.

Mr. President: I was under the impression that the amendments were circulated last night.

Nawab Muhammed Ismail Khan: We received this book only this afternoon.

Mr. K. M. Munshi: But most members received it last night.

Mr. President: It seems there have been some delays in circulating the amendments because the addresses of some members were not known to the office. It seems some members have not had these amendments until late this afternoon. I am entirely in the hands of the House as to whether we should consider the amendments now.

(After a pause.)

I now call upon Maulana Hasrat Mohani to move his amendment.

B. Pocker Sahib Bahadur (Madras: Muslim): I only want to remind you of the request I made yesterday, that arrangements should be made to render the speeches into English as a large number of members are not able to follow the speeches in languages other than English. Therefore, Sir, in view of the fact that Maulana is going to speak in Urdu, I would request that arrangements may be made to give us a rendering into English of the valuable speech which Mr. Maulana is going to make.

Maulana Hasrat Mohani: Sir, I move my amendment to this Clause No. 1. I think I will have some difficulty in expressing myself in a foreign tongue but to accommodate my friend from Madras, I shall try my best to express myself as best as I can. I move:

> "That in Clause 1, for the words 'a Governor' the words 'a President' shall be substituted."

By this I intend to say that we have got an inherent right of all the members of all these constituent provinces to demand a Provincial Republic for every Province. What we have intended and what we thought and what we were expecting to get, we wanted and we thought that we will get a Union of Indian Republics. My friend Mr. Tripathi had moved an amendment in the last session of this Assembly that he wanted to introduce the word 'Socialist'. It did not have the support of the House. We will see to it afterwards. If we have got a Federal Republic, it does not matter whether you agree to make it a Socialist Republic or not. In the first instance, you may have a Nationalist Constitution and majority of Nationalist members but I am sure that the tendency of the World is to become, everyone of us is becoming now, socialist minded and I think that the time is not far off when, as we expect, we will be able to form a solid group of leftists and I think that by the latest, in the next election I hope that we will be able to capture the whole of the organization. If you now agree to make every province a Republic, I do not care whether you agree to make it socialistic or not. We will make it a socialist republic. But one think I must say, you cannot shelve this question. You cannot say "We want only a Republic in the Centre. We will not allow any of these Provinces to become a Republic", and as I said, this is a trick when you say that in each Province there shall be a Governor. I say that it must be a President. If you accept the word 'President' then it means that you agree to make every Province a Republic. If you refuse to accept the word 'President', then it means that you are determined to retain those Provinces as mere autonomous Provinces. You grant only Provincial autonomy and nothing else. If that is your intention, I most strongly protest against this sort of treatment which if I am not using any strong words, I shall say, will be something like staging a farce on the people of all the Provinces, especially on my Province, the United Provinces. Here my friend Pandit Nehru says "you can introduce afterwards any amendment you like to the Union Constitution'. I say I introduce this amendment here and now, and ask you to make this word 'Governor' 'President', so that you may not be able to refuse to reopen the whole thing on the occasion of my moving an amendment to will anyhow come in and this difficulty will crop up. My friend Sardar Patel also said there is no difference whether we call Governor or President. There is a great difference. Once you disallow my amendment you will say 'No, we will have only Governor'. That means that you want to give us only Provincial autonomy. You do not want many of the Provinces to go even a single step further. I have read very carefully your Union Report. In this Union Report, page 12, Clause 9 says:

> "The executive authority of the Ruler of a Federated State shall continue to be exercisable in that State with respect to Federal subjects until otherwise provided by the Federal authority."

To this Clause 9, a note is added which says:

> "In this respect the position of the provincial units is rather different. These have no executive power in respect of Federal subjects save as given by Federal Law."

In respect of the Indian States you say something. But you say the position of the Provincial units is different. They have no residuary power in respect of special subjects. You fix only the provincial subjects. And you ask us to accept this clause. We will not. Of course, you have got a majority. You can pass anything you like. But I ask in the name of justice and fairplay "What right have you got to deprive the provinces of India from aspiring to become republics of the Union of Federal Republics, and not only Federal Republics but

Socialist Federal Republics at that"? This wag moved in a former meeting of the Assembly. You did not accept that. But the position was quite different then. You were suspecting the Pakistan people might make mischief. But they have been separated now, some Muslim Leaguers raised this objection; "Now that India and Pakistan have become two different things, what is the meaning of the All India Muslim League?" All-India Muslim League means the Muslim League of India, i.e. of the minority Provinces. So, they said, "If you want to have a Muslim League, you can start one for Pakistan, where we the Muslims of the Muslim minority provinces can have no influence, except through the Council of the All-India Muslim League which according to the decision of Mr. Jinnah still exists and to which new members have already been elected. I am one of the from U.P. *(Interruption).*

Mr. President: Order, order.

An Honourable Member: Does the speaker think that this is the All-India Muslim League Council?

Maulana Hasrat Mohani: No, no. I am pointing out that I have nothing to do with Pakistan except as a member of the All-India Muslim League Council. Where is the harm if we take the Union Constitution first. You have deliberately put the Provincial Constitution here first. What is the meaning of that? By taking this model provincial report fast you are doing us a very grave injustice. Of course, you can have it passed. But you cannot prohibit the provinces from demanding independence and becoming republics You have said "We want only a Unitary Republic". Then why have you introduced the word "Federation" in your report here? It is simply to deceive the public. You fight shy of the word "Unitary". Therefore to have your way you have said "Federation". This is why you want to preclude the provinces from demanding republic government. But I tell you, you cannot compel them. You cannot impose your authority on them. We want a Union of Socialist Republics and if you persist in imposing nationalism and a nationalist constitution on your provinces you will soon be swept off the face of the earth.

(Messrs. M. Ananthasayanam Ayyangar, Khurshed Lal, V. Muniswami Pillai, Dr. P. Subbarayan, T. A. Ramalingam Chettiar, Ajit Prasad Jain and R. K. Sidhwa did not move their amendments.)

Mr. President: These are all the amendments of which I have received notice in regard to Clause 1. As there was a wish expressed by some members to bring in amendments and as I wanted to consider that wish, I have just allowed one amendment to be moved. The others have not been moved. That amendment will be considered tomorrow.

As regards the Union Constitution Report, I understand it has been already circulated to members and I would request members to send in notice of amendments to that Report by Thursday evening.

Now we adjourn till tomorrow at 3 P.M.

The Assembly then adjourned till Three of the Clock on Wednesday, the 16th July, 1947.

---

*[English translation of Hindustani speech]

APPENDIX*

No. CA.64/Cons/47

CONSTITUENT ASSEMBLY OF INDIA

COUNCIL HOUSE,

NEW DELHI, THE 27TH JUNE, 1947,

From

THE HON'BLE SARDAR VALLABHBHAI PATEL,

CHAIRMAN, PROVINCIAL CONSTITUTION COMMITTEE.

To

THE PRESIDENT,

CONSTITUENT ASSEMBLY OF INDIA.

SIR,

On behalf of the members of the Committee appointed by the Hon'ble tHe President in pursuance of the resolution of the Constituent Assembly of the 30th April, 1947, to report on the principles of a model Provincial Constitution, 1 have the honour to submit the annexed Memorandum, which embodies the recommendations of the Committee together with explanatory 'notes where necessary.

I have the honour to be,

SIR,

Your most obedient servant,

VALLABHBHAI PATEL,

Chairman.

CONSTITUENT ASSEMBLY OF INDIA

PROVINCIAL CONSTITUTION COMMITTEE

Memorandum on the Principles of a model Provincial Constitution

----

PART I

GOVERNORS' PROVINCES

CHAPTER I

The Provincial Executive

1.Governor.--For each Province there shall be a Governor to be elected directly by the people on the basis of adult suffrage.

[*Note*.--The Committee were of the opinion that the election of the Governor should, as far as possible, synchronize with the general election to the Provincial Legislative Assembly. This may be difficult to provide by statute, because the Legislative Assembly may be dissolved in the middle of its term.]

2.Term of Office.--(1) The Governor shall hold office for a term of four years, except in the event of death, resignation or removal.

(2)The Governor may be removed from office for stated misbehaviour by impeachment, the charge to be preferred by the Provincial Legislature, or where the Legislature is bicameral, by the Lower House of the Provincial Legislature and to be tried by the Upper House of the Federal Parliament, the resolution in each case to be supported by not less than two-thirds of the total membership of the House concerned.

(3)The Governor shall be deemed to have vacated his office by continued absence from duty or continued incapacity or failure to discharge his functions for a period exceeding four months.

(4)The Governor shall be eligible for re-election once, but only once.

3.Casual vacancies.-(1) Casual vacancies in the office of Governor shall be filled by election by the Provincial Legislature on the system of proportional representation by means of the single transferable vote. The person so elected shall hold office for the remainder of his predecessor's term of office.

(2)In the event of the Governor's absence from duty or incapacity or failure to discharge his functions for a period not exceeding four months, the President of the Federation may appoint such person as he thinks fit to discharge the Governor's functions until the Governor's return to duty or until the Governor is elected, as the case may be.

4.Age qualifications.--Every citizen of the Federation of India who, has reached his

35th year of age shall be eligible for election as Governor.

5.Disputes regarding election.--Disputes regarding the election of a Governor shall be enquired into and determined by the Supreme Court of the Federation.

6.Conditions of Governor's office.--(1) The Governor shall not be a member of the Provincial Legislature and if a member of the Provincial Legislature be elected Governor, lie shall be deemed to have vacated his seat in that Legislature.

(2)The Governor shall not hold any other office or position of emolument.

(3)The Governor shall have an official residence and shall receive such emoluments and allowances as may be determined by Act of the Provincial Legislature and until then such as are prescribed in Schedule.

(4)The emoluments and allowances of the Governor shall not be diminished during his term of office.

7.Executive authority of Province.--The executive authority of the Province shall be exercised by the Governor either directly or through officers subordinate to him, but this shall not prevent the Federal Parliament or the Provincial Legislature from conferring functions upon subordinate authorities, nor shall it be deemed to transfer to the Governor any functions conferred by any existing Indian law on any court, judge or officer or local or other authority.

8.Extent of the Executive authority of Province.--Subject to the provisions of this Constitution and of any special agreement, the executive authority of each province shall extend to the matters with respect to which the Provincial Legislature has power to make laws.

[*Note*.-The reference to special agreements in this provision requires a word of explanation. It is possible that in the future there may be Indian States or groups of Indian States desiring to have a common administration with a neighbouring Province in certain specified matters of common interest. In such cases, the Rulers concerned may by a special agreement cede the necessary jurisdiction to the Province. Needless to say, this will not interfere with the accession of the State or States concerned to the Federation, because the accession to the Federation will be in respect of Federal subjects, whereas the cession of jurisdiction contemplated here is in respect of Provincial subjects.]

9.Council of Ministers.-There shall be a council of ministers to aid and advise the Governor in the exercise of his functions except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

[*Note*.-For the most part, the Governor will act on advise, but he is required to act in his discretion in the following matters:-

(1)the prevention of any grave menace to the peace and tranquillity of the Province or any part thereof [clause 15 (2) of this Part),

(2)the summoning and dissolving of the Provincial Legislature (Clause 20 of this Part), (3)the superintendence, direction, and control of elections (Clause 22, proviso (2) of this Part]

(4)the appointment of the Chairman and the members of the Provincial Public Service Commission and of the Provincial Auditor General, (Part III).

It is to be noted that the Governor, under the proposed Constitution, is to be elected by the people, so that h.- is not likely to abuse his "discretionary" powers].

10.If any question arises whether a matter is one for the Governor's discretion or not, the decision of the Governor in his discretion shall be final.

11.The question whether any, and if so, what advice was tendered by the ministers to the Governor shall not be enquired into in any court.

12. **Other provisions as to ministers.--**The Governor's ministers shall be chosen and summoned by him and shall hold office during his pleasure.

13.(1) A minister who for any period of six consecutive months is not a member of the Provincial Legislature shall at the expiration of that period cease to be a minister.

(2)The salaries of ministers shall be such as the Provincial Legislature may from time to time by Act determine, and, until the Provincial Legislature so determine, shall be determined by the Governor:

Provided that the salary of a minister shall not be varied during his term of office.

14.**Conventions of responsible Government to he observed.--**In the appointment of his ministers and his relations with them, the Governor shall be generally guided by the conventions of responsible Government as set out in Schedule........... ; but the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with these conventions.

[*Note.*-Schedule...... will take the place of the Instrument of Instructions now issued to Governors.]

15. **Special responsibilities of Governor.-**(1) In the exercise of his responsibilities, the Governor shall have the following special responsibility, namely, the prevention of any grave menace to the peace and tranquillity of the Province or any part thereof.

(2)In the discharge of his special responsibility, the Governor shall act in his discretion:

Provided that if at any time in the discharge of his special responsibility he considers it essential that provision should be made by legislation, but is unable to secure such legislation, he shall make a report to the President of the Federation who may thereupon take such action as he considers appropriate under his emergency powers.

16.Advocate-General for Province.-(1) The Governor shall appoint a person being one qualified to be a judge of a High Court, to be Advocate-General for the Province to give advice to the Provincial Government upon legal matters.

(2)The Advocate-General shall retire from office upon the resignation of the Prime Minister. but may continue to carry on his duties until a new Advocate-General shall have been appointed.

(3)The Advocate-General shall receive such remuneration as the Governor may determine.

17. Conduct of business of Provincial Government.-All executive action of the Government of a Province shall be expressed to be taken in the name of the Governor.

18. Rules of Business.-The Governor shall make rules for the more convenient transaction of the business of the Provincial Government and for the allocation of duties among Ministers.

CHAPTER II

The Provincial Legislature

19. Constitution of Provincial Legislatures.-(1) There shall for every Province be a Provincial Legislature which will consist of the Governor and the Legislative Assembly; in the following Provinces, there shall in addition, be a Legislative Council (here enumerate those Provinces, if any, which desire to have an Upper House).

(2) The representation of the different territorial constituencies in the Legislative Assembly shall be on the basis of population and shall be on a scale of not more than one representative for every lakh of the population, subject to a minimum of 50 for any Province.

The elections to the Legislative Assembly shall be on the basis of adult suffrage, an adult being a person of not less than 21 years of age.

(3) Every Legislative Assembly of every Province, unless sooner dissolved, shall continue for four years from the date appointed for its first meeting.

(4) In any Province where the Legislature has an Upper House, the composition of that House shall be as follows:- (a) The total numerical strength of the Upper House should not exceed 25 per cent. of that of the Lower House. (b) There should be within certain limits functional representation in the Upper House on the lines of the Irish Constitution, the distribution being as follows:- one-half to be elected by functional representation on the Irish model; one-third to be elected by the Lower House by proportional representation ; one-sixth to be nominated by the Governor on the advice of his ministers.

[Note.-Under the existing Constitution, Madras, Bombay, Bengal, the U. P., Bihar and Assam have two Houses and the rest one. It was agreed that the members of the Constituent Assembly from each Province should vote separately and decide whether an Up per House should be instituted for the Province. There is to be no special representation in the Legislative Assembly either for universities, or for labour or for women.]

20.Composition of Provincial Legislatures, etc.-The provisions for the meeting, prorogation and dissolution of the Provincial Legislature, the relations between the two Houses (where there are two Houses), the mode of voting, the privileges of members, disqualification for membership, parliamentary procedure, including procedure in financial matters, etc. shall be on the lines of the corresponding provisions in the Act of 1935.

21.Language. In the Provincial Legislature, Business shall be transacted in the Provincial language or languages or in Hindustani (Hindi or Urdu) or in English. The Chairman (where there is an Upper House) or the Speaker, as the case may be, shall make arrangements for giving the House, where he thinks fit, a summary of the speech in a language other than that used by the member and such summary shall be included in the record of the proceedings of the House.

22.Franchise for the Provincial Legislature.-The Provincial Legislature may from time to time make provisions With respect to all or any of the following matters, that is to say,

(a) the delimitation of territorial constituencies;

(b) the qualifications fur the franchise and the preparation of electoral rolls ;

(c) the qualifications for being elected as a member of either House;

(d) the filling of casual vacancies in either House:

(e) the conduct of elections under this Constitution and the methods of voting thereat;

(f) the expenses of candidates at such elections;

(g) corrupt practices and other offences at or in connection with such elections ;

(h) the decision of doubts and disputes arising out of or in connection with such elections;

(i) matters ancillary to any such matters as aforesaid:

Provided

(1)that no member of the Lower House shall be less than 25 years of age and no member of the Upper House shall be less than 35 years of age ;

(2)that the superintendence, direction and control of elections, including the appointment of election tribunals shall be vested in the Governor acting in his discretion.

CHAPTER III

Legislative powers of the Governor

23.(1) If at any time when the Provincial Legislature is not in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require.

(2) An ordinance promulgated under this clause shall have the same force and effect as

an Act of the Provincial Legislature assented to by the Governor, but every such ordinance-

(a) shall be laid before the Provincial Legislature and shall cease to operate at the expiration of six weeks from the reassembly of the Provincial Legislature, or if before the expiration of that period resolutions disapproving it are passed by the Legislature, upon the passing of the second of those resolutions ; and

(b) may be withdrawn at any time by the Governor.

(3) If and in so far as an ordinance under this clause makes any provision which the Provincial Legislature would not under this Constitution be competent to enact it shall be void.

[*Note*.-The ordinance-making power has been the subject of great criticism under the present Constitution. It must however be pointed out, that circumstances may exist where the immediate promulgation of a law is absolutely necessary and there is no time in which to summon the Provincial Legislature. In 1925, Lord Reading found it necessary to make an ordinance abolishing, the cotton excise duty when such action was immediately and imperatively required in the interests of the country. The Governor who is elected by the people and who was normally to act on the advice of ministers responsible to the Legislature is not at all likely to abuse any ordinance-making power with which he may be invested. Hence the proposed provision.]

CHAPTER IV

Excluded and Partially Excluded Areas.

[The provisions of this Chapter cannot be framed until the advisory Committee has reported.]

PART II

The Provincial Judiciary

1.The provisions of the Government of India Act, 1935, relating to the High Court should be adopted mutatis mutandis; but judges should be appointed by the President of the Federation in consultation with the Chief-Justice of the Supreme Court, the Governor of the Province and the Chief Justice of the High Court of the Province (except when the the Chief Justice of the High Court himself is to be appointed).

2.The judges of the High Court shall receive such emoluments and allowances as may be determined by Act of the Provincial Legislature and until then such as are prescribed in Schedule............

3.The emoluments and allowances of the judges shall not be diminished during their term of office.

PART III

Provincial Public Service Commission and Provincial Auditor-General

Provisios regarding Public Service Commission and Auditors-General should be inserted on the lines of the provisions of the Act of 1935. The appointment of the Chairman and members of each Provincial Public Service Commission and of the Auditor-General should be vested in the Governor in his discretion.

PART IV

Transitional Provisions

1.Any person holding office as Governor in any province immediately before the commencement of this Constitution shall continue as such and shall be deemed to be the Governor of the Province under this Constitution until a successor, duly elected under this Constitution, assumes office.

2.There should be similar provisions, *mutatis mutandis,* in respect of the Council of Ministers, the Legislative Assembly and the Legislative Council (in Provinces which decide to have an Upper House).

[*Note*.-These provisions are necessary in order that there may be a Legislature and a Government ready to take over power in each Province as soon as this Constitution comes into force.]

3.The Government of each Governor's Province shall be the successor of the Government of the corresponding Province immediately before the commencement of this Constitution in respect of all property, assets, rights and liabilities.

CONSTITUENT ASSEMBLY OF INDIA DEBATES(PROCEEDINGS)-VOLUME IV

Wednesday, the 16th July, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Three of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following Members presented their Credentials and signed the Register:

1.Mr. Kishori Mohan Tripathi (Eastern States Group).

2.Mr. Ram Prasad Potai (Eastern States Group).

Shri Sri Prakasa (United Provinces: General): Sir, before you begin the proceedings of this afternoon I should like to bring to your notice what I regard as a serious breach of the privileges of the Members of this House. I found that tongas bringing in Members of this Assembly were not allowed to drive into the portico of this building. Till yesterday they were so allowed but today when our need for this convenience was greatest, as it was raining, a European officer was stopping the tongas outside the portico. When I asked him if members were expected to get drenched in the rain, he replied that those were his orders, that tongas were to be stopped outside and only cars were to be allowed inside the portico. I think, Sir, that this is a piece of snobbery which you, of all others cannot tolerate.

Mr. President: I will ask the Secretary to look into the matter.

ELECTION OF VICE-PRESIDENTS AND OF MEMBERS OF COMMITTEES

Mr. President : I have pleasure in announcing that Dr. H. C. Mukerjee and SIX V. T. Krishnamachari are the only candidates who have been duly proposed and seconded for the office of Vice-Presidents and I accordingly declare them as duly elected Vice-Presidents of this Assembly.

As the House is aware it was decided to elect members to certain other Committees and I have to announce the results in regard to those elections also.

The following members have been duly nominated to the various Committees in accordance with the resolutions of this House of the 14th July, 1947:

1. *Credentials Committee:*

Bakshi Sir Tek Chand.

B. Pocker Sahib Bahadur.

Sri Ram Sahai.

2. *House Committee:*

Ch. Mohd. Hassan.

Mr. Upendra Nath Barman.

Sri Jainarain Vyas.

3. Steering Committee:

Haji Saiyid Mohd.Saadullah

Mr. Abdul Kadar Mohammad Shaikh.

Sri Surendra Mohan Ghose.

Sri Jagat Narayan Lal.

Acharya J. B. Kripalani.

Gyani Gurmukh Singh Musafir.

Sri Chengalaraya Reddy.

Sri Balwant Rai Mehta.

Diwan Chaman Lall.

4. *Staff and Finance Committee:*

Shri Bhavanji Arjan Khimji.

Shri K. Santhanam.

There being only as many candidates as there are vacancies in all cases, I have great pleasure in declaring these members to be duly elected to the respective Committees.

Mr. H. V. Kamath (C. P. and Berar: General): Sir, on a point of order, Dr. H. C. Mukerjee and Bakshi Sir Tek Chand have not, I believe, signed the Register of this House and as such they are not eligible to be elected to the Committee until they have duly signed the Register.

Mr. President: They will begin to function only after signing the Register and as soon as they come here they will sign the Register.

REPORT ON THE PRINCIPLES OF A MODEL PROVINCIAL CONSTITUTION-*contd.*

Mr. President: We shall now go on with the discussion of yesterday's Resolution.

Kazi Syed Karimuddin (C. P. and Berar: Muslim): Sir, I desire to raise a point of constitutional importance. Maharaja Nagendra Singh, representative of the Eastern Rajputana States is a member of the Indian Civil Service. His name is on this cadre. He has not retired and his services have not been terminated. Can a salaried servant of the Crown be a member of the independent sovereign Constituent Assembly of India? Is it not inconsistent on his part to owe allegiance to the British Crown and at the same time be a member of the sovereign Constitution Assembly of India? Under Section 25 of the Succession to the Crown Act, "If any person being chosen a member of the House of Commons shall accept any office of profit from the Crown during such time as he shall continue a member, his election shall be and is hereby declared to be void".

Mr. President: I understand that the particular gentleman is no longer working in the Defence Department of the Government of India and that he is on his way to take service in the Bundi State, perhaps as Dewan of the State. He has been returned.

Kazi Syed Karimuddin: He has not retired from service, nor have his services been terminated.

Mr. President: That is not a disqualification according to our rules.

Yesterday Clause 1 was moved, and there was an amendment by Maulana Hasrat Mohani. The resolution as well as the amendment are now open for discussion.

CLAUSE 1--*contd.*

Mr. H. V. Kamath: Mr. President, Sir, yesterday we listened to a speech which I believe was the first of its kind ever delivered in this House. It was a speech unique in more respects than one. It was in the first place a jumble of nationalism, national socialism, republicanism, communism and what not. It was unique for the vehemence with which it was delivered. In spite of all that, I listened to the speech with the respect and attention which any utterance from Maulana Hasrat Mohani ought to command. We have known him as a veteran, as a hero of a hundred battles in the country's cause for freedom. Whatever political complexion he might be wearing today, whatever Political "choga" he might be putting on today, we have known him in the past as a valiant fighter for the country's freedom. We have not forgotten the days when he was with us in the Congress, when he was a close co-worker and associate of Mahatma Gandhi and our other revered leaders. But the speech which he made yesterday, cannot escape our attention and our notice. The speech dealt so little with the amendment and so much with everything else besides, that I for one was hard put to it to sift the grain from the chaff. Maulana Sahib thinks that by substituting the word 'President' for the word 'Governor' he would, as if by a wave of his magic wand, create a socialist republic in every province. I for one fail to see how by substituting the word 'President' for 'Governor' .Such a transformation could be brought about. We know very well how even the President of America is different from the President of Finance. We know how the Chancellor Germany the Reichskanzler-der-Fuhrer--differed so much from the other Chancellors of Europe. Therefore, I do not see any point in this mere change of the word 'Governor' into 'President'.

Another point which he sought to make was about socialism. Well, even Netaji Subhas Chandra Bose, whose Forward Bloc he did mention in the course of his speech, used to say times without number that in the immediate present our main task was the achievement of the independence of India--a united, free, strong and independent India--and that only after the achievement of this independence our labours and energies should be directed to the socialist reconstruction of a free, united, independent India. Of all people I least expected that Maulana Hasrat Mohani as he is today would bring before this House the plea for socialism. I believe Maulana Hasrat Mohani is a pillar of the Muslim League today, and it is a historic fact that the Muslim League has demanded and achieved the partition of India on a communal basis a basis which to my mind is the very antithesis of socialism. If Maulana Hasrat Mohani stands before us today and tries to preach socialism to us I would tell him "Physician, heal thyself". It is not for members of an oragnisation who are committed to a patently communalistic policy to come before us and advance the plea for a socialist society unless they shed their communalism. It does not lie in the mouth of members of such an organisation to plead for socialism. We who have been guided by leaders like Mahatma Gandhi, Pandit Nehru, Sardar Patel and Netaji Subhas Chandra Bose, do not stand in need of instruction about socialism. If at all anybody stands in need of being taught about socialism, I should say it is the Muslim League which has been for the last so many years preaching a vivulently communalist policy and today has achieved a certain measure of success. I for one would plead with Maulana Hasrat Mohani even today to reconsider his own attitude and his own approach to Indian politics. I would ask him "What about the masses in your own Pakistan? Will you call upon your own masses in Pakistan to Join hands with the masses in the Indian Union--in our Hind, in our Bharat Varsha--on a socialist basis, shed your communalist 'choga' and policy and let us go forward to build a united, strong, independent. socialist India in a socialist Federation of one free world?" I do not wish to take any more time of the House. I only wish to reiterate that this amendment is a pointless amendment and that nothing would be gained by the substitution of the world 'President' for 'Governor'. After all we have reserved that term for the head of the Indian Union. There must be some way of discriminating between the head of the Indian Union and that of a province. On these grounds, I oppose the amendment of Maulana Hasrat Mohani.

Mr. President: If the Mover of the Resolution wishes to say anything in reply he may do so.

Maulana Hasrat Mohani (United Provinces): May I be permitted to say something?

Mr. President: The mover of an amendment has to right of reply.

Maulana Hasrat Mohani: The previous speaker was asking 'How has Maulana

Hasrat Mohani become a socialist, he is a communist, etc.' I What to say something by way of personal explanation.

Mr. President: I do not think the House is much interested in that personal explanation.

The Honourable Sardar Vallabhbhai Patel (Bombay: General): Sir, I shall give my reply to the speech made by the Mover in support of his amendment. I note that he was anxious to say something a second time. He has moved an amendment to the effect that instead of 'a Governor' there should be 'a President' for each Province. In the Union Centre we have a President and, if in the Provinces also, there are to be Presidents, there will be confusion. These Governors are to be elected by adult franchise. Therefore we must not have the wrong idea that anything appearing in the new Constitution connotes the old ideas, connected with the Constitution under which we are now functioning. This is a simple proposition in which there should be no misunderstanding or further discussion. I hope the amendment will be withdrawn.

Mr. President: the question is:

"That in Clause 1. for the words 'a Governor' the words 'a President' be substituted."

The motion was negatived.

The Honourable Pandit Hirday Nath Kunzru (United Provinces: General): Mr. President, will you allow me to say a few words before you put this Clause to the vote?

Mr. President: I gave an opportunity to Members to speak on this amendment, but nobody desired to speak at that stage.

The Honourable Pandit Hirday Nath Kunzru: The discussion so far has been on the amendments. There has been no discussion on the clause as a whole.

Mr. President: I said definitely that both the Clause and the amendment were open to discussion and invited Members to take part in the discussion. When nobody rose to speak I thought nobody had anything to say on the question.

The Honourable Pandit Hirday Nath Kunzru: If you hold that no further discussion is permissible under the procedure adopted by you, I do not want to speak. But if it is still open to a member to offer any general remarks, I should be glad to avail myself of the opportunity.

Mr. President: I think the time for these remarks is over. Those who are in favour of the original proposition will please say 'Aye' and those against will say 'No'.

The motion was adopted.

CLAUSE 2

The Honourable Sardar Vallabhbhai Patel: Sir, I move Clause 2 relating to Term of Office.

"2. (1) The Governor shall hold office for a term of four years, except in the event of death, resignation or removal.

(2)The Governor may be removed from office for stated misbehaviour by impeachment, the charge to be preferred by the Provincial Legislature, or where the Legislature is bicameral, by the Lower House of the Provincial Legislature, and to be tried by the Upper House of the Federal Parliament, the resolution in each case to be supported by not less than two-thirds of the total membership of the House concerned."

Dr. P. S. Deshmukh (C. P. and Berar: General): Sir, I have an amendment to Clause 1. It has not been considered. It is in the Supplementary List of amendments.

Mr. President : I am afraid there has been a mistake. There are a certain number of other amendments to Clause I of which notice has been received last night. I have not given an opportunity to Members who have given notice of those fresh amendments to move their amendments. I think I had better call upon them to move their amendments one after another. I do not think they should suffer on account of my mistake.

(Shri R. V. Dhulekar did not move his amendment.)

Dr. P. S. Deshmukh: Mine, Sir.

Mr. President: That comes under sub-clause (3) which will now be moved.

The Honourable Sardar Vallabhbhai Patel: I do not propose to move sub-clause (2). Then I move sub-clause (4) which becomes sub-clause (3)which runs thus:

"(3) The Governor shall be eligible for re-election once, but only once."

I move the three sub-clauses of this Clause for the acceptance of the House.

Mr. President: There are two amendments of Mr. Sidhwa.

Mr. R. K. Sidhwa (C. P. and Berar: General): I do not move them.

Mr. President: Mr. Santhanam may now move his amendment.

Shri K. Santhanam (Madras: General): Sir, I move:

"That in sub-clause (2) of Clause 2, for the words 'to be tried by the Upper House of the Federal Parliament the words 'to be confirmed by the Upper House of the Federal Parliament after investigation by a Special Commission of that House' be substituted."

In the case of the Union Constitution, a similar procedure has been adopted for the impeachment of the President. There it is laid down that the Lower House shall make a charge and the Upper House shall appoint a Commission to investigate and after it is satisfied that the Charge is proved, then, by a Resolution, the Upper House will confirm the charge. I have adopted the same procedure. Otherwise it will mean that the Governor will be tried by the whole Upper House. It will be inconvenient and damaging to the prestige of the province as the Governor is to be elected by adult franchise. I hope the House will accept this amendment.

Shri L. Krishnaswami Bharathi (Madras General): Sir, in the matter of omitting the sub-clauses, may I point out, Sir, that it would be better for the Mover, Sardar Vallabhbhai Patel, to formally move the sub-clauses as they appear on paper for adoption and then to get someone to move an amendment for their deletion where necessary. This is a report of the Committee and therefore the proper thing to do is for the Mover to move it as it is, and then allow an amendment for the deletion of the unwanted item.

Mr. President: The question has been raised that it is not open to the Mover to remove any particular clause which is contained in the report, that it can be deleted only by way of an amendment and that the Mover ?an then accept the amendment.

The Honourable Sardar Vallabhhhai Patel: The objection is more of a technical nature. I do not think it makes any substantial difference, but if the technicalities are to be satisfied, I have no objection. Then sub-clause (3) stands. In substance it makes no difference.

Mr. President: Pandit Pant will now move his amendment.

The Honourable Pandit Govind Ballabh Pant (United Provinces: General): Mr. President, I move:

> "That sub-clause (3) of Clause 2 be deleted."

The Mover is in agreement with me, so also a large body of opinion in this House. In fact, we had no desire to keep this clause ourselves. A similar clause found a place in the Draft Constitution of the Indian Union also, but when the matter was examined, it was found that it would not work, and so it was removed from the draft; you will not find it in the Report that has been circulated. Similarly, this clause also was scrutinised and it was found advisable to remove it. The clause says, "The Governor shall be deemed to have vacated his office by continue absence from duty or continued incapacity or failure to discharge his functions for a period exceeding four months". Who is to determine what amounts to incapacity or failure to discharge his functions? Considering all these things, we came to the conclusion that the sub-clause will not work in actual practice. Besides, it was decided to bring the constitution of the provinces so far as possible in a Me with that of the Central Constitution. Keeping all these points in view, it has been decided to omit this clause. I move that this sub-clause be omitted.

Mr. President: There are certain other amendments.

Mr. H. V. Kamath: President, Sir, I am now advised by our elder statesman that a two-thirds majority is enough and so I withdraw the amendment.*

Mr. H. V. Kamath (Bombay: General): In view of the fact that sub-clause (3) is to be deleted, I do not want to move my amendment.

(Other Hon'ble Members who had given notice of amendments did not move them.)

Mr. President: Mr. Ayyangar, are you not moving any of your, amendments.

Shri M. Ananthasayanam Ayyangar (Madras: General): No. Sir.

(Messrs. K. Santhanam, P. S. Deshmukh and H. V. Pataskar did not move their amendments.)

Mr. President: I think these are all the amendments of which I have received notice.

The clause and the amendment are now open for discussion. If any member wishes to make any remarks, he can do so.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, in regard to Clause 2, I feel some difficulty in agreeing to sub-clause (3) being deleted. Sub-clause (3) has certain good features. The other features are in Practicable. So far as the good features are concerned, they are that the Governor shall be deemed to have vacated his office by continued absence from duty. This is a very desirable provision. If the Governor remains absent for a continued period of more than four months, the work of the province will come to a standstill. It is my humble suggestion that we should retain this part of the sub-clause.

With regard to another part of the sub-clause, viz., continued incapacity, this has not been defined. It will be very difficult to decide as to what is continued incapacity.

The Honourable Pandit Govind Ballabh Pant: May I just have a word, Sir, in order to avoid unnecessary discussion? I should like to invite your attention to another amendment which is on the Order Paper, where I wish to move that the Deputy Governor should be appointed. That comes under clause 3. It is No. 8 on the Order Paper which was circulated in the form of a supplementary list.

Mr. Naziruddin Ahmad: It is said that an amendment on the lines of what I have suggested is already on the supplementary list, but we have no notice of any supplementary list whatsoever. I believe many Honourable Members have not seen it. If there is any amendment it should be moved along with these, for attention should be called to them together. If there is any amendment to that effect it would be a good amendment. I was however pointing out that the good feature in this sub-clause should be retained. But the condition as to continued incapacity is vague that relating to "failure to discharge his functions" is equally vague and will lead to great difficulties.

With regard to the next sub-clause, I feel some difficulty. I do not desire to oppose this clause altogether, but I submit my difficulty for clarification or correction, if necessary. Sub-clause (4) says that the Governor shall be eligible for re-elect once, but only once. I do not see the point that a Governor cannot be re-elected twice. Suppose there is a very good Governor, a very competent man and ready to do good to the people he will be shut out for the second re-election by the last portion of this sub-clause. The Sting of this sub-clause lies at the tail. There is no point in limiting the people's choice in electing a Governor. It is just like the chimney sweeper who has to go up inside a chimney in order to clean and in order to go into it, he must be small enough but as soon as he gets experienced he becomes too big to get into it. I think the chimney sweeper test should not be applied to a Governor. I make only a suggestion for the Honourable Sardar Vallabhbhai Patel to give his consideration to this. I simply draw the attention of the House to what seems to be an absurd and untenable position, though I think it is too early to go into great details. Enough opportunity would be given to the House to give its verdict on the final draft. I therefore make a suggestion in the hope that those in charge should keep it in their minds.

The Honourable Sardar Vallabhbhai Patel: Sir, there is not much controversy about the motion that I have moved. About the third clause I had already suggested that I would not move it as I anticipated that there was going to be a suitable amendment in a subsequent clause. We found that if we retained sub-clause (3) difficulty would arise as to who is to judge the 'incapacity or failure to discharge his functions'. In order to avoid all these complications, an amendment has been tabled to the subsequent clause, which avoids all difficulties. Now I accept Pandit Govind Ballabh Pant's amendment. About the fourth sub-clause a suggestion has been made that the re-election should not be restricted for any term. In all if he is allowed to stand for election twice, he gets a period of eight years. For the third re-election the sub-clause proposals to restrict candidature because according to the discussion that took place in the Committee it was suggested that the President, if he remains for two terms, may well establish his power to such an extent that perhaps somebody might suggest or some suggestions may be made that he has stabilized his position and it may be difficult to absolve him from the charge of having manoeuvred, from his position, support for the third election. It was considered better to avoid any such insinuation against the Governor as well, as it was also considered that the eight years' period is a, sufficiently long time. As the candidate for the Governorship will fairly he a man of substance, age, and experience, after the eight years, period he may better retire and give a change to a younger man. I think the Committee has come to the conclusion after mature consideration. I think it is a better suggestion. Therefore, the motion that I have moved as modified by the amendment of Panditji should be adopted, and the amended clause as it stands should be accepted by the House.

I forget to say that I accept Mr. Santhanam's amendment.

Mr. President: I have to put to vote the two amendments moved, one relating to sub-clause (2) of Clause 2 and the other relating to sub-clause (3) of Clause 2. The mover has accepted both these amendments. So I put the clause as a whole to the House, but before doing that I had better take votes on the amendments also.

Mr. Santhanam's amendment is as follows:

"That in sub-clause (2) of Clause 2 for the words 'to be tried by the Upper House of the Federal Parliament' the words 'to be confirmed by the Upper House of the Federal Parliament after investigation by a special Commission of that House' be substituted."

The amendment was adopted.

Mr. President: The other amendment is by Pandit Govind Ballabh Pant and it is as follows:

"That sub-clause (3) of Clause 2 be deleted."

The amendment was adopted.

Mr. President: Now, clause 2, as amended is put to vote.

Clause 2, as amended, was adopted.

CLAUSE 3

Mr. President: We will now go to Clause 3.

The Honourable Sardar Vallabhbhai Patel: Casual Vacancies. (1) Casual Vacancies in the office......

Mr. President: There is notice of an amendment that after Clause 2, another clause be inserted. I do not know whether it can be moved as an amendment. We shall put it in the right place. We shall go on with the clauses as they stand.

The Honourable Sardar Vallabhbhai Patel: I move:

"*Casual Vacancies*.--(I) Casual Vacancies in the office of Governor shall be filled by election by the Provincial Legislature on the system of proportional representation by means of the single transferable vote. The person so elected shall hold office for the remainder of this predecessor's term of office.

(2)In the event of the Governor's absence from duty or incapacity or failure to discharge his functions for a period not exceeding four months, the President of the Federation may appoint such person as he thinks fit to discharge the Governor's functions until the Governor's return to duty or until the Governor is elected as the case may be."

In this, as was suggested in the course of the discussion of Clause 2, there is an amendment to be moved by Pandit Govind Ballabh Paint. Therefore, I move this portion and I do not propose to say anything more.

(Messrs. V. C. Kesava Rao, M. Ananthasayanam Ayyangar and Shibban Lal Saksena did not move their amendments.)

The Honourable Pandit Govind Ballabh Pant: I move, Sir, that for Clause 3, the following be substituted:

"There shall be a Deputy Governor for every province. He will be elected by the Provincial Legislature on the system of proportional representation by single transferable vote after every general election. The Deputy Governor will fill a casual vacancy in the office of the Governor and he will also act for the Governor in his absence."

The first part of Clause 3, that is sub-clause (1), is incorporated in my amendment. In so far as it differs from Clause 3, it provides for a contingency which might arise in consequence of the adoption of the amendment which I moved a few minutes ago. The original clause provided that in case of casual vacancies occurring during the term of office of the Governor, the vacancy will be filled up by election. The legislature would be seized of the matter and the provincial legislature would elect a substitute Governor for the remainder of the term according to the system of proportional representation by means of the single transferable vote.

In the case of short term vacancies, however, which might occur, it was provided by sub-clause (2) that the President of the Federation would nominate a Governor to officiate for the, permanent Governor. I think it would be unwise to impose this embarrassing duty on the President of the Federation. Besides, it would be somewhat repugnant to the principle of provincial autonomy. As Honourable Members are aware the provision in the constitution that has been devised for the Federation contemplates a Vice-President to be elected by the legislature after the general election. A Vice-President is elected so that in case any vacancy occurred or any occasion arose for another person stepping into the shoes of the President, a person might be readily available to discharge the functions of the President. By the amendment that I am proposing, I am suggesting a procedure that will be in accord with that already accepted for the Federation.

As Honourable Members are aware, in some of the constitutions abroad, a Vice-President is elected by the general electorate along with the President. It is not necessary to go through an equally cumbersome process here as the Vice-President will not have very heavy responsibilities to discharge and a second election in the course of four years for the election of a substitute Governor for a short term would involve undue labour and worry and expense. So it is considered desirable that some simpler method should be prescribed. We have accordingly by this amendment suggested that the Deputy Governor should be elected by the legislature and he should be readily available to fill any vacancy that might occur during the term of office of the Governor whether the vacancy be temporary or permanent.

It is likely that the Governor may have to go abroad for important public business, that he may be deputed for diplomatic service of an important character for a short term or he may be required to perform other duties for a limited period which may not allow him to discharge his normal functions. For such occasions we should have a Deputy Governor to take his place. The question was raised by one of the Honourable Members when I moved my first amendment. This amendment that I have now moved furnishes the remedy. The amendment is straight forward and simple and I hope it will be unanimously accepted and adopted by the House.

Mr. President: Mr. Santhanam, you have an amendment.

Shri K. Santhanam : I do not wish to move it.

Mr. President: Mr. B. Das.

Shri Biswanath Das (Orissa: General): I do not wish to move.

Mr. President: Dr. Deshmukh has given notice of an amendment to Clause No. 1. Do you wish to move it now?

Dr. P. S. Deshmukh: It is covered by Pandit Pant's amendment. I do not wish to move my amendment.

Mr. President: The Clause has been moved and so also the amendment of Pandit Pant. Those who wish to say anything with regard to the original proposition as also the amendment are now free to do go.

Mr. Naziruddin Ahmad: Mr. President, Sir, I regret having to come here for the second time in connection with these amendments. With regard to the amendment that has now been moved, it was not circulated to us. It was only when it was moved here that I discovered its existence. It is difficult for us to follow the implications of these amendments. The original clauses have been drafted very carefully by an expert Committee consisting of expert draftsmen, experts in Constitutional Law acid our great statesmen together. When they have drafted the report after so much deliberation and care its amendment should be taken in a serious manner; I should think the task of following the clause and the amendment on the spur of the moment on obtruse constitutional questions, becomes for us, laymen, all the more difficult. I submit that an amendment of this serious character altering the basic character of the original clause should not be allowed without giving us some time to Consider its repercussions on the clause itself as well as upon the whole report because upon these clauses the final Bill will be drafted for our final consideration. In a matter of this importance, I think some caution should be used and some time should be allowed us for considering them. I find that to the original clause a large number of amendments have been moved. I doubt not that if the amendment just now moved was circulated to the Honourable Members, many amendments might have been suggested.

In the circumstances, I would suggest that this clause should not be rushed with. Some little time, however small, which the House or you, Sir, might consider sufficient, should be given to us. I must make it plain that it is by way of co-operation that I approach the House and approach you, Sir, for a little time. I plead with the Mover of the Clause as wall as the Honourable the Mover of the amendment, who are great figures of Our country, for a little time. I would ask them to consider the position of laymen in constitutional law having to take decisions on important issues without having previously considered them adequately. That is a prayer which I wish to make so that it may be sympathetically considered and some time given to us to consider the situation.

Mr. President: Does any one else wish to speak on the clause as well as the amendment?

B. Pocker Sahib Bahadur (Madras: Muslim): Mr. President, Sir the question that the House has to consider is whether the original clause, or the clause sought to be substituted by the amendment, should be adopted by the House. I think the amendment should be accepted for various reasons which have already been mentioned by the Mover of the Amendment. It is very unwise to create a possible occasion for an election by this complicated procedure in the middle of four years. In order to avoid that, it is much better to have a Deputy Governor elected even along with the general election itself. Therefore, I have great pleasure in supporting the amendment that has been proposed. But I have one doubt as regard the system of proportional representation by means of the single transferable vote. I ask you, Sir, to consider the question whether that is an effective system when the object is only to elect one candidate. I can understand the efficacy of that system when you have to elect a larger number of candidates than one. But if the candidate to be elected is only one, I do not know how far this system would be efficacious in achieving the object at all. The object of having election by means of proportional representation by single transferable vote is to give representation to various groups or sections or views among the voters. If the candidate to be elected is ultimately only one, I doubt if it is wise to undergo this laborious process of proportional representation by means of single transferable vote. This is a matter to be considered by the House, particularly by the experts who have drafted this Report. They certainly must have thought about this point. I am afraid, in the first place, it has no effect at all so far as the object to be achieved is concerned, when the candidate to be elected is only one. But as I said, this is a matter to be considered by the House, I have not given any amendment, but I hope this matter will be taken up for consideration by the drafters of this Report.

Sri M. Ananthasayanam Ayyangar: The last speaker seems to be under the impression that the Deputy Governor will have to be elected by votes of all the adults of the province. This, however, is not the case. The election will be done by the Provincial Legislature where the number will be only about 150 or 200. That being so it will not be a difficult matter at all. It is not a huge body; we have such elections by proportional representation by means of single transferable vote for various other bodies also. For example, in the case of the Council of State, the strength of the electorate is 3,000; in the case of a Provincial Legislature, I suppose the strength will not be more than say 300. Therefore, this need not stand in the way of our having proportional representation by means of the single transferable vote. I think the amendment may be accepted.

The Honourable Rev. J. J. M. Nichols-Roy (Assam: General): Mr. President, Sir, I am going to speak on the amendment. It deals with the filling up of a casual vacancy in the office of the Governor. It, however, does not solve the problem of a casual vacancy that may arise in the office of the Deputy Governor. The amendment says:

> "There shall be a Deputy Governor for every province. He will be elected by, the Provincial Legislature on the system of proportional representation by single transferable vote after every general election. The Deputy Governor will fill a casual vacancy in the office of the Governor for the remainder of the term of office of the Governor and he will also act for the Governor in his absence."

But what will happen if there are casual vacancies both of the office of the Governor and of the office of the Deputy Governor? In that case, there will be a dead-lock. There is no provision at all for such a care. For this reason, Sir, it seems to me that the clause as drafted originally is far better than the amendment. At every casual vacancy of the office of Governor, the Provincial Legislature may fill up that vacancy; but according to the amendment there will be a vacuum, there is no provision for filling up a vacancy if there are such vacancies both in the office of the Governor and in the office of the Deputy Governor. For this reason, Sir, the clause as originally drafted it seems to me, is preferable to the amendment.

Mr. K. M. Munshi (Bombay: General): Mr. President, Sir, with regard to the submission made to the House by Mr. Pocker, the explanation why the system of proportional representation by means of single transferable vote has been inserted in the clause is clear enough. If this method of election were not introduced here in Clause 3, the result would be that a person would be elected as Deputy Governor by less than one half of the members voting. If it is by proportional representation, then by transfer of second vote, whoever succeeds will get one half plus one votes more than the number of votes cast for the others. That is why this system has become necessary.

As regards the difficulty put forward by Rev. Nichols-Roy, about both the Governor and the Deputy Governor disappearing from the scene simultaneously, it is very difficult to conceive of such a contingency at this stage. Even if we had a third man, he too may disappear. Therefore, at this stage, we can only fix the general principle. If by some sudden stroke of calamity, the Governor, the Deputy Governor and all the rest disappear, then the whole machinery will co lapse. But we need not think of such far-fetched events. We hope the Governor will continue, if not, the Deputy Governor at least will continue, till the end of the term.

Srijut Rohini Kumar Chaudhury (Assam: General): Mr. President, Sir, the Committee which produced this Report was presided over by no less a person than the distinguished and revered Sardar Vallabhbhai Patel and we think full opportunity was given for discussion of each matter so that when the Report was before the House there would be no need for any change. I should not be understood to be opposing Pandit Pant or to criticise him, because physically, morally and intellectually I would not be equal to that task. (*Laughter*). But I think it would be better and more helpful to us if we know what would be the normal functions of the Deputy Governor, when the Governor is not absent. Would his function consist simply in longing and praying for the absence of the Governor or for him to be incapacitated i.e., for a casual vacancy? (*Laughter*). That question, Sir, may please be borne in mind and duly considered.

Then, Sir, it is obligatory according to his amendment that there shall be a Deputy Governor in every province. Will this Deputy Governor, be honorary or will he be paid? If he is a salaried man why do you compel a poor province like Assam or Orissa to maintain a Deputy Governor with all the costly paraphernalia which will be there?

Then, Sir, I am speaking on behalf of those who may aspire to become Governor of a province--but if--God forbid--a Governor should die immediately after the election (*laughter*) will the Deputy Governor who is elected only indirectly by the votes of a few people enjoy the same position as the Governor who was elected to the office by all the adult votes? It may be said that the Vice-President of the U.S.A. enjoys all the powers of the President but there he is elected by the whole country. So why should you give such extensive power to your Deputy Governor who is not elected by the entire adult votes but only by a few people? These are points to-be considered and I hope a suitable reply will be given to these questions.

Mr. Debi Prosad Khaitan (Bengal: General): Sir, in trying to understand the various clauses of the draft Bill that has been placed before us we should remember what the Mover, Sardar Patel, said in the beginning that these clauses are not complete and final drafts but only enunciation of principles which we can approve of. And the principles that we approve of will again be brought before another Drafting Committee which--will put them in proper shape and fill such lacuna as may remain after the draft passes this House at the present sitting. In the original draft as placed before us is was stated that "the Governor shall be deemed to have vacated his office by continued absence from duty or continued incapacity or failure to discharge his functions for a period exceeding four months".

This was thought to be very uncertain and very vague, as to when and in what manner the Governor is to be deemed to be in continued incapacity to discharge his functions. Similarly what was means by the expression "failure to discharge his functions"? It became very difficult to decide what authority would declare that a Governor was in continued incapacity, expect in the case of illness. Similarly, "failure to discharge his functions" is again a very vague expression. One man may consider that the Governor was failing to discharge his functions while a large body of other persons and the Governor himself may think that he was not failing to discharge his functions. This has again to be read with sub-clauses (1) and (2) of Clause 3. There it was stated:

> "Casual vacancies in the office of Governor shall be filled by election by the Provincial Legislature."

That is to say, there will not be a ready-made person capable of filling the office of Governor when a casual vacancy would arise. The election by the provincial legislature would necessarily take some time to carry out, and in the meantime the office of Governor would remain vacant without anybody to perform the functions of that high office. In Sub-clause (2) again, which is to be read with Clause 2(3) :

> "In the event of the Governor's absence from duty or incapacity or failure to discharge his functions for a period not exceeding four months, etc."

Supposing a Governor becomes ill and wants to take a holiday to some place and thinks that he will recover within three months but does not, it becomes very uncertain as to when the period will exceed four months and when it would not exceed four months. All these questions had to be seriously considered and a remedy was to beyond, or at least it was thought that another remedy should be put before this House; and that is just what Pandit Pant has done, namely that after each general election when the provincial legislature meets it would elect a Deputy Governor according to a certain process. Even now some lacuna still remains, namely, it is said that the Deputy Governor will fill a casual vacancy in the office of the Governor for the remainder of the term of the office of the Governor. It has not been stated here as to what will be a casual vacancy, and who would determine whether there Is a casual vacancy or not; whether it is the Governor himself that will determine it or some other authority will have to be duly considered by the expert draftsmen that are serving the Constituent Assembly.

An Honourable Member: Sir, is the Honourable Member in order in reading a written speech.

Mr. Debi Prosad Khaitan: I have no written speech; I am only looking at the clauses and the amendments and have to read them because I have not committed them to memory.

As I said, the expert draftsmen will have to consider when a casual vacancy occurs, which authority will determine whether a casual vacancy has occurred or not and whether the Deputy Governor--if this amendment is accepted--will fill the office of the Governor for the remainder of the term of his office or will simply act for the Governor in his absence for a short period. All these are difficult matters to consider; and if the principle that has been put forward by Pandit Pant is accepted the remaining details will have to be filled in and again brought up before this House for consideration. In the circumstances, I think the amendment of Pandit Pant is a good substitute for Clause 2 (3) and sub-clauses (1) and (2) of Clause 3, and I hope the House will accept it.

Mr. H. V. Kamath: Sir, in order to meet the difficulty visualised by Mr. Rohini Kumar Chaudhury, we might, as we have proposed in the case of the Upper House, direct that members of the Constituent Assembly from each Province shall vote separately and decide whether a Deputy Governor should be appointed for their province or not.

Mr. President: The Mover may reply.

The Honourable Sardar Vallabhbhai Patel: Sir, there is not much to be said by me, because subsequent speakers have replied to the previous speakers. This is a simple clause relating to how usual vacancies in the office of Governor are to be filled and the proposal has been improved upon by the amendment that has been moved by Pandit Govind Ballabh Pant. Doubts have been raised as to what would happen in case both the Governor and the Deputy Governor disappear. In any constitution difficulties of this kind may arise but human ingenuity always finds a remedy when such abnormalities occur. The House may also be aware that this constitution will be adjusted or revised in the first three years whenever necessity arose. Therefore, if any such unexpected or unforeseen difficulty arises, the legislature at that time will take care of itself and make provision in time to meet such contingencies. Therefore, I gee no difficulty in accepting the amendment moved by Pandit Govind Ballabh Pant and I do not think it is necessary to make any more suggestions.

Mr. President: An amendment to Clause 3 has been moved. The question is :

"That for Clause 3, the following be substituted:

"There shall be a Deputy Governor for every province. He will be elected by the Provincial Legislature on the system of proportional representation by single transferable vote after every general election. The Deputy Governor will fill a casual vacancy in the office of the Governor for the remainder of the term of office of the Governor and he will also act for the Governor in his absence The motion was adopted."

Mr. President: The question is:

"That Clause 3, as amended, be passed."

The motion was adopted.

CLAUSE 4

The Honourable Sardar Vallabhbhai Patel: Sir, I beg to move:

"Every citizen of the Federation of India who has reached his 35th year of age shall be eligible for election as Governor."

This is a very simple clause.

Mr. President: There are several amendments to this Clause.

Mr. H. V. Kamath: Sir, I am told on the highest authority that a man, or for the matter of that, a woman also,--as she too is eligible for election as Governor,--may attain to maturity and mellow wisdom even before the 40th year I do not therefore wish to press my amendment.

Shri V. C. Kesava Rao (Madras: General): Sir, I do not wish to move my amendment.

Shri M. Ananthasayanam Ayyangar: Sir, I beg to move:

"That the following be added as sub-clause (2) of Clause 4 and the existing Clauses be renumbered as Clause 4(1) :

'(2) No person holding any office. or position of emolument in the regular services of the Provincial Government or the Union Government or any local authority subordinate to the same shall be eligible for election as Governor'."

Sir, it is one of the generally accepted principles that a public servant shall not stand for any elected office and hence the need for incorporating this provision in the constitution. It is likely that for such an eminent office sometimes an over-zealous public servant may stand for election and some people may also allow him to stand. As a matter of fact, I wanted that even a person who retired from public service during the previous five years ought not to be allowed to stand for election as a Governor. That will be a proper safeguard. I do not think that a public servant, however, great he might be as an administrator, is as competent as a public man devoted to public service will be and is expected to serve his province as a Governor. However, that amendment is not before the House and I am moving a lesser and more innocuous amendment that a public servant should riot be allowed to stand for election as a Governor. Sir, I move.

(Messrs. Shibbanlal Saksena and Biswanath Das did not move their amendments.)

The Honourable Sardar Vallabhbhai Patel: Sir, I accept the amendment moved by Mr. Ananthasayanam Ayyangar.

Mr. Debi Prosad Khaitan: Sir, an age limit has been fixed for the Governor. May I know if there is any age limit for the Deputy governor also?

(No answer was given.)

Mr. President: The question is:

"That the following be added as sub-clause (2) of Clause 4 and the existing Clause 4 be renumbered as Clause4(1) :

'(2) No person holding any office, position of emolument in the regular services of the Provincial Government or the Union Government or any local authority subordinate to the same shall be eligible for election as Governor'."

The amendment was adopted,

Mr. President: The question is:

"That Clause 4, as amended, be passed."

The motion was adopted.

CLAUSE 5

The Honourable Sardar Vallabhbhai Patel: Sir, I beg to move:

"Disputes regarding the election of a Governor shall be inquired into and determined by the Supreme Court of the Federation."

I do not think this is a controversial clause and there is no amendment to it.

The motion was adopted.

Mr. H. V. Kamath: Sir, would it be too much to request you for a little recess, say, half an hour to enable members to have tea?

The Honourable Sardar Vallabhbhai Patel: Is that an amendment? The House is only sitting for three hours and members could have had their tea and come.

Mr. H. V. Kamath: If we had a recess of half an hour for tea, we could sit till 6-30.

Mr. President: Members can go and take their tea as the proceedings of the House go on.

CLAUSE 6

The Honourable Sardar Vallabhbhai Patel: Sir, I move:

"6.(1) The Governor shall not be a member of the Provincial Legislature and it a member of the Provincial Legislature be elected Governor, he shall be deemed to have vacated his seat in that Legislature.

(2)The Governor shall not hold any other office or position of emolument.

(3)The Governor shall have. in official residence and shall receive such emoluments and allowances as may be determined by Act of the Provincial Legislature and until then such as are prescribed in Schedule............

(4)The emoluments and allowances of the Governor shall not be diminished during his term of office."

You will see that sub-clause (1) provides that in case a person who stands for election as Governor and is a member, is elected, he has no option but to vacate his seat in the legislature. He automatically comes out of the Legislature and becomes the Governor. I think it is a proper provision. There can be no dispute about it.

Sub-clause (2) refers to the holding of other offices by the, Governor. It forbids it. This is also necessary. We, have provided for the acceptance of Mr. Ananthasayanam Ayyangars' amendment to the previous clause prescribing the qualifications necessary. This sub-clause is therefore very necessary.

Sub-clause (3) provides simply for residence and emoluments. It is not necessary to say anything about it. Provisional arrangement is made till it is fixed by the legislature.

Dr. P. S. Deshmukh: I do not wish to move my amendment

Mr. M. S. Aney (Deccan States): May I make a few observations on this motion?

Mr. President: Yes, after the amendments have been moved.

Mr. B. K. Sidhwa: Sir, the amendment that stands in my name states that the salary of the Governor should form part of the Constitution. I am strongly of the view, particularly for maintaining the dignity, the prestige and honour of the Governors who will be Indians themselves hereafter, that fixation of the salary should not be left to the caprices and, whims of the provincial legislatures. Again, under the circumstances in which the Governors will be elected by adult franchise, it will be undignified to let the provincial legislatures, where party politics will prevail,. sit upon the fixation of the salary of the Governors. I do feel, therefore, Sir, that the Constitution itself should provide as to what should be the salary and other emoluments of the Governors. I am quite prepared to grant that small provinces like Assam and Orissa need not pay their Governors the same salaries as the other provinces. This tool may be put down in the Schedule,. I feel that this matter should be reconsidered by the Provincial Committee. In this connection, I would point out that the Schedule stated to be there is not in fact there. The Schedule, has to be considered by the Provincial Committee. I have mentioned in the amendment that the Schedule should state what salaries should be incorporated in the constitution. I have been told that my point will be considered by the Provincial Constitution Committee. Under the circumstances, I do not move this, but I desire to emphasise this point so that the Provincial Constitution Committee may bear it in mind when they consider the Schedule. I repeat, Sir, that in view of the fact that party politics will prevail in the provincial assemblies, we should see that the salaries of the Governors form part of the Constitution.

Mr. President: The Provincial Constitution Committee has already reported. I do not know if this point would be going back to it. I take it, it will be taken into consideration when this matter comes up again in the final form when the final Constitution is considered.

Mr. R, K. Sidhwa: Yes, Sir. I have been told also that it will be borne in mind.

Mr. President: As there are no amendments moved to this Clause, I call upon Mr. Aney to speak.

Mr. M. S. Aney: Sir, I have only a few observations to make in regard to this Clause. Sub-clause (1) says that the Governor shall not be a member of the Provincial Legislature and if a member of the Provincial Legislature be elected Governor, he shall be deemed to be vacated his seat in that Legislature. This applies not merely to the Governor who is elected but also to anybody, the Deputy Governor for instance who might happen to be in the position of the Governor, in view of the provision made therefore in an amendment given notice of by my friend Mr. Govind Ballabh Pant. The case of the Deputy Governor who acts as Governor will also be covered by this Clause. But it is not, so stated in the proposed amendment. It is not stated in the aforesaid amendment that the person who acts as Governor shall not be a member of the Legislature, although by virtue of his becoming a Governor he will be taken to have vacated his seat and a vacancy will arise and it will have to be filled. That is a consequence of this amendment. We should think over the matter and see if something can be done to make this position more clear. I have nothing more to add. This is one of the points that struck me.

Mr. President: Is there any other member who wishes to speak about this?

Mr. Naziruddin Ahmad : Mr. President, Sir I feel some difficulty about Clause 6 which is under consideration. The first sub-clause says that the Governor should not be a member of the legislature, and if so after, election, he should be deemed to have vacated his seat. Coming to sub-clause (2), it is provided that the Governor shall not hold any other office or position of emolument. We have already provided through an amendment moved on the floor of, the House, of which enough notice was not given, that a candidate for Governorship should not hold any position of emolument, anywhere, oven under Government or even under a local authority. To that extent, sub-clause (2) seems unnecessary.

Then Sir I am speaking on behalf of those who may aspire to become immediately after the election (*laughter*) will the Deputy Governor who is elected only indirectly by the votes of a few people enjoy the same position as the Governor who was elected to the office by all the adult Votes?. It may be said that the Vice-President of the U.S.A. enjoys all the Powers of the President but there he is elected by the whole country. So why should you give such extensive power to your Deputy Governor who is not elected by the entire adult votes but only by a few people?

Then, Sir it is obligatory according to his amendment that there shall be a Deputy Governor in every province. Will this Deputy Governor be honorary or will he be paid? If he is a salaried man why do you compel a poor province like Assam or Orissa to maintain a Deputy, There are points to be considered and I hope a suitable reply will stand the various clauses of the draft Bill that has been placed before us we should remember what the Mover, Sardar Patel, said in the beginning that these clause are not complete and final drafts but only enunciation of principles which we can approve of. And the principles that we approve of will again be brought before another Drafting Committee which will put them in proper shape and fill such lacuna as may remain after the draft passes this House at the present sitting. In the original final draft would diminish the dignity and value attaching to that high office. With regard to the amendment moved to this clause, I think I should support that amendment that the legislature should have nothing to do with the fixation of the salary of the Governor.

Mr. K. M. Munshi: It has been withdrawn.

Mr. Naziruddin Ahmad: That was a good amendment, but I need not say anything further on the subject. This is a point, however which the Drafting Committee may keep before their mind.

These are some of the points which require careful consideration. Although I feel that this is not proper time to go into great details. I make these suggestions for the consideration of the Drafting Committee.

Sri M. Ananthasayanam Ayyangar: I want to say a few words about what Mr. Aney said about this clause. He thought that when the Deputy Governor becomes the Governor during the latter's temporary absence, be would lose his seat in the legislature. The Deputy Governor becomes the Governor only when the Governor vacates his office. Under the amendment moved by Pandit Govind Ballabh Pant, the Deputy Governor will fill a casual vacancy in the office of the Governor for the remainder of the term of office of the Governor and he will also act for the Governor in his absence. Should the Governor die or resign, the Deputy Governor becomes the Governor in which case he has no right to continue to be a member of the legislature. If on account of illness or absence, the Governor does not discharge his duties, the Deputy Governor will act in the Governor's place as Deputy Governor and not as

Governor and there-fore his place in the legislature is not vacated.

Then as regards the observations made by the previous speaker in regard to sub-clause (2) which says the Governor shall not hold any other office or position of emolument. He says that the amendment moved that no public servant can be eligible for candidature as Governor is comprehensive and therefore this sub-clause is not necessary. He has for gotten the difference between the eligibility of a candidate for Governorship and, after becoming Governor, his holding any other office. He may not be a public servant at the time of his election but he may hold any other office thereafter. The idea is that the Governor should be a fulltime servant and must not hold any other office. That is the reason for this sub-clause.

Then as regards sub-clause (4). Very often a legislature which is opposed to the Governor will try to diminish and not increase his salary. Anyhow. I would prefer the word "change" substituted for the word "diminished" in this sub-clause.

The clause, as it stands, may be accepted.

Mr. President: I put the clause to the vote. No amendment has been moved.

The motion was adopted.

CLAUSE 7

The Honourable Sardar Vallabhbhai Patel: I move:

"7. The executive authority of the Province shall be exercised by the Governor either directly or through officers subordinate to him, but this shall not prevent the Federal Parliament or the Provincial Legislature from conferring functions upon subordinate authorities, nor shall it be deemed to transfer to the Governor any functions conferred by any existing Indian law on any court, judge or officer or local or other authority."

I move this proposition for the acceptance of the House.

Mr. President: Mr. Ananthasayanam Ayyangar, you have got an amendment?

Sri M. Ananthasayanam Ayyangar: I have dropped it, I will reserve it for some other clause.

Mr. President: You are not moving so far as this clause is concerned. Very good.

Shri Biswanath Das: Sir, I move:

"That to Clause 7, the following proviso be added:

'Provided that the Federal Legislature shall contribute for such functions discharged in its behalf'."

This is an ordinary amendment and was probably left out owing to oversight. Honourable Members are aware of the fact that the Provincial and Federal Constitutions clearly lay down the respective function and responsibilities. In the present clause the federation is authorised to call upon the Provincial Executive to discharge certain functions over and above their own work. In such cases it is but fair that the Federal Parliament should pay for the work done in their behalf by the Provincial Executive as the agents of the Federal Parliament. I claim-this on two accounts, It is just and fair that the principal should pay for the agent in discharge of its agency work, Secondly, its responsibility cannot be complete unless the Federal Legislature finds its agency to carry on its work with its expense. The work in contemplation may relate to directions by the Federal Parliament or to work imposed on the Provincial Executive by means of Federal statutes. In such cases it is but fair that the principal must pay for the agency work. True it is that the Government of India Act had a similar section for discharge of its work by the Provincial Executive without any payment, but we are substituting a Federal system of Government in place of a Unitary type. I therefore hold that it is fair and necessary that this agency work should be paid for.

Mr. President: Clause 7 has been moved and the amendment to it is also moved. The original proposition and the amendment are open for discussion. Members who wish to make any remarks may do so now.

Shri Ajit Prasad Jain (United Provinces- General): The present clause says that the Executive authority of the province shall be exercised by the Governor either directly or through officers subordinate to him. There is a corresponding clause as recommended by the Union Constitution Committee which says "subject to the provisions of this constitution the executive authority of the Federation shall be vested in the President". The present clause, that is the one recommended by the Provincial Constitution Committee, follows more or less the lines of the Government of India Act, 1935, and there was a reason for this. Under the Government of India Act, 1935, there are some services which were under the control of the Secretary of State and they had to function under the authority of the Government but that distinction will cease to exist under the new constitution. I do not think that this phraseology is meant to perpetuate any distinction, but, at any rate, I believe that the recommendation made by the Union Constitution Committee is simple and much better worded and perhaps we shall be wise in adopting that phraseology.

The Honourable Sardar Vallabhbhai Patel : There is only one amendment which Mr. Biswanath Das has moved, that the Federal Legislature shall contribute for such functions discharged in its behalf. I am afraid there is some misunderstanding about this. Otherwise, the amendment would not have been moved. He is under the impression that the functions refer to the Federation authority. What the clause contemplates is that the executive authority of the province shall be exercised by the Governor either directly or indirectly or through officers subordinate to him. It is only the executive authority of the province and not of the Federation. Therefore there is no question of the Federal authority being called upon to pay. It is only a misunderstanding or misreading of the clause which has actuated the amendment. Further this is practically a non-controversial clause. Therefore, I hope the House will accept it.

Mr. President: The amendment to clause 7 has been moved. The question is:

"That to clause 7, the following proviso be added:

'Provided that the Federal Legislature shall contribute for functions discharged in its behalf'."

The amendment was negatived.

Mr.President : I now put the clause as originally moved:

"The executive authority of the province shall be exercised by the Governor either directly or through officers subordinate to him, but this shall not prevent the Federal Parliament or the Provincial Legislature from conferring functions upon subordinate authorities, nor shall it be deemed to transfer to the Governor any functions conferred by an existing Indian law on any court, judge or officer or local or other authority."

The motion was adopted.

CLAUSE 8

The Honourable Sardar Vallabhbhai Patel: I move:

"8. Subject to the provisions of this Constitution and of any special agreement, the executive authority of each province shall extend to the matters with respect to which the provincial legislature has power to make laws.

(NOTE.--The reference to special agreements in this provision requires a word of explanation. It is possible that in the future there may be Indian States or groups of Indian States desiring to have a common administration with a neighbouring province in certain specified matters of common interest. In such cases, the Rulers concerned may by a special agreement cede the necessary jurisdiction to the Province. Needless to say this will not interfere with the accession of the State or states concerned to the Federation, because the accession to the Federation will be in respect of Federal subjects, whereas the cession of jurisdiction contemplated here is in respect of Provincial subjects.)"

I move this for the acceptance of the House.

Mr. President: Mr. Santhanam, you have given notice of an amendment.

Sir Alladi Krishnaswami Ayyar (Madras: General): Sir, I think that this clause requires fuller consideration. So far as the main clause is concerned, namely that the executive authority of each province shall extend to the matters with respect to which the Provincial Legislature has power to make laws, no exception can be taken.

Mr. President : Shall we not take this up after the amendments have been moved?

Sir Alladi Krishnaswami Ayyar: What I was going to move was a postponement of the consideration of this clause for tomorrow morning, if that is possible.

Mr. President: That may be possible. But I think it would be better that the amendments are moved so that the members may have an opportunity of considering the main clause and the amendments.

Sir Alladi Krishnaswami Ayyar: I shall then reserve any remarks.

Mr. President : Yes.

Shri K. Santhanam: I beg to move:

"That in Clause 8, for the words 'Subject to the provisions of this Constitution and of any special agreement' the following be substituted :

'Subject to such restrictions and extensions as may be provided in this Constitution'."

Sir, as Sir Alladi has already remarked, ordinarily the executive authority of each province extends only to those matters with respect to which the provincial legislature has power to make laws. The point of my amendment us that an extension should not be done by the province on its own authority. It should be done only through a provision specially inserted in the federal part of the constitution, as to how far a province can enter into agreement, with a State or a neighbouring province and make an extension of its authority. Otherwise the whole Union will be reduced to chaos. The Central Ministry may not have power to prevent it and may be in great difficulty. Therefore, I want to restrict the, power and scope of any such agreement to the limitations imposed by the constitution and therefore the agreement should be subject to such restrictions as may be provided within the Constitution. Beyond the constitution, there should be no power to any province to make any agreement with a state or even a neighbouring province. It is only to draw attention to this important point that I have tabled my amendment.

Of course, if as Sir Alladi has suggested, this is postponed and a better draft provided, I have no objection. I only want that this clause should not be left as it is so that the provinces may think that they can deal with the neighbouring States just as they please and come to any agreement with them with or without the consent of the Federal Government. In such a case, the permission of the Federal Government should be necessary. Not only permission of the Federal Government, but even the permission of the Federal Legislature in certain matters should be necessary. In what cases agreements should be subject to the approval of the Federal Government and in what cases it should he subject to the authority of the Federal Legislature, all these things Should be provided in the Federal part of the constitution. It is only to draw attention to this important point that I have tabled my amendment.

Sir Alladi Krishnaswami Ayyar: Sir. I have got a draft ready. Mr. Santhanam's amendment is an innocuous amendment. You may make any agreement or provision you like. It does not finally settle the question. There may not be any objection to that form because it commits us to no particular principle. But if really, the object is to tackle the question and to enable the, provincial executive to take up the administration of subjects under the sanction or in pursuance of any agreement with the States special provision may have to be made. If you will permit me, sir I shall move an amendment, or at any rate, I will make my position clear with reference to the substance of what I have noted down even if it be not moved.

Mr. President: I will give you an opportunity. There is only one more amendment and after that amendment has been moved, I will give you an opportunity.

Shri Gokulbhai D. Bhatt (Eastern Rajputana States Group): *[Mr. President, the amendment which I am going to move is to Clause 8. The note connected with the said clause says at one place: "In such cases, the rulers concerned may by a special agreement cede the necessary Jurisdiction to the Provinces". I desire that wherever the word "Rulers" appears in the note the word "State" should be substituted. So far, the word "State" has been used everywhere in this note. Now when the States are going to have responsible government and in some states it is being established, I wish that the word "Rulers" should not be used, but the word "State" instead, for this word includes both the Rulers and the ruled. The contemplated agreement should be made with the consent of both the Rulers and the people. This is the purpose of my amendment. I think Sardar Patel will have no objection to this, for the word "State" is more dignified here than the word "Rulers".]*

Mr. Gopikrishna Vijayavargia (Gwalior): *[The amendment moved by Mr. Gokulbhai Bhatt, seeking to substitute the word "Rulers" by "State" is necessary and ought to be accepted.]*

The Honourable Pandit Govind Ballabh Pant: Mr. President although this is a very trivial point, still as it is relevant, and I would like to be enlightened on that. Mr. Bhatt's amendment relates to a word which appears in a note annexed to Clause 8. Is the note a part of this memorandum? Is it open to the members to move amendments to the wording cf the note or to anything appearing in the note? I have not considered the note as an integral part of the clause. It is nothing but explanatory I personally think that one need not worry too much about the language of the note. If the original clause is deleted, the note will fall. If the original clause is amplified, the note may not remain consistent with the amended clause. I would like to know whether you consider that amendments to notes are admissible and can be considered.

Mr. K. M. Munshi: Sir, I support my friend Sir Alladi that this clause requires reconsideration. As it is, it reads:

> "Subject to the provisions of this Constitution and of any special agreement, the executive authority of each Province shall extend to the matters with respect to which the Provincial Legislature has power to make laws."

But the insertion of the word 'of any special agreement' without any further qualification would go to show that it would be competent to the Provincial Legislature to acquire the power to make laws, not by virtue of this Constitution, but by any special agreement it may enter into. That might conceivably lead to great complications. Therefore. I submit that this requires consideration, and time should be given till tomorrow to put this into shape. It may possibly touch External Affairs too.

Mr. President: As here is a desire expressed by some members, that further consideration of this clause be postponed till tomorrow, I would like to have the views of other members if they wish to say anything on that point. I would not like to rush with it if there is a wish on the part of any considerable number of members to postpone discussion.

Sir Alladi Krishnaswami Ayyar: Sir, I support the motion of Mr. Munshi that the consideration of this matter be adjourned till tomorrow. But I would like to say a word in support of my proposition. It is this, Sir, that the Province as a unit, has certain defined rights and duties under the Constitution. You provide for the Province taking upon itself the administration of certain subjects at the instance of a State. It is an extra-Provincial sphere. If that is so, is it to extend to the Legislative, Executive or the Judicial sphere and to what extent is that agreement to be supported? In a case like this, it is matter for Federal intervention, which is necessary. These are matters which require very careful consideration and we cannot merely by adding a clause 'subject to some agreement' give a *carte blanche* for any agreement that might be entered into between Provinces and States in the Legislative, administrative or judicial sphere. Therefore, Sir, I support the motion of Mr. Munshi that the consideration of the whole matter may be adjourned until tomorrow morning. I have given notice of an amendment. I hope that will be treated as being in time because I gave it at 2 O'clock this afternoon. It reads as follows:

"1. In paragraph 8 of Chapter 1, delete the words 'and of any special agreement'.

2.After paragraph 8 of Chapter I, insert the following paragraph:-

"8-A. It shall be competent for a Province to undertake the legislative, executive or judicial functions vested in an Indian State under an arrangement made in that behalf with the State concerned, provided, however, that the arrangement relates to the class of subjects falling within the jurisdiction of the Province as a, member of the Indian Union.

On such an arrangement being concluded, the Province may, subject to the terms of the agreement, exercise the legislative, executive and judicial functions through the appropriate authorities of the Province'."

If you want to have a provision, it should be a full provision on these lines. If on the other hand, the idea is to postpone until the whole question of Union Constitution is considered, then it is another matter but I do not think it will be possible to provide for it by means of a phrase or addition of a sub-clause in the body of the section. That is my idea of the matter and I have already stated that the consideration of the whole matter may be adjourned till tomorrow morning.

The Honourable Sardar Vallabhbhai Patel: May I suggest that this involves some complicated points of law and requires further consideration as suggested by Sir Alladi? I suggest that a Committee of two or three lawyers might be appointed to consider this question and thrash out if an amendment to or modification of the present clause is necessary so that we may find it easy to tackle it tomorrow when it comes up.

Chaudhuri Khaliquzzaman (United Provinces: Muslim): I support it.

Mr. President: Will you Suggest the names?

The Honourable Sardar Vallabhbhai Patel: Sir Alladi, Dr. Ambedkar, Jr. Munshi and Mr. Chundrigar.

An Honourable Member: May I request that as the subject relates to Indian States, States Representatives also might be included?

Mr. K. M. Munshi: I propose the name of Sir B. L. Mitter.

Mr. Mohammad Sheriff (Mysore): I propose that Sir Arcot Ramaswamy Mudaliar's name may be included in the proposed Committee. This matter requires very careful consideration as it involves the interest of the States and since we represent the States, we would like to have a considered say in the matter. I request the consideration of this matter be postponed for the present and the Committee which is to be constituted should thrash out all the points and for this purpose I suggest that the name of the Mysore Dewan be included in the Committee.

Mr. President: We have got six names altogether, four suggested Originally and two other names have been added--Sir B. L. Mitter and Sir A. Ramaswamy Mudaliar. I take it that the House accepts the suggestion that this clause be referred to a Sub-Committee and the report of the Sub-Committee be put up day after tomorrow. We shall go on with the other clauses and take this up day after tomorrow. There was one question raised by a member with regard to the notes whether the note also forms part of a clause, I do not think the notes form part of a clause. That is for explanatory purposes and no amendment need be moved to any of the notes.

Mr. Debi Prosad Khaitan: I want to make one suggestion. With regard to your Ruling that the notes are not considered to be part of a Resolution, may I draw your attention to the note to Clause 9 and perhaps that may have to be considered as part of the Resolution. It reads--"For the most part, the Governor will act on advice, but he isrequired to act in his discretion. in the following matter"-- I would submit that the general statement need not be made and it may apply only with regard to this note.

The Honourable Pandit Govind Ballabh Pant: The note in Clause 9 refers to certain sections which are to follow thereafter. It is not part of the clause at all.

Mr. C. V. Krishnaswamy Rao (Mysore): Sir, while this Committee considers this Clause 8 tomorrow, will it take into consideration the obverse possibility of certain Provinces entering into agreements with a State in respect of certain matters and cede certain powers to the State in administration of those matters? Will the Committee consider this aspect of the question also?

Mr. President: Whenever that question arises, we shall consider it. The consideration of this clause is adjourned today after tomorrow and we shall now pass on to the next clause.

Mr. N. V. Gadgil (Bombay: General): It is already past 5-30, and it will be better if we adjourn now and meet tomorrow. We have done good work today.

Mr. President: Is it the wish of the House that we adjourn now? (Honourable Members 'Yes'.) The House seems to be in a holiday mood. We adjourn till 3 pm. tomorrow.

Before we disperse, I would like to make an announcement. It has been brought to my notice that the time I have given for sending in amendment to the 'Union constitution, i.e., till 5 P.m. tomorrow is two short, and some members want this time to be extended. So I extend the time till Friday evening at 5 o'clock.

The Assembly then adjourned till 3 P.m. on Thursday, the 17th July, 1947.

[English translation of Hindustani speech]

* That in sub-clause (2) of Clause 2, for the words the resolution in each case to be supported by not less than two-thirds of the total membership of the House concerned," the following be substituted:

"the resolution in the former case to be supported by not less than two thirds, and in latter not less than three--fourths, of the total membership of the House concerned."

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME IV

Thursday, the 17th July, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi at 3 P.M., Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

REPORT ON THE PRINCIPLES OF A MODEL PROVINCIAL CONSTITUTION-contd.

Mr. President: Yesterday we referred Clause 8 of the Report on the Principles of a Model Provincial Constitution to a small Committee. I understand the Committee has been able to arrive at some conclusion and it has made a report. The Report will be circulated today and the clause will be taken up tomorrow. We will now take up Clause 9.

CLAUSE 9

The Honourable Sardar Vallabhbhai Patel (Bombay: General): I move clause 9. It reads:

> "There shall be a Council of Ministers to aid and advise the Governor in the exercise of his functions except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion."

This clause provides that there shall be a Council of Ministers who will aid and advise the Governor in the exercise of his functions, but there is an exception in which certain reservations are made-where, according to the constitution proposed, he is required to exercise the functions or any of them under his discretion. About those matters there will be reference in subsequent clauses and therefore the Note is merely explanatory. I shall therefore simply move Clause 9 without the Note or clauses under the Note because they are provided for in the other clauses. Sir, I move Clause 9.

Mr. President: I have received notice of a number of amendments to this clause. I would like to know how many are proposed to be moved.

Shri V. I. Muniswami Pillay (Madras: General): The Minority Committee's Report has not yet come and I am not therefore moving my amendment, just now.

(Messrs. R. K. Sidhwa, H. J. Khandekar and H. V. Kamath did not move their amendments, and other members who had given notice of amendments were absent.)

Mr. President: As regards the amendment given notice of by Mr. Pocker Saheb Bahadur, it is an amendment to an amendment which has not been moved. It cannot therefore be moved. As none of the amendments has been moved, the original clause which has been moved is open for discussion (*After a pause*). As no one desires to speak on it I will put the clause to vote.

The question is:

"That Clause 9 be adopted."

The motion was adopted.

CLAUSE 10

The Honourable Sardar Vallabhbhai Patel: Sir, I move that Clause-10 be adopted. It runs as follows:

" If any question arises whether a matter is one for the Governor's discretion or not, the decision of the Governor in his discretion shall be final."

Some doubts have been raised about the language, but I think if the principle is accepted the question of language may be attended to at the time when the final draft is made. I think there will be no objection on the ground of any defect in the proposition as a principle. Sir, I move.

The motion was adopted.

CLAUSE 11

The Honourable Sardar Vallabhbhai Patel: Sir, I move that Clause 11, be adopted. It runs as follows:

"The question whether any, and if so, what advice was tendered by the ministers to the Governor shall not be enquired into in any court."

Obviously the advice tendered by a Minister to the Governor cannot be a matter to be taken into the judicial court. So it is a simple clause which requires no explanation. Sir, I move.

The motion was adopted.

CLAUSE 12

The, Honourable Sardar Vallabhbhai Patel: Sir, I move that Clause 12 be adopted. It runs:

"The Governor's Ministers shall be chosen and summoned by him and shall hold office during his pleasure."

This also is a proposition which requires no elucidation and I think there will be no controversy on it. Sir, I move.

Mr. Aziz Ahmad Khan (United Provinces: Muslim): *[Mr. President, the Resolution which is before you says that the Governor shall appoint his own Ministers and they shall continue as such at his pleasure. I move the amendment to the Resolution that the Governor's Ministers shall be elected by the Assembly by means of the single non-transferable Vote. The Resolution moved by the Honourable Sardar Patel does not follow the English Parliamentary system of appointing the Ministers. According to the English constitution, after the general elections are over, the number of parties in the House of Commons is ascertained and they try to find out which is the largest single party; or whether there is any such party which combining with other parties can become dominant. This is the party which is authorized to appoint the Prime Minister. He recommends the names of his colleagues, who on his recommendation form the Cabinet. This is the method which has been proposed for our constitution as well. But the method which I am advocating in my amendment, is not a novel method. There are many places in the word, where this method is prevalent. For instance, Sir, if you enquire, it would be found that today this system is prevalent even in America. The appointment of Ministers is not made by nomination. Here individual vote is taken and this is the way in which Ministers are elected. Similarly, Ministers are elected in Switzerland and Austria. Sir, if you think over it, you will find that in all countries where religious groups and sectional interests exist, this system has been adopted, in order that all the parties on whose behalf the Ministers would govern should have a hand in their appointment, to secure the confidence of every party in the Cabinet. After mature consideration, I am convinced that the English system of democracy does not suit India. We have witnessed the result of this system of democracy, which has caused disturbances and bloodshed in this country. Had the system of Government been the product of our own genius, most probably such mutual hatred and differences would not have been created or intensified. Therefore it is in the fitness of things that the Ministers should be elected by general votes. This system will have the advantage that the Ministers will have sympathies of their voters. This system will be consistent with the principles of democracy. But if this is not accepted and the English system is adopted then I am afraid it would not suit us.

Sir, very few of the present parties are based on any political principles. Most of them depend on religious faith. These religious groups have existed for centuries and have continued as such from time immemorial. It is known to one and all that the untouchables are living here for scores of centuries. It is absurd to think that no sooner the constitution is framed, the religious groups will disappear and parties will be formed on political and economic principles. It would be a dangerous experiment to think of planting English system of democracy, where Party affiliations are based exclusively on political principles or of creating those conditions here. Countries like Austria and Switzerland, where they bad their differences, have adopted this system of election for the Cabinet with success.

Naturally, whenever a person votes for electing a particular candidate as Minister, he has at least some expectations from him for the future and he (the Minister) in return shall do at least same good to him. Therefore, it would be much better to adopt such a system for India. Due to English education, we could not develop any system of our own. The English people thought that the system with which they have achieved this end, should be applied to India also to attain its object. They acted accordingly and succeeded in their endeavour. We should discontinue the methods adopted by the English people and should try to adopt a better system. I am sure, that the election of the Ministers by general votes would be much better. Therefore, I hope that my amendment will be accepted by the House.

One word more. When the Resolution was about to be move we were not given opportunity to give much thought over it otherwise the amendment could be more Properly drafted. Therefore, you need not care for the words of my amendment. As a matter of fact you should not look to the details of my amendment. If you agree with the principles underlying my amendment, the confusion about the details will automatically disappear. Please look to the principles of the amendment. In the original Resolution, there is no mention of the nomination of the, Ministers, nor is there any mention of their election in the amendment Sir, if you would approve the principles underlying my amendment, then at the time of the final draft, the whole thing can be put in proper form.]*

K. T. M. Ahmed Ibrahim Sahib Bahadur (Madras: Muslim): Mr. President, Sir, I beg to move:

"That at the end of the amendment to Clause 12 (just proposed by Mr. Aziz Ahmed Khan), the words 'and shall be responsible to the Provincial Legislature" be added."

This is a very simple amendment based on the fundamental principles of all democracies. The Ministers, Sir, should be responsible to the Legislature. That is a very fundamental principle affecting the rights of the entire population.

Now, the principles enunciated in the Report are such as to invest the Governor with all powers of the State. In short, all the powers of the State are concentrated in one single person and, I submit that such concentration of power in one single person is dangerous to the State, however eminent he may be and by whatever democratic methods he may be elected. It is true that it is stated in the Note to Clause 9 that the Governor, in the proposed constitution, is to be elected by the people, so that he is not likely to abuse his discretionary powers. But it must be admitted that it is dangerous to invest one single person with an such powers, whatever may be the method by which he is to be elected.

Further, it is also stated in Clause 13 that generally the Governor will be guided by the conventions of responsible government; but there is no compelling necessity on his part to follow any such convention. And, if there is any difference of opinion as to whether he has followed the conventions or not, the Governor's act cannot be called in question. It is obvious that the relationship of the Ministers with the Governor and their dealings with him should not be left to the entire discretion of the Governor. I would point out that such a procedure is entirely foreign to all principles of democracy. If this is allowed to stand, then the Ministers will be only advisers and the Legislature will be only an advisory body. Therefore it is that we want that the Ministers should be responsible to the, Provincial Legislature and that they should be elected by the Provincial Legislature concerned. There is otherwise every possibility of the Governor abusing his powers and encroaching upon the rights of the people in more ways than one. It is to ensure that proper democratic government, may be carried on that we want that the Ministers should be responsible to the legislature and through the legislature to the electorate, and not to one single man. The principle is that the Ministers should be responsible ultimately to the electorate through the legislature and not to one single man by whatever method or majority he may be elected. I hope the House will accept this amendment as it is based on fundamental principles.

Sri M. Ananthasayanam Ayyangar (Madras: General): I am not moving my amendment, but wish to speak.

Mr. President: The Honourable Member may speak later,

There is another amendment of Begum Aizaz Rasul to this amendment of Mr. Aziz Ahmad Khan. Will you please move it?

Begum Aizaz Rasul (United Provinces: Muslim): Sir, I wish to move that at the end of the amendment moved by Mr. Aziz Ahmad Khan to Clause 12 the following words be added:

"and shall hold office during the life of the Assembly."

Sir, my purpose in moving this amendment is that the Ministry should be a strong and stable Ministry and that it should not be subject to the whims and fancies of the party or legislature to which it is responsible. Sir, in England and France the Ministry is responsible to the legislature We see what happens in France every day. The Ministry is weak and the Cabinet has fallen several times. That always happens where there are more than two parties in the legislature, and therefore in India which is so young in democracy, where the sense of responsibility is neither ingrained nor so well developed, we should have a strong and stable Ministry which can initiate long-range policies and be uninfluenced daily by the repercussions in its party. We do not want a repetition of what is happening in France in our country. Sir, my experience of the last ten years after the introduction of the Government of India Act of 1935 has been that in the provinces where the Ministers are responsible to the legislature and are liable to fall on a vote of no-confidence by their party or the provincial legislature, they cannot put forward any long-range policies. As I said before, often they are influenced daily by party feelings and are therefore necessarily weak. I therefore feel that a Ministry that has been elected by the legislature should have a long life in which it can formulate its policies and not be influenced by party factions. We may have the American system under which the President nominates his executive, but our country may not be ready for that. But the Swiss system under which the Legislature elects the executive for a certain period during which it is irremovable is to my mind the best form of government for the provinces, because the Ministers who have once been elected by the legislature cannot be removed by a vote of no confidence in it by the legislature. I feel therefore that the Swiss system is the best *via media* that can be accepted by us in this country, keeping in view the political and other conditions that are prevailing here and will continue for a long time to come. The system of the single non-transferable vote is to my mind the best system that can be adopted for the appointment of the executive because in that all interests will be represented and no party in the legislature will have any occasion to feel that it is not represented, and therefore I strongly support the amendment that has been moved by, Mr. Aziz Ahmad Khan.

I also wish to point out that the best thing for a Ministry is to have its life synchronous with the life-time of the Assembly so that it can be an irremovable executive.

My other point is that in the constitution we are framing, we are giving such strong and wide powers to the Governor who will be an elected Governor, that there is no need for another head of the State, because the Governor is there and will be in a position to allot portfolios, to represent the State on ceremonial occasions and to preside at meetings and to co-ordinate the work of the Ministers. All these things will come under the duties of the Governor and the Ministers who will be responsible men elected by the legislature will be able to initiate their Policies and work out their long-range policies not at the whim of the party but from their own strong positions. My experience is that where the Ministers are the representatives of a party, it is impossible for them to carry on the day to day work and the administrative work of the province uninfluenced by their party members. This necessarily means that the Ministry is weak and the administration suffers on this account because it is natural that Ministers who have to keep their party men pleased, have to do many things which are not good from the administrative point of view. Therefore I hope that, this amendment of mine which is moved with a view to having a, strong and stable government in the provinces will be accepted.

(Mr. B. M. Gupta did not move his amendment.)

Mr. President: I think these are all the amendments. Now, the clause and the amendments are open to discussion.

Seth Govind Das (C. P. and Berar: General): *[Mr. President, I oppose Mr. Aziz Ahmad's amendment and also the two amendments to his amendment. He has cited the example of America where Ministers are elected and has suggested to us to adopt, not the British, but the American democratic system. I would like to point out that the Ministers in America are not responsible to the legislature. If we look at the constitutions of those countries where a system of responsible government is prevalent we shall find that the Prime Minister is chosen there by the majority party of the legislature and he chooses his colleagues. The Governor approves the list of the personnel of the Cabinet submitted to him by the Prime Minister.

The conditions in the countries, where the system of responsible government exists, clearly indicate that responsible government cannot function unless there is joint responsibility. And there cannot be joint responsibility until and unless the Premier chooses his colleagues. Mr. Aziz Ahmad has stated that it is the English system of government which is responsible for all the strife in this country. I venture to tell him that a system which has not yet been put in operation here cannot be-held responsible for the conditions prevailing in our country. This system of government can be adopted only in independent countries and so long our country is not free it is wrong to say that the said system is at the root of these troubles. If anybody is responsible for what is happening in the country it is the Muslim League that advocates the two nation theory, that from time to time raises the cries of 'Islam in danger' and proclaims that there are two civilizations and two cultures in the country. It is wrong to say that, the system of responsible government which we intend to establish here is responsible for these serious disturbances in our-country. And then Mr. Aziz Ahmad should look to the system adopted so far by the Muslim League. The President of the Muslim League is elected-Qaid-i-Azam is elected. But the personnel of the League Working Committee is chosen by the President. The general body of the League does not elect the working Committee. The Congress too follows the same system: We elect our Rashtrapati (Congress President). The provincial congress committees elect their presidents. We authorise the Rashtrapati and the presidents of the provincial congress committees to choose the personnel of their working committees. Having all these in view, I beg to advise that we must not follow the American system of government, if we desire to establish responsible government here. The Ministers in America are not responsible to the legislature--the House of

Representatives or the Senate. We want responsible government. We want our Ministers to be responsible to our legislature. If we desire to have this system, it is essential that Ministers should not be elected on the principle of proportional representation by single transferable vote.

The other two amendments to this amendment are amazing. One of them says that the Ministers so elected by single transferable votes should be responsible to their legislature. I do understand how the Ministers will be individually responsible to the legislature.

The other amendment put forward by one of our sisters is that the Ministers should hold office during the life time of the Assembly. I fail to understand how the Ministry can hold office during the life time of the Assembly when the majority of the members of the legislature have no confidence in them or the Premier. The amendment and the amendments to it are contradictory.

Therefore, concluding my speech I would again say that the system of Government prevalent in Britain must be followed here if we have to establish responsible government on the eve of our getting independence.]*

Mr. President: A request has been made to me by a Madras Member that all the speeches which are delivered here in Hindustani should be translated into English for his benefit, because he is the mover of one of the amendments. I am afraid it is not possible to comply with that request because, in the first place, we have got no arrangement for an interpreter who would be able to translate all these speeches which are delivered in Hindustani, and I also know that there are certain members who do not know English and they would insist upon English speeches being rendered into their language, whatever that language may be. I think we had better to take the limitation of individual members as the limitation exists and proceed with the debate as it has been going on, in the language in which the speaker wishes to speak.

The Honourable Mr. Jaipal Singh (Bihar: General): Mr. President, I feel very much like a Madrassi. Much of what has been said by my predecessor on the other side and the immediate predecessor in this side has been lost on me. I fully agree with them that, as far as possible, the speakers should speak in the language understood best by the majority of the members of this Assembly, but, if it were left to me to speak in a language in which I could express myself best, I do not think there is any one at all here who would understand me. I would definitely prefer to speak in my own language i.e., in an Adibasi language. There is no member here at all who would understand me. Mr. President, you, coming from the same province as I do, would find it difficult to discover an interpreter. I do hope that in deference to the need very strongly felt and in the light of what has been said on the floor of the House, it will be appreciated that it is better to talk in a language which the majority of us could understand.

I come here to oppose the amendment. But before I oppose the amendment I would like to say a word about a note, despite the advice given by the Honourable Sardar Vallabhbhai Patel that we are not to talk on any of the notes,--I know that you will permit me to say that it is most unfortunate that a paragraph such as this should ever appear on a serious document.

I will read it:

> "It is to be noted that the Governor, under the proposed constitution, is to be elected by the people, so that he is not likely to abuse his discretionary powers."

My elementary logic fails to understand the argument of this. That a man who is elected on a popular vote will not abuse his discretionary powers is beyond by comprehension. I shall now proceed to the arguments that have been advanced by the proposer and the seconder of the amendment. It is unfortunate that the serial arrangement of these, clauses are as they are. I think the proposer and his charming supporter would have thought otherwise had Clause 14 come in the place of Clause 2. In Clause 14 you will see that the Schedule which is to be equivalent, of the Instrument of Instructions is provided for. I think a great deal of the apprehension would be completely removed were we to know what the Schedule or the Instrument of Instructions would be.

Hitherto we have been talking about responsible Government. What is responsible government but that the head of the executive of the province would be bound by the technique and methods of responsible government? There will be no question whatever of his being, arbitrary. Admittedly, as far as the language of the clauses that we have so far, considered goes, it looks, as though arbitrary powers were going to be vested in the Chief executive of the province. Surely, Mr. President, that is not to be the case if we consider that there is such a thing as the Instrument of Instructions, the Schedule as we prefer to call it now, by which he is bound. That being the case, the fears that have been expressed by my friends who have spoken from the other side would be remote.

Sir, I myself have been wondering what our constitutional experts have been up to. I have been, as a layman, trying to understand whether they were drafting, even for this intermediate stage. a constitution which was to be democratic. Up to date, I have not been convinced, at least the language has been such that I have not felt that somehow or other the technique or this democracy was going to be democratic. But as far as this particular clause is concerned, I have no doubt whatever in my mind that the Governor must act in a responsible way.

Mr. Mahomed Sheriff (Mysore State): (Began to speak in Hindustani).

B. Pocker Sahib Bahadur (Madras: Muslim): On a point of order, Mr. President, may I request you to ask the speaker who knows English to speak in English, Sir?

Mr. Mahomed Sheriff: You have already given the ruling Sir.

Mr. President: I am afraid I cannot force any speaker in a particular language. It is left to him to choose the language in which he wishes to speak.

B. Pocker Sahib Bahadur: In that case, may I appeal to the Honourable speaker to speak in English with which he is very familiar, I know?

Mr. Mahomed Sheriff: I would prefer to talk in Urdu. *[Mr. President, I fully support the amendments moved by Maulvi Aziz Ahmad Saheb, Ibrahim Saheb and Begum Aizaz Rasul Saheb. The purpose of these amendments is to limit the powers of the Governors and to give the Legislative Assembly a preference in the election of the

Ministers. The main purpose of these amendments is to introduce democratic principles in administration. Almost every day we repeat our, allegiance to the democratic principles by proclaiming that in all things we should always try to popularize them. In the light of this, it seems necessary to see that the Governor's powers are limited. You might be knowing what is the system prevalent in Switzerland and other progressive countries. I beg to submit that probably in the opinion of Sardar Patel Saheb there is no harm in giving full powers to the Governors who are elected by the people. I would submit that a Governor, however, powerful he may be, must be in a position to carry out the wishes of the people. The principles to which the movers of the amendments have referred, are really the best principles and in the name of these democratic principles, I appeal to you all to become ardent supporters of democracy and standard-bearers of its principles. I strongly support these amendments and appeal to you to support them.]*

Mr. N. V. Gadgil (Bombay: General): Mr. President, I want to oppose this amendment. I have heard that this amendment is calculated to secure a better prospect for democracy. As I understand, democracy is not an end in itself. It is a method, a mechanism to secure certain desired and desirable results.

Now what are the objectives for which we are framing this constitution? These objectives have been defined in the resolution that has been passed. Apart from that, I take it that there will be several parties in the country and each party will be defining its own aims and objectives. These aims and objectives will constitute the programme of that party. Obviously, these aims and objectives are not embodied in the programme for the mere sake of telling the public that these are our aims and objects. The idea is to implement them when the party gets into power. If the party gets into power, that party cannot execute it, cannot implement it, unless that partly is charged with the full executive responsibility of the Government.

Apart from this, I submit to this House that so far as the political trends in this country are concerned, we have been brought up in an atmosphere which has been most conductive to the establishment of what we are generally accustomed to term as Parliamentary Responsible Government. That Government can only function in certain given conditions. One of the conditions is that there must be at least two big parties and the Leader of the House must have the confidence of that party which is in the majority in the House. In other words, the Leader is really the man who counts and if you do not give him any chance to choose his colleagues, if you do not throw on his shoulders the responsibility of implementing the programme on which the electorate has returned that party. I think it is destructive not only of democracy, but of the few chances of any progress. Any coalition is not calculated to help progress in the country; much more so the case if we accept the amendment. A coalition follows some understanding, some agreement, whereas under the amendment, strange and even mutually exclusive elements may be brought into the executive.

Apart from that, just consider what will be the effect if Ministers are chosen by the process of single transferable or non-transferable vote. What is there to guide the Governor for the purpose of allocation of portfolios? On the one hand, we are all anxious to see that he must be merely a constitutional head. On the other hand, if you accept this amendment, you will be giving him unlimited powers which he can use, not for the benefit to democracy but for the benefit of his own autocratic rule. Suppose out of nine people who constitute the executive, the majority party may get four, another party may get two, a third party may get one and two other groups may get one each.

If the Governor is so powerful, he can certainly allocate the most important portfolios to those who belong to the minority groups. Is that position calculated to the better progress of this country? Is it calculated to further the programme on which the majority party has been returned? I think, if accept this amendment, you will be doing the greatest injustice to the electorate, to the party that has put its programme before the electorate and on which it has been returned. The electorate is justified in expecting that that programme will be implemented and if you make that implementation impossible by accepting such an amendment, I think you will not be doing justice to the electorate. In other words, I wish respectfully to submit that it is dangerous from every point of view. It is unfair to the electorate. It is unworkable. It is giving too much power to the Governor. There is nothing in this amendment to which I can bring myself to reconcile.

One of the supporters of the amendment said that it will secure a strong and stable government. So far as the strong government is concerned, I think it cannot be secured. That it will be a weak government there is no doubt. In the absence of collective responsibility there will neither be continuity nor consistency in administration. If you accept the amendment that they will hold the office till the life of the Assembly, it may be stable but it will not be progressive. The very idea of a democratic government and a responsible government is that if the elected members even during the statutory period do something, act in a manner which is calculated to forfeit the confidence of the country, there is some provision in the constitution whereby dissolution is possible but that also is considerably affected. I therefore submit that the House will be perfectly justified in throwing out this amendment.

Kazi Syed Karimuddin (Berar: Muslim): *[Mr. President, I support the amendments moved by Mr. Aziz Ahmad and Begum Aizaz Rasul. For the last three days I am seeing that Whenever a Leaguer makes a speech. in reply he is told that till the other day he was raising the slogan of religion in danger and so we (the Leaguers) can never support socialism and democracy. Mr. Kamath has even said that socialism need not be taught to Gandhiji and Pandit Jawaharlal Nehru. I say to Mr. Kamath that since long he has been trying to teach it to them but probably they understand it too well. Notwithstanding all this, Mr. 'Kamath needs to be told what an Urdu poet has said:

"Dead drunk, during the night and penitent in the morning; I continued to be a drunkard. Yet did not lose Heaven."

Mr. Kamath can play a hero but not by maligning the Muslim League. Besides this there is one other noteworthy fact, and it is this: whenever a proposal is put forth from the Congress side, you are always disposed to accept it but whenever any thing comes from the Muslim Leaguers, howsoever beneficial it might be, it is discarded on the pretex that nothing emanating from Pakistan wallahs can be accepted. This Constituent Assembly is no political platform; it is a constitutional body. Here, the Muslim League can put forth its point of view and every member has the right to do so'. The amendment before us is "that the Ministers may be elected by the House". The British are quitting India, but their shadow is not leaving us. You say that British rule and the British executive is based on democracy. This is quite wrong. You should-look to the Constitution of U.S.A. and Switzerland. Since 1921 and particularly after the Act of 1935. what I have seen is that the majority party always shows scant regard for the opposition. I maintain that the result of majority rule has been, that the Ministry tends to be prejudiced against the opposition parties-be it communist party or any other. For keeping the Ministry in the saddle, the majority party needs cajoling. I say majority rule is accompanied by nepotism and favouritism. With these evils eradicated it is difficult to keep the party supporters intact. Hence to say that majority rule is based on, democracy is quite wrong.

Mr. Aziz Ahmad's amendment is to the effect that the Ministers should be elected. What we want in India is a constitution of the type by which she may be classed as one of the Progressive States of the world. India is passing through a very delicate phase when our mutual differences need to be settled. Mutual conflict should be stopped, and there is only one way of doing it. It is this: the representatives of every party in the House should be included in the Ministry.

The majority party will get greater representation, while the minorities will get less number of seats. Under these circumstances, as Begum Sahiba has observed, the House should last as long as the Ministry continues in office. There is nothing new in it. This has been made plain in the constitution of U.S.A. By doing this, executive judiciary and legislature would be divided into three parts Legislature would lay down the policy. The function of the judiciary would be to check the executive from exceeding its limits, and the duty of the executive is to carry out the policies laid down by the legislature.

What we find today is that there are different religions, various parties and numerous classes of people in the country. The best method is that, each and every party should be represented in the government. That would ensure the stability of the government and mutual conflict would also be eliminated. Therefore I support the amendment which has just now been moved and hope that the House will accept it.]*

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): Mr. President, Sir, I have very great pleasure in supporting the amendments moved by my friend Mr. Aziz Ahmed Khan Saheb and the further amendment by Begum Aizaz Rasul. In doing so, it will not be out of place if I observe that the constitution, the draft of it, the report of it which is placed before us, except for a few questions such as the election of the Governor and the term of office of the Advocate General, looks as if it has been copied from the 1935 Constitution in regard to the Provincial Autonomy. Sir, if we want our constitution to be democratic, we should see that the legislature, the Cabinet and the Executive, reflect the several sections of the people.

If we are relying upon what is called the parliamentary system of democracy, it is the considered opinion of the pandits of constitutions that that is not a democratic system of government. The model that ought to be before us is the model of the Swiss Government. A system of government can be called democratic only when all the sections of, the people are represented in the legislature. We are now suffering from a handicap, because we do not really know what would be the method of election, what would be the constituencies and so on and so forth, Anyhow, I take it the constituencies will be territorial constituencies, and that at the same time some reservations will be made in regard to communities or-interests which will enable them to return their men to the legislature. Now, Sir, if that is the method you are going to employ, and that is necessary in the peculiar circumstances of the provinces in India, then people from all sections of the province and persons of different interests will be elected, to the legislature. If you are accepting that method of representation of, people to the legislature, with reservations of seats by whatever method, by weightage or by some other way--it does not matter at all by which method it is done, it does not arise now--then it necessarily follows that in the Cabinet also the minorities or different sections should find a place. That is what is obtaining in the Swiss Government and that is the reason why it is said that the Swiss Constitution is the most democratic, because it represents all sections and all parts of the country in its Legislature, and not only in its Legislature, but also in its Cabinet. The method followed in Switzerland is this. The Legislature elects its Ministers by a certain method which ensure that all the minorities are represented. The method is called proportional representation by non-transferable vote. That is what we want here also in order that the constitution may be democratic, and provisions should be made for the return of certain interests and minorities. Then it necessarily must follow that these people must find a place in the Cabinet also.

The amendment of Begum Sahiba is a consequential one to the resolution moved by Maulvi Sahib. We are not asking for any nomination to the Cabinet. We are only asking for election by a certain method which will enable minorities and interests to be returned to the Cabinet. This method of election by proportional representation is considered to be the best. When the Legislature consists of say 50 to 500 or 300 members this would not be a cumbersome method. By adopting this method you will be following up the principle that you have enunciated, that minorities and certain sections of the People must be represented and the constitution must be a democratic one. To say that, when a Minister has been elected, that he can be removed on a vote of no confidence goes against that very principle. There is some conflict which has not been observed, between the amendment of my friend Mr. Ibrahim and the amendment of Begum Sahiba. Mr. Ibrahim says that the Ministers must be made responsible. If the amendment of Maulvi Sahib is accepted, then it means the Minister can be removed. But it is very necessary, Sir, that those Ministers who are elected by the Legislature and who are elected in order that the Cabinet may reflect the various sections, Christians, Muslims, or whoever they are, different interests, the tribal areas and so forth, all these sections, then they must continue for the term of the Legislature. That is consequential.

I expected, Sir, that there would be some innovations in the constitution that is going to govern us in the future. But I find that except for the provision that the Governor shall be elected, there is nothing new. I appeal to the House through you, Sir, that in order to lay the foundation of that confidence which you intend to create in the minds of all sections of the people, Muslims, Hindus, Tribals etc., this democratic method of framing the constitution should be given full consideration by this House.

Sri S.. Nagappa (Madras: General): Mr. President, Sir, I support the original clause moved by the Honourable President of the Committee that the Governor's Ministers shall be chosen and summoned by him and shall hold office during his pleasure. While doing so, I have very few remarks to make. Clause 14 lays down that in the appointment of his Ministers and his relations with them, the Governor shall be generally guided by the convention of responsible Government as set out in Schedule so and so. In the latter part of this Clause 14, it is said that the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with these conventions. Now, Sir, especially for minorities instead of keeping power in the hands of the Governor to choose his Ministers it would have been better if it had been kept in the hands of the Legislature. For instance the Governor or the Premier may select Ministers of his own choice, men who will implicitly obey the Premier, or the Governor. But such people will not command the confidence of the particular section of the people whom they are expected to represent. Therefore if it had been something like the Swiss model, leaving the Executive to be formed by the Legislature, then every group and every member of the Legislature will have a chance to select their own representatives. Such representatives will be true and effective representatives. But there comes the trouble. If the Cabinet is formed in this manner, then in the Cabinet there will, be divergent elements, one pulling on one side and another pulling on a different side and so there will not be homogeneity in the Cabinet. I do see the point. In order to avoid that situation the Cabinet must be made to select its Premier, because then the Ministers of the Cabinet cannot but follow the Premier.

Now, Sir, no doubt in the draft constitution it is said that the Governor will choose his ministers but it had not been said that the Governor must choose his Executive or the Ministers in consultation with the leader of the majority party. For instance, under the 1935 Act you are aware what the Governor of Sind did. He did not call the party which had a slight majority. There were two parties practically equal but the Governor took his own choice. He selected whom he thought fit. He did not call the really representative and majority party. Therefore such powers vested in the hands of the Governor are sometimes dangerous. No doubt these Governors are elected by adult suffrage and yet that is exactly the reason why a Governor should not be vested with this power. As he is elected by adult suffrage he might belong to a majority party. It is not human nature to be above party politics. He may be a Governor, but yet he is a human being. He knows that he has been elected by the people and he knows which party supported him in the elections and which aid not. Therefore there is ample scope for the Governor to abuse or misuse his powers. So by this means you will be not only taking out some of Ws powers in forming the Cabinet but at the same time you will be going a long way to placate the minorities. They will have their say and they will have their true and effective representation by means of the single transferable vote. Otherwise, if it is left to the choice of the Governor, if there are two equal parties or if there is a slight difference, instead of calling for the party which is slightly in the majority, the Governor may call, as the Governor of Sind did, the other party to form the Cabinet. If such Cabinets are formed where is the guarantee that they will be steady and strong governments? Day after day the Government will be interested only in safeguarding their position and will not be in a position to lay down policies nor be able to see that the people of the country are benefited by them. In my opinion, I think the powers vested in the Governor are so large that it gives cause to suspect. I do not say that the Governor who has been, elected under adult' s franchise will misuse his powers. People will not go to the extent of selecting such people but we should remember that after all a Governor is a human being and has also his own likes ant dislikes. So there is scope for him to err and that is what I want to point out.

The other point is, as I said in the beginning, it would have been better that instead of allowing the Cabinet to be formed by the Governor the Legislature forms the Cabinet. Then every member in the Legislature will have the right to elect his own representative. The question in that case will be whether such a constitution will work. All sorts of elements will be there in the Cabinet and the question is whether there will be individual or collective responsibility. No doubt in every cabinet or team work they are expected to have joint responsibility. If the members of the Cabinet selected their own Premier, to that extent at least they will be responsible and will be having joint responsibility.

Hitherto the Governor used to act in selecting members of the minority communities according to the Instrument of Instructions. Under Clause 14 there is a note which says that this schedule will take the place of the Instrument of Instructions now issued to Governors. I am glad that that provision is there and I hope that this clause under this schedule will give some scope but it would have been better if it had been otherwise.

Dr. B. Pattabhi Sitaramayya (Madras: General): Mr. President, a sudden impulse has overtaken me as, I have been following the debate with great interest and I am particularly glad that our reverted old friend from U.P., Mr. Aziz Ahmad Khan has inaugurated this discussion. He has given us an opportunity for a full-dress debate upon the question of responsible government versus fixed executive and the simple lacuna that he left in his amendment has been filled up by our extremely learned lady Begum Aizaz Rasul Saheba. I am therefore tempted to take part in this discussion, not upon the lower plane upon which it has been inaugurated but I want to take the whole discussion up, if I may mention it boastfully, to a higher plane.

We all judge on facts and conditions as they have existed during the List few years how that Provincial Autonomy which had been introduced by the Act of 1935 has been working. Unfortunately or fortunately the historical conditions of the present day are an inheritance of the past 30 or 40 years, We have inherited certain conditions and we have been the victims of those conditions. We have not been able to escape from the tyranny of those condition we have not been able to write upon a *tabula rasa* or to begin afresh with a clean slate or with clean hearts. We have inherited these things which have been the creation of the British Government. You are fully aware how in 1906 during Lord Minto's time His Highness the Aga Khan had led a deputation and negotiated for separate electorates. The vicious seed grew big and bore fruit in 1916 in the form of the League-Congress concordat which was more or less incorporated in the Montagu Reforms. We were hoping that with the lapse of a decade these vicious separate electorates would come to an end, but we have not succeeded. Every time we had an opportunity of revising the political system the tree took its roots deeper and deeper and bore worse and worse fruit; at last we have reaped the final fruit, the final stage in which India functions as a corporate body and Pakistan is destined to function, let us hope only for the present, as a separate *Sthan*.

Under the circumstances it is for us to think afresh to bring a new outlook upon the whole problem and see whether these separate electorates should continue. What purpose do separate electorates serve now? The whole political question has to be taken together as a comprehensive problem for fresh consideration. How are they going to serve the purpose of the 7 per cent. of people in Madras, the 9 per cent. in Bombay, the 4 1/2 per cent. in C.P. and the 14 per cent. in the U.P.? They will only provide ground for perpetual complaint. We are therefore looking to joint electorates. Let us forget all the antagonisms created--and inevitably created, and created for no fault of ours--in the past. Let us forget the very words--the two names, Congress and League. Let us have a Congress League Organisation. Or let us drop both these names and have a democratic, republican or socialistic organisation any appellation that you can adopt-based entirely on political grounds. It win eschew all religious predilections.

Indeed the "minorities" have always addressed themselves abroad to the three questions of freedom of religious worship, faith and customs and preservation of language script and culture. It is in this unfortunate land through the intervention of the British Government that the minority question has been complicated by mixing it with political matters. But now that period is over. We are entering upon a new period in the development of our country. Therefore, when new joint electorates are formed and when you and I have the same political programme and the bone of contention is "agricultural income" vs. "limitation of land", that is to say economic questions hold the field, then we shall have common ground to tread upon. Then I can go to Janab Mahboom Ali Beg's house and address his mother and he may come to my house and address my wife, we can invite each other to dinner, we can exchange the best of cordialities in life and become brothers once again. Then there will be no question of the Congress people alone exclusively monopolising the seats in the Government. There will be Christians, Muslims and Parsees in our Government. Anybody worthy of being selected will be selected by virtue of his service to the country--not only by virtue of his jail going; this will be forgotten very soon; it is almost being forgotten. Indeed the old traditions had better be created. Let us not judge the future by the past. Let us draw a veil upon the past, and begin the future a new. Let us be able to form political organizations on a new basis so that it will not be said that the Muslims as a minority have been neglected and ignored. No such thing will happen in the future. The complaints that have been advanced from this rostrum have been absolutely unassailable. It is a pity that people should be compelled to speak in such tones. But that is a consequence of the inevitable past for which we were not wholly responsible though it must be admitted we were partly responsible. We have all come together again under one banner and on one platform. We shall pursue one programme and there will be no difficulty whatever hereafter.

Chaudhri Khaliquzzaman (U.P. Muslim): On what point is the Honourable Member speaking, may I know? I do not think the amendment refers to any matter about which he is speaking.

Dr. B. Pattabhi Sitaramayya: I am much obliged to my friend for having pointed out this little matter. The relevancy of the question is that the whole amendment is based upon the complaint that the Muslims form a small minority--it refers to all other minorities and that therefore one section being in a vast majority by sweeping the polls, will on the principle of responsible government sweep the Ministries and that the minorities will suffer. I say that no such thing will be allowed to come into existence when the parties are formed on political principles and a new alignment has taken place.

Kazi Syed Karimuddin: But none of the speakers supporting the amendment has referred to the suffering of the minorities whereas my friend is referring to it.

Shri Balkrishna Sharma (United Provinces): He has seen through your game.

Dr. B. Pattabhi Sitaramayya: We shall have new conditions to deal with and we shall not be influenced by our unfortunate experiences in the past. I would therefore suggest that this question should be looked at altogether from a new angle of vision. It will then be possible for us to see how we can form political parties on purely political principles without any communal bias and see how we shall be able to work oat a new formula which is really based upon responsible government. This proposal which has been made is based on the bad experience of the past. That experience is a forgotten dream and we shall inaugurate a new chapter in our political development which will visualize conditions of an altogether different character. I therefore urge, Sir, that this amendment may be thrown out.

[Shri D.Govinda Doss (Madras :General):then spoke in Telugu.]

B. Pocker Sahib Bahadur: Mr. President, in what language is the Honourable Member speaking?

Mr. Ram Narayan Singh (Bihar: General): I rise to a point of order. I want to know whether the Honourable the President understands the language in which Mr. Govinda Doss is speaking and if not, how he controls the speaker.

Mr. President: I do not think it is necessary for me to control the speaker. I think he is speaking within bounds. *(Laughter.)*

An Honourable Member: I want to know from you, Sir, whether the Honourable Member is supporting or opposing the motion. I do not understand him and I do not think any Honourable Member knows or understands whether he is in favour or against the motion before the House.

Mr. President: The speaker suffers from one kind of limitation and other members suffer from some other kind of limitation. The speaker is ignorant of some languages and others are ignorant of his language. All Suffer. I will allow him to speak under the rules in the language in which he is speaking. I take it he is unable to express himself in English and so wishes to speak in his own language.

[Shri D. Govinda Dass, finished his speech in Telugu, thanking the President for upholding his right.]

Chaudhri Khaliquzzaman : Mr. President, Sir, the amendment which has been proposed by Mr. Aziz Ahmad Khan consists, to my mind, of two parts. One refers to the election of Ministers and the other, to the method of election of those Ministers. Unfortunately, it appears to me that some of my friends here have overlooked the principle altogether and have applied their minds only to the other portion of the amendment which refers to the method of election of Ministers. I can assure Members here that, so far as the question of minority rights are concerned, we know that there 'i's a Minorities Committee and that we shall have the opportunity of discussing our rights there. Having seen and gone through the Report of the Provincial Constitution Committee, we came to the conclusion that every possible effort was made by the Minorities Committee submitted to see that nothing was said in the Report which may be repugnant or inconsistent with the recommendations of that Minority Committee. We are to that extent grateful to the Members of the Provincial Constitution Committee whose Report is under consideration. And I would beg of you all to discard from your mind the feeling that there Is any hidden motive behind this amendment. It may be that once the principle of election of the Ministers is agreed upon, whether it, should be by non-transferable or single transferable vote or otherwise it, will present no difficulty. But here is a question of principle. We feel that having given wide powers to the Governor, we must have an irremovable Ministry. I shall, for that proposition, not refer to the American Constitution or the Swiss or any other Constitution. To my mind the question must be looked at purely from the point of view of the genius of the people, from the point of view of what will suit the genius of the people better.

Now, we have not for long enough worked the Constitution of 1935 which really gave us some power in the provinces. When for the first time the Congress assumed power, it worked there only for two and a half years, and this time it has only just taken over power. We have some experience in other fields of activities. For instance in the local bodies, the method of election has been tried in a different form. What has been happening to the municipal and district boards? Every-day there is a vote of no-confidence against the chairman of district boards and municipalities. One does not know what to do with the powers given to them. The Governors of the provinces are themselves tried of it all. Therefore they want to go back on that system. First two-thirds majority has been introduced, and I do not know whether the legislatures within provinces may not have to introduce three-forths majority. Otherwise the spectacle of the chairmen of the municipalities and presidents of local boards going out everyday will be witnessed. Within these few days one Ministry in Madras has fallen. This experience of ours leads us to conclude that it would be in our interests to have an irremovable executive. Otherwise, with the change of slogans there may be change of Ministry. Our people are apt to be taken in by slogans. You say that the cry of Pakistan. Two nation theory and all that was caught by the masses. This shows that your people are apt to follow any lead and any slogan. For this reason I say you should make provision to protect your Ministers. You should protect them against these shifting parties and predilections of the groups in the legislatures. This is a pure and simple proposition which we have placed before you for your consideration. To think that it is merely a case of single transferable or non-transferable vote which stinks in the nostrils of some of my friends is not right. I can assure you that if you accept the principle, we shall accept any alternative method of election. Therefore do not make that method of election the test for the acceptance or nonacceptance of this amendment. It may be that you are dissatisfied with this amendment. You may reject it. But, to say that this amendment has been moved because we want to get over some particular mode of election or representation is to misjudge it. I can assure you that, personally, I believe that no Governor who has been chosen by, the vote of the people will ever have a Ministry without representatives of the people, whoever they may be, Muslims or non-Muslims. I believe it. Therefore it is not from that point of view that we have asked for the consideration of this amendment.

With these few words I support the amendment moved by Mr. Aziz Ahmad Khan.

Mr. K. M. Munshi (Bombay: General): Mr. President, Sir, I have only a few words to say with regard to the views expressed by my friend, Mr. Khaliquzzaman. Mr. Aziz Ahmad Khan's amendment, as the House has seen, wants the ministry to be elected by proportional representation. The two amendments that have been moved are mutually contradictory. Mr. Ahmed Ibrahim Sahib says that the Ministers shall be responsible to the provincial legislature. That means that the ministry elected on the basis of Proportional representation would be responsible to the legislature, which in other words, means that after a vote of censure that Minister should resign. On the other hand, the amendment moved by Begum Aizaz Rasul wants that the Minister chosen by proportional representation should continue during the life of the Assembly. The intention of the second amendment is that the Minister should be elected by proportional representation and should continue till the end of the life of the Assembly. Now I want the House, Sir, to envisage the implications of this scheme. The system of proportional representation, as everyone knows, is this that instead of having the support of the majority in the House, you must get the first vote of a small group, and nothing fragments the political life of a country as proportional representation in the selection of ministries. I will give a concrete instance. If there is a House of 300 members, the majority party of, say, 151 must support all the ministers in order that they may retain office, but under P. R. if there are seven ministers and you have got a voting strength of 300 anyone who gets the first votes of 35 or 40 members will be entitled to become a minister. Therefore the House will not look at the ministry as a consolidated body of representatives elected on the general principles and policies which the ministry has to carry out, but it will be fragmented into sections, each trying to get as many first votes as possible. I am not saying this as a matter of theory After the Treaty of Verseilles at the end of World War I, on account of President Wilson's partiality for proportional representation, several at the Central European countries introduced proportional re-presentation and lived to be sorry for it. Instead of putting the national good before. them, the ministers were more busy securing the first votes of a small group by raising a very narrow isolated cry. Therefore, the net result of proportional representation will be that the ministry instead of being broadbased on general principles, all ministers standing together and having collective responsibility and interested in doing good to the province as a whole, it will consist of representatives of different groups having different ideologies and different policies. This will invariably result--the 35 votes will fluctuate--in a coalition with practically differing policies, and when a coalition comes, we know the result. Perhaps, members know what happened and what is happening in France during the last 25 years. In France, it has been more or less the fashion to have coalition ministries and the result has been that ministries have been falling like castles of cards. During the last eight or ten years there have been more than twenty--two ministries. Some ministries have lasted only for eight or none days. At the time when Hitler entered Austria, there was no ministry in France. When he entered the Rhineland, there was a care-taker ministry in France, and nobody would become the Prime Minister. This is the situation where you get coalition ministries. This is the greatest danger to which democracy is prone this danger of coalition ministries. There is only one way in which democracy can be practiced effectively and that is by having a majority party. If we have majority party, we must have one and that can only be done first by having the group of ministers selected by the majority party, secondly by collective responsibility and lastly by the Control the Prime Minister exercises over that homogenous ministry. As the. House knows, very well Sir, in England the power of the Prime Minister is absolute and that is what has made the British Government so very strong. It is the Prime Minister who decides as to who should be a minister and can dismiss a minister, and can control his party by saving: "I will get the House dissolved and go to the country unless the party supports me". The machanism of responsible government which we have therefore been following to a large extent in this country is the British model, and a departure of this Kind will weaken the ministry to a large extent and the provincial legislature will be nothing else but a fragmented house while cannot devote itself to the good of the province. Therefore, though the system of proportional representation looks so innocent that some people have got a fascination for it, it has led to the unmaking of democratic institutions in more than ore country in the world. This amendment of Mr. Aziz Ahmad Khan is really speaking destructive of democracy. If you have a democratic systems then you must carry it out to this extent that if the House passes a vote of censure against the ministry, the ministry must be prepared to resign. If it continues, the ministry will be naturally unresponsive to the fluctuations of public opinion.

There is only one argument which my friend, Mr. Khaliquzzaman placed before the House of which I would like to refer. He says, ''Large powers are going to be given to the Governor. If so, give the ministers much larger powers". There is no doubt that under Clause 9 which the House has adopted, certain discretionary powers have been given to the Governor. What the House has not yet before it, is the full extent and scope of these discretionary powers. It must be realised that in democracies which are young, which are yet to gain experience times of grave menace to public tranquility would require a steadying factor, a strong steadying factor, and the discretionary powers that are sought to be given to the Governor are only in times of grave menace to public tranquillity. If democratic institutions run their normal course if public tranquillity is not disturbed in a very serious manner, then there is no difficulty at all;

the ministry will function. The Governor will step in only when there is a grave menace to public tranquillity. Then everything must be subordinated to the supreme need of public tranquillity in the province. At that stage the Governor who will have the added authority of being returned on the basis of adult franchise will step in and say "my first and last function is to restore peace and tranquillity". This country has suffered immensely by the failure of the supreme authority in certain provinces to exercise their power in moments when public tranquillity has not only been threatened, but has been destroyed. It is only for that contingency that the discretionary power is given. Till that event, which will be very rare--let us hope it will never occur at all--the ministry will function as a responsible ministry and there is no reason why these amendments should be accepted by the House.

Shri Phool Singh (United Provinces: General): *[Mr. President, after the speech of Mr. Munshi, I have not much more to say against these amendments except that the elections should not be held by proportional representation. Such a ministry can never be dubbed as a Coalition Government, which is always based upon a compromise between different parties, but when the ministry is elected by its own men on the votes of its own party, it rests with the ministers whether they act jointly or not. The proposal of Maulvi Aziz Ahmad Sahib and the amendment of Begum Sahiba have filled in the gap, if any. That is, if ministers, so elected, take to quarrelling among themselves, and the actions of one are negatived by the other, then the legislature would not have even the power of removing such ministry. In other words, ministers may do good or evil but they would continue for the full term of the legislature. This is something beyond my comprehension. As I have said earlier, I do not wish to waste any more time of the House. Party government may be a progressive government. Coalition government may be suitable for any particular objective, but a government which is neither a party government not a coalition government cannot fulfill any object, rather it can succeed in defeating it. I do not hesitate to say that such a government can be of no use to any country. I dare say that the movers of these amendments have taken their "clue" from the present Interim Government.

If we do not want to entangle the provinces in the difficulties of which this Interim Government has been the victim, then it becomes the duty of each one of us to vehemently oppose these amendments. There is no time to be lost in such foolish experiments. We have had enough of sacrifices, and now it is only the party government which can be beneficial for this country. With these words I oppose both these amendments.]*

Mr. Shankar Dattatraya Deo (Bombay: General): I move closure.

Mr. President: I have the names of half A dozen of more members who have expressed their desire to speak.

Many Honourable Members: Closure, closure.

Mr. President: But if the House wishes to close the discussion, I shall have no objection. There is a motion for closure. I cannot make an exception in favour of one member. There is a closure already moved. I put the motion for closure.

The motion was adopted.

The Honourable Sardar Vallabhbhai Patel: Sir, this innocent clause has covered a very wide and controversial field-of debate and yet I think appetite of some of the speakers has not been satisfied. I thought that this would be passed without any debate. The principal amendment which has been suggested would cut at the root of the whole structure of the constitution. We have adopted the British parliamentary model-cabinet system--in this model provincial constitution. The Mover of the amendment contemplates a different model which would, if passed, probably, require us to reconsider the whole constitution. It has been suggested that during the last few years we have considerable experience of the present type of constitution. I do not know whether that is a correct statement of fact, because the constitution under which we were working was a complicated constitution in which the elective system, the services, the Governor's powers, the checks and counter-checks provided in the constitution were such that when the constitution was passed, it was suggested in the debate that it was humanly impossible to work that constitution and even the angles would fail. In spite of that they worked that constitution. The difficulties experienced in the working of that constitution and the bitter experience which some of us had to go through was not due to this particular system of selection of ministers or the prime minister being authorised to select his ministers but to various other causes which need not detain us. I have no intention of touching upon those questions. Somehow or other, some speakers have touched on that question, but I do not propose to enter into that controversy. Election by proportional representation of ministers is, a system which is contrary to the whole framework of this constitution. It cuts at the very root of democracy and therefore does not fit in here. The experience which we would gain in the working of such a constitution would be much worse than the experience that we have gained in the working of the present constitution. Therefore, I suggest that it is a very dangerous innovation to introduce in this constitution and we should not have it here.

Then, the question of the electorate, separate or joint, and other questions are to be considered by separate committee, as I have already explained in my introductory speech. Therefore, I do not propose to touch on those questions.

It has been suggested that the Governor has got very wide powers I do not think that in this constitution, the Governor has got such wide powers as under the present constitution the foreign Governors have got the present constitution was such that we had not only no elected Governor, by adult franchise representing the will of the people, but a foreign Governor with an Instrument of Instructions, designed to protect foreign interests. The experience derived from the working of that constitution cannot be compared with the constitution that we have proposed here. Whether in the working of this constitution that we propose we will have pleasant experience and smooth working or not, will depend much upon the manner in which we work the constitution. Constitutions are always broken by the people who have got a desire or a will to do so. We are not wanting in instances where if the constitution was worked in such a manner that a Prime Minister or a Minister was found irremovable by a vote of the House, he could be removed by the bullet. So, it is no use saying that an irremovable executive will be safe. If the irremovable executive functions in such a manner, then the want is real goodwill to work a good constitution and a spirit to work any constitution that you have got.

Here, we have contemplated collective responsibility, joint responsibility. Any election of Ministers by the method suggested by the Mover of the amendment would mean individual responsibilities and individual Ministers who would go their own way.

Each Minister has only to work for five, seven or ten votes which he can probably obtain by means which may not be very desirable and the whole machinery would be liable to be corrupted. Therefore, I purpose that the motion that I have moved should be adopted.

I do not wish to deal with the other amendments because they are contrary to the main amendment, as has been already explained by some of the speakers and therefore, the amendments should be rejected and the proposition that I have moved should be accepted.

Mr. President: It has been moved:

> "That the Governor's Ministers shall be chosen and summoned by him and shall hold office during his pleasure."

To this an amendment has been moved that for Clause 12 the following be substituted:

> "The Governor's Ministers shall be elected by members of the Provincial Assembly by the system of proportional representation by single non-transferable vote."

There are two amendments to this amendment. The first amendment is that at the end of the amendment to Clause 12 by Mr. Aziz Ahmad Khan (Item 57), the following words be added.

> "and shall be responsible to the Provincial Legislature."

The second amendment is that at the end of the amendment moved by Mr. Aziz Ahmad Khan to clause 12 (Item 57), the following be ended:

> "and shall hold office during the life of the Assembly."

The procedure which I propose to follow is, in the first instance to take vote on the amendments to the amendment. If any of these two amendments is accepted, that becomes the principal amendment. Then I shall put to vote the amended amendment and if it is accepted, it becomes part of the clause. Then, I shall put the clause as amended before the House.

I now put to vote the amendment to the amendment, namely that the following words be added at the end of the amendment:

> "and shall be responsible to the Provincial Legislature."

The amendment was negatived.

Mr. President: I now put to vote the second amendment to the amendment; namely, that the following words be added at the end of the amendment:

> "and shall hold office during the life of the Assembly."

The amendment was negatived.

Mr. President: I now put the original amendment of Mr. Aziz Ahmad Khan to vote.

The motion was negatived. Mr. President: I now put the original clause to vote.

The motion was adopted.

Mr. President: We will now go to Clause 13.

CLAUSE 13

The Honourable Sardar Vallabhbhai Patel: I move Clause 13.

"13. (1) A Minister who for any period of six consecutive months is not a member of the provincial legislature shall at the expiration of that period cease to be a Minister.

(2)The salaries of ministers shall be such as the Provincial Legislature may from time to time by Act determine, and, until the provincial legislature so determine, shall be determined by the Governor:

Provided that the salary of a Minister shall not be varied during his term of office."

This is a proposition which is hardly controversial and I do not think there will be any debate on it. I move this proposition for the acceptance of the House.

Mr. President: There are several amendments of which I have received notice. I will call on the Movers to move their amendments.

(Messrs. R. K. Sidhva, V. C. Kesava Rao and H. V. Pataskar did not move their Amendments Nos. 59, 60 and 61.)

Mr. R. K. Sidhwa (C. P. and Berar: General): My amendment No. 62 states that the salary of the Ministers shall not be more than the Governor's salary or even the same as the salary of the Governor. It is very appropriate that we passed yesterday that the Governor should be elected on adult franchise and also that he should he given some powers. Therefore, he will be the first citizen of the province and his dignity should certainly be considered to have increased. Therefore it is desirable that the Ministers' salary should be less than the salary of the Governor. I am told that this is a very healthy amendment, but it would not be proper to put it in the constitution. Therefore, Sir, I, do, not move A.

(Mr. Biswanath Das' amendment was not moved.)

Mr. President. These are all the amendments of which I have received notice. The original proposition is now open for discussion. Those who wish to say anything on it will do so now. (After a pause).

No one wishes to say anything. I now put it to vote

Clause 13 was adopted.

Mr. President. We go to Clause 14.

CLAUSE 14

The Hon'ble Sardar Vallabhbhai Patel : Sir, I move that:

"In the appointment of his ministers; and his relations with them, the Governor shall be generally guided by the conventions of responsible. Government as set out in Schedule........ ; but the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with these- conventions."

Now a Schedule according to the traditions of responsible Government will be framed and put in. This also is a non-controversial thing and I move the proposition for the acceptance of the House.

Mr. President: I have received no notice of amendment to this clause. I shall put it to vote, unless any member wants to speak.

B. Pocker Sahib Bahadur: On a point of order. Is it not necessary that the Schedule should be before the House before this clause is passed.

Mr. President: The idea is that the Drafting Committee will prepare the Schedule and it will come before the House. This is only to lay down the principle here.

B. Pocker Sahib Bahadur: The clause refers to a Schedule and in the absence of the Schedule, are we in order in passing the clause with reference to a Schedule which we have not seen?

Sri M. Ananthasayanam Ayyangar: Sir, when we pass this clause, we only approve of the principle that a number of things may be regulated by convention. That is all that is now put before the Assembly. So far as the schedule is concerned, it is open to some members to object that there should be no convention whatever. But the abject here is that the conventions may be changed from time to time according to the exigencies and in the light of experience; otherwise we can say later on that it is a cumbersome or a lengthy procedure and we can modify the constitution as a whole. It is intended that the schedule may be modified even without the modification of the constitution. So far as the convention are concerned, the schedule will certainly be placed before the Assembly and there will be opportunity for the members to strike out or add anything. At this stage the object is to ask the acceptance of the House for the principle that some conventions are to be put there in the form of a schedule which may be modified in the light of experience. The schedule will not be passed without the knowledge of the Assembly.

Haji Abdul Sathar Haji Ishaq Sait (Madras: Muslim): I do not Punk the argument that my friend has raised can be accepted. If we pass this clause just as it is, it means that we pass the schedule also. The schedule is mentioned there. I say if somebody wants to write down a schedule and attach it, it certainly will mean that the schedule has been passed. It is alright when he says it will be brought here. There is nothing to prevent somebody to write down a schedule and attach. That is why I suggest, that the schedule should not be mentioned at all. The sentence runs like this:

"In the appointment of his ministers and his relations with them, the Governor shall be generally guided by the conventions of responsible Government."

Stop there. Do not mention 'as set out in the schedule'. Then you go on to say:

"but the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with these conventions."

Do not mention the schedule at all. When it is ready it can be placed before the House so this difficulty can be obviated and I suggest that this should be done.

Mr. M. S. Aney (Decan States): Mr. President, Sir, I really find it somewhat difficult to support the proposition as it stands here. It Is an accepted rule that any proposition that is put before the House for consideration should be self-sufficient and self-explanatory. It must explain what it means and it should not stand in need of something else to be found somewhere and not placed before the House. I know what is wanted is that there should be a recognition to the principle that certain conventions have to be observed but you cannot put the proposition before the House and say 'I want the consent of the House that certain conventions will have to be observed in connection with the relation between the Minister and the Governor and so on'. The word 'certain makes the whole thing ambiguous and an ambiguous proposition cannot be put before the House. That is the difficulty. Therefore, the best thing would be, and it would not be difficult to get the consent of the House when the schedule will be properly prepared, that the schedule may be attached to this and then the proposition can be brought at a later stage. Then it will be complete in itself and I do not think this House, after reading the schedule, will find it difficult to give its consent but to put the proposition as it is to ask them to sign what may be called a kind of black cheque. What that schedule will contain we do not know. It is stated here that the present Instrument of Instructions will take the place of this schedule. I do not know whether the Committee sitting there will consider all the conditions contained in the present Instrument of Instructions. That has yet to be considered. The Committee was appointed to draft this Report and I think the Committee must have considered even the Instrument of Instructions. If it was satisfied with that, it would have added it as a Schedule. The very fact that that is not done means that the Committee did not think it worth while to embody the whole thing as it is and if that is so, we do not know what part of that Instrument of Instructions is going to be added.

Under these circumstances, this proposition means nothing more than taking the consent of the House to the conventions which at present are supposed to be contained in the Instrument of Instructions. The draft to be prepared by the committee is, of course, not known to this House. It is therefore unfair to the House to be asked to give its consent to the proposition as it stands. I therefore submit that it is better if the Honourable mover will withdraw this proposition for the present and reserves his right to bring in the proposition for consideration when the schedule is completed.

Mahboob Ali Baig Sahib Bahadur: Sir, this Clause 14 does not provide for the Schedule to which it refers, to come before this Assembly. It simply states:

"in the appointment of his ministers and his relations with them, the Governor shall be generally guided by the conventions of responsible Government as set out in Schedule.......... "

Therefore, in the first place, there is no guarantee that this Schedule will at all come before us. Further, in the margin, it is noted that the conventions of responsible Government should be observed. We should at least, know what are the conventions and the conventions of which Government are to be observed. Are they to be conventions of the Swiss Government or the British Government or the conventions established by Indian Governments? Or are they to be conventions that may be estabalished hereafter?

Further, in the note it is stated

"Schedule........ will take the place of the Instrument of Instructions now issued to Governors."

We find there is no definiteness about the whole thing. We are asked to vote upon or to consider a question, the most important and most relevant part of which--the Schedule--we are not aware of. And what is more, there is not even the guarantee that this Schedule will ever come before us. I submit, Sir, that it is not fair that we should be asked to consider such a question at this stage. I submit that this clause may betaken up after the Schedule has been prepared. As it is, we are not told that the Schedule will be the same or similar to the Instrument of Instructions; if we had been told that, then there would have been some guidance for us. We could at least have referred to the instrument of Instructions, and there might have been something definite to go by. Members who have the necessary patience, could have gone through the Instrument of Instructions and helped in the discussions. But as it is, the present proposition is bad because of its indefiniteness and it is vague, and also it is not self-contained and self-explanatory, as my predecessor has submitted.

Dr. P. S. Deshmukh (C. P. and Berar: General): Sir, I think there is considerable substance in the objections that have been raised against the clause as it stands. It is impossible to pass it in the shape in which we find it. We cannot possibly agree to the clause-even as a matter of principle, without the Schedule being there. But this does not mean that the whole clause should be withdrawn or brought before this Assembly on some other occasion, as suggested by Mr. Aney. I suggest that the omission of a few words near about the word "Schedule" may meet the situation. We could say:

".....conventions of responsible Government as may hereafter be set out...."

If this suggestion is accepted the consequent change in the wording is very little. This, I think, will meet the situation completely, and we will not then be forced to the position of having to agree to a Schedule which is not before us. This will also provide that hereafter, whatever we may like to have in the Instrument of Instructions shall come before us, and then there will be ample opportunity, to consider them. This slight amendment that I have suggested, will, I think, meet the objections that have been raised here. Without it, we are entitled to object to it. We should not I think, Sir permit anything so vague and uncertain as the present proposition to pass.

Rai Bahadur Syamanandan Sahaya (Bihar : General): Sir, I do not see where is the indefiniteness about the proposition contained in Clause 14, which we are discussing now. While introducing this Report, the Honourable Mover made A quite clear that the purpose generally was to get the House to accept the main principles on which the Provincial Constitution will be framed. So far as this particular clause is concerned, it is clearly laid clown that the Governor shall be generally guided by the conventions of responsible government as set out in Schedule so and so. Then it goes on further to say that the Schedule so and so will take the place of the Instrument of Instructions now issued to Governors. Now, Sir, this Instrument of Instructions is already in existence and those of us who have gone through these instructions will agree that there are directions in it as to how Ministers are to be chosen. It is all in the Act of 1935. *(An Honourable Member:* "That Act is not before the House.") It is not a question of the Act being before the House or not. The purpose of this Report is only to lay down the general principles and is intended to ascertain the wish of the House with regard to them. We can later raise the point whether they are a departure from. We can later raise the point whether they are a departure from the existing ones. But as long as we accept the proposition that the majority party must be called upon to form the Ministry, I do not think there is any objection to our considering this Clause 14.

B. Pocker Sahib Bahadur : Sir, I wish that this House is taken more seriously than for its sanction, saying that the Schedule will come later and asking for its sanction, saying that the Schedule will come later on, I think, the matter is not given the seriousness that it deserves. I know there are matters in which this House is not taken seriously because we are here asked to sit down and listen to speeches which we do not understand and are asked to pass things which we do not understand. In the same manner this clause has been brought here and we are told that the schedule will be coming later on, but the clause may be passed. Even the Mover of the motion does not know what the Schedule is. I say this is absolutely irregular, and it is for you, Sir, to rule it as out of order.

I would just refer to two suggestions made by two members. One is by Mr. Haji Abdul Sattar, to remove the word Schedule, and retain the word conventions. But without knowing what the conventions are, and their nature, it will be absolutely improper and irresponsible for this House to pass this clause. The same remark applies to the modifications suggested to this clause by the previous speaker. I would therefore appeal to you, Sir, as President of this House, to protect the honour and self-respect of this House by acceding to the request of Mr. Aney to adjourn consideration of this clause.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir we are asked in short to agree to a Schedule that is not in existence. one of the speakers has pointed out that the Schedule will be on the lines of the Instrument of Instructions to follow. But the Note, to the clause if I may be permitted to refer to it merely says that the Schedule will take the place of the Instrument of Instructions. There is no indication that this Schedule will be on the lines of the Instrument of Instructions, or will be similar to it. I submit, Sir, that it will be asking the House to agree to something which is undefined and unknown. It will be just like asking a bridegroom to agree to go through a marriage ceremony without the bride being present or even being known, on the promise she will be found and selected later.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, already the House has passed sub-clause (3) of Clause 6 which mentions a Schedule which is not reproduced there. Nobody raised any objection at this time. Besides, the Honourable, Mover said at the very beginning that these are Only Principles to be accepted and the details will follow later. So I do not think there is anything to object to in the clause. We should not waste the time of the House in raising such frivolous objections.

Shri Mahavir Tyagi (United Provinces: General): Sir, I think Honourable Members on both sides have made out a good case. In the absence of the Schedule which will take the place of the Instrument of Instructions now issued to Governors I think the proposal is incomplete. We must consider a complete Proposal. I therefore submit that the Mover, Sardar Patel, may be pleased to tell us if any Instrument of Instructions have been "now issued to the Governors". The word "now" introduces, a new complication. I know the Instrument of Instructions issued to Governors before the popular ministries came into power in 1937. Is that what is referred to or has any new Instrument of Instructions been issued to Governors now with the change of Government? The word "how" seems to show that some new Instrument of Instructions may have been issued, though I have heard of none. I think the-old one is meant here, and the word "now" has either crept in by chance or perhaps I am reading a wrong meaning into it. Anyway in the absence of details as regards the Instrument of Instructions it will be not proper to pass this as it is. My proposal therefore is that we should pass the proposal but not the note below it, and in place of this note we may say that the Schedule will be considered later. Since we are passing only the principles of our provincial constitution we can say that the Governors will have such and Such Powers as are mentioned in the Schedule, and of course the Schedule part of it we can consider later. No Schedule will be a regularly recognised schedule unless it is passed by this House. And that we can consider afterwards. But we can give these powers to the Governor and we do not complete that here; we will say that the Schedule will follow. So I think we can pass this *minus* the note which may be taken out and another note may be substituted or the whole clause may be postponed I think my friends are right when they ask to give your ruling. It is no part of the Mover's duty to withdraw or to press the motion. It is a point of order which you have to decide, whether in the absence of the Schedule it will be fair for the majority in the House to press this to a vote, because the House will have to vote without knowing the exact words of the Instrument of Instructions. I therefore submit that you, Sir, will have to decide this point of order.

Mr. President: I have said on a previous occasion when a question was raised with regard to these notes that these notes were not formally put to the House and they were not accepted by the House. They were only intended to give an indication of the meaning of the clauses that were moved and we need not in any way be bound by what is contained in the notes. The clauses have therefore to be considered on their own merits without reference to the notes.

An Honourable Member: It is not the note; it is the clause itself.

Shri Raj Krushna Bose (Orissa: General): Sir, since we have heard so many objections to the passing of this clause and since there is some force in many of these objections I suggest that the Schedule should not be passed without the contents being known to the House. I submit therefore that, as we did in the case of Clause 8, this clause also may be referred back, redrafted and brought up tomorrow before the House so that the objections raised by the dissentient members may be met.

The Honourable Sardar Vallabhbhai Patel: Sir, I am afraid the preliminary observations, that I made while moving my motion for consideration of this memorandum have not been followed; otherwise, I do not see any point in the objection that has been raised. I said more than once that this memorandum contains only the principles and if these principles are adopted the drafting will take place afterwards. It has been suggested that there is no guarantee that the Schedule will come. There is as much guarantee about it as the guarantee that the House will meet tomorrow. The clause says that there will be a Schedule; and that will come afterwards when the whole thing is ready. The Schedule will accompany the draft that will be put before the House when there win be ample opportunity to scrutinise the Schedule, to add to it or modify it. I do not see how this principle can be called imperfect, you have to adopt a principle which is perfect in itself as the clause stands. Now you cannot have a guarantee for everything; this is a very simple thing and there can be no guarantee for it. One Honourable Member said that the House should be taken seriously. I think the debate should be taken more seriously. And if the debate had been followed more seriously I think all this debate on this clause would not have taken place. It is a simple proposition in which it is stated that the Governor will follow the conventions and for that a Schedule will be put hereafter. You know that the Governor is liable to impeachment and be must know that he acts under a specific responsibility and he will know his duties. Therefore, the Schedule must contain the specific duties that he has to perform. Therefore what the conventions are should be specified fully and in detail. When fixing these general principles we have not gone into the details of these conventions and therefore they will follow later, when you will have ample opportunity to discuss them. I see no reason why this clause should now be postponed at all. The note does not form part of that clause: it is only an explanation which you can ignore you need not take It into account at all.

Shri Mahavir Tyagi: Wow that the note stands cancelled there is no, point of order, as the misunderstanding was due to the note.

Mr. President: As a matter of fact, no note which is contained in these papers forms part of the resolution before the House.

The question is:

"That Clause 14 be passed."

B. Pocker Sahib Bahadur. Sir, I made a request to you on this matter. The question that I raised was as a point of order and it is your duty to give a ruling as to whether this motion is in order or not. I want a ruling from you on this point before you put the clause to vote.

Mr. President: I do not think any question of a point of order arises The question has been put.

The motion was adopted.

The Honourable Sardar Vallabhbhai Patel: Sir, I seek your permission that Clause 15 do stand over until such time as Clause 20 and 22 are considered, because it would be more appropriate to take it at that time. I therefore ask your permission that Clause 15 stand over.

Mr. President: Clause 15 shall stand over.

The Honourable Sardar Vallabhbhai Patel: Sir I move Clause 16.

"(1) The Governor shall appoint a person, being one qualified to be a judge of a High Court, to be Advocate-General for the Province to give advice to the Provincial

Government upon legal matters.

(2) The Advocate-General shall retire from office upon the resignation of the Prime Minister, but may continue to carry on his duties until a new Advocate General shall have been appointed.

(3)The Advocate-General shall receive such remuneration as the Governor nay determine"

(Messrs. P. Kakkan, M. Ananthasayanam Ayyangar, H. V. Pateskar K.Santhanam and Gupta Nath Singh did not move their amendments.)

Mr. President: The question is:

"That Clause 16 be passed."

The motion was adopted.

CLAUSE 17

The Honourable Sardar Vallabhbhai Patel: Sir, I beg to move Clause 17.:

"All executive action of the Government of a Province shall be expressed to be taken in the name of the Governor."

This is only a formal motion and I move it for the acceptance of the House.

Sri M. Ananthasayanam Ayyangar: Sir, I do not propose to move my, amendment.

Mr. President: The question is:

"That Clause 17 be passed."

The motion was adopted.

CLAUSE 18

The Honourable Sardar Vallabhbhai Patel: Sir, I beg to move Clause 18:

"The Governor, shall make rules for the more convenient transaction of the business of the Provincial Government and for the allocation of duties among Ministers."

(Messrs. Kala Venkata Rao, M. Ananthasayanam Ayyangar and R. K. Sidhwa did not move their amendments.)

Mr. President: The question is:

"That Clause 18 be passed."

The motion was adopted.

The Assembly then adjourned till 3 p.m. on Friday, the 18th July 1947.

[English translation of Hindustani speech]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME IV

Friday, the 18th July 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at 3 p.m., Mr. President (The Hon'ble Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following Member presented his Credentials and signed the Register :

Dr. Raghunandan Prasad (Bihar: General).

REPORT ON THE PRINCIPLES OF A MODEL PROVINCIAL CONSTITUTION-*Contd.*

Mr. President: The House will now proceed with the consideration of Clause 8 which was passed over yesterday.

Mr. H. J. Khandekar (C. P. and Berar: General): *[Mr. President, Guru Agam Das, one of the members of C.P., is a member of the Constituent Assembly. He has not received the notice of this session as yet. The reason is that the address which has been given in the list is wrong. He lives in Raipur District, but Bilaspur District has been mentioned in the list. He has not received the letter by now.

I would request the President to issue him the notice of this session by telegram.]*

Sir B. L. Mitter (Baroda State): Mr. President, you appointed a Committee to examine Clause 8 of the Provincial Constitution. The Committee have unanimously made a Report$ and they have re-drafted that clause in these terms :

> "It shall be competent for a Province, with the previous sanction of the Federal Government, to undertake, by an agreement made in that behalf with any Indian State, any legislative, executive or Judicial functions vested in that State, provided that the agreement relates to a subject included in the Provincial or Concurrent Legislative List.
>
> On such an agreement being concluded, the Province may, subject to the terms thereof, exercise the legislative, executive. or judicial functions specified therein through the appropriate authorities of the Province."

Sir, I will say a few words in explanation. It is well-known that the authority of a provincial government, whether executive, Judicial or legislative, cannot extend beyond the boundaries of the province; that is to say there is no extra-territorial authority vested in any province. This clause gives a province extra-territorial jurisdiction by agreement with a State. The reason for it is this: Suppose a very backward State adjoining a province has some executive or judicial functions but has no machinery to exercise those functions. Then it can come to an agreement with a neighbouring province so that the machinery of the neighbouring province may be available to that backward State for the benefit of both. But it may be that such an agreement, if made between two parties, may act prejudicially to a third State or a third Province, and in order to safeguard against that possible risk, the words "with the previous sanction of the Federal Government" have been inserted, so that the Federal Government will know that here is an agreement between a province and a State and that the agreement is beneficial to both and injurious to none, before the Federal Government gives its sanction to the agreement. By this draft the authority of a province is extended beyond its territorial jurisdiction. The redraft has been necessary by reason of some objections raised by Sir Alladi Krishnaswami Ayyar which were found to be valid objections. I hope this redraft avoids all ambiguities. Sir, I move.

Mr. President: Does anyone wish to say anything about this clause?

Sir Alladi Krishnaswami Ayyar (Madras: General): I gave notice of an amendment.

Mr. President: There is an amendment by Mr. Gupte to be moved, I will give you an opportunity, Sir Alladi.

Mr. B. M. Gupte (Bombay: General): I beg to move that the following new clause......

Mr. President: Sir Alladi Krishnaswami Ayyar, you wanted to speak about the resolution. I thought Mr. Gupte's was an amendment but it is altogether a new proposition.

Sir Alladi Krishnaswami Ayyar: Mr. President, Sir, in supporting this amendment, I just want to make a few observations. I gave notice of an amendment substantially in these terms. The Committee that was appointed by this House was pleased to substantially adopt that amendment with the modification that the consent of the Central Government should be obtained. Now, as this House is aware, there are quite a large number of minor or small States spread over India which may find it difficult to provide adequate or efficient machinery for the exercise of certain administrative or judicial functions. So, in the interests of both economy and efficiency, it is but fit and proper to provide that the neighbouring provinces should be in a position to undertake the exercise of certain administrative and judicial functions of these States under arrangements entered into with them and to give legal sanction to such arrangements. From the very nature of things, the provinces can-not undertake functions different from the normal functions vested in them as units of the Indian Union. Accordingly, the clause provides for the exercise only of functions vested in the provinces under the Provincial and Concurrent list. In view of the importance of the task undertaken and the relation of the provinces to the Indian Union, provision is made for obtaining the previous sanction of the Union Government. It is hoped that when the Constitution is finally settled, the Union Constitution may also provide for the government of the federation exercising plenary jurisdiction in territories ceded to, or coming Under the control of, the Union Government, similar to the jurisdiction exercised by the agencies of the British Crown under the British Foreign Jurisdiction Act. The provision now inserted is, of course, without prejudice to any such general provision being made.

I might mention, Sir, that some suggestion has been made in certain quarters that provision may also be made for provinces ceding jurisdiction to the States. We are not dealing with States constitution, but when the States come into the Union, in regard to any outlying tracts I have no doubt that this Assembly Will favourably consider any such suggestion and see if it is possible to concede any jurisdiction in regard to any outlying tracts in favour of States which are in a position to undertake that responsibility.

With these words, I beg to support the resolution before the House moved by my Honourable friend, Sir B. L. Mitter.

Mr. A. P. Pattani (Western India States Group): Mr. President, Sir, I was not able to hear quite clearly what the Honourable Member said but 1 understood him to say that outlying tracts of British Indian territory falling within the area of an Indian State should similarly come under the jurisdiction of that State with the permission of the Central Government. Such acquiring of jurisdiction should' not be only one-sided. I believe there will be in time to come during the discussions, over the federal constitution something in the shape of a constitution for groups of States, but part from that what I wish to my now is that it should be possible for a State which is able to exercise functions on behalf of a province to obtain those powers under agreement with a provincial government and with the consent of the federal authority.

Sir B. L. Mitter: Mr. President, this question of reciprocal arrangement between a province and a state was considered by the committee appointed by you and the committee came to the conclusion that since they were dealing with the provincial constitution, jurisdiction of States would be inappropriate in that place. It was decided that we Should say nothing about the reciprocal arrangement at this stage. Then the question arises at what stage or in what place this reciprocal arrangement could be made. Well, there may be various answers. If any acceding States are intended to be given extra-territorial jurisdiction over any tract which is now British India, then by means of a similar clause, that is with the consent of the Union Government, an arrangement may be made between a State and a province giving the State extra-territorial jurisdiction over that tract. The State itself in its own legislature may make such law. This point has not been over-looked and I hope this House will agree to a reciprocal arrangement being made in favour of a state as it is now asked to make in favour of a Province.

Mr. President: The question is that Clause 8 be redrafted as follows:

"8. It shall be competent- for a province, with the previous sanction of the Federal Government, to undertake by an agreement made in that behalf with any Indian State, any legislative, executive or judicial functions vested that State, provided that the agreement relates to a subject included in the Provincial on Concurrent Legislative List.

On such an agreement being concluded, the Province may, subject to, the terms thereof. exercise the legislative, executive, or judicial functions specified therein through the appropriate authorities of the Province."

The motion was adopted.

Mr. B. M. Gupte : Sir, I beg to move that the following new clause be added after

Clause 8 as proposed by the *ad hoc* Committee appointed to redraft the clause.

> "8-A Subject to the provisions of the Constitution, and of any special agreement referred to in Clause 8, the executive authority of each Province, shall extend to the matters, with respect to which the Provincial Legislature has power to make laws."

The *ad hoc* Committee that was appointed to redraft this clause has put forward its report and we have just adopted that clause as clause 8 as redrafted by the Committee. The original clause 8 referred to 'executive authority', but unfortunately through oversight the redraft failed to incorporate that portion of it as it stood originally. Therefore my amendment supplies that deficiency. The redraft as it is now passed refers only to the special agreement; while this new clause includes the executive authority of the province. I therefore command my amendment for acceptance; because it actually supplies only a deficiency acceptable to the Committee and, I am sure, the Mover.

The Honourable Sardar Vallabhbhai Patel (Bombay: General): I accept the amendment moved by Sir B. L. Mitter and the addition moved by Mr. B. M. Gupte because in the original clause there was a reference to agreement which now has been specified by the amendment of Sir B. L. Mitter, But the original clause must remain. Therefore Mr. Gupte has moved that the additional clause may be added after Sir B. L Mitter's amendment. Therefore, I accept Sir B. L. Mitter's amendment as added to by Mr. Gupte.

Mr. President : Does anyone wish to speak about the amendment to this clause moved by Mr. Gupte?

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I do not think this amendment is necessary. The matter should, if necessary, be inserted in the Provincial or Concurrent Legislative Lists. To the extent as may be provided in this Legislative List the authority of the province regarding legislative and executive action would be complete. If there is any lacuna here, it is a matter for amendment of the Legislative Lists. There is no need, in my humble judgment to adopt a clause like this. I only make this submission to the House so that the same may be considered, and if necessary, it may be passed, but if unnecessary, it should not be passed.

The Honourable Sir N. Gopalaswami Ayyangar (Madras: General): It seems to me, Sir, that a word of explanation is necessary, particularly with reference to the remarks made by the last speaker. He seemed to think that this amendment which has been numbered as Clause 8-A would be unnecessary. I should say, Sir, on the contrary it is very necessary for this reason. We no doubt distinguish between the powers of the federation and of the units in the constitution. Those powers refer only to legislative powers. Legislative powers are divided between the Centre and the units but we have got also to define the scope of the executive authority of the province. We shall define it in the case of the federation also. Unless we say that the executive authority of the province will, subject to the exception mentioned here, be co-extensive with the legislative authority of the province, we shall, not be indicating how far-executive action can go at an. I therefore think, Sir, that it is a very necessary amendment.

Sir B. L. Mitter: Sir, I think there is a certain amount of confusion in the minds of some members. When I said that we had redrafted this clause, that re-draft refers to the extra-territorial part of the ,jurisdiction. But the main clause deals with the normal territorial extent of provincial jurisdiction. You must say somewhere in the constitution on what matters or within what territorial limits the provincial government has to function. Clause 8 says:-"Subject to the provisions of this constitution and of any special agreement, the executive authority of each province shall extend to the matters with respect to which the Provincial Legislature has power to make laws". Now, we know that under the 1935 Act, the provincial jurisdiction extends over the provincial list and the concurrent list and not on the federal list. Here also it is said, "with respect to which the Provincial Legislature has power to make laws". That is so far as the subject matter jurisdiction is concerned. There must be some territorial jurisdiction also. It is stated that the territorial jurisdiction of the executive power is coterminous with that of legislative power. We have to have territorial limits of provincial jurisdiction as well as subject jurisdiction. Therefore, this is necessary. What I moved in the first instance was with regard to the extra-territorial jurisdiction of a province. Therefore, I submit, Sir, that it is necessary to have Clause 8 as printed, in the constitution.

Mr. President: I do not know if there was any misunderstanding in the minds of the members when the clause was put to vote. I take it that what Sir B. L. Mitter means is that the clause as it stood in the original should remain there and what he has moved today must be added to it. All the three clause are to remain.

Gupte wants to replace the original Clause 8? I see.

I will put the clause just now moved by 'Mr. Gupte to vote.

Clause 8-A was adopted.

Mr. President: We will now pass on to Chapter II. We left over, Clause 15. Are we ready ?

The Honourable Sardar Vallabhbhai Patel: No.

Mr. President: We will then go on with Chapter II-Rule 19.

CHAPTER II-RULE 19

The Honourable Sardar Vallabhbhai Patel: I move:

"19. (1) There shall for every province be a Provincial Legislature which will consist of the Governor and the Legislative Assembly; in the following provinces, there shall, in addition, be a Legislative Council."

I would suggest, Sir, that so far as the Upper House is concerned, we shall have to consult the leaders of the Provinces to settle amongst themselves as to what provinces require a Second Chamber and request you, Sir, to appoint a Committee of the Provincial Premiers to meet and give us a list so that the list may be added hereto.

"(2) The representation of the different territorial constituencies in the Legislative Assembly shall be on the basis of population and shall be on a scale of not more than one representative for every lakh of the population, subject to a minimum of 50 for any province.

The election to the Legislative Assembly shall be on the basis of adult suffrage, an adult being a person of not less than 21 years of age.

(3)Every Legislative Assembly of every province, unless sooner dissolved shall continue for four years from the date appointed for its first meeting.

(4)In any Province where the Legislature has an Upper House, the composition, of that house shall be as follows :

(a) The total numerical strength of the Upper House should not exceed 25 per cent. of that of the Lower House.

(b) There should be within certain limits functional representation in the Upper House on the lines of the Irish Constitution the distribution being as follows:

One-half to be elected by functional representation on the Irish model;

One-third to be elected by the Lower House by proportional representation;

One-sixth to be nominated by the Governor on the advice of his Ministers."

I move this clause for the acceptance of the House. We have decided that there shall be a Legislative Assembly for every province and wherever there is to be a bicameral system, the provinces will give a list which will be attached here. At present, as you all know, there are about five or six provinces in which there is only on House such as Orissa, Punjab, Sind and the N. W. Frontier. In the other provinces there are two Houses. Now, the provinces of Bengal and the Punjab, have been divided. It is a question whether in the small provinces or whether in Bengal when divided, we want an Upper House. We are concerned with West Bengal alone. It appears there is a big European representation which from August 15 will disappear.

The representation of the different territorial constituencies will be on a scale of not more than one representative for every lakh of the population. This may perhaps in some provinces be increased; where the Provinces are smaller, this proportion will be less. Therefore, we have fixed a minimum. A suggestion may be made for fixing a maximum also. Now, elections are to be held on the basis of adult franchise. We have already settled about that and the age limit is also fixed as 21 years. The life of the Legislature will be four years.

Wherever there is an Upper House, we have adopted the Irish model for the composition of the members; a proportion shall be by functional representation; one-half to be elected by such representation, one-third to be elected by the Lower House by proportional representation and one-sixth to be nominated by the Governor on the advice of his Ministers.

I move this proposition for the acceptance of the House.

Mr. President: I have got notice of a number of amendments. I request the members to move then one by one.

(Messrs. K. Santhanam, P. Kakkan and H. J. Khandekar (lid not move their amendments.)

Saiyid Muhammad Saadulia (Assam : Muslim) :Mr. President, Sir, I beg to move:

"That in sub-clause (2) of Clause 19, for the word 'lakh' the words '2 lakhs' be Substituted; and

"That in sub-clause, (2) of Clause, 19, after the words 'any province', the words 'and a maximum of 300' be inserted."

My first amendment is only a means, to an end and the end is to fix a maximum. A minimum has been suggested in the report. For smaller provinces, the recommendation in the report may work very well, that is, under the new constitution, representation should be one member for every lakh. But if we apply this principle to the bigger provinces, in my opinion, the legislative bodies will be so unwieldy that work will suffer. Take for example the most populated of the Provinces, the United Provinces which have a population of more than five and half crores according to the census of 1941. If we are to give as recommended in this Draft Constitution one representative for each lakh, the House will have at least, 550 members. We know that in every census the population in India increases on an average by 15 per cent. So after 1951 we will have increase this big number by another 15 per cent. or in other words, U. P. will have a Provincial Assembly of more than, 600 persons. Well, the same will occur in the Madras Presidency which has now 49,300,000 population and so will have a House of 493. Even Bihar which has got a population of 36,300,000 will have at least 363 members in its Provincial Legislative Assembly. In my opinion, Sir, these are very substantial numbers. It has been the experience of almost everyone that the larger the number in a body the less the interest of parties concerned therein. In order to make these constitution of the provinces not unwieldy, I have proposed that a maximum should be fixed and the maximum should be 300. In the present constitution of 1935 we had adopted similar reduction and therefore there is nothing novel in my suggestion, e.g., Bengal which till lately had a House of 250 members counted over 6 crores of people in the last census, Madras which now counts 49,300,000 people has a House of 216, U.P. 268, and Bihar 152.

There is another aspect to the same question. In the report or rather the Draft Constitution which is going to be placed before this Assembly for the Union Parliament.

"The House of the People, [it says in Clause 14 (1) (c) I shall consist of representatives of the people of the territories of the Federation in the proportion of not less than I representative for every million of the population and not more than I representative for every 750,000 of the population."

Now, that the Indian Constitution will be functioning for a population of 30 crores, under this computation the House of the People will have a minimum number of 300 representatives and a maximum of 400. It is needless for me to emphasize that this National Assembly will be the centre of all political and executive authorities of the Federation of India. If we are satisfied with a representation ranging between 300 to 400, I think the Provincial Legislative Assembly which will be limited in its jurisdiction to the territories of the Unit only should not have a higher number of representation in their Assembly. It is for this purpose, Sir, that I recommend that as we have provided for a minimum of representation to 50 similarly we should provide a maximum also and according to my humble opinion, an assembly of 300 will give a wide scope for all provincial activities.

(Messrs. V. I. Muniswami Pillay, Gokulbhai D. Bhatt, R. K. Sidhwa, P. Khaitan, and H. J. Khandekar did not move their amendments.)

Mr. R. K. Sidhwa (C. P. General): Sir, in the note to this clause you will kindly find a sentence as follows:

> "There is to be no special representation in the Legislative Assembly either for universities, or for labour, or for women."

So far so good. But no mention has been made regarding trade, commerce and industry. I have moved an amendment:

> "That there should be no special representation to Trade, Industries or Commerce."

I do not know whether this is an omission. If there is to be no special representation to any special, interest, then I do not wish to move my amendment. I therefore desire that none of the interests will be given preference.

Mr. President: That is only a note. It is not a part of the clause.

Mr. R. K. Sidhwa: The intention of the Committee is indicated in this note. I entirely agree with what the Committee has stated because now everybody has to come from the front door having franchise extended to all interests and no special preference to any interest. I do not know why trade, commerce and industry have been omitted. I request that the Honourable Mover will please make it clear in his reply that all special representation will go away.

Mr. President: I take it, Mr. Sidhwa, that you have not moved your amendment because there cannot be an amendment to a note. Mr. Desai.

Shri Khandubhai K. Desai (Bombay: General): My amendment[#] is almost on the same lines as that, of Mr. Sidhwa, and as I understand that hereafter we are going to have only territorial constituencies and there will not be any special constituencies, I do not wish to move my amendment.

Mr. President: Mr. Omeo Kumar Das.

Shriyut Omeo Kumar Das (Assam: General): Mr. President, Sir, I beg to move :

> "That in sub-clause (2) of Clause 19, for the word lakh the words 'seventy five thousand' be substituted."

Though my Honourable friend Sir Saadulla has moved an amendment to raise the scale of population from one lakh to two lakhs, I am sorry I have, coming from the same province of Assam, to differ from him. It is the universal demand in Assam that the scale of population in relation to the delimitation of the constituencies should be lowered to the figure of seventy-five thousand. As you may know, Sir, there are many backward communities, in Assam, and these communities will have no chance of being elected in bigger constituencies. Many of us Congress-men, though we have not met in the Assam Provincial Congress Committee, have come to a decision about it. The President of the Assam Provincial Congress Committee has already, Submitted a memorandum to the Honourable Sardar Patel on this very point for his consideration. I trust the Drafting Committee which will be formed hereafter will also take this point into consideration.

I want to press before this House another point. The Honourable Sardar Patel has just now told us that Assam has no Upper House. In fact, we do have an Upper House which we want to abolish. We are almost unanimous with regard to this, demand. We are, not going to have any Upper House in future, which we have been having so long. It is but just and proper that the backward communities of our province should be given the chance of being elected to this only House. I mean the Lower House. I want to press before this House in particular that when you fix the maximum number of members, for the legislature there can be no difficulty in the case of major provinces like Madras or U.P. of having unwieldy House by lowering the scale. This difficulty can be met by fixing the maximum,--as Sir Saadulla has already suggested limiting the maximum number to. 300,--and to my knowledge the Honourable Mover will accept this amendment. In view of this I think the House may have no difficulty in accepting my amendment.

With this I commend my motion for the acceptance of the House.

Mr. President: Rev. Nichols-Roy.

The Honourable Rev. J. J. M. Nichols-Roy (Assam: General): Mr. President, Sir, I beg to move my amendment which stands as follows:

> "That the following proviso be added to sub-clause (2) of Clause 19:
>
> 'Provided that in giving representation to any territorial area or areas inhabited by hill tribes, the Provincial Government may determine a lower basis of population than one lakh and the total representation of the Province shall be increased accordingly'."

My reason for giving this amendment is this that the language of sub-clause (2) of Clause 19 seems to prevent any province from having a number of representatives in the Legislative Assembly that will be more than the proportional number of one man for every lakh of the population. If that is the meaning of the language of this clause, then it will be a real hardship on the people of the hills in Assam. In the hill areas of my Province we have large territories which are inhabited by a Proportionately small number of people. For example, in the Lushai Hills we have an area of over 8,000 sq. miles, but inhabited by a people called Lushais--(they call themselves Mizoos)--numbering only a little over a lakh and a half. In one of the plains district, however, there is an area of about 3,800 sq. miles with a population of 12,54,000. This being so, if the basis of population of one lakh per-member is applied to the hill areas also, it will clearly be a great and terrible hardship to the people of the hills.

Then, Sir, there is another area--the North Cachar hills--with an area of about 2,000 sq. miles which is inhabited by hill tribes, with a population of only about 37,000. This morning just before we came here we got a letter from the people of that area saying thus :

> "Going through the papers, I find that the Model Provincial Constitution Committee has recommended that representation to the Provincial Legislatures shall be on the basis of population of not more than one man for one lakh, subject to the minimum of 50. This, if adopted without a proviso for special cases, will permanently deny representation to North Cachar hills which has a population of only 37,000. To deny representation to a whole sub-division on the ground of population would be an injustice and even absurd."

Sir, this is the feeling among the hill people of Assam, and it applies not only to this particular hill area, but it applies to all the hill areas in Assam.

Even now, Sir, there is representation to the Assembly of Assam from the hill areas with a much lower population basis than one lakh. There is an area represented by one representative, but having a population of only about 85,000; there is another with a population of about 70,000 sending one representative. Now, if this clause means that no representative can be sent from a territory which has a population of less than a lakh then it means that these constituencies will have to be abolished. When we are talking about the coming of freedom for India, these will mean slavery to the hill people which the hill people cannot accept as justice at all. Therefore, Sir, I request that the drafting of this clause should not prevent a lower basis of population in a province which needs such a lower basis of population for one member in the Legislature. I am told by someone that this clause probably allows all-this.

It allows that a province should have representation between 50 and, if a maximum is put, 300 or 400. But it seems to me that the language may be interpreted in a different way altogether. If the interpretation is that a province is free to fix the number of representatives then it win be all right. But if it is fixed only on a basis of one representative for 1 lakh it will be a great hardship and its operation will work to the detriment of the people of the hills area. We must also consider the fact that there are some people in the hill areas of Assam now who want to be independent altogether and stand as a separate State, some who want to join Burma and some others who probably want to join Pakistan too. If this kind of representation be forced upon the hill people of Assam, it will help that propaganda and will cause a great deal of trouble to India. Therefore I would request that the Mover of the resolution may enlighten the House whether the province, will be able to give representation on a lower basis to the peoples of the hill areas where in a large territory the population is small. And these territories are sources of potential wealth and are therefore very important to the province of Assam. If that is not considered it will be a great hardship indeed. Sir, I commend my motion for the acceptance of the House.

(Messrs. M. Ananthasayanam Ayyangar, Shibbanlal Saksena and Biswanath Das did not move their amendments.)

Mr. Lakshminarayan Sahu (Orissa: General): Mr. President, Sir I want to add a sub-clause at the end of sub-clause (1) of Clause 19: "Orissa may have an Upper House when Orissa States will join the Province of Orissa". Half of Orissa is practically Orissa States and there is a great prospect now that the Orissa States will be joined to the present political Orissa. As such, in order to bring about some good feeling among the Rajahs of the Orissa States I think an Upper House will be a great need in Orissa. That Upper House will act as a good check upon the democratic outbursts. They generally have the fear that there will be too much of democracy and that they will be swept away. Therefore I think there should be a definite sub-clause like this in Clause 19.

Besides, there is a prospect of revision of boundaries and in that case the boundary of Orissa will be extended in different directions. That is what we hope, and the population will also increase. The new population that will come into our fold will gradually be one with us only when they feel assured that there is an Upper House where all the legislation that will be passed in the Lower House will be revised and the legislative actions properly done. That is another reason why there should be a provision like this.

The Mover of the resolution, Sardar Vallabhbhai Patel, has said that it is left to the province which may choose to have an Upper House it it so likes. It is very good. But at the same time I want to point out to the whole House here that there is really great need for an Upper House. I therefore move:

> "That the following be added at the end of sub-clause (1) of Clause 19:
>
> 'Orissa may have an Upper House when Orissa States will join the province of Orissa'."

I move my next amendment also, *viz.*

> "That after item (b) in sub-clause (4) of Clause 19, the following new item be added:
>
> '(c) There should be the power of recall for voters of every constituency in case in any situation. they want to recall their elected member or members'."

This is essentially necessary because we feel that at times situations arise when voters want to remove a member from the Legislative Assembly but cannot do so because there is no such provision in the Act. When we are going to have a new Act, I think we should provide for this new clause, namely, recall.

As regards the difficulty of how to operate it, I think there will not be much difficulty because the constituency will be very small. Then we may provide that if two-thirds, or some such proportion, of the voters vote against a member whom they do not like, in that case the member goes out. As regards the full procedure I am not conversant with it and it may be found out.

Moreover I think a provision like recall is necessary when we are going in full force towards democracy, and without a provision for recall our legislation will not be complete because it is being gradually provided in other places, as for instance in Switzerland and in some American States. As early as in 1922 in the Bihar and Orissa Legislative Council, when Mr. Madhusudan Das of Orissa was the Minister for Local Self Government, he introduced this provision of recall in the local Legislative Act there. If there be a fear that the provision may be misused and it will be difficult for the people to work it, I do not think there is much in that fear, because though there is provision for this recall in the Bihar and Orissa Local Self-Government Act it has not been used although people have begun to talk about it. It is not very easy to take advantage of this. Therefore there should be no such fear that if there is a provision of recall people will rush into it and there will be various parties trying to oust one member and put in another. Even if that be so I would welcome it because that will be a sort of education for our people. Our people generally after giving their vote once do not think about it afterwards, but if thee be such a thing they will begin to think and the people will be more active and agile. I therefore move that these two sub-clauses should be inserted in this clause.

Then I will touch on another point as regards population. My friends Mr. Omeo Kumar Das and Mr. Nichols-Roy have said that the constituencies should be small. I also feel like that, because in Orissa there are many aboriginal people and they are all different groups. The people can send in one fo their own people if the constituency is small. For instance the *Amanatvas* are only 60,000 people; now they cannot send their own representative because their number is small. Then there are other hill tribes who generally number twenty or thirty thousand. Of course we cannot extend this legislative power to all of the groups but we should still have the desire that those people on the hills who have been neglected so long should be given powers in such a way that they may be politically educated as quickly as possible, so that we may be able to bring them up to our level. Sir, I move.

Mr. R.K.Sidhwa: Sir, I beg to move that in sub-clause (2) of Clause 19 for the figure "50" the figure "60" be substituted. In the new constitution we are going to have a wider franchise which means a larger number of representatives in the Legislature. It is very desirable that following the democratic spirit we should have in the coming constitution a larger number of members in the Legislature. I do not share the views of Mr.Saadulla that a bigger Assembly is cumbersome and unwieldy. These stock arguments are often advanced when people do not want a bigger Assembly. Here is the Constituent Assembly consisting of about 225 members. Is it cumbersome and unwieldy. The debates are attentively listened to and we are conducting the business smoothly and rapidly. Even in the Central Legislative Assembly or in the Provincial Assemblies with only about a hundred members I have sometimes seen a want of a quorum and the Speaker of President had to go on ringing the bell. But here we have such a large number of members but still they are attentive to their duties and we get the benefit of their knowledge and experience out of which will be framed a very useful constitution. So I support the Mover's proposition that in the Assembly there should be one member for every lakh of the population.

Then, Sir, coming to the minimum, I have suggested 60 for 50, and the reason is this. The smallest province in the Indian Union today is Orissa with a population of 84 lakhs and they have a House of 60 with an electorate which is narrower than what it will be hereafter. With a larger electorate to come we cannot cut that down to 50. The two new provinces of East Punjab and West Bengal will each have a population of 2 crores and 40 lakhs. They are big provinces and we should see that they get full representation. Therefore I suggest that for provinces like Assam or Orissa, etc., the minimum should be 60 as at present.

Mr. President: I think Mr. Sidhwa has misunderstood the clause. That is only the minimum. If the population is 84 lakhs the number will be 84 according to this clause. The amendment does not touch those cases; it touches only those where the number is less than 50.

Mr. R. K. Sidhwa: But if there is to be a minimum I want it to be 60. That is my amendment and I hope the House will accept it. The more members there are I think the better it is because it would be well to have the benefit of their intelligence, knowledge and experience. Sir, I move.

Mr. President: The Resolution and the amendments are now open to discussion.

The Honourable Mr. Gopinath Bardoloi (Assam: General): Mr. President, I did not want to participate in this debate. But since my friend Mr. Nichols-Roy has placed certain issues before the House, I consider it necessary to make certain observations.

Sir, I have the privilege of being the Chairman of the Eastern Tribal and Excluded and Partially Excluded Areas Sub-Committee. In that connection we had not merely an opportunity of touring the hill areas but also of studying the conditions of the people in the hills. From a broad point of view it can definitely be stated that the method of representation proposed to be introduced for the general population cannot be made to apply to the people in the hills.

It will be seen that Assam today, with Sylhet gone, has a population of 71 lakhs and the extent of the province as it stands is only 62,000 square miles. Most of the people live in an area of about 30,000 sq.miles in the plains. With the hills, Assam comprises now 62,000 sq.miles. If you deduct 30,000 sq.miles, you will find that thirteen lakhs of hills people live in 32,000 sq.miles. What is more important for us to know is that they live as separate tribes and not as we do in the plains in a common pattern. Therefore, if any representation is proposed to be given to these people, it must be different from the manner in which representation is proposed to be given to the people in the plains. In view of this state of affairs, I think that the proposition that has been put before the House by Rev. Nichols-Roy should be supported by us generally. But I do not know whether it is necessary at all to accept the amendment as it stands. It is possibly known to all of you that the Advisory Sub-Committee will be making some recommendations in respect of representation also. Now what can be done here is that we can agree to accept the general principle so far as all other areas than the plains are concerned. I am not discussing here what that representation ought to be and whether it should be one representation for a unit of 75,000 or 1,00,000 or even 2,00,000 of the population, although in my opinion this should vary according to the population and area of the different provinces. But the broad fact should be accepted that these areas should be represented under some special plan. Mr. Nichols-Roy's recommendation is that this matter should be left to the provincial governments concerned to determine. I think the better course would be to leave this mater in the hands of the Advisory Sub-Committee and await their recommendations. The House can then consider the matter. The House should also bear in mind that in the present constitution, these hill people enjoy considerable weightage in representation. With these observations that the spirit of Rev. Nichols-Roy's amendment should be accepted, I resume my seat.

Mr. H.V. Kamath (C.P. & Berar: General): Mr. President, Sir, the second half of the first sub-clause of this clause reads thus: "in the following provinces, there shall, in addition, be a Legislative Council" and then in brackets it lays down "(here enumerate those Provinces, if any, which desire to have an Upper House)". I am glad that the words "if any" have found a place here. I hope to God that no province will elect to have an Upper House. But the possibility cannot be entirely ruled out of certain provinces choosing to have an Upper House. Therefore I stand before this House today to put in a plea for the abolition of the existing second chambers and against the creation of new ones.

Sir, in modern political practice, the second chamber is fast becoming an anachronism. In a federal democracy-the structure which we have envisaged for our Hind, our Bharatavarsha--we may visualise a second chamber for the Centre, but it would be pernicious and vicious to have a second chamber in the constituent units of our federal democracy.

Various motives have actuated the creation of second chambers all over the world. In the last century, it was stated more or less as a political axiom that no democracy should be without a second chamber. But in the 20th century this practice is fast fading out and giving way to uni-cameral legislatures. Various motives have, as I said, led to the creation of second chambers. Firstly, there has been the desire to maintain the old tradition. I am glad that in India at least we do not have any such tradition. In the first decade of this century the British Government created second chambers mostly as a hang-over from the last century. But in the middle of this century this system stands discredited.

The second motive which has actuated the creation of second chambers is the desire to safeguard the interests of the propertied classes and vested interests. If we have second chambers in every province of our Federation, then I am afraid, these very classes which propped up British rule in our country, which buttressed and bolstered up British rule in the days of its decline, will find a place in those bodies. I for one would not support such a development in our country.

The third motive which has actuated the creation of second chambers is that they would act as a sort of check on the impulsive and hasty tendencies of the Lower House. Well, Sir, in modern democracies the practice is for legislation to pass through a very elaborate process, and as such there is no need for any multiplicity of legislative checks, specially considering the times through which we are pressing. When we are aspiring to build a strong Union, we cannot afford this luxury of a second chamber which I am afraid will hamstring the Government in the provinces and render the Government static or at any rate less dynamic. We want these Governments should be dynamic and I am certain that second chambers would act as a drag on them in every province. These are the considerations which impel me to oppose the creation of second chambers. I hope that the constituent units of the Federation will not elect to have second chambers in our Hind, our Bharatavarsha.

Mrs. Renuka Ray (West Bentgal: General): Mr. President, Sir, I rise to support Clause 19 and in particular section (2) of this clause which provides for territorial representation without reservation of seats. We are particularly opposed to the reservation of seats for women. Ever since the start of the Women's' Movement in this country, women have been fundamentally opposed to special privileges and reservations (*hear, hear*). Through the centuries of our decadence, subjection and degradation, the position of women too has gone down until she has gradually lost all her rights both in law and in society. None the less, with the first stirrings of consciousness amongst women, there never arose any narrow suffragist movement that has been so common in so many so-called enlightened nations. Women in this country have striven for their rights, for equality of status, for justice and fairplay and most of all to be able to take their part in responsible work in the service of their country. The social backwardness of women has been sought to be exploited in the same manner as backwardness of so many sections in this country by those who wanted to deny the country its freedom.

Before the 1935 Act came in, the representatives of India's women made it very clear that they were against the reservation of seats or any special privileges for women. They made this clear through the All India Women's Conference. Our representatives, the three women who have evidence before the Joint Parliamentary Committee, made it clear in unequivocal terms--(I may say that Rajkumari Amrit Kaur was one of the three women)--that we did not want reservation, but in spite of our protests, and in direct contravention to our desires, reservation of seats was brought into the 1935 Act. This Act has been so great a factor in bringing dissensions in our fold and has at last divided the country. But where the heart is strong, where there is sound judgment, no machinations can divide and the women did not allow themselves to be caught in the trap. It would be wrong to say that all the credit for our attitude goes to women. From the very start of our national awakening in this country, enlightened men have encouraged women to come forward as equal partners in the struggle for freedom and to do service for national regeneration in the different walks of life. When Mahatma Gandhi have his call so specifically to the women of this country to take part in the national movement, all the social barriers of centuries broke down. There are no words to convey the gratitude of the women of this country to this Great man--who has today brought the country to the very threshold of freedom (*hear, hear*). So, it is not only the inherent qualities of women but more particularly I should say the qualities of our men that is responsible for the fact that in our country, there has never been any strife between men and women.

When the Hindu Law Reform Bills were put in the Central Assembly, women were naturally anxious that these bills which conceded certain rights to them should be adopted, but we found an opposition which was not so great in numerical strength but which was very formidable because of the fact that it was from a reactionary group who were the erstwhile supporters of the then Government and who were also betraying the country at every turn. The alien Government could not afford to displease them, and unless we too were willing to barter away our souls and our birthright, we could not fight that opposition.

Sir, what we have upheld so long has come to pass today. We always held that when the men who have fought and struggled for their country's freedom came to power, the rights and liberties of women too would be guaranteed. We already see the evidence of this today. No reservation of seats was required to induce the men who are today in power to select a woman as Ambassador, the second in the history of any nation. Vijayalakshmi Pandit has not been selected because she is a woman nor was sex made a bar to the appointment. It is her proven worth that has been responsible for her appointment to the high office of ambassador to a land which is admittedly one of the greatest forces in the world today. This has vindicated our position and women are indeed proud of this. I am confident that it will not be only women of exceptional ability who in future will be called upon to occupy positions of responsibility, but all women who are equally capable, equally able as men will be considered irrespective of sex.

In the Legislatures of India, we have some women, but there are few women who have come from general constituencies. I think that the psychological factor comes into play when there is reservation of seats for women. When there is reservation of seats for women, the question of their consideration for general seats, however competent they may be, does not usually arise. We feel that women will get more chances in the future to come forward and work in the free India, if the consideration is of ability alone.

With these words, Sir, I should like to support this clause which has done away once and for all with reservation of seats for women, which we consider to be an impediment to our growth and an insult to our very intelligence and capacity.

Mr. Sarangdhar Das (Eastern States): Mr. President, Sir, I stand here to oppose the amendment of Mr. Lakshminarayan Sahu for creating an upper chamber in the Orissa Legislature in anticipation of the Rajas that is, the Rulers of Orissa, coming into the province at some future time. An upper chamber anywhere is an anachronism in these days of democracy. With adult franchise, when all the legislation necessary, and all the safeguarding of interests necessary, are done in one chamber the members of which are elected by the whole people, there is no necessity for an upper chamber and as such I would request the Mover of this clause to see that there is no loophole left for the creation of an upper chamber in future, and particularly in Orissa. I represent here a group of small States in Orissa. At the same time, I am a member of the Orissa Legislative Assembly, and I know the feeling of the people of Orissa Province.

There is never any talk anywhere of an upper chamber and it will be disastrous to create one simply to perpetuate the vested interests of the Rajahs. So long, there had been this vested interest created by the British Government in India. But now, by creating an upper chamber in the province we shall be perpetuating that vested interest in another shape. I therefore strongly oppose this amendment and I hope the House will not in any way support this kind of reactionary measure.

Saiyid Muhammad Saadulla: Mr. Speaker, Sir, I hope this Honourable House would give me the indulgence to make a special plea for the smaller units of the Indian Federation and especially Assam. Assam was the Cindrella of all Indian Provinces till the Simon Reforms came into operation. Then she stepped up a bit and came over in the list of provinces from the bottom to three or four steps upwards, for smaller states than Assam came into existence like Orissa, Sind and North-West Frontier Provinces. But with the present set up and with the result of the referendum in the district of Sylhet of the Province of Assam she has again been relegated to the Cindrella Province of the Indian Federation. Conditions in Assam are not known to most of the Honourable Members of this House. Assam is a land of wide distances and very sparse population. In extent it was very nearly equal to the Province of Bengal as it existed three months ago, but in population it has only one sixth the population of Bengal. As has been stated earlier by two of my compatriots, we have very primitive and aboriginal people within our areas which were excluded from the Ministerial influence under the scheme of the Simon Reforms. But the then authorities took into consideration the undeveloped state of Assam and of our peoples, and gave us not merely the Provincial Legislative Assembly with a membership of 108 but also, in spite of the opposition of the peoples, an upper Chamber was imposed on them. I am not concerned here with the Upper Chamber for Honourable Members will be glad to know that all the Members from Assam present in the Constituent Assembly have sent a joint letter to the Honourable the President expressing the views of Assam, not merely of the Congress and the Muslim League but the entire population of Assam, that we do not want any Second Chamber in the future constitution. When I say that Assam has 108 members when its population was only 92 lakhs in the 1931 census, I am not disclosing the fact that one third of Assam was unrepresented in this Legislative Assembly. For Assam has three frontier areas, the biggest one is called the Sadiya Frontier, the next one is the Balipara Frontier and the third is the Tirap Frontier. All these were excluded from the Reforms of 1935 One may say that these being Frontier areas they were right to exclude it. But insular districts like the Naga Hills, the North Cachar Hills and the Lushai Hills also were excluded from participating in the Reforms of 1935. My plea before this August Assembly is that you will have to give your careful consideration if you want backward provinces, undeveloped provinces like Assam--I would not mention any others, because they may not think themselves backward -- should be treated separately in the future constitution. I therefore have great pleasure in supporting the motion that has been placed before the House by my Honourable friends Sjt. Omeo Kumar Das and Rev. J.J. Nichols-Roy. Rev. Nichols-Roy has placed before the House the fact that a very large area called the North Cachar Hills with an area of 20,000 square miles but with a population of 37,000 wants to get representation in the future constitution of Assam. But he does not say what should be the limit of population which should entitle the area for representation in the Provincial

Constitution. My Honourable friend Sjt. Omeo Kumar Das wants that the population basis should be reduced from one lakh to seventy-five thousand. Some speakers who spoke after I moved my own motion have misunderstood me. I do not want that the representation should be reduced. As a matter of fact I now openly make the plea that the smaller provinces should get a weightage as regards the number of people on the Provincial Legislature. What I wanted was just to place before the House my own humble opinion that there should be a maximum number fixed for such representation and I placed it at 300. One Honourable Member, I refer to my friend Mr. Sidhwa from Sind, fell foul of me and said that even in this House which consists of 228 members, we do not feel that this is unwieldy and that every one listens to the speeches with rapt attention. This is as it should be. For this Constituent Assembly represents the intelligentia, the patriots, those who have sacrificed their all in the service of the country. No wonder, Sir, that we all listen so attentively and with rapt attention when we have men like Mr. Sidhwa who have to be given a place in this Constituent Assembly although under his physical domicile he was not entitled to sit in this House.

Mr. President: Mr. Kakkan wants to speak in Tamil. I do not know if many members will be able to understand Tamil.

Shri P.Kakkan (Madras: General): Mr. President, I want to speak in Tamil which is my mother tongue. If I speak in Tamil, I can express my ideas clearly. So, I want to speak in Tamil which is my mother tongue.

(The Honourable Member then spoke in Tamil)

Shri Raj Krushna Bose (Orissa: General): Sir, I would not have taken the time of the House and spoken on this motion had not one of my colleagues in the Provincial Legislature moved an amendment to the effect that Orissa may have an Upper House if the Orissa States will join the Province of Orissa.

In opposing the amendment, I should like to point out to the Mover that probably before giving notice of the amendment, he has not closely studied Clause 19 of the Provincial Constitution. Clause 19 (4) says: "In any province where the Legislature has an Upper House, the composition of the House shall be as follows": Then the procedure with regard to the composition has been enumerated. Then, the note says: "It was agreed that the members of the Constituent Assembly from each Province should vote separately and decide whether an Upper House should be instituted for the Province." I should like to point out to my Honourable friend that if at all he desired to move the amendment, it would have been proper on his part to consult his colleagues here, who are members of the Orissa Legislature as to the effect the amendment would have on the province itself. I would not have opposed it if the effect would not be to commit the province to have an Upper House.

Evidently, Mr. Sahu's object in moving the amendment is to facilitate the Orissa States to join the Province of Orissa. If that is his object, let me tell him that they can do so even without an amendment like this, as this has been provided for in Clause 3 of the Draft Constitution of the Union whereby the States who want to merge themselves in the provinces can do so, as for this an Act of Parliament will be necessary. Clause 3 of the Draft Union Constitution says:

> "The Parliament of the Federation may by Act, with the consent of the Legislature of every Province and the

Legislature of every Indian State affected thereof.

(a) create a new unit;

(b) increase the area of any unit;

(c) diminish the area of any unit;

(d) alter the boundaries of any unit;

and may with the like consent make such incidental and consequential provisions as it may deem necessary or proper."

"Sir, I do not know whether what Mr. Sahu contemplates is going to happen, or when or how it is going to happen, because I know attempts have been made by leading men of Orissa, not for a few months, but for the last few years for the amalgamation of the States of Orissa numbering as many as 26, with the Orissa Province but till now they could not be persuaded to do so. Supposing these attempts bear fruit and some or all the States agree to merge in the Province of Orissa, Clause 3 of the Draft Union Constitution contains a provision for such an union by an Act of Parliament of the Federation. In that case, the Legislature of every Indian State which is affected thereby will have to give their consent to such a union. I do not see any reason. Sir, when there is such a provision, in the union Constitution, why Mr. Sahu chose to move this amendment. The amendment will, in effect, commit the province to create an Upper House where here no need for it. The amendment is therefore redundant. Another amendment which provides for the recall of members by the voters. In case such a situation arises has been moved by Mr. Sahu. He said that in Switzerland such a provision exists. I am sure no such provision exists in Switzerland. If there are any, there are such provisions in some of the American States but in the present state of our country where democracy is but in its infancy, it would be improper to provide for such a thing and render the constituencies a battle ground between candidates unnecessarily and make them victims of rival political parties. I would therefore oppose both he amendments and would request him to withdraw both his amendments.

The Honourable Mr. Jaipal Singh (Bihar: General): Mr. President, I have great pleasure in supporting Clause 19 as it is. At the same time I feel somewhat inclined favourably to the picture that has been depicted by members from Assam where the problem of the hilliness, inaccessibility, sparseness of population and all similar physical difficulties have been pointed out. I am quite definite the amendment that has been moved to the effect that, instead of one lakh, two lakhs of people should send a representative should not be accepted by this Assembly. If anything, we should go in the other direction and make representation as broad-based as possible and reduce the figure one lakh to something less. I do not say it should be 35,000, or 10,000 or 50,000. I think we have to look to the practicability in the present set up. If we are going to be democratic at all, we should be as representative, make representation as broad-based as possible and we shall not be doing that by increasing the figure higher than one lakh. We have been given a good picture of the difficult and mountainous character of the Province of Assam. That is true, that is a feature which is characteristic of most of the Adibasi tracts throughout India. I come from the Chota Nagpur Plateau, Jharkhand, which is equally mountainous, equally inaccessible as some of the territories that have been described by my friend Mr. Gopinath Bardoloi from Assam. Unless the delimitation of the constituencies is done on a much smaller population basis, it will simply mean that elections will have no strong appeal to the people. It would be difficult for the people whose votes we want and whose opinions we seek, to be interested. Sir Muhammad Saadullah, in his amendment, pointed out that he did not want that any House should be too unweildy. He gave us a figure which he wanted not to be exceeded. That is all very well but Mr. President, I have been reading, I have been hearing a great deal from the agents of the Indian National Congress, expressions about a re-distribution, a re-alignment of provinces on a cultural and linguistic basis. There is the famous Karachi Minority Resolution, 16 years old and, recently, we have had vociferous demands from various areas such as Andhra, Kerala, Karnataka, Maharashtra, Mahakoshal, Mithila and Jharkhand. I do not know whether I have left out any but there are these areas which have been demanding that there should be a re-alignment of the present unweildy and unnatural provinces. Well, I do hope that there will be a re-alignment, that the Indian National Congress will honour its word, honour the Karachi Minority Resolution and set about it quickly to get this dream realized. In that case, I think, arithmetically, Sir Muhammad Saadulla's fears will disappear altogether. Then on the basis of one per lakh the representation will never exceed the figure he has mentioned.

Sir, I fell in rather an awkward position in regard to the point that *Padre* Nichols-Roy has raised. Being a tribal myself, realizing that Adibasis must get effective representation in the future democracy of this country, I find myself confronted with a problem of there being something like 177 listed tribes in the decennial census of 1941. Now if we were to accept that, every pocket of the tribe should be represented-this is roughly the picture *Padre* Nichols-Roy has given us; he has mentioned a figure, that figure is meant to include particular pockets of the Assam tribes, now, if we are to work on that basis, *I am afraid even a figure as low as a thousand, if one thousand people were to send representatives, it would mean that somebody will be left out*. I think we have to draw the line somewhere and for the present I do feel that the figure that the Honourable Mover has stated in his clause as it stands *i.e.*, one per lakh of population, is good enough and I have great pleasure in supporting it.

Mr. Khandubhai K. Desai: Sir, I move that the question may now be put.

Mr. President: Closure has been moved. Now I ask the Mover of the Resolution to reply to the debate.

The Honourable Sardar Vallabhbhai Patel: Sir, several amendments have been moved and in the course of the discussion, some amendments have been opposed by some speakers. The sum total of the discussion results in an impression on me that there are two amendments which may be accepted. One is from Mr. Sidhwa which provides for the minimum number in Clause 2 to be raised from 50 to 60. Another amendment is from Sir Saadulla which provides for the maximum number to be fixed at 300. Except for these two amendments which I propose to accept, the rest, I would like to oppose.

There is an amendment moved by a friend from Orissa suggesting that there should be an Upper House in that province. I do not think that any amendment is necessary for that, because, in the Resolution itself it has been provided that it is the option of the province to have an Upper House or not. He will, of course have his say in that Provincial Assembly. He wants an amendment here, probably because he is afraid of not succeeding in that Provincial Assembly. But we do not propose to impose an Upper House on a province against its own will. Of course, there is no Upper House in the Province of Orissa, today, and I see that this proposal to have one has been opposed by another friend from Orissa in this very House. Probably there is no chance of his succeeding in that attempt. I do not see why we should accept it.

He has moved another amendment in which he suggests that power should be given in the constitution to the voters to recall a member who has lost the confidence of his constituency. I do not see why such a provision should be made. I think it should be left to the honour of the member elected. When he feels that he has lost the confidence of his constituency, he must resign of his own accord, instead of having to be called upon to do so, and having a provision to that effect made in the constitution. A wise member will always keep his finger on the pulse of his constituency and I think instead of putting in such a provision, we should try to develop a healthy sense of responsibility and sense of honour in the members. If there are any stray instances or some black-sheep who having lost the confidence of their constituency still want to continue to represent that constituency in the House, for some such bad instances we should not disfigure our Constitution. We should leave it as it is, to the good sense of the members concerned.

Then, it has been suggested by some friend from Assam who seems to have developed a sense of inferiority complex, that Assam must always have some special treatment. It is a matter for congratulation that women have come forward to say that they do not want any special treatment. But at the same time, it is a matter of regret that men have not yet come up to that standard. Let us hope that nothing will be provided in this constitution which would make exception in favour of men where women object.

It has been said that for tribal areas or for some such areas, some concession should be made in the matter of representation. In the first instance I would suggest that this is a matter which would primarily be considered by the special committee appointed for that purpose. We have not yet got the report of the Tribal and Excluded Areas Sub-Committee and we would not like to hamper their work or their discretion. We will not encroach upon their rights to make a free and unfettered report. I, therefore, suggest that we should not take this point into consideration now, but that the general principle as enunciated in this clause be accepted. If it is seen that after the report of this Sub-Committee is received, this clause requires some modification, that will be incorporated in the clause.

I do not think there is much that I should say now. We have had a full discussion for more than two hours and many arguments that were advanced have been replied to by contrary arguments. Therefore, I now move the clause for the acceptance of the House, with the two amendments I have referred to.

Saiyid Muhammad Saadulla: Sir, I beg leave to withdraw my first amendment.@

The amendment was, by leave of the Assembly, withdrawn.

Shriyut Omeo Kumar Das: Sir, I beg leave to withdraw my amendment also.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Now we come to the second amendment moved by Sir Saadulla:

"That in sub-clause (2) of Clause 19, after the words 'any Province,' the words 'and a maximum of 300' be inserted."

This, I understand, has been accepted by the Mover, but must be accepted by the House also.

The amendment was adopted.

Mr. President: Then there is the amendment moved by Mr. Sidhwa:

"That in sub-clause (2) of Cluase 19 the figure '60' be substituted for the figure '50'."

This amendment also, I understand, has been accepted by the Mover, but it has to be accepted by the House also.

The amendment was adopted.

Mr. President: Then there is the amendment moved by Rev. Nichols-Roy:

"That the following proviso be added to sub-clause (2) of Clause 19:

'Provided that in giving representation to any territorial area or areas inhabited by hill tribes, the Provincial Government may determine a lower basis of population than one lakh, and the total representation of the Province shall be increased accordingly'."

Shri K. Santhanam (Madras: General): On a point of order, Sir, this is a matter which should be referred to the Advisory Committee.

Mr. President: I think it is too late now. The amendment has been moved here and discussed. I take it that if the Advisory Committee has to make any suggestions on this point, it will be taken into consideration by the House.

The Honourable Rev. J. J. M. Nichols-Roy: Sir, as the Honourable Mover Sardar Patel, says that this question will be considered by the Advisory Sub-Committee now dealing with the Excluded and Partially Excluded Areas, and that the recommendations of that Sub-Committee will be discussed by this House, and that this clause will be subject to the recommendations of that Sub-Committee, I do not see any necessity to press my amendment. I want to withdraw it.

Mr. President: I think this matter will be considered by the Advisory Committee and its recommendations will come up before this House. I take it that the House permits Mr. Nichols-Roy to withdraw his amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: There are two amendments by Mr. Lakshminarayan Sahu. Does the Honourable Member desire to press them?

Mr. Lakshminarayan Sahu: Sir, I desire to withdraw both of them.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President: I shall now put the clause as amended to vote. I suppose it is not necessary for me to read out the clause as amended.

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, I oppose the whole clause and in this connection I want to give expression to some of my views. Will you permit me to do that?

Mr. President: We have already had a long discussion on the clause and the amendments thereon.

Maulana Hasrat Mohani: Certain misunderstandings have been created about my political views by Sardar Patel and Pandit Nehru. I had no occasion to remove those misunderstandings. If you would allow me only a few minutes I shall express those views.

Mr. President: I am afraid it is too late to have any further discussion. If the Maulana had been listening to the speeches and not talking to other members he would have had his opportunity.

Maulana Hasrat Hohani: Sir, I oppose the whole resolution and this report altogether and I want it to go on record that I oppose the whole thing at this stage when you put the amended proposition to the vote of the House.

Mr. President: I will now put the clause, as amended, to vote. The question is:

"That Clause 19, as amended, be passed."

The motion was adopted.

The Honourable Sardar Vallabhbhai Patel: Sir, I move Clause 20:

"The provisions for the meeting, prorogation and dissolution of the Provincial Legislature, the relations between the two Houses (where there are two Houses), the mode of voting, the privileges of members, disqualification for membership, parliamentary procedure, including procedure in financial matters, etc., shall be on the lines of the corresponding provisions in the Act of 1935".

I understand that Sir Alladi Krishnaswami Ayyar is going to move an amendment to the last line, *viz.* "on the lines of the corresponding provisions in the Act of 1935." Instead of this he suggests a better form which is wider and is on the lines of the procedure in the British Parliament I will accept the amendment when he moves it. Otherwise this clause is a simple one and I move it for the acceptance of the House.

(Prof. Shibbanlal Saksena did not move his amendment.)

Sir Alladi Krishnaswami Ayyar: Sir, I have an amendment to the clause as proposed. It contains two parts. With regard to the first part of it there was some difference of opinion in certain quarters as to whether it should be pressed at this stage and whether it could not be taken up at a later stage. On that ground for the present I am not insisting upon it, though I think there is a good deal to be said in regard to that of it. The first part of it is:

"That at the end Clause 20 the following be added (with the following changes in the provisions of Section 71 of the Government of India Act, 1935):

'After the words 'in respect of the publication by or under the authority of a Chamber of such a Legislature' in sub-section (1) of Section 71, add 'or any accurate reports of such proceedings'."

I believe there is a necessity for some such provision but as it is felt in certain quarters that that part of it requires further examination I am not pressing it now. I propose to reiterate it at a later stage of the proceedings.

The second part of my amendment is:

"For sub-sections (3) and (4) of Section 71 of the Government of India Act, 1935, substitute the following:

"The powers, privileges and immunities of the members of the Legislature of the Province shall be such as are declared by the Provincial Legislature and until so declared shall be those of the members of Commons of the House of Parliament of the United Kingdom and of its members and committees at the establishment of this Constitution'."

If you will refer, Sir, to section 71 you will notice that the privileges are very restricted. The Legislature has no power to punish its own members and there are various other restrictions too. It was felt, as indicated herein, that our Legislature should possess as plenary powers as those possessed by the House of Commons without prejudice to the Legislatures themselves later on making their own provisions. That is the object of this amendment. If there is any feeling that in an Independent India's Constitution there need not be any reference to the House of Commons, later on we might collect all the materials with reference to the privileges of the House of Commons and they might be substituted. For the present I would press this, because the House of Commons is the Assembly, which has the widest privileges of all the Assemblies of the world...

Mr. Naziruddin Ahmad: Sir, on a point of order, an Honourable Member is smoking in this House while the deliberations are going on. Is it in order to do so? If this is permitted, there will be many more Honourable Members who might claim the indulgence of smoking inside the Chamber.

Mr. President: It would not be in keeping with the dignity of this House or in keeping with our own past traditions that any Honourable Member should smoke in this House.

Sir Alladi Krishnaswami Ayyar: Sir, I also move:

"That the following new clause be inserted after Clause 20 (*That is a very material provision*):

'20-A. (1) the validity of any proceedings in a Provincial Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or other member of a Provincial Legislature in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the

jurisdiction of any court in respect of the exercise by him of those powers'."

That is a very salutary and necessary provision, because it ought not to be open to any individual to challenge the validity of any enactment on the ground that any particular rule or order has not been observed in the passage of a particular enactment. That is a provision which has found a place in every Government of India Act. It is a very salutary provision. I would therefore request the House to accept this amendment the reason for which I have explained.

Mr. President: There is no other amendment. So the original proposition and the amendments are open for discussion. Anybody who wishes to speak either on the resolution or the amendments is free to do so.

(No member rose to speak.)

I find that no one is anxious to speak. I shall therefore ask the Honourable the Mover to reply.

The Honourable Sardar Vallabhbhai Patel: Sir, I accept the amendments.

Mr. President: I have to put the amendments, which have been accepted by the Mover, to vote first. I shall put the first amendment of Sir Alladi Krishnaswami Ayyar as it has been actually moved.

The question is:

"That at the end of Clause 20, the following be added (with the following changes in the provisions of Section 71 of the Government of India Act, 1935):

'For sub-sections (3) and (4) of Section 71 of the Government of India Act, 1935, substitute the following:

> 'The powers privileges and immunities of the members of the Legislature of the Province shall be such as are declared by the Provincial Legislature and until so declared shall be those of the members of Commons of the House of Parliament of the United Kingdom and of its members and committees at the establishment of this Constitution".

The motion was adopted.

Mr. President: I shall put Sir Alladi Krishnaswami Ayyar's next amendment.

The question is:

"That the following new clause be inserted after Clause 20:

'20-A (1) the validity of any proceedings in a Provincial Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or other member of a Provincial Legislature in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers'."

The motion was adopted.

Mr. President: The question is:

"That the clause, as amended by these two amendments, be passed."

Clause 20, as amended, was adopted.

Mr. President: We now come to Clause 21.

CLAUSE 21

The Honourable Sardar Vallabhbhai Patel: I ask permission that Clause 21 may stand over for the present because there is a similar provision in Clause 16 of the Union Constitution and both may be considered together. There being two similar provisions in two constitutions, and this being a controversial matter, there is likely to be some confusion and I therefore suggest that this may be kept over and both considered together.

Mr. President: Clause 21 stands over for consideration at a later time. We come to Clause 22.

CLAUSE 22

The Honourable Sardar Vallabhbhai Patel: Sir, I move:

"The Provincial Legislature may from time to time make provisions with respect to all or any of the following matters, that is to say-

(a) the delimitation of territorial constituencies;

(b) the qualifications for the franchise and the preparation of electoral rolls;

(c) the qualifications for being elected as a member of either House;

(d) the filling of casual vacancies in either House;

(e) the conduct of elections under this Constitution and the methods of voting thereat;

(f) the expenses of candidates at such elections:

(g) corrupt practices and other offences at or in connection with such elections;

(h) the decision of doubts and disputes arising out of or in connection with such elections;

(i) matters ancillary to any such matter as aforesaid:

Provided:

(1) that no member of the Lower House shall be less than 25 years of age and no member of the Upper House shall be less than 35 years of age;

(2) that the superintendence, direction, and control of elections, including the appointment of election tribunals shall be vested in the Governor acting in his discretion."

Probably there will be a motion for deletion of Proviso(2) which I will accept because other provision has been made for it. Sir, I move this proposition for the acceptance of the House.

Sri K. Santhanam: Sir, I move:

"That in Clause 22 after the words 'from time to time' the following be inserted:

'in accordance with the procedure for amending the Provincial Constitution'."

As the clause now stands, by a mere ordinary law such important matters as the delimitations of territorial constituencies and the qualifications for the franchise and the preparation of electoral rolls can be altered. It will mean that by a snatch vote a simple majority can upset the entire basis of the Provincial Constitution; it can gerrymander constituencies and make changes so that it can dissolve the House and come back to power in a larger majority. Therefore some restrictions are needed. I suggest these changes should be made, only in accordance with the procedure for amending the Provincial Constitution. That procedure for amending the Provincial Constitution has not been laid down in the present Report, but I have tabled a clause for that purpose. The procedure may contain various provisions. Certain parts of the provincial Constitution may be changed by one procedure and certain other parts may require a more elaborate procedure. Whatever that may be, these matters should be changed only by the procedure specially prescribed in that behalf. They should not be changed by ordinary legislation. I hope therefore that this amendment will be accepted by the House.

(Dr. P. S. Deshmukh did not move his amendment)

Sri K. Santhanam: Sir, I move:

"That in item (b) of Clause 22, for the words 'the qualifications for franchise' the following be substituted:

'Limitations to adult franchise on grounds of non-residence of personal disabilities not based on birth, race, religion, or community'."

Sir, adult franchise is the basis of the whole scheme. My amendment simply makes it clear that the qualification for the franchise does not mean any power to bestow this on any one. Even for adults there may be some qualification necessary especially on grounds of residence and there may be personal disabilities like insanity or life in prison and all that. I want to provide that apart from these there should be no restriction on adult franchise.

(Messrs. Gokulbhai D. Bhatt and V. C. Kesava Rao did not move their amendments.)

Mr. President: I understand that the Mover of the Resolution is in favour of accepting the motion of Mr. Khurshed Lal to delete the second proviso to Clause 22. Would someone else move it in the absence of Mr. Khurshed Lal?

Mr. K. M. Munshi (Bombay: General): With your permission I shall move it, Sir. I move the amendment to delete the second proviso to Clause 22. The reason for its deletion is that in the Union Constitution Committee's Report there is going to be provision to set up an All-India Election Tribunal which will have the power of superintendence, direction and control of all elections not only Federal, but also Provincial. Therefore there is no need to give this power to the Governor to act in his discretion.

(Messrs. Kala Venkata Rao and K. Santhanam did not move their amendments.)

Mr. H. V. Kamath: My amendment suggesting a new proviso to Clause 22 seeks to take this vital issue of separate electorate and weightage out of the purview and jurisdiction of Provincial Legislatures. But I am told that the Report of the Advisory Committee on Minorities is dealing with this and other cognate matters. Therefore until their report is taken into consideration there is no point in moving my amendment. I do not therefore press it. It runs as follows:

> "That the following be inserted as proviso (3) to Clause 22.
> 'that no Provincial Legislature shall at any time make provision for separate electorates or for weightage to any particular class or community in the Provincial Legislature and other elective bodies of the province'."

(Shri T.A. Ramalingam Chettiyar and Shri Kala Venkata Rao did not move their amendments.)

(Prof. Shibbanlal Saksena did not move his amendment.)

Seth Govind Das (C.P. and Berar: General): *[Sir, there are two amendments in my name. One is number 4 and the other No. 5 in the Supplementary List No.3. I am not moving No. 4. I want to move No. 5 which runs:

> "That after proviso (2) in Clause 22 the following new proviso be added:
> '(3) that all provisions under Clause 22(a) to (i0 will be made on the principles of and in conformity with the instructions laid down in the Schedule annexed hereto so as to maintain uniformity in these matters throughout the Indian Union'."

I feel there is no need to say much about it. I only wish that all the items from (a) to (i) given in this clause should be uniformly applied throughout India. When India as a whole is going to be one Union, the application of these clauses for one province in one way and for another in a different way, would not be proper. That is why I have submitted this amendment and I hope that Sardar Patel will accept it.]*

Mr. President: There are two amendments by Mr. Kala Venkata Rao. (There was no reply). All the amendments have been moved. Those who wish to speak either on the resolution or on the amendments may do so now.

The Honourable Sir N. Gopalaswami Ayyangar: Mr. President, I wish to say a few words on the first amendment that was moved by Mr. Santhanam. I find some difficulty in fitting it in. His proposal is that in Clause 22 after the words "from time to time" the following words be inserted: "in accordance with the procedure for amending the Provincial Constitution." There is a good deal of substance in what he said on the merits of the amendment itself. Apparently, his scheme is that the first provisions which are to be enacted in connection with the matters mentioned in the clause should find a place in the Constitution itself, either in the body of the Constitution or in the schedules to the Constitution. If these schedules are framed, then you can give the provincial legislature power to amend these schedules. He apparently wants to safeguard against amendments being carried out in haste or perhaps in pursuance of ideas which may have had sway for the time being but perhaps would not be quite acceptable in the long run. So he wants to provide that amendments to such schedules to the constitution should be made by the provincial legislature only according to the procedure prescribed for amending the provincial constitution. I can understand that. But what this clause says is that the first laws relating to these matters are to be made by the provincial legislature. "The provincial legislature may from time to time make provisions with respect to all or any of the following mattes." If you allow the provincial legislature to make the first provisions in regard to these matters without placing, I take it, any particular restrictions on its powers, it does not stand to reason that you should provide that amendments to such provisions should be made only according to the procedure prescribed for amending the constitution. I think, Sir, that this clause will have to be redrafted in order to carry out his purpose. We can say that the first provisions with regard to these matters should find a place in the schedules to the constitution and then you can give powers to the provincial legislature to amend these schedules according to the procedure prescribed for amending the provincial constitution.

There is also another difficulty. I believe the draft Model Constitution does not provide for any procedure for amending the Provincial Constitution. That also we may have to provide for. I would suggest that so far as Mr. Santhanam's amendment is concerned, we hold it over so that we may produce a draft which will carry out the purpose Mr. Santhanam has in view. I feel that the amendment as moved by him should not for the present be accepted but that we should take it up later on.

Sir Alladi Krishnaswami Ayyar: Sir, I support the suggestion of Sir Gopalaswami Ayyangar that the consideration of this clause might lie over. If the first delimitation of constituencies is by ordinary law, it stands to reason that the later changes also may be by ordinary law, but on the other hand if the delimitation of constituencies is provided in the constitution, later amendments will be constitutional amendments. Therefore if in the schedule you indicate how exactly the constituencies are to be delimited, then of course provision will be necessary that later changes will be by constitutional amendments. Under the circumstances, I would request Mr. Santhanam not to press his amendment at this stage.

Sri M. Ananthasayanam Ayyangar (Madras : General): I do not find any insurmountable difficulty for which my friends there are trying to find a solution. The existing legislature will continue to function even after the constitution comes into force under the transitional provisions contained in Part IV. Otherwise immediately on the constitution coming into force it will not be possible to allocate the territorial constituencies and allow elections to take place. In the meanwhile demarcation of territorial constituencies will have to be made through the legislature in existence. The present legislature will continue under Clause 2 of Part IV. "There should be similar provisions, *mutatis mutandis*, in respect of the Council of Ministers, the Legislative assembly and the Legislative Council (in Provinces which decide to have an Upper House)." The previous provision is: "Any person holding office as Governor in any province immediately before the commencement of this Constitution shall continue a such and shall be deemed to be the Governor of the province under this Constitution until a successor, duly elected under this constitution, assumes office." Therefore the legislature will continue and that legislature can be entrusted with the duty of delimiting constituencies. Mr. Santhanam's amendment may be accepted without any difficulty about the initial delimitation of constituencies. That can be safely entrusted to the legislature.

Mr. President: Does any other member wish to speak on the resolution or the amendment?

Mr. M.S. Aney (Deccan States): I would like to speak on the second amendment of Mr. Santhanam.

Mr. President: It is 6 o'clock and if there is any long discussion, we might adjourn. I would like to know whether there are any other members who want to speak.

Some Honourable Members: Yes.

Mr. President: Then, before we adjourn, I would like to make one or two announcements. This morning's newspapers published the news the aeroplane in which one of our Honourable Members, Mr. Jagjivan Ram and his two secretaries were travelling crashed near Basra. I am glad to be able to inform Honourable Members that the injury which Mr. Jagjivan Ram has sustained is not of a very serious character, although I understand there has been a fracture of one of the knee caps. I am told it will not take very long for him to recover. Let us hope that he will be able to come back soon and participate in our deliberations.

It was represented to me by some members that they would like to have a little more time for sending in amendments to the Union Constitution Committee's report and as we have not finished the consideration of the Provincial Constitution, I am prepared to give a little more time for them to send in their amendments, say, by tomorrow evening 2 o'clock so that the amendments could be printed and circulated before Monday 2 P.M.

There is one another announcement. From Monday next I propose that we sit aat 10 o'clock and go up to 1 P.M. We shall now adjourn.

Mr. K. M. Munshi: The Minorities Sub-Committee would meet on Monday. 10 o'clock was the time announced.

Mr. President: It has been represented to me by several members that while this House is sitting it will be most inconvenient for the members who are members also of the Minorities Sub-Committee to be sitting and they would not find time to devote to both the sessions which will have to be held from day to day. This meeting of the Minorities Sub-Committee has already been announced, but in view of this representation, I should like to postpone it for some days and would fix another date which will suit all the members. The exact date will be announced after consulting the convenience of all the members.

The Honourable Sardar Vallabhbhai Patel: If the Minorities Sub-Committee meeting is postponed, the Advisory Committee's report and everything else will have to be postponed. They should be allowed to adjust their time and have their meetings in the afternoon.

Mr. President: I understand that other members have got engagements in the afternoon. It will be very difficult for the members to attend. In any case we cannot have it on Monday at ten. We shall fix some other date. The Minorities Committee will have to sit in the afternoon.

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): May I know why 10 o'clock is fixed?

Mr. President: For various reasons to suit the convenience of members.

The Honourable Pandit Jawaharlal Nehru: It is neither here nor there--either earlier or later.

Mr. President: I thought that most of the members considered it convenient.

We shall announce another time for the meeting of the Minorities Sub-Committee. Then we meet on Monday at 10 o'clock.

The Assembly then adjourned till Ten of the Clock, on Monday the 21st July, 1947.

#That at the end of the Note under Clause 19, the following be added: "or for landholders, or for commerce and industry.

@That in sub-clause (2) of Clause 19 for the word "lakh" the words "2 lakhs" be substituted.

[English Translation of Hindustani Speech]

APPENDIX$

CONSTITUENT ASSEMBLY OF INDIA

Report of the ad hoc Committee on Clause 8 of Part I of the Provincial Constitution

The Committee recommends that--

Clause 8 be re-drafted so as to read:

"It shall be competent for a Province, with the previous sanction of the Federal Government, to undertake, by an agreement made in that behalf with any Indian State, any legislative, executive or judicial functions vested in that State, provided that the agreement relates to a subject included in that Provincial or Concurrent Legislative list.

On such an agreement being concluded, the Province may, subject to the terms thereof exercise the legislative, executive or judicial functions specified therein through the appropriate authorities of the Province."

Signed on behalf of the Committee

B. L. MITTER,

Chairman

New Delhi:
July 17, 1947.

**Members of Committee:*

1. Sir B. L. Mitter (*Chairman*).
2. Sir Alladi Krishnaswami Ayyar
3. Mr. Ismail Chundrigar
4. Sir A. Ramaswami Mudaliar
5. Dr. B. R. Ambedkar
6. Mr. K. M. Munshi

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME IV

Monday, the 21st July 1947.

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

Mr. President: I understand there are three members who have not yet signed the Register who are present to day. They may please sign.

The following members presented their Credentials and signed the Register:

1.Dr. H. C. Mookerjee (West Bengal : General).

2. Mr. F. R. Anthony (C.P. & Berar:General).

3. Kumaraja Sir M. A. Muthiah Chettiyar (Madras : General)

CONDOLENCE OVER THE ASSASSINATION OF GEN. AUNG SAN AND HIS COLLEAGUES IN BURMA

Mr. President: Honourable Members received with the greatest grief the sad news of the tragic circumstances in which General Aung San and his colleagues lost their lives as a result of a dastardly outrage the day before yesterday. The news must have shocked Indians particularly because our relation with Burma have been of a very friendly character even after Burma was separated. General Aung San was one of those men who had brought Burma to the door of independence and that be should lose his life and that this colleagues should lose their lives at the hands of their own countrymen is tragic beyond words.

I do not know when the word will come to realise that violence, and violence particularly of this type can never solve any problem of the world. If this outrage is any indication of a deep-laid plot, Burma is in, I would fear, for very difficult times. But we have hopes that the Government there which has been brought into power with the overwhelming support of the people will be able to control the situation and that the people of Burma will be able to enjoy the fruits of that independence which those who have lost their lives have just won for her.

I hope the House will permit me to convey our sence of sorrow and our condolences to the people of Burma, to the members of the Government there as also to the members of the bereaved families I hope Honourable members will express their assent by standing in their places.

The Assembly assented, the members standing in their places.

Shri Gokulbhai D. Bhatt (Eastern Rajputana States) :*[Mr. President, with your permission, I would like to ask one or two questions. For how many days more will this Session of the Assembly continue? Are we going to meet again in August? I wish to know it in order to facilitate my programme.]*

Mr, President: *[I hope that the Assembly will conclude its session within this month, as we have before us one more report of another Committee to consider after we finish the report of the Committee When the Assembly finishes discussions over that report, the great task before us, requiring a major portion of our time would have finished, Besides that, one or two resolutions are also expected. I hope they will not take a long time. Hence I think that thee business of this sitting would be finished by the end of this month. It is possible that 'the members may have to come again on the 15th August.]*

REPORT ON THE PRINCIPLES OF A MODEL PROVINCIAL CONSTITUTION--*contd.*

CLAUSE 22

Mr. President: We shall now take up the discussion of the clause that we were discussing that day. The amendments have been moved and the motion as well as the amendments are open to discussion.

I would like to know if there is any other amendment of which notice has been given, which had not been moved. My own impression is that all amendments have been moved.

Mr Aney, you wanted to speak on this ?

Mr. M.S. Aney (Deccan States): Mr. President, Sir, I only wanted to make one observation with regard to the second amendment moved by Mr. Santhanam to Clause 22 that it was, in my opinion a superfluous amendment. He wants to make sure that any rules that may be made will not infringe the primary principle which has been already provided for *viz* adult franchise, but I believe it is a well known principle that under the rule making powers those who have to frame the rule have to see that nothing is introduced into the rules which is inconsistent with the principles already embodied in the Statute itself. In view of that and in view of the fact that adult suffrage has already been provided for by a distinct provision in the Statute the second amendment which he has proposed appears to me to be unnecessary.

Shri K. Santhanam (Madras: General): With regard to the objection raised by Sir N. Gopalaswamy Ayyangar, I have given notice of an amendment which may also be taken up with this. It is in the new supplementary list. I would like to state that no provision has been made for 'lie first election. Unless something is made, that clause is difficult to apply and so I have tabled an amendment as follows:

"That the following be inserted at the beginning of Clause 22:

> 'For the first election to the Provincial Legislature under this Constitution. the constituencies, qualifications of voters and other particulars shall be such as may be prescribed, in the Scheduled to this Constitution,'"

Then the clause will run as given and then my amendments will come. I move this amendment as I do not think there is any point to be cleared about it.

Mr. President: Does anyone wish to speak about the clause or any of the amendments that have been moved?

I will put the amendments to vote.

This is Mr. Santhanam's amendment.

"That the following be inserted at the beginning of Clause 22:

> 'For the first election to the Provincial Legislature under this Constitution, the constituencies, qualification of voters and other particulars shall be such as may be prescribed, in the Schedule to this Constitution'."

The Honourable Sardar Vallabhbhai J. Patel (Bombay: General):I accept Mr. Santhanam's as well as Seth Govind Das's amendment.

Mr. President: I put Mr. Santhanam's amendment to vote.

The amendment was adopted.

Mr. President. Mr. Santhanam's second amendment is as follows:

"That in Clause 22 after the words 'from time to time' the following be inserted:

> 'in accordance, with the procedure for amendment the Provincial Constitution".

The amendment was adopted.

Mr. President: There is another amendment by Mr. Santhanam as follows :

"That in item (b) of Clause 22. for the words 'the qualifications for the franchise' the following be substituted:

> 'Limitations to adult franchise on grounds of non resident or personal disabilities not based on birth, race, religion or community'."

The amendment was adopted.

Mr President: There is another amendment moved by Mr. Munshi as.. follows:

"That the second proviso to Clause 22 be deleted."

The motion was adopted.

Mr. President: There is another amendment moved by Seth Govind Das as follows:

"That after proviso (2) in Clause 22, the following now proviso be added:

> (3) that all provisions under Clause 22(a) to (j) will be made on the principles and in conformity with the instructions laid down in the schedule annexed hereto as to maintain uniformity in there matters throughout the Indian Union'."

The amendment was adopted.

Mr. President: Now I put the clause, as amended to vote.

Clause 22, as amendment, was adopted.

CLAUSE 23

The Honourable Sardar Vallabhbhai J. Patel: Sir, I move Clause 23:

"(1) If at any time when the Provincial Legislature is not in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require.

(2) An ordinance promulgated under this clause shall have the force and effect as an Act of the Provincial Legislature assented to by the Governor but every such ordinance-

> (a) shall be laid before the Provincial Legislature and shall cease to operate at the expiration of six weeks from the re assemble of the Provincial Legislature, or if before the expiration of that period resolutions disapproving it are passed by the Legislature, upon the passing of the second of those resolutions: and
>
> (b) may be withdrawn at any time by the Governor.

(3) If and in so far as an ordinance under this clause makes any provision which the Provincial Legislature would not under this Constitution be competent to enact, it shall be void."

Ordinance making power has been subjected to much criticism; but by long experience it has been found that it is necessary to have such provision in the case of an emergency when the Legislature is not sitting and there is not enough time to call the Legislature and there is immediate necessity of passing an urgent legislation.

I do not think there are many amendments to this clause. I move this proposition for the acceptance of the House.

(Messrs. Ajit Prasad Jain, H. V. Pataskar, R. K. Sidhwa, Shibbaydal Saksena and M. Ananthasayanam Ayyangar did not move their amendments.)

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I beg to move that the following new clause be added after Clause 23:

"24. All matters incidental to or consequential upon the Clauses above shall be deemed to be part of, and included in the said clauses."

Sir, my object in moving this amendment is to remove all technical difficulties that may arise at the time of the drafting of the final bill. We have accepted in the House a large number of amendments in the original Report and it is just possible that there may be some gap or omission here and there, met with at the time of the final drafting. I therefore propose this amendment so as to remove any such technical difficulties.

Mr. President: Mr. Naziruddin, I think yours is not an amendment but the addition of a new clause. We had, I think, better dispose of Claim 23, and then go on to this new clause.

No amendment has been moved to this clause, Clause 23. If any member wishes to speak about it, he can do so now.

(No member rose to speak.)

I shall now put the motion:

"23. (1) If at any time when the Provincial Legislature is not in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require.

(2) An ordinance promulgated under this clause shall have the same force and effect as an Act of this provincial Legislature assented to by the Governor, but every such ordinance-

> (a) shall be laid before the Provincial Legislature and shall case to operate at the expiration of six weeks from the re assemble of the Provincial Legislature, or, if before the expiration of that period resolution disapproving it are passed by the Legislature, upon the passing of the second of those resolution; and
>
> (b) may be withdrawn at any time by the Governor.

(3) If and in so far as an ordinance under this clause makes any provision which the Provincial Legislature would not under this Constitution be competent 'to enact, it shall be void."

The motion was adopted.

Mr. President: Mr. Naziruddin Ahmad will please move his clause.

Mr. Naziruddin Ahmad: Sir, I beg to move that the following new clause be added after Clause 23:

"24.All matters incidental to or consequential upon the clauses above shall be deemed to be part of and included in, the said clauses."

Sir, I submit that this clause would be necessary to remove technical difficulties at the time of the drafting. We have introduced some new amendments in this House, without perhaps much notice. It is, therefore, just possible that there may be gaps here and there, I mean, unintentional gaps or technical difficulties. So at the time of drafting a point may arise that particular things i.e. things incidental to certain amendments adopted here or consequential upon those amendments-are not meant to be included in the Report. It is for this reason that I have proposed this new clause. I do not know of any gaps, apparent gaps, just now, but all the same I have brought forward this clause so that if there is any gap or omission, then this clause may be helpful to the draftsmen. With these few words I submit it for the acceptance of this House.

Mr. President: A new clause, Clause 24, has been proposed to be added here.

Personally I have not been able to quite understand the effect of this additional clause. If any member wishes to speak about it. I shall be obliged if he would enlighten me on it.

Shri M. Ananthasayanam Ayyangar (Madras. General): Sir, I do not think there is any need for such a new clause as this because we are here only approving the general principles. Things ancillary, incidental, supplementary, consequential, etc, will naturally have to be added when the final drafting is done. The clause now proposed is vague. With it, it is not enough to meet the situation, without it we are none the worse of. In any case it need not be considered or voted upon now.

Mr. President: As there is no other speaker, I shall put the motion to House.

The motion is that the following new clause be added after Clause 23.

"24 All matters incidental to or consequential upon the clauses above shall be disputed the part of, and included in, the said clauses."

The motion was negatived.

Mr. President: There is notice or another additional clause by Mr. Santhanam. Will Mr. Santhanam please move it

Shri K. Santhanam: Sir, I beg to move that after Clause 23 the following new clause be inserted :-

` "24 The Governor of a province in which the legislature consists of a single chamber shall have the right to return at his discretion a Bill passed by the legislature for reconsideration and may suggest amendments. If the Bill is passed again by the legislature with or without, amendments by an absolute majority he shall assent to it."

This is an amendment of some substance. As things stand in the drift of the model constitution, if a legislature passes a law by a snatch vote or by a very narrow majority it will have to become law immediately because there is no power of veto or any other power vested in the Governor. Sir, I myself do not want any power of veto for the Governor; I want full autonomy and full responsible government in every province. But I want to give the Governor the power to send a Bill passed by the provincial Assembly for reconsideration. If after reconsideration the Assembly passes it by an absolute majority he will have no power of veto but will have to give to his assent to it.

Sir, I have limited this power only to those provinces which will have unicameral legislatures because where there are two chambers the revisory function will belong to the Upper House. I have also vested this power in the Governor's discretion. Obviously a ministry which rushes a Bill through by a narrow majority will not care to advise reconsiderations and so it should be a power in the Governor's discretion.

Sir, I move.

Pandit Lakshmi Kanta Maitra: (West Bengal: General): Sir, I am afraid this amendment cuts at the very root of the democratic principle which forms the basis of this constitution. What after all is Mr. Santhanam's point? It is that if in any province with a unicameral legislature a Bill is passed by a narrow majority the Governor should be invested with additional powers--which are to be exercised by him in his discretion to make suggestion to the legislature to reconsider the whole situation and then come to a decision.

Now I ask the House to consider the result of such a procedure. In my opinion the inevitable result would be that the Governor would be antagonised and would straight away come into conflict with the popular ministry which would be functioning. I do not see any necessity for it; on the other hand if any measure has been passed in inordinate haste and without due consideration and discrimination, the legislature surely is not debarred from repealing it or amending it at subsequent sessions, if it is not the product of mature deliberation. So I feel that to invest the Governor with powers like this would be directly to trench upon the independence and responsibility of the legislature. It will unnecessarily bring the Governor into conflict with the ministry and I feel that the motion should not be supported..

Mr. N. V. Gadgil (Bombay: General): Sir, I desire to make a suggestion which need not be incorporated here and now but may be considered as the proper stage later on. I suggest that there should be a time-limit within which the Governor should send a Bill back with or without amendments, failing which it should be taken automatically that he has assented to the Bill. The American constitution contains this kind of provision and it should be embodied here.

Pandit Lakshmi Nanta Maitra: While laying down a time-limit, does Mr. Gadgil accept the principle that the Governor will be in a position to reconsider the whole situation over the head of the legislature?

Shri M. Ananthasayanam Ayyangar: Sir,I consider this a very whole-some provision. I do not know why my friend Pandit Maitra has any, doubt as to the intention of Mr. Gadgil in supporting this amendment. He accepts the principle and then says that there should be a time-limit. In the American constitution a time-limit of ten days is fixed. There must be a period within which the Governor must consider the matter and send it back for reconsideration of the House. After all a sufficient number of members might not have been present, there may be important matters involved relating to minorities and other matters where consideration at some greater length should have been bestowed on a Bill instead of its being through. The Governor would have to be watchful at every stage; it is not as if he would actually try to interfere at every stage with a popular ministry. He will be on his guard; has will be the President of the Council of Ministers from time to time and will exercise a wholesome influance. If in spite of all this a situation suddenly arises where a particular section wants to rush a Bill through let him put his check upon that and send it for reconsideration of the legislature. There are similar provision in the Government of India Act. I can assure my friend Pandit Maitra that a popular Governor would not try to interfere except in very special cases. I support the amendment.

Mr. Tajamul Husain (Bihar: Muslim): Sir, I rise to support the amendment. What would be the position if a Bill is sent for the assent of the Governor and he is not satisfied with the provisions of the Bill? Ordinarily a Governor who is selected on adult franchise will not interfere with any measure which is passed by the legislature. But in case he is not satisfied with the Bill is have to sign it against him conscience? Or is he to send it back to the House with his amendments or make a total rejection? I think under the English constitution if a Bill passes through the House of Commons it goes to the House of Lords and is then sent to the King for his assent. In practice the King always assents though he has the right to reject a Bill in which case it goes back to the Houses of Parliament. If it passes again without any amendments and is again sent to the King for his assent he must sign it or he must abdicate. Similarly if the Governor is given power to refuse his consent or if he sends the Bill with his amendments it is for the provincial legislature to reconsider he Bill in the light of the Governor's suggestions. If they pass the Bill again in its original form the Governor must sign it or he must got out. Therefore I support the amendment that a chance must be given to the Governor and that he should not act merely as a figurehead.

Mr. Ramnarayan Singh (Bihar: General): Sir, I strongly support the amendment. We have provided in the constitution for an elected Governor and so I do not see why people should be so afraid of him that they do not want to give him any powers. From time to time it is necessary that the Governor should take the initiative and there will be no harm if any legislation is reconsidered. I appeal to the House to give some power to the Governor so that he may be of some use to society, otherwise it is better to get rid of the Governor altogether Sir, I think this amendment should be accepted by the House.

The Honourable Mr. Hussain Imam (Bihar: General): Mr. President, I intervene in this debate in order that the practice might be established, when things of this nature are being discussed of advising the Constituent Assembly on the practice all the world over. I regret, Sir, at this moment many of my colleagues have not before them Constitutions of the world. They have also probably not read the exhaustive notes which have been circulated by the staff of the Constituent Assembly at the instance of the Constitutional Adviser.

The practice in U.S.A., to give only one instances is that the President has the power, in spite of there being dual chambers--the Senate and the House of Representatives to vote a Bill but that the veto can be overridden if a majority of two-thirds of both Houses reject it. In addition to that he has another veto. which is a pocket veto, by means of which he can disallow a Bill if it is passed within ten days of the sittings of the House. There are any number of instances to indicate what the world is doing. It will be very useful if the practice could be established of the Honourable the President getting the Constitutional Adviser to indicate, on such controversial issues, what the practice in other parts of the world is. No doubt the Constitutional Adviser has issued a book to us. It will be very useful to us. Still there is room for more information on world practice.

I think Mr. Santhanam's amendment is very essential. He has urged in this amendment that it will have effect only in those provinces in which the legislature consists of a single chamber. The Mover thinks that where there is a second chamber, it will act as a brake on the Lower House. But we know. Sir, that there is need for further clarification where, if there is any difference between the two Houses there are different methods of tackling it in different Countries. In regard to Money Bills the practice in some places is that the Second Chamber is made *hors de combat*. It has no power. In regard to other Bills, in some, of the Constitutions, the Second Chamber can vote finally, In other Constitutions, they have to sit together and come to a decision jointly, the Second Chamber's votes being usually overridden by the majorities in the Lower House. But what I was saying was that it is wrong on our part still to dream that we will be having Governors appointed by an outside authority. In future, the Governors will not be there to serve the cause of the powers-that-be. The Governor will be our man elected by adult franchise. It. is therefore necessary that you must give him full trust and confidence. If you place your confidence in him and if you provide, as suggested by Mr. Santhanam these checks and balances, you will arrive at a happy mean in which there will be one House ready to set right matters if the other goes wrong. This is the only method by which we can avoid pitfalls. I support the amendment.

Kumararaja, Sir M. A. Muthiah Chettiyar (Madras : General): Sir I am very glad that Mr. Santhanam has moved this amendment and that there is the prospect of the House accepting it. But my happiness is mitigated by the fact that the amendment is restricted in its application to Provinces where there is no second chamber.

Sir, the experience that we have of second chambers where they exist does not warrant the belief that they are a sufficient check against hasty legislation. In the last few years the Lower House has rushed through legislation with such haste that many mistakes have crept in and there have been many occasions when the leaders of the Lower House have requested the members of the Upper House to correct and send beck the Bill to the Lower House. All this, will be avoided if the Lower House is given a chance to reconsider the matter.

There are many reasons necessitating this opportunity or reconsideration. Sir on many occasions all the Standing Orders are suspended and legislative measures published in the Gazette only the previous evening, ace carried through the Legislature the next morning in the twinkling of an eye. They say that an emergency has arisen and that if the legislature does not pass the measure before it adjourns, the Governor would have to issue an Ordinance.

For these reasons I do suggest that we should go a step further and remove from the amendment the reference to single chambers so that this check may be there even in Provinces where there are two chambers.

With regard to the possible misuse of the power by the Governor I am glad that my hon. friend Mr. Hussain Imam has pointed that the Governor is not going to be a stranger. He is going to be a provincial man or an Indian from another province. That being some may be expected to gauge public opinion. If in his opinion he feels that the legislature is rushing through a measure against public opinion, he may be expected to send back the measure for reconsideration. There may be occasions when legislators may not have time to study any piece of legislation brought before them and they will be only glad to get a chance to look at it once again Press and public opinion in the country would play a great part in shaping the views of the Governor. If the governor acts wrongly he will be told so by the Ministry and by public opinion. I do not think the Governor will misuse the power to send back legislative measures. I hope that the Mover and the leaders of the parties will find it possible to remove this reference to single chamber and provide for this check even in places where there are two chambers.

B Pocker Sahib Bahadur (Madras: Muslim): I have great pleasure in supporting this amendment. At the same time I must express; my dissent from the view of the previous speaker that this should be extended even to cases where there is a bicameral legislature. The Upper House is a sufficient check against hasty legislation. Therefore, in the Provinces in which there is an Upper House it is not necessary that this power should be given to the Governor. I support the amendment.

Mr. Naziruddin Ahmad: I beg to support the amendment. Sir, in the speeches delivered here in this connection, one aspect of the thing has not been mentioned. It is that in some cases legislation may be *ultra vires* irregular or illegal in some respects. In such cases, the Minister who has sponsored such legislation may himself desire to reconsider the matter. A provision like this would give, him an opportunity to reconsider his attitude when he finds that public opinion is against the measure. It is inconceivable that a Governor, under the new Constitution, would act in an improper manner. In the circumstances power like this may be very much desired by the Ministers themselves. I believe that a power like this exists in the Government of India Act of 1935 much of which has been copied in this Report. The Government of India Act of 1935 has now been admitted to be a model legislation. As I have already submitted the Governor should be given this power in provinces where there is no second chamber and he may be expected to act in a beneficial manner.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): Mr. President, the other day we accepted a clause empowering provinces to choose whether they would have a second chamber or not, implying thereby that this House would accept a second chamber in the case of those provinces who choose to have it. How could we deny in these circumstances the same restraining influence to provinces which choose to have only one chamber? Either you must allow provinces to have second chambers or you must allow that restraining influence to the Governors for remitting bills for reconsideration in the case of provinces which select only one chamber. Sir in the case of provinces which elect to have only one chamber, the Governor must have this restraining influence to check hasty legislation, and we cannot deny to such provinces a provision of this kind. This is consistent, logical and necessary. Therefore I support the amendment.

K. T. M. Ahmed Ibrahim Sahib Bahadur (Madras: Muslim): Mr. President, Sir it, is absolutely necessary for the Governor to have this power to prevent hasty legislation. I submit that his power is not inconsistent with democratic principles. In the Union Constitution, there is a provision a the effect that the President should have the power of returning bill which have been passed by the National Assembly for reconsideration within a period of six months. What the Union Constitution seeks to give to the President of the Nation must in justice be given to, me Governors of provinces. There is nothing undemocratic about it.

Further., Sir, the Governors of provinces are invested with very great powers, and the Provincial Constitution Committee says that the Governors will not abuse those powers as they are elected Governors. Then, Sir, it is obvious that if the President of the Union who is elected by a limited franchise is given power to send back bills to the National, Assembly for reconsideration, it is in the fitness of things that the Governors who are elected on adult franchise should be given the same power. I am therefore glad to support the amendment moved by Mr. Santhanam.

The Honourable Sardar Vallabhbhai Patel: Sir, I am prepared to accept this amendment of Mr. Santhanam with one change. I suggest that the last four words "by an absolute majority" should be dropped.

It was suggested that this should also cover the provinces where there are two chambers. I think it is not necessary because, where there are two chambers, if they differ, the case will come for reconsideration at a joint session. Therefore it is not necessary.

Mr. President: Mr. Santhanam, do you wish to say anything in reply?

Shri K. Santhanam: I will just say that I accept the suggestion made by Sardar Patel, but I wish make one remark. When a bill is sent. back for reconsideration, both the parties will marshal their forces, and unless the ministry has got 51 per cent., it is likely to be defeated. It does not matter whether the words "by an absolute majority" are there or not. The effect will be just the same.

Pandit Lakshmi Kanta Maitra: I do not know whether the amendment moved by Mr. Santhanam has been accepted by the House or not. It is not clear to me--I think it is not clear to many members of the House as to what the decision of the House is with regard to the words "by an absolute majority".

Mr. President: What are you speaking about, Mr. Maitra?

Pandit Lakshmi Kanta Maitra: I want to know whether you are going to put the vote of the House the deletion of the words "by an absolute majority".

The Honourable Sardar Vallabhbhai Patel: Mr. Santhanam has accepted the amendment.

Mr. President: How does it stand now?

The Honourable Sardar Vallabhbhai Patel: Without any reference to the remarks made by Mr. Santhanam, I accept his amendment but with the deletion of the words "by an absolute majority".

Dr. B. R. Ambedkar (Bombay: General): The sentence will read now, "If the Bill is passed again by the legislature with or without amendments, he shall assent to it".

Mr. President: Then I put Clause 24 to vote. The resolution as now amended, with those four words "by an absolute majority" omitted, will now read:

"The Governor of a Province in which the legislature consists of single chamber shall have the right to return at his discretion a Bill passed by the legislature for reconsideration and may suggest amendments. If the Bill this passed again by the legislature with or without amendments, he shall assent to it."

The motion was adopted.

Part II--The Provincial Judiciary

Mr. President: We shall go to Part II-The Provincial Judiciary.

The Honourable Sardar Vallabhbhai J. Patel: Sir, I move:

"1. The provisions of the Government of India Act, 1935, relating to the High Court should be adopted mutatis mutandis; but judges should be appointed by the President of the Federation in consultation with the Chief Justice of the Supreme Court, the Governor of the Province and the Chief Justice of the High Court of the Province (except when the Chief Justice of the High Court himself is to be appointed).

2.The judges of the High Court shall receive such emoluments and allowances as may be determined by Act of the Provincial Legislature and until then such as are prescribed in Schedule........

3.The emoluments and allowances of the judges shall not be diminished during their term of office."

This clause proposes to incorporate the provisions of the 1935 Act regarding High Courts, but regarding the appointment of the Judges it provides that the appointment shall be made by the President of the Federal Legislature in consultation with the Chief Justice of the Supreme Court and the, Governor of the Province. With so man checks and counter checks these appointments place the High Court Judges beyond any influence of the parties or any other influences and beyond any suspicion or doubt of such a nature. There is thus enough guarantee provided for the independence of the Judiciary. The other two clauses are purely consequential relating to pay and allowances for which I hope there are no amendments. I therefore move the proposition for the acceptance of the House.

(Dr. Subbarayan, Mr. Mallayya, Mr. Ramalingam, Chettiar and Seth Govind Das did not move their amendments.)

Mr. President: Then there is no amendment to this clause. Does any one wish to say anything about this clause?

Sir Alladi Krishnaswami Ayyar: (Madras: General): Mine is also an amendment.

Mr. President: You may move it at this stage.

Sir Alladi Krishnaswami Ayyar: With your leave I propose to move the following amendment to Clause 1 in II.

At the end of Clause 1 in Part II, add the following:

"Provided that--

(a) all the High Courts in the Union of India shall have the right to issue prerogative writs or any substituted remedies therefore throughout the area subject to there appellate jurisdiction;

(b) the restriction as to jurisdiction in revenue matters referred to in section 226 of the Government of India Act, 1935, shall no longer apply to the High Courts; and

(c) in addition to the powers enumerated in section 224 of the Government of India Act, 1935 the High Courts shall have powers of superintendence over subordinate courts as under section 107 of the Government of India Act, 1915."

The object of these amendments is to remove certain patent and glaring defects in the jurisdiction of the High Court to get rid of anomalies and to provide an adequate and effective machinery for the enforcement of fundamental rights. Clause (a) of the amendment deals with prerogative writs or any substituted remedies therefore. The reference to substituted remedies is to enable a simple remedy by application for writs in accordance with the procedure obtaining in England under recent enactment's. Under the law as it stands the High Courts of Calcutta, Bombay and Madras have the right to issue prerogative writs within the limits of their ordinary original jurisdiction. The remedy by application was substituted for the Writ of Mandamus by the Specific Relief Act, but the remedy is confined to the presidency towns. There is no conceivable reason why a citizen outside the limits of the presidency town should be left to the dilatory remedy of an ordinary suit while a remedy by application to the High Court is available to a resident of the presidency town. In regard to the prerogative writ of *habeas corpus*, the Criminal Procedure Coda has enabled application of substituted remedy for *habeas corpus* being available throughout the appellate jurisdiction of the High Court. The Privy Council has recently held that the remedy by way of Certiorari enabling the High Court to remedy proceedings of judicial and quasi-judicial bodies acting in excess of jurisdiction is available within the presidency town. Clause (a) when passed will enable all the High Courts in the Union of Indian to exercise the jurisdiction in regard to these matters throughout the area subject to their appellate jurisdiction. The Clause also will provide an effective-remedy for the fundamental rights guaranteed under the constitution. Clause (b) is intended to remedy an anomaly in the jurisdiction of the High Court. The anomaly goes back to the days of Warren Hastings. Under the law as it stands there is no bar even to a district munsiff entertaining a suit which involved a right to revenue, but the High Courts are debarred from entertaining such suits. The other day the Federal Court while upholding the right of a litigant in every respect ruled that the suit field in the High Court was liable to be dismissed on the technical ground based on section 226 of the Government of India Act. The need for removing this bar on the jurisdiction of the High Court is universally felt by the profession and has been emphasisted in several statements of the High Courts in India. The last clause is intended to remedy a defect introduced by the Act of 1935 under which the High Courts were deprived of the powers of superintendence in certain respects- over the subordinate courts. This amendment I venture to state, has the universal support of the profession and I commend it your acceptance.

Shrimati G. Durgahai (Madras: General): Mr. President, Sir, I wish to make it clear at the very outset that I stand here to support Clause 1 in Part II relating to the Provincial Judiciary. Sir, I wish to confine myself to that portion of the clause which lays down the procedure for the appointment of judges to the Provincial Courts. The clause runs on the following lines:

> ". ....the judges should be appointed by the President of the Federation in consultation with the Chief justice of the Supreme Court, the Governor of the Province and the Chief Justice of the High Court of the Province (except when the Chief Justice of the High Court himself is to be appointed)."

Sir, we see thus by the manner provided in this clause we introduce some kind of intervention on the part of an external authority in matters relating to the provinces and the Provincial Governments. I think this kind of intervention and this kind of procedure laid down providing for the necessity for an external authority is bound to provoke in the minds of some people at least the fear that this is a sort of encroachment over the jurisdiction of the Provincial Government as opposed to the principles of provincial autonomy. But, Sir I confess myself was holding this view for some time, whether it would not be desirable to leave this matter to the discretion of the Provincial Governments, namely the Governor acting on the advice of his Ministers. But on a careful consideration of the matter I find that the manner as suggested by the authors of this clause has greater advantages over the other. Hereafter in the new set-up conditions are bound to be different and the High Courts have got to take upon themselves greeter and heavier tasks and onerous responsibilities. They are the repositories of the Constitution; they have got to interpret the constitution. They are the guardians of the fundamental rights in the Constitution Every common man must look to these courts for fair treatment and justice. They have got to see that their rights are safeguarded and they are in safe custody. Therefore if we have got to achieve this I we have got to see to the successful working of these High Courts and this depends mostly upon the quality of the judiciary and the manner in which it is composed. The independence of the judiciary is a thing which has to be decided and this independence to a large extent depends on the way in which these judges are to be appointed. They should not be made to feel that they owe their appointment either to this person or that person or to this party or to that party. They have to feel that they are independent. It is only in that case that get efficiency of administration of justice. It is with a view to secure this kind of independence that some sort of check is necessary and the authors of the clause have provided for this check by bringing in some external authority to have something to do with the appointments relating to the Provincial courts. We may fell why the Chief Justice of the Supreme Court also is brought into this picture but in the interests of the purity of administration of justice the Supreme Court has a great part to play hereafter. It is the highest of the High Courts of India and it will have a general advisory jurisdiction and a general appellate jurisdiction which is similar to that now exercised by the Privy Council relating to Indian units. Therefore, it is to review the work of all High Courts and also exercise the powers of general superintendence, direction and control in all matters relating to the provincial judiciary Several matters of the High Courts have got to one before this

Court by way of revision, reference and appeal. Therefore, the Chief justice of the Supreme Court has got a great deal to do with these High Courts and not only that, the Supreme Court in itself has got to be composed from among the judges of the High Courts as we see. Therefore considering all these matters I feel that it is highly necessary that the Chief Justice of the Supreme Court is consulted by the President of the Federation in making these appointments to the provincial courts. Of course, this need-not really leave a fear in our minds that the freedom of the provinces is curtailed to a large extent but this sort of check will be used only on ram occasions and generally the recommendations made by the Governor on the advice of his Ministers and in consultation with the Chief Justice of the High Courts will be accepted so long as they are right and also their choice is bound to be good generally, except in very rare instances when the intervention of the Federal Authority is to be brought.

There is another point to be taken into consideration, namely this, that we need not feel that we are doing something very unusual. These is no one uniform principle in all federal constitutions of the world that this power of appointment to the judges of the High Courts of the units should always rest with only the Provincial Governments. It is not necessary. We have got an instance provided to us in the Canadian constitution where the power of appointment rests with the Governor General who will make the appointment. Therefore we can accept this principle without any fear or favour and adopt it in our system.

With these few observation, Sir, I support this clause and I commend it for the acceptance of the House.

B. Pocker Sahib Bahadur: Mr. President, Sir, I have great pleasure in supporting the amendment moved by Sir Alladi Krishnaswami Ayyar. Every one of those clauses is absolutely necessary having regard to the difficulties which people have been experiencing as a result of the Government of India Act of 1935 and also the recent ruling of the Privy Council regarding *certiorari*. Until the recent ruling, we were having this remedy by way of unit of *certiorari* as regards the mofussil also, but as a result of the Privy Council ruling, we are restricted as regards that remedy only to Presidency towns. It is absolutely necessary that such a remedy must be available to the people of the mofussil also,

As regards the power of superintendence to be vested in the High Courts we were having the remedy before the passing of the Government of India Act of 1935, but all such remedies were excluded by the new provisions of the 1935 Act, all the litigant public have been feeling very much about the absense of the right of superintendence in the High Courts as regards proceedings in the mofussil courts. The result is that people are now restricted to remedy under Section 15 of the C.P.C. which is inadequate and does not cover all cases in which remedy is necessary. Therefore, Sir, it is necessary that these matters should be made very clear, particularly for the reason that hereafter we may not be able to rely on English practice and on precedents in England.

I do not know, how far I am right; but I presume for the time being that English precedents and practice may not be available to us as authority here after. In view of these circumstances, it is absolutely necessary that these clauses should find a place in the measure that we are passing.

I have only to make another observation in connection with this clause. I have given notice of an amendment in which I suggested that instead of the Chief Justice of the High Court of the Province concerned, it must be the High Court itself that should be consulted. Instead of the consultation being confined to the Chief Justice, the consultation must be with the High Court. My amendment being an amendment to another amendment given notice of by Dr. Subbarayan as Dr. Subbarayan has not moved that amendment, my amendment fails. However, I would like to make this remark for the Drafting Committee that it is very desirable that the consultation should not be restricted to the Chief Justice of the High Court, but should be with the High Court as such, so that the matter may be considered by all the Judges of the High Court at the Judges Meeting, and the result might be communicated to the authorities concerned.

With these observations, I support the amendment proposed by Sir Alladi Krishnaswami Ayyar.

The Honourable Mr. Jaipal Singh (Bihar: General): Mr. President, I support Part II, Clauses 1 to 3. At the same time, I would like to have some information from the Honourable Mover as to whether any discussion has taken place and when we shall know anything about any result of the agitation that has been carried on in this country by all parties in regard to the separation of the judiciary from the executive, whether we are going to get this matter considered in the report Pandit Jawaharlal Nehru will submit on behalf of the Union powers Committee. I only want to ask this question and I hope the Honourable Mover will give us some information on this point.

Rai Bahadur Syamanandan Sahaya (Bihar: General): Sir, I wanted to draw the attention of the Mover and the House to Clause 3 of Part II in which it is laid down that the "emoluments and allowances of the Judges shall not be diminished during their term of office". I was thinking, Sir, that the term "diminished" would not meet the requirements and that this should be replaced by the word, "varied". I am sorry I have not tabled an amendment, because there were other amendments which I thought would be moved. In any case, the matter is of importance and I therefore wanted to draw the attention of the Mover to this. Perhaps it may be rectified at the stage of drafting. The reasons and the principle which I suppose guided the members of the Provincial Constitution Committee to lay down that the emoluments will not be diminished during their term of office will be precisely the same as in the case of increasing their salary also. You would not naturally want the judiciary to be constantly looking up either for increasing their salary, or be under the apprehension that there will be a decrease in their salary. In these circumstances, I think it will be desirable that the word "diminished" should be changed by the word " varied" with the approval of the mover.

I have not formally moved an amendment. But I think the matter is of sufficient importance to be brought to the notice of the House.

Shri M. Ananthasayanam Ayyangar: I find, Sir, with all respect, that this amendment may bring in complications for this reason. I agree with Sir Alladi Krishnaswami Ayyar that the powers of the High Court have to be enlarged. There are a number of restrictions placed under the Government of India Act now on the powers of the High Court regarding revenue jurisdiction. This is No. 1 in his amendment by which he wants to, correct this Act. In his amendment he wants to say that the High Court shall exercise jurisdiction over all revenue matters also without any of the restrictions or limitations contained in the Government of India Act. One of them is under section 226 which runs as follows:

> "Until otherwise provided by Act of the Appropriate legislature no High Court shall have any original jurisdiction in any matter concerning the revenue or concerning any act ordered or done in the collect on thereof according to the usage and

practice of the country......"

Does he want by the Constitution Act to confer original jurisdiction in revenue matters also or in the matter of collection? These have been exempted. If such a power should be given here and incorporated in the Constitution Act itself, any change that may be necessitated by experience will have to be made by way of an amendment to the Constitution Act. There is absolutely no objection to the legislature of the High Court removing the restrictions.

So far the jurisdiction of the High Court in the matter of writs is concerned, they are subject now to any Order in Council that may have been passed by the Government, under section 223, Orders in Council by His Majesty the Kink or otherwise. Some of the writs may be obsolete, some of them may be necessary or may be found obsolete later on. Should we go into the details? In case there is need to modify this, there will have to be two-thirds majority in both the Houses and all the processes and procedure for modifying the constitution will have to be gone-through as in other substantial matters. We can easily say the provincial legislature shall be entitled to enlarge the jurisdiction of the High Court or place a restriction upon that. I do not feel that any of these matters need to be incorporated in a Constitution Act like this.

Again Clause (c) says that in addition to the powers enumerated in section 224 of the Government of India Act, 1935, the High Courts shall have powers of superintendence over subordinate courts as under section 107 of the Government of India Act. I do not deny that the High Court's powers may be enlarged in the manner suggested by Sir Alladi in his amendment. But the local legislature is competent to give not only those powers, but additional powers also not contemplated in section 107 of the Government of India Act. Why should we restrict to this or that? Evidently, Sir Alladi finds that the draft constitution placed before the House which we are discussing, seeks to embody all the provisions that exist in the present Government of India Act. I agree that we ought not to bodily incorporate those provisions whether they are good or bad. The framers of the constitution will go into the details and empower the local legislature to pass laws and regulations without intervention of His Majesty in Council, to enlarge the jurisdiction of the High Court in necessary matters, empower it to issue writs wherever necessary. These are details which will have to be referred to a Committee how and in what manner jurisdiction has to be enlarged. For this, the legislature, as we propose to have it, is entitled to go into these things. Certainly, my friend Sir Alladi would say that it is not a matter which could be disposed of at a sitting by all people; that it must be referred to a Committee of experts, so that they may look into every one of these clauses before incorporating them finally into the Bill. We have not that opportunity. He merely says the High Court's powers ought to be enlarged in a particular manner which may be good or, bad. We admit it is good. Sometime later on, it may be found bad or oppressive or hard. There may be a necessity for decentralisation.

The powers of superintendence by the High Courts may be unnecessary, and uncalled for in certain matters. Therefore if we irrevocably confer all these powers on the Provincial High Courts, it will be very difficult. Why should we introduce those details? I should therefore say that my friend only wanted to bring to notice, by placing this amendment, the need for enlarging the powers of the High Courts in this direction. No doubt he has chosen the wrong method. The right method will be to place it before the Legislature and see to it that the Provincial Legislature has all the powers to enlarge the powers of the High Court in the matter of superintendence regarding revenue matters. I therefore request him not to press his amendment because it will lead to unnecessary complications.

Mr. K. M. Munshi (Bombay: General): Mr. President, Sir, the remarks of my friend Mr. Ananthasayanam are based on the present Government of India Act. But the reason why Sir Alladi's amendment is necessary has been placed before the House fully. The position with regard to Prerogative Writs is a technical matter and naturally therefore there might be a certain amount of difficulty for ordinary men to understand it but we must realise the important fact in this country, *viz.*, that only the High Courts of Calcutta, Bombay and Madras which have inherited the jurisdiction of the King's Bench Division have the power to issue Prerogative Writs within the original jurisdiction of those cities. Other High Courts have not that power nor does the power of these three High Courts extend beyond the original jurisdiction of the three towns concerned. The intention of this Clause is to see that every High Court in India should have the same power of issuing Prerogative Writs as the King's Bench Division has in England. This is not covered by the Government of India Act nor converted by anything else. What this amendment seeks is that the High Courts in India in the Provinces should have the powers possessed by the King's Bench Division. Those Prerogative Writs were ancient and known to the English Common Law but many of them have now been brought into use in Calcutta, Madras and Bombay and as lawyer members of the House would realize during the difficult days of 1942 to 1945 when the Defence of India Act was in operation, these writs did a great deal of service in vindicating them.

Further we have to consider this fact also that this Constitution of India, of Free India, will be a kind of Charter. It will also contain Fundamental Rights and also recognize the Rights of Citizens in certain Fundamental Rights and certain obligations on the part of Government. Now all those must be enforced by some kind of remedy in the nature of the remedies which are now secured by a Britisher from the King's Bench Division. In the Constitution of the Union where the Supreme Court is constituted the Supreme Court has been invested with the power to issue these Prerogative Writs. With regard to the Constitutional rights and various other rights, if the power is only invested in the Supreme Court and not in any other High Court, it will follow that every citizen in order to vindicate his rights would have to come to Delhi. The intention of the amendment moved by Sir Alladi is that all the High Courts must have similar powers to issue Writs within their jurisdiction. This is the only meaning of this clause. It is necessary to have it in the Constitution because otherwise a Legislature may take away or attempt to take away certain powers of the High Court. Any analogy of the Government of India Act would not apply. This being the object, it is necessary that this amendment should be there.

I know that the word 'Prerogative Writs' is a very vague word. That is this reason why Sir Alladi's amendment uses the words-- "any substituted remedies therefore". The idea is that either in a form defined by the Constitution or by any law made under the authority of the Constitution, those Writs will be preserved. There is no doubt about it.

The Prerogative Writs are largely the creature of common law in England but attempts are made in England to put them in the Statute book in a precise form. There is no reason why we should now allow the Common Law form to remain in its vagueness, in the present proposals. Some attempt will be made later to define those Writs in a proper legislation. The principle embodied in the amendment is that the High Courts in the Provinces must have the power to issue Prerogative Writs or some remedies of the kind. So, the objections raised by my friend Mr. Ananthasayanam are not valid.

As regards Clause (b), there is a restriction imposed by the Government of India Act as regards jurisdiction in revenue matters. This is only done as a matter of history. This amendment recognizes the principle that even revenue matters are subject to law. As regards Clause (c)--General superintendence, the High Courts will have superintendence over all Subordinate Courts and this clause does not require any elaboration.

The object is that this principle must be embodied in the Constitution. It is not intended that the Provincial Legislature should have the power to tinker with these powers of the High Court. The actual power and independence of the High Courts in these matters have to be maintained in order that the liberties and rights of citizens are not curtailed by a majority in the Legislature. In defence of civil liberties and in the interests of democracy these powers are essential.

Mr. Tajamul Husain: Clause 3 of Part II lays down that the Pay of the Provincial High Court Judges cannot be decreased during their term of Office, but it does not say anywhere that it cannot be increased. Sir, we must maintain the dignity and impartiality of the High Courts at all costs, If we do not mention in our Act that their pay shall not be increased and decreased, it will be giving them a chance because after all they are human beings--they will be looking upto the Legislature for favours of increment of their pay. This is a very important matter. I have not given notice of any amendment. The reason was that some honourable members had sent amendments. Therefore, Sir, my friend Rai Bahadur Shyamnandan Shahai has suggested the change, which I hope the Honourable Mover will accept. At present the provision reads:

> "The emolument and allowances of the Judges shall not be diminished during their term of office."

I suggest substituting the word "varied" for the word "diminished"; with this change it will read:

> "The emoluments and allowances of the Judges shall not be varied during their term of office".

I submit this for the acceptance of the House.

Shri L. Krishnaswami Bharathi (Madras: General): Sir, I wish to say one thing in reference to Clause 1 of Part II. The first part of it reads:

> "The provisions of the Government of India Act, 1935, relating to the High Court should be adopted *mutatis mutandis*, ..."

I find Sections 219 to 231 of the Government of India Act relate to High Courts. With reference to one of the important provisions in that Act, I find the question of language comes in. Section 227 of that Act reads:

> "All proceedings in every High Court shall be in the English language".

I do not know if sufficient attention has been given to this aspect of the matter. I do not think, Sir, it is the intention of the Mover that the proceedings in the High Courts shall be in the English language. We are now talking of a national language or All-India language. My own personal view is that in every province, the provincial language shall be the language in which all the proceeding of the Province, including those of the High Court, shall be carried on. It may be that for some transitional period, we may have the English language, but I do not think we can allow English to be the language of our High Courts for all time to come. But the position is, if we accept the first part of this Claus as it stands with the words "*mutatis mutandis*" we may be committed to having the English language. I therefore, wish that some suitable provision may be made in this clause so as to avoid Section 227 of the Government of India Act with reference to the English Language.

Mr. President: As there is no one else who wishes to speak the Mover of the Resolution may reply to the debate, if he wishes to.

The Honourable Sardar Vallabhbhai J. Patel: Sir, I accept Sir Alladi's amendment.

With regard to one or two questions that have been put, I would like to say a few words. Regarding the question raised by Mr. Jaipal Singh as to what has been done about the separation of the judiciary from the executive, I can only say that this is not the place to; Introduce that subject. This clause we are now considering only refers to the formation of the High Court its constitution, the method of appointment of the judges, its powers and things like that. The real question which he has raised can be decided by the Legislature, it is a matter of policy to be decided by them; and I do not think there will be difficulty now in separating the judiciary from the executive.

The other point raised is about changing the word 'diminished' into varied', that the word 'diminished' should be substituted by the word 'varied'. I do not think this change is necessary for the existing provision says that the emoluments etc., should not be varied to the disadvantage of the judges, and that clears the position. So I do not propose to have any changes made in the wording.

As I said, I accept Sir Alladi's amendment, and I commend the proposition for the acceptance of the House.

Mr. President: I shall now put the motion to the House.

Shri L. Krishnaswami Bharathi: My point regarding the language in the High Court has not been answered to. It is an important point.

Mr. President: It is, of course, an important point; but I suppose the Drafting Committee will attend to it.

Shri L. Krishnaswami Bharathi: Sir *'mutatis mutandis'* means everything as it is, which means that you cannot vary the provision in the Government of India Act, at the time of drafting our provision. If we accept it as it is, the Drafting Committee will be committed to keeping English as the language of the High Court.

Dr. B. Pattabhi Sitaramayya (Madras: General): Sir, I think 'mutatis mutandis' means with the necessary changes.

Mr. President: Yes, that is my impression also. This will cover any changes that the Drafting Committee may suggest ultimately.

I shall put Sir Alladi's amendment to vote.

That the following proviso be added at the end of Clause 1:

"Provided that-

> (a) all the High Courts in the Union of India shall have the right to issue prerogative writs or any substituted remedies therefore throughout the area subject to their appellate Jurisdiction;
>
> (b) the restriction as to jurisdiction in revenue matters referred to in section 226 of the Government of India Act, 1935, shall no longer apply to the High Courts; and
>
> (c) in addition to the powers enumerated in section 224 of the Government of India Act, 1935, the High Courts shall have powers of superintendence over subordinate courts as under section 107 of the Government of India Act, 1915."

The motion was adopted.

Mr. President: Then I shall put the resolution to the vote of the House as amended, i.e., with the addition of the proviso which has been just accepted. I do not think I need read out the whole clause.

Part II, as amended was adopted.

Part III-Provincial Public Service Commission and Provincial Auditor-General

Mr. President: Now we pass on to Part III.

The Honourable Sardar Vallabhhhai J. Patel: Sir, this part refers to the Public Service Commissions and the Auditors-General.

> "Provisions regarding Public Service Commissions and Auditors-General should be inserted on the lines of the provisions of the Act of 1935. The appointment of the Chairman of members of each Provincial Public Service Commission and of the Auditor General should be vested in the Governor in his discretion."

It is proposed to give the power to the Governor. I move the proposition for the acceptance of the House.

Mr. President: There are amendments to this by Shri Khurshed Lal and Shri Gopinath Srivastava, Shri S. L. Saksena, Pandit and Mr. Santhanam.

(The amendments were not moved.)

Shri K. Santhanam: Sir, with reference to Part III, I have an amendment (No. 23 on Second Supplementary List, dated the 16th July 1947). Though I do not want to move the amendment at this stage, I want you, Sir, to give a ruling that this can be taken up when the Union Constitution is taken up for consideration, as it has been suggested that it can be taken up at that time. In only want to make sure that this will not be ruled out then. I want to know whether you will permit me to move the amendment at that time.

Mr. President: If you wish to move the amendment now you can do so I can give you no promise as to the future. I can permit you to withdraw your amendment now if you wish to, and the question will be considered at the right time, whether the amendment can be moved in connection with the other report.

Shri K. Santhanam: Sir, I do not wish to move my amendments.

Mr. President: The question is:

"That Part III be accepted."

The motion was adopted.

Part IV-Transitional Provisions

The Honourable Sardar Vallabhbhai J. Patel: Sir, I move:

"1. Any person holding office as Governor in any Province immediately before the commencement of this Constitution shall continue as such and shall be deemed to be the Governor of the Province under this Constitution until a successor duly elected under this Constitution assumes office.

2.There should be similar provisions mutatis mutandis in respect of the. Council of Ministers, the Legislative Assembly and the Legislative Council (in Provinces which decide to have an Upper House).

3.The Government of each Governor's Province shall be the successor of the Government of the corresponding Province immediately before the commencement of this Constitution in respect of all property, assets, rights and liabilities."

These are provisions for the transition period in order to avoid an interregnum. I do not think there can be any controversy over this acid I hope it will be accepted.

Shri T. A. Ramalingam Chettiar (Madras: General): I do not wish to move my amendment to Clause 1 (No. 119 on list, dated the 15th July 1947).

Shri K. Santhanam: I do not want to move my amendment to Clause 3 (No. 120 on List, dated the 15th July 1947).

Shri M. Ananthasayanam Ayyangar: I do not wish to move my amendment to Clause 1 (No. 24 on Second Supp. List dated the 16th July 1947).

(Pandit Govind Malaviya, Shri Rohini Kumar Chaudhury, Shri M. Ananthasayanam Ayyangar, Shri Mohanlal Saksena and Prof. N. G. Ranga did not move their amendments in the 3rd and 4th Supplementary Lists)

Mr. President: There are two amendments by Mr. Ananthasayanam Ayangar, which are independent propositions. I shall take them up later.

Mr. K. M. Munshi: I have only one remark to offer with regard to Clause 3 of this part which says:

"The Government of each Governor's Province shall be the successor of the Government of the corresponding Province immediately before the commencement of this Constitution in respect of all property, assets, rights and liabilities."

I feel, Sir that the words "successor of the Government" might create difficulties and at this stage it would serve no useful purpose to keep Clause 3. I therefore submit. that Clause 3 should be deleted. The words do "successor Government" might lead to other complications which need not be invited at this stage.

Mr. H. V. Kamath (C. P. & Berar: General): Mr. President Clause 1 of of this part is of course unexceptionable and I think there will be, no difficulty in the way of its acceptance by this House. But upon its acceptance certain consequences will, to my mind, flow from it and therefore I wish to draw your attention and the attention of this August Assembly to those consequential aspects of this clause, *viz.*, Clause 1 of Part IV. This clause says:

> "Any person holding office as Governor in any province immediately before the commencement of this Constitution shall continue as such and shall be deemed to be the Governor of the Province under this Constitution until a successor duly elected under this Constitution assumes office."

We are today passing from the darkness of servitude to the light of freedom. But there is bound to be an interregnum between our Dominionhood and that Republican Independence for which we are striving. This interregnum may be long or it may be short, and again there will be another time-lag between today and the commencement of this constitution. By 'Commencement' I believe the promulgation of this constitution is meant. I presume that the constitution will be promulgated perhaps by the end of this year but between now and that date of the promulgation of the constitution we are entering upon a new state and that is the state of Dominionhood. The Indian Union will be formally ushered in or inaugurated as a Dominion on the 15th of next month. Therefore, if according to this clause, in December when the constitution is likely to be promulgated, there are certain Governors in certain Provinces, they are likely to continue as such and they will be deemed to be the Governors under this constitution, I want to emphasise the word "shall be deemed to be the Governor of the Province under this constitution." I think it would be derogatory to the dignity of the constitution, if certain non-nationals are permitted to continue as Governors under this Constitution after the commencement of this Constitution and before elections under this constitution take place. As we all know, very shortly, in the middle of next month, it will be within cur power; within the competence of our own leaders to say who will be Governors and where. If, unfortunately some non-nationals -- Europeans or Britishers remain or are appointed as Governors in certain provinces, on August 15th, it will follow that in December when the Constitution will be inaugurated or will commence, they will be there and therefore they will continue as Governors under this Constitution till the elections take place and their successors assume office. Therefore Sir, I submit that this is a position which, as a Sovereign body today an aspiring to become shortly a Sovereign legislature of the Dominion, we cannot envisage or tolerate. We have struggled hard these many years and decades to see the end of foreign rule in India. A few months less than five years ago our cry, our revolutionary campaign of 'Quit India' was launched and it is a happy coincidence that in the very month of August we in India are attaining Dominionhood if not independence, quite a good degree of independence, and power will, I hope, come into our hands. Thus, Sir when it will be within our competence to have our own Governors, I for one want that our own nationals and citizens of the India Union should be the Governors when the new Constitution is inaugurated. I wish to draw your attention to these words in the Transitional Provisions I am quoting: "In any province immediately before the commencement of this Constitution". We should take care to sea that the Governors in all our Provinces immediately before the commencement of this Constitution are Indians, our own nationals and not non-nationals or foreigners. Have we undergone all these troubles and fought the rulers on so many occasions merely to see these martinets, these panjandrums and these minions of a foreign imperialism continuing their rule in our Provinces? I should like to see the end of it. I do not like to see the day when even after the commencement of this Constitution these very Europeans, whom we asked to quit five years ago, will be continuing as our rulers in certain provinces. I was hard put to it, some days ago to explain to a common man why Lord Mountbatten was recommended for the Governor-Generalship of the Dominion of India. We can quite understand and appreciate the high considerations of diplomacy, political strategy and tactics which influences the recommendation of Lord Mountbatten for the Governor-Generalship. But the common man fails to understand it all. It is true that we cannot always act on the views of the common man. But, at the same time, in a democracy the psychology of the common man has its place. Democracy is largely conditioned by the psychological reflexes of the common man. I would request the Hon'ble Mover and this Assembly to bear these considerations in mind and see that the Governor of any Province immediately before the commencement of this Constitution is not a non-national. It is our men, our citizens who should be there. It is only if we see to this that we can produce the necessary psychological reaction in the mind of the common man. We will fail to produce this essential psychological effect if on the dawn of freedom and independence he were unfortunately to see the same foreigner still stalking the land as ruler or Governor. Our 'Quit India Resolution' is fast bearing fruit. At such a time we should create in the mind of the common man the impression that all power has been taken over by us towards the consummation of the 'Quit India Resolution' which was inaugurated by us five years ago.

(nanyah pantha ayanaya vidyate)

When we are shortly going to witness the dawn of independence we must make a supreme effort to see that the common man is able to grasp the fact that we are out on masters and that there is no foreigner ruling over us. The sooner we do this the better it is for us and for our country. If we achieve this we will have gone a long way towards awakening the 'shakti' necessary for building up our Indian Union. I am sure I am voicing the feeling of a vast majority in this Assembly when I say that at the time of the inauguration of the Provincial Constitutions, no foreigner remains as Governor in any of the Provinces. It would be a mistake to allow a foreigner to continue as Governor of a province, after that date.

Sir, I will conclude with the words used on another historic occasion and request this August Assembly to tell the foreigner "We asked you to Quit India five years ago. We now again tell you with more power, more authority in our hands: For God's sake go. Leave India to its own fat,,. Leave India free to build up a strong Independent Sovereign Republic." "Jai Hind."

Sri M. Ananthasayanam Ayyangar: I should like to say a few words with regard to the Transitional Provisions. These ought to be absolutely transitional. That is my desire.

We must congratulate ourselves, Sir that we have spent five days over the elaborate provisions recorded in this Constitution submitted to the Assembly. I am sure we will be able to finish the details considered by the Expert Committee that will be appointed to go into the details of the formalities and bring out the Constitution at an early date. All that I am anxious about is that, when the British Government who originally fixed 30th June 1948 for ushering in a new Constitution have advanced the date, we should not be found unready. We should have our Constitution ready and there should be no delay on our part. I do want that 26th January 1948, the day which we have been celebrating as Day of Independence for India should surely be the day when we celebrate the Independence of India. Let it not be said that we have unnecessarily dragged the proceedings here. We will not be charged with that. We have spent only five days on this important matter. We have not left the details to take care of themselves. I hope all concerned will be able to push through the necessary work so that on the 26th day of January we will really have an Independent India and work under an Independent Constitution. As regards the present Governors continuing till then, I am sure that they will not continue for any longer time than is necessary. When the new constitution comes into being, I expect that only nationals will be appointed as Governors.

Thirdly, after the new constitution is framed, it will take some time before elections lake place; before delimitation of constituencies takes place. All these will take some time. I do not want to have any definite date fixed within which elections should take place under the new constitution. At the same time I would like to urge that after the new constitution has been framed, care should be taken to see that within six months and not later than that, the new constitution must be in full swing. Even before the constitution is drafted, since we are providing for adult franchise; we should ask the existing Governments to prepare the electoral roles regarding adults in every village and town. Thereafter, tine delimitation of constituencies will have to take place. No effort should be lost and all efforts must be made to see that the new constitution comes into being as early as possible. With these words, I support these transitional provision clauses.

Mr. President: Does anyone else wish to speak about this?

Shri Biswanath Das (Orissa : General): Mr. President, Sir, I heartily, congratulate the Honourable Sardar Patel for having piloted the report within the shortest possible time, Sir, while congratulating him, I must also confess that the constitution that has been drafted for the provinces gives them less powers than what the provinces were enjoying under the Act of 1935.

We expect to have under the new dispensation a government of the people for the people and by the people. Now, all these three slogans will be meaningless if we do not have the leaders of the people of the provinces as governors of the provinces. Sir, the interim period that lies between the present and the date of the election should not be marred by having men of the permanent services as Governors of provinces. Sir, I support the decision taken in nominating Lord Mountbatten as the Governor-General. There may be important reasons and justifications for the same. The country will be fully with our leaders in that. Sir, that cannot however be translated into the provinces. I am not here to make any distinction between nationals and non-nationals. Sir, I cannot agree to see that people, who have been public servants, continue as governors of provinces. Most of the I.C.S. people do not have the Indian outlook and cannot in any sense be termed as servants of the people. That being the case, I would submit that it would be very hard on the country to tolerate a system of administration in which the same I.C.S. regime is being perpetuated in the provinces. I believe our leaders will not commit this blunder.

Sir with these submissions, I fully support the resolution and congratulate the Committee on having presented a report which was acceptable to the House so as to be passed within the shortest possible time.

The Honourable Sardar Vallabhbhai J. Patel: Sir, I suggest a verbal alteration in Clause 1, third line instead of the words "shall continue." I want to insert the words "may be continued". "Any person holding office as Governor in any Province immediately before the commencement of this Constitution *may be continued*". In the fourth line I suggest the insertion of the word "when so continued" after the word "and". These are purely verbal alterations.

I will now remind the House that perhaps some of the friends who gave valedictory orations have forgotten that there is still one clause, Clause 15, to be moved. It is a controversial clause and it will take some time.

She C. Subrahmaniyam (Madras: General): May be continued by whom? Who is the authority to continue him as Governor under the new Constitution?

The Honourable Sardar Vallabhbhai J. Patel: No doubt by the Government of India, who is the authority to appoint him. There is no difficulty about that.

Mr. H. V. Kamath: "May continue" or "may be continued". Why not may continue"?

The Honourable Sardar Vallabhbhai J. Patel: Put in "may continue" if you like.

Dr. P. S. Deshmukh (C. P. & Berar: General): "May be continued" is better. "May continue" is likely to be interpreted as "should continue" and Mr. Kamath would be defeating just the object that he has in view. "May be continued" involves continuation only if so ordered by the Government.

Mr. President: I put this resolution to vote with this verbal change. In place of "shall continue" substitute the words "may be continued" and in the fourth line add the words 'when so continued' after the word 'and'.

The motion was adopted.

Mr. President: Mr. Munshi, you moved that Clause 3 be deleted. I am sorry I did put that to vote, but I take it that it is accepted.

The motion was adopted.

Mr. President: I shall now put the whole resolution as amended by the deletion of Clause 3 to vote, because there was some misunderstanding.

Part IV as amended, was adopted.

Mr. President: Mr. Ananthasayanam Ayyangar has given notice of an amendment.

(The amendment was not moved.)

CLAUSE 15

Mr. President: There was one clause which was passed over and that was Clause 15 and we may take up that now.

The Honourable Sardar Vallabhbhai J. Patel: I move:

"15. (1) In the exercise of his responsibilities, the Governor shall have the following special responsibility, namely the prevention of any grave menace to the peace and tranquility of the Province or any part thereof.

(2)In the discharge of his special responsibility, the Governor shall act in his discretion :

Provided that if at any time in the discharge of his special responsibility he considers it essential that provision should be made by legislation, but is unable to secure such legislation he shall make a report to the President of the Federation who may thereupon take such action as he considers appropriate under his emergency powers."

Honourable Members may kindly refer to my introductory speech in this connection. This question of discretionary powers of the Governor is a matter which requires very careful consideration. On the one hand it encroaches upon the powers of the Ministry. The Governor has not got the services under him and it he is to exercise his functions in his discretion, if he is given authority to take control of the services for the purpose of discretionary responsibility, then it is difficult to conceive how the ministry can function and it almost amounts top a sort of introduction of Section 93 under the provisions of his Act. Again on the other side there is a feeling that looking to the conditions prevailing in the country, some provision should be made for giving special responsibilities to meet with the difficult situation which has arisen in the country today. For this purpose this clause requires careful consideration and I hope all points of view will be made clear in this debate. I therefore move this proposition for the acceptance of the House.

The Honourable Pandit Hirday Nath Kunzru (U.P. General): Mr. President, I venture to suggest that it will be in the interest of us all if the discussion of this question is postponed till tomorrow. We have a new amendment before us of which notice has been given by Mr. Munshi and I think it is desirable that, we should have some time to think over it. There is no doubt that we have been thinking about this question for many days, but no suggestion was before us in the exact form which it has assumed in Mr. Munshi's amendment. I suggest, therefore, that we might take it up tomorrow. It is only half-past twelve now and the House will not lose more than half an hour if we adjourn the discussion till tomorrow. I hope that my suggestion will meet with the approval of the House, and of you, Mr. President.

Mr. President: I was going to suggest that instead of not utilising this half hour we might have the amendments moved and further discussion might take place tomorrow if that meets with the approval of the House. Thus the members will have an opportunity of considering the amendments also with the speeches of the Movers of those amendments if that meets with the wishes of the House.

The Honourable Pandit Hirday Math Kunzru: Are you suggesting that the amendment should be moved today and that the speeches might be reserved till tomorrow?

Mr. President: If any mover of any amendment wishes to have that right, I shall give him that right.

Dr. B R. Ambedkar: It should not be. concluded today.

Mr. President: The first amendment is by Messrs. Ajit Prasad Jain, Khurshed Lal and Gopinath Srivastava.

(The amendment was not moved.)

(Messrs. K. Santhanam, Kala Venkata Rao, M. Ananthasayanam. Ayyangar, Shibban Lal

Saksena, and Pandit Govind Ballabh Pant did not Move their amendments.)

Mr. B. M. Gupte (Bombay: General): I beg to move Sir, that the proviso to sub-clause (2) of Clause 15 be deleted and the following new sub-clauses be added:

"(3) If in the discharge of his special responsibility the Governor is satisfied that a situation has arisen in which immediate action has to be taken, he may. by a proclamation assume to himself all or any of the powers vested in or exercisable by any provincial body or authority except the High Court.

(4)The Proclamation shall be communicated forthwith to the President of the Union, who may thereupon take such action as he considers appropriate under his emergency powers.

(5)The Proclamation shall cease to operate at the expiration of 2 weeks, unless revoked before then by the Governor himself or by the President of the Union under his emergency powers, whichever is earlier."

Mr. President: Pandit Hirday Nath Kunzru.

The Honourable Pandit Hirday Nath Kunzru: Mr. President, the amendment of which I have given notice runs as follows.

"That for clause 15, the following be substituted:

'Whenever the Governor is satisfied that there is a grave menace to the peace, and tranquillity of the Province or any part thereof, he may, in his discretion report to the President of the Federation.

NOTE.--The President may take such action on the report under the emergency powers vested in him as he considers appropriate'."

Sir, I shall reserve my speech till. tomorrow because it will obviously be an advantage to consider the matter as a whole after all the amendments have been moved.

Mr. President: Mr. Munshi.

Mr. K. M. Munshi: Sir, this amendment is only an elaboration of Mr. Gupte's amendment. I think I should also reserve whatever I have to say on the amendment for tomorrow.

Mr. M. S. Aney: On a point of order, Sir, Mr. Munshi's amendment is an amendment to an amendment given notice of by Pandit Govind Ballabh Pant but inasmuch as Pandit Pant did not think it worth while to move his amendment at all there is no question of Mr. Munshi moving an amendment to that.

Mr. President: May I point out that an amendment in the same words as Pandit Gobind Ballabh Pant's has been moved by Pandit Kunzru?

Mr. M. S. Aney: Then it will require a change in the wording which should be "moved by Pandit Hirday Nath Kunzru."

Mr. K. M. Munshi: Mr. Aney seems not to have read the paper correctly. I have moved two amendments one to Pantji's, and another to Mr. Gupte's amendment. Since the former amendment was not moved, and Mr. Gupte has moved his amendment, I am perfectly in order in spite of Mr. Aney's protest. The amendment is:

"That for Clause 15 the following be substituted:

> '(1) Where the Governor of a Province is satisfied in his discretion that a grave situation has arisen which threatens the peace and tranquility of the Province and that it is not possible to carry on the Government of the Province with the advice of his Ministers in accordance with the provisions of section 9 he may by Proclamation, assume to himself all or any of the functions, of Government and all or any of the powers vested in or exercisable by any Provincial body or authority; and any such Proclamation may contain. such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation including provisions for suspending in whole or in part of the operation of any provisions of this Act relating to any Provincial body or authority:

Provided that nothing in this sub-section shall authorise the Governor to assume to himself any of the powers vested in or exercisable by a High Court or to suspend, either in whole or in part, the operation of any provision of the Act relating to High Courts.

> (2)The Proclamation shall be forthwith communicated by the Governor to the President of the Union, who may thereupon take such action as he considers appropriate under his emergency powers.

> (3)The Proclamation shall cease to operate at the expiration of two weeks, unless revoked earlier by the Governor himself or by the President of the Union."

Mr. H. V. Kamath: With due deference to the legal and constitutional ability of Mr. Kunzru, I would like to submit that the phrase "satisfied in his discretion" is not quite happy. One may say or do something in one's discretion, but "to be satisfied in one's discretion" is not usual.

Mr. President: We shall adjourn the discussion of this till tomorrow.

Honourable Pandit Hirday Nath Kunzru: I shall deal with Mr. Kamath's point tomorrow.

Mr. President : We might now take up the other item on the agenda, namely the report of the Committee dealing with the Union Constitution. Pandit Nehru will move the motion which stands in his name.

Mr. H. V. Kamath: Mr. President, last night we received notice of a motion to be moved by Dr. Nehru tomorrow regarding our National Flag, I would request you to let us know up to what hour we could send in amendments to this motion.

Mr. President: Since you received the notice last night, you could have sent in your amendment by now, but if you have not sent it, you may send it up to 5 O'clock today.

Maulana Hasrat Mohani (U.P. : Muslim): I do not find any mention of the amendment moved by me about this Union Report. There is an amendment by Dr. Deshmukh. I submitted mine at the time.

Mr. President. The amendments have been circulated as Honourable members know. We would have received that amendment late in the afternoon of Saturday. But all amendments have not been placed on the table.

Maulana Hasrat Mohani: I gave my amendment to Mr. Lengar two days before Dr.

Deshmukh's amendment. It must find a place in the agenda and it must be before all Honourable members.

Mr. President: We shall consider it when we come to that.

REPORT ON THE PRINCIPLES OF THE UNION CONSTITUTION

The Honourable Pandit Jawaharlal Nehru (U. P.: General): Mr. President, Sir. I beg to move :

"That the Constituent Assembly do proceed to take into consideration the *Report on the principles of the Union Constitution submitted by the Committee appointed in pursuance of the Resolution of the Assembly of the 30th April, 1947.

This Report has been circulated and, after the full Report was circulated a #supplementary Report or rather an addendum to the previous report has also been circulated. In this Supplementary Report certain changes have been made in the previous Report. So I am putting before the House the report as amended by the Supplementary Report. I ventured to circulate a note on this report to the members of this House two days ago in which I pointed out that so, far as the Preamble and part of Clause 1 were concerned, they were covered more or less by the Objective Resolution of this House. That Resolution holds. It may have to be varied in regard to smaller matters because of Political developments since it was Passed.

A Sub-Committee has been asked to go into the question of drafting. We are not changing the Objectives Resolution at all. What I mean is, adapting it to the Preamble. The Objectives Resolution is history and we stand by all the principle laid down in it. In adapting it to the Preamble, certain obvious changes have to he made. At the present moment, as the House is aware, we are not going into the drafting of the Constitution, but are establishing the principles on which this should be drafted. Therefore, that draft of the Preamble is not necessary. We have settled the principles. So I suggested in my note that we may not consider this matter.

Part II dealing with Citizenship has not been finally decided yet by the Sub-Committee and Part III dealing with Fundamental Rights has already been considered by this House and passed. I would therefore suggest that we might begin consideration of this Report from Part IV. Chapter I, The Federal Executive. There are one or two minor matters which you may have to consider in Parts I and II. It is not necessary to take these one or two simple matters. It is better to begin with Part IV and consider the rest at a later period.

May I point out that I just mentioned that Fundamental Rights have been considered by this House and passed. All that we have passed will of course come up before the House once again for final consideration. There are many new members and it has been pointed out to me by some of them that they were not present here when these Fundamental Rights were considered and passed. Well, it is perfectly true. It is a little difficult for us to go back repeatedly and start afresh That I do not think will be proper. But, as a matter of fact, all these things will finally come up before the House and it will be open to any of the members to paint out anything or to amend any part of it at that time. So, I suggest, Sir, that we may proceed now with Part IV, Chapter I, If you have got, he printed pamphlet, it is on page 5. It begins with Federal Executive.

The Report is a fairly long one. At the end of the Report, you will find and Appendix dealing with the judiciary. This is the Report of the *ad hoc* Committee on the Supreme Court. That is Only for your information because these conclusions have been more or less incorporated in the Report.

Obviously, when we consider the constitution, the fundamental law of the nation as it is going to be, it is an intricate and important matter and we cannot just rush through it without giving it sufficient time and consideration. I may inform the House that so far as the Union Constitution Committee was concerned, it gave it their very earnest Consideration, not once, but several times. We met the Provincial Constitution Committee also on several occasions and this is the result of our joint consultation, but mostly of the Union Constitution Committee's work itself.

I have just been given the list of amendments. This paper contains 228 amendments. I am told, in all we have reached the figure 1,000, I have not seen them as yet, none of them. It is rather difficult for me to deal with them now. I should like to abide by the wishes of the House in the matter.

If I may suggest one thing at present, it is this: that we start with Part IV--Federal Executive. The very first thing that comes up is how the Head of the Federation should be elected. I understand that there are several view points on that. Possibly that particular item may be taken up. It is a simple item. The views may be this way or that: but this is a simple issue and we may consider it now, not only because it is the first item, but because it can easily be taken up without a knowledge of the ,other large number of amendments. I beg to move this.

May I, Sir, now go on with item I of Part IV?

Mr. President: I will first put the resolution that the Report be taken into consideration.

Maulana Hasrat Mohani: I have stated that before you take into consideration the Report. I want to make certain points clear. In this paper, which he claims to be a supplementary report, Pandit Nehru has made certain suggestions. After all, these are only his Suggestions. Is it necessary for myself or for anybody else to accept his suggestion? I for one do not accept these suggestions.

Besides, I have got very strong reasons for that. Pandit Nehru the other day said that we have already passed the Objectives Resolution and we have to keep that resolution before us in drafting everything now or afterwards.

Mr. President: Maulana Saheb, the simple proposition that I am putting to this House at the present moment is that the Report of the Committee be taken into consideration. When that is accepted, we will go clause by clause.

Haji Abdul Sathar Haji Ishaq Sait (Madras:Muslim): Sir, members can express their views whether this report should be taken into consideration or not. We should have a right to speak on that motion. Maulana Saheb is speaking on that motion.

Mr. President: Is it your suggestion that the Report should not be taken into consideration?

Maulana. Hasrat Mohani: Yes. What I say is this, Pandit Nehru says that he has got the Objectives Resolution already passed by the House.

Maulana Hasrat Mohani: Yes. What I say is this. Pandit Nehru in that Objectives Resolution. It says simply that we will have a Republic. It does not say whether the Republic will be a Unitary Republic or a Federal Republic. Even if it is a Federal Republic, it does not make it clear whether that Federal Republic, will be of a centrifugal or centripetal character and unless and until we decide all these things, it is futile to determine the model of Provincial Constitutions. This is why I suggested in my speech the other day: you want to get one thing passed in your provincial constitution; when you have passed the provincial constitution and when I propose on the occasion of a proposed revised Union Constitution Report coming for consideration before the next meeting of the Constituent Assembly perhaps in October, an amendment to the effect that it must be a Union of Indian Socialist Republics, then you may say, "you are precluded from doing that as that will be something like a settled fact. We have passed the provincial constitution and now there is no scope, left for Hasrat Mohani to add anything or to say against that."

I am afraid, Sir, that it will be very easy for you to declare my amendments to the Union Constitution out of order as you did the other day in connection with an amendment proposed by my friend. Mr. Tajamul Husain. You will say "Well the provincial constitution has been accepted and passed, now, your amendments are out of order. You will say, that the report has been accepted and therefore my amendments are out of order. I will have raised no objection at this stage if this matter stands over. Then I will have every right to propose amendments on the occasion hen you go clause by clause. Or I will have full rights to say that I oppose the Objectives Resolution also. I have got two reasons. One I have made clear that it does not decide anything.

Mr. Shankar Dattatraya Deo (Bombay: General): We cannot follow a single word or any idea.

Mr. President: (To Maulana Hasrat Mohani) Come to this mike, please.

Mr. Jainarain Vyas (Jodhpur State): On a point of order, Sir. The Honourable Member has already started considering the Report. The question before the House is whether the Report be considered or not. That question must be considered first.

Maulana Hasrat Mohani: Before considering the Report he should make certain points clear. It puts me at a great disadvantage if I accept this Report.

Mr. President: As I understand it, the Maulana's point is that I should give him a promise at this stage that his amendment will not be ruled out of order. Obviously I cannot give any promise to any member before the matter actually comes up. But you may all have noticed that I am very liberal in the matter of allowing amendments to be moved even if they come out of time. Unless there is any technical ground, I do not see any reason why his amendment may be ruled out of order. More than this I cannot say anything at this stage. I have given some sort of promise that Maulana wanted. I take it that the House wishes that we should proceed with the consideration of this report.

Many Honourable Members: Yes, yes.

The motion to take the Report into consideration was adopted.

B. Pocker Sahib Bahadur: I wanted to say one word about the proposition you have put.

Mr. President: I put it to vote and it has been carried.

The Honourable Pandit Jawaharlal Nehru: Sir, I suggest that we should begin with Part IV, Chapter I.

"*Clause* 1 (1) The Head of the Federation shall be the President (Rashtrapati) to be elected as provided below.

(2) The election shall be by an electoral college consisting of-

(a) the members of both Houses of Parliament of the Federation, and

(b) the members of the Legislatures of all the Units or where a Legislature is bicameral the members of the Lower House thereof.

In order to secure uniformity in the scale of representation of the units the votes of the Unit Legislatures shall be weighted in proportion to the population of units concerned.

Explanation.--A Unit means a Province or Indian State which returns in its own individual right members to the Federal Parliament. In Indian States which are grouped together for the purpose of returning representatives to the Council of States a Unit means the group so formed and the Legislature of the Unit means the Legislatures of all the states in that group.

(3) The election of the President shall be by secret ballot and on the system of proportional representation by means of the single transferable vote.

(4) Subject to the above provisions, elections for the office of President shall be regulated by Act of the Federal Parliament."

Now Sir, one thing we have to decide at the very beginning is what should be the kind of governmental structure, whether it is one system where there is ministerial responsibility or whether it is the Presidential system as prevails in the United States of America; many members possibly at first sight might object to this indirect election and may prefer an election by adult suffrage. We have given anxious thought to this matter and we came to the very definite conclusion that it would not be desirable, first because we want to emphasize the ministerial character of the Government that power really resided in the Ministry and in the Legislature and not in the President as such. At the same time we did not want to make the President just a mere figure-head like the French President. We did not give him any real power but we have made his position one of great authority and dignity. You will notice from this draft Constitution that he is also to be Commander-in-Chief of the Defence Forces just as the American President is. Now, therefore, if we had an election by adult franchise and yet did not give him any real powers, it might become slightly anomalous and there might be just extraordinary expense of time and energy and money without any adequate result. Personally, I am entirely agreeable to the democratic procedure but there is such a thing as too much of a democratic procedure and I greatly fear that if we have a wide scale wasting of the time, we might have no time left for doing anything else except preparing for the elections and having elections. We have got enough elections for the Constitution. We shall have elections 'on adult franchise basis for the

Federal Legislature. Now if you add to that an enormous Presidential election in which every adult votes in the whole of India, that will be a tremendous affair. In fact even financially it will be difficult to carry out and otherwise also it will upset most activities for a great part of the year. The American Presidential election actually stops many activities for many many months. Now it Is not for we to criticise the American system or any other system. Each country evolves the system of its choice. I do think that while there are virtues in the American system, there are great defects in that system. I am not concerned with the United States of America. I am concerned with India at present, and I am quite convinced in my mind that if we try to adopt that here, we shall prevent the development of any ministerial form of Government and we shall waste tremendous amount of time arid energy. It Is said that the American Presidential election helps the forging of unity of the country by concentrating the mind of the entire country on the Presidential election and on the conduct of those elections. One man becomes the symbol of the country. Here also he will be a' symbol of the country; but I think that having that type of election for our President would be a bad thing for us.

Some people suggested, why have even this rather complicated system of election that we have suggested? Why not the Central Legislature by itself elect the preside itself elect the president? That will be much simpler, of course, but there is the danger that it will be putting the thing very much on the other side, of having it on too narrow a basis. The Central Legislature may, and probably will be dominated, say, by one party or group which will form the ministry. If that group elects the President, inevitably they will tend to choose a person of their own party. He will then be even more a dummy than otherwise. The President and the ministry will represent exactly the same thing. It is possible that even otherwise the President may represent the same group or party or ideas. But we have taken a middle course and asked all the members of all the legislatures all over India, in all the units to become voters. It is just likely, that they will be choosing a party, man. Always that is possible of course. Anyway, we may rule out electing the President by the Central Legislature as being on too narrow a basis.

To have it on adult franchise, you must have some kind of electoral college; It has been suggested that we may have some kind of electoral college which will include all manner of people--members of municipalities, district boards and so on. That, I think will be introducing confusion without doing good to anybody. It will mean a large number of petty elections for making up the electoral college. In the various legislatures you have already a ready-made electoral college--that is, the members, of the legislatures all over India. Probably they will number a few thousands. And presumably these members of the legislatures will he lit a better position to judge of the merits of the individual in question or the candidates than some other larger electoral college consisting of municipal members and others. So I submit to the House that the method that this Committee bus suggested is quite feasible and is the right method to choose a good man who will have authority and dignity in India and abroad.

You will notice that in choosing this method, we have taken care to prevent any weightage in voting, because legislatures, a hag been explained, I believe in a note, may not be, representative of the population of the numbers of the population. A province like the United Provinces or Madras may have a provincial legislature of 300 persons representing some 60 or 55 million people. I do not know how many. Another legislature may have 50 members representing some 50,000. It will be rather absurd to give the same weightage and the result will be that a number of very small units in the country will really dominate the scene. Therefore weightage has been disallowed and some formula will have to be worked out carefully to see that voting is according to the population of the units concerned. I beg to move.

Mr. President: We shall take up the amendments to this motion, and resume discussion on this, next day.

Before we depart I would like to make one announcement. We have now the Report of the Union Powers Committee which had been circulated. Members may send in their amendments till day after tomorrow 5 P.m. i.e., up to Wednesday, the 23rd at 5 P.m. *(Some Honourable Members:* "We have not received the Report"). I understand the Report was circulated long ago, in fact that it has been circulated twice. But if still any member has not received a copy, he may take it now."

Some Honourable Members: We are anxious to know the time-table for the next session. May we put off giving notice of amendments till Thursday evening?

Mr. President: Yes, notice of amendments to Union Powers Committee's Report may be given till 5 P.m. on Thursday, the 24th instant.

The House then adjourned till Ten of the Clock, on Tuesday, the 22nd July 1947.

CONFIDENTIAL

*APPENDIX 'A'

No. CA/ 63/Cons./47

CONSTITUENT ASSEMBLY OF INDIA

COUNCIL HOUSE,

New Delhi, the 4th July, 1947.

FROM

PANDIT JAWAHARLAL NEHRU,

CHAIRMAN,

UNION CONSTITUTION COMMITTEE

To

THE PRESIDENT.

CONSTITUENT ASSEMBLY OF INDIA.

Sir,

On behalf of the members of the Committee appointed by the Honourable the President in pursuance of the resolution of the Constituent Assembly of the 30th April, 1947, to report on the principles of the Union Constitution, I have the honour to submit the annexed Memorandum which embodies the recommendations of the Committee together with explanatory notes where necessary.

I have the honour to be,

Sir,

Your most obedient servant,

JAWAHARLAL NEHRU,

Chairman.

No. CA/63/Cons./47

CONSTITUENT ASSEMBLY OF INDIA

Memorandum on the Indian Constitution

Preamble.--We, the people of India, seeking to promote the common (Mod do hereby, through our chosen representatives, enact, adopt and give to Ourselves this Constitution.

PART I

FEDERAL TERRITORY AND JURISDICTION

1. Name and Territory of Federation.--The Federation hereby established shall be a sovereign independent Republic known as India.

Save as otherwise provided or under this Constitution or any treaty or agreement the territories included for the time being in Schedule I shall be subject to the jurisdiction of the Federation.

[NOTE.-The structure proposed to be established by this Constitution being federal in character, the term Federation has been used.]

"India" has been suggested for the name of the State as being the shortest and the most comprehensive.

The words 'save as otherwise provided by or under.... and treaty or agreement" are necessary, because there may be Indian States which, though unfederated and therefore not in the Schedule, may have ceded jurisdiction for certain special purposes by some treaty or agreement.

2.Admission of New Territory.--The Parliament of the Federation may from time to time by Act include new territories in Schedule I upon such terms as it thinks fit.

[*Cf*. Art. IV, Section 3(1), of the Constitution of the U.S.A., and Section 121 of the Australian Constitution. The power to admit new States is vested in the Congress in the U.S.A. and in the Commonwealth Parliament in Australia.

As a matter of nomenclature it may be explained that in this draft the Legislature of the Federation is referred to as "Parliament"; Unit Legislatures are referred to as "Legislatures". The Federal Parliament consists of the President and a National Assembly comprising two Houses.]

3.**Creation of new units and alteration of boundaries of units.--** The Parliament of the Federation may by Act, with the consent of the Legislature of every Province and the Legislature of every Indian State affected thereby,--

(a) create a new unit;

(b) increase the area of any unit;

(c) diminish the area of any unit;

(d) alter the boundaries of any unit;

and may with the like consent make such incidental and consequential provisions as it may deem necessary or proper.

[NOTE.-This corresponds to S. 290 of the Act of 1935, but is wider in that it provides for the possibility of Indian State territory being included in a province.]

APPENDIX A

SCHEDULE I

TERRITORIES SUBJECT TO THE JURISDICTION OF THE FEDERATION

I. *Governor's Provinces*--

Madras,

Bombay,

West Bengal,

The United Provinces,

Bihar,

East Punjab,

The Central Provinces and Berar,

Assam,

Orissa.

II. *Chief Commissioners' Provinces*--

Delhi,

AjmerMerwara,

Coorg,

The Andaman and Nicobar Islands,

Panth Piploda.

III. *Indian States*--

[Here enumerate the acceding or ratifying Indian States:--

(1)Single States.

(2)Groups of States.]

[The Governors' Provinces and the Chief Commissioner's Provinces specified in the Schedule will be automatically within, the jurisdiction of the Federation of India. As regards Indian States, some procedure will have to be prescribed for determining which of them are to be included in the Schedule initially. Under the Act of 1935, accession was to be evidenced by "Instruments of Accessor" executed by the Rulers. If it is considered undesirable to use this term or adopt this procedure, some kind of ratification may have to be prescribed.

If any of the Provinces specified in the Schedule should be partitioned before the Constitution comes into operation, the Schedule will have to be amended accordingly.]

*PART II

CITIZENSHIP

1.**Citizenship.**--At the date of commencement of this Constitution every person domiciled in the territories subject to the jurisdiction of the Federation-

(a) who has been ordinarily resident in those territories for not less than five years immediately preceding that date, or

(b) who, or whose parents, or either of whose parents, was or were born in India.

shall be citizen of the Federation:

Provided that any such person being a citizen of any other State may, in accordance with Federal law, elect not to accept the citizenship hereby conferred.

Explanation.--For the purposes of this clause--

"Domicile" has the same meaning as in the Indian Succession Act, 1925.

2. After the commencement of this Constitution-

(a) every person who is born in the territories subject to the jurisdiction of the Federation;

(b) every person who is naturalised in accordance with Federal law, and

(c) every person, either of whose parents was, at the time of such person's birth, a citizen of the Federation;

shall be a citizen of the Federation.

3.Further provisions governing the acquisition and termination of Federal citizenship may be made by Federal law.

Explanation--In this Constitution, unless the context otherwise requires "Federal law" includes any existing Indian law as law as in force within the territories subject to the jurisdiction of the Federation.

[NOTE.--The Provisions regarding citizenship will doubtless rouse keen controversy. The present draft is merely meant as a basis for discussion. Cf. Art. 3 of the Constitution of the Irish Free State 1922. which runs-

"Every person, without distinction of sex, domiciled in the area of the jurisdiction of the Irish Free State at the time of the coming into operation of this Constitution, who was born in Ireland or either of whose parents was born in Ireland, or who has been ordinarily resident in the area of the jurisdiction of the Irish Free State for riot less than seven years, is a citizen of the Irish Free State and shall, within the limits of the jurisdiction of the Irish Free State, enjoy the privileges and be subject to the obligations of such citizenship:

Provided that any such person being a citizen of another State may elect not to accept the citizenship hereby conferred; and the conditions governing the future acquisition and termination of citizenship in this Irish Free State shall be determined by law."

Clause I is on the lines of the above provision, except that a period of five years has been substituted for seven years in accordance with S. 3(1) (c) of the Indian Naturalisation Act, VII of 1926.

The clause has had to be drafted with due regard to the probability that the Federation will not initially exercise jurisdiction over the whole of India.

A person born in India and domiciled in Bombay, who happens to be resident in London at the commencement of the new Constitution, will be a citizen of the Federation under this clause; but not one domiciled in Sind or Baluchistan, if the Federation does not initially exercise jurisdiction there. It is, however, open to any person to acquire a new domicile by taking up his fixed habitation in another area before the Constitution comes into operation.

Under the Indian Succession Act, 1925, every person has a "domicile of origin which prevails until he acquires a new domicile. Briefly, his domicile of origin is in the country which at the time of his birth his father was domiciled, and he can acquire a new domicile by taking up his fixed habitation in another country. There is also a provision in the Act enabiling any person to acquire a domiciled, British India by making and depositing in some office in British India, appointed in this behalf by the Provincial Government, a declaration in writing of his desire to acquire such domicile provided that he has been resident in British India for one year preceding the date of the declaration. Generally speaking, a wife's domicile during her marriage follows the domicile of her husband. If any person who is at present domiciled, say, in Hyderabad, wishes to acquire a domicile, say, in Delhi before the coming into operation of this Constitution he can do so either by taking his fixed habitation in Delhi or by following the procedure prescribed in the above, provision of the Indian Succession Act, so that at the date of commencement of the Constitution he will become domiciled "in the territories subject to the jurisdiction of the Federation".

Clauses 2 and 3 follow the provisions suggested by the ad hoc Committee; Clause 2 is not necessary, if we are content to leave the matter to Federal law under Clause 3. In this connection, there is much to be said in favour of the view of the Calcutta Weekly Notes:

"It is not possible to define exhaustively the conditions of nationality, whether by birth or naturalisation, by the Constitution. If certain conditions are laid down by the Constitution, difficulties may arise regarding the interpretation of future legislation which may appear to be contrary to or to depart in any way from them. For example, the draft of the nationality clause placed before the Constituent Assembly lays down that any person born in the Union would be a citizen of the Union. But what about a woman citizen of the Union marrying an alien national or about an alien woman marrying a Union national? Would the Union Legislature have power to legislate in the first case that the woman would lose her Union nationality or in the second case that she would acquire Union nationality (such being the law of most of the countries)? These are intriguing questions, but all these things have to be pondered before a rigid clause is inserted in the Constitution itself. It would, in our opinion therefore, be better to specify who would be citizens of the Indian Union at the date when the Constitution comes into force as in the Constitution of the Irish Free State and leave the law regarding nationality to be provided for by legislation by the Indian Union in accordance with the accepted principles of Private International Law." (Calcutta Weekly Notes, Vol. LI No. 27, May 26, 1947).

The same journal in two subsequent issues (Vol. LI, Nos. 28 and 29, June 2, and June 9, 1947) has drawn attention to a host of other questions arising out of Clause 2 and on the whole it may be better altogether to omit that clause, leaving the matter at large to be regulated by Federal law under Clause 3).

---

*This part is subject to the decision of the ad hoc Committee on Citizenship Clause.

PART III

FUNDAMENTAL RIGHTS INCLUDING DIRECTIVE PRINCIPLES OF STATE POLICY

1.Fundamental Rights:--[Here enumerate the Fundamental rights and principle of State policy as passed the Constituent Assembly.]

PART IV

CHAPTER I

THE FEDERAL EXECUTIVE

1. Head of the Federation.--(1) The Head of the Federation shall be the President (Rashtrapati) to be elected as provided below.

(2) The election shall be by an electoral college consisting of--

(a) the members of both Houses of Parliament of the Federation, and

(b) the members of the Legislatures of all the Units or, where a Legislature is bicameral, the members of the Lower House thereof.

In order to secure uniformity in the scale of representation of the Units, the votes of the Unit Legislatures shall be weighted in proportion to the population of the Units concerned.

Explanation.--A Unit means a Province or Indian State which returns in it own individual right members to the Federal Parliament. In Indian States which are grouped together for the purpose of returning, representatives to the Council of States, a Unit means the group so formed and the legislature of the Unit means the Legislatures of all the States in that group.

(3) The election of the President shall be by secret ballot and on the system of proportional representation by means of the single transferable vote.

(4) Subject to the above provisions, elections for the office of President. shall be regulated by Act of Federal Parliament.

[NOTE.--The provision about weighting of the votes according to the population of the Units is necessary to prevent the swamping of the votes of a large Unit by those of a much smaller Unit which may happen to have a relatively large Legislature. The mode of weighting may be illustrated thus: In a Legislature where each legislator represents 1 lakh (100,000) of the population, his vote shall count as equivalent to 100, that is, 1 for each 1,000 of the population: and where the Legislature is such that the legislator represents, 10,000 of the population, his vote shall count as equivalent to 10 to the same scale.]

2.Term of office of President.--(1) The President shall hold office for

5 years:

Provided that-

(a) President may by resignation under his hand addressed to the Chairman of the Council of States and the Speaker of the House of the People resign his office;

(b) a President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in sub-clause (2).

(2) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of the Federal Parliament, but no proposal to prefer such charge shall be adopted by that House except upon a resolution of the House supported by not less than two-thirds of the total membership of the House.

(b) When a charge has been so preferred by either House of the Federal Parliament the other House shall investigate the charge or cause the charges to be investigated and the President shall have the right to appear and to be represented at such investigation.

(c) If as a result of the investigation a resolution is passed supported by not less than two-thirds of the total membership of the House by which the charge was investigated or cause to be investigated declaring that the charge preferred against the President has been sustained, the resolution shall have the effect of removing the President from his office as from the date of the resolution.

(3) A person who holds, or who has held, office as President shall be eligible or re-election once, but only once.

[NOTE.-Sub-clauses (1) (b) and (2) follow Art. 12(10) of the Irish Constitution sub-clause (3) is also taken from the Irish Constitution.]

3.Age qualification.--Every citizen of the Federation who has completed the age of thirty-five years and is qualified for election as a member of the House of the People shall be eligible for election as President.

[NOTE.-This follows Art II, Section 1(5), of the Constitution of the U.S.A. and Article 12(4) of the Irish Constitution.]

4.Conditions of President's Office.--(1) The President shall not be a member of either House of the Federal Parliament and if a member of either House be elected President, he shall be deemed to have vacated his seat in that House.

(2) The President shall not hold any other office position 'of emolument.

(3) The President shall have an official residence and shall receive such emoluments and allowances. as may be determined by Act of the Federal Parliament and until then, such as are prescribed in Schedule.

(4)The emoluments and allowances of the President shall not be diminshed during his term of office.

[NOTE--These follow the provisions of Articles 12(6) and (11) of the Irish Constitution.]

5.Casual vacancies and procedure at elections.-- Appropriate provision should be made for elections to fill casual vacancies, the detailed procedure for all elections, whether casual or not being left to be regulated by Act ,of the Federal, Parliament:

Provided that--

(a) an election to fill a casual vacancy shall be held as soon as possible after and in no case later than six months from, the date of occurrence of the vacancy; and

(b) the person elected as President at an election to fill a casual vacancy shall be entitled to hold office for the full term of five years.

6.Vice-President.--(1) In the event of the absence of the President or, of his death, resignation, removal from office, or incapacity or failure to exercise and perform the powers and functions of his office or at any time at which the office of the President may be vacant, his functions shall be discharged by the Vice-President pending the resumption by the President of his duties or the election of a new President, as the case may be.

(2)The Vice-President shall be elected by both Houses of the Federal Parliament in joint session by secret ballot on the system of proportional representation by means of the single transferable vote and shall be *ex-officio* President of the Council of States.

(3)The Vice-President shall hold office for five years.

7.Functions of the President.--(1) Subject to the provisions of this Constitution the executive authority of the Federation shall be vested in the President.

(2) Without prejudice to the generality of the foregoing provision--

(a) the supreme command of the defence forces of the Federation shall be vested in the President;

(b) the right of pardon and the power to commute or to remit punishment imposed by any court exercising criminal Jurisdiction shall be vested in the President, but such power of commutation or remission may also be conferred by. law on other authorities.

[NOTE.--The italicized words in sub-clause 2(b) are necessary, because of the provisions of the Criminal Procedure Code, which, in this respect, will probably continue to be in force even after the commencement of the new Constitution. Similar limiting words occur in the Irish Constitution also.]

8.Extent of executive authority of the Federation.--Subject to the provisions of this Constitution, the executive authority of the Federation shall extend to the matters with respect to which the Federal Parliament has power to make laws and to any other matters with respect to which authority has been conferred the Federation by any treaty or agreement, and shall the exercised either through its own agency or through the Units.

9.The executive authority of the Ruler of a Federated State awl continue to be exercisable in that State with respect to Federal subjects, until otherwise provided by the appropriate Federal authority.

[NOTE.--Like the corresponding provision in section 8(2) of the Act of 1953 this clause gives the Rulers of Indian States, who have acceded to the Federation, concurrent executive power even in Federal subjects, until otherwise provided by Federal authority. (In this respect, the position of the Provincial units is rather different: these have no executive power in respect of Federal subjects save as given by Federal law.) Such a clause is necessary, for otherwise, all statutory powers in respect of Federal subjects will come to an end in the acceding States upon the ,commencement of this Constitution.]

10.Council of Ministers.--There shall be a Council of Ministers with the Prime Minister at the head, to aid and advise the President in the, exercise of his functions.

11.Advocate-General for the Federation.--The President shall appoint a person, being one qualified to be appointed a judge of the Supreme Court, to be Advocate-General for the Federation, to give advice to Federal Government upon legal matters that may be referred to him.

12. Conduct of business of the Federal Government.-- All executive action of the Federal Government shall be expressed to be taken in the name of the President.

CHAPTER II

THE FEDERAL PARLIAMENT

13.Constitution of the Federal Parliament.--The legislative power of the Federation shall be vested in the Parliament of the Federation which shall consist of the President and the National Assembly, comprising two Houses, the Council of States and the House of the People.

14.(1) (a) The Council of States shall consist of--

(i) not more than 10 members nominated by the President in consultation with universities and scientific bodies;

(ii) representatives of the Units on the scale of one representative for every whole million of the population of the Unit upto five million *plus* one representative or every additional two million of the population, subject to a total maximum of 20.

Explanation.-- A Unit means a province or Indian State which returns In its own individual right members to the Federal Parliament. In Indian States which are grouped together for the purpose of returning representatives to the Council of States a Unit means the group so formed.

(b) The representatives of each Unit in the Council of States shall be elected by the members of the Lower House of the Legislature of such Unit.

(c) The House of the People shall consist of representatives of the People of the territories of the Federation in the proportion of not less than 1 representative for every million of the population and not more than 1 representative for every 750,000 of the population.

(d) The ratio between the number of members to be elected at any time for each constituency and the population of that constituency, as ascertained at the last preceding census shall, as far as practicable, be the some throughout the territories of the Federation.

(2) The said representatives shall be chosen in accordance with the provisions in that behalf contained in Schedule;

Provided that the elections to the House of the People shall be on the basis of adult suffrage.

(3) Upon the completion of each decennial census, the representation of the several Provinces and Indian States or groups of Indian States in the two Houses shall be readjusted by such authority, in such manner, aid from such time as the Federal Parliament may by Act determine.

(4) The Council of States shall be a permanent body not subject to dissolution but, as near as may be, one-third of the members thereof shall retire in every second year In accordance with the provisions in that behalf contained in Schedule.

(5) The House of the People unless sooner dissolved shall continue for four years from the date appointed for its first meeting and no longer, and the expiration of the said period of four years shall operate as a dissolution of the House:

Provided that the said period may during an emergency be extended by the President for a period not exceeding one year at a time and not exceeding in any cm beyond the period of six months from the expiry of the period of the emergency.

[NOTE. Taking into account only the "willing" Provinces, this clause gives the Council of States a maximum strength of about 260 members and the House of the People a maximum strength of between 300 and 400 members. The following tabular statement will serve to give a general picture of the composition of the Upper House under the above scheme (The composition of the Lower House will be on a purely population basis.)]

COUNCIL OF STATES

Provinces

Madras	20
Bombay	12
Bengal (W)	12
U.P.	20
Punjab (E)	9

Bihar	20
C. P.	10
Assam	7
Orissa	6
Total	116

States

Hyderabad	10
Mysore	6
Travancore	5
Baroda	3
Gwalior	4
Jaipur	3
Kashmir	4
Jodhpur	2
Udaipur	2
Patiala	2
Rewa	2
Cochin	1
Kolhapur	1
Kolhapur	1
Indore	1
	47

For the groups of the remaining states whose population individually does not amount to one million .

24

Total 71

----

15. There should be the usual provisions for the summoning prorogation and dissolution of Parliament for regulating the relations between the two Houses, the mode of voting, privileges of members, disqualification for membership, Parliamentary procedure, including procedure in financial matters. In particular, money Bills must originate: in the Lower House. The Upper House should have power to suggest amendments in money Bills; the Lower House would consider them and thereafter, whether they accept the amendments or not, the Bill as amended (where the amendments are accepted) or in its original form (where the amendments are not accepted) shall be presented to the President for assent and, upon his assent shall become law. If there is any difference of opinion as to whether a Bill is a money Bill or not, the decision of the Speaker of the House of the People should be final. Except in the case of money Bills both the Houses should have equal powers of legislation and deadlocks should be resolved by joint meetings of the two Houses. The President should have the power of returning Bills which have been passed by the National Assembly for reconsideration within a period of six months.

16. Language.--In the Federal Parliament, business shall be transacted in Hindustani (Hindi or Urdu) or English, provided that the Chairman or the Speaker, as the case may be, may permit any member who cannot adequately express himself in either language to address the House in his mother tongue. The Chairman or the Speaker, as the ease may be, shall make arrangements for giving the House, whenever he thinks fit, a summary of the speech in a language other than that used by the member and such summary shall be included in the record of the proceedings of the House.

[NOTE.--This follows the corresponding provision in the Constituent Assembly Rules.]

CHAPTER III

LEGISLATIVE POWERS OF THE PRESIDENT

17. Power of President to promulgate ordinances during recess of Parliament.--(1) If at any time when the Federal Parliament is not in session the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require.

(2) An ordinance promulgated under this section shall have the same face and effect as an Act of the Federal Parliament assented to by the President, but every such ordinance--

(a) shall be laid before the Federal Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of Federal Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the President.

(3) If and so far as an ordinance under this section makes any provision which the Federal Parliament would not under this Constitution be competent to enact, it shall be void.

[NOTE.-The ordinance-making power has been the subject of great criticism under the present Constitution. It must however be pointed out that circumstances may exist where tile immediate promulgation of a law is absolutely necessary and there is no time in which to summon the Federal Parliament. In 1925, Lord Reading found it necessary to make an ordinance suspending the cotton excise duty when such action was immediately and imperatively required in the interests of the country. A democratically elected President who has moreover to act on the advice of ministers responsible the Parliament is not at all likely to abuse any ordinance-making power with which he may be invested. Hence the proposed provision.]

CHAPTER IV

THE FEDERAL JUDICATURE

18. Supreme Court.--There shall be a Supreme Court with the constitution, powers and jurisdiction recommended by the *ad hoc* Committee on the Union Judiciary, except that a judge of the Supreme Court shall be appointed by the President after consulting the Chief Justice and such other judges of the Supreme Court as also judges of the High Courts as may be necessary for the purpose.

[NOTE.--The *ad hoc* Committee* on the Supreme Court has observed that it will not be expedient to leave the power of appointing judges of the Supreme Court to the unfettered discretion of the President of the Federation. They have suggested two alternatives, both of which involve the setting up of a special panel of eleven members. According to one alternative, the President, in consultation with the Chief Justice, is to nominate a person for appointment as puisne judge and the nomination has to be confirmed by at least seven members of the panel. According to the other alternative, the panel should recommend three names, out of which the President, in consultation with the Chief Justice, is to select one for the appointment. The provision suggested in the above clause follows the decision of the Union Constitution Committee.]

---

*For Committee's Report *See* Appendix.

CHAPTER V

AUDITOR-GENERAL OF THE FEDERATION

19.Auditor-General.--There shall be an Auditor-General of the Federation who shall be appointed by the President and shall only be removed from office in like manner and on the like grounds as a judge of the Supreme Court.

20.Functions of Auditor-General.--The duties and powers of the Auditor-General shall follow the lines of the corresponding provisions in the Act of 1935.

CHAPTER VI

SERVICES

21.Public Service Commission.--There shall be a Public Service Commission for the Federation whose composition and functions shall follow the lines of the corresponding provision in the Act of 1935, except that the appointment of the Chairman and the members of the Commission shall be made by the President on the advice of his ministers.

22. Provision should be made for the creation of All India Services whole recruitment and conditions of service will be regulated by Federal law.

CHAPTER VII

ELECTIONS

23.Elections to the Federal Parliament.--Subject to the provisions of this

Constitution, the Federal Parliament may, from time to time, make provision with respect to all matters relating to or connected with elections to either House of the Federal Legislature including the delimitation of constituencies.

24.Superintendence, direction and control of elections.--The superintendence, direction and control of all elections, whether Federal or Provincial, held under this Constitution including the appointment of election tribunals for decision of doubts and disputes arising out of or in connection with such elections shall be vested in a Commission to be appointed by the President.

*For Committee's Report See Appendix.

PART V

DISTRIBUTION OF LEGISLATIVE POWERS BETWEEN THE FEDERATION AND THE UNITS

The provisions to be inserted under this head will depend upon the decisions that may be taken upon the report of the Union Powers Committee. The Union Constitution Committee has, however, decided that--

(1) the Constitution should be a Federal structure with a strong Centre;

(2) there should be three exhaustive legislative lists, *viz.*, Federal. Provincial and Concurrent, with residuary powers to the Centre;

(3) the State should be on a par with the Provinces as regards the Federal Legislative list subject to the consideration of any special matter which may be raised when the lists have been fully prepared.

PART VI

ADMINISTRATIVE RELATIONS BETWEEN THE FEDERATION AND THE UNITS

1.The Federal Parliament in legislating for an exclusively Federal subject may devolve upon the Government of a Unit, whether a Province, an Indian State or other area, or upon any officer of that Government, the exercise on behalf of the Federal Government of any functions in relation to that subject.

(2)The authority of the Federal Government will also extend to the executive power and authority in so far as it is necessary and applicable for the purpose as to secure that due effect is given within the Unit to every Act of the Federal Parliament which applies to that Unit; and the authority of the Federal Government will extend to the giving of directions to a Unit Government to that end.

(3)The authority of the Federal Government will also extend to the giving of directions to the Unit Government as to the manner in which the litter's executive power and authority should be exercised in relation to any matter which affects the administration of a Federal subject.

[NOTE.--C*f*. Section 122, 124 and 126 of the Government of India Act 1935.]

PART VII

FINANCE AND BORROWING POWERS

1.Revenues derived from sources in respect of which the Federal Parliament has exclusive power to make laws will be allocated as Federal revenues but in the cases specified in the next succeeding paragraph the Federation will be empowered or required to make assignments to Units from Federal revenues.

2.Provision should be made for the levy and, if necessary, distribution of the following taxes, *viz*., customs, Federal excises, export duties, death duties and taxes on income other than agricultural income and taxes on companies.

3.The Federal Government will have power to make subventions or grants out of the Federal revenues for any purpose, notwithstanding that the purpose is not one with respect to which the Federal Parliament may make laws.

4.The Federal Government will have power to borrow for any of the purposes of the Federation upon the security of Federal revenues subject to such limitations and conditions as may be fixed. by Federal law.

5.The Federal Government will have power to grant a loan to, or guarantee a loan by, any Unit of the Federation on such terms and under such conditions as it may prescribe.

[NOTE.--*Cf*. Sections 136 to 140, 162 and 163(2) of the Government of India Act, 1935.]

PART VIII

DIRECTLY ADMINISTERED AREAS

1.The Chief Commissioner's Provinces should continue to be administered by the Centre as under the Government of India Act, 1935, as an interim measure, the question of any change in the system being considered subsequently, and all centrally administered areas including the Andamans and the Nicobar Islands should be specifically mentioned in the Constitution.

2. Appropriate provision should be made in the Constitution for the administration of tribal areas.

[NOTE.-The provision to be made regarding tribal areas should incorporate the scheme for the administration of such areas as approved by the Constituent Assembly on the report of the Advisory Committee.]

PART IX

MISCELLANEOUS

The provisions for the protection of minorities as approved by the Constituent Assembly on the report of the Advisory Committee should be incorporated in the Constitution.

PART X

AMENDMENT OF THE CONSTITUTION

An amendment to the Constitution may be initiated in either House of the Federal Parliament and when the proposed amendment is passed in each House by a majority of not less than two-thirds of the members of that House present and voting and is ratified by the legislatures of Got less than half of the Units of the Federation, it shall be presented to the President for his assent; and upon such assent being given, the amendment shall come into operation.

Explanation.-- "Unit" in this clause has the same meaning as-in Clause 14 of Part IV. Where a Unit consists of a group of States, a proposed amendment shall be deemed to be ratified by the legislature of the Unit, if it is ratified by the majority of the legislatures of the States in the Group.

PART XI

TRANSITIONAL PROVISIONS

1.The Government of the Federation shall be the successor to 'the Government of India established under the Government of India Act, 1935, as regards all property, assets, rights and liabilities.

[If, before the commencement of this Constitution, two successor Governments should be set up in India, this clause may have to be amended, in as much as there may be a division of assets and liabilities.]

2.(1) Subject to this Constitution, the laws in force in the territories of the Federation immediately before the commencement of the Constitution shall continue in force therein until altered or repealed, or amended by a competent legislature or other competent authority.

(2)The President may by Order provide that as from a specified date any law in force in the Provinces shall, until repealed or amended by competent authority, have effect subject to such adaptations and modifications as appear to him to be necessary or expedient for bringing the provisions of that law into accord with the provisions of this Constitution.

3.Until the Supreme Court is duly constituted under this Constitution, the Federal Court shall be deemed to be the Supreme Court and shall exercise all the functions of the Supreme Court:

Provided that all cases pending before the Federal Court and the Judicial Committee of the Privy Council at the date of commencement of this Constitution may be disposed of as if this Constitution bad not come into operation.

4.Excepting holders of the offices specified in Schedule-every person who immediately before the date of the commencement of this Constitution, was in the service of the Crown in India, including any judge of the Federal Court or of any High Court, shall, on that date be transferred to the appropriate service of the Federation or the Unit concerned and shall hold office by a tenure corresponding to his previous tenure.

[NOTE.-Under the next succeeding clause there will be a provisional President from the commencement of the new Constitution, so that there will be no room for a Governor-General. Similarly, in the Provinces there will be no room for any Governor appointed by His Majesty. The same may be true of the holders of certain other offices. All such offices may be enumerated in a Schedule. The proposed provision applies to persons holding office other than those mentioned in the Schedule. Cf. Article 77 of the Transitory Provisions of the Constitution of the Irish Free State, 1922, reproduced below:

"Every existing officer of the Provisional Government at the date of the coming into operation of this Constitution (not being an officer whose services have been lent by the British Government to the Provisional Government) shall on that date be transferred to and become an officer of the Irish Free State (Saorstat Eireann) and shall hold office by a tenure corresponding to his previous tenure."]

5.(1) Until both the Houses of the National Assembly have been duly constituted and summoned under this Constitution, the Constituent Assembly shall itself exercise all the powers and discharge all the duties of both the Houses.

Explanation.-For the purposes of this sub-clause, the Constituent Assembly shall not include any members representing territories not included in Schedule I.

(2) Such person as the Constituent Assembly shall have elected in this behalf shall be the provisional President of the Federation until a President has been elected as provided in Part IV of this Constitution.

(3) Such persons as shall have been appointed in this behalf by the provisional President shall be the provisional council of ministers until ministers are duly appointed as provided in Part IV of this Constitution.

[NOTE.--It is essential that on the date of commencement of this Constitution there should be a Legislature and an Executive ready to take over power. The most practicable course is that the Constituent Assembly should itself be the provisional Legislature. The clause regarding the provisional Executive is consequential. These provisions may however require modification after the passing of the new Dominion Act amending the Government of India Act, 1935.]

6.As there may be unforeseen difficulties during the transitional period, there should be a clause in the Constitution on the following lines.

The Federal Parliament may, notwithstanding anything contained in Part X, by Act.-

> (a) direct that this Constitution, except the provisions of the said Part and of this clause, shall, during such period, if any, as may be specified in the Act, have effect subject to such adaptations and notifications as may be so specified ;
>
> (b) make such other provisions for the purpose of removing any such difficulties as aforesaid as may be specified in the Act.

No Act shall be made under this clause after the expiration of three years from the commencement of this Constitution.

[NOTE. The-removal-of-difficulties-clause is now quite usual: see, for example, section 310 of the Government of India Act. 1935. The period of three years has been borrowed from Article 51 of the Irish Constitution. This clause will make the process of amendment comparatively easy during the first three years.]

CONSTITUENT ASSEMBLY

ad hoc **Committee on supreme Court**

We, the undersigned members of the Committee appointed to consider the Constitution and powers of the Supreme Court have the honour to submit this our report.

2.We considered the question under the following heads:

I. Jurisdiction and powers of the Supreme Court.

II. Advisory jurisdiction of the Court.

III. Ancillary powers of the Court.

IV. Constitution and strength of the Court.

V. Qualifications and mode of appointment of judges.

VI. Tenure of office. and conditions of service of judges.

I. JURISDICTION AND POWERS OF THE SUPREME COURT

3.A Supreme Court with jurisdiction to decide upon the constitutional validity of acts and laws can be regarded as a necessary implication of any federal scheme. This jurisdiction need not however belong exclusively to the Supreme Court. Even under the existing Indian Constitution, the question of the validity of acts and laws is permitted to be raised in any court whenever that question arises in a litigation before that court.

4.A Supreme Court for certain purposes being thus a necessity, we consider that the Court may well be given the following additional powers under the new Indian Constitution:--

(a) Exclusive jurisdiction in disputes between the Union and a Unit or between one Unit and another

5.The Supreme Court is the best available forum-for the adjudication of such disputes, and its jurisdiction should be exclusive.

(b) Jurisdiction with respect to matters arising out of treaties made by the Union

6.The treaty-making powers belongs to the Union as part of the subject of 'Foreign Affairs'. It would therefore be appropriate to invest the Supreme Court of the Union with jurisdiction to decide finally, though not necessarily in the first instance, upon all matters arising out of treaties including extradition between the Union and a foreign State. At this stage we do not deal with inter-unit extradition, because this will depend upon the ultimate distribution of powers between the Union and the Units.

(c) Jurisdiction in respect of such other matters within the competence of the Union as the Union Legislature may prescribe

7.If the Union Legislature is competent to legislate on a certain matter, it is obviously competent to confer judicial power in respect of that matter on a tribunal of its own choice; and if it chooses the Supreme Court for the purpose, the Court will have the jurisdiction so conferred.

(d) Jurisdiction for the purpose of enforcing the fundamental rights guaranteed by the Constitution

8.Clause 22 of the draft the Fundamental Rights provides that the right to move the Supreme Court by appropriate proceedings for the enforcement of fundamental rights is guaranteed. We think however, that it is undersirable to make the jurisdiction of the Supreme Court in such matters exclusive. The citizen will practically be denied these fundamental rights if, whenever they are violated, he is compelled to seek the assistance of the Supreme Court as the only Court from which he can obtain redress. Where there is no other Court with Vie necessary jurisdiction, the Supreme Court should have it; where there is some other Court with the necessary jurisdiction, the Supreme Court should have appellate jurisdiction, including powers of revision.

(e) General appellate jurisdiction similar to that now exercised by the Privy Council

9.Under the new Constitution the jurisdiction of the Privy Council as the ultimate appellate authority will disappear and it is obviously desirable that a similar jurisdiction should now be conferred on the Supreme Court. So far as the British Indian Units are concerned, this jurisdiction should be co-extensive with the present jurisdiction of the Privy Council. As regards the Indian State units, there are at least two classes of cases where, in the interests of uniformity, it is clearly desirable that the final decision should rest with the Supreme Court, namely:

(1) cases involving the interpretation of a law of the Union, and

(2) cases involving the interpretation of a law of a Unit other than the State concerned.

Sir B. L. Mitter suggests that such uniformity can be obtained either by invoking the appellate authority of the Supreme Court or by a reference of the particular issue to the Supreme Court. Cases involving the constitutional validity of a law of the Union or of any Unit have already been dealt with; they will all necessarily fall within the Supreme Court's jurisdiction.

10.It will also, of course, be open to any Indian State Unit to confer by special agreement additional jurisdiction upon the Supreme Court in respect of such matters as may be specified therein.

II. ADVISORY JURISDICTION OF THE COURT

11.There has been considerable difference of opinion amongst jurists and political thinkers as to the expediency of placing on the Supreme Court an obligation to advise the Head of the State on difficult questions of law. In spite of arguments to the contrary, it was considered expedient to confer advisory jurisdiction upon the Federal Court under the existing Constitution by Section 213 of the Act. Having given our best consideration to the arguments pros and cons, we feel that it will be on the whole better to continue this jurisdiction even under the new Constitution. It may be assumed that such jurisdiction is scarcely likely to be unnecessarily invoked and if, as we propose, the Court is to have a strength of ten or eleven judges, a pronouncement by a full Court may well be regarded as authoritative advice. This can be ensured by requiring that references to the Supreme Court for advice shall be dealt with by a full Court.

III. ANCILLARY POWERS OF THE COURT

12.Power should be conferred upon the Supreme Court as under section 14 of the Act 1935 to make rules of procedure to regulate its work and provisions similar to those contained in Order 45 of the Civil Procedure Code should be made available so as to facilitate the preparation of the record in appeals to the Supreme Court as well as the execution of its decrees. It does not seem to us necessary to continue the restriction now placed on the Federal Court by section 209 of the Act of 1935. If the Supreme Court takes the place of the Privy Council, it may well be permitted to pronounce final judgments and final decrees in cases where this is possible or to remit the matter for further inquiry to the Courts from which the appeal has been preferred where such further inquiry is considered necessary. Provision must also be made on the lines of section 210 of the Act of 1935 giving certain inherent powers to the Supreme Court.

IV. CONSTITUTION AND STRENGTH OF THE COURT

13.We think that the Supreme Court will require at least two Division. Benches and as we think that each Division Bench should consist of five judges, the Court will require ten judges in addition to the Chief Justice, so as to provide for possible absences or other unforeseen circumstances. Moreover, one of the judges may be required to deal with many miscellaneous matters incidental to appellate jurisdiction (including revisional and referential jurisdiction).

V. QUALIFICATIONS AND MODE OF APPOINTMENT OF JUDGES

14.The qualifications of the judges of the Supreme Court may be laid down on terms very similar to those in the Act of 1935 as regards the judges of the Federal Court, the possibility being borne in mind (as in the Act of 1935) that judges of the superior courts even from the States which may join the Union may be found fit to occupy a seat in the Supreme Court. We do not think that it will be expedient to leave the power of appointing judges of the Supreme Court to the unfettered discretion of the President of the Union. We recommend that either of the following methods may be adopted. On method is that the President should in consultation with the Chief Justice of the Supreme Court (so far, as the appointment of puisne judges is concerned) nominate a person whom he considers fit to be appointed to the Supreme Court and the nomination should be confirmed by a majority of at least 7 out of a panel of 11 composed of some of the Chief Justice of the High Courts of the constituent units, some members of both the Houses of the Central Legislature and some of the law officers of the Union. The other method is that the panel of 11 should recommend three names out of which the President, in consultation with the Chief Justice, may select a judge for the appointment. The same procedure should be followed for the appointment of the Chief Justice except of course that in this case there will be no consultation with the Chief Justice. To ensure that the panel will be both independent command confidence the panel should not be an ad hoc body but must be one appointed for a term of years.

VI. TENURE OF OFFICE AND COMMONS OF SERVICE OF JUDGES

15.The tenure of office of the judges of the Supreme Court will be the same as that of Federal Court judges under the present Constitution Act and their age of retirement also may be the same (65). Their salary and pensions may be provided for by statutory rules. It is undesirable to have temporary judges in the highest Court in the land. Instead of having temporary judges, the system of having some ad hoc judges out of a panel of Chief Justices or judges of the High Courts may be adopted. In this connection we invite attention to the Canadian practice as embodied in section 30 of the Canadian Supreme Court Act. The section runs as follows:-

"30. *Appointment of* ad hoc *'judge*.--If at any time there should not be a quorum of the judges of the Supreme Court available to hold or continue any session of the Court, owing to a vacancy or vacancies, or to the absence through illness or on. leave or in the discharge of other duties assigned by statute or order in council, or to the disqualification of a judge or judges, the Chief Justice, or, in his absence, the senior puisne judge, may ion writing request the attendance at the sittings of the Court, as an ad hoc judge, for such period as may be necessary of a judge of them Exchequer Court or, should the Judges of the said court be absent from Ottawa or for any reason unable to sit of a judge of a provincial superior court to be designated in writing by the Chief Justice or in his absence by any Acting Chief Justice or the senior puisne judge of such provincial court upon such request being made to him in writing.

* * * * * * * * * * *

4.*Duties*.--It shall be the duty of the judge whose attendance has been so requested or who has been so designated in priority to other duties of his office, to attend the sittings of the supreme Court at the time and for the period for which his attendance shall be required, and while so attending he shall possess the powers and privileges and shall discharge the duties of a puisne Judge of the Supreme Court."

16. Not all the recommendations that we have made need find a place in the Constitution Act. The main features may be embodied in the Constitution Act and detailed provisions in a separate Judiciary Act to be passed by the Union Legislature. The form of procedure in the Supreme Court. e.g., for the enforcement of fundamental nights may also be provided for in the Judiciary Act. We may point out that the prerogative writs of mandamus, prohibition and certiorari have been abolished in England by a statute of 1938. Corresponding orders have been substituted and the Supreme Court of Judicature has been empowered to make rules of court prescribing the procedure in cases where such orders are sought [See section 7-10 of the Administration of Justice (Miscellaneous Provisions) Act, 1938].

17.We understand our terms of reference to relate only to the constitution and powers of the Supreme Court. We have, therefore, said nothing about the High Courts of the Units, although we have had to refer to them incidentally in some of our suggestions relating to the Supreme Court.

1. S. Varadachariar.

2. A. Krishnaswami Ayyar.

New Delhi. Mau 21, 1947

3. B. L. Mitter.

4. K. M. Munshi.

5. B. N. Rau.

CONFIDENTIAL

#APPENDIX 'B'

NO. CA/63/Cons./47

CONSTITUENT ASSEMBLY OF INDIA

COUNCIL HOUSE,

New Delhi, the 13th July 1947.

FROM

PANDIT JAWAHARLAL NEHRU,

CHAIRMAN, UNION CONSTITUTION COMMITTEE.

To

THE PRESIDENT,

CONSTITUENT ASSEMBLY OF INDIA.

DEAR SIR,

1.On behalf of the members of the Committee appointed by you in Pursuance of the resolution of the Constituent Assembly of the 30th April 1947, 1 submitted a memorandum embodying the recommendations of the Committee.

2.The Committee met again on the 12th July 1947. and decided on certain modifications to be mad? in the said memorandum. I have the honour to submit this supplementary report containing these recommendations.

3.In the opinion of the Committee, clause 3 of the memorandum should Contain the following additional sub-clause to enable the Federal Parliament to alter the name of any Unit, namely:

" (e) alter the name of any Unit."

4.The Committee is of opinion that the following should be added to sub-clause (2) of clause 6 of Chapter I of Part IV of the memorandum lo make it clear that if a member of the Council of States is elected as Vice President he shall vacate his seat as such member, namely:

"and if a member of the Federal Parliament is elected to be the Vice-President, he shall vacate his seat as such member".

5.The Committee is further of the opinion that Part X of the memorandum on the Indian Constitution should be replaced by the following:--

PART X

AMENDMENT OF THE CONSTITUTION

The amendment of the Constitution may be initiated in either House of the Federal Parliament and when the proposed amendment is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent; and upon such assent being given the amendment shall come into operation:

Provided that if such amendment is in respect of any provision of the Constitution relating to all or any of the following matters, namely:-

(a) any change in the Federal Legislative List,

(b) representation of Units in the Federal Parliament, and

(c) powers of the Supreme Court,

it will also require to be ratified by the legislatures of Units representing a majority of the population of all the Units of the Federation in which Units representing at least one-third of the population of the Federal States are included.

Explanation.-"Unit" in this clause has the same meaning as in Clause 14 of Part IV. Where a Unit consists of a group of States a proposed amendment shall be deemed to be ratified by the legislature of the Unit, if it is ratified by the majority of the legislatures of the States in the Groups."

Yours sincerely

JAWAHARLAL NEHRU

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME IV

Tuesday, the 22nd July 1947

The Constituent Assembly of India met in the Constitution Hall. New Delhi at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following Member presented his Credentials and signed the Register;

Mr. Jai Sukh Lal Hathi (Residuary States Group);

Mr. Ram Narayan Singh (Bihar: General): Sir, I wish to draw your attention to a very important constitutional issue. I think, and everybody knows, that we are meeting as a sovereign body here and making the constitution for a future Free India. But in the envelopes used by the Assembly Office we still find on the top the words 'On His Majesty's Service'. I think this is not proper and I draw the attention of the House and yourself to this matter. I hope these words will be dropped from the envelopes in future in the correspondence conducted by the Assembly Office.

RESOLUTION RE NATIONAL FLAG

Mr. President: We shall proceed with the agenda. The first item on the agenda is a Motion by Pandit Jawaharlal Nehru about the Flag.

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): Mr. President, it is my proud privilege to move the following Resolution.

> "Resolved that the National Flag of India shall be horizontal tricolour of deep Saffron (Kesari), white and dark green in equal proportion. In the centre of the white band, there shall be a Wheel in navy blue to represent the *Charkha*. The design of the Wheel shall be that of the Wheel. (*Chakra*) which appears an the abacuse of the Sarnath. Lion Capital of Asoka.
>
> The diameter of the Wheel shall approximate to the width of the white band.
>
> The ratio of the width to the length of the Flag shall ordinarily be 2:3."

This Resolution, Sir, is in simple language, in a slightly technical language and there is no glow or warmth in the words that I have read Yet I am sure that many in this House will feel that glow and warmth which I feel at the present moment for behind this Resolution and the Flag which I have the honour to present to this House for adoption lies history, the concentrated history of a short span in a nation's existence. Nevertheless, sometimes in a brief period we pass through the track of centuries. It is not so much the mere act of living that counts but what ,one does in this brief life a that is ours; it is not so much the mere existence of a nation that counts but what that nation does during the various periods of its existence; and I do venture to claim that in the past quarter of a century or so India has lived and acted in a concentrated way and the emotions which have filled the people of India represent not merely a brief spell of years but something infinitely more. They have gone down into history and tradition and have added themselves on to that vast history and tradition which is our heritage in this country. So, when I move this Resolution, I think of this concentrated history through which all of us have passed during the last quarter of a century. Memories crowd upon me. I remember the ups and downs of the great struggle for freedom of this great nation. I remember and many in this House will remember how we looked up to this Flag not only with pride and enthusiasm but with a tingling in our veins; also how; when we were sometimes down and out, then again the sight of this Flag gave us courage to go on. Then, many who are not present here today, many of our comrades who have passed, held on to this Flag, some amongst them even unto death and handed it over as they sank, to others to hold it aloft. So, in this simple form of words, there is much more than will be clear on the surface. There is the struggle of the people for freedom with all its ups and downs and trials and disasters and there is, finally today as I move this Resolution, a certain triumph about it a measure of triumph in the conclusion of that struggle.

Now, I realise fully, as this House must realise, that this triumph of ours has been marred in many ways. There have been, especially in the past few months many happenings which cause us sorrow, which has gripped our hearts. We have seen parts of this dear motherland of ours cut off from the rest. We have seen large numbers of people suffering tremendously, large numbers wandering about like waifs and strays, without a home. We have seen many other things which I need not repeat to this House, but which we cannot forget. All this sorrow has dogged our footsteps. Even when we have achieved victory and triumph, it still dogs us and we have tremendous problems to face in the present and in the future. Nevertheless it is true I think hold it to be true--that this moment does represent a triumph and a victorious conclusion of all our struggles, for the moment. *(Hear, hear).*

There has been a very great deal of bewailing and moaning about various things that have happened. I am sad, all of us are sad at heart because of those things. But let us distinguish that from the other fact of triumph because there is triumph in victory, in what has happened. It is no small thing that that great and mighty empire which has represented imperialist domination in this country has decided to end its days here. That was the objective we aimed at.

We have attained that objective or shall attain it very soon. Of that there is no doubt. We have not attained the objective exactly in the form in which we wanted it. The troubles and other things that companies our achievement are not to our liking. But we must remember that it Is very seldom that people realise the dreams that they have dreamt. It is very seldom that the aims and objectives with which we start are achieved in their entirety in life in an individual's life or in a nation's life.

We have many examples before us. We need not go into the distant past. We have examples in the present or in the recent past. Some years back, a great war was waged, a world war bringing terrible misery to mankind. That war was meant for freedom and democracy and the rest. That war ended in the triumph of those who said they stood for freedom and democracy. Yet, hardly had that war ended when there were rumours of fresh wars and fresh conflicts.

Three days ago, this House and this country and the world was shocked by the brutal murder in a neighbouring country of the leaders of the nation. Today one reads in the papers of an attack by an imperialist power on a friendly country South-East Asia. Freedom is still far off in this world and nations, all nations in greater or lesser degree are struggling for their freedom. If we in the present have not exactly achieved what we aimed at, it is not surprising. There is nothing in it to be ashamed of. For I do think our achievement is no small achievement. It is a very considerable achievement, a great achievement. Let no man run it, down because other things have happened which are not to our liking. Let us keep these two things apart. Look at any country in the wide world. Where is the country today, including the great and big powers, which is not full of terrible problems, which is not in some way, Politically and economically, striving for freedom which somehow or other eludes its grasp? The problems of India in the wider context do not appear to be terrible. The problems are rot anything new to us. We have faced many disagreeable--things in the past. We have not held back. We shall face all the other disagreeable things that face us in the present or may do so in the future and we shall not flinch and we shall not falter and we shall not quit. *(Loud applause).*

So, in spite of everything that surrounds us, it is in no spirit of down heartedness that I stand up in praise of this Nation for what it has achieved. (*Renewed cheers*). It is right and proper that at this moment we should adopt the symbols of this achievement, the symbol of freedom. Now what is this freedom in its entirety and for all humanity. What is freedom and what is the struggle for freedom and when does it end. As soon as you take one step forward and achieve something further steps come up before you. There will be no full freedom in this country or in the world as long as a single human being is unfree. There will be no complete freedom as long as there is starvation, hunger, lack of clothing lack of necessaries of life and lack of opportunity of growth for every single human being, man, woman and child in the country. We aim at that. We may not accomplish that because it is a terrific task. But we shall do our utmost to accomplish that task and hope that our successors. when they come, have an easier path to pursue. But there is no ending to that road to freedom. As we go ahead, just as we sometimes in our vanity aim at perfection, perfection never comes. But if we try hard enough we do approach the goal step by step. When we increase the happiness of the people, we increase their stature in many ways and we proceed to our goal. I do not know if there is an end to this or not, but we proceed towards some kind of cosummation which in effect never ends,

So I present this Flag to you. This Resolution defines the Flag which I trust you will adopt. In a sense this Flag was adopted, not by a formal resolution, but by popular acclaim and usage, adopted much more by the sacrifice that surrounded it in the past few decades. We are in a sense only ratifying that popular adoption. It is a Flag which has been variously described. Some people, having misunderstood its significance, have thought of it in communal terms and believe that some part of it represents this community or that. But I may say that when this Flag was devised there was no communal significance attached to it. We thought of a design for a Flag which was beautiful, because the symbol of a nation must be beautiful to look at. We thought of a Flag which would in its combination and in its separate parts would somehow represent the spirit of the nation, the tradition of the nation, that mixed spirit and tradition which has grown up through thousands of years in India. So, we devised this Flag. Perhaps I am partial but I do think that it is a very beautiful Flag to Look at purely from the point of view of artistry, and it has come to symbolise many other beautiful things, things of the spirit, things of the mind, that give value to the individual's life and to the nation's life, for a nation does not live merely by material things, although they are highly important. It is important that we should have the good things of the world, the material possessions of the world, that our people should have the necessaries of life. That is of the utmost importance. Nevertheless, a nation, and especially a nation like India with an immemorial past, lives by other things also, the things of the spirit. If India had not been associated with these ideals and things of the spirit during these thousands of years, what would India have been? It has gone through a very great deal of misery and degradation in the past, but somehow even in the depths of degradation, the head of India gas been held high, the thought of India has been high, and the ideals of India have been high. So we have gone through these tremendous ages and we stand up today in proud thankfulness for our past and even more so for the future that is to come for which we are going to work and for which our successors are going to work. It is our privilege of those assembled here, to mark the transition in a particular way, in a way that will be remembered.

I began by saying that it is my proud privilege to be ordered to move this Resolution. Now, Sir, may I say a few words about this particular Flag? It will be seen that there is a slight variation from the one many of us have used during these past years. The colours are the same, a deep saffron, a white and a dark green. In the white previously there was the *Charkha* which symbolised the common man in India, which symbolised the masses of the people, which symbolised their industry and which came to us from the message which Mahatma Gandhi delivered. (*Cheers*) Now, this particular *Charkh*a symbol has been slightly varied in this Flag, not taken away at all. Why then has this been varied? Normally speaking, the symbol on one side-of the Flag should be exactly the same as on the other side. Otherwise, there is a difficulty which goes against the rules. Now, the *Charkha*, as it appeared previously on this Flag, had the wheel on one side and the spindle on the other. If you see the other side of the Flag, the spindle comes the other way and the wheel comes this way; if it does not do so, it is not proportionate, because the wheel must be towards the pole, not towards the end of the Flag. 'there was this practical difficulty. Therefore, after considerable thought, we were of course convinced that this great symbol which had enthused people should continue but that it should continue in a slightly different form, that the wheel should be there, not the rest of the *Charkha*, that is the spindle and the string which created this confusion, that the essential mitt of the *Charkha* should be there, that is the wheel. So, the old tradition continue in regard to the *Charkha* and the wheel. But what type of wheel should we have? Our minds went back to many wheels but notably one famous wheel, which had appeared in many places and which all of us have seen, the one at the top of the capita of the Asoka column and in many other places. That wheel is a symbol of India's ancient culture, It is a symbol of the many things that India had stood for through the ages. So we thought that this *Chakra* emblem should be there, and that wheel appears. For my part, I am exceedingly happy that in this sense indirectly we have associated with this Flag of ours not only this emblem but in a sense the name of Asoka, one of the most magnificent names not only in India's history but in world history. It is well that at this moment of strife, conflict and intolerance, our minds should go back towards what India stood for in the ancient days and. what it has stood for, I hope and believe, essentially throughout the ages in spite of mistakes and errors and degradations from time to time. For, if India had not stood for something very great, I do not think that India could have survived and carried on its cultural traditions In a more or less continuous manner through these vast ages. It carried on Its cultural tradition, not unchanging, not rigid, but always keeping its essence, always adapting itself to new developments, to new influences. That has been the tradition of India, always to put out fresh blooms and flowers, always receptive to the good things that it receives, sometimes receptive to bad things also, but always true to her ancient culture. All manner of new influences through thousands of years have influenced us, while we influenced them tremendously also, for you will remember that India has not been in the past a tight little narrow country, disdaining other countries. India throughout the long ages of her history has been connected with other countries, not only connected with other countries, but has been an international centre, sending out her people abroad to far off countries carrying her message and receiving the message of other countries in exchange, but India was strong enough to remain embedded on the foundations on which she was built although changes many changes, have taken place. The strength of India it has been said, consists in this strong foundation. It consists also in its amazing capacity to receive, to adapt what it wants to adapt, not to reject because something is outside its scope, but to accept and receive everything. It is folly for any nation or race to think that it can only give to and not receive from the rest of the world. Once a nation or a race begins to think like that, it becomes rigid, it becomes ungrowing; it grows backwards and decays. In fact, if India's history can be traced, India's periods of decay are those when it closed herself up into a shell and refused to receive or to look at the outside world. India's greatest periods are those when she stretched her hands to others in far off countries, sent her emissaries ambassadors, her trade agents and merchants to these countries and received ambassadors and emissaries from abroad.

Now because I have mentioned the name of Asoka I should like you to think that the Asokan period in Indian history was essentially an international period of Indian history. It was not a narrowly national period. It was a period when India's ambassadors went abroad to far countries and went abroad not in the way of an Empire and imperialism but as ambassadors of peace and culture and goodwill. *(Cheers.)*

Therefore this Flag that I have the honour to present to you is not. I hope and trust, a Flag of Empire, a Flag of Imperialism, a Flag of domination over any body, but a Flag of freedom not only for ourselves but a symbol of freedom to all people who may see it. (*Cheers*). And wherever it may go-and I hope it will go far,--not only where Indians dwell as our ambassadors and ministers but across the far seas where it may be carried by Indian ships, wherever it may go it will bring a message, I hope, of freedom to those people, a message of comradeship, a message that India wants to be friends with every country of the world and India wants to help any people who seek freedom. (*Hear, hear*). That I hope will be the message of this Flag everywhere and I hope that in the freedom that is coming to us, we will not do what many other people or some other people have unfortunately done, that is, in a newfound strength suddenly to expand and become imperialistic in design. If that happened that would be a terrible ending to our struggle for freedom. (*Hear, hear.*) But there is that danger and, therefore, I venture to remind this House of it--although this House needs no reminder--there is this danger in a country suddenly unshackled in stretching out its arms and legs and trying to hit out at other people. And if we do that we become just like other nations who seem to live in a kind of succession of conflicts and preparation for conflict. That is the world today unfortunately.

In some degree I have been responsible for the foreign Policy during the past few months and always the question is asked here or elsewhere: "What is your foreign policy? To what group do you adhere to In this warring world?" Right at the beginning I venture to say that we propose to belong to no power group. We propose to function as far as we can as peace-makers and peace-bringers because today we are pot strong enough to be able to have our way. But at any rate we propose to avoid all entaglements with power politics in, the world. It is not completely possible to do that in this complicated world of ours, but certainly we are going to do our utmost to that end.

It is stated in this Resolution that the ratio of the width to the length of the Flag shall ordinarily be 2:3. Now you will notice the word "ordinarily". There is no absolute standard about the ratio because the same Flag on a particular occasion may have a certain ratio that might be more suitable or on any other occasion in another place the ratio might differ slightly. So there is no compulsion about this ratio. But generally speaking, the ratio of 2:3 is a proper ratio Sometimes the ratio 2:1 may be suitable for a Flag flying on a building. Whatever the ratio may be, the point is not so much the relative length and breadth, but the essential design.

So, Sir, now I would present to you not only the Resolution but the Flag itself.

There are two of these National Flags before you. One is on silk--the one I am holding--and the other on the other side is of cotton Khadi.

I beg to move this Resolution. (*Cheers.*)

Mr. President: I have got notice of three amendments to this Resolution.

Many Honourable Members: No, no.

Mr. H. V Kamath (C. P. and Berar: General): Mr. President, Sir, my amendment reads as follows:

"That the following new para. be inserted in the motion:

"That inside the *Chakra* in the centre of the white band, the swastika, the ancient Indian symbol of Shantam, Shivam, Sundaram, be inscribed'."

When I sent in the amendment, I had not seen the design of the Flag. There were at that time two or three, considerations uppermost in my mind. I thought that this Flag, being the Flag of our new Indian Republic, of *Bharatavarsha*, should adequately symbolise our ancient culture, the culture of our spirit, the spirit which has animated our sages and our seers, which gave the message of *Shantam, Shivam, Sundaram* to the world, the message of peace, the peace not merely of stillness, not merely a passive peace, but a dynamic peace that passeth all understanding, the peace of which the great Valmiki has sung (*Samudraiva gambirye dhairyecha himavaniva*). I thought, Sir, if the Swastika be inscribed inside the Chakra it would along with the *Dharma Chakra* of Asoka fittingly symbolise our ancient culture, that is to say, the esoteric and esoteric aspects of our culture. The Dharma Chakra symbolises the esoteric and the *Swastika* symbolises the esoteric aspects. But, Sir, I have now seen the flag and I find that it is somewhat hard to fit the *Swastika* into this *Chakra*. It would look cumbersome because of the design of the *Chakra*. The *Chakra* symbolises the *Dharma Chakr*a or the Wheel of the Law, the Wheel of *Samsara* which revolves on these eternal verities of *Shantam, Shivam, Sundaram.* These verities sustain the *Samsara* and in them we. as part of that universe live and move and have our being. Pandit Nehru referred to our role as peace-makers and peace-bringers. That is certainly true. India's role has been that from years sempiternal, from the beginning of time. In the words of Swami Vivekananda, we have never dipped our hands in the neighbour's blood, our embattled cohorts have never marched into other lands for conquest, and we have always been the harbingers of peace and the makers of peace in this war-torn, war-weary world. Mr. President, Sir, after having seen the design of this Flag, I do see that it is difficult to fit the *Swastika* in, much as I would like to see it fitted in., It would make it rather clumsy and cumbersome. In these circumstances, I do not press this amendment and beg leave of the House to withdraw it.

Mr. President: Mr. Tajamul Husain.

Honourable Members: He Is not present.

Mr. President: Dr. Deshmukh.

Dr. P. S. Deshmukh (C. P. and Berar: General): Mr. President, Sir, after such an impressive and emotional speech by Pandit Nehru one hesitates to say or add anything that may be interpreted or considered to take away from its effect. We always respect his words and on a somewhat sentimental question like this, our respect approaches adoration. I have some very strong grounds on which my amendment was based. It is not in any way or sense discordant with the speech to which we have just listened. My idea was essentially based on the retention of the tricolour absolutely intact with the charkha retained as it is charkha which Is the emblem of Ahimsa and the common toiling man associated so inseparably with the acquisition of our political freedom, and the name of Mahatma Gandhi. But in view of the fact that the House would rather stick to the Flag that hag been proposed I do not wish to move the amendment, although I still feel that my idea has much in it to recommend itself.

Mr. President: Mr. Shibbanlal Saksena had given notice of an amendment to the above amendment of Dr. Deshmukh but since that amendment itself has not been moved, no question of this amendment to the amendment being moved arises. Now we shall discuss the Resolution.

Seth Govind Das (C. P. and Berar: General): *[Mr. President, I have come here to support the resolution moved by Pandit Jawaharlal Nehru. I consider this day a landmark in the history of India. Today, Independent India is displaying her national flag. Everyone who, has taken part in the struggle for freedom during the last twenty-seven years is today reminded like Panditji of the events during that period. We were unarmed and helpless and had no resources for achieving independence. But the way in which this battle of freedom has been fought and victory achieved has no parallel, not only in the history of India but also in the history of the world. Today we are achieving the victory for which we were trying for the last so many years. We are also reminded of those who came forward so many times to, pull down this flag, to trample it and to set fire to it. But when Truth and Justice were with us, it was altogether impossible to trample it and to finish it in that way. After twenty-seven years we have been able to prove to the world that even an unarmed nation with no resources at its command, can achieve freedom, if it follows the path of Justice and Truth.

Today, I am reminded of the day when in 1922, Pandit Motilal Nehru came to Jubbulpore for the first time. I am a resident of Jubbulpore. That was the first time when this flag was displayed in India. At that time it had three colours-red, white and green. It was a tricolour no doubt. At that time, this flag was hoisted over the Town Hall of Jubbulpore for the first time in India. Who is not reminded of Pandit Motilal on seeing Pandit Jawaharlal Nehru? At that time a question was raised in the House of Commons as to how this flag was hoisted over a public hall and the Prime Minister of Great Britain assured the house that no event of the sort would be repeated in India in future. But I am pleased to find today that the flag which was hoisted for the first time twenty-five years ago in Jubbulpore, my home town, will now be unfurled over every public building there. It will be a matter of pride for everyone in India.

There is no touch of communalism in the three colours of the flag. Panditji has already told you this in the course of his speech. It is true that at a time when the colours were red, white and green there was a trace of communalism in the flag. But when we change these colours to saffron, white and green, we declared it in clear words that the three colours had no communal significance. At that time, we also made it clean as to what these colours signified. Those who have been maddened by Communalism today, should not take this flag to be a communal flag. You see that it has the Asoka chakra in the middle. Panditji told you what a great place Asoka has in our history. After the battle of Kalinga, Asoka tried to unite the whole world with love and he achieved such success that the historians not only of this country but also of the whole world admit that there has been no Emperor like Asoka in the world. Mr. H. G. Wells writes in his History of the World that while the rest of the Emperors led a bloody life, Asoka alone tried to unite the world with love.

When we see the colours of our flag we should keep in mind other things also. I want to tell those who say that the saffron colour represents Hindus, that it is wrong to say so. No doubt at me time it was the colour of the Hindus. During the regime of the Peshwas it was the colour of the Hindus. In their fights for freedom, Rajputs used saffron dress and saffron ensign. But If we go more remote into the past, we will have to accept that saffron was not the colour of these times. You may be knowing that in the times of Mahabharata there was no question of colour. The flag flying over the chariot of Arjun had the symbol of Hanuman. Karna's flag had the symbol of the elephant. Therefore to describe any colour as the ancient colour of the Hindus is historically wrong. I say that it is natural that the flag under which we fought the battle of freedom during the last twenty-seven years and have now achieved independence, should be our national flag. I am pained to see that at present, some people maddened with communalism are bringing about such events, which I am confident, after sometime when sense will dawn upon them, will make them very much ashamed of themselves. Only day before yesterday a meeting was held in Delhi regarding Hindi. The motion that Hindi should be the national language and Devanagari script the national script, was to be moved in the meeting. Pandemonium prevailed in the meeting and national flags were removed from cars and thrown away. I say that to be mad with communalism and to do such things and to insult the flag in this way is an insult to the whole nation. Human beings live in this country and not gods and they have the three dispositions of "*Satvaguna, Rajoguna and Tamoguna*" ('goodness, passion and dullness'). If such incidents occur, peace, righteousness and happiness of which this flag is the symbol, will disappear from this land. Therefore I warn these people, who are mad with communalism that they should not do such things. As regards the green colour, there wag a time when this was the colour of the flag of the war of Independence. I would remind you of the war of Independence of 1857. At that time, the colour of our flag was green and under it we fought that battle. It was at that time not the colour of Muslims alone or of Hindus but of all those who fought the war of Independence. Therefore nothing is more painful than to be against any particular colour and that too at a time when the whole of India is becoming independent and this flag will be hoisted everywhere in the country. We have styled this flag as a world-conqueror and have spoken of its conquest of the world with love. We want to conquer the world with non-violence and love. This is its symbol. When we will have done that, we will have fulfilled our pledge. I support this resolution with all my heart.]*

Shri V. I. Muniswami Pillai (Madras: General): Mr. President, Sir, I appear before you today to support the Resolution so ably moved by our great national leader Pandit Jawaharlal Nehru who had a lion's share in the freedom struggle of this great country.

Sir, he has explained to us the significance of this Flag which is to be held and defended by the millions of the inhabitants that live In this great country. It is not to be the Flag of the rich or the wealthy but it is to be the Flag of the depressed, oppressed and submerged classes all over our country.

Sir, I particularly welcome the introduction of the wheel in the centre. Mahatma Gandhi gave us the great *mantra* that lies in the matter of the *Charkha*. Those of us who have taken to *Charkha* feel proud today after so many centuries of political struggle in this country, that it has been possible to bring a Flag for this country which was lacking all these centuries.

I also welcome the introduction of the Sarnath Lion Capital of Asoka. Asoka, coming as he did after the great Buddhist order, has given us the great *Panchaseelam*, above all, sympathy for humanity.

The Harijan classes and all those communities who are in the lowest rung of the ladder of society, feel that the constitution which is on the anvil of this supreme body is going of bring solace to the millions of the submerged classes. The principle of Buddha who exhibited practically his great sympathy for suffering human beings, I am suire, Sir, will be practically carried out after accepting this great Flag.

With these words, I support the Resolution.

Chaudhri Khaliquzzaman (United Provinces: Muslim): *[Mr. President I support the resolution moved by Pandit Nehru (*Cheers*). I think that from today everyone, who regards himself as a citizen of India--be he a Muslim, Hindu or Christian, will as a citizen make all sacrifices to uphold and maintain the honour of the flag which is accepted and passed as the flag of India (*Cheers*). I do not wish to narrate again history which is wrong. I want that all of us should forget the past and should oust from our minds the old things. Therefore, I hope that the majority too shall forget the past. All of us should make a fresh history of India from today in which everyone, who has got sincerity, dignity and interest in the reconstruction of the country and the nation, may join hands. I know that a flag to look at, is simply a piece of cloth but a country's flag symbolises its ideals and its aspirations, both moral and spiritual. I feel happy that none, who calls himself a citizen of India, can have occasion to disagree with the speech of Pandit Nehru in support of the flag. Therefore, I think that from whatever angle, we may view it, the step taken today will only strengthen the foundations of India. Every Muslim, Hindu and Christian will feel proud in hoisting this flag throughout the length and breadth of India, and he shall honour it (*Cheers*). With these words I support the motion.]*

Sir S. Radhakrishnan (United Provinces: General): Mr. President, Sir I do not wish to say very much after the very eloquent way in which Pandit Jawaharlal Nehru presented this Flag and the Resolution to you. The Flag links up the past and the present. It is the legacy bequeathed to us by the architects of our liberty. Those who fought under this Flag are mainly responsible for the arrival of this great day of Independence for India. Pandit Jawaharlal has pointed out to you that it is not a day of joy unmixed with sorrow. The Congress fought for unity and liberty. The unity has been compromised; liberty too. I feel, has been compromised, unless we are able to face the tasks which now confront us with courage, strength and vision. What is essential to-day is to equip ourselves with new strength and with new character if these difficulties are to be overcome and if the country is to achieve the great ideal of unity and liberty which it fought for. Times are hard. Everywhere we are consumed by phantasies. Our minds are haunted by myths. The world is full of misunderstandings, suspicions and distrusts. In these difficult days it depends on us under what banner we fight. Here we are Putting in the very centre the white, the white of the Sun's rays. The white means the path of light. There is darkness even at noon as some People have urged, but it is necessary for us to dissipate these clouds of darkness and control our conduct by the ideal light, the light of truth, of transparent simplicity which is illustrated by the colour of white.

We cannot attain purity, we cannot gain our goal of truth, unless we walk in the path of virtue. The Asoka's wheel represents to us the wheel of the Law, the wheel Dharma. Truth can be gained only by the pursuit of the path of *Dharma*, by the practice of virtue. Truth,-*Satya*, *Dharma*-Virtue, these ought to be the controlling principles of all those who work under this Flag. It also tells us that the *Dharma* is something which is perpetually moving. If this country has suffered in the recent past, it is due to our resistance to change. There are ever so many challenges hurled at us and if we have not got the courage and the strength to move along with the times, we will be left behind. There are ever so many institutions which are worked into our social fabric like caste and untouchability. Unless these things are scrapped we cannot say that we either seek truth or practise virtue. This wheel which is a rotating thing, which is a perpetually revolving thing, indicates to us that there is death in stagnation. There is life in movement. Our *Dharma* is *Sanatana*, eternal, not in the sense that it is a fixed deposit but in the sense that it is perpetually changing. Its uninterrupted continuity is its *Sanatana* character. So even with regard to our social conditions it is essential for us to move forward.

The red, the orange, the Bhagwa colour represents the spirit of renunciation it is said:

(Sarve tyage rajadharmesu drsta).

All forms of renunciation are to be embodied in Raja Dharma. Philosophers must be Kings. Our leaders must be disinterested. They must be dedicated spirits.' They must be people who are imbued with the spirit of renunciation which that saffron, colour has transmitted to us from the beginning of our history. That stands for the fact that the

World belongs not to the wealthy, not to the prosperous but to the meek and the humble, the dedicated and the detached. That spirit of detachment that spirit of renunciation is represented by the orange or the saffron colour and Mahatma Gandhi has embodied it for us in his life and the Congress has worked under his guidance and with his message. If we are not imbued with that spirit of renunciation in than difficult days, we will again go under.

The green is there--our relation to the soil, our relation to the plant life here on which all other life depends. We must build our Paradise here on this green earth. If we are to succeed in this enterprise, we must be guided. by truth (white), practise virtue (wheel), adopt the method of self-control and renunciation (saffron). This Flag tells us 'Be ever alert, be ever on the move, go forward, work for a free, flexible compassionate, decent, democratic, society in which Christians, Sikhs, Moslems, Hindus, Buddhists will all find a safe shelter.'

Thank you. (*Loud cheers*).

Dr. Mohan Sinha Mehta (Udaipur State): Mr. President, Sir, as I had listened from my seat to the great speech which was delivered by our great leader on a great subject, the first thought that rose in my mind was that there should be no more speeches on that subject and that the Resolution should be adopted unanimously from every section of the House by acclamation. But since it was not to be and some speeches were made--fortunately no amendments are being considered--I ventured to come up here and say a few words in support of the Resolution.

Sir, I should like to say that the proposal which has been put before us has the support of the Indian States also. (*Cheers*). One of our representatives, a distinguished Prime, Minister, participated in the deliberations of the Committee which has brought this proposal before you through Pandit Jawaharlal Nehru.

Sir, this is a historic occasion when free India is going to adopt a National Flag and I wish you to understand that a very large majority of the Indian States in India are and remain an integral part of India. (*Cheers*)

Sir, when I was listening to Pandit Nehru's speech from my seat, I felt he symbolised to me in my vision the subject of the Resolution which he was moving, the sombre background of the panels of this room and Pandit Nehru in his spotless white. Knowing Pandit Nehru as we do, I am sure I am not exaggerating when I say that he in his figure represented the significance of the subject-matter of this Resolution.

Sir, as he explained to us the contents of the Flag, and its design, especially when ha was coming to the *Chakra* of Asoka's column, I thought he would also refer to it as symbolising the participation of the Indian States in the Indian Union. For the first time, Sir, after a long, long time, we will have India ruled for India and by Indians. Again Pandit Nehru symbolises this also-the symbol of self-rule. But you will pardon my saying that in a large part of India which you colour yellow on the map the ideal of self-rule was maintained by the Indian States. Please do not analyse this proposition on the basis of political philosophy, When we are discussing the Flag of India we are not discussing abstract doctrines or political practices, but primarily things which are symbolic, things of sentiment. Am I far wrong in saying that the *Chakra* of Asoka represents the Indian States, because since the time of Asoka. the Great, the whole country has not bean under Indian rule, ruled by Indians for Indians? At any rate, some of us would like to look upon it with that sentiment. I am, therefore, speaking here not only on my own behalf, but also on behalf of a large number of States; I have not consulted them, but I am sure they will agree with me when I say that this Flag whether it is flying over a building in India or on the high seas in foreign waters, this Flag would represent the combined sentiments of the Union of India, irrespective of what places of worship we go to, irrespective of the difference in our names and nomenclatures; we are all Indians and this is our Flag.

Sir, I wholeheartedly support the Resolution.

Mr. Mohomed Sheriff (Mysore State): Mr. President, Sir, I am sorry that some controversy has been created about the Resolution which was go admirably moved by Pandit Jawaharlal Nehru about the question of the consideration of the Indian Flag. Some gentlemen suggested that there should be some variation in the colours represented on this Flag. Some wanted that the......... (*Hon'ble Members:* "No, no".) Very well.

While appreciating the motive which has actuated these gentlemen in making this representation, yet, speaking for myself, I say that so far as this Flag is concerned, it is the best Flag and I do endorse whatever Pandit Jawaharlal Nehru has said this morning while sponsoring this Resolution.

Sir, the white, the saffron and the green colours, signify renunciation, purity or sacrifice. Great spiritual significance is attached to them These colours are venerated by all persons, whether they are Hindus, or Muslims, Christians or Parsis. The *Chakra* which is there in the centre of the Flag symbolises motion, progress and advancement and from aesthetic and other considerations also, it suits the genius, tradition and culture of India. As was said by Chaudhuri Khaliquzzaman, it is a Flag which deserves the respect of everybody who lives and has his being in India. With these words, Sir, I have very great pleasure in supporting the Resolution sponsored by Pandit Jawaharlal Nehru.

Mr. Satyanarayan Sinha (Bihar: General): I suggest, Sir, that the question be now put.

Honourable Members: The question may be put.

Mr. President: I have got the names of some twenty-five speakers here because it is an occasion on which every one would like to express himself. But I think it is not necessary to carry on the debate any further, because we have heard from members all that could be said. I would, therefore, put the closure motion to vote.

Mr. Tajamul Husain (Bihar: Muslim): Sir, before closure is applied, I would like to submit that more speeches should be allowed, because on an occasion like this everybody should be given the opportunity to express his thoughts.

Mr. B. K. Sidhwa (C.P. and Berar: General): Sir, this is a memorable day and the opportunity to express himself should be given to everyone who wishes to speak.

Rai Bahadur Syamanandan Sahaya (Bihar: General): Sir, it is not every day that we will be adopting a National Flag for the country and as such it is but proper that if a few more members want to speak to-day they should lie allowed to do so.

Pandit Govind Malaviya (U. P.: General): Sir, let us have the whole of today as the Flag day.

Mr. President: I am entirely in the hands of the House; if you do not want more speeches, I shall stop here, but if members want more opportunities to speak I shall proceed in the order in which I have got the names here with me.

Shri Balkrishna Sharma (United Provinces: General): We want to hear the old mother.

Mr. Tajamul Husain: We would like to hear the "Bul-bule Hind."

Mr. President. I will call upon her at the end. I am sure it will be the sweetest speech and we should, according to our old custom, end with sweets. (*Cheers*).

Mr. Saadulla may now speak.

Saiyid Mohammad Saadulla (Assam: Muslim): Mr. President, Sir, my intervention in this debate was not at all necessary, in view of the very learned and able speach of Pandit Jawaharlal Nehru and speeches from other quarters. The reason for my standing before you is that I want to make perfectly clear our position. 'Die Muslim members who are in this House in spite of the fact that you have extended to them "*swagatam*" on the very first day, are looked upon by some members with distrust and attempts were made to debar us from participating in this August Assembly unless we disclaim certain opinions we hold. I have seen in the press certain references that the Muslim members in this Constituent Assembly are unwanted, and some papers had gone to the length of saying that the Muslim members here will be fifth columnists and saboteurs of the Constitution. I am very glad that the Resolution of Pandit Nehru gives us a chance of belying these aspersions and removing distrust by proclaiming from the housetops our allegiance to the Union of India where by accident of residence and birth we happen to be. It the injunction of Islam, emphasized by instructions from League High Command and leaders, that wherever we be we must be good and loyal to the government which functions there. Acting on the principle I salute the Flag which has been presented to the House by Pandit Nehru.

In my opinion the Flag symbolises the evolution of our aspirations, the fulfilment of our struggles and the ultimate result of all our sacrifices. If I may be permitted to draw an analogy from nature, the saffron represents the condition of the earth, the scorched condition caused by the torried heat of the Indian Sun. When the crystal-clear white raindrops and the water from the snow-capped mountains and rivers comes down we get our and areas converted into smiling green fields the crops of which sustain us and conduce to the growth of the people. Similarly we had in our political struggle our scorched earth days but later on came our days of hope and today this Flag unfurled in this House has brought us to the culminating point, the desiderata of our past struggles. I am glad, Sir, that the Flag remains as it is and that the amendments proposed were not moved, for India is represented in the different colours of this Flag. India is very well noted for her spiritual attainments. Everywhere it is admitted that India has got a great spiritual message to send out to the different countries of the world. The saffron, as is well known, is the colour of all those people who live the spiritual life not only among Hindus but also among Muslims. Therefore the saffron colour should remind us that we should keep ourselves on that high plane of renunciation which has been the realm of our *Sadhus* and saints, *Pirs* and *Pandits*. I therefore welcome the inclusion of this colour in the Flag.

Next I come to the white portion. White both among Hindus and Muslims is the emblem of purity. In congratulate the High Command of the Indian National Congress that by a bold stroke of imagination they took up the white cap as the symbol of their creed. The presence of the white portion in this Flag should remind every one who takes it up that we must be pure not only in word but also in deed. Purity should be the motto of our life,--individually as well as in connection with the State.

Lastly, Sir, green reminds me of the fact that it was the emblem of the upsurge of India's freedom. Green was the emblem of the Flag which was raised by Bahadur Shah in 1857. But it has more than a sentimental or symbolical value to us Muslims because green was the colour of the Flag of the Muslims from the time of the great Prophet of Arabia thirteen centuries ago. Some may regret that the *Charkha* which was the emblem of the masses has been replaced by the *Dharma* chakra of Asoka. But I consider that it was really a heaven-born inspiration of the authorities that this Chakra now takes the place of the *Charkha.* Although the *Charkha* was the emblem of our self-help and of our approach to the common masses and was embodied in our activities by the message of the Mahatma, yet towards the later stage the ideal of *Charkha* had been polluted, the instruction or inspiration of Mahatma Gandhi had been deviated from and those who wore the *Charkha* which was the symbol of non-violence were most violent in their actions which at one time Pandit Nehru had at great personal risk to assuage. The *Dharma chakra* of Asoka reminds us of the condition of the people at the time of that great Buddhist Emperor of India. He ruled not for his personal aggrandisement but for the contentment, peace and prosperity of the people under his charge. This emblem now embodied in our National Flag ought to remind every administrator and every citizen of the federation of India that we should forget the past and look to the future and try to carry on the tradition of that great Buddhist Emperor Asoka, and we should be reminded at all times that we are here not only for our material prosperity but also for our spiritual advancement. This *Chakra* was a religious emblem and we cannot dissociate our social life from our religious environments.

Sir, with these few words not only on behalf of myself but also as Deputy Leader of the Muslim League Party and as an old inhabitant of the furthest and the smallest province of the Indian Union, Assam, I salute this Flag as a symbol of India's freedom.

Dr. H. C. Mookherjee (West Bengal: General): Mr. President, ever since the Indian Christian community became conscious of the fact that it was fundamentally an Indian community, its great leaders in the past have always fully identified themselves with the Indian Nationalism. I need only remind those, who do me the honour of listening to me, of the name of the late Kaka Baptist of Bombay, of the late K C. Bannerjee of Bengal, of the late Bishop Chidambaram of the United Provinces and the late Dr. S. K. Dutta of Punjab. These names are only a few out of the many I could quote to prove that we have all along identified ourselves fully with Indian Nationalism. From one point of view we have been misunderstood. It has been held that because we profess Christianity,--essentially an Asiatic religion,--and because we have certain contacts with foreign missions, therefore the Indian Christian community has what is known as Christian mentality. It is not so and I stand here to say that it is an incorrect idea. It is a misconception and I want it to be clearly understood that today I on behalf of my community, am pledging our allegiance once more to the Flag.

To me it seems significant that some of the workers very closely associated with the Congress are Indian Christians and I am sure my friends will bear testimony to the fact that we too have produced leaders who have fully identified themselves with Indian Nationalism. We owe our allegiance to the Flag, not only because we are Indian Christians, but because we have been always well treated in the past by the Indian National Congress. In fact it would be no exaggeration to suggest that we have been better treated by the Indian National Congress than by those with whom we are affiliated from the standpoint of religion. I take this opportunity of reminding the Hon'ble Pandit Jawaharlal Nehru of an occasion which happened in 1938 when I had been called to the Punjab by Dr. S. K. Dutta to do a little service in connection with a function at the Forman Christian College. At that time the University Union at Allahabad had arranged for an address by me on Prohibition and they insisted that I should speak on this subject because shortly before that I had visited Salem in Madras through the kind offices of Rajaji. Pandit Jawaharlal Nehru had agreed to preside over the function, but had forgotten the subject on which I was expected to speak. At his request, first of all I explained my ideas about the duties of minorities when asked by him to put before the audience our views regarding the minority question. He was to have left for Delhi within half an hour, but he forgot everything about it and in consequence missed the train. After I had spoken, Pandit Nehru told me that what the community had stood for would be remembered by the Indian National Congress when it came to power. Within three or four days I received reports of a certain case of injustice suffered by Indian Christians in some villages. I went to the villages and found out that the charges were true. I placed before Pandit Nehru the information which I gathered and in seven days' time the whole matter was settled. In that way our religious liberties were restored.

May I in this connection mention another occasion when we received prompt help from the Congress? When I was in Madras, the Principal of the Physical Education College at Saidapet, Dr. Beck, told me that he had immense difficulties in getting land for the Madras College of Physical Education. As soon as Rajaji came to power he granted us even more land than we had wanted within a short time. These are the services that we have received from the Congress. This not only because we are in sympathy with the objectives of the Congress but also because of good treatment we have identified ourselves with the Congress. Once more I, repeat that the Indian Christians owe allegiance to the National Flag.

Mr. R. K. Sidhwa: Mr. President, Sir, the Honourable Mover of this motion Pandit Nehru, said that he felt it a proud privilege to move this Motion and present this Flag to this House. Sir, it is not he proud privilege of only Hon'ble Pandit Nehru today, but it is the proud privilege of the whole Nation to see this Flag round which the people have struggled hard to win freedom has become an accomplished fact, that the National Flag hereafter shall be an officially recognised Flag. While our young and old men and women and children hoisted this Flag on private houses and public buildings, the British bureaucracy in India pulled it down and trampled it under their feet. Notwithstanding that, our countrymen took up, that very Flag and hoisted it on the very building from which it had been pulled down. While doing so, they strictly followed the doctrine given to us by Mahatma Gandhi to carry on the struggle in a non-violent way. Mahatma Gandhi enjoined upon us to be non-violent in word, thought and deed. I must admit, Sir, while it has not been possible to follow non-violence in word and thought, I along, with millions of Indians have strictly followed the principle of non, violence while fighting the battle against the British bureaucracy in India. Through that non-violent struggle we have been able to achieve our cherished goal today. On the Flag problem, a popular slogan went round, "Up, up with the National Flag; down, down with the Union Jack". We do not mean disrespect to any Nation's Flag, but we considered the hoisting of the British Flag here, a symbol of slavery. On 15th August this Flag which has been presented to us today will be hoisted on this August Assembly, on the great magnificent Secretariat Buildings and I may also say, Sir, on the Viceregal Lodge. (*Cheers*). And the Union Jack will be respectfully, slowly and solemnly brought down. Undoubtedly, on that day, the National Flag will be hoisted all over India and it will be saluted by every one.

Sir, the first National Flag, I should say the Swaraj Flag, was hoisted in 1911 at the Indian National Congress Session held at Calcutta by that great President, by that great congressman, by that great Indian Patriot who was one of the founders of the Indian National Congress and, may I say, the prime mover for the, formation of the Congress, the late Dadabhai Naoroji. That flag I have seen in the picture I have got it in my house. It is not the same Flag as we see here today. I now remember what that great leader said on the occasion of hoisting that Flag in Calcutta in 1911.

Mr. President: I did not want to interrupt the speaker. But he is mistaken in regard to the year. It was 1906 and not 1911.

Mr. R. K. Sidhwa: Thank you, Sir. While hoisting the Flag he said: 'I present this Flag. Under this Flag we should fight our battles.' Sir, this Flag has since changed in design and now it has been officially recognised as the Flag of the Nation. We shall all salute it. It will remain firmly and solidly till eternnity wherever it is flown.

The Honourable Mr. Jaipal Singh (Bihar: General): Mr. President as I listened to Pandit Jawaharlal Nehru, I thought no speech would be necessary, but since various groups in this House have severally tried to acknowledge their acceptance of and allegiance to the Flag which we are going to adopt as the National Flag of this country. I thought I would also say a few words on behalf of the 30 million Adibasis, the real owners of this country, the original sons of the soil, the most ancient aristocracy of India, who have been fighting for freedom for the last six thousand years. On behalf of these my people, I have great pleasure in acknowledging this Flag as the Flag of our country in future. Sir, most of the members of this House are inclined to think that flag hoisting is the privilege of the Aryan civilised. Sir, the Adibasis had been the first to hoist flags and to fight for their flags. Members who come from the so-called province of Bihar, will support me when I say that, year after year, in the *melas*, *jatras* and festivals in Chota Nagpur, whenever various tribes with their flags enter the arena, each tribe must come into *jatra* by a definite route by only one route and no other tribe may enter the *mela* by the same route. Each village has its own flag and that flag cannot be, copied by any other tribe. If any one dared challenge that flag, Sir, I can assure you that that particular tribe would shed its last drop of blood in defending the honour of that flag. Hereafter, there will be two Flags, one Flag which has been here for the past six thousand years, and the other will be this National Flag which is the symbol of our freedom as Pandit Jawaharlal Nehru has put it. This National Flag will give a new message to the Adibasis of India that their struggle for freedom for the last six thousand years is at last over, that they will now be as free as any other in this country. I have great pleasure. Sir, in accepting and acknowledging on behalf of the Adibasis of India the Flag that has been presented to us by Pandit Jawaharlal Nehru.

Mr. Frank R. Anthony (C.P. and Berar: General): Mr. President, Sir, as listened to the very eloquent speech of Pandit Jawaharlal Nehru in introducing and commending this Flag, I thought that it was a sufficient seal to the solemnity of the occasion. But since the understandable feelings and enthusiasms of members have led to the making of several speeches, I felt that I should say a few words. I had the privilege of serving in the Committee which finalised the form and shape of this Flag. It was made clear there that this Flag did not contain any communal motives or significance. While we have retained essentially the banner under which the fight for India's freedom was fought and brought to consummation, the Flag as hoisted today has certain qualities and motives which should be cherished by every nation that treads the path of progress and freedom. I believe sincerely that this is really a beautiful Flag in its physical aspect and also in its motives. Today this Flag is the Flag of the Nation. It is not the Flag of any particular community, it is the Flag of all Indians. I believe that while this is a symbol of our past it inspires us for the future. This Flag flies today as the Flag of the Nation, it should be the duty and privilege of every Indian not only to cherish and and live under it but if necessary, to die for it.

Giani Gurmukh Singh Musafar (East Punjab: Sikh): *[Mr. President, I feel that after the speech of such great men as Pandit Jawaharlal Nehru and Sir Radhakrishnan, who have so brilliantly interpreted the colours of the flag I need not say much. I have stood up only with the idea of associating myself with those sentiments. The sacrifices made for this flag and in the cause of the country's freedom have been pathetically narrated by Pandit Nehru in his own inimitable style. Under this Flag, my community mustered around the Indian National Congress and contributed its utmost to those sacrifices, I think no one shall be happier than the Sikhs to see those sacrifices flowering and bearing fruit today. But there is one thing and that is unavoidable that flowers are never without thorns. At this hour of happiness, I feel that many of my brethren, who were one with us at the time of making sacrifices could not now be here with us to share our happiness. It may happen sometimes that a thorn is useful in heightening the beauty and charm of the flower. I am only trying to give vent to emotions which fill my heart at the though as to how many sacrifices we had to make to see this flag up in the air. We have reached the position today that we can install our flag wherever we like, Now it is equally incumbent upon us to maintain the dignity of this fluttering Flag. Perhaps at times we may have to make the same sacrifices to keep it aloft as we have had to achieve it. Therefore, I promise on behalf of my Sikh community that they shall continue to make sacrifices for upholding the honour and dignity of the flag with the same Vigour, daring and fearlessness, as they have shown in the cause of the country's freedom. With these words, I support the Resolution moved by Panditji.]*

Mr. H. J. Khandekar (C.P. & Berar: General): *[Mr. President, I support the Resolution on this flag as moved by the Honourable Pandit Jawaharlal Nehru. You know what great Sacrifices have been made by us to maintain the honour of this Flag in this country; and how many sacrificed their lives, got their children trampled were killed and destroyed. The British Empire used all their power to destroy this Flag; but we the inhabitants of this country always cherished and adored it This Flag, under which we find Free India and which we wish to hoist, over Free India, is the Same Flag which even today giver, us strength to free ourselves.

This Flag, has three colours. One is saffron which is related to our Own community, I belong to the depressed classes and I Wish to remind you that where Shivaji was in power and when a chance of freeing this Country and establishing a Hindu Raj arose our community sacrificed lacs of persons under this saffron banner. For example, the Iron Pillar of Sidhanath Mahar in Koragaon reminds us of that age even today.

Here is the Flag. It has three colours. The first one is related to my community. The second colour which is white denotes peace and tranquillity and indicates unity amongst all the communities in this country and for this reason this Flag represents every religion and every language in the country. As the President of the All India Depressed Classes Union, I wish to give this assurance before the House that my community shall always follow the Flag which we are adopting today. With these words, I support the Resolution on the Flag on behalf of my own self and community as a whole. If the honour of the Flag, maintained by us even up to this day is a besmirched any time, my Community along with other inhabitants of the country will sacrifice themselves to save the honour of the Flag. With these words I beg to support the Resolution.]*

Shri Balkrishna Sharma: *[Mr. President, Sir, when my leader Pandit Jawaharlal Nehru has expressed such lofty sentiments today on this occasion, I myself thought no speech should be delivered after that. But the conventions prevailed and members of every group have expressed their ideas, here. On the suggestion of my elders, I also submitted my name to the President and wish to express myself briefly before you today.

This day, the day of moving this resolution by Pandit Jawaharlal Nehru, is a day of congratulations our country and its history. When I was listening to the speech of Pandit Nehru, I felt as we had finished one part of our Journey and were beginning the next. Now, when the first part of our journey comes to a close, we feel obliged to look back. In the history of the last twenty years, a great man, born amongst us, has so melodiously and artistically harmonized our life that it would be ingratitude on our part , it we do not bow to him. It is not possible to enumerate in this short time, what Mahatma Gandhi has given us and contributed towards our national life and what is being given by him to us even now. But if you take a little trouble and go back to the circumstances prevailing 27 and 28 years ago, you will find what great progress has Been made, in our country through the efforts of the world's greatest leader. There was a time when Congress was merely passing resolutions and assembling for three days during Christmas and it considered that its duty ended there. When Mahatma Gandhi said that we would not get independence by passing resolutions, and that strength was necessary to obtain rights, the nation looked at him in bewilderment and thought the he had gone mad. The message of gaining strength for a nation without arms appeared to be a mad idea in the history of the world. The world thought of only one way as means of attaining national rights and that was the way of violence. Should we not remember today that development of mass consciousness in the country, which was carried out by Mahatma Gandhi by non-violent methods? It appealed to the people and they organised. I think that it was the greatest gift of Mahatma Gandhi that he changed a mere resolution-passing Congress into a fighting body. His second great gift to our country was that the Congress which worked only for three days (in a year) was changed into a permanent Organisation. His third great gift is of a national language. We used to express ourselves in a foreign language. Mahatma Gandhi by offering us Hindi as a National language, gave us a chance to feel and awaken our national sentiments. One of those boons is that of the Flag which has been offered by him to this country. Thus centralising the collective strength of our country in the form of this flag, he inspired us to proceed and march on the way to sacrifice. Today, on behalf of all of us, I offer my homage at the feet of this great man.

When Pandit Jawaharlal Nehru wag addressing us, I looked at him and felt what had been done by this great man to our country. How much idealism have we attained through him and how much sense of service and devotion have we imbibed through him? On behalf of you all, I offer my respects to Pandit Jawaharlal Nehru and Mahatmaji. When I was listening to his speech, I felt that one part of the journey is coming to an end. An idea crept in my mind that now we have to see what next we have to do. Pandit Jawaharlal Nehru interprets the *Chakra* in the centre of our National Flag as an indication of movement. It reminds me of the old message which I had read in *Brihadaranyaka Upanished* "Remaining asleep is *Kaliyug*, opening of eyes is *Dwapar* getting up is *Treta* and moving about is *Satyayug*". Today Pandit Jawaharlal after giving us the message of motion in the form of this chakra, is once again taking us to *Satyayug*. Upanishad writers say: "Charaiveti, Charaivet" Bhagwan Buddha himself has said "Charaiveti Khihave Charaiveti". "Go on, endeavouring continually, go on again and again, there is no place for rest." On behalf of the congressmen today, may I give this assurance to our leader Pandit Jawaharlal Nehru "Dear Captain Under your leadership we shall try to follow you with all our strength."

Today on this occasion I salute the National Flag and pray to God that a new era may dawn upon this country, a new earth and a new sky may be formed in this country which may be able to give a message of eternal peace to the entire human world from under this Flag].*

Pandit Govind Malaviya: *[Mr. President, Sir, when I came here today I had not the slightest idea that we would speak anything about this Flag. But when Pandit Jawaharlal Nehru, the beloved leader of the country, made his speech, a wave of joy enthusiasm arose in our hearts and we felt a desire to pay our tribute to the National Flag on this solemn and auspicious occasion. Thus, Sir, I also sought your permission to speak a few words.

The importance of a national flag does not depend on its colour, its bands or its other parts. The flag as a whole, is important and other things--the colours etc., that it contains--are immaterial. The flag may be of a piece of white cloth of any other insignificant material but when it is accepted as a National Flag, it becomes the emblem of national self-respect. It becomes an expression of the sense of freedom a nation. It becomes its dearest object. For the last 27 years this tricolour flag has been uppermost in our thoughts and imagination. We have made numerous sacrifices for the freedom of India with this flag in our hands. As I have already stated, when a flag or any other thing is accepted by a nation as its ensign, it becomes the dearest object of the nation and assumes the most important and the highest place in the life and history of that nation. This, our Flag, has been the symbol of the hopes and dreams of four hundred million souls for the last 27 years. For the honour of this flag millions holding it dearer than their lives, suffered tremendously. Numberless people went to jails leaving their children starving. People had their heads and bones broken by the lathis of police and the military to keep it aloft. Unarmed youngmen and students of the country opened their chests before the bullets of the English military or police to protect the honour of his flag. For generations it has been our flag and the great feeling, emotion and enthusiasm we have in our hearts for this flag is beyond human description. We are eager to pay our tribute to this flag.

Sir, this flag for which great sacrifices have been made and about which there are many 'gathas' of patriotism, heroism and sacrifices, has become the centre of our thoughts. There are various opinions today in our country about this flag. Many members have given notices of various resolutions about this flag. I know every mover has his own individual and important reasons for moving his resolution. If their suggestions are not accepted here, it does not mean that we do not appreciate the thoughts of any particular individual or section. We do not certain the idea that because some differences of opinion exist regarding this flag, any body forfeits his claim to it. On the contrary, we hold that he has similar claims to it as we have. I would like to address a few words to those who have opposed the adoption of this flag, or have moved amendments for effecting some change in it, I would like to address a few words to the Hindu members who have approved of the flag. There maybe some ground for their complaint but it should not be forgotten that this flag has been the emblem of our highest hopes and noblest emotions for 27 years. It has been the advocate, after 27 years' struggle and sacrifices presenting before the House some other flag for adoption? The struggle for independence started by the Congress was not on behalf of any particular community or section. Under this flag, the Congress and the khilafat, the Hindus and the Muslims together infused the fire of enthusiasm in the people of this country; and the Sikh community has made countless sacrifices. Every community in India has shed its blood and has sacrificed its all. This flag does not belong to any particular community. It belongs to us all as a whole. The characteristic feature of the flag is this, that though it belongs to the whole of India, every individual, whether Hindu, Muslim or Christian can claim it as his own, be happy over it and have respect for it.

The green portion in the flag may be taken to represent our Muslim friends the white one the Christians and other communities and the saffron the Sikhs. Every community is represented in the flag. But it does not mean that these colours merely represent these communities and they have no other significance. There may be other interpretations also of these colours. They represent the Hindus as well. As I have said the characteristic feature of the flag provides ample scope for every one to think it as his own. In the Vedas "Rta" has not been defined but It is all embracing and has been extolled by poets and bards. But no one can identify it with any particular object.

Similarly the great poets have expressed many good ideas in beautiful words about the various virtues of mankind, e.g., truth, beauty, duty, benevolence, kindness and filial devotion, All write on the same subject but in their own way. On the same virtue, one writes some thing and another some other thing. They express different ideas and different emotions in different ways. Similarly in the case of this flag, everyone can sing a chorus in praise of the flag according to his own sentiments. Every community can think of this flag as its own. Some people have complained in the press that there should be predominance of Hindu colours in the flag and that the present flag Should be changed. They ask if along with other communities, have the Hindus not shed their blood and sacrificed their kin for this flag? How can we forget the call of those Hindu martyrs through whose sufferings and sacrifices, these disgruntled (Hindus) have had the chance to see the dawn of independence? Will It not be sheer ingratitude to them on our part? With due respect, I would like to tell even the most orthodox Hindus that this flag amply represents the Hindu sentiments. This flag is the true expression of the sentiments of the Hindus and Hinduism. The Vedas say that the colour of a flag should be red. Therefore according to the Vedas the flag of the Hindus should be red. Besides this, let us interpret it in a different way. The red colour at the top represents fire and the sun. The white represents the moon. Now according to the Hindu mythology, the first thing that the Creator (*Brahma*) did was to create the sun and the moon. The Hindus, the Aryans-have since their very beginning been worshiping the Sun, Fire and the Moon, The sun and the Moon are worshipful deities. This flag represents these vary gods-the fire the sun and the moon. The green colour at the bottom, as I have said, should be taken by our Muslim friends to represent them. But at the same time, this colour in a way represents the Hindus as well. You know of all the nine planets Budha is supposed to be the most important. This green colour represents the Budha. This very Budha according to the Hindu mythology, is the god of wealth. The green colour of Budha is the emblem of prosperity and happiness of society. That colour is given in the flag. What better flag can the Hindus adopt for themselves, than the present one which represents the Fire, the gun, the Moon and Budha? Apart from this, there is a 'Chakra' wheel in the centre of the flag. This is very significant. The, Hindus attach great importance to 'avatars'. 'When there is too much of vice, suffering and disturbance on the earth, according to the Hindu mythology, some Divine Being comes on the stage to establish order and guide the world to the path of virtue. This Divine Being is known as our Avatar. Lord Krishna was the incarnation of God. So also was Lord Buddha. "Sudarshan Chakra" was the divine weapon of Lord Krishna, Every Hindu knows of 'Sudarshan Chakra.' That "chakra" or wheel embodied in the flag. Hindus consider Lord Buddha as an Avatar and the Chakra on the flag represents Lord Buddha as well. And, if the Hindu beliefs are correct the final incarnation or divine being as already appeared on the earth to rid humanity of the present terrible turmoil and vices, and to re-establish peace, justice and order in the world. That Divine Being is amongst us. It is Mahatma Gandhi. We may not acknowledge him today, as such, but after some time, the Hindus will consider him as the latest Avatar. His dear charkha is embodied on the flag. So I can say that every one has got a pleasing feature in the lag and particularly the Hindus. As I have explained, every part of the flag is consistent with the religious sentiment of the Hindus. Therefore. far from opposing it, Hindus should adore it and should be prepared to sacrifice their all to protect its honour. I am fully satisfied with the flag, but as, some people wanted some addition and alteration in it I thought it advisable to satisfy them without making any change in the flag and for this I have made an attempt I would like to assure them that due consideration was given to their proposals and feelings but finally it was decided that the flag under which the whole country, including those who are opposing it today; fought for freedom, should be adopted as the national flag. After the change that has been made in the flag, no Hindu should have any ground for any dissatisfaction.

Sir, it is our country that has always guided the world. It has brought the World from darkness to light. As in the past, this country has fortunately for the world produced the greatest man of the time, who amidst all the crowding miseries of mankind and under the shadow, of the dark clouds of the third world war, preceded by two great wars that destroyed the world, is still standing solid like a rock and a beacon for the, world. He is proclaiming that madness should be given up. If the world follows him, there would be Peace and Prosperity. This flag bears the dear emblem of Mahatma Gandhi.

I pray to God to bestow on us the strength and the wisdom to lead ourselves and the whole world to its desired destination. It is India and he alone that can guide the world to its goal. it is India alone that can be expected to do good to the world.]*

Mr. Tajamul Husain: I want to speak a few words. My name is not on the list but I will not exceed two or three minutes. Have I your permission?

Mr. President: No I have got more than 25 names on the list.

Mr. Tajamul Husain: I hope I will have your permission afterwards.

Mr. President: I would request the speakers now to shorten their speeches as we have got only forty minutes more, so that I may be able to give an opportunity to as many speakers as may 'wish to speak. I suggest two minutes for each speaker.

Dr. Joseph Alban D'Souba (Bombay: General): Mr. President: I give you, Sir and the House a guarantee that I am not going to exceed more than 2 or 3 minutes. I stand here at this Assembly rostrum first as an Indian and then only as an Indian Christian (*Hear, hear*) because Sir, on this day when the National Flag has been introduced and planted there is jubillation and joy all over the Nation, first in every Indian Home and along with that in the home of every Indian Christian. Sir, the mover of this Resolution, the great Pandit Jawaharlal Nehru, has in an eloquent and brilliant manner told us how this Flag, represents, in the first place the brilliant and great traditions of the past and equally brilliant historic conditions of the past. Then Sir, he went on to till us what it represents at present. At present he told us it represents the ups and downs that have occurred in the progress towards freedom and above all, he told us that it represents the triumphant conclusion of our fight for freedom. Sir, it is only meet and proper that the mover of this Resolution should the great Pandit Jawaharlal Nehru and why? Because of his great personality. Sir, what do I mean by his great personality? If I am to express it as briefly as I can and at the same time give it all the significance, I can, it is this. His personality, Sir, is based on all sacrificing and all selfless character, and because it is all sacrificing and all selfless, it is all-pervading, all permeating and all-conquering. I need not say a word more on this. It is rot necessary because the whole of India, nay, Sir, the world knows how this great son of mother India has immolated himself on the high altar of the Indian Nation Sir, I think my time is coming to a close. I shall express my heartfelt desire for the progress of India under the aegis of the Flag that has been accepted today, by a small Latin quotation:

"Vivat, Crescat, floreat India"

which rendered in English means--May India under the aegis of this Flag live, grow and flourish, to the lasting advantage and glory not only of teeming millions of citizens of India but may I add, Sir, to the lasting glory and advantage of the world at large This Sir. is the prayer of this humble Indian Christian. (*Cheers.)*

Mr. Jai Narain Vyas (Jodhpur State): *[Sir, I need not say much in praise of the National Flag. I want to associate myself on behalf of the politically backward people of the States, with the chorus of tribute paid to the flag. Under this flag not only the people of the provinces but the States people too have fought for freedom, economic and social, and for liberation from foreign yoke. Our struggle in the State has been associated with this flag and with the mover of the Resolution relating to The flag, Pandit Jawaharlal Nehru. Without his guidance the movement of the States people and their progress would not have attained the momentum it has. Today Pandit Nehru's name is associated with the flag. Our feelings and sentiments are the same a, those of Pandit Nehru. Previously there was a *Charkha* on the flag and now a *Chakra* has been substituted for it. This *Charkha* is the symbol of activity. Under the *Charkha* flag the people of ten provinces have already attained freedom but the people of the States have yet to attain it in certain respects. I mean we have to attain responsible government in States. We do not mean to remove our ruling princes but we want to have full responsible government under them. There is no doubt that we will attain our objective under this flag. This is our national flag. It belongs to all the communities of India Hindus, Muslims, Sikhs and Parsis. Let it fly everywhere in India and on the Viceregal Lodge, on the hamlets of the peasants and on the palaces of the princes. With these sentiment, I pay my homage to the Flag.]*

Shri S. Nagappa (Madras: General): Mr. President, Sir, I rise to support the Resolution before the House, moved by our revered leader Pandit Jawaharlal Nehru. Sir, this is the Flag under which we have during the last sixty years marched on and have at last reached victory. We are proud of this Flag. In it there are three colours and these three colours represent the three communities in our Country who are united into one. The Flag denotes also what the country desires. We do not desire to capture other countries, we do not want to be imperialistic, we do not want to see other countries bowing to us. All that we want is that our Flag should fly all over the world as the Flag symbolising peace, progress and prosperity. That is the aim of our country.

Mahatma Gandhi was kind enough to introduce in the Flag the emblem of the poor man--the industry by which the poor man ekes out a livelihood--the *Charkha*. Sir, I come from the *Harijan* Community which depends very much on spinning and Mahatma Gandhi has rightly put the *Charkha* on the Flag. Pandit Nehru was kind enough to say that this emblem should be on the other side also, if it is nut on one side. But the *Chakra* represents not only the *Charkha* but it happily represents the progress of the country and it represents the rising Sun, the rising Sun of the independence of our country. We have been living for two hundred years in slavery, and now we are at last seeing the Sun of independence rising in our country.

This *Chakra* represents also the great *Vishnu Chakra*--the wheel of the world that was able to take the whole world to peace, progress and prosperity.

Sir, it is very easy to have a Flag, to hoist the Flag and see it fly over buildings. But every man must know how to keep the honour of the Flag. Then man who keeps the honour of the Flag keeps the honour of the whole Nation. The higher the Flag flies, the greater is the honour of the Nation.

Hitherto, this Flag was called the Congress Flag. Now it cannot be called the Congress Flag, it will be called the Indian National Flag. Everyone, whether he be a Muslim, Hindu or Christian, will own this Flag. He has to defend it and stake even his life, if need be then alone will the honour of our country be high in the eves of the world.

Mr. Lakshminarayan Sahu (Orissa: General): Sir, I wholeheartedly support the Resolution that has been so ably, wonderfully, and may I add, magically moved by Pandit Jawaharlal Nehru. The Flag that has been presented to us reminds me of my own place in Orissa. There is the temple of Jagnnath in Orissa over which for over a thousand years the Eternal Wheel called the *Neela Chakra* has been standing; and with it is associated the Flag called "*Patita Pavan Vana*", that is, the flag which represents the poor people, the untouchables. I wish that on this occasion all our leaders would make an effort to throw open the temple of Jagannath to the so-called untouchables who are denied admission into it to-day.

This wheel on this Flag reminds me also of many associations connected with Kalinga and Magadha to which latter place you. Mr. President, belong. Asoka from

Magadha went over to Kalinga and fought a great battle. After very heavy carnage, he was turned into a gentle being the gentle Asoka; and it is there that the Kalingas in a way conquered Asoka. When I see this Flag here, associated with the name of Asoka and also with Buddha, I am reminded that our country Kalinga after a great battle taught a good lesson to Asoka non-violent one. There are two places in Orissa even to day where the edicts of Asoka are standing, to tell the world that we must serve all countries and all humanity, irrespective of caste, creed, colour and so on. In fact, I feel that this Flag of ours is not only National, but it is in a way International because the wheel represents the wheel of eternity. Therefore, all of us, I say, even those of us who were not with the Congress till yesterday will respect this Flag. This is the Flag which has become entirely National, completely National today when the Resolution about this National Flag was moved so ably by Pandit Jawaharlal Nehru.

When I see the three colours on this Flag, I am reminded also of the three images inside the temple of Jagannath. Lord Jagannath represents the blue colour, Balaram represents the white and Subhadra Devi represents the yellow colour, with Lord Jagannath and Balaram on either side of Subhadra Devi, in a way defending the Women folk. This symbol I worship because in a way it is the symbol of my country--the place from where I come to sit in this Constituent Assembly as a member.

I therefore, wholeheartedly support the Resolution so ably moved by Pandit Jawaharlal Nehru.

Rev. Jerome D'Souza (Madras: General): Mr. President, I thank you Sir, for giving me the opportunity to join in the chorus of the expression of happiness on this very auspicious occasion, when India, without distinction of religion or caste or creed, province or section accepts a National emblem that will represent her in the councils of the world. Sir, some of us who have seen public demonstrations and pageants in foreign countries, have felt humiliation at seeing our own great land, its vast peoples, its ancient heritage and culture and its incomparable beauty unrepresented in these pageants. And when these strangers looked at us we had to bow our head in humiliation knowing that in this Comity we had no independent representation. Sir, today this humiliation ends and if such a pageant should take place, the children of India who may be present there will share the pride with which other nations greet and honour the symbols of their country fluttering in the air and their hearts will rejoice as their Flag will rise in the breeze. That, Sir, is one aspect of it which, I think, will come home to all of us with peculiar satisfaction.

Better than most people, I take it that our people understand the meaning of symbolism, of ritualism the significance of the hoisting of this Flag, and all that it stands for. Such is our love of ritual, such is the imaginative wealth with which we surround symbols and signs. Ours is a very happy and singularly well-conceived symbol with its harmony of colour and with its unique idea of a circle in the centre into which such a wealth of meaning can be concentrated. Sir, I am sure many of those who were present will recall the historical occasion when this very noble building in which we have gathered was inaugurated. On that day the Viceroy of the day, Lord Irwin, referred to the circular construction of this building and alluding to one of the noblest of Christian English poets, quoted his lines. that he had seen "eternity as a circle of white light." Sir, this circle. this wheel, which represents so many things time and its revenges. industry and all its achievements-represents for us also eternity and the values of eternal life.

Pandit Jawaharlal Nehru referred to these spiritual values by which a nation lives and which should be represented by this Flag. Nothing could be more appropriate and admirable than this circle to represent those spiritual values. This is the symbol with which India will continue its fight May I be permitted to say that India will continue its struggle also for peace, and that just as her soldiers will be encouraged and uplifted by the sight of this Flag in all righteous warfare against unjust enemies, so also this Flag will stand as a reminder of our love of peace. May it help us to go forward in all righteous work and see that all social wrongs are righted. Above all, in every case of fratricidal warfare, of strife among ourselves, when injustice is done, when tempers rise, when communal peace is broken up, may the sight of this Flag help to soften the harsh and discordant voices, and help us to stand together, as we have gathered today in unanimity, in happiness is brotherly feeling to salute this, our National Flag.

Mr. President: There are yet a number of speakers on the list but I had promised earlier that I will call Mrs. Naidu to make the final speech. So I request her to address the House.

Mrs. Sarojini Naidu (Bihar: General): Mr. President, the House knows that I had refused over and over again this morning to speak. I thought that the speech of Jawaharlal Nehru--so epic in its quality of beauty, dignity and appropriateness--was sufficient to express the aspirations, emotions and the ideals of this House. But I was happy when I saw the representatives of the various communities that constitute this House rise up and pledge their allegiance to this Flag. I was especially reminded by the people that sit behind me from the Province of Bihar that it was at the risk of my life and seat in their province, should I forget to mention that this Flag, so willingly and proudly accepted today by the House has for its symbol the *Dharma Chakra* of Asoka, whom they claim (I do not know with what historical veracity) to be a Bihari! But if I am speaking here today, it is not an behalf of any community, or any creed or any sex, though women members of this House are very insistent that a woman should speak. I think that the time has come in the onward march of the world-civilisation when there should be no longer any sex consciousness or sex separation in the service of the country. I therefore speak on behalf of that ancient reborn Mother with her undivided heart and indivisible spirit, whose love is equal for all her children, no matter what corner they come from in what temples or mosques they worship, what language they speak or what culture they profess.

Many many times in the course of my long life, in my travels abroad for I am vagabond by nature and by destiny--I have suffered the most terrible moments of anguish in free countries, because India possessed no flag A few of those moment I would like to recall.

On the day when peace was signed at Versailles after the last war. I happened to be in Paris. There was great rejoicing everywhere and flags of all nations decorated the Opera House. There came on the platform a famous actress with a beautiful voice. for whom the proceedings were interrupted while she wrapped round herself the flag of France. The entire audience rose as one man and sang with her the National Anthem of France--the Marseillaise. An Indian near me with tears in his eyes turned to me and said "When shall we have our own Flag?" "The time will soon come," I answered, 'When we shall have our own Flag and our own Anthem."

I was asked to speak at a peace celebration in New York soon after the peace had been signed. Forty-four Nations and their Flags fluttering in the great hall in which the

Assembly met. I looked at the Flags of all the Nations and when I spoke I cried that though I did not see in that great Assembly of Free Nations the Flag of Free India, it would become the most historic Flag of the I world in the not distant future.

It was also a moment of anguish for me when a few months later forty-two Nations sent their women to an International Conference in Berlin. There they were planning to have, one morning, a Flag parade of the Nations. India had no official flag. But at my suggestion some of the women Indian delegates tore strips from their saris sitting up till the small hours of the morning to make the Tri-colour nag, so that our country should not be humiliated for the lack of a National Banner.

But the worst anguish of all was only a few months ago, when on the inspiration of Jawaharlal Nehru the Nations of Asia met in Delhi and affirmed the unity of Asia. On the wall behind the platform there was the flag of every nation of Asia. Iran was there, China was there, Afghanistan was there as also Siam. Big countries and little countries were all represented but we had exercised a self-denying ordinance, so that we might scrupulously keep or pledge that no party politics would be permitted at the conference. Can you not understand and share with me the anguish of that decision which excluded the Tricolour the Congress Flag from the Asian Conference? But here today we retrieve that sorrow and that shame: we attain our own Flag, the Flag of Free India. Today we justify, we vindicate and we salute this Flag under which so many hundreds and thousands of us have fought and suffered. Men and women, old and young, princes and peasants, Hindus and Muslims, Sikhs, Jains, Christians, Zorostrians, all of them have fought under this Flag. When my friend Khaliquazzaman was speaking, I saw before me the great patriots, my friends and comrades of the Muslim community who had suffered under this Flag. I thought of Mahomed Ali, of Shaukat Ali, of Ansari and of Ajmal Khan. I could mention the smallest community in India, the Parsi community, the community of that grand old man Dadabhai Naoroji, whose granddaughters too fought side by side with the others, suffered imprisonment and made sacrifices for the freedom of India. I was asked by a man who Was blind with prejudice: 'How can you speak of this flag as the flag of India? India is divided.' I told him that this is merely a temporary geographical separation. There is no spirit of separation in the heart of India. (*Hear, hear*). Today I ask one and all to honour this Flag. That wheel, what does it represent? It represents the *Dharma Chakra* of Asoka the Magnificent who sent his message of peace and brotherhood all over the world. Did he not anticipate the modern ideal of fellowship and brotherhood and cooperation? Does not that wheel stand as a symbol for every national interest and national activity? Does it not represent the *Chakra* of my illustrations ad beloved leader, Mahatma Gandhi and the wheel of time that marches and marches and marches without hesitation and without halt? Does it not represent the rays of the Sun? Does it not represent eternity? Does it not represent the human mind? Who shall live under that Flag without thinking of the common India? Who shall limit its functions? Who shall limit its inheritance? To whom does A belong? It belongs to India. It belongs to an India. Pandit Jawaharlal Nehru told us that India has never been exclusive. I wish he had added 'India welcomes all knowledge from friend and toe alike Did she not? Have not all the cultures of the world contributed to the ocean of her culture? Has Islam not brought to India the ideals of democratic brotherhood the Zorostrian his steadfast courage, who fled from Iran with a blazing log from their fire temple, whose flame has not perished these thousand years? Have not the Christians brought to us the lesson. of service to the humblest of the land? Has not the immemorial Hindu creed taught us universal love of mankind and has it not taught us that we shall not judge merely by our own narrow standard but that we should judge by the universal standard of humanity?

Many of my friends have spoken of this Flag with the poetry of their own hearts. I as a poet and as a woman, I am speaking prose to you when I say that we women stand for the unity of India. Remember this Flag there is no prince and there is no peasant, there is no rich and there is no poor. There is no privilege there is only duty and resibility and sacrifice. Whether we be Hindus or Muslims, Christians, Sikhs or Zorostrians and others, our Mother India has one undivided heart and one indivisible spirit. Men and women of reborn India. rise and salute this Flag I bid you, rise and salute the Flag. (*Loud cheers*).

Mr. President: I would ask Members to express their assent to the Resolution which has been placed before them and show their respect to the Flag by getting up and standing in their places for half a minute.

The motion was adopted, the whole Assembly standing.

Mr. President: I have to make one announcement before we adjourn. A question was put to me yesterday about the future programme. I have had consultations with some of the Members and with the staff of the Constituent Assembly I am in a position to state that it is possible to complete the discussion of the Report of the Union Constitution Committee within this month and, if we do that, say by the 30th or 31st of this month, we might adjourn this session. We shall be required to be here again on the 15th of the next month when power will be actually transferred to the people's representatives by the Representative of the British Government. When Members come here for that function I suggest that we might continue our sittings after the 15th August and take up the Report of the Union Powers Committee. If this is acceptable to the House (*Hon'ble Members: 'yes'*) we may also have the Report of the Minorities Committee and we may hope to dispose of that also during the next session.

The Honourable Pandit Jawahar Lal Nehru: Mr. President, Sir, may I respectfully suggest that the two Flags which have been displayed this morning may be specially preserved and subsequently deposited in the National Museum (*Applause.*)

Mr. President: I accept that suggestion.

An Honourable Member: I request you on behalf of the House to convey our homage to Mahatma Gandhi and tell him that we are observing the day very magnificently.

Mr. President: I will do that with the greatest pleasure.

The Assembly then adjourned till Ten of the Clock, on Wednesday, the 23rd July 1947.

[English translation of Hindustan speech ends]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME IV

Wednesday, the 23rd JULY 1947

The Constituent Assembly of India Met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The nourable Dr. Rajendra Prasad) in the Chair.

REPORT ON THE PRINCIPLES OF A MODEL PROVINCIAL CONSTITUTION-*contd.*

Mr. President: We shall take up discussion of Clause 15 of the Provincial Constitution, which was held over the other day. That Clause was moved and amendments were also moved. So the Clause and also the amendments are now open to discussion.

Mr. B. M. Gupte (Bombay: General): Sir, before I proceed to the arguments in support of my amendment, I should like briefly to indicate the differences between my amendment and the original Clause and other amendments. In my amendment I have retained the first two-sub-clauses of the original Clause. Then I should like also to emphasize that the ultimate authority who has to deal with the emergency is the same in both, namely, the President of the Union. The only difference between my amendment and the original Clause is that when an emergency arises the original Clause provides that the Governor shall report to the President of the Union, while I have suggested that the Governor may, if necessary, take immediate action and then report to the President. Pandit Kunzru's amendment, I think, merely reiterates and clarifies the original Clause. Then there remains Mr. Munshi's amendment. Essentially Mr. Munshi's amendment is not different from mine but it is something more. It is a redraft of the entire Clause as it would stand if modified by my amendment.

Proceeding with the argument. I should like to submit, first of all, that the scheme as provided for by the original Clause cannot work at all. Under sub-clause (1), an onerous responsibility has been thrown on the shoulders of the Governor, namely, the responsibility to prevent any grave menace to the peace and tranquillity of the Province. What is the power given to him to meet such a heavy responsibility? It is the power merely to report to the President of the Union, if at all it can be called a power. Even this power, when is it to be exercised? Not until and unless the Governor, has tried and failed to persuade his Cabinet to initiate legislation which he considers essential for the purpose of meeting this emergency. My submission is that if a problem lends itself to solution by the Protracted processes of legislation, then it is not a grave menace at all. If it is otherwise, i.e., if it is really a grave menace, then some negotiation, some discussion with the Ministry is bound to entail delay which no really grave menace can tolerate. For a grave menace does not come in a leisurely fashion. It is a sudden flare up, a violent eruption. In such circumstances, a mere power of reporting is absolutely of no avail. If the Governor has to discharge his responsibility with some chance of success, he must act immediately and for that purpose, he must have the necessary power. That is what has been provided for in my amendment.

It does not therefore mean that my amendment seeks to give unrestrained, unrestricted power to the Governor. In the first place it is stated that he shall act only when immediate action has to be taken. If no immediate action has to be taken, the Governor cannot act. If there is time to communicate with the President and receive instructions, the Governor shall not act. Why should he take responsibility unnecessarily? If there is not time, he shall take initial action and forthwith communicate it to the President. Of course, I may be told that it is the Governor who has to judge whether immediate action has to be taken. I admit it is the Governor who has to judge. But I submit that if he acts wrongly, there is the President to correct him immediately. If he acts perversely, there is the sword of impeachment, hanging over his head.

Then it is provided that he shall not assume the powers of the High Court. The High Court is the bulwark of civil liberties and its authority must ever remain unimpaired. That is another safeguard. Then, the Governor shall have to communicate his proclamation to the President and he shall abide by his directions later on. It means that it is only for two or three days that this power is given to the Governor. As soon as the President has got seized of the matter, the Governor's power comes to an end. Of course, I have provided that the proclamation is to last for 15 days, at the most. If it does last so long the responsibility will not be that of the Governor, but that of the President. Therefore, it is evident that my amendment is designed merely to enable the Governor to hold the fort till the President takes the situation in his own hand.

Then, I am told that in these days, when distances have shrunk tremendously owing to the telephone, the radio and the aeroplane, it will not be necessary to give this extraordinary power to the Governor, and it is enough merely to report to the President. I submit that the very forces which have caused this shrinkage of distances have also contributed to the intensification of the tempo of life and situations which took some time to develop in the placid old days, develop today with baffling rapidity. This argument therefore does not affect the merits of my case.

There are other more through-going objectors, and from the order paper it is evident that some of them have expressed their opposition by tabling amendments for the deletion of the entire Clause. These gentlemen are not satisfied that there should be any emergency power at all either to the Governor or to the President. I am afraid they forget that we are living in a revolutionary age, we are living in almost perilous times. The whole world has become a seething cauldron of economic unrest and political turmoil. A spirit of violence is abroad. It is only three days ago we witnessed one of the ugliest manifestations of it in Burma. Even in India we share these world conditions, and our own peculiar problems have aggravated them. Horrible tales of arson, murder and loot continue to be our daily fare of news. Nobody has any doubt that a new and a great India is being born. But I submit that the new India cannot quickly grow and prosper to its noble destiny unless we are able to maintain the frame work of well-ordered society through this stormy and critical period of our history. The whole atmosphere is explosive. Nobody knows when and where the situation will explode. It has therefore become imperative that apart from the machinery of the Government, there shall be reserved somewhere power to deal with a serious threat to law and order promptly and efficiently. When immediate action has to be taken, It is obvious that that authority must be a man on the spot. If it is to be the man on the spot, who else can that man be other than the Governor, who is elected on the widest franchise? No doubt, in most cases, the Ministry will be able to weather the storm and practically in no case will this extraordinary power be called into action. We shall all be glad if the power rusts in the Statute Book. But occasions may arise when the Ministry may not be able to act as efficiently and promptly as we expect it to do. For such circumstance, power must be reserved in the hands of the Governor.

We are told that this will be an encroachment on Ministerial responsibility. I ask, if the President, in the interests of law and order, can override the popular Ministry, why not the Governor, who is admittedly the head of the province, is much nearer home, and who a so is an elected popular leader?

In conclusion, I say if this power, restricted in its scope and hedged round with safeguards, cannot be trusted even for two or three days to a man who has been elected on a wave of popular enthusiasm, and who enjoys the confidence of the overwhelming mass of the people of the province, then the position of the Governor is reduced to that of. a dummy and a costly dummy at that; costly both to himself and to the province. For both of them will have to spend lots of money and energy for the adult franchise election. I hope the House will agree that this is not a satisfactory position for a Governor who has been elected on adult suffrage.

That does not mean that I advocate that power should be given merely for the sake of power or merely for the sake of position and prestige of the Governor. I only say, that there may be an emergency, and it has to be provided for and power has to be given to somebody. There is the Governor elected' on adult franchise; he enjoys the confidence of the people. Why should he not have the confidence of the framers of this Constitution ? Therefore. I commend my amendment to the acceptance of the House.

The Honourable Pandit Hirday Nath Kunzru (United Provinces:General): Mr. President, I move:

> "That for Clause 15 the following be substituted:
>
> > Whenever the Governor is satisfied that there is a grave menace to the, peace and tranquillity to the province of any part thereof, he may, in his discretion, report to the President of the Federation."

The three amendments that have been moved relate to the same important subject because law and order are the foundation, not merely of the State but of society. It is not surprising therefore that we should, be anxious to include such provisions in the Constitution as would ensure the maintenance of peace and tranquillity. But we have to think carefully regarding the means that we should adopt to achieve this object. I propose to deal only with Mr. Munshi's amendment in this connection, as Mr. Gupte himself has said it was better drafted and more comprehensive than his.

Sir, Mr. Munshi's amendment is practically a reproduction of Section 93 of the Government of India Act, 1935. Before we adopt the method laid down in this Act, we should clearly understand the scheme that is embodied in it. This Act did not confer full responsibility on us. The Ministers, though they occupied an important position, were not masters of the situation in their own provinces. The Governor enjoyed Legislative and administrative authority in important fields. In fact, it would be true to say that so far as the Provincial part of the Constitution was concerned, he occupied a central position. Now, do we desire that the Governor in the new order should be as important a figure as he was till the other day? I do not think, Sir, that there is any reason why we should base our Constitution on that distrust which permeates the Government of India Act, 1935. The British Government were afraid that the Indian Ministers would so use their power as to bring about a deadlock and make the maintenance of the British authority impossible. They therefore imposed checks on the authority of the Ministers. Now, surely, we cannot proceed on the same basis. We must trust our Ministers and they must be the central figures in the Provincial Government.

Sir, some members may be influenced by the example of America where the States have Governors who have the power to maintain law and order. But in the American States there is no responsible Ministry. Besides, even in those States where the powers of a Governor or limited he occupies the most important position in the eyes of the people, both in the politics and the Government of the State. He further controls the Militia and the Central Constabulary or the State Police Force, if any. He therefore, occupies a position all his own. We cannot by any means reconcile the Presidential and the Cabinet systems. It seems to me therefore that the very principle on which Mr. Munshi's amendment is based cannot be acceptable to us. The Report of the Provincial Constitution Committee proceeds on a different basis from that on which the British authorities proceeded when they placed the Government of India Bill in 1935 before the British Parliament.

Apart from this, Sir, let us consider how the Governor could act under the Government of India Act, 1935. He was given adequate powers to enforce his decisions. He could take upon himself all the functions of Government when it could not be carried on in accordance with the provisions of the Act of 1935. He controlled the service too- The All India services connected with district administration which were under the control of the Secretary of State were immediately responsible to him for their actions. Again, so far as the Provincial services were concerned their members had a right to appeal to the Governor. Besides, one of the special responsibilities of the Governor was to protect the rights and interests of the members of the Services. The members of all the Services. whether Imperial or Provincial, were there under the ultimate control of the Governor. Apart from this, no change could be made in the rules relating to the Organisation and discipline of the police force without his sanction. His authority over the provincial executive agencies was therefore complete. The Governor under the Constitution as it is likely to be,-I mean a Constitution based on the principles laid down in the Report before us-will not enjoy these powers which will be made over to the Minister. How will he then to be able to have his orders carried out? His position will be an exceedingly difficult one. He may be an elected authority but in the case of a conflict between him and the Ministers, the position will be one of great embarrassment both for him and for the Ministers. The difficult position in which Ministers will be placed is obvious. Their prestige will go down in the eyes of the public and the services to the extent that the Governor is able to control the Services, and this will undoubtedly lead to administrative complications. They will be in the same predicament in which they are now *vis-a-vis* the Governor. Sir, we have to consider whether the method that has been suggested of ensuring the maintenance of law and order will be suitable on general grounds for securing the object that we have in view. Is it desirable that we should allow one man to sit in judgement, so to say, over the Ministers? However wise a Governor may be and by whatever method he may be selected, I submit that it is highly undesirable that his personal view should prevail over the collective view of the Ministers who will be better informed than him. That is another argument and I think a very Strong argument for not agreeing to the amendment that has been moved by Mr. Munshi.

Now, Mr. Gupte said-and perhaps Mr. Munshi will say-that the power that has been conferred on the Governor can be exercised by him only in the event of a grave menace to the peace and tranquillity of the Province. Under Section 93 of the Government of India Act. 1935, the Governor can take over the entire Government only when he is satisfied that the government of the Province cannot be carried on as contemplated by that Act, but it is provided in sub-section (5) of that Section that "the functions of the Governor under this Section shall be exercised by him in his discretion" and that "no proclamation shall be made by a Governor under this Section without the concurrence of the Governor-General in his discretion." Those who rely on the present Government of India Act shield thus realize that whatever the power conferred on the Governor by Section 93 he could take no action without previously consulting the Governor-General. Mr. Munshi's amendment will therefore confer greater power on the Governor than the Act of 1935 does. Now, it may be said that, even if the amendment is passed, it will still be possible for the Governor-General to decide finally whether the Governor's action was justified. I submit, Sir, that ' the position of the Governor-General will be seriously prejudiced if the Governor takes action of a drastic character without waiting for his decision. If the Governor issues a proclamation assuming all the powers and functions of Government, it is obvious that if the Governor-General disagrees With him he will be forced to resign, but on the other hand, if the Governor-General owing to this consideration, desists from instructing the Governor to withdraw his proclamation he will place himself in a very difficult position. The will be acting against his own judgment and making himself responsible for the Consequences of a policy which he disapproves. Mr. Gupte thought that his amendment gave power to the Governor to act on his own initiative for a very short time, and that that was all the difference between his amendment and Clause 15 of the Report. This may seem to be a trifling difference to Mr. Gupte, but to me it seems to be a vital difference. If the Governor-General is really to be in a position to decide what action should be taken. I think it is imperative that the Governor should not be allowed to prejudice the position by over-ruling his Ministers and taking over all authority from them.

I am Sensible, Sir, as I have already said, of the fact that this House is very , anxious that law and order should not be allowed to break down in any event. The question therefore to be considered is whether we can achieve the end in view without conferring on the Governor the power that would be vested in him if Mr. Munshi's amendment were passed. I have already said that if a Provincial Ministry is to be over-ruled it should not be over-ruled by single man. It should be over-ruled by some authority which would enjoy a more important position in the eyes of the public than the Provincial Ministry. Besides, it is desirable that the collective opinion of the Provincial Ministry should be set aside not by one man but by a body of men who can take into account the circumstances not merely of one Province but of the whole country. We have such an authority in the President and the Federal Government. I submit therefore that such reserve powers as you want to assign to any authority for ensuring the peace and tranquillity of a province should be vested in the Central Government. The Central Government in every country is ultimately responsible for the peace of the country and for every part of it. Since it bears this responsibility, let it be possessed also of the powers required by it to fulfill this responsibility. I submit therefore, Sir, that my amendment is much better than the amendment moved by Mr. Gupte or Mr. Munshi. It is in accordance with the view propounded by Mr. Patel when he moved the consideration of the Report on the Principles of the Provincial Constitution. It achieves all that we want without bringing the Governor and his

Ministry into conflict and placing on him a responsibility which he cannot discharge unless the Services are in the last resort made answerable to him. This would be going back to the scheme of the Government of India Act which we have been condemning all these years. I think, Sir, that we are debarred by our principles from accepting the view embodied in this amendment. We must, therefore, adopt the only method permissible in a Constitution which is based on the doctrine of Ministerial responsibility. The solution that I have proposed will not be inconsistent with the principles underlying a Federal Constitution. If my view is accepted, it will only mean that the Central Government would occupy a strong position in regard to the maintenance of law and order. This certainly does not militate against responsible government or federal government; and since there is a way, Sir, of ensuring the peace and tranquillity of the country by acting on this principle without infringing the basic ideas that lie at the bottom of responsible government, I venture to command my amendment to the attention of the House.

Shri T. Prakasam (Madras: General): Mr. President, Sir, I heard with great interest and attention the argument of Pandit Kunzru; but I have not been able to follow him when he said that the power should vest with the Centre and that the Governor when he sees any danger to peace must only report to the Centre and take its orders. (Honourable, Members: "We cannot hear you"). All right.

Apart from the Government of India Act of 1935 or the Act which we are going to pass, it is a matter of mere commonsense that when there is a great danger of a breach of the peace, the man on the spot should have the power to deal with it immediately and should try and prevent it and then report it to the Centre. This is the ordinary commonsense view which is embodied in any statute in any country. And I expect this Constituent Assembly which is a sovereign body, when it is enacting the very first statute, conceding freedom of action and provincial autonomy to the provinces and also establishing freedom for the whole country, taking power away from Great Britain, it will see to it that the law and order does not break down in the very first minute, or in the very first few minutes, and to see that the man on the spot does not have to stand there, looking at the happenings an merely reporting it to the President of the Union Government and trying to get orders from him. I would, submit, Sir, that such a course should not be adopted by this Constituent Assembly. It is against the very elementary principles of doing duty. I do not care, Sir, whether it is the Governor, or whether it is the Minister or whether it is a Police Officer that is in charge of this business. That officer that person on the spot must have the authority to deal with the situation and try to prevent a breach of the peace first. And it is only when the situation goes beyond his power from the very outset or when be is collapsing that he would order for the military or any other source of help from the Centre or from the President of the Union.

Pandit Kunzru was arguing that what was conceded under the Government of India Act of 1935 to the Governor should not be adopted by us here. I was not able to understand him. The Governor under the Government of India Act, 1935, is not the same as the Governor- that this Constitution is providing. It is not an Englishman who will be the Governor of a Province. Under this Constitution it is the man who is elected by adult franchise, by the whole Province. who will be the Governor. Having clothed him with such a position and having made him feel that he was the man responsible not to any particular community or section of the Province, but responsible for everyone in the Province who elected him to that office, having clothed him with such a position, is it right for any of us to say, "let him be all this, let him be a man elected by all the people, let him be anything, but we should not entrust him with that authority which the Government of India Act, 1935, had given to the Governors."

Sir, we have been working with the Governors under the Government of India Act, 1935, since 1937. We had to deal with bad situations, very grave situations even during my own short period as Prime Minister. Allow me, Sir, to tell you and the Honourable Members of this House that if the troubles that has overtaken Northern India and other parts of India had not overtaken the South of India, it was not because occasion did not arise for such troubles, but it was because the matters could be dealt with by vigilance on the spot, without waiting for a sin-ale minute for anybody's orders. There was a communal clash threatened, of a very serious type in South India. How was the at situation met? Not a single death occurred, though it was a very serious situation. How was that prevented? Our Muslim League friends and all the leaders of the people in the Province were also very good and alert. The moment trouble was sensed, at dead of night they came and knocked at our door and said there was danger. What were we to do? We immediately went to the spot. It was Providence that helped us to prevent blood-shed and death. It was the people, both Muslims and Hindus who saved the situation. Members of both communities formed peace committees and they began to parade the area even before the Police or the military could come to the spot. And it was managed so well that nothing happened although the whole of that zone all along the railway line from that point to the northernmost point was most inflammable.

Again, let me point out that during the worst stage of the famine, food trains could not pass from Madras along the line to a distance of fifteen hundred miles. And it was the police who were entrusted with the duty of managing it. When they knew that the train was to be interrupted by the forces that had been organised for that purpose, they were got ready, and protection was given all along the line for 1500 miles so that the food train could pass and the danger could be averted. How could anyone expect the person in charge of law and order or even the Governor who also was having authority under the Government of India Act of 1935 to report it to the Centre, to the President of the Union Government, and await his orders? Is it not very dangerous that such a thing should be done? I did not expect this proposal to come up in this form. I know when this debate was going on in another place the first attack was upon the post of the Governor himself. That I can understand; if you attack the Governor's appointment itself and eliminate him altogether and make the Ministry responsible, that would be a different matter. But it was not so, I must congratulate the leadership and the Provincial Constitution Committee that had drafted this Provincial Constitution. They have lifted up the whole nation in one stroke and saved, us from the troubles that had overtaken us till now by reviving adult suffrage. Adult suffrage is not a new thing. as imagined by some of our friends, handed down to us by Great Britain. Adult suffrage you will find inscribed on the stone walls of a temple in the village of Uttaramerur twenty miles from Conjeeveram, the whole structure of democracy of those days just a thousand years ago,-many of us imagine that it is Great Britain that has given us the democratic process of election; that is not so. You will find 'on the stone walls of that temple written in the Tamil language an inscription to the effect that there was democratic election carried on then on the basis of adult suffrage a thousand years ago. There was adult suffrage as stated there. There were no wooden boxes which could be used as ballot boxes, but cadjan leaves were used as ballot papers and pots as ballot boxes. That is the way in which they carried on the administration of the country, even in the villages; and it is the misfortune of this country that we have fallen on evil days and came under the rule of different kings. All our ancient things disappeared and we have become slaves, as it were, and whatever has come to us, we imagine as having come from Great Britain Having revived adult suffrage, having clothed the Governor under that suffrage with a unique position--I am glad it was not copied from the American or Australian or Canadian or any other Constitution-this Committee and this leadership had the vision to see the position of the country at present. How are we to manage matters now? I was an advocate of the British system of democracy and the same was the feeling of some of those friends who have tabled these amendments. I was very anxious that the British system should be copied by us. It was copied by us and we have gone through all kinds of experiences. Our leaders have gone through all kinds of experiences and having regard to all our conditions and sufferings they have suggested this device of an elected Governor on adult suffrage by which they have lifted the nation in one stroke to the skies, because they have made everyone in this country feel, man and woman, for whom-the Congress had been fighting all these years, that at last it is their Government, that they are appointing their Governor, the man who will be responsible to them. The Governor should have power to do something. if something is going on in the presence of the Governor, is he not to interrupt it and prevent it on the spot when it lies in his power? To suggest that nothing should be done and the Governor should not be made to exercise the power of Governor of the 1935 Act is not sound and correct. Anything good, may be taken even from the Constitution of 1935. Everybody must accept the proposal without a single word of demur in this matter. I am very sorry that this retrograde step has been proposed that the whole thing should be postponed until the Union President sends reinforcements or advice or gives directions. I earnestly request the House not to accept any such suggestion. We would make the whole world laugh at us if we say that without meeting a situation on the spot he must come to this place. We will be making fools of ourselves if we adopt this amendment.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Sir, the motion before the House raises a vital issue and I would request the House very carefully to consider the pros and cons with meticulous care before they come to any decision. Sir, coming from an unfortunate part of this country where the breakdown of the machinery of law and order and the non-intervention of the administrative head in the matter has been causing tremendous bloodshed and incalculable suffering and hardship, I feel called upon to put in a few words in support of the amendment moved by my Honourable friend Mr. Munshi. What does this amendment seek to achieve? It proposes certain extraordinary powers for the Provincial Governors to be exercised by them in their discretion in very emergent circumstances. The House will note carefully- that these powers do not form part of the ordinary routine work of the Governor; it is not part of his normal duty as Governor, but these powers are to be exercised by him only in emergent circumstances, if circumstances so demand that swift action is essential for preventing a total collapse of' the machinery of law and order and even for restoring the machinery of law and order if it has already been thrown out of gear. I ask every member of this House whether he really wants to deprive the administrative head of a power like that to be exercised by him only in emergent circumstances. I quite appreciate the good point made by my Honourable friend Pandit Kunzru but one may respectfully differ from him. I want to point out to him that I have no very strong criticism to make against Section 93 of the Government of India Act, 1935. In my view that Section embodies certain very valuable provisions Our only grievance is that the provisions of Section 93 have more often than not been abused and not properly used. After all is said acid done even best Constitution in the world may not be of any use to the people if the people have not the determination and understanding and good will to work it in the spirit in which it is conceived. Who, after all, is the Governor that will be appointed hereafter under the new Constitution? He is not going to be a foreign Governor. He is going to be an Indian. He is not going to a nominated person. He is going to be elected on universal adult suffrage and as such he will command the respect and confidence of the people. He will have tremendous prestige behind him. Now, after choosing a person like that for that office, do you propose to keep him in the Government House as a dummy or do you want him to do some work for you when circumstances demand swift and immediate action? There are occasions when he will have to act quickly I quite understand that there is possibility of this power being abused. But let me tell you that this fear is more imaginary than real. The occasions on which he may be called upon to exercise this power would be very rare. What are the objections against thus amendment? It is said that the Governor will not have any power over the administrative officers and therefore his intervention would be ineffective.

Now I ask my Honourable friend Mr. Kunzru whether the Union President will have absolute power over the administrative machinery of the Provinces. So in the ultimate analysis the Provincial authority in such cases will not be divorced from that of the head of the Union. There are two checks provided. In the first place the Provincial Governor will be called upon to act immediately and simultaneously report to the Union President the causes which led him take some particular action. Now, is it expected that a Governor who is elected and entrusted with very grave responsibility, who is liable to be arraigned and impeached if he acts in contravention of the Constitution, will act in an arbitrary and thoughtless manner? I do not believe he will. I believe on the other hand he will act correctly and effectively.

Further, at the most his emergent action will be only a question of a couple of weeks. From the provision it is clear that the proclamation will cease to operate at the expiration of two weeks unless ordered by the Governor himself or the President of the Union. So, unless he finds that the Ministry is divided and there is breakdown of law and that the position would deteriorate if prompt action is not taken be will not step in; and when he does he will forthwith report to the Union President who is armed with extraordinary powers. For these reasons I think there should be some provision in the Constitution by which the ultimate responsibility for the maintenance of law and order and responsibility for preventing the breakdown of the administration should be broadly and squarely laid on the shoulders of some person and that person should be the Governor. That function must be entrusted to him for the limited purpose. Sir, I support this amendment.

Mr. President: Before I call upon any other speaker, I desire to say that we have only six days now between today and the 31st of this month and the whole of the Union Constitution has to be got through. I would therefore request the speakers to limit the duration of their speeches so that more members can participate in the discussion. I have half a dozen names with me members who wish to speak. (*An Honourable Member*: "I move for closure"). There are also other members rising in their places. I will call upon members to speak in the order of their names in my list.

Shri K. Santhanam (Madras: General): is it necessary Sir, to send up names to you for an opportunity to speak? Could not the members catch your eve?

Mr. M. S. Aney (Deccan and Madras States Group): Is it not enough the members rise in their places and thus catch the eye of the President if they want to speak?

Mr. President: It is not necessary that the names of members should reach me if they wish to speak. But if any member has sent his name and rises in his place, he will naturally catch my eye first. I shall not go according to the list as it is and would call on members who catch my eye. I would request members to limit the duration of their speeches to five minutes each.

The Honourable Mr. B. G. Kher (Bombay: General):- Mr. President, I do not propose to take even five minutes, I rise because the matter is of such importance ....

B. Pecker Sahib Bahadur (Madras: Muslim): On a point- of order, Sir, I would like to know whether it is not necessary that all members who have given notice of amendments should speak first so that all the Amendments may be discussed together?

Mr. President: So far as this Clause is concerned, all the amendments have been moved and the amendments and the Clause are for discussion.

B. Pocker Sahib Bahadur: I have given notice of an amendment to this amendment. I request you to allow me to speak at this stage. It may perhaps be taken as moved.

The Honourable Sardar Vallabhbhai Patel (Bombay: General): It could not be taken as moved now. So many members have already offered their remarks. As he has not moved it up to now, nothing can be done now.

Mr. President: So many have spoken already and the Member did not ,move his amendment earlier. His amendment was received on the 21st July. On that very day all the other amendments were moved. If the Member had any intention of moving his amendment he could have ,called my attention to it then.

The Honourable Mr. B. G. Kher: Mr. President, Sir, I rise to oppose the amendment moved by the Honourable Pandit Hirday Nath Kunzru. As I said. Sir, I would not have intervened in this debate had I no felt that the amendment moved by the Honourable Mr. Kunzru was of such a nature that it was the duty of everybody to oppose it. I submit that it has only to be read to show how futile it is. What it reads is this:

> "Whenever the Governor is satisfied that there is a grave menace to the peace and tranquility of the Province or any part thereof, he may, in his discretion, report to the President of the Federation."

The Honourable Pandit Hirday Nath Kunzru: It is the same as the amendment proposed to be moved by Pandit Govind Ballabh Pant.

The Honourable Mr. B. G. Kher: Then two of you will have to be blamed instead of one.

Now, I do not know if there is a clause like this in the Burmese Constitution if there is any such Constitution, but I shudder to think what would have happened if what has happened in Burma were to happen under this Constitution. Here is a person elected on adult franchise getting more allegiance from the people than even the Prime Minister. All that he can do is to send a telegram to the President of the Union and await results. Then, sir, it is a pity that the Honourable Member does not provide as part of his amendment what the Governor has to do if the telegraph or the telephone communication is cut off. Whenever an emergency takes place and I have seen, Sir, that even at a short distance of about 15 miles from Bombay it was not possible for people to get into communication with the Governor, or the Prime Minister or any other authorities for less than 20 hours,-what is the Governor supposed to do? He is to report to the President. Therefore even in these days of modem communication, if all that a Governor elected on adult franchise has to do is to send a report to the President of the Union and watch the results, I shudder to think what the consequences will be. I therefore oppose the amendment which, if accepted, will do the greatest herm.

Apart from that, experience has shown, as previous speakers have pointed out, that in a country where those who are in power are subject to party politics. It is necessary to have somebody who will be above intrigues, above party turmoils and who will be able to secure the safety of the people. What we are trying to do is to provide that the Governor should shoulder the responsibility and then should communicate the gravity of the situation to the President of the Union who is assisted by this Cabinet and that the President will either confirm the action of the Governor or differ from the action taken by him. If you have a Governor elected on adult franchise. do not make him only a figurehead, simply sending telegrams to the President of the Union. I oppose the amendment that has been moved by Pondit Kunzru.

B. Pocker Sahib Bahadur: On a point of order, Mr. President. I gave notice of an amendment to the amendment of Mr. Munshi. I was under the impression and rightly so that it is the duty of the President to call upon persons who had given notice of amendments to move those amendments. I did not think that it was necessary to stand up and ask for permission to move my amendment. I was not asked to move my amendment on the 21st, Only Mr. Munshi's amendment was moved and further discussion was adjourned, I therefore request that I may be allowed to move my amendment.

The Honourable Sardar Vallabhbhai Patel: When the President has given a ruling on a point of order, can the same point be raised again?

Mr. President: When a ruling has been given by the President the same point cannot be raised again. In this case, before we closed the discussion, I made it clear that all the amendments had been moved. At that time the Honourable Member did not draw my attention to the fact that his amendment had not been moved. I am afraid I cannot allow him to move it as this stage.

Dr. P. K. Sen (Bihar: General): Mr. President, Sir, I will conform to the whole some time-limit which you have fixed, and I shall be as brief as I possibly can. The question before the House involves some fundamental principles. Frankly, my views are strongly in favour of the amendments tabled in the names of my Honourable friends Mr. Munshi and Mr. Gupte. Whatever may be my view. I am quite prepared to subordinate them because I know that the Wisdom and sagacity of this House will choose the right course. Let there be no illusions. First of all, it is an emergency measure and an emergency does not happen everyday. An emergency is an emergency, it cannot be defined, it cannot be described in all its features. It appears to come in upon us suddenly but in fact it comes by insidious stages, and the amendment contemplates that the Governor should be a man of insight and foresight, firmness and promptitude who will understand and know at what stage he should step in and stop the rot. That I understand is the conception of the Governor that we had in mind when we decided upon electing him on adult franchise. What we wanted to secure was that he should be the people's man and should have the whole province behind him, every man and woman should we thought, come to the polling booth having in mind the sort of men he or she is voting for, the man who will have the power and initiative to do the right thing at the right moment. It is impossible to imagine that the Governor should willfully try to override the ministry. It is accepted on all hands, since we have adopted the parliamentary form of Government, that the ultimate executive authority resides in the Council of Ministers headed by the Prime Minister. When the Prime Minister is working in perfect unison and harmony with the other Ministers. when there is no wheel clogging other wheels when all the wheels lubricated by mutual understanding and goodwill run smoothly it is then that this democratic form of Government fulfills its proper functions. But it is apprehended there may be a sudden emergency which may not be within the power of the Ministry to cope with. It may be that there are factions, disagreements, disunion among the parties. Every form of party government is subject these disadvantages. In case there is such a position in case we find that every wheel, instead of helping the other wheels to do their work clogs the rest, preventing the State machinery from running smoothly and further when there is danger ahead to cope with, it is only then that, as the amendment contemplates, the Governor should be in a position to take all powers in his own hands and having taken necessary action, immediately report to the President of the Union so that the President in his discretion may then de the needful. This is the whole extent of the emergency powers to be vested in the Governor. The question therefore arises "Can we be confident that this democratic form of government. this parliamentary form of government, will always run so perfect that there will be no occasion for any such emergency powers?"' In case we are so confident. it follows that there will be no occasion for the Governor to exercise these powers But again, I ask can we be so confident? Have we had such a long experience of this form of government that we feel that it can never be necessary for anybody to go over the head of the Prime Minister or the Council of Ministers and to take the initiative in his own hands? The fact is, there is a dread of what is called 'one-man rule'-and it is this dread that accounts for the strong opposition to the amendment. Not even for 24 hours, it is said, can we tolerate 'one-man rule'. It is against the fundamental principles of democracy. But it seems to be forgotten that it Is when the democratic machine break down, or it incapable of coping with the situation, that the amendment contemplates vesting the man whom we have elected by adult franchise of the whole province and who undoubtedly enjoys our confidence, with limited emergency powers. Without such powers the Governor of a province would be a mere figure-head. The Governor that is contemplated in the section where his election is provided for is a Governor who can handle an emergent situation, and it is for that reason, I take it that the election on adult franchise was decided upon. I am quite prepared, as I have said to subordinate my own view but I do hope that we shall be under no illustration to the effect that we are subjecting ourselves to one-man rule even for a short time. It is an emergency measure and it is only justifiable as an emergency measure and on that ground, I do submit that this amendment should be accepted and pawed.

The Honourable Pandit Govind Ballabh Pant. (United Provinces: General) Mr. President, I am really sorry that I have to speak on this Resolution, I had no intention of doing so, not because I have no opinions, but because I do not ordinarily like to challenge publicly the views, expressed by my esteemed colleagues. But, unfortunately for me, Pandit Kunzru blurted out that the amendment which he had moved had Originally appeared in my name, which is a fact and which I cannot deny and Mr. Kher then said he had to couple my name with Kunzru's as the two fools who had joined together in giving notice of such a motion.

The Honourable Mr. B. G. Kher: I did not say so.

The Honourable Pandit Govind Ballabh Pant: You did not in so many words.

I am glad that he now realises that what he said was not what he meant and I am not sorry. But all the same while I am bound by the decision of the Party and have to support Mr. Munshi's amendment, I think I must give my reason why I had the temerity and the presumption to give notice of this amendment.

Mr. President. May I point out that the House is not concerned with any decision of any Party?

The Honourable Pandit Govind Ballabh Pant: I have no objection to that, but still I feel that Members should be guided by the collective wisdom of many than by their own individual intelligence. At least I am prepared to merge my own In that of the bigger group. But still i have to tender my explanation for my attitude and the reasons which weighed with me then. The point is this. If there is a grave menace to peace and tranquillity, then how is such a delicate situation to be handled and by whom? Now you have to take into account the scheme of the Constitution which we have already accepted. I fully realize that we have agreed that the Governor will be elected by adult Suffrage but by adopting that method of election we do not convert him into a Sahasrabahu. He will still have not more than two hands and two eyes. The question is what will be the agency and under whom will the services be functioning. If it is considered that the Governor, being elected by the adult suffrage, should have control- over the executive in the day-to-day administration, I can understand his ability to handle a delicate situation, but to keep he Governor aloof from he entire sphere of administration and then to ask him to but in the most delicate moment when those in charge of the administration are supposed not to be quite equal to it, is to create chaos and to make confusion worse confounded. One can understand the Governor being in charge throughout and thus being in a position to handle a delicate situation. But to keep a man out of water-- and when there are storms to ask him to keep the boat sailing is to court disaster. That can never work, that is my apprehension.

The Governor has no power ordinarily and even now the Governor is to be no more than a reporter except for two weeks. How is that poor man during these two weeks to acquire all that capacity, that intelligence and that knowledge, which he does not normally possess? The system of democratic government means government by the people through their elected representatives. Now what is really the position which you are contemplating? It is this; the Governor does not agree with his Ministers. He cannot persuade the Legislature to agree with him and to accept his point of view. It is always open to the Governor to go to the Legislature to address them and to tell them,; that a delicate situation had- arisen, that the Ministry had unfortunately not been able to take the correct decision and that it was time for the Legislature to revise its attitude towards the administration and those in charge of it. If the Governor fails to convince the Legislature, and if he fails to convince the Cabinet which consists of not one or two, but I think of a number between 15 and 20 he will be still empowered to override the unanimous opinion of 400 members of the Lower House, the 60 members of the Upper House and the 20 representatives of the Legislature included in the Cabinet. When there is a grave and delicate situation and when there is no agency under him, how can that poor man shoulder such a burden? That is the issue that you have plainly to face: and I say if it were only this much and no more, I would not have given notice of that amendment, but the thing is that it also tends to impair the integrity of the services, it introduces an element which upsets the pyschological basis on which democracy stands, it asks people to look for protection to a man who has no power to protect them. It asks the services to be prepared for a contingency which will never arise and in which they will have to carry out the order of somebody other than the Ministers. It is fraught with grave danger. I may also disclose for the edification of Mr. Kher if he is not already aware of it, that it is not Mr. Kunzru or myself alone who happen to hold this opinion. This question was considered at very' great length. I had an opportunity of placing my point of view before the joint meeting of the Provincial Constitution Committee and the Central Constitution Committee and it was accepted by both that the Governor should rot be clothed with such authority as-is now suggested in the amendment moved by Mr. Munshi. The matter was considered by the Provincial Constitution Committee and they also finally accepted the view that the Governor cannot possibly discharge such a heavy responsibility. While I am sorry for having lost company with Mr. Kher, I have found compensation in many others who were associated with me in these Committees So the loss, though regrettable, is no irreparable.

Mr. Kher enquired if wires are cut, if the Ministers are assessinated, what will happen? I saw such a contigency will never happen. I win never allow my Ministers to be assessinated. So long as I am the Prime Minister, nobody will be allowed to assessinate the Ministers. If I cannot discharge that duty, I will step out. If the Prime Minister cannot defend himself and his Ministers, it is time for him to step out and make room for somebody else, for some other sturdier Prime Minister to come and take his place. He- asked what will happen if wires are cut. I will see that no wires are cut.

He asked what will happen if all the Ministers are assessinated. I ask what will happen if the solitary Governor, who has to report, Who has to save the wires, who has to keep the road free for the passers by, is killed? People forget that even if the Governor is killed, even if the Prime Minister is killed, there is the House there is the Legislature and it steps in and takes all the steps necessary in order to safeguard peace and tranquillity. The amendment that has been moved is neither, if I may say so, fish nor fowl nor good red herring. But it has still the odour of rotten fish. I am not free to utter these words. You have to swallow the rotten fish.

Now, Sir, you have to look at the scheme of the Act from which this Section 93 is being copied. Under this Act, the control of the services is essentially vested in the Governor. The Secretary of State's Services are under the control of the Governor. %They look to him for protection and for promotion. As you may be aware, you cannot transfer a Secretary of State's Service man from one place to another under the 1935 Act without the approval and consent of the Governor, with the result that he is the man who is really in charge of the executive and he is the man who is responsible for having created the emergency. In spite of his being in complete control of the services, he allows the situation to develop In such a way. He must face the music for which he is mainly responsible. But while under this 1935 Act the Governor is not altogether free to adopt such an attitude himself. and he has to obtain the consent of the Governor General, and the Governor-General in his turn is answerable to Parliament. here the Governor is responsible to nobody. There is no House which can call him to account for having committed a grievous blunder in a very delicate situation. I shudder to think of this amendment. In a very delicate situation when the Ministry should be free to handle things in the best manner possible the Governor may meddle and prevent the Ministers from handling the situation in a sound, proper and fair way. In a very delicate situation just when the Ministry Should have a free hand, the Ministry will be fettered with the result that a crisis will develop even where a crisis could have been avoided. This is my apprehension.

I am afraid I have taken too much time. There is a lot to be said. With the little experience that I have got in this line, I can give you many illustrations' I still feel that the amendment of which I gave notice was not unsound.

The Honourable Mr. B. G. Kher: On a word of personal explanation Sir. I only want to say that I did not mean to give any offence to Pandit Pant and I am not aware of having said anything to hurt his feelings. Mr. Pant has taken it very personally........

The Honourable Pandit Govind Ballabh, Pant: No, no. Not at all.

The Honourable Mr. B. G. Kher: R was only in debate.

The Honourable Mr. Hussain Imam (Bihar: Muslim): Mr. President, after the illuminating speech of Pandit Pant, my task has been eased a great deal. I hold the same opinion that Pandit Pant holds and Pandit Kunzru has expressed. I feel that this amendment has been ill-conceived, that it is undemocratic and that it is not based on sound logic, and is actuated, perhaps by some ulterior motive. I am sorry to use this word; but I take my cue from the joking remark of an ex-Congress man, a colleague of mine in the Central Legislature who said that perhaps it might have been aimed at demobilising the leftist element if ever it should get control of the Provincial Ministry. As I said, this was a joking remark.

My whole opposition is based on two factors. In the first place, in every constitution which I have looked through, where the Ministry is responsible to the Legislature, there is no provision of this nature that the Governor can take over the governance in his own hands. He can dismiss the Ministry and call for another if he feels that the Ministry has lost the confidence of the House.

He can, if he finds that the House is not behaving properly, dissolve the House but this motion is the strange innovation which was created by the British Government in the peculiar circumstances of India to have a Section 93 which is being perpetuated. The circumstances as Pandit Pant has pointed out, were different. The Governor there was really a party. He had certain interests which were adverse to those of the Ministry and it was essential for him to be armed with certain powers. Ordinary laws are suspended more often than is realized. There are different methods of suspension, different degrees of suspension. For instance, you have Section 144 suspending the liberty of personal association. You have, if there is a grave financial crisis, a moratorium where the ordinary laws of limitation are stopped. If you have a grave menace to the peace of the country, there is Martial Law where for a certain time you establish military rule. So the degree of suspension differs in different occasions. Secondly, I fail to realize how this omnipotent person known as the Governor can, within the short space of 14 days, change over the whole face of the Province where the Ministers who had been working for years together were not table to do it. What is the special agency and authority which he will use which is not available to the

Ministers? He can, even in the existence of a Ministry, pass an Ordinance. He can even in the presence of the Ministers with the concurrence of the Ministry, establish Martial Law. But without doing any such act, merely by assuming power to himself he will be publishing to the world that 'Now I have suspended the villains of the peace who were merely existing as a sort of stop-gap and instigators'. The meaning of this section is indicated by the following wording:

"It is not possible to carry out the Government of the Province with the advice of his Ministers."

So what it means in reality is that the danger to the peace and tranquillity is brought about at the instigation of the Ministers. Merely by the suspension you generate such an atomic power that peace and calm prevails. But after 14 days what will happen? Will the same bad lot who were regarded as responsible for all this danger to the peace, be brought back. In that case what will be their prestige and what will be their position? With what face can they ask their subordinates to carry out their orders when the subordinates know that their orders are to be carried only as long as the Governor is not invoking his special powers? There is no provision that this power of suspension will not be utilized times out of number, It is once suspended; after two weeks the Governor allows the constitution to prevail but the next day again be suspends the constitution and this process of limitation can be repeated ad nauseam without any restraint. In fact, the position of the constitution in the Province in which this power is utilized will become so that I feel that it is the Ministers who should be protected. I, as you know, am not a champion of any, executive authority. This may in the end turn our tobe the establishment of an autocratic rule if it is sanctioned by the President of the Union. If' the President of the Union feels that In a Province a Ministry has come into power which is not acceptable to the Union Executives, then that Ministry will not function and cannot function. I looked into the Union Constitution to find a counterpart for the use of his power by the President. I regret to say that in the Union Constitution too no provision has so far been made. Probably when the motion is moved, a like amendment will be placed therein giving the President autocratic power to carry out the Section 93 Government which had been rightly hated throughout India by all sections of the people. I for one, do not hold a brief either for the Governor or for the Ministry. I have had, during this short period that the Constitution has been in working order, many occasions to differs with the Ministers. I have had occasion to differ with the method in which the Section 93 Government was carried on. But I feel with all its defects, the ministerial method is a democratic method and Section 93 helps autocracy and it may at some date lead to the establishment of a regime in the province which may not be acceptable to the people- Sir, I therefore oppose the motion of Mr. Munshi.

Prof. N. G. Ranga (Madras: General): Mr. President, Sir, I am very vehemently opposed to the point of view placed before this House by the two previous speakers. it is exceedingly difficult to understand how one of my own leaders who has had experience of running the Ministries should have so completely ignored the very recent experience of Burma. Let us bring back to our mind what has happened there. Supposing any such mishap happens here in India, and half a dozen Ministers including the Prime Minister are done away with, who is there to be in that Province to straightaway make a report to the Federal President and invoke his aid? Not anyone of the Federal Union Ministers? and the Central or Federal President can-not very well immediately charter A special plane and run down to Madras or even Lucknow and then help these people who are helpless by invoking the aid of the Federal and

Provincial trips. It is extraordinary that experienced people should come here and seriously place before us views hi difference of the actual experience that is going on in our own place.

Think again, Sir, of the possibility, not of the kind of Congress party that we have to-day, having overwhelming majorities in the various Provincial Legislatures but the possibility of a number of competing political parties coming into the Legislatures and Coalition Ministries only becoming possible as a result of a sort of grouping of a number of groups and parties and the Prime Minister being only a little more than a sort of a figure head; then are we to understand at that stage a man of the stature of Pandit Pant will then suddenly come to incarnate as Prime Minister and go to the Governor and say 'I do not want your interference. I will be able to look after myself.'? Even a man of the stature of Pandit Pant, Sir, will not be able; under those circumstances being the Head of a Coalition Government, to look after himself. There will be Occasions. when the Prime Minister himself or at least some of the Ministers will surely go to the Governors and request him to invoke his special power in order to save them in spite of their own Ministry, and to save them from some hooligans or goondas or organized bandits in the country.

Some such reserve power has got to be placed in the hands of the Governor but who is this Governor? Another friend comes and tells us 'Do not make him an autocrat.' What does he mean by autocracy? Does he mean that a Governor who has been selected by adult franchise is to be considered as an autocrat? Well, he may also become an autocrat. So many people who had been elected by adult franchise also became autocrats. Quite true- That is why we have already provided the power for the Legislatures, to impeach a Governor if he were to exceed his powers. If he were to misbehave himself, as long as you have got a reserve power there in the possession of the Legislature itself, why on earth should we be afraid of the Governor either becoming an autocrat or treating his Ministers as if they were his chaprasis?

Then. there is the other point raised by Mr. Pant. He asked "what sort of experience can this Governor possibly have? Here are his Ministers dealing with day-to-day administration, who have been accustomed to take decisions on responsible occasions, whereas this man sitting as a sort of body knows nothing., When a grave crisis comes we are asked to invoke his aid. How would it be possible for him to come to a right decision?" May I remind him that it is his duty, strong, as he is as Premier in his Province, and the duty of his other Ministers to keep, the Governor in daily touch with the administration? It will be the duty of the Governor to become experienced and he would be a fool indeed if he does not grow experienced by the advice that is being given by his Ministers and Prime Ministers like Pandit Govind Ballabh Pant. Therefore. Sir, the Governor will be an experienced person. He has got to be an experienced person, a trustworthy person and a man with a sense of responsibility if he were to be able to commend himself to this adult suffrage and get himself elected in the first instance. Secondly, after his election he is being advised not only by the Prime Minister but also by his Ministers. He has got a right to be present at their Cabinet meetings; he has got also to be advised by all of them collectively and in the light of all this experience that he gains it would be possible for him to judge at the right moment whether an emergency has actually arisen at all, and if it does arise, he must possess the necessary emergency powers.

Another question has been put to us. "What powers has this Governor got? Whom has got under him to order about?" Just now, my friend Mr. Hussain Imam told us that if you were to clothe him with all these powers, the Civil Services would only look to him and not to the Ministers for allegiance Exactly so. The Civil Services will learn to look both to the Ministry as well as the Governor. Always the Governor represents the whole Ministry. So the Civil Services as well as the Reserve Forces and Police Forces will loam to obey the Governor also. The Ministers may be powerless or irresponsible for the time being. Then, what would happen to these Ministers, our friend has asked, if in a crisis they found themselves completely unequal to meet it and, therefore, they allow the Governor to have these emergency powers?

Very well then, after the emergency is over, if the Ministers are found to be absolutely useless by the majority of the members of their own Legislature, they will have to make place for another ministry. If. however. the Legislature has confidence in them and they are able to carry on, let them carry on the administration. If, on the other hand, the Legislature as well as the Ministers come to the conclusion that the Governor has misused his powers and created an emergency, then it would be within their right to move for the impeachment of this Governor. When you have provided for all these safeguards, I cannot understand how my leader Pandit Govind Ballabh Pant comes here and places before us these untenable arguments against this very wholesome amendment.

Sir, one more point and I have done. Let us remember that this Governor is to be elected by adult suffrage. Let us remember that this man is to be there continuously for five years whereas his Ministry may last for three months, or four months or six months. Let us not forget the recent experience in Madras. We must clothe this permanently placed man with as much power as we possibly can so that there may be some stability, some continuity, some security for the masses of the people for the safeguarding of their civil liberties.

Lastly, Sir,-and this is my conclusion, I am speaking here as one of the Leftists in this country. I have been a Leftist ever since I started my political career. I am afraid I have not the Ministerial experience of my friend Pandit Govind Ballabh Pant and may be it is because of that that I am still able to speak in the name of all the Leftists. All the Leftists will consider this thing to be one of the safeguard against any kind of hooliganism, or organised banditry as recently occurred in Burma, which we want to prevent in our own country.

Mr. Shankar Dattaraya Deo (Bombay: General): I move closure, Sir.

Mr. President: Closure has been moved. The question is.

That the question be now put.

The Motion was adopted.

Mr. President: The Mover may reply.

Mr. M. S. Aney: Mr. Munshi never spoke on his own amendment.

Mr. K. M. Munshi (Bombay: General): May I speak?

The Honourable Mr. Jaipal Singh (Bihar: General): On a point of order Sir. Mr.

Munshi when he moved his amendment the other day told us that he would reserve his observations for today, as also did Mr. Gupte. I think we must give him an opportunity to speak.

An Honourable Members : If he has not spoken, it is not our fault.

Seth Govinddas (C. P. & Berar: General): On a point of order, Sir, The House has accepted closure and now only the Mover can speak. If Mr. Munshi did not want to make any remarks, why should we ask him to do SO?

Mr. K. M. Munshi: I am not very keen to speak.

Mr. President: I think Seth Govinddas has raised a correct point of order. The Mover of the Resolution will now speak.

The Honourable Sardar Vallabhbhai Patel: Sir, in effect, there are two amendments to the Motion that has been moved by me. One is by Pandit Hirday Nath Kunzru and the other by Mr. Gupte, who accepts the amendment of Mr. Munshi. In fact, Mr. Munshi's amendment is an improvement of language on Mr. Gupte's amendment. In substance both are the same. Now, as I have already mentioned in my introductory remarks when I moved this Motion, this is a very controversial matter. There are two points of view. There is no doubt that an encroachment of this kind on the powers of the Ministry is bound to be resented and is bound to create difficulties also, and in a democratic constitution it does not fit in properly. Therefore, I can fully appreciate the objection, and the force with which the objection has been put, by our distinguished Prime Minister, Pandit Govind Vallabhbhai Pant.

On the other side, there are other Prime Ministers and others who have experience of working the constitution. They equally feel that in the present conditions of the country it is a dangerous thing not to provide for emergency of such a nature as is mentioned or as is contemplated in the amendment of Mr. Gupte, namely when there is a complete break- down of the machinery of law and order and if any such event as the recent unfortunate incident in Burma takes place or a similar tragedy of such a nature arises, or, as we have seen incidents like the recent unfortunate ones in our own country in some provinces take place,-if such a situation arises, it would not be enough for a machinery in the province to report to the Centre but there should be something more effective. We should have something else so that the law and order machine could function Without waiting for a moment. Otherwise, there are dangerous consequences likely to follow.

These are the two points of view, and as Pandit Pant has said, there is much to be said on his behalf, and equally, there is much to be said on the other side also. Common mortals have to follow the path of collective wisdom and take the opinion of people who have experience. The weight of opinion as it appears from the debate here is that we must have some sort of provision as is contemplated in the amendment.

It do not propose to take up the time of the House any more, because there has been considerable debate and the pros and cons have been discussed thoroughly. Both those who argue in favour of and those who argue against have only one thing in their minds-what should be in the new constitution for the good of the country-that is the only point of view that they have in mind. We have all to learn by experience. We have never maintained that we cannot improve or modify this constitution, if by experience we find that there are difficulties in its working. As I have already said, it is the spirit in which the constitution is worked that matter. There is no reason to suppose that our President, or the Governors elected by universal adult franchise Will be engaged in conflicts with the Ministry. But even if any such unfortunate event take place, we have the power to open the matter again. We are free to do so. We do not have to go to the British Parliament or look to any outside authority to improve the Constitution. I, therefore propose to accept. the amendment of Mr. Gupte, as amended by the amendment of Mr. Munshi.

Mr. President: I kill lout Pandit Kunzru's amendment first:

"That for clause 16, the following be substituted :

> 'Whenever the Governor is satisfied that there is a grave menace to the peace and tranquillity of the Province or any part thereof, he may, in his discretion, report to the President of the Federation."'

The amendment was negatived.

Mr. President: Then I shall put Mr. Munshi's amendment, which is the amendment of Mr. Gupte, since Mr. Gupte has accepted Mr. Munshi's amendment.

That for amendment No. 8 in Supplementary List of Amendments, dated 16th July 1947, by Shri B. M. Gupte, the following be substituted:

> "((1) Where the Governor of- a Province is satisfied in his discretion that a grave situation has arisen which threatens the peace and tran quillity of the Province and that it is not possible to carry on the Government of the Province with the advice of his Minister in accordance with the provisions of Section 9 he may, by Proclamation, assume to himself all or any of the functions of Government and all or any of the powers vested in or exercisable by any Provincial body or authority: and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions his Act relating to any Provincial body or authority :

Provided that nothing in this sub-section shall authorise the. Governor to assume to himself any of the powers vested in or 'exercisable by a High Court or to suspend either in whole or in part, the operation of any provision of this Act relating to High Courts.

> (2)The Proclamation shall be forthwith communicated by the Governor to the President of the Union, who may thereupon take such action as he considers appropriate under his emergency powers.

> (3)The Proclamation shall cease to operate at the expiration of two weeks, unless revoked earlier by the Governor himself or by the President of the Union.

The amendment was adopted.

Mr. President: The Resolution, as amended, becomes the substantive proposition and I put it to vote.

Clause 15, as amended, was adopted.

REPORT ON THE UNION CONSTITUTION

Mr. President: We shall now take up the discussion of the Union ,Constitution Report. The first Clause of Part IV was moved by Pandit Jawaharlal Nehru. We are now to take up the amendments, to that clause. I have got a very large number of amendments of which notice has been given.

Shri Gokulbhai D. Bhatt (Eastern Rajputana States Group): *[Mr. President Thursday was the last day for submitting amendments to the rules framed by the Union Powers Committee. But now that you have fixed the order of business, you could kindly extend the time for submitting amendments to the Report of the Union Powers Committee]*

Mr. President: *[I informed the House yesterday that the time had already expired.]*

Prof. Shibban Lal Saxsena (United Provinces: General): Sir, in Part III of the Memorandum on the Union Constitution, it is stated.

> "Here enumerate the Fundamental rights and principles of State policy as passed by the Constituent Assembly. "

But, Sir, some of us have given notice of amendments to these Fundamental Rights and Principles of State Policy. I have in particular an amendment to add a fresh clause to the Fundamental Rights and Principles of State Policy, saying that "Slaughter of Cows shall be forbidden in Bharatvarsha by law." I would like to know when I shall have the o I opportunity to move that amendment.

The Honourable Sir. N. Gopalaswami Ayyangar (Madras: General): The clauses relating to the Fundamental Rights were discussed in this Assembly and so far as putting them into the draft text of the Constitution is concerned, these clauses were passed at a previous session. The Member who has just spoken has asked when he and others who have given notice of amendments to the clauses relating to Fundamental Rights will have the opportunity of moving such amendments so that the House might consider them. I think, the proper time for moving all such amendments is when the draft text of the Constitution incorporating the Fundamental Rights is taken up for consideration at the final session of this Assembly. I think Pandit Jawaharlal Nehru made the position perfectly clear. He said that when that draft text was brought before the House members would be free to move amendments not only to the wording of the draft, but also to the substance of the draft.

Mr. President: I think that makes the position perfectly clear. It was made clear by Pandit Jawaharlal Nehru also. The amendments to the Draft Constitution, dealing with the Fundamental Rights can be moved at the final session.

An Honourable Member: We have not approved of all the clauses in Fundamental Rights.

Mr. President: We shall deal with them when they come up. Amendment No. 61 on the Order Paper-Shri Vijayavargiya.

Shri Gopi Krishna Vijayavargiya (Gwalior State):*[Mr. President. I do not want to press my amendment because of the Views expressed here, after I had moved my amendment. But there are many things to which I consider it necessary to draw your attention. This Section deals with the method of election of the I-lead of the Federation. According to the amendment, all the units of the States will participate in the election of the President.. But the States Legislatures are very faked-up and crude. They will affect the result of the election. Therefore, I moved an amendment that the Union President should be elected directly on the basis of adult franchise, so that the peopleeven the poor ones-may have the opportunity of exercising their votes for the election of the President. Now I do not want to press my amendment in view of the opinions expressed here. I would say only this much that there will be no uniformity among those Who will elect the President, because on the one hand the elected members of the provincial legislatures will take part in the Presidential election and on the other hand, the members of the State Legislatures which are irregularly constituted. This will be grotesque. The States have only parodies of legislatures. They have nominated members, landed aristocracy and other representing special interests. So long as there is no democracy in the states, there is great danger for our Federation. The States representatives will take part in the election of the President. There may be many other dangers too. Having all these in view, I deem it desirable that the States representatives should be properly elected and necessary safeguards should be incorporated whereby the nominated members, jagirdars and others belonging to special interests in the States legislatures, may not be allowed to vote for the election of the President.

Federation is going to be established in our country but as yet. we do not know if all the States will join the Indian Union and what attitude they will adopt towards it. We do not know as to how the participating States will affect the Union. I represent the States people and I think it necessary to incorporate some measures as safeguards against possible dangers. The danger is real. The elected members of the States Legislatures will seriously affect the result of the election of the Union President. Many States ministers are bringing various amendments seeking to secure more favours for the Princes in the draft constitution. This is not in the interest of the people. I desire that the Union President should be directly elected on the basis of adult franchise. This would satisfy the people the States. Even the poor ones will have the right to vote for the election of the President. However, this method is not going to be adopted and for various reasons I do not want to press my amendment. But I wish to point out that in View of the conditions prevailing in the States, we must be cautious about the intended amendment from the States ministers. I do not move my amendment.]*

(Messers. A. K. Ghosh and S. Nijalingappa did not move their amendments-Nos. 62 and 63.)

Mr. H. V. Kamath (C. P. and Berar: General): I am told that the Hindi equivalent of 'President' will be decided upon when the Hindi draft of the Constitution comes up for discussion. Therefore I do not wish to press this amendment (No. 64) at this stage.

(Shri Balkrishna Sharma did not move his amendment-No. 65)

Shri Gokulbhai D. Bhatt: *[Mr. President, the amendment I wanted to move was in connection with the word, 'Rashtrapati' or the President. He should be named as 'Rashtrapati' or 'Neta' or 'Karandhar'. But I am told that this will be decided after the report of the Committee set up for this purpose has been Submitted. Therefore. I do not move my amendment.] *

(Messrs. M. Ananthasayanarn Ayyangar, Mohanlal Saksena, B. M. Gupte and Jadubans Sahai did not move their amendmentsNos. 67, 68, 69 and 70).

Shri K. Santhanam (Madras: General): It was suggested by Pandit Nehru that we might begin with Part IV.

Mr. President: Yes, we have taken up Part IV and we are on Clause I.

Shri S. Nagappa (Madras: General): We are awaiting the Minorities Report and I do not therefore intend to move this amendment No. 71 at this stage.

Mr. T. Channiah (Mysore State): Mr. President, Sir, I move the following amendment, namely:

"That in sub-clause (1) of Clause I after the word 'elected' the words 'by rotation either by the North of India or South of India' be inserted.

Sir, why I have suggested this system of election to the Presidentship of the Federation is due to the following reasons: The election of a President to the Federation by rotation either by the North of India or by the South of India gives a fair representation and satisfaction to the people of India who stand geographically divided into two distinct divisions. namely. the South or the North of India. The people in these parts of India have got a distinct culture and methods of thinking and languages of their own, acclimatised to the conditions of those parts. More than anything else, Sir, there is in existence the lack of real of realization of the universal brotherhood and due to various reasons each man or woman has got a love of his or her own clan and does not realise to the extent possible the interests and rights of other people who are equally entitled to such rights or privileges. Such people are struggling hard to put forth their claims that their man should be elected as the President of the Federation, totally unmindful of the realisation of the universal brotherhood.

Secondly, Sir, the next feeling that comes and predominates in most of the people is this, namely, our man, our home, our state or our province, or does the President belong to North of India or does he belong to South of India and so on. So, Sir, we see how the people are forced to think under various circumstances and that broadmindedness limits itself to think in a selfish way.

Mr. H. V. Kamath: On a point of order, Sir. Can an Honourable Member read from a manuscript speech?

Mr. T. Channiah : Again, Sir, let us take for instance, the existence or predominance of any one majority party in India. Such an Organisation tries to put a man of its own as the President of the Federation and never allowing any other smaller Organisation to take its chance. Granting that any smaller Organisation takes its chance, there will be a sort of feeling in the minds of the bigger Organisation that it should try to over come the difficulty at the earliest opportunity.

There is again, Sir, the problem of the existence of innumerable castes in India.

One community struggles to get over the other and at every stage each Community tries to get power and recognition in the administration of every Government. That is but natural.

Apart from these, Sir, there will be great discontent among the minorities like the depressed classes and Muslims, when their claims are overlooked and when their very existence is not felt sufficiently either in the administration of the country or when their claim for Presidentship is not contemplated at all.

Just as we have got the love of clan in India, so also we have been observing by experience the North Indian employee in North India will look down upon a person coming from South India and vice versa. So, Sir, under these circumstances we see that each one of us is struggling for some power or other in the administration of the country. when once the power is attained by some people the interest and care on the part of the person so chosen to that high power naturally neglect the interests of the other people and in the ultimate scramble for power, we the common. men would have really lost the very democratic principles for which every common man is aiming to enjoy.

So, in order to create harmony of feeling among the people of India and for the proper justification of the President to be elected for the Federation, it is quite necessary to adopt the system of the election of the President to the Federation by rotation either from the North of India or South of India.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I move:

> "That in sub-clause (1) of Clause 1, for the words 'as Provided below' the words 'in the manner set out below' be substituted"

I may explain that this is only a drafting amendment. It is merely a restatement of the text in different words. With these few words I beg to move my amendment.

(Amendments Nos. 74 to 84 were not moved.)

Rai Bahadur Syamanandan Sahaya (Bihar., General): I beg to move:

> "That in paragraph (b) of sub-clause (2) of Clause 1, the words 'or where a Legislature is bicaemeral the members of the Lower House thereof, be deleted."

Sir, Clause 1 lays down thee procedure for the election of thin President. It says that the election shall lie by an electoral college consisting of (a) the members of both Houses of the Parliament of the Federation, and (b) the members of the Legislatures of all the Units or, where a Legislature is bicameral, the members of the Lower House thereof., It will be seen, Sir, that in the election of the President, the members of the Upper House' are being excluded from taking part. I would submit in this `connection that, as this House has decided that the Provinces have the option of having a second Chamber, it does 'not look graceful that we should exclude the members of such Upper Houses, who will be there by election, from taking part in the election of the President. In fact. if members of the second Chambers are considered unsuitable for taking part even in the election of the President of the Indian Federation, why have second Chambers at all? In your wisdom, of in the wisdom, of the Home it has been decided that second Chambers will find a place in the Constitution of the Provinces subject, of course, to the expressed desire of the Province concerned. That being so, I think it is only fair that the members of the Upper House or the second Chambers, as you may be pleased. should be allowed to vote in the Presidential election, That second Chambers are needed has been accepted in the Union Constitution, because at the Centre you have provided for a second Chamber. Second Chambers have now been existing in different Provinces and functioning for some time and I do not think I shall be contradicted by anybody if I state that if anything, they the second Chambers, have served a useful purpose by pointing out to the, Lower House errors and omissions in the legislation coming up before them from the Lower House. In most cases I believe the suggestions of the Upper House have been accepted by the Lower House. I can say this from the experience I have of my own province of Bihar. There appears to be a fear, I suppose, in the minds of those who desire to debar the members of the Upper House from taking part in the election of the President. That fear emanates from the fact that the representatives in the second chambers generally belong to the propertied classes. In the first instance, I do not see why this House should decide that propertied classes could be debarred from taking part in the election of the President. For the election of the Governors in the Provinces, we have already decided that it should be by adult franchise, and that every person whether he is a propertied person or otherwise, will be entitled to take part in the election. Why then the distinction in the Presidential election?

We have not yet laid down the franchise for election to the second Chamber. It is open to this House to lay down such a franchise that the Upper Chamber will not merely be representative of the propertied classes of this country. We may lay down the franchise in such a way that men of experience in different walks of life in this country, in industry, business, administration, public life etc.,-may hold a good proportion of the membership of the second Chamber. I am sure it will be conceded that the opinion of such representatives who will be men of experience should be taken in such an important matter as the Presidential election and nothing should be done by which we deprive ourselves of the views that those representatives in the second Chamber may have. There is another aspect to the question also. From all the amendments which members have tabled to the provision for election of the President, it will be clear to you, Sir, that there is a large section of this House which desired that the election of the President should be by adult franchise. Now, if that is not possible Sir, I say that as many people as possible should be enabled to express their opinion in the matter of the election of the President. We were not able to accept adult franchise on account of practical difficulties perhaps, but we should not further narrow down the circle and debar elected representatives of a section of the Provincial Legislature, constituted under the constitution framed by us from taking part in the election of the President. Considering how many important works we have to undertake and the rather difficult position in which this country may be placed in the future. I think it would be unwise to debar men of experience from taking part in important business of the country, especially in the matter of the election of President where in principle it will be agreed that it should be the right of every citizen to take part. I would suggest to the Honourable the Mover that this limitation on the members of the Upper House should be removed and that they should be permitted to take part in the election of the President.

There is another matter also which requires consideration by this House. In the note appended to sub-clause (2), it is laid down that:

> "The provision about weighting of the votes according to the population of the Units is necessary to prevent the swamping of the votes of a large Unit by those of a much smaller Unit which may happen to have a relatively

large Legislature. The mode of weighting may be illustrated thus. In a Legislature where each Legislature represents one lakh (100,000) of the population, his vote shall count as equivalent to 100, that is I for each 1000 of the population; and where the Legislature is, such that the Legislator represents 10,000 of the population, his vote shall count as equivalent to 10 on the same scale."

Suppose in a province under this arrangements the members of the Lower House of the Legislature of that province have 1/10th of the vote of the members of the Legislature of another province, if the members of the Upper Chamber of the former province do not vote, then to theextent that the Upper Chamber represents the people that province suffers By debarring the members of the Upper House. from taking part in the election of the President, we will be debarring some provinces from exercising their full voice based on the total population of the province.

Sir, I have nothing more to-say. I hope this suggestion of mine will appeal to the Honourable the Mover.

Mr. K. Chengalaraya Reddy (Mysore State): Mr. President. Sir, I beg to move the following amendment that in sub-clause (2) (b) of Clause 1, for the words "the members" wherever they occur, the words "the elected members" be substituted. The amended clause will read as follows:

> "The elected members of the Legislatures of all the Units or, where a Legislature is bicameral. the elected members of the Lower House thereof"

Sir, it will be seen that the President of the Union is not going to be elected on the basis of adult franchise directly but by an electoral college. There has been a fairly decent amount of opinion in favour of the President of the Union being elected on adult franchise, but since the whole constitution is based on the Ministerial type of Government rather than the Presidential type, it is as well that we should elect our President by an electoral college. Now, Sir, the electoral college that is contemplated in this sub-clause is divided into two sections; clause (a) covers the members of both Houses of Parliament of the Federation. Regarding that, there can possibly be no objection. Then comes clause (b) which covers the members of the Legislatures of all the Units. I have no difficulty in accepting it so far as the Provincial Legislatures are concerned because in the Provincial Legislatures in the Lower House all the representatives are elected on the basis of adult franchise. My difficulty is with regard to the States Legislatures. So far as the States Legislatures are concerned, it will be 'readily conceded that the Constitution of the States Legislatures will not be on a uniform basis. The various States Units will have different kinds of Constitutions according to the various stages of evolution that they may have arrived at. Since I contemplate that some of the States Legislatures may have nominated representatives, I want to restrict the voting power to the elected members only. It may be argued that by moving this amendment, we are assuming and agreeing by implication to the existence of nominated members in the States Legislatures.

I do not think, Sir, that would be the result, because I for my part Will say that this amendment, If it is accepted, would be an incentive to the Unit Legislatures of the particular States concerned to do away with nomination and to provide for election right through in the Constitution If some minorities which are being now nominated to the State Legislatures are not given the right to participate in the election of the President of the Federation, It is very likely that such minorities or any other interests may ask for election instead of nomination, so that their representatives may have the valuable right of participating in the election of, the President of the Federation. So, Sir, views from any point of view I trust this amendment would be acceptable to the House. It Is looked forward to by some that before the Constitution is actually Completed the State Unit Constitutions may be so drawn up as not provide for any nominated members in their Legislatures. If that happens, I will welcome it In that case it would be time enough when drafting the Constitution to omit this particular differentiation which has been contemplated by my amendment. For the present, Sir, I move this amendment and hope that it will be accepted by the House.

Shri Gokulbhai D. Bhatt: *[Mr. President, mine is an amendment to the amendment of Mr.. K. C. Reddy. His amendment reads: "The elected members of the legislatures........

"The elected members of the legislatures..."

I want that the word 'territorially' should be put before the word, Selected members' and it should read:-

"The territorilly elected members.... of the legislature........

The reason for my amendment is this. There are special constituencies from which the members are elected. The elected members from special constituencies cannot be considered as real representatives of the people. But I thought that this might be further restricted.

I want to draw your particular attention to this point that the elected members must be genuine representatives of the constituencies which they represent. I do not want to press this amendment any further. I want to draw your attention to the fact that as most of the elected members representing the special Constituencies are Gagirdars and Zamindars, they should not be considered as genuine representatives of the people.] *

(Messrs. Biswanath Das, R. R. Diwakar, Yudhisthir Mishra and Jai Narayan Vyas did not move their amendments).

Prof. Shibbanlal Saxena (United Provinces: General) *[Sir, my amendment is that for sub-clauses (2) and (3) of Clause 1, the following may be substituted:

"The Rastrapati shall be elected directly by the people on the basis of adult suffrage.

This is a very serious matter and I deeply feel that the scheme that we have accepted in the provincial constitution in regard to the election of Governors, should be adopted in the Union Constitution as well. In the provincial constitution we have decided to elect the Governor on the basis of adult suffrage. Shortly before we heard the forceful speeches of Pandit Pant and Mr. Kher, and in the. end Sardar Patel accepted Mr. Munshi's amendment which lays down that a Governor elected on' the ha is of adult suffrage will have some special powers which he will use in times of crisis. It is clear from this, that Mr. Patel and this Constituent Assembly recognise what moral strength the Governors, elected on the basis of adult suffrage, will have and what will be its advantage. In the same way, I think, the "Rashtrapati" should also be elected for adult suffrage.

It is certain that a person elected by twelve to thirteen crores of voters of the country, will have incomparable moral strength and dignity. He will be a man of the people and their true representative. Besides, my opinion, for fulfilling our pledge for re-establishing unity in our country, which is broken up today and may be further broken up in view of the present efforts of some States, the election of the 'Rashtrapati' by adult suffrage will be very helpful. Then, even the poorest person in every part of the country from Travancore to Kashmir and from Calcutta to Bombay, will feel that he has the right of electing the President. He will then fully realise the dignity of an Indian and thus the roots of Indian unity will get stronger and stronger and the feeling of seceding from India, which is at present noticed in Hyderabad, Kashmir and Travancore will no more exist in the country. Even the people of those parts, which have seceded from India, will have a strong desire of reuniting with India. Therefore in the present circumstances particularly, I think that the election of the 'Rashrapati' on the basis of adult franchise is very necessary and will prove to be very useful.

This is also the 'national genius" of our country. We are hero-worshippers. By having an austere man and a genius as 'Rashtrapati" our country will make speedy progress. A 'Rashtrapati' elected by twelve to thirteen crores of voters will be a genius and will command moral support. With a population of 35 crores, we will be the greatest independent nation in the world. A 'Rashtrapati' elected by twelve or thirteen crores of voters will enjoy unique moral prestige in the world. His individuality and moral strength will be very helpful to the country in the field of international polities. It will also appease the sentiment of hero-worship of the people of our country.

Today Mahatma Gandhi is the father of our nation even though he has not been elected to be so All of us call him 'Bapu'. He is like a permanent president of our nation. An elected Rashtrapati will reach his position to some extent only if he is elected by twelve or thirteen crores of voters as their 'Rashtrapati'. He win thereby gain great moral prestige and honour and even though he may be aloof from every day work, he will benefit the country a good deal.

The draft constitution before us is an admixture of two constitution One of them is the American Constitution under which the President is directly elected on the basis of adult franchise. The other is the British Constitution under which the Prime Minister is the leader of the majority party in the parliament. But in England too, there Is a King who has great dignity and the people respect him more than any Prime Minister. Under the constitution he is not free to take any action independently but he plays a useful part in improving the administration. The 'Rashtrapati' in our constitution will fulfill the purpose served by the British King. I know that many of our leaders are not in its favour and they will oppose it. They say that when we have accepted a parliamentary form of government, we would like to have a constitution in which the leaders elected by the Assembly and the Legislature will represent the whole nation and will have the responsibility of its administration and therefore to talk of the election of the 'Rashtarpati' on the basis of adult suffrage will be a sheer waste of time. and will create unnecessary confusion. I do' not agree with this. In my opinion, the party which will triumph in the presidential election in the country, will be in a majority in the legislature and will possibly command a majority in the federal legislature also.

For example, we elect Babu Rajendra Prasad, the President of the Constituent Assembly, as our president and Sardar Patel or Pandit Jawaharlal as premier. These two leaders will help and co-operate with each other. They will not be at loggerheads against each other. Pandit Pant while just now supporting another motion asked as to what will happen if the President dies. I say that if the President is not there, we will have the Prime Minister. His ministry can function and immediately conduct a second presidential election. In such an eventuality as we find in Burma, where the Prime Minister and his ministers have been murdered, the 'Rashtrapati' can manage the administration of the country and form another ministry. I say that the election of the 'Rashtrapati' will enhance the prestige of the country. Even though we do not give him powers, he will have his special influence on the administration by virtue of his position. Mahatma Gandhi is not even a four anna member of the Congress but everyone knows that every action in the country is taken on his advice. He is the architect of the present free India. I hold that the presidential election will be beneficial to us in every way but as I am not free in the matter, I do, not press this amendment.]*

Mr. D. B. Chandrasekharaiya (Mysore State): Mr. President, Sir, the amendment that stands in my name runs as follows:

> That the following new sub-clause be added after sub-clause (3) of Clause 1 (3A) :
>
> 'The President shall be alternately elected from the state and the non-state Units'

You know, Sir, that the President of the Federation is proposed to be elected through an electoral college consisting of the members of the two Houses of the Federation, and the members of the Legislatures of the units of the Federation. From this it is evident that the members from the States will not be in a position to successfully contest the elections by putting forward a candidate of their own for the Presidentship at any time because the members from the non-State Units will form an overwhelming majority of the electorates.

The population of the States is nearly 91 millions. That is to say, it forms nearly one-third of the population of the provinces forming the Indian Union and nearly more than four times the population of the Pakistan Units. The States representatives to the two Houses of the Federal Parliament, though forming a minority yet constitute an important part. So far as the Council of States is concerned, 71 members are contributed by the States alone. out of a total of 287 members of that body. Similarly, the House of the Peoples which is formed on the population basis, will contain an appreciable number from the State Units. In these circumstances, it would be just and proper that the State Units should be given a chance to put up their own candidate for the Presidentship exclusively for every second term. If that is considered to be a somewhat extravagant demand it may be provided that at least for every third term, the States may put forward their own candidate for President ship.

You know, Sir, the States form an important element in the life of the country. After the 15th August, the States too will attain a status of independence just as other elements are going to do. But I for one would wish that the States, whether big or small, will not remain aloof and isolated. They must join hands with the Indian Dominion now and with the, Indian Federation or Indian Union after the Constitution is framed. For this purpose a certain amount of goodwill and accommodation towards the States is very necessary. I believe that a provision of the kind proposed in this amendment will go some way towards establishing that happy relationship between the States and the non-State elements of our country. With these words, I commend this amendment for the kind consideration and acceptance of this House.

Mr. President: There is another amendment in your name.

Mr. D. B. Chandrasekharaiya: The next amendment which I am Proposing reads as follows :

> "That the following new sub-clause be inserted after sub-clause (4) of Clause 1:
>
> "(5) Provision should be made for the President to take the oath of office as in the Constitution of U.S.A."

One of the most important responsibilities cast on the President of the Federation is that he should preserve the Constitution and protect it from being violated. For any violation of the Constitution, he is removable from his office through impeachment. On account of that it would be necessary and proper that the President should give undertaking in terms, of an oath to that effect. Almost all Constitutions, especially Federal Constitution provide that an oath should be taken- by the head of the Executive. For instance, in the United States of America, the President of the Federation takes an oath of allegiance before he enters on his duties, in the following words:

> "I do solemnly swear and affirm that I will faithfully execute the office of the President of the-United States and will to the best of my ability preserve. Protect and defend the Constitution of the United States."

The Irish Constitution has a similar provision In its Constitution and it; is to this effect:

> "The President shall enter upon his Office by subscribing public in the presence of members of both Houses of the National Parliament and Judges of the Supreme Court and the High Court and other public personages the following Declaration :
>
> "In the presence of Almighty God I do solemnly and sincerely promise and declare that I will fulfill my duties faithfully and conscientiously in accordance with the Constitution and law and that I will dedicate my abilities to the service and welfare of the people of Ireland. May God direct and sustain me."

Any one of these forms will do for our own Constitution and the President of the Federation should also take a similar oath before he takes up his duties.

I therefore commend this amendment to the kind consideration and approval of this House.

Mr. President: It is 1 O'Clock now. So the House will adjourn till 10 O'Clock tomorrow.

The Assembly then adjourned till Ten of the Clock, on Thursday the 24th July, 1947.

[English translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME IV

Thursday, the 24th July 1947

The Constituent Assembly of India met in the Constitution Hall at Ten of the Clock on Thursday, the 24th July, 1947, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

Mr. President: I understand that there is one member who has not signed the Roll. Will he please do so now?

The following member signed his name in the Register:

Kunwar Shamsher Jang. (Residuary States G p.)

ELECTION OF MEMBERS TO STEERING COMMITTEE

Mr. President: There is a motion in the name of Mr. Satyanarayan Sinha regarding election of some members to the Steering Committee. Will he please move it?

Mr. Satyanarayan Sinha (Bihar: General): Mr. President, Sir, the motion which stands in my name reads as follows:

> "Resolved that this Assembly do proceed to elect, in the manner required under rule 40(5) of the Constituent Assembly Rules, two members to be members at the Steering Committee."

Two of the Honourable Members of this House, Maulana Abul Kalam Azad and Mr. Mane, have resigned from this Constituent Assembly and therefore under the Rules of Procedure they cease to be members of the Steering Committee to which they were elected by this House. I therefore propose that their vacancy should. be filled. The manner in which the election will be held will be determined by the President.

Mr. President : Does any one wish to say anything on this Resolution?

Honourable Members: No.

The motion was adopted.

Mr. President: Nominations for the two vacancies in the Steering Committee will be received up to 1 Pm. tomorrow and elections, if necessary, will be held at 4 P.M. on the 26th in the Under Secretary's Room, No. 25, on the Ground Floor, Council House. The election will be by the system of proportional representation by the single transferable vote.

REPORT ON THE UNION CONSTITUTION-*Contd.*

Mr. President: We shall now proceed with the discussion of Clause 1 of Part IV of the Union Constitution.

Shri Sri Prakasa (United Provinces: General): What about my motion which is on the agenda for this morning?

Mr. President: I think it is for tomorrow.

Shri Sri Prakasa: I am sorry.

The Honourable Sir N. Gopalaswami Ayyangar (Madras: General):

There is one amendment which has not been moved.

Mr. President: There are several amendments which have not yet been moved. I shall be coming to them.

Shri K. Santhanam (Madras: General): I rise on a point of order. I understand the Constituent Assembly Office has not circulated amendments which have been given notice of three or four days ago because you had fixed a time-limit for amendments before that date. But you have ruled that when any amendments are given notice of at least one day in advance of the date on which the motion is made, we will be allowed to move the amendments. Otherwise, the whole discussion will become useless because when we are proceeding certain amendments become necessary. For instance, I gave notice of an amendment on Monday. It was the result of discussion between friends and it was necessitated by imperfect drafting. It has not been circulated at all. When I enquired, I heard that all these amendments are simply filed in the office and nothing. is done. I think it will put us to a great deal of hardship if things are done like this. I hope you will give a ruling on the subject.

Mr. President: I have given sufficient time for amendments to be put in by members and we can see from the list of amendments already circulated that we have, got a very large number of amendments to the various clause. I am told that even after the expiry of the time-limit which-I placed, quite a large number of amendments have come in. If the House so desires I shall have no option but to circulate them too, but then it becomes difficult to keep pace with these amendments which go on, comming in without end and interruption. So we must stick to the time limit by which amendments should be put in.

An Honourable Member: The time-limit is automatically fixed by the time taken up here.

Mr. President: It means then that all the amendments will have to be, circulated as they come in,

Shri M. Ananthasayanam Ayyangar (Madras: General): That is the practice in every legislature. With very great respect, Sir, I say that your ruling is against Rule No. 32. Rule 32, Sub-Clause (3), says that except as permitted by the Chairman, notice, of an amendment must be given at least one clear day before the motion. In the Assembly every clause is moved and as the discussion proceeds, and when amendments suggest themselves to the Members, we give notice of them 24 hours in advance. of the actual discussion. That is all that we have to do. I submit, Sir, that it cannot be fixed that the time should be two days in advance. It will be reducing the whole thing to a formal and dead affair. If there is not sufficient staff in the office to deal with the amendments, the office has to be enlarged and not our rights curtailed.

Mr. President : I should like to be enlightened on this point by some one who has experience of legislatures. I want to know what is the procedure followed generally Mr. Purshottamdas Tandon might perhaps enlighten me. A large number of amendments keep on coming from day to day what is the usual procedure of dealing with them?

The Honourable Shri Purshottamdas Tandon (United Provinces, General): Sir, the usual practice is for amendments to be tabled as the consideration of a bill proceeds, but every amendment has to be handed over to the office some time before the particular clause to which it relates Is taken up for consideration For instance, if you are taking up a clause, today and the rule requires that 48 hours, notice must be given of an amendment, the amendment to be moved must have been sent to the office 48 hours before the time at which it is to be considered today. That is all. It is not necessary that all the amendments should be delivered to the office before the consideration of the Bill is taken up.

Mr. President: Then we shall follow that procedure and all amendments of which notice is given in time under Rule 32 will be circulated.

Dr. P. S. Deshmukh (C. P. & Berar: General): Sir, in that case, can I move my amendment to Clause 1 of which notice was given on Monday?

Mr. President: So far as Clause 1 is concerned, it was moved several days ago and amendments given notice of after the clause was moved cannot be taken into consideration. We shall now proceed with the other amendments. Shri Chandrasekharaiya moved both his amendments yesterday. Does Mr. A. K. Ghosh wish to move his amendment No. 96?

Mr. A. K Ghosh (Bihar: General): No.

Mr. President: Sir N. Gopalaswami Ayyangar has an amendment.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, my amendment seeks only a slight verbal change, that in the last sentence of sub-clause (2) of Clause 1, for the words "the votes of the Unit Legislatures" shall be substituted by the words "the votes of the members of the Unit Legislatures". The amendment hardly requires any explanation.

Mr. President: Another amendment is by Mr. J. N. Vyas.

(The amendment was not moved.)

I take it there is no other amendment to Clause 1. If any Member has got any other amendment to is clause which I have left out, he will please take this opportunity of moving it, and not complain later that he did not get an opportunity to do so.

As there Is no other amendment, we shall now proceed to discuss the clause and the amendments which have been moved.

Syed Kazi Karimuddin (C. P. and Berar: Muslim): Mr. President, Sir, sub-clause (2) of Clause 1 says:

"The election shall be by an electoral college consisting of-

(a) the members of both Houses of Parliament of the Federation, and

(b) the members of the Legislatures of all the Units or, where A Legislature is bicameral, the members of the Lower House thereof."

All the amendments which were moved to have the election of the President on adult suffrage have been withdrawn; but I want to bring borne to the House why this election should be made on the basis- of adult suffrage.

The decision on this point mainly rests on the point of view whether the executive should be non-parliamentiary or parliamentary. I have been of the view that in India, looking to the conflicting political parties diverse ideologies and many diverse factors, for the maintenance of peace and tranquillity and for the effective representation of all parties in the Cabinet. it is necessary that, there should be a non-parliamentary executive. The only reason that has been advanced why adult suffrage should not be introduced is that a huge machinery will have to be set up for dealing with the elections and the energies of the nation will be consumed in holding these elections. But that is absolutely no reason. In a country like America, the election of the President is held on adult suffrage and my submission is that if every fifth or every fourth year the election of the President is held, and held on the basis of adult suffrage, it win educate the masses. Momentous economic problems of great magnitude will be brought to the forefront. The masses will be educated if the election of the President is held on an all-India basis. Under the present sub-clause 2 of Clause 1, the President will be a puppet of the majority party and the persons, who have fought the elections partly on provincial basis and partly on the all-India. basis will elect the President for the whole Union.

Yesterday, while discussing the powers of the President, we felt that very wide powers had been given to him. He will be entitled even to suspend any part or the whole of the Constitution of a province. A President who will be afraid of the majority party and be elected by the electorate under sub-clause 2, will not, my submission is, be a man who will represent the entire nation on an all-India economic basis or on all-India issues. I have one more difficulty and that is very important. In order to suit the States, we have agreed that the members of the States' Legislatures shall be members of the Lower House of the Union. It is a patent fact and is known to everybody that there is no popular rule in the States, and the members of the Legislatures in the States probably will be those who have been nominated by the States or who will not be the real representatives of the people. By electing a President by such representatives who will form one-third of the voters practically, the President will not be representing the people of the States but those who are nominated by the States Rulers. Under these circumstances, it can never be said that the President will be the true representative of the people of the States. Under these circumstances I earnestly appeal to the House that if you want democratic rule, if you want that the President shall be the true representative of the people who vote on adult suffrage, under the electoral college mentioned in sub-clause 2 to Clause 1, as regards the States particularly, he can never be representative of the people of the land. Therefore I oppose this amendment.

Mr. Mahomed Sherif (Mysore State): Sir, I am of the opinion that the President of the Union should be elected on the basis of adult franchise. It would be in the fitnes of things that the person who would be at the helm of affairs and to whom so many powers would be given and so many responsibilities, should be one who must be elected on this basis. Every voter who is qualified to vote should have the satisfaction that in the election of the person who should govern the country, he should have a voice. It was argued that if this method is to be followed, it would intelligence of the people is not very high; that this method will not work satisfactorily, and that corruption, bribery, and so many vitiating factors will operate. It seems to me, Sir, that these difficulties will be more than ,offset by the advantages accruing there from. The election will be a great education by itself. It will lead the people to further their political insight which they have got and it will be advantageous in more than one way.

In these circumstances I would suggest that the President should be elected on the basis of adult suffrage. As I said such an election would have the seal of approval from the point of view of the voters. With these remarks I oppose this motion.

Mr. Tajamul Husain (Bihar: Muslim): Sir, sub-clause (1) of Clause 1 of Part IV lays down that the head of the State shall be called President and that any person or citizen of the Republic who has attained the age of 35 can be elected as President of the Republic. Am amendment has been moved, Sir to the effect that the election of the President should be held in rotation, that is to say', that for one term of office the Presidents shall be elected from the north of India and for another term of office from the south of India. The reason advanced by the Honourable the Mover is that the people of South India are total different from those of Northern India. I submit, Sir, that is a very dangerous principle to adopt. If you want to accept this principle that there should be a reservation of seats for the election of the President, every province may claim that in turn the President should be elected from a particular province.

I will give you an example. The people of Western Bengal may very ,well claim that they are a different people from the rest of India.

An Honourable Member: No, no.

Mr. Tajamul Husain: I am glad that there is a voice saying no, no. And there should be no difference between one province and another. Therefore I submit, Sir, that the office of the President being the highest in the realm and he being the biggest dignitary of the Republic, we should have the best man. It does not matter from where he comes. It is quite possible that when the election is being held a Bihari, or a Christian, or a Jain, or a Parsee may happen to be the best man at that time. He may be ejected President. Therefore, I have come here to oppose this amendment.

Paragraph (b) of sub-clause (2) of Clause 1 of Part IV lays down that the Upper House of a province where there are, two Houses, should not have he right of choosing the Prsident of the Republic. An amendment has-, been moved by Rai Bahadur Syamanandan Sahaya of Bihar that that right should be, given to the Upper House as well You will find that under sub-clause (a) both the Houses of the Central Legislature have been given the right of electing the President of the Union. There is no difference between the Upper House of the Central Legislature and the Upper House of a Provincial Legislature. Both have got special representation. If you do away with the Upper House then that is a different matter. I might support-you on democratic principle but we have decided that we are to have an Upper House for the Central Legislature and there are going to be Upper Houses in some provinces. In that case I would submit that the qualifications of the members of the Upper House of the Central and Provincial Legislatures being the same, the members of the Upper House of a Provincial Legislature may be allowed to participate in the selection of the President of the Republic. To me it appears there is no reason why the members of the Upper House of a Provincial Legislature should be deprived of their right, their privilege and their pleasure of choosing their own President of the Republic.

I suppose the amendment of Mr. Syamanandan Sahaya.

Mr. H. R. Guruv Reddy (Mysore State): Mr. President, Sir, yesterday I was listening with very great interest to the discussions about nominations and particularly about the 'principles underlying nominations. One of our worthy colleagues was saying that the system. of nominations, particularly in States, should be done away with, and that if those nominations are adopted elsewhere, they would not be objectionable. Sir, I fail to see the reasoning of this part of the proposition. If nominations are bad, they are bad everywhere and, if they could be accepted, they ,ought to be accepted on principle everywhere. I fail to see why we should attach sanctity to nominations if an elected person adopts it and consider his action just and proper and right too. and at the same time consider nomination by a ruler of a State or under his direction as something fundamentally wrong and bad. There is DO justification for accepting this principle of nomination in one place and rejecting it in another. 'If you want to do away with nominations, let us do so boldly. But, if for reasons of representation of various interests nominations have to be resorted to, certainly let us have nominations both in. the States and in the other Units. No one need be afraid that these nominations will be overwhelming in number. There is no need to fear that the ruler of a State would choose a person who would undo the good things that others attempt to do. In fact, if there is danger ahead, the ruler ought to be presumed to act suitably and put in persons who would represent all interest I would therefore repeat that if nominations are to be adopted in this House or by the President of the Federal Legislature, what reason is there to say that that system would be bad elsewhere?

The other idea that was nut forward by one of the speakers was that it would be a method by which we could coerce the States or other Units to adopt the method of election. That word 'coerce' is something very jarring. It is not a good and sound principle that we should coerce any person to accept or adopt our view. Our endeavour should be to win him over to our view. Therefore, Sir, once the principle underlying nominations is adopted here by the-President, is ought to be allowed to be adopted elsewhere also on principle. But, as I said, I am basing my arguments on principles and not on facts. I would appeal to this august House that as the system of nominations has been accepted tinder the Constitution put forth for India, it ought to be allowed in other places also and it would certainly meet out justice to that section of the population which would be unrepresented otherwise.

Sir, I now pass on to the more interesting, if more disturbing factor, namely the North and the South, the States and the non-States. Sir, personally I feel that the North is not separate from the South, nor is the South separate from the North. I am one of those who believe that any one who is given an opportunity, if he has got the requisite qualifications otherwise, should come up. It is only an opportunity that is sought for. It is not a territorial division. We know certain reasons why the North and the South are frequently apprehensive of this or that thing. A man like me coming from the South, the Mysore State, feels that the North has been getting larger representation on this Constituent body than in is due to it and that hereafter it should not be so. Sir, while I honestly feel that the South has been neglected fur sometime for various reasons, I do not put the blame for it on anybody or on any section. But I do feel that the South is to some extent neglected. But then it is a, question of opportunity being given to the people of the South. If opportunities ire allowed I am positive that persons coming from the South can, equal if not surpass those coming from the North.

Sir, this question of States and non-States is really perplexing. Coming from a State I very much desire that an opportunity is given to someone from the State to be the Chief of India. But then it is again a vicious thing. The States form only one-third of the entire Dominion. And then the qualifications and other considerations that are to be laid down for this purpose is another disturbing factor. So far as I am concerned, I cannot agree to the separation of States and non-States for the purpose of election. As I said, given the requisite opportunity, given the requisite representation to the States, anyone who has got that courage of conviction to speak out boldly, honestly and fearlessly ought to find a place in the Indian Constitution.

Sir, it is difficult to create a reservation either for the non-States or for the States or even to set up a rotation as it were, in the Constitution. I emphasise the word 'Constitution'. Sir, these are things which should be looked into and provided for in what we know as 'convent-on'. We are starting today with a new Constitution for India and the Constitution itself provides for a change. We can work for another three years and If we find any difficulty we could have the Constitution changed suitably.. Apart from that, I would never invoke the aid of the legislature for the purpose. As I said, it is only a healthy convention and good feeling and understanding between the North and-the South and between the States and the non-States that can solve the problem. No legislation can solve it.

In this connection I would like to draw your very kind attention to the Madras mayoralty. There was a lot of bickering so far as the Madras mayoralty was concerned. Some years ago, it should be said to the credit of Sir Ram swami Mudaliar that he, when he had something to do with that mayoralty, set up a convention. And that convention is being now respected and persons of various communities and various sections are being elected according to the- convention laid down. It is not difficult for us to take this illustration and to follow it up even in the election of our President. Sir, I would once more state that it is convention, good understanding, good feeling between the North and the South, between the States and non-States that will solve this problem, not any law or any clause in the law.

Sir, with this I pass on to another very small matter but which looms very large, the question of the oath which was very ably put forth by my worthy colleague as an essential matter, and I do not know that lacuna crept into this report on the Union Constitution. No provision has been made here for the oath. Sir, it is a common thing all over the world, in all well-established Governments, that the Head of the State takes the oath on his entry into that high office. It would be becoming and worthy of our Indian Government the President should take the oath before an appropriate authority that he would safeguard the constitution that is being framed now and which he is going to work.

With these remarks, Sir, I commend the amendments and principles I have just put forward to the acceptance of the House.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Sir, I do not want to make a speech. I want to suggest that the pace at which we are moving is very slow. At this rate I am afraid we won't be able to stick to the time-table. I suggest that now that we are discussing only the principles of the constitution, speeches may be confined to the particular clause or amendments under discussion and not touch the entire field of the Indian Union Constitution.

Mr. President: I entirely agree with you that we should not discuss the entire field of the Constitution but must confine ourselves to the particular amendment that has been moved or the particular clause which Is under discussion. I would also request members to limit their speeches to five minutes, unless in a particular case I find that the question that to being discussed is of such a nature that it requires a longer time.

Mr. H. V. Kamath (C. P. and Berar: General): Sir, two amendments moved on the floor of this House yesterday, one by my friend, Rai Bahadur Syamanandan Sahaya, and the other by my friend Mr. Channiah.

Mr. Sahaya's amendment is to the effect that, where the legislature is bicameral, the members of the Upper House, also must have the rig-it of voting in the election for the President. I stand here, to oppose that amendment. It was asked why, when the members of the Upper House of the Union are allowed to vote, the same privilege should not be extended to members of the upper chambers of the Units. If my friend looks at Chapter II, he, will find that the Council of States is proposed to be set up on a different basis from that of the upper chambers of the Units. Moreover, we have visualised the President as being all integral part of the Federal Parliament which will be composed of the President and the National Assembly, the National Assembly in its turn being composed of the Council of States and the House of the People. Where the President is an integral part, an essential part of the Federal Parliament, it stands to reason that both Houses should take part in the election of the President.

The other amendment was moved by my friend, Mr. Channiah. That amendment is astounding, bordering on the ridiculous. At a time, Sir, when we have regretfully accepted the division of India on a communal basis, at a time, Sir, when fissiparous and centrifugal tendencies are holding the field. at a time, Sir, when most of us here want to see the unity of our country restored to its pristine condition, it is amazing that a member of this House should stand up and draw a distinction between the north and south of our country. I was inclined to think that at least after the march of Agstya across the Vindhyas and after the battle of Rama with Vali and Ravana, this difference between the north and south of India had been obliterated. We have heard of the Maginot Line in Europe; we have heard of the Siegried Line in Europe; we have heard of the Curzon Line, the Durand Line in Europe. If Mr. Channiah's amendment is accepted the day will not be far off when we will have a Channiah line in India between the north and south of India. When we are trying to build a strong State, when we are trying to wipe away all the differences of the past, when the division of the country on a communal basis has been accepted most reluctantly, it is amazing that an amendment of this kind should be propounded on the floor of this House. Precisely for that reason, Sir, I am opposed, for the present at least, even to a linguistic division of provinces. Let us for the present bend all our energies to the task of building up a mighty Indian Union: and let us bend our energies to the task of restoring the unity of our country. Let us, Sir, realize the goal which we have foundly cherished 'of a strong united India, an independent India marching forward for the welfare of India and the peace of the world; an India where all Indians, be they Hindus, Muslims, Christians, Parsees or Sikhs all small march together, :as citizens of one common Motherland, a united, strong and independent India. That is the theme, Sir which is uppermost in our minds. We are still hoping to realize the dream when the unity of our country will be restored. It is in the spirit of the words of that famous song, which is on the lips of all Indians today;

> (Har sooba ke rahanewale har mazhab ke prani
>
> Sab bhed aur farak mitake sab goda me teri ake goon the prema ki mala.
>
> Suraj bankar jag par chamke Bharat nama subhaga.)

that I oppose the doctrine which was propounded yesterday by my friend Mr. Channiah seeking to divide the North from the South. One of my friends, Sir, said that the South has been neglected. I fail to see how or in what way the South of India has been neglected. if my friend says that the South means only Madras. I differ from him. I would like him first to define the South of India, whether the South means only Madras or Madras plus Bombay and the various other component parts. I for one think that the South has not been neglected. Today it is the two States in the South. Hyderabad and Travancore which are giving us the headache. If it is the result of neglect and if it is the result of being unimportant, I do not know, Sir, what my friend means, These two States of the South today, Sir, are giving most of our statesmen and our leaders a big headache. If my friend thinks that Southern India has been neglected ' I do not know, Sir. how he can forget the eminent and leading politicians from Bombay and from Madras who have contributed to the political development, the political evolution of our common Motherland.

Then, Sir, a point was made out that the oath should be taken by the President of the]Federation. I agree, but this is not the place where the oath should be mentioned. The oath will certainly find a place in the Constitution when it comes to be finally drafted. Here we a-re discussing merely the principles of the Constitution therefore I think that here the mention of the oath to be taken by the President is out of place. For that matter, Sir. we can as well say that the members of the Legislature too should take an oath of allegiance to the country, but you are not mentioning anything like that. They are mere details which are to be taken into account when the Constitution is actually drafted. I therefore, Sir, shall not take the time of the house. I oppose the amendments which were moved by Rai Bahadur Syamanandan Sahaya and my friend, Mr. Channiah.

Shri Ajit Prasad Jain (United Provinces: General): *[Mr. President, I support the resolution moved by Pandit Jawaharlal Nehru. The method suggested herein for the election of the President is very appropriate, some of the members present have proposed that the President should be elected by adult franchise. Many arguments have been advanced against this proposal. At one place the resolution says different weight will be 'attached to the votes of different members, e.g.. the vote of the member representing lesser number of people will be considered less weighty and that of the member representing greater number of people will be considered more weighty. I would like to say this much that this balances the defects caused by indirect election. The example of America has been cited where the population is 130 to 140 millions and the President is elected on the basis of adult franchise. I beg to point out that in America it was considered desirable that the Presidential election should not be direct but through "Electoral College". We too have here a proposal for the formation of an Electoral College, the members of which will be elected by the people. Thus the election of our President will also be according to the choice of the people. I had only to say this much.. but I feel one difficulty in the scheme sponsored by Pandit Jawaharlal Nehru. According to it, the President will be elected through an electoral college. All members of both the Houses of the Federal Parliament The Council of States and the House of People-will be the members of the electoral 'college and they will participate in the Presidential election. The members of the Provincial legislatures and the States legislatures too have been given the right to participate in the Presidential election. So far as the votes of the members of the Unit legislatures are concerned, it is said in the proposal that different weight age will be given to them. For example one vote of a member representing ten thousand voters will be considered equal to 10 votes of a member representing one million voters, Sir.

So far as Unit legislatures are concerned this method is very appropriate and desirable. But it has not been clearly stated in the proposal, whether 'any weight age will be given to the votes of the members of the Federal Parliament (House of people and Council of States) or what will be the value of their votes or the relative position of those votes. One of the interpretations of the proposal relating the unit legislature appears to be that in the present state of affairs, each member of the House of People has merely one vote. If this is correct. I consider the proposal very wrong. In the draft proposal presented to us, it has been stated at a later stage that on an average a member of the House 'of People represents one million voters. If he gets merely one vote, this means that members of the Unit legislature who represent only ten thousand voters get 10 votes and a member of Federal Legislature, e.g., the House of People who represent one million voters gets only One vote according to the present scheme. In my opinion this is not fair. The question of giving due weight age to the votes of the members of the Federal Parliament should be reconsidered so that the people might be properly represented.

There appears another difficulty. It is possible that state may have some sort of nomination and would be difficult to say as to what would be the value of the votes of the nominated members. Again, there might be some constituencies which are not territorial for example, the university and the Lab our Constituencies. So far as the provinces are concerned. we have decided that there would be territorial constituencies and there shall be no special constituencies. But in States it is possible that there may be some territorial and some non-territorial constituencies and some nominations as well. Another difficulty may arise from the method suggested for giving weight ages to different votes of nominated members. If you decide that some sort of weight age should be given to the votes of the members of the Federal Parliament also, although the proposal contains no mention of it-the difficulty arises as to what would be the weight of the votes of the members nominated to the Council of State.

However, I wish to draw your attention to the necessity of a clear provision for classifying and giving weight age to the votes of the members of the Federal Parliament.

With these few words, I hope that you will consider my suggestions.]*

Mr. President: I have got three more names in the list. I find some more members standing up wishing to speak. We have already taken one hour today and we took about one hour yesterday on this clause. If we go on discussing at this rate, I do not think we shall be able to complete even one Part by Thursday next when we wish to close. I therefore desire to request the members to cut down their speeches to the minimum and if any point has already been discussed by any member, not to speak on the same point and repeat the same arguments.

Dr. P. S. Deshmukh: May I suggest, Sir the system of giving names should be stopped and opportunity should be given only to that member who catches the eye of the President?

Mr. President: I accept that, Hereafter, I shall not accept any slip. Any one who catches my eye will be allowed to speak.

Mr. Yudhisthir Mistra (Eastern States Group 1): Sir, I support the amendment of Mr. K. Chengalaraya. Reddy to sub-clause (2) (b) of Clause. Mr. Reddy has moved an amendment to substitute the words "elected members" for the word "members". It would appear to many of the honourable members present here that the word sought to be inserted is unnecessary and superfluous, because tinder the present constitution, the provincial legislatures would have no nominated members. But I would like to remind the honourable members that there is no corresponding change in the constitution of the State legislature-,. In many of the States, especially in the smaller ones, there is an overwhelming number of nominated members in the legislatures. In fact. in some of the States, there is no legislature at all. I represent the Orissa States and I would submit before this House that in some of the States there is no legislature at all. Wherever there is any legislature, the number of nominated members is so large, that the elected representatives have no voice in the Legislative Assembly. In some of the States, the State Congress and the Praja Mandals have boycotted elections to the Legislative Assembly in view of the unsatisfactory franchise. Wherever there is a legislature, the franchise is narrow and based on communal lines, and it has a large number of nominated members. Sir, if you allow the nominated members to take part in the election of the President, then, some of the States may set up inadequate and bogus representative assemblies and try to influence the election by undemocratic methods. It would be a mockery of democracy if the nominated members are allowed to take part in the election of the President of the future Republic of India. I therefore support the amendment which has been moved by my honourable friend Mr. Reddy.

At the same time, Sir, I would oppose the amendment moved by Mr. Chandrasekhariah. He says that the President shall be alternately elected from the States and non-States units. It is an insult to the States if such a limitation is placed on the election of the President.

Mr. R. K. Sidhwa (C. P. and Berar : General) : Mr. President. I had no desire to enter into this debate but for one point which was raised by my Honourable friend Mr. Reddy from Mysore State, who advocated the rotation system for the election of the President and in support of that he quoted the instance of the mayorality of the Municipal Corporation of Madras.

An Honourable Member: There are two members from Mysore. The reference may be clarified, Sir.

Mr. President: (To Mr. Sidhwa). You have made a mistake with regard to the name of the speaker.

Mr. R. K. Sidhwa: He came from Mysore. Sir, It is true that in the Municipal Corporation of Madras, there is the rotation system for the election of the Mayor. In the first year a Brahmin is elected, in the second year a Non-Brahmin and in the third year a Harijan. A similar convention prevails in the Bombay Municipal Corporation. In the first ear a Hindu is elected in the second year a Muslim, in the third year a Parsi and in the fourth year a Christian. A similar system exists in the Karachi Municipal Corporation also. In the first year a Parsi is elected, then a Muslim, then a Christian and then a Hindu. Also in the Calcutta Corporation, a similar system exists. As I have something to do with this rotation system, in the Municipal Mayoral elections in India, I may say that this rotation was introduced to give an opportunity to every community for the purpose of presiding over this Only honoured office. It is only an honoured office, I repeat, Sir. The Mayor has absolutely no power except that he presides at the meetings of the Municipal Corporation. Let me assure you, Sir, he has no executive power although he is the first Citizen of the city. Therefore, you cannot compare the mayorality with the election of the President. The President of India will be the best man. He will have many executive powers. lie will have to select a Premier and he will have to select his Ministers. He will have power of dissolution of the legislature, Over and above all, Sir, under the proposed constitution, lie will be the Supreme Commander of the Army. Do you want, under these circumstances. Sir, the President to be elected by rotation? I shall certainly strongly oppose the President being elected on any kind of communal basis or the rotation or province wise system being introduced. We must have the best man for the President. If the President elected is the best man, we shall elect him for a second time-the best man whosoever he may be he may have become from the north., south, west or east. We cannot tolerate the election of the President community wise, or province wise or anywise as I stated. The convention introduced in the election of the Mayor does not apply in the election of the President. The Mayor is merely a figure-head. He only presides over the meetings. He has no executive power. The convention is only meant to give opportunities to the several communities to occupy the honoured and dignified post of the first Citizen of the city, You cannot mix up therefore the conventional system in the election of the President. I therefore strongly oppose this. There is no amendment to that effect, but implicitly or explicitly no reservation or no convention should be made even by our topmost, leaders that, we shall elect the President province-wise or from the north, south, west or east of India, or we shall elect a Parsi, a Christian or a Muslim. The best man should be elected. I therefore.. Sir, strongly oppose the convention of election province wise to the office of President.

Shri R. V. Dhulekar (United Provinces: General): *[Mr. President, I desire to speak a few words in support of The clause which has been moved much has been said in support of it but I would not say anything about them. I would draw your attention to only two matters.

Firstly, some members have said that the system of election is very irregular in the States and some of the States representatives to this Assembly have been nominated either by the government or by the rulers and they should not be all-owed to take part in the election of the President. In fairness, we must admit that the rulers, participating in the Constituent Assembly were subjected to such injustice at the hands of the British government that they have grown apprehensive that if they join the union they would be crushed. A burnt child dreads fire. We must not think that they are degraded and demoralised Indians. Personally I think that they were placed in such circumstances under the British government that they could not follow the policy which they should have. Therefore, I do not think it proper to raise this point that the nominated members should not be allowed to participate in the Presidential elections. In my opinion we must accept their request that they should be given time so that they may fully realise on joining the Union that the rulers and their people will have the same rights and status that we have. When they have realised the advantages of Joining the union, their autocracy will automatically vanish and the rulers will, feel that they are common Indians and they have the same rights that the common people have.

The second thing to which I desire to draw your attention is this.

According to this clause regarding the members of the Provincial legislatures it will have to be considered as to how many people they represent; and in order to give weight age to the votes, the word "weight age" has been included here. In my opinion, it is unnecessary. It is quite possible that some members might have said that at some places with lesser population they had got comparatively more seats than those having greater population. But in my opinion, no member, whether returned from any provincial legislature or State legislature should be considered go narrow minded that he would demand weight age for his votes in the presidential election. I know, in my own province, some members represent 50 thousand voters while some represent ten thousand and others fifteen thousand voter.-. But after being elected, he does not think it at all that he represents so many people. He considers himself only a member of the legislature and behaves in a 'way befitting his dignity.' Therefore the inclusion of the world 'weight age' appears odd but at the same time there is no harm in it and hence I do not oppose it.

With these words I support the clause]*

Mr. President: The Mover, Pandit Jawahar Lal Nehru, may now reply to the debate.

The Honourable Pandit Jawaharlal Nehru (United Provinces: General]): *[Mr. President, there are many amendments. But the greatest emphasis has been laid on one point : the election of the President on the basis of adult franchise, i.e.. everybody should take part in the election. Another amendment is that the word "Rashtrapati" should be Substituted by the word "Neta" or "Karandhar". St 11 another amendment is that the President should be elected alternatively from the North and the South- Again, there is an amendment which says that the members of the Upper Houses also should take part in the Presidential election. There is yet another amendment; but I do not know whether it has been moved or not. According to this amendment, the President should be elected from the States and non-State portion of the Indian Republic (by rotation) alternately.

Lastly, there is an amendment which deals with the oath of allegiance.

I regret very much that I cannot accept any of these amendments except the one proposing that the word "member" should be substituted by "elected member", though the word "elected" is not a definite improvement. The draft would have thoroughly clarified the point: but in spite of this, if you wish to add the word "elected", I am ready to accept it. Something has been said about the oath also. It is obvious that it will figure in the Constitution. At this stage, it does not seam necessary.

So far as the question of the election of the President, from the North and the South and from the States or non-State units is concerned, it seems to be wrong in principle. It is not desirable that we elect 'the President, once from one class and the next time from the other, and framing of rules and statutory provisions for this purposes is highly undesirable.

In answer to the query, as to why members of the Upper Houses should not take part in the presidential election. I submit that there will be much difference between the Upper Houses of the States Units and those of the provinces. I cannot say which the units will have an Upper House. Another point is that the States and the Provinces will have different standards. No body knows what principles the States and the provinces will adopt. If this right is conceded to the Upper Houses it will create confusion. Therefore, in my opinion. the proposition is correct that in the Centre, both the Houses shall have the right to take part in the presidential election, and in the units only the Lower House. There is a complexity which has not been clarified i.e., whether the units will have greater rights than the Centre, whether the members of the Central Legislature will have one vote-or more to balance the voting strength of units. It is for our advisers to make this point clear, Therefore, for the present, in my opinion, as I have already stated and as has already been printed it should be left as it is. I have already stated in the beginning, and I repeat it once again and if you, too reflect Over it, you will arrive at, the same conclusion, that it is best to leave this choice unfettered. I am not prepared to believe that adult franchise is absolutely essential. Obviously, the number of those who will elect the members of the Assembly will be in millions and they are expected to be proper persons. Therefore, when the members of the Assembly themselves are being elected by the votes of millions where is the necessity for electing the President by adult franchise? Therefore if you desire to frame and promulgate your constitution without necessary delay, then we should avoid complications; otherwise we will not be able to frame our Constitution in the least possible time, and act on it.

If you want to elect the President by adult franchise, then this would mean that we will have to waste much of our time in holding (Presidential) elections and we will not be able to act according to our new Constitution. Therefore, it is my desire that this resolution should be accepted in the form I have put before you.]*

Mr. Mahomed Sherif: *[Will you kindly throw some light on one matter? You have referred to election in Clause 2(a). When you accept the principle of nomination in this amendment, then why do you not accept this amendment also? Why this contradiction between the two?]*

The Honourable Pandit Jawaharlal Nehru: *[Which clause did you read?] *

Mr. Mahomed Sherif: *[Page 9, Clause 14 (a).]*

The Honourable Pandit Jawaharlal Nehru: *[The question of may accepting or rejecting nomination is not in issue. I accept that particular type of nomination which is recorded herein, that is to say; nominees of units and "scientific bodies" should be taken. This is not the question. I have already said that the President should be elected by the votes of the elected members.]*

Mr. President: I will now put the amendments to vote first. The first amendment which I have to put is the one moved by Mr. Channiah:

"That in sub-clause (1) of Clause 1 after the word "Selected" the words "by rotation either by the North of India or South of India" be inserted."

May I point out to the member the great difficulty which I have rent with regard to this. The clause as it sought to be amended by him will read:

"The Head of the Federation shall be the President to be elected by rotation either by the North of India or South of India."

That is to say, the members alone of the North in one year and alone of the South in the next election will take part in the election, but I think he means not the members who will take part in the election, but the President himself. I have pointed this out, and shall now put the amendment to vote.

The amendment was negatived.

Mr. President: The next one is by Mr. Naziruddin Ahmad:

"That in sub-clause (1) of Clause 1, for the words "as provided below" "the words in the manner set out below" be substituted."

It is a verbal amendment. I do not know if it is necessary. Anyhow, I shall put it to vote.

The amendment was negatived.

Mr. President: Then there is the amendment of Rai Bahadur Syamanandan Sahaya:

"That in paragraph (b) of sub-clause (2) of Clause 1, the words "or, where a legislature is bicameral, the members of the Lower House thereof" be deleted."

The amendment was negatived.

Mr. President: There is an amendment by Mr. Chengalaraya Reddy that

"That in sub-clause (2) (b) of clause 1, for the words "the members" wherever they occur, the words "the elected members" be substituted."

This has been accepted by the Mover.

The amendment was adopted.

Mr. President : Then there is an amendment by Mr. Chandrasekharaiya: that the following new sub-clause be added after sub-clause (3) of Clause 1 :-

"3(A) The President shall be alternately elected from the State and the non State Units."

The amendment was negatived.

Mr. President: There is another amendment by Mr. Chandrasekharaiya: that the following new sub-clause be inserted after sub-clause (4) of clause 1 :-

"(5) Provision should be made for the President to take the oath of office as in the constitution of U.S.A."

The amendment was negatived.

Mr. President: The next is, Sir, N. Gopalaswami Ayyangar's amendment:

"That in the last sentence of sub-clause (2) of Clause 1, for the words 'the votes of the Unit Legislative' the words 'the votes of the members of the Unit Legislatures' be substituted."

The amendment was adopted.

Mr. President: I think these are all the amendments that have been moved. Of these two have been carried. Now the Resolution as amended is put to vote.

Clause 1, as amended, was adopted.

Mr. President: Now we pass on to Clause 2. Pandit Nehru may move the clause.

CLAUSE 2

The Honourable Pandit Jawaharlal Nehru: Sir, I beg to move:

(1) The President shall hold office for five years : Provided that-

(a) a President may by resignation under his hand addressed to the Chairman of the Council of States and the Speaker of the House of the People resign his offices,

(b) a President may for violation of the Constitution be removal from office by impeachment in the manner provided in sub-clause (2).

(2) (a) When a President is to be impeached for violation of the Constitution the charge shall be preferred by either House of the Federal Parliament but no proposal, to prefer such charge shall be adopted by that House except upon a resolution of the House supported by not less than two-thirds of the total membership of the House.

(b) When a charge has been so preferred by either House of the Federal Parliament the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation.

(c) If as a result of the investigation a resolution is passed supported by not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated declaring that the charging preferred against the President has been sustained, the resolution, shall have the effect of removing the President from his office as from the date of the resolution.

(3) A person who holds or who has held office as President shall be eligible for re-election

once but only once,"

There are, Sir, we might say, three-parts of this Resolution; one relating to the term of office-five years. Now, this is not a matter of high principle, but after consideration we thought five years will be a suitable term. Four will be too little and more than five certainly too much. The rest of it deals mostly with the impeachment of the President. And lastly, this clause says that a person can only hold office twice, that is to say, not only twice successively, or consecutively, but twice altogether That means, no man can be President for more than ten years altogether in his life. The question, as is well known, has often been discussed in the United States of America and normally speaking, nobody was supposed to be President beyond the second term. In the course of the last war, of course, President Roosevelt actually went into the fourth term; but as a matter of fact, ten years is about as much as any normal human constitution can bear this heavy burden. Presumably, when a person becomes President, he will not be too young. He may be in the late forties or fifties and I think it is not right for person to be asked to assume this burden beyond ten years. President Roosevelt, under the stress of circumstances carried on for the fourth term, but he only carried on for two or three months after his election, So I submit that this rule about not holding office more than twice is a good rule and we should adhere to it.

For the rest, I have little more to say. In case there are amendments, I shall deal with them at the end of the debate.

Mr. President: I have got a number of amendments to this clause. Mr. Pataskar.

Mr. H. V. Patasker (Bombay: General): I (lo not wish to move my, amendment.

Mr. President: Mr. Shibbanlal Saksena.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, I have given notice of an amendment to the effect:

> "That in sub-clause (1) of clause 2, for the figure "5" the figure "4" be substituted."

Just now Pandit Nehru was explaining why this term of five years has been fixed upon and said that it was neither too long nor too short for the term. of the President. I quite agree with him. But I would like to point one serious flaw. Later in Clause 13, sub-clause (5) it is stated :

> "The House of the People. unless soon dissolved, shall continue for four from the date appointed for its first meeting and no longer....." :

That means that the life of the House of the People will be four years. Similarly the fife of our Provincial Legislatures is also four years. This means that in the first election the President will continue for one year after the life of the Provincial Legislature or the life of the House of the People comes to an end. In the second election, he will be elected after two years after the elections for the House of the People, in the next election after three years and so on. Thus at the time of electing the President the legislatures may become quite out of date and may not truly reflect the public opinion in the country at the time. Every fourth election of the President will be by legislatures due to expire a few months after. This will be a most undesirable situation. It may be urged that legislatures will not always run their fixed four year terms and some may have to be dissolved earlier. This is true, but such dissolutions of legislatures will be rare. Members of some fifteen legislatures will elect the President. If one or two among them have been dissolved before completing their normal term, and their members are freshly elected at the time of the President's election,, still the members of the remaining thirteen or fourteen legislatures will not be freshly elected, and the overwhelming majority of the electorate will not truly reflect public opinion in the province at the time of the President's election. Therefore it will be much better if the election for the Presidentship is, also held once in four years along with the general election to the Provincial legislatures.

It may be argued that when the general elections take place there. will be none left in office after dissolution of legislatures except caretaker governments and it is necessary to have at least the President who' will not be a caretaker President. But I submit Sir. the President will vacate his office only when his successor has been elected, so that the office will never remain vacant, nor will it ever be occupied by a caretaker President. Under the 5 years system, it is also possible that when a legislature is elected sometime at the end of the fourth year of the President's term of office, the new members may lose the chance of electing the President during their life time.

I wanted to bring these defects to the notice of the House, but I do not want to press my amendment.

Mr. President: Then you do not move your amendment?

Prof. Shibban Lal Saksena: No.

Mr. President: Hereafter, I think I shall have to ask the members first to move their amendments and then deliver the speech. Mr. Mahomed Sherif.

Mr. Mahomed Sherif: Mr. President, Sir, my amendment is:

"That in sub-clause (1) of Clause 2, for the figure "5" the figure '4' be substituted."

That means that Instead of holding his office for five years, the President shall hold it for four years. My intention is to make the life of the legislature and the tenure of office of the President the same. That will be in consonance. with the strict principles of democracy The Report says that the legislature should last for four years; if that is so, then immediately the legislature goes, the President also must become *functus officio* and if he still remains President that will be against the principle of democracy. It might possibly be argued that after four years the elections would take place and if the President, should be *functus officio* then, who should carry on the administration? For this I would suggest that two or three months before the expiry of the four years the election of the President may be held, so that the termination of the four years the President would have been elected.

With these observations. Sir, I move my amendment..

Mr. D. H. Chandrasekharaiya (Mysore State): Mr. President, Sir, the amendment which stands in my name runs as follows:

"That in sub-clause (1) of Clause 2, for the figure and word "5 years", the following word be substituted :

"4 years or until the election of a new President whichever event happen later". "

Under our constitution the term of office of the President is proposed to be fixed at five years, while the terms of the lower houses will stand at four years. Under this arrangement the President becomes one year behind hand during the second term of the Lower House, two years behind hand during the third term and four years behind hand during the fifth term. Thus you will find that the President becomes more and more removed from the popular house, as we advance from the second to the fifth term. This is a state of affairs which cannot be accepted with any reason or logic.

The President is proposed to be elected by the members of the Federal and Unit legislatures. it would therefore be right that the Presidential election should reflect the opinion of the legislatures concerned and if the Presidential office becomes old and does not properly reflect the opinions. of the legislatures then there might arise the possibility of conflicts between the President and the legislature concerned It is to avoid this possibility that the term of office of the President should be made coterminus with the terms of the popular houses of the Centre and the Units,

It may be argued that one year extra is proposed to be added to the term of office of the President, in order that discontinuity in the policies and measures of administration should not happen soon after the legislatures come to an end. I do not think that this will really happen, taking the experience of countries where this system actually prevails. But even granting for argument's sake that this difficulty is bound to occur, it may be easily avoided by continuing the same President for a, short time longer till the new legislatures come into being and the new President is elected.

Let me refer to the practice adopted in a few well known constitutions of the world. In the U.S.A the President is elected for four years arid he continues during two periods of the lower house. In Switzerland the Federal Council is elected for four years, that being the period fixed for the lower house, as well in the Soviet Union the People's Commissars are elected for four years, while the Council of the Union lasts for the same period of four years. In Ireland the period of the President is 7 years and the same is the period for the lower house. Thus the practice elsewhere seems to be that the period of the term of office of the President coincides with the life of the lower houses. I think it would be worthwhile to adopt the same practice in our constitution. I do not think that there is any particular charm in the number Five. Therefore taking the practice obtaining elsewhere into consideration and in view of the advantage of fixing the same period for both the term of office of the President and the term of the lower houses. I feel that. the amendment I have proposed is a very sound one and I hope that the House will kindly accept the same.

(Amendments Nos. 102, 103 and 104 were not moved.)

Mr. H. V. Kamath: Sir, as the President's position under the constitution is such that he is not likely to misbehave I do not think it is necessary or me to move my amendment No. 105.

(Amendments Nos. 106 to 120 were not moved.)

Rai Bahadur Syamanandan Sahaya (Bihar: General): Sir, my amendment runs

thus:

> 'That the following new sub-clause be added after sub-clause (3), of Clause 2 :
>
> > '(4) A person who has been removed from the office of the President under sub-clause 2 will not be eligible for re-election for two terms'."

With your permission and with the permission of the House I would like to amend my amendment and drop the words "for two terms" occurring at the end. My amended amendment will then read: "A person who has been removed from the office of the President under sub-clause 2 will not be eligible for re-election." The principle suggested in this amendment is of course so obvious that I will not endeavour to place arguments in support and I have no doubt that, in drafting this matter will be set right. A similar amendment was moved to the Provincial Constitution. Hence I thought I might as well place this amendment for your consideration in connection with the Union Constitution.

Mr. H. V. Kamath: Mr. President, as my amendment to sub-clause (3) of Clause 2 is unnecessary I am not moving it.

Mr. President: There are all the amendments, of which I have notice to Clause 2. If there are any others. Members who have given notice will please tell me and take this opportunity of moving them. As I see none rising, I think the House can now proceed to the discussion of the Clause and also the amendments.

Is there any Member desiring to speak on this Clause? (*Honourable Members "Vote")*.

The Honourable Pandit Jawaharlal Nehru: There are two amendments moved to this Clause neither of which raises any question of high policy, the last one especially stresses an obvious thing. It is impossible, practically speaking, for a President removed from office to stand for re-election. I do not imagine any high principles involved in this. We are dealing with important matters. If something else has to be done about it, it Will be done later.

As regards the amendment concerning the term of years, that too is not a matter of big policy. We fixed this period for various reasons into which I need not go now, one of them being not to just fit in with the four-year period of the other elections. Now, many members seem to think that, while the elections to the provincial and other legislatures will take place once in four years, this alone will take place every five years and that after sometime it may so happen that the electors will be rather old in the sense of being elected three or four years previously. Well it may be that the five-year period for the President will be a fixed term unless the President dies or is impeached or something happens to him. But, so far as the other provincial, etc. elections are concerned it is obvious and it is highly likely that the four-year period will not be strictly adhered to. Elections will necessarily have to be held from time to time. Something may happen; the Ministry might change; it might lose the confidence of the House and so many other things may happen and there will be so many of the provincial legislatures that you can not say at any time that the membership has remained constant without a change. Membership of the legislatures will be changing from year to year or from quarter to quarter so that this objection that the 'Rashtrapati' will be chosen by an electorate which itself has been chosen several years previously does not hold at all. There will be a changing electorate all the time and the four-year period is only maximum period. The electorate may remain unchanged for one year or 6 months and fresh election will take place as it now does. I submit therefore that, in the balance, the five-year period is better.

Mr. President: I will put the amendment to the vote. The question is :

"That in sub-clause (1) of clause 2, for the figure "5" the figure `4" be substitute."

The motion was negatived.

Mr. President: Now I shall Put the next amendment to the vote. The question is:

"That in sub-clause (1) of Clause 2, for the figure and word `5 years" the following words be substituted :

'4 years or until the election of a new President whichever event happens later'."

The motion was negatived.

Rai Bahadur Syamanandan Sahaya: Sir, I wish to say a word at the stage I do not think it will be right to take a negative vote on my amendment (No. 121). I would rather leave it to the drafters. A negative vote on this amendment will mean that in the opinion of this House an impeached President will be eligible for re-election. If the Hon'ble Mover is not in a position to accept my amendment I would withdraw it rather than risk a negative vote.

Mr. President: I take it that the House grants him leave to withdraw his amendment.

The motion was. by leave of the Assembly, withdrawn.

Mr. President: The question is that Clause 2 be accepted.

The motion was adopted.

CLAUSE 3

The Honourable Pandit Jawaharlal Nehru: I beg to move that Clause 3 be adopted. It runs as follows:

"3 Every citizen of the Federation who has completed the age of thirty five years and is qualified for election as a member of the House of the People shall be eligible for election as President."

This is a very simple, proposition and I do not think any argument is needed to support. It has been believed that a person who has not achieved much by the age of 35 is not going to do much later. Nevertheless, normally speaking in India, and more especially in other places, men up to 35 sometimes do not even get a chance to achieve much. Others hold the field. In any case, the age 35 is not a high limit. I think it is a fair limit. It means that a person who is chosen shall have at least a dozen years or so of experience. I think it is therefore a fairly safe age or debarring the candidates.

I hope the House will accept the Clause.

(Amendments Nos. 123 to 128 were not moved.)

Mr. H. V. Kamath: While not moving my amendment, I would however, seek clarification from Pandit Nehru on one point. The expression used for a similar purpose in the Provincial Constitution was "reached the age of 35 years" and here we are using the phrase "completed the age of 35 years". I do not know why we are adopting different language here. Do the two phrases mean One and the same thing?

The Honourable Pandit Jawaharlal Nehru: I am sorry I did not hear a word of what Mr. Kamath said. Anyway I am not responsible for the Provincial Constitution. I consider this a better wording. To say 'completed', means definitely what it says. What the other wording means I do not know. *(Laughter),*

(Messrs. Thakur Das Bhargava, Rajkrushna Bose and H. V. Kamath did not move the amendments in their names.)

Mr. President: I think these are all the amendments of which notice has been given. I think there is no other amendment. I shall now put the clause to vote.

Clause 3 was adopted.

CLAUSE 4

The Honourable Pandit Jawaharlal Nehru: I move Clause 4, Conditions of President's office.

"(1) The President shall not be a member of either House of the Federal Parliament and if a member of either House be elected President, he shall be deemed to have vacated his seat in that House.

(2)The President shall not hold any other office or position of emolument.

(3)The President shall have an official residence and shall receive such emoluments and allowances as may be determined by Act of the Federal Parliament and until then, such as prescribed in schedule..........

(4)The emoluments and allowances of the President shall not be diminished during his term of office".

There is one small matter which I thought might be cleared up and I shall await an amendment to clear that up.' In sub-clause (1), it says "The President shall not be a member of either House of the Federal Parliament.` Obviously he should also not be a member of any provincial legislature. I believe some amendment will be moved to this effect. If so, I will accept it.

Nawab Muhammad Ismail Khan (United Provinces: Muslim): May I ask the Mover as to what he means by the words "The President shall not hold any position of emolument." Does he also mean that he cannot be a director of a company or merely that he cannot hold any position of emolument under the Government?

The Honourable Pandit Jawaharlal Nehru: He shall not hold any other office or position of emolument, whatever it may be. He cannot hold any other office which brings him some gain.

Nawab Muhammad Ismail Khan: I hope you will make it quite clear.

The Honourable Pandit Jawaharlal Nehru: It is perfectly clear. It is dead clear. As the House knows, the convention his that even the Ministers should not hold directorships of companies. That is the convention in many countries. although it cannot be the law. So far as the President is concerned, he should not hold any directorships or any position of profit or gain in business.

Dr. B. Pattabhi Sitaramayya (Madras: General): But that is not conveyed by the wording.

Mr. President: We shall have a discussion of the clause when all the amendments have been moved.

(Messrs. Seth Govindas, Ajit Prasad Jain, S. V. Krishnamurthy Rao and Naziruddin Ahmad did not move their amendments.)

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I beg to move that for sub-clause (2) of Clause 4, the following be substituted :

> "(2) The President shall not hold any position or office under the Union or under any Provincial Government, or in or under any local authority or in or under any business concern (whether incorporated or not) in any honorary capacity or for any emolument allowance."

Sir, I find that this point has struck some honuorable members of this House. What the report says is that the President shall not hold any other office or position of emolument, but it may be that he may hold an honorary office in a business concern. It he is concerned with any religious charitable, educational or similar other institution, there can be no objection, but I think, if he is connected with any business concern even in any honorary capacity, it will be open to serious objection. Any businessman can ask the President to be a patron of his business and he might secure good business because of that. That would be throwing the President into the arena of party politics. I would submit that this sort of business connection should not be allowed. I am only urging this to enable the drafting committee to consider this point. This is all that I desire to submit to the House.

Mr. H. V. Pataskar: Sub-clause (2) of Clause 4, gave rise to doubts and and therefore I tabled this amendment which stands in my name, "nor shall he be interested in any business or profession for gain or profit". Since I now understand that it is not the intention that the President should hold any interest in any business, I am not moving this amendment. AR the same, I would request that when the final draft constitution is prepared, this should be made more clear.

Shri T. A. Ramalingam Chettiyar (Madras: General) : My amendment refers to appointments after the President has held office. I , will leave it to the Mover to accept it or not, as he likes, and if he does not accept it, I do not want to press it.

The Honourable Pandit Jawaharlal Nehru: What is the amendment referred to it?

Mr. President: The amendment which Mr. Ramalingam Chettiyar has given notice of is "that the person who has held office as President shall not be eligible to be appointed to any salaried office in the Federation" i.e. after he has ceased to be a President, he shall not be appointed. The amendment is not moved formally. Therefore we shall proceed further.

(Messrs. D. Govinda Doss, P. Kakkan, V. I. Muniswami Pillay and P.M. Velayudapani did not move their amendments).

K. T. M. Ahmed Ibrahim Sahib Bahadur (Madras: Muslim) : Mr. President, Sir, I move:

"That in the last sentence of sub-clause (2) of Clause 1, for the words 'the votes of the Federal Parliament and until then, such be deleted."

Now, Sir, the President of the Federation is the supreme executive authority of the whole State and as such he should be completely free from any party influence when once he is elected. But if the determination of his emoluments and allowances are dependent on any Act of the Federal Parliament it is quite possible that he will be conscious of the fact that the determination of his salary is subject to party influence and that his actions may on occasions be swayed by such consciousness. It is therefore meet and proper, Sir, that the President's salary should be placed beyond any party influence in order to ensure impartiality in his actions and therefore I have moved this amendment. I hope it will be accepted by the Honourable Mover.

(Messrs. B. M. Gupta, R. K. Sidhwa, Biswanath Das, Thakur Das Bhargava Syamanandan Sahaya, and S. Nijalingappa, did not move their amendments.

K. T .M. Ahmed Ibrahim Sahib Bahadur: Mr. President, Sir, I move:

"That in sub-clause (4) of Clause 4, for the word "diminished", the word "altered" be substituted."

In the draft it is provided that the salary of the President shall not be diminished, but at the same time there should also be no Provision for the increment of salary during his tenure of office as President. The reason is the same as I pointed out when I moved the previous amendment., i.e., the President should not be in any way conscious that his salary is dependent on any Act of Parliament and it is absolutely necessary that the quantum of his salary should be determined by the Constitution Act itself.

Mr. Ramnarain Singh (Bihar: General): *[Mr. President, I propose:

"that the President must not be a party-man".

When the Objectives Resolution enunciating our objectives was moved in the House I put in an amendment that a proviso that no party would be deemed legal in this country, should be incorporated in the constitution. Every party whether named after any person or following any particular principle should be declared illegal.

The reason for my amendment is this. In many countries of the world there are party governments and they flatter themselves with the thought that they are democratic. What does democracy mean? It means, "Panchayati Rajya"-the peoples' government. The very word makes it clear that the party system of government is poles apart from democracy. In India it is believed that the "Panch", is God Himself and its rule is God's rule. I venture to say that the very term party system deteriorates at times into a government of the wicked and the sly. Sometimes it seems as if there is no gentle soul in the party. A few sly persons from a party and establish their own government in the name of Democracy. I appeal to the members of this Assembly that the party system be abolished. So long there is a party true of democracy cannot exist. The party system is fatal to democracy.]*

Pandit Jawaharlal Nehru: *[Mr. President, on a point of order. I would like to know what bearing this speech has on my motion.]*

Mr. President: The amendment which he has moved is 'that the President must not be a party-man'.

The Honourable Pandit Jawaharlal Nehru: I should like to understand its bearing.

Mr. President : He wants to put a disqualification on a-candidate who wants to stand for Presidentship.

The Honourable Pandit Jawaharlal Nehru: A disqualification which can be measured, weighed, computed somehow. It must have some relation to fact.

Mr. President: So far as the amendment is concerned, I cannot rule it out.

Mr. Ramnarain Singh: *[Yes, I will just tell you. I am condemning here the party system and suggest to the House that our President should not be a party man. What I mean is this that often the party system of government is mistaken for democracy or Panchayati Rajya. To make it clear let me put a concrete example. Suppose a particular party has 300 members in the Assembly.]*

Mr. President: *[Please do not discuss the party system at length. You just make out your point that the President should not be a party man. Merits and demerits of the party system cannot be discussed here.]*

Mr. Ramnaraian Singh: *[I submit to your ruling, Sir, I shall not discuss that. But it is difficult for me to support the amendment unless we condemn the party system. However, I shall not further press it at the moment. If given a chance, I shall speak on its later. Now I conclude with the remark that it is absolutely essential that the President must not be a party man.]*

The Honourable Sir. N. Gopalaswami Ayyangar : Sir, I wish to move an amendment to sub-clause (1) of Clause 4. It is in the following terms:

"For sub-clause (1) of Clause 4 the following be substituted:

'The, President shall not be a member of Parliament or of any, Legislature and if such a member

> be elected President, he shall be deemed to have vacated his seat in Parliament or in the Legislature concerned."

The Principle of sub-clause (1), which, now, according to draft above the House, applies only to the Federal Parliament will be extended by this amendment to membership of the legislatures of the Units. I have advisedly used the terms 'Parliament' and 'Legislature', because, under the principles adopted for drafting in connection with this document, "Parliament" applies to the legislature of the Federation and the word 'Legislature' is confined to the legislatures of the Units. I have nothing more to say.

Mr. President: All the amendments have been moved. The original proposition and the amendments are now open for discussion.

Shri K. Santhanam : Sir, I accept the clause as it is; but I do feel that it requires to be filled up in the drafting stage.

My honourable friend Mr. Ram Narayan Singh moved an amendment which in its present form is not suitable. The President has to stand as a party man. But it is essential that after the election, he should give up all his association with any political party.

As you know, there has been some discussion as to whether the Speaker of the Assembly can continue to be a party man. It has not yet been decided. I hope in the new constitution, the President, the Governors and the Speakers, will all cease to have connection with any political party.

Then, again, there are business connections. Of course, "position of emolument" may cover many things; but it will not cover other things. Take for instance the holding of shares in a company. It is not possible to present the President from holding shares; but it is essential that as soon as he is elected, he must declare his holdings in any company so that the public will know. During his term of office, he should not be allowed to acquire any shares or immovable property except through a special procedure. We must keep the President far above all these complications. Otherwise, all kinds of rumours and slander will be set afloat. I hope the Drafting Committee which will be set up for drafting will go into the matter and give us a good, comprehensive draft which could be put into the constitution.

Pandit Lakshmi Kanta Maitra: Mr. President, Sir, I wish to, put in half a dozen sentences in connection with the amendments which have just been moved.

In reply to the question of my Honourable friend Mr. Ismail, the mover of the resolution has made it perfectly clear that the Union President will not be entitled to hold any office in any joint stock or limited company. He cannot be a Director of a registered or unregistered body. He cannot be in receipt of any salary or emoluments from any quarter. The principle is very salutary and sound. He should be a man who has no other allegiance except to the State, a man who has for the time being dedicated his whole energy to the service of the State. He should be in a position to give undivided attention to his office.

While I am clear on this and the House will agree to this, that he should not hold any office of emolument, I think we should go a step further. 1 am inclined to think that the President should not hold any honorary office. For instance, he cannot be the President of a Chamber of Commerce; lie cannot be the President of a Trade Union organisation and the like. My idea is that from such honorary offices also he should be excluded, because, his position might be utilised for furthering sectional interest. I am not moving a formal amendment. I hope and trust that the honourable the mover of the resolution, when it goes for final drafting, will take note of these things and see to it that in the final draft these things are. included.

We are all agreed that the President should be a man, who like Caesar's wife, should be above suspicion. To ensure this, all these steps should be taken and even the extreme step proposed by my honourable friend Mr. Ram Narayan Singh should be taken into consideration. You cannot eliminate a party man from standing for the Presidentship. But as soon as he gets into the office of Union President, he should certainly sever all his political connections and political affiliations, and he should cease to be a party man. That goes without saying. Keeping in view all these things, I hope the honourable the mover will, at the final stage, take such steps as will make the position of the President unimpeachable and above suspicion.

Mr. M. S. Aney (Deccan and Madras States): Mr. President, Sir, I have to make one or two suggestions in regard to the words "Position of emoluments" so that when this memorandum goes back to the Drafting Committee for final draft, they may be taken into consideration.

It has been pointed out, and rightly too, that the words "position of emolument" are not comprehensive to include many position in which emoluments are had by persons and therefore the words have to be made more clear. I may point out one or two instances which probably you may not have noted. For example in the C. P. and Berar, there is a system of hereditary village officers known as Patels and Patwaris. Again there are persons who are called Ex-Pargana officers styled Deshmukhs. Deshpande, etc. They were real Pargana officers in olden times and in recognition of that fact, certain emoluments are given to them by the British Government. My honourable friend Dr. P. S. Deshmukh who is our colleague in this House belongs too that class. They get certain emoluments which are known as *Rasams;* these persons are called *Ex-Pargana* officers. Up to this time, in all matters of elections, Patils, Patwaris and these Pargana officers in C. P. and Berar used to be considered as not holding a position of emolument debarring a citizen from standing as a candidate for election. The second thing I want to mention is there are members of the old Royal family who are getting certain political pensions. They are not called emoluments. Are we to consider that persons in this position should be debarred from standing for election as President? It is not an emolument but a compensation paid for what was taken from their royal ancestors. It is something in the nature of a private property of the man. These are the three kinds of emoluments, two of which are particularly peculiar to the provinces in which I live I therefore wish that the Committee which is going to draft the Constitution should consider these points while drafting with a view to exclude them from emoluments, in this clause.

With regard to the amendment of my friend Mr. Ram Narayan Singh would like to state that if a man, no matter what party he belongs to, once occupies the Presidentship, he must sever his connections with the party and remain a non-party man, but you cannot expect a man to be a non-party man before he does take that place. It is something like asking a fish not to be in the water. A person must belong to some party, it may not be a political party like the Congress, it may be some other party, he may belong to some religious party. A man being a social being, is supposed to belong to some kind of a party or group And if we use that word 'non-party man' it will be difficult to elect a President. Therefore, although I cannot subscribe to that particular amendment which he has suggested, I accept the principle that once he is elected to that position, he is expected to be a non-party man and he should sever his connection with his party and remain there as a man belonging to all or as a man belonging to none. He must take one of the two positions and only in that case he will be in a position to discharge his duties properly.

Mr. President: Mr. Sri Prakasa.

Shri Sri Prakasa: Listening, Sir, to some of the speeches almost compels me to repeat what I said-in another place that it seems that some members at least are of the opinion that the President should be a person who has no ostensible means of livelihood. (*Laughter*). I think, Sir, that we should have some trust in the person whom we are putting up for the Office of the President. We should not fetter him in any way. If we do not like the man's profession, then we need not put him up at all. But if we like the man, we can trust him to do his best as President and not allow his profess-ion to interfere with his actions. We can understand your prohibiting a man from practising law or practising Medicine as long as he is the President of the Republic but it would not be fair to, expect him to give up all or any means of livelihood that he may possess as a non-President simply because he is elected to the office of the President.

How, I ask, would it be possible for a person to transfer all his property, if he has any house property, landed property, shares, etc. to someone else who should keep all these things in trust for him against the day when he returns to non-official life? How are you going to be sure that the person is going to get back on relinquishing his office. all the property which he possessed before he became President? I could agree, if you have a provision that a person who has once been a President will be guaranteed a sufficient competence for the rest of his life. In that case I can understand any member wanting to deprive the President of all or any of his possessions that he may have had before. Even lawyers find it difficult to go back to their profession after they have been out of it for a long time. I am particularly worried about persons who like myself, may possess some landed property. (*Laughter.*) Before all these landed properties are abolished in your province and mine, there may be some provision made for persons-not that I am a candidate-who are in that position so that they could stand for the Presidentship. There may be some provision so that persons who are in the unfortunate position of possessing some properties of that nature may not be wholly debarred.

Sir, it would not be fair either for the person who is put up for the Presidentship to be required to declare all the shares that he may possess in various companies. Suppose he forgets one or two non-paying shares that he possesses e.g., in the *National Herald* of Lucknow........

Shri Balkrishna Sharma (United Provinces: General): May I know on a point of information, viz., why has he taken it for granted that the person will have divest himself of all his properties as soon as he takes up his office.

Shri Sri Prakasa: I thought that was what Mr. Santhanam was after.

Shri K. Santhanam: I merely wanted him to declare his shares so that we will know.

Shri Sri Prakasa: I think, Sir, we must look at the man whom we are putting in the President's position and not at his property or at his shares or anything else. If we trust the man, we ought to Put him in that office. If we don't, we ought not to put him there. Even if you make a beggar a President, he can be as dishonest as the biggest shareholder or anyone else. Honestly does not necessarily depend upon the economic position of the individual. Honesty is something apart, What we want is that our President should be a person above suspicion; and whether he is already already possessed of any property or not does not really matter. I think we should not hedge in the position of President by any of the provisions that we are seeking to introduce.

Shri M. Ananthasayanam Ayyangar: Sir, it is rather surprising that we should hear these words from our friend Shri Sri Parkasa. It is not that he has entirely misunderstood the scope of the amendment. If he should be chosen as the President, let him continue to be in possession of his properties. But we will assume he becomes the Commerce Member. He ought not to deal in shares the moment he becomes a Member. Otherwise, if a Commerce Member of any Government or the President gets into the share market, there is an assurance that that particular share for which he goes in is a sound one. The next day he may sell them away. He will be in a position to monopolize the shares. We are not going to clothe the President of the Federation with such powers to traffic in immoral business-there are various kinds of immorality. Now. Sir, my friend Mr. Santhanam's amendment is that we should insist, upon the President to declare what shares he possesses. My friend Mr. Sri Prakasa says there may be a share lurking in some comer and he may not know. I don't think he will be so negligent about his own affairs. But he expects the President to be negligent about his affairs. As regards business, even if he is a honorary President or Director of a business, and may receive only sitting fees, all the same when he has to give assent to a particular Bill, he may be induced to send it back, particularly if those provisions affect his bank or concern. I don't mean to say that a particular thing will arise but it shows the necessity why the President should not be connected with these directly or indirectly.

Then as regards his being a party man, Sir, it is impossible unless he is a wooden block or a wooden tool. He ought to belong to one party or other. After he is elected, it must be obligatory that he should resign all his connection with the previous party and absolve himself of the allegiance that he owes. To that extent, one may reasonably expected but to say that he ought not to be a partyman is impracticable. I am trying to find out one but I am afraid we may not be able to get a non-party man at all. I can only think of a pial school teacher as a non-party man. Even he may be inclined in favour of his District Board President who may be a party man. Therefore. it is impossible to come across a non-party mean in any sense of the word. It is enough if he gives up his connections with his party after he becomes President of the Federation or the President of the Union. I do say, Sir that all these limitations and qualifications are necessary so as to ensure that proper administration and proper men will be available.

Mr. President: There is no other speaker. Has the Mover of the clause anything to say in reply?

The Honourable Pandit Jawaharlal Nehru: Sir, a great deal has been said about the emoluments of the President. It seems to me that it is very difficult to make lists of offices which he should not hold. Only a general principle can be laid down and carefully no doubt, but subsequently the rest depends a great deal on convention. If you start making long lists, it means that there may be many things left out which he can do. So normally speaking, one will have to depend upon convention. The point is that he should not be actively connected or associated with the management of any gainful office. Obviously, in the modern world, if he is a at all well-to-do, he will have some shares or like Mr. Sri Prakasa he may be a landholder or he may have some other property. There is no chance as far as I can see of Mr. Sri Prakasa being prevented from standing for the Presidentship and I would deem it a calamity if it we* so. So I submit that at this moment one need not go further into this question but leave it as it is and not Only for the drafting but for the convention to grow up.

In one matter I am inclined to agree with what Mr. Santhanam said, although I do not think it is necessary to put it down, and that is that any person in high responsible office should make some kind of disclosure of his connections with business and of his holdings, etc. I think there would be an advantage in that, whether he is a President or whether he is a Minister or any other person in high responsible office. (Hear, hear.) I accept. Sir, the amendment moved by Sir N. Gopalaswami Ayyangar, which clarifies sub-clause (1).

There is the question I believe of the emoluments and allowances of the President. A suggestion has been made that some other words should be used instead of "diminished". After consideration we came to the conclusion that "diminished" was the right word. We could use "varied" or "increased or diminished" but on the whole "diminished" was considered the best. The point is that the legislature has in its power to do anything it chooses, but it must not exercise its power to the detriment of the person who has been chosen the President. There is no question of increasing his allowances or emoluments unless the Parliament so desires. You need not check Parliament doing anything, but there is the slight danger possibly of Parliament or the people from making the position of the President impossible. Therefore You say it should not be "diminished." In these clays, one does not quite know, suddenly there might be inflation and it may affect the situation so much that all normal standards of salaries and allowances might have to change. So I don't think any change is needed there.

Last of all, the amendment moved in regard to the President not being a party man-now, I don't know, but certainly I have a certain sneaking sympathy with such a proposition. But in spite of that, it seems to me completely impractical. What is a party man? No doubt, one thinks in terms of the huge party machines running political elections. But it is almost impossible for you to advise all of them. There are all kinds of parties and a person does not become bad because he belongs to a small party or a big party. Everybody is associated, I am afraid, with some group or association. The point is that the President should not function as a party men after he is elected. That, on the whole, is so. I am not myself clear in own mind as to what his relation to the party he belongs to should be after his election. However, the question does not arise. But in any event, he should function as any one should function, whether he is a party man or not, completely impartially when he is in high office. SO Sir, I regret I am unable to accept any amendment except Sir N. Gopalaswami Ayyangar's.

Mr. President: I will now put the amendments to vote. I will first put the amendment moved by Mr. Naziruddin Ahmad:

"That for sub-clause (2) of Clause 4. the following be substituted:

> (2)The President shall not hold- any position or office under the Union or under any provincial Government, or in or under any local authority or in or under any business concern (whether incorporated or not) in any honorary capacity or for any emolument or allowance."

The amendment was negatived.

Mr. President: Now the amendment moved by K. T. M. Ahmed Ibrahim Sahib Bahadur:

"That in Sub-clause (3) of clause 4, the words 'as may be determined by the Act of the. Federal Parliament and until then, such' be deleted.

The amendment was negatived.

Mr. President: There is another amendment by the same member that-

"That in Sub-clause (4) of clause 4 for the word 'diminished' the word 'altered' be substituted."

The amendment was negatived.

Mr.. President: Then there is an amendment by Mr. Ram Narayan Singh, namely: that the following be inserted as sub-clause (5) of clause 4:

"(5) The President must not be a party-man."

Mr. Ramanarayana Singh: I do not press my amendment.

Mr. President: I take it the House allows him to withdraw his amendment.

Honourable Members: Yes.

The amendment was, by the leave of the Assembly, withdrawn..

Mr. President: The amendment moved by Sir N. Gopalaswami Ayyangar is:

"That for sub-clause (1) of Clause 4, the following be substituted:

> 'The President shall not be a member of Parliament or of any Legislature and, if such a member be elected President, he shall be deemed to have vacated his seat in Parliament or in the Legislature concerned.-

The amendment was adopted.

Mr. President: Now the Resolution, as amended, is put to vote.

Clause 4, as amended, was adopted.

The Honourable Pandit Jawaharlal Nehru: Sir, I move:

"Clause5-Appropriate provision should be made for election to fill casual vacancy is the detailed procedure for all elections, whether casual or not, being left to be regulated by Act of the Federal Parliament:

Provided that-

(a) an election to fill a casual vacancy shall be held as soon as possible after, and in no case later than six months from, the date of occurrence of the vacancy; and

(b) the person elected as President at an election to fill a casual vacancy shall be entitled to hold office for the full term of five years."

The word "casual" here has not been very happily used, Sir; but I propose to accept an amendment to delete it from the various places.

Mr. President: I shall take up the amendments now.

(Messrs B. M. Gupte, A. K. Ghosh, Rajkrushna Bose, Biswanath Das and S. Nagappa. did not move their amendments Nos. 151 to 155).

Mr. Naziruddin Ahmad: Sir, I beg to move:

"That in proviso (b) to Clause 5, the words 'at an election' be deleted."

Sir, this is a purely drafting amendment which aught to be accepted.

The proviso says"

"The Person elected as president at an election

The words "at an election" are redundant, as he has been elected. The very fact that he is the person 'elected 'as President makes it perfectly clear that he has been elected at an election. The moment you say elected as President' the words 'at an election' are necessarily implied, and are therefore redundant. My amendment, as I said, is purely a drafting amendment and it should be accepted. for obvious reasons.

(Messrs. K. Chengalaraya Reddy, Shibbanlal Saksena, Gokulbhai D. Bhatt, D. H. Chandrasekharaiya and C. Subramaniam, did not move their amendments Nos. 158, 159, 161, 162 and 163).

The Honourable Sir N. Gopalaswami Ayyangar: Sir, the Honourable Mover has already referred to the use of the words "casual vacancies" in this clause. This expression has given rise to a number of difficulties which deserve to be avoided. Casual vacancies are generally vacancies which occur in the middle of a prescribed term for a particular office, and when they are filled up, the person who gets into the office is supposed to be in the office only for the remainder of the term. But the whole' object of this clause is that the person elected for the vacancy should start on a full term of office, and therefore it is desirable that the drafting of this clause should be so changed as to bring out the intention much more clearly than it does now. For achieving this end, I move the following amendment.

"That for Clause 5, the following be substituted:

'5. *Vacancies in the office of President.*-Appropriate provision should be made for elections to fill vacancies in the office of President, whether occurring before, or at, the end of the normal term of an incumbent of that office, the detailed procedure for elections being left to be regulated by Act of the Federal Parliament:

Provided that in the case of a vacancy occurring before the end of the normal term of a particular incumbent,

(a) the election to fill the vacancy shall be held as soon as possible after, and, in no case, later than six months from, the date occurrence of the vacancy; and

(b) the person elected as President at such election shall be entitled to hold office for the full term of five years'."

I do not think any more words are necessary to explain it.

Mr. President: The amendments have been moved. The amendments ;and the Resolution are now open for discussion.

Mr. Jagat Narain Lal (Bihar: General): Sir, I have to say a few words ;about the amendment moved by Mr. Naziruddin Ahmad. He seems to think that the amendment proposed by him is merely a drafting amendment; but it is not so. Actually the vacancy may be filled in more ways than one. If the vacancy has been filled otherwise than by regular election, say by nomination or otherwise, than the person shall not be entitled to hold office for the full term. Therefore, I submit, Sir, that the amendment proposed by Mr. Naziruddin Ahmed is not an amendment which can be accepted.

Mr. President: There is no one else who wants to speak on the motion. The Mover may now reply.

The Honourable Pandit Jawaharlal Nehru: Sir, I accept Sir N. Gopalaswami Ayyangar's amendment, that is all.

Mr. President. Then I shall put the amendments to vote. The amendment is:

"That in Proviso (b) to Clause 5, the words 'at an election' be deleted."

The amendment was negatived.

Mr. President: Then there is the amendment moved by Sir N. Gopalaswami Ayyangar. It has been accepted by the Mover, but it has to be accepted by the House.

The amendment was adopted.

Mr. President: The amendment becomes the substantive clause. Now I put Clause 5, as amended, to the vote of the House.

Clause 5 as amended, was adopted.

Mr. President: It is now just 1 o'clock. The House stands adjourned till 10 o'clock tomorrow morning.

The assembly then adjourn till 10 of the clock on Friday, the 25th July, 1947.

[English translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME IV

Friday, the 25th July, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following Member presented his Credentials and signed the Register:

Mr. Mihir Lal Chattopadhyaya (West Bengal: General).

AMENDMENT OF RULES

Mr. President: The first item of the agenda this morning is a motion by Shri Sri Prakasa.

Shri Sri Prakasa (United Provinces: General): Mr. President, Sir, I have the honour to move:

That after Rule 5 of the Constituent Assembly Rules the following new rule be inserted:-

"5-A. Notwithstanding the provisions of Rules 4 and 5 above, the Governor General of India, may in pursuance of His Majesty's Government's Statement of June 3, 1947, order; fresh elections to the Constituent Assembly from the areas mentioned in para 14 of that Statement and thereupon the members already elected from the said areas, whether or not they have taken their seats in the Assembly in the manner prescribed in Rule 3, shall be deemed to have vacated their seats; and the members newly elected shall be deemed to have been duly elected as members of the Assembly.

This Rule shall have retrospective effect from June 3, 1947.

Sir, I venture to place this motion before the House with three objects. The first is that I should like to regularise some of the very undesirable incidents that have occurred during the last few months. Secondly, I want to vindicate the honour of this Assembly and, if you will permit me to say so, with respect, your own honour as the President of this Assembly. And, lastly, I should also like to lodge a protest against the manner in which many things have been done during the last few months- (hear, hear). Many old members of the Assembly who were originally elected were, so to say, summarily dismissed; new elections were ordered' and new members were elected in their places.

Sir, when this Assembly was first elected-it does not matter how It was elected-it claimed to be what it obviously was, a Sovereign Body, fully entitled to make its own Rules of Procedure. It was quite clear that an Assembly like this could not go on without any rules for its own conduct and therefore we prepared a regular pamphlet that gave all the Rules of Procedure of this House. No person could claim that he was ignorant of the existence of these rules. If anyone had taken care to look into this pamphlet he would certainly have found Rules 4 and 5 staring him in the face, which laid down in unequivocal language the method by which new members of this Assembly could be chosen after other members had vacated their seats in the manner prescribed. What has happened, however, is that certain negotiations took place between certain people behind the back of this House, certain agreements were come to, some members were, so to say, summarily dismissed from this House, new elections took place and new members were elected in their places. And-we had to acquiesce in that agreement. Whether we like it, or not, the fact is that new members have come and old members have gone, and in the bargain our dear country has been cut up into two. I think, Sir, that-it is high time that we should at least regularise this procedure by inserting, a rule of our own so that we may a least save our faces and be able to say that what has been done has been done according to a definite rule framed by ourselves.

Now, Sir. my second purpose is to vindicate the position of this House and the honour of its President. I Looked in vain during those fateful days to see you mentioned anywhere, in the course of those negotiations and to be assured that you were consulted. You may have been consulted as a Member of the Interim Government and as a member of the Congress High Command; but you were nowhere in the picture as President of this Assembly. I have no doubt that if you had been Consulted as President of this Assembly, punctiliously careful as you are of the proprieties, you would certainly have asked this Assembly, for its own opinion on the subject.

When, Sir, you asked the Assembly whether it would permit me to move a simple Resolution like this the other day. you will surely have consulted the Assembly on such a vital matter if you had been consulted as President. We would have been amply satisfied if we could have been assured by you that you had agreed to the procedure On behalf of the Assembly, that was not sitting at the time. You were perfectly entitled to act on our behalf. The Assembly, however, if I may say so. has been completely ignored. The other day when Pandit Govind Ballabh Pant referred to some sort of a party mandate, you very rightly pot up and said that the Assembly does not recognise any parties. But, if I am not mistaken, over and over again during those fateful days, the leaders of the two major parties' were referred to in statement after statement that appeared in the Press. So, while you do not recognise the existence of any party so far as this Assembly Is concerned. we have to acquiesce in an arrangement that had been come to behind our backs by what are described as leaders of major parties in the country. In this connection I feel that the insertion of this rule might right the wrong to some extent, and we may at least have the feeling that what has been done has been done according to the rules of our Assembly themselves.

Lastly and this Is as far as I am concerned the most important Part I would like to lodge a protest against 'all that has happened. I do not think it was right either on the part of the leaders referred to In those statements or on the part of the Governor-General not to have consulted you, Sir, as our President and the Assembly in that important matter. You know that those negotiations have resulted in the cutting up of our country which is not to our liking. I have no doubt, Sir, that if the original procedure had been followed, and if all who had been elected to this Assembly had attended it and the matter had been placed before the house in the proper manner, we ourselves might have agreed gladly or otherwise-to the very arrangement that was finally come to over our heads. We would in that case have had the satisfaction that the representatives of the country met in this Hall, and after solemn deliberation decided that for the time being at least in the interests of the country it would be best if we have two separate Constituent Assemblies and two separate parts of the country governed by two Governments. But, as it is, the whole thing has been flung at our face in a manner which it is difficult for an ordinary person to understand,-much less to appreciate. In any case, as things are, there is nothing else for us to do than to agree, as gracefully as possible, to what has happened. I hope that I shall have the unanimous support of the House to my motion to insert this new rule in the Rules of Procedure of this House.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I find myself in a difficulty in regard to this Resolution. But with regard to the Honourable Member's desire to regularise any irregularity if then is one, I have full sympathy. Then again. with regard to the vindication of the honour of yourself, Sir, I also fully sympathise. Then, as regard the protest against many things that have happened, I feel that I should express my neutrality. Thinks happened, in an in an overwhelming manner with which we poor fellows had nothing to do.

Coming to the merits of the Resolution, it says: that the Governor-General of India, may, in pursuance of His Majesty's Government's Statement of June 3, 1947, order fresh elections to the Constituent Assembly from the areas mentioned in para. 14 of that Statement..

Sir, in this famous paragraph are included the following areas:

(1) Sylhet which is now beyond the jurisdiction of India;

(2) West Bengal which is now within the jurisdiction of India;

(3) and (4) East Bengal and West Punjab which are outside the jurisdiction of India; and

(5) East Punjab which is within our jurisdiction.

Pandit Lakshmi Kanta Maitra (West Bengal: General): I want to know, Sir, whether the Honourable Member is in order in raising a discussion, on the whole of His Majesty's Statement, in connection with this Rule? The Honourable Member has referred to that Statement in *extenso* and to parts of it which have no bearing on the motion before the House.

Mr. President: I think he was referring to paragraph 14 of the Statement because the motion under consideration itself refers to it, and developing his argument. He is in order.

Mr. Naziruddin Ahmad: That is exactly my position, Sir. In fact, these areas are referred to by implication in the resolution under consideration. I was referring to the areas mentioned in paragraph 14,

Then it is said that as a result of the election of those members and in consequence of the proposed election, the members who have already been elected in the first election will from that date be deemed to have vacated their seats. It assumes therefore that till the proposed election the members who were originally elected at the first election would retain their seats, although I understand that all of them have resigned. Then again it is also sought to be made out that upon the proposed election the newly elected members-I believe members who would be elected here after should be deemed to have been elected, and what seems to be impracticable and absurd is that they should be elected with back effect, namely with effect from June 3. I submit that there are three elections to be considered; the first election the second election through which we, some of newcomers have come, and the proposed third election. The resolution ignores altogether the second election through which some of us have come. Then the implications of this are that the members who were elected at the second election have no focus stand as their place will be occupied by us those elected at the first election and things said and done by us in this Assembly would have to be erased from the pages of the report. Then, let us consider the probable time when the third election is likely to take place. The second election took place within about a month of the June 3 Statement, that is in the beginning of July. This third election can thus take place within about a month from this date that is about the 25th August. If that is so, serious complications will arise. The resolution refers to election from all the areas including those areas which will then be outside India. By 15th August, a new transformation in the country will take place. Two new Dominions will come into existence, and it would be a serious proposition to say that the Viceroy, Lord Mount batten, will order fresh election from the areas over which he has no jurisdiction. In these circumstances, I submit that resolution is impracticable. It will load serious anomalies. The resolution purports-at least so the speaks made out-to regularise what has happened. it Seeks to vindicate the honour of this House. The Honourable Member supposes that those very members who have been elected at the second election will automatically be elected at the third election, if any. I beg to submit that some of us may not be able to come. It may be that we will have a new set of members. In that case, the so-called regularisation of the election of members like us goes to the wind. I will ask, what is to become of our assertion that we have come here as loyal and law-abiding citizens of India? If we go out, will that declaration stand or will that go? Then what will become of the acceptance by Choudhury Khaliquzzaman Saheb of the National Flag on behalf of the League group here, if he fails to come? Then again, what will become of our signatures in the Great Book which is to, go down to history? Will they be scored out and erased? What will become of the T.A. and daily allowances which we have received? Will the monies have to be returned or will that be made over to the next set of members to be elected and who are to be our legal heirs and representatives? These are some of the serious anomalies which face us in accepting the resolution as it stands. I have already submitted that I am in full sympathy with spirit which actuated this resolution. The resolution is however impracticable. It is said that the honour of this House will be vindicated by this. I believe that the honour of the President will not only be vindicated but will rather be stultified. The Honourable the President has in his wisdom allowed us to take part in the proceedings and do other things in, the House. If the resolution is carried, I think it would stultify the action of our own President. I submit that, if the real desire of the Honourable Member is to safeguard the rights and prestige of the House, we could have done it by straightforwardly declaring that we adopt the second election- That would regularise the second election in a decent manner. That will regularise irregularities if any, and safeguard the honour and prestige of this House, I repeat I am in full sympathy with the spirit which actuated the Honourable Member in moving this resolution, but there are practical difficulties and the best way would be for the House to adopt the second election. With these few words, I submit that the resolution in its practical implications cannot be accepted, and therefore I respectfully beg leave to oppose it.

Haji Abdul Sathar Haji Ishaq Sait (Madras: Muslim): May I draw the attention of the Honourable Member to the last clause of the resolution which says that this Rule shall have retrospective effect from June 3, 1947?

Mr. Naziruddin Ahmad: That does not solve the problem at all. The point is, will those gentlemen, those Honourable Members who have been elected, coma back, in a body in the third elections Can any one guarantee that? If the same Honourable Members are elected once again, then this retrospective clause has some meaning. Retrospectivity with regard to members who would he elected for the first time at the third election has no practical meaning, so far as my humble judgment goes. Then there will be overlapping of two batches of members, the first batch and the second batch who will, according to the Resolution, both be members simultaneously for a period. With these few words, Sir, I respectfully oppose the adoption of this resolution,

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): Sir, I am in entire agreement with the object of the Honourable Mover of this resolution. At the same time, I must say that I find it difficult to understand it. The resolution gives power or seeks to give power to the Governor-General in pursuance of H. M. G. s Statement of June 3 to do this or that even in the future. I cannot understand at all why the Governor-General 'should be brought into our rules. Mr. Sri Prakasa's object obviously is to validate something that has been done, something bad according to him, and I agree with him that was not done with due propriety. I agree that we should validate it but not by making any fundamental changes in our rules, even giving powers to the Governor-General in the future about it. So I suggest, Sir, that instead of considering This resolution as it is in this form, it might be referred to a small committee to redraft it with the object of merely making it a validating measure. I would suggest a committee consisting of Mr. Shri Prakasa, Sir Alladi Krishnaswami Ayyar and Sir B. L. Mitter.

This is a legal matter and so I have suggested the names of these three lawyers although Mr. Sri Prakasa is not much of a practising lawyer. I do not think it will take very much time to redraft it and bring it forward as a resolution, not as an amendment to the rules.

Shri Sri Prakasa: I agree with what my friend Pandit Jawaharlal Nehru has just said. In fact when I tabled this Resolution at the being of this Session, the N. W. F. P. referendum was in the offing and there was the prospect of three more members being dismissed-they have since been dismissed and this is the reason why I have given this power to the Governor-General. Now this is finished, and so far as I can find out there is nothing for the Governor-General to do in this behalf so far as the H. M. G. 's Statement of June 3 is concerned. We might just as well have this in the form of a Resolution as suggested by Pandit Jawaharlal Nehru and I am quite agreeable to this Committee being appointed and to bring forward the whole thing in a sort of validating Resolution. In that case I shall ask for leave of the House to withdraw my motion.

The motion was, by leave of the Assembly, withdrawn.

The Honourable Mr. Hussain Imam (Bihar: Muslim): What about Assam? Election is still in the offing there.

Shri Sri Prakasa: This Committee will have to consider Assam also. It is just as well that it should.

Mr. President: I was just going to point out that the Resolution as it is drafted has that lacuna also. It does not cover members from Assam other than Sylhet. So I think the best course is, as has been suggested by Pandit Jawaharlal Nehru, that the matter be referred to a Sub-Committee and the Sub-Committee might redraft the Resolution, because, there is, as far as I can judge, no difference so far as the object is concerned. May I take it that it is the wish of the House that this Resolution be referred to a Sub-Committee consisting of Mr. Sri Prakasa, Sir Alladi Krishnaswami Ayyar and Sir B. L. Mitter?

The motion was adopted.

REPORT OF THE UNION CONSTITUTION COMMITTEE

Mr. President: We shall now go on to the consideration of the Report of the Union Constitution Committee. We shall take up Clause 6 of Part IV.

CLAUSE 6

The Honourable Pandit Jawaharlal Nehru: Sir, I beg to move clause 6 in regard to the Vice-President:

> " (1) In the event of the absence of the President or of his death, resignation, removal from office, or incapacity or failure to exercise and perform the powers and functions of his office or at any time at which the office of the President may be vacant, his functions shall be discharged by the Vice-President pending the resumption by the President of his duties or the election of a new President, as the case may be.
>
> (2)The Vice-President shall be elected by both Houses of the Federal Parliament in joint session by secret ballot on the system of proportional representation by means of the single transferable vote and shall be *ex-officio* President, of the Council of States.
>
> (3)The Vice-President shall hold office for 5 years."

I might mention, Sir, that I propose to accept some amendments to, this Resolution if and when they are moved. They are rather amendments regarding the wording of the clause and one or two lacunae have to he filled in this clause. With regard to the age of the Vice-President, it is the desire of the House, that his age should be fixed also as 35 as that of the President. I am prepared to accept it.

(Shri A. K. Ghosh did not move his amendment No. 165.)

Mr. Naziruddin Ahmad: Mr. President, Sir, I beg to move that for sub-clause (1) of Clause 6, the following be substituted:

> " (1) When the President is absent from the Union or when the office of the President is by reason of his death, resignation or removal from office, or when the President is on account of illness or other cause unable to perform

his duties, his functions shall be discharged by the Vice-President during the period (if such absence, or such vacancy or such inability as the case may be."

Sir, the original Clause contains certain expressions which to my humble mind raise some amount of difficulty. I have suggested this amendment so that the House will consider the difficulty and the House or the Drafting Committee will consider them. The clause allows the Vice-President to function in certain contingencies. Sub-clause (1) refers to the absence of the President. Absence from where is not clear to me. We know that provincial ministers function even in their absence from their headquarters Does 'the absence of the President mean absence from the Union, when he goes outside his area to a foreign country or when he leaves his headquarters. I suppose what is meant is "absence from the- Union". That is what I have attempted to incorporate in my amendment, The second difficulty is that the Vice-President should act when incapacity is established. There is great difficulty. in determining what incapacity means and implies. The President may act in a certain way. One man might take the view that he has shown incapacity. The President might say that the critic has failed to appreciate, his capacity, and many others might be willing to agree with him. There is no court of law or tribunal "which can adjudicate upon the incapacity. Then the question arises. Is the President supposed to be incapable of discharging his duty"? This creates a similar uncertainty. So this uncertainty should be removed. Incapacity is a very doubtful expression which may lead to serious complications and squabbles.

Then the, other condition is "failure to exercise and perform his powers- and functions". That is also equally vague. It is not clear a to what is meant by "failure to perform the powers and functions of' his office" and this is also open to the same arguments and objections as the word 'incapacity'. So I have attempted to submit for the consideration of the House a sub-clause which eliminates the fundamental difference, the objectionable features provided the House considers the same. Apart from that, there is nothing new in the proposed sub-clause which I have submitted, for consideration. I submit that these serious permits should be taken into consideration and the principle of the sub-clause which I have submitted may be accepted, if agreed to. We are not now considering the real draft but to eliminate certain difficult problems, certain objectionable features principles. The amendment embodies certain principles and attempts and nothing more. With these words I request the Honourable Mover of the Resolution to consider the same and in possible give effect to the principles embodied therein.

Mr. President: I take it that the word 'vacant' is dropped after the words.......... or when the office of the President is by reason of his death, resignation or removal from office" in your amendment.

Mr. Naziruddin Ahmad: Yes, Sir., The word "vacant" should be inserted. It was due to hurry that I lost sight of it. I am grateful to you for pointing it out. The word 'vacant' is to be so read in the context indicated.

(Shri Jadubans Sahai did not move his amendment, No. 167 in the hat.)

B. Pocker Sahib Bahadur (Madras: Muslim): Mr. President, Sir, I beg to move:

"That in sub-clause (1) of Clause 6, the words 'or incapacity or failure to exercise and perform the powers and functions of his office' be deleted".

In fact, the reason for this amendment have in some way been explained by the previous speaker. I submit, Sir, that these expressions are not only very vague, but they are also unnecessary and superfluous in view of the other parts of the section where such contingencies can be met. Who is to declare his incapacity or failure to exercise and perform the powers and functions of his office, or what is the criterion or determining it, these are matters too vague and there is no necessity for such a clause at all. Because, if a man is found to be incapable or fails in the discharge of his duty, there is the remedy of removal from office. Therefore, Sir, I do not think that it is either necessary or, advisable to have such a vague clause as that in the Statute. Therefore I move this amendment.

Mr. President: Mr. Gupte, your amendment is the same as the amendment which has just been moved.

Mr. Subramaniam, Mr. Diwakar, Mr. Naziruddin Ahmad, your amendments are the same as the one just moved.

(Amendments Nos. 169, 170, 171 and 172 were not moved).

(Messrs. Rajkrushna Bose and Shibbanlal Saksena did not move their amendments, Nos. 173 to 176).

Shri D. H. Chandrasekharaiya (Mysore State). Mr. President, Sir, I beg to remove :

"That for sub-clause (2) of Clause 6, the following be substituted:

'(2) The Vice-President shall be elected by the same electoral college".

Shri K. Santhanam (Madras: General): Sir, there is an amendment in my name in the supplementary list, to sub-clause (1) of Clause 6.

Mr. President: I will take up the amendments in the supplementary list also.

Shri D. H. Chandrasekharaiya: I beg to, move:

"That for sub-clause (2) of Clause 6, the following be substituted:

'(2) The Vice-President shall be elected by the same electoral college as is applicable to the election of the President and by the same method and he shall be an *ex-officio* President of the Council of States'."

Under the Union constitution, the President is proposed to be elected through an electoral college consisting of the members of the two Houses of the Federal Parliament and the members of the Unit legislatures, while the Vice-President is elected only by the members of the two Houses of the Federal Parliament. This means that in the election of the Vice-President, the members of the Unit legislatures will have no hand, whatsoever. I for one have not been able to see as to why this difference is made in the method of the election of the President and the Vice-President. The Vice-President is as much an important functionary of the Federation as the President himself. As you know, he is to act for the President during his absence, land, besides he is to preside over an important chamber of the legislature namely the Upper House. I think that the same electoral college which elects the President can be made use, of without much difficulty for electing the Vice-President. In the United States of America, the Vice-President is elected through the same electoral college that elects the President. The same method may be adopted here with great advantage. I therefore urge that this amendment of mine is a very reasonable one and that the House will be pleased to accept it.

Mr. President: I think, Mr. Santhanam, you had better move your amendment at this stage.

Sri K. Santhanam: Sir, I move:

> "That for sub-clause (1) of Clause 6, the following be substituted:
>
> > 'During the interval between the occurrence of a vacancy in the office of President and
> >
> > its filling up by election and when the President is unable to discharge his functions win to absence, illness or other cause, his functions will be discharged by the Vice-President"

This is largely a drafting amendment and many of the other speakers have explained why a change is required. I have tried to put in it the briefest and most lucid form possible.

(Messrs. Rajkrushna Bose, A. K. Ghosh, H. V. Pataskar, Brajeshwar Prasad, H. J. Khandekar and S. V. Krishnamoorthy Rao did not move their amendments, Nos. 178 to 183).

Mr. B. M. Gupte (Bombay: General): Sir, I beg to move:

> "That in Clause 6 the following be inserted as new sub-clause (3) and the existing sub-clause 3 be renumbered as sub-clause 4:
>
> > 'During the time the Vice-President is acting in the place of the President, the Council may if necessary elect a temporary Chairman'."

Sir, the Vice-President is to be the *ex-officio* President of the Council of States. While he is acting for the President, he cannot function as the President of the Council of States. Therefore Provision has to be made for a temporary Chairman and that is done by my amendment.

(Messrs. Rajkrushna Bose, H. V. Pataskar and Shibbanlal Saksena did not move their amendments, Nos. 185 to 187.)

Shri D. H. Chandrasekharaiya: Mr. President, Sir, the amendment which stands in my name reads as follows:

> "That in sub-clause (3) of Clause 6, for the figure and words '5 years' the following figure and words be put in:
>
> > '4 years or until the election of a new Vice- President whichever event happens later'."

The terms of office of the President is fixed at five years and it is proposed to fix the term of office of the Vice-President also for the same period. I do not see any reason as to why the periods for both the President and Vice-President should be one and the same.

It was urged in the case of the President that he should continue for sufficient time so that arrangements for electing a new incumbent may be finished. But such reasons will not apply in the case of the Vice President and it will be reasonable and advantageous to synchronize the period of the Vice-President with that of the Lower House. As I explained yesterday, what happens under this arrangement is that]he becomes more and more removed from the Lower House as it advances from the second to the fifth term. That is a position which is not very happy.

The House may be aware that in the U.S.A. the Vice-President is elected for four years along with the President and the provision for having a Vice-President in the Union Constitution must have been' thought of in the light of the precedent existing in the American Constitution. If that is so, we should be ready and willing to follow the practice adopted elsewhere. The American Constitution is more then 150 years old now and considerable experience must have been gained in working the same. In framing our own Constitution it would be useful to accept the principles or methods adopted elsewhere. It is only by profiting by the experiences of others that. we can make our Constitution more perfect and practical than by inventing something new of which we may not know much. I feel, Sir, that the term of four years for the Vice-President is really in the best interest of the country and is a sound constitutional arrangement.

I have suggested that we might fix the normal period of the Vice President at four years. But as pointed out in the amendment he may be continued for short period thereafter till a new legislature comes into existence and a new Vice-President is elected. This will enable the office of the Vice-President to remain always filled. I therefore commend this amendment to the kind consideration and acceptance of this House.

(Amendment No. 189 was not moved.)

Mr. Naziruddin Ahmad: Mr. President, Sir, I beg to move:

"That in Clause 6, the following new sub-clause (4) be inserted:

'(4) The provisions of Clause 4 above shall, *mutatis mutandis,* also apply to the Vice- President'."

In Clause 4 certain conditions are laid down for the office of the President. It seems reasonable that the same, in so far as they are applicable, be also made applicable to the Vice-President. This is only a drafting amendment.

Pandit Thakur Das Bhargava (East Punjab:, General): *[Mr. President the amendment which I wish to move is as follows:

"That the following sub-clause be added after sub-clause (3):

'(4) No person, who has not completed the age of 35 years, can be elected as the Vice-President'."

There does not appear to me the necessity for mentioning many reasons for (the adoption of) this amendment. By accepting Clause (3), the House has accepted and is committed to the principle that no one below 35 years of age can be the President. And because the Vice President has to act in place of the President therefore there is little doubt , that the Vice-President should not be under 35 years in age. Besides, the Honourable Member (the Mover) has also expressed his readiness to accept this amendment. Therefore I do not want to waste the precious time of this House on other reasons (in favour of this amendment).]*

[Shri Mohanlal Saksena did not move his amendment. (No. 3 of Supp. List I).]

Mr. President: I think these are all the amendments of which I have notice. I take it that no other member has got any amendment of which he Das given notice, Now the original clause and the amendments are open for discussion.

Mr. Tajamul Husain (Bihar: Muslim): Mr. President, Sir, sub-clause (1) of Clause 6 lays down that in the event of the President's incapacity or failure to exercise and perform the powers and functions of his office, the Vice-President shall carry on such duties. In other words, Sir, if the President is incapable or fails to carry out his duties, the Vice-President shall 'act for him. I find, Sir, there are two amendments to this resolution. The amendments are in these words:

"that the words 'or incapacity or failure to exercise and perform the powers and functions of his office' be deleted."

That means that if the President is incapable or fails to do his duty, the Vice-President shall have no power , to act for him. The question that will arise is that if the President is incapable or deliberately does not do his duty, who, will act-for him. Suppose he becomes suddenly ill or insane. Surely there must be somebody to carry on the duties of the, President. With all due respect to the Honourable the Movers of the amendment, I find the amendments are meaningless and therefore I have no option but to oppose it. Now Sir there are two Officers, Heads of the States; one is the President and the other the Vice-President and if the President is ill, of course the Vice-President will act for him but when the Vice-President is doing the work of the President and acting for the President, there is no provision as to who will act for the Vice President when he becomes temporary President.

Mr. R. K. Sidhwa (C. P. and Berar: General): Suppose the third man also falls ill?

Mr. Tajamul Husain: If the Vice-President is acting as President, then there should be someone to carry on the duties of the Vice-President. There is an amendment by Mr. Gupte which says that as soon as the Vice-President acts for the President, a Chairman should be temporarily elected to carry on the duties of the Vice-President. Now, Sir, I have been interrupted by my Honourable Friend Mr. Sidhwa from Sind. He says, "Well, what will happen if the third man is ill?" If I were to agree with him I would say "Have the fourth man as well". The only amendment before us is that there should be a Chairman. I support it.

Mr. Bhargava has just now moved an amendment that as there is an age-limit for the President of the Republic there should be also an age limit for the Vice-President. I think, Sir, this amendment is reasonable because after all the Vice-President automatically becomes President, if the President is dead, and it will look very anomalous that when the permanent President is 35 the Vice-President should be 22 or

21 years of age. I support that amendment.

With these words, Sir, I have finished.

Mr. Mohammed Sheriff (Mysore State): *[Mr. President, in my opinion the words "or incapacity or failure to exercise and perform the powers and functions of his office," should be expunged from sub-clause (2). If these words are retained intact, then I think, there will be marry complications and we will have to face numerous difficulties. The purport of Section 6 is that the President is liable to be removed from office, if there is not a proper use of the proposed powers. The exercise of the powers that have been proposed for the President, is a "relative term". It is probable that you might consider proper what to me might seem improper and also that others might consider those powers proper which I might consider improper; therefore as I have already stated, this is a matter which is totally 'relative'. For this reason, I think that these words may be deleted and the remaining ones allowed to remain as they are. My other request is that the appointment of Vice-President should be on the basis of Adult Suffrage. While making the speech concerning the election of the President, the point which I kept in view was, that so far President and Vice-President are concerned-their appointments should be by way of direct election. Even though Pandit Nehru has said many things against this principle, I, as a supporter of democratic principles think it proper that the election of the Vice-President should be on the basis of adult suffrage. With these words, I support the amendment which my colleagues have moved.]*

Mr. President: I understand that Pandit Jawaharlal Nehru is in a position to accept some of the amendments. I am asking him to accept such amendments, as this will cut short the discussion.

B. Pocker Sahib Bahadur: On a point of order, Mr. President, I would just like to make this submission. The Honourable Member 'who spoke just now has evidently dealt with some amendments, of which one is mine own. I am not in a position to know whether he supported it or he opposed it or what he mid. Therefore it is only just and, fair that I should know his attitude. May I request you therefore, Mr. President, to ask that gentleman to give a gist of his own speech in English? He Is capable of doing that. He knows English well.

Mr. President: I have ruled before this that I cannot compel a member to speak in a particular language and if the member is suffering under that disability, I think he and the speaker can consult each other and find out what the latter's attitude is. *(Laughter).*

The Honourable Pandit Jawaharlal Nehru: Sir, the various amendments that have been moved fall roughly in two or three groups. I agree with most of the amendments in the sense that the wording of this Clause 6, as it has been printed, is not very happy. I think in regard to the first matter, i.e. "incapacity", that word is unfortunate. Of all the various amendments put forward I feel that the one which is shortest and clearest is Mr. Santhanam's. That, I think, meets most of the difficulties that have been pointed out. Therefore, I accept it.

I also accept Shri Gupte's amendment:

"That in Clause 6 the following be inserted as new sub-clause (3) and the -existing sub-clause (3) be renumbered as sub-clause (4) ;

'(3) During the time the Vice-President is acting in the place of the President, the Council, may if necessary, elect a temporary Chairman'."

Lastly, I accept the amendment of Pandit Thakur Das Bhargava:

"That the following sub-clause be added after sub-clause (3) :

'(4) No person who has not completed the age of 35 years can be elected as the Vice-President'."

I do not think there are any other amendments on my proposal which I can accept,

Mr. Jagat Narain Lal (Bihar: General): I want to have some clarification: Sub-clause (2) provides for the method of election. It says:

"The Vice-President shall be elected by both Houses of the Federal Parliament, in joint session by secret ballot on the system of proportional representation by means of the single transferable vote and shall be ex-officio President of the council of States.

In case there is only one Vice-President to be elected, what is the meaning of having the election carried on on the basis of proportional representation ? We have got in our Constituent Assembly Rules, Rule 6, sub-clause (6) the process of elimination. I just want the matter to be clarified, whether in case there is only one Vice-President proportional representation would be necessary.

Mr. President: I am advised by those who are supposed to know these rules of representation that this system is proportional representation can be applied even in case there is only one vacancy to be filled in.

Mr. Jagat Narain LaL: Sir, I know that even in the case of the election of the President the system of proportional representation has been provided for and we have already accepted that rule. But still, I think It is our duty to point out that where there is only one person to be elected, the process of elimination which we have already provided for in the Constituent Assembly Rules is the best method. In that rule commends itself to the House, I submit, Sir, it is not too late even at this stage, to say that when the final drafting is done we should provide for that rule to apply here, instead of the present one which does not seem to have any meaning in order to fill a single vacancy.

Mr. President: As I have already said, those who are supposed to know these rules tell me that this system can be applied even when there is only one candidate to be elected. But if the Honourable Member has any doubts, I may request Sir N. Gopalaswami Ayyangar to explain that view-point,

The Honourable Sir N. Gopalaswami Ayyangar (Madras: General): Sir, I think there is some want of comprehension of the principle underlying the system of proportional representation. It can certainly be applied to cases where only one vacancy is to be filled. The application of this principle really ensures that the successful candidate should be returned by an absolute majority of votes. If there are more candidates than. two, it may be that, if you apply the simple majority rule, the person who does not get 51 per cent. of the votes cast in the election might have to be declared elected; whereas, if you apply the principle of proportional representation, you will, by the system of transfering votes, be able to get a candidate finally declared elected by an absolute majority. That is why, even in cases where the seat to be filled is only one, we provide that it should be by the system of proportional representation by the single transferable vote.

Mr. Jagat Narain Lal: Sir, I do not propose to enter into further discussion about this point; but my purpose only to draw the attention of the House to it. I will read sub-clause (5) of Clause 6 of the Constituent Assembly Rules and draw the attention of Sir Gopalaswami Ayyangar to it. Sub-clause (5) says:

> "Where there are only two candidates for election, the candidate who obtains at the ballot the larger number of votes shall be declared elected. If they obtain an equal number of votes, the election shall be by the drawing of lots."

And sub-clause (6) reads:

> "Where more than two candidates have been nominated and at the first ballot no candidate obtains more votes than the aggregate votes obtained by the other candidates, the candidate who has obtained the smallest number of votes shall be excluded from the election, and balloting shall proceed, the candidate obtaining the smallest number of votes at each ballot, being excluded from the election, until one candidate obtains more votes than the remaining candidate or than the. aggregate votes of the remaining candidates, as the case may be, and such candidates shall be declared elected."

I think, Sir, Sir Gopalaswami Ayyangar has been referring to this method. I do not 'know if the system of proportional representation refers to a method like this.

The Honourable Mr. Hussain Imam: May I explain, Mr. President?

Mr. President: Yes.

The Honourable Mr. Hussain Imam: The basic principles of proportional representation are the fixation of a quota. Fixation of quota takes place by dividing the number of votes by the vacancy plus one, and adding one to the result. For instance, if there are 100 voters and the vacancy is one, the quota will be 100 divided by two, which gives 50 plus one. So any person who does not secure 51 votes will not be elected. The quota is not filled up if nobody secures this number. The man who gets the least number of votes is eliminated; the votes go to the others successively until a person has secured 51 votes. As soon as 51 votes are secured by a candidate, he will be declared elected.

This is a short method of expressing the idea which prevails in elections in France where also elections are hold on the basis that the President must have an absolute majority. There they have repeated ballots; but our framers have shortened the process by adopting the single transferable vote. They have attained the same object which France has, but by a simpler and more straightforward method.

Mr. President: I think we had better leave it at that.

Does anybody wish to speak about the amendments or the original, Clause?

Mr. Tajamul Husain: Sir, it is all finished. Pandit Jawaharlal Nehru has replied.

Mr. President: No, he has not replied. He has only referred to the amendments he is prepared to accept.

Sri M. Ananthasayanam Ayyangar (Madras: General): Sir, I want the Drafting Committee to take note of certain inconveniences that may arise by allowing the clause to stand as it is. No amendment is necessary at this stage. The Vice-President can be an outsider belonging- to neither the Council of States nor to the Lower House-the House of the People; under the existing law, in the Council of State the President as well as the Deputy President are both members of the House; the Vice President under the Constitution will be an extra member with a vote in case of difference of opinion. This matter has therefore to be considered. It has to be considered for the reason that we expect both the Houses to be absolutely elected, except in the case of the Upper House where ten seats are reserved for nomination. He may fill one of the nominated seats instead of adding to the seats already provided for in the latter clause.

Secondly, he may be a member of the Lower House-the House of the People in which case provision has to be made that he will Cease to be a member of the Lower House the moment he is elected Vice-President of the Federation and *ex-officio* President of the Upper House. Under the existing law, there is provision for a President and a Deputy President for the Upper House, Pandit Jawaharlal Nehru accepted the amendment of Pandit Thakur Das Bhargava, that a temporary Chairman may be elected whenever the President of the Upper House who is the Vice-President of the Union acts as the President of the Union, Instead of that, I would suggest that as soon as the Vice-President is elected for the Union, a Deputy President may also be elected for the Council of States who normally act's when the President is not there. You know, Sir, that in the Assembly there is the President and the Deputy President. The Speaker cannot sit all day long and the Deputy Speaker takes his place now and then. Likewise provision has been made in the Government of India Act for a Deputy President who will constantly officiate for the President in the Council of State whenever the President, even during the course of the day is not able to sit, when the sitting goes on. Therefore, instead of having a temporary Chairman, a Deputy President may be appointed from among the Members of the Council of States to officiate when the President who is the Vice-President of the Union is unable to preside.

Thirdly, he may be a member of any House or any legislature elsewhere, in which case also provision has to be made that he ceases to be member of any of those Houses.

All these, I would like the Drafting Committee to take note. of, before they place a detailed Bill, before the House.

As regards the amendment which seeks to reduce the period of five years to four years I see no reason for accepting it. Whether it is four years or five years does not matter so long as the full term of a member of the Council of States is six years which is the normal period after the first retirement by rotation, so that we will not extend it beyond six years.

I therefore find no reason for this amendment and it need not be accepted.

Mr. President: I will now put the amendments to vote. There are two amendments which are in the nature of substitutions of sub-clause (1) of Clause 6 one by Mr. Santhanam and the other. by Mr. Naziruddin Ahmad I will put Mr. Santhanam's amendment first.

The question is:

"That for sub-clause (1) of Clause 6 the following be substituted:

'During the interval between the occurrence of a vacancy in the office of-President

and its filling up by election and when the President is unable to discharge his functions owing to absence, illness or any other cause, his functions shall be discharged by the Vice-President'"

The motion was adopted.

Mr. President: It is not necessary to put the amendment-, of Mr. Naziruddin Ahmad and Mr. Pocker Sahib.

The question is:

"That for sub-clause (2) of Clause 6 the following be substituted:

'(2) The Vice-President shall be elected by the same electoral college as is applicable

to the election of the President and by the same method and he shall be an *ex-officio* President of the Council of States'.'

The motion was negatived.

Mr. President: The question is:

"That in Clause 6 the following be inserted as new sub-clause (3), and the existing sub-clause (3) be renumbered as sub-clause (4):

'(3) During the time the Vice-President is acting in the place of the President, the Council may if necessary elect a temporary Chairman'."

The motion was adopted.

Mr. President: The question is:

"That in sub-clause (3) of Clause 6 for the words '5 years' the following words be added :

'4 years or until the election of a new Vice- President whichever event happens later'."

The motion was negatived.

Mr. President: The question is:

"That in Clause 6, the following new sub-clause (4) be inserted:

'(4) The Provisions of Clause 4 above shall mutatis mutandis, also apply to the

Vice-President'."

The motion was negatived.

Mr. President: The question is:

"That the following sub-clause be added after sub-clause (3):

'(4) No person who has not completed the age of 35 years can be elected as the Vice-President'."

The motion was adopted.

Mr. President: I think the sub-clauses will have to be renumbered and the House will give permission to the Drafting Committee to renumber the sub-clauses. I will now put to vote the clause as amended.

The question is:

"That the clause, as amended be adopted."

Clause 6, as amended was adopted.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I beg to move that Clause 7* be adopted. There is very little that I need say on this clause. The executive authority of the Federation in any State has really to be vested in the head of the State; in this case it will be the President of the Federation. The supreme command of the defence forces of the new State is also to be vested in the head of the State and that explains sub-clause (2) (a).

Practically all the amendments that have been given notice of relate to sub-clause (2) (b). On this point I understand a motion will be made by Sir Alladi Krishnaswami Ayyar for adjourning consideration of this particular item as the matter is being examined with reference to Certain aspects of the question that have been brought to notice. That examination will, we hope, be concluded in a day or two, and when we meet next on Monday we shall probably be in a position to consider that on its merits.

Sir, I move.

Sir Alladi Krishnaswami Ayyar (Madras : General): Sir, I move that the consideration of sub-clause (2) (b) be postponed; I do riot think it is necessary to give any detailed reasons for this. The clause requires closer examination with reference to the powers of the provincial Governor, the position of the States, etc. and if the House agrees the consideration of this clause may be taken up on Monday.

Mr. President: The question is:

"That the consideration of the Clause be postponed."

The motion was adopted.

The Honourable Mr. Hussain Imam: Sir, what will be the position about amendments? When the new version of the clause comes up Will an opportunity be given to the House to move amendments to it?

Mr. President: Yes, certainly; when certain changes, are proposed members will be given an opportunity to give notice of amendments.

The Honourable Sir N. Gopalaswami Ayyangar: The procedure may be that when this examination is concluded notice of an agreed amendment will be given by somebody and copies of that will be circulated to Honourable Members who will be at liberty to propose amendments to that amendment,

CLAUSE 8

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I beg to move Clause 8, viz:

"8. Subject to the ions of this Constitution, the executive authority of the Federation shall to the matters with respect to which the Federal. Parliament has power to make laws and to any other matters with respect to which authority has been conferred on the Federation by any treaty or Agreement, and shall be exercised either through its own agency or through the Units."

This merely states the general principle that executive authority is co-extensive with legislative authority. The only exception is in respect of matters which are provided for by special treaties or agreement and that occurs at the end of this clause.

(Amendments Nos. 201 and 201-A were not moved).

Sir Alladi Krishnaswami Ayyar: Mr. President. I have given notice of an amendment to Clause 8 as Clause 8-A.

The Honourable Sir N. Gopalaswami Ayyangar. Sir, Clause 8 may be put to the House first. The amendment proposed is to have, a new Clause as 8-A.

Mr. President: As a matter of fact I have got notice of two amendments, one by Sir Alladi Krishnaswami Ayyar and the other by Mr. Ananthasayanam Ayyangar for the addition of a new clause. I had better dispose of clause 8.

As no one wishes to speak on Clause 8 I shall put it to the vote.

Clause 8 was adopted.

Sir Alladi Krishnaswami Ayyar: Mr. President, I seek to amend Clause 8 in the following manner:

Mr. President: It is not an amendment to Clause 8, but an addition as Clause 8-A.

Sir Alladi Krishnaswami Ayyar: Yes. Sir. I may mention that, in the course of the clause, I have referred to the expression 'the Union and substituted 'Federation'. I trust the House will give me leave to substitute the word 'Federation' for the word 'Union'.

That is a slip. This is the amendment I am moving:

"That after Clause 8, the following new clause be inserted:

'8-A (1) The Government of the Federation may, by agreement with a Indian State but subject to- the provisions of the Constitution, in regard to the relationship between the Indian Federation and an acceding Indian State, undertake any legislative, executive or Judicial functions in that State.

(2) Any such agreement entered into with an Indian State not acceding to the Federation shall be subject to and governed by any Act relating to the exercise of foreign jurisdiction by the Parliament of the Federation.

(3) If any such agreement covers any of the matters included in an agreement between a Province and a State under Clause 8 of the provincial constitution, the latter shall stand rescinded and revoked.

(4) On an agreement as per the provisions of sub-clause (1) being concluded the Federation may, subject to the terms of the agreement, exercise the legislative, executive or judicial functions specified therein through appropriate authorities."'

In support of this Clause, with your leave, I would like to say a few words. The object of this clause is to bring it in line With a clause already pawed by this House in regard to the provincial constitution in the provincial sphere. That confers powers on the provinces to undertake the administration of certain departments ceded to them by a State as a result of an agreement in the provincial sphere. The object of this clause is to give an overriding power to the Federation. So far as sub-clause (1) is concerned, it refers only to acceding States. The acceding States may accede to the Federation in respect of particular subjects. Even in regard to the other subjects, they may be willing to enter into an agreement with the Indian Federation in regard to the exercise of particular functions. The object of this Clause is to enable the acceding States to enter into such agreements with reference to subjects not included in the terms of accession.

The second sub-clause refer to States which do not accede to the Federation, but yet may be willing to enter into agreement with the Indian Federation. Any such agreement will of course be subject to any Foreign Jurisdiction Act that may be passed in the exercise of the plenary powers of the Legislature as a Sovereign Legislature. That makes provision for it. "Any such agreement entered into with an Indian State not acceding to the Federation shall be subject to and governed by an Act relating to the exercise of foreign jurisdiction by the Parliament of the Federation."

The third sub-clause is intended to prevent any conflict between the Provinces and the States on the one hand and between the Federation and the States on the other. Even in the provincial constitutions we have made a provision to the effect that it shall be subject to the control of the Federal Government. The object of this sub-clause is that if an agreement is entered into between the Federation and a State and, that agreement covers the field already covered by the agreement between the Provinces and the State, this agreement between the Centre and the State must have dominance over the agreement entered into between the Provinces and the State.

Clause 8(4) simply states what exactly is the effect of an agreement "On an agreement under the provisions of sub-clause (1) being Concluded, the Federation may, subject to the terms of the agreement, exercise executive, judicial and legislative functions specified therein through the appropriate authority." It more or less is a provision corresponding to a provision already passed by the House in regard to an agreement between the provinces and the States, I would ask the House to accept the proposal contained In Clause 8-A.

Col. Shri Maharaj Himmat Singhji (Western India States Group): Mr. President, we have had no notice of this amendment. Kindly give us time till Monday to consider it and give notice of amendments if necessary.

Mr. President: This amendment was circulated to members.

Col. Shri Maharaj Himmat Singhji: It was not circulated to us. Many others besides me have not received notice.

The Honourable Mr. Hussain Imam: Notice was received at 4 p.m. yesterday.

Mr. President: Notice was sent at 4 p.m. If the suggestion of the Honourable member is accepted, we Should hold this over to enable members to consider this amendment and give notice of amendments to it. I think members should have sufficient time to give notice of amendments, I think on the whole it will be desirable to postpone consideration of this

The Honourable Sir N. Gopalaswami Ayyangar: I shall have no objection, Sir.

The Honourable Mr. Hussain Imam: Everybody should have time to give notice of amendments.

Mr. President: Yesterday we decided that notice of amendments can be given to clauses which are to be considered on the following day, by the evening of the previous day. If time is required to give notice of amendments to amendments, I do not know where we will end.

The Honourable Mr. Hussain Imam: The usual practice in such cases is for the Chair to suspend rules of business and to allow the members to move their amendments, if the Chair considers that the matter Is urgent.

Mr. President: I think it will be much better to pass it over. So we shall take up the consideration of this at a later date. Similarly, the next addition by Mr. Ananthasayanam. Ayyangar may also be held over.

Sri M. Ananthasayanam Ayyangar: I have no objection.

Mr. T. Channiah (Mysore State): There is one amendment standing in in my name.

Mr. President: We shall take up all the amendments when we take up the clause.

CLAUSE 9

The Honourable Sir N, Gopalaswami Ayyangar: I beg to move Clause 9:

"The Executive authority of the Ruler of a Federated State shall continue to be exercisable in that State with respect to Federal subjects, until otherwise provided by the appropriate Federal authority."

At the present moment, both federal and unit subjects are within the jurisdiction of the executive authority of an Indian State. When federation comes into existence and certain subjects are assigned to the Centre, their administration which, is already in the hands of the State authorities, it is proposed, should continue in these hands until the appropriate federal authority makes other provision for their administration. The general principle, as I have already stated in connection with the previous clause, is that the executive authority of the federation is co-extensive with its legislative authority. That principle is respected in this clause. The only thing that is provided for here is that where that administration is in the hands of the State authorities now, that agency should continue, until the federal legislature or other appropriate federal authority chooses to make other provision. That is really for the purpose of preventing a hiatus in administrative jurisdiction particularly at the time of the inception of the federation. There are amendments to this, Sir, but I shall not deal with those amendments in any detail. But there is one amendment in the names of a number of Prime Ministers of Indian States. That amendment is real a reproduction of section 125 of the present Government of India Act. I have since given notice of an amendment in substitution of it and, if the Prime Ministers who have given notice of amendment agree to withdraw their amendment, I shall move mine.

Mr. President: As I understand it, Sir Gopalaswami, the amendment of which notice has been given by the Prime Ministers is to be inserted as Clause 9-A. It is not in substitution. Is that the one you are speaking of?

The Honourable Sir N. Gopalaswami Ayyangar: I stand corrected. I think what you have stated is correct, but I say that, if that particular addition which is proposed by the Prime Ministers is not moved, I shall be prepared to move an amendment to Clause 9 which I hope will be acceptable to them.

Sir B. L. Mitter (Baroda State): In view of Sir Gopalaswami Ayyangar's amendment which he proposes to move, we do not move the amendment which stands in our name.

The Honourable Sir N. Gopalaswami Ayyangar: I move that at the end of Clause-9 the following be added:

> "In cases where it is considered necessary."

These words hardly need any explanation.

Mr. President: We will now take up the other amendments. Mr. Chandrasekharaiya.

Mr. D. H. Chandrasekharaiya: Mr. President, Sir, I beg to move that for Clause 9 the following be substituted:

> "The Executive authority of the Ruler of a Federal State shall continue be exercisable in the State with respect to federal subjects subject to inspection of and the directions from the federal head of the executive."

Sir, the clause as it stands provides for the exercise of authority in regard to federal subjects by the rulers of federating States until other arrangements are made by the federation. Now, this exercise of authority is not made subject to the supervision and control of an appropriate federal authority. Such an uncontrolled exercise of authority in respect of federal subjects is neither correct nor helpful. I have therefore proposed in this amendment that the exercise of authority should be brought under the inspection and direction of the head of the federal executive. This is one aspect of the amendment.

The other aspect is that the State authorities are proposed to be used for administering federal subjects only for a time till other arrangements are made by the federation. My point is that if the State authorities could be used for a temporary period, why should they not be used permanently. Since the exercise of authority by the States is proposed to be' controlled and directed by the head of the federation, any mistakes committed can be pointed out then and there and the administration set right. So far as the States are concerned, there will perhaps be a limited number of federal subjects for administration, and in such a case, will not be undertaking a responsibility beyond their capacity to shoulder. Besides, there are bigger States like Mysore, Baroda, etc., which have got efficient modern and well-organised administrations and I am sure that any other arrangement will not come up to the level already attained by such administrations.

It has, however, been proposed by Sir N. Gopalaswami Ayyangar that the words "In cases where it is considered necessary" may be added at the end of Clause 9 to serve as a compromise between differing views. I do not think that such an amendment will improve the situation very much as it gives room for saying that it is considered necessary in every case.

In conclusion, firstly I propose that provision should be made for inspection and control of federal administration within State limits and secondly, State authorities should be permitted to administer Federal subjects on a permanent basis. I pray that the House will be pleased to consider and accept the amendment proposed by me.

Mr. Himmat Singh K. Maheshwari (Sikkim and Cooch-Bihar Group): Mr. President, Sir, the amendment which stands in my name is a comparatively minor one. It only, seeks to substitute for the words "by the appropriate Federal authority" occurring in Clause 9 the words "by virtue of a Federal law" I will read out the clause as it will be if the motion is accepted:

> "The executive authority of the Ruler of a Federated State shall notwithstanding anything in this Constitution, continue to be exercisable in that St-ate with respect to matters with respect to which the Federal Legislature has powers to make Laws for that State, except in so far as the executive authority of the Federation becomes exercisable in the State to the exclusion of the executive authority of the Ruler by virtue of a Federal Law."

The word 'authority', Sir, is not so very clear. It might mean and Under Secretary of the Federal Government. What therefore I wish the House to accept is a provision that where the executive authority of a Federation has to be exercised in a State, it should be by means of a Federal Law and not merely by an order of a Federal authority. Perhaps, Sir, the amendment is quite unnecessary because the drafters of the clause might ultimately have intended to make this expression more clear. I am not certain at all and in any case my object will be served if the Drafting Committee will kindly consider this matter at the appropriate time.

(Messrs. Kishori Mohan Tripathi, B. M. Gupta, Bishwanath Das, H. R. Guruv Reddy, Jainarayan Vyas, S. V. Krishnamurthy Rao and K. Chengalaraya Reddy did not move their amendment, Nos. 204 to 210).

Mr. President: I think these are all the amendments of which I have been given notice. Now the clause and the amendments are open to discussion. Does any member wish to speak about either the Clause or the Amendment?

Shri Mahavir Tyagi (United Provinces: General): *[Sir, this part of the Constitution is very important because it concerns a vast number of people of India residing in the States. At present, they enjoy enough powers of internal administration but in spite of this, in every state there is a Resident who represents the Paramount power. He has some voice in the administration and exercises a check on the powers of the rulers. Often he has safeguarded the rights of the people. If with the end of the-office of the Resident, the Assembly does not provide some via media for safeguarding the peoples' rights, I venture to say, Sir, our functions of constitution-making will not be considered successful. When the States and their people join our Union, it is the duty of the Assembly to look to the welfare of the States' people and protect their rights. I stand here to take a little of your time so that the States people, may not have cause to complain that when the question of the peoples' rights came before the Assembly, it remained silent and sacrificed the interest of the people in order to get the co-operation of the rulers. I do not want to delay the proceedings by bringing any amendment, because all the rules and provisos which are being framed here will come up before the Assembly in their final shape. Then it will have the right to scrutinise and change them. What I mean is this: At present there is a Resident who exercises some control and check on the powers of the rulers. But with the abolition of his office there is no machinery to control the authority of the rulers. The Negotiating Committee must place before the House-now or later at some opportune stage in very clear terms as to what arrangements it has made to control the authority of the rulers. In the present set up, the rulers have all the powers that the Union will have and also powers which they do not possess at present. Its result will be that the despotic and autocratic States will become all powerful and there will be no check on them. There are many States which have no legislature at all. Under the circumstances if the present wide and discretionary powers are allowed to remain with the rulers, their joining the Union would be an advantage to them. We are paying this as the price to include the States in the Union. If the rulers are allowed to retain their present absolute powers, very ruler will be a gainer by joining the Union, because the States People have so long been fighting against of the Congress and other such organisations and now not receive this help any more from them. Henceforth the rulers will use their powers in their own arbitrary manner. Therefore, though it is proper to concede the rulers whatever powers they at present enjoy or to give them power similar to that of the Union, some restrictive provision must be incorporated in the Constitution so that they may not misuse the powers granted to them. When the Government of India Act was being framed in 1935 such restrictive provision was suggested in it in order to check the authority of the rulers. It is clearly stated in the said Act that any law of the States, which is contrary to or is incompatible with that of the federation, shall be deemed null and void and- the law of this Federation shall prevail. The only difficulty at Present is that instead of one, there are two Dominions now, one of Pakistan and the other of India. Both the dominions are anxious to include in their Dominion a greater number of States than their rival. Because of this rivalry. the Princes are raising the price of their co-operation higher. I do not consider It desirable to concede to them more and more powers only in order to include them in our dominion They are not willing to forego any of their powers in order to join the Union. By joining the Union they will be gainers in as much as they will receive military protection from the Unions, but what benefit is that to us? We will only increase a member In our family. The States will receive tremendous help from this vast Dominion but in return for the privileges how many of their rights are they ready to concede to us? We must have everything before us. Every detail of the negotiation that is going on between our Negotiating Committee and the States must come before the House. It is only then, when we have considered all these that we should decide as to what power the rulers should be allowed to retain and what amount of control the Union should exercise over them. This clause, as it stands at present, grants wide powers to the States, but it does not mention as to what power the Union will have over them. , I do not want to put any obstacle to the passage of this resolution but I want to that this must be established as ,a convention that when a member speaks it is not imperative for him either to oppose or support the resolution. When an important matter is being discussed in the House a member must have the right to express was views without supporting or opposing the motion so that his views may be recorded. I stand here only for this purpose that my views may be recorded and our Negotiating Committee may know that a section of the House entertains such views. I want that my speech should bring to light what "liberties" the States halve and what further powers we are granting to them, I demand that when we are representing here the people of the States, the rulers must not be given powers beyond what they had. They have had ample powers. When they have joined the Union, the office of the Resident will be abolished and some of the States will become despotic. Therefore, without meaning any offence to and without making any allegation against any State I wish to say that when the States are joining our family the Indian Union-they must respect the principles and our democracy. Despotic states have no place in our Union. Because of the assurances from some leaders States may fill today that they will have all the liberties in the Union', but I want to make it clear to them. that, though the House is accenting all their terms, their joining the Union will put their despotism in danger. India and this Assembly will soon put an end to despotism and the States must join the union with this definite knowledge. The general public demands it and, if for some reasons this Assembly cannot do away with despotism the nation will, after the expiry of the existing Assembly, call a new Constituent Assembly which will not only solve our economic Problem but the political problem too. That revolutionary Assembly will not allow even a trace of despotism to remain in India. The Union of India will not allow the black spot of despotism to remain long on her fair face. This is what I have to say.]*

The Honourable Mr. Hussain Imam: Mr. President, the remarks made by the last speaker asking for a minimum of democracy in the constituent units of the Federation is one on which I hope there will. be no difference of opinion in this House. There are certain standards, and certain measures which are regarded as the bare minimum, as the sine qua non of a decent existence; and it is wrong in this age for any one to claim. the privilege of divine right to rule as they please. I am one of those persons who believe in moderation as well as in negotiation. But there is a limit beyond which you cannot carry on these two processes. There are certain bedrock principles which have to be accepted. Because of the fact that the foreign Government had sanctioned the existence of 560 state units, it is not necessary that this Constituent Assembly should also accept the separate existence of these units. In these days it is almost a common principle that various small units cannot fight in the battle of life. Look at industrialisation and cottage industry. Cottage industry is every day being eliminated. We are trying to protect it and give it support because it is to the greater advantage of the worker than the mill industry. Similarly, if it were to be greater advantage of the common man to have the 560 units, I for one would have supported them. But many of the units are so small that they themselves have considered it essential to join together and form bigger units. This is a move in the right direction and if it is developed to the full extent to which it should be developed, it is possible to allow them to exist even today. But if individuality prevails and if the move for having a union of States where they can give common privileges and common advantages to which a citizen is entitled is not put forward, I am afraid that the existence of the States will be jeopardised. I endorse the appeal of the previous speaker that this Assembly and those who are in charge of negotiation should look to it that the right of the common man in the States which is as precious to us as the citizens of British India is safeguarded. *(Hear, hear.)* They must be protected with as much care and as much solicitude as we are taking in the other units, the provinces. There should be a minimum standard of democracy, and minimum rights of citizenship which should not be denied to any one in the Continent of India. No matter whether it is a big State or a small State, they must all strive to uplift and if we cannot uplift, we will be failing in the charge which has been entrusted to us. Independence is not worth anything if we allow a large part of the units to remain in the same degraded condition in which they existed before the departure of the British. I therefore endorse the appeal and hope that something will come out of it.

Mr. Jainarain Vyas (Jodhpur State): the *[Mr. President, at present the whole question of States is not before the House but we have only to consider as to what authority the Princes should be given in respect of central subjects. Therefore I shall confine myself to this only and I would like the House also not to go beyond the scope of the subject.

It is true that the Princes or the States are going to have the powers and authorities which they do not have in the current set-up. But the words (of the resolution) show that power would continue with those who had it: not more than this, unless some other arrangements are made by law. In spite of this, as our Federal subjects are numerous and of various types it is apprehended that the powers granted to the Princes in respect of these subjects might be abused in some States. But now that we an have joined the Union, we may hope or rather we should appeal to the Rulers to fall in line with the rest of India. The Provinces too should be requested to make proper use of the powers granted to them Under the circumstances, we need not oppose such clauses or sections. Mr. Tyagi has just said many things with reference to the general question concerning states. I am a State subject. and represent the States people. I do admit that the representatives of the States people do no hold the same status as the ministerial representatives hold. They speak on behalf of the Government of the States. We have not attained this status. Really this is a painful position for us. But this certainly does not mean that we have given up all hopes of securing our real status. It is impossible for us to remain long in this position. I hope our Union will exercise its influence over the Princes, their ministers and the governments to see that the representatives of the people have equal share in the internal administration of the States. And if for certain technical reasons or legal complications this cannot be done, I hope we shall try to settle the matter by negotiation. However, if our negotiations with the Princes tail to secure an amicable settlement, after 15th of August the Rulers and the States people will stand in opposition to each other The people have strength enough to settle their own affairs. We are grateful for the sympathy shown to Liz. But at the same time I wish to say that our attitude would not seriously affect the federal Subjects. It might affect the Union which would consider its own interests. Such is our hope. With these words, I supper the original resolution.]*

Mr. S. V. Krishnamurthy Rao (Mysore State): Mr President, Sir, I had myself brought an amendment that in these matters the representatives of the people in the States, may have a voice but I withdrew that amendment because an amendment by Sir N. Gopalaswamy Ayyangar was accepted by the Ministers of the-States. In this I see the dawn of a new era in the States. I hope the ministers have accepted this amendment with all the implications behind it. We the peoples' representative from the States, are in a very delicate position. On the one hand we do not want to take any attitude which will jeopardise the Union of India. Unity is the prime need of the hour. On the other hand, we have to safeguard the interests of the people of the States. With this view, we have accepted the amendment of Sir N. Gopalaswamy Ayyangar. By the acceptance of the amendment, Sir, we believe that even in the States, minimum standards of democratic Governments will be established ere long, because the acceptance of this amendment in the Union Federation means the acceptance of the adult suffrage for the election of the representatives to the Federal Assembly and also the acceptance of the Citizenship Rights and the Fundamental Rights. I am sure the acceptance of these fundamental principles will have its own repercussions on the administration in the States, With this hope in view that ere long the Ministers who are charged with the heavy responsibility, will do their duty not only to their Rulers but also to the Union Federation and the people of the States, and will see that responsible Government will be established in the territories of the states, with this hope, I support the Resolution as amended.

Diwan Bahadur Sir A. Ramaswami Mudaliar (Mysore State): Mr. President, I have only a few words to address this august Assembly on, this very important subject. Some of the States' Representatives-I use the word 'Representatives with some hesitation,-the official Ministers of the States as they have been described,-have given notice of an amendment which tries to incorporate Section 125 of the Government of India Act. That Act suggested that the executive power of the Federation will be carried out by the States and the Rulers of the States through their own Officers and that the Federation should be content to have what may be called the right of inspection to see that that authority was properly exercised. There are a great many States where even now, whatever is India, the required on behalf of the Federation or the Government of India the work is carried out essentially by the State Governments and the executive authority of the States. During the years when the Government of India Act was under consideration at various Sessions of the Round Table Conference it was pointed out that while the States which acceded to the Federation would have no objection to legislation being passed on the coded subjects by the Federal Legislature, the power of executive authority should still rest in the Officers of the States. This is to say that the Federation shall have legislative authority alone, but that for the administration of those subjects which States had ceded, the administrative authority, the executive responsibility may still vest in the States. This was the position taken up as far back as 1930. Things have marched very far in some of the States during the intervening period and there are indications that in many States things will march further still in the direction of a closer association of the people of the States in the administration of the States. There is no doubt whatsoever that the trend of events, the march of public opinion, the awakening in the States themselves and the very fact that the States may accede to the Union and send their representatives to the Union Legislature, all these facts will tend to quicken the progress and the process of the greater association of the people of the State in the administration of the State. (Cheers). I do not want to refer to any individual State, but I had in mind States which very shortly will give such an amount of power to the subjects of the States that there will be very little feeling in the matter in those States, at any rate. Even in 1930-31 those who represented the States in the Round Table Conference took the view that while the legislative power may be readily conceded to the Federal Parliament, the executive power must vest in the States to be exercised by the officers of the State. I venture to think-it is not a proposition that I am putting forward on behalf of any bureaucratic or undemocratic administrator of a State, but it is a proposition which may very well be put forward on behalf of the subjects themselves-that the executive authority in those States must vest in the authorities or the officers of the State. While that executive authority is to be imposed by a Federation through its own officers, who is it that will lose the exercise of that authority, except the very subjects who through their responsible representatives will be in charge now to a certain extent. and hereafter, to a much greater extent, for the affairs of the State? If, therefore, the Federation intervenes with its own executive set-up in the administration of a State, I venture to think it, is riot the Ruler who is going to lose much or anything at all; it is those representatives, those popular representatives as they are called, those who win be in charge of administration by closer association of the people in the administration, it is they who will forego the right of exercising their authorities in those States. It may be said that in provinces to a certain extent federal jurisdiction is exercised by federal executive authority. But I believe the Union Constitution Committee and those who have taken part in these proceedings have realised that there is a fundamental. distinction between Provinces and States. I do not know whether Provinces are altogether too happy or will be happy over the decisions that have been so far taken with reference to the powers of the Federation in the Provinces. The list of subjects, Provincial and the Concurrent List have still to be examined by this House. What the fate of that examination will be I do not venture to say. But after all, Sir, I have not always been associated with States-my association has been of very recent times and for years-30 years of my public life have been spent in what till the 15th of August may be described as British Indian Provinces. I venture to express the view that there is a very strong urge in the Provinces that as far as possible, what has been the subject of our agitation decades, namely, provincial autonomy, should be a very real thing indeed. Provinces rare not likely to easily yield to the suggestion that a strong Central Government means a Central Government with a vast number of subjects to administer. My own view of a strong Central Government is not that, For what purpose should a Government be strong in the Centre? I venture to think that if that Position is clearly and analytically examined, you will come to the view that for certain subjects arid with reference to certain powers, the Central Government.-the Federal Government-should have ample plenary and exhaustive powers, but that does not mean that, taking a subject like even patents or strong Central Government is created by vesting the rights over patents or copyrights in that Centre. It may be for other reasons, that it may be desirable. It may be done by co-operation, by co-ordination, by the idea of the agency that is established at the Centre which will have not the power, at least to a certain extent, the advisory capacity to bring about that co-ordination, but let us not, because we think in terms of a strong Central Government, forget the fact that strength does not lie in expansiveness, a wide variety of subjects coming under the scope of the Central Government. In fact, my own view is that the more subjects you bring under the Federation, the weaker you make it. So I would press very strongly when the time comes-if I may be permitted for a moment to say on behalf of the Provinces, forgetting my new avatar I would press very strongly in favour of provincial administration having the widest possible power in consonance with the strength of the Central Government. There are occasions, of course, when an emergency arises when I would be willing to have the Federal Government over-run the whole of the sphere of the Federation. When an emergency is declared or proved to exist, then all these restrictions which we had even under the Government of India Act may well disappear and the Central Government may have all these powers; but normally, in day to day administration, in the absence of such an emergency, I venture very strongly, very respectfully and with great humbleness to urge that, Provinces should have as much and as wide powers as possible. If that is the case, Mr. President, a fortiori, the States should have even wider power and except for those subjects that they accede there ought not to be any interference in the States and so far as this power of administration, is concerned, I venture to state that States may be left to administer their own subjects. I understand that there may be some difficulties in some areas, some States, to confer the power on them to administer these subjects. I understand that the amendment of my Honourable friend Sir N. Gopalaswamy Ayyangar wants to preserve that position and to take care of that situation. It may be so. It is from the point of view that we have not pressed the amendment which goes the whole way before this House at present. But barring such exceptions, the general rule shall be and must be that the States which can administer properly, which have an administrator, whether popularly elected. or unpopularly based, who carried on the administration on correct administrative principles, those States cannot and should not have their administrative sphere encroached upon by the Federal Government. I think some of the States at least can show a record of administration which is-in the presence of such a large number of provincial representatives and provincial ministers, I dare not say what otherwise I would have liked to say-which is at least riot less efficient than the administration in the provinces. With that record, I venture to think that it will be accepted by everybody in this House that as far as possible, in as many States as possible where there is no question of the administrative machinery not rising to the occasion, that administration shall be that of the State itself. I therefore want to make the position perfectly clear that in accepting the amendment of Sir N. Gopalaswamy Ayyangar we are not giving up the essential principle that it shall be the rule that States shall have their own executive authority and that in special cases exceptions may be made.

Sir Alladi Krishnaswami Ayyar: Sir, I had no idea of speaking on this Resolution, especially after an agreement had been reached between the Mover of the Resolution. and certain representatives of the States. In dealing with this subject, it is unnecessary for me to go into the question as to the relative sphere of the Federation or of the Provinces in the Federal structure. I may have a good deal to say in favour of what Sir Ramaswamy Mudaliar has stated, namely, that the strength of the Centre does not depend upon the number of subjects assigned to it but upon the nation-building and nation-preserving subjects being in the hands of the Centre and the Centre being necessarily equipped with the machinery for enforcing its power throughout the area. But that is entirely irrelevant in the consideration of the question now before the House. The essential principle underlying the previous clause is that the executive power must be co-extensive with the legislative power. If the Federation has the power to pass certain laws it must have the necessary power to enforce those laws throughout the Federation. That is the common-sense, accepted constitutional principle to which no exception can, be taken ,either by State protagonists or provincial protagonists.

The second question is, how is this executive power to be exercised? It may be exercised through the instrumentality or agency directly appointed by the Federation, or it may, for the time being, employ a Stale or provincial agency. But the ultimate power and responsibility must rest with the Federation which must be satisfied that an efficient administration is carried On. If an efficient administration is carried on in State A, or State B or State C, very well. The Federation will not interfere. But the Federation is the sole judge and the only judge of the efficiency of the administration throughout the Union, and every State agency and every Provincial Agency and every other agency must be the agency of the Federation to that extent. The object of this amendment is very simple. If the State machinery is functioning properly, then you need not interfere; let the status quo continue. But the ultimate power will rest with the Federation, that is the principle to which we are committed. But that does not mean that the Federation or the Federal executive win go on experimenting. Why should it? For example, if the postal service or some other service is efficiently and properly conducted by' the State agency, then the Federation will not have any need or business to interfere. If on the other hand, the State agency does not carry on the administration properly, the final authority must rest with the Federation. That is the principle of this amendment and I do not think that any State cap take exception to it. It is really a midway solution between two extreme views. One view is that here and now the Federation must start off with a special agency for the purpose of carrying on this work. That is one extreme view. The other view is that the existing state of things must continue, especially when they are satisfactory. The view taken in this clause is that if and when the agency is found to be ineffective by' the Federal authority, it will be up to the Federal authority-and they are the sole judges of the situation-to interfere. Let there be no misunderstanding on this point. The principle of Section 125 of the Government of India Act is expressly departed from in this Constitution. It is not a question of parleying between the States and the Federal authority. It is a question of the responsibility of the Federation. It is but a matter of prudence. It is a matter of giving stability to the administration. When the administration of a particular subject is efficient through the State agency, that agency may continue to be employed. But there is no denying the fact that so far as the principle of this clause and the earlier clause is concerned, the ultimate responsibility for the proper execution of the laws which the Federation is passing is with the Federation and Federation alone and the principle that the executive power is co-extensive, in general, with the legislative power is not to be departed from. It is on that ground, Sir, that I support the amendment moved by Sir N. Gopalaswami Ayyangar with the modification, and on no other ground.

Sri K. Santhanam: Sir, I am glad that Sir Alladi has explained the fundamental principle of the federal system so clearly and emphatically. I shall met try to cover the same ground. But there is one point mentioned by Sir Ramaswami Mudaliar which also requires our attention. He suggested that as the States are getting democratised it may not be so objectionable to leave in their hands the executive authority on federal subjects. Sir, I do not think this is correct. To the extent the States get more and more democratised, the distinction between the Provincial and Federal subjects must become clearer and clearer. That is my view. When a Ruler or his Dew an defies the Federation it may be easy to deal with him because the Federal authority will get the support of the people. But if the Federal subjects are under democratic States then the people themselves may get a vested interest and they may defy the Federal authority. Therefore- in all federal schemes, as far as possible, the powers of the Federation and the powers of the units are kept distinct. The executive authority of the Federation is emphasised in all Federal subjects and the autonomous units have the executive authority only in their own subjects, This distinction is carried to such an extent in the United States of America that even in the matter of courts the Federal laws are enforced by the Federal Judiciary and the State Laws are enforced by the State Judiciary. In course of time, the Indian Federation also will have to follow the same principle. I agree with Sir Ramaswamy Mudaliar that the strength of the Federation does not depend upon the number of subjects it administers. The Indian Federation may have only a handful of subjects-four or five. But so long as it has absolute and undivided authority over those subjects, it is bound to be strong. I am sorry Sir Ramaswamy Mudaliar brought in these issues, particularly the issue as to what constitutes the strength of the Federation. What should be the scope of the Federal subjects and what the scope of the Provincial subjects is an entirely different issue on which many of us will go a long way to agree with him. But this particular clause has nothing to do with it. Assuming that we define the Federal subjects, to what extent should Federal authority extend over these subjects? That is the issue of this clause. Sir Alladi has, of course, stated and explained the general principle. I say that to leave the Federal authority in the hands of the States will he even more dangerous when they become democratised. There may be conflicts between all-India patriotism and unit patriotism, and local conflicts can be dangerous. The Provincial authority may set in motion disintegrating forces which we should seek to avoid even from the very beginning. Therefore, let us make it quite clear that it shall he open to the Federation to take the executive authority in all Federal subjects whenever it chooses to do so. For the present, it may be left in the hands of the State, but the power to resume it, whenever the Federation may think fit, should be with the Federation. The argument that more and more the authority in the States will be with the people, has no relevance whatsoever. 'In fact. it operates against leaving the authority in the hands of the States. Therefore, let us have the Federal authority intact for the Federation. I suggest that, when the final draft comes, there should be no doubt left as to the power of the Federal authorities to resume their executive functions in Federal subjects as they have been defined in the list.

Shri Gopikrishna Vijayvargiya (Gwalior State): *[Mr. President, Sir, I come from an Indian State. The motive in my mind is that oar country should have a strong Centre. Unfortunately our country consists of many parts. In some Indian States and in districts and provinces too, in a wave of local patriotism people wish to possess more 'autonomy'. This will make our country weak and cur Centre will not remain strong.

I wish to tell you that we all, the States also, shall have to surrender (rights) so as to invest the Centre with the maximum power, to make it and the country strong. Under the present circumstances, the scope of executive functions in States should not be enlarged. As suggested by Sir Mudaliar the mere number of Federal subjects, by themselves are not enough to create a strong Centre. This is correct but some subjects have to be assigned to the Centre and the ultimate authority about them should not be left to the discretion of the States.

The Central affairs of the States and provinces should be entrusted to the Centre. The minimum possible executive power should be with the States and provinces. It is not proper to keep the maximum power with them. In small countries like Switzerland and others, the executive authority is left with the units, but in India we cannot do so, as that would not be free from risks. Therefore excessive power should not be handed over to the States. The federal authority in the States should as far as possible be exercised through a federal machinery. But as suggested by Sir Gopalaswami Ayyangar, in the beginning it is not necessary to add a provision to this clause. We would not object to it. But I think it proper to create a strong Centre in the Country and the States should not grudge it. If we want to make the Centre strong, we shall have to hand over at least some subjects to the Centre. Without it our country cannot progress. Hence it is in the hands of the States and the provinces that if they intend having a strong Centre, they should confer upon the Centre the maximum power. We must make our Centre strong and along with this the powers of direction and inspection should vest in the Federation. The States should not seek to possess as, much power as possible. Therefore, at present I do not oppose it. As it is, the amendment of Sir Gopalaswami Ayyangar should be accepted but this should be our aim, that the Centre be made as strong as Possible.]*

Mr. R. K. Sidhwa: After Sir Gopalaswami Ayyangar's speech it was very good of Sir Alladi to have made the position very clear as to what the object of this resolution is. He has in unmistakable terms stated that the final authority shall vest in the Federation: Sir, we congratulate the States' representatives who have been good enough to participate in this Constituent Assembly and I also congratulate those of the States who have given a lead in this matter and made it clear for others to enter it. I also desire to tell them that while one part of the country is becoming democratic, the other part of nearly ten crores of people cannot remain under autocratic rule. It has been a principle with us and we have declared that when India becomes free we shall see to it that our States' brethren also become free. Therefore in this august Assembly, when we have all met together-and I am very glad that it is so-the Rulers, their representatives and the peoples of the States, that we should tell them that was our object and desire. I am very glad that some of the Rulers do feel that they cannot expect one part to rule autocratically and the other to rule democratically. I do not want to go into the details of various States but I know of some States where there are no local bodies, no municipalities, and where there are Legislative Assemblies there is a majority of nominated members. Days of nomination are gone. There should be all elected representatives both in the municipalities and the legislatures. The nomination period has gone, and if you want to make it democratic, abolish all these nominations. I would suggest to the Rulers that they must have elected Legislative Assembly members with powers to junction as it will be in the provincial legislatures. Please also see that elected members, local bodies and municipalities are also established where they do not exist. I know of a State where a printing press is not allowed to be established. I do not want to mention the name of that State. It is a fairly big State. I do not want to record a discordant note on this. Our spirit is equally good but we want to tell the Rulers today that the time has come when we have to implement the pledge given to the States people. We have been telling them " when the time comes to obtain our freedom we shall see to it that you also shall get it," and I therefore take this opportunity of telling the people of the States that we, shall strain every nerve and see that the people of the States are also ruled-exactly in the manner we rule in India.

Mr. M. S. Aney (Deccan States): Mr. President, Sir, the amendment under discussion is a compromise arrived at between the Ministers of some of the important States who are fortunately present here and who, have joined the Constituent Assembly to help us and the spokesmen of non-official members of the Constituent Assembly representing British India. Therefore, the proper persons to explain the implications of this compromise are those who are parties to that compromise. We have yet to hear what Sir Gopalaswami Ayyangar has to say. But one of the important members of the ministerial party, Sir Ramaswami Mudaliar, has made a speech and tried to explain the point of view which he had in mind in accepting the compromise which is embodied in this amendment. I only want to make a general observation and not any specific suggestion. The point of view is perfectly clear to my mind that as a general rule the executive authority of a State shall be continued to be exercised by the ruler in respect of federal subjects. There is a warning however to the States in the clause that a certain standard of administration is demanded of them. I believe at present, at least, the Assembly is in this mood. It does not want the Federal authority to exercise its powers to bring about a change in the administration of the States. It expects that the force or great events and the circumstances which we have to fact, will have the desired effect upon the psychology of those who have to administer the States. The signs of progress are already there. It has begun, and we hope it will continue uninterrupted for some time. We have come to a compromise and let us for the time being rest our faith in that hope. We can tell them that if the time comes the Federal authority will not be wanting in exercising its powers in cases where it may become necessary in course of time. I think the wording is sufficiently clear. Those who have got the interest of the country at heart will easily understand the importance of mutual responsibility and obligations that the Federal authority and the States have to bear in mind. We want to make a strong India, by encouraging the States to take part in the Union and by bringing about concord between the Union and the States. Our attempt should be to bring about this desirable result viz., a strong India. That strength lies in the willing co-operation between the acceding States and the Federal authority. Therefore the policy of the Federal authority will be to maintain the essential unity. The proper thing for the State to do is to enlist the sympathy of their people by associating them with the State administration and that too as quickly as possible.

With these few words I support the amendment.

Sir B. L. Mitter: Sir, it is somewhat surprising that an innocent and agreed amendment should have evoked so much eloquence and a certain amount of heat also. What are the implications of this amendment? There are two implications: one is that the amended clause postulates the supremacy of the Federation. The last words are: "until otherwise provided by the appropriate Federal authority in cases where it is considered necessary." This shows that the ultimate authority is the Federal authority. The first part which says "The executive authority of the Ruler of a Federated State shall continue to be exercisable in that State with respect to Federal subjects" merely continues the *status quo.*

The constitution which we are framing in this Assembly is not an unreal thing. We have got to take the facts in the country as they are into consideration and in the light of those facts prepare an appropriate constitution, one of the facts being that in some of the major States some of the Central subjects are administered by the State authorities. It has not caused my embarrassment to anybody. It has not occasioned any inefficiency. Well, if that be so, that State-of affairs will Continue. It you find that there has been any abuse or inefficiency, there is Power In the Federal legislature to make adequate provisions. This is a simple clause embodying two principles, first is supremacy of the Federal authority and second the continuance of the *status quo.*

The Honourable Sir N. Gopalaswami Ayyangar: Sir, we have had a most interesting debate, if I may say so on an issue which is certainly an important one, but an issue on which I thought those who took somewhat differing views had already come to an agreed settlement. I do not wish' to add to the eloquence 'that has been spent upon this issue in the last one hour and more. I wish only to say, Sir, that the basic principle of,, this clause is that the executive authority of the Federation is co-extensive with its legislative authority, that, normally, it is the Federation that is responsible for the proper administration of Federal subjects But we have taken the existing facts into consideration where a large number of Indian States are actually administering what will be Federal subjects in the new Constitution. We are providing that the existing state of things should continue, but that continuance is necessarily subject to the overriding control of the Federation itself, whenever it chooses to impose that control. We cannot get away from that position As Sir B. L. Mitter pointed out, the supreme authority in regard to the executive administration of the Federal subjects is vested in the Federation. I should reverse the position that Sir Ramaswami Mudaliar contended for. He seemed to think that the general principle should be that the executive authority in relation to Federal subjects should vest in the States, but that, as an exceptional measure, the Federation should take over the administration into its hands whenever that becomes necessary. What I wish to point out is that the general principle should be that it is the Federation that is responsible for the executive administration of Federal subjects, but that it will not, unless it considers it necessary, interfere with the State administration of Federal subjects where it, is in existence today and where it is efficient according to proper standards.

Now, it was said by the mover of one amendment that the taking over of executive administration in respect of the States should be done by Federal law and not by any kind of Federal authority as indicated in the Clause. I would only mention to him one range of subjects, viz., External Affairs. A very large portion of the field of External Affairs is covered not so much by legislation as by executive action. In such cases it would be absolutely unnecessary for us to look to a Federal law for the purpose, of the executive administration of External Affairs being carried out in the proper way within the limits of Indian States.

So far as this particular matter is concerned, Sir, I consider that in regard to the executive administration of Federal subjects there is no fundamental distinction, as was pointed out by Sir Ramaswami Mudaliar, between the Provinces and the States. The only distinction is that the States are actually administering some Federal subjects while the Provinces are not doing so. But, so far as the right to administer them Is concerned, I do not think there is any distinction between the Provinces and the States. Now what really distinguishes the Provinces and the States is only that different kinds of internal administration exist in the two areas. I do not wish to go into this wider field which some of the speakers have covered but I do wish to endorse and emphasise one Out which was I think made by Mr. Santhanam and that is this: The need for the taking over of the executive administration of Federal subjects by the Federation will not be less, but perhaps will be greater when democratic institutions become more common in the States than they are today. After all we have got to consider that the principle of a Federal system is to divide the administration or the exercise of sovereign powers between the Centre and the Units. And I do not see why any hesitation should be felt with regard to accepting- this position, because after all the federation is as much a part of the constitution which the people and the rulers of the States have to reckon with as the State constitution be. In the federal legislature the States will be adequately represented, and when for example a federal law is passed providing for direct administration of federal subjects by the federation, that law will be one in the passing of which the representatives of the States have had a voice, and therefore I could see no real principle involved in contending that you must reverse the general principle in the States from what it has to be in the provinces. I do not wish to say more, Sir, on a subject on which there is agreement as to what we actually should do. I think the House is generally in favour of accepting the amendment that I have moved. I wish to say nothing more.

Mr. President: I will now put the amendments to the vote. The first is an addition of four or five words to the clause which, Sir Gopalaswami himself proposed, that at the end of Clause 9 the following be added:

> "In cases where it is considered necessary."

I take it that the House accepts that.

The motion was adopted.

Mr. President: There are other amendments which have been moved. The amendment of Mr. Chandrasekharaiah that for Clause 9 the following be substituted:

> "The executive authority of the ruler of a federated State shall continue to be exercisable in the State with respect to federal subjects subject to inspection of and the directions from the head of the federal executive."

The motion was negatived.

Mr. President: Then the other amendment by Mr. Himmatsingh Maheswari is that for Clause 9 the following be substituted:

"The executive authority of Ruler of a Federated State shall notwithstanding anything in this constitution continue to be exercisable in that State with respect to matters with respect to which the Federal Legislature has' powers to make laws for that State, except in so far as the executive authority of the Federation becomes exercisable in the State to the exclusion of the executive authority of the Ruler by virtue of a Federal law."

The motion was negatived.

Mr. President: Then I will put the original proposition, as amended by Sir Gopalaswami to vote.

Clause 9, as amended, was adopted.

Mr. President: Honourable Members will: remember that Mr. Sri Prakasa moved a resolution in the earlier part of the day which was referred to a committee of three members of the House, for redrafting and submission before the House. That is now ready. If Honourable Members like to pass it today......

Many Honourable Members: Yes.

Shri Sri Prakasa: Sir I move that:

"Notwithstanding anything contained. in the Rules of the Constituent Assembly in regard to its composition, methods of election, and termination of membership all elections which have been, or may be duly His Majesty's Government's statement of June 3, 1947, shall be deemed to be valid, and the Assembly so constituted shall be deemed to be and always to have been validly constituted, and all proceedings hitherto had, shall be deemed to valid."

Sir I move.

Mr. H. V. Kamath (C. P. & Berar: General): Sir may I suggest that ,Clause 68 of the Rules of Procedure of the Constituent Assembly makes provision for removing any difficulties that may arise? It empowers the President......

Mr. President: The proposition has been placed before the House to remove the difficulties that have been noticed. Does anyone want to say anything about this?

(No member rose).

Then I will put the proposition to the vote.

The motion was adopted.

Mr. President: The House is adjourned till Monday at 10 o clock.

The Assembly then adjourned till Ten of the Clock, on Monday the 28th July, 1947.

7*. (I) Subject to the provisions of this Constitution the executive authority of the Federation shall be vested in the President.

(2) Without prejudice to the generality of the foregoing provisions:

(a) The supreme command of the defence forces of the Federation shall be vested 'in the President;

(b) The right of pardon and the power to commute or to remit punishment imposed by any court exercising criminal jurisdiction shall be vested in the President, but such power of communication or remission may also be conferred by law on other authorities.

[English translation of Hindustani speech ends.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME IV

Monday, the 28th July 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock. Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER.

The following Members presented their Credentials and signed their names in the Register:

1. Pandit Chaturbhuj Pathak (Central India States Group).

2. Major Maharaj Kumar Pushpendra Singhji (Central India States Group).

3. Sir Jwala Prasad Srivastava (United Provinces: General).

ELECTION OF MEMBERS TO THE STEERING COMMITTEE

Mr. President: Members will recollect that there were two Members to be elected to the Steering Committee. I have pleasure in declaring Mr. Ramchandra Manohar Nalavade and Mr. Suresh Chandra Majumdar duly elected as Members of the Steering Committee, they being the only names whose nominations were received for the two vacancies.

REPORT OF THE UNION CONSTITUTION COMMITTEE

Mr. President: We shall now proceed to the consideration of the clauses of the report of the Union Constitution. The held-over clause is Clause 8.

Mr. H. V. Kamath (C. P. and Berar: General): Before we proceed to the day's business, I have a little request to make. May I do so? Will you be so good as to direct that our National Flag be presented to every Member of this august Assembly, who will treasure and cherish it as a worthy memento of the historic occasion on which it was adopted unanimously and with acclamation by this House, the occasion on which a great new Free State was born?

Mr. President: That is a matter which will require a little consideration and after consulting the Steering Committee, I will make an announcement later.

Mr. Tajamul Husain (Bihar: Muslim): May I know Sir, if this seas on is going to end on the 1st of August? The information is necessary because we have to book our seats previously.

Mr. President: I have been considering the matter this morning. We have been going on slowly with the consideration of the clauses. At the rate at which we have been going, I do not know whether we shall be able to finish the consideration of all the clauses before the 31st I am anxious myself that this Session should end by the 31st so that the Members might go and return again on the 15th of August, when they have to return here and we may have another short session after that for considering the report of the Union Powers Committee and the Advisory Committee and certain other matters. So far as I am at present advised, I think we shall end this Session on the 31st but I am hoping that the Members will bear that in mind and will cut down the discussions as far as possible consistently with efficiency of the discussion and complete the consideration of this Report by the 31st. We have still four days for that purpose.

Mr. Tajamul Husain: May I know one thing? Do we understand that this Session will end on the 31st whether the Union Committee Report is finished or not, as we have to book our berths beforehand? It win be better to definitely fix a date whether the work is finished or not.

Mr. President: As I have already stated, as at present advised, 31st is going to be the last day of the session. We held over discussion of two Clauses 7 and 8. Shall we take them up now?

The Honourable Sir N. Gopalaswami Ayyangar (Madras: General): We can now take up Clause 8-A that was moved by Sir Alladi Krishnaswami Ayyar, which was held over for discussion.

Mr. President: I think we have passed Clause 8. We shall take up Clause 8-A which was moved by Sir Alladi Krishnaswami Ayyar. I do not know if members have got that before them. I shall read it out:

"That after Clause 8 the following new clause be inserted:

'8-A. (1) The Government of the Federation, may by agreement with any acceding Indian State but subject to the provisions of the Constitution in regard to the relationship between the Indian Federation and an acceding Indian State, undertake any legislative. executive or judicial functions in that State.

> (2)Any such agreement entered into with an Indian State not acceding to the Federation shall be subject to and governed by any Act relating to the exercise of foreign jurisdiction by the Parliament of the Federation.
>
> (3)If any such agreement covers any of the matters included in an agreement between a Province and a State under Clause 8 of the Provincial constitution, the latter shall stand rescinded and revoked.
>
> (4)On an agreement as per the provisions of sub- clause (1) being concluded, the Federation may, subject to the terms of the agreement, exercise the legislative, executive or judicial functions specified therein through appropriate authorities'."

If any member wishes to say anything about this clause, he may do so now.

I will just see if there are any amendments to clause 8-A.

Mr. B. M. Gupte (Bombay: General): A verbal amendment Sir:

> "That in item No. 5 of Supplementary List I, dated 24-7-47, in sub-clause (3) of the proposed clause 8-A, after the words 'the latter' the words 'to the extent it is covered by the agreement with the Federation' be inserted."

Sir Alladi Krishnaswami Ayyar (Madras: General): I accept the amendment.

Mr. President: Does any one else wish to say anything about it?

(None rose to speak.)

I will now put the amendment to the amendment to vote. It has been accepted by Sir Alladi.'

> "That in item No. 5 of Supplementary List I, dated 24-7-47, in sub-clause (3) of the proposed clause 8-A, after the words 'the latter' the words 'to the extent it is covered by the agreement with the Federation' be inserted."

The amendment was adopted.

Mr. President: I now put the clause as amended.

Clause 8-A, as amended, was adopted.

Mr. President: We now go to Clause 10.

CLAUSE 10

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): This is a very simple clause, Sir:

> "10. There shall be a council of ministers with the Prime Minister at the head, to aid and advise the President in the exercise of his functions."

I beg to move this.

Mr. President: There are a number of amendments of which I have got notice. Mr. Pocker Sahib Bahadur.

Haji Abdul Sathar Haji Ishaq Sait (Madras: Muslim): He has left and he has authorised me and one or two other members to move his amendments.

Mr. President: Mr. Ahmed Ibrahim. Sahib Bahadur.

Haji Abdul Sathar Haji Ishaq Sait: Both of them have left. I do not know whether you can permit me to move it.

Mr. President: Any other member can move it. You desire to move it?

Haji Abdul Sathar Haji Ishaq Saif: I move:

"That for Clause 10 the following be substituted:

> 10. There shall be a Council of Ministers elected by the National Assembly by a system of proportional representation by single transferable vote and the council of ministers shall be responsible to the National Assembly'."

I do not think, Sir, any elaborate speech is required on this. The amendment is very simple and clear and I hope this will be accepted by the House. I move.

(Amendments Nos. 213 to 217 were not moved.)

Shri H. V. Pataskar (Bombay: General): I have given notice of this amendment in order to make it clear that the principle of collective responsibility will be applicable to the council of ministers to be appointed under this clause. As Sir N. Gopalaswami Ayyangar has given notice of another similar amendment in the supplementary list, I do not propose to move this amendment (No. 218).

Pandit Thakur Das Bhargava (East Punjab: General): *[Mr. President, Sir, the amendment which I want to move is this:

"That the following be added at the end of Clause 10 :

"The Prime Minister shall select the other Ministers and the whole ministry shall be responsible to the legislature and act on the principle of joint responsibility in the discharge of the duties of the Ministry'."

I need not remind members that it has been laid down in the objectives Resolution that a democratic form of Government shall be established in the Indian Union. The question now is whether the democratic government should be of the Ministerial type or of the Presidential type as is the case in the U.S.A. So far as the provincial constitutions are concerned we have accepted the principle that responsible democratic government should be established except as regards a minor point about the powers of the government. The principle to be followed in the Union Government should be that the Prime Minister should be the pivot of the whole administration. He should have full powers, and the President would be merely a constitutional head; and he should be given no individual powers or discretion. Whatever the President will do should be on the advice of his ministers. This is a good principle and for this, the British model is regarded as an example by the whole world. This is a model of executive powers which leads to the good and welfare of the people. After great deliberation and mature consideration the Union Powers Committee did not adopt the Presidential constitution of the U.S.A. For this reason, this amendment is based on the British model, though the House is already committed to it. Even then, it should be clearly stated in the Union Constitution that the voice of the Prime Minister would be the final voice and the President will merely echo it. On no occasion shall the voice of the Premier be Routed. Secondly, the Prime Minister should have the right to choose his cabinet colleagues, and the principle of collective responsibility should be adhered to.

I need not emphasise this any more; I would like to say in the end that these three basic amendments, which are based on democratic principle, may be accepted by the

House.]*

Mr. H. V. Kamath: Sir, my amendment is covered by the amendment of Pandit Thakur Das Bhargava. So I do not propose to move my amendment.

Kazi Syed Karimuddin (C. P. & Berar: Muslim): Mr. President. Sir, my amendment is:

"That the following be added at the end of Clause 10:

'That the Executive of the Union shall be non- parliamentary, in the Sense that it shall

> not be removable before the terms of the Legislature and a member of the Cabinet or the Cabinets may be removed at any time on impeachment before a judicial tribunal on the ground of corruption or treason.

The Prime Minister shall be elected by the whole House by single transferable vote. Other Ministers in the Cabinet shall be elected by single non- transferable vote'."

Sir, there was a discussion at the time of the passing of the recommendations of the Provincial Committee regarding this issue but that decision is not binding when we are considering the Union Constitution My submission is that the parliamentary system which is functioning in India under the 1935 Act has miserably failed as far as the Local Self-Government, Local Boards or Municipalities are concerned. All over India you must have noticed that there have been deadlocks and as the worthy leader of the Muslim League said, it does not suit the genius of the people. As far as the Provincial Assemblies are concerned, there was success to some extent because the Congress was fighting the British Imperialism and all conflicting elements were reconciled on that issue. The Muslim League had an ideal of Pakistan and the majority of Muslim members were elected on the Muslim League ticket, but with the disappearance of British Imperialism, with the disappearance of the programme of liberating the Indian people, and with the attainment of Pakistan there will be a plethora of parties and groups. There might be communists, socialists, Muslim Leaguers and many others. To expect such a large majority as we had in the past will be an impossibility. There will be many groups and to except that there will be a very solid and absolute stability for the Government will be a myth. We have seen in the past that in the working of the Provincial Constitution in the Provinces the Opposition was neglected, ignored and sometimes punished. We have also seen that the parliamentary system which is existing at present created favouritism and nepotism in regard to those people who were supporting the Ministry. The Ministers were serving the members of the party more than the people. A Minister was not a humble servant of the Nation but he was a humble servant of those who were supporting him in the Cabinet and therefore I say that this scheme has not worked well in the past. At a time when India is attaining the cherished goal of independence, what do we find around us arson, killing and looting. Why, because there is weak executive manned by Ministers who depend for their existence on the support of those people who are interested in communal tension. Everybody is not Pandit Jawaharlal Nehru. Pandit Jawaharlal Nehru when he went to Bihar, announced that people would be bombed if they continued the rioting but there was not a single minister, either Muslim or Hindu in the whole of India who took this attitude. Diamonds are rare, stones are numerous. What we want to-day is a stable Government. What we want today is a patriotic Government. What we want to-day is a strong Government; an impartial and unbending executive, that does not bow before popular whims. To-day there are weak and vacillating executives in all Provinces who are amenable to influence of the members of the Party and it is impossible for them to displease if they want to continue in the seats that they occupy. Now it is said that the parliamentary system of Government is democratic. America is a democratic country and the Constitution that is prevailing there is also democratic. We find that there is a non-parliamentary executive and the whole administration of the country is divided into 3 parts, one is the Judiciary, the other is the Executive and the third is the Legislature. It is impossible, for the Executive to defy the policies laid down by the Legislature and there is the Judiciary to check the excesses of the Executive. Under the circumstances when there is communal tension everywhere, and when there are disruptive forces in this country, there is no other go except to have an Executive which is non-removable by the vote of the legislature. The other day when an amendment was moved at the time of the consideration of the Provincial Constitution, Dr. Pattabhi wanted to explain from a higher plane, although he was speaking under impulse, that the non-parliamentary executive was not suited to the conditions of India. Instead of that he argued about the separate electorates in India. He argued about the Communal Award which was beside the point. There is no communal question in America and in spite of that, this non-parliamentary executive has been ad-opted there. This is a country of different religions. This is a country of different ideologies. This is a country with different cultures. At a critical moment in the history of India when we do not want internal strife, when we want a formidable Government to be a bulwork against all aggression, it is necessary that in the interim period at least there should be a non-removable executive and non-parliamentary executive. The salvation of Indian people lies in this. There will be neither any favouritism nor nepotism and I plead with the House to accept my amendment.

Mr. D. H. Chandrasekharaiya (Mysore State): Mr. President, Sir, my amendment is to the effect that "provision should be made to give adequate representation to the States in the Council of Ministers". Beyond suggesting that the point raised in this amendment be kindly kept in view at the time when the Ministry is actually formed, I do not propose to press it.

Mr. President: Mr. Gokulbhai Bhatt.

Shri Gokulbhia D. Bhatt (Eastern Rajputana States Group) *[Sir, Clause 10 lays down that there will be a Council of Ministers and a Prime Minister. But it does not state how the Ministers will be selected or approved. Will the Cabinet Ministers be members of the Parliament? What clauses lay down that they will be members of the Parliament? What should be their salary? Can any changes be made in it? There is no mention of this anywhere. I want to emphasise that it would be better to make all this clear here, as we have done in the draft constitution for the provinces. But our constitutional experts and people more conversant with law than myself say that this is. a matter regarding the Union, the Centre, and that it is no use dilating on it because when the final draft will be prepared, the matter will be considered and everything will be clear. I think that it is very necessary to mention as to how the Cabinet will be formed. But we have been assured that all this will be in accordance with what has been laid down in the provincial constitution. With this hope and also in view of the opinion and advice that this amendment should not be moved, I do not want to place it before the House.]*

The Honourable Sir N. Gopalaswami Ayyangar: Sir, as the clause now stands in the draft, it does not say anything about the manner in which the Council of Ministers is to be chosen and the responsibility of that Council to the Legislature. A number of amendments have been tabled on this aspect of the matter and in order to cover the essentials in respect of these matters, I have given notice of this amendment, that at the end of Clause 10 the following be added:

> "The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister. The Council shall be collectively responsible to the House of the People."

Very few words are required from me to explain the content of this amendment. The Prime Minister is to be invited by the President to form a ministry and naturally by convention the President will invite the leader of the party which by itself or together with the support of other groups in the House is able to command a fairly stable majority. The other ministers will be chosen by the President on the advice of the Prime Minister. Provision is made for collective responsibility to the Lower House or the House of the People. Generally, the responsibility is only to that House, not to the Parliament as a whole. I notice that in one of the amendments it has been suggested that there should be both joint and several responsibility. I do not think in the case of a Government we need copy the practice which perhaps is common in the framing of ordinary private contracts. between a Board of Directors possibly and other people.. It is sufficient I think that we provide for the collective responsibility of the Council to the House of the People. Sir, I move.

Mr. President: These are the amendments of which I have notice The clause as also the amendments are now open to discussion.

Mr. Tajamul Husain: Mr. President, Sir. Clause 10 says that there shall be a Council of Ministers with the Prime Minister as the Head to aid and advise the President in the exercise of his functions. Sir, there is no mention in this Clause as to how the Council of Ministers is to be created. Therefore I find, Sir, that an amendment has been moved to the effect that each Minister shall be elected by the Assembly by the principle of proportional representation by single transferable vote and the Council of Ministers shall be responsible to the Assembly. Now, Sir, we can safely divide this amendment into two parts; the first part is that the Ministers are to be elected by the Assembly; the second part is that the Cabinet of Ministers are to be responsible to the Assembly. As regards the second part, I entirely agree. If the Council of Ministers have no majority behind them in the Assembly they will not remain in office or if there is a vote of 'no confidence' against them, even then they will get out. Therefore this part of the amendment I can quite appreciate. But as regards the first part, namely, that the Ministers shall be elected by the Assembly, I am afraid, Sir, I have not been able to appreciate. If the Council of Ministers are to be elected by the members of the Assembly by proportional representation by means of the single transferable vote, then, Sir, what may happen? There may be a small party and if there is single transferable vote by proportional representation, that small Party may succeed in electing a Minister. Now, Sir, that party may not have the same political view as the majority party in the Assembly. Therefore in a Cabinet there may be Ministers with two divergent views and opinions. Now, Sir, if that happens there will be no team work in the Ministry and this cannot be called a stable Ministry. After all we have seen that the English system in this connection has been tried for centuries in England and it has worked well. What happens in England? The leader is summoned by the Head of the State, *i.e.* the King and is appointed Chief Minister or Prime Minister. This Chief Minister or Prime Minister has to submit the names of the other Ministers and in consultation with the Prime Minister the Head of the State or the King and is appoints all the Ministers. Then, in that case the ministry is stable; for when the Prime Minister has got the majority in the House, he will carry on, and if he has not, he will not. But to have two different kinds of ministers in the same Cabinet, I am afraid, I am not able to appreciate.

Now, Sir, another amendment is to the effect that the Union Executive shall be non-Parliamentary and should he irremovable, and that a member of the Cabinet may be removed at any time on impeachment before a judicial tribunal on the ground of corruption, etc., and that the Prime Minister shall be elected by the whole House by single transferable vote, while the other Ministers shall be elected by single nontransferable vote.

Now, this amendment too can be safely divided into four parts The first part is that the Cabinet should be non-parliamentary-should be irremovable. That is a thing which I cannot appreciate-the non-parliamentary complexion of the cabinet. It appears to me rather antidemocratic. If the cabinet does not carry the confidence of the House it must be removed. It cannot remain even for one minute, after it has lost the confidence of the House.

The second part is that the Ministers may be removed by impeachment before a judicial tribunal. I am afraid I am not able to appreciate that point also. If a Minister does not have the confidence of the House, and if there is something against him, he can be removed by bringing up the matter before the Legislature. Why drag him before a judicial tribunal? I do not know how this is going to work in a democratic system, such as the one we are hoping to have for our country.

And the third part is that the Prime Minister should be elected by the whole House by single transferable vote, but the other members of the cabinet are to be elected by single non-transferable vote. I am not able to understand what advantage the Honourable Mover expects under this arrangement. If the whole House elects a person, the man who has the larger majority will be elected. Suppose there is a House of 150 arid one party-I will not say the Congress or the League, because there will be no old Congress or old League in Hindustan parties will be on different lines-that one party, say, the Socialists number 100 and the opposition number 50.

Kazi Syed Karimuddin :Sir, how does the Honourable Member know that there will be no League or Congress party?

Mr. Tajamul Husain: I am glad I have been asked that question. There should not be any such parties, Sir. The sole object of the Congress was to achieve complete independence, without the interference of a foreign power and it has succeeded. The Congress has achieved its object. The League's object was the partition of the country and have Pakistan and they have got that. Both the parties have achieved their respective objects and they have finished their work. What the Congress wanted, the Congress has achieved and what the League wanted, the League has achieved; now there is no difference at all between the two, we are all in India and are Indians but our rights must be protected.

Mr. President: The Honourable Member will please confine himself to the discussion of the point. The future of the Congress and of the League is not before the House for discussion.

Mr. Tajamul Husain: But the Honourable Mover had asked me to explain why I said there would be no League nor Congress Party as of old creeds and I thought I had your permission to explain; but now that I do not have it, I will not say' anything more about that. I will only say that there will be no parties on the lines we have known them, be cause both the Congress and the League have achieved their objects. Both parties will have new creeds in future.

I was saying this. Suppose in a House of 150, one party has 100 members. That party will-elect the leader who will be the Prime Minister. Suppose there are two candidates and the successful candidate gets60 votes and the rest 40 oppose him. He still becomes Prime Minister. But what will happen if the opposition of 40 Members combine with the rest 50 in the House? Then the House will be divided as 90 against 60. The Leader cannot be chosen by the Party which has the largest majority in the House. It is just possible, in that case that the man who ultimately becomes the Prime Minister will be a man of the opposition. That is undemocratic and is against that system of democracy which I admire-the English system of democracy. I think that as far as possible, in order to suit our Indian ways, we should adopt as much of the English constitution as we can.

I oppose the amendment.

Lastly, there is the amendment moved by Sir N. Gopalaswami Ayyangar-which is also the same as that of Pandit Bhargava-providing for the selection of the ministers and the appointment of the Prime Minister. The Prime Minister, it says, should be appointed by the President who will appoint the other Ministers on the advice of the Prime Minister and the Cabinet shall be responsible to the whole House. That is the system which is prevalent in the House of Commons and I support this amendment. As I said, it has worked very well in England and there is no reason why it should not be equally successful in our country. I support the amendment of Pandit Bhargava also.

Mr. H. V. Kamath: Mr. President, Sir, this clause seeks to lay down the basis of our national federal executive. Two amendments have been moved to this clause, amendment No. 212 and amendment No. 221 which, in effect, seek to weaken this national executive. My friend Mr. Kazi and my friend Mr. Hussain praised respectively the American model and the British model. Here Sir, we are not concerned with which model or which type we are going to embody in our constitution, whether it is, the British, American, Russian, Turkish or the French or any other for the matter of that. Here, Sir, we are concerned with the principles of a democratic, efficient and dynamic government. After all what is needed today is an efficient and dynamic government which will clear the mess that has been made in this country which will lift this country of ours out of the rut into which it has fallen. The most elementary as well as the most fundamental principle, to my mind, 'of a democratic, efficient and dynamic government is that while every shade 'of political opinion and every school of thought should be adequately represented in every legislature,-because in a legislature two heads are better than one, twenty heads are better than two and two hundred heads are better than twenty-, in the case of the executive, specially when we are planning a dynamic executive, the reverse is the case. Here, Sir, in an executive it should be that twenty heads are better than two hundred, two heads are better than twenty and in an emergency even one head is better than two. In an emergency where prompt action and quick decision is needed, dynamism is required one head is better than two heads. But these amendments seeks to lay down a basis for the executive which if accepted would weaken the executive and would practically render it passive, unstable acid static and render It unable to cope with the tasks that lie ahead of us. After all a cabinet or an executive is not a *Shivaji ka Barat* or an assorted museum piece or a mere *Khitchri,* but we want to make the executive a really dynamic executive. Here on the floor of the House my friend Mr. Kazi eulogised Pandit Nehru for what he had done: in Bihar. I wish, Sir, that many of us were in a similar position to praise and eulogise the leaders of the Muslim League when similar and worse things happened in Bengal and some other parts of India. It is well known that when these outrages were committed in East Bengal and many other parts of India, when men were massacred, women were humiliated and children were burnt in fire and oil no leader of the Muslim League raised his little finger nor did even one Muslim League leader go into those parts and did what Pandit Nehru did in Bihar. Is this the way in which we are going to build up a strong united India? Is this the spirit that is going to animate us in future? Only yesterday I read a statement from the head of the Muslim League where he mentioned Pakistan and Muslim India. I expected that at least after the division of India into Pakistan and India or Bharatvarsha on a communal basis the hatchet had been buried fathoms deep. But the same spirit is abroad and that spirit has not been stilled. People thought of Pakistan and the rest of India........

Mr. President: The Honourable Member should confine himself to the subject under debate.

Mr. H. V. Kamath: I was trying to make out that today what is needed is a dynamic spirit of unity, of action, of sacrifice and of faith. Let us not forget the grand, beautiful vision painted by our poet, Viswakavi Rabindranath in words of matchless beauty. That vision should animate us and guide us in our future labours 'so that we can all build up a great India worthy of our past and worthy of the sacrifices which our martyrs have undergone. Permit me, Sir, to quote those words which picture a vision of matchless beauty:

"Where the mind is without fear and the head is held high,

Where knowledge is free,

Where the world has not been broken up into fragments by narrow domestic walls,

Where words come out from the depth of truth,

Where tireless striving stretches its arms towards perfection,

Where the clear stream of reason has not lost its way into the dreary desert sand of dead habit,

Where the mind is led forward by Thee into ever widening thought and action,

Into that heaven of freedom, my Father, let my country awake."

Jai Hind.

Mr. President: I understand that Pandit Jawaharlal Nehru would like to accept some of the amendments. If so it might cut short the discussion to some extent. I should like him to make a statement before the discussion proceeds further.

The Honourable Pandit Jawaharlal Nehru: Sir, I venture to intervene in order, to make clear which of the amendments I am prepared to accept and which not. Four amendments have been moved. I may say at the outset that I am prepared to accept Sir Gopalaswami Ayyangar's amendment and not the others. Pandit Bhargava's amendment is more or less the same; it is only a question of wording. The others raise entirely different issues; for instance, the issue of ministers being, elected by proportional representation. I can think of nothing more conducive to creating a feeble ministry and a feeble government than this business of electing them by proportional representation: and I would therefore like the House to reject this amendment.

The other one raises a completely different issue, as to what the nature of the constitution should be. For instance, Mr. Karimuddin's amendment says that "that executive of the Union shall be non-parliamentary, in the sense that it shall not be removable before the term of the legislature," etc. That raises a very fundamental issue of what form you are going to give to your constitution, the ministerial parliamentary or the American type. So far we have been proceeding with the building up of the constitution in the ministerial sense and I do submit that we cannot go back upon it and it will upset the whole scheme and structure of the- constitution. Therefore I regret I cannot accept this amendment of Mr. Karimuddin or of Mr. Pocker Sahib.

As to the other point raised it is perfectly true that the original draft that I placed before the House was not at all clear on various matters It was not clear because there was no intention of drafting it here. These are certain indications for future drafting and some things were obviously taken for granted. It was taken for granted that the Prime Minister would be sent for by the President because he happens to represent the largest party or group in the House; further that the Prime Minister would select his ministers and further that they would be responsible to the House collectively. All that was taken for granted, but perhaps it is better to put that down clearly and the amendment moved by Sir Gopalaswami. Ayyangar puts that down very Clearly. Therefore I accept that amendment and I hope the House also will accept it and reject the others.

The Honourable Mr. Hussain Imam (Bihar: Muslim) : Sir, I had no intention of intervening in this debate because the subject matter of debate as to whether the executive should be parliamentary or non-parliamentary is one which though of great academic interest is not practical politics due to opinion in India being so much in favour of the British model that it is useless for any one to try and sing the praises of the American system and get it adopted. Constitutions are made although there is an element of finality about them-only for a time; and I hope to live and see the British model dethroned, just as British power is-being dethroned, and the better model adopted. But I have been forced to come here because of the speech of Mr. Kamath. Mr. Qazi spoke in praise of the activities of Pandit Nehru in Bihar. I was an eye-witness and saw his torn shirt and the amount of labour that he put in. When an opposite party man admires the other it is not an occasion to be utilised for maligning that party. The endeavour should not be to accentuate differences but to bring about greater unity.

Singularly ill-timed was the attempt of Mr. Kamath to state certain facts which were terminological in exactitudes. It is wrong to say that the League High Command never condemned the atrocities perpetrated ,on non-Muslims.

Mr. President: I am afraid we are straying into irrelevant discussion.

The Honourable Mr. Hussain Imam: I am not going to discuss this matter. I am simply mentioning that what he mentioned were of the facts. The fact that Pandit Jawaharlal Nehru went to, Bihar was due to the reason that the Congress High Command was in control there, and the Congress High Command was in a position to intervene. But in Punjab the League was not the party controlling the Ministry: it was under section 93; in the N. W. F. P. the Congress was in power.

Mr. President: I would remind the Honourable Member that we are not considering the conduct of any Ministry or of Pandit Jawaharlal. Nehru or of anybody else. We are discussing a simple clause of the Constitution. I would request him to confine himself to that.

The Honourable Mr. Hussain Imam: I hope you will not allow such digression to be made by others as well.

Sir, I was saying that the American system has got great advantages which are not appreciated at the moment. A few days ago I learnt that Harold has written a book condemning the American system of having an irremovable executive. He has praised the British system which we are adopting. What are the facts of the British system? The fact that the executive is removable in Britain does not differ materially in the day to day administration from the irremovable character of the American system. The power of not voting supplies, which is the essential part of the Ministry's working, is vested in the Legislature so that in the British system as well as in the American system the Legislature is absolute, though in the American Constitution there is the Presidential Veto. But there again they have provided so many checks and balances that the Presidential Veto can be overthrown by a two third majority of the House of Representatives and the Senate. So you find that the control of the purse by the Legislature is absolute practically in the Parliamentary system and in the non-parliamentary executive system of America.

Now, so far as legislature is concerned, the same thing applies. The Legislature is supreme with certain safeguards. Now, the very fact that a man is appointed who is not a member and the other man is appointed who is a member does not make any great difference in the day to day administration.

Some people have rightly opined that in times of crisis it is better to have one central control rather than a multitude of small minds working together and bringing about a kind of chaos. Well, if a system can work better in times of crisis, I do not understand why it should fail when there is no crisis. Crisis is an extraordinary state of affairs, a really complicated and difficult state of affairs. If a system can work at such a time, it stands to reason that it will work and work smoothly when the times are normal. 1, therefore, am of opinion that the non-parliamentary system by means of which the President who gets not less than 51 per cent of the votes of the entire Nation is a, better custodian of the Nation's interests than the Prime Minister who, after all, represents only one constituency and the majority of his own party members. The Illustration which Mr. Tajamul Husain has given was a little amiss. He said that the Prime Minister can be elected by the Opposition and the Government party combined together. He gave an illustration that, if there are 100 men in one party and 50 in another, then at the time of electing the leader, 60 vote for one and 40 for another. 'The man who was rejecting by his own party, and might have gone over to the other party, secures 50 votes from the second, party and 40 from the first and gets elected in spite of the fact that the majority of his own party wasn't with him. That apprehension is perhaps, based on inexperience.,, In political parties the differences which exist inside are never Ventilated outside. A man who will betray his own party and go over to the opposition will not get a single vote of his own party. In. these says of democracy, such things are not possible. Rare instances, of this, nature may perhaps exist in one corner or other, but on broad outlines, you cannot have this kind of fissiparous tendency. Will the Opposition support a Quisling from the Government? How can that position be allowed ? He is not a partyman. That is a contingency which will not arise. But the possibility that a Prime Minister might. represent only a minority of the- House is worth considering. The system of party working is such that if you belong to one party and secure the votes you are likely and almost sure to get all the votes In the instance which Mr. Tajamul Husain gave,. what: will happen is that the man who secures 60 votes out of 150 will ultimately be the Prime Minister Now you ask the President to act not on his own judgment, but on the judgment of this man who secured A minority of the votes of the House. He gets 60 out of the 150 votes, of 40 cent only.

I therefore regard that the system whereby discretion is left to the President to. nominate his own Ministers is more democratic and based on better and sounder principles than the system of copying the British model. The British system was found unequal to the task when was worked in France where the tendencies' are-to have small groups it and parties. They found there ever and anon that the British system was unsuitable. U.S.A. has a different. system giving the' President perfect. latitude to form a Government suited to the occasion. For instance, during the war President Roosevelt nominated two Members to his cabinet from the party in Opposition, and they were given very important portfolios. So you have the same system of coalition Government in 'America without any of the defects which a coalition presupposes. A coalition his composed of divergent elements, each pulling in different ways. I personally think that the American system is not a quarter as bad as has been stated. It is said that the executive is not removable. But the fact is that the executive is more, easily removable in the American system that in the British system. Many Members will remember the howl which was raised when Lord Templeton (Ex Sir Samuel Hoare) was turned out of the British Cabinet in the days of the Spanish crisis.

But in America everyday you find one Secretary of State being turned out and another being appointed General Marshall has just come in without any furore being made. There is no one to question the right of the President to select an executive head for the time being. I do not wish, Sir, to detain the House by making a long speech. I wish only to make my position clear. This is my personal opinion, not that of my party, but I thought that it would be better if I explained that the American system is not as bad as it has been painted by its traducers.

Mahboob Ali Beg Sahib Bahadur (Madras: Muslim) : Mr. President, Sir, Clause 10 as amplified by Sir N. Gopalaswami Ayyangar introduces a type of executive which is British and which is, commonly known as parliamentary. The amendment moved by Kazi Syed Karimuddin Saheb seeks to amend this clause by introducing a mixed type of executive, the Swiss type. Now, let us examine whether the type of executive contemplated by the amendment of Kazi Saheb is undemocratic, is impracticable and does not meet the present circumstances in the country.

Under these three heads it is necessary for this House to deal with this subject. Now, Sir, as you know, the British parliamentary system is not a statutory one. It is a historic growth covering several centuries of struggle between the people and the king, to snatch as much power as possible for the representatives of the people to administer the State. It is no doubt true that members of the Parliament are elected; and after the members are elected, the leader of the majority party is called by the Head of the State, viz., the King, to form the Government, i.e., tie chooses his own ministers. Up to the stage of the return of the members to Parliament, it is democratic. From that stage, it ceases to be democratic, for the leader of the majority party may choose anyone he pleases The ministers no doubt belong to the party Which has been favoured by the electorate, but particular ministers, are not chosen by the members of Parliament. Then, Sir, the Government is formed, and it is in the saddle so long as it carries the confidence of the Parliament- But take the case of a certain section of the Parliament not being satisfied with the executive but unable to throw out the Government. It may be that that small section are the people in whom he majority of the electorates have confidence. The anomaly is that the electorate, the real sovereign, is not in a position to throw out the Cabinet. You will therefore see, Sir, that he parliamentary executive ceases to be really democratic. In the first place, parliament does not choose the ministers; in the second place the electorate cannot turn them out. So, really, Sir, from that stage the parliamentary democracy obtaining in England which is sought to be introduced here is not democratic. Let us examine the position taken by Kazi Saheb. After the elections take place, the members of Parliament will elect their own ministers. So, Sir, it is more democratic than the British parliamentary type. There are two processes. One is that members of the Parliament are elected by the people, and the second is that the members of Parliament, the real representatives of the people, elect their own ministers. Let us see whether the system which is sought to be introduced by this amendment is practicable in the circumstances obtaining in the country. I once before said that the democratic system of election of members of Parliament and the election of the Cabinet must be one which will reflect all the section of the country.' It is no use being blind to the realities of the situation. It is no doubt true that people should not think in terms of sections, communities, and special interests. But every day we find that even the parties like the League and the Congress, both inside and outside this House, have always been saying there must be protection of minorities, religious minorities, sectional minorities and the oppressed minorities and minorities belonging to different tracts of the country. These facts. Let us not be blind to these facts. Now if the Leader of the arty is called upon by the, Head of the State, what he does naturally-and we expert him to do it-is that he would form a Cabinet of men consisting of persons representing some interests or some communities. He is going to do that. It may be by convention or good sense, bat that is going to happen. But if that does not happen and he cannot be forced to do it, then, Sir, there will be a lot of discontent, distrust and all that sort of thing. So if we provide in the Constitution itself a democratic system of forming a Cabinet by electing ministers and you introduce a system of election which is called proportional representation by the single transferable vote for non-transferable vote as the cue may I be, then it will be satisfactory. it win be democratic and it will reflect all the sections of the people. Besides that, Sir, as I submitted, it is not possible for the people to turn out a reactionary Cabinet. The party In power may still consist of a majority of persons who are reactionary and whom the electorate may have no confidence. But in any case the Cabinet will continue and is expected to continue for the full term of four or five years.

In this amendment you have the advantage of the democratic method of electing persons to your Cabinet and having elected them, you ask them to continue, while the person who is elected under the British type always stands in fear of being turned out. So, Sir, if you make this executive not removable for the period, he will be in a better position to work, develop schemes and see to their completion. So, Sir as I said. this

Swiss type has got the advantage of being democratic at certain stages. It is possible for all sections of the country to be represented, it will work better and can complete its schemes and in the present circumstances of the country, is the most suitable and there is nothing wrong in introducing this system. Further, let us remember these. systems the Swiss and the American types-are the result of the experience gained by the other countries where democracy has worked, and it is the considered opinion of the that the British system is not democratic. After all, who holds the power even in that democracy, in that Parliament? Virtually it is the Prime Minister or his executive; and on account of what is called the discipline in the Party what is considered to be good by that party, Cabinet or the Premier must be followed by all- the Members or else disciplinary action will be taken against them. I therefore think, Sir, that the Swiss system that is contemplated-by the amendment of Kazi Syed Karimuddin has much to commend it.

Mr. President: I think we have had enough discussion on this clause and I would like to put the amendment and the clause To vote now.

Mr. K. M. Munshi (Bombay: General): I move closure.

Mr. President: There is a closure moved by Mr. Munshi. I take it that the House accepts the closure.

The question is:

'That for Clause 10 the following be substituted :

"There shall be a Council of ministers elected by the National Assembly by a

system of proportional representation by single transferable vote and the council of ministers shall be responsible to the National Assembly'."

The amendment was negatived.

Mr. President: I will put the amendment of Kazi Syed Karimuddin to vote:

That the following be added at the end of Clause 10:

'That the Executive of the Union shall be non-parliamentary in the sense that it

shall not be removable before the term of the Legislature and a member of the Cabinet or the Cabinets may be removed at any time on impeachment before a judicial tribunal on the ground of corruption or treason.

The Prime Minister shall be elected by the whole House by single transferable vote.

Other Ministers in the Cabinet shall be elected by single nontransferable vote'."

The amendment was negatived.

Mr. President: I will now put Sir Gopalaswami Ayyanger's amendment to vote:

"That at the end of Clause 10, the following be added :

> 'The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister. The Council shall be collectively responsible to the House of the People'."

This has been accepted by the Mover.

The amendment was adopted.

Mr. President: There is another amendment by. Mr. Thakurdas Bhargava. I think that is covered by this amendment and it is not necessary to take the vote of the House on it.

I will now put the original clause as amended by Sir Gopalaswami Ayyangar's amendment.

Clause 10, as amended was adopted.

CLAUSE-11

Mr. President: Clause 11. Sir Gopalaswami, Ayyangar

The Honourable Sir Gopalaswami Ayyangar : I beg to move Clause 11.

"11. The President shall appoint a person being one qualified to be appointed a judge of the Supreme Court to be Advocate General for the Federation, to give advice to the Federal Government upon legal matters that may be referred to him.

Shri Gokulbai D.Bhatt: *[Sir, I withdraw my amendment in favour of the amendment to be moved by Sir Alladi Krishnaswami Ayyar.]*

Sir Alladi Krishnaswami Ayyar: Mr. President. I beg to move the following amendments to clause 11.

> "(1) That in clause 11 after the word 'referred', the words 'or assigned'; be inserted.
>
> (2)That at the end of clause 11 the following be added:.
>
> > 'by the President or are assigned to him under this Act or by any Federal Law, to exercise the powers and discharge the duties vested in him under this Act or under any Federal Law and in the performance of his duties he shall have right of audience in all courts in the Union of India. The Advocate-General shall hold office during the pleasure of the President and shall receive such I remuneration as the President may determine'."

This is merely a formal amendment, because there are three sets of duties. There are duties which are assigned to him by the President. There are other duties which are referred to him. There are statutory duties under various Acts. It is only to see that the provision is complete that this amendment is moved. I presume there will be no opposition to this.

Mr. President: The clause and the amendments are now open for discussion.

(No member rose to speak),

Mr. President: I shall put them to vote unless Sir Gopolaswami Ayyangar wants to say anything.

The Honourable Sir N. Gopalaswami Ayyangar: I accept the amendments.

Mr. President : I shall put to vote the amendments first:

"(1), That in clause, 11 after the word referred' the words 'or assigned' be inserted.

(2) That it, the end of clause 11 the following be added:

'by the President or are assigned to him under Act or by any Federal Law, to

> exercise the powers and discharge the duties vested in him under this Act or under any Federal law and in the performance of his duties he shall have right of audience in all courts in the Union of India. The Advocate-General shall hold office during the pleasure of the President and shall receive such remuneration as the President may determine'."

The amendments were adopted.

Mr. President: The clause, as amended, is put to vote.

Clause 11, as amended, was adopted.

CLAUSE 12

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I beg to move Clause 12 which runs in the following terms:

"12 All executive action of the Federal Government shall be expressed to be taken in the name of the President'."

Very little is required by way of explanation.

(Messrs. M. Ananthasayanam Ayyangar and Kazi Syed Karimuddin did not move their amendments,)

Mr. President: I do not think' there is any other amendment to this clause) If any member has given notice of any amendment to this which I have not, noticed, he may move.

(No member rose to speak)

Mr. President : As there is no other amendment, I shall put the clause to vote.

Clause12 was adopted.

CLAUSE13

Mr. President: Clause 13.

Mr. R. K. Sidhwa: (C. P..& Berar: General): There is a new clause?12-A, Sir. The additional clauses treat stands in my name reads thus:

> "That after Clause 12, the following new clause be added :
>
> 12-A. The Federation shall make laws for-
>
> (1) the Socialist system of economy nationalisation of high industries, administration on co-operative basis of trading enterprises;
>
> (2) equalisation of capital by private owners;
>
> (3) prevention of exploitation;
>
> (4) abolition of unemployment, and guaranteeing the right of work to every citizen;
>
> (5) recreation, annual vacations, leave with wages for maternity period, child welfare, rest homes, clubs and comfortable dwelling houses for all classes of workers;
>
> (6) right to maintenance in old age, family provision in cast of sickness or loss of capacity to work, free medical aid.........."

Mr. President: I think these would Come under Part Ill. When we take it, you may move this. So far as the fundamental rights are concerned, they have already been accepted by the Constituent Assembly and they will again come up at the final discussion. This is only with regard to broad constitutional principles. They will be taken up I think at the final discussion.

Now. Sir Gopalaswami Ayyangar, Clause 13.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I beg to move Clause 13.

> "13. The legislative power of the Federation shall be vested in the Parliament of the Federation which shall consist of the President and the National Assembly, comprising two Houses, the Council of States and the House of the People."

With regard to this, there is notice of an amendment that the words "the National Assembly comprising" be deleted. If that is done, the clause will read as follows:

> "The legislative power of the Federation shall be vested in the Parliament of the Federation which shall consist of the President and two Houses, the Council of States and the House of the People."

This is merely to avoid having too many designations for what will be the legislative of the Federation in the future. The Parliament of the Federation is to consist of the President and two Chambers. These words, "the National Assembly", have been put in there for the purpose of referring only to the Houses to the exclusion of the President. It seems, Sir. that it is unnecessary to have this expression "National Assembly" coming in between the Parliament and the two Houses. It is therefore considered desirable that we omit all reference to "National Assembly"- and make the clause read as I have indicated. I think the notice of amendment has been given by MT. K. Santhanam and I Wish to say at the outset that I shall be prepared to accept it.

Mr. R. K. Sidhwa: Sir, my amendment as stated in the paper reads thus:

"That in Clause 13 after the words 'in the Parliament of the Federation' the words 'to be known as Congress' be inserted."'

My object is, Sir, that the freedom that we have attained is under the aegis of the Indian National Congress and I desire the name 'Congress' to be perpetuated in our future Constitution. I understand. Sir, it is the desire of several honourable members that the various words that have to come in the Constitution should be left over for consideration. Under these circumstances, I do not propose to move, it now but I do desire that the word 'Congress' must find a place in our Constitution so as to perpetuate this memorable name under which we have fought for 65 years in the History of our country.

Mr. Mohd. Tahir (Bihar: Muslim): *[Sir, in the amendment which I have suggested much thought has not been given to the language. Since we have to discuss on principles, my amendment would read like this:

"That in Clause 13, for the words 'comprising two Houses, the Council of States and', the word "namely' be substituted."

My aim in suggesting this amendment is that in the original resolution where two assemblies have been mentioned and it has been said that there ought to be two Houses, I want to keep one House only.

Sir. we have the picture of one new India before us now, with the crown of freedom in her hands. When we are to forge a new Constitution for her and before I place my humble views regarding that before the House, I want to repeat the couplet:

"Sare Jahan se achcha Hindustan Hamara

Ham bulbulen hain uski woh gulstan Hamara

After this, I shall say only this much about the amendment, that when we are making a Constitution for India, it is our duty that we should make such a model constitution that all in the country may feel that this Constitution has been made for them and it is theirs. It must not be that, on looking to that Constitution, the common man may say that though the Englishman has left India, his ghost is yet stalking the country. But this constitution clearly betrays that his ghost is haunting us. I think that if you look at this Constitution and at this clause, which is before us now, you will feel that though no doubt the Englishmen are quitting India, his ghost is walking here. Before framing a constitution for a newly born nation or for a country which has attained freedom. the most essential thing, to mind, is to change its past traditions and old constitutions, which were hitherto in vogue, in such a way as to transform the whole mentality of the people of that country. Sir, you know how during the past so many years of their rule in India, Britishers have changed and enslaved the mentality of the people. 'Therefore, when we frame a new Constitution, it becomes our duty to make it in such a way as to transform our mentality from that of slavishness to freedom. The old mentality reminiscent of British slavery must be uprooted. I beg to state that in all the countries various forces are at play-in some countries Socialism works well, in others Communism works well, yet in some others fascism is to be found and in some Capitalism and Imperialism flourish. Unfortunately, thought Capitalism and Imperialism, the Britishers have brought India to her present distress and miserable plight Sir, I would like to point out that before framing the Constitution of the country, we should scan the history of India during the short period of 1919 to the present day. Sir, from 1919 to 1935 many Constitutions were framed but all of them the Product of British Imperialism. In 1919, local self-government was conceded to India; councils were created. even a council was formed for the centre. It was self-government only in name. But, Sir, if you think over it a little you will find that Imperialism was Capitalism were at its back and they were in full play then. Hence the local bodies could not function freely. This was because imperialism was associated with them. The masses used to send their elected representatives to the local bodies but the presence of nominated members there used to 'counteract the influence of the elected ones. And this system still continues. Similar was the case in the Councils; the influence of the elected representatives was weakened by the nominated members; and any programme for the betterment of the country put forth by the elected representatives used to be opposed by the nominated members. That was the state of affairs under the Act of 1919.

Thanks to God Almighty, when Imperialism and Capitalism were at work in India, a party under the leadership of Mahatma Gandhi came forward to voice the feelings of the, poor Indians, and that voice was raised so vociferously that today we find India on the threshold of freedom. Is it then befitting for us today to frame a constitution for India, which smells strongly of Capitalism and Imperialism, nay it fosters them? After some struggle and haggling the 1935 Act was enacted. When, after the Act of 1935, the British Government found that very great political consciousness had ,been developed in India, and she was pressing her demands more insistently, it changed the Act of 1935. Legislative Assemblies were established in the provinces, where Only the elected representatives of the people were to manage the affairs of the Government. But of what good could those provincial assemblies be, when the Upper Houses and the Council of State were tacked on to them? It was a creation of the Imperialistic mind. Thus' the, democratic atmosphere of the provincial Assembly was negatived,' because 'the Britisher knew that for keeping his Capitalistic outlook. safe in India no better plan could be devised. Hence, I would like to point out that nominations, Upper Houses, and similar other tools were the creation of Imperialism. Therefore, when we are framing the Constitution of free India we should keep these things in mind. The Constitution, which we now' frame. should be such that we may be sure that it would be acceptable to the people, and they would willingly work it. I would like task a few simple questions of the Honourable Mover of this clause. Is he of the opinion that without having two Houses, the Pr I ogress of India or of any other country would be hampered, or no good laws can be enacted? May I ask him whether an assembly, better and more responsible than the present one, has ever before I assembled In India I would say that never before did an assembly, more responsible than this, sit 'in India. Do we not see that one House is carrying on all this work, and is framing the Constitution? After some weeks this very Assembly would function, as the Federal Parliament, where laws would be enacted. If the principle that two Houses are essential is accepted, then this Constituent Assembly should be dissolved and reshaped to contain two Houses. If, the Honourable Mover cannot divide the

Constituent Assembly into two Houses, and he cannot have two Houses of the ensuing Federal 'Parliament, then it becomes quite clear that he himself does. not believe in I the principle that two Houses of legislature are essential. But he is making this proposal because of a certain force or pressure upon him- the forces of capitalism. I would like to tell him that the Council of State nominations, and Upper House were the creations of Imperialism. Does it mean that poor India is still to labour in the same old way, which though more expensive, added nothing to the efficiency of work? It should not be that even after the Britishers have quitted the country and our Government is established they may have the check, to say that their work is still being continued in India. Their work will continue to be accomplished through the devices of the Upper House,. nominations, Council of State, etc. With these words, I sit down. If my words have aggrieved anyone, I ask his pardon.]*

Mr. President: Sir B. L. Mitter.

Mr. S. V. Krishnamurthy Rao (Mysore State) : I rise on a point of Order. Under rule 32, Clause (1), an amendment must be relevant to the motion to which it is proposed. In the motion that is proposed now there is no word "Lower House" and the amendment seeks to define what the Lower House means. So this amendment is out of order.

Sir V. T. Krishnamachari (Jaipur State): I was just going to say the amendment is not going to be moved.

Mr. President: So the point of order does not arise.

(Shri Mohanlal Saxena did not move his amendment.)

Shri K. Santhanam (Madras: General): Sir, I move:

"That in clause 13. the words 'the National Assembly, comprising' be deleted."

Already, Sir, N. Gopalaswamy Ayyangar has explained why these words should be deleted. I fully sympathise with the Union Powers Committee in their desire to appropriate all the good words. The expression 'National Assembly' is certainly a very attractive expression, but we must also have the word 'Parliament'. They have devised an ingenious formula for appropriating both these expressions. The word 'National Assembly' is to, mean the two Houses taken together and the word 'Parliament' is to mean the two Houses plus the President. However ingenious it may be in practice it will be most inconvenient and when it comes to translating it into Hindustani, matters will be worse. It will be bad enough to find a suitable translation for 'Parliament' and if we are to find one for 'National Assembly' also, it will be almost a hopeless task. Therefore I move this amendment.

Mr. President: There is no other amendment. Now, the clause and the. amendments that have been moved are open to discussion.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. President, Sir, in this motion we have been asked to vote for two Houses, the Lower House and the Upper House. I wish to point out that our experience in the last so many years has been that the Upper House acts as a clog in the wheel of progress. I do not think it is very wise to continue the same thing again in our new constitution. I think that everywhere in the world the experience about Upper Houses has been the same. In no country an Upper House has helped progress. It has always acted as a sort of hindrance to quick progress. Therefore, if we are not careful at present, we shall not be able to make as rapid progress as we need. India is probably the biggest nation in the world. We will have to catch up with Russia and America if we want to occupy our proper position in the international field. In the next five or ten years we will have to cover the progress which in the normal course would take fifty years. I do not think two chambers will help us in the realisation of our new programme with the required rapidity. Therefore I think that the Mover will kindly review this matter and see that in our new constitution we do not have two Chambers.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I beg to support the clause as it stands and therefore oppose the motion to omit the Second Chamber. We are going to obtain supreme sovereign powers. We have to deal with foreign and domestic matters of extreme importance. In these circumstances it will be wise for us to have two Houses. A popular House is known for its vitality and vigour and that House will have the exclusive power in regard to money. But a Second Chamber introduces an element of sobriety and second thought. In these circumstances it would be wise for us, especially in view of many foreign subjects which are looming. large in our minds, to have a Second Chamber would be a disadvantage is, I think, not correct. I submit. Sir, that a second Chamber would not only be an advantage but an absolute necessity.

Then again, we have to consider the entry of the States into the Federation, and if we have this in mind, a Second Chamber would be an absolute necessity. Without a Second Chamber it would be difficult to fit in the representatives of the States in the scheme of things.

With these few words Sir, I would oppose the amendment to do away with the Council of States, that is, the Second Chamber.

Mr. President: No one else wants to speak probably. Then, the Mover can reply, if he desires to.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I do not think any elaborate justification is necessary for this clause which states that there will be two chambers in the Federal Legislature. The need for a Second Chamber has been felt practically all over the world wherever there are federations of any importance. After all, the question for us, to consider is whether it performs any useful function. The most that we expect the Second Chamber to do is perhaps to hold dignified debates on important issues and to delay legislations which might be the outcome of passions of the moment until the passions have subsided and calm consideration could be bestowed on the measures which will be before the Legislature; and we shall take care to provide in the Constitution that whenever on any important matter, particularly matters relating to finance, there is conflict between the House of the People and the Council of States, it is the view of the House of the People that shall prevail. Therefore, what we really achieve by the existence of this Second Chamber is only an instrument by which we delay action which might be hastily conceived, and we also give an opportunity, perhaps, to seasoned people who may not be in the thickest of the political fray, but who might be willing to participate in the debate with an amount of learning and importance which we do not ordinarily associate with a House of the

People. That is all that is proposed in regard to this Second Chamber. I think, on the whole, the- balance of consideration is in favour of having such a chamber and taking care to see that it does not prove a clog either to legislation or administration.

Nothing more is really needed from me to commend the clause as it is to the House, with the small amendment which was moved here.

Mr. President: I shall first put the amendment of Mr. Mohammad Tahir :

"That in Clause 13, for the words 'comprising two Houses, the Council of States and', the word 'namely' be substituted."

The amendment was negatived.

Mr. President: Then I put Mr. Santhanam's amendment:

"That in clause 13, the words 'the National Assembly, comprising' be deleted."

The amendment was adopted.

Mr. President: I shall now put the whole clause as amended.

Clause 13, as amended, was adopted

CLAUSE 14

Mr. President: We shall now pass on to Clause No. 14.

The Honourable Sir N. Gopalaswami Ayyangar: With your permission, Sir, and with the, permission of the House, I propose simply to formally move this Clause 14, and to request you to hold over the moving of the amendments and the discussion of this clause to a subsequent day. The clause relates to the composition of the two Houses of the Legislature. A very large number of amendments have been sent in and they raise certain, points of importance both to the Provinces and to the Indian States. A good deal of discussion-lobby discussions has been going on with reference to the merits of these amendments and it seems quite possible that as a result of those discussions, we may be able to put before the House something which will be acceptable to all sides of the House. I only pray, Sir, that you will approve. of the Procedure I am suggesting, and if you do so, I shall simply read out the clause., Clause 14.

Mr. President: I think the House has no objection to accepting the suggestion, that the discussion on this clause be held over for the present and that the clause be moved formally today.

Honourable Members: Yes.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I beg to move Clause 14."

"14. (1) (a) The Council of States shall consist of-

(i) not more than 10 members nominated by the President in consultation with Universities and scientific bodies:

(ii) representatives of the Units on the scale of I representative for every whole million of the population of the Unit up to 5 millions plus I representative for every additional 2 millions of the population-, subject to a total maximum of 20.

Explanation.-A Unit means a Province or Indian State which returns in its own individual right members to the Federal Parliament. In Indian States which together for the purpose of returning representatives to the Council Unit means the group so formed.

(b) The representatives of each Unit in the Council of States shall be elected by the members of the Lower House of the Legislature of such Unit.

(c) The House of the, People shall consist of representatives of the people of the territories of the Federation in the proportion of not less than I representative for every million of the population and not more than I representative for every 7.50.000 of the population.

(d) The ratio between the number of members 'Lo be elected at any time for each constituency and the population of that constituency, as ascertained at the last preceding census shall. as, far as practicable, be the same throughout the territories of the Federation.

(2) The said representatives shall be chosen in accordance with the provisions in that behalf contained in Schedule:

Provided that the elections to the House of the People shall be on the basis of adult suffrage.

(3) Upon the completion of each decennial census, the representation of the several Provinces and Indian States or groups of Indian States in the two Houses shall be readjusted by such authority, in such manner, and from such time as the Federal Parliament may by Act determine.

(4) The Council of States shall be a permanent body not subject to dissolution, but, as near as may be, one-third of the members thereof shall retire in every second year in accordance with the provisions in that behalf contained in Schedule.

(5) The House of the People, unless sooner dissolved, shall continue for four years from the date appointed for its first meeting and no longer; and the expiration of the said period of four years shall operate as a dissolution of the House:

Provided that the said period may, during an emergency, be extended by the President for a period not exceeding one year at a time and not exceeding in any case beyond the period of six months from the expiry of the period of the emergency."

Mr. President: We shall take up the discussion of this clause at a later stage. We shall proceed to Clause 15.

CLAUSE 15

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I beg to move:

"There should be the usual provisions for the summoning prorogation and dissolution of Parliament, for regulating the relations between the two Houses, the mode of voting, privileges of members, disqualification for membership, Parliamentary procedure-; including procedure in financial matters. In particular, money bills must originate in the Lower House. The Upper House should have power to suggest amendments in money Bills; the Lower House would consider them and thereafter, whether they accept the amendments or not, the Bill as amended (where the amendments are accepted) or in its original form (where the amendments are not accepted) shall be presented to the President for assent and, upon his assent shall become law. If there is any difference of opinion as to whether a Bill is a money Bill or not, the decision of the Speaker of the House of the People should be final.

Except in the case of money Bills both the Houses should have equal powers of legislation and, deadlocks should be resolved by joint meetings of the two Houses. The President should have the power of returning Bills which have been passed by the National Assembly for re-consideration within a period of six months."

Sir, these are matters for which provision is made in all constitutions and they will follow the usual type in our own constitution. This clause only gives authority for the, draftsmen to put the necessary provisions in.

(Amendments Nos. 300 and 301 in List II and amendment No 17 in Supplementary List No. I were not moved.)

Shri K. Santhanam: Sir, I move:

"That in Clause 15 for the last sentence the following be substituted:

'Bills other than money bills, presented to the President for assent may be returned

by him to the Federal Legislature for re-consideration, but no such return shall be made later than six weeks after the passing of the Bills by the Assembly'."

This is intended to make two changes. Now according to the clause as it stands, Bills are to be returned within a period of six months, and as the clause stands, the words "re-consideration within a period of six months" are subject to an ambiguity- Whether a Bill should be returned within six months or whether the National Assembly should meet and consider it within six Months. :Besides, the period of six months is considered' to be, by many of my friends, too long, a period and therefore this amendment of a period of six weeks has been prescribed for return of Bills by the President.

Then all Bids are liable to be returned under the new clause as it stands. this is obviously inconvenient for, money Bills. There should be no power in the President to return money Bills because they are matters of urgency and when the House passes them, it should be taken as final.

Even the Upper House is not considered, competent to change money Bills. So when revisionary, powers, are taken away from the Upper House there is no reason why power should be vested in the President. Sir, I move:

Mr. President: There is no other amendment. So the original clause and amendment are open to discussion,

Sri M. Ananthasayanam Ayyangar (Madras: General). I support this amendment. I would be glad if in respect of money Bills some provision is made for lessening the period within which it will be open to the President to return them for' re-consideration'. I 'have known that in many matters when Bills were passed by the Central Legislative Assembly we; had to regret that,, some provisions crept in which were. absolutely contrary- to your intentions, and even in respect of a money matter it so happened that in the Budget we voted down an amount which we did not like to vote; down and it went to the Upper House and subsequently in another form it had to come back on the intervention of the Governor-General. Even in: a money Bill mistakes occur and we want to correct them. As it is, there is no provision for the Assembly to review its own money Bill except by an amending Statute. I do not see why such a provision should not be made even with regard to money Bills. It is true that power ought not to be vested in the President to clog the progress of a money Bill in case of emergency. I wish the draftsmen who will put in details at a later stage will consider the desirability of giving a power to return a money Bill not later than ten days for any technical flaw which may have to be corrected; otherwise for any matter of substance it need not be open to the President to return it, when such matters must be left entirely to the decision of the Lower Assembly, and the President ought not to take the place of or be a substitute for the Lower Assembly or the Upper Chamber in such matters.

As regards the need to return these Bills, I have said that there are many cases where what one House has done in haste has been corrected by another, and even when both the Houses have bestowed their attention there are many matters which may have to be sent for reconsideration. The present provision in the Government of India Act is for the Governor-General to reserve certain Bills for consideration by His Majesty and the same Bill may be returned with suggestions as to which modifications have to be effected.

I would like to make some more suggestions with regard to some other matters which should be included in Clause 15. The amount of care or limitation with which the other clauses have been drafted, this clause has not been drafted. A number of other items are absent. For instance there, is no provision made, with reference to Budget estimates. Under the existing Act the Budget is presented first to the Legislative Assembly and then to the Council of State. It is open to the Assembly and the Council of State to revise or alter or reduce it :but if the Assembly refuses to vote a Demand, it cannot be restored by the Council of State. It is a matter of investing the Council of State with this power or taking away the power which the Legislative Assembly has. It is not merely a matter of form. I am sorry it is not included in the list of items for which provision has to be made along with other matters to be considered later.

I would also suggest that provision may be made for the summoning or dismissal of Ministers. There is no provision for it now. We have now made provision, by means of an amendment, summoning a Prime Minister who may later on choose other Ministers who will have to be accepted by the President. But, so far as dismissal is concerned, no provision has been made. If the Ministers lose the confidence of the House, it must be open to the President to call upon them to vacate their offices. Some such provision is necessary.

There are one or two matters more for which provision must be made in Clause 15. For instance, take Sections 103, etc., of the Government of India Act, providing for common legislation for two or more units. Now, there are States and Provinces federating with the Union. There may certain subjects common to two States or Units. These subjects may be absolutely provincial subjects; all the same, for the sake of convenience, those two Units may require the Centre to pass legislation. With their consent, on the delegated authority, the Central Legislature may pass legislation. There is no provision here for that.

If we accept the three Lists, one of those Lists contains matter which is exclusively within the jurisdiction of the provinces. Special provision has to be made whereby in regard to certain subjects which are in the provincial List exclusively, if two or three Units are interested in a kind of common legislation there must be an authority which can attend to it and that authority is the Central Legislature which can pass legislation common to the concerned Units. Some such provision must be made in the Constitution and it must be included in Clause 15. The draftsmen of the Constitution may kindly take note of this.

An Honourable Member: Sir, I wish to point out an omission here, due probably to oversight. While considering Clause 15, in the latter part of it the words "National Assembly" were found. According to it, the President should have. the power of returning Bills passed by. the Assembly. Just now, while considering Clause 13, by an amendment of Mr. Santhanam, the words "National Assembly" have been omitted and 'Federal Parliament' inserted. I think the words 'Both Houses of Parliament' should be there.

The Honourable Sir N. Gopalaswami Ayyangar: Sir I accept the amendment moved by Mr. Santhanam.

With reference to the remarks of the last speaker I may point out that in Mr. Santhanam's amendment he has substituted the words 'Federal Legislature' for the words "National Assembly" already. Therefore the objection raised by the last speaker does not hold good.

There were a number of points mentioned by Mr. Ananthasayanam Ayyangar, the last point being that there should be provision for Federal Legislation in cases where two Units apply for such legislation on matters which might be common to both of them, and for other Units of the Federation to apply that legislation to themselves if they wish to do so. That is an important point, Sir. I could give him an assurance that, when the text of the Constitution comes to be drafted, provision will be made for that sort of thing, along with other matters which have not been specifically referred to in this draft of the principles of the Union Constitution.

I may mention, however, that provision for such matters will riot fall under the routine items that are provided for in Clause 15. But I can assure him that the point mentioned will be kept in mind when the text is drafted. I have nothing more to say.

Mr. President: I will put the, amendment to vote. The question is:

'That in Clause 15 for the last sentence the following be substituted :

'Bills other than money Bills. presented to the President for assent may be returned

by him to the Federal Legislature for re-consideration, but no such return shall be made later than six weeks after the passing of the bills by the Assembly'."

The motion was adopted.

Mr. President: I now put Clause 15, as amended, to vote.

Clause 15, as amended, was adopted.

CLAUSE 16

The Honourable Sir N. Gopalaswami Ayyangar: The next Clause is 16. It relates to language.

Sri M. Ananathasayanam Ayyangar: May I request the Honourable Mover not to move this Clause now? This may stand over.

The Honourable Sir N. Gopalaswami Ayyangar: I have no objection to it. But I wish to point out that this particular matter is not likely to come up for discussion during this session. If it is the wish of the House that I should not move this Clause, I shall not move it.

Mr. President: A suggestion has been made that this Clause 16 be not moved at this stage. I will put it to the House.

The question is:

"That the consideration of Clause 16 be postponed."

The motion was adopted.

Chapter III

CLAUSE 17

The Honourable Sir. N. Gopalaswami Ayyangar: Clause 17 relates to the power of the President to promulgate ordinances during recess of Parliament.

"17. (1) If I at any time when the Federal Parliament is not in session the president is satisfied that circumstances exist which render it necessary for him to take immediate action, he may Promulgate such Ordinance as the circum- stances appear to him to require.

(2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Parliament assented to by the President, but every such ordinance-

(a) shall be laid before the Federal Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of the Federal approving it are passed by both House, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the President.

(3) If and so far as an ordinance under this section, makes any provision which the Federal Parliament, would not under this constitution be competent to enact it shall be void."

This clause provides for the issue of ordiances by the President. There can be no objection to the vesting of power of this very limited description for making ordinances in the President. The ordinances car be made only during periods when the legislature is not in session in the case of matters which cannot wait till the next session of the legislature, an ordinance made has got to be placed before the Parliament so soon as possible and shall cease to operate at the expiration of six weeks from the re-assembly of the Federal Parliament. Power is also given to the President to withdrawn ordinances at any time during the interim period if he thinks that it is unnecessary to keep them in force. A power of this description of taking administrative action which has to be taken at once and which cannot wait till the Parliament is in session has been found to be necessary. Sir, I move.

Mr. President: Mr. Shibban Lal Saksena.

Prof. Shibban Lal Saksena: Sir, before I move this amendment I want to know one thing. I had given notice of an amendment modelled on the Irish Constitution and in that I had given five clauses. One of them was that cow slaughter should be prohibited in Bharatvarsh by law. I cannot find that amendment in the printed list supplied to us.

Mr. President : Mr. Shibban Lal Seksena's amendment of which he gave notice relates to that part of the Constitution which you have already; passed, *viz.,* fundamental rights. They will come up again in their final form for discussion at the final stage. So that does not arise at this stage.

Prof. Shibban Lal Saksena: Thank you, Sir.

Sir, I desire that the whole of this chapter should be deleted. This chapter deals with the ordinance making powers of the President. I think on account of the last so many years of foreign rule and rule by ordinances, we have become so much accustomed to ordinances that in the Constitution of free India. we have provided for this ordinance Making power without any compunction.

Shri C. Subrahmanayam (Madras : General) : Is the Honourable Member moving this as an amendment ?

Prof. Shibban Lal Saksena : I am moving the amendment. Let me read out the amendment.

Mr. President : This is not an amendment. This is a negative of moved, you can speak. This is not an amendment so far as I can see

(Mr. Nalavade did not move his amendments Nos. 324 and 325.)

Mr. H. V. Kamath: I am told, Sir, that separate provision will be made for the emergency powers of the President, and so at this stage I do not propese to move this amendment (No. 326).

Shri H. V. Pataskar: Sir, the amendment that stands in my name is as follows:

> "That at the end of sub-clause (1) of Clause 17, the following proviso be added :
>
> > 'Provided that a session of the Federal Parliament shall be held within six months of the promulgation of such an ordinance.'"

So far as Clause 17 is concerned, it confers certain emergency powers of issuing ordinances upon the President. It is further provided in sub-clause (2) that an ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Parliament. And sub-clause (2)(a) says that every such ordinance shall be laid before the Federal Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of the Federal Parliament. The Honourable the

Mover has explained that this should be done as early as possible. It was with the idea that the Federal Parliament should be called within six months of the promulgation of such an ordinance, that I tabled this amendment. Parliament will be in session some time during the year. Ordinances are obnoxious to democracy and at least to allay public suspicions it is necessary that there should be a provision that within six months of the promulgation of an ordinance a session of the Federal Parliament shall be held, I would therefore like to suggest that when the' final draft is made, there should be a definite provision like this in the interests of all concerned, and hoping that this would be done,' I do not propose to move this amendment at this stage.

Mr. President: Mr. Kamath.

Mr. H. V. Kamath: In view of what I stated about amendment No. 326 I am not moving this amendment (No. 328).

(Messrs. Jadubans Sahai and Biswanath Das did not move their amendments Nos. 329 and 330.)

Mr. H. V. Kamath: in view of the statement made by Mr. Pataskar, this does not arise (amendment No. 331.)

(Mr. Sidhwa did not move his amendment No. 332.)

Mr. President: There is no other amendment to this clause of which I have received notice. Therefore the clause is now open for discussion.

Prof. Shibban Lal Saksena: Mr. President, Sir, this clause gives the President over-riding powers over the entire National Assembly. We have been accustomed to ordinance rule long enough and I wish that now when we are framing the Constitution of free India, we do not provide for this power again. Sir, even during the Great War, the President of the United States of America and the Premier of England did not have the power. When we start an our free Constitution we should try and follow the same canons of democracy which have been followed in these great countries. This sort of Power, Once given, is bound to the abused. When this power is given, it is often used even for small things. In fact even during this one year since our Ministries have come to power, we got so many ordinances. I therefore think that if this sort of power is given. it will be the very negation of democracy. I think that we must not take this legacy of autocracy from the past slavery of our country into the free India which we are constructing today and we must therefore see that this thing is not given any place in our new Constitution. After all, if there is a grave emergency, our National Parliament will be ever ready to meet the situation. In Britain and in America they have been able to carry on their work without any such powers even during the last great war when their very existence was at stake. An fact, Mr. Churchill used to take the House of Commons into confidence publicly even in the darkest periods during the Great War. This raised the morale of the people tremendously and rallied their wholehearted support in a manner which no other method could have secured. Rule by ordinance has always been hateful to the people. I do not think that our Premiers and our great leaders are so much desirous of having this clause. I strongly feel that this is a step which negatives the entire Constitution. Besides, it is not proper to give such over-riding powers to a man who is not elected by adult suffrage as this will negative the democratic character of the entire Constitution. I, therefore, suggest that we should make no provision for this clause in our new Constitution.

Sri M. Ananthasayanam Ayyangar: Sir, the previous speaker evidently has taken this Section from the Government of India Act and misread it for some other clause coming later. There are two provisions there in the Government of India Act of 1935, which empower the Governor-General to promulgate ordinances. Firstly during the recess or interval between two sessions of the Legislature he does so on the advice of the Ministers and the Ministers take the responsibility for the same. He can do so also in his individual judgment. That means he can in certain circumstances over-ride the decision of the Ministers but he has however to consult them. The other occasion in which he can promulgate on ordinance in the discharge of his responsibilities specially imposed on him for the maintenance of law and order is in a grave emergency. The life of such an ordinance is only six months, and it can not be renewed except_ with the previous consent of His Majesty. My Honourable friend evidently is mistaking the later provision for the previous one. The previous one is during the recess, when a session of the Assembly is not there and it is not possible to convene a meeting of the Assembly to have an Act and in the place of an Act an ordinance is promulgated. My Honourable friend thinks that the President does it in his discretion. It is not stated in the draft that the President can promulgate an ordinance in his discretion. Then it means that the President promulgates an ordinance on the advice of his ministers. In further means this: that the ministers are responsible for this ordinance and the President is only something like a rubber-stamp giving effect, under his signature, to what the minister wants. The minister is responsible to the legislature. The question of the President not being elected by adult suffrage does not come in, because the ministers who take the responsibility for promulgating the ordinance, can be turned out of office. These objections would not hold good because, we are not giving any autocratic power to the President and the President of his own motion has absolutely no right to promulgate these ordinances. In the Statement of Objects and Reasons i.e.; in the small note appended to this clause in the Provincial Constitution itself, an instance is given that Lord Reading had promulgated an ordinance relating to Customs. It was absolutely necessary then. Many such occasions will arise and we cannot stultify ourselves by denying this power to the Government. It is said that there can be no objection if in six months' time session of the Assembly could be convened. Soon after an Assembly session, the ministers are not likely to invoke the special power because if they had already a proposal in view they would have got an Act passed in the Session of the Assembly. If the emergency arises after the conclusion of the Assembly, they would invoke this power and six months thereafter, another session of the Assembly will normally come in. There need be no statutory provision that within six months after the ordinance comes into being or is promulgated, there must necessarily be a session of the Assembly. There will be many cases where for very small matters, which do not involve any principle, an ordinance has to be promulgated. Such matters need not necessiate invoking a session of the Assembly. Therefore, I submit there is no substance in the amendments proposed nor In the opposition to the clause as a whole by Mr. Shibban Lal Saksena.

Mr. H. V. Kamath: Mr. President, I submit, Sir, that there is a slight ambiguity in this Clause 17, which I would request Sir, Gopalaswami to clear in the course of his reply. In this clause we are treating the President and the Federal Parliament as two distinct entities, whereas in Clause 13 we have defined the Federal Parliament as the President plus the two Houses, that is, the Council of States and the House of the People. Personally I feel now, Sir, that the deletion of the words "National Assembly comprising" in Clause 13 was unfortunate because if we had retained them we could have defined the Houses jointly as a National Assembly and the Parliament would have been the President plus the National Assembly. Otherwise confusion is bound to arise throughout this Constitution as between the Federal Parliament, the President and the two Houses taken together.

Mr. Naziruddin' Ahmad: Mr. President, Sir, I wish to say a few words regarding the comment made by the Honourable Member who opposed the inclusion of Chapter III. In his speech he has expressed a sentiment which will be the- common sentiment in this House-. It is that we are going to have a free India; but with the other sentiment in connection with that amendment, I am not in, sympathy. The Honourable Member seems to think that in a Free India there should be no such laws, but we are going to have democratic independence and democracy means rule of law. The Honourable Member suffered. from the nightmare of the, misuse of the Ordinances, of which we have had enough experience during the last war. I think that nightmare should go. The power will now be exercised by our elected men and our chosen representatives and they would no doubt act on the advice of responsible ministers. It is therefore reasonable to suppose that they would not abuse their powers. In these circumstances, I should suppose that they should have the power. But the question is really the proper application of the power or its misapplication. I think the existence of the power is a necessity so as to enable the Government to run on smoothly. What would happen when the legislatures are not in session and when there is a grave emergency? As to the kinds of emergency, there are an unlimited variety which may arise. A war or a mutiny or anything of that kind may arise. Flood shortage and other things may arise. Then the legislature may not be in session. So, the President should have this power which may be employed usefully for the good of the community. in these circumstances, I should submit that the existence of the power is a great necessity and I have no reason to suppose that they would be misapplied: rather they would be applied for our benefit.

The Honourable Sir N. Gopalaswami Ayyangar: I am very grateful to my Honourable friend Mr. Ananthasayanam Ayyangar for having disposed of so effectively both the amendments moved and the opposition that was offered to the passing of this clause. I have little to add to what he has, said on these two aspects.

I would like to refer only to the point that was mentioned by Mr. Kamath, the use of the words "Federal Parliament" here. That is a matter which requires examination. An ordinance is issued by the President and if he lays it before the two Houses of the legislature, there are two contingencies of which you have got to take notice. If the ordinance relates to a matter which deserves to be provided for by permanent legislation, it has got to be approved by the Parliament as a whole including the President, because it will be legislation. But if it is a case of an ordinance which is only of temporary duration, or it is a case where the Houses of the legislature pass only a resolution disapproving of it and it ceases to have effect, then, perhaps it is not correct to use the word "Parliament". But all these aspects of the wording of this sub-clause (a) of Clause (2) of this paragraph, will be taken into full account when the text of the draft of the constitution comes to be settled.

Mr. President: I would now put Clause 17 to vote.

Clause 17 was adopted

CLAUSE 18

Mr. President: We shall now take up the next clause.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, we pow on to Chapter IV, Federal Judicature. The clause which I have got to no" relates to a very important part of the constitution. We have got two or three amendments and I hope you will agree that after I move this particular clause further proceedings in connection with the clause may be held over till tomorrow.

Mr. President: I was Just going to suggest that you may formally move the clause, the, amendments may also be formally moved, and we may discuss the clause and amendments tomorrow. If you can move the clause today, the amendments also could be moved.

The Honourable Sir N. Gopalaswami Ayyangar: As a matter of fact, it may be that an agreed amendment will dispose of all other amendments.

Mr. President: You will move the clause first.

The Honourable Sir N. Gopalaswami Ayyangar: I beg to move Clause 18:

18.There shall be a Supreme Court with the constitution powers and jurisdiction recommended by the ad hoc Committee on the Union Judiciary except that a judge of the Supreme Court shall be appointed by the President after consulting the Chief Justice and such other Judges of the Supreme Court as also such Judges of the High Courts as may be necessary for the purpose."

I move.

Mr. President: I have got notice of two or three amendments. They could be formally moved today. That may save some time tomorrow.

(Messrs. Jaspat Roy Kapoor, B. Pocker Sahib Bahadur, K. T. M. Ahmed Ibrahim Sahib Bahadur, Rai Bahadur Syamanandan Sahaya and H. V. Pataskar did not move their amendments, Nos. 333 to 336.)

Shri K. Santhanam: I move:

"That for Clause 18, the following be substituted:

'18. There shall be a Supreme Court with the constitution, powers and jurisdiction recommended by the ad hoc Committee on the Union Judiciary except in the following particulars:

(a) The additional jurisdiction to be vested in the Supreme Court according to para 10 shall be by Federal Law.

(b) The appointment of the Chief Justice and the other Judges of the Supreme Court shall be by the President after consulting a joint standing committee of both Houses of the Federal Parliament consisting of six members from the House of the People and five members from the Council of States.

(c) The salary and pensions of the Judges of the Federal Supreme Court should be fixed by Federal Law and they should not be altered in the case of any Judge to his disadvantage'."

Sir, I have today given notice of a revised version to be substituted in the place of clause (b) and I shall request your permission to Move it tomorrow.

Shrimati G. Durgabai (Madras: General): Mr. President, Sir, I beg to move the following amendment:

"That after Clause 18, the following new clause be inserted:

'18-A. New High Courts may be established in any newly created province on an address being presented by the Legislature of that province to the Governor and on the same being approved by the President."'

Sir, I will ask your permission for a debate on this, later.

Mr. President: It is an independent clause. We shall take it Up separately.

It is just one o'clock. We shall. adjourn now till 10 o'clock tomorrow.

Sir Alladi Krishnaswami Ayyar: I had given notice of an amendment this morning. May I read it now, Sir?

Mr. President: We have adjourned now. We shall take it up tomorrow,

The House then adjourned till Ten of the Clock, on Tuesday, the 29th July 1947.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME IV

Tuesday, the 29th July 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

REPORT OF THE UNION CONSTITUTION COMMITTEE

CLAUSE 18

Mr. President: We were dealing with Clause 18 yesterday. Some amendments were moved and some other amendments were not moved. There is one amendment by Mr. Ananthasayanam Ayyangar. Will you take that up now?

Mr. H. V. Kamath (C. P. & Berar: General): Sir, before we take up the day's business, may I say, that after the adoption of the National Flag, the question of our National Anthem-our *Rashtragita* also, has got to be determined. We were pleased, Sir, to appoint, in the exercise of your inherent powers, a Committee in connection with the Flag. May I request you, Sir, to similarly appoint a Committee *ad hoc* to go into this question of our *Rashtragita* so that it may be decided early?

Mr. President: I have had that matter under my consideration but I have not been able to fix that up yet. National Anthem might take a little more time than the Flag did and we should not be in a hurry about it. Therefore I am not in hurry myself. We will take up amendment No. 15 in Supplementary List II: There is an addition to the clause.

Shri M. Ananthasayanam Ayyangar (Madras: General): Shrimati Durgabai has already moved it.

Mr. President: There is an amendment by Sir Alladi. Will you take that up?

Sir Alladi Krishnaswami Ayyar (Madras: General): Sir, I beg to move the following amendment;

"That for clause 18 of Chapter IV, the following be' substituted:

'18. Supreme Court.-There shall be a Supreme Court with the constitution, powers and jurisdiction recommended by the ad hoc Committee on the Union Judiciary, subject to the following modifications and conditions:

(1) (a) A judge of the Supreme Court shall be appointed by the President after consulting the Chief Justice and such other judges of the Supreme Court as also such Judges of the High Courts as may be necessary for the

purpose.

> (b) For the second sentence of paragraph 15 of the Committee's report the following shall be, substituted: "Their salary may be provided for by statute."
>
> (c) Provision for the removal of Judges of the Supreme Court be made on the following lines:
>
> > "A judge of the Supreme Court of India shall not be removed from his office except by the President on an address from both the Houses of Parliament of the Union in the same session for such removal on the ground of proved misbehaviour, or incapacity. Further provision may be made by Federal law for the procedure to be adopted in this behalf.""'

I may mention, Sir. that there are certain other amendments by Mr. Santhanam. Some of his amendments overlap but I would like to explain my position with regard to these amendments. If any of his amendment is more comprehensive than my amendment, then I would be glad to withdraw. One thing I want to make quite clear. The object is not to male a comprehensive provision in regard to the Supreme Court. The normal procedure that is adopted in every constitution is to give the main heads of power of the Supreme Court and leave it for Judicature Act to be passed by the Assembly to implement the powers that are conferred under the Constitution. From the very nature of things, you cannot have all the provisions inserted in the Constitution. You may indicate what exactly is the head of jurisdiction in regard to the original jurisdiction. You may indicate what exactly is the basis of the appellate jurisdiction. The reason why more detailed provisions were found a place in the Constitution Act of 1935 is quite obvious because the Constitution then wanted to give only certain restricted powers to the Federal Court. Secondly, the Legislature of India itself was not clothed with plenary powers. Therefore Parliament provided more exhaustively for all those powers to be exercised by the Federal Court than are ordinarily found in a Supreme Court Constitution in other Federations. Therefore under those circumstances, the Committee, as referred to in the existing Government of India Act, has indicated what exactly are the lines of jurisdiction, what exactly are the powers to be exercised both on the original side as a matter of original jurisdiction-and as a matter of appellate jurisdiction and that Committee's report is fairly comprehensive; for example, whether supplementary jurisdiction can be invested in the Supreme Court or not is another point that has been raised. That is again referred to in the Committee's Report. Therefore there is nothing to prevent any supplementary jurisdiction being conferred upon the Supreme Court by the future Union Legislature. That will be competent. The main heads of jurisdiction will be indicated in the Constitution Act. Secondly, supplementary jurisdiction is referred to in the report itself. Then the matters in which it can be taken up by the States are also referred to in the Report. Under those circumstances, I venture to think that this provision is adequate. Then with regard to the removal of judges under the Constitution of 1935, the power was vested in His Majesty in Council and His Majesty would have the advantage of a Judicial body. Therefore that was the basis of the Act of 1935. In cases of misconduct or misbehaviour, His Majesty in Council was clothed with the jurisdiction to initiate any proceedings against a Judge of the Federal Court or against a Judge of the High Courts in India. Under the present Constitution the suggestion that is made, in certain quarters that the President of the Union with the advice of some Council or some Panel of Judges should have the power of removal is not, I venture to submit, a proposition which will meet with the acceptance of the House. That will bring the highest judicial dignitary in the land, the Chief Justice or the Chief Justices of the High Courts into the position of a member of the Indian Civil Service. Imagine the President appointing a special Commission of a few judges to enquire into the conduct the Chief Justice of India or the Chief Justice of the Provincial High Court. I should think that is not a position which will commend itself to the House. This particular provision which I have put in. namely, that "he shall not be removed from his office except by the President on an address from both the Homes of Parliament of the Union in the same session for such removal on the ground of proved misbehaviour or incapacity", is in line with the provision in the various Acts of the British Commonwealth. In Australia, in Canada, in South Africa, there is a similar provision and similarly from the date of the Act of Settlement In England it is only by resolution of both the Houses that a judge, could be removed his office. It does not mean that that power will normally be invoked. The best testimony to such power is that it has never been exercised. It is a wholesome provision intended to be a salutary check on misbehaviour, not intended to be used frequently, and I have no doubt that the future legislatures of India which are invested with this power will act with that wisdom and that sobriety which have characterised the great Houses of Parliament in other jurisdiction. Therefore this provision with regard to proved misbehaviour, they may appoint a Committee of the House; it may be a case of secret session. But ultimately the Resolution will have to be passed by both Houses. And then, he may be removed for misconduct. That is not a happy way of expressing the tenure of a judge. That is why it has been put in the negative-"he shall not be removed etc." Then, further provision may be made by Federal law for the procedure to be adopted in this behalf, i.e. you cannot put in all the detailed provisions by which the machinery can be set in motion in this Act. As a matter of fact, even a provision like, "Further provision may be made by Federal law for the procedure to be adopted in this behalf" does not occur in other constitutions, but there is a tendency to over-elaborate the provisions on our side and that is the only justification for my putting in that clause. Having regard to the very detailed provisions in the present Government of India Act which are intended to be adapted in the present constitution, so far as they are consistent with the man tenet of our constitution, namely, that we are providing for a Free India, there is no difficulty in adapting those provisions to the judicial machinery that we are going to erect. Therefore we have got those provision. One of our friends has put forward the provision that a judge's salary cannot be reduced during his tenure of office. That provision occurs in the Government of India Act. Therefore, we need not have a detailed provision. Let us concentrate ourselves on the fundamentals (a) in regard to jurisdiction (b) in regard to removal from office. Other matters may be left to Federal law and also to the present Government of India Act which is intended to be adapted into the provisions of this constitution. That is the reason why I have Put the word "salary". That may include emoluments, leave allowances and so on and so forth, but all that need not find a place in the constitution. On these grounds I would ask the House to accept this amendment, but if any convincing reasons are placed why another amendment is to be adopted, I am not wedded to my amendment, I shall be glad to yield to any other amendment that may be proposed.

Shri K. Santhanam (Madras: General): Sir, I move:

"That for Clause 18, the following be substituted:

'18. Supreme Court.-There shall be a Supreme Court with the constitution, powers and jurisdiction recommended by the *ad hoc* Committee on the Union Judiciary except in the following particulars:

(a) judge of the Supreme Court shall be appointed by the President after consulting the Chief Justice and such other judges of the Supreme Court as also such judges of the High Courts as may be necessary for the purpose;

> (b) the additional jurisdiction to be vested in the Supreme Court as per para. 10 shall be by Federal law;
>
> (c) the salaries of the Chief Justice and other judges of the Supreme Court shall be fixed by Statute and the salary of no judge shall be diminished during his tenure of office;
>
> (d) provision for the removal of judges of the Supreme Court shall be made on the following lines:
>
> A judge of the Supreme Court of India shall not be removed from his office except by the President on an address from both the Houses of Parliament of the Union in the same session for such removal on the ground of proved misbehaviour or incapacity'".

Sir, I beg to point out that my amendment embodies all the clauses moved by Sir Alladi Krishnaswami Ayyar and in addition two further clauses. One is with reference to the jurisdiction. The, jurisdiction of the Supreme Court is certainly the most important consideration in coming to a decision about the provisions of the Court. I may divide this jurisdiction into two broad categories, namely, the Federal jurisdiction and the non-Federal jurisdiction. Federal jurisdiction falls into four classes. The first class is original and exclusive jurisdiction which refers to inter-Unit disputes or disputes between Units and the Federation. The second class of jurisdiction which is perhaps novel to the Supreme Court in any constitution and which is not vested today in the Federal Court is that the Supreme Court may have both appellate and in some cases original jurisdiction with reference to fundamental rights. That is a new category which is being introduced by our constitution which says that in the case of fundamental rights, ordinarily, it will have appellate jurisdiction but that in any area where there is no provision or proper court to take consideration of fundamental rights, then the Supreme Court may have even original jurisdiction in the matter of such rights. The third category is the appellate jurisdiction with reference to the interpretation of the Federal Constitution and the fourth category is appellate jurisdiction with reference to Federal laws. All these categories of Federal jurisdiction are common both to Provinces and States and this will be possessed by the Supreme Court. But besides this Federal jurisdiction, the Supreme Court will have two categories of non-Federal jurisdiction and this will be confined to Provinces. One is that there will be an appellate jurisdiction with reference to the interpretation of Provincial constitution. Secondly, there will be an appellate jurisdiction with reference to the interpretation of provincial laws It is a pity that the Committee of the Union judiciary found that they could not invest the Supreme Court with the same jurisdiction with reference to the States. I am not here to say that this should be done by coercion or any kind of imposition. but I would appeal to the States that it is to their own advantage that they should invest the Supreme Court with jurisdiction regarding their State constitutions and State laws in the same way as the Provinces have done. With reference to their own State Constitution, there may be disputes between the people and the rulers and the judgment of the State High Court may not be considered binding on the people. They may think that the State Court is not sufficiently impartial to interpret the State Constitution and they may say that only the Supreme Court can give a judgment which both the rulers and the subjects will consider impartial.

Secondly, even in the case of ordinary State laws, many of the States' Laws are mere adaptations of the laws of the Provinces' Some of the States have not got the elaborate machinery, have not got the necessary legal departments to frame the laws precisely. 'They simply adopt the Provincial laws. That being the case, supposing the State Court interprets a State law in one manner and the same law is interpreted by the Supreme Court in a different manner, there will be great confusion. After much expense and great trouble, the Supreme Court which belongs to both the Provinces and the States is being established, and I think it will be extremely unwise if the States take their stand on a mere question of prestige and fail to take full advantage of the Supreme Court.

In Clause 10, it is said:

> "It will also, of course, be open to any Indian State Unit to confer by special agreement additional Jurisdiction upon the Supreme Court in respect of such matters as may be specified therein."

While I wish that every Indian State should come into the jurisdiction of the Supreme Court on the same level as the Provinces, I dislike the idea of an Indian State Unit conferring by special agreement additional jurisdiction upon the Supreme Court in respect of certain matters. The vesting of such jurisdiction should be done only by the Federal Legislature. It is only the Federal Legislature which should have the power to amend or alter or in any way modify the jurisdiction of the Supreme Court.

With reference to salary, I quite agree with Sir Alladi that it should not be diminished during the tenure of office. But why not precisely state the clause about the salary here?

I have adopted the same clause for the removal of judges except that I have omitted the clause about further provision which is superfluous.

I think my amendment is more comprehensive and I hope Sir Alladi will accept it.

Sir Alladi Krishnaswami Ayyar: In view of what has been said by Mr. Santhanam. I would like to invite the attention of the House to certain passages in the Report. Paragraph 7 of the Report. says:

> "If the Union Legislature is competent to legislate on a certain matter......".

Mr. President: It would be better if we had all the other amendments for discussion. If you are going to make a speech. it would be better to do so after the amendments have all come before us.

Sir Alladi Krishnaswami Ayyar: I have only a few observations to make arising from what Mr. Santhanam said just now. I am not going to make a speech. I only want to explain my position with reference to certain passages in the Report itself.

Mr. President: It may not be quite in order to allow another speech.

Sir Alladi Krishnaswami Ayyar: I am speaking only about what Mr. Santhanam spoke, I am not going to speak about my own amendment; but as a member of this House I am entitled to speak on the amendment of another member. I shall reserve my speech to a later stage.

Mr. President: I shall have to consider it at that stage.

Yesterday, the Mover of the clause did not make any speech and we agreed that the speeches should be reserved for to-day. The movers of the amendments also did not make any speeches. Now, this is the time when the mover of the clause and the movers of the amendments may speak and thereafter they will all be open for discussion.

Sir Gopalaswami Ayyangar, would you like to speak now?

The Honourable Sir N. Gopalaswami Ayyangar (Madras: General): Sir, I think the Movers of the amendments and the other speakers may make their speeches. If I have anything to say, I will do so at the end.

Shri M. Ananthasayanam, Ayyangar: Sir, you will find that Clause 18 refers to the Report of the *ad-hoc* Committee on Supreme Court dealing with the functions of the court, the appointment of the judges, their removal etc. This Report consists of more than 15 to 16 para every one of which is contested. We have given amendments to the suggestions and recommendations of these paragraphs. So all the amendments to this clause, Clause 18, and the ad hoc Committee's Report may be moved formally and then a discussion on various points can be had and then they may be put to vote in "he order, of preference.

Mr. President: So far as I can see here, there is no other amendment to Clause 18 of which I have notice. There is only one, your own amendment to the Appendix. You may move it now.

Shri Ananthasayanam Ayyangar: Clause 18 is incomplete without the appendix; they go together. I am not moving amendment No. 16. I move No. 17. I do not move No. 18 and No. 19 which stands in the name of Shrimati Durgabai and myself will be moved by Shrimati Durgabai.

My amendment is as follows:

"That in Para 9 of the Appendix, state:

> (a) that the appellate jurisdiction of the Privy Council in any legal matter is hereby abolished and vested in the Supreme Court;
>
> (b) that pending appeals in the Privy Council shall be disposed of by the Supreme Court."

Sir Alladi Krishnaswami Ayyar: There is another clause in the Report dealing with transitional provisions-Clause 3 which refers to cases pending before the Federal Court. My friend's amendment is to delete that provision. I suggest to him the amendment may be brought under Part XI, Clause 3 which runs in these terms:

> "Until the Supreme Court is duly constituted under this Constitution, the Federal Court shall be deemed to be the Supreme Court and shall exercise all the functions of the Supreme Court:
>
> Provided that all cases pending before the Federal Court and the Judicial Committee of the Privy Council at the date of commencement of this Constitution may be disposed of as if this Constitution had not come into operation."

My friend's amendment says that it shall not be there. I myself have given notice of an amendment in regard to this clause. Supposing some decision is come to by the House in regard to the amendment moved by may friend and later on I try to move my amendment in regard to the third proviso it would be out of order. The House would have already arrived some conclusion. Therefore I suggest that any amendment in regard to Part XI, Clause 3 may be taken up along with this the interest of clarity, because there is a special provision that is made in regard to pending causes in Part XI paragraph. Therefore I :suggest that if my friend wants to move any amendment in regard to pending causes, it may be moved, separately or, at any rate I have given notice of an amendment in regard to paragraph 3 this morning. That might be taken up along with his.

Shrimati G. Durgabai (Madras: General): Sir, I beg to move amendment No. 19 in Supplementary List II:

"That in para. 14 of Appendix, the following be added:

'Every judge shall be a citizen of the Union of India.'"

Paragraph 14 lays down the tenure of office and conditions of service of judges. Mr. President, I want that every judge shall be citizen of the Union of India. I have moved clause (a) only: I am not pressing clause (b)

Shri M. Ananthasayanam. Ayyangar: Sir, I am not moving my amendment No. 20 on Supplementary List No. II. I will move No. 21:

"That the following be added to the Appendix:

"1 (a) A judge may resign his office by communicating to the President.

(b) A judge may be removed from office on the ground of misbehaviour or of infirmity of mind or body by an address presented in this behalf by both the Houses of the, Legislature to the President, provided that a committee consisting of not less than 7 High Court Chief Justices chosen by the President, investigates and reports that the judge on any such ground be removed.

(c) A judge shall cease to hold office on his being adjudged an insolvent."'

So far as this is concerned my friend Sir Alladi Krishnaswami Ayyar has already spoken. If you would permit me I will speak immediately or I will reserve my right to speak.

Mr. President: There is another amendment in the third list in your name.

Shri M. Ananthasayanam Ayyangar: I will move that also:

"That the following be added to the Appendix of the Report:

'1. (a) A judge of the Supreme Court may resign his office, by tendering his resignation to the President.

(b) A Judge of the Supreme Court may be removed from office by the President on the ground of misbehaviour or of infirmity of mind or body, if on reference being made to it (Supreme Court) by the President, a special tribunal appointed by him for the purpose, from amongst judges or ex-judges of the High Courts or the Supreme Court. report that the judge ought on any such grounds to be removed'."

Mr. President: All the amendments have been moved and they are now open to discussion.

Shri M. Ananthasayanam Ayyangar: Sir. there is a jumble of amendments, to clause 18 and also the various paragraphs in the Appendix. All of them can be Put under five heads.

(1) Some of them relate to the authority which is to appoint a Supreme Court judge:

(2) the authority that has got the right to remove one or other of them,

(3) qualifications for being appointed a Supreme Court Judge,

(4) by whom the salary or emoluments have to be fixed, and

(5) the jurisdiction that has to be conferred on the Federal Court. These are the five items with respect to which amendments have been tabled.

Now with respect to appointment, I find that there is almost unanimous opinion regarding the power to appoint judges being vested in the President-the President not in his discretion but the President in consultation with his ministers. In addition he can consult the Chief Justice of the Federal Court or the judges of any of the high courts. It may be that he wants to appoint a judge from one of the high courts, in which case he can consult the Chief Justice or the puisne judges of the High Court other than the one whom he wants to appoint. It may not be necessary to consult the judges of all the high courts in the provinces and also in the States. Therefore discretion ought to be given to him to consult such of those judges as may have had the opportunity to know the judge whom he wants to appoint for the Supreme Court. There is almost unanimity of opinion in this matter and there is not much controversy over that.

As regards the right to remove a Supreme Court Judge there is deep difference of opinion on this matter. One school of thought is headed by Sir Alladi Krishnaswami Ayyar, who has tabled an amendment that by an address presented by both Houses of the Legislature to the President, any judge or the Chief Justice of the Supreme Court may be removed from office. The amendment that I have tabled is that it is open to the President to appoint a tribunal consisting of not less than 7 High Court Chief Justices to investigate into this matter and come to a conclusion that the judge or judges ought to be removed for stated misbehaviour or misconduct or similar reason. The President may then remove him. I have also tabled another amendment that a judge may be removed from office by the President on a report presented to him by a panel of judges appointed for the purpose. The objection of Sir Alladi Krishnaswami Ayyar is based on the reason that the highest authority so far as judicial work is concerned in the Union will be at the mercy of the executive head of the Union. It is true that the President will act on the report presented to him by a panel of judges, but in that manner the President's authority is limited. But Sir Alladi thinks that this power ought not to be vested in the President at all, because it will make the Supreme Court judge sub-ordinate to the President. Therefore he has suggested a remedy, that only when the legislature moves the President in this matter by a unanimous resolution, the judge ought to be removed. I have suggested a middle course and have tabled an amendment that any judge of the Supreme Court may be removed from office on an address presented to the President by both Houses of the Legislature but before the address is presented the President must have appointed a committee of seven judges of high courts to investigate into this matter. If they report that the judge in question has committed any breaches for which he is liable to be removed, on that report both the Houses of legislature may present an address to the President or withhold it. Therefore this is a combination of both remedies. The legislature will have control over the removal of a judge and the Power will not be exclusively given to a President or a Panel of Judges. As both houses of the legislature are constituted their number is nearly 600. You will remember that with respect to the removal of the President an amendment was tabled and accepted that when the lower chamber or either of the Chambers initiates a resolution for the removal of the President by way of impeachment, a committee has to be appointed by the other house and on the committee's report a resolution must be framed. It is in the fitness of things that a small body should go into the matter of the misbehaviour of a Federal Judge and recommend that he be removed. The entire body of the legislature consisting of 600 and odd members may find it difficult to investigate into the matter, themselves. Therefore it is reasonable to suggest that both the Houses must be moved in the matter after a committee of judges has reported that it is a fit case for interference. I am not alone in making this suggestion. The Sapru Committee Report-SIT N. Gopalaswami Ayyangar was a member of the Committee-has suggested that the President, in accordance with the report of the to be appointed for this purpose, may be empowered to remove any judge of the Supreme Court. If Sir Alladi Krishnaswami Ayyar takes objection to this item in the Sapru Committee Report on the ground that it becomes an absolute power in the hands of the President to accept or reject, I could see no objection to his accepting my amendment in this respect which is a combination of both the judicial and executive authority.

The next item in my amendment relates to the qualifications of judges. It is nothing but a reproduction of the qualifications found prescribed in the Government of India Act. To this, Mrs. Durga Bai has tabled an amendment saying that the Judge should be a citizen of India. It is not necessary to say anything on the subject after with the Mover has said. It is incumbent on us to see that, as was laid down in the clause relating to the qualifications of the President, a Judge of the Supreme Court, who is the watchdog of democracy, is also a citizen of India. He must be a citizen of a Unit. The third qualification also is reasonable and may be accepted.

The fourth item relates to salary. It ought not to be left to the discretion of the President as to what the salary should be. I have also tabled an amendment on this point, but as Mr. Santhanam has a similar amendment, I am not pressing mine. The salary ought not to be varied by the Legislature as long as a person who has occupied the post continued there. In other cases, the salary may be varied.

The last amendment relates to jurisdiction of the Supreme Court. I am sorry to have to say that the approach Mr. Santhanam made to this question of jurisdiction is not quite correct. It ought to be that the Supreme Court has supreme jurisdiction in all matters, but an exception may be made in favour of the States in respect of non-Federal Laws. In. respect of any law of the Constitution, it is the Supreme Court that must lay down the law and it must be binding even on States. With regard to British India, the Supreme Court is the highest court in the I and with, original jurisdiction in regard to inter-State matters and wit.-II appellate jurisdiction over all provincial High Courts. Our Supreme Court is. to supersede and replace the Privy Council which has been exercising a kind of appellate jurisdiction over all matters both civil and criminal. This jurisdiction of Privy Council may be transferred to the Supreme Court with some restriction regarding appellate jurisdiction In regard to criminal cases in States.

One other point I want to mention in this connection. It was said that the States cannot confer jurisdiction an the Supreme Court by agreement.. The Government of India Act of 1935 contemplates the accession of certain States on conditions and terms. If, by the terms of the agreement, the States confer jurisdiction on the Supreme Court while joining the Union. the terms and conditions of their agreement will be taken judicial notice of and will be enforceable. Therefore it is not wrong and it would not be improper, nor would it be beyond our jurisdiction; to lay down similar provisions to say that as regards any State acceding to the Federation on terms and conditions, such terms and conditions shall become part and parcel of the jurisdiction of the Supreme Court Act. The Supreme Court, may, without any further Act in this matter, extend the jurisdiction conferred upon it by agreement. There is nothing novel in it. It is already' in the 1935 Act and it may be accepted.

Then, as regards the existing appeals to the Privy Council, it is true that in the Transitional Provisions, there is provision later in this draft. But the provision there is that all pending appeals must be disposed of by the Privy Council itself. It means that even, after we attain independence and the new Constitution comes into force, the Privy Council should have jurisdiction' over the pending appeals. Sir Alladi Krishnaswami Ayyar suggests that this matter may be left over to the stage of consideration of the Transitional Provisions. I agree to that suggestion. I suggest that all these five points in the amendments may be put to vote together instead of taking each amendment separately regarding appointment, removal, qualifications, fixation of salary and vesting of jurisdiction in the, Supreme Court,

Mr. President: I should like to have the leave of the House for absence for a short time as I have to go to the Aerodrome to receive Mr. Jagjivan Ram who is returning today. (*Cheers*.) I would request Sir V. T. Krishnamachari to take the Chair during by absence. (The President then vacated the Chair, which was taken by the Vice-President, Sir V. T. Krishnamachari, *amidst cheers).*

Shriyut Rohini Kumar Chaudhury. (Assam: General) : Mr. Vice-President, Sir. I would request Honourable Members of the House to take care of their ear-drums when I speak through the microphone. I am a loud-speaker myself and when I speak through the microphone, the sound might become perilous for their ears. With this apology I want to address the House.

I think, Sir, the matter under discussion has been very much complicated by now and I shall endeavour to place before this House what simpleminded persons like me have understood from the debate. I take it, Sir, that after we have established the Supreme Court, the Privy Council will disappear, that the jurisdiction which is now being exercised by the Privy Council will be exercised by the Supreme Court but that the same amount of delay with which the Privy Council used to exercise their jurisdiction an in civil, criminal and other matters will not attend the administration of justice Supreme Court. It has been said, Sir, that it is easy to go into a Court but it is very difficult to get out of it. That has practically been our experience whenever any case had gone to the Privy Council. In the absence of anything said or done to prevent such delays, I take it that justice will be as delayed as it was in the days of the Privy Council. Sir, instead of asking constitutional or unconstitutional lawyers to advise the House on it, I suggest that some persons in this House who had exercised the powers of a judge of a High Court may device means by which delays in the administration of justice may be avoided, because it is well known that justice delayed is justice denied.

Sir, the next thing that we understand is that these judges will be appointed by the President in consultation with a panel of judges. The panel of judges will therefore have the first voice in the matter of the selection of the judges of the Supreme Court. It means that inferior judges are going to appoint the Supreme Court judges. The judges of High Courts will give the first suggestion as to whom they want as their Chief Justice of the Supreme Court. That suggestion will come from the judges of the High Court who are certainly inferior to the judges of the Supreme Court, but I think there is nothing wrong in that because when even a Sub-Inspector can investigate into cases against their superior officers, when even ordinary electorates can elect the President, there can be no difficulty about High Court Judges appointing or suggesting the names of the judges of the Supreme Court. As a matter of fact, I cannot suggest any better alternative myself. Therefore I think that will be the right course.

Then, Sir, I believe that the Supreme Court as I understand it-I am only giving my impression from the discussion will. also on occasion, exercise the functions that are now exercised by the Federal Court in constitutional matters. Not only that, they will also advise the Government in certain legal matters. This is a serious proposition o far as I am concerned. I do not understand how, if 'the Supreme Court really advises the Government in certain legal matters, in any future litigation between the Government and the party affected, the judges will be able to exercise their discretion and give their judgment impartially. That is a point over which I would like to have some elucidation. With these few words, I support the amendment that has been moved.

Sir Alladi Krishnaswami Ayyar: Sir, I want to answer certain points made by Mr. Ananthasayanam Ayyangar and Mr. Santhanam.

In the first place with regard to the vesting of any special or additional jurisdiction in the Supreme Court, it is provided for in the report which is submitted for the acceptance of the House. Clause 7 of the Report runs in these terms:

> "If the, Union Legislature is competent to legislate on a certain matter, it is obviously competent to confer judicial power in respect. of that matter on a tribunal of its own choice; and if it chooses the Supreme Court for the purpose, the Court will have the jurisdiction so conferred."

Therefore there is nothing to prevent additional jurisdiction being conferred if you adopt that report. When the constitution is finally framed and settled we will have to provide for the vesting of additional jurisdiction.

Then my friend Mr. Santhanam, made a comment on the fact that paragraph 10 of the Report says that it will also of course be open to any Indian State Unit to confer by special agreement, additional jurisdiction upon Supreme Court. In this paragraph the Committee was dealing with a particular kind of jurisdiction which has to be exercised in respect of Indian States, cases involving the interpretation of a law of the Union and cases involving the interpretation of a law of a Unit other than the State concerned, and the States were not prepared to go further than that. Apart from the court being with a jurisdiction to deal with the constitutional validity of law, it is provided that it will also be open to an Indian State to confer additional jurisdiction by special agreement. That does not derogate from the plenary powers of the legislature'. At any rate that is not the intention or the object of the Committee. Two things are necessary. So far as the States are concerned, they must agree to supplemental jurisdiction other than the jurisdiction indicated in paragraph 9. There is of course the other necessary pre-requisite, *viz.*, that the Federal Legislature must be willing to clothe the Supreme Court with the jurisdiction. If that is the intention, there is absolutely no necessity for the amendment. The object is not and cannot be to give independent power to a State, without reference to the legislature, to invest any additional jurisdiction. Therefore, when the constitution is framed, such jurisdiction as may be conferred by the Union Legislature with the consent of the States in matters in which the States are interested, will have to be specially provided for. This is my submission to you, Sir, with regard to the necessity for additional jurisdiction. That is exactly the object of the two clauses of the report.

Now the second point is about the Parliament being invested with the power of removal of judges. Here I would ask you, Sir, to follow the practice in all the Dominion Constitutions. Whereas on the one hand there is an anxiety to increase the importance of the judiciary, I cannot understand the judciary also being treated on a level with Government servants or by a kind of special tribunal being invested with the power of removal. That is why in the Dominion Constitution the words "proved misbehaviour" are used. While the ultimate power may rest with the two Houses, the clause provides that the charges must be proved. How exactly to prove the charges will be provided for in the Federal Law. We need not be more meticulous or more elaborate than people who have tried a similar case in other jurisdictions. I challenged my friend to say whether there is any detailed provision for the removal of judges more than that in any other Constitution in the world. The general principle is laid down in the Constitution and later on the Federal Law will provide for adequate machinery and that is the import of the clause. I would, therefore, ask the House to accept the general principle namely, that the President in consultation with the Supreme Legislature of this country shall have the right. That does not mean that the Supreme Legislature will abuse that power. There is sufficient safeguard in the reference "Proved misbehaviour" and we might make elaborate; and adequate provision for the way in which the guilt can be brought home to the particular judge in any federal law that may be passed, but that is a different matter.

But I do not think that in a Constitution it is necessary to provide detailed machinery as to the impeachment, the charges to be framed against a particular judge. To make a detailed provision for all these would be a novel procedure to be adopted in any Constitution. You will not find it in any Constitution, not even in the German Constitution, which is particularly detailed, not in the Dominion Constitutions and not even the Act of Settlement and the later Acts of British Parliament which refer to the removal of judges. Therefore, I think that the very great regard which you pay for judges must be a reason why you should not provide a machinery consisting of five or four judges to sit in judgment over a Chief Justice of the Supreme Court. Are you really serious about enhancing the dignity of the Chief Justice of India? You are. I have no doubt about it. Then there must be some power of removal vested somewhere and therefore you have vested that power in the Supreme Parliament, but not in an unfettered way. It must be through known, normal, ordinary, traditional methods. It is not in discretion of either House to remove a judge, but the ultimate sovereign power will be vested, in the two Houses of Parliament. That is the import of my amendment, Sir.

Then as to the other points raised-and I would ask you to remember, that you are borrowing, so far as it may be, the provisions of the Government of India Act-the salary cannot be reduced during the term of office as provided for in the Government of India Act of 1935 and I have no doubt that the gentleman to whom you are going to refer the drafts of the constitution will take care to see that this provision finds a place in the new Constitution, and I would ask the Members not to undertake the enactment of a regular Judiciary Act in this Constitution. I am not very particular about my amendment. I leave to the House to accept or reject the matter, but I do hope that unnecessary provisions will not be introduced.

Shrimati G. Durgabai: I moved this amendment, Sir, that every judge shall be a citizen of the Union of India. Of course, I realize, Mr. President that I need hardly say anything on this matter, because I expect that this House will fully realize the importance of this matter and agree with me. My amendment, if accepted, will have this effect that it will remove the alien or the foreigner from the field of selection for the appointment of judges. Of course, I would like to add only one or two words, that only a citizen and a citizen alone who will pledge his loyalty to this Dominion of India will be competent to hold this office and however eminent a man may be and however perfect his legal knowledge may be a foreigner or an alien can never be competent to hold this post. That will be the effect of my amendment. Mr. President, Sir, we have already provided for this qualification in the case of the Federation and also in the case of the Governor of the Province. If we have provided in these two cases, it is all the more necessary that we should do it in the case of the Supreme Court judges or the judges of the High Court, because the supreme-Court is considered to be the watchdog in a democracy which will guarantee the fundamental rights and other privileges of the citizens of India. That is all I want to say to the House before I commend my amendment for the acceptance of the House.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I really thought that so important an issue as the constitution and functioning of the Supreme Court of the would-be Federation would occupy more time than it has this morning, but I think the main issues have been put before the House in the amendments that have been moved. I agree generally in the propositions which Sir Alladi placed before the House. One general proposition is that in settling the principles of the new Constitution on the basis of which the text of that Constitution is to be drafted we need not go into too much detail either as regards jurisdiction or as regards procedure. What we need to put into these principles is only the main considerations in drafting the text which will come up before the Constituent Assembly later on. Sir, so far as the Constitution of this Court is concerned, the proposals made in the report of the ad hoc Committee have, I am glad to find, received general acceptance in this House. There is one point in the Report of the Committee to which I should like to draw attention. It has said that it has dealt with various matters, but that only some of them need go into the Constitution and others would more appropriately go into the Judiciary Act, which the Federal Parliament may pass after it comes into existence.. If we remember that fact we perhaps would realize that it is unnecessary to go into too much detail at the present moment.

I will only deal with one or two of the points that have been raised, I will take the last point first Shrimati Durgabai has suggested that every judge of the Supreme Court shall be a citizen of the Union of India. Nobody will take exception to that statement as a general proposition. But we have to take perhaps the composition of the court as it may be at the inception of the constitution, and the question whether it should go into the constitution in the form that has been proposed in the amendment or in some different form. I suggest it might be left to the draftsmen.

The second point, Sir, that was referred to in the course of the debate is the one relating to the appointment of the Judges of the Supreme Court. The *ad hoc* Committee made certain proposals. The Union Constitution Committee modified them and we have before us proposals for a further slight modification of even the recommendations of the Union Constitution Committee. Now, so far as I can see, Sir Alladi Krishnaswami Ayyar and Mr. Santhanam agree more or less as to the lines on which these appointments should be made. The appointments have to be made by the President of the Federation. Before making these appointments, he has got to take into consultation people who might be considered to be familiar with the qualifications and work of individuals whose claims deserve to be considered in this connection. Sir Alladi Krishnaswami Ayyar has proposed that a Judge of the Supreme Court shall be appointed by the President after consulting the Chief Justice and such other Judges of the Supreme Court as also Judges of the High Courts as may be necessary for the purpose. That is practically also what Mr. Santhanam has suggested in his amendment. One criticism that was offered against this provision was that it does not provide for the appointment of the Chief Justice himself. I trust I have correctly apprehended Mr. Ananthasayanam Ayyangar's criticism on this point. I think, Sir, that, even as the clause stands, a Judge of the Supreme Court might be held to include the Chief Justice of the Supreme Court also. The clause does not say, a puisne Judge of the Supreme Court. As regards the people to be consulted, the people to be consulted are the Chief Justice and such other Judges. An appointment has ordinarily to be settled before a retiring Chief Justice vacates his office. It is riot unreasonable, perhaps it Would even be very desirable, that the outgoing Chief Justice should be consulted as also his colleagues and other Judges before the appointment of the New Chief Justice is settled. Therefore, Sir, the clause as put by Sir Alladi Krishnaswami Ayyar, to my mind, covers also the procedure for the appointment of the Chief Justice.

Sir, the other important point relates to the removal of the Judges of the Supreme Court. As regards this, there are two alternatives which seem to deserve consideration. But before referring to these two alternatives I wish only to point out that the contingency of removing a Judge of the Supreme Court from his office is perhaps one of the rarest that we can contemplate. I cannot recall any instance, in Great Britain, for instance, where, on an address of both Houses of Parliament, a Judge has been actually removed. I speak subject to correction. Even in constitutions like those of the Dominions where a similar provision exists, I am not personally aware of any instance where that provision has been used. So whatever procedure you prescribe for the removal of Judges for proved misconduct or misbehaviour, that procedure is likely to be used only in the rarest of contingencies and very probably will not be used within my life time or even the life time of those who are much younger in this House than I am. That being so, I wish that the House 'will consider on their merits the two alternatives that have been proposed.

One is the procedure suggested by Sir Alladi Krishnaswami Ayyar which runs in the following terms:

> " A Judge of the Supreme Court of India shall not be removed from his office except by the President on an address from both the Houses of Parliament of the Union in the same session for such removal on the ground of proved misbehaviour or incapacity. Further provision may be made by Federal Law for the procedure to be adopted in this behalf."

Sir Alladi Krishnaswami Ayyar has explained the implications of this particular draft. One aspect of it which appeals to me very much is the way in which it has been put in this negative form. It takes account of the fact that a Judge is not a functionary whose removal we should contemplate with equanimity. What he says is that a Judge shall not be removed except according to certain procedure and to that extent I think it is an improvement on the other suggestions which have been made from time to time.

The other alternative which has been placed before the House is that. of Mr. Ananthasayanam Ayyangar. His draft is:

> "A Judge of the Supreme Court may be removed from office by the President on the ground of misbehaviour or of infirmity of mind or body, if, on reference being made to the Supreme Court by the President, a special tribunal appointed by him for the purpose, from amongst judges or ex-judges of the High Courts or the Supreme Court, report that the judge ought 'on any such grounds to be removed."

This is a very slightly modified version of the recommendation which was made by the Sapru Committee in this regard.

Between the two amendments, there are certain considerations which we should take into account before we decide which of them we will favour. Among these considerations is the one, that it seems odd that, for the purpose of deciding the question as to whether a Judge should be removed from his office, we should invite the two Houses of the legislature, one of them containing something like 500 or 600 members and the other perhaps consisting of about half that number, to pass an address, that is to say, a resolution, giving their verdict as to whether a Judge has misbehaved and, if so, whether he should be removed from his office. It does seem to me, Sir, that that is a procedure before accepting which we shall have to think furiously. I say so for this reason that we have, even in the case of ordinary public servants traveled far away from the principle of either getting them appointed by popular vote or of getting them removed by popular vote. If you are going to introduce in the case of Judges of the highest Court in the land the principle which you are not prepared to accept even in the case of ordinary public servants, that procedure, Sir, seems to me to stand in need of very heavy justification, if I may put it in those words. The other procedure that has been suggested is that the question of whether a Judge has misbehaved and therefore whether he should be removed should be decided or adjudicated upon by the President on the report of a Tribunal which he will specially appoint for the purpose from amongst the Judges, and ex-Judges of either the Supreme Court or the High Courts. That again, Sir, is placing a Judge who is accused of misbehaviour in the dock before a Tribunal some of the members of which might have. held positions subordinate to him in the judicial hierarchy of the country. So there is that to be said against that procedure also. But personally I am not prepared to say that either the one or the other is necessarily to be preferred because, whether you adopt the one or the other, it is my expectation that we shall probably never have an occasion for using this procedure for dealing with any individual judge of the Supreme Court. I should leave it to the House to decide between these two alternatives and whatever alternative it chooses, will be put into the text of the Draft Constitution.

As regards the question of additional jurisdiction, the jurisdiction which relates to States which might be conferred on the Supreme Court, the point is sound that while the Indian State has got to cede, or agree to, this jurisdiction by means of an agreement, the actual conferment of this jurisdiction on the Supreme Court has to be by Federal Law. That being so, Sir, what I would suggest for your consideration is that so far as the questions relating to the citizenship of the Judge and to the conferment of additional jurisdiction on him are concerned, the amendments that have been tabled for those purposes might, if the Movers agree, be withdrawn on the assurance. that the points mentioned in the course of this Debate would be borne in mind when the text of the Constitution is drafted. You may, Sir, if you agree, put to the House only the clause relating to the appointment of Judges of the Supreme Court and the alternative clauses which have been suggested for providing for the removal of Judges of the Supreme Court. With a decision ion those points and the further decision that we generally accept the report of the ad hoc Committee., we shall have sufficient authoritative material on which the text could be drafted.

Mr. Vice-President: I propose to place before the House first the amendments regarding the removal clause. The first amendment is Sir Alladi Krishnaswami Ayyar's which appears in Supplementary List III, Para. 7-C.

"A judge of the Supreme Court of India shall not be removed from his office except lie President on an address from both the Houses of Parliament of the Union in the same session for such removal on the ground of personal misbehaviour or incapacity. Further provision may be made by Federal Law for the procedure to be adopted in this behalf."

I place that amendment before the House.

The amendment was adopted.

Mr. Vice-President: There is a further amendment by Mr. Ananthasayanam Ayyangar 21- (b). I take it that that amendment is not pressed'.

I now put to the House Mr. Ananthasayanam Ayyangar's amendment 21- (a) in Supplementary List II which reads as follows:

"1 (a) A judge may resign his office by communicating to the President."

The amendment was negatived.

Mr. Vice-President: I now put Mr. Ananthasayanam Ayyangar's amendment 21-1 (c) which is as follows:

"A judge shall cease to hold office on his being adjudged an insolvent."

The amendment was negatived.

Mr. Vice-President: I now place before this House Mr. Ananthasayanam Ayyangar's amendment 19-(a) which reads as follows:

"Every Judge shall be a citizen of the Union of India."

Shrimati G. Durgabai: Sir, I moved that amendment but in view of the assurance of Sir N. Gopalaswamy Ayyangar, I do not wish to press my amendment. But it will find its place in the draft.

Mr. Vice-President: Amendment No. 19(a) is sought to be withdrawn. Does the House permit the withdrawal?

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President: I now place before the House Mr. Santhanam's amendment 8 (c) in Supplementary List III:

"(c) the salaries of the Chief Justice and other judges of the Supreme Court shall be fixed by Statute and the salary of no judge shall be diminished during his tenure of office;"

The amendment was negatived.

Mr. Vice-President.: I now place before the House amendment No. 17 in List II:

"That in para. 9 of the Appendix state:

> '(a) that the appellate jurisdiction of the Privy Council in any legal matter is hereby abolished and vested in the Supreme Court;
>
> (b) that pending appeals in the Privy Council shall be disposed of by the Supreme Court'."

Sri M. Ananthasayanam. Ayyangar: Sir, I suggested that I will move it later.

Mr. Vice-President: All right, the amendment will stand over.

Now, Mr. Santhanam's amendment No. 8 (b).

Shri K. Santhanam : I do not press the amendment, Sir.

Mr. Vice-President: Does the House permit the amendment to, be withdrawn?

Honourable, Members: Yes.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice,-President: I now put the clause, as amended, to vote.

The Honourable Sir N. Gopalaswami Ayyangar: May I point out that the amendment proposed regarding the appointment of the judges has not yet been put.

Mr. Vice-President: There are no amendments. I think all the proposals are the same. They conform to the paragraph in the memorandum, and there is no substantial difference.

I now put Clause 18, as amended, to vote.

Clause 18, as amended, was adopted.

Shrimati G. Durgabai: Mr. Vice-President, yesterday I moved an amendment that Clause 18A be added to Clause 18. It appears in the Supplementary List as amendment No. 15. It reads:

"18A. New High Courts may be established in any newly created province on an

> address being presented by the legislature of that Province to the Governor and on the same being approved by the President."

Mr. Vice-President: Does any member wish to speak on this proposed Clause 18A?

Shrimati G. Durgabai: I wish to say a few words in support of my amendment. Sir, in the draft I found no such provision made, as is contained in my amendment. So I thought it would be necessary, because by virtue of the power we have given to the Federal Legislature we find that some new Units will be springing up hereafter, and not only that, it will become more necessary, because already there are two newly carved out units, West Bengal and East Punjab. Therefore some kind of procedure must be laid down for the establishment of High Courts in these newly created units. That is why I have suggested the addition of this Clause 18A.

Sir Alladi Krishnaswami Ayyar: I do not see any necessity for such a provision, because if there is to be a province then the judiciary, legislature are all complementary and that will be part of the provincial constitution and the organisation of the province. Therefore there is no need for saying that there must be a High Court. You cannot conceive of a Province normally without a separate judicature and separate legislature. There need not be any special resolution of the legislature. It may well be part of the provincial constitution that there shall be a High Court in each province. Therefore, subject to any drafting and other changes that might be made in principle what Shrimati Durgabai says might be accepted, but there is no necessity for making this provision. We have had common High Courts working, but in the new dispensation there may be no necessity for that. I am told with regard to Assam and Orissa there may be necessity. Ultimately when the constitution is settled this will be subject to the provision that may be made in the provinces. Subject to that understanding, I have no objection to this clause being passed.

Sri M. Ananthasayanam Ayyangar: Such a provision is necessary in the Constitution. So far as the appointment of High Court Judges is concerned, in the provincial constitution that we have passed, there is a provision that the judges should be appointed by the President in consultation with the Chief Justice of India, the Chief Justice of the province and other Chief Justices also. Now, when even the question of the appointment of the judges is within the power of the Federation and the Union President, no authority is specified for establishing a High Court in a newly established Province. I ask, who is the authority to establish a High Court. That is not provided for at all. Is it to be left entirely to the Province without the concurrence of the Centre? Under the present Constitution, the Government of India Act recognises a number of High Courts established in some provinces, but as regards new ones it says that they may be established by His majesty-read Section 219, of the Government of India Act. Therefore, we must decide here and now what the authority is going to be which will in future establish new High Courts. Shall we say, as was said by Sir Alladi, that the entire matter will be left to the Provinces? Then the establishment of a High Court in a province will be entirely within the jurisdiction of that legislature whereas the appointment of the judges, as if that is more important than the establishment of the High Court, is to be regulated by the President of the Union. This seems to be inverting the procedure. Under these circumstances, I respectfully submit that my Honourable friend Mrs. Durgabai has rightly pointed out that power ought to be vested with the President to approve or reject any address presented by the Provincial

Legislature, in the matter of establishing a new High Court.

Shrimati G. Durgabai: Mr. Vice-President, Sir, with your permission I would like to add a few more words to this amendment:

"That new High Courts may be established in the already, existing provinces of Orissa and Assam and also in the newly created provinces.

The rest remain as they are.

I commend this amendment for the acceptance of the House.

Dr. P. S. Deshmukh (C. P. & Berar: General) : Sir with due respect I also beg to differ from the view expressed by Sir Alladi on this matter., As the previous speaker has pointed out, we should lay down the procedure for the establishment of new High Courts in the Provinces. As we all know, the process of establishing High Courts is a fairly long-drawn out one and it cannot be left to the Provinces to decide to have High Courts. on their own initiative and on their own decisions. There ought to be some authority and the right authority would be the Federal Parliament and the President to decide whether particular unit is large enough or is competent enough, or whether there is sufficient necessity for an independent High Court. The establishing of a High Court is not an ordinary matter, and the lack of adequate provision or procedure in the Constitution would be a very great deficiency, indeed. I am very glad, Sir,, that the lady Member has pointed out this deficiency and I hope the amendment proposed will be accepted.

Shri Raj Krushna Bose (Orissa: General)? Sir, with due respect to the Mover of the amendment I think, this is a question which has not been taken up or considered by the Steering Committee and as the amendments affects the powers of the provinces in regard to the establishment of High Courts and as it is proposed that these powers are to be restricted by the Centre, one does not know what the effect of the amendment will be so far as the powers of the provinces are concerned in this matter. The names of certain provinces were mentioned, Orissa being one of them. I know, Sir, a few years ago a committee was appointed in that province for the creation of a High Court and that committee submitted a report. It has not yet been considered by the Legislature and no decision has been arrived at. I think the amendment is of such an important nature that it should go to the Steering Committee and proper thought bestowed on it, before the House takes it up for final consideration. I would, therefore, request the Mover to agree that the matter may be referred to the Steering Committee so that we may have their views before we finally decide about it.

Mr. M. S. Aney (Deccan States) : Sir, this amendment refers to the establishment of provincial High Courts and so should not come under this Chapter which relates to Federal Judicature.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I entirely agree with the point mentioned by Mr. Aney. I do not think that the clause proposed will come appropriately within the orbit of this Chapter which is entitled 'Federal Judicature'. What is proposed is the establishment of High Courts in newly created provinces. I take it, Sir, that, when you see the text of the new Constitution, you will probably find a provision which will say either that there shall be a High Court, in every province just as there shall be a Supreme Court for the Federation: or if it wishes to make a distinction between Provinces which can afford to have a High Court and Provinces which cannot, then perhaps it will name the Provinces where High Courts exist and will take power for the establishment of new High Courts separately in the Provinces where they do not exist. What I wish to point out is that a matter of this description will not be lost sight of in framing the final text of the provincial portion of the Constitution. So far as this Chapter is concerned, I think this amendment is altogether out of order.

Sri M. Ananthasayanam Ayyangar: Sir, I am a member of the Steering Committee and I know that many amendments which have been moved here have not been before that Committee. I know the scope of the Steering Committee. It has not considered clause by clause this Draft Constitution or the Provincial Constitution. There are other consultative committees: there is the Provincial Constitution Committee, there is the Union Constitution Committee and so on. It is not the business of the Steering Committee to consider this amendment and I see no point in the objection that this should first go before the Steering Committee. If it actually comes up there, we will say it is none of our business.

As regards the point of order raised by Sir N. Gopalaswami Ayyangar, that the amendment does not come under this particular Chapter, I would say the new Clause 18 (a) of the Lady Member wants the President to establish a High Court on an address being presented by the Legislature. If this is to be relegated entirely to the Provincial Constitution. and if we do not make a provision here that the President in Council ' with the aid of his Ministers should be the final authority. then there will be a lacuna. There will be provision only on one side in the provincial constitution, there will not be a corresponding provision in the federal side of the Constitution Act. Whether it fits in as 18 (a) or whether it comes in the earlier or later portion of the Bill does not matter; but provision has to be made in this Constitution and similar provision has also to be made in a detailed manner in the provincial constitution.

Mr. Vice-President: I understand Sir N. Gopalaswami Ayyangar's assurance to mean that provision will be made for this in whatever parts of the Constitution such provision may be found necessary, by the draftsmen. Does the Mover press the amendment in view of that assurance?

Shrimati G. Durgabai: On that assurance, I withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

CLAUSE 19

Mr. Vice-President: Now, we go to Clause 19.

The Honourable Sir N. Gopalaswami Ayyangar: Clause 19 is in the following terms:

> "There shall be an Auditor-General of the Federation who shall be appointed by the President and shall only be removed from office in like manner and on the like grounds as a judge of the Supreme Court."

The principle underlying this clause is that, if the Auditor-General is to carry out his functions efficiently, he has to be an officer who feels that he is independent of the favour of the executive government whose accounts he has to audit, and that is why his status and position are placed on the same footing as those of the judges of the Supreme Court. This, I think Sir, is a very necessary clause in the Constitution.

Mr. Vice-President: There is only one amendment to Clause 19 by Shri Mohanlal Saksena (item No. 18 of Supplementary List No. 1).

(The amendment was not moved.)

Mr. Vice-President: Does any member wish to speak on the original Clause 19?

The question is:

"That Clause 19 be adopted."

Clause 19 was adopted.

CLAUSE 20

The Honourable Sir N. Gopalaswami Ayyangar: Sir I move that Clause 20 be adopted. The clause is as follows:

"The duties and powers of the Auditor-General shall follow the line of the corresponding provisions in the Act of 1935."

(Amendment No. 337 of List No. 2 was not moved.)

Clause 20 was adopted.

CLAUSE 21

The Honourable.Sir N. Gopalaswami Ayyangar: I move that Clause 21 be adopted. It is in the following terms:

"There shall be a Public Service Commission for the Federation whose composition and functions shall follow the lines of the corresponding provisions in the Act of 1935, except that the appointment of the Chairman and the members of the Commission shall be made by the President on the advice of his ministers."

Mr. Vice-President: There is an amendment in the name of Mr. H. V. Pataskar.

Mr. H. V. Pataskar (Bombay : General): Sir, I move:

"That in Clause 21, for the words 'his ministers' the words 'his Council of Ministers' be substituted."

I understand that there is another amendment next to mine-No. 339 which wants the deletion of all these words. If that amendment is passed, naturally my amendment will fall through. But if the words are to be retained, then the words should be 'Council of Ministers' and not 'ministers' for the simple reason that in Clause 10 which we have already passed what we have provided for is a 'Council of Ministers'. What I have proposed is only a verbal amendment and it is dependent on the fate of ,be subsequent amendment-No. 339.

(Amendments Nos. 339 and 340 were not moved.)

Shri V. I. Muniswami Pillai (Madras: General): As these matters are being considered by the Minorities Sub-Committee I do not propose to move my amendment (No. 341).

(Amendment No. 342 was not moved.)

The Honourable Sir N. Gopalaswami Ayyangar: Sir, the only amendment that has been moved is that of Mr. Pataskar. He wants that for the words his ministers' the words 'his Council of Ministers' should be substituted. If Mr. Shibbanlal Saksena had moved his amendment-No. 339I should have accepted it because really the words 'on the advice of his ministers' are absolutely unnecessary. If an appointment has to be made by the President he is not under the principles of the Union Constitution at liberty to make appointments without the advice of his ministers. But the words being there, and no amendment having been moved for the deletion of those words, I do not think it is necessary for me to agree to the substitution of the words, 'Council of Ministers' for 'ministers'.

Sir Alladi Krishnaswami Ayyar: I should like to move the amendment standing in the name of Mr. Shibbanlal Saksena as it will introduce an element of uniformity. Whenever the word 'President' is used what is understood is the President in consultation with the Cabinet. As such, suddenly if in a particular clause we mention about the ministers that might give rise to a difficulty. Therefore, for the purpose of clarity and uniformity it is as well that the words 'on the advice of his ministers' are omitted.

Mr. Vice-President: I do. not think Mr. Saksena meant his amendment in that sense; he probably meant it in a completely different sense.

(By this time Mr. Shibbanlal Saksena was present in the House.)

Prof. Shibbanlal Saksena (U. P.: General): Sir, I beg to move my amendment No. 339 which runs as follows:

> "That in Clause 21, the following words be deleted:
>
> "on the advice of his ministers."'

These words are unnecessary as the President has not been given any power to act in his discretion and will always act on the advice of his ministers. These words may, therefore, be deleted.

Sir Alladi Krishnaswami Ayyar: I second the amendment.

The Honourable Sir N. Gopalaswami Ayyangar: Now that the amendment has been moved, I accept it.

Mr. H. V. Pataskar: In view of the fact that amendment No. 339 has been moved

I would like to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President: The question is:

"That in Clause 21, the following words be deleted:

'on the advice of his ministers."'

The motion was adopted.

CLAUSE: 22

The Honourable Sir. N. Gopalaswami Ayyangar: I move Clause 22, *viz.:*

"22. Provision should be made for the creation of All-India Services whose recruitment and conditions of service will be regulated by Federal law."

As the House is aware, we have had All-India Services for quite a long time. They have been under the control of the Secretary of State. This control will be terminated from the 15th August. The question arises whether, in conformity with the principle of provincial autonomy, it is desirable that you should continue in being a Service recruited on an All-India basis, but under the control which will be prescribed by Federal law.

Some of you perhaps are aware of the steps Which have been taken. by the Home Department of the Government of India for the purpose of ascertaining the wishes of Provincial Ministers as regards the desirability of establishing an All-India Administrative Service. There was general unanimity and steps have been taken to establish such a Service. This particular clause only attempts to translate the executive action that has been taken into something which will have the authority of law in the future. What it prescribes is that the Constitution should make provision for the creation of All-India Services wherever such a course may be considered necessary. All-India Services will be desirable, I take it, in cases where you wish to attract to the highest services the best material that may be available in the country, and you will have to transgress provincial boundaries for the purpose of attracting this material if you want such material to take service whether under the Provincial Governments or under the Federal Government. A question will arise whether this is in conflict with provincial autonomy, whether it is not the proper thing for you to leave the whole thing in the hands of Provincial Ministers. All that I can say at the present moment is that those responsible Ministers who are in charge of provincial administrations have felt the need already for recruitment on an All-India basis and it will be only the part, of wisdom to make provision for such an arrangement in the new Constitution also.

Mr. Vice-President: There is an amendment by Mr. Santhanam.

Shri K. Santhanam: I am not moving it, Sir.

Mr. Vice-President: As there are no other amendments to this clause, I will put

Clause 22 to the vote.

The question is:

That, Clause 22 be adopted.

Clause 22 was adopted.

CLAUSE 22A

Mr. Vice-President: There is notice of a new Clause 22A. I call upon Mr. Ananthasayanam Ayyangar to move it.

Sri M. Ananthasayanam Ayyangar: Sir, I move:

"That after Clause 22, the following new clause be inserted:

> "22-A. Provision shall be made in the Constitution for granting commissions in the Army, Navy and Air Forces and for appointment to other defence services conditions of service and control of the services.
>
> A military or defence services commission may be set up on the lines of the public services commission for civil appointments."'

Sir, we just moved and passed Chapter VI relating to Services. Clause 21 makes provision for bringing into existence a Public Services Commission on the lines of the one laid down in the Government of India Act of 1935. In section 266 of the Government of India Act Provision is made to, confer on the Public Services Commission the right to recruit only to civil services. Sub-section (a) reads as follows:

"On all matters relating to recruitment to civil services and to the civil forces."

Therefore Clauses 21 and 22 relate only to civil forces and no provision has been made in Chapter VI for recruitment to defence services. There is provision in Part X of the Government of India Act, 1935 for the recruitment of defence service. Whether deliberately or by inadvertence this particular provision has not been incorporated in the Draft Constitution. The first part of that Chapter relates to recruitment of defence services and the second part relates to recruitment of civil services for which a Public Service Commission has been appointed. But in our Draft Constitution, Chapter VI relates only to recruitment to civil services. the earlier portion in the Chapter in the Government of India Act which relates to the defence services has been left out. Under the present Constitution, recruitment to Commissioned ranks and grant of King's Commission or the Viceroy's Commission are regulated by Orders in Council of His Majesty. Then there is recruitment to the Ordinary defence services. Now what is to take the place of His Majesty's Orders in Council? The Defence services form a very important portion of our services. The gazetted posts and also the civilian posts in the defence services are very important and responsible posts. Shall we leave the recruitment to these posts to the Heads of Departments or the Commander-in-Chief or his lieutenants to fill them up as they like? No doubt rules will be framed regulating the grant of these commissions. But are we not to have an independent body like the Public Service Commission for the recruitment of officers perhaps recommending the grant of King's Commissions?

Sir, hitherto the powers-that-be had classed some people of India as martial and some as non-martial. That view held the field for a long time. But the non-martial races who were recruited during the last war have proved to the hilt that they were equal to the so-called martial races. However, if this power is left in the hands of the powers-that-be for the time being and no independent authority like the Public Service Commission is established for recruitment to defence services, there will be scope for provincialism and some sections of the population might be given encouragement to join the army and not the others. If there is need for having an independent body like the Public Service Commission for recruitment to the civil services and to hold the balance evenly between the Provinces, a *fortiori,* there is greater 'reason. to have something like a Defence Service Commission. That is the amendment I have tabled. I should like to know why it has been omitted and why no provision has been made for recruitment to defence services in the Constitution.

When we copy Chapter X of the Government of India Act, it is necessary that we should copy it in whole. Defence services recruitment is an important matter and I do not like it to be left to the Federal Legislature, however good it may be. May be one particular party is in power. My point is, let 'not one section be given preference to the detriment of another section. Sir, I commend this resolution to- the acceptance of the House that a Defence Services Commission ought Lo be appointed on the lines of the Public Services Commission.

Mr. Vice-President: Any other member who desires to speak on this amendment?

The Honourable Mr. Jaipal Singh (Bihar: General): Mr. Vice-President, Sir, I have great pleasure in supporting the amendment that has just been moved. If you look at Chapter I I Part IV, para, 7, you will find that we have already approved of the President having the supreme command of the Defence Forces of the Federation. Of course, when you have used the expression 'supreme command' I take it that you mean that the President will devise ways and means for recruitment to the Forces under him. Now the amendment seeks to clarify and make the position quite clear as to how officers for the Defence Forces shall be appointed At the present moment, Mr. President, as you are aware, there are Services Selection Boards, several in the number, throughout the country, and I myself have worked on one of these Boards during the last three years. I know that the present system, the psychiatric system as it is called is the right method. It obviates patronage and cuts right across society. Under this system, everyone has an even chance of getting a commission. The Mover of this amendment has already pointed out that in the future army of India, commissions should be given on the same sort of footing as the superior appointments of the All-India Services. and. to my mind, it is imperative that we should have some equivalent of the Services Selection Board. It does not matter whether we ;call it a Defence Services Commissioner a Services Selection Board but, I have no doubt in my mind that there should be such a body.

Mr. Raghu Raj Singh (Eastern States): Mr. Vice-President, I would like to say a few words on the amendment that has been moved. Recruitment to the Defence Services is a highly technical matter. It should be part of the Defence organisation, and if a Defence Services Commission is setup, it would fetter the hands of the Defence Organisation Committee as I know, no distinction was made even in the past regarding martial and non-martial classes in respect of recruitment to the officers classes. The distinction was made only in regard to the ranks. During the war, a special Directorate was set up to undertake recruitment to the Services 'and it has developed its own technique. I think this is a matter which you should leave to the discretion of the Defence Department. If you set up a Defence Services Commission, it would fetter the discretion of the Defence organisation.

Prof. N C. Ranga (Madras: General): Mr. Vice-President, Sir, I am very- much opposed to leaving such an important matter to I the mere whims of the Defence Organisation. For a long time now, there has been a movement in England and many other countries on the continent that the recruitment to the Defence forces should be democratised, so that people from all ranks would be recruited to the defence forces. It has been a notorious fact that officers recruited from particular groups have not been able to give satisfaction. During the war, the recent one as well as the last one, the triumph of the allies was largely due to the officers recruited from the rank and file. If you want to give a chance to the people at large to throw up their own leadership and assure themselves that their leadership will have a chance of being recruited to the various officer cadres in the defence forces. A s most essential that a Commission should be set up as suggested by my friend, Mr. Ananthasayanarn Ayyangar. It may be said by some, "Why don't you leave it to the Federal Parliament?" Sir, if you have thought it fit to make special provision in this Constitution for a Public Service Commission for the recruitment of a large number of Government officials fur the civil services, then certainly it stands to reason that you should make a similar provision for the recruitment of officers to the defence forces. the number of people you are going to recruit for the civil services is not going to be as many as those you will have to recruit for the defence forces. These are times when our defence forces have got to compete with the defence forces of other countries. There is one country as you all know, Soviet Russia, just on the other side of our border. Let us study carefully how the Soviet armies are being constructed, built up and strengthened, and how their officers are being recruited. Their officers are recruited from every community, caste or cadre or society, from every service of social life. If our defence forces are to complete with the defence forces of that country and are to acquit themselves favourably in comparison with the defence forces of that country, then it is most essential that every possible care should be taken to see that competent people capable of providing leadership in times of war are recruited in an impartial manner by a commission like the one that has been suggested by Mr. Ananthasayanam Ayyangar.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, it is true that the draft before the House makes no mention of the defence services. One reason which I can put forward for this omission is that what you find in Chapter I of Part X of the present Government of India Act of 1935 is hardly matter which can be put into the outlines of the Union Constitution which we are considering at the present moment. That particular chapter in the Government of India Act of 1935 concerns itself mainly with questions like the pay of the Commander-in-Chief, the control of His Majesty over defence appointments, the control of the Secretary of State rights of appeal to the-Secretary of State and so on. Most of these will become obsolete when we frame our new Constitution. That is perhaps one of the reasons why it was considered unnecessary to make any special Provision for the defence services in the document that we are now considering. The other point which was raised by the Mover is that we should in the case of the defence services create a body on the lines of a Public Services Commission, in order to deal with the many matters connected with the recruitment and conditions of service relating to the defence services. So far as I am concerned, I do not consider that there is any particular virtue in putting into the law of the Constitution provisions relating to the creation of our Public Services

Commission even in the case of the civil services. I do not see why a commission of that sort should not be created by Federal law. After all, what is a Public Services Commission? It makes arrangements for recruitment it gives advice as to the personnel to be selected for appointments, it gives advice as to cases of appeal from punishment and as to the rules to be made for recruitment, conditions of service and so on. It is true that for applying those rules we create a body whose personnel is of the same independent status as that of High Court Judges in order that those rules might be observed impartially. We have made a fetish of having Public Services Commissions provided for by the Constitution Act in the case of the civil services. Any similar arrangements that may be necessary in regard to the defence services can be provided by Federal law; I cannot on the merits see any real solid objection to it. Now I would mention a further point. There. is a very essential distinction between the generality of civil services and the defence services. The defence services are essentially' services of discipline and even, in the civil services, I think, it has been recognised that in regard to services which would involve discipline in an intensified form, it is perhaps not so very desirable that the Public Services Commission should be brought in the matter of recruitment or in the decision of disciplinary cases. I would read to you Section 243 of the present Government of India Act which occurs in the Chapter, on the Civil Services, It says:

> "Notwithstanding anything in the foregoing provisions of this Chapter. the conditions of service of the subordinate ranks of the various Police Forces in India shall be such as may be determined by or under the Acts relating to those forces respectively"

What I wish to point out is that some of the matters like the distinction between martial and non-martial classes, questions relating to the representation of communities in the defence services, in the representation of Provinces in the different service-they are all undoubtedly important. But let me point out to the House that the policy relating to those matters is not a matter for decision by any Services Commission which we could set up. Policy is a matter for decision by the Government of the day. So I would suggest that if you want to eliminate injustice and questionable discrimination in regard to these particular points, you have got to tackle the Government of the day and see that they adopt a policy which is reasonable. No doubt there is the question of carrying out the policy, and I think you can by a Federal law set up a body. It may be the present Selection Boards which function in the Armed Forces at present. It may be a different body, but such bodies could be created by or under the provisions of any Federal law which we may enact in the future. So I would say that perhaps we might have a kind of general provision in the Constitution to say that the Federal law shall make due provision for matters relating to the recruitment. Conditions of service etc. of the defence services and leave the rest of it to be worked out later on. I can perhaps give an assurance to the Honourable the Mover that we shall try and insert a general provision of that nature in the Constitution, though it would not be on the same terms as his amendment. If he is satisfied with this, I would request him to withdraw his amendment.

Shri M. Ananthasayanam Ayyangar: It is only a matter of form and the Honourable Sir N. Gopalaswami Ayyangar is prepared to put the substance of it in some form which he considers suitable. Therefore I am not interested in pressing this before the House. I beg leave of the House to permit me to withdraw it.

The amendment was, by Jeave of the Assembly, withdrawn.

CLAUSE 23

The Honourable Sir, N. Gopalaswami Ayyangar: I move :Clause 23 which reads as follows:

"Subject to the provisions of this Constitution, the Federal Parliament may, from time to time, make provision with respect to all matters relating to or connected with elections to either House of the Federal Legislature including the delimitation of constituencies."

Mr. Vice-President : There is an amendment to Clause 23 proposed by Mr Ananthasayanam. Ayyangar and Shrimati G. Durgabai.

Sri M. Ananthasayanam Ayyangar: Sir, I move:

"That the following be added at the end of Clause 23:

> 'The first elections and subsequent elections shall be held in accordance with the provisions of Schedule (to be attached to the constitution) and the constituencies shall be those set out in another Schedule.'"

I do not press the other sentence:

"The said schedules may at any time be modified or varied by an Act of the Federal Legislature."

I stop with the first sentence.

The need for this is this. We propose in Clause 23 that election to the Federal Parliament may, from time to time, be regulated by Acts of the Federal legislature, including the delimitation of constituencies. I want to make provision in the constitution itself for the first elections and the first delimitation of the constituencies. We have made a similar provision in the provincial constitution which we passed recently, a week or a fortnight ago. On the same lines, I have tabled this amendment. Therefore, I move this amendment for the acceptance of the House.

The Honourable Sir N. Gopalaswami Ayyangar: I accept the amendment, Sir, with the omission of the second sentence as agreed to by him.

Mr. Vice-President: I place the amendment before the House.

The amendment was adopted.

Mr. Vice-President: I now place the clause, as amended, before the House.

Clause 23 as amended was adopted.

CLAUSE 24

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I move Clause 24:

"24.The superintendence, direction and control of all elections, whether Federal or Provincial, held under this constitution including the appointment of election tribunals for decision of doubts and disputes arising out of or in connection with such elections shall be vested in a Commission-to be appointed by the President."

The object of this clause, Sir, is to ensure as far possible that elections in the country, Federal or Provincial, are conducted in an impartial manner. The idea is to set up a Commission appointed by the President under whose auspices all these various aspects of election activities and post election activities will be regulated and controlled. As the House is aware the abuse of election procedure, of the election machinery and the prevalence of corruption in elections-these are complaints which are widely made in the country and this clause merely an attempt to bring all these election activities under a common centralised independent control.

Mr. H. V. Pataskar : Sir, I move:

"That in Clause 24 for the words 'all elections' the words all Federal elections' be Substituted and the words whether Federal or Provincial be deleted."

After this amendment, Clause 24 will read as follows:

"24. The superintendence, direction and control of all Federal elections held under this Constitution, including the appointment of election tribunals for decision of doubts and disputes arising out of or in connection with such elections shall be vested in a Commission to be appointed by the President."

Sir, the underlying idea of this amendment is that so far as elections to the Federal legislature are concerned, the superintendence, direction and control should vest with the President; but so far as provincial- elections are concerned, that should be left to the Governor of the Province or to some other appropriate authority in the province itself.

The reasons for this amendment are as follows: Sir, if we look at Chapter VII, Clause 23 relates to Federal elections, elections to the Federal Parliament. Naturally enough, Clause 24 which follows must relate only to elections to the Federal Parliament. It appears somehow the idea must have occurred to those that were responsible for the drafting of these clauses, why not include provincial elections as well in the clause? As I could gather from the speech of the Honourable the Mover, his main argument in favour of subjecting provincial elections to the superintendence, control and direction of the President of the Federation was that that would ensure impartially of elections. I shall deal with this 'argument later. But, Sir, apart from anything else this is not the appropriate place where they should make provision for the superintendence of provincial elections. In this chapter we are dealing with and could only deal with Federal elections.

There are again one or two very strong reasons why it should riot be so. Uptil now, we find that so far as provincial elections are concerned, their superintendence, direction and control, was in the hands of the provincial Governors. We are going to have a Governor in the province who will be elected on the basis of adult franchise and I do not understand why such a Governor should not be entrusted with this work.

Then, another difficulty is that the President of the Federation will be a person for whom it will be very difficult to either superintend, direct or control elections in far off provinces. That could be done better by those who are in the province itself. The President of the Federation will already have so many duties with him that I do not think it proper that he should be burdened with the liability of superintendence, direction and control of provincial elections.

Then, the only point that was made by the Mover of this clause was that it was only intended for the purpose of having impartial elections. I do not understand how it would make any difference whether the superintendence is with the President of the Federation or with the Governor of the province in this matter. They can be impartial in both the cases if sufficient care Is taken. With there remarks. Sir, I commend this amendment- for the acceptance of the House.

Shri T. Prakasam (Madras: General): Sir, I would like to support this amendment. The provinces need not be tied down to the Centre in regard to this matter. The provinces have been able to conduct very big elections both in 1937 and in the recent one. The coming elections will be........"

Shri Ram Sahai (Gwalior State): *[Mr. Vice-President, I raise a point of order. Neither all of the amendments have been moved as yet, nor have you allowed members to speak on the original resolution or amendment. Under such circumstance how is to possible for Shri Prakasam, to commence his speech?]*

An Honourable Member: Let all the amendments be moved first.

Mr. Vice-President : I agree that it would be better to allow all the amendments to be moved first.

Amendment No. 345. Mr. Muniswami Pillai and others.

Shri V. I. Muniswami Pillai: Sir, we are going to have elections on adult franchise. I feel it necessary that the representatives of the Schedule Castes and other minority communities ought to be represented in the Tribunal that would be set up but as I understand that the rules will be made later on, for these matters, I do not propose to move this amendment just now.

(Amendment Nos. 346, 347 on List II and No. 20 Suppl. List I were not moved.)

Shri T. Prakasam: Sir, the amendment proposes that the Provinces should be left out from the clause and that is the correct position that should have been taken. I do not know why the Provinces have been brought into this clause. It is quite unnecessary for the Provinces to be tackled on to a Commission that might be appointed by the Centre. The Provinces have been able to carry on their work in every respect without any trouble. Very big elections had been fought out in the past both in 1937 and in recent 1946 elections. Therefore it should not be considered necessary that the Provinces should be brought into this and made to depend upon the Centre's Organisation. The future election, Sir, as we all know, that are going to be fought out on adult franchise would be of very great importance and of very great magnitude. Provinces must be left prefect freedom to carry on this work by themselves as they have been doing hitherto. It is impracticable that the Central organization should be thinking of supervising the work in the Provinces. The Centre has got enough of work in every Department and particularly with regard to this also. Therefore, Sir, there is no need to argue very much on this matter. The Provinces must be excluded as stated in the amendment. Sir, I should like to support this amendment. The Provinces need not be tied down to the centre in regard to this matter.

Dr. B. R. Ambedkar (Bombay: General): Mr. Vice-Chairman. I think it is desirable that I should state to the House the origin of this clause. Although this clause appears in the Constitution which deals with the Union, as a matter of fact this matter was dealt with by the Fundamental Rights Committee. The Fundamental Rights Committee came to the conclusion that no guarantee regarding minorities or regarding elections could be given if the elections were left in the hands of the Executive of the day. Many people felt that if the elections were conducted under the auspices of the Executive authority and if the Executive authority did have power, as it must have, of transferring officers from one area to another with the object of gaining support for a particular candidate who was a favourite with the party in office or with the Government of the day, that will certainly vitiate the free election which we all wanted. It was therefore unanimously resolved by the members of the Fundamental Rights Committee that the greatest safeguard for purity of election, for fairness in election, was to take away the matter from the hands of the Executive authority and to hand it over to some independent authority. Although Clause 23 does not specifically refer to the details of the scheme that was considered in the Fundamental Rights Committee, I should like to state to the House that the Scheme that was in the minds of the members of the Fundamental Rights Committee was that there would be a Central Commission appointed by the President in order to deal with the elections throughout India. Although that was the scheme contemplated that there should be a Central Commission appointed by the President to superintend, direct and control elections, it was never contemplated that there would be only one Commission sitting in Delhi or at some centre where the Central Government was seated. The scheme was that there would be one Central Commission which probably would deal with the elections to the Federal Parliament but that the Commission would have also subordinate to it a Commission in each Province or, if a Provinces was too, small, to have a single commission, for two or three provinces combined together, so that their affairs far as elections were concerned, may be carried on by a Local Commission. From the very beginning the idea was that this thing should be decentralized. There should be one Central Commission for Federal election and there should be several Commissions for the elections conducted in the various Provinces. My submission is this that if that scheme comes into operation, the point which my friend Mr. Pataskar has in mind in moving the amendment would be gained, because so far as I understood from him, what he wanted was that there should be a local authority or a Local Commission which would deal and be concerned with elections in that Province. I think that was our intention although that scheme has not been mentioned in Clause 24. That undoubtedly was the matter we had in mind. However, if my friend Mr. Pataskar still persists in putting his amendment through, I would like to ask him one question which remains a matter of doubt when you read the amendment as drafted by him. He wants to omit the words 'all elections' and substitute the words 'all Federal elections'. I have no very great objection to his amendment provided he satisfies me on one point. I want to ask him whether or not he accepts the principle-and after all what we are concerned with is the principle-what I want to ask him is this does lie accept the principle that elections should be placed in the hands of an independent body outside the executive? If he accepts that, personally, as I said, I will have no objection if it is agreed by the House that a similar clause which is contained in Clause 24 be introduced in the Provincial Part of the Constitution. I have no desire for centralization. What we had in mind was that the elections should be taken out of the hands of the Government of the day.

Mr. H. V. Pataskar. Before we proceed further with the discussion, I would like to make it clear as the Mover of this amendment that I entirely agree with my friend Dr. Ambedkar that the superintendence,. direction and control of elections should be beyond the scope of any executive authority and should be in charge of some independent authority and provision can be made in that behalf in the Provincial constitution.

Shri K. Santhanam : I think the clause as it stands is too wide. What do we mean by elections? First of all, we have to prepare the electoral rolls. Secondly, at the time of the elections, we have to arrange for polling booths and polling officers. Then comes the taking of ballot papers, counting them and so on. I think especially when we have universal adult suffrage the entire machinery of the Provincial Government will have to be harnessed to carry out these elections. Therefore, unless the final executive authority is in the hands of the Government, no independent Commission can control the entire Provincial Government in all its stages. Certain aspects like election tribunals or consideration of the qualifications of candidates or the objections to nominations can be handed over to an independent body, but elections as a whole cannot be handed over to it, I think if any attempt is made to hand it over either in the case of Central elections or in the case of Provincial elections, to an independent Commission it will not function at all. It will not be capable of managing it, because in these days elections mean that the entire resources both administrative and financial of the Governments concerned have to be utilised. Therefore, when the time comes for drafting, these matters will have to be looked into very closely and the powers, or rather, the functions of the Commissions should be narrowly fixed and limited to those things which should be entrusted to a judicial authority and not to an executive authority. It should be really a judicial commission and not an executive commission. Executive functions should be entrusted to the normal Government of the day while all such matters as have to be disposed of in a judicial manner only should be entrusted to the Election Commission. Otherwise, the whole scheme would be a failure.

Shri Biswanath Das (Orissa: General): Sir, the clause as it is leaves certain powers with Provinces. The superintendence, control and direction of elections are left with the Federal Authority that is to be appointed hereafter under the new Constitution. It would be absurd and impossible for any authority except the Province to think of conducting elections without the co-operation of the Province. I would request Honourable Members of this House to visualise the conditions in which elections are held, including preparation of rolls-the taking of buildings required for the purpose, the posting of polling booths and the like. All this has to be done by the Provincial Government. No Federal authority, however powerful it may be, could take on all these responsibilities. Added to this, Sir, the co-operation of Provincial officials is also necessary. No Federation could undertake these responsibilities. People who are conversant with these elections will readily agree that it is not possible for any Federal authority and much less a Commission to undertake these responsibilities. Under these circumstances, it is necessary that the Provinces should be left in charge of the conduct of elections and it is necessary. I would agreed and go to a certain extent with Dr. Ambedkar in his claim that the control and superintendence of these elections be entrusted to some tribunal or to a Central authority to keep a watchful eye over them. Having had bitter experience of these elections both in local bodies and in Provincial Assemblies in certain places and in provinces, we Know how awful it would be to leave the entire thing to the Provinces especially when we are to have the future elections run on party lines Under these circumstances, it is necessary that a distinct division should be kept in view, namely, that the Provinces should conduct the elections and the Central Authority should have a watchful eye over the superintendence and control of these elections.

A word about the Election Tribunal, Sir, cases have come to our knowledge and it is within our experience that Ministries and Governors of Provinces under the advice of Ministries have not been fair even in instituting proper tribunals in some places. They have been utilised for party purposes to inconvenience opposition parties. It is therefore fair that such tribunals should be appointed independently by this Commission or by a separate and independent authority like the Federal Court, it is thus fair to give the Federation control over the elections, but to say- that the elections should be solely and wholly conducted by the Federation is an impossibility, and in fact, beyond the power and scope of any Federation or Tribunal to undertake. Under these circumstances I would appeal to Dr. Ambedkar to agree to the acceptance of a part of his amendment by the Mover himself.

Mr. Satyanarayan Sinha (Bihar: General): I move that the question be now put.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. Deputy President.........

Mr. Vice-President : Closure has been moved.

Mr. Naziruddin Ahmad: Sir, I submit that the principle applicable to a closure motion is that there has been reasonable debate and its acceptance is dependent upon the approval of the House. The House has-not been consulted. I shall, however, be extremely brief as I have ever been in this House.

Sir, I rise to support the amendment. Dr. Ambedkar has given an interesting psychology about the history of this provision. He has asked a very legitimate and straightforward question, as to whether a body that is to be set up to decide election disputes would be an independent body, Mr. Pataskar has agreed with him and I also agree with him. But I would ask Dr. Ambedkar and people of his way of thinking whether in a Province a sufficiently independent body is not available. I think the speech of Dr. Ambedkar breeds suspicion about the ability and independence of the Provinces. Are not the judicial tribunals in the Provinces independent I and is not our judiciary to be trusted? I submit that the Provincial authorities are well aware of the local conditions under which elections are held. I beg to submit that High Co-art Judges or other members of the Judiciary selected by the Provincial authorities may be safely left to deal with this matter. In my opinion, the treatment by the Centre of the Provinces in some respects is rather stepmotherly. There is too much interference, too much of suspicion about the ability of the Provinces. Sir, I support the amendment.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, on the essentials, we are all agreed and I am prepared to accept the amendment which has been moved, that is to say, this clause in the Union Constitution should be limited to Federal elections. I wish to point out to this connection only one fact, and that is, that the Advisory Committee on Minorities made the following recommendation:

> "The superintendence, direction and control of all elections to the legislature whether of the Union or of a Unit including appointment of election tribunal shall be vested in an election commission for the Union or the Unit as the case may be, appointed in all cases in accordance with the law of the Union."

Now that envisages the appointment of a separate Unit Commission for looking after elections in the Unit, in addition to a Union Commission which will look after

Federal elections; and this particular recommendation, I find, was approved by the House when it considered the Model Provincial Constitution. The statement of principle in this paragraph was endorsed by the House.

As regards the point mentioned by Mr. Santhanam, that this might encroach on the legitimate sphere of the executive in the different areas, I need only point out that what this clause provides for is only superintendence, control and direction. The actual conduct of elections, the executive machinery that may be required for conducting them and so on will have to be mobilised through the respective provincial governments. The superintendence or control will come in for instance, in regard to the location of polling stations or the selection of polling officers, methods of voting and the safeguards that have to be provided for any breach of the principle of secrecy in the ballot and so on. It is necessary that matters of this sort are properly and impartially done. Otherwise they may lead to injustice, corruption and so on. Such matters should, therefore, be in the hands of an impartial tribunal of this description. Sir, I accept the amendment.

Mr. Vice-President: Amendment No. 344 proposed by Mr. Pataskar is before the House:

"That in Clause 24 for the words 'all elections' the words all Federal elections' be substituted; and the words whether Federal or Provincial' be deleted."

The amendment was adopted.

Mr. Vice-President: Now, I place before the House the Clause 24 as amended.

"The superintendence, direction and control of all Federal elections, held under this Constitution, including the appointment of election tribunals for decision of doubts and disputes arising out of or in connection with such elections shall be vested in a Commission to be appointed by the President."

Clause 24, as amended, was adopted.

Mr. Vice-President: We shall now adjourn to 10 O'clock tomorrow morning.

The Assembly then adjourned till Ten of the Clock on Wednesday, the 30th July 1947.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME IV

Wednesday, the 30th July 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following Member presented his Credentials and signed the Register:

Mr. Mukunda Bihari Mullick (West Bengal: General).

DURATION OF AUGUST SESSION

Mr. H. V. Kamath (C. P. & Berar: General): Mr. President, will you be so good as to tell us how long the August session is expected to last, so that we may be able to adjust our programmes accordingly?

Mr. President: As Members are aware, we are going to have a function on the 15th August and Members will be expected to be present here on that day to join that function. Then 16th happen to be a Saturday and 17th a Sunday on which days we do not ordinarily sit. The 18th and 19th will perhaps be Id days and we cannot sit on those days either. So the next day on which we can sit would be the 20th, and then it depends upon Members as to how long they will take to complete the work. The business to be completed will be the consideration of the reports of the Union Powers Committee and the Advisory Committees; and if anything is left over from now-which I hope will not be the case-that will have to be completed then. There may be some other items also but these two will be the main items for consideration and I hope it will not take more than seven or eight days to complete these two items.

An Honourable Member: What about the Minority Committee's Report ?

Mr. President: That is included in the Advisory Committee's Report.

Prof. N. G. Ranga (Madras: General): What about the clauses relating to the provinces and the Indian Union which have not yet been disposed of ?

Mr. President: We shall try to complete consideration of this report if possible, but if anything is left over we shall have to take it up then.

Shri M. Ananthasayanam Ayyangar (Madras: General): I would like to make a suggestion that as 18th and 19th will be holidays we may sit on the 16th and 17th even though the later is a Sunday. It is only a sentimental objection and in view of two holidays following we may sit on Sunday.

As regards the amendments I suggest that copies may be sent round soon after we reach home so that we may come prepared to discuss them.

The Honourable Mr. B. G. Kher (Bombay: General): The best course would be to sit from the 20th to the end of the month.

Mr. President: That is what is intended.

Pandit Shri Krishna Dutt Paliwal (United Provinces: General): *Mr. President, perhaps Independence Day would be celebrated on the 16th and after meeting on the 15th here most of the members would like to go back to their respective places in order to participate in celebrations at their places. Hence it would not be possible to work on the 16th.

Mr. President:*-What do you desire?

Pandit Shri Krishna Dutt Paliwal:*Sir, as most of the member's would like to go back to their respective places, I wish that no work should be done on the 16th.

Mr. President: Those who wish to go back might do so. We will resume our work from the 20th.

REPORT ON THE UNION CONSTITUTION

PART IV--CHAPTERS I--CLAUSE 7

Mr. President: We shall now take up the discussion of the clauses that have been left over. Clause 7 is one such clause discussion of which has been left over. I understand that there is an agreed substitute to Clause 7 in the draft. Is that ready, Sir Gopalaswami Ayyangar?

The Honourable Sir N. Gopalaswami Ayyangar (Madras: General): Sir, I have given notice of an amendment to Clause 7(2) (b); but there is still some little trouble about that. I think I shall be in a position to place the amendment before the House tomorrow morning after drafting the amendment in a form which may be acceptable to both parts of the House.

Mr. President: Then we shall pass that over and take up Part V.

The Honourable Sir N. Gopalaswami Ayyangar. There is another Clause which we have held over acid that is Clause 14. About that also I hope to be in a position to place before the House a kind of agreed proposal tomorrow morning.

Mr. President: The House will in that case take up consideration of Part V.-Distribution of Legislative Powers between the Federation and the Units. In regard to this, as I understand it, though there is no specific amendment here, there is a suggestion made on behalf of the Ministers of the States that this might be held over until we have discussed the Report of the Union Powers Committee. Is that the idea?

Sir B. L. Mitter (Baroda State): That is so. I have got an amendment to it.

Mr. President: Is it necessary to move that amendment now? I think we can hold over the consideration of Part V.

The Honourable Sir N. Gopalaswami Ayyangar: We have no objection to have it postponed.

Mr. President: I take it that it is the wish of the House that the consideration of Part V be postponed until we have discussed the Report of the Union Powers Committee.

The House will now take up Part VI for consideration.

PART VI-CLAUSE I

The Honourable Pandit Jawaharlal Nehru (U. P.: General): Sir, I beg to move:

> "1. The Federal Parliament in legislating for an exclusively Federal subject may devolve upon the Government of a Unit whether a Province, an Indian State or other area, or upon any officer of that Government, the exercise on behalf of the Federal Government of any functions in relation to that subject."

This is a very simple province which hardly needs any words me to commend it.

Mr. President: Rai Saheb Raghuraj Singh has an amendment to this Clause. Does he move it? The Member not being present the amendment is not moved.

(Shri V. I. Muniswami Pillai did not move his amendment No. 362.)

Mr. Naziruddin Ahmad (West Bengal: Muslim): I beg to move:

> "That in sub-clause (1) of Clause 2, for the words 'which applies to that unit' the words 'in so far as it may be applicable to the Unit' be substituted.

I have another amendment. That is for Clause 2.

Mr. President: The Honourable Pandit Nehru has moved only Clause 1. Only amendments to Clause 1 can therefore be moved row.

Mr. Naziruddin Ahmad: Mine is only a drafting amendment.,

Rai Bahadur Lala Raj Kanwar (Eastern States)-Rai Saheb Raghuraj Singh has just arrived, but I am prepared to move the amendment. I beg to move that for Clause 1, the following be substituted:

> "1. The Federal Government may, with the consent of a Government of a Province or the ruler of a Federal State, entrust either conditionally or unconditionally to that Government or Ruler, or to their respective officers,

functions in relation to any matter to which the executive authority of the Federation extends.

An Act of the Federal Legislature which extends to a Federal State may confer powers and impose duties upon the State or officers and authorities thereof to be designated for the purpose by the Ruler."

Mr. Tajamul Husain (Bihar: Muslim): On a point of order, Mr. President, when the member who has given notice of an amendment in the House, can another member move the amendment?

Mr. President: Both the members have signed the amendment. He is, therefore, perfectly in order in moving the amendment.

Rai Bahadur Lala Raj Kanwar: Sir, the wording of the amendment which has just been moved by me is based upon the wording of the Government of India Act, 1935, Section 124, subsections (1) and (3). It contemplates that whenever any functions in relation to a matter to which the executive authority of the Federation extends are made exercisable by a provincial government or the Ruler of a State or by their officers. it should be done with their consent and not independently, acid that the State officers should be designated by the Ruler and not by the Federation. Sir, the necessity for this amendment is that the delegation of functions to a Provincial or State Unit should be made with their consent and particularly in the case of Indian States, the officers to be designated for the exercise of these functions should be chosen by the Ruler. I, therefore, commend this amendment for the consideration and acceptance of the House.

Mr. President: Does anyone else wish to speak on the clause or the amendment? Both of them are under discussion now

Rai Saheb Raghuraj Singh: (Eastern States Group 2): Mr. President, Sir, the delegation of federal authority has already been agreed to in an earlier clause, viz. Clause 9. It has also been agreed that such delegation may be withdrawn in the discretion of the federation. The amendment which has just now been moved merely says that whenever delegation is made by the Federal Government to a State, it should be done with the consent of the State, and that the exercise of the delegated powers should be through an agency which should be approved by the State Government or the Ruler.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, this amendment practically repeats what is contained in Section 124 of the Government of India Act, 1935. Clause I which has been moved was intended to give the substance of Section 124. There are however two points which have been mentioned by the mover and the supporter of this amendment which deserve some examination. The first point, as I understood it, was that the devolution of functions of administration in relation to federal subjects upon provinces or States should be with the consent of the Governments of those provinces or States. The second point was that the designation of the officers of an Indian State who are to exercise the authority devolved upon them by the Federal Legislature should be by the Ruler or with his consent. I may at once say that whenever there is a proposal to devolve functions of this sort either on provincial or State Governments, or the officers of those Governments, there is bound to be previous consultation between the Centre and the Units concerned. We have got to recognise the fact that, after all, the functions proposed to be devolved are functions in relation to the administration of federal subjects. The authority for providing for executive administration of federal subjects has to be the Centre finally.

We could provide for consultation, but I think, Sir, it would be going against the root principles of the exercise of executive authority in' relation to Federal subjects if we stipulate that the consent of the Unit Government or the head of that Unit Government should be a condition precedent to such devolution. The substance of what the amendment wants will certainly be recognised by the future Federal Government. Before such devolution is made either by executive action or under federal laws, the fullest consultation win take place between the Centre and the Unit. I am, therefore, Sir, not in a position to recommend the acceptance of this amendment.

Rai Bahadur Lala Raj Kanwar : In view of the assurance given by Sir Gopalaswami Ayyangar, I withdraw the amendment.

Mr. President: I will now put the clause to vote. As regards the amendment, the mover wishes to withdraw it. I take it that he House gives him permission to withdraw it. I will now put the original clause to vote.

Part VI. Clause I was adopted.

CLAUSE 2

The Honourable Sir N. Gopalaswami Ayyangar: Clause 2 reads as follows:

"(1) It will be the duty of the Government of a Unit so to exercise its executive power and authority in so far as it is necessary and applicable for the purpose as to secure that due effect is given within the Unit to every Act of the Federal Parliament which applies to that Unit; and the authority of the Federal' Government will extend to the giving of directions to a Unit Government to that end.

(2)The authority of the Federal Government will also extend to the giving of directions to the Unit Government as to the manner in which the latter's executive power and authority should be exercised in relation to any matter which affects the administration of a Federal subject."

These two sub-clauses really repeat in substance the provisions of the Government of India Act of 1935. These are intended to prevent any clash of authority between the Centre and the Units. They are also intended to secure that the Unit Governments will so exercise their own executive authority, that is to say, their executive authority in relation to Unit subjects, as not to come into conflict with the exercise of executive authority in relation to federal subjects. I do not think, Sir, that any more explanation is needed. Sir, I move.

Mr. Naziruddin Ahmad: I move:

That in sub-clause (1) of Clause 2, for the words 'which applies to that Unit, the words 'in so far as it may be applicable to the Unit', be substituted.

Sir, may I also move amendment No. 365?

Mr. President: Yes.

Mr. Naziruddin Ahmad: My other amendment is:

"That in sub-clause (2) of Clause 2 for the words the 'Unit Government', the words 'Unit Governments', be substituted.

I submit, Sir, these are only drafting amendments and are put in by way of suggestions for the Drafting Committee.

(Messrs. Thakur Das Bhargava, K. Santhanam and P. S. Deshmukh did not move their amendments Nos. 364, 366 and 367.)

Rai Sahib Raghuraj Singh: I move that the following new Clause be inserted after Clause 2:

"3. Where by virtue of Clause (1) powers and duties have been conferred or imposed upon a Province or Federated State or officers or authorities thereof, there shall be paid by the Federation to the Province or State such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of the Supreme Court in respect of any extra costs of administration incurred by the Province or State in connection with the exercise of those powers and duties."

The object of this amendment is obvious, i.e., that whenever any duties are imposed on a State or Province or Federated State, the cost of carrying out of those duties should be paid to the State or Province concerned.

Mr. President: There is no other amendment to this Clause. So the clause and amendments are now open to discussion. Those who wish to speak may do so.

Shri Ram Sahai (Gwalior State): *[Mr. President, I beg to support the amendment submitted by the Rai Sahib. My submission is that, the amendment is very proper and necessary. The Government of India Act, 1935, Section 124, sub-section (1), provides for "power of the Federation to confer powers on the Provinces and States with the consent of the Government of a Province or the Ruler of a Federated State". But these words have been deleted from this clause. In order to strengthen the Centre it was proper to invest the Federation with such power without their consent. But in no case is it proper to delete sub-section (4) of Section 124 of the Government of India Act. Rai Sahib has pressed his amendment on the basis of this very subsection. I, therefore, consider it proper for the House to accept the amendment. By accepting it, the Provincial Government or the State would be able to recover the expenses incurred on behalf of the Centre. In order to consolidate the economical position of the Provincial Government or the State, it is essential that such sort of expenses should be paid to them. For this reason I support this amendment.]*

Rai Bahadur Lala Raj Kanwar: The amendment which I have the privilege of supporting needs no elaborate argument and it is self-explanatory. All that it aims at is to make a statutory provision for the payment of the cost of administration by the Federation to a Federal Unit, when the administration of a Federal subject is entrusted to that unit. As this provision is very necessary and it also finds a place in the Government of India Act, section 124, sub-section (4), it is suggested that it is a necessary provision and may be incorporated in our Constitution. At present the recommendations of the Constitution Committee do not mention anything about the payment of the cost of a administration in Such cases. As this seems to be a necessary provision, it is recommended for acceptance by the House.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, of the two amendments moved by Mr. Naziruddin Ahmad, the first one is to substitute the words "in so far as it may be applicable to the Unit" for the words "which applies to that Unit". It is apparently a suggestion for improving the drafting of this particular sub-clause, and whether it is an improvement or not, it is difficult to say. I think the essential purpose of the sub-clause is served by the present drafting as by the amendment that is proposed. I would leave the clause as it stands. I therefore do not accept that amendment.

His second amendment that the words "Unit Governments" be substituted for the words "the Unit Government" I accept. Then the only other amendment to this Clause is Item No. 368. This is taken from section 124. sub-section (4) of the Government of India Act. When the outlines of the Constitution were drafted for the purpose of discussion in this House, it was not considered necessary that all the consequential powers or provisions that may be necessary should be included in this draft. The omission of this particular sub-section of 124 was not motived by any desire to do away with that provision when the final draft comes to be made, but, as this particular clause has been moved as an addition to the present clause, I accept it and will go into the text of the future Constitution.

Mr. President: I will put the amendments first. The first amendment is by Mr. Naziruddin Ahmad:

"That in sub-clause (1) of clause 2, for the words 'which applies to that unit', the words 'in so far as it may be applicable to the unit' be substituted."

The amendment was negatived.

Mr. President: The, next amendment is:

'That in sub-clause (1) of clause 2 for the words 'the unit Government' the words 'unit Governments' be substituted."

The amendment was adopted.

Mr. President: The last amendment is that the following new Clause 3 be inserted after Clause 2:

"3. Where by virtue of Clause (1) powers and duties have been conferred or imposed upon a Province or Federated State or officers or authorities thereof, there shall be paid by the Federation to the Province or State such sum as may be agreed, or, in default of agreement as may be determined \by an arbitrator appointed by the Chief Justice of the Supreme Court in respect of any extra costs of administration incurred by the Province or State in connection with the exercise of those powers and duties.'

The amendment was adopted.

Mr. President: The clause, as am ended, is now put to the House.

Clause 2 as amended was adopted.

The President: There is notice of another amendment that another clause should be added. That is given notice of by four members.

Sri H. R. Guruv Reddy (Mysore State): I beg to move this amendment:

"That after clause 2, the following new clause be added:

"3. It shall be competent for an acceding State with the previous sanction of the federal Government to undertake by an agreement made in that behalf with any Governor's Province or Chief, Commissioner's Province or any other acceding Indian State any legislative, executive or judicial functions vested in that Province, Chief Commissioner's Province or other acceding State, provided that the agreement relates, so far as Provinces or Chief Commissioners' Provinces are concerned. to a subject included in the Provincial or Concurrent Legislative List and so far as the other acceding State is concerned to a subject not included in the Federal List.

'On such an agreement being concluded the State may, subject to the terms thereof exercise the legislative, executive or judicial functions specified therein through, the appropriate authorities of the State."'

Sir this is a counterpart of Clause 8 of the Report of the Provincial Constitution Committee. This august House was pleased to accept the Report of the *ad hoc* Committee on Clause 8 Part I of the Provincial Constitution which provides that any Provincial Unit could take over and administer any portion of any State Unit under it. Similarly, a clause which enables the State Unit to take over and administer parts of other Provinces is moved now in this Clause.

Sir, it is but just and fair that once power is taken to take away a portion of a State or a State Unit for administrative purposes, a State which is competent and capable similarly to administer should be allowed that freedom of taking a portion of another Province for similar administration by itself. There need be no doubt in any quarter that it is not a fair and just clause to be introduced.

Sir, there are certain limitations here. First of all, it should be with the previous sanction of the Federal Government which is all powerful.. There is no fear of any sort that any such agreement would be rushed through by any two interested parties without first of all coming before the Federal Government and taking its consent. Next, there is another limitation imposed, namely, that there should be a competent agreement under which this action could be taken, if at all. Therefore, unless and until these two portions of this amendment come into operation no such administrative control could be taken over by a State as a matter of course.

Sir, it is but just and right that this House having passed Clause 8, as amended in the Provincial Constitution, should allow that freedom to the States also. It provides nothing more than this.

Mr. K. M. Munshi (Bombay: General): Sir, I move that the consideration so far as this proposition is concerned should be adjourned. The reason is very simple. In considering the Provincial Constitution, the House decided that there should be a similar power given to a Province with regard to the Slates and in fairness it would appear that a corresponding power should be given to the States. But, at the same time till the Union Powers are discussed and considered and the House is in a position to judge as to the nature and scope of the subjects for which the States are coming, it would be premature to consider this proposition. This clause stands by itself. It is not in the nature of an amendment, but an independent proposition. Any discussion of its merits at the Present stage, I submit, rot be very desirable. I therefore submit, Sir, that consideration of this should be postponed till after the Union Powers Committee's Report is discussed by the House.

Shri Gopikrishna Vijayavargiya rose to speak.

Mr. President: Do you want to speak on the main amendment or on the suggestion of Mr. Munshi?

Shri Gopikrishna Vijayavargiya (Gwalior State): On Mr. Munshl's suggestion.

Sir, I come from a State. I am dead against the amendment that has been proposed. *(Hear, hear.)* As long as there is dissimilarity between the political situation in the States and the Provinces, the States should not be given any further rights or any such rights an are proposed. But, as this is a controversial subject, as Mr. Munshi says it ought to be postponed, I think it ought to be postponed.

Shri H. R. Guruv Reddy: I have no objection to its postponement.

Mr. President: The suggestion is that the discussion of this Clause be postponed till after we have discussed the Union Powers Committee's Report. Is it the desire of the House that this should be postponed?

Many Honourable Members: Yes.

Mr. President: R is postponed.

Mr. President: Mr. Ananthasayanam, Ayyangar, you gave notice of a proposition that another clause be added-in Supplementary list.

Shri M. Ananthasayanam Ayyangar : I am not moving it. Srimati Durgabai also is not moving it. I do not move my amendment No. 5 in Supplementary List No. IV.

PART VII

Mr. President: We shall now take up Part VII.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, this is a very important part of the Constitution we are considering. The first two clauses raise issues of far reaching importance and if you agree, Sir, and the House agrees, I would ask for permission to postpone the moving of Clauses 1 and 2 to the next session. In doing so, I wish only to say that it will be necessary for us to get more particulars ready under Clause 2 particularly before we shall be in a position to answer all the criticisms that may be levelled against the clauses as they stand. It has been in the minds of the framers of these clauses that we should set up an expert committee on finance which will give a detailed investigation and submit proposals which could be embodied in the text of this Constitution. I hope, Sir, it will be possible for them to request you to appoint a Committee of this sort so that that Committee's report will be available to us before the next session or soon after we commence that session. Sir, if you agree, I request permission not to move Clauses 1 and 2.

CLAUSE 3

Mr. President: You may proceed to Clause 3.

The Honourable Sir N. Gopalaswami Ayyangar: Clause 3, 1 move:

"The Federal Government will have power to make subventions or grants out of Federal revenues for any purpose, notwithstanding that the purpose is not one with respect to which the Federal Parliament may make laws.'

This is intended to enable the Federal Government to subsidise activities within the range of provincial functions, or, to put it more accurately, outside the range of Federal functions. A power of this sort is necessary in order to enable the Federal Government to use revenues which are primarily raised for meeting the expenditure on Federal administration for items of expenditure which will not ordinarily fall within that field. This liberty to do so will also be helpful in another way. There're various developmental activities in different directions which the units will have to take up and the units may not have adequate finance for 'meeting the expenditure on these activities. It will be necessary, I think for the Federal Government to sanction subventions in aid of such developmental activities though they are purely within the provincial sphere. In the interest of the development of- the country as a whole. this power in the Federal Government is a very necessary weapon for them to have.

Mr. President: Mr. Omeo Kumar Das has given notice of an amendment

Shriyut Omeo Kumar Das (Assam: General): Sir, I am not going to move the amendment that stands in my name. I am more interested in Clause 2 the discussion of which Clause has been postponed to a later date and we are assured that an Expert Committee will investigate the whole problem. I hope and trust that our province will certainly get a fair deal from that Committee but I would like to make a few general observations on Clause 3 if you will permit me to do so, after all the amendments are moved.

Mr. President: Yes, we will take Clause 3 and the amendments them-to first. If you wish to take part in the discussion, you may do so later.

(Messrs. H. V. Pataskar, T. A. Ramalingam Chettiar, H. J. Khandekar and Rev. J. Nichols Roy did not move amendments Nos. 375, 376, 377 in the main list and No. 23 in Supplementary List I.)

So far as I can see there is no other amendment to Clause 3. The Clause is open for discussion.

Mr. B. Das (Orissa: General): Sir, I agree with Sir N. Gopalaswami Ayyangar that this is the most important chapter of the Union Constitution that has been placed before us. Sir. in he Fundamental rights we have not yet ensured that there should be social security for all. Social security means social justice for all and there should be certain minimum adequate standard of living for all. There should not only be public health and public safety, there should also be minimum education ensured for all. Unfortunately, Sir, we had an alien Government which lived for British domination. Its financial and economic policy was to take all it could take to maintain British Imperialism and British domination not' only in India but throughout Asia. It gave nothing to the Provinces. If it gave to the poorer provinces like Orissa or Assam anything, it was Just a sustenance allowance and nothing more. The British accession to India meant only expansion of British trade and commerce and there was development and prosperity only in ports like Calcutta, Bombay, Madras and Karachi, and all communications led to these ports and hence these Provinces became so prosperous. Provinces that came later, I mean my own province of Orissa or even Assam, they were victims of circumstances like a poor man's home where children often come and they are not wanted by the parents because they cannot equip them properly for life or give them proper food or proper education.

Sir, I am sick of hearing in this House that in certain respects we are following the Government of India Act, 1935. Those of us who opposed the enactment of that Act and those of us who knew stage by stage how the stranglehold of Britain and the autocratic British Government was being perpetuated in the Government of India Act, feel ashamed and humiliated to hear that today when we are coming to Free India or Dominion India within a, fortnight or so, we are trying to frame a constitution for India on the lines of the Government of India Act that perpetuated these strangleholds on India and postponed the formation. of the Federal Government from 1935 to 1947. Sir, these few section that we find in the Government of India Act, Sections 136 to 149-about finances and borrowing, about subventions and grants-in-aid were not inserted with any intention of securing social security and social justice to the people of the Provinces that came into existence accidentally. We have seen how these sections were flouted when the World War II came In 1939. By a particular section, section 126 (a) which was passed in 1939, all the Provinces, all the Provincial resources and all the people of India were made the hand-maidens and. slaves of the British Government, so that the soldiers of India could help the British Government to fight this war and achieve victory at the cost of India. We know what happened. Nearly Rs. 5,000 crores worth of material were sent out of India to Britain and her allies at controlled prewar rates and in the same way India was robbed of her food and the result was that 50 to 75 lakhs of people died in Bengal of famine and starvation. Another result was inflation. That was the social security and social justice that the Government of India Act gave us.

To me, Sir, it is painful that in the preamble of the Union Constitution it has not been clearly laid down that the objective is to maintain peace and well-being of the people and bring prosperity to the people of India-it has not yet been defined; I believe and I hope it will be defined. But I think it should be laid down that the first function of the State is to see to the well-being of the people,-not to rule as the British Government have so long ruled and exploited India for England's benefit and for India's misery and death. Therefore, Sir, I am glad to hear from Sir Gopalaswami that a Financial Inquiry Committee will be appointed, But I hope such a Committee would contain not only eminent lawyers but also financiers, economists, etc., who can lay down what is. the minimum standard of social security that India's present over-burdened and over saddled financial and economic conditions will warrant for the people of India. In Part V we have provided for a strong Centre, but is it the duty of the Centre only to have administrative functions and legislative functions? I would very much like that the Union Powers Committee contained also men with knowledge of high economics and finance. I know that my friend Pandit Govind Ballabh Pant was in it and he is of course a financial expert, but there might well have been others. It is social justice and social security that we want. The Administration is of course going on. I am sorry to express this view, but I have come to the conclusion that the Union Constitution has not lightened the administrative rigour that was in the Government of India Act. of course, they Will bring the final Union Constitution before us and we shall examine it in October; but judging from the tendency of speeches that we have listened to in this House by our leaders and the members of the Union Powers Committee, I find that they want power-administrative power, legislative power and so on. But these are only the tools for the contentment and happiness of the millions by maintaining peace and tranquility in the country. It is the financial and economic chapter of the Union Constitution that will show what these people really mean, whether they want to ensure social justice or whether they want to evolve another bureaucratic government where power politics will dominate. Those who are in power whether they be my brothers or cousins, are bound to exercise their power in the same Way as the British did. The reason is that most of us have grown old in the British tradition. It is very difficult, Sir, to discard that tradition and suddenly visualise democratic principles, so that we may render social justice and secure social security for our teeming millions. I therefore welcome the Union Powers Committee Report, which also will be discussed in the August Session. There I find the Committee members have gone a stage further than the draft of this Union Constitution Committee. There they say: (*vide* para 6 of 2nd report.) *(Interruption).*

Mr. President: I do not wish to interrupt the Hon'ble Member, but may I remind him that we are discussing Clause 3 now? It relates to subventions.

Mr. B. Das: I know, Sir. It is on that question I am talking. That clause talks of giving charity to the Provinces. I do not want any charity, I am merely reading out what the Union Powers Committee have saw on this point, because that explains their attitude.

They, say:

> "It is quite clear, however, that the retention by the Federation of the proceeds of the taxes specified by us would disturb, in some cases violently, the financial stability of Units and we therefore recommend that provision should be made for an assignment or a share of the proceeds of some of these taxes on a basis to be determined by the Federation from time to time."

Sir. whether it is the Finance Minister, or the President or the Federal Government, or whoever gives subvention or charities or grants-in-aid do not want that. I want that it should be statutorily provided for in the Constitution Act. My friend Sir Gopalaswami has told us that there would be an Expert Committee. But I would like that these grants-in-aid should be statutorily provided and they should not be charity grants of the Finance Minister, whoever he may be. He might be the beat expert or the best friend of the poor man, it does not matter. These grants-in-aid or subventions should be reviewed periodically, say, every three years or five years. This is the suggestion that I put forward. I want them to state definitely what they are going to do for the teeming millions. The Provinces will come in as poor *zamindaries* and big *zamindaries*. While I support Clause 3 because it gives me a chance to enunciate my views before this House and which I hope the Union Powers Committee will accept, I hope that the sections in the Constitution Act will render social justice and ensure minimum standard of living to every citizen in India.

Shriyut Omeo Kumar Das: Mr. President, Sir, I have already told you while withdrawing my amendment I would like to make a few observations in support of this clause--Clause 3.

Sir, the question of subsidies has been in all federations a very perplexing one. But still these questions are being solved in a spirit of compromise. In all the federations the constitution makers approach this problem with a spirit of compromise and try to give a fair deal to all the units. Sir, we are entrusted with the task of framing our constitution and we have to deal with this most perplexing question of subsidies. This question is all the more perplexing situated as we are with national income extremely low and with so many different problems in different provinces, with so many backward communities and tribes the provinces and many other complicated problems. Still I feel that the Expert Committee which will be set up in future will deal with this question and try to give a fair deal to all the units.

While framing this draft constitution for the Union we have almost accepted the constitutional set-up envisaged in the Government of India Act, and I have a lurking suspicion in my mind that we may also accept the financial arrangement that was provided for in that Government of India Act. Sir, it is not necessary for me to tell this House that the financial arrangement set up under that Act was conceived with a different outlook. At that time the Provinces were confronted with deficits and the Committee that was set up at that time , I mean the Otto Neimeyer Committee, had to determine how to bring about budgetary equilibrium. Besides, Sir, the Committee approached this question of budgetary equilibrium with the notions which prevailed regarding public finance at that time. These notions have now undergone a radical change in these few years and they have been replaced by a different criterion the criterion of maintaining full employment, whether maximum advantage for the people can be brought about A financial. system which was designed to meet a static economy is now being called upon to meet a situation which is essentially dynamic. Sir, a government of the people and by the people is being installed and what will be the meaning, and what will be the utility of that government if it cannot bring about the maximum advantage to the people?

Sir, it will not, perhaps, be out of place if I refer here to the Canadian or Australian constitutions The framers of those constitutions have evolved a better system of meeting the provincial requirements by giving better subsidies to the provincial units. Sir, in my province of Assam, there are special problems, The country is agricultural without any big industries. It is a land full of backward tribes and communities and a large number of backward people have been artificially transferred to that land as labourers to the tea plantations. Then there are the turbulent rivers which devastate the smiling countryside. There are also virulent diseases which bring about ruin to happy families. They need control. These are big problems and unless we have a better financial system, we cannot hope to meet these crying needs. No doubt, ours; is a backward country, but I have to bring to the notice of this House that we are one of the largest contributors to the Central exchequer, by way of the export duty on tea and jute and the excise duty on petrol. By these means we contribute to the Central exchequer no less 'than seven crores of rupees But under the present financial arrangement we are receiving only a trifling subvention (if Rs. 25 lakhs. I do hope that the expert committee which investigates this question hereafter will try to give a fair deal to Assam.

With these words I beg to support Clause 3.

Mr. Mohammad Sheriff (Mysore State): Mr. President, Sir, those who were responsible for bringing out this Report deserve our congratulations for having thought it desirable to make provisions for the uplift of those who ire undergoing so many hardships. So far as this particular clause is concerned, it proposes that the Federal Government, should have the power to make subventions or grants out of federal revenues for any purpose notwithstanding that the purpose is not one with respect to which the Federal Parliament may make laws. There is no need for me to tell you, Sir, that we have got several post-war schemes, schemes designed to improve the economic and commercial and educational standard of the people. These schemes are on the anvil, but it is very necessary that money should be got to put them into execution. So far as the Provinces are concerned, they do not have the wherewithals to put these schemes into immediate effect. And so far as poverty is concerned it is rampant not only in the northern provinces, but also in the south. So many people are dying of starvation and hunger and the enlightenment and education advance of the masses should receive immediate attention too.

So far as these nation-building items are concerned, I do not think the provinces have the money and it is the duty of the Centre to see that money is Supplied to them so that out of this money, they may spend for the needs and requirements of the poor people and in the way of their enlightenment and education. These are the two items which will bring progress and advancement to the country. These are very necessary and it is very. good of the framers of the report that they should have taken this aspect of the question and decided that from out of the Federal revenues provinces also would have necessary funds. With these words, Sir, I have very great pleasure in supporting it

Mr. President: I should have thought that it is a very innocent and simple clause and would not have required much discussion. I would ask the House-Whether further discussion is necessary since there is no opposition.

Honourable Members : No, no.

Mr. President: The question is:

"The Federal Government will have power to make subventions or grants out of Federal revenues for any purpose, notwithstanding that tile purpose is not one with respect to which the Federal Parliament may make laws."

Clause 3 was adopted.

CLAUSE 4

The Honourable Sir N. Gopalaswami Ayyangar: I beg to move Clause 4:

"The Federal Government will have power to borrow for any of the purposes of the Federation upon the security of Federal revenues subject to such limitations and conditions as may be fixed by federal law.'

This. is what every Government has to do if it has to meet expenditure which it cannot meet out of its current revenues, for it has got to meet expenditure whose effects might be of a lasting character-expenditure of a developmental nature. The raising of funds by borrowing is a very necessary item in any kind of governmental finance. This clause Is a very necessary item in the Constitution.

Mr. President : Is there any amendment of which any member has given notice?

Mr. M. S. Aney (Deccan States): I suggest that for the words, "upon the security of Federal revenues" substitute "upon the security of Federal assets and revenues''.

Mr. President: Mr. Aney suggests upon the security of federal asset and revenues.

The Honourable Sir N. Gopalaswami Ayyangar: When we consider the draft we will take that into account. I do not think it Is really necessary.

Mr. President: Is there any amendment to this clause?

Mr. B. Das: I have one. It is amendment No. 24 in supplementary list No. I.

Mr. President: That I take it is in connection with a new clause. It does not refer to this clause.

The question is:

"The Federal Government will have power to borrow for any of the purposes of the Federation upon the security of Federal revenues subject to such limitations and conditions as may be fixed by federal law."

Clause 4 was adopted.

CLAUSE 5

The Honourable Sir N. Gopalaswami Ayyangar: Sir; I move:

"The Federal Government will have power to grant 'a loan to, or guarantee a loan by, any Unit of the Federation on such terms and under such conditions as it may prescribe."

This also is a simple and very necessary clause. The Federal Government makes itself responsible for the solvency and the adequate meeting of the expenditure of the Units by the Governments of those Units. it they stand in need of a loan the Federal Government will either grant the loan or guarantee a loan which is raised by the Unit.

Sir, I move.

(Amendments 378 and 379 in List No. 2 were not moved.)

Mr. President: There is no amendment to this. The question is:

"The Federal Government will have power to grant a loan to, or guarantee a loan by, any Unit of the Federation on such terms and under such conditions as it may prescribe."

Clause 5 was adopted.

Mr. President: I have notice of an amendment to this part by way of an addition.

Mr. B. Das: I am not moving. it.

Shri T. T. Krishnamachari (Madras: General): I am not moving 'VII-A, but VII-B and I would therefore like VII-B to be renumbered as VII-A. Sir, I move:

"Part VII-A. There shall be an Inter State Commission constituted in the manner prescribed by federal law, with such powers of adjudication and administration as may be similarly prescribed for the execution- and maintenance of the provisions of this Constitution relating to trade and commerce and generally for adjudicating in similar matters as may be referred to it from time to time by the President".

The object of my moving this amendment is that in the matter of regulation of trade and commerce, so far as this Constitution is concerned the only reference we have come across so far is Clause 10 in the Fundamental Rights which this House accepted in a previous session. Clause 10 says:

> "Subject to regulation by the law of the Union Trade and Commercial and intercourse among the units and between the citizens shall be free."

I find in the report that has been submitted by the Union Powers Committee that Trade and Commerce with Foreign countries is covered by item 17 in List No. I, the Federal List, and Trade and Commerce with the provinces is included in item 26 in List 2, the Provincial List. Actually these two items follow closely the corresponding items in the Government of India Act, 1935, viz., item 19 in List I, Schedule VII and item 23 in List II of the same schedule. A slight change has been made in the wording of these two items but the contents are substantially the same. I however find a lacuna in the new proposals for a Constitution in this respect. I find this Constitution does not contain any clause analogous to Section 297 of the Government of India Act which laid a definite embargo on any device by legislation to put a ban on the freedom of inter-provincial trade. I have no doubt that the Members of this House are fully aware of this particular section in the 1935 Act and of the implications that go with it. I am therefore somewhat surprised that it should find no corresponding mention in this Constitution. Apparently the framers of this Federal Constitution have been guided by the practice that obtains in the matters of dealing with this subject in other Federal Constitutions in the world.

Sir, so far as the United States is concerned the position is that in article I, section 8 of the Constitution, there is a reference in the powers of the Congress to regulate Commerce with Foreign nations and among the several States which has now become practically the sheet-anchor of a vast amount of judicial decisions and has resulted in the creation of a number of administrative bodies to regulate various types of commercial activities within the territory of the United States. I do not think that a Federation, like the one we envisage for-ourselves, could leave such important matters as vague as they are in the American Constitution, for the reason that, while the American Constitution is of the Presidential type where the initiative rests with a single individual the President, ours is to be of the parliamentary type where the initiative is not held by any one person. We have in this matter rather to look to the examples of other Federal Constitutions like those of Canada and Australia.

So far as Canada is concerned, regulation of trade and commerce finds explicit reference in the distribution of powers in Section 91, Item 2 of that country's Constitution. Therefore it does not offer any parallel to the position in which we are placed today. Australian Constitution, however, is more or less on the lines we have envisaged for our Constitution in regard to trade and commerce. There is a reference In section 51 of the Australian Constitution to internal trade and commerce. But, apparently having learnt from the experience of the United States they have been wise enough to add a few more sections to their Constitution In the matter of the regulation of trade and commerce. These are sections 101, 102, 103 and 104 and I am now referring to section 101. My amendment is more or less a verbatim copy of this section 101 which provides for the appointment of an inter-State commission for the purposes of adjudication and administration of the provision of the Constitution in regard to trade and commerce.

Sir, it might be left that the wording of this particular amendment of mine is not appropriate. Actually I have gone a little further than the wording of this section in the

Australian Constitution as I have added the words: "and generally for adjudicating in similar matters as may be referred to it from time to time by the President". My reason for doing so is that in section 135 of the Government of India Act, provision has been made for the Governor-General bringing into being a Provincial Council where matters like this may be threshed out and frictions, strains and stresses in the Constitution that might exist, eased by discussion amongst the representatives of the units. We find no provision for any such agency corresponding to this has been made in the Constitution we are now discussing. Therefore I felt that the scope of my amendment should be wider than that of section 101 of the Australian Act and it should be open to the President to refer other matters also to this Inter-State Commission.

Sir, it might be said that a very bold reference like this does not help one very much. What the position of the Inter-State Commission should be I am leaving to the Federal Law to lay down. I have not copied the parallel section of the Australian Act No. 103 and have not provided that the Members should be so many in number, that they should have such and such qualifications and so on. These are matters which have to be considered at length later on when the Constitution is in operation and a Federal Law has to be enacted for the purpose. What I desire is that some room should be left for enlarging the powers of this Inter State Commission. Whether it is only matters regarding trade and commerce and others incidental should be referred to the Commission or whether it should be the means by which some kind of co-ordination in the economic activities of the Units could be achieved and such friction as might arise smoothened are matters which may be left to the draftsman of that Constitution act and to the Federal Law that may be brought into being later on. I hope, Sir, it will be possible for the Mover to accept my amendment. (The Honourable Sir N. Gopalaswami Ayyahgar: You are the Mover). I meant the Mover of the report of the Union Constitution committees proposals. I am quite willing to agree to any changes being made by the draftsmen in my amendment in regard to the wording of it before it comes to us finally in the form of a draft Bill commend my amendment to the House for its acceptance. Sir, I move.

Shri K. Santhanam (Madras: General): Sir, I beg to support the amendment moved by my friend Mr. T. T. Krishnamachari. In all Federal Constitutions there is always a conflict between the need for unity and the need for local autonomy. In certain respects this reconciliation has to be achieved through Federal legislation and administration. But this process is not available in the case of many matters and so, certain non-federal institutions have to be set up. The actual scope of Mr. T. T. Krishnamachari's amendment is rather narrow. I hope when the time comes we shall be able to expand it. We have to evolve not only this Commission, but many Commissions for voluntary co-operation between the Units. Let us for instance, take the Sales Tax. It is a provincial tax. I should expect in the coming years this tax becoming one of the most important sources of revenue for the Units. But unless the Units voluntarily co-operate with one another and evolve a uniform method of taxation, there may be great shifting of trade from one Unit to another to the detriment of the normal development of the Units. In certain contingencies, the Units may even be driven to the necessity of handling over the collection and distribution of this tax to the Federation. It is better for that, in the exercise of their functions. the Units voluntarily co-operate, create a machinery for such co-operation and evolve certain standards and methods keeping to themselves full liberty and discretion to make local variations. It is more as a sample of voluntary Inter provincial co-operation that I support this amendment. As this will be in the Statute Book as part of the Constitution it will set up a precedent which will give a sort of pattern for Units to join in many other spheres. Especially in matters like irrigation, agriculture, etc. such commissions will be of great use. So I suggest that this matter should be gone into by a Special Committee and its scope investigated before it is put in the draft Constitution.

How these Commissions should be constituted, whether they should be elected by the legislatures or nominated by the Units, all these matters require careful consideration and I hope proper steps will be taken to have the scheme circulated among the provincial governments and only after their consent is taken to put it in the final draft of the constitution.

Mr. R. K. Sidhwa (C. P. & Berar: General): Mr. President, Sir I welcome this proposition as it is of a very important nature but 'I do feel that the wording is rather narrow. Such an Inter-State Commission also requires to investigate the economic conditions of the country, and apart from trade and commerce, I would suggest that the word 'economics' should also be put into it. The question of money will play, a prominent part in the future constitution, and as was stated only a few minutes ago by Mr. B. Das in connection with another clause, for the nation-building programmes a good deal of money will be required as subventions from the Federal Government to the provinces and unless we have got sufficient money for the purpose of giving subventions, it is not possible for the nation-building programmes to be accomplished It has been, Sir, our cherished desire, that when India becomes free, the nation-building, programmes will be given a new fillip, and unless we have also an Economic Commission of the nature proposed for trade and commerce, I am assure you, Sir, we shall never be able to go ahead with our nation-building programmes. This is of considerable importance both to the provinces and the Federation. When the question of finances to be given to the various provinces is raised, the federal government will say that they themselves are hard pressed for money. Therefore. it is necessary that in the constitution itself provision should be made whereby an Economic Commission will be set up so that they may devise ways and means of advancing the nation-building programmes, for, Instances public health, social security, social co-operation. All these things require immediate attention. If we do not give them immediate attention, I can assure you, Sir, that the people will not be content with any type of constitution that we may make. In our Objectives Resolution itself we have made it perfectly clear that we stand for the socialist system. Sir, this is a welcome suggestion but I do request the Honourable the Mover to add the word 'economics' also in the wording of the clause. We want to do something really new, something really big for the benefit of the people, and for that it is very necessary that we should have an Economic Commission. While therefore supporting this amendment I request that the word 'economic' may be added in it.

Mr. President: Doer, anyone else wish to speak?

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I do not propose to say much on this resolution. The principle of it is sound. It says that provision should be made in the constitution for setting up an Inter-State Commission for the purposes which the mover of this amendment has already explained in detail to the House. I would only say that, in accepting this amendment, I do not stand committed to the actual terms of it, but would like to reserve to liberty to alter the language perhaps even the substance of what is contained in this amendment before we translate it into a section or sections in the Union Constitution. Sir. I accept it.

Mr. President: I would now put the amendment of Mr. T. T. Krishnamachari to vote.

The motion was adopted.

The Honourable Sir N. Gopalaswami Ayyangar: Part VIII refers to the Directly Administered Areas. The clauses that I want to move run as follows:

> 1. The Chief Commissioners' Provinces should continue to be administered by the Centre as under the Government of India Act 1935, as interim measure, the question of any change in the system being considered subsequently, and all centrally administered areas including the Andamans and the Nicobar Islands should be specifically mentioned in the Constitution.
>
> 2. Appropriate provision should be made in the Constitution for the administration of tribal areas."

The latter clause really is dependent upon the report we shall receive from the Advisory Committee. Whatever is recommended by that Committee and accepted by the House will go into the new constitution.

As regards the directly administered areas the Committee recommends that the existing state of things might continue, the question of making any changes in the constitution and administration of these Chief Commissioners' provinces being left to be attended to in the Federal Parliament after it comes into being.

***Mr. President:** There are certain amendments to this clause.

(Mr. H. J. Khandekar did not move his amendment No., 380)

Shri Gokulbhai D. Bhatt: (Rajputana Eastern States): *[Mr. President, another improved form of the amendment, conveyings nearly the same sense which my amendment has, is about to be moved and so I am not going to move mine.]

***Mr. Deshbandhu Gupta:** (Delhi): *[Mr. President the amendment which I am going to move runs as follows:-

> "That consideration of clause I be postponed and that a special Sub-Committee consisting of seven members to be nominated by the President should be recommended before the next session of the Constituent Assembly to suggest suitable constitutional changes to be brought about in the administrative systems of the Chief Commissioners' provinces so as to accord with the changed conditions in the country and to give them their due place in the democratic Constitution of Free India."

Regarding this, I have only to submit that according to the recommendations of the Union Constitution Committee, the Constituent Assembly, a present, intends doing nothing for Chief Commissioners' provinces. I consulted the members of the Union Constitution Committee, Provincial Constitution Committee and some other members, and I have reached this conclusion. They do not intend that in the Chief Commissioners' Provinces which include the three major "provinces" of Delhi, Ajmer-Merwara and Coorg, the present form of administration should be continued any longer. But it is only for the sake of convenience that they have recommended it. Naturally, when the population of these districts comes to about 30 lacs, they desire that on the occasion of the formation of the Constitution for the whole of the country, there should be a mention of these districts also in that constitution, and that there should be a definite recommendation for their administration in future. With this view, I am placing this amendment before you.

I am of opinion that since we appointed 'he Union Constitution Committee to formulate a Constitution for the centre and the Provinces likewise it was necessary to appoint a Committee for Chief Commissioners' Provinces, though they are few in number and have a small population which however is not negligible. I am glad that in a way it is an agreed amendment and I think that when the Committee is appointed, it would consider all aspects of this matter. Most of you are residents of Delhi in this way that you spend a major portion of the year here. Most of you are often our guests, and therefore, I think that when the difficulties of Delhi people come before you, this Constitution Committee will duly consider them.

I do not wish to say anything more at present. Considering the difficulties that the people in the Chief Commissioners' provinces have to face, they should not be deprived of any kind of self government now. Besides this, the part they have played in the struggle for freedom should come before the Committee and I hope it would recommend such a constitution is would be acceptable to the whole House.

I do not want to take up the time of the House for long. I hope that this amendment will be accepted. If this amendment is approved, the Other amendments of which notices have been given by us need not be moved.]*

Mr. President: There are no other amendments to the clause, but if the amendment suggested by Mr. Deshbandhu Gupta is accepted, it will not be necessary to consider the other amendments.

The Honourable Sir N. Gopalaswami Ayyangar: I accept his amendment except that I would substitute the word 'Committee' for 'Sub-Committee'.

Mr. President: It is accepted by Sir, N. Gopalaswami Ayyangar.

Mr. B. K. Sidhwa: Sir, I rise to support this Motion, not because, Sir, in supporting it, I want to make a speech but I want to impress upon the members who will form the Committee for this purpose to realise the importance of this question, and, therefore, I do feel some remarks are appropriate at this stage, when seconding this Motion. There are so many subjects concerning Delhi City, which have been ignored all along. It is said that Delhi is the seat of Imperial Government. The Government here look to All-India affairs and in this way they have neglected Delhi City and the Province. By way of illustration, there is a transport company here in Delhi called G. N. I. T. and people are cursing this Transport Co., because it could not cope with the traffic and at the same time the authorities are charging fabulously heavy rates. Now, if Delhi had its own Provincial Government, and if this matter came within their jurisdiction, it would certainly look into the matter at once. Transport licence is given by local Governments and if a responsible separate Government existed they would either nationalise the service as did the Punjab Government or they would have the service improved. It may look a small matter, but nevertheless it affects the average man. The man, in the street accuses the Government for doing nothing in the matter. Then there ate questions like irrigation, P. W. D., prohibition, etc. If there is a separate Provincial organization it will certainly look into the matter, no matter what the population is. Because Delhi is a Capital town, this has been ignored in the past. I do feel strongly that because Delhi has been the Capital of India, this city and the adjoining villages have been ignored in the past.

Sir, I therefore welcome this motion and I do impress upon the Committee to bear all this in mind. I want a responsible Government responsible to this Legislature, so that it can become a forum for ventilating the grievances of the public of the City of Delhi. From this point of view, Sir, I heartily support this Motion. It is already overdue. I must state, Sir, When I found in the Constitution that Delhi will probably remain as it is and later on in the future Constitution a Commission may be set up, I moved also an amendment that in the new Constitution to come, Delhi should have its own Legislature and the public must be enabled to ventilate the grievances of the people of the City or the Province. Therefore, Sir, I whole heartedly support this Motion.

Mr. C. M. Poonacha (Coorg): Mr. President, Sir, I thank Sir Gopalaswami Ayyangar for having accepted this amendment of ours and in doing so, I would like to make some observations by way of suggestions. On a previous occasion, Sir, on the floor of this House, I had suggested that a Committee of this type should be appointed to examine the question of the Chief Commissioner's Provinces. The problem of the Chief Commissioners' Provinces is not so simple as it appears to be. The problem of each of these areas varies one from the other. This fact is borne out in the reports of the Constitutional Enquiries that preceded the passing of the 1919 and 1935 Acts. The question of the Chief Commissioners' Provinces was not properly dealt with in 1919 and 1935 Acts and the question is still hanging fire. Therefore, Sir, I feel that a full examination of the conditions obtaining in each of these provinces as under the 1935 Acts should be undertaken and suitable recommendations made. It may be necessary for that purpose to make local enquiries or at least elicit view points through a set of questionnaire.

So far as Coorg is concerned, I had stated on a previous Occasion that I have given a definite assurance in the Legislative Council there at the time of my election to this Assembly, to the effect that the opinion of the people of Coorg will be ascertained before bringing any drastic changes in the system of administration of Coorg. Coorg has its own problems and requires a through investigation. It may not be out of place here, Sir, if I suggest that the Committee would do well to visit Coorg in order to make a first hand study of the Coorg Legislative Council there. This Council has been functioning for the last 24 years and it would be of great use to the Committee to examine how it has been working for the last quarter of a century.

In conclusion, I may be permitted to say, Sir, that as the matter is of very vital importance to the people of these areas, the members representing the Chief Commissioners' Provinces in this Assembly should be associated in the deliberations of the Committee. As the matter is rather of a complicated nature, I would also suggest that our able constitutional lawyers who have worked so much for the preparation of this Report on the Union Constitution should be included in the Committee. This question deserves very careful examination and able guidance.

Pandit Mukut Bihari Lal Bhargava (Ajmer-Merwara): Mr. President, Sir, I wholeheartedly support the amendment moved by Mr. Gupta. It is strange, Sir, that the Union Constitution Committee which was specially delegated with the authority to deal with the question of the Chief Commissioners' Provinces has not made any suggestion. It has simply deferred the whole question and has stated that the question of change in the system shall be taken up at a later stage. It is really a matter of great pleasure, Sir, that the sponsor of this clause has agreed to accept the amendment and that Committee will be appointed by the President to go into the question of the Chief Commissioners Provinces.

Sir, the Chief Commissioners' Provinces are a variety of territories situated in different parts of the country and they have got a historical importance of their own. So far as my province, Ajmer-Merwara, is concerned, it is situated in the heart of Rajputana and is a place of historical importance. In fact, its strategic position has been the cause of all this autocratic administration that has prevailed in my province throughout the British rule. All efforts at effecting a change and amelioration in the administrative system have failed. The Minto-Morley Reforms of 1909, the Montagu-Chelmsford Reforms of 1919 and the Constitution Act of 1935 have left altogether unaffected and untouched the autocratic administrative system that prevails in this province and all Other Chief Commissioners' Provinces. In fact, Sir, the recommendation of the Union Constitution Committee to the effect that this question may be taken up at a later stage is altogether out of tune with the democratic constitution of the Republic of India. 'Therefore, Sir, it is most, opportune that simultaneously with the, great constitutional changes in other provinces and in the Union, the constitution of the Chief Commissioners' Provinces, which is of a thoroughly autocratic nature, should be overhauled and brought into line with the rest of India, I hope, Sir, that the Special Committee which we are going to appoint will give due consideration to problems of each Chief Commissioner's, Province and suggest a constitution which may be of a thoroughly democratic nature.

So far as Ajmer is concerned, I say that it is a Province which deserves to be raised to the status of a full autonomous Governor's Province and the mere argument of its smallness or its slender financial resources should not stand in the way of conceding to the people their right of self determination and their right to be masters in their own house. I therefore, suggest that the Sub-Committee that is to be appointed by you should consider the problem in all its aspects and should give due hearing to the representatives of the Chief Commissioners' Provinces. In fact, Sir, I wholeheartedly support Mr. Poonacha's suggestion that representatives of the Chief Commissioners' Provinces should be given adequate representation on this Sub-Committee. At any rate, the Sub-Committee should not arrive at any conclusion concerning these provinces unless and until they have given full hearing to the representatives of these provinces. I hope, Sir, that by the end of September, this Sub-Committee would be able to recommend to the House a constitution which will be thoroughly democratic and which will give to the people of these provinces a glimpse as to the liberty coming and as to the establishment of a republic in India. This question should not be shelved by the Committee in the way it has been shelved so far.

With these remarks, I support the amendment.

Mr. B. Dos: Sir, I wholeheartedly support the resolution moved by my friend, Lala Deshbandhu Gupta. There must be a' Committee to raise the administrative standard of these Chief Commissioners' Provinces and the people there should enjoy equal privileges like us.

I can visualise there will be difficulties. These Chief Commissioners' Provinces came into existence to maintain the British power and British autocracy in India. The last speaker was speaking on behalf of Ajmer-Merwara. Ajmer-Merwara was the Political Department's paradise so long. Although the Political Department is now abolished, that place still remains the Political Department's paradise and public representatives have little say in the matter.

Delhi, Sir, showed that British autocracy can do anything it likes in the very face of the Government of India, through the Chief Commissioner in Delhi. All along there was an English Chief Commissioner and he could do anything he liked in the face of the Central Assembly that is situated in one part of this building and in the face of the single representative of Delhi in the Central Assembly. The Delhi municipal administration is very antiquated and antedated. It is a body of *jo-hukums* and it elects the Advisory Council which is very strange indeed

Then, Sir, I go to Panth Piploda in Rajputana, with a population of 15,000 people. Could or the people have any representation.? I suggest to the Committee that will enquire into this, that this should be identified with Ajmer-Merwara and form part of that Chief Commissioner's Province, be it a Governor's province or a Deputy Governor's province.

As far as the Andaman and Nicobar Islands are concerned, that blackhole plague-spot in India of which one heard so much, is inhabited by a few Indian ex-prisoners. The Nicobar Islands are inhabited by some 20,000 aboriginals. They live under very primitive customs and conditions.

So far, the Andaman and Nicobar Islands have been administered by a Chief Commissioner always recruited from the Assam Civil Service. I wish to suggest that the people there are not so enlightened except a few Englishmen and Anglo-Indians that have found settlement there, for trade purposes. I suggest that the Andaman and Nicobar Islands should have representation in the Provincial Legislature of Assam Assembly and the people of Nicobar Islands should be treated as tribal people and must receive special protection like other tribal people. I do not think the Advisory Committee on Tribes have visited Nicobar Islands and enquired into the capacity and limitations of the people there.

As far as Coorg is concerned, it was created into a Chief Commissioner's Province and the Chief Commissioner there is all in all. The Chief Commissioner has all the freedom-I speak subject to correction by Mr. Poonacha-and is an autocrat. The Coorg planters, who are mostly British. think that it is a British Kingdom.

All these raise a fundamental issue, and as we are making a Constitution for the whole of India, these people should receive equal rights as we have; but how it can be adjusted is for the Committee to decide; but the Committee must visit Nicobar Islands and understand the problem of the people. In the same way I support Mr. Poonacha's suggestion that the Committee should also identify the representatives of the locality. The Committee should visit Coorg. Perhaps except, my friend, Sir Gopalaswami Ayyangar who might have visited Coorg on a holiday very few of us have seen or have known the autocracy of Coorg; but those of us who know what tile Chief Commissioners have been in the past'. can visualise the repression and oppression the people of Coorg must have gone through.

*[**Pandit Thakur Das Bhargava** (East Punjab: General): *Mr. President, I wish to speak a few words regarding this resolution, from a particular point of view. I have great sympathy for the people of Ajmer-Merwara and other Chief Commissioners' Provinces. I have greater sympathy with Delhi in particular, because there is considerable affinity between Delhi and my Constituency. As a matter of fact, before

1912 when Delhi became the capital of India, it was a part of the Ambala Division of the Punjab. Even now Ballabgarh, Sonepat and Palwal, the three Tahsils of Delhi, are included in the Rohtak Districts and portions of the Eastern Punjab are included in Delhi. There is that socio-economic homogeneity between Delhi and villages of the Eastern Punjab which is considered essential for the amalgamation of one region with another. Taking into consideration all these points this part of Delhi which is included in the Chief Commissioner's Province is in reality a major part of Ambala Division and has since long been trying for amalgamation in the Governor's province.

A resolution is shortly to come up before the House, in which the question of redistribution of provinces on cultural and linguistic basis will be discussed and before this many other important questions have also been discussed. Now this is a question which may be considered to be very vital. Large numbers of conferences are being held in the Punjab and U. P., demanding amalgamation of diffused homogeneous tracts of Ajmer-Merwara and Delhi into one province, because they speak the same language and have the same way of life. If it is intended to keep the organically united parts of the East Punjab separated for ever, then I would oppose the resolution. It is my desire that after the all-important question of the Independence of India is settled, we might be able to create some new provinces. Till then, no final decision should be taken on this question.

So far as the question of the constitution of Chief Commissioners' Provinces is concerned, I am not opposed to it. I have Only to submit that the, Chief Commissioners' Provinces should also get their rights. When the rest of India is getting a democratic constitution, similar rights should also be granted to them by the Legislature. I am not opposed to it, may, I have always been putting questions in the Central Legislature regarding these parts of Delhi. They are our own part and parcel. I have every sympathy with them and do want that they should be excluded from the list of provinces. I wish that Dr. Pattabhi's scheme of redistribution of provinces on cultural and linguistic basis should remain intact. This question should on no account be finally decided now. 'This question should be decided on its own merits. I have no objection if this question is referred to a Committee. It is not my intention that the question should be decided irrevocably. With these words I support the resolution.]*

The Honourable Mr. Jaipal Singh (Bihar: General): Mr. President, I welcome the suggestion that a Sub-Committee be appointed to look into the future position of the Chief Commissioners' Province My own interest lies in the fact that some of these Provinces are overwhelmingly inhabited by tribals, the Andaman and the Nicobar Islands in particular. Some reference has been made about the two Sub-Committees which have been appointed by the Constituent Assembly to settle the question of Adibasi tracts, six fully excluded and 18 partially excluded areas. and I think, it is necessary the position should be made quite clear here that these two Sub-Committees were bound by the very expression that was used; that is to say that they were to examine no more than those Adibasi tracts, the excluded areas and the partially excluded areas. That is how the Committee began their work but, now, a more generous interpretation has been put to those wordings. They may now make recommendations also for tribals who are outside those so-called tribal areas. That being the case, Sir, the two Tribal Sub-Committees are, I think, equally interested in the work that may be done by the Sub-Committee suggested by the Mover of this amendment. My own suggestion is that some members from the present Tribal Sub-Committees may be incorporated in the Sub-Committee that is to go into and examine the position of the Chief Commissioner's Provinces; because there are some provinces where the whole problem will be one which will have to deal with the tribals. I support the amendment.

Mr. President : I will now put the amendment to vote. It has been accepted by the Mover.

The amendment was adopted.

PART VIII -CLAUSE 2

Mr. President: We may now take up Clause 2.

The Honourable Sir N. Gopalaswami Ayyangar: I have already moved it, Sir.

Shri K. Santhanam: On a point of order, Sir. The Tribal Committee has not yet submitted its report.

Mr. President: But that is the proposition before us. Does any one wish to speak on this clause?

The Honourable Mr. Jaipal Singh: I have only a few words to say and I feel that they must be said in order to obviate a situation which might become very serious and dangerous in this country before long. Before I say that, I would like to repeat what I said a few minutes ago that the tribal areas should include also the problem of tribals who am outside the defined tribal areas.

Sir, His Excellency Sir Akbar Hydari, the Governor of Assam, visited the Naga Hills between June 26th and July 2nd. Some very unhappy developments have since then been brewing in the Naga Hills. Members may have read some news appearing in the Press and several Members of the Interim Government, and I understand, you also. Sir, have received telegrams from some of the Nagas about what they intend to do. I myself have been receiving on an average, a telegram per day, the latest telegram becoming more confounded than the previous one. Each one seems to go one step further into the wilderness. The position, if I may have your permission to explain it, Sir, is this. The Nagas have been misguided by certain persons into thinking that, with the withdrawal of British authority, the country would go back to them. They think they are going to be in the same position as the State, where the so-called paramountcy would lapse back to the States, and, therefore.. they could do exactly what they liked. The fact that the Naga Hills have always been part of India, have never been anything like a State, has not been pointed out to them. On the contrary, it seems the Nagas have been misguided more and more as days have been going along into the belief that the Naga Hills belong to them and that they were not part of India ever and further. that, as soon as the Dominion of India came into existence, the Naga Hills would be the exclusive property of the Nagas. Sir, some of the leaders of the Naga Hills came to Delhi recently and saw some of the prominent Members of the Interim Government. Those of us who came into contact with them tried to tell them the blunt fact. (Interruption) I only desire that what I say should travel to the distant Naga Hills and reverberate there that they have been misguided by interested persons into believing that they could do what the States could do by His Majesty's Governments June 3 Plan. I only wanted to say this, because I think that it is necessary something definite should be said on the floor of this Assembly. One of the telegrams sent to the Members of the Interim Government puts it in the mouth of the Constituent Assembly hat "the offer for joining the Union has been rejected by the Nagas". The fact is there has been no question of an offer. Besides, an offer is unnecessary and uncalled for because the Naga Hills have always been part of India. Therefore, there is no question of secession. They are not an Indian State.

I hope the troubles that have been brewing there will be obviated by this definite statement on the floor of this Assembly. The unequivocal fact is that Naga Hills are part of India and they were never otherwise.

Shri V. I Muniswami Pillai (Madras: General): Sir, I had given notice of an amendment for the protection of aborigines. But in the note it has been provided that any scheme that may come before the C.A. must be on the report of the Advisory Committee. So far the Advisory Committee has not submitted its report regarding the tribal areas Or the aboriginal tribes people living in the areas distributed in various provinces. Until that report comes, I do not wish to move this amendment.

Mr. President: That really means that the report of the Sub-Committee will have to be taken into consideration before any scheme could be provided. I do not think there will be any difference of opinion on such a clause. Therefore I put it to vote.

Clause 2 was adopted,

Mr. President: I may say here that if there are any amendments they Will be considered when the report comes up before the House.

Shri K. Santhanam: Sir, I have an amendment which runs as follows:

"That after Part VIII the following new Part be inserted:--

PART VIII-A-EMERGENCY POWERS

1. If, at any time, the Governor of a Province is satisfied that a situation has arisen in which the Government of the Province cannot be carried on in accordance with the provisions of this constitution and has so reported to the President of the Federation or if the President of the Federation is satisfied that the normal government of the Province has broken down, he may take any action which he considers necessary including

(1) suspension of the provincial constitution

(2) promulgation of ordinance to be applicable to the Province; And

(3) issuing of girders and instructions to the Governor and other officials of the Province.

When any such action is taken by the President he shall report to the Federal Legislature and unless his action is ratified by both Houses of Legislature within a period of six months from the (Late of his taking action the normal constitution of the province shall be restored. The situation shall be reviewed by the Federal Legislature and continuation, if necessary, of the emergency action approved every six months.

The President shall restore the normal constitution as soon as he is satisfied that the emergency has ceased to exist.'"

This is complementary to the provisions which have already been added to the provincial constitution. According to Mr. Gupte's amendment which has been carried, the Governor has power for two weeks to take emergency action. If an emergency arises, he will have to take the sanction of the President. If that emergency arises and this act on for two weeks is not sufficient then only the President and the Federal Government have to take action. I have described two contingencies in which the President will have to take action. One is when the Governor reports that he is unable to manage the situation with his special powers given to him. Secondly, if the government of the Province has so utterly broken down that it can do nothing, and when there is no authority capable of dealing with the situation, then the President on his own initiative can take action. When he does so, he will have to report to the Federal Legislature and do, so once in six months, and the normal constitution will be restored as soon as the emergency disappears.

I think the whole thing is quite logical and is absolutely necessary. For instance, if the police machinery in a province breaks down and the Governor can do nothing in the matter, he will have to invoke the powers of the President and this provision gives these powers to the President. Therefore, I hope the new provision which I have suggested will be accepted unanimously by the whole House.

Mr. H. V. Kamath: Sir, considering that the motion of Mr. Santhanam. has no relation or relevancy to the provisions of Part VIII, I fall to understand how. it can be numbered Part VIII-A.

Mr. President : He has moved for the insertion of another part called Part VIII-A. Emergency Powers.

Mr. B. M. Gupte (Bombay: General): Sir, I beg to move:

"That after Part VIII, the following new Part be inserted:-

PART VIII-A-EMERGENCY POWERS

"1. (1) On report being made by the Governor of a Province under Section .... Part........ of this Constitution, the President of the Federation shall, have the power to issue. in consultation with his council of ministers, a proclamation assuming to himself all or any of the powers vested in or exercisable by any Provincial body or authority except the High Court, including the power to confirm modify or revoke the Proclamation issued by the Governor.

(2)The Proclamation, under this section, shall cease to operate at the expiration of 2 months unless its continuance for any further period is approved from time to time by a resolution passed by the Federal Legislature."

Mr. Santhanam, has, already shown how such a' clause as this is necessary. We have already accepted the position, by passing Clause 15 of the Provincial Constitution that there shall be some emergency powers vested in the President. But in the Report there is no such provision made; hence my amendment and the amendment of Mr. Santhanam. They are both designed to remove this lacuna. My amendment provides 'Lb at as soon as the President gets the report from the Governor he may Issue a proclamation, in consultation with his Council of Ministers. As the Governor is authorised to take immediate action, there is no urgency for the President to act without the advice of his cabinet. That he does this in consultation with his Council of Ministers, is a point I want to emphasise as a point of difference between my amendment and that of Mr. Santhanam.

Shri K. Santhanam: Sir under the Federal Constitution, the President always acts on the advice of his Ministers.

Mr. B. M. Gupte: That is all right. I only emphasise it. It was agreed in the course of the debate on Governor's powers, that overriding power should be given to the President. There was heated controversy about power being given to the Governor; but so far as the President was concerned, there was unanimity of opinion. That power is now given to the President, of course circumscribed by the condition that he has to consult his Ministers.

Another difference between Mr. Santhanam's amendment and mine is that he has provided for a period of six months while I have put it down as only two months. This is a power we give for dealing with an 'extra ordinary situation and I think only the minimum power should be given and a period of two months is quite sufficient to convene the Legislature. Only that much power should be given as is absolutely necessary. The Federal Legislature is the supreme authority on this matter and therefore an endorsement from that legislature should be obtained. I have provided that unless the Legislature endorses the action of the President within two months, the proclamation of the President shall cease to operate. As the Legislature is supreme I have put no time limit on its power. If necessary the Legislature can from time to time give its assent to the proclamation. If it is a grave emergency, it will not last long; but if it should continue in a sub-acute form then the legislature can certainly from time to time extend the proclamation.

Therefore, I submit, Sir, that my amendment is a better provision. In fact my amendment is based on the position arising from the acceptance by the House of the provision vesting the authority in the Government to issue a proclamation. Mr. Santhanam's amendment does not fit in with that. position. It does not refer to the Governor's proclamation at all. It is based on the assumption that merely the power to report had remained with the Governor. 1, therefore, submit that my amendment makes a better provision and should consequently be accepted by the House.

Mr. R. K. Sidhwa: If Sir Gopalaswami could state which of the amendments he is prepared to accept, that would perhaps facilitate the discussion.

Mr. President : Sir N. Gopalaswami, would you like to say anything now?

Shri M. Ananthasayanam Ayyangar: Mr. President, Sir......

Mr. President: Mr. Ayyangar.

Shri M. Ananthasayanam Aayyngar: Which Ayyangar Sir?

Mr. President: Sir N. Gopalaswami Ayyangar.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I cannot categorically answer what Mr. Sidhwa has asked, but I will certainly indicate my views. Both the amendments that have been moved are intended to make provision for what the House has already accepted in the case of the Provincial Constitution. The House will remember that when we were discussing the Provincial Constitution, it put into that Constitution a clause which is substantially the same as section 93 of the Government of India Act, 1935 with slight variations in details. The Governor was given power o assume to himself all or any of the functions of Government or any of the powers vested in or exercisable by any Provincial body and so on. Then there was a sub-clause which said:

> "The proclamation of the Governor shall be forthwith communicated by the Governor to the President of the Union who may thereupon take such action as he considers appropriate under his emergency powers."

It becomes necessary, therefore, that we should somewhere in the Constitution make provision indicating what the powers of the President may be in a certain emergency which arises in a province; and, from that point of view, I think both the amendments attempt to supply the omission which would otherwise exist in the outlines of the Constitution The point for us to consider is what sort of provision should be made. The Governor himself has been given the powers to suspend practically all or any portion of the Provincial Constitution and take to himself powers possessed by the various authorities indicated in the Provincial Constitution. Having done that, he has got to make a report to the President and, if nothing happens, the proclamation will cease to operate on the expiry of two weeks. The emergency might be of a character which extends7beyond two weeks or it may be such that the President of the Federation might consider did not warrant all the extraordinary measures which the Governor chose to take for tackling that particular situation. Therefore it is necessary that we should invest the President of the Federation with some powers to act on a report which he receives from the Governor of province.

Mr. Santhanam in his amendment has proposed a number of detailed measures which the President could take after receiving the report of the Governor. Now it is difficult for me to accept all the details of the measures that he has suggested in his amendment. For instance, he suggests that these powers should include suspension of the provincial constitution by the President, promulgation of ordinances applicable to the province and thirdly, issuing of orders and, instructions to the Governor and other officials of the province. A Governor takes some action. It may be right or it may be wrong. If it Is right, it might deserve to be extended beyond the two weeks for- which that action could normally be in force. If it is wrong, the President has powers under the clause already carried in connection with the Provincial Constitution to revoke the proclamation of the Governor. And then the President will have to take action on his own which he considers appropriate for tackling the particular emergency. whether the powers that we should vest in the President should be so comprehensive as Mr. Santhanam. has suggested is a matter which,. I think requires very serious consideration. It makes a breach into Provincial autonomy which many of us may not be Willing to agree to but it is necessary that the President should have such power as may be essential for the purpose of tackling particular situation. If Mr. Santhanam will permit those who will frame the text of the Constitution to examine this provision both in substance and in language more carefully and propose something, for the consideration of the constituent Assembly. which would co-ordinate the action of the Governor in the Province and the action that the President may have to take on the report of the Governor. I am prepared to accept the principle of vesting in the President certain emergency powers in this connection.

I would say the same thing in regard to the amendment of Mr. Gupte. The net result of what I have indicated is that while I am not prepared to hand over the entire administration of a province into the hands of the President even in an emergency of that sort, I am prepared to concede the position that he should have certain emergency powers in order to decide what appropriate action should be taken for dealing with a particular emergency and no more. I accept that principle. So if the movers of these two amendments will accept my assurance that we will try to translate into the draft some provisions which' will implement this principle, there will be time for Mr. Santhanam and Mr. Gupte to scrutinise the draft when it comes up before the House again and propose any amendments of detail which they would like to press. That being so, I would ask that on this assurance they should withdraw the particular amendments of which they have given notice.

Shri K. Santhanam: In view of the assurance given I beg to withdraw my amendment.

Shri B. M. Gupte: Sir, I withdraw my amendment.

The amendments were, by leave of the Assembly, withdrawn.

PART IX

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I move Part which reads as follows:

> "The provisions for the protection of minorities as approved by the Constituent Assembly on the report of the Advisory Committee should be incorporated in the Constitution."

This is a very innocent clause.

Mr. President: The question is:

> "That Part IX be accepted by the House."

The motion was adopted.

The Assembly then adjourned till Ten of the Clock on Thursday, the 31st July, 1947.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME IV

Thursday, the 31st July 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi. at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Mr. President: Think there is no member who has to take his seat today. We shall proceed with the Agenda.

The first item on the Agenda is the motion of Shri Deshbandhu Gupta for amending Rule 5 concerning representation of Delhi and Ajmer-Merwara in the Constituent Assembly.

Mr. H. V. Kamath (C. P. & Berar: General): Sir, with reference to the transfer of power ceremony on the 15th August, may I submit that your dignity and prestige as the President of the Sovereign Constituent Assembly demand that, so far as the ceremonial programme in this House at least is concerned, that should be settled. and finalised by you and you alone without any official interference or dictation whatsoever. I am sure the House will be deeply indebted to you for an assurance on this point.

While chalking out the programme, Sir, I would implore you to include in it our traditional National Song, *Vande Mataram,* as well as that other beautiful song popularised by our great warrior-statesman Netaji Subash Chandra Bose. namely, the song beginning with the words :

(Subh sukh chain ki barsha, barse Bharat bhag hai jaga)

Secondly, permit me to remind you, Sir. of the request I made to you on Monday regarding the presentation of the National flag to every Member of the Constituent Assembly. We are rather anxious to have the Flag before the 15th August. I venture to hope that the Steering Committee will not stand in the way and will raise no objection to this proposal.

Mr. President : I may inform the House and the Hon'ble Member Mr. Kamath that, as regards the programme, I propose to make a statement at the close of the sitting today. There is no question of any dictation by any outside authority. We shall fix our own programme. (Applause.) As regards the arrangements for the 15th August, I have some ideas in my mind which I have considered with Pandit Jawaharlal Nehru and some other friends and I will place them before the House.

AMENDMENTS OF THE RULES

Mr. Deshbandhu Gupta (Delhi): *[Mr. President, the motion which stands in my name is this:

"(1)That in sub-rule (2) of rule 5 (as amended) of the Constituent Assembly Rules. the words "the Advisory Councils of Delhi and

Ajmer-Merwara" occurring after the words "as the case may be" be deleted.

(2)That for sub-rule (12) of Rule 5 (as amended), the following be substituted: -

If any vacancy occurs by reason of death, resignation, or otherwise in the office of a member representing Delhi or Ajmer-Merwara in the Constituent Assembly, the President shall notify the vacancy and shall call upon the Chief Commissioner of Delhi or Ajmer-Merwara as the case may be, to take steps to hold, a bye-election to fill the vacancy,

The bye-elections shall be held, as nearly as may be, in accordance with the procedure prescribed by the Legislative Assembly Electoral Rules, as in force on August 1, 1947, for the election of a member to represent Delhi or, as the case may be, the Ajmer-Merwara constituency of the Indian Legislative Assembly'."

As regards this, I have only to say that according to the earlier amendment of Mr. Santnanam a casual vacancy in the case of Delhi and Ajmer-Merwara was to be filled up the Advisory Council which consists of not more than seven members.

It was natural that objections were raised from Delhi and Ajmer-Merwara as the Advisory Council was not an elected body like the Provincial Legislative Council. It is only a small body formed by indirect election. Its powers are limited and it seems inappropriate that the Advisory Council consisting or a few members should be called upon form an electoral college for filling a casual Vacancy. If you look at it carefully you will find that the task of electing devolves only on three non-official members out of a total of seven. As far as Delhi is concerned, the Advisory Council has been elected by the elected members of Delhi and New Delhi Municipalities. The latter is the bigger body. It, has some nominated members also, and therefore all its members do not take part in elections. There is another objection. It is this: If the Advisory Committee is entrusted with the task of election it would mean that 3 lacs voters of New Delhi would be disfranchied. This is not expected now, as Delhi has no legislative Council, It was thought that the Advisory Council would do this job. But people have reason to complain view, it is proposed to amend this rule. In the case of Delhi, a casual vacancy can be filled in the manner by which election was originally held in Delhi, The position of Delhi members is a bit different from that of others. These have been elected by Provincial Assemblies, but those for Ajmer-Merwara have been elected directly. Therefore, it would be right in' principle that the bye-election should be held in the same, manner as the original election. This is my motion, I think it has been accepted by the Steering Committee I hope the House will have no objection to it.]*

Mr. President: Does any member wish to say anything about this amendment.

(No member rose to speak.)

I take it that no member wishes to say anything on this. I will Put the amendment to vote.

The motion was adopted.

REPORT ON THE UNION CONSTITUTION

Mr. President: Then we come to the discussion of the remaining clauses of the report of the Union Constitution Committee. Shall we now. take up Part X, Sir Gopalaswami Ayyangar.

The Honourable Sir N. Gopalaswami Ayyangar (Madras: General): If I may suggest it for your consideration, Sir, we may perhaps take up the clauses left over for consideration.

Mr. President: You suggest that we now take up Clause 7 and I have no objection.

The Honourable Sir N. Gopalaswami Ayyangar: I have already moved Clause 7. You may now :call upon the members who have, given notice of amendments to this clause to move their amendments.

CLAUSE 7

Mr. President: The first is Clause 7. We had a number of amendments regarding Clause 7. Shall we take up these amendments or is there any amendment which has been arrived at by way of an agreement. Is there any agreement like that?

The Honourable Sir N. Gopalaswami Ayyangar: Sir, what I would like to say is that after having a discussion with those particularly interested in this. amendment, we came to an agreed conclusion, and I gave notice of an amendment in terms of that conclusion. But I understand that there is some difference of opinion even as regards the form of the amendment of which I have given notice. if Honourable Members representing the States will move the amendments of which they had given notice and will indicate their views and if I see that the views indicated in the House are not exactly the views which I thought they held some days ago, then I would suggest some course of action which might perhaps bring the two points of view together. I would therefore suggest that you call upon the representatives of the States to move their amendments and to indicate their views.

Mr. President: The best thing is to take up all the amendments of which I have got notice. The first amendment to Clause 7 is by Mr. Naziruddin Ahmed.

Mr. Naziruddin Ahmed (West Bengal: Muslim): Mr. President, I beg to move amendment No. 192, with a little verbal alteration of a minor nature. I beg to move that for para (b) of sub-clause (2) of clause 7 the following be substituted:

> "(b) Notwithstanding the provisions of the Code of Criminal Procedure, 1898 or of any other law for the time being in force, relating to the remission of the punishment imposed on any person by any court exercising criminal jurisdiction, the President shall have the supreme right and power to remit wholly or in part The sentence passed by such court on any such person."

I beg to submit that this only a drafting amendment and I submit it for the consideration of the Drafting Committee.

Mr. President: Sir B. L. Mitter.

Sir B. L Mitter (Baroda State): Sir, the amendment which I move is.

> That in sub-clause (2) (b) of Clause 7 after the word "jurisdiction" the words "in a Province" be inserted.

The object of the amendment that the power of pardon and reprieve which now vests in a Ruler of a State may be preserved. If this amendment is accepted, then this power of the President will be exercised in matters arising in Provinces and not in a State. I gee the point that in regard to crimes which are created by the Union Legislature, the President should be the supreme authority. I could concede that Point, but at the same time the States do not want the existing powers of the Rulers to be curtailed. A solution may be concurrent jurisdiction in the Rulers as well as the President. If Sir Gopalaswami will draft an amendment reserving the power of the Ruler and giving the same power to the President, I am quite willing to accept it.

Mr. President: Then I have got three amendments in the names of Mr. Channiah, Mr. Guruv Reddy and Mr. Himmatsingh Maheshwari. which are all to the same effect. So they need not move them.

Then amendment No. 197 by Mr. Chengalaraya Reddy.

Mr. K. Chengalaraya Reddy (Mysore State): I am not moving it.

(Mr. Gupte did not move his amendment No. 198).

Mr. Debi Prosad Khaitan (West Bengal: General): I am not. moving amendment No. 199.

(Shri M. Ananthasayanam Ayyangar did not move his amendment No. 4 of Supplementary List I.)

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I beg to move for Clause 7 (2) (b), the following be substituted:

"(b) The power to grant pardons, reprieves, respites, remissions, suspensions or commutations of punishment imposed by any Court exercising criminal jurisdiction shall be vested in the President in the case of convictions

(i) for offences against Federal laws relating to matters in respect of which the Federal Parliament has, and the Unit Legislature concerned has not, the power to make laws; and

(ii) for an offences tried by Courts-Martial.

Such power may also be conferred on other authorities by Federal Law:

Provided that nothing in this sub-clause affects any power of any officer in the Armed Forces of the Federation to suspend, remit or commute a sentence passed by a Court-Martial."

Sir, this amendment was given notice of after there had been discussion between me and the representatives of a number of States who have sponsored the amendment which Sir B. L. Mitter has just moved. The intention of that amendment was to restrict the power of pardon granted under this clause only to punishments imposed in Provinces. In other words, they wanted to retain, in the Rulers of Indian States, the unlimited power of pardon which they now possess in respect of all convictions.

Now, Sir, that raised an Issue of some Importance. We are now setting up a Federation and we are dividing sovereign powers between the Federation and the Units; In respect of certain subjects the Federation has the power to make laws and in other subjects the Units have the power to make laws to the exclusion of the Federation. In the case of the Provinces there is a third list of subjects in respect of which both the Federation and the Provinces have the power to make laws.

Now, in considering this question of where the power of pardon should be located, there are two Principles which we have to keep in view. The set is that we must have due-regard to the authority which makes the laws against which the offences are committed. The second consideration that we have to take into account is the kind of courts which pronounce these sentences or convictions. It so happens that, so far as British India is concerned, we have a unified system of judicial administration and the courts in the provinces from the lowest to the highest have got jurisdiction to try offences not merely against Provincial Laws, but against Federal Laws also. In Indian States the same thing is in force. The courts of Indian States have power to try all kinds of offences, even offences which might become offences against the Federal Laws after the Federation comes into being. And the power of pardon also is more or less similar as between the Province and the Indian State with perhaps one exception. It is the Provincial Government, according to the Criminal Procedure Code as last amended, that has the power to pardon, commute or remit sentences in the case practically of all offences with the one proviso that if a sentence happens to be a death sentence the Central Government has a concurrent power. In the case of Indian States there is not that exception now in existence. Now we had to consider the question, whether in these circumstances we should vest the power of pardon in the Provinces or in the Centre or in both. I think, Sir, the House will agree that, when we are setting up a Head of the Federation and calling him the President, one of the powers that should almost automatically be vested in him is the power of pardon. Now, is the power of pardon going to be unlimited in its character, or are we going to give him only limited powers of pardon? He is not like a hereditary monarch in a position to derive his powers of pardon from any theory on a royal prerogative and so on. If he exercises the power of pardon, we must vest the authority for it to the Constitution or to some Federal Law. That is why, in the Constitution, we have got to decide this question.

I may say at once that practically in all federations this power of pardon has been divided between the head of the federation and the head of the unity and the principle on which this division is made is that the head of the federation has the power to pardon offences against the federal laws and the head of the unit has power to pardon offences against the unit laws: Now, the question for us to consider is whether we would follow the practice of all federations.

As the draft now stands, both in the Union Constitution and the Provincial Constitution, the power of pardon is vested in the President of the Federation. But provision is made for that power being conferred on other authorities 'by Federal Law. There is no provision in the draft model provincial constitution which you have already adopted which confers any power of pardon on the Governor of Provinces. So, it comes to this, that the intention of the present clause is that the President is the primary pardon granting authority, and that Federal Law might confer such authority on other people.

Mr. President: There is one difficulty which I feel. Will you please explain that? Does your amendment exclude pardon by the President in the case of offences under the Penal Code, say murder?

The Honourable Sir N. Gopalaswami Ayyangar: The clause as stands does.

Mr. President. The clause as amended by you, does it give the President power of pardon of the offence of murder?

The Honourable Sir N. Gopalaswami Ayyangar: No. It does not, As I explained, the clause as it stands, confers the entire power of pardon. On the President though a Federal Law might confer it on other authorities. Now the amendment that 1, have given notice of gives the President the power to grant pardon only in the case of offences against Federal Laws, and that He cannot, for instance, grant pardon in the case of sentences under the ordinary criminal law. In the Provinces, ordinary criminal law occurs as item 2, I think, of the concurrent list and in a case like. that in the concurrent list, the theory of' the 1935 Act is that the executive power does not necessarily extend to concurrent subjects, in respect of which the federation also has power of making laws.

Mr. President: What are the-cases that you contemplate in which the. President would have the power to grant pardon? Practically the whole of the penal law is a provincial subject. What will be the offences in which the President will have the power to grant pardon.

The Honourable Sir N. Gopalaswami Ayyangar: I might mention, Sir, offences, say, against the Income-tax Act; maybe against the Sea Customs Act and Acts of a similar description which are exclusively Federal.

Now, the principle behind my amendment is that the President will have the power to grant pardon, etc,, only in the case of offences against the Federal Laws. The power to pardon offences against the ordinary criminal. law and against laws made by the Provinces or the States will vest in the heads of the Provinces or the States.

Sir Alladi Krishnaswami Ayyar (Madras: General): I presume that a corresponding change will be made in the provincial constitution conferring power apart from any delegation by the federal government to the provincial government both in respect of concurrent subjects and subjects, specially falling in the provincial list.

The Honourable Sir N. Gopalaswami Ayyangar: Yes, Sir. The intention is that if you carry this amendment in the Union constitution, a corresponding provision will have to be made in the model provincial constitution and steps will be taken to that end.

I shall, now, deal, Sir, with the point raised by Sir B. L. Mitter's amendment. His amendment says that this power of pardon in this particular Clause should be limited to Provinces. Of course the Indian States are not concerned with how we divide. the power of pardon between the Centre and the Provinces. That particular amendment is motived by the facto which are now in existence in the Indian. States, namely, that it is the Ruler who has the power of pardon in respect of every offence for which conviction is obtained in his courts. Now, the objection to excluding the President from power to grant pardon in such cases cannot hold, Sir, on any ground of principle., because of the other consideration that I asked the House to take in to account in considering questions of pardon, namely, that the authority which makes the law and the executive which is responsible to it, whose function it is to execute the law, cannot be deprived of the power to decide the policy with regard to the grant of pardons, remissions, reductions, and so on. Therefore the power in respect of federal offences has necessarily to vest in the President of the Federation. The amendment that has been tabled by me took note of one element What I apprehended was, a certain amount of sensitiveness a delicacy on the part of the Rulers who may not be willing to part with any portion of the power which, they now exercise as regards pardon of sentences, and so on, and the further sensitiveness that, if you vest a concurrent power in any portion of that field in an outside authority, it would mean a certain amount of clash and conflict between the way in which the. Ruler of a State might choose to exercise this power and the manner in which the President of the Federation might choose to exercise it.

So, I was impressed by the fact that, if possible opportunities for this conflict should be avoided and that is why I have in this amendment divided the offences into two different categories, in respect of one of which the President of the Federation alone has the power to grant pardon and that is with regard to offences against federal laws, and another category in which the Ruler of a State or the Governor of a Province were to exercise this power. Now, I wish the House to understand that, if this means a curtailment of the present powers of pardon possessed "by. the Ruler of a State, it also means a curtailment of the' powers of pardon which the Provincial Government now possesses under the Criminal Procedure Code. This amendment therefore seeks to place both the Provinces and the States on the same footing as regards this power. The vesting of the power in the President is necessitated by the fact that we are creating a federation and we cannot omit to vest in the President of the Federation the power to pardon offences.

Now, Sir it may be asked why is it that you want this power to be vested in the President in the case of all offences against- the federal laws, while, under the present state of things, the Governor-General can exercise this power, and that only concurrently, with the provincial government and only in respect of death sentences. Well, the answer to that is simply this. We are making a new constitution and we are not necessarily bound by what obtains today. We have got certain principles to guide us in the making of the new constitution.

If under that constitution we are assigning certain powers exclusively to the Centre which formerly belonged to the States, then it is only reasonable that all ancillary powers in regard to the administrations of such subjects must also be assigned to the Centre and if incidentally it happens to interfere with the present practice in the Provinces also, we must be quite prepared to face that curtailment. That is really at the back of the amendment of which I have given notice.

Now there are two or three matters at the end of this amendment to which I might make reference in passing. This gives the President the power to grant pardons, etc., in respect of all offences tried by Courts Martial. Courts-Martial are constituted under the Indian Army Act and the Indian Army has to be under the control of the Centre. It is only right that the personnel of the Indian army who ,get convicted by these Courts-Martial should look to the President of the Federation for pardons, commutations and similar concessions.

The second matt" to which I should like to make reference is the proviso at the end of the draft. This is taken from Section 295 of the Government of India Act, 1935. It says that "nothing in this sub-clause affects any power of any officer of the' Armed Forces of- the Federation that expression has been substituted for His Majesty's Forces' in the Government of India Act to suspend, remit or commute a sentence passed by a Court-Martial. Under the Rules framed under the Indian Army Act certain officers of the Indian army have powers to grant remissions of punishment and those powers are saved by this proviso.

I think, Sir, that on the whole this Particular amendment is quite in accordance with the Principles which underlie the framing of any Federal Constitution and the curtailment of the powers of the Rulers of States and of the Governors of the Provinces which is implied in this amendment is only a thing which should be expected naturally from any Federal Constitution. Sir, I move this amendment.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir I beg to move:

"That in sub-clause (2) (b) of the draft as amended, at the end, the following may be added."

I am referring to the draft amendment circulated to members and this is an amendment to Sir N. Gopalaswami Ayyangar's amendment. This amendment relates to the addition to the rights of the President, to extend his right to pardon in cases of sentences of death passed in any province. I shall read the text of my amendment: -

"Where any person has been sentenced to death in a province, the President shall have all such powers of suspension, remission or commutation of sentences as are vested in the Governor of the Province."

I am confining this, Sir, to the power to grant pardon in cases of death sentences passed in a Province. I would be glad to extend this power even to cases of death sentences passed in a State. Death sentences are being abolished in various countries in the world. In Norway, Capital punishment has been done away with. Even in such a country as Russia where we heard a long time ago of blood baths, they have also abolished capital punishment. AU progressive countries in the world have altogether abolished capital punishment. Under the existing Government of India Act the Governor-General is entitled to pardon concurrently with a Governor in all cases of death sentences. In other cases it is the exclusive right of the Governor in all Provinces to condone or reprieve or grant pardons in any manner under the ordinary Criminal Law. The Governor-General can interfere only in cases of death sentences. It was before the 1935 Act was passed that the Governor-General could interfere in all cases of punishment in a like manner as the Governor was entitled to exercise his right of pardon.

But after the 1935 Act, to make Provincial Autonomy perfect the right of the Governor-General to have concurrent jurisdiction in respect of pardon was taken away except in the matter of death sentences. That alone was preserved. Now under the draft amendment that has been placed before this House by Sir N. Gopalaswami Ayyangar, no right to pardon has been conferred upon the President except in matters exclusively within the competence of the Federation, i.e., wherever the Federal Legislature may pass a law. In those subjects alone the President has been given power to pardon. This is, no doubt, an improvement over the 1935 Act. But in the matter of granting pardon in the case of death sentences, wherever convictions might have been given, that right of pardon has been taken away. Life sentence is a very serious one and therefore there must be another agency also to consider if there are any cases in which pardon should be exercised. There may be some doubt if the President were an appellate authority in certain matters. There is no question of appellate jurisdiction of the President. He has concurrent jurisdiction. If is open to the Governor himself to grant a pardon. If he does not the President will exercise Ins right to grant a pardon. where the pardon is granted by the Governor, the President has no right to revoke that pardon and then convict him. I am trying to disabuse or remove certain doubts that might remain in any quarters. in criminal cases, if a man is granted pardon by the Governor, he goes scot-free. If it is not granted by the Governor, then he has a chance to go to the President who can interfere and exercise the right of pardon in cases of death sentences. I hope the House will kindly accept this amendment which tries to incorporate in this amendment of Sir Gopalaswami a power which is now being exercised by the Governor-General.

Sir, as regards the other powers that have been conferred upon the President to have exclusive right to grant a pardon in the matter of offences against Federal Laws, I would only appeal to the States not to try to take away that right of the President in so far as they are offences against Federal Laws. The States have Submitted, they have come with open eyes and they have acceded to the Union with respect to Defence, Foreign Affairs and Communications. There may be other taxation measures also to keep these Departments going. If there are offences again these Departments and against these laws, it is but natural that the President should have the power, wherever they may be exercised. The Rulers of the States ought not to feel that their right to grant pardon is taken away. The Ruler has by his accession himself conceded the right to interfere in three federal matters as regards his State. Therefore there is no meaning in the objection. If it should prevail it will be giving by one hand and taken away the same by the other. If Defence is entrusted to the Federation any interference with that subject or contravention should be punishable, on a complaint instituted by the President. There is no question of prestige in this matter, when particularly, the people from the States are in favour of this amendment. I appeal to the Ministers who represent the States here that they ought not to try to avoid the States conferring the power so far as Federal subjects are concerned in the matter of pardon, to the President of the Federation exclusively, for this reason that Defence and those subjects have been entrusted by the Rulers of the States to the Federation. Otherwise merely passing laws would not be useful unless there are sanctions and the sanctions could not be enforced. it the President of the Federation or the Federal Executives, is trying to enforce a particular law which pertains to a right ceded by the Ruler himself any interference by the Ruler would be interference with the powers that he has conceded to the President. I am requesting the Ministers to kindly consider this matter and fall in line and not move any amendment to the draft that has been proposed by Sir N. Gopalaswami Ayyangar. With all respect I would urge upon them not to take this as a matter of prestige. They have taken a particular step; this is an ancillary power that must be conferred on the President. Otherwise, there will be a conflict between the two and the conferment of that right to the Centre will become useless.

Mr. President: The original clause and the amendments are now open to discussion. I do not think there are any other amendments of which I have notice.

Mr. Mahomed Sheriff (Mysore State): Mr. President, Sir, I have heard with rapt attention the admirable speech made by Sir N. Gopalaswami Ayyangar and also Mr. Anathasayanam. Ayyangar regarding this very intricate point. That it is a, point which Is full of complication admits of no dispute. I wish that in view of its complicated nature we had been given more time to study the pros and cons of this question, but as it has come before us and as you want us to give our opinion upon it, I think it is necessary for us to state, in our capacity as the representatives of the States what our opinion is in this matter.

Sir, I do concede that so far as the President is concerned, in view of the fact that he is at the helm of the administration, he should have the power of pardon and he should have the power of commuting sentence sin respect of cases arising out of criminal jurisdiction Situations may arise in which he should have to exercise clemency. But the submission to you, Sir,. is that so far as this power is concerned, it must be Confined to provinces only. If it is made to affect the sovereignty of the Rulers, I submit there would be a clash. The Congress Party times without number have stated that so far as the sovereignty of the people is concerned it is not going to be affected. His Excellency the Viceroy in the statement that he made on 25th instant said that so far as the Rulers are concerned, they need not apprehend any danger. It war, argued that so far as this right is concerned, it will confine itself to Federal subjects. Yesterday we discussed Part VI and there, Clause I runs:

> "The Federal Parliament in legislating for an exclusively Federal subject may devolve upon the Government of a Unit, whether a Province, an Indian State or other area or upon any officer of that Government the exercise on behalf of the Federal Government of any functions in relation to that subject."

So when we say that so far as these Federal subjects are concerned, they could be administered by a Ruler, I don't see why we should take away from him the right of pardon, the right of commutation of sentences, etc., in criminal jurisdiction. So far as Mysore is concerned, His Highness the Maharaja has rarely exercised this prerogative. Everything is left to the High Court. He does not interfere at all. So, even supposing this power is going to be vested in him, there is no possibility of it being misused. In view of this, I cannot make up my mind to agree with the amendment proposed by Sir N. Gopalaswami Ayyangar.

Shri Gopikrishna Vijayavargiya (Gwalior State): Mr. President, Sir, I have come to express my point of view here. I also come from a State and I think that in a Federation the sovereignty is divided and some of the sovereignty is given to the Federation also. Therefore, it is in the fitness of things that the right of pardon that is provided for the-President, of the Federation must remain and it is also not proper that Rulers should keep that sovereignty in their hands. When they are conceding their sovereignty in favour of the Federation in other matters, they should also concede this right. I therefore suggest that the amendment of Mr. Ananthasayanam Ayyangar and Sir N. Gopalaswami Ayyangar must be accepted.

Mr. K. Chengalaraya Reddy: Mr. President, Sir. after bearing the lucid and convincing speech of Sir N. Gopalaswami Ayyangar, I thought there would be no debate an the draft presented by him to the House, but I find that a certain difference of opinion has been expressed by one of my Hon'ble friends from Mysore. It will be seen that the draft, as it was put in the memorandum originally, was a very comprehensive one. It extended the right of pardon, etc., to all offences and it appeared to vest comprehensive powers in the President of the Federation, but I was one of those who thought that even the draft clause as it stood read along with Clauses 8 and 9 did not really give that comprehensive power but that that power had been governed by certain conditions. But an amendment was tabled by certain representatives from the States that this power of right of pardon, etc., to be vested in the President should be confined to offences committed in the provinces. Well, Sir, as a counterblast to that, if I may use that word, I had tabled an amendment that this power should be vested in the President in relation to offences against Federal Laws.

Sir, I view the draft put forward by Sir Gopalaswami Ayyangar as a compromise draft which should satisfy all sections of the House. Well, Sir we should not be carried away by loyalties which have been existing In this country till now. New loyalties are coming into being. When we are Contemplating the loyalties to the States from which we come, let us not be oblivious to the fact that we have to be loyal to the Federation which we are creating now in this country (hear, hear). Our loyalties will have to undergo a change; there must be a harmonising of our loyalties. Let us remember that the strength of the Units consists :in the strength of the Federation and the strength of the Federation also consists in the strength of the Units. The two are reciprocal. Let us not run away with compartmental ideas and think of the strength of the Unit only or the strength of the Federation only. I would like to urge that we must think. Of the strength of the unit and the strength of the Federation as in integrated strength. To the extent to which the States concede to the Federation, to that extent they will have to give the right of pardon, etc., to the President, in respect of offences against the Federal Laws. I would even go to the extent of saying that the President of the Federation must be the Supreme authority in respect of offences against Federation Laws. So I urge that the amendment of Sir Gopalaswami Ayyangar, being a compromise draft, should be acceptable to all sections of the House. If I may say so, let us not be more loyal to the king than the king himself. Even the Rulers of the Indian States who are going, to come into the Federation will do so with their eyes open and prepared to accept the Federation with SRI its implications, and not with all kinds of reservations. On one or two matters like this, Sir, we must be quite plain-spoken. Let us not try to evade these issues. With respect to the Federal subjects-I have in mind now only Defence, Foreign Affairs and Communication sand with respect to offences against the Federal Laws, the supreme authority should be the President. This is the position which has got to be accepted if we view the whole problem from a liberal, statesman-like and patriotic point of view, and I do hope that no objection will be taken to the amendment moved by Sir Gopalaswami Ayyangar and which he has supported in such a lucid and cogent manner. I support his amendment without any reservation in the interest of the State, in the interest of the Federation and in the interest of India as a whole.

Mr. M. S. Aney (Deccan State): Sir, are the clause as well as the amendments under discussion?

Mr. President: Yes, the clause and the amendments.

Sir B. L. Mitter: Sir, I do not want lo press my amendment and so ask leave of the House to withdraw it.

Mr. President: Does the House give Sir B. L. Mitter leave to withdraw his amendment?

Mr. Himmat Singh K. Maheshwari (Sikkim and Cooch Behar States): But Sir, there are others who have similar amendments, but have not moved them because Sir, Mitter had moved his. Can I speak a few words, Sir?

Mr. President: Certainly.

Mr. Himmat Singh K. Maheshwari: Sir, I heard the admirable speech of my Guru Sir Gopalaswami Ayyangar with great attention and respect but with due deference to him, I must say that I do not stand convinced. The main argument I think, which he made was that because the Governors of the Provinces will not have the power to grant pardon, the existing power of pardon enjoyed by the Rulers of the States should also be curtailed or withdrawn.

The Honourable Sir N. Gopalaswami Ayyangar : Sir, I am not sure that I put it in that form.

Mr. Himmat Singh K. Maheshwari : I stand corrected. He seems to think that this was more or less a a question of sensitiveness. On that point I am Inclined to agree with him. After all, within the borders of the State the dignity of the Ruler has to be maintained and if you take away from him the power of dispensing justice which he had hitherto been enjoying that dignity is adversely affected, even within the orders of the State. In his Prom Statement of the 5th July, the Honourable Sardar Patel gave the assurance to the Princes that our common objective should be to understand each other's point M view and to come to decisions acceptable to all and in the best interests of the country. In the light of this assurance, Sir, I venture to suggest that the framers of the draft should reconsider the entire position once more and see if a happy via media cannot be arrived at. The difficulty arises mainly in respect of one matter. The courts which will try the cases under the Federal Law will be the State Courts. The State Court convicts a person of an offence under the Federal Law and the conviction is upheld by the High Court of the State and then at the end of all this, an outside authority grants pardon. In such a case, there is going to be a certain amount of complexity and- a certain amount of uneasiness and-possibly clash. In order to avoid this, Sir, it seems to me desirable that the constitutional. experts should put their heads together once more. I, for one, do not desire a settlement or decision on this matter which would leave any sense of unpleasantness or which would cause any misunderstandings specially because some of the speakers before me hinted or suggested from their speeches that there was certain amount of excitement in the matter. So far as offences under the ordinary law are concerned, the question of powers does not arise at all. The original draft took away even that power. Now the draft has been amended and it has been made clear that offences under the ordinary laws shall remain exclusive concern of the Rulers and the pardons under the ordinary laws of the land will remain the exclusive concern of the Rulers. But even this does not improve the position substantially. In the amended draft there is a clause which runs thus:

> "Such power may also be conferred on other authorities by federal law.'

It appears to be the intention that these powers may be conferred concurrently on the Governor of a Province also. So far as the Rulers of States are concerned, there can be no question of conferring any power an them because they already exercise such power. In the light of this clause, therefore, it becomes all the more necessary to re-examine the entire position. I shall feel most grateful if the House will agree to a postponement of this clause to enable every one to reconsider his attitude.

Mr. K. M. Munshi (Bombay: General): Sir, this is a matter of great constitutional importance and I submit it cannot be discussed from the point of view only of the rights of the Rulers of States or the Governors of Provinces, or, for the matter of that. either the Criminal Procedure Code or the provisions of the present Government of India Act. As a matter of fact, Sir as is well known, in a federation a citizen is related directly with the Centre as regards his rights and obligations. The allegiance of every citizen, whether he is in tin Indian State or in a Province. will be direct so far as the Union Is concerned.' Federal Laws will operate upon every citizen directly, and an offence in relation to such a law is not merely an offence against the State or the Province; it is an offence against the Federal Government. And therefore a reprieve or pardon must, as a matter of constitutional principle, vest in the head of the Federation, that is, the President. And to that extent, I submit, the position is incontrovertible.

All the acceding States, when they come into the Federation, form part of the Union, accepting the operation of Federal Laws in their States They accept to that extent that the Federal Government is supreme in the sphere of Federal Law and the President, as representing the Federal Government, can alone be the last, and also the first authority who can grant reprieve or pardon. That is why in the American constitution as is well known, the President has been authorised to grant reprieve or pardon for offences against the United States.

A similar provision, I submit, is not only necessary from the point of view of constitutional principle but also of expediency. Sir, the position is this. My Honourable friend Sir Gopalaswami Ayyangar, has referred to the Income-tax laws. But there may be other federal laws-laws relating to extradition, to naturalisation, to defence and external I affairs, to treason against the Federal Government-which are matters of the most vital importance to the existence of the Centre; and therefore the power of pardon cannot be given. I submit, to anybody except the head of the Federal Government., If the right is given to either the Ruler of a State or a Provincial Governor, the consequences will be, in a contingency, disastrous. Take for instance this. In principle the Governor or the Ruler-because they will be in the same position-will be entrusted with a part of the prerogative, which must vest in he head of he Union as a whole and any part of it. This, I submit, is inconsistent with principle. But apart from that there will be an inequality of treatment. Supposing in province 'A' the responsible ministry takes a particular view and advises the Governor to release a particular person; there is no appeal from it But then in another province a different view is taken. Therefore, for the same offence you will find one provincial Governor giving pardon and in the other the Governor not giving a pardon. And let us not assume that the Rulers of States are going to be for ever and ever absolute little sovereigns that they think they are now. Many States have introduced an element of responsibility; I have no doubt in my mind that the general progress of the country will soon compel every State to have- some element of responsibility in its Government. Arid when that comes, it it not the Ruler who will exercise the right of reprieve and pardon. but the Ministry of the State who will advise the Ruler, which will give a pardon. In a conceivable instance, therefore, it may be that it will not suit a Province or a State to allow a particular kind of criminal to remain in jail. Take a case of war; it has happened in Ireland and England but I do not want to go into cases. It has happened very often in War that different views have been taken in regard to certain offences against the State. What would happen if, against the desire and against the policy of the Centre, the heads of the units or the unit ministries take upon themselves to grant, reprieve or pardon? If the policies of the State and the Centre are of different character and the former want to grant a reprieve for a set of offences-and reprieve, as you know, means postponement of a sentence and if this power is not with the President but vested in the Governor or a Ruler, serious complications will arise. Therefore, I submit that a crime against the Federal Government is, really speaking,, based upon the loyalty of each citizen to the Federal Government as a citizen of the Union as a whole. Therefore, pursuing that principle, the power of reprieve and pardon must vest in the President of the Federal Government and it cannot be parted with.

With regard to other matters, Mr. Ananthasayanam Ayyangar's amendment is there. If members desire that the provinces should have concurrent power with the President in regard to death sentences there is no difficulty. With regard to the States, I, for one, am not very keen that with regard to State laws the President should be vested with any concurrent power. But we must not forget a very important fact. There are States small and big. All the acceding States are not of the size of the large States whom you see represented on the front bench here. There' are States which under the existing machinery of things are not entitled to pass a death sentence without the consent of some representative of the Paramount Power. Many small States, I know as a fact, even when they pass a death sentence, are subject to influence being brought to bear upon them by the representative of the Paramount Power. Therefore it is to be considered by the country as a whole, whether very small States who do not enjoy such power, have to be given an unlimited power of passing death sentences and granting reprieve and pardon at their sweet will and without any control. These are complications on which there may be reference to a committee to be discussed fully. But on the first and fundamental question I submit, it is interfering with the direct allegiance of a citizen to the Federal Government to take away the power from the President to grant reprieve and pardon in all cases relating to federal laws. That, Sir, is all I have to submit.

Sir Alladi Krishnaswami Ayyar: Sir, I should like to say a few words in support of the proposition so ably moved by Sir Gopalaswami Ayyangar and also in support of the amendment of Mr. Ananthasayanam Ayyangar. In the first place I am happy to note that the popular representatives of some of the States have come forward and have given their support to this proposition, namely, that it is a natural consequence of the federal system that the President of the Federation must have the inherent right of pardon.

An Honourable Member: Sir, may I know the insinuation behind the phrase "popular representatives"? Are the others unpopular?

Sir Alladi Krishnaswami AyyAr: I do not mean to say that the others are unpopular representatives but I do not recognise that officials are popular representatives because I believe that in the representation there are divisions in the case of certain States, between certain representatives of rulers and representatives of the people. Both of course represent the State but from a practical and commonsense point of view there is a different between the two sets of representatives. You may take it with that qualification or amendment if you like; but there is no denying the fact that there is a' very great distinction between these popular representatives in the sense in which I use that expression and all representatives selected by the Government or the ruler.

Mr. H. Guruv Reddi (Mysore State): We are all elected people and not nominated people.

Dr. B. Pattabhi Sitaramayya (Madras: General): I rise to a point of order. These are collateral issues. I wish that side-issues are not raised and discussed and that you, Sir, may stop such a thing.

Sir Alladi Krishnaswami Ayyar: The States are entering as members of a Federal Union.

Sir B. L. Mitter: On a point of order, Sir. I have asked for leave to withdraw my amendment. Therefore the argument whether the States should have this power or not need be pursued.

Sir Alladi Krishnaswami Ayyar: Some speeches have been made, by the representatives of the Kathiawar States for instance, that the President should not have this power.

Mr. President: The difficulty is that although Sir. B. L. Mitter has asked for permission of the House to withdraw his amendment, one Member has objected to this leave being granted. The matter has rested there,

Sir Alladi Krishnaswami Ayyar: If the amendment had been permitted to be withdrawn, most of the speeches made, including that of Mr. Munshi, would have been out of order. If there really is common agreement on the part of all, there need not have been a debate at all.

The first principle of a Federal system is that the Federal law is binding upon every citizen and there is a direct relation between the citizen and the Federal Government. And when there is a breach of that Federal law, the representative of the Federation, namely the President of the Federation, must have the inherent Tight to pardon any offences against the Federal law. That is the principle of Sir- N. Gopalaswami Ayyangar's amendment. There is no point in raising any issue as to sovereignty, because whatever the States might otherwise be, when once they accede to the Federation, there is a *pro tanto* cession of sovereignty in regard to the subjects ceded to the Union. The States may console themselves that in regard to all other matters they have plenary powers of sovereignty, ,but, to the extent they cede to the Union they cease to be sovereign in respect of that matter. It is not *infra dig* for any State rule or State people to think that there is a restraint on sovereignty in that regard, because that is the very essence of a federal compact. The great states of the American Union are still sovereign in many respects; but they are not sovereign in the federal sphere. That is the accepted principle in all Federal constitutions. The amendment here refers only to offences against the Federal laws. If any one has any object to it, it must be the Provinces because uptil now, even in regard to Federal subjects, the Provincial Governments had the power of pardon. Only in order to bring the States into line with the Provinces on a Federal basis, the provincial representatives are willing to let the power of pardon in regard to Federal subjects being exclusively vested in the President of the Union. If there is a concession it is a cession on behalf of the Provinces. They are giving up a right which they have been hitherto exercising under the recent Government of India Act. At the same time let it be clearly understood that when the Provincial Constitution is framed, there should be the power of pardon vested in the Provincial Governors in so far as the concurrent subjects and the subjects in the Provincial list are concerned There must be inserted a corresponding provision in respect of vesting the power of pardon in the Heads of the Provincial Governments so far as these subjects are concerned. Sir N. Gopalaswami Ayyangar has given an assurance, in the sense in which any spokesman in respect of any proposal can give, that this matter will be taken up at a later stage and an amendment moved in regard to that matter. This is so far as the provincial sphere is concerned.

Then the only remaining point is about death sentences. It was felt that, though logically you need not make any exception in regard to death sentences, having regard to the fact that a citizen of a province has enjoyed this privilege up to the present day, there is no reason why he should be deprived of that privilege of invoking the aid both of the Centre and Province. That is the spirit of Mr. Ananthasayanam. Ayyangar's amendment which I support.

Mr. Naziruddin Ahmad: Mr. President, Sir, I wish to deal with only one aspect of the subject which has created some amount of subdued heat. It is that we are considering the case of those States who are acceding to the Federation in regard to the three subjects of Defence, External Relations and Communications. It is the principle of all Federal constitutions that where there is any subject vested in a Federation the offences relating to that subject should also be within its jurisdiction. There are certain taxes which are necessary to be made over to the Federation in order to enable it to work those subjects vested in the Federation. As a matter of fact offences relating to those taxes should also naturally be dealt with by the Federation.

Now, Sir, I submit that when a State accedes to the Federation that State absolutely surrenders all its sovereignty and powers to the Federation and therefore, by necessary implication, it surrenders also its jurisdiction over offences relating to certain subjects and the offence against the taxation in relation to those subjects. If this be the case it is a voluntary act of cession. There should be no misunderstanding that this cession of power includes also the cession of sovereign rights as to pardoning and commuting of offences. In these circumstances I beg to submit that the whole controversy and the sentimental outbursts have arisen only out of a misunderstanding. I submit that if the problem is looked at from the point of view of cession of certain necessary powers, then (if course. it follows as a corollary that the power of pardon and other things must reside in the President of the Union. This is all I have to say on this subject.

Mr. Satyanarayan Sinha (Bihar: General): Sir, the question may now be put.

Mr. President: The question is:

'That the question be now put."

The motion was adopted.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I have very little to say by way of replying to the debate. The points that were raised by some members in criticism of the amendment that I had moved have been very satisfactorily answered by other members. So there is really very little, left for me to say.

As rgeards Mr. Ananthasyanam Ayyangar's amendment, there are only two points which need be mentioned. One of them is that, if his amendment is confined to the provinces alone as he has suggested, would introduce a distinction between the provinces and the States. That is number one. The second point that I might mention is that we shall be taking away from the provinces some more of the powers which my amendment would have conferred exclusively upon them but that is as mall matter. If the House agrees that in the case of death sentences there should be concurrent authority for the President of the Federation in respect of provinces alone, I for one will not object to it. We shall leave the States alone, to take their own course in this matter.

Mr. President: I will now put the amendments to the vote. The first amendment is that moved by Mr. Ananthasayanam Ayyangar that at the end of amendment moved by Sir Gopalaswami Ayyangar the following be added:

"Where any person has been sentenced to death in a province, the President shall have all such powers of suspension, remission or commutation of sentences as are vested in the Governor of the province."

The amendment was adopted.

Mr. President: Then, I will put to vote the amendment of Sir Gupalaswami Ayyangar, as-amended by Mr. Ananthasayanam Ayyangar.

The amendment was adopted.

Mr. President: I will put the original clause as amended, now, to vote

Clause 7, as amended, was adopted,

Clause 14

Mr. President: We all now take up Clause 14.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I have already read this clause out to the House, and I do not think it is necessary for me to read it out again. A very large number of amendments had been tabled in respect of this particular clause, and naturally an attempt has been made to see if the various points of view represent-Id in these amendments could be brought together and a sort of agreed arrangement placed before the whole House. for unanimous acceptance. I have taken the liberty, Sir, of sending notice of an amendment this morning which I think represents an agreed solution of the difficulties, and if it is the wish of the House that I move that particular amendment and, if it is passed, the other amendments need not be moved, I am prepared to move it.

Mr. President: Please move it. Or do you think that we should take up the other amendments?

The Honourable Sir N. Gopalaswami Ayyangar: If this is carried, I think there will not be any necessity for the other amendments to be moved.

Sir, the amendment which I beg to move is this:

"That for items (a), (b) and (c) of sub-clause (1) of Clause 14, the following be substituted :

'(a) The strength of the Council of States shall be so fixed as not to exceed me half of the strength of the House of the People. Not more than 25 members of the Council shall be returned by functional constituencies or panels constituted on the lines of the provisions in section 18(7) of the Irish Constitution of 1937. The balance of the members of the Council shall be returned by constituencies representing Units on a scale to be worked out in detail:

Provided that the total representation of Indian States does not exceed 40 % of this balance.

Explanation.-A Unit means a Province or Indian State which returns in its own individual right members to the Federal Parliament. In the case of Indian States which are grouped together for the purpose of returning representatives to the Council of States a Unit means the group so formed.

(b) The representatives of each Unit in the Council of States shall be elected by the elected members of the legislature of such Unit and in cases where a legislature consists of two Houses by the elected members of the Lower House of that legislature.

(c) The strength of the House of the People shall be so fixed as not to exceed 500.The Units of the Federation, whether Provinces, Indian States or groups of Indian States, shall be divided into constituencies and the number of representatives allotted to each constituency shall be so determined as to ensure that there shall be not less than one representative for every 750,000 of the population and not more than one representative for every 500,000:

Provided that the ratio of the total number of Indian States' respectively to their total population shall not be in excess of the ratio of the total number of representatives for the Provinces to their total population."'

'2. That in sub-clause (1) of Clause 14, following new item (e) be inserted:-

'(e) The fixing of the actual strength of the Council of Sates and of the House of the Noble the distribution of the strength so fixed amongst the Units of the Federation, die determination of the number, nature and constitution of functional panels or constituencies for the Council of States, the manner in which the smaller State should be grouped into Units for purposes of election to the two House, the principles on which territorial constituencies to the two Houses should be delimited and other ancillary matters shall be referred back to and investigated by the Union constitution Committee. After such investigation, the Union Constitution Committee shall submit to the President of the Constituent Assembly its recommendations as to the provisions relating to these matters which should be inserted in the draft text of the Union Constitution."

Sit, I wish only to draw attention to the more important aspects of this draft amendment. Sir, the first point to which I should like-to make a reference is that in this amendment we are definitely fixing the strength of the Council of States and in doing so we say that that strength should not exceed one half of the strength of the House of the People. I think Sir, the House will agree that that is a fair, proportion to fix. Now out of this strength that we so fix we propose to allocate 25 members to functional constituencies. In the draft, as originally placed before the House, it will be remembered that ten of the seats were to be filled by nomination by the President in consultation with universities and scientific bodies.

It has been felt by a very large number of people that that is not a sufficient provision for the purpose of getting on to the Council of States people who may not belong to universities or scientific bodies, but who on account of their connection with very important sides of the Nation's activity, deserve to be on a body of that description. In this connection a reference has been made to Section 18 (7) in the Irish Constitution. As you know, the bulk of the Senate in the Irish Constitution is filled by functional constituencies of this description. These constituencies relate to the representation of culture, education, of trade and commerce, of agriculture, of labour, of social services and various other national activities of that description. Now the one important difference between the provision in the Irish Constitution and the provision that is proposed to be made here is that that principle will be applied only to a very small number of members of the Council of States. If we fix the maximum strength of the House of the People at five hundred, the maximum strength of the Council of States can only be two hundred and fifty. If out of that we take twenty-five for being filled by constituencies of this description, it only means about ten per cent of the total strength, so that we retain the essential character of the Council of States, as originally planned. An overwhelming majority of members of the Council will be returned by units more or less on a territorial basis, but a very small number not exceeding ten per cent will be returned by constituencies of this special description. There is also another limitation that we have placed on the representation of Indian States in the Council of States. This amendment says that the total representation given to Indian States should not exceed forty per cent of the strength of the Council of States minus the number allotted to special constituencies.

Then, Sir, I would refer to item (b) in this new sub-clause. It practically reproduces item (b) in the original clause with this one important difference, namely, that the election should be by the elected members of the legislatures and that, if a unit legislature happens to have two Houses, the electorate will be the elected members of the Lower House of that legislature. Perhaps I might explain that I have retained the description 'Lower House' here in keeping with the description that has been used in other parts of this particular draft. The Idea is not to retain this description of the Chamber that we all of us have in mind, but to find another description which would not be open to the same criticism.

Then, Sir, with regard to the House of the People the maximum strength is fixed at five hundred and the limits of one million and 7,50,000 which you find in the existing draft have been reduced to 7,50,000 and 500,000. Incidentally this accepts a number of amendments notice of which has been given which are more or less in the same terms.

Then, Sir, you come to the proviso to item (c). Perhaps some people might consider this is not very necessary, but, in order to allay fears, perhaps suspicions, it has been decided that it is desirable to put in a Proviso of this description. The House of the People is essentially a Chamber whose composition is based entirely on the population and it is only reasonable that the ratio which the number of Members representing the Indian States bears to the total population of Indian States should not exceed the ratio which the number of seats for the Provinces bears to the total population in the Provinces. So I do not think it needs any justification. Any special treatment which we desire to give to units of the Federation, whether Provinces or Indian States that treatment will be provided for in the composition of the Council of States.

Then, Sir, having stated these general principles as regards the composition of the two Houses, it is necessary that they should be elaborated and should be put in a form which could go into the draft Constitution for the future. A good deal of spade work will have to be done in this connection, fixing the actual strength of the two Houses, the way in which that strength should be distributed amongst the units, the kind and composition of the special constituencies and the principles on which territorial constituencies in Indian States should be delimited all these are very important things on which the Constitution will have to lay down certain fundamental principles and for that the purpose I have introduced an additional item (e) which assigns to the Union Constitution Committee the task of investigating these problems in some detail an then proposing clauses or sections which could be embodied in the new draft Constitution.

That will certainly come up before the House for discussion. The Report of the Union Constitution Committee will be made to the President and then the Report becomes really the property of the House. If it is so decided that this report should be discussed in the House before the actual recommendations of the Committee are put into the draft text, that discussion can be held at the future session. But if the House should agree that the recommendations of the Union Constitution Committee as regards these matters can straightway go into the draft, text of the Union constitution, the House will still gave. an of examining the merits of these provisions when it comes to text of the constitution.

Sir, I move this amendment.

Mr. President: I have got a number of amendments to this clause. I shall take these amendments now one after another.

(Messrs. Jagat Narain Lal, H. V. Pataskar, B. M. Gupte, R. M. Nalavade, Seth Govind Das and G. L. Mehta, did not move their amendments, Nos. 232 to 237.)

Dr. Mohan Sinha Mehta (Udaipur State): I withdraw my amendment (No. 238).

Col. B. H. Zaidi (U.P. States): I withdraw the amendment (No. 238).

Maharaj Nagendra Singh (Eastern Rajputana States): Mr. President, Sir, the amendment of Sir Gopalaswami Ayyangar meets the view point ,of small States admirably and he ought to be congratulated on this amendment because it creates effective democracy. After all, Sir, the greatness and balance of a constitution lies in its portraying with the minutest attention to detail the various entities and interests that lie in the country at large. The amendment will certainly achieve this object and I wholeheartedly support it. I, therefore, withdraw my amendment, Sir, but I request that as far as the consideration of the allocation of seats *inter se* between the States is concerned there should be some representatives of the small States in the Union Constitution Committee, The grouping of small States and the formation of constituencies will affect these States vitally and it is therefore important from the point of view of these States that there should be a representative of the small States in the Union Constitution Committee to express their views.

I withdraw 'my amendment (No. 239).

(Messrs. Rai Saheb Ragho Raj Singh and H. J. Khandekar did not move their amendments, Nos. 239 and 240.)

Shri Himmatsingh K. Maheswari: I withdraw amendment No. 241. (Amendments Nos. 242 to 260 were not moved.)

Shri Vishwambhar Dayal Tripathi (United Provinces: General): *[Sir, I do not propose to move my amendment as it is covered by the resolution of Sir Gopalaswami Ayyangar.]*

(Amendment No. 262 was not moved.)

(Sir V. T. Krishnamachari did not move his amendment No. 263.)

Mr. President: I take it that none of the other Ministers are moving.

Sir V. T. Krishnamachari (Jaipur State): Yes.

(Amendments Nos. 264 to 271 were not moved.)

Mr. Naziruddin Ahmad : Mr. President, Sir, I beg to move:

"That sub-clause (2) of Clause 14 be deleted."

The simple purpose of this amendment is that the sub-clause refer to a schedule which is not yet in existence. If we agree to sub-clause (2) it would be signing a blank cheque or a transfer deed without a schedule. I submit that this is a difficult thing to do.

Then, I find after the amendment of my Honourable friend Sir Gopalaswami Ayyangar this amendment is in an anomalous position. After we gave notice of a large number of amendments the original clause has been re-drafted and put forth here on the floor of the House. We have had no opportunity of considering the draft. I have no particular objection to the revised draft which has been submitted for consideration. But still I should think that perhaps it would have been better to give us some time to consider this important subject. A draft of such intricate nature like this, containing important constitutional principles cannot be easily handled at a moment's notice. I therefore respectfully submit that, as in any other important case, some time should be given for consideration of the subject and then it would be easy for us to submit amendments. It may be that we would fully agree with the principles, but still, for the sake of safety, it would be better to give us some time. I hope the Honourable member will kindly consider the difficulty in which some of us 'have been placed and postpone the subject for-further consideration. This is a very important-subject and its importance justifies the suggestion.

(Amendments Nos. 273 to 278 were not moved.)

Prof. Shibbanlal Saksena (United Provinces: General): Mr. President, Sir, my amendment to sub-clause (4) of Clause 14 runs as follows:

> "That in sub-clause (4) of Clause 14, for the word 'one third', the, word 'one half' be substituted."

In accordance with the present provision in sub-clause (4) of Clause 14, one-third of the members will retire every second year. Now according to the time-table which we have laid down, the life of the house of the, People shall be of four years' duration, and a new House of the People as well as new provincial legislatures shall, be elected every fourth year in the normal course of things. What I want is that in the Council of States as well instead of one-third of the members being elected every second year, one-half of the members should be elected every second year. In this manner we shall be having a new Council of States every fourth year. It may be argued that the Lower House may be dissolved before their full terms expire, and the four year cycle may not recur. But dissolution, I am sure, will not be a normal feature in the, life of the legislatures; and even. if one or two legislatures in the provinces are dissolved before their full terms, the four year cycle will not be materially disturbed at least during the present century.

An Honourable Member: On a point of information, is he going to, move the amendment?

Prof. Shibanlal Saksena: Yes, Sir, I move it.

According to the amendment of Sir N. Gopalaswami Ayyangar the States will have a fairly large representation in this House and, as is well known the Lower Houses of the States have a majority of nominated members, so a majority of the members will be Rulers' representatives. Therefore what I want is that this House which will have a fairly large number of reactionary members, should not be a House which should be continued for very long intervals. I want at least half of this should change every second year and then it might not be so reactionary. I have already voiced my opposition to second Chambers before but if we are to have them, at least we should have a change of half of the members every ,second year so that in the 4th year the whole Council of States win be. changed.

(Amendments Nos. 280 to 299 were not moved.)

(Amendments Nos. 13 to 16 in Supplementary List No. I, Amendments Nos. 10 & 11 in Supplementary List No. II, and Amendments Nos. 4 to 6 in Supplementary List No. III were not moved.)

Begum Aizaz Rasul (United Provinces: Muslim): Sir, the amendment standing in my name is-

"That in sub-clause (1) (d) of Clause 14, the following be added at the end:--

'by a system of proportional representation by signal transferable vote."

Sir, I do not propose moving this amendment at the present moment in view of the amendment moved by Sir N. Gopalaswamy Ayyangar. I hope that this very important aspect of , the question as to the method of election to the Council of States will be considered by the Union Constitution Committee in order to safeguard the interest of minorities. I do not wish to move this amendment at this time, Sir, because of the great possibility of getting a negative vote on it in case the House rejects it but I reserve to myself the right of moving this amendment later on, if need arise.

Mr. President: There is another amendment in your name.

Begum Aizaz Rasul : There is another amendment standing in my name:

'That in sub-clause (4) of Clause 14. for the word "second" the word- "third"' be substituted.

Sir, the clause will then read:

"The Council of States shall be a permanent body not subject to dissolution,. but as near as may be, one-third of the members thereof shall retire in every third 'year in accordance with the provisions in that behalf contained in Schedule--"

Sir, my object in moving this amendment is that I feel that the period of two years is a very short period for a Legislator. As soon as he becomes conversant with the business, gets to know legislative work, and settles down to it he will have to retire. To my mind this is not very fair and he ought to have a slightly longer period in which to show his worth and do justice to the House to which he is elected. Sir, if my amendment is accepted it will mean that the House being a, permanent body, one-third of the members retiring every three years, it will be a rotation of nine years. As most Honourable Members are aware, this is the system at present prevailing under the Government of India Act of 1935. Therefore, people in India are not unfamiliar with this system. I feel that this system, as it has been working for the last ten years, in this country, has proved absolutely satisfactory. Sir, in the constitutions of most of the western countries there are two Houses of the Legislature; Members of the Upper House are mostly either life members or the life of that House also synchronises with the life of the Lower House. It is only in the United States Senate that one-third of the members retire every second year. I however feel that it is not necessary that we in India should try to copy the system that prevails in the United States because, for one thing, the members of the U.S. Senate are chosen by popular vote whereas for the Council of States that is envisaged by the Union Constitution these members will not be elected by direct election but will be elected by the members of the Lower House. Sir. another strong point that I wish to make in support of my contention is that I do not think that the members of the Lower House should elect members to the Council of States twice in their term of membership and I think this right should only be exercised once. If this provision stands as at present, and if the members of the Upper House have to retire every second year, that means that the members of the Lower House will have the Tight to elect twice in their lime time members to the Upper House. With these few words, I commend my amendment to the consideration of the House. I feel it is a very fair amendment and hope it will be accepted.

Mr. President: The clause and the amendments are now open for discussion.

Mr. Jainarin Vyas (Jodhpur State): Mr. President, Sir, I rise to support the fresh proposals recently put forward by Sir N. Gopalaswamy Ayyangar, but while doing so, I would like to offer a few remarks on the subject matter. When we support the-se proposals, it should not mean that we feel that the proposals will favourably affect the people of the Indian States. We support these proposals purely on political grounds. When these proposals are accepted, fourteen lore States will come in the Lower House. These 14 States will include four States of Kathiawar, seven of the Eastern States, one from Rajputana, one from Assam and one from Simla Hill States. I am very glad to observe that four maritime States, Junagadh, Nawnagar. Bhavnagar and Cutch will find their place in the Lower House on account of these proposals and the border State of Manipur will also come in. So, from that point of view, it is a very good thing to increase the membership of the Lower House as has been done. Sir Gopalaswamy Ayyangar while 'putting forward Clause I (b) said that only elected members of the Legislature in the Lower House will be able to vote for the election of the Lower House. I mean the elected members of the Legislative Assemblies of the States. There is some confusion in the words "elected members" because when we think of the elected members of the Lower House of our Union, we think that these are elected on the basis of adult franchise, but in Indian States things are not so. I know of a State in Punjab where the son of a Ruler is an elected member of the Assembly and his wife also finds a place among the elected members, and Sir, they are unfortunately both Ministers or rather, they are "popular ministers" of the Assembly. So this is how elected members and elected "popular ministers" come in through the Lower House of the Assembly in States. There is a State which has got an elected member on the basis of four members in the constituency. So he is also an elected member. I know of another State which has got ten jagirdars out of about fifty elected members in the Lower Houses or in the Legislative Assembly.

That way, the elected members of the Assembly do not mean really elected representatives because they are not elected on popular franchise or on adult franchise. Sir, I want to bring these instances to your notice and through you, to the notice of the House, so that when a draft is being prepared those who are at the helm of affairs in drafting the Constitution will see that truly elected members come in, not members elected on bogus franchise in bogus legislatures as they exist in some of the States.

One thing more I would like to bring to your notice and hat is, then popular representatives of the States have got no place in the Union Constitution Committee of this House, and when the rules or clause are framed their opinion does not come up before the Constitution Sub Committee. I hope Sir, when there is a vacancy in the Union Constitution Committee, then claim of the popular elements will be considered and, if necessary, the strength of the Committee will be increased in order to find a place for the popular members from the States.

With these remarks, Sir, I commend Sir Gopalaswamy Ayyangar's proposal to the House. I hope, Sir, my request will be considered when the real drafting is taken in hand.

Pandit Hiralal Shastri (Jaipur State): * [Mr. President, I had no intention to participate in the debate today. But when Sir Gopalaswamy Ayyangar stated that the amendment he was moving bad the unanimous support of the House, I felt that I must say something about it.

With all Respect, I ask Sir, Gopalaswamy as to how his amendment has the unanimous support of the House. SO far; as I know, all the representatives of the States people present in the House are of the opinion that the original proposal in the report of the Union Constitution Committee should stand. Again, I wish to know why the strength of the Upper and the Lower Houses Should be increased. We have often passed a resolution in the all India States Peoples' Conference, that larger, States Should join the Indian Union separately while the smaller ones should joint the Indian Union., in a. group. The standard and the qualifications we have fixed for the States joining the union 'are sufficiently high. According to our standard, a State with a population of 5 million and having a revenue of 30 millions can Join the Union individually. We were satisfied to note that for election to both the Houses, the minimum population limit was fixed at a million. Many attempts were made and many amendments were brought in to reduce this limit to a quarter million but in vain. I clearly. see that behind the proposed amendment, of, reducing the limits of one million and 750,000 to 750,000 and 500,000 respectively, underlies the policy that some State, with a population of more than half a million may get representation not only in the Upper House, but also in the Lower House I do not like this. Therefore, I have not agreed to, the proposal. There is no unanimous support of the House. Sir Gopalaswamy Ayyanger possibly was the author of the original proposal- in the report and if it is true that he himself is moving amendment to the original proposal, I do not think it proper to oppose him. However, I cannot but express my feelings in this connection. When our country is going to be. politically a Union, in spite of the division, when differences between provinces and States are being removed, I do riot think it proper that small States, should come into the Union as separate entities. I disapprove of the idea of small States coming into the Union as separate entities, for I know that if separate units of these small States are formed, that would only be for the purposes of elections. I know that this will go contrary to the proposal of grouping and States will get all opportunities for coming in as individual units. If we intend that the small States should come into the union in groups, they should be allowed the minimum opportunity to exercise their franchise as individual units for election to this House. According to our original proposal only fifteen states were to participate in the Assembly elections as individual units. But because their representatives have been recognised and because- of this and other amendments by the States, fifteen other States will now come in as individual units and this is the number of small States joining as individual units will be increased. Besides this, a provision has also been added. The amendment of Sir N. Gopalaswami considers many vital matters of detail regarding the' formation of units and delimitation of constituencies etc. This matter will go up before the Union Constitution Committee where the final decision will be taken on it, I am very sorry to have to say in this connection that so far no representative of the States people has been taken in the said Committee. However, this is not the point. We are discussing here a very important and vital matter and our decision. will be placed before the Union Constitution Committee. Maharaj Nagendar Singhji has demanded here *at the small States must be represented an this Committee. I do not know as to how many representatives will be taken but I must voice our demand that representatives of the States people must also be taken on this Committee. Many matters of great importance will be discussed in the Committee and decision thereon taken; and hence a representative of the States people must be there to voice their opinion. I give this particular warning to the House that the smaller States should not be individually allowed to come in as representatives of each separate unit. The more they are grouped the better it is. I have reasons to say this. However, I do not think it proper to go into controversies over this. One is greatly pained and astonished to hear of the atrocities and repression going on in those small States'. The States people are very miserable on account of the atrocities of the authorities. Many of the States that have joined this Assembly whether individually or in groups feel as if they have obliged our leaders and the National Congress by doing so. I do not like to say any thing against it but in the manner the smaller and the bigger States have joined the Assembly, they feel as if they have been given a written authority to have absolute power over their people. Thus they have not only begun to exercise their absolute authority over the people but have also begun to oppress them., If we enquire into the important news-of the States, appearing every day with pictures on the front Pages of the newspapers, we would find that great atrocities are committed on the people by the States authorities. This is not the proper time to say all the but I had to give vent to my heartfelt pain at some time. Syt. Vyas has just stated that the State authorities are generally interfering with elections. Therefore, I would like to draw the particular attention of Sir Gopalaswami to this and request him to see that when the constituencies and the units are formed the smaller States do not come in as individual units in large numbers and that the view point of the representatives of the

States peoples is also somehow secured.

I do not oppose the motion but wish to state that at least the voice of the States subject must not be ignored. I would also apeal to the Honourable the President to see that the representatives of the States subjects should be included in the Committee.]*

Mr. Satyanarayan Sinha: The question be now put.

Mr. President: The question is:

'That the question be now put."

The motion was adopted.

Mr. President: I shall now put the amendments. I shall First put the amendments of Sir N. Gopalaswami Ayyangar. The question is:

1. That for items (a), (b) and (c) of sub-clause (1) of Clause 14, the following be substituted:

"(a) The strength of the Council of States shall be so fixed as not to exceed one half of the strength of the House of the People. Not more than 25 members of the Council shall be returned by functional constituencies or panels constituted on the lines of the provisions in Section 18(7) of the Irish Constitution of 1937. The balance of the members of the Council shall be returned by constituencies representing Units on a scale to be worked out in detail:

Provided that the total representation of Indian States does not exceed 40% of this balance.

Explanation.-A Unit means a Province or Indian State which returns in its own individual right members to the Federal Parliament. In the case of Indian States which are grouped together for the purpose of return ting representatives to the Council of States a Unit means the group so formed.

(b) The representatives of each Unit in the Council of States shall be elected by the elected members of the legislature of such Unit and in cases where a legislature consists of two Houses by the elected members of the Lower House of that legislature.

(c) The strength of the House of the People shall be so fixed as not to exceed 500. The Units of the Federation, whether Provinces, Indian States or groups of Indian States shall be divided into constituencies and the number of representatives allotted to each constituency shall be so determined as to ensure that there shall be not less than one representative for every 750,000 of the population and not more than one representative for every 500,000:

Provided that the ratio of the total number of Indian States representative to their total population shall not be in excess of the ratio of the total number of representatives for the Provinces to their total population."

2.That in sub-clause (1) of Clause 14, the following new item (e) be inserted:

"(e) The fixing of the actual strength of the Council of States and of the House of the People, the distribution of the strength so fixed amongst the Units of the Federation, the determination of the number, nature and constitution of functional panels or constituencies for the' Council of States, the manner in which the smaller States should be grouped into Units for purposes of election to the two Houses, the principles on which territorial constituencies to the two Houses should be delimited and other ancillary matters shall be referred back to and investigated by the Union Constitution Committee. After such investigation, the Union Constitution Committee shall submit to the President of the Constituent Assembly its recommendations as to the provisions relating to these matters which should be inserted in the draft text of the Union Constitution."

The amendment were adopted.

Mr. President: There are some more amendments which were moved. I shall put Mr. Naziruddin Ahmad's amendment. The question is:

"That sub-clause (2) of Clause 14 be deleted."

The amendment was negatived.

Mr. President: There is another amendment by Mr. Shibban Lal Saksena, which I shall put. The questions is:

'That in sub-clause (4) of Clause 14, for the word 'one-third' the word 'one half, be substituted."

The motion was negatived.

Mr. President: I shall now put the amendment moved by Begum Aizaz Rasul. The question is:

"That in sub-clause (4) of Clause 14, for the word "second" the word "third" be substituted."

The motion was negatived.

Mr. President: I shall now put the original clause as amended by Sir N. Gopalaswami Ayyangar's amendment which has been adopted. The question is:

"That Clause 14, as amended, be adopted."

The motion was adopted.

Mr. M. S. Aney: There is a note under this clause and in that note the different Provinces and States are named. I find among the names the name of the Central Provinces mentioned as 'C. P.' The name of the Province under the Act under which it was formed as "C. P. and Berar' That name is also reproduced in some other clauses which we have' already passed. So I think this might be a clerical mistake. But I do want to bring this fact to your notice and to the notice of the House. When the final draft is made, if the Note happens to be there, the proper name of the Province should be given as "the Central Provinces and Berar."

Mr. President: I think that is a slip because in the Schedule it in correctly stated.

Part X

Mr. President: We shall now take up part X.

The Honourable Sir N. Gopalaswami Ayangar: Sir, I may here request your permission for asking that the moving of this 'Part be postponed because some of the amendments have raised a very important issue as to what provision should be made for giving Provincial Legislatures some constituent power for amending the Constitution of the Province. That requires some consideration. Therefore, if you permit, we will take up this matter at the next session.

Mr. President: The consideration of Part X will be held over.

Part XI

Mr. President: We shall take up Part XI.

The Honourable Sir N. Gopalaswami Ayyangar: The first clause in Part M ruins as follows:

"The Government of the Federation shall be the successor to the Government of India established under the Government of India Act, 1935, as regards all property, assets, rights and liabilities."

I request your permission to move this clause with a verbal addition which would bring the terms of this clause up-to-date with reference to recent happenings. Since this clause was drafted, Parliament has passed an Indian Independence Act. Under the powers given by that Act, very comprehensive adaptations of the Government of India Act are being ordered by the Governor-General. So at the time we shall be bringing this new Constitution into force it will be the Government of India Act, 1935, as adapted. Therefore, if you will permit me to do so, I would move:

"That after the words 'the Government of India Act, 1935' in Clause I the words 'as adapted under the provisions of the Indian Independence Act' be added."

Mr. President: Clause 1 has been moved with some alteration. We have got several amendments of which I have received notice.

Shri K. Santhanam (Madras: General): Sir, I want to know if that expression has been substituted,

The Honourable Sir N. Gopalaswami Ayyangar: The Clause will read after my amendment as follows:

"1. The Government of the Federation shall be the successor to the Government of India established under the Government of India Act, 1935, as adapted under the provisions of the Indian Independence Act, as regards all property, assets, rights and liabilities.".

Shri K. Santhanam: I do riot move my amendment No. 401.

Mr. President: The clause that has been moved as amended is this:

"1. The Government of the Federation shall he the successor to the Government of India established under the Government of India Act, 1935, as adapted under the provisions of the Indian Independence Act, as regards all property, assets, rights and liabilities,

Shri K Santhanam: The difficulty is that the Indian Independence Act must take precedence over the Government of India Act of 1935. Therefore, it will not be correct to put the latter first. The order will have to be reversed.

Mr. President: The 1935 Act is adapted.

Shri K. Santhanam : The Act in operation is the Indian Independence Act The adaptation is under the Indian Independence Act.

The Honourable Sir N. Gopalaswami Ayyangar: May I explain the point? After all, Sir, the Indian Independence Act is largely in enabling Act, the Constitution under which we shall work from the 15th August 1947 onwards will still be the Government of India Act, 1935, as adapted by the Orders which the Governor-General. has been empowered to issue under the Indian Independence Act.

Shri K. Santhanam: I do not think it will be legally correct. We will be working under the Indian Independence Act or under the Government of India Act, 1935, in certain respects.

Sir Alladi Krishnaswami Ayyar: I think Mr. Santhanam. is right The real Constitution will be the Dominion Constitution. We are adapting certain provisions of the 1935 Act to suit the Dominion Act. The future Government will be the successor of the Dominion Government.

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I bow to the legal opinion though I do not feel convinced, I doubt its correctness.

Shri K. Santhanam : Suitable arrangements may be made

Mr. President: Though there is no difference in meaning, there is a dispute. You had better leave it to Sir N. Gopalaswami Ayyangar to put it in proper form.

As Messrs. Nijalingappa, Krishnamoorthy Rae and Ananthasayanam Ayyangar are not moving their amendments, I will put Clause 1 of part XI to the vote.

The question is:

"That Clause 1, as amended, of Part XI be adopted."

The motion was adopted.

CLAUSE 2

The Honourable Sir N. Gopalaswami Ayyangar: Sir, I move:

"2. (1) Subject to this Constitution, the laws in force in the territories of the Federation immediately before the commencement of the Constitution shall continue in force therein until altered, or, repealed, or amended by a competent legislature or other competent authority.

(2) The President may, by, Order provide, that as from a specified date any law in force in the Provinces shall, until repealed or amended by competent authority, have effect subject to such adaptations and modifications as appear to him to be necessary or expedient for bringing the provisions of that law into accord with the provisions of this Constitution."

These are necessary to keep the existing Acts in force.

(Shri Jainarain Vyas did not move his amendment No. 404):

Mr. Naziruddin Ahmad: Mr. President, I beg to move:

"That in sub-clause (2) of Clause 2, for the words 'by competent authority. the words 'by a competent authority' be substituted."

Sir, this is only a drafting amendment.

Mr. S. V. Krishnamurthy Rao (Mysore State): Mr. President, this Is only an enabling provision similar to the one provided for the Provinces This has references to such of the States as accede to the Union. My amendment runs thus:

"That in sub-clause (2) of Clause 2, after the word 'Provinces' the following be inserted:

'and such of the States as are parts of the Indian Dominion as per provision Section 2, Clause 4 of the Indian Independence Act of 1947'".

I hope the Mover of the Clause will accept this amendment.

Mr. President: As there are no other amendments to this Clause and as no Member wishes to speak, Sir N. Gopalaswami Ayyangar may reply to the debate.

The Honourable Sir N. Gopalaswami Ayyangar: Mr. President, Mr. Naziruddin Ahmad's suggestion is a drafting amendment. But I am not sure that it is a drafting improvement. I would rather retain "competent authority" in the place of "a competent authority".

As regards the amendment of Mr. Rao, I think that if the representatives of Indian States are prepared to agree, I am prepared to accept it. But I am afraid the question will require to be very carefully examined before we can agree to it. I would rather that the clause is left alone and the matter examined later.

Mr. President : I will now put the amendments to the vote. The amendment of Mr. Naziruddin Ahmad is:

"That in sub-Clause (2) of Clause 2, for the words 'by competent authority' the words 'by a competent authority' be substituted."

(The amendment was negatived.)

Mr. S. V. Krishnamurthy Rae: Sir, I withdraw my amendment.

Mr. President: Mr. Krishnamurthy Rao withdraws his amendment. I take it that the House gives him leave to withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then I will put the clause to vote.

The motion was adopted.

CLAUSE 3

The Honourable Sir N. Gopalaswami Ayyangar: Sir, Clause 3 runs as follows:

"Until the Supreme Court is duly constituted under this Constitution, the Federal Court be deemed to be the Supreme Court and shall exercise all the functions of the Supreme Court:

Provided that all cases pending before the Federal Court and the Judicial Committee of the Privy Council at the date of commencement of this Constitution may be disposed of as if this Constitution had not come into operation."

That is to say, cases pending before the Judicial Committee at the inception of this Constitution will continue to be disposed of by that Committee. Sir, I see that there are certain amendments to effect improvements in this clause. I shall be prepared to accept the amendment of which Sir Alladi Krishnaswami Ayyar has given notice.

(Messrs. K. Santhanam, Biswanath Das and Thakur Das Bhargava did not move their amendments

Nos. 407, 408 and 409.)

Sir Jaspat Ray Kapoor (United Provinces: General): I am not moving No. 410 in view of Sir Alladi's amendment.

(Mr. R. K. Sidhwa did not move his amendment No. 411.)

Sir Alladi Krishnaswami Ayyar: My amendment runs in these terms:

"That for the Proviso to Clause 3, the following be substituted:

'On and after the coming into force of this Constitution, the jurisdiction of the Judicial Committee of His Majesty's Privy Council to entertain and dispose of appeals and petitions from any Court in the Union of India, including the jurisdiction in respect of criminal matters in the exercise of His Majesty's prerogative shall cease and all appeals and other proceedings pending before the Judicial Committee of the Privy Council shall stand transferred to, and be disposed of by the Supreme Court. Further provision may be made by the Parliament of the Federation to implement and give effect to this provision'."

Sir, in commending this amendment for the acceptance of the House I should like to make a few observations. Even in the British Commonwealth, judicial autonomy is recognised as necessarily incidental to the new status which the Dominions have attained. In Australia, there is no right of appeal at all except with the leave of the High Court of that country. In Canada, under recent legislation, the right of appeal from the Supreme Court of Canada both in civil and criminal cases has been abolished. In South Africa, under the South African Constitution, there is no right of appeal to the Judicial Committee. If that is the position even in regard to the Dominions within the British Commonwealth, it is inconceivable that there should, be any retention of jurisdiction in the judicial Committee after India has become a Republic and the Constitution we are enacting comes into force. There has necessarily to be an automatic cessation of jurisdiction in regard to pending appeals. It is inconceivable that what is in effect a foreign Court should be in a position to reverse or modify the decisions of Indian tribunals. The Supreme Court to be established is, the only final Court of Appeal for all India, and it is but proper that all pending cases should be transferred to the Supreme Court. The point has been raised in certain quarters whether we could direct the transfer of records from the Judicial Committee. All that we enact is- that cases do stand transferred, that hereafter the Supreme Court will have the Jurisdiction to deal with all these cases. I do not believe that the Judicial Committee will fail to act in aid of our legislation. As a matter of fact there are very few original records in the custody of the Judicial Committee. If then- is any difficulty in regard to procedure and other matters federal legislation, will be enacted. That is the object of the latter part of this amendment. I therefore ask the House to accept the amendment.

Sri M. Ananthasayanam Ayyangar: I am not moving my amendment No. 11 in supplementary List IV.

Mr. President: I think there is only one amendment now.

The Honourable Sir N. Gopalaswami Ayyangar: I accept the amendment of Sir Alladi Krishnaswami Ayyar.

Mr. President: The amendment is accepted by the Mover of the clause. I will now put it to vote.

The amendment was adopted.

Mr. President: I will now put the clause, as amended by Sir Alladi, to vote.

Clause 3, as amended, was adopted.

Mr. President: We have only two minutes now, and........

The Honourable Sir N. Gopalaswami Ayyangar: There are only two or three clauses left.

Mr. President: If the wish of the House is that we should complete these clauses. I have no objection. but there is a meeting of the Advisory Committee at 2-30 p.m., and members might like....

Sri M. Ananthasayanam Ayyangar: Thinking that the Assembly would sit today only up to 1 o'clock, we have already booked our berths for today.

Mr. President: Does the House want that the consideration of the remaining clauses should be taken up in the next session?

Many Honourable Members: Yes.

Mr. President: Then the consideration of the remaining clause is held over.

ANNOUNCEMENTS BY THE PRESIDENT

Mr. President: Before we disperse, I have some announcement to make. There was notice of a resolution by Rajkumari Amrit Kaur about Khadi being used for the National Flag. The notice of the resolution came, at a time when we could not call a meeting of the Steering Committee, and so we could not place it before the House. But I may inform the House that so far as this Constituent Assembly is concerned, there will be no Flag used which is made of anything else but Khadi. It is also the policy of the Government which has been communicated to the Provincial Governments also that all National Flags should be made only of Khadi that is to say, of hand-spun and hand-woven cloth, whether it is of cotton, of wool, or' silk or of any other material.

Yesterday, the House passed a resolution asking me to appoint a Committee to prepare a draft constitution for the Chief Commissioners' provinces, and I have pleasure in announcing that I have appointed the following Committee for that purpose:

Sir N. Gopalaswami Ayyangar.

Dr. Pattabhi Sitaramayya.

Mr. K. Santhanam.

Mr. Deshbandhu Gupta.

Mr. Mukut Bihari Lal Bhargava.

Mr. C. H. Poonadha.

Mr. Hussain Imam.

There is one other important matter to which reference was made in the earlier part of the debate with regard to which I have to make certain announcements, i.e., the Function on the 15th. The programme which we have thought of is this:

That on the night of the 14th and 15th just at midnight, we have a session of this House, and at that time just as the clock strikes twelve, we either start our Proceedings or end our Proceedings by which we take power under the New Act which has been passed and either by a Resolution or otherwise, we authorise the Leader of the House to proceed to Lord Mount batten and to request him to accept the Governor Generalship and thus regularise his appointment as Governor-General as being made at our request and the Leader of the House will also communicate to him at that hour the names of the Members of the Cabinet, which he will constitute. That will be the Proceeding at night. The next morning we have a session of this House at 10 o'clock here and that will be attended by the Governor-General and here we shall have some sort of a formal ceremony-the actual handing over of power to us.

Mr. M. S. Aney: On the 15th?

Mr. President: That would be the midnight of the 14th and the early morning of 15th.

Shri Balkrishan Sharma (United Provinces: General): That will be bur D Day.

Mr. President: As regards the details of the programme for the night session or for the morning session, we have not yet worked out all the details, but I propose to work out the details in consultation with Members like Pandit Jawaharlal Nehru and some others who will be available here.

Mr. B. Das (Orissa: General): What about the Finance Committee in regard to financial distribution?

Mr. President: Let me first complete this thing.

As regards the admission of visitors, as Members are aware, we have very limited accommodation in this House. There has been a demand made on behalf of Members, that we should allow them to bring their own guests, of course, under the ordinary conditions of cards being issued by us. It will be necessary also to invite to that function representatives of foreign countries who are here, the Consular representatives and others and some of the higher Civil and Military authorities of the Government of India will have also to be invited. The Press will naturally like to be present in full strength on that occasion. It will therefore be very difficult to accommodate all who desire to come and attend the function, but I hope the House will leave it to us to work out some programme by which we shall accommodate, as fairly and equitably as possible, as many as we can.

An Honourable Member: Can two cards be issued for every Member?

Mr. President: If we allowed two visitors to each Member, and we do not allow anyone else even then we shall have no accommodation.

Shri Gopikrishna Vijayavargiya: At least one card for every Member.

Mr. President: On the 14th night visitor passes will be allowed on the usual conditions in the usual way.

Shri Mahavir Tyagi (United Provinces: General): Can you not kindly spare this House the part of the programme according to which we are required to invite Lord Mountbatten to be our Governor-General in future; because this House has never discussed that question; nor has the House passed so far, any Resolution, nor agreed to the idea, of Lord Mountbatten being the Governor-General of India? The rest of the programme may proceed as it is.

Mr. President: If the Honourable Member is so anxious, I shall put this matter to the House for discussion. (Many Honourable Members: No. no). That was at least my impression, but if the Honourable Member wants it, I shall put it to the House.

Mr. Shankar Dattatraya Deo (Bombay: General): What is the proposition, we have not understood. Let us understand what is his proposal.

Mr. President: I had chalked out a Programme which I indicated in the earlier part of my statement. One Member says that we should not raise the question of Lord Mountbatten being the Governor-General because the House has not considered it. I said that if he is anxious, I shall put it to the House.

Many Honourable Members: No, no. It must be left to the President.

Pandit Govind Malaviya (United Provinces: General): Sir, without going into the merit of the question at all may I say that it seems to me that what the Honourable Member meant was that since that matter had been decided without the House having in any way been brought into it, we should not have the ceremony of the Leader of the House going to the viceroy straight from this House and asking him or, behalf of this House to accept the Governor Generalship. I understand that he meant only that much and not that we should riot have Lord Mountbatten as Governor-General.

Shri Mahavir Tyagi: What I meant was not to record any objection on behalf of the House to the acceptance of Lord Mountbatten as the Governor-General of India. That thing has already been done and if there were any Members in this Honourable House who object to that they could have sent a Resolution to that effect. I do not want to take tip that question in this House. What I was suggesting was that you had better drop the idea of going through that item of the programme in which. you say, on behalf of this House, Lord Mountbatten was to be invited to accept the Governor-Generalship. I think he has already done it and this formality may better be given up because the House has never discussed this issue, and if without the House having considered this issue. be is invited this will be too formal and in my opinion Slightly unfair. What I was suggesting was that with-out disturbing the scheme or without objecting to his being the Governor-General of India. the House may not be committed. He is the Governor-General. He has also accepted the offer and he remains so without any commitment on behalf of this House.

Pandit Govind Malaviya : Sir, I propose that there should be no further discussion on this subject and we should leave it to the President to fix up what he thinks best.

Mr. Tajamul Hussain (Bihar: Muslim): May I have your permission Sir, to move a formal Resolution to this effect:

> That this house accepts the programme as chalked out by the Honourable the President in connection with the Independence Day Celebration in its entirety?

Mr. President: I do not think it is necessary to put any Resolution to vote like this. I think I shall fix the programme as I said, the details of which I shall work out.

Mr. H. V. Kamath: Will you be so good as to direct the Members of the Assembly shall not be deprived of the right of introducing at least one visitor each on this historic occasion?

Mr. President: It depends upon the accommodation. As I said, we shall do our best to accommodate as many as we can, but if we cannot, we shall devise some means by which all members will be accommodated in an equitable manner.

An Honourable Member: May I know, Sir, at what time we should come here?

Mr. President: You have to come here on the night of the 14th. I Shall announce the exact time later on. It will be at midnight.

Mr. H. V. Kamath: About the presentation of the National Flag to every Member, we would be grateful if it could be given before the 15th August.

Mr. President: Purchase a flag each.

Mr. H. V. Kamath: Presentation by you, Sir

Mr. President: That is a matter which we have to consider. We cannot undertake to provide each member with a flag. It does not seem to be practicable at the present Moment.

Shri Ajit Prasad Jain (United Provinces: General): You said you will draw up a' scheme according to which visitors shall be equitably admitted to the House. I would-like to know the time when we shall be able to know that scheme.

Mr. President: We shall work it out in a day or two and we shall announce it in the Press.

Shri Mahavir Tyagi: In this regard, may I make one suggestion, Sir, Since you say that several personalities have to be invited, and we are also anxious to have our friends to witness this auspicious ceremony would suggest that instead of holding it here, we may again go to the old Fort or' somewhere else where we can have a big ceremony and a large number of people may be accommodated. Many people in India, who are not in Delhi, many come from outside to witness this occasion. my suggestion therefore is that we may make it a big show and have it somewhere, at some such place where we may have enough accommodation.

Many Honourable Members: No. No.

Mr. President: As we have been holding our session in this Hall, I think we must have, this function also in this Hall (Hear, Hear).

An Honourable Member: I propose that for accommodating more visitors these adjoining rooms may also be used.

Mr. President: We shall utilise every little bit of space.

There was one thing more which I desired to tell you. We have announced the next session on the night of the 14th and-on the morning of the 15th. Notices will be sent out from the office in due course. It is just possible that members may not get notice in time. So they may take this as notice and they may also take whatever is published in the press as notice to them in this regard, and they need not wait for formal notices being delivered to them.

We adjourn now till the 14th.

The Assembly then adjourned till Thursday, the 14th August 1947.

[English translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME V

Thursday, the 14th August 1947

The Fifth Session of the Constituent Assembly of India commenced In the Constitution Hall, New Delhi, at Eleven P. M., Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

SINGING OF *VANDE MATARAM*

Mr. President: The first item on the Agenda is the singing of the first verse of *VANDE MATARAM.* We will listen to it all standing.

Shrimati Sucheta Kripalani (U. P.: General) sang the first verse of the VANDE MATARAM sang.

PRESIDENT'S ADDRESS

Mr. President:

(Mr. President then delivered his address in Hindustani the fun text of which is published in the Hindustani edition of the Debates.)

In this solemn hour, of our history when after many years of struggle we are taking over the governance of this country, let us offer I= humble thanks to the Almighty Power that shapes the destinies of men and nations and let us recall in grateful remembrance the services and sacrifices of all those men and women, known and unknown, who with smiles on their face walked to the gallows or faced bullets on their chests, who experience living death in the cells of the Andamans, or spent long years in the prisons of India, who preferred voluntary exile in foreign countries to a Me of humiliation in their own, who not only lost wealth and property but cut themselves off from near and dear ones to devote themselves to the achievement of the great objective which we. are witnessing, today.

Let us also pay our tribute of love and reverence to Mahatma Gandhi who has been our beacon light, our guide and philosopher during the last thirty years or more. He represents that undying spirit in our culture and make-up which has kept India alive through vicissitudes of our history. He it is who pulled us out of the slough of despond and despair and blowed into us a spirit which enabled us to stand up for justice to claim our birth-right of freedom and placed in our hands the matchless and unfailing weapon of Truth and Non-violence which, without arms and armaments has won for us the invaluable prim of Swaraj at a price which, when the history of these times comes to be written, will be regarded as incredible for a vast country of our size and for the teeming millions of our population. We were unwavering indifferent-instruments that he had to Wok with but he led us with consummate skill, with determination, with an undying faith in our future, with faith in his weapon and above all with faith in God. Let us prove true to that faith. Let us hope that India will not, in the hour of her triumph, give up or minimise the value of the weapon which served not only to rouse and inspire her. in her moments of depression but has also proved its efficacy. India has a great part to play in the shaping and moulding of, the future of a war distracted world. She can play that part not by mimicking, from a distance, what others are doing, or by joining in the race for armaments and competing with others in the discovery of the latest and most effective instruments of destruction. She has now the opportunity, and let us hope, she will have the courage and strength to place before the world for its acceptance her infallible substitute for war and bloodshed, death and destruction. The world needs it and will welcome it, unless it is prepared to reel back into barbarism from which it boasts to have emerged.

Let us then assure all countries of the world that we propose to stick to our historic tradition to be on terms of friendship and amity with all,, that we have no designs against any one and hope that none will have any against us. We have only one ambition and desire, that is, to make our contribution to the building up of freedom for all and peace among mankind.

The country, which was made by God and Nature to be one, stands divided today. Separation from near and dear ones, even from strangers after some association, is always painful. I would be untrue to myself if I did not at this moment confess to a sense of sorrow it this separation But I wish to send on your behalf and my own our greetings and good wishes for success and the best of luck in the high endeavour of government in which the people of Pakistan, which till today has been a part and parcel of ourselves, will be engaged. To those who feel like us but are on the other side of the border we send a word of cheer. They should' not give way to panic but should stick to their hearths and homes, their religion and culture. and cultivate the qualities of courage and forbearance. They have no reason to fear that they will, not get protection and just and fair treatment and they should not become victims of doubt and suspicion. They must accept the assurances publicly given and I their rightful place in the polity of the State, where they are placed, by their loyalty.

To all the minorities in India we give the assurance that they will receive fair and just treatment and there will be no discrimination in any form against them. Their religion, their culture and their language are safe and they will enjoy all the rights and privileges of citizenship, and will be expected in their turn to render loyalty to the country in which they live and to its constitution. To all we give the assurance that it will be our endeavour to end poverty and squalor and its companions, hunger and disease; to abolish distinction and exploitation and to ensure decent conditions of living.

We are embarking on a great task. We hope that in this we shall have the unstinted service and co-operation of all our people and the sympathy and support of all the communities. 'We shall do our best to deserve it.

Mr. President: After this I propose that we all stand in silence to honour the memory of those who have died in the struggle for freedom in India and elsewhere.

(The Assembly stood in silence for two minutes.)

MOTION *RE.* PLEDGE BY MEMBERS

Mr. President: Pandit Jawaharlal Nehru will now move the motion which stands in his name.

The Honourable Pandit Jawaharlal Nehru (U. P. : General): *[Mr. President, many years ago we had made a tryst with destiny itself. We had taken a pledge, a vow. Now the time has come to redeem it. But perhaps the pledge has not yet been redeemed fully through stages have been reached in that direction. We have almost attained independence. At such a moment. it is only appropriate that we take a new pledge, a new vow to serve India and her people. After a few moments. the Assembly will assume the status of a fully free and independent body and it will represent an independent and free country. Therefore great responsibilities are to devolve upon it. If we do not realise the importance of our responsibilities, then we shall not be able to discharge our duties fully. Hence it 'becomes essential for us to take this pledge after fully understanding all its implications. The resolution that I am presenting before you relates to that pledge. We have finished one phase, and for that rejoicings are going on today. Our hearts are full of joy" and some pride and satisfaction. But we know that there is no rejoicing in the whole of the country. There is enough of grief in our hearts. Not far from Delhi, big cities are ablaze and its heat is reaching us here. Our happiness cannot be completes At this hour we have to face all these things with a brave heart. We are not to raise a hue and cry and get perturbed. When the reins of Government have come to our hands. we have to do things in the right way. Generally, countries wrest their freedom after great bloodshed, tears and toil. Much blood has been spilt in our land, and in a way which is very painful. Notwithstanding that, we have achieved freedom by peaceful methods. We have set a new example before the world. We are free now but along with freedom, come responsibilities and burdens. We have to face them, and overcome them all. Our dream is now about to be translated. into reality. The task of wresting freedom and ousting the foreign government was before us till now and that task is now accomplished. But uprooting the foreign domination is not all. unless and until each and every Indian breathes the air of freedom and his miseries are banished and his hard lot is improved. our task remains unfinished. Therefore a large portion of our task remains to be done, and we shall try to accomplish it. Big problems confront us and at their sight sometimes our heart quivers, but, then again, the thought that in the past we have faced many a big, problem and we shall do so again, gives us courage. Shall . be cowed down by these? It is not the individual pride and strength that is comforting, rather it is the pride of the country and the nation, and a confidence in people who have suffered a terribly for the cause that makes me feel bold to think we shall successfully shoulder the huge burden of hardships, and find a solution of these problems. After all, India, is now free. That is well and good. At a time when we are on the threshold of freedom, we should remember that India does not belong to any one party or group of people or caste. It does not belong to the followers of any particular religion. It is the country of all, of every religion and creed. We have repeatedly defined the type of freedom we desire. In the first resolution, which I moved earlier, it has been said that our freedom is to be shared equally by every Indian. All Indians shall have equal rights, and each one of them is to partake equally in that freedom. We shall proceed like that. and whosoever tries to be aggressive will be checked by us. If anyone is oppressed we shall stand by his side. If we follow this path then we shall be able to solve big problems, but if we become narrow minded we shall not be able to solve them.

I shall read out in English this resolution which I am now putting before you]*

Long years ago we made a tryst with destiny, and now the time comes when we shall redeem our pledge, not wholly or in full measure, but very substantially. At the stroke of the midnight hour, when the world sleeps, India will awake to life and freedom. A moment comes, which comes but rarely in history, when we step out from the old to the new, when an age ends, and when the soul of a nation, long suppressed, finds utterance. It is fitting that at this solemn moment we take the pledge of dedication to the service of India and her people and to the still larger cause of humanity.

At the dawn of history India started on her unending quest, and trackless centuries are filled with her striving and the grandeur of her successes and, her. failures. Through good and ill fortune alike she has never lost sight of that quest or forgotten the ideals which gave her strength. We end today a period of ill fortune and India discovers herself again. The achievement we celebrate today is but a step, an opening of opportunity, to the greater trumphs and achievements that await us. Are we brave enough and wise enough to grasp this opportunity and accept the challenge of the future?

Freedom and power bring responsibility. That responsibility rests upon this' Assembly, a sovereign body representing the sovereign people of India. Before the birth of freedom we have endured all the pains of labour and our hearts are heavy with the memory of this sorrow. Some of those pains continue even now. Nevertheless the past is over and it is the future that beckons to us now.

That future is not one of ease or resting but of incessant striving so that we might fulfil the pledges we have so oft-en taken and the one we shall take today. The service of India means the service of the millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity. The ambition of the greatest man of our generation has been to, wipe every tear from every eye. That may be beyond us but as long as there are tears and suffering, so long our work will not be over.

And so we have to labour and to work and work hard to give reality to. our dreams. Those dreams are for India, but they are also for the world, for all the nations and peoples are too closely knit together today for any one of them to imagine that it can live apart. Peace has been said to be indivisible, so is freedom, so is prosperity now, and so also is disaster in this One World that can no longer be split into isolated fragments.

To the people of India, whose representatives we are, we make appeal. to join us with faith and confidence in this great adventure. This is no time for petty and destructive criticism, no time for ill-will or blaming others. We have to build the noble mansion of free India where all her children may dwell.

I beg to move, Sir,

"That it be resolved that:

(1) After the last stroke of midnight, all members of the Constituent Assembly present on this occasion, do take the following pledge:

> 'At this solemn moment when the people of India, through suffering and sacrifice, have secured freedom, I................................ I a member of the Constituent Assembly of India, do dedicate myself in all humility to the service of India and her people to the end that this ancient -land attain her rightful place in the world and make her full and willing contribution to the promotion of world peace and the welfare of mankind;'

(2) Members who are not present on this occasion do take the pledge (with such verbal changes as the President may prescribe) at the time they next attend a session of the Assembly." *(Loud applause.)*

Chaudhari Khaliquzzaman (United Provinces: Muslim): *[Mr. President, after midnight today a great revolution is to take place in the history of India a revolution, for which India had been working for the last one hundred years in her fight for freedom, an event for which many Indians have sacrificed their lives to achieve, is now approaching very near. Now that as a result of these sacrifices we have achieved this freedom, , a new question confronts us, which is even more vital. That struggle is over but a fresh one of a different type is. to begin; this new struggle is not to be fought against any outsider but is to be settled among our own selves. It is evident that when a nation had to fight against another nation we were swayed by different emotions, we had to adopt different tactics, and different methods. Now the time has come when we shall .have to shoulder great responsibilities when there will be no room for ,clapping and for high-sounding slogans. After today the task before this House, before the leaders of the country, will not be a spectacular one but one that requires diligence, industry and service to the people. We know that great responsibility rests on this Assembly and that is of framing a Constitution, which would be acceptable not only to the minorities but also to all the people of the country, to the poor and to the common ,man and through which we may serve the people of India. This is the greatest task. Similarly, this House has to shoulder the responsibility .of the administration of the country till such time as fresh elections are held. The administrative responsibility sometimes brings with it scoldings and one has to put up with abuses etc., and 'is even subjected to brickbats. But all this has to be endured. A reading of the pledge, which is before us now. shows that it entails heavy responsibility. Ordinarily, I think that all the members, when they came here, had already taken the pledge of serving their country honestly and faithfully and as best as they could. But a pledge formally administered leaves some psychological effect on the mind of every person. Hence, I think that today, before we shoulder the responsibility, this is a most opportune. moment for all of us to bind ourselves with this pledge that henceforth ah our actions and deeds would primarily be directed towards the good of the State and no communal considerations would be allowed to prevail and we shall do our utmost to give everyone his due. After taking this pledge, when we step out of this Chamber, we shall give a message to the people of the country that we have taken a vow honestly to shoulder the responsibility, and in discharging our duties we shall show no favour to anyone.

With these words, I support the pledge and the motion moved by Pandit Nehru. I think that every one of the members, present here, will faithfully and honestly take this pledge that he would devote his life to the service of the State.]*

Dr. S. Radhakrishnan (United Provinces: General) : Mr. President. Sir, it is not necessary for me to speak at any great length on this Resolution so impressively moved by Pandit Jawaharlal Nehru and seconded by Mr. khaliquzzaman. History and legend will grow round this day. It marks a milestone in the march of our democracy. A significant date it is in the drama of the Indian people who are trying to rebuild. and transform themselves. Through a long night of waiting, a night full of fateful pertents and' silent prayers for the dawn of freedom, of haunting spectres of hunger and death, our sentinels kept watch, the lights were burning bright till at last the dawn is breaking and we greet it with the utmost enthusiasm. When we are passing from. a state of serfdom, a state of slavery and subjection to one of freedom and liberation, it is an occasion for rejoicing. That it is being effected in such an orderly and dignified way is a matter for gratification.

Mr. Attlee spoke with visible pride in the House of Commons when he said that this is the first great instance of a strong Imperialist power transferring its authority to a subject people whom it ruled with force and firmness for nearly two centuries. For a parallel he cited the British withdrawal from South Africa; but it is nothing comparable in scale and circumstances to the British withdrawal from this country. When we see what the Dutch are doing in Indonesia, when we see how the French are clinging to their possessions, we cannot but admire the political sagacity and courage of the British people. *(Cheers.)*

We on our side, have also added a chapter to the history of the World Look at the way in which subject peoples in history won their freedom Let us also consider the methods by which power was acquired. How, did men like Washington, Napoleon, Cromwell, Lenin, Hitler and Mussolini get into power? Look at the methods of blood and steel, of terrorism and assasination, of bloodshed and anarchy by which these so called great men of the world came into the possession of power. Hem in this land under the leadership of one who will go down in history, am perhaps the greatest man of our age (laud cheers) we have opposed patience to fury, quietness of spirit to bureaucratic tyranny and are acquiring power through peaceful and civilised methods. What is the result? The transition is being effected with the least bitterness, with utterly no kind of hatred at all. The very fact that we are appointing Lord Mountbatten as the Governor-General of India, shows the spirit of understanding and friendliness in which this whole transition is being effected. *(Cheers.)*

You, Mr. President, referred to the sadness in our hearts, to the sorrow which also clouds our rejoicings. May I say that we are in an essential sense responsible for it also though not entirely. From 1600, Englishmen have come to this country-priests and nuns, merchants and adventurers, diplomats and statesmen, missionaries and idealists. They bought and sold, marched and fought, plotted and profited, helped and healed. The greatest among them wished to modernise the country, to raise its intellectual and moral standards, its political status. They wished to regenerate the whole people. But the small among them worked with sinister objective. They tried to increase the disunion in the country, made the country poorer, weaker and more disunited. They also have had their chance now. The freedom we are attaining is the fulfilment of this dual tendency among British administrators. While India is attaining freedom, she is attaining it in a manner which does not produce joy in the hearts of people or a radiant smile on their faces. Some of those who were charged with the responsibility for the administration of this country, tried to accentuate communal consciousness and bring about the present result which is a logical outcome of the policies adopted by the lesser minds of Britain. But I would never blame them. Were we not victims, ready victims, so to say, of the separatist tendencies foisted on us? Should we not now correct our national faults of character, our domestic despotism, our intolerance which has assumed the different forms of obscurantism. of narrow-mindedness, of superstitious bigotry? Others were able to play on our weakness because we had them. I would like therefore to take this opportunity to call for self-examination, for a searching of hearts. We have gained but we have not gained in the manner we wished to gain and if we have, not done so, the responsibility is our own. And when this pledge says that we have to serve our country, we can best serve our country by removing these fundamental defects which have prevented us from gaining the objective of a free and united India. Now that India is divided, it is our duty not to indulge in words of anger. They lead us nowhere. We must avoid pass-on Passion, and wisdom never go together. The body politic may be divided but the body historic lives on. (Hear, hear.) Political divisions, physical partitions, are external but the psychological divisions are deeper. The cultural cleavages are the more dangerous. We should not allow them to grow. What we should do is to preserve those cultural ties, those spiritual bonds which knit our peoples together into one organic whole. Patient consideration, slow process of education, adjustment to one another's needs, the discovery of points of view which are common to both the dominions in the matter of Communications, Defence, Foreign Affairs, these are the things which should be allowed to grow in the daily business of life and administration. It is by developing such attitudes that we can once again draw near and gain the lost unity of this country. That is the only way to it.

Our opportunities are great but let me warn you that when power outstrips ability, we will fall on evil days. We should develop competence and ability which would help us to utilise the opportunities which--- are now open to us. From tomorrow morning form midnight today we cannot throw the blame on the Britisher. We have to Assume the responsibility ourselves for what we do. A free India win be judged by the way in which it will serve the interests of the common man in the matter of food, clothing, shelter and the social. services. Unless we destroy corruption in high places, root out every trace of nepotism, have of Power, profiteering and black-marketing which have spoiled the good name of this great country in recent times, we will not be able to raise the standards of efficiency in administration as well as in the production and distribution of the necessary goods of life.

Pandit Jawaharlal Nehru referred to the great contribution which this country will make to the promotion of world peace and the welfare at mankind. The *Chakra,* the Asokan wheel, which is there in the Bag embodies for us a great idea, Asoka, the greatest of our emperors, look at the words of H. G. Wells regarding him "Highnesses, Magnificence's, Excellencies, Serenities, Majesties--among them all, he shines alone. a star-Asoka the greatest of all monarchs." He cut into, rock his message for the healing of discords. If there are differences, the way In which you can solve them is by promoting concord. Concord is the only way by which we can get rid of differences. There is no other method which is open to us.

Samavaya eva Sadhuh

We are lucky in having for our leader one who is a world citizen, who is essentially a humanist, who possesses a buoyant optimism and robust good sense in spite of the perversity of things and the hostility of human affairs. We see the way in which his Department interfered actively and in a timely manner in the Indonesian dispute. *(Laud applause.)* It shows that if India gains freedom, that freedom will be used not merely for the well-being of India but for *Vishva Kalyana* i.e., world peace, the welfare of mankind.

Our pledge tells us that this ancient land shall attain her rightful and honoured place. "We take pride in the antiquity of this land for it is a land which has been nearly four or five milleniums of history. It has passed through many vicissitudes and at the moment it stands, still responding to the thrill of the same great ideal. Civilisation is a thing of the spirit, it is not something external, solid and mechanical. It is the ,dream in the people's hearts. It is the inward aspiration of the people's souls. It is; the imaginative interpretation of the human life and the perception of the mystery of human existence. That is what civilisation actually stands for. We should bear in mind these great ideals which have been transmitted to us across the ages. In this great time of our history we should bear ourselves humbly before God, brace ourselves to this supreme task which is confronting us and conduct ourselves in a manner that is worthy of the ageless spirit of India. If we do so, I have no doubt that, the future of this land will be as great as its once glorious past.

Sarvabhutdisahamatmanam

Sarvabhutani catmani

Sampasyam atmayajivai

saarwjyam adhigachati

Swarajya is the development of that kind of tolerant attitude which sees in brother man the face Divine. Intolerance has been the greatest enemy of our progress. Tolerance of one another's views, thoughts and beliefs is the only remedy that we can possibly adopt. Therefore I support with very great pleasure this Resolution which asks us as the representatives of the people of India to conduct ourselves in all humility in the service of our country and the word 'Humility' here means that we are by ourselves very insignificant. Our efforts by themselves cannot carry us to a long distance. We should make ourselves dependent on that other than ourselves which makes for righteousness. The note of humility means the unimportance, of the individual and the supreme importance of the unfolding purpose which we are called upon to serve. So in a mood of humility, in a spirit of dedication let us take this pledge as Noon as the clock strikes 12.

Mr. President: I will now put the Resolution to the vote. I shall read it first:

"Resolved that-

(1) After the last stroke of midnight, all members of the Constituent Assembly present on the occasion do take the following pledge:-

> *'At this solemn moment when the people of India through suffering and sacrifice, have secured freedom and become masters of their own; destiny, I....................... a member of the Constituent Assembly of India, do dedicate myself in all humility to the service of India and her people to the end that this ancient land attain her rightful and honoured place in the world and make her full and willing contribution to the*

promotion of world peace and the welfare of mankind;'

(2) Members who are not present on this occasion do take the pledge (with such verbal changes as the President may prescribe) at the time they next attend a session of the Assembly.

Mr. H. V. Kamath (C. P. & Berar: General): Mr. President, there are two amendments standing in my name, but since you have invoked the holy name of God in your address and incorporated the spirit of it in the pledge by modifying it slightly in the form in which it has come before as, and above all, since the zero hour is fast approaching, I do not propose to move my amendments.

Mr. President: Thank you. I will put the Resolution to vote. Members will please express their assent by saying 'Aye'.

The motion was adopted.

Mr. President: We have just resolved that as the clock strikes 12, we shall take, the pledge. In taking the pledge, I shall read it out sentence by sentence in our own language first and I shall expect those members who know that language to repeat it sentence by sentence. Then I will read it out also sentence by sentence in English and I shall expect the members to repeat it sentence by sentence. Members will please stand when the pledge is taken, but other visitors will remain seated. It is just half a minute to 12. I am expecting the clock to strike 12.

As the clock struck twelve (mid-night), Mr. President and all the Members stood up and took the pledge as below. Mr. President read" it out sentence by sentence and 'the Members repeating it after him in Hindustani and in English.

> *"At this solemn moment when the people of India,*
> *through suffering and sacrifice, have secured freedom,*
> *I......... a member of the Constituent Assembly of India,*
> *do dedicate myself in all humility to the service of India*
> *and her people to the end that this ancient land attain her*
> *rightful and honoured place in the world and make her full*
> *and willing contribution to the promotion of world peace*
> *and the welfare mankind."*

INTIMATION TO THE VICEROY ABOUT THE ASSUMPTION OF POWER BY THE CONSTITUENT ASSEMBLY AND THE ASSEMBLY'S ENDORSEMENT OF LORD MOUNT BATTEN'S APPOINTMENT AS GOVERNOR-GENERAL OF INDIA

Mr. President: I propose that it should be intimated to the Viceroy that-

(1) the Constituent Assembly of India has assumed power for the goverence of India, and

(2) the Constituent Assembly of India has endorsed the recommendation that Lord Mountbatten be Governor-General of India from the 15th August 1947.

and that this message be conveyed forthwith to Lord Mountbatten by the President and Pandit Jawaharlal. Nehru. *(Cheers.)* I take it the House approves it.

The motion was adopted.

PRESENTATION OF THE NATIONAL FLAG

Mr. President: Shrimati Hansa Mehta will now present the National Flag on behalf of the women of India. *(Cheers.)*

Mrs. Hansa Mehta (Bombay: General): Mr. President, Sir, in the absense of Shrimati Sarojini Naidu, it is my proud privilege, on behalf of the women of India, to present this flag to the Nation through you.

I have a list* here of nearly a hundred prominent women of all communities who have expressed a desire to associate themselves with this ceremonial. There are hundreds and hundreds of other women who would equally like to participate in this function. It is in the fitness of things that this first flag that will fly over this august House should be a gift from, the women of India. (Cheers.) We have donned the saffron colour, we have fought, suffered and sacrificed in the cause of our country's freedom. We have today attained our goal. In presenting this symbol of our freedom, we once more offer our services to the nation. We pledge ourselves to work for a great India, for building' up a nation that will be a nation among nations. We pledge ourselves for working for a greater cause, to maintain the freedom that we have attained. We have great traditions to maintain, traditions that 'made India so great in the past. It is the duty of every man and woman to preserve these traditions so that India may hold her spiritual supremacy over the world. May this flag be the symbol of that great India and may it ever fly high and serve as a light in the bloom that threatens the world today. My It bring happiness to those who live under its protecting care. (Cheers.)

*MEMBERS OF THE FLAG PRESENTATION COMMITTEE

1	Sarojini Naidu	38	Janaki Amma
2	Amrit kaur	39	Leelavathi Munshi
3	Vijayalakshmi pandit	40	Lavanya prabha Dutt
4	Hansa Mehta	41	Sophia Wadia
5	Ammu swaminathan	42	Mrinalini Chattopadhyay
6	Sucheta kripalani	43	Sarada Ben Mehta
7	Kudsia Aizaz Rasool	44	Zarina Currimbhoy
8	Durga Bai	45	Prem. Captain
9	Renuka Ray	46	Hemaprabha Das Gupta.
10	Dakshayini velayudan	47	Premavati Thappar
11	purnima Banerji	48	Zora Ansari
12	Kamala chaudhri	49	Jaishri Raiji

13	Malati chaudhary	50	Kitty Shiva Rao
14	Abala Bose	51	Shanoodevi
15	Lakshmi Bai Rajwade	52	Violet Alva
16	Maitreyi Bose	53	Susheela Ilukusing
17	Rameshwari Nehru	54	Bina Das
18	Sherifa Hamid Ali	55	Uma Nehru
19	Goshi Ben Captain	56	Iravati Karve.
20	Dhanavanti Rama Rao	57	Raiban Tyabji
21	Anasuya Bai Kale	58	Asha Arvanayakam
22	Premleela Thakersy	59	Mridula Sarabhai
23	Mani Ben Patel	60	Raksha Saran
24	Sarla Devi Sarabhai	61	Margaret Cousins
25	Avantikabai Gokhaley	62	Kamaladevi
26	Sakine Lukmani	63	Lakshmi Menon
27	Jankiben Bajaj	64	Lavanya Chanda
28	Muthulakshmi Reddi	65	Ayasha Ahmed
29	Charulata Mukerji	66	Krishna Hutheesingh
30	Rukamani Lakshmani Lakshmipathi	67	Rajan Nehru
31	Mithan Tata Lam	68	Indira Gandhi
32	Hannah Sen	69	Suraya Tyabji
33	Aswah Hussain	70	Memubai
34	Radhabai Subbroyan	71	Padmaja Naidu
35	Tarabhai premchand	72	Kiran Bose
36	Jethi Sipahimlani	73	Kusum Sayani
37	Ambuja Amma	74	Lajjavati Devi

Mr. President: I have, in anticipation of the consent of the House accepted with thanks a poem composed by His Excellency Dr. Chia Luen Lo, the Chinese Ambassador in India, on this occasion.

SINGING OF NATIONAL SONGS

Mr. President: The next item is the singing of the first few lines of *Sare Jahan se Achcha Hindustan Hamara* and the first verse of *Janaganamana Adhinayaka Jaya He.*

(Shrimati Sucheta Kripalani sang the first few lines of *Sare Jahan Se Achcha Hindustan Hamara* and the first verse of *Janaganamana Adhinayaka Jaya He.)*

Mr. President: The House will now addjourn for a few hours, till Ten of the Clock.

The Assembly then adjourned till Ten of the Clock on Friday, the 15th August 1947.

------ ---

[Translation of Hindustani Speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME V

Friday, the 15th August 1947

The Constituent Assembly of India met in the Constitution Hall New Delhi, at Ten of the Clock. Mr. President (The Honourable Dr. Rajendra Prasad) entered the Hall along with their Excellencies Lord Mountbatten, Governor-General of India, and Lady Mountbatten.

MESSAGES

Mr. President: I shall read out certain messages which have been received.

1. Message from the Prime Minister of the United Kingdom.

My colleagues in the United Kingdom Government join with me in sending on this historic day greetings and good wishes to the Government and the people of India. It is our earnest wish that India may go forward in tranquillity and prosperity and in so doing contribute to the peace and prosperity of the world.

2. Message from His Grace the Archbishop of Canterbury.

At this time when India and Pakistan become independent Dominions and take upon themselves the full responsibilities of self-Government, on behalf of the Christian people of this country, I send you my greetings and good wishes. In God's providence apparently insuperable difficulties have so far been overcome and all the travail of past ages has led up to this moment of fulfilment and hope. I pray that the two Dominions may go forward to a noble future ever growing in justice and peace, in brotherhood and prosperity.

3. Message from Generalisimo Chiang Kai-shek, President of the Republic of China.

On this auspicious occasion when the people of India celebrate' the Dawn of a new era of freedom, I wish to convey to you and the people of India my warm congratulations on the glorious and monumental achievement in which you and Mahatma Gandhi have played such an eminent and noble part, and which, I am confident, will be a source of inspiration to all peoples striving for independence, equality and progress. Please accept my best wishes for India's bright and promising future of success and greatness.

4. Message from the Prime Minister of Canada.

It affords me much pleasure to extend to you, and through you to the Government and people of India, the most cordial wishes of the Government and people of Canada on the occasion of the establishment of India as a completely self-governing nation.

5. Message from the Prime Minister of Australia.

I desire to convey the greetings and good wishes of the Government and people of Australia to the Government and people of India on the historic occasion which is being celebrated on the 15th August,

The Australian people rejoice in your new status as a free and sovereign nation and warmly welcome your fellow membership in the British Commonwealth of Nations.

It is confidently anticipated that your traditions, your ancient culture and the spirit which is animating you in making smooth this period of transition, will ensure the future welfare and greatness of the people of India.

6. Message from the President of the Executive Yuan, Nanking.

On this historic occasion of India's attainment of her long cherished aspiration I take especial pleasure in extending to you and the Indian people my sincere felicitations. The Chinese people are deeply gratified by the rebirth of another great nation on the Asian continent. India and China with a common frontier of 2,000 miles have enjoyed the closest and most friendly relations in the course of many centuries Our two nations having stood together through the late world war will undoubtedly continue to march forward together toward the common goal of world peace. I send you my warmest wishes for your continued success and for the happiness and prosperity of the Indian people..

7. Message from Dr. Soedarsono on behalf of the Republic of Indonesia.

On the eve of the establishment of the Dominion of India it is a great pleasure to the Republic of Indonesia to express her feelings of heartfelt joy, sympathy and friendship.

The Republic of Indonesia looks upon India as her Comrade who in time of danger and distress has helped her and will always help her. She may-as both their nationalism is based upon humanity-hope that in the very near future still tighter bonds will be welded, bonds of comradeship in the struggle for Justice and Peace and for the Freedom and Prosperity of millions who for so long a time have lived in squalor amidst luxury and wealth.

The people of India since years led by its eminent Leaders undoubtedly is approaching a better and happier future. India will not only become a land of Justice and Prosperity but at the same time a bulwark of and a guard for peace in Asia.

The Government and the People of the Republic of Indonesia send your People, your Government and your Excellency at this great historical moment their deeply felt wishes for Happiness and Prosperity.

8. Message from His Majesty's Minister in Nepal.

My staff join me in offering warmest congratulations on establishment of Dominion of India and send all good wishes for future happiness and prosperity of State and its people.

9. Message from the Prime Minister and Acting Minister of Foreign Affairs, Oslo.

On this Great Day of National Rejoicing for the Peoples of India I have the honour to transmit to you my very best wishes for the prosperity of your country.

ADDRESS OF H.E. THE GOVERNOR-GENERAL

Mr. President: May I invite your Excellency To address the House?.

H. E. the Governor-General: Mr. President and members of the Constituent Assembly.

I have a message from His Majesty the King to deliver to you today. This is His Majesty's message :-

> "On this historic day when India takes her place as a free and independent Dominion in the British Commonwealth of Nations, I send you all my greetings and heartfelt wishes.
>
> Freedom loving people everywhere will wish to share in your celebrations, for with this transfer of power by consent comes the fulfillment of a great democratic. ideal to which the British and Indian peoples alike are firmly dedicated. It is inspiring to think that all this has been achieved by means of peaceful change.
>
> Heavy responsibilities lie ahead of you, but when I consider the statesmanship you have already shown and the great sacrifices you have already made, I am confident that you will be worthy of your destiny.
>
> I pray that the blessings of the Almighty may rest upon you and that your leaders may continue to be guided with wisdom in the tasks before them. May the blessings of friendship, tolerance and peace inspire you in your relations with the nations of the world. Be assured always of my sympathy in all your efforts to promote the prosperity of your people and the general welfare of mankind."

It is barely six months ago that Mr. Attlee invited me to accept the appointment of last Viceroy. He made it clear that this would be no easy task-since His Majesty's Government in the United Kingdom had decided to transfer power to Indian hands by June 1948. At that time it seemed to many that His Majesty's Government had set a date far too early. HOW could this tremendous operation be completed in 15 months.

However, I had not been more than a week in India before I realised that this date of June 1948 for the transfer of power was too late rather than too early communal tension and rioting had assumed proportions of which I had no conception when I left England. It seemed to me that a decision had to be taken at the earliest possible moment unless there was to be risk of a general conflagration throughout the whole sub-Continent.

I entered into discussions with the leaders of all the parties at once and the result was the plan of June 3rd. Its acceptance has been hailed as an example of fine statesmanship throughout the world. The plan was evolved at every stage by a process of open diplomacy with the leaders. Its success is chiefly attributable to them.

I believe that this system of open diplomacy was the only one suited to the situation in which the problems were so complex and the tension so high. I would here pay tribute to the wisdom, tolerance and friendly help of the leaders which have enabled the transfer of power to take place ten and a half months earlier than originally intended.

At the very meeting at which the plan of June 3rd wag accepted, the Leaders agreed to discuss a paper which I had laid before them on the administrative consequences of partition; and then and there we set up the machinery which was to carry out one of the greatest' administrative operations in history-the partition of a sub-continent of 400 million inhabitants and the transfer of power to two independent governments in less than two and a half months. My reason for hastening these processes was that, once the principle of division had been accepted, it was in the interest of all parties that it should be carried cut With the utmost speed. We set a pace faster in fact than many at the time thought possible. To the Ministers and officials who have laboured day and night to produce this astonishing result, the greatest credit is due.

I know well that the rejoicing which the advent of freedom brings is tempered in your hearts by the sadness that it could not come to a united India; and that the pain of division has shorn today's events of some of its joy. In supporting your leaders in the difficult decision which they had to take, you have displayed as much magnanimity and realism as have those patriotic statesmen themselves.

These statesmen have placed me in their debt for ever by their sympathetic understanding of my position. They did not, for example, press their original request that I should be the Chairman of the Arbitral Tribunal. Again they agreed from the outset to release me from any responsibility whatsoever for the partition of the Punjab and Bengal It was they who selected the personnel of the Boundary Commissions including the Chairman; it was they who drew up the terms of reference, it is they who shoulder the responsibility for implementing the award. You will appreciate that had they not done this, I would have been placed in an impossible position.

Let me now pass to the Indian States. The plan of June 3rd dealt almost exclusively with the problem of the transfer of power in British India; and the only reference to the States was a paragraph which recognised that on the transfer of power, all the Indian States-565 of them-would become independent. Here then was another gigantic problem and there was apprehension on all sides. But after the formation of the States Department. it was possible for me as Crown Representative to tackle this great question. Thanks to that farsighted statesman Sardar vallabhbhai Patel, Member in charge of States Department, A scheme, produced which appeared to me to be equally in the interests of the States as of the Dominion of India. The overwhelming majority of States are geographically linked with India, and therefore this Dominion had by far the bigger stake in the solution of this problem. It is a great triumph for the realism and sense of responsibility of the Rulers and the Governments of the States, as well as for the Government of India, that it was possible to produce an Instrument of Accession which was equally acceptable to both sides; and one, moreover, so simple and so straight forward that within less than three weeks practically all the States concerned had signed the Instrument of Accession and the Standstill Agreement. There is thus established a unified political structure covering over 300, million people and the major part of this great sub-continent.

The only State of the first importance that has not yet acceded is the premier State, Hyderabad.

Hyderabad occupies a unique position in view of its size , population and resources, and it has its special problems. The Nizam, while he does not propose to accede to the Dominion of Pakistan, has not up to the present felt able to accede to the Dominion of India. His Exalted Highness has, however, assured me of his wish to co-operate in the three essential subjects of External Affairs, Defence and Communications with that Dominion whose territories surround his State. With the assent of the Government, negotiations will be continued with the Nizam and I am hopeful that we shall reach a solution satisfactory to all.

From today I am your constitutional Governor-General and I would ask you to regard me as one of yourselves, devoted wholly to the fortherance of India's interests. I am honoured that you have endorsed the invitation originally made. to me by your leaders to remain as your Governor-General. The only consideration I had in mind in accepting was that I might continue to be of some help to you in difficult days which lie immediately ahead. When discussing the Draft of the India Independence Act your leaders selected the 31st March 1948 as the end of what may be called the interim period. I propose to ask to be released in April. It is not that I fail to appreciate the honour of being invited to stay on in your service, but I feel that as soon as possible India should be at liberty, if you so wish, to have one of her own people as her Governor-General. Until them my wife and I will consider it a privilege to continue to work with and amongst you. No words can express our gratitude for the understanding and co-operation as well as the true sympathy and generosity of spirit-which have been shown to us at all times.

I am glad to announce that "my" Government (as I am now constitutionally entitled and most proud to call them) have decided to mark this historic occasion by a generous programme of amnesty. The categories are as wide as could be consistent with the over-riding consideration of public morality and safety, and special account has been taken of political motives. This, policy will also govern the release of military prisoners undergoing sentences as a result of trial by courts-martial.

The tasks before you are heavy' The war ended two years ago. In fact, it was, on this very day two years ago that I was with that great friend of India. Mr. Attlee in his Cabinet Room when the news came through that 'Japan had surrendered. That was a moment for thankfulness and rejoicing, for it marked the end of six bitter years of, destruction and slaughter. But in India we have achieved something greater what has been well described as 'A treaty of Peace without a War". Nevertheless, the ravages of the war are still apparent all over the world. India, which played such a valiant part, as I can personally testify from my experience in South-East Asia, has also had to pay her price in the dislocation of her economy and the casualties to her gallant fighting men With whom I was so proud to be associated. Preoccupations with the political problem retarded recovery, It is for you to ensure the happiness and ever-increasing prosperity of the people, to provide against future scarcities of food, cloth and essential commodities and to build up a balanced economy. The solution of these problems requires immediate and wholehearted effort and far-sighted planning, but I feel confident that with your resources in men, material and leadership you will prove equal to the task.

What is happening in India is of far more than purely national interest. The emergence of a stable and prosperous state will be a factor of the greatest international importance for the peace of the world. Its social. and economic development, as well as its strategic situation and its wealth of resources, invest with great significance the events that take place here. It is for this reason that not only Great Britain and the sister Dominions but all the great nations of the world will watch with sympathetic expectancy the fortunes of this country and will wish to it all prosperity and success.

At this historic moment, let us not forget all that India owes to Mahatma Gandhi the architect of her freedom through non-violence. We miss his presence here today, and would 'have know how much he is in our thoughts.

Mr. President, I would like you and our other colleagues of the later Interim Government to know how deeply I have appreciated your unfailing support and co-operation.

In your first Prime Minister Pandit Jawaharlal Nehru, you have a world-renowned leader of courage and vision. (Cheers.) His trust and friendship have helped me beyond measure in my task. Under his able guidance, assisted by the colleagues whom he has selected, and with the loyal Co-operation of the people, India will now attain a position of strength and influence and take her rightful place in the comity of nations. *(Loud and prolonged cheers.)*

Mr. President:- *[Your Excellency and members of the Assembly. I request 'you to communicate to His Majesty the gratitude of this Assembly for the message he has very kindly sent to us today. With the Knowledge that we will have his sympathy and kindness in the task that we are going to take it our hands today, we are confident that we will be able to accomplish it in a proper way.

[Mr. President then delivered his speech in Hindustani, the full text. of which is published in the Hindustani Edition of the Debates.]

ADDITIONAL MESSAGES

Mr. President: I have to announce that a message of greetings and goodwill has also been received from the French Minister of Foreign Affairs. M. Giraud on behalf of the Government of France and on his own behalf. It is regretted that I do not have the text of the message with me, but it will be inscribed in the records of the Assembly along with the other messages which I have read today.

Your Excellency, may I request you to convey to His Majesty a message of loyal greetings from this House and of thanks for the gracious message which he has been good enough to send us? That message will serve as an inspiration in the great work on which we launch today and I have no doubt that we anticipate with great pleasure association with Great Britain of a different kind. I hope and trust that the interest and the sympathy and the kindness which have always inspired His Majesty will continue in favour of India and we shall be worthy of them.

10. Message from the French Minister of Foreign Affairs.

From: Mons. Georges Bidault,

Minister for Foreign Affairs,

Paris.

To Pandit Jawaharlal Nehru.

In the name of my Government and in my own I salute the historic date which marks the final accession of India to the ranks of the World's great free nations devoted to the cause of peace and earnestly desirous of the prosperity of all. the peoples of the world. I request your Excellency to accept, on this occasion, the renewed assurances of my very high consideration and of my entire devotion to the cause of friendship between our two countries.

12. Message from the President of the United States of America

AMERICAN EMBASSY,

NEW DELHI, INDIA

August, 15, 1947.

YOUR EXCELLENCY,

I have the honour to transmit to you the following message (from the President of the United States.

On this memorable occasion I extend to you, to Prime Minister Jawaharlal Nehru and to the people of the Dominion of India the sincere best wishes of the Government and the people, of the United. States of America. We welcome India's new and enhanced status in the world community of sovereign independent nations, assure the new Dominion of our continued friendship and good will, and reaffirm our confidence that India, dedicated to the cause of peace and to the advancement A all peoples, will take its place at the forefront of take, nations of the world in the struggle to fashion a world Society founded in mutual trust and respect. India faces many grave problems, but its resources are vast, and I am confident that its people and leadership are equal to the task ahead. In the years to come the people of this great new nation will find the United States a constant friend. I earnestly hope that our friendship will in the future, as in the past, continue to be expressed in close, and fruitful co-operation in international undertakings and in cordiality in our relations one 'With the other.

I wish to avail myself of this opportunity of extending my personal congratulations to Your Excellency on your assumption of the post of Governor-General of the Dominion of India and at the same time to convey assurance of my highest consideration.

HENRY T. GRADY.

His Excellency,

Governor-General of the Dominion of India.

Mr. President: Let us in this momentous hour of our history, when we are assuming power for the governance of our country, recall In grateful remembrance the services and sacrifices of all those who laboured and suffered for the achievement of the independence we are attaining today. Let us on this historic occasion pay our homage to the maker of our modern history, Mahatma Gandhi, who has inspired and guided us through all these years of trial and travail and who in spite of the weight of years is still working in his own way to complete what is left yet unaccomplished.

Let us gratefully acknowledge that while our achievement is in no small measure due to our own sufferings, and sacrifices, it is also the result of world forces and events and last though not least it is the consummation and fulfillment of the historic traditions and democratic ideals of the British race whose farsighted leaders and statesmen saw the vision and gave the pledges which are being redeemed today. We are happy to have in our midst as a representative of that race Viscount Mountbatten of Burma and his consort who have worked hard and play-ad such an important part in bringing this about during the closing scenes of this drama. The period of domination by Britain over India ends today and our relationship with Britain is henceforward going to rest on a basis of equality, of mutual goodwill and mutual profit.

It is undoubtedly a day of rejoicing. But there is only one thought which mars and detracts from the fullness of this happy event. India, which was made by God and Nature to be one, which culture and tradition and history of millenniums have made one, is divided today and many there are on the other side of the boundary who would much rather be on this side. To them we send a word of cheer and assurance and ask them not to give way to panic or despair but to live with faith and courage in peace with their neighbours and fulfil the duties of loyal citizenship and thus win their rightful place. We send our greetings to the new Dominion which is being established today there and wish it the best luck in its great work of governing that region and making all its citizens happy and prosperous. We feel assured that they all will be treated fairly and Justly without any distinction or discrimination. Let us hope and pray that the day will come when even those who have insisted upon and brought about this division will realise India's essential oneness and we shall, be united once again. We must realise however that this can be brought about not by force but by large heartedness and co-operation' and by so managing Our affairs on this side as to attract those who have parted. It may appear to be a dream but it is no more fantastic a dream than that of those who wanted a division and may well be, realised even sooner than we dare hope for today. More than a day of rejoicing it is a day of dedication for all of us to build the

India of our dreams. Let us turn our eyes away from the past and fix our gaze on the future. We have no quarrel with other nations and countries and let us hope no one will pick a quarrel with us. By history and tradition we are a peaceful people and India want-, to be at peace with the world. India's Empire outside her own borders his been of a different kind from all other Empires. India's conquests have been the conquests of spirit which did not 'impose heavy chains of slavery, whether of iron or of gold, on others but tied other lands and Other peoples to her with the more enduring ties of golden silk--of culture and Civilisation, of religion and knowledge (gyan).' We shall follow that same tradition and shall have no ambition save that of contributing our little mite to the building of peace and freedom in a war-distracted world by holding aloft the banner under which we have marched to victory and placing in a practical manner in the hands of the world the great weapon of Non-violence which has achieved this unique result. India has a _great part to play. There is something in her life and culture which has enabled her to survive the onslaughts of time and today we witness a new birth full of promise, if only we prove ourselves true to our 'deals.

Let us resolve to create conditions in this country when every individual will be free and provided with the wherewithal to develop and rise to his fullest stature, when poverty and squalor and ignorance and ill-health will have vanished, when the distinction between high and low, between rich and poor, will have disappeared, when religion will not only be professed and preached and practised freely but will have become a cementing force for binding man to man and not serve as a disturbing and disrupting force dividing and separating, when untouchability will have been forgotten like an unpleasant night dream, when exploitation of man by man-will have ceased, when facilities and special arrangements will have been provided for the *adimjatis* of India and for all others who are backward, to enable them to catch up to others and when this land will have not only enough food to feed its teeming millions but will Once again have become a land flowing with rivers of milk, when men and women will be laughing and working for all they are worth in fields and factories, when every cottage and hamlet will be humming with the sweet music of village handicrafts and maids will be busy with them and singing to their tune-when the sun and the moon will be shining on happy homes and loving faces.

To bring all this about we need all the idealism and sacrifice, all the intelligence and diligence, all the determination and the power of Organisation that we can muster. We have. many parties and groups with differing ideals and ideologies. They are all trying to convert the country to their own ideologies and to mould the constitution and the administration to suit their own view point. While they have the right to do so, the country and the nation have the right to demand loyalty from them. All must realise that what is needed most today is a great constructive effort-not strife, hard-solid work-not argumentation, and let US hope that all will be prepared to make their contribution We want the peasant to grow more food, we want the workers to produce more goods, we want our industrialists to use their intelligence, tact and resourcefulness for the common good. To all we must assure conditions of decent and healthy life and opportunities for self-improvement and self-realisation.

Not only have the people to dedicate themselves to this great task that lies ahead but' those who have so far been playing the role of rulers and regulators of the lives of our men and women have to assume, the role of Servants. Our army has won undying glory in distant lands for its bravery and great fighting qualities. Our soldiers, sailors and airmen have to realise that they now form a national army on whom devolves the duty not only of defending the freedom which we have own but also to help in a constructive way in building up a new life. There is no place in the armed forces of our country which is not open to our people, and what is more they are required to take the highest places as soon as they can so that they may take full charge of our defences. Our public servants in various departments of Government have to shed their role as rulers and have to become true servants of the people that their compeers are in all free countries. The people and the Government on their side have to give them their trust and assure them conditions of service in keeping with the lives of the people in whose midst they have to live and serve.

We welcome the Indian States which have acceded to India and to their people we offer our hands of comradeship. To the princes and the rulers of the States we say that we have no designs against them. We trust they will follow the example of the King of England and become Constitutional rulers. They would do well to take as their model the British monarchical system which has stood the shock of two successive world wars when so many other monarchies in Europe have toppled down.

To Indians settled abroad in British Colonies and elsewhere we send our good wishes and assurance of our abiding interest in their welfare. To our minorities we give the assurance that they will receive fair and just treatment and their rights will be respected and protected.

One of the great tasks which we have in hand is to complete the constitution under which not only will freedom and liberty be assured to each and all but which will enable us to achieve and attain and enjoy its fulfilment and its fruits. We must accomplish this task as soon as possible so that we may begin to live and work under a constitution of our own making, of which we may all be proud, and which it may become our pride and privilege to defend and to preserve to the lasting good of our people and for the service of mankind. In framing that constitution we shall naturally draw upon. the experience and knowledge of 'other countries and nations no less than on our own traditions and surroundings and may have at times to disregard the lines drawn by recent history and lay down new boundary lines not only of Provinces but also of distribution of powers and functions. Our ideal is to have a constitution that will enable the people's will to be expressed and enforced and that will not only secure liberty to the individual but also reconcile and make that liberty subservient to the common good.

We have up to now been taking a pledge to achieve freedom and to, undergo all sufferings and sacrifices for it. Time has come when we have to take a pledge of another kind. Let no bite imagine that the time for work and sacrifice is gone and the time for enjoying the fruits thereof has come. Let us realise that the demand on our enthusiasm and capacity for unselfish work in the future will be as great as, if not greater than, what it has ever been before. We have, therefore,, to dedicate ourselves once again to the great cause that beckons us. The task is great, the times are propitious. Let us pray that we may have the strength, the wisdom and the courage to fulfil it.

HOISTING OF THE NATIONAL FLAG

Mr. President: His Excellency will now give the signal for hoisting the Flag.

(*The sound of a gun being fired was heard.*)

H. E. The Governor-General: That is the signal for hoisting the flag over this roof.

Mr. President: The House now stands adjourned till 10 of the Clock on the 20th.

Honourable Members: Mahatma Gandhi ki jai.

Mahatma Gandhi ki jai.

Pandit Jawaharlal Nehru ki jai.

Lord Mountbatten ki jai.

The Assembly then adjourned till 10 of the Clock on Wednesday, the 20th August 1947.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME V

Wednesday, the 20th August 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS ,AND SIGNING OF THE REGISTER

The following members presented their credentials and signed their names in the Register.

(1) The Honourable Srijut Gopinath Bardoloi (Assam: General).

(2) The Honourable Rev. J. J. M. Nichols-Roy (Assam: General).

(3) Prof. Nibaran Chandra Laskar (Assam: General).

(4) Shri A. B. Latthe (Kolhapur State).

(5) Chaudhri Nihal Singh Taxak (Punjab States Group 3).

Srijut Rohini Kumar Chaudhury (Assam: General): There are members here who were absent on the 14th night and therefore did not take the oath on that day.

Mr. President: We will come to that.

Members will recollect that on the night of the 14th the Assembly passed a resolution requiring that the Members of the Assembly should take the pledge in the prescribed form. Those members who were present that night took the pledge but I take it that there were some absentees that night. Certainly there are some members who have joined the today. All such members who have not yet taken the pledge may do so now at this stage.

TAKING THE PLEDGE

Mr. President: Those who have not taken the pledge will kindly stand up in their places.

(Those who did not take the pledge before stood up in their seats.)

Mr. President: I will read the pledge and I will. ask the Members to repeat the pledge as I read.

(The President then read the pledge in English and in Hindustani and 'the Members who had not already done so, took the pledge as follows.

"Now that the people of India, through suffering and sacrifice have secured freedom, I --- a member of the Constituent Assembly of India, I do dedicate myself in all humility to the service of India and her people to the end that this ancient land attain her rightful and honoured place in the world and make her full and willing contribution to the promotion of world peace and the welfare of mankind.")

INCIDENTS CONNECTED WITH THE FLAG HOISTING CEREMONY IN CERTAIN PARTS OF INDIA

Mr. R. K. Sidhwa (C. P. & Berar: General): Before we begin with the proceedings of the day, I would like to draw your attention to a very important subject of urgent public importance and that is this. On the Independence day, it has been reported that at the Agra Fort lakhs and lakhs of people had collected to witness the Flag Hoisting Ceremony. It is further reported that at the instance of some British Command a British officer stated that he would not allow any troops to participate in the ceremony if the Union Jack is to be hauled down and the new flag is to be hoisted. All the people were very much disappointed, but one of the Members of the Indian troop hoisted our Indian Union Flag and pacified the audience. I would like to know from the Honourable the Leader of the House as to how far this Is correct and if it is correct What steps he intends to take in this very important matter i.e., wherever the National Flag has been insulted by a British officer. I would also cite one more instance. It has also been reported that in the Indian Post Office, in the Hyderabad State our Flag was hoisted and the Hyderabad authorities pulled it down. I would like to know also from the Honourable the Leader of the House as to how far that is correct and if it is correct what steps he intends to take to protect and to preserve our National Flag which was hoisted on the property of the Government of India. Whatever the mighty Independent Nizam's Government may be--what steps is this Central Government going to take in this matter? We cannot tolerate any kind of insult to our National Flag by anybody. I would therefore request you kindly to request the Honourable the Leader of the House to make a statement.

Shri Balkrishna Sharma (United Provinces: General): Sir before you call upon the Leader of the House to explain the conduct of certain of the officials, I would also like to bring to your notice that about three or four days before the actual ceremony was to take place, I brought to the notice of the Honourable Sardar Baldev Singh, the Honourable Pandit Jawaharlal Nehru and the Honourable Sardar Vallabhbhai Patel two orders from two Military officers which were issued in Cawnpore; one was from Col. Hilman who is in charge of the C. O. D. at Cawnpore; and another was from another Military officer in charge of the Technical Branch, in which it was stated definitely that should orders be received to haul down the Union Jack and to replace it by any other flag then no ceremony will take place. Further, it was stated that if the Military personnel are invited by the Civil authorities to participate in any, such functions, none of them shall do so and this order was at the instance of the U. P. Area Command. I do not know what that means; perhaps the U. P. Command which governs all the

Military movements and the Military forces in the United Provinces. Now the Indian personnel of the C. 0. D. and the technical staff approached us, the Congress Committee people in Cawnpore, and they brought to-our notice these orders. I requested the Honourable the Prime Minister of India and also the Honourable the Prime Minister of the United Provinces to take note of it. I am further informed by my Honourable friend Shri Krishna Dutt Paliwal that in Agra also no flag wag hoisted and only the Indian personnel tried to hoist the flag even in spite of these orders but I do not know whether they succeeded or not. In Jhansi, Cawnpore and Agra, in all the military stations, at least in my province such orders were issued and I would naturally like to know whether these orders were brought to the notice of the Central Government.

Mr. President: May I point out that we have met here today for the purpose of proceeding with the framing of the Constitution, We are not yet sitting here as the Legislative Assembly of India, where questions like this and many other important questions could properly be raised. So I would request Members to reserve them till the time when we meet as the Legislative Assembly and not to raise them in the Constituent Assembly because here we are concerned only with the framing of the Constitution and not with the actual administration from day to day. Of course, I am not quite clear in my own mind as yet as to the distinction between the Legislative Assembly and the Constituent Assembly and where the line has to be drawn, but this meeting has been convened especially for the purpose of dealing with the constitution making aspect of it and so we are now carrying on that function.

Shri Balkrishna Sharma: While fully bound by your ruling, may I point out that it is the Constituent Assembly of India which has taken over the reins of the Government. it. 'is we as Constituent Assembly who have taken over from the British Government the governance of our country and therefore I think, Sir, that we are entitled to raise such questions from the to time even in the Constituent Assembly, though we many not be meeting as the Council Legislature of the Union of India.

Mr. President: The Leader of the House was not aware that questions like this would be raised at this stage and so he is, not here just at the present moment.

An Honourable Member : He is here,

Mr. President: I am sorry. He was not in 'his place here. I used to, see him in another part of tile House. I do not know if he would like to say anything on these matters at this stage.

Seth Govind Das (C. P. & Berar: General): *[Mr. President, before the Prime Minister says anything, I would like to bring to your notice an occurrence at Jubbulpore.

Jubbulpore is an important military centre. There was a military parade and the flag was also hoisted over all public buildings and other prominent private ones. The flag was hoisted over military buildings without any celebrations as were made on nonmilitary public buildings. A report was current that orders had been received from the Central Government that the flag should be hoisted over military buildings without any celebrations, pomp or show. There were some offices in the military area where the employees were told that the flags could not be hoisted over their buildings.

In this connection, I would like to know if there, were different orders for military and non-military offices or if the orders were the same, and that whatever was done in Jubbulpore was done by the military officers at their own discretion]*

Mr. Hussain Imam (Bihar: Muslim): Mr. President, may I just intervene for a moment. The question that has been raised is of great importance, as to whether this Assembly is functioning only as the Constituent Assembly or also as the legislative authority. Up to the 14th, we were debarred from discussing anything which could be called as Legislative functions. But, since that midnight, having assumed the whole power of governance of India, it is right and proper that some opportunity should` be given to the members of this House to move adjournment motions and to discuss matters of urgent public importance. I do not think that we should embark on the full scope of the legislative body, having one hour for questions and the rest for other legislative functions. That would be really taking away too much of the time from constitution making and delaying the work which is in hand. But the right to move an adjournment motion is a very important and fundamental right which is a safeguard for democracy which we must preserve, and very much like to have in these days. I therefore suggest that the Honourable the President may adopt the rules of the Legislative Assembly regarding adjournment motions so that if and when necessary matters of urgent public importance may be ventilated before this House.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Mr. President, Sir, the point raised by my honourable friends Mr. Sidhwa and Mr. Balkrishna Sharma cannot be lightly brushed aside: I quite appreciate the observations that have fallen from the Chair. It is indeed difficult to say just now whether we are functioning here in a dual capacity as members of the Indian Constituent Assembly and also as members of the Parliament of the Indian Dominion. Whatever it may be, the fact remains that while sitting as members of the Indian Constituent Assembly, there are bound to raise questions from time to time which are of such pressing importance and they cannot possibly be deferred for consideration to a time when we will assume the functions of the Dominion Parliament. As a matter of fact, we do not know even now when the time is going to come when we will be functioning as a purely Dominion Parliament and not as the Constituent Assembly. No rules have been framed and we have not been given any indication whether before we finish constitution making we can at all function as the Legislative Assembly or Dominion Parliament. Therefore, so long as we do not know when we shall be able to function as the legislative body, certainly opportunities ought to be afforded to us for ventilation of such important matters as have been, brought before the House.

With regard to the merits of the matter, Sir, though it relates to purely executive function, the House will bear in mind that the Flag Hoisting ceremony, the adoption of the Indian National Flag, were made with unanimous approval on the floor of this House, and that the Flag Hoisting ceremony was a public ceremony made under the auspices of the Indian Dominion Government. Therefore the question of infringement or violation of such orders of the Indian Government as reported by my honourable friends Mr. Sidhwa and Mr. Balkrishna Sharma and as reported in the Press is certainly a matter which must be ventilated. Sir, though it may not be possible just now to raise an adjournment motion as, it is definitely barred by the rules of procedure of the Constituent Assembly, certainly some rules may be made or some convention created till the time we function as the legislative body, for the ventilation and discussion of such matters as have be-en brought before the House. I quite share your feeling, Sir, that we are still hazy and not definite and clear as to the exact line of demarcation, the line that has to be drawn between us as members of the Constituent Assembly and as members, of the Indian Dominion Parliament. But before such time, before that can be done by rules, at least it is necessary to create some convention for this period.

The Honourable the Premier of India may be requested to make a statement and explain the facts and also the nature of the action he contemplates to take. For the time being, if he makes a statement, we would be satisfied. We do not think that a full-fledged adjournment motion need be raised and debated. But, apart from that, we are definitely of opinion that on such an important matter, the honourable the Premier of India should make a statement which would satisfy us. That is all, I have to say on this important point.

Shri Mahavir Tyagi (United Provinces : General): On a point of order, Sir.

Mr. H. V. Kamath (C. P. & Berar: General): Sir, will you be so good as to tell us when we shall assemble here purely and solely as the Do mini-on Legislature?

Shri Mahavir Tyagi: Sir, the point of order which I wish to raise is that we cannot work both as the Constituent Assembly and the Legislature of the country together. It will be very anomalous, Sir, because, in all matters of parliamentary routine, we may have to discuss Government policy and naturally when the Government policy is discussed, a Speaker is needed who is neutral and who is not a member of the Government. In the Constituent Assembly, we do not sit as Government, or officials or non-officials; but we sit all as individuals contributing, their best towards the making of the constitution and you preside over our deliberations. If we begin to discuss censure motions and adjournment motions as my honourable friend on the other side has just suggested, we shall have, to sit separately in blocks or parties and so many difficulties will arise. We shall have to vote with our parties, and naturally we shall have to divide ourselves into so many disciplined parties. So, the regular routine will all be upset. My suggestion therefore is, if we have to perform both the functions simultaneously, we cannot do all that on the same day, on one fixed day or in one fixed place. We shall have to divide the time and have a time-table. We shall have to announce that on such and such a day we sit as the Constituent Assembly so that we can sit under your President ship and carry on business as we have been doing till now. Similarly if we sit as a Dominion Parliament, we should announce our intention, and sit in party blocks and remain loyal to our parties and support the party motions or oppose the opposite ones, while in this case, it is not necessary for us to support motions proposed by the Ministers or others. My submission, therefore, is that we cannot work in the same House under the same President ship both as the Constituent Assembly and also as the Parliament of the country.

Mr. President: Mr. Santhanam.

Pandit Hirday Nath Kuzru (United Provinces: General): Mr. President, an honourable member of this House has raised a point of order.

Shri K. Santhanam (Madras: General): I am speaking on the Point of order.

Pandit Hirday Nath Kunzru: I submit that that point must be decided before any member is allowed to speak.

Shri K. Santhanam: I am speaking on the point of order. There are two issues on this point. What is the status of this Assembly? Having defined the status, it has to be determined as to how it should function. Now, it is argued that it has got a double status, one as the Constituent Assembly and the other as the legislature. My own view is that it has got only one status. This is the Constituent Assembly. According to the Indian Independence Act, it is stated that the powers of the legislature of the Dominion shall be exercise able in the first instance by the Constituent Assembly of the Dominion. It is this Assembly, one indivisible integral body which has to exercise the powers of the Dominion legislature. Therefore, there is no purpose, there is no meaning in dividing this House into two, consisting of the same members. I think it is illegal to say that this is a Constituent Assembly today and this is a legislature tomorrow. It is one body. For the sake of convenience, we may devote some time to one work and some to the other and we may, if necessary have two sets of rules. I do not think it is legitimate for anyone to raise the point that today this is not a legislature and therefore it cannot raise an issue and tomorrow it is only the legislature and therefore another issue cannot be raised. We must treat it as one body. A Committee may be set up to frame rules of procedure as to how to regulate both these functions. Therefore, I suggest that no premature decision or ruling. should be given today as to the status of this body. It should be carefully considered by lawyers and we should not commit ourselves to anything which may lead to all kinds of difficulties.

Mr. Tajamul Husain (Bihar: Muslim): Now, Sir, we are here as members of the Constituent Assembly. No doubt we assumed powers as members of the Union Parliament on 15th August; but we to-day were summoned by you to attend the session of the Constituent Assembly and not of the Union Parliament. We, Sir, are governed here by the Rules of Procedure and Standing Orders which were framed in this House. There is no other rule under which we are governed, and we are bound by these Rules. To-day we are meeting as members of the Constituent Assembly and not as members of Parliament--because if had been meeting as Parliament, all the members of Indian Government should have been present here to-day-now supposing, Sir, a very urgent and important matter connected with public education is taken up, you would require the presence of the Member in charge of Education, but he cannot be here as he is not a member of the Constituent Assembly. Therefore I submit that though the matter under discussion is undoubtedly very important and some serious action has to be taken by the Honourable the Prime Minister of India, we are absolutely powerless under our Rules to discuss this matter. Therefore my point of order is that we are meeting today as members of the Constituent Assembly and as such we are bound by our own Rules and we cannot discuss the matter which has been raised.

Shri R. V. Dhulekar (United Provinces. General): *[Mr. President, I do not agree with the point of order that has been raised. Since August 15, this Constituent Assembly has assumed full powers. It has no longer a dual aspect. Before August 15, this body was a Constituent Assembly and at that time, it could be said that it, had no power of legislation or of making changes in the country's administrative functions. Since August 15, it has assumed full powers of administration including the power of framing the Constitution and we can perform those functions while sitting here at one place.

Another question has been raised and it is that on August 15, it was said that the next session of the Constituent Assembly would begin on the 20th. I would like to add that all powers have been vested in the Constituent Assembly. There is nothing outside it when we are in session, we can do anything and at any time. It is a different thing that for our convenience we may hold discussions on constitution from ten to one. After that, from three to five we may discuss administrative matter& We have full authority for both and legally there is nothing to prevent us from doing so. I think that the persons who say that there are legal restrictions ion our way, go against the law. They should study the Act of Independence and should know that the administration is in our hands. We can also adjourn and leave Delhi for the present and may be reached later after a month or two to function as a legislature. Therefore, the point of order that has been moved is not right. There is only one comprehensive aspect of this Assembly and it includes framing' of the constitution as well as the carrying on of the administration.]*

Shri T. Prakasam (Madras: General): Sir, it is wrong to say that the status of this Sovereign body of the Constituent Assembly is one and indivisible. After 15th August this body became the Sovereign Body not only in regard to the framing of the Constitution but also with regard to doing the work necessary as the Sovereign Legislative. Now, Sir, I have got a certain matter to be placed before the Sovereign Legislature which is closely connected with the framing of the Constitution. According to me until those matters are settled in the Legislature, this constitution-making also cannot be proceeded with. Therefore this House must have a dual capacity and whenever it is necessary, this House can convert itself into a Sovereign Legislature to consider one or two important questions without wasting time relating to framing the Constitution itself and then again converting itself into a Constituent Assembly for framing the Constitution. That is the correct position and the constitutional position. Therefore it should not be considered as having an exclusive status, indivisible, and it should not continue framing the Constitution without caring for the other matters that may come here.

Mr. President: I think we have had enough discussion on this point. There are two questions which have actually been raised, one with regard to the status of the Assembly as it is today and the other regarding the incidents which have taken place on the 14th/15th. I would now ask the Leader of the House to make any statement which he wishes to make on both the points or any of the points.

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): Mr. President, Sir, I am not quite sure which of these two questions I am supposed to take first. I am suffering under a disadvantage. I have been trying to follow what has been said in this House very closely; but roughly speaking I have heard about one-fourth of what has been said. I do not know whether the accoustics of this hall has changed or owing to our experiences of the last few days our voices have changed or something has happened. It is either a roar or whisper. I found it difficult to follow either the roar or the whisper.

If I may deal with the constitutional point that has been raised more or less as a layman than as an expert, it seems to me perfectly clear that this House is obviously a Sovereign body and can do just what it likes, admitting that the House does only things which its itself decided to do. It can change its own decisions. It can change its own Rules but so long as the rules subsist, it follows its own rules. If it wants, it can change them. Therefore there is no doubt that this House has the right to carry on as a Legislative Assembly if it wants to from tomorrow or any time it likes but before doing so, it should come to that decision and frame its rules accordingly. I would therefore submit that the proper course for us to take is for the President to appoint a small committee which can report to us in two or three days time as to what rules we should have for this interim period. There is an obvious difficulty in our functioning as the Legislative Assembly as we are. For instance, questions may be asked and members of Government in charge of those portfolios will have to answer. Well Sir, you are yourself a Member of Government and if a question is asked in regard to the Department of Food or Agriculture, is the President supposed to reply or who is supposed to reply.

A difficulty arises. A number of Ministers are not members of this House. They may, I think, even under the existing rules attend the House and speak without voting, but all these things will have to be gone into and clarified before we can really function as a Legislative Assembly. There is no doubt that we can make any rules we like. We can ask the Ministers to come and function as members of the House if we so choose. Therefore I beg to suggest that the President do appoint a Committee to report to us, say, within 3 days as to how we should function during this intervening period. We are meeting now obviously as the Constituent Assembly, though we can meet otherwise also. It is clear that if this Constituent Assembly as such had no work to do, supposing we had finished our preliminary work of laying down the principles of the Union Constitution a fortnight or three weeks ago, we would not be meeting today. We would have met on the 14th night and 15th morning for that particular purpose and adjourned till September or October for the next session of the Constituent Assembly. We are meeting, therefore, because we had not finished our work a fortnight ago and we want to complete it in the next week or whatever time it many take, so that the real detailed Constitution may complete and then we may meet sometime in October, possibly, finally to pass that Constitution; so that at the present moment rather casually treating this as a Legislative Assembly will lead us into all manner of' difficulties, but if the House so chooses i.e., in regard to information being supplied by Members of Government or anything else, naturally the Members of Government will be happy to supply it. The point is that everything should be done in a methodical way. So I submit, Sir, that the best course would be for you to appoint a Committee to report in two or three days as to what procedure we should follow and if necessary we can change our rules to that end.

Now, in regard to the questions put by some of the members, some of them I could not follow at all. Seth Govind Das said something and except for the fact that he said something about Jubbulpore, I did not at all follow what happened in Jubbulpore, I tried to follow him, but I am sorry, due probably to my own hearing I could not. So also another Member whom I could not easily follow. But briefly, I would say this, that obviously the Government in common with the House attaches the very greatest importance to the fact that the national flag should be honoured and that any dishonour to the flag anywhere must be enquired into and necessary steps taken. Two or three instances that were brought to notice regarding something that happened at Agra Fort are being enquired into. I believe the U. P. Government ....

Shri Balkrishna Sharma: May I know if the Hon'ble the Leader of the House received my telegrams about these very incidents?

The Honourable Pandit Jawaharlal Nehru: I cannot say off-hand, because I have received 7,000 telegrams in the last four or five days and it is a little difficult immediately to say whether I received the particular telegrams. It is physically impossible for an individual or for a group of individuals to analyse them or even to read them quickly. We are doing it with all possible speed.

Now, we are enquiring from the U. P. Government regarding those incidents and I am sure our Defence Department is also enquiring and we shall take necessary steps.

As regards Jubbulpore, I know nothing. I shall be very happy if Seth Govind Das will supply me with the facts separately and we shall enquire into the matter and take the necessary steps.

An Honourable Member: What about Hyderabad?

The Honourable Pandit Jawaharlal Nehru: About Hyderabad I Understand that our States Department immediately enquired into this and the Hyderabad Government categorically denied any insult to the National Flag and they said that they had allowed it to be flown everywhere and certainly to their knowledge any such thing did not take place,

Mr. President: I think the question about the status and functioning of the Assembly is an important one and we have to take into consideration the rules Which we have framed for the conduct of our business here as also the adaptations of the Government of India Act which have been made and the Independence Act. Taking all these things into consideration, we have to find out I whether we can function either compartmentally in two compartments or we should function as one body. These are questions which require consideration and I think the suggestion which has been made by the Leader of the House that a small Sub-Committee should be appointed for the purpose of going into them and for making suggestions in regard to the rules which would guide us, is a suggestion which should be acceptable to the House and I would like to know if the House would like to have that done.

Honourable Members: Yes.

Mr. President: Since. the House agrees, I shall announce the names of the members of the Sub-Committee in the course of the day and we shall ask the Committee to make a report as soon as possible.

Now, we shall proceed with our function as Constituent Assembly for which we have met this morning. I shall ask Mr. Gopalaswami Ayyangar to move his Resolution.

Shri Biswanath Das (Orissa: General): Arising out of this statement made by the Leader of the House, I rise to say just one thing, namely, regarding the terms of reference of the Committee which he has suggested. He was good enough to suggest that the reference to the Committee should be confined to matters of procedure. I feel that there are certain other questions which should also be referred to the. Sub-Committee, namely, we have in this Constituent Assembly representatives of Moghalbandi (Provinces) as also of the States. Therefore, representative of both these function side by side. Now, Sir, if only the question procedure is to be referred to this Committee, there are certain difficulties regarding the functioning of the States representatives as also their voting. I will just, illustrate this point. For instance, we have to pass the Budget. So far as is known, the States have only conceded three subjects; I don't know if more subjects have been conceded to the Federation. If that is so, it is welcome, but as far as newspaper information goes, we have had nothing from our leaders-they have conceded only three subjects. In regard to legislation relating to other subjects have the a right to discuss and vote? Now what is going to be the position of the States representatives in regard to other subjects which are beyond the scope of these three subjects?

In these circumstances. I would suggest to you and also to the Honourable Leader of the House to expand the reference--the terms of reference of this committee, so that the committee could put forward recommendations not only regarding procedure but also regarding the functions and other allied matters so that we may have the whole picture before us.

Mr. President: I will keep that in mind in stating the terms reference of this committee.

Mr. H. V. Kamath: Sir, permit me to refer to a minor point. I would like to draw your attention to the fact that copies of neither your address on the 14th night nor the Governor General's on the 15th morning, nor of your reply thereto, were placed on the Members' tables, and they have not been supplied to us even to this day. Will you please take action in this matter?

Mr. President: Now, I think we shall proceed with the Report of the Union Powers Committee.

Shri Santanu Kumar Das (Orissa: General): Sir, May I know through you and from the Leader of the House what steps have been taken by the Pakistan Government against those who have insulted the National Flag there in Pakistan.

Mr. President: We shall now proceed with the Agenda. I think if there are any other questions, they may be considered at the proper time. Shri Gopalaswami Ayyangar.

REPORT OF THE UNION POWERS COMMITTEE-- *contd.*

Mr. N. Gopalaswami Ayyangar (Madras: General): Sir, I beg to move-

> That it be resolved that the Constituent Assembly do proceed to take into, consideration the Second Report on the scope of Union Powers submitted by the Committee appointed in pursuance of the resolution of the Assembly of the 25th January, 1947.

Sir, copies of this Report have already been circulated to Hon'ble Members; but, in placing this Report@ before the House, I would like to say a few words, first as to how this Report has come to be presented to the House.

The House will remember that as long ago as the 25th January, 1947, this Committee was brought into being by a motion moved by Mr. Rajagopalachari whom we are all proud to find now as the Governor of one of the most important provinces of this Dominion. Well, in that resolution--

Maulana Hasrat Mohani (United Provinces: Moslem): Sir, on a point of order, I have given notice of an amendment that this Report may not be taken up for consideration.

Mr. President: Let the Resolution be moved first.

Mr. N. Gopalaswami Ayyangar: Sir, at the time this Resolution was adopted, what we were attempting to do was to implement the scheme in the Cabinet Mission Plan. That Plan, as the House will remember, provided for a federation of Provinces and States and the assignment of a certain limited number of subjects, broadly described, to the Federation and for various other details as regards both the substance and the procedure which the leaders of the two great parties in the country had already accepted. Now, one of the important matters that had to be tackled by this House in connection with that plan was the scope of the subjects that were assigned to the Centre in that Plan. Those subjects were very broadly described, as I said. They consisted of Defence External Affairs and Communications, and the finance necessary for these subjects. Well, one of the items in that Plan which had been accepted was that constitutions had to be framed both for the Provinces and the Centre, the Federation, as also for any Groups, if the decision of the House was in favour of setting up such Groups. The constitutions for the provinces Groups were proposed to be made in' the Sections into which this Assembly was to be divided after its preliminary meeting. Before the work of framing those constitutions was taken up it was considered necessary that some indication should be given as to the orbit,--if I may use the word--of the jurisdiction of the Centre, that is to say, the subjects which Would be within the sphere of the Federation, so that the remaining subjects might be catered for in the Constitutions of the Provinces or of the Provinces and Groups, if Groups came to be decided on. It was for the purpose of implementing this object that it was decided that we should first undertake an investigation of the individual subjects which would fall within these four broad categories, and for that purpose we appointed a Committee to make this investigation and submit a report to the House. That Committee met, and on the 17th of April, I think, it made a report. That Report was presented to the House by me on the 28th April. In presenting it, I said I was not placing before the House any motion for the consideration of the Report because the conditions at that time were so fluid that we would only have wasted a considerable amount of the time of this House in considering that Report which was bound to become out-of-date within a few weeks. As a matter of fact, a very fateful political decision was impending at that time and we did not know what the nature of that decision was going to be, whether India was going to remain united or whether it was going to be divided and if so, what other details would have to be filled in. In those circumstances, I suggested that the House need not consider that first Report of this Committee at that time. I also pointed out that it would be necessary for the Committee to meet again and review the recommendations it had embodied in its first report in the light of political decisions that might be taken very soon after. As the House is aware, that decision was taken an the 3rd June and that decision started being implemented from almost that date; since then we have had the Indian Independence Act enacted by Parliament. Well, Sir, that Act has given us two Dominions in what was India, before the 15th of August.

We are now a Dominion. We have walked into independence. I deliberately gay 'walked into independence' because I do not think we went and seized it. It was there. We walked in and said we had taken our power, and we have now in working order a Constitution which is, if I may say so, a combination of the provisions of the Indian Independence Act and the provisions of the Government of India Act, 1935, as adapted under the provisions of the Indian Independence Act.

Sir, that is the present state of things. The Union Powers Committee met again after the 28th of April at a time when even the Indian Independence Bill had not been introduced in Parliament. We knew of course that such a Bill was going to be introduced, but we were not quite sure at the time we settled our second report what the provisions of that Act would finally look like. Well, we did make that report. We have since had this Independence Act. What we have now is a Dominion and a Dominion if I may describe it--possibly it has, been described so in the adaptations of the Government of India Act--I am not sure of it because we are yet to be supplied with copies of the *Gazette Extraordinary* which is supposed to have been issued on the 14th night or the 15th morning: but I take it, Sir, that that adaptation describes this Dominion as a Union comprising those Provinces of what was British India as have not seconded into the new Dominion of Pakistan. It comprises also those Indian States which have acceded to the Dominion. When I said Provinces, I should have referred to two kinds of provinces that we have in this country, namely, the Governors Provinces and the Chief Commissioners, Provinces. In addition to that, there may be other areas which may be included in the Dominion. Thus we have really a Federal Union now in this country, and that Federal Union will have to be administered in accordance with the provisions of the Indian Independence Act and the Government of India Act as modified. Now, Sir, we, in this report of the Union Powers Committee, have nothing to do with the Federal Union which now exists. What we are attempting to establish is a Federation in the future, and, in considering what that Federation should be, we have got to take note of the essentials that any Federal Constitution has to provide for, and one of the essential principles of a Federal Constitution is that it must provide for a method of dividing sovereign powers so that the Government at the Centre and the Governments in the Units are each within a defined sphere, co-ordinate and independent. Perhaps I may quote for the information of the House the definition in orthodox terms of what a Federation should be as visualized by thinkers on political science, by people who have engaged themselves in the framing of Federal constitutions. Here, for instance, is a description which I take from the Report of the Royal Commission on the Australian Constitution in 1929. For this definition the person responsible was Sir Robert Garran, a name very well known in the history of Federal Constitutions. He describes Federation as "a form of government in which sovereignty or political power is divided between the central and local governments so that each of them, within its own sphere, is independent of the other". I call this, Sir, an orthodox definition because, if we look round the world and look at the Federal constitutions that are actually in being, I am almost sure that not one of them will be found to conform rigidly to the actual terms of this definition. The line between the Centre and the Units is not so definitely fixed as this definition would assume. There are relations between the Centre and the Units There are cases where the Units have to depend upon the Centre. There are controlling powers vested in the Federation in emergencies, when the Federation could override the jurisdiction of the Units and take over things into its own hands: so that this absolute independence of functioning, which is contemplated in the definition, has not been realised in practice. But there is one fact which stands out in the history of Federations, and that is this: it is necessary for us to demarcate the sphere within which the Centre on the one hand and the Units on the other could exercise sovereign powers, and that is really at the back of all the attempts that have been made in the various Federations to demarcate the subjects which should be assigned to the Centre and the subjects which should be assigned to the Units or retained by the Units, or retained by the Units, according to the view that is taken as to where residuary power should finally be lodged.

Now, Sir, with regard to our country, we are confronted with problems which have not confronted other Federations in history. We have decided to bring into a Federation areas which were under British sovereignty before the 15th of August, as also areas which were in theory independent but which were under the suzerainty of the British Crown. Now, to bring these two areas under one Federation confronts us with problems which the framers of Federal Constitutions elsewhere have not had to tackle; and there is this further fact. Provinces have to, be provided for under a scheme of government which is not monarchical. Indian States have to come into the Federation and to remain there under a monarchical form of government. But I am one of those who think that the substance of democratic government is not affected by a difference such as the one I have referred to, whether it is a monarchical form of government or it is a republican form of government.

What we are all weded to in this House, so far as I can gauge the opinion of this House, is a Government which is responsible to the Legislature. That responsible government you can achieve under a monarchical system, as well-as under a republican system. That being so, in essence, we can easily get over the superficial difficulties that. are posed by the existence of these two systems in the two areas of this country and develop a Federal Constitution which would bring about a harmonious co-ordination of governmental activities in these two sets of areas.

Well Sir, in framing our Constitution we have kept this constantly in view. On this Committee connected with Union Powers we have kept the Same principle constantly in view.

Now let me draw the attention of the House to one or two more peculiarities in the work that we are called upon to do. There is a certain amount of recognition which has been accorded to the principle of our making a difference between what were British Indian Provinces in the past and the Indian States, as regards the quantum of jurisdiction which we shall assign to the Centre. It has been taken as conceded that the States have to cede jurisdiction, have to accede to the Federation; and while it is recognised that accession should at least be in respect of a certain minimum number of subjects, accession with regard to the other Federal subjects has to be with their consent. I am glad to be able to say that the accredited Constitutional Advisers in Indian States have generally recognised, and also I think the representatives of the people o the Indian States have generally recognised the wisdom of agreeing, if possible, to a wider range of subjects to be assigned to the Centre than the subjects which could come within the four corners of Defence, External Affairs and Communications. But the only thing I would appeal to the House to do is to carry our persuation of these Advisers to the point of their recognising that there is nothing in the Constitution that we shall be framing which could act as a discouragement to their implementing what I know they would be only too glad to implement if they were satisfied on the point I have mentioned.

Now, Sir, the fact that we have to make this distinction between the quantum of jurisdiction that is assigned to the Centre by the States on the one hand and to what were British. Indian Provinces on the other, has materially affected the nature of the Report that this Committee has decided to present to this House. You will notice that there are three lists of subjects attached to the report and they are described as the Federal List, the Provincial List and the Concurrent List. The Federal List is the only one with which the States are "immediately concerned.

Now, there is another point of distinction to which I should draw attention. When we were merely trying to implement the Cabinet Mission Plan, we accepted the proposal of the Cabinet Mission that subjects no assigned to the Centre would be deemed to be assigned to the Provinces, and, in the case of the States, the language used was "Subjects not ceded by the States to the Federation would be retained by them". Now, in substance, it more or less amounted to the same thing, viz., having listed out Federal subjects, what remained, viz., the residuary subjects, would be with the Provinces in the one case and with the States in the other.

Now, Sir, When this Committee met after its first report had been presented, we were relieved of the shackles which we had imposed on ourselves on account of the acceptance of the Cabinet Mission Plan and the Committee came to the conclusion that we should make the Centre in this country as strong as possible consistent with leaving a fairly wide range of subjects to the Provinces in which they would have the utmost freedom to order things as they liked. In accordance with this view, a decision was taken that we should make three exhaustive Lists, one of the Federal subjects, another of the Provincial subjects and the third of the Concurrent subjects and that, if there was any residue left at all, if in the future any subject cropped up which could not be accommodated in one of these three Lists, then that subject should be deemed to remain with the Centre so far as the Provinces are concerned.

This decision, however, is not one which the Committee has applied to the States. You will find a reference to this in the Report. What is said there is that these residuary subjects will remain with the States unless the States are willing to cede them to the Centre. Well, I do not know if those who represent the States in this House will take any decision of the kind which perhaps the Committee hoped for when it said so; but we have got to take things as they are.

There is another matter which it is important that we should recognise. Residuary subjects in the case of provinces are subjects which are not accommodated in any of the three long Lists that we have appended to the Report. Residuary subjects in the case of the States would really mean all subjects which are not included in the Federal List. I want to draw attention to this, because I know my Hon'ble friend Dr. Ambedkar would rather see that the States accede also on certain items which are included in the Concurrent List, if not the whole of that list. There is a school of opinion in favour, of that. But, as things stand now, the report stands today, all the subjects included in the Provincial List, all the subjects included in the Concurrent List, and whatever subjects may not be included in the federal list are with the States. That is a distinction which I think it is necessary for the House to remember in considering this report. Sir, so far as this report is concerned, there is one matter to which I should like to draw, attention if only for the purpose of avoiding possible apprehensions as to whether certain things are included in it or excluded from it. The first report gave a list of subjects under each of these four heads. It also made certain recommendations as regards the inclusion of certain other provisions in the Constitution which may not be included in the lists themselves, for instance the last sentence of paragraph 2 (a) of the first report which referred to our making some provision so far as defence matters were concerned similar to the provisions contained in sections 102 and 106 (a) of the Government of India Act. Then, Sir, there is the penultimate sub-paragraph of para 2 (d) in which, in defence to the wishes of the representatives of States, it was decided by the Committee that the States should have a certain amount of time within which they could re-order their financial systems in such a way that they could be brought up to the standard of the rest of India and that provision, is there and the second report does not cancel it.

Then, Sir, the second report itself draws attention to certain other matters, specific matters..........

Mr. H. V. Kamath: Mr. President, I submit that the loud speaker system is not behaving as well as it used to till the 15th,

Mr. President: It has caught the infection of being independent, we are going to have it checked up and. put right.

Mr. N. Gopalaswami Ayyangar: Sir, what I wish to say is that though the motion is that the second report of this Committee be taken into consideration, I think, the House is entitled to take into consideration also those portions of the first report which are not in conflict with what is said in the second one. Sir, with regard to these, lists themselves, any person who superficially glances through these lists might probably get the impression that they are too long, particularly the federal list which consist of 87 items. People have run away with the impression that this Committee has stolen a number of items from the provincial and concurrent lists and put them in the federal list and made it unduly long. I think if honourable members would scrutinise these lists and compare them with the lists in the Act of 1935 it would be difficult for them to find-perhaps with one or two stray exceptions any cases where we have encroached upon the sphere assigned to the provinces by that Act. There is also one other point that I wish to make so far as the federal list is concerned. We have cut up a number of items in the federal list into separate items and that is one reason why the number has increased so much. In other cases we have adopted certain items from other constitutions which we did not find in the Government of India Act, but none of are in the opinion of the Committee of such a character that they should necessarily go either in the provincial or concurrent list.

There is another matter in this connection to which perhaps, I may refer. One of the headaches of the Indian Independence Act, I mean the headaches caused in this country by the Indian Independence Act, was the manner in which practically it encouraged the cutting, of the political connection between the Government of India and the Governments of the Indian States. If that Act, or rather if that Bill had become law in the form in which it was originally framed, perhaps the disconnection would have been complete, but certain steps were taken in order to introduce into that Bill provisions which were intended to avert that calamity. But even so what was Pitt into the Act as enacted by Parliament, was not half of what was demanded from here with the full support of the statesman who is now tile Governor-General of the Dominion. What we got was only a partial recognition of the point of view that was urged from here, and that only tried to maintain certain economic connections that exist between the Centre and the Indian States. It left the continuance of the political connection very much in the air. In fact, legally speaking it cut off that connection, unless some steps were taken to revise that connection by some means or other, and I may here say that, happily for this country, this revival of the connection has been brought about, and the result is that today we are in the Dominion of India under the Indian Independence Act in a much better position as regards this political connection than we were under the Act of 1935.

The overwhelming body of Slates coming within the geographical boundaries of the Indian Dominion have acceded to the Dominion. They have accepted the position that the Dominion can make laws in respect of the subjects on which they have acceded, a state of things which did not exist before the 15th of August. They have, most of them, I believe, sent representatives to the Constituent Assembly and this Constituent Assembly is going to function also as the Legislature of our Dominion, so that the political and the constitutional connection that exists today between the States and the Centre is much. closer than it ever was during the last 150 years. I only say political and constitutional connection. I do not refer to the effectiveness of the control that was exercised over Indian States in the past. That may have been perhaps a little more efficient than may be possible under the existing state of things, but what I wish to draw particular attention to is that we have erected an organic political and constitutional structure which has commenced to function from the 15th of August. The credit for this, I think, should primarily go to the great awakening of public opinion in the States. It--should next go, I think, to the well considered policy of inviting the accession of Indian-States to the Dominion which was announced by Sardar Vallabhbhai Patel who presides over the States Department today. But above all I should say that the actual accession of practically the overwhelming bulk of Indian States, the credit for that should go to the statesmanship and the genius for what he-himself has called open diplomacy with which Lord Mount batten has roped them in. I say this advisedly, because I think that but for the energy and the consummate skill which he has employed in this matter, we might not have reached the result which we are so happy to see today.

Now, Sir, I was mentioning this in order to point out that there are some rather hazy opinions as to what this accession means. It is said that the States have acceded only on three subjects. It is true the are three subjects, described in. very broad terms but the actual Instrument of Accession which they have signed has detailed the items which come under each of these three heads and you will find that they really come to somewhere about 18 or 20. If we cut them up as in the list attached to the Union Powers Committee's Report, the number will probably be larger. The reason why I point out this particular fact is that representatives of States who are in this House are very subtantially interested in the business which has got to be transacted here whether it is by way of constitution making or it is by way of legislation or control over central administration. They are vitally interested in this matter and I should like all of them to feel that there is absolutely no distinction between them and other representatives of India who are in this House. Now, Sir, having said that, I should finally refer to these three lists themselves the first question I dare say which will exercise the minds of many Honourable Members here would be whether after all, this kind of distinction as regards the lodgement of the residuary powers should continue. There, are two ways of removing that distinction. One is perhaps to go back to the Cabinet Mission Plan in view of the fact that we have exhaustively described the subjects in the three lists--and lodge the residuary powers in the case of the Provinces also in those Provinces. The second proposition is one which the States might consider. Very eminent statesmen connected with the administration of Indian States have contended that what they wanted was a strong Centre and that if the Centre was made strong their hesitations about coming into the Constituent Assembly and participating in its labour would disappear. Well, if that view is concurred in by their colleagues here as also by the peoples' representatives from the Indian States, it is quite up to them to consider the alternative of modifying the report of this Committee and agreeing to the lodgement of residuary powers in the Centre itself. Well, Sir, that will be one of the things which this House will have very seriously to consider. The report of the Committee is, I must emphasize however in favour of residuary powers being with the States in the case of the States and with the Centre in the case of the

Provinces. Sir, I do not wish to take up more of the time of the House. I move.

Maulana Hasrat Mohani: *[Mr. President. Before this, a mistake was committed by Sardar Patel, and I think, now, my friend Sir N. Gopalaswami is committing a greater blunder. He is an eminent jurist. But I would bag you to consider as to what course you are adopting now. At that time I asked Sardar Patel that he had not till then decided any principle about the centre nor had it been decided as to what type of Constitution the Union would have, whether it would be a Union of the dominion, or a republic? If it is a republic then would it be socialist or nationalist? In short, you have not decided as to what shall be its shape. You have simply said that all the powers shall vest in the Centre, and the Centre shall probably assume all Powers. I say that there cannot be any greater blunder than this. It means that you consider that all the members here are fools. That is why I have raised this objection after full consideration. Replying to it, Pandit Nehru said that in he Resolution on objectives the word republic' was present. Then I kept quiet but I wish to know what you are dreaming of now. Pandit Nehru should know that our British Imperialist friends have already bound you, and they will now keep you in their dominion and for that they have created a new device. And in creating it France, Holland, England, America and the last in the queue. Chiang-Kai-Shek-the worst of men-have combined together. It is this: They have invented a sort of a Republican Dominion. They are thrusting this Republican Dominion on Indonesia. Holland is thrusting this Republican Dominion on Indonesia. France is thrusting this Republic Dominion on Indo-China, Vietnam. You have been made fools. They are going to thrust the same kind of Republican Indian Dominion on you and I am sure that you will have no escape from it. You will have to remain a dominion forever. They are past masters in the art of jugglery of words and double dealing. They say one thing and mean quite another thing. Our Governor-General, Lord Mount batten, has said that we have compelled all the Indian States to join the Indian Union. This appears a fine performance, that we have brought all the Indian States under our thumb. I say that you have not brought them under your control, rather you have gone under their control. You will naturally ask, how? It is like this: when you frame a Union Constitution, then what will happen? Your reply will be that till now it is only Indian dominion. No doubt you have got it and also along with that the right of changing the constitution. Now you have to think as to how the constitution shall be altered. Nothing can be passed unless three-fourths of the members agree to it. Those States, which shall now always be in the dominion, are almost one-third of the Union's strength. I ask you whether the representatives of the States, who have acceded to the Union, will also agree to change the Indian dominion into Socialist Republic? If that is so, you are deceiving yourselves. You are deceiving your own conscience if you think that you can get out of this wretched Dominion Status. You have go, one-third of your members belonging to the States and you have proposed that for changing the constitution, you will require a majority of three-fourths of the members of the Constituent Assembly. Don't you see that it will become impossible for you to change your constitution. You have condemned yourself to remain within the British Empire, in the British Commonwealth as a Dominion. Therefore, I say you have been made fools. I. do not know how these friends of mine of the Congress High Command. who are my friends and coworkers, have come to accept this, Besides this Pandit Nehru has said that the Resolution M. objectives has been passed and now no one has got the right to say anything. I say that what he calls republic is not a real republic. It is that contemptible thing which the British Imperialists call by other names. Britishers have created the same thing in Indonesia. It is not hidden from anyone and therefore you should not commit the mistake, which Indonesians have committed.]*

Mr. M. S. Aney (Deccan States) : On a point of order, Sir. Can a member make a bi-lingual speech?

Mr. President: I suppose that it is for the convenience of other members that he is interpreting himself partly in the English language.

Maulana Hasrat Mohani: *[Thank you Sir. In this connection, I think it necessary to point out to you that the independence, which you have got, was already, christened as Dominion Status but they openly call it as an independent status. They never meant full independence. Who will be bigger fools than us, who knowing that we are being cheated, are celebrating our independence and are illuminating our houses? I can't understand this As I am not given to oppose the opinion of the majority, I kept quiet then, but now, I say that real independence has not come to us. I have got eminent jurists and wise men as my friends here but it seems that the vision of all is befogged and they seem to be in a dream. I was saying that members of the Congress High Command are my friends and have been my co-workers. I came here to this Constituent Assembly through the Muslim League, generally for the purpose of cooperating with my old friends. But now I find that they do not want my co-operation and they are rejecting my co-operation. There is no alternative left for me but to oppose them tooth and nail, and I oppose them on the ground that I have just explained that they have been made fools by these British Imperialists.

Another proof of the fact that you have been befooled is that even such an enemy of Indian freedom as Mr. Churchill is, went out of his way and congratulated the Labour Government for having this thing passed. He said. "I do not mind whether this is only for a short time. It is quite sufficient for me that they have accepted for the time being to remain a Dominion." Mr. Churchill is clever enough you know that. I am very sorry and it is very surprising that people of such keen intellect as my friend Mr. Rajagopalachari, Dr. Radhakrishnan and Dr. Ambedkar do not see this trick and this deception.

You have stated that you have agreed to take in these Indian States and you have taken one-third of your members from the States. You are going to make a provision that to change your constitution, to change from a Dominion to a socialist Republic you will require a majority of three-fourths. This is obviously impossible. So long as these representatives of the States are part of your Assembly of your Parliament, you cannot get out of this wretched thing-Dominion and commonwealth. I wish to know, what has happened to you?. I could understand your demand for a strong Centre till Pakistan was not separated you apprehended trouble from the Muslim majority provinces, but not now when Pakistan has been separated.]*

Mr. Mohammad Sharif (Mysore State) : May I request you to ask the gentleman to come to the point?

Maulana Hasrat Mohani: *[Yes, I am speaking what objections I had to offer to Pandit Jawaharlal Nehru's previous Union Constitution Scheme the same objection applies to this scheme also because these are identical. I maintain that the more natural and better thing would be to hand over all powers to the units, and then they may give an or these three subjects, *viz.* Defence, Foreign Affairs and Communications to the Centre, rather than handing over all powers to the Centre first which in its turn would delegate whatever powers it chooses to the unit. I don't believe in any Empire, Kingdom, Dominions or Commonwealth. We have had enough of these things. Now we will have none of them neither Emperor nor dictator nor Commonwealth nor Dominion. We win have our Union only of Socialist Republics, nothing less than that.

This is my general objection, but since you have included the States Woo, my objection becomes ten times stronger. What powers have you given to our provinces? To my mind, you have curtailed their rights and powers which they had got even before independence. You have not increased them even by an iota. Rather you have curtailed them. But this depends on your sweet will as you have got the majority. It is but natural that all the members here are compelled to be bound by the Congress decisions. In fact, there should be no question of the Congress Party or the Muslim League Party as you have forsaken communalism Justice demands that every member here should be told that they can live as members of political parties and not as Hindus & Muslims.

What is the necessity for your having a strong centre vesting all powers in the centre only? What is the ground and what is your objective?

Sir, you see I have said all this as you have given no powers to the provinces, and I point doubt this to you, for, you treat us as if an of us were fools.

Therefore I ask my friend Mr. Gopalaswami Ayyangar not to befool himself by saying that you want a strong Centre. I don't recognize that Centre. The only Centre that I will recognize will be that of our Union of Socialist Republics.]*

Mr. Tajmul Husain: I would like to know whether the Maulana wants a weak centre or a strong centre.

Mr. President: *[Maulana Sahib, you are at liberty to have your say on the motion you are moving i.e., whether this resolution should be taken into consideration or not.]*

Maulana Hasrat Mohani: *[I say you could have intertained this suspicion till Pakistan had not been separated.]*

Mr. President: Order, order. Maulana, you are really straying beyond the scope of the discussion. You have moved a Resolution that the consideration of the Report be adjourned. Now, you are going into the merits of the Report itself apart from that, you have brought in many other matters which have no relevance to your Resolution.

Maulana Hasrat Mohani: *[I would like to say that you have roped in the States with the bait that they would continue to exercise all powers of the Centre as before, except Defence, Foreign Affairs and Communications. I strongly object to this. He (Mr. Gopalaswami Ayyangar) thinks he is the only clever lawyer and every body else is a fool.]*

Mr. President: Order, order. Maulana, I think you had better confine yourself to your own motion.

Maulana Hasrat Mohani: *[If this right has been given to them (the States) then at least similar or more rights should be given to the Provinces otherwise this is all a fraud. Hence, unless you clarify the whole thing, it is all nonsense and needs no consideration.]*

Mr. President: The effect of the proposition which is now before the House is that the consideration of the report which has been moved by Mr. Gopalaswami Ayyangar be adjourned until a particular time which is mentioned in it. Members are now free to express themselves on that. I would ask members not to go into the merits of the Report itself at this stage because it is only a question of postponing the consideration of the Report.

Shri Balkrishna Sharma: For my own information, Sir, I would like to know whether it is possible for any member to speak for or against particular motion unless he tries to bring out the salient features of the Report and to say that in view of our not having completed the Union Constitution we should not proceed with it. That is my difficulty. Mr. President: I think it is possible for members to confine themselves to the motion before the House.. If they want to bring any ancillary points from the Report for arguing their case, I would not object to that, but I would not like the merits of the Report to be discussed at this stage.

Diwan Chaman Lall (East Punjab: General) : On a point of order, Sir. The motion before us is the one by Mr. Gopalaswami Ayyangar that the report be taken into consideration, to which an amendment hag been moved by the Maulana. Are we to confine ourselves to the terms of the amendment or are we going to discuss the original motion by Mr. Gopalaswami Ayyangar?

Mr. President: I am taking only the amendment into consideration at the present moment, so that, when the amendment has been disposed of, we can go into the Resolution. If we go into the merits now, the discussion may get desultory; therefore I want to concentrate on the amendment for adjourning the discussion.

Shri Mahavir Tyagi: On a point of order, Sir.

Mr. President: Point of Order on what ?

Shri Mahavir Tyagi: On the amendment which has been moved by Maulana Hasrat Mohani.

Mr. President: I have already given my ruling on that. The question under discussion is a motion of adjournment.

Shri Mahavir Tyagi: But, Sir, I rise to ask for your ruling on this question, namely that I feel that this amendment itself is out of order.

Mr. President: How ?

Shri Mahavir Tyagi: It is simply a negation of the original question before the House. Therefore, I-submit that this amendment is out of order.

Mr. President : I don't think it is out of order, because it is a motion for adjourning the discussion of the original motion.

Mr. Himmat Singh R. Maheshwari (Sikkim and Cooch Behar: Group) Sir, I support the amendment, though for reasons somewhat different from those adduced by the reversed Maulana Hasrat Mohani, but before I proceed to express my views, I would like to share with the House a Persian couplet which has come to my mind as a result of hearing the' speech of the venerable Maulana. The couplet runs as follows:-

With your permission, Sir, I shall translate this couplet.

"My beloved speaks Turkish. (In this case Hindustani interspersed with English, not Hindi interspersed with Urdu). It would be a good thing if his tongue had been within mine."

I only plead guilty to being unable to speak the brilliant Turkish which he spoke.

Coming to the subject, the Report of July 1947 which is before the House is in my opinion, Already out of date for two reasons. The first reason is that the Indian Independence Act was passed after the Report had been drawn up, and the second reason is that towards the end of July certain decisions were taken by the Government of India and the States which-led to the accession of a large number of States and to the execution by them of Instruments of Accession and Standstill Agreements. The Report before the House, Sir, does not take into account fully the changes that have been brought about since it was first written. Even as regards the subjects to be dealt with in the Federal Legislative List, an obvious difference has to be observed between the Provinces and the States. The States have acceded in respect of three subjects only, while, as I understand it, the Provinces are willing to surrender to the Centre a number of other subjects for not only laying down the law or regulating the policy, but also for administration. The expenditure of the Centre on the three subjects in respect of which the Indian State acceded to the Dominion or are likely to accede to the Federation in the future, will cost, let us say, a certain amount. In addition the Centre will have to spend a large sum of money on other subjects for the benefit of the provinces alone. Therefore, Sir, the determination of the items of taxation which should be imposed in order to enable the Centre to meet its expenditure is a little premature. The States obviously ate not to be made to pay for the expenditure on subjects in respect of which they do not get any benefit.

Shri Jaspat Roy Kapoor (United Provinces : General) : Sir, I understand the Honourable Speaker is a member of the Union Powers Committee and as such is it open to him to object to the consideration of the Report of the Committee of which he is a member?

Mr. Himmat Singh K. Maheshwari: I am afraid I was not a member of that Committee.

Shri Jaspat Roy Kapoor: I am sorry.

Mr. Himmat Singh K. Maheshwari: The desire of this House, Sir, to create a strong Centre is a very legitimate desire; but I fear it is sometimes forgotten that a strong Centre does not necessarily mean a weak Province or a weak State. In any case the States have enjoyed a much larger measure of autonomy in the past than the Provinces have and this distinction will, I am afraid, have to be maintained whether we like it or not. In para 3 of the Second Report now before us, it is stated that the application to States in general, of the Federal List of subjects in so far as it goes beyond the 16th May Statement may....

Mr. N. Gopalaswami Ayyangar: May I rise to a point of order ? I thought you decided, Sir, that the present discussion should be confined to the adjournment motion.

Mr. Himmat Singh K. Maheshwari: I am only drawing the attention of the House to a very small point, The application to the States in general of the Federal List of subjects in so far as it goes beyond tile 16th May Statement should be with their consent. It follows from this that In their case, the residuary powers would vest with them unless they consent to their vesting them with the Centre. In the Federal Legislative List before us, List I in the Appendix, there are included a number of items which do not strictly follow from the three subjects in respect of which the States intend accede. The more Logical course then. Sir, would be to split up the Federal Legislative List into two lists.

Mr. N. Gopalaswami Ayyangar: Are we going into the merits Sir?

Mr. Himmat Singh K. Maheshwari: I am only stating the points, which will justify postponing consideration of the Report.

Mr. A. P. Pattani (Western India States) : Sir, the constitution cannot be drawn up unless these powers are first decided upon. The motion asks that these powers may be considered after the constitution has been drawn tip. I submit the constitution cannot be drawn up unless these powers are decided upon.

Mr. Himmat Singh K. Maheshwari: Since the Federal Legislative List is likely to undergo a drastic revision and overhauling Into two sections, one applicable to the Union and the other applicable to the Provinces only, it would be only proper for this House to agree to a postponement of the consideration of this Report.

I venture to suggest, also Sir, that in order that the Report may be considered afresh in the context of the vital changes that have taken place during the last four weeks, a wider committee may be' appointed by you, by the President, with a larger proportion of States, Representatives with a view to re-examine the Report and to submit a further report within as brief a time as possible.

We have at present one further difficulty In considering this Report. There is the original report of April 1947, and there is also the second report of July 1947. Some portions of the April Report will hold good and some other portions will not. Members will find it very difficult to pick out the exact sentences which hold good in either report. A comparison of the items given in the April and July Reports and those 1n the Federal Legislative List given in the Government of India Act, 1935, cod me six hours. I think, Sir, that the House will be handicapped very greatly in considering the Report at this stage.

With these few words I hope that the House-will Instead of attempting to rush through this important piece Of work, agree to give move thought and more time so that the work we do may be of lasting benefit to the Provinces and the States.

Shri Gopikrishna Vijayavargiya (Gwalior State) : *[Mr. President under the prevalent conditions, we cannot afford to leave these matters undecided. The amendment of Maulana Hasrat Mohani which suggests postponement of these matters is improper. I think and I feel that the situation in the country is changing so fast that the work of constitution making should be concluded as soon as possible and we should take up the work of administration and planning and solve the problems I of the people. The arguments advanced by Maulana Sahib are baseless. It is a surprising coincidence that the Maulana and a Prime Minister of an Indian State both demand postponement of the consideration of the Union Power Committee's Report on the ground that we need socialist republic. Both advance the same argument for its postponement. This is not the correct way to bring about socialism. The Socialist party can function even under this constitution. We desire to make our country United and great. For this, it is no argument that the Centre should, be given no power and all power should vest with the provinces. So far as, I can follow the speech of Maulana Sahib, his contention is that no power should be given to the Centre and India should continue in fragments. It is necessary that India should be strong. Historically India has been divided for ages but at present it is imperatively necessary that we should have a strong Centre.

I come from a State and I insist that the Centre must be very strong. would appeal to the rulers, to their ministers and to the States representatives who are present here, that they all should make the Centre, very strong by conceding to it the maximum power so that India may become a very strong country. Therefore, the arguments advanced here or the postponement of the report are wrong and postponement would e harmful to the country. We cannot afford delay. As Mr. Pattani has just now said, we cannot even outline the constitution unless the questions relating to the Union Powers are decided. Therefore, it is very necessary that we should proceed to take into consideration the matters elating to the Union. Powers and not postpone them.]*

Mr. Naziruddin Ahmed (West Bengal: Muslim) : Sir, I desire to support this motion of adjournment but not to the, extent proposed in the amendment itself or on the grounds on which it is supported. I wish to place before this House certain difficulties which confront Members ho want to tackle the problem; and on that ground as well as on other rounds, I should ask the House to consider the suggestion that committee be appointed-with regard to the personnel of which I have nothing to say-to consolidate the two reports, one dated the 28th April id the other which is under consideration, and then submit before the house a fresh report, taking into account certain momentous constitutional changes which have taken place after the second report.

I do not desire to follow the alternate expressions of the learned over in Urdu and English, which seem to me akin to alternate currents electricity. It has put some members to great disadvantage and certainly put some strain on the reporters, some of whom are experts in king down only, English speeches and others only Urdu speeches.

Sir, I submit that the report of the 28th April is entirely out of date but yet the Honourable Mover Mr. Ayyangar. has paid that those parts of the report which are not inconsistent with the report under consideration may also be considered. On behalf of the members who have been elected on the statement of June 3rd, I should say that the first report is not before us and the second report is also by the time largely out of date--as has been pointed out--on the ground that the Independence of India Act has come into being after its publication. A fresh report is thus clearly called for.

Then again another difficulty has crept in. We knew from newspaper reports that the States acceded with regard to three subjects--defence external affairs and communications. But Mr. Ayyangar has pointed out that the actual Instruments of Accession really deal with subject under no less than 18 or 20 distinct heads.

Mr. Mahomed Sherrif: *[Mr. President, I listened attentively to the speech of Maulana Hasrat Mohani. He has adduced many reasons for the postponement of the resolution. I appreciate the sentiments which compelled Maulana Sahib to make his speech. Though I do not fully agree with the Socialist Republic about which he has spoken, to my mind the motion for the postponement of the resolution is indeed a good one. A perusal of the three lists attached to this report, pertaining to the Union Powers reveals that the Centre is to wield all powers as regards the States. You know that about a fortnight ago, the Viceroy had issued a statement saying that so far as the relations between the States and the Constituent Assembly are concerned, he does not want to interfere in the internal affairs of the States. But a, perusal of the Union Powers Committee's report makes painful reading; because the Centre, in addition to the three subjects mentioned above, wants lo wield other powers as well. Our central Congress Party which lo a very strong party, has announced that it would not like to interfere in the internal administration of a State; but the report before us is not so reassuring as it ought to have been. In this connection I want to state that the consideration of the report should be postponed for the time being. This has also been demanded by the Previous speaker. A Committee including the representatives of the States should be formed and this report should be presented before it for its consideration, and the decision reached-by, should be placed before us for our reconsideration.]*

Mr. Naziruddin Ahmed: We are not, I believe, aware of the existence of any such documents I think that copies of those important documents should be supplied to us at once. It is very important in view of the fact that some subjects in the lists will deal with the States. In the absence of these important documents, we are not in a position to decide as to how far the Lists are applicable to the States.

Then again, it has been pointed out by a speaker this morning that a distinction should be &awn between the Lists applicable to the Provinces and those relating to the States. As the two are jumbled together, it is difficult to distinguish them and try to find out what amendments should be suggested.

There are also other difficulties. The Honourable Mover of the original motion has explained. I submit respectfully, In a very lucid speech, the whole subject in a masterly way. But the subject itself to extremely technical and involved. It therefore requires very careful consideration by the Members to enable them to fully appreciate the implications of the various lists and the subject under consideration. For all these reasons, I should submit that the consideration be postponed, not till Doomsday as has been suggested, but for sometime. I should suggest that the Honourable Mover of the original motion should agree to the appointment of a small committee to sit and consider the whole thing in the light of the changes and give us a consolidated Report making clear the distinction between the Lists applicable to the Provinces, to the States and to the Centre. I think this is. a reasonable request. It is not meant to delay matters. We are as anxious to expedite matters as others and so I think that things should be facilitated by adopting the course which I suggest. With these few words I submit that a little time should be given to us and a more comprehensive Report should be made to enable us to easily follow the subject.

Mr. President: Diwan Chaman Lal will now speak.

Shri Algu Rai Shastri (United Provinces: General) : *[Mr. President, This amendment should be put to vote now. Much time has been devoted to it and no further discussion Is necessary.]*

Mr. President: I have already called upon Diwan Chaman Lal to speak. After his speech I will apply the closure.

Diwan Chaman Lal: Sir, as I listened to the debate I was surprised to find that very able and intelligent leaders of our country were obviously under some; misapprehension in regard to the Motion that has been moved by Shri N. Gopalaswami Ayyangar. It struck me that they have perhaps not even read the Report before moving the motion for adjournment of consideration.

The main proposition before the House is this; The Report has been presented to this house in-two parts, one in the month of April and the other, in August, one, in other words, before the announcement of 3rd June and the other after that announcement. It has been moved that the two parts of this Report be taken into consideration.

Now, Maulana Hasrat Mohani raised the point that it should not be taken into consideration unless and until the final report of the Union Constitution Committee has been placed before the House. You must realise--it is a matter of pure and simple commonsense--that the final report of the Union Constitution Committee cannot be presented to this House unless you tell those concerned what powers the Union Constitution is going to have and unless and until you allocate the powers between the Provinces and the Centre and so on. Unless and until you are sure of your own ground as to what powers you are going to have and what powers the provinces are going to have and what the subjects in the Concurrent List are going to be you cannot present any final report. Therefore I submit that there is a logical fault in the very arguments used by Maulana Hasrat Mohani.

The other speaker who supported the motion for the adjournment of consideration of the Report is I believe a representative of the State of Cooch Behar. He is the Dew an of that State. He is a statesman who is supposed to have the destinies of the people of that State in his hand. He raised the extraordinary objection: You have given us one report; you have given us a second report. We are unable to understand the two reports. Therefore if a third report is given to us that would help. us to understand the first two reports. *(Laughter)*. I do submit that the pro position of Shri Gopalaswami Ayyangar is a simple one. This House has agreed to have some sort of Federation and all that Shri Gopalaswami Ayyangar asks us to decide is what powers this Federation is to have. You have the right at this stage to discuss the quality and the quantity of the powers you want. You can point out, as some have pointed out, that the Federal authority of the Union should be confined to the three subjects enumerated. The first report gives you details of the three subjects enumerated. The first report gives you details of the three subjects, the powers that will vest with the Centre, the Provinces, etc. The report goes on to say that, in their opinion, there are certain residuary powers which may also be handed over to the Union and that there are certain other powers, which did not arise under the terms of the May, 16 Plan, which may be taken possession of by the Centre. That is what the first report says. There is no ambiguity about it. The details-also have been given.

The second report came after the statement of June 3 when the House decided that the Centre should be strong. This deals with the allocation of powers between the Centre and the Provinces and the three Lists are before us, the Federal List, the Provincial List, and the Con. current List. Now, is there anything in these Lists to which anybody objects? This is the time for raising such objections, If you. do not want certain powers to be allocated to the Centre by the States or by the Provinces this is the time to discuss the matter. I cannot see either reason or logic behind the demand for the postponement of this issue, I submit that this is merely a dilatory motion which cannot be supported by any reasonable argument, We should proceed to the discussion of the various subjects dealt with in the Report

Mr. President: Closure has been moved. I will put the closure motion to the House. The Question is:

"That the question be now put."

The motion was adopted.

Mr. N. Gopalaswami Ayyangar: I owe the courtesy to the House to make a reply to the debate that, has taken place on this motion for adjournment. Otherwise I should have thought any elaborate reply, from me was unnecessary. I only wish to say that the speech made by Dewan Chaman Lal is a complete answer to the arguments advanced in favour of the motion for adjournment. I adopt the points that Dewan Chaman Lal made and I wish to say nothing more. I request you, Sir, to put this motion to the vote.

Mr. President I will now put the motion for adjournment moved by, Maulana Hasrat Mohani to the vote. It runs thus:

"That the Report of the Union Powers Committee be not taken into consideration before the revised and final report of the Union Constitution as well as of the modified Objectives Resolution, as suggested by Pandit Jawaharlal Nehru himself. are considered in the next Session of the Constituent Assembly."

The motion was negatived.

Mr. President : Now, we shall take up the amendments of which I have received notice. The first amendment is by Mr. D. P. Khaitan No. I in List II.

Shri D. P. Khaitan (West Bengal: General) : Mr. President, Sir, in as much as in the motion moved by Shri Gopalaswami Ayyangar only the second report was mentioned, I gave notice of an amendment.

Mr. Tajamul Husain: I rise on a point of order. The original motion moved by Mr. Gopalaswami Ayyangar has not been debated. We have only discussed the motion for adjournment and it is lost. Now, we should take up the original motion.

Mr. President: In discussing the original motion, these amendments arise. Now, this is an amendment to the original motion moved by Mr. Gopalaswami Ayyanggr.

Mr. N. Gopalaswami Ayyangar: Perhaps, it would be correct Parliamentary procedure to put the motion to take the report into consideration, to the vote, and, after that is carried, the amendments may be taken up one by one. I think the Honourable Member is correct.

Mr. President: Then I will Put the original motion that the report be taken into consideration to the vote. Does any member wish to speak on that motion?

Mr. Hussain Imam: Mr. President, I believe that we are taking a very. important decision on this most important subject. It is necessary therefore, that we should consider calmly and quietly all the implications of this report. I am, Sir, speaking not on behalf of the Muslim League Party but as a citizen of India. I think that it is necessary that the approach of this Constituent Assembly should be different from that of Mr. Gopalaswami Ayyaagar. I feel that those who are rich should not be allowed to get richer and those who are poor should not be reduced to further poverty. I mean that those of us who have the good fortune or the bad fortune to live in Indian States, where they have no voice in the administration of the State where they have no say in the Legislative matters, should not be left worse off than they were formerly. The position today is that in what was formerly British India, you have legislatures, democracy and popular representatives to administer them. In the States you have none of these three. Yet in paragraph 3 it is stated that the Indian States will be subject to control only in so far as they care to cede to the Centre. Now, who are these people who will make this decision. The Rulers of the States have been given autonomy to rule as they like. I have great respect for some of our modern States. There are a few States which are administered better than British India, who in matters of social justice and social equality can give a lead to British India. There are certain States which are comparable in size to the smaller provinces and the Chief, Commissioners' areas, but the majority of the five hundred odd States are called States because of the courtesy and pleasure of the Political Department of the old Government of India. In the first-place, Sir, I want that these rights and privileges which are being given to Indian States should not be handed over to the 562 States. At the most there are two dozen or three dozen States which can economically speaking have even a semblance of provincial autonomy. Provincial autonomy we should give to some of the States but the vast majority of the State that exist in India must either join up with other States and form themselves into units or they must be linked up with British India. It is wrong on our part to allow these autocratic Rulers to exercise more power than what the Bombay legislature can do or the C. R. Ministry can do. These are representatives of the people. Yet they cannot exercise those powers which are "exercised by these autocratic Rulers of the States.

The Central Government has to defray the expenses for the defence of the country. What contribution are the Indian States going to make towards defence costs either on a per capita basis or an income basis? They say that the provinces are making no contribution. But these provinces pay federal taxes which the States want to realise for themselves. The rights of the Indian States to impose federal taxes must be taken away. This is my first and fundamental difference with this report. No one other than the Federal authority should impose federal taxes, whether it is British or Indian States. I would not except from, this sweeping remark even the most modern State of India, but I would concede this far that. I am prepared to allow the Indian States the same amount of powers which you have given under list II to the province. No excess over that should be allowed to any Indian State. The concurrent list should also apply equally to old British India and the Indian States both. British India does not exist today but we are inheriting all the evils thereof. The evils that were brought about by giving wide powers to nonentities should not be sanctified by the approval of this House. We shall have to amend para. 3 so as to bring under its scope the over-riding authority of the Centre to impose federal taxes on all Units.

I may also mention, Sir, one important factor in this connection. Stress. has been laid in the Instrument of Accession that so far it goes beyond the Statement of May 16th, it should be with the consent of the States. The May 16th Statement is scrapped. It no longer exists. It was one of the points why there was the break-up, why the June 3rd Statement was made. For every. other purpose you have scrapped the May 16th Statement; for the purpose of the Indian States alone you are keeping it alive. Groups have been scrapped, the division of the Central powers into Central and group has been scrapped. The number of units have been scrapped. Everything has been scrapped and as a Sovereign Body we are not bound by the 16th May Statement. It is wrong to take shelter behind the plea that the 16th May Statement provided this and that Whatever you had provided has been erased by the functions of the midnight of the 14th. Now you have got no drawbacks. Even the Independence Act which has been passed by the British House of Commons is now before us and we can amend it. That right has been given to you. So, I claim, Sir, that it is wrong to take shelter behind the 16th May Statement. If the States are not prepared to come in, I think, then it is better that they should remain out and by economic pressures and other strong persuasive measures which the Central Government can apply we can bring them round. But what do we want them to do? We do riot want in any way to usurp their powers. We want to make them what they really are-units of a Federation. We have never heard of units exercising different powers, functions and taxation. It is something which will be quite approaching to the principles of democracy as well and it is as such that I do request my friends of the Constituent Assembly to consider this matter calmly and come to a decision not actuated by any malice or by any ill-will toward the Indian States. We must do it frankly and honestly and let the Indian States also be honest, Why should they claim a right which my friend Pandit Shukla does not claim for this C.
P.? If he is content with that power why should Rewa and other States lying in the C. P. claim a higher right? It is only equity and justice. It means that there should be uniformity in these two respects. The Indian States must not have any more power thin the units either in taxation or legislation.

Mr. President : It seems there is no other speaker willing to speak. So I shall put the motion to vote. It is really five minutes to one.

An Honourable Member: Closure.

Another Honourable Member: No, Sir, it will be very unfair.

Mr. President: One speaker has spoken about it. Is it the wish of the 'House that there should be further discussion?

Many Honourable Members: Yes, Sir.

Mr. President: Any one who wishes to speak may do so for five minutes. There are still five minutes left.

Shri K. Santhanam: Mr. President, I do not want to go into any details of the distribution of powers as presented to us by the Union Powers Committee. I will have my own say on each item when it comes up for discussion, but there are certain general considerations which we have to keep in mind when we come to the discussions of these items. It is a great pity that our politics have been subject to violent oscillations during the last six months with the result that the minds of our own leaders also have had to go from one extreme to the other. In the Cabinet Mission Plan the idea was that the Units should be absolutely autonomous and even sovereign, and that they should surrender a small modicum of power to the Centre. Of course, there was the complication of the Group Constitution, and the whole thing was left vague but so far as the Central Government was concerned it was to have very limited powers. And some of our leaders were put on a Committee to define those powers and they tried their best to stretch these powers to their maximum. I doubt, if the Cabinet Mission's Scheme had come into operation, whether that stretching would have stood any real scrutiny. But the position was suddenly altered by the June 3rd plan and the resulting Independence Act. Now the position is we have got almost a unitary Centre which is trying to hand over certain powers to the Provinces and the whole plan of the Union Powers Committee is based on that procedure. They have tried to take the Government of India Act as their basis and considered what items can be transferred from the Provincial List to the concurrent list and Provincial list to the Federal list. I am afraid they have made a wrong approach to this problem. I too am anxious to have a strong Government for this country but my conception of strength of Centre is rather different from that embodied in the Union Powers Committee Report. I do not want that the Central Government should be made responsible for everything. The initial responsibility for the well-being of the people of the provinces should rest with the Provincial Governments. It is only in strictly all-India matters that the Central Government should have responsibility and should come into play. Therefore, the strength of a Centre consists not only in adequate powers in all-India subjects but freedom from responsibility for those subjects which are not germane to all-India but which really should be in the Provincial field. It is in this positive as well as negative delimitation of powers that a real federal system rests and I think the federal powers as defined by the Committee report err on the wrong side. It tries to burden the Centre with all kinds of powers which it ought not to have. Take for instance, vagrancy. I cannot understand why 'vagrancy' has been taken away from the Provincial list and put in the concurrent list. Do you want all India to be bothered about, vagrants? There is almost an obsession that by adding all kinds of powers, to the Centre, we can make it strong. There is another subject. Sir, called "economic planning" which is put in the concurrent list. Now, I know that planning is the most important pre-occupation of the Central and Provincial Governments and that we must make some attempt to co-ordinate Central and Provincial policy, but is this the proper way to make it concurrent, so that the Centre can assume any power and can prevent any unit from planning in its own way even in the filed of provincial subjects, even in agriculture? Even the matter of dairies, the Centre can pass bill and take powers to itself in its own discretion. I say this should have been dealt with as a separate part of the Union Constitution, as to what powers of planning the Provincial Government should have and how these powers should be coordinated by consultation and consent, and not by simply saying that we have this all important Planning as one of the items in the concurrent list.

Then, take the financial distribution. They have put all taxation except land revenue and one or two other diminishing items, like excise on intoxicating liquors, in the federal list. The report says that some provision for assignment should be made. But unless together with the items, method of allocating the shares of the proceeds is given, the provinces will be beggars at the door of the Centre. I do not want any constitution in which the Unit has to the Centre and say "I cannot educate my people; I cannot give sanitation; give me a dole for the improvement of roads, for industries, for primary education". Let us rather wipe out the federal system and let us have Unitary system. Today our financial position is that, even if you give all the powers to taxation to the Centre, the Centre will not have enough money. Even if you give all power of taxation to the provinces, the provinces will not have enough funds. Because even the single item of primary education requires, according to the Sargent Committee Report all the finances of the Centre and the Provinces put together. Similarly, if you take Public Health, according to the Bhore Committee Report, it requires 300 crores which is the total of the provincial and central taxation. If you take Defence, how much money can we not spend on a single item as Navy or Air Force or the Army? Today, we have not got enough money for any one of these items. We must therefore make an equitable distribution, by statute and not be left to an evasive machinery to be determined in the future. Let us start with an equitable of the existing finances as they are, and then try develop the resources. If this distribution of powers is adopted without further scrutiny, without further careful adjustment, in three years time, all the provinces will revolt against the Centre and the Central Ministry will be in a most unenviable position. We must frame a constitution in which the Centre can say, "This is not my business, you have an elected Governor on the adult franchise, you have your ministers, go to them. We have given them elastic sources of revenue". What is happening in the United States? Both the Centre and the States can levy all kinds of tax. They can levy Income Tax. There is nothing to prevent them except the popular will. There, the Ministers or the Governor can go to the people and say "we have got powers of taxation; pay the taxes and we will give you entertainments, circuses, and whatever you want". Instead of that, here, they will have to say "we shall give you entertainment; let the Centre give us money". That will be an unenviable position; that will be a weak position for the Centre. I should like to warn the leaders who are piloting this report to be careful and not to add all kinds of subjects to the Centre.

Take the case of industries. Now, Defence Industries is one central item. Another item is, any industries which the Federal Legislature may declare to be a federal industry. In the provincial list, is included any other industry which the federal legislature has not taken unto itself, either under this item or under the defence item, or under the preparation of defence. What will the provinces do? They will say, that it comes under preparation for defence, or defence industries or any other industry which has been declared by the federal law to be federal industries, and that they have no responsibility to develop industries. They will say, "go to the Centre". Is this the way that we want to do things? No, Sir. If you want say coal, steel and such industries will be allotted to the Centre and the other industries like cottage industries, medium industries and food industries, will be allotted to the provinces, that will be acceptable.

Always comes the argument, "after all, who are in the Centre? They are your representatives. Why do you expect them to do anything which you do not like". I think this is often a mistake. As a member of the Central Legislature, I have always wanted more money for the Centre. If you put me in the provincial legislature, I would want more money for the provinces. the spirit of the corporation is something irresistible. It overpowers us and overcomes us. Therefore, we should see that the Centre is not allowed to infringe upon the power of the Centre. It is only by making things precise and clear, by making things determinable by courts of law that you can preserve the federal system intact. All progress will be blocked by putting all kinds of industries in the hands of the Centre, defence industries, and industries which may be declared federal by federal law.

At the time of passing the Government of India Act of 1935 and in the 1921 Act, the Parliament always said "we have given special powers and powers of discretion, but we do not think they will ever be called into operation". But have we known any single power which was not exercised to the utmost extent? Section 93 was considered to be an extreme section. Nobody will suspend the constitution, it was said in the Parliament. But on the very first day, on a mere technical ground, the Governor simply signed an order, and took the Government into his own hands.

Mr. N. Gopalaswami Ayyangar: May I ask the honourable member whether any large industries have been taken over by the Centre in the last few years?

Shri K. Santhanam : In the last few years, the Central Government has been in a state of paralysis. The Policy Committee Reports recommended the taking over of all and sundry industries into Central Control. Legislation could not be introduced. This state of paralysis was responsible for any industries not being taken over by the Centre. I say, unless some such paralysis comes over the New Government. I shall be surprised if it does not take over many industries. One may say textiles of Bombay may be taken over and it will be taken over. Another will say, milk is adulterated and let us take the dairies. There is no limit to the power. Even in the United States, the Federal Government is going on taking more and more power.

Therefore, I may, Sir, let us be careful; let us not give all the power to the Centre. Let the Units also have some work, some responsibilities ad some resources. Unless we do this, our constitution will not be on sure foundations. The whole thing will break down. This is the warning which I wish to utter here.

Mr. President : There will be further discussion tomorrow about this.

ANNOUNCEMENT re PERSONNEL OF COMMITTEE TO CONSIDER THE INDEPENDENCE ACT, ADAPTATION RULES, ETC.

Mr. President: There will be further discussion tomorrow about this.

Before we adjourn, I desire to make an, announcement. A committee consisting of Mr. Mavalankar, Mr. Hussain Imam, Shri Purushottamdas Tandon, Dr. Ambedkar, Mr. Alladi Krishnaswami Ayyar, Mr. Gopalaswami Ayyangar and Mr. B. L. Mitter is appointed to consider the Indian Independence Act, the adaptations of the Government of India Act, 1935, the Rules and Standing Orders of the Legislative Assembly, the Rules and Standing Orders in force in the Constituent Assembly, etc. and report on the following matters:-

(1) What are the precise functions of the Constituent Assembly under the Indian Independence Act?

(2) Is it possible to distinguish between the business of the Constituent Assembly

as a constitution-making body and its other business and can the Constituent Assembly set apart certain days or periods solely for the former?

(3) Should the members representing the Indian States in the Constituent Assembly be given the right to take part in proceedings which do not relate to constitution-making or to the subjects in respect of which they have acceded?

(4) What new Rules or Standing orders, if any, and what amendments if any in the existing Rules or Sanding Orders should be made by the ,Constituent Assembly or its Presidents?

I think this covers the points which were discussed in the earlier part of the day. I am appointing this Committee and expect the Committee will give us their Report very soon.

Dr. P. S. Desmukh: Sir, there is one point which I would like to suggest, and that is the examination of the permissibility or otherwise of the same members being a member of two legislatures. Hereafter, we are going to be.........

Mr. President: I think that this is covered by the Adaptations.

The House stands adjourned till 10 A.M. tomorrow.

The Assembly then adjourned till Ten of the clock on Thursday, the 21st August 1947.

CONFIDENTIAL

APPENDIX 'A'

No. CA/23/Com./47

CONSTITUENT ASSEMBLY OF INDIA

REPORT OF THE UNION POWERS COMMITTEE

FROM

PANDIT JAWAHARLAL NEHRU,

CHAIRMAN, UNION POWERS COMMITTEE.

To

THE PRESIDENT,

CONSTITUENT ASSEMBLY OF INDIA

SIR,

On the 28th April 1947, the Hon'ble Sir N. Gopalaswamy Ayyangar on behalf of our Committee, presented our first report to the Constituent Assembly. In doing so, he referred to the changes that were developing in the political situation and were likely to affect the nature and scope of the Committee's recommedations, and sought permission to submit a supplementary report at a later date. The House was pleased to grant us leave to do so.

2. Momentous changes have since occurred. Some parts of the country are seceding to form a separate State, and the plan put forward in the Statement of the 16th May on the basis of which the Committee was working is, in many essentials, no longer operative. In particular we are not now bound by the limitations on the scope of Union Powers. The first point accordingly that we considered was whether, in the changed circumstances, the scope of these powers should not be widened. We had no difficulty in coming to a conclusion on this point. The severe limitation on the scope of central authority in the Cabinet mission's plan was a compromise accepted by the Assembly much, we think, against its judgement of the administrative needs of the country, in order to accommodate the Muslim League. Now that partition is a settled fact, we are unanimously of the view that it would be injurious to the interests of the country to provide for a weak central authority which would be incapable of ensuring peace, of coordinating vital matters of common concern and of speaking effectively for the whole country in the international sphere. At the same time, we are quite clear in our minds that there are many matters in which authority must lie solely with the Units and that to frame a constitution on the basis of a unitary State would be a retrograde step, both politically and administratively. We have accordingly come to the conclusion--a conclusion which was also reached by the Union Constitution Committee--that the soundest framework for our constitution is a federation, with a strong Centre. In the matter of distributing powers between the Centre and the Units, we think that the most satisfactory arrangement is to draw up three exhaustive lists on the lines followed in the Government of India Act of 1935, viz., the federal, the provincial and the concurrent. We have prepared three such lists accordingly and these are shown in the Appendix.

We think that residuary powers should remain with the Centre in view however of the exhaustive nature of the three lists draw up by us, the residuary subjects could only relate to matters which, while they may claim recognition in the future, are not at present indentinable and cannot therefore be included now in the lists.

3. It is necessary to indicate the position of Indian States in the scheme proposed by us. The States which have joined the Constituent Assembly have done so on the basis of the 16th May Statement. Some of them have expressed themselves as willing to cede wider powers to the Centre than contemplated in that Statement. But we consider it necessary to point out that the application to States in general of the federal list of subjects, in so far as it goes beyond the 16th May Statement, should be with their consent. It follows from this that in their case residuary powers would vest with them unless they consent to their vesting in the Centre.

4. To enable States and, if they so think fit, Provinces also, to cede wider powers to the Centre, we recommend that the constitution should empower the Federal Government to exercise authority within the Federation on matters referred to them by one or more Units, it being understood that the law would extend only to the Units

by whom the matter is referred or which afterwards adopt the law. This follows the Australian model as set out in section 51 (xxxvii) of the Australian Constitution Act.

5. We have included in the federal list the item " the strength, organisation and control of the armed forces raised and employed in Indian States". Our intention in doing so is to maintain all the existing powers of co-ordination and control exercise over such forces.

6. We recommend to the Assembly the proposals contained in para 2-D of our previous report on the subject of federal taxation. It is quite clear, however, that the retention by the Federation of the proceeds of all the taxes specified by us would disturb, in some cases violently, the financial stability of the Units and we recommend therefore that provision should be made for an assignment, or a sharing, of the proceeds of some of these taxes on a basis to be determined by the Federation from time to time.

I have the honour to be,

NEW DELHI;

Sir,

July 5, 1947.

Your most obedient servant,

JAWAHARLAL NEHRU,

Chairman.

APPENDEX

LIST I--FEDERAL LEGISLATIVE LIST

1. The defence of the territories of the Federation and of every part thereof and generally all preparation for defence, as well as all such acts as may be conducive in times of war to its successful prosecution and after its termination to effective demobilisation.

2. Requisitioning of lands for defence purposes including training and manoeuvres.

3. Central Intelligence Bureau.

4. Preventive detention, in the territories of the Federation for reasons of State.

5. The raising, training, maintenance and control of Naval, Military and Air Forces and employment thereof for the defence of the territories of the Federation and for the execution of the laws of the Federation and its Units; the strength, Organisation and control of the armed forces raised and employed in Indian States.

6. Defence industries.

7. Naval, Military and Air Force works.

8. Local self-government in cantonment areas, the constitution and powers within such areas of cantonment authorities, the regulation of house accommodation in such areas and the delimitation of such areas.

9. Arms, firearms, ammunition and explosives.

10. Atomic energy, and mineral resources essential to its production.

11. Foreign Affairs; all matters which bring the Federation into relation with any foreign country.

12. Diplomatic, consular and trade representation.

13. United Nations Organisation.

14. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.

15. War and Peace.

16. The entering into and implementing of treaties and agreements with foreign countries.

17. Trade and Commerce with foreign countries.

18. Foreign loans.

19. Citizenship, naturalization and aliens.

20. Extraditions.

21. Passports and visas.

22. Foreign jurisdiction.

23. Piracies, felonies committed on the high seas and offence committed in the air against the law of nations.

24. Admission into, and emigration and expulsion from, the territories of the Federation; pilgrimages to places beyond India.

25. Port quarantine; seamen's and marine hospitals, and hospitals connected with port quarantine.

26. Import and export across customs frontiers as defined by the Federal Government.

27. The institutions known on the 15th day of August, 1947, as the Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and any

other institution declared by Federal law to be an institution of national importance.

28. The institutions known on the 15th day of August, 1947, as the Benares Hindu University and the Aligarh Muslim University.

29. Airways.

30. Highways and waterways declared by the Federal Government to be Federal highways and waterways.

31. Shipping and navigation on inland waterways, declared by the Federal Government to be Federal waterways, as regards mechanically propelled vessels, and the rule of the road on such waterways; carriage of passengers and goods on such waterways.

32. (a) Posts and telegraphs; provided that the rights existing in favour of any individual State Unit at the commencement of this Constitution shall be preserved to the Unit until they are modified or extinguished by agreement between the Federation and the Unit concerned or are acquired by the Federation, subject however, always to the power of the Federal Parliament to make laws for their regulation and control;

(b) Telephones, wireless, broadcasting, and other like forms of communication, whether owned by the Federation or not;

(c) Post Office Savings Bank.

33. Federal Railways; the regulation of all railways (other than minor railways) in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of good$ and passengers.

34. Maritime shipping and navigation, including shipping and navigation on tidal waters.

35. Admiralty jurisdiction.

36. Ports declared to be major ports by or under Federal Law or existing Indian Law including their delimitation.

37. Aircraft and air navigation : the provision of aerodromes, regulation and Organisation of air traffic and of aerodromes.

38. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.

39. Carriage of passengers and goods by sea or by air.

40. The Survey of India, the Geological, Botanical and Zoological Surveys of India,

Federal Meteorological organisations.

41. Inter-Unit quarantine.

42. Federal Judiciary.

43. Acquisition of property for the purposes of the Federation,

44. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

45. Census.

46. Offences against laws with respect to any of the matters in this list.

47. Enquiries, surveys and statistics for the purposes of the Federation.

48. Federal services and Federal Public Service Commission.

49. Industrial disputes concerning Federal employees.

50. Reserve Bank of India.

51. Property of the Federation and the revenue there from, but as regards property situated in a Unit subject always to legislation by the Unit, save in so far as Federal Law otherwise provides.

52. Public debt of the Federation.

53. Currency, foreign exchange, coinage and legal tender.

54. Powers to deal with grave economic emergencies in any part of the territories of the Federation affecting the Federation.

55. Insurance.

56. Corporations, that is to say, the incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Federated State and carrying on business only within that State or co-operative societies, and of corporations, whether trading or not, with objects not confined to one Unit, but not including universities.

57. Banking.

58. Cheques, bills of exchange, promissory notes and other like instruments.

59. Patents, copyright, inventions, designs trademarks and merchandise marks.

60. Ancient and Historical Monuments: archaeological sites and remains.

61. Establishment of standards of weight and measure.62. Opium, so far as regards cultivation and manufacture, or sale for export.

63. Petroleum and other liquids and substances declared by Federal Law to be dangerously inflammable, so far as regards possession, storage and transport.

64. Development of industries where development under Federal control is declared by Federal Law to be expedient in the public interest.

65. Regulation of labour and safety in mines and oilfields.

66. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal Law to be expedient in the public Interest.

67. Extension of the powers and jurisdiction of members of a police force belonging to any part of a Governor's Province or Chief Commissioner's Province, to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner, as the case may be; extension of the powers and jurisdiction of members of a police force belonging to any Unit to railway areas outside that Unit.

68. All Federal elections; and Election Commission to superinted, direct and control all Federal and Provincial elections.

69. The salaries of the Federal Ministers and of the Chairman and Vice-Chairman of the Council of States and of the Speaker and Deputy Speaker of the House of the People; the salaries, allowances and privileges of the members of the Federal Parliament.

70. The enforcement of attendance of persons for giving evidence or Producing documents before committees of the Federal Parliament.

71. Duties of customs including export duties.

72. Duties of excise on tobacco and other goods manufactured or produced in India except-

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;

(c) medicinal and toilet preparations containing alcohol, or any substance included In sub-paragraph (b) of this entry.

73. Corporation tax.

74. State lotteries.

75. Migration from one 'Unit to another.

76. Jurisdiction and powers of all courts, with respect to any of the matters in this list.

77. Taxes on income other than agricultural Income.

78. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of the companies.

79. Duties in respect of succession to property, other than agricultural land.

80. Estate duty in respect of property other than agricultural land.

81. The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.

82. Terminal taxes on goods or passengers, carried by railway or air; taxes on railway fares and freights.

83. The development of inter-Unit waterways for purposes of flood control, irrigation, navigation and hydroelectric power.

84. Inter-Unit trade and commerce.

85. Fishing and fisheries beyond territorial waters.

86. Federal manufacture and distribution of salt; regulation and control of manufacture and distribution of salt by other agencies.

Note.-A section should be incorporated in the constitution itself prohibiting the imposition of any duty or tax on salt.

87. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

LIST II--PROVINCIAL LEGISLATIVE LIST

1. Public order (but not including the use of naval, military or air forces in aid of the evil power); the administration o justice; constitution and Organisation of all courts, except the Supreme Court, and fees taken therein; preventive detention for reasons connected with the maintenance of public order; persons subjected to each detention.

2. Jurisdiction and powers of all courts except the Supreme Court, with respect to any of the matters in this list; procedure in Rent and Revenue Courts.

3. Police, including railway and village police.

4. Prisons, reformatories, Borstal Institutions and other institutions of a like nature, and persons detained therein; arrangements' with other Units for the use of prisons and other institutions,

5. Public debt of the Province.

6. Provincial Public Services and Provincial Public Service Commissions.

7. Works, lands and buildings vested in or in the possession of the Province.

8.Compulsory acquisition of land except for the purpose of the Federation.

9. Libraries, museums and other similar institutions controlled or financed by the Province.

10.Elections to the provincial Legislature and of the Governors of the provinces subjected to the provisions of paragraph 68 of list I.

11. The salaries of the Provincial Ministers. of the speaker and Deputy Speaker of the Legislative Assembly, and if there is a Legislative Council, of the Chairman and Deputy Chairman, thereof; the salaries, allowances and privileges of the members of the Provincial Legislature; and the enforcement of attendance of persons for giving evidence or producing documents before Committees of the Provincial Legislature.

12. Local Government, that is to say, the Constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

13. Public health and sanitation hospitals and dispensaries; registration of births and deaths.

14. Pilgrimages, other than pilgrimages to places beyond India.

15. Burials, and burial and burning grounds.

16. Education including Universities other than those specified in paragraph 28 of List I.

17. Communications, that is to say roads, bridges, ferries, and other means of communication not specified in List I; minor railways subject to the. provisions of List I with respect to such railways; municipal tram ways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; ports, subject to the provisions in List I with regard to major ports; vehicles other than mechanically propelled vehicles.

18. Water, that is to say, water supplies, irrigation and canals-drainage and

embankments, water storage and water power.

19. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases; improvement of stock and prevention of animal diseases; veterinary training and practice; pounds and the prevention of cattle trespass.

20. Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents; transfer, alienation and revolution of agricultural land; land improvement and agricultural loans; colonization; Courts of Wards: encumbered and attached estates, treasure trove.

21. Forests.

22. Regulation of mines and oilfields and mineral development subject to-the provisions of List I with respect to regulation and development under Federal Control.

23. Fisheries.

24. Protection of wild birds and wild animals.

25. Gas and 'gasworks.

26. Trade and commerce within the Province; markets and fairs.

27. Money lending and money lenders.

28. Inns and innkeepers.

29. Production, supply and distribution of goods; development of industries, subject to the provisions in List I with respect to the development of certain industries under Federal control.

30. Adulteration of foodstuffs and other goods.

31. Weights and measures except establishment of standards.

32. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respect poisons and dangerous drugs, to the provisions of List III.

33. Relief of the poor; unemployment.

34. The incorporation, regulation, and winding-up of corporations not being corporations specified in List I, or Universities; unicorporated trading literary, scientific, religious and other societies and associations, co-operative societies.

35. Charities and charitable institutions; charitable and religious endowments.

36. Theatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition.

37. Betting and gambling.

38. Offences against laws with respect to any of the matters In this List.

39. Inquiries and statistics. for the purpose of any of the matters in this List.

40. Land revenue, including the assessment and collection of revenue, the maintenance of 'land records, survey for revenue purposes and records of rights, and alienation of revenue.

41. Duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same 'or lower rates on similar goods manufactured or produced elsewhere in the territories of the Federation-

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;

(c) medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (B) 'of this entry.

42. Taxes on agricultural Income.

43. Taxes on lands and buildings, hearths and windows.

44. Duties in respect of succession to agricultural land.

45. Estate duty in respect of agricultural land.

46. Taxes on mineral rights, subject to any limitations Imposed by any Act of the Federal Parliament relating to mineral development.

47. Capitation taxes.

48. Taxes on professions, trades, callings and employments.

49. Taxes on animals and boats.

50. Taxes on the sale of goods and on advertisements.

51. Taxes on vehicles suitable for use on roads, whether mechanically propelled or not, including tramcars.

52. Taxes on the consumption or sale of electricity.

53. Cesses on the entry of goods into a local area for consumption, use or sale

therein.

54. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

55. The rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

56. Dues on passengers and goods carried on inland water-ways.

57. Tolls.

58. Fees in respect of any of the matters in this List, but not including fees taken in any Court.

LIST III--CONCURRENT LEGISLATIVE LIST

1. Criminal Law. including all matters included in the Indian Penal Code at the date of commencement of this Constitution, but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of the naval, military and air forces In aid of the civil power.

2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of commencement of this Constitution.

3. Removal of prisoners and accused persons from one Unit to another Unit.

4. Civil Procedure, including the law of Limitation and all matters included in the Code of Civil Procedure at the date of commencement of this Constitution: the recovery in a Governor's Province or a Chief Commissioner's Province of claims in respect of taxes; and other public demands, including arrears of land revenue and sums recoverable as such, arising outside that Province.

5. Evidence and oaths; recognition of laws, public acts and records and judicial proceedings.

6. Marriage and divorce;. infants and minors; adoption.

7. Wills, intestacy, and succession, save as regards agricultural land.

8. Transfer of property other than agricultural land; registration of deeds and documents.

9. Trusts and Trustees.10. Contracts, including partnership, agency, contracts of' carriage, and other special forms of contracts, but not including contracts relating to agricultural land.

11. Arbitration.

12. Bankruptcy and insolvency.

13. Administrators-general and official trustees.

14. Stamp duties other than duties or Fees collected by means of judicial stamps, but not including rates of Stamp duty.

15. Actionable wrongs, save in so far as included in laws with respect to any of the matters specified in List, II.

16. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.

17. Legal, medical and other professions.

18. Newspapers, books and printing presses.

19. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficients.

20. Poisons and, dangerous drugs.

21. Mechanically propelled vehicles.

22. Boilers.

23. Prevention of cruelty to animals.

24. Vagrancy; nomadic and migratory tribes.

25. Factories.

26. Welfare of labour; conditions of labour; provident funds; employers' liability and workmen's compensation; health insurance, including invalidity pensions; old age pensions.

27. Unemployment and social insurance.

28. Trade union; industrial and labour disputes.

29. The prevention of the extension from one unit to another of infectious or contagious diseases or pests affecting men, animals or plants.

30. Electricity.

31. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of of passengers and goods on inland waterways subject to the provisions of List I with respect to Federal waterways.

32. The 'Sanctioning of cinematograph films for exhibition.

33. Persons subjected to preventive detention under Federal authority.

34. Economic and social planning.

35. Inquiries and statistics for the purpose of any of the matters in this List.

36. Fees in respect of any of the matters in this List, but not including fees taken in any Court.

[Translation of Hindustani speech.]

@ Appendix A

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME V

Thursday, the 21st August, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following member presented his credentials and signed his name in the Register-

H. H. Raja Anand Chand (of Bilaspur) (Punjab States).

The following members also took the oath:-

(1) H. H. Raja Anand Chand (of Bilaspur).

(2) Mr. Surendra Mohan Ghosh (West Bengal: General)

REPORT OF THE UNION POWERS COMMITTEE--*(contd.)*

Mr. President: We shall now proceed with the resolution which was under discussion yesterday.

Mr. H. V. Kamath (C. P. and Berar: General) : Mr. President, Sir, permit me to invite your attention to a matter of mere routine. As members of the Dominion Legislature, may we not reasonably expect to receive the Gazette of India and other official publications of Government to which the members of the former Central Legislature were entitled?

Mr. President: I will make enquiries about it.

Mr. Mahomed Sheriff (Mysore) : Mr. President, Sir, the Report of the Union Powers Committee that forms the subject matter of discussion today is a very important document as it vitally affects the privileges and the rights of the people living in the States as well as in the provinces. It is important, Sir, because it seems to me that only on a proper and appropriate allocation of the powers between the Centre on the one hand and the provinces and the States on the other that the future good government of the country will depend. It is necessary, therefore, that we should so allocate or distribute the powers as to retain effective control in the Centre, while not denuding the people living in the States and the provinces of their powers. You know, Sir, that in a federation there is a recognised division of loyalties and interests and in order to blend them a strong Centre is very necessary, but you also know, Sir, that too strong a Centre would result in the Centre becoming very oppressive and would result in the crushing, so to speak, of the liberties and privileges of the people living in the component units. Therefore we must be very circumspect and very careful in the matter of the distribution of the powers. We must be careful to see that the distribution is so made as to effect a happy compromise between strength on the one side and consideration of the rights and privileges of the people living in the States and in the provinces on the other side. I have gone through the lists which are appended to this Report very carefully and I have also heard with rapt attention the speech made so lucidly by Mr. Gopalaswami Ayyangar, He has discussed threadbare the different aspects of the question. He has placed before us all the aspects of the question, all the pros and cons of the issue. He says, "Now that partition is a settled fact, we are unanimously of the view that it would be injurious to the interests of the country to provide for a weak central authority which would be incapable of ensuring peace, of co-ordinating vital matters of common concern and of speaking effectively for the whole country in the international sphere. At the same time, we are quite clear in our minds that there art, many matters in which authority must lie solely with the Units and that to frame a constitution on the basis of a unitary State would be a retrograde step, both politically and administratively. We have accordingly come to the conclusion that the soundest framework for our constitution is a federation, with a strong Centre". Sir, with due deference to Mr. Gopalaswami Ayyangar, I do not think that this report is a very satisfactory one inasmuch as it wants to assign to the Provinces and the States a very secondary part. After 150 years of turmoil, after 150 years of sacrifice undergone by the people of India, referred to so very lucidly by Pandit Jawaharlalji the other day, we have uprooted British imperialism. Let not that imperialism be perpetuated in another form. Why should the Centre be jealous of the component parts? After all, the people living in the States and Provinces are part of the whole. Their activities are counterparts to the activities of the Centre so that there should not be this suspicion. I submit, therefore, that the Centre should not arrogate to itself all the powers. Coming as I do from the State of Mysore, I feel that this report is very unsatisfactory., You know, Sir, that we have acceded to the Indian Dominion on three important questions, Foreign Affairs, Communications and Defence. These are the matters on which we have made a treaty and acceded to the Dominion. So far as the Federal Legislative List is concerned, you have tried to. take away the powers from us. For example, you want to interfere with our trade. You want to retain for yourself trade and commerce with foreign countries. You want power to requisition land for defence purposes. All this savours, of some force. So far as this report is concerned, you Sir, yesterday observed that we should deal with only salient points.

An Honourable Member: Not in this connection

Mr. Mahomed Sheriff: I am sorry. In any case, I would request the House to see that the Centre does not arrogate to itself all the powers but that there is an equitable and happy compromise in the distribution of powers between the Centre and the units.

Shri Alladi Krishnaswami Ayyar (Madras: General) : Mr. President, after the very full exposition of the report by my Honourable friend Mr. Gopalaswami Ayyangar I had not intended to take Part In the debate on the Resolution now before the House, namely, the Report of the Committee on the Union Powers being taken into consideration. But I felt compelled to do so by reason of certain remarks of my

Honourable friend Shri Santhanam (for whose opinion and remarks I always entertain a high regard) which suggest that the Committee did not seriously go about their business. The remarks of my Honourable friend fall under two heads: (1) Bearing on the subject of federal finance and the distribution of taxing power between the Federation and the units. (2) The general encroachment on provincial legislative power by the addition of certain items to the Federal List or to the Concurrent list. I shall deal with the two points *seriatim.*

There is no gainsaying that the subject of federal finance and the distribution of the taxing power is a difficult and complicated problem in any federal scheme of Government and has to be approached with caution and discerning and at every stage when we are dealing with this subject we have to remember that, after all, it is an individual or a corporation that is taxed though there may, be two taxing agencies, and that there is no unlimited scope for taxation. Secondly, the industrial, commercial and agricultural economy of the country is so closely knit together that the taxation in one sphere must necessarily have its repercussions on taxation in another sphere. Bearing these points in view, let us approach the consideration of the taxing system. of other Federations and see if on the whole the system adopted in India is not an improvement on the system in other countries with due regard to the peculiar conditions, the poverty and the taxable capacity of the average citizen in this country. In Australia the Commonwealth has plenary powers of taxation with the only safeguard that it cannot discriminate between States or parts of States. I am mentioning Australia particularly because it is a Federation in which the residuary power is in the Union. The States have plenary powers of legislation and it is only in particular matters that powers are confined to 'lie Centre. Even in that country with the growing needs of a modern state, it was felt that the Federation must have plenary powers of taxation. There its no limit at all to the power of taxation in Australia in the Centre excepting this, namely, that it shall not discriminate between State and State. In regard to excise and customs the power in the Commonwealth is exclusive though in regard to other subjects of taxation the Commonwealth has a Concurrent and coextensive power with that of the States. In the Constitution of the Dominion of Canada the power of the province in the matter of taxation is confined to direct taxation and to shop and Other licenses for the raising of revenue and it is in the exercise of the power of direct taxation that Provinces in Canada have been raising Corporation taxes, income-tax and succession duty, where the succession has taken place within the limits of the province. So far as the Dominion is concerned it has plenary and unrestricted power. The Royal Commission appointed recently to investigate Dominion and Provincial relations was definitely in favour of the Provinces withdrawing from all Corporation tax except beneficial licence taxes, tax on real estate or consumption taxes applicable to corporations and other consumers. The differential taxes levied by different provinces in Canada have led to the crushing of enterprise, the lack of uniformity and efficiency from divided jurisdiction. and double and treble taxation. The subject of succession duty by provinces has led to friction of jurisdiction and has been a source of friction and litigation before the Privy Council and double income-tax both by the Provinces and the Centre has been the subject of adverse comment by the industries concerned. A through revision of the taxing system was recommended by the Committee with a view to secure uniformity, the main recommendation being that the taxing power should reside in the dominion and that an adjustment should be made between the Provinces in regard to the taxes levied. While on this subject I may point out I am in favour of a definite proportion being fixed between the provinces and the Centre though the tax-collecting medium may be the Centre in the interest of uniformity. I have no doubt that if a financial Commission or a Committee goes into this matter, they will be able to arrive at a satisfactory conclusion. so that the Provinces may get the necessary quota for the purpose of meeting the various social service expenditure in the provinces. In America again Under Section 8, a general power of taxation is vested in the Congress, subject only to the restriction that the duties imposed including excise shall be uniform throughout the United States and that no tax or duty shall be levied on articles exported from any State. Under the scheme, of financial distribution in the Government of India Act and to some extent as envisaged in the present Report as far as possible the Object is kept ion view to prevent a double levy on the citizen from two different sources. That is why certain specific taxes have been assigned to the Centre and certain other taxes to the Provinces. Even in regard to taxes in respect of which the Centre is the collecting agency on grounds of convenience, provision is made for the distribution. of the same to the provinces, subject only to collection charges or for division of all the proceeds between the Centre and the Provinces. In regard to certain taxes like corporation tax, customs and certain specific. items of excise the Centre the both the collecting agency and the authority entitled to the proceeds thereof. In regard to other items like estate duty, succession duty and so on, in the interest of uniformity, speedy collection and administrative efficiency the Centre is constituted the collecting agency, the proceeds being distributed between the Provinces. In regard to income-tax the, scheme is for the distribution between the Centre and the Provinces. The Provinces have the sole right of collection and exclusive beneficial interest in a few items of taxation. While I do not dispute the need for readjustment or even reallocation in regard to a few items of taxation in the light of the recommendations of any Committee appointed for the purpose, I venture to state, that the scheme of distribution in the Government of India and to some extent outlined in the First Committee's report is a sound one and in some respects an improvement upon the scheme of taxation in other countries.

Beyond making certain general observations, my honourable friend has not chosen to state in what respects the scheme of taxation and the distribution is unsound and in what respects the recommendations of the Committee are radically defective. So much for finance.

In regard to the scheme of distribution of powers, the House will realise that there is nothing to take exception to generally. While a good number of items in the Central list can be brought under the head of Defence, Foreign Affairs and Communications, the three main heads envisaged by the Cabinet Mission Scheme, the items such as Bills of Exchange, Banking, Corporation Law, Inter-unit trade bear upon the general welfare of the country. It is possible in regard to Banking, Corporation Law and Insurance, following the Australian and Canadian model to differentiate between Corporations having purely provincial objects and Corporations whose objects extend beyond the limits of the Units. If so, it would be open to any Committee or to this House to take that into consideration and canvass that point whether it is possible to make any exception in regard to Corporations or Banks having purely provincial objects. We have been crying about a strong Centre. If you look at the provincial lists, very few if at all of the provincial list have been taken up and transferred to the federal list. It will be a much more useful purpose to take item after item in the provincial list. We ought to take item after item in the Central first and see which of them can be transferred to the provincial list instead of arguing abstractly, Centre versus Provinces, a strong Centre versus weak Centre, strong Provinces versus weak Provinces. This is of no assistance when we are dealing with the practical question of evolving a constitution for the future. We shall have to concentrate our attention in the next few days on particular items and see which of the items deserve to be modified. That would be a much more useful purpose than a general attack upon what might be called a strong Centre or a weak Centre. There may be very few items in the Centre and yet that Centre may be strong. Today it cannot be said that Australia has not a strong Centre; today it cannot be said that America has not a strong Centre. Therefore, having regard to the exigencies of the Indian situation, concentrating our attention upon the main topics of national interest in their relation to the subjects we have to see which of them can find a place in the Central list, which of them can find a place in the concurrent list and which of them can find a place in the provincial list. That would be a more useful mode of approach than a general attack upon the Centre, Provinces and go on. Very few if at all of the items of the provincial list have been taken over to the Centre, as I have already stated.

The existence of a concurrent list in matters like the general code of Indian law, or Hindu Law makes for a uniformity of law. Here again, it is a very useful feature in our constitution. For example, take a matter like the Transfer of Property Act, the Hindu Law, the Law of Succession and so on. There is nothing to prevent even the States form adopting most of the 'items in the concurrent list. I do not see any reason why the States for example in the interests of sovereignty must be really going on copying or making some small differentiations and passing their own acts in regard to matters of vital and common interest to the whole of India. The common practice that is now obtaining in most of the States is, after an Act is passed by the Indian legislature, for the same Act to be copied in the Indian States with some slight modifications which may add to the purse of the lawyer and not help the uniformity of the law in the different units of India.

Then, coming to the break-down provisions, if the breakdown. provisions have been introduced, it was at the instance and on the insistence, if I may say so, of some of the provincial representatives who are occupying responsible positions of Ministers in the different provinces of India. Therefore, Sir, I venture to state that the labours of the Union Powers Committee deserve careful consideration at the hands of the Assembly, and I have no doubt that at the end of your labours and after searching criticism which I have no doubt will be-coming from enlightened quarters of his House, you will find, it contains nothing that can be taken exception to. I therefore support the motion that the Report be taken into consideration by the House.

Shri Balkrishna Sharma (United Provinces: General) : Mr. President, Sir, I have come to support the motion that the Union Powers Committee's second Report be taken into consideration.

While we have a preliminary discussion of this report, we are generally called upon to express our views regarding the fundamentals on which this Union Powers Committee's Report is based. In the second paragraph of the Report, it has been said:

> "The severe limitation on the scope of central authority, in the Cabinet Mission's plan was a compromise accepted by the Assembly much. we think, against its judgment of the administrative needs of the country, in order to accommodate the Muslim League. Now that partition is a settled fact, we are unanimously of the view that it would be injurious to the interests of the country to provide for a weak central authority which would be incapable of ensuring peace of coordinating vital matters of common concern and of speaking effectively for the whole country in the international sphere."

I think, Sir, this is a principle to which no same-minded person can take exception. When we accepted the May 16th Plan and when as a result of that we came to the conclusion that the powers that were to be vested in the Centre were very limited, most of us felt that was not in the fitness of things and that the Centre must have more powers in order to execute the responsibilities that are to devolve upon it as a result of our gaining independence. But, then, as has been very rightly said we had no say, but to accept the principles that were laid down in the May 16 Plan. Now that plan has been scrapped and we, today, have to be very clear in our minds, as to what we mean by a strong centre and whether any powers that we give to the Centre are necessarily detrimental to the free growth of the provinces.

Before we come to discuss the various items that are given in the lists, it is necessary, Sir, that we note what the attributes of a strong Centre are. To me, the attributes of a strong Centre are that it should be in a position to think and plan for the well being of the country as a whole, which means that it must have the authority not only to coordinate the activities during times of stress and strain, but also the power of Initiative to give directions to the various provinces in regard to the economic development of the country. The second attribute of a strong Centre is that it should be in a position to supply the wherewithal to the provinces for their better administration wherever the need arises. The third attribute is that it should have the right in times of stress and strain to issue directives to the provinces regulating their economic and industrial life in the interests of the country as a whole. The fourth attribute of a strong Centre is that it-must have sufficient powers to protect the country against foreign aggression as also internecine warfare. Then the fifth attribute of a strong Centre is that it must be powerful and strong enough to represent the whole country in the international spheres. These are the attributes to me of a strong Centre.

The next question arises whether these being the attributes of a strong Centre we want a strong Centre or whether we do not. And before we discuss this question whether we want a strong or weak centre, we should at once understand that the existence of a strong centre in no way militates against the existence of a Powerful living unit inside that central authority.

Yesterday we heard rather curious speeches from two of the stalwarts of provincial autonomy. One was from Maulana Hasrat Mohani and the other from Shri K. Santhanam. Mr. Santhanam spoke rather bitterly and very vehemently about the powers that are proposed to be given to the Centre under this scheme of the Union Powers Committee Report. But if we analyse the lists that have been appended to it we will find that there are very few subjects to which even a protagonist of Mr. Santhanam's type--a protagonist of the revolution or decentralisation scheme--could take exception to. As a result of my analysis I have come to the conclusion that for the Federal List, subjects from items 1--10 cover Defence activities in various shapes and forms, and I do not know if there is anybody who can taken exception to it; *e.g.*, the defence of the territories of the Federation and every part thereof, and all preparations for defence, as well as all such activities as may be conducive in times of war to its successful prosecution and after its termination to demobilization. So on one in this House can take objection to this sort of activity on the part of the Centre. As I said, in items 1--10 there are enumerated various items which cover more or less the defence responsibility of the Centre, and I do not know if any body would take any exception to it.

Then again, from item 11 to item 25, there are various subjects given which are included in what is called the domain of foreign sphere and here also I do not think Mr. Santhanam or even Maulana Hasrat Mohani will take exception to that.

After this we come to item No. 28. This deals with imports and exports, libraries and museums and universities. These are certain responsibilities which are with the Centre already and which have to be with the Centre, and I do not know if anything substantical can be said against giving this responsibility to the Centre.

Then we come to items 29 to 39 which are under what we may call Communications. Here again there can be no difficulty in accepting them as a necessary part of the central authority.

In Items 40 to 53 in the Federal List, there are various subjects like Surveys, Federal Judiciary and Acquisition of Property for Federal purposes, Research, Census, Reserve Bank of India, Public Debt. Interest, Currency etc. I doubt very much, Sir, whether these items also can be given to the various provinces. It is but meet and proper that the Union Powers Committee should have given all these subjects to the care of the Centre.

Then form Items 54 to 59 we come to some subjects regarding Trade, Economy, Insurance, Corporations, Banking, Cheques, Bills of Exchange, Patents, Copyrights, etc. These are also all-India matters. No province can be saddled with the responsibility of executing them. Similarly, if you can the list there is not one item to which exception can be taken. Of course Items Nos. 54 and 64 are contentious.,

Item No. 64 says:--

"Powers to deal with great economic emergencies in any part of the territories in the Federation affecting the Federation."

Item No. 4 says: -

"Development of Industries where development under Federal control I., declared by Federal law to be expedient in the public interest."

These are the two items which might be taken exception to by way of saying that they encroach upon the responsibilities of the provinces.

But I beg to submit that there are occasions and there are situations in the Provinces where the provinces themselves cannot tackle these big problems, and if we have to enjoy a growth of equitable industrial distribution in the country, then we shall have to reserve to the Centre such of the powers as are sought to be given under these two items, and therefore I do not think, Sir, there is anything which can be said against the inclusion of these items to the care of the Centre. In what Mr. Santhanam and Maulana Hasrat Mohani said. I see a case for decentralization, and when I was hearing their speeches I was asking myself whether it is not India's age-long historical tendency of disintegration which was speaking through these stalwarts. Mr. Santhanam talked a lot about the obsession on the part of the framers of this Constitution to give more power to the Centre than was needed. Will, so far as the obsession is concerned, I think it is the other way about. It is the protagonists of decentralization who are obsessed with the fear that unless the Centre is kept weak, all the authority that they are likely to enjoy in the provinces shall not be worth the name. This sort of fear, after all, should not haunt us We should not go on creating imaginary hobgoblins and then ask others to be afraid of those hobgoblins.

I think Maulana Hasrat Mohani talked a great deal of having socialist republics throughout the country. I think the Maulana does not know that the Soviet Socialist Republics cannot enjoy their existence in the country unless they are well knit and unless there is a central directive. After all, all of us must be prepared for the consequences of socialization of industry. Socialization of industry is not a thing which can be done in a piece-meal manner. It has to be centrally directed. It has to be guided from the Centre and then all of us have to prepare ourselves for a lot of grotesqueness in the process of nationalisation and socialization. We cannot fight shy of that. Then, in order to have a socialist society, we must at the same time have in our country a decentralised system of Government. That does not carry us very far. Therefore, I submit that the report, as it has been framed, deserves our fullest possible support, and when we come to discuss it item by item, the House will certainly find that all the criticisms that have been levelled against it do not hold any water whatsoever. It was also said that there should be equitable distribution of power and finances. It is already there. Look at the Provincial legislative list. You will find items from 40 to 58--there are 18 of them-which give all the rights of taxation to the provinces. I need not narrate all those items that are there. The Provinces can have their own land revenue taxes including assessment and collection of revenue, the maintenance of land records, survey for, revenue purposes and records of rights; then, taxes on agricultural income; taxes on lands and buildings;duties in respect of succession to agricultural land, estate duty in respect of agricultural land, duties on mineral rights, capitation taxes on professions, and so on and so on. So many opportunities have been given to the Provinces to levy taxes; and from the very lucid and learned discourse which we heard only a minute ago from Mr. Alladi Krishnaswami Ayyar we know that in no way he provincial interests have been ignored by the framers of this Report. Therefore, Sir, I wholeheartedly support this Report and I think the House on mature consideration will find that there is not one single item to which any exception can be taken,

Mr. G. L. Mehta (Western India States Group) : Mr. President Sir, when some of us wanted to participate In this discussion yesterday I had an impression that the Report that has been so ably and impressively moved by Sri Gopalaswamy Ayyangar would receive the general benediction of this House. Of course, we were prepared for the amendment which Maulana Hasrat Mohani moved in a bilingual speech, but the speech of Mr. Santhanam, for whose objective attitude I have very high regard, took my breath away. Mr. President, we seem to discuss this question of division of powers as though it were a kind of tug of war or a tussle between me authority and another. It is nothing of the kind. It is a plan whereby through mutual concessions, provincial and cultural loyalties should be preserved and promote. the political strength and solidarity of the Indian Union. The second Report itself has explained lucidly why residual powers should be with the Centre. Maulana Hasrat Mohani yesterday astonished us by saying that now that there is partition of India there is no reason for these residual powers to be with the Centre. On the contrary, the reason why this concession of residual powers was to be given to the Units was a kind of bargaining for communal considerations. But now that there is partition, there is no reason why the homogeneous Indian State should clot have a strong Centre. There is some fascination, Mr. President, for always referring to the Union of Socialist Republics, but if you study the constitution and development of Soviet Russia, what do you find. The right of secession and other rights which are given to the Units are o theoretical rights. The whole State is maintained through the rigid and ruthless discipline of the Communist Party. And therefore there is no point in always referring to the Union of Socialist Republics in India as though the socialist republics could be independent. As was pointed out by the previous speaker, Shri Balkrishna Sharma, even if you have socialism in this country, it is absolutely essential that there should be a Central direction and initiative. We should not forget, Mr. President, that the Federation that we are trying to evolve is a Federation which has no precedent in the world, because till now through the British administrative machinery and through their treaties and agreements with the Indian States, we have had a powerful Centre in this country. In several other countries, where Federation has been built up, it has been built up through independent sovereign States coming together whereas here until 1935 the whole question was one of decentralisation and revolution. And secondly, the whole relationship between the Centre, which was under British Indian administration until the 15th August, and the Indian States is one which is unique. It is no use people getting impatient. and saying that there should lie complete uniformity between the Provinces and the States from the beginning. We are not writing on a clean slate, and even if the system is illogical we have to remember that logic does not always fit in with politics. We have seen, for instance, that the British who are admittedly a most illogical people, have made a remarkable success of their constitution. We have therefore to build up the national unity of India in the best possible manner. This question of relationship between the Centre and the Provinces is considered as though it is one of mere political mechanism and separation of powers, but what will ultimately determine these relationships are economic facts and financial considerations. May I say, with all respect, that we are too apt to derive our ideas and frame the constitutional pattern on the 19th century political ideology of Britain? There is some danger in our thinking of the Federal system or some particular forms of government in the abstract as having some special merits which make them desirable in themselves. We are always fond of quoting some models, some pat, terns, and arguing that as A, B and C powers do not exist in some constitution of the world, we cannot have them in our own country. This sort of imitation of political institutions, of transplantation of political institutions from other countries has always some risks. There is said to be a tribe of monkeys in Africa which copy faithfully the houses of men and then live on the outside of them instead of inside. The transplantation of political institutions is not free from this danger of copying the obvious and leaving out the essential. We have to build up this system on the conditions of our own country, not on any abstract theories. The local needs and interests in our own country require special treatment and nobody suggests that this vast country with its size and its multiple people can be ruled on a unitary basis. "Over-centralisation", a French political observer said, "leads to anaemia at the extremities and apoplexy at the Centre". Undue centralisation is not a way of achieving uniformity. In fact, we do not wish to effect uniformity in this country, but unity in essential matters. But I must emphasise that we have to be on guard against fissiparous and disintegrating tendencies which are always bound to prevail and we have to be conscious of our national unity which we have achieved and which we must maintain as one of our priceless possessions. Mr. President, it is very often argued by our British friends that one of the greatest gifts of the British Government to this country has been the administrative unity which has be-en given to it. There is no doubt some truth in it. but there is also truth in this that as the national movement grew stronger, the British Government encouraged in this country every kind of fissiparous and disintegrating tendency and the result is the partition we see before our eyes. We are unfortunately too prone to fall victims to these disintegrating and centrifugal tendencies. Paradoxical though it may seem, it is only a strong Centre which can build up adequate provincial autonomy and achieve decentralisation. Under the scheme which has been presented to you, it can be broadly stated that the power to regulate economic life is divided between the Provinces and the Centre and there is wide scope for provincial powers and responsibilities in the economic and social spheres. After all, we have to judge this problem from the angle of the needs of the ordinary citizens and see how best they could be satisfied and not lose ourselves in the politics of machinery and manoeuvre.

As a matter of fact there are only two main criteria by which we have to judge this question namely, what will secure efficient administration and what will meet the social needs of the people. These needs, material or cultural, can be satisfied if the various Provincial Governments are in a position to supply them, these needs which the citizens today demand of them.

We must also not forget, Mr. President that economic forces and strategic considerations to-day tend to invest the Centre with large powers. If we want to organise economic development and social Welfare as people organize for war, then the state of the future will have to be a 'positive' state, it will have to be a social service state. It will require large finances and more or less homogenous economic conditions will have to be maintained in order to achieve these purposes.

I was surprised to find my friend Mr. Santhanam objecting to planning, being in the concurrent list of subjects. What else can it be? There are Central plans and there, are Provincial plans and some of the Indian States have their own plans. In the Advisory Planning Committee under the chairmanship of Mr. K. C. Neogy, which submitted its report early this year, it was stated that the Central and Provincial Governments must regard development as a matter requiring joint effort in a cooperative spirit and must agree on a common policy of developing their financial resources to the utmost possible extent. As a matter of fact, planning has been a concurrent.........

Shri K. Santhanam (Madras: General): I would like to draw the attention of the speaker that I wanted planning to be dealt with in a separate chapter of the Constitution and not merely as an item. I did not object to planning being done by the Centre and the Provinces together.

Mr. G. L. Mehta: If that is the case, then I think my friend has no abjection to national planning being a concurrent subject. In any case, the initiative, the direction and guidance have to come from the Centre and the implementing of such decisions will have to be with the various units. Economic, technological and scientific developments have made somewhat obsolete, the old division of powers between the Centre and the circumference. Take the T. V. A.--The Tennessee Valley Authority in the U.S.A. The success of that scheme has shown that the fear that setting up a federal agency would undermine and destroy State Government's that is, the Unit's power and rights is a false fear; and that we can so organise as to have central production and yet have local responsibility. Whatever the constitutional set-up may be, the relationship between the Centre and the Provinces will be determined by economic forces and tendencies, and financial considerations. Commerce, trade and industry to-day as well as the economic relationship which they involve are national in scope and cannot be easily divided into Provincial and Federal aspects for purposes of regulation. Mr. President, Mr. Santhanam also said yesterday something about the mention of industries in the List of Federal Subjects. Apart from Item 6 Defence Industry, in the Item 65 there is the mention of development of industries where development under Federal control is declared by Federal law to be expedient in the public interest. This is the only rational way of dealing with this problem. As far back as 1945, in their statement on industrial policy, the Government of India have stated that industries in which a common policy is desirable should be brought under Central control. Can we not trust the future Central Government of India to decide which are the important defence industries, which are the essential industries and which are the industries which are inter-provincial in character and should be brought under Central control? In fact, in labour matters, we know that in many respects uniformity is desirable; otherwise there is the risk of one Province being very backward and another much ahead of it. Therefore there is strong case for regulation on a national basis. As regards the Indian States, for example, with some notable exceptions, the conditions regarding labour legislation and taxation, for example, do not attain the required standard and we should now try to evolve common standards in the spheres of industrial policy, taxation and labour legislation.

Mr. H. V. Kamath: Sir, is it permissible for my honourable friend to read from a manuscript?

Mr. G. L. Mehta: I am not reading; but if Mr. President, you do not desire me to read. if that is your decision....

Mr. President: I take it the member is riot reading, the has only notes before him.

Mr. G. L. Mehta: If Mr. Kamath, whose eloquence I cannot match, can speak extempore, I will invite him to follow me.

Mr. President, at no time has the importance of preserving the economic unity of India been so evident as in our experience during the time and in the post war period. The food question, for example, the whole question of price control, the whole question of rationing, all these require development and Organisation on an all-India basis which does not permit of territorial barriers or interprovincial jealousies and for these problems we require a comprehensive and integrated economic policy, not only for our material advancement, but for out very national existence. In many spheres we require common and even uniform standards, as, for example, in respect of naval and mercantile marine training, training in the various branches of aviation, in respect of administration of higher technological institutions and of co-ordination of higher education and higher technical education in particular; in all these respects we do require that there should be all-India policies and measures. This notion of a strong Centre or a week Centre as Mr. Alladi Krishnaswami Ayyar observed, cannot be discussed and disposed of in merely general terms; you have to get down to brass tacks, to particular items, and then decide whether this item or function is really a function which can be performed better by the Centre or by the Provinces.

There is only one word more which I would like to add. We must not forget that one of the primary reasons for the Provinces demanding larger powers has been the need for economic development. We have to cure economic ill-balancing in this country. We have to have regional planning, we have to see that those areas which are more backward and under-developed are given even preference; because if this is not done, the lower standards of living in those parts or the lower national income there would menance the higher standards in the other parts. In order to avoid inter-provincial jealousies, economic development on a balanced plan for the whole country is. essential. But here again, what is the authority that will do that ? Unless there is a national authority, unless there is an authority to allocate the resources and determine the priorities and co-ordinate these different plans, we cannot really have the development of these less developed or under-developed areas in our country.

I cannot conclude, better than by quoting--and I hope Mr. Kamath will not object if I read a small portion at this stage--from the report of the Royal Commission on

Dominion and Provincial Relations in Canada--

> "National unity and provincial autonomy must not be thought of as competitors for the citizens' allegiance, because they are two facets of the same thing, a sane federal system. National unity must be based on provincial autonomy and provincial autonomy cannot be assured unless a strong feeling of national unity exists throughout the country."

An Honourable Member: Closure.

Sir A. Ramaswamy Mudaliar (Mysore State) : Mr. President, it is with some hesitation that I venture to intervene in this debate. I should not be understood to speak purely on behalf of the States though that primarily is my responsibility. I hope the Assembly will permit me to speak on behalf of all units of the Federation and give my frank views on the subject that is now under discussion. Let me first state that as far as I have understood the sentiments of every member of this Assembly, there is no one in this House who has a feeling that the Centre should not be strong. It is not a 'tug of war' between the Centre and the Provinces. It is not a question of not appreciating the necessity of a Centre which is strong, firm, knows its mind and has no fear of executing its policy. We want such a Centre. Those of the States who have acceded to this Dominion have acceded with no mental reservation whatsoever. *(Applause).* It is with the desire to make this Federation a success, it is with the anxiety, that this Federation shall have as far as possible a dignified place among the comity of nations, that its representatives shall rise to the full stature of manhood, that in their speeches and in their, contributions at International gatherings they will speak with a voice second in authority to none at that gathering that we have acceded to the Dominion. *(Loud applause)*. Therefore, Mr. President, let there be no doubt whatsoever that there is anyone in this House representing a State or speaking on behalf of a State or representing a Unit and speaking on its behalf, who has the slightest desire in any way to minimise the work of this Centre, the powers of the Centre or the authority which that Centre should exercise. If in spite of that there have been occasional voices raised regarding provincial autonomy--which for instance is a misnomer because there is no such thing as Provincial Autonomy; the powers are shared between the Centre and the Provinces--if in spite of that there have been occasional voices raised, hushed voices sometimes, clamant voices, greatly daring at times perhaphs, it is only because there is another aspect of the question which has also to be appreciated by this august assembly. The obverse and reverse of the coin should both be studied before one has a full and comprehensive idea of what this scheme means and what it is intended to serve. Let me tell you. Mr. President, and I hope You will agree with me as President of the Assembly if not as a Member of the Central Government, that the headaches of Administrators of the units are at least as great as the headaches of Administrators at the Centre. There are problems facing them which in their own sphere are acute, grave, difficult, economic problems of the first magnitude, grievances which it is hard to satisfy, ambitions, hopes, aspirations which it is very difficult to fulfil. Remember, Sir, that much of this sphere of activity which makes for the happiness of the individual man lies with the Province or the unit of administration and not with the Central administration. You in the province have the responsibility for free and compulsory education, a goal which you have put before yourself. You have the responsibility for proper medical aid for sanitation, for promoting health, making the man live a little longer than the average life of 25 or 27 years which has been so far our lot in this country. You have the responsibility of seeing that proper conditions of housing accommodation and other amenities are provided. All that responsibility is on the Provincial administration. It is because of the weight of that responsibility that the administrators of units feel that in the separation of powers and particularly in the sphere of taxation they have not got enough resources to satisfy those responsibilities. Let us not lay the flattering unction to our soul that we are better patriots if we propose a strong Centre and that those who advocate a more vigorous examination of these resources are people with not enough of 'national' spirit or patriotism. Therefore, I would echo the sentiments that were given expression to both by my friend Sri Alladi Krishnaswamy Ayyar and by the last speaker and my friend Mr. G. L. Mehta, that what is to be discussed and thoroughly analysed is not the general proposition of a strong Centre and a weak Centre, or the division of responsibility and Sovereignty between the Centre, the Federation and the Provinces but the actual resources that are provided in this report of the Union Powers Committee. Let me say also this. I was glad to note that in the final and concluding remarks of my friend Sri Alladi Krishnaswamy Ayyar he threw aside the theoretical precedents that may be quoted from text books or Constitutions regarding Federation and asked us to apply our minds to the actual proposal in this paper and to analyse that proposal. I think that is a salutary thing to do. It is from that point of view that I venture to examine these proposals.

Now, Sir, the cardinal feature of this, the one thing that has obsessed many of those who have studied this problem from we point of view of the unit, is its taxation proposals. I have said before and I repeat again, that the gravest responsibility is cast on the units for providing what are called nation-building activities. These nation-building activities, remember Mr. President, are the activities which build up the nation and these are the direct responsibility of the units and not of the Centre. For greater responsibility lies on the Centre for the defence of the country. For if we lose our hard-earned liberty, nothing else is worth having. I appreciate that. I want the Centre to have all the powers necessary for that defence. I want the Centre to have all the resources necessary for carrying out its primary objective of defending the country. There is no question of that; but let us also remember as I said, there is another side to the picture that the defence activity cannot be strong unless the nation itself the individual who makes the nation is also strong unless they are healthily fed, unless they are properly educated, unless they are in a position to stand up as real stalwart units of the nation and that responsibility again I say is on the provinces and not on the Centre.

Now, Sir, let us examine the taxation proposals, the powers that are given to the units in this paper, to the provinces. They have been itemised from item 40 to item 58. What more does a province want? They are as many as 18 items of taxation; but let us examine them. The House will pardon me for a few minutes if I cooly and analytically examine them item by item. The first item is land revenue. Now, Sir, it is a notorious fact that for years the agitation has been not to revise the settlements and to do away with land revenue as far as possible. Prime Ministers and Ministers of Provinces elected on adult franchise having the whole weight of the elected authority behind them in the Councils will find very hard indeed to raise land revenue. What of the Prime Ministers are do it in the race of that agitation ? Land revenue, far from being an increasing asset will, I venture to prosphesy, be a decreasing asset in the future so that land revenue may not be the great asset that it is claimed to be. Let us look at time 41-Duties of excise on the following goods-alcoholic liquors, opium and medicinal and toilet preparations. Alcoholic liquor, Mr. President, with a mandate from the Centre for prohibition which most of the Provinces have already accepted, with a ban which is demanded both by popular opinion and even by the dictates from the Centre--what is the revenue that we can expect from alcohol ? Opium again is controlled by the Centre and is subject to International Conferences and regulations. It is bound to be a vanishing revenue. Let us therefore realise that 41 may as well be abolished as put on the list as a source of revenue for the province. Taxes on agricultural income, and I take that item along with Estates Duty in respect of agricultural land and duties in respect of succession to agricultural lands. When the question of the abolishing of zamindari is in the air, and I understand it is going to be an accomplished fact very soon, when division of large holdings is bound to come when peasant proprietorship is going to be recognized or made as far as possible feasible, taxation on agricultural land is bound to become a very poor source of revenue indeed, and if you take it along with Estate Duty in respect of agricultural land, the peasant proprietor having two acres to four acres holdings, what sort of duty are you going to collect from it?

Shri Alladi Krishnaswamy Ayyar: Estate duty even in respect of non-agricultural lands, though collected by the Centre is really a provincial source of income.

Sir A. Ramaswamy Mudaliar: I am aware of that from the report which has dealt with the question and I shall presently refer to it. Estate Duty on agricultural land is a misnomer according to me. You are not going to get it even if you are in a position to levy that tax Then, Sir, taxes on lands and buildings, hearths and windows, I understand that this item appears in the Act of,1935 and in some tribal areas local bodies have a power to tax the hearths and windows. In any case it is not a tax from which the Provinces can expect much This is a tax for the local bodies and not a source of revenue to the Province. Duties in respect of taxation of agricultural lands and Estate Duty I have already dealt with. (46) Taxes on mineral rights, subject to any limitations imposed. by any Act of the Federal Parliament relating to mineral development. Here again, limitation comes from the Federal Parliament. (47) Capitation taxes. Yes, that is a very good source of revenue if any provincial Prime Minister will levy a poll tax, a revived *jezia* which was levied in the old days. I wonder how many of the Provincial Ministers and their colleagues will have the temerity to propose such a capitation tax to thier provincial legislatures. (48) Taxes on professions, trades, callings and employments. This again is taxation of a very poor kind, yielding a small amount mainly intended for local self-government institutions. (49) Taxes on animals and boats. I wonder again, with the strong pressure from agricultural and rural areas which is bound to be exerted in the new legislatures, how many will be able to tax animals and boats. (50) Taxes on the sale of goods and on advertisements. This is the one tax that is being exploited now. But I venture to say that there is a limit even to that taxation. As far as possible it should be uniform more or less in all the provinces. You will be killing the goose if you merely go on increasing the sales tax. The law of diminishing returns is bound to operate as in the case of tariff on imported goods.

The next item on the list is: (15) Taxes on vehicles suitable for use on roads, whether mechanically propelled or not, including tramcars, a source of revenue intended for local bodies. Then we have: (52) Taxes on the consumption or sale of electricity. When one is trying to develop electricity in the provinces, when one wants industries to be established by giving cheap electric power so that as many industries as possible may be established in the different provinces, to impose a tax on the sale of electricity and what is more, to expect any heavy revenue from that is, I think, to indulge in a fanciful hope.

We have next, item 53. Cesses on the entry of goods into a local area for consumption. use or sale therein. This is a sort of octroi for the municipalities and other self-governing institutions. (54) Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling. Here again, betting and gambling are sought to be abolished by the provincial ministries. At any rate, public opinion is supposed to be in favour of the abolition of betting and gambling. The turf course, whole fate is hanging in the balance in more than one federating unit, is the only source of revenue from which any large income can be had, And taxes on entertainments; Let me tell you that life is rather dull ill most of the areas of the Federation and I do not know whether any heavy taxation of so-called luxuries will really ensure to the happiness of the ordinary man who, instead of going to the toddy shop for a diversions, now goes to the cinema. Item 55 relates to the rates of stamp duty and item 56 refers to collection of dues on passengers and goods carried on inland water-ways. My honourable friends from the provinces know what can be had from this source. I think very few provinces get any substantial revenue from this item.

Then, I thought, Mr. President, that the one reform that was sought to be introduced was the abolition of tolls. In many of the provinces tolls have been abolished. It will be very difficult to revive that dismal system of hold-ups which has been the feature in the past. in many of the cities of our country. I venture to think that tolls will neither bring in a large revenue nor will it be feasible to adopt them in all the provinces.

Shri M. Ananthasayanam Ayyangar (Madras: General) : In the States there are still tolls existing.

Sir A. Ramaswamy Mudaliar: Most of them have been abolished. There are only a few remaining and the process of their abolition is going on quickly.

Then there is item 58. 'Fees in respect of the matters in this list, but not including fees taken in any Court'. This is an unknown and uncertain source of revenue on which IL have very little comment to make.

In the last paragraph, para. 6 of this Report it is said: "It is quite clear, however, that the retention by the Federation of the proceeds of all the taxes specified by us would disturb, in some cases violently, the financial stability of the Units and we recommend therefore that provision should be made for an assignment, or a sharing of the proceed of some of these taxes on a basis to be determined by the Federation from time to time." With all these its and buts and with the additional and subjective clause, this source of revenue is a poor source of consolation to the provinces. It is vague; it may be illusory; it is very indefinite and even that the Federation has to decide "in such proportion and on such basis as it may determine". I wonder how many of the Provincial Ministers will be happy at this state of affairs.

Let me now turn to the Centre. There has been a great deal of analogy put before us regarding the sources of revenue for various Federations. As Mr. G. L. Mehta has pointed out, our Federation is unique in many respects. We have to take into consideration the subsisting standards everywhere and the facts as they are and, with reference to them, for the time being at least, frame the Constitution. I have said already that here is none in this House who would object to a strong Centre with resources enough for keeping up its position. But there is one fundamental fact which has been ignored and which has come into vogue during the war period a new method of increasing the sources of revenue. Let us remember, Sir, that while the provinces have nothing except the definite and declared sources of revenue the Centre has one inexhaustible source of revenue, the Nasik Printing Press. I say it advisedly because I now what has been happening during the last few years. The old idea that the currency of a country should have a fiduciary backing, that there should be gold or silver or something of the kind behind the note issue has gone waste in all countries. Today our currency has not got that backing. No country in the world, excepting the United States of America and Switzerland, has got that fiduciary backing which at one time was insisted upon for all paper currency. Now you can increase your currency at a tight moment. You can issue treasury bills. You can issue your own currency, I do not for a moment suggest that it is advisable to do so. It leads to inflation and all that sort of danger, and I am one of those who believe that even at present this inflation has to be brought down as far and as quickly as possible. It is the Centre alone that can bring it down. Therefore I am not in a position to advocate that. But I say this advisedly that in the midst of an emergency when they cannot turn to another source of revenue they can expand this source as other countries have done in abnormal times. But where can a province turn ? At times it can float loans. But as history has shown, it cannot always lead to success. In that plight, I venture to think that provincial autonomy, even on the few subjects that have been entrusted to a province will be of a poor kind indeed. Therefore, Sir, while appreciating all that has been said in this Report about it, let me also add that there is another side to the picture which those who have prepared this Report have no doubt taken into consideration; but let me, like the Laputan flapper, conclude by saying that. I wish they had taken a little more into consideration the other side of the picture. I have done.

Mr. President: I have got the names of number of members who want to speak, but closure was moved before I asked Sir Ramaswamy Mudaliar to speak.

Mr. B. K. Sidhwa (C. P. & Berar: General) : Mr. President, Sir, before closure is moved, I would request you to bear in mind one thing. This subject is very important. It affects the economic condition of India, and it is important therefore that ample opportunities should be given to members to express their views. Before the closure motion is accepted, I would request the President to see whether there has been a debate representing both sides. One view has been expressed and the other view has not been expressed as well as it ought to be. Therefore, Sir, I would request you to allow both sides to express their views so that the House may know what they think about this important matter.

Mr. President: I am entirely in the hands of the House. But so far as the speakers are concerned, I think they have been evenly balanced, three on one side and three on the other, and so there is no question of the speakers being on one side only. I would like to put it to the House whether it wants further discussion. The question is:

"That the question be now put"

(The motion was negatived).

Mr. President: I have given many members in this side (to the right) an opportunity to speak. On this side (to the left) I have got a few names. Mr. B. Das.

Mr. R. K. Sidhwa: I hope, Mr. President, that you will not go by the slips of names you have got. We have also to speak.

Mr. President: I will not go by the names I have got here. On a previous occasion, I said that I would not take notice of slips. If any member stands up in his seat, he will catch my eye.

Mr. B. Das (Orissa: General) : Sir, I was very glad to hear my friend Sir Ramaswamy Mudaliar, speak about provincial revenues and income. He was a party before 1933 to the distribution of taxation under the 1935 Act It is galling to me that Honourable Members of this House should try to perpetuate the taxation arrangements under the 1935 Act. What is the basis of that Act ? That Act gave all powers and all resources to a foreign Government. That devil of a foreign Government has quit India but the devil's system still continues. The Act of 1935 gave all resources to the Centre so that the Centre could rule and dominate and spend the country's resources as it liked. The Centre had no responsibility to the people of India except to send them to jails when it liked. Since the 15th of this month, we have a people's Government. This report is the fourth report that we are discussing, and I fail to observe that the Union Powers Committee's report is drafted in any democratic spirit. I am very glad that two gentlemen, Sri Alladi Krishnaswami Ayyar and Sri Gaganvihari Lalubhai Mehta, spoke of social welfare and social justice. I was pleasantly surprised to here these two gentlemen, situated in high places as they are and situated far above the people as they are, speak of social welfare and social justice. I think Sri Alladi Krishnaswami Ayyar who is a member of the Union Powers Committee has failed to give consideration to the primary duty of the State to render social justice to the people. We are not going to give powers to the Government, to the ministry, only for them to continue the policies of the foreign administration which were expensive and top-heavy. Defence, of course, there should be defence. Will defence suit the national temperament, the national requirement of India, or will it be in the line of the capitalist Western nations like the U.S.A. and England ? I do not think that at any stage the members of the Union Powers Committee of the Union Constitution Committee had it in their minds that India's temperament will require a different orientation in the policy of expenditure at the Centre.

Sir, nobody wants Charity from the Central Government. I do not want that, though I belong to the poorest province, Orissa, which had a *per capita,* expenditure of Rs. 1-8-0 before the war but, there should be an equitable distribution of taxation. The Central Government, including the Governor-General, or the President who will be here in six months' time, and the Ministers, must think of their primary duty of social welfare. Nowhere in the Union Constitution or even in the Union Powers Committee's report have I found any definition of the primary duty of the Central Government. Is it only to assume all powers ? Certainly not. We will have to conceive of a system of administration so that the largest amount of taxation that will come from the people should go back to the people. It, should not be spent in manufacturing armaments or in manufacturing atomic bombs. Sir Ramaswami Mudaliar analysed provincial taxation and showed how provinces are kept merely on sustenance allowances. The foreign Government at the Centre wanted only cannon fodder from the provinces. People were driven by hunger and starvation to join the army, not, a voluntary army, to defend the British Empire, not so much the Indian Empire. This is the third time I am appealing for social justice and social security. It is understood from the press reports that the Union Constitution Bill is in the drafting or semi-drafting stage. It is no use Government assuming all powers. We may think we will function as the legislature, but the residuary power is vested in the Government, in the executive. I find from the Union Powers Committee's report that the tendency is that they want further powers, that they want Section 126 (a) should be incorporated in the Union Constitution Bill, so that the President, now the Governor-General, and the Cabinet will have immense pourers.

Why this hankering, why this hungering in some minds amongst my colleagues here for these intense executive powers to be concentrated in the hands of the President or the Ministry ? The legislature must exercise its democratic functions and the people must control through the legislature the actions of the executive which should conform to democratic principles. I do not find any spirit of democracy there, Sir.

We have received the second report of the Advisory Committee. We have received many reports so far--which is not the subject matter of discussion here. There have been recommended certain concessions to the minority communities. Who wants little concessions ? We want our rights and privileges and we do not wish to hand over all our resources to a group of ministers. We do not want to hand over all our resources for carrying on the Government. What we want is that our resources should be so distributed that it should be spent for the welfare of the people. I am therefore grateful to Sri Alladi. that he mentioned it and I am also grateful to my friend Sri Gaganvihari Lalubhai Mehta, ex-President of Indian Chamber of Commerce, who thinks in terms of welfare and economies through development. He wants big capitalists to develop India. I want fifty per cent. of the taxes of India should filtrate for the common good, to remove hunger, to remove starvation from the door of the people and the standard of living of the people should be better. But if we create classes of capitalists who will be super-capitalists we can never bring up the level of the common masses to that standard. Not that I am opposed to big industries, but I do not want the House should be enamoured of the sympathy of the big capitalists that they think in terms of economic expansion and economic development of India. The Government is our own today and no Government Members has participated in the discussions we are having today. As Members of the Constituent Assembly they ought to tell us what is their attitude, what is their line of thinking. I am not talking as a Member of the legislature, I am talking as a Member of this House. If the attitude of those who are our representatives in the Government is that the common mass, the common welfare of the people of India is their lookout, their main and primary duty, then, Sir, this Union Powers Committee's report, the underlying spirit of the report of this Union Powers Committee, should be scrapped. The Union Constitution should be so framed so that the resources of India, the intelligence of India, of the best economic thought of India, should be developed for the progressive benefit of the masses of India. That spirit I have not seen and I am very sorry that the Committee, however expert they were, however eminent they were as legal luminaries or financial experts, they have never bent their thought to it and I hope after today's discussion either the Union Powers Committee report is thrown back to the Committee again or when the Union Constitution Bill is drafted and placed before us they will develop that sense of duty to the millons.

Shri Narayan Singh (Bihar: General) :*[Sir, I support the motion to take the Union Powers Committee's report into consideration. A controversy has arisen as to what powers should be given to the Centre and I feel it necessary to speak something in this connection. Distribution of powers has begun and we should consider-the matter thoroughly. Personally, I am of the opinion that the lesser the powers given to the Government the better it is. Sir, we have spent our whole life in fighting against a Government. We have just done away with a Government and are going to establish another. To tell the truth, the out-going Government has not left behind any good or happy impression. We are discussing here as to how powers are to be distributed between the Central. and the Provincial Governments. I desire that the primary units of Government should be established in villages. The greatest measure of power should vest, in village republics and then in the provinces and then in the Centre. But, unfortunately we have not as yet got village republics. The people have lesser voice in the Central Government than in the Provincial Governments. We must consider as to what powers should be given to the Government but at the same time we should also consider the measure of control the people should exercise on the Government. This requires our greatest consideration. The Central Government is vested with the authority of maintaining law and order in the entire country. It is vested with the power of defending and maintaining peace and order in the country. Is it not a very wide power ? This much power should be enough for the Government. This Government is vested with all authority in respect of Communications and Foreign Affairs. All these powers go to make the Centre very strong. But in spite of these wide powers, members are anxious to make the Centre still stronger. I too desire this and in fact everybody should aim to have a very strong but good Government at the Centre. Unless the Government is good, its strength will be a source of evil rather than of good to us. Take it from me that there may be a Central Government which might transfer the capital from Delhi to Madras. This is not impossible. If the Government is good and honest it may do immense good to the people. But on the contrary, if the Government is not good, it might prove very harmful. Let me put a concrete example. There was a time when Bihar was considered to be the best place for Pusa Agricultural College. Those who have special knowledge of agriculture know' that the Pusa Agricultural College can be run in Bihar with more profit and advantage than in Delhi. At one time, the Central Government established the Pusa College in Bihar. But when another Central Government was formed it shifted the college to Delhi. Such are the whimsical deeds of the Central Government which you must bear in mind. You know that the cost and labour involved in running the college in Delhi is excessive. It is a well known fact that the needs of the different provinces are different. We know that the system of rationing and the Food Department are under the Central Government but how are they, administered ? The people in the U.P. and the Punjab do not need rice but wheat, whereas the people of Madras need rice and not wheat. The Central Government asks the people of Madras to eat not only rice but wheat also and to the people of U. P. and the Punjab it gives rice to eat. This is what the Central Government does. I too admit and want that the Centre should be strong. The stronger the Central Government the better it is. But at the same time, we should not curtail the powers of the provinces. Such powers as you think proper and those suggested by the Union Powers Committee should no doubt vest in the provinces. But in my opinion the residuary powers vested in the provinces should remain intact. The needs of one province differ widely from those of others. I need not say much on this. But while considering residual powers you will have to keep in mind that formerly when Pakistan had not come into being, we accepted the principle that residuary powers must rest in the provinces. Now it is not proper to say it is no more necessary because Pakistan has come into being. As to whom the powers should be conceded to ensure the greater measure of benefit to the masses is a question that should be well considered. Residuary powers must vest in the Provinces. If you put them in the Concurrent List it would be quite enough. That will serve the purpose. I would appeal to you to consider this point fully. Everyone desires that the, Centre should be very strong but at the same time it should not be en-trusted with matters about which it has no idea and whereby any province may be put to a positive loss.

There is one thing more in the report which appears to me unsatisfactory. I belong to a free country and I have no liking. for Princes but the report goes to show that the rulers of. the States apprehend that their powers are being curtailed. We should act here in such a way that the princes may not entertain any such apprehensions. If they are allowed to exist there will be dissatisfaction and the work cannot be carried on smoothly. We should see that Princes are with us and whatever they do is in the interest of their people. We have the right to remove such Princes who go against the interests of the people. But we must not entertain the idea of curtailing the rights which they have been enjoying during the British rule. Such an attempt will be harmful to us. Because of these residuary powers being vested in the Centre the Princes may be apprehensive of their future. Therefore I I plead that so far as possible the residuary powers should vest in the provinces.]*

Pandit Hira Lal Shastri (Jaipur State) :*[I wish to say a few words about the principles laid down in the report which has been placed before us today. I do not want to enter into the discussion whether the Central Government should have more powers or less powers. Both of these views are being expressed but personally I believe that the Central Government should have sufficient powers. I want to support this report because in it the powers of the Centre and those of the provinces or the units have been beautifully adjusted. For maintaining peace in the country and for other purposes also there should be a strong Centre. But as our country is very extensive, we shall have to leave sufficient powers for the units also. I want particularly to impress that the units include our provinces and the Indian States. Hussain Imam Sahib used some strong words yesterday acid urged that there should be no difference between the two. We admit that there should be no difference. We, however, know that there are many differences today and there are many varieties of States. There are. differences of area, population and income. There is difference in the system of administration in the States and elsewhere. We know and understand these differences. Ye--I admit that the Policy that is being adopted towards the Indian State is the correct one. It would be proper if today they are not made to agree to anything beyond the statement of May 16. We should be con tent with what they cede of their own accord. But at the same time, want to point out that if the authorities of the Indian States think than with their participation in the Constituent Assembly their duty finished and their loyalty too ceases by getting themselves in-eluded in the India-Union, they are greatly mistaken. Because in the age that is to come it is impossible that there should be one type of administration in on unit and another type of administration in the other. It is inevitable that throughout India, in every Indian State, province, big or small there will have to be one type of administration. It will be based democratic principles. We are pained to find that the people of the Indian States are at present in great distress. We have declared that India has become independent and the whole country is rejoicing over it. India has surely become independent and we fully share these rejoicings. To achieve this independence and to bring it near, we have also made our contribution, however small it might be. We are proud of it. In spite of this, we are grieved to find that when India is said to have become independent, the people of the Indian States have still to achieve that status. This is very regrettable.

We were waiting for August 15 and it is past that date now. A new age is drawing and changes are taking place. How it is possible that no changes should take place in Indian States. We are to some extent confident of the farsightedness of the authorities, the rulers and the ministers of Indian States. They should understand that they will have to bend under the pressure of the times. If they do not bend, they Will break. We are a little confident of this too. We have some confidence that the Central Government may help us. The previous Central Government did not help us. It helped those who helped the Government and were proud in helping to maintain it here. It helped them and did not help us. It hampered our progress as much as was in its power. That Government has ended now and its authorities too have disappeared. It is no more before us now. A new Government has now been established and we have every hope that it will help us. It may not be able to help us much but we do hope that it will not hamper our work.

But I want to tell you that I am in favour of a strong Central Government. If the States want to come in at present for a limited number of subjects, let them do so. At the same time, I want to say that when we are confident of anything we are so after understanding it. We have this confidence not because of the farsightedness of the Indian States or because of the help that the Central Government would give us but because we find some strength in ourselves and feel strength in our arms. On that strength, I say this. The Indian rulers may like it or they may not like it. The Central Government is pledged to democracy. It may interfere there or it may not, and anything else may happen or may not happen but we know that we are not going to leave any stone unturned to establish democratic government. What we can do, we shall surely do. The strength of the people will increase so much that Rajas, Maharajas, and their allies will not be able to resist it. So the prevalent system of Government in States is not going to stay. Therefore, we need not be impatient. By saying some hard things we, do not want to make the States perturbed. Nor do we want to worry them or to terrify them. It appears today that their patriotism is awakened and it is for that reason that they have come here or are to' come here. Let them all come here. But everything is not over with their coming here. Changes will have to be made in States. After saying all this, I want to support the motion. The Central Government should be strengthened under any circumstances whatsoever. If the Government is weak, there will be no peace in the country. Maintaining of peace in the country is the greatest of all the tasks. After that, we will have the opportunity of establishing a new social order and a new economic order. Opportunity will come and all these tasks will be accomplished. Therefore, there should be a strong Central Government. The Provincial Governments should also be vested with more powers. But there is a difficulty regarding the Indian States. All the Indian States are not alike. Some of them are big and some small. They will have to be grouped so that they may form a proper unit in new India.

Whatever has been said here against strengthening the Central Government has no particular effect on me. I am in favour of a strong Central Government.]*

Mr. Debi Prosad Khaitan (West Bengal: General) : Mr. President, of all the discussions that have taken place in this House the debate that is taking place on this question seems to be based more on rhetoric than on an understanding of the real needs of the country Specially, Sir, I may say this of the eloquent speech that has been delivered by Sir Ramaswamy Mudaliar of international fame. He has covered the hollowness and weakness of his arguments by the flourishes of his rhetoric. He has-forgotten for the moment the needs of the defence of the country and the requirements that become necessary for the purpose of fighting a war, whether defensive of aggressive. He has forgotten conveniently how the whole country has got to be regimented in times of war, the signs of which are already visible in the world and to which our unfortunate country, not yet fully developed, may become a victim at no distant date. I am no alarmist in this direction but I do believe that whether it be to protect our freedom, whether it be to spread education and good health or whether it be to produce more goods it is necessary that the whole country of India must be treated as one. And, each one of us, whether believing in provincial strength or in national strength, must see to it that internal peace and security and defence from external aggression is maintained and the production of goods, both agricultural and industrial, is developed, for it is only on the building up of our national wealth can we develop the nation-building activities, over which Sir Ramaswamy Mudaliar was so eloquent.

He analysed the items of taxation in the provincial list and was ironical as regards several of the items. The first item he dealt with was land revenue and reminded the House of the acquisition of landed interests by the Provinces. But has not the strongest argument in favour of that proposition been used when it was said that it was the intermediate tenure holders that take away all the income and the provincial government does not get the same ? Is it not to be expected that by either abolishing or purchasing the intermediate tenure holders the provincial government will benefit more than it does at present under the existing system of land revenue ?

Secondly, he laughed at item No. 42; Taxes on agricultural income. The Provinces have all along thought that they should possess this method of taxation and so long as intermediate tenure-holders existed there was not the slightest hope that the Provincial Government could get this as a good source of revenue.

He then laughed at the words "hearths and windows" but conveniently forgot the words immediately preceding them, namely "taxes on lands and buildings." Who can deny that these taxes on lands and buildings are a fruitful source of revenue not only to the provincial government but also to the municipalities for the purpose of promoting education, building good houses and encouraging other beneficial activities which are needed by the people of the provinces?

Duties in respect of succession to agricultural land is another item which Sir, Ramaswamy Mudaliar very glibly said was of no use to the provinces. But the Provinces have always thought that estate duties in respect of succession to agricultural land, which he has completely ignored, would be a fruitful source of revenue.

Taxes on mineral rights, however insignificant they may have been in the past, will become a fruitful source of revenue to a large number of provinces when our mineral resources are developed and-they will prove a source of great strength to the country as a whole.

Sir, I do not propose to detain the House by going over each item in the provincial list. I would like to draw attention to the items in List I, namely, the Central sphere. Let us analyse those items to find out whether it is administratively possible to realise those taxes if they am placed in the provincial sphere and whether, if they are assigned to the provinces, the urgency of developing the economic resources of the country, would be met. Central Taxation begins from item No. 77 in List I. Taxes on income other than agricultural income. It is well known that business exist of the same person or firm or Company in different provinces. It sometimes happens that the Main or Head Office of a company is in one province whereas the manufacturing concern exists in another province. All these difficulties and the need for uniformity really necessitate that taxes on income can only be fixed and recovered by the Central Government. I hope, Sir, that there is nobody here who will say that taxes on income or corporation tax which is item 73 can be assigned to the Provinces. If you do that, there will be a race between different provinces as did happen in the case of certain States in America. Different rates of tax were levied in different States for the purpose of either attracting business to certain States and for preventing other States from developing the same as well as for well-developed States to get unduly more income from certain industrial concerns and other sources of income. It is therefore highly desirable that taxes on income and corporation tax should go to the Centre. in the past, the proceeds of that tax have been distributed among the provinces, and I have not the slightest doubt that it was correct. In paragraph 6 of the Report the last sentence--which again was laughed away by Sir Ramaswamy Mudaliar-says that provision should be made for an assignment or a sharing of the proceeds of some of these taxes on a basis to be determined by the Federation from time to time. "From time to time" are particularly the words at which Sir Ramaswamy laughed. But I say it must be from time to time. The needs of different provinces vary from time to time and according to the circumstances, the Central Government has to see to it that a Provincial Government is not put to any difficulty. May I remind the House of the very sad circumstances in which Bengal was placed in the famine of 1943 ? If provision did not exist that the proceeds of taxes could be distributed according to the needs of Provinces from time to time, what would the position of Bengal have been if the Central Government did not come to the rescue of that Province in year 1943 and thereafter ? We are on the verge of a famine in Northern India at the present moment. Who can visualise, who is there bold enough to visualise, that the needs of Northern India will not be greater in the near future than the needs of the other Provinces ? Therefore, Sir, some elasticity has to be given to the Central Government for the purpose of determining from time to time the needs of the different provinces and the different units. There fire some provinces who are more industrially advanced than others and it, is necessary for us to see that the more backward provinces have to be. brought as much as possible on a level with those who are higher developed, Their demands proportionately may in future be greater not only for the purpose of development of industries and agriculture but as well for the purpose of developing. health, education and the other nation-building activities which Sir Ramaswamy Mudaliar stressed. It is no use criticising the authors of the report who have giving due attention to every word appearing in he Report and than laughing at it without devoting properly the attention we are able to give and the wisdom which peoples like Sir Ramaswamy is able to bestow with his international experience and his experience for a long time as Member of the Executive Council of the Government of India. He referred to the Nasik Printing Press as a fruitful source of revenue for the Central Government. At that time Sir Ramaswamy Mudaliar was loud in speaking about the sterling balances of India and explaining that they were a valuable property for our country and today when the same Sir Ramaswamy Mudaliar talks of the packing away of our currency he conveniently ignores the existence of those very sterling balances about which he used to be so loud in proclaiming their advantages and selling the goods of our country to England at much lower costs than England would get any where else, lower than controlled prices, and by other means, and it was only at the lower prices that our sterling balances are composed of, and now lie tries to draw our attention to the Nasik Printing press, while at the same time, telling us that he is not in favour of inflation. The finances of a country are of a very delicate nature. Does lie know what is the condition of the finances of our country at present. Formerly, the Government of India Could go into the financial market and borrow to then extent of Rs 100 to 150 crores per year, but what is the state of things that we see at present. The Reserve Bank in order maintain In the price of Government securities has got always to be in market and purchasing Government securities instead of having the courage or go the market for the purpose of raising loans. It is necessary, in the interests of our country as also in the interests of the Provinces and also in the interest of every individual which the population of the Provinces is composed of, that our Central Government which is to look after the Defence which, is to look after the development of industries, which is to help agriculture by means of irrigation, hydroelectric installations and by other methods should be strong and that we should not in any way weaken the Centre on theoretical arguments. Similarly, Sri, you will see that all the taxes that are put in the Central List are only such as can be conveniently administered by the Centre, as are necessary for the sake of uniformity in the different provinces and as are absolutely essential for the purpose of the development of agriculture, industry, etc. We have got to build a large mileage of railways, we have got to have we have got to develop so many things, which can only be done by the Centre and unless each one of these items is properly developed, we shall neither have our freedom maintained nor will it be possible for us to develop either education or health or agriculture or any of the other nation-building activities that we are all so anxious that we should develop. Ultimately, Sir where is it that the proceeds of these taxes go to ? Is the Central Government which is representative of the country at large, which is responsible to the Central Legislature, on which the representatives of all the Provinces will sit and Determine as to how the proceeds of the taxes are to be spent--are. they going to allow the Central Government to fritter away the proceeds of the taxes instead of utilising them in the best interests of the country ? They will utilise them in the best interests of the country either directly or by distributing a share of the proceeds of these taxes among the Provinces, which again will be in duty bound to spend them for the uplift of the country at large. Therefore, I appeal to all my esteemed friends here not to be carried away by this slogan of Centre *versus* Provinces, and to consider deeply in their minds what is in the best interests of the country. Let us maintain our freedom, and therefore, build up our defence. Let us maintain our resources, build up more and more concerns so that we can develop the total wealth of the country at large. It is only on the basis of that total wealth of the country that we can build up the edifice of education, health, culture, art and all those factors which go to make the life of every individual rich, beautiful and happy. *(Cheers)*

Shriyut Omeo Kumar, Das: (Assam: General) : Mr. President, Sir, after the illuminating debate that has taken place, I was not inclined to take part in the debate. But I feel I will be failing in my duty if I did not bring to light a few important points in which my province is interested. At the outset, Sir, I would rather confess that I cannot wholeheartedly congratulate the members of this Committee for the report they have produced. Sir, I agree that the distribution of powers is a very vital point in the Federal Constitution. In all constitutions it has been the bone of contention as to how to distribute the powers between the Centre and the Provinces. The question of residuary powers was the bone of contention in the field of Indian politics for many years part. One section of the people was demanding that the residuary powers be vested in the Provinces and another section of people was demanding that it be vested in the Centre, and the Congress had to take up the position of vesting the Provinces with these residuary powers as a conciliatory gesture to a section of the population; and the altered position that the Congress has taken to day is, I take it a reaction to the situation created by unavoidable, though regrettable partition of India. But I cannot understand the logic, why after taking up this position of vesting the Centre with the residuary powers, the member of this Committee have taken up a different attitude towards the States. After having taken up that position they ought to have maintained a uniform policy for the States and the Provinces. In the provinces they have divested ,the provinces where there is the Government of the people, but in the States where the people have no share in the administration they have vested autocratic rulers. To my mind it appears to be a denial of democracy.

Sir, legatees as we are, of a system of administration which was not credited in the past with having dealt fairly and squarely with the Provinces in the matter of financial adjustments, I feel today that in our anxiety to strengthen the Centre we may be adopting again the same Policy of strengthening the Centre at the cost of the Provinces. Strengthen the Centre we must, confronted as we are with a situation which is volcanic on one hand and dynamic on the other. But we should not weaken the Provinces. After all It is the Provinces which have to carry out the dynamic programme of the Congress. The financial settlement which was the outcome of this anxiety to strengthen the Centre, to bring about financial stability at the Centre only, with the Units starving for funds to carry out the nation-building programme still holds good today and I do not find any change of outlook The same policy of strengthening the Centre at the cost of the Provinces still holds good today.

Sir, I know this is not the occasion to make any special pleading for my Province, but I feel I will be failing in my duty if I did not bring to light a few facts regarding our provincial finances. My Province, Assam, has been the source of contribution to the central exchequer to the extent of nearly Rs. 8 crores annually in the shape of excise and export duty on tea and petrol. But the subvention that was given to Assam was only Rs. 30 lakhs and I do not find any change in the outlook today. I feel, Sir,--and regret having to say it-that our leaders have not yet been able to shake-off the influence of the Government of India Act. Sir, with the installation of the Congress ministry not only in the provinces but also in the Centre, people are expecting a revolutionary change and they cannot be said to be unjustified in cherishing such expectations. We must free our administration, from the shackles of this octopus of red-tapism and we must devise some means to carry out our programmes speedily.

Lastly, before concluding, I must bring to the notice of this House another fact in which my Province is interested, in the list of subjects enumerated in the Federal List of subjects, I find migration and naturalisation. To my mind it appears these two subjects also should be put in the concurrent list or the language so altered as to permit the Province to have scope of action in these two subjects. Sir, I do not know how other provinces feel, but it is sore point with us. We know how mass migration into Assam has altered the very complexion of the population. It has disturbed the relative distribution in population. With the Communal Award and the communal representation it was not fair to us to allow mass migration on a large scale and in spite of the evictions that have been carried out in our Province, I still find a large number of people who are not people of the Province but only trespassers into government lands, still hanging on to the province, living with their relatives. In this sphere, Sir, I want the members of the Committee and especially the Mover of this Motion to think more clearly on this point and permit the provinces to have some scope in this matter If Assam which Is the homeland of the Assamese people, if they cannot be protected, for myself, I think I have no justification to come to this House. Assamese people have a culture distinct from other provinces. Assamese people have a language which is a separate language and which though Sanskritic in origin has got Tibetan and Burma influences and we must protect the Assamese people. In this view of the case I appeal to the Mover of this, motion to provide scope for action by the province. Sir, with these words, I support the Motion moved by Sri N. Gopalaswami Ayyangar,

Sir B. L. Mitter (Baroda State) : Mr. President, I do not want to take much time in saying a few words which I have to say because it has not been brought out in the debate so far. It has been assumed that the distribution of power in the report was made arbitrarily and some think that more power has been given to the centre than ought to have been given; some think the provinces have been weakened and so on. I was a Member of the Committee. The Committee went info the matter of distribution of powers on a definite principle. It is this. Matters of national concern should be vested in the Centre and matters of provincial concern should be vested in the provinces. We always had this a large mileage of roads, we-have to develop a mercantile marine, we fundamental principle in mind when we made the lists. We found that the Act of 1935 was a good guide because in making the list in 1935 Act the same principle, was kept in view. I suggest to Honourable Members that, when we come to discuss the various items, members will kindly bear in mind the fundamental principle that matters-of national interest ought to be in the Centre and matters of provincial interest ought to be In the provinces. There are some matters for which there should be a concurrent list in which both provinces and the Centre ought to have the power. My next point is with regard to the States. Some of the speakers have asked why should the States have a somewhat different position from the provinces ? The reason is obvious. India is about half and half of what used to be British India and what used to be States. Do we want the States to remain in the Union or do we not ? I do not think there will be any dispute here that we want the States to come Into India, all those who are within the limits of what is India. Now the States agreed to come on the basis of the 16th May Declaration. Therefore if you want the States to come in and form one consolidated strong India, you-have got to accede to the condition on which they came in and that is why some special provision should be made with regard to the States. Once the States come in there is no doubt that gradually the States and the provinces would approximate to each other. The States will come up. Assuming that the States are backward, to the backward portions you have got to show some indulgence. Let them come in, let them associate With you and then you will see gradually they will approximate to One uniform standard and that is our objective and thus India will be one consolidated strong India. I do appeal to members from the provinces not to mind the difference which may be made in favour of States.

Mr. President: I think we have had enough discussion now and after all if the Motion is adopted it means only that the report be taken into consideration and the details of the report will come up for discussion. So if the House permits me, I would now put the Motion to vote after giving the Mover of the Resolution a chance to reply if he wishes to.

Mr. N. Gopalaswami Ayyangar (Madras: General) : Mr. President, Sir, I do not think after this long debate it is necessary for me to take up much of the time of the House particularly because arguments taking a particular standpoint from one speaker or another have been answered by counter arguments from others taking the opposite point of view It is unnecessary for me to refer to all the detailed points that have been raised in the course of this debate. I wish, Sir, however, to refer to one or two main considerations. One of them has just been referred to by my friend Sir B. L. Mitter viz., a distinction that has crept into the preparation of these lists as between provinces and the Indian States. I did make a reference of this point in my opening speech and I indicated the considerations that had weighed with the Committee in arriving at the conclusion that (at the inception of the Federation in any case, some consideration should be given to the different sets of conditions which in Indian States and in the Provinces. It is really the correct to keep in view as an ultimate ideal that in due course the Indian States will approximate to provinces and the distinctions that now exist we are interested in is to maintain the integrated political structure that has come into being now and if possible to strengthen that structure as much as we can even if in doing so we have to make a discrimination in favour of areas with certain different sets of conditions, perhaps in favour of certain, what I would even go to the extent of calling, Prejudices. Well, Sir, we have to recognize that position and the Union Powers Committee Report is based upon the recognition of that distinction.

The other big point that has been raised in the course of this debate is, I think, based almost entirely upon a delusion. That point is that by the lack of a sense of values or by reason of our not having examined the matter carefully, the Union Powers Committee has grabbed for the Centre functions and financial resources which would more appropriately have been assigned to provinces. That I call a delusion. That, arises from the fact that those who, have raised that objection have not sat down to compare the Lists that have been made for the Centre and for the Provinces in the Union Powers Committee's report with the Lists that you will find, for instance, in the Government of India Act of 1935. I base this particular argument on a statement which, with considerable labour, one of my Hon'ble friends from the States has prepared and shown to me and I think I am right in saying that there is hardly ale item in the present Provincial List in the Government of India Act which this much criticised Committee, the Union Powers Committee, has transferred to the Federal List (*Hear, hear*.) If I mention that point it is not because I want to claim credit for, the List that exists in the Government of India Act. It is possible for these critics to say that even what you find in he Lists attached to the Government of India Act, is not based upon solid, convincing considerations, that the Union Powers Committee should have gone further and if possible transferred some of the items on the Federal, List of the Government of India Act to the Provincial List. I wish however only to say at this moment that the criticism that we have grabbed power for the Centre in matters which so far we have considered to be within the sphere of the provinces has no substantial foundation.

The next point that I wish to refer to is the one elaborated at length by an Hon'ble Friend of mine for whose administrative experience and. oratorical gifts I have very great regard. That friend started by examining the list of taxes in the Provincial sphere and tried to belittle and pooh-pooh the items you find there. I think the cage he tried to make out was that the distribution of the taxable sources between the Centre and the Provinces in the Union Powers Committee's Report was deliberately calculated to reduce the resources of the provinces and to in,. crease the resources of the Centre. That view, I think, Sir, is far from the real state of the facts. As a matter of fact we have included in the Provincial List all the items of taxation and revenues which you find in the Provincial List of the Government of India Act today. In, this connection I must say that it was rather extraordinary that while My Hon'ble Friend spent so much time and rhetoric on belittling these various individual items in the Provincial List; he did not devote a reasonable proportion of that time and rhetoric to the items which wit have included in the Federal List. There also we have only repeated what is to be found in the Government of India Act. He seems also not to have attached sufficient, importance to a matter to which the Committee has drawn very prominent attention in the last paragraph of its Report. The the Centre might produce revenues which would be perhaps on present Comittee recognises that the sources which are listed for the benefit of standards more than adequate for the needs of the Centre In any case it recognises the fact that, if the Centre retains the entire proceeds of all the Central taxes that are mentioned, it might result in upsetting the .financial equilibrium of the Units and therefore has made the specific recommendation that steps should be taken for the assignment wholly of these sources to the units and for the sharing of other sources between the Centre and the Units periodically at the discretion of any authority which in the course of the framing of the Constitution we may decide upon establishing for that purpose.

Shri T. Prakasam (Madras : General) : May I just point out, Sir, that the Government of India Act was rushed through Parliament at a time when the country was carrying on fierce agitation ? (Voices: 'Mike, mike').

Mr. N. Gopalaswami Ayyangar: I might for the benefit of the House repeat what Mr. Prakasam has drawn attention to. He seems to contend that the 1935 Act was rushed through Parliament that this county had no adequate opportunity to put its views before Parliament and therefore it is not an Act which we should have taken as a model for imitation. All that I would say in reply is that the 1935 Act was the last act in a series of proceedings which started I think about 10 or 8 years earlier and that the proposals that are contained therein passed through the hands of various Commissions and Committees and finally through a Joint Parliamentary Committee on which representatives of this country sat and that the whole scheme was evolved after the expenditure of an amount of labour and thought which we do not ordinarily associate with the framing of legislation of that kind.

Now, Sir, it may be that what was produced at the end of it all did not satisfy us in certain respects, but we certainly could not complain that that legislation was prepared in a hurry or rushed through Parliament in a hurry. We may not accept all that is contained therein.

What I am interested in pointing out in reply to the debate is that there is nothing that we have done in the Union Powers Committee's Report which you could attack in reason. We have heard a great deal about the-resources of the Provinces being poor, about the resources of the Centre being inexhaustible and so on. I do not however remember having heard from any speaker in this House any constructive suggestion as to what we might have added to the Provincial List and what we might have subtracted from the Federal List.

Now, Sir, I do agree that as the report stands it does not give the House a full picture of what will be the final financial provisions in our new constitution after it comes to be fully drafted. I have more than once told the House that the scheme that is in contemplation is that this whole question of the resources that could be tapped in this country, the distribution of those resources between the Centre and the units and the machinery by which that distribution should be effected, either all at once or from time to time, should first be examined by an Export Committee, and perhaps later on vetted by the Union Constitution Committee and finally that scheme would come before the House so that those who are the authors of that scheme might have the benefit of constructive suggestions from Members of this House. As it is, Sir, we have only put before you the items which we wish to include in these three different lists. We have also told you that it is not intended that these items of revenue resources or tax resources should be exclusively appropriated to the Centre. We contemplate that certain items should be wholly assigned to the Provinces. We contemplate that others should be shared equitably between the Centre and the Provinces. Where then, Sir, is the justification for the criticism that the Union Powers Committee has failed to do justice to the Provinces in this connection ? I for one am unable to see any ground for that criticism. Sir, I do not wish to take up the time of the House any longer. We have had a most interesting debate on this very vital issue relating to the Constitution and I hope that Honourable Members will recognise that during the quick changing events that have taken place during the last few months that Committee has done a piece of work which if it does not extort admiration will at least elicit some measure of approval *(Cheers).*

Mr. President: Shri Gopalaswami Ayyangar's motion is:--

"Resolved that the Constituent Assembly do proceed to take into consideration the Second Report on the scope of Union Powers submitted the the Committee appointed in pursuance of the resolution of the Assembly of the 25th January, 1947."

The motion is adopted.

An Honourable Member: I press for a division.

Mr. Hussain Imam (Bihar: Muslim): May I suggest the procedure which was sometimes followed in the Council of State, that is, in the old days minorities were asked to stand up in their places to express their dissent ? From it you could make a note and not involve the whole House into going into the lobby.

Maulana Hasrat Mohani (U. P.: General) : What is the number of those who will remain neutral ?

Mr. President: To my mind it is perfectly clear that there was a large majority in favour of the Resolution. Now those who are opposed to the Resolution will please stand up in their places.

(Six Honourable Members stood up.)

Mr. President: So I think my reading was quite correct., There are six opposed to it.

The motion is adopted.

Maulana Hasrat Mohani: I am in favour of the Resolution, but as I suggested a large percentage of those. who have not voted have been neutral.

Mr. President: I think I am quite satisfied that the House is in favour of passing this Resolution and there is an end of the matter.

Mr. M. S. Aney (Deccan States) : Mr. President, as you have granted the Poll and asked those who are against, it is necessary for you to ask those who are in favour of it.

Mr. President: I do not think it is necessary, because it is quite clear and I have already declared. But if the House insists I win ask the Members who are in favour of the Resolution to please stand.

(An overwhelming majority of Honourable Members stood up.)

Mr. President: It is now quite clear.

An Honourable Member: Those who are neutral ?

Mr. President: It is not necessary to know the neutrals. We shall take up the Report now. We have to take up the amendments. The first amendment is by Shri D. P. Khaitan.

Mr. Debi Prosad Khaitan: Mr. President, Sir, I sent notice of this amendment because in the Resolution of Shri Gopalaswami Ayyangar as it is worded only the words "Second Report" are mentioned. In the circumstances there was a little vagueness as to whether the first Report would come into consideration or not. But in the speech that Shri Gopalaswami Ayyangar delivered in moving this Resolution he made it. clear that in spite of the occurrence of the words "Second Report" only, the House will be entitled to consider the first, report also. in the circumstances, Sir, I do not think there is any necessity for my moving the amendment that stands in my name.

Mr. Naziruddin Ahmad (West Bengal: Muslim) : Mr. President, Sir, on a point of order. I submit that the House has accepted only the Resolution as it has been proposed. It has not accepted the Hon'ble Member's speech in support of the Resolution. It is an accepted constitutional proposition that when a Resolution is passed, any speech made contrary to it or inconsistent with it, is not necessarily accepted but is rather rejected. The Resolution says that the "Second Report" be taken into consideration while in the speech it was suggested that that part of the first report which is not inconsistent with it may be looked into. The so-called introduction of the first report is extremely qualified and it is that part of the report which is consistent with it which in the opinion of the Hon'ble Member may be looked into. It comes to this, to my mind, that the first report is out of date and has been discarded and only that part of it only which is consistent with the "Second Report" may incidentally be taken into consideration as a relevant document.

And then again, the amendment which was tabled should have been moved before the Resolution was put to the vote.

Mr. President: It has not been moved.

Mr. Naziruddin Ahmad: Yes. As the amendment has not been moved, it simply falls through. If the Honourable Member who tabled the amendment is happy with the idea that the first report holds the field, let him be so. But the constitutional position is that the first report is not formally before the House.

I have a second reason for making this submission. Those members who unfortunately were not in the House from the very beginning that is, those members who came here as the result o the statement of June 3rd have not yet been supplied with a copy of the first report. That also indicates that the first report is not before the House as it is constituted today.

In these circumstances, I ask for a ruling as to whether the first report is before the House by reason only of the fact that the Honourable Member, in a qualified manner said that it may also be referred to. I submit that it could be taken into consideration by way of argument in an incidental manner and not as a substantive

Report properly before the House to be voted upon.

Mr. President: Has the honourable member received a copy of the blue book ? It contains the first report also.

Mr. Naziruddin Ahmad: Unfortunately, that packet was sent to my address in the Constitution House where I was during the last Session. I have since shifted to the Western Court. In spite of repeated letters and messengers to the Constitution House I have failed to recover the packet.

Mr. President: It is unfortunate that it did not reach him. He will be given another copy.

We have to proceed with the consideration of the Report. There are certain paragraphs in the Report and we have got appendices which contain the lists. I have got notice of certain amendments suggesting that certain paragraphs should be substituted by something else, that certain additions should be made to certain paragraphs and certain fresh paragraphs should be added. It seems to me that the report as a whole is now before the House and the Report is the Report of the Committee. I do not know whether it is open to the House to substitute a paragraph of the Report. Perhaps, the House can say that the principle embodied in a particular paragraph should be substituted by certain other principles or that the substance of the Report should be altered in a particular manner. I do not know if it is correct in form to say that a paragraph of the report should be substituted by, something else,

Any way, that is only a technical matter. We have now to proceed to the merits of the report. We shall have to take the report paragraph by paragraph and if any amendments have to be made by the members, I will call upon them to put forward their suggestions of which they have given notice in the form of amendments. We take up the report paragraph by paragraph. Mr. Gopalaswami Ayyangar, will you take up the report para by para ?

Mr. N Gopalaswami Ayyangar: Sir, I did not quite catch the suggestion that you were good enough to make. Is it your idea that I should read these para by para ?

Mr. President: No. I do not think it necessary that the paragraphs should be read.

Mr. N. Gopalaswami Ayyangar: May I make an alternative suggestion which would perhaps be simpler and this is a procedure which in the legislatures we follow in regard to bills. After the motion for taking the report of a Select Committee into consideration has been passed, the procedure is that the President says, the question is that Clause I do stand part of the bill, and then amendments are moved. If I may suggest the procedure, Sir, you may refer thereby to the number of the paragraph in this report and say that that para do stand part of the report. If there is any amendment, it may be considered and the para put to the vote

Mr. President: I will follow that procedure. We shall take up para by para. I have not got notice of any amendment to para I.

Shri K. Santhanam: Sir, I have got a suggestion to make. I think we should take the items first and take the body of the report finally, because it is only a summary of the items. After we have disposed of the items, we can then discuss the various paras. If we take up the items first, it will save a lot of time. If we take the paras first, there will have to be a repetition of much of what has been said these two days.

Mr. M. S. Aney: Mr. President, the Report is in two parts. The first part gives us the principles on which the three lists in the second part are prepared. Now, to take up the analogy which has been referred to by one of my friends there, of considering a bill when it comes before the House, it must be noted that the bill generally has got one statement called the Statement of Objects and Reasons of the bill. Then there is the bill. The bill is considered first. At the end after the bill is accepted, we accept the Objects and Reasons as only giving us the grounds relevant to understand the bill and nothing more than that. We need not consider this report clause by clause. This gives the general principles on which the three lists are made. We have to examine these lists in the light of the principles enunciated there. Therefore, the proper procedure would be to consider the items first and at the end of it, if we find in dealing with the lists that some principles in the paragraphs have undergone a change, then we may make any change as regards the Other part of the report.

Mr. N. Gopalaswami Ayyangar: Sir, I entirely agree with Mr. Aney that if we strictly followed........

B. Pocker Sahib Bahadur (Madras: Muslim). On a point of order, Sir, I would like to know whether the second report alone or the second report along with the first report, is before the House for consideration.

Mr. President: The second report is under consideration. It incorporates much of what was contained in the first report. If there is any difference, it is only the second that is under consideration now.

Mr. N. Gopalaswami Ayyangar: If we followed strictly the procedure relating to bills, I agree entirely with Mr. Aney that what he proposes would be the right course. The particular suggestion I did make was due to your having already ruled that we were to consider the report also para by para. We have passed a motion that the report be taken into consideration and that by itself could be deemed to be sufficient approval of the House for taking the report under consideration and we have only to deal with the items in the list. You may have perhaps a general debate at the end when you can review the entire course of discussion and arrive at any conclusion you please. If, therefore, you are pleased to direct that we should consider the report para by para then the procedure I suggested may be adopted. if, on the other hand, you think that the report has already been taken into consideration, there is no need to go into the detailed paragraphs of that report and we may take simply the items and dispose of them.

Mr. President: I think we had better go to the lists. We shall take the items in the list one by one and when this is finished, we may take up the paragraphs if necessary. Perhaps, it may not be necessary at all We shall take this up tomorrow. The House is now adjourned.

The Assembly then adjourned till Ten of the clock on Friday, the 22nd August 1947.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME V

Friday, the 22nd August 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (the Honourable Rajendra. Prasad) in the Chair.

MEMBERS TAKING THE PLEDGE

The following Members took the Pledge.

1. Mr. Prafulla Chandra Sen (West Bengal: General).
2. The Honourable Pandit Govind Ballad Pant (United Provinces : General).

REPORT OF THE UNION POWERS COMMITTEE- contd.

Mr. President: We shall now proceed with the discussion of the items in List I in the Appendix to the Report of the Union Powers Committee. We shall take up item No. 1. I find there is notice of amendment by Sir Ramaswami Mudaliar, Sir V. T. Krishnamachari, Shri Srinivasan and Shri Venkatachar.

ITEM 1

Sir V. T. Krishnamachari (Jaipur State): Mr. President, Sir, I move:

"That in item 1, all the words after the word 'thereof' be deleted."

My reason is that the words beginning from "generally" are unnecessary. They are explanatory. I understand they have been adopted from some judgement of the High Court of Australia. It seems to me to be unnecessary to. add these descriptive words to the list of subjects. That is the reason why we have set down this amendment on the order paper. We have no objection to the sense of the words, but we consider that in the list such descriptive explanations are out of place.

(Messrs. K. Santhanam Naziruddin Ahmad and T. A. Ramalingam Chettiyar did not move their amendments-No. 5 in List No. 1, No-. 4 in List No. IV and No. 6 in List No, I.)

Mr. President: There is no other amendment to this item of which I have notice, If anyone wishes to speak on the amendment which has been moved he may do so.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President Sir, the amendment which stood in my name is the same as the one which has been moved though it is in a different phraseology. I submit that the words proposed by the amendment to be deleted are unnecessary The expression "defence" in item No. 1 is, think, comprehensive enough. No further descriptive words are necessary as will appear from numerous other items in the, List-both in the List attached to the Report and the List attached to the Government of India Act. I Will cite one or two instances: item No. 3--"Central Intelligence Bureau"; No. 6--"Defence industries"; No. 7-"Naval, Military and Air Force works". There are numerous other similar items. The items are described merely by name. According to a well-known principle applicable to such cases all incidental or ancillary powers necessary to give them full effect, are implied in these expressions. They are cryptic expressions which explain themselves. Everything necessary to those subjects is implied. In these circumstance, the proposed deletion will bring the item into line with many other similar items in the list. So, in order to secure uniformity as well as to remove much surplus age, I support this amendment.

Shri M. Ananthasayanam Ayyangar (Madras: General) : Sir, it is not unusual to elaborate the points that come in these lists. I would request the attention of the House to item No. 33 in List No. I of the Government of India Act, 1935. Corporations are a Central Subject. "The incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporation, but not including corporations owned or controlled by a Federated State........ etc." That is the language used. They have said what they mean by the word 'corporation'.

In various countries where 'defence' alone was entered as an entry in the federal list, they have taken this matter to a court of law. Differences arose and the courts, had to interpret the word 'defence'. Here I have got a case (Australian Bread Case 21 C. L. R. 433) where Griffith C. J. said the word 'defence' includes all acts of such kind as may be done in the United Kingdom either under the authority of Parliament or under the Royal Prerogative of the Realm. Among others it includes preparations for war in time of peace, and any such action in time of war as may be taken for the successful prosecution of the war and the defeat of the enemy. Sir, this explanation was given, or this decision was arrived at after elaborate discussion in a court of law. Should we once again go through this travail ? I think, Sir, if the Honourable the mover of, the amendment has no, objection to these items being there, the inclusion of them may be allowed. The only objection is that it is not elegant. The language, is not elegant. It is not a piece of literature that we are enacting here. It is a piece of law. It is better to be more specific. Wherever it is possible to avoid doubts, let, us avoid them.

Mr. N. Gopalaswami Ayyangar (Madras: General) : Sir, the reasons for the inclusion of the words, whose omission has been suggested, have been recognised by the Hon'ble the Mover himself, and have been elaborated by Mr. Ananthasayanam Ayyangar. I have nothing to add to those reasons. I think that on the whole it is better that we should not incur the risk of courts possibly taking different views upon a question of that sort. As we are all agreed that the substance of what those words indicate must be included in the item of 'Defence', it is much better that we do include those words in this item. If the Hon'ble the Mover has no objection, I would suggest his withdrawing his amendment.

Mr. President: The mover of the amendment wishes to withdraw. Has he got the leave of the House to withdraw it ?

(The amendment was by leave of the Assembly withdrawn.)

Item 1 of List I--Federal Legislative List, was adopted.

ITEM 2

Mr. President: Again there is an amendment in the name of Sir V. T. Krishnamachari.

Sir V. T. Krishnamachari: Mr. President, Sir, I move the deletion of item 2. My reason is that requisitioning is temporary acquisition, and there Is item 43--Acquisition of property for purposes of the Federation, which covers what is substantially implied in item 2. It seems to me that there is unnecessary duplication. It is for that reason' that I move the deletion of item 2. In times of war, item 1 confers all powers of requisitioning that may be needed.

Mr. President: There are certain other amendments also.

I think we had better discuss this because this amendment suggests the deletion of the whole item. So any other amendments which are only for adding something or subtracting something may be taken, up later on. Does anyone wish to say anything about this amendment?

Mr. K. M. Munshi (Bombay: General) : Mr. President, the, amendment, Sir, is based on a little misconception, if I may so put-it. The power to requisition has been construed to be included in the Defence power, and is a prerogative of the Crown in England. In India the question arose during the last war when the Central Government exercised the power of requisitioning, and the point was raised that requisitioning during the war was a Defence power, and Defence, not being a subject which was within the legislative competence of the Central Legislature, the Defence of India Act could not include the item of requisition in it. This was largely conceded in some of the High Courts and Parliament had even to intervene at a stage. Now, no doubt therefore, the Union Possessing the powers of defence under item 1, would have have the power to requisition immovable and movable property during war, but in the period of peace or during the time when preparations are being made, it is doubtful whether the power to requisition would be included in the Defence power. This item No. 2 has been specifically mentioned to obviate any doubt on this question. As already pointed out by my friend Mr. Ananthasayanam Ayyangar earlier during the debate, there have been numerous decisions on some of these items and we do not want the same point litigated over and over again in our courts for the satisfaction of the litigious public and members of my profession. Therefore it is necessary that this power should be specifically mentioned-including training and manoeuvres-since even during peace time, the power for requisitioning may have to be used. That is the whole object of it and I am sure my Honourable Friend Sir V. T. Krishnamachari will withdraw his amendment.

Shri Himmat Singh K. Maheshwari (Sikkim & Cooch Behar Group): Mr. President, Sir, during the war, requisitioning was resorted to in many places as a special measure, but it involves great hardship to many individuals, and the power was abused in a very large number of cases. During war time such abuse may be tolerated, but it is now proposed to grant this power of abuse to every 'local Hitler' who is likely to use such power against every person whom he may dislike. I suggest, Sir, that the House should throw out this item as a safeguard for the freedom and security of the common man.

Mr. Hussain Imam (Bihar: Muslim) : Mr. President the power to requisition lands for the purpose of defence is one of the most essential powers which we should give to the Centre in order to maintain the stability and strength of the Union. But there is no doubt that what the last speaker said is a fact. Lands were requisitioned and they continue to remain requisitioned two years after the termination of the war even today. There is no doubt that there has been a great deal of mis-management by the former government. But the mis-management by the former government is no reason why we should not trust our own representatives to do better when the time comes.

I have come here to make a suggestion that as requisitioning of lands for the purpose of defence is an essential thing, it should be in the central list. But I want to suggest that this requisitioning should be also for the purposes of peace. There are time when lands have to be requisitioned in times of peace. For instance just now we have got the case of the Central and Provincial Governments having to deal with the great influx of refugees from the different areas. For dealing with such problems there should be power for the requisitioning of property by the State. I would therefore like to point out to the draftsmen the need for including an item of this nature in the concurrent list.

Shri H. Chandrasekharaiya (Mysore State) : Mr. President, Sir. in my opinion the amendment moved seems to be a very reasonable one. The necessity for the proposed entry has not been explained by Mr. K. M. Munshi who thought fit to oppose the amendment. He referred to a case which happened during the time of the war, but he did not cite any case. which happened during times of peace. The requisitioning, as put down here does not even require the previous consultation of the Province or the federating State. Even in the Government of India Act of 1935 there is no entry of this kind in the Federal List. In fact, whenever lands have to be acquired for the purpose of the Federation, Section 127 of that Act provides that it should-be-done under certain conditions and with payment of compensation. But as the entry now stands, it implies requisitioning any land straightaway and in an arbitrary manner even without referring the matter previously to the concerned Unit. For all these reasons, I pray that the House will kindly accept the amendment proposed by Sir V. T. Krishnamachari.

Shri M. Ananthasayanam Ayyangar: Sir, the mover of the amendment did not take exception to this item on the ground that it is unnessary or inconvenient, but only on the ground that it is covered by a later entry, item No. 43 in the list. "Acquisition oil property for the purposes of the Federation." In his opinion, that is a more comprehensive item, and therefore this item No. 2 need not find a separate place as a separate entry in this list. That is all the objection I, however, feel that there is necessity for such a separate entry. Requisitioning of property for defence purposes is a different thing from requisitioning them for general purposes of the Federation. In the one case it is restricted to land and in the other it can be all kinds of property.

Then again, whenever property is acquired for any particular purpose the nature of the purpose also varies. Sometimes for carrying on dangerous or noxious trades some property is requisitioned and specific powers are given to the Local Boards for this purpose. Therefore, I say there is need for distinguishing defence purposes from the other ordinary purposes. By providing it in item 43, pointed attention of the Assembly is drawn to this distinction.

The last speaker said that under the Government of India Act of 1935, the Provincial Government could acquire property for the purpose of the Federation on payment of compensation. I am sure a similar provision will be made here also and the property of an individual would not be acquired without compensation. We have, in the Fundamental Rights already laid it down that no property would be acquired without the payment of adequate compensation. Therefore, this item may be allowed to continue in the list.

B. Pocker Sahib Bahadur (Madras: Muslim) : Mr. President, Sir, it is practically admitted that this item is covered either by item No. 1 or item No. 43 of the Federal list. Now the question that has to be considered is the retention or deletion of item No. 2, whether, even if it is superfluous, we should not keep it there. My view is that, in view of the fact that his particular detailed item is also covered by item No. 1, there is no necessity for mentioning it as a separate item. Moreover, if it is retained as item 2 it will give rise to difficult questions in the construction of item No. 1 whether it does cover many other points also. It may be argued that since one detail is particularly mentioned as item 2, other details are not covered by item 1. Therefore it is not at all advisable to retain this item 2 as a separate item in view of the fact that it is really covered by item No. 1. Therefore, I submit, Sir, that this may be deleted.

Shri S. V. Krishnamoorthy Rao (Mysore State) : Mr. President, I submit that neither item. No. I or No. 43 covers this item No. 2. A country like India with a large army will have to keep its Army fit and the training will have to be requisitioning land in various part of the country and in various parts of the year. So such power for the Centre is very necessary because Defence is a Central subject. So I oppose the amendment.

Mr. Tajamul Husain (Bihar: Muslim) : *[Mr. President, item 2 is that the Central legislature has got the power of acquisition and requisition of land anywhere it likes in the Indian Union for defence purposes. On that, an amendment has been tabled by my able friend that this item should be removed. Mr. President, I am unable to understand the logic as to why this amendment has been moved. Suppose there is an invasion of India, or Travancore which has acceded to the Indian Union, and it becomes necessary to establish a front there. then would you not give the Central legislature power to requisition land? I am astonished at this amendment. In my opinion the Central legislature should be given the power to requisition land for manoeuvres.]*

Mr. Naziruddin Ahmad: Mr. President, Sir, I certainly support the spirit of item No. 2, namely, that the Centre should have power for requisitioning land for its own purposes, but I should submit that the clause is unnecessary. It has been fully covered by item No. 1. There is a great distinction between 'acquisition' of land, which is taking complete title, and 'requisitioning' of land, which is taking possession for temporary use. I don't think therefore that item No. 43 will cover this item, but submit it is covered by item No. 1. Once we elaborate each power, there will be no limit at which we should stop. There are a very large number of items which are expressed merely by catch words. So if we further define this power, a large number of ancillary powers will have also to be defined. That I submit would be introducing a vicious principle. 'Defence' is also covered by item 15 relating to 'War and Peace'. If there was any doubt, item No. 15 will remove it. For all these considerations. I submit that Item No. 2 is unnecessary and redundant and should be rejected.

Mr. N. Gopalaswami Ayyangar: Sir, I think it is conceded by the House that in any case under certain circumstances the Federal Legislature should have power to make laws regarding requisitioning of lands for defence purposes. What has been put forward in favour of the amendment is that that power could be traced either to item No. 43 or to item No. 1.43, as the House knows, refers to acquisition of land for purposes of the Federation and, in connection with the interpretation of a section of the Defence of India Act which related to requisitioning of land, some High Courts in the country took the view that requisition did not come under acquisition. It was therefore necessary, especially after the war was over and for the Purpose of completing what remained to be done in regard to properties which had been requisitioned during the war, to make statutory provision to enable the Centre to deal with requisitioned property for a limited period of three years. But we are now considering a constitution which is to be of permanent duration.

Now, Sir, it will be conceded that requisitioning will in any case be necessary under conditions of emergency, whether war or otherwise, for defence purposes including purposes of training and manoeuvres. Now when we reach a stage when such a power has to be taken, the Federal Legislature should be clothed with authority for making that law. Now if that power could be inferred from item 1-- I have already said that doubts have been expressed about it being inferred from item 43--if that power could be inferred from item 1, it may be that item 2 is altogether unnecessary; but we have got to reckon with the fact that, while a number of other items which we have mentioned in detail could be brought under item 1, we have still enumerated them in this list. Now what is the harm in adding requisitioning to the number of those detailed items when you concede that, requisitioning should come under the general power of defence? We shall have this power in the Federal list. Whether that power, should be used and whether a law should be made during peace for enabling requisitioning to be done is a matter for the future Federal Legislature. It might be that in the law which may be proposed for requisitioning we may insert conditions which would not allow requisitioning to be done unnecessarily or when the conditions do not warrant it; but that in certain circumstances requisitioning may, not be necessary in peace time is not a ground for our eliminating this item from the list altogether. And there is another point I want to mention. Assuming that the contrary view is taken and it is held that requisitioning of land does not fall within the purview of item 1 of this list, what will be the position ? The position will be that it will be an item which is not to be found in any of the 3 lists and therefore will become a residuary item and the power of making a law for dealing with that item will be with the Centre. I quite appreciate the position that, in view of the distinction that we are making in respect of the quantum of residuary power and the allocation of powers between the provinces and the Centre, if this item becomes a residuary item, in the case of the States, the States might claim jurisdiction to legislate for this item. But what will be the effect of the amendment which has been moved by the representatives of the Indian States? Supposing it is removed, then the power is necessary for the federation under certain circumstances and in certain emergencies. Then, whatever arguments we may have from the Centre's point of view will be concentrated on demonstrating. that requisitioning is a very necessary item in the 'general power of defence and therefore we would still, I think, have to legislate on them. Therefore I think the balance of considerations is in favour of leaving this item alone in the Federal list and, when any legislation is attempted on this particular item, then perhaps this House can take steps for ensuring that it is not used in circumstances which do not warrant it. I therefore suggest that this amendment may not be pressed.

Sir V. T. Krishnamachari: The main point the amendment seeks to make is that whatever powers of requisition may be needed in times of war and emergency must be conceded and are conceded under item I. But public interest requires that powers in times of peace must be exercised under the Land Acquisition Act. The question is one of public policy--whether we want the power of requisitioning to be exercised in times of peace when there is no war or emergency. The object of this amendment is to prescribe that in times of peace, the ordinary Land Acquisition procedure should be used where lands are required for purposes of training and manoeuvres.

Mr. Tajamul Husain: Sir, I rise to a point of order. After the mover has replied, can there be any speech ? Nobody has any right of reply. I want a ruling from you, Sir.

Mr. President: I thought Mr. V. T. Krishnamachari was going to withdraw the amendment_. That was the reason for allowing him to speak,

Sir V. T. Krishnamachari: Sir, I do not press the amendment.

Mr. President: My anticipation was correct. He does not press the amendment.

Mr. Tajamul Husain: Then I withdraw my point of order.

Mr. President: The amendment is withdrawn. I take it the House allows him to do so.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then there are certain other amendments of which notices have been given.

(Messrs. K. Santhanam, Mohanlal Saksena, M. Ananthasayanam Ayyangar and N. Madhava Rao did not move the amendments standing in their names.)

Mr. President: I do not think there is any other amendment. So I put the original item to vote now.

Item 2 was adopted.

ITEM 3

Mr. President: Then we take item 3. I do not think there is any amendment to item 3.

Shri K. Santhanam (Madras: General). Sir, I want to speak about item 3. The Central Intelligence Bureau is not a proper subject. Central Intelligence should be the subject. Why should we have a legislative power confined to the Bureau ? I, do not see there is any need for restricting the scope. I would make a suggestion that the last word may to dropped and that Central Intelligence may be a proper subject.

Mr. President: Mr. Gopalaswami Ayyangar, that seems to be a reasonable suggestion.

Mr. N. Gopalaswami Ayyangar: We shall consider it when settling the text.

Mr. President: Then I put item 3 to vote.

Item 3 was adopted.

ITEM 4

Mr. President: Then we proceed to item 4.

(Messrs. K. Santhanam, H. V. Pataskar, and Naziruddin Ahmad did not move the amendments in their names.)

Shri Himmat Singh K. Maheshwari: Sir, I move.

"That for item 4, the following be substituted:

'Preventive detention in a Province for reasons of State connected with defence and external affairs'."

In List I of the Government of India Act of 1935 what is now item 4 forms part of item No. 1, and reads as follows: "Preventive detention in British-India for reasons of State connected with defence, external affairs or the discharge of the functions of the Crown in its relations with Indian States."' It will be noticed, Sir, that this particular item related to British Indian provinces only and not to the Federating States, the reason obviously being that if preventive detention were to be the exclusive concern of the Federal Government in the areas of the Indian States, the States themselves would find it impossible to take prompt action to prevent trouble in times of emergency. The present item seeks to extend this power to all the territories of the Federation and to that extent it makes the position of the States unduly difficult and it also involves unnecessary interference with their normal administrative machinery.

Another point, Sir, which I wish to bring to the notice of the House is that this item only vaguely describes the circumstances in which preventive detention may be ordered. The circumstances are summarised in the words "for reasons of State". But this might include almost anything under the sun. I suggest, Sir, that it is desirable to state clearly which particular reasons of. State should justify preventive detention. I have therefore suggested that such detention should be ordered only in. connection with defence and external affairs and not in connection with other matters of which there will be plenty to be dealt with by the Federal Government.

We were told yesterday that List I in the present Report is almost identical with the corresponding Federal Legislative List in the Government of India Act, 1935. Now, although this particular item does find a place in the List, it has been substantially altered to the disadvantage of the States and also to the disadvantage of the subjects in as much as it seeks to spread its tentacles almost to an unlimited extent I hope, Sir, that the framers of the Report will find it possible to reconsider this Particular item and modify it in the light of the suggestion I have made

Shri Gopikrishna Vijayavargiya (Gwalior State) :*[Mr. President I oppose the friend who has just moved the deletion of this amendment on the ground that it is not in the interest of the States. I think the argument is wrong. As we are going to make a Federation, the States am a& in duty bound to protect it. When we are going to establish a strong united administration and a strong federation, do they intend to shelter those in States who go against this Federation ? We have to check all those who are disloyal to the country whether in provinces Or in the States and the same law should be applicable everywhere.

I come from a State and submit that we. gladly cede rights to the Federation and we must. This item must remain.]*

Shri B. L. Mitter (Baroda State) : Mr. President, I oppose the amendment moved by Shri Himmat Singh Maheshwari. The reasons he gave in support of the amendment tend to separate the States from the rest of India. The item is: "Preventive detention in the territories of the Federation for reasons of State." If the States form an integral part of the Dominion of India, then the reasons which make it necessary for the Government of India to take action should apply equally to the States as to the rest of the Dominion. As act of the State is never resorted to unless it is in the interests of the Dominion as a whole. That being so, I do not see why any distinction should be made between States and the rest of the Dominion when an important measure is considered necessary in the interests of the Dominion as a whole. Supposing Borne mischief is brewing in a State and it is necessary in the interests of the whole Dominion that preventive detention should be exercised in respect of that person, if the Central Legislature do not have the power to restrain such mischievous activities, then the whole object of preventive detention would be defeated. I oppose the amendment.

Mr. Naziruddin Ahmad: Mr. President, Sir. I should submit that I heartily desire that all the States should accede to the fullest extent possible so that they should be treated exactly as the Provinces. But for that purpose I think we should proceed in a legal and constitutional manner. I believe that the States have acceded on three broad matters Defence, Foreign Relations and Communications. Mr. Ayyangar informed the House that their Instruments of Accession consist of about 18 or 20 items on which they have acceded Constitutionally, therefore, I submit that the jurisdiction of the Federation over the States would extend only to those subjects on which they have acceded. Beyond that it would not be constitutionally proper or possible to extend our authority to the States. As I have already submitted the States should fully accede, but I should also think that that should be effected through negotiations and on a voluntary basis. It is the mutual appreciation and mutual self interest and mutual dependence for the safety and welfare of India as a whole that full accession should follow. I have therefore this difficulty of accepting item No. 4 in its fullest implications. I should therefore ask the constitution experts in the House, of whom there is quite a galaxy, to consider the matter dispassionately from a constitutional point of view and give their decision. Then the alleged difficulty pointed out of a trouble brewing somewhere in an Indian St-ate and that the Federation should have full power to deal effectively with that trouble and the Federation should therefore have sufficient power to deal With a problem like that, but I think that that would contravene the conditions upon which the States have acceded. If it is for defence Purposes or the purposes for which the States have acceded, there would be no difficulty. But, however justifiable we might feel in acting in the way suggested, It would be beyond our constitutional power, at any rate constitutional propriety, to act in that way. I should therefore ask the Honourable the Mover of the Report to consider that, and I am an, it will receive adequate and effective consideration at his hands.

The other difficulty which I have felt on this item is a smaller one. It is about the last word in this item, namely "State". This item has been. taken from Item 1 of List I in the Government of India Act and the expression has been bodily lifted from that item of the Government of India Act. But in this report we have also used the word "State" in a different sense, namely, the Indian State. There may thus be some possible confusion. At any rate the use of the same technical expression in two different senses is inartistic and should be avoided. There may not be any actual misunderstanding resulting from this, but I should suggest that the Drafting Committee should consider the selection of some other suitable word, so as to prevent any possible confusion with the word "State" as it is understood in the Indian State. I should therefore consider that on the whole the item should be carefully considered and we should not proceed on mere grounds of convenience or expediency, but rather on the ground of justice and commonsense.

Mr. Hussain Imam: Mr. President, I rise to oppose the amendment, because it wants to create differentiation between the Units of the Federation; that the Provinces should be subject to the jurisdiction but the States should not be subject to jurisdiction. This is a formula to which I cannot agree, but I do fear that the item itself goes counter to the fundamental rights we hope to secure. Preventive detention is nothing but a method of arbitrary detention without trial. If you want to put a man under trial, then he will come under the ordinary law. No specific provision would be necessary for that purpose. It seems to me that we are trying to revive Regulation 3 of 1818 and similar measures that were taken. No doubt in modern democracy powers of this nature are given, but they are given under circumstances of grave menace to the peace and tranquillity in the country. It was only in times of war that regulations of this sort were passed in European as well as American countries. But in times of peace no reason of State should prevail and cause a person to be detained without his having committed an overt act. I therefore feel, Sir, that if this power is to be given, it should be qualified in such a manner that his right of preventive detention should remain with the Centre only in times of war and other grave menace to peace and tranquillity of the country. In ordinary times, a power of this nature would be misused. Human nature being what it is, it is necessary that we should provide some method whereby you can avoid the misuse of power. Power brings with it intoxication and it is rather difficult to imagine that it will not be misused in time of peace. I am therefore suggesting not its deletion, but elaboration so that proper precautions may be taken that it may not be misused.

Pandit Lakshmi Kanta Maitra. (West Bengal: General) : Mr. President, Sir, this item No. 4 "Preventive detention in the territories of the Federation for reasons of State" is a very important question involving an important principle. I have listened very carefully to the speech just delivered by my Honourable friend Mr. Hussain Imam. I can only tell him that I am one of those who have systematically opposed the preventive detention in any shape or form in the past. Mr. Hussain Imam rightly apprehends that this provision might lead to abuse and might be an instrument of oppression.

May I tell him that the situation is now completely changed? We must realise that we are going to start a new State of our own, absolutely independent State, and that the Central Government, the Union Government must be armed with certain powers which can be used by it, not for frivolous reason, but for the interests of the State itself .The amendment which has been moved unduly restricts the scope of the powers that are sought to be conferred by item No. 4.

Mr. Hussain Imam has referred to Regulation III of 1818. I am sure he would realise that when the Britishers. first came into this country and wanted to stabilise their Government here, in the very early stages of their occupation, they thought it necessary to have some legislative provision, some powers by which they could stop persons, potential mischief makers from doing any mischief to the State. Therefore, from their point of view, in the early days of the British Rule in this country, it wag thought necessary that a legislative provision like Regulation III of 1818 should be provided to give the Executive certain powers to deal with mischief-mongers. Now, why does he apprehend that the Central Government, the Union Government which we are now going to set up under the New Constitution should abuse this power? I know no human agency, no human machinery is perfect. But you have to give the Central Government certain emergency powers which have got to be exercised by them in the interests of the Dominion itself. If there is an abuse as, my honourable friend apprehends, because Regulation III of 1818 in the later stages of the British Rule came in for a lot of abuse I know a lot of people were deported and civil liberties were suppressed-but now we have got our. own State, our own Government elected by the people With a President elected by the people and of the people, and besides, it must not be forgotten that in the Fundamental Rights we have provided a relief of *Habeas Corpus*. There is no danger of civil liberties being trampled under ruthlessly and carelessly as, it has been done in the past under the British Rule. If, for instance, in any part of the federation, in any territory, not necessarily in a province, in a Native State, some persons were found by the Government, on reliable information, out to create mischief that would not only be detrimental to the best interests of the Dominion, but to peace, do you think that the Government should sit Quiet and not move in the matter, simply because there has been no overt act on their behalf which would bring them under the clutches of the law ? There may be fifth columnists who may be secretly working in the Dominion itself, in any part of the territory; they may be in the pay of a foreign Government; they may even be in the pay of a rival Government of any Dominion Government in India. Therefore, in the present set-up of things, when we have within the geographical borders another independent State, it is all the more necessary that such a power should be provided in the constitution to be utilised by this Union Government when it thinks it necessary. It is quite possible In the scheme of things that one Native State may be conspiring against another and probably by no ordinary test, because of no overt acts, he could be brought under the clutches of law. If the Indian Government had reliable information that his activities were such that he would endanger the peace between two different parts of the Indian territory itself. Certainly the Central Government must have power to intervene to stop that mischief-making.

Therefore, it is not a question of civil liberties being in danger; it is a question of high reasons of State, and reasons of State should take precedence over everything. Therefore, I oppose this motion and support the original proposal for inclusion of item 4 in the federal list.

Mr. Tajamul Husain: Mr. President, Sir, I support item 4 and oppose the amendment. In my opinion, Sir, powers must be given to the Central. legislature to detain for reasons of State any person or group of persons. Now, Sir, supposing in a province or in a State, there is a group of persons who is in conspiracy with a foreign enemy power with a view that that foreign enemy power may invade India, what should we do at that time? Therefore, the Central legislature must have power to detain that group of persons at once and prevent it from doing further danger and mischief, and there should be no open trial. What would happen in an open trial ? Many State secrete, weaknesses of the Indian Defence may be out. The enemy may know at what point we are weak. After all, you know, Sir, the technicalities of the law. Accused persons who are guilty may be acquitted. Therefore, with these few words, I strongly support that item 4 should be retained in its original form and the amendment should be opposed.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim) : Mr. President, Sir, my justification for intervening in this debate is to point out that this item in this list is included in order that the Federal legislature might legislate in regard to this item. If we understood that, all the objections raised have no place at all in this discussion. But, as preventive detention is abominable to a free country, to free citizens, some honourable members have sounded a note of warning that the Government coming into power, or rather newly coming into power, as the Honourable Mr. Hussain Imam pointed out, might get intoxicated with power, and in its enthusiasm, especially when it happens to be a party Government, in its enthusiasm to hold its power by all means, it might override the fundamental rights of the people not to be deprived of their liberty without trial. So I do not think that Mr. Hussain Imam was opposed to the granting of powers to the central legislature in this regard, but he only sounded a note of warning.

And now, Sir, even at this juncture it is necessary for us to see that in future when the central legislature thinks of passing a legislation unnecessarily, undue advantage may not be taken by it on the ground that this item has been placed on this list; and the criticism of an Honourable Member with regard to the speech of Mr. Hussain Imam is not correct; as I have stated, he only sounded a note of warning. And it is also not correct to say that there is a provision of *habeas corpus* and that it will save the people from unnecessary and illegal harassment. If legislation of the sort of the 1818 Regulation was passed, *habeas corpus* would have no place at all. Therefore we cannot seek any comfort from the provision of-*habeas corpus*. While I submit that a state must be armed with powers to detain persons in certain circumstances like war or grave menace to tranquillity, it is always necessary that provision should be made even in legislation in regard to the fundamental right and liberty of a citizen to be tried by competent courts of law and to be declared guilty on A& guilty, if that is possible. Therefore while I am not opposed to the inclusion of this item, I along with Mr. Hussain Imam would sound a note of warning that in future when any legislation is sought to be made in regard to, this item, free Indians should not be deprived of their liberty in free India.

An Honourable Member: The question may now be put.

Mr. N. Gopalaswami Ayyangar: Sir, I take it that the main amendment before the House under consideration is the one moved by my Honourable friend Shri Himmat Singh Maheshwari. That amendment seeks to limit the power given by this particular item to preventive detention In a province for reasons of State connected with defence and external affairs. Now the difference between this amendment and the original item has two aspects. One is that the orbit of this detention should be limited to reasons of State connected with defence and external affairs; and the second as that the federal legislature should have power to make laws for detention only within the limits of a province. Perhaps I might dispose of the second of these limitations at once. Assuming that, for reasons of state it is necessary to detain a person, is it the intention of the Honourable Mover of this amendment that, if such a person escapes to the territory of an Indian State, the Federation should not get him detained there or have him brought back to British India and detained there? No, after all, the States also form part of the territories of the Federation, and, if detention of persons for reasons of State is necessary, that detention should be possible in any part of the area of the Federation. Therefore, Sir, this does not seem to accord with the spirit in which the States, ought to accede to, the Federation.

Secondly, as regards the limitation in respect of matters connected with defence and external affairs, I am not sure if we should limit them to these two particular cases. There are matters which may not be connected with defence or external affairs in connection with which it may be necessary for the Government of the Federation to detain particular individuals. It may be a thing connected with the very existence of the State, but it may not relate to defence or external affairs. It would probably conduce to the disappearance of conditions which may threaten the existence of the State if we had power to control movements of people of that sort for a short while and kept them in detention for the purpose of ensuring that the atmosphere improves until the time arrives for our setting them free. In any case if it is necessary to have preventive detention powers in the case of persons in matters connected with defence and external affairs, there are other matters also in connection with which such power is necessary. Therefore, Sir, on both these grounds I do not think this amendment deserves to be supported by the House.

Then there were certain other matters referred to by other Honourable Members. Mr. Naziruddin Ahmad warned us against taking power which may not constitutionally be correct in view of the fact that the State might be acceding only in respect of a certain limited number of subjects. I am sure, Sir, that care will be taken to see that any powers that we take in this regard do not encroach upon the free sphere in which That is a matter relating to the wording of the clause and I can assure the States will be allowed to act after they accede to the Federation. Mr. Naziruddin Ahmad that what he has said in that connection will be borne in mind.

Then I will refer to one or two points mentioned by my Honourable friend Mr. Hussain Imam. One of these suggested that preventive detention is something which will go against fundamental rights. Now fundamental rights are going to be enumerated in our constitution; and if we put preventive detention in the federal list, any laws that we make in respect of this item could not conflict with the rights that we shall recognise in the body of the constitution. Therefore, Sir, the legislation that we shall have the power to make cannot conflict with fundamental rights as recognised in the Constitution.

Then there was another matter. I think it was not Mr. Hussain Imam but Mr. Naziruddin Ahmad who brought it up. He referred to the use of the word "State" in the expression "reasons of State". The Honourable Member appears to have thought that In some way or other that word "State' might get confused with Indian States. I wonder if I have got his point all right. But, if I have got his point all right, my only answer to that point is that the word "State" has nothing to. do with Indian States.

Unfortunately in the Government of India Act, from which as he very properly said, we have lifted these expressions out into our own list, the word "State" has been printed with a capital letter. I think, that perhaps was a mistake. If we substitute a small letter for the capital letter, "reasons of state" would have the meaning which it was intended that that expression should have. I therefore, Sir, oppose this amendment and would ask the House to accept the item as it is.

Mr. President: The question is :

"That for item 4, the following be substituted:

'Preventive detention in a Province for reasons of State connected with defence and external affairs.'

The motion was negatived

Mr. President: I shall, now put the original motion to the House.

The question is :

"That Item 4 in List I-Federal Legislative List be adopted *viz.:*

'Preventive detention in. the territories of the Federation for reasons of State'."

The motion was adopted.

Mr. President: I might draw the attention of the House to the fact that we have gone through only four items and we have taken one and a half hours. We have got 84 items in the List. At this rate it will take five days to deal with the items. I do not wish to rush anything but I would urge Members to go as fast as they can.

ITEM 5

Shri K. Santhanam: I would request your permission to move the amendment in my name in List V in place of the one down in List 1.

Mr. President: Yes.

Shri K. Santhanam: Sir, I move:

"That in Item 5 the words 'for the defence of the territories of the Federation and for the execution of the laws of the Federation and its Units' be deleted."

I need not take up much of the time of the House. These words are unnecessarily restrictive. The Federation should be able to use its forces for all legitimate purposes, including such work as is assigned to it by the United Nations or in pursuance of Treaties and Agreements. Therefore the deletion of these words gives a freer scope for the employment of our Military, Naval and Air Forces. I hope it will be accepted.

Mr. President: Motion moved.

"That in item 5 the words 'for defence of the territories of the Federation and for the execution of the laws for the Federation and its Units' be deleted."

Sir V. T. Krishnamachari: Mr. President, I would like to move amendments 11 and 12 to Item 5 in List I.

Sir, I move:

> "That in item 5, after the words 'Air' Forces' he words 'home on the Federal establishments be inserted."

This is a formal amendment. My next amendment relate to, the second portion of item 5. Sir, I move:

> "That in item 5, for the words 'the strength, organisation and control of the armed forces raised and employed in Indian States' the following be substituted:
>
> > "The strength of the armed forces raised and employed in Indian States and the organisation and control of such part of the forces as may by agreement be earmarked for service with Federal Forces."'

You will find a reference to this, Sir, in paragraph 5 of the report. The intention is to maintain all the existing powers of co-ordination and control now exercised over such forces. We agree that all the. powers at present exercised should continue to be exercised by the future Federation, but we have attempted to reproduce the existing position in the amendment as we have tabled it. I shall be glad if Mr. Gopalaswami Ayyangar will examine this and see whether this reproduces the existing position. We feel that this reproduces it more accurately than the original item, and we shall be glad if Mr. Gopalaswami Ayyangar will examine this and employ such language as will correctly reproduce the existing position.

Mr. H. V. Pataskar (Bombay: General),: Item 5 as it stands at present restricts the use of Naval, Military and Air Forces for two specific purposes, namely, "employment, thereof for the defence of a territory of the Federation and for the execution of the laws of the Federation and its Units........."

As that employment is confined to these two objects, I have given notice of an amendment that the scope should be widened by adding,

> "for implementing treaties and agreements with other countries,, for main, taining peace and security inside the territories of the Federation."

The object, of giving notice of this amendment was to widen the scope, because our country may make treaties with other countries and, these forces might have to be employed for implementing those treaties. I find now that my friend, Mr. Santhanam has already moved an amendment, which is wider in scope than mine. He wants all those words that refer to the use of these forces to be deleted. If that amendment Is carried, there is no point in moving my amendment. I therefore request that you allow me either to move it or not after Mr. Santhanam's amendment is disposed of one way or the other.

Mr. N. Gopalaswami Ayyangar: I straightaway wish to say that we propose to accept Mr. Santhanam's amendment.

Mr. H. V. Pataskar: Therefore I need not move it.

Mr. S. V. Krishnamoorthy Rao: Sir, my amendment is in two parts.

"That in item 5, the words 'and its units' be deleted; and for the words 'raised and employed' the word 'maintained' be substituted."

the latter part is merely verbal one and I do not press it. As regards the first portion, the Indian Union consists; of the two parts, the democratic provinces with elected presidents, and the States with, their autocratic dynastic governments. If the Federation, undertakes to use its army to execute the laws of these States, then it will be a negation of democracy. I do not think any democratic government will, allow that to be done. It is to prevent this that I tabled my amendment. But Mr. Santhanam's amendment certainly fulfils this purpose which I have in my mind, and since that amendment is accepted, I do not press mine.

(Shri V. I. Muniswami Pillay and Shri D. Govinda Doss did not move there amendment No. 5 in List III)

Mr. President: These are all the amendments which we have notice of. The original items and the amendments are now open for discussion.

Shri Ram Sahai (Gwalior State) : *[Mr. President, as a representative of one of the States, I oppose the amendment moved by Sir V. T. Krishnamachari. The amendment implies that some forces should remain under the States and others under the Centre. But at the same time, the language of the amendment includes the word "agreement". By this, the little importance that the power regarding forces which the Centre had is lost. I wish to tell the House that the independent authority enjoyed by the Centre over the defence forces is also put to an end by this amendment. The condition of the armies in the States is so bad that they cannot be used for defence whenever they are needed. Some training is necessary. And hence it should be completely under the control of the Centre. I therefore oppose the amendment.]*

Shri Yudhisthir Mishra (Eastern States G p.) : Mr. President, Sir, I support the amendment which has been moved by my Honourable friend. Mr. Santhanam, to item of list I. The words sought to be deleted indicate how the naval, military and air forces of the Union Government would be employed. It is proper that the scope of the employment and the function of the forces should be dealt with by the future Union legislature and that it should not be restricted by the Constituent Assembly. Sir, I take objection, in particular, to the words "for the execution of the law of its units". It would be disastrous for the people of the States if for the execution of the laws of the States, as they stand now, the forces of the Union are employed. The laws in the provinces would be framed by the Provincial Legislature which will consist of the representatives of the people. But, Sir, there is no guarantee that in the Indian States the people of the States would have any hand in the framing of their laws. As long as the people of the States do not enjoy democratic rights they will fight against the autocracy of the rulers and also against the laws framed to suppress the movement of the people. In many of the States, especially in Orissa States, in the name of public safety, ordinances have been passed to suppress the movement of the people who are fighting for their freedom. It would be a tragedy if the forces of the future Union Government be employed to suppress the people who are fighting for what the Congress and the Indian people fought for the last 27 years. With these words, Sir, I support the amendment moved by Mr. Santhanam.

Mahboob Ali Baig Sahib Bahadur: Mr. President, Sir, the House is under a great handicap because the Honourable Member who gave notice ,of a certain amendment Mr. Pataskar has not actually moved his amendment. He has On the other hand said that if Mr. Santhanam's amendment is passed he would not move his amendment. I do not know, Sir, whether such a procedure is allowed. In any case, members who intend to support the amendment given notice of by Mr. Pataskar do not clearly see how his amendment is covered by that of Mr. Santhanam. It may be contended that according to Mr. Santhanam's amendment the significance of the word "defence" is so wide that it covers the cases mentioned or contemplated by the amendment of Mr. Pataskar. But W. Pataskar's amendment is to this effect that the Union forcer, must be enabled to be employed for implementing the treaties and agreements with other countries. The government might enter into defensive and offensive treaties with other countries. In such cases, power must be given to the government to employ the forces for the purpose of implementing these treaties. Well, of these activities on the part of the Indian forces are included in the word "defence" which I consider is the real implication, then, I think Mr. Pataskar's amendment may be allowed to be moved. The other instance mentioned by him is for the maintenance of peace and security inside the territories of the Federation. Here again it may be contended that the words "defence of the territories" may include the maintenance of peace and security inside the territories of the Federation. There is a little difficulty here, Sir. For instance, if the Federation Government wants to send its troops into a native State--I mean an Indian State, I am sorry, excuse me--whether this legislature has got the right to legislate in regard to that, whether the Union Government has got the right or the power to send these troops to the Indian States for the maintenance of peace and security. Supposing there is a big riot or rebellion or some sort of thing happening in an Indian State, the question is whether the Central Government or the Union Government would be entitled to send troops to the Indian States. These are the instances covered by the amendment given notice of by Mr. Pataskar. As I said, the House is under a great handicap in this respect. The Mover stated that if Mr. Santhanam's amendment is passed, he would not move his. This hypothetical way of moving an amendment is rather peculiar; in any case, the mover of this amendment or those who want to support it may be given a chance to move the amendment even after Mr. Santhanam's amendment is passed.

Mr. A. P. Pattani (Western India States G p.): Mr. President, the amendment moved by Sir V. T. Krishnamachari requires considerable attention, especially as the mover has said that the intention of that amendment is to stabilise the position as it is today. So far as I know, there are three types of forces employed in Indian States. One is the Field Service Troops, second is the General Service Troops and the third is the Internal Security Troops. I know that before the last war, there were some States that had forces which were not affiliated or poined to what is known as the Indian-States Forces scheme under which these three categories of forces which I have mentioned came. But even those States, who were maintaining these forces outside the category of the Indian States Forces scheme, obtained equipment and arms through the Central Government. To that extent, Sir, I submit to the House that whether the forces were Field Service Troops, General Service Troops, Internal Security Troops or troops outside any of those organisations, the strength and equipment of those troops was determined or rather permitted, or any other term we may like to use, by the Central Government. If my interpretation is correct, then I submit, Sir, that the recommendation of the Committee as it stands is the correct position and I trust the Mover will look at it in that light.

B. Pocker Sahib Bahadur: Mr. President, Sir, I entirely agree with the Honourable Mahboob Ali Baig when he says, that the House is under a very serious handicap in understanding the position as regards the motion and the various amendments before the House. We do not know, Sir, which are the amendments for consideration before the House. Of course, there was the motion and there was Sir V. T. Krishnamachari's amendment. There was also Mr. Santhanam's amendment. Mr. Pataskar's amendment also is there, I take it, because although he said he was not moving it if Mr. Santhanam's amendment is carried he has moved it conditionally. Whether that procedure of 'moving an amendment conditionally is permitted or not it is for you, Sir, to say.

Mr. N. Gopalaswami Ayyangar: I thought, Sir, that Mr. Pataskar said he was not moving his amendment.

Mr. President: Yes; he did not move it.

B. Pocker Sahib Bahadur: Supposing Mr. Santhanam's amendment is not carried in spite of that, is it to be taken that Mr. Pataskar declined to move it ?

Mr. President: Whatever the reason may be, it is always open to a member not to move an amendment of which he has given notice. For whatever reason he may not choose to move it. In this case Mr. Pataskar did not move his amendment, whatever reasons may have influenced him.

Mr. H. V. Pataskar: Sir, I would like to speak a word on this amendment, not my own.

Mr. President: He has not finished yet.

B. Pocker Sahib Bahadur: Even now Mr. Pataskar has not said definitely whether he has moved his amendment or has declined to move it.

Mr. President: As I have said, the amendment has not been moved and it is 'not before the House.

B. Pocker Sahib Bahadur: If that is so, I would submit--of course, it is a matter of procedure on which you have to give a ruling--that if an amendment has been given notice of and if the Honourable Member who has given notice of the amendment has Spoken on that amendment and has not said whether he does not move it or he would like to move it conditionally--whatever it is I would request you to give, a ruling as to whether it is open to any other member of the House to move the same amendment with the President's consent. In view of the uncertainty of the present position, I would request, you, Sir, to give me permission to move the amendment as my amendment if the fact is that the amendment is not before the House; if on the other hand, the amendment is before the House, I would like to support the amendment and give my reasons therefore.

Mr. President: I think under the rules it is open to any member to give notice of an amendment and later not to move it for any reason he Ekes, but if he has not given notice of an amendment he cannot adopt somebody else's as his own. Mr. Pataskar's amendment has not been moved and it is not before the House.

B. Pocker Sahib Bahadur: Mr. Pataskar's reason was that Mr. Santhanam's amendment answered the point and it is only on that ground that he has declined to move. I would say, Sir, that Mr. Santhanam's amendment does not answer the purpose and it would leave the whole clause, incomplete. Therefore I would submit that it is necessary that the clause should be such as to include at least the purpose of Mr. Pataskar's amendment. Conditions will arise sooner or later in this country in which India has to enter into alliances with neighbouring States in order to defend herself against some foreign aggression of some kind or other. For instance it is very likely that India may have to enter into a Defensive alliance with the neighbouring State of, say, Pakistan or Afghanistan in order to defend herself against an aggression from Russia or some other country. Well, it is to provide for such a contingency that Mr. Pataskar's amendment has been proposed and it is necessary that specific provision should be made to enable the Federation to legislate on that. Therefore I would submit, whatever may be the technical position as to whether the amendment of Mr. Pataskar is before the House or not, it is very necessary that some provision should be made in order to make legislation under that subject possible for the federation.

Mr. H. V. Pataskar: Sir, I would like to make it clear first of all that I did not move the amendment that stands in my name and the reason that I mentioned for doing so was that the amendment moved by my friend Mr. Santhanam has wider scope. On that point I would like to offer some further remarks. Now, Sir, from the clause under discussion the words "the raising, training, maintenance and control of Naval, Military and Air Forces and employment thereof", remain while the rest of the words from that clause for the defence of the territories of the Federation and for the execution of the laws of the Federation and its Units are omitted by the amendment which has been moved by my friend Mr. Senthanam. Naturally the object with which I had given notice of ray amendment was that it was mentioned in item 5 that these Naval Forces or Military Forces or Air Forces were to be used for two specific purposes which were mentioned *viz.*, for the Defence of the territories of the Federation and for the execution of laws of the Federation and its units. Naturally I thought it was necessary that such Forces ought to be used for the purposes which were mentioned in my amendment. It is quite possible that we may have to enter into treaties with other countries and in that case we may have to make use of these Forces for implementing them. When only two purposes were mentioned, in the clause, I thought It was necessary that the other two purposes which to my mind were important should also be incorporated but when I found that my friend Mr. Santhanam moved as amendment by which he wanted to omit an reference to any purposes leaving-it open to the Federal Government or the State to use them for any purposes whatsoever, I naturally thought that that amendment gave a wider scope and therefore my amendment became unnecessary. Now, therefore, to all those friends who may have any doubts I would like to say again that "The raising, training, maintenance and control of Naval, Military and Air Forces and employment thereof" naturally means that they could be employed for any purpose connected with the State. If necessary it may be further made clear by adding the words 'for purposes of State' after the words ""employment thereof" and if the mover has no objection I would suggest an amendment to Mr. Santhanam's amendment to substitute the words 'for purposes of State' in place of the words which have been omitted. Of course, even if these words are not there the employment thereof will be entirely hi the hands of the State and in their discretion. Therefore I think the purpose for which I wanted to move my amendment does not any longer exist for the simple reason that now it is open to the State to use these forces for any purpose whatsoever. With these words, I would submit that I do not wish to move my amendment.

Mr. M. S. Aney (Deccan States) : Mr. President, Sir, there are two amendments which are under consideration of the House. One is by my Honourable friend Mr. Santhanam, and the other is by Hon. Sir. V. T. Krishnamachari. This item which is under discussion deals with the question of Defence which in my opinion is of paramount importance and the House should very carefully consider the terms of this particular item. The whole structure of your Defence, its object and purpose, are to depend largely upon what you decide now. The first part of this item deals with the Federal Forces and the second part of it deals with the Forces maintained in the Indian States. I shall deal with, the two Forces separately. In the, first part the powers with regard to raising training, maintenance and control of Naval, Military and Air Forces and employment thereof for the Defence are claimed by the Central Government, for the Federal Forces and in the second part which deals with the strength and organization of the Forces raised and employed in the Indian State, powers in regard to that are also claimed by the Central Government or by the Federal Government Mr. Santhanam wants to delete the portion which relates to the definition of the purposes for which the Federal Forces are to be employed Mr. Santhanam's amendment is that we should not make any reference to the purposes for which the Federal Forces are to be employed. I want to invite the attention of this House to this particular point because it has some importance in my opinion in the interest of the units themselves. There are two objects which have been specifically stated here for which the. Federal Forces could be employed. The first object is for the Defence of the territories of the Federation and the second is for the execution of the law of the Federation and its units. Now Defence of the territory is undoubtedly an incontrovertible matter and everybody can easily understand the use of the State Forces for that. For the second purpose it may not be easy for the Central Government to make use of that force unless specific provision is already made. Whether it is necessary to make use of that Force or not for that purpose is a matter which you must very carefully consider. Suppose a law of the Federal State is not obeyed by the people or a law of a unit is not obeyed by the people of the unit, are the Federal Forces to go and help. those units in restoring law and order and enforce obedience of the people to the laws of the Federation and the units ? When you ask the units to join the Federation, when you ask the States also to become units, you indirectly take a responsibility to help them if necessary in the maintenance of law and order and those conditions are to be fulfilled. The Central Government should therefore have the power of allowing the Federal Forces to be used for those purposes at the, time of emergency. It is necessary in my opinion to specify the purposes. There may be other purposes also for which the State Forces may be required and if we are not prepared to specify all those purposes, we may add at the end 'and for such other purposes as the State may determine from time to time.' In order to cover all those cases of emergencies when State Forces can be used some specific provision should be made. The Federal Forces exist not only for the purpose of Defence of the Federal territories from foreign invasion but also for the protection of the parts or units of the Federation from internal revolution as well. The use of the State forces for the latter purpose is very important and even necessary, in my opinion. Under the conditions under which our new Government is going to function it is necessary that some such power should be specifically given to the Federal Government for using those forces for the latter purpose. As regards that, I think that Mr. Santhanam is one with me. The omission of the words defining purposes will, according to him, widen the powers of the State. I fear that it may give rise to narrow interpretations of the powers, creating difficulties in times of emergencies and thereby endangering the safety of the State. I therefore say that although I am not opposing the amendment it will be wise if he does not press his amendment and brings some other amendment such as, adding at the end the words 'for such other purposes. which the State may think fit and proper'. Such an amendment will cover all cases which he has in view in bringing forward this amendment. I am only making these observations for the consideration of the House and of the drafting committee later on.

Now, coming to the second amendment which my Hon'ble Friend Sir V. T. Krishnamachari has moved, I appeal to Mr. Gopalaswami Ayyangar who is nursing this law and doing all the piloting work to see whether, in view of the Instruments of Accession which each State is making, suitable changes could not be made to suit the conveniences of the States. I am very anxious, if we are going to give any definite assurance in the name of the Government of India to the States, to see that we do not give the impression that we are encroaching upon the power of the States in making this Schedule. I appeal to him to examine these provisions care-fully and see whether the wording as it is found here is likely to be construed as encroaching upon what has been reserved for the States in this matter. It is a matter that should be settled by negotiation between him and the representatives of the States such as Sir B. L. Mitter and others. Their object also is the same, *viz.,* to create a strong force for the Federal Government for defending the territories of this country, for maintaining law and order and for preventing convulsions inside the country. These are MY suggestions which I hope Mr. Gopalaswami Ayyangar and the House will consider.

K. T. M. Ahmed Ibrahim Sahib (Madras: Muslim): Sir, on this occasion I would like to draw your attention to the very great handicap and difficulty which is experienced by Members on account of the sudden withdrawal of numerous amendments on the floor of the House. There are on the Agenda paper numerous amendments. Suddenly member after member rises and withdraws them. It is obvious, Sir, that the withdrawal by the Members is not due to their individual judgement, but is the result of decisions arrived at outside the House by the Party to which they belong. Therefore I would appeal to the Members of this House and to the President to see that the withdrawal is communicated by the Members beforehand so that the other Members of the House may be saved from the inconvenience caused by the sudden withdrawals. When we come to the House we have to come prepared in respect of all the amendments on the agenda paper and should have formed opinions as to whether to support or oppose them. Suddenly we are faced with these withdrawals and much time and energy is lost by us. It win be better if, as soon as the Party concerned decides upon these amendments their decisions are communicated to the office so that the office may communicate them to the other Members of the House that such and such amendments have been withdrawn. I hope that the Party concerned will have some regard for the convenience of the Members and communicate its decisions in regard to these amendments to the office in time so that we may be able to know what amendments Will be moved and what not. I am quite conscious of the fact that neither the President nor the House nor myself can compel any Member to give notice of his withdrawal earlier But, when we know that the Party concerned has come to a decision with regard to these amendments much earlier than the date and hour of a meeting of the Assembly, it will be for the convenience of the Members if they tell us earlier that they are not moving such and such amendments. I appeal to you, Sir, to see that this procedure is adopted. Hundreds of amendments are tabled and not even a few of them are being moved. Why all this inconvenience and why all this waste of energy? Sir, I appeal to you and to the Party concerned to have some regard for the convenience of the other Members.

Mr. President: I think it is the right of every Member of the House to give notice of any amendment he likes, and if any Member does not take advantage of that right which he possesses and does not give notice of amendments in his own name and depends upon somebody else, he can have no grievance if that other Member on whom he was relying does not move his amendment. It is not a question of convenience or inconvenience when Members are given time to send up their amendments which they later find it not necessary to move. No doubt with such withdrawals some inconvenience is caused. But no Member can have a grievance on the ground that any one Member has not moved his amendment. If the Honourable Member thinks that any particular matter is of such importance that an amendment should be moved, he must himself have given notice of an amendment in time. I cannot ask any Member not to withdraw an amendment if he wishes to, but I am quite sure Members will take into consideration the convenience of other Members and accommodate them wherever they can.

Mr. Gopalaswami Ayyangar may now reply to the debate.

Mr. N. Gopalaswami Ayyangar: Sir, so far as I have followed this debate, there are only two amendments before us for taking a decision on in respect of this item. The first is the one moved by Mr. Santhanam. Sir, I accept his amendment with only one verbal change which does not affect the substance of it. As amended by him the first portion of Item 5 will read:

> "The raising, training, maintenance and control of Naval. Military and Air Forces and the employment thereof".

> The rest of the words in that sentence will be omitted. I think it will be better to say 'and their employment' and drop the word 'thereof'. That is the only thing.

Shri K. Santhanam: I have no objection.

Mr. N. Gopalaswami Ayyangar: As for the point raised by Mr. Aney it is no doubt desirable to indicate some of the Purposes for which these Forces might be employed. But he also seemed to concede the position that such mention might limit the range of the purposes for which those Forces might be used.

On the whole I think it will be conceded that the purposes mentioned in the original draft are only the obvious ones and even if we omit them the words 'their employment' will cover those purposes as well as many other purposes for which the armed forces could be employed. I think, Sir, it is best to drop those words at the end of the first part of this item and leave it at the place where Mr. Santhanam has proposed that that sentence should be left. Then, Sir, the other important amendment that was proposed was the one which was moved by Sir V. T. Krishnamachari. There is no difference of view between what those who support this amendment have at the back of their minds and what the Committee itself had at the back of its mind when it worded this particular item, the latter part of it, in the way that it has done. The intention of the Committee is stated in paragraph 5 of the Report. This says:

> "We have included in the federal list the item 'the strength, Organisation and control of the armed forces raised

and employed in Indian States'. Our intention in doing so is to maintain all the existing powers of coordination and control exercised over such forces."

The purpose of the amendment is to draw attention to the degree of connection between the Centre and armed forces in the Indian States. The categories in which those forces are placed were mentioned by my Honourable friend Mr. Pattani and the Committee's understanding of the present state of things was the one which has been embodied in the wording of this particular item. I understand that while the mover of this amendment thinks that the wording that has been suggested in the amendment is more in accord with the intention of the Committee than the wording in the item as drafted, the is not in a position to say that that is absolutely accurate; and he himself suggested that I should investigate this matter, and see that the intention of the Committee is implemented in the sense that it was intended to do. I therefore wish to give the Honourable the Mover of this amendment the assurance that I shall do so and we shall, if necessary, in the text of the constitution that will come up before the House later on re-word it in a manner which would be in accord with the intention as stated in paragraph 5 of the Report. I hope, Sir, that, in view of that assurance, the Mover will not press his amendment.

Sir V. T. Krishnamachari: I do not press that amendment.

Mr. President: We have Mr. Santhanam's amendment which has been accepted by the Mover. It only involves a slight verbal change.

Mr. Santhanam's amendment was adopted.

Mr. President: Then there is only a verbal amendment moved by Sir V. T. Krishnamachari that in item 5 after the words "Air Forces", this words "borne on the Federal establishments" be inserted.

Sir V. T. Krishnamachari: I withdraw that fit view of this amendment.

Mr. President: That is withdrawn and the second amendment is not also pressed. We have got the original item as amended by Mr. Santhanam and that is now put to the vote.

Item 5, as amended by Mr. Santhanam's amendment, was adopted.

ITEM 6

Mr. President: Then we go to item No.6.

Sir V. T. Krsihnamachari: I do not press this amendment sir, in view of Mr. Alladi krishnaswami Ayyar's. I propose to support Mr. Alladi Krishnaswami Ayyar's amendment. Therefore, I do not propose to move this amendment.

Mr. President: Mr. Alladi Krishnaswami Ayyar you have to move the amendment to item No. 6.

Mr. Alladi Krishnaswami Ayyar (Madras: General) : The amendment of which I gave notice runs in these terms:

"That for item 6 the following be substituted:

'Industries necessary for the purpose of Defence or for the prosecution of war and declared as such by Federal law."

I might mention it has been suggested in some quarters that the first part of the amendment might make it a subject of litigation inviting a judicial decision as to whether industries are necessary for the purposes of defence and therefore the suggestion has been thrown out, that there may be a slight verbal amendment to my Motion, namely, industries declared by Federal Law as being necessary for the purpose of defence or for the prosecution of war. If the-House has no objection to that verbal amendment with that verbal amendment I shall move my clause, *i.e.* "industries declared by Federal Law as being necessary for the purpose of defence or for the prosecution of war."

In moving the amendment, I should just like to make a few observations. In the first place there is no intention behind this item to interfere with the normal function vested in a Provincial Government, namely, that industries must in the normal course be the sole concern of the Provincial Government. This is intended to be an exception to that rule and that is why the word "defence industry" was put in. But the word "defence industry", it was rightly pointed out, is open to the legitimate comment, that under modem conditions of warfare any industry may be treated to be a defence industry and if so under the guise of, this item the Union Legislature might interfere with Provincial Autonomy and the normal course of Provincial Administration.

Therefore, a certain qualification is necessary for the words "defence Industries" and that qualification is brought out by the amendment. No doubt, it gives power to the Federal Legislature to declare certain industries as defence Industries by Federal law. How does that make any difference, it might be legitimately commented upon. The answer is, the attention of the Federal legislature is particularly drawn to this point when the Federal Legislature is called upon to declare whether it is necessary for the purpose of defence or not. If, for example, it is likely to be wrongly used, the representatives of the people in the legislature will take exception to the enactment and urge that it does not carry out the object of the measure, namely Federal defence, that it is merely an object which is mentioned in the preamble, but the actual sections do not carry out to take exception to this fact, namely, that it is not intended to sub serve the purpose of defence. I trust that this amendment will, while serving the purpose of defence, also remove the apprehension on the part of, the provinces that under the guise of this item there is any intention on the part of the Central Legislature to encroach upon the legitimate and proper sphere of the provinces, namely, the promotion and encouragement of provincial industries.

Mr. Himmat Singh K. Maheshwari : Mr. President, Sir, the amendment which stands in my name runs as follows :

"That in item 6, For the words 'Defence industries". the words Industries for the manufacture of fire-arms, 'atom bombs and ammunition' be substituted".

The fact, Sir, that this item is vague has been realised and admitted *Prima facie* it is not clear which industries will fall under this category. Textiles or Sugar Mills, Vegetable Oil Mills or Cement, Iron and Steel factories, Cultivation of Food crops, all these are necessary for the purpose of defence. If the intention were to include them or some of them in item 6. I fear a great deal of confusion is bound to result. A comparison of the present list with the Government of India Act, 1935, also shows that the framers of that Act did not consider this item to be necessary for inclusion in the legislative list then. Even now, nobody seems to be clear in his mind as to what industries are really intended to be brought in. Mr. Alladi Krishnaswami Ayyar's amendment just moved does not seem to me to carry us far. Even now, the wording of the amendment moved by him is almost equally vague. I should like therefore, Sir, some explanation, some clarification to be given to the House as to what exactly the intention is in including this item. When such clarification is afforded, it will be time for me to consider whether I shall withdraw my amendment or press it.

Mr. President: Mr. Madhava Rao. I passed over an amendment which you have given notice of.

Mr. N. Madhava Rao (Eastern States) : Sir, in view of the amendment moved by Mr. Alladi Krishnaswami Ayyar, I do not propose to move my amendment.

Mr. President: These are all the amendments which I have got notice of. The amendments and the item are now under discussion.

Mr. Naziruddin Ahmad: Mr. President, Sir, I support the amendment moved by Mr. Alladi Krishnaswami Ayyar and oppose the amendment by Mr. Himmat Singh Maheshwari.

I think the need for this item has been already made clear by Mr. Gopalaswami Ayyangar. I should have thought that item I 'Defence' was comprehensive enough. But as he pointed out, this may lead to litigation and trouble and in order to avoid all misunderstanding different subitems have been introduced. But then, there are ambiguities in the item even in its present form as to what 'defence industries' might mean. So, the amendment by Mr. Alladi Krishnaswami Ayyar has attempted to make the position clear. It is left to a Federal law to define the purpose. There is no doubt that when the Federal law attempts to define it, a very careful examination will be made of the industries which. might reasonably come within the purview of the objective. But it is impossible now to further clarify it, because, if we attempt to do so, we will-unduly restrict the scope of this item. As the assurance given by the mover of the first amendment would not be binding on the honourable the mover of the Report on behalf of the Leader of the House, I therefore think that the mover of the Report himself should give the assurance that in making legislation, the purpose of defence should be strictly adhered to. If this is done, I think there will be no trouble.

With regard to the last amendment, my fear is that it unduly restricts the scope of the item. Defence is so great and important a subject that everything, even personal or even national convenience must yield to the exigencies of defence and in these circumstances, we should give fall power to the Feaeral Legislature to deal, with it. There is no doubt that the convenience of the public would be taken into account so far as can be consistent with the safety of India. With these few words, as I have already said, I support the first amendment and oppose the second.

Mahboob Ali Baig Sahib Bahadur: Mr. President, Sir, I consider that the amendment moved by Mr. Alladi Krishnaswami Ayyar is unnecessary. The motion for inclusion of defence industries is correct. It is enough. If Mr. Alladi Krishnaswami Ayyar's amendment is accepted, a difficulty is created. If we remember that these items mentioned in the list are the items with regard to which the legislature can legislate, it is not necessary for you to include in this very item that they should be declared by federal raw as industries for defence purposes.

It is unnecessary for you to include under this particular item that they should be declared by federal law as industries for defence purposes. Was it meant by the inclusion of certain items in this list to say that these are items with regard to which the Federal Legislature has the right to legislate ? In these circumstances where is the necessary in this particular item to mention that certain items should be declared by federal law as defence industries ? If we accept this amendment several difficulties will arise with regard to other items by contrast or by difference in the wording of this item and the other items.

This clause "declared as such by federal law" is unnecessary. The item may be left as it is. If you mean to specify in this particular item certain industries. I should very much Prefer the amendment of Shri Himmat Singh K. Maheshwari which mentions the specific instances upon which he legislature can legislate although I do not agree that the items mentioned might not be extended. My preference is for the original item as it is. As I submitted the amendment of Mr. Alladi Krishnaswami Ayyar is not only unnecessary and superfluous but it might lead to unnecessary difficulties with regard to other items. If this House wants to specify certain items on which the legislature can legislate, it is better to enumerate all the items. Therefore oppose both the amendments and support the item as it is in the original, motion.

Mr. Alladi Krishnaswami Ayyar: Both in the, Government of India Act and in the present report you will find the words, "declared by federal law" in several items by which such declaration is made a condition of the item being brought, into the list. That is the object of the clause "declared by federal law to be necessary for the purpose of defence or for the prosecution of war".

Mahboob Ali Baig Sahib Bahadur: That does not justify the inclusion there.

Mr. N. Gopalaswami Ayyangar: Sir, in the ordinary course of things I should have been grateful to Mr. Mahboob Ali Baig for the support he gave to the item as it stands in the list but I am afraid I have been persuaded to the view that Mr. Alladi Krishnaswami Ayyar's amendment is a better description of the power that should be vested in the Federal Legislature than the original item. The reason for that has been indicated by Mr. Alladi Krishnaswami Ayyar himself. But what I would draw the attention of the House to is the new description that is proposed in the amendment of Mr. Alladi Krishnaswami Ayyar. Industries are a subject primarily assigned to the province. If we are going to cut out of that subject a slice in respect of which the Federal Legislature should have power to make laws, it is desirable that that slice should be fairly well defined and that that power should be taken only in respect of those industries which have to be taken out of the jurisdiction of the provinces and placed within the jurisdiction of the Centre. If we left the item to stand as it is in the Original draft, the Courts would have the jurisdiction to say whether a particular industry is or is not a defence industry: whereas if we adopted the language of Mr. Alladi Krishnaswami Ayyar's amendment as verbally modified by him, it would be for the federal legislature first to take a decision as to whether it is necessary for purposes of defence that a particular industry should be taken over under the control of the Federation; and, when the legislature has taken that decision, the courts cannot intervene to say that it is not an industry necessary for purposes of defence. That is why it has been decided to accept this amendment.

So far as the amendment moved by my Honourable friend Mr. Himmat Singh K. Maheshwari is concerned, the matter has been referred to already by Mr. Nasiruddin Ahmad. We cam not confine defence industries to the manufacture only of fire arms, atom bombs and ammunition. Even in times of peace the Federation may have to exercise jurisdiction over a number of industries which do not relate to those items. If it is necessary for purposes of feeding, clothing or otherwise equipping our armed forces that certain industries should be taken over under the control of the Federation--whether those industries should be owned by the Federation or controlled by it-there should be no impediment in the way of the Federal Legislature acting in the manner in which it is suggested that it should act. Therefore I would oppose Mr. Himmat Singh Maheshwari's amendment. and accept the amendment of Mr. A Krishnaswami Ayyar.

Mr. President: I will put first the amendment of Mr. Alladi Krishnaswami Ayyar to vote.

The question is :

"That for item 6 the following be substituted:

'Industries declared by Federal Law as being necessary for the purpose of defence or for the prosecution of war'."

The motion was adopted.

Shri Himmat Singh K. Maheshwari: I take it, Sir, that Mr. Alladi Krishnaswami Ayyar's amendment is only intended to put off decision and I have therefore no objection to withdrawing my amendment.

Mr. President: The amendment of Mr. Alladi Krishnaswami Ayyar takes the place of the original item and I will therefore put it to the House.

The question is:

"That the original item as amended by Mr. Alladi Krishnaswami Ayyar's amendment be accepted."

Item 6, as amended, was adopted.

ITEM 7

Mr. President: 'Mere is only one amendment to item 7. That is by Shri Himmat Singh Maheshwari-No. 4 in List VI.

Shri Himmat Singh K. Maheshwari: Mr. President, Sir. the amendment which I beg leave to move is:

"That in item 7 the following be inserted at the end:

'other than works belonging to a Federated State'."

The item as it stands at present is "Naval, Military and Air Force works". As I understand it, Sir, some Federal States have got Military and Air Force works built by them at their own expense. I take it that the Federation has no intention of taking these over, Subject, therefore, to any assurance that may be forthcoming on this point I should like to say as little as possible and to await further remarks from the framers of the Report.

Mr. N. Gopalaswami Ayyangar: Sir, with regard to the last observation made by my honourable friend Mr. Himmat Singh let me say tha the inclusion of this item as it stands in the list does not necessarily import any idea of the Federation expropriating any State of any of its rights of property in works built by it. But I must warn him at the same time that if, in the interests of the general defence of the country, the Federation should decide that it should take over and' either own such works in Indian States or should control them, then it should be free to do that sort of thing. I do not think even Mr. Himmat Singh will question the right of the Federation in the interests of the general defence of the country to determine for itself what Military. Naval and Air Force works should be owned or controlled by the Federation and what might be left to the Indian States themselves. That will be a matter of detail in any legislation that may be undertaken But the power will certainly be there in the Federation.

Shri Himmat Singh K. Maheshwari: In view of the explanation given I withdraw the amendment.

(The amendment was, by leave of the Assembly, withdrawn.)

Mr. President : The question is:

"That item 7 be adopted."

The motion was adopted.

ITEM 8

Mr. R. K. Sidhwa (C. P. & Berar: General) : Sir, item 8 in List I of the Appendix reads: "Local self-government in cantonment areas, the constitution and powers within such areas of cantonment authorities, the regulation of house accommodation in such areas and the delimitation of such areas:" If you refer to the Government of India Act, 1935 (p. 299 item 2) the words are almost identical to what I. have read before the House just now. It reads thus: "Local self-government in cantonment areas-not being cantonment areas of Indian States-the regulation of house accommodation in such areas .... etc." So the wording in this list coincides almost identically with what the Government of India Act says: My amendment reads thus:

"That in item 8, for the words 'Local self-Government in cantonment areas, the constitution and powers within such areas of cantonment authorities' the following be substituted:

'Control of the area occupied by military force, arsenals, factories for manufacturing areas, ammunition, etc'."

From the amendment that I have moved it will be seen that I am making a differentiation between the local self-government area and the cantonment area. This subject has for the last two decades been a most contentious subject and has been receiving the attention of the various authorities of India--I mean particularly the local authorities and the cantonment authorities--on the one side the Provincial Government and on the other the Central Government. Just before the war. the Government of India had to intervene and find out a way for this contentious subject that has been pending since over two decades. Then the war came in and the subject-matter is at a standstill. Those who have visited the cantonments and studied the subject, I am sure, will be able to grasp this contentious subject very easily. Notwithstanding that, I would suggest to the honourable House to bear with me for a few minutes to understand the intricate question that this item relates to.

There are in India several cantonments where troops are located. Within that cantonment area and within those areas where the troops are located there is a civil population. This civil population is also governed by the Cantonment Act. As far as the troops area is concerned that is kept by the Cantonment authority in as sanitary a state of affairs as possible and all amenities are given to the troops. But just about a mile and a half away from this troops area, where the civil population resides, these amenities are not given. There is scarcity of drinking water, the drainage system is very defective, hospitals and wells are lacking. In some places the area covered is from one mile to about eight or nine miles, and the limitations are so framed that at certain stations the area comes within the jurisdiction of the local authority-- I mean the provincial government--and just across the road, only 25 yards away it is the cantonment area.

All sorts of complications have arisen so many times between the local authorities, the Central authorities and the Provincial authorities because the rights and privileges which the civil population enjoys outside the cantonment are denied to them inside the cantonment. This is because the cantonments. are, as I said, governed by the Cantonments Act. Under this Act a limited number of persons are nominated from the Military authorities and a few from the rest of the population to look after the affairs of the cantonment. A few landlords and people like them may be there. All the other seats are filled by the military officers. Therefore the rights and privileges of the civil population inside the cantonment are denied to them whereas the population just across the boundary--just 25 yards off--are enjoying these rights, in their local bodies and municipalities.

Mr. M. S. Aney: How much more time will the Hon'ble Member take?

Mr. R. K. Sidhwa: I will take a long time, Sir. This is a mater on which I am not expressing merely my own views. but it is a matter on which the All India Local Bodies Association from year to year and from month to month......

Mr. President: In that case, we shall continue the discussion tomorrow. You can continue your speech tomorrow if you like (*Some Honourable Members :* Not tomorrow, but Monday.) Yes, on Monday. The House stands adjourned till 10 o'clock on Monday.

The House then adjourned till ten of the clock on Monday, the 25th August 1947.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME V

Monday, the 25th August, 1947

The Constituent Assembly of India met in the Constitution HO, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

SIGNING OF THE REGISTER

The following member signed his name in the Register:--

Mr. Syed Abdul Rouf.

TAKING OF THE PLEDGE

The following members took the pledge:--

The Honourable Sri Kala Venkata Rao.

Mr. Syed Abdul Rouf.

The Honourable Mr. Brijlal Nandlal Biyani.

ANNOUNCEMENTS BY THE PRESIDENT

Mr. President: I have received a letter from the President of the Constituent Assembly of Burma in reply to the message we had sent to him. The letter reads as follows :-

> "On behalf of the Constituent Assembly of Burma I personally thank you for your message of condolence for the loss Burma has sustained by the assassination of General Aung San and his collegues. The Burmese nation will surely enjoy peacefully the fruits of independence which the fallen heroes have just won for Burma. Kindly convey to all Members of the Constituent Assembly our appreciation of this message of sympathy. I will convey the message of condolence to the bereaved families."

Before we go to the next item, namely the consideration of the remaining items in the list, I would like to make certain announcements with regard to the programme of this session. As I said the other day, we should try to complete the consideration of the Report of the Union Powers Committee as soon as possible. The progress we have so far made has been very slow. I propose to set apart today and tomorrow for the consideration of the Union Powers Committee Report, and from Wednesday we shall take up the Report of the Advisory Committee relating to Minorities and Fundamental Rights and I think this will take Wednesday and Thursday. Friday will be reserved for the consideration of the Report of the Committee which we appointed the other day to suggest to us what steps should be taken with regard to the Constituent Assembly and the Legislative Assembly functions of this Assembly. I hope thus that we shall be able to end the work of this session by the 31st at the latest. If necessary, I propose that we sit in the afternoon and also on Saturday and Sunday next and if necessary, have night session. We have got so many other things to do that it is not possible to prolong this session beyond the end of this month and therefore I am anxious to complete this work as far as possible. Now. I am proposing to interrupt the consideration of this list by interposing the Reports of the Advisory Committee for this reason. So far as the drafting is concerned, it will depend very much upon the consideration Which this Assembly gives with regard to those subjects covered by the Reports of the Advisory Committee on Fundamental Rights.

But so far as the list itself Is concerned, much drafting is not required and whether the Assembly accepts a few subjects or turns them down it would be easier to incorporate that in the draft when the report is drafted. Therefore I am anxious that the part of the work of this Assembly should be finished which is essential for drafting purposes as I wish to have the draft prepared as soon as possible and for that purpose a drafting Committee will have to be appointed which we shall do on the last day of the Session.

There is one other thing which may take a little time. The late Sir Prabha Shankar Pattani has bequeathed to the Nation a portrait of Mahatama Gandhi done by a distinguished artist of England Mr. Oswald Birely and that has been presented to us by his son who is a member of this House and members will surely appreciate the gift and would like to have the portrait put up in a suitable place in this Assembly. For that purpose we may require a little time on one of these days which I shall fix for that function. I shall announce the day. May be on Friday next in the afternoon but I shall finally fix it up later.

Mr. Tajamul Husain (Bihar: Muslim) : Sir, you have told us that this Session would perhaps end by the end of this month but you have not told us when the next session will begin.

INCIDENTS IN WEST PUNJAB

Shri Algurai Shastri (United Provinces: General) : *[Mr. President, I want to say a few words before the commencement of today's proceedings. I wish to draw your attention to the fact that in view of the unfortunate incidents in West Punjab, and the manner in which people are being massacred and the killings are taking place, today's proceedings should be postponed in order to express our sympathy with the unfortunate people there It is inappropriate for us not to pay attention to these unfortunate happenings and to proceed with our work of constitution making. I have been realising this for some-time; and for the last several days, I was on the look out for an opportunity to raise this point but hesitated to do so, in consideration of the fact that when this Assembly meets as a Dominion Parliament, that will be the right occasion for its consideration. But when on that day, some of our colleagues drew your attention on the flag question, you permitted the Leader of the House to make a statement here. I am of opinion that problems can arise, in view of which it will not be improper for us to postpone our proceedings for a short while. The Constituent Assembly is a democratic and independent body and over the whole field of its work it is fully sovereign. There have been incidents in a portion of this country where innocent children and women have been massacred and where trains have been stopped and passengers murdered. These incidents invite our attention. During these last few days such shocking and heart-rending incidents have taken place that it will be difficult to find their parallel (even) in the barbaric epoch of India's history. At a time when foundations of democratic government are being laid, occurrence of incidents of this kind is painful. If we are concerned only with making our constitution and pay no attention to these incidents, then the coming generations will say that, just as Nero was playing on his flute while Rome was burning similarly we were absorbed in constitution making while Lahore and other places were burning and people were being killed. We must not give an opportunity (to anyone) to put such blame on us. Our sense of Humanity will diminish if we do not express our heart-felt sympathy for those helpless people whose wealth worth crores of rupees has been looted and who are very anxious for the protection of their wealth and property which is (still) in the Punjab. Fleeing people are being butchered. How disgraceful it is that people's heads are being chopped off in the same way as a lawn-mower cuts off the grass; Since the 15th we are the Dominion Parliament as well. How much our hearts are full of anger anxiety and shame at our being unable to protect those helpless old men, women and children This is such a helpless state and such a deplorable state. that it puts us to shame and grief. It would have been very different if either the Honourable Home Member or the Leader of the House or the Defence Member were to make a statement in this connection. Therefore I propose that in order to express sympathy for the dead or for their survivors, the proceedings (of this House) should be postponed. I am aware that objection may be raised to this proposal but we have seen that on the arrest of our leaders, the proceedings of Corporations and Municipal Boards etc. used to be postponed. When on previous occasions we could postpone proceedings we should not have any difficulty in doing so today, even though Maulana Hasarat Mohani has suggested that the report of Union Powers Committee should not be considered at all. We should have a full constitutional right to postpone the proceedings for a short while and I hope that the House will postpone its Proceedings at least for fifteen minutes].*

Mr. President: *[There is no doubt that there would hardly be any Indian whose heart would not be pained and full of sorrow and grief at whatever is happening as a result of which so many murders are taking place and there is such a lot of loot, arson and destruction. Now the question is as to what we here in this Assembly can do and what we cannot do. You may rest assured that your government is doing and will make every effort to do whatever is possible in this connection. Your Prime Minister is himself touring those places and it is for this reason that he is not present here today. There is no doubt that we have full sympathy with those numerous persons who are undergoing terrible suffering. We will help them to the extent possible and will not shirk our responsibilities. At this time, if it is the desire of all members of the House, surely we should stand up and express our sorrow and sympathy for all those who are involved in this calamity and who are suffering all these hardships. If all agree, then I hope that those who are undergoing all this suffering and pay our homage to those who, as a result of these calamities, have departed from this world.]*

The Members stood up and observed silence for a minute.

Mr. President: A suggestion has been made that the House should express its sympathy, by adjourning itself for about quarter of an hour, with those who have suffered in the riots which are going on in the country. I have suggested that instead of adjourning the work of this Assembly, we should all rise in our places and express our deep sympathy with those sufferers, and there can be no difference of opinion that the riots which are taking place are the most disgraceful from the point of view of the nation and are such as would make the heart of any patriot sick with the happenings and I therefore requested the members to stand in their places and express their sympathy with the sufferers and I have also pointed out that so far as the Government is concerned, the Prime Minister has flown to that place and is not here today because he is there and is doing all that can be done to help the sufferers and bring about the cessation of the events that are taking place there.

We shall now proceed with the discussion.

REPORT OF THE UNION POWERS COMMITTEE-*contd.*

Dr. P. S. Deshmukh (C. P. & Berar: General) : Sir, I want to made a suggestion for your consideration if we can modify the programme you have announced. It is quite evident that we do not propose to complete the consideration of the Union Powers Committee's Report. In view of the fact that we can only, advance a few items more, it would be better I think for us if you allot tomorrow also for the consideration of the Minority Committee's Report and thus have a day more for the consideration of the Report of the Committee that you appointed the other day. My point is that we should not adjourn the present Session without doing two things.

Firstly, we should complete the consideration of the report of the committee on Minority Rights and secondly we, as the Dominion Legislature, should not disperse without having an opportunity to discuss the West Punjab situation. These are the two things which I would like you to consider. if you accept my suggestion we may be better able to complete the consideration of the Minority Committee's Report and then meet for a couple of days as Legislature to discuss the most harrowing spectacle of the West Punjab, and also the East Punjab. Sir, we are quite sure that our Government is doing its very best and we have no doubt that everything possible is being done. Nonetheless, since we have transformed ourselves into a Legislature, every one of us is responsible to the millions of people whom we represent. As such we ought to know, and the world ought to know and India ought to know what exactly is happening there and to what extent we have discharged our duty. From that point of view, I think you should, Sir, accept my suggestion by which we will have one more day for discussing the Committee's Report, and then if possible meet as a Dominion Legislature may be even for a few hours during the present session itself.

Mr. President: Let us not spend any more time discussing the programme of sittings. I have fixed day after tomorrow to enable members to have as much time as they want for the consideration of the Report on Minority and Fundamental Rights. I have fixed day after tomorrow to enable members to have time to send up amendments before it actually comes up for discussion.

The question of having a meeting of the Assembly as Legislative Assembly can be decided only after the report of the Sub-Committee has been received. We shall await its report.

The Assembly will now resume consideration of the Report of the Union Powers Committee. Mr. Sidhwa will now speak on his amendment to Item 8.

Mr. R. K. Sidhwa: (C. P. & Berar: General): Last Friday, while moving my amendment to Item 8 in relation to the powers of the cantonment authorities, I stated that there are cantonments in various stations in India, small and big, and that these are within a radius of one to eight miles. As far as the troops are concerned, they are located in barracks and governed by the Cantonment Code or Cantonment Act. These troops are given all facilities and comforts and conveniences. I have no objection to that. The troops certainly ought to get all conveniences such as good water-supply, proper drainage, hospital facilities, etc. There are theaters and cinemas also for their amusement. Apart from that they have got their own messes and canteens and shops from which they could provide themselves with their other requirements, We do not want to make any change in these arrangements hereafter as, far as the conveniences of the troops are concerned. We do desire that the troops should be well looked after and kept content in the area in which they reside. What we seek is this : Within a distance of two miles of these areas where the troops are located there is civilian population also in these cantonments areas. If the House will bear with me for a while I would like to mention that this civil population is deprived of all the rights and privileges which the population elsewhere enjoy. We do not want that this civil population should have the same facilities and convenience, as the troops enjoy. But I contend that some at least of the creature comforts should be provided for this civil population. I have in mind provision of drinking-water supply, drainage facilities, hospital arrangements and electric lights.

Another thing is that these areas in the earlier days had been selected in a haphazard manner, without any serious consideration being paid to the selection. They have been so arranged that on one side of the road there is the civil Government functioning, and on the other, the military. This fact has caused discontent and grievances and these have been ventilated in the press and in conference and in correspondence between the Provincial Governments and the Centre. Nothing has been done so far to remove the cause of discontent. The military authorities are lukewarm in this matter of provision of facilities to the civil population.

When these questions are raised now, it may be argued that we are running our own Government and that we must have a different outlook in all these matters. We are also told that we are labouring under an inferiority complex, even now. I submit that one can reply to such arguments that the government being popular, the old Government of. India Act can continue and not bother about making a new Constitution. It must be remembered that there is a principle involved in this question, *viz.*, that we should see to it that the civil population in the cantonment areas get the Same rights as the civil population elsewhere. They should not hereafter be denied the vote and the opportunity to get redressal of their grievances.

In the Cantonment Board there are only a few nominated members and fewer members to represent the civil population. Sir, it, is very improper that the civil population should enjoy certain rights and Privileges even in notified areas and the civil population, in the cantonment areas should be denied the same. This is a Matter of right and therefore my amendment seeks that where there are troops they should be governed by the cantonment board, but where there is civilian population it should be governed by the Municipal Act so that the civil population may have the rights and privilege which the civil population elsewhere is enjoying. Let me tell you that at times when the people in these areas suffer from diseases they do not get the medical help which the people living in municipal areas get; because under the present Act any person who is residing out of municipal limits is not entitled to the beneficial measures in force in municipal areas.

Another important factor is that a large portion of this area and the land has been given away to a certain class of people almost free of charge. I would say if this land is sold it will realize crores of rupees. These lands ranging from two to five thousand square yards are given to a class of people at a nominal price of Rs. 500, or Rs. 1,000. On these lands properties have been built and occupied by some people and then sold and resold and that class of people have made tons of money. It is State land. The Provincial Government is deprived of this land. The Central Government also has been deprived of this valuable land and the whole benefit is enjoyed by a section of people. I might here inform you, Sir, that in one station alone 80 per cent. of the property is owned by one man.

Mr. President: I do not want to interrupt you, but we are not discussing the mismanagement in the Cantonments. We are discussing a particular item in the list and whether the Federal list should contain this item. You need not therefore go into the whole question of mismanagement or maladministration of Cantonments here.

Mr. N. Gopalaswami Ayyangar (Madras: General): If you will kindly permit me to say a few words, I hope Mr. Sidhwa will not pursue the speech. I will say just a few words. Sir, five amendments have been given notice of in connection with this clause. A number of questions have been raised 'in connection with this particular item and, Sir, it has been considered that it will be desirable to investigate all the aspects of this question in detail before the final form of this item can be settled. If you will permit me, Sir, I would ask that this item may be held over for the present. We will come back to it later on.

Mr. President: The suggestion is that this item may be held over and may put forward in a form which will be acceptable to all and then all these amendments will become unnecessary. We will pass on to the next Item, No. 9 of the list.

ITEM 9

(Messrs. Mohan Lal Saksena and M. Ananthasayanam Ayyangar did not move their amendments.)

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I beg to move that item 9 be deleted. The reason is that there has been in the past considerable amount of dissatisfaction in the country that we had not freedom as to the use of arms or firearms. There has been tremendous and persistent agitation over this and, it need not be elaborated. Now my amendment is that this should be removed from the Federal List and be made a Provincial subject, for which purpose an appropriate amendment would be submitted later on. I think that so long as the British were here their objective was to disarm the people and they did so out of suspicion and jealousy of the Indian people and they kept it as a central subject. Now as the British have gone, the reason for making it a Central subject has also, I submit, gone. It would be a very proper gesture now on the part of the Centre to let the Province, to exercise this power. If there is any difficulty as to giving these privileges to the Provinces it may be carried to List No. III and it would be a concurrent subject. I submit that the retention of this item any more as a Central subject would be wrong. I believe that though the British have gone, their ghosts still haunt our minds and we want to cling to the power.

Mr. President: There is only one amendment. It is that item 9 should be deleted. Does anyone wish to speak about this ?

Mr. N. Gopalaswami Ayyangar: Sir, I gathered from the speech of Mr. Naziruddin Ahmed that he does not propose to remove from the scope of legislation this item of arms, fire arms, ammunition and explosives. His suggestion seems to be that there is no need for Federal legislation on this subject, and that this subject might be transferred to the Provinces. I think, Sir, that, in a matter of that importance, arms, fire arms, ammunition and explosives, particularly, in these days, it is very necessary that the control which legislation might impose upon these particular things should emanate from the Centre. There should be uniformity about the manufacture, possession, transport and use of arms, fire arms and ammunition. It would perhaps interest Mr. Naziruddin Ahmed to know that even the States which have acceded to the Dominion already have acceded on this subject, which means that they are prepared to let the Federal Legislature make laws for this subject. I hope, Sir, he will not press this amendment.

Mr. President: I will put Item 9 now to vote. The amendment is that this item should be deleted.

The amendment was negatived.

Mr. President: I put the item to vote, whether it is to be retained.

The motion was adopted.

ITEM 10

Mr. President: We will now proceed to Item No. 10. I do not find that there is any amendment to this, unless. Mr. Himmat Singh Maheswari wishes to move any amendment.

Shri Himmat Singh K Maheswari (Sikkim and Cooch Behar Group): Mr. President, Sir, the object underlying my amendment to this item is that the mineral resources required for the production of atomic energy should be paid for wherever it may be necessary to take them over. This does not require any lengthy argument and

I hope the framers of the Report will accept it without any hesitation.

Mr. President: Does anyone wish to say anything about this ?

Mr. N. Gopalaswami Ayyangar: Sir, this item relates only to the passing of legislation by the Centre in respect of atomic energy and the mineral resources required for that purpose. But the inclusion of an item like that in the Federal list does not mean that the Centre is going to expropriate any people who might own mineral resources of their own, whether it is an Indian State or a Province or a private individual. If it is necessary for the interests of the Federation that control should be exercised or even acquisition should be made of those resources; certainly due compensation will be paid. I do not therefore think that it is necessary that this word should be added at the end.

Shri Himmat Singh K. Maheswari: In view of the assurance given, I do not press my amendment.

Mr. President: I take it that the amendment is allowed to be withdrawn. I put the original item 10 to vote.

The motion was adopted.

ITEM 11

Mr. President: We go to the next item. (Item 11.)

So far as I can see, there is no amendment to item No. 11. I put it straightaway to vote.

The motion was adopted.

ITEM 12

Mr. President: We go to item No. 12. There is an amendment by the Prime Ministers of-States to this item.

Sir V. T. Krishnamachari (Jaipur State): We do not move the amendment.

Mr. President: There is no other amendment to item No. 12, 1 nut the item to vote.

The motion was adopted.

ITEM 13

Mr. President: We pass on to item 13. There is no amendment to item No. 13. I put it to vote.

The motion was adopted.

ITEM 14

Mr. President: Now, we take up item No. 14. There is an amendment by Sir Ramaswami Mudaliar and other Prime Ministers of States,

Sir V. T. Krishnamachari: Mr. President, Sir, I move:

That in item 14 of the following be added at the end:-

"Provided that the Federation shall not by reason only of this entry have power to implement such decisions for a province or a Federated State except with the previous consent of the Province or of the State."

Now, Sir, we participate in all kinds of International Conferences, Associations and other bodies. The power to implement the decisions taken at these Conferences, Associations and other bodies must depend on whether the subject matter of that decision is a provincial or a Federal subject. My proposal is that if these decisions relate to provincial subjects, the consent of the province concerned should be taken before the decisions are implemented. In the absence of such a restriction, the powers of provinces and of States will become almost nugatory. These Conferences relate to matters , like agriculture, food, and largely matters which are within the scope of provincial authority. Honourable members will remember that we have section 106 in the Government of India Act which makes provision for this. If the intention is to re-enact section 106, my amendment will not be needed. If, however, that is not the intention, I propose that these words be added at the end of item 14.

Mr. President: Mr. N. Madhava Rau, there is an amendment to item 14 in your name.

Mr. N. Madhava Rau (Eastern States Group II): I do not propose to move the amendment.

Mr. Naziruddin Ahmed: Mr. President, Sir, I beg to move:

That in item 14 the following be added at the end: -

"on matters within its legislative competence, and in other matters affecting a province or a State, with the express consent of such State."

The point which I wish to make in this amendment is that there may be subjects which are entirely Central or it may come within List, No. III in which case the Centre will also have jurisdiction. But the subject may also come within List No. II that is within the provincial jurisdiction. In that case, it would not be proper to give powers to the Centre, to do anything without the consent of the province. In fact, that would be an indirect encroachment over a thing which is reserved entirely and exclusively to the province.

Then, with regard to the States, from the papers which have been circulated amongst us, we find that the States have acceded subject to important reservations. They have acceded with regard to certain subjects which have been. clearly defined in the Schedule attached to their Agreement. There may be, subjects which are outside the scope of that Schedule. In that case, to ask the Central Government to legislate or to agree to matters coming within the scope of those subjects which are outside the scope of the Agreement, that would be allowing that Government to encroach upon spheres which would be prohibited by the Agreement. The Agreement makes it absolutely clear that the States do not accede to anything except those enumerated in the Schedule. In these circumstances, I submit that it would not be proper for the Centre to take powers which may go outside its scope. The principle embodied in my amendment would thus be necessary to prevent confusion and some scrambling for power with regard to certain matters.

Mr. President: There is no other amendment. Now, the amendments and the original item are under discussion. Those who wish to speak may do so.

Mr. K. M. Munshi (Bombay: General): Mr. President, Sir, I oppose the amendment that has been moved by my honourable friend Sir V. T. Krishnamachari. Honourable members will see that item 16 is "The entering into and implementing of treaties and agreements with foreign countries". They will also find a similar amendment to that item by the same four honourable members. Now, I do not want to anticipate the arguments on that amendment. But item 16, as honourable members will see, relates to the implementing of treaties and agreements with foreign countries. These agreements and treaties are bilateral between this country and another. So far as item 14 is concerned......

Sir V. T. Krishnamachari: Are we on item 16 ?

Mr. K. M. Munshi: No. I am distinguishing between the two, if the honourable member has the patience to listen to me. Item 14 does not refer to bilateral treaties, but refers to international conferences. Now, as the House knows very well, in this age international relations are not necessarily governed by treaties. There are various conferences at which India sends out her representatives and she will be sending them out in much larger measure in the future. At these conferences decisions are taken on the footing that the representatives of India have got the power to implement those decisions; no representative of India will be heard with any weight at all, if he has to keep a reservation that he would come back to this country and ask his 35 unit Governments and if one of them disagrees he would not be able to implement those decisions. In this present world it would be impossible for India in such conditions to take part effectively in any conference, except of course as in a debating society without coming to any decision. Therefore it is highly essential that the central legislature as well as the Central Government should have ample power not only to participate in these conferences but to implement the decisions arrived at there.

Take for instance this simple example that I can give you at the moment. Suppose there are trade relations with a country, and as a result of an impending war or of her conduct which is against international policy those trade relations are to be terminated, suppose, all the members of that international association in a body said that they should denounce such trade relations or follow a particular kind of policy as regards them and, that would be a decision, pot a treaty. Even if that decision were adopted practically by the whole world, the Indian representative would have to say that he must go back to India and see that every Unit of India--even a State with a population of 20 or 25 thousand-has to say about it, and that until such consent is forthcoming he could not implement it. That will reduce the whole Central Government to a farce before the international world. As the House is aware, We are moving towards a position when most of tile decisions regarding all larger policies are taken by international conferences, not in the shape of actual treaties but conventions. Decisions with regard to education, hours of labour and various other matters are taken in this way. Surely if this clause is deleted, it will again come to this that a small section of India can hold up the implementation of the decision approved by the rest. Assuming this s power is taken away, India's representatives can go to any of these gathering, and be a party to all their decisions, but when they come here one-sixtieth of India call put a veto upon the implementation of those decisions That will be the effect of accepting this amendment. If therefore India is to be an international personality and equal to other sovereign bodies of the world it must have the power not only to take part in these decisions but also to implement them.

The safeguard is this. This item here means that the central legislature will have the power to make laws for the purpose of implementing these decisions. Before a decision is implemented it will come before the central legislature; that legislature will fully debate upon it; and it will then decide whether it will implement that decision or not. It is not going to be taken behind the back of the representatives of any member of the Union; it means not only the lower House but the upper house as well,-- the House of States. Therefore the representatives of the whole of India--the people as well as the States--will have the right to vote upon it and bring to bear upon it the influence of an all-India opinion. That is the effect of the clause as it stands. Therefore it is not as if something will be done behind the back of any State or province. India as a whole assembled in these two legislatures will consider the point of view of each unit as put forward before it and then come to a conclusion in the interest of the whole of India. If both Houses of the legislature by a majority come to the conclusion that the decision is to be implemented, is it suggested that one State or one small province can say that whatever tile legislature may have done it should have liberty not to implement that decision? That destroys the very basis of the sovereignty of this country. Therefore I submit that though it looks a very harmless amendment, the results which will flow from it will cripple the power of India as a sovereign member of international society, and I submit that this amendment should be rejected by the House.

Pandit Hirday Nath Kunzru (United Provinces: General): Sir, I feel that tile amendment placed before the House by Sir V. T. Krishnamachari which is practically a repetition of the provision which existed in section 106 of the Government of India Act of 1935 is a very unfortunate one. He cannot be unaware of the criticism to which that provision has been subjected during the last ten years, particularly in connection with questions relating to labour. Although questions relating to labour could tinder the Act be dealt with both by the Central and the provincial Governments it was clear that in all essential respects the labour question is an all-India affair; it cannot be dealt with piecemeal by provinces. If it is to be dealt with successfully, in other words in such a way as to create contentment throughout the country and to be in accordance with international views and standards, it is absolutely clear that it should be within the power of the Central Government to give effect in the last resort to agreements entered into at the international labour confereces. Yet it did not possess this power under the Act of 1935. No question relating to the matters which require the consent of the Governments of the units for their implementation has given rise to such dissatisfaction and criticism as that relating to labour. I think even if there were no other instance to be taken into account we should be perfectly justified in throwing out Sir V. T. Krishnamachari's amendment.

But there are other questions which in these days require to be dealt with by the country as a whole. Sir V. T. Krishnamachari was afraid that the power which item 14 would confer on the Central Government would be too vast, and as an illustration of the subjects that it might extend to, he mentioned food and agriculture. I was rather surprised when my honourable friend mentioned these two subjects. If there is anything today that requires to be dealt with by the National Government, it is questions relating to food and agriculture. We know the dangerous position to which we were reduced in 1943 and 1944 because the Government of India either did not possess or was unwilling for some time to exercise the powers required to control the Provincial Governments and bring them to accept a uniform policy. I may go further and say that experience has shown that the matter is of such vital importance that although a state of war does not exist, the Central Government must continue to exercise the power of coordinating provincial policies in regard to food and agriculture for at least some time more. Again, Sir, these questions are so important as to require the almost continuous attention of international bodies. There is the Food and Agricultural Organization which has been set up in order that these questions might be delt with in a coordinated way in all the important agricultural countries. It would be most unfortunate, it would be retrograde, if we accepted Sir V. T. Krishnamachari's amendment, with our eyes open and with a full knowledge of the dangers that we would be exposed to. If we had to obtain the consent of every unit in order to adopt a uniform policy, we would drift again into the position that existed in 1943.

Apart from this, Sir, I should like to say one word with regard to the fears that the representatives of the States or any other units might entertain with regard to the power that the Central Government would enjoy in case item 14 was accepted by this House. The National Government, before accepting any responsibility, will naturally consider whether the responsibility will be one which can be discharged by the units with their own unaided resources, or only with the aid of the National Government. It will not be in a hurry to enter into agreements which will involve large expenditure, because it will in that case be morally bound to help the Provinces to fulfil the obligations accepted by it Honourable Member may be afraid that the acceptance of international conventions might involve the units in expenditure which they would be unable to bear. I do not think that there need be any fear of it because it is well known that the units, whatever financial powers may reasonably be conceded to them at the present time, will not be in a position either to make education free or compulsory, or to adopt the measures recommended by Sir, Joseph Bhore's Committee in regard to public health or make satisfactory progress in regard to other matters which would lie within the provincial sphere unless they receive generous help from the Centre. It is inconceivable to me in these circumstances that the Central Government should, without adequate thought and previous consultation with the units, commit them to policies Which it would be beyond their resources to implement. Again, Sir, the representatives of India at the international conferences which will be concerned with subjects which the Provinces will be called upon to deal with, will not belong exclusively to the Central Secretariat or the Central Legislature. They will be taken from the Provinces also, and from other units too. Why need we therefore entertain any apprehension about the effect of any international agreement entered into by the Government of India on the finances of the Units ? Sir, taking past experience into account, and considering the unenviable position that we have occupied during the last 25 years and more at the International Labour Conferences on account of the unfortunate limitation placed on the power of the Central Government by the Government of India Act, 1935, it is right, and necessary in my opinion, that the power of the Central Government to give effect to international agreements should be wider than it is at present. I should like to add, before I close, that if the number of units were limited and they were of a size which would make it possible for the Government of India to consult them and pay due weight to their views, there might be a case for the acceptance of Sir V. T. Krishnamachari's amendment. But we do not know at the present time how many units there will be or what the size of the smallest unit will be. If a unit is to consist of a few thousand or a few hundred people, the acceptance of Sir V. T. Krishnamachari's amendment would place us in a very difficult position. We shall be laughed at at international gatherings if we say that we cannot commit India without consulting units which are no better than big zamindaris. In view of this, Sir, I think the position that will be created by Sir V. T. Krishnamachari's amendment is impossible to contemplate. I am therefore, wholeheartedly for its rejection.

Sardar K. M. Panikkar (Bikaner State): Mr. President, Sir, I think there has been a very considerable amount of misunderstanding in the debate that has followed the motion by Sir V. T. Krishnamachari. The issue is not whether agreements reached at international conferences should be ratified by the Central Legislature or implemented by the Central Legislature. It is accepted by everybody that agreements entered into by India at international conferences must be ratified and implemented in the Central Legislature. Then what is the issue ? The issue is that in order to do so it must be related to a federal item or an item in the concurrent legislative list so that the power for this legislation may be vested in the Central Legislature. Now the issue raised by Mr. Munshi and by Pandit Kunzru is that there are many-conferences in which India has to go and take part, where decisions are arrived at and where it is not possible to consult all the units when we come back to legislate and give implementation to agreements arrived at. Here, I venture to say, there is a slight misunderstanding because if You take the question of the I. L. 0. for example, which has been prominently mentioned, if you turn to the concurrent list, you will find that item 26 deals with welfare of labour; conditions of labour; provident funds; employers' liability and workmen's compensation; health insurance, including invalid pensions and old age pensions. Now, as long as that item is in the concurrent list, the right belongs to the Union Legislature to pass any law which it considers necessary whether in terms of any international agreement or otherwise to give effect to its policy. In the same way in regard to every matter of importance either in the concurrent legislative list or in the federal list. Therefore, the issue that arises is if the Union goes not merely to a recognized international conference as the U. N. O. or is a party to the I. L. O. as India may be, but say to the Moral Re-armament conference at Switzerland, are we in position to give effect to the decisions ? In order to do so, it is absolutely necessary that it must be related to a substantial item in the federal or concurrent legislative list and the federal or concurrent legislative lists have been made in such a manner as to include every possible thing which may be of common interest. So, what is left to the Provinces or States are purely matters of local administration, not of an all-India or of a common character. That being so, to entrust wide powers such as the enforcing of decisions by legislation, the implementing of any agreement or arrangement reached at international association-itself a very dangerous definition, what kind of international association or conferences it is not mentioned--is most dangerous which will, nullify every provincial and State constitution, because it is not limited to the subjects in the federal or concurrent legislative list. After all, Section 106 of the Government of India Act, as it stands, specifically limits the power of implementing such decisions. I am as anxious as any other Member here that the Central Legislature should have ample powers to give effect to treaties and agreements reached with other countries. But in order to do so it must be related to one or other subject in the concurrent or the federal legislative lists. As item 14 stands, it is rather peculiarly worded. it reads--

> "Participation in international conferences, associations and other bodies and implementing of decisions made thereat."

If this relates to items which are in the federal and concurrent lists, then this clause is not necessary. If it relates to matters outside the federal or concurrent list, then this clause will completely nullify every legislative item in the Provincial list or in the list pertaining to the Units and therefore I shall strongly suggest that whatever you may want is in Item No. 16. You may make the position clear in regard to the I. L. O. and other conferences or associations of a recognized international character. I would very respectfully submit that to give any more powers, such wide and undefinable powers to the Central Legislature, would be to nullify every act of the Provinces and units and to give the Union the right to interfere in every sphere of power without having a proper legislative source to which this legislative authority can be traced. Therefore, I have pleasure in supporting the amendment which has been put forward by Sir V. T. Krishnamachari.

Sir B. L. Mitter (Baroda State): Mr. President, I wish to draw the attention of this Assembly to one aspect of this question which has not yet been touched upon. I agree with Sardar Panikkar that there is a certain amount of misunderstanding in this matter and reference has been made to Section 106 of the Government of India Act. Section 106 of the Government of India Act was enacted when India, as defined in that Act, was not an organic entity. India consisted of British India and the States and therefore special provisions had to be made in regard to the States. But now India is an organic entity. There is no distinction, so far as the outside world is concerned, between the Provinces and the States. Therefore any reference to the Government of India Act is not quite relevant.

Now, this item speaks about the implementing of decisions made at international conferences. Before you implement a decision, you have got to ratify it. The decision will come before the Central Legislature for ratification. Then, at the next stage, if the Central Government so decides that the ratification needs to be further implemented by legislation, then and then only does item No. 14 come into operation. Consider what is the nature of things likely to come before these international conferences for decision. They will be matters which are common to nations and matters which are of national interest and not of parochial interest. That being so, the chances are that anything outside the exclusive or concurrent list will not ordinarily come in for international decision. But supposing some matter of provincial importance is embodied in an international decision. Then this question will be debated in the Central Legislature where the Unit will be represented and if there be anything in the nature of oppressiveness naturally the Central Legislature will take account of it. where is the risk then in empowering the Central Legislature with the implementing of international decisions ?

My point, therefore, is this; that international decisions are likely to be taken on matters of national interest and common to many nations. India now goes to the international conferences as an organic entity and. not as a collection of political units as under the Government of India Act. That being so, Sir, I do not see any risk in giving this power to the Central Legislature. I would request my Honourable friend Sir V. T. Krishnamachari to withdraw his amendment.

Mr. M. S. Aney (Deccan States): Mr. President, Sir the item here has really raised a controversy which I thought would not be raised at all; but on the amendment standing in the name of Sir V. T. Krishnamachari being moved and another amendment in the name of Mr. Naziruddin Ahmed also, being moved, the controversy has assumed a form in which I find that certain fundamental aspects of this question are being obscured. Let us see what this item calls upon this House to do. It relates to participation in international conferences. So far as participation is concerned, I believe nobody seems to take any exception that it should be the right of the Central Government or the Dominion Government to send representatives to participate in these Conferences in the name of India. The real difficulty comes in regard to implementing those decisions. Now, as has been very rightly pointed out by my friend Sir B. L. Mitter, these decisions will be arrived at after consultation and deliberation at the international conferences. They will embody decisions on matters not taken in the interest of any particular part of his country or that country, but from the broader point of view of international usefulness and international benefit. The question is, when decisions of that nature involving international considerations are, to be implemented, although they might be related to matters within the provincial sphere, are those decisions not fit subjects to be considered by the Central or Union Government ? Units are Intended to govern their territory in regard to certain matters purely from the interest of the persons living within the territory of the unit. Their view is therefore necessarily limited to a territorial nature, bounded by the geographical limits within which the units have to carry on their administration. but here there are decisions taken in which the world view is taken and therefore in the carrying out of those decisions the Central Government will be in a better position to see whether those decisions should be implemented or not, and even in the former case, what is the proper way to implement them so as to justify India before the civilised world. That is the. stand point from which these decisions will have to be looked at. This is not possible, in my opinion in the very nature of things if these matters are left to be decided by Provinces or units. It is this body the Central Legislature, I mean, which is in a position to take a broader and international view and therefore the authority for implementing these decisions must also vest in it. I think it is obvious to everybody that if India to stand as a whole, before the whole world, it is the Central Legislature only which can represent India before the world and it must be responsible for implementing those decisions also. In all affairs outside India, the authority is exclusively left to the control and administration of the Central Government and I submit this is a matter of that nature, *i.e.,* falling within the category of external affairs. International conventions are external considerations which affect the affairs inside the country. Therefore, in the natural course of thinks this should be a matter for the Central Government to decide and I am sure that Sir Krishnamachari will see that nothing is lost if he does not press his amendment and let the item stand as it is. I therefore oppose the amendment.

Mr. T. Channiah (Mysore State) : (*Spoke in Canarese)*.

Mr. H. V. Kamath (C. P. and Berar: General): Mr. President, the Honourable Member knows English and I suggest that you request him to speak in English.

Mr. T. Channiah: I have got option to talk in any language. I like (*continued to speak in Canarese*).

Mr. Shankar Dattatraya Deo: (Bombay: General): Sir, We must at least be told in what language the Honourable Member is speaking.

Mr. President: My information is that he is speaking in Canarese. (Laughter).

Shri Mohanlal Saksena (United Provinces: General) : How do we find out whether he is talking in Canarese or not ?

Diwan Chaman Lall (East Punjab: General): On a point of order, Sir. Are there any arrangements for a translation to be made into some understandable language of the speech that my honourable friend is making?

Mr. President: There is no arrangement for translation. If an Honourable Member chooses to speak in his own language, I cannot prevent him. The other members miss the speech and the speaker himself is not in a position to influence the bulk of the members present here. So the loss is more on the side of the speaker than on the side of the members who do not follow him. I don't wish to interrupt any member who wishes to speak in his own language.

Mr. T. Channiah: Thank you, Mr. President (continued to Speak in *Canarese).*

Mr. M. S. Aney: Sir, on a point of order. Are you in a position to know whether he is speaking relevantly or not ?

Mr. President: I am not in a position to know whether he is talking relevantly or not. This is the third occasion when a gentleman has spoken in a language which is not understood by the bulk of the members present here. I allowed a member to speak in Telegu and another in Tamil and I thought I could not prevent a member who wished to speak in Canarese. I know that be will himself realize that the speech he is making is not understood by the bulk of members and that he is therefore wasting his time. I would therefore request him to cut short his speech.

The Honourable Mr. B. G. Kher (Bombay: General): He is talking of the relations between the States and the Centre. I submit that has nothing to do with the subject we are discussing.

Dewan Chaman Lall: Rule 59 of the Rules of Procedure and Standing Orders of this Assembly says--"In the Assembly, business shall be transacted in Hindustani (Hindi or Urdu) or English, provided that the Chairman may permit any member who cannot adequately express himself in either language to address the Assembly in his mother tongue". I submit that the Honourable Member is now taking advantage of this particular rule and he has no business to take advantage of it. He knows English. He has already expressed himself adequately in English and therefore he should not now be given an opportunity to speak in his mother tongue.

Mr. President: Ibis Rule, exists in the Rules of the other Legislative Assemblies also and there the members have been permitted to speak in their own languages even if the member could express himself in the English language. I would therefore allow him to express himself in his mother tongue. I would, however, request him to cut short his speech.

Shri Rai Krushna Bose (Orissa: General): In that case, when you allow, the members to speak in a language which is not understood by the bulk of the members, the Chair will, at least, keep an interpreter by his side to know what the member in speaking about.

Mr. T. Channiah: (Concluded his speech in Canarese.)

Mr. President : We have had enough discussion. I now ask Mr. N. Gopalaswami Ayyangar to reply if he wishes to.

Mr. N. Gopalaswami Ayyangar: Sir, the two amendments that are before the House for consideration now are those of Sir V. T. Krishnamachari and Mr. Naziruddin Ahmad. In substance I think they raise the same issue more or less. So far as the merits of the amendments go, they have been sufficiently canvassed already the speakers who have dealt with the matter before me. I do not to add anything of a material nature to the discussions that have taken place. The main thing for our consideration is whether, in the case of International Conferences, Associations and other bodies, the Federal Legislature should have power to legislate not merely for our participation in those Conferences and Associations but also for our implementation of the decisions arrived at at those Conference and Associations.

Now, Sir, if, as has been conceded, it is very necessary in view of the new status that India has acquired in the International World that this country should speak with one voice at those Conferences and Associations and if it is also agreed that India should be a party to any decisions arrived thereat, it is to my mind important that steps should be taken by India as a whole for the implementation of such decisions. Ordinarily speaking, I agree with Sardar Panikkar's argument that the Federal Legislature should trace its powers of legislation in respect of matters decided at those Conferences only to specific entries in either the Federal list or the Concurrent List. That is so, but we have got to remember that we go to those Conferences not on behalf of the Federation as distinguished from the Units of the Federation. We go to those Conferences as representing India as a whole, *i.e.* the Federation and the Units combined, and, if we are empowered to subscribe to the decisions arrived at those Conferences, it is only right that we should be in a position to implement those decisions which we agree to at those Conferences. It is on use our assenting to such decisions and coming back home to find that we at the Centre are unable to implement them, but have to remit those decisions to the various Units for the purpose of arriving at their own decisions in regard to such matters and either implementing those decisions or refraining from implementing them. Now, Sir, that would put India as a country in the International World, in a very awkward position.

There is of course the fact that, when we do reach decisions at those Conferences, those decisions are of varying degrees of importance. At many of those Conferences, only pious decisions are arrived at, but at others human freedoms are declared and so on. It would be difficult for us to attempt implementing every one of the resolutions that may be adopted at those Conferences; but what does this item really mean? It does not mean that every decision that is arrived at those Conferences is necessarily to be implemented by legislation. It only means that, if it is decided that those decisions should be implemented, the Federation should have power to legislate about them. That is about all. Therefore, Sir, looking at it from that point of view, it seems to me that, if the House agrees to legislation for participation in such Conferences, it should also agree to its having power to implement such decisions as deserve implementation.

There is one other point I would like to mention. The provision that has been suggested by Sir. V. T. Krishnamachari in respect of this item is really not a thing which should be accepted so far as the List of Items is concerned. I think really if that question is to be debated at all it must be by his giving notice of an amendment when the text of the Constitution comes up before the house and asking for a specific section, on the liens perhaps of section 106 of the Government of India Act, to carry out his object. To put a proviso of that sort into a mere enumeration of the list of items in respect of which the Federal Legislature is empowered to make laws is, I submit, not an appropriate way of bringing up that matter. I have nothing more to say.

Mr. President : I will not put the amendments to vote. The first amendment is the one moved by Sir. V. T. Krishnamachari.

The question is---

That in item 14, the following be added at the end:-

"Provided that the Federation shall not by reason only of this entry have power to implement such decisions for a province or a Federated State except with the previous consent of the province or of the State".

The amendment was negatived

Mr. President : Then there is the amendment of Mr. Naziruddin Ahmad.

The question is--

That in item 14 the following be added at the end:--

"on matters within its legislative competence, and in other matters affecting a province or a State, with the express consent of such state".

The amendment was negatived

Mr. President : I will put the original item 14 to vote

The question is---

"That Item 14 be adopted".

The motion was adopted.

Item 15

Mr. President : I do not find that there is any amendment to this item No.15. So I put it straightway to vote.

The motion was adopted.

Item 16

Mr. President : There is a notice of an amendment by Sir A. Ramaswami Mudaliar, Sir V. T. Krishnamachari, Shri M.A. Srinivasan and Shri C. S. Venkatachar.

Sir V. T. Krishnamachari : I withdraw the amendment

Mr. N. Madhava Rau : I also withdraw my amendment

Mr. Naziruddin Ahmad : Mr. President, Sir, I beg to move that in item No.16 the following be added at the end:-

"on matters within its legislative competence, and in other matters affecting a province or a State, with the express consent of such state".

Sir, the matter has been fully debated and I do not wish to go over the ground covered already. I beg to submit one thing i.e. in the debate on clause 14 Mr. Munshi almost gave away his case when he said that no action would be taken by the Centre without consultation with the units or with the States and that the Centre would never do anything behind their back. That is a very indirect concession that the Provinces and the States are entitled to be consulted. Then again, Mr. Ayyangar also said in a reply--I think it was with reference to proviso to amendment to Item No.14--that this item was to the proper place to put it in, suggesting thereby, if I caught him rightly, that the same may be dealt within the body of the Act itself in some appropriate form.

These two speeches by two eminent men in the House indicate to me that they also felt the difficulty of their position. In fact the point is simply this. That Mr. Ayyangar and Mr. Munshi are very influential men of the Centre; let us suppose they go to an international conference and there they agree that all properties of the men in the street should be expropriated and distributed amongst the influential men. The man in the street says: "You cannot do it without my consent". But the influential men say: "If you interrupt us in our noble pursuit at the International Conference, I think you are obstructing us". This is exactly the position. Although noble sentiments may lie behind this action, it is a question of the rights of the provinces and the States. The question is whether you can be permitted, even indirectly, even for the benefit of the whole of India, to circumvent the legislative safeguards of the provinces and the States by means of a proviso like this. I submit that the debate has not answered this difficulty which I feel. In fact the Provinces and the States have rights within their legislative competence being in List No. II that is, within the exclusive provincial jurisdiction or in the case of State within a sphere on which they have not acceded. The question is whether the Centre should be permitted indirectly to encroach upon hose exclusive spheres. Thus all the distinctions in the legislative list would be brought to nullity. On a question of principle I think that his should not be allowed to be done however laudable the motive may be supposed to be. All that I desire is that the List should be so amended or some sufficient safeguards should be introduced into the body of the Constitution that in going to an international conference previous discussion with the province or State should take place and their consent taken and then the Centre should send their representatives to such conferences. It would be absurd to go there without this formality. This seems to me to be absolutely simple and straightforward and absolutely legal. I do not know why in the name of efficiency and good name of the Centre this encroachment should be resorted to. I think the point which I made is based upon sound constitutional reason and something should be done to provide against acts being done by the Centre behind the back of the Units of their exclusive subjects.

Mr. Alladi Krishnaswami Ayyar (Madras: General) : Though a decision of the House on item No.14 makes any speech on Item No.16 unnecessary, I should like to say a few words in view of the statement made that unless the treaty or the agreement is implemented by the province the treaty or agreement must have no sanction and there is also a suggestion thrown out that adequate provision should be made in the Constitution on the liens of section 106 of the Government of India Act. I submit, Sir, that as has been pointed out by Sir B.L. Mitter, the reasons for the enactment of Section 106 of the Government of India Act no longer exist and the Central Legislature must have the power to implement the treaty or the agreement that has been entered into with foreign powers. There is nothing novel in a provision of that description. Almost tin every federal constitution in spite of any division of powers between the Centre and the Provinces, notwithstanding the fact that the treaty may encroach upon what might otherwise be a provincial power, the treaty perforce has a binding force and the Centre has the power to implement the treaties notwithstanding the fact that but for the treaty the subject-matter would be in the domain of the Provinces.

I would only refer to a few parallels. In the American constitution also, there is a division of powers between the Centre and the States. The residuary power is in the States and yet it has been uniformly held that if in the exercise of the treaty-making power the United States Central Government enters into a treaty with a foreign power, the treaty is binding on the states notwithstanding the fact that the subject-matter of the treaty may otherwise fall within the domain of the States. In fact, the provision in the American constitution goes to the extent of stating that the treaty shall be the supreme law of the land. That is the position in America.

In Australia also, the residuary power in the States and the powers of the Centre are confined to a few specific matters. And yet, if the Centre enters into a treaty or an arrangement with a foreign power in the exercise of its power under External Affairs, the treaty is perforce binding upon the States and it is not open to a State to challenge the treaty or the law implementing the treaty on the ground that in the normal course of things, it would fall within the purview of the States.

In Canada, there has been a sharp difference of opinion in the decisions of the Judicial Committee in appeals from Canada. But the preponderance of Canadian national opinion is in favour of the view that the Centre must be in a position to implement the treaties entered into by the Dominion as a member of International Society and it not open to the province to say that because particular matters are in the normal course within the provincial sphere, the treaty is not binding on the provinces. So far as the decision are concerned, there is no doubt a difference of opinion. But, as I have stated, the preponderance of influential and national opinion in Canada is in favour of giving force to the treaty.

In these circumstances, having regard to the peculiar nature of Indian conditions, the multifarious States that exist and the number of Units that are going to comprise this Union, this country must have a right to enter into a treaty and implement that treaty. But, of course, our statesman must be on the guard in entering into an unconditional treaty. They must make the necessary reservation and they must see that until our legislature implements the treaty, it shall not be binding of they may make other reservations in consultation with the Governments of the Provinces and of the Centre. Otherwise, the Centre will be stultifying itself in any treaty arrangement. I am making these observations in view of the frequent references that were made to section 106. In supporting the retention of this item I proceed on the footing that there will be no such provision as section 106. Apart from treaties, the case of international conferences or what might be called a kind of agreements entered into in international conferences may stand on a different footing.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, I was also of the view that a provision should be made in the constitution in terms of section 106 of the Government of India Act. But, on reconsideration, I find that it will involve this country in a series of troubles; they will not be able to represent our case in international conferences and even with respect to foreign countries where we have entered into treaties or agreements. There is no doubt danger in allowing the Centre a free hand in this matter without consulting or taking the consent of the various provinces or units. The units may be too large in number and it may not be possible to consult every one of them or take their consent before the decisions are implemented. These are the two sides of the picture. A middle course must always be found and that can be done by way of a conversation.

I find, Sir, that all treaties and agreements that are entered into, except those which are entered into with foreign countries on political matters, the other agreements, trade agreements and decisions by international conferences are all, before implementation, brought before the Central legislature and without its consent, or ratification they are not given the sanction of law. Therefore, there is at least one legislature in this country which accepts these decisions and given them the sanction or force of law. The only question is whether with respect to provincial matters, the provincial legislatures must have a voice or not. That will be impossible having regard to the fact that the number of units is too large. There is the International Conference on Food and Agriculture in Geneva. I know as a matter of fact the provinces have not been consulted, one at least of the provinces has not been consulted, regarding the representatives that had to go and what instructions had to be given. If, over the head of the provinces representatives are sent to these international conferences, without the consent of the provinces and without the provinces giving any particular directions to these representatives as to what these representatives should press at these conferences, it is practically ignoring them both in the beginning and in the end, before the representatives are sent and after decisions are taken. This difficulty arises only with respect to provincial subjects. If the provinces are treated with scant courtesy in the matter of choosing representatives and in giving directions to the representatives, and, after the representatives come back with particular decisions which have been taken at these international conferences, the provinces or units have no say in this matter, it is regrettable matter. In practice, the Centre does not consult the various units. I do not want a legislative provision tying up the hands of the Centre and preventing it from implementing the decisions. If there is to be such a provision, the Centre will be stultifying itself before the eyes of the world and to that extent I agree that this amendment ought not to be allowed.

But, in practice what ought to happen is them. An Inter-provincial Council or an All India Council must be established with respect to these matters where international conferences are generally held, health, education, labour and other matters. Whenever representatives are asked to be sent to conferences, this council must have a voice. There must be representatives of provincial governments and units. They must be consulted in the choice of representatives. The representatives must consult them and obtain directions as to what they should say on behalf of the Government and on behalf of the various provincial Governments also with a united voice. After they return, they must report to this inter-provincial of All India Council and take their decision. After the decision is arrived at that decision must be implemented by the Centre. This would avoid a number of inconveniences which would arise out of making a statutory provision for obtaining the consent of the units. It would not be desirable to ignore the Government s of the units and the various provinces altogether. A middle course must be adopted; but it need not be by statutory provision; it may be by a convention. For these reasons, Sir, I am not in favour of the amendment. Nor am I in favour of a provision like section 106 of the Government of India Act to be incorporated in the body of the Act. But the Centre must bear in mind that immediately an All India Council, with respect to the various items or matters that come up in these international conferences and which are in the provincial list, must be established and this council must be consulted in the matter of sending representatives, in the matter of giving directions, and after the decisions are taken, in the matter of implementing them before they are ratified by the Central Legislature.

Mr. N. Gopalaswami Ayyangar : Sir, a good deal of what has to be said on the amendment before the House has been said already both during the debate on it and during the debate on item 14. I wish only to meet one point which was raised by Mr. Naziruddin Ahmad. It is this. He wanted that if this amendment was not accepted in relation to this item, some other provision should be made at least in the body of the constitution embodying the substance of this amendment. Now, Sir, in connection with the debate on item 14, I took the point that, if the proviso which was moved to that item as an amendment had to be considered at all, the substance of it, it should not be in connection with that item, but might be brought up as an amendment to the body of the constitution when that came before the House for consideration. I wish however to make it clear that that statement of mine was intended merely as an indication of the correct procedure that should be followed. I wonder if --I have been rather thinking that--in the minds of some members, there is a lurking feeling that I myself suggested the inclusion of something on the lines of section 106 in the body of the constitution. On the merits of putting in a provision of that sort in the body of the Constitution I have absolutely no doubt in my mind that so far as item 16 is concerned there is no case for such a provision in the conditions of this country. I agree with Mr. Alladi Krishnaswami Ayyar in the point he made on that question. That being so I am afraid I must oppose Mr. Naziruddin Ahmad's amendment and I cannot hold out before him any prospect of my agreeing to accept an amendment even to the text of the constitution on the lines of his amendment here or on the lines of Section 106 of the Government of India Act, 1935.

Mr. President : I will now put the amendment to vote.

That question is:

"That in item 16 the following be added at the end:

"On matters within its legislative competence and other matters affecting a province or a state, with the express consent of such state.''

The amendment was negatived.

Mr. President: The question is:

"That item No.16 be adopted."

The motion was adopted.

ITEM 17

Mr. President : There are two amendments of which I have notice and both of them are to the effect that the item be deleted.

Sir V. T. Krishnamachari : I am not moving my amendment.

Mr. Naziruddin Ahmad : I am not moving my amendment.

Mr. President : The question is:

"That in tem No. 17 be adopted."

The motion was adopted.

ITEM 18

Mr. President : Mr. Madhava Rau.

Mr. N. Madhava Rau : I am not moving any amendment.

Shri Himmat Singh K. Maheshwari : Mr. President, Sir, I beg to move:

"That in item 18 the following be inserted at the end :

'raised by the Federation".

The object of this amendment is to have the position made clear whether foreign loans referred to in this item will be loans raised by the Federation only or whether it is intended that units or private concerns or private individuals should have no right whatsoever to raise a loan in a foreign country. The item as it stands does not make its scope clear. I shall therefore, be grateful if some light is thrown on the exact scope of this item.

Mr. A. P. Pattani (Western India State Group): Mr. President, the amendment that has been moved, as far as I can understand, suggests that not only the Federal or Central Government but the units should be able to raise foreign loans. I think that is a very dangerous power to give to the units, especially in the light of the previous item on the Federal List where the Federal Government is taking responsibility to meet grave economic crises in any part of the country. If a unit, that is to say a Province or a State, is permitted to raise loans in any foreign country and create economic difficulties for the Federation it will be very hard on the Federal Government. I therefore request the mover of the amendment kindly to withdraw it.

Mr. N. Gopalaswami Ayyangar : Sir, the mover of the amendment wanted some elucidation of what was covered by this particular item. The words 'foreign loans', I think are a fairly clear description of what is intended. Apparently the object of the amendment is that the power of the Federal Legislature to make laws should be confined to foreign loans raised by the Federation. I am afraid, Sir, that I cannot agree to that position. The Honourable the mover of the amendment was referring to the case of units being at liberty to raise such loans in foreign countries. I do not think the Centre can agree to a unit, without reference to the Centre, proceeding to raise a loan in a foreign country. If it has to do so, it must get the consent of the Centre and perhaps must act through the Centre in raising such a loan, if it is otherwise unobjectionable. This item is intended to give complete power to the Federation to control the raising of foreign loans.

Shri Himmat Singh K. Maheshwari : What about a private concern or a private individual?

Mr. N. Gopalaswami Ayyangar : If the Federal Legislature considers it necessary to place restrictions or regulate the raising even of such loans, the power will be there. But whether it should be exercised at all, or whether it should be exercised in certain circumstances will be a matter for decision by the Federal Legislature.

Mr. President : I shall put the amendment to vote.

The question is:

"That in item 18 the following be added at the end:

'raised by the Federation'".

The amendment was negatived.

Mr. President : The question is:

"That item No.19 be adopted".

The motion was adopted.

ITEM 19

(Mr. Krishnamoorthy Rao and Shri Omeo Kumar Das did not move their amendments)

Mr. President : The question is:

"That item No.16 be adopted".

The motion was adopted.

Item 20

Shri Himmat Singh K. Maheshwari : Sir, I move:

"That in item 20 the following be added at the end:

'subject to existing agreements between one Unit and another'."

The subject of extradition formed part of Item No.3 of the Government of India

Act, 1935 relating to External Affairs. The exact item stood thus:

> "External Affairs: The implementing of treaties and agreements with other countries: extradition, including the surrender of criminals and accused person to parts of his Majesty's Dominions outside India".

In the context, Sir, extradition apparently related only to extradition from and to foreign countries. In the present List, Sir, the subject of extradition has been separated from other subjects dealing with foreign affairs. For instance, we have item No.11 dealing with foreign affairs and we have item 14, 16 and others dealing with foreign matters. By putting this subject "Extradition" into a separate item the implication is that the Federal Legislature will have the right to legislate not only regarding extradition from and to foreign countries but also in matters relating to Units i.e. that existing agreements between Units, between States and Provinces, between one Province and another will be affected adversely. I am not sure what the intention was in putting this as a separate item. But I imagine it cannot be that the existing arrangements between States and Provinces are going to be replaced or disturbed by taking over the subject as a Federal subject. In any case, Sir, I would like to have light thrown on this.

Mr. President : Does any one wish to speak about this?

Mr. Naziruddin Ahmad : Mr. President, Sir, I should think that one point requires clarification. Extradition is a subject on which it seems to me that the States are not acceding. In that case, when any legislation or any executive action in intended, the question arises as to whether the States should be consulted or their consent taken. This is a matter which requires clarification.

Mr. N. Gopalaswami Ayyangar : Sir, I do not think that there was any mysterious purpose behind the List on this item of extradition being separated from the group of items which are included in a single entry in the Federal List of the Government of India Act. As a matter of fact, that particular entry is so jumbled up that we thought that extradition, being an important matter in itself, should be separately listed.

As regard the point that was raised by the mover of this amendment, and also the question of clarification, that was raised by Mr. Naziruddin Ahmad, I have only to say this. Ordinarily speaking extradition arrangements are a matter between one State and another, the two States being in essential respects independent in the exercise for their respective jurisdictions. There are Federations in the world where extradition arrangements exist between one Unit and another inside the Federation. I believe there are Federations in the world where the question of the matters that should be provided for by extradition is dealt with in a much easier manner than the formal way in which extradition has to be accomplished as between one independent State and another. But whether it is the one or the other, extradition is really a matter of agreement between the two States which enter into these arrangements. The entry of extradition as an item in the federal list does not necessarily abrogate any agreements or arrangements that may exist. It is possible that, when a law is passed it will probably provide, as the present extradition enactments do provide, for the entering into of agreements between one State and another, and if extradition has to be provided for as between one Unit and another of the future Federation of India. I am sure that the law will make a similar provision. As to whether the power to make that law should be restricted by the words that the honourable mover has suggested, namely "subject to existing agreements between one Unit and another" that question is one as to which I am not prepared to give an affirmative answer. Those agreements will be entered into under the provisions of the law that may be made. I cannot anticipate what those provisions will be; that is a matter for the future. But whether existing agreements should continue or whether modified agreements should be entered into, should be left to the administration of the law that may be enacted in future. It may be taken for granted, however, that , when extradition is provided for, the States entering extradition arrangements have got to be consulted and it is only ordinarily by consent between the States entering into that arrangement that the arrangement can come into existence. This being so, Sir, I would suggest that the Hon'ble Mover of the amendment need not press his amendment.

Shri Himmat Singh K. Maheshwari : Sir, I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question in :

"That Item No.20 be adopted".

The motion was adopted.

ITEM 21

Mr. President : We come to item No.21. I do not find there is any notice of amendment to this item. So I will put it vote.

The motion was adopted.

ITEM 22

Mr. President : Item No.22

Sir V. T. Krishnamachari : Sir, the object in setting down this amendment (That Item No.22 be deleted) on paper is to seek a clarification whether this means jurisdiction over nationals of this country in other countries, or whether it means anything more than that. That is the point on which we seek clarification.

Mr. President : There are two amendments of which I have notice, both to the same effect, one by Mr. Naziruddin Ahmad and the other by Mr. Himmat Singh Maheshwari.

Shri. Himmat Singh Maheshwari : Sir, I have nothing to add to what Sir. V. T.

Krishnamachari has said.

Mr. N. Gopalaswami Ayyangar: Sir, my answer to Sir. V. T. Krishnamachari's question is that foreign jurisdiction is jurisdiction exercised in another country over the nationals of this country. Not merely that. The power to exercise the jurisdiction can be taken only if we have the consent of the government of that foreign country. Therefore, what this item really means is that, when we have the permission of that foreign country to exercise jurisdiction over our own nationals in that country, we make laws for the purpose of governing the relations between our own nationals who happen to be in that country.

Sir. V. T. Krishnamachari : Sir, in view of what Mr. Gopalaswami Ayyangar has said, I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : Then I put this item to vote.

The motion was adopted.

ITEM 23

Mr. President : We now come to item No.23. I do not find there is any amendment to this item.

Shri M. Ananthasayanam Ayyangar : I only want to make a suggestion. Item 23 says:-

> "Piracies, felonies committed on the high seas and offences committed in the air against the law of nations".

I want to suggest the deletion of the words "in the air". Sir, this entry was lifted bodily from a similar article in Section 8 of the American constitution where the words are the same item by item and word for word. But in that article there is reference to piracies, felonies committed in the high seas and offences against the law of nations. There is no restriction to offences committed in the air. There is no reason to discriminate against the offences committed on the high seas against nations and offences committed in the air. I believe these words have been put in by inadvertence, and may be omitted and this item may fall in line with the similar provision in the United States of America constitution. I would place this suggestion before the Assembly for its consideration.

Mr. N. Gopalaswami Ayyangar : Sir, I see the point that was attempted to be made by Shri M. Ananthasayanam Ayyangar; but I am not so sure that we should keep entirely to the language of a constitution that was made, I believe, 160 years ago. So I think I would meet his main object if he will agree to the alteration of this item as follows:

> "Piracies, felonies and offences against the law of nations committed on the high seas or in the air".

Shri M. Ananthasayanam Ayyangar : That will meet my point.

Mr. President : I take it that the House will permit Mr. Gopalaswami Ayyangar to recast this item in the way he has just now suggested.

The I put this item, in the form he has put it, to the vote of the Assembly.

Item 23, as amended, was adopted.

ITEM 24

Shri Himmat Singh K. Maheshwari : Mr. President, Sir, I beg to move that for item 24 the following be substituted:-

"Subject to the existing laws of a Federated State, admission into, and emigration and expulsion form, the territories of the Federation, pilgrimages to places outside the boundaries of India as they stood before the 15th August, 1947".

Sir, I have two objects in view in moving this amendment. Firstly, certain States have got law in existence for regulating the admission of foreigners into and emigration and expulsion from their territories. If the Federation takes over this subject completely, that is to say, to the exclusion of the jurisdiction of the Unit, then the power of the Unit to take prompt action will be removed, much to the detriment of the maintenance of law and order. Whatever provision, therefore, Sir is made to give the Centre power to direct the admission and emigration and expulsion from the territories of the Federation, I think it has got to be subject to one condition, namely, that the discretion of the federating State in this matter should not be interfered with.

The second point that I want to make is that pilgrimages to certain places like the Gurudwaras in Pakistan and the Shrine of Khwaja Moinuddin Chishti in Ajmer are not subjects which need be dealt with by means of legislation by the Centre.

After all, a gurudwara may be only ten miles away from a village in India and it would be, I hope, a very common occurrence in future for people from one Dominion to cross over into the other for a religious purpose like this without let or hindrance. Similarly, I don't see why there should be any restrictions placed on the visit to a place like Ajmer of Muslims living in Pakistan. I therefore hope, Sir, that these two points will be very carefully considered and that the reply of the farmers of the Report will be reassuring on the subject.

Mr. Mohd. Tahir (Bihar : Muslim) : Mr. President, Sir, I beg to move;

"That in item 24, the words 'pilgrimages to places beyond India' be numbered separately as one specific item, namely, item 38, or that it may be added as 24-A".

Now, Sir, this is an amendment which is very simple, modest and innocent. To me, Sir, it appears that this aspect is the most important aspect of our constitution. But unfortunately it has been given a very insignificant place in the constitution. I therefore, request the Hon'ble Mover to agree to it, as has been rightly done in the provincial list, item 14. And in doing so, Sir, I thing the Hon'ble Member will not have any difficulty because we have also done it as regards item 27 of the provincial list. In the Government of India Act, the matters referred to in item 26 and 27 have been included in one, i.e. item 27, and it has been separated here in the provincial list. I, therefore, submit that if this matter, *i.e.* the pilgrimages to places outside India is given as a specific item, there will be no difficulty. Lastly, I submit that in item 24, the first part of it has got no concern whatsoever with the second part, to which my amendment refers. With these few words, I request the Hon'ble Mover to make his heart and mind more flexible towards this amendment and accept it.

Mr. A. P. Pattani : Mr. President, the powers sought under item 24, as I understand, relate very much to powers taken under item 21 also. It will be very necessary, I believe for the Union Government to regulate movements of aliens in our country and there is a suggestion I would like to add to his item 24 as it stands. This item refers to "administration into and expulsion or emigration from the territories of the Federation". My suggestion relates only to questions of "admission into and expulsion from". It is possible there may be some areas of the country or rather States, that have not acceded to the Federation. I suggest, Sir that Mr. Gopalaswamy Ayyangar may kindly note that in any agreements that are arrived at with such States, provision should be made that aliens should be excluded or expelled if they are undesirable to the Federation. I say this because, the old Government, under paramountcy, had taken power to exclude such aliens from India should they seek asylum in Indian states. We are always anxious to speak much against paramountcy, and I did not like it myself, but it is a thing that arises of its own accord for the defence: or rather for the proper looking after of our own country. So, I request a note be made that in making any agreements with States that have not acceded to the Union, there shall be provision to exclude aliens not merely from the territories of the Federation but from India if those aliens are undesirable to the Union.

Mr. N. Gopalaswami Ayyangar : Sir, as regards Mr. Himmat Singh's amendment, I have not very much to say, but it is important, I think that the power of the Federation to make laws in respect of "admission into, emigration or expulsion from the Federation" should absolute. The main reason why that is necessary is that the Federation is responsible for maintaining the integrity of India, preserving its internal security, providing for its defence and so on. An authority charged with these heavy responsibilities should have absolute power to make laws controlling immigration and expulsion from the territory. Mr. Pattani drew my attention to the fact that it is possible that some of the States might not have acceded and that it is important, in entering into any political relations with them, to make sure that a condition is imposed upon them in the terms more or less of this particular item.

I am sure, Sir, that those in the Government of this country who will be responsible for relations with Indian States in the future, whether acceding or non-acceding States, will keep this very important point in mind and make the necessary provision.

Sir, the other amendment by Mr. Mohammad Tahir is purely a question of cutting up this item into two. What he has argued is that pilgrimages to places beyond India have very little relation to the rest of this item. One possible justification for lumping these two things together would be that pilgrimages outside India are a form of temporary emigration but I do concede that it is not necessarily a matter which should go with the rest of this particular item. I am quite willing to have it listed as a separate item though I hope the House would forgive the framers of this list of Union Powers if that means an addition to the 87 items that already exist.

Mr. President : I put these two amendments to vote, one after another.

Mr. Mohd. Tahir : I withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : There is one by Mr. Himmat Singh Maheshwri as follows:-

"Subject to the existing laws of a Federated State admission into, and emigration and expulsion from, the territories of the Federation pilgrimages to place outside the boundaries of India as they stood before the 15th August, 1947."

I put it vote.

The amendment was negatived.

Mr. President : Now I put item 24 to vote.

The motion was adopted.

ITEM 25

Mr. President : Now, we will go to item 25. (Messrs. R. K. Sidhwa, M.S. Aney, and Naziruddin Ahmad did not move their amendments). Then there is no amendment to item 25, and I put it vote.

The motion was adopted.

ITEM 26

Mr. President : Now we take item No. 26. There is only one amendment by Mr. Himmat Singh Maheshwari.

Shri. Himmat Singh K. Maheshwari : Mr. President, Sir, I beg, to move that in item 26 the following words be inserted at the end:-

"subject to the right of a Federated State to levy and to vary from time to time customs duties on its own frontier".

Customs duties in most States form a very substantial part of the income of the States and if the intention is that States should not levy customs duty, I can say without hesitation that the power of the States to efficiently administer their area will be completely lost. Without finances no State will be able to run its schools and hospitals and if this important item disappears, I am afraid the finances of most of the States, even the bigger ones, are likely to collapse. I hope therefore that this amendment will receive serious consideration and be accepted.

Mr. N. Gopalaswami Ayyangar : Sir, there are two items in this list which are relevant to be considered in connection with the amendment that has been moved. The first is item 26 which we are considering now. The other one is item 71 'Duties of Customs including export duties'. Now Sir, if the amendment has reference only to the right of a Federated State, situated on the frontier of the Federation, to continue to levy its own Customs duties, this particular amendment would more relevantly come up for consideration under item 71. I should say, Sir, that item 26 refers only to legislation which has reference to import and export across customs frontiers. As there is a separate item relating to the levy of duties of customs, I take it that any Court will interpret this item 26 as not covering the levy of duties of customs, assuming that item 71 is also going to remain in our list. So, on that ground, this amendment does not call for consideration at the present moment. Mr. Himmat Singh, however, raised another issue of some importance and that was the right of a Federated State to levy and to vary from time to time customs duties on its own frontier. These frontiers may not be the frontiers of the Federation. They might merely be frontiers between one State and another or one State and the rest of India. With regard to the continuance of these rights, the whole thing will depend upon what conclusions we reach as regards the distribution of financial resources between the Federal Centre and the Federal Units. That also will come up later for consideration in connection with this report. I might say, in order to remove any possible misapprehensions that may be in the minds of representatives of States, that, if on account of powers taken by the Federation as regards customs duties in general, even customs duties between the frontiers of one unit and another, the financial equilibrium of a unit gets upset, the Federation is not likely to run away form the responsibility of making that units solvent. That is as much as it is necessary for me to say at the present moment. If any proposals of this kind should be made at the time we come to consider the distribution of financial resources, I shall elaborate this particular point. In view of this I hope Mr. Himmat Singh K. Maheshwari will not press his amendment.

Mr. Himmat Singh K. Maheshwari : As this subject is to come up again, I do not press my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

"That item 26 be adopted".

The motion was adopted.

Mr. President : I have received a letter from two Members asking for an opportunity to discuss the situation that has arisen in some parts of the country in the Punjab. There is a suggestion in that letter that the Report of the Committee, which was appointed the other day to define the scope of the working of the Constituent

Assembly and the Legislative Assembly, has been made to me and that I am not bringing it up before the House. I desire to assure Members that I have not received the report, whatever may have appeared in the newspapers. Therefore, I am not in a position yet to decide how the Assembly can function in its two aspects. As soon as I get the report, I shall give an opportunity to the House to discuss it and therefore, we shall take such action as may be considered necessary in the light of the Report.

The House stands adjourned to Ten of the clock tomorrow morning.

The Assembly then adjourned till Ten of the clock on Tuesday the 26th August, 1947.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME V

Tuesday, the 26th August 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

TAKING OF THE PLEDGE

The following member took the pledge:

Mr. S. K. Patil.

Mr. President: We shall now take up the consideration of the item of List I.

Mr. H. V. Kamath (C. P. & Berar: General) : Mr. President permit me, Sir, to invite your attention to an incident which took place on the historic midsummer night of August 14-15. I must apologise to you, Sir, and to the House for harking back on old times, but in view of the intrinsic importance of the matter, I will request you to condone the delay in bringing it to your notice. You will be pleased to recollect, Sir, that on the night of the Assumption of Power Ceremony, the first item of the agenda was the singing of the *Vande Mataram.* Some of us in this House noticed that a number of our Honourable friends entered the Assembly Chamber--I would almost say trooped into this Hall--after the song had been sung. I would request you, Sir, to look into this matter, because there are certain considerations which arise from this action of theirs. They entered the Hall simultaneously, so simultaneously that it gave the appearance of the act having been performed not so much by accident as by design. You will be pleased to remember that the Assembly had resolved to leave this matter of programme entirely in your hands and they were in duty bound as members of this House to participate in the programme. My friends all very well know that this song, though it has not been adopted by this House as our National Anthem, yet it is a song, Sir, which has been hallowed, which has been consecrated, sanctified by the suffering and sacrifice, blood and tears, and the martyrdom of thousands of our countrymen and women. I shall be happy to hear from those members who came after the National Song had been sung that they did so not by design, but only by accident. Thank you.

Shri Balkrishna Sharma (united Provinces: General): Mr. President, I am really pained to see this matter being raised by an honourable friend of mine for whom I have great respect and love. As a matter of fact, Sir, most of us did feel that the behaviour of some of our colleagues in this House was not quite in the fitness of things. Yet, we here cannot force anybody.

Shri L. Krishnaswami Bharathi (Madras: General) : May I rise to a point of order, Sir? I do not know what we are talking about. I have found on many occasions some members stand up without any motion before the House. You have been so good, Sir, as to permit that kind of thing. But I do not know if it is proper for a member to stand up and talk without being called by you. There must be a definite motion before the House on which we can talk. Therefore, I think it is a most improper procedure for some members to stand up without any motion before the House and therefore, I want your ruling on this.

Some Honourable Members: Order, order.

Mr. President: I think the matter should now be closed. We have heard from Mr. Kamath what he had to say. We have also heard something from Mr. Balkrishna Sharma. I do not know what can be done by pursuing the matter further. I think we had better drop it there.

We shall take up now the items. The next item is Item No. 27.

UNION POWERS COMMITTEE REPORT--*contd.*

ITEM NO. 27

Shri K. Santhanam (Madras: General) : Sir, I beg to move the amendment in my name in list No. VII, rather than the one list No. 1. I ,have given a revised amendment.

Mr. President : Yes.

Shri K. Santhanam : I beg to move:

"That in item 27 after the words 'other institution' the words 'financed by the Federation wholly or in part and' be inserted."

The reason for this amendment is that the Central Government is authorised by this item to declare by federal law any institution to be an institution of national importance. There may be many institutions built up wholly by private or provincial funds. It will not be fair for the Central Government to come down on one of them and say that it is going to be an institution of national importance. The consequences of that declaration may be that while that institution is serving the needs of a particular locality or a particular section of the population, it will become an all India institution available to the whole country. I realise there may be an advantage in such declaration with respect to certain institutions. But this power should be confined to those institutions which have been financed wholly or partly by the Central Government. It is only then that the Central Government will be entitled to declare the institution to be an institution of national importance. I beg to move the amendment, Sir.

Mr. President: Mr. Pataskar, you have got an amendment exactly in the same terms.

Mr. H. V. Pataskar (Bombay: General) : Sir, in view of the amendment moved by Mr. Santhanam, I do not propose to move mine. If I may be allowed to point out this item 27 corresponds to item 11 in the Government of India Act, 1935. there also it was provided that any such institution must be financed by the federation.

(I support the amendment, and do not move mine.)

Mr. Naziruddin Ahmad (West Bengal: Muslim) : Mr. President, Sir, I beg to move:

"That in item 27 after the words "and any other" the word "similar" be inserted, and for the words "declared by Federal Law to be an institution of national importance", the words "controlled or financed by the Federation" be substituted."

Sir, the effect of this amendment would be to bring it exactly on the same basis as item No. 11 of List I in the Government of India Act from which the idea has been taken. Some changes have been made here. But I should submit that the text as given in the Government of India Act is slightly better. The effect of my amendment would be that it would extent the operation of the item to any other similar institutions. The word 'similar' is very important as it will give some idea as to the nature of the institutions which can be brought into operation of this item by the Federal authority.

The next change I desire to affect is to the effect that I want to delete the words "declared by federal law to be an institution of national importance" and instead of that, I want to substitute "institutions controlled and financed by the Federation". I submit the requirement of a declaration by Federal Law is unnecessary. As the item is included in List I, the Federation will have automatically the power to make laws. So, the provision that a thing has to be declared by the Federal law seems to be unnecessary because the power to legislate on this item would be implied. Instead of that, the words "controlled and financed by the Federation" would be better because that would be more appropriate. This is the effect of the amendment. This is clearly of a drafting nature and it does not seriously alter the purpose and scope of the item. With regard to Mr. Santhanam's amendment, I am in agreement with the spirit of the amendment.

Mr. Himmat Singh K. Maheshwari (Sikkim and Cooch Behar States) Mr. President, Sir, I beg to move :

"That in item 27 after the words "any other institution" the words "in a province" be inserted".

I suggest, Sir, that institutions of this kind in Indian States should be left alone. Otherwise, there will be no end to the amount of interference that can be practised under cover of an innocent looking provision like this.

Mr. President : These are the amendments I have notice of. The amendments and the original item are now open to discussion.

(No Member rose to speak.)

Mr. President: It seems nobody else wants to speak. Mr. Gopalaswami Ayyangar, do you wish to say anything ?

Mr. N. Gopalaswami Ayyangar (Madras: General) : Sir, I accept Mr. Santhanam's amendment to the effect that "after the words 'other institution' the words 'financed by the Federation wholly or in part and' be inserted.

With regard to Mr. Naziruddin Ahmad's amendment I might say that the word "similar" was changed into the words "any other" deliberately, because the institutions referred to in item 27 specifically are the Imperial Library, the Indian Museum, the Imperial War Museum and the Victoria Memorial. These, it was considered, were not sufficiently indicative of the kind of institutions that the Federation might choose to help financially and which the Federal

Legislature might consider to be institutions of national importance. It is necessary, Sir, that we should not have the restrictive adjective "similar" in this connection.

The other point in Mr. Naziruddin Ahmad's amendment is that the language used in the Government of India Act, Item 11, is more appropriate. The difference between that language and the one which has been used in this item is that instead of saying "financed wholly or in part by the Federation" you will have the words "controlled or financed by the Federation". So far as the latter part is concerned, it is practically the same as Mr. Santhanam's amendment. The use of the words "controlled or" would bring into the purview of this item institutions which may not be finance either wholly or in part by the Federation but which the Federation might seek merely to control. The whole idea behind Mr. Santhanam's amendment is that the Federation should not legislate about any institutions of the kind which are not financed wholly or in part by the Federation. Therefore it seems to me that in order to sub serve the object of the amendment which has been accepted it is not possible for me to accept the language used in the Government of India Act.

As regards Mr. Himmat Singh Maheshwari's amendment I am afraid he is unduly sensitive about the Federation encroaching on the province of the Indian States. I would ask him to realise how much he may stand to lose in Indian States if we excepted institutions of the kind located in Indian States from the financial help that such institutions may expect from the Federation, if the item stood as it is. I may assure him that there is no attempt behind this item to clutch jurisdiction over institutions in Indian States; if the rulers and the peoples of the Indian States are willing to run institutions of this kind and finance them wholly themselves, I do not think the, Federation will be anxious to exercise any jurisdiction over those institutions. But it may be that the people of the Indian States would stand to benefit greatly by looking for help to the Centre in regard to institutions of national importance which neither they nor their rulers have got the financial capacity to maintain at the proper standard. I think, Sir, it will be to the benefit of the Indian State that they allow this item to remain as it is.

Mr. President: The first amendment which has been moved and accepted by Mr. Gopalaswami Ayyangar is Mr. Santhanam's.

The question is :

"That in item 27 after the words 'other institution' the words 'financed by the Federation wholly or in part and' be inserted."

The motion was adopted.

Mr. Naziruddin Ahmad: Sir, may I be permitted to withdraw my amendment ?

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then there is Mr. Himmat Singh Maheshwari's amendment. The question is:

"That 27 after the words 'any other institution' the words 'in a Province' be inserted."

The amendment was negatived.

Mr. President: The question is:

"That item 27, as amended by Mr. Santhanam's amendment, be accepted."

The motion was adopted.

ITEM No. 28

(No amendment to Item 28 was moved.)

Mr. President: The question is:

"That item 28 be adopted."

The motion was adopted.

Mr. President: There is a motion in the name of Mrs. Renuka Ray that after item 28 a new item 28 (A) be added.

Mrs. Renuka Ray (West Bengal: General) : Sir, I do not desire to move my amendment.

ITEM No. 29

Mr. Himmat Singh K. Maheshwari: Sir, I beg to move:

That for item 29 the following be substituted:

"Airways, Subject to the right of a federated State to develop air communications within it."

As the House is perhaps aware, the States have the right at present to develop air communications within their areas. I want to know definitely whether the intention is to leave them this freedom or in future to take over the landing grounds. and air communications in the States under the control of the Federation.

Mr. N. Gopalaswami Ayyangar: Sir, the item is a general description which provides for leigslation being undertaken as regards airways. That by itself does not connote the elimination of Indian States altogether from engaging themselves in enterprises which provide air communication between one point in their States and another. The whole thing is to depend upon what is decided to-be put into the federal law when it comes to be made. I have no doubt that such legitimate interests of Indian States, as deserve to be catered for, will be provided for in that law. After all, in regard to the question of airways in general, everybody should agree that the legislation regarding air communications, routes, etc., should be regulated and controlled by the centre. I do not think that what Mr. Himmat Singh apprehends will necessarily come to happen. There is no need to make an exception because, even in regard to airways operated by Indian States within their own limits, in respect of certain aspects of control, it would be necessary to vest power in the centre.

Mr. President: The question is:

"That for item 29 the following be substituted:

"Airways, subject to the right of a federated State to develop air communications within it."

The motion was negatived.

Mr. President: The question is:

"That item 29 be adopted."

The motion was adopted.

ITEM NO. 30

Mr. H. V. Pataskar: Sir, I beg to move:

"That in item 30 for the word "Federal" where it occurs for the second time the word "national" be substituted."

Item 17 of the provincial list refers to provincial highways and waterways. and for that reason it seems to be proper to mention them here as national highways and waterways. I hope it will be accepted. Sir, I move.

Mr. Alladi Krishnaswami Ayyar (Madras: General) : Sir, I beg to move:

"That in item 30 the words 'and waterways' be deleted, and for the words 'Federal Government' the words "Federal law' be substituted."

The reason why I move this is that in item 31 you are providing for "shipping and navigation on inland waterways declared by the Federal Government to be Federal waterways". Therefore if you retain waterways here there will be a certain overlap between items 30 and 31. Secondly, if you use the general expression "waterways" it will be susceptible to the construction that the entire control over the waterways including irrigation and other rights may be taken over by the centre, which is certainly not the object of the original item. So in order to show that it must have a restrictive operation it is much better that waterways should be omitted from item 30 and brought under item 31. And later on for the development of waterways special provision is made. The idea is to preserve in their integrity all the other rights of the provinces in regard to waterways. For all these reasons I move this amendment.

I have no objection to Mr. Pataskar's amendment which seeks to substitute "national highways" for "Federal highways". Sir, I move.

Mr. N. Madhava Rao (Eastern States): Sir, my only object in proposing to move an amendment to this item is to emphasise what must have been in the minds of the authors of this list. Highways and waterways fall generally within the sphere of the Units, and if they are to be declared as federal in any particular case, it is reasonable to assume that the Government of the Unit or the Units concerned would be consulted, and their opinions given due weight. If the Federation makes such a declaration, it will be for improving the highway or waterway in question and maintaining it at a higher standard than the resources of the Units permit. Such being the case, it is most unlikely that any Unit would raise any objection unless the proposal was coupled with very unacceptable conditions. Several of the entries in the

Federal List read as if unilateral action by the Federal Government was contemplated, although I am sure the real intention was quite different. It is expedient to remove this impression. I would not have really moved this amendment Sir. To save time I might have taken it for granted that before a declaration like this was made, the Units concerned would be consulted. But after Mr. Alladi Krishnaswami Ayyar's amendment, I feel a little confused as to what exactly is the object and import of this item. Is it mainly concerned with the construction and improvement of highways and their maintenance in a proper and efficient condition ? Or is it meant to empower the Federal Parliament to legislate in regard to the carriage of goods and passengers ? Both items 30 and 31, as they stand, are to me fairly clear. It is the amendment proposed by Mr. Alladi Krishnaswami Ayyar, that has aroused some doubt. I should like to have some enlightenment as to what exactly is the object of the amendments and how the entry would read with the amendments now proposed and what its effect would be on the powers and responsibilities of the Centre re (a) the maintenance of highways and (b) control of passengers and goods traffic on such highways.

Mr. Hussain Imam (Bihar: Muslim) : Mr. President, I should like to express certain opinions for the consideration of the House and for the guidance of the draftsman if my suggestions are approved of. I am referring to a particular matter as far as waterways are concerned. We agree that as far as the control of shipping is concerned, it is covered by item 31 and there is no need for its inclusion in item 30. But there is another aspect of waterways with which we are at the present moment concerned, namely, the development of power and irrigation as a consequence thereof. We have this scheme of the Damodar Valley in which two Provinces are interested-Bihar and Western Bengal. Now, because of the present set-up, the Central Government could not legislate on that without the concurrence of the two Provinces concerned. Similarly there is the Rihand Valley Project between Mirzapur District of U.P. and Palamau District of Bihar. The development of this project is dependent on the concurrence of the two Provinces concerned. I think that now that we are legislating anew, it is necessary that provision be made to distinguish between the two functions the irrigational and power development aspects. In the smaller rivers, or rather in the case of rivers in which only one Province is concerned, it could remain as at present a Provincial subject. But where large rivers are concerned, in which two or more provinces are concerned or interested, it is only proper that these should remain a Central or Federal subject so that the present difficulties which we have to encounter of getting the concurrence of the Provinces asking them to bear some part of the expenses and cost thereof all these-create difficulties-may be avoided. The Provinces are notoriously poor. Their resources are very meagre. Take for instance the Mahanadi Project in Orissa. It is impossible for that Province to finance this project out of their own resources. I therefore suggest that it framing this item, care should be taken to see that there is no encroaching on Provincial rights, as far as rivers, in which only one Province is interested, are concerned. But where more than one Province is interested in a River, and the work is of a major nature involving power development together with irrigation, it should remain a Federal subject. I am making this suggestion for the consideration of the House. I have, therefore, not put in any amendment; but if the House approves of this idea it may be incorporated by the draftsman when preparing the Bill.

Shri M. Ananthasayanam Ayyangar (Madras: General) : Sir, the difficulty anticipated by the previous speaker can be fully overcome by the provision of the Government of India Act enabling the Federal Legislature to pass laws for more than one Unit Wherever two or more Units are interested even in a Provincial subject. It does not need any alteration of the present item, and it need not be included in list I, it is not necessary to clothe the Federal Legislature with all the power, irrespective of whether a particular Unit wants the power to be exercised in their favour or not. That is my first point.

Then, as regards the amendment moved by Mr. Madhava Rao, there is some meaning in what he said. If highways are vested in the Central Government and included in the Federal List, without any qualifications, the regulation of traffic over the highways also will be a Central subject. Highways naturally pass through many units. There is no highway which does not pass through Units, and so far as roads are concerned, they are a Provincial subject. Therefore, he justly asks if it is the intention of the Centre to exclude these from the operation of the Provincial Legislature so, fir as the road traffic is concerned. My view is that it is necessary that it must be exclusively with the Centre. There may be occasions when the traffic on these roads may have to be controlled in the interests of the Federation. But the ordinary kind of traffic may be left to the Provinces. In the Centre we are accustomed to such legislation as the Motor Vehicles Legislation. There is the Motor Vehicles Act passed by the Central Government which also gives power to create Provincial Traffic Boards to deal with the traffic in the Provinces. Likewise though highways are included in List I, provision may be made to reserve certain powers to the Centre as in times of emergency for the regulation of traffic, though the ordinary maintenance of traffic may be entrusted to the Provinces. Therefore, there is no need to accept the amendment suggested by Mr. Madhava Rao, and the present item may be left as it stands.

Mr. N. Gopalaswami Ayyangar: Sir, for the very good reasons adduced by Mr. Alladi Krishnaswami Ayyar, I accept his suggestion that we drop "waterways" from item 30. If we retain it there, it would lead to a certain amount of overlapping between items 30 and 31, not to speak of other items relating to waterways in the rest of the list. The actual amendment proposed by him was originally "Highways declared to be such by Federal law", and we have an amendment moved by Mr. Pataskar that, for the words "Federal highways and waterways", the words "national highways and waterways" be substituted. I have already said that we are omitting "waterways" from this item, but I think it would meet the points of view of both these Honourable Members if I suggest that the item may read as follows :

> "National highways declared to be such by Federal law."

If the House agrees to that small amendment, we may get through with it.

The next amendment that was moved was by Mr. Madhava Rao. I think he himself conceded that no highways are likely to be declared "national highways" without previous consultation with the units. That is a matter of administrative routine and I do not think it is necessary that we should insert the words that he has suggested in item 30. He wanted, however, some clarification as to what exactly was meant by the item as it stands, whether it would include, for instance, power being taken by the Federal Legislature to control traffic on the roads. What I would like him to realise is that the item as it stands primarily refers to the construction and maintenance of national highways. As regards the question of the regulation of traffic thereon, we are not giving any specific power to the Centre. As a matter of fact, in regard to other forms of communications like waterways and railways and, I believe, airways, we have specifically provided in this list for the Centre taking power to control carriage of passengers. We have not made any such provision here. I should therefore suggest to 'him that the powers that the unit may possess for the control of such traffic even on national highways, it will not be deprived of.

The next point that I wish to refer to is the one mentioned by my Honourable friend Mr. Hussain Imam. He referred to waterways. But, as I have said. we propose to omit waterways from this item. Apart from that, on the merits of what 'tie said, some argument has been advanced on the other side by Mr. Ananthasayanam Ayyangar to the effect that in the constitution then, will be provision for two units concerned with the same waterway applying to the Centre for legislation to regulate and control it. Apart from that provision which will certainly be made, I would refer Mr. Hussain Iman to item 83 in the Federal List itself, which refers to the development of inter-unit waterways for purposes of flood control irrigation, navigation and hydroelectric power. That ought to satisfy him to the full.

Shri Ananthasayanam Ayyangar: May I ask one question of Mr. Gopalaswami Ayyanger ? He said that "national highways" without any further qualification would only mean construction and maintenance of national highways and he said that item 31 provides for "carriage of passengers and goods on such waterways". These according to him are not restricted by the powers conferred on the centre. Without that the Centre will not have such power. On the other hand, can it not be taken as restricting the powers of the Centre, and if that is so, is it not necessary to accept in some form Mr. Madhava Rao's amendment ?

Mr. N. Gopalaswami Ayyangar: Sir, my answer is this. In the remarks I made I was rather deliberate. I skated over rather thin ice from a legal point of view. "Highways" left as highways only in this item would cover power to make regulations even as regards traffic. I did not say in my remarks that the Centre would not have that power. What I really intended to convey was that we are not giving the Centre *exclusive power*--which is what is meant by inclusion of the item in this list to--regulate the traffic on even national highways. What I told Mr. Madhava Rao was that, even if the item were left to stand as it is, there is no specific taking away of the power in the units to make any regulations they may like. I think there is a certain amount of delicate interpretation of the wording of these items involved in what I said, but I believe the substance is clear from what I have said.

Mr. President: Mr. Gopalaswami Ayyangar has in effect accepted the amendment moved by Mr Alladi Krishnaswami Ayyar and the one moved by Mr. Pataskar. So I will put both these amendments in the way in which he intended them to be put, namely.

For item 30, the following be Substituted:

"National highways declared to be such by Federal law."

The amendment was adopted.

Mr. President: Now there is Mr. Madhava Rao's amendment.

Mr. Madhava Rao: I withdraw my amendment, Sir.

Mr. President: Mr. Madhava Rao has withdrawn his amendment.

I hope the House gives him leave to withdraw his amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: I shall now put the item, as recast, to vote, namely

"30. National highways declared to be such by Federal law."

The motion was adopted.

ITEM No 31

Mr. President: Item 31. There is an amendment by Mr. Alladi Krishnaswami Ayyar.

Mr. Alladi Krishnaswami Ayyar: Sir, as item 30 has been carried, 31 may be retained with this change. I would suggest the substitution of the words 'Federal law' for the words 'Federal Government' in item 31. The item, as amended, will read thus:--

> "Shipping and navigation on, inland waterways, declared by the Federal law to be Federal waterways, as regards machanically propelled vessels, and the rule of the road on such waterways, etc."

This will bring item 31 in line with 30.

Mr. Naziruddin Ahmad: Mr. President, Sir, the amendment which stands in my name is in the alternative form. I do not wish to move the first part. I wish to take up only the alternative part. The alternative part is again divided into two parts. I gave notice of it in two separate portions but they have been printed together. I only wish to move the last portion of the alternative amendment. The portion I beg to move runs thus :--

> "That in item 31 for the words 'on such waterways', the words 'in such waterways' be substituted."

I submit, Sir, that this is only a drafting amendment. When speaking of roadways we say 'on' such roadways but when speaking of waterways, I should think that it should be 'in' such waterways. While travelling on the road you move on the road but when passing in the waterways, the vessels go at least partly under the surface. This is the impression which I have got on the subject. As I have submitted it is purely a drafting amendment and I hope the Honourable Mover may consider the advisability of accepting it.

Mr. N. Gopalaswami Ayyangar: Sir, I accept Mr. Alladi's amendment to substitute 'Federal law' for the words the "Federal Government' in item 31.

As regards the amendment moved by Mr. Naziruddin Ahmad, it is a matter of what would be correct English. After all what this refers to is movement. We move on the road--that seems to be conceded. I do, not known if it is right to say we move in the water. I think it is not necessarily wrong. I cannot accept the amendment straightaway but I shall ask the draftsman to have the English examined very carefully and decide between on and in.

Shri R. V. Dhulekar: (United Provinces: General) *[Mr. President, this amendment of Mr. Naziruddin Ahmad is out of order regarding the use of "on" or "in". Englishmen may be able to decide that and they may do what they like. As this constitution will be drafted in Hindi there is no need of such discussions.]*

Mr. President: *[We shall see to it when there is Hindi.]*

Mr. President: The first amendment is by Mr. Alladi Krishnaswami Ayyar. That has been accepted by Mr. Gopalaswami Ayyangar. I take it that the House accepts it.

The amendment was adopted.

Mr. Naziruddin Ahmad: I withdraw my amendment.

Mr. President: I hope the House agrees to the withdrawal of the second amendment by Mr. Naziruddin Ahmad.

The amendment was by leave of the Assembly, withdrawn.

Mr. President : I put the item to vote,

Item 31, as amended, was adopted.

ITEM NO. 32

Mr. President: We take item 32. There is an amendment by Sir V. T. Krishnamachari.

Sir V. T. Krishnamachari (Jaipur State): I do not move it.

Shri K. Santhanam: Sir, I beg to move-

"That in paragraph (b) of item 32, the word 'broadcasting' be deleted and the following be added at the end:

'Federal' broadcasting and law and regulation of broadcasting'."

I was expecting that amendment No. 32 will be moved and if it was moved I was going to support it. The item as it stands gives not only law but also actual owning and regulation for telephones, wireless, broadcasting and other forms of communications whether owned by the Federation or not, to the control of the Centre. So far as law or regulation of these communications are concerned, there is no doubt that it should be a central power but whether the unit should possess these forms of communications as supplementary to the central lines of communication is a point which requires careful consideration; in such a big country as this, with all kinds of difficulties and many languages, it is essential that the line should not be drawn too tightly. I think at least so far as broadcasting is concerned, it is essential that every linguistic unit should be allowed to have its own broadcasting arrangements, subject of course to the regulation of the Centre for law and other matters which require to be regulated. I wish that the other matters also--telephones and other communications also--had been brought in but as that amendment is not moved, I am moving my amendment so that at least the broadcasting is brought in. Sir, I move the amendment.

Mr. A. P. Pattani: (Western India States Group 4) : Mr. President, the amendment which I wish to submit reads as follows:-

"That for paragraph (b) of item 32 the following be substituted:

"Telephones, wireless, broadcasting and other like forms of communications owned by the Federation; and regulation of similar forms of communications owned by provinces or States'."

The States, Sir, have agreed to federate--to Join the Union on the three subjects of Defence, Communications and Foreign Affairs. If I am correct in my interpretation, they are wholeheartedly prepared to co-operate with the Union in these subjects.

They do not wish to make more reservations than are necessary. Defence and Communications are interdependent subjects. Defence will be possible only if there are proper communications. My amendment, therefore, Sir, does not wish to restrict the powers of the Union. All I wish to suggest is that there should be a distinction between Federal telephones, wireless, broadcasting, etc. and similar forms of communications owned by Provinces and States. The latter should be regulated only by the Federation. I only want to make a distinction between the two ownerships and nothing more. So I submit the amendment.

Mr. N. Madhava Rao: Mr. President, Sir, these are amendments which I have tabled more with a view to elicit information than to make any positive contribution to the proper drafting of this item. I shall explain my object.

In the first sub-item, Posts and Telegraphs, it has been stated

"Provided that the rights existing in favour of any individual State Unit at the commencement of this Constitution shall be Prescribed to the Unit until they are modified or extinguished." etc.

Now, with regard to posts and telegraphs, there are certain rights more or less of a contractual character which subsist in favour of certain States. I am not aware that there are any with regard to telegraphs. With regard to telephones there is an understanding that the States are at liberty to erect and operate systems which are internal to the State. The Indian States are entitled to set up and maintain telephone systems, open them to the public and work them for gain or grant licences to private companies and persons for the same provided the lines do not go beyond the limits of the State into British India or into another State.

Now, I would like to know how this assurance that has been given in the past is likely Io be affected by the adoption of this item of the Federal Legislative List.

Then again, Sir, with regard to Savings Bank, this is not really an item under communications at all. Merely because the Savings Bank is operated by the Postal Department this item is mentioned here. This question of Savings Bank was raised before the Davidson Committee. The Government of India, who were consulted by the committee, expressed their opinion as follows :-

"These operations which take the form of savings bank account and the sale of cash certificates represent a form of commercial exchange from which each party concerned derives some benefit which is fairly balanced by the consideration given.......... We admit, however, that it would be a new and unjustifiable principle of political practice to hold that the Paramount Power is entitled to carry on these transact-ions in the States against the wishes of the Rulers and, in some cases, in competition with the Durbar's own local arrangements. We are prepared therefore to arrange for their complete cessation in the territory of any State that definitely asks for it."

Now, some States I know of are thinking of establishing their own savings banks and it is, quite likely that for their proper working it would be necessary to ask the Postal Department to withdraw its own savings bank system. Now, whether the assurance conveyed in the passage which I have now read out is still valid or is to be regarded as a matter of ephemeral policy which may be altered at any time is a matter on which I should be very grateful for elucidation.

Thirdly, with regard to wireless and broadcasting, there is a provision in section 129 of the

Government of India Act. I wish to know whether anything corresponding to this would be. reproduced in the new Constitution. It is for the sake of ascertaining these particulars that I am moving these three amendments, *viz.*,

"That in paragraph (a) of item 32, after the words 'Posts and Telegraphs' the words 'telephones; post-office Savings Bank' be inserted."

"That in paragraph (b) of item 32, the word 'telephones' be deleted, and the following be added at the end:

'subject to the provision of the Constitution corresponding to Section 129 of the Government of India Act, 1935'."

"That paragraph (c) of item 32 be deleted."

Mr. Naziruddin Ahmad: I beg to move--That in item 32, the following new para. be added after para. (b) :--

"That in item 32, the following new para. be added after para. (b):

'(bb) other like forms of communications'."

This is practically an amendment of a drafting nature because it only seeks to make the enumeration complete. There are in clause (a) the Posts and Telegraphs owned and managed by the Government. In clause (b), telephones, wireless and broadcasting are mentioned. The subparagraph which I wish to add is to include within this list "Other like forms of communications". There may be private postal undertakings by private individuals. The Government of India have the monopoly for carrying on postal communications. So, in order to guard against any loophole enabling private persons to undertake a parallel postal service I have suggested that this sub-clause may be added. It is only a suggestion to the Drafting Committee to take note of and to do the needful that I have made in this amendment.

With regard to Mr. Madhava Rao's amendment in the matter or postal savings bank I think that though it is connected historically with the Postal Department, it does not form part of the "Communications" to which the States have acceded. I should therefore think that before dealing with the law relating to Postal Savings Banks, some consultation with the States' authorities may be undertaken. That is all I have to submit in this respect.

Mr. Himmat Singh K. Maheshwari: Mr. President, Sir, I beg to move. that in para (a) of item 32 the words "or are acquired by the Federation" be deleted and at the end of para (c) of item 32 the words "in a Province" be inserted.

Sir, in connection with other amendments which I had the temerity to move earlier this morning I have been accused of being sensitive and also of being unduly apprehensive. I plead guilty to these accusations and I must say that my apprehensions regarding the acquisitive tendency of the Centre are not removed by the wording of item. 32 or by any sub-item of this item. I have moved amendments only in respect of sub-items (a) and (c), but I am in full agreement with the amendment moved also in respect of clause (b) of item 32.

In this connection, Sir, I would like to draw the attention of the House to item 4, sub-clause (a) of clause C of the Report submitted to this House in April 1947. At that time, Sir, there was no intention on the part of the authors of the Report to acquire the rights of the States in regard to Posts and Telegraphs. This intention to acquire those rights seems therefore to be a later development.

With regard to clause (b) item 4 of clause (c). of the April Report may again be referred to. It was then intended to deal with Union Telephones, Union Broadcasting, Union Wireless and not with telephones, wireless and broadcasting owned or controlled by States. The intention evidently was only to regulate wireless and broadcasting and other such means of communications owned by the States but not control them. The present item on the other hand seeks to control an telephones, all wireless stations, all broadcasting stations and other like forms of communication whether owned by the Federation or not. To principle that was in mind my mind this is clearly an extension of the when the earlier April Report was drafted.

Then again, Sir, with reference to clause (c) it has been pointed out Savings Bank does not form is already by other speakers that the Post Office part of the subject of communications which is one of the three subjects in respect of which the States have acceded Federation in future. In practice, Sir, the business conducted by the Post Office does mean a certain amount of profit to the Post Office and it is only legitimate that Indian States which have established banks of their own should be permitted to deal with the savings bank business and that the Post Office should cease to do this work in future in Indian States.

Prof. Shibbanlal Saksena (United Provinces : General) : Mr. President, Sir, my amendment is as follows:-

"That for para. (b) of item 32 the following be substituted:

'(b) Telephones, wireless, broadcasting and other like forms of communication. Acquirement when such systems of communication are not owned by the Federation at present'."

Sir, there are three subjects on which the States have acceded and they are Defence, Communications and Foreign Affairs. In regard to Foreign Affairs, Sir, the list of Federal subjects will show that the entire jurisdiction is with the Federal Government. As for Defence, there, too the entire control is with the Federal Government. In fact there is provision in item 5 allowing the States to keep their armies though the strength Organisation and control of these will be by the Federation. But I wish that this provision were not there, and no separate armies were allowed to be kept by any unit. Similarly in regard to Communications, I think that no defence system can work unless the communications are completely owned by the Federation. We had the experience of the last war and we know how the Fifth Columenists used to employ wireless transmitters and other things for purposes of espionage. We can conceive of another war. In that case, until the Federation has full control over the system of communications, it cannot adequately discharge its responsibilities for defence. So, think, that, so far as communications are concerned, the Federation must have complete ownership. Of course, I visualise that our Federation will trust its units and will in normal times delegate its powers to them and grant full autonomy by federal laws, but it must have the power in times of emergency to take away all control and be fully prepared to meet emergencies. For if we have no power of ownership of these means of communication, we cannot own them.

This is only possible by providing in this Federal list complete ownership of all the means of communication by the Federation and the power of acquirement by the Federation of all systems which are not owned by it at present. I therefore think that all members from the States will see that by accepting this amendment they will not in any way be losing their right to have their systems of broadcasting in their own States in their own languages. Only they will be giving the Federation the right in times of war to take complete control of all systems of broadcasting. Therefore, I have suggested that "Acquirement when such systems of communication are not owned by the Federation at present", be added to the present clause after the deletion of the words "whether owned by the Federation or not" at the end of the present clause. Because there are some States which have got their own systems of communication I want the Federation should have the right to acquire them at least during the time of emergency and to that I think, nobody should object.

Shri M. Ananthasayanam Ayyangar: Sir, I support Mr. Santhanam's amendment. We are all agreed that the Central Government must have control over broadcasting. Even the amendments that have been suggested by the States Ministers-did not try to take away the control in the last resort of the Federal Government. All that I am able to read from their amendments is that they should be permitted to establish their own broadcasting stations and to some extent exercise control over them. I am sure that in the body of the Act a provision similar to the existing provision in section 129 of the Government of India Act will be enacted. There, reference is made to treaties and obligations between the Central or Federal Government and the States or Rulers of States regarding the manner in which the powers should be exercised and also in cases of emergency the Governor-General should have power to take charge of the entire broadcasting system in the whole country, whether the broadcasting station is within the ambit of a State or in a province. A similar provision clothing, the Central Government with power to take charge in case of emergency will also, I am sure, be made. This provision is adequately made in the amendment of Mr. Santhanam who recognises that both the provinces and the States-may be allowed to have their own broadcasting stations subject to laws and regulations to be made by the Centre.

Then I find Mr. Maheshwari takes objection to one thing in clause (a) of item 32, that is acquisition of broadcasting stations, and posts and telegraphs within the ambit of a State. It is true that it is not there in Entry No. 7 in List I in the Government of India Act. For the sake of uniformity, Sir, if a State is prepared to sell away the posts and telegraphs communications there, it must be open to the Federation to acquire them. Acquisition means not only voluntary acquisition or agreement between the parties, but compulsory acquisition also. The only thing to which they are taking exception is compulsory acquisition.

So far as the railways are concerned, there has been an attempt to centralise all the railway systems for the benefit of the entire State. I am not talking of the States who are not acceding. Those States who are acceding, originally even under the Cabinet Mission Plan, it was intended, should concede the three subjects Defence, External Affairs and Communications Communications are practically the arteries of defence and in referring to defence, we think in terms of emergency. Therefore, Communications must be a federal subject and there ought to be no deflection from that. The States ought not to stand on respect or prestige in this matter. They must concede the power to the Central Government to acquire the posts and telegraphs within the ambit of a State whether voluntarily or by agreement or even by compulsion.

I support the amendment moved by my honourable friend Mr. Santhanam and oppose the other amendments.

Mr. S. V. Krishnamoorthy Rao (Mysore State) : Sir, I do not think clause 32 excludes the right of a Unit to own broadcasting, wireless, telephones, because it says in clause (b), telephones, Wireless, broadcasting and other forms of communication, whether owned by the Federation or not. So, all that this clause does is to empower the Federal legislature to legislate, whether these forms of communication are owned by the Federation or not. Especially, in a country like India, in times of war and emergency, communications are closely allied with defence and so the power to regulate and legislate for these communications should rest with the Centre and the Centre alone.

I also oppose the amendment to exclude the Savings Bank from the Post offices, because these Savings Banks are a normal function of the post offices. No State so far as I know can afford the service that these Post office Savings Banks are doing, especially in the rural areas. Almost every State has got its own Savings Bank in the Treasuries and also the Banks financed or partially run by the State. But these post offices are situated in rural areas in small villages and I do not think any State or province can afford to start savings banks in rural areas. This work can be done and it is being done very usefully by these post offices, even branch post offices and therefore I oppose the amendment to exclude the savings banks from the purview of the post office.

I oppose all the amendments and support the original clause as it is.

Shri Gopikrishna Vijayavargiya (Gwalior State) *[Mr. President, I am of the opinion that "broadcasting" should be included in "Communications." Broadcasting is also one of the means of communicating one's ideas and therefore this should also be a federal subject. The objections raised against it are not sound. The amendment of Mr. Santhanam in this connection is appropriate and broadcasting should be a federal subject. Many States today are pressing the view that this right should remain with them. In this connection, what I have to say is that when we are all jointly making the Federation, it is not proper to say that this right belongs to the States and that the Federal Centre should not interfere with it. I think that this is not in good spirit. We are framing the Federation in cooperation with the Princes and their representatives and therefore whatever few rights are being ceded in a few subjects must be surrendered without reservations. This includes Posts and Telegraphs. We must give them to the Federation.

It is my' experience that in the small States where there are only State Past-offices, the States place a number of restrictions on people's liberties. Very often, in cooperation with post-offices, C. I. D., and many similar methods the States suppress the news that is sent out, and people's confidential letters are detained, intercepted and utilised against them in litigation. Therefore, the post-offices, etc., should be a little more independent, and the States should be given minimum rights over them, so that the service that can be rendered to the people through the Post offices, should be properly done. These (Post-offices) can escape intrigues and mismanagement of States only by recognition as a Federal subject.

Therefore this whole subject should be treated as suggested in the amendment of Mr. Santhanam.]*

Chaudhri Nihal Singh Takshak (Jind State) *[Mr. President, I rise to oppose one half of the amendment of Mr. Maheshwari. As an inhabitant of an Indian state, I have some experience of those States which have their own postal arrangements, particularly the smaller States. The State-subjects have a number of difficulties there. Post offices are, considered a source of state-revenue and therefore the States try to have as many post-offices and as few postmen as possible, whereas, in the provinces (of India) the mail is distributed in a village twice a week, in Indian States it is distributed hardly twice a month, not even once a week. The reason is the shortage of postmen.

One other particular difficulty is that the money-orders that are sent there are "exchanged" and the "exchanged" takes place in the post-offices in British India. This takes a lot of lime. Many a time it happens that due to shortage of money in State-treasuries, money-orders are delivered after many days and delayed even for months.

The third special difficulty is that in such States as have their own postal arrangements, when the pensions are paid from Indian Provinces the recipients have to go very long distances. Very often, I have seen how much inconvenience widows have to undergo when they go (to post offices) to receive pensions.

The other thing is that post office is included in the "item" but the Savings-Banks clause cannot be separated from it. In the States where there are local post-offices, Savings bank facilities are not given. Therefore, the words "or acquired by the Federation" should not be deleted. I would request this Assembly that as soon as the Constitution comes into operation, right from the very beginning the post offices must be a Federal-subject, so that the difficulties of State subjects may be removed.]*

Mr. A. P. Pattani: Mr. President, Sir, last honourable member's remarks about the States who wish to cooperate in every possible way, as I said as a member from the States, are something that I do not understand. What is the intrigue of the States he talks about ? We are asking you to take the communications that are necessary for the Union. We are requesting that communications that are necessary for the Union. are re-questing that communications which are owned by the provinces or States should only be regulated by the Centre. Where is the intrigue in this ? I do not understand, Sir, and T wish the honourable member will explain.

Shri Gopikrishna Vijayavargiya: The thing is this. The intrigue I was mentioning was not regarding the present affairs. But in some post offices, some letter were intercepted and other things done by the States. That was what I was referring to and not the present state Of affairs.

Mr. N. Gopalaswami Ayyangar: Sir, the first amendment that was moved to this particular item was that of Mr. Santhanam. I take it that lie moved it because the previous amendment on the list had not been moved. I may say at once that, though that particular amendment was not moved by Sir V. T. Krishnamachari, an amendment in substance more or less the same as that amendment has been moved by Mr. Pattani; and, if the House will permit me, I propose to accept the substance of Mr. Pattani's amendment but in the language of Sir V. T. Krishnamachari's amendment which was not moved. The only verbal change that I would make in Sir V. T. Krishnamachari's draft is that would substitute "Federal" for "Union". It will read: "Federal telephones. wireless, broadcasting and other like forms of communication". That, I think, disposes of Mr. Santhanam's amendment. I will not accept it.

Shri K. Santhanam: I withdraw it.

Mr. N. Gopalaswami Ayyangar : Then, Sir, I have to deal with the remarks of Mr. Madhva Rao in regard to certain points connected with the wording of this item. I may mention for his information that there is a State where there were agreements about telegraphs between the Paramount Power and the State. I refer to Kashmir. In addition to the Indian telegraph system which works in Kashmir, that State has also a State telegraph system, and the correlation and coordination of these two systems have been provided for by an agreement between the State and the Government of India. He referred also, Sir, to certain assurances and statements of policy made by the Crown Representative in respect of post offices, of telephones, of post office savings banks, and about wireless. Now I do not wish to go into all the statements of policy by the Paramount Power which is defunct today. But I would only say that any assurances of that sort were not supposed to be eternal. It is quite possible, even if the Paramount Power had continued in this country, for these arrangements being revised by agreement between the State and the Paramount Power. That procedure will still be available. The short answer to Mr. Madhava Rao as regards these matters is this. I would refer him to the terms of the Instrument of Accession which has been recently signed by all States which have acceded to the Dominion, and one of the items under Communications in respect of which they have agreed that the Federal Legislature should have power to make laws is worded as follows:-

> "Posts and Telegraphs, including telephones, wireless, broadcasting, and other like forms of communication."

There is no limitation at all here. In actual fact this broadly worded item is limited by other arrangements. Now I was referring to agreements as regards these matters. We find in the standard Standstill Agreement which has been entered into between the States and the Government of India the clause that will apply to agreements is worded as follows:--

> "Until new agreements in this behalf are made all agreements and administrative arrangements as to matters of common concern now existing between the Crown and any Indian State shall, in. so far as may be appropriate, continue as between the Dominion of India or as the case may be the part thereof and the State."

So that, whatever assurances or agreements already exist will be continued until new arrangements are made. And such agreements, according to the schedule to that Standstill Agreement, could relate to Posts, Telegraphs and Telephones. There can be no quarrel then as regards the wording of the item in the Federal list in the Union Powers Committee Report. It really puts into the new constitution limitations on the power of the Federal Legislature which you do not find in the Instrument of Accession that you have already signed. And it preserves the right which exist in favour of any individual State at the commencement of this constitution. Those rights will be preserved until they are modified or extinguished by agreement between the Federation and the unit concerned. That, I hope, supplies the clarification which Mr. Madhava Rao sought.

There is one part of this item, clause (a) of item 32,to which some exception was taken in an amendment moved by my friend Mr. Himmat Singh. He thought that his apprehensions as regards the Centre were only fortified by the words which you find in this clause "or are acquired by the Federation". Now. I wish to put to the House this one point: Posts and Telegraphs are, according to the distribution of powers between the Centre and the Units, an item which should normally be under the exclusive control of the Federation. We recognize the fact that any arrangement that may exist with the States which accede should be continued until other arrangements are made. Now, take the case of the Federation deciding at some time in the future that, in the interests of the country as a whole it is necessary that the standard of postal administration of a particular State should be pulled up, that there was no hope of the State itself doing it, that therefore it is necessary for the Federation to take over the administration of Posts and Telegraphs in that particular State. I think, Sir, in the larger interests of India the Federation should have the power to acquire any rights that that particular State might have. When we say "or are acquired by the Federation" it means that for any rights in what is essentially a Federal subject-any vested interest-which an individual State may have, due compensation will be paid to that State on acquisition. No body who really appreciates a scheme of federation can object to the lodgement of such a power in the Centre.

Then, Sir, I would refer to the other amendment which was moved by Mr. Himmat Singh. He wants to restrict Post Office Savings Banks to Provinces. Apart from the merits of it, I think, if we do that, it will mean a tremendous unsettlement of the existing state of things.

There are hundreds of States and thousands of Post Offices in such States which are now doing this work, is it suggested that the Federation should not have anything to do with this sort of thing in any Indian State ? The only thing we need provide for is that, in case any particular State makes out a case for running Savings Banks of its own, unconnected with the Post Office, then it will be a matter for negotiation between it and the Government of India as to whether the Post Offices in the State might be instructed from the administrative standpoint not to have any more Savings Bank work. That is quite possible and if a State makes out a case, I dare say the future Government of the Dominion will consider it. But to remove Post Office Savings Banks in all Indian States from the purview of the Federation will be an economic upsetting of conditions in Indian States which I for one will not recommend to the House.

Then, Sir. we have Mr. Shibbanlal Saksena's amendment which runs as follows :

"That for para. (b) of item 32 the following be substituted:

'(b) Telephones, wireless, broadcasting and other like forms; of communication. Acquirement when such systems of communication are. not owned by the Federation at present'."

I think, Sir, the amended form in which this item will appear as a result of what I have said already will cover the substance of what Mr. Shibbanlal Saksena wants.

The only other amendment I need refer to is that of Mr. Naziruddin Ahmad. He very rightly points out that the words "other like forms of communication" which now occur in clause (b) will only refer to forms of communication of the same type as telephones, wireless and broadcasting. He wanted that the Centre should have power also to regulate forms of communication such as Post Offices and Telegraphs. The only thing that I need say on this point is this: Posts and Telegraphs, in item (a), are a Federal subject. You will notice that even in the case of any postal or telegraph systems, which under the exceptional arrangements which exist with certain Indian States are continued, the Centre will have the power-the Federal Parliament will have the power-to make laws for their regulation and control.

In areas which are not covered by any such special arrangements the Federal Parliament will have exclusive power to prohibit any other kind of postal communication between individual and individual or groups of individuals and groups of individuals. As a matter of fact, I believe, there is in the existing Post Office Act a section which makes it an offence to circumvent the regular post by making any arrangement privately for the dispatch of letters between one area and another. That is an offence under the Post Office Act. I am sure that provision will be continued. Nobody can send a telegram except through the Government Telegraph Office at present. In view of this, I do not think he need press the addition of the item he wanted. Sir, I have nothing more to say. The result is that I accept Mr. Pattani's amendment in Sir, V. T. Krishnamachari's language, and oppose all the other amendments.

Mr. President: I will now put the amendments to vote, and I think the best course would be to take the item by paragraphs.

There is first the amendment of Mr. Madhava Rao.

"That in paragraph (a) of item 32, after the words 'Posts and Telegraphs' the word 'telephones; post-office, Savings Bank;' be inserted."

(The amendment was negatived.)

Mr. President: Then there is the amendment of Mr. Himmat Singh,

"That in para. (a) of item 32, the words 'or are acquired by the Federation' be deleted."

(The amendment was negatived.)

Mr. President: Then I take up the amendments to clause (b).

Shri K. Santhanam: In clause (a) I have an amendment about the words "State Unit". These words are likely to cause confusion.

Mr. N. Gopalaswami Ayyangar: Sir, he might leave the refining of the phrase to the draftsmen.

Shri K. Santhanam: The intention is the States ?

Mr. N. Gopalaswami Ayyangar: Yes.

Mr. President: To Item No. 32 (b) Vie first amendment is that of Mr. Pattani, in the language of Sir V. T. Krisnamachari.

The amendment was adopted.

Mr. President: Then I take it that Mr. Santhanam withdraws his amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: I do not think it is necessary to put Mr. Shibbanlal Saksena's amendment now separately.

The amendment was by leave of the Assembly, withdrawn.

Mr. President: Then we take Mr. Madhava Rao's amendment.

Mr. N. Madhava Rao: That is a consequential one and it drops, as also my amendment to 32(c).

Mr. President: Then we come to Mr. Himmat Singh's amendment.

"That at the end of para. (c) of Item 32, the words 'in a province' be inserted."

(The amendment was negatived.)

Mr. President: There is, I think, only one other amendment, that is the one by Mr. Naziruddin Ahmad.

"That in item 32, the following new para be added after para (b)

'(bb) other like forms of communications'.

Mr. Naziruddin Ahmad: Sir, I withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : Then I put the item, as amended, to the vote of the Assembly

Item No. 32, as amended, was adopted.

ITEM' No. 33

Mr. Naziruddin Ahmad: Sir, I beg to move-

"That: in item No; 33, the brackets enclosing the words 'other than minor railways' be deleted.'

This is only drafting amendment. This item corresponds with item No. 20 in List I of the Government of India Act. It is exactly the same, except that the two brackets appear here which do not appear in the model. I submit that the brackets are unnecessary and without them the item would read better. In fact, to me it seems that the brackets are an eyesore and look like hurdles to impede the reader.

Mine is purely a drafting amendment and I suggest it to the House for consideration.

Mr. N. Gopalaswami Ayyangar: Sir, I agree that a bracket is a crude thing in a list of this sort, and I accept the amendment. But, If Mr. Naziruddin does not consider it inappropriate, I would put a comma before and after that expression *(Laughter).*

Mr. Naziruddin Ahmad: Sir, I agree.

Mr. President: There is no other amendment to this item and that moved by Mr. Naziruddin Ahmad has been accepted by Mr. Gopalaswami Ayyangar.

I now put this amendment to vote.

The amendment was adopted.

Mr. President: Now I put the item, as amended, to vote.

Item 33, as amended, was adopted.

ITEM No. 34

Shri K. Santhanam: Sir I move that in item 34, the following be added at the end

"Provision of education and training for the mercantile marine and regulation of such education and training provided by units and other agencies."

The need for the centralisation of the qualifications needed for engineers, pilots and other executive officers of the mercantile marine need not be dilated upon. It is essential that all the standards as well as the actual provision of education should be in the control of the Centre, but there is no reason why there should be any prohibition of the provision of such education by universities and other agencies. Only such education and training should conform to, the standard set up by the Centre. The actual amendment that I am moving provides both for central provision as well as central regulation of other provision, by universities and State agencies.

(Mr. G. L. Mehta and Prof. Shibbanlal Saksena did not move their amendments.)

Mr. N. Gopalaswami Ayyangar: I accept Mr. Santhanam's amendment, Sir,

Mr. President: The amendment moved by Mr. Santhanam has been accepted by Mr. Gopalaswami Ayyangar, that in item 34 the following be added at the end

"Provision of education and training for the mercantile marine and regulation of such education and training provided by units and other agencies."

I now put the amendment to vote.

The amendment was adopted.

Mr. President: The question" is that item 34, as amended, be adopted.

Item 34, as amendment, was adopted,

ITEM No. 35

Mr. President: There is no amendment to item 35. I put it to vote. The item was adopted.

ITEM No. 36

Mr. H. V. Pataskar: Sir, I beg to move that in item 36 the following be added at the end:-

"and the, constitution and powers of Port, Authorities therein."

Mr. R. K. Sidhwa (C. P. & Berar General) : Sir, until the Government of India Act, 1935, came into existence, all the major ports in India were controlled by the Provincial Governments, but before that period a wider franchise was given to the governing bodies of the various port trusts and therefore the non-official majorities were considerably increased. But the Government of India which was bureaucratic and was; controlling those port trusts subsequently took away those powers from the Provincial Governments. I would have preferred not to burden the Central Government again with these major ports to-be controlled by them. However, if it is felt that in the existing circumstances there should be a uniform law for all the major Ports I do not press my amendment to delete the item in this list and insert in List No. II.

Mr. A. P. Pattani: Mr. President, the only suggestion I have to make in this connection is that at the end the following proviso be added to this item.

"Provided that for ports of federated maritime States such declaration or delimitation shall be made after consultation with the State concerned."

I have only made this suggestion because in the past there has been a tendency on the part of the Central Government to take rather drastic action without consulting the States, and since we are coming into the Federation we should be consulted before suddenly delimitations of our ports are taken in hand. Of course, the same applies for declaration of a minor or a major port. Sir, I move.

Mr. Naziruddin Ahmad: Sir, I beg to move that for item 36, the following be substituted:-

`36. Major ports, that is to say, the declaration and delimitation of such ports and the constitution and powers of port authorities therein."

Sir, the amendment is exactly a reproduction of item 22 in List I to the Government of India Act, from which the present item 36 has been taken. It is in substance the same; there is difference in the drafting. The amendment gives complete power to deal with the subject, i.e.. to declare a port to be a major port. While the amendment emphasises the power to be given to the Federation the item under consideration emphasises the fact of declaration or the action taken under the item. I submit the amendment, would serve the purpose better. However, it is only a drafting amendment and it is submitted for the consideration of the Drafting Committee.

Shri Lakshminarayan Sahu (Orissa: General) : Mr. President, Sir I approve wholeheartedly of this item, but at the same time, I wish to add that there should be some provision for opening at least a new major port in every coastal province.

My amendment is:

'That the following be inserted at the end of item 36:

"and also opening of at least a new major port in every coastal province."

My anxiety for my own province actuates me to suggest this amendment. The present province of Orissa is in a very wretched condition., Once it was very prosperous and the present poor condition of Orissa is due to want of a major port and that is why I want that there should be an insertion of such a clause so that we, the coastal provinces, may have at least one major port. Mr. Sidhwa on the other hand wants that it should not be a subject under the Federal List; but I must oppose that and say that unless it is under the Centre, it is not possible for the Province to develop a new port. My friend Mr. Naziruddin Ahmad has partly supported me by his amendment and I therefore hope that my amendment also will be passed. The once prosperous province, of Orissa has been reduced to such penury that it is a shame for the whole Union; it will remain a shame for the whole Union unless and until it is developed and brought into line with other provinces. When you are going to start, so to say, anew altogether, all the provinces must be started on an even keel and that is why I am so particular that we must have a major port, so that trade and industry may flourish. We must have a channel through which we may be able to be prosperous. Once the policy of starting canals in Orissa was started: but it was a failure and that caused great inconvenience and cost to the people of Orissa. Again, the Railways were started and the Railways have also become so to say a failure in Orissa to a great extent because there are not many openings and we get floods almost once in three years and we suffer terribly. The real prosperity of the coastal provincelies in its ports and in former times Orissa was very prosperous only on account of her ports. In almost every district we had one or two ports; in Balasore we had the port of Pipli and Chandbali, and in Puri in olden times we had the famous port of Chelitola. All these ports are practically non-existent today and I therefore wish that our, new Union will give us such help that we may be able to start at least one major port for the province of Orissa. To start with, the Andhra province-it is expected it will be a new province-will have Vizagapatam; but though our province has been created in 1936 and it is a coastal province, we have no major port. I therefore wish that this should be included in item 36. As regards the Language, I feel some difficulty in wording it properly but I hope that may be changed properly by those who are in charge of the drafting.

Mr. G. L. Mehta: (Western India States Group) : Mr. President, I am intervening in this debate to make clear a few points. So far as ports are concerned in this country they are not merely intimately connected with Communications which is a Central subject and must therefore be under Central control but they have also enormous strategic importance. Last year the Government of India appointed a Ports Development Committee which presented a valuable report and the Honourable Members of this House, if they study the report. will see that this Committee has realized and emphasised the vital importance of ports on the coast of India for strategic, defensive as well as commercial purposes. Ports Sir, are also connected with Railways in the hinterland add Railways are a Central subject and therefore I would suggest that ports should be under Central control. Mr. Pataskar has given notice of an amendment that the constitution and powers of Port Authorities therein should also be included in the federal list. I think that is a reasonable amendment because if the delimitation of ports is included, naturally the constitution and powers of the port authorities should also be included in this list. Mr. Pattani has given an amendment that "Provided that for ports of federated maritime Sates such declaration shall be made after consultation with the State concerned." I am sure. Sir, that will be exactly what will be done and I do not know if this provision should find a place in the Federal Legislative List. Mr. Gopalaswamy Ayyangar will no doubt be able to enlighten the House in this matter. I would submit that the inclusion of this item in the Federal Legislative List is justified and if we had made a mistake before 1932, there is no reason why we should continue that mistake.

As regards the suggestion that there should be one major port in every province, that surely is a matter for detailed technical investigation and a question of the financial resources of the Province and of the country as a whole and is a subject of subsequent legislation, not a matter that should be put in the constitution itself or in the Federal Legislative list. If ports unduly compete with one another and if you want to stop that, it requires co-ordination and Central control. I therefore support the inclusion of this item in the Federal list as moved by Mr. N. Gopalaswamy Ayyangar.

Shri M. Ananthasayanam Ayyangar: Sir, I agree with Mr. Lakshmi Narayan. Sahu that power has to be given to the Centre to create and develop ports. As regards competition between ports, it is a central subject and therefore it is up to the Federal Legislature to pass regulations to avoid competition between one port and another. As Mr. Sahu said attempts to improve Railways etc. have failed so far as Orissa is concerned and therefore the only other source that can possibly be had is by creating a major port where there is none. There is provision for development in the 1935 Act as also in the list that we are now considering. If there is already a major port, it is open to improve it; if there is a minor port it is open to the Federal Legislature to declare it to be a major port but it does not give to the Federal Government power to start a major port at a new place. I think provision must be made to create a major port where there is none. No development is mentioned there. Declaration and delimitation are the words used. That means the declaration and delimitation of major ports only. This no doubt gives ample power to the Centre to declare as major port any port developed by a Province. The Centre should help the provinces with finances to develop the ports. Therefore I would urge upon Mr. N. Gopalaswami Ayyangar to accept the words "creation and development' along with the words 'declaration and delimitation'.

Shri T. T. Krishnamachari (Madras: General) Only one thing I would like to say in this connection and it is this : My friend Mr. Ananthasayanam Ayyangar said that the Provinces develop the ports and the Centre takes them over thereafter. That was not the case in my own province. My province has a special fund for minor ports in which over 60 lakhs had accumulated and a sum of Rs. 40 lakhs from this Minor Ports Fund was appropriated by the Provincial Government and put into the general revenues. It is not always the case therefore that the Provinces go the right thing in regard to ports under their control and the Centre the worng thing.

Mr. N. Gopalaswami Ayyangar: I accept Mr. Pataskar's amendment to insert at the end of item 36, the words "and the constitution and powers of port authorities therein". That is an obvious addition to make and that is in substance what W. Naziruddin Ahmad intended by his amendment. Mr. Naziruddin Ahmad has really copied out the item as it stands in the List under the Government of India Act. We have slightly elaborated that item, so far as the first part of it is concerned, in our description. Instead of 'Major ports', we have said. 'Ports' declared to be major ports by or under Federal law or the existing Indian law including their delimitation. Now, I do not think that there is any thing very strongly in favour of the Government of India Act so far as this item is conerned.

The other point that has been raised during the debate is that in certain provinces major ports do not exist or minor ports have not been sufficiently developed so as to enable their declaration as major ports. Now, Sip, so far as these are concerned, we have laws already and we shall have power to make laws in the future. In our Federal legislation we shall have to indicate the conditions which should be satisfied before the Federal Government can declare a port, to be a major port under that law. It would be wrong. I think, to put into the Constitution any provision that there should be at least one major port in every coastal Province. May be that the coast of a particular province does not admit of the creation or development of a major port. There is no point in going and wasting money, on a coast which does not permit of this sort of thing. I am sure that no province which has got the necessary conditions and facilities for having a major port will be denied the opportunity of developing a major port in the new order of things. It is sufficient, Sir, that we take power to create and develop such ports wherever, they are necessary and whereyer, they can be created and developed.

One point I should refer to in the amendment proposed by Mr. Pattani. That provides for consultation with an acceding maritime State before any area in it is declared to be a major port. That consultation, as I have said in connection with the other items, will be a matter of routine in the future. I can understand Mr. Pattani's point that in the past certain things have been done which did not quite meet the legitimate wishes of particular Indian States which come under this description. I can well understand it. In the past, Indian States stood aloof constitutionally from the Centre. The question of major ports was one for the Government of India. Those States were, not in direct touch with the Government of India and had to negotiate through the Crown Representative's Department. That was not always a healthy method of getting these questions settled to the satisfaction of both the Centre and of the State concerned. In the future, the States that have acceded to the Federation will become part of the Federation and, just as in the case of provinces previous consultation will take place before any area is declared to be a major port the same consultation will take place with the Units which are Indian states. There is also the fact that these Indian States will have representatives at the centre. I am sure there will be representatives in the Legislature and I am sure in the Government there will be some persons who will be there because of their connection with and experience of Indian States. Therefore, Sir what perhaps had happened in the past, Mr. Pattani may take for granted, will not necessarily happen in the future. If it does he has the means of pulling up the Federal Government in matters of this kind and seeing that that sort of thing is prevented.

Mr. A. P. Pattani: May I just say a word? Very often the interests of the different maritime States do not coincide under the present arrangements. Maritime States have their own particular interests and they should be able to place before the Government their case. It will not be possible for all to be represented by some one person or representative.

Mr. N. Gopalaswami Ayyangar: My answer to that is, I think, that practically every maritime state of any importance will have individual representation in the future Federal Legislature. With regard to States which do not have such representation, they certainly do have representation in the sense that along with other States, they will have the right to send representatives to the Federal Legislature so that there can be no question of any acceding State not being represented in, the Federal Legislature at all.

I am sorry I omitted to refer to Mr. Ananthasavanam Ayyangar's suggestion. I think really that the Act as it stands covers the points that he has stated. It is certainly open to the Federation to declare ports to be major ports. It does not necessarily mean that you are given power only to declare a minor port to be a major port. You can take any area in the country and say that it is a major port and provide for the creation of the necessary agencies for its development and so on. I think this is wide enough to cover his point.

Mr. President: I will now put the amendments to vote. There is an amendment by Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: I withdraw my amendment.

The amendment was by leave of the Assembly, withdrawn.

Mr. President: I then put the amendment of Mr. Pataskar which has been accepted by Mr. Gopalaswami Ayyanger, to vote

"That the following be added at the end of item 36:

'and the constitution and powers of Port Authorities therein'."

The amendment was adopted.

Mr. President: The next amendment is by Mr. Pattani. That at the end of item 36, the following proviso be added:-

"Provided that for ports of federated maritime States such declaration or delimitation shall be made after consultation with the State concerned."

Mr. A. P. Pattani: I withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then there is an amendment by Mr. Lakshminarayan Sahu that the following be inserted at the end of item. 36:-

"and also opening of at least a new major port in every coastal province."

The amendment was negatived.

Mr. President: The original item as amended by Mr. Pataskar's amendment is now put to vote.

Item 36, as amended, was adopted.

ITEM No. 37

Mr. President : Now we go to item 37.

(Shri K. Santhanam did not move his amendment).

Mr. G. L. Mehta: Mr. President, I beg to move that the following be added at the end of item 37 :-

"Provision for-aeronautical education and training and regulation of such education and training provided by Units, and other agencies."

> Sir, I need not take up the time of the House in commending this amendment to their acceptance. For reasons which were explained by Mr. Santhanam in regard to education and training in mercantile marine services, we need also Central control and co-ordination in education in aeronautical services. I should only like to add one point and that is that for such services as mercantile marine and aviation, we have to pool our resources and in the initial stages, it would be too optimistic to expect that every unit or every state could start similar institutions. We have dearth of technical talent and then we have also the difficulty of getting the necessary aircraft, equipment and so on and therefore, in the initial stages it will be necessary that there will have to be one Central institution. But there is no need to prevent the units from starting such institutons if they so desire, provided we evolve and maintain uniform standards of education and training and competence in such matters. Sir, I move this amendment.
>
> > (Mr. G. L. Mehta did not move his other amendment No. 16 in List II).
> >
> > (Prof. Shibbanlal Saksena did not move his amendment.)
> >
> > **Mr. Naziruddin Ahmad:** Mr. President, Sir, I beg to move:

> "That in item 37 for the colon, a semi-colon be substituted, and for the comma, a semi-colon be substituted (*laughter*)."

I find, Sir I have created some amount of amusement in the House by this amendment, but it has a serious aspect. In fact item 37 Consists of three different subjects. The first is Aircraft and air navigation. The second is the provision of aerodromes and the third is regulation and Organisation of air traffic and of aerodromes. I beg to submit that these three distinct items must each be separated by a semi-colon.

That has been the custom in drafting these items. In fact these three different sub-items should be separated by equal kinds of stops, but the, separating punctuation between the first and the second is a colon. The reader here is suddenly halted. It acts almost like a full stop. But between the second and the third sub-items there is a comma. The reader is suddenly hurried from one subject to the other. I have carefully compared this item with Item No. 24 in List I in the Government of India Act to which item 37 corresponds. There the punctuation is exactly as I have suggested. I do not think that an intentional or conscious departure has been made here but this slight difference between the punctuation in the Government of India Act and this item probably is dug to a clerical error. I submit this amendment, which is purely of drafting nature for the consideration of Mr. Gopalaswami Ayyangar.

Mr. President: Mr. Santhanam, there is another amendment in your name.

Shri K. Santhanam: I do not propose to move it, Sir.

Mr. President: We have then two amendments now. Does any-one wish to say anything about them ?

Shri M. Ananthasayanam Ayyangar: Sir, as regards training, the amendment moved by Mr. Mehta-I have no objection to it--only elaborates the powers already conferred. As you know all that you do is to insist upon the pilots or drivers having particular qualifications and the schools will come of their own accord. Therefore even in respect of aeronautical training or navigation schools, none of them need be opened. By a stroke of legislation that a particular qualification should be possessed by seamen or navigators or air-pilots, the 'situation can be solved. Therefore, this particular amendment may not be necessary. All the same, there is no harm in its inclusion and I support that amendment.

There is a fundamental thing to which I would like to draw the attention of the House at this stage. So far as the road highways are concerned, there are national highways and provincial highways. So far as the railways are concerned, there are State railways, all India Railways and there are minor railways. Likewise, in waterways, there are inland waterways and waterways which are declared federal waterways. So far as the airways are concerned, I would like to say, Sir, that there may be a tendency on the part of the Centre to starve the provinces. So far as the airways are concerned, the highways may be reserved for the Centre.. Branch lines or branch airways should be left to the provinces to develop as they are better capable of developing this traffic than the Centre. I am not opposing or even moving a formal amendment. But I would like this Assembly to take note at this stage, that the federal legislature, when an Act is passed, ought to provide, as-in the case of road traffic boards, for provincial Air traffic Boards, so that air traffic in the provinces may be regulated, expanded, and new lines may be opened so as to feed the main lines or highways, or between one province and another.

There is this danger also. I find, though I am not opposed to centralised capital flowing in all channels and I welcome, it, this will help to concentrate the wealth of the country in the hands of a few persons. It may be possible for the Centre to prefer those men with a fleet of aircraft to proceed even to the villages to the detriment of a few persons who may wish to start small air navigation companies in the provinces and gather a few rupees there, so that the province as well may become wealthy. To avoid competition also, there must be an air traffic. board a provincial board established in the provinces.

These are the limitations that ought to be taken into consideration at the time when we pass a federal law to safeguard the interests of all In view of this and under the impression that it will be acceptable to the general Assembly I am not proposing any amendment. I support the entry as it stands.

Mr. N. Gopalaswami Ayyangar: Sir, I accept the addition proposed by Mr. Mehta at the end of this particular item which says, provision of aeronautical education and training and regulation of such education and training by Units and other agencies.

The other amendment was an amendment relating to the punctuation of this item. I entirely agree with Mr. Naziruddin Ahmad that the colon after "navigation" was a mistake for a semicolon and I accept that amendment. I agree with him also, Sir, that after "aerodromes", there should be a semicolon instead of a comma.

Pursuing the same kind of mental process that should have instigated him to propose this amendment, I would suggest, if he approves, that the word "the" before "provision" be omitted. Or if he is not agreeable to that, after the second semicolon, we should insert another "the". I personally would prefer the dropping of "the" before "provision", so that the item will read as follows:

> "Aircraft and air navigation; provision of aerodromes; regulation and organisation on air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by units and other agencies."

Mr. President: I now put the amendments to vote. The first amendment is by Mr. Mehta. I take it that it has been accepted by Mi. Gopalaswami Ayyangar. I put that amendment to vote now:

That after item 37, the following new item be added.

> "Training in various branches of aviation, civil and military."

Those who are in favour of this addition will please say Aye.

Many Honourable Members: Aye.

Mr. N. Gopalaswami Ayyangar: He has withdrawn that amendment.

Mr. President: I am sorry it is a mistake. I am sorry the vote has to be withdrawn. It was by a mistake that I put it to vote.

Now, I put this amendment to vote.

That at the end of item 37 the following be added.

"Provision for aeronautical education and training and regulation of such education and training provided by Units and other agencies."

The amendment was adopted.

Shri Ananthasayanam Ayyangar: Sir, you are declaring according to the sense of the House, when we do not hear the eyes. At least the mover of an amendment must say Aye. Otherwise why should we accept it. It is as much the business of the mover as that of the House.

Mr. President: I take it that the mover has said Aye.

Now the amendment item with the semicolons is put to vote.

An Honourable Member: May the House know how it reads now !

[An Honourable Member]

Mr. President: "Aircraft and air navigation; provision of aerodromes; regulation and organisation of air traffic and of aerodromes; provision for aeronautical education-and training and regulation of such education and training provided by Units and other agencies."

The item, as amended, was adopted.

Mr. President: It is one O'clock now. The House will now adjourn till ten O'clock tomorrow.

The Assembly then adjourned till ten of the Clock on Wednesday, 27th August 1947.

---

*No.19- that in Item 30 after the words "declared by the Federal Government the words in consultation with the Government of the Unit or each of .the Units concerned" be inserted.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME V

Wednesday, the 27th August 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

REPORT ON MINORITY RIGHTS

Mr. President: I propose that the House should now take up the Report of the Advisory Committee on Minorities.

With regard to the, procedure that I propose to follow, it is this: A motion will be made for consideration A the Report and in that connection I find there are certain resolutions in the form of amendments that the consideration of the Report be postponed either until the next Session or until the consideration of the other Report, that is, the items which they have been considering, has been completed. I shall take those amendments along with the general discussion of the motion for consideration of the, Report. When that has been disposed of I propose to go to the Appendix and take the items one by one with the relative amendments to those items, because that will then dispose of many of the amendments which are relevant to the general body of the Report which only summarises the recommendations contained in the Appendix. I think that will be the proper course and the most convenient way of dealing with the matter.

Mr. B. V. Kamath (C. P. and Berar: General) : The loud speaker must be out of order because we have not heard a word over here.

Mr. President: In that case I shall have to repeat. What I have said is that the most convenient way of dealing with today's agenda is this I propose to take up the consideration of the Report of the Advisory Committee on Minorities. A motion will be made for taking it into consideration. In that connection there are certain other motions of which I have notice that the consideration of the Report be postponed until the next Session or until we have disposed of the items on the List which we. were considering yesterday. After this, I propose to go on the Appendix of the Report and take up each item. The relevant amendments, to those items will be moved and disposed of, and when we have discussed the Appendix we may come to the general body of the Report which is nothing but a summary of what is contained in the Appendix.

I will now request Sardar Vallabhbhai Patel to move the, consideration of the Report.

B. Pocker Sahib Bahadur (Madras: Muslim) : The procedure prescribed by you is that all the matters in the Appendix may be taken up item by item. But I would submit that even as regards the amendments in each of the items in the Appendix, there are very many subjects each of which is of a different character. Therefore I would request you to dispose of the amendments of one and the same character on each item separately so that all the amendments of the same character on the same item could be taken up together and disposed of. Otherwise, if all are jumbled together, it would lead to difficulties.

Mr. President: That is what I have been thinking of doing--to take each item in the Appendix and all the relevant amendments thereto.

B. Pocker Sahib Bahadur: In disposing of the amendments, the character of the amendments might be taken into consideration, and each of the amendments of a particular character on each item might be disposed of before other amendments of another character on the same item are disposed of.

Mr. President: I do not understand what the Honourable Member mean by the character of the amendments. All relevant amendments will be taken into consideration in connection with each item.

The Honourable Sardar Vallabhbhai J. Patel (Bombay: General): Sir, on behalf of the Advisory Committee I beg leave to place this Report* on Minority Rights before the House. It has been drafted after considering the report of the Minority Committee and after considering all the points raised with regard to the safeguards for different minorities in this country. You all know that the question of safeguards for minorities has been discussed several times and considered in various committees, and there is no new point to be discussed. In one committee or other for several years past this question has been discussed, sometimes very minutely, sometimes generally. Sometimes its discussion has taken an acute form and sometimes it has resulted in a bitter controversy. But I am happy to say that this report has been the result of a general consensus of opinion between the minorities themselves and the majority. Therefore, although it is not possible to satisfy all, you will see that this report has been the result of agreement on many points; and wherever there has been disagreement the recommendations have been carried by a very large majority, so that except perhaps on one point the report is practically an agreed report. It may be that there are some who are not satisfied on some points, but we have to take into consideration all points of view and feelings and sentiments of the minorities, big and small. We have tried as far as possible to meet the wishes of all the minorities. The minorities among themselves are also divided; there are conflicting interests among them. We have not tried to take advantage of these differences among the minorities themselves; we have tried to see that the minorities also instead of being divided among themselves try to present a united front in order-to safeguard their interests. But there are certain points on which the minorities cannot be united because there are minorities within minorities. So it is a difficult proposition. We have tried to solve this difficult problem without any bitterness and without any controversy which would create any ill-feeling or hitch; and I hope that this House also will be able to dispose of this question in a friendly spirit and in an atmosphere of goodwill. Let us hope that we will leave the legacy of bitterness behind and forget the past and begin with a clean slate. There is much that is happening round us which requires us to dispose of our business as quickly as possible; and we should do nothing in this House which will add to our difficulties or to the difficulties of our neighbours who are at present involved in bitter strife and when our hearts are bleeding with the wounds that are being inflicted on one of our best provinces in India. Therefore I trust that in this House in considering this question which affects all the minorities we will introduce no heat or argument which may lead to such controversy as would have a repercussion outside. I hope that We shall be able to dispose of this matter quickly and in a friendly Spirit.

You will remember that we passed the Fundamental Rights Committee's Report which was sent by the Advisory Committee; the major part of those rights has been disposed, of and accepted by this House. They cover a very wide range of the rights of minorities which give them ample protection; and yet there are certain political safeguards which have got to be specifically considered. An attempt has been made in this report to enumerate those safeguards which are matters of common knowledge, such as representation in legislatures, that is, joint versus separate electorates. This is the question which has raised controversy for almost a decade and we have suffered and paid heavily for it. But fortunately we have been able to deal with this question in such a manner that there has been unanimity on the point that there should be no more separate electorates and we should have joint electorates hereafter. So that is a great gain.

Then again on the question of weightage we have agreed that there Should be no weightage and with joint electorates the communities should be representated according to the proportion of their population. Then we have thought fit to agree to reservation in proportion to the population of the minorities. Some of the minorities gladly surrendered that right, and said that they wanted neither weightage nor separate electorates but in the general upheaval that is taking place they want to merge themselves in the nation and stand on their own legs. I congratulate those who have taken that stand but I also sympathise with those who still want some help to come up to the standard which we all expect of the nation. We have now also decided that in the public services a certain amount of reservation for certain communities is necessary-particularly the Anglo-Indian community and the scheduled castes in certain respects deserve special consideration. We have made recommendations in this respect I am glad to say that in this matter also there is unanimity between us and the communities whose interests are affected.

Then we have also provided for some sort of administrative machinery to see that whatever safeguards are provided are given effect to, so that it may not be felt by the communities concerned that these are paper safeguards. There should be continuous vigilance and watch kept over the safeguards that have been provided in the working of the Government machinery in different provinces, and it shall be the business of the officer or administrative machinery concerned to bring to the notice of the legislatures or the Government; the defects or drawbacks in the protection of the rights of minority communities.

We have divided the minorities according to their strength or according to their population. In the Schedule the three parts are set out and dealt with separately because they require separate consideration in proportion to their strength.

The Anglo-Indians have special rights or rather special privileges or special concessions which they have been enjoying in certain types of services, such as the railways and some one or two other services. Now, suddenly to withdraw these concessions and to ask them to abandon these claims or these concessions and to stand with the general standard would put them perhaps in a difficult position. They may not be prepared for that at present and it is better that we give them time for adjustment. They now know that they have to prepare themselves for this. They have ample notice and I am glad to say that they have agreed that they take this notice. The gradual reduction of these concessions has been agreed to by them. Similar concessions have been given to them in the matter of education. In certain educational institutions they get special grants. These educational institutions are open also to students of other communities, but they are generally meant for the Anglo-Indian community and they get certain concessions in the matter of financial assistance. It is proposed to continue this assistance for some time and by a process of gradual reduction to prepare them for a stage when they can be prepared to come to the general level of the other communities and to share the financial burdens, obligations and difficulties. So there also we have solved this problem by agreement.

Then about representation in the Legislatures. In their case it is difficult. It is a small community of a lakh of people or more, but very substantially small, spread all over India and not located in a particular Province. It is difficult for them, to get seats in a general election. Therefore, if they fail in getting representation by, the normal process of election in some Provinces or in the Centre, provision has been made for their being nominated, if they are not properly or adequately represented, and that power of nomination is given to the Governor or the Governor General as the case may be.

Then in other cases, that of the Parsis, they have themselves voluntarily abandoned any concessions that may be given to them and wisely they have done so. Besides, it is well-known that though small, it is a very powerful community and perhaps very wise. They know that any concessions that they may get would perhaps do more harm to them than any good, because they can make their way anywhere, and make their way in such a manner that they would get more than they would get by any reservation or by any separate process of elections. Either in the legislature or in the services, they stand so high in the general standard of the nation that they have disclaimed any concessions and I congratulate them on their decision

Then comes the Christian community. This community is more populous in two or three Provinces;. and in other Provinces they are not so located as to have any direct representation by the process of election.

Still they have agreed to have reservation according to their population and to abandon the claim for separate electorate; there is no other safeguard that they have claimed.

We have, so far as the Cabinet representation is concerned also adopted the formula that exists today in the 1935 Act which is considered constitutionally proper and, therefore, it has also been accepted unanimously.

Then comes representation in the services. The general standard that we have accepted is that ordinarily competitive posts must go by merit and if we are to depart from this, the general administration would suffer immensely. It is well-known that since this departure has been introduced in the matter of services our administration has suffered considerably. Now that we begin a fresh, we must see that where we have to fill some administrative posts of a higher level, these posts have to be filled by competition, i.e. by competitive examination and competitive tests. We have made some concessions in the matter of certain communities. which require a little help.

On the whole, this report is the result of careful sifting of facts on both sides.

One thing I wish to point out. Apart from representation in the Legislature and the reservation of seats according to population, a provision has been made allowing the minorities to contest any general seat also. There was much controversy about it, both in the Advisory Committee and in the Minorities Committee; but it has been passed by a majority. There was also another point which was a matter of controversy, and that was on behalf of the Muslim League and a section of the Scheduled Castes. The point was raised that a certain percentage of votes should be considered necessary for a successful candidate. This was a matter of controversy and amongst the Scheduled Castes themselves a very large majority sent me a representation yesterday saying they were against this. But in the Advisory Committee it was discussed and it was thrown out by a large majority.

Now, this is in substance the Report. But it is possible that When we take the Schedule item by item, it may be necessary to modify the Report, as and when the items are considered and passed. Therefore, as the President has urged, we may take the Schedule item by item and the Report may be modified accordingly as and when the items are passed.

Mr. President: There are two motions, of which I have notice, which are for adjourning the discussion of this Resolution. I would ask those Honourable members to move their motions.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim) : Not moving.

Mr. Naziruddin Ahmad (East Bengal: Muslim) : Also not moving.

Mr. President: Then the general motion that the report be taken into consideration is open for discussion.

Dr. P. S. Deshmukh (C. P. & Berar: General) : Mr. President, Sir, the worthy and able Chairman of the Advisory Committee on Minorities and the members of this Committee deserve our sincere thanks for the highly satisfactory report that they have produced on the question of the rights and representation of the minorities in India. In my opinion, there is no more monstrous word in the history of Indian politics than the word " minority". Even since India emerged out of its political infancy, the demon of the interests of minorities and their protection stood before us and appeared to bar the progress of the country. It is a matter of history that this was a creation of the British policy, but it succeeded so well that it is, in my view, essentially the work of the Satan of minority that our beloved country united for over a century has been divided into more parts than one. That this monster should at long last have been shorn of its terrors is an achievement worthy of note. I believe, Sir, that the Members of the Advisory Committee have in this respect a great achievement to their credit. I therefore offer them my hearty congratulations.

First and foremost, they have discontinued separate electorates. Secondly the none too just system of weightages has been given up. The composition of Cabinets is not going to be hampered by insurmountable difficulties of taking minority representatives as of legal and constitutional right nor are our percentages of recruitment going to be worked up to the second decimal as would certainly have been the case had the various representatives of the minorities insisted upon reservation in those spheres also. I believe I voice the feeling of a large section of this House when I say that the representatives of these minorities have taken a long and nationalistic view of the whole matter and provided they do not do anything to spoil the good effect, I would like to assure them on behalf of us all that they will never have any occasion to repent what they have conceded. It should always be remembered that we are, speaking the bare truth, a highly charitable and liberal-minded people. Some of our Muslim friends, mostly as a result of the British policy, painted us as tyrants and majority-made oppressors. I have never found any justification for such an accusation. but an unjust and untrue charge was repeated *ad nauseum* and somehow sustained throughout the last so many years. It is upon those false foundations that Pakistan was demanded and conceded. Very few showed patience to analyse the facts. Rather than tyrannize the minorities, the fact was that in most places the minorities tyrannized the majority. The Muslims have almost everywhere enjoyed privileges far in excess of what may be called Just or fair. In my own curious Province. Muslims still enjoy a position which is even today denied to over 60 per cent of the peasants and workers by our own Hindu rulers.

This is not an occasion on which I would like to go further into the matter than this. I am content that no minority is going to try any more to deprive others of what legitimately belongs to them. For many years past, it was the majority that has been tyrannized. Unfortunately, the so-called majority is dumb and deaf and although many of us try always to speak in their name, I have no hesitation in stating that we have completely failed in translating our words into action. May I ask, Sir, what place has been given to the millions of Jats, million, of Ahirs, Gujars, Kurmis, Kunbis, the Adibasis and millions of others. Have we not been a little too engrossed in our own exploits and have given inadequate thought to the thousands of these poor people who have sacrificed their lives to give us the present freedom. What place have we assigned to them except to visualize that they will as heretofore blindly, meekly and religiously vote for any one we will choose for them. From this point of view, the, situation is gloomy even today. It is up to our present rulers to examine and consider, if they are so inclined and to understand all that I mean If they do not do this, nothing but trouble and destruction will lie ahead. I therefore urge that at least when the minorities are content to have only their fair share of power in the, Cabinets and a reasonable proportion in Government services, our rulers will pay some attention to the oppressed and neglected rural population which has even under the sacred name of the Congress been more undone than assisted. Pressed by political considerations, microscopic minority interests have been advocated by the greatest of democrats. They enjoyed posts and privileges which they-had no right to enjoy. It is self-evident that if anybody enjoys more than he deserves, he must of necessity deprive someone else of his legitimate share. Let this be borne in mind in distributing power and posts among the various Hindu communities and let the policy of the Devil take the hindmost cease, at least from now.

Shri V. I. Muniswami Pillai (Madras : General) : Mr. President, Sir, I feel today is a red letter day for the welfare of the minority communities that inhabit this great land. Before I proceed, I have to congratulate the Honourable Sardar Vallabhbhai Patel for this great tact and ability in bringing a report to the satisfaction of the majority and minority communities of this land. The document that has been produced by the Advisory Committee, I consider to be the Magna Charta for the welfare of the Harijans of this land. Sir, as has been previously said by my friend, it was due to the third man residing in this country that brought out several minority communities. I do admit that, but, Sir, it was given to Mahatma Gandhi as a great Avathar to find the disabilities of a section of the Hindus, namely, depressed classes known by various names, to come to their rescue and to take that great epoch-making fast which evoked all the Caste Hindus in the whole realm of India to think what is 'Untouchables', what is 'Depressed Classes', what is, 'Scheduled Castes' and what should be done for them. It was that Poona Pact to which you yourself have been a signatory along with me and Dr. Ambedkar, that produced a great awakening in this country. Then, Sir, one question was in the mind of everybody, whether the Poona Pact will show signs of a change of heart by caste Hindus in this country. Today I may assure you, Sir, that that change has come, though not full 100 per cent, at least more than 50 per cent. I may give you instances here. The very inclusion of Dr. Ambedkar in the present Dominion Cabinet is a change of heart of the Caste Hindus that the Harijans are not any more to be neglected. In my own Province, Sir, I may tell you the former Premier, Mr. Prakasam, has made a provision of a crore of rupees for the amelioration of the condition of the Depressed Classes *(Hear, hear)* and the present Premier Mr. Omandur Ramaswami Reddiar has set up a big Committee to investigate and bring a 5-year plan to ameliorate the condition of the Depressed Classes.

Now, Sir, coming to the very proposition of the consideration of this Report, I may say that any constitution that is made for the 300 millions of this country must have proper safeguards. Some may be thinking in their hearts whether they are not a minority of this land. Specially, Sir, the Untouchables who form one-sixth of the population of this subcontinent are a minority community, because their social, political and educational advancement is in a very low state. Sir, after Poona Pact We are coming to the second stage. Actually this. is the second stage because the untouchables, the scheduled castes are given certain facilities according to this report that has been presented in this House. One great point, Sir, which I would like to tell this House is, that we got rid of the harmful mode of election by separate electorates. It has been buried seven fathom deep, never more to rise in bur country. The conditions that were obtaining in the various provinces were the real cause for introducing the system of separate electorates. The Poona Pact gave us both the separate and joint electorates but now we have advised according to this report that has been presented here that the Depressed Classes are doing to enjoy joint electorates. It is hoped. Sir, that, in the great Union that we are all envisaging that this country will become in the years to come, joint electorates will give equal opportunity. for the Caste Hindus and the Minority communities to come together and work together and produce a better India. Sir, now there, is a reservation of seats on population basis. This is a rightful claim, Sir, of the Depressed Classes who form the tillers of the soil and hewers of wood that they must have equal voice, in the administration of the land. Moreover, due to their economic condition it is not possible for them to contest the unreserved seats and it is a good augury on the part of the Advisory Committee to come with this important recommendation that all the minority communities besides their having the reservation in the various provincial legislatures, will also have the right to contest seats in the unreserved seats. This forms a very good augury that hereafter both the Caste Hindus and the Harijans, that is the Scheduled Castes will go hand in hand so that whatever reform that may be brought to this land or in the Acts that may be brought before the Assembly and for the welfare of the country will be one accepted by all communities. Moreover this clause, allowing the minorities to contest the unreserved seats, shows the goodwill the majority communities are having towards the minority communities.

Much has been said about the representation of minorities in the Cabinet. I am one of those, Sir, who believe in political power for the elevation of the weaker sections of our land. It is by holding offices that these people are bound to come in contact with these unfortunate minority communities and see for themselves what should be done to elevate them. If I plead that there ought to be proper representation of these minorities in the Cabinet, I do not mean, Sir, that the Cabinets will become polluted or it win become inefficient but equal opportunity must be given. Once you give reservation an population basis, I also claim, Sir, that representation in the Cabinet also must be in that proportion. Sir, events have shown in this country that the members that have been drawn from Scheduled Castes to various offices as Ministers and Speakers of the Assembly have proved equally good in the discharge of their duties. Let there be nothing in the minds of the majority communities that those who were chosen from these communities for high offices will not be efficient. I feel that a convention has to be created according to the 1935 Act, as recommended in the Report. I am sure that the goodwill of the majority communities will always be there to see that those weaklings,--the minority communities, are well represented in the Cabinets. Sir, in the matter of services, I earnestly request that everything must be done to these minority communities so that they may have their quota in the services of this great land. Often it is said though the Depressed Classes have the required qualification, under some pretext or other they are not given chances in the services. I wish, Sir, after this report has been accepted by the Constituent Assembly, those majority communities who will have the ruling say in the matter will see that the claims of the Scheduled Castes will not be forgotten. I know--as a matter of fact to start with, the present Dominion Cabinet have already issued an executive order setting aside 12 1/2 per cent and 16 1/2 per cent for the Scheduled Castes both in the competitive and non-competitive services. This is a very good augury and I am sure the change of heart will be followed further and proper quota for the representation of the Scheduled Castes in the services will be maintained.

Coming to the conclusion, Sir, the report envisages creation of a Statutory Commission and also Officers in the provinces to investigate and see what are the real things that are keeping these people backward in all the social, economic and educational spheres and I welcome this because this will go a long way for this Commission and also the Officers to know for themselves what are the difficulties of the Scheduled Castes and during the next 10 years do such things, so that after the 10th year we, the Scheduled Castes may not ask for reservations either in the provincial legislatures or in any of these things. It is up to the majority community to see that justice is done so that these minorities may rise in the educational and social sphere so that they may take equal share in the administration of this great land. Sir, there is a fear in the minds of some of my friends, especially the Scheduled Castes. that the Hindus are getting into power and that Hindu Raj is coming into force and they I may introduce the Varnashrama that was obtaining years back, again to harass the Harijans. I may tell such friends, as we see things, the Varnashrama Dharma may be applied in a different sense--not in a sense that was obtaining years before--and I am sure this report will be accepted unanimously in this House and any amendments that may be brought may not disfigure the very good report that--has been produced by my Honourable friend Sardar Vallabhbhai Patelji.

Mr. F. R. Anthony (C. P. & Berar:-General) : Mr. President, Sir, I feel that as a Member of the Minority Sub-Committee and also of the Advisory Committee I should say a few words on the Report. I might tell you that some of the issues were of a highly controversial character. Some of them. involved argument and counter argument not only for hours but sometimes for days. But all the deliberations were conducted in the best traditions of generosity on both sides. It was not always an easy matter to cross words successfully with an able and almost incredibly tenacious lawyer like Mr. Munshi. There were many points of view. Some people were guided quite understandingly from their points of view by unalloyed principles, Others were fortunately more realistic and more statesmanlike in their approach. So far as the interest of my community are concerned, I feel that I have to offer a special word of appreciation. and thanks to those members who approached our problems in an attitude of realism, particularly to Sardar Patel. We from our side did everything we possibly could to come to an agreed solution which I am glad to say, we did arrive at ultimately. I feel I must express--the appreciation and the thanks of my Community to those who realised the special needs of the Anglo-Indian community, and ultimately gave them shape in the report of the Advisory Committee. This report, Sir, represents a happy augury for the future. I have always been one of those who felt that we must modify our principles to suit realities. The path of statesmanship is the path of compromise. I am glad that statesmanship and a sense of realism were brought to bear on our proceedings and were infused into them by Sardar Patel. By being generous--that is what the majority community was in fact--by adopting an attitude of magnanimity. to the minorities, you have helped to efface the fear that the needs and the points of view of the minorities would not be considered. By that act of statesmanship you have helped to harness completely the loyalty of the minorities to the tasks of nation-building which face us.

I believe that today the conditions are a challenge to the minorities. Every wise minority will look forward to the time, sooner or later, when It will take its place not under any communal label or designation, but as part and parcel of the whole Indian community. (*Wear, hear'*) I believe that the conditions today are a challenge, because of the background of events, to some members also of the majority community. I say to them: "Let us all march forward inspired by this spirit Let us work up for this goal, that we shall sooner than later shed all communal labels and be bound together by the all-compelling sense of belonging to one Indian community *(Applause).*

Srivut Rohini Kumar Chaudhury (Assam: General) : I would like to take this opportunity of speaking on this motion to give expression to some of my feelings. In fact this is the first time that I rise to speak on any motion after we achieved our independence. I do not know, Sir. if I have correctly followed the course of this debate or understood what the implications of the report on the Rights of Minorities are. But it seems to me,--I hope to be excused for--saying so, but it seems to me that there are two kinds of minorities at present. One of them belongs to the India which was once ours and which had been decimated practically and is now being protected by God in heaven and in His place, because that is the place, that is the sanctuary for all religious men and saints. Unlimited numbers of seats are being reserved for them in heaven from 16th August 1947 up till now. In spite of the great rush for seats in heaven, there seems to be no want of accommodation. We are not concerned with their goal. We are Members of the Constitution making body. We have nothing to do with their woes and miseries. We shall frame certain rules till Friday and after that we shall disperse on Saturday and go to the different Provincial Assemblies and Councils. We shall then enjoy the Dusserah vacation and Durga Pooja. We shall come again to give the finishing touches to this Constitution. Then there will be time enough for us to think of the unfortunate victims of our division of India. I am sure, Sir, the interests of these unfortunate people will be kept alive by adjourning this House for a few minutes or by observing silence for a minute or two and things like that. We thus pay homage in silence to those who have died fighting, We have established this convention now to observes silence for those who have died. This convention, I am afraid, will have to be followed for a very long time yet in this unfortunate country of ours.

Sir, there is another type of minority with which we are not immediately concerned. For that minority I am glad to observe ample provision has been made. There have been seats reserved for them for a period of 10 years. They will have an opportunity of contesting the unreserved seats. With the reserved seats they will continue in their own communal party and secure also the unreserved seats through the benevolence of the Congress party. I believe that it will not take ten years, by this means, to make the minority community a majority community. From that time onwards there will be no minority communities. That is all as it should be, because we have adopted this policy and have divided our duty and our responsibility.

In the area which is known as Pakistan, the Government of that country would look after the interests of the majority and, in the area which is known as India we shall devote ourselves to the Protection of the minority. We have been doing so and we will go on merrily doing so.

Sir, while, thinking of the minorities in the different provinces of this country, let not this House forget certain provinces which are absolutely backward, e.g., Assam and Orissa, where not a single man can be found to fill up a seat in the Indian Government, where not single man has been found to fill up the position of a Governor, where not a single man has been found. fit to hold the high offices in the Railways or Posts and Telegraphs or even in the Imperial Secretariat which still retains its imperial character.

It is easy to call the Province a Cindrella province after keeping dust and ashes there and it is very easy to call in that way the people of a province who are suffering from an inferiority complex after having done all that you could possibly do to deny them the opportunity given to the people of other provinces. Sir, I notice that there are some frowns on the faces of certain Honourable Members of this House and I think for the sake of safety I must run back to my seat now.

Shri S. Nagappa (Madras: General) : Mr. President, Sir, really it is a very important day in the annals of Indian History. Now, Sir, as my friend has already said the Committee deserves congratulations for having submitted an agreed report. I have to bring to your notice, that these minorities stood in our way of being free long long ago. The Britisher pleaded with these minorities all these days in order to delay to give us independence. It is only on the 15th of August we got independence and today it is only the 27th and within 12 days these minorities have come to an agreement. So, Sir, you can see how much unity there is in India. There was a kind of pose. They began to play with us, so that we seemed to be disunited for all times to come. Now within a few months we have come to understand each other and are able to present a Minority

Committee Report, and that too an agreed report, though these were all-the majority of the members-from the minority communities. Does this not show the hollowness of our friends sincerity when they pleaded to set apart our independence question all these days? But anyhow I do not want to go into the past. Now, I am glad today we have been able to undo the mischief that was done 15 years ago by Ramsay Macdonald. It is he who was responsible for the destruction of today. He is the man who is responsible for the loss of life and lots of property in this country. If I have any power, I would have called him to answer these questions. It is he who sowed the seed of disunity and destruction about 15 years ago by giving the communal award.

Now, Sir, it is a very good and auspicious day that all the minorities have come together and are able to understand that the country's Welfare is more important than that of an individual or a particular community.

Now, I particularly congratulate the Sardar for having been able to allow all the minorities to contest even the unreserved seats. It is a great thing. We have also to congratulate the Sardar for having been stiff when there was need, to be so. It is statesmanship having sat tight in places where he ought to be. He has not conceded some of the demands, especially the percentage of votes. The qualities of statesmanship require generosity where generosity is to be shown and stiffness where it is needed.

Under the instrument of Instruction of the 1935 Act there is a provision for inclusion in the Cabinets. But it would have been better if there is an assurance for a minority community Member to be included in the Cabinet, and it would have been more satisfactory if there had been a statutory provision. For instance I want to quote my own province. It is a province of 215 members. There are about 30 Harijans. They form one seventh of the Legislature and their population is 1/5th . They are 8 millions out of total of 49 millions. They form 1/5th of the population, they form 1/7th of the legislature, but what is their share in this Cabinet ? According to the strength of the Members they would have been two because they are 1/7th and when the whole Cabinet is 14 or 13 it should have been two, but when the question came up, they have abolished a Harijan post. They have made it 13 and have not given one. I say that the Harijans are not going to elect ministers it is left to the Premier to select. The quota must be statutorily reserved. I feel that we should not be at the beck and call of the Premier. Let the Premier select the Ministers according to his choice. Why should we think that he has done us a great favour ? It is out due share. We are not asking for anything gratis. So, Sir, this. is how injustice will be done. Today we see with our naked eyes that injustice was done and therefore, it would have been better if an assurance is given to these minorities regarding their position in the Cabinet.

Now, Sir, it is not possible to make minority communities the Premiers, because the Premier is expected to command the confidence of the majority party. So is no good to expect rotation to be applied for the Premiership. But there is every provision, every possibility, every probability to choose the Governors of the Provinces by rotation from among the various communities. It would have been easy if this had been included in the Report.

Again, Sir, it is not possible to make a minority community man to be the Dominion Premier but at the same time it is easy to make, say, for instance, out of 12 times, six will go to the general community and 3 times will go to the Scheduled Castes, 2 times will go to Muslims and I to other smaller minorities and out of a rotation of 12 one will be the share of the Dominion President ship, Governorship and Deputy Governorship, Deputy President ship etc. These things would have-gone a long way to assure minority communities that the majority is in favour of the minorities, and sincere towards minorities. As regards services I am glad very recently the Dominion Government has come' out with its policy. I congratulate there also the Dominion Government. It has done justice to some communities and it has done more than justice, especially to the Christian Community or some such community. It has been fair there. I would suggest that it would have been better if it has been provided in the Report itself, for instance, a particular community will have its share according to its population. I do not want to rob Peter to pay Paul. It is very bad policy. I want my due share; though I am innocent, ignorant dumb, yet I want you to recognise my claim. Do not take advantage of my being dumb. Do not take advantage of my being innocent. I only want my due share and I do not want anything more. I do not want, like others, weightage or a separate state. Nobody has a better claim than us for a separate state. We are the aboriginals of this country.

Now, Sir, so far as the services are concerned, I congratulate the Dominion Government. It would have been better if a provision in this report had been made such that the Provinces also can copy. Even now it is not difficult for the Dominion. Government to give instructions to Provincial Governments to copy that. Now, as regards the population, Sir, according to 1931 Census we are about 7 crores. We see that. there had been an increase of 14 per cent. average increase. As poverty breeds population our minority might have increased by not less than 20 per cent.

This is the theory given by Malthus; I am not saying that. Because a rich man has a different standard of life and he would like to marry only when he attains some position or some power or property whereas if you go to the poor man's quarters, you will see a number of children, moving about, and if you go to the rich man, he will be praying to God to give him children. There is no surprise when Malthus says that poverty breeds population. If we were more than six crores in 1931, Sir, how is it that we have been reduced to five and half crores in 1941 ? There is something behind it. Especially in Bihar and the Punjab, I am sorry, in Bengal, some mischief has been done by somebody. There was controversy between Hindus and Muslims. Both these people thought it safe to fall upon these poor and Innocent Harijans and these people were converted or were added to the Hindu population as our people happen to be Hindu. Instead of increasing to seven, we have come down to five and a half crores. Therefore, I would request that in order to give seats to the Harijans, you should take the 1931 Census. That Census was not prepared by the Harijans. It was prepared by the Government. machinery and we had no hand in it. There is not even a single Harijan that can do any mischief. After all, it is a Government record. You know there is a general increase in the population. You give us the average representation I do 'not want any special provision. According to that Census, please work it out. I am afraid because future representation. is assured on the population basis. If that is the case, in course of time,--within 10 years, two crores have been diminished; if it is left at this rate, within ten or twenty years, I am afraid there may not be a Harijan at all, Harijan in the real sense. As the honourable, Premier of Bombay says, I would even prefer one seat if I am economically as good, if not better, at least equal, oh a par with him. It is left to the constitution. It remains to be seen how much speed you will put in the matter of this community.

As a whole, on this report deserves to be congratulated, not only Sardar Patel, but each and every member of the-Advisory Committee and Minorities Committee for having cooperated with him, for having been able to come up with such an agreed report. Sir, I recommend this report for the consideration of this House.

Dr. H. C. Mookherjee (West Bengal: General): Mr. President, I must say at the beginning, that I am not one of those who believe that the greatness of a country is increased by increasing the greatness or the economic or political importance of a particular group which is inside it.

On the other hand, I have always advocated the placing of national interests above group interests. At the same time, my experience as Chairman of the Minorities Sub-Committee has convinced me that it was necessary for the sake of peace, for the sake of the future progress of our country, that every attempt should be made to meet the wishes of the minorities. I am a member of a minority community myself and I feel proud that the community of which I am a member has decided to give up all special privileges, and first of all I must thank my colleagues of my community who are members and who are present here today. Along with that it was realised that the several groups had distrust of the majority. Of course, personally speaking, I noticed that this was true of a majority among them and I have exhorted them and I am still exhorting them, again and again, to have some measure of trust. If they demand safeguard, those safeguards can be implemented only if the majority community can be trusted. But till this distrust is removed, I do recognise that something has to be done to meet their wishes. It is here that I must compliment Mr. Munshi, who in the Minorities Sub Committee did so much running from one group to another, in order to find their minimum demands, then pressing their case on the attention of the Minorities Committee and who got them carried in the Advisory Committee. I must bear witness to the goodwill and generosity that was shown to us by Sardar Patel. I therefore recommend the findings of the Advisory Committee to the House. At the same time, personally speaking, I must make it clear once more that I stand for trust of the majority and that I feel that some among us who stood for a more radical policy, have a kind of grievance against Sardar Patel because he has not allowed us freedom to carry it out thought, I also admit that we were defeated by a majority of the members.

Mr. President: We have had a long discussion on this motion. Although I do not wish to stop speakers, I would expect them to conclude discussion on this within the next ten minutes. There are two or three speakers still to speak and I would request members to confine their speeches to three minutes each. Mr. Sidhwa.

Mr. R. K. Sidhwa: (C. P. & Berar: General) : Sir, I shall not take up much of the time of the House. From my boyhood (I have always believed that to serve humanity without any distinction of caste or creed is a very noble religious duty and with that end in view, I have always inculcated and advocated that view to my community. I am proud to state that my community have all along, notwithstanding the opposition of a section of my community, never advocated separate electorate or separate or special representation either in the legislature or in the services. I am also proud to state, I am glad to state that while we have not advocated any special representation, we have been really happy with joint electorate and non-reservation of seats in the legislature. Sardar Patel has rightly stated that we have taken part in politics, in education, in social and in all walks of life and we have made our view point felt amongst table majority in such a way that it was for them to realise and feel that they cannot ignore a community which has been really taking part in all these spheres of public life.

Sir, in the Minorities Sub-Committee, my friend and colleague Sir Homi Mody was in favour of special representation in the legislature and it was I who advocated very strongly against it. But I had only three votes against nearly 22, not because the members felt that I was not right, but the members felt that I was taking rather a rational view point and a more advanced view point. Let me tell you, the following day, without my approaching Sir Homi Mody, he realised that what I had said on the previous day was right, absolutely right and he himself changed his view point and on the following day, he said that he was not asking for any special representation for I the Parsi community because he felt that if he did so, it was harmful to the community Itself. From this point of view, you can see, as Sardar Patel said, that we have to adjust among ourselves. Without my approaching Sir Homi Modi privately or openly, he had to change his view. I would only impress upon the other minorities that if they really assimilated their view points now onwards with the majority view point, I can assure them, that in the period of ten years that has been given to them, they will have no grievance, they will have no complaint to make against the majority community It is only the heart that is wanted on behalf of the minority to, adjust themselves. I am of opinion that the ten years that have been given to them is a sufficiently long period. Within that period, I would appeal to the small minorities to adjust themselves so that at the end of ten years, they should not have to go; to the majority and say "give this or give that", they must, on the contrary demand that we are entitled to this. They must carry it out just as our community have been doing.

With these words, I congratulate the committee for the generosity they have shown; some of the minorities did not deserve what they have got. I really give credit to the majority community for what they have done. I was opposing so many things; I had not a majority in the committee; but I was impressed all along by their noble and generous heart to accommodate the small minorities.

I only, wish, Sir, that the phrase "minorities" should be wiped out from the history. The ten years that have been given to them is a sufficiently long period and I hope that when we meet in the shortest period within ten years, these minorities will come and say "we are happy, we do not want anything".

Mr. Jaipal Singh (Bihar: General) : Mr. President, I myself am a member of the advisory Committee. So I would not like to congratulate myself and my colleagues. But I have come to say a few words on behalf of the Adivasis of India in so far as they are affected by the recommendations of the Minorities Sub-Committee. I do felicitate some of the smaller and, if I may, say so in comparison with our own numbers, the infinitesimal minority groups like the Anglo-Indians and the Parsis, on their success. So far as the Anglo-Indian are concerned, they certainly have received more than their desserts. I do not grudge them that let them have that, and good luck to them in the future. Our attitude-has not been on grounds of being a numerical minority at all. Our position has nothing whatever to do with whether we are less than the Hindus or Muslims or more than the Parsis. Our stand point is that there is a tremendous disparity in our social, economic and educational standards, and it is only by some statutory compulsion that we can come up to the general population level: I do not consider the Adibasis are a minority. I have always held that a group of people who are the original owners of this country, even if they are only a few, can never by considered a majority. They have prescriptive rights which no one I can deny. We are not however asking for those prescriptive rights. We want to be treated like anybody else. In the past, thanks to the major political parties, thanks to the British Government and thanks to every enlightened Indian citizen, we have been isolated and kept, as it were, in a zoo. That has been the attitude, of all people in the past. Our point now is that you have got to mix with us. We are willing to mix with you, and it is for that reason, because we shall compel you to come near us, because we must get near you, that we have insisted on a reservation of seats as far as the Legislatures are concerned. We have not asked and, in fact, we have never had separate electorates; only a small portion of the Adibasis, that part of it which was converted to various religious and particularly to the Christian religions of the West, had a separate electorate but the vast majority, wherever it was enfranchised, was on a general electorate with, reservation of seats. So, as far as the Adibasis are concerned there is no change whatever. But numerically there is a very big change. Under he 1935 Act, throughout the Legislatures In India, there were altogether only 24 Adibasi M. L. As. out of a total of 1,585, as far as the Provincial Legislatures were concerned and not a single representative at the Centre. Now in this adult franchise system of one member for one lakh population you can see the big jump. It will be ten times that figure. When I speak of Indian India may I also make my appeal to Princely India. In Princely India nowhere have Adibasis found any representation. I hope the spirit of Indian India, will duly permeate there.

Mr. M. S. Aney (Deccan States) : There is no non-Indian India now.

Mr. Jaipal Singh: I would explain to Mr. Aney that I was using a new phrase instead of 'British India' by calling it Indian India and calling the States Princely India. He may use some other expression if he so likes, but what I mean by Indian India is non-Princely India. I hope this spirit of trying to give a push to the most backward section of Indian society will permeate Indian States also.

Sir, a good deal has been said by my friends, the Scheduled Castes leaders in gratitude in regard to the reservation that has been made for appointments. Only a few days ago the Government of India made announcement that a certain policy would be followed so that the scheduled castes would find a place in the central Government. I deeply regret that the most needy, the most deserving group of Adibasis. has been completely left out of the picture. I do hope that what I say here will reach the Government of India and that they will pay some attention to this particular item. We do not want reservation on any unequal terms. We desire that so long as we come up to the standards which are required for appointment we should not be kept out of the picture at all.

There is much more that one could say on the subject of Adibasis, but, as the House will have an opportunity to discuss that particular problem when the Reports of the two Tribal Sub-Committees come up before this Assembly. I need say no more now. But I commend that the recommendations of the Advisory

Committee in regard to the minorities may receive the favourable considerations of this Assembly.

Mr. President: I think, I should now close the discussion. We have had enough of discussion on this point unless the house otherwise wishes. Member will get another opportunity when we come to the clauses.

The Honourable Sardar Vallabhbhai J. Patel: Sir, on behalf of the Advisory Committee I am grateful to all the Members of the Minorities Committee to all the Members of the Advisory Committee who have helped and co-operated in bringing out a report which is almost unanimous, a report which was expected to be very controversal and a report which has given general satisfaction as is evidenced from the speeches that have been made on the floor of the House. Therefore I move that the Report with its enclosure relating to Anglo-Indians. of which I also made mention in my preliminary remarks, be taken into consideration. Then we can proceed clause by clause.

Mr. President: The question is:

"That the Report (with its Annexure relating to Anglo Indians) be taken into, consideration'.

The motion was adopted

Mr. President: We shall now take up the items in the Appendix to the Report.

The Honourable Sardar Vallabhbhai J. Patel: The first item refers to electorates. It reads:

"All elections to the Central and Provincial Legislatures will be held on the basis of joint electorates.".

I assume that the House is unanimous on this point and therefore do not propose to make any speech Sir, I move.

Mr. President : Is there any amendment to this ?

B. Pocker Sahib Bahadur: Mr. President, Sir, I must congratulate the Hon'ble the Mover of the motion for the spirit in which he moved it and for appealing to the House to forget the past and to carry on the discussion in a friendly spirit I very much welcome that spirit and I shall certainly conform to-the wishes of the Hon'ble the Mover. You know, Sir, that we are in very critical times, and every word that is said here will go very far either way, either to cementing the friendly relationship or creating dissensions among the people. Therefore, Sir, I have this in my mind when I have to propose my amendments in which I may have to differ from the Hon'ble the Mover and the recommendations of the committee. With these remarks, Sir, I shall move my first amendment which in is on the agenda. My amendment runs as follows:-

"That on a consideration of the report of the Advisory Committee on minorities, fund mental right etc., on minority rights this meeting of the Constituent Assembly resolves that all elections to the Central and Provincial Legislatures should, as far as Muslims are concerned, be held on the basis of separate electorates."

In making this motion, Sir, I am fully aware that there is a very strong section who feel differently from me and who not only feel that separate electorates are not desirable, but who also feel that it is the separate electorates that have been responsible for so many ills which have attacked this country and which are responsible for so much of misunderstanding that has caused so much harm to the country. Now, Sir, I would submit that in considering this question Honourable Members of his House should comply with the request of the Honourable the Mover and forget the past and begin with a clean slate. They ought not to apply their minds to this question with any pre-conceived notions which they might have entertained during recent years. They should forget all that has happened in the past and look at the question only with the view as to how far this provision which I am proposing will be useful in developing a better understanding between the communities and how far it will contribute to the happiness of all the communities concerned. I would request them to divest themselves of all ideas of past incidents and look at the question entirely from the point of view as to how far it is necessary and advisable to cement friendly relationship hereafter and to see that all the communities in the land are contented and whether this provision will not lead to the happiness of all the communities concerned. I will request you to begin with the premise that it is our primary and fundamental duty to make the constitution in such a way that it will satisfy all communities and be conductive to contentment among all communities I hope, Sir, that the House-will agree with me in saying that if important communities are left discontented and if they are left to get on with the feeling that they have not got an adequate voice in the governance of the country, hat is an evil which we will have to avoid at any cost. The contentment and satisfaction of all communities in the land is the Sine qua non of a good constitution which it is our religious duty to make here.

In some of the speeches I found that regret was expressed about the existence of what are called the minorities or perhaps minority communities. As a matter of fact there is no use in our going against human nature and having before us ideologies which are impossible or realisation Human nature being what it is, there are bound to be minorities and minority communities in every land; and particularly in such a vast sub continents as India they are bound to exist. and it is humanly impossible to erase them entirely out of existence. What we can do is to minimize differences between them and to do things is such a way that all minorties are satisfied and feel they are contented. In this matter there are two principles which have to be kept in view. There must be a spirit of give and take on the part of various communities and particularly on the part of the majority community there must be a spirit of generosity. They should not measure things on an arithmetical or mathematical scale and try to argue points When some minorities are working under great disabilities and feel that they have not had their share in the governance of the country, adequate provision should be made so as to satisfy them. Even if the majority feel that any particular minority is not right in claiming a particular method of achieving their end, even there I would say there must be a spirit of give and take and the majority community should be generous, and I appeal through you, Sir, to Hon'ble Members of this House to keep this particularly in view, and also remember that after all, if this generosity is exercised by the majority, community, they are not going to suffer. The majority is a majority and the minorities are minorities. If by some special measure which may be proposed, some particular minority community gets a little more than what it deserves, according to their population or some such thing, even the majority community should act in a spirit of give and take and display a generous spirit. It is in this spirit that I appeal to the House to look at this question. I have to make these preliminary remarks because I know there is a strong feeling against separate electorates in a large section of the people. It is also found in the Report of the Minority Committee and that of the Advisory Committee. They feel That it is a very dangerous thing to have separate electorates, or to recognise the principle of having separate electorates.

Now I have to tell you that there are various communities in this land and various minorities, and it is impossible in the very nature of things to erase them out of existence. As I have already said, it is our duty, it is the duty of those who make the constitution to make it in such a way that there are provisions in it to keep all of them contented.

Then, the next thing is how to give full effect to these considerations. I submit, Sir, that so long as it is recognised that the minorities should be kept satisfied, that their views and their grievances should be given an effective voice in the deliberations of the Legislature, I do say that the only way is to get at that man in that community who really represents that community. On the other hand, if you say that community has: no right to exist as a community, and that it should be effaced by one stroke of the pen, then, Sir, I am certainly out of court. But you have to recognise, and it, is absolutely necessary to recognise, that there are communities with vital differences among themselves, whether on grounds of religion. or other differences. There are such communities, and it is our duty to provide for them constitutionally, that they are all adequately represented and the best and only effective way in which any particular community can be represented is by laying down a procedure by which the best man who can represent that community, who can voice forth the feelings of that community is elected to the legislature. That is the, sole criterion on the basis of which we have to look at this question. The question now is whether in order to achieve that end, it is necessary to have separate electorates or not. That the interests of the communities should have a representation in the legislature is conceded even by the Report of the Committee. The only difference is that they want to achieve that purpose by some other means and I say by that means the end will not be achieved at all. What the Minorities committee says is, "Reserve a certain number of seats to candidates belonging to that particular community but on the basis of the joint electorate". Then, it is that person whom the majority community backs that will be elected. Perhaps that man may be a man liked by the majority under the guise of belonging to, the minority community. There have been instances in which Muslims and Hindus joint together, in the old days of Non-Co-operation, and boycotted all legislatures, and simply for the sake of fun, some illiterate sweeper or scavenger, or some such person, was put up as a candidate as coming from a particular community in order to make a mockery of the, whole show. If that could be done in those days, what I am asking is, whether such things will not reoccur. Of course it all depends on the spirit in which the question is viewed, but I say the mere fact that a particular member belongs co a particular community is not a guarantee that his views represent the views of that particular community. That particular community, if at all it is to be represented, has got to elect the right man from among the members of that community. That is my appeal to you. If a worthless man or a man who is not capable of even understanding the needs of the community is elected from a particular community, he cannot be expected to represent that community simply because he is labelled as one belonging to that community. I submit, Sir, this is the criterion which should decide whether this report has given effect to the principle which they have accepted, namely, that the minority communities should be represented on the legislature. If, on the other hand the existence of the minorities and their right for representation are denied, well, then I have nothing more to say. But I would request you to approach this question in a generous spirit. I would request the Hon'ble Members to remember the days in which in pursuance of the Lucknow Pact of 1916 separate electorates were recognised and the spirit in which both communities moved as brothers in the non-co-operation days of 1920. Now, Sir, if the communities were able to move as brothers and sisters in those days and they could lay the foundations for the achievement of independence which we have now gained, I do not see any reason why we cannot hereafter work en the same principle as brothers and sisters and work as members of the same family and make India one of the proudest nations in the comity, of nations. It is up to us to make India the foremost nation in the world, provided we act in a spirit of cordiality and friendship. In view of the spirit in which we were working in 1920 in the non-co-operation days, I say it is possible for us to work in the same spirit hereafter also. And I submit to you Sir, that it is up to the Members of this House to set an example by divesting themselves of pre-conceived notions that all the ills of the country were due to this system of separate electorates. I do not want to enter into discussions as to the correctness or otherwise of this notion. My only appeal to you is to join the Hon'ble Mover in asking you to forget the past and to act in a friendly spirit in the future.

I have to emphasise one point. The legislature is intended to make laws for the whole country and for all communities, and it is necessary that in that legislature the needs of all communities should be ventilated. I would submit that as matters stand at present in this country, it will be very difficult for members of particular communities, say the non-Muslims to realise the actual needs and requirements of the Muslim community. I say that even if a non-Muslim does his best to do what he can for the Muslim community, to represent their views, he will find it impossible to do so because he is not in a position to realise, understand and appreciate the actual needs of the members of that particular community, so long ache does not belong to that community. They will find it practically impossible to know, exactly what the needs are. There are ever so many questions, particularly hereafter, which the communities will require to be ventilated in the legislatures. There may be legislation concerning wakfs, marriage, divorce and so many other things of social importance, I request the House to consider this matter from the reverse point of view. How would the Hindus feel if the Muslims were to represent their grievances in the legislature and provide effective remedies as regards say, temple entry marriage customs etc. ? I do admit that there may be efficient men on either side possessing knowledge of the needs of both Hindus and Muslims, but they will not be many. Therefore it is that I say that the principle should be, that the best man in the particular community should represent the views of that community and this purpose cannot be served except by means of separate electorates.

One more point I wish to place before you is this.. This institution of separate electorates was being enjoyed by the Muslim Community from the first decade of this country, *i.e,* for over 40 years and now the moment independence has been obtained it is being. abolished. It would be a very sad thing, I submit, to give rise to the feeling among Muslims that at this critical stage they are being deprived of the benefit of this institution now and that they are being ignored and their voice stifled. I request Honourable Members to avoid such a contingency and the creation of such a feeling among the Muslim community of India.

One other point I would like to mention is this. The Muslim community is well-organised. It is very necessary in the interests of the country as a whole that each of the important communities should be well-organised, so that all and come together and arrive at an understanding for the future governance the country. At present the Muslims are strong and well-organised. Now, if they, are made to feel that their voice cannot even be heard in the Legislature, they will become desperate. I would request you not to create that contingency. You are fully aware that at present there is very little difference between the Congress and the Muslim League as regards their objectives. No doubt, till recently they had wide differences, but somehow or other, wisely, or unwisely, rightly or wrongly, they have been solved and an agreement has been reached between these two great organisations. The fundamental point on which they differed has been resolved and there is no difference really now. At this stage they must join hands and destroy the subversive elements in the country. I am sure you will agree with me that there are a large number of elements in the land which are subversive and which act against law and order. Provincial Governments have taken full power in their hands to pass Ordinances in order to put a stop to these elements. Now, I appeal to the Honourable gentlemen of this House, both Congressmen and Muslims and other communities, to join hands and act together so that these subversive elements which have raised their head at this critical juncture of the history of this great land may be put down, and in order to do that, I say in spite of the great difference of opinion that exists today, granting of separate electorates to the Muslims and allowing Muslims to have their voice heard in the Legislature so as to enable them to act hand in hand with the Congress will be the best method. Otherwise, these elements will be a very great danger to the safety of the people of the land, not only internally but also externally. I do not want to be more explicit on the point because I know that Hon'ble Members understand me when I say this. With these few words. Sir, I move my amendment.

There are, Mr. President, other amendments of which I have given notice. They come under one or other of the items in the Appendix and therefore, I reserve my right to move them.

Mr. President: The amendment and the motion are now open to discussion.

Shri M. Ananthasayanam Ayyangar (Madras: General) : Sir, I am extremely disappointed at the speech made by the previous speaker. I though that after having obtained Pakistan my friends in India would change their attitude. I really wonder what more can be done, we are going too far and are trying to placate them in every possible way. I have got here the treaty entered into by Turkey regarding the protection of its minorities on 24th July 1923 at Geneva. I ask any of the protagonists of this amendment, to show me a single instance where in any part of the country, in any part of the world a political right has been conceded in the manner in which it has been conceded here. I ask the indulgence of the House to read article 39 of the Turkish treaty. It cannot be said that there is a greater nation in recent years standing for the rights of Muslims in the world than Turkey. Let us see what rights they have given no the other minorities in Turkey and what rights they have insisted upon for for their nationals in other countries. I have got here the two sides of the picture. There are the two agreements, printed in Constitutional Precedents No. III. I shall read article 39:

"Turkish nationals belonging to non Muslim nations will enjoy the same civil and political rights as

Muslims."

These rights they do have. That only means that they are entitled to stand shoulder to shoulder with the rest of the community, to stand for any seat anywhere without being trammelled, without being ineligible for any particular post or office. By all Means, let them win the confidence of the entire community. That is the only way in which they can come together. What is the other method, I ask the Honourable Member. The germs of his complaint were sold since 1916, not by us, but by the Britishers. Let me go back into the history of our land a little earlier, though it may take some time of the House. Hindus and Muslims fought shoulder to shoulder as early as 1857. Let us not forget that we wanted to reinstate in our country the rule by our own people, whether Hindus or Muslims, wherever they were, in various parts of the country. They joined in a strenuous fight for the release of this country and for its independence. By whatever names the western historians might call it, it was a battle for independence. Then, the British Government wanted to play one community against the other. Sometimes they favoured the Hindus and sometimes the Muslims. It is no doubt true that some respectable and patriotic Europeans were the authors who put the idea of starting the Indian National Congress in our minds. It is no doubt true, but, what did their successors do? They found in a short time of fifteen years that the ideas of independence had come to stay in this country. It was dangerous for them and therefore in 1903 Lord Curzon wanted to separate the Hindus and Muslims in Bengal. No man or woman, not even a child, would sleep until the arrangement for partition of that province was annulled. Once again we came together and to-day on account of separate electorates we are separate again. I am told, Sir, that one day in 1916 a European who was responsible for separate electorates in this country wrote to his friend in England that he had achieved one of the best things in the world, *viz.,* separating the Hindus and Muslims. There is no doubt that difference between the Hindus and Muslims do exist. One prays towards the East and the other toward the West. But there is also a common bond. Mohammad started his religion to bring the various warring elements together under a common banner. Religion in ancient days was an integrating power. There must be a common platform on which all could stand. I look forward to that day when humanity will be one, when all castes and creeds will disappear, *(Chieer)* when children are asked as to what religion they belonged, they may-say, "I do not belong to any religion but I am an Indian and do take pride in being one". I look forward to the day when there will be no difference. Even a child knows that the sex of the mother is different from that of the father. Though one electric bulb may be white and the other red, the current that is running through is one and the same. A philosopher is necessary to come and say amidst all these happenings, 'Let us bring millenium on earth'. In my part of the world, the Madras Presidency, though the Muslims are in a minority, they also joined in this move for separating the country. Have you a paralleled to this carriage that is going on in the Punjab whoever may be responsible for it ? It is a disgrace to our ancient religion and the religion of the Prophet. Neither the Seers nor Maharishis, if they will be looking on, will be satisfied with what is going on in the country. Is it not time for us wisely to consider what is responsible for this ? We are all brothers. Can it be said that Mr. Pocker is different from myself ? He speaks Tamil and I also speak Tamil. He cannot speak in Hindustani whereas I am able to understand and speak Hindustani in a smattering way. If tomorrow I become a Muslim do you think I will become less of a Madrasi ? Unfortunately the country has been cut up and those people who may be responsible for it may be Proud of it. After all it is like a fight between two brothers. I am a lawyer and I know of cases where a younger brother files a suit against the elder brother and where the elder brother says that the younger brother was not born to his father. After the case is over if there was marriage in elder brother's house the younger brother refuses to attend the same and the eider brother says It is no doubt true that we fought, but I am not going to celebrate the marriage if my younger brother does not attend it ? Similarly some day Pakistan also may come back to us. What will be the effect of my friend Mr. Pocker's amendment ? You go in the morning to the mosque and I go to the temple. But there will have to be a common platform where we have to join together on many matters. If there is famine we will all have to fight it. We expect if there is to be joint electorates, we will come together some time. Under the joint electorate system a Hindu can represent the Muslims and a Muslim the Hindus. I will represent much more than you do because I know I am not a Muslim and as such I will always have an inferiority complex and so look after your interests well. So why not take advantage of that ? My friend Mr. Pocker says "I want a good, honest representative". What is the definition of goodness ? Goodness does not come by being a Muslim or a Hindu. I believe he wants a man who effectively supports the Muslims cause. When there was carnage in Bengal, we did not bother to enquire how many were Hindus and how many were Muslims and we do not know even to this day. Unfortunately Hindus also sometimes feel "we are still human beings; when the country has been divided, why should they be protected still ? Let this business, be done away with". For Heaven sake avoid all this. Now he says that he is not the proper representatives of the Muslims who has not got their confidence. Even a Hindu or a Muslim Priest will run the show if India is to become a Religious State instead, of a Secular State. Nothing more than that. Therefore these are not the things that will bring us together. I am a Hindu and if you allow me to represent you, I will come to you at least every, 4 years. Similarly a Muslim can come to the Hindus. Ultimately we will come together. This is possible only if we have joint electorates. If I do not come on his vote, if I am not his representative, what on earth is there to bind me to him ? From the practical point of view, I ask my friend who moved this amendment if he is, one or five or twenty in a House of two hundred, what is it that he can do without the co-operation of the others ? Is he going to preach here Islam or read the Quran ? Will I be allowed to the Vedas here ? In this House, what is it one can do without the help of the majority ? I expect very soon a secular State will arise here. Are you going to stand between us and the establishment of a secular State ? Will you not profit by the events recorded history ? What was America 150 years ago ? Will you not take a leaf out of their history books ? 150 years ago, persons who were driven from their soil, sailed in S. S. May flower in search of other lands and reached "West India". That is the present America. Today they are the masters of the world in the economic field. They are the persons who today do this and that. They are teaching our people, who knew these things 5,000 years ago, how to clean our teeth and wash our faces. They do not know the fact that we do not take our food without first taking a bath. They come and tell us these things because, on account of the disintegrating forces working in our country, they have stolen a march over us. Did not the Italians, the Frenchmen, the Spaniards and others come together in the continent of America ? Therefore it is up to to us to create a secular State. It would no be wrong for me to quote Mr. Jinnah in this connection, whatever, he might have said before Partition. He said: 'My idea is to have a secular State here'. Somebody asked : "Religious or secular ?" He said: 'Hindus and Muslim are alike to me. They must have equal opportunities. I am trying to make a common nation for both of us. Why should our Muslim friends who owe allegiance to Mr. Jinnah and whom they revere as I do, think differently in this matter ? I am not prepared to call a single individual a minority. I do not like the word 'minority' at all. Therefore I am saying that I am opposed to this amendment.

Mr. B. Das (Orissa: General) : Mr. President, may I ask whether we are to be allowed to discuss the things we have discussed for years again here on 'the floor of this House ?

Mr. President: I appreciate the point of order raised by Mr. B. Das. I expect Members to confine themselves to the subject matter of the motion which it is true is such that we can talk interminably on many points. I expect Members to have an eye on the clock also. Mr. Ayyangar has already taken more than 20 minutes.

Shri M. Ananthasayanam Ayyangar: Yes, Sir, but this is the first time I am speaking on this subject which is uppermost in our minds. It is not easy not to refer to certain happenings. in the Punjab, of the 165 civilian officers who were sent from here to Karachi by train, only two have returned. They have come back to India. That is the news in the "Hindustan 'Times" yesterday. What has become of the 163 civil servants, belonging to the Secretariat at Delhi ? Their fate is not yet known. I would spend not 20 minutes but even 20 years weeping and crying over happenings such as this I am trying to find a solution. I am trying to request my friend Mr. Pocker and appeal to him once again to develop a secular State. Ample provision for cultural, linguistic and educational matters has been made. And if there is any difficulty, let us sit together and surmount it. Let not the interest of any single community or Individual be sacrificed for the cause of the rest.

As regards political matters, let us sit together and solve our problems. We have patched up our differences : if now we can build up a secular State, we can rear up our heads as the foremost, nation in the world. We have nowadays been thinking of the culture of the West. The sun of wisdom that rose in the East has set in the West unfortunately. Let us revive that Sun. Let us make him rise gloriously in the East. With these few words I request my friend Mr. Poker and the other gentleman who has joined him in tabling this amendment to withdraw it and stand unanimously for joint electorate. (Cheers)

Mr. President: I now call upon Mr. Mahavir Tyagi to speak I hope he will be short to the Point and that he has heard my remarks made a few minutes ago.

Shri Mahavir Tyagi: (U. P. : General) : *[I am sorry the previous speaker has alarmed you, Sir. I have come here to oppose the amendment moved by Mr. Pocker. In compliance with your instruction I will not take much time, but before we proceed to the consideration of this question. I want to remind the House that our country has had a good deal of the experiment of separate electorates. Hindus and Muslims. who, are here, are very familiar with it. This injection of deadly poison was given by the English who ruled over us.]*

B. Pocker Sahib Bahadur: On a point of order, Sir, I understand that the Honourable Member is very familiar with the English language. Anyway, I would be very grateful if the Honourable Member will speak in English so that I may be able to follow him.

Shri Mahavir Tyagi: I can speak in English. But English not being my tongue it is apt to be ungrammatical and un-idiomatic; if my friend is prepared to face this kind of English, I am quite willing to oblige him

B. Pocker Sahib Bahadur: On a point of order, Sir, I under-when they came to keep us under bondage. They successfully gave us that injection. They in fact sowed the Dragon's teeth in the country and it grew and made its all communally conscious as Hindus and Muslims. They also made us irrigate this crop and we did it too willingly with our own blood instead of with water and the crop was well tended by them and today we are reaping that deadly crop. After that bitter experience of their diplomacy, if even today in this House we stand up and say, when we are building a new, when we are legislating for future generations for our peace and for our happiness, that we should start with that Poisonous injection again, this is something to which I cannot agree. We have seen enough of it. Today, when, as I just now submitted, we are reaping that deadly harvest, when on the borders, of our country there is bloodshed and the worst disorder which civilisation has ever witnessed, when places lying only a hundred miles from here are not safe, it is time that we realised that all this is the result of the separatist tendency injected into our veins by the Britons. Now that we have thrown, the British seven seas away from here it is surprising that we should again be asked to take up that separatist tendency and put that poison again into the Constitution which we are making today. I submit that the country as a whole is opposed to this. Personally I am a believer in unadulterated socialisation of both property and politics. I believe property should be socialised. I am also a believer in unadulterated democracy, which means a true representation of the people; true without any weightage, without any favour; without any disregard of the rightfull privileges of any section of the people or any individual. Without depriving even the individual, of this rights, there must be a free representation of all, and the legislatures-Central or Provincial must fully represent all the people and must represent in a free manner. If we put obstacles in the way of any or stop the passage of others or give privilege to others, that will mean that the democracy or the representation of the people will not be as true and pure as it ought to be in an unadulterated democracy. To give the-right of suffrage to a section of people on religious basis is something which the world does not understand. After all, we do not come here to legislate about religions. We come here to legislate and make laws to see that peace is maintained in the country on a, country-wide basis. It is not a question of one section being legislated against or legislated in favour it is not a question of one or the other section being considered. It is the whole country which has to be taken into consideration when we legislate. So the idea of getting representation from religious sections is simply ridiculous. We have had it till now, but we cannot continue it because the future constitution is not meant to be a constitution of religions. A State cannot be a confederation of so many religions or sects or groups. The laws and the administration of the country can only be entrusted to and can only be handled by those who command the biggest confidence in the country. The major political party will, as a rule, be in charge of the administration of a country. That is recognised everywhere. The minority must remain a minority. Now before a minority there is only one alternative : it is to be loyal to the majority and co-operate and gain the confidence of the majority. There are also other alternatives-which of course I do not advocate nor support according 'to these alternatives minorities become extinct; and on. the other side of the country this process of extinction is going on at 'present. Here Sir, I may be permitted to say that we belong to that part of the country which has guaranteed at the very outset safety of life and property to every one, to every individual in this country. We base our politics on love and truth and not on fear and hatred as is done by our neighbours on the west. We do not believe in discarding minorities or finishing them or killing them en-masse, because we are believers of conversion and we are confident of being able to convert them one and all to our side. We believe that minorities will in the long run be reduced to one entity and that entity would be one unadulterated unity of people a democracy. We want to dissolve, minorities into the majority by 'justice'. We want to rule this country and to run its administration on the basis of perfect justice. These minorities cannot be recognised because in a country whose administration is supposed to be run on the basis of justice alone, there is no question of minority or majority. All individual are at par. We cannot recognised religion as far as the State is concerned. I wonder if my friends who have suggested separate electorate for minorities would appreciate the remarks of a great leader of India. It is Mr. Jinnah who in his address to the Pakistan Assembly says:--

"We are starting with this fundamental principle that we are all citizens and, equal citizens of one State. We would keep that in front of us as our ideal and in course of time you will find that in the political sense the Hindus will cease to be Hindus and Muslims will cease to be Muslims because religion in the personal faith of each individual." That is what the Governor-General of one of the parts of India says, Sir, he was known here to be the worst communalist, as it were, but even he, when he takes, over the charge of a State, even he, when he takes up the reins of a communal State and the administration of a big country composed of Hindus and Muslims, he ways so. It is very well known that his State is a Muhammadan State and they are proud of its being Muhammadan and they proudly call it "Pakistan"; even in that State he says, religious will not be taken notice of by the State. Every individual will be an individual and Hindus will lose their Hindu ship as far as their political rights and privileges are concerned. I submit Sir, that even they are believers of oneness of their people. Why should we introduce this separatist tendency into our politics ? Sir, at another place the same very great leader says "you are free to go to your temples and places of worship in this State of Pakistan. You may belong to one religion or caste or creed, that has nothing to do with the business of the State." I submit Sir, Constitution making is the business of the State Muhammadans as such have nothing to do with it. They are here because they are citizens of India. We are one nation which stands for justice. We will legislate in a manner that will be a guarantee against all injustice. and we shall not recognise any sections. Sir, this amendment is not in keeping with the high principles we last adopted and which we have passed as resolutions in the past.

Now with regard to the Report, I am glad to say that it is practically an unanimous one. Though I could not yet agree to the principle of reservation of Feats, yet as we are just making some arrangement for minorities to lie represented temporarily, I will not stand in the way. It is perhaps to satisfy their fears that some accommodation of their desires has been made. But I have failed to appreciate why they are allowed the liberty to stand for and contest general seats too. Every one knows that they cannot be successful from any extra seat after they have had their due share of seats reserved. Their failure will be quoted after tea years, as arguments against the removal of this reservation clause.

Suppose a candidate offers himself to stand for a general seat. To expect a Hindu to vote for a Mohammadan, especially in the Punjab side, is something which is terribly impossible. Nobody will vote. The circumstances have so changed. This again on account of this very separate electorate system of which we have practical experience. It will practically be a mockery to allow minority candidates to stand from the general seats as well. I submit, Sir, we should have only one electorate and that should be a joint one. The idea of accommodating the minorities for even ten years is not exactly in accord with our principles. I think, we have compromised and compromised enough. I am afraid even, this compromise might also Drove futile. Even this may have bad results. But in spite of this compromise. I submit that the report is very good and, the members of the Committee are really to be congratulated for having produced practically a unanimous report which they have submitted to this Howe. We are proud of them and we shall also be proud of the joint electorate which they have recommended to the country. I hope we will accept their proposals as they are.

Shri T. Prakasam: (Madras: General) : Sir, many of the leaders of the so called minorities offered thanks and congratulations to the Honourable Members of the Committee and its Chairman, Sardar Vallabhbhai Patel for the generosity shown by the majority in this direction. I should say, Sir, they should be congratulated not for the generosity shown, but for discharging their duty as they have done now. There is nothing of generosity which has been shown by the members of the Committee or by you, Sir, as Chairman of the Committee. It is a duty that has been cast upon the majority which has not been discharged for such a long time. All these minorities have been allowed to be formed and developed to this stage, until we are chocked with the poison of communalism that has been there for such a long time. All this could have been checked in the past. We have been paying now, Sir, for all the sins of omissions and commissions of the majority, itself. It was the duty of the majority, Sir, to see that all these separatist tendencies had not developed, separate communities had not been formed. Now they have been put together just as they had been at one time. This is a country, as every one knows, where in the beginning there was only one religion, one God and one form of worship. All these later things had come up gradually. Look into the sequence of dates of all these religions that have been started. Take the Christian religion and mark the period when it came into existence. Take the Muslim religion and mark the period when it came into existence. What was the state of affairs before these religions came into existence ? Before two thousand years and one thousand and three hundred, years, there were no such things as these that prevail today.

But these religions are not and should not have been responsible for all the troubles that we witness today. I was present in Multan when the first Hindu-Muslim riot started and from there it is going on year after year, for such a long period, until at last it has reached this stage. It is a very unfortunate state of affairs which could have been checked earlier. What is the reason for all these things ? It is not the religion that is responsible. If today in the Punjab ail these massacres and crimes are going on, it is not exclusively due to difference in religion. On the top of this so-called religion, what has come about is the desire, desire for profit, desire for office and desire for encroachment on others properties. It is that thing that has come on the top of these things. I am very glad, Sir, that all these 27 years or 31 years of struggle; from the coming into this country of Gandhi, though the whole thing developed into violence from the very first year or the second year, in spite of it the majority had been been watching carefully to see that these things are bridged, until at last, it has come to the honour and credit of the national cause, of the National Congress for the way in which the result has been brought about. At last, the victory has been won and the British people have left this country. In the wake of their leaving the country, all these troubles have come up in so many ways. I must congratulate this Committee and Sardar Patel for the manner in which all these communities which had been statutorily separated for such a long time, have been brought together and made to feel as one and made to agree. That is the highest point that has been gained. Even among the Muslims, Sir, after the so-called Pakistan or partition, friends who are sitting here, who are-from almost every province, they are all agreed on the need for joint electorates. We should have had joint electorates for the last 25 years and there would have been no trouble in this country at all. It is only the desire for office, the desire for profit, the desire for encroaching upon others' rights dislodging others and taking possession that has brought about ruin upon this country. It is that thing that this national movement and struggle started under Mahatma Gandhi has tried to harness, check and focus into one and I should like to congratulate Sardar Patel for the way in which he has managed to bring all these different minority communities together and made them agree.

Also it is to the honour of this Committee and the exclusive privilege of this Committee and I should say of the people of this country to have secured this success and brought about a constitution like this which is being prepared. In that constitution, yesterday or day before yesterday, it was mentioned that One of the communities which was treated as a separate community should not be treated as a separate community. This is an occasion on which we are framing a constitution, a Union constitution, to have all the people put together. Let them not disagree; let them be treated as part of the majority. That is the way in which things are being forged and I agree that these are things which have gone wrong for ages together and for centuries together and that they could not be brought together in one moment and made to go together: That is why this committee has made this report in this careful manner and it is to the credit and honour of this committee that this great result has been achieved. I therefore congratulate this Committee and its Chairman Sardar Patel.

I am proud of the fact that you and I and all of us who have part take in this great struggle have survived to see this result and the way in which this is being forged and we are now almost coming to the end of it. Within ten years it is stated all these things will disappear. I have no doubt they would disappear within ten years or even less than that. Every one of us in the country should bear in mind that this does not take away from us the duty that is cast upon us in serving the country to remove this desire for place desire for office and desire for others' properties.

We are reading in the press all that is going on in the Punjab today and all that is with a view to get hold of the properties and privileges of those who are on the top. It is the duty of the Governor-General of Pakistan and the Government there to see that things are not allowed to go on in the manner in which they are going on and I have no doubt that every step is being taken on this side, so far as our Government is concerned, and I hope that the Pakistan Governor-General and his Government, would also see that people from here are allowed to go into West Punjab and see things for themselves. I would like to go into West Punjab today, if I am allowed. Can I get the passage ? Will I get the facilities to go and see with my own eyes myself what is going on there just as I can go to East Punjab and see what is going on there? It is these things that have got to be secured and I am sure that our leaders will see that they are secured. I have therefore much pleasure congratulating the Committee and supporting the report.

Chaudhuri Khaliquzzaman (U. P.: Muslim) : Sir so much has been said in favour of and against joint electorates and separate electorates during the last three decades that I do not think it is possible for anyone to add any new argument for or against them. However, I feel that it is my duty to point out one very serious objection which was urged against separate electorates. The objection was that it has helped a third party. Fortunately for us all that third Party is no more here. Should we really visualise the situation as it stands today in its true perspective, much of the suspicion that hangs round this system of separate electorates will disappear. After all, if they are conceded to us, what will happen to this great majority ? Today there is no third party to whom we can appeals have been witnessing things here. If anything happens in East Punjab or if there is any untoward incident in Delhi itself we cannot go to the Governor-General or to any one else. We have to go to Sardar Patel, because he has become the final arbiter of the fate of the minorities. What use is then that people should cite history, which history is as dead as bones ? Surely, there were very serious objection. Rightly or wrongly the Muslims did not realise that separate electorates were the cause of dividing communities. But today those arguments do not hold Mod. If you conceded separate electorates, the Muslim community feels that they will help in returning their true representatives, representatives who will lay before you--not to any other power, not to any other Government, not even to Pakistan--our grievances and our claims, therefore I beg of you and beg of this House to consider the new situation in which this question is being discussed.

I know and I am fully conscious that a great body of this House is opposed to separate electorates. Considering the short shrift that this demand received in the sub-committee and in the Advisory Committee on minorities, I had very little hope that we shall be listened to here but whether we are listened to or not, that is not the point. The question is: will the majority community here take into account the new situation in which this demand is made ? Cast away your suspicions. I know that there is a large body of opinion both outside and inside this House which is not prepared to cast away these suspicions which have been created in the past against the Muslims. I would beg of you to realise that when we here accepted the citizenship of this state, we meant to be honest, we meant to be sincere. We have got to live here as a minority but living as a minority and as a citizen does not mean that we have not got any rights to urge for our own community or we should desist from doing it. But if we do that, I hope the old suspicions will not be revived, because whatever happens, whatever the decision of the majority might be, take it from me that the Muslims will accept it. But it is up to you to see whether you should not consider this demand of the Muslims which they feel is likely to give them greater protection than otherwise, and see that, it is accepted by this House. Therefore without giving any other argument, because I have no arguments to advance, I only appeal to you to consider the situation in the light of the changed circumstances and believing that it is. the majority alone on whom we are going to rely for our demand, I hope you will accept it.

The Honourable Pandit Govind Ballabh Pant (U. P. - General) : Mr. President, I regret that the mover of the resolution should have considered it necessary to introduce this subject at this stage and in the existing circumstances. I had thought that we had outgrown the stage when sentiment instead of reason used to overpower us. My friend the leader of the Muslim League Party asked us to take note of the changed circumstances. That is exactly what I ask him to do. I regret very much that the magnitude of the great change that has come over this country has not been adequately appraised or appreciated. The mover does not seem to realise that since the 15th August the administration of this country has been made over lock stock and barrel to the People of this country. I may also assure him and those associated with him that I am trying to look at the question exclusively from the point of view of the minorities. I am one of those who feel that the success of democracy is to be measured by the amount of confidence that it generates in different sections of the community. I believe that every citizen in a free State should be treated in such a 'manner that not only his material wants but also his spiritual sense of self-respect may be fully satisfied. I also believe that the majority community should, while considering these questions, not only try to do justice, but throughout it should be informed and inspired by genuine feelings of regard for the minorities and all its decisions should be actuated by a real sense of understanding and sympathy. So when I am opposing this motion, it is because I am convinced that it would be suicidal for the minorities themselves if the system of separate electorates were countenanced and upheld now. In fact, we seem to forget the great change. as I said which has come over the political status of our country. In the old-en days, whatever be the name under which our Legislatures functioned, in reality they were no more than advisory bodies. The ultimate power was vested in the British and the British Parliament was the ultimate arbiter of our destiny. So long as the power was vested in the foreigners, I could understand the utility of separate electorates. Then perhaps the representatives of different communities could pose as the full-fledged advocates of their respective communities) and as the decision did not rest with the people of the country they could satisfy themselves with that position. But it is not merely a question of advocacy now. It is a question of having an effective decisive voice in the affairs and in the deliberations of the Legislatures and the Parliament of this free country. Even if in an advisory capacity one were a very good advocate, he cannot be absolutely of any use whether to his clients or to himself if the Judge whom he has to address does not appreciate his arguments, sentiments or feelings, and there is no possibility of the Advocate ever becoming, a Judge. I want the Advocate to have also before him the prospect of becoming a Judge. In the new status that we have now secured, every citizen in this country should in my opinion be able to rise to the fullest stature and always have the opportunity of influencing the decisions effectively; so I believe separate electorates will be suicidal to the minorities and will do them tremendous harm. If they are isolated for ever, they can never convert themselves into a majority and the feeling of frustration will cripple them even from the very beginning. What is it that you desire and what is our ultimate objective? Do the minorities always want to remain as minorities or do they ever expect to form an integral part of a great nation and as such to guide and control its destinies? If they do, can they ever achieve that aspiration and that ideal if they are isolated from the rest of the community? I think it would be extremely dangerous for them if they were segregated from the rest of the community and kept aloof in an air-tight compartment where they would have to rely on others even for the air they breathed. I want them to have a position in which their voice may cease to be discordant and shrill but may become powerful. The minorities if they are returned by separate electorates can never have any effective voice, and what have Mr. Jinnah, and other leaders of the Muslim League Party repeatedly declared? They had separate electorates and separate electorates with weightage and it was their definite pronouncement, after all the experience they had for the last- three decades of separate electorates, combined with weightage, that it was an illusory safeguard and that it did not secure their rights and their interests. In spite of separate electorates and weightage which the Muslims and the Hindus enjoyed in the Provinces of Bengal, Bihar and the North-West Frontier what have we not been hearing all these days during the last many months? Has the system of separate electorates helped them? Have separate electorates even with weightage been of any real assistance to them in this pitiable predicament? It is really unfortunate that in spite of all this experience there should still be a demand for separate electorates today.

Then again what do the minorities desire? Do they want to have any share in the Government of the country and in its administration? I tell you, you cannot have a I genuine seat in the Cabinet if you segregate yourself from the rest of the community, for the Cabinet can only act as a team in a harmonious manner and unless every member of the Cabinet is answerable to a common electorate the Cabinet cannot function in a fruitful manner. Are you prepared to give up your right of representation in the Government? And will you-be satisfied with the pitiable position of being no more than advocates-if advocates alone you wish to be-when your advocacy will be treated, if not with scorn and ridicule, but in any case with utter disregard and unconcern, which is bound to be the case when those who are judges are not in any way answerable to your electorate ? Your safety lies in making yourselves an integral Dart of the organic whole which forms the real genuine State.

Further, what its your ultimate ideal? Do you want a real national secular State or a theocratic State? If the latter, then in this Union of India a theocratic State can by only a Hindu State. Will it be to your interest to isolate yourself in such a manner? Will this State care for those who have no share or voice in the election of the representatives who will have real control of the affairs of the State? Will-anything be more dangerous than that? Then you have also to consider, if such a system is introduced, how it will react on you now and hereafter. If you have separate electorates for the minorities, the invitable result is that the majority becomes isolated from the minorities, and being thus cut off from the minorities, it can ride rough-shod upon them.

So I ask you whether you want the majority to be cut off in such a way that the majority will not be answerable to anybody belonging to your community and no one in the majority will have to care for your sentiments or for the reactions of his acts on you and your associates? Nothing will be more harmful than that. And do you not see the signs today? Do you not see the upsurge of communal passions even in quarters which had remained uncontaminated in the past? I have no doubt that from whichever point of view you may look at it, it will be extremely detrimental to your interests if you now clamour for separate electorates. Apart from other things it is an obsolete anachronism today. In a free country nobody has ever heard of separate electorates. After all, what is the essence of democracy? For the success of democracy one must train himself in the art of self-discipline. In democracies one should care less for himself and more for others. There cannot be any divided loyalty. All loyalties must exclusively be centered round the State. If in a democracy, you create rival loyalties, or you create a system in which any individual or-group, instead of suppressing his extravagance, cares nought for larger or other interests, then democracy is doomed. So, separate electorates are not only dangerous to the State and to society as a whole, but they are particularly harmful to the minorities. We all have had enough of this experience, and it is somewhat tragic to find that all that experience should be 'lost and still people should hug the exploded shibboleths and slogans. In the olden days one could have shouted like that; but now, especially these days when we are seeing all the orgies of violence before our very eyes when we are every hour hearing the harrowing tales of massacres, of rapine, of plunder, of rape and what not, which make everyone of us hang his head in shame if not to hang himself by the neck, then I say, does it not occur to you that we have paid amply for this abominable cult of separation and we must grow wise?

We are now going to be free and we have paid a price for this freedom; we have Pakistan on the one side and the Union of India or Hindustan on the other side. There has been too much talk of treating the Muslims as aliens in Hindustan or the Hindus as aliens in Pakistan. Will this institution of separate electorates encourage the disruptive tendencies or will it bring about that cohesion without which neither state can exist? Do you want the citizens of one State to look to their co-religionists in the other State for their protection, or do you want them to be treated as equal citizens of their own free sovereign State? I want all minorities to have an honourable place in this Union of India. I want them to have full opportunities for self-realisation and self-fulfilment. I want this synthesis of cultures to go on so that we may have a State in which all will live as brothers and enjoy the fruits of the sacrifices of those who gave their all for the achievement of this freedom, fully maintaining arid observing and following the principles of equality, liberty and fraternity. *(Loud cheers).*

Mr. President: We shall rise now and meet again at 3 O'clock.

Some Members: The question may be put.

Mr. President: If that is the wish of the Assembly, I shall put the closure.

The question is: that the question be now put.

The motion was adopted.

Mr. President: I call upon the Honourable Sardar Patel to reply, if he wishes to say any thing.

The Honourable Sardar Vallabhbhai J. Patel: Sir, I will not take much time I was sorry to learn that this question was taken seriously because when this question came before the Advisory Committee there was not so much debate as I heard here today. My friends of the Muslim League here who moved this amendment and supported it took it for granted that they had a duty to perform in a sense. They had been pressing for separate electorates and enjoying it for a long time and felt that they should not leave it all of a sudden, but just move the motion and have the vote of the House. But when I heard the elaborate speeches I thought that I was living in the ages in which the communal question was first mooted. I had not the occasion to hear the speeches which were made in the initial stages when this question of communal electorates was introduced in the Congress; but there are many eminent Muslims who have recorded their views that the greatest evil in this country which has been brought to pass is the communal electorate. The introduction of the system of communal electorates is a poison which has entered into the body politic of our country. Many Englishmen who were responsible for this also admitted that. But today, after agreeing to the separation of the country as a result of this communal electorate, I never thought that that proposition was going to be moved seriously, and even if it was moved seriously, that it would be taken seriously. Well, when Pakistan was conceded, at least it Was assumed that there would be one nation in the rest of India- the 80 per cent. India and there would be no attempt to talk of two nations here also. It is no use saying that we ask for separate electorates, because it is good for us. We have heard it long enough. We have heard it for years, and as a result of this agitation we are now a separate nation. The agitation was that "we are a separate nation, we cannot have either separate electorates or weightage or any other concessions or consideration sufficient for our protection. Therefore, give us a separate State". We said, "All right, take your separate State". But in the rest of India, in the 80 per cent of India, do you agree that there shall be one nation ? Or do you still want the two-nations talk to be brought here also ? I am against separate electorates. Can you show me one free country where there are separate electorates ? If so, I shall be prepared to accept it. But in this unfortunate country if this separate electorate is going to be persisted in, even after the division of the country, woe betide the country; it is not worth living in. Therefore, I say, it is not for my good alone, it is for your own good that I say it, "forget the past. One day, we may be 'united. I wish well to Pakistan. Let it succeed. Let them build in their own way, Let them prosper. Let us enter into a rivalry of prosperity, but let us not enter into that rivalry that is going on today in the land of Pakistan. You do not know that we are sitting in Delhi on a volcano. You do not know the strain that is being put on us because of what is happening near about. My friend the Mover of the amendment says the Muslim community today is a strong-knit community, Very good; I am glad to hear that, and therefore I say you have no business to ask for any props, *(Cheers)*. Because there are other minorities who are not well-organised, and deserve special consideration and some safeguards, we want to be generous to them. But at the same time, as you have enjoyed this to a certain extent for a long time and you may not feel that there is discrimination, we agree to reservation according to population basis. Where is that kind of reservation in any other free country in the world? Will you show me? I ask you. You are a very well-organised community. Tell me, why do you behave like a lame man ? Be a bold and a strong man, as you are well-organised and stand up. Think of the nation that is being built on this side. We have laid the foundation of a nation. From now, under this new constitution, Chaudhuri Khaliquzzaman says the British element is gone, and therefore forget the suspicious. The British element is gone, but they have left the mischief behind. We do not want to perpetuate that mischief. (*Hear, hear*). When the British introduced this element they had not expected that they will have to go so soon. They wanted it for their easy administration. That is all right. But they have-left the legacy behind. Are we to get out of it or not ? Therefore I say, and appeal to you. "What are you doing"? Think about it. Do you expect any one man in this country outside the Muslim League who will say 'Let us now also agree to separate electorates' Why do you do this ? If you say "We want now to have loyalty" on this side to this nation", may I ask you "Is this loyalty?" Are you provoking response of loyalty from the other side ? I have no intention to speak on this, but when the Mover of this amendment talked such a long time and it was supported by the Leader, then I felt that there is something wrong again still is this land. Therefore, my dear friends, I ask you "Do you want now peace in this land? If so do away with it; you can do no harm either to Pakistan or India or anything, but only you will have all over the country what is happening in this country near about us; if you do want it, you can have it." But I appeal to you "Let us at least on this side show that everything is forgotten" and if we want to forget then let us forget what has been done in the past and also what is responsible for all that is happening today. Therefore, I once more appeal to you to withdraw the amendment and let us pass this unanimously. so that the world outside will also understand that we are united. *(Cheers).*

Honourable Members: Withdraw

Mr. President: I have no to put the amendment first to vote. The amendment reads :

"That on a consideration of the report of the Advisory Committee on minorities, fundamental right etc. on minority rights this meeting of the Constituent Assembly resolves that a elections to the Central and Provincial Legislatures should, as far as Muslims are concerned, be held on the basis of separate electorates."

The motion was negatived.

Mr. President: I now put the original motion to vote. It reads:

"All elections to the Central and Provincial Legislatures will be held on the basis of joint electorates."

The motion was adopted.

The House then adjourned till 3 of the Clock in the afternoon.,

----

The Constituent Assembly of India re-assembled after Lunch at 3 p.m., Mr. President (The Honourable

Dr. Rajendra Prasad) in the Chair.

Mr. President: We shall proceed with further discussion of the items, Sardar Patel.

The Honourable Sardar Vallabhbhai J. Patel: Sir, I move the proviso to the first item-

"Provided that as a general rule, there shall be reservation of seats for the minorities shown in the schedule in the various legislatures on the basis of their population :

Provided further that such reservation shall be for 10 years, the position to be reconsidered at the end of the period."

I move this for the acceptance of the House.

Mr. President: There are some amendments. The first is by Pandit Thakurdas Bhargava.

Pandit Thakurdas Bhargava, (East Punjab: General) : With your permission, Sir, I propose to move my amendment No. 19 in List I and not 18.

"That in the first Proviso to para. 1 for the word 'seats' the word 'representation' be substituted."

I am apply to move this amendment as it affords an opportunity to Air. Munshi to move another amendment which I consider is the right one. I am sorry to say that I am not inclined in the present circumstances to say anything in support of my amendment.

Shri K. M. Munshi: (Bombay: General) : Mr, President, Sir, I move the following amendment to the amendment of Pandit Bhargava :

"That in amendment No. 19 of List I, dated 25th August 1947, for the word seat the word 'representation' be substituted", the following words be substituted: -

"after the word 'schedule' the words 'and the section of the Hindu Community referred to in paragraph 1A hereof' be inserted."

The words of the proviso are these-

"Provided that as a general rule, there shall be reservation of seats for the minorities shown in the schedule."

and if my amendment was adopted it would read as follows:

"reservation of seats for the minorities shown in the schedule and the section of the Hindu Community referred to in paragraph 1A hereof."

I have also moved an amendment to No. 85 whereby the item of Scheduled castes is going to be removed to a separate para. No. 1A and not included in the schedule.

The object of this amendment is to clarify the position of the so-called, Scheduled Castes. The word 'minorities' so far as international treaties and international law is concerned, is only restricted to racial, linguistic and religious minorities. The Harijans, generally known as Scheduled Castes, are neither a racial minority nor a linguistic minority, not certainly a religious minority. Therefore in the interest of exact phraseology this amendment was found necessary. It was only, as members of the House will remember, when the Government of India Act was moved that the definition of 'minorities' was so extended by Sir Samuel Hoare as to include every minority which the Governor thought fit to consider as minority. This is a very very mischievous extension of the term and my amendment seeks to clarify the position that so far as the Scheduled Castes are concerned, they are not minorities in the strict meaning of the term; that the Harijans are part and parcel of Hindu community, and the safeguards are given to them to protect their rights only till they are completely absorbed in the Hindu Community.

Another reason is this, and I might mention that that reason is based on the decisions which have already been taken by this House. The distinction between Hindu Community other than Scheduled Castes and the Scheduled Castes is the barrier of untouchability. Now, by the Fundamental. Rights which we have accepted, untouchability is prohibited by law and its practice is made a criminal offence under the law of the Federation. We have also accepted in the Fundamental Rights that no public place should be prohibited to anyone by reason of his birth. So far as the Federation is concerned, we have removed the artificial barrier between one section of the Hindu Community and the other.

In view of those facts, any safeguard as a minority, so far as the Scheduled Castes are Concerned, is illogical and will possibly prevent their complete absorption in the Hindu fold. I therefore submit that the amendment which I am moving clearly defines the position.

Mr. H. J. Khandekar (C. P. & Berar: General) : *[Mr. President my amendment is very simple, and it is:--

That in Appendix 5 wherever the word "population" has appeared in the proviso to para. 1 at the end of para. 3 (C), and in para. 5 the following words should be added after that ward:-

"In the case of the Scheduled Castes according to 1931 census". I want to tell the House my special reason for moving this amendment. India's population is increasing day by day. If we review the period between the census of 1911 and that of 1941, we discover that India's population has reached the figure of 40 crores. I want to place before you a fact which you all know that the Scheduled Castes belong to the lower strata which is in no way behind higher classes, in respect of increasing its numbers. If one child is born to a caste Hindu then four are born to a Scheduled Caste Hindu but it is very sad and surprising that the Population of Harijans has been decreasing since 1931. I do not know why it is so. When we sought the reason for it we discovered that in 1941 Census in the provinces of Bengal and Bihar. some of our Muslim brethren got the Scheduled Castes registered as Muslims on the one hand and Caste Hindus got them registered as Hindus on the other. And this is the reason why ever since the 1931 Census our population has been continuously declining and in 1941 census the strength of Scheduled Castes was less than in the 1931 Census by 2 crores. Therefore I have to place this amendment before you, because the minorities are getting their rights in the provincial and Central Assemblies according to their numerical strength, and if we get our rights according to 1941 census Man our representation will be much less. The reason is that according to 1931 census we are few but even that is tolerable as compared to the 1941 census, when the latter was taken the war was on and it is possible that the census might not have been taken correctly, especially of the Scheduled Castes. Caste Hindus got Scheduled Castes registered as Hindus and the Muslims got them registered as Muslims. Therefore, I suspect that the 1941 census is absolutely wrong. Not only I but the whole Harijan community throughout the country loudly proclaimed that our strength as shown in the 1941 Census was wrong and that our representation should not be based on that figure. Now there is no way out except that the mover of this resolution may give us an assurance that census will be taken again, in which case I will be Prepared to withdraw my amendment. If the census had been taken fairly then our strength would have been much more, but as regards 1941 census, I suspect that it is not a correct census so far as we are concerned. From this standpoint I put this amendment before you. I am aware that every member of this House has great sympathy for Scheduled castes. I have heard many speeches. Many leaders sympathise with us, but that is of no use, if it is merely verbal. People say and I also affirm that we are a part and parcel of the Hindu community. If you oppose this amendment of mine, it will only mean that you are not prepared to give us anything more than what we are getting according to the 1941 census. When you say that they are Hindus and that a few seats less or a few seats more does not make much difference, then I will request that if under the 1931 census we get a few seats more, the House should not hesitate to give us those seats. Therefore, I request the Honourable Mover that he may accept my amendment and give to the Scheduled Castes rights according to 1931 census. With these words I hope the Honourable Mover Will accept my amendment.]*

Shri V. I. Muniswami Pillai: Sir, my friend Mr. Munshi made it clear that the Scheduled Castes form a minority. Still they are not considered to be a minority in view of the fact that they do not come under the three categories of the minorities mentioned. I may tell this House, Sir, till the 16th of May the Scheduled Castes were considered to be a minority in this respect, but later on when the Cabinet Mission came, by an unknown process they have eliminated the Depressed Classes, I mean the Scheduled Castes, and have taken only the other communities into account. But my friend, Mr. Munshi made it clear that since there is the disability for Scheduled Castes, they will be given all the advantages as a minority and they will on no account be deprived of the facilities that are required by them. In that view, Sir, I think my amendment can be accepted. I move.

An Honourable Member: Mr. President, Sir, I would like to know how an amendment to an amendment could be moved unless the original amendment has been moved.

Mr. President: It is a consequential thing. Therefore I have allowed this opportunity of moving it now.

Shri S. Nagappa: Sir, Amendment No. 88. My friend Mr. Khandekar just now moved that the Census of 1931..........

Shri K. M. Munshi: I rise to a point of order. This is with reference to para. 3. Now we are on para. 1 in the schedule.

Shri S. Nagappa: That was moved.

Shri K. M. Munshi: That was an amendment to para. 1. The House is debating at the moment para. 1.

Shri S. Nagappa: I am saying it is a similar amendment.

Mr. President: When we come to that, you can move it.

Shri K. M. Munshi: Sir, I have got another amendment. My amendment No. 2 relates to para. 1. It simply carries out the scheme of the first .amendment that I have moved.

Mr. President: That is consequential.

Shri K. M. Munshi: Yes, carrying out the same idea. if you will permit me, Sir, to move formally. The amendment which I move is this:

"That the words '7. Scheduled Castes' be deleted from the schedule and the following para, be added after it:

'1A The section of the Hindu community referred to as Scheduled Castes as defined in Schedule I to the Government of India Act, 1935 shall have the same rights and benefits which are herein provided for minorities specified in the Schedule to para 1'."

This is consequential to Harijans being removed from the category of minorities and placed as an independent category as a section 'of the Hindus. I move the amendment.

Mr. B. Das: Sir, I wish to move an amendment to the amendment moved by Mr. K. M. Munshi. He said, "The section of the Hindu community referred to as Scheduled Castes as defined in Schedule I to the Government of India Act, 1935". I wish to move this amendment: Instead of "defined in Schedule I to the Government of India Act, 1935", the words "to be defined in the Scheduled to the Union Constitution Act."

I do not wish the Government of India Act to be repeated. The Committee has gone into the Schedule of the Government of India Act which is referred to, and we can accept it as a Schedule of the Union Constitution Act. This is the amendment I move. The words "Government of India Act, 1935" be dropped and the words "to be defined in the Schedule of the Union Constitution Act" be inserted. That is the amendment I wish to move.

Shri K. Santhanam (Madras: General) : Sir, I may offer one remark with regard to the latest amendment moved by Mr. B. Das. If we had prepared a Schedule, then it would have been relevant. Without a Schedule, to refer a matter to a non-existent schedule, I do not think is quite regular. Reference to Government of India Act, 1935 is proper because it gives a concrete reference.

The points which I wanted to make are three. First, in this provision there is the word "legislatures". I want to know if it is meant that this reservation should be both for the Lower and the Upper Houses. assume that the reservation is meant only for the Lower House, because, under the constitution which we have adopted, the Upper Houses in the case of the provinces are to be elected on the Irish model while in the case of the Federation, it is to be on the model of the American Senate, elected by the provincial legislatures. I do not think that reservation should have an application to the Upper Houses of the legislatures and I think it may be clarified by saying "various Assemblies"

Another point which I would like to point out is that this clause should not be made applicable to East Punjab and West Bengal. The conditions there are peculiar as a result of the partition. We do not know, exactly what is the distribution of population there today. Unless we know the distribution of population, any such principle as reservation of, seats on the basis of population would have unpredictable effects and therefore, until we know exactly the distribution of population in these two provinces, I think this clause should not be made applicable. I think, as a general rule, these two provinces should be treated as exempted from the present Report.

Another point which I would like to impress upon the mover of this amendment is that if in a constituency, a minority community for which reservation is provided is in a majority, that constituency without any reservation should be treated as a reserved seat. Suppose for instance, in a District, Muslims, are in a majority and that is a constituency. There are one or two seats. There is no reason why there should be a reservation in that constituency. I think for all practical purposes it should be included. in the number of seats reserved. Unless it is done, it may lead to untoward consequences. Suppose in the whole District there is a Muslim majority and you have got three or five seats to that District. Are you reserving Muslim seats in a constituency where they are in a majority ? I think it will be absurd. If you do not reserve, then their seats may not be counted in the reserved seats this contingency must be duly provided for especially when this principle is to be applied to West Bengal and East Punjab. This will also become very material in certain parts of Bihar and in certain parts of the United Provinces. Therefore, my simple suggestion is, if in any constituency the minority community for which any reservation is made is in a majority, that constituency must be treated as already reserved by the very fact of the majority of the electorate and then the number of seats allotted to that constituency should be deducted from the total reservation. I think this is a detail which has to be worked out with reference to each province, but the, point deserves to be remembered.

There are many other considerations which arise from the fact of reservation on the basis of population into which I need not go now, and I shall deal with them when dealing with other matters. I suggest that these three points, namely whether reservation is to be made applicable to the Upper Houses, whether this principle is applicable to West Bengal and East Punjab and how the constituencies where the minorities for which reservation is made are in a majority are to be dealt, with, all these matters should be clarified or at least should be left over for future consideration and decision.

Prof. Shibban Lal Saksena (U. P.: General) Mr. Munshi moved an amendment to the schedule but the schedule has not yet been moved. I think his amendment can come only after my amendment has been moved.

Mr. President: What Mr. Munshi did was to move an amendment to the proviso in the first clause and he has not touched your amendment.

Rev. S. J. Jerome D'Souza (Madras: General): Mr. President, I should like to make a few very brief general observations on these provisos just presented to this House by Sardar Patel. Before doing so, let me also, though somewhat belatedly, express, my very great gratification at the way in which these minority questions have been handled, the skill and tact with which a consensus of opinion has been secured in this report and the great kindness and spirit of understanding shown by Sardar Patel in dealing with these questions here and elsewhere in discussions.

I know that this question of reservation is something which has troubled the minds of a good many among us here, now that separate, electorates have to be given up; and if there were doubts about giving them up, the extremely cogent and powerful exposition which we heard this morning should set all doubts at rest and should bring even the hesitators that there might be in general agreement with the thesis that separate electorates must go. But, on the other hand, it is not absolutely clear and many here are not convinced that reservation is the happiest substitute for them. This is a compromise and like all compromises there is bound to be an element of illogicality in it. I say this not because reservation itself is something wrong. There is an impression that reservation is anti-democratic and that it should: somehow be got rid of in the course of the next ten or fewer years. I beg to say that I do not agree with this. Reservation in itself is one way of securing a satisfactory working of the electoral principle. Sir, after all we ourselves in this very House and in our Provincial circles are providing for upper Houses in which there will be functional representation. In its own way functional representation is nothing else than reservation of a very special kind. You reserve seats for particular interest. The misfortune here is that reservation is made on communal lines and secondly, the reservation being made, the elections to the reserved seat are not made exclusively by those on whose behalf the reservation is made, but by a general constituency by a mixture in the electorates. Therein comes the difficulty and I beg this House to understand that the few misgivings that may have been expressed on this head are due to this and not to any other consideration Nevertheless I believe that his principle of reservation with general electorates is a bold experiment though fraught with some risks, nonetheless worth making at this juncture for the satisfaction of all. It cannot be given up, because, if I may venture to remind the majority party in this House, for years together the Congress party has been associated with the demand that there shall be joint electorates with reservation. At this stage to give up reservation as some of my friends wish to do would be in contradiction to the promises held out, if not tactly at least by implicit agreement. That is one reason why we cannot go back on this and I am most happy once again to say that the way in which the feelings of the minorities have been interpreted in this matter by Sardar Patel have filled us with satisfaction and reassurance and our thanks are due to him. As I said, we should all be happy if a day would come when reservation could be taken away and I am sure if that other opening, which has been left before this Rouse and before this country, namely that general seats might be contested by members of those classes for whom, reservation has been made, if that yields a certain amount of satisfaction, if a certain number of prominent and accepted people are elected on that basis, I am sure that the minorities will be encouraged at the end of a certain period to give up this reservation. This would dispel whatever fears they may have that under present arrangements people might be chosen to represent them who do not really represent them or who would not interpret their minds as they wish them to be interpreted. I would therefore conclude by appealing to this House to make this great experiment a success by working it in such a way that it satisfies minorities on whose behalf it has been placed here, that the men chosen may be men who would have the courage of their convictions and that the expression of their courageous convictions may not offend or in any other way displease the majority communities and that they would be taken as courageous and sincere people. Such an attitude would provide a safe Outlet for feelings which might otherwise be suppressed and go underground, and thus prove an effective safeguard for the working of democracy.

We know that, though democracy of the parliamentary type has succeeded and succeeded remarkably well in England, it has failed elsewhere and it has failed precisely because majority parties or groups have known how to master the machinery of elections, they have known how to dominate public opinion. Formidable reactions against such method developed in certain European countries, and the ugly monster of fascism reared its head. But even Fascism, ugly as it was, sought to obviate the difficulty of possible suppression of individual or minority opinion by thinking of a scheme which really comes to functional representation, namely, the forming of what they called a corporative State, a device which has fallen into unmerited disrepute, because of its association with Fascism. If, Sir, these things are bone in mind and if a very fair trial is given to this scheme of joint electorates with reservation, it is possible that our country in making this innovation, this bold experiment, might save democracy from one of its obvious dangers and might perhaps set an example for a solution of minority problems which may be accepted elsewhere. I say this knowing well that the chances are not very abundant as to complete success in the sense that I indicated but I do hope that this will not be looked upon as an unpleasant and forced concession made to minorities but that will be worked in the spirit in which it is given in order to give to those minorities the satisfaction for which they have pleaded before You.

Pandit Chaturbhuj Pathak (C. I. States) : *[Mr. President, my colleague Mr. Khandekar has desired in his amendment that they (Scheduled Castes) should be given representation according to 1931 Census. In this connection I want to say a few words. If instead of 1941 census we give representation to the minorities on the basis of 1931 census, it will have its repercussions on other minorities as well. He has stated that there have been mistakes in the taking of Census because in some places they have been registered as Muslims and at other places they have been registered as Caste Hindus. Because the Muslims have increased their numbers, in this way, they would also like to increase their representation according to 1941 Census. And if the forthcoming census which will take place after 4 years is correct and according to it the strength of the Scheduled Castes increases, Mr. Khandekar will be tempted to suggest that they (Harijans) should be given representation not according to 1931 census, but according to 1951 census. I fall to see how this will be appropriate.]*

Shri H. J. Khandekar: *[I only suggest that a Census should be taken before allocation of seats or the allocations should be deferred till the census of 1951, or that our numerical strength be fixed according to the 1931 census. For my community, I will accept representation on the basis of the 1951 census or on one that may be taken now. But the census of 1941 is utterly wrong. Any division on that basis would be grossly unjust to the Harijans]*

Pandit Chaturbhuj Pathak: *[Mr. Khandekar has said that the birthrate amongst Achchuts is high enough but at the census their number has not been recorded as High. The reason for this is that happily they have been enumerated amongst Caste Hindus. Mr. Khandekar has admitted this. It is good. The Caste Hindus themselves have pleaded for good treatment of Harijans and that they should be treated as Caste Hindus. Mr. Khandekar should have no objection to it.]*

Shri H. J. Khandekar: *[The Harijans have been counted amongst Caste Hindus only to increase the number of the Caste Hindus. This device has caused no change in the social life of Harijans. Those Harijans who have been classified amongst the Caste Hindus are still in the same deplorable state. Their standard is not the same as that of the Caste Hindus.]*

Shri Chaturbhuj Pathak: ***[**I do not think that when Achchuts are enumerated amongst the Caste Hindus they (at once) acquire the standard of Caste Hindus and they *ipso facto* get all the rights of Caste

Hindus.

I have only to submit that I oppose Mr. Khandekar's resolution to adopt representation on the basis of the 1931 Census. Even in the report submitted no mention of number is made. It is written there; "On the basis of their population"; i.e., they would get representation according to their population. I support this (the report)]*

The Honourable Sardar Vallabhbhai J. Patel: Some amendments have been moved to this. One is by Mr. Munshi in which after the word 'schedule' he wants to say 'and the section of the Hindu community referred to in paragraph 1A hereof'. It is only intended for clarity and it makes no substantial change and therefore I propose to accept, that amendment.

So far as Mr. Khandekar's amendment is concerned I do not think we can accept it because it would not be proper to make a special exception for the Scheduled Castes, that their reservation should be on the basis of one census and that reservation for other minority communities should be on the basis of another census. It would not be proper and it would be an invidious distinction. I do not understand why he wants to do that. Probably he wants to exclude some of those who have been included in the Scheduled Castes in 1931. I do not think it is proper to do so at this stage. In the resolution that I have moved, there is no mention of any census. We have simply said 'on the basis of their population'. Therefore it should be kept as it is. No injustice is being done to any community, and uniformity is also desirable and necessary.

Then Mr. Santhanam has moved an amendment and made two or three suggestions. One is about reservation of seats for the minorities in the various Legislatures. He says it should be 'various Legislative Assemblies'. I have no objection to accepting that amendment.

He made another point that East Punjab should be excluded in Clause 3.

Shri K. Santhanam: And West Bengal also.

The Honourable Sardar Vallabhbhai J. Patel: I do not think it is necessary to accept that amendment as they are specifically excluded in clause 3.

His third suggestion was that in a constituency where a minority Community are in a majority the seats must be from the reserved seats. I do not consider the suggestion a proper one. The seats are on the basis of population reserved as a whole and not on a particular constituency. Therefore I do not propose to accept it.

To sum up, I propose to accept Mr. Munshi's amendment and Mr. Santhanam's suggestion about putting the words 'Legislative Assemblies'. I commend the resolution for the acceptance of the House.

Mr. President: I will now put the first amendment, which has been accepted by Sardar Patel to vote.

The question is :

"That in amendment No. 19 of List I, dated 25th August 1947 for the word 'seats' the word 'representation' be substituted". The following words be substituted:--

> "after the word 'schedule' the words 'and the section of Hindu community referred to in the paragraph 1A hereof' be inserted."

The motion was adopted.

Mr. H. V. Kamath: What about Mr. B. Das's amendment to this ?

Mr. President: His amendment was that the words 'Government of India Act, 1935' be substituted by the words 'Union Constitution Act'. I think it is a verbal amendment and when the act is actually drafted they will take care to define it in the correct way. Does he press it ?

Mr. N. Gopalaswami Ayyangar (Madras: General) : You cannot say 'Union Constitution Act'. As it stands, there is no schedule. The correct description is what Mr. Munshi has given.

Mr. President: As the Member is not here I will have to put the amendment to the vote of the House.

The question is :

"That for the words 'defined in Schedule I to the Government of India Act, 1935' the words 'to be defined in the Schedule to the Union Constitution Act, be substituted."

The amendment was negatived

Mr. President: The next is, Mr. Khandekar's amendment.

Mr. R. J. Khandekar: I withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The next is Mr. Munsiswami Pillai's amendment, that for 'ten years' the words '12 years' should be substituted.

Shri V. I. Muniswami Pillai: I withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is

"That the two Provisos as amended be adopted."

The motion was adopted.

Mr. President: We now take up the Schedule.

The Honourable Sardar Vallabhbhai J. Patel. I move for the acceptance of the House the Schedule that is put in under para 1. I shall in doing so first read it.

SCHEDULE

GROUP: A.-Population less than 1/2 per cent. in the Indian Dominion omitting States.

1. Anglo-Indians.

2. Parsees.

3. Plains' tribesmen in Assam (other than Tea Gardens' tribesmen).

B.-Population not more than 1 and 1/2 per cent.

4. Indian Christians.

5. Sikhs.

C.-Population exceeding 1 and 1/2 per cent.

6. Muslims.

7. Scheduled castes.

This Schedule is based on the strength of the communities in order that the relevant provisions in the subsequent sections may fit in and therefore this is merely a formal matter. There is no controversy about it. I therefore move that this Schedule be accepted.

Mr. President: There is only one amendment to this and that is from Prof. Shibbanlal Saksena. Of course it is covered by the amendment which we have passed just now. But it has to be formally dropped, so he may move it.

Prof. Shibbban Lal Saksena (United Provinces: General) : Mr. President Sir, my amendment is No. 85 and it says that the words "scheduled castes" be deleted from the schedule. The purpose of the amendment is that scheduled castes should not be classed as separate minority but should be treated as an integral part of the Hindu community. My amendment reads--

> That from group C of the Schedule to para 1, the words "7 Scheduled castes" be deleted.

I would like to draw the attention of the Assembly to one important declaration. It is this. It will be remembered that Mr. Jinnah has often tried to include the Scheduled castes in the minorities; and on June 26, 1946, in a letter from Maulana Abdul Kalam Azad to Lord Wavell, and the latters reply thereto, Lord Wavell is reported to have said:

> "........ if any vacancy occurs among the seat, allotted to the minorities, I shall naturally consult both the main parties before filling it."

Mr. Jinnah has thus included the Scheduled Castes among the minorities. But so far as we are concerned, we consider the Scheduled Castes as belonging to Hindus, they are not a minority, they have also always formed part of us. I am glad Mr. Munshi has brought up his amendment, which meets my purpose and I therefore withdraw my amendment, in favour of his.

Shri K. M. Munshi (Bombay: General) : Sir, because amendment No. 85 has been moved by Prof. Shibban Lal Saksena I move the amendment standing in my name:-

> "That in amendment No. 85 of List III, dated 26th August 1947, the words "7. Scheduled Castes" be deleted and the following para. be added after para :--

> "1-A. The section of the Hindu community referred to as Scheduled Castes as defined in Schedule I to the Government of India Act, 1935, shall have the same rights and benefits which are herein provided for

minorities specified in the Schedule to para. 1."

Shri Lakshminarayan Sahu (Orissa: General) : Sir, on this Schedule I want to say one thing about the aboriginals. I think there should be some provision here so that the aboriginals also may find a place in this Schedule. The fact is, mete are two and a half crores of aboriginals in..........

The Honourable Sardar Vallabhbhai J. Patel: There is a separate Committee going into the question of the aboriginals and other tribes and its report will come up. The question will be considered when we consider that report.

Shri Lakshminarayan Sahu: But could we not make some provision here ?

Mr. President: There is a separate committee appointed for the aboriginals and other tribes and if there is any such recommendation in that committee's report, then we can take it up for consideration when considering that report.

Mr. Jaipal Singh: Sir, I would like to know whether it was not the idea that item. A. 3. "Plains tribesmen in Assam" should be left over till the final report of the committees was received? I though it was decided in the Advisory Committee not to discuss item A. 3, but I find that item included here.

Mr. President: I am afraid I have not been able to follow what you said.

Mr. Jaipal Singh: The report of the Committee will be before us before tomorrow afternoon. Pending that, I suggest that this item A. 3 be left alone, that the wording be left untouched and not discussed now. Let us get on to it afterwards, say, tomorrow.

Mr. President: You therefore that A. 3. "Plains Tribesmen in Assam" be taken out from the list.

Mr. Jaipal Singh: Yes, taken out now, and the wording decided on tomorrow.

Mr. President: It will come up when the report of the Tribals Committee comes up. For the present it will be left alone.

The Honourable Shrijut Gopinath Bardoloi (Assam: General) : Sir, I am afraid Mr. Jaipal Singh is making a mistake. The question now is whether the Plains Tribals in Assam are to be recognised as a minority, and that has been decided by the Minority Committee, and that is what we are considering. But what concessions are to be given to them has been left over, for a joint, report to be received from the Advisory Committee and that report will be coming before us tomorrow or sometime after.

Shrijut Omeo Kumar Das. (Assam: General) : Sir, I have an amendment No. 57, saying--

"That in the Schedule to para. 1, for words 'Plains' tribesmen of 'Assam' the words 'Plain Tribesmen of Assam other than tea garden tribes' be substituted."

Have I to move it now? Or am I to understand that it has been already accepted.

The Honourable Sardar Vallabhbhai J. Patel: it has been accepted that the words "Plains Tribesmen of Assam other than tea garden tribes" be substituted for the words "Plains" tribesmen of Assam."

Mr. President: Yes, he has accepted that.

Shri Lakshminarayan Sahu: Once that is included, cannot I say that the aboriginals should also be included in the Schedule ? Sir, the hill tribes of Orissa number fifteen lakhs and form one-sixth of the population.

Mr. President: But you have not given notice of any such amendment. Probably everyone thought that this matter would, anyway, be coming up along with the report of the Sub-Committee which has been appointed. Therefore, no one has given notice of any amendment on this matter. I take it that when the recommendations of that sub-committee are received and if they go counter to what is decided here, it will to that extent act as an amendment.

The Honourable Sardar Vallabhbbai J. Patel: When the report of that Sub-Committee comes up, the safeguards for the tribes will be included according to that report. Here we have an enumeration of the different classes of minorities according to their strength. Therefore, so far as the Schedule is concerned there is no reason to suspect or doubt anything. Whatever safeguards ate recommended by that Sub-Committee will be provided for. There is no occasion for any doubt.

Mr. Jaipal Singh: On a point of order, Sir. May I know when we are discussing the question of minorities, whether this has been submitted by the Advisory Committee or the Minorities, whether this has been submitted member aright, this particular item was held over and it was agreed that it was not to be brought up for discussion here till the reports of the two Tribal Committees had been presented.

Shri K. M. Munshi : May I say one word about this? There seems to be some amount of confusion on this point. If you will look at the Report itself, the position will be made clear. In para 8 of the Report, it is said: "The case of these tribesmen will be taken up after the report of the Excluded and Partially Excluded Areas Sub-Committee is received." But at the same time, look at para 5. It enumerates the minorities which will be entitled to some rights. So in Group A you find the Words "Plains tribesmen in Assam." Therefore, what was postponed was not the incorporation of the Plains tribesmen in the Schedule but the safeguards which may have to be extended or altered after the report of this Excluded Areas Committee is received by the House. What is sought to be done now is to complete the Schedule by incorporating Plains tribesmen in Assam. It is not bit if it decides what the safeguards are going to be. That is the position laid therefore there is nothing inconsistent

The Honourable Rev. J. J. M. Nichols Roy (Assam: General) I want to ask one question for clarification. It is stated in Group A, item 3 "Plains tribes-men in Assam other than garden tribes". I understand by the term "other than garden tribes". It is meant garden tribes working as a labour population in the gardens and not those tribes that have settled in Assam who have had land and property there. Is that the meaning?

Mr. President: I think that is the meaning.

Dr. P. S. Deshmukh: There is an amendment in my name. It reads as follows:

"That in schedule to para. 1, the following be added:

'Group D.-Educationally advanced and wealthy minority casts and communities in the various Provinces.

NOTE 1.-It shall be provided that persons belonging to these minorities shall not have the right to contest unreserved seats.

NOTE 2.-A list of these minorities, shall be as determined by each legislature of the existing Provinces."

The main purpose of my amendment is to safeguard the interests of the very small minorities, who are bound to find it very difficult to maintain their own, once the adult franchise is introduced. I mean the highly educated castes and castes and communities that own a very large potion of the wealth of the whole country. At the moment, they are both very powerful. The former monopolist Government services and higher appointments. They are masters of the platform, and the Press is a pretty-maid in their sole keeping. They appear to be the only people who matter and there is nothing that is not within the hollow of their hands if they will it. Education gave them unlimited, opportunities of serving the British interests and discharge their duties so loyally and to such complete satisfaction of their erstwhile masters. The communities which have lived by money-lending and trade also supplied to the British rulers the sinews of war and all the requirements of peace. If these should now appear to be the only fortunate People in India, nobody need be surprised. The credit of maintaining and sustaining the British rule in India is after all theirs. It could not suit them to join the revolution of 1942 and risk their lives. Whilst some went to jail quietly, others who loved the British less sacrificed everything they had including their lives. Those who sacrificed in this way feel that their interest are not being protected and their sacrifices are not being recognised. There is, therefore, in their opinion, nothing better than mere lip sympathy. That being so, the highly educated and well-to-do are likely hereafter to be much disliked and possibly persecuted. It behoves us therefore to be prudent and protect their interest by a provision in the constitution. These communities may, for the time being, be very sure of scoring over everybody else either on the score of academic careers or wealth, but I would like to warn them that their calculations may prove to be wrong. They are, I know, likely to question even my motives, but let me tell them that I wish them well.

Mr. H. V. Kamath: May I request you to define the words "Highly educated and wealthy" ?

Dr. P. S. Deshmukh: I will do it when the amendment is accepted by my Honourable friend. They are, I know, likely to question my motives, but the reason why they should not be permitted to contest other seats is that after all they belong to the worst, parasitic castes and in a real democracy which we are aiming at, it would not be proper that they should have unrestricted and unrestrained right to override the claims Of the other people. How else are you going to safeguard these people, in the words of my friend Mr. Tyagi, from annihilation ? I think the only way is to give them reserved seats and at the same time keep them away from other unreserved seats. But, Sir, I know that the sentiments I express and the socialistic bias that I would like this constitution to have is not very popular with the House as it is constituted today. Under the circumstances, I merely wish to make these observations fore consideration of the framers of the constitution. I have no desire to move my amendment.

Mr. President: I never thought that Dr. Deshmukh would really move his amendment seriously. I think he does not deserve any protection himself, although he himself belongs to the wealthy and well educated class. I had by chance omitted to call him to move his amendment but I now find that what I considered to be a mistake by chance was really a correct thing for me to do. *(Laughter.)* However, these are all the amendments of which I have notice. Sardar Vallabhbhai Patel may say anything if he likes.

The Honourable Sardar Vallabhbhai J. Patel: I did not expect any debate on this; however, it has taken place. I have already accepted the amendment moved by Mr. Shibbanlal Saksena and I now commend the Schedule for the acceptance of the House.

Mr. President: I now put the amendment which has been accepted by Sardar Vallabhbhai Patel of Mr. Shibbanlal Saksena.

The amendment was adopted.

Mr. President: I now put Mr. Munshi's amendment to Mr. Shibbanlal Saksena's amendment.

The amendment was adopted.

Mr. President: I now put the Schedule as amended to vote.

The motion was adopted.

Mr. President: We now go to clause 2.

The Honourable Sardar Vallabhbhai J. Patel:

"Anglo-Indians: (a) There shall be no reservation of seats for the Anglo-Indians, but the President of the Union and the Governors of Provinces shall have power to nominate their representatives in the Centre and the Provinces respectively if they fail to secure adequate representation in the legislatures as a result of the general election."

This is an agreed solution so far as the Anglo-Indian Community is concerned and I do not suppose anybody can move any amendment to this because as the community is satisfied with the proposal and as the Advisory Committee has accepted it unanimously I recommend this for the acceptance of the House.

Shri K. Santhanam: I have one or two doubts to be cleared. I suppose here 'Legislatures' will be 'Assemblies'. Then does it mean that in every province the Governor would appoint representatives of Anglo-Indians ?

The Honourable Sardar Vallabhbhai J. Patel: It means what is stated there.

Mr. President : I put this now to vote.

Clause 2 was adopted.

Mr. President: This reminds me. I made a mistake when I put the first clause I did not say 'Provincial Assembly'. I put Provincial Legislature. I take it the House accepts that.

We go to the next item.

The Honourable Sardar Vallabhbhai J. Patel: I move--

"Parsees-(b) : There shall be no statutory reservation in favour of the Parsee Community, but they would continue to remain on the list of recognised minorities :

Provided that if as a result of elections during the period prescribed in proviso 2 to para 1 above it was found that the Parsee Community had not secured proper representation their claims for reserved seats would be reconsidered and adequate representation provided should the separate representation Of minorities continue to be a feature of the Constitution."

This is also an agreed thing between the Parsee Community and the Advisory Committee. Therefore I recommend that this should 'be accepted.

Mr. President: I take it that there is no discussion required on this.

The motion was adopted.

The Honourable Sardar Vallabhbhai J. Patel: I move--

"3. (a) Indian Christians--(a) There shall be reserved representation for Indian Christians in proportion to their population in the Central Legislature and in the Provincial Legislatures of Madras and Bombay. In other provinces, they will have the right to seek election from the general seats."

This is also an agreed thing between the Christian Community and the Advisory Committee. Therefore. I recommend this for the acceptance of the House.

Sri B. Gopala Reddy: (Madras : General) : It includes Councils also I believe. In Madras we have 3 reserved seats in the Council.

Mr. President: Yes. I take it here it means the Legislative Assembly and Council. I put it to the House.

The motion was adopted.

The Honourable Sardar Vallabhbhai J. Patel: The Punjab question we propose to postpone till the conditions in the Punjab are properly ascertained and settled. The question is kept over and I suggest the House may agree to it.

Mr. President : The question of minority rights in Eastern Punjab will be considered separately. I think there is an amendment which says 'Western Bengal' also should be added to it. Should. that also be included ?

Shri K. M. Munshi: Amendment No. 24 by Pandit Thakurdas Bhargava relates to Eastern Punjab to which I have moved an amendment (No. 3) just to carry out the intention of the Honourable the Mover.

Mr. President: We take the amendment of Mr. Munshi at this stage.

Pandit Thakurdas Bhargava: My amendment is to (c) of para 3. I lime it. It reads: That in sub-para. (c) of para 3 for the word "seats" the word "representation" be substituted.

Shri K. M. Munshi: Sir, I move the amendment which says:--

"That in amendment No. 2; of list I, dated 25th August 1947, for the words (c) of para 3 for the word 'Seats' the word 'representation' be substituted:--

> (b) of para 3. Delete the words beginning with 'Sikhs (b)' etc., to the end and substitute the following:-
>
> > 'East Punjab (b). In view of the special situation of East Punjab the whole question relating to it will be considered later'."

If my amendment is accepted, the clause will read as follows:

"Sikhs-(b). In view of the special situation in Eastern Punjab the whole question relating to it will be considered later."

This will take the place of the present paragraph.

Mr. S. M. Rizwan Allah (U. P. : Muslim) : Sir, I beg to raise a point of order on this amendment. This is a Report of the Minorities Committee. Different provisions have been laid down in this report about various minorities. So far as the Sikhs ate concerned, no decision has been arrived sit in the Minorities Committee

Report about them. It Is stated in this Report that the matter about Sikhs will be decided later on. Now an amendment has been tabled to replace a Province instead of Sikhs, and thus in place of a minority an issue about territory is brought in. This is a report for the minorities and has nothing to do with any Province and therefore the amendment is out of order.

Mr. President: I do not think the point of order really arises. As a matter of fact there are other minorities in that Province and the whole question of minorities is held over. So it is quite in order.

Now I put Mr. Munshi's amendment which is this:-

"(b) of para 3. delete the words beginning with 'Sikhs (b). The question of minority rights for the Sikhs will be Considered separately, and substitute the following.--

East Punjab (b). In view of the special situation of East Punjab the whole question relating to it will be considered later."'

The amendment was adopted.

The Honourable Sardar Vallabhbhai J Patel:

'*Muslims and Scheduled Castes.*-(c) There shall be reservation of seats for the Muslims and Scheduled Castes in the Central and Provincial Legislatures on the bask of their population."

I move the above clause for the acceptance of the House.

Prof. Shibbanlal Saksena: Mr. President, Sir, as the amendments to Clause 1 by Mr. Munshi and myself have been accepted, it is necessary that in para. 3, the words "and Scheduled Castes" wherever they occur be deleted.

Mr. President: I take it that is a consequential amendment. We have already accepted the definition of Scheduled Caste elsewhere and the same thing will be introduced here.

The amendment was adopted.

Mr. President: I have put only the amendment to vote. The clause, as amended, is now put to vote.

The clause, as amended, was adopted.

The Honourable Sardar Vallabhbhai J. Patel:

"*Additional right to minorities.*--The members of a minority community who have reserved seats shall have the right to contest unreserved seats as well."

This is an item which was hotly contested in the Minority and the Advisory Committee and after a prolonged debate this proposition was passed. As this proposition has been passed at two places, I do not think it will be wise to open another debate on this question. After all after having a prolonged debate on this question it would be better to pass it as it is. I move this proposition for the acceptance of the House.

Seth Govind Das (C. P. and Berar: General) : *[Mr. President, as Sardar Sahib has just stated there was a good deal of discussion between the minorities and Advisory Committees on clause 4. Afterwards there was a good deal of discussion among members themselves over this matter. So far as minorities are concerned, there are many minorities which in fact cannot be called as such. For instance take the case of

Harijans. They are in fact Hindus; they are not a minority like the Muslims or the Christians. Therefore so far as Harijans are concerned they ought to be treated in one way and the other minorities should be treated in another way. Harijans have been very much suppressed. This is also a matter which is to be considered separately. In this connection, I want to say that if Sardar Sahib does not take the vote of the House today but postpones it for tomorrow, that will be more appropriate because even now there are many members who want to think over it and are discussing the matter amongst themselves. I desire that this matter be disposed of in such a manner as may give full satisfaction to all members of the House as well as to all minorities. And I do not think that it would be proper to put it to vote today. Therefore, I appeal to Sardar Sahib that he may postpone this matter till tomorrow. There are many other recommendations of this committee which can be considered today.]*

Mr. R. V. Dhulekar (U. P.: General) : *[Mr. President, I also beg to request that, as this is a very complex issue, it may be postponed so as to enable us to give fuller consideration to it.]*

Mr. President: A suggestion has been made that this item may be held over for consideration tomorrow.

The Honourable Sardar Vallabhbhai J. Patel: Sir, I have already told the House that this question was debated in the Minority Committee as well as in the Advisory Committee and we had a very full debate. In spite of this, if our friends desire to postpone this question I must resist .it on the ground that I see no advantage. We had two full debates. I have said that after the debates the Resolution as is being moved was passed and no advantage is to be obtained by postponing this. I do not think that any debate would be useful. If I thought that there was any possibility of any advantage being gained, I would have agreed, but postponement would not. help us at all. This has been passed in two committees not by a very narrow majority and therefore I do not see any advantage. I must say that postponement will simply mean waste of time. I therefore move that this be accepted.

Mr. President: In any case you have to rise at half past four. It automatically has to be postponed.

The Honourable Sardar Vallabhbhai J. Patel: We shall abide by the desire of the House and the ruling of the Chair, but if this is to be put to vote, it will be carried immediately.

Mr. President : But as certain Members have expressed a desire that there should be further discussion, I would not like to disappoint them. They wish to speak about it. We have got a meeting of the Cabinet and some of us have to go there at 5 o'clock. The House stands adjourned till 10 o'clock tomorrow morning.

The Assembly then adjourned till Ten of the Clock on Thursday the 28th August, 1947.

No, CA/24/Com./47.

CONSTITUENT ASSEMBLY OF INDIA

COUNCIL HOUSE,

NEW Delhi the 8th August,1947.

FROM

THE HON 'BLE SARDAR VALLABHBHAI PATEL,

CHAIRMAN ADVISORY COMMITTEE ON MINORITIES

FUNDAMENTAL RIGHTS, ETC.

To

THE PRESIDENT,

CONSTITUENT ASSEMBLY OF INDIA

DEAR SIR,

On behalf of the members of the Advisory Committee appointed by the Constituent Assembly on the 24th January 1947 and subsequently nominated by you. I have the honour to submit this report on minority rights. It should be treated as supplementary to the one forwarded to you with my letter No. CA/24/Com./47, dated the 23rd April, 1947 and dealt with by the Assembly during the April session. That report dealt with justiciable fundamental rights; these rights, whether applicable to all citizens generally or to members of minority communities in particular offer a most valuable safeguard for minorities over a comprehensive field of social life. The present report deals with what may broadly be described as political safeguards of minorities and covers the following points--

(i) Representation in legislatures; joint *versus* separate electorates and weightage.

(ii) Reservation of seats for minorities in Cabinets.

(iii) Reservation for minorities in the Public Services.

(iv) Administrative machinery to ensure protection of minority rights.

2. Our recommendations are based on exhaustive discussion both in the Sub-Committee on Minorities as well as in the main Advisory Committee. From the very nature of things, it was difficult to expect complete unanimity on all points. I have pleasure in informing you, however, that our recommendations, where they were not unanimous, were taken by very large majorities composed substantially of members belonging to minority communities themselves.

Joint versus separate electorates and weightage

3. The first question we tackled was that of separate electorates; we considered this as being of crucial importance both to the minorities themselves and to the political life of the country as a whole. By an overwhelming majority, we came to the conclusion that the system of separate electorates must be

abolished in the new constitution. In our judgement, this system has in the past sharpened communal differences to a dangerous extent and has proved one of the main stumbling blocks to the development of a healthy national life. It seems specially necessary to avoid these dangers in the new political conditions that have developed in the country and from this point of view the arguments against separate electorates seem to us absolutely decisive.

4. We recommend accordingly that all elections to the Central and Provincial legislatures should be held on the basis of joint electorates. In order that minorities may not feel apprehensive about the effect of a system of unrestricted Joint electorates on the quantum of their representation in the legislature, we recommend as a general rule that seats for the different recognised minorities shall be reserved in the various legislatures on the basis of their population. This reservation should be initially for a period of 10 years, the position to be reconsidered at the end of that period. We recommend also that the members of a minority community who have reserved seats shall have the right to contest unreserved seats as well. As a matter of general principle, we are opposed to weightage for any minority community.

5. For two reasons the application of the above principles to specific minorities was considered in detail by the committee. In the first place, it was known to us that minorities are by no means unanimous as to the necessity, in their own interests, of statutory reservation of seats in the legislatures. Secondly, the strict application of the above principles to a microscopic minority like the Anglo-Indian seemed to require very careful examination. We accordingly classified minorities into three groups 'A' consisting of those with a population of less than 1/2 per cent. in the Indian Dominion excluding the States, group 'B' consisting of those with a population of more than 1/2 per cent. but not exceeding 1 1/2 per cent. and group 'C' consisting of minorities with a population exceeding 1 1/2 per cent. These three groups are as follows-

Group 'A'-

1. Anglo-Indians,
2. Parsees.
3. Plains' tribesmen in Assam.

Group 'B'-

4. Indian Christians.
5. Sikhs.

Group 'C'-

6. Muslims.
7. Scheduled Castes.

6. *Anglo-Indians.*-The population of the Anglo-Indian community excluding the States is just over a lakh, that is, .04 per cent. Mr. Anthony on be-half of the Anglo-Indians, contended that the census figures were inaccurate but even admitting a larger figure than the one given In the census, this community is microscopic, and to deal with it on a strictly population basis would mean giving it no representation at all. The representatives of the Anglo-Indians on the committee asked originally that they should have the

following representation in the legislatures:

House of the People	3
West Bengal	3
Bombay	2
Madras	2
C. P. & Berar	1
Bihar	1
U. P.	1

Subsequently they asked that they should be guaranteed two seats in the House of the People and one in each province in which they have representation at present, that is, a total of 8 altogether. After very considerable discussion, in the course of which the representatives of the Anglo Indian community gave full expression to their views, the committee unanimously accepted the following formula, namely, that there shall be no reservation of seats for the Anglo-Indians but the President of the, Union and the Governors of Provinces shall have power to nominate representatives of the Anglo-Indian community, to the lower house in the Centre and in the Provinces respectively if they fail to secure representation in the legislatures as a result of the general election. We wish to congratulate the representatives of the Anglo-Indian community on the committee for not pressing their proposals which would not merely have introduced the principle of special weightage which was turned down as a general proposition by an overwhelming majority but would also have encouraged other small minorities to ask for representation wholly out of proportion to their numbers. We feel sure that by the operation of the formula recommended by us Anglo-Indians will find themselves given adequate opportunity effectively to represent in the legislatures the special interests of their community.

7. *Parsees.*-In the Minorities Sub-Committee, Sir, Homi Modi had urged that in view of the importance of the Parsee community and the contribution, it has been making to the political and economic advancement of the country. Parsees should have adequate representation in the Central and Provincial Legislatures. The Sub-Committee were of opinion that this claim should be conceded. In view, however, of the opinion expressed to him by several members that an advanced community like the Parsees would be adequately represented in any event and did not need specific reservation. Sir Homi had asked for time to consider the matter.

When the issue came before the Advisory Committee, Sir Homi stated that though the committee had already accepted the Parsee community as a recognised minority entitled to special consideration on the same basis as other minorities in Group 'A' he had decided to follow the traditions which the community had maintained in the past and to withdraw the claim for statutory reservation. He assumed that Parsees would remain on the list of recognised minorities and urged that if, during the period prescribed in the first instance for the special representation of the minorities it was found that the Parsee community had not secured proper representation, its claim would be reconsidered and adequate representation provided, if the separate representation of minorities continued to be a feature of the constitution. The Committee appreciated the stand taken by Sir Homi and agreed to his proposal.

8. *Plains'* tribesmen in Assam.-The case of these tribesmen will be taken up after the report of the Excluded and Partially Excluded Areas Sub-Committee is received.

9. *Indian Christians*.-The representatives of the Indian Christians stated that, so far as their community was concerned, they did not desire to stand in the way of nation building. They were willing to accept reservation proportionate to their population in the Central Legislature and the Provincial legislatures of

Madras and Bombay. In the other provinces, they would have the liberty of seeking election from the general seat. They were against any weightage being given to any community, but made it plain that if weightage was given to any minority, in Groups 'B' and 'C'. they would demand similar weightage. As weightage is not being conceded to any community. this means that the Indian Christians are prepared to throw in their lot with the general community subject only to the reservation of certain seats for them on the population basis in the Central legislature and in Madras and Bombay.

10 *Sikhs*.-In view of the uncertainty of the position of the Sikhs at present, pending the award of the Boundary Commission in the Punjab-, the committee decided 'that the whole question of the safeguards for the Sikh Community should be held over for the present.

11. *Group 'c'-Muslims and Scheduled Castes.*--The Committee came to the conclusion that there are no adequate grounds for departing from the general formula in the case either of the Muslims or of the Scheduled Castes. Accordingly it is recommended that seats be reserved for these communities in proportion to their population and that these seats shall be contested through joint electorates.

12. A proposal was made in the committee that a member of the minority community contesting a reserved seat should poll a minimum number of votes of his own community before he is declared elected. It was also suggested that cumulative voting should be permitted. The Committee was of the view that a combination of cumulative voting and a minimum percentage of votes to be polled in a community would have all the evil effects of separate electorates and that neither of these proposals should be accepted.

Representation of minorities in Cabinets

13. Some members of the committee proposed that there should be a Provision prescribing that, minorities shall have reserved for them seats in Cabinets in proportion to their population. The committee came unhesitatingly to the conclusion that a constitutional provision of this character would give rise to serious difficulties. At the same time, the committee felt that the constitution should specifically draw the attention of the President of the Union and the Governors of Provinces to the desirability of including members of important minority communities in Cabinets as far as practicable. We recommend accordingly that a convention shall be provided in a schedule to the constitution on the lines of paragraph VII of the Instrument of Instructions issued to Governors under the Act of 1935 and reproduced below.

> "VII. In making appointments to his Council of Ministers, our Governor shall use his best endeavours to select his Ministers in the following manner, that is to say, to appoint in consultation with the person who in his judgement is most likely to command a stable majority in the legislature those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the legislature. In so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers"

Representations in Services

14. A proposal was made to us that there should be a constitutional guarantee of representation in the public services of the minority communities in proportion to their population. We are not aware of any other constitution in which such a guarantee exists and on merits, we consider, as a general proposition that any such guarantee would be a dangerous innovation. At the same time, it is clear to us that consistently with the need of efficiency in administration, it is necessary for the State to pay due regard to the claims of minorities in making appointments to public services. We recommend, therefore, that, as in the case of appointments to Cabinets, there should be in some part of the constitution or the schedule and exhortation to the Central and Provincial Governments to keep in view the claims of all the minorities in making

appointments to public services consistently with the efficiency of administration.

The Anglo-Indian members of our committee have represented to us that owing to the complete dependence of the economy of their community on their position in certain services and their existing educational facilities, their case required special treatment. We have appointed a sub-committee to investigate this question and to report to us-

15. The minorities' representatives in the committee naturally attached importance to the provision of administrative machinery for ensuring that the guarantee and safeguards provided for the minorities both in the constitution and by executive orders are in fact implemented in practice. After considerable discussion, we have come to the conclusion that the best arrangement would be for the Centre and for each of the Provinces to appoint a special Minority Officer whose duty will be to enquire into cases in which it is alleged that rights and safeguards have been infringed and to submit a report to the appropriate legislature.

16. We have felt bound to reject sortie of the proposals placed before us partly because, as in the case of reservation of seats in Cabinets, we felt that a rigid constitutional provision would have made parliamentary democracy unworkable and partly bacause, as in the case of the electoral arrangements we considered it necessary to harmonise the special claims of minorities with the development of a healthy national life. We wish to make it clear, however, that our general approach to the whole problem of minorities is that the State should be so run that they should stop feeling oppressed by the mere fact that they are minorities and that, on the contrary, they should feel that they have as honourable a part to play in the national life as any other section of the community. In particular, we think it is a fundamental duty of the State to take special steps to bring up those minorities which are backward to the level of the general community. We recommend accordingly that a Statutory Commission should be set up to investigate into the conditions of socially and educationally backward classes, to study the difficulties under which they labour and to recommend to the Union or the Unit Government, as the case may be, steps that should be taken to eliminate their difficulties and suggest the financial grants that should be given and the conditions that' should be prescribed for such grants.

17. A summary of our recommendations is attached in the Appendix.

Yours truly,

The 8th August 1947.

VALLABHBHAI PATEL

Chairman

APPENDIX A

REPRESENTATION IN LEGISLATURES

1. *Electorates*.-All elections to the Central and Provincial Legislatures will be held on the basis of joint electorates

Provided that as a general rule, there shall be reservation of seats for the minorities shown in the schedule in the various legislatures on the basis of their population.

Provided further that such reservation shall be for 10 years, the position to be reconsidered at the end of the period.

SCHEDULE

Group: A.-Population less than 1/2 per cent. in the Indian Dominion, omitting States.

1. Anglo-Indians.

2. Parsees.

3. Plains' tribesmen in Assam.

B. -Population not more than 1 1/2 per cent.

4. Indian Christians.

5. Sikhs.

C. -Population exceeding 11/2 per cent.

6. Muslims.

7. Scheduled Castes.

2. *Anglo-Indians.*-(a) There shall be no reservation of seats for the Anglo-Indians, but the President of the Union and the Governors of Provinces shall have power to nominate their representatives in the Centre and the Provinces respectively if they fail to secure adequate representation in the legislatures as a result of the general election.

Parsees. (b) There shall be no statutory reservation in favour of the Parsee Community, but they would continue to remain on the list of recognized minorities :

Provided that if as a result of elections during the period prescribed in proviso 2 to para. 1 above it was found that the Parsee Community had not secured proper representation, their claim for reserved seats would be reconsidered and adequate representation provided should the separate representation of minorities continue to be a feature of the Constitution.

Note.-The above recommendations represent the view taken by the representatives of the Parsee Community.

3.*Indian Christians.*-(a) There shall be reserved representation for Indian Christians in proportion to their population in the Central Legislature and in the Provincial Legislatures of Madras and Bombay. In other provinces, they will have the right to seek election from the general seats.

Sikhs -(b) The question of minority rights for the Sikhs will be considered separately.

Muslims and Scheduled Castes.--(c) There shall be reservation of seats for the Muslims and Scheduled Castes in the Central and Provincial Legislatures on the basis of their population.

4. *Additional right to minorities.*-The members of a minority community who have reserved seats shall have the right to contest unreserved seats as well.

5. *No weightage.*-The minorities for whom representation has been reserved will be allotted seats on their population ratio, and there shall be no weightage for any community.

6. *No condition for a minimum number of votes of one's own community.*-There shall be no stipulation that a minority candidate standing for election for a reserved seat shall poll a minimum number of votes of his own community before he is declared elected.

7. *Method of voting.*-There may be plural member constituencies but cumulative voting shall not be permissible.

REPRESENTATION OF MINORITIES IN CABINETS

8. *No reservation for minorities.*- (a) There shall be no statutory reservation of seats for the minorities in Cabinets 'but a convention on the lines of paragraph VII of the Instrument of Instructions issued to Governors under the Government of India Act, 1935 shall be provided in a Schedule to the Constitution.

**VII. In making appointments to his Council of Ministers our Governor shall use his best endeavours to select his Minister in the following manner, that is to say, to appoint in consultation with the person who in his judgment is most likely to command a stable majority in the legislature those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the legislature. In so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.

RECRUITMENT IN SERVICES

9. *Due share to all minorities guaranteed.*-In the all-India and Provincial Services, the claims of all the minorities shall be kept in view in making appointments to these services consistently with the consideration of efficiency of administration.

(NOTE.--Appropriate provision shall be embodied in the Constitution or a schedule thereto to this effect.)

10. *Position of Anglo-Indian community.*-Owing to the complete dependence of the economy of the Anglo-Indian community on their position in certain services and their existing educational facilities, a subcommittee consisting of the following members has been appointed to submit a report:

1. Pandit G. B. Pant.
2. Mr. K. M. Munshi.
3. Mrs. Hansa Mehta.
4. Mr. S. H. Prater, and
5. Mr. F. R. Anthony.

WORKING OF SAFEGUARDS

11. *Officer to be appointed*.-An Officer shall be appointed by the President at the Centre and by the Governors in the Provinces to report to the Union and Provincial Legislatures respectively about the working of the safeguards provided for the minorities.

12. *Statutory Commission for backward classes*.-Provision shall also be made for the setting up of a Statutory Commission to investigate into the conditions of socially and educationally backward classes, to

study the difficulties under which they labour and to recommend to the Union or the Unit-Government, as the case may be, the steps that should be taken to eliminate the difficulties and the financial grants that should be given 2nd the conditions that should be prescribed for such grants.

APPENDIX 'B'

No. CA/60/Com./47.

COUNCIL HOUSE,

New Delhi, the 25th August, 1947.

FROM

THE HONOURABLE SARDAR VALLABHBHAI PATEL,

CHAIRMAN, ADVISORY COMMITTEE IN MINORITIES,

FUNDAMENTAL RIGHTS, ETC.

TO

THE PRESIDENT,

CONSTITUENT ASSEMBLY OF INDIA.

SIR,

I have the honour to refer to paragraph 14 of my letter No. CA/24/ Com. 47, dated the 8th August and to submit this supplementary report on the position of Anglo-Indians in certain services and the grant of special educational facilities for them. This report is based on a consideration of the findings of a sub-committee appointed by us.

2. (a) Position of Anglo-Indians in certain services:

We find that, as a result of historical circumstances the whole economy of this community is at present dependent on finding employment in certain types of post in the Railways, tile Post and Telegraphs and the Custom Departments. A recent survey conducted by the Provincial Board for Anglo-Indian Education in Bombay showed that 76 per cent of the employable section of the community there were dependent for their livelihood on these appointments. We believe that the position is almost the same all over India; the total number of Anglo-Indians at present employed in these three departments being about 15,000. The special reservation ,,liven to them in the Government of India Act, 1935 does not however extend to all the categories of posts in these departments, but only in those with which they have had long past associations. In view of this we feel that if the existing safeguards in this regard are not continued in some form for some years to come, the community will be subjected to a sudden economic strain which it may not be able to bear. We therefore recommend that:

> (i) The present basis of recruitment of Anglo- Indians in the Railways, the Posts and Telegraphs and the Customs Departments shall continue unchanged for a period of two years after the coming into operation of the Federal Constitution. After that, at intervals of every two, years, the reserved vacancies shall be

reduced each time by 10 per cent. This shall not however bar the recruitment of Anglo-Indians in the categories of posts in which at present they have reserved places over and above the prescribed quota of reserved appointments, if they are able to secure them on individual merit in open competition With other communities. It shall also in no way prejudice their recruitment on merit to posts in these departments, or any other in which they have not been given a reserved quota.

(ii) After a period of ten years from the date of the coming into operation of the Federal Constitution all such reservations shall cease.

(iii) In these services there shall be no reservation for any community after the lapse of 10 years.

(b) special educational facilities or Anglo- Indians.

There are at present about 500 Anglo-Indian Schools in India. The total Government grant to these schools is about Rs. 45 lakhs being approximately 24 per cent. of the expenditure incurred by the schools. We feel that a sudden reduction in the grant will seriously dislocate the economy of these schools; and that it would only be fair to bring them gradually into line with other similar educational institutions after giving them sufficient time and opportunity to adjust themselves to the altered conditions now prevailing in the country. We also feel that in this way these institutions might become a valuable educational asset which would cater to the growing educational needs of the whole nation and not only to those of the Anglo-Indian community. We accordingly recommend that:

(i) the present grants to Anglo-Indian education made by the Central and Provincial Governments should be continued unchanged for three years after the coming into operation of the Federal Constitution.

(ii) After the expiry of the first three years, the grants may be reduced by 10 per cent and by a further 10 per cent after the 6th year and again by a further 10 per cent after the ninth year. At the end of the period of 10 years, special concessions to Anglo-Indian schools shall cease.

(iii) During this 10 years period, 40 per cent of the vacancies in all such state aided Anglo-Indian schools shall be made available to members of other communities.

The term 'Anglo-Indian' used in this Report has the meaning given to it in the Government of India Act, 1935.

Your sincerely,

VALLABHBHAI PATEL

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME V

Thursday, the 28th August 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

MEMBERS TAKING THE PLEDGE

The following Members took the pledge--

Professor N. G. Ranga.

Shri K. Kamaraja Nadar, M. L. A.

REPORT ON MINORITY RIGHTS

Mr. B. Das (Orissa : General) : Sir, on a point of order. Yesterday the House passed Clause 1 (a) which was moved by Mr. K. M. Munshi to define the Scheduled Castes as part of the Hindu Community. Sir, to that I moved an amendment.

Mr. President: I may tell you, Mr. Das, that we are not drafting the statute today. If there is anything which is not quite accurate in the description, the draftsman will put it right. So we need not worry about that. It is a purely technical matter.

Mr. B. Das: Schedule I does not exist from 15th August. It has been omitted in the Adaptation Act (The India Provisional Constitution) Order, 1947.

Mr. President: Even if it does not exist, I think the draftsman will understand what is meant.

Shri Gopikrishna Vijayavargiya (Gwalior State) : Sir, Members from Bengal feel that if right to contest additional seats to minorities is given n Western Bengal it will infringe the position there, and disturb the whole proportion. I request that question may be deferred for later consideration.

Maulana Hasrat Mohani (United Provinces: Muslim) : May I know how, at this time when members of the Congress High Command and members of the minorities talk of the Minorities Report, they always mean by minority Muslims only ? I refuse to accept Muslims to be a minority. Now you say you have done away with this communalism. Are we not calling a minority to refer only to Muslims ?

Mr. President: I am afraid I have not followed what the Honourable Member is saying.

Maulana Hasrat Mohani: Sir, I did not take any part in the discussions about this Minority Report purposely. My idea was ......

Seth Govinddas (C. P. and Berar : General) : Sir, may I know what Item we are discussing ?

Mr. President: There is no item under discussion; I thought the Maulana was raising a point of order. The Honourable Member should mention his point and then make his speech if necessary.

Maulana Hasrat Mohani : Sir, I have got a very fundamental objection to this Minority Report. How is it that when you talk of minorities you mean Muslims only and when you talk of reservation you refer to Muslims only ?

Mr. President: I am afraid I cannot allow the Honourable Member to speak at random because there is nothing that we are discussing at this stage.

Maulana Hasrat Mohani: I am saying that, when we talk, of minorities how is it that Muslims only are referred to as a religious minority ? The Muslims refuse to be called a minority if parties are formed on political line.

Mr. President: I think the Honourable Member is discussing the merits of a matter which has already been discussed and passed.

Maulana Hasrat Mohani: That is what I wanted to say.

Mr. President: We were discussing Clause 4 of the Appendix yesterday and we will now take up the amendments.

Mr. Debi Prasad Khaitan (West Bengal : General) : Sir, in connection with this I have an amendment, No. 44, which is related to paragraph 4 of the Report which is also Clause 4 of the Appendix. If you allow me to move that at the proper time I shall be obliged. And if you wish me to move it now I am prepared to do it.

Mr. President: Yes, you can move it.

Shriyut Rohini Kumar Chaudhury (Assam : General) : Sir, according to the order paper we should discuss the fundamental rights first and then take up the consideration of any other matter.

Mr. President: We are discussing this first,

Mr. Debi Prasad Khaitan: Sir, I move:

"That with reference to paragraph 4 this Assembly recommends that owing to seats shall not have the right to contest unreserved seats."

I have collected certain figures which go to show that the aggregate Population of scheduled castes and Muslims constitute about half of the total population. If to the figures that I have added together for Burdwan Division, Presidency Division and Jalpaiguri and Darjeeling districts, the fiqures of Murshidabad, Nadia and Dinajpur which have come over to West Bengal be added, the total figures of scheduled castes and Muslim will be still more adverse to the rest of the population. Therefore if will be very unjust and unfair if the communities for whom reservations have been made are allowed to contest still more seats out of the. unreserved ones. It may be remembered that the general population apart from the scheduled castes...........

Mr. H. J. Khandekar (C. P. and Berar General) : Sir, on a point of order, we passed a clause yesterday to the effect that the scheduled castes are a part and parcel of the Hindu community and not a minority. So the present amendment and the Mover's speech making the scheduled castes a minority is, I think, out of order.

Mr. Debi Prosad Khaitan: I submit, Sir, that what I am referring to is communities or a section of a community for whom reservations have been made. Whether they are called minorities or a section of the Hindus, the position is not disturbed at all. I am not referring to scheduled castes as a recognised minority but as that section of the Hindu community for which reservation is made. Therefore I submit that I am not at all out of order.

The position is that the general population after taking into account the scheduled castes and Muslims will be about half or just more than half. Further I intend to submit that the general population, after the scheduled castes and Muslims have got their reserved seats, would like to give some seats to Indian Christians, Buddhists who are a large number in Bengal, and other communities to which some of the seats should more properly go than those communities who have already got reservation. I submit that this matter requires further consideration at our hands. So I am moving this amendment and I believe Mr. Munshi will make a recommendation that just as the case of East Punjab has been reserved for further consideration. the case of West Bengal in these circumstances should also be kept back for further consideration. I would be willing to accept that suggestion.

Sir, I move.

(Shri Mohanlal Saksena and Prof. Shibban Lal Saksena did not move their amendments.)

Mr. President: As this is the only amendment that is moved, the matter is now open for discussion.

Mr. K. M. Munshi (Bombay : General) : Mr. President, Sir, the amendment moved by my Honourable friend, Mr. Khaitan was moved only with a view to I state that the case of West Bengal may be considered afresh. And I understand that the Honourable Mover of the Report is going to accept it in that. form only. The reason for this is that the figures for the new West Bengal that were placed before the Mover of the Resolution were not accurate. At least there is some discussion as to whether the figures are accurate or inaccurate. If the figures are inaccurate then this question may require some kind of consideration later on. Then why precipitate a decision on the figures which are not correct ? Therefore it is felt advisable to leave the case of West Bengal to be considered later on when all the figures have been properly collected. That is whole purpose of this amendment. It does not seek to make any change in the body of Clause 4 so far as the whole of India is concerned; except that as the case of

East Punjab for consideration has been accepted, that of West Bengal also may be considered afresh.

Pandit Lakshmi Kanta Maitra (West Bengal: General) : Mr. President, Sir, I would like to say a few words in connection with the amendment which has been just moved. I want to tell this House and particularly my friends of the Scheduled Castes and other minorities that the object of this amendment is not to frustrate or to defeat the object which is embodied in the Minority Committee's Report. But the House should at the same time realise that the position of West Bengal and of East Punjab today is entirely different from that of the rest of India, as a result of the partition of the country, and particularly after the Radcliffe Award which in many respects varies from the national award. Most of the members from Bengal are not in a position to understand here and now what exactly has been the result and what west Bengal's population now consists of. If we compare the statements contained in the Radcliffe Award with what is stated here, we find considerable divergence in the matter of figures. Nobody knows exactly what is the population of West Bengal now under the Radcliffe Award. Therefore, instead of precipitating a decision just now, we may stay our hands for the present, so that when we are in full possession of the statistical data with regard to the newly formed provinces of West Bengal and East Punjab, we may be in a position to decide their case in a proper manner. The House has already accepted this suggestion in the case of East Punjab. We now submit that the House will bear with us, and that, the case of West Bengal Also may be fully and carefully considered with all the available data that may be in our possession within a few days. I may tell the House that the Radcliffe Award is so illogical and arbitrary that in some cases the domestic households of persons have been in the Indian Union while their able lands are in Pakistan. So We are not in a position to know what area is meant When we simply see the word Pakistan or Indian Union mentioned. We do not know what portion is in Pakistan and what portion is in Hindustan, and what is the relative population in either part. What all these considerations in view, we have now come to the conclusion that for doing justice for all parties concerned the question of West Bengal should stand over for the present This is all that is demanded in the present motion. There is no Idea of going behind the principle that we have accepted. With these few word I support the amendment.

Mr. Naziruddin Ahmad (West Bengal: Muslim) : Mr. President, Sir, I do not here want to say anything on this delicate question that may raise any controversy. I only desire to draw the attention of the House to certain aspects of the matter, and I hope the Honourable the Mover of the Report will kindly consider them; but whatever the decision of this House may be, it Will be loyally and cheerfully accepted.

Sir, the effect of this amendment would be that in West Bengal some minorities, excluding the Scheduled Castes who have now been treated as a separate class feel that they would lose the sentimental right or advantage of contesting the unreserved seats. The principal object, so far as I can see, in providing for the right of the minorities to contest unreserved seats seems to be to induce them to give up their privileges of reservation of seats, as quickly as possible. In fact, if there was no reservation, the position would be that they may get more seats in certain constituencies than otherwise but only if the majority community favours them. This is thus an inducement thrown out to the minorities to give up their claim for reservation. In fact, the Hindus being in a great majority in West Bengal, they would have had the choice of electing an additional member of the minority group to the unreserved seat. It would be entirely in their hands. So the amendment would, Seek to deprive the situation of that condition. I submit that it, would be better to keep the original paragraph as it stands rather than to accept this amendment. But I make my submission with regard to this only to request Honourable Sardar Patel to consider the same.

With regard to the minorities, the Scheduled Castes as I pointed out a moment ago now form a different class altogether. Practically the only minority that remains and that will be affected by the amendment will be the Muslim community. If the Hindus would cheerfully elect a Muslim to an additional seat, that would be entirely for them to say; and if they think that a particular Muslim for nationalistic reasons or for reasons of efficiency etc., if they think that they should elect him, that is their business. If they think that they would not elect an additional Muslim to an unreserved seat, they can always do so. But I think the right of the electorate should be left absolutely untouched and a legislative prohibition should not be introduced. It is on grounds of high policy that I speak and not on narrow grounds of getting or losing one or two seats. One or two seats would not matter. What matters is the sentimental gesture to the minorities. This is, a situation which deserves very careful consideration from the point of view of long-range politics.

Shri Upendra Nath Barman (West Bengal: General) : Mr. President, Sir, I had no intention to oppose this motion, but I have to stand up today before this House because of some observations made by the Mover of the Resolution in the course of which he insinuated that after the Radcliffe Award and the partition of Bengal, West Bengal will have almost 50 per cent or exactly 50 per cent of population within the Scheduled and Muslim communities, and therefore he wants to defer this matter and appoint a Committee. My submission is that this is a reflection upon the Scheduled Castes which we all have been trying for so long to shake off altogether. I submit that we, the Scheduled Castes, have joined wholeheartedly in this constitution-making not only from outside but as members of the Congress, because we know that whatever may be our shortcomings during this period of our dependence whatever crimes we may have imbibed during our unfortunate period, there had been born men amongst us, specially of Bengal I can say like Vivekananda and Rabindranath Tagore who inspired in us the faith and hope of rejuvenation of India. Now, during the course of my taking part in this Constituent Assembly and the various Committees, I am confirmed in, my belief that after all the genius of India has not forsaken her in her hour of need. We have complete faith in the sagacity of the majority community for the time being I call them.

Sir, this independence has been won by the Congress with the help of those who had the keenest of vision, the highest of wisdom, the straightest of limb and the staunchest of spirit. We have full faith in their impartiality when they take the reins of office in their own hands, and we have full faith 'that they will amply discharge their duty of enlivening India, of lifting her to the standard of such a height that she might take her rightful place among the comity of nations. But at such a time, unfortunately one of my friends from Bengal speaks and speaks in such a way that it pains us. So I have the painful duty to remind him that this is not the way to gain faith. After all, Sir, what are you going to do? I have no objection to putting off this matter to a later date to, consider the whole position of West Bengal. I have no doubt that this Assembly on whom rests so much responsibility will come to the same decision as we are going to adopt, perhaps according to the decision Of the minority committee. But still some friends from Bengal think that their decision should be reconsidered I have no objection to that. After all, after this Radcliffe Award and the division of Bengal, the

Muslims have got a minority; there can be absolutely no doubt about it. I do not worry for a moment about any seat outside the reserved quota because I know full well that even in the reserved quota the minority will have to depend upon the majority votes, i.e., the Caste Hindus. Our revered leaders have told us time and again that this blot within the Hindu community, the Scheduled Castes must go so that we can rise as a nation. I fully endorse that view. But, my submission is that in the interim period, so long as this distinction remains the Scheduled Castes will depend upon the majority community. So if in any case outside the reserve quota, any Scheduled Caste member or a Muslim member so to speak, wants to contest a seat, he will have to depend upon the sympathy and faith of the bigger community. So from my point of view, I do not worry at all whether outside the reserve seats any seat be allowed to be contested by the Scheduled Castes, but as a matter of principle when you are going to accept the principle for the rest of the Provinces, do you mean to say that this august Assembly will make an exception in the case of Bengal or any particular province I think not. However, I leave it to the House to defer this matter or not.

The Honourable Sardar Vallabhbhai J. Patel (Bombay : General) Mr. President, Sir, there is only one amendment to Clause 4. The members of the minority community have reserved seats and those who have reserved seats will have right to contest unreserved seats as well. The amendment moved today by Mr. Khaitan, which has been amended by Mr. Munshi seeks that line the East Punjab the question of West Bengal be held over. There is no reason either for the Scheduled Caste people or other people to have any suspicion about it. When the East Punjab question will be examined, the West Bengal question will also be examined. Nothing will be done behind their back and nothing will be taken away without their consent or without their knowledge. It has still to be seen what the actual effect of the, population and proportion will be. Therefore, when we have made the Schedule which we have passed for giving safeguards in connection with franchise and elections, we have fixed them on the basis of population and strength. If really the population is, so much so far as any minority is concerned, that they need not have any such additional right to contest, if it is such as would affect the majorities seriously so as to reduce it to an ineffective majority, then it is a case for consideration. So if it only suggested, as is suggested in the amendment, that this question be held over and be considered along with the question of East Punjab, then there is no need for any apprehension. There need be no doubt about the sincerity of the people who have given these concessions, and in substance they will stand by it. Therefore, I have no hesitation in accepting the amendment and I move that Clause A may be accepted.

Mr. President: There is only one amendment, the effect of which is that the question of West Bengal may be held over for consideration at a later date. The Mover has accepted it. Do I take it that the House, accepts that suggestion ?

Honourable Members: Yes.

Mr. President : Then, I put Clause 4, as amended, to vote.

Clause 4, as amended was adopted,

CLAUSE 5

The Honourable Sardar Vallabhbhai J. Patel: Clause 5--

> "The minorities for whom representation has been reserved will be allotted seats on their population ratio, and there shall be no weightage for any community."

I don't think that there need be any debate on this question now as it has been fully discussed in the Press and also in the Committee and I don't think there will be any body who will differ from it. Sir, I move this for the acceptance of the House.

Mr. President: There are two amendments to this (Messrs. Tajamul Husain and H. J. Khandekar did not move their amendments.) I put the clause to vote.

Clause 5 was adopted.

CLAUSE 6

The Honourable Sardar Vallabhbhai J. Patel: For the subsequent clauses also there will be no amendments I suppose Clause 6--

> "No condition for a minimum number of votes of one's own community. 'There shall be no stipulation that a minority candidate standing for election for a reserved seat shall poll a minimum number of votes of his own community before he is declared elected'."

This question has also been considered very often even in the past and it is another form of separate electorates being introduced and it has been considered and in view of the change in the situation there is no need for introducing any such thing. We have agreed no such reservation of percentage is necessary. Sir, I move the clause for the acceptance of the House.

(Messrs Tajamul Husain and V. C. Kesava Rao did not move their amendments.)

K. T. M. Ahmed Ibrahim Sahib Bahadur (Madras: Muslim): Amendment No. 4 was given notice of by Mr. Pocker Saheb and myself and it refers to this clause.

Mr. President: I will take it up later. Mr. Nagappa.

Shri S. Nagappa (Madras: General) : Mr. Chairman, Sir, I want to bring to the notice of the House that in the case of Scheduled Classes before they are declared elected to the seats reserved for them, I would request that a certain percentage of the votes of that community the candidates must be able to poll. I know, Sir, that that gives a kind of prestige and leadership to the candidate who comes from that community. For instance today if we are elected to reserved seats, when there is agrarian trouble, when the Harijans and the agriculturists are at loggerheads and when we go and appeal to these people these Harijans they say "Get out man, you are the henchmen and show-boys of the caste Hindus. You have sold our community and you have come here on their behalf in order to cut our throats. We don't accept you as our representative." Sir, in order to avoid that what I suggested is that a certain percentage of the Harijans must elect the candidate so that he may be able to tell them that he has, the backing of some Harijans and he will have the prestige and voice as their representative. That prestige and voice he should have.

Mr. H. J. Khandekar: Is the Mover moving his amendment or is he making a speech ? He must declare whether lie is moving or not?

Mr. President: Are you moving the amendment or not?

Shri S. Nagappa: Yes, I am moving the amendment.

The Honourable Mr. B. G. Kher (Bombay: General) : Yesterday the Honourable Member congratulated Sardar Patel for being firm and refusing to accept this. Now he is moving this amendment.

The Honourable Sardar Vallabhbhai J. Patel: He is moving it only to make a speech and then withdraw it, *(Laughter).*

Mr. President: Every member has a right to be inconsistent.

Shri S. Nagappa: Sir, I would explain how this does not amount to separate electorates.

Shri Mohan Lal Saksena (United Provinces: General): Let him move his amendment first, and then let him speak.

Mr. President: It makes no difference when he says he moves it. Mr. Nagappa you please read out the amendment.

Shri S. Nagappa: The amendment is as follows:--

"That the following be added at the end of para. 6:--

> 'Provided that in the case of the Scheduled Castes the candidate before he is declared elected to the seat reserved for the Scheduled Castes, Shall have secured not less than 35 per cent. of the votes polled by the Scheduled Castes in the election to the reserved seat'."

Now Sir, I would explain to you how it does not work out to separate electorates.

Mr. K. M. Munshi: Does the Honourable the Mover of the amendment wish to mote the amendment or is he going to withdraw it ?

Mr. President: He has said he wants to move it.

Shri S. Nagappa: For instance there are four candidates that are seeking election to the reserved seats. Now let us take it there are 100 Scheduled Caste votes and let us assume all the 100 Scheduled Caste voters comes and vote. A gets 36 and B gets 35, this comes to 71. Only 29 is there for the other. Now you need not take that man at all into consideration who has polled only 29 per cent. Now again you need not have two elections. You can distribute two coloured papers to the voters come and vote. A gets 36 and B gets 35, this comes to 71. Only placed only for the Scheduled Caste candidate and if one gets more than 35 per cent, of the Scheduled Caste votes, or coloured votes, you need not take the other man into consideration at all.

Sir, even if he gets 36 per cent. but does not get the highest number of votes in the general election he should not be declared elected. As it is, if X gets 36 per cent. of the votes of the community and Y gets only 35 per cent., if the former does not get the majority of votes of the other communities at the election he is declared to be defeated and the latter though he gets only lesser number of votes of his own community, is declared elected; if he gets more votes than, X at the general elections, been declared elected. After all the election is completely in the hands of the general constituency or community. According to the Poona Pact you have allowed four candidates tot elected at the primary elections. This means that a man who gets 25 per cent. of the votes is declared elected to the panel where you have allowed cumulative Voting. That is almost separate electorate I do not want separate electorates. I know the evils of separate electorates. I am for joint electorates. But, while seeing that joint electorates are there, let us not put the Harijan representatives in disfavour with their community who, as it is, call them show-boys of the general community. If a provision of the kind I am advocating is adopted, we can face the people of our community and tell them "Look here, we have been elected also by a majority of 35 per cent. of the members of our own community. We are not show-boys". By my amendment I am only seeking to reduce the panel from four to two and providing for the election Of the, person who gets the majority of votes of the general community. I would request Members to think over it without prejudice.

I thank you, Sir, for giving me an opportunity to move my amendment.

K. T. M. Ahmed Ibrahim Sahib Bahadur: Mr. President, Sir, I move:

"That on a consideration of the Report of the Advisory Committee on minorities, fundamental rights, etc. on minority right this meeting of the Constituent Assembly resolves that in case the elections to the Central and Provincial Legislatures are to be held on the basis of joint electorates for all commmunities with reservation of seats. for minorities, the election should be held on the following basis.":--

I am not moving (a)--

"Out of the candidates who have secured at, least 30 per cent. of the votes polled of their own community the candidates. who secures the highest number of votes polled on the joint electoral roll shall be declared elected. In case there is no candidate, who has secured not less than 30 per cent. of the votes polled of his own community, then out of the two candidates who Secures the highest number of votes of their own community, that candidate' shall be declared elected who secures the highest number of voter of the total votes polled."

Mr. President, this amendment is in-tended to secure the fulfilment in a satisfactory manner of the object of the reservation of seats accorded to the minorities by Clause 1. If a person is elected to the reserved seat by a constituency it will generally be presumed that that person represents the members of that community and that he would reflect the views and the opinions of that particular community in whose favour that seat has been reserved in that constituency. Now, Sir, for that person to represent in any adequate manner that particular community, he must command the confidence of that community. We want therefore that if he does not command the confidence of the majority of the community, he must have the confidence of at least 30 per cent. or even less of the voters of that community who went to the poll. This, will concede. Sir, is a very reasonable request. It is a fundamental you and vital right of every citizen in every form of democracy that his. views and opinions must be given expression to on the floor of the Legislatures of the country. How can any citizen be confident that his views will be adequately represented an the floor of the House if the person sent to the legislature does not have the confidence of at least a fair proportion of the members of the community, if not the majority of that community ? You will also remember, Sir, that a provision of of this nature was, adopted by general agreement at the Third Unity Conference held at Allahabad in December 1932, i.e., as a result of the agreement reached between all the communities and parties in this land.

My amendment is only an adaptation of the agreement which was arrived at on that occasion. I wish to Point out, Sir, that if there is no such provision, the person who is elected to the reserved seat cannot be expected to represent the views of the community in whose, favour that seat has been reserved. It would be imposing on a community a a who has been virtually elected by another community to represent the community which has been given the benefit of reservation, of mats, but has not been elected by it. Now it is too late in the day to contend that there are no minorities in this country and that there am no special interests of minorities to be safeguarded. The very appointment of the Advisory Committee no, Fundamental Rights and on Minorities and the Minorities Sub-Committee presupposes the existence of minorities and their special interests. The Report also has proceeded on the assumption that there are certain interests of minorities to be protected. Therefore I say this House would not now take up the position that there are no minorities and there are no special interests to be provided for. Now, the issue as to how best to give protection to these minorities has to be considered. One of chief problems of modern democracy is how best to temper the rigours of the majority in order that the minorities may be protected from such rigours.

Now, Sir, in this age the divine right of kings has given place to the divine right of the majority, as has been put by a jurist. Our aim must be how best to temper the rigours of the majority in order that the minorities may have confidence in the majority, and in the constitution framed by the majority and may work out the constitution with all sincerity and honesty of purpose. We are assembled here as citizens of the State to frame a constitution in such a manner as to assure all sections of the population of their rights and to infuse confidence in the minds of all the sections of the population that their rights will be safeguarded. This amendment does not go any further than this, that in respect of the election of all representatives who are expected to reflects the views of a particular minority or community at least a fair proportion of the voters of that particular minority or community should have voted for the said representatives. This is a very legitimate request and by passing this amendment, Sir, we are not taking away the right of the majority to finally determine the representative of the constituency. Therefore, Sir, I appeal to this House to dispose of this question, in the words of the Honourable Mover "in an atmosphere of friendliness". As the Honourable Mover rightly said "we must leave behind us the legacy of bitterness" arid we must look at this question devoid of all passion. I am anxious, Sir, that this matter should be considered in an atmosphere of extreme calm. Left to myself I would have wished that this Report no the Rights of Minorities was considered at a time when this country was free from all passion and the heat of the moment has subsided and died down, but unfortunately it has been taken un now. I appeal to you, following the appeal of the Honourable Mover, to conorder this question in a dispassionate manner and not to import any heat. After all we request that the members of the minority community should be afforded the necessary facilities in order that the representatives elected in their name for the purpose of speaking on their behalf may have the confidence of a fair proportion of the voters. There is nothing anti-national in it and there is nothing fundamentally wrong. On the other hand it would be granting one of the fundamental and vital rights of every citizen in any form of democracy that he should have the right to have this views represents in the parliament of the country by a person in whom he has got confidence and the members elected by the minority will after all be in a minority and the minority will not be able to dominate over the decisions of the majority in the lagislature. The only purpose, is that the views and opinions of the minorities and the other communities may be refleceted on the floor of the House in a proper manner by a person in whom those communities have got confidence at least to a limited extent. This is the purpose of this amendment and I do not know how it will infringe on the rights of the majority or bow it will convert the majority community into a minority in any manner.

Well, Sir, for the successful working of any constitution, there must be confidence created in all sections of the population by the constitution framed. We desire that the independence that has been achieved the new-born independence must be independence and freedom for all sections of the population and this can be achieved only if the constitution to be framed by this House secures the freedom and independence of all sections of the people and infuses confidence I in the minds of the members of all sections. My amendment is a step in that direction, and I submit this is the surest way to foster harmony, good-will, cordiality and amity between the various sections and communities. The pre-requisite for the creation of harmony and cordiality between the various sections of the population is the creation of confidence in, the minds of the various sections of the population and therefore it is that I appeal to this House to remember that after all we want only that the representatives may be elected by a fair proportion of voters of the particular communities. Well, Sir, I would like to point out that the system of proportional representation by a single transferable vote is an accepted. method of election in all democracies and this very House has accepted the said method in respect of certain elections to be held in pursuance of this country was free from all passion and the, neat of the moment has the constitution we are framing and this amendment is only an approach towards the system of proportional representation by single transferable, vote and therefore, I hope, Sir. that this House, will accept this amendment. I am glad that the same feeling was also expressed by my Honourable friend Mr. Nagappa on behalf of the Scheduled Castes. You will see that we are not actuated by any malice or ill-will against anyone, but we only desire that there should be, confidence in the minds of the, minorities that their views are properly represented in the legislature by persons in whom they have confidence and in whose election they have a reasonably fair voice. I commend my amendment for the acceptance of the House.

Shrimati Dakshayani Velayudan (Madras: General) Mr. President I find that for the Motion four Members have given their names and first comes the name of the Honourable Dr. B. R. Ambedkar. I am surprised to find that a Member who came in as result of a joint electorate came forward to move this amendment whereas a member who, was all the while standing, for separate electorates and for the so-called percentage is not to be seen in the House to-day. If there was any sincerity in moving this amendment we could have found the person who headed the list, and I do not know why another member took up that responsibility. There may be some reason behind the scene. The Mover of the amendment, Mr. Nagappa, said when they come to, the Assemblies as a result, of joint electorates they may not be coming With the votes of the community and so they are not entitled to represent the community. If Mr. Nagappa, thinks that he has come here as a result of such an election, the wisest and the best thing that he ought to do would be to withdraw his candidature or his membership from this Assembly and the Provincial Assemblies (*Hear, hear)*. If anybody thinks that he is unfit to speak for the community when he comes on the vote of the community or the vote of the people in general, the best way to do service to the community is to disappear from the scene and not to take part in any political activities whatsoever and I think Dr. Ambedkar was wise enough to be absent on the occasion because he knew that this is not going to be carried in the Assembly today or on any day. As the Chairman of the, Minority Committee spoke yesterday these things were passed in the committee by majority of votes and, whatever reasons that he may bring forward here, it may not be carried out. So without wasting his time, he has gone for his work as he is engaged in Cabinet work. Somebody has come forward with an excuse that if this form of electorate exists, the real representatives of the people will not be able to come. If we analyse the demand for a percentage of the votes of the community, we will come to the conclusion that it is nothing but unadulterated separate electorates *(Hear, hear).* I must ask the Honourable Members who moved the amendment whether they are giving any meaning to the votes that. will be cast by the members of other communities. In practice, we have to take into account only the votes that will be cast by the community. If a candidate gets 34 per cent. and another date 35 per cent. of the votes of his community, if the first candidate gets 200 cites from the general public and the next candidate gets 100 votes from the general public, and if we take into account the percentage of votes cast by the community, certainly the second candidate Should be elected. Then it comes to this that there will be no meaning to the votes cast by other communities though it amounts to double the number of votes which the second candidate gets from the general people.

Then there is another reason for my opposing this amendment. Even if the Harijans are given this percentage of votes, and this kind of electorate system, the Harijans are not in a position to withstand the attractions that they will have to face at the time of elections. So many parties can set up candidates and they can purchase the Harijans and put up any candidate they desire, and any candidate can come up in the assembly and certainly he may not represent the community though he may get percentage of votes that is desired by this system. Along as the Scheduled Castes, or the Harijans, or by whatever name they may be called, are economic slaves of other people, there is no meaning demanding either separate electorates or joint electorates or any other kind of electorates with this kind of percentage. (Cheers). Personally speaking, I am not in favour of any kind of reservation in any place whatsoever. *(Hear, hear)*. Unfortunately, we had to accept all these things because the British Imperialism has left some marks on us and we are always feeling afraid of one another. So, we cannot. do away with separate electorates. This joint electorate and reservation of seats also is a kind of separate electorates But we have to put up with that evil because we think that it is a necessary evil. I wanted to oppose this amendment because it will be standing in our way and because when the system is put into actual working it will be standing in the way of Harijans, getting a correct ideology. It is lack of correct ideology among Harijans that has led them to bring this sort of amendment here. If they think that they can better their lot by standing apart from the other communities, they are in the wrong. They can do better by joining with the majority community and not depending on the votes of their own, community. I must assure the Mover of the amendment that the Harijans are not going to gain anything. if you get this sort of electorate system. So I oppose I this amendment and I hope that nobody in this House will support the amendment. *(Cheers.)*

(Many Honourable Members rose to speak.)

Mr. President: I have got requests from a very large number of Members to speak on this.

The Honourable Sardar Vallabhbhai J. Patel: Sir, I should like to say a few words before the debate is carried on. Mr. Nagappa was allowed to move the amendment on condition that he will withdraw it. There Is no use in carrying on the debate. He only wanted to show to his community that he has not sold himself away If you take it seriously and give importance to this business, then it would show that there is some substance in it. Why do you want to waste, the time of the House on it ?

Mr. President : Is it necessary to carry on the debate about Mr. Nagappa's amendment ?

Shri L. Krishnaswami Bharathi (Madras: General) : That need not be taken seriously, Sir

Many Honourable Members: Closure. closure.

Mr. President : No closure. There is the other amendment by Mr. Ibrahim.

(Kazi Syed Karimuddin rose to speak.)

Mr. President: Do you want to speak about it? We have dropped Mr. Nagappa's amendment at any rate.

Kazi Syed Karimuddin (C. P..& Berar : Muslim) : Sir, I support the amendment of Mr. Ibrahim, and I have to say a few words. I have heard with great patience the admirable speech of Pandit Pant and Sardar Pater's spirited defence of joint electorates. My submission is that I do not agree that it is only due to the separate electorates that the present situation is created. I do not want to minimise the various factors which have led to the present situation; but on behalf of the Muslim League Party, Sir, I submit that we are equally determined to eradicate this evil, from India and we will not leave any stone unturned in offering our hand of co-operation in this matter.

Mr. Ibrahim has moved an amendment, Sir, that there should be joint electorates with reservation of seats and that a member of a particular community should secure 33 per cent. of the votes of his community. We cannot forget that there are misgivings. We cannot be blind to the present situation in the country. We all desire that it should not contiune any more. But there are misgivings. There is mistrust and we have to move on very carefully and very calmly. This House has already decided on the abolition of separate electorates and we have to find out a formula that would satisfy the minorities. We must have the progress of the country in view also. The formula or amendment moved by Mr. Ibramhim lays down that there should be joint electorates. A candidate from a minority community will have to go with his cap in hand to beg the votes from other communities. Communalism will be gradually killed. Then he has to be a representative of his own community. For: which purpose have you given: reservation of seats ? Reservation of seats is given for this purpose that he should represent a particular community,

An Honourable Member: No, Sir.

Kazi Syed Karimuddin: He should have the sentiments of his community in view, he should have the aspirations of his community before him If a minimum, number of votes from his community is not fixed and if he is not able to secure that, my submission is that it will be the position of a client engaging a pleader who will be opposed to the interests of his client. Even a man of straw, or even L false convert will be able to defeat a genuine or real member ;A a community. Therefore, my submission is that in the interests of the provision of reservation of seats, it is necessary for a particular period that we should give this minimum number of votes to a candidate of a particular community. I do, not agree, Sir, that the mere introduction of joint electorates is a magic wand to do away with all these evils. The problem of the Schedule Castes is over and above this joint electorate for centuries. There are many other considerations which have contributed to the present position. I make an earnest appeal that as you have made a generous gesture of giving reservation of seats, you should also concede that for a particular period, the Muslim minority should be allowed to have a minimum number of voters from the community which will satisfy their political aspirations.

Mr. H. J. Khandekar: *[Mr. President, Sir, I stand to oppose the amendment which has been placed before you by my friend Mr. Nagappa. This amendment stands in the name of four Members. The first name is that of Dr. Ambedkar, and you all know that from the time of Vie Second Round Table Conference till the Minority Sub-Committee, of the Advisory Committee assembled, he relinquished the demand for joint electorates and continued the demand for separate electorates. On the question of this demand his message to all Harijans of his country, who belonged to his party, went to the extent that they were not even Hindus that they wished to have a colony separate from the Hindus, that they were not within the fold of Hindu religion, and it was for this reason that they desired separate electorates. This thing has been going on in the country for the-last fifteen years with the result that a sort of discord has been created between Caste Hindus and Harijans of Dr. Ambedkar's party, and it- has gone to the extent that Harijans of Ambedkar party do not wish to converse with Hindus. But I feel happy to state that when this matter relating to joint and separate electorates came-Up before the Minority Sub-Committee, Dr. Ambedkar did not press the claim further but withdrew it on the ground that he had no argument in support of the principle.

For the last 15 years, I have listened with interest to the speeches Of Dr. Ambedkar and read them in newspapers too, but, there was no argument in them in support of the demand for separate electorates. In this way, as the demand did not stand to reason, lie did not press it but withdrew it. It is a great victory for us. Having withdrawn the demand, separate electorate was thought of by which the plea for percentage could be pressed. Speaking plainly it means that he desires separate electorates in a different form. I may explain lo you the effects of separate electorates in this country. It was because of Lord Morley Minto that Muslims got separate electorates. and the result was that our country was divided into two. The same separate electorates are being brought before us in. the form of percentage. If this is accepted either for Harijans or for our Muslim brother, then it would mean the fulfilment of what my friend Mr. Jinnah has always said "Muslin--of India and Muslims of Pakistan"--which means the preparation for Pakistan within India. Much suffering, has been caused already. India has been divided into two. Brother Muslims have'. got what they wanted and was for their benefit. Having got that, they should, be good enough not to try to create Pakistan within India and should not bring an amendment of this sort in this House.

It has come to my notice that our Muslim brothers, who in this country are about 3 crores, have got and are going to get on the report of the Advisory Committee all the facilities which they should get. Even then they say that they should get percentage of votes in order to enable them to elect their representatives. Once again, my friend Mr. Nagappa too, who is an ally of Dr. Ambedkar and is dancing to his tune on some expectations, says the same thing, i.e., that it is in this way alone that our true representatives will be chosen. I want to ask these brothers, what is the meaning of a true representative ? I want to cite the example of this Assembly. If my friends are not true representatives of Harijans, if Kazis are not here as true representatives of Muslims then, what will happen to this Assembly ? If these honest Muslim brothers shout "Jinnah Zindabad", we shout "Bharat-Mata-ki-jai" or other slogans and such sort of pin pricks continue, what will be the result ? I would like to ask Mr. Nagappa and Kazi Sahib, who will suffer then, the majority or the minority ? Any declaration of this sort is most improper and therefore I do not agree with the amendment of Mr. Nagappa.

The other thing which I have just pointed out is that this percentage of votes is through the medium of separate electorates. Even after the present amendment, a few more are coming before you (in support of the percentage of votes) which is in fact a child of separate electorates. It is improper to bring amendments of this kind within this House. It is merely wasting the time of the House. I wish to state that whatever has happened as a result of percentage of votes is before us. I am Very to say that the result of separate electorates and the Poona Pact has been that in Nagpur and in Bombay, there is considerable agitation today against the Hindus and there are differences between one caste and another. The Poona Pact provided for primary election and cumulative voting which indirectly meant separate electorate. Do Dr. Ambedkar and Mr. Nagappa want to aggravate or eliminate this mutual conflict ? If they want to eliminate they should withdraw the amendment. If the tension between the caste Hindus and the Harijans is aggravated the latter would be the loser not the gainer. Because of this mentality of Dr. Ambedkar and Mr. Nagappa the Harijans will permanently remain Harijans and their position would gradually deteriorate. There are sub-castes within castes. There are several sub-castes among Harijans. In fact Harijans are not a part of any community but are spread throughout India in 132 sub-castes. If percentage of 35 is passed, the 3 per cent. "Chamars" who live in Nagpur will not come. within the orbit of this election. If election is fought community-wise then "Mahars" who are 80 per cent. will get 35 per cent, votes. Therefore "Chamars", "Bhangis" and the other sub-castes will not be able to return their representatives in elections because they are in minority among Harijans. In that case only the 'Mahars', to which section Dr. Ambedker and I belong and which has a predominating majority in Bombay and Nagpur, will capture all the seats of the Harijans in those provinces and other Harijans will get no seat at all.

Besides, I have to request Mr. Nagappa to withdraw the amendment. The reason being that contrary to his belief the percentage of votes is not in favour of Harijans. Harijans will not benefit by it, in fact it would be very bad (for them). Today we have achieved freedom for this country. We the inhabitants of this country have become its masters. Under than circumstances, if we do not take the majority community into confidence, and if the majority community does not take us to its confidence, then the government of this country cannot go on. For preserving peace in the country I have to request Mr. Nagappa to kindly withdraw the amendment.

Friends, only a few days back we the Hindus, the Muslims, the Sikhs, the Christian, the Parsis and the Harijans all acclaimed with one voice that we are one nation. We all gave our respectful salute to this tricolour. It would be a pity, if today we put in this amendment which seeks separate electorates.]*

Shrimati Renuka Ray (West Bengal: General): Sir, I rise to oppose this last amendment. The report of the Advisory Committee shows very clearly that its authors have done their utmost to satisfy all elements in the country. In fact, Sir, if the report has erred it has erred in the direction of over-generosity to the so-called minorities. In order to allay suspicion and distrust and to come to an agreed solution it has given every consideration to those who are swayed by communal and religious considerations even to the sacrifice of national interests. After all Sir, it is not a question of minorities and majorities on a religious basis that we should consider in a democratic secular State. We have agreed to the reservation of seats just for the time being for the next ten years to allow those who cannot think of themselves in terms of "Indians" to adjust themselves over this period. I am surprised that the Mover of this amendment should have persisted today in bringing it forward. After the stirring appeal that was made by Sardar Patel and the very cogent and comprehensive arguments put forward by Pandit Pant to show that separate electorates are not only discordant and jarring to national interests but against the interests of the very communities for which they are intended, I thought he would not have pressed this amendment.

It is a back door method of bringing in separate electorates, which the House did not accept yesterday. Sir, we have stood aside helplessly while artificially this problem of religious differences--an echo of medieval times, has been fostered and nurtured and enhanced by tile method of political devices such as separate electorates in order to serve the interests of our alien rulers. Today we see as a result our country divided and provinces like my own dismembered We see that many who have made sacrifices, in the struggle for the freedom of India cannot be citizens; of India today. We have learnt indeed a bitter lesson. We have submitted to all this so that at least in the rest of India that remains with us now we may go ahead in forming a democratic secular State without bringing in religion to cloud the issue Religion is a personal matter. Religious differences might have been exploited as a political expendient by the British but there is no room for that in the India of today, Sir, the problem, that faces us is not a problem of minorities or of majorities on a religious basis. The problem that faces us is the problem of the vast majority in the country irrespective of religion, the majority who today are surrounded by ignorance and ill-health, hunger and want. It is they who are the backward sections of the, community and who are the majority at the same time. It is their problem that we have to take up. If we want to make the Objectives Resolution that this House has passed and the Fundamental Rights that have been laid down, a living reality it is this problem that we have got to tackle. We cannot allow any subtle devices by the back door such as restricted separate electorates to sidetrack us now from the main issue. We cannot expect those who are backward to function and participate as citizens with equal rights unless we take steps to make them conscious of their rights. By all means let us do all that we can to help their development through every means In our power, and make such provision in the constitution. But a separatist tendency on the basis of religion is something that I do not think we can tolerate any longer. We have never stood nor do we stand today for Hindu domination; we do not want that Hindus as such as a religious community shall override any other interests. But 'We' do want that India's interests shall be paramount, that the interests of no special community shall stand in the way whether it is a majority or a minority religious community. Sir, I hope that this House will throw out this amendment and that we shall be able to go ahead until we are able to find a solution for the real problems that confront us, so that India can take her proper place in the comity of nations; so that in accordance with the cultural heritage which is ours, enriched by the variety of the cultures, that have found a home in this country, we will be enabled to play an effective part in the harmonious development of the world as a whole.

Mr. Naziruddin Ahmad: Sir, the amendment moved by Mr. Ibrahim has raised a little tempest in a teapot. I submit that it is better to look at it from a practical point of view. I admire the splendid idealism preached by the Honourable lady from West Bengal who spoke just now. I cannot aspire to be as eloquent and as persuasive as she can claim to be. But I think that though it is a good thing to be an idealist it is a useful thing to be a realist. I do not like the prevailing situation at all; I do not like that there should be any difference between the Hindus and the Muslims. I do not believe that the better classes have any differences in the higher walks of life. But after all our community consists of men who are not idealists; there are men who have a communal outlook. We find this exemplified in the elections. In municipal and other elections where joint electorate prevail, the voting, as is well known to those who have experience, has for long been carried on on communal lines. As I said before, I do not like this and no right thinking man likes it. But the situation should be looked at, as I said, from a practical point of view and with a due sense of proportion. What is the percentage of the majority community in India ? It is something like 75 and the percentage of Muslims would be about 25. In order to appreciate the enormous difference between the two I shall refer to a famous cartoon in a very well known paper here, where the attitude of the great Hindu community towards the Muslims in this House was depicted by the famous cartoonist Shankar.

He represents the great Hindu community as an elephant in a most affectionate mood and the elephant is holding in an affectionate embrace with his trunk the Muslim community--a weakling in the shape of our leader Chaudri Khaliquzzaman. That gives to my mind, from a cartoonists' point of view, of course, the sense of proportion in which the Muslim stands to the Hindus. What is after all the effect of this prayer I do not call it a demand--put forth through this amendment ? It is this that the Hindu community who can be collectively described as the elder brother has in a generous mood conceded for the period of ten years--I should consider that period quite sufficient--that they should get a reserved representation. It seems to me that it implies that the great Hindu community are willing for this period of ten years to listen to what difficulties and complaints, apart from the justice or otherwise of these complaints, of the Muslim community. The only effect of allowing certain Muslim members to come through these 30 per cent. limit would be this, that 25 per cent. Muslims would come into the Legislature. What would the weakling younger brother represent to the elder brother the elephant ? What would be the nature of his prayer ? It will be an appeal. No danger or harm can follow from this in the period of ten years if the elder brother listens to the grievances of the younger brother. These grievances and difficulties may be unreal or exggagerated, they may be due more to fear and suspicion rather than to any real reasons, but what would be the effect, I ask in all humility, what fearful consequences would arise out of these ? If there is any reason in the prayer, then the elder brother, the affectionate elephant will accept it, if there is none he will reject it. That is all that will happen. I do not think the fearful consequences that are confidently predicted would at all follow from the acceptance of this amendment. I again submit, Sir. this is just a prayer on behalf of the younger brother to the elder brother in the shape of this vast august Assembly.

But I know that the result is a foregone conclusion. This amendment and the speeches in support of it reminds me of the argument of a lawyer before a judge, with the knowledge that the judgment has already been written and awaits delivery after his argument is over. We all know the result of the voting that is going to follow. But I hope that if we lose the amendment, the younger brother does not lose the affection of the elder brother.

Mr. President: I have received a number of slips, from Members who want to speak and I also see a number of Members standing, but....

Honourable Members: Closure.

Mr. President: I too think that we have had enough discussion now and would therefore put the motion for closure. The question is:

That the question be now put.

The motion was adopted.

Mr. President: The Honourable Mover may reply now.

The Honourable Sardar Vallabhbhai J. Patel: Sir, I am sorry to see that so much time has been taken on this amendment which I thought was going to be withdrawn and on which there would not be much debate. So far as the Scheduled Castes are concerned, I do not think Very much has to be said on this amendment, because I got a representation from a large majority of the Scheduled Castes representatives in this House, except one or two or three, that they were all against this amendment *(Hear, Hear),* and Mr. Nagappa knew about it. But Mr. Nagappa wanted to move his amendment to fulfil a promise or undertaking or at least to show his community that he was not purchased by the majority community Well, he has done his job, but other people took him seriously and took a lot of time.

So far as the amendment moved by the representative of the Muslim League is concerned, I find that I was mistaken in my Impression. and if I had believed this, 1,would certainly not have agreed to any reservation at all. *(Hear, Hear)*. When I agreed to the reservation an the population basis, I thought that our friends of the Muslim League will see the reasonableness of our attitude and allow themselves to accommodate themselves to the changed conditions after the separation of the country. But I now find them adopting the same methods which were adopted when the separate electorates were first introduced in this country, and in spite of ample sweetness in the language used there is a full dose of poison in the method adopted. *(Hear, Hear).* Therefore, I regret to say that if I lose the affection of the younger brother, I am prepared to lose it because the method he wants to adopt would bring about his death. I would rather lose his affection and keep him alive. If this amendment is lost, we will lose the affection of the younger brother, but I prefer the younger brother to live so that he may see the wisdom of the attitude of the elder brother and he may still learn to have affection for the elder brother.

Now, this formula has a history behind it and those who are in the Congress will be able to remember that history. In Congress history this is known as the Mohammad Ali Formula. Since the introduction of separate electorates in this land there were two parties amongst tile Muslims. One was the Nationalist Muslims or the Congress Muslims and the other the Muslim League members, or the representatives of the Muslim League. There was considerable tension on this question and at one time there was a practical majority against this joint electorate. But a stage was reached when, as was pointed out by the Mover of this amendment in Allahabad a settlement was reached. Did we stand by that settlement ? No. We now have got the division of the country. In order to prevent the separation of the country this formula was evolved by the nationalist Muslims, as a sort of half-way house, until the nation becomes one; we wished to drop it afterwards. But now the separation of the country is complete and you say, let us introduce it again and have another separation. I do not understand this method of affection. Therefore, although I would not have liked to say anything on this motion, I think it is better that we know our minds perfectly each other, so that we can understand where we stand. If the process that was adopted, which resulted in the separation of the country, is to be repeated, then I say : Those who want that kind of thing have a place in Pakistan, not here *(Applause.)* Here, we are building a nation and we are laying the foundations of One Nation, and those who choose to divide again and sow the seeds of disruption will have no place, no quarter, here, and I must say that plainly enough. (*Hear, Hear.*) Now, if you think that reservation necessarily means this clause as you have suggested, I am prepared to withdraw the reservation for your own benefit. If you agree to that, I am prepared, and I am sure no one in this House will be against the withdrawal of the reservation if that is a satisfaction to you. *(Cheers.)* You cannot have it both ways. Therefore, my friends, you must change your attitude, adapt yourself to the changed conditions. And don't pretend to say "Oh, our affection is very great for you". We have seen your affection. Why talk of it ? Let us forget the affection. Let us face the realities. Ask yourself whether you really want to stand here and cooperate with us or you want again to play disruptive tactics. Therefore when I appeal to you, I appeal to you to have a change in your heart, not a change in the tongue, because that won't pay here. Therefore, I still appeal to you : "Friends, reconsider your attitude and withdraw your amendment". Why go on saying "Oh, Muslims were not heard; Muslim amendment was not carried". If that is going to pay you, you are much mistaken, and I know how it cost me to protect the Muslim minorities here under the present condition and in the present atmosphere. Therefore, I suggest that you don't forget that the days in which the agitation of the type you carried on are closed and we begin a new chapter. Therefore, I once more appeal to you to forget the past. Forget what has happened. You have got what you wanted. You have got a separate State and remember, you are the people who were responsible for it, and not those who remain in Pakistan. You led the agitation. You got it. What is it that you want now ? I don't understand. In the majority Hindu provinces you, the minorities, you led the agitation. You got the partition and now again you tell me and ask me to say for the purpose of Securing the affection of the younger brother that I must agree to the same thing again, to divide the country again in the divided part. For God's sake, understand that we have also got some sense. Let us understand the thing clearly. Therefore when I say we must forget the past, I say it sincerely. There will be no injustice done to you. There will be generosity towards you, but there must be reciprocity. If it is absent, then you take it from me that no soft words can conceal what is behind your words. Therefore, I plainly once more appeal to you strongly that let us forget and let us be one nation.

To the Scheduled Caste friends, I also appeal: "Let us forget what Dr. Ambedkar or Ms group have done. Let us forget what you did. You have very nearly escaped partition of the country again on your lines. You have seen the result of separate electorates in Bombay, that when the greatest benefactor of your community came to Bombay to stay in bhangi quarters it was your people who tried to stone his quarters. What was it ? It was again the result of this poison, and therefore I resist this only because I feel that the vast majority of the Hindu population wish you well.. Without them where will you he ? Therefore, secure their confidence and forget that you are a Scheduled Caste. I do not understand how Mr. Khandekar is a Scheduled Caste man. If he and I were to go outside India, nobody will find out whether he is a Scheduled

Caste man or I am a Scheduled Caste man. There is no Scheduled Caste between us. So those representatives of the Scheduled Caste must know that the Scheduled Caste has to be effaced altogether from our society, and if it is to be effaced, those who have ceased to be untouchables and sit amongst us have to forget that they are untouchables or else if they carry this inferiority complex, they will not be able to serve their community. They will only be able to serve their community by feeling now that they are with us They are no more Scheduled Castes and therefore they must change their manners and I appeal to them also to have no breach between them and the other group of Scheduled Castes. There are groups amongst themselves, but everyone tries according to his own light. We are now to begin again. So let us forget these sections and cross-sections and let us stand as one, and together.

Mr. President: I have first to put the amendment of Mr. Nagappa.

Shri S. Nagappa: I do not press my amendment. I withdraw it.

Mr. President: Does the House give him leave to withdraw his amendment ?

Honourable Members: Yes.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then there remains Ahmed Ibrahim Sahib Bahadur's amendment,-

"That on a consideration of the Report of the Advisory Committee on minorities, fundamental rights. etc. on minority rights this meeting of the, Constituent Assembly resolves that in case the elections to the Central and Provincial Legislatures are to be held on the basis of joint electorates for all communities with reservation of seats for minorities, the election should be held on the following basis:-

'Out of the candidates who have secured at least 30 per cent. of the votes polled of their own community, the candidate who secures the highest number of votes polled on the joint electoral roll shall be declared elected. In case there is no candidate, who has secured not less than 30 per cent. of the votes polled of his own community, then out of the two candidates who secures the highest number of votes of their own community, that candidate shall be declared elected who secures the highest number of votes of the total votes polled'

The amendment was negatived.

Mr. President: I now put the original clause 6

Clause 6 was adopted.

CLAUSE 7

Mr. President: We shall now take up Clause 7.

The Honourable Sardar Vallabhbhai J. Patel: Sir, I beg to move.

"7 Method of voting.-These may be plural constituencies out cumulative voting shall not be permissible."

There is an amendment that instead of putting this motion in a negative form as it now stands, it should be put in a positive form that "there shall be distributive voting". That amendment will be moved formally and I propose to accept it. I suggest to the

Honourable Members of this House, however, that we have to finish this Report before we rise today and therefore as this Report has been thoroughly discussed and main points have been passed, I hope on the amendments, if any, there will not be long speeches and we shall not waste time. I move the clause for the acceptance of the House.

Mr. President: There are two amendments, one by Mr. Kesava Rao and another by Mr. Mallick.

(Mr. Kesava Rao and Mr. M. B. Mallick did not move their amendments.)

Shri K. Santhanam (Madras: General) : Sir, I seek your permission to move only part (2) of my amendment. I don't want to move Part (1). My amendment is:

"That the voting shall be distributive, that is, each voter will have as many votes as there are members and he should give only one vote to a candidate."

This amendment is necessary because I want to get the maximum advantage out of the joint electorates which we have adopted. Unless each candidate has to know every section of the electorates and is not able to confine himself to a particular section, the evil spirit of separate electorate will be retained. The result of my amendment will be, if there is a Scheduled Caste candidate he will not be able to say I want to accumulate only the 'Scheduled Caste votes' and a Christian candidate will not be able to say 'I want to accumulate the Christian votes only'. Everyone will have to seek every vote from every section, and therefore without any further elaboration, I propose my amendment.

Mr. President: Does any one wish to say anything ?

Shri D. H. Chandrasekharaiya (Mysore State) : President, Sir, the amendment standing in my name runs as follows:

"(i) That provision be made for conducting all elections on the system of; proportional representation by single transferable vote.

(ii) That if the above system is not adopted, then the system of single nontransferable vote be provided for."

In para. 12 of the Report corresponding to para. 7 of the Appendix it has been stated that the system of cumulative voting should not be permitted in the elections to the Central and Provincial Legislatures. But as already admitted by Sardar Patelji no, definite suggestion has been put forward in the report about the actual method of voting to be adopted. To put over this lacuna an amendment has been moved by Shri K. Santhanam urging the adoption of what is called the compulsory distributive voting system in all elections, under the new Constitution. Sir, before speaking upon my own amendment, I should like to say a few words regarding the method that has been suggested. This method which. is also, called the Block vote permits each voter to have as many votes as there are seats to be filled but he is compelled to give only one vote to a candidate. This is a system which is in vogue in some countries of the World, but its working has brought to light several drawbacks in it and therefore the opposition of political thinkers and statesmen is steadily increasing towards it as we see from their writings. Under this system it is only a majority party that will secure full success in elections. I shall take an instance to make my point clear. Supposing there is an electorate consisting of 100 votes, then a party that commands 51 votes will sweep the polls and any other party having even 49 votes will go to the wall. This system will thus make room only for the success of one party and a legislature formed with only one party can never be said to be national in character or representing all important interests and elements in the country. Modern democracy, as we all know, is generally a representative democracy which means that our legislatures should properly and fully; reflect the. public opinion of the country. Therefore the method that has been proposed is person to serious objections.

With a view to avoid the defects of this system is very necessary to adopt some form of proportional representation other the system of single transferable vote or the system of single non-transferable vote. I will not go into the details of these systems but both of them are scientific and elastic and give representation to majorities and minorities exactly in proportion to this voting strengths. When say minorities I do-not mean merely communal minorities. In fact I personally feel that the sooner this communalism goes out of politics the better it is for our country. But so long as communal minorities exist they will also take advantage of the system that I am proposing. The minorities that I have more particularly in view are these based on political considerations or economic ideologies or even territorial differences. I am inclined to think that this, subject of method of voting should have more appropriately come in the report of the Union Constitution Committee than in the Report on the rights of Minorities, as it is a general subject relating to the form of representation in Legislatures. Whatever may be the nature of a minority, it, ought to find a place in the Legislature adequately. This system is in vogue in several countries of the World. For instance in England some members of the British Parliament are chosen from certain Universities on the principle of proportional representation. In Northern Ireland members are chosen to both the House of Legislature only on the basis of this system. In South Africa the Senatorial elections are conducted in accordance with this system. In India we are familiar with this system in connection with some elections and I am told that the members of this House were elected from Provincial Legislatures in accordance with the principle of proportional representation by single transferable vote. Therefore a system which is fair and just to all, gives representation to all major items and minorities in Proportion to the respective voting strengths and makes the legislature thoroughly representative of all national interests is certainly worth having. The only objection to it may perhaps be that it is a little complicated system. As we are now trying big experiments in democracy, I think that no difficulty should be considered as too great for us to, solve. In our country 90 per cent of the population is illiterate, nevertheless elections are being held and political institutions are being run without any serious difficulties. Similarly I feel that the system of proportional representation can get on every well notwithstanding the million of the masses.

If for any reason the system of single transferable vote is considered to be unsuitable, then the other system of non-transferable vote which is simple enough may be tried. According to it, each voter is entitled to cast one vote whatever may be the number of seats to be filled. The result is that in a constituency Consisting of 500 voters, only 500 votes will be polled and no more. This method is less complicated, more simple and Well suited to the circumstances of our country. It Will avoid all the drawbacks and defects associated with the block vote system. I do not want to take any more time of the House, in view of the suggestion made to shorten our speeches as much as possible. Therefore, in order to make our legislatures truly democratic and representative of all important elements and interests in the country, I commend my motion to the kind acceptance of the House.

Shri Ajit Prasad Jain (United Provinces: General):*[Sir, the purport of most of the resolutions which have been moved during the last two or three days. is that some alteration be effected in the joint election *(i.e.,* the system of joint-electorates which is before the House at the moment for consideration).

The meaning of the present resolution is also the name. In elections by means of a single transferable vote, small groups acquire the authority to send their elected representatives. Past experience has shown that whenever the system of Proportional representation by single transferable vote was adopted, even a few individuals could send their representatives. Wherever Muslims or members of Scheduled castes or other small minorities exist, they can have the authority, under this system to elect their own representatives, by means of their own votes exclusively. On the contrary, the system of joint election is a democratic system. Its significance is to enable the largest possible number of persons to take part in the election of a candidate so that if some candidate be a Muslim then in his election both Hindus and Muslims may be able to participate, and if he be a Hindu then also, both Hindus and Muslims may be able to take part in it. But proportional representation is spoilt by the single transferable vote because there a few Hindus and Muslims can separately elect their representatives, thereby defeating the purpose of joint election.

The second part of this amendment is to the effect at a voter should have only one vote Irrespective of the number at candidates This also means that Muslims or members of scheduled castes are entitled to elect their own representatives. Therefore, the net result of both these amendments will be that although effort is being made to remove the defects of separate elections, they will reappear in a different form and the result of that will be that the minorities *i.e.,* Scheduled castes or Muslims or other minorities will have an opportunity to their elections by appealing to communal sentiments of their people, and thus the decision to create a (proper) atmosphere by means of joint elections, will not materialise in the near future.

Therefore, I think that this amendment is one which will again create division and disturbances in the country, one which contains the fearful possibility of Spreading factional and communal sentiment. I oppose this amendment which the Honourable member has just moved because I fear that it will create obstacles in our way and in the task before us.]*

The Honourable Sardar Vallabhbhai J. Patel: Now, I do not think I need say anything. The amendment which has been moved by Mr. Santhanam I propose to accept. The other amendment that has been moved does not suit our conditions, because we are now going to make an experiment of having elections by adult franchise which will bring on the rolls millions of ignorant voters. That being the case, the complicated system that has been suggested will be absolutely unsuited to us. Therefore I do not propose to accept it. I oppose it and move the adoption of the paragraph.

Mr. President: The amendment of Mr. Santhanam that has been accepted Is this:

"That the voting shall be distributive, that is, each voter will have as many votes as there are members and he should give only one vote to a candidates'

I take it, it is in substitution of...............

Shri K. Santhanam: Of that latter part regarding cumulative voting.

Mr. President: The amended paragraph 7 is now to be voted upon.

The question is:

"There may be plural member constituencies, but the voting shall be distributive, that is, each voter will have as many votes as there are members and he should give only one vote to a candidate."

The motion was adopted.

CLAUSE 8

The Honourable Sardar Vallabhbhai J. Patel: This item refers to representation in the Cabinets. I move-

"8. *No reservation for minorities.*-(a) There shall be no statutory reservation of seats for the minorities in Cabinets but a convention on the lines of paragraph VII of the Instrument of Instruction issued to Governors under the Government of India Act 1935 shall be provided in a Schedule to the Constitution."

This was accepted unanimously in the Advisory Committee by all the minorities and the representatives of the majority communities. I hope the House will accept it: This is exactly a copy of the present provision in the Government of India Act, 1935.

(Messrs. Tajamul Husain, S. Nagappa, and V. T. Muniswami Pillai did not move their amendments.

Shri D. H. Chandrasekharaiya: Mr. President, Sir. the amendment which I wish to move runs as follows:-

"That para. VII of the Instrument of Instructions issued to the Governors of Provinces under the Government of India Act, 1935, and proposed to be followed now be amended so as to provide for representatives of acceding States being selected to the Council of Ministers among others."

In connection with the communal minorities it is proposed to follow the convention expressed in para 7 of the Instrument of Instructions. As I said in another connection I have in view not merely the minorities of a communal or religious character but also based on other considerations.

Mr. K. M. Munshi: I rise to a point of order. This is a Minority Committee's report and we are only dealing with minorities and not States.

The Honourable Sardar Vallabhbhai J. Patel: The States are in a majority. There are 500 States and we are only one State!

Shri D. H. Chandrasekharaiya: Regarding the point of order may I say a word ? The report of the committee on minorities does not state what kinds of minorities are dealt with under it. It may refer to any kind of minority.

The Honourable Sardar Vallabhbhai J. Patel: You are in a majority.

Mr. President: Really you cannot bring the States as a minority. Minority ordinarily refers to communal minority or cultural minority or racial minority.

Shri D. H. Chandrasekharaiya: If this report refers only to communal minorities, then I have nothing more to say.

Mr. President: The whole thing is in reference to minorities and this you will find in the Schedule. Apart from the communal minorities referred to in the report, there is no question of other minorities.

Maulana Hasrat Mohani: You are thinking of your population ratio. This means that we are thinking in terms of communities and nations. Can't you refer to any political party ? Therefore, I raise the objection that the whole of this Minority Report is based on a very fundamentally wrong principle. It must refer to political parties and not to parties on the basis of religion. The whole thing is absurd. You are wasting your time and energy in passing all these amendments. I will raise this objection when you put this final report to the House. Sir, I say, the whole thing is absurd and is a huge humbug.

The Honourable Sardar Vallabhbhai J. Patel: There is no amendment to this clause and I have not followed Mr. Hasrat Mohani. Therefore I do not propose to reply.

Mr. M. S. Aney (Deccan States) : I would request you, Sir, to call upon the Honourable Member to withdraw the word 'humbug'. It Is an insult to this House. It is quite unparliamentary.

Mr. President: Did you use the words 'huge humbug'?

Maulana Hasrat Mohani: Yes: I said It is a huge humbug.

Mr. President : You withdraw that. I will now put clause 8 to vote

Clause 8 was adopted.

CLAUSE 9

The Honaurable Sardar Vallabhbhai J. Patel:

> "9. Due share to ail minorities guaranteed---In the all-India and Provincial Services, the claims of all the minorities shall be kept in view in making appointments to these services consistently with the consideration of efficiency of administration."

This clause is framed with a view to see that the minorities are properly represented in the Services but it will also see that the efficiency of the administration is not affected. Keeping that point in view the State will also see that the minorities have due representation. I move this proposition for the acceptance of the House.

(Mr. Tajamul Husain did not move his amendment.)

Shri Mahavir Tyagi (United Provinces: General) : Sir, my amendment is very innocent and innocuous. I only beg to request the House to drop the word "guaranteed" in the beginning of the sentence. It would assure guarantee to all minorities.

Mr. N. Gopalaswami Ayyanar (Madras: General) : I rise to a point of order, Sir. This amendment relates only to the marginal note. We do not usually propose amendments to marginal notes.

The Honourable Sardar Vallabhbhai J. Patel: This amendment has. nothing to do with the proposition.

Shri Mahavir Tyagi: The word is objectionable because in paragraph 14 of the Report it is said "a proposal was made to us that there should be a constitutional guarantee of representation in the public services of the minority communities in proportion to their population. We are not aware of any other constitution in which such a guarantee exists.". The word 'guaranteed' was objected to there and now it has somehow or other Crept in here. It was better if we had removed this word from even the heading of this section.

Mr. President: It may be left out from the heading which will read there-'Due share to all minorities."-That will be quite enough.

Shri Mnhavir Tyagi: I will be satisfied if the word 'guaranteed' does not exist there.

The Honourable Sardar Vallabhbhai J. Patel: It does not exist for me.

Shri Mahavir Tyagi: I hope it will not exist for others too. I would rather not press my amendment.

(Messrs. P. Kakkan and Upendranath Burman did not move their amendments.)

Shri Chandrika Ram (Bihar: General) : I want to say a few words. I do not want to move, but while withdrawing the amendment that stands in my name, I wish to say a few words.

Mr. President: The question of withdrawing does not arise because your amendment has not been moved, but if you wish to say anything I do not mind. but be short.

Shri Chandrika Ram (Bihar: General): *[Sir, in the beginning when this matter was decided, there was a good deal of discussion in the Advisory Committee. We felt that we should be given reservation in provincial services. After discussing it amongst ourselves, some of our Honourable Members suggested that we might discuss it with the Sardar, in view of the note underneath the main item. Therefore we thought it proper that there should be some statutory provision in the provincial services. We do not require (any such provision) in the cetral, because in the central services our position is satisfactory even today. But so far as provinces are concerned our claims have been ignored. For example, we know that in the U. P. we number more than 25 per cent. but from news papers and other reports we gather that the seats reserved for us are only 10 per cent. In the provincial services, we have been ignored, and we desire an assistance from Sardar Sahib, that just as he is advocating for the centre, similarly in the provinces as well, services be given on population basis, because spending money on education does not mean that we should be denied our due share in services. This is a very important matter. I do not insist on moving this amendment. But I desire an assurance from the Sardar who is the mover of this clause that there will be full protection and that what is contained in this. clause will find' a place somewhere in the constitution.

With these few words, I withdraw this amendment.]*

Mr. President: There is no amendment to this. There is only the question put by Mr. Chandrika Ram.

The Honourable Sardar Vallabhbhai J. Patel: Mr. Chandrika Ram ,only wants some sort of assurance. I can only give the assurance that if this Minorities Committee Report is passed, everything will be all right for the minorities.

Mr. President: I put clause 9 to vote.

Clause 9 was adopted

CLAUSE 10

Mr. President: Now, we go to clause 10.

Honourable Sardar Vallabhbhai J. Patel: In this clause you will see that the Advisory Committee appointed a Sub-Committee for the consideration of certain concessions which were enjoyed by the Anglo-Indian community. The Committee, the members of which are mentioned here, made a Unanimous* Report and I wish to draw your attention to the report of that Committee, and I shall move the recommendations of that Committee as the motion. You will gee paragraph 2 has an introductory part giving the historical background of these concessions. and clause (1) is the real motion. The motion begins from clause (i)---

"(i) The present basis of recruitment of Anglo-Indians in the Railways, the posts and Telegraphs and the Customs, Departments shall unchanged for a period of two years after the coming into operation of the Federal constitution. After that at intervals of every two years, the reserved vacancies shall be reduced-, each time by 10 per cent. This shall not however bar the recruitment of Anglo-Indians in the categories over and above the prescribed quota of reserved appointments, if they are able to secure them on individual merit in open competition with other communities. It shall also in no way prejudice their recruitment on merit to Posts in these departments, or any other in which they have not been given a reserved quota.

(ii) After a period of ten years from the date of the coming into operation of the Federal constitution all such reservations shall cease.

(iii) In these services there shall be no reservation for any community after the lapse of ten years."

This is the first part of the motion. The other part refers to educational facilities. I shall move this first. I want to inform the House that this is a sort of an agreed proposition between the members of the Advisory Committee and the Anglo-Indian community. It has been unanimously, accepted and I hope this agreement will be given effect to by this House.

Mr. President: Does any one wish to say anything about it ?

(No Member rose to speak.)

Mr. President: I shall put this to vote.

The motion was adopted.

The Honourable Sardar Vallabhbhai J. Patel: I move:

"*Special educational facilities for Anglo-Indians.*-There are at present about 500 Anglo-Indian Schools in India. The total Government grant to these schools is about Rs. 45 lakhs being approximately 24 per cent. of the expenditure incurred by the school. We feel that a sudden reduction in the grant will seriously dislocate the economy of these schools; and that it would only be fair to bring them gradually into line with other similar educational institutions after giving them sufficient time and opportunity to adjust themselves to the altered conditions now prevailing in the country. We also feel that in this way these institutions might become a valuable educational asset which would cater to the growing educational needs of the whole nation and not only to those of the Anglo Indian community. We accordingly recommend that:

> (i) The present grants to Anglo-Indian education made by the Central and Provincial Governments should be continued unchanged for three years after the coming into operation of the Federal constitution.
>
> (ii) After the expiry of the first three years, the grants may be reduced by 10 per cent. and by a further 10 per cent. after the 6th year, and again by a further 10 per cent. after the ninth year. At the end of the period of 10 years, special concessions to Anglo-Indian schools shall cease.
>
> (iii) During this 10 years period, 40 per cent. of vacancies in all such State aided Anglo-Indian schools shall be made available to members of other communities.

The term 'Anglo-Indian' used in this Report has the meaning given to it in the, Government of India Act, 1935."

This also is an agreed proposition accepted unanimously by the Advisory Committee and the Anglo-Indian representatives in the Advisory Committee. Therefore I hope the House will give effect to this agreement.

Mr. President: Does anyone wish to say anything about this ?

(No member rose to speak.)

Mr. President: Then, I shall put this to vote.

The motion was adopted.

CLAUSE 11

Mr. President: Clause 11.

The Honourable Sardar Vallabhbhai J. Patel: Clause 11.

"An officer shall be appointed by the President at the Centre and by the Governors in the Provinces to report to the Union and Provincial Legislatures respectively about the working of the safeguards provided for the minorities."

This is only an administrative arrangement and I hope the House will accept this.

Mr. President: There are some amendments to this.

(Messrs. Mahavir Tyagi and Tajamul Husain did not move their amendments.)

Mr. President: There is no other amendment. Does anyone want to say anything about this ?

(No member rose to speak.)

Mr. President: Then I shall put it to vote.

Clause 11 was adopted.

CLAUSE 12

Mr. President: We go to clause 12.

The Honourable Sardar vallabhbhai J. Patel:

> "12. Provision shall also be made for the setting up of a Statutory Commission to investigate into the conditions of socially and educationally backward classes, to study the difficulties under which they labour aid to recommend to the Union or the Unit Government, as the case may be, the steps that may be taken to eliminate the difficulties and the financial grants that should be given and the conditions that should be prescribed, for such grants."

This is also an administrative provision for the benefit of the oppressed and the backward classes. I hope the House will accept it.

Mr. President: There are some amendments to this.

(Messrs. Tajamul Husain, P. Kakkan, H. V. Pataskar and V. I. Muniswami Pillai did not move their amendments.)

Mr. President: There are no other amendments. I put clause 12 to vote.

Clause 12 was adopted.

The Honourable Sardar Vallabhbhai J. Patel: Sir, now all the Items are over and the Report as amended by the amendments that have been passed and the resolutions that have been accepted, may be adopted.

Maulana Hasrat Mohani : Sir, I should like to have an opportunity to express my views on the whole report.

Mr. President: Now, we have considered each clause of the Appendix and the report of course will be treated as changed to the extent that it is changed by the resolution of the House,

Now the proposition is that the report be accepted. Is it necessary to put it ?

Mr. K. M. Munshi: Sir. this Is a report by the Advisory Committee to the Constituent Assembly 'and not a draft report to be adopted by the Constituent Assembly itself. Therefore I submit this report cannot be amended so that something may be put into the mouth of the Advisory Committee. What has been done technically is that the report has been taken into consideration. The House, having decided to take the report into consideration, the decisions embodied in the report and which find a place in the Appendix, were considered. Those decisions were amended by the House. Therefore I submit, Sir, no decision need be taken on the report itself. It is a report of the Advisory Committee, and should remain as such. There have been certain amendments suggested to the report, but I submit they are out of place because the report can only be adopted by the Constituent Assembly if it is going to the world or going to a third party as the report of the Constituent Assembly. Therefore I submit, Sir, the decisions having been duly amended by the House, nothing need be done with regard to the report. That is my submission.

Pandit Lakshmi Kanta Maitra: What is there to show that the House has considered the report ?

Mr. K. M. Munshi: Mr. Maitra says, "What is there to show that the House has, considered the report ?" A resolution was formally passed that the House do consider the report. Then it took the Appendix. The Appendix contained the operative decisions which find a place in the report. These have been either changed or accepted: but we cannot change the wordings of the Advisory Committee formulated in the report for the purpose of placing before the House. It has been placed here and there ended the matter.

Pandit Lakshmi Kanta Maitra: There should be something on record to say that the House has accepted the report with certain amendments, etc.

Mr. K. M. Munshi: The decisions have been accepted in part, have been amended in part, and the report has been before the House. My point of order is that there cannot be new paragraphs added to the report or anything subtracted from it because it is a report to the House, and decisions having been properly accepted or modified by this House, the report stands as it is.

This, Sir, is an important point of order. I want a ruling because in the past we have been talking that the report is to be either adopted or altered or some paragraphs added to it. It is a very erroneous procedure because you cannot alter the report of a Committee. This is not a sort of Appeal Court. This is only a report placed before the House for consideration.

Maulana. Hasrat Mohani: I do not want either to add anything or subtract anything from the report itself. What I want to say is that whenever I stand up to make any observation, you, Sir, say that this is not the occasion. I say that this whole report should be put to the vote of the House, when I have a right to say what I want to say, while I oppose the whole thing.

Mr. President: Order, order, I am afraid you have missed that opportunity. When the proposition was moved that the report be taken into consideration, that was the right time when you could have expressed yourself. Probably you were not here.

Mr. R. K. Sidhwa (C. P. & Berar: General) : The point of order is that we have taken the vote of the House for the consideration of the report, and then clause by clause we discussed amendments, and it is always customary that after the clauses have been amended, the report which was under consideration having been completed, should be put to the House as an amended report for acceptance. That is the usual procedure, Sir, and now it should be put that the report as amended clause by clause should be adopted. That is the proper parliamentary procedure.

Apart from this, there are resolutions given notice of in regard to draft paragraphs of the report. Those resolutions stand on a separate footing, though they may be taken up or withdrawn or the whole report may be accepted.

Mr. President: What is the particular item you have in mind at the present moment ?

Maulana Hasrat Mohani: I want to refer to the portion relating to the reservation of seats on communal lines, I say that the whole system is wrong. I want to refer to nothing else except that which refers to the reservation of seats and communal representation on communal lines. Will you allow me only a few minutes ?

Mr. President: As I said earlier, you have missed the opportunity.

Dr. S. Radhakrishnan (United Provinces: General) : It is quite true that we are not accepting the report which has been sent to us by the Advisory Committee. We have amended certain of the clauses in the schedule and all those amended clauses represent our decisions. In stating the decisions which we have made, we might add one or two sentences by way of preamble "with a view to develop a homogeneous, secular, democratic State, the devices hitherto employed to keep minorities as separate entities within the State be, dropped and loyalty to a single national State developed. While this should be our recognized aim, we do not wish to ignore altogether our recent past, so for a period of ten years the following recommendations are intended to secure adequate representation for the minorities. Before we put down the decisions, let us have some introductory sentences and make it clear that it is not our desire in this House to, have these minorities perpetuated. We must put an end to the disruptive elements in the State. What is our ideal ? It is our ideal to develop a homogeneous democratic State-that is why we have provided for fundamental rights, we allow no discrimination in public employment, we say, it is a secular State. If you make it an Islamic, Hindu or Christian State, it would cause apprehension to the followers of other creeds. So we must declare our objective-that it is our desire to set up here a homogeneous, democratic, secular State, and those devices which were hitherto employed to keep the different sections of society apart have to be scrapped, if we now provide for certain compromise measures, it is simply because we wish to reckon with the past. We have to effect a compromise between the ideal we have in view and the actual conditions which have come down to us. These concessions will operate only for a period of ten years.

My suggestion does not touch the specific recommendations we have made. It merely states by two sentences the central aims we have in view. Every State, Mr.

President, works towards a particular kind of objective. Whether it is the Soviet State or the Nazi State or the American State. What is our objective ? Do we want to keep these minorities over all India as separate entities in the State ? Have we not suffered enough ? Are not the tragic happenings of the Punjab directly traceable to the development of disruptive tendencies and deliberate indoctrination ? These are not the acts of God but the acts of man. You, will find that in the I. N. A. or in the Indian Army where we wished to develop loyalty to a single State we succeeded; where we wished to disrupt a State we have also succeeded. It is therefore time for us to put our foot down on all disruptive tendencies and take care to work for other aims And say that it is not our desire to maintain these minorities as minorities. The measures of compromise are transitional, and will be terminated at the end of the tenth year. So I move formally with the permission of the House that as a preliminary to the items in the schedule we insert the sentences I have mentioned.

Mr. S. M. Rizwan Allah (United Provinces: Muslim) : Sir, I think the first point raised by Mr. Munshi is not in order. Usually the procedure is that a report coming from any committee is considered by this House and then the House adopts it in the amended form as its own report, and then it goes to the drafting committee as such. Therefore the contention of Mr. Munshi that there is no need for adopting the report is *ultra vires* and does not hold good. In the second place what Prof. Radhakrishnan said is also out of order. He wants to, lay down, a new objective by means of introducing his resolution but that should have been done at the time the 'objectives' resolution was under consideration. It is a new matter which he wants to introduce and so that is also out of order.

Mr. Shankar Dattatrpya Deo (Bombay: General) : Sir, we do not know what is exactly before us for consideration.

Mr. President: There are two points that have come up for consideration. The first was raised by Mr. Munshi that now that we have adopted the items in the Appendix it is not necessary for us to say anything about the report itself and it is not open to the House to put something in the mouth of the members of that committee which is not in their report. That is the point of order raised that we should not say anything about the report itself because we cannot say anything about it. And what our views are have also been expressed in the course of the decisions that we have arrived at.

Mr. Shankar Dattatraya Deo: Have you given your ruling on that?

Mr. President: I am explaining the position.

Shri K. Santhanam: Sir, I submit that only those things should be recorded which have to go into the draft and so I support Mr. Munshi's point of view. As for Dr. Radhakrishnan's point it is surely a good resolution but I do not see how it can go into the drafting at all. As a general exhortation it is all right but I do not think it will have any place in the Bill when it comes up. I think it is rather irrelevant.

Shri R. V. Dhulekar (United Provinces: General) : Sir, the whole report is now before us and I submit that at this stage it is quite in order for Acharya Radhakrishnan to move that the object of this whole report is to do away with reservations of all kinds and also to do away with all disruptive forces within ten years so that after ten years we may become one homogeneous nation. So I submit that this is the proper place to bring in Acharya Radhakrishnan's suggestion and the point of order is not at all justified because there is no-other place where it can come in. So I support this amendment.

Mr. President: I think we have had enough discussion on the point of order and I may now be permitted to give my ruling. I am inclined to agree with the view that so far as this House is concerned it is only giving instructions at the present moment to the drafting committee to introduce certain clauses on certain items, and it is for the drafting committee now to take those instructions which are contained in the Appendix which we have just adopted. It is therefore not necessary to say anything more at this stage and it will be for the drafting committee to include what is contained in the Appendix as decisions of this House.

The Honourable Sardar Vallabhbhai J. Patel: Sir, for the information of the House I may mention that so far as the Advisory Committee's work is concerned, the things left over are, first, the part referring to the East Punjab and West Bengal and the other is the Tribal and Excluded Area Committee report which has now been received by the Advisory Committee, but it will take time for its consideration. The third thing is that the last time when we met in the Constituent Assembly we accepted certain fundamental rights and the remaining part of that report has still to be submitted. These proposals will be considered and the final report of the Committee will come before the House when the House meets next. For the present the Advisory Committee's report has been finished. I thank the House for the cooperation it has given and for finishing the work in the scheduled time.

Mr. President: What about the fundamental rights? Shall we take it up now ?

The Honourable Sardar Vallabhbhai J. Patel: If the House chooses to take it up I have no objection.

Mr. President: As there is no time now we will take-up our normal business tomorrow at 10 o'clock; but I wish to state that this afternoon we are meeting for a short time and for a special purpose, namely, the unveiling of the, portrait of Mahatma Gandhi which has been presented to this House. I therefore propose that we should meet at 3 o'clock for that purpose.

The Assembly then adjourned for lunch till three of the Clock.

The Constituent Assembly of India reassembled after lunch in the Constitution Hall, New Delhi, at three of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PRESENTATION AND UNVEILING OF THE PORTRAIT OF MAHATMA GANDHI

Mr. President: Mr. Pattani.

Mr. A. P. Pattani (Western India States) : I this my happy privilege to place the following motion before the House-

> "Resolved that the Constituent Assembly of India do accept the portrait of Mahatma Gandhi by Sir Oswald Birley, bequeathed to the nation by Sir Prabha Shankar Pattani."

It is not possible to express in words the happiness I feel today, standing in this Constituent Assembly of my country, to discharge a trust and fulfil the wishes of my late father.

The portrait that is to be unveiled presently, was painted by the great portrait painter, Sir Oswald Birley, in England during the Second Round Table Conference, and my father purchased it. I may inform the House that Sir Oswald had painted that portrait for himself and lie agreed to part with it, because my, father wanted it and it was for India. When it arrived in India, however, it was put away carefully in its original packing. We were not allowed to see it and neither the family nor friends in England could obtain from him information as to what he intended to do with it. But some time after the Act of 1935 was passed, he told me very privately that he intended to present it to the nation when, the new Government under that Act was inaugurated. Time passed, and there was no hope of that Act, coming into operation. My father, passed away in February 1938; almost within ten minutes of the time when he had planned to fly from Bhavnagar, on the 16th February, to Haripura to meet Mahatmaji. That programme and that meeting were subsequently cancelled by other circumstances. But before his death he had told me two or three times to bear in mind this portrait and his wishes regarding the same.

As I submitted, Sir, the Act of 1935 did not materialise. But when the new Government war. to be established under the Act of 1947, I spoke of the message of my father--which I shall mention presently--and of the portrait, to our Prime Minister Pandit Jawaharlal Nehru. That, in brief, Sir, is the history of this occasion.

I would like to take this opportunity to say a few words about Mahatmaji. I do so with reverence and great diffidence, for I am conscious that anything I say about Mahatmaji would be like attempting to measure the mountain of Kailas with a foot-rule, or as it is said in our *Shastras* trying to, describe the beauty and grandeur of the Himalayas in pen and ink. And yet I myself and some other Honourable Members of this House may be permitted to take a little. pride that we belong to Kathiawar, that land of Sri Krishna, Sudama, Narsi Mehta, Dayananda Saraswati, and Mahatma Gandhi. If we take pride in this fact, we should also try and follow their examples, especially the example of Mahatmaji, whom we have lived with and seen for he has been, and is, a friend of the Princes arid the people. He belongs himself really to no community. He has no country. He has no home. The world is his home, and mankind the community to o which he belongs. Seeking truth and serving God, he cut across all distinctions and loved all who were honest, upright, and God fearing, and it was this high plane of the spirit that attracted my father and made him a humble follower of the Mahatma. It was Bapu himself who told me that their "sambandh" the English language has no word like 'samband'--begar when my father first wrote to him when he was in South Africa. This was, I believe, in the last century.

The great fact of modem life, and in fact of world history, is that the mahatma discovered at the root of all trouble both in India and in England was the influence of foreign rule in this country. Having made this discovery he set himself to solve it; and by leading an unarmed revolt, he brought India to freedom. It is for us all to make a success of' this achievement, so that the fruit that he has given us may nourish everybody and lead us to a better life.

In conclusion, it was my father's wish that the picture should be delivered to the nation in his own words; these were:-

> "It is a portrait of the saint who laboured more than anyone else for peace and who preached non-violence which is ultimately , the only right way in human affairs." (*Applause*).

That, Sir, is the message I am to deliver, and there (pointed to where the portrait was installed) is the portrait. I have done my duty. I request that the portrait be unveiled.

(The President then unveiled the portrait)

Mr. President: Honourable Members, I am sure I am expressing the sense of gratefulness of all the members of this House to Mr. Pattani for the present which he has made to this House. (*Applause*). It was a happy inspiration of the late Sir Prabha Shankar Pattni to have preserved this beautiful portrait for so many years to be handed ever to the nation on the auspicious occasion when India has got her freedom, and it is a happy moment for all of us that we have lived to me this portrait unveiled in this House on this occasion. It would be presumptuous on my part particularly because I happen to be one of those fortunate many who have had the fortune and privilege to serve under Mahatma Gandhi for so many years (*Cheers*), to say anything about the work which he has accomplished. He come to us at a time when the country was looking for something which have failed. The country had made many attempts to become free it was looking for something that would give it the necessary impetus and, above all, the kind of weapon which will enable it to win its freedom. Mahatma Gandhi aroused that spirit and gave that weapon in the hands of the people, and although we may not have come up to his expectations, we have at least succeeded under his guidance and his inspiration in winning the freedom for which we have all been longing for so many years.

It is not only in the field of politics, but there is hardly any field in life of' a human being which has not been in some way or other touched and bringtened by Mahatma Gandhi. (*Applause*). Whether we go to a village slum, to a city slum or whether we go to a big palace of a rich millionaire or a big Maharaja, there is hardly any place where his influence has not been felt, and felt very well indeed. That influence has permeated our life to an extent which probably we do not ourselves quite appreciate and fully realise, and the greatness of the Mahatma lies in this, that as time passes, as ages pass, the influence which he has exercised not only on our lives but on the current of world history will be more and more appreciated and more and more realised. Such men are not often or easily born. They come once in a way in the History of the World to turn its course, to change its current and here is Mahatma Gandhi whom it is our privilege and our good fortune to serve under today, who has turned the current of history of mankind and who has in his own life-time seen how the work which be has started has borne fruit and is bearing more and more precious fruit everyday. The miracles which he has wrought in our life are so many that if would be impossible for any of us to recount them all in a short speech. We all know how he has made heroes out of clay, how he has moulded men of ordinary calibre into men of great capacity of great culture and of great achievements. He has not only done that he has created in the Nation as a whole apart from mere individuals, a longing for freedom and also, in a way by his work fulfilled that longing. So it is that we stand here today to pay homage to him. This picture which has been presented to us will be in this House reminding every member who sits on these benches of the great part which he had played in our history and the World's history at a most critical and momentous time. It will remind members of the great duty which they owe to this country. It will remind all of us of the great heritage which he represents and which we all of us have got from our forefathers and above I all, it will remind us how the freedom that we have won has to be utilized for the good of all. Let us hope that this picture will serve that purpose and we shall prove worthy Of the great Mahatma who had led us to this goal. (*Loud Cheers.*)

On behalf of the House I formally accept this portrait. I hope you will all agree to this.

Shri H. V. Kamath (C. P. & Berar General) : Mr. President, may I Sir, in all humility, venture to suggest that it will be eminently in the fitness of things if alongside this magnificent portrait of Mahatma Gandhi, the father of Indian struggle, the Hall of this Assembly were adorned with a portrait of Lokamanya Bal Gangadhar Tilak, the father of Indian unrest and also that of Netaji Subhas Chandra Bose, the father of Indian Revolution. That, Sir, will be a thoroughly adequate and pictorially symbolic representation of the three distinct, the three well-marked stages of our struggle for political emancipation. I have no doubt, Sir, that this Assembly will accept such portraits with joy and gratitude. Will you, Sir, be good enough to permit the presentation of such portraits on subsequent occasions ?

Mr. President: The House will now adjourn to 10 o'clock to-morrow.

The Assembly then adjourned till Friday, the 29th August 1947, at 10 A.M.

APPENDIX

No. CA/98/Cons/47.

CONSTITUENT ASSEMBLY OF INDIA

From

Shri G. V. MAVALANKAR,

Chairman,

Committee on the Functions of the Constituent

Assembly under the Indian Independence Act.

TO

The PRESIDENT

Constituent Assembly of India.

SIR,

On behalf of the members of the Committee appointed by you on the 21st of

August 1947 to consider and report on certain matters connected with the future working of the Constituent Assembly, I beg to submit this report.

I. *Preliminary:*

2. At our first meeting on Friday the 22nd I was elected Chairman. The Committee met also on the 23rd and the 25th

3. Our terms of reference are:

(1) What are the precise functions of the Constituent Assembly under the Indian Independence Act?

(2) Is it possible to distinguish between- the business of the Constituent Assembly as a Constitution-making body and Us other business and can the Constituent Assembly set apart certain days or periods solely for the former?

(3) Should the members representing the Indian States in the Constituent Assembly be given the right to take part in proceedings which do not relate to Constitution-making or to the subjects in respect of which they have acceded?

(4) What new Rules or Standing Orders, if any, and what amendments, if any, in the existing Rules or Standing Orders should be made by the Constituent Assembly or its President ?

We proceed to state our views on these terms in the order mentioned.

II. *First term of reference:*

4.The business to be transacted by the Constituent Assembly falls under two categories:

(a) To continue and complete the work of Constitution-making which commenced on the 9th December, 1946, and

(b) To function as the Dominion Legislature until a Legislature under the new Constitution comes into being.

III. *Second term of reference:*

5.It is not only possible but necessary for the proper functioning of the Constituent Assembly in its two capacities that its business as a Constitution-making body should be clearly distinguished from its normal business as the Dominion Legislature. We consider that for the purpose of avoiding complications and confusion, different days, or separate sittings on the same day, should be set apart for the two kinds of business.

IV. *Third term of reference:*

6.We agree that, as implied in the wording of this term of reference, tile members of the Assembly representing the Indian States are entitled to take part in the proceedings Of the Assembly on All days set apart for the business of Constitution-making. They further have the right on days set apart for the functioning of the Assembly as the Dominion Legislature to participate in business relating to subjects in respect of which the States have acceded to the Dominion. Though it is competent for the Constituent Assembly to deny or limit their participation in business; relating to subjects in respect of which the States have not acceded, we would recommend that no ban or restriction be placed by rule on their participation in such business also.

V. *Fourth term of reference:*

7.So far as Constitution-making is concerned, the existing Rules of Procedure and Standing Orders made by the Constituent Assembly and its President are adequate and only such amendments need be made therein from time to time as may be considered necessary in the light of experience. As regards the functioning of the Constituent Assembly as the Dominion Legislature, under section 8 (2) of the Indian Independence Act, the relevant provisions of the Government of India Act' as adapted and the Rules and Standing Orders of the Indian Legislative Assembly have generally to be followed. It will however, be necessary to make modifications and adaptations in these Rules and Standing Orders in respect of matters common to both the classes of business, to be transacted by the-Assembly. We have not been able, within the time at our disposal, to. attempt a detailed examination of these Rules and Standing Orders with a view to make suggestions as regards the modifications, adaptations and additions that may be necessary. We would suggest that necessary modifications, adaptations and additions be made under the orders of the President.

8.We desire to refer to three matters. of importance which, beside being relevant to the main issue remitted to us for consideration, have a, bearing. on the question of the need for the making by the Constituent Assembly or its President of new Rules or Standing Orders and the amendment of existing Rules or Standing Orders.

9. The Provisions for the election of a Speaker in Section 22 of the Government of India Act 1935 have been omitted. This read together with the other modifications carried out in that Act show that the President of the Constituent Assembly is the person to preside over it when function as the Dominion Legislature also, unless other provision is made in the Rules of Procedure of the Constituent Assembly itself for the election of an officer for the purpose of presiding over the Assembly when transacting ordinary legislative business. It has to be remembered that though transacting two kinds of business, the Assembly is one and can have only one President who is the supreme head of it both on its deliberative side and on its administrative side. We would, however, point out that it would be constitutionally inappropriate for the person presiding over the Constituent Assembly when functioning as the Dominion Legislature being also a Minister of the Dominion Government. It Is obviously desirable that steps should be taken for avoiding this anomaly. We would suggest that for this purpose the following alternatives might be considered:

(a) The President of the Constituent Assembly should be a person whose whole time is given to the work of the Assembly both when engaged on Constitution-making and when transacting business of the Dominion Legislature.

(b) If the President of the Constituent Assembly is a Minister, provision may be made in the Rules of the Constituent Assembly for the election of an officer to preside over the deliberations of the Assembly when functioning as the Dominion Legislature.

10.Under the Government of India Act as adapted, the power of summoning and proroguing the Dominion Legislature vests in the Governor-General. We consider that, consistently with the powers which of right belong to the Constituent Assembly and with the Rules already made by it and with a view to secure proper co-ordination of the work of the Assembly in its two spheres, this power of summoning that Assembly for functioning as the Dominion Legislature and proroguing it should also vest only in the President. A new Rule to this effect may be added to the Constituent Assembly Rules of Procedure and a further adaptation of the relevant section of the Government of India Act may be made to bring it into conformity with this new Rule.

11. At present five members of the Dominion Government have no seats in the Constituent Assembly. These Ministers have the right to participate in the business of the Constituent Assembly when functioning as the Dominion Legislature, though they will not have the right to vote. They will, however, not have the right even to participate in the work of the Constituent Assembly when it transacts business connected with Constitution-making. We, however, recommend that such Ministers may by a suitable addition to the Rules of the Constituent Assembly be given the right to attend and participate in its work of Constitution-making, though until they become members of the Constituent Assembly they will not have any right to vote.

Yours sincerely,

G. V. MAVALANKAR,

Chairman

NEW DELHI,

DATED THE 25TH AUGUST 1947,

[Translation of Hindustani speech.]

* Appendix

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME V

Friday, the 29th August 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

MEMBER TAKING PLEDGE

The following member took the pledge:

Lt.-Col. Brijraj Narain (Gwalior State)

ELECTION OF MEMBERS TO THE HOUSE COMMITTEE

Shri Satyanarayan Sinha (Bihar: General) : Sir, I beg to move the following, motion:-

> "Resolved that the Constituent Assembly do proceed to elect in the manner required under Rule 44 (2 of the Constituent Assembly Rules two Members to be Members of the House Committee."

As you know, Sir, two of our Members who were Members of this Committee, Mr. Abdul Ghaffar Khan and Mr. A. K. Das have ceased to be Members of the House. According to the Rules, they have ceased to be Members of the House Committee too. Therefore, there are, two vacancies to be filled in the manner prescribed by the Honourable the President.

The motion was adopted.

Mr. President: Nominations to the two vacancies in the House Committee will be received up to 5 pm. today, and elections, if necessary, will be held between 3 pm. and 4 pm. tomorrow in the Under Secretary's room (Room No. 25), Ground Floor, Council House, in accordance with the principle of proportional representation by means of the single transferable vote.

COMMITTEE TO SCRUTINISE DRAFT CONSTITUTION

Shri Satyanarayan Sinha: Sir, I beg to move--

"This Assembly resolves that a Committee consisting of--

(1) Shri Alladi Krishnaswami Ayyar,

(2) Shri N. Gopalaswami Ayyangar,

(3) The Honourable Dr. B. R. Ambedkar,

(4) Shri K. M. Munshi,

(5) Saiyid Mohd. Saadulla,

(6) Sir B. L. Mitter,

(7) Shri D. P. Khaitan,

be appointed to scrutinise and to suggest necessary amendment to the draft Constitution of India prepared in the Office of the Assembly on the basis of the decisions taken in, the Assembly."

Sir, you will remember, last time when we were discussing the Union Constitution and also the Provincial Constitutions, on your suggestion, the House approved that a Drafting Committee should be appointed to give proper shape to the decisions which we have taken in this House. With that end in view, this Committee is going to be appointed. This is purely an expert committee. I hope the House will approve the names suggested.

Mr. H. V. Kamath (C. P. & Berar: General) : On a point of order, Mr. President, Saiyid Mohd. Saadulla, as you, are well aware was unseated as a result of the Sylhet Referendum. and has been only recently re-elected. He has not yet signed the Roll of Members and taken his seat in this House. As such I think he is not eligible for election to any Committee. Will you, Sir, be so good as to tell the House whether, as far as Mr. Saadulla is concerned, the motion is in order?

Mr. President: He will begin to function after. signing the. Roll.

Begum Aizaz Rasul (United Provinces: Muslim) : Mr. President, though I have not given notice of this motion, I would like to move with your permission that this House gives the Honourable the President the power to nominate any other Member to this Committee, if any Member who has been nominated on it is not able to serve for any reason. I hope the House will kindly accept this amendment of mine and give this power to the Honourable the President.

Mr. President: Have you given notice of this amendment?

Begum Aizaz Rasul: I said just now that I have not given formal notice of this motion, bat that I hope the House will kindly accept my motion.

Mr. President: I shall consider this matter a little later. In the meantime the other amendments may be moved.

The Honourable Shri B. G. Kher (Bombay: General) : Mr. President, Sir, the amendment of which I have given notice is suggested with a view to express more clearly and give effect to the intention of the Mover, Mr. Satyanarayan Sinha. It reads this way:

That for the words "to scrutinise and to suggest necessary amendments to the draft Constitution of India prepared in the Office of the Assembly on the basis of the decisions taken in the Assembly" the following be substituted:-

"to scrutinise the draft of the text of the Constitution of India prepared by the Constitutional Adviser giving effect to the decisions taken already in the Assembly and including all matters which are ancillary thereto or which have to be provided in such a Constitution, and to submit to the Assembly, f or consideration the text of the draft Constitution as revised by the Committee."

It makes provision for two things. One is that for the purpose of giving effect to the decisions taken already in the Assembly--the Constitutional Advisor will prepare the draft. That draft has to be scrutinised by this Committee. Then, Sir, we have not here considered 611 the points which are ancillary to the decisions which we have taken or which are usually necessary and have to be provided in the Constitution. For example, we have laid down a principle that all the action to be taken in the Provincial Constitution will be taken in the name of the Governor. There are a number of things which have to be put in in order to give effect to this decision which the Assembly has taken and which have been given a place in the Government of Act. Then there are provisions which are ancillary in the other constitutions, and some, other provisions which must usually find a place in the Constitution. All these will have to be included in our draft even though they may not have been discussed or decided here up to now. I do not think it proper to make any lengthy remarks on this amendment. It was not possible for us to discuss and provide for every necessary matter but without them the constitution will not be complete. We have taken decisions on almost all important points. Those will be given effect to but the draft will also contain things. which are ancillary to these and also all such things as are otherwise necessary. The draft containing all these matters is bound to come up before the House for discussion and decision. I hope, Sir, this House will accept this amendment.

Mr. President: Those amendments which go to the merit of the resolution will first be considered.

Shri Satyanarayan Sinha: I accept the amendment, Sir.

Mr. A. P. Pattani (Western India States) : Mr. President, I wish to submit that the Motion that is being placed should be shortened and it might be just said that this Committee be appointed to assist the Constitutional Advisor in drafting the Constitution. I wonder whether it is necessary to entrust the task of drafting the constitution to a large Committee. It would be much better if the Constitutional Adviser who is the one experienced adviser is given the work, because all the details are only known to him. The draft cannot be made in sections but as a whole. Consequently those members of the Committee that are appointed will be of help to him in framing the Constitution, to draft it on the lines of the amendments that have been accepted in the House here. So instead of scrutinising, etc., it will better serve the purpose, if the House simply says that this Committee will assist the Constitutional Adviser in drafting the Constitution.

Shri M. Ananthasayanam Ayyangar (Madras: General) : Sir, I am not in favour of the suggestion just made by the previous speaker. It is not right that the work should be entrusted entirely to the office, however eminent the, officers might be. We have now taken decisions on various matters the have been placed before us by way of the draft Constitution. It is up to us to appoint a Committee of the leading men to frame the Constitution. There are a number of things in which we have moved amendments to the draft that was placed before us, approved of other things which normally find a place in any Constitution and which are taken for granted and even in respect of lists we have to consider them. It is wrong to leave these Lists--whether they are good or bad--to the decision of the officer who has to frame it. We have been looking for guidance from time to time to many Honourable Members of this House. For instance, the Honourable the President many a time has asked Mr. Alladi Krishnaswami Ayyar what is his opinion and likewise various others have also contributed. They have got all the amendments that have been tabled. No doubt, the amendments have not been formally moved, but they will be taken into consideration. Therefore, I suggest that this Committee may introduce a draft bill which will be considered clause by clause later on by the Assembly.

I also agree in a way to the suggestion made by the Honourable Lady Member that in case anyone of the Members may not find it convenient to come and the work cannot wait, the power to fill in or co-opt such of the members who may find it convenient or who are prepared to shoulder this responsibility must be given to the President, Sir, if the House accepts, I would like to clothe the President with that power also. It is not for two or three members to meet and share the entire responsibility. For instance, Mr. Santhanam has been here taking a great interest in these matters. He continues to be in Delhi. These gentlemen may be requested to attend in case others do not find it convenient to appear. Therefore, with the modification of vesting the general power in the President, the amendment of Mr. Kher may be accepted.

Shri K. Santhanam. (Madras: General) : I support the amendment of Mr. Kher, but I should also like to have some information upon a few important points. We have left certain material particulars undecided in this House so far. For instance, we have yet to decide upon the definition of citizenship, upon the procedure for change of constitution, upon the emergency powers and upon the financial clauses of the Constitution. Now, I would like to know whether this Committee is to begin work now or whether it is to wait till we have decided these matters in the next session. This should be made clear unless this Committee is to sit quiet and practically not function at all. I would myself suggest that the Committee should proceed to draft an the clauses. But they should keep the matters which have been already decided distinct. The other portions may be put in big types or italics so that when we meet here we may adopt a different procedure for the two parts. So far as the parts containing our decisions are concerned, only the verbal part of it will be scrutinised and no material amendments of principle will be adopted. As far as those parts which contain matters which are not decided are concerned, we shall proceed to table amendments on principle. also. Therefore, I do not think this Committee need wait till we have decided the points which have not yet been decided.

Let them prepare a tentative draft and let the whole draft be brought before the next session. Let us then consider verbal amendments to those parts which have already been decided and in case of the other sections of the constitution which have to be considered de novo, we can table amendments of principle. Thus we can save the time of' the House. Otherwise, another session to determine all these unsolved particulars will be a great strain on the Members. Therefore, I hope that when we meet in November, we will have a complete draft of the whole Bill including all matters which we have decided and other matters which we have yet to decide, so that we can adopt this procedure. I hope this will be acceptable. Mr. Kher's amendment should be interpreted in the more liberal fashion that I have suggested.

Seth Govind Das (C. P. & Berar: General) : *[Mr. President, one very important matter has not yet been decided and in this connection I want to say what should be our language. You had said that the constitution, which we will draft, will originally be in our national language, and if it is deemed necessary it will be translated into English. I want to know in what language the committee that is being set up will transact its business. I want to know whether this matter will be considered by the Committee or not.

The other thing that I want to know is, as to whether the bill that we are drafting will be originally in our language as you had said, or whether it will be in English. I want to suggest that these matters as well should be decided now, and also that the Bill that we are drafting should initially be in our national language. It can later be translated into English. What our national language should be, must also be decided just now.]*

Mr. M. S. Aney (Deccan States) : Mr. President, Sir, I have come to make some observations because my friend Mr. Santhanam has made a suggestion which appears to me to be unconstitutional. Mr. Santhanam has asked that the Drafting Committee work should be to prepare a draft showing those clauses which are based upon our decisions in some form to be distinguishable from the rest of the clauses. He further stated that those clauses which are based upon the decisions already taken here should admit only of verbal amendments here and there; and any substantial amendment to modify those clauses should not be permissible. I submit, Sir, that the right of the House cannot be restricted in that way. (*Hear, hear*). It is one thing when you take the decision now. When the whole draft of the Bill is before you, in the light of that, it may become necessary for you even to go back upon certain decisions that you have taken before. No hard and fast restriction is, in my opinion, desirable. I have come here mainly to emphasize this particular thing.

Secondly, a suggestion has been made that it should be open, to the President to nominate anybody he likes in addition to the names on the list. Ordinarily, nobody will take any objection to this. The main reason why we have thought of giving certain names is to relieve the President of his invidious responsibility in a matter of this kind. It will be putting, him in an awkward position if ten persons go and tell him, "I think I am very competent to deal with the matter and so my name should be there". It is better that the names that are given in the list are adopted. It is not necessary for anybody to be on the committee itself to assist the members by making suggestions.

Therefore I oppose the particular suggestion which has been made by the lady who spoke and who was supported by my Honourable friend Mr. Ananthasayanam Ayyangar.

Mr. R. K. Sidhwa (C. P. & Berar: General) : Mr. President, as I have understood, the object of this Committee is to proceed immediately with the business that has been adopted by this House. That is to say, all the proposals that this House has considered as far as the Union and Provincial constitutions are concerned, will be duly framed, excepting those subjects, namely language, citizenship and the principles of the first part which are to be held over. The Committee cannot discuss these matter until these and other subjects which are not yet decided by this House have been discussed threadbare again in the next session. But that would not prevent the Committee from proceeding with its business. Mr. Santhanam's apprehension therefore is not tenable. The object of this Committee is to proceed immediately with its business and therefore, I feel, Sir, there is no necessity for Mi. Santhanam to be apprehensive.

Secondly, as Mr. Pattani has suggested, I do feel that the constitution could be prepared by one expert gentleman. Personally, I Would have felt a Committee of three persons to scrutinise it would be enough. As it is stated that some members may be absent, seven names are suggested. I am not in favour of asking the President to fill in names for those persons who are absent. Three even would be sufficient; five would be more than that and seven- much more. Therefore, I feel that as proposed by Mr. Kher and Mr. Santhanam, the names which are there should be allowed to stand without giving power to the President to take any more in the event of a vacancy for persons who are absent, and that the proposal as made by Mr. Kher with the names that hate been proposed should be accepted.

Dr. D. Pattabhi Sitarpmayya (Madras: General) Mr. President, Sir, we cannot read into the resolution more than the wording permits and therefore I am not perturbed by what Mr. Santhanam has suggested. As a practical politician, he expects that the Bill to be ready must be complete and cannot be full in certain parts and absolutely blank in other parts, and so he thinks that the Bill should be a complete one. When it is made a complete one, his suggestion comes into operation. Whether there is to be a complete Bill and his suggestion should be permitted to come into operation is the issue that we have to consider. If that is to be accepted, then it will be taking away the powers of the whole House and constituting the Sub-Committee into a kind of Committee Delegate of the Constituent Assembly, a step that is not desirable by any means. As Mr. Santhanam has himself categorically described the first three Chapters of the Union Constitution Committee and the last two bits of the same, as well as the Provincial and concurrent and a good half of the Federal lists of the Union Powers Committee constitute a big chunk which has been left out and has yet to be considered by the whole House. For instance, the Union Constitution Committee and the Model Provincial Constitution Committee had a joint sitting and appointed a Sub Committee in regard to linguistic provinces and its recommendation has been considered by the Joint Committee of the two Committees. What is to happen to that hereafter? Should it be dangling in the air like Trisanku, neither in heaven nor on earth? Should it be given the go-by? Should it be passed over? I mention it only as an example, not that I am a faddist about the question. The matter has to be taken as an illustration. I ask; "When on November 6th, this Assembly reassembles, for what purpose is it going to reassemble? Is it going to be presented with a Bill, complete in every detail, and then consider it as a matter of course?" In that case, it will have embodied in it portions which have not been considered at all by this House even primarily. If that is not so, then, the November 6th Session will have to address itself to a consideration of the left-over points in which case no Bill can be ready by that time. This is the difficulty that presents itself to me logically. Therefore, I would like the President to make the position clear and also if possible to convene a Session of this House in, the month of September or October in order to complete all the points which have been left unconsidered. Then the material that will be presented to the drafts men or the drafting Committee or the scrutinising Committee will be ample and complete and then only they can deal With the matter. I make this suggestion in order to have in our mind a clear idea as to wheat is going to happen and if possible to persuade the President to convene a session in the month of September or October for completing the business by attending to those other matters which have been left over.

Pandit Lakshmi Kanta Maitra (West Bengal: General) : Mr. President, the amendment moved by my Honourable friend Mr. Kher deserves very careful consideration and in that connection the observations that have been made by Mr. Santhanam should also be closely scrutinized. I am sure that most of the members of this: House have not yet got any clear picture as to what is going to be done in th. next session. Mr. Santhanam say's that a portion of the Union Powers Committee's Report has not yet been dealt with by the House. Nobody knows whether the House is in a position to accept it *in toto* or to modify it. He seemed to suggest that there will be drafting of the decisions that have already been taken by the House and that it Would be open to the Members to make certain small verbal alterations only if necessary. I want to tell this House that this is not an ordinary piece of legislation or an ad hoc piece of legislation which a, legislature is called upon to enact. You are going to enact a Constitution Act for Free India and, therefore, it is incumbent, may, it is imperative on everyone of you to scrutinise closely every single provision in the Constitution Act and to satisfy yourself that it meets with the requirements of the nation. If you simply restrain the powers of the members of this House and restrict them to mere verbal alterations. I think you will be doing the greatest possible injustice to this house and also to the country. It may be that when a full picture is presented to the House they may be constrained to make certain drastic modifications of certain portions of clauses of the Constitution Bill in the light of the decisions that we may be able to take mean-time. How can you say beforehand that, the draft that will come up before you would be only amenable to certain formal or verbal alterations? Does Mr. Santhanam seriously suggest that because we have accepted certain principles in this House in connection with the reports, of the Union Powers Committee and the other Committees, therefore, that will operate as a *res judicata,* that they cannot be reopened, that it is, not open to any member to go back on them or to modify them to suit the necessity of the law itself or the constitutions itself so that it might fit in with the rest of the provisions? If that is the view held by him, I will join a straight issue with him. I cannot too strongly emphasise the point their it is the Constitution Act of this country which you are going to frame.

Then, Sir, I thoroughly agree with my Honourable friend Mr. Kher when he said that the drafting should be entrusted to certain responsible persons and that too many cooks would spoil the whole broth, and that these responsible persons should be entrusted with the specific duty of seeing that The decisions that have been taken so far are really embodied in the Bill with such alterations as may have been suggested. I want to ask you, Mr. President, to indicate to its whether or not, when the draft bill is prepared and formally introduced in the House for consideration, you are going to allow a Select Committee of this House, elected by members of this House represent it all sections (and by all sections I mean also the States) to go into and examine the whole Bill that is presented for the consideration of the House. Unless in my opinion, a Select Committee is appointed to go into the whole question to examine the bill with meticulous care in respect of every single provision of The Constitution Act, I am sure we are not going to get satisfactory results. Let us not forget that once a Constitution Act is passed, it is not changed within three, or six months or even within a year and a half. Therefore, we must take every possible care and precaution so as to make it as faultless as is humanly possible. No human institution is perfect, I know. But we must take all possible care to see that the Constitution Act framed by us is nearly faultless as possible. We will defer our judgment for some time until we are satisfied with all provisions of the Constitution Act. Therefore before we put the final imprimaturs or seal of approval on the Constitution of India, I ask you carefully to consider whether you will not insist that on the presentation of the Bill there should be a Select Committee to examine the whole Bill and all its provisions with the utmost care and caution and then when the report of the Select Committee is presented before the House, you should have the final opportunity of carefully discussing every single section of the Bill. Personally speaking, I do not feel that we need proceed with the drafting of the constitution at the terrific speed now when we are going to introduce rules and regulations by which this Constituent Assembly will also be functioning as a Legislature. While functioning as a legislature this House can carefully examine the provisions of the Constitution Act as well. With regard to the portions that have been left out, I would suggest that if it is insisted that a complete draft should be presented to this House by the November Session, then the draftsmen may proceed on the assumption that the portions of the report of the Union Powers Committee that have not been so far discussed by this House or left over, have the approval of the House. If, however, we find that these recommendations, in the report of the Union Powers Committee will not ultimately meet with the approval of the House, then we will modify them, and if the principles are not later accepted, the draft also will be modified accordingly. Therefore I do not agree with my Honourable friend Dr. Pattabhi Sitaramayya that an intermediate session would be necessary to complete the programme that was placed before us. I do not think it will be possible in the whole of September to convoke another session of the Assembly to go into this matter. I must say that the November Session should first of an discuss the portions that have been left out and which can be pieced together towards the end. The draft can follow. We shall expect the draft of the Bill in three month's time. After all the constitution of a country is not a small matter and cannot be lightly treated. I would therefore request that you, Sir, should give a clear indication to the House as to how we want to proceed. So far as I am concerned, I do not know if I am voicing the feelings of my Honourable friends here, but I am inclined to think that the final draft of the constitution should be in the hands of Honourable Members of the Constituent Assembly for at least three weeks before it is taken up. Unless you give them sufficient time carefully to read and scrutinise the provisions that you make in the draft, You will be simply taking a terrible lot of time here. You cannot stop the flood gates of amendments that would be pouring in from all directions, if you give them insufficient time. I do not think that for the scrutiny of the draft constitution of the country three weeks' time is too much. I mean that the draft will be prepared and circulated to the members at least three weeks in advance of the session. If you can do that, then the Honourable Members would come prepared thoroughly, and the amendments that may be tabled in connection with the different clauses, Probably will not be so numerous as they would otherwise be, if the Bill is drafted in haste and if the draft is circulated to the members only a few days before the session commences. This is a very important matter. Sir, I do not mean to cast any reflection on your office, Mr. President, but from our experience of the Central Legislative Assembly Department, I may say that your secretariat is not half as efficient as that of the Central Legislative Assembly. That is what we find from the way in which papers,--daily order papers, are circulated to us. On the question of the supply of the draft constitution, if we are confronted with excuses such as "shortness of time" or "we sent to your address" or "we could not send it" and so on and so forth, that will be disastrous. Therefore I would say that it is very necessary to see that these drafts are sent to us in time.

Then, Sir, I would submit that it will be for you to take counsel with the other important members of this House and consider whether you envisage the appointment of a Select Committee to go into the whole Bill before it is taken up clause by clause by this House. Unless that is done we may not be able to safeguard ourselves against pitfalls.

Mr. Alladi Krishnaswami Ayyar (Madras: General) : Sir, on a matter like this it is as well we are sure as to what exactly the import of the resolution is. One thing must be made quite clear, namely, that in regard to the decisions already reached, they will be treated as binding, though if errors are discovered or unforeseen difficulties arise, it will always be open to the House to review the decisions. The analogy of a Select Committee in the case of an ordinary bill that is introduced by Government is misleading. We have taken nearly a year for the consideration of various subjects by certain committees of the House. There has been a Fundamental Rights Committee, the Union Powers Committee, and the Union Constitution Committee and they have considered and placed their decisions before this House. In regard to matters which have already been considered by this Assembly and in regard to which decisions have been reached, the scope of review at a later stage must naturally be limited. The analogy of an ordinary Bill introduced by Government without reference to the Assembly is misleading. There the Government Department prepares a Bill without reference to the legislature and places the Bill before the legislature. Then the House appoints a Select Committee which goes into the question. If you treat the whole question as a draft without reference to the decisions already reached on various important matters and if clause after 'Clause were taken and discussed, I think it will be like beginning again. There will always be a beginning to the procedure, never an end of the procedure started in this House. I think it is as well that it Is made clear that in regard to matters in respect of which no decisions have been reached they stand on a different footing.

But difficulty arises on account of my friend Mr. Santhanam's Suggestion that this committee must take into account the other set of provisions in regard to which no decision has been reached. I do not say that it is not open to the House to review the entire decision but there must be some degree of finality in regard to the work already done for about eight or nine months, so that we do not begin again as if it is the case of an ordinary Bill placed before a Select Committee ignoring the reports that have been submitted by the committees, the discussions of this Assembly on clause after clause and the votes that have been taken on the floor of the House. I do not know whether it is the wish of the House that this Committee should consider all matters. Sections which have not become the subject of decisions by this House is another matter. At any rate, some distinction must be drawn between cases in which decisions have been raised in this House yesterday, the day before and during the whole of the various sessions of this House. We have discussed clause after clause and there have been very long and elaborate arguments an the floor of the Abuse. We owe a duty to the public, to make them feet that all this time is not to be treated as waste of time. That is the only point I want to make clear.

Dr. P. S. Deshmukh (C. P. & Berar: General) : Mr. President, Sir, I am sorry I cannot find my way to agree with the suggestion and the speech made by Mr. Alladi Krishnaswami Ayyar, or Ayyangar--I am afraid I am not able to pronounce his long name correctly, but whether it is Ayyar or Ayyangar, probably it makes no difference, in any case, he can be fittingly described as the previous speaker. His suggestion, Sir, is that the time that we have spent in this House should not be wasted. But this is, Sir, the important legislation which could never be altered lightly, and whatever procedure we may lay down in the House, it is bound to be very hard to amend it. We will have also to take into account the fact that many of our friends have already made up their minds that we are going to have a very large number of representatives coming from the States. We all know that 'the States are a conservative element in India and they are sure to put in their weight against any alterations. It is absolutely certain that if we try to amend the constitution, they would be on the side of maintaining it rather than permit it to be altered.

Apart from that Sir, what is the exact situation in which we find ourselves today? Sir, Alladi or Mr. Alladi said that we have spent a year on this work. I am afraid, Sir, that is not strictly correct. For the first time we met in the month of December. What was the business that was transacted then? Very little. The sum-total of the work we turned out in that session does not come to much especially from the point of view of being of much practical use. Then we met again in January, but that also was a very short session. We merely passed a resolution giving out the objectives of this Assembly. As a matter of fact, if we carefully look into the proceedings and records of our work, we will find that the work that we have done so far, is in my humble view, of a very perfunctory nature. We have bad several committees, but in most cases we have had only interim reports, provisional suggestions, tentative proposals and things of that sort. That is the sort of thing we have been dealing with. We have not yet had a complete picture of the Constitution. As a matter of fact, the most important chapters in the. Union Powers Committee are yet to be decided on. Then, how can we possibly say that we have before us a skeleton of the constitution? I say there is not even a skeleton constitution before us. Therefore, it is but proper that we should have a very comprehensive committee a committee got up of members from all sides of this House containing the best intellect and competence that we have in this House to look to the shipping of the Constitution. Not to give such an opportunity and to rush legislation like the framing of a Constitution would be highly improper. I hope, Sir, that the suggestion made by Mr. Santhanam and supported by Mr. Alladi Krishnaswami Ayyar will not be accepted by this House and that the counter-suggestion made by other friends of mine and supported by Mr. Aney on this side will be accepted by the House.

As I said before, we have been dealing with the Constitution in a very piece-meal manner and unless we have the whole picture before us, the House should not be regarded as having committed itself one way or the other. Of course, in some matters, as in the case of the Minority Committee report, etc., there was so much of unanimity that the decisions arrived at are not likely to be disturbed. But there are so many ancillary things, and things that arise as sort of corollaries to the main propositions. It is fit and proper that they should be decided afresh. It should not be supposed that the decisions that we have already taken in respect of these are unalterable. They should be alterable with as much ease as possible till we have the whole picture and till we have had a proper opportunity of discussing every word, every section and every principle involved in the Constitution. Till such time none of our decisions should be regarded as in any way unalterable.

Mr. Tajamul Hussain (Bihar: Muslim) : Sir, I rise to oppose the motion of Mr. Satyanarayan Sinha. In my opinion it will be wrong to appoint a committee at this stage. I do not believe in doing work piecemeal. I think it is far better in our own interests that we sit here till we have finished the consideration of all the Reports. I think it will not take more than about a fortnight to finish the consideration of the Reports. If we continue the work now, I think, that by the 12th of September we will be able to finish it. If Government, for certain reasons, are not prepared to do so, being busy elsewhere-let us adjourn for a few days and meet again. But let us not end this session, now. Let us adjourn for a few days, meet again and finish the work which we have taken on hand. When all the Reports are finished let us then appoint a Committee, and then adjourn for about three months. I think it will take the Committee about two months to scrutinise the whole thing and submit its report in the form of a Bill. And then we will take at least one month to consider the Bill and then we can come to the Assembly to deal with that Bill. Therefore, I say, let us go on till the end or at least till the middle of September and finish consideration of these Reports. Suppose we to the end of September, we can adjourn for October, November and December, and meet again in January and then go on till we finish this work. I think if we sit for two months during, January and February, then by the end of February we shall finish the work. For the three months we can stay here as the Members of the Union Parliament. During these three months, part of the time can be spent in this way. Then we can sit from the beginning of March to end of March or middle of April for the Budget Session of the Central Legislature. I think, Sir, for the smooth working it would be better that we continue now, and appoint a committee after the entire work of considering the Reports is finished. I have come here to oppose the original motion of Mr. Satyanarayan Sinha.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim) Mr. President, Sir the process of constitution-making has been going on for the last eight or nine months. This Assembly appointed certain committees to go into several topics, and to recommend a constitution for the Province and for the Centre, and some committee were appointed to make reports on special subjects such as the Powers of the Union, the Minorities Rights, the Fundamental Rights and so on. After these committees had gone into the several matters referred to them, and after great care and scrutiny, they made their reports to this Assembly. Most part of the reports has been discussed and debated upon in this Assembly, and this Assembly came to certain conclusions, and decided certain matters this way or that. So we have reached a certain stage now. After the committees had studied the questions and prepared their reports, these reports were discussed and debated in this Assembly and most of these questions have been decided upon and only a few topics have been left over. Now, two questions arise. The first is, whether a select committee to draft the Constitution should be selected now, or whether it should be selected after the remaining topics also have been decided upon by this august House. That is the first question to be decided. The second question is whether the decisions that have been taken by this. House can be re-opened again at the stage when the draft Bill comes before it. These are the two questions to be decided on this motion. I am clearly of the opinion that there is no room, nor justification for reopening the decisions on those topics that have already been decided upon. As my friend Mr. Alladi Krishnaswami Ayyar put it they have been debated upon, they were scrutinised on reports drawn up by committees competent to consider them. They were again thrashed threadbare and debated upon by this body. Therefore, Sir I think no useful purpose would be served by reopening then again at this stage, nor is it right and proper.

Shri C Subramanyam (Madras:. General) : Sir, on a point of order Rule 32 of the Rules of Procedure is as follows:-

> "No question which has once been decided by the Assembly shall be re-opened except with the-consent of at least one-fourth of the members present and voting."

Therefore, it is clear that we have provided for the reopening of questions already decided upon. That being the case. I want to know why there should be any debate on this point at all. We have already provided for the reopening of decisions. So I submit there need not be any debate regarding the reopening of decisions once arrived at.

Mr. President: You should have raised this point of order when the first speaker raised the question. Now that the debate has proceeded so far it cannot be stopped in the middle. But all the same, I think this question has been discussed at great length and I would request Honourable Member to cut short their remarks as much as possible.

Mahboob Ali Baig Sahib Bahadur: The second question is about the select committee for drafting the Bill. I entirely agree with my friend Dr. Pattabhi Sitaramayya that the topics left over should also be debated upon, discussed and scrutinised by this House and when we have done that, then that will be the time to appoint this drafting committee. I do not see any reason why certain topic which have been left over should not be discussed by this Body. Is it considered that the topics left over are not of as much importance as the others? It is clearly not so. One Member has said that after the Bill is presented to the House it should go to a select committee. I do not think that is necessary at all after this larger body, the whole Assembly, had once gone into the whole question and decided on the issues one way or the other. Therefore there is no necessity for a select committee to be appointed before, which the Draft Bill should go and I submit that just as we have decided on many topics the remaining topics also should be decided by this body so that what is left to the Drafting Committee will be only placing the topics that have been decided on, on which decisions have been arrived at, in a legal form and providing any consequential provisions that may be necessary from those decisions. That is all. When the draft Bill comes before the House it should be very much easier for us to get through the business and pass it in a shorter time than would be necessary if we were to go through it *in extenso.* Therefore, I submit that it is not open to us, at any rate, normally, to reopen the question at the time the draft is placed before us. At the same time I am of opinion that this House should decide, as it had decided other topics beforehand, regarding matters that had not been decided and it is not necessary for us at this stage to appoint a Committee.

Shri Raj Krushna Bose (Orissa: General) : Mr, President, I do riot have to say much in this connection. In my opinion it would have been proper if we had maintained continuity-and consistency in the proceedings hitherto. From the discussion today it appears that we are deviating from the course which we were following. As first, we had thought of determining the principles for drafting of the constitution. You set up two committees and they have settled the principles. When principles have once been decided, it would have been proper for us to express our opinion on them. This could not be done, because the present session finishes before the 31st of August. Therefore, I desire that hence forward, whenever we are summoned we should have clear indications as to how many days we would be required to stay. We do not get any indications in this connection and we come on the understanding that after finishing the work of the Assembly in a few days we will be able to go back to our respective constituencies. But in future, we should have clear indications as to how long approximately the session will continue so that the members may not say that they are not prepared to stay so long. I want to submit most respectfully that we should have liked to express our opinion on the principles which the two Committees have agreed upon after so much labour and hard work. To do otherwise is a mistake and I think that we are not doing our duty. When you have decided that we shall not sit after 31st, then I submit that for expressing our opinion on the Union Constitutional principles on which we have not yet given our opinion, another session should be summoned either towards the end of September or the beginning of October. After that, the draft should be prepared which we will pass of course. If there is some mistake of language we will correct it. When the draft comes before us we can amend it if necessary, but we have no right to go against the basic principles. Then we will not be able to say that the Governor should be elected on the basis of indirect election instead of adult franchise. If we go on changing the principles like this, then the task of the Constituent Assembly becomes very difficult, and the work will never come to an end. Therefore, I submit very respectfully that consistency should be maintained with what has so far been accomplished, and in order to ascertain opinion regarding the remaining principles of the Union and Provincial Constitutions, another session should be summoned either at the end of September or the beginning of October. After that, we will give time to the Constitutional Adviser to prepare the draft, and when the completed draft comes before us, we will give our final opinion. Therefore, it is essential that continuity be maintained.

As I have already said, from now onwards when the Constituent Assembly is summoned an indication should be given that we will have to stay here for approximately so many days. The members will therefore not form their own idea that the work will be finished in so much time and make their arrangements accordingly. On the contrary, they Will make their programme on the basis of your directions and then these difficulties will not arise.

Mr. Jaipal Singh (Bihar: General) : Mr. president, Sir, I oppose the Resolution that has been moved because I feel that it is not right for us, at this stage, to appoint any Committee, whether of experts or otherwise, which can pry into things which we have not yet decided. I can fully understand that decisions that have been made may be put into the melting pot by them and turned out in constitutional language, but it has been insinuated by some, speakers that this Committee would also look into matters where the House has not taken its decision. A great may important subjects aye yet left over. They have not been decided by this Assembly and I don't see how we can delegate our constitution making power to Any Committee at all. I do not think there can be any difference of opinion on that. I do admit that, as far as the question of clauses and other things that have already been decided by us, is concerned, a Committee may reproduce them in suitable constitutional language. Here, a point has been raised that some sort of finality should be reached. True we are making a constitution and that very word itself means that we are not to change it every five minutes, but at the same time, before finality is reached, I think we should have ample opportunity of reviewing the situation. It may be that we shall have to unmake our decisions. The, House is a sovereign body and It has the right to make decisions and unmake them. It seems to me that, by appointing a Committee at this stage, we are putting the cart before the horse. More and more have we realised that it does not pay us to rush things. We have appointed Committees of experts; they have produced their reports; and what has happened is that those reports when they have appeared before this Assembly have been thrashed out and there have been very many important changes in the recommendations of the experts. This may be the ease with the Drafting Committee also when it submits its report. I think, in that case, we shall just be wasting time. I think the better thing would be that we should complete whatever remains to be done and, then, the Drafting Committee will be in a position, having been in full possession of all decisions taken by this Assembly to produce a Bill which can come before us to make up our mind whether we want to change the language or the subject matter contained in that Bill. Sir, I particularly feel that should not be left to this Committee even to draft in constitutional language clauses in regard to tribal matters, for instance. Now, the Tribal Committee, one of the Sub-Committees appointed by the Advisory Committee which again has been appointed by this Assembly, has vet to complete its work. We have, I know, submitted an interim report. Does it mean that this Committee of experts, expert draftsmen, are going to submit in the Bill matters which have not yet come before the Assembly? I think, that would be a preposterous thing for us to do. The House must have the right to make its decisions and I suggest that we can never delegate our constitutional power to any Committee, however great the experts might be. We have seen their we are grateful for the work they have produced, but our experience has been that even experts have to be shifted when the matter they produce comes before the floor of the House before the floor of the House.

Mr. Hussain Imam (Bihar: Muslim) : Mr. President. I do not wish to take up the time of the House. I simply wish to point out the conditions under which we are working. At the moment there is so much distress and disturbance in the country that it seems unnatural for us to sit here, and not be at our posts. A suggestion was made that this Session should be continued. I think it would be disastrous for this Session to be continued for a day longer than is absolutely necessary. We must terminate the Session as soon as possible and go back and give the message of peace to the countryside. It is our duty as citizens of India to see that peace is restored. The motion by Mr. Satyanarayan Sinha is very simple and I do not understand why there has been so much distrust shown by Honourable Members. Let us examine this in a cool way. An Assembly of this nature cannot possibly go into and examine the, things in detail. Everywhere the detailed scrutiny is left to Select Committees. Here, to, we had the advantage of double scrutiny. Firstly, you had the Union Powers Committee and then the Union Constitution Committee. These two have gone into the matter, sifted the whole thing and framed their recommendations. They have then been examined by the House. But let me tell the House. that no doubt there have been a large number of amendments moved, but the amendments that have been carried have been mostly inspired amendments and the Committee that has been proposed consists of experts whose opinions have prevailed in this House. You have the guarantee that after the double scrutiny there will be a third scrutiny by the experts. Now, there is no question of usurpation of the rights of the House. The House being a sovereign body, has the right to change everything which it has not approved in the first instance. Only those are sacred which have been approved by the House, and after the approval of the House, you, as a sovereign body, respect yourself and impose a self-denying restraint and do not go back on your own decision. Therefore if any item is brought in which has not been approved of by the House, it will be open to the House to examine and reconsider and change. No one can deny the right of the House to amend those proposals which have not been approved in principle but this is what I want the House to realize. We are talking in riddles. We are really different parties and decisions are taken therein. No matter whatever people might say but it is only if the majority of the party feel that an amendment should be approved, then only it will be put as a party question and even those who were against it will vote for it. This is the reality of the situation. Therefore it is idle to say that suggestions have a better chance of being carried here if the Committee is not formed. Whether the Committee is formed or not, the party machine will move and as such only the inspired amendments which can have the approval of the machine of the party can get through. I therefore suggest that it is idle to make objections to the procedure. The procedure is quite all right. You have appointed the best people available to examine the draft put up by the office and it will not be difficult to go back on those recommendations of this Committee which have not been specifically approved by the House. I therefore feel, Sir, that this motion should be approved unanimously by the

House.

Shri Shanker Dattatraya Deo (Bombay : General) : Sir, I move closure.

Mr. President: Closure is moved. I put it to the House.

The motion was adopted.

Mr. President: Mr. Satyanarayan Sinha may reply.

Shri Ramnath Goenka (Madras: General) : Certain amendments have not been moved.

Mr. President: I shall take up the amendments later. I am taking at the present moment the amendment relating to the text of the Resolution.

Mr. Satyanarayan Sinha: Sir, I confess I have not been able to appreciate the misgivings and doubts expressed by many of my friends here. I think the Drafting Committee's Report will be before this House and this House has got an inherent right to alter, modify and change anything it likes. I think the Assembly has the right to change even the decisions it has taken but it will not be fair if it goes on changing the decision which it has once taken and therefore I think the House will not agree to change the decisions on important principles which were discussed and decisions arrived at. But with regard to those principles which might be incorporated in drafting the whole bill on which we have not expressed our opinion or taken any decision, to that extent I think this House has every right to modify, change and alter. I don't see any reason for any fuss. The Committee's report will be before this House and it will have every opportunity to change or modify anything it likes.

Mr. President: I think it is necessary for me to make the position clear before I put the Resolution to vote. I do not think there is any intention of taking away any of the powers of the Members of this House and even if there were any such intention, that intention can have no effect. The idea is to place before the House at its next Session a draft in a more or less complete form so that the Members may be in a position to give their attention to the draft, as a whole and then come to their conclusions and pass the draft section by section. We have already discussed and adopted the principles underlying some of the most important items and there are some about which we have not yet had any discussion. The idea is that the Committee which is now being suggested should have the draft ready, not only of the principles which have already been accepted, but also of those which we have not considered. Of course both will be before the House but they will be an a somewhat different footing. Those relating to the portions which have already been accepted will be considered by the House from one angle of vision. The House will ordinarily try to conform to its previous decisions and not to alter them unless it finds that there is something which calls for a revision. But with regard to the items which we have not yet discussed, the House will naturally scrutinise the draft with a greater degree of latitude or freedom and I think that will be the best course to save time, so that the House may consider the whole thing and may have an opportunity of forming a comprehensive view of the constitution as, it emerges. I have this to say, that I am anxious that the Constitution should be completed; but at the same time I am equally anxious that we should do nothing in a hurry and that every clause, every sentence of a clause and every word of the clause will be weighed and carefully weighed by all the members before it is finally adopted. *(Hear, hear.)* Therefore when the draft comes up before in its final form for consideration, we shall take as much time as is considered necessary for giving it the fullest possible consideration and the, members will have an opportunity of considering every word that is used there and of giving their own decision on the draft. I think with that the members will be pleased to accept this resolution in the amended form which gives the Committee a somewhat larger latitude in preparing the draft in regard to matters which do not come exactly under the principles which we have decided but which are implied in them. I now put the amendment of Mr. Kher to the House.

An Honourable Member: What about your announcement that the Bill will be in Hindi or in the National language?

Mr. President: We will have it in Hindi. When the time comes. I shall place it before you.

Another Honourable Member: How many weeks will you give us to study the Bill?

Mr. President: Reasonable time would be two to three weeks. I will now put the amendment of Mr. B. G. Kher to vote.

The question is:

"That for the words "to scrutinise and to suggest necessary amendments to the draft Constitution of India prepared in the Office of the Assembly on the basis of the decision taken into the Assembly" the following be substituted:-

"to scrutinise the draft of the text of the Constitution of India prepared by the Constitutional Adviser giving effect to the decisions taken already in the Assembly and including all matters which are ancillary thereto or which have to be provided in such a Constitution, and to submit to the Assembly for consideration the text of the draft Constitution as revised by the Committee'."

The motion was adopted

Mr. President: I now put the resolution, as amended to vote.

The motion was adopted

Mr. President: Now, with regard to the names of the Members who are to constitute the Committee I find that there are several amendments.

Honourable Members: We are not moving the amendments.

Dr. P. S. Deshmukh: I request all friends, who have given notice of amendments, adding my name to the list of names already suggested, kindly not to move their amendments. I am most thankful to them for their kindness in proposing me as a member of the Drafting Committee.

Mr. President: So then we have dispersed of the amendments to include new names to the list.

There is one suggestion made by Begum Aizaz Rasul and that is that in case any of the Members are unable to attend the Committee or if any vacancy occurs I should be given power to fill it. I take it that that suggestion was made in view of the fact that Mr. Saadulla is unfortunately not keeping fit and may not be able to serve on the Committee. I take it that the House will give me leave to fill up the vacancy if it actually occurs. *(Members:* "Yes"*)*

The question is:

"That original list of names suggested in the Resolution moved by Mr. Satyanarayan Sinha be adopted."

The motion was adopted.

REPORT OF THE CONSTITUENT ASSEMBLY FUNCTIONS COMMITTEE

The Honourable Dr. B. R. Ambedkar (Bombay: General) : Mr. President, I beg to move that this Assembly do proceed to take into consideration the Report on the functions of the Constituent Assembly under the Indian Independence Act, 1947, submitted by the Committee appointed by the President in pursuance of the decisions of the Assembly on the 20th August 1947.

Sir, the Report of the Committee has already been circulated to the Members of the House and, I do not think that at this stage, when the Report has been in the, hands of the Members at least for the last two days, I need expatiate at great length upon the work of this Committee. I think it would be enough if I, in the first instance, draw attention to the recommendations of the Committee.

All together the Committee has made five recommendations. Its first recommendation is that, it is open to the Constituent Assembly to function as Legislature and that it should function as such; (2) that while functioning as Legislature it should adopt the rules of the Legislative Assembly as far as possible with necessary amendments; (3) the necessary amendments should be made under the orders of the Please dent of the Constituent Assembly; (4) the work of the Constituent Assembly as a Constitution-making body and as an ordinary legislature should be separated and should be conducted in separate sessions to be held on separate days; (5) the power of prorogation should vest in the President and not in the Governor-General as found in the Adaptation of the Government of India Act. After having made these recommendations, the Committee considered whether there were any difficulties which would stand in the way of giving effect to their recommendations and found three which they had to resolve in order to give effect to their recommendations.

The first was whether one and the same person should preside over both the bodies, the Constituent Assembly and the Legislature. This difficulty arose because section 22 of the Government of India Act, which related to the office of the Speaker, has been dropped by the Adaptations which have been carried out under the Indian Independence Act with the result that the President is the one person who has to preside over both, the Constitution-making body as well as the Legislature. Ordinarily speaking, this should not create any difficulty, but in the circumstance where for instance the President is a Minister of the State, this difficulty may arise. For instance, it would be an anomalous thing if the President who is a Minister of State also were to preside over the Constituent Assembly when it was functioning as a lawmaking body. Consequently the Committee thought that either of two courses has to be adopted; either the President should cease to be a Minister, or, if he continues to be a Minister, the Assembly should elect another officer to be called the Speaker or Deputy President whose functions it would be to preside over the Constituent Assembly when it is in session for the purpose of making laws.

The second difficulty which the Committee came across was will regard to the representatives of the States. The House will remember that the Constituent Assembly, when it will be meeting for the purposes of law making, would be operating upon the whole field which has been included in List No. 1 of the Seventh Schedule to the Government of India Act. The House also will recall that the States at the present, moment have joined the Constituent Assembly on a basis of what is called the Instrument of Accession which does not altogether tally with the subjects included in, List No. 1. In fact the subjects included in the Instrument of Accession fall considerably short of the subjects included in List No. 1. The question, therefore, that arises is this, whether a body of people, who are Members of the Constituent Assembly and who are bound by the Instrument of Accession and have responsibility for a shorter number of items, should be permitted to take part in motions-and in debates relating to certain Other subjects Which were not included in the list contained in the Instrument of Accession. There were of course two ways of dealing with this matter. One way of dealing with this matter was to adopt the procedure of what is called 'in and out', that they should sit in the Assembly and vote when an item which was being debated was common to both' the Instrument of Accession as well as List No. 1, and when a item was being discussed in the House which did not form part of the Instrument of Accession, they should not be permitted to participate. The Committee came to the conclusion that although theoretically the second course was more logical, from a practical point of view such a distinction need not be made in the circumstances in which we stand and, therefore, the Committee made the recommendation that notwithstanding the subjects contained in List No. 1 and the Instrument of Accession, the representatives of the Indian States should continue to take part in all motions that may relate to all subjects irrespective of the distinction between the two lists.

The third question which the Committee felt they had to deal with was the position of the Ministers. As the House knows, there are certain Ministers who are at present not Members of the Constituent Assembly. They are five in all who fall in that category. The question therefore arises for consideration whether the Ministers who are Members of the Constituent Assembly should take part in the proceeding of the Constituent Assembly and also in the Legislature. So far as their participation in the work of the Legislature is concerned, the position is safeguarded by reason of the fact that Section 2 sub-clause (2) of the Government of India Act is retained by the Adaptation and Members of the House know under the provisions contained in Section 10 sub-clause (2) a person, notwithstanding the fact that he is not a Member of the Legislature, may still continue to participate in the work of the Legislature and be a Minister. Under that, therefore, the Ministers who are not Members of the Constituent Assembly will be eligible to sit in the Constituent assembly when its functions as a Legislature, without ceasing, to be Minister of State.

The question that remains is, what is to happen with regard to their relationship to the Constituent Assembly. At present, as they are not Members of the Constituent, Assembly, they are not entitled to participate in the work of the Constituent Assembly so far as it relates to the making of the Constitution. The Committee came to the conclusion that it was necessary that their guarantee should be available to the Constituent Assembly in the matter of constitution-making and therefore just as Section 10 sub-clause (2) permits them to participate in the work of the Legislature so also the Constituent Assembly should make a provision which would permit Members of Government who are not Members of the Constituent Assembly also to participate in the work of the Constituent Assembly.

Sir, there are two other matters about which the Committee has made no recommendation and it is necessary that I should refer to them. The first matter is the question of double membership. As the House knows there are certain Members of the Constituent Assembly who are also Members of the Provincial Legislature. So far there is no anomaly, because the Constituent Assembly is not a Legislature. But when the Constituent Assembly begins to function as a Legislative Body, this conflict due to double membership will undoubtedly arise. I might also draw attention to the provision contained in Section 68 (2) of the Government of India Act which deals with this matter. Section 68 (2) did not permit a member to hold double membership of two Legislatures, the Central or Provincial. But this provision has now been dropped by the adaptation. Consequently, it is permissible for Members of the Constituent Assembly when they are functioning as Members of the Legislature also to be Members of another Legislative Body. The anomaly, of course, purely and from a strictly constitutional point of view does remain. It is for the Constituent Assembly to decide whether they will accept the principle embodied in the omission of Section 68 (2) and permit double membership or whether notwithstanding the dropping of Section 68 (2) they will take such suitable action as to prevent double membership.

The second question about which the Committee has made no recommendation is relating to the administrative- organization of the Assembly. As the administrative organization in the Assembly is a single unified organization it is under the exclusive control of the President of the Constituent Assembly. So long as the Constituent Assembly had only this single and solitary function to perform, namely, to prepare the constitution, there was no difficulty, in this matter. But when the Constituent Assembly will function in its double capacity, once as the constitution-making body and another time as a law-making body with another person at the head of it, namely, the Speaker or the Deputy Speaker, questions with regard to the adjustment of the staff may arise. But the Committee thought that they were not entitled under the terms of reference to deal with this matter and therefore did not make any reference to it at all.

Sir, I do not think it is necessary for me to take the time of the House any more than I have done. I think what I have said will sufficiently remind Members of what the Committee has done and will enable them to proceed to deal with the report in the best way they like.

Mr. President: Mr. Munshi has given notice of a Resolution embodying the recommendations of this Committee. I think it will be best if that motion is taken up first and the discussion may follow later.

Dr. P. S. Deshmukh: Would it not be better if we first take the motion that the report to be taken into consideration and after a decision on that take up the other amendments?

Mr. President: Is it necessary to have a separate discussion on the motion for considering the Report? I think both can go together if the House permits. Strictly speaking, that Resolution which Mr. Munshi moves is practically the same thing.

Mr. K. M. Munshi (Bombay: General): I move the Resolution which stands in my name. The paragraphs of the Resolution which I seek to move are almost in the words of the Report, except one or two things to which I will presently draw the attention of the House. The clauses are taken bodily from the Report which has been explained to the House by the Honourable Dr. Ambedkar. I need not, therefore, go over the same ground again, but I would like' to draw the attention of the House to one or two changes which I have made and which I think were necessary in the interests of giving proper effect to the Report.

Para. (iv) runs as follows:-

> "Suitable provision should be made in the Rules of the Constituent Assembly for the election of an officer to be designated the Speaker to preside over the deliberations of the Assembly when functioning as the Dominion Legislature."

In this connection, I have to mention that the Report has placed before the House two alternatives:

Alternative (a) is that the President of the Constituent Assembly should be a person whose whole time is given to the work of the Assembly both when engaged on Constitution-making and when transacting business of the Dominion Legislature. They have also stated another alternative: If the President of the Constituent Assembly is a Minister, provision may be made in the Rules of the Constituent Assembly for the election of an officer to preside over the deliberations of the Assembly when functioning as the Dominion Legislature.

Sir, as you happen to be a Minister, I have selected the second alternative and embodied it in my paragraph (iv) with the result that the House will have to elect an officer to preside over the deliberations of the Assembly when it functions as a Dominion Legislature.

The only other change that I have ventured to make is the name of the officer whose election I have suggested, that upon election, the officer should be designated Speaker, so that when the House sits as the Constituent Assembly, we will have the President presiding over it and when it sits as a Legislature, the officer elected will preside and we win address him as Speaker.. The word Speaker being of sufficient significance, it will convey that we are sitting as the Legislature and not as the Constitution-making body. That is the only change which I have ventured to make. I submit that the motion as have moved may be accepted by the House.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, on a point of order, the motion has not been read out and moved.

Mr. K. M. Munshi: I will read It out certainly. I am much obliged to the, Honourable Member for drawing attention to this and I stand corrected. My motion stands as follows:

"That with reference to the Motion by the Honourable Dr. B. R. Ambedkar regarding the consideration of the Report on the functions of the Constituent Assembly under the Indian Independence Act, it is hereby resolved that--

(i) the functions of the assembly shall be-

(a) to continue and complete the work of Constitution-making which commenced on the 9th December, 1946, and

(b) to function as the Dominion Legislature until a Legislature under the new Constitution comes into being.

(ii) The business of the Assembly as a Constitution-making body should be clearly distinguished from its normal business as the Dominion Legislature, and different days or separate sittings on the same day should be set apart for the two kinds of business.

(iii) The recommendations contained in para. 6 of the Report regarding the position of representatives of Indian States in the Assembly be accepted."

I have incorporated para. 6 of the Report. The operative part of that para is as follows:

"We agree that, as implied in the wording of this term of reference, the' members of the Assembly representing the Indian States are entitled to take part in the proceedings of the Assembly on all days get apart for the business of Constitution-making. They further have the right on days set apart for the functioning of the Assembly as the Dominion Legislature to participate in business ,relating to subjects in respect of which the States have acceded to the Dominion. Though it is competent for the Constituent Assembly to deny or limit their participation in business relating to subjects in respect of, which the States have not acceded, we should recommend that no ban or restriction be placed by rule on their participation in such business also."

Coming to my resolution,

"(iv) Suitable provision should be made in the Rules of the Constituent Assembly for the election of an officer to be designated the Speaker to preside over the deliberations of the Assembly when functioning as the Dominion Legislature.

(v) The power of summoning the Assembly for functioning as the Dominion Legislature and proroguing it should vest in the President.

(vi) Minister of the Dominion Government, who are not Members of the Constituent Assembly, should have the right to attend and participate in its work of constitution-making, though until they become members of the Constituent Assembly they should not have any right to vote.

(vii) Necessary modifications. adaptations and additions should be made--

(a) by the President of the Constituent Assembly to the Rules and Standing Orders of the Indian Legislative Assembly to bring them into accord with the relevant provisions of the Government of India Act as adapated under the Indian Independence Act 1947.

(b) by the Constituent Assembly or the President, as the case may be, to the Rules and Standing Orders to carry out the provisions of para. 9 of the Report and where necessary to secure an appropriate adaptation of the relevant section of the Government of India Act to bring it into conformity with the new Rule."

In this connection I may mention one fact which I omitted to mention in the beginning. The power of summoning the Assembly and proroguing is, according to Resolution moved by me and according to the report, to be vested in the President. As already stated, under the Government of India Act, as adapted, for the moment it rests with the Governor-General. That of course means, Governor-General as advised by the Prime Minister. But our legislative function being only an aspect of the Constituent Assembly should remain independent of the Governor-General. Therefore, it was thought that the President would be the proper person to summon or prorogue the Legislative Council.

These are all the remarks that I have to make and I hope the House will accept the resolution.

Mr. President: I have got notice of certain amendments. I find that four of these amendments are covered by the Resolution which Mr. Munshi has moved and therefore they need not be moved. There are two amendments of which I have notice which are not covered by Mr. Munshi's Resolution, one by Mr. Ananthasayanam. Ayyangar and the other by Mr. T. T. Krishnamachari.

(Shri M. Ananthasayanam Ayyangar did not move his amendment.)

Shri T. T. Krishnamachari (Madras: General): Sir, I am not moving the amendment; but I would like to say a few words on the motion before the House.

Mr. President: There is no other amendment. The resolution is now open for discussion. You can speak now.

Shri T. T. Krishnamachari: Mr. President, MY object in speaking on this motion moved by Dr. Ambedkar and the amendment thereto of Mr. Munshi is to obtain elucidation on a few points, because as things are one feels he is in a maze of conflicting proposals. The first point that I would like to draw the attention of the House to is in regard to sub-section (vi) of Clause 1 of Mr. Munshi's amendment. The Honourable Dr. Ambedkar in moving the main motion drew attention to the fact that the Report had taken cognisance of Section 10 sub-section (2) of the Government of India Act thereby providing the members of Government who are not members of this Assembly the right to participate in the proceedings. This is again reiterated in the resolution which is moved as an amendment to the main motion. Sir, I would like to know whether the limitation that exists in sub-section (2) of Section 10 of the Government of India Act, namely, that those members of Government can continue in the capacity and hence can participate only for a period of six months and not more and during that time they have got to be qualified by becoming members of the Assembly applies to the members of the present Government. That is a point that I would like either Dr. Ambedkar or Mr. Munshi to make clear.

The second point I would like to mention is in regard to the designation of the officer that has been suggested to preside over the Dominion legislature. I am afraid there is some conflict between the adaptation of the Government of India Act and what Mr. Munshi stated. The adaptation of the Government of India Act deals rather drastically with Section 22 which refers to the presiding officers of the Legislature under the 1935 Act. Sub-sections (1), (2), (3), and (5) of this section have been omitted and sub-section (4) reads thus in its original form:-

"There shall be paid to the President and Deputy President of the Council of States such salaries as may be respectively fixed by Act of the Federal Legislature, and, until provision in that behalf is so made, such salaries as the Governor-General may determine". The adaptation merely says that in sub-section (4), for "and the Deputy President of the Council of State", substitute "of the Dominion Legislature". So the provision remains more or less intact so far as sub-section (4) is concerned, except the change that is contemplated in the nomenclature of the legislatures and the words the Council of State and the Lower House have been removed and the words "the Dominion Legislatures" substituted. So when the entire scheme has been changed and the name Speaker has been wiped out in Section 22 of the Government of India Act, and in the following Section 23, I do not know if it is quite right or legal' for the name Speaker to be introduced here. It would probably be better to adopt the wording of the original report namely ,an officer to preside', whatever the designation he might get ultimately.

The third matter on which I would like some elucidation is this. That is sub-clause (v) of Clause 1. The position taken up in this sub-clause is quite correct from our point of view since this is a sovereign body entitled to frame its own rides of procedure and appoint its own officers. But so long as we shall be functioning under the Government of India Act which we have adapted as a legislature, why not take the adaptation a little further and make it state that the Governor-General shall not have the power a proroguing and summoning the Assembly which shall be vested in the President? I do not think there is any legal bar to an adaptation of this sort. As I said, at the start I am open to correction: But I think that the position could be suitably rectified by proper legislative procedure rather than by means of a motion and an amendment thereto, or by an explanation by the mover of the amendment. I refer to Mr. Munshi.

Sir, yet another matter which I would like to mention here and which relates to the amendment of which I had given notice, is this. We are dealing with a number of anomalies because the position in which we are now placed is not of our own creation. A number of factors have come into play by reason of the rapidly changing political position of our country and we have to carry on as best as we could. In the circumstances, without going into.. personalities, I think it best, Sir, that the sphere of action of the presiding officers of the Constituent Assembly over its two functions should be clearly defined and that is why I wish Mr. Munshi had reproduced in his amending resolution those words in paragraph 6 of the Committee's report which had clearly stated it has to be remembered that though transacting two kinds of business, the Assembly is one and can have only one President and that the President should be the supreme head of it, both on its administrative side and on its deliberative side. I may at once assure the House that in bringing to the notice of the House this Particular clear and precise enunciation of the functions of the President and the consequent delimitation of the functions of any officer that the President or the House might appoint, I have no intention of either trying to put extra power in the hands of anybody or take away the power of anyone else. Only I feel that when we are dealing with circumstances over which we had no control, we are trying as, best as possible to get on with the work that we are obliged to do-let us have a precise definition here and now so that later on whatever happens, if by any chance there is any conflict, it will be known exactly who is the supreme authority. I wish Mr. Munshi had put this idea in his amending resolution. It is quite adequate for our purpose if it is acknowledged by the mover that the wording of the report of the Committee is supreme and that it cannot be altered even by the amending resolution which has been moved. I think that assurance will serve the purpose. After all the position that we are envisaging now might last only for six or eight months. Thereafter, this Assembly will function principally as the Dominion Legislature, until the new Constitution comes into operation, and there might have to be other changes also in the status and powers of the presiding officer. But for the time being I think a precise definition of the sphere of his activities and emphasis on the fact that the President of the Constituent Assembly, notwithstanding the fact that he concedes with the permission of the House some powers to another person, still remains the supreme head both in regard to the administrative and deliberative sections of the House, will go to satisfy fears and doubts in the minds of Members. I also hope that either Dr. Ambedkar or Mr. Munshi will try to clarify the doubts that I have stated in regard to items (iv) and (vi) of Clause 1 of the amendment moved by Mr. Munshi.

Mr. D. H. Chandrasekharaiya (Mysore State): Mr. President, I rise to a point of order. It is this. Whenever a report is brought up for consideration before this House the motion made is that the report be taken into consideration. After the report is considered, the decision of the House is taken on the motion, and then clauses are taken up one after another. What has happened now is that the motion stands undecided and Members are permitted to move their amendments, and then even the amendment which Mr. K. M. Munshi has moved is so omnibus in character and covers so many points that it will be difficult for the Members to discuss them all together. What I would suggest is that a decision might first be taken on the motion moved by the Hon'ble Dr. Ambedkar, and then each one of the points covered by Mr. Munshi's amendment might be taken up separately for discussion and decided. This is my point of order.

Mr. President: I think the point of order which has been raised now was raised at an earlier stage, and at that time I found generally the desire of the House was that it would serve no useful purpose to have two discussions, one on the motion to take the report into consideration and another on the Resolution of Mr. Munshi dealing with the details, and therefore I allowed both to be taken up together. Both are now under discussion and Members are at liberty to speak on the Resolution which has been moved, in which all the details covered by the Report are put in.

Dr. P. S. Deshmukh: Mr. President, Sir, I would not go so far as to describe the present situation created by the presentation of the Report and the proposals embodying the proposed decisions on the Report as a messy situation, as has been done by my friend who preceded me, Mr. Krishnamachari. But I must say, Sir, that I consider the Report not very satisfactory. It we analyse the contents of the Report, I think many Members, if not most, will agree with me that the Report states either what is most obvious or what is a matter of pure commonsense for anybody. Secondly the Report contains certain alternative proposals For example, is says you can have one President or two as you like. Stating alternative is, I submit, Sir, of no use. What we expect such a committee to do is to, give us proper guidance. It is clear that the Ambedkar, that they relied more upon logic and on what was political, rather than giving this House a direction as to what was legal and constitutional. I refer to the recommendation as regards the States representatives. Let it be remembered that we have no quarrel whatever with the States representatives whether they have come here on behalf of the rulers or the people. I welcome them; I would like them to be absolutely identical with us and have all the privileges and all the right that any of us coming from other parts of India have. But nonetheless I believe it was the duty of the Committee to tell us what the legal position was so far as the exercise of the rights of these persons coming from the States and sitting in this House was concerned. It was not necessary to tell us what was logical and political. We can and shall exercise that discretion ourselves. The direction that we really wanted was as to what is constitutional and what would be legal and then ultimately there might have been a sentence or two with regard to the property of their proposal. And I should like to, make it clear that I mean no offence to any particular member of the Committee-and least Of all to Dr. Ambedkar--but there is a fair number of members in this House who characterise the work that is done by several of our committees in the same terms as I have been compelled to use in connection with this particular report. And that is the reason why they have not been satisfied with some of the reports that we got from time to time at least from some of the" committees.

Even so, Sir, I think it would be futile for me to hope that it will be possible for you to give us more time for the consideration of the Report or to refer the Report back to the same Committee for further consideration. That is too much to expect. I have been sufficiently long in politics and in the legislatures to know that wise counsels do not always prevail. So I am not going to indulge in requesting you that the Committee's report should be turned down or it should be referred back. All that I wish to point out is that what is before us is not satisfactory. We have not been guided and directed on the lines on which we should have been directed, and as such the whole situation is very unsatisfactory. I will take only one or two points. I was very glad that Mr. Krishnamachari made a very cogent speech and pointed out quite a few vital defects in the Resolution that has been moved by Mr. Munshi. In fact the main purpose and the main thing with which members of the Committee should have concerned themselves was as to what is the result of the adaptations which have been made behind our back. There is reference to only one or two modifications that have been made. But all that is a fait accompli. We have the whole Government of India Act altered to suit. God knows whose convenience, or according to whose intelligence and dictation. But we have certain ready-made decisions before us and we are trying to tinker with them in certain places by means of this Report and the Resolution. We have as a matter of fact at least two definite things before us. Although we have been given the powers of a Legislative Assembly and called a Dominion Legislature the adapters of the 1935 Act removed the Speaker, the section referring to the election of Speaker having been omitted. Secondly, we have all been agitated about the question as to whether M. L. A.'s from the different provinces should sit here as full-fledged members of both the Legislature acid the Constituent Assembly or not. The position is that that section by which a person was prevented from being a member of two legislatures has been quietly removed from the 1935 Act and this was Imposed upon this House. We have no quarrel with it; we want to get on with the work. I am merely mentioning this point by way of showing that the position is unsatisfactory. I do not question the right of any one to change or modify the sections but the whole situation is not sufficiently clear and not of such a nature as to enable the members to be clear on any particular matter. Of course when things are proposed and resolutions are moved we have got to support it in whatever condition it is, and we are so anxious to get on with decisions and Constitution-making that we do not mind in what messy or unsatisfactory condition it is. But at the same time I want just by way of criticism to suggest that it is not a very happy situation, and if it is possible for you Or the Mover of the Resolution or for the Mover of the amendment to do something to attend to our grievance and redress it at least in part I shall be obliged and I am sure many other Members of the House also would feel obliged.

Shri Biswanath Das (Orissa : General): Sir, I have very little quarrel with the Resolution that was so ably moved by Mr, Munshi but I must frankly confess that I am not happy with the Report that has been presented to us. The Report seems to support the adaptations which I am afraid very few Members of this House will do. Both the Report and Mr. Munshi's Resolution therefore proceed on the basis that the Constituent Assembly which has been the Dominion Parliament from the 15th of this month has to function in absolutely two different capacities, namely the Constituent

Assembly and the Dominion Parliament. Having taken up this stand, namely absolute separation out and out, they necessarily follow the same course throughout their plan and that in where the Parting of the ways comes in. A reading of the Indian Independence Act of 1947 shows that the Constituent Assembly is the supreme legislature of this country. That is a position which has been accepted by the Constituent Assembly, or if not by the Constituent Assembly, at least it has been accepted by our leaders and the Constituent Assembly is a party to A from the 14th August. This Constituent Assembly has accepted the Indian Independence Act, has elected its leader and has authorised the leader to go and invite Lord Mount batten to be the Governor-General of India. In that view of the question, the Constituent Assembly as such, has accepted the position assigned to it by the Indian Independence Act of 1947. Therefore there no use saying, today at this late hour, that we function as two different bodies, that we function differently and absolutely for different purposes. The purposes are one and the same; and while on the one hand we have to prepare a Bill for the future constitution of India and pass it into an Act we have also to look to the day to day administration of the country and also undertake such other legislation as might be necessary. Therefore the proposal of the Committee to function in a dual capacity and also the Resolution of my Honourable friend Mr. Munshi giving the silent 'approval of the House to the same cannot be accepted by us. That is where my complaint is. Sir, if once we accept this principle it means two Secretariats and that we will have the same experience of the Secretariat of the Constituent Assembly who are not efficient nor very polite and should undergo some training in politeness and good manners.

An Honourable Member: Can you prove that?

Shri Biswanath Das: Yes, if necessary I can cite examples. An Honourable friend spoke about their inefficiency. I must say that the Secretariat of the Constituent Assembly is not efficient. In these circumstances, these are mainly additional arguments as to why we cannot take these two functions as dual functions. If we undertake to do the work of the Constitution-making on different days, with which suggestion I fully agree, it is not because we are different, but for convenience of the transaction of the business. To quote another illustration, let us take the disposal of the business in the High Courts. There we have civil matters on one day, criminal on other days and so on. In the same way this one single body will undertake the disposal of Constitution-making on certain specified days, and ordinary legislative business on some other days.

Mr. H. V. Kamath: The mike has become inefficient.

Shri Biswanath Das: It is a question of opinion. *(Laughter.)*

Some Honourable Members: The mike is not working.

Shri Biswanath Das: I am very sorry. I will speak loud. That being the position, I feel that the time has come when a little plain speaking is necessary and we have to, make it very clear that we function here as absolutely one legislature for no different purposes, except one of convenience for the transaction of our business. Only to that extent am I prepared to agree with the Committee that we may allot different days for Constitution-making and different days or hours on the same day for ordinary legislation or for the discussion of other measures an executive work. That being the position, I suggest that this duality of functions should cease.

Mr. President: I am afraid the current has failed and so the mike is not working. I take it the Members will just raise their voices so as to be audible to the other Members.

Shri Biswanath Das: Yes, Sir, Having done that, I came to the second question on which I wish to address the Honourable Members of this House and that is the question of adaptations. Sir, adaptations have been undertaken without consulting the Honourable Members of this House and important alternations have been made to which I must record here a note of protest. Let me illustrate my point. We have met here in the Constituent Assembly, in a single session. We have no session except one, namely we begin and we will close as and when we decide. Our rules are very clear in his, If we adjourn from time to time it is because for our own convenience and for the convenient transaction of our business. But the fact remains that the Constituent Assembly functions as one single body till its main business Is over, namely, the preparing and passing of our constitution. Sir, having seen those rules, the Parliamentary Act has been framed which means it has been accepted. Therefore the position remains that the Constituent Assembly its till along, be it for one year, or two years or six months, it is all one session. This being the position, I strongly protest against the adaptations wherein it has been laid down that the Governor-General has to summon us to sit in sessions, of the Parliament to transact business. It is no concern of his, no business of his. We are members of the Constituent Assembly and the Constituent Assembly meets and adjourns at its pleasure. We cannot delegate its functions to the Governor-General however much we may love him, like him or respect him. Nor do we delegate this important function to the Honourable President, though we love him. like him, and esteem him. Sir this adaptation is very unfortunate and I think it is fair that we should record our protest.

Secondly, I come to prorogation. We have met and we ourselves shall prorogue. No authority, no power on earth can make us prorogue this Assembly and we cannot delegate this function to any other authority except the Constituent Assembly itself. In this view of the matter, I am not prepared to accept the adaptation. I have just picked up a few and there are a number of other items on which adaptations are not necessary, nor are they fair to us.

I now come to the third question, the participation of the States. My Honourable friends, the Members of this Committee have recommended to us that they, the States representatives should be with us. We are prepared to have them here. But is it their proposal that they should hot only participate in our deliberations and discussions but also in the matter of voting? I must frankly confess that I must take more time to think over the question than what has been given. So far as the States representatives are concerned, they constitute about 6 Members-- a fairly good fraction of the strength of the legislature. It would be very hard, very difficult for us to agree without further consideration whether these 62 Members of the Constituent Assembly should be allowed to vote with us also in a budget for which they have absolutely no responsibility--except in respect of the three subjects.

Before closing. I would beg of you to consider the question, that we have got a Legislative Assembly Secretariat, well-trained, efficient and ready at hand to do the work. Under these circumstances, why should we have a duplicate Secretariat, which means puzzle, expenditure and inefficiency ? Under these circumstances I would beg of you to consider this question from the point of view of finance and from the point of view of efficiency.

Mr. Hussain Imam: Mr. President, I was very sorry to see that some, of our colleagues have taken objection and exception to the work of the Committee. As a member of the Committee, I have come here to explain the position in which we worked. We were restricted by the term of reference which was originally framed here. The Members who are being wise now did not suggest any modification in the term of reference. But now, having worked under that restricted term of reference we are being criticised on two counts. Firstly, that we have exceeded our limits acid the other that we have not done enough. These two self-contradictory charges have been levied. Now what was the position of the committee? A committee is never superior to the parent body which has created it. The parent body is always supreme and has the right to modify or change the suggestions of the committee. The ,committee cannot impose its will. What it really does is to bring forward before you in a concrete form all the pros and cons of a particular course of business. Now, it is obvious that the Constituent Assembly has dual functions. Even that has been attached by the ex-Prime Minister of Orissa, that it should have no dual functions. Now, this is what was regarded by one Honourable Member as obvious and by the other Honourable Member as wrong. But what is the position? Please remember that after the Indian Independence Act, the whole power for making the constitution for today and tomorrow vests in you; for the whole of the administration of today and till such time as the new constitution starts functioning, the power vests in you. This House being in that position, it cannot and should not ignore one of the two functions. The genesis of this Committee was that a question was raised here and discussion took place that at the present moment we should have some forum to question the Executive Government on the actions which they are taking in the present circumstances. Pandit Jawaharlal Nehru was present and after a lot of speeches, he said that it would be better if some Committee were to sit and examine all the implications and suggest ways and means. We were working really in order to make arrangements for dual functions to be peformed simultaneously. The two, functions are so separate that they could have been kept in watertight compartments. We might have sat in August, say, as the Constituent Assembly, and in September as the Legislature. That was one ,of the courses open to us. The other course open to us was that we should have separate days in the same session. The third course was that within the same day we should have separate hours. All these subjects were referred to us and as conscientious people we have not given any preference to any one of the three courses. We have pointed out all the three courses that are open to you. You can have either different hours in the same day, or you can have separate sessions, but we have indicated that instead of different hours, we prefer different sittings. You can have a morning sitting for one purpose and an afternoon sitting for another purpose. That is all we have done. We have left the discretion entirely, to you and the better course would have been to allow the Executive Government which is responsible to the House to use its discretion and give us the time for the legislative business just as they do for non-official business in the sessions. We can similarly have two kinds of days, Constituent Assembly and the Legislature. A time may come when the Constituent Assembly function may become so small that even me day would be enough in the week and four days may be devoted to legislative business, or at other times you may have it the other way round. I mean, you may be doing the Constituent Assembly work for four days in the week and one day only for the legislative work.

Now, the question arises of duality of control. We have stated in so many words that the President shall be the head of both the legislative and Constitution-making work. Now, it is open to the House, if it thinks that a particular type of executive. is required to carry on the secretariat work of the Constituent Assembly when acting as Legislature, to make that rule. If it thinks that it is necessary to have an amalgamation of the two sections, it can do that also, or if it wishes that one side should be dismissed and another set appointed, it has perfect power to do it. Why ask the Committee to take up the burden when it is not in the terms of reference? It would be something of an imposition. We are really there not to impose our will on you, but to point out to you what are the courses open to you and what would be the implications thereof. In fact, it has been said that we have exceeded our terms of reference. In two instances, that was necessary because we found that we were up against certain things which, though not strictly in the four terms of reference, were nevertheless so pertinent and so germane to our discussions that we could not ignore them and therefore we have submitted some Observations on those subjects. But we have taken care not in any way to impose our will on you.

The question which was put about Section 10 (2) of the Government of India Act, while it lays down that a Member of Government must become a member of the Legislature within six months or vacate office, is also one of those Sections which you can change and if the Executive Government feels that a change is necessary it can make that change; or Wit feels that it is necessary to bring them into the Constituent Assembly, there are openings enough for those Members to be brought in. I therefore think that it is really making a mountain out of a molehill to suggest that any adaptation of the clauses will stand in the way of the work. Knowing that it is a little bit difficult, and takes time to make adaptations, we have suggested a better course that the Constituent Assembly being a sovereign body and having the right to have these rules framed as it likes, we have recommended that the work which we think to be very essential and immediate should be done by means of rule-making Rower. For instance, the question of summoning the Legislature. Instead of suggest that the clause should be changed and the power should vest in some other authority than the Governor-General we have suggested that the Constituent Assembly's own rules should be so adapted as to enable the President to have the power But to say that not even the President should have power to fix the date and it is so Important that the House cannot surrender that right to anybody is, in my opinion, showing too much suspicion. Knowing the state of affairs through which we are passing, we have to rely on our officers, on the President, to do the right thing. The President is always subject to the House. Although he is the supreme head, nevertheless, under the democratic theory he is subject to the vote of the House. So if he does wrong you can always correct him, but for executive functions you must have an executive head. There are certain things which democracy even delegates to executive, and it is one of those functions, i.e., The summoning of the Legislature, which is sought to be given to the President. We always give directions. The executive carries them out. For instance, the exact dates had not been fixed for the last session. The last session was called on a date which the President found suitable and no one raised an objection to that. So far the President has not used his discretion in a wrong manner.

All these are human elements. We must not be creatures of rules and regulations or theories. Let us remain human beings and regard things from that angle and trust where trust is necessary and distrust where you must distrust. Otherwise work cannot proceed. I there fore suggest that Mr. Munshi's resolution may be adopted.

Shri R. V. Dhulekar (United Provinces: General): *[Mr. President, I rise to support the report which has been put before the House. So far as the principles in it are concerned they are very appropriate and no one can have any objection against them. In this connection I want to say a few things as follows.

The first is that no one can have any objection to what is said in Section 1 to the effect that our Constituent Assembly should continue to work until the constitution is completed, and even after that it should continue to work until the new Lower and Upper Houses are brought into existence. I desire to say only me thing in this connection. It win be proper if we confine the use of the words "Dominion Legislature" which constantly come to our lips, to the Indian Independence Act. The reason is that the word "Dominion", somehow does not sound very good. In 1929, Dominion Status was very much discussed and we had passed resolutions against it and in favour of complete independence. Even though Dominion Status appears attractive to many, yet if it is translated into Hindi, its meaning will be-the place of slavery. And if it is translated into Persian or Urdu, then also it would have the same meaning. Therefore I feel that if on some suitable occasion, either the drafting Committee or our Assembly or the President were to give it tome such name as Indian Parliament, or Parliament of India, then it would be very proper.

Besides, there is one more question about which many people have misgiving and that is to what should be the rights of the representatives from the States. I think that there representatives should be able to discuss our problems and also vote upon them. I want to tell those who have any misgivings that their fears are not proper. We must now consider the whole of India as a single unit, and every individual who takes his seat here, every member who comes here should find an honourable place. I think it would not be proper if we tell him that he can speak only for a short while, or, when the occasion arises to express a definite opinion (which comes only when. hands have to be raised either in support or opposition), we tell him that he has no right either to vote or to express his opinion.

One other thing I want to say to those who think that those representatives who are the Princes' nominees should not have full liberty of expression, because the States are backward. We see that some of our Provinces are very progressive whereas some are backward. In some Provinces rules and regulations have been framed which are democratic and popular in form. Many good laws have been made for the workers and peasants. In our United Provinces, "Gaon Hukumat" Bill and "Prajatantra Rajya " Bill have been passed by the Assembly and now they will go to the Upper Chamber, the Council. Such a Bill has not yet been passed by any other Province. Therefore, it is not proper to say that States' representatives should find no place here, only because the States are backward. Some have also suggested that there representatives who have been popularly elected should be given the opportunity to speak whereas those who are nominated by the rulers, should be denied such facility. I have to submit that they also should be given full facilities so that they may be able to occupy their rightful place. I think that if they get opportunity to see clearly, what democracy is, how legislative assembly proceedings are conducted and what collective wisdom they contain, then very soon they will endeavour to extend democracy there. It is for this reason that I believe that it is not proper to insinuate that the nominated representatives of the States should not have full rights. I am of opinion that it is a very great task to take democracy a step further and this task has been accomplished by our Dr. Ambedkar and his colleagues, and I want to congratulate him very warmly.

There is one more question and that is that we are going to appoint a Speaker for the Legislative Assembly--which is a popularly elected law-making body. This is a very good suggestion. I do not approve of giving power to the Governor-General for two reasons, firstly because the is a foreigner and secondly because the word Governor-General does not sound well. Therefore he should not have the power of summoning or proroguing the Assembly. It now remains to be settled as to who should have the right of summoning and proroguing the Assembly; whether it should be the President or the Speaker. When it was stated that the Honourable President should not be the Speaker, because he is a Minister, then my opinion was that when we appoint a Speaker, he should be given the right of summoning or proroguing the Assembly. Because the argument which applies to the first point also applies to the second one. If a Minister should not have the right to sit in the Legislative Assembly as our President, then this argument can be applicable there as well. But I also agree that there is no harm in accepting the statement of some of our members that we should not go into constitutional matters and their provisions.

Now the question of double-membership remains. Some members have perhaps suggested that because of the presence here of many representatives of Provincial Assemblies their work is likely to slacken and therefore they suggest that double membership should be abolished. It has been said that the Constituent Assembly should consider whether double membership should be retained or not. My humble submission is that Constituent Assembly has nothing to do with this question. Provincial Assemblies have the right to send their elected representatives to the Constituent Assembly; and the Provincial Assemblies have sent those, men here in whom hey had full confidence; and these men are working here. My opinion is that when we have worked in, the Constituent Assembly from the. very beginning, then at this stage our ideal should be that there should not be any such alteration in the Constituent Assembly as may make it difficult for those, who come after us to understand the task which we have already accomplished. I admit that most of the prominent men of all provinces are here and it can be said that the provinces may have to suffer some low on that amount. But my submission is that the distinguished men are here because they were considered the fittest by the Provinces. Therefore there is great force in the argument that double-membership should be retained till a new Legislative Assembly is set up on the basis of new elections, and my humble submission is that this question should not be over-emphasised.

Now I will conclude after saying this that in our existing constitution Sere are many things which our Constituent Assembly has not yet considered; and I suggest that the Constituent Assembly should be summoned at least once before the meeting of the Legislative Assembly ,in which we will consider the whole legal position. Before meeting as the Dominion Legislature there should be a session of this Constituent Assembly in which all remaining fig matters may be considered and the committee drafting the constitution may have our collective opinion on all matters so that it may be able to draft a good constitution. With .these remarks I conclude my speech.]*

Mr. President: Mr. Tajamul Husain may speak now. I would ask him to be brief. I want to finish the discussion at one o'clock

Mr. Tajamul Husain: I will be brief, Sir. Sir, the question before us is how was this Assembly constituted? Was it constituted by any Act of Parliament or how? Sir, it was not constituted by any statute or by any law. It came into existence by means of the Statement of April 16, After that, it assumed power and it became the Sovereign body for the whole of India. As such it is in existence now and is continuing. We know there is no difference between the Constituent Assembly as a Constitution-Making body and the Constituent Assembly as a legislative body. Both are absolutely one and the same. There is no difference. This Constituent Assembly has been summoned. To suggest now that the Governor General should go out of his way and summon us again would be meaningless. You as President here, in my humble opinion can summon us as Members of the Constituent Assembly to make a Constitution for India or to make laws for the day to day administration of the country.

Sir, now a point has been raised whether there should be another President and another Speaker when we sit as a legislative body. I think, Sir, that the President of the Constituent Assembly can continue to function as President or Speaker of the legislative body. But the only difficulty is that you happen to be, unfortunately or fortunately also a Member of Government. Therefore, it has been suggested, that it will not be right or proper for you to sit there, because many questions will be asked about the departments in your charge and the difficulty will be In your having to answer them as Member of Government or as Speaker. You have got power given by us to delegate your power to anybody you like. you can appoint a Deputy Speaker or some other functionary from any one of us to discharge your duty. Now I will give you an instance for I precedent. In Bihar, Dr. Sachidananda Sinha (who happens to be a Member of this Assembly) was President of the Council at the same time a Member of the Executive Council of the Government. He functioned in both the capacities at the same time. If such a thing can be done under the British rule, why can it not be done under our own rule, Sir? Therefore I submit that there is absolutely no necessity for the Governor--General to call us again in different capacities. We are already in existence and continuing and a meeting can be called by you at any time you wish. It will be proper for you when necessary to leave the Chair and appoint a Deputy speaker in your place to carry out your duties.

Pandit Hiralal Shastri (Jaipur State): *[Mr. President, my friends Ur. Deshmukh and Mr. Dhulekar, have asked me to make my humble submission before you. Some are of opinion that from the Constitutional and legal point of view the representatives of Indian States should not be given equal rights here; others have suggested that even though the States are backward, they should be allowed to participate fully. I revere this Constituent Assembly and I deem it an honour to be elected as its member. But I cannot help saying that this Assembly has been summoned under special circumstances and many persons of different shades of opinion are included in it. There are many who have come here through the Provincial Assemblies and many have come from the Indian States. Even among those who come from the States there are different categories. There are some who have been nominated by the rulers, some who are self-nominated and some who are called elected representatives though there can be genuine objection against calling them elected. There are some who are themselves ruling chiefs, though small. One class is of those who are Princes and there are others who can be called Heirs-apparent. In this fashion, many different types of men have come here. Circumstances were pressing; we were invited hesitatingly and we reached here after many obstacles. I will not repeat these matters; you all know them very well. But today we have taken our seats here just like the representatives of the Provinces. I hope you do not think that we have come here as beggars, or that we have to beg against the law and the Constitution. There was a time when the fight for the country's freedom was being fought here. In that fight the Indian States people took part without any invitation and fought shoulder to shoulder with you. They did not require any invitation. Therefore today, we have not come uninvited. We are here on invitation of some sort or other, and we are here in this gathering. Now, having come in, there is a talk of serving different kinds of purposes. We may be told "Look here, friend, you can deal with three matters but you must not touch the rest, because it is against your Interest." This can be said but you should not say it. You can count on us that we ourselves will stay away from that which is not proper for us to discuss. We may ourselves not take part in those things: but if that is the decision then I have nothing to ask for, from you. It is our misfortune that our rights have not been fully recognized, but if we are here by right, then no matter whether they be Rulers or Princes, or Heirs-apparent, whether they are nominated (by these rulers) or self-nominated or whether they are Prime Ministers, they are all equal. They are, in no way backward, but are progressive, and they also include men of action. All have come here without any distinction of caste or creed and their tights should be equal. That is my opinion.]*

Mr. President: I think we have had enough discussion on this, I would now call upon Dr. Ambedkar to reply.

The Honourable Dr. B. R. Ambedkar: Mr. President, the report made by the Committee obviously has received a mixed reception. Some members of the House have described it as a messy, document. I do not propose to give any reply to those who have described the Report in those terms, because personally I think that the arguments advanced by them do not deserve sufficient consideration. All that I propose to do in reply is to meet some technical points which have been raised by my friends Dr. Deshmukh and Mr. Biswanath Das. Dr. Deshmukh refers to two recommendations made by the Committee. One was the recommendation relating to the permission to be granted to the Members representing the States for taking part in all the deliberations of the Committee. The second recommendation to which he referred was the recommendation in respect of the Ministers of the State to whom the Committee said it might not be desirable to permit to take part also in the proceedings of the Assembly, Dr. Deshmukh said that all that the Committee observed was logical or convenient. The Committee did not say whether this was constitutional. I am very much surprised at that question particularly because Dr. Deshmukh happens to be a lawyer. As a matter of fact he ought to have realised that we have really no constitution at all. The Constituent Assembly is making a Constitution, and anything that the Constituent Assembly does would be constitutional (Hear, hear). If the Constituent Assembly say that the State representatives should not take part that would be perfectly constitutional. If the Constituent Assembly said that they should, that would also be perfectly constitutional. Therefore that sort of observation I thought was entirely misplaced. With regard to the point raised by my friend Mr. Biswanath Das, I also feel a considerable amount of surprise that he should have thought fit to make the observations he made. If I remember correctly what he said, his observations related to two points. He said that the Committee was Dividing the Constituent Assembly into two parts, that it was an indivisible body, that it was functioning as an integral, one whole. Well, I do not know whether he is not in a position to appreciate that the working of a constitution is quite different from the making of ordinary law. The distinction, it seems to me to put it in a nutshell, is that the Constituent Assembly, is not bound by the Constitution. But a Legislature is bound by the Constitution. When the Constituent Assembly functions as a legislature it would be bound by the Government of India Act as adapted under the Independence Act. Anybody would be in a position to raise a point of order. Anybody would be in a position to say whether a particular motion is *ultra vires* or *intra vires.* But such a question can certainly not arise when the Constituent Assembly is functioning us a body framing the Constitution. And I thought that was a sufficiently substantial distinction to enable us to understand nationally at any rate that the two functions were different that the purposes were different, that the work was different and if we are intending to avoid confusion, the practical way of doing so would be to let the

Constituent Assembly meet in a separate session as distinct from a legislature. He also raised some grouse against the adaptations. Now, I must frankly say that no one here is responsible for the adaptations that have been introduced in the Government of India Act, 1935.

If he refers to section 8 sub-clause (1) of the Indian Independence Bill, he will realise that under that section the power of adapting the Government of India Act of 1935 to suit the new status, which the Constituent Assembly has as a legislature, has been vested entirely in the Governor-General. I think it is possible that the Governor-General did take advice from some source in order to decide what adaptations to introduce. Therefore, at the present moment, nobody is responsible for it. If the Constituent Assembly is not satisfied with the adaptations which have been introduced in the Government of India Act, the very same section 8 sub-clause (1) states that the Constituent Assembly would be perfectly within its competence to change the adaptations and to introduce any other that it may like. I therefore, submit, Sir, that there is no substance in the points that have been raised by the critics of the Committee.

One other point to which my friend Mr. Krishnamachari referred: He said that Mr. Munshi's resolution omitted to take into account the second part of the report which dealt with the question that the President was the sole authority both on the deliberative and administrative side. He questioned why the resolution which has been framed and submitted to us by Mr. Munshi, practically accepting all the proposals of the Committee did not contain this particular provision. I should like to say that if Mr. Krishnamachari reads the report carefully, he will find that that particular part of the report is an observation on the part of the Committee and not a recommendation and therefore, I submit my friend Mr. Munshi was perfectly justified in 'not referring to it.

Pandit Lakshmi Kanta Maitra: Sir, I want to ask Dr. Ambedkar certain information. First of all, I want to know from him whether or not he is convinced that there is necessity for re-adaptation and if so, is it in his contemplation to bring any fresh adaptation in respect of certain matters before the next session of the Constituent Assembly or at any earlier date. For instance, the abolition of Speakership in the Government of India Act and its introduction in this recommendation here. There are also certain other matters: for instance, Ministers who are not members of the Constituent Assembly but who are required to be members. Is it contemplated to bring in any other measure for re-adaptation in respect of such parts?

Secondly, he has just referred in his speech to the fact that he did not go into the question of the administrative control of the department that is going to be set up an he said that it was beyond the terms of reference, if I understand him aright. There is some apprehension in our minds that there is likely to be conflict in the event of another independent machinery being set up for this organisation when it is to function as the Legislature.

The third question is whether or not the proposal as made in the resolution which has been moved by Mr. Munshi, is going to be a purely temporary one, only for the period we continue to function in a dual capacity, as a constitution-making body as well as the legislature?

An Honourable Member : Is it a speech or a question?

Mr. President : I would remind Pandit Maitra that he cannot make a speech. He has put the question and Dr. Ambedkar will answer if he chooses.

An Honourable Member : Even the question is out of order.

Pandit Lakshmi Kanta Maitra : Why is it not permissible? When the honourable member replies to the debate and an honourable member does not understand, he is perfectly within his right in asking further questions to get point cleared up.

Mr. President : You have put the question. Dr. Ambedkar will reply.

The Honourable B. R. Ambedkar: I shall be brief. The first question was whether we contemplate any change in the adaptations of the Government of India act. My answer is that that is a matter for the House to determine what adaptations the House wants. But I want to assure my friends here that we have got the power to change the adaptations. The Government of India act with its adaptations is not entirely binding on us in the sense that a change is not beyond our purview. If the House, on a reconsideration of the matter, finds that certain adaptations ought to be changed, it would be perfectly possible to undertake that provision.

The second question which my honourable friend Mr. Maitra put to me was whether the unity of administration is likely to be affected and there is likely to be conflict in view of the fact that there may be two offices, one President presiding over the Constituent Assembly and secondly a Speaker presiding over the legislative body. What the Committee has said is that there is a theoretical possibility of conflict. But I take it that there need not necessarily be a conflict. In practice, it should be perfectly possible for the two offices, the President and the Speaker of the Assembly to work in union and to so arrange the timing of the Constituent Assembly as well as the legislative body in perfect order so that notwithstanding the fact that we have two offices, we need not be afraid that there would necessarily be a conflict.

With regard to the third question, obviously, the arrangement that we are making now for the purpose of converting the Constituent Assembly into a legislative body, undoubtedly will be temporary. It would last so longs as the function of constitution-making has not been completed. When the function of constitution-making is completed, obviously, one or the other arrangement would vanish and we shall then continue to function as a legislature.

Mr. Naziruddin Ahmad : One more question. The honourable member has said that re-adaptation may be made by the House. Is it possible for the Governor-General to make further adaptations?

The Honourable Dr. B. R. Ambedkar : It is a question of law. This House has power to change the adaptation.

Mr. Naziruddin Ahmad : I do not deny that. That question is whether in the opinion of the honourable member, the Governor-General can make further adaptation.

The Honourable Dr. B. R. Ambedkar : He can not, because he will have to act on the advice of his Ministers.

Mr. Naziruddin Ahmad : Whether he can do so on the advice of his ministers?

An Honourable Member : Is this a law court, or a cross examination?

The Honourable Dr. B. R. Ambedkar : I am not sure and I do not like to give an offhand answer.

Mr. President : I think we have to put the motion clause by clause as was suggested. Clause 1.

"(i) The functions of the Assembly shall be

> (a) to continue and complete the work of Constitution-making which commenced on the 9th December, 1946, and
>
> (b) to function as the Dominion legislature until a legislature under the new Constitution comes into being."

The motion was adopted.

Mr. President:

"(ii) The business of the Assembly as a Constitution-making body should be clearly distinguished from its normal business as the Dominion Legislature, and different days or separate sittings on the same day should be set apart for the two kinds of business".

The motion was adopted.

Mr. President:

"(iii) The recommendations contained in para.6 of the Report regarding the position of representatives of Indian States in the Assembly be accepted."

The motion was adopted.

Mr. President:

"(iv) Suitable provision should be made in the Rules of the Constituent Assembly for the election of an officer to be designated the Speaker to preside over the deliberations of the Assembly when functioning as the Dominion Legislature".

The motion was adopted.

Mr. President:

"(v) The power of summoning the Assembly for functioning as the Dominion Legislature and proroguing it should vest in the President"

The motion was adopted.

Mr. President:

"(vi) Ministers of the Dominion Government, who are not members of the Constituent Assembly should have the right to attend and participate in its work of constitution-making, though until they become members of the Constituent Assembly they should not have any right to vote."

The motion was adopted.

Mr. President:

"(vii) Necessary modifications, adaptations and additions should be made-

> (a) by the President of the Constituent Assembly to the Rules and Standing Orders of Orders of the Indian Legislative Assembly to bring them into accord with the relevant provisions of the Government of India act as adapted under the Indian Independence Act, 1947."

The motion was adopted.

Mr. President:

"(b) by the Constituent Assembly or the President, as the case may be to the Rules and Standing Orders to carry out the provisions of para 9 of the Report and where necessary to secure an appropriate adaptation of the relevant section of the Government of India Act to bring it into conformity with the new Rule."

The motion was adopted.

Mr. President: The question is :

That the Resolution as a whole be adopted, namely:

"1. That with reference to the Motion by the Honourable Dr. B. R. Ambedkar regarding the consideration of the Report on the functions of the Constituent Assembly under the Indian Independence Act, it is hereby resolved that

-

(i) The functions of the Assembly shall be-

(a) to continue and complete the work of Constitution-making which commenced on the 9th December, 1946 and

(b) to function as the Dominion Legislature until a Legislature under the new Constitution comes into being.

(ii) The Business of the Assembly as a Constitution-making body should be clearly distinguished from its normal business as the Dominion Legislature, and different days or separate sittings on the same day should be set apart for the two kinds of business.

(iii) The recommendations contained in para.6 of the Report regarding the position of representatives of Indian States in the Assembly be accepted.

(iv) Suitable provision should be made in the Rules of the Constituent Assembly for the election of an officer to be designated the Speaker to preside over the deliberations of the Assembly when functioning as the dominion Legislature.

(v) The power of summoning the Assembly for functioning as the Dominion Legislature and proroguing it should vest in the President.

(vi) Ministers of the Dominion Government, who are not members of the Constituent Assembly, should have the right to attend and participate in its work, of Constitution- making , though until they become members of the Constituent Assembly they should not have any right to vote.

(vii) Necessary modifications, adaptations and additions should be made-

(a) by the President of the Constituent Assembly to the Rules and Standing Orders of the Indian Legislative Assembly to bring them into accord with the relevant provisions of the Government of India Act as adapted under the Indian Independence Act, 1947.

(b) by the Constituent Assembly or the President, as the case may be to the Rules and Standing Orders to carry out the provisions of para.9 of the Report and where necessary to secure an appropriate adaptation of the relevant section of the Government of India Act to bring it into conformity with the new Rule".

The motion was adopted

Mr. President : Now that this resolution has been carried, I purpose to take up the adaptation of the rules and the Standing Orders and also such sections of the adapted Government of India Act as are necessary.

With regard to the question which has been raised in the course of the discussion about the staff. I propose to appoint a committee consisting of the officials on the staff of the Constituent Assembly and on the staff of the Legislative Assembly to prepare a scheme for re-organizing the two Departments so as to make the work as efficient and as economical as possible.

Mr. K. M. Munshi : May I point out that the day after tomorrow is a holiday and Members are anxious that the Assembly should close tomorrow? The day after tomorrow is a Hindu holiday and most Members want to return to their homes.

Mr. President : The matter is in the hands of the Members. I propose to close the session tomorrow.

The Assembly then adjourned till Ten of the Clock on Saturday the 30th August, 1947.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME V

Saturday, the 30th August 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (the Honourable Dr. Rajendra Prasad) in the Chair.

SUPPLEMENTARY REPORT ON FUNDAMENTAL RIGHTS-

(Contd.)

Mr. President: We have now to take up the consideration of the Supplementary Report of the Fundamental Rights Committee.

The Honourable Sardar Vallabhbhai J. Patel (Bombay: General) Sir, the House is already aware that my letter of 23rd April 1947, submitting the Report of the Advisory Committee on Fundamental Rights was considered and most of the main proposals were accepted. The report was to a certain extent incomplete because we had to consider several matters which were referred back to us, and some proposals were received direct, which had also to be considered. There were two parts of the report: one contained fundamental rights which were justifiable and the other of the report referred to fundamental rights which were not justiciable but were directives* more or less which would be useful for the governance of the country. Now the Advisory Committee considered both these parts and completed its work; This report which I place before the House contains, first, two or three important matters regarding justiciable rights which were not finished and which were referred back to us: One Is regarding clause 16 which reads--

> "No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in any religious instruction that may be given in the school or to attend religious workshop held in the school or in premises attached thereto,"

meaning thereby that there should be no compulsion in religious education in schools maintained by the State or receiving public aid; and the Committee has accepted this, and recommend that the House should accept it.

Then there is clause 17, which refers to conversion. It reads--

> "Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law."

The Committee came to the conclusion that this general clause is enough so far as fundamental rights are concerned. On further consideration this clause seemed to us to enunciate a rather obvious doctrine which it was unnecessary to include in the constitution, and we thought it better to leave it to the legislature.

Then about clause 18(2), which reads--

> "No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them."

There was another paragraph in which it was recommended that the latter portion of the clause, namely, "nor shall any religious instruction be compulsorily imposed on them" be dropped because that is covered by clause 16.

Then we have examined the question as to whether the scope of the clause should be extended so as to include, *State-aided* educational institution also, and the Committee came to the conclusion that in the present circumstances we would not be justified in making any such recommendation.

Then the Fundamental Rights Sub-Committee in their report to us. had recommended the adoption of Hindustani, written either in Devanagri or the Persian script, as the national language of the Union, but subsequently' this question was held over because the matter was considered by the Union Constitution Committee: and as the Constituent Assembly is already seized of the subject, we thought it, better not to deal with the subject. So. we have not. said anything about it, and it will be considered separately. Several other amendments were moved. We have considered them individually, and we have come to the conclusion that the fundamental rights should not be burdened with all such amendments that have be-en moved.

There is another part of the report which contains, in addition to justiciable rights, certain directives of State policy which, though not cognizable by any court of law, should be regarded as fundamental in the governance of the country. The provisions that the Committee have considered are included in Appendix A which is added to the Report.

The appendix which has been circulated with the Report is also with you. So I suggest that the Report be taken into consideration.

Mr. President: The Resolution is that this Assembly do proceed to, take into consideration the Supplementary Report on the subject of Fundamental Rights submitted-by the Advisory Committee. If any Member wishes to say anything, he may do so now.

Mr. R. K. Sidhwa (C. P. & Berar: General) : Mr. President. Sir, you will remember this House passed a memorable Resolution in its first and second sessions Which is popularly known as the Objectives Resolution. Out of the several good measures that are indicated therein, one is in connection with social and economic equality. While moving this Resolution the learned Pandit Jawaharlal Nehru made a memorable, speech and placed before this Rouse some ideas about which I would, like to remind members just to refresh their memory. Among other. things, the Resolution states--

> "Wherein shall be guaranteed and secured to all the people of India justice, social, economic, and political; equality of status, of opportunity, and before the law;........ "

And while moving that Resolution he said-

> "I stand for Socialism and I hope, India will stand for Socialism and that India will go towards the constitution

of a Socialist State and I do believe that the whole world will have to go that way."

Sir, after this clear statement of the objectives, when the justiciable rights came before us, I was expecting to see that in our Constitution equality, social and economic, would play a prominent part. Not having found it in the justiciable rights I expected to see this in the non-justiciable rights. I searched and searched, but searched in vain. Sir, it is all very well to say that we want to give absolute power from the villages right up to the cities so that the economic conditions are so adjusted that the people, the average people may be happy and prosperous. But I may state, Sir that however much we may try and introduce measures like the *Grama Udhar* and village Panchayats and village uplift, unless economic conditions are considered equitably, these measures are not going to prove of any use or be successful. Sir, what are the conditions today ? I can tell You from experience. I have the honour to be the President of the All India Local Bodies Association. These local bodies have been given the power, but they have not the money to spend. Therefore, they are quite helpless. Without money they cannot function. The powers that have been given to them are in no way useful to them. These are the conditions in which the Local Bodies suffer today.

While I was listening to the Union Powers Committee's Report and the items presented to the House the other day, we were making capital of strengthening the Centre with greater financial powers. But it must be admitted that the economic conditions of the Provinces are so poor that they are not in a position to give that help to the local Bodies that is necessary. The Local bodies suffer from insufficiency of money, and when they approach the Provincial Government, the Provincial Governments express their inability to help them on the ground that the Central does not contribute them the money that is due to them. Sir, in the Local Bodies, the electricity tax, the entertainment taxes, the betting taxes, these legitimately belong to the Local Bodies but they have been appropriated by the Provincial Governments. An enquiry was set up by the various governments and it has been laid down definitely that unless contributions are made by the Provincial Governments, Local Bodies will not function successfully.

Sir, the Local Bodies are the root, the basis of our economic conditions in India and unless the better financing of the villages is properly considered and enough money is given to them. I can tell you with confidence, that we are not going to make our average citizen happy and prosperous. We may give them power. We are all anxious to give them authority; but if you do not give them money, what will they do ? How can they proceed further ? I expected, Sir, that at least in these non-justiciable rights-they are pious--I mean to say they are pious measures because they are non-justiciable--I expected that even in these pious measures there may be some mention about the equality of social rights. I do not for a moment suggest that our popular governments both in the Centre and in the Provinces do not care for them. They are as eager as some of us, or most of us here to do the right things. But they are also confronted w1th the difficulties of money and I may tell you that unless financial conditions improve, they will not be able to advance in any direction or do any good for the average man of the country, whom we have been telling for ages that when we achieve freedom we shall see that the average man really gets real happiness. Sir, it is stated in the Resolution that all the citizens, men and women, have the right for an adequate means of livelihood. It is all very well to say "adequate means of livelihood" Where is that to come from. We have to make provision for that. Of course, I do admit that merely making a provision here will not achieve the end But certainly if there is a provision to that effect it would be very difficult for the administration to overlook it.

Sir, the distribution of wealth in this country has been in such a miserable state of affairs that unless we bring them into a state of equality, conditions are not going to improve. I will give you two illustrations, real illustrations.

In a case when the head of the family died, he left nearly 11 crores of rupees for one issue to enjoy them. Fortunately or unfortunately, that issue also expired after about a year of the death of the father. The whole amount was distributed among' the various members of the rich family who already possessed crores of rupees. If we had an equitable distribution of this wealth, this money would have come to the State.

I have known another family of a father with three children leaving Rs. 50 lakhs of rupees. Two sons within three years squandered their share and the third son was a miser and by speculation and other means made two crores out of his share. What kind of economy is this? In this country, Sir, there are only a few hundreds or few thousands who roll in crores, while millions have no proper food. This is the state of affairs. How are we going to improve it, Unless this system of inequality of wealth which has been confined to a few people in the country is to be abolished ? I am sure without imposing further burden upon the average person by various kinds of taxation, if this wealth is properly distributed the State will have ample money to put this nation-building building programme into operation very successfully. I know, Sir, our popular Members of the Government are alert and they may be looking into the matter. I don't for a moment say they are unmindful of it or they are indifferent about it. But what I would state is that a place should have been found for this provision in some part of the constitution. These non-justiciable rights are merely to adorn the pages of the constitution and to just give a little consolation, but I would prefer them to be a part and parcel of the constitution so that every citizen may be proud to state that now my time has come to enjoy equality and wealth, so that I may not remain poor for all time. That is my point. I tried to move a Resolution in the Fundamental Rights Committee and was told that it was not the proper place. So I waited. Now the proper place has Come and I want to see provision made in the non-justiciable rights.

What I submit is that if you want to improve the socialist system of economy, then you have to nationalise your big industries, and if you want to provide proper wager, to your wage earners, and maternity and other benefits do not think for a moment this is a stock argument which I am advancing, but I sincerely feel that the time has come for this argument to be fulfilled. We don't want the strikes. We don't like them. But every morning you get up from bed and go to the market and if you had paid 10 annas the previous day for an article, you have now to pay 12 annas or 14 annas. What will be the effect of this on the average serviceman, who depends entirely on his monthly budget? How can he adjust his budget. I submit, Sir, the whole economic structure has broken down to pieces. While we don't want these strikes, while we want more production, we should not find absolute fault with the labourers if they go on strike. The fact is they cannot make both ends meet. Prices have gone up. If you go to the bazar what is the conditions ? Upper class people, wealthy class of people. send their servants to the bazar; they don't know the condition. But the man who is absolutely dependent an the income he derives, he goes to the bazar himself and when he finds that he has got only Rs. 1-8-0 to spare and hi has to pay Rs. 2-0-0 he becomes desperate. Conditions. are getting worse and worse, and the popular Government, notwithstanding whatever difficulties might exist, have to face these facts. I know, Sir, in this very House there is a mixed variety of people-upper class people, wealthy people, lower class people and poor people, and it is not possible for us to bring in a measure of this sort in this Assembly. But as Pandit Jawaharlal has rightly said in the Resolution, the time has come when, whatever the position may be, we have to adjust according to the times and see that this wealth is evenly distributed.

Sir, I lay emphasis on this point, namely that whatsoever objectives you may put down, whatsoever provisions you may put down, unless you provide village panchayats, notified area committees and sanitary committees with sufficient money at their disposal, not within the power of the provinces to appropriate the same, you are not going to improve the social structure of this country, which has gone down. That is the main cause of all this trouble and it requires immediate attention.

Mr. President: Will the Honourable Member now come to the point? *(Laughter).*

Mr. R. K. Sidhwa: Mr. President, if these were not the points for insertion in the constitution, I don't know what are the points. My friends here clapped their hands when the Honourable President asks me to come to the point. I anticipated this and I said in a mixed House of this kind, it is not possible to have such a measure passed. If that is the desire of the House, that such a provision should not be made in the constitution, then let them please themselves. But I want to express my view. I feel strongly on this and state that the constitution ought to provide such a clause if you want this land to be happy. I shall state my view, no matter what the opinion of this House may be. Besides it is not only my own view. It is the view of the various important bodies in this country, of which I have the honour to be the President.

I therefore suggest, Sir, but I know it may be argued that these are some of the social adjustments that are borrowed from the Russian constitution. I know there are many irreligious things in the U. S. S. R. constitution which could not be made applicable to India, but there are many good, very good points which are quite suitable to India and it is certainly in our interests that we copy some of the good things from the U. S. S. R. constitution. I want to state that any good means which would bring good results to the country I shall certainly be in favour of borrowing them. With these worked, Sir, while I congratulate the Committee for bringing up this proposition, I would have preferred a clause of this nature to have been inserted. It has not been inserted but I do hope, Sir, that in the governance of this country and its administration, this view point will be borne in mind particularly that unless you change your economic conditions and improve them, you are not going to bring any kind of happiness and prosperity to this country.

Mr. B. Das (Orissa: General): Sir, when the first draft of the Fundamental Rights was discussed on the floor of this House I expressed gave doubts about Clause 3 regarding citizenship. After *Ad hoc* Committee redrafted it and it was presented to the House for acceptance by the Honourable Sardar Patel. At the time when the *Ad hoc* Committee's Report was presented I had my doubts as to whether that new draft would suit the requirements of the people of India. I accept the clause to-day. Some slight changes have also been made in the body of the text of clause 3. Sir, I would like to be assured by the Honourable Sardar Patel whether Government intend to change the laws of the Union as envisaged in the proviso of clause 3. Many things have happened since we discussed Fundamental Rights in April last. India has been divided up and Indian citizens who are born in both parts of India now can claim citizenship in either Pakistan or Hindustan. There may be families that may have a brother in Pakistan acquiring the citizenship of Pakistan while others may be citizens of India. Particularly, Sir, I find many officials and non-officials whom I always took as citizens of India, have gone to place their services, their best energies in the service of Pakistan. So it is natural that Government should legislate that everybody must declare whether he is a citizen of Pakistan or Hindustan. One would not like the best brains of India to go to Pakistan and when they come back to India will they be taken as Indians or only recognized as citizens of Pakistan because they have served after the separation in that country?

Sir, as to the other changes of the Fundamental Rights, I accept the recommendations on clause 16 and I also accept that clause 17 and sub-clause (2) of clause 18 should be deleted.

Sir, while we are talking of Fundamental Rights of the people of India, I would like to state that certain citizens, particularly in the services of the Constituent Assembly, were so unnecessarily and deplorably criticised yesterday. They have no representation on the floor of this House--it is the office of the Constituent Assembly--to reply to any charges that may be made on the floor of this House. I think it was wrong to make such statements on the floor of this House. If any member had any grievance, he ought to have approached the Staff and Finance Committee to make any enquiry about the efficiency or non-efficiency of the Constituent Assembly office. Personally I know they have discharged their onerous responsibilities with great intelligence, tack and loyalty to Independent India. They were part of the old bureaucracy and yet they came up to the high standard required of them and they have served India as faithfully and as loyally as any of us have served India. So far I record my grateful appreciation of their work and services.

Sir, I will then come to the next part of the Report which deals with the Fundamental principles of governance. My honourable friend Mr. Sidhwa had made some observation and I agree with him and regret that these pious recommendations should find no place in the Statute. I consider that the fundamental principles of governance means--Dharma of the Government--the path of duty of the Government. But we don't lay down in the Constitution Act what the Government should do and what are the responsibilities of Government to the citizens and the people of India. We say that the Government may do this and it is expected that we, members of the Constituent Assembly should be treated like children in our homes, and shout and agitate for something from the Government and then the Government, whether they may be the present Government or successor Government will legislate for the betterment of the conditions of the people of India. I am not satisfied with the opinion of the legal servants and great authorities on law in this House who interpret the functions of Government as justiciable and non-justiciable. They have said that we cannot include in the Union Constitution of India what the Government has to do for the people. I think it is the primary duty of Government to remove hunger and render social justice to every citizen and to secure social security. Sir, I am not satisfied, although portions of the Soviet Constitution or the Irish Constitution are somehow made into a jumble and included in these 12 paras, that they bring any hope to us. The teeming millions do not find any hope that the Union Constitution that will be passed two months hence will ensure them freedom from hunger, will secure them social justice, will ensure them a minimum standard of living and a minimum standard of public health. In the principles of Constitution we have approved so far, be it the Provincial Constitution or be it the Union Constitution or be it the Union Powers I do not find anything that makes it obligatory on the Government, on the State, to discharge their obligatory duties to the people of India about common welfare and well being of the people. So better it is that these pious clauses find their way to the Appendix and not to the main Constitution Act! It is no consolation to the people of India that they elect the Constituent Assembly which elects the Dominion Government. The Government has a corresponding obligatory duty to the people to govern them properly, to look after their social welfare and their general well-being. We have appointed yesterday a body of draftsmen to draft the Union Constitution. I hope it is not too late for the legal talents of this House to find ways and means for making it obligatory on the part of the Government to function and to exist for the welfare and well being of the people of India. Too much is made of 'justiciable' and 'non-justiciable.' I do not understand how the Irish Constitution included some of these noble principles in the body of the Constitution. If the Irish Constitution can do it, the Indian Constitution must do it. But then, Sir, we are up against a brick wall of lawyers. Legal talents are there and they rule that these are justiciable and other are non-justiciable. The result is that this House is reduced to the status of children and made to function as children. The Government though it is democratic, must follow, they say, the precedents and the traditions of the bureaucratic Governments of the past. If it does so, it cannot effect any improvement in the social conditions of the people.

This is very alarming. We are framing our Free Sovereign Constitution. Perhaps ours is the last Constitution framed in the 20th century. One would have expected that we would have profited by the knowledge, by the suffering and by the experience of other countries. I do not want this Constitution to be drawn up to last only for a year or two. There are rumblings; there are signs of the times. And if we go by the precendents of the French Constitution Assemblies we may not achieve much. The people of France elected three successive Constituent Assemblies to draft their Sovereign Constitution and there were three successive Constitutions. The French Government, under the last Constitution, has not yet been a stable one. Our Government is expected to be stable and is stable today. But nobody can be a prophet and say that it will be stable for more than a year or two. And if I, a Gandhite, am not satisfied with this Draft, how can I expect the Socialists and the communists and the others to be satisfied with it. Let us make a more acceptable draft. Let us make the draft fit in with the conditions in India. Let us tell the world through our draft Constitution that Indians have a civilization and culture, ten thousands of years old. We should draw up a democratic Constitution whereby the State serves the people and the people, the State. Let our Constitution bear the Stamp of the culture and civilisation of India.

Dr. P.S. Deshmukh: (C. P. & Berar: General): Mr. President, Sir, before I speak on the motion itself I wish to suggest that, since this is the last day of the session, we might probably devote the whole day for the discussion of the principles which have been placed before us.

The House knows, Sir, that we have left many things incomplete. Many Reports have been presented to us and we have only dealt with parts of them. A good many sections or clauses for instance of the Union Constitution Committee, the Union Powers Committee etc., have been left over for further consideration. The same, I submit, should not happen to this particular Report. This Report, in my opinion, is the most important of all because it represents that part of the Constitution which the masses of India are looking forward to for the fulfilment of the promises made to them by their leaders. They are watching how far we are serious in our promises to ameliorate their condition and better the standard of living of the average man. From that point of view, Sir, I submit, this particular portion of the Constitution should be given more importance than the other parts and every opportunity should be given to the members to express themselves. I would further submit that the recommendations be not taken into consideration in this session if the criticism that I wish to level and many of my friends have levelled are going to have any effect on the sponsors of the measure. Only if this is done shall we be able to go to the people and tell them that we are striving to protect their interests not only temporarily but permanently.

My first criticism against the present Report is that it is, like some other reports, exceptionally perfunctory. The framers of the Report will pardon me if I use somewhat strong words. The attitude of the Members of the Committee is, I think, very correctly reflected in one of the sentences to be found in a book that has been provided by the office to us. I will read that one sentence: "Great difficulty has been experienced in selecting provisions for inclusion" of course in the draft of Fundamental Rights in the Indian Constitution-as "there is no absolute standard as to what constitutes 'Fundamental Rights', and the basis of classification varies from country to country." This, it is clear has been the sole sheet-anchor of the Committee. They have delved into various books on Constitution of the world to select a section here and an item there so as to suit the Indian conditions and conform to their ideals. I submit to you and to the House, Sir, that this is not the correct attitude to take when dealing with fundamental rights. India, our country, is totally incomparable with Ireland. What is there in Ireland, that we should bodily adopt its fundamental rights for our country? What may be useful for them may not be worthy of consideration by us. The total population of Ireland is only 29 lakhs which is the same as, if not less than the population of the State of Baroda. And what is the character of this particular Constitution which has been considered worthy of imitation? I have not seen any important book on Constitutional History or Constitutional Law bestowing any special praise on the Irish Constitution and I fail to see what there is that makes it fit to be adopted whole-sale. In my opinion the Committee viewed the whole question from an utterly wrong stand-point. Our Constitution framers appear as if they merely studied the existing Constitutions and chose what they thought would probably serve as a sop to the socialists and communists. This I think summarises and properly expresses in a nutshell what has been presented to us. They did not want in any case to go very far; but none the less they were not in a position to leave out the social and economic aspects of the Constitution altogether untouched. In this half-hearted manner they have dealt with it. Therefore it is that we have something that cannot be accepted by a very large section of people either here or outside.

We expected, Sir, that the Indian society would in the future be regulated on definite principles. What are the principles that have been embodied here that people have a non-justiciable right to a means of livelihood, that the pay of man and woman would be equal, that youth and childhood will be protected etc.? All these things and everyone of the items that have been put down here are a matter of common knowledge and any modern Government would be ashamed not to own what has been embodied here. It is the absolute minimum that every modern Constitution and Government must avow. We do not want the hollow avowal of the minimum. We may not insist upon the maximum also and I am prepared for a compromise; but we do not want to depend upon mere platitudes and pious wishes, because that was not what we came here to achieve. At least since the year 1942 the character of the Congress has altogether changed. The change was due to the fact that there was a solemn promise that the Government of Independent India would be that of the peasants and workers of India and none others. That was what impelled so many rural people, so many youths from the rural population to sacrifice themselves in the "Revolution of 1942." If you analyse the figures you will be started, Sir, to find that none of the vested interests, none of the erstwhile patriots sacrificed themselves. They were the purely the backward and illiterate people from the rural communities who sacrificed themselves. Very few indeed of the people from towns who belonged to any of the higher and well-known families were ready to join them. That being so, it is our duty to look to the promises that we had held out, and in considering the Report we should have kept that ideal in view and not tried merely to make half-hearted recommendations so as to be able to say to the Socialists that we are also socialists of a sort and to try to say to the Communists that we also respect some of their theories. A friend of mine said, Sir, that there was an admixture of the Russian and the Irish Constitutions in these recommendations. I would like to inform my Honourable friend that he is labouring under a misapprehension. There is nothing of the Russian constitution in all these recommendations. Now what is the sanctity of these recommendations? They are supposed to be directives. Instead of having all these several items, let the framers of our Constitution give us a definite programme that they are determined to give effect to. The whole of India is thirsting for it. Instead of all that we are merely going to hold out some distant and indistinct hope without providing in our constitution any effective means as to when and how they are going to be realized. Sir, I submit that it will be far better if the framers of the Report would kindly utilize the interval between this session and the next for reconsideration of their recommendations in the light of the criticism that may be levelled against the Report on the floor of this House. We may then hope to have something better than what we have here today unless the whole thing is to go to the drafting Committee whether the report is fully discussed here or not. If this happens we would be required to consider the draft. But if this comes up against for our consideration in the form of a report, we hope it will be in a different shape.

Actually, Sir, these are described as fundamental rights and fundamental rights, Sir, are in my opinion primarily intended for the protection of the life, liberty and comfort of an average man. The fundamental rights idea is actually something like the principles of the *Magna Charta* against possible oppression either by a monarch or by some body of people who can get into the Government. My view is that in the framing of our present constitution there was not much need of having fundamental rights as such. All the principles, the inclusion of which we thought necessary and especially this portion of the fundamental rights which are merely recommendatory, it not being incumbent upon any Government to carry out, could, I submit, Sir, have been either embodied as ordinary provisions in a constitution or radically altered. What are the difficulties that we the people of India suffer from? Our difficulties and impediments are diverse. The first is the poverty of our people, then ignorance and illiteracy, then lack of food, lack of vitality, lack of morals, inhuman greed and consequent exploitation, ruthless profiteering and consequent oppression--moral, mental, social, spiritual and last but not least economic. To what extent are these fundamental rights going to protect us from this oppression, that is the question. And to what extent we can regard this as something on which we can go and remove these difficulties and reorganise our society, so that there is no poverty, there is no ignorance, no starvation, no unnecessary concentration of wealth in a few hands, etc. None of these things have been dealt with. In a word I say, Sir, they have been dealt in a deceitful manner. I understand the implication of the word 'deceitful' and yet I have no hesitation in using it. I say so, Sir, because once you have these as fundamental rights you will prohibit anybody going further than that. I wish it to be clearly understood that the intention is that no only should we not go further. That is the intention behind the wording. I wish I could take the time of the House to read out and analyse the words used in every particular recommendation to prove the truth of my statement. But it is clear that the language used does not only not go for enough for the Indian situation, but the recommendations are so framed as not to permit anybody else coming after us to change the fundamentals and go ahead in a way that should be the only way that India should go. Our problems are huge, our population is big and we cannot merely sit and take portions from here and from there and especially from an Irish constitution. After all what is this Constitution? We have parts of the Irish Constitution copied out and we have three-fourths of the Government of India Act of 1935 copied out. If this is the Constitution which we are rushing through, I think there is no reason for any hurry at all. It should be remembered that we have got a very well considered adaption of the Government of India Act and that should suffice for our purpose. I am sure, Sir, the representatives who have come here are such that I do not expect any Indian Assembly would contain any better people than those we have here. Sir, we have the best talent in the land assembled in this Assembly. Why not take the opportunity of fashioning something original, something that is in keeping with the genius of our people and something that will be in perfect conformity with the historical background of the ancient civilization of this land? That is my submission, Sir, I hope Honourable members will confine themselves only to general criticism of the recommendations of the Committee that we have here and I think they will do a distinct service if they do not let these recommendations be passes hurriedly. In fact when I said that the decisions taken by the House should not be binding, this was at the back of my mind. I feel that when we have the whole constitution before us, we want ourselves to have the liberty if need be of changing the whole structure.

Yesterday I said that we had not even a skeleton. Even supposing we have a skeleton closer examination will show that the skeleton is in some parts human and in other beastly. It is skeleton which is not in keeping nor in harmony with the rest. This being the state of affairs, I submit to you, Sir, that since we are not going to meet hereafter and today is going to be the last day of our meeting, let us confine ourselves only to the general discussion of these recommendations. Passing of one or two items would not advance our cause in any way. If at all it will only damage it. And probably we may have to alter even those later on.

With these observations, Sir, I shall cut short my speech as I do not want to take too much of the time of the House especially because I spoke twice yesterday, I hope my observations will commend themselves to you and to the House.

Shri Vishwambhar Dayal Tripathi: (United Provinces: General): *[Mr. President, I welcome the report on fundamental rights, which has been presented before the House. Even though I am not satisfied with all that has been said in it, I warmly welcome some of its specific provisions. I want to invite the attention of the members of the Assembly particularly to Section 8. It has been said therein that within ten years our *Swaraj* Government will fully extend primary education to every poor man in every village. What it means is this that within ten or twelve or fifteen years, though every old and young man may not be educated, yet the Government will try to make full arrangements for the education of the children at least, and there shall not be any child in our country who shall not get an opportunity of education. I specially welcome this clause. Other clauses also are very important and they are appropriate as far as they go. I do not think that this report and its clauses are merely meant as a pious wish. I think that if we act fully according to them, there is no doubt that we will take the country a long way on the road to progress. But in spite of it all, there are some clauses in it which even though appropriate, are altogether inadequate. In this connection I want to invite your attention particularly to clauses 3 and 4. There are some other provisions also which should have been included in this report but they are not there.

On examining the amendments, I discover that they are coming before us in some form or other, and when we consider each clause separately the new principles involved in them will also come before us, and I hope that we will accept them only after full consideration. Once before also a report regarding fundamental rights was presented and w e adopted it. It laid down justiciable fundamental rights. These principles which have been adopted in the second report are no doubts fundamental principles of administration but we cannot have them translated into action through he Courts. Our Constituent Assembly had a different status when the first report was presented. Even though we desired that it may have full power, there were some restrictions, due to which we were unable to frame our constitution freely. But after the 15th August, although we got Dominion Status alone and not full freedom yet the Constituent Assembly is going to frame such constitution as will bring full freedom to our country. Now the situation is very different from what it was before 15th August. Therefore, it has become necessary that when the Constitution comes before us once again, we may think over the principles which we accepted earlier. The reason for this is that at that time we had several mental reservations, because of which we could not think freely. But now when the complete draft constitution comes before us, we will be able to consider it more freely. Sir, I am happy to know that yesterday you gave us permission to discuss the constitution when it comes before us and to make our suggestions. I want to draw your attention to clauses 3 and 4 in particular. Matters relating to economic rights have been mentioned there. Whatever has been said in them is appropriate but I wonder if in spite of it we will be able to accomplish the task which it is necessary for us to do. At the present juncture when we are taking over the reins of administration we have to give it serious thought. This is not merely my desire, but that of every Congressman. I think that it is the desire of every inhabitant of our country that the lot of our poor people be improved and the poor be no longer dependent on the rich. Nowadays, the rich dig wells, build *Dharamshalas* and *Gaushalas* for the poor and loudly proclaim that they are helping the poor in every day. This is a blow to the self-respect of the poor and in this manner they can never rise. The need is that the poor may realise and feel that they have also the strength to rise to the highest level and that they also have the same facilities for advancement as other have. This feeling can be roused in the poor only when we alter the fundamental principles substantially and mould our society on socialist line. There is some indication of it in clauses 3 and 4. But these clauses have a place in all the constitutions of the world. In spite of this the poor are denied the justice that should have been extended to them. Today practically in every country the poor are dependent on the rich. Therefore, I am unable to say what effect these principles will have in our country.

The leaders have made many sacrifices and led a very austere life for the liberation of the country during the last twenty five or thirty years. In our midst, we have our Honourable President who, during his life time, has set an example of sacrifice before the world. Many of our leaders have also done the same and they are in our midst. We hope that in their presence justice will be done to the poor. But the Constitution that we are making today is not for the present only but for centuries to come. Therefore, we should include in it the principles on the basis of which justice may be done to the poor and whether our present leaders are living or not the basic principles of the constitution may be brought in the action. We see today that even though the

Government is in our hands, and the Congress has made so many sacrifices, and in spite of our efforts and desires, the influence of the capitalists, is continuously increasing. Does not each one of us know that all the prominent newspapers are one by one passing into the hands of the capitalists; the chains of newspapers are coming under the control of the capitalists. If one wants to say something against capitalism, it is impossible to get it published in leading newspapers. Today the redeeming feature is that we have as our leaders those men who have spent their lives in making sacrifices and in the service of the poor. But after then or fifteen years when these people will be advanced in age and when they will have no energy left to work, or when the ordinary people who have not made sacrifices, will come up as leaders, then, it is difficult to imagine as to what will be the condition of the country. Therefore, at this time we must frame such a constitution as may prevent such a contingency.

In my opinion when we are framing a constitution for the coming generations of India, it is necessary that we should include in it *inter alia* four fundamental rights. Some of these four rights are already there in an indirect form, some are coming in the form of amendments and some would probably come at the time when the full draft of the constitution will be placed before us. We will put forth our suggestions at that time, but I want to speak to you here and now about the four fundamental rights which I have mentioned before.

The first basic principle of our constitution should be that the poor man should have full right to rise to the highest station in life, he should have the facilities to do so, not out of somebody's compassion, but by his own strength and the assistance of society. Very respectfully, I submit not by way of criticism but because I feel that we included many things in our constitution, laid down many principles and made an effort to solve many national and international questions, but we did not write even a word for removing the poverty of the poor. Except for goodwill, no other word is found in the whole constitution. Except for the right of vote, the poor man has not yet got any other right under the constitution. Being a representative of the poor I am grateful for this right to vote, but this is not enough. Therefore, I submit very humbly that we should make such rules and regulations as may make it clear and necessary that when our constitution will be ready an acted upon, it will not result in the rule of a few capitalists and vested interests and they alone will not dominate the administration and the people would not be dependent on them. There are a few friends of mine who feel irritated at the very word socialism. I do not want to irritate them and in fact there is no need of irritating them by making a mention of socialism. But I simply love this word. A time will come when socialism will reign supreme both in our country as well as in the world as was remarked by Pandit Jawaharlal Nehru while speaking on the Objectives Resolution. Even then, if there are some who feel irrigated at I, I am not so petty as to use this word repeatedly to annoy my colleagues and friends. Therefore, if you dislike the word socialism, let it go, do not use it. But you must make such regulations as may prevent the domination of vested interests, capitalists and those who desire to keep the poor under subjugation. I would request you at least to prevent the capitalists and vested interests from standing for the membership of the legislature or from holding high posts or those in the Ministry. I am sorry to say so, but whatever I have said is not by way of criticism. When I go to old or New Delhi, I hear people wondering how such and such men have got into such and such committees. The public is suspecting as to whether the Constitution that is being framed is for the poor people or for vested interests. The names of those people generally appear for these committees who represent the vested interests and not of those who made tremendous sacrifices for their country during the last thirty years. I do not know what we should tell the people. We admit that up to a certain stage we may require the capitalists but it is not proper that they should wield influence under the Constitution. The country will never approve of it and I know that our leaders also who have suffered for our country do not approve of it. And if they also will not approve of it, some such provision should be included as may prevent these capitalists subsequently from gaining power. This is very necessary and it can be done in either of these two ways. You can either provide that our constitution our future social structure will be on socialistic lines. If however, you do not wish to use the word socialism, you can provide that you are not prepared to retained, capitalism in any form, and so long as capitalism has to be retained, you may provide that no one who is engaged in profit-making can occupy high Governmental position. You can know who joins the Government with profit motive and how he takes unfair advantage of his position. You people understand the ways in which people take unfair advantage. I therefore respectfully submit that it is very necessary that we include some such provision in these fundamental rights as may be a safeguard against these dangers. Until we make such a provision, the poor people of this country will not be benefited by this constitution. Today we are engaged in fixing the salaries of Governors and Ministers and the allowances of members. But the greatest need at present is that of finding out ways and means to increase his income out of somebody's charity but we have to make such provision as may help him in making his life happy and in increasing his income. This is the foremost and the most important task facing us. Today when we go out we find people asking us as to what place we are giving to the poor in the Constitution and what we are doing for them, and they openly point out that unless some thing is done for them, this Constitution is useless for them.

The other thing that is necessary is that we have to make the nation strong and compact. Many things are needed to make a nation compact. The most important of them all is that there must be cultural unity amongst us. For cultural unity, among other things there should be one State language. I want to invite your attention to the speech of my learned friend Chaudhari Khaliq-uz-Zaman. When Pakistan was in the offing, he made the declaration that the language of Pakistan would be Urdu. I think that no one should have any objection to it. In one nation, there can be only one national language. It occurred to me on reading his statement that as a matter of principle it is very appropriate; and therefore it is necessary that in India too we may decide hat in our country also there shall be one language. Until we decide this there is no doubt that we can strengthen neither our cultural unity nor our national unity. There has always been one culture in our country. By adopting one language we can strengthen it and thereby strengthen the Indian nation. We admit that ten to twenty thousand of our muslim brethren came from out side but undoubtedly it is difficult to say as to who are their progeny and where they are. Nowadays about 99 per cent Muslims, 100 per cent Hindus, 100 per cent Christians and 100 per cent Sikhs are the descendants of common ancestors. Some of our muslim brethren, may under misguidance hurl abuses at Rama and Krishna. But there is no doubt, that in the near future when conditions stabilize and this virus of ill feeling and communalism is destroyed, every Muslim will consider Rama and krishna as his ancestors just like Hindus. It has been a feature of the History of the World that in spite of change of religion cultural unity has remained intact. It was unfortunate that ill-will continued to grow amongst Hindus and Muslims in our country and its result was that we were continuously separated from each other. We have cultural unity and everyone has contributed towards it. Our culture has its roots in antiquity and every religious sect of our country has contributed towards it. Muslims have also made their own contribution. In the circumstances if we adopt one language as our State language we will be strengthening our culture and our nation. I am happy to know that very soon a resolution will come before you proposing that our State language be Hindi and that the script, be Devnagri. I think all members of this Assembly and every man, woman and child in the country will welcome this resolution.

The third thing, that is presently coming before you and which should also form part of fundamental rights, is very useful from the point of view of our culture and economy. Our country has all along been predominantly agricultural and no matter how much we may expand our trade so long as we do not become imperialistic which we should not be-our country will undoubtedly remain agricultural. Cow protection is very important for an agricultural country. I am happy to know that a resolution to this effect is coming before you in a very nice form, and I hope that this Assembly will adopt it unanimously. This matte too was hotly discussed. No only from financial point of view but from cultural point of view also, I think it is necessary to make adequate arrangements for cow-protection. From both the points of view, financial a s well as cultural, it is necessary and proper that we should take steps for cow-protection, and I am happy that a resolution to that effect is coming before you.

The fourth important matter has not yet come before you, but I think, that when the draft constitution including the fundamental rights will be placed before you, this also will come before you. And that is, how to make our nation strong and powerful in the shortest possible time. We do not want to attack any country of the world. We do not want that there should be any conflict in the world. But everything does not depend upon our wishes. If any country desires 50 per cent peace, we want 100 per cent peace and we will make all possible efforts to being about peace in the world. This we can accomplish only when we are strong. From the point of view of population our country is the largest in the world and therefore it is our duty that owe put an end to the tendencies of violence that we find in the world today. But we can stop them only when we ourselves are strong and for that it is necessary that every young man of our country should receive military training. I want that we should make a law that every young man of our country will receive military training unless he is physically unfit and the State should compel him to receive such training. To make the nation strong, and also to remove the indiscipline that has crept into us owing to our dependence for centuries it is necessary that physically fit men should be conscripted and given military training.

These four things are very necessary and I confidently hope that when these matter come before you from time to time, you will consider them and the House will support them unanimously. I said at the very outset that so far as the principles contained in this report are concerned, I welcome them, but I think that they are inadequate. Until these fundamental principles are added, neither can the poor masses of the country be fully benefited nor can our country become strong. I hope that the Honourable Members of the Constituent Assembly will welcome this report and will support the inclusion of the fundamental principles stated by me.]*

With these words I welcome once again the report. *Jai Hind.*

Mr. Satyanarayan Sinha (Bihar: General): Sir, I move:

"That the question be now put."

Mr. President: The question is:

"That the question be now put."

The motion was adopted.

Mrs. Renuka Ray (West Bengal: General): Sir, yesterday you said in the House that the clauses of the Report would be discussed at a later stage. Some of us have amendments, particularly to clause 16. I hope we shall have an opportunity to bring up these amendments at a later stage.

Mr. President: At present we have taken up the motion that the Report be taken into consideration and if this motion is carried, then we shall take it up clause by clause and any amendments to the clauses may be taken up at that stage. Does the mover wish to say anything in reply?

The Honourable Sardar Vallabhbhai J. Patel: I am glad the discussion is over. We have a very interesting general discussion on the Supplementary Report. The discussion on the main Report was shorter than that on the Supplementary Report. So far as the Supplementary Report is concerned, the general discussion is based on the non-justiciable rights, and on the few clauses which have been submitted in this Report about the justifiable rights there has been practically no discussion. The real prolonged discussion has been on the other part of the Report.

This Report lays down certain administrative objectives. We have already passed the main Resolution defining the objectives and therefore whether you have this prolonged debate or not is more or less an academic thing. Therefore I suggest that the Report be taken up for consideration and when we come to the clauses, one by one, if any amendments are moved, then I may have to say something, but now I have nothing more to say except that the Report be taken into consideration.

Mr. President: The motion is:

"That the Report be taken into consideration."

The motion was adopted.

Mr. M.S. Aney (Deccan States): Sir, I want to point out that it is the general rule that when a reply is made the Member who is replied to should be present in the House to hear the reply to his attack. This is a recognised rule of debate in all legislatures.

Mr. President: I hope the Members will bear in mind this advice of as experienced legislator like Mr. Aney.

Clause 16

The Honourable Sardar Vallabhbhai J. Patel: Sir, I move clause 16:

"No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in the religious instruction that may be given in the school or to attend religious worship held in the school or in premises attached thereto."

We recommend this clause to be accepted by the Assembly in its present form. That is the final recommendation of the Advisory Committed. After a long discussion considering all the amendments, we finally came to the conclusion that this is the most suitable form for incorporation into the Fundamental Rights and I move that this clause be accepted by the House.

Mr. President: I have notice of several amendments to this Clause.

Shri R. V. Dhulekar (United Provinces: General): Sir, I want to suggest a slight verbal change, that instead of the word "school" in the clause, the words "teaching institution" may be used.

Mr. President: But you have given no notice of any such amendment?

Shri R. V. Dhulekar: No, Sir.

Mr. President: Mr. Dhulekar suggests that the words "teaching institution" may be used, in the first line of this clause, in place of the word "school". He has given no notice of any amendment.

Mr. K. M. Munshi (Bombay: General): Sir, that will enlarge the meaning. The whole idea will be changed it may mean a college, postgraduate school, or anything. The whole idea is that right should be restricted to a school. It is not a simple matter of changing one word by another.

Mrs. Purnima Banerji (West Bengal General): Sir, I move.

That in clause 16 the following new paragraph be added as an explanation--

> "All religious education given in educational institutions receiving Statewide will be in the nature of the elementary philosophy of comparative religions calculated to broaden the pupils' mind rather than such as will foster sectarian exclusiveness."

The object of the clause, Sir, is, as the Mover of the Report has suggested , to prevent the students attending these schools being forced to attend the religious classes, if they do not wish to do so. With that I am in perfect agreement. But I know there are a large number of institutions which are run on religious lines and which came into the field of education much before the State came in. There are in my Province 'Maktabs' and 'Pathasalas' which perform the function of importing education to children of school-going age. But we have seen that the religious instructions given there are of such a nature that, instead of broadening the mind of the child, they mis-educate the mind and sometimes breed a certain type of fanaticism and religious bigotry as a result of receiving education in these 'Maktabs' and 'Pathasalas.' It is a controversial point as to whether we should give any aid to denominational schools at all-- I do not wish to open that subject at all because there are experts appointed for this purpose and their report is awaited and I am sure after that the legislature will enter into that subject in fuller detail. My object in moving the amendment is that the education imparted in these institutions should be restricted or controlled by the Government without any fear of interfering with anybody's religion. The curriculum should be in the control of the Government and should be of such a nature that it broadens the mind rather than create an exclusiveness. When we were discussing the Minority Rights Report, we said that our aim should be to form a united nation and we have done away with separate electorate and agreed on fundamental rights and given each the right to follow his own religion. But I do believe that however secular a State you may wish to build up, unless one member of it appreciates the religion of another member of the State, it would be impossible for us to build up a united India. Therefore, without interfering with the religion of anybody, the State should be perfectly entitled to see that in the formative age of the child, when he is of the school-going age, the religious instruction is controlled and that the syllabus is of such a nature that the child will develop into a healthy citizen of India capable of appreciating each other's point of view. We may be united by political parties but if we do not appreciate each other's religion. We shall find that instead of having really men of religion in our midst, we shall be breeding a type of exclusiveness which will be most harmful and on that type of mind, I am afraid, the future of the nation cannot be built up. With these few words, Sir, I move my amendment and I hope the House will agree with me and accept it.

Mrs. Renuka Ray: Mr. President, Sir, I move my amendment leaving out the first party, namely,--

That for clause 16, the following be substituted:--

> "No denominational religious instruction shall be provided in schools maintained by the State. No person attending any school or educational institution recognised or aided by the State shall be compelled to attend any such religious instruction."

Sir, I feel that the farmers of the Report did not intend to imply what this clause does imply, namely, that instruction given in schools maintained by the State of out of public funds may be of a denominational character. Surely denominational schools cannot be run by a democratic secular State. Such schools may be recognised or even aided, but as the State we envisage under the new Constitution will be secular having no State religion as such it cannot set up denominational religious institutions as State schools. I do not want to make a long speech: I merely want to point out that if my amendment is substituted for clause 16, then this interpretation will not be possible and what this clause is intended to convey will be brought out better. I hope the House will realise the necessity of making this substitution.

Sir, even before we have freedom, the Central Advisory Board of Education decided that the education that was to be given by the State in this country should not be of a denominational character and that religious education of a denomination character was the responsibility of the community and the home to which the child belongs and not of the State. I am sure that now that we have to fashion our own destinies and we are in a position to usher in that free and democratic State for which we have striven and for which so many have sacrificed and died, it is open to us to say that we do not want to be inconsistent. We do not want to bring in an educational system whereby the education given by the State will be in direct contravention to the ideals and the interests of the State itself. I do not say that denomination religious education should not be allowed. But education given by the State should have the teaching of moral and spiritual values; it cannot by the very nature of the State be of a denominational religious character. I hope that Sardar Patel will accept this amendment, because it is not in contravention to the desire of the Committee. It merely tries to clarify the issue. The clause as it now stands may be misunderstood to mean that we are submitting to the State having denominational educational institutions as a part of its educational programme of policy.

Mr. President: There are only two amendments of which I have notice. Both the amendments have been moved. Now, the resolution and the amendments are open for discussion.

Shri K. Santhanam (Madras : General): Sir, I strongly support the amendment moved by Shrimati Renuka Ray. I think it carries out more fully the intentions of the Sub-Committee. In our country, even in the same religion there are any number of denominations. We want the village panchayats to control education; we want the local boards to control education. In a particular village or a particular area, a particular Hindu denomination may be in a majority. We don't want Saivaites to give Saivaite instruction; the Vaishanavaites to give Vaishnavaite education; the Lingayats to give Lingayat instruction. We do not want to give even the slightest loophole for such controversies. Therefore, it is essential that all schools maintained by the State should have no religious instruction whatsoever. Let other agencies provide this instruction, if they so choose, in 'out of class' hours. That is a different thing altogether. I am objecting to religious instruction as such, nor I am objecting even to denominational character of religious instruction, but our public institutions should be absolutely secular. They should be beyond the reach of all religious controversies. Therefore, this amendment says that where schools are maintained by the State, no denominational religious instruction shall be provided in them. It carries out the intentions of the Committee much more precisely and fully. If an institution is recognised or receives aid from public funds then there should be no compulsion. There may be religious instruction in an aided school, but where any parent of a minor or-if a student is an adult such student does not want to attend the classes, he should not be penalised in any way. He should be allowed to absent himself from such religious instruction. I think both these clauses are fundamental and I hope that they will be unanimously accepted by the House.

Mr. H. V. Pataskar (Bombay : General): Sir, I would like to have clarification with regard to one point. The clause states "No person attending any school." In the beginning Mr. Dhulekar suggested to replace the word "school" by "educational institution." As I understand it, the word "school" is used in a wider sense implying any class of institution where education is provided, but if it is the idea that we are going to exclude colleges, for instances, which are in one way schools where education is given, then I think what it would lead to is that in schools which are aided by Government you cannot make religious instruction compulsory, but in colleges, if we use the word 'school' in its restricted sense, you can make it compulsory. I know of some colleges in the city of Bombay where some time back this religious instruction was compulsory. So I hope the Honourable Mover will clarify this point when replying.

Mr. President: It seems to me that nobody is willing to speak on this motion or the amendment. Will Sardar Vallabhbhai Patel reply?

(B. Pocker Sahib Bahadur, Madras: Muslim, stood up)

Mr. President: Oh, you want to speak?

B. Pocker Sahib Bahadur: Yes, Sir, I only want to say a word as regards amendment No.34. The object of this amendment seems to be to unify all the people of this country towards one religion or something tending towards it. If that is the object, then I certainly oppose it. I must say that in some previous speech in Hindustani on the general discussion, some similar suggestion was made; of course, I have not been able to follow that and I am not proficient to deal with that. But generally, I would say that any attempt towards the unification of all religions or towards giving instruction in public schools which is intended to unify religion is fundamentally opposed to the other clauses of fundamental rights which we have passed.

Now, Sir, I would like to point that the carrying out of this amendment No.34 will be opposed to the other clauses and it would be opposed to the Fundamental Rights upon which we have been working so far and the introduction of this amendment will create not only discontent but it will take away the vary basic principles upon which this Constitution is to be built. Then, I have no objection to the amendment No.59 but I would point out that even though no denominational religious instruction may be provided in schools maintained by the State, what we find is in all the text-books which are prescribed for the various classes in the Schools we find so many religious topics are introduced particularly topics which deal with Hindu religion or some other religion. I would like to say that subjects which deal with the moral aspects only without having any religious idea introduced may find a place but if it does find a place in the text-books it may be from all religions alike and not from any particular religion alone.

Therefore, I would oppose this amendment No.34 and support the original clause as it stands but I would only add that there are so many educational institutions which are intended to promote some particular minorities or religious minorities because of their backwardness in the matter of education. I submit that such institutions should not be affected by this clause.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): This is rather an important matter and my preference is for the original proposition. *i.e.*., as framed by the Committee. I am in entire agreement with the mover of amendment No.59, Shrimati Renuka Ray, whose aim is to have secular education not influenced by any kind of religious or spiritual worship or education which must be the aim. The amendment by the other lady member is somewhat controversial. What would be the fundamental education that should be given to the child would be a matter of opinion and it might lead to controversy. So, Sir, the amendment No.34 cannot be taken into account at all. It will do more harm than good. For, this elementary philosophy of comparative religion is very difficult to define. While as I have said I generally support the amendment of Shrimati Renuka Ray where it aims that in no State Schools there should be any religious instruction, it does not contemplate prevention of religious education being given by other recognized and aided schools. So the objective may not be the same by the amendment of Mrs. Renuka Ray. Allowing the proposition, rather the original motion, as framed by the Committee, is very sound. It may be that there are some institutions where religious education is given and some State aid may be given and if there is no compulsion that no pupil can be compelled to receive such education, there is no harm in it. It might stand. So, I think, Sir, that the clause 16 as amended and placed before us by the Committee is better and I support that.

Sriyut Rohini Kumar Chaudhury (Assam : General) Mr. President, Sir, I rise to give my whole-hearted support to the Motion which was moved by our Honourable friend Mrs. Purnima Banerji. It is not the personality of the Mover which has promoted me to do so but I think, Sir, taking the two motions side by side, the motion which was moved by Mrs. Banerji would take us nearer to the goal of our ideal of secular education. My Honourable friend, Mrs. Renuka Ray, has made an earnest appeal to the Honourable Sardar Patel and I am sure he is not relishing the position of having to choose between either of the two amendments but, as is well known, he is capable of surmounting any difficulties and I am sure he will get over this difficulty and give regard to the appeal of Mrs. Renuka Ray and also accept the motion made by Mrs. Banerji.

Mr. K. M. Munshi: Mr. President, Sir, my first proposition with regard to this Fundamental Right is that the words 'Public Funds' should be really 'State Funds'. Mr. Kamath's amendment was evidently lost sight of. When the original Fundamental Right was accepted, wherever the words 'Public Funds' were found, they were substituted by 'State Funds.' The object was that the money collected from public subscription should not be considered the same as 'State Funds'. Therefore I appeal to the Mover that this verbal change might be accepted. My second submission is with regard to the amendment moved by Mrs. Banerji. However laudable the object, the House will remember that this is a justiciable right and therefore every word of it will have to be discussed, considered and decided upon by the different High Courts and the Supreme Court in the end. Now, if Mrs. Banerji's amendment becomes law as a justiciable right, this will be the position. There is a school in which religious education is given. The first question raised by some friend or by some enterprising man will be 'Is it in the nature of elementary philosophy or comparative religions? So the matter will have to be taken to the Supreme Court and eleven worthy judges will have to decided whether the kind of education given is of a particular religion or in the nature of elementary philosophy of comparative religion. Then, after having decided that, the second point which the learned judges will have to direct their attention to will be whether this elementary philosophy is calculated to broaden the minds of the pupils or to narrow their minds. Then they will have to decide upon the scope of every word, this being a justiciable right which has to be adjudicated upon by them. I have no doubt members of my profession will be very lad to throw considerable light on what is and is not a justiciable right of this nature. (A Member: *For a fee*). Yes, for very good fee too.

Then again they will have to consider whether a particular kind of teaching fosters sectarian exclusiveness. All this I think will require any amount of litigation before a quietus can be given to this right.

An Honourable Member: May I ask the Honourable Member whether comparative religion taught in all universities and educational centres is not narrow minded and likely to warp the minds of the pupils?

Mr. K. M. Munshi: It is not a point of order, but a question. There are no lawyers set up there to consider whether this comparative philosophy or elementary comparative philosophy taught in the educational institutions broadens the pupils' minds or not. These decisions will have to be for the whole country including the Indian States. But all these words are of a nature not capable of being interpreted in judicial terminology except by dozens of decisions and an expenditure of lakhs of rupees. Therefore, I am submitting that this is more in the nature of a dictum of what may be called broad rationalistic philosophy and is not to be approached legalistically and embodied into justiciable and non justiciable rights. To attempt to do so would lead to considerable confusion. Even if the idea is to prescribe that religious education must not be of a nature which is exclusive, then a better phraseology would have to be found.

On the merits I would like to say only one word and it is this: Educational institutions of a denominational character often give religious education. They are doing so, not for the purpose that the students will have a general knowledge of comparative philosophy but for seeing that the students who are members of a particular denomination are given education in that kind of religion. And as a matter of practice, I may assure the House that even if this 'justiciable rights' is there, it is not going to make any difference. Supposing there is a school of a particular denomination where a particular doctrine is taught, can any one compel that institution to impart instruction in comparative philosophy to its students? First of all, at that stage students cannot understand philosophy. But even if you compel them, the school, its teachers and even the authors can so manipulate things that at the end of the study of comparative religion, the student comes to the conclusion that that religion is the best. I know of a concrete instance. A certain denominational school taught the sacred book of that community to the classes, but at the same time lectures were being delivered in the nature of comparative study of religion. At the end of it it was taught that theirs was by far the best. This amendment will not meet the situation. It will make it worse. I submit, it is impossible to bring this doctrine under the terms of a clause as a justiciable right. If this amendment is accepted it will work great hardship and will remain a dead letter.

Then I come to the next amendment of Mrs. Ray. As far as the first part of it is concerned, *viz.*, "No denominational religious instruction shall be provided in schools maintained by the State" as far as the Federation is concerned, it is going to be a secular and democratic State. So far as the Units are concerned, I do not think the provinces are going to be religious States. But at the present moment this Fundamental Right would not only affect the provinces, but also the States. If the Indian States are willing to accept that, it is a different matter, but it would not be right in my opinion to lay down this general principle in the present condition of India unless we are all unanimous on this point.

As regards the second sentence, I confess it is an improvement on the phraseology of Clause 16 as adopted by the Advisory Committee and for this reason: "No person attending any school maintained or receiving aid out of public funds..." Now, the word 'maintained' in the original clause may be construed as wholly maintained. Therefore, Mrs. Ray's amendment would recognise this fact. If it is wholly maintained, it is different. This clause only refers to what may be called State-aided institutions. Therefore, her words 'No person attending any school or educational institution recognised or aided by the State' constitute a better phraseology. I submit it should be accepted. It runs thus: 'No person attending any school--'maintained' instead of this the word 'recognised' may be inserted. The result will be: 'No person attending any school recognised or receiving aid out of public funds. So it automatically puts out of its purview State institutions which are wholly financed by the State.

Now, with regard to the words 'educational institutions' I submit it enlarges the meaning of the word 'school' to a very large extent. It would create grave difficulties if it is allowed to be used. There may be *pathasalas* or *madrassahs* giving religious instruction. Their express object is to give religious instruction and everywhere today these are aided by the State. Any such rigid fundamental right would have the effect that all those thousands of educational institutions will have to go out of existence.

Shri K. Santhanam: May I know why those institutions should go out of existence?

Mr. K. M. Munshi: The point is that there are schools which are intended to teach religion and every student who goes there is taught religion. *Pathasalas* are not strictly educational institutions. Therefore the word 'school' has a clear meaning that meaning is that schools are institutions where primary and secondary education is given and not education of a specialized character. Therefore I submit, Sir, Clause 16 as moved will express the idea completely if two words are changed, "maintained" is altered into "recognised" and "public funds" into "State funds". That is my submission.

Mr. Debi Prosad Khaitan (West Bengal: General): I believe that 'out of' will have to be changed into 'by'. Then it will read: "No person attending a school recognised by the state."

The Honourable Sardar Vallabhbhai J. Patel: Sir, I am prepared to accept the change suggested by Mr. Munshi that instead of the word "maintained" in the clause we put the words "recognised by the State" and instead of 'public funds' we put "out of State funds."

The only thing that I have to say in considering the clause is that one has to keep in mind that this is one of the justiciable rights and we must in drafting or in adopting the clauses keep in mind that this is not a clause which belongs to British India only but to the whole of the Indian Union and in adopting these clauses we have to consider the fact that it should not be such as to open the flood gates of litigation and create many difficulties afterwards. Therefore, these should be mainly general propositions under which special cases would give so much to go to the court and therefore with these changes which I am accepting I move the proposition for the acceptance of the House.

Dr. S. Radhakrishnan (United Provinces: General): Mr. President, I should like to have an elucidation. Does this term "recognised by or receiving aid from" include or exclude institutions wholly maintained administered and financed by the State?

The Honourable Sardar Vallabhbhai J. Patel: It includes.

Mr. H. V. Pataskar: May I know if it is the idea to exclude colleges and all other higher institutions, where religious instruction may be made compulsory or is it used in the larger sense of any educational institution?

Mr. President: Mr. Pataskar wants to know whether 'school' includes colleges or not.

The Honourable Sardar Vallabhbhai J. Patel: It excludes colleges.

Mr. President: May I put the amendments to vote? The first amendment is that of Shrimati Purnima Banerji:

That in clause 16, the following new paragraph be added as an Explanation:--

> "All religious education given in educational institutions receiving State aid will be in the nature of the

elementary philosophy of comparative religions calculated to broaden the pupil's mind rather than such as will foster sectarian exclusiveness."

The amendment was negatived.

Mr. President: The next amendment is by Shrimati Renuka Ray:

That for clause 16, the following be substituted:-

"No denominational religious instruction shall be provided in schools maintained by the State. No person attending any school or educational institution recognised or aided by the State shall be compelled to attend any such religious instruction."

Mr. K. M. Munshi: I want to know whether the Honourable Mover has accepted the word "recognised" in the place of "maintained."

Mr. President: That is in the original resolution-"maintained by the State." He has accepted that I think..

Pandit Hirday Nath Kunzru (United Provinces: General): I do not understand the exact effect of the amendment. Does the acceptance of the amendment by the Honourable Sardar Vallabhbhai J. Patel mean that clause 16 will relate not to schools maintained by the State but only to schools recognised by the State and aided out of state funds?

Mr. President: Mrs. Renuka Ray says she is withdrawing the amendment. I will put the original proposition.

Pandit Hirday Nath Kunzru: Sardar Vallabhbhai Patel said he would accept the amendments suggested by Mr. Munshi and I believe that if these amendments are accepted clause 16 would read as follows:-

"No person attending any school recognised by the State or receiving aid out of State funds shall be compelled etc. etc."

Is this correct?

Mr. President: I am going to put that very proposition to the House as you have just now read out.

Mr. K. M. Munshi: Instead of 'state funds' it would be better to have It "recognised by or receiving aid from the State" because it cannot be recognised by State funds. That is only a matter of drafting.

Mr. President: The sentence will be:

"No person attending any school recognised by the State receiving aid out of state funds etc."

Pandit Hirday Nath Kunzru: That is, the schools maintained by the State are excluded from the scope of this clause. This is a curious phraseology and I should like the meaning of this clause to be clearly explained. If it is the intention of the

Government that denominational religious instruction might be given by the state in the State schools then that should be stated clearly so that we may make up our minds and decide how we should vote on this clause.

Mr. President: We may get over the difficulty if we put the clause in the following way: "No person attending any school recognised or maintained by the State or receiving aid out of State funds etc. Will that do?

Pandit Hirday Nath Kunzru: I think that will remove the difficulty.

Dr. S. Radhakrishnan: If the institutions which are maintained by the State are to impart denominational religious instruction then what happens to our declaration that the State is a secular institution which will not impart any instruction of any denominational kind? That is the real question. We have adhered to the first principle that the State as such shall not be associated with any kind or religion and shall be a secular institution. In other words we are a multi-religious State and therefore we have to be impartial and give uniform treatment to the different religions, but if institutions maintained by the State, that is, administered, controlled and financed by the State, are permitted to impart religious instruction of a denominational kind, we are violating the first principle of our Constitution. On the other hand, if we say aided institutions may impart religious instruction, we protect the interests of the people against the violation of their religious conscience by saying that they shall not be compelled against their will to join classes on religion. So a distinction will have to be made between institutions maintained by the State and those institutions which are merely aided from State funds. So far as the former are concerned we cannot allow any religious instruction of a denomination character. So far as the latter are concerned, you may allow, provided you protect the rights of the minorities concerned. We have to make ourselves absolutely clear on this matter.

The Honourable Sardar Vallabhbhai J. Patel: Sir, there is some confusion. So far as any school that is entirely maintained by the State is concerned, we cannot do anything by way of introducing fundamental rights for which the remedy of taking it to the court is given. Because, this is not restricted to the British Indian portion alone; it covers the whole of India, that is the Indian Union. Therefore, if a Unit which is a State, take the case of Hyderabad, wants to maintain wholly its own school in which it wants to introduce religious education, it may compel; but we cannot give a remedy by which anybody can go to the court and say, "you will not impart religious education here." I do not think this is proper at this state. Therefore, the wording 'recognised' by or receiving aid from the 'State funds' is introduced.

Mr. M. S. Aney: I have one doubt, Sir. Does the word "State" mean only the Union or the Units also?

Mr. President: He wants to know whether "State" includes Units.

The Honourable Sardar Vallabhbhai J. Patel: 'State' includes Units.

Shri R. V. Dhulekar: On a point of information, Sir, I would like to know whether the wording is "recognised by and receiving aid" or "recognised by or receiving aid".

The Honourable Sardar Vallabhbhai J. Patel:" The word 'Or' is there.

Mr. President: Recognised by the State or receiving aid out of State funds. One or the other.

Shri R. V. Dhulekar: If the word "or" is there, that means that even denominational institutions which are wholly maintained by private funds will not be recognised by the Government at all. So, the word "or" should not be there. It should be "and". They should be recognised by the Government and aided. If they are aided then this rule will apply. If it is maintained only by private funds, then.........

The Honourable Sardar Vallabhbhai J. Patel: Even if it is maintained by private funds, if it is recognised by the State, you cannot compel the students to have religious education.

Dr. B. Pattabhi Sitaramayya: (Madras: General): May I express a difficulty, Sir?

The Honourable Sardar Vallabhbhai J. Patel: There will be no end to the difficulties.

Dr. B. Pattabhi Sitaramayya: If you want to pass it in an ambiguous manner, there is no trouble. I see an obvious defeating of the purpose for which the amendment is made.

The Honourable Sardar Vallabhbhai J. Patel: I do not see any difficulty.

Mr. President: Mr. Munshi's amendment was introduced in the course of the discussion and there was no proper notice of it. Therefore, this question has arisen.

The Honourable Sardar Vallabhbhai J. Patel: What is the difficulty?

Dr. B. Pattabhi Sitaramayya: There are certain institutions in the provinces or States where certain benefactors have maintained whole institutions and they would like to impose certain religious instruction upon the students. We wanted to exempt them. That is all very well. Now, the object is to exclude a category or institutions maintained by a certain province or State or private funds without any connection with the State. Very well, then, you have excluded them. Then you have included two categories of institutions: one which is not recognised by but is receiving State aid: in that case, my argument does not apply. But, when you say recognised by or receiving aid from the State, then you have introduced two categories of institutions. One of them includes any institution recognised by the State. A state maintained institution is a recognised one and thus becomes included, when it was meant to be excluded. Thus, the right of compulsion is taken away and the very exemption that we have given is undone; because even a State-maintained institution is a recognised one. The moment it is recognised by the State, that moment, the exemption that you have given to the State-maintained institution is a recognised one. The moment it is recognised by the State, that moment, the exemption that you have given to the State-maintained institution is taken away. Therefore, if you want to validate and affirm your exemption to the State maintained institutions, you must say, "recognised and receiving aid from the State." That creates only one category. Otherwise, the language with 'or' would include those institutions which you have excluded. Let us take a little time, each person for himself, to judge what it means.

Dr. Mohan Sinha Mehta: (Udaipur State): Sir, I am very glad that the Honourable Pandit Kunzru raised that point. From the explanation that has been given, it is quite obvious that what we understand was not really intended. Now we are told that an institution maintained by a State may have religious instruction compulsory. Well, Sir, that is a position about which some of us in this House have very strong feeling, and since the matter is not clear, I would strongly submit for your consideration that it be referred back to the Committee. If you accept the first sentence in Mrs. Renuka Ray's amendment and keep the rest of the original proposition, it would be all right. It will meet the point raised by my friend, Professor Radhakrishnan...........

Mr. K. M. Munshi: Are we debating the same thing over again? I think we have adopted it.

Mr. President: The difficulty is, you put in certain words in the course of the discussion, of which there was no notice to the members. The mover has accepted them and therefore the difficulty has arisen.

Dr. Mohan Sinha Mehta: The matter is of fundamental importance. There is a very real difficulty and I wish that it should be cleared before you ask us to vote on the proposition. I would remind the House that this subject was discussed at two sessions of the Central Advisory Board of Education. It is not a matter which should be treated lightly.

Pandit Hirday Nath Kunzru: Sir, may I strongly support the suggestion by Dr. Mohan Sinha Mehta. It is very desirable, in view of the importance of the subject, that this clause should be referred back to the Advisory Committee. I do not want to labour the point, but in order to show that it deals with a question of vital importance, I wish to point out that if we allow the State to give religious instruction in any school, it means that we accept the principle of a State religion and that there shall be something like an Established Church. Now, so far as I remember, Sir, during all the years that the struggle for national freedom went on, we stood for a secular State. Indeed, the earlier generation of leaders of Indian public opinion welcomed the measures taken for the disestablishment of the Protestant Church in Ireland. How can we then, Sir, consistently with our previous principles now accept a position in which the State will be in a position to give religious instruction and thus have a State religion which it is bound to protect above all other religions? Therefore, Sir, I strongly support. Dr. Mohan Sinha Mehta's suggestion and I hope Sardar Vallabhbhai Patel will have no objection to that.

There are many points which have not yet been decided by this House. Provision will be made in respect of them in the Bill that will come before us and we shall then have an opportunity of arriving at a decision with regard to them. No harm will be done if we leave one more point to be discussed and decided at a later stage. Indeed I think that it is absolutely necessary, in view of the cardinal character of the question that has arisen, that we should not decide it in a hurry today. We must refer it back to the Advisory Committee if we attach any value to fundamental principles.

Mr. K. M. Munshi: Sir, it is not correct to assume that the matter did not receive consideration at the hands of the Advisory Committee or the original Fundamental

Rights Committee. There are two different propositions. One proposition is that no school which is recognized by the State, whether aided by the State or not, should be such where students are compelled to take religious instruction. It is one proposition, which is embodied in this. The reason why the word "maintained" was altered to "recognised" was this: there are several schools which do not receive aid from the State and yet they are recognised schools. I know in my part of the country there are several recognised schools which send up students for various examination, but they do not received any aid from the State, but they are schools all the same, and the object of substituting the word "maintained" by "recognised" was to cover all those schools, whether they receive State aid or not, but are recognised by the State. Now. so far as those schools are concerned, proposition contained is very simple, that they shall not compel any student to receive religious instruction against his will. The second proposition, which is quite different, which has nothing to do with this clause, is the one contained in Mrs. Renuka Ray's sentence, that in schools which are controlled, owned and maintained by the State there shall be no religious education. Now these two are entirely different propositions.

Pandit Hirday Nath Kunzru: May I point out to my honourable friend that Sardar Vallabhbhai Patel said that this clause as it stood included both the categories of schools?

Mr. K. M. Munshi: But not for the purpose of excluding religious education. This only recognizes the right of the student or his parent to say "my son shall not be given any religious instruction." This is only one part of it. The other is a different proposition. We need not mix up the two. A State-maintained institution and owned by it may conceivably give religious instruction or may not. It is an entirely different subject.

The object of this clause is not to fetter the State from putting up religious schools but from in insisting that every student shall be compelled to undergo religious instruction. This matter came up again and again and the Committee always held that it was not necessary to put down in fundamental rights the converse proposition. If the converse is brought before the House, it may be discussed at another time. But so far as this proposition is concerned, it stands as it is.

Mr. N. Gopalaswami Ayyangar :(Madras: General): A state does not recognise its own institutions. "Recognized" has got a particular meaning.

Mr. K. M. Munshi: If a school maintains an institution, then if you want to prohibit religious instruction in it, it is an entirely independent subject. It is not covered by this clause. This clause only covers institutions which are recognized and State-aided. I see no reason why this part must be held up till the other one is decided. That other one was discussed again and again and ruled out by the Committees. It is not correct to say that neither the Fundamental Rights Committee not the Advisory Committee considered it.

Mr. Alladi Krishnaswami Ayyar: (Madras: General): In view of the difficulties that have cropped up, and I submit that they are genuine, it is necessary that the clause should receive further consideration. The way in which I put the matter is this. You have got three classes of institutions: first, an institution which is maintained by the States, second, an institution which is recognized by the State, third, an institution which receives aid from the State. Now, though the subject might have been considered in a general way by the Committee, and my friend Mr. Munshi is quite right in that, personally speaking I am impressed by the argument that a State being a secular institution, there are weightier reasons why religious instruction should not be forced in an institution which is wholly maintained by the State than in a merely recognized or partly aided school. Difficulties in regard to Indian States have been pointed out. If the State maintains an institution for a particular purpose, you may make an exception: for example, for imparting Sanskrit learning or training a particular class of pandits or some such thing. But generally speaking an institution maintained by the State must stand on a better footing than an institution which is recognized by the State or which is receiving aid from the State. Therefore I do think that the whole question may be reconsidered in the light of the suggestions made in the House, instead of one point being accepted, another point being left open, and another being referred to the Advisory Committee.

I do not mean to say anything different from what Mr. Munshi has said: but certain points have cropped up here. Let us consider them; they are important points, and I do think they should be remitted for reconsideration by the Advisory Committee or even by the Committee which has been set up to revise the Draft to see whether it is possible to bring in line these different classes.

The Honourable Sardar Vallabhbhai J. Patel: These difficulties arise when at the last moment pressure is being put to accept some suggestions, and then even those who make the suggestions afterwards say 'Oh, this is not what we meant.' This question was discussed in the House and the clause was referred back to the Advisory Committee. The Advisory Committee considered it in all its aspect and brought it here. Then at the last moment these changes were pressed. We said 'All right if you think those better, we accept them.' Instead of referring back to the Advisory Committee, it would be better to refer it to a small Committee of two or three people. My suggestion is that instead of referring this small matter to the whole Advisory Committee, it should be referred to a small committee, and if they make any suggestions, they can be brought forward at the next session. I do not think it is advisable to refer it back a third time to the Advisory Committee.

Shri K. Santhanam: We are not going to consider it fresh. It may be referred to the Drafting Committee.

The Honourable Sardar Vallabhbhai J. Patel: That is better.

Mr. President: Does the House wish to refer it to the Drafting Committee?

Honourable Member: Yes.

Mr. Tajamul Husain (Bihar: Muslim): The Drafting Committee will only draft. We settle the principle.

The Honourable Sardar Vallabhbhai J. Patel: The House cannot discuss what the Drafting Committee will do.

Pandit Hirday Nath Kunzru: Mr. Patel's suggestion was better. Let us refer this to a small committee that can send its recommendations to the Drafting Committee. I think that will meet the points of view of all Members of the House.

Mr. Hussain Imam (Bihar: General): A committee appointed by the President will do. They will send their recommendations to the Drafting Committee.

Mr. President: If that is the wish of the House I do not mind.

(Interruption by a member in Hindi.)

Mr. President: The Members of the Drafting Committee are here and they have also heard the discussion, and they will get a report of this debate. I am sure they will take all points into consideration and then put forward a draft eliminating all the difficulties mentioned there.

Pandit Hirday Nath Kunzru: Is there any real difficulty in the suggestion made by Mr. Patel?

Mr. President: The House has accepted it.

Pandit Hirday Nath Kunzru: I think if Mr. Patel puts it forward strongly, the House will accept it.

Mr. President: I do not think it is necessary for him to do that. If the House accepts it I will do it.

Pandit Hirday Nath Kunzru: Let Sardar Vallabhbhai Patel put it forward strongly.

The Honourable Sardar Vallabhbhai J. Patel: I have no objection if it is referred to a committee appointed by you and that committee may send it to the Drafting Committee.

Mr. President: I will nominate four or five gentlemen who are really interested in this subject and they can send up their recommendations to the Drafting Committee.

An Honourable Member: It must come to the House.

Mr. President: Only the final report will come to the House.

Dr. P.S. Deshmukh: There are one or two things which require elucidation. If it is not necessary to take up the next item, we may discuss these one or two matters.

Mr. President: I do not know what are these matters.

The Honourable Sardar Vallabhbhai J. Patel: That may be discussed before the next session meets.

Dr. P.S. Deshmukh: We have for instance to fix the time of the next Session and other things!

Mr. President: That will not take much time.

CLAUSE 17

Mr. President: Clause 17.

"Conversion from one religion to another brought about by coercion or undue Influence shall not be recognised by law."

The Honourable Sardar Vallabhbhai J. Patel: The Committee discussed this and there were several other suggestions made by the House and the clause was referred back to the Committee. After further consideration of this clause, which enunciates an obvious principle, the Committee came to the conclusion that it is not necessary to include this as a fundamental right. It is illegal under the present law and it cm be illegal at any time.

Mr. President : Has anybody anything to say?

Shri M. Ananthasayanam Ayyangar (Madras: General) : It is unfortunate that religion is being utilised not for the purpose of saving one's soul but for disintegrating society. Recently after the announcement by the Cabinet Mission and later on by the British Government, a number of conversions have taken place. It was said that power had been handed over to Provincial Governments who were in charge of these matters. This is dangerous. What has religion to do with a secular State? Our minorities are communal minorities for which we have made provision. Do you want an opportunity to be given for numbers to be increased for the purpose of getting more seats in the Legislatures ? That is what is happening. All people have come to the same opinion that there should be a secular State here; so we should not allow conversion from one community to another. I therefore want that a positive fundamental right must be established that no conversion shall be allowed, and if any occasion does arise like this, let the person concerned appear before a Judge and swear before him that he wishes to be converted. This may be an out-of-the-way suggestion but I would appeal to this House to realize the dangerous consequences otherwise. Later on it may attain enormous propositions. I would like this matter to be considered and the question referred back for a final draft for consideration at a later sitting.

Shri R. V. Dhulekar: *[Mr. President, my opinion is that clause 17 should be retained as it stands. In the present environment, all sorts of efforts are being made to increase the population of a particular section in this country, so that once again efforts may be made to further divide this country. There is ample proof, both within this House and outside that many who live in this country are not prepared to be the citizens of this country. Those who have caused the division of our land desire that India may be further divided. Therefore in view of the present circumstances, I think that this clause should be retained. It is necessary that full attention should be paid to this. While on tour, I see every day refugees moving about with their children and I find them at railway stations, shops, bakeries and at numerous other places. The men of these bakeries abduct these women and children. There should be legislation to stop this. I would request you that an early move should be made to stop all this and millions of people would be saved.

I submit that we cannot now tolerate things of this nature. We are being attacked, and we do not want that India's population, the numerical strength of the Hindus and other communities should gradually diminish, and after ten years the other people may again say that "we constitute a separate nation". These separatist tendencies should be crushed.

Therefore I request that Section 17 may be retained in the same km as is recommended by the Advisory Committee.

The Honourable Sardar vallabhbhai J. Patel: Much of this debate may be shortened if it be recognised that there is no difference of opinion on the merits of the case that forcible conversion should not be or cannot be recognised by law on that principle there is no difference of opinion. The question is only whether this clause is necessary in the list of fundamental rights. Now, if it is an objective for the administration to act, it has a place in the Second Part which consists of non-justiciable rights. If you think it is necessary, let us transfer it to the Second Part of the Schedule because it is admitted that in the law of the land forcible conversion is illegal. We have even stopped forcible education and, we do not for a moment suggest that forcible conversion of one by another from one religion to another will be recognised. But suppose one thousand people are converted, that is not recognised. Will you go to a court of law and ask it not to recognise it ? it only creates complications, it gives no remedy. But if you want this principle to be enunciated as a seventh clause, coming after clause 6, in the Second Schedule, it is unnecessary to carry on any debate; you can do so. There is no difference of opinion on the merits of the case. But at this stage to talk of forcible conversion on merits is absurd, because there cannot be any question about it.

Shri R. V. Dhulekar: *[I agree that it may be transferred there.]*

The Honourable Sardar Vallabhbhai J. Patel: *[It will be transferred.]*

(At this stage Mr. Hussain Imam walked up to the rostrum to speak.)

The Honourable Sardar Vallabhbhai J. Patel: Do you advocate forcible conversion ?

Mr. Hussain Imam : No, Sir I very much regret the attitude of certain Members who are in the habit of bringing in controversial matters without any rhyme or reason. It was really almost uncalled for attack which the last speaker made on the Mussalmans, without mentioning names. But I regret that in the atmosphere which we are trying to create of amity such intrusions should be allowed to intervene and mar the fair atmosphere.

Sir, what I came to suggest was that this is such a fundamental thing, that there is no need to provide for it. According to the, law everything which has been done under coercion is illegal. Anything done by reason of fraud can never stand. Forcible conversion is the highest degree of undesirable thing. But it is not proper, as the Sardar himself has admitted, to provide it in the justiciable fundamental rights. The only place which it can occupy is in the annals of High Court judgements. Any number of judgements exist which have declared that anything done by reason of fraud or coercion is illegal. Therefore it is not justiciable and cannot be justified by any sensible person in the world I strongly advocate that it is not necessary to put it in any of the lists of Fundamental Rights.

Shri R. V. Dhulekar: *[I want to ask you whether any Hindu has embraced Islam by speeches.]*

Mr. President: Then I shall put the motion.

"That this should not be put in the Fundamental Rights."

The motion was adopted.

Mr. President: Then we come to Clause 18 (2).

The Honourable Sardar Vallabhbhai J. Patel: This is the last clause, that--

"No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instruction be compulsorily imposed on them."

This clause was referred back to the Committee and it came to the conclusion that the last sentence is not necessary, i.e., "nor shall any religious instruction be compulsorily imposed on them" because it is already covered by Clause 16 which we have passed. That being dropped, I move the proposition, without that that particular sentence, for the acceptance of the House.

K. T. M. Ahmad Ibrahim Sahib Bahadur (Madras: Muslim): Sir, I move that the following be added after the word "institutions" in Clause 18(2)

"Provided that this clause does not apply to state Educational institutions maintained mainly for the benefit of any particular community or section of the people."

Sir, it is well known that there are in existence certain institutions maintained by the State, specially for the benefit of certain communities which are educationally backward, and if this clause is applied to such institutions also, the very object of establishing such institutions would be defeated. Therefore, it is necessary that, in order that the object of the establishment and maintenance of such educational institutions mainly for the benefit of that particular community may not be defeated, this. clause should not apply to them. This is a very simple proposition and I hope the House will accept it.

Shri Mohanlal Saksena (United Provinces: General) : Sir, I move that, the following proviso be added to clause 18 (2) :

'Provided that no State aid shall be given to any institution imparting religious education unless the syllabus of such education is duly approved by the State'.

I do not want to make any long speech. It is obvious that if any institution wants to impart religious education and wants to take State aid as well, then it is necessary that the syllabus of religious education should be approved by the State; otherwise, it should forego the aid. We know that in the name of religion all sort of things are being taught and since the children are the trust of the State, it is necessary that before the State gives any aid, it should at least approve the syllabus of the religious instruction that is prescribed and imparted in any institution to which it gives such aid. With these words, Sir, I move.

Mrs. Purnima Banerji: Sir, my amendment, is to clause 18 (2) It reads as follows :-

"That after the word 'State,' the words 'and State-aided' be inserted."

The purpose of the amendment is that no minority, whether based on community or religion shall be discriminated against in regard to the admission into State-aided and State educational institutions. Many of the provinces, *e.g.*, U. P., have passed resolutions laying down that no educational institution will forbid the entry of any members of any community merely on the ground that they happened to belong to a particular community--even if that institution is maintained by a donor who has specified that that institution should only cater for members of his particular community. If that institution seeks State aid, it must allow members of other communities to enter into it. In the olden days, in the Anglo-Indian schools (it was laid down that, though those school were specifically intended for Anglo-Indians, 10 per cent. of the seats should be given to Indians. In the latest report adopted by this House, it is laid down at 40 per cent. I suggest Sir, that if this clause is included without the amendment in the Fundamental Rights, it will be a step backward and many Provinces who have taken a step forward will have to retrace their steps. We have many institutions conducted by very philanthropic people, who have left large sums of money at their disposal. While we welcome such donations, when a principle has been laid down that, if any institution receives State aid, it cannot discriminate or refuse admission to members of other communities, then it should be follow. We know, Sir, that many a Province has got provincial feelings. If this provision is included as a fundamental right, I suggest it will be highly detrimental. The Honourable Mover has not told us what was the reason why he specifically excluded State-aided institutions from this clause. If he had explained it, probably the House would have been convinced. I hope that all the educationists and other members of this House will support my amendment.

Mr. K. M. Munshi: Mr. President, Sir, the scope of this clause 18 (2) is only restricted to this, that where the State has got an educational institution of its own, no minority shall be discriminated against. Now, this does recognise to some extent the principle that the State cannot own an institution from which a minority is excluded. As a matter of fact, this to some extent embodies the converse proposition over which discussion took place on clause 16, namely no minority shall be excluded from any school maintained by the State. That being so, it secures the Purpose which members discussed a few minutes ago. This is the farthest limit to which I think, a fundamental right can go.

Regarding Ibrahim Sahib's amendment, I consider that it practically destroys the whole meaning and content of this fundamental right. This minority right is intended to prevent majority control legislatures from favouring their own community to the, exclusion of other communities. The question therefore is : Is it suggested that the State should be at liberty to endow school for minorities ? Then it will come to this that the minority will be a favoured section of the public. This destroys the very basis of fundamental right Submit that it should be rejected.

The next amendment moved by my Honourable friend Mr. Mohanlal Saksena is really irrelevant to this clause. However good it might be, it does not relate to the fundamental right we are dealing with. It says: "Provided that no State aid shall be given.....unless the syllabus......is duly approved by the State". This clause refers only to State institutions and not to those aided by the State. The amendment seeks to control the nature of the religious education that is given in State-aided schools. Therefore, it is outside the scope of the general proposition before the House. In regard to its content also, it says "duly approved by the State". Now, the State may approve one kind of religious education for one community and may not approve for the other. It introduces an element of discrimination which would be much more dangerous than others. I therefore, submit that it should not be accepted by the House.

Then comes Mrs. Banerji's amendment. It is wider than the clause itself. As I pointed out, clauses 16 and 18 are really two different propositions. This is with regard to communities. Through the medium of a fundamental right, not by legislation, not by administrative action this amendment seeks to close down thousands of institutions in this country.

I can mention one thing in so far as my province is concerned there are several hundreds of Hindu Schools and several dozens of Muslim Schools. Many of them are run by charities which are exclusively Hindu or Muslim. Still the educational policy of the State during the Congress regime has been that, as far as possible no discrimination should be permitted against any pupil by administrative action in these schools. Whenever a case of discrimination is found, the Educational Inspector goes into it; particularly with regard to Harijans, it has been drastically done in the Province of Bombay. Now if you have a fundamental right like this, a school which has got a thousand students and receives Rs. 500 by way of grant from Government, becomes a State aided School. A trust intended for one community maintains the School and out of Rs. 50,000 spent for the School Rs, 500 only comes from Government as grant. But immediately the Supreme Court must hold that this right comes into operation as regards this School. Now this, as I said, can best be done by legislation in the provinces, through the administrative action of the Government which takes into consideration susceptibilities and sometimes makes allowances for certain conditions. How can you have a Fundamental law about this? How can you divert crores of rupees of trust for some other purpose by a stroke of the pen ? The idea seems to be that by placing these two lines in the constitution everything in this country has to be changed without oven consulting the people or without even allowing the legislatures to consider it. I submit that looking into the present conditions it is much better that these things should be done by the normal process, of educating the people rather than by putting in a Fundamental Right. This clause is intended to be restrictive that neither the Federation nor a unit shall maintain an institution from which Minorities are excluded. If we achieve this, this will be a very great advance that we would have made and the House should be content with this much advanced.

Mr. Hussain Imam: I will not take more than two minutes of the time of the House. I think there is nothing wrong with the amendment which has been In moved by Mrs. Banerji. She neither wants those endowed institutions to be closed, nor their funds to be diverted to purposes for which they were not intended. What she does as is that the State being a secular State, must not be a party to exclusion. It is open to the institutions which want to restrict admission to particular communities or particular classes, to refuse State aid and thereby, after they have refused the State aid, they are free to restrict their admission of the students to any class they like. The State will have no say in the matter. Here the word 'recognise' has not been put in. In clause 16 we put the all embracing word 'recognise'. Therefore all this trouble arose that we had to refer that to a small Committee. In this clause the position is very clear. And Mr. Munshi as a clever lawyer, has tried to cloud this. It is open to the institution Which has spent Rs. 40,000 from its funds not to receive Rs. 500 as grant from the State but it will be oven to the State to declare that as a matter of State policy exclusiveness must not be accepted and this would apply equally to the majority institutions as well as, minority institutions. No institution receiving State, aid Should close its door to any other class of persons in India merely because its door has originally so desired to restrict. They are open to refuse the State aid and they can have any restriction they like.

Mr. M. S. Aney : Sir, I am only putting this for the sake of clarification. In the Advisory Committee Report we have recommended that the last portion of this Clause, *viz.*, 'nor shall any religious instructions be compulsorily imposed upon them' be deleted and only the rest of the thing Should be put to the vote of the House but the condition under which we made that recommendation was that clause 16 should be accepted by this House. That was the condition. Now what have we done ? Clause 16 we have referred to a certain Committee for consideration. Under those circumstances the whole clause including the last portion that is to be deleted will have to be put to the vote of the House. Is the entire clause going to be put to, the vote or only the first part ?

Mr. President: I think the proposal is to have the last portion excluded.

Pandit Hirday Nath Kunzru: Mr. President, I support the amendment moved by Mrs. Banerji. I followed with great interest Mr. Munshi's exposition. His view was that if we accepted the principle that educational institutions maintained by the State shall be bound to admit boys of all communities, it would be a great gain and that we should not mix up this matter with other matters howsoever important they may be. I appreciate his view point. Nevertheless I think that it is desirable in view of the importance that we have attached to various provisions accepted by us regarding the development of a feeling of unity in the country that we should today accept the principle that a boy shall be at liberty to join any school whether maintained by the State or by any private agency which receives aid from State funds. No school should be allowed to refuse to admit a boy on the score of his religion. This does not mean, Sir, as Mr. Munshi seems to think, that the Headmaster of any School would be under a compulsion to admit any specified number of boys belonging to any particular community. Take for instance an Islamia School. If 200 Hindu boys offer themselves for admission to that School, the Headmaster will be under no obligation to admit all of them. But the boys will not be debarred, from seeking admission to it simply because they happen to be Hindus. The Headmaster will lay down certain principles in order to determine which boys should be admitted. It is the common experience of every School that the number of boys seeking admission into it is much larger than can be accommodated.

Now, in order to weed out a certain number of students, the Headmaster lays down certain principles which are purely secular and educational. The Headmaster of a Hindu High School or the Headmaster of a Muslim High School will be completely free if Mrs. Banerji's amendment is accepted, to reject Muslim or Hindu boys as the case may be because they do not satisfy the standards laid down by the respective Headmasters. I think this is a sufficient guarantee that a Headmaster will be in a position to act in accordance with the principle that all schools whether maintained or aided by the State should be open to boys of all communities and that it will not impose on him a burden which he cannot bear.

Sir, we have decided not to allow separate representation in order to create a feeling of oneness. throughout the country. We have even disallowed cumulative voting because, as Sardar Vallabhbhai Patel truly stated the other day, its acceptance would mean introduction by the backdoor of the dangerous principle of communal electorates which we threw out of the front door. So great being the importance that we attach to the development of a feeling of nationalism, is it not desirable, is it not necessary that our educational institutions which are maintained or aided by the State should not cater exclusively for boys belonging to any particular religion or community? If it is desirable in the case of adults that a feeling of unity should be created, is it not much more desirable where immature children and boys are concerned that no principle should be accepted which would allow the dissemination, directly or indirectly, of anti-national ideas or feelings?

Sir. since the future welfare of every State depends on education, it is I think very important that we should today firmly lay down the principle that a school, even though it may be a private school, should 'be open to the children of all communities if it receives aid from Government. This principle will be in accordance with the decisions that we have arrived at on other matters so far. Its non-acceptance will be in conflict with the general view regarding the necessity of unity which we have repeatedly and emphatically expressed in this House.

The Honourable Sardar Vallabhbhai J. Patel: I do not propose to take any time, to the impatience of the House, in replying. I only wish to say that this is a simple non-discriminatory clause against, the minorities in the matter of admission to schools which are maintained by the State. It is only a question whether that principle should be extended to such an extent as to include all schools which receive small or large aids. That question the committee considered at length and came to the conclusion that if we accepted this principle at present it would be enough and that the rest could be left to the legislature to be adopted wherever conditions were suitable. But in the Fundamental Rights to do away with this will be a big step forward. That was the view. Therefore I cannot accept this amendment at present

Shri Mohanlal Saksena: Before you put the amendments to vote, I wish to say a few words about my amendment. Mr. Munshi has said that my amendment is not relevant. I would suggest that it should be referred to the committee appointed to consider clause 16.

The Honourable Sardar Vallabhbhai J. Patel: That is also not relevant.

Mr. President: I will first put the amendment of Mr. Ahmed Ibrahim Sahib to vote.

The question is

"That the, following be added after the word 'institution' in clause 18 (2):-

'Provided that this clause does not apply to state Educational institutions maintained mainly for the benefit of any particular community or section of the people."'

The motion was negatived.

Mr. President: I will now put the amendment of Shrimati Purnima Banerji to vote.

The question is

"That in Clause 18 (2) after the words, 'State' the words 'and State-aided' be inserted."

The motion was negatived.

Mr. President: Next I will put the amendment moved by Shri Mohanlal Saksena to vote.

The question is:

"That the following proviso be added to clause 18 (2):--

"Provided that no State aid shall be given to any institution imparting religious education unless the syllabus of such education is duly approved by the State."

The motion was negatived.

Mr. President: I will now put the original clause to vote.

The question is :

"18 (2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission into state educational institutions."

The motion was adopted.

Mr. President: This part of the Report is now finished. The Schedule will be taken up later.

I have to make a certain announcement before we part. Members will recollect that it was suggested that clause 16 be referred to a Subcommittee and that Sub-Committee will report, not to this House, but to the Drafting Committee which will consider that Report; I am suggesting the names of gentlemen who seem to be interested in that particular clause.

(1) Dr. Mohan Sinha Mehta.

(2) Pandit Hirday Nath Kunzru.

(3) Mr. Hussain Imam.

(4) Dr. Radhakrishnan.

(5) Shrimati Renuka Ray.

(6) Mr. K. M. Munshi.

The Honourable Sardar Vallabhbhai J. Patel: Shall we take the second part ?

Mr. President: Not now. The House will recollect that yesterday we had elections to fill up vacancies in the- House Committee. Only two nominations were received and there were only two vacancies and therefore these two nominations are now accepted. Those gentlemen are declared elected. They are:

Shriyut Omeo Kumar Das, and

Shri V. C. Kesava Rao.

Then, the House has now to adjourn. Under one of the rules, the, President has power to adjourn the House for only three days. This adjournment is going to be of much longer duration and this House has to authorise the President to call it whenever he considers suitable, because we expect that the Drafting Committee will prepare the report and I propose to circulate that to the Members well in advance before calling a meeting of the Assembly, so that they may study and consider the Report and then come to the meeting of the Assembly. It it not possible today to anticipate by what time the Drafting Committee's report will be available and therefore it is not possible today to indicate even the approximate date for the meeting. I would therefore ask the House to give me leave to fix a, suitable date when the Report is ready.

The Assembly agreed.

Mr. R. K. Sidhwa: Can you give us any faint idea as to when it is likely to be ?

Mr. President: I won't like to commit myself to anything at this stage.

Mr. Tajamul Husain: May I know whether there will be a meeting of the Legislature in the meantime ?

Mr. President: It is not for me, but for the Government.

Shri Mohanlal Saksena: Sir, I beg to move that the Assembly do stand adjourned till 'a date to be fixed by the President.

Mr. Tajamul Husain : I second it.

Mr. President: Mr. Mohanlal Saksena says that the House be adjourned to a date to be fixed by the President. I take it that is the wish of the House.

Honourable Members: Yes, yes.

Mr. President: The House, in accordance with this resolution, stands adjourned to a date to be fixed by me.

The Assembly then adjourned to a date to be fixed by the President:

No./CA.24/Com/47

CONSTITUENT ASSEMBLY OF INDIA

Council House

New Delhi, the 25th August 1947.

FROM

THE HONOURABLE SARDAR VALLABHBHAI J.PATEL

CHAIRMAN, ADVISORY COMMITTEE ON MINORITIES,

FUNDAMENTAL RIGHTS, ETC.

TO

THE PRESIDENT,

CONSTITUENT ASSEMBLY OF INDIA

DEAR SIR,

In continuation of my letter No. CA/24/Com/47, dated the 23rd April 1947, I have the honour, on behalf of the committee, to submit this supplementary report on Fundamental Rights.

2. We have come to the conclusion that, in addition to justiciable fundamental rights, the constitution should include certain directives of State policy which, though not cognisable in any court of law, should be regarded as fundamental in the governance of the country. The provisions that we recommend are contained in Appendix A.

3. In para 8 of our previous report, we had referred to the recommendation of the Fundamental Rights Sub-Committee that the right of the citizen to have redress against the State in a Court of law should not be fettered by undue restrictions. After careful consideration, we have come to the conclusion that it is not necessary to provide in the constitution for any further right in this connection than those already contained in clause 22 as accepted by the Assembly in the April-May session.

4. The Constituent Assembly had referred back to us clauses 16, 17 and 18(2) of our previous report. We have re-examined the clauses and our recommendations are as follows:-

> Clause 16: "No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in the religious instruction that may be given in the school or to attend religious, worship held in the

> school or in premises attached thereto"

We recommend that this clause be accepted by the Assembly in its present form.

> Clause 17: "Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law."

It seems to us on further consideration that this clause enunciates a rather obvious doctrine which it is unnecessary to include in the constitution and we recommend that it be dropped altogether.

> Clause 18 (2) : "No minority whether based on religion, community or language shall be discriminated against in regard to the admission into State educational institutions, nor shall any religious instructions be compulsorily imposed on them."

We recommend that the latter portion of the clause, namely "nor shall any religious instruction be compulsorily Imposed on them" be deleted in view of clause 16 above which we have recommended for retention. We recommend that the rest of the clause, be adopted by the Assembly.

We have examined the question as to whether the scope of the clause should be extended so as to include State-aided educational institutions also and have come to the conclusion that in present circumstances we would not be justified in making any such recommendation.

5.The Fundamental Rights Sub-Committee in their report to us had recommended the adoption of Hindustani, written either in Devanagari or the Persian script, as the national language of the Union of India, but we had thought it to postpone consideration of the. matter in April 1947. In view of the fact that the Constituent Assembly is already seized of the matter by certain recommendations of the Union Constitution Committee's report, we think it unnecessary to incorporate any provision on the subject in the list of fundamental rights.

6.We have also examined numerous amendments in the nature of new provisions, notice of which had been given by several members during the April-May session of the Assembly, and have not been able to accept any of them. Some of them relate to matters Which have already been provided for either in the clauses already accepted by the Assembly or in new clauses which we have recommended in this report; and the other seem to us unnecessary or inappropriate.

Yours sincerely,

VALLABHBHAI PATEL,

Chairman.

APPENDIX A

FUNDAMENTAL PRINCIPLES OF GOVERNANCE

PREAMBLE

1.The principles of policy set forth in this part are intended for the guidance of the State. While these principles are not cognizable by any court, they are nevertheless fundamental in the governance of the country and their application in the making of laws shall be the duty of the State.

PRINCIPLES

2. The State shall strive to promote the welfare of the whole people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

3. The State shall, in particular, direct its policy towards securing--

    (i) that the citizens, men and women equally, have the right to an adequate means of livelihood;

    (ii) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

    (iii) that the operation of the competition shall not be allowed to result in the concentration of the ownership and control of essential commodities in a few individuals to the common detriment;

    (iv) that there shall be equal pay for equal work for both men and women;

    (v) that the strength and health of workers, men and women, and the tender age of children shall not be abused and that citizens shall not be forced by economic necessity to enter avocations unsuited to their age and strength;

    (vi) that childhood and youth are protected against exploitation and against moral and material abandonment.

4.The State shall, within the limits of its economic capacity and development, make effective provision for securing the, right to work, to education and to public assistance in case of unemployment, old age, sickness, disablement- and other cases of undeserved want.

5. The State shall make provision for securing just and humane conditions of work and for maternity relief for workers.

6.The State shall endeavour to secure, by suitable legislation, economic Organisation and in other ways, to all workers, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

7. The State shall endeavour to secure for the citizens a uniform civil code.

8.Every citizen is entitled to free primary education, and It shall be the duty of the State to Provide within a period of 10 years from the commencement of this Constitution for free and compulsory primary education for all children until they complete the age of 14 years.

9.The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the aboriginal tribes, and shall protect them from social injustice and all forms of exploitation.

10.The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of 'Public health as among its primary duties.

11.It shall be the obligation of the State to protect every monument or Place or object of artistic or historic interest, declared by the law of the Union to be of national importance, from spoliation, destruction, removal, disposal or export. as the case may be, and to preserve and maintain according to the law of the Union all such monuments or places or objects.

12.The State shall promote international peace and security by the prescription of open, just and honourable relations between nations by the firm establishment of the understandings of international law as the actual rule of conduct among governments and by the maintenance of justice and the scrupulous respect for 'treaty obligations in the dealings of organised people with one another.

---

* Appendix

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VI

Tuesday, 27th January 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eleven of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER

The following Members presented their Credentials and signed the Register :

(1) Shri K. Hanumanthiah (Mysore State);

(2) Shri T. Siddalingaiah (Mysore State);

(3) Shri V. S. Sarvate (Indore State).

Shri H. V. Kamath (C. P. & Berar: General): Mr. President, I rise to a point of order.

Mr. President : We have not yet started the proceedings. No point of order can arise before that. We will now take up the first item on the Agenda.

ARREST OF SHRI V. D. TRIPATHI

Shri H. V. Kamath: Mr. President, before you proceed with the Business of the Day, permit me to bring to your notice the arrest of an Honourable Member of this House, I mean Shri V. D. Tripathi of the United Provinces during Netaji Jayanti celebrations on Friday last. In this connection may I ask if the United Provinces Government have addressed you any communication giving the circumstances leading to his arrest and the reasons for his detention which has prevented him from attending this Session ? In my humble judgment, Sir, this constitutes a breach of privileges of the Members of this House.

Pandit Ballkrishna Sharma (United Provinces: General): On this point I would like to say one thing. I do not know how far the Honourable Member is in order in raising this point in this House. Full details have not been placed before the House. The House must be in fun possession of all the facts before it is expected to pass any judgment in the matter. The arrest of Mr. V. D. Tripathi was due to the fact that he constituted himself as a member of an unlawful organization. Moreover, Mr. Tripathi violated an order under section 144 of the Criminal Procedure Code in force in the city of Cawnpore for various reasons. I do not see how any Honourable Member of this House is entitled to violate, the law of the land and if he does so, he must be prepared to suffer the consequence.

Mr. President : I do not think the question of arrest I arises here. We are sitting as the Constituent Assembly for the purpose of dealing with the amendments to rules which are going to be moved. If a Member has been arrested, the matter has to be dealt with in the proper place. We cannot go into that.

(Shri H. V. Kamath *rose.*)

Mr. President: Order, order. We cannot go into that matter here in the Constituent Assembly.

Shri H. V. Kamath: I want to know whether the Government of the United Provinces have informed you about this.

Mr. President: I have received no information.

Shri H. V. Kamath : The other point is that he should be released on parole to enable him to attend the session.

Mr. President: That again involves going into the merits of the case which I am not prepared to do in this case. We shall now go on with the Agenda.

POINT OF ORDER

Shri Yudhisthir Misra (Eastern States) : On a point of order, Mr. President. The point is whether the Honourable Members of this House from Orissa and Chhatisgarh States who were nominated by the Rulers can sit in this House after the 15th December 1947.

According to the terms of the negotiation between the Rulers and the Constituent Assembly, the Rulers of Orissa had nominated two members and those of Chhatisgarh one member to this House to represent them and safeguard their interests in the future constitution of the country. Now on the 14th and 15th of December 1947, these Rulers had agreed to transfer and have actually transferred on the 1st January 1948 all their rights, authority and jurisdiction exercisable by them in their States to the Government of the Indian Dominion. After the 15th December, therefore, the nominees of the Rulers in this House neither represent the interests of the Rulers nor of the people of Orissa and Chhatisgarh States. One of the Honourable Members has already accepted service in Central Provinces. When the Rulers' power and authority do not exist in the States, their nominees, I submit, are not entitled to sit in this House. I would respectfully submit before you, Sir, to give a ruling on this point.

Seth Govinddas (C. P. & Berar: General): *[Mr. President, as regards Chhatisgarh States I request that, though they have been merged into the province of Central Provinces, and Berar, yet until fresh elections are held the present members representing those States should be allowed to participate in the proceedings of the Assembly, After the election they will cease to participate.

I think that their removal at present would serve as a blow to the rights of those States. I, therefore, request you that, until fresh elections are held, the present members should be allowed to sit here and have the right of participating in the proceedings.]*

Shri Raj Krushna Bose (Orissa : General) : *[Mr. President, the point of order that has been raised just now in regard to Orissa and Chhatisgarh should not be accepted. The reason for it is that after August 15, though the rulers of a number of States relinquished the powers that they enjoyed before that date and all such States merged into the Indian Union, yet the election held for returning members to the Constituent Assembly has not been declared null and void. It we do that, we will either have to abandon the members from these States or we will have to say that they have no right of joining, this Assembly. In my opinion if we take this step, they will cease to be members and till fresh elections are held, there will be no representation of those States in this Assembly. No rule of the Constituent Assembly permits us to tall them at present that they cannot come here. Therefore I think that the election that has been held should be valid. I want this, so that the representatives of 40 lakhs of people of Orissa States may participate in the proceeding of this House. The representatives chosen by the rulers have after the merger become people representatives because the rulers have ceded their powers. It is said that there should be a fresh election and their, it is necessary because the rulers as such have ceased to be, as also the representatives chosen by them. I am not of this opinion.]*

Mr. Tajamul Husain (Bihar: Muslim): In my humble opinion, the only point before you is whether those Honourable Members were properly nominated at that time or not and also whether the territories they represent are still under the Indian Union. If these two facts are established, I think there is no power to, remove those Members from the membership of this House.

Mr. President: I do not think that this matter can be disposed of as a matter of order. Those Members are validly Members of this House and until they resign or are otherwise removed, they continue to be members of this House. If certain circumstances have arisen which may necessitate their removal, well, action will have to be taken for that purpose, but until and unless that action is taken, they will continue to be Members of this House.

ADDITIONAL REPRESENTATION TO WEST BENGAL

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, I beg to move the following resolution:

> "Whereas West Bengal is at present represented in the Constituent Assembly by 19 members (15 General and 4 Muslims);
>
> and whereas this arrangement was made in pursuance of paragraph 14 of His Majesty's Government's Statement of June 3, 1947, and confirmed by the Constituent Assembly by its resolution of July 25, 1947, on the basis of the than boundaries of West Bengal;
>
> and whereas since the aforesaid dates the boundaries of West Bengal have been revised in accordance with the Award of the Boundary Commission;
>
> and whereas on the basis of the revised boundaries West Bengal is now entitled to return 21 members (16 Gene-rat and 5 Muslim) to the Constituent Assembly;

it is hereby resolved that steps be forthwith taken to secure the return from West Bengal as now constituted of 2 additional members (1 General and 1 Muslim) in accordance with the procedure prescribed for the filling of casual vacancies."

Sir, the Resolution is sufficiently long and explains itself. Originally, when there was a national division it was expected that the population of West Bengal would be nineteen millions and fifteen seats were allotted to General and four to Muslims. Later on by the time the Radcliffe Award was given, it was found that the population on account of the addition of territories to West Bengal increased to twenty one minions and therefore it has now necessitated the addition of two more members, the population having increased from 19 to 21 millions; and the population has increased in both the communities, Muslims and non-Muslims. This Resolution contemplates the addition of one more General seat and one more Muslim seat. I crave the indulgence of this House to move this Resolution and I request that it May be accepted.

Mr. President: Mr. Naziruddin Ahmad has given notice of an amendment.

Pandit Balkrishna Sharma: Has it been declared by you, Sir, that the, motion has been moved?

Mr. President: Yes; the motion has been moved.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I ask your permission to move two amendments. They are of the same nature and allied to each other. They should be moved and considered together.

Sir, I beg to move:

1.That in para. 2 of the motion, for the words, "basis of the then boundaries" the words "basis of the population within the then boundaries" be substituted.

2.That in para. 4 of the motion, for the words "and whereas on the basis of the revised boundaries West Bengal is now entitled" the words "and whereas on the basis of population in West Bengal as now constituted, is entitled" be substituted.

Sir, though the amendments are only of a drafting nature, I consider them to be important. The text of the Resolution says that additional members should be elected on the basis of the change of boundaries. My amendments seek to clarify the position that it is not the boundaries, but rather the population which is the basis of the proposed increase. On account of the change in the boundaries, the population as it now stands has increased. Therefore, population should be the starting-point and I have tried to make this plan. As I have already stated, the amendments are of a drafting nature, but they go to the root of the principle upon which the increased number is claimed. With these words, I move the amendments.

Mr. President: The motion and the two amendments have been moved. If any member wishes to take part in the proceedings, he may do so.

Shri Ananathasayanam Ayyangar: Sir, I have great pleasure in accepting the amendments. My friend wants to make the He wants to make the population within the boundaries of West Bengal the basis. That is what was meant though the expression is "basis of the then boundaries". To make it more elegant, I accept the amendments.

Mr. President : I shall now put to vote the amendments which have been accepted by the

Mover.

The amendments were adopted.

Mr. President : I now put to vote the motion as amended.

The motion, as amended, was adopted.

ADDITIONAL REPRESENTATION TO EAST PUNJAB

Mr. President: I have received notice of another resolution dealing with East Punjab. Notice of that was given only last night and therefore there has not been sufficient notice in regard to that. If the House has no objection I should like to take it up and have that also passed because the West Bengal resolution and the East Punjab resolution stand more or less on the same footing.

May I take it that the House has no objection ?

Many Honourable Members: No objections?

Mr. President: Giani Gurmukh Singh Musafir will move the motion.

Giani Gurmukh Singh Musafir (East Punjab: Sikh): *Mr. President, with your permission, I wish to move the following motion:-

Whereas East Punjab is at present represented in the Constituent Assembly by 6 General, 4 Muslim and 2 Sikh members;

and whereas This arrangement was made in pursuance of paragraph 14 of His Majesty's Government's Statement of June 3, 1947, and confirmed by the Constituent Assembly by its resolution of July 25, 1947, on the basis of the then boundaries of East Punjab;

and whereas since the aforesaid dates not only have the boundaries of East Punjab been revised in accordance with the Award of the Boundary Commission but also the entire structure of the population has changed by reason of the mass migration of Muslims from East Punjab to West Punjab and of non-Muslims from West Punjab to East Punjab;

and whereas in consequence of these changes, on the best estimates available, East Punjab is now entitled to return to the Constituent Assembly 8 General and 4 Sikh members;

it is hereby resolved that steps be forthwith taken to secure the return from East Punjab as now constituted of 2 additional General members and 2 additional Sikh members in accordance with the procedure prescribed for the fining of casual vacancies.

*[My object in moving this motion is to secure the same representation for the non-Muslims of West Punjab here, which they had in the Pakistan Constituent Assembly, that is to say, the number of members from East Punjab should be increased. I do not think anybody would object to this. This motion clearly lays down that those who have migrated from West Punjab to East Punjab should be given full representation. The Hindu and Sikh members of the West Punjab Assembly have been allowed to sit in the East Punjab Assembly, that is to say, this principle has been accepted. Only the question was left out, which we have considered. That was regarding the question of numbers, whether it should be four or five. West Punjab is

at present represented in the Constituent Assembly of Pakistan by five members, three General (Hindus) and two Sikh members. The motion which I have just moved demands four seats, two General and two Sikhs. I am still of opinion that five seats should be allotted, the same number of seats which have been allotted to the Punjab in the Constituent Assembly of Pakistan, that is to say, three General and two Sikh. For this purpose the Honourable President had appointed a sub-committee, with the Honourable Minister for Law as its Chairman. It was comprised of four members, besides the President. Yesterday morning a meeting of this sub-committee was held to consider this problem. We arrived at the conclusion that five members should be returned. But afterwards on calculation we felt a doubt that perhaps it may not be possible to return five members on population basis. Obviously all the Hindus and Sikhs have migrated to this side from West Punjab, and the rest are about to come. In West Punjab their number was more than 45,00,000 that is to say, 45,07,231. If this figure is taken into account, then, five members can be returned. Besides, a number of Hindus and Sikhs have migrated to East Punjab, also from N. W. F. Province, Sind and Baluchistan. But as at present it is not possible to have a correct estimate of the population, we have agreed that only four seats may be added. If, afterwards, on calculation it is found that the population has increased, then the matter might be reconsidered. I hope that this minimum demand which is before the House will be accepted.]*

Mr. President: The motion has been moved. If anyone has got any amendment or if anyone wishes to speak, he may do so.

Shri B. Das (Orissa: General): Sir, I sent in a substitute motion this morning when I read the motion which my friend Giani Gurmukh Singh Musafir has moved just now. I could have understood it bad he tackled the whole problem of representation of the population who have migrated from Pakistan to Hindustan. I have given notice of an amendment to his motion, but on reconsideration, I do not propose to move it; I wish, however, to submit a few things for the consideration of the Honourable the President and the House.

A large population has left Pakistan and entered the Indian dominion. From East Bengal, from Sind and from the North West Frontier Province, a large population have migrated. My honourable Friend wants representation. only for those from West Punjab. People have migrated to the United Provinces, Central Provinces, and even to Bombay, also Rajputana and Delhi side. It will not be fair if we ignore these people. The proper thing would be for this House to consider whether it should not resolve that those Hindu and Sikh members who were elected to the Constituent Assembly from the North West Frontier Province, Sind, East Bengal and West Punjab should be made eligible to sit in this Rouse. if they are permitted to represent the Hindu and Sikh emigrants, then there need be no election as is suggested by my Honourable friend.

Above all, if we accept his suggestion, the idea of electing eight General and four Sikh members is abnormally high to the number of Sikh and Hindu emigrants who have come to East Punjab. Further, that does not solve the problem at all. We have heard that ten to fifteen lakhs of. people have migrated from East Bengal to West-Bengal. We know 'that at present there are very few Hindus and Sikhs left in the North-West Frontier Province. Our esteemed friend, Mr. Mehr Chand Khanna, is now a refugee in this city. Why should he not be permitted by this House to represent the, Hindu residents of the Frontier Province? Similarly, we now find our friend Mr. Jairamdas Daulatram, who was elected by the Sind Province, a refugee, or rather a Minister, in Delhi. Why should not he represent properly the Sind emigrants in India ?

The problem of East Bengal is even more difficult. People have started migrating in large numbers. Last night a friend told me that fifteen lakhs of refugees have come from East

Bengal to West Bengal. It may happen if the Pakistan policy goes on, that the whole of the Hindu population will migrate to West Bengal. It is this population we have to think about. It is to know what is in the mind of the people who represent the emigrants from East Bengal or West Punjab regarding the constitution that we shall pass, that we are trying to give them representation. The proposed solution means going into the franchise and the qualification of new members. I would suggest that my Honourable friend's motion may be adjourned until the President devises a way by which all those elected members from these Pakistan areas are permitted to become members of this House and participate in the discussions as they used to do before.

Shri Jaipal Singh (Bihar: General) : Mr. President, I strongly oppose the motion that has been placed before this House. I find it is dangerous, mischievous and sectarian, it is strange logic and lacking in simple arithmetic. The argument has been advanced that, according to the best estimates available, there should be added two additional General Members and two additional Sikh Members, and, in a clause of the motion, we are told that the present representation is 6 General, 4 Muslim and 2 Sikh members. would like to ask my Honourable friend, why lie, has not suggested that the Muslim representation should be reduced. That is my first point. If Muslims have left the East Punjab and gone elsewhere, then according to his logic-the logic that he has advanced on behalf of the Sikhs and the General population, surely the same argument should apply on this side. I, say, it is dangerous, Sir. My friend, Mr. Das, has already pointed out that this should be considered on an all-India basis and we should not be working upon flimsy estimates. There should be a census throughout the country. Take my own Province, Bihar. How do we know that we do not need further representation ? How many people have come to Bihar from East Bengal or West Punjab or from anywhere else ? I do not think we can work on the so-called estimates. They are only estimates. The figures that this Assembly can accept are only the census figures and unless an all-India census is taken and unless we know the actual number of Muslims and the variation there has been in their number from Province to Province or the variation of other people, the general population--I do not think it would be wise for this House to accept his motion. I consider it to be a mischievous and sectarian motion.

Diwan Chaman Lall (East Punjab: General): Sir, I would not have spoken on this motion but for the speech made by my Honourable friend who has just spoken. He talked about the figures being flimsy and statistics that do not exist, but I am afraid that he has not even read the report of the Steering Committee which is before him. According to that Report..........

Shri Jaipal Singh: I have not got that Report.

Diwan Chaman Lall: If my Honourable friend has not got it, I can quite well understand why he got up to speak without knowing the real reason which prompted this particular motion before the House.

The position, Sir, is this. We have got the statistics. According to the notional division, the number of Mussalmans on this side was 3.8 million, Sikhs 2.1 million and General 5.6 million. After the Radcliffe, Award, the figures were slightly altered. Instead of 3.8 million Muslims, it was 4.4 million Muslims, instead of 2.1 million Sikhs it was 2.3 million Sikhs and instead of 5.6 million General, it was 5.9 million General; the total is 12.6 million inhabitants. Now since then the disaster came upon us and practically every Hindu and Sikh excepting those who remain in a few isolated pockets has moved out from West Punjab to East Punjab. The total figures of those who moved out come to: General 2.25 million and Sikhs 1.67 millions. This is from Lahore Division, Rawalpindi Division and Multan Division and these are the exact Census figures although I would personally add 7 per cent. to the Census figures as a result of the recent increase since the Census was taken. The position therefore is that of the 12.6 million inhabitants, excluding 4.4 Muslims. 8.2 inhabitants, Hindus and Sikhs, have remained in Eastern Punjab, and in addition we have now 4.92 million Sikhs and General. The population that migrated from Lahore, Rawalpindi and Multan Divisions came to Eastern Punjab generally. Some portion of that population has come to Delhi and a little portion has gone to various other centres. But the vast majority is still there in East Punjab and they were the voters of those who were elected to the Punjab Assembly. The voters still exist and therefore they are entitled to further representation. This is the principle which is at the back of this Resolution. Therefore, although logically we should demand 4 or 5 seats according to population, nevertheless, in order not to create an unnecessary weightage, we were quite content to demand 2 for Sikhs and 2 for General for the purpose of election. Why is it that we are coming before you in regard to this motion to ask you to give us the right of appointing 4 more representatives to the Constituent Assembly? You will notice that an Ordinance was passed making it possible for members who were West Punjab Legislative Assembly members and who vacated their seats in West Punjab to take their seats in East Punjab. On the same principle we ask you now to allow us to elect 4 additional representatives reflecting an increase in population both of Sikh and General constituencies. I do not think the figures are very wrong as they are Census figures. The figures we have taken are the Radcliffe Boundary Commission figures. Comparing the existing figures of the Province with those of the Radcliffe Commission's we have come to the conclusion that there is a case for the increase.

Shri Jaipal Singh : On a point or order. Why have they not reduced the Muslim figures on their own argument ?

Diwan Chaman Lall: You, will find the following in the penultimate paragraph of the Report:-

"We were therefore immediately faced with a difficulty as to how to deal with the four Muslim members who still continue to be members of the Constituent Assembly even though we were given to understand that they did not attend during the last session of the Constituent Assembly functioning as the Dominion Legislature and that they did not intend to attend the forthcoming session either."

Personally my view is that we must leave this matter as it is now. Possibly you may be constrained to make a change at a later stage, namely, that where a member does not attend the Sessions of the Constituent Assembly for a certain stated time, then he automatically vacates his seat. As there is no rule at the present moment we cannot take advantage of such a provision. The practical solution which we have considered in connection with this problem seems to be this-to let the 4 seats remain and to add other seats reflecting the increase in the population in East Punjab, and I do hope that the House will accept this proposal and give due consideration not only to those who have lost everything on the other side but to those who have come to this side so that they may be able to put their own point of view before you.

Mr. President: Just to avoid longer discussion may I make a statement with regard to the procedure that has been followed in connection with this particular resolution ? The matter came up before the Steering Committee and the Steering Committee felt that it was necessary to refer it to a very small committee to go into these figures. This committee consisted of-

Dr. B. R. Ambedkar,

Diwan Chaman Lall,

Giani Gurmukh Singh Musafir,

Mr. Rafi. Ahmed Kidwai, and

Mr. Ananthasayanam. Ayyangar,

and after taking into consideration all these figures and such information as was available with regard to the migration of population from one side to the other the Committee made certain recommendations on the basis of which the Resolution has come before the House. The matter has been considered by a Sub-Committee which I had appointed on the recommendation of the Steering Committee. Of course it is open to the House to accept it or not. I thought I had better explain that position. I am sorry that the report of that Sub-Committee has not been circulated and only the Resolution has been circulated. If that report had been before the members probably much of the discussion might have been avoided but that has not been done. I am sorry.

Shri Rohini Kumar Chaudhury (Assam: General): Mr. President, Sir, I consider that this resolution is rather premature at this stage. Once you concede this principle, you cannot help granting the same privilege to the people of either Western Bengal or any other place. For instance a very large number of refugees has come to Delhi. Are you going to increase the representation of Delhi? Similarly a fairly large number of refugees has gone to Bombay. Are you going to consider the question of increasing their representation in this House ? Although, Sir, this may not be known to all, it is a fact that large numbers of people have migrated from East Bengal to West Bengal and also into Assam. Should they not be given representation if you concede in this case? Sir, an Honourable Member, Mr. Khaliquazzaman, has left his constituency in United Provinces for Pakistan. Should not there be some adjustment in that also? So I say, Sit, if you wish to give additional representation on the ground that people have migrated from other provinces, there should be deduction of representation with regard to certain others who have left the province. So the whole thing requires adjustment and unless those adjustments are made in all the representations, no action on the lines indicated by the Honourable Member can be taken.

Begum Aizaz Rasul (United Provinces: Muslims) : Sir, I am afraid I have not been able to study this Report of the Committee to which you referred to just now, because I do not find it in the papers. I would, therefore, request you, Sir, kindly to postpone discussion of this very important matter until Members have had the time to study the implications of these amendments to the rules.

Sir, it is true that a very large proportion of the population in Last Punjab have gone to West Punjab. In the same way a very large number of non-Muslims in West Punjab have gone over to East Punjab. They must nave representation in this House, and as far as that matter goes, it is quite a justificable demand and I do not think anyone here can possibly refuse it. But at the same. time, it has to be seen and carefully studied as to The number of people who have gone and set led down from one part of the Punjab to the other Part. And as everyone knows, non-Muslims have gone not only to East Punjab, but they have also migrated to the U. P. and Lo the province of Delhi and other places. The situation at the present moment is very fluid. All these Matters have to be taken together with reference to the context before any amendment can be passed in this House. I would, therefore, most respectfully request you, Sir, to postpone the consideration of these matters to a later date when we are in a position to know definitely what are the numbers of the people who are settling down in East Punjab and those who go back to their homes in West Punjab and also when Members have had the time to study the Report of the Committee. I hope this suggestion of mine will be acceptable and that the consideration of this subject will be postponed to a later date.

(Pandit Thakur Das Bhargava came to the rostrum.)

Mr. President: I would request the Honourable Member to be as short as possible.

Pandit Thakur Das Bhargava (East Punjab: General) : *[Mr. President, just now Begum, Sahiba has suggested the postponement of this motion and the reason she gave is that some part of the population yet remains in West Punjab and some of it has come to Delhi and some have gone to United Provinces and therefore the question should not be considered at present. Other friends have given different reasons and have said that, as some people have also come from Baluchistan and Sind, they should also be given representation. It is correct that all new comers need representation. No. such differentiation can be made amongst the people. But this should be remembered that this question has to be looked at from a practical point of view. No doubt, about 40 lakhs of people have moved from West Punjab into East Punjab and other areas. The Government has already decided that the whole Muslim population of East Punjab is to be transferred to West Punjab and all Hindus and Sikhs of West Punjab are to be brought to East Punjab. Now, the question is only that of Hindus and Sikhs and as to what is their exact number. About five lakhs have conic to Delhi and five lakhs have gone to United Provinces. But' as representation is given to numbers over 5 lakhs and not below it, so representation should be given at least, to those who have come to East Punjab. And those who are at present in Delhi or U. P. may also move to East Punjab. Thus o give them no representation or postponing it would be a great injustice. You know that those who have come to Delhi have not come here of their free will. Government has already agreed to the exchange of population both by their word and deed. Therefore I would be,, the House to look at this question from a practical point of view and not to deprive these men of their right. Those who are known as refugees today have as much claim on the Union and the Constitution as anyone else. As you have allowed representation for every 10 lakhs of population to other parts of Indian Union, you Must do the same to those who have been uprooted from West Punjab so that they may also share in the shaping of the Indian Constitution. With these words I support the amendment.]*

Mr. President: Is it necessary to carry on the discussion any further? I suppose we have had enough of discussion.

Shri Mihir Lal Chattopadhyaya (West Bengal: General) : Sir, I only request that the principle being followed in East Punjab should also be followed in the case of West Bengal. Everyone knows that about ten lakhs of people have migrated from East Bengal to West Bengal. Here in this Resolution on the basis of migration of population from West Punjab to East Punjab additional seats are being allotted. I submit that the same principle be followed in the case of West Bengal and additional seat-one seat-be given in consideration of increase of population due to migration from East Bengal to West Bengal. A few minutes back we have passed a Resolution allotting two more seats for West Bengal. But that was done on the basis of the Radcliffe Award boundary. But if the question of migrated population is to be taken into consideration in the case of West Punjab, I request the same consideration should be shown to Bengal also and one additional seat on the same principle given to West Bengal.

Nawab Mohd. Ismail Khan (United Provinces : Muslim) : *[Mr. President, the' authentic figures of those who have already- migrated and may hereafter migrate from West Punjab have not been ascertained up till now. Neither have we any knowledge as to what would be the population of East Punjab. Unless correct figures are available, actual representation cannot be given. Therefore, I would like to submit that this should be postponed for some time.]*

Mr. President: I would now ask the Mover to reply to the debate.

Giani Gurmukh Singh Musafir *[Mr. President, I thought it to be a simple matter, and therefore the speech I made, while moving the motion, was also simple. Even now I regard it as simple. One of our Honourable members has objected to it as being sectarian. If you regard it as sectarian simply because of my beard then it is a different thing; otherwise 'here is nothing as such in it. If a demand for two additional seats for Sikhs and two for the Hindus is enough to make a motion communal then why not apply the same criterion to Mr. Ayyangar's resolution regarding giving of one additional seat to Muslims and one to Hindus in West Bengal? You have, not taken it to be, sectarian. I have no objection to what has been said with regard to reducing of Muslim representation in East Punjab. At present, Punjab's case is a special one. I am obliged to say that only those, who have suffered can realise and not the others. Punjab has gone through agony. Punjabis, who have suffered terribly and whose problems are before the Government will prove of much assistance in solving them, because all this has happened before their very eyes. The proposal which Begum Sahiba and Nawab Sahib have just put for the postponement of this question for the present is likely to injure the feelings of Punjabis. Therefore, I appeal to the House to accept my motion. Giving of additional representation would greatly assuage the feelings of those who have gone through terrible happenings. Not only that; it will also lessen to some extent the difficulties which our Government has to face daily in this connection. Our ministers, who are very busy with work, get respite neither in the day nor in the night. It is because that the tales of the people coming are so Cull of woe and are so heart-rending. Sir Zafarullah has said in the United Nations Organisation that his house was burnt. I do not know whether that is true or not. But here are thousands, or rather lakhs, of people from West Punjab, and any one of them could have told the U. N. O. how his near and dear ones were killed, his house looted and burnt, his daughters and sisters abducted. There are so many things which are beyond description. Nawab Sahib has just said that this question should be postponed, as no correct estimate of the population is available. I believe it is not a question of postponing but of grappling with the problem of Punjab. Among the Punjabis, who were the victims of this terrible disaster, are many old and responsible congress men of the Province. Their houses were burnt, they were killed. To name a few, Sardar Jaswant Singh of Compbellpur, Hukumat Singh President of Gujarat District Congress Committee, Lala Niranjan Dass Bagga, Advocate, President of Gujranwala Congress Committee were killed.]*

Mr. President: I did not want to interrupt the Honourable Member ....

Nawab Mohd. Ismail Khan: *[I never meant that. I do not know what Sardarji has taken to mean. What misunderstanding has crept in ? What I meant. For instance, Sir, it cannot bind its successor. It cannot pass a law population is not yet complete.]*

Mr. President: The Honourable Member must confine himself to the motion before the House.

Giani Gurmukh Singh Musafir: *[I have not at all misunderstood Nawab Sahib, I will only say that some of our Punjabi brethren have come to Delhi and have gone also to other places, but their eyes are set towards their homes. Wherever Punjabis have gone their miseries have followed them. They have not ended. They are now returning from Alwar and Bharatpur. They am thinking of going back from Delhi after getting kicks. They will also go back from Patiala and other States. Many places have refused to admit Punjabis. Honourable Pandit Pant is present here. You can ask him how many Punjabis he is willing to accommodate permanently in his Province. Therefore it should be admitted that this demand of East Punjab is quite just. Mr. President, I have presented this resolution through you. I hope that the House will accept this.]*

Mr. President: I will now put the Resolution to vote. There is no amendment. The question is :

Whereas East Punjab is at present represented in the Constituent Assembly by 6 General, 4 Muslim and 2 Sikh members:

and whereas this arrangement was made in pursuance of paragraph 14 of His Majesty's Government's Statement of June 3, 1947, and confirmed by the Constituent Assembly by its resolution of July 25, 1947, on the basis #.Of the then boundaries of East Punjab; and whereas since the aforesaid dates not only have the boundaries of East Punjab been revised in accordance with the Award of the Boundary Commission but also the entire structure of the population has changed by reason of the mass migration of Muslims from East Punjab to West Punjab and of non-Muslims from West Punjab to East Punjab;

and whereas in consequence of these changes, on the best estimates available, East Punjab is now entitled to return to the Constituent Assembly 8 General and 4 Sikh members;

it is hereby resolved that steps be forthwith taken to secure the return from East Punjab as now constituted of 2 additional General members and 2 additional Sikh members in accordance with the procedure prescribed for the filling of casual vacancies.

The motion was adopted.

AMENDMENTS TO RULES 2 AND 3

Shri Balwant Rai Gopalji Mehta (Residuary States) : I move.

"That the following amendments to the Constituent Assembly Rules be taken into, consideration :-

Rule 2.-In Rule 2, insert the following new clause (cc) after clause (c)

"(cc) 'Minister' mean's a Member of the Council of Ministers of the Governor-General of India."

Rule 3-Add the following proviso to rule 3

"Provided that every Minister who is not a Member of the Assembly shall have the right to speak in, and otherwise to take part in the proceedings of, the Assembly and any Committee thereof of which he may be named a member, but shall not by virtue of this rule be entitled to vote."

*[This is moved for the simple reason that the experience of the Ministers of the Government of India, who are not elected to the Constituent Assembly, should be made available to the body. The Constituent Assembly (Legislative) has already adapted rules which allow Ministers to attend and participate in the debates of the House, without a right to vote. The Constituent Assembly also, when it works on the Constitution, should have the benefit of the experience accumulated by all the Ministers of the Central Cabinet. I recommend that the

amendment be adapted.]*

Mr. President: I take it that the motion "the following amendments to Constituent Assembly Rules be taken into consideration" really means that the following amendments be made.

The motion has been moved. There is notice of an amendment. I would ask Mr. Naziruddin Ahmad to move his amendment.

Mr. Naziruddin Ahmad: Sir, I beg to move:

"That in the proposed proviso to rule 3, the commas after the words "the right to speak in" and "in the proceedings of" be omitted, and the words "by virtue of this rule" be omitted."

With regard to these commas they appear to be absolutely unnecessary. With regard to the last amendment the deletion of the words "by virtue of this rule" seems to be necessary because the proviso 'begins with the case of a Minister who is not a Member. If he is not a Member at all, then he 'IS not entitled to vote. The question that his vote will depend upon this rule does not arise because we have begun with the assumption of a Minister who is not a Member and therefore he is not entitled to vote. So these words appear to be unnecessary. But both these amendments are of a drafting nature.

Mr. President: The amendment has been moved. Now the Motion and the amendment are open to discussion.

Mr. Tajamul Hussain: Mr. President, Sir, I beg to oppose this Motion It is said that the British Parliament is a sovereign body and it can make and unmake anything. It is also said that the British Parliament, although a sovereign body and it can do or undo any thing, works under certain limitations, namely, that it cannot bind its successor, because it is not the wish of the people that the British Parliament should choose who. should succeed them. Secondly, the British Parliament cannot make a law which will not be obeyed by the majority of the people; and thirdly, it cannot nominate or elect a person to become a member of the House of Commons. That right is given exclusively to the people at large. Similarly, Sir, this House is no doubt a sovereign body; it can do or undo anything but it has certain limitations like the British Parliament. For instance, Sir, it' cannot bind its successor. It cannot pass a law which will not be obeyed by the majority of the- people and it cannot and should not nominate a person to become a Member of the Constituent Assembly.

The Motion does not say that the Honourable Ministers who are not members should become members but it clearly says that those Muslims who are not members of this Honourable House may attend the meetings of the House, that they may take part, address the House, but shall not vote.

My submission is that there must be some limit. You must draw the line somewhere. Once you concede the principle that this House can and will have outsiders--no doubt I have great respect for the Ministers-there will be no end to it. Further, they are all the same outsiders to this House. The moment you concede this principle that we can have outsiders to sit with us and give us the benefit of their advice, the next moment you will say that you might have experts who are not Ministers because their advice will be valuable. No doubt you want Ministers so that if anything is being discussed concerning their Departments their advice will be very necessary. I feel that you must draw the line somewhere. In the House of Commons every Member is elected and there is not a single nominated one. Now it is a rule of law even in India that a Provincial Prime Minister may choose a Minister who is not a Member of the Legislature. He therefore remains Minister for six months, but he must get elected to that House. If you want to have Honourable Ministers in this House, why not some members resign and vacate their seats ? Now, Sir, after all we are here, we have been elected; I think, I am not sure, but each Member represents about 10 lakhs of people. The whole world knows that this Constituent Assembly was elected by the people. What will they say ? Are we not going to be the laughingstock before the world if we are having outsiders here ?

Now, Sir, I remember during the last session of this Constituent Assembly that there was a talk that Mahatma Gandhi should be persuaded to come and address this House and one Honourable Member said that this was not right. Well, Sir, after all Mahatma Gandhi is the biggest person in the world, and we must admit that everything is due to him; our membership is due to him; the whole constitution is due to him; our independence is due to him. If such a big personality like him could not be requested to come, should persons who are much lower be allowed to address this House ? The rule of democracy also prevents us from asking any outsider to come here.

We are not working here on Party lines, but the Congress Party are ruling the country. They are in the majority; I am not in the Congress Party and they can by their moves pass anything. So if this is done on Party lines, I do not think it is right. As I have said we must draw the line somewhere and I submit that the House should accept my proposition and reject this motion.

Mr. President: May I just point out that at our last session of the Constituent Assembly a resolution was passed which accepted this very thing and it is only to formalize the thing that the motion has been moved? The Resolution was passed on the basis of the report of the Mavlankar Committee that Ministers of the Dominion particularly who are not Members of the Constituent Assembly should have the right to attend and participate in the work of Constitution-making though until they become Members of the Constituent Assembly they should not have any right to vote. This was passed by the Constituent Assembly during the last session and this amendment in the rules is now being brought forward so as to bring it within the rules. As a matter of fact the question has already been discussed and accepted during the last session.

Mr. TaJamul Husain: Mr. President, if you had told me this in the beginning, the time of the House would not have been wasted.

Mr. President: I thought the member was aware of what took place in the last session. Anyhow, that is the position.

Mr. TaJamul Husain: I suggest that in the future, you should inform the House which is a formal Resolution and whether we have a right to discuss the matter. If you had told us that a Resolution had been passed, no member would come up to speak.

Mr. President: Is there any other member who wishes to speak? I shall put to. vote the amendment and the motion.

Shri Balwant Rai Gopalji Mehta: *[I accept the amendments of Mr. Naziruddin Ahmad.]*

Mr. President: The amendments moved by Mr. Naziruddin Ahmad have been acceptable to the mover. I take it that the House accepts the amendments.

The amendments were adopted.

Mr. President: The motion, as amended, is put to vote.

The motion, as amended, was adopted.

ADDITION OF RULES 5-A AND 5-B

Shri P. Govinda Menon (Cochin State): Mr. President, the motion which I propose to move is intended to lay down a procedure regarding the filling up of casual vacancies in the office of members of this Assembly representing Indian States. In Rule 5, the present rules contemplate to lay down a procedure regarding the filling up of casual vacancies in the cast of members who come from the provinces and from Ajmer-Merwara and Coorg. There is a lacuna in the rules in that nothing is said about vacancies arising in the case of members coming from Indian States. The motion standing in my name seeks to insert two rules, Rules 5-A and 5-B after Rule 5, to fill up this lacuna.

I move, Sir.

that Constituent Assembly Standing Orders 13 and 14 be made part of the Constituent Assembly Rules as shown in the amendments below:-

Rule 5: Insert the following as Rules 5-A and 5-B after rule 5

"5-A When a vacancy occurs by reason of death, resignation or otherwise in the office of a member of the Assembly representing an Indian State, the President shall notify the vacancy and make a request in writing to the Ruler of the Indian State concerned to proceed to fill the vacancy, as soon as may reasonably be practicable, by election or nomination, as the case may be.

"5-B. In the case of a vacancy in the office of a member of the Assembly representing more than one Indian State, the President shall notify the vacancy and make a request in writing to the Rulers of the Indian States concerned to, proceed to fill the vacancy, as soon as may reasonably be practicable, by the same method as was applicable to the case of the outgoing member when he was chosen as a member of the Assembly."

Sir, although these rules do not find a place in the Rules of procedure,. they have been incorporated in the Standing Orders by virtue of the powers. granted to the President under certain of the rules. The attempt now is to give a place to these Standing Orders in the Rules themselves.

There is an amendment standing in the name of Shri Santhanam seeking to add a proviso to rob 5-A : "Provided that, where the seat was filled previously by nomination, the Ruler may fill the vacancy by election". I can even now state that I will be accepting that amendment when it is moved; because that will give an option to the Ruler concerned to fill up a vacancy by election where previously it was filled up by nomination.

Mr. President: The motion has been moved. I have received notice of' amendments. Mr.

Naziruddin Ahmad.

Mr. Naziruddin Ahmad: Mr. President, Sir, I beg to move:

That in para. 1 for the words "be made part' the, words "be omitted and be inserted as Rules 5-A and 5-B respectively", and for the word "amendments" the word "amendment" be substituted.

May I move the next one too ?

Mr. President: I think the first amendment of yours is unnecessary because they are going straightway to insert the Rules according to the next part of the Resolution. If you leave that out, you can move the next one.

Mr. Naziruddin Ahmad: Sir, I move:

That in the proposed Rule 5-A, for the words "Ruler of the Indian State" the words "Ruler of the State" be substituted.

I do not move the other part of the amendment.

Sir, with regard to the first amendment, it does not affect the Rules, but it merely affects the heading. With regard to the second, if we mention the word "State" that means "Indian State". The word Indian is unnecessary. With these words, I beg to move the amendments.

Mr. President : You do not move the other part ?

Mr. Naziruddin Ahmad: No. I do not move.

Shri K. Santhanam (Madras: General): Sir, I move-

That at the end of tile proposed Rule 5-A, the following proviso be inserted:--

"Provided that where the seat was filled previously by nomination, the Ruler may fill the vacancy by election."

As the mover has already promised to accept this. I need not take up much of the time of the House. I do riot want any Ruler to say. "I am willing that the seat may be filled up by election, but the Constituent Assembly has prevented it by Rule and laid down that I should not fill it by election". I hope the House will accept this amendment.

Mr. President: Does anyone want to say anything about this ?

Shri P. Govinda Menon: Sir, as I said, I accept the amendment moved by Shri Santhanam. In the case of the amendments moved by Mr. Naziruddin Ahmad, I wish to point out, Sir, that his first amendment is that in para. 1 the words "be made part" be omitted. If it is accepted, it would mean that certain words in the Standing Orders will have to be omitted. We are not here to amend the Standing Orders. We are amending the Rules. Standing Orders are made by the Honourable the President of this, Assembly and I do not think it is necessary to amend them. If this finds a place in the Rules, then, probably, the Standing Orders will either become superfluous or the Standing Orders will be changed by the President.

Regarding the use of the word "State" instead of the word "Indian State", I wish to point out that everywhere in these Rules and Standing Orders, the word used for States is Indian States and I do not find any reason why in this particular Rule the word Indian State should be changed into the word State. I would therefore put it to the Honourable the mover of the amendments that the amendments are really unnecessary.

Coming again to para. 1 of the motion standing in my name, I wish to point out that if the motion moved by me is accepted by this House, that para. in the motion will not find a place in the Rules. In the Rules, we will find only Rules 5-A and 5-B and any attempt to beautify the words of para. 1 will be of no avail, because that will not find a place in the Rules. Really, the motion before the House is that Rules 5-A and 5-B be inserted after Rule 5. No amendment is sought with respect to Rules 5-A and 5-B. I would request Mr. Naziruddin Ahmad not to press his amendments. I am not accepting them.

Mr. President: I shall now put the amendments to vote. I do not think it necessary to put the first part of amendment to vote at all. We will go straight to the second part, namely..........

Mr. Naziruddin Ahmad: I beg leave to withdraw the amendments.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President: Then there is only one amendment of Shri Santhanam which has been accepted by the mover. The amendment of Shri Santhanam is put to vote.

The amendment was adopted.

Mr. President: The motion, as amended, is put to vote

The motion, as amended, was adopted.

ADDITION OF NEW RULES 38-A TO 38-V

Shrimati G. Durgabai (Madras : General) : Mr. President, Sir, I beg to move the motion that stands in my name, namely

That the following amendments to the Constituent Assembly Rules be taken into consideration:--

After Rule 38, insert the following:--

The proposed Rules lay down in a Chapter, Chapter VI-A, the procedure for legislation for making provision as to the constitution of India. They spread over above 22 Sections, from 38-A to 38-B, and are divided into two categories.

Before going into the body of these proposed Rules, I feel it necessary to explain the scope and object of these Rules. Sections 38-A to 38-K seek to lay down an appropriate procedure for the consideration and the passing of Bills proposing amendments to the existing constitution as embodied in the Indian Independence Act, the Government of India Act, 1935, as adapted, and any Order, Rule, Regulation or any other instrument made there under. Sections 38-L to 38-V seek to lay down a procedure for the introduction, consideration and the final passing of the new constitution of India. The power of making legislation for a provision as to the constitution of the Dominion is vested, as we all know, in this sovereign body, the Constituent Assembly of India. The Constituent Assembly sitting as a legislative body cannot do this. By virtue of Section 8 (1) of the Indian Independence Act, this sovereign body alone is competent to make this legislation for providing for the amendment of the constitution and also for the final passing of it.

Sir, the procedure laid down in Sections 38-A to 38-K enables us to amend the existing constitution even during the interim period without waiting for the final emergence of the new constitution. We have all noticed that it is necessary for us to make some progressive provisions for amending the new constitution, because the members are aware that some contingencies arose and are likely to arise, such as for instance the emigrations that have recently taken place. Therefore, it may be highly necessary for us to amend the constitution of India so as to enable ourselves to make any proposed changes to the constitution. The necessity, therefore, for the adoption of some procedure being laid down for amending the constitution without waiting for the final constitution is amply clear. I need not say much about the details of the procedure laid down because it is almost the same as we are familiar with and which we follow in the case of ordinary legislation.

Now, I turn to the second set of rules, namely, Rules 38-L to 38-V. They propose to lay down a procedure for the introduction, consideration and the final passing of. the new constitution of India. As I have already stated, the power of making this provision is solely vested in this sovereign body and by this procedure the Constituent Assembly of India will put its seal of approval for the final acceptance of the new constitution. Members have already noticed that 38-L dispenses with the motion for leave for introduction of the new constitution. The whole object of the procedure is to simplify the matter and also to enable ourselves to expedite the matter of passing the constitution. Therefore, though I would like to be brief, I shall refer to the salient features of these provisions which lay down the procedure for considering and passing the new constitution.

Briefly, the procedure adopted is this. It, of course, differs in some essentials from the procedure we lay down for the consideration of the Bills which will amend the existing constitution. In three essentials it. differs. One of them is this, that it dispenses with the motion for leave for introduction of the new constitution Any member can introduce the constitution after giving five days' notice of his intention to move it. Thus delay is avoided. In yet another essential it differs, i.e., Rule 38-R lays down that there shall be no intermediary Stage between the stages of introducing the constitution, its consideration and final passing. There is no Select Committee stage, but all the same, 38-R enables us still to have it referred to the Drafting Committee, if the President so desires. The President can send the constitution as amended to the Drafting Committee for carrying out any verbal or consequential or formal amendments or for inserting some marginal notes or for renumbering of the clauses. Even here delay is avoided because it is only just a formal thing i.e., refer it to the Drafting Committee which sits from day to day and which simultaneously goes on with the work of renumbering or making any consequential or formal amendments. For the final act of completing the constitution and the making of the constitution the procedure is laid down in 38-U which reads thus:-

> "When the constitution is passed by the Assembly it shall be submitted to the President who shall authenticate the same by affixing his, signature thereto."

Honourable Members are already aware that this meets as a Sovereign body and for finalizing and passing the Constitution it does not require the approval of any outside body but the President authenticates it by putting his That is what we note here.

There is another clause to which I would like to refer. That is provided in 38-V. The procedure there slightly differs. That is, in, the case of a bill passed by the Assembly and before it becomes a Final Act it win have to go to the Governor-General for his assent. There we see the marked difference between the bills for amending the existing constitution and also for the final new constitution where the Governor-General also assents.

Sir, this is all that I wanted to explain before I commend my motion for the acceptance of this House. I have got some amendments before me. The amendments given notice of by Mr. Naziruddin Ahmad seek only formal or verbal changes. Therefore I do not think that I need say much about those amendments; but the amendments given notice of by Mr. Santhanam are there. I understand that his object in proposing his amendment is to, simplify the whole matter and to pass the constitution without any delay or by a simpler process. While I appreciate his object. I feel that the procedure. which he wants to adopt is by making a reference to rule 24 of the Constituent Assembly Rules which lays down that the business of the Assembly shall be brought before it or its Committee by means of a Motion, etc. I wish the Mover of the amendment to understand the business of the House and the motion which he proposes should be distinguished from the task that is before us. What we are seeking to do is to make provision for amending the constitution, which is quite different. Even for the ordinary bills we are adopting an elaborate procedure that several stages are to be gone through before a bill finally becomes law. If that is true in the case of an ordinary law much more so it must be in the case of the very important legislation that we have got before us, viz., the amending of the existing constitution and also passing the new constitution. We have got to give adequate publication before we do these two matters which are of very great importance. Therefore I feel that an elaborate procedure under these circumstances has to be laid down and incorporated in the Rules that we have. The existing rules and Standing orders did not provide for a procedure like that. I feel very happy to be able to say that here is the procedure that we want to lay down for amending the existing constitution which we feel necessary at this stage to do and also for passing the new constitution of India, The time has come when the whole world is focussing its attention on the final emergence of this new constitution. Therefore here is the procedure which we have got ready for receiving when the draft comes before us for our consideration and passing. With these observations, Sir, I commend my motion for the acceptance of tile House.

Shri Phulan Prasad Varma : (Bihar: General): On a point of order. Paragraph 38-V says-

> "When a Bill referred to in rule 38-A is passed by the Assembly, a copy thereof signed by the President shall be Submitted to the Governor-General for his assent. When the Bill is assented to by the Governor-General' it shall become an Act and shall be published in the *Gazette of India*"

I submit that bill Passed by the Constituent Assembly cannot be, the subject of assent by the Governor-General and the Governor-General does not come in so far as the Constituent Assembly is concerned. I submit that it will affect the sovereignty of this House.

Mr. President : That is really a question on the merits of the proposition. Is it a question of Order ? If the Honourable Member Wishes to raise the question of merits he is entitled to do it. It does not arise as a point of order. The Motion has been moved. Mr. Santhanam's amendment is one for the substitution of the whole motion by another motion. So I would ask him to move that.

Shri K. Santhanam : I do not intend to move it but I want just to say a few words on this motion.

Mr. President: Then we shall take up the other amendments. The other amendments relate to each of the clauses and with regard to the wording of the clauses but in the first instance we have to take the motion as a whole as to whether these rules are necessary. Any member who wishes to speak on that may do so now.

Shri K. Santhanam: Sir, my own view is that the whole motion is wholly unnecessary and purposeless. It consists of two parts. One part is intended to amend the Indian Independence Act or the Government of India Act as adapted by the Indian Independence Act. I do not think this Constituent Assembly is going to exist till you can follow the procedure laid down. I think we are going to finish the business in the next two or three months and shut up our shop and I do not see why we should adopt a complicated procedure for amending the Indian Independence Act or the Government of India Act which will also cease to exist. If you want to make a provision for any stray wording, etc., it could be done by an ordinary motion. Regarding the other part intended to pass the Constitution, when the rules were made. they were, made to pass the Constitution. I am unable to understand Mrs. Durgabai's idea that these rules did not provide for passing the Constitution. When we made the Rules of the Constituent Assembly we made them solely for the purpose of considering and passings the Constitution. How is it that suddenly on this blooming day we have realized that our Rules did not provide for the passing of the Constitution? I do not think there is any basis for any such fear. On the other hand the introduction of these rules may mean that whatever principles we have adopted in the House according to the other Rules cease to be of any value, and that the new bill takes the place of everything else that the Constituent Assembly has done and that will reopen the discussions that we have already gone' through.

If what you have done is to be effective, then the same procedure should he followed for the remaining parts of the Constitution also. We should have the same procedure of making a motion, then taking. it up and considering it, clause by clause, then discuss the amendments moved. The Drafting Committee will present a report. And the Report comes up for discussion and so on. That was the procedure laid down after a great deal of discussion. The Rules Committee sat for many weeks and drafted these rules. And now the Steering Committee sits for a few hours and passes a complicated structure, and I may say many of the provisions in it are wholly defective. Take for instance the Point referred to just now by one of the Members, the point about referring to the Governor-General in Council. I thought we had this Constituent Assembly so as to exclude him from this business of constitution-framing. And then another clause says that the Constitution should be submitted to the President. But if the Constitution is passed by this Assembly, then who will submit It to the President ? There is no authority whatsoever for doing that. Therefore the whole thing is very defective, and I am sorry the Steering Committee passed it. I have, however, no desire to move my amendment. I only submit that this may be adjourned for consideration at a later date.

Pandit Thakur Das Bhargava: *[Mr. President, as regards this Motion, which in a way consists of two distinct propositions, I would like to point out that I cannot understand the reason of this distinction. One part of this Motion which extends up to clause K is connected with a Bill which concerns the Government of India Act or Independence Act, while the second part concerns the constitution. As regards the first part which extends up to Clause K, I would like to say that I could not follow as to why the Dominion Legislature has no power regarding the Bills which are connected with the Government of India Act and Independence Act respectively. The Constituent Assembly of India came into being for framing the Constitution of India. Therefore, it is permissible to hold that the Constituent Assembly is a sovereign body and the only body which can consider the Government of India or Independence Act. So far sovereignty is concerned, to my mind, the Dominion Legislature is the only sovereign body and the fact that in legislative matters it has to take the consent of the Governor-General does not alter its position. It is a sovereign body in this sense that it has right to frame any law in all matters which concern India. On the last occasion when the question of appeals to the Privy Council was discussed in the Dominion Legislature, our learned Law member had expressed an opinion that the Dominion Legislature cannot make any changes in the Government of India Act. At that time it was pointed out that in fact this view is not correct. In this connection, I would like to draw the attention of the House to section 6 (2), which runs thus :

> "No law and no provision of any law made by the Legislature of either of the new dominions shall be void or inopportune on the ground that it is repugnant to the law of England or to the provision of this or any existing or future Act of Parliament of United Kingdom or to any order, rule or any regulation made wider any such act, and the powers of the Legislature of each dominion include the power to repeal or, annul any such Act, order, rule or regulation in so far as it is part of the Law of the dominion."

So far the question of Constitutional Law is concerned, on many occasions. the rules for changing any constitution are regarded as different from the ordinary rules. But I would like to submit that no flexible constitution has any such rule. If today any body in England wishes to make changes in the Law, he can do so; for the Legislature has the power to make such changes by a bare majority vote in the House of Commons. Dominion Legislature also is a parallel body of the Constituent Assembly ; and in this connection I have to say only this much that the Legislature has every right to make any changes in the Independence Act. Just now, a member has expressed the opinion that the Constituent Assembly does not require Governor-General's consent for framing any law. If under clause 38(5), Governor-General's consent is considered to be unavoidable, then there is no difference between the rules which have been framed for amending the Acts and those ordinary laws which the Dominion Legislature has a right to frame. If Governor-General's, consent is unavoidable for such amendments, as also for the other Bills, then I would like to ask, how do you distinguish between the Dominion Legislature and the Constituent Assembly? It may be pointed out that as the powers of the Constituent Assembly are to be amended, therefore, it has such a right. In reply, I would humbly submit that there is no such law. There are many countries in the world, where Legislatures amend all kinds of Acts with the help of ordinary rules. Therefore, I would like to submit that so far the question of the privileges of Dominion Legislature is concerned, there is no reason why this Legislature should not have the power to amend those Bills ,which are connected with the Government of India Act and Independence Act respectively and make any changes it Ekes. Therefore, I beg to submit that the House should not accept Clause 38-K. Moreover we should determine that the Dominion Legislature is the only body where such Bills can be introduced and amended. The question of Constitution does not arise here. It is altogether a different question. Obviously our constitution is being framed under circumstances totally different from other places. In other places it was framed after a revolution. But our government was not established after revolution. It is a continuous body and we have inherited many laws from the past and we cannot escape its influences. It is known to us that the Governor-General's consent is not necessary for framing the constitution. For making amendments in the law, we have already accepted the principle that to make changes in the Government of India and Independence Acts respectively, Governor-General's consent is necessary. But it is apparent from Article 6 that the Dominion Legislature has full power and on no account any such distinction should be made which should render the Legislature incapable of making any amendments in the Government of India Act and that the Constituent Assembly should be able to do it. In fact, both are sovereign bodies and so far the question of any amendments in a Bill or in Government of India Act and Independence Act are concerned, both have full power to do so. Also I would like to say that this Constituent Assembly is not a sovereign body in every way; for, save and except framing the constitution, it has no power to pass any Bill. On one occasion our Prime Minister had said that our Constituent Assembly cannot pass ordinary Bills. Therefore, I beg to submit that so far the amendment of Independence and Government of India Acts is concerned, the Dominion Legislature must have the power to do so and there is no law which can deprive the Dominion Legislature-of this privilege. With these words, I would submit that clause 38-K should not be accepted; because this amendment reduces the powers of the Dominion Legislature and is derogatory to the prestige of the Constituent Assembly.]*

Mr. President: The House will rise now to meet again at 2-30.

The Assembly then adjourned to 2-30 in the afternoon.

The Assembly re-assembled after lunch at half past two of the clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the chair.

Mr. R. K. Sidhwa (C. P. and Berar: General) : Mr. President, on a point of information....

PRESENTATION OF CREDENTIALS AND SIGNING OF THE REGISTER.

Mr. President: There is one Member who has to present the Credentials and sign the Register.

The following Member presented his Credentials and signed the Register :-

Shri Krishna Chandra Sharma (United Provinces : General)

ADDITION OF NEW RULES 38-A TO 38-V--*contd.*

Mr. R. K. Sidhwa: For the purpose of expediting the debate I want to know whether this House is competent to discuss this motion or is it the other House that is competent to do so ? The Governor-General is part and parcel. of the Independence Act and this subject cannot be dealt with by this Assembly.

Mr. President: On the point of order raised, I may say that it is perfectly clear that this House can deal with this question.

Maulana Hasrat Mohani: (United Provinces: Muslim) : *[Mr. President, when the Union Constitution was presented, then it was decided that the consideration of its three clauses be postponed. But in this connection, I find that whatever was said during the discussion, has been omitted in the printed proceedings. I would like to know, whether this omission is deliberate or by mistake?]*

Mr. President: *[I could not follow. What has been omitted ?]*

Maulana Hasrat Mohani: *[This contains amendments to several clauses. Then it was decided after a good deal of discussion that the point raised would be taken up. Pandit Nehru had also said, "I will produce a modified constitution afterwards at the next meeting of the

Constituent Assembly".

The report, which you have published contains thirty clauses, and that includes everything. But in the Report no mention has been made of the discussion that had followed on the first three clauses. It contains nothing pertaining to, that. I want to enquire the reason for that.]*

Mr. President: *[Whatever you wish to say please give in writing for I shall have to enquire about it. I will see what it is. Does anyone else wish to speak ?

Mr. Naziruddin Ahmed: Sir, I submit that Clauses 38-A to 38-K will not be necessary to be passed by this House. I do not consider that this House has no jurisdiction in the matter. It has full jurisdiction to deal with the matter. But so far as this House is concerned, it is concerned directly with the business of Constitution-making. I submit that the other House,. with reference to the legislative aspect of the Assembly, is fully competent to deal with this. This was referred to in an earlier debate in the legislative Assembly. But it require further clarification. I submit, while I agree with Pandit Bhargava, that, so far as changing the Government of India Act is concerned, it can be done up to the 31st March next by the Governor-General under section 9 (1) (c) of the Independence Act. In these circumstances there is no hurry about creating a machinery for amending the Government of India Act. Then the Governor-General has the power up to 31st March under section 5(9) of the Independence Act. So far as the competence of the legislative side of the House is concerned, I submit that power is given under section 6(1) of the Independence Act. It is laid down there that the legislature has 'full power to make laws' and so on and so forth. In sub-section (2) of section 6 it is specifically mentioned that the legislature can pass laws and amend, alter or absolutely repeal any Act of the British Parliament which has been passed or may be passed hereafter including orders, rules, regulations etc. So, under section 6(1)(2), the legislature is competent to effect the necessary changes in this direction. This has been made clearer by sub-section (2), Proviso, which says : 'AU powers of the legislature for the time being shall be discharged by the Constituent Assembly'. So, the Constituent Assembly exercises all the functions of the Legislature and the Legislature, under section 6, is competent to pass any law or make any changes or alterations in any Statute, passed by the British Parliament or rules and regulations made there under. So, I submit that this clause which deals with the setting- up of a particular machinery to deal with British Acts, Regulations or orders made there under, should be left to the other House, or rather the other aspect of the House, which is particularly meant for it. There is no need to trouble this House about these routine matters. This House as constituted should have its attention solely directed' towards the framing of the Constitution which is its most essential function. After the framing of the Constitution this House will, I believe, cease to function. In these circumstances if the machinery is really set up for the Constitution section to make the amendments, it should be remembered that this House will cease to function very soon and the Legislative section will act in its place. So the life of the rules made here would be transitory, would be unnecessary, and would be burdening this House with the duty which is not its primary duty, though I fully admit that this House has jurisdiction, but it is not the proper function of this House and probably these rules are attempted to be amended as it seems that there is an unfounded fear that the other House has no jurisdiction. I submit that the Rules 38-A to 38-K should be omitted from consideration or their consideration be postponed.

With regard to the remaining clauses, they are perfectly necessary. In order to facilitate the passing of the Constitution Act and other matters connected therewith these rules are necessary and I therefore support the suggestion of Pandit Bhargava hi this respect.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Mr. President, Sir, I rise to explain some of the criticisms which have been levelled by Mr. Santhanam against the Motion moved by Shrimati Durgabai proposing the adoption of certain Rules by this Constituent Assembly. One of the criticisms levelled against her proposal is by Mr. Santhanam. Mr. Santhanam's main criticism is that the existing Rule 24 is quite sufficient for the purpose we have in view and that no new Rules are necessary. I am sure that Mr. Santhanam has not given enough attention to the question when he rose to oppose the motion. Rule No. 24 speaks of a motion and says that anything can be done in this House by a Motion. That is quite true. But I am sure that Mr. Santhanam has failed to realize that this omnibus Rule will not suffice and that further detailed Rules are necessary. For motions fall into two categories. There is a motion which has no further stage; it is exhausted by the decision taken by the House on that particular motion. But there is also another category of motions which involve further stages. A particular illustration of a motion of this sort is a motion introducing a Bill. A Bill which is introduced by a motion is not exhausted by that particular motion if the House decided in favour of that motion. There are further stages which have to be gone through and it is therefore very necessary that the further stages of a motion of this sort should be regulated by specific rule. I think if my friend Mr. Santhanam. had referred to the Constituent Assembly (Legislative) Rules he could have seen that the provision which has been made in the new rules which was moved by Shrimati Durgabai was modelled on the provisions contained in the rules and the standing orders of the Constituent Assembly. For instance, he will find that analogous to Rule No. 24 in the rules of the Constituent Assembly there is Standing Order No. 30 worded exactly in the same terms as Rule No. 24. Notwithstanding that, there is a further Standing Order i.e. No. 37, which provides for bills and which lays down what further motions can be moved in the 'House with regard to them and therefore, on that footing the proposal made for. adopting the new rules is in line with the procedure adopted by the Constituent Assembly in its legislative capacity. I should think that if the Constituent Assembly rested purely ,on rule No. 24 for carrying out its business in so far as it related to legislation, there is not the slightest doubt in my mind that there would be utter chaos. If there was only Rule 24 there could be no limit as to the number of motions or the nature of motions that one could move. In the Legislative Assembly rules Honourable Members will find that after a Bill has been introduced there are only three motions which are permitted. One is motion to circulate, motion to refer the Bill to a Select Committee or motion to pass the bill. If we had nothing but Rule 24 to govern our proceedings it would be open for any member to move any sort of motion which he may fancy. Indeed it would be necessary in certain cases not to allow freedom to move anyone of these three motions, In our procedure for the purpose of passing the bill embodying our new constitution we have curtailed the list of motions that could be moved by a member. In the new rules proposed we have not permitted a motion for the circulation of the constitution because we think that would be dilatory. In short what is important to bear in mind is that unless these rules were adopted, it would be quite impossible to control the further stages of the Bill and therefore the point raised by Mr. Santhanam is, I think a point without Substance.

The other point of criticism levelled by Mr. Santhanam relates to one of the new Rules which requires the assent of the Governor-General to the passing of a Bill adopted by the-Constituent Assembly. As the Members of this House will remember, the Committee, which reported on the bifurcation of the functions of the Constituent Assembly into (1) Constituent Assembly for making laws relating to the Constitution and (2) Dominion Legislature for making ordinary law, divided the work of the Constituent Assembly into two parts one part related to the making of the future constitution and the other relating to the amending of the existing Constitution as contained in the Government of India Act, 1935, and the Indian Independence Act of 1947. With regard to its power to make and pass the future Constitution the Governor-General has no place. Ms assent is not necessary. The Constituent Assembly is supreme. Not merely is the assent of the Governor-General not necessary, but even the assent of the

President is not required by the Rules now prepared. The only power which the President has been given after the Constitution has been passed by this Assembly is to sign it merely as a token that that is the final Act of Constitution.- It is not assent in the ordinary sense of the word. The assent of the Governor-General has been retained with regard to the amendment of the existing constitution. I know there are certain members who feel hurt that such a provision should have been retained. But, I will tell the House that this matter was considered by the best lawyers that were available and they all came to the conclusion that the retention of the assent of the Governor-General was not only desirable but necessary. I should like to explain the reasons. In the first place, as everybody knows, the Governor-General possesses the power of adapting the Constitution. Adaptation is merely another name for amending the Constitution. There is not much difference between adapting the Constitution and amending the Constitution. They are just one and the same thing. The question that arise.-, is that if it is necessary that the Governor-General should have the power to amend the Constitution in the form of adapting it, what harm can there 'be if the power was retained with regard to a Bill as distinguished from adaptation which has the same purpose, namely, the amendment of the Constitution.

Shri K. Santhanam: May I know why then you want the sill at all?

The Honourable Dr. B. R. Ambedkar: The answer is simple, After all, the power of adaptation will be exhausted by the 31st of March, What is to happen thereafter if the necessity for amending the existing constitution arose ? Of course if the power of adaptation comes to an end, on the 1st of April and if our future Constitution also became operative on the 1st of April, the, problem would not arise at all. There would be the new Constitution taking complete possession of the territory occupied by the existing Constitution. But, we are not quite sure that such would not be the case. It may be there might be a time lag between the commencement of the new Constitution and the first of April 1948. It may be a month or two may clause between the 31st of March and the commencement of the Constitution. It is also equally clear that the whole of the Constitution as framed and passed by this House may not conic into operation All at once. It may come into operation in part. There may be transitional provisions, supplementary provisions for the purpose of defining- constituencies for the purpose of giving effect to what are called incidental matters. All that requires undoubtedly some time. Consequently, time process of adapting the Constitution which will come to an end by the 31st March will have to be continued and it can be continued only by the known process of a Bill passed by this House.

In the light of this it will be clear that a provision for changing the existing Constitution by a Bill is necessary. Those who realize this fact and also realize that the purpose of adaptation is the same as that of the Bill amending the Constitution cannot question the validity of the provision for requiring the Governor-General's assent to the Bill. If the purpose of both is the same and if adaptation requires assent of the Governor-General, the question that arises, is, why should a Bill of amendment not require the assent of the Governor--General ? Certainly. there is no logical inconsistency at all. I may further point out that the committee was to a large extent guided by the provision contained in sub, clause (3) of section 6 of the Independence Act which says that all laws passed by the Dominion Legislature will be assented to by the Governor-General. What that clause means is a matter of uncertainty today. The Governor-General has the power to assent. The question is, does it mean that the Assembly is bound to submit a Bill amending the existing Constitution to the Governor-General by virtue of the fact that he is endowed with the power by the Independence Act to give his assent? We were not able to give any categorical opinion. We thought that notwithstanding feasibility of the argument that merely because of the existence of sub-clause (3) in section 6 there is no obligation to submit the Amending Bill to the Governor-General for his assent, a court of law may hold otherwise and declare an Act passed by this Assembly, not submitted to the Governor-General for assent, as being *ultra vires* and we did not want that legislation passed by this Assembly should be put in that sort of jeopardy. It is therefore out of abundant caution and also out of the feeling that there was nothing illogical in it that we inserted the new Rule. I hope the House will understand that whatever has been done by the Drafting Committee, to which this matter was referred, is perfectly in order and that the points raised by Mr. Santhanam and the friends who followed him have really no substance in them.

Shri H. V. Kamath: Sir, with due deference to my honourable friend Dr. Ambedkar and the host of the best lawyers whom he mentioned in his speech, I am constrained to say that I remain unconvinced as regards the need for this rule 38-V, that is to say, the need for submitting a Bill passed by this Assembly to the Governor-General for his assent.

Dr. Ambedkar said that if it were open to this Assembly to do anything it likes, then one fine morning any member could move that the consideration of the Constitution be suspended. It is perfectly valid, for I believe any member who gets such a motion passed by this Assembly will see that the consideration of the Constitution is suspended. I think that one of our Rules is even to the effect that this Assembly can dissolve itself provided the motion secures a two-thirds or a three-fourths majority. Either this Assembly is sovereign or it is not. I submit that at this time of the day nobody, especially no lawyer or constitutionalist, will contend that this Constituent Assembly of India is not a sovereign body. If it is a sovereign body, it follows a natural consequence that there cannot be any outside authority whether it be the Governor-General or the British Parliament, or anyone else who can be called upon to give his assent to or ratify any Bill passed by this Assembly. Therefore, if we are all agreed,-I am sure we agree on this point, that this Assembly is a sovereign body,-then, the need for this, rule 38-V clearly does not arise. This rule says that the Bill referred to in, Rule 38-A on being passed by the Assembly shall be submitted to the Governor-General for his assent.

If the Governor-General is brought into the picture for ratification of or assent to any Bill, then it clearly means that this Assembly is not sovereign, so that if we want to bring in the Governor-General then certainly we cannot get this Bill passed here and the only place for getting such a Bill passed would be the other Assembly, namely, this very Assembly functioning as Legislature where at present the Governor-General is a part of that body. I therefore feel that this Section 38-V which has been incorporated in the motion brought forward by my Honourable friend, Shrimati Durgabai, is somewhat ill-conceived and would, if adopted by this Assembly, detract from its sovereignty and as such I would submit to the House that this particular clause be deleted from the motion.

Maulana Hasrat Mohani: *[Sir, I am also of the opinion that Govemor-General's consent is not necessary for any motion brought before this Assembly and the basic reason for that is that as yet ours is a dominion status and the Governor-General is the representative of Britain and not of the Indian public and hence, for anything, his consent should not be taken.]*

Mr. President: Before I put the motion to vote, I would like to ask the Mover whether she would like to say anything in reply.

Shri M. Ananthasayanam Ayyangar: Before that, Sir, I beg your permission to interrupt for a little while. I would like to ascertain from the Honourable Dr. Ambedkar whether he has considered the consequences that would follow if this motion is adopted, because, under Section 32 of the Government of India Act as adapted, the Governor-General has the right either to give or withhold his assent when a Bill is referred to him. Are we contemplating that so far as a Bill seeking to amend the existing constitution is concerned, the Governor-General shall have the power either to give or withhold his consent ?

The Honourable Dr. B. R. Ambedkar: He is a constitutional Governor. He acts on advice.

Shri M. Ananthasayanam Ayyangar: Another point which requires elucidation is this. It is laid down that when the Dominion Legislature passes a Bill, that Bill will require the assent of the Governor-General. But does this apply in so far as amendment of the present constitution is concerned, because we are not sitting here as Dominion Legislature, but as the Constituent Assembly of India which is a sovereign body ? That is why I say you have the power, as President. We do not even say Speaker here. Does the Honourable Dr. Ambedkar realise that just as the new constitution is not going to be referred to the Governor-General, the amendment of the existing constitution also need not be referred to him ?

Mr. President: That is a point which Dr. Ambedkar has answered in his own way. Whether the member is satisfied or not is a different question. I shall now call upon the Mover if she wishes to say anything in reply.

Shrimati G. Durgabai: Mr. President, Sir, I do not think there is much left for me to say in reply, because Dr. Ambedkar has very kindly taken upon himself to explain the whole position as well as answer the points raised by my Honourable friends. I think he has sufficiently met them and clarified the whole position, but I appreciate that much has been said by some of the members about the provision retained here about the assent of the Governor-General with regard to Bills referred to in 38-A. Dr. Ambedkar dealt with that point also, so I need not say much about it. but I would like to remind Honourable Members of this fact that we are governed today by the 1935 Act as adapted which still retains that provision.............

An Honourable Member: Not as far as. this Constituent Assembly is concerned.

Shrimati G. Durgabai: Sir, the fact that the Bin is passed by this Constituent Assembly I think, does not dispense with such assent unless the Constituent Assembly makes a provision contrary to that. So if you like to eliminate this provision, by all means do it. but make a provision contrary to that; otherwise, you cannot eliminate it altogether and arbitrarily. What would like to impress upon Honourable Members is firstly this, that if the Governor-General is to continue to hold the existing position unchanged in the existing constitution, he must be consulted and his assent cannot be dispensed with, and secondly, that it is not necessary to eliminate this, since he acts on the advice of our own Ministers. For both these reasons, there is practically no fear that the assent will be unduly with field. Another consideration is also this, that in the absence of a second Chamber to revise or rectify any defects, it also further provides an opportunity for the Ministers to go through the whole thing if necessary and if occasion demands it. Therefore, bearing in mind all these points, I would request Honourable Members to accept my motion without any fear by the retention of this provision regarding assent of the Governor-General.

Mr. President: The motion is that the amendments to the Constituent Assembly Rules be taken into consideration. I shall put clause by clause later; now the general motion is before the House.

The motion was adopted.

Mr. president: I would take up the clauses one by one. Members may kindly go through each of these as quickly as possible, because we have got three more resolutions and we have not much time.

Shrimati G. Durgabai: I move Rule 38-A (1)

> 38-A. (1) Any member desiring to propose any amendment to the Indian Independence Act, 1947, or any order, rule, regulation or other instrument made there under, or to the Government of India Act, 1935, as adapted under the said Act may move, for leave to introduce a Bill for the purpose, shall give notice of his intention and shall, together with the notice, submit a copy of the Bill and a full Statement of Objects and Reasons.

Shri M. Ananthasayanam Ayyangar: May I make a suggestion? Barring some amendments which seek to rectify minor errors, there is no substantial amendment. Of course, Mr. Naziruddin Ahmad's amendment, are there which add a word here and a word there. I suggest these may be left to the office to take care of. We may proceed with clauses.

Mr. President: I would suggest that such of the amendments as are acceptable to the mover may be accepted now and the motion may be moved in the amended form so that there may be no discussion and the whole thing can be gone through quickly instead of leaving it to the Office to make the changes. The first clause if amended by Mr. Naziruddin's amendments would read as follows :-

> "Any member desiring to move any amendment to the Indian Independence Act, 1947 or an order, rule Or regulation made there under, or to the Government of India Act, 1935, as adapted by the Indian Provisional Constitution shall give notice of his intention, and shall together with the notice submit a copy of the bill for the Purpose and may move for leave to introduce the Bill."

If you accept these amendments it would read like that.

Shrimati G. Durgabai : I cannot accept the amendments.

Mr. President: Then let Mr. Naziruddin Ahmad read his amendments one, by one.

Mr. Naziruddin Ahmad: Sir, I beg to move:

> "That in sub-rule (1) of the proposed rule 38-A, for the words 'desiring to propose' the words desiring to move; for the words 'rule', regulation or other instrument' the words 'rule or regulation' and for the words 'adapted under the said Act' the words 'adapted by the Indian (Provisional Constitution) Order, 1947' be substituted."

The other amendment I wish to submit is that I beg to propose,--

> 'That in sub-rule (1) of the proposed rule 38-A, the words 'may move for leave to introduce a Bill for the purpose' be omitted; after the words 'submit a copy of the Bill' the words 'for the purpose' be inserted; and the words 'and may move for leave to introduce the Bill' be added at the end".

The object of these amendments is quite clear. I have merely transposed the motion condition after notice to keep the sequence. The others are mere verbal amendments.

Shrimati G. Durgabai : Sir, I do not accept the amendment. The. language proposed in 38-A (1) is quite alright. I do not think it requires any amendment.

Mr. President : The mover of the motion is not prepared to accept any of the amendments. I put the amendments to vote.

The amendments were negatived.

Mr. President: We go to 38-A (2).

Shrimati G. Durgabai: Sir, I move-

"(2) The period of notice of a motion for leave to introduce a Bill under this rule shall be fifteen days, unless the President allows the motion to be made at shorter notice."

Mr. Naziruddin Ahmad: Sir, I beg to move--

"That in sub-rule (2) of the proposed rule 38-A, for the words 'President allows' the words 'President in his discretion allows' be substituted."

This condition of the President allowing it in his discretion appears in the other clauses in pages 4 and 7 of the list of amendments.

There are two Places in which the same phrase appears and in order to bring the whole thing to a uniformity, I submit my amendment may be accepted.

Shrimati G. Durgabai : I do not think, Sir, that it is necessary to accept this amendment.

Mr. President: The Mover is not prepared to accept this amendment. The amendment seeks to add the words "in his discretion" after the word 'President'. I shall put it to the House.

The question is :

"That in sub-rule (2) of the proposed rule 38-A, for the words 'President allows' the words 'President in his discretion allows' be substituted.".

The motion was negatived.

Mr. President: Then I put the whole clause, 38-A (1) and 38-A (2).

38-A. (1) Any member desiring to propose any amendment to the Indian Independence Act, 1947, or any order, rule, regulation or other instrument made there under, or to the Government of India Act, 1935, as adapted under the said Act, may move for leave to introduce a Bill for the purpose, shall give notice of his intention, and shall, together with the notice, submit a copy of the Bill and a full Statement of Objects and Reasons.

(2) The period of notice of a motion for leave, to introduce a Bill under this rule shall be fifteen days, unless the President allows the motion to be made at shorter notice.

The motion was adopted.

Mr. President: Now we pass on to 38-B.

Shrimati G. Durgabai: Sir, I move:

38-B. If a motion for leave to introduce a bill is opposed, the President. after..........

Haji Abdul Sattar Haji Ishaq Sait (Madras: Muslim) : May I suggest, Sir, that the whole clause need not be read? It has already been circulated and it need only be moved.

Shrimati G. Durgabai: Sir, I move clause 38-B.

38-B. If a motion for leave to introduce a Bill is opposed, the President, after permitting, if he thinks fit, a brief explanatory statement from the member who moves and from the member who opposes the Motion, may without further debate put the question.

Mr. President: Mr. Naziruddin Ahmad can move his amendment.

Mr. Naziruddin Ahmad: Sir, I would suggest that instead of my moving my amendments to each clause, it would be better and more satisfactory if they are all dealt with by the Government draftsmen. Otherwise, I find it is useless for me to move them, because I find the sponsors of the motion are not in a mood to listen to them or to consider them. But I consider them necessary and that is why I have brought them forward. They are not of a frivolous or dilatory nature. In these circumstances I respectfully seek your advice as to what I should do. If I decline to move my amendment that will be hardly respectful to the House.

I beg to move-

That in the proposed rule 38-B, for the words "introduce a Bill" the Words "introduce such a Bill" be substituted.

Sir, this amendment is necessary because the Bill is qualified in the earlier part of the clause and the addition of the word "such" will make it very clear.

The Honourable Dr. B. R. Ambedkar: Sir, if I may reply to this point. If the Honourable Mover will only refer to the beading of the chapter he will see that the chapter is called "Legislation for making provision as to the Constitution of India." These rules relate to no other Bill except the Bill amending the Constitution. Therefore the word "such" is absolutely unnecessary.

Mr. Naziruddin Ahmad: After this clarification, Sir, I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

The Honourable Dr. B. R. Ambedkar: Sir, if I may make a suggestion with a view to economise. time. These are all drafting amendments. If this House were to pass a resolution that all these amendments should be taken into consideration by the official draftsmen and incorporated wherever he thinks necessary, that will be better. If we were to take up the amendments one by one, it will take more than a whole day. After all different people use different language for the purpose of conveying the same thought. it is better to leave it to the draftsmen who are particularly qualified in this matter than laymen who merely want to exercise their time in this matter.

Mr. President: Before I come to that, I will put Rule 38-B to the House.

Rule 38-B was adopted.

Mr. President: As regards the suggestion made by the Honourable Dr. Ambedkar, I would make a request that if Mr. Naziruddin and Shrimati Durgabai and any other Member interested would sit together separately and decide about these amendments, we could, in the meantime go on with the other resolutions. We can take up these clauses, after, say three-quarters of an hour.

Mr. Naziruddin Ahmad: But then, I have other amendments to other resolutions also. Sir, no Member had the time to go through these clauses and amendments and that is why we feel this difficulty now. Especially after the launch .our everybody seems to be in a happy mood and is not able to apply his mind to technicalities.

Mr. President: I think the Mover of the Motion, Shrimati Durgabai, may consider these amendments and see which of them she could accept and we might take up this item a little later. In the meantime we could go on with other items.

Diwan Chaman Lall may now move his resolution.

ADDITION OF RULE 59-A

Diwan Chaman Lall: Sir, the resolution that I beg leave to stove is as follows-

That the following amendment to the Constituent Assembly Rules be taken into consideration :-

New Rule 59-A. After rule 59 insert the following new rule:-

59-A. (1) The Credentials Committee or the Election Tribunal shall, for the purposes of an inquiry into an election petition, have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and, so far as may be, in the same manner as is provided in the case of a civil court under the code of Civil Procedure, 1908.

(2)The provisions of the Indian Evidence Act, 1872, shall, subject to the provisions of these rules and the standing orders made by the President, be deemed to apply to every such inquiry.

Sir, the subject of election petitions is to be found in Chapter 10 of the Rules of Procedure adopted by this Assembly. The general basis is as follows. An election can be called into question only by means of an election petition. Any candidate or elector can file this election petition. If the petition is in order, then the President, if he is satisfied that there is sufficient ground shall refer the petition to the Credentials Committee. The Credentials Committee thereupon shall enquire into the election petition and go into the charges contained therein and as quickly as possible submit a report. The Credentials Committee, if they think fit, may recommend to the President that an Election Tribunal should be appointed to enquire into the Election Petition. Therefore, we have a dual procedure. The Credentials Committee can either recommend to the President lo appoint an Election Tribunal or report to the President. If it comes to the appointment of the Tribunal, the President shall appoint an Election Tribunal consisting of one or more members to go into the merits of the petition. Now, there is a lacuna, some doubt as to the procedure after handing over the election petition to the Election Tribunal.

According to rule 43(5), the President may make Standing Orders for the conduct of the business of the Credentials Committee. It is doubtful whether he can also make rules for the purpose of compelling witnesses to appear before the Election Tribunal or compel their attendance, summon them, enforce their attendance or compel the production of documents. Therefore the necessity has arisen for this particular Rule 59-A to be inserted granting power to ask for the attendance of witnesses and for the production of documents.

There are two aspects of this power. The procedure will be, as far as possible, the same as is adopted in Civil suits under the Civil Procedure Code. Secondly, subject to the standing orders and rules of the Assembly the Evidence Act shall apply to the evidence that is produced before the Election Tribunal.

I do not think that long speeches are necessary to persuade Honourable Members to see the need for this amendment. I may mention that, so far, five or six election petitions are still pending and for the due despatch of these petitions it is necessary that this doubt should be resolved and this rule accepted.

Mr. President: Mr. Naziruddin Ahmad may move the amendment he has given notice of.

Shri K. Santhanam : On a point of order, Sir, I do not think any rule, of this Assembly can have the force of law. If you want this compulsion, it should be done by a Bill in the Legislature duly introduced and passed. Then only will the civil authorities recognise it. The civil courts will not take legal cognisance of the rules of this Assembly. So I think it is *ultra vires* .

Shri M. Ananthasayanam Ayyangar: Under the Indian Independence Act, this Assembly has been recognised as the Dominion Legislature with all powers. Therefore, whether you call it a rule or a law, it has the force of law.

Mr. President: I think I will take the view put forward by Mr. M. Anaathasayanam Ayyangar.

Mr. Naziruddin Ahmad: Sir, I beg to move-

(1)that in sub-rule (1) of the proposed rule 59-A, after the figures '1908' at the end, the following be inserted :--"V of 1908".

(2) that in sub-rule (2) of the proposed Rule 59-A, for the words "standing orders", the words "Standing Orders" be substituted.

The two are self-explanatory. The first one merely gives the Statute No. and the second one puts in capitals the first letters of the words 'standing orders' The amendments are of a very formal character and may be accepted.

Diwan Chaman Lall: I accept the amendments.

The amendments were adopted.

The motion, as amended, was adopted.

AMENDMENT OF RULES 51, 53, 60, 61 AND NEW RULE 67

Shri P. Govinda Menon: Mr. President, the motion which I propose is of a formal character. Chapter X of the rules: adopted by this Assembly lays down the procedure to be adopted for the decision of doubts and disputes with regard to election of Members of this Assembly. But a perusal of the definition of the words 'Candidate' and 'Returned candidate' in rule 51 in that Chapter will show that these rules do not apply to members returned from Indian States. With respect to Members returned from Indian States, Standing Orders have been framed by the Honourable the President and it is under. these Standing Orders that the matter is being dealt with at present. The attempt made by this motion is to incorporate these Standing Orders in the rules themselves. Sir, I move that in Rule 51-

(1) After clause (a), insert the following new clauses-

"(aa) 'representative' of any Indian State or States means the person who is chosen as a representative of such State or States in the Assembly in accordance with the provisions contained in the Schedule to these Rules".

(ii) Add the following at the end of clause (b) :-

"and includes a candidate whose name has been reported by or on behalf of the Ruler or Rulers of any Indian State or States to the President in the manner provided in the Schedule to these rules as a duly chosen representative of such State or States."

Mr. President: There is no amendment to this motion.

The motion was adopted.

Shri P. Govinda Menon: Sir, I move-

In clause(1) of sub-rule (1) of Rule 53, for the words 'in the cast of the first election to the Assembly substitute the-words 'in the case of election to the Assembly held before the publication of these Rules.'

In clause (ii) of sub-rule (1) of rule 53, for the words "in the appropriate official Gazette", substitute the words "in the Gazette of India or in the Official Gazette of the Province concerned."

Mr. President : There is no amendment to this motion.

The motion was adopted.

Shri P. Govinda Menon: Sir, I move-

In sub-rule (1) of rule 60. after the words 'Indian Legislative Assembly Electoral Rules' insert the words and figures "as in force on the 1st day of August', 1947"

Mr. President: There is no amendment to this motion.

The motion was adopted.

Shri P. Govinda Menon: Sir, I move-

Add the following at the end of rule 61 :-

"and the orders so issued shall be final and shall not be questioned in any court."

Mr. President: There is no amendment to this motion.

The motion was adopted.

Shri P. Govinda Menon: Sir, I move-

After rule 66 insert the following new rule

"67. If any question arises as to the interpretation of these rules otherwise than in connection with an election held there under, the question shall be referred for the decision of the President and his decision shall be final."

Mr. President: There is no amendment to this.

The motion was adopted.

Shri P. Govinda Menon: I beg to move-

Schedule.-Insert the following Schedule at the end of the rules

THE SCHEDULE

(See Rule 51.)

1.The seats allotted to Indian States in the Statement shall be allocated among the various States and groups of States as in Annexure A, generally on the basis of one seat for one million of the population, fractions Of three-fourths or more being counted as one and lesser fraction being ignored in the case of individual States, and fractions of more than half being counted as one and lesser fractions being ignored in the case of groups of States.

#2. The President may, on the application of any State or States concerned, by order amend Annexure A to this Schedule so as to-

(a) alter the representation allotted to the States, individual or grouped;

(b) alter the grouping of the States by the division of a group into more than one group or the transfer of any State, or States from one group to another or otherwise;

Provided that-

(i) no such alteration shall affect the total representation of all States or of the group or groups of States concerned; and

(ii) in making any such alteration the population basis shall not be departed from and the geographical proximity, economic considerations, and ethnic, cultural and linguistic affinity shall be duly kept in view.

#2-A. When the representation allotted to the States, individual or grouped, or the grouping of the States is altered by an order made under paragraph 2, the President may, on application made in that behalf by the States affected by such order, declare the seats of the members of the Assembly representing the States so affected to be vacant.

3. Not less than 50 per cent of the total representatives of the States in the Assembly shall be elected by the elected members of the States' legislatures, or where, such legislatures do not exist, by the, members of electoral colleges constituted in accordance with the provisions made in this behalf by the Rulers of the States concerned. The States shall endeavour to increase the quota of elected representatives as much above 50 per cent of the total number as possible. Accordingly at least one half of the number of seats allotted to any State or group of States shall be filled by election in accordance with the provision made in that behalf by the Ruler of the State or States concerned.

4.The Conveners, in respect of the various groups of States specified in column I of the Annexure A, shall be the rulers specified in the corresponding entries in column 4 of that Annexure. The Secretary may in consultation with the States in the group make any such changes in the said column 4 as he may deem necessary or desirable.

5.On the completion of the election or nomination, as the case, may be, the Ruler of the State concerned shall make a notification as far as may be in the following form + stating the name or names of the person or persons elected or nominated as representative or representatives in the Constituent Assembly and cause it to be: communicated to the President of the Constituent Assembly. Where the selection has been made by a group of States, this notification shall be made by the convener for that group.

+FORM

BE IT HEREBY KNOWN THAT [here enter the name of the representative (s)] .... has/have been duly chosen as (a) representative (s) of [here, enter the name (s) of the State (s)] in the Constituent Assembly of India. In testimony whereof this notification is issued under my signature and the Seal of my State.

State (s)....................

Date.......................

Ruler of....................

ANNEXURE A

Single State

Division as shown in the table of seats appended to part II of the First schedule to the Govt. of India ACT,1935	Name of State	Number of seats in the Constituent Assembly	Convener
1	2	3	4

I	Hyderabad	16	..
II	Mysore	7	..
III	Kashmir	4	..
IV	Gwalior	4	..
V	Baroda	3	..
IX	Travancore	6	..
IX	Cochin	1	..
X	Udaipur	2	..
X	Jaipur	3	..
X	Jodhpur	2	..
X	Bikaner	1	..
X	Alwar	1	..
X	Kotah	1	..
XI	Indore	1	..
XI	Bhopal	1	..
XI	Rewa	2	..
XII	Kolhapur	1	..
XIV	Patiala	2	..
XIV	Bahawalpur	1	..
XVI	Mayurbhanj	1	..
	20	60	

Frontier Groups

VII	Sikkim	}1	Ruler of.-
XV	Cooch Behar	}	Cooch Behar
			State.
XV	Tripura	}	
XV	Manipur	}1	Tripura state.
XVII	Khasi States	}	

Interior Groups

VIII	Rampur	1	Rampur State
	Benares		
X	Bharatpur		
	Tonk		

	Dholpur		
	Karauli		
	Bundi		
	Sirohi		
(13 States)	Dungarpur	3	Bundi State
	Banswara		
	Partabgarh		
	Jhalawar		
	Jaisalmer		
	Kishengarh		
XI	Shahpura		

Division as shown in the Table of seats appended to part II of the First Schedule to the Govt. of India Act,1935.	Name of State	Number of seats in the Constituent Assembly	Convener
1	2	3	4
	Datia		
	Orcha		
	Dhar		
	Dewas (Senior)		
	Dewas (Junior)		
	Jaora		
	Ratlam		
	Panna		
	Samthar		
	Ajaigarh		
	Bijawar		
	Charkhari		
(26 States)	Chhatarpur	3	Panna State.
	Baoni		
	Nagod		
	Maihar		
	Baraundha		

	Barwani		
	Ali Rajpur		
	Jhabua		
	Sailana		
	Sitamau		
	Raigarh		
	Narsingarh		
	Khilchipur		
XVII	Kurwai		
XII	Cutch		
	Idar		
	Nawanagar		
	Bhavnagar		
	Junagadh		
	Dhrangadhra		
	Gondal		
	Porbandar		
(17 States)	Morvi	4	Nawanagar State.
	Radhanpur		
	Wankaner		
	Palitana		
	Dhrol		
	Limbdi		
	Wadhwan		
	Rajkot		
	Jafrabad		
XII-A	Rajpipla		
	Palanpur		
	Cambay		
	Dharampur		
	Balasinor		
	Baria		
(14 States)	Chhota Udepur	2	Rajpipla State.
	Sant		
	Lunawada		
	Bansda		

	Sachin		
	Jawhar		
	Danta		
XIII	Janjira		

Division as shown in the Table of seats appended to part 11of the First schedule to the Govt. of India Act, 1935.	Name of State	Number of seats in the Constituent Assembly	Convener
1	2	3	4
XII	Sangh		
	Savantvadi		
	Mudhol		
	Bhor		
	Jamkhandi		
	Miraj (Senior)		
	Miraj (Junior)		
	Kurundwad (Senior)		
	Kurndwad (Junior)		
(17 States)	Akalkot	2	Miraj (Junior) State.
	Phaltan		
	Jath		
	Aundh		
XI	Ramdurg		
	Pudukkottai		
	Banganapallee		
	Sandur		
XIV	Kapurthala		
	Jind		
	Nabha		
	Mandi		
	Bilaspur		
(14 States)	Suket		

	Tehri -Garhwal	3	Bilaspur State.
	Sirmur		
	Chamba		
	Faridkot		
	Malerkotla		
	$Loharu		
	Kalsia		
XVII	Bashahr		
XV	Sonepur		
	Patna		
	Kalahandi		
	Keonjhar		
	Dhenkanal		
	Nayagarh		
	Talcher		
	Nilgiri		
	Gangpur		
	Bamra		
(25 States)	Seraikela		
	Baud	4	Bundi State.
XVII	Bonai		
	Athgarh		
	Pal Lahara		
	Athmalik		
	Hindol		
	Narsingpur		
	Baramba		
	Tigiria		
	Khandpara		
	Ranpur		
	Daspalla		
	Rairakhol		
	Kharsawan		
XVI-A	Bastar		
	Surguja		

	Raigarh		
	Nandgaon		
	Khairagarh		
	Jaipur		
(14 States)	Kanker	3	Baud State.
	Korea		
	Sarangarh		
XVII	Changbhakar		
	Chhuikadan		
	Kawardha		
	Sakti		
	Udaipur		
XVII	All other states	4	Baghat State.

Mr. President : There is no amendment to this motion.

The motion was adopted.

Mr. President: We have come to the end of the Agenda. We will now go back to the remaining item, viz., the resolution to be moved by Shrimati Durgabai.

ADDITION OF RULES 38-C TO 38-V

Shrimati G. Durgabai: I beg to move Rule 38-C.

38-C. As soon as may be after a Bill has been introduced, the Bill shall, unless the President otherwise directs, be published in the Gazette of India.

Mr. President: There are two verbal amendments given notice of by Mr. Naziruddin Ahmed, that in the proposed rule 38-C, for the words "after a Bill" the words "after the Bill", and for the words "has been introduced, the Bill" the words "has been introduced, it" be substituted.

Shrimati G. Durgabai: I accept that amendment.

Mr. President : Mr. Naziruddin Ahmed, she has accepted the amendment.

Mr. Naziruddin Ahmad: Sir, I beg to move:

That in the proposed rule 38-C, for the words "after a Bill" the words "after the Bill," and for the words "has been introduced, the Bill" the words "has been introduced, it" be substituted.

Shrimati G. Durpbai: I have accepted the amendments.

The amendments were adopted.

Mr. President: I put Rule 38-C, as amended, to voice.

Rule 38-C, as amended, was adopted.

Shrimati G. Durgabai: I beg to move Rule 38-D:

38-D. When a Bill is introduced, or on some subsequent occasion, the member who has introduced the Bill may make one of the following motions in regard to the Bill, namely :-

(a) that it be taken into consideration by the Assembly either at once or on some future day to be then specified; or

(b) that it be referred to a Select Committee;

Provided that no such motion shall be made until after copies of the Bill have been made available for the use of members and that any member may object to any such motion being made, unless copies of the Bill have been so made available for three days before the day on which the motion is made, and such objection shall prevail unless the President in his discretion allows the motion to be made.

I accept the amendment that in the proposed Rule 38-D, for the words "When a Bill" the words "At the time when the Bill" be substituted.

Mr. Naziruddin Ahmad: Sir, I beg to move:

That in the proposed rule 38-D for the words "When a Bill" the words "At the time when the Bill" be substituted.

Mr. President: She has accepted that amendment. I put the Rule, as amended, to vote.

Rule 38-D as amended, was adopted.

Shrimati G. Durgabai: I beg to move Rule 38-E (1).

38-E : (1) On the day on which any such motion is made; or on any subsequent day to which the discussion thereof is postponed, the principles of the Bill and its general provisions may be discussed, but the details of the Nil must not be discussed further than is necessary to explain its principles.

Mr. Naziruddin Ahmad: I beg to move amendment No. 9-

That in sub-rule (1) of the proposed rule 38-E, for the words "postponed, the principle" the words "adjourned, only the principles" be substituted.

With regard to this, the technical language which is used is not "postponed". "Postponed" means postponed for ever. Adjourned means adjourned for further consideration. The word "adjourned" is more suitable.

I also move amendment No. 10-

That in sub-rule (1) of the proposed rule 38-E, for the words "the Bill must not" the following words be substituted

"The Bill shall not."

Shrimati G. Durgabai: Sir, I do not accept amendment No. 9. I accept amendment No. 10.

Mr. Naziruddin Ahmad: Sir, I beg the leave of the House to withdraw amendment No. 9.

Mr. President: May I take it that the House gives leave to withdraw amendment No. 9 ?

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Amendment No. 10 has been accepted by the mover. I shall put Rule 38-E (1), as amended, to vote.

Rule 38-E (1), as amended. was adopted.

Shrimati G. Durgabai: I beg to move Rule 38-E (2).

38-E (2) At this stage, no amendments to the Bill may be moved, but if the member who has introduced the Bill moves that his Bill be taken into consideration, any member may move as an amendment that the Bill be referred to a Select Committee.

Mr. Naziruddin Ahmed: Sir, I beg to move:

That in sub-rule (2) of the proposed rule 38-E, for the words "any member may" the words "any other member may", be substituted.

The point is that the member who moves cannot move an amendment. So the question of amendment must be left to any other member than the person who moves. That is why I think his amendment is necessary.

I also move-

That in sub-rule (2) of the proposed rule 38-E, the words "or be circulated for eliciting public opinion thereon" be added at the end.

Shrimati G. Durgabai: I do not accept the amendment No. 11. I oppose amendment No. 12 also.

Mr. Naziruddin Ahmed: Sir, I beg the leave of the House to withdraw both these amendments.

Mr. President: I take it that the House gives leave to the withdrawal.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President: I now put Rule 38-E, as amended, to vote.

Rule 38-E, as amended, was adopted.

Shrimati G. Durgabai: I beg to move Rule 38-F.

38-F. (1) The member who has introduced the Bill shall be a member of every select Committee, and it shall not be necessary to include his name in any motion for appointment of such a Committee.

(2)The other members of the Committee shall be appointed by the Assembly when a motion that the Bill be referred to a Select Committee is made.

(3)The committee shall-choose a member of the Committee to be their Chairman, and in his absence may choose another member of the Committee to preside and exercise the power of the Chairman.

(4)The Chairman shall not vote in the first instance but, in the case of an equality of votes, shall have a casting vote.

(5) The Select Committee may bear expert evidence and representatives of special interests affected by the measure before them.

Mr. Naziruddin Ahmad: Sir, I beg to move:

That in sub-rule (1) of the proposed rule 38-F, after the words "of every Select Committee. the words "to which the Bill may be referred" be inserted.

These words are necessary to complete the sense.

Shrimati G. Durgabai: He will please move all the amendments to rule 38-F.

Mr. Naziruddin Ahmed: Sir, I beg to move:

That in sub-rule (2) of the proposed rule 38-F, for the words "shall be appointed", the words "shall be elected" be substituted.

The word "election" is more proper in the case of selection by the legislature.

I beg to move also--

That in sub-rule (3) of the proposed rule 38-F, for the words "The Committee shall choose a member of the Committee" the words "The members of the Committee shall choose one of them" be substituted.

Sir, this is only a verbal amendment. The proposed Rule says that the 'members of a Committee' should choose a 'member of the Committee' as Chairman. Instead of repeating the same expression, I have said, choose 'one of them'.

My next amendment is:-

That in sub-rule (3) of the proposed rule 38-F, the words "of the Committee' after the words "may choose another member" be omitted.

The next amendment is:-

That is sub-rule (3) of the proposed rule 38-F, for The word "the powers of the Chairman" the words "the powers of the Chairman during his absence" be substituted.

The object of this amendment is this' The power of the person chosen to preside in the absence of the chairman can only be exercised during the absence of the Chairman. The Rule as it stands would mean that the man who is chosen to preside can continue to do so even when the Chairman returns and joins the, meeting.

Shrimati G. Durgabai : Sir, I oppose all these amendments. All members of the Select Committee are "appointed" not "elected". That is the language used and it has been rightly adopted here also.

Sir, I would like to move a small amendment myself, namely:

that in sub-clause (1) of clause 38-F, for the word "every" before the words "Select Committee" the word "the" be substituted.

Mr. Naziruddin Ahmad: Sir, I beg leave to withdraw all my amendments, Nos. 13 to 17.

Amendments Nos. 13 to 17 were, by leave of the Assembly, withdrawn.

Mr. President: Now I put Rule 38-F as amended by the Mover to the vote.

Rule 38-F, as amended, was adopted.

Shrimati G. Durgabai: Sir, I beg to move Rule 38-G.

38-G. (1) At the time of the appointments by the Assembly of the members of a Select Committee the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be fixed by the Assembly.

(2) If at the time. fixed for any meeting of the Select Committee, or if at any time during any such meeting, the quorum of members fixed by the Assembly is not present the Chairman of the Committee shall either suspend the meeting until a quorum is present or adjourn the Committee to some future day.

(3) Where the Select Committee has been adjourned in pursuance(of sub rule (2) on two successive days fixed for the meeting .if the Committee, the Chairman shall report the fact to the Assembly.

Mr. Naziruddin Ahmad: I do not move amendment No. 18 to this Rule, standing in my name.

Mr. President: So there are no amendments to this rule. I put it to vote.

Rule 38-G was adopted.

Shrimati G. Durgabai: Sir, I beg to move Rule 38-H.

38-H. (1) When a Bill has been referred to a Select Committee, the Committee shall make a report thereon.

(2)Reports may be either preliminary or final.

(3)If any member of a Select Committee desires to record a minute of dissent on any point, he must sign the report stating that does so Subject to his minute of dissent, and must at the same time hand in his minute.

Mr. President : There are no amendments to this Rule. So I put it to vote.

Rule 38-H was adopted.

Shrimati G. Durgabai: Sir, I beg to move Rule 38-I.

38-I (1) The report of the Select Committee on a Bill shall be presented to the Assembly by the Chairman of the

Committee.

(2)In presenting a report, the Chairman shall. if he makes any remarks confine himself to a brief statement of facts, but there shall be no debate at this stage.

Mr. President: To this Rule also there are no amendments. So I put it to Vote.

Rule 38-I was adopted.

Shrimati G. Durgabai: Sir, I beg to move Rule 38-J.

38-J. The Secretary shall cause every report of a Select Committee to be printed, and a copy thereof shall be made available for the use of every member of the Assembly. The report, with amended Bill shall, unless the President otherwise directs, be published in the Gazette of India.

Mr. Naziruddin Ahmad: Sir, I beg to move

That in the proposed rule 38-J, for the words "with amended Bill" the words "with the amended Bill" be substituted.

I think, Sir, this amendment should be accepted for obvious reasons.

Shrimati G. Durgabai: Sir, I accept this amendment.

Mr. President: I hope the House gives leave to accept this amendment.

The amendment was adopted.

Mr. President: I shall now put the Rule as amended.

Rule 38-J, as amended, was adopted.

Shrimati G. Durgabai: I move Rule 38-K.

38-K. (1) After the presentation of the final report of a Select Committee on a Bill, the member who has introduced the Bill may move

(a) that the Bill as reported by the Select Committee be taken into consideration :

Provided that any member of the Assembly may object to its being so taken into consideration if a copy of the report has not been made available for the use of members for three days, and such objection shall prevail unless the President in his discretion allows the, report to be taken into consideration; or

(b) that the Bill as reported by the Select Committee be re-committed either

(i) without limitation; or

(ii) with respect to particular clauses or amendments only; or

(iii) with instructions to the Select Committee to make some particular or an additional provision in the Bill.

(2) If the member who has introduced the Bill moves that the Bill be taken into consideration any member may move as

an amendment that the Bin be recommitted.

Mr. President : There are no amendments to Rule 38-K. So I put it to vote.

Rule 38-K was adopted.

Shrimati G. Durgabai: Sir, I beg to move Rule 38-L.

38-L. (1) 7The provisions of rules 38-A to, 38K shall not apply to the Draft Constitution of India settled by the Drafting Committee appointed in pursuance of the resolution of the Assembly dated the 29th day of August, 1947 (hereinafter referred as "the Constitution"), and any member may introduce the Constitution after giving notice of his intention and it shall not be necessary to move for leave to introduce the Constitution.

(2)The period of notice for introducing the Constitution under this rule shall be five days unless the President allows the Constitution to be Introduced at shorter notice.

Mr. Naziruddin Ahmad: Sir, I have several amendments to this Rule. First, I beg to move;--

"That in sub-rule (1) of the proposed rule 38-L, for the words "the Draft Constitution" the words "consideration of the Draft Constitution" be, substituted.

Secondly I beg to move-

That in sub-rule (1) of the proposed rule 38-L, the words and brackets (thereinafter referred to as "the Constitution" be deleted; and for the words "referred the words "referred to as" be substituted.

On this amendment, Sir, I wish to say this. There is a distinction between the 'Constitution and the 'Draft Constitution. Here the Draft Constitution is subsequently termed as the "Constitution". The word 'Constitution' has been used to mean the 'Draft Constitution' and the terms are not interchangeable. This is certainly a shortened expression but it gives a different sense. That is why I have tabled this amendment. The latter part of the amendment removes a clerical error.

Next, Sir, I beg to move-

"That the following be omitted from sub-rule (1) of the proposed rule 38-L:-- "and any member may introduce the Constitution after giving notice of his intention and it shalt not be necessary to move for leave to introduce the Constitution."

Then, next I beg to move-

"That after sub-rule (1) of the proposed rule 38-L, the following new sub clause be inserted :-

"(1A) The Draft Constitution shall, as soon as practicable, be published in the Gazette of India.

(1B) Any member may introduce the Draft Constitution after giving notice of his intention but it shall not be necessary to move for leave to introduce the same".

Sir, I have attempted here to interpose a sub-rule (1-A) for the publication of the constitution of India in the Gazette of India. This is to ensure that the people at large should get notice of what was happening.

I think this is an obvious necessity. Publicity is the essence of democracy and the constitution should be published. As regards 1(B) it is nothing but the last part of sub-rule (1) made into an independent sub-clause just to interpose the publication clause in the Gazette.

I further beg to move-

"That in sub-rule (2) of the proposed rule 38-L and in the proposed rules 38-N, 38-0, 38-P, 38-Q, 38-R, 38-S and 38-T, for the word Constitution, Wherever it occurs, the words 'Draft Constitution' be substituted."

This amendment is only consequential upon what I have submitted.

Shrimati G. Durgabai: Sir, I oppose all the amendments to Rule 38-L, except the latter part of the amendment No. 21 i.e., for the words 'referred as' the words 'referred to as' be substituted. The publication is deliberately omitted as after the Constitution is drafted the President will take such steps as he likes to publish the same.

Mr. Naziruddin Ahmad: In that case I would ask for leave to withdraw all the other amendments.

Mr. President: The mover has accepted only one amendment i.e., for the words 'referred as' the words 'referred to as' be substituted. That is accepted by the House. All other amendments are withdrawn.

Rule 38-L, as amended, was adopted.

Shrimati G. Durgabai: Sir, I beg to move Rule 38-M.

38-M. When the Constitution is introduced the member introducing the Constitution may move that it be taken into consideration by the Assembly.

Provided that no such motion shall be made until after copies of the Constitution have been made available for the use of members, and that any member may object to any such motion being made unless copies of the Constitution have, been made available for three days before the date on which the motion is made, and such objection shall prevail, unless the President in his discretion allows the motion to be made.

Mr. President: There is no amendment to 38-M.

Rule 38-M was adopted.

Mr. Naziruddin Ahmad : Sir, I beg to move.

That after the proposed rule 38-M, the following new rule be inserted, namely :-

"38-MM. When a motion is made that the Draft Constitution be taken into consideration, any other member, may, on giving two days notice, move that it be Circulated to elicit public opinion thereon or that it be referred to a Select Committee constituted by the President."

In this matter as in the other motion it is desired that the greatest amount of publicity should be given to what is being done in connection with the Constitution but if it is your desire to take such action as you, Sir, in your wisdom think fit in this direction, then in that case I shall be prepared to' withdraw the amendment but, as I have said, I think publicity is the very essence of democracy.

Mr. President: My own idea is that as soon as the Drafting Committee gives me the final draft I shall have it published in the Gazette and I shall. also have cheap printed copies made available so that everyone who is interested may get copies and study and offer such suggestions as he. may wish and I shall also see that a printed copy is made available to the members of the Constituent Assembly well in advance of the meeting when it will be considered.

Mr. Naziruddin Ahmad: That, I beg to submit, will more than satisfy the object of these amendments and I beg leave of the House to withdraw my motion.

The amendment was, by leave of the Assembly, withdrawn.

Shrimati G. Durgabai: Sir, I move clause 38-N.

38-N. When a motion that the Constitution or a Bill be taken into consideration has been carried, any member may propose an amendment of the Constitution or the Bill, as the case may be.

Mr. Naziruddin Ahmad: Sir, I move-

"That in the proposed rule 38-N, for the words 'has been carried' the words has been agreed to' be inserted; for the word 'any member' the words 'any other member' and for the words 'amendment of' the words 'amendments to' be substituted".

With regard to the first part of the amendment the word 'agreed to' is, the recognized word in the Legislature rather than 'Carried'. With regard to the second part of the amendment for 'any member' the words 'any other member' has been suggested to distinguish between the member who moves the motion and the rest. The last part is only a drafting amendment.

Shrimati G. Durgabai: I oppose this amendment, because 'carried' is the recognized word in the Assembly Rules. 'Any member' means 'and other member' and so I do not accept his amendment.

Mr. Naziruddin Ahmad: I beg leave to withdraw my amendments.

The amendments were, by leave of the Assembly, withdrawn.

Rule 38-N was adopted.

Shrimati G. Durgabai: I beg to move clause 38-O.

38-O.(1) If notice of a proposed amendment has not been given two clear days More the day on which the Constitution or the Bill, as the case may be, is to be considered, any member may object to the moving of the amendment, and such objection shall, prevail, unless the President in his discretion allows the amendment to be moved.

(2)The Secretary shall, if time permits, cause every notice of a proposed amendment to be printed, and a copy thereof to be made available for the use of every member.

Shri H. V. Kamath : Mr. President, by knowledge of the English language is very meagre and it is therefore, with considerable trepidation that I submit that the mandatory 'shall' and the conditional 'if' go ill together and their juxtaposition, one in the main and the other in the subordinate clauses of this sub rule, might do violence to the, rules of syntax. But if our wise linguistic experts here hold otherwise, then I do not desire to press this amendment. I move the amendment:-

"That in sub-rule (2) of the proposed rule 38-0, for the words 'The Secretary shall, if time permits, cause the following be substituted

"The Secretary may, if time permits, cause"

or alternatively,

"The Secretary shall cause."

Shrimati G. Durgabai: I oppose this amendment.

Mr. President: Then I put Mr. Kamath's amendment to the House.

The amendment was negatived.

Mr. President: Then I put Rule 38-0.

Rule 38-0 was adopted.

Shrimati G. Durgabai: Sir, I beg to move Rule 38-P.

38-P. Amendments shall ordinarily be considered in the order of the clauses of the constitution or the Bill to which they respectively relate; and in respect of any such clause a motion shall be deemed to have been made "that this clause stand part of the Constitution" or "that this clause stand part of the Bin", as the case may be.

Mr. President : There is no amendment to this Rule. So I put it to the House.

Rule 38-P was adopted.

Shrimati G. Durgabai: Sir, I beg to move Rule 38-Q.

38-Q Notwithstanding anything in these rules, it shall be in the discretion of the President, when a motion that the; Constitution or a Bill be taken into consideration has been carried, to submit the Constitution or any part of the Constitution, or as the case may be, the bill or any part of the Bill, to the Assembly clause by clause. When this procedure is adopted, the President shall call, each clause separately, and, when the amendments relating to it have been dealt with, shall put the question. "That this clause (or, as the case may be, that this clause as amended) stand part of the Constitution (or, as the case may be, the Bill)".

Mr. Naziruddin Ahmad: Sir, I beg to move that for the proposed Rule 38. for the words "has been carried" the, words "has been agreed to" and for the words "or as the case may be, the Bill or any part of the Bill" the words and brackets "(or, as the case may be, the Bill or any part of the Bill" be substituted.

Sir, with reference to the first part, I think it has already been disposed of. So I do not press for changing the words "has been carried" by the words "has been agreed to". But with regard to the second part of my amendment, the words "as the case may be" occur in line 5, and also at the end. But at the end they are inside the brackets and not at the place which is the subject of the amendment. Therefore, to ensure uniformity, I have brought in this amendment.

Shrimati G. Durgabai : I consider the first part of the amendment unnecessary, The second part, of putting the words in brackets, I accept.

Mr. President: The Mover has accepted the second part and I now put the Rule; as amended, to the House.

Rule 38-Q, as amended, was adopted.

Shrimati G. Durgabai : Sir, I beg to move Rule 38-R.

38-R. (1) When a motion that the Constitution be taken into consideration has been carried and all amendments to the Constitution moved have been considered, any member may move that the Constitution be passed;

Provided' that the President may, before allowing the motion to be made, refer the Constitution as amended 'to the Drafting Committee referred to in sub-rule (1) of rule 38-L with instructions to carry out such renumbering of the clauses and such revision and completion of the marginal notes thereof as may be necessary and to recommend such formal or consequential amendments to the Constitution as may be required..

(2)When the Constitution has been so referred do the Drafting Committee and the Committee has presented its report, any member may move that the Constitution as revised by the Committee be passed.

(3)To a motion made under sub-rule (1) or sub-rule (2) no amendment may be moved which is not either formal or consequential upon an amendment made after the Constitution was taken into consideration.

Mr. Naziruddin Ahmad: Sir, I do not move the first part of my amendment about substituting the words "agreed to" for the words "has been carried". But I move :-

That in the proviso to sub-rule (1) of the proposed rule 38-R, commas be inserted after the words "to the Drafting Committee" and the words, " in sub-rule (1)of rule 38-L".

I also move-

That in the proviso to sub-rule (1) of the proposed rule 38-R, after the words such re-numbering of the clauses", the words "and such revision of punctuation" be inserted.

With regard to these amendments, the rule proposes that, after the Constitution is adopted by this House, to refer the Draft Constitution to the Drafting Committee for certain corrections and changes. But the revision of the punctuations is not provided for though in the Legislative Rules of Business this Power is given to the Secretary. But that rule is not being followed so far as the Constitution is concerned. Therefore the question of the revision of punctuations should also be given to the Committee.

I also move my amendment No. 32-

That in sub-rule (2) of the proposed Rule 38-R, after the words "referred to the Drafting Committee" the words "under the proviso to sub-rule (1)" be inserted.

Shrimati G. Durgabai: I accept amendments Nos. 30 and 31. But I oppose amendment No. 32.

Mr. Naziruddin Ahmad: Sir, then I would beg leave to withdraw my amendment No. 32.

Mr. President: I hope be has the leave of the House to withdraw his amendment No. 32.

Amendment No. 32 was, by leave of the Assembly, withdrawn.

Amendments Nos. 30 and 31 were adopted.

Shrimati G. Durgabai: Sir, I have two verbal amendments to propose. One is that in line 2, the word 'all' in 'and all amendments' may be changed to 'the'. The second is, to insert the words 'if any' between the words 'Constitution' and moved' in line 3.

Mr. President : Then I put the rule 38-R (1), (2) and (3) as amended, to the House.

Rule 38-R as amended was adopted.

Shrimati G. Durgabai: Sir, I move rule 38-S.

38-S. (1) Where a motion that a Bill be; taken into consideration has been carried and no amendment to the Bill is made, the member who has introduced the Bill may at once move that the Bill be passed.

(2) If any amendment of the Bill is made, any member may object to any motion being made on the same day that the Bill be passed, and such objection shall prevail, unless the President in his discretion allows the motion to be made :

Provided that the President may, before allowing the motion to be made refer the Bill as amended either to the Drafting Committee referred to in sub-rule (1) of rule 38-L, or to another ad hoc Committee consisting of members of the Assembly appointed by him with instructions to carry out such renumbering of the clauses and such revision and completion of the marginal notes thereof as may be necessary and to recommend such formal or consequential amendments to the Bill as may be required.

(3) Where the objection prevails, a motion 'hat the Bill be passed may be brought forward on any future day.

(4) When the Bill has been so referred to the Drafting Committee or the Committee appointed under the proviso to sub--rule (2) and the Committee has presented its report, any member may move that the Constitution as revised by the Committee be passed.

(5) To a motion made under sub-rule (2), sub-rule (3) or sub-rule (4), no amendment may be moved which is not either formal or consequential upon an amendment made after the Bill was taken into consideration.

Mr. Naziruddin Ahmad: My amendment No. 33 seeks to substitute "has been agreed to" for tile words "has been carried". But that has already been disposed of and so I do not move it. I move amendments Nos. 34 and 35.

That in the proviso to sub-rule (2) of the proposed rule 38-R, 38-S, after the words "renumbering of the clauses" the words "and such revision of punctuation" be inserted.

That in sub-rule (4) of the proposed rule 38-S, for the words "that the Constitution" the words "that the Bill" be, substituted.

Sir, so far as rule 38-S is concerned, it deals with a Bill' alone as distinct from the 'Constitution'. In some of the rules, the words 'Constitution' and 'Bill' are used. But so far as this particular rule is concerned, I carefully looked into it and find that it deals with only Bill. Therefore, the word 'Constitution' is, I take it, clerical error, and the word 'Bill' should be used.

Shrimati G. Durgabai: Sir, I accept No. 34, but No. 35 is not necessary as the clerical error has been corrected since.

Mr. Naziruddin Ahmad: But the difficulty is the original motion was as it was then printed and not with the correction. So it will have to be moved again along with the correction.

Shrimati G. Durgabai: Sir, I move that the word 'Bill' may be substituted for the word 'Constitution'.

Mr. Naziruddin Ahmad: That is exactly my amendment.

Mr. President: That means both the amendments are accepted by the mover.

Shri M. Ananthasayanam Ayyangar : Sir, in sub-rule (1) it is. stated "that a Bill be taken into...... etc." In sub-rule (4) we have "When the Bill has been etc." In the last but one line, the word "Constitution" is used. Is that the one to be changed to "Bill" ?

Mr. President : The word "Bill" has to be used for "Constitution" all through.

Rule 38-S, as amended, was adopted.

Shrimati G. Durgabai: I beg to move Rule 38-T.

"The member who has introduced a Bill may at any stage of the Bill move for leave to withdraw 'the Bill, and after such leave is granted, no further motion may be made with reference to the Bill."

Mr. Naziruddin Ahmad: I move-

"That in the proposed rule 38-T, for the words land after such', the words 'and if such' be substituted".

This is only a verbal amendment.

Shrimati G. Durgabai: I accept the amendment.

The amendment was adopted.

Rule 38-T, as amended, was adopted.

Shrimati G. Durgabai: I beg to move Rule 38-U--

"When the Constitution is passed by the Assembly, it shall be submitted to the President who shall authenticate the same by affixing his signature thereto."

Shri M. Ananthasayanam Ayyangar: A small error has crept in here. The clause says: "When the Constitution is passed by the Assembly, it shall be submitted to the President........ There is no agency for that submission. Instead of this, we may amend the clause as follows:

"When the Constitution is passed by the Assembly, the President shall authenticate same by affixing his signature thereto."

Shrimati G. Durgabai: I accept the amendment, Sir.

Mr. President: The question is:

"When the Constitution is passed by the Assembly, the President shall authenticate same by affixing his signature thereto."

Rule 38-U, as amended, was adopted.

Mr. Naziruddin Ahmad: I move New-Rule 38-UU I have given notice of. It runs :

After the proposed rule 38-U, the following new; rule be inserted :

"38-UU. The Draft Constitution as so authenticated by the President shall be published in the Gazette of India and shall thereupon constitute the Constitution of Free India".

Shrimati G. Durgabai: I do not accept this new rule. This matter has already been dealt with.

Mr. Naziruddin Ahmad: In view of the fact that this is only a routine matter I beg leave to withdraw this motion.

The motion was, by leave of the Assembly, withdrawn.

Mr. Naziruddin Ahmad: I have to apologise to the House for speaking so often. But it was due to the desire to improve the rules in my own humble way that I have done so. I am afraid I have tired out the patience of the House am sorry for it. But since these defects came to my notice I thought it my duty to raise them before the House.

Mr. President: The Honourable Member need not apologise to the House for that. I am sure we are thankful to him.

Shrimati G. Durgabai: I move clause 38-V-

"When a. Bill referred to in rule 38-A is passed by the Assembly, a copy thereof signed by the President shall be submitted to the Governor-General for his assent. When the Bill is assented to by the Governor-General, it shall become an Act and shall be Published in the *Gazette of India.".*

Shri H. V. Kamath: Sir, I would suggest in this connection that, as this Rule 38-V has come in for a good deal of adverse criticism, it may be referred back to an expert committee for re-examination in the light of the objections raised here.

Shri M. Ananthasayanam Ayyangar: Regarding this rule, at the time of the consideration stage, I myself raised two points for clarification by the Honourable Dr. Ambedkar. I do still think that his reference to the Governor-General and his assent is not necessary. Though I may not agree to the rule being referred back to the Committee, here and now it is possible to change it if the Mover, with the advice of Dr. Ambedkar, changes her opinion. I will be very glad if she does so. I consider that these rules provide for the passing of the new Constitution for India and also the same set of rules, with the exception of one, apply to the modification of the existing Constitution. Other Acts will be brought forward to empower the executive to make rules and regulations to the Indian Union in the Constituent Assembly

(Legislative Section). Therefore, so far as these other bills are concerned, they are regulated by the Government of India Act as adapted. Clause 32 lays down that these rules must receive the assent of the Governor-General and it is open to him to withhold his assent and remit for re-consideration either wholly or with reference to particular sections and so on. But so far as this section is concerned, do we want the Governor-General to exercise this power ? I do think that because of some errors that might have crept in we are clothing him with this power. Therefore the errors are no argument for clothing the Governor-General with this power.

There was another point raised. Under the existing law, under the Independence Act passed by Parliament of Britain, the Governor-General has been given the power to adopt the 1935 Act to suit the changed conditions. But that power continues only till 31st March 1948. If because he is given that power, he modifies the Act, be will become a super-legislature so far as the Act is concerned. If any further change has to receive his assent that power will lapse after 31st March 1948. There is no likelihood of the Government of India Act hereafter being changed. So, hereafter, when the Government of India Act as adapted will be no more there, why should we re-clothe the Governor-General with this power? Further, it is not in the Legislative side of the Dominion legislature that we are trying to modify the Constitution Act. It is only on this side, which deals with the new Constitution for India that we have taken power to modify the existing Acts. Therefore these two, the modifications of the existing Act and the preparation of a new Constitution differ fundamentally and for the latter there is no need to get the assent of the Governor-General. When we are making a law, let us not fall into that error. In some advice that was given by Dr. Ambedkar he said that it is open to this Assembly to modify the provision for reference to the Governor-General. Therefore he is not wedded to-that opinion. It is open to, Dr. Ambedkar to change his mind. I would appeal to him to reconsider this matter. We are trying to lift ourselves from the old curse under which we have been living for 150 years. We have struggled against it for a long time. Why should we again submit our neck to the Governor-General, whether he is our nominee or any other ? Therefore, instead of re-committing this to the Committee we may make the modification straightaway.

Shri H. V. Kamath: Sir, I submit that so far as this Assembly is concerned, you are the supreme authority and no bill or resolution adopted by this Assembly should be submitted for ratification by or assent to any outside authority, and as such this clause is not necessary.

Mr. President: Does any other Member wish to speak about this clause? There is no amendment unless I take Mr. Kamath's suggestion as an amendment that it be referred back to the Committee.

Shri H. V. Kamath: I would request you to treat it as an amendment.

Mr. President: The question is:

That the proposed Rule 36-V be referred to the Drafting Committee.

The amendment was adopted.

ANNOUNCEMENT BY PRESIDENT *re* NEXT SESSION

Mr. President: We have come to the end of the agenda and. there is one thing which has to be done before we adjourn, and that is to give me power to convene the next session of the Assembly at a suitable time. Under the rules, I cannot call it after a limited time, but in this case I suppose it would be a pretty long time before the next session is called for considering the draft Constitution. So I wish you to give me the power to call it at a suitable time.

Seth Govind Das (C. P. & Berar: General) : *[Mr. President, I propose that the authority for the calling of the next session of the Assembly should be given to the President.]*

Mr. President: Is there any amendment to this ?

The motion was adopted.

Mr. President: I will give the House an idea of the time-table that I have in my mind. I expect the drafting Committees to give me the final draft about the middle of February and as soon as the final draft is received, it will be printed and it will be sent to the Press and it will also be published in the Gazette and otherwise publicised and when the Legislative Session is over, which will be. I expect some time towards the end of March or beginning of April, I shall fix a suitable date, sometime in April, for the next session of the Constituent Assembly for considering the Draft Constitution and we shall sit as long as it is necessary to complete the consideration and final adoption of the Constitution.

An Honourable Member: Will there be any interval between the Legislative session and the Constitutent Assembly session ?

Mr. President : I think I shall give a few days' interval but not a long interval.

Mr. R. K. Sidhwa: We will require a fortnight at least.

Mr. President: I shall give a short interval, but I do not know how much it will be.

An Honourable Member: Not less than two weeks.

Mr. President. I shall consider that It all depends upon when the Legislative session ends.

An Honourable Member: It is due to end on the 4th April.

Mr. President : Every year it is stated that the session will end on such and such a date, but then it is extended beyond that date. It is not possible to fix a date today, but I shall give some time after it.

The Assembly then adjourned to a date to be fixed by the President.

[Translation of Hindustani speech.]

These provisions (2 & 2-A) are new, having been substituted for the original paragraph 2.

$ By special arrangement Loharu is represented by the representative of Bikaner State.

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME VII

Thursday, the 4th November 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eleven of the clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

PRESENTATION OF CREDENTIALS AND SIGNING THE REGISTER.

The following Members presented their credentials and signed the Register:

(1) Shri H. Siddaveerappa (Mysore State);

(2) Mr. K. A. Mohammed (Travancore State);

(3) Shri R. Sankar (Travancore State);

(4) Shri Amritlal Vithaldas Thakkar [United State of Kathiawar (Saurashtra)];

(5) Shri Kaluram Virulkar [United State of Gwalior, Indore, Malwa (Madhya Bharat)];

(6) Shri Radhavallabh Vijayavargiya [United State of Gwalior, Indore Malwa (Madhya Bharat)];

(7) Shri Ram Chandra Upadhyaya (United State of Matsya);

(8) Shri Raj Bahadur (United State of Matsya);

(9) Thakar Krishna Singh (Residuary States);

(10) Shri V. Ramaiah (Madras State);

(11) Dr. Y. S. Parmar (Himachal Pradesh).

TAKING - THE PLEDGE

The following Member, took the pledge.

Shri Syamanandan Sahaya.

HOMAGE TO THE FATHER OF THE NATION

Mr. President: Honourable Members, before we take up the items on the Order Paper, I bid you to rise in your places to pay our tribute of homage and reverence to the Father of the Nation who breathed life into our dead flesh and bones, who lifted us out of darkness of despondency and despair to the light and sunshine of hope and achievement and who led us from slavery to freedom. May his spirit continue to guide us. May his life and teaching be the torchlight to take us further on to our goal.

(All the Members stood up in silence.)

CONDOLENCE ON THE DEATHS OF QUAID- E-AZAM MOHAMMED ALI JINNAH, SHRI D. P. KHAITAN AND SHRI D. S. GURUNG

Mr. President: I ask you, Members, to stand in your places to pay our tribute of respect to Quaid-e-Azam Mohammed Ali Jinnah, who by his grim determination and steadfast devotion was able to carve out and found Pakistan and whose passing away at this moment is an irreparable loss to all. We send our heartfelt sympathies to our brethren across the frontier.

(The Members stood up in silence.)

Mr. President: Two Members have died since the Constituent Assembly met in its constitution - making function. They are Shri Debi Prasad Khaitan and Shri Damber Singh Gurung from Darjeeling. They represented their constituencies very faithfully and were of considerable help in our deliberations. I ask you to rise in your places to show our respect to their memory.

(The Members stood up in silence.)

AMENDMENTS TO CONSTITUENT ASSEMBLY RULES 5-A & 5-B

Mr. President: We shall now proceed to take up the items on the Order Paper. The first item is a motion by Mr. Govinda Menon and also by Shrimati Durgabai, of which notice has been given. I would ask Shrimati Durgabai to move it.

Shrimati G. Durgabai (Madras : General): Sir, I beg to move:

That the provisions mentioned in the Constituent Assembly Notification No. CA/43/Ser/48-I, dated the 2nd August 1948, be made part of the Constituent Assembly Rules, as shown in the amendments below, with effect from the 2nd August, 1948: -

(i) Rules 5-A and 5-B -

> For Rules 5-A and 5-B substitute the following Rule: -
>
> "5-A. When a vacancy occurs by reason of death, resignation or otherwise in the office of a member of the Assembly representing an Indian State or more than one Indian State specified in column 1 of the Annexure to the Schedule to these rules, the President shall notify the vacancy and make a request in writing to the authority specified in the corresponding entry in column 3 of that Annexure to proceed to fill the vacancy as soon as may reasonably be practicable by election or by nomination, as the case may be, in the case of the States specified in Part I of the said Annexure, and by election in the case of the States specified in Part II of that Annexure:
>
> Provided that in the case of the States specified in Part I of the said Annexure, where the seat was filled previously by nomination, the vacancy may be filled by election:
>
> Provided further that in making a request to fill a vacancy by election under this rule the President may also request that the election be completed within such time as may be specified by him."

(ii) In Rule 51 -

> "(b) 'Returned candidate' means a candidate whose name has been published in the appropriate Official Gazette as a duly elected member of the Assembly and includes a candidate whose name has been reported to the President in the manner provided

in paragraph 5 of the Schedule to these rules as a duly chosen representative of any Indian States or States specified in column 1 of the Annexure to that Schedule."

(iii) In the Schedule -

For paragraphs 3, 4, 5 and 6, substitute the following paragraphs:

"3.(1) When the representation allotted to the States, individual or grouped in the Assembly, or the grouping of the States for the purpose of such representation is altered by an order made under paragraph 2, or by an amendment of the Annexure to this Schedule, the President may, by order -

(a) re-assign members representing a State or States to such State or States as may be specified in the order;

(b) declare the seat or seats of any member or members of the Assembly representing any State or States affected by an order under paragraph 2 or an amendment of the Annexure to this Schedule, as the case may be, to be vacant.

(2) Any member who has been re-assigned to a State or States by an order made under clause (a) of sub- paragraph (1) and whose seat has not been declared vacant under clause (b) of that sub-paragraph shall as from the date of the order be deemed to be a duly chosen representative of such State or States.

(3) A member whose seat is declared vacant by an order made under clause (b) of sub-paragraph (1) shall, if it is so specified in the order, continue to hold office as member of the Assembly until his successor has been duly elected and has taken his seat in the Assembly.

"4. (1) Not less than fifty per cent of the total representatives of the States specified in column 1 of Part I of the Annexure to this Schedule in the Assembly shall be elected by the elected members of the legislatures of the States concerned, or where such legislatures do not exist, by the members of electoral colleges constituted in accordance with the provisions made in this behalf by the authorities specified in the corresponding entries in column 3 of that Part.

(2) All vacancies in the seats in the Assembly allotted to the States specified in column 1 of Part II of the Annexure to this Schedule shall be filled by election and the representatives of such States to be chosen to fill such seats shall be elected by the elected members of the legislatures of the States concerned, or where such legislatures do not exist, by the members of electoral colleges constituted in accordance with the provisions made in this behalf by the authorities specified in the corresponding entries in column 3 of that Part.

5. On the completion of the election or nomination, as the case may be, of the representative or representatives or any State or States specified in column 1 of the Annexure to this Schedule in the Constituent Assembly, the authority mentioned in the corresponding entry in column 3 of that Annexure shall make a notification under his signature and the seal of his office stating the name or names of the person or persons so elected or nominated and cause it to be communicated to the President of the Assembly."

Sir, before I commend my motion to the House for its acceptance, I wish to say a few words of explanation as to why and how these amendments to the rules have become necessary.

Sir, Rules 5-A and 5-B of the Constituent Assembly Rules lay down the procedure for filling a casual vacancy in the office of a member representing an Indian State or more than one Indian State and the Schedule to the Rules prescribes the allocation of seats in the various States or groups of States and the manner of choosing the States representatives and also the method of appointing conveners for purposes of conducting election. These Rules 5-A and 5-Bwere based on conclusions reached by the two Negotiating Committees set up by the Chamber of Princes and also by The Constituent Assembly.

Sir, since then, as it is common knowledge, many changes of a far-reaching character have taken place and these changes have taken place both in the constitutional as well as in the administrative set up of these states. For example, certain States have formed themselves into Unions and certain others have merged into neighbouring provinces and still certain others have been constituted into Centrally Administered Areas.

Sir, these changes in their turn affected radically in the case of some the existing scheme of representation in the Constituent Assembly. Consequently, it became necessary to re-group these several States and to re-allocate seats among them and also change the conveners for the purpose of conducting elections and also make necessary changes in the rules of the Constituent Assembly. All these matters were considered at a meeting of the Honourable the President and of the Honourable the Minister of States and also the Rajpramukhs and the Premiers of the Union and the States concerned and also the Premiers of various provinces affected by these changes and also of the officials of the Secretariat of the Constituent Assembly and of the States Ministry; and the decisions reached at that Conference are now embodied in these provisions which are now sought to be incorporated in the Constituent Assembly Rules.

Now, Sir, the most important feature of these changes in the provisions is that in the case of newly formed group or Union of the States - Cutch and Junagadh, which have been given separate representation in the Assembly - all the vacancies in the seats are to be filled by election by the elected members of the Legislatures of the States or where such legislatures do not exist, by any other Electoral College which is set up for that purpose.

Under the old Rules some of them could be filled by nomination. Sir, as you have already noted the various changes, I do not think that I need elaborate these points. I commend my motion to the House for its acceptance. Sir, I move.

Mr. President: I have received notice of certain amendments to this motion. Mr. Kamath.

Shri H. V. Kamath: (C. P. & Berar: General): Mr. President, Sir, I move:

> "That in sub-para, (1) of the proposed paragraph 3 of the Schedule, for the words `to the States, individual or grouped in the Assembly' the words `in the Assembly to the States, individual or grouped' be substituted."

That is to say, if the amendment is accepted, it will read thus: Now it reads, "When the representation allotted to the States, individual or grouped in the Assembly". In the place of this, it will read, "When the representation allotted in the Assembly to the States, individual or grouped....." I do not think I need speak much on this amendment. It is self evident and the meaning that is sought to be conveyed by the paragraph is as represented in my amendment. Certainly, the States individual or grouped as they are, is not for Assembly purposes. Therefore, it should be "representation allotted in the Assembly to the States, individual or grouped." This is the first amendment.

Sir, the second amendment runs thus:

> "That in sub-para. (3) of the proposed paragraph 3 of the Schedule, for the words 'is declared vacant' the words 'has been declared vacant' be substituted."

This is purely, if I may say so, a linguistic amendment. I think it refers to the state of affairs arising after a seat has been declared vacant. The wording "when a seat has been declared vacant" is more correct and more accurate.

I therefore commend these amendments of mine for the acceptance of the House. Sir, I wish to speak on the motion. May I speak?

Mr. President: Yes.

Shri H. V. Kamath: Sir, I seek some clarification on certain points that have arisen from the motion moved by my honourable friend Shrimati Durgabai. Sir, the potential strength of this Assembly is 324. I am given to understand that the actual strength today is 303. Twenty one members who are to represent Hyderabad, Kashmir and Bhopal are not present with us. Even as regards the remaining 303, the papers yesterday brought us the news that the Patiala and East Punjab States Union have not elected their representatives to this Assembly. I do not know why these States or Union of States or groups of States should continue to be unrepresented in this last and most important session of the Constituent Assembly. As regards Hyderabad which now forms one of the States specified in Part I of the Annexure, it takes top rank among the States. I do not see why we should not call upon the Ruler of Hyderabad or to elect and nominate as the case may be in accordance with the provisions of this resolution, and send representatives to take their place in this Session as early as possible. In view of the recent events that have taken place, a happy denouement - I hope the House is in agreement with me that we have had a happy termination of the Hyderabad episode - we wish to welcome our friends, our colleagues from Hyderabad as soon as possible in this Assembly. As regards Bhopal, I do not know what difficulties stand in the way, what stumbling block there is in the way, what obstacle has to be surmounted, so far as the participation of Bhopal in this Assembly is concerned. I would plead with you and I would request that the Bhopal authorities should also be called upon at once to send their members to this Assembly with the least possible delay.

Then, Sir, the report which appeared in the press yesterday as regards Patiala and East Punjab States Union was not very clear. It alleged all sorts of things against the administration and against the Ruler; but, whatever it may be, I think it is high time that this Union of Patiala and East Punjab States should be called upon to send their representatives to this last session of the Constituent Assembly.

There is another point which I would like to draw your attention to. In the Rules that have been framed by us during the previous sessions. We have stated-I refer to Rule5 sub-rule (2)- "Upon the occurrence of a vacancy, the President shall ordinarily make a request in writing to the Speaker of the Provincial Legislative Assembly concerned, or as the case may be, to the President of the Coorg Legislative Council, for the election of a person, for the purpose of filling the vacancy as soon as may reasonably be practicable." Here, now that in some of the States mentioned in Part I of the Annexure-I am sorry I cannot say off hand which States have got elected legislature functioning-take for instance, Mysore; it is a big State and it has already sent its representatives to this Assembly-so far as such States are concerned, I see no reason why in future, instead of the Ruler, the Speaker or President of the Assembly should not be requested to fill the vacancies that may arise. It may be argued against this that the Rule as it stands, 5-A provides for the Ruler being the authority in this case. But, as we are amending the Rules, why not amend certain provisions of these Rules so as to make them more in conformity with democratic practice and democratic traditions? Therefore, I would ask my honourable friend Shrimati Durgabai to explain why, in the case of those states where we have got Assemblies functioning, the Speaker or the President should not be the authority instead of the Ruler. On this point, I would ask some more light from the mover of the motion.

Sir, before I resume my seat, I commend my two amendments to this motion for the acceptance of the House. Thank you, Sir.

Mr. President: Mr. Sidhwa.

Shri R. K. Sidhwa (C. P. & Berar: General): Mr. President, Sir, my amendment was -

> "That in sub- para. (1) of the proposed paragraph 4 of the Schedule, delete the words `Not less than fifty percent' of and for the words `the total representatives' the words `The total number of representatives' be substituted."

The object of my amendment was that while we have done away with the nomination system in our Constitution, it would not be fair to allow the States, particularly the Rulers to nominate the 50 per cent. I therefore, with that object in view and just in conformity with our decision for abolishing the nominations, suggested the abolishment of this also. I however understand that an arrangement has been arrived at between the Rulers and the people of the State and the States people have agreed to this arrangement being continued and I am also told that although this is there, the representatives are all elected by the people themselves. If that is so as I understand it is so, I do not propose to move this amendment.

Mr. President: Do you move the amendment or not?

Shri R. K. Sidhwa: I do not move it, Sir.

Mr. President: All the amendments of which I have notice, so far as this motion is concerned, have been moved. I have received a complaint from one Member that the agenda and amendments have been circulated here and he did not get them before and so he has not been able to give notice of amendments and he wants that the discussion be adjourned. I understand from the Secretariat that the agenda and other papers were circulated some days ago but they were sent to the addresses that were then known to the office and it is possible that the Members during the course of transit have not been able to get the papers that were sent to them and by way of caution a second copy has been supplied here today. It is not as if the agenda and the papers have not been circulated. Only the second copies have been given today. I do not think there is any ground for adjourning the discussion of this motion particularly because after all it is more or less a motion of a formal nature, because we have already acted upon these Rules and they are not likely to be acted upon in the future when this session of the Assembly is over.

Shri Mohanlal Gautam (United Provinces: General): *[I have no objection in complying with your order. But I submit that the information supplied to you by the office is incorrect. Many of the Members have not received copies of the agenda. Not I alone but two or three of my colleagues also who are present here have not received it.I am in greater difficulty as my telephone has also been disconnected even though they had already taken from me the subscription for the whole year. Twice I have referred this matter to the Deputy Minister for Communications but telephone connection has not yet been restored. When I came here I telephoned from another place to the Deputy Secretary, Constituent Assembly, and informed him that no copy of the agenda had been received by me and the telephone connection also had not been restored. This is the situation of the Members and I would like to make my protest against it. Had it been so with me alone, you could have adopted this course. But there are many Members present here who have not received the agenda. The Deputy Minister Shri Khurshed Lal is also one of them. He also denies having received a copy of the agenda. I don't know how it was circulated but even he complains of not having received it. Twice I complained to him that my telephone connection had not been restored even though the subscription money had been realised by them for the whole year. You have reduced us Members to this miserable plight. As for the agenda, I am not the only Member to complain about it. Many Members have not received it. There are important items on the agenda and as a protest I demand the postponement of its consideration.]*

Mr. President: *[Copies of the agenda were sent to the Members by the office. Whether it did reach the Members or not is a matter for Shri Khurshed Lal to answer. It is also his responsibility to see whether telephone connections have been provided or not. I do not think that there is any important reason to adjourn the House. If any Member wants to speak on this matter he may do so.]*

Mr. Hussain Imam (Bihar : Muslim): *[I would like to suggest that you are empowered to admit the amendments which are, even now, received from Honourable Members. That would leave no room for grumbling.]*

Mr. President: *[As I have not received any amendment as yet, the question does not arise.]*

Shri Shyamanandan Sahaya (Bihar : General): *[Mr. President, I request that these amendments which have been moved should be considered if they need consideration. But first of all a chance should be given to the mover...]*

Mr. President: *[Had I received any amendment I would have allowed it to be moved in the House. But no amendment has been received. Now, you want that this discussion should be postponed so that there might be an opportunity to move an amendment. But as yet I have no amendment before me.]*

Shri Shyamanandan Sahaya: *[Mr. President, in this connection, it is submitted that your orders are binding on all. If the copy of the agenda is lost in transit the purpose of sending it--, and it is that the Members may go through it and may form their opinion—is defeated. Consequently if it could not reach the Member or if there is any delay or error in its despatch from the Assembly office, and thereby if any Member did not receive the agenda, then in my opinion it requires consideration whether the resolution may be taken up for consideration on that day or not. I want to draw your attention to this fact.]*

Mr. President: *[I do not think it necessary at this stage, for such questions are not before us as require prolonged discussions and postponement of the debate to some other day and stoppage of our proceedings today.]*

Dr. P. S. Deshmukh (C. P. & Berar : General): Mr. President, Sir, I do not have to make the complaint that some of the honourable members of this House have made, although I must say that I did not get the agenda before yesterday, and that is the reason why it was not possible for me--my stenographer not having arrived--to send in my amendment to the various Rules. It is quite clear that the Rules are pretty lengthy and therefore the amendments are also likely to be of a similar nature. I hope therefore that you will kindly pardon my not having sent in my amendments and the few amendments that I propose would be considered by the Honourable Mover of the Motion. The first amendment I would suggest is--

"In the first part of Rule 5-A instead of 'an Indian State or more than one Indian State' substitute the words 'one or more Indian States'."

I personally think it is better English in that way. My second amendment is--

"Instead of the words 'make a request' the word 'direct' be substituted."

It should be possible for you Sir, to direct the authorities specified in the corresponding entry in column 3 of the Annexure. I do not think it is in consonance with the dignity of the office you hold or the position of this Constituent Assembly that it should be necessary to request a petty State or the Authority existing therein to hold the elections. We, as Members of the Constituent Assembly are summoned by you. I would therefore suggest the adoption of the above amendment.

Similar words are used in the second proviso. There also the word 'request' has been used. That also should be changed to 'direct'.

There is also one more amendment I would suggest so far as the second proviso is concerned. I suggest that-

"The proviso as it stands be substituted by the following, *viz.* 'Provided further that in directing to proceed to fill a vacancy by election under this Rule the President may also direct that the election be completed by a certain date'."

The change is to replace the words "making a request to fill" by the words "directing to proceed to fill". The word "request" is changed into "direct", and the concluding words-'within such time as may be specified by him'-are proposed to be changed by the words "by a certain date".

The wording in paragraph 3 (1) on page two may read better if it were put as follows:

"When the representation allotted to any States, jointly or individually, in the Assembly or the grouping of the States for the purpose of such representation is altered by an order made under paragraph 2, or by an amendment of the Annexure to this Schedule, the President may by order-- ...."

The alteration would be to change the word "the" into "any", and to omit the words "individual or grouped in the Assembly", by merely saying "jointly or individually".

This amendment of mine is very similar to the one moved by Mr. Kamath. I think he was somewhat hesitant in suggesting a wholesale alteration of the clause. That is why the suggestion he has made, although he has the same intention, does not express it so correctly as the suggestion made by me, and if possible to accept them.

Shri Biswanath Das (Orissa : General): Sir, I have just given notice of an amendment. Before moving it I would like to explain the position as it is today.

In part 1 to the Annexure, Mayurbhanj State has been mentioned with one representatives and the Returning Officer is the Ruler of Mayurbhanj. But it has been decided by the States ministry that the State of Mayurbhanj can not stand singly by itself and it has been agreed that it shall merge into the province of Orissa, along with the twenty-three other States that have already merged.

Mr. President: Has the Mayurbhanj State already merged or is it a proposal?

Shri Biswanath Das: I believe they have signed a certain agreement and they are going to hand over the State to the Government of India and that an Administrator has been already appointed and that he is going to take charge of the State. Under these circumstances, I believe there is no justification for treating Mayurbhanj State as a separate identity, and again to recognize the Ruler of Mayurbhanj State as the Retuning Officer. I do not know, and I can not say whether the Government of India have actually intimated to the Government of Orissa that Mayurbhanj State is to merge in Orissa. But this much I can assure you, and through you the Honourable Members of the Constituent Assembly that this is expressed view of the Government of India that it shall be merged into the province of Orissa. Therefore, there is absolutely no purpose in bringing in something which will undo what has been already done and decided by the States Ministry with the full concurrence of the State of Mayubhanj, the people and also the province of Orissa.

Therefore, Sir, I beg to move an amendment, which is (I have given notice of it just now.):

> "Omit Mayurbhanj with its representation of one and the Ruler of Mayurbhanj as the Returning Officer from Part 1 of the Annexure."

I further move:

> "That the State of Mayurbhanj be added to the Orissa States in Part II of the said Annexure, substituting 24 for 23 and also under the column of representation substituting 5 for 4, including 1 from the Sate of Mayurbhanj, and the Governor of Orissa to continue as the Returning Officer."

This is the complete amendment that I place before the Honourable Members of the Constituent Assembly and think that it is necessity.

If you propose to give separate representation and a separate identity to Mayurbhanj, that means you propose to perpetuate the independent existence of smaller States, a policy which has been refuted and not accepted by the States Ministry and the Government of India. Therefore, my amendment is just to give effect to the very idea which has been accepted, adumbrated and followed in principle and in practice by the States Ministry and the Government of India.

Mr. President: I may point out to Members that as the States are concerned, the question has been in a state of flux. There have been so many changes going on from day to day that it has been difficult to keep pace with them. The proposal is based upon the recommendation of the States Ministry, and the proposal was reached at a conference at which not only the Prime Ministers of all the provinces concerned but also of the Sates concerned and Rajpramukhs were present, and there were representatives of the States Ministry as also of the Constituent Assembly, and these proposals are in conformity with recommendations of that Conference. If there has been any change since then, we have no notice of that change. Besides, there will be no difficulty in altering any of the rules subsequently if a change has taken place. So I would suggest to Shri Biswanath Das that he need not apprehend that there is any question of perpetuating smaller States. At the moment we are proceeding upon facts that we know and we are recognizing those facts takes place, and we are informed of that change, we shall change the rules accordingly. So I would suggest to him not to press his amendment at this stage. We can take up the matter as soon as the States Ministry is in a position to tell us that this ought to be changed.

Shri Biswanath Das: An officer of the States Ministry is here. These are the salient facts. I do not dispute the facts that I have placed before him.

Mr. President: I do not dispute his facts. I only say that I have received no intimation from the States Ministry to that effect and therefore we are proceeding upon what we have from the States Ministry. As soon as we have information, there will be no difficulty in changing the rules. That can be done at any sitting.

Shri Biswanath Das: You are going to take charge of the State. The newspapers published that the Constituent Assembly has given separate representation to the State I assure you that there will be tremendous trouble to be faced not by me or the people of Orissa but by the very administrator that is going to be appointed by the Government of India. Under these circumstances I appeal to you, knowing as you do the difficulties of the situation and as a person having an intimate knowledge of the areas and the people concerned, not to tread on dangerous ground. I do not want to press my amendment. I have only brought this matter to your notice as also to the notice of the Constituent Assembly.

Mr. President: I think the newspapers will not only publish the fact that Mayurbhanj has been given separate representation but also the statements which I Have made and you have made. Along with these statements the information itself will have no effect of the kind that you apprehend and I would therefore suggest to the honourable Member not to press his amendment.

Shri Ram Sahai [United States of Gwalior, Indore, Malwa (Madhya Bharat)]: *[Mr. President, I would like to know if an amendment which is contrary to the principles accepted by the Negotiating Committee can be moved to the amendment now before us. For example, 50 per cent. Is fixed in it. Is it possible to move an amendment that instead of 50 per cent. All the members should be elected or that they should be nominated by the Raj Pramukhs or that the members must be elected on the basis of the electoral rolls that had been prepared before in the States? I would like to know whether an amendment can be moved which goes beyond the principles accepted by the Negotiating Committee.]*

Mr. President: I think we have to be very curious in dealing with the States. We are proceeding on the basis of the agreements entered into with the States and here we should not say or do anything which may have the effect of going back upon any agreement which has been made with the States. All these amendments are based upon agreements which have been made between the States Ministry and the States concerned. The House will remember that originally there was one set of agreements but that has become out of date and therefore we have a second set of agreements. All these amendments are based upon these agreements and I would therefore suggest that nothing should be done to go back upon any of the agreements that have been entered into.

I would ask Mr. Sidhwa not to press his amendment....

Several Honourable Members: He has not moved it.

Shri S. Nagappa (Madras: General): Sir, I beg leave of the House to move the amendment of which I have given notice just now. I am in agreement with the original motion but as regards the Annexure Part I, third Column (*viz*. Authority for the purpose of the choosing of representatives in the Constituent Assembly) I propose to move an amendment to the "word" Ruler of Hyderabad, My sore, Kashmir and so on. I would like to say that the rulers today do not have the real ruling power, as it has been transferred to the people of the State, especially since August 15th 1947. So, Sir, I think the ruler of any State should not be made the authority for the purpose of choosing representatives in the Constituent Assembly, as he has not got the authority to choose. What is the good of calling someone an authority who really has not got that authority? To me it does not look to be in order. I shall be thankful if the Honourable the Mover accepts my amendment:

> "That for the word 'Ruler' in column 3 of annexure Part I the word 'people' be substituted."

If you find that this is not in order then for instance, the Speaker of any Assembly, which has been elected by the people of that State, occupies a more important place than that of the Ruler. No doubt the Ruler is there as a nominal figurehead but the real person who rules is either the prime Minister or the Legislative Assembly, wherever there is one. So, Sir, I would request that the Honourable the Mover would accept this simple amendment. I have proposed a simple amendment and I need not explain it further. I hope the House will be good enough to accept it.

Mr. President: I might point out that the Honourable member's amendment is wholly misconceived. It is not as if the Ruler is going to nominate the representatives. The Rules have to be addressed for the purpose of getting the representatives elected by the bodies who have the right to elect them. The Ruler does not come in in any other way.

Shri S. Nagappa: That is exactly my point. You are addressing the Ruler but the Ruler has not got any authority to elect. What is the good of asking a person who does not possess the power? The actual power is not with the Ruler but with the people of the State. So the representatives should be elected by the people of the State either the Speaker of the Assembly wherever there is an Assembly functioning or the Prime Minister or the Raj Pramukh who has been duly elected. They will be the proper authority. Even for the sake of form it should not be there.

Mr. President: I have pointed out the position to the Honourable Member but if he wants to press his amendment......

Shri S. Nagappa: There is no question of pressing the amendment. I have understood , Sir, your point. You have been kind enough to enlighten me that the ruler is only a figurehead and is meant for the purpose of addressing someone. But what I say is, what is the good of addressing a Ruler who has not got the authority and who has transferred his authority to the people of the State?

Mr. President: Every order of the Government of India also goes in the name of the Governor-General, although it is the Ministers who pass the orders. The position is exactly similar.

Shri S. Nagappa: Sir, I accept your advice and I leave it to you.

Shrimati G. Durgabai: Mr. President, I do not think I have much to say by way of replying to the points raised by several Honourable Members of the House and I am thankful to you, Sir, that you had taken upon yourself the task of explaining some of the points raised by the Honourable Members. I would not refer to the points raised by Shri Biswanath Das and Shri Nagappa, because the Honourable President has sufficiently dealt with those points.

With regard to the amendment moved by Dr. P.S. Deshmukh, I think the existing expression, 'make a request in writing' is more happily worded than that suggested by him and is also very courteous, I do not think there is need for a change. His other amendment also I cannot accept for the same reason.

With regard to the point raised by Mr. Kamath in his amendments, I may say that I appreciate it and have great pleasure in accepting his amendments. They are really verbal amendments and I accept them.

He has raised the question of Hyderabad and Kashmir in his connection. I do not think it is for me to say anything on the points he has raised about those States; but I feel that those points are irrelevant to the motion I have moved here. I commend my motion to the House for its acceptance.

Shri H. V. Kamath: Mr. President, I have not moved any amendment and therefore the question of irrelevancy does not arise, I only wanted to know whether Hyderabad, Bhopal and Kashmir would send their representatives to the Assembly. I only wanted some light and clarification on the point.

Mr. President: I shall put the amendment to vote. The amendment of Mr. Kamath runs thus:

"That in sub- Para (1) of the proposed paragraph 3 of the Schedule, for the words "to the States, individual or grouped in the Assembly", the words "in the Assembly to the States, individual or grouped" be substituted."

This has been accepted by the Mover.

The amendment was adopted.

Mr. President: The other amendment of Mr. Kamath, viz., "That in sub-para. (3) of the proposed paragraph 3 of the Schedule, for the words 'is declared vacant' the words 'has been declared vacant' be substituted" is now for the vote of the House. This has also been accepted by the Mover.

The amendment was adopted.

Mr. President: Then there are the amendments of Dr. Deshmukh. So far as the wording of one of them at any rate is concerned, it has been already accepted when Mr. Kamath's amendment was accepted The other amendment is only a question of taste whether we should make a direction or a request. As Dr. Deshmukh has not withdrawn it, I shall put it to vote. The amendment is:

"In the place of the word 'request' the word 'direct' should be used."

The amendment was negatived.

Mr. President: I shall now put the amendment of Dr. Deshmukh to Clause 3(i) of the Schedule to vote.

The amendment was negatived.

The amendment of Mr. Biswanath Das was, by leave of the Assembly withdrawn.

Shri S. Nagappa's amendment was, by leave of the Assembly withdrawn.

Mr. President: The motion, as amended, is for the vote of the House.

Shri H. V. Kamath: Would you please tell us whether Hyderabad and Kashmir would send their representatives to this Assembly?

Mr. President: I am not in a position to give any information on that point. The Government, if they liked, would have given you the information by now.

The motion as amended, is for the vote of the House.

The motion, as amended, was adopted.

Mr. President: Srimati Durgabai may now move her second motion.

AMENDMENT TO THE ANNEXURE TO THE SCHEDULE

Shrimathi G. Durgabai: Mr. President I beg to move the following motion :

" That the provisions mentioned in the Constituent Assembly Notification, No. CA/43/Ser/48-II, dated the 3rd August1948, be made part of the Constituent Assembly Rules, as shown in the amendments below, with effect from 3rd August 1948."

Annexure to the Schedule----

For the Annexure to the Schedule substitute the following Annexure :-

ANNEXURE

Part I

Name of State or States	Number of seats allotted in the Constituent Assembly	Authority for the purpose of the choosing of the representatives in the Constituent Assembly
1	2	3
Hyderabad	16	Ruler of Hyderabad
Mysore	7	Ruler of Mysore
Kashmir	4	Ruler of Kashmir
Baroda	3	Ruler of Baroda
Travancore	6	Ruler of Travancore
Cochin	1	Ruler of Cochin
Jodhpur	2	Ruler of Jodhpur
Jaipur	3	Ruler of Jaipur
Bikaner	1	Ruler of Bikaner
Bhopal	1	Ruler of Bhopal
Kolhapur	1	Ruler of Kolhapur
Mayurbhanj	1	Ruler of Mayurbhanj
Sikkim and Coochbehar	1	Ruler of Coochbehar
Tripura Manipur Khasi States	1	Ruler of Tripura
Rampur Benares	1	Ruler of Rampur
Total	49	

Part II

Name of State or States	Number of seats allotted in the Constituent Assembly	Authority for the purpose of the choosing of representatives in the Constituent Assembly
1	2	3
Athgarh Athmalik	ORISSA STATES	

(23)	Bamra Baramba Boudh Bonai Daspalla Dhenkanal Gangpur Hindol Kalahandi Keonjhar Khandpara Narsinghpur Nayagarh Nilgiri Pal Lahara Patna Rairakhol Rampur Sonepur Talcher Tigiria	4	Governor of Orissa.
(15)	Bastar Changhbhakar Chhuikadan Jashpur Kanker Kawardha Khairagarh Korea Nandgaon Raigarh Sakti Sarangarh Surguja Udaipur Makrai	Central Provinces and Berar States 3	Governor of Central Provinces and Berar.
	Banganapalle Pudu Khotai	MADRAS STATES 1	Governor of Madras.
(35)	Rajpipla Palanpur Cambay Dharampur Balasinor Baria Chhota Udapur Sant Lunawada Bansda Sachin Jawahar Danta Janjira Sangli Savantvadi	BOMBAY STATES 4	Governor of Bombay.

	Mudhol			
	(35) Bhor			
	Jankhandi			
	Miraj (Sr.)			
	Miraj (Jr.)			
	Kurundwad (Sr.)			
	Kurundwad (Jr.)			
	Akalkot	4		
	Governor of Bombay			
	Phaltan			
	Jath Aundh			
	Ramdrug			
	Idar			
	Radhanpur			
	Sirohi			
	Savanur			
	Wadi			
	Vijayanagar			
	Jambughoda			
	271minnor states, (thanas, etc.)			
	Bashahr		Himachal Pradesh	Chief Commissioner of Himachal Pradesh.
	Sirmur			
	Chamba			
	Mandi			
	Suket			
	Baghal			
	Baghat			
	Balsan			
	Bhajji			
(21)	Bija			
	Darkoti		1	
	Dhami			
	Jubbal			
	Keonthal			
	Kumharsain			
	Kunihar			
	Kuthar			
	Mahlog			
	Mangal			
	Sangri			
	Tharoach			
	United State of Kathiawar (Saurashtra)		4	Rajpramukh of the State.
	United State of Matsya		2	Rajpramukh of the State.
	United State of Rajasthan		4	Rajpramukh of the State.
	United State of Vindhya Pradesh		4	Rajpramukh of the State.
	United State of Gwalior, Indore, Malwa (Madhya Bharat)		7	Rajpramukh of the State.
	Patiala and East Punjab States Union		3	Rajpramukh of the State.
	Cautch		1	Chief

		Commissioner of Cautch
Junagadh	1	Adminnistrator of Junagadh
Jaisalmer Sandur Tehri-Garhwal Bilaspur BIHAR STATES Seraikela Kharsavan EAST PUNJAB STATES Loharu Pataudi Dujana	RESIDUARY STATES : 1	Chief commissioner of Himachal Pradesh.
Total	40	
GRAND TOTAL OF PART I AND PART II	89	

Shri H. V. Kamath: Mr. President, the amendment I have given notice of is an extremely simple one and a purely verbal one intended to add the definite article 'the'. It reads:

> "That in part II of the proposed Annexure to the Schedule, for the words 'Governor of Central Provinces and Berar' in the 3rd column under the heading 'Central Provinces and Berar States', the words 'Governor of the Central Provinces and Berar' be submitted."

I would invite your attention and the attention of the House to the name by which my province is known in official documents and records. In our Draft Constitution, of which we have all got copies in Schedule I, Part I, page 159 where the list of the various provinces has been given, and you will find my province described as the Central Provinces and Berar.

Mr. President : I do not want you to adduce arguments in support of this amendment.

Shri H. V. Kamath: I moved the amendment and commend it for the acceptance of the House.

Mr. President: Do you accept that?

Shrimati G. Durgabai: I accept that.

Mr. President: The amendment is that the word "the" be added before the words "Central Provinces and Berar".

The amendment was adopted.

Mr. President : The motion, as amended, is now put to vote.

The motion, as amended, was adopted.

Addition of New Rule-38-V

Shrimati G. Durgabai: Sir, I beg to move that the following to the Constituent Assembly Rules be taken into consideration:

After rule 38-U insert the following-

> "38-V. When a Bill referred to in Rule 38-A is passed by the Assembly, the President shall authenticate the same by affixing his signature thereto. When the Bill is so authenticated it shall become an Act and shall be published in the *Gazette of India*."

Sir, before I commend my motion for the acceptance of the House, I consider it my duty to offer a few words of explanation as to why this amendment has become necessary. Sir, I am sure that Honourable Members are aware that during the last session of the Constituent Assembly when it met on the 27th January, certain amendments were proposed and accepted by this House to the rules of the Constituent Assembly, and one of those amendments was to introduce a new rule 38-V laying down the procedure for passing of the Bills referred to in Rule 38-A. Sir, that proposed rule 38-V raised a good deal of controversy and objections were raised by some Honourable Members on the ground that a Bill passed by the Constituent Assembly for amending the Indian Independence Act or the Government of India Act 1935 as adopted by that Act should not be subject to the ascend of the Governor-General since such a procedure might detract from the sovereign character of the Assembly. Another objection was raised on the ground that, if that rule was adopted, the consequence would follow that the Governor-General might give or withhold his ascent even to a Bill seeking to amend the existing constitution. Another objection was raised on the ground that there should not be any difference between the procedure to be adopted for passing the draft Constitution and for passing a Bill seeking to amend the existing Act. These objections were discussed and after prolonged discussion, the suggestion made by Mr. Kamath to refer the proposed rule back to the Draft Committee for re-examination in the light of the objections raised, was accepted. This suggestion was accepted by the House and the rule was referred back to the Drafting Committee. The Drafting Committee has considered this rule and their fresh proposal is before the House. Sir, this new rule dispenses with the ascent of the Governor-General to any Bill passed by the Constituent Assembly under Rule 38-A. The original rule reads thus:

> "When a Bill referred to in Rule 30-A is passed by the Assembly, a copy thereof signed by the President shall be submitted to the Governor-General for his ascent. When the Bill is a scented to by the Governor-General, it shall become an Act and shall be published in the Gazette of India".

I think Members have understood the significance of the change proposed and that I need not elaborate this point. I commend my motion for the acceptance of the House.

Mr. President: Mr. Kamath has tabled an amendment to this to substitute the words "has been" for the word "is".

Shri H. V. Kamath: Mr. President, Sir, I move:

> "That in the proposed rule 38-V for the words `when the Bill is so authenticated' the words `When the Bill has been so authenticated' be substituted."

This amendment, Sir, is entirely similar to the one which has been accepted by the House with regard to another motion moved by my honourable Friend. Mrs. Durgabai. I think it will be happier and more in consonance with the rules of idiom and usage to substitute the words "has been" for the word "is" so that, if the amendment is accepted, the proposed rule will read:

> "When a Bill referred to in rule 38-A is passed by the Assembly, the President shall authenticate the same by affixing his signature thereto. When the Bill has been so authenticated, it shall become an Act . . . ." etc.

I commend this amendment for the acceptance of the House.

Mr. President: The motion has been moved and also an amendment to that. If any Member wishes to speak on the motion, he may do so now.

Shrimati G. Durgabai: I accept the amendment.

Mr. President: It seems there is nobody who wishes to speak on the motion. The mover has accepted the amendment. I first put the amendment to vote.

The amendment was adopted.

Mr. President: The motion, as amended, is now put to vote.

The motion, as amended, was adopted.

PROGRAMME OF BUSINESS

Mr. President: We will now go on to the next item on the agenda but before doing so, I would like to explain to the House the procedure which I propose to follow in dealing with the Draft Constitution. Members are aware that the Draft Constitution was prepared by a Drafting Committee which was appointed by this House and the Draft was placed in the hands of Members nearly eight months or more ago. Members were asked to send in any suggestions or amendments which they wished to make and a large number of suggestions and amendments were received not only from Members but also from the public and public bodies, provincial governments and so forth. The Drafting Committee has considered all these suggestions and amendments and they have redrafted many of the articles in the light of the suggestions made by either Members or the public. So we have now got not only the Draft as it was originally prepared, but also the re-draft of a number of the Articles which the Drafting Committee had prepared in the light of suggestions received. These have been placed in the hands of Members. What I propose now to do is to take up each Article after we, of course, have passed this motion for consideration and I shall take all these amendments of which notice has been given already as having been given in time, so that Members who have already given notice of amendments need not repeat the notice after the motion for consideration has been adopted. I will also give to Members two days more forgiving notice of any further amendments which they wish to propose to the Articles. And then, I propose not to accept any other amendments, unless they are of such a nature that it becomes necessary to accept them. Of course, there will be amendments which may be consequential and those will have to be accepted. There may also be amendments which for other reasons may be considered by the House to be of such a nature that they should be considered; I will not burke discussion of those amendments; I shall have them also. But ordinarily I would ask the Members to confine themselves to the amendments of which we have already got notice and they are, I believe, about a thousand in number. In this way we might economies time without in any way affecting our efficiency and without in any way putting any check on free discussion of all the Articles of the proposed draft. This is what I propose to do, of course, subject to what the House lays down. I think this is quite reasonable in view of the fact that Members have had such a long time to consider; and that they have considered in detail the draft is apparent from the fact that we have already got notice of about a thousand amendments, and if by any chance any amendment has been overlooked and if any member feels its consideration to be necessary, we shall take it, but ordinarily I will not take any further amendments after this. What I propose is that we discuss the motion, which Dr. Ambedkar will move, for two days, that is, today and to morrow, when we sit both in the morning and in the afternoon and we give Saturday and Sunday for giving notice of amendments to the members. All the amendments of which we have already received notice and of which we shall have received notice by 5 o'clock on Sunday will be tabulated, printed and placed in the hands of Members by Monday, and then we proceed with the discussion of the amendments from Tuesday. That is the program me which I have outlined in my mind.

There is another thing which I might tell Members. There is a motion of which notice has been given and there is also an amendment of which notice has been given that this House should adjourn discussion of the Constitution altogether and a new House on adult franchise and on non-communal lines should be elected and that House should deal with the question of framing the Constitution. I do not know if the House will be prepared to throw away all that we have been doing during the last two years, particularly because there is in the Draft an article which gives a some what easy method of amending the Constitution during the early years after it comes into force and if there is any lacuna or if there is anything which needs amendment, that could easily be done under the provision to which I have just made reference, and it is, therefore, not necessary that we should hold up the consideration of the entire Constitution until we have adult franchise. The difficulty will be in the first place to form the electorate under adult franchise; we have no such law existing at present. Adult franchise we have contemplated in this Draft Constitution and it will come into force when this Constitution has been passed. So if you want to have adult franchise and if you want to have another Constituent Assembly for the purpose of drafting the amendments, we shall have to pass another law and I do not know which House will have the right to pass that law which will constitute a Constituent Assembly. So I think it would be best to proceed with the draft which we have prepared after much labor and to which so much care and attention has been given by the Drafting Committee and by the Members of this House.

This is the programme which I propose to follow and if there is any other suggestion which any member wishes to make, I shall be glad to consider it. There is only one thing more which I might mention and that is this. I do not wish to curtail discussion. I want to give to members the fullest opportunity for considering every article and every aspect of the Constitutional question, because, after all, it is going to be our Constitution, but at the same time, I do not like that we should spend more time than is absolutely necessary over it by repeating arguments which have already been once advanced by one Member or another or by going over the same ground. For that reason, we may not reconsider many of the decisions which have already been taken. Members know that we had long discussions, and after long discussions we settled the principles of the Constitution and the Draft, the bulk of it, is based upon those decisions which were taken after long discussion by this House. I would not expect that the Members would lightly throw away those decisions and insist upon are consideration of those decisions. There may be cases whereat reconsideration may be necessary. But ordinarily, we shall proceed upon the decisions which have already once been taken and it is only where no decisions have yet been taken that the House may have to take decisions for the first time. Now there are certain questions on which no decisions have been taken. There were certain committees appointed by the House. The reports of those Committees were not considered. But the Drafting Committee has taken care to place in the draft alternative proposals, one set of proposals representing their own views where they differ from those of those Committees and another set of proposals embodying the recommendations and the decisions of those Committees. So when we come to those particular provisions, the House may consider them on their merits, and after considering them on their merits may accept either the opinion of the Drafting Committee or of the Committee. The House will have the draft ready, so that it will not have to wait for preparing a draft on these questions. When we consider this whole matter from this point of view, I think, after all, the scope for discussion gets very much limited, because most of the amendments will be more or less of ad rafting nature, because the decisions have already been taken, and so far as the drafting is concerned, the Drafting Committee has already considered many of these suggestions and amendments and it has accepted them. So, while there maybe discussion of principle in regard to some questions which have not been decided, there is not much to discuss so far as principles are concerned, because we have already discussed those principles and we have arrived at certain conclusions. Therefore, what I feel is this, that if we proceeded in a business-like way, it should be possible for us to complete discussion of the whole Constitution by the second anniversary of the day on which we started the work of this Constituent Assembly, that is, by the 9th of December next.

If we succeed in doing that, after that we might have a few days adjournment, when all the amendments which have been accepted by the House will be considered by the Drafting Committee and put in their proper places, when all the re-numbering and re-allocation of the Articles from one Chapter to another and so forth--all that becomes necessary--all that could be done within that interval of say ten or fifteen days. Then, we might meet a second time when we could finally accept the Constitution as it will have emerged. In this second discussion, under the Rules, we shall not go into the merits of any question; we shall have only to see that the amendments as they were accepted by the House have been incorporated in the final form in which the draft is placed before the House.

This is the proposal which I place before the House and I think this ought to meet with the approval of the members of this House.

Seth Govind Das (C. P. & Berar: General): *[Mr. President, I would like to know whether after adoption of the article relating to the national language, clauses which might have been passed by then in English would be placed before this House for adoption in Hindi.]*

Mr. President: *[Yes, of course, all the clauses would-be reconsidered in that language which may have been adopted as the national language. There would be no discussion at that time on the clauses as such. The only point for consideration would be whether the clause has been correctly translated or not. I, therefore, think that our discussions should be based on the English draft at present, for all those who have given thought to the draft and those who have prepared it, have done so in that language only. And when clause relating to the national language is finally adopted we would put up the translation of the Constitution in that language before you for adoption.]*

Pandit BalKrishna Sharma (United Provinces: General): Sir, I wish to draw your attention to this very important question which my honourable friend Seth Govind Das has raised before the House.

Shri Mahavir Tyagi (United Provinces: General): *[Mr. President, I would like to submit that before we proceed to discuss fundamental questions, it appears desirable that you should decide what the procedure would be for tabling amendments. Shall the old procedure be followed or the one which you have stated now? It is necessary so that we may have some idea of the order in which debate would proceed, and the time we would be allowed for sending in amendments.]*

Mr. President: *[Both will be decided simultaneously.]*

Pandit Balkrishna Sharma: Sir, I fail to see where the point of order lies. As a matter of fact, I only wanted to draw your attention to one thing. Before you call upon the Honourable Dr. Ambedkar to move that the Draft Constitution be taken into consideration, I should like to draw your attention to the question which has been raised by my friend Seth Govind Das. After the motion which the Honourable Dr. Ambedkar is to move has been carried, we shall certainly consider the Constitution clause by clause. As you know, Sir, I am one of those who had given notice that the National language of India be Hindi and the script the Devnagari script. Naturally, the question will arise when we take into consideration one clause after the other of our Constitution, as to which language will it be in which the Constitution shall be deemed to have been passed. My suggestion, therefore, before you will be that when we consider the clauses of the Constitution, after finishing one Chapter of it, we must revert in Hindi and pass every clause as has been amended by this House and as has been translated in that language by a Sub-Committee of this House. I would therefore request you, Sir, that before you take up the consideration of the Constitution clause by clause, you may be pleased to appoint a Sub-Committee of this House which will keep itself in touch with the clauses and the amendments that the House wishes to make therein and as they are passed, and that Committee should get these clauses translated and these clauses, after finishing one Chapter, may again be brought before the House in Hindi and it could be deemed to have been passed in Hindi also. So that, after some time, when we have ultimately done away with the English language, the original must be considered to have been passed in Hindi, and it should be the ultimate authority, the authentic constitution. If we do not adopt any such course, I think we shall be greatly handicapped at the time when I think article 99 of the Constitution comes before us and we declare our language as Hindi and the script the Devnagari script. I think there is some difficulty before my South Indian friends. They can easily say that "this Constitution at present is in the English language which we all understand, you call upon us to pass every clause in Hindi, and we do not know the language." I think those of my South Indian friends who do not know Hindi to such an extent may rely on the better sense of their colleagues. Here, in this House, there are friends who do not know English and yet they rely upon your good sense and they do not raise the objection that they do not know the English language and therefore this Constitution is not good. Similarly, they may try to accommodate us in this matter.

Mr. President: I think it will cut short discussion on this point if I explain what I propose to do in regard to this matter. There is a motion of which notice has been given that a Committee should be appointed for the purpose of preparing a translation and that translation should be passed Article by Article by this House, and that should be treated as the original. There is something to that effect of which notice has been given. What I propose to do is this. Members are aware that we have got translations prepared: there is a translation in Hindi; there is a translation in Urdu; there is a translation in Hindustani; all these three translations of the Draft

Constitution are ready and I believe members have received copies of these translations. As soon as the question is decided as to what will be our language, we shall set up a Committee which will take up that particular translation which is ready and see to it that it conforms literally to the original in English. Whatever our sentiments may dictate, we have to recognise the fact that most of those who have been concerned with the drafting of the constitution can express themselves better in English than they can in Hindi; it is not only a question of expressing in English or Hindi, but the ideas have also been taken from Constitutions of the West. So the expressions which have been used have, many of them, histories of their own and we have taken them bodily from the phraseology of Constitutions of the West in many places. Therefore it could not be helped because of the limitation of those who were charged with drafting that the draft had to be prepared in English. I do not think we have lost anything by that but when once a particular article is finally adopted in this House in the English language, we shall see to it that as correct and perfect a translation is produced as possible and in the language which will be accepted by the Constituent Assembly as the language for our national purposes. So I would ask the Members not to anticipate the discussion which we shall have on the question of language. That will come a little later but I promise this that as soon as that question is settled, we shall have the translation revised or prepared in that particular language which is accepted and we shall put the translated Constitution also before the House for acceptance.

Seth Govind Das: *[Mr. President, you had made a specific commitment that when the constitution would be placed before us, its original would be in our national language. I had also put a question to you at that time and in your reply also you did say that the original draft of the constitution to be placed before us by Dr. Ambedkar is in English. As the constitution now placed before us is in English I would like to know when the constitution originally drafted in our national language and about which you have given us an assurance will be brought before us]*.

The Honourable Shri Ghanshyam Singh Gupta (C. P. & Berar: General): *[Mr. President, I would like to inquire whether after the adoption of the article relating to the national language, each clause would be taken up in the National Language for adoption just in the same manner as the clauses in the English Draft are taken up for final adoption after these have been duly amended.]*

Mr. President: *[Every article will be taken up.]*

Pandit Balkrishna Sharma: Sir, I only want to make this suggestion that before taking up the Constitution clause by clause will it not be better if you very graciously permit us to take up the question of national language and have a decision about it. Because if we first take up the question of the national language and decide it, then once for all the hatchet is buried *(Cheers)*. You can have the discussions of 10 or 15 clauses in English. The Committee will begetting the translations ready the next day and the whole translation of that part will be before the House which will be called upon to take it into consideration and then it shall be deemed to have been passed by the House. There fore I suggest you may be pleased to permit this House to take up the question of the national language first before taking up the Constitution clause by clause. The question of national language comes in somewhere in clause 99 of the Constitution which may take long. This question bristles with many difficulties and some of us feel it to be fundamentally embedded with our future. There are other members who do not attach importance to it. Therefore I would request you to take up this question first and give us an opportunity to decide it and afterwards take the Constitution in English clause by clause and then give us opportunity to take the min Hindi as well.

Mr. President: May I state that the very reason which he has adduced for taking up the question of language in the beginning has induced me to put it off to a later stage. The reason which he has given is that there are differences of opinion, some people holding very strongly one view and others holding the other view equally strongly. I suggest that it is much better to discuss at any rate the fundamentals of the Constitution in a calm atmosphere be fore our tempers have got frayed. I therefore suggest that we should go on with the Constitution and discuss each item and when we have done that much, - it will not in any way prejudice the question of language - the language question will be decided on its merits by the House and when that decision has been taken, every article will be passed ultimately in that language also. Therefore nothing is lost. Only, we do not lost temper to begin with.

Shri R. V. Dhulekar (United Provinces: General): *[Mr. President, Sir, the proposal that I want to place before you is this. On the first occasion when I delivered my speech in Hindi in this House, I had moved an amendment to the effect that the constitution should be framed in our national language and that the English version should be treated as its translation. Therefore I want to submit that when the discussion on the English version of the Constitution is over and it has been fully passed and when with your permission a decision has also been reached in regard to the national language, I shall place the proposal before you that the constitution in the national language should be considered as the original one. It will be insulting for us to adopt the translation of the English version. No nation has so far done so.

I admit that the Members would speak in English in this debate. I shall also speak in English and in fact want to do so but later I shall speak in Hindi. I wish to inform you that I want to place before you a motion when this discussion is over. It will be to the effect that the English version of the Constitution will be considered the translation of the constitution in the national language and the latter will be taken to be the original one. The English version will be styled as translation. I request that I maybe told as to when I may table that motion before you.]*

Mr. President: *[This Assembly is entitled to say whether the constitution will be passed in Hindi or Urdu and that version will be taken to be the original one. The other versions will be considered as its translations. You have the power to do so.]*

Shri Suresh Chandra Majumdar (West Bengal: General): Sir, your orders came regarding the translations. Complete translations have been made in certain languages and I have no quarrel with that but in the process of Constitution making it is imperative that the people of our country - whatever may be their spoken language - they should understand it. So in your scheme of translation if you will kindly include, in addition to Hindi and Urdu, other major languages of India, it would be very convenient for everyone to understand and thereby, whatever may be the Rashtrabhasha afterwards, it will not be said that the proceedings were carried on in a language or languages which were not intelligible to all parts of the country. This is my suggestion. I have no disrespect for Hindi nor have I any attachment to English but as the Constitution is a very important thing I think it should be made intelligible to all the people of the country. So my prayer is you might kindly include in your scheme of translation at least the major languages of India and I don't think it will be difficult for you to arrange that.

Pandit Hirday Nath Kunzru (United Provinces: General): Mr. President, you have made an announcement regarding the procedure you propose to follow in connection with the Bill before us, that will have a very important bearing on the discussions that will take place shortly. You have drawn our attention to two points.

The first point is that as the principles underlying this Bill were accepted by the Assembly a few months back, no amendment should be brought forward which would question any of these principles or would seek to make any alteration in them. Sir, this is a matter......

Mr. President: I qualified that by "ordinarily".

Pandit Hirday Nath Kunzru: It all depends on how the Chair will interpret this word. But I remember that when the discussions on the principles embodied in the Bill were going on, it was said several times that we should have a better opportunity for expressing our opinions later when the whole picture was before us. This is a matter that, I venture to think, Sir, deserves your serious attention. We might, a few months back, have accepted certain conclusions, but if, either after studying the Act as a whole, or after further reflection, any of us comes to the conclusion that any of these principles should be modified or completely altered, his right to express his opinion should not be questioned.

Mr. President: I may say at once that I do not propose to rule out any discussion. It will be for the House to decide whether it will go back on any of its decisions. As Chairman, I do not propose to rule out any discussion or reconsideration.

Pandit Hirday Nath Kunzru: The House will certainly have the right to decide whether it will go back on any of its previous decisions. If it does not approve any change in the principles accepted by it some time ago, it will be open to it to throw out any suggestion for a change made by any Member. But what I have said, is due to the fact that I am under the impression that it was your intention to rule out certain amendments.

Mr. President: I am sorry if I left that impression.

Pandit Hirday Nath Kunzru: I am very glad to hear from you, Sir, that this is not your intention. It is therefore not necessary for me to discuss this aspect of your pronouncement any more.

I now come to the second point which you asked the House to bear in mind in giving notice of amendments in future. You said that you would allow amendments to be proposed till 5 o'clock on Sunday next, but that thereafter you would not admit any new amendment for discussion, unless it seemed to you to relate to a matter of importance. I think, Sir, we all appreciate the substance of what you have said. As far as possible, our discussion should be canalized in proper channels and should relate to such points only a sought to be considered by the House again. Your advice therefore in regard to the character of the amendments would naturally carry great weight with every Member of this House. But I submit, Sir, that no amendment, no matter when received, ought to be automatically ruled out on the ground that it was not received by 5 o'clock on Sunday afternoon. It is the duty of the Chair to regulate the discussion and I have no doubt that every Member of this House is anxious to help the Chair in its onerous task, particularly as the which every Member of the House ought to be jealous. We have under the rules the right to give notice of amendments at any stage we like, and provided they are received within the time allotted by the rules, our right to put forward new amendments cannot be questioned. It cannot be questioned even by you, Sir.

I therefore suggest that when you consider any amendment that is proposed, to be superfluous, or to relate to a very unimportant matter, you may well advise the Member concerned to save the time of the House by withdrawing it. But should he insist on expression his view, even on an unimportant matter, I hope that you, whose duty it is to maintain our rights and privileges unimpaired, will not takeaway by executive discretion his right to propose his amendment. Sir, this is a matter of great importance. It relates to a question of principle. I do not think that in practice any conflict will arise between the Chair and any member of this House but I am anxious that no right, not even the least, that the rules enable us to enjoy should betaken away from us or whittled down either directly or indirectly. I hope that my observations will receive the attention of the Chair and that my remarks will be taken inthe spirit in which they have been made. We all mean to be respectful to you. We listen to whatever you say with great attention and with a desire to act up to your advice but we do earnestly request you not to make any attempt to trench even on the smallest of our privileges. We ask you to standup for them should anybody attack them and I trust that the discussion will be carried on in such a way as to enable us to feel that you are the guardian of our dignity and privileges and will maintain unimpaired every right that the House enjoys at present under the rules.

Mr. President: I hope I have not given any cause so far in this Assembly to any Member to complain that I have acted in such a way as to take away any of his rights and I hope to continue the tradition in the future also.

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, I beg to draw your attention to the fact that I have already given notice of a motion to the effect:

> "That the consideration of the Draft Constitution of India be postponed till the election of a fresh and competent Constituent Assembly on the basis of Joint Electorates and the formation of political rather than communal parties in India."

I also beg to draw your attention to your ruling when I proposed an amendment to the same effect on the occasion of the presentation of the report on the principles of a Model provincial constitution, viz., that the consideration of the provincial constitution be postponed unless and until we have considered the Union Constitution.....

Mr. President: We shall take up your amendment in due course.

Maulana Hasrat Mohani: I want to place my motion first.

Mr. Hussain Imam (Bihar: Muslim): The motion that the Bill be considered has not been made and therefore the amendment cannot be moved at this stage.

Mr. President: That is what I am saying. We shall take it up in due course.

The Assembly then adjourned for Lunch till Three of the Clock.

The Assembly re-assembled after lunch at Three of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Shri Mahavir Tyagi: Mr. President, before we rose for lunch, the question put before you for your consideration was whether the procedure which you had announced regarding the discussions here held good or whether you will please accede to the request made by my friend Pandit Hirday Nath Kunzru. According to the rules we have the right to give two days' notice of amendments if they are to be considered valid. I need not quote the relevant rule. It is known to everybody. We followed it last time. When the draft of the Constitution was sent to us, I and many others here thought naturally that the same old procedure with regard to discussion will be followed. Now, many of my friends may not have sent in their amendments in full in the hope that we would discuss these matters here and then give notice of our amendments after a discussion between ourselves. The old arrangement of two days' notice enabled us to meet in groups or parties and discuss and send in amendments. If this practice is to be guillotined and we are not to be permitted to give notice of amendments as we proceed clause by clause, it will not be fair for those who have only just now joined the Assembly. There are many who have signed the Register today and got the papers of the Assembly a few hours ago. The draft Constitution is a huge volume which we want to read and consider. If you accede to the request of my friend Mr. Kunzru and permit the new-comers to study the Draft Constitution as the discussion proceeds it will facilitate them to send their amendments in time and have their say. Otherwise, the new arrivals will not be accommodated at all.

Mr. President, we are the Constituent Assembly and a remaking the Constitution. An ordinary law which is considered by the Legislative Assembly and passed can be amended once very month or so. But the Constitution is not amended every now and then. We are making a Constitution for centuries to come and it cannot be amended easily, as easily as we can amend a legislative enactment. Therefore, full facilities should be given to the Members of this House to have their say.

Therefore, I repeat the request that you may please consider that the two days time given in the rules is not taken away and allow amendments subject to their relevancy to the motion under consideration. Amendments may not be moved which have the effect of negativing the main motion except as permitted by the Chairman. Notice of amendments to a motion must be given one clear day before the motion is moved in the Assembly. This rule being there, I submit ,unless we change the rules.............

Mr. President: The relevant rule is 38-0.

Shri Mahavir Tyagi: It says:

"If notice of a proposed amendment has not been given two clear days before the day no which the Constitution or the Bill, as the case may be, is to be considered, any member may object to the moving of the amendment, and such objection shall prevail, unless the President in his discretion allows the amendment to be moved.

Do you mean to interpret this rule 38-0 in such a way that the whole Constitution.........

Mr. President: I hope the Honourable Member will not drive me to give a decision on that point today. You had better leave it there. *(Laughter).*

Shri H. V. Kamath: Arising from the pronouncement made by you this morning, may I seek clarification on two points?

Shri Algu Rai Shastri (United Provinces: General):*[Mr. President, I find that Honourable Members stand up to intervene in the debate. I request that I may also be given a chance to speak.]*

Shri H. V. Kamath: May I seek a little clarification of the announcement you made this morning? You were pleased to say that the Assembly would adjourn on 9th December for a few days. Do we adjourn on that day irrespective of whether we complete the consideration of the Constitution or not?

Mr. President: Nothing of the sort. I only suggested some sort of time table which I considered to be fair. It is for the House to decide whether they would go on up to 9thof December next year. *(Laughter).*

Shri H. V. Kamath: Are we going to have a recess from9th December to a date to be specified later?

Mr. President: It all depends on the business on hand. I have suggested more that once that I do not want to curtail discussion. As we are considering the Constitution of the country, we shall not do anything in a hurry; but at the same time I do not want waste time.

Shri H. V. Kamath: Are we going to adjourn on the 9thDecember, irrespective of whether we complete the consideration of the Constitution or not?

Mr. President: That we shall see.

Shri H. V. Kamath: You were pleased to remark in the morning as regards the non-participation of Hyderabad and Bhopal, that it is a matter entirely for the Government to consider. Mr. President, according to our Rules you have power to call upon the rules of Hyderabad and other States to send representatives to the Constituent Assembly. But, you were pleased to say that it is a matter in the hands of Government. I do not know how the Government comes into this affair. You are fully authorised to call upon the rulers to send their representatives to the Assembly.

Mr. President: Sitting in this Assembly, I have no right to compel anybody to do anything. Those who have come in are entitled to participate in the deliberations of this Assembly and those who have not come, we cannot force them to come. It is for the Government to deal with them.

Shri Algu Rai Shastri: *[Mr. President, as far as I remember you had announced in the last session that the Constitution to be presented here would be in Hindi and that it might be translated into English. But the statement you have made today has been a source of disappointment in as much as we learn that we have to discuss the very Draft that has been prepared by the Drafting Committee in English. We have before us its Hindi version also. I do not understand why we should not take into consideration the Hindi version of the Draft when it is before us. We may take up for consideration the Hindi version of the Draft clause by clause and if any portion is found to be translated in rather difficult language. Dr. Ambedkar who himself is a great scholar of the Sanskrit language, may explain such portion from the English Draft to those who are unable to follow the version in Hindi. It is necessary for every county to frame its constitution in its own language. We belong to a country that has its own language. We should therefore discuss it clause by clause in our own language. The Draft prepared in a foreign language should not be presented to this House for discussion.

Sir, perhaps you remember that at the commencement of the first session of the Constituent Assembly I made a request that the discussion in this House should be carried on in a language which is understood by the people of this country. We should not proceed in this House as if it were the British Parliament. The word `Dominion' is entirely foreign in character. I remember a saying of the late Moulana Mohammad Ali. He used to say that the word` Dominion' might be applicable to Africa, South Africa, New Zealand, Australia and Tasmania. These are the dominions where our alien rulers had founded colonies and established cantonments. But India cannot be said to be a cantonment for the British. They went to the countries I have already named and established there their colonies and cantonments; they also carried their language with them and the people of those countries are English speaking. But this cannot be said in our case. We have our own language, our own civilization which has come down to us through hundreds of centuries; so also we have our own literature. Just as the English people can take pride in their literature, in Shakespeare and Milton, we too can be proud of the works of our Kalidas, Tulsidas, Jayasi and Soordas. It will be matter of deep shame for a country which has developed a language of its own, to frame its first free Constitution in a foreign language. Therefore, I would like to entreat you, to pray to you that the Hindi version of the Draft Constitution should be placed before this House as the original Draft of the Constitution. The clauses of the Hindi version should be discussed here and the English Draft should not be presented here for discussion. It should be treated only as a translation.

The English have quit India. Their cantonments are no longer here. Following your example and the example of your colleagues and other respected leaders who have immortalized their names in our history by eliminating the English rule from our land and whose names have become memorable, we should remove the word `Dominion' from the Draft and I am sure it will be removed. It will, I think be agitated in detail in this House and many Members would express themselves on it. But this is a matter for future discussion. Just now the question before us is whether we have any language of our own and a culture of our own; whether we have a language of our songs, of our poems and for the expression of our thoughts and emotions. We should frame our Constitution in the same language in which we would express our feelings. The Preamble of the Draft says: "We, the people of India . . . . give to ourselves this Constitution." Here the term "We the people of India "means not the few men who are sitting in this House but the dumb millions of India and on whose behalf we are functioning here. Therefore the Constitution that is being presented here must be in the language we understand. It is a matter of regret that many of our veteran leaders have begun to say that the problem of language has not yet been solved; that our language has not been reformed and that English has to stay. Such things are said sometimes. I do not want here to mention the names of those leaders. But since they say that we have no language of our own, I want to tell them that ours is a developed language, a rich language which is capable of expressing high thoughts and sentiments. It has a rich and a good vocabulary. We have inherited our language from our ancient sages, we have inherited it from Kautilya's Artha Shastra, from our ancient literature which has such gems as the Mahabharat at and the Ramayana. We have developed our language taking words from these epics. Therefore it can not be said. . . .]*

Mr. President: *[Excuse me, I do not understand what you are discussing. All the matters to which you are referring are those on which there is already considerable agreement.]*

Shri Algu Rai Shastri: *[I am only submitting that the original draft of the Constitution which we are to discuss here should be in Hindi and not in English. Therefore we should have liberty to table amendments on the clauses of the Hindi version of the Draft treating it as the origin alone. I beg to propose this with the idea that it would indicate that we have our own language. We do not deem our land to be such a dominion within the British Empire as can express itself only in English.

I would like to say a few words more. Fortunately or unfortunately our brethren who live in those coastal regions where the English landed for the first time have acquired considerable proficiency in English. It is they who feel the greatest embarrassment when Hindi is mentioned as the national language. It had been the great good fortune of the people of Madras that their scholars gave to India a sublime message based on the Vedic literature and culture. Similarly it was their lot that the English.......]*

Mr. President: *[I would like to point out to you that you are continuing to talk on a subject on which there is no dispute. All admit that we can and will frame our constitution in our language. There is no scope for any further discussion on this matter. Previously also the question has been discussed many times and I am sure that at the appropriate occasion it will be adopted.]*

Shri Algu Rai Shastri: *[I am talking at present, of tabling amendments in Hindi.]*

Mr. President: *[You can table amendments in Hindi if you so desire. But how can an amendment in Hindi fit in the clause that is in English. There will be difficulty for me but, however, if you wish to table any amendment in Hindi you can do so.]*

Sardar Bhopinder Singh Man (East Punjab: Sikh): *[Mr. President, I want to invite your attention to the fact that while discussing the Report of the Minorities Board this House had decided on the last occasion that the consideration of the problem of Sikh rights should be held up as the conditions in the East Punjab were not normal. Today, we have got before us recommendations relating to all minorities but so far Sikhs are concerned, no decision has been taken as yet.]*

Mr. President: *[When this question is taken up you will be free to say what you want to say about it.]*

Sardar Bhopinder Singh Man: *[Sir, You have observed that amendments may be sent within two days but nothing has been decided regarding this question.]*

Mr. President: *[You can send your amendments, after a decision has been taken in this matter.]*

Mr. Hussain Imam: Mr. President, Sir, I do not wish to prolong the discussion on this subject. I simply wish to draw your attention to two important points. The rule as framed is all-comprehensive, the time of two days is given for giving amendments before the Constitution is taken up. Your discretion, Sir, is still left wide open, and I hope it will be used generously. I am saying this not that I am not convinced that it will be used generously but to assure my friends that, if there is anything material, they can rely on you that it will be given favourable consideration.

There is a second point on which I require your indulgence. Amendments to amendments can only come forward when the amendments are before the House. Therefore in that category you will have to relax your ruling and give us an opportunity to give amendments to amendments even after that time.

Mr. President: Certainly.

Mr. Hussain Imam: Thirdly, I wish to stress that this controversy about language may be happily solved if all those friends of ours who are interested in the Hindi version are formed into a Committee from the beginning to go forward with the work of translating or putting forward a Hindi version also. Amendments also may be sent in Hindi provided the office arranges to give us an English translation as well. So in this manner we will be able to achieve both the objectives. An amendment may be given in any language which is approved by the Constituent Assembly provided a translation appears on the Order Paper simultaneously.

Fourthly, I should like to invite the attention of the House to the fact that the Constitution is being made for - I would not say for generations - as long as it serves our purpose. The United States of America has made amendments to its constitution and about twenty amendments have already been made. There the process is so difficult. As you will remember, that not only has to be got through the two Houses, but it must be approved by each unit of the U.S.A. Our position is not so bad. But there is one thing, Sir, on which I would require your indulgence, and that is the question of the boundaries of existing or new provinces. That matter, Sir, after the constitution will become so difficult that I am sure it will become well nigh impossible to do anything towards this end. If it is the will of the House that the present boundaries should be changed in any manner, it would be meet and proper that before we finalise the Constitution in the next session after the recess, we should have a picture of the provinces as they will be constituted in the immediate future and not leave it for further action in a remote future.

Mr. President: I think that the suggestion is somewhat premature. We are awaiting the report of the Commission which we have appointed and we shall consider it at that stage.

Mr. Hussain Imam: Before finalising, we may be able to move amendments to those recommendations as and when it comes up. I simply invite the attention of the House to the urgency of the matter and to the matter being given full consideration and finalization.

Shri R. V. Dhulekar: *[Sir, I submit that the period of two hours that will be given to us tomorrow for general discussion is too short. It is a different matter that hundreds of amendments will be received. When every member gets an opportunity of expressing his views, the amendments that are tabled after a discussion of a few days, are altered. The amendments are not referred to in the discussion. Therefore I request that if we are given three or four days' time for discussion and every Member is asked to observe the rule that he should not speak for more than fifteen minutes, every Member then will have the satisfaction that he has made his contribution in the House in the framing of the constitution. I submit that one day means only five hours time. If Dr. Ambedkar takes it up at four today and takes half the time tomorrow, there will hardly be left any time for us. Therefore I humbly request that we may be given an opportunity of speaking on this highly important constitution. The opportunity of framing the constitution does not come over and over again and everyone desires to speak out whatever he has to say for his country and nation. I want to submit also that whatever we speak here is not meant for this House only or for the present time only. Whatever is spoken here will be read even after hundred or two hundred or four hundred years and the people will come to know of the views of their ancestors one particular point. They will interpret it accordingly. Therefore, Sir, I think we the Members in this House will be highly obliged if at least four days are granted to us. Everyone of us wants only fifteen minutes and I want to tell you on behalf of other Members also that if this opportunity is given to us, we shall sit together and come to a decision regarding the hundreds of amendments that may be brought forward and the Members of this House will help you in finalising the constitution as quickly as possible.]*

Mr. President: *[We shall consider this later on. The time now being spent on the preliminary discussion reduces the time available for detailed discussion. Therefore, I would ask that you allow the real work to start.]*

Pandit Thakur Dass Bhargava (East Punjab: General):*[Mr. President, at the very outset I would like to enquire whether the Honourable Dr. Ambedkar has given any notice of his intention to introduce the Draft Constitution as required by the Rule 38-L or not. I am asking for this information, because if no such notice has been given, I am afraid he can not move for consideration. According to the rules five days' notice is necessary.]*

Mr. President: *[Yes! It has been included there. It has been included in the Agenda. It being a re-draft all the amendments will be up again.]*

Pandit Thakur Dass Bhargava: *[Another point which I wanted to bring to your notice falls under Rules 38-M. The copy of the draft constitution, which is a re-draft, has been given to us just today at the time when you were adjourning the House for lunch, whereas it should have reached us much earlier. I think all the Members have not received a copy each so far. According to Rule 38-M. such copies should reach the Members at least three days before ,more particularly for the reason that it contains various reports on new matters. Unless it has been thoroughly read and studied, how can amendments be sent?]*

Mr. President: *[Which copy are you referring to? The Draft Constitution placed before you by Dr. Ambedkar of 21stFebruary, the copies of which were distributed, will be moved by him and the amendments on it will be proposed as amendments and they will be moved on behalf of the Drafting Committee.]*

Pandit Thakur Dass Bhargava: *[The third point for submission on which I respectfully want to lay more emphasis is regarding the interpretation of Rule 38-O. In my opinion the view that the words "two clear days before the `day' on which the constitution is to be considered" in Rule 38-O is that all the amendments should reach the office by Sunday before 5 P.M., is not correct for the reason that the constitution shall not be taken up for consideration on the9th November only; rather, its consideration will continue from day to day when the clauses will be discussed. There will be other dates further on after which it would be stated that the Constitution will be considered on those particular dates. That being the case, Members have the right to send in their amendments, two days before the date when the particular amendments shall be discussed.]*

Mr. President: *[Let us not take a decision on this point at this stage.]*

Pandit Thakur Dass Bhargava: *[I am aware that you want to give full opportunity to the Members for discussion and that their right of giving notice of amendments should remain intact. Every Member has confidence in the matter of the exercise of your discretion. But in my humble opinion, the question of discretion does not arise here, because according to my interpretation, every Member can send in amendments as a matter or right. This is also the intention of Rules 38-P and 38-Q. Your order that Members should send their amendments by 5 o'clock on Sunday goes in a way, prima facie, against the Members, which is not in order and should be reviewed. You may not decide it now, if you do not want to, though incidentally and in a way, the decision is there .In my humble opinion, if without reviewing the order, you extend the date, instead of 7th, to 10th and decide the question, when occasion arises, then nobody will have any grievance.]*

Shri T. Channiah (Mysore State): On a point of order, Mr. President, Sir, most of the honourable Members who spoke previously know the English language very well. We are very sorry to bring it to your notice that most of the Members, especially Members coming from Madras, from Bengal, Bombay, Assam and many other places cannot understand Hindi or Hindustani. We have to sit almost like dumb people. Mr. President, Sir, you are here to protect the interests of all the Members. I would, therefore, request you to see that all those members who know English and who are able to speak in English are made to speak in English.

MOTION *re.* DRAFT CONSTITUTION

Mr. President: I think we shall now proceed with the discussion. I call upon the Honourable Dr. Ambedkar to move his motion.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Mr. President, Sir, I introduce the Draft Constitution as settled by the Drafting Committee and move that it be taken into consideration.

The Drafting Committee was appointed by a Resolution passed by the Constituent Assembly on August 29, 1947.

The Drafting Committee was in effect charged with the duty of preparing a Constitution in accordance with the decisions of the Constituent Assembly on the reports made by the various Committees appointed by it such as the Union Powers Committee, the Union Constitution Committee, the Provincial Constitution Committee and the Advisory Committee on Fundamental Rights, Minorities, Tribal Areas, etc. The Constituent Assembly had also directed that in certain matters the provisions contained in the Government of India Act, 1935, should be followed. Except on points which are referred to in my letter of the 21st February 1948 in which I have referred to the departures made and alternatives suggested by the Drafting Committee, I hope the Drafting Committee will be found to have faithfully carried out the directions given to it.

The Draft Constitution as it has emerged from the Drafting Committee is a formidable document. It contains 315Articles and 8 Schedules. It must be admitted that the Constitution of no country could be found to be so bulky as the Draft Constitution. It would be difficult for those who have not been through it to realize its salient and special features.

The Draft Constitution has been before the public for eight months. During this long time friends, critics and adversaries have had more than sufficient time to express their reactions to the provisions contained in it. I daresay some of them are based on misunderstanding and inadequate understanding of the Articles. But there the criticisms are and they have to be answered.

For both these reasons it is necessary that on a motion for consideration I should draw your attention to the special features of the Constitution and also meet the criticism that has been levelled against it.

Before I proceed to do so I would like to place on the table of the House Reports of three Committees appointed by the Constituent Assembly #(1) Report of the Committee on Chief Commissioners' Provinces (##)(2) Report of the Expert Committee on Financial Relations between the Union and the States, and (###)(3) Report of the Advisory Committee on Tribal Areas, which came too late to be considered by that Assembly though copies of them have been circulated to Members of the Assembly. As these reports and the recommendations made therein have been considered by the Drafting Committee it is only proper that the House should formally be placed in possession of them.

Turning to the main question. A student of Constitutional Law if a copy of a Constitution is placed in his hands is sure to ask two questions. Firstly what is the form of Government that is envisaged in the Constitution; and secondly what is the form of the Constitution? For these are the two crucial matters which every Constitution has to deal with. I will begin with the first of the two questions.

In the Draft Constitution there is placed at the head of the Indian Union a functionary who is called the President of the Union. The title of this functionary reminds one of the President of the United States. But beyond identity of names there is nothing in common between the form of Government prevalent in America and the form of Government proposed under the Draft Constitution. The American form of Government is called the Presidential system of Government. What the Draft Constitution proposes is the Parliamentary system. The two are fundamentally different.

Under the Presidential system of America, the President is the Chief head of the Executive. The administration is vested in him. Under the Draft Constitution the President occupies the same position as the King under the English Constitution. He is the head of the State but not of the Executive. He represents the Nation but does not rule the Nation. He is the symbol of the nation. His place in the administration is that of a ceremonial device on a seal by which the nation's decisions are made known. Under the American Constitution the President has under him Secretaries in charge of different Departments. In like manner the President of the Indian Union will have under him Ministers in charge of different Departments of administration. Here again there is a fundamental difference between the two. The President of the United States is not bound to accept any advice tendered to him by any of his Secretaries. The President of the Indian Union will be generally bound by the advice of his Ministers. He can do nothing contrary to their advice nor can he do any thing without their advice. The President of the United States can dismiss any Secretary at any time. The President of the Indian Union has no power to do so long as his Ministers command a majority in Parliament.

The Presidential system of America is based upon the separation of the Executive and the Legislature. So that the President and his Secretaries cannot be members of the Congress. The Draft Constitution does not recognise this doctrine. The Ministers under the Indian Union are members of Parliament. Only members of Parliament can become Ministers. Ministers have the same rights as other members of Parliament, namely, that they can sit in Parliament, take part in debates and vote in its proceedings. Both systems of Government are of course democratic and the choice between the two is not very easy. A democratic executive must satisfy two conditions - (1) It must be a stable executive and (2) it must be a responsible executive. Unfortunately it has not been possible so far to devise a system which can ensure both in equal degree. You can have a system which can give you more stability but less responsibility or you can have a system which gives you more responsibility but less stability. The American and the Swiss systems give more stability but less responsibility. The British system on thither hand gives you more responsibility but less stability. The reason for this is obvious. The American Executive is anon-Parliamentary Executive which means that it is not dependent for its existence upon a majority in the Congress ,while the British system is a Parliamentary Executive which means that it is not dependent for its existence upon a majority in the Congress, while the British system is a Parliamentary Executive which means that it is dependent upon a majority in Parliament. Being a non-Parliamentary Executive, the Congress of the United States cannot dismiss the Executive. A Parliamentary Government must resign the moment it loses the confidence of a majority of the members of Parliament. Looking at it from the point of view of responsibility, a non-Parliamentary Executive being independent of parliament tends to be less responsible to the Legislature, while a Parliamentary Executive being more dependent upon a majority in Parliament become more responsible. The Parliamentary system differs from a non-Parliamentary system in as much as the former is more responsible than the latter but they also differ as to the time and agency for assessment of their responsibility. Under the non-Parliamentary system, such as the one that exists in the U.S.A., the assessment of the responsibility of the Executive is periodic. It is done by the Electorate. In England, where the Parliamentary system prevails, the assessment of responsibility of the Executive is both daily and periodic. The daily assessment is done by members of Parliament, through questions, Resolutions, No-confidence motions, Adjournment motions and Debates on Addresses. Periodic assessment is done by the Electorate at the time of the election which may take place every five years or earlier. The Daily assessment of responsibility which is not available under the American system is it is felt far more effective than the periodic assessment and far more necessary in a country like India. The Draft Constitution in recommending the Parliamentary system of Executive has preferred more responsibility to more stability.

So far I have explained the form of Government under the Draft Constitution. I will now turn to the other question, namely, the form of the Constitution.

Two principal forms of the Constitution are known to history - one is called Unitary and the other Federal. The two essential characteristics of a Unitary Constitution are:(1) the supremacy of the Central Polity and (2) the absence of subsidiary Sovereign polities. Contrariwise, a Federal Constitution is marked: (1) by the existence of a Central polity and subsidiary polities side by side, and (2) by each being sovereign in the field assigned to it. In other words. Federation means the establishment of a Dual Polity. The Draft Constitution is, Federal Constitution inasmuch as it establishes what may be called a Dual Polity. This Dual Polity under the proposed Constitution will consist of the Union at the Centre and the States at the periphery each endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution. This dual polity resembles the American Constitution. The American polity is also a dual polity, one of it is known as the Federal Government and the other States which correspond respectively to the Union Government and the States Government of the Draft Constitution. Under the American Constitution the Federal Government is not a mere league of the States nor are the States administrative units or agencies of the Federal Government. In the same way the Indian Constitution proposed in the Draft Constitution is not a league of States nor are the States administrative units or agencies of the Union Government. Here, however, the similarities between the Indian and the American Constitution come to an end. The differences that distinguish them are more fundamental and glaring than the similarities between the two.

The points of difference between the American Federation and the Indian Federation are mainly two. In the U.S.A. this dual polity is followed by a dual citizenship. In the U.S.A. there is a citizenship of the U.S.A. But there is also a citizenship of the State. No doubt the rig ours of this double citizenship are much assuaged by the fourteenth amendment to the Constitution of the United States which prohibits the States from taking away the rights, privileges and immunities of the citizen of the United States. At the same time, as pointed out by Mr. William Anderson, in certain political matters, including the right to vote and to hold public office, States may and do discriminate in favour of their own citizens. This favoritism goes even farther in many cases. Thus to obtain employment in the service of a State or local Government one is in most places required to the be a local resident or citizen. Similarly in the licensing of persons for the practice of such public professions as law and medicine, residence or citizenship in the State is frequently required; and in business where public regulation must necessarily be strict, as in the sale of liquor, and of stocks and bonds, similar requirements have been upheld.

Each State has also certain rights in its own domain that it holds for the special advantage of its own citizens. Thus wild game and fish in a sense belong to the State. It is customary for the States to charge higher hunting and fishing license fees to non-residents than to its own citizens. The States also charge non-residents higher tuition in State Colleges and Universities, and permit only residents to be admitted to their hospitals and asylums except in emergencies.

In short, there are a number of rights that a State can grant to its own citizens or residents that it may and does legally deny to non-residents, or grant to non-residents only on more difficult terms than those imposed on residents. These advantages, given to the citizen in his own State, constitute the special rights of State citizenship. Taken all together, they amount to a considerable difference in rights between citizens and non-citizens of the State. The transient and the temporary sojourner is everywhere under some special handicaps.

The proposed Indian Constitution is a dual polity with a single citizenship. There is only one citizenship for the whole of India. It is Indian citizenship. There is no State citizenship. Every Indian has the same rights of citizenship, no matter in what State he resides.

The dual polity of the proposed Indian Constitution differs from the dual polity of the U.S.A. in another respect. In the U.S.A. the Constitutions of the Federal and the States Governments are loosely connected. In describing the relationship between the Federal and State Government in the U.S.A., Bryce has said:

> "The Central or national Government and the State Governments may be compared to a large building and a set of smaller buildings standing on the same ground, yet distinct from each other."

Distinct they are, but how distinct are the State Governments in the U.S.A. from the Federal Government? Some idea of this distinctness may be obtained from the following facts:

1. Subject to the maintenance of the republican form of Government, each State in America is free to make its own Constitution.
2. The people of a State retain for ever in their hands, altogether independent of the National Government, the power of altering their Constitution.

To put it again in the words of Bryce:

"A State (in America) exists as a commonwealth by virtue of its own Constitution, and all State Authorities, legislative, executive and judicial are the creatures of, and subject to the Constitution."

This is not true of the proposed Indian Constitution. No States (at any rate those in Part I) have a right to frame its own Constitution. The Constitution of the Union and of the States is a single frame from which neither can get out and within which they must work.

So far I have drawn attention to the difference between the American Federation and the proposed Indian Federation. But there are some other special features of the proposed Indian Federation which mark it off not only from the American Federation but from all other Federations. All federal systems including the American are placed in a tight mould of federalism. No matter what the circumstances, it cannot change its form and shape. It can never be unitary. On the other hand the Draft Constitution can be both unitary as well as federal according to the requirements of time and circumstances. In normal times, it is framed to work as a federal system. But in times of war it is so designed as to make it work as though it was a unitary system. Once the President issues a Proclamation which he is authorised to do under the Provisions of Article275, the whole scene can become transformed and the State becomes a unitary state. The Union under the Proclamation can claim if it wants (1) the power to legislate upon any subject even though it may be in the State list, (2) the power to give directions to the States as to how they should exercise their executive authority in matters which are within their charge, (3) the power to vest authority for any purpose in any officer, and (4) the power to suspend the financial provisions of the Constitution. Such a power of converting itself into a unitary State no federation possesses. This is one point of difference between the Federation proposed in the Draft Constitution, and all other Federations we know of.

This is not the only difference between the proposed Indian Federation and other federations. Federalism is described as a weak if not an effete form of Government. There are two weaknesses from which Federation is alleged to suffer. One is rigidity and the other is legalism. That these faults are inherent in Federalism, there can be no dispute. A Federal Constitution cannot but be a written Constitution and a written Constitution must necessarily be a rigid Constitution. A Federal Constitution means division of Sovereignty by no less a sanction than that of the law of the Constitution between the Federal Government and the States, with two necessary consequences (1) that any invasion by the Federal Government in the field assigned to the States and vice versa is a breach of the Constitution and (2) such breach is a justiciable matter to be determined by the Judiciary only. This being the nature of federalism, a federal Constitution have been found in a pronounced form in the Constitution of the United States of America.

Countries which have adopted Federalism at a later date have attempted to reduce the disadvantages following from the rigidity and legalism which are inherent therein. The example of Australia may well be referred to in this matter. The Australian Constitution has adopted the following means to make its federation less rigid:

(1) By conferring upon the Parliament of the Commonwealth large powers of concurrent Legislation and few powers of exclusive Legislation.

(2) By making some of the Articles of the Constitution of a temporary duration to remain in force only "until Parliament otherwise provides."

It is obvious that under the Australian Constitution, the Australian Parliament can do many things, which are not within the competence of the American Congress and for doing which the American Government will have to resort to the Supreme Court and depend upon its ability, ingenuity and willingness to invent a doctrine to justify it the exercise of authority.

In assuaging the rigour of rigidity and legalism the Draft Constitution follows the Australian plan on a far more extensive scale than has been done in Australia. Like the Australian Constitution, it has a long list of subjects for concurrent powers of legislation. Under the Australian Constitution, concurrent subjects are 39. Under the Draft Constitution they are 37. Following the Australian Constitution there are as many as six Articles in the Draft Constitution, where the provisions are of a temporary duration and which could be replaced by Parliament at anytime by provisions suitable for the occasion. The biggest advance made by the Draft Constitution over the Australian Constitution is in the matter of exclusive powers of legislation vested in Parliament. While the exclusive authority of the Australian Parliament to legislate extends only to about 3 matters, the authority of the Indian Parliament as proposed in the Draft Constitution will extend to 91 matters. In this way the Draft Constitution has secured the greatest possible elasticity in its federalism which is supposed to be rigid by nature.

It is not enough to say that the Draft Constitution follows the Australian Constitution or follows it on a more extensive scale. What is to be noted is that it has added new ways of overcoming the rigidity and legalism inherent in federalism which are special to it and which are not to be found elsewhere.

First is the power given to Parliament to legislate on exclusively provincial subjects in normal times. I refer to Articles 226, 227 and 229. Under Article 226 Parliament can legislate when a subject becomes a matter of national concern as distinguished from purely Provincial concern, though the subject is in the State list, provided are solution is passed by the Upper Chamber by 2/3rd majority in favour of such exercise of the power by the Centre. Article 227 gives the similar power to Parliament in a national emergency. Under Article 229 Parliament can exercise the same power if Provinces consent to such exercise. Though the last provision also exists in the Australian Constitution the first two are a special feature of the Draft Constitution.

The second means adopted to avoid rigidity and legalism is the provision for facility with which the Constitution could be amended. The provisions of the Constitution relating to the amendment of the Constitution divide the Articles of the Constitution into two groups. In the one group are placed Articles relating to (a) the distribution of legislative powers between the Centre and the States, (b) the representation of the States in Parliament, and (c) the powers of the Courts. All other Articles are placed in another group. Articles placed in the second group cover a very large part of the Constitution and can be amended by Parliament by a double majority, namely, a majority of not less than two thirds of the members of each House present and voting and by a majority of the total membership of each House. The amendment of these Articles does not require ratification by the States. It is only in those Articles which are placed in group one that an additional safeguard of ratification by the States is introduced.

One can therefore safely say that the Indian Federation will not suffer from the faults of rigidity or legalism. Its distinguishing feature is that it is a flexible federation.

There is another special feature of the proposed Indian Federation which distinguishes it from other federations. A Federation being a dual polity based on divided authority with separate legislative, executive and judicial powers for each of the two polities is bound to produce diversity in laws, in administration and in judicial protection. Up to a certain point this diversity does not matter. It may be welcomed as being an attempt to accommodate the powers of Government to local needs and local circumstances. But this very diversity when it goes beyond a certain point is capable of producing chaos and has produced chaos in many federal States. One has only to imagine twenty different laws-if we have twenty States in the Union-of marriage, of divorce, of inheritance of property, family relations, contracts, torts, crimes, weights and measures, of bills and cheques , banking and commerce, of procedures for obtaining justice and in the standards and methods of administration. Such a state of affairs not only weakens the State but becomes intolerant to the citizen who moves from State to State only to find that what is lawful in one State is not lawful in another. The Draft Constitution has sought to forge means and methods whereby India will have Federation and at the same time will have uniformity in all basic matters which are essential to maintain the unity of the country. The means adopted by the Draft Constitution are three

(1) a single judiciary,

(2) uniformity-in fundamental laws, civil and criminal, and

(3) a common All-India Civil Service to man important posts.

A dual judiciary, a duality of legal codes and a duality of civil services, as I said, are the logical consequences of a dual polity which is inherent in a federation. In the U. S. A. the Federal Judiciary and the State Judiciary are separate and independent of each other. The Indian Federation though a Dual Polity has no Dual Judiciary at all. The High Courts and the Supreme Court form one single integrated Judiciary having jurisdiction and providing remedies in all cases arising under the constitutional law, the civil law or the criminal law. This is done to eliminate all diversity in all remedial procedure. Canada is the only country which furnishes a close parallel. The Australian system is only an approximation.

Care is taken to eliminate all diversity from laws which are at the basis of civic and corporate life. The great Codes of Civil & Criminal Laws, such as the Civil Procedure Code, Penal Code, the Criminal Procedure Code, the Evidence Act, Transfer of Property Act, Laws of Marriage Divorce, and Inheritance, are either placed in the Concurrent List so that the necessary uniformity can always be preserved without impairing the federal system.

The dual polity which is inherent in a federal system as I said is followed in all federations by a dual service. In all Federations there is a Federal Civil Service and a State Civil Service. The Indian Federation though a Dual Polity will have a Dual Service but with one exception. It is recognized that in every country there are certain posts in its administrative set up which might be called strategic from the point of view of maintaining the standard of administration. It may not be easy to spot such posts in a large and complicated machinery of administration. But there can be no doubt that the standard of administration depends upon the calibre of the Civil Servants who are appointed to these strategic posts. Fortunately for us we have inherited from the past system of administration which is common to the whole of the country and we know what are these strategic posts. The Constitution provides that without depriving the States of their right to form their own Civil Services there shall be an All India service recruited on an All- India basis with common qualifications, with uniform scale of pay and the members of which alone could be appointed to these strategic posts throughout the Union.

Such are the special features of the proposed Federation. I will now turn to what the critics have had to say about it.

It is said that there is nothing new in the Draft Constitution, that about half of it has been copied from the Government of India Act of 1935 and that the rest of it has been borrowed from the Constitutions of other countries. Very little of it can claim originality.

One likes to ask whether there can be anything new in a Constitution framed at this hour in the history of the world. More than hundred years have rolled over when the first written Constitution was drafted. It has been followed by many countries reducing their Constitutions to writing. What the scope of a Constitution should be has long been settled. Similarly what are the fundamentals of a Constitution are recognized all over the world. Given these facts, all Constitutions in their main provisions must look similar. The only new things, if there can be any, in a Constitution framed so late in the day are the variations made to remove the faults and to accommodate it to the needs of the country. The charge of producing a blind copy of the Constitutions of other countries is based, I am sure, on an inadequate study of the Constitution. I have shown what is new in the Draft Constitution and I am sure that those who have studied other Constitutions and who are prepared to consider the matter dispassionately will agree that the Drafting Committee in performing its duty has not been guilty of such blind and slavish imitation as it is represented to be.

As to the accusation that the Draft Constitution has produced a good part of the provisions of the Government of India Act, 1935, I make no apologies. There is nothing to be ashamed of in borrowing. It involves no plagiarism. Nobody holds any patent rights in the fundamental ideas of a Constitution. What I am sorry about is that the provisions taken from the Government of India Act, 1935, relate mostly to the details of administration. I agree that administrative details should have no place in the Constitution. I wish very much that the Drafting Committee could see its way to avoid their inclusion in the Constitution. But this is to be said on the necessity which justifies their inclusion. Grote. the historian of Greece, has said that:

> "The diffusion of constitutional morality, not merely among the majority of any community but throughout the whole, is the indispensable condition of a government at once free and peaceable; since even any powerful and obstinate minority may render the working of a free institution impracticable, without being strong enough to conquer ascendency for themselves."

By constitutional morality Grote meant "a paramount reverence for the forms of the Constitution, enforcing obedience to authority acting under and within these forms yet combined with the habit of open speech, of action subject only to definite legal control, and unrestrained censure of those very authorities as to all their public acts combined too with a perfect confidence in the bosom of every citizen amidst the bitterness of party contest that the forms of the Constitution will not be less sacred in the eyes of his opponents than in his own." *(Hear, hear.)*

While everybody recognizes the necessity of the diffusion of Constitutional morality for the peaceful working of a democratic Constitution, there are two things interconnected with it which are not, unfortunately, generally recognized. One is that the form of administration has a close connection with the form of the Constitution. The form of the administration must be appropriate to and in the same sense as the form of the Constitution. The other is that it is perfectly possible to pervert the Constitution, without changing its form by merely changing the form of the administration and to make it inconsistent and opposed to the spirit of the Constitution. It follows that it is only where people are saturated with Constitutional morality such as the one described by Grote the historian that one can take the risk of omitting from the Constitution details of administration and leaving it for the Legislature to prescribe them. The question is, can we presume such a diffusion of Constitutional morality? Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people have yet to learn it. Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic.

In these circumstances it is wiser not to trust the Legislature to prescribe forms of administration. This is the justification for incorporating them in the Constitution.

Another criticism against the Draft Constitution is that no part of it represents the ancient polity of India. It is said that the new Constitution should have been drafted on the ancient Hindu model of a State and that instead of incorporating Western theories the new Constitution should have been raised and built upon village Panchayats and District Panchayats. There are others who have taken a more extreme view. They do not want any Central or Provincial Governments. They just want India to contain so many village Governments. The love of the intellectual Indians for the village community is of course infinite if not pathetic (laughter). It is largely due to the fulsome praise bestowed upon it by Metcalfe who described them as little republics having nearly everything that they want within themselves, and almost independent of any foreign relations. The existence of these village communities each one forming a separate little State in itself has according to Metcalfe contributed more than any other cause to the preservation of the people of India, through all the revolutions and changes which they have suffered, and is in a high degree conducive to their happiness and to the enjoyment of a great portion of the freedom and independence. No doubt the village communities have lasted where nothing else lasts. But those who take pride in the village communities do not care to consider what little part they have played in the affairs and the destiny of the country; and why? Their part in the destiny of the country has been well described by Metcalfe himself who says:

"Dynasty after dynasty tumbles down. Revolution succeeds to revolution. Hindoo, Pathan, Mogul, Maratha, Sikh, English are all masters in turn but the village communities remain the same. In times of trouble they arm and fortify themselves. A hostile army passes through the country. The village communities collect their little cattle within their walls, and let the enemy pass unprovoked."

Such is the part the village communities have played in the history of their country. Knowing this, what pride can one feel in them? That they have survived through all vicissitudes may be a fact. But mere survival has no value. The question is on what plane they have survived. Surely on a low, on a selfish level. I hold that these village republics have been the ruination of India. I am therefore surprised that those who condemn Provincialism and communalism should come forward as champions of the village. What is the village but a sink of localism, a den of ignorance, narrow-mindedness and communalism? I am glad that the Draft Constitution has discarded the village and adopted the individual as its unit.

The Draft Constitution is also criticised because of the safeguards it provides for minorities. In this, the Drafting Committee has no responsibility. It follows the decisions of the Constituent Assembly. Speaking for myself, I have no doubt that the Constituent Assembly has done wisely in providing such safeguards for minorities as it has done. In this country both the minorities and the majorities have followed a wrong path. It is wrong for the majority to deny the existence of minorities. It is equally wrong for the minorities to perpetuate themselves. A solution must be found which will serve a double purpose. It must recognize the existence of the minorities to start with. It must also be such that it will enable majorities and minorities to merge someday into one. The solution proposed by the Constituent Assembly is to be welcomed because it is a solution which serves this twofold purpose. To diehards who have developed a kind of fanaticism against minority protection I would like to say two things. One is that minorities are an explosive force which, if it erupts, can blow up the whole fabric of the State. The history of Europe bears ample and appalling testimony to this fact. The other is that the minorities in India have agreed to place their existence in the hands of the majority. In the history of negotiations for preventing the partition of Ireland, Redmond said to Carson "ask for any safeguard you like for the Protestant minority but let us have a United Ireland. "Carson's reply was "Damn your safeguards, we don't want to be ruled by you." No minority in India has taken this stand. They have loyally accepted the rule of the majority which is basically a communal majority and not a political majority. It is for the majority to realize its duty not to discriminate against minorities. Whether the minorities will continue or will vanish must depend upon this habit of the majority. The moment the majority loses the habit of discriminating against the minority, the minorities can have no ground to exist. They will vanish.

The most criticized part of the Draft Constitution is that which relates to Fundamental Rights. It is said that Article 13 which defines fundamental rights is riddled with so many exceptions that the exceptions have eaten up the rights altogether. It is condemned as a kind of deception. In the opinion of the critics fundamental rights are not fundamental rights unless they are also absolute rights. The critics rely on the Constitution of the United States and to the Bill of Rights embodied in the first ten Amendments to that Constitution in support of their contention. It is said that the fundamental rights in the American Bill of Rights are real because they are not subjected to limitations or exceptions.

I am sorry to say that the whole of the criticism about fundamental rights is based upon a misconception. In the first place, the criticism in so far as it seeks to distinguish fundamental rights from non-fundamental rights is not sound. It is incorrect to say that fundamental rights are absolute while non-fundamental rights are not absolute. The real distinction between the two is that non-fundamental rights are created by agreement between parties while fundamental rights are the gift of the law. Because fundamental rights are the gift of the State it does not follow that the State cannot qualify them.

In the second place, it is wrong to say that fundamental rights in America are absolute. The difference between the position under the American Constitution and the Draft Constitution is one of form and not of substance. That the fundamental rights in America are not absolute rights is beyond dispute. In support of every exception to the fundamental rights set out in the Draft Constitution one can refer to at least one judgment of the United States Supreme Court. It would be sufficient to quote one such judgment of the Supreme Court in justification of the limitation on the right of free speech contained in Article 13 of the Draft Constitution. In *Gitlow Vs. New York* in which the issue was the constitutionality of a New York "criminal anarchy" law which purported to punish utterances calculated to bring about violent change, the Supreme Court said:

> "It is a fundamental principle, long established, that the freedom of speech and of the press, which is secured by the Constitution, does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom."

It is therefore wrong to say that the fundamental rights in America are absolute, while those in the Draft Constitution are not.

It is argued that if any fundamental rights require qualification, it is for the Constitution itself to qualify them as is done in the Constitution of the United States and where it does not do so it should be left to be determined by the Judiciary upon a consideration of all the relevant considerations. All this, I am sorry to say, is a complete misrepresentation if not a misunderstanding of the American Constitution. The American Constitution does nothing of the kind. Except in one matter, namely, the right of assembly, the American Constitution does not itself impose any limitations upon the fundamental rights guaranteed to the American citizens. Nor is it correct to say that the American Constitution leaves it to the judiciary to impose limitations on fundamental rights. The right to impose limitations belongs to the Congress. The real position is different from what is assumed by the critics. In America, the fundamental rights as enacted by the Constitution were no doubt absolute. Congress, however, soon found that it was absolutely essential to qualify these fundamental rights by limitations. When the question arose as to the constitutionality of these limitations before the Supreme Court, it was contended that the Constitution gave no power to the United States Congress to impose such limitation, the Supreme Court invented the doctrine of police power and refuted the advocates of absolute fundamental rights by the argument that every state has inherent in it police power which is not required to be conferred on it expressly by the Constitution. To use the language of the Supreme Court in the case I have already referred to, it said:

> "That a State in exercise of its police power may punish those who abuse this freedom by utterances inimical to the public welfare, tending to corrupt public morals, incite to crime or disturb the public peace, is not open to question. . . . . "

What the Draft Constitution has done is that instead of formulating fundamental rights in absolute terms and depending upon our Supreme Court to come to the rescue of Parliament by inventing the doctrine of police power, it permits the State directly to impose limitations upon the fundamental rights. There is really no difference in the result. What one does directly the other does indirectly. In both cases, the fundamental rights are not absolute.

In the Draft Constitution the Fundamental Rights are followed by what are called "Directive Principles". It is a novel feature in a Constitution framed for Parliamentary Democracy. The only other constitution framed for Parliamentary Democracy which embodies such principles is that of the Irish Free State. These Directive Principles have also come up for criticism. It is said that they are only pious declarations. They have no binding force. This criticism is of course superfluous. The Constitution itself says so in so many words.

If it is said that the Directive Principle have no legal force behind them, I am prepared to admit it. But I am not prepared to admit that they have no sort of binding force at all. Nor am I prepared to concede that they are useless because they have no binding force in law.

The Directive Principles are like the Instrument of Instructions which were issued to the Governor-General and to the Governors of the Colonies and to those of India by the British Government under the 1935 Act. Under the Draft Constitution it is proposed to issue such instruments to the President and to the Governors. The texts of these Instruments of Instructions will be found in Schedule IV of the Constitution. What are called Directive Principles is merely another name for Instrument of Instructions. The only difference is that they are instructions to the Legislature and the Executive. Such a thing is to my mind to be welcomed. Wherever there is a grant of power in general terms for peace, order and good government, it is necessary that it should be accompanied by instructions regulating its exercise.

The inclusion of such instructions in a Constitution such as is proposed in the Draft becomes justifiable for another reason. The Draft Constitution as framed only provides a machinery for the government of the country. It is not a contrivance to install any particular party in power as has been done in some countries. Who should be in power is left to be determined by the people, as it must be, if the system is to satisfy the tests of democracy. But whoever captures power will not be free to do what he likes with it. In the exercise of it, he will have to respect these instruments of instructions which are called Directive Principles. He cannot ignore them. He may not have to answer for their breach in a Court of Law. But he will certainly have to answer for them before the electorate at election time. What great value these directive principles possess will be realized better when the forces of right contrive to capture power.

That it has no binding force is no argument against their inclusion in the Constitution. There may be a difference of opinion as to the exact place they should be given in the Constitution. I agree that it is somewhat odd that provisions which do not carry positive obligations should be placed in the midst of provisions which do carry positive obligations. In my judgment their proper place is in Schedules III A & IV which contain Instrument of Instructions to the President and the Governors. For, as I have said, they are really Instruments of Instructions to the Executive and the Legislatures as to how they should exercise their powers. But that is only a matter of arrangement.

Some critics have said that the Centre is too strong. Others have said that it must be made stronger. The Draft Constitution has struck a balance. However much you may deny powers to the Centre, it is difficult to prevent the Centre from becoming strong. Conditions in modern world are such that centralization of powers is inevitable. One has only to consider the growth of the Federal Government in the U.S.A. which, notwithstanding the very limited powers given to it by the Constitution, has out-grown its former self and has overshadowed and eclipsed the State Governments. This is due to modern conditions. The same conditions are sure to operate on the Government of India and nothing that one can do will help to prevent it from being strong. On the other hand, we must resist the tendency to make it stronger. It cannot chew more than it can digest. Its strength must be commensurate with its weight. It would be a folly to make it so strong that it may fall by its own weight.

The Draft Constitution is criticized for having one sort of constitutional relations between the Centre and the Provinces and another sort of constitutional relations between the Centre and the Indian States. The Indian States are not bound to accept the whole list of subjects included in the Union List but only those which come under Defence, Foreign Affairs and Communications. They are not bound to accept subjects included in the Concurrent List. They are not bound to accept the State List contained in the Draft Constitution. They are free to create their own Constituent Assemblies and to frame their own constitutions. All this, of course, is very unfortunate and, I submit quite indefensible. This disparity may even prove dangerous to the efficiency of the State. So long as the disparity exists, the Centre's authority over all-India matters may lose its efficacy. For, power is no power if it cannot be exercised in all cases and in all places. In a situation such as maybe created by war, such limitations on the exercise of vital powers in some areas may bring the whole life of the State in complete jeopardy. What is worse is that the Indian States under the Draft Constitution are permitted to maintain their own armies. I regard this as a most retrograde and harmful provision which may lead to the break-up of the unity of India and the overthrow of the Central Government. The Drafting Committee, if I am not misrepresenting its mind, was not at all happy over this matter. They wished very much that there was uniformity between the Provinces and the Indian States in their constitutional relationship with the Centre. Unfortunately, they could do nothing to improve matters. They were bound by the decisions of the Constituent Assembly, and the Constituent Assembly in its turn was bound by the agreement arrived at between the two negotiating Committees.

But we may take courage from what happened in Germany. The German Empire as founded by Bismark in 1870 was a composite State, consisting of 25 units. Of these 25 units,22 were monarchical States and 3 were republican city States. This distinction, as we all know, disappeared in the course of time and Germany became one land with one people living under one Constitution. The process of the amalgamation of the Indian States is going to be much quicker than it has been in Germany. On the 15th August 1947 we had 600 Indian States in existence. Today by the integration of the Indian States with Indian Provinces or merger among themselves or by the Centre having taken them as Centrally Administered Areas there have remained some20/30 States as viable States. This is a very rapid process and progress. I appeal to those States that remain to fall in line with the Indian Provinces and to become full units of the Indian Union on the same terms as the Indian Provinces. They will thereby give the Indian Union the strength it needs. They will save themselves the bother of starting their own Constituent Assemblies and drafting their own separate Constitution and they will lose nothing that is of value to them. I feel hopeful that my appeal will not go in vain and that before the Constitution is passed, we will be able to wipe off the differences between the Provinces and the Indian States.

Some critics have taken objection to the description of India in Article 1 of the Draft Constitution as a Union of States. It is said that the correct phraseology should be a Federation of States. It is true that South Africa which is a unitary State is described as a Union. But Canada which is a Federation is also called a Union. Thus the description of India as a Union, though its constitution is Federal, does no violence to usage. But what is important is that the use of the word Union is deliberate. I do not know why the word 'Union' was used in the Canadian Constitution. But I can tell you why the Drafting Committee has used it. The Drafting Committee wanted to make it clear that though India was to be a federation, the Federation was not the result of an agreement by the States to join in a Federation and that the Federation not being the result of an agreement no State has the right to secede from it. The Federation is a Union because it is indestructible. Though the country and the people may be divided into different States for convenience of administration the country is one integral whole, its people a single people living under a single *imperium* derived from a single source. The Americans had to wage a civil war to establish that the States have no right of secession and that their Federation was indestructible. The Drafting Committee thought that it was better to make it clear at the outset rather than to leave it to speculation or to dispute.

The provisions relating to amendment of the Constitution have come in for a virulent attack at the hands of the critics of the Draft Constitution. It is said that the provisions contained in the Draft make amendment difficult. It is proposed that the Constitution should be amendable by a simple majority at least for some years. The argument is subtle and ingenious. It is said that this Constituent Assembly is not elected on adult suffrage while the future Parliament will be elected on adult suffrage and yet the former has been given the right to pass the Constitution by a simple majority while the latter has been denied the same right. It is paraded as one of the absurdities of the Draft Constitution. I must repudiate the charge because it is without foundation. (To know how simple are the provisions of the Draft Constitution in respect of amending the Constitution one has only to study the provisions for amendment contained in the American and Australian Constitutions. Compared to them those contained in the Draft Constitution will be found to be the simplest. The Draft Constitution has eliminated the elaborate and difficult procedures such as a decision by a convention or a referendum. The Powers of amendment are left with the Legislature Central and Provincial. It is only for amendments of specific matters - and they are only few - that the ratification of the State legislatures is required. All other Articles of the Constitution are left to be amended by Parliament. The only limitation is that it shall be done by a majority of not less than two-thirds of the members of each House present and voting and a majority of the total membership of each House. It is difficult to conceive a simpler method of amending the Constitution.

What is said to be the absurdity of the amending provisions is founded upon a misconception of the position of the Constituent Assembly and of the future Parliament elected under the Constitution. The Constituent Assembly in making a Constitution has no partisan motive. Beyond securing a good and workable constitution it has no axe to grind. In considering the Articles of the Constitution it has no eye on getting through a particular measure. The future Parliament if it met as a Constituent Assembly, its members will be acting as partisans seeking to carry amendments to the Constitution to facilitate the passing of party measures which they have failed to get through Parliament by reason of some Article of the Constitution which has acted as an obstacle in their way Parliament will have an axe to grind while the Constituent Assembly has none. That is the difference between the Constituent Assembly and the future Parliament. That explains why the Constituent Assembly though elected on limited franchise can be trusted to pass the Constitution by simple majority and why the Parliament though elected on adult suffrage cannot be trusted with the same power to amend it.

I believe I have dealt with all the adverse criticisms that have been levelled against the Draft Constitution as settled by the Drafting Committee. I don't think that I have left out any important comment or criticism that has been made during the last eight months during which the Constitution has been before the public. It is for the Constituent Assembly to decide whether they will accept the constitution as settled by the Drafting Committee or whether they shall alter it before passing it.

But this I would like to say. The Constitution has been discussed in some of the Provincial Assemblies of India. It was discussed in Bombay, C. P., West Bengal, Bihar, Madras and East Punjab. It is true that in some Provincial Assemblies serious objections were taken to the financial provisions of the constitution and in Madras to Article 226.But excepting this, in no Provincial Assembly was any serious objection taken to the Articles of the Constitution. No Constitution is perfect and the Drafting Committee it self is suggesting certain amendments to improve the Draft Constitution. But the debates in the Provincial Assemblies give me courage to say that the Constitution as settled by the Drafting Committee is good enough to make in this country a start with. I feel that it is workable, it is flexible and it is strong enough to hold the country together both in peace time and in war time. Indeed, if I may say so, if things go wrong under the new Constitution, the reason will not be that we had a bad Constitution. What we will have to say is, that Man was vile. Sir, I move.

Mr. President: Maulana Hasrat Mohani has given notice of an amendment. It was given at half-past Eleven this morning. I will allow him to move it, particularly because it will have the effect, if it is lost, of blocking another motion of which I have got notice. Maulana Saheb, will you kindly move your amendment?

Maulana Hasrat Mohani: *[Sir, the amendment, of which I have given notice, is to the effect that the present Constitution Assembly is not competent and there are three reasons why I do not regard it as competent. The first and the most important reason is . . . .]*

Shri B. Das (Orissa: General): Mr. President, Sir, will Maulana Sahib please read out the amendment first?

Mr. President: I will read out the amendment. The amendment is this:

"That the Consideration of the Draft Constitution of India be postponed till the election of a fresh and competent Constituent Assembly on the basis of joint electorate and the formation of political rather than communal parties in India."

That is the amendment.

Shri B. Das: May I rise on a point of order, Sir? My point of order, is that Maulana Sahib cannot move his negative amendment after ....

Mr. President: Won't you allow him to move it?

Shri B. Das: He has just spoken in Hindustani, the purport of which is that he has moved his amendment. This is contrary to the practice of this House. I think it is out of order and it should not be allowed.

Mr. President: I think I had better allow the Maulana Saheb to move the amendment. Then, you may take the point of order.

Maulana Hasrat Mohani: *[I was telling the reason why I do not regard this Constituent Assembly as a competent body. Firstly, because all over the world wherever a Constituent Assembly has been set up, it has been done as an outcome of revolution. Revolution does not necessarily mean an armed revolution. It only means that, when the prevailing system of Government has come to an end and another is intended to be set up in its place, a Constituent Assembly has been invariably called to frame and pass a constitution in the light of new conditions. If the previous form of Government were to continue then there was no need of a Constituent Assembly. Look at our new constitution drafted by Dr. Ambedkar. There is nothing new in it. He has mostly copied out either the Government of India Act of 1935 or, as admitted by himself, has drawn from the constitutions of other countries. A bit from here and a bit from there-it is a Pandora's Box. This is what has been produced by our friend Dr. Ambedkar! My biggest complaint on this account is that if for the purpose of drafting a constitution he had to copy out the constitutions of other countries, then why did he not embody the latest and the best constitution? How was it that he looked up to the constitutions of Australia, Canada, America, and England, but the constitution of the Soviet Union did not catch his eye? I have jotted down all the points he has made in his speech. This is not the time to reply them in detail, but this much I can say that he has retained all the bad points that he could lay his hands upon. He has observed that there should be no rigidity and legalism, but has he at any place said that a Unitary System of Government should be established? At one place he mentioned that he could not provide for the village Panchayats. If he had kept the Soviet Constitution in view, there would have been no difficulty in his way. I claim it and I challenge him on that point. For example, he has said that unless there is a unitary type of Government and a powerful Centre, nothing can be done. Such talk is beside the point. He does not know that it is so in the Soviet Constitution. What he has done is to allocate some subjects to Provinces, some to the Centre and some have been put in the concurrent list. In the Soviet Constitution every constituent state has been made a permanent republic; and to win its confidence every component unit has been given control over the defence, foreign relations and communications. What has been the result? He says that it would be detrimental, but there the Soviet Government have gained the confidence of their component states. The result has been that all parts of the Soviet Union - considered from the point of view of population they are all Muslim republics - have helped their utmost in the last war. People of Caucasia and of every war-ravaged region have stood wholeheartedly by the Soviet Union. Cossacks and others who rendered help all belonged to the Union. Thus his observation is unjustified. He is not taking the people into his confidence, and says that all should merge.]*

Pandit Balkrishna Sharma: May I rise to a point of order? The revered Maulana Sahib is discussing the merits of the Constitution whereas the proposal that is put forward before us is that we must not consider this Constitution. The discussion of the merits of the Constitution cannot be brought before the House when we are to consider only the question of postponement of the discussion.

Mr. President: I thought it would save time if you left him alone.

Maulana Hasrat Mohani: *[I repeat what I have already said, that the reason why this House is not competent, is that you have consulted all the constitutions of the world; but you have not cared to see the latest and the best constitutions. The second point arises, what was the basis of the election of our Constituent Assembly? It was on communal basis. Muslims had elected Muslims and Hindus had voted for the Hindus, but the States were not represented. What was the position at the time of the first meeting of the Constituent Assembly? On your own admission there were three parties, namely, the Congress, the Muslim League and the States; but up to that time the States had not come in.No member of the Muslim League had taken any part. The result has been that the constitution that has been framed has been forged by one party alone. How can you enforce it on others? I mean to say that no reliance can be placed by us as the Constitution has been framed by one party alone. In the situation that has how arisen we also find the same, namely that there is only one party. It is like this: the Muslim League is finished, it has dissolved itself and all the States have merged themselves in the Indian Union and now only the Indian Government, namely one party, has remained in the field. That is why we have to form political parties so that your difficulties may come to an end.]*

Shri Satyanarayan Sinha (Bihar: General): *[Did you find out any better solution?]*

Maulana Hasrat Mohani: *[I am coming to that. Dr. Ambedkar has just said that the majority party should be considerate towards the Minority party. I say: we do not want them. You have provided in the constitution that 14 percent of the seats should be reserved for the Muslims. You still consider yourself 86 per cent and Muslims to be 14 percent. So long as you have this communalism, nothing can be done. Why do you say that Muslims are in a Minority. So long as you depict them in communal colours Muslims shall remain a Minority. When we come as members of a political party or as members of the Independent Communist party or as Socialists and then form a coalition party, then as a whole they will be arrayed against the rest.

You say that a long time has elapsed that many things have happened and that you have worked so hard. Mr. President, I would recall that when Pandit Jawahar Lal Nehru had presented the Draft Constitution, I had then raised an objection and he had advised me to leave alone a primary matter. I had thereupon pointed out to him that it would be absurd to leave aside a point which is to be settled first. I had also pointed out that by doing so he would not betaking any strong and firm stand but would be stuffing irrelevant matter in all directions. I had also enquired what he would do if questions were raised on these issues, if without taking any decision, he started framing the constitution. It is a futility; we should see what type of Constitution is required. We want to make a picture, but if that picture is not painted correctly, then it cannot be termed a picture. You will say that you have worked hard and that quite a long time has elapsed. My answer would be that there is no difficulty about it, neither was there any risk. I had protested at that time and I was glad that the Honourable President had stated that the point would be considered and it was on that understanding that we had discussed the resolution. You know that the same thing has happened in Pakistan as well. Mr. Jinnah had said that so long as the Constituent Assembly was not elected, the constitution could not be passed. This is the reason why I am telling you that so long as the Constituent Assembly is not elected on non-communal basis, you have no right to get a constitution passed by this Constituent Assembly. No matter receives any consideration from you, because you are inflated with the idea that you are in a majority and that whatever you like will be passed. Do not imagine that no blame will come upon you. I am alone and Ian saying all I can say. You may not agree. In reality you are doing all that the British Government had been doing. After sometime they used to give us pensions and used to ask us to stay at home. But why should we do so?

I would like to ask you what you are doing in Hyderabad. You say that a Constituent Assembly will be setup which would frame a constitution. You have accepted this principle for Hyderabad. Why don't you do it here? Obviously all this is being done on communal lines in which truth and justice have no place.

If he says that he cannot do that, he has no power to elect a new Constituent Assembly on the basis of joint electorate and that would be done after the constitution has-been framed, then I repeat what you have said, that` legalism' and `rigidity' should be cast aside. I ask him whether he can set up a Constituent Assembly in Hyderabad without the Nizam's fireman. But here we set up an electorate for the Constituent Assembly as we felt the need for it; so it is incorrect to say that we can not do it." Where there is a will, there is a way." If you are in earnest to be just to the country and if you want to treat every one equally, then I give you a warning that your endeavour to assimilate all into one whole, to build a paramount Indian power, will bring disaster. The latest example is that of Aurangazeb the Emperor. After conquering the whole of India he annexed the two Southern States of Bijapur and Golcanda with the intention of founding aunitary Moghul Empire. What was the result? They say Aurangazeb lost his kingdom because of his bigotry but I say it was lost because of his imperialistic ideas. If he had not done that, he would not have lost a kingdom. Do not think it is easy to form a single unitary Government by coercing each and all into your fold. That can not last. You should hold fresh elections on non-communal basis, on the basis of joint electorates, and then whatever constitution you frame will be acceptable to us. We regard the constitution framed by you worthy of being consigned to the waste paper basket.]*

Shri B. Das: I wish to point out that under Rule 31sub-clause (2) the motion for adjournment on the motion moved by the Honourable Dr. B. R. Ambedkar for the consideration of Draft Constitution of India should not have been allowed by the Chair.

Mr. President: I have taken this under Rule 25, Clause(5), sub-clause (b) as a motion for adjournment of consideration of a motion which is under discussion.

Shri B. Das: But he is wanting a fresh election to take place first in the country. That is a negation of the whole idea.

Mr. President: I have liberally construed the rule for the Honourable Member and I have taken it, as I have said, under Rule 25, Clause (5), sub-clause (b).

Begum Aizaz Rasul (United Provinces: Muslim): Sir, before we adjourn for the day, may I know how many days the Chair proposes to allow for the general discussion on Dr. Ambedkar's motion?

Mr. President: As at present advised, it is hoped to conclude the discussion tomorrow. I will limit the time of each speaker and if I find that there is a considerable opinion in favour of further discussion, more time may be given.

The Constituent Assembly then adjourned till Ten of the Clock on Friday the 5th November 1948.

APPENDIX `A'

CONSTITUENT ASSEMBLY OF INDIA

COUNCIL HOUSE,

New Delhi, the 21st October 1947.

To

THE PRESIDENT,

CONSTITUENT ASSEMBLY OF INDIA,

NEW DELHI.

DEAR SIR,

We, the members of the Committee appointed by you in accordance with the motion adopted by the Constituent Assembly on the 30th July, 1947, for the purpose of recommending constitutional changes in the five Centrally administered areas, viz., Panth Piploda, Andaman and Nicobar Islands, Coorg, Ajmer- Merwara and Delhi, submit this our report and the annexure thereto. We have adopted broadly the principles of responsible government as the basis of the constitution for the three last mentioned provinces. We have, however, made some modifications in the provisions adopted by the Assembly in respect of the Major Provinces. Before formulating our proposals we fully considered the position of these provinces with respect to their geography, financial condition and the working of the existing system of government in these areas.

2. Panth Piploda is a small tract of territory consisting of only 10 1/2 villages situated in Malwa in the Central India Agency. In view of its small size and isolated position we have recommended that it should form part of the province of Ajmer-Merwara. This step was also suggested by some influential citizens of Panth Piploda. As regards the group of islands in the Bay of Bengal known as the Andaman and Nicobar Islands which have ceased to be penal settlements, we recommend that they should continue to bead ministered by the Government of India as at present with such adjustments in their administrative machinery as may be deemed necessary.

3. Before recommending any constitutional changes for the three Chief Commissioners' Provinces of Coorg, Ajmer-Merwara and Delhi which we propose to designate as Lieutenant Governors' Provinces, we took into account the following considerations:-

(a) that the Centre must have a special responsibility for the good government and the financial solvency of these provinces:

(b) that on account of the smallness of these areas and the scantiness of their resources, the need for Central assistance will continue for pulling up the standard of their administration to the level in the major provinces.

Among the important decision taken by us are: -

(1) Each of these three provinces should henceforth function under a Lieutenant Governor to be appointed by the President of the Indian Federation.

(2) Each of these provinces should normally be administered by a Council of Ministers responsible to the legislature as in other provinces, but any difference on an important matter arising between the Lieutenant Governor and the Ministry should be referred to the President of the Federation for final decision.

(3) Each of these provinces should have an elected legislature which should function like other provincial legislatures except that -

(a) the Federal Legislature will in the case of these provinces, have concurrent power of legislation even in respect of the subjects included in the Provincial Legislative

(b) all laws passed by the provincial legislature shall require the assent of the President of the Federation;

(c) the budget of the province after being voted by the provincial legislature shall require the approval of the President of the Federation before it becomes operative.

4. We are fully alive to the circumstances which led to the formation of the Delhi province in 1912. We also recognize the special importance of Delhi as the Capital of the Federation. We are,

however, of the opinion that the people of the province which contains the Metropolis of India should not be deprived of the right of self-government enjoyed by the rest of their country-men living in the smallest of villages. We have, accordingly, placed the Delhi Province on a par with Ajmer-Merwara and Coorg and have recommended responsible Government subject to the limitations already indicated. Our detailed recommendations are given in the annexure.

Yours sincerely,

B. PAT TABHI SITARAMAYYA

(Chairman)

N. GOPALASWAMY AYYANGAR

DESHBANDU GUPTA

K. SANTHANAM

C. M. POONACHA

MUKAT BEHARI LAL BHARGAVA

Members of the Committee.

[ANNEXURE 1]

LIEUTENANT GOVERNORS' PROVINCES

Delhi, Ajmer- Merwara including Panth Piploda, Coorg and such other provinces as may be so designated shall be Lieutenant Governors' Provinces.

The Provincial Executive

2. In each Province there shall be a Lieutenant Governor who shall be appointed by the President of the Federation.

3. The provisions of the Constitution Act relating to the term of office, qualification for appointment, eligibility for re-appointment, conditions of office, declaration before entering office by the Governor shall as far as possible be applicable in the case of the Lieutenant Governor. He may be removed from office by the President on grounds upon which a Governor may be impeached.

4. (i) The executive authority of the Province shall be vested in the Lieutenant Governor and may be exercised by him either directly or through persons acting under his authority.

(ii) The power to suspend, remit or to commute the sentence of any person convicted of any offence shall be vested in the Lieutenant Governor as in the case of major provinces.

(iii) Nothing in this section shall prevent the President of the Federation or the Provincial Legislature from delegating functions to subordinate authorities.

Administration of Provincial Affairs

5. (i) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Lieutenant Governor in the exercise of his functions except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion. The number of ministers shall not exceed three except with the approval of the President of the Federation.

(ii) In case of difference of opinion between the Lieutenant Governor and his ministers on any issue which he considers important, he may refer the matter to the President of the Federation, whose decision shall be final and binding upon the Province.

6. The provisions of the Constitution Act relating to the appointment, dismissal and with respect to the determination of the salaries of the ministers in the Governors' Provinces shall, as far as possible, be applicable in the case of Lieutenant Governors' Provinces.

Legislative

7. There shall for each of the Lieutenant Governor's Province be a Legislature, consisting of a single Chamber to be known as the Legislative Assembly. It shall be composed of members chosen by election.

8. The term of office of the elected members of the Assembly, the basis of franchise and other general provisions shall be on the lines as provided in the Constitution Act for Governors' Provinces except that the representation of the different territorial constituencies in the Assembly shall be on a scale of not more than one representative for every 5,000 persons subject to a maximum of 33 for Coorg, 15,000 subject to a maximum of 40 in the case of Ajmer-Merwara including Panth Piploda and 20,000subject to a maximum of 50 in the case of Delhi.

9. The Provincial Assembly shall not have the power to make laws for federal subjects; and the subjects included in both the provincial and concurrent lists in the new constitution, will be treated as concurrent in respect of these minor provinces. Laws made by the federal legislature for these provinces in respect of any of these subjects shall prevail over laws passed by the Provincial Assembly in so far as the latter are inconsistent with the Federal laws.

10. Laws passed by the Provincial Assembly shall require the assent of the President of the Federation.

11. The provisions of the Constitution Act relating to prorogation and dissolution of the legislature, the right of the Governor to address and send messages, election of members as Officers of the legislature and fixation of their salaries in Governor's Provinces shall apply mutatis mutandis in the case of Lieutenant Governors' Provinces.

12. The Provisions of the Constitution Act relating to the making of declaration by members, vacation of seats, disqualifications of members, their privileges and immunities, salaries and allowances, in the Provincial Legislatures shall be as far as possible be applicable in the Lieutenant Governors' Provinces.

13. The provisions of the Constitution Act relating to language to be used in the Provincial Legislature shall as far as possible be applicable in the case of these Provinces.

Administrative Breakdown

14. If at any time the President of the Federation is satisfied that the government of the Province cannot be carried on in accordance with these provisions, he should have power to supersede these arrangements, take the administration into his own hands and make such other provision for conducting it as he may consider necessary. The exercise of this power will be subject to the usual provisions relating to report to and control by the Federal Legislature in the case of emergencies in a Governor's Province.

Judiciary

15. (i) In the case of Coorg, the powers of a High Court shall be exercised by the Madras High Court.

(ii) For Delhi and Ajmer- Merwara there shall be a High Court established in Delhi having original as well as appellate jurisdiction over both the provinces. The constitution of this High Court, the appointment of judges and their salaries, its jurisdiction and administrative functions shall be governed by the provisions of the Constitution Act applicable to the High Courts.

Provincial Services

16. (i) For higher appointments provision shall be made in the recruitment of All India Administrative Services for meeting the requirements of these three provinces.

(ii) Provision shall be made for transfers inter se of service personnel recruited in the above manner in these three provinces.

Representation in the Federal Legislature

17. Notwithstanding anything to the contrary in the Union Constitution regarding the basis of representation for the Houses of Federal Legislature, each of these three Minor Provinces should be treated as a unit of the Federation for purposes of representation in the two Houses of the Federal Legislature.

CHIEF COMMISSIONERS' PROVINCES

18. (i) Andaman and Nicobar Islands and such other areas as may be so designated shall be the Chief Commissioners' Provinces.

(ii) The Andaman and Nicobar Islands shall continue to be administered as at present with such adjustments in the administrative machinery as may be deemed necessary.

Additional Note by Shri Mukat Behari Lal Bhargava and Shri C. M. Poonacha, to the Chief Commissioners' Provinces Constitution Committee Report.

We, the members representing Ajmer-Merwara and Coorg having signed the report find it necessary to append this additional note regarding the future of these two provinces.

The special problems arising out of the smallness of area, geographical position, scantiness of resources attended with, what may be called administrative difficulties of many a complex nature may, at no distant future, necessitate the joining of each of these areas with a contiguous unit. Therefore, we feel that a specific provision should be made in this chapter of the constitution to make possible such a union after ascertaining the wishes of the people of these areas. No doubt, our attention was drawn to clause 3 of the Union Constitution Committee Report, which is yet to be adopted by the Constituent Assembly, wherein certain provisions relating to the creation of a province, altering the boundaries of a province, etc., are embodied. But after careful examination we feel that the proposed clause 3 of the Union Constitution Committee Report is of a very restrictive nature and does not in specific terms contemplate the inclusion of an Indian Province of areas with a State or Group of States. Taking into account the situation of Ajmer-Merwara which is surrounded on all sides by Rajput- ana States such a clause would perpetually leave Ajmer-Merwara in isolation even though the people of Ajmer-Merwara may at any time decide against it. Accordingly we press upon the Constituent Assembly the urgency of incorporating a suitable provision in this chapter of the Constitution so as to make it possible for each of these areas to join a contiguous unit.

APPENDIX B

No. CA/103/Cons/47

CONSTITUENT ASSEMBLY OF INDIA

COUNCIL HOUSE

New Delhi, the 5th December 1947.

To

THE SECRETARY,
CONSTITUENT ASSEMBLY OF INDIA,
COUNCIL HOUSE, NEW DELHI.

Expert Committee on Financial Provisions

SIR,

I have the honour to forward herewith the Report of the Expert Committee on Financial Provisions of the Union Constitution for submission to the Hon'ble the President.

I have the honour to be,

Sir,

Your most obedient servant,

M. V. RANGACHARI,

Member-Secretary.

REPORT

Terms of Reference

[ANNEXURE 1]

We were appointed by the President of the Constituent Assembly to examine and report on the Financial Provisions of the Constitution Act with the following terms of reference: -

I. To examine, with the aid of the memoranda on the distribution of revenue between the Centre and the Provinces sent by the Government of India and the Provinces, the existing provisions relating to finance and borrowing powers in the Government of India Act, 1935, and their working during the last ten years and to make recommendations as to the entries in the lists and sections to be embodied in the new Constitution.

The following points shall, in particular, be kept in view in making the recommendations: -

(a) How are taxes to be allocated between the Centre and the Units as regards legislation, levy and collection?

(b) Which are the Federal taxes -

(i) whose net proceeds are to be retained entirely by the Centre;

(ii) whose net proceeds are to be entirely made over to Units;

(iii) whose net proceeds are to be shared between the Centre and the Units?

(c) On what principles the taxes mentioned in (b) (iii) are to be shared between the Centre and the Units?

(d) What is to be the machinery for determining the shares: e.g., whether a Financial Commission should be appointed immediately after the enactment of the Constitution to report on the principles of sharing and their application to be brought into effect when the Constitution comes into force; and whether the same or a similar Commission should review these principles and their concrete application periodically, say, once in five years?

II. What should be the principles on which Federal grants should be made to the Units in future? What should be the machinery for the determination of such grants: could the same Financial Commission as is referred to in I (d) above act as the machinery for this purpose also, or should it be a different one?

III. How could the Indian States be fitted into this general system as far as possible on the same terms as Provinces? Should a time lag be provided for their being so fitted in?

IV. On the assumption of financial responsibility for Defence, Foreign Affairs and Communications on behalf of the Indian States under arrangements for accession to the Federation, what special financial arrangements, if any, are necessary between the acceding States and the Federation?

V. Should the existing rights of the Indian States as to Federal taxes now levied by them be acquired on payment of compensation?

VI. How far is it feasible, on the centralization of all customs levied at the Federal frontiers, to permit Indian States affected by such centralization to retain such portion of the customs so levied at their frontiers as might be attriments between the Centre and certain important Indian States as regards maritime customs, excises etc. may be of value in this connection.]*

VII. Some Provinces have claimed a larger percentage of the income-tax to be made over to them than under the existing system. Does this claim merit consideration; if so ,to what extent?

VIII. A suggestion has been made that the Centre should be allocated only the excises on specified commodities, the rest of the field of excise being left to the Provinces to tap according to their needs. Would this be possible without any material detriment to Federal revenue?

IX. On the basis that the residuary powers are vested in the Centre in the new Constitution so far as the Provinces are concerned, and in the States so far as the States are concerned, is it necessary that any additional specific taxes should be entered in the Provincial List, and if so, what?

X. Is it necessary to make any modifications in the existing provisions as regards procedure in financial matters contained in Sections 33 to 37 and 78 to 83 of the Government of India Act, 1935?

XI. A large number of Indian States at present derive substantial revenues from land customs levied at the frontiers between their limits and those of neighbouring States or Provinces. One of the fundamental rights already adopted by the Constituent Assembly is to remove all internal barriers in regard to trade between Unit and Unit. Could these land customs be done away with either immediately or over a period of years, and if so, should any prejudice caused thereby to the finances of particular States be compensated and in what manner?

[The Committee should kindly indicate clearly which of its recommendations should go into the body of the Constitution and which should be provided for by Federal law.]

Prefatory Remarks

2. We began our work on the 17th November and have been sitting continuously. We have received memoranda from the various Provincial Governments setting out their claims for larger resources as well as their points of view in connection therewith. We have also received a memorandum from the Ministry of Finance of the Central Government giving a picture of the financial position of the Centre in the near future. The Secretariat of the Constituent Assembly has collected for us information on various matters relating to the States, and also helpful information regarding other Federations. It has also prepared a draft of the sections which come within our terms of reference; and this has considerably helped us in our work. We are indebted for all these memoranda, information and drafts. We are also indebted to some of the Provincial authorities who appeared before us in person and discussed with us informally the question arising out of the memoranda presented by their Governments. We availed ourselves also of the specialised knowledge and experience of not only some of the officials of the Central Secretariat, but of some members of the Constituent Assembly and others who have unique knowledge of some of the problems under our consideration. All our discussions, however, were free and informal; and we did not, therefore, record any evidence, apart from the memoranda placed before us.

3. In particular, the other two of us would like to place on record our grateful appreciation of the assistance we have received from our colleague and Secretary Mr. Rangachari , who amidst his exacting, multifarious duties, including the preparation of the interim budget, not only found time regularly to attend our meetings, but also placed his wide knowledge and experience at our disposal, and arranged to secure at short notice most of the available information required by us. We should also like to thank Mr. B. Das Gupta of the West Bengal Government Secretariat for the intelligent and extremely well informed assistance he gave us. We are also indebted to Mr. Mukerjee, Joint Secretary of the Constituent Assembly, for his help throughout our sittings and in particular for putting our recommendation sin the shape of draft amendments to the Constitution.

4. Our terms of reference may be divided broadly in to the four following groups:

(1) Relations between the Centre and the Units, and between the Units inter se;

(2) Financial procedure, i.e. relating to the budget, expenditure and money Bills;

(3) Borrowing powers of Units; and

(4) Relations of the Union with the States.

We have accordingly, for convenience, regrouped our terms of reference as follows:

(1) I, VII, VIII, IX, II

(2) X

(3) I

(4) III, IV, V, VI, XI

and discussed them, as far as possible, in the above order.

Brief History of Financial Relations

5. Before dealing with the working of the financial arrangements in the Government of India Act, 1935, it is necessary to give a brief account of the earlier arrangements so that we can have a correct picture of the problems before us.

6. The period before the passing of the Government of India Act, 1935, falls into two well-defined parts, namely, the period ending with the 31st March, 1921, i.e., be fore the operation of the Government of India Act, 1919, and the period covered by that Act.

7. The process of financial development in this country has been one of evolution from a unitary to a quasi-federal type. The Government of India started as a completely unitary Government in entire control of the revenues of the country with the Provincial Governments depending on the Central Government for all their requirements. In the earlier years, Provincial Governments were given fixed grants for meeting the expenditure on specific services, and the first step in making specific sources available to them was taken when the Provincial Governments were given the whole or part of certain heads of revenue like Forest, Excise, License Fees (later to develop into Income-tax), Stamps, Registration, Provincial Rates, Law and Justice, Public Works, Education, etc. The funds released by this allocation were not adequate for the requirements of the Provinces and had to be supplemented, mainly by sharing with them in varying proportions the main source of Central revenue, namely, Land Revenue, and partly by making to them additional cash assignments. In 1904, the settlements with the Provinces were made quasi-permanent, thereby making the Provinces less dependent on the fluctuating grants from the Centre. This method of financing the Provinces was examined more than once and retained as the best suited to the then circumstances.

8. The Government of India Act, 1919, which, among other things, aimed a giving a reasonable measure of autonomy to the Provinces as the first step in the process of self-government, made the first clear-cut allocation of resources between the Centre and the Provinces without having any divided heads between them. Under this Act, certain specific heads were given wholly to the Provinces and the remaining sources were retained by the Centre. Thus among the principal heads of revenue, Land Revenue, Excise and Stamps were given to the Provinces, while the Centre retained Customs, Income-tax, Salt and Opium. Of the three great Commercial departments of Government, Railways and Posts and Telegraphs were retained by the Centre, while irrigation was handed over to the Provinces.

9. This allocation of resources between the Centre and the Units, particularly the assignment of the whole of Land Revenue to the Provinces, left the Central budget in a substantial deficit; and in the earlier years of this scheme, the Centre had to depend on the Provinces for contributions for balancing its budget. These contributions were fixed by what is commonly known as the Meston Award, and were designed to produce for the Centre an estimated shortfall of Rs. 9.8 crores resulting from the rearrangement of resources between the Centre and the Provinces. The contributions ranged from Rs. 348 lakhs from Madras to Rs.15 lakhs from Assam, while one Province, namely, Bihar and Orissa, had to make no contribution at all. It is unnecessary for the present purpose to describe in detail the method by which these contributions were fixed. It is enough to mention that they became a source of constant friction between the Centre and the Provinces; and when substantial Provincial deficits occurred, an unceasing clamor developed for their withdrawal. Between 1925 and 1928these contributions were partially remitted and they were completely extinguished in 1929.

10. The experience of the years under the 1919 Act clearly showed that the sources of revenue allocated to the Provinces were inelastic, and were insufficient to meet the increasing requirements of the Provinces for their expanding needs for nation building services such as Education. Medical Relief, Public Health etc., which fell almost wholly in the Provincial field. It was clear that some additional revenue heads had to be released to the Provinces; and while the Government of India Act. 1935 did not make any radical change in the allocation of heads between the Centre and the Units, it revived in a somewhat modified form the earlier principle of dividing the proceeds of certain Central heads, the two heads concerned being Customs and Taxes on Income. The Act also provided for the grant of fixed subventions to some of the smaller Provinces, and gave the Centre power to

raise Excise and Export duties for distribution among the Provinces and federating States. After an enquiry into the relative needs of the Centre and the Provinces by Sir Otto Niemeyer, the Provincial shares in the divided heads of Central revenue and the subventions to some of the Provinces were fixed by an Order-in-Council, which, subject to a modification during the war, continued till 15th August,1947.

Present Constitutional Position

11. Under the Government of India Act. 1935, which is the starting point of our enquiry, the taxing jurisdictions of the Central and Provincial Legislatures are entirely separate. But, while the Provinces retain the whole of the net proceeds of all taxes levied by them, the Central Government has to give away either in part or in whole the net proceeds of some of the taxes levied by it.

12. The taxes, the net proceeds of which are to be given away wholly to the Provinces, if levied, are -

(1) Federal Estate and Succession duties.

(2) Federal Stamp duties,

(3) Terminal Taxes on goods and passengers carried by Railway or Air

(4) Taxes on Railway fares and freights.

The Centre can levy a surcharge on those taxes entirely for its own purposes. None of these taxes has in fact been levied, except that the Federal Stamp duties continue to be levied under the old laws, the duties however being collected and retained by the Provinces.

13. The Federal Taxes, the net proceeds of which are to be shared with the Provinces, fall into two groups: -

(1) taxes, the sharing of the net proceeds of which has been made obligatory by the Constitution viz., income-tax and jute export duty.

(2) taxes, the sharing of the net proceeds of which has been left to be determined by the Federal Legislature viz., Central Excises including duty on salt, and export duties except on jute and jute products. The Central Legislature has levied certain taxes under these heads, but has not provided for giving any share to the Provinces.

14. Besides providing for giving away the net proceeds of taxes in whole or in part to the Provinces, the Constitution also provides for fixed grants-in-aid to some Provinces.

15. There is also a general provision for giving grants to Provinces at the discretion. of Central Government either for general or specific purposes.

16. Two tables showing the Constitutional position in respect of the revenues of the Federal and Provincial Governments respectively under the Government of India Act,1935, will be found in Appendix I. We are indebted to Mr. Myanmar's commentary on the Government of India Act, 1935,for these tables.

Review of Finances of Provinces and the Centre

17. Two tables giving the financial position of the Provinces and the Centre during the year 1937-38 to 1946-47are set out in Appendix II. In considering the working of the existing arrangements during the last decade, the most important point to note is that war broke out soon after the Government of India Act, 1935, came into operation.

18. During the war, all Provinces except Bengal and Assam had surplus budgets. Revenue receipts increased

several times, mainly on account of wartime conditions and also because the Provinces levied a number of new taxes and increased the rates of existing ones; there were remarkable increases in receipts under Provincial, i.e., Liquor and Drugs, Excises, and in the Provincial share of Income-tax. Most Provinces were under Section 93 administration. All development work was stopped. The Provinces are now faced with a heavy program me of expenditure without any corresponding increase in revenue. On the contrary, even apart from voluntary abandonment of revenue as in the case of Liquor Excises, the revenue is likely to go down much below wartime levels. Land revenue, both in the permanently and temporarily settled provinces, is not likely to expand. State purchases of zamindaries will not bring any return for years to come. In ryotwari Provinces, remissions are likely to be more liberal than before, and there is thus little prospect of an increase in land revenue. Receipts from stamps and registration fees are not likely to increase much, while forest revenue will perhaps dwindle on account of large scale felling during the war. Receipts from sales tax, entertainment tax may not fall, thought they will be below the war-time peak for some time to come.

19. During the war and after, most of the Provincial Governments have practically exhausted the entire field of taxation reserved for them. Moreover, Provincial Governments have to share the Provincial field with Local Bodies, and on that account too, need adequate resources. A substantial transfer of revenues from the Center to the Provinces, therefore, seems inevitable, if essential and overdue programmes of social service and economic development have to be undertaken.

20. At this stage, we would refer to the adoption, by most Provincial Governments, of a prohibitionist policy; and of the inevitable loss of substantial revenue by all of them. Obviously, it is for the provinces to find alternative provincial resources from which to recoup the loss; and incase, it any case, it would not be practicable for provinces to expect sufficient assistance from the Center for this purpose, at any rate for many years. The point that we wish to emphasise is that it will be for the provincial Government to balance the urgency of schemes of development against the advisability of social reforms like prohibition, and that in any case, they must not embark on schemes, whether of reform or development, depending merely on the possibility of obtaining assistance automatically from the Centre.

21. To turn now to the Centre, it has been working on deficit budgets. The large surpluses that were expected sometime ago have not been, and are not likely to be realised, mainly because of the food shortage, the refugee problem and other causes arising out of the partition of the country, particularly, continued heavy expenditure on Defence. These are, however, temporary problems, and we consider that the financial position of the Centre is essentially sound. As these temporary problems are solved, the budgetary position of the Centre will necessarily get better. There is scope for improvement in the administration of Central taxes, and particularly of taxes on income. In respect of taxes on income, it should be possible for the Centre not only to collect more in future in the ordinary course every year, but to secure for the exchequer, by legislative changes, if necessary, the large sums that are believed to have been successfully kept back from the Government in recent years. We do not, however, expect any appreciable change under Customs and Excise; and we do not expect Railway contributions on anything like the scale during the war. Even after the temporary problems referred to above have been solved, expenditure on Defence and Foreign Affairs would still be substantial. The Defence Services will probably be reorganised and re-equipped, and it is not possible to foresee what would be the scale of expenditure for properly equipped defence services even on a peace-time basis. There is little prospect on the other hand of reduction in the service of the national debt but there is, however, scope for reduction in the existing civil expenditure.

22. The problem before us is how to transfer from the Centre to the provinces, sufficient amount which, while not placing too great a strain on the Centre, would provide adequate resources for the inauguration of useful schemes of welfare and development by the Provinces. While the Centre, on its present basis, may not be in a position to part with substantial sums, we fell that with the resolution of its temporary difficulties and improvement in its tax administration, together with the levy and collection of taxes evaded in the past, it can with no serious risk to its own budget part with sizable sums every year. We are suggesting later in detail how these sums should be regulated. We have already referred to the need for Provinces having clear priorities as between contending demands for money, and we have no doubt that the Provinces will in the earlier years utilise the additional resources now placed at their disposal by concentrating on schemes that would add to the productive capacity of the country and consequently the income of the people and thus enable the provinces to embark on further schemes of reform and development.

Claims of Provinces

23. Every Province has drawn pointed attention to the urgency of its programmes of social service and economic development and to the limited nature of its own resources, both existing and potential, and all of them have asked for substantial transfer of revenues from the Central sources. A summary of the detailed suggestions made by them, which very considerably, is set out in Appendix III.

24. On the question of apportionment of income-tax among Provinces also, the provinces differ widely in their views. Bombay and West Bengal support the basis of collection or residence, the United Provinces that of population, and Bihar a combined basis of population and origin (place of accrual); Orissa and Assam want weight age for backwardness. East Punjab, while suggesting no basis, wants her deficit of Rs. 3 crores somehow to be met.

25. In the case of excise taxes, the bases suggested are production, collection, consumption and population, while Assam suggests some weight age for its low level of revenue and expenditure. Assam has further pressed for special treatment of excises collected on wasting assets, e. g., the petroleum raised in Assam Assam also wants a share of the export duty on tea.

General Observations

26. Before we proceed further we would make a few general observations.

India has federal form of Government, and every federation is based on a division of authority and involves a certain amount of compromise. In this country, federation has been the result of gradual devolution of authority. It has not come into existence through agreements among sovereign States as in some other federations.

27. What we have to do is to distribute the total available resources among Federal and Provincial Governments in adequate relation to the functions imposed on each; so, however, that the arrangements are not only equitable in themselves and in the interests of the country as a whole but are also administratively feasible. We have also to ensure that there is not too violent a departure from the status quo, and also to see that while we have as much uniformity as possible, weak Units are helped at least to maintain certain minimum standards of services.

28. The basic functions of a Federal Government are Defence, Foreign Affairs and the service of the bulk of the national debt, and they are all expensive functions, particularly in the light of the limited resources of the country. The head "Communications" would ordinarily at least pay for itself. The Federal Government may also have to assume leadership in the co-ordination and development of research and higher technical education. Normally, however, apart from war or large scale internal disorder, the expenditure of the Centre should be comparatively stable. The needs of the Provinces are in contrast, almost unlimited, particularly in relation to welfare services and general development. If these services, on which the improvement of human well-being and increase of the country's productive capacity so much depend, are to be properly planned and executed, it is necessary to place at the disposal of Provincial Governments adequate resources of their own, without their having to depend on the variable munificence or affluence of the Centre. The Provinces must, therefore, have as many independent sources of revenue as possible. On the other hand, it is not practicable to augment their revenues to any considerable extent by adding more subjects to the Provincial Legislative List, without simultaneously up-setting the equilibrium of the Centre. We cannot, therefore, avoid divided heads; and what we have to aim at is to have only a few divided heads, well balanced and high-yielding, and to arrange that the shares of the Centre and the Provinces in these heads are adjusted automatically without friction, or mutual interference.

29. In this country the lack of sufficient economic and financial statistics and other similar data is a great handicap. Therefore, the allocation of resources has to be made largely on the basis of a broad judgment, at any rate until the necessary data become available. We attach great importance to the collection of these statistics and to connected research, and trust that the Government will make the necessary arrangements

without delay. In the meantime we have made our recommendations on the best judgment we could give to the exiguous data available.

List of taxes for the Centre and the Units

30. We recommend no major change in the list of taxes in the Federal Legislative List as recommended by the Union Powers Committee. We however, recommended the substitution of the limit of Rs. 250 for Rs. 50 in clause 200 of the Draft Constitution relating to taxes on professions, trades, callings and employments. We observe from the Draft Constitution that it has been proposed to transfer to the Federal Legislative List stamp duty on transfer of shares and debentures, but we presume that the duties will continue to accrue to the Provinces. In view of the far-reaching effects on public credit and finance of Stock Exchange transactions, we consider that the Centre should have the power to legislate for the regulation of such transactions. If such regulation involves the levy of taxes, we recommend that such taxes should be retained by the Centre except that if the taxes take the form of mere duties on transfers of shares and debentures, the Provinces should have these duties just like other Stamp duties. We accordingly recommend the entry in the Federal Legislative List of a new item "Stock Exchanges and futures market and taxes other than Stamp duties on transactions in them".

31. In the list of taxes in the Provincial Legislative List, we recommend the following changes: -

(1) In entry 43, the words "hearths and windows" may be deleted. Such taxes are not likely to be levied. In any case, they would be covered by the word "buildings".

(2) In entry 53, the word "cesses" should, we think, be replaced by the word "taxes".

(3) Similarly, in entry 56, we would substitute the word "taxes" for the word "dues".

(4) In entry 50, we would make the following changes: -

> (a) for the word "sale", we would substitute "sale, turnover or purchase", in order to avoid doubt.
>
> (b) We would also add words such as "including taxes in lieu thereof on the use or consumption within the Province, of goods liable to taxes by the Province on sale, turnover or purchase". This addition is suggested in order to prevent avoidance by importing for personal use from outside the province.

32. One of the Provincial Memoranda has suggested that the entry "State Lotteries" should be transferred to the Provincial List, but, as we do not wish to encourage State Lotteries, we should prefer the subject to remain Central where, too, we hope, it will not be used.

Shares in certain taxes

33. We have no new items to suggest for insertion in the Provincial Legislative List.

34. The Federal Government will levy and collect all the taxes in the Federal Legislative List. But, according to our recommendations in the following paragraphs the Centre will retain the whole of the net proceeds of the following taxes only, *viz*.: -

> (1) Duties of customs, including export duties.
>
> (2) Taxes on capital value of assets and taxes on the capital of Companies.
>
> (3) Taxes on Railway fares and freights.

35. At present, the Central Government shares the net proceeds of the Jute Export duties with the jute-growing Provinces and has to hand over to the Provinces the whole of the net proceeds of taxes on railway fares and freights, if levied. As regards the latter, we recommend that, if such taxes are to be levied at all, they should be wholly Central, for, we cannot see any difference in substance between such taxes and a straight addition to fares and freights. As regards the former we are of the opinion that an export duties are capable of very limited application and have to be levied with great caution, they are unsuitable for sharing with the Provinces.

36. It is necessary, however, to compensate the Provinces concerned for the loss of this item of revenue and we recommend that, for a period of 10 years or till the export duties on jute and jute products are abolished, whichever may be earlier, fixed sums as set out below be paid to these Governments as compensation every year.

PROVINCE	AMOUNT
	Rs.
West Bengal	100 lakhs.
Assam	15 lakhs
Bihar	17 lakhs
Orissa.	3 lakhs

In arriving at these figures which we have based on the figures of pre-war years, we have taken all relevant circumstances into account, and in particular the concentration of manufacture in West Bengal. If at the end of ten years, which we think should be sufficient to enable the Provinces to develop their resources adequately, the Provinces still need assistance in order to make up for this loss of revenue, it would no doubt be open to them to seek grants-in-aid from the Centre, which would be considered on their merits in the usual course by the Finance Commission.

37. Of the remaining Federal Taxes, we recommend that the net proceeds should be wholly or partly given away to the Provinces as indicated below:

38. Under the present arrangement the Provinces receive50 per cent of the net proceeds of income-tax, except what is attributable to Chief Commissioner, Provinces and taxes on federal emoluments. The net proceeds of the Corporation Tax are also excluded for the purpose of the sharing. Subject to what we have said in paragraph 49 regarding tax on agricultural income, we recommend that, while the net proceeds attributable to Chief Commissioners' Provinces should be retained wholly by the Centre, the other reservations should go, and that the Provinces should get not less than 60 per cent of the net proceeds of all income tax including the net proceeds of Corporation Tax, and taxes on federal emoluments. For the purpose of the division, income-tax will mean any levy made under the authority of the entry "Taxes on Income" in the Federal Legislative List.

39. We also consider that over and above its share in the net proceeds retained by it normally, the Centre should be empowered to levy a surcharge whenever conditions require such a levy; obviously such occasions should be rare are not last for unduly long periods.

40. Excise duties are ordinarily closely connected with customs duties and, barring liquor and drug excises, which we consider, should continue to remain Provincial are inherently not suited for provincial taxation. On the other hand, they are only a species of consumption taxes of which another species namely, sales, turnover and purchase taxes have been the subject of provincial taxation for some time. The Memoranda received by us from the Provincial Governments are almost unanimous in demanding some share under excises; and our problem is to find not only more resources for the units but to make their revenues more balanced. If it was possible to have excises on commodities not subject to Customs duties (whether revenue or protective) or not competing, or capable of competing with, or of substitution for, commodities subject to customs duties, e.g., on rice or

wheat or millets or on jute and jute goods consumed in India, we see no reason why such excises or a share thereof should not be allotted to the units, apart from the general political objection to the division of heads, viz., the divorce of benefit from responsibility. But such excises are not likely to be levied. Again, it is obvious that Excise duties on commodities subject to a protective tariff or even a high revenue tariff could not be conveniently shared. In the circumstances, the utmost that we can suggest by way of assistance in this respect to the Provincial Governments is to hand over to them a share of one of the important Central Excises on a commodity not receiving tariff protection, viz., Tobacco. Incidentally, the effective administration of this excise requires the active co-operation of Provincial Governments, which would be better forthcoming if they had ash are in the tax. We are averse to giving the units a share in too many Central Excises; for, such an arrangement would not only magnify the political objection of benefit without responsibility but lead to administrative inconvenience, since the rates could not be altered except by the consent of all the beneficiaries.

We accordingly recommend that 50 per cent of the net proceeds of the excise duty on tobacco should not form part of the revenues of the Federation but should be distributed to the Provinces.

41. It will be seen from what has been said above that we are not in favour of the suggestion made in item VIII of the Terms of Reference, viz., that the Centre should be allocated only the excises on specified commodities, the rest of the field of excise being left to the Provinces.

42. These duties cannot be administered satisfactorily except by or in the closest touch with the income-tax staff; and in any case, if the Centre is to part with a substantial amount of taxes on income and also a part of certain Central excises, it is appropriate that it should get a share of the estate and succession duties. This will also give to the Federal Government a direct interest in the duty. Subject to what we have said in paragraph 49 about taxes on agricultural property, we recommend that not more than 40per cent of the net proceeds of such duties should be retained by the Centre.

43. We recommend the continuance of the status quo, i.e., the legislation in respect of the duties on the specified documents should be Central but Provinces will collect and retain the duties.

44. These taxes are not suitable except for purely local purposes, i.e., for the benefit of municipalities, pilgrim funds, etc., but they can be conveniently levied and collected only by the Centre. The existing provisions may stand.

Grants-in-Aid and Subventions

45. Item II of our terms of reference refers to Grants-in-aid. Assam and Orissa now get fixed subventions of Rs. 30and Rs. 40 lakhs per annum, respectively. The recommendations that we have made for the increase in the Provincial share of income-tax and the transfer of a share in the excise on tobacco will increase their revenues substantially like those of other Provinces. Even so, however, we have little doubt that these two Provinces will still require fixed subventions on higher scales than at present.

The position of East Punjab is peculiar. Everything there is unsettled, and it will take some time for things to settle down. It is clear, however, that this Province will require a substantial annual subvention for some time to come.

The position of West Bengal is uncertain, and it is not clear how her finances will shape as a result of the partition. The liability that she will have to take over as a result of the partition is not yet known. All told, however, she will perhaps need some temporary assistance.

46. For lack of time and data, we have not been able to assess the subventions required by these four Provinces. We, therefore, recommend that the Central Government should immediately take up the question so that the amounts required by each of these Provinces may be determined in time. The amounts should be subject to periodical review by the Finance Commission to which we refer later.

47. We have suggested elsewhere that till the Finance Commission has been able to recommend a better

basis of distribution, a part of the divisible pool of income-tax should be used in order to mitigate hardship in individual cases. The provision also contains an element of grants-in-aid.

48. It is clear that during the developmental stages of the country it will be necessary for the Centre to make specific purpose grants to the Provinces from time to time. The provisions of clause 203 of the Draft Constitution seem to be adequate for the purpose. We have considered the question whether, as in Australia, grants should be made in order to equalise, or at any rate to reduce the disparity between the levels of services and of severity of taxation in the different provinces. There is undoubtedly something attractive in seeking to bring up the backward units at least to `average' standards, both in effort (severity of taxation) and in performance (standards of services). In Australia, the maximum difference between the levels is said to be of the order of 20 per cent and the number of unit States is small. In India, on the other hand, as for example in the U.S.A., the difference in the levels is very wide and the number of units larger when acceding States come into the picture. In such a background `averages' would be mere mathematical concepts totally unrelated to actual facts. On the other hand, even in a Federation of autonomous units, there is a great deal to be said for helping the less prosperous units to come up to the level of the more prosperous ones. As in all such matters we must take a realistic decision with reference to the conditions in our country. While we do not recommend the adoption in this country of the Australian system, we have no doubt that the Centre, when distributing specific purpose grants under clause 203 of the Draft Constitution, will bear in mind the varying circumstances in the different Provinces.

48-A. Section 199 of the Draft Constitution provides for special assistance to Assam in respect of expenditure for promoting the welfare of the scheduled tribes in the Province. We agree with this provision. It has been represented to us on behalf of Orissa that a similar provision should be made for assisting her to develop the backward areas of the Province. In the absence of any data, we have been unable to assess the measure of assistance, if any, required by this Province, and we content ourselves with expressing the view that if the Central Government, after a due examination of the question in all its aspects, decide the special assistance is necessary it should be provided on adequate scale.

Taxes on Agricultural Income and Property

49. It is obvious that the taxation of agricultural income by the Provinces, while all other income is taxed by the Centre, stands in the way of a theoretically sound system of income-tax in the country. We should, therefore, have liked to take this opportunity to do away with this segregation. In view of the ease with which the origin of agricultural income can be traced, it could be arranged that the tax from such income, even though levied and collected by the Centre as part of an integrated system of income-taxes, should be handed back to the Provinces; and it could be further arranged that till such time as the Centre in fact levied a tax on agricultural income, the Provinces already levying this tax might continue to levy it without restriction and with full power to vary the rates of tax. The interests of Provinces could thus be fully protected, and there could, therefore, be no financial objections from them. On the other hand, the present arrangement has the political merit of keeping together in one place both benefit and responsibility, a rather important point, seeing that the Provinces will have full control over but few important heads of revenue. A few provinces have, in fact, levied the tax and are administering it for some time. Perhaps also, the Provinces can administer this particular tax with greater `facility than the Centre. For the present, therefore, we have decided to continue the status quo, but, in view of the importance of the matter, would recommend that the Provinces should be consulted at once and if a majority, including of course those now levying the tax, agree, tax on agricultural income may be omitted from the Provincial List of subjects, consequential changes being made elsewhere in the Constitution. Our foregoing remarks apply mutatis mutandis to Succession and Estate Duties on agricultural property also.

Division of proceeds of Revenue between Provinces

50. *Income-tax* - As regards the basis of distributing between Provinces the share of proceeds from taxes on income, we are of the opinion that no single basis would lead to equitable results. Origin or *locus* of income is no doubt relevant, but in the complex industrial and commercial structure of modern times, where a single point of control often regulates a vast net-work of transactions, where the raw materials come from one place, are processed in another, manufactured in a third, marketed wholesale in a fourth and ultimately sold in retail over a large area, contracts are made at places different from where they are performed, money is paid in at

one place and goods delivered at another and more than one of these stages relate to the same tax-payer the assignment of a share of profits to each stage can only be empirical or arbitrary.

51. Again, the residence of the tax-payer is an important factor, but apart from the artificial legal definition of residence for income-tax purposes; the predominance of joint stock enterprise in business, the dispersion of the shareholders of companies all over the country and even outside, the possibility (emerging from the artificial definition) of simultaneous residence in more than one area, the non-assessment (due to various reasons) of a large number of shareholders, and the absence of authoritative, i.e., tested, information in the income-tax records as to the province of a residence of a resident of India (for, today, it is immaterial to the Income-tax Department in which particular Province on assessee is resident), all these together make this criterion of residence a difficult factor to apply in practice in distributing the proceeds of the tax. Even if the statistical difficulties were got over, residence could be changed at the will of the tax-payer.

52. Another possible criterion is the place of collection. This place is usually the principal place of business of the tax-payer, or his residence, if he is not carrying on a business or profession. The objection to this factor is that it is unfair to the areas of origin and sale which it completely ignores, while it gives far too much weight to the place of control of a business, which is usually, though not necessarily, the place of collection. Moreover, even more than in the case of residence, the place of collection can be easily altered at the will of the tax-payer.

53. Another possible basis is that of needs, i.e., the shares would be regulated somewhat like grants-in-aid, and rather than go into elaborate enquiries for this purpose, the population of a Province could be taken as a rough measure of its needs. The objection to this basis is that a` share' is something to which a Province is entitled because its citizens or things have in some measure contributed to the fund, while a grant is something given to it without regard to its contribution to the Centre or to any common pool.

54. We have said enough to show the difficulties of the problem, but the difficulties have somehow to be faced and met, unless we keep the whole of the taxes on income as Central and permit Provinces simultaneously to levy a Provincial income-tax on the basis of origin. In our opinion the latter course is not feasible in the circumstances of this country even if justifiable in theory; and pending enquiry by the Finance Commission the setting up of which we suggest later, we have no choice except somehow to make the distribution on as equitable a basis as can be devised in the circumstances.

55. We propose to proceed on the basis of collection as well as population and also to make some provision for adjustment on the basis of need. We recommend that the Provincial share, i.e., 60 per cent. of the net proceeds be distributed among the Provinces, as follows: -

20 per cent. on the basis of population.

35 per cent. on the basis of collection.

5 per cent. in the manner indicated in paragraph 56.

60

For the distribution of the first two blocks, population figures of the previous census and collection figures as certified by the Auditor-General should be accepted as authoritative.

56. The third block of 5 per cent. should be utilised by the apportioning authority as a balancing factor in order to mitigate any hardship that may arise in the case of particular Provinces as a result of the application of the other two criteria; in distributing this block it would be open to the authority to take into account all relevant factors.

Excise duty on Tobacco

57. In our view, the most equitable method of distributing this duty is on the basis of estimated consumption. We have no doubt that the Government will take steps to obtain necessary statistical information if it is not already available.

Estate and Succession Taxes

58. These taxes have not so far been levied. One of the hurdles to be crossed before they can be levied is the determination of the manner of distribution of the net proceeds among Provinces. Until the taxes are actually levied and collected for some time, no data about their incidence will be available. Hence, the levy will have to start with some a priori basis of apportionment among Provinces. We accordingly recommend that until the Finance Commission is in a position to evolve a better method on the basic of data available to it, the net proceeds should be distributed among the Provinces as follows: -

The net proceeds attributable to real property - On the basis of the location of the property.

Of the balance -

75 per cent on the basis of the residence of the deceased;

25 per cent on the basis of the population of the Province.

The administration and distribution of these taxes would, in the ordinary course, fall on the Central Board of Revenue, but it would be necessary to empower an appropriate authority to adjudicate in the case of disputes between Provinces as to the residence of individuals.

Effect of the proposals

59. The net effect of all our recommendations together is that, on the present basis of revenue, the Centre will have to transfer to the Provinces a sum of the order of Rs.30 crores annually. It will recover a part of this loss by the imposition of the Estate and Succession Duties, of the net proceeds of which it will retain 40 per cent. We believe that it will not be beyond the capacity of the Centre to part with this amount annually during the next five years, though it must cause some strain, while at the same time the transfer will enable the Provinces to start their programme of essential social services and economic development.

60. In our recommendations regarding the distribution of proceeds of taxes among the Provinces, we have not only proceeded on more than one basis, but have provided for an element of flexibility in order to mitigate hardship. We have also provided for a periodical review so that the method of apportionment can be adapted to changing conditions from time to time on the basis of experience. We have further provided for grants-in-aid both to the weaker Provinces and to Provinces in difficulty.

61. We have also tried to make the whole arrangement as automatic and free from interference as possible. The basic features of the scheme will be embodied in the Constitution itself, while periodic changes will be made by the President on the recommendation of the Finance Commission, which we hope will command the confidence of all. As frequent changes are undesirable, we have recommended a five-yearly review, though in special circumstances the Finance Commission may embark on a review at a shorter interval. The Provinces will now be sure of their position and can go ahead with their plans.

62. It is needless for us to add that to the extent that the Centre transfers its resources to the Provinces in the shape of new or increased shares in revenue, its ability to give grants to the Provinces for specific or other purposes must be correspondingly reduced.

63. We may not have been able in our proposals to satisfy everybody or to provide for every contingency

that may possibly arise in the future, but we have tried to do the best possible under the circumstances.

Finance Commission

64. For reasons already stated, our recommendation as to the initial basis of apportionment among Provinces is not intended to be permanent. Conditions may change. The working of the scheme for some time will in itself produce some data that would indicate the nature and direction of the changes required. It is necessary, therefore, to have a periodical review of the whole position by a neutral expert authority.

65. We recommend for this purpose, among others, the appointment of a high level Tribunal of five members including a Chairman who has been, or is, holding high judicial office, not lower than that of a Judge of a High Court. This Tribunal may be called the Finance Commission. There may not ordinarily be enough work for the Commission to keep it busy continuously, and the members need not, therefore, devote their whole time to the work. The members should be appointed by the President in his discretion if only because a Commission of this kind would have frequently occasion to deal with points of conflict between the Centre and the Units. While we would not lay down any conditions in the Statute as to how these members should be selected, we recommend that two should be selected from a panel of nominees of Units Governments and two others from a panel of nominees of Units Governments and two others from a panel of nominees of the Central Government, the Chairman being selected by the President himself. One at least of the five should possess close knowledge of the finances and accounts of Governments, while another at least should have a wide and authoritative knowledge of economics, It would be an advantage if one or more were public men with vide experience. it would be further advantage if a member possessed more than one qualification, and steps should betaken to secure the services of such individuals. The appointments might be made for 5 years and be renewable for another five years.

66. Between now and the setting up of the Finance Commission, we recommend that the Central Government should take steps in consultation with the Provinces, to collect, compile and maintain statistical information on certain basic matters such as the value, volume and distribution of production, the distribution of income, the incidence of taxes, both Central and Provincial, the consumption of important commodities, particularly those that are taxed or likely to be taxed, etc. The Finance Commission, when setup, would then have some basic information to go upon, and would no doubt call for such further information as it may need. It would also, to the extent necessary, arrange for continuous examination and research in respect of all important matters.

67. The Finance Commission should be entrusted with the following functions: -

(a) To allocate between the Provinces, the respective shares of the proceeds of taxes that have to be divided between them;

(b) To consider applications for grant-in-aid from Provinces and report thereon

(c) To consider and report on any other matter referred to it by the President.

68. While these categories would exhaust the duties of the Commission, it should be open to the Commission to make any recommendations it may think expedient in the course of the discharge of these duties. It may, for example, suggest a variation in the heads of revenue assigned to the Provinces, i.e., the transfer of new heads or the withdrawal of existing heads, or increases in the shares of existing heads or a reduction in these shares. In making all such recommendations, the Commission will take into account all relevant matters, including the state of finances of the Centre. Its recommendations, in so far as they do not involve any change in the Constitution, would, when accepted by the President, be given effect to by him by order, while recommendations involving a change in the Constitution, if similarly accepted by him, would be dealt with like any other proposed amendment to the Constitution.

69. The Commission's first function would be of the nature of an arbitration, and therefore, the Commission's decisions will be final. As regards one second function, we have no doubt that the

recommendation of the Commission in respect of grants-in-aid would be given the utmost weight by the President and not ordinarily departed from by him.

70. The basis for the allocation of revenues referred to in item (a) should ordinarily be settled by the Commission at intervals of five years, but it should be open to the Commission to shorten the interval if it feels satisfied in special circumstances that such shortening is called for.

71. We would further recommend, in order to save time, that the Finance Commission may be set up in advance of the coming into effect of the Constitution, and its status regularised after the Constitution comes into effect.

Residuary Powers of Taxation

72. It appears that under the new Constitution, residuary powers will be vested in the Centre, so far as the Provinces are concerned, while the corresponding residuary powers in respect of the States will be vested in the States themselves. The question has therefore been raised whether, as a consequence, as many specific taxes as possible should not be entered in the Provincial List of subjects. We cannot think of any important new tax that can be levied by the Provinces, which will not fall under one or the other of the existing categories included in the Provincial List. We think that the chance of any practical difficulty arising out of the proposed constitutional position is remote, and, in any case, it seems to us that if a tax is levied by the Centre under its residuary powers, there will be nothing to prevent the proceeds of the whole or a part of this tax being distributed for the benefit of the Provinces only. As a matter of abundant caution, however, it may be laid down in the Constitution that if any tax is levied by the Cent rein future under its residuary powers, and to the extent that the States do not agree to accede to the Centre in respect of the corresponding subject the whole or a part of the proceeds of the tax shall be distributed between the Provinces and the acceding States only.

This disposes of Item IX of our Terms of Reference.

Exemption of Provincial Governments from Taxation

73. Section 155 of the Government of India Act provides that profits from trading by a Provincial Government would be taxable only if the trade was carried on outside the Province. The exemption from Central taxation of trade by Provincial Governments carried on within the provincial limits did not matter much in the past; for the Governments had few trading operations. With the present tendency towards Nationalisation (e.g., many provinces have already taken up quite seriously the Nationalisation of road transport). the Centre should have some power to levy either income-tax or a contribution in lieu of income-tax in respect of these trading activities. Disputes as to such contributions should, we consider, be examined and adjudicated upon by the Finance Commission to which we have already referred. We feel that if Nationalisation of industries or trades takes place rapidly, the whole question would have to be reviewed *de novo*, for the entire structure of the tax system of the country would be completely changed.

74. In the meantime we make the following recommendations: -

(a) The existing practice should continue in respect of trading operations of the Central Government, i.e., no income-tax should be levied on the profits. It should be open to the Centre, however, to levy a contribution, as in the case of Railways, for its sole benefit from such operations. If the trading is carried on by a separate juristic person, tax will be levied even if the Government is the dominant shareholder.

(b) Tax should be levied on the trading operations of Units (as also of local bodies), whether carried on within or without their jurisdiction; and the tax or the contribution in lieu thereof should be treated as ordinary income-tax revenue for the purpose of the divisible pool. We presume that if there are no profits, there will be no contribution; but if this presumption is wrong, we suggest that the contribution should be treated as part of the divisible pool of income-tax.

(c) We recommend that quasi-trading operations incidental to the ordinary functions of Government such as the sale of timber by the forest department or of jail products by the jail department should not be treated as trading operations for this purpose.

Emergency Provisions

75. The needs of the Centre in times of emergency, such as war or large scale internal disorder, cannot be provided for through the detailed allocation of heads of revenue or of shares therein. It is obviously not possible to legislate how emergencies should be met. We would suggest that there should be a special provision in the Constitution authorising the President in an emergency to suspend or vary the financial provisions in such manner as he may think best in the circumstances. For example, if there is a war and an Excess Profits Tax is levied, it might be necessary for the Centre to retain the whole of this tax for itself.

Procedure in Financial Matters

76. Item X of our terms of reference is as follows: -

"Is it necessary to make any modifications in the existing provisions as regards procedure in financial matters contained in Sections 33 to 37 and 78 to 83 of the Government of India Act, 1935?"

77. The present financial procedure in the federal sphere is laid down in sections 33-37 of the Government of India Act, 1935. The corresponding clauses in the Draft Constitution as prepared by the Secretariat of the Constituent Assembly are 74, 75 and 77-81. We have two recommendations to make: -

> (1) When a money bill is sent from the Lower House to the Upper, a certificate of the Speaker of the Lower House saying that it is a money bill should be attached to, or endorsed on, the bill and a provision to that effect should be made in the Constitution on the lines of the corresponding provision in the Parliament Act, 1911. This will prevent controversies about the matter outside the Lower House.
>
> (2) After clause 80, a provision may be made making it necessary for Government to approach the Legislature for regularising any excess expenditure that might be discovered in audit after the close of the year. This is, in fact, done even now, but there is no statutory obligation to do so.

Subject to these two recommendations, we approve of the provisions in the Draft Constitution.

78. Financial procedure in the Provincial field is governed by sections 78-82 of the Government of India Act.1935. The corresponding provisions in the Draft Constitution occur in clauses 149-153. We recommend -

> (1) that in a Province with a bicameral Legislature, if any, the powers of the Upper House over money bills should be exactly the same as at the federal level;
>
> (2) that the new provision, in respect of a vote on excess grants, recommended by us at the federal level should be repeated at the provincial level also.

79. It is usual in written democratic constitutions to provide that no money can be drawn from the treasury except on the authority of the Legislature granted by an act of appropriation. In this country, the practice has been to authorise expenditure by resolutions of Government after the demands have been voted, and not by law. As the existing practice has been working well in this country, appropriation by law does not appear to be necessary.

Auditor-General

80. Though the question has not been specifically referred to us, we consider that the status and powers of the Auditor-General are so closely connected with financial procedure that we have gone into this matter also. The provisions in respect of the Auditor-General of the Federation are contained in clauses 106-109 of the Draft Constitution, and those in regard to the Auditor-General of the Provinces, in clauses 174-175. In substance, all these clauses repeat the existing provisions in the Government of India Act. We consider the provisions to be adequate for the purpose of securing the independence of the Auditor-General. We notice that the Auditor-General of India is to perform the functions of the Auditor-General in respect of the Provincial Governments also for an initial period of three years, and thereafter, until a particular Provincial Government chooses to appoint its own Auditor-General. We favour the continuance of a single Auditor-General for the Government of India as well as for the Provincial Governments, and it is possible that the Provincial Governments will also prefer that course, and will choose not to use their power of appointing separate Auditor-General for the Government of India as well as for the Provincial Governments, and it is possible that the Provincial Governments will also prefer that course, and will choose not to use their power of appointing separate Auditor-General of their own. The Draft Constitution, however, gives them the option to appoint Auditors-General if they think fit so to do. We are not sure whether it is possible altogether to do away with this option, much as we should like to do so; but if the option remains, we recommend that the provisions of sub-clause 3 of clause 174should be amended so as to make the Auditor-General of a Province eligible for appointment as Auditor-General of another Province also.

Borrowing Powers

81. This question is covered by Item I of our Terms of Reference.

The present position is that the Provinces have the freedom to borrow in the open market in India except when they are indebted to the Centre.

The most outstanding advantage of the freedom of borrowing is the sense of financial responsibility it creates; for, there is no more accurate, sensitive and dependable meter of the credit of a borrowing Government than the reaction of the securities market. We do not therefore wish to withdraw this freedom. Nevertheless, it is necessary to have some machinery which would ensure that borrowing Governments do not, by their competition, upset the capital market. This machinery is now provided through the Reserve Bank which advises all the Governments, but in view of the ambitious programmes of development both by the Centre and by the Units, it may become necessary to set up some kind of expert machinery, both competent and definitely empowered, to fix the order of priority of the borrowings of the different Governments. In some countries, this co-ordination is effected either by a Ministerial Conference or by a Loans Council. Such machinery should not affect the responsibility of a Government for its borrowing policy, and should help only in the timing of the loan and avoidance of unnecessary competition. The co-ordination by the Reserve Bank has worked well in practice and so long as it works well we do not recommend any change. We assume that there will be no distinction between federating States and the Provinces in this respect.

82. We are of the opinion that it should not be open to a Provincial Government or to a Government of a State to go in for a foreign loan except with the consent of the Federal Government and except under such conditions, if any, as the Federal Government may think fit to impose at the time of granting the consent. We notice, however, that there is an entry, *viz.*, "18. Foreign Loans" in the Federal Legislative List in the Draft Constitution. We are not sure whether, the insertion of this entry in the Federal Legislative List is enough to prevent the Government of a Unit from going in for a foreign loan. We, therefore, recommend that the point be examined, and if the provision is not found to be adequate, a specific provision should be made in clause 210 of the Draft Constitution making it necessary for the Government of a Unit to obtain the consent of the Federal Government before going in for a foreign loan.

Problem of Indian States

83. The points at issue are contained in items III, IV, V, VI and XI of our terms of reference.

This part of our work is the most difficult party thereof, and the difficulty arises as much from the lack of statistical data as from the complications of the problem itself; for, not only do conditions differ widely between the Provinces as a whole and the States as a whole, but from State to State, so that it is difficult to apply a common yard-stick.

84. The Union Powers Committee of the Constituent Assembly in Para. 2 (d) of their report, dated 17th April,1947, has expressed its view on this subject in the following terms: - "We realise that, in the matter of industrial development, the States are in varying degrees of advancement and conditions in British India and the States are in many respects dissimilar. Some of the above taxes are now regulated by agreements between the Government of India and the States. We, therefore, think that it may not be possible to impose a uniform standard of taxation throughout the Units all at once. We recommend that uniformity of taxation throughout the Units may, for an agreed period of years after the establishment of the Union not exceeding 15,be kept in abeyance and the incidences, levy, realisation and apportionment of the above taxes in the State Units shall be subjected to agreements between them and the Union Government. Provision should accordingly be made in the Constitution for implementing the above recommendation." We entirely agree with these observations.

85. We assume that the ultimate object of the Federation must be to secure for the federating States the same, or nearly the same standards of economic development, fiscal arrangements and administrative efficiency as in the Provinces. It is only against this background that the States can have the same identity of interest with the Union as the Provinces have.

86. The first difficulty met with in our investigation is that many of the smaller States have neither a budget nor effective audit, so that adequate and reliable in formation about their financial position, on a basis permitting comparison with Provinces, is not available. We recommend accordingly that it should be made obligatory within as short a period as possible for each State to arrange for the preparation and authorisation of a periodical budget and the maintenance of proper accounts and audit and to send copies of its budget, accounts and audit reports to the Union Government.

87. In the absence of sufficient data, we are not in a position to make recommendations other than of a general nature. We are clear in our mind that the States should gradually develop all the taxes in the Provincial legislative List so that they may correspondingly give up reliance on taxes in the Federal Legislative List. This process however would necessarily take some time and in the meanwhile it will be necessary to have transitional arrangements.

88. We will now take up Land Customs. We do not recommend the immediate abolition of Land Customs, for we find that such a course would lead to a serious dislocation in the finances of many States. Moreover, where there is no large re-export trade, these land customs, though a possible source of annoyance, are really of the nature of octroi duty levied at a few point of entry. On a long view, however, in the interests of the States themselves, these duties might be replaced by other taxes, such as sales and turn-overtaxes. We recommend accordingly that Land Customs now levied by the States should be abolished during the next 10 years. As a first step it may be arranged that -

(1) a State shall not in future levy land customs on a commodity on which there is no such duty now;

(2) a State shall not after a fixed date, increase the rate on any commodity; and

(3) a State levying land customs should grant refunds on re-exports.

Gradual abolition over a period of 10 years should not cause any serious dislocation to the finances of these States, nor can there be any question of paying any compensation to these States, for the simple reason that the Union Government will not gain any corresponding revenue.

89. Maritime customs should be uniform all through the Union, and the Federal Government should take over the administration of such customs in all the maritime States. If this arrangement results in the loss of any State of the revenue now enjoyed by it, it is only fair that the State should be compensated for the loss. Pending determination of the appropriate compensation in each case by a States Commission, the appointment

of which we recommend in a later paragraph, each State may be given an annual grant equal to the average revenue from this source during the last three years. The right of Kashmir to a rebate on sea customs maybe similarly abolished on payment of a similar grant.

90. The Federal Government may levy Central Excises in all the States, but those States which now enjoy the benefit of a part or the whole of these revenues raised in their areas should, in lieu of such benefit, receive grants on the basis of the average revenue enjoyed by them from these sources during the last three years. In our opinion, neither this arrangement nor the one referred to in the foregoing paragraph should present any difficulty from the purely financial point of view either to the Union or to the States.

91. The Indian Income-Tax Act, with such modification as may be considered necessary by the President, may be applied to all the Federating States. The net proceeds of the tax attributed to the States may be credited to a States Income-Tax Pool and such portion not being less than 75 percent of the net proceeds attributable to each State, as determined by the President, may be paid back to the States.

We are aware that many problems will arise in the course of allocating these proceeds between the different states, but they are not insoluble, and can be solved on lines similar to those followed in allocating similar revenues between the Provinces.

92. The need for a uniform system of income-tax both in the Provinces and in the States has become urgent not only because of the facilities afforded for evasion and avoidance of the Central Income-tax by the existence of States with lower rates of taxation or no tax at all, but also because it is alleged that industries are being diverted artificially by the incentive of lower taxation to areas not inherently suited for the industries.

93. Though we do not favour any abrupt change in the status quo, we do not attach much weight to the argument that the States are, as a whole, industrially backward and that they cannot, therefore, stand the same high rates of taxation, particularly income-tax, as the Provinces can. If the productive capacity of a State, and consequently its level of income, is low, it follows that the State will not have to contribute much by way of tax if it falls in line with the Provinces. If, on the other hand, the point is that industries should be artificially stimulated in the States somehow by the incentive of lower taxes, it is obvious that if the State is not suited for industrial development, the cost of bolstering up its industries must ultimately fall upon the Provinces and other States.

94. As already stated, we are not in a position to make detailed recommendations regarding the States. We recommend for this purpose the establishment of a States Commission with five members who should possess wide knowledge of the financial administration of Provincial, Federal or State Governments. Preferably, one of these members might be a member of the Finance Commission (for Provinces) referred to earlier in this report. The Commission should advise the President, as also the States, about their financial systems and suggest methods by means of which the States could develop their resources and fall into line with the Provinces as quickly as possible. One of the first tasks of the Commission will be to examine in detail the privileges and immunities enjoyed by each State, and also the connected liabilities, if any, and recommended a suitable basis of compensation for the extinction of such rights and liabilities. We consider in particular that the States Commission should deal with the problems before it with understanding and sympathy and suggest solutions which would not only be fair both to the States and to the Provinces, but enable the States to come up to the Provincial standards in as short a time as possible.

95. The States which come into the above arrangements would pay their contribution for Defence and other Central services through the share of the net proceeds of Central taxes retained by the Centre, and nothing more should be expected from those States. On the other hand, the States which accede but do not come into the above arrangements, should pay a contribution to the Centre, the amount of which should be determined by the States Commission having regard to all the relevant factors.

96. The constitutional arrangements in this respect, particularly during the interregnum of 15 years, should, in our opinion, be kept very flexible. The President should be enabled by order to adopt any financial arrangement he may find expedient with each State until such arrangement is altered by an Act of the Federal

Legislature after necessary consultation with the States.

97. While the outlines which we have indicated above are capable of being applied to most of the major or even middle-sided States, it is, in our opinion, necessary to group together a number of smaller States in sizable administrative units before they can be brought into any reasonable financial pattern.

98. We are sorry that we have not been able to contribute anything more precise then we have done to this part of the terms of reference to us.

99. We enclose two Appendices (IV and V) one of which sets out in detail, as far as we have been able to collect, the rights and immunities enjoyed by various States, and the other setting out the total budgets of certain States and the part played by Land Customs in those budgets.

Summary of Recommendations

100. (1) No major change to be made in the list of taxes in Federal Legislative List as recommended by the Union Powers Committee. (Para. 30)*

(2) The limit of Rs. 50 to be raised to Rs. 250 for taxes on professions etc. levied by Local Bodies. (Para.30)*

(3) An entry to be made in the Federal Legislative List of a new item "Stock Exchanges and Futures Markets" etc. (Para. 30)*

(4) A few minor changes of a drafting nature to be made in the list of taxes in the Provincial Legislative List; and no new items for insertion in the Provincial Legislative List. (Paras. 31-33)*

(5) The Centre to retain the whole of the net proceeds of the following taxes, viz., (a) Duties of Customs including Export Duties; (b) tax on capital value of assets, etc.; (c) taxes on Railway fares and freights; and (d) Central Excises other than on tobacco. (Para. 34)*

(6) The grant of fixed assignments for a period of years to the jute-growing provinces to make up for their loss of revenue. (Paras. 35-36)*

(7) The net proceeds of the following taxes to be shared with the Provincial Governments, viz. (1) Income-tax, including Corporation Tax; (2) Central Excise on Tobacco;(3) Estate and Succession Duties. (Par as. 38-42)*

(8) The suggestion that the Centre should be allotted only the excises on specified commodities, not accepted (Para. 41)*

(9) Federal Stamp Duties and Terminal taxes on goods. etc., to be administered centrally, but wholly for the benefit of the provinces. (Par as. 43 and 44)*.

(10) Larger fixed subventions than now, necessary for Assam and Orissa, and subventions for limited periods for East Punjab and West Bengal, but no precise figures recommended for lack of data. (Par as. 45 and 46)*

(11) Grants-in-aid on the Australian model not favoured. (Para. 48)*

(12) Merging the tax on agricultural income in the Central Income-tax and similarly the Estate and Succession Duties on agricultural property in the similar duties on property in general to be examined in consultation with Provincial Government and transfers made from the Provincial List of subjects, if necessary. (Para. 49)*

(13) Not less than 60 per cent. of the net proceeds of Income-tax, including Corporation Tax and the tax on Federal emoluments, to be divided between Provinces in the following manner: -

20 per cent. on the basis of population, 35 percent. on the basis of collection and 5 per cent as an adjusting factor to mitigate hardship. (Par as. 55 and 56)*

(14) Not less than 50 per cent of the net proceeds of the excise on tobacco to be divided between Provinces on the basis of estimated consumption. (Para. 57)*

(15) Not less than 60 per cent. of the net proceeds from Succession and Estate. Duties to be divided between the Provinces on the following basis: - Duties in respect of real property on the basis of allocation of the property, and of the balance, three-fourths on the basis of the residence of the deceased and one-fourth o the basis of population. (Para. 58)*

(16) Net effect of the recommendations, to transfer annually a sum of the order of Rs. 30 crores from the Centre to the Provinces. (Para. 59)*

(17) A Finance Commission with a High Court Judge or ex-High Court Judge as Chairman and four other members to be entrusted with the following functions: - viz. (a) allocation between the Provinces of their shares of centrally administered taxes assigned to them; (b) to consider applications for grants-in-aid for Provinces and report thereon; (c) to consider and report on other matters referred to it by the President. (Par as. 65-67)*

(18) The Commission to review the position every five years, or, in special circumstances, earlier. (Para. 70)*

(19) A tax levied by the Centre under its residuary powers, not to ensure to the benefit of a non-acceding State unless it agrees to accede to the Centre in respect of that subject. (Para. 72)*

(20) Trading operations of Units, as also of Local Bodies, whether carried on within or without their jurisdiction, to be liable to Central Income-tax or a contribution in lieu, but quasi-trading operations incidental to the normal functions of Government not to be taxed. (Para. 74)*

(21) The President to be empowered in an emergency to suspend or vary the normal financial provisions in the Constitution. (Para. 75)*

(22) A few minor changes suggested in regard to the procedure in financial matters. (Para. 77)*

(23) No change to be made in respect of borrowing powers of Units. - (Par as. 81-82)*

(24) Early arrangement to be made for the preparation of regulate budgets and the maintenance of appropriate accounts and audit by all acceding States. (Para. 86)*

(25) States gradually to develop all the taxes in the Provincial Legislative List and correspondingly give up taxes in the Federal List. (Para. 87)*

(26) Maritime customs and excises in States to betaken over by the Centre, the States being compensated therefor if necessary. (Par as. 89 and 90)*

(27) The Indian Income-tax Act to be applied to all the federating States, and 75 per cent. of the net proceeds attributable to the States to be divided between them. (Para. 91)*

(28) A States Commission to be set up with five members with wide knowledge of the financial administration of Provincial, Federal or State Governments. (Para. 94)*

(29) The States Commission to examine the privileges and immunities etc. of States and to suggest suitable compensation for the extinction of these rights and liabilities. (Para. 94)*

(30) States which do not come into the arrangements to pay a contribution to the Centre to be determined by the States Commission. (Para. 95)*

(31) The interim Constitutional arrangements with the States to be flexible and small States to be grouped together. (Par as. 96 and 97)*

Conclusion

101. Some of our recommendations would need to be embodied in the Constitution while others would be given effect to by the order of the President. We have attempted ad raft of the necessary provisions in the Constitution to give effect to the former; and these are set out in Appendix VI.*

102. Mr. Rangachari has signed this report in his personal capacity, and the views expressed in it should not be treated as committing in any manner the Ministry of Finance of which he is an officer.

NALINI RANJAN SARKER,

V. S. SUNDARAM,

M. V. RANGACHARI.

New Delhi:

5th December 1947.

[Annexure I] **APPENDIX B**

CONSTITUTIONAL POSITION OF THE CENTRE AND THE PROVINCES IN RESPECT OF REVENUE UNDER THE GOVERNMENT OF INDIA ACT, 1935.

(a)Revenue of the federation

(1) From Taxes				(2) From Commercial operations	(3) Sovereign Functions	(4) Contributions from States –Assigned by His Majesty
A. Levied and collected by the Federation but belonging wholly to the Provinces or Units.	B. Levied and collected by the Federal Government of which a portion is or mat be assigned to the provinces		C. Levied and collected by Federation and, belonging wholly to the federation.	1. Posts and Telegraph 2. Federal Railways. 3. Banking 4. Other commercial operations	1. Coinage and Currency 2. Escheat and lapse in areas administered by Federal government.	Tributes and other payments.
1.Duties on succession to property other than agricultural land.* 2.Stamp	a. Assigned by the Act.	b. May be assigned by Federal Law.	1.Taxes in Lists A & B in areas administered by the Federal Government. 2.Customs.			

Duties on Bills of exchange, Cheques, Pronotes, Bills of Lading, Letters of Credit, Policies of Insurance, Proxies and Receipts.! 3. Terminal Taxes on goods or passengers carried by Railway or air.!! 4.Taxes on Railway fares and freights.* (Subject to the right of the Federation to raise Federal Revenue by a surcharge on all the items in this list.)	1.Income-tax other than Corporation Tax, (Subject to Federal Surcharge.)! 2.Jute Export Duty.!!	1.Duty on Salt. 2.Other duties of excise on Tobacco and on other Goods manufactured or produced in India except. (a)alcoholic liquor for human consumption. (b)Opium, hemp and other narcotics and non narcotics drugs. ©Medicinal and toilet preparations.# 3.Duties of Export.%	3.Corporation Tax. 4.Surcharge mentioned in Lists A & B 5. Taxes on capital values of assets of individuals and companies. 6.Miscellaneous receipts from fees in respect of matters in Federal List (including fees taken in the Federal Court).			

*Not yet levied.
! These duties continue to be both levied and collected by the Provinces.
!! Levied so far only for the benefit of local bodies.
$Duty now abolished.
#See notes under the other Table.
%No share assigned to Provinces.

(b)Revenue of the province

<table>
<tr><td colspan="3">A. By Taxes</td><td>B. Commercial Operations</td><td>C. Sovereign Rights
|
Escheat and Lapse</td><td>D. Grants - in-aid and subventions from the centre.</td></tr>
<tr><td>A. Directly raised by the Province.
1.Land Revenue.
2.Duties of excise on alcoholic liquors, etc. excluded from Federal revenues.</td><td>B. Levied and collected by the Federation and wholly</td><td>C. Levied and collected by the Federation but which is or may be allocated in part to the provinces.
|</td><td colspan="3"></td></tr>
</table>

3.Taxes on agricultural income. 4.Taxes on Lands and Buildings8 Hearths and Windows. 5.Succession to agricultural land. 6.Taxes on Mineral rights. 7.Capitation taxes. 8.Taxes on Professions, Arts, Trades and Callings.* 9.Animals and Boats.* 10.Sale of Goods and Advertisements. 11.Octroi. 12.Taxes on luxuries, entertainment, etc.* 13.Stamps—other than Stamps in Federal List. 14.Taxes on Passengers and Goods in inland waterways. 15.Tools.! 16.Miscellaneous receipts from fees including fees taken in Courts (other than the Federal court).	allocated to the Provinces | Items in List A of the other Table.	(a)By the Government of India Act. Income-tax. !! Export duty on Jute.#	(b) By Federal legislation. $ Salt! Federal Excise Duty. Export Duties.#	

These taxes are now raised by Municipal and other Local authorities for their needs.

By order in Council 50% of the net proceeds of tax on income other than Corporation tax exclusive of proceeds attributable to Chief commissioners Provinces and taxes in respect of federal emoluments are distributable in accordance with a prescribed ratio.

#62 1/2 assigned to Provinces by Order in Council distributed among jute producing provinces in proportion to the respective amounts of Jute grown in them.

$Duty abolished.

#No share allotted to Provinces.

!Now abolished—but before abolition was a source of Municipal

APPENDIX B

FINANCIAL POSITION OF THE PROVINCES AND CENTRE FROM 1937-38 TO 1946-47

(a) Provinces

Province	Provinicial Revenue	Devolution Grants from the centre including Dev. Grants	Total Revenue	Total Revenue Expenditure	Cumulative Deficit (-) Surplus (+)	Balances in Reserve Funds on	Closing balance on 31st Mar.1947

						31st Mar.1947	
Madras	2.63,27	24,12	2,87,39	2,84,22	+3,17	29,18	- 56
Bombay	1,92,52	26,51	2,19,03	2,06,69	+12,34	17,07	42
Bengal	1,65,35*	69,92	2,35,27	2,51,13*	-15,86	25	2,48
United provinces	1,79,33	26,77	2,06,10	2,04,99	+1,11	17,31	6,43
Punjab	1,84,12	11,51	1,95,63	1,60,46	+35,17	6,79	57
Bihar	75,06	51,10	90,16	81,81	+8,35	7,78	1,07
C. P.& Berar	63,61	7,69	71,30	70,661	+64	8,14	2,41
Assam	35,54	7,89	43,43	42,89	+54	1,02	1,54
N. W. F. P	11,94	11,55	23,49	22,95	+54	15	63
Orissa	17,71	7,93	25,64	25,11	+53	10	60
Sind	55,19	10,27	65,46	60,04	+5,42	8,14	8

* Subsidy of 3,00 in 1943 -44 taken by Bengal as reduction of expenditure on Famine . Hence Revenue and Expenditure both have been increased by 3,00

*The Subvention was capitalised on 1st April 1944 and the value setup against the Lloyd Barrage Debt.

Revised Estimate have generally been taken for 1946 - 47

(b) Central Government (1937-38 to 1649-47)

(In lakhs of Rupees)

Year	Revenue	Civil	Expenditure -------- ---------- Defence	Total	Deficit (-) Surplus (+)
1937-38	86,61	39,39	47,22	86,61	---
1938-39	84,52	38,97	46,18	85,15	--63
1939-40	94,54	45,03	49,54	94,57	----
1940-41	1,07,65	40,57	73,61	1,14,18	--6,53
1941-42	1,34,57	43,33	1,03,93	1,47,26	--12,69
1942-43	1,77,12	74,28	2,14,62	.2,88,90	-1,89,89
1943-44	2,49,95	81,44	3,58,40	4,39,84	--1,89,89
1944-45	3,35,71	1,00,77	3,95,49	4,96,26	--160,55
1945-46	3,61,18	1,24,38	3,60,23	4,84,61	--1,23,43
1946-47(Revised Estimate)	3,36,19	1,43,36	2,38,11	3,81,47	---45,28
TOTAL	19,68,07	7,31,52	18,87,33	26,18,85	---6,50,78

The amounts included in the above on account of revenue assigned to the Provinces and Grants-in-aid and Subventions to them are given below :-

(In Lakhs of Rupees)

Year	Share of Jute Export duty	Share of Income-tax	Grants - in aid and subventions
1937-38	2,65	1,25	3,14
1938-39	2,51	1,50	3,05
1939-40	2,56	2,79	3,04
1940-41	1,85	4,16	3,04
1941-42	1,95	7,39	3,03
1942-43	1,40	10,90	2,76
1943-44	1,38	19,50	5,75 (a)
1944-45	1,49	26,56	8,70 (b)
1945-46	1,57	28,75	9,70 (c)
1946-47(Revised Estimate)	2,80	29,87	1,70
TOTAL	20,16	1,32,67	43,91(d)

(a) Includes 3,00 Special Grant to Bengal. (b) Includes 7,00 Special Grant to Bengal.

(c) Includes 8,00 Special Grant to Bengal. (d) Includes 7 roundly in all for Coorg.

Annexure III

APPENDIX B

SUMMARY OF PROVINCIAL SUGGESTIONS

Part I - Taxes

Tax	Assignment existing or contemplated	Provinces proposing	Assignment Proposed for provinces
1. Income tax (other than on agricultural income). [Sec. 138 of the Government of India Act, 1935 and item 54 in Federal Legislative List.]	A maximum of 50% of the net proceeds to be distributed among provinces.	Madras Bombay	A minimum of 50% of net proceeds. 75% of income tax and corporation tax receipts for provinces or 75% of the corporation, income and super taxes paid by residents in a province to be earmarked for that province. From the divisible pool from corporation and income tax 33 1/3 % should be allotted to Bombay which is the largest single contributor to the revenue.
		U. P	50% for provinces on population basis
		C. P	75% Tax on Agricultural income also should be collected by collected by centre.
		West Bengal	60% to be distributed in proportion to the collection of these taxes in provinces.
		Bihar	Even on the basis of population Bihar should have received 17

			crores as against 13 allotted. In future none of the poorer provinces should get an amount lower that that payable on the basis of population. The distribution should be governed not by residence of the assessees but by the place where the income is earned. The basic factors must be population and the place where the income is earned. If any modifications are to be made they must be done with the object of assisting the financially poorer provinces among which Bihar is at the very bottom.
		Orissa	Distribution of 50 % may continue as at present but the percentages should be revised taking into consideration the factor also of the state of development in addition to those of corporation and residence used by Sir Otto. Due weightage to be given to undeveloped provinces. Should the provincial share exceed 12 crores, 75 % of the exceeds may be left to the discretion of the Central Government.
		East Punjab	After the partition the East Punjab Province faces a deficit of about 3 crores : its share of income tax proceeds should be very appreciably increased to meet the deficit fully
		Assam	75 % . There should be a drastic revision of the shares of provinces in income tax receipts having regard to the facts that Sind and N. W. F.P. go out that the amounts now available in the divisible pool have enormously exceeded the original estimate and some provinces are now getting , as a result income tax amounts exceeding the entire revenues of some others.
2. Corporation Tax. [Items 46 in Federal Leg. List]	Wholly Federal	Madras	At least 50 % of the net proceed to go to provinces
		Bombay	75 % for provinces
		U. P	50 % for provinces on population basis
		C. P	C. P. suggests the inclusion of Corporation tax and taxes on Capital assets in taxes on income for distribution.
3. Central Excise duties (on tobacco and other goods except alcoholic liquors. (item 46)	There is provision for in part [Sec. 140 (1)] but not so far shared	Madras	Should be entirely provincialized.
		Bombay	Should be provincialized or no less than 50 % of the net proceeds on each producing unit to be allotted to that unit.
		U. P	Should be entirely provincialized and distributed on population basis.

		C. P	Should be provincialized or 75 % should be allotted to provinces. The duties should cover some more articles such as rubber goods, papers etc.
		West Bengal	25 % of the federal excise should be allocated to provinces .
		Bihar	A portion of the duty should be distributed on the basis of the yields in different provinces.
		Orissa	A portion may be distributed to provinces gradually particularly as the provinces are now faced with the loss of their revenue.
		Assam	At least 75 % of the excise duty collected on her oil should be allotted to Assam. At least 50 % of the other excise duties (Sugar, Steel, Matches, Tobacco and Beetle Nuts) to be given to the producing units on a formula combining factors of province of production, size of population and level of revenue expenditure.
4. Export Duties on Jute and Jute products.	62 1/2 % of net proceeds [Section 140(2)]	West Bengal	75 % should accrue to the provinces growing and manufacturing jute.
		Bihar	The entire net proceeds of the jute producing provinces should be distributed proportionately among the concerned provinces.
5. Export Duties		Madras	At least 50 % of net proceeds of all export duties should be distributed to provinces according to principles formulated be federal legislature. Analogy of jute duty arrangement cited.
		Bombay	50 % of net proceeds.
		U. P	All export duties should be entirely provincialized and distributed on population basis.
		C. P	Export duty on minerals (coal and manganese etc.) should be allotted to C. P. (jute analogy)
		West Bengal	25 % of net proceeds of export duties other than jute
		Orissa	A portion may be distributed to provinces gradually particularly as the provinces are now faced with the loss of their excise revenue.
		Assam	At least 75 % of the sale proceeds of export duty realised on her tea.
6. Succession duties, Federal Stamp duties, Terminal Taxes (Railway & Air), Taxes on Railway Fares &Freights.	Provided for full distribution to provinces.(sec.137)	Madras	It should be provided that the net proceeds shall not form part of the revenues of the federation but shall be distributed to the provinces according to principles formulated by the Federation.
		U. P	The provisions should be fully utilized to augment the resources of provinces.
		C. P	Succession duties in respect also of agricultural land should be transferred from the provincial to

			the Federal list. The duty should be on *ad valorem* basis.
		West Bengal	The provincial governments should be empowered to levy them if the Central government do not levy them.
		Assam	50 percent of income from increase in railway fares and freights above the levels determined by the Railway Budget of February 1947 to go to provinces on population ratios weighted by a given factor in favour of provinces with smaller revenues and expenditure.
7.State Lotteries	Federal (item 48 Federal List).	C. P	Should be transferred to provincial list.
8. Taxes on trades, professions Callings and employment.	Provincial tax sec.142-A, Item 46 in provincial list.		The limit of Rs. 50 p.a. Should be removed and gradation according to capacity should be provided for .
9. Taxes on sales and advertisements.	(Item 48 in provincial list)		Sales tax should be levied in all provinces and acceding states.

PART II - NON TAX PROPOSALS

TAX	Assignments existing or contemplated	Provinces proposing	Assignment proposed for provinces
		U. P	(1) The inequity of Niemeyer Award should be rectified and central allocation for U. P. should aim at a minimum of 6 or 7 crores p.a. going up to 12 or 13 crores in the space of 10 years.
			(2) The consolidated debt due from the U. P. to the Govt. of India should be wiped off.
			(3) The Govt. of India should share losses on the food grains scheme as originally promised by them.
		C. P.	A system of central grants derived after taking into account such factors as natural resources, stage of industrial development, taxable capacity, etc. is essential, An expert financial enquiry should be undertaken

		West Bengal	(1) Provision for federal aid to provinces for social and amelioration work.
			(2) There should be financial commission on the lines of the Commonwealth Grants Commission in Australia.
		Bihar	If any grants in aid or subventions are given in future the per capita revenue and expenditure in each province during the last 10 years should be kept in mind. Those with low per capita revenue should be given greater assistance than the richer.
		Orissa	The broad lines of the present allocation may be maintained in the new Constitution; but the subvention of 40 lakhs fixed for the province should be increased; it should be stated as a percentage of the revenues of the central govt. and in any case there should be a minimum annual subvention of 150 lakhs.
			Enforcement of the policy of prohibition and judicial panchayats will make the provincial administration impossible unless the central government multiplies its grants and subventions very liberally
			Abolition of the Zamindari system would seriously affect Land revenue and stamps. Make every one pay according to his capacity. Provide for a well regularised house tax on a provincial scale ; a tax on passengers.
			Nationalization of industry will wash away the twin anchor sheets of Central finance- Income tax and

			Customs.
		East Punjab	(1) Particularly as the East Punjab is now to be the frontier of the Indian Dominion, there is a strong case for a recurring subvention of more than 1 crore for it (N. W. F. P used to get 1 crore).
			(2) A non-recurring subvention for the capital of the province. (Orissa was given such a grant) .
		Assam	There is an obvious case for an upward revision of the subventions granted to Orissa and Assam.
			Assam as a frontier as well as a backward province of India deserves special treatment.
			Its royalty of 5 percent on oil (as against 10 times that amount of central excise) is unfair . Large amounts of income accrue in Assam but are assessed in Calcutta which in headquarters of the concerned companies . Some provinces like Bombay and Bengal have been allowed to get a large share of increase tax receipts because of their claim to be territorially responsible for the production of incomes . Assam is entitled to similar consideration in regard to certain items of central revenues .

[ANNEXURE IV] APPENDIX B

RIGHTS AND IMMUNITIES ENJOYED BY THE STATES

(A) ANNUAL VALUE OF THE IMMUNITIES ENJOYED BY THE STATES UNDER SEA CUSTOMS, CURRENCY AND COINAGE

State	Year to which the figures relate	Rs. in lakhs	Remarks (see footnote)
(i) Sea customs			
Kutch	1945-46	21.18	(1)
Bhavnagar	1945-46	.19	(2)
Morvi	1945-46	6.80	(3)
Jauagadh (excluding Mangrol)	1945-46	12.65	(3)
Nawanagar	1945-46	15.27	(3)

Porvabdar	1945-46	3.63	(3)
Cambay	1945-46	2.00	(4)
Baroda	1943-44	22.98	(5)
Janjira	1945-46	3.00	(6)
Cochin	1944-45	22.70	(7)
Travancore	1944-45	17.99	(7)
Sawantwadi	1944-45	0.12	(8)
Mangrol	1945-45	2.33	(9))
Kashmir	1945-46	11.00	(10)
(ii) Currency and Coinage			
Hyderabad	1945-46	105.55	
	(6 th october 1945-5th october 1946)		

(1) In connection with Federation, the proposed method of calculating the immunity in the case of Kutch was as follows: -

To the trade figures supplied by the State the British Indian tariff rates should be applied and from this total should be deducted the difference between the duty calculated at British Indian tariff rates and that actually collected at State rates on goods not consumed in the State itself.

As the figures necessary to apply this formula are not available the figure given in the statement represents simply the amounts of customs duty retained by the State in1945-46.

(2) The value of the immunity in the case of Bhavnagar is the total of customs collections made and retained by the State. The figures for 1945-46 is abnormal.

The figures for 1930-31 to 1935-36 were as follows: -

Year	Rs.
1930-31	51,02,974
1931-32	75,91,016
1932-33	81,93,368
1933-34	99,32,628
1934-35	1,21,55,668
1935-36	61,62,300

(B) Note prepared by the Ministry of States on excise arrangements with Indian States

Matches. - In respect of match excise there is a pooling arrangement with the States. The main principal is that the whole of the proceeds of the tax collected in any State a remade over to the general pool and the whole proceeds of the pool divided between British India on the one hand and the various States that agree to come into the pool on the other on the basis of population, regardless of whether matches are manufactured or not, in the States. Import of matches from the States that have not joined this arrangement, is prohibited. The conditions that a State is required to accept for admission to the pool are -

(a) The State should levy duty on matches produced in their territories by means of British Indian banderols and pay the proceeds into the common pool.

(b) The British Indian procedure for the levy and collection of duty should be followed.

Licence fees and fines are not included in the pool. Deduction on account of collection-charges at a uniform rate is allowed. The present rate is 3 per cent of the net collections. The total net revenue is distributed among the various States and British India on the basis of population. While the amount contributed by States during 1944-45 to the pool was Rs. 44,38,970 the amount actually paid to the States was Rs. 1,00,66,875. The British Indian realisation was Rs. 5,46,26,781.

* * * * * *

3. **Sugar.** - Arrangements were made in 1934 with the sugar producing States whereby they were required to levy the same rates of excise and under the same conditions as in force in British India in return for which sugar produced in Indian States was to be admitted free to British India. Soon after the outbreak of war, arrangements were made with the major sugar producing States, whereby in addition to compliance with the 1934arrangements, these States undertook to hand over to the Central Government the excess of their earnings from sugar excise in any year above the highest revenue derived from the sugar excise in any of the three years preceding 1939-40. As regards States which had not till the developed a degree of production materially in excess of their own consumption and States which had not commenced production, the Residents were asked to watch and report developments. All producing States were, however, requested to levy the same duty as in British India. In the case of such States where production now exceeds consumption, the arrangement is that the State retains duty on the basis of population at the rate of Rs. 3/20 per capita revenue.

The sugar producing States are -

---

(3) The value of the immunity in these cases is represented by the total customs collections less the amount payable to the Central Government under the Agreements.

(4) By the agreement of 1938 Cambay is allowed to retain whichever is greater of the following two amounts: -

(i) Rs. 2 lakhs: or

(ii) a proportion of the customs duties collected at the State ports on the basis of population with suitable adjustments to correct difference between the proportion of the urban population to the rural population in the state and the whole of India respectively.

Since the net customs revenue collected by the State during 1945-46 was only Rs. 6,993/- the State was entitled to receive from the Central Government difference between that figure and Rs. 2 lakhs. The immunity in this case is therefore Rs. 2 lakhs.

(5) Baroda is entitled to retain all the duty collected by it up to a maximum of 1 per cent. of the average customs revenue of British India and until this maximum is reached the immunity is represented by the State's collections. The latest figures available are given here.

(6) Annual payment under the 1940 Agreement, which represents the State's immunity.

(7) The immunity of Travancore and Cochin is represented by their share of the pool reduced by the collection of duty at the British port of Cochin, at Cochin ports and Travancore backwaters. In addition it is necessary to include for Travancore the annual collections of customs duty at their ports other than the backwater ports; and in respect of commodities such as tobacco, on which Travancore levies duty at rates other than British Indian rates, the amount of duty at those rates is substituted for the actual collections.

(8) The immunity is represented by the compensation payment of Rs. 13,433 less Rs. 1,700 allotted for abolition of land-customs under the Agreement of 1838.

(9) Actual amount collected and retained by the State.

(10) Drawback from customs on goods imported by sea through British India.

A	B
Mysore	Baroda
Phaltan	Hyderabad
Kolhapur	Udaipur
Kaprthala	Gwalior
Rampur	Aundh
Jaora	Nabha
Bhopal	Kashmir
Sangli	
Miraj	

The States falling in category A above produce sugar in excess of their requirements and those falling in category Bless than their requirements. Of the first mentioned States, negotiations were satisfactorily concluded with the first five. Bhopal which is surrounded on three sides and Jaora which is surrounded on all sides by Indian States, taking full advantage of their geographical position did not accept the settlement at first. Jaora, however, agreed to surrender its surplus revenue from 1942-43. Sangli and Miraj States only recently developed their sugar factories and have agreed to surrender the surplus revenue on the basis of the formula at 'A' above but have protested for revision of the arbitrary figure of actual consumption represented by3/20ths. The matter is under consideration.

The amount retainable by Indian States and the average duty Collected are as follows:-

Name of state	Amount retainable	Average Collection
	(Rs.)	(Rs. in lakhs)
Mysore	12,91,135	17
Kapurthala	2,52,000	8
Kolhapur	2,33,592	4
Rampur	11,43,532	16
Phaltan	5,21,262	
Sangli	44,007	Not Known
Miraj	6,944	Not Known

Following is the contribution by the above States to the Central Exchequer in respect of the year 1945-46 -

	Rs.
Mysore	-
Kapurthala	6,47,368
Kolhapur	2,26,820
Rampur	-

Phaltan	1,40,585
Sangli	1,07,869
Miraj	59,268

Information regarding the amount to be surrendered by My sore and Rampur is still awaited.

7. Tobacco. - All States are expected to levy the British Indian rate of duty. (Some States where production is not of much consequence levy excise on the basis of acreage in view of the high cost of administration.) The States are entitled to retain the proceeds of the excise duty subject to the limit, on the basis of their population, worked out in accordance with the following formula -

$$A = \frac{R \times P}{P}$$

Where A is the limit retainable by a State;

R = the total net revenue in any year calculated from 1st April to 31st March, collected in British India and all the participating States (i.e., the gross revenue less the cost of collection, licence fees, penalties, fines etc.);

p = the population of the State concerned;

P = the population of British India and all the participating States.

Some States have not come into the scheme and the tobacco of such States on entry into British India is confiscated and released on payment of fine and penalty. Although section 5 of the Central Excises and Salt Act 1944empowers us to impose customs duty equivalent to the excise duty, the provisions of this section have not been involved because it has been possible to realise an amount equivalent to the excise duty on State Tobacco under rule 32 of the Central Excise Rules by means of confiscation. Hyderabad has not accepted the formula and does not share the revenue with the Government of India although it has legislated on the lines of British India. No restrictions have been imposed on the entry of Hyderabad Tobacco into British India.

To facilitate movement of tobacco from and to the States, a special procedure for the movement in bond has been devised. Under this procedure the duty is realised at destination and credited to a Suspense account. The amounts. realised on the State tobacco is at the end of the year credited to the State and is taken into account in the State's realisations for purposes of the formula. The revenue contributable by the States during the years 1943-44and 1944-45 were Rs. 51,38,809 and Rs. 1,48,07,552respectively.

8. **Vegetable Product.** - The formula is the same as in respect of tobacco. The only States concerned at present are My sore and Cochin although the other States were asked to legislate and have legislated on the matter. Of the two States, namely, Cochin and My sore, Cochin's contribution to the Central Revenues during the year 1943-44 and 1944-45 was Rs. 76,160 and Rs. 41,212 respectively. The My sore State has nothing to pay under the formula.

9. **Tea, Coffee and Betel Nuts.** - The States concerned are: -

Tea: - Mysore, Travancore, Cochin, Tripura, Mandi;

Coffee: - Mysore, Travancore, Cochin;

Betel Nuts: - Mysore, Travancore, Cochin, Tripura, Sawantwadi and Janjira. The rates of duty imposed by Travancore are as follows: -

Betel Nut	As. 1/6 per 1b.
Coffee	As.-/6 ,, ,,
Tea	As.1/9 ,, ,,

The same formula as in respect of tobacco has been adopted in respect of these excises also, although the Board's intention was that 'P' in respect of these excises should denote the population of all India and not limited to participating States and British India as in the case of tobacco. Mysore and Travancore, the two important States, have been clamouring for a revision of the formula. In the case of Travancore the following revised formula has been offered: -

$$A = \frac{P}{T}$$

Where A denotes per capita consumption figure;

T = the total quantity of the article taxed in British India and in other participating units;

P = the total population of British India and other participating States.

On the basis of the per capita consumption figure worked out, the amount retainable by the State will be worked on the basis of the following formula: -

$$A = a \times d \times p$$

Where A = amount retainable by the State;

a = per capital consumption figure of British India and the participating units;

d = rate of excise duty levied by the State;

p = Population of Travancore.

The excess over 'A' plus cost of collection will have to be surrendered by the State. The State's acceptance of the formula has not yet been received.

In the case of My sore, we have agreed in respect of coffee that the amount retainable by the State may be determined on the basis of the Coffee Controller's statistics of coffee consumption in the State. My sore has accepted this formula and is pressing for a similar formula in respect of betel nuts. After a recent tour, the Board has stated that after the establishment of the Betel Nut marketing Board, it may be possible to adopt the coffee formula in respect of betel also.

(C) Statement showing the value of service postage stamps supplied annually free to States

Sl. No	Name of State	Value
		Rs.
1	Alwar	30,000
2	Baroda	1,25,000
3	Bharatpur	12,000
4	Bhopal	8,380
5	Bikaner	37,000
6	Bushahr	600
7	Cooch Behar	9,000
8	Datia	5,000
9	Dhar	3,000
10	Faridkot	1,000
11	Gwalior	480
12	ldar	550
13	lndore	35,000
14	jhalawar	.2,400
15	jubbal	250
16	kalsia	.450
17	Kashmir	20,000
18	Kotah	15,000
19	Loharu	300
20	Malerkotla	900
21	Mamdi	700
22	Marear	39,000
23	Panna	900
24	Sikkim	1,500
25	Suirmoor	1,275
26	suket	700

(D) Statement showing the values of immunities granted annually to Indian States in the shape of free conveyance of their official correspondence within the State limits

Name of the state	Value of the immunity (Rs.)	Remarks
(1) Mysore	21,38,182	
(2) Hyderabad	5,440	Combined figures for the portions of the state in the

		Madras and Bombay Circles .
(3) Banganapalle	365	
(4) pudukottai	37, 960	
(5) Baroda	14, 705	
(6) Bhor	68	
(7) Jawhar	3, 627	
(8) Bhopal	49,177	
(9) Rewah	1, 72,380	

(E) Statement showing the amounts of telephone revenue accruing in India on behalf of Indian States and vice versa

Amount of revenue accruing in India on behalf of States

		1944-45	1945-46	1946-47
		Rs.	Rs.	Rs.
1	Kashmir	1,912 3 0	2,731 3 0	1,646 13 0
2	Jammu Tawi	3,880 0 0	4,475 5 0	4,005 4 0

Amount of revenue accruing in India on behalf of India

		1944- 45	1945-46	1946-47
		Rs.	Rs.	Rs.
1	Kashmir	1,702 5 0	2,375 1 0	1,187 7 0
2	Jammu Tawi	3,608 1 0	4,133 1 120	1,501 3 0

APPENDIX B

[Annexure V]

STATEMENT SHOWING REVENUE AND THE PERCENTAGE OF LAND CUSTOMS INCLUDED N THE REVENUE OF CERTAIN STATES

(In lakhs of Rupees)

Sl.No	Name of satate	Total Revenue (Ordinary)	Total Revenue (Ordinary)	percentage	Remarks
1	Hyderabad	943	124	13.2	
2	Travancore	611	89	14.6	
3	Kashmir	557	117	21.0	
4	Gwalior	303	41	13.5	
5	Jaipur	197	23	11.6	

6	Baroda	434	20*	4.6	* Includes sea custmos, figures of which are not seperately available.
7	Jodhpur	224	40	17.8	
8	Udaipur (Mewar)	81	1	1.3	
9	Indore	305	27	8.9	
10	Bikaner	252	29	11.5	
11	Alwar	90	44	48.9	
12	Bhopal	124	20	16.1	
13	Kotah	48	6	12.5	
14	Tehri -Garhwal	23	4*	17.4	#Includes Excise also.
15	Bharatpur	65	23	35.4	
16	Cutch	89	1	1.1	
17	Patna	30	6	20.0	
18	Sarguja	17	5	29.4	
19	Nawanagar	110	19* *	17.3	## Includes sea customs Figures of Which are not seperately available .
20	Tonk	34	11	32.3	
21	Bundi	29	8	27.6	
22	Sirohi	21	4	19.0	
23	Dungarpur	22	8	36.4	
24	Banswara	13	3	23.1	
25	Partabgarh	8	3	37.5	
26	Jhalawar	7	1	14.3	
27	Jhisalmer	6	3	50.0	
28	Shahpura	4	1	25.0	
29	Danta	3	1	33.3	
30	Paladpur	28	5	17.9	
31	Idar	45	17	37.8	
32	Balasinor	5	1	20.0	
33	Lunawada	10	2	20.0	
34	Sant	12	2	16.7	
35	Chhata Udaipur	24	2	8.3	
36	Radhanpur	23	4	17.4	
37	Baria	18	1	5.6	
38	Dewas (Junior)	23	4	17.4	
39	Panna	10	1f	10.0	f Includes Tributes &C.

40	Rattam	17	6	35.3	
41	Alirajpur	6	1&	16.7	& Includes sayar.
42	Bijawar	7	1&	14.3	& Includes Biyai.
43	Chhatarpur	4	2	40.0	
44	Barwani	12	2	16.6	
45	Jaora	22	3	13.6	
46	Rajgarh	12	1	8.3	
47	Sailana	6	1	16.6	
48	Jhabua	13	4	30.8	

APPENDIX B

AMENDMENTS RECOMMENDED IN THE DRAFT CONSTITUTION

Provisions relating to procedure in financial matters

Clause 75. - To clause 75 *add* the following, namely:-

> "(4) There shall be endorsed on every Money Bill when it is transmitted to the Council of States under Section 74, and when it is presented to the President for assent under section 76, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill."

Clause 79. - In sub-clause (3) of clause 79, for the words "succeeding section" *substitute* the words "two succeeding sections".

New clause 80-A. - After clause 80, insert the following new clause namely -

"80-A. *Excess grants*. - If in any financial year expenditure from the revenues of the Federation has been incurred on any service for which the vote of the House of the People is necessary in excess of the amount granted for that service and for that year, a demand for the excess shall be presented to the House of the People and the provisions of sections 78 and 79 shall have effect in relation to such demand as they have effect in relation to a demand for a grant."

Clause 145. - For sub-clause (1) of clause 145, *substitute* the following namely: -

> "(1) Subject to the special provisions of this Part of this Constitution with respect to Money Bills, a Bill may originate in either House of the Legislature of a Province which has a Legislative
>
> (1a) Subject to the provisions of sections 146 and 146- A, a Bill shall not be deemed to have been passed by the Houses of the Legislature of a Province having a Legislative Council unless it has been agreed to by both Houses either without amendments or with such amendments only as are agreed to by both Houses."

Clause 146. - For clause 146, *substitute* the following, namely: -

"146. Passing of Bills other than Money Bills In Provinces having Legislative Councils. - (1) If a Bill which has been passed by the Legislative Assembly of a Province having a Legislative Council and transmitted to the Legislative Council is not, before the expiration of twelvemonths from its reception by the Council, presented to the Governor for his assent, the Governor may summon the Houses to meet in a joint sitting for the purpose of deliberating and voting on the Bill:

Provided that nothing in this section shall apply to a Money Bill.

(2) If at a joint sitting of the two Houses summoned in accordance with the provisions of this section the Bill, with such amendments, if any, as are agreed to in joint sitting is passed by a majority of the total number of members of both Houses present and voting, it shall be deemed for the purposes of this Constitution to have been passed by both Houses:

Provided that at a joint sitting: -

> (a) unless the Bill has been passed by the Legislative Council with amendments and returned to the Legislative Assembly, no amendments shall be proposed to the Bill other than such amendments, if any, as are made necessary by the delay in the passage of the Bill;
>
> (b) if the Bill has been so passed and returned by the Legislative Council, only such amendments as aforesaid shall be proposed in the Bill and such other amendments as are relevant to the matters with respect to which the Houses have not agreed, and the decision of the person presiding as to the amendments which are admissible under this sub- section shall be final."

New clauses 146-A and 146-B. - After clause 146, *insert* the following clauses, namely: -

"146-A. Special provisions in respect of Money Bills. - (1) A Money Bill shall not be introduced in a Legislative Council.

(2) After a Money Bill has been passed by the Legislative Assembly of a Province having a Legislative Council it shall be transmitted to the legislative Council for its recommendations, and the Legislative Council shall within a period of thirty days from the date of its receipt of the Bill return the Bill to the Legislative Assembly with its recommendations, and the Legislative Assembly may thereupon either accept or reject all or any of the recommendations of Legislative Council.

(3) If the Legislative Assembly accepts any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Legislative Council and accepted by the Legislative Assembly, and if the Legislative Assembly does not accept any of the recommendations of the Legislative Council, it shall be deemed to have been passed by both Houses in the form in which it was passed by the Legislative Assembly without any of the Amendments recommended by the Legislative Council.

(4) If a Money Bill passed by the Legislative Assembly and transmitted to the Legislative Council for its recommendations is not returned to the Legislative Assembly within the said period of thirty days, it shall be deemed to have been passed by both Houses at the expiration of the said period of thirty days in the form in which it was passed by the Legislative Assembly.

146-B. Definition of "Money Bill", - (1) For the purposes of this Chapter, a Bill shall be deemed to be a money Bill if it makes provision -

(a) for imposing or increasing any tax; or

(b) for regulating the borrowing of money or the giving of an guarantee by the province or for amending the law with respect to any financial obligations undertaken or to be undertaken by the province; or

(c) for declaring any expenditure to be expenditure charged on the revenues of the Province, or for increasing the amount of any such expenditure.

(2) A Bill shall not be deemed to be a Money by reason only that it provides for the imposition of fines or other pecuniary penalties or for the demand or payment of fees for licences or fees for services rendered or by reason that it provides for the imposition or increase of any tax by any local authority of body for local purposes.

(3) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the Legislative Assembly thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Legislative Council under section 146-A after it has been passed by the Legislative Assembly, and when it is presented to the Governor for assent under section 147, the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill".

Clause 148. - In the proviso to clause 148, after the words "Provided that insert the words "if the Bill is not a Money Bill".

Clause 151. - In the sub-clause (3) of clause 151, for the words "succeeding section" *substitute* the words "two succeeding sections."

New Clause 152-A. - After clause 152, *insert* the following clause namely: -

"152-A. Excess grants. - If in any financial year expenditure from the revenues of the Province has bee incurred on any service for which the vote of the legislative Assembly is necessary in excess of the amount granted for that service and for that year, a demand for the excess shall be presented to the Assembly and the provisions of sections 150 and 151 shall have effect in relation to such demand as they have effect in relation to a demand for a grant."

Clause 153. - For clause 153, *substitute* the following clause, namely: -

"153. Special provisions as to financial Bills. - (1) A Money Bill or an amendment thereto shall not be introduced or moved except on the recommendation of the Governor.

(2) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of a Province shall not be passed by a House of the Provincial Legislature unless the Governor has recommended to that house the consideration of the Bill."

Provisions relating to the Auditor-General of the Province

Clause 174. - For sub-clause 93) of clause 174substitute the following namely. -

"(3) The Auditor-General of a Province shall be eligible for appointment as Auditor-General of the federation or as Auditor-General of any other Province but not for any other appointment either under the Federation or under the Government of a unit after he has ceased to hold his office."

Provisions relating to distribution of revenues between the Federation and units and miscellaneous Financial provisions

Clause 194-A. - For, clause 194-A *substitute* the following, namely: -

"194-A. Interpretation. - In this Part -

(a) 'Finance Commission' means the Finance Commission constituted under Section 202-A of this Constitution;

(b) 'unit' does not include a Chief Commissioner's Province."

Clauses 196 to 199. - For clause 196 clause 196 to 199, *substitute* the following, namely: -

"196. Certain succession duties. - (1) Duties in respect of succession to property other than agricultural land and estate duty in respect of property other than agricultural land shall be levied and collected by the Federation, but sixty per cent or such higher percentage as may be prescribed of the net proceeds in any financial year of any such duty, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces, shall not form part of the revenues of the Federation, but shall be assigned to the units within which that duty isle viable in that year, and shall be distributed among the units in accordance with such principles of distribution as may be prescribed.

(2) If any dispute arises as to the distribution of the net proceeds of any such duty among the units, it shall be referred for decision to such authority as may be appointed in this behalf by the President and the decision of such authority shall be final.

196-A. Certain terminal taxes. - Terminal taxes on goods or passenger carried by railway or air shall be levied and collected by the Federation, but the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces, shall not form part of the revenues of the Federation, but shall be assigned to the units within which that tax is leviable in that year, and shall be distributed among the units in accordance with such principles of distribution as may be prescribed.

196-B. Certain stamp duties. - Such stamp duties as are mentioned in the Federal Legislative List shall be levied by the Federation and collected, in the case where such duties are leviable within any Chief Commissioner's province, by the Federation and in other cases, by the units within which such duties are respectively leviable, but the proceeds in any financial year of any such duty leviable in that year within any unit shall not form part of the revenues of the Federation, but shall be assigned to that unit.

197. Taxes on Income. - (1) Taxes on income other than agricultural income shall be levied and collected by the federation, but sixty per cent or such higher percentage as may be prescribed, of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces shall not form part of the revenues of the Federation, but shall be assigned to the units within which that tax is leviable in that year, and shall be distributed among the units in such manner as may be prescribed:

Provided that the Federal Parliament may, at any time, increase the said taxes by a surcharge for Federal purposes and the whole proceeds of any such surcharge shall form part of the revenues of the Federation.

(2) In this section, "taxes on income" includes any sum levied by the Federation in lieu of any tax on income but does not include any contributions levied by the Federation in respect of its own undertakings. 198. Salt duties and excise duties. - (1) No duties on salt shall be levied by the Federation.

(2) Federal duties of excise shall be levied and collected by the Federation, but , if an Act of the Federal Parliament so provides, there shall be paid out of the revenues of the Federation to the units to which the Act imposing the duty extends, sums equivalent to the whole or any part of the net proceeds of that duty, and those sums shall be distributed among the units in accordance with such principles of distribution as may be prescribed:

Provided that fifty per cent or such higher percentage as may be prescribed, of the net proceeds in any financial year of the excise duty on tobacco, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces, shall not form part of the revenues of the Federation but shall be assigned to the units within which that duty is leviable in that year, and shall be distributed among the units in such manner as maybe prescribed.

198-A. Taxes not enumerated in any of the lists in the Ninth Schedule. - If any tax not mentioned in any of the lists in the Ninth Schedule to this Constitution is imposed by Act of the Federal Parliament by virtue of entry 90 of the Federal Legislative List, such tax shall be levied and collected by the Federation but a prescribed percentage of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces, shall not form part of the revenues of the Federation, but shall be assigned to the units within which that tax is leviable in that year, and shall be distributed among the units in accordance with such principles of distribution as may be prescribed.

198-B. Grants in lieu of jute export duty. - Until the abolition of the export duty levied by the Federation on jute products or the expiration of ten years from the commencement of this Constitution, whichever is earlier, there shall be charged on the revenues of the Federation in each year as grants-in-aid of the revenues of the Provinces mentioned below the sums respectively specified against those Provinces:

Province	*Sum*
West Bengal	100 lakhs of rupees.
Bihar	17 lakhs of rupees.
Assam	15 lakhs of rupees.
Orissa	3 lakhs of rupees.

199. Grants from Federation to certain units. - Such sums as the President may, on the recommendation of the Finance Commission, by order fix shall be charged on the revenues of the Federation in each year as grants-in-aid of the revenues of such nits as the President may on such recommendation determine to be in need of assistance, and different sums may be fixed for different units:

Provided that there shall be charged on the revenues of the Federation in each year as grants-in-aid of the revenues of the provinces of Assam and Orison the sums of thirty and forty lakhs of rupees respectively or such higher sums as the president may on the recommendation of the Finance commission fix in respect of either of these Provinces:

Provided further that there shall be paid out of the revenues of the Federation as grants-in-aid of the revenues of a Province such capital and recurring sums as may be necessary to enable that Province to meet the costs of such schemes of development as may be undertaken by the Province with the approval of the Federal Government for the purpose of promoting the welfare of the scheduled tribes in the province or raising the level of administration of the scheduled areas in the Province to that of the administration of the rest of the Province:

Provided also that there shall be paid out of the revenues of the Federation as grants-in-aid of the revenues of the province of Assam sums, capital and recurring, equivalent to -

> (a) the average excess of expenditure over the revenues during the three years immediately preceding the date of commencement of this Constitution in respect of the administration of the areas specified in Part I of the table appended to paragraph 19 of the Eighth Schedule to this Constitution; and
>
> (b) the costs of such schemes of development as may be undertaken by that province with the approval of the Federal Government for the purpose of raising the level of administration of the said areas to that of the administration of the rest

of the province.

Clause 200. - In sub-clause (2) of clause 200, for the word "fifty", wherever it occurs, substitute the words "two hundred and fifty".

New Clause 201-A. - After clause 201, insert the following clause, namely: -

"201-A. Application of the provisions relating to distribution of revenues during the period a proclamation of Emergency is in operation. - Where a proclamation of Emergency is in operation whereby the President has declared that the security of India is threatened, then, notwithstanding anything contained in the foregoing provisions of this Chapter, the President may, by order, direct that all or any of those provisions shall, until the expiration of the financial year in which such Proclamation ceases to operate, have effect subject to such exceptions or modifications as may be specified in such order."

Clause 202. - For Clause 202, substitute the following, namely: -

"202. Definition of 'prescribed' and calculation of' net proceeds' etc. - (1) In the foregoing provisions of this Chapter -

(a) 'prescribed' means -

(i) until the Finance commission has been constituted, prescribed by order of the President; and

(ii) after the Finance Commission has been constituted, prescribed by order of the President on the recommendation of the Finance Commission;

(b) 'net proceeds' means in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or duty, or of any part of any tax or duty, in or attributable to any area shall be ascertained and certified by the Auditor-General of the Federation, whose certificate shall be final.

(2) subject as aforesaid, and to any other express provision in this Chapter, an order of the President may, in any case where under this Part of this Constitution the proceeds of any duty or tax are, or may be, assigned to any unit, provide for the manner in which the proceeds are to be calculated, for the time from or at which and the manner in which any payments are to be made, for the making of adjustments between one financial year and another, and for any other incidental or ancillary matters."

New Clause 202-A and 202-B. - After clause 202, insert the following clauses, namely: -

"202-A. Finance Commission. - (1) There shall be a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President in his discretion.

(2) The Chairman shall be a person who holds or has held judicial office not inferior in rank to that of a Judge of a High Court.

(3) The members of the Commission shall receive such remuneration as the President may by order determine and shall hold office for a term of five years and may on the expiry of such term be re-appointed for another term of five years.

(4) It shall be the duty of the Commission to perform the functions conferred on the Commission by this Chapter or by any other law for the time being in force and to give advice to the Federal Government upon such financial matters or to perform such other duties of a financial character as may from time to time e referred or assigned to it by the President.

(5) The Commission shall determine its procedure and shall ave such powers in the performance of its function as the President may by order confer on it.

202-B. Recommendations of the Finance Commission. - The President shall cause every recommendation made by the Finance Commission under the foregoing provisions of this Chapter together with an explanatory memorandum, as to the action taken thereon by the President to be laid before the Federal Parliament."

Clause 207. - To clause 207, add the following Explanation, namely: -

"Explanation. - For the purposes of this section, any undertaking by the Government of any unit, such as the sale of the forest produce of any forest under the control of such unit or of any article produced in any jail within such unit, shall not be deemed to be a trade or business, carried on by or on behalf of such Government."

Provisions relating to borrowing

Clause 210. - In sub-clause (3) of clause 210, for the word "Province", in the two places where it occurs, substitute the word "unit".

Ninth Schedule

Provincial Legislative Lists

In the Provincial Legislative List in the Ninth Schedule -

(1) in entry 43, omit the words "hearths and windows";

(2) for entry 50, substitute the following, namely: -

> "50. Taxes on the sale, turnover or purchase of goods including taxes in lieu thereof on the use or consumption within the Province of goods liable to taxes within the Province on sale, turnover or purchase; taxes on advertisement;"

(3) in entry 53, for the word "Cesses" substitute the word" Taxes"; and

(4) in entry 56, for the word "Does" substitute the word" Taxes".

APPENDIX C

No. OA/24/Cons/47

CONSTITUENT ASSEMBLY OF INDIA

Council House,

New Delhi, the 4th March 1948.

From

The HONOURABLE SARDAR VALLABHBHAI J. PATEL, CHAIRMAN,

ADVISORY COMMITTEE ON MINORITIES FUNDAMENTAL RIGHTS, ETC.,

To

THE PRESIDENT,

CONSTITUENT ASSEMBLY OF INDIA.

DEAR SIR,

On behalf of the members of the Advisory Committee I have the honour to forward herewith the reports of the Northeast Frontier (Assam) Tribal and Excluded Areas and Excluded and Partially Excluded Areas (Other than Assam) Sub-Committees, adopted by the Committee at the meeting held on the 24th February 1948. The two sub-Committees had been setup by the Advisory Committee in their meeting held on the27th February 1947 in pursuance of paragraphs 19(iv) and 20of the Cabinet Mission's Statement dated the 16th May 1946and the two reports had been drawn up after they had undertaken extensive tours of the provinces, examined witnesses and representatives of the people and the provincial governments and taken the views of the different political organizations.

2. Acting on an earlier suggestion of the Advisory Committee made on the 7th December 1947, the Drafting Committee had already incorporated in the Draft Constitution provisions on the basis of the recommendations contained in the reports of the two sub-Committees. This coupled with the fact that the recommendations were practically unanimous made our task easy, and except for the two amendments mentioned in the Appendix to this report, the Advisory Committee have accepted all the recommendations of the two sub-committees. In regard to these amendments, it was agreed that these should be noted for the present and necessary amendments made later.

3. Summaries of the recommendations of the two sub-committees are given on pages 208 to 218 of the report (Volume I) of Excluded and Partially Excluded Areas (Other than Assam) Sub-Committee. Provisions embodying these recommendations are contained in the Fifth, Sixth and Eight Schedules attached to the Draft Constitution.

Yours truly,

V. J. PATEL, CHAIRMAN

[Annexure II]

APPENDIX C

North East Frontier (Assam) Tribal and Excluded Areas

1. The following proviso is to be added to paragraphD(1) of appendix` A' to Part I on page 20 of the report:-

"Provided that the Assam High Court shall have power of revision in cases where there is failure of justice or where the authority exercised by the District Court is without jurisdiction."

2. In Schedule `B' on page 23 of the report the words" excluding the plains portion" be added after each of the items in the schedule so as to read as follows:-

The Sativa and Bali Para Frontier Tracts (excluding the plains portion).

The Tiara Frontier Tract (excluding the Lakhimpur Frontier Tract and the plains portion).

The Nag a Tribal Area (excluding the plains portion).

[Annexure III]

APPENDIX C

The 28th July 1947,

From

THE CHAIRMAN,

NORTH-EAST FRONTIER (ASSAM) TRIBAL & EXCLUDED AREAS

SUB-COMMITTEE.

To

THE CHAIRMAN,

ADVISORY COMMITTEE ON FUNDAMENTAL RIGHTS, MINORITIES,

TRIBAL AREAS, ETC.,

CONSTITUENT ASSEMBLY OF INDIA,

COUNCIL HOUSE, NEW DELHI.

SIR,

I have the honour to forward herewith my Sub-Committee's report on the Tribal and Excluded Areas of Assam. The report has been drawn up by us after a tour of the Province which included visits to the Lushai Hills District, the North Cachar Hills Sub-Division, the Mikir Hills and the Nag a Hills District. The Committee could not visit the Garo Hills District on account of bad weather and difficult communications and the Jowai Sub-division of the Khasi Hills District could not also be visited for the same reason. We however examined witnesses and representatives of the Garo Hills District at Gauhati and paid a visit also to certain Garo villages on and near the Goalpara road. At most of the places we visited, we had to be satisfied with a visit to the headquarters of the district or tract and with a visit to one or two villages in the neighborhood. To visit places in the interior would have taken us a great deal more of time and delayed our report considerably. Representatives of the tribes however visited the headquarters, even from long distances, and on the whole we feel that we have been able to get into contact with all the important representatives of the hill people and to take their views on the future administration of the areas. We have also taken the views of the different political organisations in the province and recorded the evidence of officials.

2. Except for the Frontier Tracts and Tribal Areas, we co-opted two members from the tribes of each of the districts visited. The co-opted members, with the exception of Mr. Kezehol (representative of the Kohima section of the Nag a National Council and himself an Angami) who submitted his resignation during the final meeting at Shillong, discussed the proposals and signed (subject to dissent in the case of Mr. Kheloushe & Mr.

Aliba Imti) the minutes of the meeting.

3. In connection with the co-option of members we would like to mention the "District Conference" convened by the Superintendent of the Lushai Hills as an elected body purporting to be representative of the whole of the Lushai Hills. The election to this body which consisted of twenty chiefs and twenty commoners with the Superintendent himself as President was boycotted by the Mizo Union which was the only representative body of the Lushes at that time and clearly could not be regarded by us as representing more than a section of opinion, largely that of certain officials and chiefs controlled by them. Consequently the criticism that we co-opted members without consulting the Superintendent or his conference carries, in our opinion, no weight.

4. In the Nag a Hills, the Committee had to face a similar situation in the sense that certain officials were influencing the extreme elements of the Nag a National Council. Discussion of a number of points could not be carried on to the full extent on account of lack of agreement within the Naga National Council but we understand that on the occasion of the Governor's visit to Kohima, the more reasonable elements put forward their views. We find that our proposals not only contain the substance of these but go further in some respects. The resignation of Mr. Kezehol was due to the fact that his section of the Nag a National Council was dissident. Our proposals correspond fully to the spirit of the resolution of the Naga National Council passed at Wokha in June 1946, and we feel confident that the majority of people in the Nag a Hills District will find that our proposals go a long way towards meeting even their present point of view.

5. Our report (Volume I) is divided into two parts and the evidence forms a separate volume (Volume II). In the first part of our report we have given a bird's eye view of the areas as a whole, noting in particular their common features and giving the frame work of the scheme of administration recommended by us. In Part II a largely descriptive account of the different areas is given separately and we have mentioned their special features or needs.

6. We regret that our colleague Mr. Aliba Imti has not been able to attend the meeting to sign the report and hope that he will be able to attend the meeting of the Advisory Committee.

I have the honour to be,

SIR,

Your most obedient servant,

G. N. BARDOLOI,

Chairman,

North-East Frontier (Assam) Tribal

& Excluded Areas Sub-Committee

[Annexure IV]

APPENDIX C

REPORT OF THE SUB-COMMITTEE ON NORTH-EAST FRONTIER (ASSAM) TRIBAL AND EXCLUDED AREAS

Part I

1. INTRODUCTORY -

The Excluded and Partially Excluded Areas of Assam as scheduled by the Order-in-Council under the Government of India Act, 1935, are as follows: -

Excluded Areas

The North-East Frontier (Sadiya, Bali para and Lakhimpur).

Tracts

The Nag a Hills Districts.

The Lushai Hills District.

The North Cachar Hills Sub-Division of the Cachar District.

Partially Excluded Areas

The Garo Hills District.

The Mikir Hills (in the Now gong and Sibs agar Districts).

The British portion of the Khasi and Jaintia Hills District, other than Shillong Municipality and Cantt.

There is also an area to the east of the Nag a Hills District known as the Nag a Tribal Area the position of which is covered by the provisions of Section 311 (1) of the Government of India Act: The Tirap Frontier Tract which adjoins the Lakhimpur Frontier Tract has no defined boundary with Burma.

The Assam Tribal and Excluded Areas Sub-Committee is required to report on a scheme of administration for all these areas.

2. GENERAL DESCRIPTION -

(a) The Frontier Tracts. - The Schedule quoted above shows the North-East Frontier Tracts as excluded areas. In considering the list of areas to be excluded or partially excluded and making recommendations to H. M. G. in 1935 the Government of India wrote as follows: -

"Bali para, Sadiya and Lakhimpur are essentially frontier areas inhabited by tribes in an early stage of development. Bali Para has no defined outer boundaries and extends to the confines of Bhutan and Tibet." It will be seen that it was mentioned that Bali Para has no definite outer boundaries but the position of Sadiya and Lakhimpur or the Tirap Frontier Tract was apparently the same. On the Tirap Frontier Tract in fact, the boundary with Burma has yet to be settled and all three regions include considerable areas of as yet virtually unadministered and only partially explored territory. The position of Balipara and Sadiya however differs from that of the Tirap Frontier in that there exists a boundary between Tibet and India. The facts are that in 1914 there was a tripartite convention with Tibet and China regarding the relations of the three Governments and in particular regarding the frontier between India and Tibet. The convention which contained an agreement about the frontier line between India and Tibet was ratified by the Tibetan authorities at Lhasa, and the line known as the Mac Mahon Line was indicated on a map of which a copy was given to the Lhasa Government which acknowledged it. The existence of this line was for a long time not known to the Assam Government, and on the other hand it was found that there was no notification under Section 60 of the Government of India Act, 1919, specifying the northern frontier of Assam, with the result that the MacMahon Line which is the frontier between Tibet and India is the legal boundary of Assam as well. In practice the position is peculiar. Though the Governor of Assam is vested with authority over the Frontier Tracts, it is taken to be exercised, not by virtue of the provisions applicable to Excluded Areas of the Government of India Act, 1935, but as the Agent of the Governor-General under Section 123 of the Act, vide Notification No. I-X, dated the 1st April 1937 of the Government of India in the External Affairs Department (Appendix B. page 130). All the costs of administration of the tracts are also borne by the Central Government and the Central Government are inclined to treat them as tribal areas within the meaning of Section 311 of the Government of India Act. On the other hand, the local officials treat the area as consisting of two parts. One which they call the Excluded Area and stretches up to the "Inner Line" boundary, and the Tribal Area, which by them is understood to mean the area beyond the "Inner Line" boundary. The "Inner Line" boundary is roughly along the foot of the hills and the are abounded by its occupied by a some-what mixed population, while the hill portions beyond it are purely inhabited by the tribes. This treatment again does not appear to be strictly justifiable in law though it may be convenient to think of the administered plains portion of the area separately from the not fully administered hills. Since the frontier tracts are administered in practice by the Central Government as tribal areas, the absence of a notification under Section 60 of the Government of India Act, 1919, was regarded as an oversight. The position of these areas will be discussed further at a later stage, but it is clear from the foregoing that the Nag a Tribal Area on the Eastern Frontier and the Bali para, Sadiya and Lakhimpur or Tirap Frontier Tracts on the North-Eastern Frontier fall under one category. The Bali para Frontier Tract which includes the Subansiri area is the tract over which there is as yet the smallest measure of control and administration. This tract and the Sadiya Frontier Tract are inhabited by tribes such as the Senjithonji, Dafla, Apa Tani, Momba (Bali para) the Abor, Mishmi, Hkampti (Sadiya). The Tirap Frontier contains Singp haws (who were originally Kachins) and a number of tribes classed as Nag a, while the Nag a Tribal Area is largely inhabited by Nag as of the Konyak group. The policy on these Frontiers is to establish administration and control over the whole area right up to the frontier, and a five-year plan has been sanctioned by the Government of India. This plan mostly covers the Sadiya and Bali para Tracts but a few schemes of the Nag a Tribal Area are also included in it. A separate plan for the development of the latter is under consideration.

(b) The Excluded Areas. - The Excluded Areas of the Nag a Hills District, the Lushai Hills District and the North Cachar Hills Sub-division fall within the second category of areas over which the Provincial Ministry has no jurisdiction whatever and the revenues expended in this area are not subject to the vote of the provincial legislature. The Nag a Hills District is the home of a good number of tribes classed as Nag a, such as Angami, Ao, Sema, Lhota. Adjoining it is the Nag a Tribal Area in the eastern portion of which a good deal of head hunting still goes on. Though the tribes are all called Nag a, they speak different languages and have differing customs and practices also. The Lushai on the other hand, though consisting of a number of clans, are practically one people and speak a common language. The Kukiin the North Cachar Hills and elsewhere are people of the same stock as Lushai or Mizo and speak the same language or a dialect. The Lushai Hills District except for an inappreciable number of Lakhers in the extreme south contains a uniform population. The North Cachar Hills, on the other hand, provide sanctuary for the Kachari, Nag a, Kuki, Mikir and Khasi. The largest of the tribes here are the Kachari and the villages of the different tribes, are more or less interspersed.

(c) Partially Excluded Areas. - The third category is the Partially Excluded Areas consisting of the Khasi Hills District (British portion), the Garo Hills District and the Mikir Hills which fall in two districts, viz. Now gong and Sibsagar, are administered by the Provincial Government subject to the powers of the Governor to withhold or apply the laws of the Provincial Legislature with or without modifications, or to make special rules. The Khasia, incidentally, are the only line of the tribes in this area who speak a Monkhmer language; all the other tribes speak Tibe to-Burmese languages. Generally speaking, they inhabit the areas which bear their names but there are villages outside these districts which also contain some of the tribes. Thus, the Garo inhabit a number of villages in the Mymensingh district of Bengal in addition to many villages in the districts of Kamrup and Goal para in Assam. The Khasi population is not only to be found in the British portion of the Khasi and Jaintia Hills, but the States (which comprise a fairly large area) round about Shillong are inhabited by the Khasis. These States, twenty-five in number, have the special feature that their chiefs are actually elected in a few cases by free election, though in the majority of cases the election is confined to a particular clan, the electorate consisting of Myntries of the clan only in some states, by a joint electorate of Myntries and elector selected by the people in general in others. The States have comparatively little revenue or authority and seem to depend for a good deal of support on the Political Officer in their relations with their peoples. There is a strong desire among the people of the States to "federate" with their brothers in the British portion, a feeling which the people on the British side reciprocate. Some of the Siems also appear to favour amalgamation but their idea of the Federation differs from that of the people in that the Chiefs seek a greater power for themselves than the people are prepared to concede to them.

Of the people in the Partially Excluded Areas, the Khasi are the most advanced and the Mikir the least. Unlike the Nag a and the Lushai Hills these areas have had much more contact with people in the plains, situated as they are between the valleys of the Brahmaputra and the Surma. They have representatives in the provincial legislature who, in the case of the Garo and the Mikir Hills, are elected by franchise of the Nokmas and the village headmen respectively.

3. DEVELOPMENT -

As regards the degree of development and education in the excluded and Partially Excluded Areas, the most backward areas, comparatively appear to be the Mikir and the Garo Hills, both of which are Partially Excluded Areas. The Frontier Tracts, parts of which must be inhabited by people with on contact with civilisation or education, are of course on a different footing. The Khasi Hills have probably benefited by the fact that the capital of the province is situated in them. In the Garo Hills, Christian Missions have spread some education along with Christianity but the Mikir Hills have suffered from the fact that they are divided between two districts, Now gong and Sibs agar, and thus nobody's child. Partial exclusion has in a way been responsible for their backwardness also, since both the Governor of the province and the Ministry can disclaim the sole responsibility for the area. The Sub-divisional Officers and Deputy Commissioners of these Hills moreover seem to have taken little interest in them and hardly any touring has been performed by officers in the Mikir areas. On the whole, however, the Hill Districts show considerable progress. The Khasi Hills have provided Ministers in the Provincial Government. The people of the Lushai Hills who have benefited by the activities of the Missionaries among them cannot be said to be behind the people of the plains in culture, education and literacy. In literacy particularly they are in a better position than a good number of the plains areas and the general percentage of literacy among them is about 13 per cent, while the literacy among men only is about 30 per cent. Among the Nag a also may be found a number of persons of college education, though the district as a whole appears to be less advanced than the Lushai Hills. In the Nag a Hills, the demand for education is keener in the Mokokchung Sub-division than in the Kohima Sub-division. In the North Cachar Hills, the development of the people has not been impressive and the Sub-division as a whole should be classed as more backward than other areas and comparable with the Mikir rather than the Lushai Hills. While education has made some progress in all these areas, the conditions of life and pursuit of non-agricultural occupations cannot be said to have reached the level attained in the plains, although the degree of intelligence necessary is undoubtedly available in most of these areas, even in the tribal areas. We were in fact impressed by the intelligence of the Abort and Mishmi, the Sherdukpen, the Hkampti and even the Konyak of the tribal area. The skill of many of the tribes in weaving and tapestry contains the elements of a very attractive cottage industry-at present articles are made largely for personal use-but agriculture is practically the only occupation, and with the exception of considerable areas occupied by the Angami in the Nag a Hill under terraced and irrigated cultivation and the advanced cultivation in the Khasi Hills, the mode of agriculture is still the primitive one of jhuming. Portions of the forest are burnt down and in the ashes of the burnt patch the seeds are sown: the following year a new patch of forest is felled and cultivated and so on, the first patch perhaps being ready again for cultivation after three or four years. The jhuming patches develop a thick growth of bamboo or weeds and trees do not grow on them. Thus the method is destructive of good jungle. In certain parts, of course, conditions may be said to be unfavorable to the terracing of the hillsides and there is no source of water supply other than rainfall. In the Lushai Hills for instance comparatively few areas have the gradual slope which renders terracing easy; in the North Cachar Hills Sub-division, irrigation is difficult to arrange and the small hamlets occupied by the tribes cannot provide enough lab our for terracing work. Attempts have however been made to introduce terracing and improved methods of cultivation as well as the growing of fruits, and there is little doubt that good progress will soon be feasible in these directions. A certain amount of political consciousness has also developed among the tribes, and we were much impressed by the demand of the Abor in the Sadiya Frontier Tract for representation in the provincial legislature. The idea of Government by the people through their chosen representatives is not a totally new conception to most of the hill people whose ways of life Centre around the tribal and village councils, and what is required now is really an understanding of the mechanism and implications as well as the responsibilities of the higher stages of administration and the impracticability as well as the undesirable results of small groups of rural population being entrusted with too much responsibility. Generally speaking, it can be stated that all the excluded areas of the province, not taking into account at this stage the frontier and tribal areas, have reached the stage of development when they can exercise their votes as intelligently as the people of the plains. On the ground of inability to understand or exercise the franchise therefore, there is absolutely no justification for keeping the excluded areas in that condition any longer.

As regards the Frontier Tracts, not only has there been little education except in the fringes or plains portions, but administration has yet to be fully established overlarge tracts and the tribes freed from feuds or raids among themselves and from the encroachment and oppression of Tibetan tax collectors. The removal of the trade blocks setup by these Tibetans on the Indian side of the McMahon Line sometimes creates delicate situations. Thus the country is in many ways unripe for regular administration. Only when the new five-year programmer has made good headway will there be an adequate improvement in the position. Even the village councils in these tracts appear to be ill- organised and there seems to be little material as yet for local self-governing institutions though it may be possible to find a few people who can speak for their tribe. The plains portions are however on a different footing and the question of including them in the provincial administration needs careful examination. For example, we are of the view that prima facie there is little justification to keep the Saikhoaghat, the Sativa plains portion and possibly portions of the Bali Para Frontier Tract under special administration.

4. THE HILL PEOPLE'S VIEWS -

Though the Constituent Assembly Secretariat and we ourselves, issued a leaflet to provide information and create interest in the political future of India, the Constituent Assembly's functions and the objects of our tour, the Hill people, even of the Excluded Areas, were not found lacking in political consciousness. Perhaps not without instigation by certain elements, this consciousness has even instilled ideas of an independent status the external relations under which would be governed by treaty or agreement only. In the Lushai Hills District the idea of the Superintendent who constituted himself the President of the "District Conference" which he himself had convened (see para, 5 Part II) was that the District should manage all affairs with the exception of defence in regard to which it should enter into an agreement with the Government of India A "Constitution" based on this principle was later drafted by the Conference. (The great majority of the Lushai however cannot be regarded as holding these views and it is doubtful if the District Conference represents the views of anybody other than certain officials and chiefs). In the Nag a Hills, although the original resolution as passed by the Nag National Council at Wokha contemplated the administration of the area more or less like other parts of Assam, a demand was subsequently put forward for "an interim Government of the Naga people" under the protection of a benevolent "guardian power" who would provide funds for development and defence for a period often years after which the Nag a people would decide what they would do with themselves. Here again it seems to us clear that the views of a small group of people, following the vogue in the Nag a Hills of decisions being taken by general agreement and not by majority-gained the acceptance of the National Council, for little more purpose than that of presenting a common front. In other areas more moderate views prevail. In the Garo Hills the draft constitution asked for all powers of government including taxation, administration of justice etc. to be vested in the legal council and the only link proposed with the Provincial Government was in respect of a few subjects like higher education, medical aid etc., other than the subjects of defense, external affairs and communications which were not provincial subjects. In the Mikir Hills and in the North Cachar Hills, which are the least vocal and advanced of the areas under consideration, there would probably be satisfaction if control over land and local customs and administration of justice are left to the local people. The Khasi Hills proposals were for a federation of the States and British portions; otherwise the proposals were similar to those made for the Garo Hills. A feeling common to all of the Hill Districts is that people of the same tribe should be brought together under a common administration. This hasled to a demand for rectification of boundaries. The Lushai want the Kuki of Manipur and other areas in their boundaries, the Nag a want the Zemi areas of the North Cachar Hills included in their district and so on.

5. POLITICAL EXPERIENCE -

Except for the Municipality of Shillong, there are no statutory local self-governing bodies in any of the Hill Districts. The partially excluded areas have elected representatives in the provincial legislature but in the Garo Hills the franchise is limited to the Nokmas and in the Mikir Hills to the headmen. Generally, however, the tribes are all highly democratic in the sense that their village councils are created by general assent or election. Chief ship among certain tribes like the Lushai is hereditary (although certain chiefs have been appointed by the Superintendent) but among other tribes appointment of headmen is by common consent or by election or, in some cases, selection from particular families. Disputes are usually settled by the Chief or headman or council of elders. In the Nag a Hills what is aimed at is general agreement in settling disputes. Allotment of land for jhumis generally the function of the Chiefs or headmen (exceptin the Khasi & Jaintia Hills) and there are doubtless many other matters pertaining to the life of the village which are dealt with by the chiefs or elders, but while this may form a suitable background for local self-government the tribes altogether lack experience of modern self-governing institutions. The "District Conference" of the Lushai Hills, the tribal council of the North Cachar Hills and the Nag a National Council are very recent essays in or ganising representative bodies for the district as a whole and have no statutory sanction. While there is no doubt that the Nag a, Lushai, Khasi and Garo will be able to manage a large measure of local autonomy, the North Cachar tribes and the Mikir may yet want a period of supervision and guidance.

6. THE SPECIAL FEATURES -

Whatever the capacity of the different councils or conferences to manage the affairs of the areas may be, the general proposals for the administration of these areas must be based upon the following considerations: -

(a) The distinct social customs and tribal organisations of the different peoples as well as their religious beliefs. For instance, the Khasi and the Garo have a matriarchal system, the Lushai have hereditary chiefs, the Ao Naga have got the council of elders called `Tatar' which's periodically renewed by election. The laws of succession of the Lushai permit the youngest son of the family to succeed to the property of his father. Similarly, in the case of the Garo, the youngest daughter gets her mother's property and so on. Christianity has made considerable headway among the Lushai, Khasi and the Garo, but large numbers of the hill people still continue their own tribal forms of worship which some people describe as `animism'.

(b) The fear of exploitation by the people of the plains on account of their superior organisation and experience of business, the hill people fear that if suitable provisions are not made to prevent the people of the plains from acquiring land in the hill areas, large numbers of them will settle down and not only occupy land belonging to the hill people but will also exploit them in the non-agricultural professions. Thus, the hill people seem to attach special value to the present system of an `Inner Line' to cross which non-tribals entering the area require a pass, and the provisions prohibiting non-tribals from settling down or carrying on business without the approval of the district-officer. It is felt that even industries should not be started in the hill areas by non-tribal because that might mean exploitation of the people and the land by the non-tribals. In addition to these main points there is the question of preserving their ways of life and language, and method of cultivation etc. Opinions are expressed that there could be adequate protection in these matters only by transferring the government of the area entirely into the hands of the hill people themselves.

(c) In the making suitable financial provisions it is feared that unless suitable provisions are made or powers are conferred upon the local councils themselves, the provincial government may not, due to the pressure of the plains people, set apart adequate funds for the development of the tribal areas. In this connection we invite a reference to the views expressed in the Assam Government's Factual Memorandum on p. 67 of Constituent Assembly Pamphlet Excluded and Partially Excluded Areas - I.

7. PROVISIONS OF 1935 ACT -

The provisions of the Government of India Act are based on the principle that legislation which is passed by the Provincial Legislature is often likely to be unsuitable for application to the Hill Districts. The mechanism provided for "filtering" the legislation is therefore to empower the Governor of the Province to apply or not to apply such legislation. The full implications of the provisions of the Government of India Act are discussed in the Constituent Assembly pamphlets on "Excluded and Partially Excluded Areas" Parts I and II, and it is perhaps not necessary to discuss them exhaustively here. The main features of the provisions are that certain areas have been scheduled as excluded or partially excluded; it is possible for areas to be transferred from the category of excluded to the category of partially excluded by an Order-in-Council and, similarly, from the category of partially excluded to the category of non-excluded; legislation will not apply automatically to any such scheduled area even if it is a partially excluded area, but will have to be notified by the Governor who, if he applies them at all, can make alterations. The revenues for excluded areas are charged to the revenues of the Province and special regulations, which do not apply to the rest of the Province, may be made by the Governor in his discretion for excluded and partially excluded areas.

8. FUTURE POLICY -

The continuance or otherwise of exclusion cannot be considered solely from the point of view of the general advancement of an area. If that were so, all that would be necessary in the case of areas like the Lushai Hills which are considered sufficiently advanced would be to remove the feature of exclusion or partial exclusion. such action maybe suitable in the case of certain partially excluded areas in other parts of India. But in the Hills of Assam the fact that the hill people have not yet been assimilated with the people of the plains of Assam has to be taken into account though a great proportion of hill people now classed as plains tribals have gone a long way towards such assimilation. Assimilation has probably advanced least in the Nag a Hills and in the Lushai Hills, and the policy of exclusion has of course tended to create a feeling of separateness.

On the other hand, it is the advice of anthropologists (*see* Dr. Guha's evidence) that assimilation cannot take place by the sudden breaking up of tribal institutions and what is required is evolution or growth on the old foundations. This means that the evolution should come as far as possible from the tribe itself but it is equally clear that contact with outside influences is necessary though not in a compelling way. The distinct features of their way of life have at any rate to be taken into account. Some of the tribal systems such as the system of the tribal council for the decision of disputes afford by far the simplest and the best way of dispensation of justice for the rural areas without the costly system of courts and codified laws. Until there is a change in the way of life brought about by the hill people themselves, it would not be desirable to permit any different system to be imposed from outside. The future of these hills now does not seem to lie in absorption in the hill people will become indistinguishable from non-hill people but in political and social amalgamation.

9. THE HILL PEOPLE'S LAND -

The anxiety of the hill people about their land and their fear of exploitation are undoubtedly matters for making special provisions; it has been the experience in other parts of India and in other countries, that unless protection is given, land is taken up by people from the more advanced and crowded areas. The question has already acquired serious proportions in the plains portions of Assam and the pressure of population from outside has brought it up as a serious problem which in the next few years may be expected to become very much more acute. There seems to be no doubt whatever therefore that the hill people should have the largest possible measure of protection for their land and provisions for the control of immigration into their areas for agricultural or non-agricultural purposes. It seems also clear that the hill people will not have sufficient confidence if the control on such matters is kept in the hands of the provincial Government which may only be too amenable to the pressure of its supporters. Even the Head of the State under the new Constitution will probably be an elected head, and even though he may be elected also by the votes of the hill people, they may still have the fear that he will give way to the pressure of the plainspeople on whose votes he may be largely dependent. The atmosphere of fear and suspicion which now prevails, even if it is argued that it is unjustified, is nevertheless one which must be recognised and in order to allay these suspicions and fears, it would appear necessary to provide as far as possible such constitutional provisions and safeguards as would give no room for them. Moreover, in the areas where no right of private property or proprietory right of the chief is recognised the land is regarded as the property of the clan, including the forests. Boundaries between the area of one hill or tribe are recognised and violation may result in fighting. Large areas of land are required for *jhum* and this explains in part the fear of the tribesman that its availability will be reduced if incursions by outsiders is permitted. In all the hill areas visited by us, there was an emphatic unanimity of opinion among the hill people that there should be control of immigration and allocation of land to outsiders, and that such controls should be vested in the hands of the hill people themselves. Accepting this then as a fundamental feature of the administration of the hills, we recommend that the Hill Districts should have powers of legislation over occupation or use of land other than land comprising reserved forest under the Assam Forest Regulation of 1891 or ther law applicable. The only limitation we would place upon this is to provide that the local councils should not require payment for the occupation of vacant land by the Provisional Government for public purposes or prevent the acquisition of private land, also required for public purposes, on payment of compensation.

10. FOREST -

As part of the question of occupation of land the transfer of the management of land now classed as reserved forest has also been raised. We have recommended that the legislative powers of the Local Councils should not cover reserved forests. While accepting the need for centralised management of the forests, we would strongly emphasise that in questions of actual management, including the appointment of forest staff and the granting of contracts and leases, the susceptibilities and the legitimate desires and needs of the hill people should be taken into account, and we recommend that the Provincial Government should accept this principle as a part of its policy.

11. JHUMING -

We recommend further that the tribes should have the right of deciding for themselves whether to permit *jhum* cultivation, or not. We are fully aware of the evils of *jhum* cultivation that it leads to erosion, alteration of the rainfall, floods, change of climate etc. The tribes may not always be aware of these dangers but they have definitely begun to realise that settled or terraced cultivation is the better way. The Angami terrace on a large scale and in most of the hills definite attempts at introducing settled cultivation are being made. The main difficulty however is the fact that all hill areas do not lend themselves to terracing equally well and in some parts, there may be a portion which could be terraced without prohibitive cost, or economically cultivated, by this method. Terracing mean s labour, a suitable hill side and the possibility of irrigation. When these are not all available it is obvious that the tribes cannot be persuaded to take up terracing and must continue *jhum*. While therefore, we feel strongly that jhuming should be discouraged and stopped whenever possible, no general legislative bar can be imposed without taking local circumstances in the account. Besides there is a feeling among the tribes that jhuming is part of their way of life, and that interference with it is wanton, and done with ulterior motives. The wearing out of that feeling must come from within rather than as imposition from outside which may cause undue excitement among the tribes. We propose therefore that the control of jhuming should be left to local councils who, we expect, will be guided by expert advice.

12. CIVIL AND CRIMINAL COURTS -

On the principle that the local customary laws should be interfered with as little as possible and that the tribal councils and courts should be maintained we recommended that the hill people should have full powers of administering their own social laws, codifying or modifying them. At present the Code of Criminal Procedure and the Civil Procedure Code are not applicable to the hill districts though officials are expected to be guided by the spirit of these laws. In practice, criminal cases, which are not of a serious nature like murder and offences against the State, are left to the tribal councils or chiefs to be dealt within accordance with custom. Usually offences are treated as matter for the payment of compensation and fines are inflicted. There appears no harm and a good deal of advantage in maintaining current practice in this respect and we recommend accordingly that all criminal offences except those punishable with death, transportation or imprisonment for five years and upwards should be left to be dealt with in accordance with local practice and that so far as such offences are concerned the Code of Criminal Procedure should not apply. As regards the more serious offences punishable with imprisonment of five years or more we are of the view that they should be tried henceforth regularly under the Criminal Procedure Code. This does not mean that tribal councils or courts set up by the local councils should not try such cases and we contemplate that wherever they are capable of being empowered with powers under the Criminal Procedure Code this should be done. As regards civil cases (among the tribes there is little distinction between criminal and civil cases) we recommend that except suits arising out of special laws, all ordinary suits should be disposed of by the tribal councils or courts and we see no objection to the local councils being invested with full powers to deal with them, including appeal and revision. In respect of civil and criminal cases where non-tribals are involved, they should be tried under the regular law and the Provincial Government should make suitable arrangements for the expeditious disposal of such cases by employing Circuit Magistrates or Judges.

13. OTHER LOCAL SELF GOVERNMENT -

As regards such matters as primary schools dispensaries and the like which normally come under the scope of local self-governing institutions in the plains it is needless for us to say that the Hill Districts should get all such powers and except in the North Cachar Hills and the Mikir Hills, we are of opinion that the Hill People will be able to takeover control of such matters without much difficulty. With a view to providing some training and thereby smoothening the transition, the Chairman of our Sub-Committee has already taken up the question of establishment of councils with powers of local boards. The difference between the councils we contemplate for the Hill Districts and Local Boards will already have been clear from the foregoing paragraphs. It is proposed to entrust these councils with powers of legislation and administration over land, village forest agriculture and village and town management in general, in addition to the administration of tribal or local law. Over and above these matters the tribes are highly interested in education and feel that they should have full control over primary education at least. We have considered this questioning all its aspects and feel that the safe policy to follow in this matter is to leave it to the local councils to come to a decision on the policy to be followed. We recommend that primary education should be administered by the Local Councils without interference by the Government of Assam. The Assam Government will however always be available to provide such advice and assistance as the Local Councils may require through its Education Department particularly with reference to the linking up of primary with secondary education. As regards secondary school education we do not consider that the Hill People in general are able to look after this subject themselves nor do we consider that this stage should be left without some integration at least with the general system of the Province. There is of course no objection to Local Council being made responsible for the management of secondary schools where they are found to have the necessary material. But we consider that no statutory provision for this necessary and that it should be open to the Council and the Government of Assam by executive instructions to make the necessary arrangements. The Local Councils will have powers of management in all other matters usually administered by local boards and we consider that on account of the special circumstances in the hills the councils should have powers to make their own administrative regulations and rules. We expect however that in all matters, particularly those involving technical matters like and management of dispensaries or construction of roads, the Local Councils and their staffs will work under the Executive guidance of the corresponding Provincial Department.

For the Mikir and the North Cachar Hills, we recommend that the necessary supervision and guidance should be provided for a period of six years which we expect will be the term of two councils by the appointment of the District or Sub-Divisional officer, as the case may be, as ex-officio President of the Council with powers, subject to the control of the Government of Assam, to modify or annul resolutions of the Council and to issue instructions as he may find necessary.

14. FINANCE -

(a) **Powers of the Council.** - The next question we propose to consider is finance. A demand common to the Nag a Hills, the Khasi and Jaintia Hills, the Garo Hills and the Lushai Hill is that all powers of taxation should rest in the National Councils. The National Conference of the Garo and of the Khasi and Jaintia Hills suggested a contribution to the provincial revenues ora sharing of certain items. If this were accepted even the Centre would have no powers to levy finances in these area. Suggestions regarding contribution to provincial revenues are obviously based on the assumption that the district, in addition to what it needs for its own expenditure, will have a surplus to make over to the Provincial Government. In the case of the Garo Hills, it was suggested that the abolition of zamindari rights in that area would result in a considerable augmentation of the revenues of the district which would then be able to spare a certain sum to the Provincial Government, and generally the idea seems to be that given sufficient powers the Districts will be able to increase their revenues by exploitation of forests, mineral and hydro-electrical potentialities. Not only do some of the districts feel that they will have plenty of money in due course but the demand for all powers of taxation is based to a large extent on the fear that if the Provincial Government has those powers they may not get a fair deal and there maybe diversion of money to other districts. Districts which, on the other hand feel that they do not command potential sources of revenue or at least realise that the development of the resources will take time during which they remained deficit can only make a vague demand for allocation of funds from a benevolent Province or Centre to supplement local resources.

The question of finance and powers of taxation in an atmosphere of suspicion and fear is not an easy one. Any surplus district is likely to examine the provincial expenditure with a jealous eye to find out whether it gets a good share of expenditure for its own benefit or not. The extreme case is the expectation or demand that all the revenues derived from a particular district must be spent within that district itself. It is obvious however that where different districts are functioning under a common Provincial Government, the revenues of the whole area become diverted to a common pool from which they are distributed to the best possible advantage of the Province as a whole. Should all powers of taxation and appropriation of revenues be placed in the hands of the hills districts, the plains districts will not fail to make a similar demand, and if they do, there would be little justification to refuse it to them. The concession of such a demand to the various districts virtually amounts to breaking up the provincial administration. Besides, giving unregulated powers of taxation in general to small units is undesirable as it would result in different principles, perhaps unsound principles, being adopted indifferent places for purposes of taxation and in the absence of coordination and provincial control, chaos is more likely than sound administration. Further it is obvious that a local council and local executive would be much more susceptible and amenable to local pressure and influence that either the Provincial Government or its executive and will therefore not find it possible to undertake measures of taxation which the Province as a whole can. Even if taxes can be adequately resorted to by the local council, the proposal that an appropriation could be made for the provincial revenues does not sound practicable, for what the quantum of that will be is to be determined only by the National Council and it is quite obvious that the Council will decide the quantum from the point of view of its own need rather than the needs of the Province as a whole. The areas which feel that they have large potential sources of revenue must not forget that their demands for educational and other development are also very large and expanding. Various other factors such as the efficiency of tax collection and the cost of collecting staff have to be taken into consideration and we are of the view that the only practicable way is to allocate certain taxes and financial powers to the Councils and not all powers of taxation. Accepting this conclusion then we can consider what powers they should have. It goes without saying that they should have all the powers which local bodies in a plains district enjoy and we recommend that in respect of taxes like taxes on houses, professions or trades, vehicles, animals, octroi, market dues, ferry dues and powers to impose cesses for specified purposes within the ambit of the Councils, they should have full powers. We expect that the Councils will seek the advice of the Provincial Government in exercising these powers but in view of the democratic spirit and nature of tribal life, we do not consider that any control by the Provincial Government which is prescribed by statute is necessary. In addition we would recommend powers to impose house tax or poll tax, land revenue (as land administration is made over to the Councils), levies arising out of the powers of management of village forest, such as grazing dues and licences for removal of forest produce.

(b) **Provincial Finance.** - There is no doubt that for some time to come the development of the Hills must depend on the rest of the province and they will be regarded as" deficit areas". As their development must be regarded as a matter of urgency considerable sums of money will be required but it is equally certain that measures of development are needed in other districts also and the claims of the Hills will not find a free field. The expenditure on the excluded areas has so far been a non-voted charge on the provincial revenues but unless it is provided in the Constitution that sums considered necessary by the Governor for the Hills will be outside the vote of the legislature we have to consider how the provision of adequate revenues can be secured. In this connection, we would point out the admission in the Factual Memorandum$ received from the Government of Assam that while the Excluded Areas have benefitted by the provision in the Government of India Act regarding them, the Partially Excluded Areas in respect of which the funds are subject to the vote of the legislature have suffered greatly. In particular, the position of the Mikir Hills seems to be a bad example. Here, only a small proportion of the revenues derived from the area which contains rich forests is utilised in the district and the position in respect of provision of schools, medical facilities etc. is unsatisfactory. We have noted the views of witnesses from the various political or agitations that there is a lot of goodwill among the plains people towards the tribes but we feel that a more concrete provision is necessary as practical administration must be taken into account. It is admitted all round that the development of the hills is a matter of urgency for the province as a whole and there should therefore be a good measure of support for a specific provision.

Coming to the actual provision to be made, it has been suggested in some quarters that the revenue to be spent within a Hill District should be ear marked by provision in the Constitution and should form a definite proportion of the revenue of the Province. This, in our opinion, is an impracticable proposition since any statutory ratio is invariable for a number of years and there are no simple considerations on which it can be based. If it is based on the population, it is obvious that the expenditure would be totally inadequate, for the hill areas are generally sparsely populated. On the other hand, if a certain stage of development has been reached, the provision of funds on the basis of area may amount pampering the tracts, while revenue is needed elsewhere. We have no doubt that the fixation of a rigid ratio by statute would not be suitable for the Provincial Government to work on and may not be in the interests of the Hills themselves. We feel that placing the sums outside the vote of the legislature is likely to be distasteful to the Legislature and contrary to the democratic spirit and proceed therefore to consider an alternative.

It appears to us that the main reason why the needs of the Hills are apt to be overlooked is due to the clam our of more vocal districts and the facts that there is little attention to or criticism of, the provisions made for the Hills, which in the case of voted items are merged in general figures. If therefore a separate financial statement for each such area showing the revenue from it and the expenditure proposed is placed before the legislature, it would have, apart from the psychological effect, the advantage that it would draw attention specifically to any inadequacy and make scrutiny and criticism easy. It can of course be objected that criticism may be ignored and that the separate statement may therefore not serve any really useful purpose, but we nevertheless recommend the provision of a separate financial statement as likely to fulfil its purpose. We also recommend that the framing of a suitable programme of development, should be on the Government of Assam, either by statute or by an Instrument of Instructions, as an additional safeguard.

(c) **Central Subventions.** - While the Province may be expected to do its best to provide finances to the limit of its capacity, it seems to us quit clear that the requirements of the Hill Districts, particularly for development schemes, are completely beyond the present resources of Assam. Though the Districts are more developed than the Frontier Tracts in respect of which the Central Government has recognised the need for special grants for development, the position of the Hill Districts in comparison with the plains districts is not radically different. The development of the Hill Districts should for obvious reason by as much the concern of the Central Government as of the Provincial Government. Bearing in mind the special position of this province in respect of sources of central revenue, we consider that financial assistance should be provided by the Centre to meet the deficit in the ordinary administration of the districts on the basis of the average deficit during the past three years and that the cost of development schemes should also be borne by the Central Exchequer. We recommend statutory provisions accordingly.

(d) **Provincial Grants for the Local Councils.** - Some of our co opted Members have expressed the apprehension that the sources of revenue open to them may not provide adequate revenue for the administration of the District Council, particularly where there are Regional Councils. We have not made a survey of the financial position of the new councils and their requirements in the light of the responsibilities imposed on them but we recognise their claim for assistance from general provincial revenues to the extent that they are unable to raise the necessary revenue from the sources allotted to them for the due discharge of their statutory liabilities.

15. **CONTROL OF IMMIGRATION -**

The Hill People, as remarked earlier, are extremely nervous of outsiders, particularly non-tribals, and feel that they are greatly in need of protection against their encroachment and exploitation. It is on account of this fear that they attach considerable value of regulations like the Chin Hill Regulations under which an outsider could be required to possess a pass to enter the Hill territory beyond the Inner Line and an undesirable person could be expelled. They fell that with the disappearance of exclusion they should have powers similar to those conferred by the Chin Hills Regulations. The Provincial Government, in their view, is not the proper custodian of such powers since they would be susceptible to the influence of plains people. Experience in areas inhabited by other tribes shows that even where provincial laws conferred protection on the land they have still been subjected to expropriation at the hands of money-lenders and others. We consider therefore that the fears of the Hill People regarding unrestrained liberty to outsiders to carry on money lending or other non-agricultural professions is not without justification and we recognise also the depth of their feeling. We recommend accordingly that if the local councils so decide by a majority of three fourths of their members, they introduce a system of licensing for money-lenders and traders. They should not of course refuse licences to existing money-lenders and dealers and any regulations framed by them should be restricted to regulating interest, prices or profit and the maintenance of accounts and inspection.

16. **MINES AND MINERALS -**

The present position is that except in relation to the Khasi States all powers are vested in the Provincial Government. The hill people strongly desire that revenues accruing from the exploitation of minerals should not go entirely to the Provincial Government and that their Council should be entitled to the benefits also. In order to ensure this they demand that control should be vested in them in one way or another. We have considered this carefully keeping particularly in mind that the Khasi Hill States are now entitled to half the royalties from minerals and feel that the demand of the hill should be met, not by placing the management in their hands, but by recognising their right to a fair share of the revenue. The mineral resources of the country are limited and it is recognised by us that the issue of licences and leases to unsuitable persons is likely to result in unbusiness like working and devastation. We consider that the best policy is to centralise the management of mineral resources in the hands of the Provincial Government subject to the sharing of the revenue as aforesaid and also to the condition that no licences or leases shall be given out by the Provincial Government except in consultation with the local Council.

17. **LEGISLATION -**

The position under the Government of India Act, 1935,has already been described. It has been argued in some quarters that no provincial legislation should be applicable to the hill except with the approval of the Hill Council. This, we consider, is a proposition which cannot be acceded to without reservations. It is true that no legislation is now applicable without a notification by the Governor but the Governor in practice would apply the legislation unless there is a reason why it should not be applied, while the Council would probably be guided by other considerations. There are many matters in which the legislature has jurisdiction which has nothing to do with special customs in the hills and to provide that such legislation should not apply directly would only amount to obstruction or delaying the course of legislation which ought to be applied. It may also frustrate the application of a uniform policy through the whole province and subject everything to the limited vision of a local council. The Hill Districts will of course have their representatives in the provincial legislature and we feel that a bar should be placed only in the way of provincial legislation which deals with subjects in which the Hill Councils have legislative powers or which are likely to affect social customs and laws. We consider therefore that there is no need for a general restriction and we have provided accordingly for limited restriction in Clause L* of Appendix A to this Part. We have also included in this draft a clause concerning the drinking of rice-beer which is very much a part of the hill people's life. We feel that the Council should have liberty to permit or prohibit this according to the wishes of the people. We would draw attention to the fact that the rice-beer (Zu or Laopani) is not a distilled liquor and that its consumption is not deleterious to the same extent as distilled liquor consumed by tribes in other areas.

18. **REGIONAL COUNCILS -**

The conditions obtaining in the Nag a Hills and the North Cachar Hills, in particular, need special provision. The Nag a Hills are the home of many different tribes known by the general name of Nag a; in the North Cachar Hills, there are Nag a, Cachari, Kuki, Mikir and some Khasi or Synteng. Other Hills also contain pockets of tribes other than the main tribe. The local organisations referred to earlier have themselves found the need for separate Sub-Councils for the different tribes and the condition are such that unless such separate councils are provided for the different tribes may not only feel that their local autonomy is encroached upon but there is the possibility of friction also. We have therefore provided for the creation of Regional Councils, if the tribes so desire. These Regional Councils will have powers limited to their customary law and management of their land villages. We also propose that the Regional Councils shall be able to delegate their powers to the District Councils.

19. **EMERGENCY PROVISIONS -**

The picture drawn thus far is therefore that an autonomous Council for the district with powers of legislation over land, village, forests, social customs, administration of local law, powers over village and town committees, etc:, with corresponding financial powers. These are far in excess of the powers of Local Boards. What if the Council or the executive controlled by it should misuse the powers or prove incapable of reasonably efficient management? Some of the Hill Districts are no on the borders of India. What if their acts prove prejudicial to the safety of the country? Experience all over the country indicates that local bodies sometimes mismanage their affairs grossly. We consider that the Governor should have the power to act in an emergency and to declare an act or resolution of the Council illegal or void, if the safety of the country is prejudiced, and to take such other action as may be necessary. We also consider that if gross mismanagement is reported by a Commission, the Governor should have powers to dissolve the Council subject to the approval of the Legislature before which the Council, if so it desires, can put its case. (See clause Q of Appendix A*).

20. **THE FRONTIER TRACTS -**

(a) **Central Administration recommended**. - We have indicated the difference between the Frontier Tracts and other Hill Areas already. It is clear that the legal position on the Balipara and Sadiya Frontier Tracts is that they are part of the province right up to the Mac Mahon Line. Regular provincial administration is however not yet possible (except perhaps in the plains portions before the Inner Line) on account of the circumstances prevailing there. The policy followed in these tracts as well as on the Tirap Frontier (where there is no delineated frontier with Burma yet) and the Naga Tribal Area is that of gradually extending administration. We recommend that when the Central Government which now administers these areas (and which we consider it should continue to do with the government of Assam as its agent) is of the view that administration has been satisfactorily established over a sufficiently wide area, the Government of Assam should take over the administration of that area by the issue of a notification. We also recommend that the pace of extending administration should be greatly accelerated and that in order to facilitate this, steps should be taken to appoint separate officers for the Lohit Valley, the Siang Valley and the Nag Tribal area which at present is in the jurisdiction of two different officers (the Political Officer, Tirap Frontier Tract and the Deputy Commissioner, Nag a Hills District). We have provided that the administration of the areas to be brought under the provincial administration in future should also be similar to that of existing Hill Districts.

(b) **Lakhimpur Frontier and Plains Portions.** - Regarding the Lakhimpur Frontier Tract, is appears to be the view of the External Affairs Department that this Tract does not differ from the plains "and need not be considered in relation to the problems of the hill tribes." Our information goes to show that a portion of the Lakhimpur Frontier Tract was recently (during the war) included in the Tirap Frontier Tract. The view of the Political Officer regarding this portion differed from that of other witnesses and the circumstances here seem to need closer examination, as the Political Officer has stated that the area is inhabited by tribes people. There are certain Buddhist villages inhabited by Fakials who should be brought into the regularly administered area if possible. About the Lakhimpur Frontier Tract which is under the Deputy Commissioner Lakhimpur we have no hesitation in recommending that it should be attached to the regular administration of the District. The report of the Deputy Commissioner produced before us in evidence is clear on the point. We also conclude from the evidence collected at Sadiya that the Saikhoaghat portion of the excluded area south of the Lohit river and possibly the whole of the Sadiya plains portion up to the Inner Line could be included in regular administration, but feel that the question needs more detailed investigation and recommend that it should be undertaken by the Provincial Government. The portion of the Bali Para Frontier Tract round Charduar should be subjected to a similar examination, and the headquarters of the Political Officer of this tract should be shifted into the hills as early as possible.

(c) **Posa Payments.** - Certain payment are being made at present to the tribes on the North East Frontier. In the Bali par a Frontier Tract payments called pos a which total in all to about Rs. 10,000 per year, and certain customary presents are paid. These are vestigial payments of sums which the tribes used to claim in the days of the Ahom kings whether by way of quid pro quo for keeping the peace on the border and not raiding the plains or in recognition of a customary claim on the local inhabitants or territory. On the Tirap Frontier a payment of Rs. 450 per year is made to the Chief of Nam sang as lease money for a tea garden. We have considered the question whether these payments should be continued in view of the costly development schemes being undertaken, and have come to the conclusion that it would be a mistake to stop them. The effect upon the tribes of such a step would be the feeling that the first act of the new Government was adverse to them and the result of any disaffection in this area might seriously jeopardise our aims of establishing administration and bringing the tribes, who are well disposed at present, into the fold of civilisation within our boundaries. The payments are negligibly small in comparison with the large sums of money required for these areas and we recommend that they should continue unchanged at any rate till there is a suitable opportunity for a review of the position.

21. **REPRESENTATION -**

(a) **Adult Franchise.** - The partially excluded areas are already represented in the provincial legislature. In the Garo Hills Mikir Hills the franchise as already stated is a restricted one. The excluded areas have no representation at present. So far as the frontier tracts tribal areas are concerned they have no representation and the circumstances are such that until it is declared that an area is or can be brought under regular administration, representation cannot be provided. We are of opinion that examination should be made as soon as possible of this question in view of the very clear desire expressed by the Abor, Hkampti and others for representation. Meanwhile, we are of the view that there is no longer any justification for the exclusion of the Nag a, Lushai and North Cachar Hills and that these areas should be represented in the provincial legislature. The restriction on the franchise in the Garo and Mikir Hills should be removed and, if there is universal adult franchise elsewhere, that system should be applied to all these Hills. We would note here that our colleagues from the Lushai Hills expressed some doubts about the feasibility of adult franchise in the Lushai Hills and seemed to prefer household franchise. We do not anticipate any real difficulty in adult franchise here if it is feasible elsewhere but would recommend that the position of the Lushai Hills may be considered by the appropriate body which deals with the question of franchise.

(b) Provincial Representation. - As regards the number of representatives of the Hill Districts in the provincial legislature, we are of the view that if the principle of weight age is recognised for any community, the case of the hill people should receive appropriate consideration in that respect. Though we do not propose that there should be any weight age for the hill people as a principle, we are clear that the number of representatives for each of the Hill Districts should not be less in proportion to the total number than the ratio of the population of the district to the total population even though this may, in some cases, mean a slightly weighted representation in practice. In the draft provincial constitution we find that it is provided that the scale of representation in the provincial Assembly is not to exceed one representative for every lakh of the population. On this basis, the Hill Districts would, according to the minimum recommended by us, obtain representation as follows: -

Khasi & Jaintia Hills	No	Population
Garo Hills	2	105,463
Mikir Hills	3	223,569
Naga Hills	2	149,746
Lushai Hills	2	189,641
North Cachar Hills	2	152,786
	1	37,361
	TOTAL 12	858,566

It will be seen if the total population of the Hills is taken, the number of representatives for all the Hills will be somewhat in excess of the number which would be arrived at on the basis of one representative for each lakh of the population. We are not only of the view that in the special circumstances of the Hills, representatives as recommended by us is necessary to provide proper representation but that the excess should not be adjusted to the detriment of the rest of Assam out of the total number admissible under Section 19(2) of the Draft Provincial Constitution. We have provided accordingly that in reckoning the number of representatives for the rest of Assam, the population and the number of representatives for the rest of Assam, the population and the number of representatives of the Hills shall not be taken into account. We contemplate that the Khasi and Jaintia Hills should include the Municipality and Cantonment of Shilling which is at present a general constituency. This will be an exception to the provision barring non-tribals from election in the Hill constituencies.

(c) **Federal Legislature.** - The total population of the Hill Districts given above clearly justifies a seat for the Hill Tribes in the Federal Legislature on the scale proposed in Section 13(c) of the Draft Union Constitution.

(d) **Joint Electorate.** - The Hill Districts have this simple feature, that their populations are almost entirely tribal. In the Khasi and Jaintia Hills (a pocket of Mikir excepted) in the Garo Hills, the Mikir Hills (some Rengma and Kuki excepted) the population is uniform. In the Naga Hills, among the different tribes like the Angami, Ao, Sema, there is now the beginning of a feeling of unity. The Naga Hills District has a population of 1.85 lakhs and is likely to get two representatives at least which might enable the allocation of one each to the two main centres of Kohima and Mokok chung. In the North Cachar Hills the position is less satisfactory but in all these areas we consider that the electorate should be joint for all the tribes and non-tribals residing there. In view of the preponderance of tribal people we consider that no reservation of seats is necessary and the only condition which we propose is that the constituencies should not overlap across the boundaries of the district (in the case of North Cachar, the subdivision).

(e) Non-Tribals Barred. - We have considered the question of non-tribals residing permanently in the hills. Some of these have been in residence for more than one generation and may well claim the right to stand for election but we find that the feeling against allowing them to stand for election is extremely strong. It is felt that even though in a predominantly tribal constituency the chances are all in favour of a tribal candidate, the non-tribals, in view of their greater financial strength can nullify this advantage. We recommend therefore that plainspeople should not be eligible for election to the provincial legislature from the Hill Constituencies.

22. **THE PROVINCIAL MINISTRY -**

That the Hills can already provide representative who can take part in the provincial administration is obvious. On four occasions residents of the Khasi Hills have occupied a place in the provincial Executive Council or Cabinet. The hitherto excluded Lushai and Nag a Hills have the same potentiality. With Ministers from the Hills in the Cabinet it may be expected indeed that their interests will not be neglected. The doubts raised are: will there necessarily be a Minister from the Hills even when a suitable person is available? If not who will look after interest of the Hills? The Hill areas contain close upon a million people and in view of the great importance of the frontier hills in particular, it would be wise of any Ministry to make a point of having at least one colleague from the Hills. It is our considered view that representation for the Hills should be guaranteed by statutory provision if possible. If this is not possible, we are of the view that a suitable instruction should be provided in the instrument of instructions or corresponding provision. The development of the Hills however is a matter which requires special attention in the interests of the province and we feel that if the circumstances necessitate it, the Governor should be in a position to appoint a special Minister who should, if possible, be from among the hill people. In this connection we would refer to the need for a special development plan which we have referred to in Para. *16(b).

23. **THE SERVICES -**

A good deal of discussion has cent red round the problem of providing suitable officials for the hills. The number of suitably qualified candidates from the hill people themselves has been inadequate hitherto and the utilisation of other candidates has of course been found necessary. No special service has been considered necessary for the hills. On the other hand there has been a certain amount of feeling against the plains officials notably question carefully and come to the conclusion that no separate service for the Hills is desirable or necessary and that there should be free interchange between hill and non-hill officials, at least in the higher cadres of the provincial and All India Services. The District Councils will doubtless appoint all their staff from their own people and to prevent interchangeability would be tantamount to perpetuating exclusion as our proposals involve a good deal of separation already. We recommend therefore that while non-tribal officials should be eligible for posting to the hills and vice versa should be selected with care. We also recommend that in recruitment the appointment of a due proportion of hill peoples should be particularly kept in mind and provided for in rules or executive instructions of the Provincial Government.

24. **A COMMISSION -**

We have referred to the need for special attention to the development of the Hills. No statutory provision for the earmarking of adequate funds is considered possible. On the other hand, the Hill Councils recommended by us will have far greater powers than local bodies in plains districts. The Hills occupy a position of strategic importance and it is in our opinion of great importance for constant touch to be maintained with the development and administration of these areas. For this purpose we consider that there should be provision for the appointment of a Commission, on which we expect that there will be representatives of the tribes, to examine the state of affairs periodically and report. We recommend that there should be provision to appoint the Commission ad hoc or permanently and that the Governor of the province should have the responsibility and power for appointing it. The report of the Commission should enable the Government to watch the progress of the development plan and take such other administrative action as may be necessary.

25. **PLAINS TRIBALS -**

The total tribal population of Assam was shown in the Census of 1941 as 2,484,996. The excluded and partially excluded areas contribute to this only 863,248. About 1.6million tribal therefore live in the plains including those who work as tea-gardens lab our. The terms of our enquiry are that we report on a scheme of administration for the tribal and excluded areas and the question of tribes people in the plains strictly does not concern us. Reference to par a. is to par a. in the original report. Their case will doubtless be dealt with by the Minorities Sub-Committee. The population of the plains tribals which is being gradually assimilated to the population of the plains, should for all practical purposes be treated as a minority .Measures of protection for their land are also in our view necessary. At present certain seats are reserved in the provincial legislature for them. The question of their representation and protection will we hope be considered by the Minorities Sub-Committee. We have kept in mind however the possibility of there being certain areas inhabited by tribals in the plains or at the foot of the hills whom it may be necessary to provide for in the same manner [*See* Clause* A (3) of Appendix A].

26. **BOUNDARIES -**

All the Hills people have expressed a desire for the rectification of district boundaries so that people of the same tribe are brought under a common administration. Washman these with this desire but find that it is only outside our terms of reference but also that it would necessitate an amount of examination which would make it impossible for us to submit our report to the Advisory Committee in time. The present boundaries have, we find, been in existence for many years and we feel that there is time for a separate commission set up by the Provincial Government to work on the problems involved. An exception should however be the case of the Barpathar and Sarupathar mauzas included in the Mikir Hills which the Provincial Government have already decided should be removed from the category of excluded and added to the regularly administered areas (see memorandum of Government of Assam). We agree with this recommendation and propose that it should be given effect when the new Constitution comes into force.

27. **NON-TRIBAL RESIDENTS-**

In the Hill Districts, a certain number of non-tribal people reside as permanent residents. They generally follow non-agricultural professions but some cultivate land also. We have recommended that these residents should not be eligible to stand for election to the provincial legislature. It is necessary however to provide them with representation in the local council if they are sufficiently numerous. We contemplate that constituencies may be formed for the local councils if the number of residents is not below 500 and that non-tribal constituencies should be formed where this is justified.

28. **DRAFT PROVISIONS-**

For the sake of convenience we have condensed most of our recommendations into the forms of a draft of provisions in roughly legal form and this draft will be found as an appendix to this part. The draft also contains cert a in incidental provisions including finance not referred to in this report.

29. **TRANSITIONAL PROVISIONS-**

Reference has been made to the constitutions drafted in the different district for their local councils. This is of course the expression of the strong desire for autonomy in the Hill District. Rather more important however are the individualities of the different tribes and the distinctness of their customers and social systems. If the tribes are allowed to decide the composition and powers of their own councils it will doubtless afford them the maximum of sentimental satisfaction and conduce also to the erection of a mechanism suited without question for their own needs and purposes. While therefore it will be necessary in the existing conditions for the Governor of Assam (as the functionary who will carry on the administration till the new constitution comes into force) to frame provisional rules for holding elections and constituting the councils. We recommend that the councils thus convened should be provisional councils (one year) and that they should frame their own constitution and regulations for the future.

[Annexure V]

APPENDIX A@ TO PART OF NORTH-EAST FRONTIER (ASSAM) TRIBAL AND EXCLUDED AREAS SUB-COMMITTEE REPORT

A (1) The areas included in Schedule@ A to this Part shall be autonomous districts.

(2) An autonomous district may be divided into autonomous regions.

(3) Subject to the provisions of section P the Government of Assam may from time to time notify any area not included in the said schedule as an autonomous district or as included in an autonomous district and the provisions of this Part shall thereupon apply to such area as if it was included in the said schedule.

(4) Except in pursuance of a resolution passed by the District Council of an autonomous district in this behalf the Government of Assam shall not notify any district specified or deemed to be specified in the schedule or part of such district, as ceasing to be an autonomous district or a part thereof.

B (1) There shall be a District Council for each of the areas specified in Schedule* A. The Council shall have not less than twenty nor more than forty members, of whom not less than three-fourths shall be elected by universal adult franchise.

Note. - If adult franchise is not universally adopted this provision will have to be altered.

(2) The constituencies for the elections to the District Council shall be so constituted if practicable that the different tribals or non-tribals, if any, inhabiting the area shall elect a representative from among their own tribe or group:

Provided that no constituency shall be formed with a total population of less than 500.

(3) If there are different tribes inhabiting distinct areas within an autonomous district, there shall be a separate Regional Council for each such area or group of areas that may so desire.

(4) The District Council in an autonomous district with Regional Council shall have such powers as may be delegated by the Regional Council in addition to the powers conferred by this constitution.

(5) The District or the Regional Council may frame rules regarding (a) the conduct of future elections, the composition of the Council, the office bearers who may be appointed, the manner of their election and other incidental matters, (b) the conduct of business, (c) the appointment of staff, (d) the formation and functioning of subordinate local councils or boards, (e) generally all matters pertaining to the administration of subjects entrusted to it or falling within its powers:

Provided that the Deputy Commissioner or the Sub-divisional officer as the case may be of the Mikir and the North Cachar Hills shall be the Chairman ex-officio of the District Council and shall have for a period of six years after the constitution of the Council, powers subject to the control of the Government of Assam to annul or modify any resolution or decision of the District Council or to issue such instructions as he may consider appropriate.

C (1). The Regional Council, or if there is no Regional Council, the District Council, shall have power to make laws for the area under its jurisdiction regarding (a) allotment, occupation or use for agricultural, residential or other non-agricultural purposes, or setting apart for grazing, cultivation, residential or other purposes ancillary to the life of the village or town, of land other than land classed as reserved forest under the Assam Forest Regulation, 1891 or other law on the subject applicable to the district.

Provided that land required by the Government of Assam for public purposes shall be allotted free of cost if vacant, or if occupied, on payment of due compensation in accordance with the law relating to the acquisition of land, (b) the management of any forest which is not a reserve forest, (c) the use of canal or water courses for the purposes of agriculture, (d) controlling, prohibiting or permitting the practice of *jhum* or other forms of shifting cultivation, (e) the establishment of village or town committees and council and their powers, (f) all other matters relating to village or town management, sanitation, watch and ward.

(2) The Regional Council or if there is no Regional Council, the District Council shall also have powers to make laws regarding (a) the appointment or succession of chiefs or headmen, (b) inheritance of property, (c) marriage and all other social customs.

D (1) Save as provided in Section F the Regional Council, or if there is no Regional Council, the District Council, or a court constituted by it in this behalf shall have all the powers of a final court of appeal in respect of cases or suits between parties, all of whom belong to hill tribes, in its jurisdiction.

(2) The Regional Council, or if there is no Regional Council the District Council, may set up Village Councils or Courts for the hearing and disposal of disputes or cases other than cases tribal under the provisions of Section For cases arising out of laws passed by it in the exercise of its powers, and may also appoint such officials as may be necessary for the administration of its laws.

E. The District Council of an autonomous district shall have the powers to establish or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads and waterways and in particular may prescribe the language and manner in which primary education shall be imparted.

F (1). For the trial of acts which constitute offences punishable with imprisonment for five years or more or with death, or transportation for life under the Indian Penal Code or other law applicable to the district or of suits arising out of special laws or in which one or more of the parties are non- tribals, the Government of Assam may confer such powers under the Criminal Procedure Code or Civil Procedure Code as the case may be on the Regional Council, the District Council or Courts constituted by them or an officer appointed by the Government of Assam as it deems appropriate and such courts shall try the offences or suits in accordance with the Code of Criminal Procedure or Civil Procedure as the case may be.

(2) The Government of Assam may withdraw or modify powers conferred on the Regional Council or District Councilor any court or office under this section.

(3) Save as provided in this section the Criminal Procedure Code and the Civil Procedure Code shall not apply to the autonomous district.

Note. - "Special Laws" - Laws of the type of the law of contract, company law or insurance etc. are contemplated.

G (1). There shall be constituted a District or Regional Fund into which shall be credited all moneys received by the District Council or Regional Council as the case may be in the course of its administration or in the discharge of its responsibilities.

(2) Rules approved by the Comptroller of Assam shall be made for the management of the Fund by the District or Regional Council and management of the Fund shall be subject to these rules.

H (1). A Regional Council, or if there is no Regional Council the District Council shall have the following powers of taxation:

(a) subject to the general principles of assessment approved in this behalf for the rest of Assam, land revenue, (b) poll tax or house tax.

(2) The District Council shall have powers to impose the following taxes, that is to say (a) a tax on professions, trades or calling, (b) a tax on animals, vehicles, (c) toll tax (d) market dues, (e) ferry dues, (f) cesses for the maintenance of schools, dispensaries or roads.

(3) A Regional Council or District Council may make rules for the imposition and recovery of the taxes within its financial powers.

I (1). The Government of Assam shall not grant any licence or lease to prospect for or extract minerals within an autonomous district save in consultation with the District Council.

(2) Such share of the royalties accuring from licences or leases for minerals as may be agreed upon shall be made over to the District Council. In default of agreement such share as may be determined by the Governor in his discretion shall be paid.

J (1). The District Council may for the purpose of regulating the profession of money lending or trading by non-tribals in a manner detrimental to the interests of the tribals make rules applicable to the district or any portion of it: (a) prescribing that except the holder of a licence issued by the Council in this behalf no person shall carryon money lending, (b) prescribing the maximum rate of interest which may be levied by a moneylender, (c) providing for the maintenance of accounts and for their inspection by its officials, (d) prescribing that no non-tribal shall carry on wholesale or retail business in any commodity except under a licence issued by the district council in this behalf:

Provided that no such rules may be made unless the District Council approves of the rules by a majority of not less than three-fourths of its members:

Provided further that a licence shall not be refused to moneylenders and dealer carrying on business at the time of the making of the rules.

K (1). The number of members representing an autonomous district in the Provincial Legislature shall bear at least the same proportion to the population of the district as the total number of members in that Legislature bears to the total population of Assam.

(2) The total number of representatives allotted to the autonomous districts (which may at any time be specified in Schedule A*) in accordance with Sub-section (1) of this Section shall not be taken into account in reckoning the total number of representatives to be allotted to the rest of the Province under the provisions of Section............of the Provincial Constitution.

(3) No constituencies shall be formed for the purpose of election to the Provincial Legislature which include portions of other autonomous districts or other areas nor shall any non-tribal be eligible for election except in the constituency which includes the Cantonment and Municipality of Shillong.

L (1) Legislation passed by the provincial legislature in respect of (a) any of the subjects specified in section C or

(b) prohibiting or restricting the consumption of any non-distilled alcoholic liquor, shall not apply to an autonomous district.

(2) A Regional Council of an autonomous district or if there is no Regional Council, the District Council may

apply any such law to the area under its jurisdiction, with or without modification.

M. The revenue and expenditure pertaining to an autonomous district which is credited to or met from the funds of the Government of Assam shall be shown separately in the annual financial statement of the Province of Assam.

N. There shall be paid out of the revenues of the Federation to the Government of Assam such capital and recurring sums as may be necessary to enable that Government - (a) to meet the average excess of expenditure over the revenue during the three years immediately preceding the commencement of this constitution in respect of the administration of the areas specified in Schedule A; and (b) to meet the cost of such schemes of development as may be undertaken by the Government with the approval of the Federal Government for the purpose of raising the level of administration of the aforesaid areas to that of the rest of the province.

O (1). The Governor of Assam may at any time institute a commission specifically to examine and report on any matter relating to the administration or, generally at such intervals as he may prescribe, on the administration of the autonomous districts generally and in particular on (a) the provision of educational and medical facilities and communications (b) the need for any new or special legislation, and (c) the administration of the District or Regional Councils and the laws or rules made by them.

(2) The report of such a commission with the recommendations of the Governor shall be placed before the provincial legislature by the Minister concerned with an explanatory memorandum regarding the action taken or proposed to be taken on it.

(3) The Governor may appoint a special Minister for the Autonomous Districts.

P (1). The Government of Assam may, with the approval of the Federal Government, by notification make the foregoing provisions or any of them applicable to any area specified in Schedule B* to this part, or to a part thereof; and may also, with the approval of the Federal Government, exclude any such area or part thereof from the said Schedule.

(2) Till a notification is issued under this section ,the administration of any area specified in Schedule B* or of any part thereof shall be carried on by the Union Government through the Government of Assam as its agent.

Q (1). The Governor of Assam in his discretion may, if he is satisfied that any act or resolution of a Regional or District Council is likely to endanger the safety of India, amend or suspend such act or resolution and take such steps as he may consider necessary (including dissolution of the Council and the taking over of its administration) to prevent the commission or continuation of such act or giving effect to such resolution.

(2) The Governor shall place the matter before the legislature as soon as possible and the legislature may confirm or set aside the declaration of the Governor.

R. The Governor of Assam may on the recommendation of a commission set up by him under section N order the dissolution of a Regional or District Council and direct either that fresh election should take place immediately, or with the approval of the legislature of the province, place the administration of the area directly under himself or the commission or other body considered suitable by him, during the interim period or for a period not exceeding twelvemonths:

Provided that such action shall not be taken without affording an opportunity to the District or Regional Council to be heard by the provincial legislature and shall not betaken if the provincial legislature is opposed to it.

Transitional Provisions:

Governor to carry on administration as under the 1935Act till a Council is set up, he should take action to constitute the first District Council or Regional Council and frame provisional rules in consultation with existing tribal Councils or other representative organisations, for the conduct of the elections, prescribed who shall be the office bearers, etc. The term of the first Council to be one year.

GOPINATH BARDOLOI

(*Chairman*).

J. J. M. NICHOLS-ROY.

RUP NATH BRAHMA.

A. V. THAKKAR

Schedule A

The Khasi and Jaintia Hills District excluding the town of Shillong.

The Garo Hills District.

The Lushai Hills District.

The Naga Hills District.

The North Cachar Sub-division of the Cachar District.

The Mikir Hills portion of Now gong and Sibsagar District excepting the mouzas of Barpathar and Sarupathar.

Schedule B

The Sadiya and Bali para Frontier Tracts.

The Tirap Frontier Tract (excluding the Lakhimpur Frontier Tract).

The Nag a Tribal Area.

APPENDIX C

[Annexure VI]

Copy of Notification No. 1-X, dated the 1st April 1937,from the Government of India in the External Affairs Department.

In exercise of the powers conferred by sub-section (1)of Section 123, read with sub-section (3) of Section 313, of the Government of India Act, 1935, the Governor General in Council is pleased to direct the Governor of Assam to discharge as his agent, in and in relation to the tribal areas beyond the external boundaries of the Province of Assam, all functions hitherto discharged in and in relation to the said areas by the said Governor as Agent to the Governor-General in respect of the political control of the trans-border tribes, the administration of the said areas and the administration of the Assam Rifles and other armed civil forces.

APPENDIX C

[Annexure VII]

REPORT OF THE NORTH-EAST FRONTIER (ASSAM) TRIBAL AND EXCLUDED AREAS SUB-COMMITTEE

Part II

1. THE BALI PARA FRONTIER TRACT -

This is the tract between the Subansiri River on the east, Bhutan on the west and the Mac Mahon Line to the north, with its headquarters at Charduar about 20 miles from Tezpur. It is included in the Schedule to the Government of India (Excluded and Partially Excluded Areas) Order as an Excluded Area, but in practice it is administered by the Governor of Assam as the Agent to the Government of India and is treated in this respect as a tribal area. The portion immediately to the north of Charduar and up to the Inner Line is a plains portion the area of which is estimated to be approximately 1,000 square miles. The censused portion of the area was 571 square miles and the population of 6,512 contained only 560 Dafla, the remaining number of 2323 persons enumerated as Assam tribes consisting of Cachari, Garo, Mikir and Miri. The area beyond the Inner Line is estimated to cover about 11,000 square miles and contain a population of approximately 350,000. For administrative purposes it is at present divided into two parts, the Bali para or Sela Agency and the Subansiri Area under two Political Officers. Particularly in the Subansiri Area there are portions which have not yet been explored by our officers, and the details of the tribes living there are still not fully known. In the Sela area administration has been extended as far as Dirang Dzong and this area contains tribes like the Momba, Sillung, Aka or Rhuso, Senjithonji. The Subansiri area is inhabited largely by Dafla (Nisu) and Apatani but large areas have yet to be visited and explored.

In the western portions of the tract the way of life of the tribes is influenced a good deal by Tibetan customs and Buddhist monastaries but in the eastern sector the people are much more primitive. Some terraced cultivation and orange gardens exist but people like the Aka depend on *jhuming*. Literacy among the tribes seems to be very poor in spite of the influence of monastaries. Except among the Momba there is little demand even for education. For their requirements of cloth and salt notably the inhabitants depend upon contact with the plains areas or with the Tibetans. The monastery at Towing exercises considerable influence over the lives of these tribes and puts forward claims to monastic taxation. The tribes keep poultry, pigs, goats and mithun. In the olden days some chiefs here apparently used to exercise a kind of right of levying taxes in plains villages. This appears to have been recognised by the Ahom Kings who allowed relief to the people liable to such taxes from other taxes to a corresponding extent. In connection with these levies an agreement^ was entered into by the British Government for the payment of an annual subsidy, known as posa. Rs. 5,000 are paid to the Talung Dzongpons and the Sat Rajas of Kalaktang and some bottles of rum and cloth also are given. The tribes in return also given certain presents like ebony, a gold ring, two Chinese cups, two yak tails and two blankets. Similar payments of posa are made to the Chaduar Bhutia or Sherdukpen, Thembangia Bhutia, Aka and certain other tribes. Payments to the Dafla and Miri are however made only to freemen and in all cases cease on the death of the present holder. The total payment of posa comes to about 10,000 rupees per year. Maintenance of law and order in this area as well as defence against external encroachment is looked after by the posts occupied by the Assam Rifles.

Though some of the witnesses who appeared before us could speak Assamese and appeared to be intelligent, we are inclined to agree with the Political Officer's view that until the five-year plan which provides for an expansion of schools and communications has been given effect, there is likely to be little material in this Tract particularly in the Subansiri Area, for local self-governing institutions. For some time the problems of administration here must remain confined largely to the maintenance of peace among the tribes, prevention of encroachment and oppression by Tibetan tax collectors, extension of communications, and elementary facilities for obtaining medicine and primary education. Tibetan officials are known to have set up trade blocks with a view to compelling trade with Tibet rather than India and the removal of these obstructions is a matter which may involve political contact with Tibetan authorities. As already pointed out large areas are as yet terra incognita to our officers and the attitude of the tribes is one of fear or suspicion which may easily turn to hostility. It is clear however that the southern portions of the tract will develop earlier than the northern most portions and administration of the political agency type can therefore be gradually shifted northwards. The Political officers' view is that the time is not yet ripe for shifting his headquarters from Charduar to a place in the hills. The area round Charduar which is in the plains portion is inhabited mostly by non-tribals or detribalised people of tribal origin. The question of bringing it under regular administration needs therefore to be examined in detail by the Provincial Government. What we contemplate is that areas over which adequate control has been established should be brought under the regular provincial administration while areas further north remain under the control of the Central Government, as at present. The Centre should however administer the tract through the Provincial Government as its agent so that the Provincial Government remains in contact with the administration^^.

We are also of the view that steps should be taken as soon as practicable to erect boundary pillars on the trade routes to Tibet at places where they intersect the Mac Mahon Line.

The payments of posa represent a small amount and the sentimental value attached to it and the probability that any cessation of it concurrently with the coming into force of the new constitution would have most undesirable consequences on the attitude of the tribes, should be kept in mind. It should clearly not be discontinued for the present.

2. **THE SADIYA FRONTIER TRACT -**

The Sadiya Frontier Tract is the tract between the Subansiri river on the west and the boundary of the Tirap Frontier Tract on the north-east. The latter boundary has-been adjusted from time to time. The Frontier area comprising the Sadiya and Tirap Frontier Tracts is somewhat in the shape of a parabola which contains the area through which the Brahmaputra river with its tributaries debouche son to the plains. The Sadiya tract may be regarded as falling into two or three distinct portions. To begin with, there is the portion to the west consisting of the valley of the Dibang or Siang with Abor tribes like Minyong, Bori, Galong, Pad am. The Valley of the Dibang in the centre covers the area inhabited by Idu or Chulikata Mishmi, and the valley of the Lohit is inhabited by Digaru and other Mishmi and certain Hkampti and Miri tribes. Included in these three broad divisions is the plains portion of the tract (which includes Saikhoaghat on the south bank of the Lohit river) which runs up to the foot of the hill (roughly along the Inner Line). As in the case of the Bali Para tract, regular administration has yet to be established in portions up to the Mac Mahon Line, which itself needs to be demarcated by the erection of boundary pillars at least at the points where the trade routes cross into India. The headquarters of the Political Officer is at Sadiya and there is an Assistant Political Officer at Pasighat.

The Assistant Political Officer of the Lohit Valley stays at Sadiya and his jurisdiction includes the Chulikataor Idu Mishmi in the north and the Digaru and others towards the east and south of the tract. There are no easy lateral communications between the Chulikata area and the Lohit Valley proper.

By inhabitants, the hill tract falls broadly into portions inhabited by Abor (Siang Valley) the Chulikata in the Dibang Valley and other Mishmi in the Lohit Valley, and the Hkampti or Shan who are a comparatively civilised tribe following Buddhism. In addition there is the mixed population of the Sadiya portion to the south of Inner Line containing non-tribals and some Miri. Although the GallongAbor are somewhat different from the Pad am and Minyong the languages are practically the same and the whole of the Abor Tract could be regarded as reasonably uniform. The Mishmi area, though it falls into two separate portions along the Dibang and Lohit Rivers respectively, and the tribes do not understand one an others language, could be treated as one. The Hkampti area which is the third one is small and the Sadiya population is a mixed one. The area beyond the Inner Line which is not censused is estimated to contain 250,000Abor 40,000 Idu, 25,000 Digaru and Miji and about 2,000Hkampti. The censused portion is an area of 3,309 square miles with a total population of 60,118 of which 39,974 are of tribal origin.

The total area of the tract may be in the neighbourhood of 15,000 square miles and its development and administration clearly necessitate the sub-division of the tract and the appointment of more officials. In fact the

Political Officer has already recommended the division of the tract into two portions based on Pasighat and Sadiya respectively. This is roughly equivalent to a division in to the Mishmi area and the Abor area respectively and the proposals under consideration at present seem to contemplate the posting of a Political Officer at Sadiya for the Mishmi Agency with an Assistant with headquarters at Walong (Lohit Valley) and a second Political Officer at Pasighat (now the headquarters of an A. P.O.). The main reason for keeping Sadiya as the headquarters for the Mishmi Agency would appear to be the lack of lateral communications between the Chulikata area in the Dibang Valley and the Digaru area in the Lohit Valley. It is clear however that Sadiya and the portion up to the Inner Line is in the plains and contains a mixed population. Cultivation in this tract is also settled and the people of the tract desire that it should not continue under the present system of exclusion. Moreover, there is the area occupied by the Hkampti who are settled cultivators professing Buddhism which has also spread a good deal of literacy among them. Prima facie there is a strong case for treating the plains portion of the tract as well as the Hkampti portion as regularly administered areas in the form perhaps of a separate subdivision or district. The distinctness of the Hkampti must however be borne in mind and the area will probably have to be treated as a separate taluk. An early and detailed examination of the whole question is clearly called for. If Sadiya is treated as plain, suitable headquarters for the Political officer of the Mishmi Area needs to be looked for keeping in mind the difficulties of communication between the Dibang and Lohit valleys.

With the exception of the Hkampt is who are settled cultivators, and may be regarded as comparatively civilised, and a few people in the plains portion who also do settled cultivation, the Abor and Mishmi pursue *jhuming* and appear to exhibit little competence in the art of raising crops. They of course eke out a livelihood by keeping poultry, sheep and *mithun*. The herds of mithun kept by these tribesare in fact the occasion for disputes between people as raiding for mithun seems to be in this area what head-hunting is in the Nag a tribal area. Serious quarrels arising out of raiding for mithun may call for the intervention of the Political officer. The tribes are generally heavily addicted to opium and attempts to keep the growth and consumption of opium in check seem to be meeting with little success. Though we feel that the Abor and Mishmi are people who can be educated and assimilated to civilised administration in a comparatively short time, there is little literacy or education among them at present, and the depth of the area over which control has been established beyond the Inner Line does not seems to be great. Communications are the urgent need so that greater contact is possible event if the lack of education is regarded as no impediment. By the time the five year plan has been worked out (it contemplates the making of a road to Walong and improvement of communications in other respects also) it maybe possible to give effect to the keenly expressed desire among the Abors of a share in the provincial administration. It is obvious that the pace of establishment of full-fledged administration in this area should be accelerated. Abe ginning should however be possible by way of political education of the people, if tribal councils are setup to enable the different tribes to come together to discuss matters of mutual interest and understand the problems of administration.

The forests of this tract can produce a good revenue but land revenue in the plains portions amounts to about50,000 and the poll tax which is also levied in this area amounts to about 15,000. This forest revenue in 1946-47 was430,000.

3. **THE LAKHIMPUR AND TIRAP FRONTIER TRACTS -**

The exact position, legal and *de facto* is not clear. The Lakhimpur Frontier Tract is mentioned as one of the North-East Frontier Tracts scheduled as an excluded area. No frontier has as yet been laid down between Burma and India in this region. There is an area locally known as the Lakhimpur Frontier Tract which is treated as an excluded area with the Deputy Commissioner, Lakhimpur, as the Agentor Political Officer. The Tirap Frontier Tract, which apparently derives its name from the river of that name, is said at present to contain a number of villages added to it from the Lakhimpur Frontier Tract during the war, and the rest of the portion inhabited by Nag a tribes towards the Burmese territory. In addition to the Tirap Frontier Tract the Political Officer, whose headquarters are at present in Margherita in Lakhmipur district, is also in charge of aportion of the Nag a Tribal Area which stretches along the boundary of the Lakhmipur district till it touches the northern apex of the Nag a Hills district boundary and then runs along the eastern boundary of the Nag a Hills districts towards its southern projection towards Burma. The area of the Lakhmipur Frontier Tract as shown in the census is about394 square miles. The area of the Tirap Frontier Tract can of course only be guessed as there is no definite boundary with Burma. It may be in the neighbourhood of 4,000 square miles. In population also the tract differs from part to part. The Lakhmipur Frontier Tract differs "in no way from the surrounding plains;

possesses none of the characteristics of the hill areas and need not be considered in relation to the problems of the hill tribes". ^^In the portion of the Lakhimpur Frontier Tract which has now been taken into the Tirap Frontier Tract there are several villages inhabited by Kachins and others who are regarded as tribal and pay house tax. In the Tirap Frontier Tract an umber of tribes classed as Nag a such as Tikak, Yogli, Ranrang, Lungri, Sank-e, Mosang, Morang etc. reside. The whole of the area inhabited by the Nag a tribes could appropriately be regarded as part of India since the economic relations of all these tribes are with India and not with any other country. The demarcation of a boundary with Burma is to be taken up therefore on this principal and the question is said to be now under consideration by the Government of India. It is obviously a matter which needs to be expedited.

In the northern portion of the Nag a Tribal area (which may be really regarded as part of the Tirap Frontier, since for a considerable distance the boundary of this area runs along with the eastern boundary of Lakhimpur district) there are tribes classed as Konyak Nag a and the relations of this area are also with the plains portion of the Lakhim purdistrict. For instance it is common for tribes from Namsang and Borduria to come frequently to Jaipur for their marketing etc., and a good number of them seem to speak Assamese. T he area is thickly populated. The Singpho or Kachin are Buddhists and they had chiefs belonging to the old ruling family before the country was taken over in 1839.The agreements entered into in 1826 and 1836 are a dead letter and though the chiefs are consulted by the Political Officer whenever there is any dispute to be settled or other matter to be dealt with, the Political Officer is being looked up to more and more, and the chief is regarded only by way of being an adviser to the Political Officer.

Agriculture is mostly by the primitive method of *jhuming* and there are no educational facilities. The economic condition of the tract is pretty poor. The Kachin however are settled cultivators and are in a better position than the Nag a. In the Nag a Tribal Area head hunting is still practised and slavery also seems to exist.

For the Tirap Frontier Tract also the five year plan approved by the Government of India contemplates the extension of the benefits of administration. The headquarters is proposed to be moved to a place in the interior called Horukhunma and hospitals and schools are to be constructed. Both in the Tirap Frontier Tract and the Nag a tribal area the policy is just the same, namely the extension of administration gradually up to the Burma frontier. This policy appears to us to be the correct one to follow, whatever the legal status of the area may be under the Government of India Act. As in the case of the MacMahon Line frontier, all the portion between the Burmese boundary and the administered area of Assam should be merged in Assam as soon as possible and the distinction between Tribal Area and administered Indian territory abolished.

The Lakhimpur Frontier Tract need no longer be treated as an excluded area. As regards the portions of this tract taken over into the Tirap Frontier Tract the justification for continuing it as a frontier area needs to be further examined and if no difficulty is likely to be caused by the inclusion of the Kachins and other tribes who live there in the Lakhimpur district the area should be merged in the district. In the rest of the area, steps should be taken to organise non-statutory tribal councils, panchayats etc., in anticipation of the time when this tract will be fit for inclusion in the provincial administration. For the proper administration of the Nag a Hills tribal area it would appear desirable to provide more officials, and a separate officer with headquarters as close as possible to the area, if not inside, is necessary. It would appear that there is already sanction for a separate Sub-divisional Officer at Mokokchung under the control of the Deputy Commissioner. Nag a Hills district but the present arrangement by which the tribal area is shared between the Deputy Commissioner, Kohima, and the Political Officer. Tirap Frontier Tract, needs to be further examined. It would perhaps be best to divide the portion into two districts one which will in due course either merge with the existing Nag a Hills district and forma sub-division thereof or be a Konyak district, and another which will form a portion of another district under an officer with headquarters in the present Tirap Frontier Tract.

4. NAG A HILLS DISTRICT -

The Nag a Hills District is an area of 4,289 square miles bounded on the east by the Naga tribal area, on the south by Manipur State and on the west by the Sibsagar district. The population was given as 189,641 of which184,766 or 97.4 per cent were tribal, at the 1941 census. The district is inhabited by a number of Nag a tribes notably the Angami, the Sema, the Lhota and the Ao. Of these tribes Angami are the most numerous and inhabit the area round Kahana, their number at the 1941 census being slightly over52,000. The Aos are the next numerous numbering over 40,000and the Semas come third with 35,741. These two tribes inhabit the area round Mokokchung which is a separate sub-division of the district, and the Sema also inhabit the region to the north-west of the Angami country. The tribes speak different languages and their lingua franca is Assamese or Hindustani. They have also differing customs and traditions. Areas claimed by the tribe or village are jealously guarded against encroachment and to such an extent in the Nag a Tribal Area that a villager seldom ventures outside his village boundary. Within the boundary of the district proper there is generally speaking regular administration though during the war a slightly different atmosphere might have been introduced. Though the percentage of literacy among male Nag a is about 6 only, quite a good number of these have received high education. Female literacy among the Nag a is however negligible, though in the Mokokchung Sub-division it was found to be nearly four per cent. Literacy seems to be higher in the Mokokchung area than the Kohima area and the demand for education is also keener here. As regards economic circumstances a good deal of terracing is done in the Angami areas and a number of Nag as seem to have taken up non-agricultural occupations--the planting of gardens, etc.

It has been mentioned that the district is inhabited by mutually exclusive, diverse tribes. A movement for unification has however been afoot in the last two or three years and a body known as the Nag a National Council (with sub-councils of the different tribes) was formed in 1945.Though a non-official political organization, many of its leaders and members are Government officials and the organisation has also received official recognition locally. Thus the anomalous position of Government servants participating in political activity exist and in part this situation is due to the fact, that the educated, influential and leading elements are Government servants. Though the formation of this Council may be taken as an indication that the unity of administration has given a sense of unity to the different tribes it would perhaps be a mistake to suppose that there has been any real consolidation, and the tenacity with which the tribes hold on to their own particular views of traditions is still a potent factor. A notable characteristic of Naga@@ tribes is that decisions in their tribal councils are taken by general agreement and not by the minority accepting the decisions of the majority. This feature, though perhaps well suited to village affairs, may lead to many an unsatisfactory compromise in matters of greater movement.

In June 1946, the Nag a National Council passed are solution expressing their approval of the scheme proposed by the Cabinet Mission in the State Paper of May 16, 1946,and their desire to form part of Assam and India. The resolution protested against the proposal to group Assam with Bengal. This resolution and the feeling which prompted it seems to have held the field throughout 1946, and the Premier of Assam who visited the district in November 1946was greeted with the utmost cordiality. Early in 1947 the Governor of Assam, Sir Andrew Clow, visited the Nag a Hills and advised the Nag as that their future lay with India and with Assam. Subsequently, towards the end of February 1947, the Nag a National Council passed a resolution in which they desired the establishment of "an Interim Government of Nag as with financial provisions, for a period of ten years at the end of which the Nag a people will be left to choose any form of Government under which they themselves choose to live." This resolution was of course completely different from the previous one in that it was based on the idea of being a separate nation and country. Subsequently the Nag a National Council sent another memorandum in which they mentioned a" guardian power" without however stating who should be the guardian power, and it was found that they were extremely reluctant to express any choice openly between the three possibilities of the Government of India, the Provincial Government and H.M.G. It would appear that this was the formula on which a general measure of agreement could be obtained among the nag as since there were clear indications that many of them were inclined to take moderate views more on the lines of the original resolution at Wokha but in view of the intransigeance of certain other members, probably of the Angami group, they were prevented from doing so.

Subsequent events connected with the visit of H. E. the Governor to the Nag a Hills on the 26th of June 1946 show that the Nag as have dropped their extreme demands. The substance of the claims made by the Nagas is now to maintain their customary laws and courts ,management of their land with its resources, the continuance of the Regulations by which entry and residence in the Hills could be controlled and a review of the whole position after ten years.

5. **LUSHAI HILLS DISTRICT -**

This district has an area of 8,142 square miles and lies to the south of the Surma Valley. It forms a narrow wedge-shaped strip of territory about 70 miles wide in the north tapering to almost a point at its southern extremity and separates Burma from the State of Tripura and the Chittagong Hill Tracts of Bengal on the east and south-east respectively. With the exception of a small area at its southern extremity which is inhabited by Lakher tribesmen, the rest of the district is inhabited by the tribes known as Lushai or Mizo and found elsewhere in North Cachar sub-division, and Manipur as Kuki. The communications with the main inhabited areas of Aijal (headquarters) and Lungleh are difficult and there is only a bridal path connecting Aijal with Silchar. From Serang, near Aijal, communication by river, along the Dhaleswari, is possible and Demagiri in the south is connected with Rangamati in the Chittagong Hill Tracts, by the Karnaphuli river. There is also a bridal path connecting Lungleh with Rangamati. The population of this district is 152,786 according to the last census and over 96per cent of the population is tribal. The district as a whole is hilly, with a general elevation of between 3,000and 4,000 feet and the slopes are usually quite steep.

Jhuming, with the exception of certain orange gardens, is the common form of cultivation, and terracing and wet cultivation present many difficulties. Spinning and weaving is a common cottage industry, and every woman in a Lushai household spins and weaves for the needs of the family. Most attractive tapestry work is done in these hills and the designs make a very colourful display. Much of the weaving and spinning is done however for personal use and not for sale. The degree of literacy in the area is very high; the reason for it being probably the fact that a large proportion of the population is Christian and the Sunday Schools have assisted the spread of literacy even among the adult men but, apart from a few Government servants, the number of people following non-agricultural occupations is negligible. The general level of intelligence and civilised behaviour in this area is high and compares favourably with most places in the plains.

There are no local self-governing institutions and village life is to a great extent dominated by the chief who is generally hereditary @@@. Formerly the number of chiefs was small, probably 50 or 60, but on account of the increase in population and the growth of new villages the present number is over 300. The chiefs settle disputes in the village, make a distribution of land for *jhuming* and generally carry out any orders issued to them by the officials including such work as collection of taxes. Of late the relations between the chiefs and the people has been rather strained, and it would appear that one reason for this is the convening of the so-called District Conference by the Superintendent of the Lushai Hills. The "Mizo Union" was started sometime ago by the people (including chiefs also as members) as a non-official organisation, with the consent of the Superintendent. This organisation seems to have been without a rival to begin with but in 1946 the Superintendent convened the District Conference with a membership of 40 of which 20 were commoners and 20 were chiefs. The District Conference was supposed to be elected by household franchise at the rate of one voter for every 10 houses and in the first conference, the chiefs and the people had separate electorates, that is the people elected their own representatives and in the chiefs theirs. The conference apparently created little enthusiasm and the large representation of chiefs on it must have caused some dissatisfaction. The Superintendent was the President of the conference. Towards October 1946 this conference seems to have broken down and was virtually abandoned. Shortly before the visit of the Sub-Committee however fresh elections were held by the Superintendent. At this election a change was made in the franchise so that the separate electorate was abolished and chiefs and commoners voted jointly. The ratio of chiefs and commoners was however maintained and on this account the "Mizo Union" decided to boycott the elections with considerable effect on it. Infect it is claimed by the Mizo Union that only two or three hundred voters actually took part in the elections. However this might be, the convening of the District Conference which was claimed to be an elected body obviously brought it into rivalry with the Mizo Union, and since the conference was supported by the Superintendent, the Mizo Union incurred official disfavour$$. The Superintendent being the President of the conference and the chiefs being largely under official control and influence, there was apparent justification for the suggestion that the District Conference was not representative of the views of the people. In fact the attitude of the Superintendent gave us very good reason to believe that the District Conference was completely dominated by him and was his mouthpiece. The Superintendent himself propounded a scheme before the Committee the purport of which was that all local affairs should be managed by a constitutional body elected by the district who would have their own officers appointed by themselves and that the Government of Assam or of the Union should pay only a certain sum of money amounting to the deficit of the district and enter into an agreement regarding the defiance of the district and its external relations. To what extent the Superintendent believed that the Lush a is could actually administer their own affairs efficiently in every matter other than defense is a matter of some doubt because in answer to a question whether he thought that the whole administration could be managed by them, he replied "I will not guarantee that it could bed one". (See p.

- Vol. II Evidence). In answer to a further question he gave it as his opinion that it would not be very long before the district could manage its own affairs and that the length of the period would depend upon whether there was interference from outside by bodies that are too powerful or not. The general impressions gathered by us during our discussions with representatives of various interests in the district was that, with the exception of a few people who are under the influence of the Superintendent, the attitude of the rest was reasonable and it would not be long before disruptive ideas prevailing now completely disappear.

The main emphasis in the demands of the Lushais was laid on the protection of the land, the prevention of exploitation by outsiders and the continuance of their local customs and language.

The district has a revenue of about 2 lakhs and an expenditure amounting to about six lakhs. A high school has recently been started. The Assam Rifles are stationed at Aijal and Lungleh.

6. THE NORTH CACHAR HILLS SUB-DIVISION -

This area is a sub-division of the Cachar district whose headquarters is Silchar. It is an area of 1,888 square miles inhabited by 37.361 people of which 31,529 were tribals, the remainder being accounted for by the various railway and other colonies of outsiders. The main feature of this sub-division is that it contains a number of different tribes namely the Cachari, the Nag a, the Kuki and Mikir; a small number of Synteng or Khasi also inhabit the area. The general characteristic is that the tribes named above, with the exception of one or two villages of Nag a inhabited by a few Kuki, live in areas of their own and there is no intermingling of population of the different tribes in the villages. The Zemi Nag a are however not in a compact block and live in three different portions with Kuki or Cachari in the intervening portions. The Mikir form a pocket to the north-west of the area and the Cachari roughly inhabit the central and south-west portions. The Cachari are the most numerous of the tribes with a population of about 16,000;the Kuki are about 7,000 and the Zemi about 6,000. Relations between the Kuki and the Nag a are said to be unsatisfactory though for the time being relations appear to be good. It may be mentioned here that the Zemi have still unpleasant memories of bad treatment by the Angami of the Nag a Hills District and there is not much love lost between them though they showed themselves responsive to instructions given by certain Angami officials from Kohima.

There is little literacy in this area and cultivation is by the primitive method of *jhuming*. Unlike the Angami areas in the Naga Hills District, the hillsides here are much steeper and, apart from rainfall, there is no scope for irrigation. Then again, unlike the Angami, the Zemi live in small hamlets and it is not an easy matter to find adequate labour for the introduction of terracing and wet cultivation. A certain number of orange gardens have been planted and potatoes have been introduced into the district. There is little doubt that with the encouragement of education, for which there is a demand the tribes can be brought up to the level of the others; but at present while they are quite capable of understanding the broad outlines of the democratic mechanism and can take part in elections, it is unlikely that they will be able to manage a body like a local board without official aid. The main difficulty in this portion is however that caused by the existence of different tribes who have little feeling of solidarity among themselves. Quite recently a sort of tribal council to bring, together the different tribes with a view to educating them in local self-government was undertaken by the Sub-Divisional Officer, but the Mikir, influenced as they were by people from the Mikir Hills who wanted an amalgamation of the Mikir area with the Mikir Hills portion ,would not co-operate in the joint council. Then there is the question of choosing a common representative. The Cachari being the most numerous have some advantage and the area is obviously too small for the representation of more than one in the provincial legislature. It is likely however that there will be a sufficient combination for the purpose of electing a common representative. Since this area cannot share a representative with plains areas, the population of37,000 will have to be provided with a representative of their own. If however a local self-governing body is formed in this district it is clear that there will have to be some kind of regional arrangement by which the different tribe shave their own separate councils which will then come together in the form of a council for the whole sub-division.

Like most other hill districts this area is also a deficit area. The same feeling which exists in other areas about safeguarding land and protection of the land from occupation by outsiders as well as excluding them also from other activities which may lead to exploitation prevails here. One feature of this area is that among the different tribes it is Hindustani which is more of common language than Assamese.

7. **KHASI AND JAINTIA HILLS -**

This partially excluded area consists of the Jaintia Hills formerly forming part of the Kingdom of the old Jaintia Kings and now forming the Jowai Sub-division, and some 176 villages in the Sadar Sub-division. The Khasi and Jaintia Hills as a whole consists of a large territory between the Garo Hills on the west and the North Cachar Hills and the Mikir Hills on the east. The Khasi States which consist of 1,509 villages cover the western portion of the Hills and the British villages are interlaced with them. The people of the Jowai Sub-division are known as Synteng or Pnar and speak a dialect but with the exception of a small number of Mikir on the northern slopes of the Hills, the whole population of these Hills may be regarded as uniform. Unlike their neighbours who speak Tibeto-Burman tongues the Khasi form an island of the MonKhmer linguistic family.

The Khasi States, which are about 25 in number, are some of the smallest in India. The largest States are Khyriem, Mylliem and Nongkhlao and the smallest is Nonglewai. The system of inheritance of Chief ship is described as follows: -

"The Chiefs of these little States are generally taken from the same family inheritance going through the female. A uterine brother usually has the first claim and failing him a sister's son. The appointment is however subject to the approval of a small electoral body, and the heir-apparent is occasionally passed over, if for any reason, mental, physical or moral, he is unfit for the position. The electors are generally the myntries or lyngdohs, the representatives of the clans which go to form the State." In Langrin, the appointment is by popular election. In some of the States, if the Myntries are not unanimous in their choice, a popular election is held. The Chiefs are known assume in most States; but in some they are called Sardar, Lyngdoh in three of them and Wahadadar in one. The functions of the chiefs are largely magisterial and in the discharge of their duties they are assisted by their My tries. The relations between them and the Government of India are based upon sanads issued to them. For specimen of these sanads Volume XII of Aitchison's Treaties Engagements and Sanads may be referred to. Under the terms of the sanad, the chiefs are placed completely under the control of the Deputy Commissioner and the Government of India and waste lands as well as minerals are ceded to the Government on condition that half the revenue is made over to the Siems. Their criminal and civil authority are also limited. The sanads do not mention the right to levy excise on liquor and drugs and presumably the Siems have that right. Though the States are not in the partially excluded areas, the main interest attaching to them is the fact that there is an understandable feeling among the people of the States that there should be a federation between the States and the British portions so that all the Khasi people are brought under a common administration. The position is that in the British areas, though there is now the franchise and a member is sent to the provincial legislature, there is no statutory local body for local self-government. The States, on the other hand, enjoy certain rights as stated above, and the problem is to bridge the gap.

The Khasi and Jaintia Hills have the advantage of the provincial head quarters Shilling, being situated among them. Literacy among the Khasi amounts to about 11 per cent with a male literacy of 19 per cent. The district is already enfranchised and the special features which it is desirable to bear in mind is the matriarchal system prevalent there, the democratic village systems and other special customs and traditions. Cultivation in the Khasi and Jaintia Hills maybe regarded as comparatively advanced. There is a good deal of wet cultivation and the culture of oranges and potatoes is common. The Khasi have also taken to non-agricultural professions much more than other hill people.

8. **THE GARO HILLS -**

Which is the butt-end of the range of hills which constitute the water shed for the Brahmaputra and the Surma Valleys. The Garo who inhabit these hills are people of Tibeto-Burman origin and are similar to the Cachari. The area of the district is 3,152 square miles and it is inhabited by a population of 233,569 of which 198,474 or nearly 85 per cent, are tribals, mainly Garo. The Garoinhabit not only the district which bears their name but there are villages inhabited by them in Kamrup and Goalpara also and portions of the Mymen singh district of Bengal joining the Garo Hills is inhabited by thousands of Garo.

The Garo are a people with a matriarchal system like the Khasi. The tribal system of the Garo is highly democratic and the whole village with the Nokma as the head or chairman takes part in the council if any matter is in dispute. The district as a whole is pretty backward with only about five literates in a hundred and lacking in communications. Christian missions have been active and there has been a certain amount of conversion but on the whole the Garo even while being able to produce a fair number of intelligent and literate people have yet to come up to the degree of the Khasi or the Lushai. Franchise at present is restricted to the Nokma but is unlikely that there will be any great difficulty in working a franchise system based on adult franchise than in most other areas.

In the Garo Hills also the sole occupation is agriculture and though garden crops are grown round the huts sometimes, the method is largely that of *jhuming*. The people weave their own clothes but there is no important cottage industry. The area is however much more in contact with the plains on either side of it than areas like the Lushai Hillsor the Nag a Hills.

The Garo are keenly desirous of uniting all the villages inhabited by Garo whether in the plains of Assam orin the Mymensingh district of Bengal under a common administration. The Bengal district of My men singh seems to be the home of about 48,000 Garo most of whom are on the fringe of the Garo Hills, and the question of rectification of the boundary to include this area in the Garo Hills district of Assam definitely deserves consideration. A similar examination is necessary in respect of other Garo villages in the Kamrup and Goal Para districts of Assam.

9. **THE MIKIR HILLS -**

The partially excluded area of the Mikir Hills with an area of about 4,400 square miles and a population of about 150,000 persons is split up between two districts namely Now gong and Silsagar. The Mikir Hills form an area rather irregular in shape into which there projects an enclave of the Assam Valley. The western extremity of the partially excluded area actually reaches a point in the Khasi Hills and eastwards, it extends to a point not far from Dimapur while to the north it approaches Golaghat. It is clear that the irregular shape of this area makes the administration from centres outside the area rather inconvenient which apparently is the reason why the district has had to be split up between two plains districts. Being a rather sparsely populated$$$ area with rather less than 50 persons to the square mile and containing no communications other than the railway passing through it, it has apparently not been considered suitable for treatment as a separate district. The Provincial Government has at present under consideration a proposal for the making of the whole of the Mikir Hills area into a separate sub-division, perhaps on the analogy of the North Cachar Hills Sub-division. Divided between two districts as it is and consisting of inhospitable territory in which *jhuming* is the only method of cultivation practised while malaria takes its toll, it has been sadly neglected in many ways and special steps are necessary for its development. Very obviously the present state of affairs where it is divided between two districts cannot continue if the area is to be developed and it should be made either a district or a sub division with its headquarters somewhere in the middle of the bend so that it is accessible from both extremities. The area includes certain mouzas Barpathar and Saru pathar inhabited very largely by non-tribals which even at the time of the constitution of the partially excluded areas were considered doubtful areas for exclusion, and the Provincial Government have since taken a decision that the areas should be added to regularly administered portions as soon as possible.

The Mikir are probably the most backward of all the tribes of the Assam Hills though this backwardness is probably not their own fault. There are pockets of Mikir in the North Cachar and the Khasi Hills. Like the Garo and Khasi the Mikir desire the consolidation of their own tribesmen under a single administration. Unlike the Lushai or the Khasi Hills, Christianity has made little progress here.

While the special customs of the Mikir, their addiction to *jhuming* cultivation etc. necessitate that an arrangement must be made by which they are able to maintain their own system, the Mikir Hills at present find representation in the provincial legislature although through the restricted franchise of the headman, and opinion generally is that there is no objection to the extension of adult franchise in the area. The sparse population may give rise to certain practical difficulties in organising elections there but it would appear that these are not insurmountable.

The Mikir Hills are inhabited to some extent by Cachari (about 2,000) Rengma Nag a and a few Kuki, but on the whole, the population may be regarded as uniform.

In view of the comparatively backward state of the Mikir and the fact that there are no self-governing institutions of a statutory type locally, it is necessary in introducing institutions of this kind to arrange for a period of supervision and guidance in other words, any local council set up in the hills should at first be subject to the control of the local District or Sub-divisional officer.

G. N. BARDOLOI

(Chairman),

J. J. M. NICHOLS-ROY,

RUP NATH BRAHMA.

A. V. THAKKAR.

APPENDIX C

[Annexure VIII]

SUMMARY OF RECOMMENDATIONS OF THE ASSAM SUB-COMMITTEE.

District Councils should be set up in the Hill Districts (see Section *B of Appendix A) with powers of legislation over occupation or use of land other than land comprising reserved forest under the Assam Forest Regulation of 1891 or other law applicable. This is subject to the proviso that no payment would be required for the occupation of vacant land by the Provincial Government for public purposes and private land required for public purposes by the Provincial Government will be acquired for it on payment of compensation [Para. *9 Section C (1) Appendix A]. *

2. Reserved forest will be managed by the Provincial Government. In questions of actual management including the appointment of forest staff and the granting of contracts and leases, the susceptibilities and the legitimate desires and needs of the Hill people should be taken into account (Para. *10).

3. On account of its disastrous effects upon the forest, rainfall and other climatic features, *jhuming* should be discouraged and stopped wherever possible but the initiative for this should come from the tribes themselves and the control of *jhuming* should be left to the local councils [Para. *11 and Section C. of Appendix A]*.

4. All social law and custom is left to be controlled or regulated by the tribes [Para. *12 and Section C (2) of appendix A]. All criminal offences except those punishable with death, transportation or imprisonment for five years and upwards should be left to be dealt with in accordance with local practice and the Code of Criminal Procedure will not apply to such cases. As regards the serious offences punishable with imprisonment of five years or more they should be tried henceforth regularly under the Criminal Procedure Code. To try such cases, powers should be conferred by the Provincial Government wherever suitable upon tribal councils or courts set up by the district councils themselves.

All ordinary civil suits should be disposed of by tribal courts and local councils may have full powers to deal with them including appeal and revision.

Where non-tribals are involved, civil or criminal cases should be tried under the regular law and the Provincial Government should make suitable arrangements for the expeditious disposal of such cases by employing circuit magistrates or judges [Para. *12 Sections D & F of Appendix A].*

5. The District Councils should have powers of management over primary schools, dispensaries and other institutions which normally come under the scope of local self-governing institutions in the plains. They should have full control over primary education. As regards secondary school education, there should be some integration with the general system of the province and it is left open to the Provincial Government to entrust local councils with responsibility for secondary schools wherever they find this suitable [Para. *13 and Section E of Appendix A]*.

For the Mikir and North Cachar Hills the District or Sub Divisional Officer, as the case may be, should be ex-officio President of the local council with powers, subject to the control of the Government of Assam, to modify or annual resolutions or decisions of the local councils and to issue such instructions as may be necessary [Para. *13 and Section B (5) of Appendix A]*.

6. Certain taxes and financial powers should be allocated to the councils. They should have all the powers which local bodies in regulation districts enjoy and in addition they should have powers to impose house tax or poll tax, land revenue and levies arising out of the powers of management of village forest [Section *H of Appendix A and Para. 14 (a)]*.

Statutory provision for a fixed proportion of provincial funds to be spent on the hill districts is not considered practicable. A separate financial statement for each hill district showing the revenue derived from the district and the expenditure proposed on it is recommended. The framing of a suitable programme of development should be enjoyed either by statute or by Instrument of Instructions [Section *M of Appendix A and Para. 14 (b)].*

It is quite clear that the urgent requirements of the hill districts by way of expenditure on development schemes are beyond the resources of the Provincial Government. The development of the hill-districts should be as much the concern of the Federal Government as the Provincial Government. Financial assistance should be provided by the Federation to meet the deficit in the ordinary administration on the basis of the average deficit during the past three years and the cost of development schemes should also be borne by the Central Exchequer [Section *N of appendix A and Para. 14 (c)]*.

The claim of the hill district councils for assistance from general provincial revenues to the extent that they are unable to raise the necessary finances within their own powers is recognised [Para. 14 (d)]*.

7. If local councils decide by a majority of three-fourths of their members to licence money lenders or traders they should have powers to require moneylenders and professional dealers from outside to take out licences [Para. *15 and Section J of Appendix A]*.

8. The management of mineral resources should be centralised in the hands of the Provincial Government but the right of the district councils to a fair share of the revenues is recognised. No licence or lease shall be given by the Provincial Government except in consultation with the local Council. If there is no agreement between the Provincial Government and the district Council regarding the share of the revenue, the Governor will decide the matter in his discretion [Para. *16 and Section 1 of Appendix A]*.

9. Provincial legislation which deals with the subjects in which the hill councils have legislative powers will not apply to the hill districts. Legislation prohibiting the consumption of non-distilled liquors like Zu will also not apply; the district council may however apply the legislation [Para. *17 and Section L of Appendix A]*.

10. It is necessary to provide for the creation of regional councils for the different tribes inhabiting an autonomous district if they so desire. Regional councils have powers limited to their customary law and the management of lands and villages and courts. Regional councils may delegate their powers to the district councils [Para. *18 and Section B (4) of Appendix A]*.

11. The Governor is empowered to set aside any act or resolution of the council if the safety of the country is prejudiced and to take such action as may be necessary including dissolution of the local councils subject to the approval of the legislature. The Governor is also given powers to dissolve the council if gross

mismanagement is reported by a commission [Para. *19 and Sections Q and R of appendix A]*.

12. The Central Government should continue toad minister the Frontier Tracts and Tribal Area with the Government of Assam as its agent until administration has-been satisfactorily established over a sufficiently wide area. Areas over which administration has been satisfactorily established may be taken over by the Provincial Government with the approval of the Federal Government [Section *P of Appendix A and Para. 20 (a)]*.

The pace of extending administration should be greatly accelerated and separate officers appointed for the Lohit Valley, the Siang Valley and the Nag a Tribal Area [Para. *20(a)]*.

The Lakhimpur Frontier Tract should be attached to the regular administration of the district. The case of the portion of the Lakhimpur Frontier Tract recently included in the Tirap Frontier Tract should be examined by the Provincial Government with a view to a decision whether it could immediately be brought under provincial administration. A similar examination of the position in the plains portions of the Sadiya Frontier Tract is recommended. The portion of the Bali Para Frontier Tract around Charduar should also be subject to a similar examination [Para. *20 (b)]*.

Posa payment should be continued [Para. *20 (c)]*.

13. The excluded areas other than the Frontier Tracts should be enfranchised immediately and restrictions on the franchise in the Garo and Mikir Hills should be removed and adult franchise introduced [Para. *21 (a) and Section B (1) of Appendix A]*.

Weight age is not considered necessary but the hill districts should be represented in the provincial legislature in proportion not less than what is due on their population even if this involves a certain weight age in rounding off. The total number of representatives for the hills thus arrived at [See par a. 21 (b)] should not be taken into account in determining the number of representatives to the provincial legislature from the rest of Assam [Para. 21(b) and Section K of Appendix A]*.

The total population of the hill-districts instifies as eat for the hill tribes in the Federal Legislature on the scale proposed in Section *13 (c) of the Draft Union Constitution [Para. *21 (c)]*.

Joint electorate is recommended but constituencies are confined to the autonomous districts. Reservation of seats, in view of this restriction, is not necessary [par a. *21 (d) and Section K (3) of Appendix A]*.

Non-tribals should not be eligible for election from hill constituencies except in the constituency which includes the Municipality and Cantonment of Shillong [Para.*21 (e) and Section K (8) of Appendix A]*.

14. Representation for the hills in the Ministry should be guaranteed by statutory provision if possible or at least by a suitable instruction in the instrument of Instructions or corresponding provision [Para. *22 - See also Section O(3) of Appendix A]*.

15. Non-tribal officials should not be barred from serving in the hills but they should be selected with care if posted to the hills. The appointment of a due proportion of hill people in the services should be particularly kept in mind and provided for in rules or executive instructions of the Provincial Government [Para. *23]*.

16. A commission may be appointed at any time or permanently to enable the Government to watch the progress of development plans or to examine any particular aspects of the administration [Para. *24 and Section O (i) of Appendix A]*.

17. Plains tribals number 1.6 million. Their case for special representation and safeguards should be considered by the Minorities Sub-Committee [Para. *25]*.

18. The question of altering boundaries so as to bring the people of the same tribe under a common administration should be considered by the Provincial Government. The Barpathar and Sarupathar Mouzas included in the Mikir Hills should be included in the regularly administered areas henceforth [Para. *26]*.

19. Non-tribal residents may be provided with representation in the local councils if they are sufficiently numerous. For this purpose non-tribal constituencies may be formed if justified and if the population is not below 500 [Para. *27 and Section B (2) of appendix A]*.

20. Provincial councils should be set up by the Governor of Assam after consulting such local organisations as exist. These provisional councils which will be for one year will have powers to frame their own constitution and rules for the future [Para. *29 and Transitional Provisions of Appendix A also]*.

APPENDIX D

[Annexure I]

CONSTITUENT ASSEMBLY OF INDIA

EXCLUDED AND PARTIALLY EXCLUDED AREAS (OTHER THAN ASSAM)

SUB-COMMITTEE [VOLUME I (REPORT)]

Sub-committee

1. Shri A. V. Thakkar - Chairman.

Members:

2. Shri Jaipal Singh.

3. Shri Devendra Nath Sam anta.

4. Shri Phul Bhanu Shah.

5. The Honourable Shri Jagjivan Ram.

6. The Honourable Dr. Profulla Chandra Ghosh.

7. Shri Raj Krushna Bose.

Co-opted Members:

8. Shri Khetramani Panda (Phulbani Area).

9. Shri Sadasiv Tripathi (Orissa P. E. Areas).

10. Shri Kodanda Ramiah (Madras P. E. Areas).

11. Shri Sneha Kumar Chakma (Chittagong Hill Tracts).

12. Shri Damber Singh Gurung (Darjeeling District).

Secretary:

13. Mr. R. K. Ramadhyani, I. C. S.

[Annexure II]

APPENDIX D

From

THE CHARIMAN, EXCLUDED & PARTIALLY EXCLUDED AREAS (OTHER THAN ASSAM)

SUM-COMMITTEE.

To

THE CHAIRMAN, ADVISORY COMMITTEE ON FUNDAMENTAL RIGHTS, ETC.

SIR,

I have the honour to submit herewith the Report of my Sub-Committee for the Excluded and Partially Excluded Areas of Provinces other than Assam. We have visited the Provinces of Madras, Bombay, Bengal, Central Provinces and Orissa, and in regard to these Provinces our recommendations may betaken as final. We have yet to visit Bihar and the United Provinces and to examine certain witnesses from the Punjab. In respect of these Provinces, the Report may kindly be treated as provisional. Our final Report is expected to be ready by the end of September.

I have the honour to be,

SIR,

Your most obedient servant,

A. V. THAKKAR,

Chairman,

Excluded & Partially Excluded Areas

(other than Assam) Sub-Committee.

NEW DELHI;

The 18the August 1947.

[Annexure III]

APPENDIX D

INTERIM REPORT OF THE EXCLUDED AND PARTIALLY EXCLUDED AREAS (OTHER THAN ASSAM) SUB-COMMITTEE OF THE ADVISORY COMMITTEE (CONSTITUENT ASSEMBLY OF INDIA).

1. INTRODUCTORY -

Appendix A** shows the excluded and partially excluded areas for which we are required to submit a scheme of administration. Appendix B* contains certain statistical information and the thirteenth schedule to the government of India (provincial Legislative Assemblies) Order, 1936, which shows the different tribes classed as backward, and among these tribes are to be found the inhabitants of the excluded and partially excluded areas. In determining the areas to be classified as excluded or partially excluded, the Secretary of State for India issued instructions that exclusion must be based upon strict necessity and must be as limited as possible in scope consistently with the needs of the aboriginal population. As regards partial exclusion, he considered that prima facie any areas containing a preponderance of aborigines or very backward people which was of sufficient size to make possible the application to it of special legislation and which was susceptible, without inconvenience, of special administrative treatment should be partially excluded. The Government of India in making recommendations for partial exclusion kept in view the possibility of obtaining convenient blocks of territory with readily recognizable boundaries susceptible of special administrative treatment without inconvenience. Thus, the excluded and partially excluded areas are well defined areas populated either predominantly or to a considerable extent by aboriginals. The excluded and partially excluded areas, however, do not by any means cover the entire population of tribal origin, and in many cases represent only a comparatively small proportion of the aboriginal population, the rest of them being scattered over non-excluded areas. As an example, in the C. P., out of 299 millions of tribals of all religions, only 8.3 lakhs live in the partially excluded areas. With the exception of the Mandla District, which is a partially excluded area and contains 60.5 per cent of tribals, Betul and Chhindwara districts which include partially excluded areas and contain 38.4 and 38.3respectively of tribals, the tribals are scattered all over the province and comprise almost a fifth of the population in some districts. This kind of intermingling is prominently noticeable in Bombay and Bengal and to some extent in other provinces also. In Bengal notably, the tribal population of the excluded areas is but a small fraction of the total tribal population of the province. A common feature of the partially excluded areas is that they are generally located in the out of the way and hilly tracts, and it is in these areas that concentrations of aboriginal population may be found. In the non-excluded areas although small blocks of them can be distinguished, notably in the Madras Presidency, elsewhere, they are interspersed with the rest of the population and are sometimes hardly distinguishable from the general population. Although our terms of reference strictly require us to report on the excluded areas, the total population of tribals in the non-excluded portions of British India not including Assam comes to about 5.5millions, and we consider therefore that our recommendations should not altogether leave out of consideration such a large population who in many respects are in a very backward condition. We have felt it therefore necessary to recommend that the whole tribal population should be treated as a minority community for the welfare of whom certain special measures are necessary. Bearing this in mind, we proceed to discuss the general features of the tribal population in the different provinces.

2. THE EXCLUDED AREAS -

The excluded areas are few in number and consist of the islands of the Laccadive group on the West Coast of Madras, the Chittagong Hill Tracts in Bengal and the Waziris of Spiti and Lahoul in the Punjab. Of these tracts, the West Coast Islands and the Wazir is of the Punjab are isolated from the rest of the province on account of their geographical position and the impossibility of communicating with them during a part of the year. The West Coast islands are cut off from the mainland for several months during the monsoon. Similarly, the Punjab Waziris are isolated during the winter when snow blocks the passes. Inaccessibility of these areas is largely responsible for their exclusion as well as for the backward condition of their inhabitants. The position in these areas is briefly given below: -

(a) **Madras.** - The islands may be considered to fall in three divisions, the Amindivi islands opposite the South Canara coast, the Laccadives attached to Malabar and Minicoy, the southernmost of them, also attached to Malabar. The total area is about 10 square miles and the population, all Muslim, 18,355. The Minicoy islanders are of Sinha lese origin while the inhabitants of the others are akin to the Mapillah of Malabar. The economy of the islands is based on the coconut palm and the produce (coir production is a whole family job) is exchanged for rice and other necessities. The administration is carried on largely by customary laws and special regulations. An amin, or monegar (Amindivi) with powers to try petty criminal and civil cases is the official immediately in contact with the islanders and the amin is in fact selected from the islanders. In the Minicoy island, literacy is said to be cent per cent; in the others, it is negligible. There is no appreciable intercourse between the islands of the three groups and their geographical position necessitates separate treatment. While they are located in a strategic position, we understand that the islands are not suitable for naval stations as they are coral islands and there is difficulty in getting fresh water. Hitherto, they have been administered practically in the manner in which relations were started with them in the days of John Company. Rs. 2 lakhs are spent, partly by way of doles including gifts of combs and mirrors, on the visits of the Collector or other official to the islands, but no attempt seems to have been made to increase intercourse between the islands and the mainland.

(b) **Punjab.** - The excluded area consists of Spiti and Lahoul with an area of 2,931 and 1,764 square miles respectively. Spiti has a population of only 3,700 and Lahoul about 9,000 (1941). The people are of Tibetan origin and Buddhists. The main difficulty about the areas is the difficulty of communication as the passes leading to them are blocked by snow in the winter.

The Provincial Government have now come to the conclusion that Lahoul need no longer be considered as excluded area and should be brought under the general system of administration.

The cultivation of *kuth* has brought some economic prosperity to this area and many Lahoulis have taken to trade also. Spiti is still economically in a backward condition and the schools there are not flourishing. Spit has still very little of the contact with the plains which Lahoul has. Several agrarian laws have not been applied to Spiti particularly though the most important enactments are now in force without modification.

(c) **Bengal.** - The Chittagong Hill Tracts on the other hand, are not inhabited by a population of Burmese and tribal extraction. They cover an area of about 5,000 square miles and contain a total population of 247,053, mostly Buddhists. In 1941, there were 9,395 literates including 622females among the tribes out of a population of 233,392.There are 154 schools and a High School at Rangamati. There is a good deal of contact with the plains people in the western portion of the tract, but the eastern portion towards the Lushai Hills and the Burmese border is more primitive.

Jhuming cultivation is practised almost universally and it would appear that there are considerable difficulties in the way of terraced or wet cultivation on account of the friable nature of the hill sides and the difficulty of irrigation. some settled cultivation also exists and it may happen that a family does both kinds of cultivation. Both plough rent and *jhum* tax are levied. Pressure on the land is increasing and the tribes are greatly apprehensive of encroachment by outsiders.

Weaving and tapestry is a common household occupation but cannot be said to be a cottage industry though it has potentialities in that direction. The district is deficit to the extent of about Rs. 2 lakhs.

The special feature of the Chittagong Hill Tracts are the Chiefs, the Chakma Raja, the Bohmong and Mong Raja. The tract is divided into three circles representing the jurisdiction of the Chief. The Chakma circle is the large stand is 2,409 square miles; the Bohmong and Mong circles are1,935 and 704 square miles respectively. The chief have certain magisterial and appellate powers and out of the *jhum* tax of Rs. 6 per family. Rs. 2-8-0 goes to the Chief, Rs. 2-4-0 to the headman and Rs. 1-4-0 to the Government. On the ground that they are really tributary powers, the Chiefs a reclaiming the status of Indian States and desire that three States corresponding to the circles should be set up. It is claimed that before the *jhum* tax was imposed there was a capitation or family tax and that the right to levy this tax was a symbol of sovereignty. In 1928, a report on the position of the chiefs was submitted by Mr. Mills who recommended that the chiefs should be relieved of the collection of *jhum* tax and should also be relieved of their magisterial duties, the powers of Honorary Magistrates being conferred on them if they were proved fit. His idea was that" they were the leaders of their people and in that lay their value" and they should therefore be consulted in all-important matters of the administration. Their position and future is a matter of some importance and needs careful examination by the Provincial Government. We do not feel that we can express a carefully considered opinion.

Now that Bengal is to be partitioned, the future administration of the Hill Tracts appears to lie with Assam. The Lushai Hills form in part the hinterland of this district and though communications to the east are not easy, they are not more difficult than with Chittagong. The Karnafuli provides a waterway to Demagiri which is connected with Lungleh in the Lushai Hills. The Chakma, Magh and Mroof these Hills have probably their tribal origin in common with the Lushais and in any case the province of Assam is the home of many different tribes. It is obvious that the Hill Tracts should not go to East Bengal in view of its predominantly non-Muslim population. The people themselves are strongly averse to inclusion in Bengal. They desired that the area should be set up as an autonomous district.

3. **PARTIALLY EXCLUDED AREAS -**

The main feature of the Partially Excluded Areas is that they are not altogether excluded from the scope of the Provincial Ministries like the excluded areas nor is the expenditure on them outside the scope of the legislature. In fact the administration of the areas notably of the C. P. and Bombay has not been appreciably different from the rest of the province and the Provincial Governments were in greater or less degree opposed to their exclusion. It is in the Agency Tracts of Madras and Orissa and in the Santal Parganas theta different system prevails. A brief account of the areas of each province follows: -

(a) **Madras.** - The partially excluded areas consist of the East Godavari Agency, the Polavaram taluq of West Godavari Agency. The total area is 6,792 square miles and the total population 493,006 of which about 278,000 are tribal, and 54,000 are classed as backward making a total percentage of 67.6. The tribes inhabiting these tracts are Koya, Koya Dora, Hill Reddy, Dombo, Kondh and others. The tribes are pretty backward on the whole and do podu (shifting cultivation) largely. Except manual labour they have no non-agricultural occupations worth mentioning. There are special agency rules and save for certain sections the Civil Procedure Code does not apply. Crime is scarce and the aboriginals are simple and truthful. The mechanism of justice therefore needs to be a simple one.

There are no local self-governing bodies and tribal panchayats do not seem to be fit for work other than the decision of petty disputes. The toddy palm plays a large part in the life of aboriginals. They have suffered in the past through exploitation by moneylenders and landlords and incidents like the Rampa rebellion have occurred in the areas. Lisencing of moneylenders, as agreed by the Collector of West Godavari, is probably a definite need of these parts in addition to the prevention of acquisition of land by non-aborigines.

Yaws and malaria are very common in these parts.

(b) **Bombay.** - The partially excluded areas which are to be found in the districts of West Khandesh, East Khandesh, Nasik, Thana, Broach and Panch Mahals cover an area of 6,697square miles and contain a population of 1,125,471 of which663,628 or 58.9 per cent are tribals. The tribes are largely Bhil, Varli, Kokna, Thakur and Katkari. In 1935, the Government of Bombay were not in favour of exclusion of any area except the Mewasi Chiefs Estates and the Akrani Mahalin the West Khandesh District on the ground that the administration of these areas was all along carried on in the same manner as the other tracts and that there were local self-governing institutions in the areas. The Akrani Mahal in the Satpura Hills is an almost purely Bhil area and probably the one with the least contact with the plains.

In 1937, the Government of Bombay appointed Mr. D. Symington to conduct a special enquiry into the conditions prevailing in the aboriginal areas. Mr. Symington pointed out that the local boards were largely or even exclusively run by non-Bhil elected members and opined that it was not a mere question of providing seats for the hill tribes but that these people were not sufficiently educated and advanced either to use their votes sensibly or to produce from among themselves enough representatives capable of looking after their interests intelligently on local boards. "They are not only illiterate but also ignorant of everything outside their daily run. They are contemptuous of education which they regard as a degrading and senseless waste of time. They have more faith in witchdoctors than in pharmacopoeia. They live near the border line of starvation. They are inveterate drunkards. It was not surprising that they take no interest in the local boards elections or local board administration." He also expressed the opinion that the salvation of the aboriginal lay in protecting him from exploitation by the moneylenders who were gradually depriving him of his land, and stopping the drink habit. Giving evidence before us, he reiterated the view that elections would be completely useless so far as these people were concerned.

Among the Thadvi Bhils (Muslims) there is a Sub-Judge. Among the half dozen graduates from the Bhils there is Mr. Natwadkar, the M. L. A. from West Khandesh and there is a lady from the Panch Mahals. The demand for education is however becoming very keen.

In the Warli areas of the Thana District visited by us practically all the land had been taken up by non-tribal sand the tribals were reduced to the condition of landless serfs. The Bombay Government have in fact now found it necessary to pass special legislation to prevent alienation of land. On account of the acquisition of all the land by a few people, the land system in this tract has been virtually transformed from a ryotwari system to a system similar to the malguzari system of the Central Provinces.

(c) **Central Provinces & Berar.** - The partially excluded areas, of which Mandla District is the largest unit, contain only 833,143 tribals out of a total tribal population of nearly 3 millions. The Gond (including Maria and Pardhan) is the main tribe in the C. P. and the Korku in the Melhat are prominent in Berar. Although backward and adhering largely to their own customs and ways in the areas where they are still most numerous, the tribes have in appreciable degree assimilated the life of the rest of the population and tribal institutions are either weak or practically non-existent. Mostly the tribes have taken to settled cultivation and there is little bewar or dahia in the province. Of handicrafts and cottage industries, however, there is next to nothing and this is the great weakness of the aboriginal economy. The aboriginal is given to drink but opinion in favour of temperance or prohibition seems to be gaining ground.

The partially excluded areas are, with hardly any exception, administered in the same manner as the other districts. The C. P. Land Alienation Act of 1916 is the only notable legislation enacted specially for the protection of the aboriginals and restricts the transfer of agricultural land from aboriginal to non-aboriginal classes. In 1940,when the C. P. Tenancy Act was amended to confer rights of alienation on certain classes of tenants, the application of the amending Act to the partially excluded areas was made subject to certain modifications designed to secure that unscrupulous landlords would not manipulate to their own advantage the complicated provisions of the Act.

A special enquiry into the problems of the aboriginals was ordered by the C. P. Government and a report was submitted by Mr. W. V. Grigson in 1942. Among the points made by Mr. Grigson were the weakness of the tribal representatives in the local boards and the need for provisions to prevent the application of legislation to aboriginal areas except after special consideration. Mr. Grigson was also examined by us as a witness and expressed himself in favour of a system of indirect election for the aboriginals. Opinion of a number of C. P. witnesses was not in fav our of reserved representation for the aboriginals in proportion to their population. Some witnesses preferred nomination out of a panel submitted by the District Officers. At present there are three tribal members in the Legislature although only one seat is reserved.

The Provincial Government have now created a special Department and inaugurated a scheme of development of the aboriginal areas in which multipurpose co-operative societies play a prominent part. Opinion in the C. P. (as in Bombay) was strongly in favour of boarding schools with free meals as the only way of making schooling acceptable to the aboriginals.

(d) **Orissa.** - This province contains a partially excluded area of nearly 20,000 sq. miles, i.e., almost two-thirds of the province is partially excluded. The partially excluded area includes the portions of the Madras Agency Tracts transferred to Orissa, the Khondmals of the former Angul District and the Sambalpur District which was formerly in the C. P. The total tribal population of the province is1,721,006 of which 1,560,104 are found in the partially excluded areas. The tribes inhabiting this province are among the most backward in the whole of India. The Bond a Porja, Gadaba, Kondh and Savara are among the most important of them. In 1939 the Orissa Government appointed a special committee to make recommendations for the partially excluded areas (Thakkar Committee) which found that some tracts were too backward to administer even local boards. Although they have representatives in the legislature, four of the five reserved seats are filled in by nomination and some of the nominated members have to be non-tribals. The precentage of lit racy in the Agency Tracts is about one per cent. Aback ward Classes Welfare Department has recently been setup. The Thakkar Committee made a number of important recommendations which could not be given effect to during the war and are now being taken up.

Apart from the Khondmals which are now attached to the Ganjam Agency, the Angul Sub-division which is a partially excluded area has only 13,308 tribals who form 8 per cent of its population. The Thakkar Committee recommended the administration of this area as a regular district and pointed out that the Angul Laws Regulation is no longer suited to the advanced condition of the people. Even in1935, it was stated by the Orissa Government that the area was so advanced that it should be possible within a few years to place it on a level with the normal districts (par a. 49, Recommendations of Provincial Government and the Government of India, Indian Reprint).

The District of Sambalpur was made a partially excluded area largely on account of the special system of that district, viz., the distinct system of revenue and village administration. The district was formerly part of the C. P. and the C. P. Revenue Laws and type of village administration were in force. The aboriginal population of the district is 252,095 and constitutes 19.6 per cent. but most of these tribals seem to have assimilated the customs and culture of the surrounding Hindu population. The administration of the district though differing from the rest of Orissa was not radically different from the administration of the C. P. plains districts until 1921.Three of the Zamindaris of Sambalpur had been declared scheduled districts under the Act of 1874, but with the exception of the Insolvency Act of 1920 all other legislation was applied to the district. The Thakkar Committee recommended (para. 397) that the district should cease to be a partially excluded area and should be treated as a normally administered area. The Committee however considered (Para. 402) that some sort of protection was still needed for the aboriginals of that district and recommended certain special measures for the protection of the land of the aboriginals (Para. 403). The tribes in this district consist mainly of Gond (102,765), Kondh, Kharia and Savara. They are concentrated largely in the Sadar Sub-division of the district. Literacy among them is not up to the level of the Scheduled Castes of the District and amounts to only about 2 per cent. They however take part in elections and in the Sambalpur Sadar constituency there is are served seat for the backward tribes. This is the only one of the five tribal seats in the province which is filled by election.

The question of representation for the Orissa tribes presents somewhat of a problem. Local officials had serious doubts as to the possibility of finding suit-able representatives from among them, at any rate in proportion to their population. The Provincial Government have similar hesitations. In their factual memorandum (page. 28*) they have recommended that local bodies should be partly elected and partly nominated. For the Provincial Legislature, "a specific number of seats should be reserved for aboriginal members in general constituencies; but the aboriginal members should be elected to these seats by a system of indirect or group election."

(e) **Bengal.** - The partially excluded areas of Bengal consist of the District of Darjeeling and certain police station areas in the Mymensingh district which border on the Garo Hills of Assam.

The Darjeeling District is shown to contain 141,301tribes out of a total population of 376,369 in 1941. The tribal population of the district seems to consist largely of lab our employed in the tea gardens and some Lepcha and Bhotia. Actually, the latter are only about 20,000 in number. The prominent community in Darjeeling is the Gurkha or Nepalese community which numbers about 2 1/2 lakhs. A good many are employed in the tea gardens and the local police force also contains a high proportion of them. The Gurkha are not regarded as a backward tribe and the thirteenth schedule to the Govt. of India (Legislative Assemblies) Order does not include Gurkha. They feel however neglected so far as other ranks of Government service are concerned and in the trade and business of the place, the Marwari has the upper hand. On the other hand, the small community of Lepcha (12,000) finds itself dominated by the Gurkha and one of the complaints is that their land (the Lepcha claim to be the original inhabitants) has been gradually taken away from them by Nepalese immigrants.

The partial exclusion of Darjeeling was recommended by the Govt. of Bengal not because it was considered as backward area but because it was felt that safeguards were necessary in the interests of the hill people. The fact that Darjeeling was the summer capital of the Government of Bengal and the existence of European tea-planters may have played some little part. The 1941 census shows that even among the tribals (mostly tea garden coolies) there was16,450 literates out of a total population of 141,301 and2,571 of these were women.

The local bodies (Municipality and District Board) are not wholly elected bodies and the Deputy Commissioner is the President of the Municipality. Undoubtedly the land the hill tribes needs to be protected from the maw of money lenders but there is little case otherwise for continuing partial exclusion or special administration.

The Gurkha League desires that there should be an elected Advisory Council in the District so that the interests of the Gurkhas in representation in the services, in the land and industry of the district may be protected. They have also sponsored a movement for union with Assam where there is a strong Gurkha element.

As regards the partially excluded portion of the My men Singh District, there are about 49,000 Garo in all but according to the census, some of the than as contain very few tribes. The provincial Govt. were opposed to its partial exclusion in 1935. They pointed out that no special measures had been hitherto necessary to protect the tribe and had no indication at any time that the existing administrative system had worked inequitably for them. It would appear that the partial exclusion of this area was consequential upon the exclusion of the Garo Hills District in Assam. The Garo of this are keenly desirous of being united with the Garo of Assam under a common administration, and in view of the division of Bengal there is a good case for rectification of the boundary, i.e. to include the Garo area in the Garo Hills Districts of Assam. The majority of the population of the partially excluded area (5.94 lakhs) consists however of non-tribals and it will be necessary therefore, to draw a fresh boundary.

(f) **Bihar.** - The Partially Excluded Areas of this province extend over the enormous area of 32,458 sq. miles comprising the whole of Chota Nagpur division and the Santhal Parganas District. The total population of the area is 9,750,846 and nearly 4.5 millions of these are tribal people consisting of Santhal, Oraon, Munda, Ho, Bhumij and other lesser tribes of the Kolarian family. Although the general level of literacy and development in this area is lower than that of the non-aboriginal population, the tribes people here are rapidly advancing and quite a number of people in the learned professions may be found among the Munda and Oraon. Local self-governing institutions exist, and there is no question that the area would be able to take part intelligently in the administration of the province. The main feature of this area may be summarized in the words of the Provincial Government in recommending partial exclusion: "The Special Tenancy Laws in Chota Nagpur, the Santhal Parganas, *Sambalpur and *Angul are the bulwark of the backward peoples. The legislatures of the future would have the power to amend, modify or even repeal those laws and the only safeguard against legislative action detrimental to the interests of backward peoples is the power of the Governor to refuse assent. ......The importance of these special Tenancy Laws to the aboriginals cannot beover-stressed. The history of the Santhal Parganas and Chota Nagpur was one of continuous exploitation and dispossession of the aboriginals punctuated by disorder and even rebellion until special and adequate protection was given. In the fringe areas, such as Manbhum, where the non-aboriginals are in a majority, the aboriginal element would probably have been driven from the land long ago but for the protection given by tenancy laws. ....The fate of the aboriginal where he has been unprotected has usually been to lose his land........" In the Santhal Parganas, legislation since1855 has been mainly by means of special regulations framed by the Governor-General-in-Council. The main function of these regulations was to regulate inter alia the agrarian law, the constitution of courts and their procedure, money lending and the village police. Except in the most important cases the jurisdiction of the High Court was excluded and judicial procedure simplified. In the Kolhanpir of the Singh hum District also, the Civil Procedure Code was replaced by simplified rules but generally speaking, the laws of the rest of the province operate in Chota Nagpur. For a detailed account, the Factual Memorandum of the Provincial Government may be referred to (pages(?)97-98,Excluded and Partially Excluded Areas - I). Since 1937,section 92 (2) of the Government of India Act has been made use of to frame some special regulations notably for the Santhal Parganas.

The population of Chota Nagpur and the Santhal Pargnas is rather mixed and except in the Ranchi District, the Singh hum District and the Santhal Parganas, the tribal population are in 3 minority. In their Factual Memorandum, the Bihar Government have pointed out that a comparison between the figures of 1941 and 1931 census shows that there is room for doubting the accuracy of the figures of the 1941census. Recently an agitation has been started for the formation of a separate Chota Nagpur Province on the ground that this land is the land of the aboriginal residents who are distinct from the inhabitants of the plains in many ways. Taken as a whole, the tribals form only 45.6 per cent of the total population of the Partially Excluded Areas and in Chota Nagpur they constitute 44.2 per cent of the population. Only in Ranchi (70 per cent), Singh hum (58.4per cent) and Santhal Pargan as (50.6 per cent) are they in anything like a majority. The creation of a separate province is a matter outside the scope of our enquiry and we do not find that this is in fact necessary for the satisfactory administration of the tribals.

(g) **United Provinces.** - The partially excluded areas are the Pargana inhabited by the Jaunsari tribes in the north and the portion of the Mirzapur District below the Kaimur Range inhabited by mixed tribes of Chota Nagpur and Central India. The area is 483 sq. miles in the Dehra Dun District and 1,766 sq. miles in the Mirzapur District. The total population of both areas is about 200,000.

The Jaunsar Bawar Pargana forms the watershed between the Jumna and the Tons. The country is hilly and offers little land for cultivation. It appears that most of the cultivable land is held by Brahmins and Rajputs and that the Koltas (Scheduled Caste) are debarred from possession of land according to the village Wazibul-arz and occupy practically the position of serfs. Though the great majority of the people are Hindus, polyandry and special systems of divorce are in vogue since ancient times. Although the area is under the criminal jurisdiction of the High Court a simplified system of criminal, civil and revenue administration is followed and except in Chakrata Cantonment, regular police are not employed. For civil law, the Commissioner, Meerut, acts as a High Court. The Excise and Opium Acts have not been extended to the area and opium cultivation) permitted. There is great illiteracy in the area and the administration will have to be suited to the lift of the inhabitants. In Khat Haripur Bias at the foot of the hills however conditions are different and approximate to those in the plains. The Khat Haripur Bias Tenants Protection Regulation of 1940 has afforded some protection to the tenants. The Provincial Government are of the view that this Khat should be included in the Dehra Dun Tahsil. Though the area is enfranchised and is included in the Dehra Dun rural constituency, it is considered incapable of sending representatives to the legislature.

As regards the Mirzapur District, the excluded area consists of four parganas of which only the Agori and Bijaigarh parganas have a concentration of aboriginals. The population consists of a number of tribes having affinities to the tribes in the neighbouring provinces from which they have come. There is no strong tribal life left among them. Their occupations are said to be those usually followed by the Scheduled Castes and in their religious and social customs they are similar to low-caste Hindus.

The land revenue system of this area is different from the rest of the Province and is based on a plough tax. Then on-agricultural classes are gradually acquiring land from the aboriginal. The Tahsildars of the tract who exercise magisterial functions are Munsifs also. Except in relation to suits of succession and divorce, the court of the Commissioner is the highest court of appeal in civil suits. The area is under the jurisdiction of the District Board of Mirzapur.

The Provincial Government are of the view that there is no justification for this area being treated differently from the rest of the province and that normal administration should be extended to it immediately.

4. **POLITICAL EXPERIENCE -**

The people of the excluded areas have no experience of local self-governing institutions of the modern or statutory type and are of course not represented in the legislature. The management of a Local Board is perhaps likely to be a much bigger undertaking for the people of these areas than the mere election of a representative to the legislature and the establishment of such bodies needs perhaps a period of official guidance and control, particularly in areas like the Madras islands. The partially excluded areas on the other hand are all included in electoral constituencies of the provincial legislatures and with the exception of the Agency tracts of Madras and Orissa,*** the Santhal Parganas and Jaunsar Bawar, are covered by local boards also. There are certain reserved constituencies, viz., Bihar 7, Orissa5, Madras 1, Bombay 1 and C. P. 1. In Orissa, four of the five members are selected by nomination. Unlike Assam, no reservation of seats had been made for tribals of the plains or non-excluded areas and these vote along with general Voters. In Bombay, C. P. and Chota Nagpur, the tribal though reported to be apathetic and showed aside by non-tribals, have known, at least nominally, such bodies as local boards. Nevertheless it is likely to take some time before there is sufficient interest in these bodies and probably interest in local self-government will have to be built up from the village stage. Although as shown by Mr. Grigson in his report, the tribals cast their vote as copiously as others, they have yet to learn to utilise its powers to their own advantage.

5. **EFFECTS OF EXCLUSION -**

Although exclusion or partial exclusion has been in force for a number of years now, the benefits which the areas have derived from it are not particularly noticeable. In the case of the excluded areas, the sole responsibility for the administration has lain upon the Governor and the revenues earmarked for these areas have been outside the vote of the provincial legislature. No definite programme for the development of the excluded areas with a view to removing the disability of exclusion has been followed. The introduction of kuthts cultivation in Lahaul has brought it some economic prosperity but the West Coast islands are probably no better off than they were ten or twelve years ago, and in the Chittagong Hill Tracts no great impetus to enlightenment is perceptible. On the other hand, in the partially excluded areas also little improvement is as yet visible although in Bombay an inquiry into the conditions of the aboriginals was started as early as 1937. A Backward Class Department and Board have also been functioning in Bombay. Other provinces have since taken the cue and welfare work now seems to be forging ahead but it is perhaps the general interests in the backward classes which is responsible rather than the system of partial exclusion as such. The remarks of the Orissa Government are of interest:" The system of partial exclusion has also been a most unsatisfactory constitutional device. In matters of administration of the partially excluded areas, the Ministers tender advice to the Governor, with whom the ultimate responsibility for the good Government of these areas rests. He may accept or reject such advice. The system suffers from a fundamental defect; the responsibility is shared between the Governor, and the Ministry answerable to the people of this country or their elected representatives." No less responsible is perhaps the fact that the representatives of the partially excluded areas have not been capable of bringing sufficient pressure and influence to bear on the Ministry. Further, some of the partially excluded areas which constitute small pockets in large districts and constituencies could apparently be lost sight of and their interests subordinated to those of the larger areas in which they were contained. Some of the C. P. excluded areas situated in the Chhindwara and Bilaspur districts may be particularly noticed in this connection. They constitute comparatively small islands of partial exclusion which have little voice in a large constituency. The greatest weakness of the scheme of partial exclusion is perhaps the fact that it left areas weakly or only nominally represented in the legislature without any special financial provisions. Whatever the reasons may be, the conclusion to be drawn from the state of affairs noticed by us is that partial exclusion or exclusion has been of very little practical value. There has been neither educational nor economic development on any appreciable scale. The object of special administration has thus not been achieved, and it is clear that if the hill tribes are to be brought up to the level of the rest of the population the strongest measures are now necessary.

6. **ATTITUDE OF THE GENERAL PUBLIC -**

One thing which we noticed in the course of our visits to the different Provinces was a considerable awakening of the public conscience in the matter of the welfare of the tribal people. The inquiries instituted in some of the Provinces have doubtless contributed to this quickening. Non-official organisation's are beginning to take interest in the welfare of the tribes and the work of the Servants of India Society stands out prominently among these. The recent rising of the Warlis in Bombay Presidency has drawn attention in a rather forcible way perhaps, to their problems. Whatever the reasons, is seems now clear that there is a general tendency to take up the question of development of the tribes people as a serious matter, but whether this by itself is sufficient to ensure the future well-being of the tribes is more than questionable. Most of the Provinces are far from being happily placed in the matter of funds, and the development of areas inhabited by tribes which are situated generally in hilly country is a matter which calls for a good deal of expenditure for which there are many competitors. The emergence of educated people among the tribes is as yet inadequate for the maintenance of interest in their problems.

7. **POTENTIALITIES OF THE TRIBES -**

The views of people of different points of view regarding the future administration of the hill tracts and of the tribes people themselves was found to be remarkably uniform. To begin with, there was hardly anybody who did not believe that the tribals are capable of being brought to the level of that rest of the population by means of education and contact. Wherever facilities for education and contact have been available, the tribes people have showed that their intelligence can be developed and environmental difficulties overcome. It is true that as yet there is a great deal of apathy in certain areas. Mr. Symington's report in particular points out that the Bhils take little interest in the local boards or in education and their addiction to drink is likely to keep them in their present backward state. In the partially excluded areas of Orissa, we came across tribals who had not been any where beyond a few miles of their village or seen a motor car or a railway train. By and large however we found that there is a considerable demand for education and advancement among the tribal peoples and have no doubt that within a short time they can be brought up to a satisfactory level, if development plans are vigorously pursued.

8. **GENERAL CONCLUSIONS -**

To sum up: Both exclusion and partial exclusion have-not yielded much tangible result in taking the aboriginal areas towards removal of that condition or towards economic and educational betterment. Representation of partially excluded areas in the legislature and in local bodies has-been weak and ineffective and is likely to continue to be so for some time to come. Education shows definite signs of being sought after more and more but the poor economic condition of the aboriginal and the difficulty of finding suitable teachers present problems which must be over-come before illiteracy can be properly tackled. The great need of the aboriginal is protection from expropriation from his agricultural land and virtual serfdom under the money-lender.

There are certain tracts like Sambalpur and Angul in the Orissa province which need no longer be treated differently from the regularly administered districts. On the other hand areas like the Madras and the Orissa Agency tracts still need a simplified type of administration which does not expose them to the complicated machinery of ordinary law courts. Differences in social customs and practices among the tribes also need to be kept in mind.

9. **REPRESENTATION IN LEGISLATURES -**

We have pointed out at the very outset that the tribals who live in non-excluded areas form part of our problem and cannot be left out of account. In considering representation in the Legislatures we would urge that the tribes should be treated as a whole as a minority and not separately. In this regard, we would refer to a certain difference of opinion which exists among the parties interested. In Bombay the view of the Ministers and others dealing with the problem was unreservedly in favour of providing representation for the tribes as a whole by reservation of seats in a joint electorate. In Madras also a similar view found fav our. In the Central Provinces, however, different views were expressed not only in respect of the method of election but also about reservation, both by officials and by Ministers. Certain district officials suggested that there should be nomination out of a panel submitted by district officials. Mr. Grigson favoured a scheme of indirect elections by means of group panchayats. The general feeling among these officials was that election was not likely in the present circumstances to produce suitable representatives. Some point was given to this by the reply of Mr. Wadiwa, a Gond pleader, who gave evidence before us, that he could not stand for election on account of the expense involved. The Ministers on the contrary seemed to have no objection to elections but were strongly opposed to reservation of seats in proportion to their population. Mr. Grigson also did not appear to fav our reservation though he was of the view that if reservation was made for the scheduled castes there was no justification for not protecting the aboriginal similarly: "But once we start with reservation there is the possibility of it becoming permanent." The Ministers considered that increased representation would be provided by their scheme of demarcating constituencies without the evil of creating a separatist mentality. "These tahsil areas will be delimited so that particular communities in particular areas will get an effective voice. Just as particular wards in a municipality return only a particular class or community of persons - some wards in Nagpur Municipality return only Muslim members - an Ahir ward ortahsil will return only an Ahir, a Gond tahsil will return only a Gond and so on. In this way we want to give all the sections of our people thorough and complete representation without whetting their communal appetite." As regards the other tribals who are not found in compact areas, it is asserted that they are generally dispersed in the province and not easily distinguishable from the other people. In Orissa reservation of "a specific number of seats" in general constituencies is recommended but it is considered necessary that aboriginal members should be elected to these seats by a suitable system of indirect or group election. The remarks of the Orissa Government in connection with the system of partial exclusion are relevant: "The inadequacy of representation of the aboriginal people of these areas in the legislature has also contributed to their neglect. They are not vocal nor have they any press for propaganda. They have been represented in the Assembly by five members, four nominated by the Governor and one elected from Sambal pur. As a result of this insufficient representation the problems of these areas do not receive the attention to which their size and importance entitle them." We have given serious thought to the question and come to the conclusion that the tribal should have reserved seats in a joint electorate based on adult franchise. We do not consider the scheme of the C. P. Government adequate as it provides no safeguards for the large numbers of tribals who live in the non-excluded areas and who without reservation would have no chance of being represented in the Legislature. The case of the tribals is not essentially different from that of the Scheduled Castes and they are in fact more backward in education and in their economic condition than the Scheduled Castes. Representation in proportion to their numbers in the legislatures, even if some of them are not vocal or able to argue their case will emphasize the importance and urgency of their problems. And it is to the interest of the country to see that these original inhabitants of the Indian soil are brought up to the level of the rest so that they can contribute in due measure to the progress of the country rather than be a dragon the rest. We do not consider that the method of indirect election or nomination should be resorted to. The aboriginals have to take part in direct election some time and the sooner their training for this starts the better.

Having regard to the circumstances of the Madras island and the Punjab Excluded Areas, we recommend special representation as follows: -

Laccadive Group	1
Lahaul and Spiti	1
Amindivi Group	1
Minicoy	1

It seems clear to us that these areas cannot be included in other constituencies, nor would they be suitably represented if so included.

10. LEGISLATION-

(a) **Areas to be Scheduled.** - The provisions for partially excluded and excluded areas in the 1935Constitution are designed to prevent the application of unsuitable legislation, to permit the making of special rules and regulations required for any different system of administration needed in the aboriginal areas, and for the provision of funds at the discretion of the Governor for the totally excluded areas. Although in most of the Provinces, there has been a good deal of assimilation of the tribal people of the plains, yet the social system of the tribes indifferent from that of the plains people in a number of the partially excluded areas. In the excluded areas, of course as already pointed out, there are people like Tibetans, the Chakma, Miro and Mogh of the Chittagong Hill Tracts, the islanders of the Laccadive Islands and so on. In the partially excluded areas, the tribes of Orissa and Chhota Nagpur and even the Gonds of the C. P. and the Bhils of Bombay who have assimilated the life of the plains to a greater extent than others have different social customs. The law of inheritance and the systems of marriage and divorce are different from those of other communities. It is possible of course for the legislatures to bear these features in mind and pass different laws just as different laws have been passed for Hindus and Muslims but there are other subjects as well in which the tribes will have to be treated on a different footing. In places like the Agency Tracts, for example, the population is as yet too primitive to be able to understand or make use of the complicated procedure and law of the civil, criminal and revenue courts. We have mentioned earlier the features peculiar to the Santal Parganas and the Jaunsar Bawar Pargana. Even in the more advanced tracts of the Central Provinces of Bombay, the tribal is at a serious disadvantage on account of his poverty and ignorance and the procrastination of courts and officials and is easily victimized. This is of course true of all poor and simple rural folk, but it is clear that in the case of the aboriginal, it applies to a community found predominantly in certain areas and not to individuals. Thus a simplified system of dispensation of justice will be necessary in certain areas. There is again the question of land legislation. The land is the only thing left to the aboriginal, who does not follow non-agricultural professions to any appreciable extent as yet. In the Chhota Nagpur Division different kinds of tenure have been recognized for the tribals and in any case, even where the tenure is simple and common to other areas, grant of the power of alienation to the tribals is certain to result in his gradual expropriation. We are thus led to the conclusion that it is necessary to provide that in certain areas laws of the provincial legislature which are likely to be based largely on the needs of the majority of the populations should not apply automatically, if not generally, at least in certain specified subjects. A general provision of this kind is of course a matter of convenience and would eliminate the need for the legislature to provide special clauses or saving clauses. It would also enable special consideration if the legislation is to be applied to the area. This of course involves notification of areas and we recommend provision for the purpose. We propose that the areas should be known as "Scheduled Areas" in future.

(b) **Application to Scheduled Areas.** - The next question which arises is whether any special mechanism is to be provided or whether the matter should be left to the legislature without any additional safeguard to apply legislation. The Government of Orissa have apparently thought it sufficient if the laws are specially extended by the Provincial Government and other Governments may hold similar views. The fact that non-tribals will be in a majority in all the legislatures and the fears which the tribals entertain that their interests and special customs and circumstances may be ignored must in this context be taken into account. Doubtless they would like to feel that they themselves have a voice in the decision and that a decision is not taken by persons unacquainted or imperfectly acquitted with their special circumstances and not genuinely interested in their welfare. The feeling which prevails in this matter has been expressed thus: "Speaking purely hypothetically, it should not be possible for the member representing Chittagong to be able to oblige his constituents by getting some radical changes made to the detriment of the hill tribes, which is of local advantage to them." (Lt.-Col. Hyde, D. C. Chittagong Hill Tracts) and "Ministers may find that owing to political pressure from organised pressure groups, that it is impossible for them to give the protection which they desire to give". (Grigson, aboriginal Tribes Enquiry Officer, C. P. & Berar.)

The present system under which the Governor in his discretion applies the legislation is not likely to appeal as this principle will be regarded as undemocratic, even though the governor in future may be an elected functionary. An alternative mechanism is therefore necessary. We have considered the question in all its aspects and come to the conclusion that in respect of certain subjects, laws passed by the Provincial Legislature should not be applied to the Scheduled Areas if the Tribes Advisory Council does not consider them suitable for those areas. We have also provided that in other subjects the Provincial Government should have the power to withhold or modify legislation on the advice of the Tribes Advisory Council. (Para*. 15).

(c) **Special Subjects.** - It has been stated above that in certain subjects legislation should not apply if considered unsuitable by the Tribes Advisory Council. We consider such a definition desirable to prevent any unnecessary complication of legislative procedure or delaying of legislation. In most of the areas ordinary legislation is applicable and the policy has been and should be to apply legislation normals unless there is any special reason to the contrary. As a matter of general concern restriction seems necessary only in certain matters and we recommend that all legislation relating to (1) social matters (2)occupation of land including tenancy laws, allotment of land and setting apart of land for village purposes, and (3)village management including the establishment of village panchayats should be dealt with in this manner.

13. **CRIMINAL AND CIVIL COURTS -**

We have noticed that there are areas where the regular machinery for the disposal of criminal and civil cases is not in operation and an "Agency" system is in force. The civil procedure has in particular been substituted by a simplified procedure. We have no doubt that simplified procedure should be possible for the disposal of petty criminal and civil cases and recommended accordingly that except where the regular procedure is already in force, a simplified system should continue to be in forced. We are not however in a position to say whether the exact procedure followed at present needs modification or not.

14. **RESERVATION IN FEDERAL LEGISLATURE -**

We have recommended reservation of seats in the Provincial Legislature. We recommend reservation in the Federal Legislature also on the basis of population in each province. On the scale contemplated in the draft Union Constitution, this would be 5 for Bihar, 3 for C. P., and 2each for Bombay and Orissa.

15. **PROVINCIAL TRIBES ADVISORY COUNCIL -**

Most of the Provincial Governments have found it necessary to set up advisory bodies for the proper administration of the tribal areas. In our view, it is necessary that there should be a body which will keep the Provincial Government constantly in touch with the needs of the aboriginal tracts (Scheduled Areas) in particular and the tribal for such a council requires little explanation. Whatever legal machinery is set up, it is no fancy to suggest that its actual translation into practice may not be in accord with its spirit, and besides the legal machinery itself may be found defective in practice. For a number of years clearly, the development of the aboriginals will require the most meticulous care. There are many ways in which the aboriginals' interests may be neglected, and it is known that regardless of certain prohibitory rules they are subjected to harassment at the hands of subordinate government officials and contractors. In spite of the abolition of beggar, for instance, there are still a good many cases of it in fairly serious form coming to notice from time to time. The working of provincial legislation or the machinery of administration in whole or in not needs constant scrutiny and regulation. The reclamation of the tribal is not likely to be an easy matter since it is seen from experience that even where provision for local bodies exists the aboriginal requires special encouragement to take active part in it. We have also pointed out that the representation of the aboriginal in the legislature is likely to be weak for some time to come. To exercise special supervisory functions therefore and to bring to the attention of the Provincial Government from time to time the financial and other needs of the aboriginal areas, the working of development schemes, the suggestion of plans, or legislative or administrative machinery, it is necessary to provide by statute for the establishment of a Tribes Advisory Council in which the tribal element is strongly represented. There may be no objection to the advisory council being made use of for supervision of the interests of other backward classes as well. We are of the view that the establishment of an Advisory Council for the next ten years at least is necessary in the Provinces of Madras ,Bombay, West Bengal, Bihar, C. P. & Berar and Orissa, and we recommend that statutory provision be made accordingly. We have referred earlier (Para. 11) to the part that the Tribes Advisory Council will play in respect of Legislation.

16. **CENTRAL COMMISSION -**

We have indicated above that unless the attention of the Government is concentrated with special emphasis on the problems of the aboriginals and the needs of the Scheduled Areas, there is little likelihood of any development. We do not intend any reflections on Provincial Governments if we remark that they may fail to take adequate interest. The provincial finances may also need to be strengthened by subventions from the Central fisc and we have in fact recommended that the Federation should come to the aid of the provinces to the extent necessary. We are of the view therefore that the Federal Government should take direct interest in the development of the tribes. We consider that it should be possible for the Federal Government to institute at any time a special Commission to enquire into the progress of plans of development and also into the conditions of the Scheduled Areas and tribals in general. In any case, such a commission should be instituted on the expiry of ten years from the commencement of the new Constitution. We have no doubt that the provinces would welcome such a commission and we recommend that provision for its appointment should be made in the Union constitution.

17. **CENTRAL SUBVENTIONS -**

The development of the Scheduled Areas is likely to involve heavy expenditure on account of the nature of the country and other practical difficulties. It is obvious that in the hilly tracts the construction and maintenance of roads will require a good deal of money. Most of these tracts are devoid of any attraction for officials who thus need to be specially compensated. The provision of schools, medical facilities and water supply which are dire needs will doubtless make a heavy demand on the budget. While we are clearly of the view that to the maximum possible extent the funds required for the welfare and development of these areas should be found in the provinces themselves, we feel that unless the Central Government provides the necessary assistance, some of the Provincial Governments at any rate may find it impossible to carry out schemes of improvement. We recommend therefore that for all schemes of development approved by it the Central Government should contribute, in whole or in part, funds for the implementation of the development schemes. The Central Government should also be in a position to require the Provincial Governments to draw up schemes for the Scheduled Areas. We have recommended statutory provision to this effect.

18. **PROVINCIAL FUNDS -**

The main anxiety of the Scheduled Areas will centre round the attitude of the legislature in the provision of funds. These areas as already pointed out will be weakly represented and, being deficit areas, may be dealt with on the principle of he who pays more gets more. In the absence of a keen demand it is even possible that there is a diversion of revenues to the more vociferous areas. We have remarked earlier that one of the weakness of the system of partial exclusion is the lack of financial safeguards. There is very clearly a necessity for making the required provisions to remove this weakness. It has been suggested to us that funds for the development of the Scheduled Areas should be provided by the fixation of a statutory percentage of the provincial revenues. It may be easy to provide by statute that such and such a proportion of the Provincial revenues should be spent upon the Scheduled Areas, but there is first of all the difficulty of determining the ratio. The needs of the Scheduled Areas are great in comparison with the population and in some cases even with the extent of the tract. Secondly if a rigid statutory ration is fixed, it may in practice be found that it is not possible to adhere to it. The framing of a budget has to take into account many factors and rigid statutory ratio is likely to cause difficulties to the Provincial Governments, apart from being perhaps ineffective in providing the real needs of the hill tracts. If a low ratio is fixed it is practically certain that the Provincial Governments will not exceed that. If a high ratio is fixed, the Provincial Government may be unable to meet it and in any case the working out of an acceptable ratio itself seems impracticable in the circumstances without a careful examination of the needs of all the different tracts. We feel consequently that no direct statutory safeguard of this nature is possible. The other possibility is that the Governor in his discretion should set apart funds and that these funds should be outside the vote of the legislature. We feel that such a provision is likely to be repugnant to the provincial legislature.

We recommend however that the revenues derived from and the expenses incurred on the Scheduled Areas from the provincial budget should be shown separately so as to prevent the needs of these areas being overlooked through incorporation in the general items Such a separate statement will of course afford a better opportunity for scrutiny and criticism.

19. **GOVERNOR'S RESPONSIBILITY -**

In connection with financial safeguards the view was expressed that the formulation of a plan of improvement affords sufficient guarantee for the expenditure of funds .We are of the view that in the provisions corresponding to the Instrument of Instructions the Governor should be required to see that a suitable scheme of development is drawn up and implemented as far as possible (See Para. *17)

20. **TRIBAL MINISTER -**

Connected with the formulation of development schemes and the provision of adequate expenditure for the hill tracts is the need for the appointment of a separate Minister to give effect to the plans and to look after the interests of the aboriginals. The tribal population in the C. P., Orissa and Bihar forms a considerable proportion of the total population and on this ground alone the tribal shave a case for representation in the Provincial Government. In the C. P., the tribal population is nearly 18 per cent. In Orissa, almost a fifth of the population is tribal, and in Bihar there are over 5 millions of them constituting about14 per cent. Partly in order to provide representation for the tribals and in any case to see that adequate attention is paid to their administration we are of the view that there should be a separate Minister for the tribal areas and tribes in C. P., Orissa and Bihar and that this should be provided by statute. The Minister should be a tribal himself unless a suitable person cannot be found. We may add that the Government of Orissa have recognised that there should be a separate portfolio for the welfare of the backward classes under the new constitution.

21. **SERVICES -**

It has been pointed out that the tribals constitute an appreciable proportion of the population particularly in some Provinces. On this account, the policy of recruitment of a due proportion of aboriginals having regard to reasonable efficiency, into the Government services is justified and necessary and must be followed. Apart from this, however, it is necessary that there should be an adequate number of tribals in the services so that the constant complaints of mishandling by non-tribal Officials, particularly, of such servants as forest guards, constables or excise peons and clerks can be minimized. Moreover, it is only by adequate representation in the Government and local bodies' services that the tribal can gain the necessary confidence and status.

We do not consider that a separate service of tribal people is necessary or desirable for the Scheduled Areas, and we recommend that they should be recruited to a general cadre. This will enable them to come into contact with non-tribes people and we also consider that there is no objection to the posting of selected non-tribal officials to the Scheduled Areas. In fact, in the evidence before us, opinion has been practically uniform that there is no necessity for a special cadre of officials for the hill tracts and what is really required is selection of sympathetic officials for working in the hills. We would draw attention here to the importance of providing suitable accommodation and facilities for medical attention to officials serving in the scheduled areas. Malaria and other diseases constitute the scourge of these hill tracts and unless special attention is paid to the health of the staff it is unlikely that development schemes will make much headway. The provision of facilities for recreation and adequate compensatory allowances for officials posted to these areas should be kept in mind. Any tendency to treat these posts as penal posts or posts for the safe deposit of incompetents must be strongly deprecated.

22. **TRIBAL PANCHAYATS -**

We have recommended that simplified rules should be continued where they are in force in the Scheduled Areas for the trial of civil and criminal cases. Wherever trial institutions are still fairly vigorous, we would recommend that they should be utilised to try petty civil disputes and criminal cases. The establishment of the more advanced type of village panchayat is recommended wherever possible.

23. **SHIFTING CULTIVATION -**

Shifting cultivation or podu is practised mostly in the Koraput and Ganjam agency tracts of Orissa and in the similar agency tracts of Madras. In the Central Provinces it is prohibited by law and is not practised to any appreciable extent except in the Baiga Chak where it is permitted and in the Zamindaris. We have nothing to add to the recommendations of the Orissa Partially Excluded Areas Inquiry Committee. This method of cultivation should be eliminated, as soon as possible.

24. **PROHIBITION -**

We invite the attention of Provincial Governments to the recommendations made by Mr. Symington (Bombay) and the Orissa Partially Excluded Areas Committee. Temperance propaganda should be taken up as part of the welfare work. A feeling has been growing among aboriginals, particularly in the tracts of Bombay and the Central Provinces that prohibition is to their advantage, and this feeling should be fostered among all the tribals.

25. **LAND -**

The importance of protection for the land of the tribals has been emphasised earlier. All tenancy legislation which has been passed hitherto with a view to protecting the aboriginal has tended to prohibit the alienation of the tribals land to non-tribals. Alienation of any kind, even toot her tribals, may have to be prohibited or severely restricted in different stages of advancement are concerned. We find however that Provincial Governments are generally alive to this question and that protective laws exist. We assume that these will continue to apply and as we have made special provision to see that land laws are not altered to the disadvantage of the tribal in future, we do not consider additional restrictions necessary. As regards the allotment of new land for cultivation or residence however, we are of the view that the interests of the tribal need to be safeguarded in view of the increasing pressure on land everywhere. We have provided accordingly that the allotment of vacant land, belonging to the State in Scheduled Areas should not be made except in accordance with special regulations made by the Government on the advice of the Tribes Advisory Council.

26. **MONEY-LENDERS -**

Connected with the protection of the land is the need for prevention of exploitation by money-lenders. We consider it necessary that in the Scheduled Areas money-lenders should not be permitted at all and that at any rate they should be allowed to operate under licence and stringent control only.

27. **THE SCHEDULED AREAS -**

It has been pointed out that areas like Sambalpur, Angul and Darjeeling need no longer be treated as partially excluded areas. The U. P. Government are of the view that the Khat Haripur Bias should be detached from the Hill Sub-division. They have also recommended the removal of the Dudhi Partially Excluded Areas. The population of the partially excluded areas in the United Provinces is small and the Jaunsar Bawar pargana is not inhabited by people who are in an ethnic sense tribals. We have not recommended a Tribes Advisory Council for U. P. and we do not consider it necessary to schedule either of these areas. Similarly we do not consider it necessary to schedule the Spiti area of the Punjab. In all these tracts, it will be open to the Provincial Government to apply the provisions of part II of the law proposed by us. In Bombay, we consider that certain areas in the West Khandesh District and the partially excluded areas of the Broach and Panch Mahals District should henceforth be administered without any special provisions. The C. P. areas are retained as they are and in Chhota Nagpur we are provisionally of the view that only the three districts which have a majority of tribal should be scheduled. The schedule proposed is shown as Appendix D*.

On the other hand, there may be other areas which the Provincial Governments may like to bring under special administration. This can be done by the Provincial Government in their discretion. For the protection of the land of tribes line the Lepcha in Darjeeling the Provincial Government could make the appropriate provision of the chapter relating to the Scheduled areas applicable to the area concerned.

28. **DRAFT PROVISIONS -**

We enclose a draft of provisions contemplated by us in roughly legal form (Appendix C*).

A. V.THAKKAR

Chairman

D. N. SAMANTA.

THAKUR PHUL BHANU SHAH

RAJ KRUSHNA BOSE

JAIPAL SINGH

P. C. GHOSH.

[Annexure IV]

APPENDIX D

Part I - Excluded Areas

MADRAS

The Laccadive Islands (including Minicoy) and the Amindivi Islands.

BENGAL

The Chittagong Hill Tracts.

THE PUNJAB.

Spiti and Lahoul in the Kangra District.

Part II - Partially Excluded areas

MADRAS

The East Godavari Agency and so much of the Vizagapatam Agency as is not transferred to Orissa under the provisions of the Government of India (Constitution of Orissa) Order,1936.

BOMBAY

In the West Khandesh District, the Shahada, Nan durbar and Taloda Taluks, the Navapur Petha and the Akrani Mahal, and the villages belonging to the following Mehwassi Chiefs' namely, (1) the Parvi of Kathi, (2) the Parvi of Nal, (3) the Parvi of Singpur, (4) the Walwi of Gaohali, (5) the Wassawa of Chikhli, and (6) the Parvi of Navalpur.

The Satpura Hills reserved forest areas of the East Khandesh District.

The Kalvan Taluk and Peint Peth of the Nasik District.

The Dhahanu and Shahapur Taluks and the Mokhada and Umbergaon Pethas of the Thana District.

The Dohad Taluk and the Jhalod Mahal of the Broach and Panch Mahalas District.

BENGAL

The Darjeeling District.

The Dewanganj, Sribardi, Nalitabori, Haluaghat, Durgapur and Kalmakanda police stations of the Mymen singh District.

THE UNITED PROVINCES

The Jaunsar-Bawar Pargana of the Dehra Dun District.

The portion of the Mirzapur District south of the Kaimur Range.

BIHAR

The Chhota Nagpur Division.

The Santal Parganas District.

THE CENTRAL PROVINCES AND BERAR

In the Chanda District, the Ahiri Zamindari in the Sironcha Tahsil, and the Dhanora, Dudmala, Gewardha, Jhara papra, Khutgaon, Kotgal, Muramgaon, Palasgarh, Rangi, Sirsundi, Sonsari, Chandala, Gilgaon, Pai-Muranda and Potegaon Zamindar is in the Garchiroli Tahsil.

The Harrai, Gorakghat, Gorpani, Batkagarh, Bardagarh, Partabgarh (Pagara), Almod and Sonpur jagirs of the Chhindwara District, and the portion of the Pachmarhi jagirin the Chhindwara District.

The Mandla District.

The Pendra, Kenda, Matin, Lapha, Uprora, Chhuri andKorba Zamindaris of the Bilaspur District.

The Aundhi, Koracha, Panabaras and Ambagarh Chauki Zamindaris of the Drug District.

The Baihar Tahsil of the Balaghat District.

The Melghat Taluk of the Amraoti District.

The Bhainsdehi Tahsil of the Betul District.

ORISSA

The District of Angul.

The District of Sambalpur.

The areas transferred from the Central Provinces under the provisions of the Government of India (Constitution of Orissa) Order, 1936.

The Ganjam Agency Tracts.

The areas transferred to Orissa under the provisions of the aforesaid Order from the Vizaga patam Agency in the Presidency of Madras.

APPENDIX D

[Annexure V]

I

Statement showing the total population and tribal population of provinces:-

Name of province	Toatl population	Tribal population	percentage
Madras	49,341,810	562,029	1.1
Bombay	20,849,840	1,614,298	7.7
Bengal	60,306,525	1,889,389	3.1
United provinces	55,020,617	289,422	.53
Punjab	28,418,819	..	..
Bihar	36,340,151	5,055,647	13.9
C. P and Berar	16,813,584	2,937,364	17.5
Assam	10,204,733	2,484,996	24.4
N.W.F.P	3,038,067	..	..
Orissa	8,728,544	1,721,006	19.7
Sind	4,535,008	33,819	0.81
Ajmer-Merwara	583,693	91,472	15.6
Andaman and Nicobar	33,768	11,076	32.8
Baluchistan	501,631	3	..
Coorg	168,726	19,723	11.7
Delhi	917,939	..	..

II

Excluded and Partially Excluded Areas Population

(Provincial Totals)

Name of province	Areas in SQ. Miles Total population	Aboriginal or Backward class	Percentage
	Excluded Areas-		
	962 18,357	18,335	99.9
Madras	Sq.Miles+		
	201 3/4		
	acres.		
	Partially Excluded Areas-		
	6,792.31 493,026	333,372*	67.6
	Excluded Areas-		
	Nil		
Bombay			
	Partially Excluded Areas-		

	6,697+	1,125,471	663,528	58.9
	Excluded Areas-			
	5,007	247,053	233,392	94.5
Bengal				
	Partially Excluded Areas-			
	2,518	977,665	190,112	19.4
	Excluded Areas-			
	Nil			
United provinces				
	Partially Excluded Areas-			
	2,250	202,000	143,600	71.1
	Excluded Areas-			
	4,695	11,700	11,700	100
			(Tibetans)	
Punjab				
	Partially Excluded Areas-			
	Nil			
Name of province	Areas in sq miles	Total population	Aboriginal or Backward class	percentage
	Excluded Areas-			
	Nil			
Bihar				
	Partially Excluded Areas-			
	32,592	9,750,846	4,451,109	45.6
	Excluded Areas-			
	Nil			
Central provinces and Barer				
	Partially Excluded Areas-			
	19,831	2,939,416	1,560,104	53.07
GRAND TOTAL	100,248	17,233,205	8,435,190	48.95

III

Statement Showing Total Population and Tribal Population By Districts

Province or District	Total population	Tribal population	Percentage
MADRAS PROVINCE			
British Territory	49,341,810	562,029	1.14
Vizagapatam	3,845,944	286,923	7.46
Agency	421,437	140,721	63.55

plains	3,624,507	146,202	4.03
Godavari East	2,161,863	101,532	4.70
Agency	271,569	97,200	35.79
Plains	1,890,294	4,332	.23
Godavari west	1,380,088	1,999	.14
Kistna	1,444,294	345	.02
Guntur	2,277,283	2,246	.10
Nellore	1,617,026	15	..
Cuddapah	1,056,507	19	..
Kurnool	1,146,250	5,878	.51
Bellary	1,051,235	548	..
Anantapur	1,171,419	4	..
Madras	777,481	2	..
Chingleput	1,823,955	39	..
Chittoor	1,632,395	..	..
North Arcot	2,577,540	..	..
Salem	2,869,226	6	..
Coimbatore	2,809,648	12,440	.44
South Arcot	2,608,753	..	..
Tanjore	2,563,575	213	..
Trichinopoly	2,194,091	24	..
Madura	2,446,601	8	..
Ramnad	1,979,643	..	..
Tinnevelley	2,244,543	161	..
Nilgiris	209,709	62,951	30.20
Malabar	3,929,425	34,366	.87
South Kanara	1,523,516	52,312	3.43
BOMBAY PROVINCE			
Province of Bombay Proper	20,849,840	1,614,298	7.74
Bombay city	1,489,883	4,606	.31
Northern Division	5,276,593	874,103	16.56
Ahmedabad	1,372,171	8,730	.64
Ahmedabad City	591,267	5,744	.97
Broach& panch Mahals	924,527	268,617	29.06
Kaira	914,957	5,161	.57
Surat	881,058	320,575	36.37
Thana	932,733	257,130	27.57
Bombay suburban	251,147	13,890	5.53

Central Division	8,197,398	667,828	8.15
Ahmednagar	1,112,229	41,146	3.60
East Khandesh	1,327,722	61,054	4.60
West Khandesh	912,214	357,719	39.21
Nasik	1,113,901	167,280	15.02
poona	1,359,408	36,835	2.71
Satara	1,327,249	11,014	.08
Sholapur	1,014,670	2,780	.21
Southern Division	5,885,971	67,761	1.15
Belgaum	1,225,428	1,674	.14
Bijapur	975,982	1,008	.10
Dharwar	1,210,016	1,414	.12
Kanarah	441,157	197	.04
Kolaba	668,922	62,170	9.29
Ratnagiri	1,373,466	1,298	.09
BENGAL PROVINCE			
British Territory	60,306,525	1,889,389	3.13
Burdwan division	10,287,369	706,729	6.87
Burdwan	1,890,732	151,355	8.0
Birbhum	1,048,317	74,084	7.07
Bankura	1,289,640	154,246	11.96
Midnapur	3,190,647	253,625	7.95
Hooghly	1,377,729	69,500	5.04
Howrah	1,490,304	3,919	.26
Presidency Division	12,817,087	99,235	.77
24-parganas	3,5336,386	51,085	1.44
Calcutta	2,108,891	1,688	.08
Nadia	1,759,846	12,671	.72
Murshidabad	1,640,530	26,138	1.59
Jessore	1,828,216	4,978	.27
Khulna	1,943,218	2,675	.14
Rajshahi Division	12,040,465	776,729	6.44
Rajshahi	1,571,750	67,298	4.28
Dinajpur	1,926,833	182,892	9.49
Jalpaiguri	1,089,513	279,296	25.63
Darjeeling	376,369	141,301	37.54
Rangpur	2,877,847	18,200	.63
Bogra	1,260,463	14,387	1.14

Pabna	1,705,072	6,906	.45
Malda	1,232,618	66,449	5.39
Dacca Division	16,683,714	65,398	.39
Dacca	4,222,143	4,029	.10
My men singh	6,023,758	59,722	.99
Faridpur	2,888,803	1,363	.05
Bakarganj	3,549,010	284	.01
Chittagong Division	8,477,890	241,298	2.85
Tippera	3,860,139	1,524	.04
Noakhali	2,217,402	34	....
Chittagong	2,153,296	6,348	.29
Chittagong Hill tracts	247,053	233,392	94.47
UNITED PROVINCES			
British Territory	55,020,617	289,422	.53
Agra Province	40,906,147	289,244	.71
Meerut Division	5,716,451	70	....
Dehra Dun	266,244	....	....
Saharanpur	1,179,643	....	....
Muzaffarnagar	1,056,759	....	....
Meerut	1,896,582	....	....
Bulandshahar	1,317,223	70	....
Agra Division	5,326,768	79	....
Aligarh	1,372,641	1	....
Muttra	806,992	....	...
Agra	1,289,774	....	.....
Etah	984,760	78	.01
Rohilkhand Division	6,195,996	57	....
Bareilly	1,176,197	28	....
Bijnor	910,223	11	....
Budaun	1,162,322	....	....
Moradabad	1,473,151	17	....
Shahjahanpur	983,385	1	....
Pilibhit	490,718	....	....
Allahabad Division	6,014,813	19,139	.32
Farrukhabad	955,377	47	...
Etawah	883,264	143	.02
Cawnpore	1,556,247	1,083	.70
Fatehpur	806,944	241	.03

Allahabad	1,812,981	17,625	.97
Jhansi Division	2,553,492	26,439	1.04
Jhansi	773,002	12,494	106
Jalaun	482,384	6,361	1.31
Hamirpur	575,538	7,584	1.32
Banda	722,568	....	...
Benares Division	5,545,257	141,661	2.55
Benares	1,218,629	21,152	1.74
Mirzapur	899,929	43,383	4.82
Jaunpur	1,387,439	3,353	.24
Ghazipur	985,380	21,641	2.20
Ballia	1,053,880	52,133	4.95
Gorakhpur Division	7,972,108	101,746	1.28
Gorakhpur	3,963,574	99,076	2.50
Basti	2,185,641	83	...
Azamgarh	1,822,893	2,587	.14
Kumaon Division	1,581,262	53	...
Nainital	291,861	...	...
Almora	687,286	...	...
Garhwal	602,115	53	.01
Oudh Province	14,114,470	178	...
Lucknow Division	6,530,932	7	...
Lucknow	949,728	7	...
Uanao	959,542	...	...
Rae Bareli	1,064,804	...	...
Sitapur	1,293,554	...	...
Hardoi	1,239,279	...	...
Kheri	1,024,025	...	...
Fyzabad Division	7,583,538	171	...
Fyzabad	1,319,425	157	.01
Gonda	1,719,644	...	...
Bahraich	1,240,569	...	...
Sultanpur	1,100,368	14	...
Partapgarh	1041,024	...	...
Bara Banki	1,162,508	...	...
BIHAR PROVINCE			
British Territory	36,340,151	5,055,647	13.91
Patna Division	7,265,950	300,004	4.12

Patna	2,162,008	12,722	.59
Gaya	2,775,361	258,032	9.33
Shahabad	2,328,581	29,250	1.26
Tirhut Division	11,959,827	31,378	.35
Saran	2,860,537	18,314	.64
Champaran	2,397,569	20,086	.83
Muzaffarpur	3,244,651	1,996	.05
Darbhanga	3,457,070	982	.03
Bhagalpur Division	9,598,025	1,393,041	14.45
Monghyr	2,564,544	53,421	2.08
Bhagalpur	2,408,879	104,879	4.35
Purnea	2,390,105	104,856	4.38
Santal Parganas	2,234,497	1,129,885	50.56
Chhota Nagpur Division	7,516,349	3,321,224	44.19
Hazaribagh	1,751,339	478,253	27.31
Ranchi	1.675,413	1,173,142	70.02
Palamau	912,734	323,106	35.40
Manbhum	2,032,146	678,126	33.37
Singhbhum	1,144,717	668,597	58.41
CENTRAL PROVINCE AND BERAR			
British territory	16,113,584	2,937,364	17.47
Central provinces	13,208,718	2,663,959	20.16
Jubbulpore Division	3,691,112	789,335	21.39
Saugor	939,068	82,107	8.74
jubbalpore	910,603	166,958	18.33
Mandla	504,580	304,099	60.27
Hoshangabad	823,585	123,621	15.01
Nimar	513,276	112,570	21.93
Nagpur Division	3,924,985	854,939	21.78
Betul	438,342	168,229	38.38
Chhindwara	1,034,040	395,781	38.28
Wardha	519,330	51,848	9.98
Nagpur	1,059,989	66,471	6.27
Chanda	873,284	172,610	19.77
Chattisgarh Division	5,592,621	1,019,6665	18.23
Bhandara	963,225	115,173	11.96
Balaghat	634,350	138,693	21.86
Raipur	1,516,686	273,260	17.01

Bilaspur	1,549,509	287,680	18.56
Durg	928,851	104,859	20.91
Berar Provinvce	3,604,866	273,405	7.86
Amraoti	988,524	63,210	6.39
Akola	907,742	30,456	3.36
Buldana	820,862	19,849	2.42
Yeotmal	887,738	159,890	18.01
ASSAM PROVINCE			
British Territory	10,204,733	2,484,996	24.35
Surma valley and Hill division	4,218,875	683,546	16.20
Cachar	641,181	178,264	27.80
Sylhet	3,116,602	69,907	2.24
Khasi & Jaintia Hills (British)	118,665	103,567	87.28
Naga Hills	189,641	184,766	97.43
Lushai Hills	152,786	147,042	96.24
Assam Valley Division	5,919,228	1,757,664	23.46
Goalpara	1,014,285	237,993	15.66
Kamrup	1,264,200	197,926	35.39
Darrang	736,791	260,748	23.43
Nowgong	710,800	166,525	33.57
Sibsagar	1,074,741	360,768	37.46
Lakhimpur	894,842	335,230	88.78
Goaro Hills	223,569	198,474	66.49
Sadiya Frontier Tracts	60,118	39,974	58.54
Balipara Frontier Tracts	6,512	3,812	58.54
ORSSA PROVINCE			
British Territory	8,728,544	1,721,006	19.72
Cuttack	2,431,427	55,280	2.27
Balasore	1,029,430	29,757	2.69
Puri	1,101,936	29,555	2.68
Sambalpur	1,182,622	232,095	19.71
Ganjam	1,855,264	433,687	23.38
Plains	1,392,188	59,658	4.29
Agency	463,076	374,029	80.77
Koraput	1,127,862	940,632	83.40
SIND PROVINCE			
British Territory	4,535,008	36,819	0.81
Dadu	389,380	154	0.31

Hyderabad	758,748	769	0.01
Karachi	713,900	884	0.12
Larkana	511,208	.....	.....
Nawabshah	584,178	1,326	0,23
Sukkur	692,556	51	0.01
Thar Parkar	581,004	33,635	5.79
Upper Sind Frontier	304,034	.....	.....
AJMER-MERWARA	583,693	91,472	15.67
ANDAMANS & NICOBARS			
Andamans	33,768	11,076	32.80
Nicobars	21,316	.....	.....
Coorg	12,452	11,076	88.95
	168,726	19,723	11.69

IV

Schedule 13 to Government of India (Provincial Legislative Assemblies) Order, 1936

BACKWARD TRIBES

PART I - MADRAS

1. Bagata.

2. Bottadas - Bodo Bhottada, Muria Bhottada and Sano Bhottada.

3. Bhumias - Bhuri Bhumia and Bodo Bhumia.

4. Bissoy - Barangi Jodia, Bennangi Daduva, Frangi, Hollar, Jhoria, Kollai, Konde, Paranga, Penga-Jodia, Sodo Jodia and Takora.

5. Dhakkada.

6. Domb - Andhiya Dombs, Audiniya Dombs, Chonel Dombs, Christian Dombs, Mirgani Dombs, Oriya Dombs, Ponaka Dombs, Telaga and Ummia.

7. Gadabas - Boda Gadaba, Cerlam Gadana, Franji Gadaba, Jodia Gadaba, Olaro Gadaba, Pangi Gadaba and Paranga Gadaba.

8. Ghasis - Boda Ghasis and San Ghasis.

9. Gondi - Modya Gond and Rajo Gond.

10. Goundus - Bato, Bhirithya, Dudhokouria, Hato, Jatako and Joria.

11. Kosalya Goudus - Bosothoriya Goudus, Chitti Goudus, Dangayath Goudus, Doddu Kamariya, Dudu

Kamaro, Ladiya Goudus and Pullosoriay Goudus.

12. Magatha Goudus - Bernia Goudu, Boodo Magatha, Dongayath Goudu, Ladya Goudu, Ponna Magatha and Sana Magatha.

13. Serithi Goudus.

14. Holva.

15. Jadapus.

16. Jatapus.

17. Kammaras.

18. Khattis - Khatti, Kommaro and Lohara.

19. Kodu.

20. Kommar.

21. Konda Dhoras.

22. Konda Kapus.

23. Kondareddis.

24. Kondhs - Desaya Kondhs, Dongria, Kondhs, Kuttiya Kondhs, Tikiria Kondhs and Yenity Kondhs.

25. Kotia - Bartikar, Bentho Oriya, Dhulia or Dulia, Holva Paiko, Putiay, Sanrona and Sidho Paiko.

26. Koya or Gound with its sub-castes, Raja or Rasha Koyas, Lingadhari Koyas, Koyas (ordinary) and Kottu Koyas.

27. Madigas.

28. Malas or Agency Malas or Valmikies.

29. Malis - Worchia Malis, Paiko Malis and Pedda Malis.

30. Maune.

31. Manna Dhora.

32. Mukha, Dhora-Nooka Dhora.

33. Muli or Muliya.

34. Muria.

35. Ojulus or Metta Komsalies.

36. Omanaito.

37. Paigarapu.

38. Palasi.

39. Palli.

40. Pentias.

41. Porjas - Bodo, Bonda, Daruva, Didua, Jodia, Mundili, Pengu/Rvdi and Saliya.

42. Reddi or Dhoras.

43. Relli or Sachandi.

44. Ronas.

45. Savaras - Kapu Savaras, Khutto Savaras and Maliya Savaras.

PART II - BOMBAY

1. Barda.
2. Bavacha.
3. Bhil
4. Chodhra.
5. Dhanka
6. Dhodia.
7. Dubla.
8. Gamit or Gamta.
9. Gond.
10. Kathodi, or Katkari.
11. Konkana.
12. Koli Mahadeb.
13. Mavchi.
14. Naikda or Nayak.
15. Pardhi, including Advichincher or Phanse Pardhi.
16. Patelia.
17. Pomla.
18. Powara
19. Rathawa.
20. TadviBhill.
21. Thakur.
22. Valvai.
23. Varli.
24. Vasava.

PART III - BIHAR

A person shall be deemed to be a member of a backward tribe if and only if -

(a) he is resident in the Province and belongs to any of the following tribes: -

1. Asur.
2. Banjara.
3. Bathudi.
4. Bentkar.
12. Gond.
13. Gorait.
14. Ho.
15. Jaung.
23. Kora.
24. Korwa.
25. Mahli.
26. Mal Paharia.

5. Binghia.
6. Birhor.
7. Birjia.
8. Chero.
9. Chik Baraik.
10. Gadaba.
11. Ghatwar.
16. Karmali.
17. Kharia.
18. Kharwar.
19. Khetauri.
20. Khond.
21. Kisan.
22. Koli.
27. Munda.
28. Oraon.
29. Parhiya.
30. Santal.
31. Sauria Paharia.
32. Savar.
33. Tharu.

(b) he is resident in any of the following districts or police stations, that is to say the districts of Ranchi, Singhbhum, Hazaribagh and the Santal Parganas and the police stations of Arsha, Balarampur, Jhalda, Jaipur, Baghmundi, Chandil, Ichagarh, Barahabhum, Patamada, Banduan and Manbazar in the district of Manbhum and belongs to one of the following tribes: -

1. Bauri.
2. Bhogta.
3. Bhuiya.
4. Bhumji.
5. Ghasi.
6. Pan.
7. Rajwar.
8. Turi.

(c) he is resident in the Dhanbad sub-division or any of the following police stations in the Manbhum district, that is to say, Purulia, Hura, Pancha, Ragunathpur, Santuri, Nituria, Para, Chas, Chandan-Kiari and Kashipur, and belongs to the Bhumi tribe.

PART VI - CENTRAL PROVINCES

1. Gond.
2. Kawar.
3. Maria.
4. Muria.
5. Halba.
6. Pardhan.
7. Oraon.
8. Binjhwar.
9. Andh.
10. Bharia Bhumia
11. Koti.
13. Baiga.
14. Kolam.
15. Bhil.
16. Bhuinhar.
17. Dhanwar.
18. Bhaina.
19. Parja.
20. Kamar.
21. Bhunjia.
22. Nagarchi.
23. Ojha.
25. Kol.
26. Nagasia.
27. Sawara.
28. Korwa.
29. Majhwar.
30. Kharia.
31. Saunta.
32. Kondh.
33. Nihal.
34. Birhaul(or Biror).
35. Rautia.

12. Bhattra.
24. Korku.
36. Pando.

PART V - ORISSA

A person shall be deemed to be a member of backward tribe if and only if -

(a) he is resident in the Province and belongs to any of the following tribes: -

1. Bagata.
2. Banjari.
3. Chenchu.
4. Gadaba.
5. Gond.
6. Jatapu.
7. Khonda (Kond)
8. Konda-Dora.
9. Koya.
10. Paroja.
11. Saora (Savar).
12. Oraon.
13. Santal.
14. Kharia.
15. Munda.
16. Banjara.
17. Bingjia.
18. Kisan.
19. Koli.
20. Kora.

(b) he is resident in any of the following areas, that is to say, the Koraput and Khondmals districts and the Ganjam Agency and belongs to either of the following tribes: -

1. Dom or Dombo.
2. Pan or Pano.

(c) he is resident in the Sambalpur district and belongs to any of the following tribes: -

1. Bauri.
2. Bhuiya.
3. Bhumij.
4. Ghasi.
5. Turi.
6. Pan or Pano.

[Annexure VI]

APPENDIX D

Statutory Recommendations

PART I

A. The Provincial Government may at any time by notification apply the provisions of Part II of this Chapter or of any of its sections to such areas as may be specified in the notification, being areas in habited by any of the tribes named in Schedule A (and hereinafter referred to as "the tribes").

B. (1) The number of representatives of the tribes in the Provincial Legislature shall not be less in proportion to the total number of representatives than the population of the tribes in the Province bears to its total population.

(2) In the Federal Legislature (House of the People) there shall be such number of representatives of the tribes of each Province as may be in accordance with the total population of the tribes in that Province on the scale prescribed in Section.

C. The election of the representatives of the tribes to the Provincial Legislature shall be by universal adult franchise.

PART II

D. As from the commencement of this Constitution the provisions of this Part shall apply to the areas specified in Schedule B to this Chapter (and hereinafter referred to as "the Scheduled Areas").

E. (1) The Provincial Government may, if so advised by the Tribes Advisory Council, by notification direct that any law passed by the Legislature shall not apply to a Scheduled Area or shall apply with such modifications as it may prescribe:

Provided that the Provincial Government shall, if so advised by the Tribes Advisory Council, direct that any law passed by the Provincial legislature in respect of the following subjects, that is to say, (i) all social matters including inheritance of property; (ii) occupation of land (not being forest reserved under the provisions of the Indian Forest Act or other law applicable) including tenancy laws, allotment of land, reservation of land for any purpose; (iii) village management, including the establishment of village panchayats, shall not apply to a Scheduled Area or shall apply with such modifications as it may prescribe with the concurrence of the said Council.

(2) The Provincial Government may, in consultation with the Tribes Advisory Council, make special regulations for a Scheduled Area on any matter not provided for by a law in force in the Area.

F. Vacant land in a Scheduled Area which is the property of the State shall not be allotted to a non-tribal except in accordance with rules made by the Provincial Government in consultation with the Tribes Advisory Council.

G. (1) The Provincial Government may, and if so advised by the Tribes Advisory Council shall, direct that no person shall carry on business in a Scheduled Area as a moneylender except under and in accordance with the conditions of a licence issued by it or by an officer authorised by it in this behalf.

(2) Any contravention of an order issued by the Provincial Government under sub-section (1) of this Sections hall be an offence.

H. The revenue and expenditure pertaining to a Scheduled Area which is credited to or met from the funds of the Provincial Government shall be shown separately in the annual financial statement of the Provincial Government.

I. There shall be paid out of the revenues of the Federation such capital and recurring sums as may be necessary to enable the Provincial Government to meet the cost of such schemes of development as may be undertaken with the approval of the Federal Government for the purpose of raising the level of administration of the Scheduled Areas and all round development of the tribes to that of the rest of the province.

J. (1) There shall be established as soon as may be after the commencement of this Constitution in the Provinces of Madras, Bombay, West Bengal, Bihar, C. P. and Berar and Orissa, a Tribes Advisory Council to perform such functions as may be prescribed in this Constitution and to advise the Provincial Government from time to time on all matters pertaining to the administration and welfare of the tribes and of the Scheduled Areas.

(2) The Tribes Advisory Council shall consist of not less than ten and not more than twenty-five members of whom three-fourths shall be elected representatives of the tribes in the Provincial Legislature (Lower House).

(3) The Provincial Government may make rules prescribing or regulating as the case may be: -

(a) the number of members of the Council, the mode of appointment of the members and of the Chairman or other office-bearers;

(b) the conduct of meetings and procedure in general;

(c) relations with officials and local bodies;

(d) all other incidental matters.

K. (1) The Federal Government may, at any time, and shall after the expiry of ten years from the commencement of this Constitution, institute a Commission to report on the administration of the tribes and the Scheduled Areas in general.

(2) The Federal Government may at any time require the Provincial Government to draw up and execute such schemes as it considers essential for the welfare of the tribes.

L. In the Provinces of Bihar, the Central Provinces and Berar and Orissa there shall be a separate Minister for Tribal Welfare:

Provided that the Minister may hold charge simultaneously of welfare work pertaining to Scheduled Castes or other backward classes or any other work.

M. Notwithstanding anything in the Criminal Procedure Code 1898, or the Civil Procedure Code (Act V of 1908), the Provincial Government may make special regulations for a Scheduled Area for the trial of offences other than those punishable with imprisonment for five years or more or with death or transportation for life and of disputes other than those arising out of special laws respectively and may empower headmen or panchayats to try such cases.

[Annexure IX]

APPENDIX D

Schedule A

PART I - MADRAS

1. Bagata.

2. Bottadas - Bodo Bhottada, Muria Bhottada and Sano Bhottada.

3. Bhumias - Bhuri Bhumia and Bodo Bhumia.

4. Bissoy - Bharangi Jodia, Bennangi Daduva, Frangi, Hollar, Jhoria, Kollai, Konde, Paranga, Penga Jodia, Sodo Jodia and Takora.

5. Dhakkada.

6. Domb - Andhiya Dembs, Audiniya Dombs, Chonel Dombs, Christian Dombs, Mingani Dombs, Oriya Dombs, Ponaka Dombs, Telag and Ummia.

7. Gadabas - Boda Gadaba, Cerlam Gadaba, Fanji Gadaba, Jodia Gadaba, Olaro Gadaba, Pangi Gadaba and Paranga Gadaba.

8. Ghasis - Boda Ghasis and San Ghasis.

9. Gondi - Modya Gond and Rajo Gond.

10. Goundus - Bato, Bhirithya, Dudhokouria, Hato, Jatako and Joria.

11. Kosalya Goudus - Bosothoriya Goudus, Chitti Goudus, Dangayath Goudus, Doddu Kamariya, Dudu Kamaro, Ladiya Goudus and Pullosoriay Goudus.

12. Magatha Goudus - Bernia Goudu, Boodo Magatha, Dongayath Goudu Ladya Goudu, Ponna Magatha and Sana Magatha.

13. Serithi Goudus.

14. Holva.

15. Jadapus.

16. Jataus.

17. Kammaras.

18. Khattis - Khatti, Kammaro and Lohara.

19. Kodu.

20. Kommar.

21. Konda Dhoras.

22. Konda Kapus.

23. Kondareddis.

24. Kondhs - Desaya Kondhs, Dongria Kondhs, Kuttiya Kondhs, Tikiria Kondhs and Yenity Kondhs.

25. Kotia - Bartikar, Bentho Oriya, Dhulia or Dulia, Holva Paiko, Putiay, Sanrona and Sidho Paiko.

26. Koya or Gound with its sub-sects, Raja of Rasha Koyas, Lingadhari Koyas, Koyas (ordinary) and Kottu Koyas.

27. Madigas.

28. Malas or Agency Malas or Valmikies.

29. Malis - Worchia Malis, Paiko Malis and Pedda Malis.

30. Maune.

31. Manna Dhora.

32. Mukha Dhora - Nooka Dhora.

33. Muli or Muliya.

34. Muria.

35. Ojulus or Metta Komsalies.

36. Omanaito.

37. Paigarapu.

38. Palasi.

39. Pali.

40. Pentias.

41. Porjas - Bodo. Bonda, Daruva, Didua, Jodia, Mundili, Pengu Pydi and Saliya.

42. Reddi or Dhoras.

43. Relli or Sachandi.

44. Ronas.

45. Savaras - Kapu Savaras, Khutto Savaras and Maliya Savaras.

46. The inhabitants of the Laccadive, Minicoy and Amindivi Islands.

PART II - BOMBAY

1. Barda.

2. Bavacha.

3. Bhil.

4. Chodhra.

5. Dhanka.

6. Dhodia.

7. Dublia.

8. Gamit or Gamta.

9. Gond.

10. Kathodi or katkari.

11. Konkna.

12. Koli Mahadeb.

13. Mavchi.

14. Naikda or Nayak.

15. Pardhi, including Advichincher or Phanse Pardhi.

16.Patelia.

17. Pomla.

18. Powara.

19.Rathawa.

20. Tadvi Bhill.

21. Thakur.

22. Valvai.

23. Varli.

24. Vasava.

PART III - BIHAR

(a) A resident of the province belonging to any of the following tribes: -

1. Asur.

12. Gond.

23. Kora.

2. Bajra.
3. Bathudi.
4. Bentkar.
5. Binjhia.
6. Birhor.
7. Birjia.
8. Chero.
9. Chik Baraik.
10. Gadaba.
11. Ghatwar.
13. Gorait.
14. Ho.
15. Juang.
16. Karmali.
17. Kharia.
18. kharwar.
19. Khetauri.
20. Khond.
21. Kisan
22. Koli.
24. Korwa.
25. Mahli.
26. Mal Paharia.
27. Munda.
28. Oraon.
29.Parhiya.
30. Santal.
31. Sauria Paharia.
32. Savar.
33. Tharu.

(b) a resident in any of the following districts or police stations, that is to say, the districts of Ranchi, Singhbhum, Hazaribagh and the Santal Parganas, and the police stations of Arsha, Balarampur, Jhalda, Jaipur, Baghmundi, Chandil, Ichagarh, Barahabhum, Patamda Banduan and Manbazar in the district of Manbhum, belonging to any of the following tribes: -

1. Bauri.
2. Bhagta.
3. Bhuiya.
4. Bhumij.
5. Ghasi.
6. Pan.
7. Rajwar.
8. Turi.

(c) a resident in the Dhanbad Sub-Division or any of the following police stations in the Manbhum District, that is to say, Purulia, Hura, Pancha, Raghunathpur, Santuri, Nituria, Para, Chas, Chandan-Kiari and Khasipur belonging to the Bhumij tribe.

PART IV - CENTRAL PROVINCES

1. Gond.
2. Kawar.
3. Maria.
4. Muria.
5. Halba.
6. Pardhan.
7. Oraon.
8. Bimjhwar.
13. Baiga.
14. Kolan.
15. Bhil.
16. Bhuinhar.
17. Dhanwar.
18. Bhaina.
19. Parja.
20. Kamar.
25. Kol.
26.Nagasia.
27. Sawara.
28. Korwa.
29.Majhwar.
30. Kharia.
31. Saunta.
32. Kondh.

9. Andh.

10. Bharia-Bhumia.

11. Koti.

12. Bhattra.

21. Bhunjia.

22. Nagarchi.

23. Ojha.

24. Korku.

33. Nihal.

34. Birhaul(or Birhor.)

35. Rautia.

36. Pando.

PART V - ORISSA

(a) A resident of the province belonging to any of the following tribes: -

1. Bagata.

2. Banjari.

3. Chenchu.

4. Gadaba.

5. Gond.

6. Jatapu.

7. Khand (Kond).

8. Konda-Dora.

9. Koya.

10. Paroja.

11. Saora (Savar).

12. Oraon.

13. Santal.

14. Kharia.

15. Munda.

16.Banjara.

17.Binjhia.

18. Kisan.

19. Koli.

20. Kora

(b) a resident of any of the following areas, that is to say, the Koraput and Khondmals Districts and the Ganjam Agency belonging to either of the following tribes: -

1. Dom or Dombo.

2. Pan or Pano.

(c) a resident of the Sambalpur District belonging to any of the following tribes: -

1. Bauri.

2. Bhuiya.

3. Bhumij.

4. Ghasi.

5. Turi.

6. Pan or Pano.

PART VI - BENGAL

1. Botia.

2. Chakma.

3. Kuki.

4. Lepcha.

5. Munda.

6. Magh.

7. Mro.

8. Oraon.

9. Santal.

10. Tippera.

11. Any other tribe notified by the Provincial Govt.

PART VII - UNITED PROVINCES

1. Bhuinya.
2. Baiswar.
3. Baiga.
4. Gond.
5. Kharwar.
6. Kol.
7. Ojha.
8. Any other tribe notified by the Provincial Govt.

Schedule B

MADRAS

The Laccadive Islands (including Minicoy) and the Amindivi Islands.

The East Godavari Agency and so much of the Vizagapatam Agency as is not transferred to Orissa under the provisions of the Government of India (Constitution of Orissa) Order,1936.

BENGAL

The Chittagong Hill Tracts.

BOMBAY

In the West Khandesh District: - The Navapur Petha, the Akrani Mahal and the villages belonging to the following Mehwassi Chiefs: (1) the Parvi of kathi, (2) the Parvi of Nal, (3) the Parvi of Singpur, (4) the Walwi of Gaohali, (5)the Wassawa of Chikhli and (6) the Parvi of Navalpur.

In the East Khandesh District: - The Satpura Hills Reserved Forest Areas.

In the Nasik District: - The Kalvan Taluk and Peint Peth.

In the Thana District: - The Dahanu and Shahpur Talukasand Mokhala and Umbergaon Pethas.

BIHAR

The Ranchi and Singh hum districts and the Latehar Sub-division of the Palamau district of the Chota Nagpur Division.

The Santal Paraganas District, excluding the Godda and Deogarh sub-divisions.

THE CENTRAL PROVINCES AND BERAR

In the Chanda District, the Ahiri Zamindari in the Sironcha Tahsil and the Dhanora, Dudmala, Gewardha, Jharapapra, Khutgaon, Kotgal, Muramgaon, Palasgarh, Rangi, Sirsundi, Sonsari, Chandala, Gilgaon, Pai-Muranda and Potegaon Zamindaris in the Garchiroli Tahsil.

The Harrai, Gorakghat, Gorpani, Batkagarh, Bardagarh, Partabgarh (Pagara), Almod and Sonpur Jagirs of the Chhindwara District, and the portion of the Pachmarhi jagirin the Chhindwara District.

The Mandla District.

The Pendra, Kendra, Matin, Lapha, Uprora, Chhuri andKorba Zamindaris of the Bilaspur District.

The Aundhi, Koracha, Panabaras and Ambagarh Chauki Zamindaris of the Drug District.

The Baihar Tahsil of the Balaghat District.

The Melghat Taluk of the Amraoti District.

The Bhainsdehi Tahsil of the Betul District.

ORISSA

The Ganjam Agency Tracts including Khondmals.

The Koraput District.

MINUTE OF DISSENT

Scheduled Areas

I regret I must submit a minute of dissent in regard to the "Scheduled areas" for the Chhota Nagpur Plateau. I cannot agree to the elimination of the Districts of Manbhum, Hazaribagh and Palamau which, even according to the unreliable 1941 Census, contain 678, 126, 478, 253 and 323,106 Adibasis respectively, that is, a total of 1,479,485 Adibasis for the three Districts. I cannot see how I can agree to the demolition of the economic, geographical and ethnic unity and entity of the Chhota Nagpur Division. It is not right that we should give an *ex parte* verdict and change the *status quo* of these three Districts.

JAIPAL SINGH

The 19th August 1947.

[Annexure VIII]

APPENDIX D

INTERIM REPORT OF THE EXCLUDED AND PARTIALLY EXCLUDED AREAS (OTHER THAN ASSAM) SUB-COMMITTEE

Summary of Recommendations

1. Tribes who live in the non-excluded areas are part of the problem and the tribes as a whole should be treated as a minority. Tribals should have reserved seats in a joint electorate based on adult franchise in proportion to their population. One representative each is recommended for the Laccadive, Amindivi and Minicoy islands respectively in the Madras Legislature and one for the Lahaul and Spiti Waziris in the East Punjab Legislature [Para. *9 and Sections A and B (1) of Appendix C]

2. It will be necessary to provide for the exclusion of unsuitable legislation in such matters as land, village management and social customs in certain areas inhabited predominantly or to an appreciable extent by tribals. These areas will be known as Scheduled Areas (Para. *10).

3. Legislation in such matters as land and social customs should not be applied to Scheduled Areas if the Tribes Advisory Council advises to the contrary (Paras.*11and 12 and Section E of Appendix C).

4. Simplified procedure should be continued for the disposal of petty criminal and civil cases (Para. *13 and Section M).

5. Seats should be reserved in the Federal Legislature on the basis of the tribal population of the province. A Tribal Advisory Council should be set up with a minimum often and a maximum of 25 members in Madras, Bombay, Bengal, Bihar, C. P. and Orissa (Para. *15 and Section J of Appendix C).

6. There should be provision for the Federal Government to institute a special commission to enquire into the progress of plans of development and also into the conditions of the Scheduled Areas and tribals in general [Para. *16 and Section K (1) of Appendix C].

7. It will be necessary for the Central Government to come to the assistance of Provincial Governments for the execution of schemes of development by providing the necessary funds. The Central Government should also be in a position to require the Provincial Governments to draw up schemes for the Scheduled Areas (Para. *17 and Sections I and K (2) of Appendix C).

8. The revenues derived from and the expenses incurred on the Schedule Areas from the provincial budget should be shown separately in the annual financial statement of the province (Para. *18 and Section H of Appendix C).

9. It should be the Governor's responsibility to see that schemes of development are drawn up and implemented. (Para. *19).

10. There should be a separate Minister for Tribal Welfare in C. P. Orissa and Bihar, and provision for this should be contained in the statute. (Para. *20 and Section L of Appendix C).

11. There should be a due proportion of aboriginals recruited into the various Government Services. A separate service is not recommended but non-tribal officials posted to the Scheduled Areas should be selected with care. (Para.*21).

12. Tribal panchayats should be encouraged wherever possible (Para. *22).

13. Shifting cultivation should be discouraged (Para.*23).

14. Temperance propaganda should be carried on as part of tribal welfare work (Para *24).

15. The alienation of land belonging to tribals to non-tribals should be prohibited. Allotment of new land in Scheduled Areas should not be made to non-aboriginals exceptin exceptional cases (Para. *25 and Section F of Appendix C).

16. There should be provision for control of money-lenders by a system of licensing (Para. *26 and Section G of appendix C).

Sambalpur, Angul and Darjeeling and certain areas in Bombay need not be treated as Scheduled Areas. In Bihar the three districts of Ranchi, Singhb hum, and Santal Parganas only where the tribes are in a majority are included in the Schedule provisionally. The U. P. and Punjab areas are not included (Para. *27 and Schedule B of Appendix C).

[Annexure VII]

APPENDIX D

FINAL REPORT

To

THE CHAIRMAN,

ADVISORY COMMITTEE ON MINORITIES, etc.

DEAR SIR,

This is our final report written after our visit to Bihar and the United Provinces. It relates to the partially excluded areas of these provinces and the excluded areas of the Punjab in respect of all of which the recommendations contained in our interim report were provisional. Certain general recommendations have also been added.

2. With reference to Bihar we confirm the constitutional proposals already made by us *in to to.*

BIHAR

We consider it necessary in addition to refer to certain matters connected with the administration of this, the largest compact block of territory comprising any excluded area in India, which came to our notice during our tour. To begin with, the Christian section of the tribals, though small in number (see statement appended), is educationally and economically far in advance of the non-Christian tribals. The demand for education among the non-Christians is said to be negligible and this presumably is the result of their economic backwardness which makes it necessary that children should assist their parents in earning their livelihood. There are however allegations that the Christian teachers and educational officials encourage only Christian children, and as a good number of the schools are run by Christian Missions, the non-Christians lack facilities for education. The Christians again appear to be much better organised and vocal and they are found to take prominent part in local and political organisations. The other striking feature of this area is the feeling common among educated tribals and shared by non-tribals inconsiderable measure that Chhota Nagpur has little share in the administration commensurate with its area, population and industrial importance and is being neglected by the Government which is made up of elements interested mostly in the rest of Bihar. Certain non-aboriginal witnesses have expressed their views of the neglect of Chota Nagpur in noun certain terms and suggested that the ameliorative measures claimed by the Government are purely defensive action prompted by the separation movement. Even when the Government is supposed to be resident at Ranchi, it is given as concrete proof of their lack of interest that they are mostly absent on tour in areas other than Chhota Nagpur in which they are interested. Dr. Sinha has also stated that the present Government has yet to do something "to capture the imagination of the people" and that under the present practice "the Honourable Ministers stay for a very short period at Ranchi - at their own will and convenience - and do not usually visit so much the aboriginal areas as they do those of the other three divisions of Bihar". We have referred to these statements not because we are in agreement with them or with a view to adjudicating on them but purely as indicative of the local atmosphere. Dr. Sinha has referred to the absence of the aboriginal element in the Ministry and has recommended reconstitution.

The extreme expression of the discontent prevalent in Chhota Nagpur is the separatist movement which demands the formation of a new province of Jharkhand out of the partially excluded area. This movement is sponsored at present by the Adibasi Mahasabha containing a very large advanced or Christian element but in Singhbhum and in the Santal Parganas also, a good proportion of non-Christians seem to have been affected by it. To borrow Dr. Sinha's words it is "capturing the imagination" of the tribals. Unmistakably also the movement is gaining sympathy among the non-aboriginals; and even if it be party due to mere local ambition, the virtual exclusion of tribal elements from the Cabinet has undoubtedly contributed much to it. We have already held in our interim report that the question of the formation of a separate province is not for us to tackle but we would invite the attention of the Provincial and Central Government to the separation movement, which seems to be gaining strength, as a symptom of the discontent which is simmering in varying intensity among all sections of the Chota Nagpur population. At the same time we have noticed that the Cabinet of the Bihar Government and such an eminent public man as Dr. S. Sinha oppose the separation movement on the grounds very well shown in the brochure of Dr. Sinha. We have also received a number of telegrams from these areas saying that they thoroughly disapprove of the separatist movement.

We are inclined to the view which seems to be shared by Dr. Sinha also, that there should be adequate association of the people of the partially excluded areas, particularly the tribals, in the different branches of the administration including the Cabinet and that there can be neither satisfaction nor adequate progress until this is done. In short, the problem of administration in this tract must be dealt with not only by economic and educational improvements but also by remedies which recognise its political and psychological aspects; and we would lay the maximum emphasis on the urgency of action in both these directions.

UNITED PROVINCES

3. As regards the partially excluded areas of the United Provinces viz., the Jaunsar-Bawar Pargana in the Dehra Dun District and the area comprising the Dudhi Tahsil and part of the Robertsganj Tahsil of the Mirzapur District, we find that both of these comparatively small areas are suffering from serious neglect. Although a committee was set up as early as 1939 to enquire into the administration of the Jaunsar-Bawar Pargana and a report was submitted by it in1941, it is a matter for regret that no action has yet been possible although the report was ultimately made only by the official members of the Committee. We understand that another committee has been appointed recently this year to go into the matter by the Provincial Government and hope that speedy action will be taken on its report. The main matters which require attention in this area are as follows: -

(1) the fixation and collection of land revenue and distribution of "rights timber" through the agency of the Sayanas as well as the position of the Sayana in the village panchayat which gives rise to a great deal of oppression.

(2) survey resettlement of the area and removal of restrictions on the possession of land and reclamation of waste land by Koltas (local depressed castes of Hindus).

(3) the elimination of social evils like polyandry and venereal disease.

In the partially excluded area of the Mirzapur District which is inhabited by a majority of tribals we find that the administration is of a pretty primitive character. The figures given in the U. P. Government's factual memorandum for the Dudhi Government Estate which are shown below indicate that the revenue from it is not utilised to the extent of even two-fifths of the administration of the area: -

	Income	Expenditure
1944-45	1,64,430	83,421
1945-46	2,96,002	88,002
1946-47	2,34,797	89,854
TOTAL	6,95,229	2,61,227 i.e.37.6 per cent of the income

We would draw particular attention to the statement of witnesses that a very large percentage of the population of this area is suffering from venereal disease. In the Dudhi Estate the U. P. Government have themselves noted that there is a passage of land from the hands of the aboriginals to the non-aboriginals. It would appear that the rules of the Dudhi Estate are ineffective in preventing this since land can be surrendered to the Supurdar who re-allots the same to another person, most probably a non-aboriginal. Such a transfer unfortunately does not require the approval of the S. D. O. or the Collector. It does not appear that suitable steps have been taken to put a stop to this. Among other complaints are the working of this monopoly under which only about one-seventh, or if we allow for overhead and working charges, not more than one-fourth, of the price realised by the company for the sale of the lac is obtained by the aboriginal cultivator tends to keep the aboriginal in a miserable condition. It does not appear to us that the Government have any comprehensive or fully considered programme for this area as yet.

The population of this tract is very small (1/3 percent.) in comparison with the total population of the United Provinces. We would not on that account recommend for its future administration the proposals which we have recommended for some of the backward tracts of other provinces, but we are equally definite that special provisions for its development are essential, as without them it is certain that due attention will not be paid to its needs. Similarly although the inhabitants of the Jaunsar-Bawar Area, as pointed out in our interim report, are not tribals by race and we do not recommend inclusion in the schedule of our Interim Report special provisions are necessary for this area also. We recommend therefore constitutional provisions for both of these tracts as follows: -

(1) there should be an advisory committee consisting of tribes or backward people to the extent of not less than two-thirds of its membership to advise the Government on the development of the area.

(2) the estimated revenue and expenditure (including development schemes) pertaining to the area should be shown separately in the provincial budget;

(3) although general administration of the type in force in other districts may be applied to the tract, the trial of petty civil and criminal cases should be permissible under special regulations;

(4) there should be provision in the Constitution prohibiting the transfer of land from aboriginals to non-aboriginals except with the sanction of an authorised officer:

(5) the powers of Supurdars in the Dudhi area of Mirzapur District to allot waste lands and accept surrender of land should be withdrawn and in Jaunsar -Bawar the system of Sayanas should be abolished and the Sayanas replaced by Government employees;

(6) the U. P. Government should report to the Central Government annually or as may be required by the Central Government regarding the administration of this area and abide by its directive;

(7) there shall be one seat reserved in the Provincial Assembly for a tribal from the area of the Mirzapur District which is now partially excluded.

EAST PUNJAB

4. The disturbed conditions in the East Punjab have prevented the appearance of witnesses from Spiti and Lahoul before us and it is equally not possible for us to visit the area. It is unlikely that settled conditions will prevail in the Punjab before the passes are blocked and we do not propose therefore to postpone our recommendations which will now be based on the factual memorandum sent by the Provincial Government.

We consider that constitutional provisions should be made as follows: -

(a) An Advisory Committee of which at least 2/3 shall be local residents shall be set up to advise the Provincial Government regarding the administration of Lahoul and Spiti.

(b) The Provincial Government may declare any law passed by the Federal or Provincial Legislature as not applicable to the tracts or applicable with specified modifications.

(c) The Provincial Government may make special regulations for the administration of criminal and civil law and the protection or rights of local Tibetan inhabitants in land.

(d) The Provincial Government shall report to the Central Government annually or as may be required by the Central Government regarding the administration of this area and abide by its directive.

(e) We confirm the recommendation made in paragraph 9 of the Interim Report that there should be a representative for Lahoul and Spiti in the Provincial Legislature.

5. **A Central Department.** - After surveying the position in all the provinces, we have been forced to the conclusion that unless there is a separate department of the Federal Government prescribed by Statute to supervise and which the development of the scheduled areas and the tribals in the different provinces and to furnish such advice and guidance as may be needed, the pace of progress of the tribes will not be sufficiently swift. The Central Government have already recognised the need for a Directorate of anthropological Survey and we recommend that provision for a Central Department of Tribal Welfare should be made in the Constitution.

6. **Recruitment to Armed Forces.** - We are also of the view that special attention should be paid to the recruitment of the tribes to the armed forces of India. The tribes people can in our opinion furnish valuable material for this purpose as experience in the last war goes to show.

7. **Village and Tribal Headmen.** - During the course of our enquiry many complaints of oppression and mishandling of the tribes people by the hereditary chiefs or heads of villages like the Mustadars Bissois and Paros and Muthadars of South Orissa, the Parganaits and Pradhans of the Santal Parganas and the Mankis and Mundas of Singh hum have reached us. We are of the view that a general review of the powers and functions of such village or tribal heads should be undertaken by Provincial Governments with a view to removing the grievances of the tribal villagers, the abolition of powers which are exercised in an oppressive manner and the general reform of these ancient systems.

8. **Non-official welfare organisations.** - We recommend that the Provincial Governments should utilise the services of approved non-official organisations which are at present doing welfare work in the provinces for the tribals or which may hereafter come into existence by giving them grants-in-aid with a view to supplementing the volume of development work.

9**. Officials to learn tribal languages.** - We have found that officials posted to aboriginal areas rarely know the local language. This obviously does not conduce to satisfactory administration and we are of the view that it should be made compulsory for officials posted to the aboriginal areas to obtain a working knowledge of the language within a reasonable period. Proficiency in these languages or dialects should be encouraged by the grant of suitable awards.

Yours truly,

A. V. THAKKAR,

Chairman,

Excluded & Partially Excluded Areas.

(other than Assam) Sub-Committee.

Members -

RAJ KRUSHNA BOSE.

PHUL BHAN SHAH (Subject to Minute of Dissent).

JAIPAL SINGH.

The percentage of Tribal population on to the total population in 6 Districts of Bihar and of the Christian population to that of the Tribal population.

	Name of District	Total Population	Tribal Population	Percentage	Christian Tribal Population	Percentage
1	Santhal Parganas	22,34,500	11,29,885	50.5	23,205	2.05
2	Hazaribagh	17,51,300	4,78,253	27.8	2,593	0.54
3	Ranchi	16,75,400	11,73,142	70.0	2,85,200	24.31
4	Palamau	9,12,700	3,23,106	35.4	10,786	3.34
5	Manbhum	20,32,100	6,78,126	33.3	1,354	0.19
6	Singhbhum	11,44,700	6,68,597	58.4	17,775	2.65
	Total	97,50,700	44,51,109	45.65	3,40,913	7.66

MINUTE OF DISSENT

I submitted a dissenting minute against the provisional report which had included recommendations for those tribal areas also which had then not been visited. After the visit of the Sub-Committee to these areas, I am more than confirmed in my opinion that all the six districts of the Chhota Nagpur Plateau, namely, Manbhum, Singhbhum, Palamau, Hazaribagh, Ranchi and the Santhal Parganas, should remain "Scheduled Areas". All the witnesses were emphatic that the Chhota Nagpur Division as a whole should be scheduled and no district or territory should be excluded from the scheduled status. Even Dr. Sachchidananda Sinha, whose Memorandum has received such attention from the other members of the Sub-Committee, has admitted that for administrative reasons all the six districts should be scheduled. I have other reasons also for the same insistence but the most vital one is the necessity of protecting 1,479,485 Adibasis of the districts of Manbhum, Hazaribagh and Palamau with the veto of the Tribes Advisory Council. This 1941 Census figure is large enough to justify the claim that 15 lakhs of Adibasis should not be exposed to the dangers of General Administration.

Partially Excluded Areas in Mirzapur District. - The tribal tract in Mirzapur district should be transferred to the Scheduled Area of the Chhota Nagpur Plateau. Administratively as well as geographically, the Bihar Government would be in a better position to manage this far-off corner of the United Provinces.

Chittagong Hill Tracts. - The Indian Government must claim back the Chittagong Hill Tracts. The Radcliffe Award must be altered in regard to them

JAIPAL SINGH.

Sept. 25th, 1947.

Note by Chairman on Minute of Dissent by Shri Jaipal Singh

I do not think that any witnesses whom the Committee examined were explained our proposal that was under contemplation by the Committee about "Scheduling" of certain areas in some provinces. "Scheduling" has a certain special meaning which was not explained to nor known by witnesses at all, not even to Dr. Sachchidananda Sinha. Therefore they could not distinguish between "Schedule and non-schedule" areas in which Tribes reside. Therefore the statement that, all the witnesses were emphatic that the Chhota Nagpur Division as a whole should be scheduled and that no District or territory should be excluded from the "Scheduled States" is incorrect, at any rate, very highly exaggerated.

The Tribal people in Manbhum District form only 33.3per cent. of the total population. In Hazaribagh 27.8 is the similar percentage. The Latehar Sub-Division of the Palamau District has been recommended by the Sub-Committee as" Schedule". But in the Sadar Sub-Division the percentage sonly 26.0. Moreover there are very small compact areas in the two districts mentioned above and in the Sadar Sub-Division of Palamau District which have a Tribal population of more than 40 per cent of the total population, the tribal people have assimilated themselves with the rest of the population so as to be indistinguishable in those areas. It is not therefore necessary to "schedule" the districts of Manbhum and Hazaribagh and the Sadar Sub-Division of Palamau District for the small percentage of the Tribal people who are dispersed among the rest of the population, and thus to brand these 2 1/2 districts as backward.

As has already been shown in the body of the report the area of Dudhi Tahsil and parts of Robertsganj are too small to be made a Scheduled Area. It is a very fantastic proposal to detach this area from the United Provinces and to tag it on to Bihar Province. It requires no argument to say that this proposal can form no part of this Committee's proposal.

Chittagong Hill Tracts is a purely 97 per cent Buddhistic or non-Muslim area and this Committee would have been too glad, had it formed a part of West Bengal but as the Boundary Commission gave its decision to the contrary and it was accepted by both the Dominions of India and Pakistan. The Committee has been very sorry to know this decision but the award of the Boundary Commission is unalterable.

A. V. THAKKAR,

Delhi, 25th Sept. 1947.

Chairman.

MINUTE OF DISSENT

The Sub-Committee submitted a provisional report prior to visiting Bihar. While submitting that report I raised a question to the effect that all districts of Chhota Nagpur Division and Santhal Pargana should be included as Scheduled Areas. During Bihar tour evidence adduced before the Sub-Committee strongly confirmed my contention that the aforesaid areas deserve to be included as Scheduled Areas. The evidence including that of Dr. Sachchidananda Sinha strongly support this contention. Inclusion of the aforesaid tracts as scheduled Areas is strongly warranted.

D. N. SAMANTA

The 13th October,1947.

[Annexure X]

APPENDIX D

Joint Report of the Excluded and Partially Excluded Areas (other than Assam) Sub-Committee and the North East Frontier (Assam) Tribal and Excluded Areas Sub-Committee of the Advisory Committee.

In accordance with the ruling of the Chairman, Advisory Committee, we have held a joint meeting of our two sub-committee. Separate reports have already been submitted by us which in the case of the Assam Sub-Committee contains final recommendations, and in the case of the other Sub-Committee is final for the Provinces of Madras, Bombay, Bengal, the Central Provinces and Orissa, and is provisional for Bihar, the United Provinces and the Punjab which have yet to be visited or in respect of which witnesses are yet to be examined. The report of the latter Sub-Committee contains however the framework of the proposals likely to be adopted finally. Although that report is not final for all Provinces, this joint report is being submitted so that the recommendations could be taken into consideration by the Advisory Committee, if this is necessary, before the final report is available towards the end of September. We would further point out that the position of the excluded and partially excluded areas has undergone a change with the coming into operation of the Indian Independence Act and the adapted Constitution of 1935. Under the Indian Independence Act so much of the provisions of the Government of India Act, 1935 as requires a Governor to act in his discretion or exercise his individual judgment ceases to have effect from the 15th of August. The partially excluded areas are represented in the legislatures, however inadequately, but in the case of the excluded areas the change implies that they are brought under the jurisdiction of the Ministry without representation in the legislature. Taking into account the past history of these tracts, the needs and susceptibilities, of the people and other factors, it appears desirable that the Provincial Governments should at least be aware of our recommendations as soon as possible so that their policy may be guided thereby even if other steps are not found necessary in the Constituent Assembly for their implementation at an early date. We recommend that Provincial Governments should be advised to take such action as the establishment of District Councils and Tribal Advisory Councils as may be possible immediately to give effect to the policy recommended by us and to make such statutory regulations for this purpose as may be necessary.

2. Coming to the actual recommendations made by the two Sub-Committees, we are of the view that although certain features are common to all these areas, yet the circumstances of the Assam Hill Districts are so different that radically different proposals have to be made for the areas of this Province. The distinguishing feature of the Assam Hills and Frontier Tracts is the fact that they are divided into fairly large districts inhabited by single tribes or fairly homogenous groups of tribes with highly democratic and mutually exclusive tribal organisation and with very little of the plains leaven which is so common a feature of the corresponding areas, particularly the partially excluded areas of other Provinces. The Assam Hill Districts contain as a rule, upwards of 90 per cent of tribal population whereas, unless we isolate small areas, this is generally not the case in the other Provinces. The tribal population in the other Provinces has moreover assimilated to a considerable extent the life and ways of the plains people and tribal organisations have in many places completely disintegrated. Another feature is that some of the areas in Assam like the Khasi Hills or the Lushai Hills, show greater potentialities for quick progress than tribes in the other Provinces. They may also be distinguished by their greater eagerness for reform in which they have a dominant share than the apathy shown by the tribals of some other Provinces. Having been excluded totally from ministerial jurisdiction and secluded also from the rest of the Province by the Inner Line system, a parallel to which is not to be found in any other part of India, the excluded areas have been mostly anthropological specimens; and these circumstances together with the policy of officials who have hitherto been in charge of the tracts have produced an atmosphere which is not to be found elsewhere. It is in these conditions that proposals have been made for the establishment of special local councils which in their separate hill domains will carry on the administration of tribal law and control the utilisation of the village land and forest. As regards the features common to tribal area sin other Provinces, the Assam hill man is as much in need of protection for his land as his brother in other Provinces. He shares the backwardness of his tract and in some parts the degree of illiteracy and lack of facilities for education, medical aid and communications. Provision is necessary for the development of the hill tracts in all these matters and we have found it necessary to recommend constitutional safeguards of various kinds.

3. The differences between Assam and other areas as well as certain common features have been indicated above. While in Assam the Hill Districts present features of their own and the Assam Sub-Committee have confined their recommendations on the whole to these tracts, it has not been possible for the other Sub-Committee to deal with the problems of the tribes in exactly the same manner. The special features of the hills have been mentioned and they distinguish almost to the same degree the tribesmen in the hill and the tribesmen in the plains of Assam as they do the regular plains inhabitants. The total population censussed as tribal in the plains of Assam is about 1:5 million out of which possibly some 50 per cent. consists of tea-garden labour, drawn in part from other provinces. This portion of the plains tribals is of course a population which has assimilated in high degree the life of the plains. The stable population of plains tribals is more or less in the same position. As regards other Provinces, the degree of assimilation is on the whole greater whether the tribesman is found in the hills or in the more accessible parts although some of the small tribes in the Agency Tracts of Orissa and Madras have hardly come into contact with the plains. In any case their outlook is totally different. From the very manner in which partially excluded areas have been formed it has not been possible to include large numbers of tribals who are scattered about in the Provinces irrespective of whether their condition was advanced or otherwise. It has been necessary therefore to treat all persons of tribal origin as a single minority and not separately as in the case of Assam. In this method of treatment therefore the

recommendations for other Provinces differ radically from the proposals for Assam. The excluded and partially excluded areas however contain considerable concentrations of tribes people and generally they are in hilly and comparatively inaccessible areas with no communications and facilities for the development of the population. Land for them also is a vital factor and protection of the tribals land is an essential need. The financial requirements of the Scheduled Areas are considerable, and the Centre will have to come to the assistance of certain Provinces at any rate. Thus the essential features of the proposals for the tribals of Provinces other than Assam are proportionate representation for the tribals as a whole in the Legislature, the scheduling of certain areas as in need of special attention and in which the protection of land and the social organisation of the tribals is an indispensable need. To facilitate the proper administration of the tribes, a Tribes Advisory Council with statutory functions is recommended for the Provinces of Madras, Bombay, the Central Provinces, Bihar, West Bengal and Orissa, and the application of provincial legislation to the Scheduled Areas is linked up with this Advisory Council.

4. The common proposals for Assam and other Provinces is that of provision of funds by the Centre and a separate financial statement in the budget for the Hill Districts (Assam) and the Scheduled Areas (other Provinces). The inclusion of provisions for the control of moneylenders is another common feature.

5. We have attached copies of the Appendices**** to the separate reports which indicate the legal provisions necessary and a summary! of the recommendations of both the Sub-Committees.

6. We recommended that the plains tribals of Assam!! should be recognised as a minority and should be entitled to all the privileges of a minority including representation in the legislatures in proportion to population and in the services; and that their land should be protected.

7. Subject therefore to the special provisions for the representation of the Hill Districts of Assam, all tribals should be recognised as a minority for the purposes of representation in the legislatures and in the services.

G. N. BARDOLOI, Chairman,
N. E. F. (Assam)
Tribal & Excluded Areas
Sub-Committee.

A. V. THAKKAR, Chairman,
Excluded & Partially
Excluded Areas (Other
than Assam)
Sub-Committee.

Dated New Delhi, the 25th August 1947.

[Annexure XI]

APPENDIX D

Appendix A to Part I of North-East Frontier (Assam) Tribal and Excluded Areas Sub-Committee Report

A. (1) The areas included in Schedule A to this part shall be autonomous districts.

(2) An autonomous district may be divided into autonomous regions.

(3) Subject to the provisions of Section P the Government of Assam may from time to time notify any area

not included in the said schedule as an autonomous district or as included in an autonomous district and the provisions of this Part shall thereupon apply to such area as if it was included in the said schedule.

(4) Except in pursuance of a resolution passed by the District Council of an autonomous district in this behalf the Government of Assam shall not notify any district specified or deemed to be specified in the schedule or part of such district, as ceasing to be an autonomous district or a part thereof.

B. (1) There shall be a District Council for each of the areas specified in schedule A. The Council shall have not less than twenty nor more than forty members, of whom not less than three-fourths shall be elected by universal adult franchise.

Note. - If adult franchise is not universally adopted this provision will have to be altered.

(2) The constituencies for the elections to the District Council shall be so constituted if practicable that the different tribals or non-tribals, if any, inhabiting the area shall elect a representative from among their own tribe or group:

Provided that no constituency shall be formed with a total population of less than 500.

(3) If there are different tribes inhabiting distinct areas within an autonomous district, there shall be a separate Regional Council for each such area or group of areas that may so desire.

(4) The District Council in an autonomous district with Regional Councils shall have such powers as may be delegated by the Regional Councils in addition to the powers conferred by this constitution.

(5) The District or the Regional Council may frame rules regarding (a) the conduct of future elections, the composition of the Council, the office bearers who may be appointed, the manner of their election and other incidental matters, (b) the conduct of business, (c) the appointment of staff, (d) the formation and functioning of subordinate local councils or boards, (e) generally all matters pertaining to the administration of subjects entrusted to it or falling within its powers:

Provided that the Deputy Commissioner or the Sub-divisional officer as the case may be of the Mikir and the North Cachar Hills shall be the Chairman ex-officio of the District Council and shall have powers for a period of six years after the constitution of the Council, subject to the control of the Government of Assam, to annul or modify any resolution or decision of the District Council or to issue such instructions as he may consider appropriate.

C. (1) The Regional Council, or if there is no Regional Council, the District Council, shall have power to make laws for the area under its jurisdiction regarding (a) allotment, occupation or use for agricultural, residential or other on-agricultural purposes or setting apart for grazing, cultivation, residential or other purposes ancillary to the life of the village or town, of land other than land classed as reserved forest under the Assam Forest Regulation, 1891or other law on the subject applicable to the district:

Provided that land required by the government of Assam for public purposes shall be allotted free of cost if vacant, or if occupied, on payment of due compensation in accordance with the law relating to the acquisition of land; (b) the management of any forest which is not a reserve forest; (c) the use of canal or water courses for the purposes of agriculture; (d) controlling, prohibiting or permitting the practice of *jhum* or other forms of shifting cultivation; (e) the establishment of village or town committees and councils and their powers; (f) all other matters relating to village or town management, sanitation, watch and ward.

(2) The Regional Council or if there is no Regional Council, the District Council shall also have powers to make laws regulating (a) the appointment or succession of chiefs or headmen; (b) inheritance of property; (c) marriage and all other social customs.

D. (1) Save as provided in Section F the Regional Council, or if there is no Regional Council, the District

Council, or a court constituted by it in this behalf shall have all the powers of a final court of appeal in respect of cases or suits between parties, all of whom belong to hill tribes, in its jurisdiction.

(2) The Regional Council, or if there is no Regional Council the District Council may set up village Councils or Courts for the hearing and disposal of disputes or cases other than cases triable under the provisions of Section F, or cases arising out of laws passed by it in the exercise of its powers, and may also appoint such officials as may be necessary for the administration of its laws.

E. The District Council of an autonomous district shall have the powers to establish or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads and waterways and in particular may prescribe the language and manner in which primary education shall be imparted.

F. (1) For the trial of acts which constitute offences punishable with imprisonment for five years or more or with death, or transportation for life under the Indian Penal Code or other law applicable to the district or of suits arising out of special laws or in which one or more of the parties are non-tribals, the Government of Assam may confer such powers under the Criminal Procedure Code or Civil Procedure Code as the case may be on the Regional Council the District Council or Courts constituted by them or an officer appointed by the Government of Assam as it deems appropriate and such courts shall try the offences or suits in accordance with the Code of Criminal Procedure or Civil Procedure as the case may be.

(2) The Government of Assam may withdraw or modify powers conferred on the Regional Council or District Councilor any court or officer under this section.

(3) Save as provided in this section the Criminal Procedure Code and the Civil Procedure Code shall not apply to the autonomous district.

NOTE. - "Special Laws" - Laws of the type of the law of contract, company law or insurance etc. are contemplated.

G. (1) There shall be constituted a District or Regional Fund into which shall be credited all moneys received by the District Council or Regional Council as the case may be in the course of its administration or in the discharge of its responsibilities.

(2) Rules approved by the Comptroller of Assam shall be made for the management of the Fund by the District or Regional Council and management of the Fund shall be subject to these rules.

H. (1) A Regional council, or if there is no Regional Council the District Council shall have the following powers of taxation:

(a) subject to the general principles of assessment approved in this behalf for the rest of Assam, land revenue (b) poll tax or house tax.

(2) The District Council shall have powers to impose the following taxes, that is to say (a) a tax on professions, trades or calling, (b) a tax on animals, vehicles, (c) toll tax, (d) market dues, (e) ferry dues, (f) cesses for the maintenance of schools, dispensaries or roads.

(3) A Regional Council or District Council may make rules for the imposition and recovery of the taxes within its financial powers.

I. (1) The Government of Assam shall not grant any licence or lease to prospect for or extract minerals within an autonomous district save in consultation with the District Council.

(2) Such share of the royalties accruing from licences or leases for minerals as may be agreed upon shall be made over to the District Council. In default of agreement such share as may be determined by the Governor in

his discretion shall be paid.

J. (1) The District Council may for the purpose of regulating the profession of money lending, or trading by non- tribals in a manner detrimental to the interests of the tribals make rules applicable to the district or any portion of it: (a) prescribing that except the holder of a licence issued by the Council in this behalf no person shall carry on money lending, (b) prescribing the maximum rate of interest which may be levied by a moneylender, (c) providing for the maintenance of accounts and for their inspection by its officials, (d) prescribing that no non-tribal shall carry on wholesale or retail business in any commodity except under a licence issued by the District Council in this behalf:

Provided that no such rules may be made unless the District Council approves of the rules by a majority of not less than three fourths of its members:

Provided further that a licence shall not be refused to moneylenders and dealers carrying on business at the time of making of the rules.

K. (1) The number of members representing an autonomous district in the Provincial Legislature shall bear at least the same proportion to the population of the district as the total number of members in that Legislature bears to the total population of Assam.

(2) The total number of representatives allotted to the autonomous districts which may at any time be specified in Schedule A in accordance with Sub-section (1) of this Section shall not be taken into account in reckoning the total number of representatives to be allotted to the rest of the Province under the provisions of Section ....of the Provincial Constitution.

(3) No constituencies shall be formed for the purpose of election to the Provincial Legislature which include portions of other autonomous districts or other areas, nor shall any non-tribal be eligible for election except in the constituency which includes the Cantonment and Municipality of Shillong.

L. (1) Legislation passed by the provincial legislature in respect of (a) any of the subjects specified in section C or (b) prohibiting or restricting the consumption of any non-distilled alcoholic liquor, shall not apply to an autonomous district.

(2) A Regional Council of an autonomous district or if there is no Regional Council, the District Council may apply any such law to the area under its jurisdiction, with or without modification.

M. The revenue and expenditure pertaining to an autonomous district which is credited to or met from the funds of the Government of Assam shall be shown separately in the annual financial statement of the Province of Assam.

N. There shall be paid out of the revenues of the Federation to the Government of Assam such capital and recurring sums as may be necessary to enable that Government - (a) to meet the average excess of expenditure over the revenue during the three years immediately preceding the commencement of this constitution in respect of the administration of the areas specified in Schedule A; and (b) to meet the cost of such schemes of development as may be undertaken by the Government with the approval of the Federal Government for the purpose of raising the level of administration of the aforesaid areas to that of the rest of the province.

O. (1) The Governor of Assam may at any time institute a commission specifically to examine and report on any matter relating to the administration or, generally at such intervals as he may prescribe, on the administration of the autonomous districts generally and in particular on (a) the provision of educational and medical facilities and communications (b) the need for any new or special legislation and (c) the administration of the District or Regional Councils and the laws or rules made by them.

(2) The report of such a commission with there commendations of the Governor shall be placed before the

provincial legislature by the Minister concerned with an explanatory memorandum regarding the action taken or proposed to be taken on it.

(3) The Governor may appoint a special Minister for the Autonomous Districts.

P. (1) The Government of Assam may, with the approval of the Federal Government, by notification make the foregoing provisions or any of them applicable to any area specified in Schedule B to this Part, or to a part thereof; and may also, with the approval of the Federal Government, exclude any such area or part thereof from the said Schedule.

(2) Till a notification is issued under this section, the administration of any area specified in Schedule B or of any part thereof shall be carried on by the Union Government through the Government of Assam as its agent.

Q. (1) The Governor of Assam in his discretion may, if he is satisfied that any act or resolution of a Regional or District Council is likely to endanger the safety of India, annul or suspend such act or resolution and take such steps as he may consider necessary (including dissolution of the Council and the taking over of its administration) to prevent the commission or continuation of such act or giving effect to such resolution.

(2) The Governor shall place the matter before the legislature as soon as possible and the legislature may confirm or set aside the declaration of the Governor.

R. The Governor of Assam may on the recommendation of a commission set up by him under section N order the dissolution of a Regional or District Council and direct either that fresh election should take place immediately, or with the approval of the legislature of the province, place the administration of the area directly under himself or the commission or other body considered suitable by him, during the interim period or for a period not exceeding twelvemonths:

Provided that such action shall not be taken without affording an opportunity to the District or Regional Council to be heard by the provincial legislature and shall not betaken if the provincial legislature is opposed to it.

Transitional Provisions

Governor to carry on administration as under the 1935Act till a Council is set up, he should take action to constitute the first District Council or Regional councils and frame provisional rules in consultation with existing tribal Councils or other representative organisations, for the conduct of the elections, prescribe who shall be the office bearers etc. The term of the first Council to be one year.

GOPINATH BARDOLOI, (Chairman)

J. J. M. NICHOLS-ROY.

RUP NATH BRAHMA.

A. V. THAKKAR.

Schedule B

The Khasi and Jaintia Hills District excluding the town of Shillong.

The Garo Hills District.

The Lushai Hills District.

The Nag a Hills District.

The North Cachar Sub-division of the Cachar District.

The Mikir Hills portion of Now gong and Sibs agar District excepting the mouzas of Barpathar and Sarupathar.

Schedule B

The Sadiya and Balipara Frontier Tracts.

The Tirap Frontier Tract (excluding the Lakhimpur Frontier Tract). \

The Nag a Tribal Area.

[Annexure XII]

APPENDIX D

SUMMARY OF RECOMMENDATIONS OF THE ASSAM SUB-COMMITTEE

District Councils should be set up in the Hill Districts (see Section B of Appendix A) with powers of legislation over occupation or use of land other than land comprising reserved forest under the Assam Forest Regulation of 1891 or other law applicable. This is subject to the proviso that no payment would be required for the occupation of vacant land by the Provincial Government for public purposes and private land required for public purposes by the Provincial Government will be acquired for it on payment of compensation [Para. *9 - Section C (1) Appendix A.]

2. Reserved forests will be managed by the Provincial Government in questions of actual management including the appointment of forest staff and the granting of contracts and leases, the susceptibilities and the legitimate desires and needs of the Hill People should be taken into account [Para. *10].

3. On account of its disastrous effects upon the forest, rainfall and other climatic features, jhuming should be discouraged and stopped wherever possible but the initiative for this should come from the tribes themselves and the control of jhuming should be left to the local councils [Para. *11 and Section C of Appendix A].

4. All social law and custom is left to be controlled or regulated by the tribes. [Para. *12 and Section C (2) of appendix A]. All criminal offences except those punishable with death, transportation or imprisonment for five years and upwards should be left to be dealt with in accordance with local practice and the Code of Criminal Procedure will not apply to such cases. As regards the serious offences punishable with imprisonment of five years or more they should be tried henceforth regularly under the Criminal Procedure Code. To try such cases, powers should be conferred by the Provincial Government wherever suitable upon tribal councils or courts set up by the district councils themselves.

All ordinary civil suits should be disposed of by tribal courts and local councils may have full powers to deal with them including appeal and revision.

Where non-tribals are involved, civil or criminal cases should be tried under the regular law and the Provincial Government should make suitable arrangements for the expeditious disposal of such cases by employing circuit magistrates or judges. [Para. *12 - Section D & F of Appendix A].

5. The District Councils should have powers of management over primary schools, dispensaries and other institutions which normally come under the scope of local self-governing institutions in the plains. They should have full control over primary education. As regards secondary school education, there should be some

integration with the general system of the province and it is left open to the provincial Government to entrust local councils with responsibility for secondary schools wherever they find this suitable. [Para. *13 and Section E of Appendix A].

For the Mikir and North Cachar Hills the District or Sub Divisional Officer, as the case may be should be ex-officio President of the local council with powers, subject to the control of the Government of Assam, to modify or annul resolutions or decisions of the local councils and to issue such instructions as may be necessary. [Para. *13 and Section B (5) of Appendix A].

6. Certain taxes and financial powers should be allocated to the councils. They should have all the powers which local bodies in regulation districts enjoy and in addition they should have powers to impose house tax or poll tax, land revenue and levies arising out of the powers of management of village forest. [Section *H of Appendix A and Para. 14 (a)].

Statutory provision for a fixed proportion of provincial funds to be spent on the hill districts is not considered practicable. A separate financial statement for each hill district showing the revenue derived from the district and the expenditure proposed on it is recommended. The framing of a suitable programme of development should be enjoined either by statute or by Instrument of Instructions. Section *M of Appendix A and Para. 14 (b)].

It is quite clear that the urgent requirements of the hill districts by way of expenditure on development schemes are beyond the resources of the Provincial Government. The development of the hill districts should be as much the concern of the Federal Government as the Provincial Government. Financial assistance should be provided by the Federation to meet the deficit in the ordinary administration on the basis of the average deficit during the past three years and the cost of development schemes should also be borne by the Central Exchequer [Section *N of appendix A and Para. 14 (c)].

The claims of the hill district councils for assistance from general provincial revenues to the extent that they are unable to raise the necessary finances within their own powers is recognised [Para. *16 (d)].

7. If local councils decide by a majority of three-fourths of their members to license moneylenders or traders they should have powers to require moneylenders and professional dealers from outside to take out licences. [Para. *15 and Section J of Appendix A].

8. The management of mineral resources should be centralised in the hands of the Provincial Government but the right of the district councils to a fair share of there venues is recognised. No licence or lease shall be given by the Provincial Government except in consultation with the local Council. If there is no agreement between the Provincial Government and the district council regarding the share of the revenue, the Governor will decide the matter in his discretion [Para. *16 and Section I of Appendix A].

9. Provincial legislation which deals with the subjects in which the hill councils have legislative powers will not apply to the hill districts. Legislation prohibiting the consumption of non-distilled liquors like Zu will also not apply; the district council may however apply the legislation [Para. *17 and Section L of Appendix A].

10. It is necessary to provide for the creation of regional councils for the different tribes inhabiting an autonomous district if they so desire. Regional councils have powers limited to their customary law and the management of lands and villages and courts. Regional councils may delegate their powers to the district councils Para. *18 and Section B (4) of Appendix A].

11. The Governor is empowered to set aside any act or resolution of the council if the safety of the country is prejudiced and to take such action as may be necessary including dissolution of the local councils subject to the approval of the legislature. The Governor is also given powers to dissolve the council if gross mismanagement is reported by a commission [Para. *19 and Section Q and R of appendix A].

12. The Central Government should continue to administer the Frontier Tracts and Tribal Area with the

Government of Assam as its agent administration has been satisfactorily established over a sufficiently wide area. Areas over which administration has been satisfactorily established may be taken over by the Provincial Government with the approval of the Federal Government [Section *P of Appendix A and Para. 20 (a)]*.

The pace of extending administration should be greatly accelerated and separate officers appointed for the Lohit Valley, the Siang Valley and the Nag a Tribal Area [Para. *20(a)]*.

The Lakhimpur Frontier Tract should be attached to the regular administration of the district. The case of the portion of the Lakhimpur Frontier Tract recently included in the Tirap Frontier Tract should be examined by the Provincial Government with a view to a decision whether it could immediately be brought under provincial administration. A similar examination of the position in the plains portions of the Sadiya Frontier Tract is recommended. The portion of the Bali par a Frontier Tract around Charduarshould also be subject to a similar examination [Para. *20(b)].

Posa payment should be continued [Para. *20 (c)].

13. The excluded areas other than the Frontier Tracts should be enfranchised immediately and restrictions on the franchise in the Garo and Mikir Hills should be removed and adult franchise introduced [Para. *21 (a) and Section B (1)of Appendix A].

Weight age is not considered necessary but the hill districts should be represented in the provincial legislature in proportion not less than what is due on their population even if this involves a certain weight age in rounding off. The total number of representatives for the hills thus arrived at [See Para. *21 (b)] should not betaken into account in determining the number of representatives to the provincial legislature from the rest of Assam [Para. *21 (b) and Section K or Appendix A].

The total population of the hill districts justifies as eat for the hill tribes in the Federal Legislature on the scale proposed in Section 11 (c) of the Draft Union Constitution [Para. *21 (c)].

Joint electorate is recommended but constituencies are confined to the autonomous districts. Reservation of seats, in view of this restriction, is not necessary [Para. *21 (d) and Section K (3) of Appendix A].

Non-tribals should not be eligible for election from hill constituencies except in the constituency which includes the Municipality and Cantonment of Shillong [Para.*21 (e) and Section K (8) of Appendix A].

14. Representation for the hills in the Ministry should be guaranteed by statutory provision if possible or at least by a suitable instruction in the instrument of Instructions or corresponding provision [Para. *22 - See also Section O(3) of Appendix A].

15. Non-tribal officials should not be barred from serving in the hills but they should be selected with care if posted to the hills. The appointment of a due proportion of hill people in the services should be particularly kept in mind and provided for in rules or executive instructions of the Provincial Government [Para. *23].

16. A commission may be appointed at any time or permanently to enable the Government to watch the progress of development plans or to examine any particular aspects of the administration [Para. *24 and Section O (i) of Appendix A].

17. Plains tribals number 1.6 million. Their case for special representation and safeguards should be considered by the Minorities Sub-Committee. [Para. *25].

18. The question of altering boundaries so as to bring the people of the same tribe under a common administration should be considered by the Provincial Government. The Barpathar and Sarupathar Mouzas included in the Mikir Hills should be included in the regularly administered areas henceforth [Para. *26].

19. Non-tribal residents may be provided with representation in the local councils if they are sufficiently numerous. For this purpose non-tribal constituencies may be formed if justified and if the population is not below 500 [Para. *27 and Section B (2) of appendix A].

20. Provincial councils should be set up by the Governor of Assam after consulting such local organisations as exist. These provisional councils which will be for one year will have powers to frame their own constitution and rules for the future [Para. *29 and Transitional Provisions of Appendix A also].

[Annexure XIII]

APPENDIX D

SCHEDULE 13 TO GOVERNMENT OF INDIA (PROVINCIAL LEGISLATIVE ASSEMBLIES) ORDER, 1936

BACKWARD TRIBES

PART V - ASSAM

The following Tribes and Communities: -

1. Kachari.
2. Boro or Boro-Kachari.
3. Rabha.
4. Miri.
5. Lalung.
6. Mikir.
7. Garo.
8. Hajong.
9. Deori.
10. Abor.
11. Mishmi.
12. Dafla.
13. Singpho.
14. Khampti.
15. Any Naga or Kuki tribe.
16. Any other tribe or community for the time being designate of by the Governor in his discretion.

[Annexure XIV]

APPENDIX D

General Summary of the Reports of the Excluded & Partially Excluded Areas (other than Assam) Sub-Committee and the North-East Frontier (Assam) Tribal and Excluded Areas Sub-Committee [including the Final Report of the E. & P. E. Areas (other than Assam) Sub- Committee.]

In provinces other than Assam, with the exception of the Laccadive Islands of Madras and the Spiti and

Lahoul area of Punjab, there are no excluded areas. In both of these excluded areas the population is not ethnically tribal. In the Laccadive Islands the islanders are Muslims of the same stock as the Moppillahs of Malabar. In Minicoy they are believed to be of Sinhalese origin. In Spiti and Lahoul the inhabitants are of Tibetan origin. In the remaining partially excluded areas of provinces other than Assam the principal tribes to be found are Santal, Gond, Bhil, Munda, Oraon, Kondh, Ho and Savara. Many minor tribes like Korku, Pardhan, Ko, Bhumij, Warli also inhabit the areas. The total population* of all the tribes, excluding Assam, is about 131/2 millions of which approximately 8 millions inhabit the partially excluded areas. With the exception of certain small tribes like the Bonda Porja and the Kutia Kondh of Orissa, all the remaining tribes have experienced varying degrees of sophistication and come into contact with people of the plains and advanced tracts. Although the tribal living in the non-excluded areas are often hard to distinguish from the plains people among whom they live, they are generally in a backward condition which is sometimes worse than the condition of the scheduled castes. It is not possible therefore to leave them out of consideration on the ground that only the tribes in the partially excluded areas need attention. All the tribes of provinces other than Assam, whether living in the plains or in the partially excluded tracts, should, as one whole be treated as a minority. As regards Assam, conditions in the hill districts of which the Nag a Hills, the Lushai Hills and the North Cachar Hills have been excluded are or a totally different footing and the atmosphere, particularly in these excluded areas, is one which is not to be found elsewhere. These areas must therefore be treated separately from the rest. As regards plains tribals the total number of whom, including Sylhet, comes to approximately 1.5 million according to census figures, about seven lakhs are tea-garden lab our from various parts of the country [not included in the schedule B to the Government of India (Legislative Assemblies Order) 1936] are not to be taken into account as tribes of Assam. The tribal population of the excluded and partially excluded area comes to about 81/2 lakhs. In Assam there are in addition the frontier tracts and tribal areas in which conditions of settled administration prevail only to a very small extent and large areas cannot be said to be under regular administration at all. Even now, in the northern frontier tracts, Tibetan tax-collectors make inroads and, in the Nag a tribal area still involves contact with foreign States and problems of defence.

2. The areas inhabited by the tribes, whether in Assam or elsewhere, are difficult of access, highly malarial and infested also in some cases by other diseases like yaws and venereal disease and lacking in such civilizing facilities as roads, schools, dispensaries and water supply. The tribes themselves are for the most part extremely simple people who can be and are exploited with ease by plains folk resulting in the passage of land formerly cultivated by them to money-lenders and other erstwhile non-agriculturists. While a good number of superstitions and even harmful practices are prevalent among them the tribes have their own customs and way of life with institutions like tribal and village panchayats or councils which are very effective in smoothing village administration. The sudden disruption of the tribal customs and ways by exposure to the impact of a more complicated and sophisticated manner of life is capable of doing great harm. Considering past experience and the strong temptation to take advantage of the tribals simplicity and weaknesses it is essential to provide statutory safeguards for the protection of the land which is the mainstay of the aboriginal's economic life and for his customs and institutions which, apart from being his own, contain elements of value. In making provisions however allowance could be made for the fact that in the non- excluded areas the tribals have assimllated themselves inconsiderable degree to the life of the people with whom they live and the special provisions concerning legislation in particular are therefore proposed largely for the schedule areas [provinces other than Assam; see page *33 of this volume] and the autonomous districts [(Assam) Para. *13 of Report and Section *A of Appendix A on p. 19 of Report].

3. Although in the case of the autonomous districts of Assam a distinction has been made, the proposals in the main contemplate that tribals should be treated as a minority in the matter of representation in the legislatures and recruitment to the various services of the Central and Provincial Governments. In the case of the tribals of provinces other than Assam reserved representation in the provincial and Federal Legislatures (House of the People) in proportion to the total tribal population of the Province is recommended by joint electorate. In the case of Assam similar reservation of representation for the plains tribals (excluding tea-garden lab our) is recommended. In the case of the hill districts, in view of their small and exclusive populations it is recommended that representation should be provided in proportion to the population out in such a way that all fractions of a lakh are taken as one lakh even though this might involve a small weight age. In the Federal Legislature (House of the People) the autonomous hill districts should have a representative. The plains tribal should have representation in the House of the People also on the basis of their population. In all cases election by adult franchise is recommended and indirect election or nomination should not be resorted to. There should

be special representation as follows: -

Laccadive Group - 1.

Amindivi Group - 1.

Minicoy Island - 1.

Lahaul & Spiti - 1.

(Para. *9 of Interim Report of Other Than Assam Sub-Committee and Para. *21 of Assam Sub-Committee Report; see also Para. 6 of Joint Report).

Non-tribals will not be eligible for elections from hill constituencies to the provincial legislature except the constituency which includes the municipality of Shilling [Para. *21 (e) and Sec. K (8) of App. A of Assam Report]. Constituencies may not be so made as to extend outside the boundaries of autonomous districts [Para. *21 (d) and Sec. K(3) or App. A, Assam Report].

4. There should be a department under the Federal Government in order to supervise and watch the development of the tribals in the different provinces and to furnish such advice and guidance as may be needed [Para. *5 of Final Report of Other Than Assam Sub-Committee].

5. The areas inhabited by the tribes are hilly and difficult country, to develop which is likely to be beyond the resources of some Provincial Governments. The Federation should therefore provided the necessary funds for the execution of approved schemes of development [Par a. *17 of Interim Report and Sec. *I & K (2) of App. C of Other Than Assam Sub-Committee, also para. *14 (c) and Sec. N of App. A of Assam Sub-Committee Report]. In the case of Assam, the Federation should also meet the average deficit of the autonomous districts during the three years preceding the commencement of the Constitution [Para. *14 (c) and Sec. *N of App. A of Assam Report].

6. The Central Government should also be in a position to require the Provincial Governments to draw up and execute schemes for the scheduled areas [Para. *17 of Interim Report and Sec. I & K (2) of App. C of Other Than Assam Sub-Committee]*.

7. The Federal Government should institute a special commission after ten years to enquire into the progress of the scheduled areas and the tribes [Para. *16 and Sec. K (1)of App. C of Other Than Assam Sub-Committee Report]*.

8. In provinces other than Assam, excepting the U. P. and the Punjab, a Tribes Advisory Council containing, to the extent of three-fourths of its membership, elected members of the provincial legislatures is recommended. The Council shall have not less than ten or more than twenty-five members [Para. *15 and Sec. J of App. C of Other Than Assam Sub-Committee Report]. For U. P. and the Punjab an advisory committee containing representatives of the tribal or backward class concerned to the extent of two thirds is recommended [Par as. *3 & 4 of Final Report; see also para.*18 of this Summary for details of U. P. Committees]. For Assam there is provision for the Governor to appoint either a permanent or an ad hoc commission to report or keep the Government in touch with the administration of the autonomous districts [Para. *24 & Sec. O (1) of App. A of ass am Sub-Committee Report]*.

9. The hill districts of Assam are to be designated as autonomous districts and special district councils should beset up for each of them. The district councils will have powers of legislation over (a) occupation or use of land other than land comprising reserved forest, (b) the management of forest other than reserved forest, (c) the use of canals and water courses for the purposes of agriculture, (d) control of jhum cultivation, (e) establishment of village and town committees and (f) village management in general. Reserved forests will be managed by the Provincial Government [Par as. *9 to 13 of Assam Sub-Committee Report]*.

The district council will have powers of management of all institutions which normally come under the scope of local self-government in the plains and will have full control over primary education [Para. *13 and Sec. E of App. A of Assam Sub-Committee Report].

The district will also have powers to make its own rules and regulations regarding its own constitution [sec.*B(5) of app . A of Assam sub-committee Report].

The district council will have powers to make laws affecting (a) appointment and succession of Chiefs, (b) inheritance of property councils [Para. *18 & Sec. B (3) of app. A of Assam Sub-Committee Report].

District councils and regional councils can set up courts with full powers to deal with all civil suits other than those arising out of special laws and offences punishable under the Penal Code with imprisonment of less than five years in accordance with local or tribal custom except where non-tribals are involved. (Para. *12 & Sec. D &F. of App. A of Assam. Sub-Committee Report).

Where there are different tribes in a district and they wish to manage their own affairs regional councils may beset up. Regional councils have powers limited to their customary law and the management of land-villages and courts. Regional councils may delegate their powers to district councils [Para. *18 & Sec. B (3) of App. A of Assam Sub-Committee Report].

The district and regional councils (Assam Hill Districts) will have powers to levy land revenue, house tax or poll tax and other taxes levied by local self-governing institutions in the plains [Para. *14 (a) & Sec H of App. A of Assam Sub-Committee Report]. They should be assisted by provincial grants where necessary [Para. *14 (b) of Assam Report].

The District or Sub-divisional officer, as the case maybe, will be ex-officio President of the district council of the Mikir and North Cachar Hills.

10. The district council shall be an elected body with not less than 20 or more than 40 members of whom not less than three-fourths shall be elected by universal adult franchise. Separate constituencies to be formed for separate tribes, with a population of not less than 500. Non-tribal residents of autonomous districts, if their population is not below 500, may be formed into a separate constituency for election to the district council [Para. *27 and Sec. B(1) & (2) of App. A of Assam Report].

11. In matters relating to land (provinces other than Assam), social customs and village management, if the Tribes Advisory Council advises that any law passed by the provincial legislature should not be applied to a scheduled area the Provincial Government shall direct accordingly. The Provincial Government shall have powers to direct that any other legislation shall not apply to the scheduled areas on the advice of the Council [Para. *9 & 10 and Sec. E of App. C of Other Than Assam Sub-Committee Report].

In the case of Assam legislation on these matters is left to the district council and provincial laws will not apply unless the district council applies them with or without modifications. Legislation prohibiting the consumption of non-distilled liquors will also not apply unless the district council applies it [Para. *17 & Sec. L of App. A of Assam Sub-Committee Report].

12. If the Tribes Advisory Council so advises, moneylenders in scheduled areas should not be permitted to carry on business except under a licence [Para. *26 & Sec. G of App. C of Other Than Assam Sub-Committee Interim Report].

In Assam the district council should have powers to take action to license moneylenders and non-tribal traders if the rules are approved by a majority of three-fourths of their members; this is to prevent the practice of these professions by non-tribals in a manner detrimental to the interests of tribals [Para. *15 and Sec. J of App. of Assam Sub-Committee Report].

13. Allotment of waste land in a scheduled area should not be made to non-aboriginals except in accordance

with rules made by the Provincial Government in consultation with the Tribes Advisory Council [Para. *25 and Sec. F of App. C of Other Than Assam Sub-Committee Report].

14. Mineral resources in the autonomous districts of Assam will be managed by the Provincial Government but the district councils will be entitled to a share of the revenue. Licences or leases shall not be given out except in consultation with the district council [Para. *16 and Sec. I of App. A of Assam Report].

15. The Governor of Assam should be empowered to seta side any act or resolution of a district council if the safety of the country is prejudiced; he should also have powers to dissolve a council if gross mismanagement is reported by the commission [Para. *19 and Sec. Q & R of App. A of Assam Sub-Committee Report]*.

In provinces other than Assam the Governor should have the special responsibility to see that schemes of development are drawn up and implemented. This should be enjoined on him by instructions [Para. *18 of Other Than Assam Report]*.

16. The Central Government should continue to administer the frontier tracts and tribal areas with the Government of Assam as its agent until administration has been satisfactorily established over a sufficiently wide area. Areas over which administration has been satisfactorily established may be taken over with the approval of the Federal Government [Section *P of App. A and Para. 20 (a) of Assam Sub-Committee Report]*.

Provincial Governments (other than Assam) should have powers to make special regulations for the trial of petty criminal and civil cases in scheduled areas, with a view to simplify procedure [Section *M of App A of Other Than Assam Report]*.

17. The estimated revenue and expenditure pertaining to a scheduled area or an autonomous district should be shown separately in the provincial budget [Para. *18 & Section H of App. C of Other Than Assam Sub-Committee Report and Para.*14 (b) and Section M of App. A of Assam Sub-Committee Report]*.

18. There shall be a separate Minister for tribal welfare in the C. P., Orissa and Bihar [Para. *20 & Section L of App. C of Other Than Assam Sub-Committee Report]. In Assam representation for the hill people in the Ministry should be guaranteed by statutory provision of possible or at least by a suitable instruction in the instrument of Instructions [Para. *22; see also Section O (3) of App. A of Assam Sub-Committee Report]*.

19. For the partially excluded areas of the U. P. an advisory committee consisting of tribals or backward people to the extent of two-thirds of its membership, provision to prevent the transfer of land from the aboriginals to non-aboriginals, (except with special permission) for regulations for the trial of petty civil and criminal cases by simple procedure, is recommended. The revenue and expenditure of the area should be shown separately in the provincial budget and there should be a seat reserved in the provincial assembly for a tribal from the partially excluded area of the Mirzapur District. There should also be provision for the Federal Government to call for reports from the Provincial Government regarding the administration of the areas.

Parallel provisions are recommended for Spiti & Lahoul (E. Punjab) which should have one seat in the provincial legislature. (Par as *3 & 4 of Final Report of Other Than Assam Sub-Committee).

II

OTHER RECOMMENDATIONS

20. Tribal panchayats should be encouraged wherever possible. (Para *22 of Interim Report Other Than Assam Sub-Committee). Shifting cultivation should be discouraged Para. *23 of Interim Report of Other Than Assam Sub-Committee & Para. *11 of Assam Sub-Committee Report]. Temperance propaganda should be carried on as part of tribal welfare work [Para. *24 of Other Than Assam Sub-Committee Report]*.

21. Tribals should be recruited in due proportion to all Government services. Non-tribals posted to tribal

areas should be selected with care [Para. *25 of Assam Report and Para. 21 of Other Than Assam Report].

Special attention should be paid to the recruitment of tribes to the Armed Forces of India [Para. *6 of Final Report of Other Than Assam Sub-Committee].

22. The abolition of the powers of Supurdas (Dudhi area of Mirzapur District, U. P.) to accept surrender and make a reallotment of land is recommended. The system of Sayanas in Jaunsar Bawar (U. P.) should be abolished and revenue collected through officials.

23. A general review of the powers and functions of ancient systems of village or tribal headmen should be undertaken with a view to removing the grievances of tribal sand the abolition of oppressive powers and general reform [Para. *7 of Final Report of Other Than Assam Sub-Committee]*.

24. Provincial Governments should utilise the services of approved non-official or ganisations doing welfare work among the tribals, with a view to adding to the volume of development work, by giving them grants-in-aid [Para. *8 of Final Report of Other Than Assam Sub-Committee].

25. It should be made compulsory for officials posted to aboriginal tracts to obtain a working knowledge of the local language within a reasonable period.

26. Pos a payments to the frontier tribes should be continued [Para. *20 (c) of Assam Sub-Committee Report].

The pace of extending administration in the frontier tracts should be greatly accelerated and additional officers appointed where necessary [Para. *20 (a) of Assam Sub-Committee Report].

The Provincial Government should undertake an examination of the position in the frontier tracts with a view to taking a decision whether any portion could be taken immediately by it under provincial administration [par a. *20(b) of Assam Sub-Committee Report].

NOTE. - The contents of Appendix A of the Assam Report [page 19] and of Appendix *C [page 33] of this volume must be studied for a full picture of the constitutional provisions recommended. [See also pages *300 - 32 for Schedule of tribes.]

---

*[ ] Translation of Hindustani speech

Appendix A ## Appendix B ###Appendix C

$ P. Excluded and Partially Excluded Areas –I (reference to pages are to pages in the original reports.)

@ Reference to appendices and schedules are to appendices and schedules in the original reports.

^ Clause IV of Agreement No. XLIV of 1888 with the Kapaschor or Kavatsun Akas suns as follows :- The "posa" we shall receive from Government is in lieu of the we formerly levied on the Assamese inhabitants of the plains, and that we have no right to receive any food, service, dues or other token of superiority from any receipt in British territory...

Aitcheson Vol. XII.

^^ See Assam Government's Factual Memorandum on page 70 of Excluded and Partially Excluded Areas—I (C.A) Pamphlet); all references to pages are to pages in original reports.

@@ Other tribes have this characteristic also in greater or lesser degree.

@@@ A certain number of non-hereditory appointments have been made of late by the Sperintendent.

$$ There were incidents earlier leading to the seizure of the Mizo Union's funds by the Superintendents.

$$$ It may be noted however that the Lushai Hills are also sparsely populated and there is no railway running through it.

* References to paras., sections and appendices are to paras., sections and appendices in the original reports.

** Reference to appendix is to Appendix in the original report .

*** In the koraput District there is a District Board with the collector as president .

**** For the relevant Appendices of the Report of the excluded and Partially Excluded Areas (other than Assam) Sub-Committee,

See pages 33-34 of the original reports.

! See page 63 of the original report.

!! This means that Tea-garden labour and ex tea-garden labour which consists of tribals from provinces other than Assam are excluded.

!!! Including Assam, the total population of the tribes in the provinces is 15.9 millions.

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME VII

Friday, the 5th November 1948.

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following members took the Pledge and signed the Register:

1. Mr. Mohamed Ismail Sahib (Madras: Muslim).

2. Shri P. S. Rau (Jodhpur).

MOTION re. DRAFT CONSTITUTION-(contd.)

Mr. President: I have received an amendment to the Honourable Dr. Ambedkar's motion from Seth Damodar Swarup which is more or less of the same nature as that which was moved by Maulana Hasrat Mohani yesterday, but as it is slightly different I will allow him to move it. I propose that members should have limited time for speaking on this motion. I understand there are many members who desire to participate in the discussion and I therefore suggest that we might sit to-day and to-morrow for general discussion instead of to-day only, and to-morrow we will finally dispose of the motion moved by Dr. Ambedkar. Then I will give two days i.e. Sunday and Monday for amendments, and from Wednesday we will sit and take up the Articles one after another. To enable the largest number of members to participate in the discussion today I think ten minutes would be enough for each member, and if the House approves of it I should like to stick to that time limit.

Shri T. T. Krishnamachari (Madras: General): Sir, in anticipation of Saturday being a holiday some of us have entered into other engagements like meetings of Select Committees on Bills.

Mr. President: I am afraid I have no information about meetings of committees, etc., and I should have been consulted about the fixation of these meetings while the Assembly was going to sit. Therefor I propose to give priority to meetings of this House.

Shri T. T. Krishnamachari: Sir, while the fixing of a time limit is no doubt desirable, I submit that in a matter of such importance even if one deals with only one aspect of the subject it is not possible to say anything relevant or to the point in ten minutes. Therefore I humbly suggest that such a time limit should not be adhered to.

Otherwise the discussion will be stifled and nobody can make any point. I have something to say myself on the financial provisions.

Mr. President: If I find that any particular member is making a useful contribution to the debate I will relax the time limit in his favour.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Sir, I should like to suggest that two or three more days may be given for the general discussion because in considering the Draft Constitution the general discussion will be a very important feature of the thing and members can know the feelings of people from different parts of the country on different aspects of the Constitution. That will help us greatly in drafting our amendments and deciding whether to move or not to move particular amendments. As a matter of fact even for ordinary legislation two or three days are always given. In the Finance Bill which operates only for one year five or six days are given for the general discussion. Here if you give us two or three days more the time will not be lost. That will give us an idea as to the direction in which the minds of different members are working on different aspects of the question. So I suggest that you may be pleased to give us two or three days more for the general discussion.

Shri K. Hanumanthaiya (My sore State): Sir, in a house of three hundred members two days are hardly sufficient. It is only about ten members who can speak and it would not allow all sections to participate in the debate. Even five days would hardly be enough.

The Honourable Shri K. Santhanam (Madras: General): Sir, I suggest that a discussion of the entire Constitution will not be of much use. It will not be possible for any one to make any useful contribution in less than 45 minutes or one hour. So I suggest that as we take up each Para. we may have a short general discussion on that Para. and then proceed to pass it. In that way we can have a useful general discussion than if the debate ranges over the entire constitution.

Mr. President: I think we had better not take any more time in discussing how we shall proceed. Let us proceed and we shall see.

Shri B. Das (Orissa: General): Sir, I wish to support the suggestion made by my friend Shri Santhanam. I wish to point out, however, that several documents have not been made available to members as yet. For instance, the report of the Boundary Committee we have not received so far. Then certain documents were available to the Drafting Committee which the House has a right to see. For instance, there are the opinions of the provincial Governments on the draft constitution, the views of the High Courts and the Federal Court on the various provisions about the judiciary. There are legal aspects of many issues which we must know and the views of the High Courts and Federal Court are therefore very important; these documents should therefore be made available to us; then only we can carry on further discussion.

Mr. President: We shall try to supply members with copies of opinions of provincial Governments, High Courts and such other important bodies, say by Monday or Tuesday next.

Shree R. K. Sidhwa (C. P. and Berar: General): On a point of information, Sir. You said that you will allow Seth Damodar Swarup to move the motion of which he has given notice. Yesterday, Maulana Hasrat Mohani moved a similar motion. May I know whether this motion will be taken up independently of the general discussion for which you have allowed two days?

Mr. President: I shall take votes on the adjournment motion immediately after discussion on these two propositions is over and then we shall proceed with the general discussion.

Shri H. V. Kamath (C. P. and Berar: General): I have given notice of an amendment to the original motion.

Mr. President: We will take it up when we have finished the adjournment motion.

Maulana Hasrat Mohani (United Provinces: Muslim): It has been published in the 'Statesman' of the 4th November that the Preamble will be debated and put to vote last. I understood from the observation made by you that you will adopt that course. If this is so,..........

Mr. President: I am not concerned with what the newspapers publish.

Maulana Hasrat Mohani: You stated in your observations yesterday that this matter will be decided now and that it should not be taken up again. Do you mean that the Preamble will be taken up now?

Mr. President: I never said anything about the Preamble or any part of the Constitution.

Maulana Hasrat Mohani: I want to move the amendment to the Preamble at this stage.

Mr. President: No amendment to the Preamble or any part of the Constitution can be taken up at this stage. We shall take up all amendments in due course.

Shri Damodar Swarup Seth (United Provinces: General):*[Mr. President, with your permission I want to place this amendment before the House:

> "Whereas the present Constituent Assembly was not elected on the basis of adult franchise and whereas the final constitution of free India should be based on the will of the entire people of India, this Constituent Assembly resolves that while it should continue to function as Parliament of the Indian Union, necessary arrangements should be made for convening a new Constituent Assembly to be elected on the basis of adult franchise and that the Draft Constitution prepared by the Drafting Committee be placed before it for its consideration and adoption with such amendments as it may deem necessary."

Sir, before speaking on this amendment I deem it necessary to point out that I had given notice of a separate resolution to the effect that the consideration of the Draft Constitution should for the time be postponed. But unfortunately for some reason that resolution of mine has not been admitted. Therefore I have no option but to move an amendment for the same purpose as the resolution.

Sir, yesterday when Maulana Hasrat Mohani Sahib moved his amendment, it was with regret that I noted that some honourable members of this House were mocking at it and were in a way playing with it.]

Shri S. Nagappa (Madras: General): Mr. President, I would like to know from the honourable member who is moving this motion whether, when he was elected to this august body, he did not recognise this as a sovereign body competent to act as the Constituent Assembly? It not why did he agree to become a member? *(Laughter.)*

Mr. President: That is not a point of order.

Shri S. Nagappa: I would like to know whether he is in order in saying that this body is not a Constituent Assembly and that a new Assembly should be constituted on the basis of adult franchise.

Mr. President: He is in order in moving his motion. *(Renewed laughter)*

Shri Damodar Swarup Seth: *[Sir, I was saying that it is easy to ridicule a resolution or amendment or to ridicule the views of its supporters but it requires some courage to understand the reality and to appreciate it. I am afraid that this amendment of mine may displease some of my friends. But everyone has a duty to perform. It is the duty of every man unhesitatingly and fearlessly to give expression to the voice of his conscience and nature before his fellow beings regardless of the consequences that may follow or of the opinion people may form about him and this because I believe, Sir, that in the lives of nations as in the lives of individuals also there is sometimes a situation in which they have to swallow the bitterest pill. I think that the consideration of the Draft Constitution has brought such an occasion in our country and therefore we need not worry about our views being welcome or unwelcome to one person or the other. We have to perform out duty. I shall at first try to throw light on the representative character of this Constituent Assembly which is assembled here and which is going to consider the Draft Constitution and to pass it.

Sir, the first characteristic which a constitution-making body of a free country should possess is that it should be able to claim that it represents the will of the entire people of that country. Sir, with your permission I would put it to the Honourable Members present in this House whether they can sincerely claim that they represent, in this House, the entire people of India. I can emphatically say that this House cannot claim to represent the whole country. At the most it can claim to represent that fifteen per cent of the population of India who had elected the members to the provincial legislatures. The election too, by virtue of which the members of this House are here, was not a direct one, they are here by virtue of an indirect election. In these circumstances, when eighty-five percent of the people of the country are not represented in this House and when they have no voice here, it will be in my opinion a very great mistake to say that this House is competent to frame a Constitution for the whole country. Besides the representative character of the Draft Constitution that is being placed before the house, we have also to consider its nature. We see that the Constitutions of United States of America and Britain have been copied in this Constitution. Some articles have been borrowed from the Constitutions of Ireland, Australia and Canada. A paper has rightly remarked that this is a slavish imitation of the Constitutions of these countries. Sir, the conditions that prevailed in America, Britain, Canada or Australia do not obtain in our country. The conditions prevalent in our country can be compared only with those of Russia - Russia of pre-Soviet Republic days. Besides, we have seven lakh villages in our country and the village is its smallest unit. Thanks to Mahatma Gandhi, our struggle of freedom reached the villages and it was because of the villages and because of their might that India became free.

I want to ask whether there is any mention of villages and any place for them in the structure of this great Constitution. No, nowhere. The constitution of a free country should be based on 'local self government'. We see nothing of local self-government anywhere in this Constitution. This Constitution as a whole, instead of being evolved from our life and reared from the bottom upwards is being imported from outside and built from above down-words. A constitution which is not based on units and in the making of which they have no voice, in which there is not even a mention of thousands and lakhs of villages of India and in framing which they have had no hand, - well you can give such a constitution to the country but I very much doubt whether you would be able to keep it for long.

Sir, our Indian Republic should have been a Union - a Union of small autonomous republics. All those autonomous republics by joining together would have formed the bigger Republic of India. Had there been such autonomous republics, neither the question of linguistic provinces nor of communal majorities or minorities or of backward classes would have arisen. The autonomous Units of the Union could have joined the unions of their choice according to their culture. The Union that would have been formed in our country in this way, would not have required so much emphasis on centralization as our learned Doctor Ambedkar has laid. Centralization is a good thing and is useful at times but we forget that all through his life Mahatma Gandhi emphasised the fact that too much centralization of power makes that power totalitarian and takes it towards fascist ideals. The only method of safeguarding against totalitarianism and fascism is that power should be decentralized to the greatest extent. We would have thus brought about such a centralization of power through welding of heart as could not be matched anywhere in the world. But the natural consequence of centralising power by law will be that our country which has all along opposed Fascism - even today we claim to strongly oppose it - will gradually move towards Fascism. Therefore, Sir, I want that this House should seriously consider these matters. This is not an ordinary matter. We should not treat this constitution-making as a light and playful business. On the contrary it is a step pregnant with historic consequences. After hundreds, nay, thousands of years I would say, and it would be no exaggeration to say so, that in the history of India it is for the first time that we have this opportunity of framing the Constitution of the whole of India. Therefore no amount of thought we can give to this Constitution can be too much. We may be told and we have been told that let this Constitution be adopted, for the assembly, elected on adult franchise provided therein, would be quite competent to effect the necessary amendments in it.

But Sir, when the Constitution is once framed, there will be legal difficulties in amending it. Moreover it would be no matter of pride for us that a task of such importance in the history of India, which we are expected to complete, should have been left half-finished by us to be completed by others. The coming generations will only deplore such a course of action on our part. Therefore if we take into consideration the unrepresentative character of the Draft Constitution that is before us and its nature and structure, we come to the conclusion that it is not in harmony with our present conditions, our culture and our customs. Therefore it is necessary that we should postpone its consideration for the time being and should form a new Constituent Assembly on the basis of adult franchise so that it may go through this constitution, consider it and amend it where necessary. Till the formation of this new Constituent Assembly the present Constituent Assembly can function as the Parliament of India. We do not want that there should be any delay in this. No doubt we have taken two years to do this work and we might take an year or so more but one or two years are nothing in the life of a nation. So long as this Constitution is not finalised we can continue to function as we have been doing so far. As I have said we are going to frame the Constitution of United India; it should be a new and ideal Constitution.

Today after India has attained freedom it is not necessary for me to tell you that the world is looking up to India. It expects something new from India. At such a times as the present one it was necessary that we should have placed before the world a Draft Constitution, a Constitution, which could have been taken as an ideal. Instead we have copied the constitutions of other countries and incorporated some of their parts and in this way prepared a Constitution. As I have said, from the structure of the Constitution it appears that it stands on its head and not on its legs. Thousands and lakhs of villages of India neither had any hand nor any voice in its framing. I have no hesitation in saying that if lakhs of villages of India had been given their share on the basis of adult franchise in drafting this Constitution its shape would have been altogether different. What a havoc is poverty causing in our country! What hunger and nakedness are they not suffering from! Was it not then necessary that the right to work and right to employment were included in the Fundamental Rights declared by this Constitution and the people of this land were freed from the worry about their daily food and clothing? Every man shall have a right to receive education; all these things should have been included in the Fundamental Rights. But, Sir, I need not say anything else except point out that even Honourable Dr. Ambedkar has had to realize and has also admitted in his speech that many objections have been raised in regard to the Fundamental Rights. Not withstanding the reasoning of the learned Doctor, I find it difficult to accept that the Fundamental Rights and other rights are one and the same thing. I understand that Fundamental Rights are those rights which cannot be abrogated by anybody - nay, not even by the government. One can be deprived of these rights only as a punishment for an offence, awarded by a Court of Law. But if the Fundamental Rights were to be at the mercy of the government, they cease to be Fundamental Rights. Sir, what I mean by all this is that if the thousands of villages of the country, the poor classes and the labourers of India had any hand in framing this Constitution, it would have been quite different from what it is today.

With your permission, therefore, Sir, I would appeal to the House that, treating this Constitution not as ordinary but as a historical document, they should give proper consideration to it. And I would appeal to you, sir, that consideration of the Draft Constitution be postponed for the present and the country be given an opportunity to express itself so that the Constitution that may be framed may really be a democratic Constitution. With these words I close my speech on the amendment.]*

Mr. President: *[The motion is before you; those who desire to speak may do so.]

Pandit Balkrishna Sharma (United Provinces: General):*[Mr. President, my friend Seth Damodar Swarup has submitted a motion before the House today that we should postpone the consideration of the Draft Constitution placed before us. In support of his motion he has advanced some arguments. Before taking up an analysis of those arguments I would like to draw the attention of the Assembly to one or two important matters. The first thing that strikes me is that the motion moved by my friend is absolutely undesirable. After all, for what purpose have we assembled here? We have assembled here having been elected to frame the Constitution. The political party, to which the Honourable Member belongs, once decided that this Constituent Assembly is not an independent sovereign body, and so it should be boycotted. Again that party, under what considerations I know not, decided that they should seek election to it. They were elected to this Assembly but some of their party-men did not attend the Assembly in the beginning. But later, again under a consideration, of which I am not aware, they decided to participate in this Assembly. Now you can imagine what opinion can be formed of a group, party or an individual whose policy changes every moment, which is satisfied at one moment and discontented the next. I think the idea that we should not frame the Constitution in this House struck the mind of my friend Seth Damodar Swarup rather too late. In my humble opinion, the arguments advanced by him are weak, groundless, uninteresting and senseless to such a degree as cannot be defined. His first argument is that the Constituent Assembly does not have a representative character. I would like to submit that there is ridiculous aspect of democracy, and that comes to the surface when to make democracy fully representative in character, we evolve such institutions as proportional representation and thereby establish fascism amongst ourselves. In Germany, Italy and France, wherever attempts were made to establish this type of Democracy, the only result was that it was soon transformed into fascism. The argument, that we are the representatives of 15 per cent of the population and that the representatives of 85 per cent of the population are not with us and therefore we should postpone on that ground the consideration of the Constitution, is a fallacious one - fallacious because nowhere in the world can a model assembly be constituted. We have represented the whole of the country in this Assembly. Sethji had been a member of the Congress till recently; on the basis of the formation of such associations, could he say that the Congress was a body representing the whole of India? While he could not say that on numerical basis, my friend Sethji has always considered himself to be a divine lieutenant in India. Even though not even one poor man, not even a farmer, and a worker has elected him to represent India, yet he considers himself to be a representative. And why does he do so? As the saying goes in the Russian language "we are the will of the peoples". We are the representatives of the will, emotions and ambitions of the people, and in this capacity representing the whole of India we are framing our Constitution, though our representation is not based on numbers. Hence, I think that it is not proper to raise this fallacious argument about percentages.

The second point which he has raised is that we have borrowed in our Constitution many articles from the constitutions of other countries. I think that Honourable Dr. Ambedkar has very nicely answered this question in his yesterday's speech. I would only like to say that if my friend Seth Damodar Swarup runs so much after originality which I believe he intends to do, I am afraid he would make himself extremely ridiculous. It will be because when he talks of originality he himself is not really original. His eyes are fixed on Russia and he comments that Russian Constitution has not been followed in framing this Constitution. This means that had we followed Russia we would have been original, but because we have followed Australia, Canada, U.S.A. and U.K. or borrowed many articles from them or received an inspiration from them, we are not original. Now it is for us to choose which one to follow. Sethji and Maulana Hasrat Mohani incline towards Russia. We favour friendship with Russia. With great interest and sympathy we witness the great experiment Russia is making to organise men; but it is definite that we cannot accept even in dream its policy to subordinate or annihilate the individual for the sake of the state in all important stages of life. Sethji has quoted Mahatma Gandhi, who was against over-centralisation. My friend should remember that Mahatma Gandhi was essentially an anarchist. He was a philosophical anarchist. His view was that in the ultimate analysis anarchism was beneficial, for his aim was to raise man to a pedestal were he does not need external restraint. You and we are not such great souls. It would be ridiculous for us to attempt to talk of anarchism by simply repeating the words of Gandhiji and trying to put it into actual practice. Hence, it is useless to repeat the words of Mahatma Gandhi here. By quoting Mahatma Gandhi in support of his arguments Sethji has not revealed any special power of reasoning. He wants to know what position is held by villages, labourers, farmers, and local self-governments in this Constitution. I would like to submit humbly that if he will take the trouble of studying the whole of the Constitution carefully, he would come to know that even today in the making of this Constitution we are not ignoring that sacred inspiration of Mahatma Gandhi which led him to give us a message that India does not consist of cities but of the seven lakhs of villages. Mr. President, I, therefore, oppose the motion of Sethji and I am sure that the House will not at all hesitate in rejecting it outright.]*

Prof. Shibban Lal Saksena (United Provinces: General):Mr. President, Sir, Seth Damodar Swarup's amendment should not be dismissed so lightly as my Honourable friend Shri Bal Krishna Sharma has done. We ourselves, when the Cabinet Mission were in India, wanted that this Assembly should be elected on adult suffrage; but the Britishers never wanted election on adult suffrage. They forced on us this method of election. If they had acceded to our demand, we would have been elected on adult suffrage. Seth Damodar Swarup knows full well that the Congress party which is in the majority in this House, would have welcomed it. The issue which he has raised is a fundamental one and we must all admit that an Assembly elected on adult suffrage would be the real Constituent Assembly, though I am sure a large majority of these same members would be again returned.

But, today, the question is a practical one: can we adjourn now and wait for a year or so to have a new election for the Constituent Assembly and then frame our constitution? I think the present Constitution which has been framed by a foreign Parliament is not one under which I would like to remain a minute longer than I can help. I therefore think that today we must go on with the consideration of this Draft Constitution but when we come to the chapter for changing the Constitution we must make changes in the Constitution in the first ten years much easier than it is at present in the Draft. I think we must make it possible for any change in the Constitution to be made by simple majority and not by two-thirds majority.

Sethji has also raised other issues. He has said that this Constitution does not give any voice to the villages. He is thinking of the Soviet Constitution. Mahatma Gandhi's own Constitution, of which an outline was given by Shri S. N. Aggarwal, was also based on village republics or village panchayats, and I think we shall have to discuss this point carefully when we come to that aspect of the Constitution. I was pained to hear from Dr. Ambedkar that he rather despised the system in which villages had a paramount voice. I think we will have to amend that portion properly. This Assembly is now entering upon its task and is fully entitled to change the entire Constitution. Sethji has today given his amendments and we shall be very glad to discuss them. I do not think that Sethji is alone in the views he expressed. We must not dismiss these things with the lightness with which my predecessor has dismissed them. In this Assembly we must discuss every aspect of this Constitution with seriousness and everybody must be treated with respect. Other things which he has said, can also be discussed at the proper time. He has said that there is no provision in this Constitution for Local Self Government in units. It is an important thing which must be included in the Constitution and at present there is this omission in the present Constitution. But I don't think that Sethji's advice that we should adjourn now and wait for a year for the

Constitution to be made by a new Constituent Assembly is proper, because the new Assembly will have to be elected afresh and this House will have to make some rules for electing a new Constituent Assembly and that will take some time. Then we will have to sit now to make some rules for election of the new Constituent Assembly and then to have the new Constitution discussed by it. I think the new Houses of Parliament in this Draft Constitution elected under adult suffrage will have full power to change the Constitution, and if that clause which makes it difficult to change the Constitution is removed, the purpose of this amendment will have been served. I therefore suggest that when that portion comes, we will discuss that, but at present the adjournment will not be proper. I therefore oppose this amendment.

Shri S. Nagappa (Madras: General): Mr. President, Sir, I am sorry that I have to oppose my Honourable friend's motion that is before the House. My friend has been saying that he has not been returned to this Assembly in order to make a Constitution. I am at a loss to understand what is the purpose for which he contested these elections. I think it was clear to him when he got into this Assembly that he was coming here only in order to frame a Constitution. But his point is that this is not a representative body. May I ask him which sort of body will be really representative? Are these members not elected by the elected representatives of the people? No doubt I agree that there was no adult suffrage. Whose fault is it? Is it the fault of the present Government or is it the fault of the previous Government? My friend would have been in order if he had asked the previous Government and he was also aware that the previous Government had not enough time. They were eager to go and so, even if they wanted to prepare the electoral rolls on adult suffrage and conduct elections, they would have taken two years. I don't know whether my friend wanted to have the foreign domination for two more years. We have been elected by the representatives of the people and every member represents some thousands of people. No doubt he does not represent every one of the people that are in that province but he represents the educated that are the cream of the people. When they have sent these members herewith the definite task that they should frame the Constitution and moreover when this was the body that has received the power from the foreigner, it is more in order and more representative than any other. Even if elections are held on an adult suffrage, can my friend guarantee that there will be other than these members? I doubt it. These are the chosen leaders not from to-day or yesterday but for so many years and the people have confidence in them. Even when the country was going through turmoil and difficulties the people had reposed confidence in them.

My friend was saying that there are no poor people's representatives. What are we? I represent the poorest of the poor. He was talking of the depressed classes and backward communities. Are we not depressed class people? What about Dr. Ambedkar? Whom does he represent? He represents the lowest rung of the ladder and can there be any other representative other than Dr. Ambedkar from those people? It is our fortune that the task of framing the Constitution has-been entrusted to the representative - the real representative - of the lowest rung of the ladder and I can't understand when my friend says the poor have not been given a chance to be represented here, and the worker has not been given a chance to be represented here. If that was the case, may I ask why there was no agitation in the country when this Assembly was elected? There were so many organisations and there were so many papers who could have complained and agitated; and almost all people were eager that this body must come into existence as early as possible and relieve the Britisher who was anxious to leave this country. When that was the case I am surprised at my friend's observations. If my friend does not consider this as a representative body, he should have refrained from coming into this Assembly. He did not do that. He was wise enough to get into this and continue for two years and be called a Member of this Assembly. Having done all that, now when the Constitution is ready and ripe for adoption, he calmly comes and says that this is not a representative body. I see no logic or reason in that. Can be prove that except a section of the country which is dissatisfied and a section which could not get into the House or a section which is jealous of the present Government, there is any large body of people in the country who are not satisfied with the representative character of this House?

My friend the Maulana talked in the same strain. I do not know whether he took his inspiration from Shri Damodar Swarup or whether the latter took his inspiration from the Maulana, or whether they conspired among themselves. Anyhow their view seems peculiar not only to me but to large numbers of people. I do not know what the Maulana was trying to impress on the House, but he seems to be more fond of the Soviet Constitution than of his own Constitution. Forgetting that he can frame a better constitution than the Soviet or any other constitution, he told us that he was for adopting the Soviet Constitution. I do not know the reason why he has been tempted to adopt that constitution. If his argument is that as we have borrowed from every constitution we should borrow from the Soviet Constitution also, I can see some reason in it. Here he says that as we have borrowed from America and England and New Zealand we should borrow also from Soviet Russia: But why should he be so fond of that? We borrow from other countries what is fit to be adopted by us, when they suit our conditions and requirements. It is not for the sake of borrowing that we do this and our Constitution is not a combination or mixture of all other constitutions. We study other constitutions and consider our own Customs and usages and usages and culture, and we borrow what suits us best. There is nothing wrong in borrowing something which suits us best.

Sir, I oppose the motion.

Shri Syamanandan Sahaya (Bihar: General): Sir, I propose a closure of the debate on the amendments and move that the question be now put. My Honourable friend Seth Damodar Swarup has done his duty by voicing the opinion of a certain political section of the country and we need not take any more time over this. We may now proceed to discuss the Draft Constitution generally.

Mr. President: The question is:

That the question be now put.

The motion was adopted.

Mr. President: The question is:

That Maulana Hasrat Mohani's motion be adopted.

The motion was negatived.

Mr. President: The question is -

That Seth Damodar Swarup's motion be adopted.

The motion was negatived.

Mr. President: The House will now proceed to a general discussion of the motion by Dr. Ambedkar. Shri H. V. Kamath has an amendment on it.

Shri H. V. Kamath: Sir, I move:

"That in the motion the word 'Constituent' be deleted and for the words 'settled by the Drafting Committee' the words 'prepared by the Drafting Committee' be substituted".

It is a purely verbal amendment and there is no need to enter into a discussion or controversy over it. The word "Constituent" is redundant as "Assembly" means the Constituent Assembly. As regards the other part, the copy of the Draft Constitution that we have got says, "prepared by the Drafting Committee". I wish to bring Dr. Ambedkar's motion into line with this even at the risk of being dubbed a stickler or purist. Sir, I move.

Mr. President: I will draw attention to Rule 38-A which uses the words "Draft Constitution of India settled by the Drafting Committee". Dr. Ambedkar's motion takes the word from that rule.

Shri H. V. Kamath: By leave of the President, I shall now speak on the motion itself. While I support the motion I do not accept all the observations that Dr. Ambedkar made in the course of his learned address yesterday. As regards those aspects of the question which deal with the strength of the State, which deal with the provision to convert a Federal State into a unitary one in the event of emergency, as regards the undesirability of the various component units of the State to maintain armies to the prejudice of the security of the Union as a whole, I endorse his observations wholeheartedly. He told us with some pride - I think - that the Constitution is borrowed largely from the Government of India Act and considerably from the constitutions of the United Kingdom, United States and Australia and perhaps Canada also. I listened to his speech with considerable pleasure and not a little profit. But I expected him to tell us what, if any, had been borrowed from our political past, from the political and spiritual genius of the Indian people. Of that there was not a single word throughout the whole speech. This is perhaps in tune with the times. The other day Shrimati Vijaya Lakshmi while addressing the United Nations General Assembly in Paris observed with pride that we in India have borrowed from France their slogan of liberty, equality and fraternity; we have taken this from England and that from America, but she did not say what we have borrowed from our own past, from our own political and historic past, from our long and chequered history of which we are so proud.

On one thing I join issue with Dr. Ambedkar. He was pleased to refer to the villages - I am quoting from a press report in the absence of the official copy - as "sinks of localism and dens of ignorance, narrow-mindedness and communalism"; and he also laid at the door of a certain Metcalfe our "pathetic faith" in village communities. Sir, I may say that it is not owing to Metcalfe but owing to a far greater man who has liberated us in recent times, our Master and the Father of our nation, that this love of ours for the villages has grown, our faith in the village republics and our rural communities has grown and we have cherished it with all our heart. It is due to Mahatma Gandhi, it is due to you, Sir, and it is due to Sardar Patel and Pandit Nehru and Netaji Bose that we have come to love our village folk. With all deference to

Dr. Ambedkar, I differ from him in this regard. His attitude yesterday was typical of the urban highbrow; and if that is going to be our attitude towards the village folk, I can only say, "God save us." If we do not cultivate sympathy and love and affection for our villages and rural folk I do not see how we can uplift our country. Mahatma Gandhi taught us in almost the last mantra that he gave in the last days of his life to strive for panchayat raj. If Dr. Ambedkar cannot see his way to accept this, I do not see what remedy or panacea he has got for uplifting our villages. In my own province of C. P. and Berar we have recently launched upon a scheme of Janapadas, of local self-government and decentralisation; and that is entirely in consonance with the teachings of our Master. I hope that scheme will come to fruition and be an example to the rest of the country. Sir, it was with considerable pain that I heard Dr. Ambedkar refer to our villages in that fashion, with dislike, if not with contempt. Perhaps the fault lies with the composition of the Drafting Committee, among the members of which no one, with the sole exception of Sriyut Munshi, has taken any active part in the struggle for our country's freedom. None of them is therefore capable of entering into the spirit of our struggle, the spirit that animated us; they cannot comprehend with their hearts - I am not talking of the head it is comparatively easy to understand with the head - the turmoiled birth of our nation after years of travail and tribulation. That is why the tone of Dr. Ambedkar's speech yesterday with regard to our poorest, the lowliest and the lost was what it was. I am sorry he relied on Metcalfe only. Other historians and research scholars have also given us precious information in this regard. I do not know if he has read a book called" Indian Polity" by Dr. Jayaswal; I do not know if he has read another book by a greater man, "The Spirit and Form of Indian Polity" by Sree Aurobindo. From these books we learn how our polity in ancient times was securely built on village communities which were autonomous and self-contained; and that is why our civilisation has survived through all these ages. If we lose sight of the strength of our polity we lose sight of everything. I will read to the House a brief description of what our polity was and what its strength was:

"At the height of its evolution and in the great days of Indian civilisation we find an admirable political system, efficient in the highest degree and very perfectly combining village and urban self-government with stability and order. The State carried on its work administrative, judicial, financial and protective - without destroying or encroaching on the rights and free activities of the people and its constituent bodies in the same department. The royal courts in capital and country were the supreme judicial authority coordinating the administration of justice throughout the kingdom."

That is so far as these village republics are concerned. I believe the day is not far distant when not merely India but the whole world, if it wants peace and security and prosperity and happiness, will have to decentralise and establish village republics and town republics, and on the basis of this they will have to build their State; otherwise the world is in for hard times.

Then, Sir, I find in Dr. Ambedkar's speech considerable amount of thunder and plenty of lightning. But I could not find the light that sustains, the light that warms, the light that gives life, the light eternal. I heard what he said about minorities in India. I do not know on what basis he made this remark that no minority in India had taken this stand. After referring to the Redmond-Carson episode in the history of the Irish struggle, he went on to say that no minority in India has taken this stand. "Damn your safeguards" said Carson, "we don't want to be ruled by you."

Dr. Ambedkar said: "They have loyally accepted the rule of the majority which is basically a communal majority and not a political majority."

If, Sir, our minorities had really taken this stand, India's history would have been different. After what has happened during the last two years, can we say that no minority took this stand? It is because a certain minority took this stand and said, "We do not want to be ruled by the majority. Go to hell.", we had the tragedy of the last eighteen months. If Dr. Ambedkar was referring to India before 15th August 1947, I fail to understand him. How can he say that no minority stood for safeguards and said, 'We do not want to be ruled by you'? It is because a certain organisation took the stand, "No safeguards. We do not want safeguards. We want a separate State.", that ultimately Pakistan came into being and we had to witness the tragedy of the past eighteen months.

In 1927, I as a student attended the Madras session of the Congress. Maulana Mahomed Ali and Pandit Malaviya were both present there. There was a question about safeguards and Pandit Malaviya made a moving speech that went straight to the heart. He said: "What safeguards did you ask from the Secretary of State for India or from the Government of India? We are here. What better safeguards you want?" After that speech, Maulana Mahomed Ali came to the rostrum, embraced Pandit Malaviya and said: "I do not want any safeguards. We want to live as Indians, as part of the Indian body-politic. We want no safeguards from the British Government. Pandit Malaviya is our best safeguard." If that spirit had continued to animate us, we would have remained as united India, a single country, a single State and a single nation. This being so, I fail to understand what Dr. Ambedkar means by saying that no minority in India has taken this stand. The majority has always been willing to grant them safeguards, adequate safeguards. But the minority would have nothing to do with it. The minority in India took the same stand as Carson took in Ireland. That is why, to the detriment of the Irish body-politic division was resorted to, as was done in India, resulting in disturbance of the peace and progress of the country.

Well, Sir, there are one or two other aspects of the Constitution I would like to touch upon. One relates to Article 280 of the Constitution, viz., the one about Fundamental Rights.

Mr. President: The Honourable Member has almost exhausted his time.

Shri H. V. Kamath: I only want one or two more minutes, Sir. The Fundamental Rights could be suspended in the event of an emergency and that means that the power of the High Court can be taken away. It is a dangerous provision to make in the Constitution. If I remember aright, even during the last world war, the British Government did not suspend the right of the citizen to move the appropriate courts to issue writs of *haebeas corpus* and so on. I do not know whether we should go one better, rather one worse, than the British Government.

Then we have the Ordinance-making power given in Article 102. This should be done away with. When we were fighting the British Government, we attacked this power, this ordinance-making power of the Governor-General and the Viceroy. Here we are making this provision, not for an emergency. Article 102 merely says that the President may promulgate Ordinances whenever he is so satisfied. That power should be drastically curtailed, if not entirely done away with.

Now I will conclude by saying that, with all its good points, with all its provisions for making India a united and strong federal-unitary State, there are certain matters which could have been more happily provided for.

Now, what is a State for? The utility of a State has to be judged from its effect on the common man's welfare. The ultimate conflict that has to be resolved is this: whether the individual is for the State or the State for the individual. Mahatma Gandhi tried in his lifetime to strike a happy balance, to reconcile this dwandwa and arrived at the conception of the Panchayat Raj. I hope that we in India will go forward and try to make the State exist for the individual rather than the individual for the State. This is what we must aim at and that is what we must bring about in our own country. Because we have a great spiritual and political heritage, we in India are best fitted to bring about this consummation in our own country; and let me say that unless in the whole world the spirit of empire gives place to the empire of the spirit, in the way that Mahatma Gandhi and all seers before him have conceived it, unless this consummation comes about in the world, there will be no peace on earth. At least let us try to bring about this empire of the spirit in our own political institutions. If we do not do this, our attempt today in this Assembly would not truly reflect the political genius of the Indian people. We have been so much taken in by Western glamour. This glamour has been too much with us. We have become the prisoners of our habit forms and thought forms. They have become almost like the old man in Sindbad the Sailor whom he could not shake off. We have become unable to shake off our old habits. But amid all the mist of confusion, there is still the certainty of a new twilight; not the twilight of the evening, but the twilight of the morning - the *Yuga Sandhi* India of the ages is not dead nor has she spoken her last creative word; she lives and has still something to do for herself and for the human family. And that which is now awake in India is not, I hope, an Anglicized or Europeanized Oriental people, docile pupil of the West and doomed to repeat the cycle of the Occident's success and failure, but still the ancient invincible Shakti recovering Her deepest Self, lifting Her head higher towards the supreme source of light and strength, and turning to discover the complete meaning and a vaster form of Her Dharma. In that faith and fortified by that conviction, let us march forward into the future, and by the grace of God, victory will crown our efforts.

Seth Govind Das (C. P. and Berar: General): *[Mr. President, I rise to support the motion moved by Dr. Ambedkar. But at the very outset I would like to make it clear that my support to his motion does not mean that I agree to every thing he has said in his speech. On the contrary, in my opinion his speech has not at all been befitting the beautiful motion moved by him. He has raised many controversial issues and it would have been better if he had not raised them at all. While supporting the motion, I would like to make it clear to you that I do not have at present the enthusiasm with which such a motion should be supported. The motion as also the whole Constitution have been presented to the House in an alien language. There has been yesterday considerable discussion on this question and I would not say much on it. But I do feel a regret today that we did not decide the question of national language earlier. Sir, had we taken a decision in this respect earlier, yesterday, there would have been no necessity for you to give an assurance that this Constitution would be placed before this House in the language which would be accepted as the national language and that the articles which would have been passed by the time a decision is taken in this respect would be repassed in our own language. Perhaps you remember, that you had given us an assurance in this respect and that when after your assurance I had raised the question again you had stated in your reply that the original draft of the Constitution would be in the national language. To adopt the Constitution in an alien language is not only a matter of shame for us but it will create many difficulties in the future and will establish supremacy of English in our country. Even during British regime our country produced many learned men who did not know English.

For example, mention of late Pandit Sudhakar Dwivedi may be made. Such a person nowadays is Moulana Abdul Kalam Azad who cannot be said to be a scholar of the English language. If we frame our Constitution in a foreign language, even free India, in spite of having its own national language, will have to depend for ever on those who have specialised in English in so far as the constitutional matters would be concerned. Therefore again, I would appeal to you, as I did yesterday, that the original of our Constitution should be in Hindi.

Moreover, this Constitution is incomplete. Many important matters have not been included in it. No doubt article 99, chapter II lays down "In Parliament Business shall be conducted in Hindi or English", but in the whole of the Draft there is no mention about our national language. Of course, we can amend article 99, and specifically mention the language for transaction of business in our Assemblies. But that alone would not do unless we also specifically declare which language shall be our national language. The mere statement that in Parliament business shall be conducted in this or that language is not enough. We have to declare that a particular language shall be the national language of the country. We have also to declare which shall be the national script of the country. In so far as both these matters are concerned the Constitution is quite incomplete.

Perhaps you might have noticed the fact that in the Irish Constitution there is mention of their National Flag. Though we accepted by a resolution this tri-colour flag as our National Flag, we have made no mention of the National Flag in this draft.

We would like that our Constitution should specifically provide that a particular flag shall be our National Flag just as has been done in the Irish Constitution.

Besides, our Constitution is silent about our National Anthem. On many occasions our Prime Minister Pandit Jawaharlal Nehru has stated that the final decision on the question of National Anthem would be taken by the Constituent Assembly. But I would also like that a provision should be included in our Constitution which specifically fixes our National Anthem.

I would also like to express my views on all these matters that have not been provided for by this draft of the Constitution. In my opinion Hindi alone can be the national language of this country. I think there are only a few members of this House who believe today that English can be made the national language of this country. The Hindi-Hindustani controversy has also come to an end, simply because Article 99 of the Constitution refers to "Hindi or English" alone in relation to the transaction of business in our Parliament. Thus the question of Hindustani also exists no more. As far as the members and residents of South India are concerned, I would agree that business here may be conducted in English also for some years to come. We should not impose anything on them. But Hindi must be our national language and Devnagari our national script.

This Constitution should by a specific provision prescribe the flag that has been accepted before in this House as our National Flag and I suggest that like the Union Jack it should be given a distinctive name of its own. I would like to suggest to you a beautiful name for it. It maybe named "Sudarshan". The word "Sudarshan" means beautiful in appearance. While presenting the flag to the House Pandit Jawaharlal

Nehru had described in his speech how beautiful our national flag is. I suggest, therefore, that it be named" Sudarshan". There is also a Chakra or wheel on it. The weapon of Lord Vishnu was also known Sudarshan Chakra and hence this name would be quite suitable.

As far as the question of National Anthem is concerned, I would say that 'Vande Mataram' can be our National Anthem. The history of our struggle for independence is associated with Vande Mataram. If it be said that is tune is not fit for orchestrisation I would submit that this is a difficulty which can be overcome by experts in orchestral music. Lyrical songs of Mahakavi Soordas and Meerabai can be sung not only in one but in many tunes. It is therefore wrong to think that 'Vande Mataram' is not suited for orchestrisation. There is no person who has no respect in his heart for Rabindranath Tagore - the King among poets. The verse "Jana Mana Gana" was composed on the occasion of the visit of the late Emperor George the V to India in 1911. The poem offers greetings, not to Mother India, but to the late King Emperor. Every sentiment in it is in relation to the" Bharat Bhagia Vidhata" and who is meant is clear from the expression "victory to the Emperor" (Jai Rajeshwar). It is evident that in a Republic we cannot in our National Anthem offer any greetings to any 'Rajeshwar'. 'Vande Mataram' alone, therefore can be our National Anthem.

Besides its incompleteness, this Constitution also needs many amendments.

For instance, our country has been named as 'India' in this Constitution. As far as the foreign countries are concerned this name is alright. But if a meeting is held in our country which we have to address, shall we address the gathering 'Ay Indians'? When we want to frame the Constitution of our country in our national language, when we want to make it a secular state, neither 'India' nor Hindustan are suitable names for this country. In my opinion, we should give this country the ancient name 'Bharat'.

One thing more I would like to mention here. Ours is an agricultural country. It should have all that is necessary for agriculture. From this point of view the protection of cows is very essential for us. The problem of cow protection is a matter which has been associated with our civilisation from the time of Lord Krishna. To us it is not only a religious or economic but also a cultural problem. Just as we have declared the practice of untouchability an offence, we can also declare that cow-slaughter in this country would be an offence. We should include some provision in our Constitution for this. We learn from our history that only such regimes, whether during Hindu period or Muslim period, as had prohibited cow-slaughter had been popular and successful in our country. History is a witness to the fact that cow-slaughter was abolished here during the rule of many Muslim Kings. It may be said that it would entail a heavy financial burden. I submit, however, that even if we impose a tax on the people and ask them to pay it in order to protect the cows, I am of opinion that they would pay it quite willingly. The bogey of financial difficulties used to be raised before us by the British Government. But I would like that in the matter of cow-protection this bogey should not be raised before us.

We have to examine the Constitution from every point of view and seek to make it complete in all respects. Ours is not a newly born country. It is an ancient country, it has along history, a hoary civilisation and culture. We should frame our Constitution keeping in view all these facts before us. We do not want to place any minority, whether Muslim or other, under any disabilities. But, certainly we are not prepared to appease those who put the two-nation theory before us. I want to make it clear that from the cultural point of view only one culture can exist in this country. The Constitution that we adopt must be in harmony with our culture and that Constitution would be suitable to us which is in our language.

It is after centuries that we have this opportunity of framing our constitution. We must use it well and frame a constitution that is suited to the genius of our land.]*

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I have a short time at my disposal to deal with this enormous subject and I shall therefore confine myself to one or two specific subjects and reserve my comments on other matters for a latter stage. The first thing to which I wish to draw the attention of the House is the treatment of the expression "States". "States" under the Draft Constitution means almost anything. The idea was to do away with the distinction between the Provinces, the Indian States, the Chief Commissioners' Provinces and similar other things. It was feared, and very naturally feared, at one stage that the Indian States would not align themselves or could not be made to align themselves to the new set up of things, but things have proceeded rapidly and the "States" have quite reasonably aligned themselves or are aligning themselves with the Provinces. I therefore think that this definition of "States" as meaning all sorts of things is no longer necessary. I should think we should revert to the nomenclature of Provinces, Indian States and Chief Commissioners' Provinces and the like. There is no fear of jumbling them together and it is better to treat them as distinct entities. It may have been thought by the eminent draftsmen that unless they did this, there would be some centrifugal forces working, making them drift apart. But, that fear having been allayed, it is now necessary to go back to the original state of affairs. I submit that we are not legislating for the future; we are legislating for the present; though we should have an eye for the future, we must not forget that we are legislating for the present time. In the Draft Constitution we have three distinct items, namely, Provinces, Indian States and Chief Commissioners' Provinces. We should not do away with the present distinctions. If at a future date, these distinct entities would combine into one, as I have no doubt they will, and would be governed by the same or similar characteristics, then will be the time to amend the Constitution and treat them on the same basis.

You would be pleased to find that in Parts VI and XII, "State" means the Provinces. In Part VII, "State" means Chief Commissioners' Provinces. In Part IV "State" means Indian States. In Part III, "State" means a wonderful series of things. By means of article 7, "State" means first of all, the Government of India, secondly it means the Government of the States, meaning all the States, Provinces, Indian States and Chief Commissioners' Provinces, and what is very remarkable, it also means local and other authorities. I suppose these are the municipalities, district boards and other autonomous authorities. I think the passion for a constitutional expression has gone too far. To call a district board, a municipality or a thing of that type as a "State" would be doing violence to language. If English is to remain the language in which the Constitution has to be embodied, I think we should have some respect for the accepted meaning of the word State. A State always means and implies a kind of sovereignty. It may be limited or it may be unlimited. Some kind of sovereignty is implied in the word State. But to call a district board or a municipality a State would be a misnomer. I think the passion for the use of the word 'State' should be checked. If it is a question of nomenclature, if we want to use the same expression for the Government of India and the States, we should distinctly mention the word municipality or district board and not allow these to be comprehended within the meaning of the all-pervading word 'State'. If we allow the word 'State' to be used for allsorts of purposes, the very purpose of this well-known constitutional expression would be lost. I should think therefore that Honourable Members should look into this while drafting amendments. I find it to be an anomaly and it is difficult to find a substitute for this expression. I ask the co-operation of the Honourable members of this House to find a suitable expression for this. The expression has been defined to mean different things in different clauses. These are articles 1, 7, 28, 128, 212 and 247, according to which the word 'State' means different things. There is a danger of using a well-known expression to mean different things indifferent parts of the same statute. This may lead to confusion. It will be difficult for everyone who will have to deal with the interpretation of this Constitution or to understand this Constitution, to keep his head quite clear as to what is the sense in which the word 'State' has been used at a particular place. I submit, Sir, the ultimate purpose which seems to be lying behind this draftsmanship is the ultimate co-ordination and uniformity of all these different institutions. But at present, there is no need for this kind of indiscriminate use of the word 'State'. I should therefore ask Honourable members to consider in giving notice of amendments, whether it would be better to stick to the old and well known expressions Provinces, Indian States and Chief Commissioners' Provinces.

Then, I have one or two things to say with regard to another subject. Coming to the directive principles of State policy, articles 28 to 40, I think that these are pious expressions. They have no binding force. These cannot be enforced in a Court of Law and really, as the Honourable the Law Minister himself candidly admitted, they are pious superfluities. That is the criticism. He has given only one reply that the draft Constitution admits it to be so. I submit it is not a reply, but rather it is a statement of the fact of the criticism. I think every constitutional principle should give a right, and every right should be justiciable in a Court of law and in other places. If there is a right, its violation is a wrong, giving rise, to the well known cause of action. So, there can be no right, the violation of which would not lead to a cause of action. I do not think that people would rush to Court for these things. But, if a constitutional right is defined with a considerable amount of ceremony in a considerably important document like the Constitution of India, and if for the violation of the same no legal remedy is provided, it would be absolutely wrong to insert the so-called rights in the statute. I submit, Sir, these principles are so well known that they do not require to be stated formally in a Constitution, at the same time taking care to see that they are not justiciable in a Court of law. I submit, if these principles of a purely directive character without a binding force be at all introduced in a State. I think there are other principles which should also be equally introduced, as for instance, 'don't tell a lie', 'don't ill-treat your neighbour', and so on and so forth. The Ten Commandments of the Bible and the other commandments from various religions and from practical life should also be introduced on the same principle. As we do not think it practicable to state all these obvious truths, not that these truths are not admissible or are not binding, but because they are obvious. I submit that these directive principles are too obvious to require any mention. If there is any principle which requires to be mentioned, it must be justiciable; it must be enforceable in a Court of law. Otherwise, it should have no place in a Constitution. The Honourable Law Minister himself admitted that there is no principle similar to this to be found in any Constitution, except in the Irish Constitution. If a principle of this broad nature has found place only in one Constitution and that Constitution not being the best, I think it is not a safe guide to be followed. I submit that these directive principles should also receive careful attention from the Honourable members; at the time when this thing will come up, these principles should require careful attention.

As the time is very short, I do not wish to take up the time of the House any further but I would reserve my other comments for suitable occasions if and when they arise.

Sardar Bhopinder Singh Man (East Punjab: Sikh): *[Mr. President for a country which has passed through the historic phase of subjugation, it is natural that while framing its constitution, it should have a bright vision. Progress is liable to be impeded, if high ideals are not kept in view. It is an essential for progress. Differences do occur among the people, but on such occasions we have to see with what speed to proceed, which would enable us to reach our destination. In political matters it is wrong to ignore a reality and to take any hasty and unbalanced step, howsoever progressive the step may be. I congratulate the Drafting Committee for visualizing the conditions in their true perspective and solving various problems according to the exigencies of the time. Criticism is being levelled from two points of view. A strong Centre and retention of residuary powers have become object of criticism by some people. Undoubtedly the position of the Congress also has-been the same. But under changed circumstances and in the light of old experiences and partition of the country, some people demand a strong Centre. In opposing this the example of Russia is quoted. But it is forgotten that Russia has handed over these powers to her units after a dictatorial regime of 30 years.

I think, slowly and gradually as the country advances socially and economically, different provinces might get this freedom in instalments. In accepting these principles, I do not think it expedient to interfere in the day-to-day working powers of the provinces, which have been handed over to them by the Centre. Clause 226 can be cited as an example. This clause has been discussed in the Assemblies of the different provinces where it has been disapproved.

Another question is the problem of Minorities. While considering this question, the members of the Majority Community are touched. They are influenced by the past happenings. But consider it minutely. Formerly, in our country there used to be the third power which always induced them to become unreasonable. I regret that as a consequent one important minority succumbed to this temptation and adopted an unreasonable attitude and got the country partitioned. But, Sir, this cannot be said regarding other minorities. The minority, to which I belong, has always responded to the call of the country and in spite of their very small number has played a big part in every battle of freedom for the country. Therefore, when I invite your attention towards me, as a member of the minority community, it is not my intention to raise communal issue nor to weaken the nation or the country; rather I say this as a patriot, who feels that to gain the goodwill of the minorities is to add to the glory of the country and to increase the strength of the nation. Now, when there is no third power and the days of the unreasonable attitude of the minorities has come to an end, the responsibility of the majority has increased. The majority has to gain the confidence of the minority. I hope with the attainment of power, the majority will be able to dispel the doubts and misgivings of the minority. It will have to gain the confidence of the minority.]*

Shri R. V. Dhulekar (United Provinces: General): *[Now there is no minority here.]*

Sardar Bhopinder Singh Man: *[Well, you have already accepted it. You have accepted it in two different clause son the basis of religion and language. Sir, while I say that in the Draft Constitution problems have been solved according to the exigencies of the time, I shall be failing in my duty, if I did not bring to your notice that in clause 13 relating to the fundamental rights and more particularly the rights of citizenship, such difficult conditions have been laid down that all the rights have been rendered nugatory. So far as finance is concerned, special consideration is to be given to East Punjab and West Bengal which have been affected very much due to partition. Along with it the clause relating to the citizenship rights should, in my opinion, be made more elastic for the refugees. It would be difficult for lakhs of refugees coming from far off places to appear before a District Magistrate for filing the declaration that they intent to adopt the citizenship of India.

In many cases it is quite possible that the people will have to come from a distance of 40 to 50 miles and they will have to spend a lot for their journey. Therefore, it is not expedient to force the people like this, more particularly in the Punjab where they have no arrangement of a fixed place of residence.

There is yet another and last point. I have observed it since yesterday that Endeavour is being made to solve the language problem by giving an emotional tinge. In my opinion, there should be no display of sentiment while solving the language problem. At times it takes a religious turn. In my opinion the Congress stand should be maintained in solving the language problem and the numerous resolutions passed by the Congress previously, regarding the language problem, should stand.]*

Mr. Frank Anthony (C. P. and Berar: General): Mr. President, Sir, although Dr. Ambedkar is not present in the House I feel that, as a lawyer at least, I ought to congratulate him for the symmetrical and lucid analysis which he gave us of the principles underlying our Draft Constitution. Whatever different views we may hold about this Draft Constitution, I feel that this will be conceded that it is a monumental document at least from the physical point of view, if from no other point of view. And I think it would be churlish for us not to offer a word of special thanks, to the members of the Drafting Committee, because I am certain that they must have put in an infinite amount of lab our and skill to be able to prepare such a vast document.

Dr. Ambedkar referred to the fact that while there was a necessary minimum of rigidity and legalism in a federal constitution, an attempt had been made to give it the maximum of flexibility by accommodating as much as possible local needs and local circumstances. He also pointed out that this flexibility had not been over-carried to the extent of encouraging chaos. For instance, on fundamental matters an essential unity and integration had been retained by having uniform laws, by having a single and integrated judiciary, by having a Central Administrative Service. Dr. Ambedkar also indicated that the Constitution sought to strike a balance between giving the Centre too much or too little power. He felt that it is a salutary principle not to over-weigh the Centre with too much power under which it might crash. Sir, I know that several Members in this House will not agree with me. I, also, regard as a salutary principle the need for not giving too much power to the Centre. Constitutionally, that is an unexceptionable principle, but in applying it, we must adapt it to local needs and circumstances, and, if we are frank with ourselves, we must admit that in this vast country of ours there is an inherent potential of divergence and disintegration. Because of that I feel that the maximum possible power that can be given to the Centre must be given to the Centre in the interests of the country, in the interests of the integrity and cohesion of the nation. I feel that in three particular matters there should be Central control. I do not know to what extent some of my friends will agree with me here.

The first matter in which control should, I feel, be by and from the Centre is with regard to the Police Administration. I feel that the Police Services throughout the country should be controlled from the Centre. You may not have absolute control. You may qualify it. But there should be some measure of control from the Centre. We have to remember that there was such a thing as the Indian Police Service. It was an all-India service, the members of which filled key appointments in the Police Administrations in the different provinces. In spite of that single unifying link, the Police Administrations in the different Provinces had varying standards. If we are frank, we will admit that in some provinces the Police Administration set general standards of efficiency and integrity. At the same time, we have also to admit that in certain provinces the standards set by the Police Administrations were not far removed from chronic inefficiency and chronic corruption. While we have sought to secure cohesion and integrity, with regard to our judiciary, with regard to the Central Administrative Service (I do not know to what extent members of the Central Administrative Service will be appointed to key positions in the Police Administrations of the different provinces), whatever integrity and cohesion we may secure by having a single judiciary, whatever integrity and cohesion we may secure through the Central Administrative Service, I feel that integrity and cohesion will be largely stultified if the Police Administrations are left at the mercy of the different provincial Governments. I might add here that I feel this measure of cohesion by central control, to some extent at least, is vital. It goes to the roots of a healthy and stable society in our vast country.

The second matter on which I should like to see control from the Centre is education. I know that I am touching on Avery controversial point, that I will be criticised and my suggestion will be completely repudiated by those who, I feel, think - and only think - in provincial terms. At the same time, I feel that my proposal that education throughout the country should be controlled from the Centre will have, the approval and endorsement of eminent educationists of men, of vision and of men with statesmanship. What is happening today? On the threshold of independence (I cannot help saying it) certain provinces are running riot in the educational field. Provinces are implementing not only divergent but often directly opposing policies. And it is axiomatic that a uniform, synthesized, planned education system is the greatest force to ensure national solidarity and national integration. Equally, divergent, fissiparous, opposing educational policies will be the greatest force for disintegration and the disruption of this country. I regret to say, but it is true, if we will only admit it, that educational policies conceived in narrow provincial and even parochial terms are today menacing us with the inevitable danger of raising cultural barriers, mental stockades, of building educational walls, over which it will become increasingly impossible to look. I feel very strongly on this subject, because I have not a little to do with education. I have a great deal to do with education from an all-India point of view, and I feel that if a policy of *laissez faire* at this stage is conceded or accepted from the Centre, then we are trifling with a force which in its potential for mischief, in its potential for disrupting this country is much greater than any disruptive tendency we have faced from religious communalism.

Finally, Sir, the subject which I feel should be also controlled from the Centre is the not negligible subject of health. Education and health are, to my mind, the two paramount problems which this country is faced with. And we cannot begin to liquidate ill-health and malnutrition, unless we do it on a uniform scale. I do not believe that we can begin to touch this, perhaps our greatest problem, by allowing it to rest at the mercies of the different provincial Governments which are, some of them, bound to have halting policies; some of them are bound to have disparate policies, some of them are bound to have divergent policies.

Lastly, I wish to endorse the sentiment expressed by Dr. Ambedkar when he commended the provisions on behalf of the minorities. I know that it is an unsavoury subject (after what India has gone through) to talk of minorities or in terms of minority problems. And I do not propose to do that I do not propose to commend these minority provisions, because they have already been accepted by the Advisory Committee; they have been accepted by the Congress Party; they have also been accepted by the Constituent Assembly. But I feel I ought to thank and to congratulate the Congress Party for its realistic and statesman like approach to this not easy problem; and I feel we ought particularly to thank Sardar Patel for his very realistic and statesman like approach. There is no point in blinking or in shirking the fact that minorities do exist in this country, but if we approach this problem in the way the Congress has begun to approach it, I believe that in ten years there will be no minority problem in this country. Believe me, Sir, when I tell you that I, at any rate, do not think that there is a single right minded minority that does not want to see this country reach, and reach in the shortest possible time, the goal of a real secular democratic State. We believe - we must believe - that in the achievement of that goal lies the greatest guarantee of any minority section in this country. As Dr. Ambedkar has said ,we have struck a golden mean in this matter. The minorities too have been helpful. There is no doubt that we went more than half-way to meet the Congress Party and the Congress Party also, although it is very difficult for a member who is not a member of a minority community, to appreciate the difficulties and anxieties of a minority, has done that and we are deeply grateful to them for it. I believe that in these provisions we have struck a mean - a mean by which through a process of evolution, through a process of natural and easy transition, if we all play the game (as I believe we will) this country will achieve the only goal which we all want to achieve, namely, a goal where we think of ourselves as Indians first, last and always. One of the realisations which impressed itself very strongly on my mind when I attended, recently, the Commonwealth Parliamentary Conference was that the eyes of the world are on India. People realise that when India comes into her own, the balance of power, industrial, economic and even military will be affected throughout the world. We all believe that India will come into her own. I am one of those who believe that India will attain her fullest stature in a secular democratic society. There may be shortcomings and imperfections in this Constitution which are inevitably the result of necessary adaptation. But I believe that in this Constitution which are inevitably the result of necessary adaptation. But I believe that in this Constitution we have both the opportunity and the guarantee of a secular democratic society in this country.

Finally, Sir, I wish to say that it is not so much on the written word of the printed Constitution that will ultimately depend whether we reach that full stature, but on the spirit in which the leaders and administrators of the country implement this Constitution of ours and on the spirit in which they approach the vast problems that face us; on the way in which we discharge the spirit of this Constitution will depend the measure of our fulfilment of the ideals which we all believe in.

Shri Krishna Chandra Sharma (United Provinces: General): I join in the pleasant task to compliment Dr. Ambedkar for the well worked out scheme he has placed before the House, the hard work he was put in, and his yesterday's able and lucid speech.

Sir, in considering a Constitution we have to take not of the fact that the Constitution is not an end in itself. A Constitution is framed for certain objectives and these objectives are the general good of the people, the stability of the State and the growth and development of the individual. In India when we say the growth and development of the individual we mean his self realisation, self-development and self-fulfilment. When we say the development of the people we mean to say a strong and united nation.

Sir, ours is a Democratic Constitution. Democracy involves a Government of, by, and for the people. In democracy, the combined wisdom of the people is regarded as superior to that of any single king or tyrant or indeed to a group of men. Moreover, democracy emphasizes the supreme good as being the welfare of the people. Political institutions are justifiable only in so far as they lead to this result and not by any pomp and show attached to them. These being the fundamentals of democracy, we have to judge whether the Constitution placed before us will make India a strong united nation with the possibility of self-fulfilment, self-development and self-realisation of the individual.

Sir, India needs wealth and when we say India needs wealth, we mean that India is a poor country and therefore should be strong enough to compete with any great country in the world and erect it on a footing of equality. Now, there was a time when wealth was regarded to consist in gold and silver or some other resources of the country. In the modern context, the wealth of a nation consists primarily in the limbs of its young men, their character and brain and their working capacity. Now, in this Constitution, there is not a single item or provision anywhere to make the people work or to make them grow. You have got directive principles. There, the State endeavours to give primary education and to find work and employment. The State does not take the responsibility to make the people work, on the principle that he who does not work, neither shall he eat. This is an important question. We should have provision for enforcement of work for able-bodies citizens. So Sir, in the directive principle which a learned friend of mine has criticised, there is no legal obligation imposed on the State to fulfil the rights given in the Constitution. I suggest that we make a provision that any law made in contravention of these principles shall to that extent be void. This will not affect the present position. It will give jurisdiction to a court of law, though only a negative right to the people to move a court that any law which goes against the interests of the people, against providing primary education for the children and against providing work and employment to the people should be declared void. The court will have jurisdiction to declare that such and such a law is void, because it contravenes the general principles laid down in Chapter IV.

The second thing I wish to emphasise in the directive principles is that for the growth of democracy, a free and healthy public opinion is necessary. The position is that in mediaeval times one dared not think freely but in these enlightened times one can dare think freely, but he cannot. Look to the spectacle of the man who by black-marketing and by doing things a decent man will not do amasses fabulous wealth. He buys a dozen of educated women roams about in the world and gets control over twenty Provincial dailies. He by unscrupulous propaganda gets hold on the mind of the people and passes as a benefactor of humanity. Do you think this is democracy? Do you think there is any possibility for the growth of an honest, independent citizen in a country where such a thing is possible? I, Sir, with all the force at my command protest that such a thing should not be allowed to happen in this great country. You should and you can make it impossible for such things to happen by preventing the abuse of wealth or the amassing of wealth in the hands of individuals to that extent. You should do this control of the Press and provide for a healthy and independent press so that effective independent opinion should be possible. For instance, I would refer to the provisions of Chapter II of the Russian Constitution. There are two articles there 14 and 18. They lay down that the State will compel every able-bodied citizen to work and further in another article it is laid down that the Press would not be allowed to prejudice or affect the growth of effective independent opinion. This effective opinion is the backbone of democracy.

Having dealt with directive principles, I pass on to Chapter XIV relating to minorities. As I said, this great country needs unity. The object is a united nation. Much has been said about the rights of minorities. I do not think our minorities are minorities in the real sense of the term or the classes or groups accepted by the League of Nations. We all belong to the same race. We have all lived in this country for centuries, for thousands of years. We have imbibed a common culture, a common way of living, a common way of thinking. Thus I do not understand the meaning of giving these special privileges in Chapter XIV. It creates statutory minorities and to say that the thing will last for ten years only is to forget the lesson of the past. What happened in the past? You gave certain rights and privileges to Muslims as such and those rights and privileges, it was hoped, would in the course of time automatically cease, that the Muslim community would realise the futility of those special privileges and would associate itself with the common people of the land and give up those privileges. But the result was the partition of the country. Once you give to a certain group of people, not on their functions, not because they are doing something for the country, but simply because they belong to a certain group or class, certain special privileges, you perpetuate what is generally the fault in democracy, namely, the giving rise to of groups or classes which would do things detrimental to ends of the groups or classes they belong to Cliques and intrigues will do neither any good to the groups or classes they represent nor to the country, but in the name of that group or clique they will serve their own selfish ends. While it would stand in the way of a united nation it will not do any good to those classes or groups and would perpetuate what is, as I said, generally the defect in democracy. I would therefore suggest that this Chapter better be altogether omitted and if there are any safeguards, or any encouragement, necessary for the backward classes or certain other classes, there might be other means, namely, giving scholarship to deserving students, giving other financial help, opening institutions and other facilities which are necessary for their amelioration and lifting up; but to perpetuate division in the body politic, to perpetuate division in the nation, would be detrimental to the healthy growth of the nation and would do an incalculable harm to us and our posterity.

Shri T. T. Krishnamachari (Madras: General): Mr. President, Sir, I am one of those in the House who have listened to Dr. Ambedkar very carefully. I am aware of the amount of work and enthusiasm that he has brought to bear on the work of drafting this Constitution. At the same time, I do realise that that amount of attention that was necessary for the purpose of drafting a constitution so important to us at this moment has not been given to it by the Drafting Committee. The House is perhaps aware that of the seven members nominated by you, one had resigned from the House and was replaced. One died and was not replaced. One was away in America and his place was not filled up and another person was engaged in State affairs, and there was a void to that extent. One or two people were far away from Delhi and perhaps reasons of health did not permit them to attend. So it happened ultimately that the burden of drafting this constitution fell on Dr. Ambedkar and I have no doubt that we are grateful to him for having achieved this task in a manner which is undoubtedly commendable. But my point really is that the attention that was due to a matter like this has not been given to it by the Committee as a whole. Some time in April the Secretariat of the Constituent Assembly had intimated me and others besides myself that you had decided that the Union Powers Committee, the Union Constitution Committee and the Provincial Constitution Committee, at any rate the members thereof, and a few other selected people should meet and discuss the various amendments that had been suggested by the members of the House and also by the general public. A meeting was held for two days in April last and I believe a certain amount of good work was done and I see that Dr. Ambedkar has chosen to accept certain recommendations of the Committee, but nothing was heard about this committee thereafter. I understand that the Drafting Committee - at any rate Dr. Ambedkar and Mr. Madhava Rau - met thereafter and scrutinised the amendments and they have made certain suggestions, but technically perhaps this was not a Drafting Committee. Though I would not question your ruling on this matter, one would concede that the moment a Committee had reported that Committee became *functus officio*, and I do not remember your having reconstituted the Drafting Committee. The point why I mention all these is that certain aspects of our Constitution have not had the amount of expert attention that was necessary, the amount of attention that could have been provided to it if a person like Mr. Gopalaswami Ayyangar or Mr. Munshi or certain other persons had attended the meetings all through.

Sir, I would draw your attention to one aspect of the Draft Constitution, *viz.*, the financial provisions in the Constitution. You, Sir, appointed an Expert Committee. Well, to my own mind, the way in which the Committee worked was not altogether satisfactory, though the members of the Committee were eminent enough. I had the opportunity of giving evidence before the Committee and I did come away from that meeting feeling that the Committee was not seized of the seriousness of the matter they were entrusted with, nor were they competent to advise the Drafting Committee in regard to the subjects referred to them. Sir, the proof of the pudding is in the eating. I have with me a copy of the report of the Expert Committee, and I am not satisfied with it. Circumstances happened that the House could not discuss the report of the Expert Committee and I believe that the Drafting Committee were more or less left to decide for themselves whether those recommendations were worthy of being incorporated or not.

Sir, I have a few remarks to make in regard to there port of the Expert Committee. The Expert Committee did not seem to be sure of itself. Actually, though the terms of reference which you, Sir furnished them were wide enough, wide in the sense that going on the experience of the Government of India and the provincial governments during the last ten years they were competent even to suggest alterations of the various heads in the lists enumerating Central and State subjects if necessary, they did not attempt to seize the opportunity that you furnished to them, but on the other hand they have mentioned explicitly in their report that they preferred in the circumstances that exist in this country to adopt the *status quo* rather than attempt to make any revolutionary changes in the financial structure of the country. That, Sir, I am afraid, was very unfortunate.

The second point on which I would like to touch is about paragraph 49 of the report with regard to the items in provincial list, Nos. 48. 49 and 51., 51 relates to agricultural income-tax. 48 and 49 relate to Estate Duty and Succession Duty on agricultural land. They felt that in the present context of things, the difference between agricultural property and non-agricultural property had no validity. I think they were quite right, but they have not had the courage to suggest that in the Draft Constitution this distinction which was imported for specific reasons into the Government of India Act should be done away with. I propose Sir, if the House would permit me, to table an amendment seeking to do away with this distinction. Not that I feel that the powers of the provinces should be encroached upon but I feel that the only way in which the revenues of the provinces could be augmented is by unifying income-tax, whether it is agricultural or non-agricultural property, unifying Estate Duty whether it is agricultural or non-agricultural property and so on and making the advantage of such unification available to the Provinces.

Sir, one other recommendation of the Expert Committee is, I am afraid, rather mischievous. That is, they have suggested in regard to Sales Tax - which is item 58 in List 2 - that the definition should be enlarged so as to include Use Tax as well, going undoubtedly on the experience of the American State Use Tax which, I think, is a pernicious recommendation. I think it finds a reflection in the mention of Sales Tax in Item No.58 which ought not to be there.

The other recommendations of the Expert Committee like increasing the share of income-tax to the provinces from 50 per cent to 60 per cent and incorporating in the pool the proceeds of Corporation Taxes as well as taxes on Federal emoluments have been more or less dismissed by the Drafting Committee .

So I do feel that either the Drafting Committee was not competent to examine even the half-hearted recommendations made by the Expert Committee or they felt that it would be better to tread on safer ground and adopt the *status quo* which idea, I think, more or less dictated the decisions made by the Expert Committee itself.

Then I come to a new provision that has been made in the financial sections of this Draft Constitution, viz. Article 260. Article 260, Sir speaks of a Finance Commission. In fact, Sir, in the terms of reference that you had sent to the Expert Committee you yourself made that suggestion, but I do not know if it is at all necessary for us to incorporate in the constitution an Article like 260 which is mandatory only in regard to one particular aspect of it. namely, the appointment of a Commission. The duties assigned to it, to arbitrate between provincial units and the Centre and also to act as a sort of Grants Commission, can actually be done by any Commission approved by any law enacted by Parliament. Parliament is empowered to appoint a Commission of this nature so long as the recommendations of the Commission are not mandatory on the Central and provincial governments which is the position as the wording of Article 260 as it now stands. So what I really feel would be wiser to insert it, in view of the fact that we have had no time to examine the financial implications of this Constitution and in view of the fact that we could not apportion the heads of income properly between the provinces and the Centre, a provision in the Constitution itself for a Commission which will go into the entire financial structure of the country and make recommendations even in regard to changing the heads in the lists assigned to the provinces and the Centre. As a matter of fact, mention has been made by the Expert Committee that it should be done, though they have not gone further into it. What I would like to have in this Constitution is that a Finance Commission should be appointed and that Commission should be empowered to make recommendations to make alterations in both lists 1 and 2 and that the recommendations of that Commission should be adopted as a part of the constitution and should be obligatory on the Government of India and the provincial governments without going to the needless process and trouble of an amendment to the constitution. I do not know, Sir, if such a thing is possible but I see that the mover of this motion is not here--probably he may have been able to enlighten me on this point if he were here--but I do feel that an attempt should be made to insert a provision of this nature in the Constitution. I would only say, Sir, when dealing with this particular aspect of the matter that I feel that the defects in regard to the distribution of the financial powers in the 1935 Act have not been properly appreciated and no serious attempt has been made to devise methods to increase the revenues of the provinces which do badly need additional resources and to have a more rational and equitable system of taxation in this country.

Sir, one or two other aspects I would like to touch on before I sit down is this. Sir, the Mover of the motion mentioned about the need for a strong Centre. I find that sentiment has been echoed by Mr. Anthony. Well, I think in the uncertain state of events which lie ahead of us and in view of the fact that the main objective of our having achieved freedom is to better the lot of the lowliest in this country, namely, to improve the economy of the common man, the only way in which that can be achieved is to take certain amount of powers to the Centre which can direct the steps to be taken to this end. I am all for a strong Centre, if the provinces' powers could be preserved intact. It is also necessary, Sir, as I find from a letter written to me recently by a former member of the Government of India and a well-known lawyer who has complained, that Provinces as they are today are merely going off the rails and are imposing all kinds of parochial and provincial restrictions in regard to the internal economy of the province and he has doubted whether it was wise to have a federal system of Government in the present state of things and whether we should not go back to the unitary system. That is there and when we look at it from that point of view, we feel that a strong center is necessary. I would also say that in certain matters Central direction may probably be useful. My honourable friend Mr. Jagjivan Ram has found a lot of difficulty in implementing his labour policy because of the imperfect power that is vested in the Central Government. Actually I see that Dr. Ambedkar has said that Article 60 is now so worded that the power of the Central Government in regard to concurrent subjects will also extend to giving executive directions which are non-existent at the present time. But I do not think, as I read the Article 60, the power is explicitly there but that is a point which Mr. Jagjivan Ram has often mentioned and I always felt that in regard to labour matters, it is better that a larger amount of power is vested in the Centre both for purposes of co-ordination and also because in the provinces the various vested interests prevent progressive lab our legislation being undertaken. So, I would perhaps suggest either an explicit mention in Article 60 that in regard to concurrent subjects the power of the Central Government to give executive directions will also be there or to put lab our legislation in List 1.

One other matter in which perhaps I had some sympathy with Mr. Anthony's suggestion, though I feel I must resist all other suggestions he has made in regard to strengthening the Centre, is in regard to public health. There are certain aspects of public health where the Central Government could do a lot of good. Actually, disease in this country is universal. It is not the main privilege of Madras, Bombay or U. P. and therefore in the matter of public health legislation and also in the matter of maintaining institutes for purposes of research in health, I think some amount of power could be given to the Centre and therefore, that item could come into List 3. But, Sir, while I feel that a strong Centre is necessary, because I visualise the most important task before us is the implementing of the economic objectives, I am rather disinclined to pursue that idea to its logical end, because of what happened yesterday here. Sir, I assure you that I am not going into any controversy, because a controversy can be raised at the proper time. We found yesterday the display of a certain amount of intolerance, of a certain amount of fanaticism, of a certain amount of thoughtlessness on the part of people whom I always regarded as being highly intellectual, highly developed in the matter of aesthetic regarded as being highly intellectual, highly developed in the matter of aesthetic sensibilities and civilization. I refer, Sir, to a type of imperialism that seems to threaten us to-day which perhaps driven to its logical end will bring into being a type of totalitarianism and its reaction on the rest of the units of the Union of India to be. Sir. I refer to this question of language imperialism. There are various forms of imperialism and language imperialism is one of the most powerful methods of propagating the imperialistic idea. It is no doubt true that a large portion of this country do speak a particular language. If I were perhaps a Hindi speaking person, I would certain visualise the days when the Hindi-speaking areas would be a powerful area, well-knit with United Provinces, the northern portion of C. P. portions of Bihar. Matsya Union, Madhya Bharat, Vindhya Pradesh, all together reproducing, Sir, the greatness of the Asokan Empire, the Empire of Vikramaditya and that of Harshavardhana. It is a thing which just tickles your fancy and if you happen to be a native of the area your imagination more or less takes you to the glories of the past which one seeks to bring into being. But what about the other areas? What about the level of education that we have now attained in those areas and the ideas of freedom that have grown with it? Believe me, Sir, that the hatred that we in South India had for the English language has now gone. We disliked the English language in the past. I disliked it because I was forced to learn Shakespeare and Milton, for which I had no taste at all, but today it is no longer a matter of duress. But if we are going to be compelled to learn Hindi in order to be a member of the Central Assembly in order to speak out the grievances of my people, well, I would perhaps not be able to do it at my age, and perhaps I will not be willing to do it because of the amount of constraint that you put on me. I shall deal with this particular subject later on at the appropriate time but I do feel, Sir, that my honourable friends of the U. P. and C. P. and portions of Bihar will take note of the fact that while they are enthusiastic for their own language, and while they want the English language to be wiped out of this country, they must also recognise that there are a number of people all over India who do not understand the Hindi language. Sir, my honourable friend yesterday resorted to a simile, to strengthen his case. I am accustomed to hear similes, I have a friend who is extraordinarily good in similes and parables, who is somewhere near here now. But what about the simile used by my friend? My honourable friend said: "Are there not a number of people who do not understand English, who trust the people who speak the language?" Yes, there are a number of people in this House and elsewhere who do not understand English. It may be my neighbour from Madras does not understand English and he is prepared to trust me, but that does not mean that a person in South India would be content to trust somebody in U. P., however good Pandit Balkrishna Sharma may be and whatever assurance I may carry forth from Delhi to the South. I know he is an ideal legislator, has an aesthetic soul, is a poet and all that sort of thing-it does not mean that merely because in one particular area there are people who cannot understand the language, they should be prepared to trust those people, who understand it and who are a thousand miles away to carry on the administration. Has anybody in this House given one moment of thought to those of us of this House, who have been merely gaping unintelligently because we could not understand what is being said? It may be, as my honourable friend, Mr. Satyanarayana, who propagates Hindi in South India without effect told me, that there was not much substance in the Hindi speeches that have been made; perhaps it is so, but I would like to know what has been said; I would like to counter the points made. I felt completely helpless in a situation where I am bound to have brought to bear all my faculties to understand what has been said for the benefit of the future of my country, for the benefit of the future of my people. This kind of intolerance makes us fear that the strong Centre which we need, a strong Centre which is necessary will also mean the enslavement of people who do not speak the language of the legislature, the language of the Centre. I would, Sir, convey a warning on behalf of the people of the South for the reason that there are already elements in South India who want separation and it is up to us to tax the maximum strength we have to keeping those elements down, and my honourable friends in U. P. do not help us in any way by flogging their idea `Hindi Imperialism' to the maximum extent possible. Sir, it is up to my friends in U. P. to have a whole-India; it is up tot hem to have a Hindi-India. The choice is theirs and they can incorporate it in this Constitution; and if we are left out, well, we will only curse our luck and hope for better times to come.

Mr. President: We shall now adjourn for lunch. Before we adjourn, it has been pointed out to me by the office that some difficulty is being experienced in distributing papers because some members have not reported their arrival or given their addresses. I request the members to leave their addresses in the notice office so that papers may be sent to them. Those who have not done so will kindly do so.

We shall adjourn now till Three of the Clock.

The Assembly then adjourned for lunch till Three of the Clock.

The Assembly re-assembled after lunch at Three of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

Shri Biswanath Das (Orissa: General): Mr. Vice-President, Sir, I rise to thank the Honourable Dr. Ambedkar for the brilliant analysis of the Constitution that he presented to the Constituent Assembly. Sir, I equally thank his colleagues who laboured hard for six long months to forge the Constitution that is presented to this House. While paying respect that is due to them, I will be failing in my duty if I do not state here that the Drafting Committee has exceeded the terms of the reference and power that was vested in them by the Honourable House. Sir, the House, if I remember aright, decided to refer the decisions to the Drafting committee to be presented in the shape of a bill and a subsequent motion by an Honourable Friend in this House gave them the option of making certain changes which might be found necessary in the course of the drafting changes flowing from decisions. But, Sir, in the course of drafting the Bill they have not only assumed to themselves the powers of the Drafting Committee but also the powers of a Select Committee - nay - something more - the Constituent Assembly itself. They have made certain changes for which they had no authority. Reference has already been made to the question of bringing in new changes in the Constitution for which they had no authority, questions which were not discussed nor were decided in the Constituent Assembly. Certain changes they themselves have made which they admit in the report and the changes have been marked and new questions have been introduced. Three committees were appointed either by the House or by the Honourable the President - the Sarker Committee, The Centrally Administered Areas Committee and the Minority Committee. I must state here that we have not discussed those reports nor has the Assembly come to any or the recommendations of the Committee but in certain cases something more than what the Committee have recommended; especially in this case need I draw the attention of the House to the recommendations of the Sarker Committee involving very important questions, viz., the financial relations between the Centre and the Provinces as also among the provinces themselves. I must frankly say that the Drafting Committee had no jurisdiction and all that has been done is done without the power or authority of this House.

Similarly, changes have been made in the Constitution without a decision of the Assembly. Sir, I will, having stated so far about the decision taken by the Drafting Committee itself, come to the question of the Draft Constitution. Sir, the procedure adopted by the Honourable President regarding discussion of the Draft Constitution is, I am afraid, peculiar. It is neither the procedure that relates to a Bill, nor the procedure that has been followed in other Constituent Assemblies. We constituted the Drafting Committee on the 10th of August 1947. After six months of labour, a report was presented to the Honourable Members of this House. The report was circulated about the middle of February 1948 and a very short time was given for Honourable Members to place their views before the Committee. I must frankly confess that not only was the time given to us short, but the time that was chosen for offering suggestions was very inopportune, in the sense that both the members of the Central Legislature as also members of the provincial Legislatures were busy with their Budgets. Therefore, the attention that was necessary and that ought to have been given to such an important thing was not given for no fault of the members themselves. Thus the help which the Drafting Committee must have received or has received necessarily remains very small and inadequate. Having said so much about the time given to us for submitting our suggestions, I pass on to the other question that was raised by Mr. T. T. Krishnamachari.

Not all the members of the Committee have taken part in the discussions of the Drafting Committee, not even I believe the decision of the members have given their joint thoughts. Therefore the decision of the Drafting Committee boils down to be the decision of a few Honourable friends. They may be eminent in their own way, but we want more minds, more thought and more discussion on this question. There was not enough, I claim. A year passed without much work and a lot of work could have been done and there would have been no complaint today either on the score of taking consultations or taking help of members or placing of the views of different members of the Constituent Assembly before the Drafting Committee. It is a matter to be regretted that even today we do not have before us the decisions or the discussions of the various legislatures. We claim here that we are delegates representing provinces and we do not know what the provinces have decided and what their views are. If we could know them, this would certainly give us good guidance in giving our decisions. Let me hope that at least before the actual Bill is taken for discussion, we will have before us the discussions or decisions of all the provincial legislatures whom we have the honour to represent in this Constituent Assembly.

It behoves me to place my protest here that a Bill of this importance has not been thoroughly scrutinised by a sort of Select Committee taking into consideration the various representations made from all over India and also views expressed by the members of different Provincial legislatures. If such an occasion had been given, it would have been welcome. If a session of the Constituent Assembly had been held in the month of May 1948, sitting and discussing, say, for about a week or so, the matter could easily have been referred to a Committee which would have taken the place of a Select Committee, and they would have thoroughly scrutinised the various Sections by this time, taking into consideration the views of different organisations. I feel that due scrutiny has not been made by the members of the Drafting Committee, nor is this

House given necessary time to discuss the whole question, nor even the opportunity to place the views of members properly and fully either before the Select Committee or before this House. I must again state that there was a meeting of four committees in one place - that was about 9th or 10th April 1948 - a combined meeting of the Drafting Committee, the Union Powers Committee and the Union Committee and the Provincial constitution Committee. I must frankly state that the decisions that were arrived at have not been accepted by the Drafting Committee. Therefore, is this a Drafting Committee , or a Select Committee, or an all-powerful Constituent Assembly? It remains for the, no, not for me, but for the Honourable Members of the House to decide. Under these circumstances, I do not at all feel happy over this performance.

One other item I will state before I resume my seat. It is an important one. I refer specially to the question of fundamental rights. Fundamental rights, specially Section 7,lays down that any Act which comes into conflict with the fundamental rights will be swept away, and the same Section defines the law to include Ordinances, Rules, Regulations and the like. That means that all the existing laws, provincial, central as also parliamentary laws that are in operation including Regulations and a huge number of Codes will be swept away by the operation of the justiciable portion of the fundamental rights. I am asking my Honourable friend Dr. Ambedkar whether he has examined thoroughly the implications and effect of these fundamental rights on the existing laws, both central and provincial. Are you going to create chaos in the country? I believe it was left either to the Secretariat of the Constituent Assembly or to the Central and Provincial Governments to determine the effect and implications of these laws. The British Government before it passed a Constitution Act undertook an examination as to the implications of the Constitution on the existing laws, and after being satisfied with it, they provided three different stages. The first stage was provided in the Act itself, that the existing laws shall continue in operation. The second was taken by allowing authority to take to adaptations of the Acts that are in existence and the third stage was in providing for the issuing of Orders in Council. Nothing of this kind has been attempted here nor an examination of the effect upon existing laws undertaken. It was left to me to protest against this in April 1947. I said this is unfair to the country and would bring trouble and misery. An examination was promised, and I state that this examination has not yet been undertaken, at least to my knowledge. This examination should be taken up in right earnest. I hope my speech proves that the necessary discussion has not been possible.

Shri B. Das (Orissa: General): Mr. Vice President, Sir, at the outset I must pay my tribute to the Drafting Committee that did a greatly arduous work and put into shape and form the Constitution Bill which we are considering today and which we have to alter according to our will, so that a proper sovereign Constitution will be designed for India. While I pay my tribute to Dr. Ambedkar and his colleagues, I must also pay the tribute that your Advisers deserve. Our great Constitutional Adviser, Srijut Narasingha Rau has rendered yeoman service in assisting the Drafting and other Committees in bringing the Constitution to this safe anchor. We are also indebted to our friend Srijut Narasingha Rau for raising our international status at the U. N. O. While we are still a Dominion, and I always think I am still a slave of England, my friend went there, raised our status and dignity and showed the West that India can contribute to world peace and happiness.

Now, Sir, I agree with some of the draft articles of this Constitution Bill. I may not be able here within the short time at my disposal to state the issues where I agree. I would rather start by enumerating the points where I disagree with the draft constitution and where the House must deliberate and so change the draft that the Constitution is truly for Indians and not based on past traditions and past connections with the British.

Now I will take the new draft of the Preamble to which I strongly object. The Objectives Resolution that we adopted in January 1947 stated that the Constitution is "Independent Sovereign Republic". On 21st February 1948 my friend Dr. Ambedkar changed it into "Sovereign Democratic Republic" but we find in another note of 26th October 1948 it has been changed into "Sovereign Democratic State". I do not know how this Drafting Committee can change the Objectives Resolution that this House passed in January 1947. There we have agreed unanimously that the Preamble should be "Independent Sovereign Republic", and I am one who will oppose the amended draft Preamble very strongly.

There are certain points here in which the House never gave its opinion. They were controversial. They were allowed to stand over, but still I welcome the new amendment to article 5 that the Drafting Committee has suggested. It should be further improved. I am referring to the definition of "citizenship". It requires closer examination. The Drafting Committee in its first draft was hesitant but in another suggested amendment they have introduced a better draft. It needs further improvement.

Regarding Fundamental Rights, there were two or three points where the House did not reach any conclusion. I do hope that we will be allowed sufficient time to discuss those without accepting the Drafting Committee's recommendations. One thing I am happy about is that the women of India have won a position which women in no other independent nation enjoy. They have secured equal rights, equal privileges, equal opportunities, with men and that is one great achievement in Fundamental Rights of our citizens.

Sir, I very strongly oppose the idea of nominated Governors. I do not know why the idea of those in which my friend Dr. Ambedkar is participating - the Government – should come into the drafting of this Constitution Bill. At no stage have we found any representative of our Cabinet making here that suggestion. Governors should be elected by Provincial Assemblies and they need not has the residents of that province to contest the Governorship. We do not want to hand our powers to the Government, be he the President or any other able Administrator including Dr. Ambedkar. We do not want the Governorships or Ministerships to be confined to a few individuals and their associates.

My greatest objection - and one on which the whole Constitution Act will founder - is in relation to financial allocation as between the provinces and the Centre. I am surprised that a brave man like my friend Dr. Ambedkar is fighting shy to discuss the finances of the Provinces and piously recommend that for five years after the promulgation of the Constitution Act we should not disturb the financial allocations. Very, very surprising indeed it was to me! It was the same attitude that the Colonial Government, that our former Government, took, and the supporters of that Government took in 1935. The foreign rulers wanted a top heavy central administration and starved the Provinces. I am surprised today to see that the same thing has been in the mind of the Drafting Committee! Of course, I concur with my friend Srijut Kamath that more Congress-minded men should have been in the Drafting Committee so that they will represent the principles and the thoughts of the people who have brought this Constituent Assembly to fruition and whose desire could have been reflected in the draft.

I am grateful to Mr. T. T. Krishnamachari for speaking out strongly. I find that in public health the range of expenditure in all the Provinces varied from 5.8 and 3.1 percent of the total expenditure. This was before the war in 1935-38; this is so after the war in 1947-48. Due to inflation, the expenditure has gone up three times in all the Provinces and at the Centre. This is a point which every province should examine and take note of. Poor provinces like Orissa and Assam are going to examine the consequences of such a statement from Dr. Ambedkar. We want finances re-allocated so that provinces have resources to give to effect to the second sentence in the Preamble:

"Justice—social, economic and political."

Sir, I do not care for political justice. I want social and economic justice from this House for the people. And if the Honourable Members are found hostile to it, we will compel them to accept the majority view of the House and do justice—social, economic,--to the teeming millions placed under provincial administrations.

Shri Lokanath Misra (Orissa : General): Mr. Vice-President, Sir, I am a new Member to this august House and never before have I taken any part in the proceedings here. I therefore would crave the indulgence of this Honourable House if I fail to make a coherent speech. But then I owe it to the people who sent me here to express in their behalf what I think is their view on this most important matter.

Sir, this Constituent Assembly which represents the sovereignty of India and which is supposed to give shape and form and prestige to our freedom is here deliberating on a Constitution that is supposed to be the guardian of our future. With that end in view, our leaders have laboured enough and hard and have produced a Draft Constitution which we are now going to discuss. But I can not really congratulate the Drafting Committee to the extent that they have been congratulated on this draft.

Sir, my first point is this: that although Dr. Ambedkar has delivered a very brilliant, illuminating, bold and lucid speech completely analyzing the Draft Constitution—here I must say that but for that speech I would not have been able to find out the defects in the draft so much—I must say that the draft does not represent the Objectives Resolution which this sovereign body passed last year. So far as I have been able to read it and so far as I can remember, the Objectives Resolution was a magnificent product which represented the mind and spirit of India not only for the moment, but for the distant future too. What was the Objectives Resolution? That Objectives Resolution envisaged a federal constitution in which the provinces would have the residuary powers and the Centre would have no more and no less power than is necessary to bring the provinces into a coherent system. But this Draft Constitution, by whatever name it may be called, federal or unitary, parliamentary or presidential, is laying the foundation more for a formidable unitary constitution than a federal one. By unitary I mean that it has surreptitiously taken more power to the Centre than it has given to the provinces. Whatever Dr. Ambedkar might have said or might have been thinking of about giving power to the individual with all his disdain for our villages, I must say, this Constitution does give nothing to the individual, nothing to the family, nothing to the villages, nothing to the districts, and nothing to the provinces. Dr. Ambedkar has taken everything to the Centre.

And what is this center? By this centralization of power, I do not know what will happen in the future. But from my present experience I must say that the Government that we are now having has been so centralised and our people in power have become so greedy of power that in the name of law and order, peace and unity, they are liable to go astray easily if the country is not vigilant and the are not relentlessly vigilant. I should therefore say that whatever might be the future of India, we must once for all know and the people must once for know and realize what is the ideal for which we are having this Constitution and what amount of freedom we are going to have.

I beg to question, Sir, whatever we want a strong centre. For what? Some people say that a great deal of provincialism is coming to the fore day by day and that there may be friction. Therefore, to start with, we must make the Centre so strong that it will be invincible. But this should not mean that we must be war-minded. We want a strong Centre. Strong against whom? Is it against Pakistan? Is it against Russia? Or is it against the people of India themselves? I am quite sure that if you can build on the solid foundation of India’s past, which is nothing more and nothing less than the spirit or the inward vision of India or the inwardizing temperament of India, if you can think and speak in terms of the spirit and not of your external objectives, I am quite sure you can build an India quite united, quite strong and at the same time an example to the world. But if by taking so much power into the hands of the President or the Ministers, or the Central oligarchy, we want a unite India, I am sure India will either break or it will be another means to us and all.

Now, it has been said that the United States of America has got a Federal constitution, but that gradually it is becoming a unitary constitution and that therefore it is getting better. It has also been said that as time goes on it is natural that the Centre must be taking more power and that the Provinces and units must be losing more and more power. This is a temperament of war-mindedness or at least of panicky peace. Let us see to what effect the United States Government has taken more power. The effect can only be that they will be stronger against Russia or some other country. That means strong against external forces. I should say that the strength of a nation and the unity of her people do not depend upon the State power. It depends upon the realization of the inner unity and the human spirit that makes all men brothers. Therefore if the words in the Preamble ‘Equality, justice and peace’ could have meaning only if we have a strong Centre, the sooner we are disillusioned, the better. I am wholly against a very strong Centre in the sense that the Government will be so strong, though not dictatorial or oligarchic, that the provinces will lose all importance, all initiative and drive. That ultimately curbs the individual below.

An Honourable Member just now said that we may have a strong Centre but no common language. I should say that we should be strong at the Centre if only we have a common language. If really we must have a unity in India , we must have a common language. If we are not prepared to forego the provincial language how can we have unity and how does it lie in the mouth of a Member to suggest that we must have unity, but no common language. He probably means that we must have a strong Centre with no common language which express an inherent common culture. The slogan of united India with a strong Centre is that way frightful. A strong Centre is not worthy of the struggle for us. Now my time is up. I would have taken some more time to x-ray the speech of Dr. Ambedkar. I bow down to his knowledge. I bow down to his clarity of speech. I bow down to his courage. But I am surprised to see that so learned a man so great a son of India knows so little of India. He is doubtless the very soul of the Draft Constitution and he has given in his Draft something which is absolutely un-Indian. By un-Indian I mean that however much he my repudiate, it is absolutely a slavish imitation of – nay, much more,-- a slavish surrender to the West.

Kazi Syed Karimuddin (C. P. & Berar : Muslim): Mr. President, Sir, I congratulate Dr. Ambedkar for the introduction of the motion for the consideration of the Draft Constitution of India. The speech that he delivered was a remarkable one and I am sure that his name is bound to go down to posterity as a great constitution-maker.

It was stated by him yesterday that the Constitution is the bulkiest in the world. In my opinion it is no merit in itself, unless there is substance in it. There is no doubt that we have copied provisions after provisions from foreign constitutions. This Constitution is neither parliamentary nor non-parliamentary, and it is yet to be seen, when we begin to work it, whether it would work properly.

Sir, I have very serious objections to some parts of the Constitution. As Dr. Ambedkar himself has agreed, the continuance of the States is not really proper in India, i.e. States or groups of States who will have the authority to legislate or to have separate Constituent Assemblies. In my opinion, it is really a stigma and a blot on the Constitution of India that even in the twentieth century Rajas, Rajpramukhs and Nizams are allowed to continue and to have their dynasties also continued. All these institutions must be abolished and there should be similar constitution for every State. All these States or groups of States should either be merged with the provinces or should be converted into independent provinces.

Sir the most important provision in this Constitution from the point of view of the minorities is the provision of reservation of seats with joint electorates. The Constituent Assembly last time considered the problem of the separate and joint electorates with reservation of seats. The only provision made for the minorities now is joint electorate with reservation of seats. In my opinion, it is neither here, nor there. Joint electorates with reservation of seats is absolutely of no consequence to the minorities. It would do them positive disservice. The representatives who would be elected under joint electorate with reservation of seats would not be the representatives of the minorities for whom reservation is given. Even a false convert, or a hireling of the majority party would come in by the majority party. Therefore my submission is that this provision is detrimental to the interests of the minorities. If the two resolutions regarding the continuation of separate electorate or joint electorate with reservation of seats with a fixed percentage of votes of the community to which the candidate belongs which were rejected last time are not acceptable to the House, the minorities should forego this reservation of seats under joint electorates. Sir, this is going to create permanent statutory minorities in the country. It would be to the great disadvantage and detriment of the Muslim community or any other minority community which claims reservation, as there is no chance under the system for any real representatives of the minorities to be elected. Even when we are having separate electorates we are not able to do any service to the community. We have thrown ourselves at the mercy of the majority and it is up to the majority to rise to the occasion and in this way the minorities and the majorities will be united together in the country to the advantage of both. We have seen how things have happened in India after 15th August, 1947 and we were sitting in separate compartments helplessly. We should be prepared to have joint electorates and fight our battles on a common ticket. It is up to the majority to create confidence in the minorities and it is up to the minorities to come forward and co-operate with the majority. Therefore my submission is that reservation of seats will create more bitterness, more jealousies, more communal hatred and Muslim disintegration. This provision is not in favour of the Muslim community. It is no us e accepting safeguards which are nominal and can not be effective. This is my opinion. We must be left to our own fate and we are quite prepared to face the future. If at all the majority community want to protect the rights of the minorities, let them introduce the system of proportional representation. Proportional representation with multi-member constituencies with plural voting is the only democratic system known in Europe for the protection of political and communal minorities. Without any sacrifice of the democratic principles the minorities can be protected. The rights of the minorities can be protected in another way and that is by the establishment of a non-parliamentary executive in this country. I was really surprised to hear Dr. Ambedkar while he was introducing the Draft Constitution, praising the system of parliamentary executive, while in his book "States and Minorities" he has advocated that the system of non-parliamentary executive is best suited to protect the minorities, and I would like to read to him what he himself stated in the year 1947:-

> " *Provisions for the protection of minorities—*
>
> The constitution of the United States of India shall provide:
>
> *Clause* 1
>
> (1) that the executive –Union of States – shall be non-parliamentary in the sense that it shall not be removable before the term of the legislature.
>
> (2) members of the executive, if they are not members of the legislature, shall have the right to speak in the legislature, speak, vote and answer questions:
>
> * * *
>
> (4) the representatives of the different minorities in the Cabinet shall be elected by members of each minority community in the legislature by the single transferable vote.
>
> (5) the representatives of the majority community in the executive shall be elected by the whole House by the single transferable vote.
>
> * * *

In my opinion this is the easiest method to afford protection to minorities. What has happened in India? In all provinces there were acts of rioting, arson and murder and the ministers were not courageous enough to come forward and stop them immediately, being afraid of their constituents. If you introduce non-parliamentary executive, the members of the executive would not be afraid because they are not liable to be removed by their supporters. Therefore in parliamentary executive the Government is naturally weak, and vacillating because the ministers have to depend for their continuance on communally minded supporters.

Sir, the fourth part of the Constitution is the directive fundamentals which have been given. I want to tell Dr. Ambedkar that in his book, he has mentioned that all these principles and fundamentals should be mandatory. He has mentioned that these provisions should be enforced within a period of ten years. What is stated in Part IV is vague. What we want today is not mere talk of economic or philosophical ideals. We want an economic pattern of the country in which the lot of the poor masses can be improved. In this Constitution which is framed, there is neither a promise nor a declaration for the nationalization of the industries. There is no promise for the abolition of Zamindari. It is nothing but a drift. It is nothing but avoiding the whole issue in a Constitution of a Free India. Not to have a definite economic pattern in the Constitution of Free India is a great tragedy.

One word more, Sir, and I have done. It is mentioned in a footnote to the Preamble that the question of our continuance in the commonwealth or otherwise is not yet decided. I am very sorry to point out I am very sorry to point out that when the Objectives Resolution was moved, it was proclaimed to the world and to the Indians that India will be a free and independent State. Why is this indefiniteness? At whose instance is this done, when by a resolution the sovereign Constituent Assembly of India had declared that India would be independent. I can not understand how this position was taken and with whose authority and whose consent this was done. My submission is that Dr. Ambedkar has gone beyond his powers in taking this wrong step. We have not forgotten the tragedies that have been committed in India. We have not forgotten the tragedy of Jallianwallah; we have not forgotten the support of British imperialism to the Union Government in South Africa Indians; we have not forgotten the racial policy in Australia. Such an association identifies us with Fascism in South Africa and with racial discrimination in Australia and moreover it would be an absolute failure of our foreign policy of neutrality. In view of all this my definite opinion is that there is no other way except to be out of the Commonwealth. Pandit Jawaharlal Nehru in 1929 at Lahore has declared that unless British Imperialism and all that is implies is discarded, India could never be a member of the Commonwealth. I am very sorry my time is up.

Prof. K. T. Shah (Bihar: General): Sir, I have to join in the chorus of congratulations that have been offered to the Drafting Committee and its Chairman for the very elaborate Draft Constitution that they have placed before this House. I have particularly to felicitate the Law Minister for the very lucid way in which he has put forward the salient features of the Constitution for our consideration, and given us thought-provoking ideas, with reasons why certain items have been included and why certain others have been put in the manner they have been.

My congratulations, I venture to submit, are the more sincere, as I am afraid I am not able to take the same view on many of the leading issues involved in this Draft Constitution. I would invite the House, Sir, to consider that in the first place the principles on which the Draft is based, or the instructions for preparing this draft were prepared and given at a time when this country was passing through very serious crises and happenings which many of us deplore. Our minds were tense; our thoughts were fixed upon certain events, which, if I may say so, distorted our vision of the future India as it should be. Under the stress of those events, instructions were given and principles laid down which I for one feel on more sober consideration we may have reason to revise. When the proper time comes, Sir, I shall put forward suggestions for amending certain provisions in the Constitution, on which I will not take the time of the House at this moment. Certain general ideas, however, I would beg to place before this House at this stage which I think would require reconsideration; and the foremost is, to use the words of Dr. Ambedkar himself: "the aims of this Constitution." What is this Constitution intended to do? The Constitution’s aim, as explained by Dr. Ambedkar, or as can be gleaned from the wording of the

Constitution itself, is almost entirely political and not at all social or economic. I hope no one will think it is a bee in my bonnet when I put forward this idea that there is not a trace of any desire to secure social justice, a real equality of the people, not merely paper equality, but equality in actual fact, in daily living and experience, which we were promised and we had all hoped would be the result after the Imperialist exploiter was ousted from the country. As I read two or three most prominent chapters or articles I feel a glaring lack of any attention being given to the disinherited, to the dispossessed, to those who have not scope to have the minimum, what I may call, a decent standard of civilized existence in this country.

Take the chapter of Fundamental Rights. For example, we were told and with some force that the Fundamental Rights have been added to and modified by a number of exceptions, but that these exceptions do not take away the right. I for one feel that the exceptions are too many. As I said before we have given the instructions or the principles have been laid down for drafting this Constitution in a moment of tension, in a moment when our minds were terribly disturbed so that attention was paid only to the dangers in an emergency rather than a more normal, more permanent, more usual form of life or standard of life which we were hoping for.

In the various items of the Fundamental Rights which will come up for detailed discussion later on I shall have, I hope, an opportunity to suggest amendments and redress the omission or correct the distortion this Draft suffers from on this most important subject.

But there is one aspect of it which I wish even at this moment to place before the House. The Rights are throughout spoken of only as "Rights"; and there is not a word said about Obligations. I would put it to the House that we are living and thinking as individuals or as a community too much of Rights and forgetting our Obligations whether as citizens, or as communities, or as a State. I for one would like to emphasize the chapter of Obligations of the State to the individual and *vice versa* as much, if not more, as that of rights.

The Rights, if I may say so, indicate extreme individualism, an exclusionist or exclusivist tendency, in which the individual emphasizes his exclusive claims or possession of privileges or possibilities far more than that of his membership of a group or of a society or of a community; whereas a similar emphasis on Obligations would teach him that he is not living in an isolated compartment by himself, he is not living in a Robinson Crusoe island, but that he is a member of a cooperative society, of a mutually interdependent community, of a state in which the only guarantee for survival, the only chance of progressive advancement is a co-operative effort, in which individual rights have to be subordinated to the co-operative necessity of joint effort for a common or agreed end. Sir, we are living in an age when we think so much of freedom; and talk in terms of individual liberty so much that we are apt to forget that "freedom" is likely to degenerate into "license" if we do not take care to remember the need simultaneously for self discipline that freedom has its obligations just as much as its advantages. This would be a self-imposed restriction like any kind of discipline that one can think of.

Here again is a case in which in regard to not only individuals, but also communities, the provinces and the whole Union, I should like to emphasise the Obligations chapter as much as, if not more than, the chapter of Rights. The individual has his rights, and I for one shall never agree to any suggestion of any infraction of those rights. But, at the same time the individual as well as the society have mutual obligations; and unless these obligations are duly stressed, I fear the apprehensions of many of us, about the likely consequences of the unrest of our time, will not be lulled to rest.

In this connection, I would like to add another idea which I would beg the House to consider more at length later on. We are talking about "Democracy" almost as a fetish. I know I am using some unpopular language when I speak in this strain. But please remember that "democracy", to be successful, has to be qualitative as much as quantitative. You must remember that what should count ought not to be merely the number of hands that are raised or the number of heads, present, but the character of those hands or the content of those heads.

In the Constitution before us, this qualitative aspect of democracy is, I am afraid, very much over-looked, if it is at all there, whereas the quantitative aspect figures almost in every chapter, and if I may say so, almost in every word of this Constitution. I could give a number of illustration straight off of the way in which the wordings express more the quantitative side of democracy, more the number, more the numerical strength, and not the moral force, the spiritual backing, the intrinsic value that a sound democracy should have.

I am afraid this is an idea not very popular at the moment, not very fashionable. But it is an idea which I wish the House would at least bear in mind before adopting the several process of the constitution. They embody a view, which I am afraid, has already become obsolete. We were told the other day that there is nothing new in this Constitution. The Law Minister was good enough to say that in matters like this, there can be nothing new. But here is a suggestion: why should we not begin, if I may say so, emphasising what I call the qualitative side of democracy of the new India as much as we have so far been talking of territorial or quantitative democracy?

In the chapter relating to the distribution of financial resource and obligations, to which allusion was made this morning; in the chapter relating to the distribution of powers between the provinces or the units and the Union, in the question of the emergency powers, and so on, always there is a hint, behind the scenes so to say, there seems to be a conflict even in the minds of the draftsmen, between what is demanded in the interests of the integrity, independence and security of the new State and also by the freer life, nobler living, and wider opportunity for the individuals that make up this nation.

I am not inclined, Sir, to invite a repetition of your bell though I have a lot more to say. Even if you are gracious enough to extend the time, I would not be able to say it within this time limit. I would, therefore, reserve what I have to say to the time when the amendments come up for discussion. Thank you.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Sir I would be failing in my duty if I do not at the very outset congratulate my Honourable friend and old colleague Dr. Ambedkar, for the magnificent performance he made yesterday. The House appreciates the stupendous amount of time and energy he has spent in giving the constitutional proposals a definite shape. In the few minutes at my disposal, I propose to discuss some of the most striking points in this Draft Constitution and before I plunge myself headlong into the provisions, I would request my Honourable friends Dr. Ambedkar and Sir Gopalaswami Ayyangar to listen to me for a minutes with attention.

The first thing to which I would like to draw the attention of my Honourable friend, Dr. Ambedkar, is the description he has given of India as a Union of States. I take particular objection to the expression States; for, "States" in political parlance, in the constitutional literature of the world, has got a certain special connotation. Unfortunately, the expression States has been used this Draft Constitution in many places for a variety of purpose and in different senses likely to create confusion. If the world Sates is retained in the description of India as it is, the impression may be caused in future that these States are independent sovereign States, joined to the Centre by some sort of a voluntary association. Students of constitutional history know that happened in the United States of America. There, some of the States, under the advice of some of the eminent jurists of the time, formed the States' Rights School and seriously contended that the States had each of them real sovereign and independent states and that it was by sheer voluntary association that they formed into a federation and worked together. I want this is to be guarded against. We had before the transference or power a body of territories known as Native States. Many of them have acceded to the Indian Union. If this description of India, as is given in articles 1 and 2, is retained, these States may contend, at some later stage, that they were sovereign States and were united to the Indian Union by purely voluntary arrangement. We want to make it perfectly clear in the Constitution that this Union is an indissoluble Union of indestructible States, States in the sense of constituent units. If I try to develop this point further, I will take more of the time of the House. We have got to find a suitable expression. We could use the word Provinces in the case of Governors' Provinces, and in the case of the native States, "principalities" or expressions like that. If Ajmer-Merwara, Coorg or even Delhi were to be dignified by the name of State, it would be descending really to the region of the ridiculous.

The next point to which I want to draw the attention of the House, is the discretionary power given to the Governors in the Constitution. The House knows very well that according to the Government of India act of 1935, the Governor had certain special powers to be exercised by him in his discretion or his individual judgment. This caused a lot of friction between the provincial Ministers and the Governors,--some of the Premiers are sitting here in front of me and I see them nod in assent of what I say—that this had been really a source of discontent among the popular ministers in the country. After the 15th of August, 1947, we made a clean sweep of these provisions. It is now provided that " there shall be a Council of Ministers to aid and advise the Governor in the exercise of his functions", removing completely all the discretionary powers which the Governors used to enjoy under the Government of India act of 1935, until the 15th August 1947. Curiously enough I find that this Constitution these noxious provisions have been bodily incorporated in Article 143 (i) and (ii). Here in this Constitution we have again provided for discretionary powers of the Governor but I ask the House very seriously to consider whether it really means progress or regress, advance or reaction. Today the Constitution of the country provides that the Governor or Governor-General of this country shall function merely as the Constitutional head and nothing more. Tomorrow if this Constitution, as it is, comes into operation with Section 143 (i) and (ii) the Governor will be more than a constitutional head as he will have certain discretionary powers. There is another point to which I would like to draw the attention of the House. In the Government of India act of 1935 there was in Section 54 a salutary check that whenever the Governor was to function in his discretion or in the exercise of individual judgment, he was to be under the superintendence, guidance and control of the Governor-General. This is entirely absent in the present case. Therefore this demands serious consideration.

My third point is regarding the provision for a very strong Centre. An Honourable Member speaking before me was making a grievance that the Centre was being made over-strong. Yes we want a strong Centre by all means, if we want to preserve or maintain our new born freedom, and if we want the solidarity of this country. (Hear, hear). We have had enough experience of Provisional Autonomy of which we had been enamoured in the past and now we have seen its effects. We have seen the centrifugal and fissiparous tendencies that it has generated and we all know it to our cost. If we want to hold together all the component units there must be a Centre which would be able to bring them into cohesion, and that Centre must have ample powers for the purpose. This does not mean that provincial autonomy should be ruthlessly curtailed.

My next point is regarding reservation of seats for minorities. I have a strong feeling about it. Reservation of seats today has absolutely no meaning (cheers). Reservation of seats for Muslims can have absolutely no justification. After having divided the country on basis of two-nation theory with all its implications after having provided in the Constitution. Fundamental Rights some of which are justiciable, after having provided in the Constitution Directive Principals of Governance, after having provided in the Constitution for the adult suffrage, after having done all this, does anyone feel called upon to provide for any reservation ? In principle I am opposed to it. Let my Muslim friends not misunderstand me. They have got this country divided and we know to our cost what that divisoin has meant. Punjab has understood it and Bengal has realised it. Therefore, those of you who are super-secular minded, by all means, give all manner of special representations to whom so ever you please but so far as the province of West Bengal and East Punjab are concerned, I beseech you to take your hands off. In the last session of the Constituent Assembly, I got a motion passed that so far as reservation for minorities etc., is concerned, exception must be made in the case of West Bengal and East Punjab; the House accepted it.

Prof. N. G. Ranga (Madras : General) : We do not want reservation.

Pandit Lakshmi Kanta Maitra : Mr. Vice-President of this august Assembly represents the Indian Christian community in India. He is man of great eminence and standing and he has been President, for three successive terms, of the Indian Christian Association. This Christian Community under his able guidance and leadership has never claimed any special representation. And if there is any Community in India which can legitimately claim special representation, it is the Indian Christian Community. He has set an example and I hope the leaders of the rest of the communities would emulate his example. We are trying to weld all Indians into a common nationhood. Whatever is left in India after division, is one nation and it will be the endeavour of Constitutionalists, public-men and the Government to work up to this ideal that we are all one nation.

Next I want to insist that we should have in every province a bi-cameral legislature. You are giving adult suffrage and you do not know how big your legislatures would be and you do not know what kind of people you will have. We want revising Chamber as a check or brake on hasty legislation. That has just a very salutary practice which obtains in England and so far as I am concerned, I have not the slightest doubt that you must have bi-cameral legislatures in every province for another two decades at least. In any case I, do declare here that we in Bengal want a bi-cameral legislature, an upper House.

Next the successful operation of this constitution hinges on a very important matter and that is the financial adjustments between the provinces and the Centre. Unless you provide here and now in the body of the Constitution itself the basis on which allocation between the Centre and the provinces should be made, I am afraid the new Constitutional machinery would begin functioning at great disadvantage. The provinces or the components unit will not know how to proceed with their development plans or Nation-building projects unless they are told in the Constitution itself their respective shares in the revenues in the Centre. I would therefore suggest that a Committee of Impartial financial experts should be appointed to advise the Central Government, after exploring the entire field of taxation the allocation to be made to the different provinces out of the revenues that are derived from the provinces on behalf of the Centre and other sources of taxation.

Lastly I think I should make a passing reference to the controversy which has unfortunately been raised on this House over the question of State language. The protagonists of Hindi, in their enthusiasm, have gone too far. As a reaction two or three of my friends have already spoken against it somewhat bitterly. I wish that this matter had not been raised at this stage. I can assure my friends from Northern India that if we cannot speak Hindi today, it is simply because we happen to be born in the Eastern and Southern parts. It is a mere accident of birth and individual merit or demerit has absolutely nothing to do with it. We will try to see how far we can go with you. We want some national language for India (Cheers) but it is no use repeating *ad nauseum* the new dictum that independence will be meaningless if we all do not start talking in Hindi or conducting official business in Hindi from tomorrow. It is both ridiculous and absurd. However at some later stage we must solve this problem. I can assure my Honourable friends from the north that we have got every sympathy for Hindi, but let them not in their over zealousness mar their own case. This is a sort of fanaticism,--this is linguistics fanaticism, which is allowed to grow and allowed to grow and develop, will ultimately defeat the very object they have in view. I therefore, appeal to them for a little patience and forbearance towards those who for the time being cannot speak the language of the north. After all they also humbly claim that their own languages contain literacy wealth and treasure which they cannot all throw away the mere bidding of the North.

Shri Ramnarayan Singh (Bihar : General) : Sir, I congratulate my Honourable friend Dr. Ambedkar on the opportunity he got of introducing this Constitution bill and I support this motion. As political workers we always talked of Swaraj which means that power will go from the British direct to the people in the villages. But I do not think this proposed constitution will give that power to them. As before once in five or seven years they will give their votes and their power will end there; later on, they will be governed as in British days. What we all want is that the political organizations in the country should serve the people; we do not want to be governed as before. We do not want Governors and even Ministers. The political and other organization should think how best to serve the people of the country. As regards the powers of the President and Ministers, my Honourable friend Dr. Ambedkar has very well appreciated this parliamentary system. He was not ashamed to admit that many things have been borrowed from other constitutions. It is of course a fact that beggars and borrowers do not feel ashamed of what they do, but those who do not want it feel the pangs of it. This constitution will only indicate to the outside world that we have no originality and only borrow from the constitutions of other countries. I say emphatically that the constitution is not what is wanted by the country.

Dr. Ambedkar said in an appreciative mood that it is parliamentary system of Government. If that is so, I am sure it will develop surely into the party system of Government which has been a failure in the west. I appeal to the House to consider this very seriously. There are people who say that the party system is based on democracy; on the other hand many jurists and politicians feel—and I also feel—that there is no democracy in it; on the other hand it strikes at the very root of the democracy. Democracy means rule by the majority, which must consists of feel and independent votes. But what we find is that our votes are influenced by a few people. And once the votes are influenced there is no democracy. I therefore say that this parliamentary system of Government must go out of this; it has failed in the west and it will create hell in this country. I have a bitter experience of its working in the provinces. In the Presidential system of Government it is easy to find one honest President, but it is not so easy to find an army of honest ministers and deputy ministers and parliamentary secretaries, and so on. So long as this thing is there, there can be no justice. Of course we can provide for the removal of the President if he goes wrong, but I think both in the center and in the provinces we must have all powerful Presidents who will be responsible for the work done and who will chose their ministers or secretaries. With regard to those people I am inclined to say that it is better to be ruled by the devils than by an army of ministers and secretaries, etc. I want power to go direct to the villages. It is not enough that they should vote; they must be made to take an interest in day to day administration of the country. Besides everybody knows that in a good State the three functions of judicial, legislative and executive are independent. But in these days under the parliamentary system of Government people from parties and manipulate votes and get a majority in the Legislatures and from the Government. This is dangerous. We find to our cost that these people wish to please their relatives and party men. Therefore I suggest that the parliamentary system should go and the three branches—executive, judicial and legislative—should have nothing to do with one another.

As regards language and protection of cows I agree with what my friend Seth Govind Das said. The economy of the country demands that the question of cow protection should form one of the items of the Fundamental Rights which should also include the right to bear arms.

As regards reservation of seats I feel it should not be allowed. All my friends know that I have never been communal-minded. But as Pandit Maitra said, when the country was divided on a communal basis, there should not be any reservation for Muslims. At the same time I am not one of those who say that all Muslims should be sent to Pakistan or should be harassed in the Indian Union in any way or that their rights should be less than mine. They should have the same rights and privileges here as others but there should be no talk of reservation for them. To provide the reservations for any community would do great harm to the country. In conclusion I appeal to the House and to the country outside to frame the constitution in such a way that power may go to the purest and the best of our countrymen and that those who wield power may serve the people and make them happy and prosperous.

Dr. P.S. Deshmukh (C. P. & Berar : General): Sir, I am thankful to you for giving me this opportunity to express my views on the proposed constitution. The time is limited and therefore my observations can only be of a very general nature. When consideration of the various clauses takes place I shall unfortunately not be present here. I am therefore all the more grateful to have these few minutes.

The speech delivered by my Honourable friend Dr. Ambedkar was an excellent performance and it was an impressive commentary on the Draft that has been presented. As is well known, he is an advocate of repute and I think he ably argued what was before him. He would perhaps have shaped the constitution differently if he had the scope to do so. In any case I think he admitted his difficulties fully when he said that after all you can not alter the administration in a day. And if the present constitution can be described in a nutshell it is one intended to fit in with the present administration. That is why there is nothing original and nothing striking, nothing to create any enthusiasm about it. It is fit in with the administration left by the British in this country. The Governors of provinces are to be there; the administration in the provinces is not to be disturbed. What has been disturbed is only a few names here and there. We are told that there will be a President of the Indian Republic. As the learned Doctor himself admitted, he has been metamorphosed into a pitiable figurehead like the present King of England. So the name of President is merely a misnomer. It is to be adopted because we have perhaps no other alternative and because we are not prepared to call the head of our executive by the name of king. Apart from that and apart from the enumeration of Fundamental Rights, we do not find any striking difference between this constitution and the Government of India Act of 1935. In the way in which it was done by my learned friend it looks perhaps more attractive but on an ultimate analysis it will be found to be the same as the Act of 1935 with a few changes here and there.

With regard to the Fundamental Rights my Honourable friend had to admit that they have not tended to remain as fundamental as they should have been expected to. What is being done by the Supreme Court of America is tried to be done by provisos in the Draft Constitution. The various Fundamental Rights embodied in the American constitution were interpreted by the Supreme Court of America from time to time, and in their interpretation there were certain clogs placed on the fundamental nature of the Fundamental Rights, provided for in the American Constitution. That is what we do here by way of provisos. I for one do not like the fundamental rights because those which are necessary are already there in the Act of 1935, without the pompous name of Fundamental Rights. For instance, freedom of speech and freedom to associate freely although these rights had to be trampled under feet on various occasions during the Congress movement. The Fundamental Rights which are provided in the present constitution should not either have been circumscribed as they are or their enumeration should have been avoided to a large extent. Because some at least of them are bound to prove a clog, an obstacle to our future progress. For instance, freedom to acquire or sell property and to dwell anywhere one likes. I think it takes away from the sovereignty of the Parliament. If this is going to be the state of our fundamental Rights provided for in the Drat Constitution based on the parliamentary system of government, these rights should have much rather been permitted to be determined from day to day by the Parliament itself. Why should we take away or encroach on the sovereignty of Parliament by defining the rights which we are not prepared to concede on any broad basis? We have hedged in the Fundamental Rights with so many restrictions that they are neither Fundamental nor have much of rights in them. In some respects at least they constitute an enumeration without much significance.

The Honourable Dr. Ambedkar was at pains to justify the inclusion of the directive principles of administration in the body of the Constitution. He was constrained to admit that if he had the choice he would have relegated them to the Schedules in the Constitution. That I think is a very clear and explicit admission on his part. Really speaking there is no place for them in the Constitution. It is a sort of a election manifesto. Moreover the directive principles themselves are not of a very fundamental nature. I could have understood it if it was provided that it shall be the duty of the State to establish the right of the state to the ownership of all mineral resources, that all industries shall be the property of the nation, that the Government derives all its authority from the people, that no person shall be permitted to be exploited by another etc. If there was something fundamental like that, there would have been more use. It is no use to put them in the Instrument of Instructions also as suggested by Dr. Ambedkar. They should not have in any case found a place in the Constitution itself.

Then my friend tried to tell us that the Constitution was more unitary than federal. My opinion frankly is that the present Constitution is neither unitary nor federal. That being so, this is nothing better than the 1935 Act. It is not unitary because provincial autonomy of a sort will continue; it is not federal because there is no freedom allowed to any of the units to any substantial degree. So I think this is a hotchpotch of the provisions taken from several different constitutions and my friend has been hard put to it to make a consistent whole of it. Of course , as an advocate he has justified every provision in it. This Constitution will in all probability go through the House without much change. I think we are destined to have this Constitution and no other. But in spite of that, I should like to say that we should have a Constitution about which every individual in the country would feel enthusiastic.

Sir, after all this is a country of agriculturists. The peasants and the labourers should have a larger share and the most dominating in the Government. They should have been made to feel that they are the real master of this the biggest nation on earth. I do not share the view that the past or our ancient civilization is not worth utilizing for the future building up of the Indian nation. That is a view from which I differ. I have offered these few comments, within the time at my disposal. I do not think that this House would be in a position to alter the Constitution largely.

Here I may refer to the feeling of some people that we have got into the Constituent Assembly and want to drag on remaining in office by some means or the other. Though that feeling is there, we have to make the best of the situation; we must try to remove it and improve it as much as possible. That is all that is possible in the present circumstances.

I hope the Honourable Doctor, although he has not been able to frame a Constitution more akin to the genius of the Indian people, will be accommodating in the matter of the amendments intended to make the ordinary citizen feel more enthusiasm and the peasant and the labourer feel that his Raj and his kingdom is going to dawn. That was the Ashirwad that Mahatma Gandhi gave him.

Shri S. Nagappa: Mr. Vice-President, Sir, I join the previous speakers in congratulating the Honourable Chairman of the Drafting Committee and all members of it. They have taken care to see that all aspects of all problems and all the reports of the various committees have been consolidated and looked into.

Now, as regards the labour problem, which my friend Shri T. T. Krishnamachari was kind enough to bring to our notice, it is a fact that we have been finding that in various provinces different measures to deal with labour are going forward. It would have been better if Labour therefore had been in the Central list. That would help to solve all the problems agitating lab our.

Sir, I am one of those who plead for a strong Centre, especially as we all know that we have won our freedom very recently. We require sufficient time to consolidate it and to retain it for all time to come. For another reason also the Centre has to be strong. We have been already divided in so many respects, communally and on religious grounds. Now let us not be divided on the basis of provinces. So, in order to unite all the provinces and to bring about more unity, it is in the country's interests as a whole to have a strong Centre.

Another reason why we should have a strong Centre I will mention presently. Some people say that we should have a strong Centre with a war mentality. I do not think we should have that mentality at all. We have been trained to be non-violent and truthful. These are our principles. When that is the case, there is no likelihood of the Centre having war mentality.

The Honourable Dr. Ambedkar, in introducing his report and the Draft Constitution, mentioned that the Constitution was federal in structure but unitary in character. I believe, Sir, especially at this stage we require such a Constitution. We were told that he has borrowed from the Government of India act. When we find something good in it, we copy it. If we find something useful and suitable to us, to our custom and to our culture, in other constitutions, there is no harm in adopting it.

The minorities have been very well provided for in the Constitution. I am glad about it and the representatives who have returned to this House to safeguard the interests of the minorities are also glad about it. For this we have to congratulate the majority community. We have to congratulate the majority community for conceding certain special privileges to the minorities.

Questions were raised here whether it is necessary for the minorities to have reservation. I think it may not be necessary for all time to come and for all the minorities. There are certain minorities which require some safeguards. I do not want these safeguards to be continued for all time to come. It depends more on the majorities how the minorities are made to merge with the majorities. It is not for the minorities to claim any reservation and to be always secluded or separated. The minorities are more eager than the majorities to get themselves merged at the earliest possible moment, but the task lies not on the minorities but on the majorities. The majority must conduct itself in such a way that the minorities feel that they are not different from the majority. It is only then, Sir, that we will be in a position to do away with the minority problem. Anyhow, I am thankful to the majority for having gone such a long way. As my Honourable friend, Mr. Frank Anthony, was saying this morning, the minorities have gone more than half the distance to meet the majority. Sir, there is some point in having reservation at least for some time to come. I only want to emphasise that it is the duty of the majority to see that the minorities do not feel that they are minorities.

I am glad, Sir, that social problems have also been touched. In the Constitution it has been made an offence to practice untouchability in any form. I am glad that the Drafting Committee has taken care to see that this is incorporated in the Constitution.

Sir, with regard to the services also, the Committee has made provision for the adequate representation of minorities. But there is one omission which I want to bring to the notice of the House. Nothing has been said that, when the leader of a party forms a Government, his government should be so formed as to reflect all shades of opinion and all classes of people. If such a provision is included, it will go a long way in solving the minority problem. I am thankful to the Drafting Committee for having conceded most of the points of these minorities. If the Drafting Committee had taken care to include such a provision as I have mentioned regarding the formation of Cabinets, both provincial and Central, they could have solved the minority problem completely. The House can easily imagine as to what will happen if this matter is left to the sweet-will and pleasure of the Premier whether to select a member of the minority communities or not. The Premier may say that in his Party there is no member belonging to the minority communities and that therefore he need not include any member in his Cabinet from outside his Party. In order to see that the minorities get a share in the administration of the country, it would have been better if the Drafting Committee had made a provision stipulating due-representation of the minorities in the Cabinets, both Provincial and Central.

As regards the language problem, it has been touched on by my Honourable friend coming from Southern India. I feel that my Honourable friends from Northern India are taking undue advantage of the fact that they have learnt Hindi from birth. That should not be the reason why these friends want to force Hindi on the people of Southern India. This does not mean that we are not for this language. We are not fond of English or any other foreign language. We are fond of our own language Hindi but that must take its own time. Even a child, when sent to school, takes its own time to study. Why are you in such a hurry? I do not think you have got to catch a bus or anything. I would like to assure my friends from Northern India that we are for one language for the country, whether it is Hindi or any other language decided by this House. But you should not try to force it on us all of a sudden and see that we are kept in the dark thereby. This must take time till all the people in this country become accustomed to it.

Sir, I once again thank the Honourable Dr. Ambedkar for having taken the trouble of drafting this Constitution. No doubt, it is an elaborate task but he has done it so successfully and in such a short time.

Mr. Vice-President: The House stands adjourned till Ten of the Clock tomorrow morning.

The Assembly then adjourned till Ten of the Clock on Saturday, the 6th November 1948.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VII

Saturday, the 6th November 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

MOTION *RE* DRAFT CONSTITUTION-(*contd.*)

Shri Arun Chandra Guha (West Bengal: General): Mr. Vice-President, Sir, we are assembled here to give final touch to the first Constitution of Free India. It is a very significant moment of our life and in this moment I cannot but recollect the past, the years of trouble and struggle that we have passed through. We have lost many comrades; the whole nation has undergone many troubles and sacrifices. When we are assembled here to give shape to our future destiny and our future constitution, I must bow down to the memories of those who have left us in the course of the long years of struggle that we have passed through,-- Surendranath Banerjea, Lajpat Rai, Motilal Nehru, Deshbandhu Chittaranjan, and many others who have led us in the struggle and last by Mahatma Gandhi the Father of the Nation. And in our intimate circle, particularly in Bengal, we have also our friends who have led us through all the struggle, less known to the public, but not less devoted to the cause, not less honest and sincere in their ardent desire for freeing the country. Coming as I do from the circle of workers who have been through the struggle for more than four decades, Sir, I cannot but recollect at least the names of some -- Jatindra Nath Mookerji, Swamy Prajnananda Saraswati, Surya Sen, Bhagat Singh and others. They have also served the cause, though they are not so widely known-- they have also contributed to the cause.

Now to the Draft Constitution. I am afraid the Drafting Committee has gone beyond the terms. I am afraid the whole constitution that has been laid before us has gone beyond the main principles laid down by the Constituent Assembly. In the whole Draft Constitution we see no trace of Congress outlook, no trace of Gandhian social and political outlook. The learned Dr. Ambedkar in his long and learned speech has found no occasion to refer to Gandhiji or to the Congress. It is not surprising, because I feel the whole Constitution lacks in Congress ideal and Congress ideology particularly. When we are going to frame a constitution, it is not only apolitical structure that we are going to frame; it is not only an administrative machinery that we are going to setup; it is a machinery for the social and economic future of the nation.

I feel, as for the economic side, the Draft Constitution is almost silent. It is rather anxious to safeguard the sanctity of property; it is rather anxious to safeguard the rights of those who have got something and it is silent about those who are dispossessed and who have got nothing. While there is much about the sanctity of property and the inviolability of property, things such as right to work, right to means of livelihood and right to leisure etc., have been left out and these things should have been effectively incorporated, in the Constitution.

As for the Fundamental Rights, Dr. Ambedkar,--he is a learned professor and I acknowledge his learning and his ability and I think the Draft Constitution is mainly his handicraft--in his introductory speech, he has entered into a sort of metaphysical debate. He has introduced a new term; I feel, Sir, there is no right in the world which is absolute. Every right carries with it some obligation; without obligation there cannot be any right. So it is no use taking shelter behind the plea that the Fundamental Rights cannot be absolute. I know these must be relative; but that does not mean that the Fundamental Rights should be negatived by putting some provisos. All the rights that have been mentioned in the Fundamental Rights section have immediately been negatived by putting some provisos and some subsidiary clauses. It would have been better for the Drafting Committee not to have provided these provisons within the Constitution at all. Then the future Government would have been able to act freely in framing the Fundamental Rights. But now as these have been incorporated within the Constitution it would be a question of amending the Constitution to make it broad-based. So I would ask the House either to put the Fundamental Rights rather frankly or to omit the whole chapter from the Constitution so that the future Government may frame the Fundamental Rights according to the needs of the time and not be handicapped with the task of amending the Constitution which has put some difficulties in the way.

Then, Sir, Dr. Ambedkar has passed some remarks about the village units. We have been in the Congress for years. We have been taught to think of the village panchayats as the future basis of administrative machinery. The Gandhi an and the Congress outlook has been that the future constitution of India would be a pyramidal structure and its basis would be the village panchayats. According to Dr. Ambedkar, the villages have been the ruination of India, the villages have been the den of ignorance. If that has been the case now, that is due to us who have been living in the towns, who have been shining under the foreign bureaucracy and foreign rule. Our villages have been starved; our villages have been strangled deliberately by the foreign Government; and the towns-people have played a willing tool in this ignoble task. Resuscitating of the villages, I think, should be the first task of the future free India. I have told you, Sir, that we have been taught according to the Gandhi an outlook and the Congress outlook that the future constitution of India would be a pyramidal structure based on the village panchayats.

I admit we require a strong Centre; but that does not mean that its limbs should be weak. We cannot have a strong Centre without strong limbs. If we can build the whole structure on the village panchayats, on the willing co-operation of the people, then I feel the Centre would automatically become strong. I yet request the House that it may incorporate some clauses so that village panchayats may be allowed to play some effective part in the future administration of the country.

Dr. Ambedkar has posed before us a question that they have tried to put the constitution on the basis of provinces, on the basis of some political units, on the basis of the individual as the basic unit. The village should be the real basis of the machinery. The individual is the soul of the whole constitution; but the village should be made the basis of the machinery of its administration.

Then, Sir, I would like to say something about the language. In the Draft Constitution it has been stated that Hindi and English should be freely used in this

House, and other languages can be used only when the speaker is unable to express himself adequately in either of these languages, I feel, Sir, as in the Soviet Constitution, we should allow the eight or nine major languages of India to be freely used in this House. As in the Soviet Constitution, by sheer weight of number the Russian language has all the predominance, here also, Hindi would have all the predominance by the sheer weight of number. There is no shred of doubt in the mind of any of us that Hindi is destined to be the national language and the language of the State in India; yet that should not mean that other languages which have mighty literature, mighty traditions behind them should not be allowed to be spoken in this House without the speaker declaring himself to be unable to express himself in Hindi or English. I would request that other languages should be allowed to be freely used in this House.

Mr. Vice-President (Dr. H. C. Mookherjee): Before I call upon the next member to address the House, I have here forty slips of members who wish to speak. The matter is so urgent and so important that I should like everybody to have an opportunity of airing his views on the Draft Constitution. May I therefore appeal to the speakers not to exceed the time limit which I have fixed as ten minutes?

Shri T. Prakasam: (Madras: General): Sir, the Draft Constitution introduced by Dr. Ambedkar, the Honourable Member in charge, is a very big document. The trouble taken by him and those who are associated with him must have been really very great. My Honourable friend Mr. T. T. Krishnamachari when he was speaking explained the handicap under which the Honourable Dr. Ambedkar had been labouring on account of as many as five or six members of the Committee having dropped out and their places not having been filled up. I have been attending this session regularly with the hope and expectation that the Constitution that would be evolved would be one that would meet with the wishes and desires of those who had fought the battle of freedom for thirty years, and who had succeeded in securing freedom under the leadership of the departed Mahatma Gandhi. I was hoping, Sir, having seen the Preamble, that everything would follow in regular course and bring out a Constitution that will give food and cloth to the millions of our people and also give education and protection to all the people of the land. But, Sir, to the utter disappointment of myself and some of us who think with me, this Draft Constitution has drifted from point to point until at last it has become very difficult for us to understand where we are, where the country is, where the people are, what is it that they are going to derive out of this Constitution when it is put on the statute book. Now, Sir, when a Constitution is drafted, generally, what is expected of those who are in charge of drafting the Constitution, those who are in charge of approving the constitution as members of the Constituent Assembly is, what are the conditions in the country, what is the situation in the country, are we doing all that is necessary to get over the troubles in the country? With that object, I have been waiting to learn from all Members who have been devoting their time in explaining the real position with regard to this Constitution. I feel thankful to some of those members who have not forgotten the way in which the battle of freedom had been fought in this country and how freedom had been secured. So far as the drafting of this Constitution is concerned, with all respect to the Honourable Dr. Ambedkar, I must say that he has not been able to put himself in the position of those who had been fighting for the freedom of this country for thirty long years. In one stroke he condemned the village panchayat system. He has referred to the remarks of one great man of those old days of the British, Mr. Metcalfe, and the description given by him that the village panchayats existed and continued, whatever may have been happening with regard to the Government at the top; whoever may have come and whoever may have gone, they did not concern themselves. It is not a matter which should have been treated by Dr. Ambedkar in that manner. That was a condition to which we had been reduced, after the village panchayats had been exhausted on account of the oppression of the various foreign rulers who had come over to this country. Still in spite of all that had been done for their suppression, they had survived. That is what Metcalfe wanted to explain to the word and to us who have been ignoring it. Therefore village panchayat is not to be condemned on that basis. I do not advocate for one moment today that village panchayat should be such as described by Metcalfe under those circumstances. Village panchayat should be one which is up-to-date, which gives real power to rule and to get money and expend it, in the hands of the villagers. I would like to know what is this Government that is being constituted under this Draft Constitution. For whose benefit is this intended? Is it for the benefit of a few people or is it for the benefit of the millions of people who pay taxes? Whether they have power or not they pay the taxes under the vicious system that had been established in this country and under which we had been groaning for a hundred and fifty years and we tried our best to get rid of that system. The British built up a system in the Centre and in the provinces in such a manner that the tiller of the soil and the labourer and other people are made to pay some tax or other to enable this Government to carry on administration from the Fort St. George or some other Fort and from this Delhi Centre or other places. What becomes of those millions who pay the taxes? The money is taken away under the British system by those people who have been established here step by step and the money is brought here and spent. How the money is spent the tax payer does not know and the tax payer has been left in the lurch. He does not know whether there is any ruler at all, even after the establishment of freedom by us, because we are perpetuating the same system and we are supposed to be governing in the name of King George. The Governor-General is appointed by the British Cabinet and our currency notes are being printed with the head of King George. To-day, after two years of establishment of freedom, we are in that condition. Therefore, it is only right and proper that this Constituent Assembly which has been sent by the people of this country should take particular care to see that this Draft Constitution of Dr. Ambedkar is so amended that it would really become a constitution for the benefit of the masses and the millions of people for whose sake the battles have been fought by that great friend who has gone away leaving us here to get along with our work. When he was alive his system and his schemes were not supported by us wholeheartedly or by the millions in the country. If that had been done, as he said, within twelve months we would have established freedom. That man of vision was with us and with all the betrayal made by us, he managed to educate us and keep us calm and fought all the battles until he succeeded and gave us a scheme for the construction of the future Government. Having been the man who roused the millions of people who had been in ignorance at the bottom when he came here and lifted them up, he made them understand that you are all men having soul force in the same manner in which I have got. If you educate yourself and carry on my programme, you will carry out everything and you will establish freedom. I myself, Sir, had a talk with the great Lala Lajpat Rai more than forty five years ago in England. He was the earliest of the sufferers for freedom and he said: "Look at the organization and discipline and the way in which people here conduct themselves. Can we ever hope to send away these British people from our country and establish freedom?" That was my feeling when I touched that shore. Under those circumstances it was, that this man Gandhiji came as a Seer and lifted us up and I and many friends here entered into his movement and we had been struggling on all these thirty years. The real thing has not been established. The British system drowned us and suppressed the country and made the people utterly helpless. To get rid of the capitalist system he introduced what was called the constructive Programme to enable every man and woman to do his or her duty and then make themselves fit for making sacrifices and finally to send away the British. He succeeded and the people succeeded. The must be thanked for the readiness with which they flung themselves into any ordeal whether it was one of fire or fire or one of water. Instead of having a Constitution based on a socialist basis in the manner in which Gandhiji had formulated for thirty long years, he divided the whole country into linguistic areas and framed the Constitution for the Congress and worked that for thirty years and it is one account of that that we won freedom – that socialist basis has all been thrown off and a capitalist basis is being introduced. That for food and cloth and would ask Dr. Ambedkar whether this Constitution would solve any of these problems. To my mind it is not possible so long as the capitalist system of the world is kept up. You may pass so many resolutions and appoint so many committees to solve the inflation problem, but have not been able to reach that point. Therefore it is necessary that this Constitution must be amended in such a manner that the capitalist monetary system is not adopted but a more proper socialist system of our own – I don't mean to say the Russian, we had our own system and we have had our system which had been put into force by Mahatma Gandhi and worked for thirty years successfully. This type of Draft Constitution is beyond my comprehension and I would appeal earnestly to Dr. Ambedkar – I do not blame hid alone. Dr. Ambedkar has not been in the battle-field for thirty years. He had not in any way understood the significance of this. He had been attacking the whole system and the Programme of Gandhi and the Congress all his life - time...

Mr. Vice-President: Order, order.

Shri T. Prakasam: If I should not say so much – I do not know – I will obey your order. The Draft Constitutions has gone in a wrong direction and it requires amendment very badly. I may tell the Honourable Members of this the same capitalistic monetary system is adopted here, must remember the same capitalistic monetary system is adopted here, we must remember what happened to other countries. The monetary system adopted by the capitalist countries of the world had proved a failure not once but twice. After the first war you have all seen what was called the world's first economic distress. Germany had become bankrupt England had become very nearly bankrupt. Her pound became equivalent only to seven shillings in the foreign market. But for the gold that was exported from here by the kind friends of our own mercantile leaders here, the capitalists, England also would have become completely bankrupt. That is the first thing. Then the second economic distress came upon the world. You will all remember what Dalton, the British Chancellor of the Exchequer said. He said that under the changed conditions the loss sustained by Britain on account of the dollar exchange business was 13 million dollars every day. and the whole system was going to collapse. If that had not been prevented by this Marshall Aid System they would have been perhaps in a worst position. Today England is suffering this country into such an economic condition by adopting this Draft Constitution without making necessary changes when the amendment stage comes. I have been waiting to see whether any light would come – whether any day would come with regard to these things. Sometimes I put myself in communication with the Finance Minister who is not be found here, with regard to the monetary system that should be adopted. (At this stage Mr. Vice-President again rang the bell). Well, Sir, I stop.

Shri Vishwambhar Dayal Tripathi (United Provinces: General): Sir, I wish to draw your attention to one very important matter. We are discussing a very important subject and it will be very difficult for any one of us to compress our ideas in ten minutes. I would therefore request you to relax your rule and to give us time to express our ideas freely and fully. The other day when we made this request tot he Honorable President we were assured that we shall have full and ample time for discussion. I hope you will kindly accede to our request.

Mr. Vice-President: As a matter of fact yesterday every honorable member exceeded the ten minutes limit. I am in the hands of the House the House: I can give any amount of time of time you want. But after all there must be some definite rule.

Prof. N. G. Ranga (Madras: General): Sir, you have said that yesterday every Member was exceeding the minutes limit. As an experienced speaker to be reminded by you bell that his time is up. There is considerable force in what my Honourable friend has said, namely, that it is impossible for anyone to develop any point satisfactorily within the short space or ten minutes. It is necessary, the general discussion should be extended by one day more.

Mr. Vice-President: Are you prepared to give one day more to the general discussion?

Many Honourable Members: Yes.

An Hounourable Member: What about those who have already spoken and taken only ten minutes time?

Dr. Joseph Alban D'Souza (Bombay: General): Mr. Vice-President, never before in the annals of the history of this great nation, a history that goes back to thousands of years has there ever been, and probably will there ever be, greater need – nay, Sir, I may even say as much need – as at this most vital and momentous juncture when this Honourable House will be considering clause by clause, article by article, the Draft Constitution for a Free, Sovereign, Democratic Indian Republic – as much need for a quiet and sincere introspection into our individual consciences for the purpose of giving unto Caesar what unto Caesar is due; as much need for a keen spirit of fraternal accommodation and co-operation whereby peace, harmony and goodwill will be the hall-marks of our varied existence individually as well as collectively; as much need for sufficient breadth of vision so that the complex and the difficult problems that we have to faced in connection with this constitutional set-up may be examined primarily from the broader angle of the prosperity and progress of the country as whole; and lastly, as much need for and adequately generous and altruistic display of that well-known maxim "Love thy neighbour as thyself", so that in the higher interest of the nation as a whole, sentimental, emotional, parochial particularisms may not be allowed unduly to influence the decisions of fundamental policy affecting the nation as a whole.

It has been admitted by several Members – practically by every member who has spoken before me- that the Draft Constitution is an excellent piece of work. May I say that it is a monumental piece of work put up by the Honourable Dr. Ambedkar and his Drafting Committee after months of laborious work which may definitely be qualified as the works of experts, work which is comparative, selective and efficient in character right from the beginning to the end.

After these general remarks on the approach to the examination of what the Honourable Mover in his speech styled the formidable document before this House, which he has told us is the bulkiest amongst all the Constitutions in the World, containing 315 articles and as many as eight Schedules after indicating to the Honourable Members of this fundamental document, I carve your permission to refer to a few items in the context of the Constitutions. As a Member of the Advisory Committee for Minority Rights, I have been and am particularly interested in the Justiciable Fundamental Rights. I feel at this juncture that it is my bounden duty to express my gratitude in highest form possible to the Honourable Sardar Vallabhhai Patel, the Chairman of the Advisory Committee for the highly satisfactory and equitable manner in which these rights have been meted out to the minorities by the majority party. I feel sure, Sir, that it is this satisfactory and equitable deal that will make the minorities cling to the majority through thick as well as thin, Sir, it is my earnest hope that these rights as they are laid down in the Draft Constitution will not be permitted to suffer in any way whatever during their transit through this Honourable House.

Whilst I am on the subject of minority rights, there is one humble submission that I would like to place before the Honourable Mover of this Resolution. It is in connection with Article 299 of the Draft Constitution which says:

> "There shall be Special Officer for minorities for the Union ......and a Special Officer for minorities for each State .... who shall be appointed by the Governor of the State."

Necessarily, Sir, the Special Officer of the Union is under the Central Legislature, but what I would submit to the Honourable House is that some modifying measure should be introduced whereby while the appointment of the Special Officer at the Centre is by the President, in the nine States it should also be by the President. In some way of other these officers in the States should be made responsible to the Centre. If that is done, I dare say work in the States by these officers will be done without fear or favour. It is a submission that I make and I make and I do hope that if it is in any way possible a modification should be made with the object of making the Special Officer in the State responsible to the Centre.

The other submission is also on the subject of minority rights and deals with the right to constitutional remedies in Article 25. Ordinarily, as the Draft Constitution stands, only the Supreme Court will be dealing with these cases. But, Sir, I wish to point out to this Honourable Houses that most of the cases will be concerning the poorer section and classes of our citizens, especially amongst the masses. There is a provision made in sub-clause(3) that parliament may by law empower other courts, it should be done here, and it would ease the situation of the poorer class of people particularly the masses, if by means of modification something is introduced straight away, not waiting for parliamentary, measures of enactions later on.

Sir, the last point I wish to make naturally arises from the suggestions I have already made with reference to the Special Officer for minority rights being made responsible to the Centre. I am sure the Honourable House has already made out that I am for a very strong Centre. The Stronger the Centre the greater will be the consolidation of the State services and State work. The greater will be the consolidation of the State work. The history of India shows that for want of strength in the Centre, empires have may be considered a paramount one and this is what will have to be done if we want to maintain the freedom achieved after centuries of foreign domination. A strong Centre is absolutely necessary in order to consolidate the entire the three subjects: Union subject, Provincial subjects and the Concurrent subjects with residual powers given to the Centre as indicated in the Constitution.

Sir, I am thankful to you for giving me the opportunity of expressing my views on this Draft Constitution.

The Honourable Shri K. Santhanam (Madras General): Mr. Vice-President we have come to the last and the most difficult stage of our work. While I am anxious that we finish this work a expeditiously as possible, we may not forget that we are making the Constitution of India and that for mere speed we should not sacrifice a proper and careful consideration of the provisions which may affect the welfare of this country.

The Drafting Committee have done a good job of work, but at the same time I am afraid they cannot escape two valid criticisms. The committee, I have taken upon themselves the responsibility of changing some vital provisions adopted in the open House by this Assembly. They have also felt themselves entitled to reject the report of committees appointed by the House. (Hear, hear). I happen to be a Member of the Committee which reported on the future constitution of Delhi and the Centrally administered Provinces. It is true that the report of that Committee was not discussed in this House and no decisions were taken, but I think the recommendations of that Committee were more entitled to be embodied in this Constitution than the views of the Drafting Committee. (Hear, hear). Sir, I shall not labour the point and I leave it to the House to judge when the clauses come up which proposals the House will choose to accept. But I would confine myself today to discuss certain fundamental principles which were touched upon by the Mover of this Resolution.

Dr. Ambedkar rightly stressed those aspects of our Constitution which make for rigidity and flexibility and he claimed that the Constitution of India as drafted is more flexible than the American Constitution or other federal constitutions. But I venture to suggest that flexibility is not always a virtue. The constitution of country is like the human frame; certain parts of it have to be rigid in order that the constitution may endure; there will have to be other those parts which have to be rigid. I think it is dangerous to compromise with fundamental principles. We may think it is expedient to compromise with them for the necessities of the moment, but once we compromise on fundamental principles that compromise becomes, a canker in the Constitution and will finally destroy it.

Sir, what are the fundamental principles which are sought to be embodied in this Constitution? First of all, there is to be a single, equal and secular citizenship. Secondly, there is to be adult franchise. Thirdly, it is to be suggest that we should examine the provisions of the Constitution to see whether every one of these every one of these principles has been embodied to the fullest extent.

Take for instance the principle of single, equal and secular citizenship. These are said to be protected by the Fundamental Rights. But Dr. Ambedkar himself admitted that every one of the Fundamental Right is subject to Supreme Court has had to modify these Fundamental Rights. That is quite true. But even our Supreme Court will have to deal with these Fundamental Rights. While it was the function of the Supreme Court of the United States of America to restrict the scope of the Fundamental Rights. That is quite mental Rights. While it was the function of the Supreme Court of the United States of America to restrict the scope of the Fundamental Rights by considering the necessities of the State, it will be the duty of the Federal Court or the Supreme Court of India to restrict the scope of the limitation. For, if the limitation are to be interpreted broadly, the we may as well omit the Chapter on Fundamental Rights altogether.

Sir, I think we should scrutinize these provisions and see that the limitations imposed are as narrowly and a strictly defined as possible, because in these days of emergencies and emergency powers, it is essential that some at least of the Civil liberties of the people should be preserved by the Constitution. It should not be easy for the local legislatures and even the Central Legislature to take them away altogether.

Sir, there is next the question of adult franchise I wish that we could adopt it as a principle that it should be the duty of the Central Government to compile and maintain the Registers or Rolls of adult franchise throughout the country, because we know that Provincial Government and local Governments who modify these rolls on linguistic and other secular considerations are not unlikely to be a little lax in the careful preparation of these Registers or Rolls (*Hear, hear*). There may be defects. For instance, there was an attempt by Madras to compile a register of voters. It was all done in a single day or two days and there are complaints that 50 per cent of the voters of the city have been left out. In this particular instance, there was no motive. But, administrative efficiency and thoroughness in the compilation of these Registers was not observed. Sir, we feel we could not be too careful or too watchful in this matter. We want every citizen of India to be automatically included in the Register and his right to be in the rolls protected, by all means possible in the constitution. Therefore, I would suggest to this House that they should consider the desirability of placing the responsibility of preparing and maintaining this Register on the Central Government itself. Now the Central Government has the responsibility of taking the census of India at ten-yearly intervals. I think we may create a permanent machinery which will not only take the ten-yearly census, but also maintain the Registers of adult franchise throughout the country so that there could be no complaint about and no manipulations of these Registers.

Sir, Dr. Ambedkar spoke of the dual polity. Now we have got three Lists – the Federal list, the Provincial List and the Concurrent List. We have had experience of the Concurrent List. It tends to blur the distinction between the Centre and the Provinces. In the course of time it is an inevitable political the Concurrent List fades out, because when once the Central Legislature takes jurisdiction over a particular field of legislation, the jurisdiction of the provincial legislature goes out. Therefore we may take it that in ten years or fifteen years' time the entire Concurrent List would be transferred automatically to the Federal List. We must reflect whether this is what we want and whether this is desirable. If we do not want it we will have to see that the Concurrent List is either restricted to the minimum or define the scope of the Central and Provincial Jurisdiction in regard to matters mentioned in that List.

Then I come to the question of the responsible or cabinet type of executive. It is of the utmost importance in every responsible government that the frontiers of responsibility should be clear and definite. There should be no ambiguity about it. When once responsibility is blurred, the cabinet type of government is automatically annulled and we get near the presidential type of government. I do not myself object to a presidential type of government and it may quite suit the country. If necessary, the Centre and the Provinces can adopt a Presidential Chapter knowing all the implication and the consequences. In many cases I think the presidential type is superior and much better suited to India. But let us not adopt rather than flexibility is the need of the hour for India. But let us not adopt the cabinet type and then try to undermine it by all kinds of devices.

Take for instance the Instrument of Instructions to the President and to the Governors. Originally there was only an Instrument of Instruction to the Governors. Now the Drafting Committee have put in a Chapter on Instrument of Instruction to the President. What happens if the Prime Minister of India ignores these Instructions? Will the Governor-General tell him "Now according to the Constitution it is my right to insist on the Instruction ?" There is a possibility of conflict between the President of India and the Prime Minister and the Cabinet. Similarly in the provinces also. These Instruments of Instruction may bring about conflict between the provincial Ministries and the Governor. I think if we are going in for responsible government, we should go in for it full and entire. Let us not compromise on fundamental principles, because compromise on fundamental principles will land us in all kinds of dilemmas and anomalies and it will not be easy to saddle the Constitutions with different methods to deal with each dilemma.

Within the time at my disposal I have tried simply to touch upon certain points of importance which will have to be discussed thoroughly when we take up the Articles of the Draft Constitution.

Sir, there are, however, one of or two vital matters which have to be considered in particular. For instance, take the provisions for changing the by a certain majority in both Houses. I think in the matter of a Constitution changes should not be allowed easily, because political parties may come into power owing to sudden changes in national feeling. The constitution should be considered as the spinal chord. If it is more flexible than necessary and if it is altered every now and then, simply because a party has got majority in the legislature, then the whole basis of democracy will go to pieces. I think therefore the provisions regarding changes in the Constitution require to be carefully thought out. Changing the Constitution should not be made easy. At least, if the changes on most important matters are vested in the Parliament, I would suggest that it should be not only by a larger majority an interval of six months or one year. We may thus ensure that the changes in the Constitution are brought about with a full realisation of the consequences. We should not change our Constitution hastily. Canada has not changed her Constitution ever since it was set up. Has she suffered for it ? The United States of America changes its constitution only very rarely.

I think a rigid Constitution is far more important for stability than flexibility and ease in changing the Constitution. The Constitution is the bone work of our freedom, and bones must be rigid rather than flexible.

Sir, I am sorry that Dr. Ambedkar went out of his way to speak about village panchayats and say that they did not provide the proper proper background for a modern constitution. To some extent I agree but I agree but at the same time I do not agree with his condemnation of the village panchayats and his statements that they were responsible for all the national disasters. I think that in spite of revolution and changes, they have preserved Indian life and but for them India will be a chaos. I wish that some statutory provision had been inserted regarding village autonomy within proper limits. Of course there are difficulties because there are villages which are very small and there are big villages, and many of them may have to be grouped for establishing panchayats, but I do think that at some stage or other when all the provinces have set up panchayats, their existence may have to be recognized in the

Constitution, for in the long run local autonomy for each village must constitute the basic framework for the freedom of this country.

Sir, I am finishing in a minute. There is only one more point. I shall merely touch upon it. I agree with the mover that the artificial distinction between Provinces and States should vanish as quickly and a seedily as possible. The only impediment is that certain financial interest have developed owing to the possession of Central subject by the States, and if we can find a formula to protect the States from the financial consequences of adopting the same constitutions as the provinces, the Sates may not object to fall in line with the provinces. Therefore I suggest that we should adopt the principle that no State should suffer by falling in line with the provinces and let us give them a guarantee that they will be recouped from Central funds for any loss caused by falling in line with the provinces. I suggest that we may consider a formula for protecting them against any kind of financial suffering on account of becoming identical with provinces. I agree that we should not have the anomaly of having A class States and B class States which will only cause confusion. If possible, I would like that all these different categories of units should be abolished. There should be only one standard unit constitution with freedom for these constitutions to adjust themselves to local circumstances.

Sir, owing to the rigid time limit which I fear is not conducive to a proper discussion of the constitution, I have confined myself only to a few points I hope they will receive the consideration of this House.

Shri R. K. Sidhwa (C. P. & Berar : General): Mr. Vice-President, Sir, as an able and competent lawyer, the Honourable Dr. Ambedkar has presented the Draft Constitution in this House in very lucid terms and he has impressed the outside world and also some of the Honourable Members here, but that is not the Criterion for judging the constitution. This is a constitution prepared for democracy in this country and Dr. Ambedkar has negatived the very idea of democracy by ignoring the local authorities and villages. Sir, local authorities are the pivots of the social and economic life of the country and if there is no place for local authorities in this Constitution, let me tell you that the Constitution is worth not worth considering. Local authorities today are in very peculiarly miserable condition. The provinces which complain that the Centre has been made too strong and that certain powers have been taken away from them, have themselves in the intoxication of power taken away the powers of the local bodies, and in the name of mal-administration today more than 50 per cent of the local bodies have been superseded by Provincial Governments. Sir, this was the attitude in the previous British regime, and our provincial Governments are merely following that practice instead of revolutioning the entire system of local bodies. Unless a direction is given in the Constitution to Provincial Governments to make these bodies very useful organizations for the uplift of villagers, let me tell you, that this document is not worth presentation in the name of democracy. The finances of the local bodies are, in a miserable condition. The Provincial Governments would not like to give them the electricity taxes, the entertainment taxes, etc. which are the only sources of revenue for these local bodies in Western countries. Here in this country all these taxes are grabbed by the provinces. This has left the local bodies mere skeleton today. If this is the tendency, how can you expect the local bodies and villages to prosper? His Excellency the Governor General in his recent speeches and also our Deputy Prime Minister in his speech in Bombay state that every villager must be made to understand that he is responsible man or a responsible woman and made to realize that he or she has got a share in the administration of the country. I fail to understand how this can be done if you ignore the villagers, the largest portion of the population?

Your will merely be taking power into your hands and make some improvements in the top, but the masses of people are struggling today to become happy and you will be nowhere helpful to them. On the contrary the present feeling that the masses have been neglected will pass this Constitution without really making reference to the points that I have mentioned. Dr Ambedkar, Sir, has made a confession rightly that many of the provisions of the various constitutions in other countries have been borrowed and inserted in this Constitution. I personally think that there is nothing wrong borrowing some good provisions that may be existing in other countries. The only thing that has to be seen is that these provisions which may be beneficial in those countries may be equally beneficial in this country also. I, however, see from Schedule 7 – they are important lists – that the Union Power List, the State List, the Provincial List, have been copied wholesale from the 1935 Act, barring a few changes here and there. I do not know whether they have taken care to enquire from various provincial governments whether they have found loop-holes. I will mention one or two items. The terminal tax, the profession tax and the levy of taxes on Government of India building, have been the bone of contention between the Provincial Governments and the Central Government, in as much as in some cases the matter had gone to the Federal Court. It seems to me that the sub-committees have merely copied all these items without giving my consideration to the hardships that have been imposed by the Provincial Governments. I, therefore, feel that these three lists when they come before the House should be given due attention by the House. Last time when we met this list came before us and the time was not sufficient and we left it as they were and I hope very minute consideration will be given to this list which is as important as any other provision of this Constitution.

Coming to the Fundamental Rights, I do not know whether the Committee had the power to upset the unanimous decision of this House. The sub-Committee is perfectly justifies in making recommendation, I do not dispute that and these are also recommendations, I admit. But on a fundamental matter when the House after mature consideration had taken a decision on a basic principle on the Fundamental Rights, I feel that they have exceeded their rights in making even those recommendations.

I will only give one illustration. The constituent Assembly in its last session passed the Fundamental Rights:

> "No person shall be deprived of life of liberty, without due process of law nor shall any person be dined the equal treatment of the laws within the territories of the Union."

The Drafting Committee have made a change in this, a revolutionary change, I should say and put before this Honourable House. I will read their recommendation:

> "No person shall be deprived of his life or personal liberty expect according to procedure established by law ......"

The remaining words have been deleted. We will take this matter up when the occasion arises. But Sir, I do feel that in the Fundamental Rights that we passed last time there was already a grievance that we have not gone to the extent to which we should haven a if your are going to curtail even those rights even those rights of the citizen, I do feel, Sir, that the very nomenclature of the Fundamental Rights would be ridiculed.

I was really impressed with one point that was raised in regard to the constitution of the States. I endorse what he has what he has stated in this respect. When we made this Constitution last time the States were quite different than what they are today and I fail to understand why there should be a separate constitution for each new State. There should be provision that all States should adopt the provincial part of this Constitution. Instead of the Governor, the ruler should be the Governor and likewise certain other changes, but there should be no separate Constitution for each State. After all they have all acceded to the Indian Union and their lawsshould be the same laws as ours. It is not one-man rule now and I fail to understand how there can be two laws functioning in one country when all States are part and parcel of our own kith and kin in this Union. I therefore, feel, Sir, that very serious consideration has to be given to this question as to whether we can allow the States people to prepare their own constitution which may go against the very fundamentals of the main Constitution that we are now preparing. In the Fundamental Rights they may go somewhere lesser than we have decided. In many of the matters they may go against what we have finally provided for every citizen of this country.

Sir, take for instance the High Courts. Today in the High Courts of India the best men are on the benches. They are first-rate men and even their judgments are appealable to the Federal Court and to the Privy Council; but in these second--rate High Courts in the States--I do not mean any disrespect by stating second-rate, but it is a fact that they are not first--rate men--their judgments are not changeable in a Federal Court. Is that fair, I ask you that you do not give this right to the citizen of citizen of a State? I therefore feel, Sir, that this matter also will have to be very seriously considered and to made the work of the State people very easy, provincial part of this Constitution should he absolutely made applicable to them, barring a few changes.

Lastly, a reference has been made about the reservation and protection for minorities. I have remained in this Minority Committee and Sub-Committee of the Minorities and I am really thankful to the majority community for the manner in which they have dealt with the minority question and I must say that there should be no complaint from any from any quarter in this respect. As far as our community is concerned, although the offer has been made for the reservation of seats, we have refuse it with thanks. Similarly, yesterday Kazi Syed Karimuddin instead on removal of reservation of seats. This statement even at a later stage is very welcome. Just as when the majority community offered the reservation of seats to the Parsi community, we said: "No thank you, we do not want," similarly all the groups, I expect, Sir, will refuse with thanks the offer of the majority.

Maulana Hasrat Mohani (United Provinces: Muslim): Mr. Khaliquzzaman wanted reservation and not Syed Karimuddin.

Shri R. K. Sidhwa: I do not follow. I therefore appeal that this communal poison should be removed from this country and this Constitution should be made into a document about which we could feel proud and we should be able to say to the world that this is a document which the Indian people have made for other to initiate. With these words, Sir, I end. Hope that some of the points which I have mentioned will be borne in mind when the time comes. Thank you, Sir.

Shri Ram Sahai [United State of Gwalior-Indore-Indore-Malwa (Madhya Bharat)]: *[Mr. Vice-President, Sir, many Members have shed light on a number of points relating to the Constitution. I shall not go over them again, I shall only speak a few words in regard to the States. I would like to made it clear tot he House that the people of the States are in favour of a strong Centre and would whole-heartedly support the establishment of a strong Centre in this way. I submit, however, that much thought does not seem to have been given to the States in the Constitution that has been placed before us. I would like to illustrate this point by one example.

In Schedule I, Part III, the States have been specified as they had in the past, although a number of States have merged to from Unions and have in a way given themselves the character of a province. Madhya Bharat Union may be taken as a case in instance. The Raj Pramukh of Madhya Bharat signed a new Instrument of Accession on June 15, by which all the subjects mentioned in the first and third list of Seventh Schedule excluding taxes and duties, have been handed over to the Centre. This means that even the Judiciary has been subordinated to the Centre. But even then no appeal can lie to the Supreme Court from the decisions of its High Court under Sections 111 and 113 of the present Draft. When the Madhya Bharat Union has, by its new instrument of accession surrendered all its rights, transferred all its powers to the Centre and agree to all it proposals. I cannot see why a provision has been made prohibiting appeals being to the Supreme Court against the judgments of the High Court of the Union. Section 113 lays down that a reference can be made to the Supreme Court. But I fail to understand why an appeal against the High Court cannot be admitted in the Supreme Court. This is a matter which particularly affects the rights of the people. I submit that a single provision of such a type would have been sufficient for the protection of the rights of the people. Our efforts to bring the High Court of the Union, into line with the Provincial High Court would be facilitated and would be crowned with success if these High Courts are made subordinate to the sufficiently developed there but so far as far as the High courts of Gwalior and Indore are concerned I can say with some pride that they are in no way inferior to the High Courts of the provinces; nor do they have lesser standing. They too have as learned Judges as have the High Courts of the provinces.

Honourable Dr. Ambedkar wants that Constituent Assemblies may not come into being in the States. But I think that if Dr. Ambedkar had been a little in touch with the Ministry, of States regarding this matter land had placed it before that Ministry, these complication, that have been introduced now, would not arisen at all. I would place before him the matter of the Constituent Assembly of Madhya Bharat as a case in point. An interim legislature is being formed there and a Constituent Assembly will also be formed. What may possibly be the necessity of forming these two at the same time? There will be interim legislature there and after that the Constituent Assembly will be formed. No session of the interim legislature is in view as yet and it is yet to seen when the work of the Constituent Assembly would start. The members of the interim legislature are here in this Constituent Assembly to frame the Constitution. I fail to understand why these people who can make laws in the legislature and framing the Constitution here, cannot frame the Constitution there. Such complications have been brought in. I am sure that if Dr. Ambedkar had consulted Sardar Patel in this matter, many problems would have been easily solved.

No necessity now remains for the Constituent Assemblies that have been formed or are being formed in the states particularly when almost all the States have taken the shaped of provinces.

I would like to submit to the House that the third part of the First Schedule should be revised and the Unions, wherever they have been formed should be included in the first part. Such an inclusion will result in bringing the States up to the level of the provinces--the only remaining difference would be that the Governors of the Provinces would be that the governors of the Provinces would be elected for the public. While the Rajpramukhs of the States would be selected by the princes. As remarked by Messrs. Santhanam and Sidhwa, it would be very advantageous to put the provinces and the Unions on the same footing and in my opinion such a step is both necessary and essential. We should revise the parts of both these schedules, and they should be redrafted in such a way that the States which have already formed Unions be brought to the level of the provinces.

The committee of experts appointed in connection with the financial provisions has decided that within ten years all the States should at least be brought to the level of the provinces. I find that there is nothing in this Constitution which would permit the report of the committee of experts being given a practicable shape. I would therefore request the drafting Committee that it should make some such provisions by which States which have merged to form Unions should be brought to the level of the provinces. And there should remain no difficulties in respect to this matter.

I would like to submit to the House one thing more, and this is that the big states like Mysore and Travancore, which claim a better position than most of the provinces, should--and I request the rulers and representatives of these states to give up their interest in this aspect--accept the same status as is enjoyed by the other provinces. All the resources, which are not essential for the State, should be handed over to the Centre. One cannot fail to understand that like other States Gwalior State could have maintained its separate existence. But ruler of that State himself realized this necessity and handed over all his powers to the Centre. Just as the constitution is meant for the people of the provinces similarly it should be for the people of the States also. Hence I would like to submit to the House and more specially the Drafting Committee that they should adopt some such device that those Unions which have assumed the form of provinces ad the big States which have not merged into any Union may be able to attain uniformity in this respect.]*

Shri Jainarain Vyas (Jodhpur): *[Mr. Vice-President, Sir, Dr. Ambedkar and his colleagues as also the typist and copyists have to be thanked for the labour expended in preparing the Draft Constitution that is before us. This is a very big Draft and many things have been included in it. But as is the case with all drafts prepared by men, this Draft too has many defects. In particular, the use of the word "State" which has not been defined at any place is, in a way, very confusing to all of us, what a State means from the territorial or place therein. From the point of view of rights of citizenship also it cannot gathered what the term "State" means. For purposes of Fundamental Rights the term "States" has been made to include Legislatures of the State of the States, Local Governments and the Government of the States. As the word "State" was generally used for Indian States, it would have been better if some other word had been substituted for it.

States too have been divided into different categories. There are Governors Provinces and Chief Commissioners' Provinces and the third category would consist of what are called States that is to say, Indian States. They are specified in Schedule I, Part III. I support the view of Dr. Ambedkar, which he expressed in the course of his speech, that the States should be as big as the provinces and they should be in line with the provinces. I fact we the people living in States cannot do justice to our economy by remaining in small territories nor can we properly carry on our administration. But at the same time we would like to tell Dr. Ambedkar and his colleagues that they should have also shown some anxiety to bring us into line with the provinces. In Schedule I, Part III, they have divided us into small units. We should have been grouped into larger units even there. States, that is to say Princes' States have not been the right of appeal to the Federal court by the article providing for appeal for appeal to that Court. Only the provinces can avail themselves of that right of appeal. Why have we been made Harijans in the matter of appeals to the Federal Court? This policy of treating the people of States as Harijans in the matter of appeal to Federal Court reveals that even you have not cared to form big units. On the contrary I find that you are keeping some mental reservations. You say that we should form big States but then it is your duty that you should grant us our rights. Mr. Sidhwa observed just now that we should come on a par with the big provinces. I ask, who does not want to come on at par with them? But you say that the Princes of the States and the people of the provinces can be Governors. Why do you not give this opportunity the people of the States? If you really mean that the mean that the States and Governors' Provinces are of two different categories, you should it clearly, as also that you want to keep this reservation in respect to the States--that you will keep some such matters exclude and will not give them to the people of the States. You should be quite frank in these matters. On the one hand it is said that the States should be brought on a par with the Governor' Provinces and on the other that the people of the States will not be entitled for appointment as Governors though the Prices of the States may be so appointed. I do not appreciate this distinction. I think that this is a defect in this Constitution and it should be removed.

Another observation which I would like to make is in regard to the territories of the provinces. It has been provided in this Constitution that some territories of the provinces can be separated form them and joined to other territories, that two or more territories can be joined together to form a province. The condition for forming such provinces is that either the legislature of the State or its members or the majority of the member should submit to the President of he State that they want to form a separate province for themselves. But this matter too a reservation has been kept against the people of the States which are specified in Schedule I, Part III. The States are not permitted to form a big unit by submitting a proposal through their legislatures or through the Members of their legislatures. For that the consent of the State is neccessary. I do not understand what "consent of the State" means. If the legislature of the State consents, if its member consent, it should have been taken the consent of the State. But perhaps "consent of the State" means "consent of the ruler". If it is not so, will a referendum be held or will it be ascertained by some other system? If consent of the State does not mean consent of the ruler, it should be stated clearly. Therefore, I think that so far as the States are concerned, the constitution is not fully clear.

I would like to make one or two other observation about this Constitution. I admire that equal right have been given to all classes of people but I cannot say whether it is deliberately or otherwise that while the people have been given the right of access to Dharamshala and wells, they have nit been given the right of entering temples. I cannot say whether the fact that while the Harijans have been the right of access to wells, Dharamshalas, etc., they have not been given the right of entering temples came under the notice of Dr. Ambedkar. I think that it is either a mistake or an omission. If it is an omission, it should be provided for.

There is no doubt that it has not been considered necessary to differentiate between the minorities and the majority and the citizens have been considered citizens in a general sense but even then it has been accepted that if some educational institutions are run by the minorities, the State should be able to aid them. It means that under this Draft it should still be possible to run the existing communal schools and educational institutions. *I do not think that it is right to leave scope for such a possibility when we are free and the people of the minority communities and the majority community have to live as brothers.* But the system of Grants-in-aid to such institutions would produce only such a result.

I have to make only one more observation and that is about the language. A number of our brothers have spoken about it. An Honorable Member went so far as to remark that Hindi Imperialism is being established here. Another Honourable Member said that linguistic fanaticism is being fomented here. I would like to tell that no question of Hindi imperialism or linguistic fanaticism is involved, when we say that we should have a national language of our own. When we can about English I do not understand why we cannot adopt Hindi. If you do not want to adopt Hindi have courage and say that English is our national language. But you do not say that. When English is not our *lingua franca* it is not right that we should not allow another language to become the national language. I sympathize with those who say that they cannot understand Hindi but at the same time I would say that they should now try to evolve a national language of their own. If we do not do so there is not so much the danger of the imposition of the English language as of the question of linguistic provinces taking the form of linguistic countries. We do not say that all the people should speak one language only. So long as they cannot do so they may speak English—no one will prevent them from doing so. I am speaking Hindi although my language is Rajasthani which is different from Hindi and has some peculiarities not to be found in Hindi. But at the same time I know that the largest number of people can speak Hindi and can learn Hindi. Therefore we should adopt one national language. I hope there will be no misunderstanding about those who are trying to make Hindi the national language, that they want to establish supremacy of that language. They only want one national language in the interest of our country. It does not mean that the provincial languages will be put under any ban or that English will be bereft of the position it has attained. It may be that in the long run English may no more be there.

With these words I support the Draft Constitution placed before us by Dr. Ambedkar and I hope he will try to incorporate the changes that have been suggested.

Shri B. A. Mandloi (C. P. & Berar : General): Mr. Vice-President, Sir, Dr. Ambedkar, Chairman of the Drafting Committee, in a very lucid speech explained the salient points of the Draft Constitution. In answer to the questions which are raised, namely, what is the form of the Government and what is the constitution of the country, he has pointed out that it is a federal type of Government with a strong Centre and a parliamentary system of Government with a single judiciary and uniformity in fundamental laws. He has also said that the emphasis has been placed on responsibility rather than on stability. It is strong enough in peace time as well as in war-time. He has answered in his speech the various criticism leveled against the Draft Constitution and I submit that his speech is a very lucid exposition of the Draft Constitution. The Draft Constitution prepared by the Drafting Committee is based on the reports of the various committees, namely, the Union Power Committee, the

Provincial Constitution Committee, the Advisory Committee and the Minority Committee. The Constituent Assembly in its very first session passed a Resolution with respect to the objective of our Constitution. That Resolution was moved by our respected leader Pandit Jawaharlal Nehru, and was unanimously passed. We had to see that our Constitution is based on that fundamental Resolution—on that Objectives Resolution—in which the claims for justice, liberty, equality and fraternity had been granted. I submit that the Draft Constitution is a true reflection of the Objectives Resolution and therefore we can say that it has fulfilled our object.

There is another touch-stone with which to see whether the Draft Constitution answers the purpose of our country and our nation. That touch-stone is whether it would maintain our freedom, our independence and our democratic, secular Government. I am of opinion that looking from that point of view also this Draft Constitution serves our purpose.

There are, however, certain omissions and certain things which are not found in this Draft Constitution and proper emphasis has not been placed on those subjects. The omissions are with respect to our National Flag and National Anthem. In a Draft Constitution and in a Constitution which is going to govern our country, there should be a proper place for the National Anthem and for the National Flag. There is also a necessity with respect to a common language and a common script. We should be definite on this because after all our aim is to be one nation and one State. In the absence of one common language we can not claim to be one nation and one State. Taking into consideration the various languages prevailing in our country one can say without any controversy that the place of honour should go to Hindi and the script should be Devanagri script. We should bid good-bye to the English language as early as possible because it would be derogatory to our nationhood if we adopt a foreign language. The Hindi language is spoken and understood by a vast majority of the people in the country and the Devanagri script is a very scientific script and it should be adopted as the official script of our Government.

While we have attempted to make the Centre quite strong, I submit that we have not paid sufficient attention to our Provinces. The Provincial budgets are poor budgets and there is a chronic poverty prevailing in the Provinces. The responsibilities of the Provinces are great. We have to fight ignorance, disease and so many other things and we have to carry on nation-building departments and the constructive work in the provinces. The allocation from the Centre revenues to the provinces should be on an equitable basis so that the Provinces may be able to discharge their duties properly and efficiently.

In his speech Dr. Ambedkar made an appeal with respect to the States – that the States which have formed into units and acceded to the Union should also be on a par with the Provinces. We would certainly like to see that uniform laws prevail there also and the level of progress is maintained in the States in a uniform manner. I therefore would suggest that in the Draft Constitution we should not make a distinction between the units of the provinces and the units of the States. We have got representatives of the States and we can, in consultation with them, bring the States to the same level as the other Provinces shown in Part I of the Constitution.

Something has been said with respect to the minorities. The Advisory Committee on Minority has recommended certain safeguards for the minorities. Though the future relationships are going to take place on the basis of joint electorates, these safeguards have been provided. Sir, I submit that these are days of voluntary surrenders. In the year 1947 the British, after a rule of a hundred and fifty years, surrendered voluntarily though there was the fight of the Congress going on for so many years. Then we found that the Rulers of the Indian States have also surrendered. And I feel sure that if the minorities were to surrender the safeguards, they would be in a better and stronger position and they need not have any fear from the majority. If they surrender the safeguards and join the majority, coalesce with the majority and merge with the majority, we would have a stronger India and our ideal of nationhood would be realized earlier.

Sir, our Constitution is a Constitution which has been evolved by us from a comparison of the various constitutions prevailing in the civilized countries all over the world. Various good points from all the Constitutions have been taken with such modifications as are necessary in the interests of our country. If we faithfully and honestly work out the Constitution, I feel sure that our country would be prosperous, would be happy, would be strong and we would be able to maintain our independence and not only maintain our independence but would be fulfilling the great mission of our departed leader, the Father of the Nation, who said that thereafter India would be in such a position as to free the other dependent countries and bring peace and prosperity in the whole world.

With these words, Sir, I submit that the Motion moved by Dr. Ambedkar be accepted by the House.

Pandit Balkrishna Sharma (United Provinces : General): Mr. Vice-President, Sir, so many friends have come here and offered their congratulations to the Honorable the Law Minister who was in charge of this Draft Constitution that it will sound almost a tautology if I repeat the same sentiments again. But I think I will be failing in my duty if I do not offer my humble and respectful congratulations to the learned Law Minister for the very lucid manner in which he has presented this Draft Constitution for our consideration.

Many friends and critics have come here and leveled certain charges against our Constitution. The one charge which has been repeated by many friends is that ours is a very bulky Constitution. The Mover himself referred to the bulky nature of this document. When we really examine the clauses and articles of the various other Constitutions we come to the conclusion that ours is indeed a bulky Constitution. Sir, as you know, it contains 315 Articles, whereas the Constitution of the British North America, that is Canada, contains only 147 Articles; the Commonwealth of Australia Act contains about 128 Articles; the Union of South Africa Act contains 153 Articles; the Irish Constitution only 63 Articles; the U.S. Constitution contains 28 Articles; the U. S. S. R. Constitution 146 Articles; the Swiss Federal Constitution 123 Articles; the German Reich Constitution contains 181 Articles, and the Japanese Constitution 103 Articles. A glance at these Constitutions shows that none of them contains more than 200 Articles whereas our Constitution contains 315 Articles.

Critics have tried to make a great deal out of this bulkiness of our Constitution. But we must not forget that ours is a big country of 330 millions and we are making a Constitution for almost one fifth of humanity. Therefore there should be no wonder that our Constitution is bulky. Not only are we making a Constitution for a number of people for whom so far no other country has made any Constitution but our problems are varied and are different. Also, at the same time we have tired to give in the constitution of ours a *modus operandi* where by we have been able to set at naught the rigours of federalism and the vagaries of unitary form of Government. In an attempt to bring about that compromise between federalism and unitary from of Government, we had naturally to take recourse to certain Articles which are responsible for increasing the bulk of our Constitution.

As I said, Sir, our is a country which has got its own problems. In no country in the world are there what we call the principalities - the States - and there should be no wonder that in order to bring all these various factors inline with the present day democratic principles, the draftsmen of our Constitution could not compress into a few Articles all that they wanted to do. Therefore the charge that has been levelled against our Constitution that it is bulky seems to me to be frivolous.

The second charge is that we have borrowed almost verbatim from the various constitutions and that we have not cared to glance at the Constitution of the U. S. S. R. Now, so far as this particular charge is concerned, I would like to draw the attention of the Honourable House to some very patent factual and fundamental differences that exist between our country and the U. S. S. R. Let us not forget that the Russian Constitution came into existence after full eighteen years of Government by a single party, the Communist Party of the U. S. S. R. For full eighteen years that party was in power. The October Revolution of 1917 brought that party to power and, till 1935, they did not think of making a Constitution for their country. After eighteen years, during which period a rigid single-party rule was there, they thought of giving a constitution to Russia. Our conditions are far different from the conditions prevailing in Russia. Naturally, if we could not borrow any provision from the Russian Constitution which may appear on the face of it desirable, we must not forget that we did not borrow on purpose. It is said that the Russian Constitution gives the fullest scope to the minorities, but we forget that during the eighteen years when that rigid party known as the Communist Party of Russia was in power in what is called the Democratic Republics of Russia, it had established such a strong hold upon the various Republics that constitute the U. S. S. R., that in spite of the fact that the Constitution gave them power to break off their connection with the Central Government, in the very nature of things it is impossible for them even to think of doing so. The Republics of Georgia, Ukraine, etc. and some of the other Central Asian republics, long before a Constitution was given to them, were in the grip of that well-knit, well-organised Communist Party of the U. S. S. R. Therefore, to turn round and say that we have not taken this or that great principle of the Russian Constitution and embodied it in our own Constitution is to ignore the facts as they exist in Russia and as they exist in our own country.

Sir, if we look at the political development that has taken shape in our own country, we will find that it is on democratic principles that our party, the Congress Political Party, has developed. The Russian Communist Party has developed on a totally different basis and that basis is the basis of revolutionary totalitarianism. Therefore those friends who came to the rostrum and spoke very well of the Russian Constitution and twitted us for not having borrowed various clauses from the Russian Constitution, may be told that their criticism is absolutely baseless. While making that criticism they have not cared to look at the situation in our own country.

Then again, let us not forget that there is a vital difference between the principles, the aims and objects of the Russian polity and the principles and the aims and objects of the polity which we want to develop in our own country.

Sir, in Russia, the individual as such has got precious little value. It is the State, the Society and the Party for which the individual should exist. But here, under the inspiring leadership of Mahatma Gandhi we have learnt to look at things in a little different way. We consider individuals to be the basis of society and party and State. This insistance upon the individual makes our situation far different from the situation that prevails in Russia. For all these reasons if our Constitution makers could not borrow from the Russian Constitution, then I can say that they did so on purpose and that it was proper that they should have looked to the democratic countries for inspiration rather than to Russia which, though apparently a democratic State, is yet a Government on a rigid single party basis.

The third charge which has been laid at the door of our Constitution makers is that this Constitution has got a very powerful centrifugal tendency and that the little provincial autonomy which seems to have been given under the Constitution is likely to be taken away in the course of working this constitution and that all power is likely to centre in the Union State. But why should we forget that we, our country, we all, have been chronic patients of what I may call centrifugalities ? This centrifugal tendency is a tendency to fly away from the Centre. This tendency of the various limbs to break off from the body politic is a historical tendency. We should not ignore it.

Today we are sitting here to weld the Nation into a strong well-knit, well organised society. If our Constitution-makers do not take care to guard against that chronic illness from which our country has been suffering for centuries, then we are likely to come to grief. Therefore I say that these friends and critics, who think that the Centre which has been given certain powers to meet certain emergencies is likely to abuse those powers, are trying to cry 'wolf' 'wolf' before actually the wolf comes to their doors.

There is no doubt that the Constitution does not contain any clause about village panchayats. A good deal of criticism has been hurled at it for that reason, but may I point out that the Constitution in no way rules out the development of the village panchayats? The Constitution does not put any obstruction whatsoever in the path of the development of those units of local self-government which will enjoy power for managing their own affairs, and therefore that criticism also seems to me to be without any foundation.

One word more, Sir, and I have done. I was rather pained to see that my esteemed friend, Mr. T. T. Krishnamachari, and my respected elder, Pandit Lakshmi Kanta Maitra, have taken our efforts, in the direction of trying to give a national language, with suspicion and even with a little sense of exasperation. I tender to my friend, Mr. T. T. Krishnamachari, a thousand apologies if that impression has been created. May I tell the House that those of us who feel that there should be a national language, that there should be a common medium by which we may be in a position ultimately to exchange our ideas and to express ourselves - this *lingua Indica* should be Hindi in our opinion - that certainly does not mean that we wish to tread upon the toes of any friends of ours. No provincial language can come to grief if those friends co-operate with us in evolving a national language. In trying to give a common language to the nation, our efforts are not with a view to exasperating any friends. We want sympathisers from every quarter. We want the whole group from the Dakshina to come to our rescue and to help us in our efforts to give a national language to this ancient land of ours. Thanks.

Pandit Thakur Dass Bhargava (East Punjab: General):(Began in Hindustani).

Shri S. Nagappa (Madras: General): Sir, may I request that those of the members who can express themselves in English should speak in English?

Pandit Thakur Dass Bhargava: Since my friends insist that I should speak in English, I bow to their wishes. It is true that I am able to express myself with greater ease in Hindi but at the same time I do wish that I should be understood by all the members of the House.

Sir, I wish to join in the chorus of praise which has been showered in this House on the Drafting Committee, but I cannot do so without reservation. When I bear in mind the complaints made by some friends here, I do feel that the Drafting Committee has not done what we expected it to do. Some of the members were absent, some did not join, some did not fully apply their minds. In regard to the financial provisions, what do we find? They have shirked the question and have not given us any solution whatsoever with regard to some other questions also. The real soul of India is not represented by this Constitution, and the autonomy of the villages is not fully delineated here and this camera (holding out the Draft Constitution) cannot give a true picture of what many people would like India to be. The Drafting Committee had not the mind of Gandhiji, had not the mind of those who think that India's teeming millions should be reflected through this camera. All the same, Sir, I cannot withhold my need of praise for the lab our, the industry and the ability with which Dr. Ambedkar has dealt with this Constitution. I congratulate him on the speech that he made without necessarily concurring with him in all the sentiments that he expressed before this House.

I think, Sir, that the soul of this Constitution is contained in the Preamble and I am glad to express my sense of gratitude to Dr. Ambedkar for having added the word 'fraternity' to the Preamble. Now, Sir, I want to apply the touch-stone of this Preamble to the entire Constitution. If Justice, Liberty, Equality and Fraternity are to be found in this Constitution, if we can get this ideal through this Constitution, I maintain that the Constitution is good. In so far as these four things which are contained in the Preamble are wanting, then I am bound to say that the Constitution is wanting, and from this angle I want to judge the Constitution. I know that time is very limited and I cannot touch upon everything. I wish to speak about only three or four subjects.

In the first place, I would like to draw the attention of the House to Part II-Citizenship. There are about 60 lakhs of people or more who have come from Western Pakistan, Sind, Baluchistan and East Bengal. These people are not aliens. If technically they are regarded as aliens, I do maintain that it is a sin to do so, because this situation has been brought about by the Government who agreed to partition. Therefore to make a law that each one of them should go before a District Magistrate within one month and declare that he or she is a citizen of India is rather hard. In practice, I know it will be impossible as most of these 60 lakhs of people are illiterate and do not know anything about this provision in the Constitution. If any such illiterate man fails to register himself as a citizen under this article, what would happen to him? Therefore I maintain that this is a very serious flaw in Part II. We ought to see that all these persons who have come from Pakistan on account of this Government agreeing to partition automatically become citizens of India without any effort on their part. If they want to secure themselves by making a declaration, I have no objection, but in case they fail to comply with this provision, I maintain that we should have a provision that mere permanent residence entitles them to full citizenship rights. To insist that they can only become citizens after they have gone to a District Magistrate and made a declaration that they want to be citizens of India is, in my opinion, an act of tyranny on them.

I therefore submit that this clause should be amended in such a way that those 60 lakhs of people may become citizens of India without any special effort on their part.

Secondly, I beg to submit that in regard to the question of minorities, as you know, Sir, I have been taking the very same position which you have been taking in the Minority Committee and I must say that you yourself have been a sort of beacon light to me and to others who thought like you. In regard to this question, I beg to submit that under the third clause of the Preamble equality of status and of liberty will be given to all.

In regard to the majority community - Sir, there will be either single constituencies or plural constituencies. In regard to single constituencies my submission is that if a member of a minority community will stand for those constituencies the members of the majority community will not be allowed to stand. This means that the electoral right of the member of the majority community will not be equal to the electoral right of the minority community. Again if they had plural constituencies even then I maintain, it is very humiliating for any person to stand and secure the largest number of votes and then to be told that another person of a minority community will represent that constituency and no the who secured the largest number of votes. It is extremely humiliating and I want that in regard to the electoral right there should be perfect equality among the members of the minority community and the majority community.

Sir, I have been a worker all my life for the welfare of the minority community people. For the last 35 years I have been a worker and all those who belong to minority communities know that I have never made a speech on the occasion of budget when I have not submitted to this House that in regard to posts, lands, money, property, the members of the Scheduled castes should be given preference and priority and I do maintain it is necessary to pass such measures as will level up their economic and social equality.

I am in favour of Clauses 299 and 300 which provide sufficient safeguards for them, but in regard to this aspect of reservation of seats, I must submit that I am dead opposed to it. When weightage was sought to be given to the Anglo-Indians we made an effort to see that this weightage question is not introduced into our Constitution and we succeeded ultimately and by nomination any deficiency in the number of Anglo-Indians was sought to be made up and we have got section 293 and other sections where nomination has been impressed upon to make up deficiencies, if any. Now, Sir, I maintain that in regard to Muhammadans and Sikhs and Christians no occasion for reservation arises at all and the entire population is almost homogeneous, so far as wealth, social influence and status and other things are concerned. In fact some of these communities are perhaps better off than the majority community. In regard to Harijans, members of the Scheduled castes it may be said that in wealth, social influence and social status they are inferior, but all the same I want that their position may be levelled up in ways other than by reservation of seats. In regard to this right also I am agreeable that if there is any deficiency in any number according to section 67, then we will have recourse to nomination and by nomination the number may be made up if this House thinks that their right should be secured in this respect. There is no occasion for having reservations at all but if any are necessary this method of reservation is very humiliating to the majority community and will be very harmful to the minority community. Yesterday Mr. Karimuddin gave very good reasons in the House. In the Legislative Assembly Sardar Gurmukh Singh on behalf of the Sikhs said that he did not want reservations. I know that since August 1947 the situation has changed and my Muslim friends and my Sikh friends are coming round to the view that the reservations are not useful for them. I wish that many of them expressed their minds. In regard to reservations therefore my position is that if reservations are thought to be necessary by this House, the reservation should be made only by nomination. We know how the Bureaucracy used this power of nomination, but in regard to a President who will be elected by the people. I do not think that such a misunderstanding or such a situation can arise. In regard to reservations the question of equality of status comes in the way and at the same time such a system tends to perpetuate the psychology of separation and the majority community is bound to consider that the reservation being there they are not bound to do anything further and the word fraternity which has been added in the last sentence by Dr. Ambedkar will lose its significance. If we want to abolish the sense of separation, it is necessary that we should not encourage the sense of separation by our own act. I therefore submit, Sir, that in regard to reservation I wish the House accepted the proposition which I am advocating from the very day in which I entered this House.

Some criticism has been made in this House that this Constitution is more political than social and economic in nature. Prof. K. T. Shah gave vent to his feeling yesterday and I for one respect every word of what he said, but may I humbly submit that in this Constitution we have got sections 32, 33, 38 which deal with the social and economic aspect? Now, Sir, I do not want that we should have a Constitution which we may not be able to work; if this Constitution said that the State shall provide full employment and amenities and these rights given in the directive principles were also justiciable, we shall be stultifying ourselves and promising to do what we are unable to do at present as I do not think that the present Government of India is able to do what the other States in Europe can do. This Constitution very modestly says that we shall endeavour to the best of our ability to do what we claim to do. These directive principles have been spoken of disparagingly by some of the Members. I beg to submit that I regard these directive principles to be essence of this Constitution. They give us a target, they place before us our aim and we shall do all that we can to have this aim satisfied. In regard to this, sections 32, 33 and some other sections provide social and economic basis for advancement. In regard to section 38 it says that the standard of living shall be raised. But the question arises. How shall the standard of living be raised?

In India a poor country, where the average earning of a man is only five shillings a week, compared to other countries of the world where the earnings are at least twenty times as much, we do not know how to face this question. If we go to the villages, even drinking water is not easily available. In regard to clothing, you know better than I can describe. In regard to these matters, if we want really to place some sort of an obligation on the Government, let us say clearly that the Government shall have, as soon as it gets into full power, to undertake the execution of irrigation and hydro-electric projects by harnessing the rivers, by the construction of dams, and adopt other means of increasing the production of food and fodder. Similarly, we can say certainly that the Government should provide good drinking water in the country. If you want rivers of milk and honey to flow in India, we should also say that the Government shall preserve, protect and improve the useful breeds of cattle, and ban the slaughter of useful cattle, particularly milch cows and young calves. I am placing this humble submission before the House. I know that the Congress party unanimously accepted this proposition when it was put to the House by me at the time of their meeting. But, it was my misfortune that this thing could not be debated in this House; and when the occasion came, the House was adjourned. I submit that there is a very great demand in this country that some steps should be taken to see that people get good food, good drinking water and milk. I have used the words "useful breeds of cattle and useful cattle". I may say every Government in India, even the Muslim Kings, the Government of Afghanistan, and even now Burma, have settled this thing by law for all time. In Burma, today, which has got no religion like ours, who do not regard the cow as sacred, they have enacted that slaughter of cows shall be banned. I do not want that. What I want is that the slaughter of useful cattle shall be banned. That is my humble submission to this House and I think nobody will disagree. This would, at the same time, give satisfaction to crores of people who regard this question from a different motive, though I do not regard it from that motive.

I have to make one other submission to the House and it is this. We have heard too much about the village panchayats. How these village panchayats will work I do not know. We have got a conception and that conception we try to put into practice. I wish to submit to this House for their very serious consideration that when the constituencies come to be formed under the new Constitution, they should make territorial constituencies; they should not make constituencies of cities alone and they should not make constituencies of villages alone. They should evolve a system by which the differentiation between the rural and urban people, between those who have too much and who have too little may for all time be removed, so that we may evolve one nation. In my visit to England just now, I found when an application goes to the Government for starting a new factory, they say, "go to the villages, we shall not allow any more factories in London". I want all the factories should be so established in India that for the villages or for groups of villages some sort of employment may be provided. The industries should be decentralised as much as the administration should be decentralised. The disparity between the mode of living of the rural people and the urban people must be abolished if we want to evolve one nation. At the present time, what do we find? The urban people and the rural people are so much apart from each other in their modes of living and outlook on life. To go near the villages is very difficult. The urban people do not like to go to the villages. I know the Congress has gone to the villages all honour to the Congress. But, there are a good many in the Congress also who do not wish to go to the villages; they cannot go because their mode of living is different. You will have to evolve such constituencies in which the cities and villages come in without any distinction; if there is a constituency for a lakhs of the population, the cities and villages should be included in one constituency. Some of the village people themselves may not like the urban people coming in, and will regard this proposition as a contrivance for usurpation of their preserve but in making this proposal I have the best interests of the country as a whole before myself. I wish that the amenities of life may be the same everywhere in city as well as in village and in future all efforts be concentrated financially and politically to bring the village into line with the city. I hope if you will ponder over this question, you will agree that it is essential to work this constitution in such a manner and in such a spirit as will conduce to better life and better happiness of the nationals of this country.

Shri H. V. Kamath (C. P. and Berar: General): On a point of order, Sir, may I ask whether it is fair to this House that Dr. Ambedkar who has moved this motion and who is expected to reply, to the debate should remain absent from the House? Is anybody deputising for him here ?

Mr. Vice-President: Yes.

Shri Algu Rai Shastri (United Provinces: General):*[Mr. President, Sir, the point raised by Shri Kamath just now appears to be quite sound because so long as the member in charge does not benefit from the speeches that are being delivered and does not pay attention to whatever is being said in the House, it is futile to have a discussion. Therefore, I request that so long as he is unable to be present here, the discussion should be postponed. However, if he has authorised some one else to note down whatever is said here and then to help him, there would be no harm done. Otherwise the whole discussion that is being held appears to be a mere waste of breath and will not be of any use in amending the Constitution.

You should, therefore, give a clear ruling that if there is to be a discussion, the member in charge, who is piloting the Draft, should be present here or some representative of his should be here. So long as this is not arranged, the discussion should be postponed.]*

Shri Satyanarayan Sinha (Bihar: General): Mr. Saadulla who was in the Drafting Committee is here and he represents Dr. Ambedkar.

Mr. Vice-President: There are members of the Drafting Committee here who are deputising for the Honourable Dr. Ambedkar. I think that our requirements are fairly met. I hope this will satisfy the House.

Shri Lala Raj Kanwar (Orissa States): Sir, as a back-bencher and as one who has generally been a silent Member of this House, I crave your indulgence and the indulgence of this august Assembly to make a few observations for what they are worth. My observations, if I may say so, will be confined to only one aspect, albeit a very important aspect, of the problem that we are called upon to tackle, namely the question of national language.

Mr. Vice-President: It is for you to consider whether a detailed examination of that is necessary now.

Shri Lala Raj Kanwar: I am not going into the details; I shall confine myself to general observations. The Constitution is bound to reflect the will of the people and the voice of the people and I believe, therefore, the voice of God, as the Latin saying goes, *vox populi, vox Dei.* It means that it is not a question of the language of the Constitution, but the language of the nation and the country at large. Sir, in the Upanishads, which are the repository of concentrated wisdom and divine knowledge, and about which the great German Philosopher Schopenhauer said that "in the whole world there is no study so elevating as that of the Upanishads, which has been the solace of my life and which will be the solace of my death", it is written:

> *As one thinks from the mind, so he speaks from the mouth;*

as one speaks from the mouth, so he acts;

as one acts, so he becomes. That is, the deeds proclaim the man.

Language is the outward expression of our innermost thoughts and a common national language is a prime necessity as it makes for unity and cohesion in a manner in which no other single factor does. As in the case of redistribution of provincial boundaries, there is an outcry in favour of some of the provincial languages struggling for supremacy. This is only natural but there should be no antagonism between one language and another. Whether the provinces should be formed on linguistic basis or some other basis or should be left intact has nothing to with the question of national language - the *lingua franca* of the country. That the Government of the day can give a great lead in this matter goes without saying. Witness the case of English which under the domination of our late foreign masters practically became the *lingua franca* throughout the length and breadth of this vast country. But in order to be the national language it should not only be the language of the intelligentsia but of the common people. It should be a language which should be spoken and understood by all classes of people and by the majority of them. Considering the huge population of India we find that of the provincial languages such as Bengali, Marathi, Gujarati, Punjabi, Telugu or Oriya, none of them is spoken or understood by the great majority of the people of India and the only language that can lay claim to a great extent to this position is Hindi which is spoken not only in Upper India but in C. P., Rajputana, Bihar and various other tracts. But the spoken Hindi is not the Sanskritised Hindi of Scholars and the intelligentsia - for after all what is their percentage as compared to the huge population of the country - but a Hindi full of short, sweet and simple words, the pure, chaste and unadulterated Hindi spoken by the great majority of the people and which the uneducated people, the womenfolk and the children make full use of and speak freely and frankly. Although Sanskrit is the mother of most of the Indian languages - the languages not only of India but also of the World - and although it is the language par excellence in which our Vedas, Upanishads, Shastras, the Ramayan and Mahabharat and the Immortal Gita are written and although in the words of Sir William Jones, the great Orienta list, "Sanskrit is more perfect than Greek, more copious than Latin and sweeter than Italian", still it is not the language of the common people and so it is not desirable that we should draw upon it for our daily requirements in Hindi. Moreover Sanskrit has been a dead language for several centuries like Latin, Greek and Hebrew, and in spite of the marvels of the marvellous and inimitable Ashtadhyayi of Panini, the greatest Grammarian of the world, Sanskrit is most difficult to learn. The test of a national language should be its simplicity, and that it should be easily understood by everybody in the country. Now nobody can deny that the Sanskrit Alphabet is the most perfect and scientific in the World and it is also very natural and not unlike the alphabets of other languages. For example the very first letter of its alphabet is **a.** The mouth automatically opens when you have to utter this and the sound represented by it is the very first sound which one hears when the mouth is opened. Similarly when the last letter of the Sanskrit alphabet, that is **m** is uttered the mouth is automatically shut, which means that it is rightly the last letter of the alphabet, although I do not forget that **m** in a sense is not the last letter of the Devanagri alphabet because it is followed by other letters like **ya ra la va** but they are variations of other letters. For instance **ya** is a variation of **e**, **ra** is a variation of **ree**, **la** is a variation of **lree**, **va** is a variation of **oo**. On account of the perfection of the Sanskrit alphabet, Hindi which is spoken by the great majority of the people in this country, should when reduced in writing, be written in Devanagri script (*Cheers*). Sometime ago a move was made to evolve what is known as basic English. If some such steps could be taken with regard to Hindi, it would be much easier for other people who do not at present speak Hindi or write Hindi to learn it in the minimum of time. In view of the position hitherto and at present occupied by Urdu written in the Persian script and in view of the fact that it is the language generally used by our Muslim brethren who number nearly 3 1/2 or 4 crores in this country and who are scattered throughout the length and breadth of this country, and in view of its intrinsic merit that its script is a sort of shorthand, I think it is desirable that we should pay some attention to Urdu also but of course it can never be and there is no reason why, it should be the primary language of the Nation. The national and official language should of course be Hindi written in the Devanagri script but the second language should in my opinion be Urdu because it is a sort of shorthand and takes much lesser time to write and occupies much lesser space than other languages. For example take the word 'Muntazim' which in Urdu is written as if it were one compound letter, but if you write in Hindi in Devnagri script or Roman English it will consist of 7 or 8 distinct letters. Similar instances are 'Muntazir, Muntashir, Muntakhib' and hundreds of other similar combinations of letters which at present form unitary words. So I think that in view of the fact that Urdu is at present spoken by an appreciable number of people in this country and especially in big cities like Delhi, Agra, Lucknow and other places, and the countryside round about Delhi, and other large centres of population in Northern India and it possesses certain advantages in as much as it is a sort of shorthand, I submit that we should treat it as the second language of the country. Moreover, if we adopt it as a second language, it will be a gesture of good-will towards the Muslim population who, as I have already said, number no less than 3 1/2 to 4 crores. And in a secular State we will do well to make such a gesture. However much we may feel the consequences of the partition and the holocaust that followed in its wake we should take a realistic view of things, for after all we cannot build on anger, vengeance or retribution. Although I happen to represent a distant part of India at the moment, namely the Orissa States, I am a Punjabi, and like most Punjabis have suffered grievously in a variety of ways on account of the partition, but that should not make me forgetful of our duty towards the country. We should also not forget that the Father of the Nation during his life-time freely and unreservedly expressed himself in favour of Hindustani, and in expressing this opinion he was never depressed; on the other hand he was always impressed with the reality of the situation and the necessity and the correctness of this view.

One other suggestion that I should like to make in all humility is that in framing our Constitution we should invoke God's blessings as is done by every householder when he performs some big ceremony or when some great *Yajna* has to be performed. And what greater *Yajna* could there be than this in the new India that is born after so much travail? I therefore suggest that at the commencement of the Constitution we should say that we invoke God's blessings in this holy task, and at the end of the Preamble also we should use some such words as "So help us God". At a time of great trial facing his country Rudyard Kipling devoutly wrote:

> Lord God of gods,
>
> Be with us yet,
>
> Lest we forget, Lest we forget.

I trust this suggestion of mine will be considered by this Honourable House.

Before I resume my seat I should like to add my tribute to the chorus of praise showered on the Honourable the Law Minister, Dr. Ambedkar, Chairman of the Drafting Committee, for the excellent speech made by him while moving for the consideration of the Draft Constitution. For lucidity and clarity of exposition and expression it could hardly be surpassed. Both he and his co-adjutors are entitled to our best gratitude for the very strenuous work they have done in preparing the Draft Constitution. Sir, I thank you forgiving me this opportunity of making my submission.

Shri Yudhisthir Mishra (Orissa States): Mr. Vice-President, Sir, I have been called upon to speak at this fag-end of the morning session and I shall try to finish it as soon as possible. I want to submit a few points for the consideration of this Assembly. The first thing is that in the whole of the Draft Constitution there is no provision for the economic independence of the country. So long we had been fighting for the political independence of the country, and times without number, our leaders have said that we shall try to establish in this country such a Constitution as will provide for the economic independence of the country. But I am sorry to say that nothing of the kind has-been done. There is nothing for the common people to be secure about their future. There is nothing in this Draft Constitution which provides them full opportunities for their growth in the future. The Constitution should firstly provide that all the lands, machinery and all other means of production and products thereof will be owned and controlled by the State in the interests of the people.

Secondly, the State should provide for every man and woman work according to his or her capacity and ability and supply the people with materials and goods according to their needs and requirements.

Thirdly, the production of goods should be determined and regulated according to the needs of the people. The Draft Constitution does not give any guarantee for the nationalisation of the wealth within a reasonable time; and it does not say anywhere that every man and woman should be provided with work in this country.

The second submission I would like to make is about civil liberty. The Draft Constitution provides that a person can be detained without trial in the interests of the state. I do not understand what is meant by "in the interests of the state". You have been seen, in the last few months, from January and thereafter, what is meant by detention without trial. In the various High Courts it has been held that the detention which has been ordered by the various Provincial Governments was in some cases illegal. When there is the law of the land to be applied to different individuals, I do not understand why there should be any provision at all for detention without trial. We fought against this during the time of the British Government, and I do not see any reason why this provision should be retained now also. Of course this principle has been agreed to by this Assembly while adopting the principles for the Constitution. But I would submit that this view should be changed and that the provision which has been given a place in the Draft Constitution should be amended.

The third submission I would like to make is about States, the Rulers of which have ceded their jurisdiction and power to the Central Government. The provision which has been made in the Draft Constitution is beyond the terms of reference given to the Drafting Committee. I do not understand why the Drafting Committee has gone beyond the terms of reference and has gone beyond the wishes of the people of the States who have come under the administration of the Government of India, and adopted a Constitution which is not at all demanded or liked by the people of the

States. I would therefore say that Article 212 which has also been applied with respect to the States who have merged with the Provinces should be amended and that the wishes of the people should be respected in that regard. Of course, in due time the amendments will be moved, and I hope the House will accept the same.

With these words, Sir, I command the Draft Constitution for the consideration of the House.

Mr. Vice-President: I am glad to announce to the Honourable Members that the President has agreed that in deference to the wishes of the House, we shall have another day, that is Monday, for general discussion.

The Assembly then adjourned for lunch, till Three of the Clock.

The Assembly re-assembled after lunch at Three of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

Shri H. V. Kamath: Will you be so good as to direct that......

Mr. Vice-President (Dr. H. C. Mookherjee): Will the Honourable Member kindly resume his seat?

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following member took the Pledge and signed the Register:

Shri Ratna Lal Malaviya (C. P. and Berar States).

MOTION *re* DRAFT CONSTITUTION-*Contd.*

Mr. Vice-President: We will now resume the debate.

Shri H. V. Kamath: Will you be so good as to direct that a copy of Dr. Ambedkar's speech introducing the Draft Constitution be supplied to every Honourable Member with the least possible delay?

Mr. Vice-President: I understand that the speech of the Honourable Dr. Ambedkar will have to be cyclostyled. This will be done as quickly as possible and possibly copies will be made available to the Members either this evening or tomorrow morning.

We will now resume the debate.

Prof. Shibban Lal Saksena (United Provinces: General) :Mr. Vice-President.....

Shri B. Das (Orissa: General): Are you allowed to speak twice on this motion?

Prof. Shibban Lal Saksena: No. Formerly I spoke on the amendment of Seth Damodar Swar up. I have not yet spoken on the motion moved by Dr. Ambedkar.

Mr. Vice-President, we are today called upon to discuss the principles underlying our Draft Constitution. To begin with, I must congratulate the learned Doctor who has placed this motion before us. I have read the speech, which he delivered, several times and I think it is a masterpiece of lucid exposition of our Constitution. I certainly think that there could not have been an abler advocacy for the Draft Constitution. But I would like to say something about the principles incorporated in the Constitution.

Sir, this Draft Constitution has accepted, as he himself said, the democratic Government of England as the model and has rejected the American system of Government. I personally have tried to compare both and to weigh which is better. I personally think that our country's need at present is for a stable State. I think what we require first is stability of Government. I therefore think that we should have opted for the system which prevails in America. A President elected by adult suffrage should be in charge of the Nation and he should have the right to choose his executive to carry on the administration, and the judiciary should be independent of the executive. I personally think that stability of Government is the first need of the Nation today. There are already tendencies which are fissiparous. There is the demand for linguistic provinces and for re-distribution of the provinces. We have also seen quarrels about the division of powers between the units and the Centre. All these tendencies are natural. But if we had modelled our Constitution on the American example and had adopted their system of election, I think it would have met our needs better. Therefore, in one fundamental respect I beg to differ from Dr. Ambedkar who has opted for the British model. The British system works admirably. But that is the result of seven hundred years' experience and training. Besides, I think there are two special features of British life which enable them to keep their system going. There are no fissiparous tendencies and the loyalty to one King is a strong binding force. Secondly, in every Englishman, respect for his Constitution is ingrained. In our own country, I personally feel that the American system would be better. There will be less corruption and we can grow to our full stature much better under that system than we can do under the system recommended.

Then, Sir, Dr. Ambedkar has criticised the system of village panchayats which prevailed in India and which was envisaged by our elders to be an ideal basis for our Constitution. I was just now reading Mahatma Gandhi's speech in the 1931 Round Table Conference in London. He was speaking about the method of election to the Federal Legislature. There he recommended that the villages should be the electoral units. He in fact gave fundamental importance to the village republics. He said that it was in villages that the real soul of India lived. I was really sorry that Dr. Ambedkar should express such views about the village panchayats. I am certain that his views are not the views of any other Members of this House. Let us see what Dr. Ambedkar has said about these village panchayats:

"Their part in the destiny of the country has been well described by Metcalfe himself who says:

'Dynasty after dynasty tumbles down. Revolution succeeds to revolution. Hindoo, Path an, Mogul, Maharashtra,

> Sikh, English, are all masters in turn but the village communities remain the same. In times of trouble they arm and fortify themselves. Any hostile army passes through the country. The

> village com-communities collect their cattle within their walls, and let the enemy pass unprovoked.'

> Such is the part the village communities have played in the history of their country. Knowing this, what pride can one feel in them? That they have survived through all vicissitudes may be a fact. But mere survival has no value. The question is on what plane they have survived. Surely on a low selfish level. I hold that these village republics have been the ruination of India. I am therefore surprised that those who condemn provincialism and communalism should come forward as champions of the village. What is the village but a sink of localism and a den of ignorance, narrow-mindedness and communalism. I am glad that the Draft Constitution has discarded the village and adopted the individual as its unit."

I am certain that a very large majority of the House do not agree with this view of village republics. As one who has done work in villages and has experience of the working of Congress village panchayats for the last twenty-five years, I can say that this picture is purely imaginary. It is an entirely wrong picture. I personally feel that, if we bring to these village panchayats all the light and all the knowledge which the country and the world have gathered, they will become the most potent forces for holding the country together and for its progress towards the ideal of Ram Rajya. In fact, the Soviet Constitution is based on village units, village Soviets as they are called. I feel personally that these village republics, like the Russian village Soviets, can become models of good self-government. I think that the Constitution should provide for the establishment of village republics.

The Upper House under this Draft Constitution is to be elected indirectly by provincial legislatures. I think it should be elected on a wider franchise and village panchayats should be required to elect the Upper House. The suggested method of electing the Upper House by provincial legislatures is a very wrong method. If village panchayats are allowed to elect the Upper House, we will have a more representative Upper House. I personally feel that unless we give the villages more responsibility, we cannot really solve their problems.

The third point I want to touch upon is States. I fully agree with Dr. Ambedkar in his criticism against having two kinds of constitutions, one for Indian States and one for provinces. I feel that the States should be made to fall in line with the provinces. I hope that the States' representatives here will see that it will be more advantageous to have constitutions for the States similar to those for the provinces. Instead of Governors, they can have Rajas as constitutional heads. Most of the smaller States have already merged themselves with bigger units. Where they are very small, they have already merged themselves with provinces. I feel that the Constitution should have a provision that, if any State wishes to fall in line with the provinces, the provincial constitution shall apply to that State also. I hope that by the time the Constitution is passed, most of the States will agree to fall in line with the provinces.

Then, Sir, about the fundamental rights, Dr. Ambedkar said that nowhere in the world are Fundamental Rights absolute. I personally feel that our Fundamental Rights should be in more unambiguous form. I think there is much force in the contention that the provisos to these Fundamental Rights take away much of the rights granted by the Constitution. I think that these Articles should be modified.

Then, Sir, one word about our national language. I think there should be a separate clause stipulating a national language on the model of the Irish Constitution. I personally feel that it should be Hindi written in Devanagri characters. Similarly I think the form of the flag should also be provided for in our Constitution: what colour it shall be and what its dimensions should be, should all be declared in the

Constitution. I also quite agree with Seth Govind Das when he said that cow-slaughter should be banned in the Indian Union. I personally feel that the sentiment of thirty crores of population should be respected. I feel that we should provide in one of the Articles of this Constitution the banning of cow-slaughter. I feel that after all we have to take the people as they are and we will have to respect their sentiments also. I therefore feel that this Constitution should be amended to suit our needs and requirements.

Lastly, Sir, I thank the Drafting Committee for providing us with a very fine Constitution. I also feel that the suggestions that I have made will be discussed at the amendment stage and finally find a place in the Constitution of our country. Sir, with these words, I commend the motion to the House.

Shri Sarangdhar Das (Orissa States): Mr. Vice-President, Sir, like all the previous speakers I congratulate the Drafting Committee, and especially its Chairman, Dr. Ambedkar for the hard work that they have put in. But at the same time, there are certain things in his speech with which I cannot agree. When he says: "What is the village but a sink of localism and a den of ignorance, narrow-mindedness and communalism ?" I am rather surprised that a respected member of this House and also a Minister of the National Government should have such an idea about our villages. I must say here, that with the spread of western education in our schools and colleges we had loss contact with the villages, and it was our leader, Mahatma Gandhi, who advised the intelligentsia to go back to the villages, and that was some thirty years ago. For the last thirty years we have been going into the villages and making ourselves one with the villagers; and in reply to Dr. Ambedkar's accusation, I would say that there is no localism in the villages. There is ignorance,--yes, ignorance of the English language and also our various written languages, and that situation is due to the kind of Government we had, a Government that destroyed our educational system. As far as knowledge of nature and wisdom gathered from Shastras and Puranas are concerned. I would say that there is more wisdom and more knowledge in the villages than in our modern cities.

I am not a hater of cities. I have lived in cities in two continents, but unfortunately our cities in India are entirely different from the cities in other countries. Our people living in the cities are far away from the villagers, from their life, and that is why we have become such that we think there is nothing good in the villages. Now this idea is changing; I do not know if it is changing outside the Congress circles, but I am positive that within the Congress circles, the idea of the villages is uppermost in everybody's mind. I shall therefore appeal to Dr. Ambedkar to reconsider this matter and to give the villagers their due because the villages in the near future will come into their own as they used to be.

Now then when we come to the Draft Constitution itself, I am at one with Dr. Ambedkar in the matter of more power to the Centre, because a strong Centre is very necessary at the present time. No matter what we say about the fundamentals of the culture of our peoples in different provinces being the same, we are a heterogeneous people; and taking advantage of the situation that the British have gone, there are all kinds of disruptive elements trying to raise their heads, and therefore it is essential that the Centre must be strong so that all the different peoples of the country can be welded together into one nation. In this connection, I would urge upon you to keep this idea of linguistic provinces in abeyance for, say, five or ten years, because although I come from a province where we also think that injustice has been done to our province, nevertheless because of this linguistic provinces idea during the last one year, there has been more bitterness between the peoples of neighbouring provinces than anything good. And this is not the time to have bitterness. We want goodwill between the neighbouring provinces and that is why I would strongly urge that this linguistic provinces idea should be kept in abeyance for at least five years. As regards language, I know and every freedom-loving man in any country knows that there must be a national language. In that respect also, we have different provincial languages some of which have developed very much and are of a very high order, while there are others which are backward. So, there is a competition between the different provincial languages. But, we must remember that we must use a language that the majority of people speak or understand. There is no language other than Hindi that can stand this test. Hindi is a language based on Sanskrit. Because in the different provinces we study Sanskrit to some extent, although not as fully as the older generations used to do, our regional languages also are based on Sanskrit, our Sadhu Bhasha as we call it in my province, that is, the scholarly language is such, that I believe, this scholarly language spoken in Orissa can be understood by the Hindi people or the people from the Punjab and they do understand it. So also, the Oriyas understand Hindi though they may not be able to speak it. The same is the case in Bengal, Maharashtra, etc. When we look at it from that point of view, I am rather surprised that other non-Hindi-speaking friends, particularly in South India consider that the demand for adopting Hindi as our national language is "imperialism of language". I do not see where there is imperialism of language. If the South Indian scan speak in no other language than English, do they mean to say that the millions of people living in the Madras Province understand English? It is only a few, and a few of the uneducated people in the cities also who understand English; but not in the villages. We will have to banish English; but at the same time, I would say to the advocates of Hindi that it cannot be done right away, immediately. Some time must be given to the people of South India and other non-Hindi speaking provinces to get acquainted with Hindi and to make their contacts with North India and Western India in the national language.

The next point I want to dwell on is the Indian States. When we first considered the principles of the Constitution, some ten months ago, the Indian States were in a different position. Since then, things have changed. I cannot see how we shall have units of Indian States and of provinces, and call them all units, and yet, the Indian States are not on a par with the provinces. Particularly I see, that the High Courts of the Indian States will not be under the jurisdiction of the Supreme Court. It is said in the Chapter on Fundamental Rights that these rights are guaranteed to every citizen in India. I take it that a person, man or woman, living in an Indian State or in a Union of States as they have been formed during the last few months, is a citizen of India and if his Fundamental Rights are curtailed by the Government there, there is an appeal to the High Court and that is the final judgment, while in the provinces, the matter can go up to the Supreme Court. I do not see how the man or woman in the States is on a par with the man or woman in the provinces.

Then there are various other matters that exist in many States, particularly in Rajputana and Central India, where there are Jagirdars who own practically 75 to 90 per cent of the land under the Maharajas of Jaipur, Jodhpur and Bikaner; there is an inland customs duty collected by the Jagirdar from the producer, and then again by the Maharajas' Government, and then when the goods are exported to the neighbouring State, that State also levies an import duty. I can give a particular instance of cotton grown in Jaipur, paying two duties in the Jagirdar's territory and while going out of Jaipur, paying another import duty in Bikaner, when exported to Bikaner, where there is no cotton grown. These matters will have to be changed and the earlier they are changed, the better it is for the primary producer as well as the consumer and also for the expansion of trade and commerce.

Then there is another matter and this is the last one that I want to stress, that is the tribal population in the various States that have come into the provinces, particularly in Orissa and the Central Provinces. It is the duty of the Union Government to improve their standard of living, and to give social and economic amenities to all the people. These tribal people, unfortunately, have been in a very backward condition as far as education, sanitation and economic status are concerned. There are about twenty lakhs of tribal people in Orissa and about 15 lakhs in the Central Provinces. For the quick advancement of these fellow citizens of ours, it will be necessary to allot large sums of money from the Centre, because the provinces cannot bear such heavy burdens. In the matter of financial arrangements between the Centre and the provinces, it will be necessary, when there is any per capita allotment on population basis, for the purposes of the tribal people, the amount must be four or five times the ordinary allotment allowed for then on-tribal people. I press this point particularly, because, if we are to improve their status in the quickest possible time, it is necessary to spend more money whenever it is needed and wherever the people are backward.

Chaudhari Ranbir Singh (East Punjab: General): *[Mr. Vice-President, while supporting the motion of Dr. Ambedkar I would like to submit a few words to this House. I agree with Seth Govind Das that it would have been better if we had decided upon our National Anthem, National Flag and National Language in the very beginning. With reference to what Shri Maitraji said yesterday, I admit that we cannot expect our Deccan friends to speak in Hindi and to use it for the business of the House all at once. But there would have been one advantage if the problem of the national language had been settled in the very beginning - and even now the advantage would accrue - and it would have been that people would have come to know which language was to be their national language and which language they should seek to learn.

I would not like to go deep into the question of centralisation and decentralisation of power, but I would like to draw the attention of the House to one matter. Mahatma Gandhi, the Father of the Nation always taught us that whether in the political or in the economic sphere decentralisation engenders a power which is much greater than other kinds of power. Besides, there are other reasons also for this view. I am a villager, born and bred in a farmer's house. Naturally I have imbibed its culture. I love it. All the problems connected with it fill my mind. I think that in building the country the villagers should get their due share and villagers should have their influence in every sphere. Besides there is another matter to which attention was drawn this morning by Babu Thakur Dasji. It is that the distinction between rural and urban seats should be done away with. I have no doubt that if we take a long view of the matter it would be beneficial for the rural areas - and more specially in a country like India where there are seven lakhs of villages and only a few cities. But we cannot ignore the conditions of today. Howsoever ingeniously we may try to beguile them with subtle arguments and fine sentiments the village people cannot be blinded to the fact that the power of the Press and the Intelligentsia is cent red in the cities alone, and that they of the villages have little say in the affairs of the nation. It is no use, therefore, to ignore this reality. Today a distinction has to be maintained in our country between the rural and urban seats. In fact reservation of seats is to be provided and it should be provided, for those who are backward. The reservation provided in our Constitution is rather a peculiar one. We should remember what used to be emphasised by the

Father of our Nation, Mahatma Gandhi, that is, the means for achieving an end have to be very carefully scrutinised, for the end is conditioned by the means. Our aim today is to set up a secular State - a non-denominational State. I cannot therefore, see any reason why seats should be reserved for minorities or sectarian groups. I do not see any sound reason for the adoption of such a course of action. Would not its adoption defeat the realisation of Ideals we have in view? Our object of establishing a secular State in this country would remain merely an unrealised dream if we decide to provide safeguards on grounds of religion. The training, the level of education, and the power of the followers of Islam do not need any further demonstration in the circumstances prevailing in the country to-day for we have already had ample proof of the same.

We have seen that by the power of their organisation and with the help of a foreign power they brought about the partition of the country. The other minorities that have already been referred to are not less powerful. We cannot from any point of view call them backward communities. It is no doubt true that it may be said, if it can be said for any group at all, that Harijans constitute a backward class. Both from their educational and financial conditions they may be called a backward class. But even in this respect we have to keep in view one other consideration. It is that if we provide in this Constitution safeguards for Harijans, the word 'Harijans' would be perpetuated even though such is not our intention. We want to form a classless society in the country. But a classless society cannot be formed if we make a provision for reservation of seats on the contrary. This would only perpetuate the word 'Harijan'. In my opinion there is another way and a much better way of providing safeguards for them. All the backward people in the country are either peasants or labourers. All such people were disfranchised in Russia as did no manual work and lived not by their lab our, but on the returns on their capital. We may not disfranchise such people in our country today. We may even give them rights according to their numbers. But we should provide safeguard for manual workers, the peasants and the wage-earners. If safeguards are to be provided they must be only for those who are peasants and wage-earners and in fact safeguards can be properly provided for them alone.

There is one thing more. As I said before, it may perhaps be objected that this will give rise to another serious problem, that is to say, the words 'peasant' and 'labourer' will find a permanent place in the Constitution. But I think that, even if this happens, it will not be in any way injurious to anyone. It will be all the better that the people of the whole country would be labelled as peasants and workers. If every one would earn his bread by labour, it would be the best thing for the country and the problems of food and cloth with which the country is faced today would then be solved easily.

I would like to proceed to make one more observation and this I may do only as a peasant. It is with respect to the protection of the cows. Pandit Thakurdass Bhargava and I had jointly moved a resolution on slaughter of cows in the Congress party and at that time it was unanimously adopted. But unfortunately no mention of it has been made in our Constitution. Though the same was the case in regard to Hindi on which question also the party had come to a decision, yet the mention of Hindi is to be found in the Draft while no mention has been made of the resolution as regards cow protection. I humbly submit that resolution should be carried out as a whole - rather it should be enlarged as follows:

"In discharge of the primary duty of the State to provide adequate food, water and clothing to the nationals and improve their standard of living the State shall endeav our: -

(a) as soon as possible to undertake the execution of irrigation and hydro-electric projects by harnessing rivers and construction of dams and adopt means of increasing production of food and fodder.

(b) to preserve, project and improve the useful breeds of cattle and ban the slaughter of useful cattle, specially milch and draught cattle and the young stocks."

Sir, I would like to make one more point in regard to the economic order. I have no objection, rather I am happy that the Centre should be very strong. But I consider it my duty to submit that the finances of the provinces should be on a sound basis. Today there is not a single pie of the income of the peasant who earns it by his sweat and blood, which is not taxed. If he cultivates even a single bigha of land he has to pay a tax on it. As compared to this even an income of two thousand rupees of other people of India is not taxed. This is a great injustice to the peasant, particularly in a country where they dominate and have a large population. It should rather be considered how the continuance of this injustice in a country of peasants would look like? Therefore I want that the provincial governments should realise land revenue on the same basis as the income tax; for this purpose their finances should be strengthened.

I would like to make one more observation as a Punjabi. Punjab was partitioned as a consequence of the Freedom of India and partition completely dislocated the entire administration of this Province. To bring it again into line with the other provinces it is necessary that at least for the next ten years, in so far as its finances are concerned, special concession should be shown to East Punjab.]*

Mr. Vice-President: I have received a number of communications from Honourable Members suggesting that the House might be adjourned as they want to go to the Exhibition. I want to know the views of the House.

Honourable Members: Yes, it may be done.

Mr. Vice-President: I have got the names of sixty gentlemen who wish to speak. The adjournment will mean that only a smaller number will be able to speak because there is only one day left. It is for the House to decide what they want.

An Honourable Member: We might adjourn at half past four.

Another Honourable Member: Let it be four o'clock.

Mr. Vice-President: We will carry on up to a quarter past four.

Shri R. R. Diwakar (Bombay: General): Mr. Vice-President, Sir, Honourable Members who have spoken before me have covered enough ground and I think I should not take much time of the House in going over the same ground. I would like to make a few points which from my point of view are very important when we are on the eye of giving a new Constitution to our country. One thing which I wish to make quite clear is that the Draft Constitution which is before us is really a monumental work and we all of us have already given congratulations to the Drafting Committee and its Chairman who is piloting it through this House. At the same time I would like to point out that the Drafting Committee has not only drafted the decisions of the

Constituent Assembly but in my humble opinion it has gone far beyond mere drafting. I may say that it has reviewed the decisions, it has revised some of the decisions and possibly recast a number of them. It might be that it was inevitable to do sounder the circumstances, but at the same time we, the Members of the Constituent Assembly, should be aware of this fact when we are considering the Draft and when we are thinking in terms of giving our amendments.

The second point I want to make is about the hurry with which some people want to finish the discussions about this Draft. I do not think that much hurry will be beneficial ingoing through the Draft. Enough time should be allowed, and none of the amendments that may be given should in any way be suppressed or insufficient time given to them. Enough time should be given for the discussion of important things. If not for anything else, I want to point out that it is more than one year since Free India is in existence, and this year has been one of rich experience. This experience itself, I think, should make us pause and think about changing a number of provisions that are there in the Draft, as it is today before us.

Let us take the question of adult franchise. A number of us are already thinking as to whether we shall have the required type of people in the legislatures if we straightaway introduce adult franchise. I am one of those who would suggest that while we should keep adult franchise as it is, so far as the electorate is concerned, we should consider and put our heads together and see if the qualifications of candidates are, in a way, such as would bring to the legislatures people who would really be capable of shouldering their responsibilities. No doubt it is a superstition with western democratic method that each one who has a vote is also eligible for becoming a candidate. But I do not think that it is absolutely necessary for the purposes of democracy to follow this tradition of western countries. We can as well think about the important consideration that we want a legislator who is not merely a representative but also a representative who can legislate and who has a certain perspective. While we are speaking in terms of nationalism, unitary government, strong Centre etc., all these words would be useless and meaningless if we do not have in our legislatures people who have this perspective and who can look upon every piece of legislation with this perspective and in this context. The Constitution, after all, draws its force from the people who work in and if we are not able to send to the legislatures people who can understand, who can grasp the spirit of the whole Constitution, I think it would be very difficult to work it for what it is worth. I want to point out that there are some more considerations of this type which experience has brought home to us during the past one year, and they should stand us in good stead in considering the Draft that is before us.

Another important point which has been harped upon from this platform is about linguistic provinces and the question of language. The battle of languages has been or is being fought almost from day to day - it comes up in a number of dubious ways. But I think that when once we have all agreed that there should be a *lingua franca*, a national language, I do not think that we should quarrel any more about details and emphasise unnecessarily the point that our Constitution itself should be in that language. With due respect to the Hindi language - or Hindustani or whatever we may call it - I should say that it has not yet developed the connotations, that are necessary for its free use in legalistic and constitutional works as well as constitutional methods and interpretation. Therefore, it is absolutely necessary that we should wait a little more before we rush in that way. I would plead that we should pass the Constitution in the English language and we should also have a good Hindi translation of it, but so far as an authoritative version is concerned, for the next few years the English one should be that authoritative version. That, of course, is my humble opinion.

Now, the old hatred or rather the dislike for the English language must really lapse with the 15th of August1947. Before the 15th August 1947, we were using the English language as slaves, and therefore we ought to have felt the revulsion that we were feeling. But today, it is out of choice, out of the merits of that language possibly, out of the difficulties of the situation, on account of the heterogeneous languages which so many of us speak that we take to it, we rely on it for some period; and that I think should be the best way of doing things. It is from the point of view of arriving at the highest common measure, what maybe called the highest common factor, that we ought to look at this problem; then I hope we shall be coming to a very good conclusion and a harmonious one.

Now about linguistic provinces. The question is before the Commission that has been appointed by the President of our Assembly; it is premature to say anything about it. Really speaking, I wish that none had referred to it from this platform. But since it has been referred to, I should think that this question should not in any way be shelved or postponed since this Constituent Assembly is there; and since we are considering the whole future of the country as well as of the Provinces, it is no use simply brushing it aside saying that there are difficulties in the way. If there are difficulties, well, we are all here to see that those difficulties are removed. I do not think that there are insuperable difficulties which we cannot overcome as a nation. We have overcome greater difficulties, possibly we shall have to overcome far greater difficulties in future, and at such a time it is necessary that each limb of the nation, each group in the country, feels that its future is assured, that its development is assured and that there is no danger of its being suppressed or neglected in the future Constitution of India.

Sir, I once more urge that we should not be in a hurry about this Constitution - it might take a few days more or a few days less. I would urge you to take fully into consideration the experience that we have had during the whole year and bring that experience to bear upon the provisions of the Draft Constitution that we have before us.

With these few remarks, I commend the Draft and congratulate once again the Drafting Committee and its able Chairman and on the way in which he has presented this Draft to this House.

Shri Himmat Singh K. Maheshwari (Sikkim-and-Cooch Behar): Mr. Vice-President, Sir, the House has during the past two days heard some very vigorous and useful criticism son the Draft--before it. It is not my intention to repeat or to paraphrase any of the suggestions that have been made. I shall permit myself to make only one general comment and to make one appeal.

The general comment that I wish to make is that the Draft tends to make people, or will tend to make people, more litigious, more inclined to go to law courts, less truthful and less likely to follow the methods of truth and non-violence. If I may say so, Sir, the Draft is really a lawyers' paradise. It opens up vast avenues of litigation and will give our able and ingenious lawyers plenty of work to do. Whether this will help the nation as a whole, is extremely doubtful.

Many of the provisions of the Draft confer benefits or concessions of a somewhat illusory character. Some of them, in my opinion, are even harmful. The question then is: what is this blemish due to? I shall hazard an answer: the answer is that the raw material out of which this Draft has been made is all foreign. The ideas are foreign, the garb is foreign, and what is more, the form is top-heavy. With these disadvantages I am afraid it was not possible to do much better than what the Committee has done. Whether at this stage it will be possible to remove these defects I am unable to say. But I wish to put in a strong plea that when the Draft is examined clause by clause by the House, every effort should be made to expunge all unnecessary provisions and provisions which might more conveniently be left for legislation by the Dominion Parliament in future.

The appeal which I wish to make to the House is in connection with a subject which has been touched upon by an umber of speakers today and yesterday. It is in connection with reservation of seats in the legislatures for the minorities--Muslims, Sikhs, Scheduled Castes and others. My friend Mr. Karimuddin sounded a very healthy note yesterday when he opposed reservation of seats for Muslims. From my personal experience in the State which I represent, I am able to say that the refusal to grant separate electorates and the refusal to grant reservation of seats in the legislatures to Muslims during the last 25 or 30 years has had the most beneficial results in my State. The result has been that Hindus and Muslims have always been on the most friendly terms and have, even during the troublous times of 1946, 1947 and this year, remained on the most friendly terms without breaking each others' heads. They co-operate in every field of life and are the best of friends. Reservations are bound to encourage separatism and postpone at least for some time the realisation of the dream which we have, namely, that of evolving a truly secular State. As long as any community demands and gets reservation of seats in the legislatures a truly secular State, in my opinion, must remains a distant dream. I therefore make a most earnest appeal to my friends of all minority communities to drop their claim for reservations voluntarily so that this Constitution may start off as a truly democratic, virile, strong Constitution without any drawbacks to begin with. One of our Sikh friends yesterday, as far as I could understand him, also put in a plea I believe against reservation. That is a very healthy sign. I have still to hear what the Scheduled Castes in this House have to say. Personally, Sir, I have always felt that giving any person the name of a Scheduled Caste involves a stigma.

(At this stage the bell was rung indicating that the Member's time was up.)

I bow to your call, Sir. I have said nearly all that I wanted to say.

Mr. Vice-President: The House stands adjourned till 10o'clock on Monday, the 8th November 1948.

The Assembly then adjourned till Ten of the Clock on Monday, the 8th November 1948.

[Translation of Hindustani speech]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VII

Monday, the 8th November, 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the pledge and signed the Register:

1. Mr. H. P. Mody (Bombay: General).

MOTION *re.* DRAFT CONSTITUTION

Mr. Vice-President (Dr. H. C. Mookherjee): It has been the decision of the House that we should close the general discussion today. There are about sixty names on my list and it is obviously impossible for me to give an opportunity..........

Many Honourable Members: We cannot hear you, Sir. Evidently the mike is not working.

Mr. Vice-President: It is obviously impossible for me to give an opportunity to every Member who wishes to speak. I have therefore decided to give Members of the minority communities the opportunity to speak first. Mr. Mahboob Ali Baig.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): Mr. Vice-President, Sir, Dr. Ambedkar's analysis and review were remarkably lucid, masterly and exceedingly instructive and explanatory. One may not agree with his views but it is impossible to withhold praise for his unique performance in delivering the speech he did while introducing his motion for the consideration of this House.

I am afraid, Sir, I am unable to agree with either the form of Government or the form of constitution embodied in the Draft Constitution or the reasons that Dr. Ambedkar gave in their justification.

Firstly, let me deal with the form of Government. Dr. Ambedkar's view is that the British parliamentary executive is preferable to the American non-parliamentary executive on the ground that the former is more responsible though less stable, while the latter is more stable but less responsible. I am inclined to think, Sir, that the advantages of the parliamentary executive have been exaggerated and its defects minimised. It is common knowledge - and from experience also we have found - that the responsible executive under which we have been working for the last two decades has pointedly brought to our attention the fact that a removable parliamentary executive is at the mercy of hostile groups in their own party. Very little time is left to the executive to achieve the programme which is before it. It is so unstable. It is always in fear of being turned out by no-confidence motions. Further, Sir, it is there that the seeds of corruption are sown. A corrupt party-man cannot be turned out by the electorate under the present Constitution or under the proposed Constitution. The Minister or Ministers have always to be very careful to satisfy the various elements in their party in all their legitimate and illegitimate demands. This is the opinion also, Sir, of the Commission that was sent out to India sometime ago, called the Simon-Attlee Commission. It was clearly said that the Ministry is so much engaged in cajoling, in satisfying its Parliament that there is hardly time to look after its administration or to put into effect its schemes. That is a very serious defect. Further, I have heard several members of the party saying: "Well, we cannot vote according to our conscience. There is the Party Whip. God save us from this party system". This is what has been expressed by many honest legislators. Further, Sir, as I said, there is no stability at all.

The third point I would like to urge against this parliamentary executive is that it cannot reflect the several sections of the country. The defects are so overwhelmingly great that I should rather prefer a stable Government, a government which does not stand in fear of being turned out overnight, because it was not able to satisfy some corrupt supporters of their party. Now, it is true in a democratic Government, the executive must be responsible. Let us see whether there is any other system of Government which has both responsibility and stability. It is no doubt true that in the American system there is less responsibility and more stability. But if you look at another system of Government, namely, the Swiss form of Government, where the elected parliament again in its turn elects the executive, there the responsibility is emphasized. Having elected its executive, it leaves the executive to work out its schemes in a satisfactory way for a period of four years and the decisions of the Parliament are binding on that executive, unlike in the case of the American Presidential executive. Therefore, if we want both stability and responsibility, the Swiss system of executive is preferable.

Now, Sir, with regard to the form of constitution, I am unable to agree with the constitution that is embodied in the Draft Constitution. People seem to think that the Centre must be strong, and that unless the Centre is very strong the provinces will always be an impediment in the way of the Centre becoming strong. That is a wrong view. If provinces are made autonomous, that does not necessarily mean that the Centre will be rendered weak. What do we find here? My view is that the provinces will be nothing but glorified District Boards. Look at Article 275 where in an emergency all powers can be usurped by the Centre. Look at articles 226, 227 and 229. The Centre can legislate for the provinces in all matters; and again look at the long Union List and the Concurrent List. All these clearly show that in the hands of a Central Government which wants to over ride and convert this federal system into a unitary system, it can be easily done. Now there is a danger of this sort of Government becoming totalitarian. This is the danger in the form of the constitution that is embodied in the Draft Constitution. Now to add to this, look at the Fundamental Rights that are enunciated. Can they be called Fundamental Rights at all? Fundamental Rights are those which are fundamental in character, unchangeable except in extreme circumstances. But what do you find here? These Fundamental Rights are hedged in by provisos, by overriding exceptions. There is a little confusion also in that chapter that deals with Fundamental Rights. It is said that from experience, it is found that instead of a Supreme Court deciding whether the government cannot under certain circumstances override the Fundamental Rights, provision is made in the draft itself;

and it is claimed, Sir, is the provisions for the form of constitution that it must be a flexible constitution. May I, with due respect to Dr. Ambedkar, state that the rigidity and the legalism which he says must be avoided are the very essence of a written constitution? It is not an unwritten constitution as in the case of Britain. In the case of Britain, Sir, it is a matter of history. It is an unwritten constitution and it has suited the peculiar genius of the British people to go on with their work without any written constitution and the peculiar parliamentary democracy suited the British Government. The very rigidity and the legalism which Dr. Ambedkar complained of is a necessary and unavoidable characteristic of a written constitution. We do not want to be so flexible as to allow any Government to ride rough-shod over the fundamental rights. They are not written rights at all if they are hedged in by so many exceptions. What is stated as Fundamental Rights, in the very article they have been rendered useless. Further, with regard to these Fundamental Rights, it is stated in section 13 that nothing contained in this shall in any way affect the operation of the existing laws. You know very well how reactionary the existing laws have been. No doubt in Article 8 it is stated that all laws which are inconsistent with the Fundamental Rights must go, but in article 13 it is said that the existing laws must prevail as against the Fundamental Rights. Not only there is contradiction here but there is confusion. I could understand, Sir, if under Article 8 a list of Acts and their sections have been mentioned as well as those which have been annulled. That section does not make it clear. In these circumstances, Sir, I am afraid, there are no fundamental rights at all.

One thing with regard to minority rights I am bound to say. There is nowhere any mention of provisions which safeguard the personal law of the people. You know, Sir, in India, at least, people of several communities are governed by personal laws based on their religion. It is possible to legislate with regard to personal laws also. That would go against the claims that this government is going to be secular, which would not interfere with the religious rights of the people.

Sir, one word with regard to reservation. Some Muslim friends of mine, especially Mr. Karimuddin has stated that he does not want reservation for his community. But, when I had a talk with him, he clearly stated that when there are no separate electorates, the people who will be returned will be those put up by the majority community, and therefore, the Muslim candidates who really represent the Muslims may not be elected. That seems to be the reason why he did not want reservation. If we can find out a way by which the Muslims who are elected would truly represent their community, there should be no objection. If in case of minorities a device is found, for instance, the election being based on what is called proportional representation by the system of single transferable vote, if such a device is made by the party in power, by the persons responsible for the framing of the constitution, I think that might go along way. In the absence of such a device, in the absence of separate electorates, I do not think I will be voicing the opinion of my community if I gave up this reservation that has been agreed to in the Minorities Sub-Committee. Therefore, Sir, I feel, on the whole, that this draft has not been very satisfactory. There is almost a certainty system of Government would lead to fascism or totalitarianism and it is capable of riding rough-shod valued rights of the citizens and also of the minorities.

Mr. Z. H. Lari (United Provinces: Muslim): Mr. Vice-President, Sir, before making my submissions on the draft Constitution, I would like to lodge a protest. The Constituent Assembly refrained from taking any decision as to the language question, and had postponed its consideration to a future stage. But the Drafting Committee, of its own accord, inserted a clause laving down that Hindi and English shall be the languages for transacting the business of the House. In today's paper I saw a report that the Muslim members from the United Provinces and Bihar have agreed that Hindi with Devanagari script shall be the official language. I therefore think it necessary to repudiate that statement at the very outset, and say clearly that we stand for Hindustani written in either script as the national language of our motherland. So far as English is concerned, I think it is necessary to retain it for some years to enable those who are not acquainted with Hindustani to be able to take an effective part in the discussions in the House. An Honourable Member from Madras was right when he said that there should be no linguistic imperialism. For that reason, Hindustani written in either script along with English should be the languages used for transacting the business of the House.

Coming to the Draft Constitution, which is primarily intended to usher in a democratic secular republic, we have to see how far the contents, the form and the spirit of the provisions contained therein are calculated to promote the Objectives Resolution unanimously adopted by this House and universally acclaimed by the country. To assess the provisions of the Draft Constitution, we have to see how far the Draft Constitution ensures the inherent rights of man, rights without which life is not worth living, how far the provisions safeguard against possible prostitution of democratic forms for totalitarianism, how far the provisions ensure justice if not generosity for the minorities and lastly, how far they ensure the independent development of the various national elements in the country. In order to assess the value of the provisions, we have to bear in mind two things: firstly, certain admissions made by the honourable Mover of the Resolution, I mean the Honourable Dr. Ambedkar, and secondly our experience of the working of democracy in the last fifteen months after the attainment of independence. When the House adopted resolutions which are the basis of the Draft Constitution, we had no such experience before us; but now we have. The first admission that the honourable Mover made was, and I will use his own words: "Democracy in India is only a top-dressing on Indians oil, which is essentially undemocratic"..... "It is wiser not trust the legislatures to prescribe forms of administration." With respect, I say he is mainly right.

An Honourable Member: He is wrong.

Mr. Z. H. Lari: I would like to point out in this connection the various Security Acts which have been passed by the various legislatures, particularly the Safety Act in one province which even excluded the right to move the High Courts under section 491 of the Criminal Procedure Code. The second admission that he made is: "Constitutional morality is not a natural sentiment. It has to be cultivated. We must realise that our people have yet to learn it."

I say not only the people but even our Governments have to learn it. To prove this I will cite only two instances. The House will remember that in Calcutta - in Bengal - the High Court was seized of a case and had appointed a full Bench to decide as to what is the effect of the word reasonable' in an enactment dealing with Government's power to arrest and detain. The Bench was to meet only next day but the Government came out with an Ordinance laying down that the word 'reasonable' shall be held to have been deleted. No doubt, as the High Court remarked in that case 'His Excellency the Governor of the Province' was fully within his rights to enact an Ordinance but it was against constitutional morality.' The second instance which I would place before the House is that the head of an autonomous institution - I mean the Aligarh

University - was only the other day asked to quit and give place to another man although that head had the confidence of the University Court and of the community to which the institution appertains. I say therefore in assessing the value of the provisions we have to keep in view these two admissions made by the Honourable Minister, as well as the recent working of the democracies during the last fifteen months.

Now the first requirement of a citizen is there must be security of life and there must be safeguard of liberty. This august House when considering the Draft Fundamental Rights laid down that nobody should be deprived of life and liberty except in accordance with due process of law. Now those words have been substituted by the words 'procedure established by law'. That absolutely nullifies the intention of those of personal liberty and life "in accordance with procedure" it becomes open to the legislature to frame any legislation affecting life and liberty. That nullifies the very intention. Therefore the substitution of the original clause is absolutely essential. In the Introduction to the Draft Constitution reference is made to the Japanese and Irish Constitutions but those responsible for those constitutions had laid down the procedure itself. For instance it is laid down there that everybody arrested shall have the right to be given the cause of arrest and he will have the right to get it adjudicated by courts. Therefore so far as Japanese and Irish Constitutions are concerned, they have laid down the procedure and after laying down the procedure, the Constitution says 'Nobody can be deprived of life and liberty except in accordance with procedure as established by law'. I submit that the examples of Ire land and Japan have no relevance.

Next to individual liberty and life comes the sanctity of one's house. One's house has been said to be a citadel, and it is of sanctity for him. In all democratic constitution you will find that no searches or seizures can be made in the houses except on causes shown and on complaints specifying the reason thereof and thing to be seized. Similar articles should appear in our Constitution.

The next necessity of the individual is the right to have elementary education. That is singularly absent in the Fundamental Rights. In the Directive Principles of State Policy it is contained that it shall be the endeavour of the State to provide elementary education. My submission would be that is absolutely insufficient. What is necessary is that it should be the duty of the State to provide elementary education and such a provision should exist in the Constitution among the Fundamental articles.

Now I come to Article 13 which refers to freedom of speech, assembly or association. These are conceded but have been hedged in by such provisos and conditions that they reduce them to a nullity. I think addition of the words 'subject to reasonable requirements of public order and morality' would be enough. The Honourable Mover said that in America these rights have been circumscribed by judicial decisions, but when judicial decisions circumscribing those rights are given, they are given out of necessities of State. I think the addition of the words 'subject to reasonable requirements of public order and morality' would do. I submit that Fundamental Rights as conceded in the Draft Constitution are indefinite, insufficient and in certain particulars, vague.

The next item I would like to bring before you is this. The twin principles of democracy are that everybody has aright to representation and the majority has the right to govern. The electoral system, therefore, must be such as to ensure representation to everybody. This is the significance of adult franchise but the method adopted, *viz.*, that of single member constituency really amounts to disenfranchisement of 49 per cent of the voters. It is possible in a single member constituency to disenfranchise even a minority extending to 49 percent. I am talking of political minority. Even political minorities are entitled to be represented in representative institutions. Therefore the system which is laid down in this Constitution needs revision. It may be said it prevails in England but this is why I drew the attention of the House to certain basic facts to which the Honourable Mover has referred and I would say it would be more advisable to follow the Irish, Swiss and now France in regard to introduction of proportional representation by single transferable or cumulative voting. It may be said that such system leads to multiplicity of parties. This has been in vogue for 25 years in Ireland and everyone is aware that one party governed the country for more than fifteen years and there had been not more than two parties. France had a plethora of parties even when there was no proportional representation. It is better for us to adopt this principle which is more progressive in instinct and which is really democratic.

I come to another feature of the Constitution, *viz.,* the Ordinance. There was a time when we used to complain that Ordinance was the rule and legislature was hardly consulted. I may here refer to the Father of the Nation who said: "Under the British rule the Viceroy could issue Ordinance for making laws and executing them. There was a hue and cry against the combination of legislative and executive functions. Nothing has happened to warrant a change in our opinion. There should be no Ordinance rule. The Legislative Assemblies should be the only Law makers". It is said when the Assembly is not meeting, an emergency arises, and an Ordinance has to be promulgated. But there is no significance of time and space and you can get an Assembly within two days and it is not at all difficult. Even if a necessity existed, that has disappeared; and moreover what is its effect? Because of the use of Ordinance-making powers the Assembly has become a rubber-stamp. In our province I know there is hardly any legislation which is not preceded by an Ordinance and in a Parliamentary Government where the Cabinet determines really the policy of the majority, once the Cabinet has framed an Ordinance and it comes forward in the form of a legislation, it is impossible for the major party to go back and therefore it is the Cabinet which determines the legislation. I would accordingly submit that there is really no necessity of a provision requiring powers of issuing Ordinance.

Then there is the contingency of emergency. No doubt an emergency clause should be there. But such is the wide scope of the emergency as put in the Draft Constitution, that not only actual violence, not only actual invasion as in the case of America, but threat of violence is enough to warrant declaration of emergency. These features are dangerous and must be eliminated.

I will now come to that portion of the draft which deals with minority rights. In dealing with these rights the first thing that has to be seen is reservation of seats. That is the one unique feature of the Constitution - that a minority is said to be safeguarded by means of reservation of seats, without ensuring that the minority concerned has any right or voice in determining its representative. This is meaningless and even deceptive. The only means of safeguarding minorities is by adopting the system of proportional representation. A writer in the Round Table of March 1948 referring to this system and its working in Ireland said that this solved the question of reconciling justice to minorities with the necessities of a stable Government.

Then I come to the Services. What a strange contrast In the Legislature you have got statutory reservations where they are meaningless, but when you come to the Services it is merely said their claims shall be considered. This is a very pious wish. The experience of the last fifteen months in the United Provinces and in other provinces has shown that mere pious wishes are not enough. There must be statutory reservations. Take away the reservation from the Legislature and for God's sake give us reservation in the Services. Here I speak not only for the Muslims of the United Provinces but also for other minority people. You concede reservations to Anglo-Indians but you deny it to the Muslims. Why this discrimination? Take the situation in the United Provinces. If you peruse the results of the last twelve months there, hardly five per cent of the Muslims have been taken in the services. I say if you take into account their discharges and dismissals it will be 75 percent., but if you take new recruitment - it is hardly 5 per cent.

Shri Vishwambhar Dayal Tripathi (United Provinces: General): What did your leaders do in Pakistan?

Mr. Z. H. Lari: My friend wants me to follow in the footsteps of Pakistan. I am not going to do so.

Mr. Vice-President: Order, order.

Mr. Z. H. Lari: I have not mortgaged my rights to Pakistan. I stand here as a citizen of India. What Pakistan does or does not do is not my concern.

An Honourable Member: You have grown wise today!

Mr. Vice-President: Order, order.

Mr. Z. H. Lari: We never said that Muslims in these parts are going to migrate to Pakistan. We are the children of the soil and as such we claim the rights of citizens of India.

Shri Vishwambhar Dayal Tripathi: Even your U. P. leader has escaped!

Mr. Z. H. Lari: Interruptions only show how uncharitable and how undemocratic are these.........

Mr. Vice President: Order, order.

Mr. Z. H. Lari: I Submit to the order. I was saying that my time was very short.

Mr. Vice-President: It has gone already!

Mr. Z. H. Lari: Give me two minutes more please.

Now there is the question of the Cabinet. I admit there can be no statutory representation there. In a parliamentary system of Government it is inconceivable. But you have to consider whether, after introducing proportional representation, it is not proper for us to go back to the Presidential system. In that case it will be possible to have the election of the Cabinet on the Swiss system. But in the present set-up of the

Constitution I admit that statutory reservation is impossible and the best that could be done has been done.

Lastly, I would beg of this House to consider that there must be some provision which should recognise the existence of an opposition in the Legislature. Of late since the Socialists seceded from the Congress, there have been utterances from responsible men indicating that the majority party - I do not say this is a confirmed opinion - are not very charitably disposed towards such an opposition. Just as it is in South Africa, or in England or in other countries, the position of the Leader of the Opposition should be accepted, and the one means of accepting is that it should be provided that he should be also granted a salary as in other countries. We know that in the system that is coming, men like myself have no chance to come back. Therefore, it is not in our interest but in the interests of democracy that there should be a proper Opposition which is constructive and charged with a duty to the country, and the motherland, and this can be assured only when you give a status to it in the Constitution itself.

I notice that in the further amendments provided by the Drafting Committee, there is a suggestion for the appointment of an Advisory Committee to advise the President and there the position of the Leader of the Opposition has been recognised. But his position should be recognised even in the Constitution for the Union and for the States.

With these few submissions I conclude. I have made references to certain admissions by Dr. Ambedkar but all the same I have faith in the goodness of my countrymen and in the catholic spirit of those who inhabit this motherland, and I hope that they will rise to the occasion, and now that the critical phase has passed, now that passions have subsided, they will be more realistic and more conciliatory so that there may be an even balance in the country between the majority and the minority, not only theoretically but actually, so that we may concentrate on making India great.

Mr. Hussain Imam (Bihar: Muslim): I wish to say a few words on the Constitution as it has been presented to us. My task has been lightened a great deal by the previous speakers who have referred to many of the questions to which I wished to refer.

I must say that I find the position of the President of the Drafting Committee unenviable. He has been attacked from the left for not having copied the Soviet Constitution, and from the right for not having gone back to the village panchayat as his unit. May I say that there is an element of confusion in some our friends' minds, when they want that the Constitution should provide for all the ills to which Indians are subject? It is not part of the Constitution that it should provide for cloth and food. A very revered Member of this Constituent Assembly regretted that this Constitution does not contain any provision for that purpose. My submission, Sir, is that the Constitution is based on the needs of a country to which it is applied. We have to see whether this Constitution does supply those essentials which are peculiar to our own circumstances.

The first lacuna which I find is that there is no mention of the sovereignty of the people. Unless you accept the principle of sovereignty of the people that all power is derived from the people and all Constitutions are based on the will of the people, the result will be confusion.

This has resulted in confusion. For instance, take what was formerly called the Indian States and the British Indian Provinces. The way in which the two have been treated is scarcely just and equitable. We find that people who mainly fought for the achievement of Swaraj or self-rule have lesser power than the people of the States, who did not participate as much in the struggle as we of the Indian provinces. The customs income of certain States has to be compensated by means of central grants. We have been told that there is one citizenship, the citizenship of India. With one-citizenship rights, can the people of the States have different rights? In the Indian States the people will be free from income-tax and income-tax can only be applied to the British Indian provinces. Corporation tax is not levied there except in so far as it might be applicable to one or two Indian States. I therefore suggest that there should be uniformity with a single kind of suzerainty. That is my first fundamental objection to the Draft Constitution.

Secondly, as Dr. Ambedkar himself has pointed out, I think there must not be any differentiation between the provinces and the States. The right to maintain an army which has been given to the Indian States is wrong. India is in a dynamic condition. Thanks to the sagacity and firmness of Sardar Patel, the question of the Indian States has been solved to a great extent and they are no longer a stumbling block in our way. I was very glad to hear yesterday the Prime Minister of the Jodhpur State and one representative gentleman from Madhya Bharat speaking, in which they themselves came forward with the idea of uniformity with the Indian provinces. There is no reason why the portals of the Supreme Court should be closed to the citizens of Indian States. If they are citizens of India, they have as much right as we have to go to this court for the adjudication of their interests and rights. I think that it is all due to the fact that we have not conceded the suzerainty of the people nor the proposition that with uniformity you get as a matter of course a system under which every one will be equal before the law in power and in responsibility.

I was also surprised that a learned pundit of constitutional law like Dr. Ambedkar should have skipped over the fact that the responsibility of the non-parliamentary executive is not less than that of the parliamentary executive. If it is examined it will be found that the committees of the House of Representatives and the Senate in U.S.A. exercise far greater control than the control exercised by the House of Commons. It is wrong to say that the Executive in the U.S.A. only comes in for a corrective after four years' term of the President. He is subject to day today control and that control is far greater in the case of the Senate Committees and the House of Representatives than it is in the case of the British Parliament. A very well-known instance is the failure of President Wilson to carry forward his move for the League of Nations, because it was the Senate Committee which did not consent to it. Even the appointment of ambassadors to other countries is subject to the control of the Senate. Therefore it is wrong to say that in the presidential non-parliamentary system there is no control and the control if at all is very remote. It is as intimate if not more intimate than in the British system of parliamentary control. I do not wish to discuss this aspect of the matter further as I shall have opportunities later when we will be discussing this subject again.

I might mention in this connection, as I said earlier, that the constitution must be framed to fit in with the needs of the country. I ask leaders to examine conditions in India. Look at the U. P., the Centre of India, where the only other political party that you have got, *viz.,* the Socialist Party, was supposed to be the strongest. What was the result in the local board and district board elections? They were beaten. In the Parliamentary elections out of twelve seats vacated by them every one of them was lost. Is this the way in which you can maintain parliamentary democracy? In a parliamentary democracy it is necessary that we must have an effective opposition. You can never have an effective opposition if you have single seat constituencies. It is only by means of a system of proportional representation that you can avoid the danger of reducing India to a Fascist State. I make this observation in all humility that for the preservation of democracy in India it is necessary that you must have a system where by an opposition may be allowed to come in. The popularity, the prestige and the name of the Congress are so great that it is impossible for anyone to come in opposition to the Congress and the result of this is, as has been seen many times in England, that the majority of the electors are disfranchised in this way that if there is a three-cornered contest the defeated candidates might together get more than the successful one. Even conceding that there will be no three-cornered contest a large part of the electorate is disfranchised. Even if you have 60 and 40 per cent. voting,40 per cent. have no representation in the country, whereas under the system of proportional representation which is prevailing in most of the new advanced countries of Europe you will have representation in which every shade of opinion will be represented.......

Shri L. Krishnaswami Bharathi (Madras: General): What are those countries in Europe where there is proportional representation at general elections?

Mr. Hussain Imam: In the U.S.A. there is proportional representation......

Several Honourable Members: No, no.

Mr. Hussain Imam: Switzerland has got it. (Voices: No, no.) Even if nobody has got it, if it is necessary for us, we should not follow what others have done. As I said in the beginning, a constitution must be framed suitable to the needs of the country and not necessarily in line with what others have been doing.

I might explain a point which was made by the previous speaker, *viz.,* that the personal law of the minorities should be safeguarded. The majority need not have the safeguard, because they are the majority, and nothing can be passed in the legislature without their full consent and concurrence, whereas, the minority have not got this privilege and therefore it is necessary that the personal law of the Muslims and other minorities who so desire should be preserved from interference by the legislature without the concurrence of a vast majority of the members thereof.

Adverting to the question of reservation, as Mr. Lari has said reservation in the legislature is no good when there is no method of proper representation. I therefore say that proportional representation, in addition to being a very necessary item for the preservation of an opposition in the country, would also serve the interest of the minorities. There will be no need to have reservation for minorities provided you give proportional representation insufficiently large numbers.

For instance, one or two constituencies in each district may be made multi-member constituencies with ten or twelve seats in each. And, if you have the Lists system which prevailed sometime ago in Germany, that would serve a greater purpose; because voting will be on the basis of parties and not on the basis of persons. We want representation more in groups than individually. We do not want the spectacle of France repeated in India. But we do not wish to have a one-party Government which is liable to degenerate into something anti-democratic.

Before I conclude, Sir, I wish to say few words on the language question. I am not going to say anything in opposition to the prevailing sentiment on this matter. The need for the continuance of the English language for the time being has been advocated by the South. But as far as Hindi is concerned, there is no difference of opinion, provided we know what is Hindi. I personally am prepared to adopt the language spoken by Sardar Patel and the language in which he delivered his recent address at Bombay. He does not come from the Urdu-speaking tracts. He is a Gujerati. He speaks the language which is spoken by people everywhere. I had occasion to listen to the radio-relay of his speech at Chowpathi and I found that it was nothing but Hindustani or whatever name you give it. To me the language in which he spoke at Chowpathi was Hindustani. It is a language which is far better understood by the people than the language used by the Department under him, the A. I. R.

We have been told, Sir, that in this respect too, we are following the Gandhian conception. But people forget that Mahatma Gandhi stood for Hindustani to the last moment. He stood for Hindustani, in both Devnagri and Urdu scripts. Devnagri, as far as the script is concerned has nothing to rival it. It is the best possible medium. But what about the language? Hindi (you may call Hindustani), unless you mix it up with big Sanskrit words and fill it up with all common genders, is Hindustani. As I said, the language of the Deputy Prime Minister, coming from a province not speaking Urdu, should be our criterion and guidance. If the Members of the Constituent Assembly are willing to accept it I suggest that Hindustani, written in both Devnagri and Urdu, which was the last wish of Mahatma Gandhi and the most accepted in India today, should be adopted as the national language.

Sir, the Constitution is only framed once. It is not a thing which is done every other day. So it is but right and proper that in framing it we should give the utmost consideration, cool consideration, without heat and without rancour or mental reservations. I appeal to the House that they should forget and forgive the past. It is very painful, Sir, to be reminded every day that we are responsible for bringing Pakistan into existence. In its creation the Congress was as much a party as anybody else. In that spirit I request that Muslims should not be regarded as hostages. They should be regarded as citizens of India with as much right to live and enjoy the amenities of India - the land of their birth - as anyone else. I conclude my speech.

Begum Aizaz Rasul (United Provinces: Muslim): Sir, I congratulate the Honourable Dr. Ambedkar for his lucid and illuminating exposition of the draft Constitution. He and the Drafting Committee had no ordinary task to perform and they deserve our thanks.

Sir I feel it a great privilege to be associated with the framing of the Constitution. I am aware of the solemnity of the occasion. After two centuries of slavery India has emerged from the darkness of bondage into the light of freedom, and today, on this historic occasion we are gathered here to draw up a constitution for Free India which will give shape to our future destiny and carve out the social, political and economic status of the three hundred million people living in this vast sub-continent. We should therefore be fully aware of our responsibilities and set to this task with the point of view of how best to evolve a system best suited to the needs, requirements, culture and genius of the people living here.

Much has been said about the fact that most of the provisions have been borrowed from the Constitutions of the U.S.A., England, Australia, Canada, Switzerland, etc. Sir, I for my part see nothing wrong in so borrowing as long as the higher interests of the Nation and the well-being and prosperity of the country are kept in mind. There is no doubt that the draft Constitution has been framed to fit in with the present administration. But this had to be so in the very nature of things. After all, we have all become used to a certain way of life of government and of administration. If the draft Constitution had changed the whole structure of Government, there would have been chaos. India is a new recruit to the democratic form of Government. Its people have been used to centuries of autocratic rule and, therefore, to carry on more or less on the lines they have been accustomed for some time more, with changes here and there according to changed conditions, is the best thing possible. The important thing is that power is derived from the people and it is the people who will make or mar the destiny of India.

A lot of criticism has been made about Dr. Ambedkars' remark regarding village polity. Sir, I entirely agree with him. Modern tendency is towards the right of the citizen as against any corporate body and village panchayats can be very autocratic.

Sir, coming to the Fundamental Rights, I find that what has been given with one hand has been taken away by the other. Fundamental Rights should be such that they should not be liable to reservations and to changes by Acts of legislature. It is essential that some at least of the civil liberties of the citizen should be preserved by the Constitution and it should not be easy for the legislature to take them away. Instead of this, we find the provision relating to these Rights full of provisos and exceptions. This means that what has been given today could easily be changed tomorrow by an Act of the legislature.

To my mind it is necessary that some sort of agency should be provided to see that the Fundamental Rights and the Directive Principles are being observed in all provinces in the letter and in the spirit. Otherwise it may be that the absence of such an agency may give rise to the formation of communal organisations with the object of watching the interests of their respective communities. It should be the function of the agency I have suggested to bring to the notice of the Government the cases where the Fundamental Rights and the Directive Principles are not being followed properly. I hope this point of mine will be seriously considered by this august Assembly when we come to discuss the Draft Constitution clause by clause.

Sir, as a woman, I have very great satisfaction in the fact that no discrimination will be made on account of sex. It is in the fitness of things that such a provision should have been made in the Draft Constitution, and I am sure women can look forward toe quality of opportunity under the new Constitution.

Sir, I will not go into the details of the Constitution because I shall deal with the various provisions as we discuss the Constitution clause by clause, but there are a few fundamental issues which have been raised and discussed on the floor of this House during the last two or three days to which I may refer in passing.

Sir, the question of the reservation of seats for the minorities has engaged the attention of this House. It is true, Sir, that last year on the recommendations of the

Minorities Sub-Committee, this House accepted the principle of the reservation of seats for certain communities. At that time also I was opposed to this reservation of seats, and today again I repeat that in the new set-up with joint electorates it is absolutely meaningless to have reservation of seats for any minority. We have to depend upon the good-will of the majority community. Therefore speaking for the Muslims I say that to ask for reservation of seats seems to my mind quite pointless, but I do agree with Dr. Ambedkar that it is for the majority to realise its duty not to discriminate against any minority. Sir, if that principle that the majority should not discriminate against any minority is accepted, I can assure you that we will not ask for any reservation of seats as far as the Muslims are concerned. We feel that our interests are absolutely identical with those of the majority, and expect that the majority would deal justly and fairly with all minorities. At the same time, as has been pointed out by some honourable Members in their speeches, reservation of seats for minorities in the Services is a very essential thing and I hope that the members of this House will consider it when we deal with that question.

Then, Sir, another question which has been engaging the attention of this House is the question of language. Sir, the question of language in its very nature is a very important question because after all we have to devise something which is most acceptable to the people living in this country. It is quite true that the language of the country should be the language that is mostly spoken and understood by the people of the country, and I do not deny the fact that Hindi is the language which is understood and spoken by the majority of the people (*hear, hear*), but, Sir, the word 'Hindi' as it is being interpreted today is a very wrong interpretation. After all there is not much difference between Hindi and Hindustani. Every one will bear witness to the fact that the language spoken in the country, whether by Hindus or Muslims, is a very different language to that which is being described as Hindi and which is being advocated by the protagonists of Hindi. What is advocated is Sanskritised Hindi which is only understood by a small section of the people. If we take the villages, the language spoken there is very different to what is called Hindi here.

Then, Sir, I do not think that the forty million Muslims living in this country can immediately be asked to change their language. I agree that we will have to learn Hindi in the Devanagri script, but some time must be given to us to effect the change-over. It is very unfair of you to ask us suddenly to transact all the business of the state as well as the business in the legislatures in a language that we are not conversant with. I therefore feel that this is a matter which should be calmly and coolly considered. After all, this is not a matter which can be decided on the spur of the moment or on grounds of sentiment or passion. We have to keep in mind the requirements of the country. The Father of the Nation up to the last advocated Hindustani written in both the scripts as the only language which is most suitable and which can be acceptable to the mass of the people living in this country. I therefore recommend that, whereas Hindi in the Devanagri Script can be made the ultimate lingua franca of the country, a certain time limit, say about 15 years, must be given for the change over and until then Hindustani in both the scripts should remain the language of India.

In conclusion, Sir, I would say that whatever we put in this constitution, we must see that all our efforts are concentrated to make India strong and prosperous with equality of opportunity, happiness and prosperity for all so that India may lead the countries of the world on the path of peace and progress.

Dr. Monomohan Das (West Bengal: General): Mr. Vice-President, Sir, a few days have passed since the Draft Constitution was introduced on the floor of this House by our able Law Minister and Chairman of the Drafting Committee, Dr. Ambedkar. During these few days, the Draft Constitution has met with scorching criticism at the hands of different members of this House. With the exception of every few members who questioned the very competency and authenticity of this House to pass the Draft Constitution, all the other Members have been unanimous in their verdict. They have accepted the Draft Constitution with some alterations, additions and omissions, in some clauses and articles, as a fairly workable one to begin with. One very reassuring feature that we find in the Constitution is the single citizenship. As the Chairman of the Drafting Committee has said, unlike the American Constitution, the Draft Constitution has given us a single citizenship, the citizenship of India. In these days of provincialism, when every province likes to thrive at the cost of its neighbouring ones, when we have forfeited the sympathy and goodwill of our neighbouring provinces, it is indeed a great reassuring feature. I, as a member from West Bengal, especially find myself elated to think that henceforth when this constitution is passed, when this clause of single citizenship, with its equal rights and privileges all over India, is passed, the door of our neighbouring provinces will be open to us, so that our unfortunate brethern from the Eastern Pakistan, will find a breathing space in our neighbouring provinces.

I beg to mention another point regarding the minority problem. The safeguards that have been awarded to the minorities in the draft Constitution, have caused some amount of resentment. Nobody can deny that minorities do exist in this country. No amount of denial can efface these minorities from the face of India. You know Sir, that democracy means rule by majority. The majority is always there to rule and the minority will always be there at the mercy of the majority. The majority has no need to be afraid of these minorities. It behoves the majority, I think, to protect these minorities, and give them safeguards, if necessary, so that a sense of confidence, a sense of security may be created in their hearts. I think, what the minorities of India demand and deserve today, from the majority, is a sympathetic consideration of their problem sand not a challenging attitude.

One very pertinent question has been raised by an eminent member of this House, Sir, when he said that the Draft Constitution of India has borrowed many things from the Constitutions of other countries of the world, but it has taken nothing from the indigenous soil, from our cultural heritage, evidently meaning the Village Panchayat System. We, as a sentimental and idealist race have a natural tendency and love for everything that is old and past. Our Chairman of the Drafting Committee has been criticised by various personages of this House, for not including this Village Panchayat System into the Draft Constitution. They have taken it for granted that this Constitution has been the work of a single man, forgetting that there was a Constitution-making body, the Drafting Committee, always to guide the framing of Constitutions. I think, it is strange, Sir, that all the members of the Drafting Committee including the Chairman have forgotten to include this Village Panchayat System into our Constitution. The Village Panchayat System has been a blind spot to all of them. I personally think the Drafting Committee has wilfully left it to the provincial legislatures to frame whatever they like about this Village Panchayat System.

In fact, Sir, there are provinces in which legislation has already been undertaken in that direction, I mean, Sir, the Gram Panchayat Bill of the United Provinces. There is nothing in our Constitution that will take from the provincial legislatures the power to pass an Act in that direction. If our provincial legislatures think that this Village Panchayat system will do immense good to our country, they are quite at liberty to introduce it in their legislatures and pass it accordingly. So I think, Sir, the criticisms sometimes amounting to abuse, which have been showered upon the Chairman of the Drafting Committee, are wholly uncalled for, unjustifiable, uncharitable, and if I am permitted to say so, undignified.

I beg to utter a few words of caution to all Honourable friends who are so enthusiastic protagonists of the Village Panchayat System. Unless and until our village peoples are educated, unless and until they become politically conscious unless they become conscious of their civic rights and responsibilities, and unless they become conscious of their rights and privileges, this Village Panchayat system will do more harm than good. I know that I am inviting upon myself when I say that the Village Panchayat System has been there and was there for centuries and centuries. How much has it contributed to the welfare of our country, how much has it contributed to our social, political and economic uplift? If this system is introduced before our village people are properly educated, then I think, Sir, the local influential classes will absorb to themselves all the powers and privileges that will be given by the Panchayat System and they will utilise it for their selfish motives. This system will enable the village zamindars, the village talukdars, the Mahajans and the money-lending classes to rob, to exploit the less cultured, the less educated, poorer classes of the villages.

With these words, Sir, I endorse wholeheartedly the motion put forward by the Chairman of the Drafting Committee for consideration of the Draft Constitution. I thank you, Sir, for the opportunity you have given me to express my views on the floor of this House.

Shri V. I. Muniswamy Pillai (Madras: General): Mr. Vice-President, Sir, nobody in this august Assembly or outside can belittle the efforts and the services rendered by the Drafting Committee that has presented the Draft Constitution for the approval of this House. The future generation will feel great pride that this Drafting Committee has been able to digest the various constitutions that are obtaining in the world today and to cull from them such of the provisions as are needed for the elevation of this great sub-continent.

Sir, going through the various sections, one has to note whether the underdog, the common man, the communities that have been neglected in the past, have been well protected, and facilities for citizenship have been afforded. Reading this constitution, one finds that there are two novel things that are not obtaining in any of the constitutions of the world: first of all, the eradication of untouchability. As a member of the so-called Harijan community, I welcome it. Untouchability has eaten into the vitals of the nation, and with all the pride and privilege of the Hindu community, the outside world have been looking at India with a doubtful eye. I welcome this provision because it shows the greatness of the majority community that they found out that them is a fungus that is eating into nation's pride and they have come forward to remove this course of untouchability. There are people in India today who say that enough propaganda has been made to eradicate untouchability and there is no need for further propaganda. But I honestly feel, Sir, if you go to the village parts, untouchability is rampant still and a provision of this sort in the Constitution is a welcome thing.

The second feature is the abolition of forced lab our (*begar*). If there is any lab our required for common purposes in the village, this most unfortunate fellow, the Harijan, is always caught hold of to do all menial and inferior service. By the provisions in this Constitution, I am sure you are elevating a community that has been outside the pale of society. It was given to the great Father of the Nation ,Mahatma Gandhi, as a great mycologist, to find out the fungi that were eating into the national vitality. He has made certain proposals to eradicate this evil and I am glad that the Drafting Committee have made provisions to eradicate untouchability and forced lab our on this unfortunate community.

Sir, in the Draft Constitution, they have stated that the eradication of untouchability can be made by laws. I plead that mere laws are not enough. Special laws have to be made. In my own province the legislature was good enough to pass an Act to remove the civil disabilities; but in putting the Act into operation, it was not possible even for the Government to enforce the facilities that were sought to be conferred by the Act. Therefore, I plead that there ought to be special laws if you really want to do away with untouchability and forced lab our.

Coming to the Fundamental Rights that have been accorded to all in this country, and especially for the unfortunate minority communities, the Advisory Committee, the Minorities Committee and the Fundamental Rights Committee that went through the whole thing have adopted certain methods and they have been approved by this august Assembly.

There are certain sections of people who say that no reservation is required. But, all those, who have seen the unfortunate plight of these minority communities, feel that reservation must be there, as already accepted by the Minorities Committee and also approved by this august Assembly. So far as the protection of the minorities are concerned, it is the good-will of this august Assembly to confer adult franchise with joint elect rates. Of course, no one can deny that this is the best thing that could be done in the circumstances to elevate this community, that is poor in economic status and also poor in education. Any attempt to do away with adult franchise will be a great sin. In the matter of safeguard to the minorities, I think what is now provided in the Draft Constitution is a welcome thing; but there is still in the provinces a strong feeling against these safeguards. I honestly feel that they must be enforced in all ways.

Coming to the economic condition of the villagers, especially the tillers of the soil and agricultural lab our, I do not find any provision has been made in the Draft Constitution to consider the village as a unit. Of course, due to exploitation and other things, the villages are in rack and ruin. It is the highest duty of any constitution-making body to see that the village is set right. Due to the hereditary system of appointment of village officers, Maniagars and Karnams, they are the people who rule the villages. Having made a constitution for the upper strata for the management of the provinces of India, if we leave alone the village re-construction, I feel that we are doing a wrong thing. It is the wish of Mahatma Gandhi also that the village must be made a self-governing unit. I am sure this august Assembly will reconsider what has been presented to this House and see that we make proper amendments so that the village or a group of villages could come under the category of self-governing institutions. Whether in the District Boards or Municipalities, there are no real representatives of the people of the village or the taluk. Due to certain circumstances the Collectors in my province are asked to look after the District Board administration. These Collectors are loaded with so much other responsible work that they appoint a

Special officer to carry on the District Board administration. This is not a popular institution as it is now constituted. I feel that the village unit must betaken into account.

In the matter of appointment of Ministers, the President is given full powers. If you read the provisions of the Government of India Act, 1935, you will find that provision has been made that the Governor or the President, in choosing his Ministers, shall take into account the claims of the minority communities. I find no such provision in this Draft Constitution, some such provision will be made to take into account claims of the minority communities for these Ministers' posts. Sir, I believe that it is political power that can give a chance of better service to these neglected communities. Even in the matter of All India services, in section 10 it is said that the backward communities are to be taken not of. But, if you persue the list of backward communities from province to province, the Scheduled Castes do not come in it. I feel that also must be rectified.

Finally, there is the controversy about the national language. Taking my own community, I do not think that even one per cent of the population have taken to Hindi or Hindustani

I feel, Sir, that this august body must deliberate properly and should not force any language on a province, or district or state where it is not welcomed.

With these few observations, I congratulate the President and members of the Drafting Committee for their great service in presenting the Draft Constitution to this Assembly and I commend the motion to this House for its acceptance.

Shrimati Dakshayani Velayudhan (Madras: General): Mr. Vice-President, Sir, now that the draft is before us for general discussion, I request you to permit me to express my views on the same. The able and eloquent Chairman of the drafting Committee has done his duty creditably within the scope of the general set-up of the new State of India. I feel that even if he wanted he could not have gone beyond the broad principles under which transfer of power took place and I therefore think that any criticism that is levelled against him is totally uncharitable and undeserved. Even if there is any blame - and I think there is - it should go only to those of us who are present here and who were sent for the purpose of framing a Constitution and on whom responsibilities were conferred by the dumb millions of this land who by virtue of their suffering for independence had great hopes when they sent us to this Assembly. But this does not mean that I have not got any criticism about the Draft. I fear that the Constituent Assembly from the very beginning of its formation showed more interest in things other than making a constitution. We hear daily speeches made by our great leaders and their ideals and principles but in the Constitution we find that it is barren of their ideas and principles. We have got leaders of national and inter-national importance but in our Constitution we find that those principles and ideals are absent and it is a great tragedy to find that such a draft has been placed before us and I do not think even the members of the Drafting Committee have completely read the Draft that is placed before us.

The general criticism is that the draft is a replica of the 1935 Act, but we cannot forget the fact that we have got a legacy of the British Imperialist ad-ministration which goes by the name of the Parliamentary system of Government. The trouble was that we were depending on it and we will have to depend on it even after the

Constitution is put into operation. The trouble arose from one point, *viz.,* just as the British administrators who wanted to keep India centrally and provincially as a single unit, we in our bewilderment and anxiety tried to bring India centrally and provincially as a strong unit and this centralisation of power has led to all the troubles. There are two ways of making India a strong unit. One is by the method of centralisation of power and the other is by decentralisation; but centralisation is possible only through parliamentary system which now goes under the safe words 'democratic methods', but in this draft we can't find anything that is democratic and decentralisation is totally absent. It is a great tragedy that in making the constitution of a great country with thirty crores of people, with a great culture behind it and the great principles and teachings of the greatest man of the world on the surface, we were only able to produce a constitution that is totally foreign to us. The arguments put forward by the Chairman of the Drafting Committee are not at all convincing. He has said that we are very late in making the Draft Constitution. But I can cite examples which will show that his arguments are not sound. The Drafting Committee recommends that the President of the Union can nominate fifteen members to the Council of States. Then another plea is that the term of the legislature should be more than four years. There is another misnomer in the Draft and that is about the selection or the election of the Governors. The Committee feels that if the Governor and the Chief Minister who is responsible to the Legislature are elected by the people then there will be friction between the two. But the remedy they have suggested is worse than the disease. There is a panel and the President is to select from the four one person as a Governor. If the Centre happens to have a Congress President and if a province is having a Socialist majority, suppose the Socialist party recommends three from their party and one from the Congress, certainly the President at the Centre will select the Congress man to be the Governor. Certainly this will lead to friction. We find that this direct recruitment to Governorship is taken from the Government of India Act and it shows that we have not left out even a comma from it.

Then, Sir, I cannot understand why there should be Centrally Administered areas under the new Constitution. The British kept these areas simply to have the military rule in the country. But I do not understand why we should have such areas under the present Constitution. It is better that these provinces are merged with the adjoining provinces and thus we will not be losing anything. We find that the draftsmen included such a clause and as a result it has come before us for discussion.

Then I want to say a few words about the Socialist demand at this stage. The Socialists are the second party which wants to come as an Opposition to the official bloc. We cannot deny the large following that they are having in the country. They have declared that they want to be a Constitutional Opposition in the future. But I must say that I do not agree with their demand that this Constituent Assembly should be buried. I have to make one suggestion. The present Constitution, when it comes into force, will be put before the public by way of the General Elections. Then this Constitution can be made an election issue either for its acceptance or rejection. If the majority of the electorates accept the Constitution, then we can take it that the whole country has accepted it. If the majority of the electorates reject it then we must take it that the whole country has rejected it, and the party that comes into power, and the Legislature that will be formed thereafter, can take up the Constitution and makes the amendments that are necessary. I think, Sir, the Congress Party that is in power today will accept such a policy and see that we are not blamed for being undemocratic in our approach to Constitution making.

Shri Deshbandhu Gupta (Delhi): *[Mr. President I am sorry I cannot congratulate Dr. Ambedkar, the Chairman of the Drafting Committee who has received congratulations from different Members of the House. I have read that part of the recommendations of the Drafting Committee which relates to the Chief Commissioners' Provinces, with great care. I would like to confine my remarks to this part only and wish that the Members of this House should go through it minutely.

Mr. President, you are aware that previously when the problem of Chief Commissioners' provinces was brought before the Constituent Assembly, the recommendations of the Drafting Committee were that the system of governance should remain the same as is now in force. Hindustan is changed, the country is free, but Delhi and other Chief Commissioners' provinces, in spite of their considerable population, did not have any say in the administration. There was no change in the system of their governance. When such a recommendation was brought before us in the Constituent Assembly, the representatives of the Chief Commissioners' provinces raised their voice and the Constituent Assembly appointed a special sub-Committee, which was entrusted with the task of framing a constitution in accord with the conditions prevailing there. Mr. President, the chairman of this special Sub-Committee was Dr. Pattabhi Sitaramayya, the President-elect of our present National Congress and a senior member of this House. This special Sub-Committee had obtained the services of our constitutional "Pandit" Shri N. Gopalaswami Ayyangar. Moreover, our another Constitutional "Pandit", Shri K. Santhanam was also one of its members who always took a keen interest in it (*laughter*). (Do you doubt it)? Every member of the committee took interest in it and the recommendations which they submitted were unanimous. This committee held several meetings, considered the whole problem, examined all the sides of the question minutely and it also considered those difficulties of the Government, due to which they had deemed it proper to treat the Chief Commissioners' Provinces with indifference. Accordingly, taking all the matters into consideration, recommendations were submitted in which it was clearly stated that although the people of these areas demand that they should have the same rights as the people of the other provinces have already got - and there is no reason why this should not be - yet, considering that Delhi has a peculiar position of its own, they have recommended that Delhi and other similar provinces should be turned into Lieutenant-Governors' Provinces; and as regards the appointment of a Lieutenant-Governor it was conceded that the Centre should have control over him. Accordingly, it was resolved that instead of electing the Governor the President of the Republic should nominate him.

Another safeguard which has been provided is that, unlike other provinces, the constitution of the provinces should be framed differently and in such a manner that the provincial and central list should be concurrent, so that the Centre should have the full power to interfere in any legislation it likes which has been passed by the provincial Legislature. Moreover, the province should not have its exclusive jurisdiction.

It also has been provided that its budget should be brought before the Centre and that the President should have the right to interfere in it. This is not all. There is yet another safeguard, which says that should any difference arise between the Lieutenant-Governor and the Ministers on any matter it would be referred to the President whose decision on the subject would be taken as final. I fail to understand why the Drafting Committee deemed it necessary to dismiss this question in a few lines on the plea that as Delhi is the Capital town, local administration was not possible - although the committee had submitted its recommendations after mature consideration in which maximum regard was paid to the powers of the Centre. It seems to me that the Drafting Committee, instead of paying due regard to the unanimous recommendations of the special committee or trying to find any other way out, has acted according to its prejudices and thought that it was not a matter to which consideration should be given. It seems to me that these gentlemen were under the impression that the special committee was appointed merely to console the people of Delhi and other Chief Commissioners' provinces. That is why its recommendations have been thrown into the waste paper basket. I would like to ask them, why did they not realise that so many Members of the Constituent Assembly who spend considerable time in Delhi have certainly thought it proper that Delhi's population of 20 lakhs should have a say in their own administration? Does it look nice that in case there is a partial strike in Delhi, the Home Minister and the Prime Minister should run about to stop it? Is it proper that even under the new system of administration the cabinet ministers should be called upon to settle even the petty affairs of Delhi and the people of Delhi should have no voice? It is said that there being no parallel in Australia, it could not be done also here in India. I should have thought that we should try to benefit by the constitution of other countries and should not merely copy word by word. The example of Australia has been cited, but the population of its Capital town was 8000, and the estimate of its population in 1944 was 12,000. Its population is less than that of Narela, a town near Delhi. If you want to follow the example of Australia, then by all means make Narela your capital and exercise your authority there. The people of Delhi will have no objection. Another example which has been cited is that of Washington. This example can hold good to a certain extent. But I think that Delhi and Washington cannot be weighed in the same scale. Delhi is a commercial and an industrial town and it has a population of 20 lakhs whereas the population of Washington is near about 8 lakhs. Washington has been specially built to serve the purpose of a capital. Delhi has been in existence for centuries, may for thousands of years. It has a culture of its own and its population has its own requirements.

To my mind, great injustice is being done to the citizens of Delhi by dismissing the whole question in few lines by saying that, as it is not done in United States and in Australia, therefore nothing can be done likewise in Delhi. I would like to ask whether it is not a fact that Moscow has a separate province and a provincial administration of its own. If Moscow, being the Capital of U. S. S. R. can have a separate administration, why can't Delhi have one? Is it not a fact that there are four separate provinces in the Union of South Africa? And is it not a fact that even there, the capital city is also the capital of a province? Then why cannot it be done in India? Only two examples have been cited before us and of these two, one is that of a place where the population is 8000. I would like to ask with greatest respect: what comparison could there be between the capital of Australia and Delhi? Is it not an injustice that the case of Delhi be dismissed in a minute by comparing it with a town having a population of 8000?

I would like to say in all humility that if this Constituent Assembly, which is representative of the people, does not lend its ear to the voice of the people, then they will have to adopt some other method for making their voice heard by the members. Since 1927 from every nook and corner of Delhi the cry is being raised that Delhi should have a separate administration of its own; even today a resolution to the effect has been passed by the Delhi Provincial Congress Committee. A similar resolution has also been passed at a provincial political conference. Chief Commissioner's Advisory Council and the Delhi Municipal Committee have adopted similar resolutions. Similar resolutions have been passed in hundreds of meetings but the members of our Drafting Committee have completely ignored that; they have not cared to take note of that at all. I think it is a grave injustice. There can be no greater injustice that the residents of Delhi, which is the heart of India, be denied ash are in its administration. It is said that this demand is being put forth as some Delhi-wall as are hankering for Governorship and Minister ship. I ask my worthy friend that while he poses to be the standard-bearer of the minority-rights - Dr. Ambedkar's attentive eye at once catches even the minutest point, if any, concerning the minorities - how did the claim of this small province escape his notice? He should have shown some consideration to Delhi, regarding it at least as a minorities province. Even today when it concerns a religious minority, which is only 30 to 35 lakhs, the question is brought before the Constituent Assembly. It draws the attention of all of our leaders and they do their utmost to find a solution, but nobody today pays any heed to the Delhi province. Is it not an injustice to ignore the demand of twenty lakhs of people and to regard the twenty-lakh population as insignificant? Today about six lakhs of our brethren have come down to Delhi from West Punjab after losing their all. Delhi has given them shelter and made them its own. I want to know whether this Constituent Assembly wants to penalise doubly these six lakhs of people by denying them franchise? That would be a great injustice. If you think that Delhi, being the capital, needs more of protection then you can certainly give it. Delhi-wall as are prepared for that service. In there commendation, which we have placed before you, we have ourselves conceded wide powers. What do you then lose by giving to Delhi a small Legislative Council and a few ministers? You will have full freedom to suspend the whole thing whenever you like. The special Committee have themselves given all these powers to the President. Even here, instead of giving this a trial which would be a step in the right direction, we are told that there is no necessity of giving it a trial, and the President is vested with powers to take any such action, if and when he thought fit. On top of it all, it is made out that this is the only comprehensive solution of this problem. Mr. President, through you, I entreat the Honourable members of this House to ponder over this question calmly and to realise that the feeling of the people of Delhi is very strong and that their demand and their grievance is quite justified.

The same may be said about Ajmer-Merwara and Coorg; but as most probably they may amalgamate themselves with their neighbouring states they may thus acquire all the rights enjoyable by an autonomous province; but as regards Delhi it is being ordained that there would be no change in its status. Previously, Delhi's population was about six lakhs. Its present population is near about twenty lakhs, and it is estimated that within the next decade it would increase by another ten or fifteen lakhs. It is the fourth biggest town of India and its people have no voice in its administration. What is the state of affairs today? Delhi's Administrative report does not come before us. We are told that a Chief Commissioner's Advisory Council has been provided and we must be content with that. So, listen a bit about that also. It is more than a year that it was set up but not even once during all this period has the Chief Commissioner thought it necessary to consult the members of his Advisory Council on any matter of day-to-day administration so far. When riots broke out in Delhi, an emergency committee under the Chairmanship of Mr. Bhabha was set up by the Central Cabinet. But Delhi's Advisory Council had no hand in it. I want to know that if some sort of misfortune or devastation befalls Delhi today, or some sort of difficulties are created by the people of Delhi, then would it not affect us? How could it be therefore that the people of Delhi are not to be given any voice in its administration? New townships are being built around Delhi; new schemes are being planned, but nobody consults the people of Delhi. There is no place for them. For trivial matters they have to go to the Prime Minister or to the other Ministers. If

Bombayites are capable of self-government, if Calcutta people are capable of running a government, and if U. P. with a population of five crores can run its government, than the same right should be given to the people of Delhi so that they may run the administration of Delhi province. The people of Delhi have never lagged behind during the hour of trial; their part in the struggle for freedom has been no less than that of others. In spite of all this, it is stated that no rights can be given to the Chief Commissioners' provinces of Delhi and Ajmer-Merwara. I want to emphasize that this question cannot be settled so easily.

Sir, I being the only member here for Delhi, my voice is feeble; I get little opportunity to make known to this House the aspirations of the people of Delhi. Today, with the great difficulty I have got this opportunity to put their case before this House; who cares for a cry in the wilderness? The most potent argument that I can place before you is that whatever safeguards you think proper, you may take. We shall have no objection to that, but the local administration should be entrusted to the people of Delhi. Delhi's status should be similar to that of other provinces. If you do not concede this right to them, it would be a grave injustice. The consequences will not be good.]*

Shri Gokulbhai Daulatram Bhatt (Bombay States): *[Mr. President, The minorities are being afforded an opportunity today to speak to the motion. I am, however, from the Native States. But these States are as yet political minors though they are gradually moving forward to attain the age of political majority. I am specially here to demand that we, who have reached this fulness of political age, should be recognised to have attained it, notwithstanding those who would like to deny us this right. The fact is that our standing those States and Unions of States are similar in character to the other provinces. I believe that I have been afforded this opportunity on this very ground and I only say that it was for this very purpose that I had agreed to it and I thank you, Sir, for affording this opportunity to me. Since the draft of the constitution reached me I have been carefully scrutinising it. I may therefore say that it is not that I have begun its scrutiny only a few days back. But from the day I began to examine it I have felt that there is nothing in it which may be said to be proper and right. I admit that it is quite proper to borrow, in a written constitution, such provisions from constitutions of other countries as may be considered obviously very good and useful. But the bold and authoritative statement of the Chairman of the Drafting Committee that the constitution we are going to accept would be the best in the world should betaken with some reservation. He says so because he is one of those who have prepared this draft - and I admit that they are entitled to gratitude on our part for the pains they have taken and the lab ours they have put in, borrowing parts from the constitutions of innumerable countries. Of course, it is not that these parts are disparate nor do I suggest that they have strung up a remarkable frame of unharmonious parts gathered from here and there. No, I would not like to make such an observation, for I do not think that the disparity within its various parts is to such an extent as would justify such a sentiment. But I would say that even in the buildings of Delhi, the city where we are meeting today and of which Shri Deshbandhuji has been telling us just no wand which I agree should be given a separate status of its own in the buildings of Delhi, for example, in a building like the Governor General's House there are to be found traces of ancient architecture just as there are those of modern architecture. Similarly I concede that good provisions of the constitutions of other countries may be included in our Constitution. But I feel pained today, as I did even before, that in our eagerness to borrow from other countries we have totally neglected those ancient principles and institutions of our country which are there even today and which we have inherited in our blood. It is a draft of the Constitution but neither its guiding principles nor its body are vitalised by the heart of India. The truth is that it does not give us the sense of being our own. This draft is no doubt beautifully decorated and decorated with flowers and other attractive articles. But the fragrance which such of constitution should give out is not there. I do not suggest that the lab ours of the Committee were a mere waste of energy and time, but I beg to be excused if I do wonder why so many months were spent on it when the constitution to be framed was to be only of this nature. I do not deny that there are some good features in it and I extend my congratulations to them for the same; but considering it as a whole I doubt seriously if it can at all be considered a constitution which is Indian in spirit and in character.

Dr. Ambedkar boldly admitted, and the members of the Drafting Committee do concede that in this constitution there is no provision for establishing Panchayat Raj, the village Panchayati system in India. When there is no such provision, it can never be the constitution of India. To forget or sprung the system of village Panchayats, which has lifted us up and which has sustained us so far and to declare boldly that it has been deliberately spurned - will in all humility I lodge my protest against it. They admit that they have spurned it and have not included it in our constitution. He has said so and that too with great emphasis. I am pained at the fact that the chairman of our Drafting Committee has used the words, "what is the village but a sink of localism and a den of ignorance..."I am glad that the Draft Constitution has discarded the village..." I was grieved to find that our great Pandit with all his knowledge of Sanskrit and politics, has opposed the system of village Panchayats in this way. If the village is to be discarded, someone can also boldly demand that this constitution be discarded. But I am a humble person and do not have much experience either. Occasionally I am led by sentiment also to make an observation. But in all circumstances an attempt should be made to include in some form, by the amendments we intend to bring forward, that democracy should be the foundation of our polity. Then alone can our Constitution be complete, then alone will it have life and then alone will we have the feeling that this constitution is our own. Otherwise we would be rearing this great building on a foundation of sand and it will surely fall down. This is what I particularly want to suggest and that was why I wanted to speak.

Another matter to which I want to draw your attention is that some of our States have joined together to form an umber of unions. It is a matter of great satisfaction that our able leader Sardar Patel has changed the very face of the States with great speed and I am proud of it. Now, the constitution will be completed, I admit by the end of December or in January next. But several States have and desire to continue to have a separate existence of their own. It must be said that if the province of Orissa can have a separate existence, several states such as Travancore. Cochin, Jaipur, Jodhpur etc., can also maintain their separate existence. But I humbly submit that if we form such small provinces, we will find ourselves in the grip of much worse provincialism than we have today and all our unity will be shattered. The result will be that we will not be as strong as we are to-day. I would say that the States and provinces should be so big and so well administered as to be able to stand on their own legs. A Revenue of six crores or seven crores or eight crores is not sufficient. No large province can pull on with this revenue. I my opinion, no such province should be formed as may have a smaller revenue than twenty fivecrores; nor in my opinion should there be formed any union States which does not have that much revenue. But this is a matter which requires consideration, special consideration, by our leaders. I come from Rajputana and from a small State. Even though I admit that the rulers have made great sacrifices and may also praise their self-surrender. Yet I wonder how long can Bhopal be permitted to maintain, as it is doing today, a separate existence from Madhya Bharat, how long Benares and Rampur can be permitted to have their separate existence and Jodhpur and Bikaner, in our parts, can be permitted to remain separate autonomous identities. When India is going to be divided into various provinces - and of course they should be big ones - I think the rulers, rulers of big States, should come forward and on the basis of the mutual understanding merge their States into sufficiently big units. If, for example, Rajputana is formed into a unit by itself the question of Ajmer and Merwara will naturally be solved for there would be no reason to continue its separate existence as it is but a small province. It is a part of Rajputana and should be naturally merged therein. Rulers may be given high officers in order to keep up their dignity. The offices of Rajpramukh and Up-Rajpramukh are already there. Besides these, there are many other offices in India which should be given to rulers because we respect them. So far as the States are concerned, we would not in any circumstances like to lag behind the provinces, nor would be proper to keep them behind the Provinces. If it be said for any reason that we have acceded only in a few subjects, I would say that this need not be so. We do say that our status should be improved because you are kind to us and want to lead us forward. We would not like to be put on any other footing than that of the other provinces. Our status should be the same as of provinces in all matters, be they relating to High Court or Supreme Court. I am sure you will help us in the matter. We shall ask our leaders to help us, to lead us forward and give us the same place that the provinces have.

I shall not speak much because many friends have already put many of these facts before you. But I do like to submit that in regard to the formation of small provinces on linguistic basis I hold a different view. It is my opinion that under that under the existing conditions in India we should not even think of this for at least the next ten years. I would submit earnestly to my friends to postpone for the present the issue of the Linguistic Provinces for the sake of the unity that we are seeking to establish and for the sake of the powerful nation we are trying to build up now. We shall think over the question after ten years when things have settled down.

This is what I wanted to say. As far as Delhi and other places are concerned. I would like to urge that we should take into consideration the fact that Delhi is the Capital and that as such it must be given a distinct status. I am one with Lala Deshbandhu Gupta on this question. But the small regions like Ajmer-Marwara, Coorg, Pantpiploda etc. should be merged in the provinces. It is no use making them centrally administered areas. This much I would like to submit to Doctor Sahib. He is a great scholar, and as such he should treat this country also as a land of wisdom. It is my appeal to him that he should give a place to the soul of India in this constitution.]*

The Honourable Pandit Jawaharlal Nehru: (United Provinces: General) (Rising amidst cheers) Mr. Vice-President. Sir, we are on the last lap of our long journey. Nearly two years ago, we met in this hall and on that solemn occasion it was my high privilege to move a Resolution which has come to be known as the Objectives Resolution. That is rather a prosaic description of that Resolution because it embodied something more than mere objectives, although objectives are big things in the life of a nation. It tried to embody, in so far as it is possible in cold print to embody, the spirit that lay behind the Indian people at the time. It is difficult to maintain the spirit of a nation or a people at a high level all the time and I do not know if we have succeeded in doing that. Nevertheless I hope that it is in that spirit that we shall consider it in detail, always using that Objectives Resolution as the yard measure with which to test every clause and phrase in this Constitution. It may be, of course, that we can improve even on that Resolution; if so, certainly we should do it, but I think that Resolution in some of its clauses laid down the fundamental and basic content of what our Constitution should be. The Constitution is after all some kind of legal body given to the ways of Governments and the life of a people. A Constitution if it is out of touch with the people's life aims and aspirations, becomes rather empty: if it falls behind those aims, it drags the people down. It should be something ahead to keep people's eyes and minds up to a certain high mark. I think that the Objectives Resolution did that. Inevitability since then in the course of numerous discussions, passions were roused about what I would beg to say are relatively unimportant matters in this larger context of giving shape to a nation's aspirations and will. Not that they were unimportant, because each thing in a nation's life is important, but still there is a question of relative importance, there is a question also of what comes first and what comes second. After all there may be many truths, but it is important to know what is the first truth. It is important to know what in a particular context of events is the first to be done, to be thought of and to be put down, and it is the test of a nation and a people to be able to distinguish between the first things and the second things. If we put the second things first, then inevitably the first and the most important things suffer a certain eclipse.

[Translation of Hindustani speech]

Monday, the 8th November, 1948

Now I have ventured with your permission, Sir, to take part in this initial debate on this Draft Constitution, but it is not my intention to deal with any particular part of it, either in commendation of it or in criticism, because a great deal of that kind has already been said and will no doubt be said. But in view of that perhaps I could make some useful contribution to this debate by drawing attention to certain fundamental factories again. I had thought that I could do this even more because in recent days and weeks. I have been beyond the shores of India, have visited foreign lands, eminent people and statesmen of other countries and had the advantage of looking at this beloved country of ours from a distance. That is some advantage. It is true that those who look from a distance do not see many things that exist in this country. But it is equally true that those who live in this country and are surrounded all the time with our numerous difficulties and problems sometimes may fail to see the picture as a whole. We have to do both; to see our problems in their intricate detail in order to understand them and also to see them in some perspective so that we may have that picture as a whole before our eyes.

Now this becomes even more important during a period of swift transition such as we have gone through. We who have lived through this period of transition with all its triumphs and glories and sorrows and bitterness, we are affected by all these changes; we are changing ourselves; we do not notice ourselves changing or the country changing so much and it is a little helpful to be out of this turmoil for a while and to look at it from a distance and to look at it also to some extent with the eyes of other people. I have had that opportunity given to me. I am glad of that opportunity, because for the moment I was rid of the tremendous burden of responsibility which all of us carried and which in a measure some of us who have to shoulder the burden of Government have to carry more. For a moment I was rid of those immediate responsibilities and with a mind somewhat free, I could look at that picture and I saw from that distance the rising Star of India far above the horizon (*hear, hear*) and casting its soothing light, in spite of all that has happened, over many countries of the world, who looked up to with hope, who considered that out of this new Free India would come various forces which would help Asia, which would help the world somewhat to right itself, which would co-operate with other similar forces elsewhere, because the world is in a bad way, because this great continent of Asia or Europe and the rest of the world are in a bad way and are faced with problems which might almost appear to be insurmountable. And sometimes one has the feeling as if we were all actors in some terrible Greek tragedy which was moving on to its inevitable climax of disaster. Yet when I looked at this picture again from afar and from here, I had a feeling of hope and optimism not merely because of India, but because also of other things that I saw that the tragedy which seemed inevitable was not necessarily inevitable, that there were many other forces at work, that there were innumerable men and women of goodwill in the world who wanted to avoid this disaster and tragedy, and there was certainly a possibility that they will succeed in avoiding it.

But to come back to India, we have, ever since I moved this Objectives Resolution before this House - a year and eleven months ago, almost exactly - passed through strange transitions and changes. We function here far more independently than we did at that time. We function as a sovereign independent nation, but we have also gone through a great deal of sorrow and bitter grief during this period and all of us have been powerfully affected by it. The country for which we were going to frame this Constitution was partitioned and split into two. And what happened afterwards is fresh in our minds and will remain fresh with all its horrors for a very long time to come. All that has happened, and yet, in spite of all this, India has grown in strength and in freedom, and undoubtedly this growth of India, this emergence of India as a free country, is one of the significant brothers and sisters who live in this country, significant for Asia, and significant for the world, and the world is beginning to realise - chiefly I think and I am glad to find this - that India's role in Asia and the world will be a beneficent role; sometimes it may be with a measure of apprehension, because India may play some part which some people, some countries, with other interests may not particularly like. All that is happening, but the main thing is this great significant factor that India after a long period of being dominated over has emerged as a free sovereign democratic independent country, and that is a fact which changes and is changing history. How far it would change history will depend upon us, this House in the present and other Houses like this coming in the future who represent the organised will of the Indian people.

That is a tremendous responsibility. Freedom brings responsibility; of course there is no such thing as freedom without responsibility. Irresponsibility itself means lack of freedom. Therefore we have to be conscious of this tremendous burden of responsibility which freedom has brought: the discipline of freedom and the organised way of working freedom. But, there is something even more than that. The freedom that has come to India by virtue of many things, history, tradition, resources, our geographical position, our great many things, history, tradition, resources, our geographical position, our great potential and all that, inevitably leads India to play an important part in world affairs. It is not a question of our choosing this or that; it is an inevitable consequence of what India is and what a free India must be. And, because we have to play that inevitable part in world affairs, that brings another and greater responsibility. Sometimes, with all my hope and optimism and confidence in my nation, I rather quake at the great responsibilities that are being thrust upon us, and which we cannot escape. If we get tied up in our narrow controversies, we may forget it. Whether we forget it or not, that responsibility is there. If we forget it, we fail in that measure. Therefore, I would beg of this House to consider these great responsibilities that have been thrust upon India, and because we represent India in this as in many other spheres, on us in this House, and to work together in the framing of the Constitution or otherwise, always keeping that in view, because the eyes of the world are upon us and the hopes and aspirations of a great part of the world are also upon us. We dare not belittle; if we do so, we do an ill-service to this country of ours and to those hopes and aspirations that surround us from other countries. It is in this way that I would like this House to consider this Constitution: first of all to keep the Objectives Resolution before us and to see how far we are going to act up to it, how far we are going to buildup, as we said in that Resolution, "an Independent Sovereign Republic, wherein all power and authority of the Sovereign Independent India, its constituent parts and organs of Government, are derived from the people, and wherein shall be guaranteed and secured to all of the people of India justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought and expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and this ancient land attain its rightful and honored place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind."

I read that last clause in particular because that brings to our mind India's duty to the world. I should like this House when it considers the various controversies - there are bound to be controversies and there should be controversies because we are a living and vital nation, and it is right that people should think differently and it is also right that, thinking differently when they come to decisions, they should act unitedly in furtherance of those decisions. There are various problems, some very important problems, on which there is very little controversy and we pass them - they are of the greatest importance - with a certain unanimity. There are other problems, important no doubt, possibly of a lesser importance, on which we spend a great deal of time and energy and passion also, and do not arrive at agreements in that spirit with which we should arrive at agreements. In the country today, reference has-been made - I will mention one or two matters - to linguistic provinces and to the question of language in this Assembly and for the country. I do not propose to say much about these questions, except to say that it seems to me and it has long seemed to me inevitable that in India some kind of reorganization should take place of provinces, etc., to fit in more with the cultural, geographical and economic condition of the people and with their desires. We have long been committed to this. I do not think it is good enough just to say linguistic provinces; that is a major factor to be considered, no doubt. But there are more important factors to be considered, and you have therefore to consider the whole picture before you proceed to break up what we have got and re-fashion it into something new. What I would like to place before the House is that, important from the point of view of our future life and governance as this question is, I would not have thought that this was a question of that primary importance, which must be settled here and now today. It is eminently a question which should be settled in an atmosphere of good-will and calm and on a rather scholarly discussion of the various factors of the case. I find, unfortunately, it has raised a considerable degree of heat and passion and when heat and passion are there, the mind is clouded. Therefore, I would beg of this House to take these matters into consideration when it thinks fit, and to treat it as a thing which should be settled not in a hurry when passions are roused, but at a suitable moment when the time is ripe for it.

The same argument, if I may say so, applies to this question of language. Now, it is an obvious thing and a vital thing that any country, much more so a free and independent country, must function in its own language. Unfortunately, the mere fact that I am speaking to this House in a foreign language and so many of our colleagues here have to address the House in a foreign language itself shows that something is lacking. It is lacking; let us recognise it; we shall get rid of that lacuna undoubtedly. But, if in trying to press for a change, an immediate change, we get wrapped up in numerous controversies and possibly even delay the whole Constitution, I submit to this House it is not a very wise step to take. Language is and has been a vital factor in an individual's and a nation's life and because it is vital, we have to give it every thought and consideration. Because it is vital, it is also an urgent matter; and because it is vital, it is also a matter in which urgency may ill-serve our purpose. There is a slight contradiction. Because, if we proceed in an urgent matter to impose something, may be by a majority, on an unwilling minority in parts of the country or even in this House, we do not really succeed in what we have started to achieve. Powerful forces are at work in the country which will inevitably lead to the substitution of the English language by an Indian language or Indian languages in so far as the different parts of the country are concerned; but there will always be one all-India language. Language ultimately grows from the people; it is seldom that it can be imposed. Any attempt to impose a particular form of language on an unwilling people has usually met with the strongest opposition and has actually resulted in something the very reverse of what the promoters thought. I would beg this House to consider the fact and to realize, if it agrees with me, that the surest way of developing a natural all-India language is not so much to pass resolutions and Lawson the subject but to work to that end in other ways. For my part I have a certain conception of what an all-India language should be. Other people's conception may not be quite the same as mine. I cannot impose my conception on this House or on the country just as any other person will not be able to impose his or her conception unless the country accepts it. But I would much rather avoid trying to impose my or anyone else's conception but to work to that end in co-operation and amity and see how, after we have settled these major things about the Constitution etc., after we have attained an even greater measure of stability, we can take up each one of these separate questions and dispose of them in a much better atmosphere.

The House will remember that when I brought that motion of the Objectives Resolution before this House, I referred to the fact that we were asking for or rather we were laying down that our Constitution should be framed for an Independent Sovereign Republic. I stated at that time and I have stated subsequently this business of our being a Republic is entirely a matter for us to determine of course. It has nothing or little to do with what relations we should have with other countries, notably the United Kingdom or the Commonwealth that used to be called the British Commonwealth of Nations. That was a question which had to be determined again by this House and by none else, independently of what our Constitution was going to be. I want to inform the House that in recent weeks when I was in the United Kingdom, whenever this subject or any allied subject came up for a private discussion - there was no public discussion or decision because the Commonwealth Conference which I attended did not consider it at all in its sessions - but inevitably there were private discussions, because it is a matter of high moment not only for us but for other countries as to what, if any, relation we should have, what contacts, what links we should bear with these other countries. Therefore the matter came up in private discussion. Inevitably the first thing that I had to say in all these discussions was this that I could not as an individual - even though I had been honored by this high office of Prime Minister ship - I could not in any way or in any sense commit the country - even the Government which I have the hon. our to represent could not finally decide this matter. This was essentially a matter which the Constituent Assembly of India alone can decide. That I made perfectly clear. Having made that clear, I further pointed out this Objectives Resolution of this Constituent Assembly. I said it is open of course to the Constituent Assembly to vary that Resolution as it can vary anything else because it is Sovereign in this and other matters. Nevertheless that was the direction which the Constituent Assembly gave to itself and to its Drafting Committee for Constitution, and so long as it is (*cheers*) - that Constitution would be in terms of that Objectives Resolution. Having made that clear, Sir, I said that it has often been said on our behalf that we desire to be associated in friendly relationship with other countries, with the United Kingdom and the Commonwealth. How in this context it can be done or it should be done is a matter for careful consideration and ultimate decision naturally on our part by the Constituent Assembly, on their part by the irrespective Governments or peoples. That is all I wish to say about this matter at this stage because possibly in the course of this session this matter no doubt will come up before the House in more concrete form. But in whatever from whether now or later, the point I should like to stress is this, that it is something apart from and in a sense independent of the Constitution that we are considering. We pass that Constitution for an Independent Sovereign Democratic India, for a Republic as we choose, and the second question is to be considered separately at whatever time it suits this House. It does not in any sense fetter this Constitution of ours or limit it because this Constitution coming from the people of India through their representatives represents their free will with regard to the future governance of India.

Now, may I beg again to repeat what I said earlier and that is this: that destiny has cast a certain role on this country. Whether anyone of us present here can be called men or women of destiny or not I do not know. That is a big word which does not apply to average human beings, but whether we are men or women of destiny or not, India is a country of destiny (*cheers*), and so far as we represent this great country with a great destiny stretching out in front of her, we also have to function as men and women of destiny, viewing all our problems in that long perspective of destiny and of the World and of Asia, never forgetting the great responsibility that freedom, that this great destiny of our country has cast upon us, not losing ourselves in petty controversies and debates which may be useful but which will in this context be either out of place or out of tune. Vast numbers of minds and eyes look in this direction. We have tore member them. Hundreds of millions of our own people look to us and hundreds of millions of others also look to us; and remember this, that while we want this Constitution to be as solid and as permanent a structure as we can make it, nevertheless there is no permanence in Constitutions. There should be a certain flexibility. If you make anything rigid and permanent, you stop a Nation's growth, the growth of a living vital organic people. Therefore it has to be flexible. So also, when you pass this Constitution you will, and I think it is proposed, lay down a period of years - whatever that period may be - during which changes to that Constitution can be easily made without any difficult process. That is a very necessary proviso for a number of reasons. One is this: that while we, who are assembled in this House, undoubtedly represent the people of India, nevertheless I thinks it can be said, and truthfully, that when a new House, by whatever name it goes, is elected in terms of this Constitution, and every adult in India has the right to vote - man and woman - the House that emerges then will certainly be fully representative of every section of the Indian people. It is right that House elected so - under this Constitution of course it will have the right to do anything - should have an easy opportunity to make such changes as it wants to. But in any event, we should not make a Constitution such as some other great countries have, which are so rigid that they do not and cannot be adapted easily to changing conditions. Today especially, when the world is in turmoil and we are passing through a very swift period of transition, what we may do today may not be wholly applicable tomorrow. Therefore, while we make a Constitution which is sound and as basic as we can, it should also be flexible and for a period we should be in a position to change it with relative facility.

May I say one word again about certain tendencies in the country which still think in terms of separatist existence or separate privileges and the like? This very Objectives Resolution set out adequate safeguards to be provided for minorities, for tribal areas, depressed and other backward classes. Of course that must be done, and it is the duty and responsibility of the majority to see that this is done and to see that they win over all minorities which may have suspicions against them, which may suffer from fear. It is right and important that we should raise the level of the backward groups in India and bring them up to the level of the rest. But it is not right that in trying to do this we create further barriers, or even keep on existing barriers, because the ultimate objective is not separatism but building up an organic nation, not necessarily a uniform nation because we have a varied culture, and in this country ways of living differ in various parts of the country, habits differ and cultural traditions differ. I have no grievance against that. Ultimately in the modern world there is a strong tendency for the prevailing culture to influence others. That may be a natural influence. But I think the glory of India has been the way in which it has managed to keep two things going at the same time: that is, its infinite variety and at the same time its unity in that variety. Both have to be kept, because if we have only variety, then that means separatism and joint to pieces. If we seek to impose some kind of regimented unity that makes a living organism rather lifeless. Therefore, while it is our bounden duty to do everything we can to give full opportunity to every minority or group and to raise every backward group or class, I do not think it will be a right thing to go the way this country has gone in the past by creating barriers and by calling for protection. As a matter of fact nothing can protect such a minority or a group less than a barrier which separates it from the majority. It makes it a permanently isolated group and it prevents it from any kind of tendency to bring it closer to the other groups in the country.

I trust, Sir, that what I have ventured to submit to the House will be borne in mind when these various clauses are considered and that ultimately we shall pass this Constitution in the spirit of the solemn moment when we started this great endeavor.

The Assembly then adjourned for Lunch till Three of the Clock.

The Constituent Assembly reassembled after lunch at Three of the Clock,

Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

Giani Gurmukh Singh Musafir (East Punjab: Sikh): Mr. President, like my Honourable friend Shri Deshbandhu Gupta, I cannot say that Dr. Ambedkar, President of the Drafting Committee does not deserve any congratulation. On several matters he deserves congratulation for several reasons and the Committee's labour in framing this first constitution is certainly praise-worthy. In spite of that, if anybody discovers any error, he mentions it, according to the measure of his understanding.

Now I want to say something regarding Article 5 which is embodied in the Part relating to the rights of citizenship. Some of my friends have already drawn our attention to the fact that it would be very difficult for illiterate people to appear before a magistrate for filling their declarations. But I look at it also from another point of view. From both points of view, some sort of amendment is essential, because in this Article no distinction has been made between a foreigner and the Hindus and the Sikhs coming from Pakistan. Those that are still perforce in Pakistan will have no right of acquiring citizenship after this Constitution has been framed. I think this Article should be so amended that they might be regarded as the citizens of this land, whenever they come here. There is yet another point. Just at present Non-Muslims are coming from East Bengal. If, therefore, any provision is made in this Constitution to the effect that they would not be able to come, after this Constitution has been passed, then the process of their migration will gain momentum. We are notable to look fully well after the refugees who have come here already. From this point of view, too, I consider it expedient that suitable amendment should be made in this item.

Another point which I want to mention is regarding the Fundamental rights, namely the one which concerns our basic rights. They have been stated in grandiloquent style, but the many limitations made therein have lessened the grandiloquence. Seth Damodar Swarup had moved an amendment on behalf of his party, which was lost. The object of his amendment was to point out that this Assembly which is not elected on the basis of joint electorate and adult franchise, is not representative of the masses; but we did not agree with him and the House rejected his amendment. But this much is very clear that although our Assembly was not elected on the basis of joint electorate and adult franchise. Yet this Constituent Assembly has to look to the interest of the masses at the time of framing the constitution. Articles 9 to 13, where the people's rights have been embodied, answer the objection raised by Seth Sahib. For instance, there is equality of right on the basis of religion, race or caste, meaning thereby that there shall be no discrimination on grounds of Caste. Untouchability is abolished. Freedom of speech is guaranteed and in awarding punishment, no discrimination shall be made on grounds of creed or caste. All these things have been incorporated and they are all very good; but I have objection against some of the limitations. For example, in Article 13, freedom of speech has been guaranteed, freedom of movement throughout the country without any distinction has been given and there is freedom to acquire and to dispose of property - all these things have been embodied. But the limitation imposed in item (5) of Article 13 should not have been there. In the face of these limitations, all grand clauses which have been embodied in it will lose some of their grandeur. Even now I have this complaint anybody may admit it or not; but I strongly believe, that those of our brethren who have come from Pakistan - although in some places they have been treated well, yet distinction has certainly been made and their rehabilitation has not been liked. Wherever they have gone, difficulties have certainly been raised in rehabilitating them freely and comfortably. Therefore from the point of view of refugee problem, too, there should not be any limitation regarding the freedom of movement throughout the country and of acquiring and disposing of property. Those who cannot acquire plots should have the liberty of acquiring cultivable lands. I have received telegrams from everywhere that this limitation should bed one away with so that this old evil of disunion might disappear.

Third thing which I want to say is about the language. This is a very important question but I had not thought it to be so intricate as made out by our learned men and research scholars. Till the time this question had not come to me in its present form, I never thought there was any difference between Hindi and Hindustani. It never occurred to me that Hindi is separate language from Hindustani. In this connection I recall a Panjabi couplet of my own which means "Ignorance was bliss to me; knowledge has landed me into a difficult situation" or, in other words, I wish I had not known about it; now when I have known it I am in a puzzle what to do. But one thing is quite clear. As a principle we should agree to keep only one script in our Constitution. There should be one script and one language for the whole of India, as has been stated by our friend Seth Govind Das Ji and several other speakers.

I also agree that our first constitution should be adopted in the National language. This is my firm faith and my confirmed opinion. So far as language is concerned, it undoubtedly varies from place to place; there is no doubt about it. There seems to be some difficulty about language question. Some Honourable members have gone to the extent of threatening that if a particular decision is taken they would stop attending the House or would have to take some steps as a protest. In our armed forces, Roman script, Urdu script as well as Devnagri script are prevalent. If we have to keep only one script than we ought to see in which of these three scripts all our languages can be written and reproduced correctly. I would go to this extent, that if all the advocates of provincial languages so agree, then I would be prepared for the position that Bengalis should leave their Bengali script, Tamilians and Telugus give up their scripts and Punjabis leave their Punjabi script and all these languages should be written in Devnagri script and I would have no objection. Under the present conditions however this seems to be somewhat difficult, though it would create a sense of oneness. If all of us differ in every other respect, at least we must be one in one respect. We must unite on one point, that is we must agree to have one common script, in which all different languages may be written. If it is done we shall be saved from several perplexities. In case this is not possible, then every provincial language must be given equal importance in that particular province.

Then remains the question of language; regarding that I want to say this that I have seen all the translations of this draft constitution. I have seen its Hindi translation, and have read its Urdu and Hindustani translations. I have used the word "seen" about Hindi translation for the reason that I have talked to several of my friends who are supporters of Hindi. None of them could explain the purport of the Hindi translation to me. Our great poet of Panjab Dr. Tribal, used to write his poems in Persian. I have read several of his books in Persian but when he realised that his Persian poetry was like a wild flower for the people, out of which nobody got any fragrance, then he began writing in Urdu. If you see the language of his Urdu poems, you will find that he was obliged to use a simple diction so that his thoughts may reach the people. Just listen; I repeat one of his couplets to you: -

"Iqbal bara updeshak hai,

Man baton men moh leta hai,

Guftar ka woh ghazi to bana

Kirdar ka ghazi ban no saka."

Now tell me what you will call this language - Hindi, Urdu or Hindustani? To which language do the words 'updeshak', Man', and 'Moh' belong? If the language in which my friend, Chaudhary Ranbir Singh, delivered his speech the other day, is Hindi then I am a supporter of Hindi. Now, we have to see what is most suitable and most practicable. If you ask me about the Punjab I can tell you that all those papers, which are supporters of Hindi, are printed in Urdu script. It is not a question of personal or individual convenience but of finding a most suitable and practicable solution.

So what I mean, is that our language should be easy and commonly understandable. I suggest that a committee be appointed for coining the terms, and after the terms have been coined and the simplification of language decided upon then I think there will be no difficulty in the way of solving the language question. There is short-coming in us all and particularly in Panjabis, that we tend to give a religious tinge to every problem. We pitch ourselves against each other on the basis of religion. The matter may be simple but by giving it a religious co lour we create a mess.

There is a talk of division of provinces on linguistic basis. On that point our constitution is almost silent; only a vague hint has been given in the Panjab this question too has taken a religious turn although it is a very simple one. So, as was said by one speaker in the morning, it is a controversial matter. It should be postponed, and this principle should be accepted that if provinces are formed on a linguistic basis, then all the developed languages will be given due consideration.

My time is almost finished, but I want to say something about the minorities. I have not given much thought to this question because I have been a Congress worker. Even now I am the President of the Provincial Congress. To my mind, rights of the minorities will be quite safe in the hands of the Congress Governments. But at present the question of reservation is before us. This is true that on the basis of religion I belong to a minority community, and I am proud of the fact that I have never viewed this question from a communal angle. Regarding this, I would like to state that the Sikh community has always been proud of the fact that it has bravely made sacrifices in making the country a strong nation. That was the reason which prompted revered Pandit Malviyaji to remark that every Hindu family must have a Sikh son. Shri Savarkar had once advised the co-religionists of Dr. Ambedkar that if they wished to change their religion they could become sikhs. I had then enquired from Shri Savarkarji as to how could he, being himself a Hindu and an Arya Samajist, give such advice? (A voice - Savarkar is not an Arya Samajist.) Then, I withdraw my words. Anyway, he replied to me that though he had not studied Sikhism, this much he knew that when he was at the Andaman's there were several old and distinguished Sikh prisoners with him, in whom he had found intense patriotism, passion for national service and sacrifice in abundance. Judged from that he could say that they were good people and for that reasons he had advised co-religionists of Dr. Ambedkar to embrace Sikhism. From the point of view of the minorities themselves, I venture to say that without weight age reservation is of no use. I think that if our hearts are freed from mutual suspicions and we gain each other's confidence then several provisions can be embodied which would help us in forging one nation. Governors and the President can be vested with the power of nomination incases where minorities fail to secure their adequate place under election. If any such method is devised whereby reservation is done away with then it would be a test of the majority also, as well as a step forward towards forging one nation. We have seen how the reservation and separate electorates have worked under the British regime; instead of becoming one nation, the country had been torn to pieces. This treatment simply aggravated the malady. We should take lesson from that; we should know what steps we ought to take for knitting the country into one nation. Majority community ought to find out the ways for filling up the shortage, if any, in the representation of the minorities.

With this end in view let us proceed in a way whereby one united nation may emerge. There is no time left; otherwise I had to say much more on this subject.

Mr. Vice-President (Dr. H. C. Mookherjee): I have received notice of an amendment from Mr. Naziruddin Ahmad to the following effect: -

> "That the Draft Constitution be referred to a Select Committee consisting of such members, elected or nominated by the Honourable the President in such manner as he thinks proper, to report thereon by such date as the Honourable the President thinks proper."

I rule it out of order on the ground that in the rules for the consideration and passing of the Draft Constitution there is no provision for reference to a select Committee. Acceptance of this amendment would amount to an amendment of the rules already framed. This cannot be done without reference to the Steering Committee. Not only that. Rule 31(4) says:

> "The Chairman may disallow any amendment which he considers to be frivolous or dilatory".

I consider this a dilatory amendment. I therefore rule it out of order.

The Honourable Rev. J. J. M. Nichols-Roy (Assam: General): Mr. Vice-President, Sir, it is indeed a great privilege to associate myself in rendering tribute to Dr. Ambedkar and the other members of the Drafting Committee for the stupendous task they have undertaken to bring out this Draft Constitution. they all deserve our best thanks.

To me, the structure of the Constitution depicted in this draft looks good though it requires certain modifications in some details and important matters. By this Constitution, India is to have unity in diversities, India with diverse races, colours, creeds languages and cultures and with varied degrees of civilisation is being moulded into one Nation that will work together for the good of the common whole. This is not a small task. India is like the different States in the continent of Europe which have not been able to form a united sovereign country. But by the help of God and the wisdom given to our leaders India is having unity in the midst of diversities. This unity is not to be achieved by eliminating all diversities and putting all component parts into one mould by a stroke of the pen, for such an attempt will cause terrible revolution and great distress everywhere. The process for achieving the unity of India is by evolution as provided in this Draft Constitution.

The provisions for freedom of worship etc. etc. for minorities and for certain special areas and for hill tribes are the necessary stages for evolving unity in the midst of diversities. The wisdom of our leaders and of the majority community in acknowledging the necessity for allowing diversities in this unity structure is greatly appreciated and will be greatly appreciated by all. This is God's own method. God's own creation everywhere is unity with diversities. I thank Sardar Patel, the Chairman of the Advisory Committee for Minorities etc. He appreciated the needs of minorities and special tribal hill areas.

I must especially thank the Drafting Committee for accepting the draft for the creation of District Councils with autonomy in the hill districts in Assam which in the Sixth Schedule are called autonomous districts. These hill districts, inhabited by tribal hill people, will under this constitution be able to develop themselves according to their own genius and culture. The result, I believe, will be charming if these autonomous districts are nurtured to develop themselves in their own way without disturbing the main purpose of unity underlying the constitution presented in the draft. These tribes, though small in themselves, have been self-governing bodies from time immemorial. The India of tomorrow will surely stand to gain if the schemes for development of these areas are duly financed by the Government of India as proposed in the draft. Certain improvements in the Sixth Schedule will have to be made in the draft. I hope the House will accept the amendments which will be moved in due course.

While I fully appreciate the attitude expressed by Dr. Ambedkar and others as regards the strengthening of the Centre, I have to express that my views are very strong against the unbalanced strengthening of the Centre at the cost of causing weakness to the component parts thereof. It will be like the picture of an unbalanced man with a very big head but with bony and lean limbs. Such a head in that very condition will not be able to stand.

In perusing the printed amendments to Article 131 it appears that the Drafting Committee wants that the Governor should be appointed by the President. Powers are therefore proposed to be centralised. I hope the Drafting Committee will revise their view and find it undesirable to move it. I think this country has long given up the idea of nominated governorship with discretionary powers. The Drafting Committee has also given an alternative proposal for the appointment of Governors from a panel of four candidates to be elected by Members of the Legislative Assembly of the State. The argument of some of the members of the Committee is that the co-existence of an elected Governor and a Prime Minister responsible to the Legislature might lead to friction and consequent weakness in administration; but at the same time the existence of a nominated Governor with discretionary powers might cause obstruction and deadlock. I have had experience as a Minister with eight nominated Governors. I am strongly of the opinion that an elected Governor will be better substitute. This matter will be discussed at length when the amendments to Article 131 are moved in this House. I shall have occasion to say more about this then.

In the matter of Finance this draft is very unsatisfactory - particularly in reference to smaller Provinces. It does not give a fair deal to the Provinces. Poor Provinces like Assam and Orissa have reasons to be particularly disappointed. Those Provinces should not be weakened financially. Even one weak limb of the body will make the whole body weak. If India is to live and prosper, the States which are its component parts should function as healthy organs of the body politic of India. To come to the point, I want to say that the provisions of Articles 253 and 254 cannot be appreciated by us. They are couched almost in the same language as that of section 140 of the Government of India Act of 1935. The good wishes of the Government of India have so far remained a dead letter while the backward Provinces like Orissa and Assam remain where they were before. Even this year, Sir, our Assam Province is being greatly hit by the financial policy of the Central Government. We were in great hopes that our most essential needs such as building up of institutions for educating and training personnel in various nation-building activities would be satisfied, but we are told that these have to be postponed or delayed. The construction of strategic highways and roads absolutely essential for giving relief to our distressed people living on the border of Pakistan and for the protection of the country are proposed not to be pushed on with the same rapidity as it is essentially necessary to be done for we are told that not even one-fourth of the money required for these schemes for the current year will be available to us. The great Congress organisation has declared that our goal is a co-operative commonwealth, but when rural centres for an all round development of the villages are proposed to be opened on co-operative principles, the money required for the fulfillment of the schemes in this connection is not forthcoming. Our Assam Government in order to raise the maximum finances it is capable of doing, within the provincial list, has exhausted all the sources of taxation; but our province is yet faced with a deficit of about a crore, while its substantial income is only over four crores. But Assam would have had enough to bear its own responsibilities without begging from the Centre, had not the Central Government taken away the export duty on tea. Tea and petroleum are produced in Assam. If the excise and export duties on tea and petroleum are allotted to us, which give about eight crores of rupees annually from Assam alone to the coffers of the Government of India, we shall have enough to finance our development schemes all round. Why should not this export duty be given to Assam, at least the largest share of it, every year?

An Expert Committee was appointed to investigate these questions and the Premier of Assam, Mr. G. N. Bardoloi himself led the deputation before the Committee. While the Committee conceded that a portion of the export duty on jute could be given to Bengal (a small portion of which comes to Assam also) and that a portion of the excise duty on tobacco might be given to the Province of Madras, the Committee did not consider it desirable to concede anything in favour of Assam on account of tea and petroleum produced in Assam. Is this just and equitable? Assam is kept under this system of eternal doles from the Centre. It passes our comprehension why this difference is made. Is it because Assam does not have a strong voice in the Centre? For many years during the rule of the British, Assam has been crying hoarse against this injustice committed by the central financial authorities in the past; but all our cries and condemnation of that injustice have gone unheeded by the Centre. Why reduce this producing province which could have had enough to support itself to a state of a beggar perpetually? Sir, I hope any strengthening of the Centre financially in this manner while robbing a province of its legitimate right will not be supported by any one. I believe that this just House with reasonable minds and sympathetic hearts will see that the province gets a fair deal. Facts should be faced.

I think myself that the authorities have been so busy with other matters that their attention could not be drawn in the past to this matter of life and death for Assam. We are today appealing to all the Honourable Members to come to our rescue at this time. Let it not be forgotten that Assam is a Frontier province which is subject to aggression from all sides. It is the duty of the whole Union to attend to this from the very beginning before evil days come. It is also very necessary for India to keep the bordering areas supplied with the necessities of life in order to keep them satisfied, otherwise adverse elements will cause great trouble which may cost India ten times more than the amount of money which may be spent during peaceful time. It will be a shortsighted policy to deprive our Assam province of its export duty on tea and to reduce its legitimate share of excise duties on tea and petroleum etc. In the past the bureaucratic Government overlooked the claims of backward provinces like Assam or Orissa, but how can we imagine that this Constituent Assembly will allow the perpetuation of the same wrong which was by the alien Government? I hope, Sir, that when the amendments to right this wrong are brought before this House, they will receive full support from all the Members of this august Assembly.

Before I close, Sir, I must also say that adult franchise is necessary as the basis of election. The people everywhere must feel that freedom has come to them and that they have a share in the shaping of the administration of the country. This has been the hope given by the Congress in the past and any deviation from this principle will cause disappointment and arouse agitation in the country. It is true that the common man in the villages does not understand much, but it is the duty of the politicians to educate the common man in the right direction. We have adopted democratic principles, and the salvation of our country is to educate the common man and trust that he will be guided to exercise his right of franchise in the right direction.

I do not want to take the time of this House with other observations and criticisms which I would have liked to make, but before I conclude, I want to say that if we are going to build up a democratic State, we must make every one in this country, however humble and poor he may be, feel that he has a share in the making of a better country. We must cultivate the spirit of fraternity and this should have full sway in this country of ours so that every one of us, however humble and low we might be, can feel proud of this country to which we belong. God also will no doubt help us when we are saturated with this spirit of honesty and fraternity.

Mr. Mohammed Ismail Sahib (Madras: Muslim): Mr. Vice-President, Sir, I thank you, in the first instance, for having allowed me some time though almost at the last stage of this general debate. I shall touch only on a few of the points I wanted to place before the House and try to compress my ideas within the short time which I understand has been kindly allowed to me by you.

Sir, it is indeed a great speech in which the Honourable Dr. Ambedkar has commended the consideration of the Draft Constitution to the House. For lucidity, for persuasiveness, impressiveness and logic I do not think that it could be beaten. All congratulations to him. But this does not mean that one is agreeing with everything that is said by him in the speech. For example, take the question of provincial autonomy, the relationship between the Centre and the States. He pleads more really for a unitary type of State. He says that a balance has been struck between federalism and the unitary type of Government. But I am inclined to think, when I go through the Draft Constitution, that the emphasis is too much upon the unitary nature of the State. In my view, this is not conducive to the happiness and prosperity of the country. Ours is a vast country of great distances and huge population. However much the Centre may be anxious to accord uniform treatment to the various parts of the country, still, in the very nature of things, there will be draw-backs and shortcomings. This will naturally lead to discontent, and conflict. It is for this reason that many political thinkers have been of the view that a federal type of Government is more suitable than anything else for such a country as ours. We in India need not be afraid of anything like disintegration or undue clashes and conflicts between the various parts of the country. The example of the United States of America has been cited. What has happened there really? This country which has got more than forty States, all autonomous, have, as one unit, stood two of the severest wars ever known to the history of mankind, and these States have also stood together and have dealt with and confronted successfully the stress and strain of post-war problems that faced them after the last two wars. Take again the case of Russia. The States of Russia are called autonomous Republics. It is said that they have got even control over external affairs. What has happened? That country with all these autonomous republics, has been able to withstand the deadly and terrible onslaught of the last war, and today she is as one big country, able to pull on in the face of so many hardships and difficulties. Therefore, it is not so much the type of Government, or the number of powers which we give to the Centre that really matters. It is the character of the personnel which runs the Government, and it is the character of the people that really counts in these matters. Sir, in spite of the Russian States being autonomous republics, what has fact, to be over-weighted with powers. The Centre has come, in actual fact, to be over-weighted with powers. That is human nature. Here, it is said, on occasions, our Constitution will become unitary. But, in the nature of things, when once it becomes unitary, the tendency will be to stay on the unitary type of Government. I say that the federal system is more suited to the conditions of our country than the unitary type.

The conditions in different parts of the country are different. Therefore they have to be dealt with by the people who are in more intimate touch with those conditions from day to day. In this connection, I shall just touch on one point. That is to say, when the province is deprived of so much of its autonomous powers, there is a proposal which does not agree with this framework, *viz.,* that of the election of the Governor through adult franchise. The Governor himself is only a constitutional head if he is not a figure-head and to go through all the paraphernalia and trouble of having him elected by tens of millions of people in a province is not necessary and it really bristles, with possible difficulties and probable hardships apart from huge expenditure it would involve. The Governor must of course be elected by certain agencies in the provinces and States themselves and that is in keeping with the provincial autonomy of my pleading. Such an agency might take the form of an electoral college consisting probably of members of the legislature in a province members of the municipalities and district boards and I would even go, if friends would like it, to the extent of including members of the Panchayat Board as well. After all it may mean only about fifty or sixty thousand voters when the Governor is also elected by the people through adult franchise it is only natural that on occasions he will come into conflict with the ministry which will claim to be the spokesmen of the people.

Regarding Fundamental Rights, the Mover of the Resolution said that the exceptions have not eaten up the rights, but as a matter of fact they have actually eaten up the rights. He says everyone of these exceptions can be supported by at least one decision of the Supreme Court of America. To say so is on a par with the argument advanced by the British politicians when the Government of India Act of1935 was on the anvil of the Parliament in Great Britain. They said they were including in that Act things which were there and they had come into being and therefore it was that they were putting them into that Act. To say that the Supreme Court has decided in a certain way, has decided that certain exceptions are quite legal and all right and therefore such exceptions must come into our Constitution - to say that is different from saying that the people will have the freedom of going to Supreme Court or Federal Court whenever a fundamental right is in question in doubt. This freedom of the people to go to the Federal Court even as against the Government will really imbue them with a sense of real freedom and that will also have a salutary check on the Government which is very necessary in democracy.

Some of my friends claimed that Constitution is apolitical Constitution but really is it so - I don't know. It deals with untouchability, temple-entry and religious instruction. I don't blame the Constitution or its drawers for this. I say it is quite right in noting these things; but one important fundamental thing I want to refer to and that is regarding religious instruction. The Constitution says that religious instruction shall not be provided in any of the State schools. Taking this provision with the compulsory elementary education which is being introduced in almost all the provinces. It means that the Government is against religious instruction, it is against people getting instruction in their own religion even if they wanted it. Therefore until 15 years of age up to which age the children have to be sent to these elementary schools they shall not have an opportunity in these schools of having any instruction in religion. That right is not derogatory to the neutrality or secular nature of the State. The State would not impose any religious instruction upon people who do not like it. They only give facilities for the people if they want to give instruction to their children in their own religion.

Then, Sir, I have to refer to the question of minorities. Some friends said that reservation must go; some said it must go because it is not of much use and some said that reservation as such must go. They said that it was good-will that was required and not reservation. It is really true that goodwill is required; it is essential even in the working of this elaborate bulky constitution and without goodwill any elaborate scheme will be of no avail. But on that plea goodwill might be taken as a substitute for many other provisions in the Draft Constitution; nevertheless, those provisions are there. Goodwill has to be grounded on something and it can't be live on air. There has to be something for goodwill to be based upon and for it to grow and that is the elementary rights - fundamental rights and safeguards given to minorities. Therefore it is that my community wants this reservation though it alone does not satisfy their requirements. I don't mean to say that it satisfies the people who want representation in the legislatures. They want themselves to be given the right of really representing their views and the feelings and aspirations before the legislature. Will these people who are the occupants of these reserved seats under joint electorates be able to express the view of the community as such? When I say this we should not rake up the past and I don't want to refer to the past and kindle and stir up controversies and disputes. We should take up this question on its own merits - whether it is reasonable or not we should consider. In my view there should not only be reservation of seats but these seats should be filled up through separate electorates. I don't find any other alternative if you want to give the right to these minorities to express themselves before the majority community, before the country and before the legislature. This is all that is meant by this electorate. It is no barrier between one community and another and if there was any trouble in the past it was not due to this system of election, but it was due to other things. As I have told you, I don't want to enter into the past. Again, when we talk of these separate electorates communalism is brought forward. In this connection I would only give the House the benefit of a quotation from one of the Ministers, a Congress Minister in the Madras Assembly, about ten days ago. A question was put regarding communal representation for the admission of students to a certain college.

One of the Members put the question to the Minister:

> "How is the Minister justified in preserving and fostering communalism even within the ranks of the Hindus themselves?"

Then the Minister for Education answers:

> "It is not the Government that do it. It is there. The communities exist. It is an unwise man that does not take note of the things that exist. People are born and die in these various communities."

Then the Minister further added:

> "The Government wanted to put an end to this communalism. But without giving equal opportunities to the

various communities to come up that could not be done".

That is the view expressed by a Congress leader belonging to the majority community who is now working an important portfolio in one of the important provinces of the country.

Therefore, Sir, that is the position. There is no harm in recognising those communities and this is not a position peculiar to our country. When I was a young-man I used to follow the national movement of Egypt. When they first wanted independence, a community called the Copts came up. This community started a counter-movement. They wanted to be assured of their rights under independence and then Zaghlul Pasha, the leader of Egypt called those people and asked them to formulate their demands. The demands were brought forward in due course of time and he considered them. He then said that those demands alone would not secure the minority's rights and position; that they would not even give them the right or proper expression. He said that he was giving them more. That was how the minority was treated in that country. Until then, whenever there was anything about Egypt there would be something about the Copts as well. But all this changed. From that day of settlement until now we do not hear the name of the Copts at all. Now they are a contented people. They are all living today as one people. I hope the House will consider this question in a dispassionate manner, excluding any emotionalism or sentiment from the subject.

Shri Algu Rai Shastri: (United Provinces: General):*[Mr. President, as there is only one hour left at our disposal I would request that the time for discussion be extended by a day. Many members have expressed a desire to speak and so far no closure has been moved. It appears that the House wants to have more discussion on the subject. The issue is of great importance and, as Shri Diwakar said yesterday, it should not be disposed of hurriedly. At least one day's extension should be given for its consideration. Only some of those persons whose names are already with you would like to speak. I beg to make one more submission. Sir, the entire time today has been given by you to those whom you consider to be the members of minority communities They have placed their view point before the House. Will you not now give an opportunity to those whom you consider to be members of majority communities to place their views? Some reasoned reply to objections raised here must be permitted to be made here so that the world may be influenced to believe that whatever decisions are being taken in this House, are based on reasoning and not on a majority vote. If any one wants to meet the objections raised here, he must be given an opportunity to do so. There is the question of language, the question of our relations with Great Britain and other problems of this kind. These are very important matters and require through elucidation in the House. I would, therefore request you kindly to give us one day more for discussion. We must have at least one day more so that others also place their views on these matters.

Mr. Vice-President: You want one extra day !

Pandit Govind Malaviya: (United Provinces: General): May I support that request. I think we are discussing a very important matter, for which there will be no other opportunity and I think, even when three days have already been devoted to this, so long as there are a number of Members of this House who have yet to express their views before it on this matter, I think we shall be doing nothing wrong in extending the time.

The Honourable Shri B. G. Kher (Bombay: General): Tomorrow again a request will be made that one more day should be granted. There will be plenty of opportunities when amendments are moved and all these points could be brought out. We have been treated to a variety of views indifferent languages and sufficient light or darkness has been thrown on a subject which has been before us for two year. I sympathise with Members who want to speak and to be heard, but I do submit that there ought to be some finality to such general discussion and when you have already extended the time by one day I thought that was enough I suggest there should be no more extensions.

Shri Mahavir Tyagi (United Provinces: General): As long as there is one Member who wants to record his opinion on this subject, he should be given a full opportunity to express himself. I therefore submit, that not only one, but if tomorrow we want another day, then another day must be given.

Mr. Vice-President: I have here the names of about forty gentlemen who want to speak. At the same time I have to point out that I have been keeping a note of the principal items touched upon by the previous speakers, and I find that they concern more or less six different points. Already about thirty Members have spoken and they have gone round these six different points. If the House is certain that the gentlemen who come here-after will be able to do something more than cover these six points, then there will be some justification. But I am in your hands. I am perfectly prepared to extend the time, provided you can convince me that something new will be contributed.

Pandit Govind Malaviya: Would you like us to submit to you a precis of the points we wish to raise?

Mr. Vice-President: Perhaps you have misunderstood me and that deliberately.

I have never suggested that I wanted a precis. But those who have sat down here and listened - you came only today and so you do not know the points that have been touched upon......

Pandit Govind Malaviya: But I have taken the proceedings home and studied them

Mr. Vice-President:... the Members whose names are already with me, if they can convince me or convince themselves that they have something new to contribute, then I am prepared to consider the proposition.

Mr. Hussain Imam: (Interruption)....

Shri Suresh Chandra Majumdar: (West Bengal: General) When there are forty names outstanding even a day's extension may not suffice. So you must go on for the whole week

Shri Vishwamber Dayal Tripathi: (United Provinces: General) I suggest two more days should be given for this discussion.

Mr. Vice-President: All right, I will give one day more. But I do hope the time will be used for some useful purpose.

Shri Alladi Krishna swami Ayyar (Madras: General): Sir, before making a few remarks on the Draft Constitution, I should like to join in the tribute of praise to the Honourable Dr. Ambedkar for the lucid and able manner in which he has explained the principles of the Draft Constitution, though I owe it to myself to say that I do not share the views of my honourable Friend in his general condemnation of village communities in India. I must also express my emphatic dissent from his observation that Democracy in India is only a top-dressing on Indian soil. The democratic principle was recognised in the various indigenous institutions of the country going back to the earliest period in her history. Democracy in its modern form is comparatively recent even in European history, as its main developments are only subsequent to the French Revolution and to the American War of Independence. The essential elements of democracy as understood and practised at the present day are even of much later date and have gained currency and universal support during the last war and after its termination.

Before I proceed to make my remarks on the Draft Constitution, in view of certain observations of my honourable Friend Mr. T. T. Krishnamachari on the work of the Drafting Committee and the part taken by its members, I owe it to myself and to the House to explain my position. As a member of the Committee, in spite of my indifferent health, I took a fairly active part in several of its meetings prior to the publication of the Draft Constitution and sent up notes and suggestion for the consideration of my colleagues even when I was unable to attend its meetings. Subsequent to the publication of the draft, for reasons of health, I could not take part in any of its deliberations, and I can claim no credit for the suggestions as to the modifications of the draft.

In dealing with the Draft Constitution, it is as well to remember that the main features of the Constitution in regard to several particulars were settled by the Assembly after due consideration of the reports of various committees; this Assembly is not starting afresh after two years of work. I doubt if even, some of the Members who animadverted upon certain features of this constitution settled by this House could disclaim responsibility for the decisions already reached. The federal framework of the Constitution with an over-riding power in the Centre, the need for a concurrent list and the items therein, the composition of the Houses, the relative powers of the two Houses of Parliament and in the provincial legislatures, the mode of election of the President and of the Governors, the relationship between the legislature and the executive, the constitution and powers of the Supreme Court and of the High Courts, the fundamental rights to be guaranteed to the citizen and a number of other matters relating to the constitutional framework, were settled by this House or considered by the Committees appointed by this House. In so far as the Drafting Committee has embodied in the articles as framed the considered decisions of this Assembly, the Drafting Committee can in no way be responsible for the decisions already reached, while it may be quite open to the House to revise those decisions on special grounds. In regard to such of the provisions of the draft as have not been considered by this House, it is open to this House, to come to any conclusion, consistently with the resolutions already reached and with the general framework of the Constitution.

The main criticisms on the Draft Constitution range under the following heads: -

Criticism 1. - It draws largely upon foreign constitutions and there is nothing indigenous about it. There is not much force in this criticism when it is remembered that federalism in its modern form is of recent growth, since the American Revolution and America has furnished the example to all the later federations. It cannot be denied that there is a strong family resemblance between the several federations and that each later constitution has drawn upon and profited by the experience and working of the earlier federal constitutions of the world. In this connection, it is as well to remember that even the Soviet Constitution has not departed from certain accepted principles of federal government.

Criticism 2. - The Centre is made too strong at the expense of the units. In view of the complexity of industrial, trade and financial conditions in the modern world and the need for large scale defence programmes, there is an inevitable tendency in every federation in the direction of strengthening the federal government. The Draft Constitution in several of its provisions has taken note of these tendencies instead of leaving it to the Supreme Court to strengthen the Centre by a process of judicial interpretation. I might point out in this connection that the U.S. Supreme Court, by the wide interpretation which it has put upon the General Welfare clause as well as on the trade and commerce clause in the Constitution, has practically entered into every sphere of state activity, so that it may be in a position to regulate the economic activities, the relationship between capital and lab our, the hours of lab our and so on, taking advantage of these two clauses.

Criticism 3. - The existence of a large list of concurrent subjects might lead to the Centre encroaching upon the provincial sphere and giving a unitary bias or character to the constitution. A study of the several items in the Concurrent List shows that they mainly relate to matters of common concern all over India. Whatever criticisms might be levelled against the British administration in India, the enactment of the great codes which has secured uniformity of law and legal administration has been its special merit. It is common knowledge that even the Indian States have adopted the great Indian Codes. Instead of not having a Concurrent List or curtailing the list of concurrent subjects, I would advocate the Concurrent List being extended and applied to the States in Part III. The existence of a Concurrent List in no way detracts from the federal character of the constitution, there being an independent provincial list of subjects.

Criticism 4. - The constitution does not give sufficient importance to village communities which are an essential feature of India's social and political life. With the large powers vested in the provincial or state legislatures in regard to local self-government and other matters, there is nothing to prevent the provincial legislatures, from constituting the villages as administrative units for the discharge of various functions vested in the State governments.

Criticism 5. - The criticism regarding the fundamental rights was that they are hedged in by so many restrictions that no value can be attached to the rights guaranteed under the constitution. The great problem in providing for and guaranteeing fundamental rights in any constitution is whereto draw the line between personal liberty and social control. True liberty can flourish only in a well ordered state and when the foundations of the state are not imperilled. The Supreme Court of the U.S.A. in the course of its long history has read a number of restrictions and limitations based upon the above principle into the rights expressed in wide and general terms. The Draft Constitution, instead of leaving it to the courts to read the necessary limitations and exceptions, seeks to express in a compendious form the limitations and exceptions recognised in any well ordered state. It cannot be denied that there is a danger in leaving the courts, by judicial legislation so to speak, to read the necessary limitations, according to idiosyncracies and prejudices it may be of individual judges.

The problem of minorities has been solved by common agreement in a manner satisfactory to the various parties concerned, and the draft Constitution merely seeks to give effect to the agreement reached. As has been pointed out in the spirited address of our Prime Minister this morning, while regimented unity will not do, nothing should be done which will tend to perpetuate the division of the nation into minorities and to prevent the consolidation of the nation.

The next criticism is that the common man is ignored and there is no socialistic flavour about the Constitution. Sir, the Constitution, while it does not commit the country to any particular form of economic structure or social adjustment, gives ample scope for future legislatures and the future Parliament to involve any economic order and to undertake any legislation they choose in public interests. In this connection, the various Articles which are directive principles of social policy are not without significance and importance. While from the very nature they cannot be justiciable or enforceable legal rights in a court of law, they are none the less, in the language of Article 29,fundamental in the governance of the country and it is the duty of the State to apply the principles in making laws. It is idle to suggest that any responsible government or any legislature elected on the basis of universal suffrage can or will ignore these principles.

The financial provisions in the draft Constitution have also come in for strong comment from my honourable friend Shri T. T. Krishnamachari. While an independent source or sources of revenue are certainly necessary for the proper functioning of a federal government, there is a distinct tendency, however, in the several federations, for the Central Government to act as the taxing agency, taking care to make adequate provision for the units sharing in the proceeds as also for the central or national Government granting subsidies. After all, it cannot be forgotten that the tax payer is the individual citizen or a corporation - whichever the taxing agency might be - and the multiplication of taxing agencies is not a matter of convenience to the citizens. I doubt whether in the present uncertain state of the country it is possible to overhaul the whole financial structure and attempt a re-distribution on entirely new lines. That is why a provision has been made for a Financial Commission at the end of ten years. Possibly the draft is defective in that special provision has not been made for the re-arranging of the lists in regard to financial matters in light of the recommendations of the Financial Commission without having recourse to the procedure as to Constitutional Amendments.

In regard to the subject of taxation, Professor Wheare makes the following observations in his recent Treatise on Federalism: -

> "There can be no final solution to the allocation of financial resources in a Federal system. There can only be an adjustment and reallocation in the light of changing circumstances".

We then had the criticism that the Constitution is far too detailed and elaborate and contained more number of articles than any other known Constitution. This criticism does not take note of the fact that we are not starting a Constitution anew after a Revolution. The existing administrative structure which has been worked so long cannot altogether be ignored in the new framework. The second point that the critics have failed to take note of is that unlike other constitutions, the draft Constitution contains detailed provision as to the constitution and power of the Supreme Court and the High Courts and also Articles relating to the Constitution of the units themselves. If we could eliminate all those Articles, our Constitution also could be rendered simpler and shorter.

In regard to the Judiciary, the draft Constitution also recognises the importance of an independent judiciary for the proper working of democracy, and especially of a Federal Constitution. The Supreme Court, under the Draft Constitution, has wider powers than any other court under any Federal system in the world.

More than any other provision in the Constitution. I should think the boldest step taken by this Assembly is in the matter of universal adult suffrage with a belief in the common man and in his power to shape the future of the country. For this institution to work properly too great a care cannot be taken in the matter of the preparation of proper electoral rolls and a uniform principle being adopted in the different parts of India. I would commend for the consideration of the House the suggestions made by my friend, the Honourable Shri Santhanam, in the course of his speech yesterday.

There are other matters which require very close and critical examination by this Assembly before the Constitution is finally adopted, such as citizenship, the formation of new States, and the position of the Indian States which have been grouped together under the able leadership and guidance of our Sardar. The position of the States which are not represented in the Constituent Assembly will also have to be considered and dealt with before the Constitution is completed as otherwise complicated legal questions might arise in regard to the relationship of these States vis-à-vis the Union of India.

There are two other points also which have been touched upon in the course of the debate. These relate to the emergency powers vested in the Government and to the ordinance-making power. One point that has to be remembered in this connection is that any power exercised by the President is not to be exercised on his own responsibility. The word 'President' used in the Constitution merely stands for the fabric responsible to the Legislature. Whether it is Ordinance or whether it is the use of the emergency power, the Cabinet is responsible to the popularly elected House. It should be remembered too that during the last debate it was the representatives......

Prof. N. G. Ranga (Madras : General) : There is too much noise in the House. Another debate seems to be going on in that corner of the House.

Mr. Vice-President: Order in the House, please.

Shri Alladi Krishnamachari Ayyar: I may mention that during the last debate the representatives from the Provinces were more anxious, including the Ministers, than anybody else, to have emergency powers. It is they, having regard to the actual working of the administration, who wanted these emergency powers given to them. How exactly the emergency power is to be provided for, whether any changes are necessary, all that is another matter. So normally when the Assembly is not in session. If the Assembly is in session, I do not think that the representatives elected under universal suffrage are likely to be less insistent upon their rights than the Members of this House elected on a comparatively narrow ticket.

A brief survey of the draft Constitution must convince the Members that is based upon sound principles of democratic government and contains within itself elements necessary for growth and expansion and is in line with the most advanced democratic Constitution of the world. It is well to remember that a Constitution is after all what we make of it. The best illustration of this is found in the Constitution of the United States which was received with the least enthusiasm when it was finally adopted by the different States but has stood the test of time and is regarded as a model Constitution by the rest of the democratic world.

Shri K. Hanumanthaiya (My sore): Mr. Vice-President, Sir, Dr. Ambedkar was pleased to make a reference to the Indian States and made an appeal that so far as the units are concerned, there need not be any difference in the constitutional set-up between the Provinces and States. I am glad that such an opinion is given, I think, though for the first time. Hitherto, every State was allowed to have a Constituent Assembly of its own and even the Unions of States were permitted to summon Constituent Assemblies for the purpose of framing their own constitutions. Many of us are wondering whether the Constituent Assemblies to be summoned in the States and Unions of States are free to make their own constitution, whether they were in consonance with the Indian Constitution or not. I want to suggest some ways by which we can attain the desired end.

In My sore, Sir, the Constituent Assembly has done almost half of its work, and when it was about to appoint a Drafting Committee, it thought it fit that the opinions of the other Assemblies in the States and also the opinion of this honourable House may be of much value in coming to final conclusions. Therefore it has appointed a Committee of five members to get into touch with the representatives of other States' Assemblies and if possible with this House also. The personnel of the Committee has been announced. I hope the Members representing the States in this House will be able to sit separately together either officially or unofficially and evolve a policy acceptable to this House and to the country. The constituent assemblies in various States and Unions of States will no doubt take the advice that may be given to them by the States representatives in this House. But there are certain impediments in the way which I would like to point out.

The States, as you know, Sir, even under the British regime were enjoying a certain amount of autonomy more in degree than the provinces were allowed to enjoy and that autonomy, I might say, has never been misused. Every State, whatever the degree of its autonomy, has always had the interests of India at heart and acted accordingly. We, the States people, feel that the Units of the Federation may not have sufficient autonomy in the draft as it stands to manage their own affairs well and efficiently. The draft as it stands - I beg to differ from Dr. Ambedkar - is rather too much over-Centralised. It practically makes the Indian Union a Unitary State and not a Federal State. In their anxiety to make the Centre strong, they have given too much legislative and financial powers to the Centre, and have treated the provinces and States as though they were mere districts of a province. This tendency, I am afraid, will not make for what is called the strength of the Centre. Let me tell all those who are concerned in drafting this Constitution that mere accumulation of files in the Imperial Secretariat does not make for the strength of the Centre. The strength of the

Centre, if I understand correctly, consists in having a strong Army, a strong Navy and a strong Air Force and in the possession of sufficient money for these purposes, instead of it taking a begging bowl before the States and provinces. Beyond that, if they take too much power and accumulate their legislative lists, what happen sis that the initiative that should come form provinces will not be there and the provinces will be reduced to mere automatons. I have read experts on constitutions and one of the accepted tests whether a country enjoys freedom is to see how far the units and the local bodies enjoy freedom and autonomy. Different people understand the strength of the Centre in different ways and the Drafting Committee have merely understood that the mere accumulation of files in the Imperial Secretariat makes for the strength of the Centre. This is a great impediment in the way of the States people agreeing to have a common constitutional set-up for the units. Before the States agree to come on a par with the provinces - I am talking here for all the units, States as well as provinces - they will have to be assured real autonomy, not autonomy to injure the interests of the State as a whole, but sufficient powers and responsibility to manage their affairs well and efficiently. We have forgotten whom we repeatedly call the Father of Nation. He said that the constitution should be a pyramid-like structure with the Centre occupying the apex. But the present set-up is absolutely topsy-turvy. The fear is there in the minds of the States people, that the Centre is taking too much power.

There is one other matter which has not been brought sufficiently to light and I hope I would not be misunderstood if I say that the States Ministry as such has caused more dissatisfaction to the States people than even the Political Department did previously. I have heard it said by the representatives of the States people in the House that the States Ministry has failed to take the opinion of the States people into consideration at all. They are more after the Princes and their Dewans. The people are really nowhere in the picture. It seems as though the Princes and the Dewans get everything and the people nothing. If the integration of States has taken place today, it is not because the people in the States who participated in the freedom movement had created such a position that the Princes had no other course except to follow this line, and it is a sorrowful thing that we have forgotten the people in our anxiety to placate the Princes and their Dewans. This psychology of the States Ministry has to be reversed as soon as possible in order to make the people really feel that they are one with the rest of India and they are in safe hands.

Then, Sir, the States have been enjoying in the matter of taxation much more latitude than the provinces. We have conceded three subjects and in order to meet the expenditure in connection with these three subjects, sufficient money may be provided. For example, most of the States collect income-tax just now. We have no objection if it goes to the Centre, but the other taxing heads ought to be left to the States themselves in order to meet their own expenditure. Intact the complaint is repeatedly made that the merging States today are not enjoying even as beneficent a Government as they were enjoying under the Princes. That is the opinion of the accredited representatives of the people. This is a very sorrowful feature. We expected that after the Princes went away and after the States were merged with the provinces they would get better amenities and better opportunities than they were accustomed to previously. It is a bitter feeling that is expressed by the States representatives. In the Orissa States and the Deccan States the administration under Congress Governments is not as beneficent as it was under the Princes' administration. I am not merely speaking as a representative of My sore, but I have had occasion to talk with other States representatives and this is their opinion.

Then, Sir, Delhi happens to be the capital for the present. Most of us from the South, from Bengal and fro mother parts of the country, feel that Delhi is not suited to be the capital of India for various reasons. Historically Delhi has developed a course; it has got all the empires it had buried in its tombs scattered all about the place, and we do not want our new Government to go that way. I have got not a sentimental reason only. Here in Delhi excepting for two months either we have to sweat or shiver and in this extremity of climates, it is almost impossible to do any hard work. The capital of a country, it is reasonable to expect, should be in the Centre of the country and we can locate our capital either in the C. P. or somewhere near about.

The Honourable Shri B. G. Kher (Bombay-General): Bombay is better!

Shri K. Hanumanthaiya: Sir, I might say, after I have gathered the opinions of many of my colleagues, I am saying that C. P. is preferred. For example, it may be Betulin C. P. Sir, there is an argument that having expended so much money on Delhi, is it wise for us to expend further sums of money for another capital? In Delhi, we can still locate some of the Central offices. Now East Punjab is hunting after a capital and they want to make Ambala as its capital. We can make over half of our Government buildings here to East Punjab Government and take money from them. In the financial proposals I see that after the partition of the Punjab it has not been able to maintain itself and wants a subsidy from the Centre. If you make Delhi part of the Punjab, there will be no necessity for us to pay the subsidy, for it will then be a self-sufficient province. From this point of view and from the point of view of public opinion also it is better and in the interests of the country and its future, Delhi should cease to be the capital of India. We must be able to build a fresh capital in the Centre Provinces. Thank you very much, Sir.

Mr. Vice-President: Pandit Govind Malaviya.

Pandit Govind Malaviya: Since we are carrying on till tomorrow, may I have the privilege of speaking tomorrow?

Mr. Vice-President: I think you had better speak now.

Pandit Govind Malaviya: Sir, before I say anything else. I should like to offer my cordial congratulations to ourselves and to the Drafting Committee and its versatile Chairman, our friend, Dr. Ambedkar, for the very excellent work which they have done in giving us this Draft Constitution. It was a difficult problem which they had to face and they have tackled it most excellently. There may be many things in the Draft Constitution which one might have wished to be slightly different, but then that must be so about anything which can be produced anywhere.

The reason, Sir, why I requested you to allow me an opportunity to take a few minutes of this House was not to put before this House all the points about which I wish the draft was slightly different. In such matters, differences can remain, but after all they do not matter very much so long as a thing is tacitly good. For instance, in the Draft Constitution there are some things which personally I should have preferred to be slightly different. There is the election of the President, Sir, by proportional representation by single transferable vote. I do not feel happy about it; I should have preferred that it should have been by a straight vote. The proportional method might prove extremely unhealthy but I do not wish to take one moment more of your time than is absolutely necessary. I can only mention that by the way. There is, Sir, the right in the hands of the President to nominate fifteen members to the Upper Chamber; I should have felt happier without that. Then there is the federal judiciary about which we have a fixed minimum limit, but we have no maximum limit. I am sorry, Sir, I came only today. I did not know this discussion was continuing. I have not brought my papers, etc. I was not prepared to speak just now. I am just saying a few things as they strike me. There is the minimum limit but there is no maximum limit fixed to it. I can contemplate a situation where the executive, the Government of India, might abuse that provision by adding to the federal judiciary a number of new judges and getting the work done by them and in that manner bypassing any inconvenient older judiciary. I do not suggest that it will happen, but when we are framing a constitution for the future administration of the country, the more cautious we are the better. I should, therefore, have preferred that there should be an upper ceiling also to the number of judges of the federal judicature.

Sir, there are many other similar things in the constitution to which I might have referred, as I said, about which I should have felt happier if they were slightly different, but that was not the main purpose of my taking the time of this House and I shall not inflict that upon you. What I particularly wish to suggest, Sir, is about the Preamble to this Constitution. We shall be failing in our duty to our country, to the entire history of our country, to the entire culture and civilization of our country, to the entire ideology of our people if we adopt that bald preamble which we have put into the Draft Constitution.

I should very much like that we should have in it a reference to the Supreme Power which guides the destinies of the whole world. The reason why I make this suggestion is not merely that we have it in many constitutions of the world. It is not on that ground that I make that suggestion. As I said, the entire back-ground that we have in this country demands that we should do it. I will make only one submission about it as I do not wish to take up the time of the House and wish to be as brief as possible. We sit here as representatives of the people of India. Today, in this country, if we were to devise some method of finding out as to what the views of the people are in that matter, I am certain that more than ninety per cent. of our people, if not more, will be staunch believers in God Almighty. They will desire that our failing in our duty as representatives of our people if we, - even if some of us, even if all of us, do not believe in God - I say 'even', I do not say that it is so - but, even if that be so, I respectfully submit that we shall be failing in our duty to our people and to our country whom we represent here, if we do not bring that into the Preamble, because, as I said, more than ninety per cent. of the people of this country believe in God and would like to have a reference to the Almighty in the Preamble. The great point about our culture has been, the great point about our philosophy has been, the great point about our social structure has been that, while we have with complete tolerance allowed unmolested place in society to every school of thought to the atheist and the agnostic, yet, as a whole, as a people, we have always had a strong and fervent belief in the higher Power which guides us. An all pervading, an active and living belief in, and devotion to God, has been, since the very beginning of our long and glorious history, the fundamental basis, the very foundation, the supreme essence of the very life of our people. Mahatma Gandhi's life, the life of the builder of our nation today, was one beautiful, unchequered sermon to that effect. He died with the name of God on his lips. Everyday, he practised Ramdhun and I submit that the glorious impression which our country has made everywhere in the world, in the international circles and gatherings, the great impression which our great Prime Minister has made recently in the Conferences where representatives of all the countries of the Commonwealth were present, is due to the philosophical background of our country, which has in the ultimate shape taken the form of our beloved Prime Minister's present brilliant and soothing policy which we have pursued under the leadership of Mahatma Gandhi. I submit, Sir, that we will be unjust to our people and to our country if we do not do that. I hope therefore that my friend Dr. Ambedkar and others will consider that aspect and will remedy that defect or omission as I feel it to be.

The other point that I should like to mention is that in our Constitution we should have our own name for our country. I cannot understand our having a Constitution in which our country should be called 'India'. I shall not suggest any particular name; I shall be content with any name which appeals to the whole House. But, what I submit is that it will be wrong to leave India as the name of our country. We may, for some time, if necessary, put down after our own name within brackets 'India'. or say, "(Known in English as India)", as the Irish have done. But, to put down India as the name of our country appears to me to be ridiculous. That is the second point which I wish to bring before this House for its consideration.

The third point, Sir, that, I wish to submit is a little delicate. I hope no friend of mine will misunderstand me. In his speech, our friend Dr. Ambedkar referred to the question of minorities. He referred to the proceedings of the Irish Conferences about partition. But, he forgot that if there was a Cosgrave to say there, "To Hell with your safeguards; we do not want to be ruled by you," there was the entire English Government to back him up. We have none so here now. I am certain that no minority now will genuinely wish to have any such separate State. Therefore, I have got one submission to make. I do not say that we should not provide safeguards for minorities. By all means, we should do so; we should give them every assurance possible, not only in words, but in actual deed; but what I submit, Sir, is that the Article in the Draft Constitution about reservation of seats should have one further clause added to it - I do not want to disturb it - I do not want in any way to take away from it; by all means let the minorities have that reservation. The clause as it stands today, says that the reservation shall automatically go after ten years unless otherwise decided upon. All I want, Sir, is that if the minorities themselves or any section of the minorities themselves desire, even before the lapse of those ten years, to do away with this reservation or special representation, then, that Article of the Constitution should not be allowed to come in the way. As I said, I hope I will not be misunderstood. It is not my desire in the least degree to take away from the safeguards which have been provided; I only want that the possibility of the minorities themselves desiring and deciding to give up that reservation should not be ruled out. I hope, Sir, this will be done.

Then, Sir, I wish to submit that, at the end of our constitution, we should have a provision for a statutory revision of it after a certain period. I know that the provisions for amending the Constitution have been prepared with great thought. But, notwithstanding all that has been said, I still feel that the provision is not of a very easy nature. I should like to make it clear that I am not a believer in very easy provisions for changes or amendments to a Constitution. I firmly believe that it should be a very difficult thing to get through any amendments to a Constitution. But, for the first time at the beginning, for once only, I should like that there should be a Statutory provision in our Constitution that after the experience of a few years, one review will take place, and as a result of that review, any changes which are suggested should be considered and dealt with by the method of simple majority. I should like to have that provision for only once. I am not dogmatic about the details of that suggestion. It may be after three years, five years or seven years. But, my purpose is that after we have experience of three or five years, once at least we should have a statutory review which should be there automatically and then after consulting the experience of people in the provinces and at the Centre, we should adopt whatever changes may be necessary. After that, I should personally like to make the provision for amendments to the Constitution as difficult and as rigid as may be possible. I am anxious, Sir, not to let your bell ring. I shall therefore stop here. These are the few suggestions which I wish to place before the House and i am grateful to you for having given me this opportunity to do so.

Shri R. K. Sidhwa (C. P. and Berar: General): Sir, before we adjourn, may I know the final programme regarding the motion under discussion.

Mr. Vice-President: After tomorrow nobody will have the face to say that more time is wanted.

The House stands adjourned till 10 A. M. tomorrow.

The Assembly then adjourned till Ten of the Clock, on Tuesday, the 9th November 1948.

[Translation of Hindustani speech]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VII

Tuesday, the 9th November, 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

DRAFT CONSTITUTION-(*contd.*)

Mr. Vice-President (Dr. H. C. Mookherjee): I take it as the unanimous desire of the House that the general discussion on the Honourable Dr. Ambedkar's motion should be concluded today. I have noticed endless repetitions of the same arguments and I appeal to those who will speak today that they will avoid issues which have been already dealt with.

Shri R. Sankar (Travancore): Sir, I must at the very outset congratulate the framers of the Draft Constitution on the very efficient manner in which they have executed their duty; and I must particularly congratulate Dr. Ambedkar on the very lucid and able exposition of the principles of the Draft Constitution that he gave us by his brilliant speech. I do not propose to go into the details of the Draft Constitution but will content myself with dealing with one or two aspects of it. I think the most salient features of the Draft Constitution are a very strong Centre and rather weak but homogeneous Units. Dr. Ambedkar made a fervent appeal to the representatives of the States to take up such an attitude as to make it possible for all the States and the provinces to follow the same line, and in course of time to establish homogeneous units of the Federation without any distinction between the States and the provinces. But I think there are certain things which differentiate the States among themselves, and the States as a class and the provinces. There are some which are very well advanced and others which are not only not so well advanced but are really backward. There are States in which literacy is less than 5 per cent. There are States in which literacy is more than 50 per cent. There are States which levy income-tax. There are others which do not levy income-tax at all. In fact, there is such a great difference between the States amongst themselves than between some of the States and the provinces that it is very difficult to find much in common between the States and the provinces as they are constituted at present. For an example of a State which is advanced, I might take the case of Travancore, which I have the honour to represent. Travancore is, I think, one of the most advanced States in the whole of India. In certain respects she is ahead even of the provinces. She has been able to work herself up to the present position on account of the fact that all her revenue resources had been tapped for along time and the Rulers had tried to develop the State from very early times. Today, she is one of the most highly advanced industrial areas in all India. More than 50 percent. of her people are literate. Though a small State with an extent of only 7662 square miles, she has a revenue of nearly Rs. 9 crores. She spends about Rs. 2 crores on education now, more than half a crore on medicine and public health and as much on village uplift; and in other nation-building activities she spends very large sums. But if this Draft Constitution becomes law tomorrow, what is going to be the fate of this State? That is what concerns the people of the States as a whole and the people of Travancore in particular. Our customs revenue is nearly Rs. 1 1/2 crores. Our revenue from income-tax is nearly Rs. 2 crores and other federal items will come to nearly another crore. In other words, about 45 per cent of the income of the State will be central revenue from the day this Draft Constitution becomes law. The result would be that a State like Travancore will not be able to maintain, much less improve upon her present administrative efficiency. The States people now look at this picture more or less from this angle. The Princes, who were till now the stumbling block, have most of them decided to introduce responsible government in their realms, and the Ruler of Travancore has made no reservation whatever in this respect. The people are now anxious how they will be in a position to carry on the administrative functions of the State at least as it was carried on under the old irresponsible regime. I believe the Honourable Members of this House will see that it is a very hard case for a state like Travancore. Unless there be some provision by which a sort of fiscal autonomy is allowed to a state like mine it will be simply impossible for the State to maintain the high level of development it has been maintaining till today. The people after the long struggle are looking forward to the present responsible governments in the States to find a solution for the hundreds of problems, especially economic problems, that they are faced with, and if the States, instead of being in a better position, are in a worse position from tomorrow, they will certainly find it impossible to do anything and to solve any problem that they face. This aspect has to be borne in mind when this Draft is considered by this Body.

Another thing about which I would like to speak one word is the linguistic affair. There appears to be very much enthusiasm on the part of Honourable Members from the North whose mother tongue is Hindi or Urdu to force it all of a sudden upon others who scarcely understand a syllable of it now. Though much work has been done in the field of propagating the national language, Hindi-Hindustani, in the South, if you go out to the villages you will find that not even 1 per cent of the population knows Hindi. Even if you take such an educationally advanced State as Travancore and another State which is educationally far advanced - Cochin - not even 1 per cent of the population can even today understand either Hindi or Urdu. I would therefore request the members who are very enthusiastic about this thing - this common national language to wait for a time, to give an opportunity to the people of the South and the East to get themselves sufficiently acquainted with it. Hindi, of course, is in favour everywhere. Only some time - probably a decade or two - will have to be allowed. In the meanwhile, English must continue to enjoy the position it does to-day. If that be done, I think there will be none from any part of India who will stand in the way of Hindi being recognised as the national language of India.

As my time is up, I close with these remarks.

Shri M. Thirumala Rao (Madras: General): Mr. Vice-President, Sir, as a new recruit to this Constitution-making body, I seek the indulgence of the House for the few remarks I have the privilege of making here presently.

We are now on the eve of great changes and we have been endowed with the power of shaping our future in a manner that suits our genius and tradition. Of course the past 150 years of British rule has made an indelible impression on the Constitution that has been presented to us. I do not want to go into the details of the Constitution. I want to deal only with one aspect of it, *viz.*, whether this country should remain a part of the British Common wealth of Nations.

Sir, the Objectives Resolution has clearly laid down that the basis of our State should be a complete Sovereign Independent Republic. I feel, Sir, that in the present set-up of world affairs, it is but meet that India should from the very first make an attempt to stand on her own legs and show that we are capable of developing our own institutions on the lines best suited to us. No doubt, British statesmen and all those people who are accustomed to be imperialists are looking askance at us wondering whether we will cut ourselves away from the British Empire. It is too late in the day to think of having any constitutional ties with the word 'Empire' which smacks so much of a feeling that had been engendered in the past. But one thing necessary is that we should not excite any jealousy on the part of powers like Russia or America by permanently tying ourselves to the apron strings of British Imperialism or British Commonwealth.

Now, whatever one may say, the balance of power is yet influencing world affairs; and India, strategically situated as she is in the Indian Ocean, midway between the Pacific and the Atlantic and the Mediterranean, has a special responsibility and an important role in maintaining world peace. Though we are a young nation, with very ill-equipped defences, it must be our duty to see that we estrange nobody in the world with regard to our position in international affairs. As such, if we make it plain that complete sovereign independence is our ideal and also the practical basis on which we are building up our Constitution, we may not estrange people like the Americans in the future.

In spite of all the tall talk that has been indulged in with regard to the Anglo-American Bloc, an under current of jealousy still persists in America against the British Empire. But they have realised - even Republican papers in America have realised-that they must make a little sacrifice of their trade monopoly in order to strengthen India and build up a bulwark against the forces that are now sweeping the East from Russia. From that point of view I feel that we must have complete Republican and independent sovereignty in our Constitution and from that point of view, we may command some respect and also some assistance from countries which seek our help and co-operation in the near future.

With regard to other matters, we must borrow a lesson from the Australian and Canadian Constitutions where the provinces and Centre have evolved a sort of relationship which is still the bone of contention in their law courts. The recent instance in Australia where Nationalisation of Banking was attempted is an example: the Centre wanted to nationalise the banks but the provinces resisted. So also in our future development, the relationship between the provinces and the Centre has to be evolved in the best interests of the country. We require no doubt a strong Centre, but a strong Centre should not mean weak provinces. The provinces also should be equally strong to enable them to perform their multifarious duties and to develop schemes. They should be left with sufficient financial resources to discharge their duties and contribute to the strength of the Centre.

With regard to Defence, we have been unfortunately split up by the machinations of British diplomacy. Whether it is Pakistan or India, India is one and indivisible as far as the defence of the country is concerned; Pakistan, which is separated on the north-east and north-west by long stretches of the Indian Union territory, is much too small to defend herself and will have to co-ordinate her defences with India. Our frontiers lie much further than Pakistan; our eastern frontier lies much beyond Assam and if we are to integrate these, we will have to keep the States well-knit and to enter into a sort of alliance with Pakistan by enclosing it within a super-federation of this federation.

Sir, I visualise a day when it will be impossible for the new States to remain as separate entities for long. There was wisdom in the proposal that these two States could combine for certain purposes like international trade, currency and defence. I will not rule out the possibility of such a combination in the near future, in the next decade, if we are to develop our Constitution on proper lines.

One more point, Sir. We have been talking too much of a secular State. What is meant by a secular State? I understand that a secular State may not allow religion to play a very important part to the exclusion of other activities of the State. But we must make it clear that the ancient traditions and culture of this country will be fully protected and developed by the Constitution and through the Constitution.

Mr. Vice-President, I see that my time is up. With your permission I will conclude in another minute.

Wherever you go, to the Mother of Parliaments or to other British Institutions, you find invariably the Church associated with them, with their universities, with their Parliament, with their Courts of Law and so on. Although I do not want to impose our religion in our institutions to that extent, I do plead that we should protect our culture, our peculiar national characteristics and traditions. These should be protected by the Constitution. We should not forget, wherever we go, that we are not a hybrid nation or a disproportioned mixture of several cultures, but that we have a culture and a Government and a civilization of our own. This should be reflected in our Constitution.

Shri Raj Bahadur (United State of Matsya): Mr. Vice-President, Sir, I have sought this opportunity from you to speak during the discussion of the Draft Constitution, only because I felt impelled by a sense of duty that I should draw the attention of this august Assembly to two problems which I think are really constituting a grave danger to our newly-won freedom and to the unity and integrity of the Nation. I hope and wish that this Assembly, in order to safeguard the new and the nascent blossom of our freedom would provide adequate safeguards and provisions in the constitution for the protection of the Nation and of our hard-won liberty from two great perils. These perils, indeed, are too grave to be ignored. The perils I mean are the evils of "provincialism" and "communalism" which, in spite of the "supreme sacrifice", have yet not been laid quite low. By this "supreme sacrifice" I mean the martyrdom of the Father of our Nation. For the time being it appears that the demon of communalism has been definitely laid low, but even so I was a little painfully surprised when yesterday honourable Members like Mr. Is mail and Mr. Lari........

Nawab Muhammad Ismail Khan (United Provinces: Muslim): On a point of information. I never spoke yesterday.

Shri Raj Bahadur: Some of the Members of this House referred to the provision of proportionate representation and separate electorates. I mean to say Sir that, if we went to protect our freedom, we shall have to provide in our Constitution that just as we have said that there shall be no evil of "untouchability" in our body politic, so also we shall have to see that these tendencies, these idiosyncrasies which have been responsible for the vivisection of our mother-land shall not raise their ugly heads again. If I say this, it is because even today when we are finding that the effects of partition are still troubling our body politic, when we are not yet free from the evils of partition, there are people and forces in the country which are still trying to revive and perpetuate communal politics. It is absolutely necessary for us to see when we frame our Constitution that these evil forces do not imperil our freedom.

I may also say that there is another peril from which our country may suffer and that is "feudalism" that is still rampant in some of the States of Rajputana. Owing to the sagacity of our States' Minister, the problem of the States has been squarely dealt with, but may I still submit that the people in the various States of Rajputana are still under the thumb of these feudal landlords? The Jagirdari system is still there and the poor kisans for whom we have been clamouring for freedom are still not breathing the air of freedom. The reactionary tendencies of these Jagirdars are still there and so I hope that, just as the problem of the States has been squarely dealt with, the problem of these feudal landlords will also be dealt with squarely and solved.

When I talk of feudalism, that naturally takes me to the problem of the States. In introducing the Draft Constitution which has been placed before us by the Honourable the Law Minister for discussion and consideration, he (the Law Minister) spoke of a dual polity. But in this Constitution, I find that there is a "triple polity" provided therein, in as much as the States are allowed to have constitutions different from the constitution for the provinces. We see that the States are allowed to maintain their own separate armies. We see also that their Constitutions would be devised and adopted by their own separate Constituent Assemblies. They have also been allowed to have their own separate judiciary and the people of the States will not be allowed to appeal to the Supreme Court even in defence of their Fundamental Rights. These things, separate armies, separate Constituent Assemblies and separate judiciary, are things which cause great concern to us, the people who have come from the States, and I feel that it is high time that this disparity, this incongruity between the various units of the Indian Union is done away with. I would submit, Sir, that it can be safely assumed that the Princes just as they have relinquished their powers for the sake of the nation, so also would they favour the bringing of the States on a par with the provinces for the sake of the unification of the country. I feel that it will also be possible for the provision relating to Rajpramukhs to be made analogous to that of the Governors. They may have the same powers as the Governors in the different provinces, but I would support definitely my friend Mr. Vyas in his appeal that the right of being elected to the high office of governorship may be conceded to the ordinary man in the street also. I do not see any reason why the office or the high post of a Governor should be restricted only to the Princes and depend only on their choice in the case of the States.

Then I may also respectfully refer to another factor which has lately come to light in our body politic and that is about the criticism that we see being levelled these days against our Ministers in almost all the provinces. That criticism may not have any justification behind it but still the criticism is there that our Ministers are not following the Gandhi an ideals in their life, that they are travelling by aero planes, maintaining stately houses and so on and so forth. So I feel that in the Constitution there should be a provision giving a code of conduct for our Ministers so that we may not in future find, when history gives its verdict onus, that we have failed in our duty.

Lastly, I would beg to submit, Sir, that the provision for a Council of States in the

Constitution seems to me to be redundant because an upper House has always acted as a dead weight upon the progress of the people. This smacks of a slavish imitation of the West and is quite unnecessary.

I hope these suggestions of mine will be considered by the House in due course.

Prof. N. G. Ranga (Madras: General): Mr. Vice-President, I am sorry to find that the Members of the Drafting Committee have completely forgotten the very fundamental thing that was really responsible for bringing this Constituent Assembly into existence and for giving them this chance of drafting this Constitution for India. One would have thought that it would be their elementary duty to have suggested to us that this Constitution is being framed by the Constituent Assembly which has been brought into existence by the lab ours of the countless martyrs and freedom fighters in this country guided and led by Mahatma Gandhi, but not a word has been said in regard to this matter. Therefore I suggest that we should make it clear that this Constituent Assembly comes into existence after India has attained freedom under the inspiring leadership of Mahatma Gandhi, the Father of our Nation, and that we are grateful for the unremitting struggle of the countless men and women to regain the right of independence for our nation. This is the least that we can possibly say in appreciation of the services rendered by these martyrs in our freedom struggle, and I hope the House will make the necessary amendment later on in this Draft.

Next, Sir, I am most unhappy that Dr. Ambedkar should have said what he has said about the village panchayats. All the democratic tradition of our country has been lost on him. If he had only known the achievements of the village panchayats in Southern India over a period of a millennium, he would certainly not have said those things. If he had cared to study Indian history with as much care as he seems to have devoted to the history of other countries, he certainly would not have ventured those remarks. I wish to remind the House, Sir, of the necessity for providing as many political institutions as possible in order to enable our villagers to gain as much experience in democratic institutions as possible in order to be able to discharge their responsibilities through adult suffrage in the new democracy that we are going to establish. Without this foundation stone of village panchayats in our country, how would it be possible for our masses to play their rightful part in our democracy? Sir, do we want centralisation of administration or decentralisation? Mahatma Gandhi has pleaded over a period of thirty years for decentralisation. We as Congressmen are committed to decentralisation. Indeed all the world is today in favour of decentralisation. If we want on the other hand centralisation, I wish to warn this House that would only lead to Sovietisation and totalitarianism and not democracy. Therefore, Sir, I am not in favour of the so-called slogan of a strong Centre. The Centre is bound to be strong, is bound to grow more and more strong also on the lines of modern industrial development and economic conditions. Therefore, it is superfluous, indeed dangerous to proceed with this initial effort to make the Centre specially strong. In the Objectives Resolution that we passed in the beginning we wanted provinces to have the residual powers, but within a short period of two years public opinion rather has been interpreted by those drafters to have swung to the other extreme, to complete centralisation at the Centre and strengthening the Centre over-much.

I am certainly not in favour of having so many subjects as concurrent subjects. As Mr. Santhanam has rightly put it the other day, what you consider to be a concurrent subject today is likely to become an entirely federal subject in another five or ten years. Therefore, although I am quite ready to leave the residual powers to the Central Government, I certainly do not want the provinces to be weakened as this Draft Constitution seeks to do.

Sir, one of the most important consequences of over-centralisation and the strengthening of the Central Government would be handing over power not to the Central Government, but to the Central Secretariat. From the chaprassi or the duffadar at the Central secretariat to the Secretary there, each one of them will consider himself to be a much more important person than the Premier of a province and the Prime Ministers of the provinces would be obliged to go about from office to office at the Centre in order to get any sort of attention at all from the Centre. We know in parliamentary life how difficult it is for ministers to have complete control over all that is being done by these various Secretaries at the Secretariat. Under these circumstances, it is highly dangerous indeed to enslave these Provincial Governments and place them at the mercy of the Central Secretariat and the Central bureaucracy.

Sir, I am certainly in favour of redistribution of our provinces, but in view of the fact that the President of the Constituent Assembly has appointed a Linguistic Commission to enquire into the possibility of establishing these provinces, I do think that any detailed discussion in this House is not in order, when the particular matter, before they make their report, is *sub-judice;* whether it is the top-most leaders of our country, the Prime Minister or the Deputy Prime Minister or any humble Member of this House - it is certainly *sub-judice* for any one today to express any opinion for or against the redistribution of provinces on a linguistic basis until this Commission expresses its own opinion. Therefore, I do not wish to say anything more, although I have certainly very much to say in favour of these linguistic provinces.

What are to be our ideals? We have stated some of our ideals here in the Fundamental Rights chapter as well as in the directives. But is it not necessary that we should make it perfectly clear in one of these directives that it is the duty of the State to establish village panchayats in every village or for every group of villages in order to help our villagers to gain training in self-government and also to attain village autonomy in social, economic and political matters, so that they will become the foundation stone for the top structure of our Constitution?

Next, Sir, I do not want this distinction to be made between the provinces and the so-called Indian States. Why should it be that the Indian provinces should be degraded into a kind of District Board status while these India. States would be given so much special power and favours? Why should these Indian States be allowed to have their own separate Constituent Assemblies and formulate their own separate constitutions? Either we should have very powerful states including the Indian States and the provinces or we should have weak provinces and weak States just as is being proposed in this Constitution. I am certainly not in favour of weak provinces or weak States; I am in favour of strong States and therefore, I suggest that my honourable friends from the Indian States also should pool their resources with us and then agree that all the provinces as well as the Indian States should be placed on the same footing and they should be made as strong as possible.

Sir, in these objectives, nothing has been said about all those people who are living in our villages. There is something here said about the industrial workers. The industrial workers, unfortunate as they are, seem to be much less unfortunate than the rural people. It is high time, Sir, that we pay some attention to this aspect also in our villages. Certainly the Bombay Resolution of the Indian National Congress of August 1942 lays special stress upon the toilers in the fields, in factories and elsewhere. But no such mention is made here; special mention is made only of industrial workers. I suggest. therefore, that whatever we want to do must be for the benefit of all those people in the villages, in the towns, in the fields, in the factories and elsewhere.

Sir, in regard to the minorities, I am certainly not in favour of the reservations so far as the great Muslim community is concerned; they certainly cannot claim any longer to be such a helpless community as to be in need of these. One of those friends have come forward to say that they do not want to have these reservations.

I am not in favour of second Chambers, in the provinces especially. These second Chambers will only retard progress. Some people seem to think that some check like this should be put in there; it will only give a special premium to conservatism and therefore we should not have it.

Then there were some friends who said that this Constitution should be turned into a sort of rigid pole. I am not in favour of rigid poles; I am in favour of a flexible Constitution. If it had been found necessary within the last two years to swing from one side to the other, leaving the residuary powers to the provinces or keeping them with the Centre, then how much more it would be necessary in the next ten years for us to try to make the necessary constitutional changes in our own Constitution in the light of the experience that we would be gaining. So far we have not gained any experience. Our Constitutional Adviser has gone all over the world, he has consulted other statement and he has come back and suggested so many amendments. We do not know how many times we are going to amend our own constitution within the next ten years after this constitution is accepted and our new legislatures come into existence. Therefore, I welcome the suggestion made by the Honourable Prime Minister yesterday that we should try to make our constitution as flexible as possible and also to make it easier within the first ten years at least to make the necessary constitutional amendments to our own constitution.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, objections of fundamental importance have been raised to the Draft Constitution as it has emerged from the Drafting Committee. I agree that there is nothing characteristic in this Constitution reflecting our ancient culture or our traditions. It is true that it is a patch work of some of the old constitutions of the west, - not even some of the modern constitutions of the west, - with a replica of the Government of India Act, 1935. It is true that they have been brought together and put into a whole. Dr. Ambedkar is not responsible for this; we alone have been responsible for this character of the Constitution. We have not thought that we must imprint upon this a new characteristic which will bring back to our memories our ancient culture. It is more our fault than the fault of Dr. Ambedkar.

It is no doubt true that Dr. Ambedkar gave an analysis of the several provisions of the Constitution, and unfortunately emphasised certain aspects of it, and gave his own views upon village republics, village autonomy and democracy. He could have spared us and spared the Assembly a controversy over these issues. Sir, left to myself, I would like very much that this Constitution must be based upon autonomous village republics. Democracy is not worth anything if once in a blue moon individuals are brought together for one common purpose, merely electing X, Y and Z to this

Assembly or that Assembly and thereafter disperse. That is the present state of India today. People in the villages have had absolutely no opportunity to train themselves for democracy. They have not shared responsibility with anybody; they are absolutely irresponsible. That was the view that was taken and that was the purpose of the British who ruled us for 150 years. They destroyed the elements of our freedom, of our decentralised economy and the village republics that we had. They wanted to centralise the Government and concentrated all power in the Governor General and ultimately in the British Parliament. It was in that view that they took steps to see that the villages did not govern themselves. We must see that the village is the unit for the social fabric that we are going to build. In the village itself, I would like that the family should be the unit, though for all-India purpose, the individual must be taken as the unit for voting. The village must be reconstructed on these lines; otherwise, it will be a conglomeration of individuals, without any common purpose, occasionally meeting and dispersing, without an opportunity to come together and rehabilitate themselves both economically and politically.

But, as we are situated today, is it at all possible immediately to base our Constitution on village republics? I agree this ought to be our objective. But where are these republics? They have to be brought into existence. As it is, we cannot have a better Constitution than the one that has been placed before us on the model of some Western Constitutions. Therefore, I would advise that in the directives, a clause must be added, which would insist upon the various Governments that may come into existence in future to establish village panchayats, give them political autonomy and also economic independence in their own way to manage their own affairs. Later on, a time will come when on the basis of these republics or autonomous panchayats a future Constitution may be built. I agree with our Leader, the Prime Minister, who spoke yesterday that this Constitution may be kept in a transitional form for a period of five years, so that in the light of whatever experience we may gather in this period, a future Assembly which may be elected on the basis of adult suffrage may re-draft our Constitution or amend or alter it. With that safeguard, I would urge upon this Assembly to accept the Constitution as it has been placed before us by the Drafting Committee and finalise it.

There is another criticism that has been levelled, - and according to me, it is a more serious one, - against this Constitution. To the man in the street, political democracy is worth nothing unless it is followed by economic democracy. In the Fundamental Rights, the right to speak, the right to address Assemblies, the right to write as one likes, all these have been guaranteed; but the right to live has not been guaranteed. Food and clothing are essentials of human existence. Where is a single word in the Constitution that a man shall be fed and clothed by the State? The State must provide the means of livelihood for every one. Russia has addressed itself to this problem and has concerned itself with the growing of food and the feeding of every citizen of the country by nationalising the means of production. In England, the Government cannot be in the saddle even for a single day if it allows even a single citizen to die of starvation. We have not yet taken any lesson from the 35 lakhs of people who died three or four years ago during the Bengal famine. Are we to perpetuate this tragedy? Is there a single word in the Constitution that imposes on the future Governments the obligation to see that nobody in India dies of starvation? What is the good of saying that every man shall have education, every man shall have political rights, and so on and so forth, unless he has the wherewithal to live? In England, either the Government must provide every citizen with employment or give him doles so that nobody will die of starvation. It is very disappointing to see that we have not introduced a similar provision in this Constitution. I would urge upon this

Assembly that even now it is not too late, and that that must be our first concern; the other things may stand over if necessary.

There is another important matter to be considered and provided for. Otherwise India may be engulfed in a war or internal unrest. Now war clouds are thickening. There are two ideologies fighting for power, fighting for the supremacy of the world. On one side, there is the political democracy of the West; but there is the economic dictatorship of America. We do not want economic dictatorship at all; but we do want democracy. In Russia, there is no political democracy; but there is economic democracy. The two powers are striving for the mastery of the world; on account of this a war may come at any time. Is there anything here in this Constitution to say that we stand for economic democracy along with political democracy? There is a vague reference in the Objectives Resolution that there shall be social justice and economic justice. Economic justice may mean anything or may not mean anything. I would urge, here and now, that steps should be taken to make it impossible for any future Government to give away the means of production to private agencies. We have seen what private agencies mean. So far as cloth is concerned, within a short time of the removal of controls, prices went up. Why should we not take charge of all the mills and produce the necessary cloth? Even in the matter of food, in spite of all the exertions of this Government as well as the previous Government, are we able to grow sufficient quantity of food and distribute it in the country? I would therefore say, the time has come in this country when we must make a departure. We should not follow the economic dictatorship of the West or the political dictatorship of Russia. In between, we must have both political democracy as well as economic democracy. If we have to stand out as the protectors of Asia, or chalk out a new line and avoid all wars in the future, this alone can save us. Let us not be complacent. Communism is spreading. In the north there is communism; it has come to our very shores. China has been practically swallowed up by the communists. And likewise Indo-china. Burma is also in the grip of the communists. I do not know to whom I could attribute the sabotage of telephonic communications in Calcutta. I understand that there is a movement there to destroy the water works and destroy the power house also. There is arum our afloat that in Delhi itself, there is going to be a strike in the Water-works Department as also in the Electricity department. Unless we make up our minds to have economic democracy in this country and provide for it in the Constitution, we may not be able to prevent the on-rush of communism in our land.

The next important matter for which provision should be made is the effective consolidation of our country as early as possible. I was really surprised to hear the words of my friend Mr. Hanumanthaiya yesterday. The people in the States were anxious to fall in line with the rest of India. They wanted to get rid of the Rulers; we helped them; when once they regained freedom, they want to supersede these Rulers and become the rulers in their own States. Big States and small want to be separated from the rest of India. Why should not they adopt this Constitution which is framed for the provinces also?

Shri K. Hanumanthaiya (My sore): On a point of personal explanation, Sir, I never claimed any separate status or independence for any of the States.

Shri M. Ananthasayanam Ayyangar: There is a view that so far as the States are convened, if they merge in India they will lose the peculiar privilege of having Prime Ministers in their small places. That is a disadvantage they have, I agree, but it is better to fall in line with the rest of India. Why should they not adopt the position in the rest of India and why should they reserve all the subjects for themselves and give only three or four subjects?

(At this stage Mr. Vice-President rang the bell.)

In the case of a Bill there is no question of time. Strangely enough you have imposed a time restriction.

Mr. Vice-President: You must set an example to others.

Shri M. Ananthasayanam Ayyangar: I will accept what you say; there will be ample opportunities and I shall clear up this matter later.

Shri Rohini Kumar Chaudhari: (Assam: General): Sir, I am deeply grateful to you for having given me this opportunity of participating in this debate of momentous importance but before I proceed, I should like to pay my share of tribute to the Members of the Drafting Committee, its worthy President and above all, our Constitutional Adviser whose services to our poor Province, Assam, in the heyday of his youth are still remembered with affection and gratitude.

Nevertheless, I must say that this Draft does not claim perfection and there are faults of omission and commission to which I must refer in the course of my speech. The fir stand foremost question which strikes me that this House should consider is whether they want to retain the State of Assam in the first schedule of this Constitution Act. The position has become somewhat difficult now, and you must once for all decide and provide in this Constitution measures which would enable Assam to be retained in India. I refer to the lamentable neglect to make any provision for finances so far as my province is concerned. It has been stated in the report that for five years the status quo must continue, which means that Assam at the end of five years will cease to exist as any province of importance. Sir, I must just go into a little detail. At the present moment there is a deficit of one crore rupees in that province and the total revenue of the province including what is obtained from the Government of India is to the tune of four crores only and already the expenditure has gone up to five crores. If you have to maintain the minimum standard of administration of an Indian province, at least an expenditure of eight crores is necessary. From where is this amount to come? We have said and urged even in the olden days that we must get a share of the petrol and kerosene excise duty, and a share of the export duty on tea; but nothing has been so far done even though the conditions are so desperate. The Drafting Committee does not make any exception in the case of the special condition of that province. Sir, we have gone to the maximum capacity of taxation. Our rate of taxation is far more excessive than any other province and we tax ourselves at the rate of 4.3 whereas the rest of the provinces tax themselves at the rate of 4.9. We had started levying tax on agricultural income long before the rest of the provinces and we had taxed ourselves for amusement and luxuries long before others and even now our conditions are so desperate as this, and I would appeal to this House that if you really want to retain Assam in India, you must make some special financial provision for her and you must pay some special attention, otherwise that province will become bankrupt. India is one body politic and if one finger of that India is rotten, the whole India will rot in the long run. If you allow Assam to be ruined now, you will see that you will have to suffer ultimately for that.

I would like to refer to another point, and that is with regard to Article 149.

Curiously enough, I find an amendment has been suggested which if given effect to will lay down a very dangerous principle, the principle of converting a general population into an absolute minority. I refer to the amendment which had been suggested by the Drafting Committee and which says:

> "That in clause (3) of article 149, after the words' save in the case of the autonomous districts of Assam' the words 'and in case of constituencies having seats reserved for the purposes of article 294 of this Constituted' be substituted."

If this is given effect to, it will mean that all communities with reserved seats will have constituency of less than 1 lakh population whereas the general population must be restricted to constituencies having only 1 lakh population. This will mean additional weight age being given to reserved seats which is not claimed or asked for by any of the communities. The proportion of the population in the province is as follows:

Hill tribes	... 18 per cent.
Muslim	... 17 per cent.
Scheduled castes	... 4 per cent.
General	...34 per cent.

Where have you seen in a province where the general population is 34 per cent out of a total of 74 per cent that special weight ages have to be given to communities ranging between 18 and 17 per cent of the total population? And yet if this is accepted it will mean that the general population will have to give up some of their seats and will get less than what they are entitled to on the basis of population. This is a dangerous principle, and though it refers only to one province it will create a situation in which the general population will be converted into a minority and weight age given to other people for whom seats have been reserved. Of course the proposition which I make will not affect the tribal population at all because they will have their autonomous districts. I certainly see that there are complications in the case of reserved seats if you adopt the formula of one lakh representation; but the best thing to be done in this matter would be to make an exception in the case of Assam in regard to having a constituency for a lakh of people.

I will refer to one other act of omission. In the Draft Constitution there is no mention of women. I think the peculiar composition of the Drafting Committee which consisted of people who have no domestic relations with women made them nervous about touching on that point. In this House there has been no mention of a special constituency for women. I know there are Members here who have unbounded faith in the chivalry of men and who consider that they will be quite competent to get seats even though no special constituency is reserved for them. But outside this House that is not the feeling. Women generally have lost faith in the chivalry of men. The young men of to-day do not show respect to them even in the trams and buses.

Mr. Vice-President: The Honourable Member has reached his time limit.

Shri M. Ananthasayanam Ayyangar: Sir, on a point of order, I do not find in the rules any provision for a time-limit in respect of Bills of this kind.

Mr. Vice-President: That was done with the consent of the House. First it was 10 minutes, then it was extended to15 minutes, and then to 20, and again it was brought down to10 minutes.

Shri Rohini Kumar Chaudhari: Sir, from my experience as a parliamentarian and a man of the world I think it would be wise to provide for a women's constituency. When a woman asks for something, as we know, it is easy to get it and give it to her; but when she does not ask for anything in particular it becomes very difficult to find out what she wants. If you give them a special constituency they can have their scramble and fight there among themselves without coming into the general constituency. Otherwise we may at times feel weak and yield in their favour and give them seats which they are not entitled to.

Shrimati Renuka Ray (West Bengal: General): Sir, the main features of the Draft Constitution embody the principles of a democratic federation and as such should win the approbation of all. At the same time there are certain matters which I feel are not quite explicit or in which changes are required, if this constitution is to conform to those ideals which actuated India during its many years of struggle and which are embodied in the Objectives Resolution to which our Prime Minister referred yesterday. Sir, I agree with my Honourable friend Dr. Ambedkar that it is the spirit in which we are able to work it, that will make all the difference, Again, whatever constitution we may draw up to-day, it will not be possible for us to foretell how it will fit in with our requirements in its actual working and with the inherent genius of our race. It is therefore quite essential, as the Prime Minister said yesterday, that the Constitution at present should be flexible. I think amendments of the Constitution should be by simple majority for the next ten years so that there may be opportunities for adoptions and modifications in the light of experience.

Turning to the citizenship clause, I think there should be a categorical statement in it about a single uniform citizenship with equal rights and privileges. As rights involve responsibilities, so it is necessary that the obligations of citizenship should also be enumerated in this Clause.

With regard to Fundamental Rights, equal rights have been prescribed. Quite rightly, it has been laid down that the State shall not discriminate against any citizen on grounds of religion, race or sex. But in view of conditions in this country and in view of some of the opinions expressed by the public - and the last speaker's chivalry touched us deeply - I think it is necessary to have an explicit provision that social laws of marriage and inheritance of the different communities shall not also have any disabilities attached to them on grounds of caste or sex. It is of course true that the right of equality includes this but there may be different interpretations and much confusion and I therefore appeal to the House to have a proviso to explain this.

I will not repeat what my Honourable friend Shri Ananthasayanam Ayyangar said but I do feel that in regard to the economic rights of the common man there is a lacuna. Although I agree that the provision "that no person shall be deprived of his property save by the authority of the law" is alright, I do not at the same time see why under justiciable rights one should have the second part of this clause which goes into details about compensations when property is taken by the State for public purposes in accordance with law. Surely if there is any need for putting this into the Constitution it should be under directives and not under rights which are justiciable and enforceable in courts of law. It is not right that we should commit the future to the economic structure of the present. Turning to education, which I consider to be one of the most fundamental of rights, I feel there is a great inadequacy. I do not want to repeat what other speakers have said, but I would appeal to the House to include a proviso whereby a definite proportion of the budget is allotted for this purpose. This is nothing very new; it is already therein the Constitution of China which says:

"Educational appropriations shall set apart not less than 15 per cent of the total amount of the budget of the Central Government and not less than 30 per cent of the total amount of the provincial, district and municipal budgets respectively." If we are to progress and prosper I suggest that in the matter of the two nation-building services of education and public health there should be some provision in the Constitution of the type that is there in the Chinese Constitution.

With regard to the reservation of seats for minorities we have not of course in a secular State provided for separate electorates, but I do not see why we should have reservation of seats for minorities. It is psychologically wrong to lay down, as it has been laid down, that after ten years the right shall lapse unless extended by amendment. I am sure that if this privilege is conceded now there will be a clam our for its extension. It is not fair to these minorities; it is not self-respecting for them. If the House wants to ensure representation for minorities I would suggest multiple constituencies which cumulative voting. Some speakers have suggested proportional representation by single transferable vote. I think that is a difficult procedure particularly for India and I would not recommend it. But I think that multiple constituencies with cumulative voting has a great deal to recommend it. In the first place, it will give much better representation not only to these minorities without creating a separatist tendency. The last speaker Sri Rohini Chaudhari the erstwhile champion and defender of women who is against removing their social disabilities spoke about special electorates for women. All along the women of India have been against reservation of seats or special electorates. Before the 1935 Act came in we were against it and put forward our views in no uncertain terms, but it was forced upon us; and today, in spite of the chivalry of the previous speaker, Indian women will not tolerate any such reservations in the Constitution. I will not repeat what others have said about village panchayats. I feel that freed from the shackles of ignorance and superstition, the panchayat of the Gandhian village will certainly be the backbone of the structure of this country's Constitution. I do not think there is anything in the Constitution that can bar it.

Coming to the allocation of powers between the units and the Centre, I think we must approach this subject dispassionately. There is a great deal to be said for giving as much provincial autonomy as possible. At the same time, where a country has a tremendous leeway to make up, particularly in the nation-building services, the unifying force must be strong and the Centre should be given some power of a supervisory and coordinating character, in regard to both Education and Health. I do not think the provinces should be crippled by taking away from them certain financial securities. They should at least be given 60 percent of the income-tax according to the recommendations of the expert committee, 35 per cent on the basis of collection, 20 per cent on the basis of population and 5 percent for hard cases. This is a very good recommendation and I hope this House will agree to embody it in the Constitution. I also feel that a Financial Commission should be set up immediately and not after five years.

Before I conclude, I wish to say something about linguistic provinces. Unity must be our watchword to-day and it is a fatal mistake to allow realignment of provincial boundaries on a linguistic basis at this juncture of our country's history. It has already led to much bitterness and strife and will lead to more. There is no justice or logic if such a thing is allowed in one part of the country and not in others. For instance if you allow a province of Maharashtra to be formed, naturally there will be other parts which will want it. There is in Bengal a feeling of great bitterness that she who has sacrificed part of her territories so that the transfer of power could take place should be denied her rights, now. It was because of the political expediency of the British and to suit the purposes of an alien Government that Bengal was forcibly deprived of much of its territory when the movement for the freedom of India started here. I do not subscribe to the theory that we should have a reallocation on a linguistic basis at this time. If it is to be done at all it should be done after ten years when passions have subsided. In any case, for administrative purposes there is no need for a linguistic realignment. Linguistic minorities in every province should have a guarantee that they will be given education in their mother tongue. I would urge that the Linguistic Boundary Commission should stop work or in any case it should be put off for ten years. I repeat that the overriding consideration is that of unity, if we want that India should be strong and prosperous and should take its rightful place in the comity of nations.

The Honourable Shri Ghanshyam Singh Gupta (C. P. and Berar: General): Sir, it has been said that the language of the Union should be simple Hindustani, that the language of the Constitution, the language on which we shall frame our laws, should be Hindustani. I was in search of this simple Hindustani. I could not find it in C. P. I could not find it in the law books. I could not find it even in the official proceedings of this August House. The official proceedings of this House are published in three languages: English Hindi and Urdu. I read English, I read Hindi and I got read Urdu with the idea that I might be able to find what they call simple Hindustani. I could not find it. Urdu was Urdu and Hindi was Hindi. There was no such thing as simple Hindustani. I thought that I might find it in the newspapers. 'The Tej', Limited, the Jubilee of which was celebrated the other day, publishes news in two languages, one in Hindi called 'the Vijay' and the other in Urdu, called 'the Tej'. I compared the languages of these two also. I could not find simple Hindustani. I would not waste the time of the Honourable House by reading from these publications. I have got a copy of' Vijay' in my hand. It is all Hindi in 'Vijay' and all Urdu in 'Tej'. I found two books, elementary text in Delhi may have simple Hindustani. I found two books, elementary text-books in Geometry (rekhaganit). I could not find simple Hindustani in them also. I also looked at the Elementary Arithmetic books and also Elementary Geography. I could not find there what they call simple Hindustani. They were all either Urdu or Hindi. I shall give you a few illustrations. Now, Sir, in elementary arithmetic multiplication we call (gunan) in Hindi. It is called (zarab) in Urdu. Multiplicand is (gunya) in Hindi, while it is (mazarab) in Urdu. Multiplier is (gunak) in Hindi and it is (mazarbafi) in Urdu. Product is (gunanfal) in Hindi, while it is (hasil-i-zarab) in Urdu. Divisor is (bhajak) in Hindi. It is (maksum-i-lah) in Urdu. Dividend is (bhajya) in Hindi. It is (maksum) in Urdu. Quotient is (bhajanphal). It is (kharf-i-kismat) in Urdu. L. C. M. (laghuttam samapvartya) in Hindi. It is (zuazaf-i-aqual) in Urdu.

I can multiply illustrations. I now take up elementary geometry. Radius is (trijya) in Hindi. It is (nisfakutur) in Urdu. Isosceles triangle is (samadvibahu tribhuj) in Hindi.It is (musallas-musvai-ul-sakin) in Urdu. Equilateral triangle is (samatribahu tribhuj) in Hindi. It is (musallas-musavi-ul-zila) in Urdu Right-angled Isosceles triangle is (samakon samadvibahu tribhuj) in Hindi. while it is (musallas musavius-saquan quamuzzavia) in Urdu.

I can quote hundreds of such illustrations. I could not find simple Hindustani even in these elementary text-books. I felt somewhat puzzled when ladies and gentleman loudly proclaim that they can have simple Hindustani for our laws. It is only in the bazaar that I could find simple Hindustani. When we cannot have simple Hindustani even in the elementary school-books, how can our laws be made in it? I have done, Sir.

Shri Mahavir Tyagi (United Provinces: General): I thank you very much, Sir, I have been waiting for the last three days to speak on this Draft Constitution. I am glad you have permitted me to speak for a few minutes.

I must start by thanking and congratulating the Drafting Committee for the high level of legal language and phraseology which they have used in the Draft from beginning to end. I do not want to criticise the Drafting Committee. They have done their work very efficiently. They have collected together bits of the principles of Constitution that we lay before them in irregular instalments, and have given us a complete picture for our review.

Sir, when we sat for the first time to draw a picture of the Constitution of India, we had a blank canvas a face and many of us did not actually know which side to start from and what colour to fill. It is all due to the ability of these talented lawyers that we have now got a complete picture to look at. When you wish to judge an artist's work, you should take the opinion of a layman. If it appeals to the layman, it must be good. That is my criterion. The lawyers have finished their work and the complete picture is before us. I, as a layman, want to put before you my ideas about it. The circumstances have changed from what they were when this work was entrusted to the Drafting Committee. It is very unfortunate that, in the history of India, the lamp which lit our hearts with pleasures of freedom was put out suddenly and we were steeped in sorrow. Then again, populations have changed and the whole face of the country has changed. The ideology also has changed to a great extent. Now to give that old picture on the canvas will be making the picture a back number. We must keep in mind today the present environments, the present conditions and the growing ideologies. So, Sir, we must examine the picture in the light which gave us freedom. In fact, we must examine it from the point of view of Gandhiji, through his eyes. His eyes are not with us, but still there are persons in this House who have the glimpse of his eyes. We can all recollect what Gandhiji thought about Swaraj. It must not be forgotten that this Constituent Assembly is the fruit of the labour of those who worked day and night for about thirty years in their attempt to win freedom. It is their achievement. It is they who should have given us the Constitution. They alone are competent to draw up the Constitution. The Constitution should have been the work of revolutionaries alone. But since this Assembly has been constituted by the British, we cannot think of the other possibilities and it could not be purely a Gandhi an Constitution altogether. I admit this. But again, we are in the majority and we should see to it that the Gandhian outlook does not vanish from the country so soon after his death.

In this Constitution, I must confess, I am very much disappointed. I see nothing Gandhian in this Constitution. It is not the fault of the Drafting Committee. It is our own fault. When we decided upon the principles of this Constitution we gave them certain basic principles to work upon. But conditions have since changed. When we decided about the representation of communities, language and other controversial matters we had to reckon with the reaction our decisions would have in Pakistan. Now the situation has totally changed. Pakistan has been freed of its minority problems altogether; there those problems have vanished. Here also the thorny and the horny ones have migrated away from India; those who fought us under one pretence or the other have forsaken their mother-country and have gone over to the other side, and have adopted a step-mother. We have with us now only those Muslims, Sikhs and others who want a united India. India is united today and therefore the Constitution must be suitable to the present set-up of things.

So, Sir, from the Gandhian point of view when I look at this picture, I find one thing very prominently lacking. Gandhiji had always been keen on total prohibition in the country, but the Constitution does not say a word about it. Our promises to the electorate on this issue have been fulfilled only in Madras and in some other provinces. Gandhiji was anxious that in India as a whole there should be complete prohibition. I would suggest that this idea of Gandhiji should be taken in before we sign this Constitution.

Then, Sir, Gandhiji was very keen on cottage industries to be organised on the basis of self sufficiency. This item had a top priority in his 'constructive programme'. Here this is also lacking. I am an orthodox Gandhite and surely I am not a socialist and so I do not want to wipe away all the big industries. In the context of things today, the various industries in the country are very helpful, but if and when they are to be abolished, they should be abolished *en masse*. You cannot bring in socialism by stages, by socialising one industry after another. When socialism comes, it should cover everything, all at a time. If total socialism comes all of a sudden, there will be no loss to anybody, because the loss sustained by anybody on one count will be made upon the other count, because all property becomes absolutely a socialised property. To say in the Draft Constitution that people shall not be deprived of their property without adequate compensation means that India will ever belong to the vested interests. Today there is not even a blade of grass which does not belong to somebody or the other. There is not even one particle of sand which does not belong to somebody or the other. According to this Constitution, if the future generations want to socialise all property and all means of production, then every particle of sand and every blade of grass will have to be compensated for. I want to know, wherewith will they compensate this total wealth: it would all be in the hands of individuals who will demand compensation. So, compensation will be impossible. Gandhiji had said that the wealthy should consider themselves only as custodians of wealth. He never went to the extent to which we are going in this Draft Constitution. I therefore tell you, Sir, that before we sign this Constitution, we should see that we do not sow seeds of a bloody revolution in India. Only if revolution is meant to be avoided we should let the door remain open for coming generations, if they ever so desire, to socialise all vested interests and all means of production in the country. If we shut the door as we have done against future socialisation, by our Article24(2), I submit, the youth of India will rise and knock at the door and smash it and the result would be a bloody revolution. (*cheers*). Therefore, Sir, I would plead that we should scrap this sub-clause altogether and make it possible in future for the Parliament to socialise all property and all means of production without being compensated for. It is also a sort of mistake, Sir, to say that we are a sovereign body. I do not think we are a sovereign body in the sense in which a Constituent Assembly should be. The sovereignty that we enjoy is the sovereignty that the British enjoyed in India: It is a transferred sovereignty. Real sovereignty will belong only to the Parliament which comes after the introduction of adult franchise. That Parliament must therefore be more morally and constitutionally competent than us to decide issues of this nature.

I then come to the question of minorities. I am sorry that Dr. Ambedkar made the statement that minorities are an explosive force which if it erupts can blow up the whole fabric of the State. I say that these minorities can do nothing of the sort. The reason is simple--they are not factual, they are a mere fiction having no existence. I throw them a challenge. They have no right to be separately represented here. Whom will they represent? The fiction of minorities was a British creation. The Scheduled Castes are not a minority at all, simply because a few castes of the poorer classes have been enumerated together in a schedule, they have become a "scheduled minority". This minority is a mere paper minority. It is being perpetuated now because some of the opportunist families among them want to reserve their seats in the legislatures. Those people who took pleasure in calling themselves a minority have migrated away from here. It is only those who believe in one State that remain. Therefore, Sir, there is no minority now and there should not be any provision for minority representation here, because this has proved ruinous to the so called minorities themselves. Take the Muslims. I had seen in Dehra Dun personally, and I know what their reactions are. They are an absolutely demoralised people today. Even the ordinary rights of citizenship they are not morally free to enjoy. They are so cowardly today that they cannot stand erect in India because of the wrong lead they had followed in the past. Therefore, Sir, I would ask the Scheduled Castes, the Sikhs, the Muslims and the other minorities and for the matter of that even Hindus not to ask for any kind of reservations for them. We are a secular State. We cannot give any recognition or weight age to any religious group of individuals. I could understand their claims as majority or minority if they, had belonged to different races. Beliefs or creeds are a purely individual affair. I also refute Dr. Ambedkar's claim that the majority in India is "basically a communal majority". The majority party is Congress, which is purely political.

Then, Sir, a word about the villages. Dr. Ambedkar said that he was happy that the "Drafting Committee has not accommodated the village". He characterised it as "a sink of localism and a den of communalism". It is these sinks of slavery that were facing all sorts of repression in the freedom struggle. When these sinks of slavery that were being charred, burnt and tortured in Chimoor, the pyramids of freedom were applying grease on the back of the Britis hers. Unless I raise my voice against the remarks which Dr. Ambedkar has made against villages, I cannot face my village people. Dr. Ambedkar does not know what amount of sacrifice the villagers have undergone in the struggle for freedom. I submit, Sir, that villagers should be given their due share in the governance of the country. If they are not given their due share, I submit that they are bound to react to this. I thank you, Sir.

B. Pocker Sahib Bahadur (Madras: Muslim): Sir, I am very thankful to you for giving me this opportunity to speak a few words on this motion. In the first place, I would just like to refer to the question of language. When I first entered this august body, I felt myself to be under a very great disability that I was not able to follow the proceedings that were going on. Then I found that a very considerable section of this House was in the same unfortunate position as myself and the idea struck me that the Constituent Assembly, which is going to determine the destinies of millions of this country for ever, is conducting the proceedings in a manner which does not bring credit either to this Assembly or to the nation. We have been going on speaking about very important and vital subjects without every one of us understanding each other. That is really a very unfortunate position. I raised my cry against it, but I must say that I did not succeed. Even now the disability continues, even though to a lesser extent and I am glad that, at any rate, there was some abatement in the matter of the extent to which that disability is suffered by us.

Now, Sir, in the Draft Constitution, provision is made that the official language shall be Hindi and English. I submit, Sir, that this also will create an anomaly. No doubt provision is made that arrangements may be made for giving the substance of all the speeches of one language in the other language, but to what extent and what is the method to be employed for that, it is yet to be provided for. I submit, Sir, that it is very necessary that for some reasonable period, it may be ten years, it may be fifteen years, --that is a matter of detail--there should be a provision that the official language should continue to be English. We have no reason to hate the English language. As a matter of fact we ought to be grateful to the culture that we have imbibed from that language. In fact for a great deal of our agitation for freedom and the freedom that we have obtained large contribution has been made by the English language and by the culture which we imbibed from that language. Therefore, I do not think that there is anything which we should hate in that language; and particularly, when we have attained our freedom, we are entitled to adopt the best from any nation from any part of the earth. I shall also say that there is no proprietorship in language. The English language cannot be claimed by the Englishman as their own with any exclusive right for themselves nor can we claim Hindi as the exclusive language for ourselves. There are several languages in the world and therefore we are entitled to use every language. So we are entitled to use the English language and we must adopt it until we are in a position to have one national language known to the generality of the public of this country. Until that position is attained, we must continue English as the official language so that every one who assembles in the Parliament may understand each other. Of course, there maybe some stray cases in which the representatives may not be acquainted with English, but a very large majority of them will be acquainted with English and therefore, I submit, Sir, that the English language must continue to be the official language at least for fifteen years, by which time the nation may be prepared to have a national language for themselves.

Now, Sir, coming to the question as to what that national language should be, that is a matter to be decided by this august body. I must say at the very outset that I am not acquainted either with Hindi language or with Urdu language or with Hindustani. Therefore, I am taking a dispassionate view of the matter. It is very difficult to say that it is possible for the people of this country to learn Hindi overnight. No doubt we must have a national language, but we must prepare the nation for it by making provision for their learning that language. Now if Hindi is to be made compulsorily the official language, the question will arise in the elections by adult franchise that knowledge of Hindi should be the primary qualification of a candidate for election. I think it will be detrimental to the interests of the country, if that happens, and the knowledge of Hindi becomes the criterion in electing their representatives.

I do not want to dwell more on the subject as the time at my disposal is very short. I would only submit this. My suggestion is that this august body should decide in favour of Hindustani for no other reason than the fact that it is the solemn testament of Mahatma Gandhi, the father of the nation. He was one who was well acquainted with this controversy about these languages and he knew what the nation was and it is after mature consideration that great man has suggested that Hindustani with the Devnagari script and the Perisan script should be the official language and I hope that this august body will really revere the memory of that great man by deciding on Hindustani with Devanagari and Urdu script as the official language.

Now, Sir, if we do not abide by his advice, the world might say that after all the devotion and reverence we show to Mahatmaji is a lip-reverence and a lip-respect and it is not deeper than that. Let us not give occasion to the world to say that our reverence for Gandhiji is only lip-respect. Let us not allow ourselves to be accused of the grave charge that soon after the death of Mahatmaji his views and wishes were buried nine fathoms deep. At least for the sake of his memory, I appeal to you, Sir, and to all the Members of this body to vote upon Hindustani as the official language.

Now, Sir, I would just like to deal with another question, and that question is about the freedom of person. Recently we have heard so much about the power of promulgating ordinances that is being exercised by the various Governments. Particularly I am fully aware of the circumstances under which the Ordinance rule was enforced in the Madras Presidency. The legislature was in session. All on a sudden, it is prorogued one evening and the next morning there comes this bomb of an Ordinance, even taking away the powers of the High Court to issue writ of *Habeas Corpus* under section 491 of the Criminal Procedure Code. I refer to this fact in order to show that if the power of making an Ordinance is preserved, there is every likelihood of the power being abused and the liberty of the subject being dealt with in a very reckless way. In pursuance of these Ordinances, hundreds and thousands of innocent people were arrested adept in custody as if they were chattel, without their even being told what the charge against them was and why they were detained even as required by the very Public Safety Act. In this connection, I would only request this House to see that the powers of the High Court are not in any way taken away with reference to saving the liberty of the subject. Neither the legislature nor the Government should be allowed to pass any law or Ordinance which takes away the power of the High Court to protect the liberty of the subject. That is a very fundamental point. We were crying hoarse when the Britishers were ruling that they were keeping in custody persons without bringing them to trial. I say this is a sacred right and it must be provided in the Fundamental Rights that no man, to whatever religion, or to whatever political creed he may belong, shall be arrested or detained except after trial by a court of law. This is a sacred right of which a citizen should not be deprived. It is said emergencies may arise; even when emergencies arise, there must be power in the High Court to see that the man is brought to trial and he must be kept in detention only after proper trial. No power should be given either to make any laws or to make any Ordinance to enable the Legislature or the Government to deprive the citizens of their personal liberty without his being brought to trial before a court of law. I would therefore request this Assembly to see that provision is made in the Fundamental Rights that the liberty of every subject is protected and no man should be incarcerated without being brought to trial before a court of law.

One word more, Sir, and that is about the salary of the High Court Judges. This morning when the memorandum submitted by the Chief Justice of the Federal Court and of the Chief Justices of the various High Courts was circulated to us, I realised on going through that memorandum that they have made out a very good case for maintaining the present salaries. The salaries were fixed about 70 years ago. After that, everything has gone only in favour of retaining it and all circumstances are against reducing the salaries. The purchasing power of the Rupee has gone down; income-tax has been increased; modern life has become more costly. In order to maintain their dignity and to keep the Judges beyond temptation, it is very necessary that the present salary of the High Court Judges should be maintained, without being reduced.

Just one minute more, Sir. I shall just mention the point. I have maintained that the only way of protecting the rights of the minorities is by giving separate electorates. I do not want to develop the point further. I know the matter has been discussed in this House before and the House was against it. I know the House will be against it even now. I am giving my honest feeling that it is the only right way of protecting the rights of minorities and I would appeal to the House to consider the question dispassionately. If for any reason that is not practicable, and if the House thinks that it cannot agree to that, reservation is absolutely necessary. I do not want to go into the reasons. In any case reservation of seats has to be retained. Election by proportional representation by the single transferable vote, or the creation of multiple constituencies with cumulative voting, may be some of the other remedies. I would only say that separate electorates is the proper remedy and the right method of giving protection to the minorities. In any case, if that is not practicable, reservation must be there, or in any case, the other methods may be tried. Election by proportional representation by single transferable vote will be a rather complicated method; otherwise, I would have preferred that.

I thank you, Sir.

Shri L. Krishnaswami Bharathi: (Madras: General): Mr. Vice-President, Sir, coming almost at the fag end of the discussions, I do not think I have anything novel or new to traverse. However, I felt I should discharge my duty by giving certain views of mine.

Dr. Ambedkar deserves the congratulations of this House for the learned and brilliant exposition of the Draft Constitution. No congratulations are due to him for the provisions in the Draft for the simple reason they are not his. Honourable Members may remember that most of the clauses in the Draft Constitution were discussed, debated and decided upon in this House. Only a very few matters were left over for incorporation by the Drafting Committee. The House, however, would tender its thanks for his lab ours inputting them in order.

I am sorry, Sir, that Dr. Ambedkar should have gone out of his way to make certain references and observations which are not in consonance with the wishes or the spirit of the House, in regard to his references to the villages, and his reference to the character of the majority and 'constitutional morality'. Honourable Members have referred to the question of villages. I only wish to add this: He says: "I am glad that the Draft has discarded the village and adopted the individual as its unit." I would like to ask him where is the individual apart from the villages. When he says that the villages have been discarded and the individual has been taken into consideration, he has conveniently forgotten that the individuals constitute the village; and they number about ninety per cent of the population, who are the voters.

There is another matter which has been referred to by him; that is in regard to the character of the majority. He says, "the minorities have loyally accepted the rule of the majority which is basically a communal majority and not apolitical majority." I do not know what he has at the back of his mind. There was only one party which functioned on the political plane and on the Governmental plane, the Indian National Congress, which was entirely a non-communal organisation and a political party. And yet Dr. Ambedkar says it is 'basically a communal majority', which is not true in fact. I must say it is wrong, mischievous and misleading. I want to touch upon four points, *viz.,* the form of Government, the minority question, the language question and adult franchise and elections. I know with the limited time at my disposal I cannot develop those points at any length. However, I would like to touch upon certain aspects of the matter.

The Draft Constitution, Dr. Ambedkar said, is federal in composition. A careful reader of the whole Constitution would find that it is more unitary than federal. If I am to express my idea in terms of percentage, I am inclined to think it is 75 per cent unitary and 25 per cent federal. Many Honourable Members spoke strongly on the need for a strong Centre. I do not think there was any need for this kind of over-emphasis, for it is an obvious thing that the Centre ought to be strong, particularly in the peculiar context of the circumstances prevailing in the country. But I am afraid they are overdoing it. I fee a strong Cent redoes not, and need not necessarily mean a weak province. An attempt seems to be made and I find there is a tendency to over-burden the Centre and there is a tendency towards over-centralisation. I am glad Dr. Ambedkar has given a kind of warning. I am inclined to think that in actual working of the Constitution this course of taking more powers over to the Centre will be a fruitful source of friction. After all let it be remembered the strength of the chain is in its weakest link and the provinces should not be considered as a rival Governmental organization. The Centre is trying to chew more than it can digest. I find in the transitory provision there is an attempt for the first five years to take over even the provincial subjects. It is for the House to decide how far we can allow that.

Sir, coming to the minority question I am very happy to find that members belonging to the minority community are now coming round to the view that it is no good to have this kind of communal electorate even though in a diluted form in the form of a joint electorate. I am happy that Beg am Aizaz Rasul has discarded this and does not want the separate electorate. Mr. Karimuddin also said the same thing but he wanted what is known as proportional representation through single transferable voting system. I am sorry to say that it is an attempt to come by the backdoor or side windows what is denied by the front door. This is not very proper and the suggestion that it may be done by proportional representation is absolutely unworkable and impractical, particularly in general elections where large masses of men and women who happen to be illiterates are concerned. Honourable Members may know that in that system the voter has to put numbers as 1, 2, 3 etc. against the names of candidates and it is very difficult and impracticable and therefore it is no good; and as Dr. Ambedkar said the minorities must trust the majority. There is one fundamental fact to be remembered. I am glad Mr. Tyagi emphasized that. Community should not be made the basis of civic rights. That is a fundamental principle that we must remember. In a secular State the right to representation is only the right to represent a territory in which all communities live and if a member is representing in the Assembly, he has the right to speak on behalf of all those living in the territory, of all communities and classes, men or women. That should be the idea with which we must function. I must take this opportunity of expressing my great appreciation of some minority communities who have been nationalistic throughout and who have not clamoured for special provisions only on the basis of birth or community. I refer to that community to which you, Sir, Mr. Vice-president, have the honour to belong. I have had opportunities of coming in close contact with Christian friends and throughout they have not demanded any kind of separate electorate or special provisions, and I am happy over that. If some members of minority community now do not want reservation,. I may not give all credit to them as they are only making a virtue of necessity--this great Christian community have never asked for special considerations. They have all along been of the view that special electorates are no good and after all we must all live together and I am glad the Parsee community also had not wanted this special representation.

Then Sir, one Honourable Member wanted reservation in services. I should think though it is not undiluted nationalism, we must for some time to come give them reservation in services also. But one thing you must have clearly in mind. There must be a time limit for all these peace or compromise moves and you must make it clear that after the lapse of a certain specified period all these special provisions must go. I particularly support Mrs. Renuka Ray's suggestion that the last portion in Article 306 where it is stated that after 10 years this may be continued may be removed. We must give our view emphatically and definitely that it is only as a necessary evil that we are tolerating reservations on communal basis.

I want to say something on the language question. Much trouble arises on account of not properly defining what is exactly meant by national language. There is no doubt whatever that India must have a national language but you must remember that India is not entirely a country with one language existing at present, and I am glad to find that the Draft Constitution has steered clear of all these controversies. They have simply said in Article 99 that in "Parliament business shall be transacted in English or Hindi". That is all. I do not think that the House need go into this question at present, as our Prime Minister said, of deciding upon a National language here and now. If at all we must have, let us have a language for the Central Government and then it must be made clear beyond a shadow of doubt that in the provinces the provincial languages and respective regional provincial languages shall be the official language for the territories comprised in the province. If that point is made clear beyond a shadow of doubt, much of the heat and much of the controversy will disappear. Let it be definitely understood that the regional language shall be both, in the legislatures and in the High Courts of the Provinces.

Sir, I have only one point more if you will give me two more minutes. That is regarding the election under adult franchise. Much doubt and apprehension is entertained in the minds of big constitutional experts like Mr T. R. Venkatarama Sastry of Madras about the efficacy of adult suffrage; but it is decided and we cannot go back on it. But the most important point that I want to emphasize is that the elected representatives must truly reflect the will of the people. Unfortunately, Honourable Members know how elections are conducted. Today we find from the papers an Honourable Member of this Constituent Assembly went to poll to cast his vote at an election. He is told: "Your vote is already cast." That is nothing surprising. That is happening on a large scale everywhere. I stood for election in 1937and in two or three elections I was personally interested. I knew actually twice the actual number of votes were not polled correctly. Some arrangement must be devised by which this sort of corruption at elections must be stopped. I have a suggestion and I shall place it before this House for consideration and leave it at that. Every voter must be given what is known as an identity card. The identity card may contain--it is a matter of detail what the identity mark should be. I would very much like a photo of the voter to be put in a card which he might carry. In the post office we are given what is known as identity cards on a payment of Re. 1. Our photo is put there and wherever we go we can carry it. If such a system or something similar to it is done, the voter must first present this identity card and on presenting it he will be given the ballot paper and then he will exercise his vote. I am prepared to discuss the details. This arrangement will be a great boon. If this suggestion is taken up and put in the appropriate place, I have no doubt that the elected representatives would reflect the true will of the people.

Shri Kishorimohan Tripathi (C. P. and Berar States): Mr. Vice-President, Sir, there has been sufficient discussion of the Draft Constitution and I have been very carefully listening to the criticisms. There have been two types of criticisms. Some of the critics have criticized themselves rather than the Drafting Committee. They took certain decisions and all those decisions were embodied by the Drafting Committee and where the Drafting Committee wanted to make its own suggestions it underlined the Draft and has tried amply to draw the attention of the House to the suggestions and changes that it wanted to make. Critics have criticised and in doing so, they have indirectly criticised their own decision. There has been another type to criticism which has gone rather astray and critics have tried to bring in things which we need not discuss while discussing the constitution of a country. I would not now go into the details of the Constitution, into the nature of the Constitution, into the economic or other provisions of the Constitution. Much has been said on those issues. But I tried to find out the place of the Chhattisgarh States in the Draft Constitution; I looked into the Schedule enumerating the various units of administration and found their names nowhere: whereas as a matter of fact the administration of these States has been integrated with that of C. P. and administrative units,--Districts, --have been carved out of these States. I do not know why these States have not been treated as a part and parcel of the province of C. P. in the Draft Constitution. I would request for this change; and when I say so I however do not want to say that as a result of this integration the people have felt something very advantageous. In the transitory stage of integration, there have been a lot of difficulties to people. They have, in fact, suffered. Their conditions have become rather worse, but I believe, - and believe honestly - that all those are only passing phases and they will go and in the long run these small States when merged and integrated with C. P. would derive their own benefit. They are not in a position to form a Union in any way; they have not got sufficient economic and other resources to develop themselves and therefore in no case should they be treated separately. Secondly, I will draw the attention of the House to the necessity of including co-ordination of agricultural development and planning in respect of food, its procurement and distribution, in the Union list as a Central subject. When I say so, I want to draw the attention of the House to the reply the Honorable Minister for Agriculture gave while replying to questions in the House when functioning as the Assembly that for want of proper provision or power it is not possible for the Centre to deal effectively with the question of agricultural development of the country. When we think of the reconstruction of the economy of India, the first and foremost thing that should strike our attention is the agricultural economy in India. If you want a planned development in India including agricultural economy, it is essential that agriculture - its development and planning - should find a place in the Union List rather than in the Provincial List. The food problem in India is very grave. It is going to be a serious problem for years to come and we have been spending most of our dollar and other exchange in getting imports of food from foreign countries and this has withheld and will be withholding our industrial development to a large extent. It is therefore very essential that a country-wide planning to develop agriculture to an extent where we can be self-sufficient in the matter of food should be treated as essential. I would therefore request the Drafting Committee to take into consideration this suggestion of mine and place the co-ordination of agricultural development as a Central subject. I am sure that the attention of the Drafting Committee has also been drawn to this subject by the Ministry of Agriculture also.

Then, I come to the question of India and her relationship to the Commonwealth. This question has yet been left undecided although references in the papers and in the speeches of Members have been made to it. I for one would like that India must declare herself an Independent Sovereign Republic. We should make no mention of our association with the Commonwealth in any part of the Constitution itself. Having declared herself a free and independent nation, India should then go to seek her association with one bloc or the other; but jumping from the present position of a Dominion to the relationship of the Commonwealth will inevitably mean that we are going tore main still a dependent country, dependent to the Commonwealth and the King of England.

Taking next the question of election in villages, much has been said about villages. There has been very sharp criticism of the view expressed by Dr. Ambedkar when he said that "the villages are dens of ignorance". There has been ruthless criticism. I know this criticism is because of a genuine feeling on the part of the House. The House desires that the villages should come forward and play their full part in the national reconstruction. Since the desire is very genuine, I would request the House to detail out the election procedure in the Constitution itself. While giving adult franchise to every citizen of India, the eligibility for election to legislatures should be restricted to such persons as neither pay income-tax nor hold land in excess of 100 acres. That, I am sure, would bring in most of the villagers to the legislatures and they will be able to play their best role.

I now come to the question of the linguistic provinces. It is said in examining this question that there distribution of provinces is essential only on the ground of language. That is a wrong theory to my mind. A province should be formed or carved out of India, bearing in mind its economic resourcefulness, so that it could give full opportunity of growth to every citizen in it. The discussion of linguistic provinces, the appointment of a Commission to consider the question only on the basis of language, has already created a sort of wild feeling in the country and even in the political parties this tendency has taken place. I heard the other day that the States of Manipur, Tripura and a district of Cachar are demanding themselves to be a separate province in the Congress body. There are other small unions who desire to continue to be separate units. This is very harmful to the nation and must be prevented.

Then coming to the question of language, I am one who wants that Hindi should be accepted as the national language of India, but when I say so I do not mean the Hindi which we find in the translation of the Draft Constitution.

> **Mr. Vice-President:** The Honourable Member has already exceeded his time.

Shri Kishorimohan Tripathi: Well, Sir, as I have no time, I close with these few words. I support the motion moved by Dr. Ambedkar.

Shri Vishwambhar Dayal Tripathi (United Provinces: General): Sir, it is with a certain amount of hesitation that I am going to speak before you in English. It appears that a sort of misunderstanding has been created amongst a section of our Friends, particularly those from Southern India, that we speak in Hindi because we want to shut them off from our own ideas. I must assure them that it is not a fact. The real fact is - and I want to say so quite frankly - that we can express our ideas ten times better in Hindi than in English. This is the only reason why some of us always speak in Hindi. But in deference to the wishes of those friends I am going to speak in English.

To come directly to the subject matter, it has been a formality with almost all the speakers to congratulate the Members of the Drafting Committee and its Chairman on the lab our they have put in and also on the merits of the Constitution. I would not undergo that formality. There is no doubt, of course, that they have put in a good deal of lab our and have placed before us a complete picture of a Constitution on the principles that we laid down in this Constituent Assembly. I am also aware that there is a good deal of merit in the draft Constitution. They have no doubt thoroughly studied the constitutions of different countries and have tried to make a choice out of them and to adapt those constitutions to the needs of this country. This is the chief merit of this Draft Constitution. In one word, it is an 'orthodox' Constitution.

But along with its merits we have also to see as to what are the defects or demerits and omissions in this Draft Constitution. We should then try to remove those defects and omissions.

Before I point out these glaring defects and serious omissions, I would like to draw your attention to certain observations made by the Mover of the Draft Constitution. I would not go into unnecessary details, because those points have been effectively dealt with by a number of previous speakers. But I cannot refrain from making certain observations. The one thing - and to me it appears very objectionable - which I wish to reply to is Dr. Ambedkar's remark that the Indian soil is not suited to democracy. I do not know how my friend has read the history of India. I am myself a student of history and also of politics and I can say with definiteness that democracy flourished in India much before Greece or any other country in the world. The entire western world has taken democratic ideas from Greece and it is generally regarded that Greece was the country where democracy first of all flourished. But I say and I can prove it to the hilt that democracy flourished in India much earlier than in Greece. I shall not go into the facts and figures, yet I would draw his attention to two or three points with regard to this matter. He might remember, as I know he has read history and he is also a scholar of Sanskrit, that even during the time of Buddha, democracy flourished in India. It is an oft-quoted phrase which I want to repeat here and it is this: that certain traders went from northern India to the south. The King of southern India asked them as to who was the ruler of northen India. They replied: "Deva, Kechiddesha Ganaadhinah Kechid Rajaadhina" It means: some of the countries in the north are governed as republics, while there are others which are governed by kings.

Then, coming down to the period of Alexander, we find that the historians of Alexander have praised very much the city-states of northern India which were governed on democratic lines as republics. There is no doubt that later on the course of political development was arrested for sometime on account of invasions from outside. Yet we find that the same democracy continued to function in our villages under the name of village republics. This, the Mover himself has admitted in his address. It is very unfortunate that he should have made such remarks as are not borne out by the facts of history.

[Translation of Hindustani speech.]

Tuesday, the 9th November, 1948

As regards the defects in the Draft-Constitution I would now draw your attention to the Objectives Resolution itself. Even that has been sought to be changed. The word' Independent' has been sought to be changed into 'democratic' and the word 'republic' has also been sought to be changed into 'State'. I think the Drafting Committee should not have done it. The very suggestion of such a change is repugnant to us and I hope that this thing will not be accepted by the House.

Then, coming to the Fundamental Rights, we find that while freedom of speech and freedom of association etc. have been given by one hand, they have been taken away by the other. The Clauses that follow have done away with all those rights which have been given in the first clause of Article13. Similarly, if we look at the Directive Principles of State policy, we find the same thing. You will remember that I placed before you an amendment seeking to add the word 'socialist' before the word 'republic'. I am sorry that at that time Shri Seth Damodar Swarup did not think it proper to support me. I am glad he had now come here as a champion of socialism. But at that stage, I am sorry nobody supported it and my suggestion was rejected. Anyhow, whether the word 'socialist' is used or not we must try to see that, when we incorporate political democracy, we also incorporate economic democracy in the Constitution.

So far as the Directive Principles of State Policy as given in the Draft Constitution are concerned, there are no grounds for thinking that they will at all affect the future structure of society in India.

There are certain other defects also which I shall point out when the amendments are moved and discussed.

But I would certainly like to mention some of the grave omissions in the Draft Constitution. There are three such omissions which are very grave and important, and they are: the omission of National Flag, the omission of National song and the omission of National language. I think these three omissions are very grave. The Drafting Committee ought to have seen its way to incorporate all these three subjects in our Constitution. So far as the flag is concerned, there is no controversy. This could have been easily incorporated in the Constitution.

There is some controversy about the National song between `Vandemataram' and 'Jana-Gana-Mana'. I think "Vandemataram" which has been our song during the last 50years or so and which has been the beacon-light in our struggle for independence will become the National song of our country. Then there is the question of the National language.

Mr. Vice-President: If you go on speaking I will have no time to give to other intending speakers.

Shri Vishwambar Dayal Tripathi: I shall conclude my speech after a reference to the National language, Sir.

Our country is very big, and it has not therefore been possible so far to have one language for the whole of India. But, as an independent country, we have now to evolve some language which may become the national language of India. In this connection I make the following suggestions--Firstly, in every province the work of the Government and of the people should be carried on in the language or languages of the masses. Secondly, English, although it has been imposed upon us by the foreigners, should remain for sometime for our inter-provincial relations. Thirdly, we must have Hindi as our National language written in Devnagri character. (*Cheers*). So, it is here and now that we should definitely decide that Hindi written in Devnagri character is to be the national language of our country; while English may remain as an alternative language for some time till we are able to develop Hindi sufficiently both in northern and in southern India. As I said, in the provinces, the language of the masses should continue to be the language of the State. These are my observations about the National language.

The last point which I have to place before you is that we should, from cultural as well as from economic point of view, make provision for cow-protection. Our Congress party had already decided that this should be done. This was probably not known to the Drafting Committee. Therefore no provision with regard to this has been incorporated in the Draft Constitution. I hope the Constituent Assembly will see its way to incorporate this also in our Constitution.

With these few words, I hope the Assembly will consider the amendments on these subjects when they come up for discussion and try to remove the defects and fill in the omissions that I have pointed out before the House, Jai Hind.

Shri Brajeshwar Prasad (Bihar: General): Mr. Vice-President, Sir, I am opposed to federalism because I fear that with the setting up of semi-sovereign part-States, centrifugal tendencies will break up Indian unity. Provincial autonomy led to the vivisection of the country. Federalism will lead to the establishment of innumerable Pakistans in this sub-continent.

Our Ministers at the Centre have been at the helm of affairs since the last fifteen months. They know how difficult it is to secure the approval of provincial Ministers on any measure of reform which they like to introduce. Much time is wasted in securing their approval, which is rarely obtained.

The existence of provincial governments does not benefit the common man in any special sense. Its abolition will not jeopardise his welfare at all. On the other hand, I am convinced that his lot will improve considerably. The professional politicians will of course be deprived of their means of livelihood. The average man in the provinces has to bear the burden of a costly administration. Salaries to Governor, Ministers, Parliamentary Secretaries and members of the legislatures swallow a large part of the revenue. The poor man is exploited in order to maintain the dignity of the State.

Federalism is a conservative force in politics. It checks the rise and growth of radical economic movements. It perpetuates economic inequality between one province and another and this accentuates provincial rivalries and bitterness which lead to the demand for the formation of linguistic provinces.

Federalism is entirely unsuited to the needs of a collectivist age. Vast plans of national development await immediate enforcement. It will be a crime against the people of India to set up obstacles and hurdles in the form of part-States in the path of the Central authority which has to tackle the fourfold problems of illiteracy, poverty, communalism and provincialism. Those who talk of federalism, regionalism, provincial autonomy and linguistic provinces do not fully comprehend that they are talking the language of a bygone age. These concepts were appropriate to the needs of the 19th century when industrialism was in its incipient stage. These instruments of political organisation suit the requirements of agricultural communities interspersed over a wide area. Today the picture is entirely changed. We are thinking in terms of a world State which must be vested with all powers to regulate the problems of migration of people from overpopulated zones to areas which are under populated. The world State will have all powers to regulate the entire economic wealth of humanity. The existence of Nation-States has become an anomaly and a hindrance in the path of human progress and welfare. The dominant tendency of the age is towards greater concentration of power in the hands of some sovereign international authority. To talk of sub-national groups and federalism is to put back the hands of the clock. We do not know what will happen to India if a world war breaks out. If India gets an opportunity to build up the nation for a period of ten years at least, she will be in a position to meet the onslaughts of international powers. If India proceeds on collectivist lines unhampered by any provincial or federal part-States, she may be in a position to meet the challenge of the third world war. India lags centuries behind the Great Powers of the world. We must skip over certain stages of development and compress centuries into moments if we are to survive the forces of reaction both external and internal. By adopting parliamentary federalism we shall be playing into the hands of our enemies. A divided Germany, a vivisected Korea, pre-eminently fits into the political plans of international gangsters. A divided India provides some security to those who have plans of their own. The incorporation of federal principles in that part of India which has been left to us will provide hundred percent security to those Jingoes and Junkers who survive on loot and plunder. No foreign power wants a strong Central Government in India. A strong Central Government in India will embarass all. It is suicidal to divide powers into federal, concurrent and provincial. Any such division of powers will weaken the hands of the nation on all fronts.

Shri S. Nagappa (Madras: General): Can any Honourable Member read his manuscript speech?

Mr. Vice-President: I do not see any objection. Please go on.

Shri Brajeshwar Prasad: The Collector in the district and the Commissioner of the Division must be brought directly under the authority of the Central Ministry of Home Affairs. The Governors, Ministers and the provincial legislators must be asked to quit the scene. There should be only one Government in India. All provincial and State Governments must be abolished. The Constituent Assembly should vest all executive, legislative, judicial and financial powers in the hands of its President. He should have four advisers, Rajaji, Panditji, Sardar Patel and Moulana Azad. After having set up this system of government, the Constituent Assembly should be adjourned *sine die.* The Assembly should be summoned only to give its verdict in case there is sharp difference of opinion on any issue between the majority of the Advisers on the one side and the president on the other. If the President or an Adviser dies, the Constituent Assembly must be summoned to elect a successor. This system of Government should last till the end of the Third World War which may break out any moment. The present Government of India Act should be abrogated.

I have advocated the rule of philosopher-kings because Plato, whom I consider to be the Father of Political Science, considered it to be the best system of government. We look back with pride to the days of Raja Ram of Ayodhya and Raja Janak of Mithila. What Plato advocated in his Republic has always been practised in India. I have advocated the rule of philosopher-kings because this is the best system of government. I have more faith in living people than in the dead clauses of a written constitution. I do not believe in a permanent constitution. We are at the end of an epoch. It is very difficult for us to sense the needs of the coming century. The Americans framed their constitution at the beginning of the epoch of capitalism. We are asked to frame our constitution at the end of this epoch. The end of the third World War will decide the broad economic and political patterns of the coming age. Today we are in a state of ferment and decay. The whole of Asia is in the melting pot. The nation stands in need of spoon-feeding. We are passing through the birth pangs of a new social order. Any constitution which we may frame today may become completely out of date tomorrow. Power placed in the hands of the electorate may prove disastrous.

The traditions of the Khalifas of Islam - Abu Baqar and Shah Omar - are worthy of emulation. Germany, Italy and Turkey rose to grand heights under Hitler, Mussolini and Kemal Ataturk. The Soviet dictator has worked miracles. The days of Chandragupta Maurya, Asoka, the Guptas, Harshavardhana and Akbar were the best periods of our history when India enjoyed peace and progress.

There is no parliamentary form of government worth mentioning in the whole of Asia. There are some deeper reasons for this. Any attempt to foist parliamentarism on India will only spell our ruin and misery.

I regard the parliamentary system of government as the direct form of democracy. The system of government set up by Hitler, Mussolini, Kemal Ataturk and Stalin represent the indirect forms of democracy. The whole of Germany, Italy and Turkey were behind the dictators. What Pandit Nehru is to us, probably that or more is Stalin to the people of the Soviet Union. How can we call the Soviet rule undemocratic? The only conclusion to which we are driven is that the basis of all governments - both parliamentary and totalitarian - is democratic.

The essense of democracy is not franchise. There presentation of the real will of the people, as distinct from actual will, is the core of democracy. One man, whether elected by the people or not, can represent the people as a whole if he stands for the real will of the community. The rule of the dictator is essentially democratic if he stands for the greatest good of the greatest number. The substance is always more important than the form.

One party rule is in perfect consonance with the ideals of democracy. This fact has to be grasped. We can have perfect democracy only in a classless society. It is only after war, and nation states and capitalism have been liquidated, that we can achieve perfect democracy. Friends may retort that one party rule will lead to Fascism. To this I would reply that parliamentary governments, as in Germany and Italy, facilitate the rise of Fascism if the people are not highly conscious of their political responsibilities. Are the people of India conscious of their political responsibilities? The vast majority of the people of India are sunk in the lowest depths of illiteracy, poverty, communalism and provincialism. Only philosopher-kings can tackle these problems. Both parliamentarism and federalism will aggravate the malady.

Critics may urge that power corrupts and absolute power corrupts absolutely. I do not believe in this maxim. Was Hitler corrupt? Is Stalin corrupt? The records of Mushtapha Kemal and Mussolini are as good as that of the leaders of parliamentary democracy.

In this atomic age, the problems of the modern state have become so complex and baffling that more and more people are beginning to realise that the affairs of government can only be tackled by experts. Parliamentary democracy has outlived its utility.

If we want to meet the challenge of Anglo-American imperialism in Asia, if we want to meet the demands of international trade and commerce, if we want to meet the threat of the third world war which is looming large on the horizon, if we are to meet the onslaughts of international politics, we must hand over full power into the hands of our leaders.

It is not possible for our foreign friends to meddle in the affairs of Spain or the Soviet Union because they have hung an iron curtain around their frontiers. Parliamentary democracy facilitates foreign intervention into the internal affairs of a people. If we want to be free from the machinations of our foreign friends, we should not provide any opportunity to them. Our constitution must be fool-proof and knave-proof. Parliamentary democracy must be discarded.

Dr. Ambedkar said the other day that our Constitution is both federal and unitary. It is federal during times of peace and it is possible of being converted into unitary type during times of war. The distinction between peace and war is fictitious, because we are now living in a state of cold war. If we want to meet the onslaught of foreign powers the type of democracy which we are trying to build will perhaps obstruct us. The demands of peace time are as urgent and insistent as that of war. If we have an unitary type of constitution now, we may be able to meet the demands of the third world war. I do not know whether there are more competent leaders than Pandit Jawaharlal Nehru and Sardar Patel. Then why are we wasting the time of the Government of India by all sorts of criticisms? We must build up our economy. If we are not able to meet the challenge of war, we may go down in history. I am not very sure what will be the outcome or the fate of this country if a war breaks out. The whole of Asia is in the melting pot; let us not try to weaken the hands of our leaders. They are the best people; they are the only people who can govern this country. Is it necessary that in order to keep them in control, we must be sitting in the legislature and talking all kinds of nonsense?

The Assembly then adjourned for lunch till Three of the Clock.

The Assembly re-assembled after Lunch at Three of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

Shri H. V. Kamath (C. P. & Berar: General): Before we proceed, Sir, with the further consideration of the Motion, may I ask for a railing from you as to whether the use of the word "nonsense" to describe the speeches of Honourable Members of this House conforms to parliamentary practice?

Mr. Vice-President (Mr. H. C. Mookherjee): I do not think it is in order.

Shri H. V. Kamath: This arises out of the speech made by Mr. Brajeshwar Prasad. He did use the word 'nonsense' to describe the speeches of Honourable Members in this House. That is why I am raising this point.

Mr. Vice-President: Is he present here?

Shri Brajeshwar Prasad: I did not know it was unparliamentary; if it is so, I withdraw it, Sir. I would replace it by any other word which the honourable Member may suggest.

Mr. Vice-President: We shall now resume further consideration of Dr. Ambedkar's motion.

Shri Moturi Satyanarayana (Madras: General): *[Sir, you will be surprised to know that a person from Madras has come here to speak in Hindustani. The general belief so far was that all the Members from Madras would like to speak in English. I am not surprised at this. It is my conviction that all the speeches in this Assembly should be delivered in Hindustani. It is, however, very unfortunate that even though people have worked for this cause for the last thirty years, Hindustani-speaking people have not secured election to this House from the south, the east and the west. It does not mean that there are no Hindustani-speaking people in these provinces. Only, Hindustani-speaking people have not been able to secure election to this Assembly. I see that even the Members from the north speak in English only. The reason may be that they want to have closer relations with the people of the South and other provinces. Whatever may be the reason, the fact is that they do speak in English.

The Constitution which is now on the anvil places before us provisions of many kinds. It appears to me from what I have been able to gather from these provisions that it is being built from above and not from below, the base. If it had been built from the base upwards, our Constitution would have first been framed in the languages of our country. The people know what that swaraj means for which we have been labouring for the last thirty years, and they are also conscious that the Constitution is being framed for them and not for anyone else. But only the international view-point, and not the national nor the swaraj, nor even the villagers' view-point, and not the national nor the swaraj, nor even the villagers' view-point is being given weight in the framing of this Constitution. We want that the Constitution for the whole country should first be framed in the language of the country, that the Constitution should be for the people of the villages so as to ensure food and cloth for them, as it was the lack of these necessities that led us to make our demand for swaraj. It would be very good for us if the Constitution is framed in the languages of the country. It may afterwards be translated into English or into the languages of the countries whose constitutions we have drawn upon, of those whose opinion we value. It would have been much better if we had seen to this matter in the very beginning. If this consideration had been kept in mind from the very beginning, we would not have had occasion to listen to all the criticisms that have been made today in this House - that this Constitution is not suited to the genius of our country, that it is not suited to the people of the villages, that it is not in the interests of the people of the cities and that it is not in the interests of the poor. We did not keep that in mind in the beginning and that is why there is all this criticism. I hold that if we have to provide food, cloth and shelter for our poor brethren, the villages and the village panchayats, should form the base of our Constitution. We should proceed with our work keeping them in mind. It is because we have not done this that we have to consider whether our provinces should be strong or weak, Whether our Centre should be strong or weak. These questions arise only because we have not given due importance to our provinces and villages in framing our Constitution. The basic idea underlying the whole constitution is as to how our country will compete with Britain, Russia or America and what relations it will have with them. There is nothing in the whole Constitution to show that our intention was to do something for the inhabitants of our country, for our villagers and for our townsfolk, and for the poor people.

So far as production is concerned, there is nothing init that would make the village people work their utmost in order to produce the maximum quantity of wealth. I think that it will be said in reply to this that later on when this Constitution would be enforced all these would be taken to be implied by its provisions and would therefore be put into practice but that these cannot be specifically included within the Articles of the Constitution. But I hold that just as the face is to a man's character so also a mere glance at the Constitution should be sufficient to reveal the direction in which it tends to move the people. Therefore, I hope that at the time when the Constitution would be considered here clause by clause every attempt will be made to include in it provisions for all that we have been promising to provide to our countrymen.

For the last four or five days a very important problem - the problem of the relations that should subsist between the State or national language and the various provincial languages - has been engaging our attention.

There has been ample discussion as to what should be the position of the national language and the position to be given to the various provincial languages. I hold that unless we decide as to what would be the place of provincial languages, how they would be used in their respective provinces, no decision can be taken about the national languages. In my opinion, our provincial languages must not have a less important place that of our national language. If a decision is not taken in regard to this matter there will be a very powerful agitation in the country and many people will say that the people of northern India who hold Hindi as national language are trying to make their own language the national language. This will have a serious consequence in the provinces and they will oppose it and as a result the country will be split up into many divisions, as of old. To prevent this, it is very essential to make it clear that in no case the state language would take away the importance of provincial languages. If this is not done, there is a possibility of a very serious danger arising for the country. It must be averted. The purpose for which a State language is needed is to establish unity within the State. Another function it fulfils is to facilitate the carrying on of international relations. In my opinion it is very essential for us to build up a composite culture, a composite language and a composite society. The assimilation of the culture and the language and the dress of all those who come to our country has been a part of our tradition for centuries. We did this and marched on the path of progress. We should adopt that practice for the future also. If we fail to do so, it is very possible we may not make such rapid progress in international matters as our Prime Minister has in view. On the contrary, it is quite likely that we may remain involved in our own internal disputes. It is better if we avoid it. Merely to hold this view is not sufficient. We must also act upon it. Therefore, I hope, Sir, that the language which is going to be made our national language, which is going to be used here, must be the link of a composite culture, must have a mixed vocabulary, a mixture of phrases and idioms and a composite script so that we may have mutual understanding within the coming ten or fifteen years, and thereafter be able to march forward together. Till that time we should not take any step to give up our composite culture. In short I would like to submit that our national language should be Hindustani and our culture should be Hindustani.

In regard to the national script I submit that until all our people have learnt to write in a common script - and today they use two separate scripts - both the scripts should be given recognition so that no one may have any occasion to complain that his script which he had been using for centuries was being suppressed after the attainment of freedom and that thereby his culture and religion was being suppressed. If we are prepared to continue to use the English language for the next fifteen or twenty years, I do not find any reason why the other current languages cannot be kept on for that period. Today some people complain that alien words are being imported into their language. But we should not only keep these words but should also extend their meaning. I, therefore, think that both from the viewpoint of justice as from that of expediency it is essential to be fully considerate in such matters.

I would like to discuss this subject much more fully and perhaps it is not difficult to speak at length on it. But there have been so many longwinded speakers since this morning - several of whom you pulled up rather sharply - that I do not wish to take any further time of the House and I now conclude my remarks. I would, if I get an opportunity, express may views at the proper time on the amendments that have been tabled.]*

Shri Suresh Chandra Majumdar (West Bengal: General): Mr. Vice-President, Sir, it is with deep humility in may heart that I rise to speak a few words on the onerous task which history has assigned to this Assembly namely, the making of a democratic Constitution for this great and ancient land whose civilization dates back to an age beyond man's memory. No nation has had such varied experience of success and failure, of happiness and which our history is replete, there is one which in my opinion should command our utmost attention as we are engaged in settling the forms of our State and Government. It is this that throughout history our finest glories in whatever field they might be, were achieved precisely during those periods when India, striving towards political cohesion was most successful and such cohesion always presupposed a strong unifying Central authority. The form of that authority was different at different times and of course we shall have to evolve one that will suit the conditions of the present age but the truth remains that India's greatness depends as it has always done on the effective strength of a unifying Centre. I therefore want the Constitution to provide for a strong Centre and am glad that the Drafting Committee had kept this point prominently in their view. The time has now come to curb the bias in favour of the so-called 'provincial Autonomy' which arose from historical causes. When Alexander attacked India we understand that India was divided into 52 autonomous units and we know what consequences it produced. It might have had some justification when the Centre was irresponsible and completely under alien domination. Even so, 'provincial autonomy' encouraged provincialism and that the curse did not assume greater proportions was due wholly to the unifying influence and control which the All-India Congress exercised over the provincial ministries. Now there is no foreign power in the land and there should be no conflict between the provinces and the Centre; and as between the provinces themselves, possibilities of conflict can be best lessened by the Centre being given power to intervene effectively whenever and wherever provincial jealousies may threaten the unity, or impede the progress of the country as a whole. I therefore want that it is not only at times of war or other grave emergency that the State should function as a unitary State but that in normal peacetime also the Centre should have certain necessary overriding powers without which planned reconstruction of the country will not be possible.

While on the subject of delimitation of powers. I should like to make a very brief reference to Dr. Ambedkar's comments on the role of the village community in India's history. It is true that at times the village community stood still when history passed by. But this happened invariably in periods of national depression when everything was in a state of stagnation and the political life itself was disintegrating and the village community was indifferent to the main course of history. But there were other times - times of healthy national life - when the village community did supply strength. I believe the village community, if it is properly revitalised and made power-conscious, can become not only a strong prop of the State but even the main source of its strength.

India has been always proud - and I also share that pride - of her achievement of cultural unity in diversity, but in matters political it is essential today that we emphasize unity and uniformity rather than diversity. I therefore want a uniform political structure for the whole country. No praise can be too high for the wonderful work of integration which the States Ministry has done and is still doing under the creative, I should rather say, inspired leadership of our Deputy Prime Minister and I hope this work will proceed further to the point where the viable States and the States' Unions will have the same political and administrative organisations as the other units - I mean the present Provinces - within the over-all political structure of the country. In view of the basic character of these units as recognised by the Chairman of the Drafting Committee himself, I do not even like them to be called "States", because that may create an impression that India is a Federation of the type of the United States of America. All units, the present Provinces as well as the integrated States, should be given the uniform nomenclature of "Province".

I am proud of the achievements not only of my own language but, as an Indian, also of those of the other major languages of India. I certainly want a lingua Indic a for the whole country, but at the same time it will be an irreparable loss if we allow the major provincial languages to languish by neglect. The lingua Indica that we may adopt should not be a kind of imposition. It will be willingly accepted by all if it is allowed to make its way gradually and naturally and without giving a rise to a feeling of imposition. The previous speaker, Shri Satyanarayana, is an outstanding example of this. Nobody imposed upon him Hindi or Hindustani, but Honourable Members have heard the fluency with which he spoke just now. As regards English we need not ignore its usefulness as a medium of international exchange, and even in the sphere of internal use I am not in favour of violently throttling it but would like to see its gradual replacement. It may not be wise to set a time limit in a matter like this.

It is unfortunate that the question of linguistic provinces has become mixed up with provincialism. The principle of linguistic provinces can be justified only on two grounds, namely, administrative and educational convenience and the development of our great major languages. It would be wrong to introduce any other consideration into this matter, which unfortunately has become a subject of violent controversy and even conflict. Possibly we are all suffering from the hang-over of our depressed condition which is only just over and under which our foreign rulers always emphasized and encouraged the spirit of division. I hope we shall be able to see things in their proper perspective after some time. It is essential that at this stage all internal conflicts should be avoided. If, therefore, the question of linguistic regrouping of provinces cannot be settled without bitterness and conflict now, I think the question should be postponed for ten years. I would only urge that the Constitution should not contain any such provision as will make a settlement of this question too difficult in the future. At the same time I would appeal to all my countrymen meanwhile to behave in a manner so as not to prejudice the rightful claims of any language Hindi or Hindustani as the lingua Indic a of India. It is due to my great love for all the major Indian languages as well as to the necessity I feel that all our countrymen should understand and follow the Constitution, that I have asked that the Constitution be made available in all the major Indian languages and approved by this Assembly before its final adoption.

One word more. I hope I will not be misunderstood in saying this in this Gandhi an era. I want to say a few words regarding the right of the people to bear arms. We are passing the Constitution today. But so far as I can see there is no mention of that. I would like that the House may provide in the Constitution that as a fundamental right, all adults, irrespective of whether they are men or women, would be allowed to bear arms for the defence of Mother India whenever she would be in peril Jai Hind.

Pandit Mukut Bihari Lal Bhargava (Ajmer-Merwara): Mr. Vice-President, Sir, the Draft Constitution has been under fire for the last several days in the House. I would not deal generally with the Draft Constitution but would confine my observations to one particular aspect of the Draft Constitution, and that is what is incorporated in Part VII of the Draft Constitution. It deals with what are known as the Chief Commissioners' provinces under the present Government of India Act of 1935. At the very outset I would respectfully draw the attention of the House that in this particular case the Drafting Committee and its Chairman have been very unjust to the Chief Commissioners' provinces. Infact, in making the recommendations which the Drafting Committee has made in Part VII of the Draft Constitution, it has exceeded its powers. It is absolutely clear; if necessary, reference may be made to the resolution adopted by the House on 29th August 1947, which brought the Drafting Committee into existence. The powers of that Committee are specified in the Resolution that was adopted by the House on the occasion. It is simply to implement the decisions that have already been taken by the House. When the question of the Chief Commissioners' provinces came up before the House, from the Union Constitution Committee Report you will be pleased to find that in part VIII Clause 1 what was recommended by the Union Constitution Committee was that the Chief Commissioners' provinces should continue to be administered by the Centre as under the Government of India Act, 1935. When this clause 1 of part VIII of the Union Constitution Committee report was moved by the Honourable Sir N. Gopalaswamy Ayyangar in the House, an amendment to it was moved by my friend Mr. Deshbandhu Gupta and that amendment was unanimously accepted by the House. That amendment sought the setting up of an *ad hoc* committee consisting of seven Members of this Honourable House, which committee was to go into the question of the Chief Commissioners' provinces and to make suggestions for effecting changes in the administrative systems of these provinces on democratic lines so as to fit in with the changed conditions in the country. The fact that this amendment was unanimously accepted by the House clearly implies that the House stands committed to bringing about suitable administrative changes in the set up of these provinces on democratic lines so as to fit in with the Republican Constitution of free India. In spite of this mandate from the House, one is staggered to find the recommendation of the Drafting Committee in Articles 212 to 214 of the present Draft Constitution. My respectful submission would be that these recommendations are absolutely *ultra vires* inasmuch as the Drafting Committee could not set at nought the recommendations of the *ad-hoc* Committee. The *ad-hoc* Committee consisted of three very distinguished Members of this House, - Sir N. Gopalaswamy Ayyangar, Mr. Santhanam and Dr. Pattabhi Sitaramayya. In spite of this the unanimous recommendations of the ad hoc Committee have been set at nought by Articles 212 to 214. What Article 212 does is to provide that the Chief Commissioners' provinces shall continue to bead ministered by the President to the extent he thinks fit, through a Chief Commissioner. What the Drafting Committee has done in this Article 212 is simply to repeat the words of the Government of India Act, 1935 Section 93 (3). These were the very words, which by the acceptance of the amendment of Mr. Gupta, were set at nought by the House. Consequently, my submission is that the present Articles 212and 213 are absolutely *ultra vires* and the House should not give any consideration to them. The *ad hoc* Committee after going into the question of the Chief Commissioners' provinces has incorporated certain recommendations to make certain administrative changes in the present constitution of the Chief Commissioners' provinces. In fact, in the modern age when India has attained the goal of full independence and when we have assembled here to draft a constitution befitting a free Republican India, it is impossible to think of a recommendation of the character incorporated in Articles 212 to 214. These recommendations seek to perpetuate a regime of autocracy. The Chief Commissioners' provinces have been enclaves of bureaucratic and autocratic regimes and even today, fifteen months after having attained full independence, we find there is undiluted autocracy prevailing there. For political and strategic reasons the British Government ignored the claims of the Chief Commissioners' provinces to responsible government. The only concession they made was in 1934 when a single seat was allotted in the legislature. Beyond this, the administrative set up in these provinces continue to be that of one man's rule. The Advisory Councils to the Chief Commissioner which were set up immediately after the formation of the National Interim Government at the Centre have served no useful purpose. In spite of them, one man's rule. The Advisory Councils to the Chief Commissioner which were set up immediately after the formation of the National Interim Government at the Centre have served no useful purpose. In spite of them, one man's rule is prevailing. So far as Ajmer-Marwara is concerned, the administration there is a hot-bed of corruption, nepotism, favouritism and inefficiency. How can this deplorable state of affairs be brought to an end until and unless the accredited representatives of the people are given a voice and a hand in the administrative set-up? The demand for the establishment of responsible government in these Chief Commissioners' provinces has been repeated from every one of them. No less than three Conferences convened during he last two years in Ajmer-Merwara have separated this demand for immediate establishment of responsible government. The Provincial Congress Committees have also done so in everyplace. Notwithstanding this, the autocracy has prevailed and these three Articles - 212 to 214 of the Draft Constitution - aim at perpetuating this system of autocracy. I appeal to this august House, how on earth can this state of affairs be to erated by an Assembly which has assembled to draft a constitution for free India? Yesterday there was reference made to One-Rajputana Union. We all want territorial integration and administrative cohesion of the different Rajputana States into one single unit and every one desires that this should be an accomplished fact as soon as possible, but till that takes place, why should the present administrative set-up be allowed to remain? We do not know what is going to be the future picture of Rajputana Union. If and when it comes, Ajmer-Merwara would always welcome any such move and Ajmer will be glad to join in any such Rajputana Union provided its historical, geographical and cultural place, which has always been its own since the dawn of history, throughout the Path an, Moghul, Maharatta and the British periods, is retained in the future set-up of such Union. But because the existence of such a Union is a possibility or even a probability it does not mean that the autocratic system should be allowed to continue. To the other Chief Commissioner's province, i.e., Delhi, a reference was made about it yesterday. Regarding Coorg, its position is also identical and analogous. The Legislative Council there has only advisory functions and it has neither legislative power nor any voice in the day to day administration. There also the demand of the people has been the establishment of responsible government. I fail to understand what can possibly be the difficulty for this House to accept in to to the recommendations of the *ad hoc* committee. The *ad hoc* committee has been careful in its recommendations. It has recommended that, looking to the financial difficulties of those tracts, it will be necessary that the Centre here should have greater powers than it has in Governors' provinces. We, the representatives of the Chief Commissioners' provinces, in spite of our unwillingness, agreed to accept those restrictions only as a compromise measure. Fiscal autonomy is conceded only in name, because all the financial proposals will have to be previously approved by the President of the Union. Similarly, in the legislative sphere also what has been recommended is that every Bill before it becomes law must be assented to by the President of the Union. It has also been provided in the ad hoc committee's report that in case of any difference of opinion between the Lieutenant Governor and the Ministers, the President will have the final voice. Consequently there cannot be room for any apprehension in accepting the recommendations and granting some form of responsible government to Ajmer-Merwara and the other Chief Commissioners' provinces.

One argument that has been repeated often is that it is not a viable unit, that it is not self-sufficient and that it is a deficit province. I would respectfully ask who is to be blamed for this? Ajmer-Merwara people never wanted than they should be segregated and left as an island in the midst of the Rajputana States. It was the responsibility and the decision of the then Government at the Centre that Ajmer-Merwara should remain as a separate entity in order that it may be the citadel of the Centre to keep its clutch firmly on the neighbouring States. Therefore why should the people be subjected to any penalty now? As I said, it was for strategic and political reasons that it was left as anis land. That being so, may I ask why the Central Government was giving subventions to N. W. F.P. of about a crore of rupees and subvention also to Sind? Now if it decides to give today subventions to Assam, Orissa and also West Bengal and East Punjab, it is for strategic reasons and for protecting the frontiers. If that is the case, why should not Ajmer-Merwara also be given subvention? For the reasons placed before the House by me, Articles 212 to 214 are absolutely *ultra vires* of the powers of the Drafting Committee and the recommendations of the *ad hoc* committee appointed by this Honourable House, which already stands committed to a policy of accepting suitable administrative changes in the set-up of this province, should be accepted.

With these remarks I support the motion for the consideration of the Draft Constitution by the House.

Mr. Vice-President: There is an established convention that in the case of a Member who is not present when his name is called by the Chair to participate in the debate, he loses his right to speak. That happened to one of our colleagues at the beginning of today's sitting of this Assembly. He has explained to me that his absence was due to unavoidable reasons. If I have the permission of the House, I will give him a second chance to speak. As no one objects I give him permission to speak and call upon him to address the House.

Shri S. V. Krishnamurthy Rao (My sore): Mr. Vice-President, I thank you for giving me an opportunity to speak on the Draft Constitution. I join the various speakers who have paid a chorus of tribute to the Drafting Committee and its

Chairman, Dr. Ambedkar.

An attempt has been made in this Draft Constitution to put in the best experience of the various democratic constitutions in the world, both unitary and federal. Of course no Constitution can be perfect and even our Constitution will have to undergo some modifications before it finally emerges from this House.

I shall first refer to the Directive Principles of policy. I submit that this contains the germs of a socialistic government. I submit that this Chapter should come in immediately after the Preamble. As objective principles of the Union, we will be giving it greater sanctity than to others and it will stand as the Objective Principles of the future Government. With certain modifications they can be adopted as a socialist programme for the future Parliament of India.

The next thing I wish to refer is the Fundamental Principles. I find certain conspicuous omissions here. Inmost of the democratic constitutions, the freedom of the press is guaranteed, but in our Constitution I find it is not there. Of course there is freedom of expression. But I feel in a country with 87 per cent illiteracy, our press has to play a very important role both in the political and democratic spheres in the education of the masses. I feel that a specific provision should be made in the Fundamental Principles guaranteeing freedom of the press. In fact in the Constitution of the United States of America it is enacted that the State shall not pass a law restricting the freedom of the press. Similarly, the inviolability and the sanctity of the home should be granted. Similarly again, I feel that no citizen of India should expelled from the State. Such a provision should find a place in the Chapter on Fundamental Rights.

One thing I would like to see omitted is the provision for freedom to propagate religion. This right which has been claimed by some has been the bane of our political life in this country. Probably it might have been thought proper to include it in the old set-up of things. In a secular State, such a provision, especially with the guarantee for the free exercise of religion and freedom of thought, is out of place in our Constitution and I submit to this House that provision should be omitted.

Then there is the question of the redistribution of provinces. I am not one of those who see something red in this question. If the linguistic provinces have been bastions of strength in our fight for freedom, I do not understand how they can be damned as showing fissiparous tendency when we ask for linguistic provinces. In fact, every citizen should feel that he has got freedom. I feel that the language of the Parliament of the particular region should be the language of that area. In fact there is no place for multilingual provinces like Bombay and Madras.

The provinces should be distributed on a linguistic basis. We are not going to break our heads over this question. It can be settled amicably by mutual understanding and co-operation.

Similarly about language. The southern languages of India have borrowed freely from Sanskrit. We have got both Tatsama and Tadbhava words in our Dravidian languages. I feel that Hindi with the Devanagri script would be acceptable to us, but I think that it should not be force don us all at once, especially the vast numbers of people inhabiting the Deccan peninsula. It should be gradually introduced. We are prepared to accept Hindi with the Devanagri script as the official language of India, but time should be given to us to pickup Hindi. This Constitution should reflect the cumulative wisdom of every section of this House. If you want to take us with you, we must understand your arguments, we must understand your points of view and we must hammer out this Constitution and make it acceptable to all. So also, the sections of the people who have got the Urdu script should also be given time to pick up the Devanagri script as Begum Aizaz Rasul suggested.

One other point I would like to touch upon is regarding the provisions in Part VII for the states in Part II of the First Schedule, that is, Sections 212 to 214. I think they should not be made a permanent feature of the Constitution. In fact, the policy of the Government of India has been to make the States into viable units. Sections 212 to 214 with the various amendments suggested by the Drafting Committee will simply increase the number of these uneconomic small States in the country. Provision is made for Lieut. Governors, Council of Ministers and so on. If these are allowed to remain a permanent feature of the Constitution, I am afraid they will divide the country into smaller units. Within a short time these smaller units must be induced to merge with the larger provinces or States amidst which they are situated. Take for example the province of Coorg. It has an area of only 1,500 sq. miles and the population is about 160,000. I learn that ever since the Coorg budget was separated from the Central Budget, they have not been able to undertake any development project. They have not been able to repair a bridge which would cost only about Rs.5,000.

Then about the capital of India, I agree with my Honourable friend from My sore who stated that before vast sums of money are expended over the capital for the East Punjab and also the extension of Delhi, we should consider locating the capital in a more centrally situated place.

There may be some justification for Delhi to continue as a Centrally administered area because it is the capital, but there is absolutely no justification to increase these Centrally administered areas. In fact the Central Government will be functioning in two capacities, one as the Central Government and the other as a provincial government for the Centrally administered areas. I do not see any justification for the Centre spending large sums of money on these uneconomic units.

Both Mr. Ananthasayanam Ayyangar and Professor Rang asked why there should be Constituent Assemblies for the States. I submit that this is none of our fault. As soon as we came here in July last, some of us Members representing the States tabled a resolution before this august Assembly that a committee be constituted to evolve a model constitution for the States. If the archives of the Steering Committee are searched, such a resolution will be found there, but unfortunately this Assembly did not take any steps and things so developed that we had to demand Constituent Assemblies in our States when we fought for responsible government in our States. I do not see any harm in this because no constitution drawn up by these Constituent Assemblies can be at variance with the Constitution that is going to be adopted by this House. They must fit in with the all India picture. So long as they do this, I do not see why they should not be allowed to finish their job.

Another suggestion was made that there should be uniform powers both for the States and the provinces. In this connection, I would like to submit, Sir, speaking on behalf of States like Travancore and My sore, that we are far ahead of some provinces industrially, economically and financially. In bringing about uniformity between provinces and the States, I would submit to this House that there should be no levelling down. There should be only levelling up. Mysore has co-operated in all all-India matters and is still co-operating, and I am sure it will co-operate also in bringing about uniformity, provided there is only levelling up and no levelling down. In fact, I am one of those who believe that there should be uniform powers both for the States and the provinces. I want the Supreme Court to be given appellate powers not only in constitutional matters but also in civil and criminal matters. I am glad that the Drafting Committee has made provision for this and I am sure that this provision will be taken advantage of by the States.

Another point I would like to touch upon is Section 258 as regards the financial powers of the President. Power is given to the President to terminate any agreement entered into between a State in Part III and the Union after a period of five years. I submit, Sir, that five years is too short a time. The clause itself says that such an agreement would be valid for a period of ten years. If such an agreement is terminated, after five years it may disturb the financial position of the State concerned. In fact, for long range planning, five years is too small a period. I submit that it may be altered with the consent of the State. If after the report of the Finance Commission the President feels that it is necessary to terminate such an agreement, he may do so in consultation with the State concerned. My point is it should not be one-sided, as this would work as a great financial handicap to the State concerned.

Then, Sir, as regards the power to amend the Constitution. I do not agree with my Honourable friend, Mr. Santhanam, that it should be rigid. It should be as flexible as possible because the integration of smaller units into bigger units is still going on and bringing about uniformity between the States and the provinces also is still going on. Perhaps it will take some time before there is some sort of uniformity between the various units of the Federation, and during the initial period it should be as easy as possible for the future Parliament to amend the Constitution to suit the circumstances of the time. The power to amend the Constitution should be made flexible, but even here a difference is made between the States and the provinces. I submit that this difference between the States and the provinces as regards the number of votes should be done away with. Equal rights should be given both to the States and the provinces so far as amendments to the Constitution are concerned.

With these words, I support the motion for the consideration of the Draft Constitution.

Shri N. Madhava Rau (Orissa States): Mr. Vice-President, I had not intended to join in this discussion, but in the course of the debate, several remarks were made not only on the provisions of the Draft Constitution, but on the manner in which the Drafting Committee had done their work. There was criticism made on alleged faults of commission and omission of the Committee. Mr. Alladi Krishnaswami Iyer who spoke yesterday and Mr. Saadulla who will speak on behalf of the Committee a little later have cleared or will clear the misapprehensions on which this criticism is based. I felt that as a member of the Committee who participated in many of its meetings, after I had joined the Committee I should also contribute my share in removing these misapprehensions if they exist among any large section of the House.

It is true that the Draft Constitution does not provide for all matters, or in just the way, that we would individually have liked. Honourable Members have pointed out, for instance, that cow-slaughter is not prohibited according to the Constitution, Fundamental Rights are too profusely qualified, no reference is made to the Father of the Nation, the National Flag or the National Anthem. And two of our Honourable friends have rightly observed that there is no mention even of God in the Draft Constitution. We have all our favourite ideas; but however sound or precious they may be intrinsically in other contexts, they cannot be imported into the Constitution unless they are germane to its purpose and are accepted by the Constituent Assembly.

Several speakers have criticised the Draft on the ground that it bears no impress of Gandhi an philosophy and that while borrowing some of its provisions from alien sources, including the Government of India Act, 1935, it has not woven into its fabric any of the elements of ancient Indian polity.

Would our friends with Gandhi an ideas tell us whether they are prepared to follow those ideas to their logical conclusions by dispensing, for instance, with armed forces; by doing away with legislative bodies, whose work, we have been told on good authority, Gandhiji considered a waste of time; by scrapping our judicial system and substituting for it some simple and informal methods of administering justice; by insisting that no Government servant or public worker should receive a salary exceeding Rs. 500 per month or whatever was the limit finally fixed? I know some of the Congress leaders who sincerely believe that all this should and could be done. But we are speaking now of the Constitution as it was settled by the Constituent Assembly on the last occasion. Apart from the Objectives Resolution (which is otherwise known as India's Charter of Freedom) and the enunciation of Fundamental Rights, the decisions of the Assembly dealt, sometimes in detail and sometimes in outline, with questions relating to the composition and powers of the Legislature, the executive authority and the judiciary of the Union and of the provinces, the distribution of legislative powers and administrative relations between the Union and the units, finance and borrowing powers, the amendment of the Constitution and soon. Is there any instance in which a decision of the Assembly embodying Gandhi an principles has not been faithfully reproduced in the Draft Constitution? If it is the contention of these critics that the decisions of the Assembly itself have fallen short or departed from those principles, that is of course another matter.

Then those of our friends who wanted indigenous ideas of polity to be embodied in the Constitution would have to admit that while (as has been pointed out by an honourable member today) there might have been republics in the northern India in the days of Alexander, by and large, kingship was an integral part of Indian polity. At a time when the institution of kingship is so unpopular, when even Indian rulers are barely tolerated although they have shed all power, when formal elections and ballot boxes unknown to our ancestors are regarded as the sine qua non and authentic symbols of democracy, it would be unreal to pretend to seek guidance for our immediate task in the ancient political philosophy of India. A more pertinent point is this. Why did not the exponents of these fine ideas press them on the attention of the House at the proper time and secure their acceptance when the Constitution was more or less settled during the last session? Why do they not do so even now if they have any feasible suggestions to make? Why should they blame the Drafting Committee for not incorporating in the Draft what can only be described as belated second thoughts?

There is undoubtedly a feeling among some Congress circles and others that the National Government in the Centre and the people's Government in the provinces are both departing from the principles of Gandhiji, that they are carrying on the much the same bureaucratic way as their alien predecessors and that the promised Ramrajya is nowhere near being realised. In these circumstances, "back to Gandhi" has become a sort of militant slogan and a challenge to the authorities. It might or might not be right, but it has to be addressed to the proper quarter. To apply that slogan in the context of the very restricted ask entrusted to the Drafting Committee seems to be entirely pointless. I am reminded of a couplet written about an archaeologist of the name of Thomas Hearn. This is how it runs:

"Quoth Time to Thomas Hearn

What I forget you learnt."

"You learn what I forget" seems to be rather naive advice.

Shri B. Das (Orissa: General): On a point of order, Sir, Members of this House asked the Drafting Committee to draft the Constitution and each of us is giving out our views now. It is no use for a member of the Drafting Committee to tell the House that we use slogans. I strongly protest against such language by a member of the Drafting Committee.

Mr. Vice-President: Mr. Das, you do not propose to curtail the liberty of expression allowable to a member of the Drafting Committee? You and I may not agree with him. Surely he is entitled to give out his views. Is it not?

Shri N. Madhava Rau: It is very unfortunate that a good deal of controversy arose in regard to village panchayats. Dr. Ambedkar's strong remarks on the subject were apparently based on his own experience. But, like Mr. Alladi Krishnaswami Ayyar, I wish to speak for myself in the light of my own experience. For over thirty years, the Mysore Government have put the revival of village communities and the improvement of the working of village panchayats in the forefront of their activities. A great deal of public expenditure has been incurred on this account. All officers concerned from the Dewan to the Tahsildar have, according to their lights, given personal attention to the condition of the villages. The present popular Government in My sore, are, I understand, making still more intensified efforts in the same direction. The results are, in my opinion encouraging and in some cases, quite gratifying. It is true some villages are chronically faction ridden and indulge in petty tyrannies, or remain the strongholds of untouchability. A considerable number are apathetic or even moribund. But about thirty per cent could be classed as good; that is to say, they has held regular meetings, collected panchayat taxes, undertaken some optional duties and carried out works of public utility and weekly cleaning by voluntary labour contributed by the villagers and had taken steps to ensure the vaccination of children and so on. The success that has been achieved such as it is, is largely conditioned by the initiative of a good headman or other influential land-lord. I am sure that experience in other parts of the country is more or less the same. In certain small Indian States, where the bureaucratic system of administration had not penetrated, I found remarkable self-help and organised effort in the villages. With sustained effort on the part of the provincial and State Governments, the resuscitation of village communities may well be hoped for. As the Members of the Assembly are aware, Gandhiji was very particular about constructive work in the villages. This is what he said on one occasion. "If the majority of congressmen were derived from our villages, they should be able to make our villages models of cleanliness in every sense. But they have never considered it their duty to identify themselves with the villagers in their daily lives." There is nothing in the Draft Constitution to prevent provincial Governments from developing the village panchayats system as vigorously and as rapidly as they are capable of doing. The only point which has now come into prominence is whether the electoral scheme for the legislatures should be founded on these panchayats. If the House comes to the decision that this should be done, two Articles in the Draft Constitution have to be slightly amended. But, before taking such a step, the Assembly will have very carefully to consider whether by throwing the village panchayats into the whirlpool of party politics, you will not be destroying once for all their usefulness as agencies of village administration.

In curious contrast with those Members who found fault with the Drafting Committee for not presenting to them a Constitution according to their own ideas, although they had not been approved by the Assembly, there were others who criticised the Committee for having exceeded its instructions. This is an aspect of the matter which will be dealt with by the next speaker. I have only to say, in view of the criticism of Mr. B. Das, that by accepting membership of the Drafting Committee, Members have not given up their freedom to express their views either from the committee room or the floor of this House.

The Draft Constitution is nothing more than a detailed agenda for this session, it is to serve as the basic working paper so to speak. There are other papers too, such as the Report of the Expert Committee on Finance and the Report of the Committee on Centrally Administered Areas. This is not the only paper before the House. If the Draft Constitution is viewed in this light, I am sure Members will appreciate that the charge that the Committee has, in any way exceed edits instructions is unfounded.

One of the honourable Members observed that this Constitution if adopted would become a fruitful source of litigation. So long as the Constitution is of a federal type, the possibilities of litigation cannot be excluded. It is all the more necessary, therefore, that all Articles and Clauses are closely scrutinised to ensure that litigation and consequent uncertainties of administration are minimised if they cannot be avoided.

Sir, there are one or two points which I should like to refer to in this connection. One is this: when any federal constitution is in the process of making, there are always two opposing sets of views, namely, the views of those who want to make the Centre strong, and the views of those who would plead for the utmost extent of State autonomy. The provisions of the Draft Constitution are necessarily a compromise, tentatively suggested, of these opposing views. My own feeling is that the scales have been tilted a little towards the Centre. If this feeling is shared by any large section of the House, it should be possible to adjust the balance in the direction desired. The second point, Sir, is that the provisions relating to the accession of States are meagre. There have been so many different kinds of mergers of late and the final pattern, so far as we know, has not yet emerged. The exact procedure by which the States will accede to the Union has to be determined at an early date so that the names of the acceding States may be mentioned in the appropriate Schedule and other relevant parts of the Constitution finalised.

There is a good deal of wisdom in the saying; "For forms of Government let others contest; whatever is best governed is best." However, things being what they are, unfortunately, we have to have some sort of written constitution and it has inevitably, to be a lawyer's constitution. If it is possible for any honourable Members to animate the Draft Constitution by a Promethean breath of ancient political wisdom or exalted patriotic sentiment many of us in this House would surely welcome such an effort.

Shri Biswanath Das (Orissa: General): Sir, May I have a word of elucidation from my honourable Friend, as to why the honourable Members of the Committee modified even decisions arrived at by the Constituent Assembly as also by Committees?

Shri N. Madhava Rau: I think if a specific instance is given, the next speaker will explain.

Shri T. Prakasam (Madras: General): The Honourable Mr. Madhava Rau said that the ballot box and ballot paper were not known to our ancestors. I would like to point out to him, Sir, that the ballot box and the ballet papers were described in an inscription on the walls of a temple in the villages of Uttaramerur, twenty miles from Conjeevaram. Every detail is given there. The ballot box was a pot with the mouth tied and placed on the ground with a hole made at the bottom and the ballot paper was the kadjan leaf and adult franchise was exercised. The election took place not only for that village but for the whole of India. This was just a thousand years ago. It is not known to my honourable Friend and that is why he made such a wrong statement - a grievously wrong statement and I want to correct it.

Syed Muhammad Saadulla (Assam: Muslim): Mr. Vice-President, Sir, I rise with some diffidence to sum up this debate and general discussions of the Draft Constitution for I was a member of the Drafting Committee. I do not mean to cover all the grounds that have been advanced during the last four days on the floor of the House but I will speak generally on the trend of the criticism and try to show by facts why the Drafting Committee took a certain line of action. Many honourable Members have been kind enough to give us a meed of appreciation for the tremendous trouble we took in the task of preparing the Draft Constitution. Certain honourable Members were not in a position to congratulate the Drafting Committee and I welcome that also. For it is well known that in the midst of sweet dishes something briny, something salty adds to the taste. I have listened very carefully during the last three days to the criticisms that have been advanced. My task has been greatly lightened by the intervention of my friends, colleagues in the Drafting Committee - I mean Sir Alladi Krishnaswamy Ayyar and Mr. Madhava Rau - in this debate. The criticisms that were levelled against our lab ours boil down really to three only, one that we have travelled far beyond our jurisdiction, secondly that we have flouted the opinions expressed by various committees by not accepting their recommendations, and thirdly, that we had made a discrimination between the provinces and the Indian States. Sir, if human memory is short, official memory is shorter still. The Drafting Committee is not self-existent. It was created by a Resolution of this House in August 1947, if I remember aright. I personally was lying seriously ill at the time and I could not attend that session. But, Sir, I find from the proceedings that as the Drafting Committee has been asked to frame the Constitution within the four corners of the Objective Resolution, we will be met with the criticisms which we have heard now. Wise men even in those days had anticipated this and to the official Resolution an amendment was moved by the learned Premier of Bombay, Mr. Kher, wherein we are given this direction. I will read from his speech. He moved an amendment to the original Resolution for Constituting this Drafting Committee and there he said - "That the Drafting Committee should be charged with the duties of scrutinising the draft of the text of the Constitution of India prepared by the Constitutional Adviser giving effect to the decisions taken already in the Assembly and including all matters which are ancillary thereto or which have to be provided in such a Constitution, and to submit to the Assembly for consideration the text of the draft Constitution as revised by the Committee". This was his amendment. In his speech he said:

> "We have laid down a principle that all the action to be taken in the Provincial Constitution will be taken in the name of the Governor. There are a number of things which have to be put in order to give effect to this decision which the Assembly has taken and which have been given a place in the Government of India Act. Then there are provisions which are ancillary in the other constitutions and some other provisions which must usually find a place in the Constitution. All these will have to be included in our draft even though they may not have been discussed or decided here up to now. We have taken decisions on almost all important points. Those will be given effect to but the draft will also contain things which are ancillary to these and also, all such things as are otherwise necessary."

That was the amendment which was accepted by the House. Sir, after this amendment of the Honourable Mr. Kher which was accepted by the House, it does not lie in the mouth of the Members of the Constituent Assembly to say that we have gone far beyond our jurisdiction.

Shri Biswanath Das: Sir, May I know whether this direction includes the accepting of Committee's reports, modification of such reports and rejection of important recommendations of such Committees?

Syed Muhammad Saadulla: I would request the Honourable Mr. Das, ex-Premier of Orissa, not to disturb me during the course of my speech. I propose to meet his ground towards the end of my statement. I will also make the same request to other Honourable Members of the House, for otherwise I will lose the trend of my thought. I am not a seasoned orator like my friends here, and I speak from no notes. So I would appreciate their silence. If they want to ask me any questions, I will gladly reply to them if I can at the end of my speech.

The yard stick to measure the contents of the Draft Constitution is really the Objectives Resolution that was accepted by this House universally when it was moved by our learned Prime Minister. That Objectives Resolution contained only eight Articles, the last of which need not find a place in a Constitution. Let anyone here say that we have not conformed to the principles that are enunciated by that Objectives Resolution. We cannot say that those eight Articles form our Constitution: they gave us the barest skeleton. The Drafting Committee was charged with the duty of filling in the canvas and producing a complete picture of what the Constitution should be. At the time of moving that Objectives Resolution our popular Prime Minister said that this is an expression of our dream, this is the target of our aspirations and that it is nothing but a "Declaration". A declaration in such bold terms cannot form a Constitution. Therefore the Assembly, at the instance of Government - for the Resolution was moved by the then Chief Whip of the Government party - decided that the actual framing of the Constitution should be left in the hands of the Committee. I personally had no hand in my inclusion in that Committee. As a matter of fact, very strenuous attempts were made to oust me from the personnel of the Drafting Committee. I see from the proceedings that our stalwart friend Mr. Kamath raised a technical objection that I was not a Member of the Constituent Assembly at the time when my name was proposed. Probably he took that ground without knowing the facts. I was a Member of the Constituent Assembly from the very first. But he was correct that after the referendum in the districts of Sylhet, part of Sylhet was transferred to Eastern Pakistan, and the number of Members to be sent from Assam to the Constituent Assembly had to be reduced and there was a fresh election. But if I remember aright at this distance, we were electing Members of the Constituent Assembly, in the Provincial Legislative Assembly in August1947, and, if I remember aright, I was again elected a Member at the time when Mr. Kamath had raised that technical objection.

Shri H. V. Kamath: On a point of personal explanation, Sir. My point was that my Honourable friend Mr. Saadulla had not taken his seat in the Assembly; he had not taken the oath nor signed the Register, and therefore he was not a Member of the Assembly technically.

Syed Muhammad Saadulla: Sir, in spite of my request Mr. Kamath has chosen to interrupt me.

Shri M. Thirumala Rao: May I know how all this is relevant to the subject under discussion?

Mr. Vice-President: Let us proceed with the subject.

Syed Muhammad Saadulla: Sir, what I was driving at was that these people of the Drafting Committee were really elected by the unanimous vote of the Constituent Assembly, and it does not lie in the mouth of anyone now to say that they are not competent, that they did not belong to a certain party, and that barring one none of the Members had the hall-mark of jail delivery. How can I tell Honourable Members that we toiled and moiled that we did our best, that we ransacked all the known Constitutions, ancient and recent from three different continents, to produce a Draft which has been termed to be nothing but patch-work? But those who are men of art, those who love crafts, know perfectly well that even by patch-work, beautiful patterns, very lovable designs can be created. I may claim that in spite of the deficiencies in our Draft we have tried to bring a complete picture, to give this Honourable House a document as full as possible which may form the basis of discussion in this House. The Drafting Committee never claimed this to be the last word on the Constitution, that its provisions are infallible or that these Articles cannot be changed. The very fact that this Draft has been placed before this august House for final acceptance shows that we are not committed to one policy or the other. Where we had differed from the recommendations of Committees, or where we had the temerity to change a word here or a word there from the accepted principles of this august House, we have given sufficient indication in foot-notes, so that nothing can be put in surreptitiously there. The attention of the House has been drawn so that their ideas may be focussed on those items in which the Drafting Committee thought that they should deviate from the principles already accepted or from the recommendations of the Committees.

As regards the Committees, we were in a difficult position. Some Committees' recommendations were placed before the House and there they were discussed and a decision was taken, but reports of certain other Committees--notably the Financial Experts Committee or the Centrally Administered Areas Committee - were not placed before the House. They could not be discussed by the Honourable Members and no decision could be arrived at. We have taken liberty in the Drafting Committee to put our own view on some matters. If we have done it, we have done it with the best of intentions. As regards two other matters, I will elaborate a little later, but please for God's sake, do not go with the uncharitable idea that the Drafting Committee were not amenable to the vote of this House.

The main point of criticism, at least in regard to those two Committees, is firstly that the Drafting Committee did not give any consideration to the recommendation of the ad hoc Committee on the Centrally Administered Areas. We had very able exponents from those areas - Delhi and Ajmer-Merwara. We listened with the greatest respect, but we have heard the criticism on the very floor of this House that India should not multiply very small localities and convert them into units of the Union. We had the recommendations of this *ad hoc* Committee before us but we were perplexed what to do with them. Take Delhi, for example. It has got a population of 20 lakhs. If it is converted into a separate unit - and it cannot but be separated into a distinct unit, call it Lieutenant Governor's province or put it under the Centre - in that case, what are we to do with the other localities which are now centrally administered, Ajmer-Merwara, for instance? According to 1941 census figures, Ajmer-Merwara had only 6 lakhs population, but Mr. Mukut Bihari Bhargava was good enough to tell me now that the population has increased to 9 lakhs. Let us put the present population at 10 lakhs. In that case, if we give a separate Lieutenant Governor's province to Delhi, how can we refuse it to Ajmer-Merwara? Then what about Coorg? It is another centrally administered locality with a population of less than 2 lakhs. Then again there is the Andaman islands which also boasts of a Chief Commissioner. Therefore, we thought it best that this matter should be left to be decided by the bigger body - the Constituent Assembly. Were we wrong in adopting this course? We drew specific attention of this august Assembly to this in Part VII of the Draft Constitution. In the foot-note there you will find that we have said:

> "The Committee is of opinion that it is not necessary to make any detailed provisions with regard to the Constitution of the States specified in part II of the First Schedule which are at present Chief Commissioner's provinces on the lines suggested by the ad hoc Committee on Chief Commissioner's provinces in their recommendations. The revised provisions proposed in this part would enable there commendations of the ad hoc Committee, if adopted by the Constituent Assembly, to be given effect to by the President by order. "

If we wanted to neglect these areas, if we wanted to give a cold shoulder to their aspirations, we would not have said that it is up to the Constituent Assembly whether they should give them a constitution on the lines recommended by the *ad hoc* Committee.

I now come to the greater charge - of practically refusing to accept the recommendations of the Experts Finance Committee. I can quite appreciate--nay, sympathize - with all those members from East Punjab, West Bengal, Orissa and Assam who have criticised this part of our recommendations. But I would leave it to the decision of this august House to judge whether the provisions that we have made are not far better ultimately than the recommendations made by the Expert Finance Committee. I was surprised to hear one particular criticism from an Honourable Member from Madras that we were either careless in going through those recommendations or we were incompetent to appreciate the principles underlying them. To both of these accusations I register an emphatic "No". On the other hand, we gave the closest attention to the recommendations of the Expert Committee. I will show from their report as well as by figures that if the recommendations of that Committee had been accepted, the provinces will stand to lose, especially the poorer provinces like Assam, Orissa and Bihar. Again, it is not correct to say that the Drafting Committee has not accepted the majority of the recommendations of the Expert Finance Committee. I have that Committee's report in my hands and anybody who has it in his hands will find that on 41, Appendix VI, the Committee recommended certain amendments in the Draft Constitution. I am glad to say that 95 per cent of those amendments have been accepted by the Drafting Committee and will be found in our provisions. What we did not accept is the figures that the Expert Finance Committee suggested that we should include in our recommendations.

Now, to turn to specific points, first I take there commendation of the Expert Committee regarding the share in the jute export duty which is now available to the jute-growing provinces of India. This subject is very vital for the Republic of India. Jute, as is known, is the world monopoly of these four provinces only. I am glad to see from Press reports that attempts are being made to grow jute in Madras, but taking the position as it is, the undivided Bengal used to produce 85 per cent of the world's jute, Bihar 7 per cent, Assam 6 per cent and Orissa 2 per cent but these proportions have been changed by the partition of Bengal into East and West Bengal.

East Bengal used to produce 75 per cent of the total jute produced in Bengal. Therefore the present West Bengal produces only 10 per cent or 12 per cent of world jute. This position has changed the percentages of Assam, Bihar and Orissa. Yet, what do we find in the recommendations of the Financial Experts' report? Their recommendation is that the share - which under the Government of India Act of 1935, is $62^{1/2}$ per cent of the proceeds of the jute export duty which was given to this account to the provinces. But they realised that the poor provinces will be hard hit and therefore recommended that for ten years, the contribution should be made by the Government of India *ex-gratia* and in the following proportion: -

West Bengal - one crore,

Assam - fifteen lakhs,

Bihar - seventeen lakhs and

Orissa - three lakhs.

Now, I request this Honourable House to consider seriously whether this distribution is just or equitable for a province like Assam or a province like Orissa or Bihar. Bihar has got its production ratio increased from 7 per cent to very nearly 35 per cent of the jute grown in India now. Similarly the percentage for Assam has gone up to 30 per cent and proportionately for Orissa. Yet, the Financial Expert Committee wants to perpetuate the injustice that was done during the bureaucratic days and divide the proceeds in the same fashion, giving West Bengal which produces only 10 or 12 per cent of the total jute production as much as one crore.

One argument advanced by the Committee is that jute may be grown in the other provinces, but the mills converting the jute into finished products are situated in Bengal. It is perfectly correct that the export duty is levied not only on raw jute but also on the finished product. But consider the effect. West Bengal cannot increase its acreage. There, all the available waste lands are being requisitioned for refugees from East Pakistan. If any province can increase jute production it is Assam and Orissa. But if we do not get any return, if the share in the jute export duty is stopped, what is the incentive for Assam to increase the jute acreage? Jute is vital for India in the sense that all the jute produced in West Bengal is sold either to the continent of Europe or America by means of which we get the much-needed sterling or dollar exchange. If tomorrow the provinces of Assam and Orissa cease to produce jute, the jute mills in Bengal would not have anything to do and they will have to close down. It is on this account that the Drafting Committee thought that we should not accept those recommendations of the Expert Committee and let the *status quo* run.

The next recommendation of the Expert Finance Committee is that, in order to make up the loss which these province swill suffer by the stop in the share of jute export duty, the Government of India which now shares on a 50-50 basis the income-tax from the provinces should increase the divisible pool of the provinces to 60 per cent or an increase of 10 per cent. Sir, most Honourable Members here do not know how unjustly and iniquitously this provision of division of income-tax has fallen on the poor provinces of Bihar and Assam. Bihar produces the raw material; Bihar has the gigantic steel works and offices, but their head offices are all in Bombay and hence the income-tax is paid in Bombay. Bihar therefore does not get any credit for this income-tax. Bihar has been crying hoarse to get this changed, but has been unsuccessful so far. In Assam, the condition is worse. Before Partition, Assam had some 1,200 tea gardens. Even after the removal of a large part of Sylhet to East Pakistan, Assam has got a thousand tea gardens. That is the only organised industry of Assam. But out of those 1,000 tea estates, the head offices or the offices of the managing agents of as many as 800 are in Calcutta or London. Up till now, Assam has been making insistent prayers to the Central Government from the time this system was introduced to change the system. The division under this system is on the basis of collection and not of origin.

Now, do you think, Sir, that if we accept this provision of the Finance Committee, justice would be meted out to Bihar and to Assam? We wanted revision of the entire system and the Finance Committee was compelled to accept the force of our arguments. But they tried to compromise and their compromises are put down in Section 55 of their recommendation.

They say: "We recommend that the provincial share, that is 60 per cent of the net proceeds, be distributed among the provinces as follows: -

20 per cent on the basis of population,

35 per cent on the basis of collection, and

5 per cent in the manner indicated in paragraph56."

Paragraph 56 says: "The third block of 5 per cent should be utilised by the apportioning authority as a balancing factor in order to modify any hardship that may arise in the case of particular provinces as a result of the application of the other two criteria."

Sir, of the present provinces, after the merger of the native States with Orissa, Assam is the least populated provinces in India. We had a population according to the 1941 census of 102 lakhs, but now the population has dwindled to 72 lakhs. The population of Orissa has increased. Therefore if twenty per cent of the divisible pool of income-tax is divided on population basis, we get very little. Rather, Assam would get a reduced sum.

Then they say that 35 per cent should be distributed on the basis of collection. This way both Assam and Bihar will suffer, because the place of collection in the case of Assam is Calcutta and for Bihar, Bombay and naturally the major portion of the 60 per cent will go away from the provinces concerned. Only a little 5 per cent is left to mitigate any hardships that may arise in the case of particular provinces. Ours has been a cry in the wilderness; our voices are never heard at the Centre. However hoarse we may cry and however much our Premier may try, we do not get a hearing. Therefore, the Drafting Committee thought that it is not in the interests of the poorer provinces to accept this recommendation of the Expert Committee.

Again, the Committee has stated that the excise duty on tobacco should be divided amongst the provinces on the basis of estimated consumption. That would not help either Assam or Orissa for want of numbers. Although the Expert Committee made a reference about this in their main recommendations, they omitted this from the list of amendments which they have put down in Appendix VI. Therefore when they themselves have not recommended this, no blame can be attached to the Drafting Committee if they have not adopted it.

Lastly, Sir, the Expert Committee recommended that there should be a Finance Commission appointed immediately to go into the finances of the provinces and the Centre. We have not accepted that it should be appointed immediately because we felt that the appointment of such a Commission at this juncture would be fair neither to the provinces nor to the Central Government. Moreover, they will have nothing to go by. The Expert Committee themselves have stated:

> "In this country the lack of sufficient economic and financial statistics and other similar data is a great handicap. Therefore, the allocation of resources has to be made largely on the basis of a broad judgment, at any rate until the necessary data become available. We attach great importance to the collection of these statistics and to connected research, and trust that the Government will make the necessary arrangements without delay......."

An Honourable Member: For how long does the Honourable Member propose to continue? Is there no time limit for him?

Syed Muhammad Saadulla: I am finishing in a few minutes, if my friends will allow me.

Mr. Vice-President: I think he is entitled to as much time as he wants in order to answer the various criticisms that have been levelled against the Drafting Committee. Surely you should give him time to do it.

Syed Muhammad Saadulla: We find that even on the recommendation of the Expert Committee, there are no data available at the present moment. From the figures which they have published at 27 of the brochure, we find that the Central Government's budget has been a deficit one continuously since 1937-38. According to the revised estimate for 1946-47, their deficit is a small one of about 45 lakhs, but I am sure, Sir, that when the final figures are published, the deficit will increase. That is the reason why, I presume, the Central Government without consulting the provinces concerned, by a stroke of the pen, have reduced the share of the Jute Export Duty to these four provinces from $62^{1/2}$ per cent. to 20 per cent. They would not have taken this extraordinary step if they were not hard-pressed for finance.

The Honourable Shri K. Santhanam (Madras: General): On a point of order, Sir, the Drafting Committee, I suggest, have nothing to do with the Government of India's financial administration. I think the Honourable Member should confine his remarks to the Constitution itself.

Syed Muhammad Saadulla: But, Sir, the Drafting Committee has been charged with neglect in this matter.

For the past ten years the Government of India themselves are having deficit budgets, and now they are incurring very huge expenditure on the rehabilitation of refugees, the war in Kashmir and the police action in Hyderabad. On account of these, they are not in a position to give sufficient help to the provinces, whereas the provinces are crying hoarse over the financial neglect from the Centre. Sir, I will just address one point about the particular position of Assam, as Assam's position is not appreciated by most Members of the House. It is not merely a frontier province of the Republic of India but it is a bulwark against aggression from the East. (Interruption).

Sir, if you do not allow me to speak I am subjecting myself to your Ruling. But I wish to say a few words as a Member coming from Assam.

Mr. Vice-President: You are speaking as a Member of the Drafting Committee.

The Honourable Shri B. G. Kher (Bombay: General): May I suggest that he may continue this subject tomorrow, so that we may have more time?

Syed Muhammad Saadulla: I bow to your ruling, Sir, I thought that I have my three functions before this House, as a member of the Drafting Committee, also as a member from the neglected and benighted province of Assam and also as coming from the Muslims. I wanted to speak just two things about Assam and the Muslims, but I will reserve it for a future occasion.

Mr. Vice-President: I understand that Mr. Kamath had some kind of amendment. Is the Honourable Member pressing it?

Shri H. V. Kamath: I am not pressing it, as it is purely of a verbal nature.

Mr. Vice-President: The question is:

> "That the Constituent Assembly do proceed to take into consideration the Draft Constitution of India settled by the Drafting Committee appointed in pursuance of the resolution of the Assembly dated the 29th day of August, 1947."

The motion was adopted.

Mr. Vice-President: I have to say something about our future programme of work. Naturally we shall get two days, tomorrow and the day after, for submitting amendments. I understand that a Member had written a letter to our President, asking for ten days' time. It is impossible to grant this extension of time without seriously jeopardizing the existing programme which we have set ourselves to fulfil. So the last date will be Thursday and the time 5 P.M. on the 11th.

I further understand that already three thousand amendments have been received and I am quite certain that within the next two days further amendments will come in. I take my courage in my hands and make a suggestion for the consideration of the House. It is this: that instead of trying to go through the amendments one by one on the floor of the House, it would be much better for those who have suggested these amendments to meet the Drafting Committee as a whole or certain members of the Drafting Committee and to discuss matters. In this way it is possible to expedite the work. It is for you to reject it at once without listening to my suggestion or to come to some sort of understanding. It may be that the Drafting Committee may be persuaded to accept certain amendments; it is quite possible on the other hand that certain amendments will not need any further consideration. If this meets with your approval, then I suggest that the arrangement may come into effect from, say, Friday and the time fixed by 10-30 A.M.

Shri T. T. Krishnamachari (Madras: General): May I ask,Sir, if the Drafting Committee is in existence?

Mr. Vice-President: It may not be in existence, but the people in it are very much alive and they are prepared to take this trouble in order to reduce the work of the House.

Prof. N. G. Ranga: I dare say you are aware of the system that we have followed in the past. Anyhow so far as those people who belong to the Indian National Congress are concerned and those who are associated with it, we used to meet every day for three or four hours in order to lessen this work as you have suggested and make it easier for you to get through the allotted work. In addition to this, if we are to accept your suggestion it would mean that we would have to be sitting here with the Drafting Committee and beg them to accept this amendment or that. In addition we would have to meet again for three or four hours every day. Therefore, I wish to submit to you with all respect that this suggestion will not be very practicable and may not be quite acceptable to several of us. Therefore, we would like you to relieve us from this suggestion.

Shri R. K. Sidhwa (C. P. and Berar: General): I endorse the suggestion made by Prof. Ranga. The suggestion made is certainly not practicable and it is better to leave the Members to help expediting these amendments. I therefore suggest that the usual practice may prevail and the Members should be given the right to move their amendments in this House if they do not come to an agreement with the Drafting Committee.

Mr. Vice-President: If you do not agree, then you need not accept the suggestion. Further, the Drafting Committee is not defunct.

There is something more. Friday will be a closed holiday on account of Mohurram and the Honourable the President has given us Saturday to consider for the study of amendments, so that we shall meet on Monday the 15th at 10A.M.

Shri H. V. Kamath: On a point of procedure, may I know whether the preamble will be taken first or last?

Mr. Vice-President: I am not in a position to give any decision on the matter.

The Assembly then adjourned till Ten of the Clock on Monday, the 15th November 1948.

[Translation of Hindustani speech .]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VII

Monday, the 15th November, 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mokherjee) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the Pledge and signed the Register:

1. Shri P. S. Nataraja Pillai (Travancore).

DRAFT CONSTITUTION--*(Contd.)*

Mr. Vice-President (Dr. H. C. Mookherjee): Maulana Hasrat Mohani.

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, I beg to state that on the 6th November, I have notice of an amendment to this effect:

> "That the consideration of the Draft Constitution clause by clause be postponed till after it has been finally decided which of the following three sets of words are to be incorporated in the Preamble of the same -
>
> Sovereign Independent Republic,
>
> Sovereign Democratic Republic,
>
> Sovereign Democratic State."

It has not yet been decided which of these three sets is to be incorporated in the Constitution, and yet I understand that the Congress Party has decided to consider this Constitution, clause by clause, without deciding the most important question of what words should be there - Republic or State, in the Preamble.

I have a complaint to make. All the amendments of which notice was given to your office have been printed, but my amendment has been left out. May I know the reason why this has been left out?

Mr. Vice-President: I understand that this has come about at as a result of the form of procedure, and the amendment is out of order. I am fortified in my decision by what I am told is the procedure adopted in the House of Commons where the Preamble comes last of all.

Maulana Hasrat Mohani: May I point out one thing, Sir? On a previous occasion, when the same thing was done by me, it was decided by the President of the

Constituent Assembly, and he has definitely given a ruling that my amendment to this very effect which I have proposed today, was in order. He has definitely said so. I may read out his very words which have been printed in the official report --

> "I think the amendment is in order. It is open to the House to throw it out."

So I have every right to propose my amendment. Of course, it is open to the House to accept it or reject it. So I say this thing has been settled by the President. If you like you may ask the President if it is a correct ruling or not.

Again, when the Union Constitution was presented before this House in July, on that occasion also, I raised objection to this very effect, and then also the President of the Constituent Assembly definitely said that my amendment cannot be ruled out of order. If you like, I may read out his exact words:

> "I actually give a promise that whenever you move an amendment to that effect, it will not be ruled out of order."

So I request you not to rule me out of order, as it has been finally decided by the President that my amendment should be allowed. Of course, it is open to the House to accept or reject it, as on a previous occasion, when the Union Constitution was proposed by Pandit Nehru. It is very unfortunate that instead of Pandit Nehru, we have today Dr. Ambedkar. I think he has reversed the whole order of the business. I submit I have got every right to request you to protect my rights and allow me an opportunity to give my reasons for what I say. Of course, if the House is not willing to accept my amendment, the House can throw it out, as it did on a previous occasion. But I think I must not be discouraged in this way. My right to move any amendment must be protected.

Mr. Vice-President: I make a distinction between the time when the Preamble is to be considered and your right to move an amendment. When the time comes, you have, of course, every right to move your amendment. My ruling is that the Preamble is not to be taken up first of all. That is final.

Now we propose to take up the discussion of the Draft Constitution, clause by clause.

Shri Algurai Shastri (United Provinces: General): *[Mr. President, before you take up the consideration of this constitution, I want to draw your attention to an important matter. Have I your permission to do so?]*

Mr. Vice-President: Please come to the mike.

Shri Algurai Shastri: *[Mr. President, I want to submit that two or three days back a report appeared in the papers that many Hindu Members of the Sind Assembly had been unseated because a large number of Sindhis had left Sind and had come over to India. Those people who have come to India appear to be fourteen lakhs in number and therefore, it appears to be necessary that these Sindhi brothers, who were compelled to leave their place and have come here leaving behind their homes and hearths, should find some representation in this Assembly. We are going to frame a constitution for the whole of India. In framing that constitution it is necessary that these brothers, who have been compelled to leave their homes, should find some representation. I want that some such arrangement may be made as may enable those people who have come here from Sind to get representation in this House. If you permit us, we shall move a regular resolution to that effect so that those people may be represented in this House.]*

Mr. Vice-President: This question cannot be taken up here.

It seems that I made a mistake in the procedure to be adopted. What I have to say now is that Article I should stand as part of the Constitution.

I understand that there is something to be said on this matter by our friend Mr. Ayyangar. As regards the amendments, he has certain proposals to make.

ARTICLE 1.

Shri M. Ananthasyanam Ayyangar (Madras: General): Sir, I submit that amendments Nos. 83 to 96, both inclusive, may kindly be allowed to stand over. They relate to the alternative names, or rather the substitution of names - BHARAT, BHARAT VARSHA, HINDUSTAN - for the word INDIA, in Article 1, clause (1).

It requires some consideration. Through you I am requesting the Assembly to kindly pass over these items and allow these amendments to stand over for some time. A few days later when we come to the Preamble these amendments might be then taken up. I am referring to amendments Nos. 83 to 96, both inclusive, and also amendment No. 97 which reads:

> "That in clause (1) of article 1, for the word 'India' the word 'Bharat (India)' and for the word 'States' the word' Provinces' be substituted."

So I would like all these to stand over.

Mr. Vice-President: Is that agreed to by the House?

Honourable Members: Yes.

Shri Lokanath Misra (Orissa: General): Of course I would have no objection, Sir, if you defer consideration of these amendments for two or three days, but I beg to bring to your notice that amendment No. 85, which stands in my name, does not only mean to change the name of India into 'Bharatavarsha', but it means something more and I am afraid if you hold over this amendment those things would be inappropriate at a later stage. I am submitting that I may be allowed to move this amendment, of course without committing myself to the change of the name of India to 'Bharatavarsha' or otherwise. Though I am not insisting on the change of name just now, I ask that I may be allowed to move the other part of my amendment.

Shri M. Ananthasayanam Ayyangar: My request was that amendments relating only to the name may stand over and in his case on the understanding that the word 'India' be changed to some other name, he may move his amendment. I am not asking that the other portion of this amendment may not be moved.

Mr. Vice-President: So the Honourable Member may take the opportunity of moving the second part of his amendment at the proper place.

Now we shall go to the amendments. Amendment No. 98 stands in the name of Professor K. T. Shah.

Prof. K. T. Shah (Bihar: General): Sir, I beg to move:

> "That in clause (1) of article 1, after the words 'shall be a' the words 'Secular, Federal Socialist' be inserted."

and the amended article or clause will read as follows:

> "India shall be a Secular, Federal, Socialist Union of States."

In submitting this motion to the House I want first of all to point out that owing to the arrangements by which the Preamble is not considered at this moment, it is a little difficult for those who would like to embody their hopes and aspirations in the Constitution to give expression to them by making amendments of specific clauses which necessarily are restricted in the legal technique as we all know. Had it been possible to consider the governing ideals, so to say, which are embodied in this Preamble to the Draft Constitution, it might have been easier to consider these proposals not only on their own merits, but also as following from such ideals embodied in the preamble as may have been accepted.

As it is, in suggesting this amendment, I am anxious to point out that this is not only a statement of fact as it exists, but also embodies an aspiration which it is hoped will be soon realized. The amendment tries to add three words to the descriptions of our State or Union: that is to say, the new Union shall be a Federal, Secular, Socialist Union of States. The Draft Constitution, may I add in passing, has rendered our task very difficult by omitting a section on definitions, so that terms like "States" are used in a variety of meanings from Article to Article, and therefore it is not always easy to distinguish between the various senses in which, and sometimes conflicting senses in which one and the same term is used. I take it, however, that in the present context the word "Union" stands for the composite aggregate of States, a new State by itself, which has to be according to my amendment a Federal, Secular Socialist State.

I take first the word 'Federal'. This word implies that this is a Union which however is not a Unitary State, in as much as the component or Constituent parts, also described as States in the Draft Constitution, are equally parts and members of the Union, which have definite rights, definite powers and functions, not necessarily overlapping, often however concurrent with the powers and functions assigned to the Union or to the Federal Government. Accordingly it is necessary in my opinion to guard against any misapprehension or misdescription hereafter of this new State, the Union, which we shall describe as the Union of India.

Lest the term 'Union' should lead any one to imagine that it is a unitary Government I should like to make it clear, in the very first article, the first clause of that article, that it is a `federal union'. By its very nature the term 'federal' implies an agreed association on equal terms of the states forming part of the Federation. It would be no federation, I submit, there would be no real equality of status, if there is discrimination or differentiation between one member and another and the Union will not be strengthened, I venture to submit, in proportion as there are members States which are weaker in comparison to other States. If some members are less powerful than others, the strength of the Union, I venture to submit, will depend not upon the strongest member of it, but be limited by the weakest member. There will therefore have to be equality of status, powers and functions as between the several members, which I wish to ensure by this amendment by adding the word `Federal'.

So far as I remember, this word does not occur any where in the constitution to describe this new State of India as a Federation and this seems to me the best place to add this word, so as to leave no room for mistake or misunderstanding hereafter.

Next, as regards the Secular character of the State, we have been told time and again from every platform, that ours is a secular State. If that is true, if that holds good, I do not see why the term could not be added or inserted in the constitution itself, once again, to guard against any possibility of misunderstanding or misapprehension. The term` secular', I agree, does not find place necessarily in constitutions on which ours seems to have been modelled. But every constitution is framed in the background of the people concerned. The mere fact, therefore, that such description is not formally or specifically adopted to distinguish one state from another, or to emphasis the character of our state is no reason, in my opinion, why we should not insert now at this hour, when we are making our constitution, this very clear and emphatic description of that State.

The secularity of the state must be stressed in view not only of the unhappy experiences we had last year and in the years before and the excesses to which, in the name of religion, communalism or sectarianism can go, but I intend also to emphasis by this description the character and nature of the state which we are constituting today, which would ensure to all its peoples, all its citizens that in all matters relating to the governance of the country and dealings between man and man and dealings between citizen and Government the consideration that will actuate will be the objective realities of the situation, the material factors that condition our being, our living and our acting. For that purpose and in that connection no extraneous considerations or authority will be allowed to interfere, so that the relations between man and man, the relation of the citizen to the state, the relations of the states *inner se* may not be influenced by those other considerations which will result in injustice or inequality as between the several citizens that constitute the people of India.

And last is the term `socialist'. I am fully aware that it would not be quite a correct description of the state today in India to call it a Socialist Union. I am afraid it is anything but Socialist so far. But I do not see any reason why we should not insert here an aspiration, which I trust many in this House share with me, that if not today, soon hereafter, the character and composition of the State will change, change so radically, so satisfactorily and effectively that the country would become a truly Socialist Union of States.

The term `socialist' is, I know, frightening to a number of people, who do not examine its implications, or would not understand the meaning of the term and all that it stands for. They merely consider the term `socialist' as synonymous with abuse, if one were using some such term, and therefore by the very sound, by the very name of it they get frightened and are prepared to oppose it. I know that a person who advocates socialism, or who is a declared or professed socialist is to them taboo, and therefore not even worth a moment's consideration......

Seth Govind Das (C. P. and Berar: General): It is absolutely wrong.

Prof. K. T. Shah: Thank you. If the assurance given by some friends is correct, I hope the House would have no objection to accept this amendment. I trust that those friends here who are very loud in this assertion will induce others in the House to set aside party barriers, and support me in this promising description, this encouraging epithet of the State.

By the term `socialist' I may assure my friends here that what is implied or conveyed by this amendment is a state in which equal justice and equal opportunity for everybody is assured, in which every one is expected to contribute by his lab our, by his intelligence, and by his work all that he can to the maximum capacity, and every one would be assured of getting all that he needs and all that he wants for maintaining a decent civilised standard of existence.

I am sure this can be achieved without any violation of peaceful and orderly progress. I am sure that there is no need to fear in the implications of this term the possibility of a violent revolution resulting in the disestablishment of vested interests. Those who recognise the essential justice in this term, those who think with me that socialism is not only the coming order of the day, but is the only order in which justice between man and man can be assured, is the only order in which privileges of class exclusiveness property for exploiting elements can be dispensed with must support me in this amendment. It is the only order in which, man would be restored to his natural right and enjoy equal opportunities and his life no longer regulated by artificial barriers, customs, conventions, laws and decrees that man has imposed on himself and his fellows in defence of vested interests. If this ideal is accepted I do not see that there is anything objectionable in inserting this epithet or designation or description in this article, and calling our Union a Socialist Union of States.

I have one more word to add. As I said at the very beginning this is not merely an addition or amendment to correct legal technicality, or make a factual change, but an aspiration and also a description of present facts. There are the words "shall be" in the draft itself. I therefore take my stand on the term "shall be", and read in them a promise and hope which I wish to amplify and definitise. I trust the majority, if not all the members of this House, will share with me.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Mr. Vice-President, Sir, I regret that I cannot accept the amendment of Prof. K. T. Shah. My objections, stated briefly are two. In the first place the Constitution, as I stated in my opening speech in support of the motion I made before the House, is merely a mechanism for the purpose of regulating the work of the various organs of the State. It is not a mechanism where by particular members or particular parties are installed in office. What should be the policy of the State, how the Society should be organised in its social and economic side are matters which must be decided by the people themselves according to time and circumstances. It cannot be laid down in the Constitution itself, because that is destroying democracy altogether. If you state in the Constitution that the social organisation of the State shall take a particular form, you are, in my judgment, taking away the liberty of the people to decide what should be the social organisation in which they wish to live. It is perfectly possible today, for the majority people to hold that the socialist organisation of society is better than the capitalist organisation of society. But it would be perfectly possible for thinking people to devise some other form of social organisation which might be better than the socialist organisation of today or of tomorrow. I do not see therefore why the Constitution should tie down the people to live in a particular form and not leave it to the people themselves to decide it for themselves. This is one reason why the amendment should be opposed.

The second reason is that the amendment is purely superfluous. My Honourable friend, Prof. Shah, does not seem to have taken into account the fact that apart from the Fundamental Rights, which we have embodied in the Constitution, we have also introduced other sections which deal with directive principles of state policy. If my honourable friend were to read the Articles contained in Part IV, he will find that both the Legislature as well as the Executive have been placed by this Constitution under certain definite obligations as to the form of their policy. Now, to read only Article 31, which deals with this matter: It says:

> "The State shall, in particular, direct its policy towards securing --
>
> > (i) that the citizens, men and women equally, have the right to an adequate means of livelihood;
> >
> > (ii) that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good;
> >
> > (iii) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
> >
> > (iv) that there is equal pay for equal work for both men and women;...."

There are some other items more or less in the same strain. What I would like to ask Professor Shah is this: If these directive principles to which I have drawn attention are not socialistic in their direction and in their content, I fail to understand what more socialism can be.

Therefore my submission is that these socialist principles are already embodied in our Constitution and it is unnecessary to accept this amendment.

Shri H. V. Kamath (C. P. and Berar: General): Mr. Vice-President, the amendment moved by my honourable friend, Prof. K. T. Shah is, I submit somewhat out of place. As regards the words `secular and socialist' suggested by him I personally think that they should find a place, if at all only in the Preamble. If you refer to the title of this Part, it says, `Union and its Territory and jurisdiction'. Therefore this Part deals with Territory and the jurisdiction of the Union and not with what is going to be the character of the future Constitutional structure.

As regards the word `Union' if Prof. Shah had referred to the footnote on page 2 of the draft Constitution, he would have found that "The Committee considers that following the language of the Preamble to the British North America Act,1867, it would not be inappropriate to describe India as a Union although its Constitution may be federal in structure". I have the Constitution of British North America before me. Therein it is said:

"Whereas the provinces of Canada, Nova Scotia, have expressed a desire to be federally united", but subsequently the word "federal" is dropped, and only the word "Union" retained. Similarly, in our Constitution the emphasis should be on the word

`Union' rather than on the word `Federal'. The tendency to disintegrate in our body politic has been rampant since the dawn of history and if this tendency is to be curbed the word `federal' should be omitted from this Article.

You might remember, Sir, that the content of Federation has been incorporated in the Constitution and we have various Lists prescribed for Union, etc. So long as the essence is there in the Constitution, I do not see any reason why the word `Federal' should be specifically inserted here to qualify the word `Union'. I therefore oppose the amendment of Professor Shah.

Mr. Vice-President: The question is:

> "That in clause (1) of Article 1 after the words `shall be a' the words `Secular, Federal, Socialist' be inserted."

The motion was negatived.

Mr. Vice-President: I want to make one thing clear. After the reply has been given by Dr. Ambedkar, I shall not permit any further discussion. I have made a mistake once. I am not going to repeat it. *(Laughter).*

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): Mr. Vice-President, Sir, I move:

> "That in clause (1) of Article 1 for the word `States' the word `provinces' be substituted."

You, Sir, will remember that when Dr. Ambedkar moved the motion for the consideration of this Draft Constitution, when he was dealing with the form of Government, he stated that..........

Mr. Vice-President: We do not want a discussion of this nature. I appeal to the Honourable Member to speak only if he has something new to say.

Mahboob Ali Baig Sahib Bahadur: Dr. Ambedkar stated, when dealing with the form of government, that there are two forms of government, one unitary and the other federal.

Shri K. Hanumanthaiya (Mysore): On a point of order, Sir. We have already voted down the amendment of Prof. K. T. Shah. It contained the word "Federation" and the House has already given its decision on that question. If the mover of the present amendment moves his amendment, the House would be reconsidering the same question. Therefore, in view of the fact that this amendment, was already covered by the previous amendment and discussion and voting had taken place on it, I think he is out of order in moving this amendment. I hope the Chair will use its discretion in the matter so that we may do our work quickly.

Mr. Vice-President: I agree with you in thinking that the question has been discussed, but I think he is still in order if he insists on moving this particular amendment.

Mahboob Ali Baig Sahib Bahadur: Dr. Ambedkar asserted that in the Draft Constitution the government that is proposed is federal and not unitary, but subsequently he stated that nothing turns upon the term used, whether you call it a Union or a Federation. He further went on to say that the word `Union' has been used advisedly so that the constituent parts may not have the freedom to get out. I take it that I am correct in interpreting the view taken by Dr. Ambedkar. Now, Sir, a Constitution is either unitary or federal, but if the framers of the Draft Constitution had in the back of their minds a unitary government and yet called it federal.........

Mr. Vice-President: Since the time at our disposal is short, please confine yourself strictly to the point.

Mahboob Ali Baig Sahib Bahadur: If Dr. Ambedkar says that the word "Union" was used not with any great significance, there is no reason why we should not use the correct word "Federation", but if on the other hand the word " Union" was used with a purpose so that in course of time this federal form of government may be converted into a unitary form of government, then it is for this House now to use the correct word so that it may be difficult in future for any power-seeking party that may come into power easily to convert this into a unitary form of government. So, it is for the House to use the correct word "Federation" instead of the word "Union". This is my justification, Sir, for moving this amendment. If you mean that the government must be a federal government and not a unitary government and if you want to prevent in future any power-seeking party to convert it into a unitary form of government and become Fascist and totalitarian, then it is up to us now to use the correct word, which is "Federation". Therefore, Sir, I move that the word "Federation" may be substituted for the word" Union".

The Honourable Dr. B. R. Ambedkar: I do not accept the amendment.

Mr. Vice-President: I now put the amendment to the vote.

The motion was negatived

Mr. Vice-President: Then Amendment No. 100 to be moved by Mr. Lari. I think it is covered by amendment No. 99. Does Mr. Lari insist on moving it? (Mr. Lari was not in the House). Then we pass on to amendment No. 101. Mr. Kamath.

Shri H. V. Kamath: I am moving only the second part of it, Sir. At the outset may I submit to you........

Mr. Vice-President: What do you want to say, Mr. Ayyangar?

Shri Mr. Ananthasayanam Ayyangar: So far as this amendment is concerned, I do not want any postponement. I do not see any serious objection to the latter part of it being moved.

An Honourable Member: Amendment No. 104 is on the same subject, Sir.

Shri H. V. Kamath: At the outset, may I bring to your notice, Sir, that I originally sent this amendment separately as two amendments. Unfortunately the office has lumped them together into one. Had these amendments been printed separately, no difficulty would have arisen. The first amendment was to insert the word "Federal" before the word "Union", and the second was to substitute the word "Pradeshas" for the word "States".

May I now proceed to the amendment itself. The second part of the amendment only is before the House. I move, Sir:

> "That for the word `States' in clause (1) of Article 1,the words `Pradeshas' may be substituted."

Shri C. Subramaniam (Madras: General): On a point of order, Sir. This is not an amendment. The word "Pradeshas" is only a Hindi translation of the word "States". If we accept translations of words as amendments, it will create endless complications. The Draft Constitution is in the English language and we should adhere to English terminology and not accept other words, whether they be from Hindi or Hindustani.

Mr. Vice-President: May I point out that it is not really a point of order, but an argument against the use of the word "Pradeshas"? Please allow Mr. Kamath, if he so wishes, to address the House.

Shri H. V. Kamath: I am glad, Sir, that several friend shave already made their observations, because that shows how much interest the House is taking in this matter. So I now proceed fortified by that conviction. My reasons for substitution of the word "State" by the word "Pradesha" are manifold. Firstly, I find that in this Draft Constitution, the word "State" has been used in more senses than one. May I invite your attention and the attention of the House to Part III, Article 7, of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India. Here we use the word "State" in quite a different sense. So the first reason for my amendment for the substitution of the word "State" by the word "Pradesha" is to avoid this confusion which is likely to arise by the use of the word "State" in different places in different senses in this Constitution. Secondly, Sir, - I hope my suspicion or my doubt is wrong, - but I feel that this word "State" smacks of a blind copying or imitation of the word "State" which you find in the Constitution of the United States. We have been told by Dr. Ambedkar in his first speech on the motion for the consideration of the Draft Constitution that we have borrowed so many things from various constitutions of the world. Here it strikes me that word "State" has been borrowed from the Constitution of the U.S.A. and I am against all blind copying or blind imitation. Thirdly, Sir, looking at our own history, at least during the last 150 years, the word "State" has come to be associated with something which we intensely dislike, if not abhor. The States in India have been associated with a particular type of administration which we are anxious to terminate with the least possible delay and we have already done so under the sagacious leadership of Sardar Patel. Therefore, this malodorous association with the British regime, which, happily, is no more, I seek to get rid of through this amendment which I have moved before the House. To those friends of mine, who are sticklers for the English language, who think that because this Constitution has been drafted in English, we should not bring in words that are our own, I should like to make one submission and that is this, that the bar to my mind is not against all words that are indigenous, that are Hindi or Indian in their etymological structure. I am reading from the "Constitutional Precedents", regarding the Constitution of the Irish Free State - it was adopted in 1937 - which was supplied to us a year and half ago by the Secretariat of the Assembly. If we turn to 114 of this Constitutional Precedents, we find there is a footnote on that this effect:

> "Also in the Irish language."

This means that the Constitution of 1937 was adopted firstly in English, because the footnote says it was adopted also in the Irish language. That means to say that originally it was adopted in the English language and later on adopted in the Irish language. If you look at the Constitution of Ireland, we find so many Irish words and not English words, words like - I do not know how they are pronounced in the English language - Oireachtas, Dail Eireann, Taois each (for the Prime Minister) and Seanad Eireann. All these words are purely Irish words and they have retained these words in the Irish Constitution adopted in the English language, and they did not bother to substitute the equivalent word sin the English language. Therefore it is for this House to decide what words we can incorporate in our Constitution though they are Indian, Hindi or any other language of our country.

So, Sir, for the reasons that I have stated already the word "State" should never be used in our Constitution in this context. Firstly, because it smacks of blind imitation. Secondly, because of its association with a regime which, by our efforts and by the grace of God, we have put an end to. I will make one other submission, Sir. In the new integrated States - former States or Indian States which we have been able to unite into one unit - we have already used the word "Pradesh", and we have called the Himachal Union as the Himachal Pradesh and the Vindhya Union as the Vidhya Pradesh, and there is a movement afoot in Assam to call the union of States there as Purbachal Pradesh.

Another point is that we are going to constitute provinces on a new basis in the near future. Already the provinces of Madras, of C. P. and of Bombay have got merged in themselves some of the former Indian States and so the new provinces are going to be different from the old Provinces and therefore the word "Pradesh" is much better and much more apt than the word "State".

Sir, the last point that I want to make is this. My friend Mr. G. S. Gupta has also tabled an amendment to this article. That would arise only if my amendment is adopted. If this fails, the amendment of my friend will not arise. If my amendment is adopted, then certainly consequential changes will have to be made throughout the text of the Draft Constitution.

Therefore, I move this amendment, Sir:

> "That in clause (1) of Article 1, for the word `States' the word `Pradeshas' be substituted."

and commend it to the acceptance of the House.

The Honourable Shri Ghanshyam Singh Gupta (C. P. & Berar: General): Sir, I would like to submit this with regard to my amendment. Mr. Kamath has given an amendment which only says that in clause (1) of article 1 for the word 'States', the word `Pradeshas' be substituted. That would mean, that in other clauses, in other articles, the word may not be substituted. If that contingency arises, it may not be all right. Therefore, my amendment No. 104 may either be treated as an amendment to Mr. Kamath's amendment or I may be allowed to move it now, so that no further complication may arise. Because, it would be really absurd if the word ' States' is changed into `Pradeshas' only in clause (1) of Article 1. Sir, I shall read Article 1. Clause (1) of Article I say: "India shall be a Union of States." This is the only place where Mr. Kamath has sought to change. It means instead of `States' we shall have, "India shall be a Union of Pradeshas." In clauses (2) and (3) and in other clauses, the word `State' will continue.

Mr. Vice-President: May I interrupt with your permission. If this amendment of Mr. Kamath is rejected, then, amendment No. 104 comes in. Even if it is carried, then, your amendment will come in subsequently and you will have a subsequent chance. I think that would economise the time of the House.

The Honourable Shri Ghanshyam Singh Gupta: Sir, the procedure that I suggest would really economise the time of the House. If I move my amendment as an amendment to Mr. Kamath's amendment, the time of the House will be saved. Otherwise a contingency may arise - I do not say it will. Suppose Mr. Kamath's amendment is carried and mine is rejected.......

Mr. Vice-President: Do you want to move it now?

The Honourable Shri Ghanshyam Singh Gupta: Yes.

Mr. Vice-President: All right; you may do so.

The Honourable Shri Ghanshyam Singh Gupta: Sir, I move:

"That in Article 1 for the word `State' whenever it occurs, the word `Pradesh' be substituted and consequential changes be made throughout the Draft Constitution."

The reason why I want to make this motion just now is what I have already submitted. If Mr. Kamath's amendment is carried, then it will mean that only clause (1) of Article 1 will be amended, and the rest of it will not be amended. But, if my amendment is carried, then, not only in clause (1) of Article 1 we shall have substituted the word `Pradesh' for the word `State', but in the subsequent portions of Article 1 and throughout the Draft Constitution, wherever the word `State' occurs, so that it would be quite consistent. Otherwise, there would be some absurdity left. The reason why I want the word `States' in Parts I and II are really provinces and the States in Part III are what are called Indian States at present, none of which are States in the accepted sense of the term. One reason for using the word `State' may be to synchronise the two, and the other reason could be to follow the American Constitution. The American Constitution has no parallel with us, because, originally the American States were all sovereign States. Our provinces are not at all sovereign; they were never sovereign States. Our provinces are not at all sovereign; they were never sovereign of the Centre. The Indian States also are not sovereign. We want that India should not only be one nation, but it should really be one State. Therefore, I submit that it should be, "India shall be a union of Pradeshas." I avoid the word 'provinces' because, it will not fit in with what are now called Indian States, we want that both may be synchronised. This word `Pradesha' can suit both the provinces and what are now called Indian States. Indian States are merging and merging very fast, thanks to our leaders. Moreover they themselves are choosing that word. For instance, they call the Himachal Pradesh, and Vindhya Pradesh. If we use this word for our Provinces as also for the States, all anomaly would be removed. This is all that I have to say.

Shri K. Hanumanthaiya: Sir, I have regretfully to oppose that amendments moved by friends Mr. Kamath and Mr. Gupta. I have to state that by whatever name the rose is called, it smells sweet. Here, the Drafting Committee has advisedly called

India a Union of States. My friends want to call the same by the name of a Union of Pradeshas. I do not want that this occasion should be utilised for any language controversy. I would appeal to the House not to take this question in that light. The word Pradesh, as admitted on all hands, is not an English word. We are considering the Draft in the English language. I would respectfully appeal to my honourable friends who have moved the amendments to show me in any English Dictionary the word Pradesh. We cannot go on adding to the English language unilaterally all the words that we think suitable. The English language has got its own words. We cannot make the Draft Constitution a hotchpotch of words of different languages. Besides, the Constitution, I respectfully submit, is a legal document. Words have got a fixed meaning. We cannot incorporate new words with vague meanings in this Constitution and take the risk of misinterpretation in courts of law. I would therefore beg the mover and the seconder not to press this word to be incorporated in the Draft Constitution. If my friends are very enthusiastic about the Hindi language, we are not far behind them; we will support them. But, this is not the place, this is not the occasion to insert Hindi words in the Draft Constitution. Therefore, Sir, purely as a matter of convenience and legal adaptability, the Drafting Committee's word "State" is quite good. To substitute it by the word "Pradesh" would be to open the flood-gates of controversy, and if there are other amendments to the effect that Kannada words, Tamil words and Hindi words should be substituted in the different Articles of the Constitution then, as I said, the whole draft, as placed before the House, would be a hotchpotch of linguism. I would earnestly request the members not to press these amendments, because it is merely a translation, and not to introduce non-English words into an English Draft.

Pandit Lakshmi Kanta Maitra (West Bengal: General) Mr. Vice-President, I have very carefully listened to the speech just delivered by my honourable friend Mr. Hanumanthaiya opposing the amendment of my honourable friend Mr. Kamath. I must tell at once my honourable friend Mr. Hanumanthaiya that he need not have unnecessarily scented a sort of underhand effort to import Hindi linguism by this amendment. In the course of my speech on the general motion for consideration of the Draft Constitution I dilated at considerable length on the question of States. I pointed out then and point out even now that the expression 'State' has got a peculiar connotation in the Constitutional literature of the world. (*Cheers*). 'State' always connotes an idea of sovereignty, absolute independence and things like that. In the United States of America there was a States Rights School. It seriously contended that the States had independent status and the bitterness which was generated by the long drawn out controversy culminated in the bloody civil war. That is the evidence of history. Therefore when we want to describe our country as a Union of States, I apprehend that it is quite possible that the provinces which are now being given the dignified status of States, the native States which had hitherto been under the Indian Princes, but have now either acceded to or merged in, the Indian Union may at a later stage seriously contend that they were absolutely sovereign entities and that the Native States acceded to the Indian Union ceding only three subjects, *viz*. Communications, Defence and External Affairs. In order to avoid all these likely controversies in the future, I suggested to the House that best efforts should be made to evolve a phraseology in place of 'States'. We must eliminate the chances of this controversy in the future. I am prepared even now - let my friends ransack and find out a substitute. This word has an unsavory smell about it. In the absence of 'State' it has been suggested that the word 'Pradesh' should be substituted. Let me tell my friend Mr. Hanumanthaiya and those of his way of thinking that the word may be used in Hindi but it is a Sanskrit word. It is not an English word but there will be no difficulty if it is used. Here you describe in article 1 sub-clause (2) that -

> "The States shall mean the States for the time being specified in Parts I, II and III of the First Schedule."

If you look to Part I of the Schedule, you will find the States that are enumerated there are the Governors' provinces of Madras, Bombay, West Bengal, United Provinces, Bihar, Central Provinces, Assam and Orissa, if you look to Part II you will find Delhi, Ajmer-Merwara, including Panth Piploda and Coorg. I seriously ask, are you going to describe the City of Delhi as a State? Are you going to describe Coorg as a State? Are you going to describe Panth Piploda as a State? Are you going to describe Ajmer-Merwara as a State? If you do it, it will be simply ridiculous. Therefore in the absence of any other suitable expression I do feel that the term 'Pradesh' which is of Sanskrit origin and which means a country of big area - would be quite suitable. There will be no harm if, in the first schedule, in the description, the words 'Pradesh' I know it is an English translation. There is some force in what my honourable friend said that in the English draft itself you should not introduce Sanskrit words. But my friend coming from My sore should be the last person to describe his own territory as an Independent State. Does it require any argument? Has he not so far pleaded that these States should have no sovereign existence and that they should be merged with the Union? Therefore there ought to be no sanctity about the word 'State'. I am perfectly prepared if the Draftsmen or any body in this House could find an expression which would denote and connote what we want. We have always pleaded for a strong Centre. In the Draft we have a federal structure but the Drafting Committee has rightly imported to it a unitary bias. We appreciate it. If we are to give effect to that view we have got to find out an expression which will thoroughly embody the concept which we have in view. From this point of view I am convinced that nothing would be lost if we describe the States as Pradesh. In that case all categories of States, Governors' provinces, Chief Commissioners' provinces and what have hitherto been called Native States could all be included under 'Pradesh' and 'Pradesh' could be enumerated in the First Schedule I support the amendment to substitute 'Pradesh' in place of 'State'.

Shri Rohini Kumar Choudhari (Assam: General): Sir, in future I would ask you to allow me to speak from the nearest mike because the long distance which we have to travel from the seat to this place sometimes helps us to forget our ideas. *(Laughter).*

I want to oppose this amendment. First of all I oppose Mr. Kamath's amendment and it is very easy to ask the House to throw it out. He has asked the word 'Pradeshas' to be used in place of the word 'States'. How does he come to the conclusion that 'Pradeshas' if anything. It cannot be 'Pradeshas'. Therefore on that ground as well as on the ground that if you change the word 'Pradeshas' in article 1 and you do not touch the rest of the article, then it becomes meaningless. Therefore on these two grounds I oppose the amendment which has been moved by Mr. Kamath. But I must be careful when I go to oppose the amendment of a person like my friend Mr. Gupta who is the Speaker of the C. P. Assembly.

Nevertheless, I cannot understand the object of the change he proposes. There may be some sentiment behind it which I may understand, but not appreciate. Here, Sir, you have a Constitution in English and the same Constitution in the language called the National Language - call it Hindi or Hindustani. When you write the Constitution in Hindustani, it is but natural that you should use the word 'Pradesh' in place of the word 'State' or 'Province'. But when you are writing the Constitution in the English language, it is not conceivable why you should seek to change the word 'State' to 'Pradesh'. What is the object? That is what I would like to know. If the object is to acquaint people who are not acquainted with Hindi, with the word 'Pradesh', that I can understand. People from South India do not understand Hindi, and so first of all, let them begin by learning the word Pradesh in the Hindi Language. You start with the word Pradesh now, and next time you give them some other word to learn, and bit by bit bring the language on the people of South India. *(Laughter).* Is that the object?

Then again, it will be most unaesthetic as suffix to the word 'Pradesh' for the United Provinces or the Central Provinces. Would you call then United Provinces Pradesh or the Central Provinces Pradesh? And if you were to translate the word Province also into Pradesh, then there would be two Pradesh Pradesh, and all this is rather odd.

Come to Bengal. What would you call West Bengal? Would you call it West Bengal Pradesh? Paschim Banga Pradesh. I can understand, but I cannot understand putting in the word Pradesh alone.

All these complications will arise if the word is changed. It will help nobody. On the other hand, it will not go against the sentiments of anyone if the word 'State' is used. So I would request Honourable Mr. Gupta to consider this point again.

If by any mischance, this amendment is carried, you, Sir, will kindly allow us time to make amendments in the First Schedule, because it looks very awkward to say U. P. Pradesh, or C. P. Pradesh. I would also like to change from Assam Pradesh to Kamrup Pradesh, because the word Assam jarson everyone's ears as I find now-a-days.

Mr. Vice-President: You must obey the bell.

Shri Rohini Kumar Chaudhari: I am short of hearing bell sounds, Sir.

Seth Govind Das (C. P. & Berar : General): First of all, Sir, I want to assure the honourable members of the non-Hindi speaking provinces, that our object in moving this amendment is not to force Hindi on any one. The language controversy need not have arisen so far as this amendment is concerned. We wanted to drop the word 'State', and therefore, this amendment is being moved.

I was rather surprised to hear the speech of my Honourable friend Mr. Rohini Kumar Chaudhari. He asked us, if Pradesh is accepted, what is going to happen to U. P. and to C. P.? I want to tell him that it would be Samyukta Pradesh or Madhya Pradesh. It will not be the U. P. Pradesh or C. P. Pradesh. Mr. Rohini Kumar, I think, knows Sanskrit well, and he will agree with me that even if we adopt the word Pradesh in our Constitution, it does not mean that the English word Provinces or Province would be used along with the word Pradesh. If we want to get rid of the word 'State' because it has got different meanings in different countries, the only way is to put in the word Pradesh there.

Now, as far as the word Provinces is concerned, another controversy is there. There are newly formed States or Unions of States which may not accept the word

Province in the beginning. Though all the provinces would be treated alike in the future, in the beginning, to name these State Unions as Provinces will not be a proper thing. Therefore, in view of these difficulties, we thought that the word 'Pradesh' would be the proper word. Even in the English version of the Constitution, I think there should not be any difficulty inputting the word Pradesh. There are many other words which have been taken in the English language, for instance words like 'bazaar' or 'Rajyas'. For these words, when we form the plural of these words, we add the letter 's', and say' bazaars' or Rajyas' in English. Similarly to make Hindi word into its plural form in the English language you need add only 's'. I do not see what difficulty there is to adding 's' to Pradesh also and say Pradeshas when we want the plural form.

I hope, Sir, that controversy of language and other questions will not be raised here, and if we think the word ' State' should be dropped, and under the present circumstances, the word 'provinces' cannot be taken up, I think the best thing would be to put in the word 'Pradesh' both in the Hindi Constitution and in the English Constitution.

Sir, I support the amendment.

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): Sir, I do not wish to enter into any lengthy arguments on this question, but only wish to point out what my own reaction to this proposal is. When we met some time back in the two committees - the Union Constitution Committee and the Provincial Constitution Committee - we met jointly, and we considered this matter, and also as to what the names of the Houses should be. After considerable discussion, we came to the conclusion that one of the Houses should be called the House of States. So I say this matter was discussed then in various forms. Now I feel that at the present moment, if any change is made in the name of a province, and it is called a Pradesh, personally I think it would be a very unwise change. (*Hear, hear*). For the moment, I am not going into the merits of it. It may be, we may have to change, but if so, there should be some uniformity about these changes all over the place. It is not right to push in one or two words here and there. They do not fit in aesthetically, artistically, linguistically or in any other way.

Apart from all this, the argument that was advanced, that "State" somehow meant something which we did not wish our units to mean, I think, was not a very strong argument. The example of the United States of America was given. A State is just what you define it to be. You define in this Constitution the exact powers of your units. It does not become something less if you call it a "Pradesh" or " Province". On the other hand "Pradesh" is a word which has no definition. No one knows what it means. With all respect, no one present in this House can define it because it has not been used in this context previously. It has been used in various other contexts. It is a very good word, and gradually it may begin to get a significance, and then of course it can be used either in the Constitution or otherwise, At the present moment, the normal use of the word varies in hundreds of different ways and the word "State" is infinitely more precise, more definite, not only for the outside world which it is, but even for us. Therefore, it will be unfortunate if we used a completely improvised word, which becomes a linguistic anachronism for a Constitution of this type. Now, I can understand the position when our constitution is fully developed and we have it in our own language with all the appropriate words. Whether "Pradesh" is the right word or not, I cannot say. That is for the experts to decide and I will accept their decision. For the moment we are not considering that issue. We are considering what words should be brought into this present English draft of the Constitution and bringing in words which will undoubtedly sound as odd and inappropriate tom any ears in India is not good enough. The use of the word in a particular context is foreign. One has to get used to it, especially in regard to the context, and the more foreign words we introduce, the more you make it look odd and peculiar to the average man. My own test would be not inputting up linguistic committees and scholars, but taking a hundred odd people from the bazaar and discussing the matter with them and just seeing what their reactions are. We talk in terms of the people but in fact we function often enough as a select coterie forgetting what the people think and understand. Obviously in technical matters you cannot go to the people for technical words, but nevertheless, there is an approach that the people understand. Therefore, I would beg this House to consider it from this point of view and maintain the normal English word in the English Constitution and later on consider the matter as a whole as to what other words in our language you will be putting in our own draft, which will obviously have an equal status. But putting it in this would be confusing, and looking at it from a foreign point of view, it would be very confusing because no one would be used to it and it would take a long time even to understand the significance of these changes. For myself I am clear that there should be no difference in the description of what is now a province and what is now a State. There should be a uniformity of description in the two. The proposal is that the word "State" should apply to both, and the second House, if approved, should be called the House of States.

There is another matter. This touches, whether we wish it or not, several other points of controversy in this House. They may be linguistic or call it by any other word. I think it would be unfortunate if we brought in those particular controversies in this way, as if by a side door. Those have to be faced, understood and decided on their merits. There is undoubtedly an impression that changes brought about in these relatively petty ways affect the general position of those issues. I think in dealing with the Constitution, we should avoid that. The Constitution is a big enough document containing principles and deciding our political and economic make-up. As far as possible I should like to avoid those questions which, though important we could decide in the context of the drafting of the Constitution. Otherwise, what is likely to happen is that we shall spend too much time and energy from the constitutional point of view on irrelevant matters, although important, and the balance of our time and energy is spent less on really constitutional matters. Therefore, I beg the House not to accept the two amendments moved and to retain the word "State".

The Honourable Dr. B. R. Ambedkar: I oppose the amendment.

Mr. Vice-President: The question is:

"That in article 1 for the word "State" wherever it occurs, the word "Pradesh" be substituted and consequential changes be made throughout the Draft constitution."

I think the Nose have it.

Shri H. V. Kamath: I ask for a division.

Mr. Vice-President: It seems to me that the "Noes" have it. It is not necessary for me to call for a division. I have the power not to grant this request. I would request honourable Members to consider the position. It seems to be quite obvious that the "Noes" have it.

The Honourable Shri Ghanshyam Singh Gupta: I accept the position that the "Noes" have it.

The Honourable Pandit Jawaharlal Nehru: May I suggest that instead of making our requests, we could raise our hands. That would give a fair indication how the matter stands.

Mr. Vice-President: Does the Honourable Shri G. S. Gupta admit that the "Noes" have it?

The Honourable Shri Ghanshyam Singh Gupta: I accept the position that the "Noes" have it.

The motion was negatived.

The Honourable Shri Ghanshyam Singh Gupta: On a point of order, Sir, you kindly put my amendment to the House and it was lost but Mr. Kamath's motion must be put to the House formally.

Mr. Vice-President: It seems to me that Mr. Kamath's amendment is covered by yours. He wants deletion in particular parts but you wanted it everywhere.

The Honourable Shri Ghanshyam Singh Gupta: Mr. Kamath's amendment is lesser in scope than mine. If the House has not agreed to cent per cent, they might agree to five per cent.

The Honourable Pandit Jawaharlal Nehru: It will probably take less time, Mr. Vice-President, to put the amendment to the vote of the House and it is the proper procedure that it should be put to the vote of the House.

Mr. Vice-President: The question is:

"That in clause (1) of article 1, before the word' Union' the word 'Federal' be inserted and for the word' States' the word 'Pradeshas' be substituted."

The motion was negatived.

Shri H. V. Kamath: Sir, I beg to move:

"That in clause (1) for the word 'States' the word' provinces' be substituted."

Shri B. Das: (Orissa: General): On a point of order, Sir, in view of the fact that the previous amendment has been rejected by the House this amendment would be out of order.

Mr. Vice-President: The only thing that has happened is the rejection of the word "pradesh".

Shri H. V. Kamath: My honourable friend Mr. B. Das rose to a point of order to the effect that this is not in order. The amendment that has been thrown out by the House is to the effect that the word 'Pradesh' be substituted for the word 'State', which does not rule out this amendment, *viz.*, the substitution of the word 'State' by any other word, if the House so chooses. I have therefore moved my amendment that for the word 'State' in the article and wherever it occurs throughout the Draft in this context the word' Province' be substituted. The formal amendment is that in this particular clause the word 'State' be replaced by the word 'Province'. When I moved my first amendment with regard to the word 'Pradesh' I made my position clear as to why I am against the retention of the word 'State'. I do not wish to repeat those arguments which I then advanced before the House. I might just recall them by saying that the word 'State' smacks of imitation as the word finds a place in the constitution of the U. S. A. Secondly the word 'State' has a bad connotation or bad odor about it, because of the association of the Indian States with the British regime which is now dead. I would therefore in all circumstances plead with this House the word 'State' should be eliminated at all costs and by all means and if the House is not in a mood to accept the word 'Pradesh' I would certainly entreat them to accept the word 'Province', as the lesser of the two evils. Our position today is that we have dispensed with or eliminated the old Indian States; and have we not already adopted the terms Himachal Pradesh and Vindhya Pradesh? We want to level them up to the position of the Indian Provinces and therefore in the new set up I feel that the word 'Province' is more happy and would express the meaning of the structure of the component units amendment and commend it to the acceptance of the House.

The Honourable Dr. B. R. Ambedkar: Sir, I do not accept the amendment.

(At this stage Shri Himmat Singh K. Maheshwari rose to speak.)

Mr. Vice-President: The Honourable Dr. Ambedkar has already replied to the debate and I am sorry I cannot allow any further debate on the motion.

Pandit Hirday Nath Kunzru (United Provinces: General): Sir, if after every motion is moved by a member and you ask Dr. Ambedkar whether he agrees to it and after allowing him to express his views you debar other members from speaking on the subject, it will be very hard on the House.

Mr. Vice-President: I am afraid Pandit Hirday Nath Kunzru has not realised exactly my position. I am always prepared to give every possible facility to every member here, which I need not demonstrate further than by reference to what I have done in the last few days. But just now we are pressed for time. After Mr. Kamath moved his amendment I waited for some time to see if any body would stand up and nobody stood up and when specially I found that Mr. Kamath had repeated the arguments which had been formerly stated by him, I thought that I would not be going against the wishes of the House by asking Dr. Ambedkar the question whether he wished to reply. If I failed to understand the attitude of the House I am very sorry.

Pandit Hirday Nath Kunzru: You are perfectly within your right in not allowing discussion of a clause which you regard as trivial and on which you think there has been sufficient discussion. You have the power to stop discussion and ask the Member in charge to reply. If in exercise of this power you asked Dr. Ambedkar to reply, there can be no objection to what you have done.

Mr. Vice-President: Then I will put the amendment to vote. The question is:

"That in clause (1) of Article 1, for the word 'States' the word 'Provinces' be substituted."

The motion was negatived.

Mr. Vice-President: Amendment 108, Shri Mahavir Tyagi.

Shri H. V. Kamath: Division, Sir.

Mr. Vice-President: You are a little late.

Shri Mahavir Tyagi: Sir, I am not very keen to have all the words mentioned in my amendment inserted. I do not also want to make a speech and waste the time of the House. However, I want to make one point clear and with that end in view, I shall formally move this amendment:

"That in clause (1) of article 1, for the word 'States' the words 'Republican States and the sovereignty of the Union shall reside in the whole body of the people' be substituted."

In the Draft Constitution I find that the residence of sovereignty has not been described. Where sovereignty lies has not been definitely laid down. I want that this may goon record. I shall be content if the Honourable mover of the Constitution would place before the House either in connection with the Preamble or some other Article of the Constitution, an amendment which will clearly lay down that the sovereignty shall reside in the whole body of the people. The word 'State' has one meaning in one place and another meaning elsewhere. It will therefore not be satisfactory to say that the sovereignty should rest in the States. What does the Honourable Member suggest? Whether the sovereignty reside in the Union or in the States? From the Draft it is not clear. My amendment therefore seeks to lay down definitely where sovereignty resides or shall reside in future.

I want also to make one thing clear. If we remain in the family of the United Kingdom and remain attached to them, sovereignty will probably technically remain with the King. I want to save the country from that danger. I want to make it absolutely clear that the sovereignty virtually, technically and practically resides in the whole people..........

Mr. Vice-President: May I point out that the proper place for an amendment of this nature is the Preamble?

Shri Mahavir Tyagi: It is neither defined in the Preamble in so many words. I want that it should be clearly defined. I am a layman. I would like to know from the expert draftsmen whether the Preamble forms part of the body of the Constitution. Since the Preamble is not an Article of the Constitution, may I know if it comes in the body of the Constitution proper? Can Preamble always override the law? I don't think it does. What I want is that sovereignty should be defined in one of the Articles of the Constitution. The Preamble mentions only casually that we are constituting India into a sovereign union. From this my friends of the Drafting Committee draw the conclusion that the sovereignty resides of in the "people". That does not satisfy me. We cannot depend on the implication drawn. I insist that sovereignty should be defined in the body of the Constitution itself. I want that sovereignty should reside in the whole people of the country, and not in State or Union. State may only mean to be a sort of Governmental structure in the Centre, or it may include the people as well, or it may be only the union or one or more states. The Provinces will also be known as States hereafter. Let us therefore define in unambiguous terms the actual residence of sovereignty for future. I may submit that in the Constitution of China it is stated that the sovereignty rests in the whole people. We may lay down the same thing in our Constitution also. I therefore beg to move this amendment.

Shri Gopikrishna Vijayavargiya (United State of Gwalior, Indore, Malwa: Madhya Bharat): Mr. Vice-President, I come from an Indian State and I have a particular interest in this amendment, and I wish the House accepts it. There are also Indian States coming in as states in this Constitution, We do not want the Rajpramukhs and others to be there permanently. Of course, as the convenants have been signed, let them be there for some time. But, in the Constitution, we should lay down that even the common people can become heads of the provinces and States, and this will be one of the methods by which we will bring the States into conformity with the provinces. This is an important question. This issue must have been engaging the attention of the States Ministry. This is therefore a very urgent affair. Even before we finish our lab ours at Constitution-making, we must make all attempts to see that the States do come on par with the provinces. This amendment can achieve that object. Sovereignty is a very important power and, as has been pointed out, it has been laid down in the Chinese constitution also. So there is no harm in accepting this amendment. I request the Honourable Members to vote for it.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. Vice-President, Sir, the amendment moved by Mr. Tyagi is a very important amendment. I have myself given notice of a similar amendment (No. 189) which runs as follows:

"That the following new Part be inserted after Part I and the subsequent Parts and articles be renumbered accordingly: -

Part I-A

General Principles

6. The name of the Union shall be BHARAT.

7. Bharat shall be a sovereign, independent, democratic, socialist Republic.

8. All powers of government, legislative, executive and judicial, shall be derived from the people, and shall be exercisable only by or on the authority of the organs of the government established by this Constitution.

9. The National Flag of Bharat shall be the tricolour of saffron, white and green of pure hand-spun and hand-woven Khadi cloth, with the Dharmachakra of Asoka inscribed in blue in the centre in the middle stripe, the ratio between the width and breath being 2:1.

10. Hindi written in the Devanagri script shall be the National language of Bharat:

Provided that each State in the Union shall have the right to choose its own regional language as its State language in addition to Hindi for use inside that particular State.

11. English shall be the second official language of Bharat during the transition period of the first five years of the inauguration of this Constitution.

12. The National Anthem of Bharat shall be the" Vandemataram" which is reproduced in the Second Scheduled.

[Note. - The subsequent Schedules be renumbered accordingly.]

13. The Arms of Bharat consist of the Three Lions above the pedestal and the Dharmachakra, as are depicted on the top of the Asoka pillar at Sarnath.

14. The capital of Bharat is the City of Delhi'."

I personally think that this amendment should not be incorporated in this clause. There should be a separate Clause containing the substance of the amendment I have given notice of. In Chapter II they have defined sovereignty. In my amendment I have suggested how this should be put in. All powers of Government, legislative, executive and judicial shall be derived from the people and shall be exercisable only by one on the authority of the Government established by this Constitution. So, the sovereignty shall reside in the people and all powers of the State, legislative, executive and judicial, shall belong to the people.

Sir, my friend from the States just now pointed out that the matter is a very important one because, if we do not say here that the source and the fountain of all authority is the people, the theory that kings have got divine rights will continue. Therefore, it is important that it should be stated in the Constitution that it is the people who have sovereignty. Here in our country where the States have been a standing sore which we hope to wipe out very soon, I think this provision should find a place in the Constitution. I would request my learned friend, Dr. Ambedkar to say, when he replies to this amendment, that he accepts this principle, I hope he will find a suitable place for its insertion in the Constitution. On the Irish model, I suggest that the next chapter should contain definite provision relating to the name of the Union, its language and other things. It may be stated therein that all power of government legislative, executive and judicial, is derived from the people. I think this is an amendment of fundamental importance and as such I hope that it will not be rejected summarily and that Dr. Ambedkar will insert it in some suitable place in the Constitution.

Maulana Hasrat Mohani (United Provinces: General): Sir, I rise to support the amendment moved by Mr. Mahavir Tyagifor the reason that it conforms to the spirit of the Objectives Resolution of this House. Our Prime Minister has repeatedly stated that the Constitution should be inconformity with the Objectives Resolution not only recently but from the very beginning. He stated - I am reading from this printed book -

"We are not changing the Objectives Resolution at all. The Objectives Resolution is history and we stand by all the principles laid down in it."

May I remind my friend, Dr. Ambedkar, that when a Committee was formed to frame the Constitution, it was expressly mentioned that they will have to conform to the Objectives Resolution. Now Dr. Ambedkar has gone out of his way. He has not conformed to the Objectives Resolution and I re quest all of you to see what he has done. Instead of drafting the Constitution in conformity with the Objectives Resolution, he wants to make the Objectives Resolution conform to what he is proposing now. This Draft Constitution is a bundle of inconsistencies and is worth throwing only into the wastepaper basket. He has gone his own way and therefore all his efforts are only waste of time and energy.

Mr. Vice-President: Please confine yourself to the amendment, Maulana Saheb.

Maulana Hasrat Mohani: I support this amendment because it is strictly on the lines of the Objectives Resolution. Instead of conforming to the Objectives Resolution, Dr. Ambedkar has changed the word "Republic" into a "State" and the word "independent" into "Democratic". This shows the way his mind is working. The Draft Constitution makes me sure that he wants to establish a unitary Indian Empire which will again be subject to the greater Anglo-American Empire consisting of America and its satellites, the Brit is Commonwealth and some of the Western Powers of Europe.

Mr. Vice-President: I will ask you again to confine yourself to the amendment.

Maulana Hasrat Mohani: Sir, I support the amendment of Mr. Tyagi and I oppose the whole Constitution. May be Dr. Ambedkar produced this Draft because as Law Minister he was asked to do it. But what he has produced is a wretched thing and therefore I think that he should make amends for the mistakes he has committed. With these words I support the amendment.

Shri Prabhudayal Himatsingka (West Bengal: General): Sir, I beg to oppose the amendment. It is absurd that an attempt should be made to put words here and there. The Draft Constitution is a complete framework and where sovereignty lies, what power is given to the executive and the legislatures, etc. have been defined by the different sections in it. To make an attempt to put in words here and there will be dangerous and if we accept such amendments, I think the whole Draft Constitution may upset and we do not know where we will be landed. Of course, if there is anything to be said on principle, that may be allowed, but to make verbal alterations in the Draft which has been considered by the Committee will mean a considerable waste of time and we should not accept amendments in this fashion.

Shri M. Ananthasayanam Ayyangar: I beg to oppose the amendment. In the preamble it is stated that "We, the people of India, having solemnly resolved to constitute, etc." We are the persons who have met to give a Constitution for ourselves. Unless we are sovereign, we cannot give a Constitution for ourselves. Hitherto it was the Parliament in the United Kingdom that framed Constitutions. The fact that we have been elected by the various legislatures and come here for framing a Constitution shows that sovereignty is inherent in the people.

Shri Mahavir Tyagi: Of course we are here as a sovereign body. But what about the future? This sovereignty has been transferred to us by the British, why do you not vest it back with the people?

Mr. Vice-President: Allow him to proceed.

Shri M. Ananthasayanam Ayyangar: I will answer Mr. Mahavir Tyagi. We have not come here on adult franchise, but we represent three hundred odd million people and are gathered here to frame a Constitution for ourselves. If we are in a position to give a constitution on behalf of the people, if follows that in future the House elected on adult franchise representing larger interests, will be even more sovereign. From this it follows that sovereignty rests with the people. Therefore I cannot find any difficulty in leaving it as it is and no such introduction as is contemplated in the amendment is necessary. I would only draw the attention of the House to the preamble in the Constitution of the United States which says:

> "We, the people of the United States, in order to forma more perfect Union, establish justice, insure domestic tranquillity........"

There are a number of articles in this Constitution. Later on the constitution was amended. The framers of the Constitution or the people of the United States who subsequently amended that constitution never said that there was a lacuna in the Constitution or that the sovereignty vested in themselves rather than with the people. Therefore, it is unnecessary. A doubt is created and to avoid that doubt an amendment is sought to be moved. There is another difficulty also. I want the sleeping dogs to lie. So far as the States are concerned, the States rulers in some places have been claiming sovereignty and we are trying to liquidate these rulers. Many of them have been liquidated, and these rulers have come into these States. In part III of the 1st Scheduled the States are there with the rulers in some forms or other. The people are already beginning to assert themselves and the whole thing will disappear even on that ground. I do not want the clause to be inserted here as the amendment contemplates. It is enough to leave the Preamble to itself and to work itself. We are sovereign and in that capacity we have gathered here and we shall give unto ourselves a Constitution. It is unnecessary to create a ghost and then afterwards lay it. I oppose this amendment, Sir.

Shri Lokanath Misra (Orissa: General): Mr. Vice-President, Sir, one of the honourable members of this House has opposed this amendment on the ground that by the acceptance of this amendment, the whole structure and the whole scheme of the Draft Constitution will be changed. It seems to me that this is a bold statement and I will not like to digest a statement like this. This structure of the Constitution will be changed as if we are committed not to change it or we will abide by anything that will not change it. It seems to me therefore to be a dangerous statement to say that we will not accept because the structure of the scheme of the Draft Constitution will be changed. We are here to change it, if need be. Indirectly, it means also that the very basis, the scheme, or the structure of the Constitution is such that it militates against the very principle that underlies this amendment. If that is so, it is still more dangerous because this amendment clearly says--and no more than that - the sovereignty of India rests in the whole body of the people of India.

Now, one of my friends has just said that it does really vest with the people of India and therefore it will not be necessary. I submit it is a sort of a hypocritical statement, because I remember to have heard Dr. Ambedkar, while he was speaking somewhere that this sovereignty rests with the Government of India and I want to make a difference between the Government of India and the people of India; they may be identical, they may be different. It might be that the Government of India will be supposed to be one thing and the people of India might be supposed to be another thing. They were so one day. Therefore, we must make it clear where, after our freedom, sovereignty vests. In the people of India? In the Cabinet? In the Government? In the President or somewhere else? I therefore think that to avoid this snag once and for all, we ought to declare that the sovereignty vests in each one of the citizens of India and for that purpose at least this amendment is very appropriate. I do not want to insist that this amendment should be passed and put in here, but it must be clear that there need be no reservation in the minds of us that sovereignty does not lie in each one of the citizens of India. I therefore support the spirit of this amendment and reiterate that really India's sovereignty vests in each one of her citizens, however high or low, pandit or no pandit, fool or wise; it belongs to the people, each one of them, once and for all.

Mr. Vice-President: I shall now put this amendment to vote.

Shri Mahavir Tyagi: Mr. Vice-President, Sir, in view of what the learned draftsman has said namely that the sovereignty remains vested, in spite of this draft, in the people, I do not wish to press my amendment. I hope, Sir, Dr. Ambedkar agrees that his draft means that it vests with the people, and his explanation may well go down into the records for future reference.

The Honourable Dr. B. R. Ambedkar: Beyond doubt it vests with the people. I might also tell my friend that I shall not have the least objection if this matter was raised again when we are discussing the Preamble.

Shri Mahavir Tyagi: Then I beg leave of the House to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That in clause (1) of Article 1, after the word States' the words `equal inter se' be added."

In commending this amendment to the House, I would like to express my gratitude to the Chairman of the Drafting Committee for giving us a new version of what the Constitution is intended to be. It was somewhat new, to meat least, to hear that a Constitution is a mechanism for regulating the various organs of Government and their functions; and that any desire to include in it any aspiration of the people might be regarded as somewhat out of place. I am grateful for this view of the matter, as in future I shall conduct myself in my amendments and in my speeches accordingly. I must, however, add that when reference is made to the chapter on the Directives I can assure Dr. Ambedkar that I too have read them, though perhaps not with as much frequency and intensity with which he may have read it. The 'Directives' are, in my opinion, the vaguest, loosest, thickest smoke-screen that could be drawn against the eyes of the people, and may be used to make them believe what the draftsmen never intended or meant perhaps. When those matters are brought before the tribunals for adjudication or arbitration, they might not be interpreted in the sense the people might believe those clauses to convey.

In proposing this particular amendment, Sir, I have no illusion about the actual state of affairs. In the States today, including both - what are called the Provinces and which have still to be called the States proper - I realise there is no equality, of population or possibilities, area or resources.

But I also recognise that even if equality of political status does not exist today, we have, at any rate, to strive towards a state of affairs in which they would really and truly be equal amongst themselves, as members of a Common Federation. If this Union is to be a true federation, as we are assured it is going to be, if this Union is going to be a democratic federation, as we have also been promised again and again, then, I suggest that it is of the utmost importance that the constituent parts of the Union should be and must be equal amongst themselves.

This equality, I may assure the House, does not exist, and need not consist in area or population, in revenue or resources, in industrial or educational development. Unfortunately, we are all aware that the various parts of this country, politically divided or geographically demarcated, are not all equally developed and advanced. It must be the first task of the Union to see that those who have, for no fault of theirs, lagged behind, shall not continue to remain backward, and those who have had, for some Adventitious reasons, some advantage over others and moved forward more than others, shall also not be so selfish as to insist upon retaining their position and keeping those who are backward still lagging behind. The country cannot progress, the ideals we have all in view regarding the future growth and prosperity of this country will not be realised, if any single part of it is not able to pull its full weight in the advance of the country. That is one reason why I suggest that we must, here and now, insert in the Constitution is properly framed and working, the units shall be regarded as politically equal amongst themselves. I mean equal politically, in the sense that if one unit, however large it may be has the power of taxation of a certain kind, other units, however small, shall also have that power; if one unit has the right to maintain and use its own police force, the others also would have it; if one unit has the right to maintain its exclusive army, then another unit also shall have it. This being my conception of equality of States *inter se*, the existing differentiation between those which have been called provinces and between those which have been called States, those States which have merged and those which have acceded will have to be abolished at the earliest opportunity, even though today it may be an unfortunate fact of our position.

This is not the only reason which actuates me inputting forward this suggestion before the House. I look forward to the day when this Union of India shall consist of a body of Village Panchayats, knit together amongst themselves as co-operative republics, which will combine together not only for the greater advancement of their own inherent resources, but also for the greater prosperity of the country as a whole. In this view of the destiny of this Union, in this view of the position and potentiality of each component part of the Union, I think it would be the greatest hindrance if any one is politically considered, or socially regarded as unequal to others. If it is thought that some only should have the leadership while the others have the destiny of always being followers, it would be, Ire peat, an untold disaster to the country. Just as we are resolved and are all agreed that we shall have amongst ourselves, as citizens or individuals, equality before the law, just as we have thought that all distinctions of caste and creed shall disappear from the face of this land, so also, I submit, that this country must consist, as soon as we can manage it, of equal units, equal parts of the federation, each anxious, each competent, each equipped with the utmost possible means for development of the resources and the possibilities inherent in it; each also intent upon and each also willing to co-operate in the strengthening and development of the entire country, to the best of its possibilities. We have many parts in this country which are admittedly very backward in all kinds of material or moral development. It is towards them, it is for them, that I fee lit necessary to insist that if they are non-equal *inter set* today, they shall be made equal at the earliest opportunity.

For this reason, the motion that was made just before, regarding the republican character of every component part of the Union, meets with my highest and heartiest approval. All these remnants, all these absurdities of economies, and all those anachronisms of history which are embodied in the so-called Ruling Princes, must disappear. It is only when we have got rid of these autocrats and plutocrats that we shall be able to design a humane and reasonable Constitution and try to attain the aims of life, which our great Teacher has placed before us.

It is for the same reason also that I have, in another part of this Constitution, tabled an amendment to the effect. I hope, Sir, that hereafter, at any rate, the Union of India shall consist of villages or groups of villages, which are each in themselves autonomous units, which are each in themselves republics, and each, if necessary, with the right to co-operate with their neighbours, so that as a result of their combined and collective effort, the Indian people just emerging from political bondage and economic slavery, may soon attain their rightful place in the role of the nations, and make their effective contribution to the progress of mankind.

I commend my amendment to the House.

Shri H. V. Kamath: Mr. Vice-President Sir, I rise to support the amendment moved by my friend Professor Shah. In view of the fact that the House has not accepted the qualifying word 'federal' for the word Union, I think it is necessary for us to define the status of the States. As my friend remarked, the provinces or States or Chief Commissioners' provinces certainly are not equal amongst themselves. Therefore, for the sake of clarity, for the sake of accuracy, for the sake of precision in constitutional terminology, it is essential for us to define the relationship or status of the States as between themselves. Therefore, the amendment of my friend Professor Shah is very apposite in my estimation. In a Constitution of this sort, which is essentially, as the footnote on page 2 says, federal in structure, there should not be one State superior to another, or one State inferior to another. There should not be any one State which may be called *primus inter pares*, that is first among equals. We should avoid this in the future constitutional set up. Obviously, it is necessary for us to define that all the States as amongst themselves should be equal. All the States should have only an equal status amongst themselves. If at all there is a superior State or Government or a mechanism, it is the mechanism of the Union Government. That is, if I may say so, it may be a super State or a supra State so far as India is concerned. So far as the States themselves are concerned, they should be absolutely equal amongst themselves. I therefore support the amendment of my friend Professor Shah to the effect that India shall be a Union of States which are equal *inter se.*

Shri M. Ananthasayanam Ayyangar: Sir, I am not able to follow either the mover or Mr. Kamath who supported him. If we accept the amendment, it means that India shall be a Union of States equal inter se. What is this equality? Is it in extent or area or population or economic resources? In what are they to be equal?

An Honourable Member: States.

Shri M. Ananthasayanam Ayyangar: What are the States? So far as representation is concerned, most of the States in Part I of the First Schedule are equal; there is no difference made between the one and the other. So far as the States in Part III of the First Schedule are concerned, they have come in by certain agreements. We have accepted the agreements and until we are able to revoke the agreements or introduce different sets of agreements, we cannot make them equal. Even amongst ourselves, in all the Provinces or States which are included in Part I of the First Schedule, there cannot be an equality of the kind envisaged. This is absolutely an indefinite amendment. So far as the States are concerned, according to the population they have representation both in the Lower and Upper Houses. Therefore this amendment is understandable, vague and impractical and ought not to be accepted.

The Honourable Dr. B. R. Ambedkar: Sir, I oppose the amendment.

Mr. Vice-President: I put the amendment to vote.

The amendment was negatived.

Mr. Naziruddin Ahmad: Sir, I beg to move:

"That at the end of clause (1) of Article 1, the following be inserted:

` and shall be known as the United States of India'."

Sir, this is a non-controversial amendment. It gives a bigger, a more dignified and a more sonorous name to the Union. If any precedent is needed we have it in the "United States of America". I submit that in order to keep the balance between the Western hemisphere and Eastern hemisphere we should adopt this expression in India. India is the leading country in the East and we should have a very dignified name. As I have submitted it is a non-controversial amendment, and I ask the House to consider it on the merits.

The other amendment is an alternative to this. I move:

> "That at the end of clause (1) of Article 1, the following be inserted:
>
> 'and shall be known as the Indian Union'."

Sir, I submit these are three alternatives. I would prefer the first but it all depends on the House as to what it thinks about them.

Shri H. V. Kamath: Sir, I rise to oppose the amendment Nos. 10 and 112. As regards amendment 110 the very argument that my friend advanced that we have a precedent in the United States, is itself an argument against accepting it, in my judgment. He said something to the effect that there should be a meeting of East and West or some words to that effect. I certainly stand for harmony, a synthesis of the

East and West, but I certainly do not want any hybrid development. The amendment which my Honourable friend has moved before the House seeks to bring about such a hybrid development between the East and West and we do not want to be suspected at this stage when we are pursuing or supposed to be pursuing a neutral foreign policy. We do not want the faintest indication to be made here in this House that we are going to copy either the U. S. S. R. or U.S.A. As regards U. S. S. R., there is no effect or influence in this Constitution and as regards U.S.A., precisely because this will smack of copying the U.S.A. Constitution, I oppose this amendment which seeks to add "shall be known as the United States of India".

As regards No. 111. I support the amendment and we will thereby be eliminating or removing that hateful word ' State'. Just now the House was pleased to throw out that amendment and I do not want the 'State' to come in by the back-door again in describing the structure of the Indian Union and therefore I would support my Honourable friend Mr. Naziruddin Ahmad in referring to India as the Union of India.

As regards No. 112, once we accept the words 'Union of India' there is no need to consider the third amendment. I think from the point of view of language, sound and its reaction on the ears, the Union of India is a much more dignified expression than Indian Union. I therefore oppose110 and 112 and support 111.

The Honourable Dr. B. R. Ambedkar: Sir, I oppose all these amendments. With regard to the first amendment that India should be known as the United States of India, the argument set out by my friend Mr. Kamath is a perfectly valid argument and I accept it wholeheartedly. I have given my own views as to why I used the word 'Union' and did not use the word 'Federation'.

With regard to the other amendment that India should be known as the Union of India, I also say that this is unnecessary, because we have all along meant that this country should be known as India. without giving any indication as to what are the relations of the component parts of the Indian Union in the very title of the name of the country. India has been known as India throughout history and throughout all these past years. As a member of the U. N. O. the name of the country is India and all agreements are signed as such and personally I think the name of the country should not in any sense give any indication as to what are the subordinate divisions it is composed of. I therefore oppose the amendments and maintain that the Draft as it is presented to the House is the best so far as these amendments are concerned.

Mr. Vice-President: I shall now put the amendments one by one to vote.

Mr. Naziruddin Ahmad: Sir, I beg to leave to withdraw the amendments.

The amendments were, by leave of the Assembly, withdrawn.

Mr. Vice-President: Amendment No. 113.

Mr. Naziruddin Ahmad: I am not moving 113.

But I am moving 114. Sir, I beg to move.

"That in clause (2) of Article 1, the word 'The' occurring at the beginning be deleted."

Sir, this part really tries to define the words "The States". I submit the word 'The' is a definite article and not a part of the name or nomenclature. Though the word has been used in this context, the word has been used also in other combinations like 'A State' 'Any State' `Every State' and all sorts of States.

The Honourable Dr. B.R. Ambedkar: Sir, I raise a point of order. My point of order is that this is not an amendment. Unless it changes the substance of the original proposition, it is not an amendment. I am trying to find out the reference in May's Parliamentary Practice. But I would like to raise this point at this moment. If my friend will forgive me, I think he is in the habit of moving all sorts of amendments, asking for a comma here, no commas there and so on and I think we must put a stop to this sort of thing in the very beginning.

Mr. Naziruddin Ahmad: On the very threshold of independence, if I am to be stopped like this, I shall bow down and submit to the decision of the Chair.

Mr. Vice-President: What is your reply to the point of order?

Mr. Naziruddin Ahmad: My reply to the point or order raised is this. I want to remove the word "The" from the article and therefore it is an amendment. This is certainly a drafting amendment. It may be opposed on the ground that it is insignificant, illogical or purposeless or useless and so forth. But Dr. Ambedkar is not right in asserting that it is not an amendment at all. It cannot be ruled out on the technical ground that it is not an amendment.

And with regard to my Honourable friend's remarks as to my habit of moving amendments like punctuations and other changes, I am happy to inform him and the House that I have ceased to follow that habit so far as this amendment is concerned. *(Laughter).*

Mr. Vice-President: You say it is a drafting amendment. Can't we leave it to the Drafting Committee and its Chairman for seeing to it at the third reading? I am sure they will accept these amendments if there is any substance in them.

Mr. Naziruddin Ahmad: In that case, it would be leaving the matter to the Drafting Committee, instead of leaving it to the judgment of the House. The spokesman of the Drafting Committee has already given out his mind. Therefore, if I were to agree to leave it to the Drafting Committee, it would be as good as withdrawing it. Therefore, I have to submit, again, that the word "The" is not part of the name.

Mr. Vice-President: I am waiting to hear Dr. Ambedkar on this point.

The Honourable Dr. B. R. Ambedkar: Sir, I do not know why the Honourable Member objects to the word 'the'. 'The' is a definite article, and it is quite necessary, because we are referring to the States in the Schedule. We are not referring to States in general, but to certain specific States which are mentioned in the Schedule. Therefore the definite article 'the' is necessary. It refers to the definite States included in the Schedule.

Secondly, I would like to submit this, it would be wrong - and I speak about myself - for any Indian to presume such precise command over the English language as to insist in a dogmatic manner that a comma is necessary here, a semi-colon is necessary there, or article 'a' is proper here and article 'the' would be proper there and so on. But if my friend chooses to arrogate to himself the authority of a prefect grammarian so far as English is concerned, I would like to draw his attention to the Australian Constitution from which we have borrowed these words and the definite article 'the' is used there. So I take shelter or refuge under the Australian Constitution which, I suppose, we may take it, was drafted by men who were good draftsmen and who knew the English language and whom we cannot hold guilty of having committed an error in the language.

Mr. Vice-President: I put the amendment to vote.

The amendment was negatived.

Mr. Vice-President: Amendment No. 119, Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: Sir, I beg to move:

"That in sub-clause (c) of clause (3) of Article 1, after words 'as may' the word 'hereafter' be inserted."

Sir, I have moved this amendment after, I believe, taking great risks of having to displease the Honourable Chairman of the Drafting Committee. But I have to submit most respectfully that things which occur to Members should be placed before the House and the opinion of the House should be taken. If I have offended any member by moving.

Mr. Vice-President: There is no question of offending any one.

Mr. Naziruddin Ahmad: Sir, I beg to submit that the context indicates the word "hereafter" that is, States which may hereafter be acquired. So the word 'hereafter' would be appropriate and I beg the House to consider insertion of this word.

The Honourable Dr. B. R. Ambedkar: I say it is quite un necessary, and I oppose it.

Mr. Vice-President: I put the amendment to vote.

The amendment was negatived.

Mr. Vice-President: Tomorrow, I understand, is a bank holiday. So we postpone further consideration of this to Wednesday 10 O'clock. We start from amendment No. 126.

The House then adjourned till Ten of the Clock, on Wednesday, the 17th November, 1948.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VII

Wednesday, the 17th November, 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Members took the pledge and signed the Register:

1. Shri B. H. Khardekar (Kolhapur State).

2. Shri A. Thanu Pillai (Travancore State).

DRAFT CONSTITUTION-*contd.*

ARTICLE 1-*contd.*

Mr. Vice-President (Dr. H. C. Mookherjee): We shall now go on with the amendments. Amendment No. 126 - Prof. Shah.

Prof. K. T. Shah (Bihar: General): Mr. Vice-President, Sir, I beg to move:

"That at the end of sub-clause (c) of clause (3) of article 1, the following be added:

> or as may agree to join or accede to or merge with the Union'."

The clause, as amended, will read:

"such other territories as may be acquired or as may agree to join or accede to or merge with the Union."

I think this is a very simple amendment. It tries to include within the territories of the Union not only those which are at present in it, or which, under the provisions of this Article, come under its scope; but also those which after the Constitution is passed may agree to join, or accede to, or merge with, the Union. I confess that I am not very enamoured of the term 'acquired'. I do not suggest that acquisition is necessarily by conquest. I agree that acquisition may take place by other means than conquest. I have, therefore, not suggested any alteration of the word "acquired".

At the same time, however, I feel that the term is not sufficiently inclusive. It does not take account, for instance, of the addition to the territory by voluntary agreement, or by accession of States, which, at the time the Constitution is passed, had not yet acceded and/or were not merged with the Union. I have in mind two particular instances which have led me to table this amendment. There are neighbouring territories even today which are independent States, with which, however, we have much affinity. They may find in a closer union with us much greater chance of their own advancement or prosperity; and as such it is possible that they also may like to join this Union, and take all the benefits that joining with such a great State, with such resources as we have, may bring to them as well. There is in this suggestion no intention of coercion or conquest by any use of force, or aggressive designs upon any neighbouring territory, in an amendment of this kind. This is only a provision that, without any necessity to amend the Constitution, if some such contingency arose, we could simply under the existing provisions accept the joining or accession of such States as today are independent, sovereign States in their own name, in their own right; and which may yet feel the necessity of much closer union than any treaty or alliance may provide. I trust, therefore, that this provision which is only permissive and facilitating the joining of other States, will find no objection in any part of this House.

Then there is the accession of States, which, at the time I put in this amendment, had not acceded to the Union. Everybody would understand the example I have in mind. Even now I am not clear whether that particular State has, in point of technical, constitutional law, actually acceded to the Union even today. Whatever that may be, here is a provision that the territories of the Union will include also such a State if and when it accedes.

The third contingency is of merger. This contingency of States completely identifying themselves to the point of sacrificing their own identity and becoming part and parcel, integral units, of this Union should I suggest also be provided for so that in the long run the Union should consist of parts which I hope would be equal *inter se*, making the components of the Union.

These three contingencies I have sought to provide for by this amendment, *viz.* States joining voluntarily, States acceding - which have not yet acceded, and States becoming merged in the Union, may arise at any time; and so I do not think this amendment will in any way be objectionable in any part of the House. The merger problem is ticklish, rather delicate, and we do not yet know what final shape this great development will take. But whatever that shape may be, the integrity of the Union, the integral association, if I may put it that way, of States which are still retaining somehow their separate identity, will help to make this Union territory much more uniform under single jurisdiction and the parts thereof much more equal *inter se* than is the case today. On these grounds, therefore, Sir, I think this amendment ought to commend itself to the House.

The Honourable Dr. B. R. Ambedkar (Bombay: General):Sir, I oppose the amendment.

Mr. Vice-President: The question is:

That at the end of sub-clause (c) of clause (3) of article 1, the following be added: -

> "or as may agree to join or accede to or merge with the Union."

The motion was negatived.

Mr. Vice-President: As regards the next amendment, No.127, standing in the name of Sardar Hukam Singh, I do not think it arises out of Article 1. It may be discussed at the proper time and place.

I think the same objection applies also to amendment No. 128, standing in the names of Shri B. A. Mandloi and Thakur Chhedi Lal. It can be discussed hereafter.

Now we come to amendment No. 129. Professor K. T. Shah.

Prof. K. T. Shah: Mr. Vice-President, Sir, this amendment which stands in my name is as follows:

> "That the following proviso be added to article 1:
>
> 'Provided that within a period not exceeding ten years of the date when this constitution comes into operation, the distinction or difference embodied in the several Schedules to this Constitution and in the various articles that follow shall be abolished, and the member States of the Union of India shall be organised on a uniform basis of groups of village Panchayats co-operatively organised *inter se*, and functioning as democratic units within the Union'."

This also is part of the general idea I am trying to propagate. It tries to realise the ideals which I hope will commend themselves to the House, namely that, in the long run, this Union must consist of locally autonomous units, equal *inter se*, which will be the strength as well as the salvation of this country in my opinion.

Sir, it appears to me that in the various Schedules as well as in the various articles that follow, there is an obvious distinction between not only the old-time Provinces as they were called, but the old-time States whose designation is now sought to be applied to all the Members of the Union which are amongst themselves clearly not on an equal footing.

Now, there may be reasons why at the present time it is not possible to make them all, with one stroke of the pen so to say, equal by themselves and amongst themselves. I recognise the difficulty. I notice, however, that even in the Constitution, and in the reports of the Experts Committee and others, the intention obviously is to see that even though at the present time there may be these difficulties, within a given period- I have given here the period of ten years - within a given period these differences, should disappear, and the country reorganised on a uniform basis. These differences, at the present time, hinder not only the uniformity of jurisdiction of authority and of working but I suggest it will also impede the developing of the country for lack of this very uniformity. Whatever, therefore, may be the heritage of the past, and whatever may be the restricting, conditioning factor of today which compels us to recognise these inequalities between the member States, I suggest that we must make up our mind, and this Constitution should provide that these differences, these inequalities, these variations, must disappear, and that too within a pre-determined, within a given period of ten years.

The ten-year period suggested is sufficiently long not to cause any difficulty in smoothing away the present differences. The ten year period would be sufficient to readjust the tax systems, the ten year period would be sufficient to readjust if necessary the judicial systems, the legal and fiscal systems, the ten year period would be sufficient to readjust all differences in communications, transport, and other common factors which at the present time do cause a great deal of variation, and, in my opinion, a great deal of hardship, impediment and heart-burning as between the various units. To give you but one instance, it has been recently held by many people that the existence of the States as independent jurisdictions leads to considerable evasion of taxation; or, what is worse, that it leads to an artificial attraction of industry from one area into another, where the taxes are believed to be lower or where other facilities for the growth of industry are easier or greater. These arise not from the inherent qualities, resources, or peculiarities of those regions; these arise not from the natural differences that cannot be abolished by human effort; they arise simply and solely because there are varying jurisdictions, which permit all these differentiations to go on accumulating.

As I have already suggested, their presence is bound to work against the best long range interests of the country, which seeks to march forward, which seeks to make a uniform plan for all-round development within a given period. And therefore it is but right and proper that we should try and eliminate these traditional differences, so that within the stated period we should attain the goal that we have in view.

I have already stated that these differences are of human creation. They are legacies of the past. But as these are impediments in the way, they must be removed at the earliest opportunity. The period of ten years is long enough for making constructive efforts to readjust and make more or less uniform the various units that compose the country as between themselves.

In trying to reconstruct and readjust these various units, I have further suggested that they should be re-organised. The moment we have an opportunity to do so, we must re-organise them into autonomous village groups, which would have more natural geographical affinity amongst themselves and more economic sympathy amongst themselves than happens to be the case in the *ad hoc* creations which we call either provinces or States.

We have in this regard a burning problem already causing considerable amount of difficulty in there construction of the units or provinces on what is called linguistic basis. The constitution of the provinces on a linguistic basis is not by itself a guarantee that the intrinsic unity of each region or group will be properly developed; and, what is more, that the principle of democratic self-government of the people, by the people, for the people, would be equally promoted, if these various units are reconstructed on any other basis but that of local unity, local affinity, and local identity of interest. It is for that reason that I am suggesting the regrouping, there-construction and the re-adjustment on a village basis.

The constitution of the villages on a co-operative basis, enabling them to make common cause, make of them assort of internal republics so to say, - *imperium in imperio,* if I may use the expression, - would be the best guarantee for the development that we have in view. They would be able to take note of the local resources, the local talent, and the local possibilities much better than any distant Government, like the one at the Centre or even at the provincial headquarters even of the size that many of them in our country are.

Sir, remarkable is the emphasis that our great leaders have laid upon the re-vitalisation of the villages. As such I think I am following very honoured foot-steps, if I put forward this ideal before you, and invite you to consider the possibility of re-developing the State in the only manner in which in my opinion it can be assuredly developed, *e.g.,* on the basis of co-operative village reorganisation, forming groups sufficiently strong and big to enable them to progress among themselves, and realise the ideal of a better standard of living that we have been hoping and striving for all these years. I commend this proposition to the House.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, I agree with the suggestion that, early or late, we must re-organise this country on a system of village panchayats. But today there are not such panchayats. That being so, if today we are told that within a period of ten years, to be provided for in the Constitution itself, all distinction should be abolished, it would not be a practical proposition. Myself and Professor Ranga have given notice of an amendment to the Directive Principles to the effect that the State shall take care to see that village panchayats are re-organised and re-established every-where, so that, as far as possible, in the interests of democracy, the villages may be trained in the art of self-government, even autonomy. In that way there may be development of villages. But, in the substantive portion of the Constitution itself, to say that the distinction between State and State should be abolished and the whole country re-organised on the village autonomy basis, is a different thing. We cannot do this immediately. The villages are unfortunately torn by factions and there is nothing like responsibility there now. Under the circumstances I do not want to say anything more than what Dr. Ambedkar has said. He is a bit too pessimistic; I do not agree that we can never reform the villages and develop them for self-government. We must be able to reform the villages and introduce democratic principles of government there. It will all take time. Therefore, now to say that all the existing differences should be abolished at once, is too much to accept. We also expect that, with the indefatigable energy shown by Sardar Patel, the distinction between the States and Provinces will automatically disappear. But let us not rush matters too much. The differences are disappearing fast and popular Governments are coming into existence everywhere. At this rate I am sure that before ten years elapse there will be no difference between either Prof. K. T. Shah or any one sitting on the other benches as regards the ultimate goal that we should reach.

The only question is about the method and pace with which this object should be achieved. I would appeal to him not to press the amendment. We are all engaged on the common task of attaining the absolute sovereignty of the people including those in States. We must devise different methods to suit local needs and conditions. This country will ultimately consist of a number of village republics, autonomous as far as possible, knitted into a number of State with a Union at the Centre. We do derive all authority from the people who must be trained in the art of government and the responsibility must flow from them. But this amendment is premature. I therefore request Professor Shah not to press his amendment. If he does not do so, I am sorry I shall be obliged to oppose it.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, in this amendment, Professor Shah has enunciated two important principles: one is that after ten years he expects the Government of India to attain a particular shape and hopes that it shall be organised on the basis of groups of village panchayats, organised *inter se,* and functioning subordinately to the Union. Sir, with these two principles I think most Members will agree. I have myself given notice of certain amendments wherein I have stated that after ten years, many of the principles embodied in the Constitution would be in operation and would have the force of law. Similarly, also we have provided elsewhere in our amendment that the present system of village administration should be organised on the basis of village panchayats. It was pointed out to the House the other day that we want the Republic of India to be based on small village republics having autonomy. But I do feel that the law as it stands here is vague and should be amplified. Therefore I suggest that instead of putting this in this omnibus form, Mr. Shah should bring in amendments to the various clauses where these should be inserted. I personally agree with the two principles, firstly, that the distinction embodied in the several schedules should be abolished, and secondly, that village panchayats should find a place in the Constitution and that everywhere a uniform method of forming village panchayats should be adopted. In fact in the Gandhi an Constitution which is proposed by Professor Aggarwal, he points out that Mahatma Gandhi wanted that there should be village republics. He envisaged that for about every 20,000 people there should be a panchayat and these units should elect the Taluk panchayats and the district panchayats. I agree that these panchayats should find a place in the Constitution and should also have some voice in the election of the Upper House, but I think in this place it is not proper to say that the distinction embodied in the schedules should be abolished. That, I think, is going too far, apart from its being very vague. Instead of this, I would suggest that Mr. Shah should table amendments to the various schedules when they are taken up. I hope Mr. Shah will not press his amendment.

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, I beg wholeheartedly to support the amendment proposed by Professor Shah where he says that the member States of the Union of India shall be organised on a uniform basis of groups of village panchayats co-operatively organised. I would like to go a step further and say that instead of making the village panchayat a unit, we should make a village Soviet as the unit of our Constitution. It will not be out of place to point out to you that I approached Mahatma Gandhi and presented to him the Soviet Constitution and discussed with him all the points contained in that Constitution. He agreed and at least accepted two principles of that Soviet Constitution. One of those two principles was, "No work, no vote". The second thing was that our unit must be a village Soviet and he said that the Constitution of the Soviet was quite similar to the Constitution of the All-India Congress Committee here, as we have got village Congress Committees which elect representatives to the Tehsil Congress Committees; the Tehsil Congress Committees elect their representatives to the District Congress Committees, the District Congress Committees to the Provincial Congress Committees and the Provincial Congress Committees to the All-India Congress Committee. The same process has been adopted by the Soviet Constitution. Every village there is a self-sufficient Village Soviet. It sends its representatives to the higher Soviets. If we give up this idea of the village panchayats and accept the village Soviet as our unit, all these absurdities which exist in the Constitution by way of provision for minorities, etc. will disappear. With this suggestion, I wholeheartedly approve and support the amendment proposed by Professor Shah.

The Honourable Dr. B. R. Ambedkar: I oppose the amendment.

Mr. Vice-President: I will now put the amendment to the vote. The question is :

That the following proviso be added to article 1: -

"Provided that within a period not exceeding ten years of the date when this constitution comes into operation, the distinction or difference embodied in the several Schedules to this Constitution, and in the various articles that follow shall be abolished, and the member States of the Union of India shall be organised on a uniform basis of groups of village Panchayats co-operatively organised *inter se,* and functioning as democratic units within the

Union."

The amendment was negatived.

Mr. Vice-President: The next one is number 130. Mr. Mandloi.

Shri B. A. Mandloi (C. P. & Berar: General): Sir, I am not moving it.

Mr. Vice-President: Let us now go back to the amendments which we did not take into consideration on Monday. No. 83.

Shri M. Ananthasayanam Ayyangar: I suggest that these may be allowed to be held over and that article 1 may be put to the vote now.

Mr. Vice-President: Please allow me to proceed. No. 83 deals with script and language. This may be discussed at the proper time when we discuss the question of language and script under article 99. Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I move:

"That at the beginning of the heading above article 1, the word and Roman figure `CHAPTER I', be inserted."

Sir, I submit this raises an important question of drafting. Honourable Members will find that in the Draft Constitution chapter numbers are not continuous. There are many places where there is no chapter number but there are some cases where are several chapters and they are numbered separately. The result of this is some amount of confusion. If we number the chapters consecutively apart from the Parts to which they appertain, the advantage will be that, if we refer to a particular chapter, it will be enough indication of the chapter belonging to that particular Part. If we however retain the existing numbering, the result would be that we have to say Chapter I of Part III, Chapter III of Part IV, etc. I submit, Sir, it would be more advantageous to adopt running chapter numbers in the Draft Constitution. That would be highly advantageous from a practical point of view. Sir, I have before me many samples of Indian enactments. The practice in India has been uniform in this respect, though I must point out so far as the existing Government of India Act is concerned, the present draft follows the practice in England. There is in that Act no contiguous running chapter numbers as in Indian practice.

Coming, Sir, to the various enactments, with which everybody is familiar, namely, the Civil Procedure Code, the Criminal Procedure Code, the Evidence Act and all other Acts, Members will find that these Acts are divided into several parts. The chapter numbers are not individually and separately numbered and although there are several parts, the chapter numbers are continuous. The result is an enormous simplification in the matter of citation. In the Criminal Procedure Code and in the penal Code and in other Acts, we refer to certain chapter number without reference to the parts to which they belong. I submit this is the universal practice in India. There are many other Acts which are divided into Parts but the chapters bear running numbers. Considered, therefore, from the point of view of established practice in India and the point of convenience in the matter of citation, I think the chapters, irrespective of the Parts to which they belong, should bear consecutive numbers. This is a matter of convenience and I thought it my duty to place my views before this House. With these few words I commend my amendment to the acceptance of the House.

The Honourable Dr. B. R. Ambedkar: Sir, I oppose the amendment.

Mr. Vice-President: The question is:

"That at the beginning of the heading above article 1,the word and Roman figure `Chapter I', be inserted."

The motion was negatived.

Mr. Vice-President: I find that so far as item No. 85 is concerned the first part of it may be moved as the other portion has been disposed of already. I therefore call upon Mr. Lokanath Misra to move the first part.

The Honourable Pandit Govind Ballabh Pant (United Provinces: General): Sir, I move that we now pass on the Article 2 and postpone discussion on the remaining amendments to Article 1. So far we have not been able to reach unanimity on this important point. I am not without hope that if the discussion is postponed, it may be possible to find some solution that may be acceptable to all. So, nothing will be lost. After all we have to take the decision, today, tomorrow or the day after: nobody will suffer thereby, but if we can find something that satisfies everybody, I think the House will feel all the stronger for facing the tasks that lie ahead of it. I hope there will be no difference of opinion on this point and I do not see why there should be any opposition from any quarter. After all, we will take the decision. Nobody else is going to add to or diminish the strength of any section or of any group here, and we are not here as sections or groups. Everyone of us is here to make the best contribution towards the solution of these most intricate, complicated and difficult problems and if we handle them with a little patience, I hope we will be able to settle them more satisfactorily than we would otherwise. So, I suggest that the discussion on the rest of the amendments to Article 1 be postponed.

Shri H. V. Kamath (C. P. & Berar: General): Mr. Vice-President, Sir, I appreciate the arguments that have been advanced by my honourable Friend, Pandit Govind Ballabh Pant. I only wish to know from you, Sir, for how long a time these amendments Nos. 85 to 96 both inclusive are going to be held over. It will create, I submit, Sir, a very bad impression in the outside world and in our own country, if we go on postponing the consideration of the amendments dealing with the very first word in the very first clause.

Honourable Members: No, no.

Shri H. V. Kamath: And if we go on postponing the consideration of these amendments indefinitely, it would certainly create a bad impression. I want to know, therefore, for how long it will be held over.

Shri R. K. Sidhwa (C. P. and Berar: General): Sir, I am rather surprised at the argument advanced by my honourable Friend, Mr. Kamath that if we postpone this matter indefinitely the outside world will be rather surprised. On the contrary, if we come to a satisfactory solution and a unanimous decision on this matter, the outside world will have really a very high opinion of this House. I feel, therefore, that the suggestion made by my honourable Friend Pandit Pant should certainly be accepted unanimously. I am rather surprised that of all persons Mr. Kamath should have come forward to speak in this manner. What Pandit Pant stated was really a very fine solution and I was expecting from this House that instead of creating any kind of dissension, if we really come to a unanimous decision, it will be really a record in the history of this Constitution. I therefore, very heartily and strongly support the motion moved by my honourable friend, Pandit Pant.

The Honourable Dr. B. R. Ambedkar: I support the suggestion made by Pandit Govind Ballabh Pant.

Seth Govind Das (C. P. & Berar: General): Sir, I wholeheartedly support Pandit Pant's proposition. The House very well knows how clear I am for naming our country BHARAT, but at the same time, we must try to bring unanimity of every group in this House. Of course, if that is not possible, we can go our own ways; but up to the time there was any possibility of reaching a unanimous decision by any compromise, that effort must be made. Sir, I Support this proposition, and I hope that by the efforts of our leaders, there will not be any division on fundamental points like this, and not only this proposition, but other propositions also, like that our national language, national script etc., we shall by able to carry unanimously. I, therefore, support the views just expressed by the Honourable Pandit Pant.

Shri H. V. Kamath: I only wanted to know for how long the amendments will be held over.

An Honourable Member: It may be a day, a week or a fortnight.

Mr. Vice-President: I hold that a discussion of these few clauses should be held over till sufficient time has been given for arriving at some sort of understanding. This will be to the best interests of the House and of the country at large.

Shri Lokanath Misra (Orissa: General): Sir, I have a submission to make. If it is your decision, Mr. Vice-President, Sir, that may amendment is not to be moved, or that it is to be held over, I have no objection. Of course, I agree that may amendment consists of two parts, changing the name of India, and some other things. I am very glad that this change of the name is being held over so that we may come to some unanimous decision which will be pleasant to all. But, I submit, I should be allowed to move the rest of the amendment. That is in no way similar to the amendment moved by Professor K. T. Shah. If I had really known that, I would have said what I have to say when he moved that amendment. I, therefore, request you kindly to allow me to move the rest of the amendment, without amending the name of India.

Mr. Vice-President: Apart from the language employed, I consider that what is said in your amendment is substantially the same as what was said in the amendment of Professor K. T. Shah. It has been discussed. It cannot be discussed again.

Shri Likanath Misra: That is taking one by surprise.

Article 2

Mr. Vice-President: the next motion is:

That Article 2 stand as part of the Constitution.

Shri H. V. Kamath: Article 1 may be put to vote.

Mr. Vice-President: That Article has been postponed. I cannot be put to vote now till all the amendments are considered.

Mr. Naziruddin Ahmad: Amendment No. 131.

Mr. Naziruddin Ahmad: Sir, I beg to move:

"That for Article 2 and Article 3, the following be substituted:

'2. Parliament may be law -

(a) admit into the Union new States;

(b) sub-divide any State to form two or more States;

(c) amalgamate any two or more of the following classes of territories to form a State, namely -

(i) States,

(ii) part or parts of any State,

(iii) newly acquired territory;

(d) give a name to any State admitted under item (a) or created under items (b) and (c) of this article;

(e) alter the name of any State:

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless -

(a) where the proposal contained in the Bill affects the boundaries or name of any State or States for the time being specified in Part I of the First Schedule, the views of the Legislative Assembly or in the case of a bi-cameral Legislature, of both Houses of the Legislature of the State, or as the case maybe, of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President; and

(b) where the proposal affects the boundaries or name of any State or States for the time being specified in Part III of the First Schedule, the previous consent of the State, or as the case may be, of each of the States to the proposal has been ascertained'."

Sir, in introducing this amendment, I should submit that many points are involved in this. The two Articles, Articles 2 and 3, are to a certain extent overlapping. In Article 3 there are certain redundancies, and there are one or two minor gaps. I shall deal with them just now. An analysis of Article 2 shows that Parliament may admit into the Union new States and establish new States. These are the two points in Article 2. In Article 3 power has been given to the Parliament to (a) form a new State by separation of territory from a State or by uniting two or more States or parts of states, (b) increase the area of any State, (c) diminish the area of any State, (d) alter the boundaries of any State, and (e) alter the name of any State. I submit, Sir, that the first element in Article 2, admitting into the Union a new State, is covered by the first part of Article 3. With regard to Article 3, the three elements of increasing the area of a State or diminishing the area of a State, or altering its boundaries, I submit, are redundant. If you subdivide a state, you decrease the area. If you add to one State another or a part of a State, you necessarily increase the area, and a re-adjustment of territories involves necessarily alteration of boundaries. I beg to submit that the three elements of increasing the area or diminishing the area or altering the boundaries are so necessarily implied in the other part of the Article and it would be meaningless and practically useless to embody them in the Constitution, I submit, Sir, that if you have the power to divide one State into two or more parts, or unite two States or parts of States, these three elements are necessarily implied and therefore, they need not be repeated. This element of increasing the area, diminishing the area and altering the boundaries are consequences of the other powers given. These consequences need not be mentioned. They are necessarily involved in the process of division, addition and subtraction. So to that extent these three elements must go.

Then the condition of separation of territories from a State in Article 3 (a) - for this I think a better way would be, to say, we "sub-divide" any State and form into two or more States. I think this would be a better expression; and then the element of uniting two or more States, etc., a better expression would be "amalgamating any two or more States or parts of States". Then there is no power given in the existing article of amalgamating newly acquired State. The powers of the Parliament in this respect are specifically given in my amendment but this is entirely absent in the Draft Constitution.

Kazi Syed Karimuddin (C. P. & Berar: Muslim): Mr. Vice-President, the Honourable Member Mr. Naziruddin has moved an amendment to Articles 2 and 3. Article 2 has been taken up for discussion now and not Article 3. So unless both are taken up for discussion, the amendment as it stands cannot be moved.

Mr. Vice-President (to Mr. Naziruddin): Please go on.

Kazi Syed Karimuddin: What is your ruling, Sir?

Mr. Vice-President: When I said he is to go on, the decision should be understood.

Mr. Naziruddin Ahmad: That is why I have attempted to incorporate into the amendment the following points:

(a) admit into the Union new States,

(b) sub-divide any State to form two or more States;

(c) amalgamate any two or more of the following classes of territories to form a State, *viz.,*

(i) States,

(ii) Part or parts of any State

(iii) newly acquired territory;

(d) give a name to any State admitted under items (b) and (c) of this article;

and then again the power to alter name is already given. I submit that these embody the essential features, of clauses 2 and 3. It avoids repetition and it eliminates parts of articles which are redundant, *viz.*, which are necessarily implied. That disposes of the body of the proposed amendment. Then with regard to the present clause 3, ...

Shri H. V. Kamath: On a point of Order. How can he refer to Article 3 when it is not under discussion? Amendment to Article 3 cannot be taken up at this stage.

Mr. Naziruddin Ahmad: I submit that a ruling has already been given that the amendment is in order, *viz.*, that for Articles 2 and 3 the following article be substituted. This is certainly an amendment to Article 2 although it incorporates in the amendment also article 3. So the Honourable the Vice-President has already ruled that the amendment is in order.

I submit that the phrase `increasing area' or`diminishing area' would not be very appropriate. You do not increase an area by addition or diminish it by means of subtraction. The words are mostly used in an intransitive sense. As an instance you can increase the area of a balloon by inflating and decrease it by deflating. Therefore I submit that these words are not appropriate. If these elements are to be retained, the words `enlarge' and 'reduce' would be more appropriate. The increase of an area by addition or reduce it by subtraction is not in current use, but at any rate the other objection is that they are absolutely redundant. I therefore submit that the body of the proposed new Article 2 should be accepted.

With regard to the proviso, the only effect of the amendment would be that in the proviso (a) in part I there is a condition of representation in the Legislature. In No.2 there is the question of the resolution. I submit Part 1 of proviso (a) should be deleted. A Resolution as mentioned in Part 2 of clause (a) of the Proviso is better. So the only effect of the change of proviso is to eliminate Part 1 of proviso (a). These are the essential changes proposed in this amendment, viz., elimination of some of the points which seem to me to be redundant. There are one or two points which seem to have been overlooked. In proposing this amendment I do so with great respect. I do not in the least disparage the high quality of work which the Drafting Committee has done.

My next amendment which I shall move in this connection is as follows: -

> "That in Article 2 the words `from time to time' be deleted."

The words `from time to time' have caused some amount of trouble before. These words have been provided for in the General Clauses Act. Under that Act if any power or right is given, it is understood that unless the contrary is specifically indicated that the power or right may be exercised "from time to time as occasion arises". It follows that if any power is given, unless the contrary is definitely stated, that power may be exercised from time to time. This expression appears again and again the Draft Constitution. We have put specific provisions in the Draft Constitution itself in Article 303, Clause (2) which provided that in the interpretation of this Constitution, the provisions or the General Clauses Act shall apply. I shall read out this clause -

"Unless the context otherwise, the General Clauses Act, 1897 (X of 1897), shall apply for the interpretation of this Constitution."

The Government of India Act was controlled in this respect by the U. K. Interpretation Act of 1889, and this clause (2) of Article 303 is similar to that provision in the Government of India Act. It, therefore, follows that in the interpretation of this Constitution, we should have regard to the General Clauses Act. And the General Clauses Act definitely provides for this thing, that the words "from time to time" need not be repeated again and again. If we say that the President can give a ruling on points of order, it implies that he can give the ruling as and when occasions arise, from time to time. So in practical life, and in daily drafting of Statutes, we find it as an invariable rue that this phrase is not repeated, here and there, and now and again. In this Constitution itself, the words "from time to time" do not appear everywhere. The House will see that in Article 2, line 1, the expression 'from time to time' appears. "Parliament may, from time to time..." do certain things. But coming to Article 3, we merely find "Parliament may, by law......" and no 'from time to time' occurs there. There are numerous other places where the words 'from time to time' in a similar context do not appear. I submit that the drafting should be uniform. If in one place we introduce the phrase 'from time to time', and if we do not introduce it in another analogous place, the argument may be made that in one place the power may be exercised from time to time, and in the other place it may not be exercised from time to time. It is this reason that I say that there should be some uniformity in the matter of drafting. The words 'from time to time' must be excluded. But if they have to be introduced at all, they have got to be introduced in all other similar places.

With these few words, I submit may amendment for the consideration of the House. I merely wanted to raise these points for discussion, and if necessary for redrafting of the article, if the points are worthy of consideration.

Shri M. Ananthasayanam Ayyangar: Sir, I oppose these amendments. These are verbal matters and I would even appeal to you not to allow such amendments. I request you to put it to vote now.

The Honourable Dr. B. R. Ambedkar: I oppose the amendments.

Mr. Vice-President: I will put the amendments nos. 131 and 132 to vote. Dr. Ambedkar has spoken already and there cannot be any further discussion.

Kazi Syed Karimuddin: Sir, on a point of order. If this amendment is accepted, it will amend Article 3. Therefore, unless a ruling is given that Articles 2 and 3 should be discussed and taken into consideration in regard to this amendment, this cannot be put to vote now. If it is accepted, as I said, it will amend Article 3 also.

The question is: -

"That for Article 2 and article 3, the following be substituted:

'2. Parliament may by law -

(a) admit into the Union new States;

(b) sub-divide any State to form two or more States;

(c) amalgamate any two or more of the following classes of territories to forma State, namely -

(i) State,

(ii) Part or parts of any State,

(iii) newly acquired territory;

(d) give a name to any State admitted under item (a) or created under items (b) and (c) of this article;

(e) alter the name of any State;

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on there commendation of the President and unless --

(a) Where the proposal contained in the Bill affects the boundaries or name of any State or States for the time being specified in Part I of the First Schedule, the views of the Legislative Assembly or in the case of a bi-cameral Legislature, of both Houses of the Legislature, of the State, or as the case maybe, of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President; and

(b) where the proposal affects the boundaries or name of any State or States for the time being specified in Part III of the First Schedule, the previous consent of the State, or as the case may be, of each of the States to the proposal has been ascertained; and

That in article (2), the words "from time to time" be deleted'."

The amendments were negatived.

Mr. Vice-President: Amendment No. 133, I find is connected with the Preamble, and so it may be taken up later, this is not the appropriate place for it.

Amendment Nos. 134 and 135, are not moved.

Amendment No. 136 has been disposed of.

Amendment No. 137 is a verbal change and I rule it out of order.

Amendment No. 138 is not moved.

Then I put Article 2.

Shri H. V. Kamath: Sir, I wish to speak on Article 2.

Mr. Vice-President Sir, it appears to me that there is a little lacuna in this Article which my Honourable friend, the able jurist and constitutional lawyer that he is, will rectify, when it is finally drafted by the Committee. If we turn to the report of the Union Constitution Committee - I am reading from the reports of the Committee, Second Series, from July to August 1947, copy of which was supplied to each member last year - there Article 2 begins thus: -

"The Parliament of the Federation" of course, we have changed the word

Federation into Union but here you import the word 'Parliament' suddenly in Article 2 without saying to which Parliament it refers. This is a lacuna, because there is noting so far in the previous article regarding Parliament. So we must say here the "Parliament of the Union". This lacuna, I hope, will be rectified.

The Honourable Dr. B. R. Ambedkar: We shall take note of what Mr. Kamath has said.

Mr. Vice-President: Then the question before the house is that Article 2 form part of the Constitution.

The motion was adopted.

Article 2, was added to the Constitution.

Article 3.

Mr. Vice-President: Now we come to Article 3.

Amendment No. 139 is a negative amendment and is out of order.

Then we come to Amendment No. 140. Not moved.

The Honourable Shri K. Santhanam (Madras: General): Sir, I move:

> "That in clause (a) of article 3, the following words be added at the end:
>
> 'or by addition of other territories to States or parts of States'."

I need not take up the time of the House. It only makes clause (a) logically perfect, because a new State can be formed by having a part of one of the acceding States and adding to it other territories which may be acquired by India.

Shri M. Ananthasayanam Ayyangar: I request the House to accept the amendment because by this addition alone will the article become complete.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, I am agreeable to the principle of the amendment moved by may friend Mr. Santhanam. The only point is that I like slightly to alter the language to read "or by uniting any territory to a part of any State".

The Honourable Shri K. Santhanam: I am agreeable to the change.

Mr. Vice-President: the question is:

> "That in clause (a) of article 3, the following words be added at the end:
>
> 'for by uniting any territory to a part of any State'."

The motion was adopted.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That the following new proviso be added after clause (e) of article 3:

'Provided that every proposal for legislation which increases or diminishes the area of an existing State, or alters its name or boundaries, shall originate in the Legislature of the State concerned or affected, in such form as the rules of procedure in the Legislature concerned consider appropriate'."

Sir, here is a proposal to consult first the Legislature of the State, whose name or boundaries are proposed to be altered, or whose areas are proposed to be increased or diminished. We are all aware that the existing Units which make up this Federation are not equal *inter se* are not logical, are not happily constructed so as to minister to the development of the country or even of the areas themselves. It is necessary, and it will soon perhaps have to be implemented in some form or another, that these areas be reconstructed. That would mean that their boundaries, perhaps even their name, and their territories, may be altered, upwards or downwards. If that becomes necessary, then I submit the proper course would be to consult the people themselves who are affected, if not by a direct Referendum to the people affected, at least by a consultation of the legislature, rather than that the change be imposed from above, as in may opinion the clause as it stands requires. The parties primarily affected are the people themselves of the areas whose boundaries or name is to be altered, or whose position has in any way to be reconstructed. And it is but a simple proposition - a mere matter of fundamental principle I submit - that you should in a democratic regime consult the peoples affected, and not merely lay it down from above. I recognize that the article as it stands provides that in any such event you should have either a representation from the representatives of the people in the Central Parliament to suggest such an alteration, or alternatively the President should have received some such re-presentation from the people concerned. But it will be the act of the Central authority, and not of the people primarily affected to suggest this variation. I submit that is in principle a wrong approach.

I am afraid that the general trend of the Draft Constitution, as I view it, seems excessively and unnecessarily to place power and authority in the Centre, to the serious prejudice not only of the Units, but even of the very idea of democracy as we flatter ourselves we are embodying in this Constitution. If it is a democratic Constitution, if we desire that the people should govern themselves, or that, even if they are not prepared today to do so, they should learn necessarily by mistakes, to be fit for and practice self-government, then I think it is of the utmost importance that a provision like this should be insisted upon.

Any question which relates to the alteration of the present units, their territories, boundaries or name, should begin with the people primarily affected, and should not come from the authority or power at the Centre. The authority at the Centre obviously is not familiar with local conditions; or they may have other outlook, may have other considerations, other reasons, for not accepting or agreeing to such a course. The authority at the Centre, even if moved by the representatives of the areas concerned by some resolution or other procedure, may be guided by the very few persons which, under any scheme of election, will constitute the representatives of those areas in the Central Parliament; and not really consult the entire population, the adult voters of the areas concerned, which I submit is the first requirement of any such readjustment.

Lest I should be misunderstood, I would at once add that I am certainly not in love with the present position, or the continuance of the alignment of the provinces and States as they stand today. They need to be altered, they must be altered. But they must be altered only as and how the people primarily affected desire them to be altered, and not in accordance with the preconception, the notion, of such adjustment that those at the Centre may have, even if some of those at the Centre are the representatives of the people concerned.

I make it imperative, therefore, that the first proposition, the initiation of the movement either to integrate or to separate, either to readjust the boundaries or to bring about any new form of configuration, must commence with the people themselves. There is another consideration in the matter, which also should not be ignored, namely that in any such readjustment, it will not be one single group that will be affected or concerned; there may be at least two or more which are likely to be affected; and as such the representatives of those two groups, or those more than two groups in the Central, may not be quite competent to reflect the views of the people as a whole. I admit that in democracy majority rule should prevail. But the majority has not the monopoly of being always right and still less to be always just. If that is so - and I strongly believe it is so - then I submit that the only cure, if you wish to retain democracy, is to secure the assent in advance, to make the initiation, from the beginning, from or by the people concerned in suggesting such readjustment.

The actual readjustment of boundaries, the actual formation of new units, may be left to competent Boundary Commissions, or to any other body or authority that may beset up, either *ad hoc* for the particular purpose, or in general terms as a kind of a statutory, constitutional authority, semi-judicial in character, that may decide upon and settle these matters. but in the absence of any such provision, and apart altogether from such mechanism that maybe set up hereafter, I think the principle must never be lost sight of that the matter should originate, and should originate alone, with the peoples concerned. I personally would advocate a direct Referendum rather than merely a vote of the Legislature, but lest the suggestion of a referendum sound too revolutionary to be entertained by a respectable House like this, I suggest - and I have put in the amendment - the idea only of the Legislature being consulted, and not necessarily the people as a whole. I trust this evidence of my intense, ingrained moderation would commend itself to the House, and allow the amendment - not merely to be opposed by a simple formal "I oppose", but by some sort of a reasoned answer rather than a fiat. Sir, I commend this proposition to the House.

Rai Bahadur Syamanandan Sahaya (Bihar: General): Sir, may I make a submission. I think that if Dr. Ambedkar moves his next amendment things will be clarified and such of us as have amendments in our names will be able to decide whether we should move them or not.

Mr. Vice-President: I agree with you fully. Dr. Ambedkar may move his amendment.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for the existing proviso to article 3, the following proviso be substituted:

'Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the president and unless --

> (a) where the proposal contained in the Bill affects the boundaries or name of any State or States for the time being specified in Part I of the First Schedule, the views of the Legislature of the State, or as the case may be, of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President; and
>
> (b) where such proposal affects the boundaries or name of any State of States for the time being specified in Part III of the first Schedule, the previous consent of the State, or as the case may be, of each of the States to the proposal has been obtained'."

Mr. Vice-President, if one were to compare the amended proviso with the original proviso as it was set out in the Draft Constitution, the Members will see that the new amendment introduces two changes. One is this: in the original draft the power to introduce the Bill was given exclusively to the Government of India. No Private Member of Parliament had the power, under the original draft, to propose any legislation of this sort. attention of the Drafting Committee was drawn to the fact that this was a somewhat sever and unnecessary curtailment of the right of the members of Parliament to move any motion they liked and in which they felt concerned. Consequently we deleted this provision giving the power exclusively to the Government of India, and gave it to the President and stated that any such Bill whether it was brought by the Government of India or by any private Member should have the recommendation of the President. That is one change.

The second change is this: under the original Article 3, the power of the Government of India to introduce legislation was restricted by two conditions which are mentioned in (a)(i) and (ii). The conditions were that there must be, before the initiation of any action, representation made to the President by a majority of the representatives of the territory in the Legislature of the State, or a resolution in that behalf passed by the Legislature of any State-whose boundaries or name will be affected by the proposal contained in the Bill. Here again, it was represented that there might be a small minority which felt very strongly that its position will not be safeguarded unless the boundary of the State were changed and that particular minority was permitted to join their brothers in the other State, and consequently if these brothers remained there, action would be completely paralysed. Consequently, we propose now in the amended draft, to delete (i) and (ii) of (a) and also (b) of the original draft. These have been split up into two parts, (a) and (b). (a) deals with reorganisation of territory in so far as it affects the States in Part I, that is to say, Provinces and, (b) of the new amendment relates to what are now called Indian States. The main difference between the new sub-clauses (a) and (b) of my amendment is this: In the case of (a), that is to say, reorgaisation of territories of States falling in Part I, all that is necessary is consultation. Consent is not required. All that the President is called upon to do is to be satisfied, before making the recommendation, that their wishes have been consulted.

With regard to (b), the provision is that there shall be consent. The distinction, as I said, is based upon the fact that, so far as we are at present concerned, the position of the provinces is different from the position of the States. The States are sovereign States and the provinces are not sovereign States. Consequently, the Government need not be bound to require the consent of the provinces to change their boundaries; while in the case of the Indian States it is appropriate, in view of the fact that sovereignty remains with them, that their consent should be obtained.

As regards the amendment moved by Prof. Shah, I do not see much difference between my amendment as contained in sub-clause (a) of the new proviso and his. He says that the discussion shall be initiated in the States. My sub-clause (a) of the proviso also provides that the States shall be consulted. I have not the least doubt about it that the method of consulting, which the President will adopt, will be to ask either the Prime Minister or the Governor to table a resolution which may be discussed in the particular State legislature which may be affected, so that ultimately the initiation will be the local legislature and not by the Parliament at all. I therefore submit that the amendment of Professor Shah is really unnecessary.

The Honourable Shri K. Santhanam: Mr. Vice-President, I wonder whether Professor Shah fully realizes the implications of his amendment. If his amendment is adopted, it would mean that no minority in any State can ask for separation of territory, either for forming a new province or for joining an adjacent State unless it can get a majority in that State legislature. I cannot understand which he means by 'originating'. Take the case of the Madras Province for instance. The Andhras want separation. They bring up a resolution in the Madras legislature. It is defeated by a majority. There ends the matter. The way of the Andhras is blocked altogether. They cannot take any further step to constitute an Andhra province. On the other hand, as re-drafted by the honorable Dr. Ambedkar, if the Andhras fail to get a majority in the legislature, they can go straight to the President and represent to him what the majority did in their case and ask for further action removing the block in the way of a province for them. If they are able to convince the President, he may recommend it and either the Government of India may themselves sponsor legislation for the purpose or any private Member or a group in the Central legislature can take up the question. Therefore, by Mr. Shah's amendment instead of democracy we will have absolute autocracy of the majority in every province and State. That is certainly not what professor Shah wants. But, unfortunately, in his enthusiasm for what he calls the principle, he has tabled an amendment which altogether defeats his object. I therefore suggest that the amendment shall be rejected and the proposition moved by Dr. Ambedkar should be accepted.

Mr. Vice-President: Mr. Sidhwa.

Shri R. K. Sidhwa: Mr. Vice-President.

Shri H. V. Kamath: Sir, are we considering amendments 149 and 150 together? There are tow amendments to amendment 150.

Mr. Vice-President: Let us hear what Mr. Sidhwa has to say. We will certainly take up the amendments to which Mr. Kamath has drawn attention.

Shri R. K. Sidhwa: I do not accept the arguments advanced by Mr. Santanam against the amendment moved by Professor Shah. He stated that if in the Madras legislature a motion for the separation of the Andhra is lost by a majority, the Members affected will have the right to represent their case to the President at the Centre, under the proposition moved by Dr. Ambedkar. If, Sir, that is the effect of the proposition, I do not welcome it. It will be unfair to seek the aid of the President against the expressed wish of the majority under democracy. If the majority say that they do not want separation of the Andhras, the minority should not have the right to go to the President by the backdoor and urge separation.

But Sir, I do not share the views of Professor Shah in this matter. Dr. Ambedkar's amendment is very clear and comprehensive. It states that if anybody wants a change of name or separation, he can move for that in the local legislature. This is what Prof. Shah wants too. But I do feel that Dr. Ambedkar's official amendment is more comprehensive and should be supported. Though Professor Shah says that he has in mind referendum on matters of this kind, the amendment does not mention it. If a referendum is to be taken, the legislature has the necessary power to ask that it be done. The arguments advanced by Mr. Santhanam do not appeal to me. But, as I said, Professor Shah's amendment restricts the utility of the Provision. I therefore commend the amendment of Dr. Ambedkar to the House.

Mr. Vice-President: Mr. Naziruddin Ahmad may move his amendment.

(The amendment was not moved.)

Mr. Vice-President: Pandit Hirday Nath Kunzru.

Pandit Hirday Nath Kunzru (United Provinces: General): Mr. Vice-President, I beg to move:

> "that in the amendment of Dr. Ambedkar as just moved, for the words 'the previous consent' the words 'the views' and for the words 'has been' the words 'have been' be substituted respectively."

Sir, the object of may amendment, as honourable members will clearly see, is to place the States specified in Part III of the First Schedule on the same footing as the States specified in Part I of the Schedule so far as the reorganisation of the territory of any State is concerned. Dr Ambedkar has told us why the amendment that he has proposed deals differently with the States mentioned in Part I and the States mentioned in Part III of the Schedule. He has expressed the opinion that the States mentioned in Part III of the Schedule are sovereign States and that they therefore enjoy a higher status than the provinces. Consequently, while the consent of the provinces is not necessary to a reorganisation of their territory, the consent of the States in Part III of the Schedule is required if their boundaries are to be altered in any way.

Now, I submit, Sir, that there are several provisions in the Draft Constitution that do not proceed on the theory just now outlined by Dr. Ambedkar. Take Article 226 for instance. This Article lays down that, when the Council of States has declared by the prescribed majority that it is necessary or expedient in the national interests that Parliament should make laws with respect to any matter enumerated in the State List specified in the Resolution, "it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter". It is clear from this provision that notwithstanding the sovereignty of the States mentioned in Part III of the Schedule, the Dominion Parliament can in certain circumstances legislate on subjects in regard to which legislative power has not been made over by these States to the Dominion Parliament in their Instruments of Accession. I know that this clause has been amended by the Drafting Committee. It has been provided that the declaration made by the Council of States in regard to the necessity or desirability of legislation of the kind mentioned in Article 226 should be limited to three years at a time, but it can be renewed from time to time. But whatever the duration of the power that the Dominion Legislature will acquire under Article 226 may be, it is clear that notwithstanding any difference between the provinces and the Indian States, the Dominion Parliament will in a certain eventuality be able to legislate in regard to a subject in connection with which the Indian States have not parted with their own legislative power. I see no reason therefore why, proceeding on the principle on which Article 226 of the Draft provides, we should not provide that in the case of the reorganisation of territories too, the provinces and the Indian States should be placed on the same footing.

Article 226 does not provide the only instance in which the States and the provinces will be dealt with in the same manner, whatever the Instruments of Accession may say. For another illustration, I would ask the House to refer to Article 230 which deals with the implementation of international treaties, agreements and conventions. This article lays down that Parliament has power to make any law for any State or part thereof for implementing any treaty, agreement or convention with any other country or countries. Now, I could have understood, if Dr. Ambedkar's theory was to be acted upon consistently, the exclusion of the States specified in Part III of the Schedule from the operation of Article 230; but as a matter of fact this Article, if accepted by the House, will affect not merely the provinces or the States mentioned in Part I of the First Schedule but also the Indian States, *i.e.*, the States mentioned in Part III of the Schedule. Whatever the Instruments of Accession may say, the Dominion Parliament will have the power to carry out international treaties, agreements and conventions, even though they may relate to subjects specified in the State List.

Sir, there is yet another example that may be given to show that the draft Constitution has, in an important matter, given power to Government to direct the States to act in a particular manner. I refer to Article 294 of the new Draft. Article 294 as previously drafted provided for minority representation in the Legislative Assemblies of the States specified in Part I of the First Schedule. The Article as drafted now compels the Assemblies of the States specified in Part III of the First Schedule also to reserves eats for the minority communities mentioned therein in the Legislative Assemblies of the States. This is another illustration of the manner in which the draft Constitution has imposed liabilities or responsibilities on the States mentioned in Part III of the first Schedule, notwithstanding what Dr. Ambedkar has said about their sovereign status.

Now it may be said, Sir, that the examples that I have given from the draft Constitution do not indicate that the Dominion Legislature will be able to exercise any power in regard to the States mentioned in Part III of the Schedule, notwithstanding anything to the contrary in the Instruments of Accession. It may be contended that the Instrument of Accession will be accepted only when the states accept the responsibilities mentioned in Articles 226, 230 and 294. If that is so, why cannot Government go further and require the States to agree to a reorganisation of their boundaries in such manner as might be considered desirable by the President in consultation with them? I am not asking that the States should have no voice in connection with matters relating to their territorial limits. All that I am asking for is that the consent of the States should not be necessary for a reorganisation of their territories. Consultation with them should be quite enough. Normally their legislatures should be consulted, but as we are not certain that every State has or will soon have a legislature, I was unable to table an amendment requiring that in the case of the States, too, the opinions of the legislatures concerned should be obtained, before any action is taken. I do not see, why the previous consent of the States should be required in connection with Article 3 and more than it is required in connection with matters dealt with in Articles 226, 227 and 294. If Government desire to be consistent, it is incumbent on them, in may opinion, to accept the amendment that I have placed before the House. They cannot in conformity with the position taken up by them in the draft Constitution raise any objection on principle to the amendment that I have moved.

Sir, if my amendment is as I think free from all theoretical objections, one any practical grounds be urged for dealing with the States differently from the provinces? I do not think that there is any reason whatsoever why the States specified in Part III of the Schedule should have the permanent right to veto their territorial re-organisation, however necessary or desirable it may be in the public interest. There are unions, Sir, that are very small; their revenues are too limited to enable them to fulfil the duties that Governments have to shoulder in modern times. Is it desirable that these States should in utter disregard of the interests of their citizens always rule out all proposals relating to the re-organisation of their territories? If Government bear in mind the interests of the people, not merely in the States specified in Part I of the First Schedule but also of the States specified in Part III of the First Schedule, it is necessary for them to take power in their own hands to deal with the question of territorial re-organisation, whether it concerns the provinces or the Indian States, in any manner they like. If they fail to do so, they may justly be accused by the inhabitants of the States specified in Part III of the First Schedule of treating them in a step-motherly manner and leaving them to carve out their future as they best may with their own unaided resources. The whole principle on which the Draft Constitution is based is that in certain essential matters, the Central Government should have adequate powers to arrive at decisions and to execute them in the interests of the entire territory of India. My amendment, Sir, proceeds on the same basis and I submit that it would be inconsistent and unjust on the part of the Government if they were to reject my proposal merely on the ground that the States, though they will be compelled to bow to the wishes of the Indian Legislature in certain matters, should not be compelled to fall in line with the provinces in regard to the re-organisation of their territories, however urgent the matter may be.

Rai Bahadur Syamanandan Sahaya: Mr. Vice-President, Sir, the desire for the formation of provinces and the re-distribution of boundaries of existing provinces and States is, in my opinion, assuming the proportions of an epidemic, I feel that the two words "linguistic" and "cultural" have never been more misused than in recent times. In framing a legislation, and particularly a legislation of the type we are considering, it is necessary for us to decide what type of tendencies we should encourage and what types of tendencies we should not encourage. It is from this angle that I am making a few submissions in connection with this Article and the amendments before us.

I have no doubt that the amendment proposed by Dr. Ambedkar to his own draft has been guided by some such consideration that I have just placed before you and the House. The Draft as it stands only lays down that a Bill for re-distribution of boundaries or for re-naming a State would be introduced if the majority of the representatives of the territory expressed a desire to that effect. Of course, the language of the Draft as it stands is, in may opinion, ambiguous. Because, representatives of the territory, as it stands in the Draft, may mean the territory of the whole province, and the representatives of the entire province under the existing Draft may be required to give their opinion before legislation of the type could come into parliament. Since then, Dr. Ambedkar has moved an amendment which makes a distinction between the manner of ascertaining the views of the Provinces, and the States specified in Part III of the First Schedule. Although I agree with one observation which has recently been made by Pandit Kunzru that there is no reason for this differentiation, I do not agree with the amendment which he has proposed. I feel that in both the cases of the Provinces and the Indian States, the words 'previous consent' should occur. In part (a) of the Proviso as suggested by Dr. Ambedkar, the words are: "where the proposal contained in the Bill affects the boundaries of any State of States for the time being specified in Part I of the First Schedule, the views of the legislature of the State or as the case may be of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President." This is, Sir, relating to the Provinces. When he comes to part (b) of this Proviso, concerning the States referred to in Part III of the First Schedule, (ii) the Indian States he says: "the previous consent of the State or as the case may be, of each of the States to the proposal has been obtained." Now, Sir, there is a difficulty which I envisage in this amendment. Supposing the re-distribution of boundaries concerns one State referred to in Part I of the First Schedule and another State referred to in Part III of the First Schedule, the result would be that in the case of the State referred to in Part I of the First Schedule the views of the Assembly will be ascertained and in the other case, the consent of the State will be required so that, if the State referred to in Part III of the First Schedule does not give consent, even though the province may agree, the re-distribution will not take place. I, therefore, feel with Pandit Kunzru that there should be no distinction between the two provisions; but instead of leaving the door very wide open in the provinces, I would submit that Dr. Ambedkar should consider if it would not be proper that the word 'consent' used in the case of States referred to Part I of the First Schedule also. I had an amendment in my name, being number 161 on the list. But, I feel that this amendment of Dr. Ambedkar will receive a great deal of support in this House and the amendment suggested by me in the Draft as it stands will have no chance. I therefore make a request that even at this late stage, if the mover has no objection, you may kindly accept an amendment to use the word "consent" for the word "views" in part (a) of the proviso as moved by Dr. Ambedkar.

Pandit Thakur Dass Bhargava (East Punjab: General):*[Mr. Vice-President, I have come here to express my view son this amendment and on the amendment moved by Prof. K. T. Shah. The amendment moved by Dr. Ambedkar on this Bill is more stringent than the original one.

The first point which I would like to submit is that every part of India should be given this facility, that, should it decide to secede from one part and to accede to another, then there should be no impediment in its way. India of ours, which was under the domination of the British, is sub-divided into unhomogeneous parts which have grown in haphazard manner. Not only there are districts, which want to secede from one province and to accede to another, but there are even Tahsils and parts comprising ten to twenty villages who want to secede from one part and to accede to other parts. This Article is sufficient to throttle them. For example, I would like to mention that Hariana, which is at present included in East Punjab, has been trying for the last forty years to get itself attached to areas whose language, customs and traditions are similar to its own and to get itself constituted into a separate province. But it could not succeed. The reason was that when this was discussed with U. P. leaders they at once stated that this was a device to parcel out U. P. They did not even consider whether it was a right thing to do or not. Provincialism and other ideas have become so ingrained in us that nobody is prepared to judge a thing on its own merits. I would like to know why in a part of Narnaul Area where there is not a single Sikh, teaching of Gurmukhi has been ordered. Today, in 1948, orders have been passed to teach Gurmukhi in an area where not a single Sikh resides and the result will be that children of that area will be forced to learn Gurmukhi. This Article, now sought to be moved, will make impossible the position of those leaderless areas, who wish to find a way out of this confusion. There will no attractive life to them, because according to this Article the right which should vest in every Member of Parliament is being given to the President. I would like to submit most respectfully that today, there are several provisions in the Government of India Act which debar a member from introducing a bill of a particular nature. Whenever I had wanted to introduce a Bill regarding joint Hindu family with the object of exempting the family from taxation, I found that it could not be done without prior sanction. Whenever I applied for sanction, that was refused. I am aware that the method of work of all the Governments is the same. The sanction of the President implies that Member, having the right to introduce a Bill, will not get the requisite sanction. Dr. Ambedkar has just said that this point was raised before him and that is why he has made the change that instead of Government introducing the Bills, Members also should be able to do so. But he has made the law more stringent than heretofore. If Government takes the responsibility for the bill, then it could get it passed. But since the giving of sanction will entirely depend on its recommendation, no moral influence will be there. If the President and the Cabinet do not want it and do not recommend it, then Parliament, not to talk of the individual, can do nothing. Recommendation means that the power of originating such a bill has been taken away from the Members. Therefore I submit that this provision is most undemocratic. Similarly, I would like to state that under article 34, which gives the discretion to Parliament to delegate any of its powers to the President or to anyone else, Parliament will not be competent to bring any legislation for changing the boundaries of provinces unless the President's recommendations is there. This is a right of a Member and it will be taken away by this provision. Since the war we have been hearing that everyone has got the right of self-determination. This provision takes away that right. If the people of an area want separation, then the right of self-determination should be given to them. Prof. K. T. Shah while elaborating his amendment has stated that he is afraid of referendum, but the proposal put forth by him strikes at the very root of self-determination. For example, if any part of a big province wants to break away then the only course before it is to bring the matter before the Members. But by doing so the very purpose would be defeated because the majority would always reject such a proposal. The principle, underlying the amendment of the learned Professor, is right but his suggestion is wrong. In my opinion a provision should be evolved whereby separation may be effected by holding a referendum of the people of the area desiring to separate. I know the result will be that many areas would like to go out and the provincial legislature would never agree to that. Therefore, there would be no use in taking the vote of the whole House as small areas will not get a vote. In the old Government of India Act a similar provision existed. In 1946, I had tabled a resolution in the Assembly for the appointment of a Commission for redistribution, but unfortunately it could not be taken up. A proposal was also put before the Cabinet Mission for appointing a Commission for the redistribution of the provinces. Now a linguistic commission has been appointed. I hear attempts are being made to shelve its activities. I would like the Congress Government to respect the wishes of the areas, which desire to separate from any province and that no hurdles are placed in their way; on the other hand, all legal aid should be given for the formation of a new province. But so long this Section exists areas comprising even two or four districts, will not be heard at all. The previous condition that only the vote of the representatives of the territory, which wants separation, should be taken, has now been deleted. Now it is proposed that the vote of the legislature should be taken. No provincial legislature would agree to the separation of apart, and the representatives of the affected area will be so influenced that they would not be able to give free expression to their views. Therefore, holding of a referendum is necessary. Parliament, and not the President, should have the right to determine the matter after taking into account the opinion of the people of the area concerned and of the vote of the provincial legislature. It is therefore necessary that every Member of the parliament should have the right to give notice of such a bill. Views of the provincial legislature may be taken but the changes should be effected in accordance with the wishes of the people of the area, who want separation. If this is not done then the principle of self-determination would be nowhere. We used to hear that after the attainment of Swaraj the right of self-determination would be given to all. This Section will put an end to that right, and no justice would be done to the people. I belong to a small district, Hissar. It is an epitome of India. Boundaries of many provinces meet in Hissar, *e.g.*, Jind. Jind State having 88 per cent Hindu population, and only 1 per cent Sikhs has been included in the Eastern Punjab States. Formerly, Delhi was a part of U. P. Six districts of Ambala Division were also included in it. In 1857, Lawrence, who had annexed this area, was made Governor of the Punjab and so this territory was included in the Punjab Province. For a very long time we tried that Delhi and Ambala Division be separated from the Punjab, because this territory had nothing in common with the Panjab, but our efforts bore no fruit. Now, after the partition it remains to be seen as to what would happen to this area; with whom will Delhi and Ambala Division be tagged and whether Punjabi or Hindi would be its language. Now, we hear that we are to be included in a Punjabi speaking province. Our children, who have nothing to do with Punjabi language, will have perforce to read Punjabi. Nothing could be more cruel than this. This provision gives no freedom. The Constitution is being forged to enable people of every part of the country to live in peace, and to evolve an organic life for themselves. But under Article 3 and this amendment, each and every part would not be able to attain freedom for itself. Therefore, I say that the provision is undemocratic, and that it restricts the rights of the Parliament. Views of the legislatures may be invited, and may be taken into consideration; but the determining factor should be the vote of the people of the area, which wants to separate. For this, there is no provision under the present law. With these words, I would like to emphasis that it should be so amended that even the smallest areas in the country may be able to achieve full freedom.

Shri Rohini Kumar Chaudhari (Assam: General): Sir, it is my misfortune to have to oppose the amendments moved by the two stalwart Members of this House, namely, Prof. Shah and Pandit Kunzru. I oppose them not because I like them less, but because I like Dr. Ambedkar's amendment more, as it meets the present situation very well. Sir, I do not object to Prof. Shah's amendment on the ground of its wording or its unsatisfactory character or to the word 'originate'. I entirely agree with him that no such motion should be considered in any House if the State which is affected is not at all in favour of it. I say that if there is not a single Member of the legislature in a State who countenances the idea of separation, it is unthinkable that the Central Legislature would take up that matter. To that extent, I agree with Prof. Shah. But I am opposed to his amendment on the ground that is very restrictive. It does not allow a motion to be moved by any other authority or by a private Member other than the Government of India itself. On that point I consider that this amendment should be opposed.

Then coming to the amendment of Pandit Kunzru, I consider that his amendment lays down a rather dangerous principle, dangerous at this stage. It smacks of a repetition of Dalhousie's annexation policy. It gives to the Central Legislature the power to alter name of a State, to change, increase or diminish the boundaries of a State, without any previous consent of that States - thanks to Sardar Patel. We have not asked for any merger or accession without the consent of the State itself, except probably in the case of the police action in Hyderabad - and we do not know how it will end after all. So, what I say is, if at this stage we give the idea to the States that it will be open to the majority of the Central Legislature at any moment they think fit to take one part of a State and tag it on to another province or to saddle it with an unprofitable part of a province, that will be a most unwise thing and that will put the States on their guard, and that will end the amity with which they are now coming in and joining us. Certainly, I agree that some powers of interference have been reserved in our Constitution by articles 226 and 230. But they also show how cautiously we are proceeding in this matter. After all, you must not ask your host to give up his bed for you, merely because he has allowed you shelter. Merely because the States now are showing their inclination to come and join us in all matters, we must not ask them to agree to a proposition whereby you will be able to alter their name, diminish their area, or change their boundary or do anything of that kind, without their consent.

With these words, I support the amendment moved by the honourable Dr. Ambedkar. I would only ask him, or anyone in the House to tell me whether the word 'President' means that the recommendation of the President would be given with the consent of the Government, or whether the President can independently act in exercise of his discretion. The word 'discretion' is not used, of course, but I would like to know if he can exercise his discretion in allowing a motion of that kind. I consider that it will be more reasonable to allow the President to exercise his discretion, rather than that he should be guided by the opinion of his Government in this matter. There are other provisions in the Draft Constitution where the President undoubtedly uses his discretion, without consulting the Government or the Central Legislature, though the word 'discretion' has not been used. For instance, in the matter of remission of sentences, the President will never be called on to take the consent of his Ministry in remitting a sentence or refusing to remit a sentence. All the same, that Article is there, without the addition of the word 'discretion'. Therefore, I consider that the interpretation which Dr. Ambedkar puts is correct, and when the word 'President' stands alone, it means he will be able to exercise discretion in such matters.

Shri Gopikrishna Vijayavargiya [United State of Gwalior - Indore - Malwa (Madhya Bharat)]: Mr. Vice-President, Sir, I am not going to speak against or for any of these motions. I have only to make certain observations, as I come from an Indian State and want to give expression to the feelings of the people of the States in this matter. I think, Sir, that the people of the States do not want any discrimination in the matter of consent or no consent (*Hear, Hear*). In fact, our wish is that the States must be put on the same level as the Provinces *(Hear, hear),* and therefore, there is no question of taking the consent of the States. In fact, I would be very glad if this article could have been amended in some such way, at least, to the effect that the States Legislatures might be consulted. I think, mere consultation would be sufficient in the matter of the States also as it is in connection with the Provinces. I think, Sir, the question of the sovereignty of the Rulers or of the States should not be brought up. I think, Sir Stafford Cripps when he came to India also gave a definition of the States and thought that the Rulers are the States, and now some such anomaly may be created again. I say the wish of the States' people is that there should not be any discrimination in favour of the States, and consent is not necessary. You might put the States on the same level as the Provinces. The people of the States have always contested the sovereignty of the rulers - they do not accept the sovereignty of the rulers. Most of the States have been tiny; now they have merged with some of the Units but the question would crop up again if sovereignty were given to the rulers. The people of the States are fully the kith and kin of the people of the Provinces - they are the same as those in the Provinces. We do not like to further fragment our country on the same old lines. The distinction of the Indian States and the Provinces is still being maintained, but now we think that this distinction must go. The House must consider anything that may help in the States being brought on a par with the Provinces. I think the States Ministry ought to have done that a little earlier. This is really worth while doing, because we are making a Constitution and it will be very difficult to change it afterwards. I therefore think will be very difficult to change it afterwards. I therefore think that this discrimination must go. I request Dr. Ambedkar to find out some way for this. In this matter I voice the feelings of the people of the States. I am not speaking on any particular amendment.

Shri M. Ananthasayanam Ayyangar: Sir, the question may now be put.

Mr. Vice-President: What is the feeling of the House?

Shri H. V. Kamath: No, no. This is a very important matter.

Mr. Vice-President: Prof. Shibbanlal Saksena.

Prof. Shibban Lal Saksena: Mr. Vice-President, Sir, this is a fundamental matter, and the amendment tabled by Dr. Ambedkar is a very important one. In his explanation he has said that his amendment enables any Member to give notice of private Bills for changing boundaries, and on receipt of that Bill the President will take certain steps to ascertain the opinion of the Legislature concerned, and then on the advice of the Prime Minister recommend that the Bill be brought up. My friend Shri Thakur Dass Bhargava just now said that this amendment is really far more stringent than the original clause. I do not agree with that view. Under the original clause, only the Government of India could have brought such a Bill, whereas under this amendment, on the recommendation of the President any Member can bring it. The only condition is this, namely, that the President after he receives notice of such a motion from any Member will try to take the opinion of the area concerned and then, of course after consulting his Ministry, give his recommendation for moving the Bill or otherwise. But if the original clause had continued, no private Bill could have come; under the new amendment a private Bill can come, with the limitation I have already described. I personally think this is a much better form than the original clause. Probably Shri Thakur Dass Bhargava wants to go much further. He wants that any private Member should have liberty to bring in the House a Bill asking for the change of boundaries. Change of boundaries is a very vital matter and it should not be made so easy that everyday any Member shall bring forward motions for changing the boundaries and the Legislature should discuss that question. It will create unnecessary heat and create friction which I think should be avoided. I think that so far as the language of the amendment is concerned it meets the wishes of Shri Thakur Dass Bhargava. Of course the Member will have to secure there commendation of the President, and probably if the President feels that the people of an area - the majority of them - are of the opinion that they would be happier if they go to some other State or Province, he would advise the Prime Minister, and probably the Prime Minister also will agree with him that the motion should be allowed and that Parliament should be allowed to discuss the question. I think that gives full liberty and opportunity to every area which desires a change of boundaries.

There is one aspect of this amendment which is really a very unfortunate aspect, to which Dr. Ambedkar had given vent in his lucid address in the beginning when he said that in this Constitution we have been forced to treat the Indian States on a separate footing from the Provinces. In the First Schedule, the Indian States have been put in Part III while the Provinces have been put in Part I. And here in this Article 3, Part I and Part III are separately treated. Whereas in respect of the States under Part I their Legislatures will only be *consulted*, in respect of the States under Part III their consent will be *required*. Sir, I had given notice of amendments which really sought to do away with this distinction, and I am sure that our learned Dr. Ambedkar also wishes the same thing from the bottom of his heart. There should be no difference between a Province and a State and we all wish that this distinction should disappear. My honourable friend Pandit Kunzru has also argued that there should be no differentiation at least in this matter namely about *consent* and *consultation*. He wants that the States should only be consulted just like the Provinces. He has also pointed out Sections in the Draft Constitution where the States have been asked to fall inline with the Provinces, and I think he has made out a very good case. I am very much in agreement with all that he said. But I personally feel that in this matter our leader, the States Minister, Sardar Patel, feels that it will be a breach of faith if we made provisions in the Constitution without securing the prior agreement of the Indian States also. He has promised us that he will make his efforts to get their consent and before the Bill goes into third reading he will try to have this. We all very much wish him success in his efforts.

Shri H. V. Kamath: On a point of order. Sardar Patel has made no statement on this issue and I do not know if my friend is in order in referring to any statement made by him in private.

Prof. Shibban Lal Saksena: I am only expressing his wish - he has made no statement like that - I only say that he will make his efforts and that before the Bill comes up for third reading he would be able to secure their consent. If he does not, then of course we will have to fall back on our own resources. But by making a provision like this in the Constitution we are making it very difficult for any change afterwards. When it becomes part of the Constitution, a two-third majority will be required for making any change and it will be very difficult. I suggest that some way should be found out for this. If before the third reading is passed this consent is not achieved, then this Article should at least be changeable not by a two-third majority but by a simple majority. Or if the learned Doctor can make the amendment that this part will not be treated as a change in the Constitution, I think our difficulty may be met. The honourable Member who preceded me also said that the people of the States do want that the States should fall in line with the Provinces. It is a matter of fundamental importance that the States should not remain something separate, having separate sovereignty. There should be only one sovereignty and that should be the sovereignty of the Republic; and the States should be part of the one single Sovereign Republic. I therefore hope that the Princes themselves will agree to this patriotic consummation and if they do not, I hope there will be a provision that when the Indian States people come into their own, they will be able to make the required changes. But I hope that the Constitution will not lay down the two-thirds majority. I do hope that if a simple majority is laid down for a change in this clause, when the Indian States people come into power in their Legislatures they will see that they are governed on the same lines as the Provinces; but so long as that is not done, we will not be wise in making a breach of faith with those Indian States with whom we have made agreements. Sir, I support the amendment.

Shri L. Krishnaswami Bharathi (Madras: General): Mr. Vice-President, Sir, I fully support Dr. Ambedkar's amendment and the principle underlying it. He said that in the case of Provinces, that is Part I States, mere consultation is enough, in the case of Indian States previous consent is necessary. But the reason that he gave for this distinction is unacceptable and I have no doubt that the House will entirely repudiate that. If I heard him aright, Sir, he said that the States are sovereign. This is a very dangerous doctrine at this time of the day to lay down; two States particularly, Travancore at one stage, and Hyderabad, till recently, claimed that they were Sovereign, and we have all along been repudiating that position and declaring that the States are not at all sovereign in any accepted sense of the word, and that was the fundamental issue at the United Nations Organisation Council at Paris.

Sir, I think it may be his personal view. If we accept his amendment it is not because of that argument. I entirely agree that it is very necessary to make this distinction. We want to go slow, and the States are governed by the Instruments of Accession. We shall certainly get the consent of the people when it is necessary. But to say that the States are sovereign is laying down a dangerous doctrine and if this House accepts this amendment, it is not because of the reason that he advocates but because of other weighty considerations.

Shri Raj Bahadur (United State of Matsya): Mr. Vice-President, Sir, I stand here to voice what I think to be the universal feeling of those of us who happen to come from that part of India which hitherto has been called as the Indian States. When we read this amendment which has been proposed to the Draft Constitution by the Drafting Committee, two points emerge. Firstly, that the necessity is there for a provision in the Constitution under which there-distribution, readjustment or re-alignment of the boundaries of the various units of the Union, may be made whenever needed. Secondly, that in this matter there is some distinction provided in this provision between the Indian States of the present day on the one hand and the Province son the other. I may respectfully submit that the distinction in the wordings of the provision contained in provisos (a) and (b) of the amendment has not made us who come from the States any with happy. On the other hand, we feel a little smaller and we feel as if full justice has not been done. We know that this word "State" has been outrageously interpreted ever since the day of the first Round Table Conference. We have seen that from the days of the Round Table Conference to the declaration of August 8 by Lord Linlithgow in 1940, again from that date to the Cripps Proposals and from the Cripps Proposals to the Cabinet Mission, and even after that during the deliberations of the Negotiating Committee, there has always been the tendency, I should say the definiteness, to interpret the word "State" as NOT the people of the State but "the Ruler" of the State. I am sure that when I voice my protest against this interpretation, I voice the universal feeling of the people of the States. May be that our sacrifices in the struggle for independence have been considered by some to be somewhat smaller in magnitude but that is no reason why we should be deprived of equal rights and opportunities and of the feeling that we are one with the country, that we are not whit different from the rest of the people of the country. That is why I say we are not happy over this distinction.

It has been argued before us - it is always, so to say, used as a militant argument against us - that because of the Covenants that have been signed between the Indian

Princes and the States Ministry, and also because duly constituted Legislatures are not yet existing in many of the States or States Unions, this distinction in the proviso cannot be avoided. But I think that things are now different. Time was when sovereignty vested in the Princes, but it is a hard fact today that sovereignty has been transferred to the people in all cases, I should rather say invariably. There might still be an exception or two but that exception too will soon disappear and if that is not going to disappear willingly it shall have to take a lesson from what has happened in Hyderabad. The united will and action of the people of the Indian Union will bring round the recalcitrant elements, if any, as also those who are not going to disappear willingly it shall have to take a lesson from what has happened in Hyderabad. The united will and action of the people of the Indian Union will bring round the recalcitrant elements, if any, as also those who are not going to fall in line with the tendencies of the rest of the country. I repeat that sovereignty today vests in the people and so it vests in this Constituent Assembly. The sovereignty of the Constituent Assembly is unqualified, and undiluted in respect of any and every part of the Indian Union. If there be anyone who objects to that sovereignty or who casts any doubt about that sovereignty, the people of the States are as much behind this august Assembly as the people of the rest of the country for the defence and support of - the sovereignty of the Assembly. There should, therefore, be no difference whatsoever. I suggest that it would have been better that this amendment also might have been allowed to stand over because the matter is of urgent importance, or shall I say, of utmost importance to the people of the Indian States. Even if it be supposed that this amendment has got to be taken up, my suggestion is that is should be taken up at the time when all other controversial points are decided by this Assembly. In case my suggestion does not find favour and the amendment is pursued, then it will be accepted by the representatives of the States in this Assembly with the mental reservations which I have just referred to.

I may conclude by saying that so far as this Assembly is concerned, we have been committed to two definite principles: the principle of unification and of democratization of the entire Union and as such it cannot be contemplated by any provision of the Draft Constitution that there can be some sort of a different treatment between the Provinces and the States. The word "State" has been defined in Article 7 of the Draft Constitution as under:

> "In this Part, unless the context otherwise requires, 'the State' includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India."

The word that has been used is "includes" that means there might be something more which may come within the purview of the word "State". I think the word "Ruler" may be contemplated there. That is why we are not happy over the use of the word "State" in proviso (b) to the amendment proposed by the Drafting Committee itself.

Sir, I respectfully submit that my suggestions and remarks will be taken in the light they are made and will be considered.

Chaudhari Ranbir Singh (East Punjab: General): *[Mr. President, while supporting Dr. Ambedkar's amendment I cannot help remarking that the amendment undoubtedly provides some freedom to the members of the Central Legislative to move private bills as also some freedom and opportunity to the minorities, based on religion or caste, to have their say in the matter of the formation of any province of their choice. But I want to submit in this connection that the aim of our country being the establishment of a secular State our non-religious Government should follow the rule that all such reservations based on religion or community should be abolished. On the other hand I fear that if this suggestion is accepted, a community which is in a majority in a territory but is in minority in a State will have neither the same weight nor the same opportunities as it had under the previous provisions.]*

Shri H. R. Guruv Reddi (My sore): May I suggest, Sir, that further discussion may be continued tomorrow?

Mr. Vice-President: The House stands adjourned till 10A. M. on Thursday the 18th November 1948.

The Assembly then adjourned till Ten of the Clock on Thursday, the 18th November 1948.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VII

Thursday, the 18th November, 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

Taking the Pledge and Signing the Register

The following Members took the Pledge and signed the Register:

1. Dr. Jivraj Narayan Mehta (Baroda);
2. Shri Chimanlal Chakkubhai Shah, United States of Kathiawar (Saurashtra).

DRAFT CONSTITUTION-*(contd.)*

Article 3 - *(contd.)*

Shri Lokanath Misra (Orissa: General): Sir, before we resume the discussion, I would like to raise a fundamental point of order. It refers to the rights and privileges of Members of this House. With all respect to you, may I beg to submit that by your not allowing me to move my amendment yesterday, I feel that I have been deprived of my rights in moving that amendment which, as a member, I always have consulted the Rules and I see that there is no provision any where which can disentitle me from moving that amendment. You had been pleased to disallow that amendment on the ground that my amendment was the same as the amendment moved by Professor K. T. Shah. I do not see how these two amendments can be the same. Professor Shah's amendment is economic while my amendment is political. He anticipates 10 years ahead, my proposition has immediate application, valid and enforceable here now. He wants to break up the 'States', I want to keep the States, describe them completely. Mine is based on the sovereignty of the people which is inherent in them, and not a proviso. Again these two amendments are so very different in the sense that.....

Mr. Vice-President (Dr. H. C. Mookherjee): Is it necessary for you to go into all those arguments?

Shri Lokanath Misra: The number of my amendment is 85,while the number of Professor Shah's amendment is 129.

Mr. Vice-President: This point of order was raised and a decision was given. It is unfortunate that my position compels me to arrive at certain decisions. That particular decision was given and I am not prepared to revise it.

Shri Lokanath Misra: The point is what is the remedy in such cases?

Honourable Members: Order, order.

Mr. Vice-President: Kindly take your seat and oblige me.

Chaudhari Ranbir Singh (East Punjab: General): *[Mr. Vice-President, I pointed out yesterday that according to his amendment a minority, whether based on religion or caste, which is not in majority in any State or any are a thereof might undoubtedly secure such alteration in the boundaries of a State as it chooses through the President or the Government of India. But I am afraid the amendment would reduce the chance of success of any community which is in majority in any area but happens to be in minority in that State and I am afraid it would also reduce the importance of their demand and narrow the opportunity of their having a say in the matter. I hold so because, according to this amendment, the matter would be referred to the State Legislature for consideration and as the people of that are a would be in minority in the State although they may be in majority in their own area, it would naturally be recorded that only a few members of the State Legislature desired a change in the boundary of the State. The provision as it stands in the draft lays down that if the majority of the people in any area demand that their area be joined to any other State or to a new State, their demand can be taken into consideration but under this amendment, I am afraid their demand would lose some of its weight, and particularly this would be the case of the people of such areas as have no leader of their own, no press of their own and no other means to make their voice heard. We may take U. P. as a case in instance. When in the last session, the constitution was being discussed, it became quite clear from the discussion held in the Party that U. P. people realise that their province is rather too big. At that time the U. P. people had expressed a fear that their Legislature would be unmanageable as it would have 600 members, if like other provinces, each lakh of the population sent one member to it. While legal and administrative difficulties of this nature are recognised, even then it is said that no area should be given to the province of Delhi or Haryana. Though the people of this area wanted that their region should be jointed to Delhi or Haryana yet nothing happened as they had no leader of their own nor any Press of their own. The loyalty of those people of U. P. who had made this demand, was doubted and their voice was stifled to an extent beyond description. A ban was laid on them by the Provincial Congress Committee not to make such a demand, and they were asked not to raise any voice for any alteration in the boundaries of the province.

Therefore, I am afraid, Sir, this amendment will prevent any action for achieving their union on the part of those people and areas that have the same culture, the same language and the same way of life, and whose union is advantageous to the country from legal, administrative and other points of view. I may repeat, Sir, what Shri Thakurdas Bhargava stated yesterday that when a demand was made for forming Haryana into a Province the loyalty of some of those who made this demand was suspected and it was alleged against them that they wanted to form a separate province of Jats. But the truth is that if Haryana had been formed into a Province - and I may point in this connection that under the British regime, when the Round Table Conference was being held, there was the Corbett Scheme for the formation of a new province of Haryana which fell through for want of a spokesman of Haryana while today its formation is being opposed on the alleged ground that the Jats are seeking to have a separate Province of their own - so as I was going to say, the fact would have been that the Jats would be a minority there and even if each community was taken singly into account the Jat community would not be in majority in comparison to the others. If there be any community which has a large population it is that of Harijans - Chamars. So if this province is to be formed at all it would be a province of Chamars. But since they have no Press of their own, they cannot give voice to their demand.

I no doubt support the amendment but at the same time I want that it should be changed so as to include without any doubt the provision that when the Centre consults the provincial legislature the opinion of the majority of the representatives of the territory, which wants to separate itself and join another province, should also be on record and that their recorded opinion should appear before the Central Assembly so that it may know what that particular territory desires.]*

Shri H. V. Kamath (C. P. and Berar: General): Mr. Vice-President, Sir, I hope that the former Indian States will not derive undue encouragement from the doctrine of sovereignty which my honourable friend, Dr. Ambedkar, propounded yesterday. I do not know whether he meant that their status is something like *Imperium in Imperio*. I think it is a dangerous doctrine to propound at this time of the day. If we turn to Part III of the First Schedule, we will find there are two divisions in this Part, Division A and Division B. Many of these States have already merged themselves in the adjacent Indian Provinces. Some have integrated among themselves and formed bigger unions and some are still single States. In terms of the amendment moved by my honourable friend, Dr. Ambedkar, sub-clause (b) of the proposed amendment lays down that where such a proposal affects the boundaries or the name of any State or States for the time being specified in Part III of the First Schedule, it means to say that it refers to all States mentioned in Part III of the First Schedule whether they are single States, whether they are integrated States or whether they are merged States. I wonder whether for little principalities which have merged themselves in the provinces, whether for these States too this doctrine of sovereignty will be extended and whether for the unions of these States the consent of each of the States will have to be obtained. Apart from that, whether the single States should be regarded as sovereign in this regard is to be considered. I can understand if Dr. Ambedkar says that in terms of the Instrument of Accession of these States to the Union of India, so far as this matter is concerned, you will have to obtain their consent, but I trust, Sir, that within the next two or three months at the end of which we will adopt this Constitution, by that time, the hope that Dr. Ambedkar expressed in his speech on the motion for the consideration of the Draft Constitution, that the States will fall in line with the provinces in all respects, will be realized; and I have no doubt that the strenuous efforts of Sardar Patel in this regard will bear fruit, and that by the time we adopt this Constitution, there will be no distinction, the amendment of my honourable friend, Pandit Kunzru has come force. If this equal status of the various provinces and States does not come about by the time the Constitution is adopted, then we have got to think why we should attach undue importance to the so-called sovereignty of the States; if at all, it is a nominal sovereignty that the rulers of the States have got in this regard. I am inclined to agree, therefore, with Pandit Kunzru's argument that if the States do become equal in status to the provinces, even then we should not go beyond obtaining the views of the rulers of the States or the legislatures of the States, whatever the case may be. It is understood when we obtain the views of the rulers of the States, or the Rajpramukhs or the legislatures of the States, if their views are in conflict, with the proposal, then that proposal will not come up. So also if the provinces are consulted and if their views are against such a proposal, then that proposal will not be made in the Union Parliament. So, I do not understand why this distinction should be made at all. If you consult a certain authority or a certain Government, it means that if that Government is opposed to the proposal, that proposal will not be made in the Union Parliament. Therefore, it is desirable, that at this time, when Sardar Patel has been telling us for the last so many months that we will abolish all distinctions between the provinces and States and that the provinces shall be brought into line with the States, if you want merely to consult the provinces, just consult the States also, and if you want to get the consent of the States, certainly get the consent of the Provincial Governments also.

Lastly, Sir I would request Dr. Ambedkar to consider this matter from this aspect, namely, in view of the hope expressed in his first speech in the Assembly that the States should be brought into line with the provinces at the earliest possible date and considering the several articles in the Constitution which Pandit Kunzru pointed out yesterday, seeking to abolish such distinctions, whether in this regard also this distinction should not be abolished. I hope, Sir, that at a very early date, we shall administer the *coup de grace*, put an end to the doctrine of sovereignty which has been propounded for the States, so far as this matter is concerned.

Shri R. K. Sidhwa (C. P. & Berar: General): Mr. Vice-President, Sir, several members have stated that this amendment deprives the right of a member to move a Bill to the effect mentioned in this amendment. I am rather surprised at the argument advanced by certain members to this effect. Sir, I yield to none in my desire to protect the privileges and rights of members to move motions or Bills in a legislature. But, while the amendment of Dr. Ambedkar says that the consent of the President should be obtained, it should not be understood that it deprives the member of any right. By way of an illustration, I would say, that every citizen has a right to walk on the highway. Any person can walk as he likes. But, when he walks, he has to be governed by certain elementary rules, so that he may not cause obstruction in the road, or cause accidents or death to others. If a man has to drive a motor car or a vehicle, he has to obtain a license. He is governed by certain elementary rules; if the elementary rules are not followed, there will be chaos. To state that the rights of members have been deprived by this motion of Dr. Ambedkar is incorrect. On the contrary, nowhere is it stated that no member can bring forward a Bill. This is a very important measure and therefore it has been stated that the President should be consulted and his recommendation taken. This is to the benefit and advantage of those who get the opinion of the President, which would mean, the Government of India. They would be armed with very great strength behind them in moving such a proposition.

It has been argued by my honourable friend Mr. Bhargava, yesterday that some of the minor provinces which would like to cut off from the major provinces, would have no right to do so under this amendment. I said yesterday and I repeat today that if a majority does not want a particular territory to be divided, it would be unfair for a minority to encroach upon the rights of the majority. If you want the majority to be ruled over by the minority, then it is autocracy; democracy means rule of the majority. I therefore contend that the amendment that has been proposed is very salutary. It does not deprive any member of his right; on the contrary, I feel that when the recommendation of the President is taken on an important measure like this, his case is greatly strengthened.

Sir, only one point about Pandit Kunzru's amendment. I am really unable to understand why a difference has been made between the States in Part I of the First

Schedule, that is provinces, and the States in Part III of the First Schedule. In one case it is stated that the views of the legislature should be obtained and in the other case, *i.e.*, the States, he has stated that the previous consent should be obtained. View means "observations", consent means "unanimity and decision on a matter." You are aware, Sir, that this Constitution was sent to various provinces and the various provinces discussed them in their legislatures and their views have been sent to this House and we have been supplied with copies. That is the right course. No decision has been taken in any legislature. The legislatures in Bihar, Bengal, Bombay, all have discussed the matter and copies of the printed proceedings have been supplied to us. But, consent means consent of the State. I do not agree with those who say that consent means the consent of the State. I do not agree with those who say that consent means the consent of the Ruler. Consent means consent of the legislature of the State. State does not mean the Ruler. Just as the President does not mean himself personally, but the Government of India, if the Ruler gives consent, he has to take the consent of the legislature of the State. I want to know why in the case of the States, it is stated that consent should be obtained, and I would like Dr. Ambedkar to enlighten the House as to why this difference has been made between States and Provinces. I feel that in the case of the states, it is very necessary that their views should be obtained rather than consent. I therefore, think, that unless there are valid reasons, - the valid reasons, may be that the Ruler has to be consulted, the States having come into the Union by compromise - no impediment could exist or no compromise question arises. The rights of the people of the States are identical with the rights of the people of the provinces. The zeal of the people of the States is so great that they want to come into the Union straight away and merge with the various provinces. As we are told that without consent or compromise it is not desirable, we yield to that. But, we expect that on the question of obtaining their opinion, a similar procedure should prevail as in the case of the provinces.

With these observations, I support the amendment strongly and I hope Dr. Ambedkar will clear the point why a differentiation has been made in the case of the States, why he has stated that the views of the legislature should be ascertained in the case of the provinces, whereas in the case of the States he has stated that their previous consent should be obtained.

Mr. Vice-President: Dr. Ambedkar.

An Honourable Member: The question be now put, Sir.

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, I rise to a point of order. Dr. Ambedkar has only moved an amendment and therefore, I submit, he has not got any right of reply. I have got a ruling of this House in which it is said definitely.....

Shri R. K. Sidhwa: I understand the whole article is under discussion. If the article is under discussion, Dr. Ambedkar has a right of reply.

Maulana Hasrat Mohani: Dr. Ambedkar has already spoken; he has no right to make any further speech.

Mr. Vice-President: Please address the Chair.

Maulana Hasrat Mohani: Sir, I beg to point out that the Ruling says - I am quoting from the printed proceedings of this House - the mover of an amendment has no right of reply. He cannot make a second speech.

Mr. Vice-President: I hold that the Article as well as the amendment are under discussion. Dr. Ambedkar.

The Honourable Shri Ghanshyam Singh Gupta (C. P. & Berar: General): Sir, the mover has a right of reply.

Mr. Vice-President: That makes my position stronger.

The Honourable Shri Ghanshyam Singh Gupta: What I mean to say, Sir, is this. There are two sets of rules, one, rules of procedure on the legislative side and the second, rules of procedure on the constitutional side. The rules of procedure on the legislative side do say that the mover of an amendment shall have no right to reply. That rule has been purposely omitted in the rules of procedure on our constitutional side. Therefore, I submit that every mover of an amendment has got a right of reply.

Mr. Vice-President: You do not object to Dr. Ambedkar replying?

The Honourable Shri Ghanshyam Singh Gupta: Not only do I not object, but I want to establish this practice that the mover of an amendment has a right of reply, because our rules differ widely from the rules that have been framed for the legislative side.

Mr. Vice-President: We shall decide that later on after Dr. Ambedkar has made his reply.

Shri Lakshminarayan Sahu: (Orissa: General): Sir, there is an amendment in my name.

Mr. Vice-President: Kindly take your seat, Mr. Sahu, Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay: General): The amendment moved by my friend Mr. Kunzru is an amendment which carries a great deal of my sympathy but unfortunately in the circumstances in which we stand, I am not in a position to accept the same. The arguments urged by my friend in supporting his amendment was that when I had stated originally in moving my amendment was inconsistent with some of the other clauses or articles contained in the Constitution. He said that the plea I had urged in justification of the distinction between the provinces and the States in the matter of the provisions contained in Article 3 was inconsistent with Articles 226, 230 and 294. Now my submission is this that there is no inconsistency whatever in the plea I have urged in supporting a distinction between the provinces and the States and the various articles to which he has made reference.

With regard to Article 226 which gives power to the Central Legislature to pass legislation on matters included in Provincial list, my submission is this that that authority will be exercised by Parliament by virtue of a Resolution passed by two-third majority of the Upper legislature. He will realize that the Upper House or Council of States will include representatives of the States as much as the representatives of the Provinces. They will undoubtedly participate in the proceedings of that particular

Resolution which seeks to confer power upon Parliament to legislate on the matters included in that Resolution. Consequently it is hardly fair to say that Article 226 automatically usurps the sovereignty of the Indian States. It is really a measure which confers sovereignty by a special resolution passed by the Upper Chamber in which the States are fully represented. That is therefore no illustration of inconsistency at all.

With regard to Article 230, my submission is also the same. My learned friend will remember that the Indian States apart from what they do after the Constitution is passed have at any rate for the present, acceded on the basis of three subjects and one of the subjects is Foreign Affairs. Obviously implementation of the treaty is nothing but an exercise of the power conferred upon the Central Parliament for implementation of the treaty which is the subject matter covered by Foreign Affairs. Therefore that again cannot be said to be an usurpation of their sovereignty rights.

With regard to Article 294 which deals with the extension of the provisions of the protection of minorities in Indian States, that undoubtedly may appear for the moment to be a sort of encroachment of their sovereignty but it is nothing of the kind. It is merely one of the proposals which we shall be making to the Indian States that when they seek admission to the Indian Union they will have to accept Article 294. I might say that this extension was made by the Drafting Committee because the Drafting Committee heard that the Constituent Assemblies of some of the Indian States were making provisions in this regard so diverse and so alarming that the Drafting Committee thought it best to lay down what sort of arrangements for minority protection the Union Government will accept and what it will not accept.

Now, Sir, with regard to this question of differentiation between the Indian States and the Provinces of British India a great lot has been said, and I quite realise that the House is terribly excited over the distinction that the Constitution seeks to make but I should like to tell the House two things. One is this that we are at the present moment bound by the terms of agreement arrived at between the two Negotiating Committees, one appointed by the Indian Constituent Assembly representing the British provinces and the other of representatives nominated by the Indian States for the purpose of arriving at certain basis for drafting a common constitution which would cover both parts. Now I do not wish to go into the details of the reports made by the Negotiating Committees but if my honourable Friend Pandit Kunzru would refresh his mind by going over the report of that committee, he will find that here is a distinct provision that nothing in the Negotiating Committee report will be understood to permit the Indian Union to encroach upon the territories of the Indian States. My submission is, if that is an understanding - I do not mean to say a contract or agreement arrived at between the two parties, at this stage we would do well in respecting that understanding. I would like to point out another thing, - another article in the Constitution to which I am sorry to say my friend Mr. Kunzru has made no reference - that is Article 212 which is a very important article, and I should like to explain what exactly are the possibilities provided by the Indian Draft Constitution with regard to the Indian States. Honourable members must have seen that Article 3 provides for the admission of the Indian States on the basis of such Instrument of Accession as may be executed by the Indian States in favour of the Indian Union. When a State as such is coming into the Indian Union, its position *vis-à-vis* the Central Government and *vis-à-vis* the provinces would and must be regulated by the terms contained in the Instrument of Accession but the Instrument of Accession is not the only method of bringing the Indian States into the Indian Constitution. There is another and a very important article in the Constitution which is 212. 212 provides that any Ruler of an

Indian State may transfer the whole of his sovereignty to the Indian Union with respect to his particular State. When the whole of the sovereignty is transferred under the provisions of 212, the territory of that particular ruler becomes so to say the territory of India, with complete sovereignty vested in the Indian Union. Power is then given under Article 212 so that that particular territory the sovereignty over which has been fully transferred by the ruler to the Indian Union can then be governed as a province of India in which case Part II of the Constitution which defines the Constitution of the Indian provinces will automatically apply to that Indian State or it may be administered as a Centrally Administered area; so that the President and the Central Parliament will have the fullest authority to devise any form of administration for that particular territory. Consequently my submission to the House is that there is no necessity - if I may use an expression - to be hysterical over this subject. If we have a little patience I have not the least doubt about it that our Minister for the Indian States, who has done so much to reduce the chaos that existed before we started on the making of our Constitution, will exercise the *de facto* of paramountcy which the Union Government has obtained and reduce the chaos further and bring about an order either by inducing the Indian States to accept the same provisions which we have applied to Indian States or to follow the provision of section 212 and surrender to us complete sovereignty so that the Indian Union may be able to deal with the Indian States in the same way in which it is able to deal with the provinces.

For the present I submit we shall be acting wisely by respecting the agreement which has been arrived at by the two Negotiating Committees and following it up until by further agreement we are in a position to change the basis rather with goodwill, peace and honour to both sides Sir, I oppose the amendment. *(Cheers).*

Mr. Vice-President: I shall now put Amendment No. 150, as modified by the amendment of Pandit H. N. Kunzru to vote. (*Interruptions*). Kindly permit me to conduct the proceedings in the manner I wish it to be conducted.

The Honourable Pandit Govind Ballabh Pant (United Provinces: General): Sir, I do not know how you are putting the amendment as modified by the amendment of Pandit Kunzru to the vote of the House I think, first of all you might put the amendment proposed by Pandit Kunzru to vote, and then take the other amendment; to take it up at the outset and combine the two will not be quite in the proper order.

Mr. Vice-President: Please come to the mike.

The Honourable Pandit Govind Ballabh Pant: My submission is this. This amendment of Dr. Amedkar as modified by the amendment of Dr. Kunzru is being put to vote, and that is exactly what I wish you not to do. I suggest that you might be pleased to put to vote first the amendment of Dr. Kunzru. If it is rejected, then you have to put the original amendment of Dr. Ambedkar to vote. To combine the two together will be to create some confusion.

Shri H. V. Kamath: What about amendment No. 149 of Prof. K. T. Shah?

Mr. Vice-President: If the amendment of Dr. Ambedkar is carried that will automatically rule out the amendment of Prof. K. T. Shah. That is why I am taking Dr. Ambedkar's amendment, that being the easier course No. 149 seeks for complete substitution.

We shall then first of all vote on the amendment of Pandit Kunzru.

The Honourable Shri Ghanshyam Singh Gupta: Sir, I should like to submit an important point. I think the Honourable Pandit Kunzru has got the right to reply. The ordinary rule is that one who initiates a debate has the right to reply, if it is not curtailed. The Rules of Procedure and Conduct of Business of this House on the legislative side, Rule 111 says that.........

Mr. Vice-President: Does that rule apply here?

The Honourable Shri Ghanshyam Singh Gupta: No, because we have not got any corresponding rule, and the reason is obvious. Here we are dealing with a very important matter in which the mover of an amendment who really brings a substantial proposition before the House may have to say much, after he hears the debate in the House. Therefore, the very fact that in our Rules of Procedure there is no rule corresponding to Rule No. 111 shows very clearly that the mover of the amendment to the Constitution has the right to reply. And that is but natural, because the matter being of very vital importance, the ordinary rules of debate must govern our procedure also. That is my submission.

Shri R. K. Sidhwa: Sir, I feel that the Honourable Pandit Kunzru has no right of reply in connection with his amendment. My reason is that the rule which has been pointed out by my friend Shri Ghanshyam Singh Gupta says that the mover of an amendment has no right of reply. He argues that in our Assembly there is no rule, and so we have to say that the mover has the right to reply. On the contrary, I have not heard in any important legislature or assembly such a right given. When there is no rule for this Assembly, then the rules of the Constituent Assembly (Legislative) should prevail, that being the highest body in our country for legislative purposes. We in this Assembly have no rules to this effect. Therefore, the second highest, *i.e.*, the Legislative Assembly rules should prevail. I feel that this is a very important matter. We must be governed by certain rules. I have not heard of any important legislature or other body or even local bodies where the mover of an amendment has been given the right to reply. I submit, therefore, that the contention and the argument advanced by Mr. Gupta, do not hold water, for the simple reason that we are governed by another and a parallel body which says the mover has no right of reply.

The Honourable Shri Purushottam Das Tandon (United Provinces: General): Sir, my friend Mr. Sidhwa has been too bold. He has touched a subject of which, you will permit me to say, he has not full knowledge. He has said he does not know of any important legislature which gives the mover of an amendment the right to reply. I submit, Sir, the United Provinces is a sufficiently important province in the country, and I can tell you, that the Legislative Assembly of the United Provinces has a definite and specific rule to the effect that the mover of an amendment has the right of reply. (*Hear, hear*). This is in regard to bills. The mover of an amendment to a clause in a Bill has the right to reply. Of course, the Minister in charge of the Bill has always the last word. But that is a different matter. The point is that the mover of an amendment to a clause in a bill has been given the right to reply.

I submit here we are dealing with an important matter, as a friend has rightly pointed out. I feel that it would be very proper that the mover of an amendment be given the right to reply to the animadversions that are made on a matter that he has brought before the House. If you choose, you can permit the Minister in charge to have the last word. But I do submit that the mover of the amendment may be permitted to reply to the criticisms that are made against the views that he puts forward.

Shri R. K. Sidhwa: How many provincial legislatures have such a rule?

Pandit Hirday Nath Kunzru (United Provinces: General):Mr. Vice-President, may I make my point a little clearer so that there may be no misunderstanding about it. The Draft Constitution was placed in our hands some time ago. There is a provision in it relating to the redistribution of the territories of States of various kinds. Dr. Ambedkar did not place before the House the provision contained in the Draft Constitution. The proposition to which he invited our attention was an amendment of the original provision, and in moving his proposition he spoke not merely on the merits of his proposal but also on the original proposition contained in the Draft Constitution. It cannot therefore be said that in speaking for the second time he was dealing with something that he had not spoken on originally. He had, it seemed to me, exhausted his right to speak. Nevertheless, he was allowed to reply to the observations made by the other members. I was personally very glad to hear him though I do not agree with all that he said or with much of what he said. But this raises an important question regarding the rights of the members who move amendments, and it is this point that I would like to be cleared up. If a Minister who moves an amendment has the right to reply, may not another member of the House have the same right in similar circumstances?

Shri Ghanshyam Singh Gupta: On a point of order....

Mr. Vice-President: I am going to give my ruling. Under the Rules of the House I am not aware that there is anything which gives a right to the mover of an amendment to give a reply. If I asked Dr. Ambedkar to give a reply it was because he was asked certain questions and I thought it right and proper and fair that he should be given an opportunity of explaining his position. That is my ruling.

Now I shall put Pandit Kunzru's amendment to the vote.

The question is:

"That in amendment No. 150 of the List of Amendments, in clause (b) of the proviso to article 3, for the words 'the previous consent' the words `the views' and for the words `has been' the words `have been' be substituted respectively."

The motion was negatived.

Mr. Vice-President: The question is:

"That for the existing proviso to article 3, the following proviso be substituted: -

'Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless--

(a) where the proposal contained in the Bill affects the boundaries or name of any State or States for the time being specified in Part I of the First Schedule, the views of the Legislature of the State, or as the case may be, of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the

President; and

(b) where such proposal affects the boundaries or name of any State or States for the time being specified in Part III of the First Schedule, the previous consent of the State, or as the case maybe, of each of the States to the proposal has been obtained'."

The motion was adopted.

Mr. Vice-President: It seems to me that the amendment of Prof. K. T. Shah, as well as the next set of amendments up to No. 175 fall through after the acceptance of Dr. Ambedkar's amendment. Then we may pass on to No. 176.

Shri Lakshminarayan Sahu: I would like to move amendment No. 154 which is in may name.

Mr. Vice-President: That is an amendment for substitution to an article which has been dropped altogether. Therefore it cannot be discussed here.

(Amendment No. 176 was not moved.)

We have here an amendment No. 176 (a) from Begum Aizaz Rasul. That is concerned with the National Language. Like others it may be postponed to the proper place.

That finishes Article 3. Is there anyone who wishes to discuss the Article as a whole?

Pandit Lakshmi Kanta Maitra (West Bengal: General): What will be the position if the honourable member is allowed to speak on the Article as a whole? Will Dr. Ambedkar be called upon to reply to that again?

Mr. Vice-President: Most certainly not.

Pandit Lakshmi Kanta Maitra: This whole article has not yet been disposed of and Dr. Ambedkar has so far replied only to the amendment and not to the whole article.

Mr. Vice-President: We shall listen to the honourable member and if he traverses old ground, we shall ask him to desist.

Pandit Lakshmi Kanta Maitra: Therefore Dr. Ambedkar is not entitled to reply as a right?

Mr. Vice-President: No.

Shri M. Ananthasayanam Ayyanar (Madras: General): That is hypothetical. It does not arise.

Shri Brajeshwar Prasad (Bihar: General): The Article is designed to serve the following three purposes...

Prof. Shibban Lal Saksena: (United Provinces: General): An important question of procedure is involved. To this Article there have been tabled a number of amendments but you allowed two of them or three of them to be moved and then you took votes upon two of them. There was no chance of moving the other amendments. I think all the amendments should have been allowed to be moved and then votes should have been taken. Otherwise other members will have no occasion to assess them. If they were moved in the House, the House might accepted some of them.

Mr. Vice-President: What are the amendments which have not been moved?

Prof. Shibban Lal Saksena: All the amendments up to No.174.

Mr. Vice-President: They do not arise. They have been practically rejected on account of the acceptance of Dr. Ambedkar's amendment.

Prof. Shibban Lal Saksena: But they should have been allowed to be moved.

Mr. Vice-President: Why did you not point this out at the proper time?

Prof. Shibban Lal Saksena: It may be kept in view in future.

Mr. Vice-President: That point will be kept in mind.

Shri Brajeshwar Prasad: The Article is designed to serve the following three purposes:

(a) To wipe out the existence of any Province or State;

(b) To strengthen the hands of Sardar Patel;

(c) To create new provinces.

The Article is silent on two fundamental points: *viz.,*(1) the constitutional powers of the new States formed under the provisions of this Article. It has been left to the majority party in the future Parliament of India to determine by the most convenient process of simple majority whether the new State thus formed will be placed in Part I, II, or III of the First Schedule. (2) the conditions under which the Parliament can function under the provisions of this Article. The Parliament has the legal power to unite or breaks up States without any rhyme or reason. Its hands have not been fettered by any conditions under the provisions of this Article.

Let me illustrate my point. If the majority party in power at the Centre takes into its head to wipe out the Province of Bihar it can easily do so in either of the following two ways open to it under the provisions of this Article, namely:

> 1. Bihar can be divided into parts and the whole territory placed under the direct jurisdiction and administration of the Government of India. The plain meaning of the Article is that the Government of India has got the power of placing a State, put in either Part I or Part III, in Part II of the First Schedule.

2. Bihar can be merged with Orissa and the new state thus created can be brought entirely under the direct governance of the central power.

The Government of India must have the power to takeover the administration of a State into its own hand, if it does not govern well or in accord with spirit of the Constitution. Similarly it must have the authority to punish a recalcitrant state which under the stress of centrifugal forces tends to drift away from the Centre.

As stated above the second purpose for which the Article has been incorporated is to strengthen the hands of Sardar Patel. The constitutional position of the Native States is still in the melting pot.......

Pandit Hirday Nath Kunzru: Indian States and not Native States.

Shri Brajeshwar Prasad: It would be far better to call them Native States than Indian States. The native state shave always been the weakest link in the chain of Indian Nationalism. Special care and attention must be bestowed in tackling these problems. The present craze for constituent assemblies in the native states must be checked. State armies must be wiped out. The native states must be brought under the direction, supervision and control of the Ministry of States and the Government of India. It will be desirable to place them in Part II of the First Schedule. The line of least desistance was adopted in amalgamating a large number of states into unions. The formation of these unions will encourage fissiparous tendencies. It lies within the power of Sardar Patel to bring all these territories under the direct government of the central authority. To obviate the danger of any misconception in the minds of the state people that we are tending towards absolutism and despotism I suggest the appointment of a Deputy Minister of States from the ranks of those who are representing the states people in this Constituent Assembly.

The third purpose for which this Article has been conceived is to make some room for those who are the great champions of Linguistic Provinces. I am opposed to this Article to the extent it tends to serve this purpose.

A great fuss is being made that it is undemocratic to oppose the cherished ambitions, hopes and aspirations of a considerable section of the community. But a thing must be intrinsically sound to carry weight. No standard of sound democracy can justify the great wrong that has been done to this country by the tragic partition of August 15,1947...........

Mr. Vice-President: This has nothing to do with the Article under consideration. The Honourable Member is getting into stride and five minutes have already gone.

Shri Brajeshwar Prasad: Sir, I said at the beginning that I wanted ten minutes and I have taken only five minutes so far. I am however entirely in your hands.

Mr. Vice-President: I am equally in your hands.

Shri Brajeshwar Prasad: Nationalism is more dear to me than Democracy. It is a very poor conception of democracy to say that it is very necessary to secure approval and obtain consent at all levels of administration. Such a notion will only lead to utter chaos and anarchy..........

Srijut Rohini Kumar Chaudhari (Assam: General): On a point of order, Sir, I do not know under what provision you have allowed this sort of speech being made after the amendments have been carried in the House. I have seen no precedent where an amended resolution or amended provision of a Bill can be allowed to come up before the House and discussion allowed. If everybody here is allowed to write a criticism of the debate on this clause and inflict that speech on the House there will be no end to it. There is no procedure which allows a speech like this after the amendments have been carried out.

Mr. Vice-President: I may point out that there is a precedent for it when Mr. Kamath spoke at the end of the second Article and there was no objection at that time fro many quarter.

Shri Brajeshwar Prasad: The essence of democracy is that people must aspire after higher goals of political life. Any demand of the people which does not fulfil this essential pre-requisite is not democratic.

Mr. Vice-President: This is wasting the time of the House.

The question is:

"That Article 3, as amended, form part of the Constitution."

Sardar Hukam Singh (East Punjab: Sikh): The Article cannot be put to the House unless those amendments that have been held over are decided upon.

Mr. Vice-President: They have been left, as they are not in order after the acceptance by the House of the amendment of Dr. Ambedkar.

Shri Raj Bahadur (United State of Matsya): Sir, I invite your attention to the fact that the Honourable Member Mr. Brajeshwar Prasad has used the words "Native State" in respect of the Indian States. I seriously object to the use of the word "Native" and would request you to rule out such words.

An Honourable Member: They should be expunged from the proceedings.

Mr. Vice-President: That question does not arise.

The question is:

"That Article 3, as amended, form part of the Constitution."

The motion was adopted.

Article 4

Shri M. Ananthasayanam Ayyangar: Sir, may I suggest a point of procedure just to avoid unnecessary waste of time. You have called out article No. 4 and you have asked Mr. Naziruddin Ahmad to move his amendment. All members who wish to take part in the discussion may be allowed to speak on the article also along with the amendments, so that there need not be a repetition once again when you put the article as a whole. If all the amendments are exhausted there may not be any speeches again. It is open to you and there is nothing to prevent you from giving such a ruling as this.

Mr. Vice-President: I accept your suggestion.

Mr. Naziruddin Ahmad (Bengal: Muslim): Sir, I beg to move:

"That the words `of this Constitution' be deleted in clause (1) of article 4 and throughout the Draft Constitution wherever the said words occur in the same context; and a new definition (bb) be inserted in clause (1)of article 303: -

(bb) "article" means article of the Constitution'."

In the ordinary legislation of this country whenever we refer to a section we never repeat the word "section" of this Act. So far as this Constitution is concerned we have used the word `article' instead of 'section', and the wording of the Act is due to the fact that it is implied under the General Clauses Act. I submit that we should apply a similar device in this Constitution by the adoption of a new definition (bb). I have suggested in the amendment that the words are absolutely unnecessary. Whenever we refer to an article it is obvious that an article of this Constitution is always meant. I would point out respectfully that in this draft Constitution, in many places, the Article number has been given without the addition of the words 'of this Constitution'. Even in this very Article in one place we have these words 'of this Constitution' and in another place, these words are not there. We may uniformly omit these words in all places.

Mr. Vice-President: The Honourable Member may move all his amendments to Article 4, one after the other, up to amendment No. 181 on the Order Paper, and be as brief as possible.

Mr. Naziruddin Ahmad: I shall be brief, Sir. But it must be noted that this amendment of mine will dispose of moles than 68 amendments. With reference to the Schedule we have omitted the repetition of the words 'of this Constitution'. Whenever you refer to the Schedule you refer to the Schedule Number and do not say, such and such Schedule 'of this Constitution'. This is because of a special definition which has been provided in the Draft Constitution itself. I draw the attention of the House to Article 303, clause (1), item (v): '"Schedule" means a Schedule to this Constitution'. This is a very necessary provision. On this analogy, 'Article' should also mean an Article of this Constitution. I submit that the amendment I have suggested is similar to item (v) of 303 (1).

Now I shall move the other amendments, 178 to 181.

I move:

"That in clause (1) of Article 4, for the words article 2 or article 3', the words and figures 'article 2 or 3' be substituted".

I submit that the word 'article' need not be repeated as it is done in clause (1) and, in fact in many places in this Draft Constitution.

Then I move:

"That in clause (1) of article 4, for the words and figures 'article 2 or article 3', the word and figure 'article 3' be substituted."

I move next:

"That in clause (1) of article 4, for the words `shall contain such provision for', the words `shall also provide for' be substituted."

This is a very simple amendment.

I now move my last amendment to this article:

"That in clause (2) of article 4, for the words `for the purposes of', the words `within the meaning of' be substituted."

This is only a verbal amendment.

Mr. Vice-President: The subsequent amendments may now be moved one after the other. Amendment No. 182 in the name of Prof. Shibbanlal Saksena is the next in order. Though it is for the deletion of clause (2) and hence cannot be allowed, I would give him an opportunity to speak on this Article.

Discussion will henceforth be on the concerned Article as a whole.

Prof. Shibban Lal Saksena: I am not moving 182 for the omission of clause (2).

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): Sir, I move amendment No. 184:

"That in clause (2) of article 4, for the words `for the purposes of article 304', the words `under article 304' be substituted."

The retention of the existing words will lead to some sort of complication. Therefore we should substitute the words `under article 304.'

Shri H. V. Kamath: Mr. Vice-President, by your leave, I shall make a very brief observation on amendment No. 177 of my Honourable friend Mr. Naziruddin Ahmad. Before you call upon Dr. Ambedkar to reply, may I request him, in case he holds that amendment No. 177 should be rejected, to give us some reasons for his opposition and not merely repeat the trite formula `I oppose this amendment'? Because, apart from the arguments advanced by my friend the mover of the amendment and the instances quoted by him, I have gone through the constitutions of the Commonwealth of Australia, the Union of South Africa, the Swiss Confederation and the German Reich which have all been supplied to us in a booklet of the Assembly Secretariat, called Constitutional Precedents - Second Series. I have gone through them all very closely and I find that this sort of repetition of the phrase "of this Constitution" does not find a place in anyone of them.

After all, to my mind, brevity is the soul or essence of a Constitution, and we should try to avoid overburdening the Constitution with redundant and unnecessary words or phrases or expressions. I find in our draft Constitution 'of this Constitution' repeated *ad nauseam*. I think the amendment is a reasonable and harmless one. We should pay some attention to the language of the articles of the Constitution. In conclusion I repeat my request to Dr. Ambedkar not to merely repeat the formula `I oppose', but give reasons as to why he does so.

Shri Rohini Kumar Chaudhari: I have come to the rostrum to honour my friend Mr. Naziruddin Ahmad by opposing this amendment. (*Laughter*). I regret that he has wasted some of our time and I curse myself that I cannot resist the temptation to oppose him and waste some time of the House also by doing so. I would be failing in my duty if I do not record here the appreciation which we must give to that noble band of thieves which operates in the East Indian Railways between Howrah and Delhi. We must give our thanks to this noble gang that is responsible for stealing only the brief-bag containing various other answers of our friend Mr. Naziruddin and, but for that fortunate fact, there would have thousands more of amendments of the kind we are dealing with now. I would warn my friend Prof. Shah that this noble gang may be operating between Bombay and Delhi as well.

Mr. Vice-President: I am afraid this has no bearing upon the matter on hand.

Shri Rohini Kumar Choudhari: The point is that if there had been no theft of his brief from his compartment when he was coming this time to attend the Assembly there would have been more such amendments which could be easily left to the draftsmen and not brought before the House. I will also say, Sir, that in dealing with amendments from Mr. Naziruddin Ahmad, although some of them are very good ones, because they are tabled in his name, they are often opposed without any comment. Therefore I would request my honourable Friend, if he comes forward with very serious amendments, to table an amendment to change his name also, so that his amendments may be seriously considered.

Prof. Shibban Lal Saksena: Sir, I gave notice of an amendment that clause (2) of article 4 be omitted but you have ruled it out of order. I think that an amendment for the deletion of a clause can be moved, but your ruling is there and I bow to it. I feel that we must bear in mind one particular aspect of Article 4 to which I would especially wish to draw the attention of Dr. Ambedkar. In this article Dr. Ambedkar has provided an easy method for changing boundaries because in clause (2) he says that "no such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 304." In article 304 it is laid down that any change in the Constitution must be passed by a two-thirds majority, whereas here it is provided that so far as any law referred to in article 2 or 3 of the Constitution is concerned, it shall not be deemed to be an amendment of the Constitution. Sir, I personally feel that changes in boundaries of States are matters of much consequence and they should not be allowed to be carried out by a mere majority, because the boundaries of a State should be stable and it should not be possible for every majority in Parliament when it comes to power to alter boundaries which this clause (2) will enable them to do. I think this is a wrong provision, but still I think that in the first ten or twenty years it may probably be allowed. My honourable Friend, Dr. Pattabhi Sitaramayya and others have given notice of an amendment to that effect, but they are not moving it. I do not want to move any amendment but I do feel that it should not be made easy for boundaries of States to be changed by a mere majority. If we allow this clause to remain as at present, we should at least set a time limit. This should not be made a permanent part of the Constitution. I hope Dr. Ambedkar will say how he feels about this very important matter.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, I did not think that this was a matter which required any speech from me, but as Mr. Kamath has expressed a desire that I must not merely negative the amendment but should offer an explanation as to why I was not prepared to accept the amendments suggested by my honourable Friend, Mr. Naziruddin Ahmad, I have come here to make my explanation. I think it will be agreed that in matters of this sort, which relate merely to phraseology and not to the substance of the article itself, it cannot be stated that it is a matter of principle at all. It is a mere matter of precedent how different Constitutions have used language in matters which are analogous. My submission is that in the language we have used we are absolutely covered by precedent with regard to the question of repeating the phrase "of this constitution". My friend, Mr. Kamath, stated that he has examined several constitutions such as that of Australia and of some other countries but not find this phrase "of this Constitution" contained therein. I am sorry that he did not extend his researches to the Irish Constitution. If he had, he would have found that the phraseology used in the Draft Constitution is the same as is used in the Irish Constitution. For his reference, I would like to draw his attention to Article 19 of the Irish Constitution, article 27, sub-clause (4), article 32 and article 46, sub-clause (5) where he will find that, wherever the word "article" occurs, it followed by the phrase "of this Constitution".

I may also point out to Mr. Kamath that in this respect we have also followed the phraseology contained in the Government of India Act 1935. I am sorry I have not had the time to examine all the sections of the Government of India Act but I have just, fortunately for myself, found one section which is 142-A where similar phraseology has been used. So far therefore as the first part of the amendment moved by my honourable friend, Mr. Naziruddin, is concerned, my submission is that we have not acted in any eccentric manner but that whatever phraseology we have used is covered by the Constitutions of other countries as well.

With regard to his second amendment that we should not repeat the word "article" after the word "or" and that we should merely say, "article 2 or 3", my submission is again the same. There again we have followed well-known Constitutions and if my friend will examine them, he will find that similar phraseology occurs elsewhere also. For his information, I would ask him to refer to section 69, sub-clause (3), of the Government of India Act. The word used there is "paragraph". It says, "paragraph (d) or paragraph (e)". It does not merely say, "paragraph (d) or (e)". Therefore this can hardly be a matter of debate or a matter of difference of opinion so far as the principle is concerned. It is a mere matter of precedent and the question to be asked is: Have we done something which is not covered by precedent? And my submission is this, that whatever we have done in the matter of using phraseology is covered by precedent and therefore, there can be no objection to any clause as it stands in the draft.

Mr. Naziruddin Ahmad: Then what about clause (2) of Article 4? I think there should be a short notice amendment to use the words "of this Constitution" in clause

(2) in order to make the draft clear.

Mr. Vice-President: We cannot create a bad precedent by admitting a short notice amendment.

The Honourable Dr. B. R. Ambedkar: I cannot accept it. Sir.

Mr. Vice-President: In that case, I shall put the amendments to vote one by one.

Mr. Vice-President: The question is:

"That the words `of this Constitution' be deleted in clause (1) of article 4 and throughout the Draft Constitution wherever the said words occur in the same context; and a new definition (bb) be inserted in clause (1)of article 303: -

'(bb) "article" means article of this Constitution';"

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (1) of article 4, for the words article 2 or article 3', the words and figures 'article 2 or 3' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (1) of article 4, for the words and figures 'article 2 or article 3', the words and figure 'article 2' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (1) of article 4, for the words `shall contain such provisions for', the words `shall also provide for' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (2) of article 4, for the words `for the purposes of', the words `within the meaning of' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (2) of article 4, for the words `for the purpose of article 304', the words `under article 304' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That clause (1) of Article 4 stand part of the Constitution."

The motion was adopted.

Mr. Vice-President: The question is:

"That clause (2) of Article 4 stand part of the Constitution."

The motion was adopted.

Mr. Vice-President: That finishes Article 4. The next few amendments, No. 185 and the following are concerned with national flag, national language, script and so on. I understand that there is an attempt made to arrive at some sort of understanding and I think that it would be to the interest of the House and it will save the time of the House, if we postpone their consideration for the present and pass on immediately to Part IV.

Seth Govind Das (C. P. & Berar: General): Mr. Vice-President, Sir, before you proceed to take up Part IV, I want to bring it to your notice that these new clauses deal with the national flag, the national language, script and the name of the country and so on. I have no objection if they are held over for future, but at the same time, I want your ruling on one point and that is that whenever these questions are taken up in future, suppose when the question of the language of parliament comes in Article 99, then we should be allowed to raise the question of national language, national script and other matters also which are included in the various amendments which are not being moved now. Let it not be ruled out at that time because Article 99 deals only with the language of the Parliament and similar things these amendments cannot be moved then. Therefore, Sir, I want this to go on the record as a ruling that in future these questions can be raised and if certain things are decided by the House, then those articles may be inserted in the Constitution wherever it is thought proper to be inserted. *(Interruption).*

The Honourable Shri K. Santhanam (Madras: General): Mr. Vice President. Sir, on a point of procedure, I submit, it is for the Chair to regulate what sections will be taken and in what order. Therefore, I do not think there should be any debate on your ruling that Part IV should be taken up first. It is not for any honourable member to choose and say where and when an article is to be put in. However, you have asked that Part IV be taken up now and therefore, I suggest we ought to proceed with the articles of that part, without considering any other interpolation.

Mr. Vice-President: I am an unworthy occupier of this chair and I do not think that anybody here need have any apprehension about these amendments being ruled out. We are here so far as I understand it to arrive at common understanding and to pass a Constitution that will be to the benefit of us all. Here every opportunity, I think, should be given to every Member of the House to place his point of view before the rest of the members and I can assure Seth Govind Das that if I am here, I shall see that no injustice is done to any one.

Shri Damodar Swarup Seth (United Provinces: General): I wish to move amendment No. 187 which has nothing to do with the language controversy going on. My amendment reads like this. (The Honourable Member began to read his amendment).

Mr. Vice-President: I rule your amendment is inappropriate here. We pass on to Part IV.

Shri R. K. Sidhwa: Before you proceed to Part IV, I have got to offer my personal explanation. The Honourable Shri Purshottam Das Tandon levelled a charge against me when I mentioned that no important legislature has got a rule giving the right of reply to the mover of an amendment. I have got a ruling from the Bombay Provincial Legislative Assembly which reads:

"That mover of a motion, but not the mover of an amendment........." *[Interruption].*

Mr. Vice-President: We are not concerned with that just now and I must ask the honourable member to sit down.

Now, we go on to Part IV. I rule amendments 831 and 832 out of order. The first part of amendment No. 833, I rule out of order. Mr. Mahboob Ali Baig, if you like, you may move the second part.

Shri M. Ananthasayanam Ayyangar: Sir, I think this amendment is not in its proper place. This amendment reads: "or alternatively. That the following proviso be added to Article 35: - etc." This should come in after amendment No. 835.

Mr. Vice-President: You can bring in your objection later on.

Mahboob Ali Baig Sahib Bahadur: Sir, I will move this after amendment No. 835. May I be allowed to speak generally on Part IV, Sir?

Mr. Vice-President: No; you can speak only with reference to this particular amendment.

Shri Lokanath Misra: Mr. Vice-President. Sir, we are not prepared to discuss part IV. From Part I to Part IV this is a big jump. We came prepared only for the discussion of Parts II and III. I think we should be given time and the discussion should be adjourned.

Shri M. Ananthasayanam Ayyangar: Sir, Part IV consists of Directive Principles. There are not very many amendments to this Part. Part II relates to Citizenship and Part III relates to Fundamental Rights which are of a justiciable nature. A number of amendments have been tabled to these two Parts. To bring about agreement as to which amendments have to be moved and which need not be moved, takes some time. So far as Part IV is concerned, it does not take much time. They are only Directive Principles: they have been already considered and we have spent long hours over them when we discussed these principles. In these circumstances, I feel nobody need complain of want of notice so far as Part IV is concerned.

Mr. Vice-President: Did you get the lists of amendments?

Honourable Members: Yes.

Shri Amiyo Kumar Ghosh (Bihar: General): Sir, the general practice is that discussion proceeds *seriatim* but instead we are now jumping from Part I to Part IV. We have several amendments to Parts II and III. We are prepared to move them but we are not prepared with the amendments to Part IV. We are taken aback and that is our difficulty. We have several amendments to Part IV.

Mr. Vice-President: You will agree that we should expedite the business of the House.

Shri Amiyo Kumar Ghosh: But there is a method, Sir.

Mr. Vice-President: You will also agree that it is in the interests of the House that before we come here those who have sent in amendments have an opportunity of discussing them with the members of the Drafting Committee and arriving at some kind of understanding. This is in the larger interests of the House and with the idea of saving the time of the House. These are the factors which have induced me to give further time for the consideration of Parts II and III. I believe, on the whole I have the support of the House.

Shri Amiyo Kumar Ghosh: May I request you, Sir, to adjourn the House now and again sit after the recess. It is about twelve o'clock; we may sit again at three o'clock.

Mr. Vice-President: I shall consider that.

Kazi Syed Karimuddin (C. P. & Berar: Muslim): Sir, that we are going to discuss Part IV should have been intimated to the members yesterday. We have not even brought the amendments to be moved to Part IV. We are taken unawares. It is very difficult for us to move the amendments, because we are not prepared with the amendments. It would be unfair for those of us who are not ready, Sir.

Shri M. Ananthasayanam Ayyangar: Sir, it is strange that Mr. Karimuddin should have raised a complaint like this. Every member is generally ready with his amendments.

B. Pocker Sahib Bahadur (Madras: Muslim): Sir, it is very unfair on the part of Mr. Ananthasayanam Ayyangar to say that each and every member should be ready with his amendments to any of the 300 or 400 Articles of this Constitution. It is impossible for anybody to be so, Sir. I submit, Sir, it is unfair to pass over these important Parts and go to a Part which many of us did not expect at all would be taken up. It is only proper that we go in order, or this House should be adjourned till such time as is convenient. *(Interruptions).*

Shri Lokanath Misra: Sir, so much is happening behind the scenes that we are not only puzzled, we cannot even run the race. This is unworthy of us. On banded knees, I would ask you to save us from such situation and help us to undertake our task with regularity and proper direction. If such things are to happen and things go on behind us, kindly us to get out and then let things go on as they like. I would but request you, Sir, to give us time to prepare and think about these amendments. We should be in a position to do justice to our constituents, to the great goal and to ourselves and to this august House.

Shri Mahavir Tyagi (United Provinces: General): Sir, may I request the party leaders and the Whips of the majority party to be considerate and take a charitable view? I understand that it is rather unfortunate and unfair that for the failure of the Congress Party to decide issues among themselves, they should force the whole House to accommodate them in this manner. I feel that either the House should be adjourned or some such business be taken up as the members are prepared to discuss.

Mr. Vice-President: If the majority of members are unable to proceed with the business of the House, I am fully prepared to adjourn the House now. We may meet tomorrow at Ten of the Clock.

Honourable Members: Yes.

Mr. Vice-President: The House stands adjourned till 10 a.m. tomorrow.

B. Pocker Sahib Bahadur: May I know, Sir, what Part will be considered.

Mr. Vice-President: We shall deal with Part IV first tomorrow. If there is time, we will proceed further.

The Assembly then adjourned till Ten of the Clock on Friday, the 19th November 1948.

Thursday, 18th November, 1948

[Translation of Hindustani speech]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME VII

Friday, the 19th November, 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

DRAFT CONSTITUTION *-(contd.)*

Article 28

Mr. Vice-President (Dr. H. C. Mookherjee): Shall we resume discussion of Part IV? If I remember a right, amendment numbers 831, 832 and 833 were disposed of yesterday. We start with amendment No. 834.

Shri Brajeshwar Prasad (Bihar: General): Sir, before we go clause by clause, I would suggest that the House may be given an opportunity to discuss the general provisions of State Policy.

Mr. Vice-President: I am afraid it cannot be done.

(Amendment numbers 834, 835 and 836 were not moved.)

Kazi Syed Karimuddin (C. P. & Berar: Muslim): Mr. Vice-President, Sir, the amendment which I am moving is:

> "That in the heading under Part IV the word "Directive' be deleted."

Sir, it would have been much better if the amendment of Mr. Kamath could be taken up along with the amendment that I have moved. The provisions of Directive Principles which have been embodied in Part IV are very important as they relate to uniform civil code and to economic pattern and very many Fundamental matters. Directive Principles mean that they will not be binding on the State; in any case, they would not be enforceable in a court of law. My submission is that, if this Constitution is not laying down these principles for being enforced in a court of law, or if they are not binding on the State, they are meaningless. I would like to draw the attention of the Honourable Members to what Dr. Ambedkar has said in his own book, that these principles should be embodied in the Constitution as Fundamental Rights and that a scheme embodying these principles should be brought into operation within ten years. I find, Sir, in Article 31 the economic pattern of the country has been based on very vague generalisations. It is very necessary that the word 'Directive' should be deleted, and as Mr. Kamath has suggested, they should be made Fundamental Principles of State Policy. Therefore, my submission is that the word 'Directive' is unnecessary and meaningless. The provisions under this Chapter become only platitudes or pious wishes and it has been very rightly stated by Dr. Ambedkar that they are more or less only Instrument of Instructions. If they are really an Instrument of Instructions, why should they find a place in the Fundamental Principles to be embodied in the Constitution, I do not understand. Dr. Ambedkar has further said in his speech that we do not want to lay down certain principles because it would open to the coming generations to have their own pattern - I do not want to read the whole speech. It is only stated in Article 31 that there will be improvement in economic, social and other things. What is the use of laying down generalisations as has been stated in Article 31? Therefore, I submit, it is no use treating these principles as Directive; such a course will not prove to be to the good of the people and to the State. It is very necessary that all these principles should be made mandatory in order that a scheme embodying these principles could be brought into operation within ten years.

Sir, I move my amendment, and reading my amendment with Mr. Kamath's amendment, it should be "Fundamental Rights".

Shri M. Ananthasayanam Ayyangar: (Madras: General): Sir, if my friend Mr. Karimuddin follows Mr. Kamath, as Mr. Kamath has withdrawn his amendment........

Shri H. V. Kamath (C. P. & Berar: General): I have not yet withdrawn my amendment, Sir.

Shri M. Ananthasayanam Ayyangar: He is not moving, I think. The point is this. It is not as if Mr. Karimuddin does not want this Chapter. He only wants the word 'Directive'...........

Kazi Syed Karimuddin: I want the Chapter; only, I want the word "Directive" to be deleted from the heading.

Shri M. Ananthasayanam Ayyangar: He does not want the Chapter to be deleted.

Shri H. V. Kamath: On a point of order, Sir, did we not agree yesterday that all the amendments to an article will be moved first, and then the article will be taken up for discussion?

Mr. Vice-President: Mr. Kamath is correct. I am sorry that this matter escaped my attention altogether. Discussion will be taken up later on.

The next amendment stands in the name of Mr. Kamath, No. 838.

Are you moving amendment No. 838?

Shri H. V. Kamath: Mr. Vice-President, I move:

"That in the heading under Part IV for the word 'Directive', the word 'Fundamental' be substituted."

Sir, while moving this amendment for the consideration of my Honourable friend Dr. Ambedkar and of the House, I would like to advance only two reasons for the same. Firstly, we have been told that Parts III and IV of the Draft Constitution embody certain rights, Part III being justiciable rights and Part IV being non-justiciable rights.

But both are looked upon or regarded as right which are fundamental. I derive support from the report of the Honourable Sardar Patel. I am reading from the reports of the Committees Second Series, from July to August, 1947.Copies of this booklet were supplied to all the Members of the House in March of this year. I am reading from the Honourable Sardar Vallabhbhai Patel's Report which was presented to the Assembly on the 30th August 1947. There he says - and it is addressed to the President of the Constituent Assembly - in para. 2:

> "We have come to the conclusion."

'We' means the Advisory Committee on the subject of Fundamental Rights.

> "We have come to the conclusion that in addition to these Fundamental Rights, the Constitution should include certain directives of state policy which though not cognizable in any court of law, should be regarded as fundamental in the governance of the country."

And on page 48 of this booklet which contains there port of the committee of which the Honourable Sardar Patel was the Chairman, they have given the title to these very rights which are now embodied in Part IV - "Fundamental Principles of Governance". I should like to know from Dr. Ambedkar and the gentlemen of the Drafting Committee, why they have made a departure from the title given by Sardar Patel to these rights. That Committee gave the title of 'Fundamental Principles of Governance', but here the Drafting Committee have changed the title to 'Directive Principles of State Policy'. There is some force in Syed Karimuddin's argument that both these are fundamental - the justiciable and the non-justiciable rights; and in requesting the House to consider my amendment I would only say this in conclusion, that if this amendment in thrown out, you will be throwing out not my amendment, but the recommendation of Sardar Vallabhbhai Patel.

Mr. Vice-President: Amendment No. 839 - not moved. Is amendment No. 840 going to be moved?

Shri M. Ananthasayanam Ayyangar: No. 840 is the same as No. 838.

Mr. Vice President: Then, it seems to me that the amendments considered so far deal with the heading of this chapter. Members who wish to speak on this may please do so now.

Shri M. Ananthasayanam Ayyangar: Sir, the object of differentiating certain rights as justiciable and non-justiciable rights is well-known. Those here are non-justiciable rights as has been laid down in paragraph 29.They shall not be enforceable in a court of law. Mr. Karimuddin wants that these also should be justiciable rights. I do not know if Mr. Karimuddin is a lawyer. But let him consider one or two suggestions. In Article 26 it is said that the State should within a period of ten years introduce free compulsory education. Take this as an instance. Let us assume that the State does not do so, then can any court of law enforce it? Against whom? In case a decree is granted by a court of law, who will carry it out? If the Government does not carry it out, can the High Court or the Supreme Court enforce it? Is it open to the Supreme Court to change such a government? With its authority, can it by an officer of the Court, an Amin or a Sheriff, imprison all the Ministers, and bring into existence a new set of ministers? In the nature of things, these are only directives and cannot be justiciable rights at all. So there is no purpose in removing the word directive. These are principles which the Government must keep in mind, what ever government may be in power, and they must be carried out. We have incorporated them in the Constitution itself because we attach importance to them. But to classify them as Fundamental Rights as in Part III would be to take away the difference between the one set and the other, and making all the rights justiciable, which, in the nature of things, is impossible. There is no use being carried away by sentiments. We must be practical. We cannot go on introducing various provisions here which any Government, if it is indifferent to public opinion, can ignore. It is not a court that can enforce these provisions or rights. It is the public opinion and the strength of public opinion that is behind a demand that can enforce these provisions. Once in four years elections will take place, and then it is open to the electorate not to send the very same persons who are in different to public opinion. That is the real sanction, and not the sanction of any court of law.

Therefore, this amendment is mis-conceived, and I would request the House not to accept it.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I support the amendment to drop the word "directive". It is not only the heading but the entire chapter which is misconceived. Only the other day Dr. Ambedkar enunciated a very important principle by way of reply to Prof. Shah's amendment (No. 98) by which he wanted to introduce certain words into the Constitution to which Dr. Ambedkar said that pious expressions are not proper things to be embodied in a Constitution. He said, "the Constitution is a mere mechanism and no political principles or policies need or should be incorporated in it." He further said that "political principles or policies should be dictated by the people themselves through their votes and posterity should never be fettered by an announcement of policy or principle." These are important words coming from such a high authority. I submit these pious principles should not be enunciated unless there is the backing of the law and they are also made justiciable. Dr. Ambedkar further said that to introduce pious expressions would be "taking away from the people their right to vote" and these things would be "superfluous". I submit that if you introduce pious principles without making them justiciable, it will be something like resolutions made on New Year's day which are broken on the 2nd of January. I submit that these pious wishes are so obvious that they need not be enunciated at all. If you state them you might also say that people should get up from their bed early and be kind to their neighbours, and so forth. Sir, I submit these are not proper things to be embodied in the Constitution and the amendment of Syed Karimuddin should be accepted.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, I am sorry I cannot accept either of the two amendments: Mr. Kamath's amendment is really incorporated in the phraseology as it now stands; the word "Fundamental" occurs, as Mr. Kamath will find, in the very first Article of this part. Therefore his object that these principles should be treated as fundamental in already achieved by the wording of this Article.

With regard to the word "directive" I think it is necessary and important that the word should be retained because it is to be understood that in enacting this part of the constitution the Constituent Assembly, as I said, is giving certain directions to the future legislature and the future executive to show in what manner they are to exercise the legislative and the executive power which they will have. If the word "directive" is omitted I am afraid the intention of the Constituent Assembly in enacting this part will fail in its purpose. Surely, as some have said, it is not the intention to introduce in this part these principles as mere pious declarations. It is the intention of this Assembly that in future both the legislature and the executive should not merely pay lip service to these principles enacted in this part, but that they should be made the basis of all executive and legislative action that may be taken hereafter in the matter of the governance of the country. I therefore submit that both the words "fundamental" and "directive" are necessary and should be retained.

Mr. Vice-President: The question is:

"That in the heading under Part IV, the word 'Directive' be deleted."

The motion was negatived.

Shri H. V. Kamath: Sir, I beg leave of the House to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President: We shall now take up amendment Nos. 841 to 846. The movers will kindly move them one after another and then there will be a discussion.

Amendment No. 841 is a negative one and therefore it is ruled our of order.

Since the Member concerned is not here, Amendment No.842 falls through.

Amendment Nos. 843 to 846 - Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: I shall be moving Nos. 843, 844 and 846 I shall not be moving No. 845.

Sir, I move:

"That in article 28, the words 'unless the context otherwise requires' be omitted."

"That in article 28, for the word 'requires', the word 'indicates' be substituted."

"That in article 28, for the words 'the State', the word 'State' be substituted."

With regard to my first amendment for the deletion of the words "unless the context otherwise requires", I beg only to submit this. There are only a few articles in this part. This article attempts to define "the State" to mean States in part III of the Constitution. I submit that there is here no difficulty or any confusion. If we say "unless the context otherwise requires" it would indicate that the meaning that has been definitely given by article 28 to the expression "the State" is subject to fluctuation in accordance with the context, that is in accordance with the individual approach of each man. This would create an uncertainty and a very needless uncertainty in the context. I would submit that the word should be precisely defined. In fact the word "State" has been defined in so many places to mean so many things that there has already been a sufficient amount of confusion in the understanding of the word "State" and the introduction of these words "unless the context otherwise requires" would introduce further complications. I therefore submit that these words should be removed and, if necessary, doubts in any particular context should be met by a proper change in draftsmanship.

The second amendment is merely verbal, and I want to change the word 'requires' into the word 'indicates'. I do not wish to say anything further in this connection.

With regard to the third amendment, that for the words "the State" the word "State" be substituted, I have to submit that the word 'State' is the proper word in the context. If we define the expression as "the State" it will lead to difficulties in the clauses in which this expression occurs. I should submit that the word "State" should be more appropriate and I shall attempt to show why.

The Australian precedent which has been cited in another connection by the Honourable Dr. Ambedkar, I think, should better be discarded. The reason why I submit this amendment is this: That in the context the expression "the State" appears in articles 29 to 40. In those contexts the words "the State" are inappropriate. It should be remembered that the words "the State" are attempted to be defined as "State" within the meaning of Part III of the Constitution. It is enough for me to point out that there are more States than one included in Part III of the Constitution. Therefore the words "the State" in the following articles - 29 to 40 - would be inappropriate. If there is one individual State which we want to indicate, the words "the State" would be proper in the context. But we have in mind not one State or "the State" but several States in the different contexts. So I have suggested the expression "State". It is for this reason that I want to remove the word "the" which to my mind is absolutely unnecessary. It is a grammatical article which need have no place in the definition itself. If we tie down the definition to the word "the" the words become inseparable and therefore a forced use of this expression in the succeeding articles becomes absolutely compulsory. Therefore, this will need careful consideration.

The Honourable Dr. B. R. Ambedkar: Sir, I oppose the amendments of my friend, Mr. Naziruddin Ahmad. The words "the State" in Article 28 have been used deliberately. In this Constitution, the word "State" has been used in two different senses. It is used as the collective entity, either representing the Centre or the Province, both of which in certain parts of the Constitution are spoken of as "State". But the word used there is in a collective sense. Here the words "the State" are used both in a collective sense as well as in the distributive sense. If my friend were to refer to part III, which begins with article 7 of the Constitution, he will see in what sense the word "State" is used. In this part, unless the context otherwise requires, "the State" includes the Government and the Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India. So that, so far as the Directive Principles are concerned, even a village *panchayat* or a district or local board would be a State also. In order to distinguish the sense in which we have used the word we have thought it desirable to speak of 'State' and also 'the State'. Honourable Members will find this distinction also made in Article 12 of the Constitution. There we say:

> "No title shall be conferred by the State;
>
> No citizen of India shall accept any title from any foreign State."

There we do not use the words "the State"; but in the first part we use the words 'the State'. We do not want any of the authorities, either of the Centre or of the provinces, to confer any title upon any individual. That being the distinction, the House will realise that the retention of the words 'the State' in Article 28 is in consonance with the practice we have adopted in drafting this Constitution.

Mr. Vice-President: I shall now put these three amendments to vote. The question is:

"That in article 28, the words 'unless the context otherwise requires' be omitted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in article 28, for the word 'requires' the word 'indicates' be substituted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That article 28, for the words 'the State', the word 'State' be substituted."

The amendment was negatived.

Mr. Vice-President: I shall put Article 28 to vote. The question is:

"That article 28 form part of the Constitution."

The motion was adopted.

Article 28 was added to the Constitution.

Article 29

Mr. Vice-President: The House will now take up Article 29 for discussion.

Amendment No. 847 for the deletion of Article 29 is out of order.

Professor K. T. Shah may now move his amendment.

Prof. K. T. Shah (Bombay: General): Mr. Vice-President, I beg to move:

"That for article 29, the following be substituted:

'29. The provisions contained in this Part shall be treated as the obligations of the State towards the citizens, shall be enforceable in such manner and by such authority as may be deemed appropriate in or under the respective law relating to each such obligation. It shall be the duty of the State to apply these principles in making the necessary and appropriate laws'."

In submitting this motion to the House, I would in the first place express my sense of keen appreciation of Dr. Ambedkar's remarks made a few minutes ago, wherein he not only insisted that we should not leave such matters as mere pious principles, but also should make them a sort of directive, which, though the word mandatory is not used, may amount to that state. I was a little unhappy when, on a previous occasion, the learned Doctor was pleased to say that the Constitution was not a document for embodying such principles. It seems that the course of conversion operates very swiftly with a brain so alert, an intelligence so sharp a mind so open to new ideas as that of the learned Doctor. That is why I am very happy to express my sense of keen appreciation for the rapid conversion that he has exhibited today in agreeing to find a place for enforcement in the Constitution. In fact he has gone a step further; and, though he does not admit their place in the name or designation of the Constitution, he has been pleased to make that as a positive thing, the enforcement of such principles, fundamentals as they are called, in the Constitution.

Having expressed this, Sir, I hope that Dr. Ambedkar would also see the advisability of accepting my amendment that this article 29, which I regard as an insult to the entire Constitution, be substituted by what I have suggested.

Sir, article 29 makes it quite clear, in the opening phrase, that no court can enforce these ideals. That is to say, the only authority that we are going to set up in the Constitution, to give effect to whatever hopes and aspirations, ambitions and desires, we may have in making these laws and in laying down this Constitution, is from the very start exempted, exonerated and excused from giving effect to one of the most cardinal, important and creative Chapters of this Constitution. We have suffered from a hundred years of exploitation; we have suffered from a hundred years of denial and exclusion. Now that we are coming into our own, we insist - I hope the House will join me in the intention - that the night of darkness shall pass away and that from the very first rising of the sun on the horizon, even from the first glimpse of dawn, we shall makeup our minds, we shall gird up our loins to give effect to all the hopes that our leaders in the past have expressed.

Sir, certainly it would not be in consonance with such a hope as this to lay down, at the very outset, in a Chapter like this, that no court shall be entitled to give effect to our hopes and aspirations. If I may say so without any offence, it is a kind of provision which encourages the Court and also the Executive not to worry about whatever is said in the Constitution, but to act only at their own convenience and on their practicability, and go on with it. It looks to me like a cheque on a bank payable when able, *viz.,* only if the resources of the Bank permit. I do not think that any authority connected with the drafting of this Constitution would approve of such a provision being incorporated in the Negotiable Instruments Act authorising the making of a cheque payable when able. It seems to me that unless my amendment is accepted, this Chapter would be nothing else, as it stands, but a mere expression of some vague desire on the part of the framers that, if and when circumstances permit, conditions allow, we may do this or that or the third thing. There is nothing mandatory, - with all deference to those who have spoken in support of the retention of the word 'directive' in the title of the Chapter - or compulsory, included in the various provisions. Sir, in the absence of any such mandatory direction to those who may have the governance of the country hereafter, it is quite possible that all these things for which we have been hoping and striving all these years may never come to pass, at any rate within our lifetime. This is an attitude which no lover of the people would care to justify, would dare to justify.

I suggest, Sir, that many things look impracticable until they are tried, and become practicable if they a retried. Nothing in practice is practicable until it is tried. Take even the elementary right to education which every civilised Government is now undertaking to provide for the children of the nation. Even this right to compulsory primary education has been provided for in such a clumsy, half-hearted and hesitating manner that one wonders whether the framers of this Draft were at all anxious that the curse of ignorance that has rested upon us all these years should be removed at all. The provision made here just permits the State, even within the period of ten years, only to "endeavour" to give effect to this aspiration. Even there it is not compulsory, even such an elementary right as the right to primary education for every child in the nation is not mandatory. As such I feel Sir, that unless some change is made, unless you make these preemptory obligations mandatory duties of the State, the State or the constituent parts of it may not at all attend to these duties of the State. These are most elementary duties in my opinion, duties which are most primary duties, if I may say so, most sacred that no one should try to insult this House by suggesting these are not practicable.

Then, Sir about the absence of any sanctions as another learned friend put it. An old English writer - it was Walter Baghot, I think, - who wrote in a classic chapter of his book on the English Constitution that Parliament votes every year large sums of money to the Crown, but there is no sanction or authority for anybody to compel the Crown that the sums shall be spent. I agree. There is no constitutional authority laid down so far in the unwritten Constitution of England that the sums voted shall be spent. But does anyone think that because there is no legal sanction, any Minister in his senses would for a moment suggest that these sums need not be spent, or that the so-called prerogatives of the King like dismissing any officer of the State would be used now arbitrarily as they had been in the past?

I mention this illustration, Sir, merely to emphasis the fact that it rests with you whether or not you are resolved that no longer shall the courses that have rested upon us so far will continue, for a moment longer than we can afford or than we can possibly help. It is no use putting down these mere pious hopes and aspirations or general directives that may be enforced if and when circumstances permit. It is possible that circumstances will never permit until you compel them to permit you. That is why from the very start I would lay down that these shall be mandatory, compulsory obligations of the State, which every citizen will have the right to demand should be fulfilled, and if today you think of no sanction, if today you can devise no means by which they can be enforced except perhaps by the periodic general elections when Ministries may be turned out for not fulfilling these duties, then it is up to you to devise something. Where there is a well - to repeat the trite old saying - there will always be a way. It is either bankruptcy of intelligence if you say that you cannot find a way; or it is really a genuine lack of desire to make good what we have been hoping and striving for.

There may be many in this House - I am sure Dr. Ambedkar is the foremost amongst them - who will remember that when the late Gopal Krishna Gokhale first brought forward the Bill for compulsory primary education, the then officials of the then Government of India gave all sorts of reasons why such a step was simply impracticable. One of the arguments was that an expenditure of three crores spread over ten years, that is rupees thirty lakhs a year, was too heavy a burden for the Government of India's finances at that time to bear. But within four years of that, however, they were wasting not three crores but more than thirty crores over the war in which we had no concern and about which we were not consulted.

That was the case when we were powerless, when we were helpless in our own country. That position, however, is changed today, and I hope the Ministers of the new Government of India, the Ministers of the Government of free India, the legislators of the Republican India, will not now rest content with merely expressing these pious wishes. If there are difficulties in the way, they are only meant to be overcome. These difficulties should not be allowed to stop our progress at any cost. Hence it is that I would like to invite the House to agree with me that the provisions contained in this Chapter must be regarded as the Obligations of the State towards every citizen and vice versa. Every citizen should have the right to compel the State to enforce these obligations by whatever means may be found practicable and effective, and conversely the State also should have the right to see that every citizen fulfils his obligations to the State.

There is only one more word that I have to say and I have done. My Honourable Friend Mr. Rohini Kumar Chaudhary expressed his keen sense of appreciation yesterday for the gang of thieves who are operating between Calcutta and Delhi, and he warned me they may do so also between Bombay and Delhi. I am deeply grateful for the solicitude that he had expressed on my account as well as on that of another Honourable Member. I can only assure him that his apprehensions are groundless, because I am not in the habit of just travelling in a railway compartment with my amendments in an attache case under my head. I carry them mostly in my own head. Unless therefore the thieves take a highly expert surgeon with them, who can remove the amendments from my brain, they cannot take away my amendments; and the House will not be spared - certainly Mr. Rohini Kumar Chaudhary will not be spared - the necessity of going through these amendments. May I also add without any offence that the loss of these amendments is not the loss of Mr. Naziruddin Ahmad or myself. It is the loss of the House, because those of us who have come here and put forward these amendments are not doing them for fun or mischief, but have put brains and intelligence into them.

Mr. Naziruddin Ahmad: I wish to speak on my amendment, though I do not wish to move it.

Shri M. Ananthasayanam Ayyangar: A similar amendment for substituting the words "every State" for the words "the State" was moved and negatived.

Mr. Naziruddin Ahmad: It depends upon the context.

Mr. Vice-President: If you insist on speaking, you may do so.

Mr. Naziruddin Ahmad: I won't take more than one minute, Sir.

Shri M. Ananthasayanam Ayyangar: I submit that the President has always got the right to disallow in order to avoid frivolous amendments. This matter has already been considered by the House. It has been disposed of and except for the purpose of taking the time of the House, there seems to be nothing else behind it. I submit that there is no substance in Mr. Naziruddin Ahmad's amendment, and if it is still being persisted, then I want your ruling.

Mr. Naziruddin Ahmad: I very much regret that my attempt to explain is being regarded as dilatory.

Mr. Vice-President: I suggest you proceed without paying any attention to what he says.

Mr. Naziruddin Ahmad: Sir, I beg to move:

"That in article 29, for the words 'the State', the words 'every State' be substituted."

I fully admit the force of the remarks of Mr. Ananthasayanam Ayyangar, but I am compelled to place before the House a certain difficulty. Article 29 says that it shall be the duty of the State to apply these principles in making laws. Then the State means one State, but here there are a large number of States.

The Honourable Shri K. Santhanam (Madras: General): May I ask the honourable member to see Article 29 where "the State" has been defined as wring the same meaning as in Part III of this Constitution. Therefore in article 29 also the State is the same thing.

Mr. Naziruddin Ahmad: I was pointing out the difficulty in the draft. We have already been placed in a straight jacket by accepting the words "the State" and the straight jacket is pursuing us in the clauses. I should say the words 'every State' are more appropriate. The fact that we have accepted the definition does not prevent us to avoid the absurdities in the following articles. I submit that the expression in the context is absolutely absurd.

Prof. Shibhan Lal Saksena (United Provinces: General) : I am not moving my amendment, but I want to speak on the Article as a whole. Sir, this Article has been the subject of many amendments and the purpose of most of the amendments is that this Chapter should have some sort of binding force. I have also given notice of an amendment which is No. 861 in the printed list and which says that "After a period of ten years, these directive principles of State Policy shall become the Fundamental Rights of the People and shall be enforceable by any Court". Alter a very careful consideration of the various Articles in this Chapter, I feel that it will not be proper to lay down such a tall order. In fact, the Drafting Committee has itself laid down a period of ten years for compulsory Education up to fourteen years of age and three years for separation of Executive from Judiciary and some such other things. So something has been done in this direction. What I really want is that these Directive principles in this Chapter should not merely remain a pious wish. My Honourable friend, Prof. K. T. Shah, also wanted that these fundamental principles should guide the state in their legislation. I wish to assure him that the very fact that this chapter forms part of the Constitution, gives such a guarantee and it will surely be open to every legislature to point out when an Act is brought before the Assembly that it is in conflict with the principles laid down in this Chapter. So, the mere fact that they are being included in the Constitution shows that every legislature will be found to respect these directive principles in the Constitution and therefore, any act which offends the directive principles shall be *ultra vires.* Although every citizen will not be able to go to a court of law for enforcement of these principles, yet the President of every Assembly will be within his rights to rule out any Bill and say that this Bill cannot be moved, because it is against the fundamental directive principles of the Constitution itself. I therefore, think that this chapter is not merely a chapter of pious wishes, but a chapter containing great principles. A perusal of articles 31 will show that very many high principles have been enunciated here and I hope Prof. Shah will also admit that if these principles are acted upon in both the Union Legislature and the State Legislatures, we shall have a State which will almost be acting as if these principles were fundamental rights which were enforceable by a court of law. Of course, every individual will not be able to go to a court of law to get their enforcement, but every legislature will be able to rule out any Bill which offends these principles. I therefore, think that my amendment which was intended to put a sort of time limit to make the State go on with their implementation at a rapid pace, so that all these directive principles may become incorporated in Acts of Parliament in ten years, may create difficulties by its rigid time limit. I hope ray purpose will be realized by the fact that this pan shall be a part of the Constitution and every legislature will be required to respect the principles contained in it and to see that no Act is passed which is against the principles enunciated in this chapter. I therefore, think that those friends who term this Article merely as a chapter of pious wishes are not correct. This is a very important chapter which lays down the principles which will govern the policy of the State and which, therefore, will ensure to the people of the country the realisation of the great ideals laid down in the preamble. I therefore hope that the opposition which my friend, Prof. Shah has voiced through his amendment will not be pressed. Sir, I therefore support this Article.

Mr. Hussain Imam (Bihar : Muslim) : May I ask if there will be no discussion on these amendments except by the movers?

Mr. Vice-President: If you had caught my eye, I would have given you an opportunity.

Mr. Hussain Imam: I thought that after the amendments have been disposed of by putting them to vote, discussion would be allowed.

Mr. Vice-President: No. It was decided yesterday that honourable members can speak both upon the amendments as well as on the article.

Mr. Hussain Imam: By a discussion other members of the House will also get an opportunity.

Mr. Vice-President: Why did you not stand up ?

The question is :

"That for article 29, the following be substituted :

'29. The provisions contained in this Part shall be treated as the obligations of the State towards the citizens, shall be enforceable in such manner and such authority as may be deemed appropriate in or under the respective law relating to each such obligation. It shall be the duty of the State to apply these principles in making the necessary and appropriate laws'."

The motion was negatived.

Mr. Vice-President: The question is :

"That in-article 29, for the words 'the State', the words 'every State' be substituted."

The motion was negatived.

Mr. Vice-President: The question is :

"That Article 29 stand part of the Constitution."

The motion was adopted.

Article 29 was added to the Constitution.

Mahboob Ali Baig Sahib Bahadur (Madras : Muslim) . Sir, I said that I will speak on this Article. I stood up, Sir.

Mr. Vice-President: I did not see you. Can you not speak on Article 30?

Mahboob Ali Baig Sahib Bahadur : Article 29 is the most important Article.

Mr. Vice-president: I am unable to go back. I shall give you an opportunity to speak on Article 30.

Shri Amiyo Kumar Ghosh (Bihar : General) : Sir, may I know the correct procedure? When a clause is nut to the House, is it not the right of a member to speak either in favour of the clause or against it?

Mr. Vice-President: Certainly.

Shri Amiyo Koniar Ghosh: But, I think, Sir, no such opportunity has been given in this ease. The amendments were put to vote. When the clause was put to vote, several gentlemen stood up to oppose the entire clause. I think the correct procedure is, after the amendments have been put to the vote and they are lost, the entire clause is put to the House. At that time a member has got the right to oppose it or support it; he may speak on the entire clause. That is the correct procedure.

Shri M. Ananthasayanam Ayyangar: Sir, yesterday you gave a ruling and it was accepted that instead of having two different sets of discussions, there may be one discussion once for all both on the amendments and the Article, and that after the amendment are put to the vote, the Article may be put to the vote without any further discussion, and declared carried or otherwise. That was your ruling and we have been following it. Separate discussions, one for the amendments and another for the Articles are not necessary.

Shri Amiyo Kumar Ghosh: That was not a ruling for the entire Constitution that was specially meant for Article 3. I think Mr. Ayyangar is laying down a new principle.

Mr. Vice-President: That was the procedure adopted. (*Interruption.*) Kindly allow me to speak. Shall I proceed? (To B. Pocker Sahib Bahadur, who stood up) Do you want to say anything? I am prepared to make way in your favour.

B. Pocker Sahib Bahadur: Sir, I am very sorry to note that Mr. Ananthasayanam Ayyangar is taking upon himself very frequently the duties of the Vice-President himself. (*Interruption*).

Mr. Vice-President: Order, order.

B. Pocker Sahib Bahadur: Sir, he has been giving instruction to the Chair every now and then. In fact.......(*Interruption*).

Some Honourable Members: Withdraw.

B. Pocker Sahib Bahadur: I am quoting a fact, Sir. Just now......

Shri K. Hanumanthaiya (Mysore) : Sir, he is casting aspersion on an honourable member.

Mr. Vice-President: Order, order.

B. Pocker Sahib Bahadur: I am just quoting facts. He has said just now that the ruling of the Chair is that the questions on the amendments and also questions opposing the clause itself should all be discussed together. As a matter of fact, when Mr. Mahboob Ali Baig came here and wanted to speak against the clause itself, he was told by the Chair that the proper time for him would be when the clause itself is before the House after the amendments are over. Whatever it is, it is for the Chair to decide the question.

Shri Biswanath Das (Orissa: General) : Sir, on a point of order. It is to be very much regretted that an honourable member jumps up and goes on to draw the attention of the Vice-President and the honourable members of the House to certain questions which should have been noticed by the Vice-President himself. The very fact that the Vice-President has not taken notice of these goes to show that either he himself desired them or they were his rulings. It is none of the business of the Honourable member to point out to this House or to the Honourable the Vice-President the way in which he should have acted himself. I am sorry to say that it is a reflection on the Chair. Therefore, I would request you, Sir, not to tolerate, much less to allow such disturbances of the proceedings.

Mr. Vice-President: May I suggest that Mr. Ayyangar merely repeated a procedure which had been adopted with the approval of the House in conducting our proceedings. I do not consider that Mr. Ayyangar was wrong in reminding us about what had passed yesterday. I deeply regret that these things should not have been appreciated in the proper spirit by the honourable member speaking. I want that we should work together in complete harmony and that no misunderstanding should spring up. We must come here with clear and open hearts, prepared to trust one another. In democracy it always happens that the minority can only put forward its point of view and try to persuade the majority, and submit to the ruling of the majority. That is what democracy means as I understand it in my poor and inadequate way. Surely, the business of the House can hardly be conducted unless certain rules are followed and followed faithfully, in the spirit and not merely in the letter. As I have already said, if Mr. Mahboob Ali Baig had caught my eye, I would have surely given him an opportunity to speak. In fact, if honourable members will only scrutinise the way in which I have tried to conduct the proceedings of the House, they will find that I have gone out of my way in affording facilities to certain groups which at the present moment feel that they were not sufficiently strong to make their voices heard. That has been my policy, and in that policy, I am grateful that the majority community has lent me its unstinted support. In these circumstances, I would beg you, Mr. Pocker Sahib, to kindly resume your seat and allow me to conduct the business of the House in the way that seems best to me and not to cast reflections, which pain me, either on Mr. Ayyangar who is there to help us, or on myself, who am trying my very best so far as my poor abilities go, to conduct the business to the entire satisfaction of the House. Will you please resume your seat ?

B. Pocker Sahib Bahadur: Sir, I do not want to say anything more except to thank you for the kindly way in which you have expressed your anxiety to give every facility to people who are in the minority. I must also apologise to you if you take it that I in any way meant any reflection on you or on Mr. Ayyangar. I only wanted to bring to your notice how we misunderstood what you stated and that we thought that we had further opportunities after all the amendments are discussed. I am thankful to you, Sir, for the way in which, you have expressed your anxiety to give opportunities to the minority to express themselves.

Mr. Vice-President: May I make one suggestion? When such a kind of understanding has been given by me namely that an honourable member will speak on a particular occasion, for the time being, he may occupy a front seat so that he may not experience much difficulty in catching my eye. Let me assure the House once again that I shall do whatever lies in my power to give every possible facility to the members of the minority communities.

Mr. Hussain Imam: May I ask for elucidation of your ruling, as I was not present when this ruling was given. Therefore I want for the guidance of the House that it should be elucidated first. My own impression was that by your ruling what was meant was that members who were speaking on amendments should not claim a second right of speech on the main motion itself. It was never meant that as soon as an amendment is moved and the mover of the article says whether he accepts or rejects it, the discussion ends. That only means that the discussion as far as that particular amendment is concerned is ended, but the discussion on the main article can continue and in that connection I will remind you that I stood up as soon as Dr. Ambedkar had intimated his opinion on the amendments and therefore I was perfectly justified—and I had caught your eye—to express my opinion on the article. It is on that restricted line that I want your ruling as to whether my understanding is correct or I am wrong.

Mr. Vice-President: Let me explain it. First of all the amendments are moved and members moving them can also speak on the clause as a whole. Then there is opportunity given to Honourable members to discuss the amendments as well as the article itself and after that Dr. Ambedkar replies and that closes the discussion. That is how I have tried to understand it and that will be the procedure which will be followed hereafter.

Mr. Hussain Imam: It is not clear whether the discussion on the general article itself closes. The discussion on the amendment can close, not the general discussion.

Shri Ram Sahai [United State of Gwalior- Indore-Malwa (Madhya Bharat)]: *[Mr. President, I would like to submit that many members do not like to express their views on the amendments that are moved here and to participate in the debate on them, because they consider them to be meaningless, useless and devoid of any utility. If it continues, the result would be no discussion on the original clause. Therefore, I submit, Sir, that since members do not like to speak on the many amendments that are being moved here, they simply fall through. In my opinion, it is much more necessary to speak on the original clause and consider it fully.

Therefore I would submit that the amendments that are useless and are moved for no reason should be ruled out and we should devote ourselves to a fuller consideration of the original clause.]*

Mr. Mohamed Ismail Sahib (Madras: Muslim): Mr. Vice-President, Sir, while I appreciate the consideration you have been showing to the House, to the various sections of the House, I want this point to be made clear. Now suppose several amendments are being moved to a certain article. Then those amendments are discussed and afterwards replied to by the Honourable Mover of the Resolution. I want to know whether after the reply is given by the Honourable Mover I mean the Law Minister, the article is not before the House for general discussion. Because the amendments may relate only to certain parts of the article. There may be other parts on which honourable members might have something to say. Therefore I request you to make it clear whether after all the amendments are disposed or, Members have got a light to speak on the article itself.

Mr. Vice-President: What I said was this; suppose there are four amendments. They are moved one after another. Between the moving of the amendments and the reply by the Chairman of the Drafting Committee there is an interval during which other members may participate in the discussion and they might talk not only about the amendments but about the clause itself.

Mr. Mohamed Ismail Sahib: My point is after the amendments are disposed of by the House, whether the members have not got the right to speak on the articles as amended or not as amended—that is what I want to know. The members should in fairness be given an opportunity to speak on the article.

Mr. Vice-President: They have that opportunity.

Shri M. Ananthasayanani Ayyangar: Mr. Vice-President, that opportunity means once again after Dr. Ambedkar has spoken?

Mr. Vice-President: No.

Shri M. Ananthasayanam Ayyangar: It is rather strange that persons who have been in Legislatures should make this objection. We know that the Resolutions are first moved and then all amendments are asked to be moved on the particular clause or resolution. Then both the resolution and the amendments are open for discussion. Thereafter the amendments are put to vote and then the clause is put to vote. There is no scope for a general discussion once again on the clause. There should be no departure from this practice which is followed in the Dominion Legislature.

Mr. Vice President: I do not think it is profitable to continue the discussion. The ruling is final. I shall not permit further discussion.

Nawab Muhammad Ismail Khan (United Provinces: Muslim) : After the amendment has been moved. ....

Mr. Vice-President: I am afraid you fail to appreciate the fact that the decision has been given. I am not prepared to reopen the discussion.

Nawab Muhammad Ismail Khan: In order to facilitate discussion, after amendments have been moved the Chair may please say that the article is now open to general discussion so that people may rise to speak on the motion.

Article 30

Mr. Vice-President: The motion before the House is :

> 'That article 30 form part of the Constitution'.

The first amendment stands in the name of Mr. Naziruddin Ahmad. This is out of order. The second amendment is in the name of Mr. Damodar Swarup Seth.

Shri Damodar Swarup Seth (United Provinces : General): Sir, I move that for article 30, the following be substituted :

> "30. The State shall endeavour to promote the welfare, prosperity and progress of the people by establishing and maintaining democratic socialist order and for the purpose the State shall direct its policy towards securing :—
>
> (a) the transfer to public ownership of important means of communication, credit and exchange, mineral resources and the resources, of natural power and such other large economic enterprise as are matured for socialisation;
>
> (b) the municipalisation of public utilities;
>
> (c) the encouragement of the organisation of agriculture, credit and industries on co-operative basis."

Sir, my reason for submitting this amendment is that I feel that as it is worded, the article is somewhat indefinite and vague, and does not convey any clear indication as to the economic nature of the social order to be established. We all know that the society in which we now live is of a capitalistic order or character and in this society we see the exploiter and exploited classes both existing side by side; and the exploiting class is naturally the top-dog and the exploited class the under-dog. In such a society we clearly see that the real welfare of the masses, of the toiling millions can neither be secured nor protected, unless the society is made clear of the exploiter class, and that can only be possible when we establish a socialist democratic order, and transfer to public ownership the "important means of production, communication, credit and exchange, mineral resources and the resources of natural power and such other large economic enterprise as are matured for socialisation;'' bring about the "municipalisation of public utilities"; and "the encouragement of the organisation of agriculture, credit and industries on co-operative basis".

So far as I know, the Indian National Congress in its election manifesto promised the transfer of ownership of the means of public utilities, communication, production, credit, exchange, to the ownership of the public. The Economic Committee's Report of the Congress also accepts this principle. Without that, we are not going to establish a social democratic order in which the real welfare of the masses will be secured. Let it not be said of us. Sir, that we made promises simply to break them, as was done by the British Government. Here we talk too much about democracy and the welfare of the masses. But in practice, we see actually that there is little or no democracy. The will of the ruler even to-day prevails, in the form of the law. If we really want that something should be done for the masses, and their real welfare secured, that can only be possible through a socialist, democratic order. And if we are really keen to establish such an order, we should lay down in this Constitution that the order which we are going to establish will be a socialist democratic or democratic socialist one. The wording should be as clear as possible so that its meaning may not be changed when it is in the interest of the ruling classes to do so.

With these words, Sir, I submit this amendment for the acceptance of this Assembly.

Mr. Vice-President: No. 864 is the same as No. 863. Therefore it need not be moved. Is 867 moved ?

Mr. Naziruddin Ahmad: Yes, Sir, I move it. I beg to move:

"That in article 30, the words "strive to" be omitted."

Sir, the article in the passage runs to this effect—"The State shall strive to promote the welfare of the people. ...." I want the removal of the words 'strive to'. The article, would then read as follows :

"The State shall promote the welfare of the people."

I submit, Sir, that by providing that these rights shall not be justiciable, this Article has been sufficiently weakened, and by again putting in the words "shall strive" to promote the welfare of the people, the Article has been still further weakened. I submit, Sir, that if these rights are to be introduced in the Constitution, they should be that the "State shall promote the welfare of the people", not merely "strive to". As it is, it would mean that the State is not expected actually, to promote the welfare of the people, but merely strive to do so. In this weakened and diluted form, I think it is worse than useless. Therefore, in order to give the article some practical meaning, these words must be removed.

Shri H. V. Kamath: Sir, I move amendment No. 870:

"That in article 30. the Word The'- occurring before the words "national life" be deleted"

Sir, I was rather reluctant to give notice of this amendment, considering that it is of a minor character; but somehow the word 'the' jarred, upon my ear and ultimately I decided to send it on. I am not so presumptuous as to advise my learned friend Dr. Ambedkar or his wise colleagues of the Drafting Committee on matters of language; but I do hope that in this case, the word 'the' jars upon their ears as much as it does on mine, and it does violence to the laws of euphony. So I request him to omit it.

The Honourable Dr. B. R. Ambedkar: I accept the amendment.

Mr. Vice-President: No. 871 not moved.

Now the Article is open for general discussion.

Mahboob Ali Baig Sahib Bahadur: Sir, I oppose the amendment of Mr. Damodar Swarup Seth (No. 863) as well as the Article itself. The reason is that the amendment seeks to import into the constitution certain principles of a particular political school. My view is that in a constitution no principles of any school of political thought should be incorporated. For the same reason I oppose the clause itself. This question of directive principles of State policy should be examined from two points of view, *i.e.*, democratic principles and secondly, the enforceability of those principles. With regard to the first you know that in the Preamble to the constitution a democratic republic or State is envisaged, and in the body of the constitution the type of democracy which is commonly known as parliamentary democracy is embodied. And the executive which is embodied in the constitution is what is termed the parliamentary executive which comes into power on account of the majority of a particular party having been elected by the electorate; and that executive is responsible to the people through the Parliament. Therefore inevitably there would be parties in the country which seek election to parliament and these political parties have different and distinctive ideas, ideals, ideologies, programmes and principles. Sometimes they are so different that they can be called antagonistic; and it is on the merits of the principles or programmes of particular parties that the electorates return them to Parliament. And when a particular party is returned in a majority and is entitled to form the government, the people and the electorate have got a right to expect the implementation of those programmes and principles. That is what is meant by parliamentary democracy as it obtains in the United Kingdom, and which is sought to be embodied in this constitution. Now the question is, in these circumstances what is the place of these directive principles of State policy in a parliamentary democracy in which the executive is made responsible to the parliament which has been chosen and elected on the merits of the principles and programmes laid down by that party? That is the most important thing for us to consider. We can conceive of cases where a party which has been returned by the people has programmes and principles which are contrary to the principles that are laid down in this Chapter. Recently we know that in the British Parliament the Conservatives have moved for the rejection of nationalisation of iron and steel. Yesterday we heard there was an uproar. It was no doubt defeated by the Labour Government; that clearly shows that political parties have different and distinctive programmes, and is on their merits that the parties are returned to parliament in a parliamentary democracy. When that is the position envisaged and embodied in the constitution, what is the place of these directive principles in it? They have obviously no place. It is undemocratic opposed to parliamentary democracy which is envisaged here. Is it the purpose of these principles to bind and tie down the political parties in the country to a certain programme and principles laid down in this? Surely not; that will not be democracy or at least democracy of the type that is envisaged here, *viz.,* parliamentary democracy which is responsible to the people. Therefore my submission is that these principles are out of place and contrary to the principles of parliamentary democracy.

Now it is said by some that these are fundamental principles. I submit that if they are so fundamental they cannot be changed except by amendment of the constitution, and should not find a place here. In fact my own view of fundamental rights is that they are those which are taken away from the purview of the legislature; they are so fundamental that no party can veto them. If all those rights that are embodied here are so fundamental they must be transferred to the Chapter of Fundamental Rights. I consider that most of them are not fundamental rights but only items of programme of certain schools of political thought. Therefore I submit that these clauses must not find a place here at all; and I believe it is for that reason that Dr. Ambedkar while opposing a programme of this kind embodied in an amendment of Prof. K. T. Shah with regard to the panchayat system said that this constitution is only a mechanism whereby any party which has come into power may utilise it and implement its programme according to its political thoughts, principles and programmes. That is quite right. Now I fail to see how this programme can come into the constitution. Either they are fundamental or they are matters of policy. If they are so fundamental that no legislature can interfere with them and have to be placed beyond the purview of the legislature and the executive, they should be placed somewhere else. In my view, however, these are not fundamental but mere State policy. And Dr. Ambedkar was right when he said that this is only a mechanism and any party which comes in tax power might implement its principles and programmes, ideals and ideologies.

Now, Sir, we next have to see whether there is any enforceability. In a Constitution like this, except where discretion is given to the Governor or the Governor-General or some other authority to act in this way or that way, no clause should find a place which cannot be enforced. Supposing a Government which comes into power does not care about these things, neglects them, and ignores them because it has a different mandate from the people. The people have accepted its programme and the guidance that you have provided here is such that it goes against the mandate given to the party by virtue of their having been returned to power : not only that, it neglects them and goes put of the way and does something contrary. What is going to happen? Who is to judge?

It is said by my friend, Mr. Ananthasayanam Ayyangar that the country will judge. The country does not judge these directive principles. It judges the ideals, programmes and the principles of the concerned parties. That is what is called parliamentary democracy. Therefore I submit that not only Article 31 but all the articles that follow — the whole Chapter — has no place. It may be that a certain party thought that unless certain principles are introduced in the Constitution itself by a Constituent Assembly where it has a majority, perhaps in the country political parties might take objection, might canvass support for themselves and against the party at present in power. May be that is the reason. Or perhaps they think these are fundamental rights. One of these reasons must be there. I am sure they cannot be called fundamental rights. So it is the anxiety of the party in power to placate the electorate, saying we have framed a Constitution in which we have made these provisions which are as good, if not better than the principles and programmes of some other party, say the Socialist Party.

So, I submit that these principles are wrong. They do not find a place in, the Constitution and on account of the fact that they cannot be enforced they are useless and they had better be deleted.

Shri K. Hanumanthaiya : Sir, I have to oppose the amendment moved by my Socialist friend, Shri Damodar Swarup Seth and I request the House to give its full support to the Article as it stands. If the Honourable Member who moved amendment No. 863 carefully reads article 30, as well as article 31, clauses (1) and (2), he will surely find that all the ideas he wants to incorporate are contained therein. In fact the previous speaker, Mr. Baig based his opposition to the amendment and to the original clause on this very reason. What he wants to achieve by his amendment is there already—in these two clauses—and therefore, it is completely superfluous to accept this amendment.

As for Mr. Baig, it has become the fashion of his school of thought always to fling a remark at the majority party and I can only say his argument suffers from "Grapes are sour" psychology. Merely because he is in a minority today, he chooses to fling remarks now and then in this fashion. If a particular school of thought persuades the country to be with it, there is nothing sinful or immoral or objectionable in that. The fact that he has not been able to do so is a disqualification in his favour. Instead of admitting this, he cannot go on throwing stones at the majority party in this fashion. The same applies to his argument that this particular section or article wants to bring a particular type of Government into being. It was the case that several centuries back it was a sin to talk of democratic government in this country. It was a question then of a particular king ruling or a particular emperor ruling. The days of one individual or one section of people ruling a country have gone for ever. Now it is a democratic age. It is the people's government. A particular type of Government holds sway over the people and the State at a particular time. There was a time when, individualism and *laissez faire* policy held sway over Governments. That policy has now been given up. It is now a question of socialization. Now the trend of the time is socialism and that holds the field. Many Honourable Members of this House want to go even in advance of the ideals stated in the Articles. But the Drafting Committee has very happily worded the phraseology which does not favour any of these extremes, and at the same time, it has been so wisely worded that even Communist Party can implement its ideology under article 30 and article 31, clauses (1) and (2), if it comes to power. No party is prevented from implementing its ideology under these sections. If anybody reads the wording of the section he will find—as I for one do—it is difficult to say to what word or to what sentence he can take objection. Therefore, Sir, amendment No. 863 is superfluous and the Article as it stands deserves the full support of this House.

Mr. Hussain Imam: Mr. Vice-President, I regret that it is not possible for me to give my full support to Damodar Swarup Seth nor can I admire the Government or the movers, or those who are behind this article at their great fear of bringing forward anything which will smack of socialism. I regret, Sir, that the Government has succeeded neither in placating the capital nor the labour. ...

Shri T. T. Krishnamachari (Madras : General) : What has this House got to do with the Government?

Mr. Hussain Imam: I am stating facts as they exist. The articles are being governed by a party and under party whips amendments are stopped ....

Mr. Vice-President: Order, order.

Shri M. Thirumala Rao (Madras: General): My friend wants to say some facts. Should they not be relevant to the subject under discussion?

Mr. Hussain Imam: Let me have my say. You can then say what you like. Mr. Gautam had a similar amendment.

Shri Mohan Lal Gautam (United Provinces : General) : Was I called on to move it

?

Mr. Hussain Imam: No, Sir.

Mr. Vice-President: Please address the Chair and do not carry on an argument among yourselves; otherwise, I might as well vacate the Chair. I will give him opportunities to criticise the article, but not any particular political party. So far as this House is concerned, there is no political party in existence.

Mr. Hussain Imam: I will follow your advice, Sir. I would mention one fact. The directive principles have laid down a number of liabilities on the future State. What the amendment proposes to do is to supply some assets to meet the liabilities created by the constitution as at is going to be framed. In that way I welcome the suggestion for a mild type of socialisation. The socialisation envisaged in this amendment is not a full-fledged socialisation. For instance, it does not include the nationalisation of land which is at present the active policy of many of the States in India. Therefore to say that the mover wants to make any revolutionary change or fundamental change is wrong. It must be remembered that we are creating liabilities for the future State of India saying that it shall do this, that and the other. Is it wrong to attempt to place some funds also at the disposal of such a State?

Let me remind the House that when the Eighteenth Amendment to the American Constitution was brought forward to introduce Prohibition, the fact that nothing of that nature (about Prohibition) existed in the Constitution of the United States of America did not prevent the Eighteenth Amendment being moved. Similarly, when the Amendment was repealed six years afterwards, there was nothing in the Constitution to stop it. Is there any provision in the British Constitution for nationalising mines, the State Banks and the Iron and Steel industries? There is no provision and yet they are doing all this. If the existing Constitution is not a bar to the Labour Party bringing in socialist changes, I fail to understand how the provision made in this amendment would prevent the Conservative Party from coining to power and not enforce these measures? This is not a justiciable right. It is just a directive principle of State policy. A political party in power can ignore these directive principles and there is no provision anywhere making it obligatory on the party to see that these directive principles are followed. Not even the President of the Union has been authorised to put his foot down when he sees a State government going against the directive principles. I therefore suggest that bringing forward of this amendment will not prevent a certain political party from coming to power and there is nothing wrong. These directive principles, as they have been laid down, are singularly inoperative. They merely say that if the people and the Government are good they will observe these directives. I do not think there is any need for having any ineffectual directives at all. It is only when you provide a law or fix a certain standard that you have to provide for those who are not up to that standard. It is just to prevent transgression. And where is the provision here to prevent this? All the directive principles can be ignored by the State Governments and there is no remedy for it. Even the President of the Union cannot do anything to see that the directive principles are observed. The Central Legislature cannot bring forward any motion for the Government which ignores these directive principles to be dismissed or some alternative being adopted. In the Instrument of Instructions issued to Governors under the Government of India Act there was authority given to the Central Government or Secretary of State to see that those instructions are carried out. But here we have provided nothing like that. At least I do not find anything like that and I shall be obliged if Dr. Ambedkar will point out to us any method by means of which transgressions by the Governments of the States of the directive principles can be proceeded against. There must be some method of intervention by the Legislature. The provincial legislatures cannot intervene because the provincial Governments are responsible Governments. If there happens to be a going back on directive principles, it is not the Ministers alone, but the entire legislature that would be responsible for it. So, there must be some superior authority to examine whether the directive principles are followed or not. Unless some provision is made on these lines it will only go to prove what one Honourable Member suggested, *viz.*, that these principles have been brought in just to silence criticism and to have a good sign-board that we have good intentions, without having any intention of following those directions. I therefore suggest that the House should examine the amendments rather more dispassionately and, if there is anything good in these amendments, because of the fact that they have been brought forward by a Member who is not *persona grata* with the majority, they should not be rejected. We are framing a Constitution and in that connection I appeal to the House to be more generous, more conciliatory and more sympathetic and accept the things as they are and not think that by means of these amendments some party will gain advantage. It is not so. It is very necessary that some kind of provision for socialisation should be there. I say this though I do not go as far as Shri Damodar Swarup. But let us give some indication of our trend of thought in our Constitution. Take the case in question of the nationalisation of coal mines accepted by the British Government long ago as an ultimate goal. The Committee which reported on this question in 1935 accepted it as the ultimate goal, though there was then a Conservative Government in power in England. I suggest that these amendments should be dispassionately considered and if there is anything good in them it should be accepted by the Mover of the draft Constitution.

Shri Mahavir Tyagi (United Provinces: General): Sir, from the point of view of making a Constitution for our country, this Article is of great importance. It contains at least a fourth part of the aim which we have in view. For, in the Preamble we say that we are drawing up this Constitution with the aim of securing Justice, Equality and Fraternity. Sir, this clause is the only clause which directly deals with justice and justice has been defined here as justice, social, economic and political. In fact, Sir, it accommodates all that we desire. It accommodates all the revolutionary slogans in a particular form. It is social and economic justice that is demanded by the most radical of the radicals of the world. This clause is in fact the pivotal point in the Constitution, but still I am inclined to criticise its language. The clause from the language point of view is not strong; it is very halting. Our aim in framing this Constitution is to secure social, economic and political justice, but in the clause as it is worded, unfortunately there are so many halting sub-clauses. It says, "The State shall strive to promote". I think the amendment moved by my honourable friend, Mr. Naziruddin Ahmad, makes the clause read better.

Shri Roiuni Kumar Chaudhari (Assam: General) : On a point of information, Sir, as the honourable member is supporting this clause, may I ask him kindly to explain the word "inform" used in this clause.

Shri Maharir Tyagi: "Inform" means animate the institutions of national life. "Inform" is the most idiomatic word which is used in that clause. It adds beauty to the clause. "Inform" means that in the making of the institutions justice should be the foundation. You should not take the word "inform" in the ordinary meaning of the

Information Department.

Sir, this clause is very halting. I appeal to Dr. Ambedkar and his other colleagues to accommodate the wishes of the House on all sides. When we want to put something real in the Constitution, why should these lawyers come between our wishes and the Constitution? They should make it absolutely plain that the purpose of the Constitution is to secure justice, social, political and economic. So, Sir, why should they introduce the words "strive to"? Suppose a man wants a recommendation from me and I say, "I will try", it means that I have not given a promise. Why not say, "The State shall promote"?

Then it goes on to say, "The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, etc." Why introduce so many halting phrases in this clause? Why say, "as it may"? If a government cannot do it, we do not want that government. If a State cannot do it, of what use is that State to us? The function of a State is taken to be only the maintenance of law and order by means of the army and the police. We do not want a police state. In fact, all order and tranquillity which reigns over mankind is not the effect of any government in the world. Its origin lies in the principles of society. Order would remain intact, even if the formality of having Governments had been done away with. The desire to associate is an instinctive feature of man, and so the credit for the peace and tranquillity of the world goes to the individuals who make up the society. The first and the foremost duty of a Government is to promote the welfare of the people. That is why governments are there. If a Government cannot do this, they should have the honesty to move out and give place to others. Sir, it must be made incumbent on the State to promote the welfare of the people by securing justice, social, economic and political, without introducing the words "as it may". I appeal to Dr. Ambedkar to listen to the advice of those who have come here from the people and also of those like me who have no legal knowledge gained in law colleges, in England or elsewhere—unfortunately my education has been by experience of the people—I therefore plead and request the House to accommodate the wishes of the people. I hope the wordings of this clause will be changed by my lawyer friends with a view to make it incumbent on the Government to promote the welfare of the people. I am not a man of words; I am a man of ideas and action. I can only give ideas. Dr. Ambedkar is a man of words and therefore he may be able to devise suitable words to convey the idea. This clause must be made very strong and unequivocal. It should be made the first and foremost duty of the Government to promote the welfare of the people by securing and protecting a social order in which justice, social, economic and political shall inform all our institutions. If this suggestion of mine is accepted, the most radical of radicals will be accommodated.

Shri Mohanlal Gautam: Is the discussion going to be closed now ?

Mr. Vice-President: I have given a reasonable time for discussion, both for and against the amendments.

Shri Mohanlal Gautam: Will you please permit me to speak ?

Mr. Vice-President: I maintain that we have had a reasonable amount of time—merely an hour—for discussion and Dr. Ambedkar should now address the House.

Shri Mohanlal Gautam: My submission is that I gave notice of an amendment. It is only a chance that Seth Damodar Swarup's amendment was placed at the top and mine below it and therefore, you did not think it desirable or necessary for me to move it. I stood twice or thrice and I am unfortunate that I was not given a chance to speak on my amendment.

Mr. Vice-President: I think the amendment was discussed at full length and I do not think there is any use moving it now.

Shri T. T. Krishnamachari: Certain observation have been made by a member in regard to the manner the Congressmen in this House are acting I think, Sir, it is the duty of the Congressmen to repudiate this statement. May I ask you, Sir, to give us an opportunity of repudiating those charges which have been levelled against us ?

Mr. Vice-President: I think we had better close the discussion, here.

Shrimati Renuka Ray (West Bengal: General) : I think this is very unfair.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, I see that there is a great deal of misunderstanding as to the real provisions in the Constitution in the minds of those members of the House who are interested in this kind of directive principles. It is quite possible that the misunderstanding or rather inadequate understanding is due to the fact that I myself in my opening speech in support of the motion that I made, did not refer to this aspect of the question. That was because, not that I did not wish to place this matter before the House in a clear-cut fashion, but my speech had already become so large that I did not venture to make it more tiresome than I had already done; but I think it is desirable that I should take a few minutes of the House in order to explain what I regard as the fundamental position taken in the Constitution. As I stated, our Constitution as a piece of mechanism lays down what is called parliamentary democracy. By parliamentary democracy we mean 'one man, one vote'. We also mean that every Government shall be on the anvil, both in its daily affairs and also at the end of a certain period when the voters and the electorate will be given an opportunity to assess the work done by the Government. The reason why we have established in this Constitution a political democracy is because we do not want to install by any means whatsoever a perpetual dictatorship of any particular body of people. While we have established political democracy, it is also the desire that we should lay down as our ideal economic democracy. We do not want merely to lay down a mechanism to enable people to come and capture power. The Constitution also wishes to lay down an ideal before those who would be forming the Government. That idea is economic democracy, whereby, so far as I am concerned, I understand to mean, 'one man, one vote'. The question is : Have we got any fixed idea as to how we should bring about economic democracy ? There are various ways in which people believe that economic democracy can be brought about; there are those who believe in individualism as the best form of economic democracy; there are those who believe in having a socialistic state as the best form of economic democracy; there are those who believe in the communistic idea as the most perfect form of economic democracy.

Now, having regard to the fact that there are various ways by which economic democracy may be brought about, we have deliberately introduced in the language that we have used, in the directive principles, something which is not fixed or rigid.

We have left enough room for people of different ways of thinking, with regard to the reaching of the ideal of economic democracy, to strive in their own way, to persuade the electorate that it is the best way of reaching economic democracy, the fullest opportunity to act in the way in which they want to act.

Sir, that is the reason why the language of the articles in Part IV is left in the manner in which this Drafting Committee thought it best to leave it. It is no use giving a fixed, rigid form to something which is not rigid, which is fundamentally changing and must, having regard to the circumstances and the times, keep on changing. It is, therefore, no use saying that the directive principles have no value. In my judgment, the directive principles have a great value, for they lay down that our ideal is economic democracy. Because we did not want merely a parliamentary form of Government to be instituted through the various mechanisms provided in the Constitution, without any direction as to what our economic ideal, as to what our social order ought to be, we deliberately included the Directive Principles in our Constitution. I think, if the friends who are agitated over this question bear in mind what I have said just now that our object in framing this Constitution is really two fold : (i) to lay down the form of political democracy, and (ii) to lay down that our ideal is economic democracy and also to prescribe that every Government whatever, it is in power, shall strive to bring about economic democracy, much of the misunderstanding under which most members are labouring will disappear.

My friend Mr. Tyagi made an appeal to me to remove the word 'strive', and phrases like that I think he has misunderstood why we have used the 'strive'. The word 'strive' which occurs in the Draft Constitution, in judgment, is very important. We have used it because our intention is even when there are circumstances which prevent the Government, or which stand in the way of the Government giving effect to these Directive Principles, they shall, even under hard and unpropitious circumstances, always strive in the fulfillment of these Directives. That is why we have used the word 'strive'. Otherwise, it would be open for any Government to say that the circumstances are so bad, that the finances are so inadequate that we cannot even make an effort in the direction in which the Constitution asks us to go. I think my friend Mr. Tyagi will see that the word 'strive' in this context is of great importance and it would be very wrong to delete it.

As to the rest of the amendments, I am afraid I have to oppose them.

Mr. Vice-President: Only two amendments have been moved; I shall put them to vote. The first is amendment No. 863 by Shri Damodar Swarup Seth.

The question is:

"That for article 30, the following be substituted:—

'30. The State shall endeavour to promote the welfare, prosperity and progress of the people by establishing and maintaining democratic socialist order and for the purpose the shall direct its policy towards securing:—

(a) the transfer to public ownership important means of communication, credit and exchange, mineral resources and the resources of natural power and such other large economic enterprise as are matured for socialisation;

(b) the municipalisation of public utilities;

(c) the encouragement of the organisation of agriculture, credit and industries v& cooperative basis."

The amendment was negatived.

Shri H. V. Kamath: I am not pressing my amendment, Sir.

Mr. Vice-President: The next one is amendment No. 867 by Mr. Naziruddin Ahmad.

The question is :—

"That in article 30, the words 'strive to' be omitted."

The amendment was negatived.

Shri L. Krishna swami Bharathi (Madras: General): Sir, Mr. Kamath must have the leave of the House to withdraw his amendment.

Mr. Hussain Imam: The Mover has accepted the amendment!

Mr. Vice-President: Does the House give him leave to withdraw?

Several Honourable Members: Yes.

Shri L. Krishnaswami Bharathi: I object to leave being granted.

The Honourable Dr. B. R. Ambeddkar: If he wants to withdraw, I have no objection; let him withdraw.

Shri H. V. Kamath: There seems to be some conflict in the House over this. One Honourable Member thinks that Dr. Ambedkear has accepted it. 1 did not know that he had accepted it. If he has accepted it, then, no question of withdrawal arises.

Mr. Vice-President: Do you wish to withdraw ?

Shri H. V. Kamath: Yes.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President: The question before the House is:

"That Article 30 stand part of the Constitution."

The motion was adopted.

Article 30 was added to the Constitution.

Shri Mahavir Tyagi: Does this clause pass with the word 'the' ?

Mr. Vice-President: It has been passed as it stands now.

New Article 30-A

Kazi Syed Karimuddin: Mr. Vice-President, Sir, I move:

"That after article 30, the following new article be inserted :—

'30-A. The State shall strive to secure prohibition of manufacture, sale or transportation or consumption of intoxicating liquors for beverage purposes."

I need not give a very long lecture in this respect. In the American Constitution this has been described as a Fundamental Right. I will read Amendment 21 of the American Constitution :

"The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

Sir, it is a fact known to everybody that Mahatma Gandhi was preaching all his life that the use of liquor and the manufacture of liquor should be prohibited in India; and in fact in keeping with that policy the Provincial Governments in India have been framing laws and are applying those laws. I am really surprised that in the Constitution which is drafted, there is no mention about the prohibition or manufacture or sale of liquors in India. We know that thousands of families have been ruined and are miserable on account of this evil. In the directive principles of the State, which according to Dr. Ambedkar have no sanction, they ought to have been embodied because the State would have tried their utmost to secure prohibition of liquors. The rejection of this additional clause will be the rejection of the wishes of Mahatma Gandhi.

Mr. Vice-President: Amendment No. 873—not moved. Any Member who wishes to speak on amendment 872 may please do so now.

Prof. Shibban Lal Saksena: Sir, my friend Kazi Karimuddin Sahib has raised a very important issue. Although I could not agree that a separate clause for this is necessary here, but I do wish that in clause 31 there should be a sub-clause incorporating that the State Policy is prohibition. In fact the Congress from the very beginning since 1920 has placed prohibition as one of the chief planks of its struggle. Many of us have gone to jail for picketing liquor shops and toddy shops and I do not think it is proper that in this Constitution when we are laying down the Directive Principles of State policy we should not make mention of prohibition. Of course there is a general clause in part (vi) of 31 which says :

"That childhood and youth are protected against exploitation and against moral and material abandonment"

Of course its meaning is almost the same but that is far too general and I think that prohibition is something so important that this should be mentioned as one of the sub-clauses in article 31. I hope on this matter it is not necessary to give long arguments as it is well-known that many of our Governments have already declared several districts dry. Madras has the honour of declaring first the whole of the province dry. We do not wish to live by the excise revenue which is in fact the revenue got by the ruin of so many labour class families. I therefore think that in our country, when all the religions are unanimous about prohibition, this amendment of Kazi Karimuddin should be mentioned somewhere in Article 31. Because this is something on which the entire House is unanimous, I hope Dr. Ambedkar will see to its inclusion.

Seth Govind Das (C. P. & Berar) : Sir, I do not wish to press Honourable Dr. Ambedkar to accept this amendment but at the same time I entirely agree with my honourable friend, Prof. Saksena that we are pledged to the policy of prohibition. Everybody knows that in spite of the reduction in revenue in various provinces we follow this policy. It is true that up till now complete prohibition is not there in every province, yet an effort is being lined to bring about complete prohibition not only in the provinces but in the Centrally administered areas also. Now, Sir, it would really not be in accordance with our traditions that when we are making a new Constitution for our Inland, no mention is made about prohibition. I hope that the Honourable Dr. Ambedkar and the Drafting Committee will find out, if this amendment is not accepted, a suitable place in the constitution where a reference is made to prohibition and I think that every community of this land, Hindus, Muslims, Christians, Sikhs, Parsees and others will agree that the principle of prohibition must be accepted in this country and our Constitution should say something with respect to prohibition. Though, Sir, I am not in a position to support the amendment I would request the Honourable Dr. Ambedkar to make the policy in this respect clear.

Mr. Mohamed Ismail Sahib: Sir, I have got the honour to support the amendment that is placed before the House. Sir, you know with regard to the principle underlying this amendment, there has not been and there is not any difference of opinion amongst any section of people. Almost all sections political or otherwise, are agreed upon this principle. Therefore, Sir, one would have expected the Government to have made this principle the subject-matter of even a mandatory and statutory article. It is really a very mild amendment to say that this principle on which there is no difference of opinion in the country should be made at least part of this Part, *viz.* of Directive Principles. I therefore, Sir, earnestly request the Honourable the Mover to accept this amendment; though he may not accept it as part of article 30, he may, as was suggested by one or two of my friends, make it part of article 31. I would request him once again to make prohibition find a place in the Constitution because there is absolutely—I may say almost absolutely—no difference of opinion in the matter. Whatever may be the loss in the matter of revenue, people are agreed that the Government must find other ways and means of revenue and should enforce this principle which the Congress Party as well as the other parties had been advocating for decades.

Shri Biswanath Das: Sir, I am very sorry I have to oppose my honourable friend, the mover of the amendment: my grounds are there. We have been—I mean the nationalist sections of the country have been—wedded to the principle of entire prohibition but unfortunately my honourable friend wants and proposes as a Directive part of the Constitution that we should prohibit only the manufacture and consumption of liquor. What becomes of opium ? Opium is the worst evil that is prevailing in the country. Sir, China and the eastern countries are in their present position because of opium-eating. Therefore, I for myself would not be a party to any prohibition if it does not include the prohibition and manufacture of opium for purposes of consumption.

Sir, I am not in favour of having a reform of this magnitude to be put in the directive principles in the Constitution. I consider the Directive Principles of the Fundamental Rights in the Constitution as the Sermon on the Mount. Shri Bhagavat has stated that there is nothing like small and great but fact remains that there are small and great. Therefore nothing will be gained by putting all and sundry in the Fundamental Rights. Under these circumstances I feel that any additions to what we have already is going to serve no useful purpose. We are wedded to democracy. We are going to have a national government. A National Government even today led and guided by not less persons than Pandit Jawaharlal Nehru and Sardar Patel will not have their way if they do not carry the people with them. That being the position, I do not see why the question of prohibition should come in at all here as a Sermon on the Mount. Sir, despite the difficulties, despite the financial stringencies, despite various limitations, the provincial Governments in Madras and other Provinces have already adumbrated the reform. I plead patience with friends. For myself I want an all-India policy in which the provinces and the States should go on together fighting against this mighty demon of drink and opium consumption.

Under these circumstances I do not see how any useful purpose could be served by only putting this hi the framework of the Constitution as a Directive Principle. Directive Principles are of course useful and they will serve as a beacon light to the incoming ministries. They will serve as a sort of test for the work of the Ministry after the term of office of five or three years. As test, they remain for ever, but that does not bring us anywhere near our goal if we include this in the Constitution and keep it as a Directive Principle. Under the circumstances I am strongly opposed to this addition which will mean nothing more than another Sermon on the Mount. Sir, I want a practical step to be taken and the practical step is being taken, despite difficulties, and I nave no hesitation in believing that the installation of a national Government of India, guided and led by a Ministry which is responsible to the Honourable Members of the Constituent Assembly or the National Parliament, will have no other option than to take up this great reform on hand without any delay. Sir, despite difficulties, even the Central Government, ridiculous though it looks, is thinking of having prohibition in the province of Delhi. I state all this merely to show the anxiety of the Government, I again appeal to the Honourable the Mover that nothing can be gained by appealing to sentiments in the name of Mahatma Gandhi. We must look to the practical aspect of the question, and nothing will be served by putting this in the Directive Principles. Under these circumstances, I stand opposed to the amendment.

Shri Mahavir Tyagi: Sir, I have a similar amendment, and that is No. 999 but a practical joke has been played here and my amendment has been completely reversed by the omission of two words. I do not know where and at what time this clerical mistake has occurred or when. My amendment reads thus—

Mr. Vlce-President: But I cannot permit you to move your amendment now.

Shri Mahavir Tyagi: No, Sir, I am only quoting it. It reads:

"That at the end of article 38, the following words be inserted:—

'and shall endeavour by means of both temperance and prohibition the use by mouth of liquor and other intoxicating drugs except on medical grounds'."

The words should be "shall endeavour to stop by means of both temperance and prohibition. .... etc." I am reminded of a couplet in Urdu which with your permission I will repeat—

Ilahi hamse mai khawaron ko

woh dunya ata hoti;

Jahan hukman piya Kerte,

na pite to saza hoti.

Well, Sir, on this occasion, I have come to oppose this amendment, not because I disagree with its contents but because he has suggested it a bit too early. I feel that the amendment of Syed Karimuddin is one to which we can have the support of an overwhelming majority of this Assembly. But my difficulty is that this is not the proper place where this amendment should come up. My friend wants it to come in as article 30-A. My suggestion is that it should come below article 31 where all the directives have been enumerated; that is the proper place for his amendment.

That there must be prohibition is admitted to by all. I submit that Gandhiji's foremost plank of constructive programme was prohibition *(cheers)*, and we all stand pledged to this programme; we had pledged in front of Gandhiji. We have repeated that pledge tens of tunes every year on Independence Days and now we cannot falsify that pledge before the nation. The time has now come when we must implement our programme of prohibition. We must bring it in the Constitution. I am in full agreement with the spirit of the amendment, but it is misplaced. I must submit that the Constitution as it is, and I have repeated this many times before, is devoid of Gandhiji's ideas. It is very poor from that point of view. We have not accommodated him in the least. I had hoped that even if he be dead, we would keep his spirit alive, but he stands dead even in this Constitution. Without his spirit, I submit that the Constitution is dead. We had given our pledges to stand by his programme, and, we had done so in the most unambiguous and unequivocal manner; Sir, on such questions we Congressmen cannot compromise, whatever may be the consequences. This prohibition has been in his programme. It has been also in our Election Manifesto, on which all members of the provincial Assemblies were elected, and it is through those elected bodies in the provinces that we have been sent to this Assembly, indirectly. So basically the whole of our electorate has voted for the programme of prohibition, and if now we do not bring it in here, we shall be betraying the wishes and the trust of the whole electorate, and the people on whose behalf we say, rightly or wrongly, that we are making this Constitution. Let us not forget that we are using the name of the people. If we do not appreciate their desires and do not accommodate them in this Constitution, we shall have no moral justification to use the name of the people. If we cannot accommodate even the idea of prohibition in our Constitution, then what else have we been sent here for? We have been talking of revolutions, and about all sorts of progress. But if we cannot have even this small reform in our Constitution; the book will not be even worth touching with a pair of tongs. I therefore submit that if the Draft Constitution does not contain prohibition, it does not contain Gandhiji, because where there is liquor, Gandhiji cannot be, and where Gandhiji is, liquor cannot be. That is the position. Therefore, I submit that this amendment may be accommodated at some proper place in the Constitution. I support the spirit of the amendment, but only oppose it because it is proposed to be put in a place which is not the proper one to incorporate it. With these words I oppose not the spirit, but the place where my friend wants his amendment to be inserted.

Kazi Syed Karimuddin: If Dr. Ambedkar accepts the spirit of my amendment and is prepared to accommodate it in article 31, I will have no objection in withdrawing. it.

B. Pocker Sahib Bahadur: Sir, I heartily support this amendment and in doing so I do not want to take up the time of the House except to draw its attention to one fact. One of the previous speakers mentioned financial difficulties which will arise out of prohibition. I only want to draw the attention of the House to the fact that prohibition has been accepted by the Government of Madras, and by the Madras legislature and they have worked it out wonderfully well. It is working wonderfully well in spite of financial difficulties,, and these difficulties are being overcome. Therefore, I would say financial difficulties should not stand in our way. As was pointed out by the previous speaker, if we have got any real reverence for the views of Gandhiji, we ought to incorporate prohibition at least in the directive principles, if not in the mandatory provisions of the Fundamental Rights. It is not at all a difficult thing to include it in the chapter dealing with the directive principles.

After all, it only says, Government shall strive to achieve what is stated there. Therefore I appeal to the House that the Members here should not allow it to be said of them that soon after Gandhiji's death, his wishes and views were also buried nine fathoms deep.

Mr. Vice-President: The House stands adjourned till Monday the 22nd November, 10 a.m.

The Assembly then adjourned till Ten of the dock on Monday, the 22nd November, 1948.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VII

Monday, the 22nd November 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten minutes past Ten of the Clock, Mr. Vice-President, (Dr. H. C. Mookherjee), in the Chair.

DRAFT CONSTITUTION- *contd.*

Article 30-A (contd.)

Mr. Vice-President (Dr. H. C. Mookherjee): Before we commence the proceedings of today, I beg to apologise to the House for my delay which I may add is not due to any fault of my own.

We shall now resume discussion on new Article 30-A. Does any Member want to speak on amendment No. 872?

Shri Mahavir Tyagi (United Provinces: General): Sir, the other day I had spoken at length on this amendment, and I had put in a request with the Mover of this amendment to kindly agree to postpone the discussion on this question just now and have it when my amendment No. 999 comes. I hope, if the honourable Mover agrees, then it will be better that you be pleased to postpone discussion just now, and take it up when the proper occasion comes.

Mr. Aziz Ahmad Khan (United Provinces Muslim): Sir, this amendment was proposed by Mr. Karimuddin who is not present here today but at the same time the amendment was sent by me and him both, and he has specifically authorized me to submit that in case there is an agreement or an undertaking given by the Honourable the Law Member that he is prepared to incorporate the principle of it anywhere in the Constitution, then the amendment may be withdrawn; and I agree to it. Therefore, I am quite prepared to submit to your decision that consideration of the amendment may be delayed till we come to article 38.

The Honourable Dr. B. R. Ambedkar: (Bombay: General): Sir, I have not followed exactly what it is, but if it is a matter which relates to prohibition............

Mr. Vice-President: Yes.

The Honourable Dr. B. R. Ambedkar: Then, it has been agreed between myself and Mr. Tyagi that he will move an amendment to Article 38, and I propose to accept his amendment. So, this matter may be postponed until we come to the consideration of Article 38.

Mr. Vice-President: Then we shall pass on to the next amendment No. 873.

Shri Basanta Kumar Das (West Bengal: General): Sir, I am not moving it.

Mr. Vice-President: The next amendment is No. 874.

Shri Raj. Bahadur (United State of Matsya): Mr. Vice-President, Sir, I tabled this amendment because it appeared to me that the Draft Constitution contained no provisions to secure the most elementary justice or the barest chance of survival as decent and self-respecting citizens of the Indian Union, to the people of those territories in our country which are at present under the control and possession of feudal lords, the jagirdars. I want to invite the attention of this Assembly to the unfortunate circumstances - circumstances which provoke sympathy and pity at one and the same time - under which these people are living. But before I do that I should read my amendment. The amendment runs as follows:

"That after article 30, the following new article 30-A be added:

'30-A. The State shall not recognise feudalism in any shape or form and no person shall be entitled within the territory of India to any special rights or interests on the basis of property falling in the category of Jagirs or Muafis'."

Sometimes the position of these jagirdars and these feudale states is confused with that of the zamindars and zamindaries. I submit that the two are essentially different in nature, conception and origin. In fact there is no resemblance or similarity between the two. The jagirdars find their origin in past history. They descend from certain ruling families in the States. In other words they are the scions of these families. They enjoy the right to hold properties in their jagirs and estates without paying anything absolutely, or if at all very little, to the State or Government to which they owe their origin. They enjoy independent judicial powers. They have got the right to levy even customs duty in some cases. In some other cases they have got the right to have a separate Police force. They also levy sales tax. Their succession always operates on the principle of primogeniture. As such, *vis-à-vis* the State to which they belong or *vis-à-vis* the Central Government, their position is one of quasi-sovereignty. I should therefore submit that there is nothing common between the Zamindars and feudalists. *Vis-à-vis* their people, their rights and authority are almost unlimited. They have the right to levy extortionate rates of rents from the kisans (tenants) under them. It is common knowledge that they enforce begar, that is, forced labour, not only for ordinary purposes of agriculture but even for menial and humiliating jobs. Another thing that constitutes an insult to humanity itself is the imposition of a duty known as "Lagbag" on marriage or other occasions as also the way in which they impose certain humiliating social restrictions as for example in some cases these feudal lords do not allow their ryots and kisans to ride horses in their presence. If there is a marriage party, the bridegroom cannot ride a horse. The womenfolk of their ryots are not allowed to wear even silver trinkets or ornaments. In some cases, this goes to the extent of refusal of the right to hold an umbrella even. I therefore invite the attention of the House that if in a free India such conditions exist and are tolerated then this would mean clearly a denial of democracy and liberty. It is why when we address these people and tell them that "Swaraj has come", they look blankly at our faces. They refuse to believe that Swaraj has really come and we find ourselves in a very awkward position. It is true that now with the democratisation of the States, we have got popular Ministers functioning in the States, but in some of the States where these jagirs or feudal estates exist there are some sort of mixed Governments and Ministries, and our popular Ministers are unable to bring any succour or relief to this hard-pressed and oppressed section of the people.

If we consider the problem from another point of view, we can also see that in our Constitution, there are three classes of States or "units" - firstly, Governor's provinces, secondly, Chief Commissioners' provinces, thirdly, the acceding States. But it is obvious that these feudal estates enjoying a sort of quasi sovereignty over their people, constitute a class by themselves. It should have been therefore meet and proper that there should have been something in the Constitution to provide for the securing of social justice, of liberty and democratic freedom to the people in these feudal estates. Unfortunately it is not there. The simple question that arises from the amendment I have tabled is whether this Constitution of ours should or should not contain something in order to ensure even an elementary freedom for these people. As far as the Draft Constitution is concerned, we have been assured that the position of the States, in course of time or may be even before we finish the consideration of the Draft Constitution, shall be brought on a par and equality with the rest of the units of the Indian union. But at the present time there is definitely a difference in the Draft Constitution between the treatment proposed for the present States Unions or States on the one hand and the provinces on the other. This goes to the extent that the people of the States cannot come in the defence of their fundamental rights even, before the Supreme Court. If you want to appeal regarding certain matters there is a special procedure provided for it and that procedure would make it very difficult for us to get even our rights vindicated from the Supreme Court. When I commend this question to the House, I presume that the House will earnestly consider it. I am not very serious to move my amendment. What I am very serious about is that when I go back to my constituency I may face the people with an easy conscience. I want to know in case they ask me, "What have you done for us who are so much hard-pressed under the thumb of these feudal lords?" what answer I shall give to them. I want this answer from this Assembly. It is not my purpose to delay the proper consideration of the Draft Constitution by any frivolous or superfluous amendments, but I submit that the House should come to the relief and succour of these hard-pressed people and our Constitution should contain adequate provisions to secure this.

Mr. Vice-President: I have not been able to make out whether this amendment has been formally moved.

Shri Raj Bahadur: I have not formally moved it. I have simply had my say on it, to invoke the attention of the House on this question.

Shri H. V. Kamath (C. P. & Berar: General): Mr. Vice-President, Sir, it is very unfortunate that several amendments dealing with this subject have been scattered pell-mell in this list of amendments. It would have been much better if these amendments relating to village panchayats had been taken up all together and had been placed in the list also in the same order. Unfortunately, however, that has not been so, and I am constrained to move the amendment as it appears on the Order Paper, because by not moving it I do not want the impression to be created that I have resiled from the stand which I took in the course of the debate on Dr. Ambedkar's motion for consideration of the Draft Constitution. I am very happy to see that my feeble voice was reinforced by the powerful support of my veteran and elder colleagues in this House and I am glad that several amendments on this subject have appeared. If you are to disposed, Sir, I would formally move it now and request you to hold it over for consideration till the other amendments come up for discussion or an agreed amendment comes up. Whatever the case may be and whichever amendment on this subject is accepted by the House, the other amendments will be withdrawn in favour of that, and mine also will be withdrawn later on; but as matters stand, I have no other go but to move it before the House. I do not want to traverse the ground which I covered in the course of my speech on Dr. Ambedkar's motion. I would only express the hope that where the type of capitalist, parliamentary democracy typified by Europe and America and the centralised socialism typified by the Soviet Union have failed to bring peace, happiness and prosperity to mankind, we in India might be able to set up a new political and economic pattern, and that we would be able to realise the vision of Mahatma Gandhi's Panchayat Raj and, through this system of decentralised socialism, we will lead mankind and the world to the goal of peace and happiness.

I, therefore, with your leave formally move this amendment and make a personal request to you to hold this over till such time as the other amendment to this Article are ready for discussion. I shall read my amendment.

"That after article 30, the following new article be inserted:

'30-A. The State shall endeavour to promote the healthy development of Gram Panchayats with a view to ultimately constituting them as basic units of administration'."

Mr. Vice-President: Does Dr. Ambedkar wish to say anything on this amendment?

The Honourable Dr. B. R. Ambedkar: I move that this matter do stand over.

Mr. Vice-President: I find that there is an amendment, to add a new article 31-A, numbered 927 in the list, standing in the name of Shri K. Santhanam. This, as well as that amendment may be considered together. Is it the wish of the House that this may be done?

Honourable Members: Yes.

Article 31.

Mr. Vice-President: We shall then pass on to article31.

An Honourable Member: Article 30 has not yet been put to the House.

Mr. Vice-President: It has been put and adopted.

Mr. Vice-President: The House will now take up article 31, for discussion.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I beg to move:

"That in clause (i) of article 31, the words 'men and women equally' be omitted."

The clause in question is to this effect, that "the citizens, men and women equally, have an adequate means of livelihood." I submit, Sir, that the words 'men and women equally' are unnecessary and redundant. In fact with the acceptance of this amendment, the clause would run thus: "that the citizens have the right to an adequate means of livelihood." I submit, Sir, that the word 'citizen' has been defined in article 5, clause (a). That definition is in general terms and I presume includes the feminine. The masculine, as it is well known, embraces the feminine. In the circumstances, as we have defined,...............

Pandit Lakshmi Kanta Maitra (West Bengal: General): Did the Honourable Member say, "masculine" means "feminine"?

Mr. Naziruddin Ahmad: 'Masculine' includes 'feminine' in interpretation. 'Every person' mentioned in article 5(a) means certainly feminine as well as masculine. Therefore, as the word 'citizen' has been precisely defined and that defined expression 'citizen' has been used in this article, I think the addition of the words "men and women equally" is unnecessary. If we are to make it clear that any law shall apply to men and women equally and if we are forced to declare it everywhere, then this expression has got to be used unnecessarily in many places. Although I agree with the principle that all citizens shall have certain rights without distinction of caste or creed, sex or colour, these words need not be there.

The Honourable Dr. B. R. Ambedkar: I oppose the amendment, Sir.

Shri Mahavir Tyagi: Sir, I have a suggestion to make. There are a number of amendments suggesting improvement in language or change in words. They do not propose any change of the spirit or the meaning of the article concerned. That being so, may I suggest that they may be collected together and sent to a committee which you may appoint to consider and dispose them of? If this is done much of the time of the House can be saved for the consideration of vital and important amendments.

Mr. Vice-President: I am quite willing to fall in with the suggestion, if that is the wish of the House. Probably we shall consider this suggestion later, after two or three days.

Shri Lokanath Misra (Orissa: General): Does it mean an adjournment of the consideration of these motions?

Mr. Vice-President: No. Why should we adjourn it? We can take a vote on it at once and come to a decision.

Prof. K. T. Shah (Bihar: General): Mr. Vice-President, Sir, I beg to move: -

"That in clause (i) of article 31, for the words 'that the citizens, men and women equally, have the right to an adequate' the words 'every citizen has the right to an adequate' be substituted."

Sir, in commending this motion to the House, I would like to be understood in the first place that this is not merely an attempt to improve upon language. I do not profess to be an authority on the English language, and much less on the mysteries of technical draftsmanship as is implied in this language. Mine is only a commonsense view of this matter. The term "the citizens", as it is used in this clause, is so collective that I am afraid its distributive sense is apt to be lost sight of. I am, therefore, proposing to substitute for the words "the citizens" the words "every citizen" so that each and every member of the society shall have this right to an adequate standard of living. The distributive sense is brought out much better by my amendment, this very language is used in another article in this Chapter itself later on when they are speaking of the right to primary education. I am therefore suggesting no innovation which is not authorised by the draftsman's own terminology.

It is, of course, beyond me to say why in one article, in one and the same Chapter, they use the collective expression "the citizens", while in another article in the same Chapter they use the words "every citizen" and in a third again some different form. This, Sir, is the reason why, not understanding the distinction that may have been in the mind of the draftsman for using a variety of expressions to convey perhaps the same meaning, at least to a commonsense man, I am proposing this amendment. If the intention is that the words "the citizens" are used in the collective sense, then I submit that would be an offence more of substance than I am at present inclined to believe while reading this article. For taking the term collectively it can at best express a vague hope for the happiness of the average citizen. Now, the law of averages is a very misleading law, and will give you a sort of satisfaction for which in truth there can be no basis. I have no desire to convert this debate into any kind of light hearted exhibition of one's capacity to entertain the House; but I cannot help bringing here to the notice of the House the mischief that the vagaries of the mere mechanical statistician can reduce the law of averages, and give a result which is totally opposed to fact. In illustration, may I say that I have heard the story of a women's hostel having to be reported upon, when the trustees of the hostel came to know that there were ten girls, and one of them had apparently misconducted herself. There was some trouble and a statistical authority was called in to investigate and report on this hostel. He examined the inmates and made the famous report saying that everyone of the inmates of the hostel was ninety per cent virgin and ten percent pregnant. In this statement he was simply applying the law of the average.

I do not know whether it is fully appreciated that this kind of perpetration is within the power of the expert to achieve; and as I do not wish the Constitution to lead to this kind of expert technical perfection, I wish to substitute the words "every citizen" for the words "the citizens", which will leave no room for doubt in the matter.

Another reason why I am moving this amendment for dropping the words "men and women equally" is that it smacks too much in my opinion, of patronising by men over women. There is no reason for man to believe that he is even an equal to woman, let alone superior. According to that view which I have always entertained that man is a somewhat lower animal as compared to woman, I feel that this exhibition of patronage by man over woman, as if we were conferring any special right, ought to be expunged from the Constitution.

Citizens are citizens irrespective of sex, age or creed; and that being one of the fundamental propositions accepted by the Constitution, I see no reason why we should say "men and women, equally" as if we were pleased to grant equal rights to men and women, rights moreover which are only directives, and therefore not necessarily to be implemented immediately. For these reasons, I suggest that this amendment ought to be taken, not merely as a verbal amendment, but one of substance, and I trust that those responsible for moving this Constitution before the House will accept it.

Mr. Vice-President: I understand that even though amendment No. 884 is to be negatived, I must give an opportunity to Mr. Naziruddin Ahmad to speak on it.

Mr. Naziruddin Ahmad: Not moving it, Sir.

Mr. Vice-President: Then 885, Professor K. T. Shah.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That for clause (ii) of article 31, the following be substituted:

'(ii) that the ownership, control and management of the natural resources of the country in the shape of mines and mineral wealth, forests, rivers and flowing waters as well as in the shape of the seas along the coast of the country shall be vested in and belong to the country collectively and shall be exploited and developed on behalf of the community by the State as represented by the Central or Provincial Governments or local governing authority or statutory corporation as may be provided for in each case by Act of Parliament';"

Sir, the original clause for which I propose this one in substitution stands as follows: -

"(ii) that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good;"

If I may venture to say so, Sir, the clause, as it stands can lend itself to any interpretation; and, with the background on which we have been working, with the traditions under which the administrative machinery is operating, and the allegiance which vested interests command in this House, I am afraid that, if this clause is allowed to stand as it is, instead of serving any purpose, it will make the proper development of the country or the just redistribution of its wealth, or bringing in a fair measure of social justice, only an empty dream.

I suggest, therefore, that it should be substituted by what I have just read out, where by the ownership, control and management of the natural resources shall be vested in the community collectively, and shall be exploited, developed and worked by the community as represented by the Central or Provincial or Local Governments, or by any statutory corporations that may have been created for the purpose.

I think there can be no dispute on this proposition that, as regards the natural resources that I have tried to describe, no human being has lent any value to those resources by his or her own lab our.

They are gifts of nature. They are the initial endowment which each country has in greater or less measure; and, in mere equity, they should belong to all people collectively. And if they are to be developed, they should be developed also by, for, and on behalf of the community collectively.

The creation or even the presence of vested interests, of private monopolists, of those who seek only a profit for themselves, however useful, important, or necessary the production of such natural resources may be for the welfare of the community, is an offence in my opinion against the community, against the long-range interests of the country as a whole, against the unborn generations, that those of us who are steeped to the hilt, as it were, in ideals of private property and the profit motive, do not seem to realise to the fullest.

In the resources that are mentioned in my amendment not only is there no creation of any value or utility by anybody's proprietary right being there, but what is more, the real value comes always by the common effort of society, by the social circumstances that go to make any particular interests or resources of this kind valuable.

Take mines and mineral wealth. Mines and mineral wealth, as everybody knows, are an exhaustible, - a wasting asset. Unfortunately, these, instead of having been guarded and properly protected and kept for the community to be utilised in a very economical and thrifty manner, have been made over to individual profit-seeking concession-holders and private monopolists, so that we have no control over their exploitation, really speaking, for they are used in a manner almost criminal, so that they can obtain the utmost profit on them for themselves, regardless of what would happen if and when the mines should come to an end or the stored up wealth of ages past is exhausted.

I suggest, therefore, that we allow no long range interests of private profit - seekers involved in the utilisation of these mines and the mineral wealth, that on the proper utilisation of these mines and mineral wealth depends not only our industrial position, depend not only all our ambitions, hopes and dreams of industrialising this country, but what is much more, depends also the defence and security of the nation. It would, therefore, I repeat, be a crime against the community and its unborn generations if you do not realise, even at this hour, that the mineral wealth of the country cannot be left untouched in private hands, to be used, manipulated, exploited, exhausted as they like for their own profit.

It is high time, therefore, that in this Constitution we lay down very categorically that the ultimate ownership, the direct management, conduct and development of these resources can only be in the hands of the State or the agents of the State, the representatives of the State, or the creatures of the State, like Provinces, municipalities, or statutory corporations.

Another argument may also be advanced here in support of my view. By their very nature, these resources cannot be exploited economically or efficiently unless they become monopolies. In one form or another, they have to be developed in a monopolistic manner. Now monopolies are always distrusted so long as they remain in private hands and are operated for private profit. If they are to be monopolized, as I believe inevitably they will have to be, then it is just as well that they should be owned, managed and worked by the State.

It is not enough to provide only for a sort of vague State control over them as the original clause does; it is not enough merely to say that they could be so utilised as to "sub serve the common good," every word of which is vague, undefined and undefinable, and capable of being twisted to such a sense in any court of law, before any tribunal by clever, competent lawyers, as to be wholly divorced from the intention of the draftsman, assuming that the draftsman had some such intention as I am trying to present before the House. We must have more positive guarantee of their proper, social and wholly beneficial utilisation; and that can only be achieved if their ownership, control and management are vested in public hands.

Considerations, therefore, of immediate wealth, of the necessity of industrialisation, of national defence, and of social justice have moved me to invite this House to consider my amendment favourably, namely, that without a proper full-fledged ownership, absolute control and direct management by the State or its representatives of these resources, we will not be able to realise all our dreams in a fair, efficient, economical manner which I wish to attain by this means.

Most of these forms of wealth, I need hardly tell this House, are yet undeveloped, or developed in a very, very superficial manner. It is to be hoped that in years to come, we shall undertake and carry out a much more direct, a much more effective and efficient Plan for the all round development of the country, in every part and in every item of our available resources. If that is so, if we are going to achieve, if we are going to take that as our first concern, for the new life that is pulsating throughout the country, then I put it to you, Sir, that without some such provision, it would not be possible to attain the objective as quickly and as economically as we would desire.

I would only add one word. Deliberately, I have not included in the list of initial resources of the country, the biggest of them, namely land. I have not mentioned it, not because I do not believe that land should be owned, operated and held collectively, but because I recognize that the various measures that have been in recent years adopted to exclude landed proprietors - zamindars to oust them and take over the land, would automatically involve the proposition that the agricultural or culturable land of this country belongs to the country collectively, and must be used and developed for its benefit.

For these reasons, therefore, Sir, while particularising the natural resources which we should have in common ownership and develop collectively, I have deliberately left out perhaps the most important of them all. But that I trust will not prejudice the fate of this proposition by itself. I commend it to the House.

(Amendments Nos. 886 to 891 were not moved.)

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That for clause (iii) of article 31, the following be substituted: -

'(iii) that there shall be no private monopolies in any form of production of material wealth, social service, or public utilities nor shall there be any concentration of means of production and distribution in private hands and the State shall adopt every means to prevent such concentration or accumulation'."

Sir. the original Article as it is drafted reads as follows:

"(iii) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment."

Once again, I have to use the same argument namely that while I have taken the phraseology that is given in my amendment almost entirely from the Draft itself, I have tried to make it much more clear and unambiguous than the Draft makes it. I feel, Sir, that if the Draft remains as it is, it is liable to be interpreted in a way not at all intended perhaps by the draftsmen, or, at any rate, not understood in that sense by the reader.

I think, Sir, that monopolies by themselves are very offensive to the common good. In every country whose history is recorded, wherever they have manifested themselves, there have been cries of protest against their presence. Some of the most important decisions which have contributed materially to the growth of the English Constitution have been in regard to monopolies granted by the Crown. No fight was so strong in the ages gone by in England or France or other countries which have experienced this in a more intense form than the fight against the monopolies.

Monopolies, however, need not be created or established by direct grant or patent, or in a legal, open form that would admit itself to be caught or controlled, so to say, by the straightforward operation of any provision like this included in the Constitution or legal system in general.

Monopolies develop much more artificially; monopolies develop much more by force of the very circumstances that competition is supposed to provide. In a competitive society, we are told, the only guarantee of the common good being served is that, by the mere process of competition amongst themselves, the competing producers will have so tore duce prices, they would have so to bring down their costs or selling price, that the largest amount of profit can be gained if the monopolised commodity is consumed by the widest number of consumers. In actual fact, however, Sir, in every country that has got industrialised, and commercialised on a wide scale, you find that the competitors soon come to realise that competition is good for nobody. Hence by arrangement amongst themselves, by all sorts of devices, like Trusts, Syndicates, and Cartels, they try to make a virtual monopoly, which may seem in offensive on the face of it, which may even appear to be aimed at cutting out costs and reducing overheads, and thereby making the product more easily and more cheaply accessible; but which, in fact, really result in adding enormously to the increasing profit of the private proprietor.

I take it, Sir, that members of this enlightened House will be all too familiar with the history of Trusts in England or America, and of the Syndicates and Cartels in Germany or France, for me to outline it. They would easily realise how insidiously, how slowly, but how irresistibly the movement for Trustification, Syndication, Cartelisation, combination or monopoly in all important industries began to develop, what devices they adopt for holding these monopolies tightly and closely among a selected few of their own blood circle, and what part the Interlocking Directorate plays in the general direction of policy; how when competition is intense, they try to ruin every new appearance in the field, so that the field remains for ever their exclusive possession, their exclusive property.

We in this country have too bitter, too recent, too varied and too numerous experiences of the operation of foreign monopolists, who, until the other day, held power in our country, whereby any indigenous enterprise that was against the vested interests of the alien Monopolists, had to put up the most intense struggle against the monopolist outsiders. Only the other day we had the spectacle, in which the history of the growth of a great national shipping concern was outlined. Those who know the vicissitudes through which that concern has gone, would realise the long years of fight, the discouraging developments that they had to put up with, because the Government of the country in those days was a foreign Government. Because the new competing interest was an Indian interest, it did not suit the Government to allow the foreign monopolists in any way to suffer, and the native new enterprise to succeed. The latter, therefore had to suffer all kinds of handicaps and disadvantages, into the details of which this is not the place nor the time to go. The fact, however, that in spite of that, by the support of the people, by the intrinsic strength of the service they wanted to render, the enterprise has survived to this day, does not undo the principal argument that I am trying to place before the House, that private Monopolies, by their very nature, are not in the interests of the public, unless they are of the community as a whole.

A private less correct monopolist will always be a predatory creature, who will hunt and prey upon those who become consumers of his product or service. Whether it is in an ordinary industry like the manufacturing industry turning out a given product, or in any industry which is making consumer goods, or in a social service, like Education or Health, there is danger of monopolists creating strong private interest which it will never be in the interests of the country to tolerate. I should therefore forbid the very possibility of any monopoly emerging, let us say, in the matter of education or educational apparatus, let us say, in regard to health or the production of drugs, or making medicines, or the supply of surgical and other instruments and apparatuses. I would beg to submit to this House that there is every danger of our country being dominated by private monopolists unless, from the very start, in this very Constitution we make it perfectly clear that in this New India, there shall be no room for private monopolists, who would be predatory, who would be preying upon their kind as cannibals in a form that no savage or alleged savage of the Pacific Seas would do.

The civilised cannibal of our time, the blood-sucker, is the exploiter who is highly honoured, who is often titled, who is very fully represented in this House also, and is therefore able to dictate to you, and inspire you in innumerable ways, as to how you shall provide for his safety in the Constitution itself, so that he could get a new lease of life and go on in a variety of ways, multiplying, diversifying, increasing and intensifying his monopoly to the prejudice of the common people, to the prejudice of the country's defence, to the prejudice of all those who have been looking forward to this age as an age in which real power is supposed to be vested in the representatives of the people in this House, to be able at least to obtain the immediate necessaries of life without paying the toll of the profiteer, and as such to be able to lead a life a little above the level of the beasts.

The Honourable Shri K. Santhanam: (Madras: General): Does the expression 'Private Monopolies' include monopolies by public companies?

Prof. K. T. Shah: I have already said in an earlier amendment that I would not only have monopolies but only monopolies when they are public, either Government owned, State-owned or owned by state Corporations. If by public companies you mean statutory companies, the answer is in the affirmative. But if you mean by public companies only those that are registered and falling under the Companies Act as public companies, then the answer is in the negative.

The Honourable Shri K. Santhanam: The expression 'private monopolies' will exclude public limited companies.?

Prof. K. T. Shah: I would invite my Honourable friend to help me in making it much more explicit. If he will not, then he will forgive me for not paying more attention to these very casuistic words. The monopolies I have in mind are represented much more by Trusts, by inter-locking Directorates, by a variety of ways by which banks, insurance companies, transport concerns, electricity concerns, power corporations, utility corporations of all kinds etc. yet all combined horizontally, vertically, angularly, sideways, back ways and front ways, so that if you take up the totality of them all, you will find that this country is in the grip of between 300 to 500 people or families so far as economic life of this country is concerned. They may have their nephews and their nieces functioning in various capacities. One may work in a factory, another may shine in sports, a third may flirt with Art, and a fourth may endow Science and Learning. One may be a Manager, and another may be a philanthrophist, and yet another may be a religious teacher, but that does not change the complexion. There are a few hundred families in this country which hold us all in economic slavery of a kind that the slavery in the Southern States of America has no comparison. If you do not open your eyes even now, then you are inviting with open eyes the kind of revolution in a form which none of us might desire but none of us would be able to resist. Sir, I commend this proposal to this House.

Mr. Naziruddin Ahmad: Sir, I beg to move: -

"That in clause (iii) of article 31, for the word 'concentration' the words 'undue concentration' be substituted."

Sir, the passage in the Draft Constitution runs thus: -

"That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment etc".

My amendment would be to the effect that the clause should prevent "undue" concentration of wealth and means of production to the common detriment. I submit that the economic system which we have here today and which it seems is in view, would necessarily mean that the wealth and means of production would be uneconomic; unless we want to introduce a Communistic state, these inequities would be inevitable. Even in the Communistic state of today there are inequities. I submit, Sir, that it is impossible to equalise wealth and means of production in the hands of all. I submit, the earning of a good business man, that of a lawyer of eminence, that of a Minister of eminence and that of a common man in the street or a Chaprasi, cannot be equal. So I submit that all that we should attempt to prevent is "undue" concentration of wealth and means of production. There would be inevitable concentration of some wealth and the means of production. I submit Sir, that this word would remove the misconception.

(Amendments Nos. 896 to 903 were not moved.)

Mr. Naziruddin Ahmad: Sir, Amendment No. 904 consists of three parts, of which I wish to move only parts two and three.

Sir I beg to move that in clause (v) of article 31, for the word "abused" the word "exploited", and for the words" economic necessity" the word "want" be substituted.

Mr. Vice-President: Is it necessary to make a speech?

Mr. Naziruddin Ahmad: No, Sir.

Mr. Vice-President: Amendment No. 905, Mr. Kamath.

Shri H. V. Kamath: Mr. Vice-President, Sir, I find that so far as this amendment of mine is concerned, I am in very good company. I find that the Drafting Committee has sponsored an amendment - No. 907 - to the same effect.

The clause as it stands, reads as follows:

"The State shall.........direct its policy towards securing........that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength."

My amendment seeks to add the word "sex" also, so that it will then read thus:

".........are not forced by economic necessity to enter avocations unsuited to their age, sex or strength."

I feel, Sir, that so long as the economic system is what it is today, it is conceivable that women might be forced by sheer necessity to take to occupations which maintop be suitable to the conditions imposed on them by nature. I personally feel that this would be a wise amendment, a wise move, to see that necessity does not force women to enter certain occupations.

Since sending in this amendment, however, I have ascertained from my Honourable women friends in this House that they are not very keen on this provision being made, in this clause. So in spite of my inclination to the contrary, in spite of my disposition to retain this amendment, I have decided, out of deference to their wishes, not to press this amendment, and not to move it. Of course, it will await the fate of amendment No. 907 which has been officially sponsored.

Shri C. Subramaniam (Madras: General): Sir, can a speech be made if the Member is not moving his amendment?

Mr. Vice-President: I did not notice till the very end that Mr. Kamath was not going to move his amendment. We are all in the hands of Mr. Kamath in this matter. I am not a prophet.

Then we come to amendment No. 906, Shri Sahu.

Shri Lakshminarayan Sahu (Orissa: General): *[Mr. Vice-President, move the amendment which stands in my name:

"That in clause (v) of article 31, for the words 'their age' the words 'their age, sex' be substituted."

Mr. Kamath admitted here that even he considers that the word 'Sex' should be put in but that he did not do so because the term 'Sex' was not liked by some lady members of this House. But I insist that this word should be retained here. I would like to know the reasons which led them to say that they did not like this word. We see that the word 'Sex' has already been used in article 9 of the Fundamental Rights. We also know that we use the word 'Linga' in our language, and so I fail to see the harm likely to be done by the use of this word here.

Secondly, if we do not use the word 'Sex' here, many unpleasant complications are likely to ensure. In order to avoid all such complications I would like that the words "Unsuited to their age, sex and strength" should be retained. There are many such factories and mines which are not fit for women to work in. But many women are compelled by circumstances to work there. To stop this practice the word "Sex" should be specifically used here.

The third point is that the members of the Drafting Committee like to use the word 'sex' here. When it is so, I do not find any reason to delete it. And hence the word sex must be retained so that women may be saved from exploitation. The condition of the women of our country is rather deplorable and I do not like that they should workday and night in the mines and be obliged to adopt some such profession which may spoil their home life. On account of these three reasons I propose that this word 'Sex' must be retained here and I move this amendment accordingly.]*

Mr. Vice-President: No. 907, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar: Not moving.

Mr. Vice-President: Then No. 908. Mr. Syed Abdur Rouf.

Syed Abdur Rouf (Assam : Muslim): Sir, I beg to move:

"That in clause (v) of article 31, for the words 'to their age or strength' the words 'to their sex, age or health' be substituted."

From the trend of the amendments it is seen that so far as acceptance of the word "sex" is concerned, there is unanimity of opinion in the House. Now, in my amendment I have tried further to add the word "health" in place of "strength", because I think the word "health" includes and connotes the word "strength", but the word "strength" does not necessarily connote the word "health". On this ground the word "strength" is unsuited. If we want to save the worker from ruin, we should consider the health of the worker, not merely his strength. I therefore commend this amendment for the acceptance of the House.

Shri S. V. Krishnamoorthy Rao (Mysore): Sir, I move:

"That in clause (v) of article 31, for the words 'that the strength and health' the words 'that the health and strength' be substituted."

My amendment is only in order to rearrange the phraseology. My only justification is that strength follows health and the phraseology sound better. Sir, I move.

(Amendments Nos. 910 to 913 were not moved.)

Rev. Jerome D'Souza (Madras: General): Mr. Vice-President, I am grateful to you for the opportunity you have given me of making a very brief statement on this amendment which I and some of my friends have tabled. Let me say at once, to reassure this House that statement will be brief and that for reasons which I shall presently explain, it is not my intention to press the amendment. But, Sir, I deem it a matter of some importance that the grounds which moved us to table this amendment should be understood by this House, and that the broad principles on which we have based this request may be appreciated, so that though at the present moment and in the present form this amendment may not be acceptable or may not be prudently pressed, the spirit of it may be understood and somehow embodied in this momentous and solemn document of our Constitution.

Sir, there have been complaints from many sides of this House that our Constitution does not reflect the spirit or the genius of our people, that it is a kind of mixed recipe got up from various foreign sources and foreign constitutions. To a certain extent this was inevitable, but I am sure that the framers of the Draft have partly answered this criticism by the embodiment of certain principles in this part of the Constitution, the Directive Principles.

Now, Sir, if one thing characterises our people more than anything else, it is the power and the sanctity of the family tie, the sacredness which we have been accustomed to attach to the sanctities that go to make up the spirit and the atmosphere of home life. Therefore, I am sure that every section of this House will feel that it is in the fitness of things that this strong and traditional spirit of our nation and race might somehow be expressed in our Constitution. Sir, I venture to say that if the virtues, the strength and manhood of our people have survived so many centuries of invasion and subjection, it is because, in spite of external and political changes, the strength of the family, its protective power, its capacity to inspire and maintain virtue and moral strength, have never been diminished, have never been completely overcome in our land. Whatever is best in the Caste system - and nobody will say that it is an unmixed evil - I venture to say is an extension of the family spirit, and the attachment to family ties that has come out of it is its best and most admirable characteristic.

Sir, in a Constitution, we undertake legislation for the organisation of society. We are speaking of villages, of provinces and the Centre, of tribes and Communities, and every other form of society. Now, the primary unit of society. One whose limits and characteristics are fixed by nature itself, is the family. The varieties and forms of external civil society may vary and change, but the limits, the characteristics, the fundamental features of the family, are fixed by nature. And it is within the bosom of the family that the social virtue, on the basis of which we are making this Constitution, and the firmness of which will be responsible for the carrying out of the Constitution, those fundamental virtues are developed and most lastingly founded in the family circle - mutual regard, mutual dependence, respect for authority and order, foresight and planning, and even the capacity for negotiating with other units, - qualities which would be required on a wider scale and in a wider theatre in our political and public life. Nay, Sir, patriotism itself is but the extension and the amplification of the love of the family. We call our country Fatherland or Motherland. Even before we know the culture and the extend and the greatness of our historical past, we begin to love our country because we love the little place where we were born, because the scenes and the sounds and the sights of those places are linked for ever in our memories with the voices and visages which are among the most lasting and most treasured things in life. Therefore, I feel that this house will not reject this plea that in some form our respect and love for family traditions, may be reflected in this Constitution.

Now, Sir, I know that there is a serious divergence of views as to what this amendment should imply, in what manner the family should be protected and how its stability should be ensured. Let me, Sir, in all frankness place before you very briefly what was in my mind about the means of ensuring the stability of the family. In the first place, I believe it implies that in the majority of instances, in a normal state of society, the mother of the family should have freedom and leisure to give all her attention to the upbringing of her children and to the maintenance of that family. Now, I do not say that it is obligatory on her to do so always - there are exceptions, and she may sometimes find it convenient to give her best energies to answer the higher vocation of public life and public service. But under normal conditions this is her main and her sacred duty, and this implies that the wage-earner, be he the working man, be he the poorest in the country, should have a wage which will enable him to maintain his wife and children, a *family wage*, a concept which modern social legislation tends to accept more and more. I say, therefore, that the head of the family is not to get a wage in accordance with the strict principle of remuneration for labour done according to the laws of liberal economics. I rather say that society owes him, as the head of a family and as one of the most important elements in the organisation of society, a maintenance to which he has a right, partly independently of whatever work he does. That is one principle which this amendment implies.

In the second place, I believe that this amendment, or this idea of the sacredness of the family, implies a readiness on the part of the State to recognise and encourage the institution of marriage in every way possible in its stable and monogamous form. I wish to draw the attention of the House to this fact that in all societies the tendency is to recognise more and more monogamous marriages as the only legal form of marriage. Moreover, I am aware of, and I am not here prepared to discuss, the claims of the women of our land to some degree of facility in breaking up unions which are no longer happy. I admit there may be grounds for separation when a union has become utterly unhappy. I plead at least for this: that the State should look with caution and prudence, nay with positive disfavour, on the multiplication of the facilities for divorce in order that the permanence and happiness of the family may be ensured.

In the third place, - and I know that here again I shall provoke the opposition of many elements, but nevertheless, it is necessary to state it on this occasion and in this House - it would be unfortunate if the State gave official patronage or approbation or encouragement to the artificial limitation of families. We in India who are recipients of such bounty from nature have nothing to fear from the multiplication of the greatest source of our wealth, namely, the manhood of our land, the hard-working men and women of our race.

Lastly, I would, as a last idea which should accompany this notion of the sanctity and permanence and stability of the family, plead for respect for the rights of parents, the recognition of all reasonable authority on the part of parents in regard to their children, particularly, the right of the parent to see that his child is brought up in the traditions and in the beliefs, which are dear to him, so that there may not be in his family a disruption of the happy atmosphere, the uniformity, the homogeneity which should normally reign there. These are the implications - grave, far reaching, but I believe, acceptable to the vast majority of our countrymen - these are the implications of this amendment. But as I said already, it is because I understand that in this particular form and owing to the vagueness of its implications there may be very serious difference of opinion, I am prepared not to press it at the present moment, but I do want this House and my most honoured and most respected colleagues somehow and at sometime and in some form to speak the word which would ensure for future generations the blessings which they and we ourselves have inherited and enjoyed, to recognise that the great virtues which go to make up the greatness of a country - personal worth - are best developed in an early period and within the atmosphere of the home. We are optimists and democrats, but we know that human nature has many evil inclinations and if they are not to get the better of a man, if the vicious and anti-social elements in his nature are not to gain the upper hand, it is during these tender years that the seeds of lasting civic virtues should be planted. I therefore ask you, my honoured colleagues, to turn your attention, to turn your regard, back to that treasury of the tenderest and the most sacred memories that you have, the voices and the visages that are most dear to you, and appreciating all you have received from that circle and from those people, do something to ensure that the future children of this land will be blessed with the same happiness.

Shri V. C. Kesava Rao (Madras: General): I do not move amendment No. 917 standing in my name but I reserve the right of moving it later in connection with fundamental rights.

Pandit Thakur Dass Bhargava (East Punjab: General): I am not moving amendment No. 920 at present, but when we come to fundamental rights, I propose to move it.

I am not moving No. 923. The same remarks apply as in 920.

Mr. Vice-President: The article is now open for general discussion.

Prof. Shibban Lal Saksena (United Provinces: General): This is a clause which is very fundamental in our Constitution. The character of the amendments suggested also shows that it goes to the very root of the whole Constitution. My sympathies are undoubtedly with the amendments of Prof. K. T. Shah who has moved two amendments which really suggest that in this clause we should lay down that the system of our State shall be "Socialist". In an amendment to the Preamble I have suggested that the word "Socialist", should be added before the word "Union". Impersonally feel that the particular amendments which he has moved are very important and I would urge on my friend Dr. Ambedkar at least to incorporate the spirit of those amendments somewhere in the Constitution. Part (2) of article 31 says:

> "...Ownership and control of the material resources of the community are so distributed as best to sub serve the common good."

Now, this enunciation "ownership and control of the material resources of the community to be distributed so as to sub serve the common good" is a very wide enunciation of a most important principle. The enunciation is so general that any system of economy can be based upon it. Upon it can be based a system of socialist economy where all the resources of the country belong to the State and are to be used for the well being of the community as a whole. But a majority in the next Parliament can also come forward and say that the New Deal evolved by Roosevelt is the best system, and it should be adopted. This clause leaves it open to any future parliament to evolve the best plan of their choice. But I feel personally that we should today at least lay down that the key industries of the country shall be owned by the State. This has been an important programme of the Congress since 1921. The Congress has accepted the principle that the key industries shall be controlled by the State. Even recently in the committee appointed by the Congress the report mentioned that the key industries shall be owned by the State; for the present we have postponed nationalisation of key industries for ten years. But I do feel that in our Constitution we must lay down that this is our fundamental policy. Unless we lay down in the

Constitution itself that the key industries shall be nationalised and shall be primarily used to serve the needs of the nation, we shall be guilty of a great betrayal. Even if the principle is not to be enforced today, we must lay down in this clause (ii) about directive principles that the key industries shall be owned by the State. That is, according to the Congress, the best method of distributing the material resources of the country. I therefore think that Professor Shah's amendment has merely drawn attention to this fundamental principle.

His second amendment is against monopolies and my sympathies are entirely with him. The system of monopolies has been admitted to be very wrong everywhere. In America, about 54 per cent of the nation's wealth is owned by some 60 families of that State and it is said that the 12 directors of these industrial concerns there are more powerful than even the Cabinet Ministers of the U. S. A. I therefore think that we must take a lesson from the other countries and lay down in our Constitution that monopolies will not be permitted in India. This being so I trust that Dr. Ambedkar will try to incorporate this idea in the clause by means of an appropriate amendment.

I know there is one merit in his draft which is that he has left the whole thing open and it is my hope that he will incorporate this idea in the clause. This Assembly, which has the majority from one party that has already committed itself to these principles, should lay down these principles in the Constitution itself. As I said, Dr. Ambedkar has left the whole thing open and it is possible that an Assembly elected on the basis of adult franchise will lay it down that the State shall own and control the key industries.

I have given notice of an amendment to an amendment of Mr. Kamath (875-A) which he did not move. My object there was to substitute for the words "The State shall foster the growth" the words, "the State shall promote the development". The amended amendment would have read: "The State shall promote the development of economic and social democracy and to that end direct its policy towards securing." I had proposed that this amendment should be incorporated in the first line of article 31 in accordance with the view announced by Dr. Ambedkar the other day that we want an economic democracy on the basis of 'one man one value'. It is a great ideal and I congratulate him forgiving expression to that great ideal. With these words I commend this article to the House and I hope that the spirit of my criticism will be remembered by Dr. Ambedkar.

Shri Jadubana Sahaya (Bihar: General): With your kind permission, Sir I hope the House will give me the indulgence of making certain observations in regard to article 31 which is now before the House for its consideration.

Sir, it was said, possibly yesterday, that this article of this Chapter is the Charter of economic democracy. It was also said that in this Charter and in this article we could find the germs of socialism and other isms. It was said also that this article was the Charter of the poor man. I most respectfully submit that in this Chapter, Article 31 is the pivot around which everything will revolve. Article 31 clause (ii) is the most important feature to which I shall most respectfully draw the attention of the House. But it is not possible for me, I am sorry, to support the amendment moved by my friend Professor Shah outright, because I respectfully submit it is loosely worded. But I may state for the information of the House that, so far as the principles which underlie his amendment are concerned, I support them. The spirit of it also I support. I fail to see why this august Assembly which meets only once in every country, is not keen to the extent of clearly and boldly incorporating in this article that the means of production and the natural or material resources of the country shall belong to the community and through it to the State. I cannot understand this, though the large majority of the amendments, if you scrutinise them, will be found to favour the principles underlying the amendment of Professor Shah. I cannot understand how it is that the Congress, the predominantly majority party here, is not pressing this thing.

One Honourable Member stated yesterday that these are political matters and that political parties should not bring up such amendments. I was considerably surprised to hear it. Constitution making is the work of political parties. So far as the organisation to which I have the honour to belong, *viz.*, the Congress we congressmen have given promises from many platforms to the teeming millions that so far as the means of production and the natural resources of the State are concerned, they will not be put into the hands of a favoured few. How can we go back on our word? After all this is a directive principle. I am not asking you to incorporate it so that the capitalists and the big purses of the country may not have the opportunity to work the mines and the minerals. This is only a directive principle. Are we not going to keep it as our goal that all means of productions and the gifts of Nature which belong to this vast country should belong to the State or to the community? I am sorry, Sir, that the bogey has been raised by the capitalists that if you talk like this they will cease to produce. I know the large majority of friends here will not be deterred by this bogey raised by the capitalists, because production is not for the welfare of the community. It is for the welfare of the capitalists. They produce for profits. Honourable Members of this House know it better than myself that they produce for profit and they will continue to produce as long as they make profit and, if not, they will not. So we should not be deterred by this slogan. As far as the Government of India is concerned, - somebody attributed it to the Prime Minister - it is said that after ten years we shall have nationalisation. To this, Sir, Ardeshir Dalal has stated, according to newspaper reports, that production is hampered because something was said by the Prime Minister of India.

Sir, in this Chapter and particularly in this article are we not going to suggest that ultimately we have to nationalise them, are we not going to suggest that is the aim of the nation, is the target of the nation? We stated in the August Resolution that land belongs to the tillers of the soil. You have here magnificent and sparkling words, social justice, political justice and economic justice. Very good and splendid words but they appear very far away from the toiling millions. Why not state here, not today, not tomorrow but in the distant future that the community will own what belongs to the community by the gift of nature and by the gift of God. I do not belong to the Socialist Party but I belong to the Congress to which many here belong. May I appeal to Dr. Ambedkar who claims to represent the down-trodden untouchables of the country not to wash away this hope from our hearts that in the future years the natural resources of the community may belong not to the provileged few but to the poor people of the country, for the good and benefit of all.

Shri S. Nagappa (Madras: General): Sir, this clause is the only clause where the poor man, the common man can find some hope for the future. Clauses (ii) and (iii) are intended for the benefit of the poor man. No doubt, it would have been better if this clause had been drafted in more unequivocal terms instead of in this ambiguous language. As a layman, as a common man, I can see some ray of hope for the future in these clauses. It is the aim of all honourable Members who have assembled here to socialise as early as possible. As long as these clauses stand, there is no possibility of capitalism thriving in India. I am very much thankful to the Drafting Committee and to the President of it in particular for having brought in these clauses and my only grievance is that they have not been drafted in more unequivocal language. Sir, the slogans today are municipalise utilities and nationalise industries and means of production, and unless and until these things are done, there is no hope for the common man. Today, land is concentrated in a few hands and the tiller finds himself in serious difficulties. A friend was moving an amendment for abolishing feudalism in India. When such are his feelings, you can imagine what would be the feelings of a man who has been teased for centuries and centuries. You know the conditions of the tenants in jagirs and zamindaries. They are expected to work for nothing for a number of hours and for a number of days, whereas in factories there are fixed hours. I am very glad, Sir, that in the Fundamental Rights there is a provision against beggar and forced labour. I would request the framers of the Constitution to see that every word of it is translated into action. There is no use having pious wishes or putting in high-sounding words.

With these words, I support the article.

Shri Brajeshwar Prasad (Bihar: General): May I speak, Sir?

Mr. Vice-President: I am very sorry. I think there has been sufficient discussion. Dr. Ambedkar.

The Honourable Dr. Ambedkar: Mr. Vice-President, Sir, of the many amendments that have been moved to this particular article, there are only four that remain for consideration. I will first take up the amendment of Mr. Krishnamoorthy Rao. It is a mere verbal amendment and I say straightaway that I am quite prepared to accept that amendment.

Then there remain the three amendments moved by my friend, Professor K. T. Shah. His first amendment is to substitute the words "every citizen" for the words "the citizens". Now, if that was the only amendment he was moving, I would not have found myself in very great difficulty in accepting his amendment, but he also proposes to remove the words "men and women equally" to which I have considerable objection. I would therefore ask him not to press this particular amendment on the assurance that, when the Constitution is gone through in this House and is remitted back to the Drafting Committee for the consideration of verbal changes, I shall be quite prepared to incorporate his feelings as I can quite understand that "every citizen" is better phraseology than the words "the citizens".

With regard to his other amendments, *viz.*, substitution of his own clauses for sub-clauses (ii) and (iii) of Article 31, all I want to say is this that I would have been quite prepared to consider the amendment of Professor Shah if he had shown that what he intended to do by the substitution of his own clauses was not possible to be done under the language as it stands. So far as I am able to see, I think the language that has been used in the Draft it a much more extensive language which also includes the particular propositions which have been moved by Professor Shah, and I therefore do not see the necessity for substituting these limited particular clauses for the clauses which have been drafted in general language deliberately for a set purpose. I therefore oppose his second and third amendments.

Mr. Vice-President: I shall now put the amendments to the vote, one by one.

Mr. Vice-President: The question is:

"That in clause (i) of article 31, the words 'men and women equally' be omitted."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (i) of article 31, the words 'that the citizens, men and women equally' have the right to an adequate' the words 'every citizen has the right to an adequate' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That for clause (ii) of article 31, the following be substituted.

(ii) that the ownership, control and management of the natural resources of the country in the shape of mines and mineral wealth, forests, rivers and flowing waters as well as in the shape of the seas along the coast of the country shall be vested in and belong to the country collectively and shall be exploited and developed on behalf of the community by the State as represented by the Central or Provincial Governments or local governing authority statutory corporation as may be provided for in each case by Act of Parliament'."

The motion was negatived.

Mr. Vice-President: The question is:

"That for clause (iii) of article 31, the following be substituted: -

(iii) that there shall be no private monopolies in any form of production of material wealth, social service, or public utilities nor shall there by any concentration of means of production and distribution in private hands and the State shall adopt every means to prevent such concentration or accumulation'."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (iii) of article 31, for the word 'concentration' the words 'undue concentration' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (v) article 31, for the word 'abused' the word 'exploited' and for the words 'economic necessity' the word 'want' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (v) of article 31, for the words 'their age' the words 'their age, sex' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (v) of article 31, the words 'to their age or strength' the words 'to their sex, age or health' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (v) of article 31, for the words 'that the strength and health', the words 'that the health and strength' be substituted."

The motion was adopted.

Mr. Vice-President: The question is:

"That Article 31, as amended, be part of the Constitution."

The motion was adopted.

Article 31, as amended, was added to the Constitution.

Mr. Vice-President: We shall now proceed to Article 31-A.

Article 31 - A

Shri M. Ananthasayanam Ayyangar (Madras: General): Mr. Vice-President, Sir, Amendment No. 927 stands in my name, but Mr. Santhanam has given an amendment to this amendment, for substitution of this. I find that that language is better. With your permission, Sir, he may be allowed to move his amendment in the place of mine. If you want me to formally move my amendment, I will do so, but I am prepared to accept the substitution for 31-A. I am prepared to adopt whichever course you direct.

Mr. Vice-President: Let Mr. Santhanam move.

The Honourable Shri K. Santhanam: Sir, I beg to move:

"That after article 31, the following new article be added: -

'31-A. The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government'."

Sir, I need not elaborate the necessity for this clause. Many honourable Members had given similar amendments for village panchayats, but they had also attached to it conditions like self-sufficiency and other matters, which many of us did not consider desirable to be put into the directives. What powers should be given to a village panchayat, what its area should be and what its functions should be will vary from province to province and from state to state, and it is not desirable that any hard and fast direction should be given in the Constitution. There may be very small hamlets which are so isolated that even for fifty families, we may require a village panchayat; in other places it may be desirable to group them together so that they may form small townships and run efficient, almost municipal administrations. I think these must be left to the provincial legislatures. What is attempted to do here is to give a definite and unequivocal direction that the state shall take steps to organise panchayats and shall endow them with necessary powers and authority to enable them to function as units of self-government. That the entire structure of self-government, of independence in this country should be based on organised village community life is the common factor of all the amendments tabled and that factor has been made the principle basis of this amendment. I hope it will meet with unanimous acceptance. Thank you, Sir.

The Honourable Dr. B. R. Ambedkar: Sir, I accept the amendment.

(At this stage Seth Govind Das rose to speak).

Mr. Vice-President: If you want to discuss anything, you can discuss after Prof. Ranga's amendment has been moved.

An Honourable Member: Prof. Ranga is not here.

Mr. Vice-President: I am on the horns of a dilemma. This amendment has been accepted. If I gave an opportunity to one speaker, then the whole question will have to be re-opened. I would value the advice of experts on this matter.

Shri M. Ananthasayanam Ayyangar: If you will permit me to say so, I shall only quote the procedure that is adopted in the House when it sits as a Legislature. Even though a Member in charge of a Bill say she accepts an amendment, he only indicates the line of action for other Members to follow. They may go on speaking and he will always have a right of reply after they have spoken. Even to cut short the debate on certain matters which do not involve a principle, people would like to know what the attitude of the Government is. If it is found useless, they may not pursue that matter and it is for that reason that Dr. Ambedkar has said that he accepts the amendment. He still can reserve his reply after the speeches or debates are closed. I therefore request you to call upon other speakers who want to speak. It is a very important subject and every one would like to throw some light on it.

Mr. Vice-President: In that case, I shall call upon Mr. Prakasam to speak first.

Shri T. Prakasam (Madras: General): Mr. Vice-President, Sir, I feel happy that the Government have with grace accepted this amendment and agreed to introduce it in the Constitution. We should have tried to introduce this at the very beginning of the framing of the Constitution.

Shri Vishwambhar Dayal Tripathi (United Provinces: General): Sir, I do not know which Government he has referred to.

Shri T. Prakasam: I am referring to the Government as it is constituted today.

This is a subject which is so very dear to the country and to the Members of this House as is shown by the way in which they have intervened in the general debate and brought it to the forefront of the discussion that this should find a place in the Constitution itself. Dr. Rajendra Prasad, who is the President of the Constituent Assembly, himself expressed his opinion in favour of having village republics as the basis of the Constitution.

Shri Vishwambhar Dayal Tripathi: What has the Government to do with our discussions?

Mr. Vice-President: The reference was to the President of the Constituent Assembly and not to the Government.

Shri T. Prakasam: I have not referred to the Government. Thank you,

Dr. Rajendra Prasad has expressed his view in favour of making the village republic as the basis of the whole Constitution, which we are completing these days. On the 10th of May, Sir, Dr. Rajendra Prasad happened to express his views in this matter. The Constitutional Adviser, Sir B. N. Rau, when he dealt with this question, sympathised with the whole thing, but pointed out that it was too late to make any attempt to change the basis of the Constitution which has gone so far. I too agree, Sir, that if there was any mistake, the mistake was on our part in not having been vigilant enough and brought this before the House in proper time. When this was coming so late as that, I did not expect Dr. Ambedkar as Chairman of the Drafting Committee to be good enough to accept this.

Sir, a very serious situation was created by not making the village republic or the village unit as the real basis of the Constitution. It must be acknowledged on all hands that this is a construction which is begun at the top and which is going down to the bottom. What is suggested in this direction by Dr. Rajendra Prasad himself was that the structure must begin from the foundations and it must go up. That, Sir, is the Constitution which the departed Mahatma Gandhi indicated and tried to work up for nearly thirty years. Under these circumstances, it is very fortunate that this should come in at this stage, that this should be introduced and worked in a proper way. I must really congratulate Mr. Santhanam for having attempted to bring this amendment in this form so that all others who had tabled amendments, of whom I was also one, reconciled ourselves to accept this, because this gives opportunity to the people of every province and the whole of India to go on this basis and work up the whole thing, without interrupting the progress of the Constitution at this stage.

Sir, one of the distinguished friends of this House was remarking the other day to me, "why are you thinking of these village republics and all these things? The bullock cart days have gone; they will never come back." This was his observation. I may point out to that friend that the village republic which is proposed to be established in the country and worked is not a bullock cart village republic. The republic that would be established, Sir, under this resolution, under the orders of the Government as it were, would be a village republic which would use the bullock carts, not for simply taking the fire-wood that is cut in the jungles to the towns and cities and getting some money for hire; these village republic would convert the work of the bullock carts to the work of carrying paddy and other produce which they produce in the village for their own benefit and for the benefit of the public. These village republics will also be serviceable to those men of ours who are now fighting in Kashmir. I was there the other day; I saw the way in which those friends in the battle field have been carrying on their work. Some of them said to us: "Well Sir, when you go back to the country, you please see that the prices of food-stuffs are reduced and that our people when they apply for small sites for habitation, they are secured." For all these things, the village republics will be of service to the military people in the best possible manner.

This is not a thing which should be looked upon with contempt, having forgotten our history and the history of the world. This is not the first time that this is introduced in our country. This is not a favour that we bestow upon our people by reviving these republics. When we fill the whole country with these organisations, I may tell you, there will be no food famines; there will be no cloth famine and we would not be spending 110 crores of rupees as we are doing today for the imports of food; this amount could be saved for the country. We have gone away far from the reality. These village republics will put a stop to black-marketing in a most wonderful manner. These village republics, if properly worked and organised on the basis of self-sufficiency, to which some may take exception, if the village is made a self-governing unit, it would put a stop to inflation also which the Government has not been able even to checkmate to any appreciable extent. This village organization will establish peace in our country. Today whatever the Government might be doing from the top here byway of getting food from other countries and distributing it, the food would not be distributed amongst the masses ordinarily through the agencies which we have got either in the Centre or in the provinces. All that trouble would be solved immediately so far as this business is concerned. Let me tell you above all that Communism - the menace the country is facing - we are seeing what is going in China, we saw what was done in Czechoslovakia and we know what the position is in Burma, we know what the position is even in our own country with regard to Communism. Communism can be checked immediately if the villages are organized in this manner and if they are made to function properly. There would be no temptation for our own people to become Communists and to go about killing our own people as they have been doing. For all these reasons I would support this and I am very anxious that this must be carried out in all the provinces as quickly as possible, soon after the Constitution is passed, and I am seeing today the light and prosperity before the country when the Constitution is passed and when this village organization comes into existence.

Shri Surendra Mohan Ghose (West Bengal: General): Sir I am grateful to you for giving me an opportunity to express my feeling on this amendment moved by my honourable Friend Mr. Santhanam. Sir, you will find there is another amendment No. 991 which stands in my name almost identical with the present amendment which has been moved by my honourable Friend. I am glad that such an agreed amendment has been moved by my honourable Friend, Mr. Santhanam and that it has been accepted by the Honourable Law Minister, Dr. Ambedkar.

Sir, in my opinion the meaning of this Constitution would have been nothing so far as crores and crores of Indian people are concerned unless there was some provision like this in our Constitution. There is another point also *viz.*, for thousands and thousands of years the meaning of our life in India as it has been expressed in various activities, was this that complete freedom for every individual was granted. It was accepted that every individual had got full and unfettered freedom; but as to what the individual should do with that freedom there was some direction. Individuals had freedom only to work for unity. With that freedom they are to search for unity of our people. There was no freedom to an individual if he works for disruption of our unity. The same principle was also accepted in our Indian Constitution from time immemorial. Every village like the organic cells of our body was given full freedom to express itself but at the same time with that freedom they were to work only to maintain and preserve the unity of India.

Sir, our village people are so much familiar with this system that if today there is in our Constitution no provision like this they would not have considered this as their own Constitution or as something known to them, as something which they could call their own country's Constitution. Therefore, Sir, I am glad and I congratulate both my friend the Honourable Mr. Santhanam and the Honourable Dr. Ambedkar on moving this amendment as well as for acceptance of the same. Sir, I commend this.

Seth Govind Das (C. P. and Berar: General): *[Mr. President, very few speeches are being made now-a-days in this House in Hindi. I would, therefore, resume my practice of speaking in Hindi unless of course I have something to explain to my south Indian friends which requires my speaking here in English.

During the course of the speech he made while presenting this Draft to the House Dr. Ambedkar made some remarks about villages which caused me and, I believe, a great majority of the members of this House, great pain. It is a matter of deep pleasure to me that he has at last accepted the amendment moved by Shri Santhanam. We need not complain if one comes to the right course, though belatedly.

I belong, Sir, to a province in which perhaps the greatest progress has been made in respect to this matter. Our village Panchayats, our judicial Panchayats, and our laws for Janapadas are the talk of the whole of India today. There was a time when our province was regarded as a very backward province. But today the whole country will have to admit that our province though small in size, has given a lead in many matters to the other provinces of the country. So far as the scheme of village Republics is concerned, it is an undisputed fact that our province has progressed more than any other province towards its fulfillment.

Ours is an ancient, a very ancient country and the village has had always an important position here. This has not been so with every ancient country. In Greece, for instance, towns had greater importance than villages. The Republics of Athens and Sparta occupy a very important place in the world history today. But no importance was attached by them to the villages. But in our country the village occupied such an important position that even in the legends contained in most ancient books - the Upanishads - if there are descriptions of the forest retreats, of the sages, there are also descriptions of villages. Even in Kautilya's Arthasastra there are to be found references to our ancient villages. Modern historians have also admitted this fact. We find the description of our ancient village organisation, in Ancient Law' by Mr. Henry man, 'Indian Village Community' by Mr. Baden Powell and in 'Fundamental Unity of India' by Shri B. C. Pal. I would request the members of this House to go through these books. They will come to know from these books the great importance the villages have had in India since the remotest times. Even during the Muslim Rule villages were considered of primary importance. It was during the British regime that the villages fell into neglect and lost their importance. There was a reason for this. The British Raj in India was based on the support of a handful of people. During the British regime Provinces, districts, tahsils and such other units were formed and so were formed the Talukdaris, Zamindaris and Malguzaris. The British rule lasted here for so many years only on account of the support of these few people.

Just as Mahatma Gandhi brought about a revolution in every other aspect of this country's life, so also he brought about a revolution in the village life. He started living in a village. He caused even the annual Congress Sessions to be held in villages. Now that we are about to accept this motion I would like to recall to the memory of the members of this House a speech that he had delivered here in Delhi, to the Asiatic conference. He had then advised the delegates of the various nations to go to Indian villages if they wanted to have a glimpse of the real India. He had told them that they would not get a picture of real India from the towns. Even today 80 per cent of our population lives in villages and it would be a great pity if we make no mention of our villages in the Constitution.

I support the amendment moved by Honourable K. Santhanam. I hope that the Directive Principles laid down in the Constitution would enable the provinces to follow the lead given by the Central Provinces in the matter and I hope a time will come when we shall be able to witness the ancient glory in our villages.]*

Shri V. I. Muniswamy Pillai (Madras: General): Mr. Vice-President, Sir, by my Honourable Friend Mr. Santhanam moving this amendment and the Chairman of the Drafting Committee expressing that he is going to accept it shows the real feeling of the Sovereign Body towards their less fortunate brethren living in the villages. My Honourable Friend Mr. Prakasam referred to the statement made by the revered leaders Rajendra Prasad and Mahatma Gandhi. But we know it for a reality that the villages are in rack and ruin, and if there is to be any amenities or self-government, it is to the villages that the Sovereign Body must give them. The other day when I made a speech on the Draft Constitution, I pointed out that there is no provision to give the rural areas any choice of self-government. Now, under this amendment we bestow a certain amount of power to make the villages self-contained and to have self-government there. Sir, I am sure the seven lakhs of villages in the whole of India will welcome the provision of this amendment in this Constitution. Sir, it is with the revenue that is derived from the rural areas that it has been possible to create towns, with all amenities therein. But the man who gives the revenue by way of taxes could not get even the rudiments of amenities, due to a citizen. I feel that by accepting this amendment we will go a long way to re-construct the villages that have been allowed to go to rack and ruin for centuries together. If the pies are taken care of, the rupees will take care of themselves. So I feel that by having this amendment, we are going a long way towards reconstructing our villages which are in such dire necessity of such reconstruction today.

Dr. V. Subramaniam (Madras: General): Mr. Vice-President, when our Mother India delivers her Constitution, if there is any living cell in the Constitution, it will be this village panchayat amendment which has been brought forward by my Honourable friend, Mr. Santhanam. It is a well-known fact that India is standing today as a self-governing unit in the world because of this living cell in our body politic - the village panchayat. Today, if we want to make the country strong and self-sufficient in every respect, this clause in the Constitution or in the Directive principles is very necessary.

Now, there has been some controversy about self-sufficiency. My interpretation when we speak of a village being self-sufficient is this. It may produce, say ground-nut in large quantities, and it may export it, even though it may be forced to import Dalda and other substances for the needs of the people in the village. By saying that it is self-sufficient, we only mean that it may grow all the articles that it can and also import what is necessary, from the neighbouring villages. That is my interpretation.

But these are matters to be worked out in detail by the village panchayats themselves.

It is clear that as far as this amendment is concerned, there can be no two opinions about it. This amendment must be carried, and in our future constitution, much more powers must be given to the villages. As a matter of fact, we do not know how many carpenters there are in our land. If we have the panchayats, we need go only to their records and pick up the number of carpenters in every village. These panchayats will serve a very useful purpose. This clause is very essential, and I support this amendment.

Shri Satyanarayan Sinha (Bihar: General): Sir, we have had enough discussion, and after Shri Bharathi, I would like to move for closure.

Shri L. Krishnaswami Bharathi (Madras: General): Mr. Vice-President, Sir; I congratulate the Honourable Mr. Santhanam for moving and Dr. Ambedkar for agreeing to this amendment. I must confess that I am not fully satisfied with this amendment, for the very simple reason that even today even under the present Constitution, I think the Provincial Governments have enough powers to form village panchayats and operating them as self-governing units. But to the extent to which it goes, I must express my satisfaction. It must be remembered that this is in the directive principles, and I see no reason why the idea of self-sufficiency should not have been accepted by Mr. Santhanam. The reasons that he gave for not accepting that principle are not at all convincing. In fact, two or three Honourable Members - Mr. Ranga, Shri Ananthasayanam Ayyangar, and Mr. Prakasam have given amendments with these ideas. Mr. Ananthasayanam Ayyangar's amendment says there is great need for effective decentralisation of political and economic powers. After all, what the amendment seeks to give is only political independence. Political independence apart from economic independence, has no meaning. The idea behind the Directive Principles is to emphasis the way in which we want the country to function, and for that we must make it quite clear to the whole world that economic democracy is important and for that decentralisation of economic power is important. It is that aspect of the matter which Gandhiji emphasised. Decentralization both in the political and economic sphere is absolutely essential if India is to function as a democracy.

In fact, speaking at the Asian Relations Conference, Mahatmaji said pointing out to the City of Delhi: -

> "This is not India. You people are seeing Delhi - this is not India. Go to villages; that is India, therein lives the soul of India."

Therefore, I do not know why they should fight shy of self-sufficiency'. It has been sufficiently explained by Mahatmaji, and if it is necessary I would like even to say some words from his speeches.

The Honourable Shri K. Santhanam: May I point out to the Honourable Member that self-government is not merely political? It may be economic or spiritual.

Shri L. Krishnaswami Bharathi: I quite understand it and that is the reason why it should be made clearer. If self-government includes that, it is much better that we explain it because that explanation is very necessary. I would very much like the word "self-sufficiency" in the Gandhi an sense of the word, self-sufficiency not in all matters, let it be remembered, but in vital needs of life, self-sufficiency in the matter of food and clothing as far as possible. That is what Mahatmaji said. It does not mean absolute independence. Sir, I would ask leave to read from Mahatmaji's articles certain important portions which will clear up the matter. This is what Gandhiji wrote: -

> "My idea of Village Swaraj is that it is a complete republic, independent of its neighbours for its vital wants and yet interdependent for many others in which dependence is a necessity."

An Honourable Member asked, "Well, what can you do? Some villages produce only paddy, they cannot have self-sufficiency". Is it such an impossible proposition? Gandhiji was emphatic in saying that he was not at all suggesting that the village should be independent of all these things, but in certain matters you must have self-reliance, the basic idea being, *"no work, no food"*. Now the villagers think that as it is a Swaraj Government, *khadi* and food will flow from the heavens as *manna*. Gandhiji's idea in this self-sufficiency is, "Don't expect anything from the Government. You have got your hands and feet; work; without work you will have no food. You can produce your own cloth, you can produce your own food. But if you do not work, you shall have no food, no cloth." That is the basic idea of decentralization and economic democracy. And if the villagers are to have that idea, we must put it here and tell them about self-sufficiency, "Do not expect anything from the Government. Who is the Government? After all you constitute the Government. You must work, you must produce. Do not depend on these mills. Go on with your *charkha,* make your own food". That is the basic idea of self-sufficiency and decentralization and economic democracy.

Mahatmaji said: -

> "My idea of Village Swaraj is that it is a complete republic, independent of its neighbours for its vital wants, and yet interdependent for many others in which dependence is a necessity. Thus every village's first concern will be to grow its own food crops and cotton for its cloth. It should have a reserve for its cattle, recreation and playground for adults and children. Then if there is morel and available, it will grow useful money crops, thus excluding ganja, tobacco, opium and the like. The village will maintain a village theatre, school and public hall. It will have its own waterworks ensuring clean supply. This can be done through controlled wells and tanks. Education will be compulsory up to the final basic course. As far as possible every activity will be conducted on the co-operative basis. There will be no castes such as we have today with their graded untouchability. Non-violence with its technique of Satyagraha and non-cooperation will be the sanction of the village community..."

(At this stage Mr. Vice-President rang the bell).

Sir, I think there are only a few more lines of Mahatmaji's picture of life. With your leave I should like to finish it.

> "...There will be a compulsory service of village guards who will be selected by rotation from the register maintained by the village. The government of the village will be conducted by the *Panchayat* of five persons, annually elected by the adult villagers, male and female possessing minimum prescribed qualifications."

This is a rough idea of what Gandhiji felt, and therefore, in my opinion it is very necessary that this sovereign body should enunciate and give its views on this fundamental tenet of Mahatma Gandhi, his idea being that there must be decentralisation and the village must function as an economic unit. Of course, the Honourable Mr. Santhanam said that it is included. I only wanted that it should be made more explicit so that Mahatmaji's soul will be very much pleased. He said that India dies if the villages die, India can live only if the villages live.

The Honourable Dr. B. R. Ambedkar: Sir, as I said, I accept the amendment. I have nothing more to add.

(An Honourable Member rose to speak.)

Mr. Vice-President: In this matter my decision is final. I have not yet found anybody who has opposed the motion put forward by Mr. Santhanam. There might be different ways of praising it, but at bottom and fundamentally, these speeches are nothing but praising the amendment.

The question is:

"That after article 31, the following new article be added: -

'31-A. The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government'."

The motion was adopted.

Mr. Vice-President: The question is:

"That the new article 31-A stand part of the Constitution."

The motion was adopted.

Article 31-A was added to the Constitution.

The Assembly then adjourned till Ten of the Clock on Tuesday, the 23rd November 1948.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VII

Tuesday, the 23rd November 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee), in the Chair.

DRAFT CONSTITUTION- *(Contd.)*

Article 32

Shri Syamanandan Sahaya (Bihar: General): Sir, I will move amendments Nos. 933 and 934 together with your permission. I move:

> "(i) That in the article 32 after the word 'education' a comma and the words `to medical aid' be added; and
>
> (b) that for the words 'of undeserved want' the words 'deserving relief' be substituted."

This part deals with directives to the Government in power and the article deals with different aspects of social relief and other amenities which the State should strive to secure for the well being of the people. These include the right to work, education, public assistance in case of unemployment, old age, sickness, disablement and other "cases of undeserved want". The acceptance of my amendment would give the State an added responsibility of medical relief also.

In the second amendment, although the words "undeserved want" may have been used in other constitutions, I submit that the words "deserving relief", although not new to the language of constitutions, expresses the idea better and should be accepted.

With the conditions of health and the figures of mortality in this country as also the duration of life according to actuarial statistics I submit that special attention should be devoted to medical aid.

I do not think the amendment requires much argument to support it. Sir, I move.

Shri H. V. Kamath (C. P. & Berar: General): Mr. Vice-President, I move my amendment No. 936 as amended by my amendment No. 69 in List II. If the two are taken together, my intention will be very clear. In effect my amendment will substitute the word `State' for the word `public' occurring in this article. I find that provision as regards food, clothing, shelter and medical aid are covered by article 38 which seeks to raise the standard of living and provide for public health and such other amenities. I think that my friend Mr. Syamanandan Sahaya's amendment as regards medical aid is also covered by the same article. There is no need to include these provisions as regards food, clothing, medical aid, etc. specifically in this article.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, I oppose the amendments.

Mr. Vice-President (Dr. H. C. Mookherjee): I put the amendments to vote. Amendments Nos. 933 and 934, and 936 as further amended, were negatived.

Mr. Vice-President: I shall now put article 32 to the vote of the House.

The question is:

"That article 32 stand part of the Constitution."

The motion was adopted.

Article 32 was added to the Constitution.

Article 33

Mr. Vice-President: The House will now take up article 33 for consideration.

Shri V. I. Muniswamy Pillai (Madras: General) : I am not moving my amendment No. 940 as the subject-matter relates to the Schedules.

Mr. Vice-President: I shall now put article 33 to the vote of the House.

The question is:

"That article 33 stand part of the Constitution."

The motion was adopted.

Article 33 was added to the Constitution.

Article 34

Mr. Vice-President: The House will now take article 34 into consideration.

(Amendments Nos. 938 to 947 were not moved.)

Shri Mahavir Tyagi (United Provinces: General): Sir, I beg to move:

"That article 34 be numbered as 34(1) and the following new clause be inserted after clause (1) so re-numbered:

'(2) The State shall encourage the use of Swadeshi articles and promote cottage industries, especially in the rural areas with a view to making as far as possible those areas self-sufficient'."

In moving this amendment I wish to bring to the notice of the House the fact that the condition of rural areas is very bad today. In fact rural areas have been depleted, and deliberately deprived and made devoid of all their old initiative and incentive to work. The conditions in the villages are so bad that the artisan classes have all practically come to the towns. Even a barber, if he is good at razor, does not stay in the village but goes to towns where more money can be had. Attendance on villagers does not enable him to earn his daily bread. He goes to the town and opens a saloon. The village carpenter also does the same; if he knows his job well. He goes to town and easily earns Rs. 5 or 6 a day. Masons do likewise and also the tailors. All the craftsmen flock to towns abandoning their village homes. I want to put it before the House that, under these conditions, when the villagers have been reduced to the position of carrying their dirty clothes to the town to be washed, what will happen to three-fourths of our population living in the villages? We have put it on record that what we want is economic democracy. How will economic democracy come about in the existing state of affairs in the rural areas?

We have given the villager only the right of vote. And this too we have given him only to take back after every five years - he will give us his vote. He is only the custodian of the right of vote; and we being his leaders he must return the vote to us at the time of elections. We are always their leaders. Sir, I have had experience of Legislative Assemblies for the last ten or twelve years and I know that we are not treating the villagers fairly. All budget amounts are mostly spent in towns. Only in the towns you have electricity and all sorts of other amenities. Their roads are cemented. There is public health only in the towns. But the villagers are totally neglected. Every man who has the least initiative comes to the towns. All intelligence has come away and now it is only the sluggish people who are left in the villages. Anyone who has passed the Matriculation Examination comes to the towns and employs himself in some service or other. So the villages are fast going to ruination. Now, Sir, it is very good to say that we want economic equality and economic democracy but cannot we on this occasion direct the future governments of the country that this is the line through which we want to achieve our objective of economic democracy? I am not opposed to big concentrations of industries in big towns. In fact, these big industries have been drawing muscular man-power from the villages. Villages have been their recruiting grounds. Villagers come and employ themselves in these big mills only to demoralise themselves in the bad atmosphere in towns. That is the reason why the Britishers purposely kept them weak and poor from all points of view. Initiative they have been deprived of, because otherwise they would not work as mere labourers. Sir, all the villagers cannot come to the towns. Even if you go on increasing the number of industrial towns, you cannot accommodate the vast populations living in the rural areas. They will have no housing in the towns. The purpose of my placing this amendment before you is that instead of the muscular power going to the machine, I want to carry the machines to the sources of muscular power. I want the machines to be taken to the villages so that the villagers who are living in their own sweet homes in their own healthy environments may not be snatched away from their families. At present, Sir, the pressure on land has become too much. The House may be surprised to know that in 1891 only 61 per cent of our population were employed on agriculture. In 1901, it was 66 per cent and in 1931 it was 72 per cent. Land has been torn into tiny fragments and agriculture has become totally uneconomic. If things go on like that, most of the villagers will come to the towns. We are enjoying our life in towns, while the villagers in whose name we come here are deprived of even their ordinary privileges of citizenship. Therefore, Sir, I submit that this amendment may kindly be accepted. Our Party, the Congress Party, has been propagating Swadeshi and cottage industries since its very inception. But now that the time has come for making our constitution, if we ignore the villagers that will be disappointing to the village people. I do not want to take any more time of the House because most of the Members of this honourable august House already appreciate the usefulness of the amendment that I am bringing forward. I hope honourable Members will consider the feasibility of giving to the world a new type of social revolution. In Russia, they say, there is already achieved economic democracy, but this economic democracy in Russia has concentrated all power in the hands of the State, with the result that the State has become autocratic. If you want to combine political democracy with economic democracy and translate into life Dr. Ambedkar's maxim, "One man, one unit", then you should make the villages self-reliant and self-sufficient. Otherwise the millions who are unemployed in the rural areas will never enjoy the fruits of freedom; they will remain slaves of the towns men as they are today. Political consciousness and patriotism will come only when they are economically contented. The way to do this is to give them cottage industries so that they can live happily with their families in their own happy surroundings. It is only then that they can exert some influence on the government that be and contribute towards the progress of the country. With these words, Sir, I move this amendment and I hope the House will accept it.

Mr. Vice-President: I understand that there is an amendment to this amendment by Mr. Rama lingam Chettiar. Do you propose to move it?

Shri T. A. Ramalingam Chettiar (Madras: General): Sir, I gave notice of an amendment, but I would like, Sir, that it be altered a little, as this altered amendment is more likely to be accepted. Instead of the amendment of which I have given notice, I would move with your permission that at the end of article 34 itself we add as follows:

> "And in particular the State shall endeavour to promote cottage industries on co-operative lines in rural areas."

If you will permit me, I will move that amendment, Sir,

Mr. Vice-President: Do you want an addition to the article which has been already accepted and passed?

Shri T. A. Ramalingam Chettiar: This is the article which is under consideration now.

Shri Amiyo Kumar Ghosh (Bihar: General): Sir, there is an amendment, standing in the name of Shri Gupta Nath Singh which is exactly the same as the amendment now proposed to be moved. The amendment number is 954.

Shri T. A. Ramalingam Chettiar: What I want to move is in the place of Mr. Tyagi's amendment.

Shri Amiyo Kumar Ghosh: The new clause 34-A which is sought to be moved is exactly the same as this. It says:

> "The state shall endeavour to develop and promote cottage industries and make the villages self-sufficient as far as possible."

An Honourable Member: Are two persons permitted to address the House at the same time?

Mr. Vice-President: Two persons are not speaking. I am afraid you are making a mistake. Mr. Ghosh should have resumed his seat.

Mr. Chettiar, have you moved your amendment?

Shri T. A. Ramalingam Chettiar: That is the amendment, Sir.

Mr. Vice-President: Mr. Ghosh, what is it that you want to say? Please come to the mike.

Shri Amiyo Kumar Ghosh: Mr. Vice-President, what I was submitting was that there is already an amendment (No. 954)to the same effect and that instead of moving an amendment to Shri Mahavir Tyagi's amendment, it is better that we should take the amendment No. 954, which is to the same effect. I do not see why we should move this amendment over the amendment of Shri Mahavir Tyagi.

The amendment which is now going to be moved by my friend is to the effect that the State shall endeavour to develop and promote cottage industries etc. as an amendment to Shri Mahavir Tyagi's amendment, but I submit that when there is already an amendment standing in the name of Shri Gupta Nath Singh to the same effect that the State shall endeavour to develop and promote cottage industries and make the villages self-sufficient as far as possible, there is no need of moving this amendment. We can therefore take up amendment No. 954 for discussion and if it is acceptable to the mover, then we can accept it and put it as clause 34-A.

Mr. Vice-President: The amendment of Mr. Ramalingan Chettiar runs as follows:

> "And in particular the State shall endeavour to promote cottage industries on co-operative lines in rural areas."

That is the language of the amendment moved by Mr. Chettiar. Therefore, it is in order. Now the article is open for general discussion.

Shri T. A. Ramalingam Chettiar: Mr. Vice-President, Sir, there is no doubt about the general feeling in the country that cottage industries ought to be encouraged. The only point I want to make is that so far the cottage industries have not been able to make headway for two reasons. One is the competition with the imported and mill-made goods and the other the want of organisation to help the cottage industries. Raw materials have to be supplied, wages have to be paid and above all, marketing has to be arranged. It is on the rock of marketing that most of our cottage industries have floundered. An organisation for the purpose of undertaking these things is necessary and so far we have been able to find only two methods, either the introduction of master capitalists who will exploit lab our or co-operative societies. Of course, it is not the intention of any of us that we should encourage these master capitalists, who practically exploit the village labourers and even town labourers. So the only method that is available and that is open to us is the formation of co-operative societies to undertake the supply of raw materials and the marketing of the produce. It is on that account, Sir, that I have ventured to move this amendment and I hope the House will accept it unanimously.

Shri H. V. Kamath: Mr. Vice-President, Sir, I am happy that articles 34, 32 and 31 have been incorporated in this Part dealing with directive principles of state policy. If the provisions in these articles are going to be seriously implemented and Government will really and in earnest take action in accordance with the provisions of these articles, I have no doubt that they will provide a new charter, the charter of a new life for the exploited, the disinherited and the under-privileged, and they will provide the basis or the framework for the blue-print of economic and social democracy in our country. I was very much heartened to hear Dr. Ambedkar saying the other day in this House that the Constitution seeks to lay down the ideal of economic democracy in this country. Indeed, Sir, that is the ideal we have got to strive for in this country. It may be argued that it is a vague idea. What is economic democracy and what is social democracy? Pandit Nehru, if I remember aright, when he moved the Objectives Resolution in this House hoped that our country along with the rest of the world would move towards socialism, though in his own mind there were doubts as to what democracy meant or political democracy meant or economic democracy meant. But, Sir, article 30 says that we will have social, economic democracy and political justice. Is it not far better to say that we will have political, economic and social democracy, rather than mere justice, which is an abstract conception? *(Interruption)*

This concept of economic and social democracy has formed the basis, the content of most Congress resolutions that have been passed since 1936; especially, Sir, I would refer to the resolution passed at the Meerut session of the Congress, which gives a definite meaning to this concept of economic and social democracy. Dr. Ambedkar said that to his mind, political democracy means one man, one vote; economic democracy means one man, one value. I, Sir, would say that social democracy, to my mind, means: all men, one class; all men one caste; and I hope, Sir, that we are moving towards the creation of a casteless and classless society which Mahatma Gandhi envisaged for the social order in India.

Here, Sir, political democracy we have now secured. Through experience, not merely here, not merely in Europe, not merely in America, but all over the world, we have realised today that political democracy is not enough; unless you translate this political freedom, this political democracy into the life of the common man in economic and social terms this political democracy will not work and political democracy will be dead.

That is why, when democracy is opposed or resisted, it gives rise to a totalitarian form of Government. If political democracy is allowed to evolve, to grow, into economic, social democracy, then we would not have strife, we will not have wars, we will not have a totalitarian form of Government. Even today, we see the world is half slave and half free. In Asia and Africa vast tracts of land are under colonial rule. That is why this movement of communism is growing apace. You may call them communist bandits or communist fellow travellers. It is no use dubbing them and calling them names. Unless you change your exploiting social order into a freer order, this movement for violently ending the social order will continue. Therefore, we should take heed be times and try to establish in our country economic and social democracy. Here, Sir, in article 34 we have got an important provision. It is stated, "The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, work etc.......". I am glad that this has been incorporated. We have got three alternatives or all of them: legislation, organisation or in any other way. I hope, Sir, the Government will take advantage of this and act up to it and see that in accordance with the terms of the article, all workers, industrial or otherwise, are secured work, a living wage and a decent standard of life. We want a society of workers; every one must work. We should inscribe on the portals of our temple of democracy that he who will not work shall not eat: No work, no food. In the Bible this is laid down. Sir, In the Gita, it is said, he who eats without sacrifice, without work, he is a thief;(*Stan Eva sa:*) he steals from society. We must therefore lay down this concept that work must be compulsory, work must be obligatory. In article 32,it is said that the State shall secure the right to work; article 34 goes further and says, that the State shall secure work. There are millions of people in India today who want to work, but do not get work. As Bernard Shaw has said, at one end we have got men with appetites but no dinners; at the other, we have men with dinners, but no appetites. This social order is a house divided against itself. So long as this house divided continues, there will be no peace in the world; there will be no happiness in the world. We will have violent movements; we will have desperate men armed with bullets, armed with bren guns, trying to overthrow the social order. You cannot entirely blame them; you cannot find fault with them only; the fault lies also with those of us who want to perpetuate the exploiting social order. The answer to the bullet and bren gun is not the tank and the bomber as we see in Malaya; the answer is a change in the social order. I hope these articles will be implemented by the Government that is going to take office in the new India of the future, and that Government will try to establish economic and social democracy.

I would only make one more observation. To India through the ages has been given the mission of preaching the noble and sublime ideal, the concept of spiritual democracy, of which political, social and economic democracy are mere off-shoots. If true spiritual democracy takes root in our society, there is no doubt that we shall show to humanity a new way of life, and if all other countries in the world have tried to establish economic and social democracy by violence, by disorder, by strife, we can make a beginning here and go forward and try to achieve this new order................

Mr. Vice-President: I am afraid that you are taking too much time over the amendments.

Shri H. V. Kamath: I am speaking on the article also.

Mr. Vice-President: You have sufficiently explained the article.

Shri H. V. Kamath: I have finished, Sir. We in our country must try to bring about this new order by methods of peace and non-violence and thus show a new way to the world. Otherwise, the present order, exploiting as it does, will perish, consumed in its own fires. But I hope out of the ashes will rise like unto the Phoenix of old, a new order with the light of morning in its eyes.

Shri S. Nagappa (Madras: General): Sir, I do not want to take the time of the House; I just want to make an amendment. After the words "to all workers, industrial", the word "agricultural" may be added. Sir, I need not say that the bulk of the working population consists of agricultural workers.

Mr. Vice-President: This is out of order.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, as there is a considerable amount of feeling that the Directive Principles should make some reference to cottage industries, I am agreeable in principle to introduce in article 34 some words to give effect to the wishes of the Members of this House. I am therefore prepared to accept the amendment moved by my friend Mr. Ramalingam Chettiar, subject to the substitution of one or two words. One substitution that I would like to make is this. After the words "cottage industries on" I would like to add the words "individual or". I would like to substitute his word `lines' by the word `basis'. So that the amendment would read as follows:

> "And in particular the State shall endeavour to promote cottage industries on individual or co-operative basis in rural areas."

That, I think, would meet the wishes of most of the Members who are particularly interested in the subject.

I may also add that I am quite agreeable to accept the amendment moved by Mr. Nagappa that the word 'agricultural' be added after word 'industrial'.

Mr. Vice-President: That was not allowed.

The Honourable Dr. B. R. Ambedkar: I have no objection if you allow that. I think Mr. Nagappa's suggestion that agricultural lab our is as important as industrial lab our and should not be merely referred to by the word 'otherwise', has some substance in it. However, it is a matter of ruling and it is for you to decide.

Shri T. A. Ramalingam Chettiar: I accept Dr. Ambedkar's amendments.

Shri L. Krishnaswami Bharathi: (Madras: General): Sir, may I suggest, that we may stop with the word cottage industries and omit the rest. Why do you want the words 'on individual or co-operative basis'? There is no point in adding these words unless you want to lay special emphasis on co-operative basis. I would like these words 'on individual or co-operative basis' to be omitted.

The Honourable Dr. B. R. Ambedkar: May I explain, Sir? I find among the Members who are interested in the subject, there are two divisions: one division believes in cottage industries solely on a co-operative basis; the other division believes that there should be cottage industries without any such limitation. In order to satisfy both sides, I have used this phraseology deliberately, which, I am sure, will satisfy both views that have been expressed.

Shri M. Ananthasayanam Ayyangar: (Madras: General): I do not want to speak.

Mr. Vice-President: I think we have discussed this matter sufficiently. We shall pass on to the actual voting.

Shri Mahavir Tyagi: In the hope that this will all be done on the basis of self-sufficiency, I accept the amendment to my amendment as finally proposed by Dr. Ambedkar and in that case I shall have to withdraw mine.

The amendment was, by leave of the Assembly, withdrawn.

Shri Amiyo Kumar Ghosh: Sir, I want to know whether 'agricultural workers' have been included or not.

Mr. Vice-President: It has not been included but I am quite prepared to go back on my ruling provided the House as a whole, without any dissention, accepts the suggestion of Dr. Ambedkar.

Honourable Members: Yes.

Mr. Vice-President: Then I shall put the amendment of Shri Ram lingam Chettiar as amended by Dr. Ambedkar to the vote.

The amendment, as amended, was adopted.

Mr. Vice-President: Now I put the amendment as further modified by Mr. Nagappa.

The amendment, as further amended, was adopted.

Mr. Vice-President: Now the motion before the House is:

"That article 34, as amended in the manner just mentioned, should form part of the Constitution."

The motion was adopted.

Article 34, as amended, was added to the Constitution.

Article 34-A

Mr. Vice-President: Now we come to amendment No. 952 to article 34-A.

(Amendment No. 952 was not moved.)

Amendment No. 953 - Shri Ranbir Singh Chaudhari.

Chaudhari Ranbir Singh (East Punjab: General): I am not pressing it but I want to speak on the article.

Shri M. Ananthasayanam Ayyangar: This amendment is covered by article 34 as amended. These are all matters not so much for a Constituent Assembly to introduce in the Constitution but for legislation at the Centre or in the provinces. I therefore think this need not be moved. Even at present usury is restricted in the provinces. A percentage for interest is fixed.

Mr. Vice-President: As the wording is different Shri Ranbir Singh Chaudhari has a right to move his amendment but whether he will do so or not lies with him. I hope he will not take up too much time of the House. You ought to remember that our

President wants that we should finalize our Constitution by the 9th December. Then there was some talk about moving it further back. We owe a certain duty to the country and I have been receiving a series of wires so much so that sometimes I am awakened in the middle of the night, throwing the blame on us.

Chaudhari Ranbir Singh: *[Mr. Vice-President, I wanted to make a few observations on the general article first and that is why I rose a little while ago to speak. But as I did not then get an opportunity to speak, with your permission, Sir, I would like to express my views now within a minute or two. I have already said that I would not press my amendments. Besides, there is one thing, more. As Shri Ayyangar has stated.............]*

Mr. Vice-President: Kindly speak on the amendment.

Mr. Z. H. Lari (United Provinces: Muslim): Sir, on a point of order. Can any person be allowed to address the House unless he formally moves a motion?

Mr. Vice-President: You are right.

(Addressing Mr. Chaudhari) You will first of all move the motion and then address the House.

Chaudhari Ranbir Singh: My new article reads thus: -

"That after the article 34, the following new article34-A be added: -

'34-A. (a) The State shall endeavour to secure by suitable legislation or economic organisation or in any other way the minimum economic price of the agricultural produce to the agriculturists.

(b) The State shall give material assistance to national co-operative organisations of the producers and consumers.

(c) Agricultural insurance shall be regulated by special legislation.

(d) Usury in every form is prohibited'."

Mr. Vice-President: May I take it that you are moving this amendment formally? I suppose this is done.

Mr. Z. H. Lari: He says, it reads thus. He has not moved his amendment.

Mr. Vice-President: Suppose, you waive that point. Now, Mr. Chaudhari, you can address the House.

Chaudhari Ranbir Singh: *[Mr. President, I am afraid that one class remains still to whom the provisions of article 34, as it stands now or even with the amendment of Shri Nagappa as accepted by Dr. Ambedkar, would not afford any protection and whose economic interests would, therefore, remain unsafe guarded. My reference is not to the class of landlords. The fact on the contrary is that I do not desire to speak for that class at all. My reference is to the class of peasant proprietors of the Punjab who neither exploit anybody nor like to be exploited by anyone. Speaking for the peasantry. I would like to remark that so long as we do not fix some economic price of the produce, they will continue to suffer from a grave injustice. The duty of the State today is not merely to maintain law and order but also to resolve the economic complexities, the solution of which is the main problem of the peasantry at present. Sometime back the prices of gur and other commodities fell so much that they came down to one-fourth of what they were four or five months before. Ours is an agriculturist country and in this country such violent disturbances of the price level cannot but radically disturb the agricultural economy. I do not want to press this very much because I know that this point is covered by the previous article. But these matters should be kept in mind. My purpose is to emphasise that without fixing the economic price of agricultural products, there can be no stability anthem economic life of the agriculturists and it is very necessary to make it stable. The other three parts also lend some support to this view. Since a good many members of the House think that the purpose of my amendment is covered by the previous article, I do not move it.]*

Mr. Vice-President: I shall not, therefore, put it to the vote. The next amendment is that standing in the name of Mr. Guptanath Singh.

Shri Guptanath Singh (Bihar: General): Sir, My purpose, I see, has been served by the amendment of Dr. Ambedkar to a great extent, I, therefore, do not wish to move my amendment No. 954.

Article 35

Mr. Vice-President: Now, we come to article 35.

The Honourable Dr. B. R. Ambedkar: Sir, I have to request you to allow this article to stand over for the present.

Mr. Vice-President: This article is allowed to stand over for consideration later. Is it agreed to by the House?

Honourable Members: Yes.

Article 36

Mr. Vice-President: Then, the motion before the House is that article 36 do form part of the Constitution. Amendment No. 961 is a negative motion. So we come to amendment No. 962 - Shri L. K. Maitra.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Mr. Vice-President, Sir, I beg to move:

> "That in article 36, the words `Every citizen is entitled to free primary education and' be deleted."

Sir, I will strictly obey the injunction given by you regarding curtailment of speeches. I will put in half a dozen sentences to explain the purpose of this amendment. If this amendment is accepted by the House, as I hope it will be, then the article will read as follows: -

"The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years."

It will thus be seen that this article 36 will be brought into line with the preceding and the subsequent articles, in form, at any rate. The House will observe that article 30, 31, 32, 33, 34, 35, 37 and 38 all begin with the words - "The State shall.....so and so". But article 36 alone begins with - "Every citizen is entitled to....etc." Therefore if we delete the words I have referred to, this article also will come into line with the other articles. Besides the question of form there is also a question of substance involved in this. Part IV deals with directive principles of State policy, and the provisions in it indicate, the policy that is to be pursued by the future governments of the country. Unfortunately, in article 36, this directive principle of State policy is coupled with a sort of a fundamental right, i.e. "that every citizen is entitled......etc." This cannot fit in with the others. Here a directive principle is combined with a fundamental right. Therefore, I submit that the portion which I have indicated, should be deleted.

Now, there is another point, and I particularly want to draw the attention of the Drafting Committee to it. You will see that in the original draft, in the margin of this article there is a note, "provision for free primary education." But in article 36, we are not making any distinction between primary and secondary educations. That is to say, to every citizen, up to the age of 14 years, the State shall provide, within ten years of the commencement of this Constitution, free and compulsory education. In other words, the education need not be confined to the primary but it may go up to the secondary stage, so long as the person is up to the age of 14. Therefore, the marginal note should be amended accordingly. Sir, I move.

Mr. Naziruddin Ahmad: (West Bengal: Muslim): Sir, I beg to move:

"That in article 36, for the word `education', the words `primary education' be substituted."

Sir, this article, as has been clearly pointed out by the previous speaker, deals with primary education.

It begins with primary education and the marginal note also makes it clear. But as has been pointed out, towards the end what is said is that the State shall provide within a period of ten years from the commencement of this Constitution for "free and compulsory education." I believe from the context and from other internal evidence that what was intended was compulsory 'primary' education. The State cannot undertake to give compulsory education of a secondary character.

Pandit Lakshmi Kanta Maitra: As far as possible !

Mr. Naziruddin Ahmad: But then if you enlarge the scope of the Government's duty, it will be making it innocuous. I think it would be better to confine it to primary education and that should be a directive principle of the State. I think that is what is meant. The word, if introduced, would, I submit, fill up an obvious lacuna.

Mr. Vice-President: It would be as well if you move the other amendments in your name as that would save the trouble of your coming up again.

Mr. Naziruddin Ahmad: Sir, I move:

"That in article 36, a semi-colon be inserted after the word 'education'."

As this relates only to punctuation. I am asking the Drafting Committee to consider it.

Mr. Vice-President: Article 36 is now open to general discussion.

Shri B. Das (Orissa: General): I have never been enamoured of these directive principles. They are just pious hopes and pious wishes laid down there occasionally to create trouble for the provincial Ministries and very seldom the Central Government will be affected by criticisms of this House. Yet article 36 deals with primary education, which article 23 on Fundamental Rights which we have not yet discussed, ignores to provide for. I am not yet satisfied from the speeches what free and compulsory primary education will be like. Will it be in one language, or will it be in two or three languages if a province has two or three kinds of people making up the province?

I will talk of Orissa, where we have some of the Andhra people and some Bengalee people, for whom I think free primary education up to a certain stage should be provided by the State. The same demand I make from the provinces of Madras, Bengal and the Central Provinces, where education in the mother tongue of the Oriyas has been denied. My friend, Premier Shukla, is looking at me. It is not his Ministry's fault. It is a tradition that has grown. No one bothers about giving free primary education in the mother tongue of any race that has a language and a script of its own. In Bengal in the Midnapore district, in the 1881 census, five lakhs of Oriyas existed. In the last census only a few thousands and perhaps in the coming census they will be completely wiped out. But yet primary education gives individuals the chance to be in communion with their God and in communion with the textbooks of their religion. The Oriya children of Midnapore have at present to study Bengali. They have changed their names into Bengali names. So is the case in Madras in the Vizagapatam district where very large numbers of Oriyas live and it was their misfortune that the area could not become part of Orissa Province in 1936. But I do want in bi-lingual areas where there is a large population of another race, the Provincial Ministry and the Government concerned should not deny those children their right of knowledge in their own mother tongue so that when they become literate they may have been able to undertake some study of their religious texts. It is not the policy of this House or the contemplation of this Constitution that every province as it is constituted now should make all the people of one language. That is a problem on which I have had discussions in private. I understand that the Drafting Committee will take this up in article 23(1). So that is the reason why I did not move my amendment No. 970 which asked for free and compulsory primary education for all children in their respective mother tongue. It is a very primary and essential problem that we should not denationalise those people who have a mother tongue of their own and compel them to learn the mother tongue of someone else, however suitable it may be.

The Honourable Dr. B. R. Ambedkar: Sir, I accept the amendment proposed by my friend, Mr. Maitra, which suggests the deletion of the words "every citizen is entitled to free primary education and". But I am not prepared to accept the amendment of my friend, Mr. Naziruddin Ahmad. He seems to think that the objective of the rest of the clause in article 36 is restricted to free primary education. But that is not so. The clause as it stands after the amendment is that every child shall be kept in an educational institution under training until the child is of 14 years. If my honourable Friend, Mr. Naziruddin Ahmad had referred to article 18, which forms part of the fundamental rights, he would have noticed that a provision is made in article 18 to forbid any child being employed below the age of 14. Obviously, if the child is not to be employed below the age of 14, the child must be kept occupied in some educational institution. That is the object of article 36, and that is why I say the word "primary" is quite inappropriate in that particular clause, and I therefore oppose his amendment.

Mr. Vice-President: The question is:

"That in article 36, the words `Every citizen is entitled to free primary education and' be deleted."

The motion was adopted.

Mr. Vice-President: The question is:

"That in article 36, for the word 'education' the words 'primary education' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That article 36, as amended, stand part of the Constitution."

The motion was adopted.

Article 36, as amended, was added to the Constitution.

Article 35

Mr. Mohamad Ismail Sahib (Madras: Muslim): Sir, I move that the following proviso be added to article 35:

"Provided that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law."

The right of a group or a community of people to follow and adhere to its own personal law is among the fundamental rights and this provision should really be made amongst the statutory and justiciable fundamental rights. It is for this reason that I along with other friends have given amendments to certain other articles going previous to this which I will move at the proper time.

Now the right to follow personal law is part of the way of life of those people who are following such laws; it is part of their religion and part of their culture. If anything is done affecting the personal laws, it will be tantamount to interference with the way of life of those people who have been observing these laws for generations and ages. This secular State which we are trying to create should not do anything to interfere with the way of life and religion of the people. The matter of retaining personal law is nothing new; we have precedents in European countries. Yugoslavia, for instance, that is, the kingdom of the Serbs, Croats and Slovenes, is obliged under treaty obligations to guarantee the rights of minorities. The clause regarding rights of Mussulmans reads as follows:

> "The Serb, Croat and Slovene State agrees to grant to the Mussulmans in the matter of family law and personal status provisions suitable for regulating these matters in accordance with the Mussulman usage."

We find similar clauses in several other European constitutions also. But these refer to minorities while my amendment refers not to the minorities alone but to all people including the majority community, because it says, "Any group, section or community of people shall not be obliged" etc. Therefore it seeks to secure the rights of all people in regard to their existing personal law.

Again this amendment does not seek to introduce any innovation or bring in a new set of laws for the people, but only wants the maintenance of the personal law already existing among certain sections of people. Now why do people want a uniform civil code, as in article 35? Their idea evidently is to secure harmony through uniformity. But I maintain that for that purpose it is not necessary to regiment the civil law of the people including the personal law. Such regimentation will bring discontent and harmony will be affected. But if people are allowed to follow their own personal law there will be no discontent or dissatisfaction. Every section of the people, being free to follow its own personal law will not really come in conflict with others.

Shri Suresh Chandra Majumdar: (West Bengal: General): Sir, on a point of order, what is being said now is a direct negation of article 35 and cannot be taken as an amendment. The Honourable Member can only speak in opposition.

Mr. Mohamed Ismail Sahib: Article 35 reads thus:

> "The State shall endeavour to secure for citizens a uniform civil code throughout the territory of India."

That will include the personal law as well.

Mr. Vice-President: I hold that the Honourable Member is in order.

Mr. Mohamed Ismail Sahib: Therefore, Sir, what I submit is that for creating and augmenting harmony in the land it is not necessary to compel people to give up their personal law. I request the Honourable Mover to accept this amendment.

Mr. Naziruddin Ahmad: Sir, I beg to move:

> "That to article 35, the following proviso be added, namely: -
>
> 'Provided that the personal law of any community which has been guaranteed by the statue shall not be changed except with the previous approval of the community ascertained in such manner as the Union Legislature may determine by law'."

In moving this, I do not wish to confine my remarks to the inconvenience felt by the Muslim community alone. I would put it on a much broader ground. In fact, each community, each religious community has certain religious laws, certain civil laws inseparably connected with religious beliefs and practices. I believe that in framing a uniform draft code these religious laws or semi-religious laws should be kept out of its way. There are several reasons which underlie this amendment. One of them is that perhaps it clashes with article 19 of the Draft Constitution. In article 19 it is provided that `subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.' In fact, this is so fundamental that the Drafting Committee has very rightly introduced this in this place. Then in clause (2) of the same article it has been further provided by way of limitation of the right that `Nothing in this article shall affect the operation of any existing law or preclude the State from making any law regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice'. I can quite see that there may be many pernicious practices which may accompany religious practices and they may be controlled. But there are certain religious practices, certain religious laws which do not come within the exception in clause (2), *viz.* financial, political or other secular activity which may be associated with religious practices. Having guaranteed, and very rightly guaranteed the freedom of religious practice and the freedom to propagate religion, I think the present article tries to undo what has been given in article 19. I submit, Sir, that we must try to prevent this anomaly. In article 19 we enacted a positive provision which is justiciable and which any subject of a State irrespective of his caste and community can take to a Court of law and seek enforcement. On the other hand, by the article under reference we are giving the State some amount of latitude which may enable it to ignore the right conceded. And this right is not justiciable. It recommends to the State certain things and therefore it gives a right to the State. But then the subject has not been given any right under this provision. I submit that the present article is likely to encourage the State to break the guarantees given in article 19.

I submit, Sir, there are certain aspects of the Civil Procedure Code which have already interfered with our personal laws and very rightly so. But during the 175 years of British rule, they did not interfere with certain fundamental personal laws. They have enacted the Registration Act, the Limitation Act, the Civil Procedure Code, the Criminal Procedure Code, the Penal Code, the Evidence Act, the Transfer of Property Act, the Sarda Act and various other Acts. They have been imposed gradually as occasion arose and they were intended to make the laws uniform although they clash with the personal laws of a particular community. But take the case of marriage practice and the laws of inheritance. They have never interfered with them. It will be difficult at this stage of our society to ask the people to give up their ideas of marriage, which are associated with religious institutions in many communities. The laws of inheritance are also supposed to be the result of religious injunctions. I submit that the interference with these matters should be gradual and must progress with the advance of time. I have no doubt that a stage would come when the civil law would be uniform. But then that time has not yet come. We believe that the power that has been given to the State to make the Civil Code uniform is in advance of the time. As it is, any State would be justified under article 35 to interfere with the settled laws of the different communities at once. For instance, there are marriage practices in various communities. If we want to introduce a law that every marriage shall be registered and if not it will not be valid, we can do so under article 35. But would you invalidate a marriage which is valid under the existing law and under the present religious beliefs and practices on the ground that it has not been registered under any new law and thus bastardise the children born?

This is only one instance of how interference can go too far. As I have already submitted, the goal should be towards a uniform civil code but it should be gradual and with the consent of the people concerned. I have therefore in my amendment suggested that religious laws relating to particular communities should not be affected except with their consent to be ascertained in such manner as Parliament may decide by law. Parliament may well decide to ascertain the consent of the community through their representatives, and this could be secured by the representatives by their election speeches and pledges. In fact, this may be made an article of faith in an election, and a vote on that could be regarded as consent. These are matters of detail. I have attempted by my amendment to leave it to the Central Legislature to decide how to ascertain this consent. I submit, Sir, that this is not a matter of mere idealism. It is a question of stern reality which we must not refuse to face and I believe it will lead to a considerable amount of misunderstanding and resentment amongst the various sections of the country. What the British in 175 years failed to do or was afraid to do, what the Muslims in the course of 500 years refrained from doing, we should not give power to the State to do all at once. I submit, Sir, that we should proceed not in haste but with caution, with experience, with statesmanship and with sympathy.

(B. Pocker Sahib Bahadur rose to speak.)

Mr. Vice-President: When we discuss the clause as a whole, you will get your chance. Amendment No. 960. The Mover has called it a new sub-clause, that is 35-A. We can take it up later on. The article as a whole is now under consideration.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): I have given notice of an amendment to article 35. It is No. 833.

Mr. Vice-President: That escaped my attention. I am glad you pointed that out.

Mahbood Ali Baig Sahib Bahadur: Sir, I move that the following proviso be added to article 35:

"Provided that nothing in this article shall affect the personal law of the citizen."

My view of article 35 is that the words "Civil Code" do not cover the strictly personal law of a citizen. The Civil Code covers laws of this kind: laws of property, transfer of property, law of contract, law of evidence etc. The law as observed by a particular religious community is not covered by article 35. That is my view. Anyhow, in order to clarify the position that article 35 does not affect the personal law of the citizen, I have given notice of this amendment. Now, Sir, if for any reason the framers of this article have got in their minds that the personal law of the citizen is also covered by the expression "Civil Code", I wish to submit that they are overlooking the very important fact of the personal law being so much dear and near to certain religious communities. As far as the Mussalmans are concerned, their laws of succession, inheritance, marriage and divorce are completely dependent upon their religion.

Shri M. Ananthasayanam Ayyangar: It is a matter of contract.

Mahboob Ali Baig Sahib Bahadur: I know that Mr. Ananthasayanam Ayyangar has always very queer ideas about the laws of other communities. It is interpreted as a contract, while the marriage amongst the Hindus is a Samskara and that among Europeans it is a matter of status. I know that very well, but this contract is enjoined on the Mussalmans by the Quran and if it is not followed, a marriage is not a legal marriage at all. For 1350 years this law has been practised by Muslims and recognised by all authorities in all states. If today Mr. Ananthasayanam Ayyangar is going to say that some other method of proving the marriage is going to be introduced, we refuse to abide by it because it is not according to our religion. It is not according to the code that is laid down for us for all times in this matter. Therefore, Sir, it is not a matter to be treated so lightly. I know that in the case of some other communities also, their personal law depends entirely upon their religious tenets. If some communities have got their own way of dealing with their religious tenets and practices, that cannot be imposed on a community which insists that their religious tenets should be observed.

Shri L. Krishnaswami Bharathi: It is sought to be done only by consent of all concerned.

Mr. Vice-President: Mr. Bharathi, the majority community has always been so very indulgent that I would ask you as a personal favour to give the fullest possible freedom to our Muslim brethren to express their views. I would ask you to exercise patience for a little while. I know they feel very strongly on this matter.

Shri L. Krishnaswami Bharathi: My point was, Sir, that it was not an attempt at imposition. If anything is done, it will be done only with the consent of all concerned, and the Honourable Member need not labour that point.

Mr. Vice-President: It is understood and I thank you for it.

Mahboob Ali Baig Sahib Bahadur: Now, Sir, people seem to have very strange ideas about secular State. People seem to think that under a secular State, there must be a common law observed by its citizens in all matters, including matters of their daily life, their language, their culture, their personal laws. That is not the correct way to look at this secular State. In a secular State, citizens belonging to different communities must have the freedom to practice their own religion, observe their own life and their personal laws should be applied to them. Therefore, I hope the framers of this article have not in their minds the personal law of the people to cover the words "Civil code". With this observation, I move that that it may be made clear by this proviso, lest an interpretation may be given to it that these words "Civil code" include personal law of any community.

B. Pocker Sahib Bahadur (Madras: Muslim): Mr. Vice-President, Sir, I support the motion which has already been moved by Mr. Mohamed Ismail Sahib to the effect that the following proviso be added to article 35: -

> "Provide that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law."

It is a very moderate and reasonable amendment to this article 35. Now I would request the House to consider this amendment not from the point of view of the Mussalman community alone, but from the point of view of the various communities that exist in this country, following various codes of law, with reference to inheritance, marriage, succession, divorce, endowments and so many other matters. The House will not that one of the reasons why the Britisher, having conquered this country, has been able to carry on the administration of this country for the last 150 years and over was that he gave a guarantee of following their own personal laws to each of the various communities in the country. That is one of the secrets of success and the basis of the administration of justice on which even the foreign rule was based. I ask, Sir, whether by the freedom we have obtained for this country, are we going to give up that freedom of conscience and that freedom of religious practices and that freedom of following one's own personal law and try or aspire to impose upon the whole country one code of civil law, whatever it may mean, - which I say, as it is, may include even all branches of civil law, namely, the law of marriage, law of inheritance, law of divorce and so many other kindred matters?

In the first place, I would like to know the real intention with which this clause has been introduced. If the words "Civil Code" are intended only to apply to matters procedure like the Civil Procedure Code and such other laws which are uniform so far as India is concerned at present well, nobody has any objection to that, but the various civil Courts Acts in the various provinces in this country have secured for each community the right to follow their personal laws as regards marriage, inheritance, divorce, etc. But if it is intended that the aspiration of the State should be to override all these provisions and to have uniformity of law to be imposed upon the whole people on these matters which are dealt with by the Civil Courts Acts in the various provinces, well, I would only say, Sir, that it is a tyrannous provision which ought not to be tolerated; and let it not be taken that I am only voicing forth the feelings of the Mussalmans. In saying this, I am voicing forth the feelings of ever so many sections in this country who feel that it would be really tyrannous to interfere with the religious practices, and with the religious laws, by which they are governed now.

Now, Sir, just like many of you, I have received ever so many pamphlets which voice forth the feelings of the people in these matters. I am referring to many pamphlets which I have received from organisations other than Mussalmans, from organisations of the Hindus, who characterize such interference as most tyrannous. They even question, Sir, the right and the authority of this body to interfere with their rights from the constitutional point of view. They ask: Who are the members of this Constituent Assembly who are contemplating to interfere with the religious rights and practices? Were they returned there on the issue as to whether they have got this right or not? Have they been returned by the various legislatures, the elections to which were fought out on these issues?

If such a body as this interferes with the religious rights and practices, it will be tyrannous. These organisations have used a much stronger language than I amusing, Sir. Therefore, I would request the Assembly not to consider what I have said entirely as coming from the point of view of the Muslim community. I know there are great differences in the law of inheritance and various other matters between the various sections of the Hindu community. Is this Assembly going to set aside all these differences and make them uniform? By uniform, I ask, what do you mean and which particular law, of which community are you going to take as the standard? What have you got in your mind in enacting a clause like this? There are the Mitakshara and Dayabaga systems; there are so many other systems followed by various other communities. What is it that you are making the basis? Is it open to us to do anything of this sort? By this one clause you are revolutionising the whole country and the whole setup. There is no need for it.

Sir, as already pointed out by one of my predecessors in speaking on this motion, this is entirely antagonistic to the provision made as regards Fundamental Rights in article 19. If it is antagonistic, what is the purpose served by a clause like this? Is it open to this Assembly to pass by one stroke of the pen an article by which the whole country is revolutionised? Is it intended? I do not know what the framers of this article mean by this. On a matter of such grave importance, I am very sorry to find that the framers or the draftsmen of this article have not bestowed sufficiently serious attention to that. Whether it is copied from anywhere or not, I do not know. Anyhow, if it is copied from anywhere, I must condemn that provision even in that Constitution. It is very easy to copy sections from other constitutions of countries where the circumstances are entirely different. There are ever so many multitudes of communities following various customs for centuries or thousands of years. By one stroke of the pen you want to annul all that and make them uniform. What is the purpose served? What is the purpose served by this uniformity except to murder the consciences of the people and make them feel that they are being trampled upon as regards their religious rights and practices? Such a tyrannous measure ought not to find a place in our Constitution. I submit, Sir, there are ever so many sections of the Hindu community who are rebelling against this and who voice forth their feelings in much stronger language than I am using. If the framers of this article say that even the majority community is uniform in support of this, I would challenge them to say so. It is not so. Even assuming that the majority community is of this view, I say, it has to be condemned and it ought not to be allowed, because, in a democracy, as I take it, it is the duty of the majority to secure the sacred rights of every minority. It is a misnomer to call it a democracy if the majority rides rough-shod over the rights of the minorities. It is not democracy at all; it is tyranny. Therefore, I would submit to you and all the Members of this House to take very serious notice of this article; it is not a light thing to be passed like this.

In this connection, Sir, I would submit that I have given notice of an amendment to the Fundamental Right article also. This is only a Directive Principle.

Mr. Vice-President: That may be taken up at the proper time.

B. Pocker Sahib Bahadur: What I would submit is only this. The result of any voting on this should not be allowed to affect the fate of that amendment.

Mr. Hussain Imam: (Bihar: Muslim): Mr. Vice-President, Sir, India is too big a country with a large population so diversified that it is almost impossible to stamp them with one kind of anything. In the north, we have got extreme cold; in the south we have extreme heat. In Assam we have got more rains than anywhere else in the world; about 400 inches; just near up in the Rajputana desert, we have no rains. In a country so diverse, is it possible to have uniformity of civil law? We have ourselves further on provided for concurrent jurisdiction to the provinces as well as to the Centre in matters of succession, marriage divorce and other things. How is it possible to have uniformity when there are eleven or twelve legislative bodies ready to legislate on a subject according to the requirements of their own people and their own circumstances. Look at the protection we have given to the backward classes. Their property is safeguarded in a manner in which other property is not safeguarded. In the Scheduled areas,--I know of Jharkhand and Santhal Parganas--we have given special protection to the aboriginal population. There are certain circumstances which demand diversity in the civil laws. I therefore, feel, Sir, that, in addition to the arguments which have been put forward by my friends who spoke before me, in which they feel apprehensive that their personal law will not be safe if this Directive is passed, I suggest that there are other difficulties also which are purely constitutional, depending not so much on the existence of different communities, as on the existence of different levels in the intelligence and equipment of the people of India. You have to deal not with an uniformly developed country. Parts of the country are very very backward. Look at the Assam tribes; what is their condition? Can you have the same kind of law for them as you have for the advanced people of Bombay? You must have a great deal of difference. Sir, I feel that it is all right and a very desirable thing to have a uniform law, but at a very distant date. For that, we should first await the coming of that event when the whole of India has got educated, when mass illiteracy has been removed, when people have advanced, when their economic conditions are better, when each man is able to stand on his own legs and fight his own battles. Then, you can have uniform laws. Can you have, today, uniform laws as far as a child and a young man are concerned?

Even today under the Criminal law you give juvenile offenders a lighter punishment than you do to adult offenders. The apprehension felt by the members of the minority community is very real. Secular State does not mean that it is anti-religious State. It means that it is not irreligious but non-religious and as such there is a world of difference between irreligious and non-religious. I therefore suggest that it would be a good policy for the members of the Drafting Committee to come forward with such safeguards in this proviso as will meet the apprehensions genuinely felt and which people are feeling and I have every hope that the ingenuity of Dr. Ambedkar will be able to find a solution for this.

Shri K. M. Munshi (Bombay: General): Mr. Vice-President, I beg to submit a few considerations. This particular clause which is now before the House is not brought for discussion for the first time. It has been discussed in several committees and at several places before it came to the House. The ground that is now put forward against it is, firstly that it infringes the Fundamental Right mentioned in article 19; and secondly, it is tyrannous to the minority.

As regards article 19 the House accepted it and made it quite clear that--"Nothing in this article shall affect the operation of any existing law or preclude the State from making any law (a) regulating or restricting"--I am omitting the unnecessary words--"or other secular activity which maybe associated with religious practices; (b) for social welfare and reforms". Therefore the House has already accepted the principle that if a religious practice followed so far covers a secular activity or falls within the field of social reform or social welfare, it would be open to Parliament to make laws about it without infringing this Fundamental Right of a minority.

It must also be remembered that if this clause is not put in, it does not mean that the Parliament in future would have no right to enact a Civil Code. The only restriction to such a right would be article 19 and I have already pointed out that article 19, accepted by the House unanimously, permits legislation covering secular activities. The whole object of this article is that as and when the Parliament thinks proper or rather when the majority in the Parliament thinks proper an attempt may be made to unify the personal law of the country.

A further argument has been advanced that the enactment of a Civil Code would be tyrannical to minorities. Is it tyrannical? Nowhere in advanced Muslim countries the personal law of each minority has been recognised as so sacrosanct as to prevent the enactment of a Civil Code. Take for instance Turkey or Egypt. No minority in these countries is permitted to have such rights. But I go further. When the Shariat Act was passed or when certain laws were passed in the Central Legislature in the old regime, the Khojas and Cutchi Memons were highly dissatisfied.

They then followed certain Hindu customs; for generations since they became converts they had done so. They did not want to conform to the Shariat; and yet by a legislation of the Central Legislature certain Muslim members who felt that Shariat law should be enforced upon the whole community carried their point. The Khojas and Cutchi Memons most unwillingly had to submit to it. Where were the rights of minority then? When you want to consolidate a community, you have to take into consideration the benefit which may accrue to the whole community and not to the customs of a part of it. It is not therefore correct to say that such an act is tyranny of the majority. If you will look at the countries in Europe which have a Civil Code, everyone who goes there from any part of the world and every minority, has to submit to the Civil Code. It is not felt to be tyrannical to the minority. The point however is this, whether we are going to consolidate and unify our personal law in such a way that the way of life of the whole country may in course of time be unified and secular. We want to divorce religion from personal law, from what may be called social relations or from the rights of parties as regards inheritance or succession. What have these things got to do with religion I really fail to understand. Take for instance the Hindu Law Draft which is before the Legislative Assembly. If one looks at Manu and Yagnyavalkya and all the rest of them, I think most of the provisions of the new Bill will run counter to their injunctions. But after all we are an advancing society. We are in a stage where we must unify and consolidate the nation by every means without interfering with religious practices. If however the religious practices in the past have been so construed as to cover the whole field of life, we have reached a point when we must put our foot down and say that these matters are not religion, they are purely matters for secular legislation. This is what is emphasised by this article.

Now look at the disadvantages that you will perpetuate if there is no Civil Code. Take for instance the Hindus. We have the law of Mayukha applying in some parts of India; we have Mithakshara in others; and we have the law-Dayabagha in Bengal. In this way even the Hindus themselves have separate laws and most of our Provinces and States have started making separate Hindu law for themselves. Are we going to permit this piecemeal legislation on the ground that it affects the personal law of the country? It is therefore not merely a question for minorities but it also affects the majority.

I know there are many among Hindus who do not like a uniform Civil Code, because they take the same view as the honourable Muslim Members who spoke last. They feel that the personal law of inheritance, succession etc. is really a part of their religion. If that were so, you can never give, for instance, equality to women. But you have already passed a Fundamental Right to that effect and you have an article here which lays down that there should be no discrimination against sex. Look at Hindu Law; you get any amount of discrimination against women; and if that is part of Hindu religion or Hindu religious practice, you cannot pass a single law which would elevate the position of Hindu women to that of men. Therefore, there is no reason why there should not be a civil code throughout the territory of India.

There is one important consideration which we have to bear in mind--and I want my Muslim friends to realise this--that the sooner we forget this isolationist outlook on life, it will be better for the country. Religion must be restricted to spheres which legitimately appertain to religion, and the rest of life must be regulated, unified and modified in such a manner that we may evolve, as early as possible a strong and consolidated nation. Our first problem and the most important problem is to produce national unity in this country. We think we have got national unity. But there are many factors--and important factors--which still offer serious dangers to our national consolidation, and it is very necessary that the whole of our life, so far as it is restricted to secular spheres, must be unified in such a way that as early as possible, we may be able to say, "Well, we are not merely a nation because we say so, but also in effect, by the way we live, by our personal law, we are a strong and consolidated nation". From that point of view alone, I submit, the opposition is not, if I may say so, very well advised. I hope our friends will not feel that this is an attempt to exercise tyranny over a minority; it is much more tyrannous to the majority.

This attitude of mind perpetuated under the British rule, that personal law is part of religion, has been fostered by the British and by British courts. We must, therefore, outgrow it. If I may just remind the honourable Member who spoke last of a particular incident from Fereshta which comes to my mind, Allauddin Khilji made several changes which offended against the Shariat, though he was the first ruler to establish Muslim Sultanate here. The Kazi of Delhi objected to some of his reforms, and his reply was--"I am an ignorant man and I am ruling this country in its best interests. I am sure, looking at my ignorance and my good intentions, the Almighty will forgive me, when he finds that I have not acted according to the Shariat." If Allauddin could not, much less can a modern government accept the proposition that religious rights cover personal law or several other matters which we have been unfortunately trained to consider as part of our religion. That is my submission.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. Vice-President, after the very full exposition of my friend the Honourable Mr. Munshi, it is not necessary to cover the whole ground. But it is as well to understand whether there can be any real objection to the article as it runs.

> "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."

A Civil Code, as has been pointed out, runs into every department of civil relations, to the law of contracts, to the law of property, to the law of succession, to the law of marriage and similar matters. How can there be any objection to the general statement here that the States shall endeavour to secure a uniform civil code throughout the territory of India?

The second objection was that religion was in danger, that communities cannot live in amity if there is to be a uniform civil code. The article actually aims at amity. It does not destroy amity. The idea is that differential systems of inheritance and other matters are some of the factors which contribute to the differences among the different peoples of India. What it aims at is to try to arrive at a common measure of agreement in regard to these matters. It is not as if one legal system is not influencing or being influenced by another legal system. In very many matters today the sponsors of the Hindu Code have taken a lead not from Hindu Law alone, but from other systems also. Similarly, the Succession Act has drawn upon both the Roman and the English systems. Therefore, no system can be self-contained, if it is to have in it the elements of growth. Our ancients did not think of a unified nation to be welded together into a democratic whole. There is no use clinging always to the past. We are departing from the past in regard to an important particular, namely, we want the whole of India to be welded and united together as a single nation. Are we helping those factors which help the welding together into a single nation, or is this country to be kept up always as a series of competing communities? That is the question at issue.

Now, my friend Mr. Pocker levelled an attack against the Drafting Committee on the ground that they did not know their business. I should like to know whether he has carefully read what happened even in the British regime. You must know that the Muslim law covers the field of contracts, the field of criminal law, the field of divorce law, the field of marriage and every part of law as contained in the Muslim law. When the British occupied this country, they said, we are going to introduce one criminal law in this country which will be applicable to all citizens, be they Englishmen, be they Hindus, be they Muslims. Did the Muslim stake exception, and did they revolt against the British for introducing a single system of criminal law? Similarly we have the law of contracts governing transactions between Muslims and Hindus, between Muslims and Muslims. They are governed not by the law of the Koran but by the Anglo-Indian jurisprudence, yet no exception was taken to that. Again, there are various principles in the law of transfer which have been borrowed from the English jurisprudence.

Therefore, when there is impact between two civilizations or between two cultures, each culture must be influenced and influence the other culture. If there is a determined opposition, or if there is strong opposition by any section of the community, it would be unwise on the part of the legislators of this country to attempt to ignore it. Today, even without article 35, there is nothing to prevent the future Parliament of India from passing such laws. Therefore, the idea is to have a uniform civil code.

Now, again, there are Muslims and there are Hindus, there are Catholics, there are Christians, there are Jews, indifferent European countries. I should like to know from Mr. Pocker whether different personal laws are perpetuated in France, in Germany, in Italy and in all the continental countries of Europe, or whether the laws of succession are not co-ordinated and unified in the various States. He must have made a detailed study of Muslim jurisprudence and found out whether in all those countries, there is a single system of law or different systems of law.

Leave alone people who are there. Today, even in regard to people in other parts of the country, if they have property in the continent of Europe where the German Civil Code or the French Civil Code obtains, the people are governed by the law of the place in very many respects. Therefore, it is incorrect to say that we are invading the domain of religion. Under the Moslem law, unlike under Hindu law, marriage is purely a civil contract. The idea of a sacrament does not enter into the concept of marriage in Muslim jurisprudence though the incidence of the contract may be governed by what is laid down in the Koran and by the later jurists. Therefore, there is no question of religion being in danger. Certainly no Parliament, no Legislature will be so unwise as to attempt it, apart from the power of the Legislature to interfere with religious tenets of peoples. After all the only community that is willing to adapt itself to changing times seems to be the majority community in the country. They are willing to take lessons from the minority and adapt their Hindu Laws and take a leaf from the Muslims for the purpose of reforming even the Hindu Law. Therefore, there is no force to the objection that is put forward to article 35. The future Legislatures may attempt a uniform Civil Code or they may not. The uniform Civil Code will run into every aspect of Civil Law. In regard to contracts, procedure and property uniformity is sought to be secured by their finding a place in the Concurrent List. In respect of these matters the greatest contribution of British jurisprudence has been to bring about a uniformity in these matters. We only go a step further than the British who ruled in this country. Why should you distrust much more a national indigenous Government than a foreign Government which has been ruling? Why should our Muslim friends have greater confidence, greater faith in the British rule than in a democratic rule which will certainly have regard to the religious tenets and beliefs of all people?

Therefore, for those reasons, I submit that the House may unanimously pass this article which has been placed before the Members after due consideration.

The Honourable Dr. B. R. Ambedkar: Sir, I am afraid I cannot accept the amendments which have been moved to this article. In dealing with this matter, I do not propose to touch on the merits of the question as to whether this country should have a Civil Code or it should not. That is a matter which I think has been dealt with sufficiently for the occasion by my friend, Mr. Munshi, as well as by Shri Alladi Krishnaswami Ayyar. When the amendments to certain fundamental rights are moved, it would be possible for me to make a full statement on this subject, and I therefore do not propose to deal with it here.

My friend, Mr. Hussain Imam, in rising to support the amendments, asked whether it was possible and desirable to have a uniform Code of laws for a country so vast as this is. Now I must confess that I was very much surprised at that statement, for the simple reason that we have in this country a uniform code of laws covering almost every aspect of human relationship. We have a uniform and complete Criminal Code operating throughout the country, which is contained in the Penal Code and the Criminal Procedure Code. We have the Law of Transfer of Property, which deals with property relations and which is operative throughout the country. Then there are the Negotiable Instruments Acts: and I can cite innumerable enactments which would prove that this country has practically a Civil Code, uniform in its content and applicable to the whole of the country. The only province the Civil Law has not been able to invade so far is Marriage and Succession. It is this little corner which we have not been able to invade so far and it is the intention of those who desire to have article 35 as part of the Constitution to bring about that change. Therefore, the argument whether we should attempt such a thing seems to me somewhat misplaced for the simple reason that we have, as a matter of fact, covered the whole lot of the field which is covered by a uniform Civil Code in this country. It is therefore too late now to ask the question whether we could do it. As I say, we have already done it.

Coming to the amendments, there are only two observations which I would like to make. My first observation would be to state that members who put forth these amendments say that the Muslim personal law, so far as this country was concerned, was immutable and uniform through the whole of India. Now I wish to challenge that statement. I think most of my friends who have spoken on this amendment have quite forgotten that up to 1935 the North-West Frontier Province was not subject to the Shari at Law. It followed the Hindu Law in the matter of succession and in other matters, so much so that it was in 1939 that the Central Legislature had to come into the field and to abrogate the application of the Hindu Law to the Muslims of the North-West Frontier Province and to apply the Shari at Law to them. That is not all.

My honourable friends have forgotten, that, apart from the North-West Frontier Province, up till 1937 in the rest of India, in various parts, such as the United Provinces, the Central Provinces and Bombay, the Muslims to a large extent were governed by the Hindu Law in the matter of succession. In order to bring them on the plane of uniformity with regard to the other Muslims who observed the Shariat Law, the Legislature had to intervene in 1937 and to pass an enactment applying the Shariat Law to the rest of India.

I am also informed by my friend, Shri Karunakara Menon, that in North Malabar the Marumakkathayam Law applied to all--not only to Hindus but also to Muslims. It is to be remembered that the Marumakkathayam Law is a Matriarchal form of law and not a Patriarchal form of law.

The Mussulmans, therefore, in North Malabar were up to now following the Marumakkathyam law. It is therefore no use making a categorical statement that the Muslim law has been an immutable law which they have been following from ancient times. That law as such was not applicable in certain parts and it has been made applicable ten years ago. Therefore if it was found necessary that for the purpose of evolving a single civil code applicable to all citizens irrespective of their religion, certain portions of the Hindus, law, not because they were contained in Hindu law but because they were found to be the most suitable, were incorporated into the new civil code projected by article 35, I am quite certain that it would not be open to any Muslim to say that the framers of the civil code had done great violence to the sentiments of the Muslim community.

My second observation is to give them an assurance. I quite realise their feelings in the matter, but I think they have read rather too much into article 35, which merely proposes that the State shall endeavour to secure a civil code for the citizens of the country. It does not say that after the Code is framed the State shall enforce it upon all citizens merely because they are citizens. It is perfectly possible that the future parliament may make a provision byway of making a beginning that the Code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage the application of the Code may be purely voluntary. Parliament may feel the ground by some such method. This is not a novel method. It was adopted in the Shariat Act of 1937 when it was applied to territories other than the North-West Frontier Province. The law said that here is a Shariat law which should be applied to Mussulmans who wanted that he should be bound by the Shariat Act should go to an officer of the state, make a declaration that he is willing to be bound by it, and after he has made that declaration the law will bind him and his successors. It would be perfectly possible for parliament to introduce a provision of that sort; so that the fear which my friends have expressed here will be altogether nullified. I therefore submit that there is no substance in these amendments and I oppose them.

Mr. Vice-President: The question is:

"That the following proviso be added to article 35:

'Provided that any group, section or community or people shall not be obliged to give up its own personal law in case it has such a law'."

The motion was negatived.

Mr. Vice-President: The question is:

"That to article 35, the following proviso be added, namely, 'Provided that the personal law of any community which is guaranteed by the statute shall not be changed except with the previous approval of the community ascertained in such manner as the Union Legislature may determine by law`."

The motion was negatived.

Mr. Vice-President: The question is:

"That Part IV of the Draft Constitution be deleted."

The motion was negatived.

Mr. Vice-President: The question is:

"That article 35, stand part of the Constitution."

The motion was adopted.

Article 35 was added to the Constitution.

Article 37

Sardar Hukum Singh (East Punjab: Sikh): Mr. Vice-President, I move:

"That in article 37, for the words `Scheduled Castes' the words `Backward communities of whatever class or religion' be substituted."

Sir, "Scheduled Castes" has been defined in article 303 (w) of this Draft Constitution as castes and races specified in the Government of India (Scheduled Castes) Order 1936. In that Order, most of the tribes, castes and sub castes are described and include Bawaria, Chamar, Chuhra, Balmiki, Od, Sansi, Sirviband and Ramdasis. It would be conceded that they have different faiths and beliefs. For instance, there are considerable numbers of Sikh, Ramdasis, Odes, Balmiki and Chamars. They are as the backward as their brethren of other beliefs. But, so far, these Sikh backward classes have been kept out of the benefits meant for Scheduled Castes. The result has been either conversion in large numbers or discontent.

I do realise that so far as election to legislatures was concerned, there could be some justification as the Sikhs had separate representation and the Scheduled Castes got their reservation out of General Seats. There is the famous case of S. Gopal Singh Khalsa who could not be allowed to contest a seat unless he declared that he was not a Sikh. Such cases have old to disappointment and discontent on account of a general belief that some sections were being discriminated against.

Now the underlying idea is the uplift of the backward section of the community so that they may be able to make equal contribution in the national activities. I fully support the idea. I may be confronted with an argument that at least there is the first part of the article which provides for promotion "of educational and economic interests of `weaker sections' of the people". So far it is quite good and it can apply to every class. But, as the "weaker sections" are not defined anywhere, the apprehension is that the whole attention would be directed to the latter part relating to `Scheduled

Castes' and `weaker sections' would not mean anything at all. Even the article lays the whole stress on this latter portion by centralising attention through the words `in particular' of the Scheduled Castes'.

I may not be misunderstood in this respect. I do not grudge this special care of the State being directed towards" Scheduled Castes". Rather, I would support even greater concessions being given and more attention being paid to backward classes. My only object is that there should be no discrimination. That is not the intention of the article either. But, as I have said, so far the "Scheduled Castes" have been understood by general masses to exclude the members of the same castes professing Sikh religion. We should be particular in guaranteeing against any misconstruction being placed or any discrimination being exercised by those who would be responsible for actual working of it. Under the present article, it is the "educational and economic interests" that are to be promoted and therefore it should be made clear that it is to be done for all backward classes, and not for persons professing this or that particular religion or belief. I commend this motion for the acceptance of the House.

Shri A. V. Thakkar (United States of Kathiawar: Saurashtra): Sir, I beg to move this amendment (983) which asks for the inclusion of the backward castes among Hindus and among Muslims...............

The Honourable Dr. B. R. Ambedkar: May I just make a statement? I believe both these amendments dealing with the backward classes, etc. would be more appropriate to the Schedule and could be better considered when we dealt with the Schedule. I would suggest that the consideration of these amendments may be postponed.

Shri A. V. Thakkar: My amendment seeks to lay down certain principles......

Mr. Vice-President: Dr. Ambedkar proposes to give the fullest possible consideration to these in the Schedule.

Shri A. V. Thakkur: Does he agree to include all backward classes?

Mr. Vice-President: He can hardly agree to anything now. The matter is open to discussion later.

Shri A. V. Thakkar: Then I do not move my amendment now.

Mr. Naziruddin Ahmad: Sir, I am not moving my amendment No. 985. It merely seeks to use capital letters in the case of the Scheduled Castes. I would respectfully draw the attention of the Chairman of the Drafting Committee to article 303 (1), items (w) and (x) on page 147 of the Draft Constitution. We have there specified two definitions, `Scheduled Castes' and 'Scheduled Tribes'. `Scheduled Castes' have everywhere been spelt with capital letters, but `Scheduled tribes' have been spelt with small letters.

The Honourable Dr. B. R. Ambedkar: We shall consider that.

Sardar Hukam Singh: I beg leave to withdraw my amendment. The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President: I shall now put article 37 to the vote of the House.

The question is:

"That article 37 do stand part of the Constitution."

The motion was adopted.

Article 37 was added to the Constitution.

Article 38

Mr. Vice-President: The House will now take up article 38 for consideration.

Shri Mahavir Tyagi: Sir, in connection with my amendment No. 999, I have given notice of another amendment (71 in List II) after consulting some of my friends. I hope Mr. Aziz Ahmed Khan who has his own amendment to this article will agree with my amendment. I do not want to make any speech in moving this amendment. Everybody appreciates the value of prohibition. Hence I simply move amendment No.71 in List II:

"That at the end of article 38, the words `and shall endeavour to bring about the prohibition of the consumption of intoxicating drinks and drugs which are injurious to health' be inserted."

Sir, for this attempt of mine I am conscious of the abuses that will be hurled on me by the dry mouths of those who have to stop drinking. I am also aware of the blessings that will be showered on me by the wives of those who will benefit by the removal of this evil. I should only wish "good luck" to the country in case this amendment is accepted.

An Honourable Member: It is already past 1 o'clock.

Mr. Vice-President: Somebody is surely to blame. Here in this time-piece it is one minute to one.

The House stands adjourned till 10 A. M. tomorrow.

The Assembly then adjourned till Ten of the Clock on Wednesday, the 24th November 1948.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VII

Wednesday, the 24th November 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee), in the Chair.

CONDOLENCE ON THE DEATH OF SHRI KANYALAL MANANA

Mr. Vice-President (Dr. H. C. Mookherjee): I understand that Shri Kanyalal Manana who was elected to the Constituent Assembly from Madhya Bharat died sometime ago. This was announced in newspapers and then the news had to be verified. It has been verified now. May I request the Members to stand up for a minute in order to pay respect to his memory?

(All the Members stood up in their seats.)

Mr. Vice-President: I wish that the House should authorise me to send the usual message of condolence to the members of his family.

Honourable Members: Yes.

DRAFT CONSTITUTION -*Contd.*

Article 38 -(*Contd.*)

Mr. Vice-President: We shall commence today's proceedings with the consideration of the particular article with which we are concerned today in the draft Constitution. The introduction of the Bill will be taken up after a little while.

Prof. Shibban Lal Saksena (United Provinces: General): I am tabling an amendment which is an amendment of Mr. Mahavir Tyagi's. I hope it will be acceptable to him, because in his amendment, he has not included the words 'except for medicinal purposes'. I think that if the amendment of Mr. Mahavir Tyagi is accepted as amended by my amendment, it would become much better. I wish Dr. Ambedkar to accept my amendment which is mentioned in No. 86 of list IV.

Sir, I beg to move:

> "That at the end of article 38, the following be substituted: -
>
> 'and shall endeavour to bring about prohibition of the consumption of intoxicating drinks and drugs which are injurious to health except for medicinal purposes'."

This exception in the last four words was not made in the original amendment but I think it is important. I think it was an omission and therefore my amendment should be accepted. Sir, I pointed out the other day while discussing the amendment of Syed Karimuddin that this is a fundamental subject on which opinion in our country is almost unanimous. Probably people do not generally realise the far-reaching consequences of the drink evil. In fact, if we add up the revenues of the various provinces from prohibition, we will find that the figure is of a very high order. I have complete figures for 1940-1941 and in that year the total revenue from prohibition was Rs. 12,52,00,000 from all the provinces. Out of this one crore was from foreign liquors and two crores from opium and only Rs. 25 lakhs of this sum was derived from sales of medicinal and intoxicating drugs. Actually now it has become almost double or even more, in the last six or seven years. So the real magnitude of the sacrifice involved in accepting this amendment will be clear from the fact that if we can achieve prohibition, we shall be voluntarily foregoing about 25 crores of rupees in revenue. But the revenue is only a fourth or fifth part of the price of liquor and if the revenue lost is Rs. 25 crores, the amount saved to the people is at least Rs. 100 crores which are wasted by the people in the country on intoxicants. Now this 100 crores will be saved to the families of drunkards and especially to labour and Harijan families where this vice is most prevalent. I wish to call the attention of Dr. Ambedkar to the fact that the Harijan and the labour population which earns this money by hard labour spends a large portion of it in the toddy shops and the drink shops which are generally situated in the vicinity of mills and labour and Harijan quarters. I hope that this directive principle will not remain merely a pious wish; but like Madras, all the provinces will enforce it and soon we shall have our country dry and thus we shall set an example to the whole world in this matter.

At present the expenditure on enforcing these excise duties is about a crore and a half of rupees, but I know that if we enforce prohibition, the expenses will increase, so that we are not only sacrificing a revenue of Rs. 25 crores, we shall also spend a few crores on the enforcement of prohibition; it is a big sacrifice, but I think for the great ideal which our leader has bequeathed to us, we must not grudge this sacrifice, because ultimately it will result in a very happy population and a contented country. In fact the advantage in the shape of Rs. 100 crores saved to the Harijan, labour and other drunkard families together with far more valuable moral advantages which far outweigh even the material advantages, which will follow complete prohibition are worth all this great sacrifice. Only the other day the Premier of my province, the Honourable Pandit Govind Ballabh Pant, was telling me that prohibition in Cawnpore has been very beneficial and the labour population in Cawnpore is now very much better off and their families thank the Government for what they have done. I hope very soon the whole country will be dry and we will then have achieved our great ideal of prohibition. I commend the motion to the House.

Shri Mahavir Tyagi (United Provinces: General): Sir, I accept the amendment.

Shri B. H. Khardekar (Kolhapur): Mr. Vice-President, Sir, at the outset I must say I am extremely nervous. This is the first speech that I am making not only in this Assembly, but in any Assembly. I may further add that I have not so far taken part in any college or school debate. I should like, therefore, Sir, to have your indulgence, almost your generosity, particularly when I am making bold to speak something against prohibition. I do want you to give me the necessary hearing.

I have been listening, Sir, very carefully to the number of arguments brought forth in favour of prohibition. I will just mention them and because I think they are very flimsy, I will say what I have to say about them. One of the arguments put forth was that the

American Constitution makes such a provision. Sir, are we not going to learn anything from the mistakes of others? Is it going to be said of us that history teaches us nothing? The Americans had it in their Constitution; the Americans provided for it in the legislature; ultimately, in the light of experience, they had to give it up completely.

Then, Sir, the second argument put forth has been that the Congress is pledged to it. Sir, it has been repeatedly admitted that in this House there is neither a Government nor any party. The Congress is no longer a mass organisation; it is one, perhaps the most important political party. This is only a technical objection. Let me go a little further. The Congress has done such a tremendous work in the past and innumerable sacrifices and so on for the attainment of freedom. The Congress is pledged to a number of good things. My request to the members of the Congress is, you must try to see which pledges should come first. You have to see first of all how you are going to make the lot of the teeming millions of India economically and in several other respects better.

The third argument put forth has been the success of prohibition in Madras. How, Sir, is this success measured I want to know. Is it measured in terms merely because there is prohibition? You have a number of people who go on still indulging in drinks and go on filling the innumerable jails. Have you also measured as a result of the squandering of several crores of Rupees, what you have failed to do? Have you tried to measure the success of prohibition in Madras from that point of view?

The next argument put forth was that all communities want it. Parsis and Christians also were included in that list. Sir, I happen to know Parsis and Christians a little bit and I think, Sir, definitely they are not in favour of prohibition.

Then, the last and perhaps the most difficult argument for me to answer is that Gandhiji has been always for prohibition. Let me make it very clear to this House that I am second to none in my admiration, respect and veneration for Gandhiji. Gandhiji is the father of the Nation; he is the father of all of us. But, Sir, I want to say something. It was stated here, might be perhaps a little frivolously, that where liquor is, Gandhiji is not; where Gandhiji is, liquor is not. In other words, Gandhiji shuns sinners, presuming that liquor drinking is a sin. Gandhiji read, studied, I dare say, loved the Gita, and as a student of the Gita, he had, what I may say, attained *Sama Drishti*. He did not make any distinction between a sinner and a saint. Gandhiji was a saint first, a politician afterwards. I want you to consider, Sir, I make bold myself to ask you, what do you think is the essence of Gandhism? The essence of Gandhism is love, toleration; its essence is non-violence, search for truth and all these important things. The externals of Gandhism or the outward trappings of Gandhism are Khaddar and prohibition. Unfortunately, the followers of Gandhiji, some of them have been giving more importance to the outward trappings of Gandhism than to the essence of it. Gandhiji's conception of truth was that though truth is one, every individual is to have his own approach to truth, and every individual had to see it for himself. Therefore, this is what Gandhiji said, what Gandhiji wanted. If we merely follow blindly, the good father that he is, he will really be sorry, though he has departed, - he has left even this House full of lisping babes, who merely do discredit to the Father, - for not having taught them to think individually and rationally. Then, Sir, are we going to say: merely because it is the father's word, as the saying goes, *Baba Vakyam* Pramanam, is that going to be the philosophy of life? We are living in an age, when, in spite of the fact that there are several defects in it, there is one very important thing about the twentieth Century. This is an age of interrogation. The young men of today want to throw a challenge and find out the truth for themselves. As Flaker has said, "Even if God were to burn with hell and fire, I would still ask Him till He answers me why;" I would not follow blindly even if God were to tell me to do so.

We are not to be dumb driven cattle; We are to be heroes in this strife. Sir, George Bernard Shaw has said much the same thing, 'examine, test and then accept'. If you are fond of Sanskrit literature, Kalidasa says more or less the same thing:

Santaha parichhyanta tarata majante moodhah para pratayayneya buddhiha.

From answering arguments, let me go to the positive side of my speech. On the practical side, I say prohibition should be made to wait, and wait for long in this unfortunate land of ours which has become fortunate only the other day. On the practical side, Sir, I may quote one great thinker who says that there are two important fronts in life, first there is the war front, and then there is the front of education. When we will have war, God alone knows; we may have a major war at any time and we must be prepared for that. There is some trouble in Kashmir; there was some in Hyderabad. We have got to be prepared. It must also be remembered that we are a very poor country and we must gather up all the resources that we have, so that we can attend to first things first. In a country where democracy has to flourish, where democracy is in its infancy, the front of education is the most important one. You know the appalling condition of the people so far as education is the most important one. You know the appalling condition of the people so far as education is concerned. About sixty to seventy years ago, in several, countries free and compulsory primary education was introduced. As a result of freedom, that should be our first business. Only yesterday, we discussed the necessity of having such a clause in the Draft Constitution. In a country like ours, even free compulsory primary education would not be enough, because the poor boy, who goes to plough, forgets even to put his signature after a few years, and so, in proportion, even secondary education for the backward communities, rather I may say for the poor would have to be provided. Sir, we are an infant democracy and if we are going to have really a democratic Government, we must have education. You know the great saying "Democracy without education is hypocrisy without limitation" and we do not want to have such a Government where only a few who know will govern ultimately and we will have a Fascist Government; and if we are going to insist too much to-day on prohibition, we are going to deprive a number of our good children from receiving proper education and the result would be whereas we aim at establishing a secular democratic State, we are really going to have a religious fascist Government and nothing short of it. I am giving you, Sir, a warning.

Then apart from education, there is a thing like medical health and public health. Most of you are very honest and sincere workers and you have been to villages. Even during my occasional visits I find that the poor villager has absolutely no medical help. There are thousands of lepers who require medical help and if all that tremendous help is to be given, from where is the money to come forth? Therefore, we must have first things first and our great enemy is poverty and unless we pool our resources and put first things first, unless we develop a sense of values, I think we will be in a mess.

Now curiously enough I want to talk to you, Sir, a little about the moral side of prohibition or against it. I recommend to you very strongly a remarkable Chapter in Harold Laski's 'Liberty in the Modern State' which he has devoted against prohibition. I could not get the book, so I cannot quote from it but his main point is that prohibition goes against the very grain of personal liberty. In a free India, Sir, the development of personality to its fullest extent is our aim and by frustrations, prohibition, inhibitions, suppressions we are going to have a stunted growth in the young men. It does not mean that we should encourage them to drink but they will find their mistakes and ultimately liberty - I don't mean by liberty license - would be of considerable use. Then Sir, consider - I am not going to be frivolous here - but consider the shock given to social life, - club life will come to an end - and I may tell you just compare the two things - some friends having discussion may be in the evening or night quite seriously over a glass of butter-milk and as against that an innocent but intellectual discussion over a glass of wine or even beer. The Greeks had it. True philosphers know how to enjoy both the worlds and the foundations of philosophy and science were laid by the Great Greeks. They did not have taboos and suppressions and inhibitions. The real development of personality comes through that. If you were to compare the life in a city like Bombay on dry days and wet days, Sir, on dry days you will find life really dry and dull. I ask you to see that. You might think this is all for the rich. Everybody that goes to club is not rich but what about the poor? Think of the millions of mill hands working very hard all day. In the evening they like to have a glass or two of toddy which is really nothing but fermented neera and if along with the vitamins he gets a little mirth or joy, why should you deprive him of that? Sir, I would request you to consider the solace and the little comfort that he gets. There are some among us - men like Dr. Ambedkar getting great solace in reading. There are others who like to read novels and enjoy them. There are those who like to play the piano and there are some who would like to have a glass of wine or beer. Now I may draw some distinction here because most of you, I beg to say, would not be knowing how many people after all do drink. I would request the economists and the statisticians to find it but I dare say the figure is not more than 10 per cent and most of you are ignorant of a very important fact that you do not know the essential difference between drinkers and drunkards. Of the 10 per cent. that drink not 9 per cent are drunkards. They just drink a glass or two with friends and the 1 per cent that consists of drunkards are hopeless people due to very bad circumstances--there might be innumerable reasons - if you deprive them of drink by law, they will resort to illicit distillation. If even that is not allowed, if your machinery is perfect - but I dare say our machinery is inclined towards bribery and corruption and this will be one more handle for them - but apart from that even if you deprive them of that, they will indulge in drinking poisonous stuff and meet their end even earlier. So, for this 1 per cent of the human population are you going to throw so much of valuable wealth, tons and tons of rupees into the Arabian Sea merely because there is a sort of religious inking behind. You may have that religious idea that it is impious to drink. Well, Gods were supposed or they are supposed to indulge in Sura. The human beings may indulge in Madira. What harm is there? Then, I may point out that after all if one really does not have bad effects from it, why should we deprive them? Let us consider what India really requires. Now, having prohibition and being very pious are very good and these are very highly developed qualities which even the civilised nations have not been able to bring into practice. We, Sir, lack even common decency and honesty. The Prime Minister of India Pandit Jawaharlal Nehru, the most beloved and most respected, loses a pair of shoes. In European countries the least respected leader would not lose a pair of shoes, if he attends a function. So there is this difference that essential qualities, basic qualities like honesty etc. we must have first. You are a party in majority and you can decide what you like. I don't mean you should stop bringing prohibition but wait for some time - and I may quote the Editor of the Times of India and say that there are things other than liquor that go to the head and power is one. Let not the majority party suffer from it.

Shri Jaipal Singh (Bihar: General): Mr. President, Sir, I do not know whether I shall be in order in suggesting to you that this amendment be postponed until such time as we come to the consideration of the recommendations that the Advisory Committee has made particularly in regard to the Tribal Areas. Now the recommendations of the Advisory Committee as well as the Sub-Committees have not been given a chance for full discussion on the floor of this House. Therefore, I do not at this stage, want to go into details but I am bound to oppose the Resolution and amendments of this sort. We have heard such a lot of pious language about a democratic State, of a secular State, of our being voluntarily opposed to the establishment of theocracy in India. Here, Sir, I submit, by the back door we are trying to interfere with the religious rights of the most ancient people of this country. You may laugh. Excess in everything is wrong. If you eat too much rice, it is bad for you. There are so many other things that you take in excess. But, if you take anything in its right quantity, it is good for you. Drink certainly is one of the things taken in excess which does no one good, but, let us remember that we should not be hasty in putting into the Constitution anything which is going to work for more bitterness than there is already. During our discussions in the Advisory Committee, Maulana Abul Kalam Azad was pleased to put a direct question to me and it was this - "Kya yah mazhabi chij hai". Is it really a religious right? On that occasion, the Chairman of the Advisory Committee, the Honourable Sardar Patel gave me an opportunity to explain what the position was. Now, as far as the Adibasis are concerned, no religious function can be performed without the use of rice beer. The word here used - the phrase used is `intoxicating drinks'. Sir, that is a very vague way of describing the thing, and, also `injurious to health'. My friend Prof. Shibban Lal has tried to put forward the argument of economic efficiency. He thinks that if prohibition were installed in this country, the economic efficiency of the workers would be enhanced. I dare say it would be. But what I want to tell him is that it is not merely the industrial workers whom he has particularly in mind, that are affected. I would like to point out to him the position of the very poor people, the Adibasis, and, members who come from West Bengal and other places will bear me out in what I say about the Adibasis who are in such large numbers in West Bengal, Southern Bihar, Orissa and other places. In West Bengal, for instance, it would be impossible for paddy to be transplanted if the Santhal does not get his rice beer. These ill clad men, without even their barest wants satisfied, have to work knee-deep in water throughout the day, in drenching rain and in mud. What is it in the rice beer that keeps them alive? I wish the medical authorities in this country would carry out research in their laboratories to find out what it is that the rice beer contains, of which the Adibasis need so much and which keeps them against all manner of diseases.

Well, Sir, I am not opposing this amendment because I want drink to increase in this country. I am all for seeing to it, and, seeing vigorously to it, that the Adibasis do not injure themselves by this drink habit. But that is quite apart from the religious needs and religious privileges; we shall educate them to lead a life of temperance. I am all for that. But this amendment is a vicious one. It seeks to interfere with my religious right. Whether you put it in the Constitution or not, I am not prepared to give up my religious privileges. *(Hear, hear.)*

Mr. Vice-President: Order, order.

Shri Jaipal Singh: Sir, if you will forgive me, I would rather explain all this when we come to the recommendations which the Advisory Committee has made in regard to the Scheduled Tribes and others. This is not the proper time for me to talk *in extenso.* Here I would only point out to the honourable Members here that it is better not to be hasty, and, I would request you that this amendment be deferred until such time as we come to the recommendations of the Advisory Committee in regard to the Scheduled Tribes and Scheduled Areas; because, if we decide the thing at this stage, we shall be doing ourselves wrong. We shall be unfair to a very important and, at the present moment, politically helpless minority. There are hardly a dozen of them who can speak on behalf of them here, though they are thirty millions. This is a decision which must rest with the wishes of the people themselves. We are going through difficult times. Let us not make matters any more difficult. Sir, I need say nothing more than that I am opposed to this amendment, and my humble request to you would be that the further consideration of this amendment be taken up after we have come to a decision with regard to the Scheduled Tribes and Scheduled

Areas.

Shri V. I. Muniswamy Pillai (Madras: General): Mr. Vice-President, Sir, I was strangely surprised today to see two members of the sovereign Body come up here and say that prohibition must be postponed. Let me take my honourable Friend Mr. Jaipal Singh. He claims to represent the Adibasis - the Hill-tribes and the aborigines. A humble member like myself, coming from the region of the aborigines and Hill-tribes may tell him that there is no such thing as require liquor, toddy, brandy or any such thing, at the time of the ceremonies of the aborigines. I do not know, Sir, whether my friend has ever seen a Toda - a member of the pastoral community, living in the Nilgris. They live there under the worst conditions of the monsoon. In their life they had never seen what alcohol is. Sir, when the Britishers came, they brought in the whisky bottle and when they disappeared, from the administration of this land, we must take it that wine also has disappeared. But it is strange that today my friend Mr. Jaipal Singh had to plead for these unfortunate communities. I may say there are several communities like the Kotahs Irulas, Paniyas, Kurumbas, Badagas, and others who all come under the category of Adibasis in the Province of Madras. But there none of these communities has ever come forward to protest against the authorities that drink must be given back to them. It is strange that my friend who is so sympathetic to the aborigines should plead for drink for them. I may tell him that in actual practice, all these communities have greatly benefited in the province of Madras after the introduction of prohibition. The other friend from Kolhapur has been praising Mahatma Gandhi as the Father of the Nation and all that. But unfortunately he fails to follow what Mahatma Gandhi told us. Of the four constructive programmes, Mahatma Gandhi placed prohibition at the head of all the four. Why? Because he found that the country was going to rack and ruin, and the poor were spending all their earnings on drink and leaving their children and families in utter poverty and want. I am sorry my friend has taken up this attitude and opposed this amendment, so wholesomely brought before this Sovereign Body. The Province of Madras has lost yearly nearly seventeen crores of rupees. But the people of Madras stood up as one man and said, "Never mind about these seventeen crores of rupees. We want the citizens, we want the poor people to be healthy and peaceful." Sir, Prohibition has brought peace and plenty to the province of Madras. It has produced a marked improvement in the physique of the people and also in their economic position. I may tell you that Harijans, the unfortunate communities were driven by the Caste-Hindus and the Mirasdars to lowly occupations and were given their wages not in cash, but chits to liquor vendors that they may go and get drunk. But these things have now disappeared and as the Minister in charge of the portfolio, I can dare say that prohibition has brought peace and plenty to my province. So I support the amendment brought by Prof. Saksena and oppose those friends who are talking about postponing prohibition.

The Honourable Shri B. G. Kher (Bombay: General): Sir, it is rather unfortunate that the very first appearance of our new arrival from Kolhapur should have been made an occasion for attacking what is a very vital directive principle in the shaping of our constitution. Prof. Shibban Lal Saksena has suggested that at the end of Article 38 the following clause may be inserted:

> "The State shall endevour to bring about prohibition of the consumption of intoxicating drinks and drugs which are injurious to health."

Shri Mahavir Tyagi: That amendment is my copyright and not Prof. Shibban Lal Saksena's.

The Honourable Shri B. G. Kher: I do not propose to infringe the copyright of the

Honourable Mr. Mahavir Tyagi or any other Member who wishes to take the credit of it. I am perfectly willing to give it.

The amendment further says "except for medicinal purposes". From the fact that these gentlemen propose to object to this amendment it is evident that they wish that the State should allow the consumption of intoxicating drinks and drugs which are injurious to health.

I do not wish to speak at length on prohibition because after very deliberate consideration and prolonged discussion most of the provincial governments and most of those who are interested in the progress of this country have accepted the necessity of protecting our people from going to their ruin by the use of intoxicating drugs and liquor. They believe that humanity will not progress on proper lines unless along with intellectual and material progress they give sufficient importance to moral progress and it is too late in the day now to argue that the use of intoxicating drugs and liquor do not affect the moral sense of a person who uses them. The very lamp which shows to you the distinction between right and wrong is extinguished and it is therefore, not a matter of individual liberty, which was one of the arguments which the honourable representative from Kolhapur used. There cannot be individual liberty to commit suicide. Society is interested in every individual's prolonged life and therefore I was surprised to find such an amount of ignorance in what today is being done, thought and experienced as a result of the administration of prohibition in the provinces. Instead of getting a large excise revenue and spending it on education, the best education is to teach people to abstain from drink and drugs.

For every single rupee that the State gets by way of revenue from excise society loses three times that money by the increase of crime, by the increase of disease and the loss of efficiency. This has been admitted by economists. The honourable gentleman who championed the cause of Adibasis told us that there ought to be further medical research. Medical research has been made to a considerable extent and people have come to the conclusion that the consumption of spirituous liquors and injurious drugs (the description which has been used in this clause) is admittedly injurious to health. One Honourable Member mentioned Nira. The Bombay Government is opening Nira centres by the hundreds, because Nira before it ferments and becomes toddy is a health-giving drink and therefore we are allowing people to drink Nira. But we are now speaking about intoxicating drinks and drugs which are injurious to health. Is it the contention of those honourable members that the State shall not strive to prohibit the use of drugs and drinks which are injurious to the health of the people? Those who use such hackneyed arguments as that of further medical research, individual liberty or medicinal benefit, I am afraid these people are living in an isolated world of their own, because whichever province (Madras and Bombay for instance) has introduced prohibition, has come to the conclusion that the very people who indulged in the use of these liquors are today benefited so considerably that not a day passes when we do not get letters of gratitude from the members of the family of the labourers and other people who used to drink themselves to death. To say that only 10 percent of society indulge in this and that therefore society need not worry itself about this does not need any further criticism.

I was surprised to hear an Honourable Member who represents the Adibasis attack this amendment as vicious. I am afraid that this is the way in which men's minds are perverted. The very object of introducing this amendment, which I am very happy to find has been accepted by the Honourable Dr. Ambedkar who is in charge of the Bill, is to prevent the furtherance of vice. Is it argued that the use of intoxicating liquors and injurious drugs leads to the practice of virtue? I am not quoting Mahatma Gandhi in support of my argument but he has said that he would not attach any importance to any other social reform so long as this question of the prevention of consumption of intoxicating liquors and drugs was not taken up by the State. The very first reform that he enjoined upon all the provinces was the stopping of this vicious thing. In this country almost every section of society, whether it is the Hindus, the Muslims or even Christians, have always looked upon the use of intoxicating liquor and drugs as a vice........

Shri L. Krishnaswami Bharathi (Madras: General): As a sin.

The Honourable Shri. B. G. Kher: I mean sin. The drinking of liquor is one of the five deadly sins which the *Smritis* have laid down and that was not a matter of bigotry or prejudice but the result of vast experience. Today go to America. I met a number of people who genuinely regretted that they were not able to make prohibition a success. Why were they not able to make a success of it? Simply for the reason that they have gone on too long imbibing the poison and it is too late now for them to go back. But the section of the people who have the good of the community and of their country at heart still desire that it were possible to stop the deterioration of the human race, which is sure to be brought about by the use and by making the use of intoxicating drinks respectable in society. So, though a sin both for the Hindus as also for the Muslim, after the advent of the British the use of intoxicating liquors became a sign of being fashionable, a sign of progress and culture. It is quite true that it is perhaps impossible to eradicate from the face of the earth for good and for ever these three vices - the use of liquor in one shape or other by some few people, the evil of gambling and the evil of prostitution: but it shall be the endeavour of every civilised government to prevent all these three cankers of human society, if it is their object that society should be healthy and happy and moral.

I do not propose to take much time of the House.

Sir, it is entirely due to the fact that our friends from Europe were used to look at liquor in a different way that people in this country began to look upon the use of liquor as respectable. Before the evil becomes so deep-rooted that we also come to the same conclusion as those in Europe and America that it is impossible to prevent our people from drinking, it is time that the State should take up this reform which is not only in the interest of this country but also of the world and of the human race in general.

I was considerably surprised at the argument of the honourable Member representing the Adibasis. Here is Mr. Thakkar who has devoted his whole life to the service of the Adibasis and I am sure he wholeheartedly agrees with the principle of this amendment. I quite agree that these people are accustomed to drink and they will have to be gradually educated but that is what this amendment proposed to do, that is, prohibiting the consumption of intoxicating drink sand drugs which are injurious to health. I do hope the honourable Members do not wish to encourage the use of drinks and drugs which are injurious to the health of the people.

I strongly support the amendment.

Mr. Vice-President: Does the Honourable Member, Dr. Ambedkar, accept the amendment?

The Honourable Dr. B. R. Ambedkar: Yes.

Mr. Vice-President: I ask the indulgence of the House as I have overlooked another amendment. That is No. 81 in list No. 3 - by Sardar Bhopinder Singh Man. Does he propose to move it?

Sardar Bhopinder Singh Man (East Punjab: Sikh): Yes.*[Mr. Vice-President I would like that where these words, namely, "Drinks and drugs" occur, the word "tobacco" also be added between them. Mr. Vice-President, I am aware that in moving this amendment. I would be incurring the displeasure of the influential members of this House and I also feel that I am going against the temper of the majority. In reminding Mr. Tyagi regarding this omission I am submitting it after judging it according to the test laid down by him. He has made out two points, namely, to prohibit those intoxicants that are bad and dangerous for health. Judging by this test we should see whether it can be classified as an intoxicant or not, or whether it is harmful to health. I have no doubt that tobacco is an intoxicant and is more harmful to health than liquor. This is the considered opinion of the medical men that tobacco has nicotine - a poison - most harmful to health. Take the villagers; they get liquor only off-and-on, but they smoke tobacco day and night, and due to their indolence they let suffer even their important tasks. As far as the economic aspect is concerned, I can assure you that much greater loss is incurred on account of tobacco than by liquor. Not only lakhs but crores of rupees annually flow out of the country on this account. When it is realised that tobacco is in fact a dangerous intoxicant, then I do not see why Mr. Tyagi has left out tobacco while mentioning liquor and other drugs. It is probably because it is consumed by the majority but that is no reason. It is said that cigarette or bidi, if consumed in small quantity, would not be harmful to health. But this leads to another controversy of `too-much or too less'. Even if a useful thing is consumed in excess, it might prove harmful. My point is that when you are dead against an innocent thing like liquor then why don't you prohibit tobacco also?]*

Shri A. V. Thakkar (United State of Kathiawar: Saurashtra): Sir, after the case had been put by my friend Shri Bal Gangadhar Kher I did not want to speak. But I want to speak on two small matters, but those are very important matters. One is this. Mr. Jaipal Singh has said, "Let the Regional Committees or the Advisory Committees of the Adibasis come into existence; ask their opinion and then this amendment should be passed; or this should be postponed till then." That is not a correct attitude for any legislator to take.

Shri Jaipal Singh: What I said was let the Schedule dealing with the Scheduled Tribes and Scheduled Areas come up for discussion here; there was no question of consulting the Regional Council.

Shri A. V. Thakkar: The Advisory Committees are still to come into existence. We do not know whether they will approve of this prohibition of disapprove of it. It should not be taken for granted that they will disapprove of it because Mr. Jaipal Singh disapproves of it.

There is another matter. All Adibasis do not want to drink: they want prohibition. I am talking of the Bhils in Gujrat, in Maharashtra, in West Khandesh and in the Central Provinces. I am talking of the Gonds also of the Central Provinces. I have asked hundreds and thousands of them whether they want drink or whether they want prohibition. Their decided answer to me has been: "Thakkar, you are talking of prohibition; you are talking of doing away with drinks. You are placing these enticements in our path and you are still asking for our opinion. For God's sake have the liquor shops closed and then ask us. We are enticed to go to drink; otherwise we will not." To give you a concrete fact about the Bhils of Panchmahals, amongst whom I have worked for 27 years, even the shops set up by the government of the day had to be closed because of the voluntary abstention of the Bhils from drinking. The shops went dry of their own accord. Nobody would visit the shops, because the Bhils had taken vows not to drink and not to become victims to the liquor shops. The shops had to be auctioned out and nobody would buy them. Therefore, it is too much to say that all Adibasis want this, or want this even as a religious right. Even in the matter of it being a religious right with the Bhils, that was the talk twenty years ago. Now they have stopped talking about it. It is not a religious right with them now.

Mr. Vice-President: May I ask the permission of the House to suspend discussion of this item so that the Honourable Sardar Vallabhbhai Patel may have an opportunity of moving the motion which stands against his name?

Honourable Members: Yes.

GOVERNMENT OF INDIA ACT, 1935 (AMENDMENT BILL)

The Honourable Sardar Vallabhbhai J. Patel (Bombay: General): Sir, I beg to move for leave to introduce a Bill to amend the Government of India Act, 1935.

Mr. Vice-President: The question is:

"That leave be granted to introduce a Bill to amend the Government of India Act, 1935."

Maulana Hasrat Mohani (United Provinces: Muslim): I beg to oppose this.

Mr. Vice-President: On what ground?

Maulana Hasrat Mohani: I will make out the reason if you please allow me to have my say. I say that he should not be allowed to introduce the Bill.

Mr. Vice-President: I shall put the matter to vote. The question is:

"That leave be granted to introduce a Bill to amend the Government of India Act, 1935."

The motion was adopted.

Maulana Hasrat Mohani: I strongly protest against this procedure. It is a well-known fact that this House is a packed House.

The Honourable Sardar Vallabhbhai J. Patel: With your leave I now introduce the Bill to amend the Government of India Act, 1935.

Mr. Vice-President: The Bill has been introduced. Now may I ask Sardar Vallabhbhai Patel to give the House some idea of the time when he proposes to move for taking the Bill into consideration? This is required only for the convenience of Honourable Members.

The Honourable Sardar Vallabhbhai J. Patel: It will be after a week.

Mr. Vice-President: Thank you. The House will now resume discussion of article 38 of the Draft Constitution. I now call upon Shri L. N. Sahu to speak.

Article 38 (contd.)

Seth Govind Das (C. P. & Berar: General): I move that the question be now put as far as the clause relating to prohibition is concerned.

Mr. Vice-President: I have already called upon Mr. L. N. Sahu to speak.

Shri Lakshminarayan Sahu (Orissa: General): *[Mr. Vice-President, the subject which we are discussing here today is very important. It is correct that Adibasis are addicted to the habit of drinking as has been stated by Shri Jaipal Singh, but as remarked by Shri Thakkar Baba it is also a fact that they (Adibasis) want to do away with it.

First of all, I would like to point out that the liquor used by Adibasis is of a different kind. It is prepared out of a tree and is named as "Salab Drink". It relaxes them a little but does not produce intoxication. In the words of Keshab Chandra Sen the two great gifts of the Britishers to India are on the one hand, the Bible and on the other hand the bottle. The country lost its all. Shri Keshab Chandra Sen said that Bible was really such a great book that had not the Britishers brought the bottle with them, this country as a whole would have put faith in the Bible. I speak from my experience when I say that wine produce very harmful consequences in our country. Formerly in the town where I have been living for the last 32 years, no one was given to the drink habit. But since the Government started liquor shops all persons began to drink. My grand-children talk now of other people drinking and I am afraid that they may also take to drinking. As there is now a new order of things as we have attained independence and as it was the wish of Mahatma Gandhi that the word Prohibition should be inscribed in every public place, therefore, I desire Prohibition to be enforced. Is it now wise on Sri Jaipal Singh's part to talk of religious freedom in this context? We had the religious freedom of Sati in our country. Where is it now? Most of such other religious freedoms were abolished according to the conditions of the age. Human sacrifice was permissible amongst the aboriginals, but today that evil custom disappeared under the stress of changed circumstances. Now the Government does not permit human sacrifice. I am talking of aboriginal area. I toured along with Shri Thakkar Baba for about three or four months. In Orissa I toured alone. I found a new feeling amongst the aboriginals of that area. They have got a feeling that one who teaches should not take to drinking and one who goes to school should not also drink. Reading and drinking should never be combined. One who reads does not drink.

Aboriginals have such a nice feeling and the greater the facilities provided to them to cherish this feeling the better it would be for them. It is not fair to talk of drinking as a matter of our religious rights; and that we should fight to preserve it is quite unfair.]*

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President. I accept the amendment of Prof. Shibban Lal Saksena subject to a further amendment, namely, that after the word `and' at the beginning of his amendment (86 of List IV) the words "in particular" be added.

Shri Mahavir Tyagi: I really cannot understand how that amendment can be accepted by the Honourable Dr. Ambedkar. The amendment under discussion is mine.

The Honourable Dr. B. R. Ambedkar: Sir, I accept the amendment of Mr. Tyagi as amended by the amendment of Prof. Shibban Lal Saksena (Laughter.)

Mr. Vice-President: Mr. Tyagi is a great stickler for rights.

The Honourable Dr. B. R. Ambedkar: Sir, if I may say so, the right really belongs to me, because it is I who drafted the amendment he moved. (Renewed laughter.)

Mr. Vice-President: That puts the matter in a new light.

The Honourable Dr. B. R. Ambedkar: I do not think the House would have found any difficulty in accepting this amendment. Two points have been raised against it. One is by Prof. Khandekar who represents Kolhapur in this Assembly. I am sure that Mr. Khandekar has not sufficiently appreciated the fact that this clause is one of the clauses of an Article which enumerates what are called Directive Principles of Policy. There is therefore no compulsion on the State to act on this principle. Whether to act on this principle and when to do so are left to the State and to public opinion. Therefore, if the State thinks that the time has not come for introducing prohibition or that it might be introduced gradually or partially, under these Directive Principles it has full liberty to act. I therefore do not think that we need have any compunction in this matter.

But Sir, I was quite surprised at the speech delivered by my friend Mr. Jaipal Singh. He said that this matter ought not to be discussed at this stage, but should be postponed till we take up for consideration the report of the Advisory Committee on Tribal Areas. If he had read the Draft Constitution, particularly the Sixth Schedule, paragraph 12, he would have found that ample provision is made for safeguarding the position of the tribal people with regard to the question of prohibition. The scheme with regard to the tribal areas is that the law made by the State, whether by a province or by the Centre, does not automatically apply to that particular area. First of all, the law has to be made. Secondly, the District Councils or the Regional Councils which are established under this Constitution for the purposes of the administration of the affairs of these areas are given the power to say whether a particular law made by a province or by the Centre should be applied to that particular region inhabited by the tribal people or not, and particular mention is made with regard to the law relating to prohibition. I shall just read out sub-paragraph (a) of paragraph 12 which occurs on page 184 of the Draft Constitution. It says:

> "Notwithstanding anything contained in this Constitution --
>
> > (a) no Act of the legislature of the State in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the Legislature of the State prohibition or restricting the consumption of any non-distilled alcoholic liquor shall apply to any autonomous district or autonomous region unless in either case the District Council for such district or having jurisdiction over such region by public notification so directs, and the District Council in giving such direction with respect to any Act may direct that the Act shall in its application to such district or region or any part thereof have effect subject to such exceptions or modifications as it thinks fit;"

Now, I do not know what more my friend, Mr. Jaipal Singh, wants than the provision in paragraph 12 of the Sixth Schedule. My fear is that he has not read the Sixth Schedule: if he had read it, he would have realised that even though the State may apply its law regarding prohibition in any part of the country, it has no right to make it applicable to the tribal areas without the consent of the District Councils or the Regional Councils.

Mr. Vice-President: There are three amendments. One is by Mr. Mahavir Tyagi. That is No. 71 in List II. If I read the situation a right, that has been practically withdrawn. Am I right, Mr. Tyagi?

Shri Mahavir Tyagi: I have not withdrawn my amendment. I have only accepted the words which Prof. Shibban Lal Saksena intends to add to my amendment.

Mr. Vice-President: I want to know whether you want that your amendment should be put separately to the vote.

Shri Mahavir Tyagi: Yes, Sir, of course. As I have said, I want to abolish liquor altogether. He wants to add the words "except for medical purposes". Therefore my amendment is the original amendment.

Mr. Vice-President: I understand the situation. I shall now put to the vote the amendment of Mr. Mahavir Tyagi as modified by Professor Shibban Lal Saksena and further modified by Dr. Ambedkar.

Shri Mahavir Tyagi: On a point of order, Dr. Ambekar has added the word "particular" but he has not taken my permission.

Mr. Vice-President: I take your permission on behalf of Dr. Ambedkar.

Shri Mahavir Tyagi: I accept his amendment also, Sir.

Mr. Vice-President: This particular amendment as amended is now put to the vote.

The amendment was adopted.

Mr. Vice-President: Then, there is another amendment which is No. 81 in List III moved by Sardar Bhopinder Singh Man to insert the word `tobacco' between the words `drinks' and `drugs'. I now put it to the vote.

The amendment was negatived.

Mr. Vice-President: I now put to the vote article 38,as amended.

The motion was adopted.

Article 38, as amended, was added to the constitution.

Mr. Vice-President: We now come to new article 38-A - amendment No. 1002 standing in the names of Pandit Thakur Dass Bhargava and Seth Govind Das.

Article 38-A.

Seth Goving Das: Sir, I have an amendment to the amendment of Pandit Thakur Das Bhargava which I will move after Pandit Thakur Das Bhargava has moved his amendment.

Pandit Thakur Dass Bhargava (East Punjab: General):*[Mr. President, the words of the amendment No. 72 which I am moving in place of amendment No. 1002, are as follows:

-

"That for amendment No. 1002 of the lists of amendments to 38-A the following be substituted: -

'38-A. The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall in particular take steps for preserving and improving the breeds of cattle and prohibit the slaughter of cow and other useful cattle, specially milch and draught cattle and their young stock'."

At the very outset I would like to submit that this amendment..........]*

Shri S. Nagappa (Madras: General): Sir, on a point of order, my honourable Friend, who can speak freely in English, is deliberately talking in urdu or Hindustani which a large number of South Indians cannot follow.

Mr. Vice-President: The honourable Member is perfectly entitled to speak in any language he likes but I would request him to speak in English though he is not bound to speak in English.

Pandit Thakur Dass Bhargava: I wanted to speak in Hindi which is my own language about the cow and I would request you not to order me to speak in English. As the subject is a very important one, I would like to express myself in the way in which I can express myself with greater ease and facility. I would therefore request you kindly to allow me to speak in Hindi.

*[Mr. Vice-President, with regard to this amendment I would like to submit before the House that in fact this amendment like the other amendment, about which Dr. Ambedkar has stated, is his manufacture. Substantially there is no difference between the two amendments. In a way this is an agreed amendment. While moving this amendment, I have no hesitation in stating that for people like me and those that do not agree with the point of view of Dr. Ambedkar and others, this entails, in a way, a sort of sacrifice. Seth Govind Das had sent one such amendment to be included in the Fundamental Rights and other members also had sent similar amendments. To my mind it would have been much better if this could have been incorporated in the Fundamental Rights, but some of my Assembly friends differed and it is the desire of Dr. Ambedkar that this matter, instead of being included in Fundamental Rights should be incorporated in the Directive Principles. As a matter of fact, it is the agreed opinion of the Assembly that this problem should be solved in such a manner that the objective is gained without using any sort of coercion. I have purposely adopted this course, as to my mind, the amendment fulfils our object and is midway between the Directive Principles and the Fundamental Rights.

I do not want that due to its inclusion in the Fundamental Rights, non-Hindus should complain that they have been forced to accept a certain thing against their will. So far as the practical question is concerned, in my opinion, there will be absolutely no difference if the spirit of the amendment is worked out faithfully, wheresoever this amendment is placed. With regard to Article 38 which the House has just passed, I would like to state that Article 38 is like a body without a soul. If you fail to pass Article 38-A which is the proposed amendment, then Article 38 will be meaningless. How can you improve your health and food position, if you do not produce full quota of cereals and milk?

This amendment is divided into three parts. Firstly, the agriculture should be improved on scientific and modern lines. Secondly, the cattle breed should be improved; and thirdly, the cow and other cattle should be protected from slaughter. To grow more food and to improve agriculture and the cattle breed are all inter-dependent and are two sides of the same coin. Today, we have to hang our head in shame, when we find that we have to import cereals from outside. I think our country is importing 46 million tons of cereals from outside. If we calculate the average of the last twelve years, namely, from 1935 to 1947, then it would be found that this country has produced 45 million tons of cereals every year. Therefore, it is certain that we are not only self-sufficient but can also export cereals from our country. If we utilize water properly, construct dams, and have proper change in the courses of rivers, use machines and tractors, make use of cropping and manuring, then surely the production will increase considerably. Besides all these, the best way of increasing the production is to improve the health of human beings and breed of cattle, whose milk and manure and lab our are most essential for growing food. Thus the whole agricultural and food problem of this country is nothing but the problem of the improvement of co and her breed. And therefore I would like to explain to you by quoting some figures, how far cattle-wealth has progressed and what is the position today.

In 1940, there were 11,56,00,960 oxen in India and in1945 only 11,19,00,000 were left. That is to say, during these five years, there was a decrease of 37 lacs in the number of oxen. Similarly the number of buffaloes in 1940, was 3,28,91,300 and in 1945, this figure was reduced to3,25,44,400. According to these figures, during these five years, their number was reduced by four lacs. Thus during these five years there was decrease of 41 lacs in the sum total of both the above figures taken together.

Besides this, if we see the figures of the slaughtered cattle in India we find that in 1944, 60,91,828 oxen were slaughtered, while in 1945 sixty five lacs were slaughtered *i.e.*, four lakhs more. In the same year 7,27: 189 buffaloes were slaughtered. I do not want to take much of your time. If you wish to see latest figures then I have got them upto 1945. You can see them. I have got figures for Bombay and Madras. A look at these figures will show that there has been no decrease in their slaughter, rather it is on the increase. Therefore, I want to submit before you that the slaughter of cattle should be banned here Ours is an agricultural country and the cow is `*Kam- Dhenu*' to us - fulfiller of all our wants. From both points of view, of agriculture and food, protection of the cow becomes necessary. Our ancient sages and Rishis, realising her importance, regarded her as very sacred. here, Lord Krishna was born, who served cows so devotedly that to this day, in affection he is known as "Makhan Chor". I would not relate to you the story of Dalip, how that Raja staked his own life for his cow. But I would like to tell you that even during the Muslim rule, Babar, Humayun, Akbar, Jahangir and even in the reign of Aurangzeb, cow slaughter was not practised in India; not because Muslims regarded it to be bad but because, from the economic point of view, it was unprofitable.

Similarly in every country, in China, cow-slaughter is a crime. it is banned in Afghanistan as well. A year ago, a similar law was passed in Burma, before that, under a certain law cattle only above fourteen years of age could be slaughtered. But eventually, the Burma Government realised that this partial ban on slaughter was not effective. On the pretext of useless cattle many useful cattle are slaughtered. I have read in newspapers that the Pakistan Government has decided to stop the export of cattle from Western Pakistan, and they too have enforced a partial ban on slaughter of animals. In the present conditions in our country, cow-breeding is necessary, not for milk supply alone, but also for the purposes of draught and transport. It is no wonder that people worship cow in this land. But I do not appeal to you in the name of religion; I ask you to consider it in the light of economic requirements of the country. In this connection I would like to tell you the opinion of the greatest leader of our country - the Father of the Nation - on the subject. You know the ideas of revered Mahatmaji on this topic. He never wanted to put any compulsion on

Muslims or non-Hindus. He said, "I hold that the question of cow-slaughter is of great moment - in certain respects of even greater moment - than that of Swaraj. Cow-slaughter and manslaughter are, in my opinion, two sides of the same coin."

Leaving it aside, I want to draw your attention to the speech of our President, Dr. Rajendra Prasad. After this the Government of India, appointed a committee - an expert representative committee-to find out whether for the benefit of the country the number of cattle can be increased, and whether their slaughter can be stopped. The Committee has unanimously decided in its favour. Seth Govind Das was also a member of the committee. The committee unanimously decided that cattle slaughter should be banned. Great minds were associated with the said committee. They examined the question from the economic view-point; they gave thought to the unproductive and unserviceable cattle also. After viewing the problem from all angles they came to the unanimous decision that slaughter of cattle should be stopped. That resolution relates not to cows alone. Slaughtering of buffaloes, which yield 50 per cent of our milk supply, and of the goats which yield 3 per cent of our milk supply, and also bring a profit of several crores, is as sinful as that of cows. In my district of Hariana, a goat yields 3 to 4 seers of milk. Perhaps a cow does not yield that much in other areas. Therefore I submit that we should consider it from an economic point of view. I also want to state that many of the cattle, which are generally regarded as useless, are not really so. Experts have made an estimate of that, and they came to the conclusion that the cattle which are regarded as useless are not really so, because we are in great need of manure. A cow, whether it be a milch-cow or not, is a moving manure factory and so, as far as cow is concerned, there can be no question of its being useless or useful. It can never be useless. In the case of cow there can be no dispute on the point.]* *(Hearing the bell being rung.)* Am I to stop?

Mr. Vice President: Yes, I am asking you to stop.

Pandit Thakur Dass Bhargava: Could you give me two minutes more?

Mr. Vice-President: You have already had 25 minutes.

Pandit Thakur Dass Bhargava: *[As the Vice-President has ordered me to finish off, I shall not go into the details; otherwise I can prove by figures that the value of the refuse and urine of a cow is greater than the cost of her maintenance. In the end, I would wind up by saying that there might be people, who regard the question of banning cow-slaughter as unimportant, but I would like to remind them that the average age in our country is 23 years, and that many children die under one year of age! The real cause of all this is shortage of milk and deficiency in diet. Its remedy lies in improving the breed of the cow, and by stopping its slaughter. I attach very great importance to this amendment, so much so that if on one side of the scale you were to put this amendment and on the other all these 315 clauses of the draft, I would prefer the former. If this is accepted, the whole country would be, in a way, electrified. Therefore, I request you to accept this amendment unanimously with acclamation.]*

Seth Govind Das: *[Mr. President, the amendment moved by Pandit Thakurdas Bhargava appears to be rather inadequate as a directive in its present form. I therefore move my amendment to his amendment. My amendment runs thus:

> "That in amendment No. 1002 of the list of Amendments in article 38-A the words and other useful cattle, specially milch cattle and of child bearing age, young stocks and draught cattle' be deleted and the following be added at the end:

'The word "cow' includes bulls, bullocks, young stock of genus cow'."

The object of the amendment is, I hope, quite clear from its words. The amendment moved by Pandit Bhargava prohibits the slaughter of cow and other useful cattle but according to it unfit or useless cows may be slaughtered. But the object of my amendment is, as far as cows are concerned, to prohibit the slaughter of any cow, be it useful or useless and in my amendment word 'cow' includes bulls, bullocks and calves all that are born of cows. As Pandit Thakur Das told you, I had submitted this earlier to be included in Fundamental Rights but I regret that it could not be so included. The reason given is that Fundamental Rights deal only with human beings and not animals. I had then stated that just as the practice of untouchability was going to be declared an offence so also we should declare the slaughter of cows to be an offence. But it was said that while untouchability directly affected human beings the slaughter of cows affected the life of animals only - and that as the Fundamental Rights were for human beings this provision could not be included therein. Well, I did not protest against that view and thought it proper to include this provision in the Directive Principles. It will not be improper, Sir, if I mention here, that it is not for the first time that I am raising the question of cow protection. I have been a member of the Central Legislature for the last twenty-five years and I have always raised this question in the Assembly and in the Council of State. The protection of cow is a question of long standing in this country. Great importance has been attached to this question from the time of Lord Krishna. I belong to a family which worships Lord Krishna as *"Ishtadev"*. I consider myself a religious minded person, and have no respect for those people of the present day society whose attitude towards religion and religious minded people is one of contempt. It is my firm belief that Dharma had never been uprooted from the world and nor can it be uprooted. There had been unbelievers like *Charvaka* in our country also but the creed of *Charvaka* could never flourish in this country. Now-a-days the Communist leaders of the West also and I may name among them Karl Marx, Lenin, Stalin, declare religion "the opium of the People". Russia recognised neither religion nor God but we have seen that in the last war the Russian people offered prayers to God in Churches to grant them victory. Thus it is plain from the history of ancient times as also from that of God-denying Russia that religion could not be uprooted.

Moreover, cow protection is not only a matter of religion with us; it is also a cultural and economic question. Culture is a gift of History. India is an ancient country; consequently no new culture can be imposed on it. Whosoever attempts to do so is bound to fail; he can never succeed. Ours is a culture that has gradually developed with our long history. Swaraj will have no meaning for our people in the absence of a culture. Great important cultural issues - for instance the question of the name of the country, question of National Language, question of National Script, question of the National Anthem and question of the prohibition of cow slaughter - are before this Assembly and unless the Constituent Assembly decides these questions according to the wishes of the people of the country, Swarajya will have no meaning to the common people of our country. I would like to submit, Sir, that a referendum betaken on these issues and the opinion of the people be ascertained. Again, cow protection is also a matter of great economic importance for us. Pandit Thakur Das Bhargava has shown to you by quoting statistic show the cattle wealth of the country is diminishing. This country is predominantly agricultural in character. I would give some figures here regarding the position of our cattle wealth. In 1935 there were one hundred nineteen million and four hundred ninety one thousand (11,94,91,000) heads of cattle. In 1940 their number came down to one hundred fifteen million and six hundred ten thousand, and in 1945 it further came down to one hundred eleven million and 9 hundred thousand. While on one side our population is increasing our cattle wealth is decreasing. Our Government is carrying on a Grow More Food Campaign. Millions of rupees are being spent on this campaign. This campaign cannot succeed so long as we do not preserve the cows.

Pandit Thakur Das has given us some figures to show the number of cows slaughtered in our country. I would like to quote here some figures from the Hide and Skin Report of the Government of India. Fifty two lakhs of cows and thirteen lakhs of buffaloes are slaughtered every year in this country. It shows in what amazing numbers cattle are slaughtered here. Thirty six crores acres of land are under cultivation here. These figures also includes the land under cultivation in Pakistan. I have to give these figures because we have no figure of the land under cultivation in India since the secession of Pakistan from our country. We have six crores bullocks for the cultivation of the land. A scientific estimate would show that we need another one and a half crore of bullocks to keep this land under proper cultivation.

So far as the question of milk supply is concerned I would like to place before you figures of milk supply of other countries as compared to that of our country.

In New Zealand milk supply *per capita* is 56 ounces, in Denmark 40, in Finland 63, in Sweden 61, in Australia 45, in Canada 35, in Switzerland 49, in Netherland 35, in Norway 43, in U.S.A. 35, in Czechoslovakia 36, in Belgium 35, in Australia 30, in Germany 35, in France 30, in Poland 22, in Great Britain 39 and in India it is only 7 ounces. Just think what will be the state of health of the people of a country where they get only seven ounces of milk per head. There is a huge infantile mortality in this country. Children are dying like dogs and cats. How can they be saved without milk?

Thus even if we look at this problem from the economic point of view, we come to the conclusion that for the supply of milk and agriculture also, the protection of the cow is necessary.

I would like to place before the House one thing more. It has been proved by experience that whatever laws we may frame for the prevention of the slaughter of useful cattle, their object is not achieved. In every province there are such laws. There people slaughter cattle and pay some amount towards fines and sometimes escape even that. Thus our cattle wealth is declining day by day.

Sometime back there was a law like that in Burma but when they saw that cattle could not be saved under it, they banned cow slaughter altogether.

I would like to emphasise one point to my Muslim friends also. I would like to see my country culturally unified even though we may follow different religions. Justas a Hindu and a Sikh or a Hindu and a Jain can live in the same family, in the same way a Hindu and a Muslim can also live in the same family. The Muslims should come forward to make it clear that their religion does not compulsorily enjoin on them the slaughter of the cow. I have studied a little all the religions. I have read the life of Prophet Mohammad Sahib. The Prophet never took beef in his life. This is an historic fact.

Pandit Thakur Das Bhargava pointed out just now that from the time of Akbar to that of Aurangzeb, there was a ban on cow slaughter. I want to tell you what Babar, the first Moghul Emperor told Humayun. He said: "Refrain from cow-slaughter to win the hearts of the people of Hindustan."

Pandit Thakur Dass Bhargava just now referred to the Committee constituted by the Government of India for this purpose. It recommended that cow slaughter should be totally banned. I admit that the Government will require money for the purpose. I want to assure you that there will be no lack of money for this purpose. If the allowance given to cattle-pounds and Goshalas is realised from the people by law, all the money needed would be realised. Even if the Government want to impose a new tax for this purpose every citizen of this country will be too glad to pay it. Therefore our Government should not raise before us the financial bogey so often raised by the British Government. I have travelled a little in this country and I am acquainted with the views of the people.]*

Sir, I wish to say a few words in English to my South Indian friends.

Mr. Vice-President: I am afraid that if I give you that permission, other speakers will not have sufficient time to speak. You asked for ten minutes and I have given you fifteen minutes plus four. If you insist on more time I am prepared to give it but you could have addressed them in English.

Mr. Shibban Lal Saksena - Amendment No. 87 of List 4.

Shri R. V. Dhulekar (United Provinces: General): Sir, I have sent a little request for permission to speak.

Mr. Vice-President: If honourable members will kindly take their seats, I shall be able to say something. We have adopted a certain procedure. The amendments have to be moved one after another.

Mr. Shibban Lal Saksena.

Prof. Shibban Lal Saksena: Sir, I had given notice of an amendment in which I desired that cow slaughter should be banned completely. But after the agreement arrived at about Pt. Thakur Dass Bhargava's amendment, I waive my right to move my amendment.

An Honourable Member: But what is the amendment?

Prof. Shibban Lal Saksena: It is No. 87 in list IV, but I am not moving it.

Mr. Vice-President: In that case you cannot speak.

Prof. Shibban Lal Saksena: But there is no other amendment. I may speak on the clause now.

Pandit Balkrishna Sharma (United Provinces: General): Sir, may we know where we stand? Is the Honourable Member moving his amendment or is he taking part in the general discussion of the clause?

Prof. Shibban Lal Saksena: I am speaking generally on the clause.

Mr. Vice-President: In that case, you must wait till Shri Ram Sahai moves his amendment also, No. 88, list IV.

Shri Algu Rai Shastry (United Provinces: General): On a point of order. Professor Saksena has copied out the whole of Pt. Thakur Das's amendment and added only one or two words. In such cases only those new words should be taken as his amendment, and the whole of the amendment should not be owned by him.

Mr. Vice-President: But he has said he will be taking part in the general discussion only.

Now, Shri Ram Sahai.

Shri Ram Sahai (United State of Gwalior- Indore- Malwa: Madhya Bharat): *[Mr. Vice-President. In regard to this matter I have already tabled an amendment seeking to add these words in article 9 of Part III "The State shall ban the slaughter of cows by law". But for the very reasons that led Mr. Bhargava not to move his amendment, I have also now decided not to move mine. Still there is another amendment in my name in Part IV of the Draft Constitution.

My only object in tabling this amendment was to secure complete prohibition of the slaughter of cows. But I find here that a section of the House does not like this. I also do not like, on my part, to make any proposal that may not receive the unanimous acceptance of the House nor a proposal which may lead to the curtailment of the freedom of the provinces in this matter. Under the Directive Principles of State Policy, Provinces will have the power to stop cow slaughter totally or partially. Though there is a ban in one form or another on the slaughter of cows, in almost all countries of the world, yet I would not emphasise that fact before you.

I hope Honourable Dr. Ambedkar will appreciate and accept the amendment moved by Mr. Bhargava because it is on the basis of the assurance to this effect given by him that the amendment has been moved as a compromise.

In view of that assurance I am not moving my amendment.]*

Mr. Vice-President: There is another amendment which I had overlooked. It is No. 1005, standing in the name of Shri Ranbir Singh Chaudhari.

Chaudhari Ranbir Singh (East Punjab: General): Sir, I do not propose to move that amendment. But I would like to speak on the general clause.

Mr. Vice-President: All right. Professor Saksena.

Prof. Shibban Lal Saksena: Sir, there are two aspects to this question. One is the religious aspect and the other is the economic aspect. I shall first deal with the religious aspect. I am not one of those men who think that merely because a thing has a religious aspect, it should not be enacted as law. I personally feel that cow protection, if it has become a part of the religion of the Hindus, it is because of its economic and other aspects, I believe that the Hindu religion is based mostly on the principles which have been found useful to the people of this country in the course of centuries. Therefore, if thirty crores of our population feel that this thing should be incorporated in the laws of the country, I do not think that we as an Assembly representing 35 crores should leave it out merely because it has a religious aspect. I agree with Seth Govind Das that we should not think that because a thing has a religious significance, so it is bad. I say, religion itself sanctifies what is economically good. I wish to show how important cattle preservation is for us mahatma Gandhi in fact, has written in so many of his articles about his belief that cow protection was most essential for our country. From the scientific point of view, I wish to point out that Dr. Wright who is an expert on the subject in his report on our National Income says that out of 22 crores of national income per annum, about eleven crores are derived from the cattle wealth of India, representing the wealth of most of our people who live in the villages.

Sometimes it is supposed that we have too many cattle and that most of them are useless, and therefore, they must be slaughtered. This is a wrong impression. If you compare the figures, you will find that in India there are only 50cattle per 100 of the population, whereas in Denmark it is74, in U.S.A. 71, in Canada 80, in Cape Colony 120 and in New Zealand 150. So in New Zealand, there are about three times the number of cattle per head of population than we have here. So, to say that we have too many cattle is not right. As for useless cattle, scientists say that their excreta has value as manure and its cost is more than the expenditure on the upkeep of such cattle.

Then again, our agriculture depends mostly on cattle, as it is mostly of small holdings where the cultivators cannot make use of tractors and other implements. They depend on bullocks, and if you compare the figures of bullocks, you will find that although we have got an area of33 1/2 million acres of land to cultivate, we have only six crores of bullocks which works at about 16 bullocks per 100 acres of land which is quite insufficient. Therefore, even from the point of view of our agricultural economy, we need a very large number of bullocks. It has been estimated that to meet our requirements, we would require about eleven crores more bullocks.

Then, coming to our requirements of milk and other products, if we compare our milk consumption with that of other countries, we find that it is only 5 oz. per head, and that is very little, compared to the figures of other countries. Therefore I think that we must have this amendment incorporated in our Constitution.

The other important evils in our country are infant mortality and tuberculosis which have their origin in deficient milk diet. These evils can be remedied only if we preserve our cattle and improve their breed, which is the purpose of this amendment. I therefore think that this amendment should be accepted.

Then there is the use of Vanaspati ghee, which has become an economic necessity, because there is no pure ghee available anywhere. If we are able to give effect to this amendment we can improve the breed of cattle and then we will be able to do away with the use of Vanaspati, which is so injurious to the health of the nation.

Also from the point of view of the requirements of our climate this amendment is very necessary. I think the amendment is very well worded. It says that we shall try to "organise agriculture and animal husbandry on modern and scientific lines and in particular take steps to preserve, protect, and improve the useful breeds of cattle and ban the slaughter of cow and other useful cattle, especially milch cattle and of child-bearing age, young stocks and draught cattle". I think the amendment of Seth Govind Das is included in it. I am sure, representatives of people elected on adult suffrage will surely incorporate in their state laws legislation which will give effect to this amendment and we shall then have in our land no cow slaughter. I therefore support this amendment wholeheartedly.

Dr. Raghu Vira (C. P. and Berar: General): Sir, I think it my most bounden duty in this House to express the feelings, feelings which no words can really convey, that not a single cow shall be slaughtered in this land.

These sentiments which were expressed thousands of years ago still ring in the hearts of tens of millions of this land. My friends tell me that it is an economic question, that Muslim kings have supported the preservation of cows and banned the killing of the cows. That is all right. But when we attain freedom, freedom to express ourselves in every form and manner - our Preamble says 'There shall be liberty of expression' - is that merely expression of thought or is that the expression of our whole being? This country evolved a civilization and in that civilization we gave prominent place to what we call *Ahimsa* or non-killing and non-injury, not merely of human beings but also of the animal kingdom. The entire universe was treated as one and the cow is the symbol of that oneness of life and are we not going to maintain it? Brahma hatya and *go-hatya* - the killing of the learned man, the scientist, the philosopher or the sage and the killing of a cow are on a par. If we do not allow the killing of a scientist or a sage in this land it shall certainly be ordained by this House that no cow shall be killed. I known my childhood we were not allowed to drink until the cow has had its drink and we were not allowed to eat till the cow has had its meal. The cow takes precedence over the children of the family, because she is the mother of the individual, she is the mother of the nation. Ladies and gentlemen in this House, I appeal to you to look back with serenity and to search your souls. We are representatives of millions of our people...........

Mr. Vice-President: The Honourable Member must address the Chair. This is not a public platform.

Dr. Raghu Vira: Through you, Sir, I wish to convey the feeling of this House and other people of this country that the cow shall be saved in the interests of the country and in the interests of our culture. And with these words, Sir, I take your leave.

Shri R. V. Dhulekar: Sir, I always believed from my childhood that India had a mission and because India had a mission therefore I wanted the independence of this country. Many millions of the people, who died for this country, also like me had believed that India had a mission, and what was that mission? The mission was that we should go about the world and carry the message of peace, love, freedom and *Abhaya* (freedom from fear) to every body in the world. When independence was achieved I was happy to believe that I shall carry out my mission, that I shall carry to the world this message, *viz.*, that India has got no grudge against any country in the world, it has no expansionist ideas but that it is going to save the whole world from the danger of internecine war, bloodshed and many other ills that humanity is suffering from. In the same way and for the same purpose I appeal to the House to discuss this subject from a dispassionate point of view. It is not the crumbs, the loaves and fishes that we are fighting for. Loaves and fishes were left behind by some people thirty years back and by some others fifty years back. We did not want to achieve this independence for loaves and fishes. Those who want them are welcome but men like us who have a mission or a message for the world cannot love loaves and fishes. We do not want ambassadorship, premierships, minister ships or wealth. We want that India should declare today that the whole human world as well as the whole animal world is free today and will be protected. The cow is a representative of the animal kingdom, the *peepal* tree is the representative of the vegetable kingdom, the touchstone or the *shaligram* is the representative of the mineral world. We want to save and give peace and protection to all those four worlds and therefore it is that the Hindus of India have put these four things as representatives of this world - the human being, the cow, the *peepal* and the *shaligram*. All these were worshipped because we wanted to protect the whole humantly. Our *Upanishad* says:

We do not want this property, we do not want this food; we do not want this raiment - not because we cannot take it; not because we are cowards; not because we cannot carry Imperialism to the four corners of the world; but we may not have it because we see the whole world identical with our own soul. So our humanity which resides in this Bharatvarsha for several thousand years has marched forward and has taken the cow within the fold of human society. Some people here talked to me and said "You say that you want to protect the cow and want it to be included in the Fundamental Rights. Is the protection of the cow a fundamental right of a human being? Or is it the fundamental right of the cow?" I replied to them and tell them suppose it is a question of saving your mother or protecting your mother. Whose fundamental right is it? Is it the fundamental right of the mother? No. It is my fundamental right to protect my mother, to protect my wife, my children and my country. In the Fundamental Rights you have said that you will give justice, equity and all these things. Why? Because you say "it is your fundamental right to have justice". What does that justice mean? It means that we shall be protected, our families shall be protected. And our Hindu society, or our Indian society, has included the cow in our fold. It is just like our mother. In fact it is more than our mother. I can declare from this platform that there are thousands of persons who will not run at a man to kill that man for their mother or wife or children, but they will run at a man if that man does not want to protect the cow or wants to kill her.

With these few words, I wish to say that these two amendments which have been put forward by Mr. Bhargava and Seth Govind Das should be dealt with dispassionately. I shall appeal to you that only that amendment should be passed which is very clear. If Mr. Bhargava's amendment is doubtful, then certainly Seth Govind Das's amendment should be passed.

Mr. Vice-President: Following my usual practice I must give an opportunity to people who hold different views from the majority view and I am therefore calling upon Mr. Lari to speak.

Mr. Z. H. Lari (United Provinces: Muslim): Mr. Vice-President, I appreciate the sentiments of those who want protection of the cow - may be on religious grounds or maybe in the interests of agriculture in this country. I have come here not to oppose or support any of the amendments but to request the House to make the position quite clear and not to leave the matter in any ambiguity or doubt. The House, at the same time, must appreciate that Mussalmans of India have been, and are, under the impression that they can, without violence to the principles which govern the State, sacrifice cows and other animals on the occasion of *Bakrid.* It is for the majority to decide one way or the other. We are not here to obstruct the attitude that the majority community is going to adopt. But let there not linger an idea in the mind of the Muslim public that they can do one thing, though in fact they are not expected to do that. The result has been, as I know in my own Province on the occasion of the last *Bakrid,* so many orders under Section 144 in various places, districts and cities. The consequence has been the arrests of many, molestation of even more, and imprisonment of some. Therefore, if the House is of the opinion that slaughter of cows should be prohibited, let it be prohibited in clear, definite and unambiguous words. I do not want that there should be a show that you could have this thing although the intention may be otherwise. My own submission to this House is that it is better to come forward and incorporate a clause in Fundamental Rights that cow slaughter is henceforth prohibited, rather than it being left vague in the Directive Principles, leaving it open to Provincial Governments to adopt it one way or the other, and even without adopting definite legislation to resort to emergency powers under the Criminal Procedure. In the interests of good-will in the country and of cordial relations between the different communities I submit that this is the proper occasion when the majority should express itself clearly and definitely.

I for one can say that this is a matter on which we will not stand in the way of the majority if the majority wants to proceed in a certain way, what ever may be our inclinations. We feel - we know that our religion does not necessarily say that you must sacrifice cow: it permits it. The question is whether, considering the sentiments that you have, considering the regard which the majority have for certain classes of animals, do they or do they not permit the minority - not a right - but a privilege or a permission which it at present has? I cannot put it higher. I won't class it as interference with my religion. But I do not want that my liberty should be taken away, and especially the peaceful celebration of any festival should be marred by the promulgation of orders under Section 144. I have come only to plead that. Therefore, let the leaders of the majority community here and now make it clear and not leave it to the back-benchers to come forward and deliver sermons one way or the other. Let those who guide the destinies of the country, make or mar them, say definitely "this is our view", and we will submit to it. We are not going to violate it. This is the only thing I have come to say. I hope you will not misunderstand me when I say this. It is not due to anger, malice or resentment but it is out of regard for cordial relations between the communities, and what is more, due to the necessity of having a clear mind that I say this. Henceforward the Muslim minority must know where they stand so that they may act accordingly, and there be no occasion for any misunderstanding between the majority and the Muslims on this point.

In view of what I have said, I would not oppose nor support any of the amendments, but I would invite a very clear and definite rule instead of the vague phraseology of the clauses which have been put forward. It proceeds to say that we should have modern and scientific agriculture. Modern and scientific agriculture will mean mechanisation and so many other things. The preceding portion of the clause speaking about modern and scientific agriculture and the subsequent portion banning slaughter of cattle do not fit in with each other. I appreciate the sentiments of another member who said "this is our sentiment, and it is out of that sentiment that we want this article". Let that article be there, but for God's sake, postpone the discussion of the article and bring it in clear, definite and unambiguous terms so that we may know where we stand and thereafter there should be no occasion for any misunderstanding between the two communities on this issue which does not affect religion but affects practices which obtain in the country.

Syed Muhammad Saiadulla (Assam: Muslim): Mr. Vice-President, Sir, the subject of debate before the House now has two fronts, the religious front and the economic front. Some who want to have a section in our Constitution that cow killing should be stopped for all time probably base it on the religious front. I have every sympathy and appreciation for their feelings; for, I am student of comparative religions. I know that the vast majority of the Hindu nation revere the cow as their goddess and therefore they cannot brook the idea of seeing it slaughtered. I am a Muslim as everyone knows. In my religious book, the Holy Qoran, there is an injunction to the Muslims saying -

"La Ikraba fid Din", or

or, there ought to be no compulsion in the name of religion. I therefore do not like to use my veto when my Hindu brethren want to place this matter in our Constitution from the religious point of view. I do not also want to obstruct the framers of our Constitution, I mean the Constituent Assembly if they come out in the open and say directly: "This is part of our religion. The cow should be protected from slaughter and therefore we want its provision either in the Fundamental Rights or in the Directive Principles."

But, those who put it on the economic front, as the honourable Member who spoke before me said, do create a suspicion in the minds of many that the ingrained Hindu feeling against cow slaughter is being satisfied by the backdoor. If you put it on the economic front, I will place before you certain facts and figures which will show that the slaughter of cows is not as bad as it is sought to be made out from the economic point of view. I have very vast and varied experience of the province of Assam and therefore I will quote you figures from Assam only. In the year 1931, under the orders of the then Central Government a census of the cattle wealth of the province was undertaken. We found that in 1931, Assam had 70 lakhs of cattle as against a human population of 90 lakhs. It will stagger my friends from the other parts of India when I place before them the fact that the average yield of an Assam cow is but a quarter seer of milk daily and that it is so puny in stature that its draught power is practically nil. Assam is dependent for her draught cattle on the province of Bihar. During the last war, when there was tremendous difficulty as regards transport, we could not get any cattle from Bihar, with the result that we were compelled to use our own small cattle for the purpose of ploughing. In order to conserve this cattle, the Government of Assam passed a law prohibiting the slaughter of cattle in milch or cattle which could be used for the purpose of draught. But, wonder of wonders, I personally found that droves of cattle were being taken to the military depots for being slaughtered not by Muslims, but by Hindus who had big *"sikhas"* on their heads. When I saw this during my tours I asked those persons why, in spite of their religion and in spite of Government orders, they were taking the cattle to be slaughtered. They said: "Sir, these are all unserviceable cattle. They are all dead-weight on our economy. We want to get ready cash in exchange for them".

My friend Seth Govind Das mentioned the case of cattle that were killed. I questioned him privately. The figures in the Hides and Skins Report are from the hides. I know there is a community amongst Hindus themselves who go by the name of `Rishis' in our part of the country whose sole occupation in life is to take away the skin from dead cattle. They have got absolutely no objection even to flay the skin of slaughtered cattle. The figures given by Seth Govind Das include the numbers of both the dead and slaughtered cattle. Similarly the figures given by Pandit Bhargava are not the figures of cattle slaughtered during normal times. They were, as Honourable Members know, war years and, on account of the fact that the Japanese had invaded India through Assam, Assam alone had to accommodate about 5 lakhs of fighting men and an equal number of camp followers. Cattle from all parts of India were then taken to Assam to feed these ten lakhs of people from America and elsewhere, whites as well as blacks. Even the Chinese soldiers were there in Assam, not to speak of soldiers from every part of India. Therefore, those were abnormal years and you cannot base you arguments on the figures of the years 1945 and 1946.

Pandit Thakur Dass Bhargava: But, during those years, there was a ban on the slaughter of cattle imposed by the Government of India. They had issued orders banning the slaughter of cattle. It is in spite of that that the figures of slaughter have been so high.

Syed Muhammad Saiadulla: I do not want to be side-tracked. The point is that there are cattle and cattle. We were trying to get cattle from West Punjab just before Partition. The cattle there on an average give half a maund of milk. The Assam Government have been trying to improve the milk yield of their cattle by introducing cattle from England, Australia and the Punjab. We have yet touched only the fringe of the problem with our Government cattle farms and we have succeeded only in Shillong. The milk yield there has increased but in the plains the milk yield is only quarter seer daily.

The motion of Pandit Bhargava is that, in order to improve the economic condition of the people, we should try scientific measures. That presupposes that the useless cattle should be done away with and better breeds introduced.

Now, I ask you what is to be done with these seventy lakhs of cattle that we have got in Assam? Therefore, Sir, if you place it on the economic front, you are met with this proposition that we have got such a big number of uneconomic cattle that must be done away with before you can supplant them with a better breed. Another point is.......

Pandit Thakur Dass Bhargava: Does not the honourable Member know that many useless cattle have been turned into good cattle by goshalas and other organisations and at least 90 per cent can be salvaged by proper feeding and treatment.

Syed Muhammad Saiadulla: Sir, I do not know of goshalas in other parts and I do not want to reply to Pandit Bhargava as I have only ten minutes to speak. I was telling the House that there is a lurking suspicion in the minds of many that it is the Muslim people who are responsible for this slaughter of cows. That is absolutely wrong.

Pandit Thakur Dass Bhargava: Quite wrong.

Syed Muhammad Saiadulla: I am glad that the Mover of this amendment says that it is quite wrong. There are lakhs of Muslims who do not eat cow's flesh. I am not speaking in any sense of braggadocio when I say that I myself do not take it. Before the partition the Muslims were only one-fourth of the total population. They did not raise sufficient cattle to kill. It is the majority people who sold their cattle to the Muslims to be killed. Now the Muslims form only one-tenth of the population of the Dominion of India. Do you think that the Mussalmans can raise sufficient cattle to slaughter them? Muslims are poorer than our Hindu brethren. The Muslims are as much agriculturists as the Hindus and the cattle in their farms form their capital asset, the natural source of their power to till the land and produce the food which will maintain them for the entire year. Therefore it is wrong to say that the Muslims kill the cows either to offend my Hindu friends or for any other purpose. Fortunately or unfortunately the Muslims are a meat-eating people. The price of mutton is so high that many poor people cannot buy it. Therefore on rare occasions they have to use the flesh of the cow. From my own knowledge, it is only the barren cows that go to the butcher. Speaking for Assam, it is the hill people who are the worst culprits in this respect. In the town of Shillong, there is only one Muslim butcher against seventy from the hill people, who deal in beef. Sir, in these circumstances, in the name of the economic front, I cannot lend my support to the motion moved by Pandit Bhargava. I am sorry that for the reasons given already, I am compelled to oppose the amendment of Seth Govind Das.

The Honourable Dr. B. R. Ambedkar: I accept the amendment of Pandit Thakur Dass Bhargava.

Mr. Vice-President: I shall now put the amendments one by one to the vote. The amendment of Pandit Thakur Dass Bhargava. That is No. 72 in List II.

Seth Govind Das: What about my amendment which has been moved as an amendment to Pandit Bhargava's amendment? That should be put to the vote first.

Mr. Vice-President: You moved your amendment as an amendment to No. 1002 which was not moved.

Pandit Thakur Dass Bhargava: I substituted No. 72 for No. 1002.

Seth Govind Das: My amendment is an amendment to the amendment which Pandit

Bhargava just moved.

Mr. Vice-President: All right. I am willing to put your amendment to the vote. Now, the amendment of Seth Govind Das, *i.e.*, 73 in List No. II, is now put to the vote.

The question is:

"That in amendment No. 1002 of the List of Amendments, in article 38-A, the words and other useful cattle, specially milch cattle and of child bearing age, young stocks and thought cattle' be deleted and the following be added at the end: -

"The word `Cow' includes bulls, bullocks, young stock of genus cow.'"

The amendment was negatived.

Mr. Vice-President: Now amendment No. 72 in List II by Pandit Thakur Dass Bhargava is put to the vote.

The question is:

"That in amendment No. 1002 of the List of Amendments, for article 38-A, the following be substituted: -

> 38-A. The State shall endeavour to organise agriculture and animal husbandry modern and scientific lines and shall in particular take steps for preserving and improving the breeds of cattle and prohibit the slaughter of cow and other useful cattle specially milch and draught cattle and their young stocks.'"

The motion was adopted.

Mr. Vice-President: Article 38-A will consist of the amendment of Pandit Thakur Dass Bhargava. The question before the House is:

"That article 38-A in the form just mentioned form part of the Constitution."

The motion was adopted.

Article 38-A, as amended, was added to the Constitution.

Article 39

Mr. Vice-President: Shall we now go on to the next item in the agenda? No. 1003 has been covered by one of the previous amendments. No. 1004 has also been disposed of. Then No. 1005. The first part of it cannot be moved, but the second part can be moved. (Not moved.)

Then the motion before the House is that article 39 forms part of the Constitution. There are several amendments to this.

(Nos. 1006, 1007 and 1008 were not moved.) No. 1009 by Dr. Ambedkar and his collegues.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That in article 39, after the words `from spoliation' the word 'disfigurement' be inserted,

Prof. Shibban Lal Saksena: Mr. Vice-President, Sir, I beg to move:

"That in article 39, after the word 'from spoliation' the word `disfigurement' be inserted, and all the words after the words 'may be' to the end of the article be deleted."

The Honourable Dr. B. R. Ambedkar: Why do you want to make a speech when I am going to accept it?

Prof. Shibban Lal Saksena: I am glad that Dr. Ambedkar is going to accept it. Because this article is to be a directive principle, it should not mention about laws of Parliament and so we must omit the words "to preserve and maintain according to law made by Parliament all such monuments or places or objects."

The Honourable Dr. B. R. Ambedkar: Sir, I accept the amendment.

Mr. Vice-President: There is another amendment in the name of Shri Ram Sahai, which is identical in words. I shall put this to vote.

Shri Ram Sahai: *[Mr. Vice-President, Sir, there are two amendments in my name, and one of them is covered by the amendment just moved by Mr. Shibban Lal Saksena. As Mr.Saksena's amendment has been accepted by Dr. Ambedkar, I need not move mine. Now I move my other amendment that seeks to replace the words "It shall be the obligation of the state" in Article 39 by the words "The State shall". My object in moving the amendment is that the words "The State shall" should be in Article 39 just as they have been put in the preceding article and the words "It shall be the obligation of the State" should not be put in here. I have moved this amendment to bring all these Articles into conformity. I hope Dr. Ambedkar will accept it and so will the House.]*

Mr. Vice President: I am now putting the amendments one by one.

The question is:

"That in article 39, after the words `from spoliation' the word `disfigurement' be inserted."

The motion was adopted.

Mr. Vice-President: There is the amendment of Prof. Shibban Lal Saksena.

Begum Aizaz Rasul (United Provinces: Muslim): May I know if Dr. Ambedkar has accepted Prof. Shibban Lal Saksena's amendment? If not, I wish to oppose the second part.

Mr. Vice-President: There is no second part so far as I am aware. It only refers to deletion of certain words. The first part is the same.

Begum Aizaz Rasul: I wish to oppose that motion.

Mr. Vice-President: I am afraid it is too late now. The question is:

"That in article 39, after the words `from spoliation', the word `disfigurement' be inserted, and all the words after the words `may be' to the end of the article be deleted."

The motion was adopted.

Mr. Vice-President: The question is:

"That in article 39, for the words `It shall be the obligation of the State to', the words. The State shall' be substituted."

The motion was negatived.

Shri Ram Sahai: I want to point out that Dr. Ambedkar has accepted my amendment. I would request you kindly to again call for voting.

Mr. Vice-President: I put the matter before the House and the House has rejected it, and whatever the reasons might be, it is not for me to reopen the matter.

I will put that clause in the form in which it now stands before the House.

Shri Ram Sahai: *[My submission is, Sir, that Dr. Ambedkar has already accepted my amendment. I demand division on this question.]*

Mr. Vice-President: It is too late now. Why don't you stand up in proper time and demand a division? The matter is now closed. The question is:

"That article 39, as amended, do stand part of the Constitution.

The motion was adopted.

Article 39, as amended, was added to the Constitution.

Article 39-A

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, I move:

"That after article 39, the following new article be inserted: -

'39-A. That State shall take steps to secure that, within a period of three years from the commencement of this Constitution, there is separation of the judiciary from the executive in the public services of the State.'"

I do not think it is necessary for me to make any very lengthy statement in support of the amendment which I have moved. It has been the desire of this country from long past that there should be separation of the judiciary from the executive and the demand has been continued right from the time when the Congress was founded. Unfortunately, the British Government did not give effect to the resolutions of the Congress demanding this particular principle being introduced into the administration of the country. We think that the time has come when this reform should be carried out. It is, of course, realised that there may be certain difficulties in the carrying out of this reform; consequently this amendment has taken into consideration two particular matters which may be found to be matters of difficulty. One is this: that we deliberately did not make it a matter of fundamental principle, because if we had made it a matter of fundamental principle it would have become absolutely obligatory instantaneously on the passing of the Constitution to bring about the separation of the judiciary and the executive. We have therefore deliberately put this matter in the chapter dealing with directive principles and there too we have provided that this reform shall be carried out within three years, so that there is no room left for what might be called procrastination in a matter of this kind. sir, I move.

Shri T. T. Krishnamachari (Madras: General): Mr. Vice-President, Sir, this is an after-thought

of Dr. Ambedkar or, shall I say, of the rump of the Drafting Committee. I do not know why they did not think of it at the time they drafted this particular Part of the Draft Constitution. Probably, he felt that in view of the fact that quite a number of new items have crept into this Part which might be called a veritable dust-bin of sentiment, he might also find a place in it for this particular amendment of his, I see no objection actually to this or any other amendment coming in because this dust-bin seems to be sufficiently resilient as to permit any individual of this House to ride his hobby-horse into it. But, I cannot understand Dr. Ambedkar's explanation when he said that he did not want to put this in the Fundamental Rights. He only wanted to make it permissive; but this in insists on a three-year limit within which this has to be carried out! As a matter of fact, when he himself realises it is not mandatory, what is the object of putting a three-year limit? The mere expression of the wishes of the framers of this Constitution that there should be separation of the judiciary from the executive is quite enough. It ought to be put into practice by the various Provincial Governments as early as possible. Where is the merit of the three-year limit in this particular matter? I personally would have favoured the amendment proposed by my friend Pandit Lakshmi Kanta Maitra, amendment No. 960.

The learned Doctor said that this has been practically one of the basic demands of the Congress ever since it was founded. I believe it is so; I do not want to deny it. I also remember that an eminent Congressman, who was Prime Minister of one of the major provinces in this country, once said that ideas about the separation of the judiciary from the executive have changed, and that because a foreign Government was no longer in power, separation need not be effected. This does not seem to be such a cardinal principle as politicians chose to believe it to be in the days when the British were in power.

The learned Doctor must have known that some provinces have already taken some steps in the matter of separating the judicial and executive functions. I think three major provinces have moved in the matter. Actually they have not made much progress, probably for various reasons, either other preoccupations or finance, or whatever it may be. I do not see why we should ask them to do this within three years when probably it could be done in six or seven years. What I really feel about this amendment is that there is no rhyme or reason in Dr. Ambedkar seeking to tie the hands of provincial Governments by saying that this should be done in three years, though actually, he cannot tie the hands of the provincial Governments by this directive as the provincial Governments can ignore this provision. We are merely voicing a pious wish and tying it up with a period within which we know that it may not be carried into effect.

In this connection, I would like to strike a note of warning. There are several amendments tabled in regard to this question of judiciary which are to be moved by the rump of the Drafting Committee, which are in the nature of an after-thought. For a Professor, it is all very good to envisage a complete separation of the judiciary and the executive. But in actual practice, it might work out in a different way altogether. It might also be that in trying to give the judiciary an enormous amount of power, - a judiciary which may not be controlled by any legislature in any manner except perhaps by the means of ultimate removal - we may perhaps be creating a Frankenstein which would nullify the intentions of the framers of this Constitution. I have in mind the difficulties that were experienced in another country where they have a rigid Constitution, the United States of America, not merely during the time of the New Deal of President Franklin Roosevelt, but also at the time of President. Theodore Roosevelt when the Progressive Party felt that the judiciary was interfering unduly with the liberalising of the administration. My feeling is that while I have the greatest respect for Dr. Ambedkar's views on this matter, to put the Constitution of the country in a straight jacket by giving undue power to the judiciary at a time when we know that in the matter of recruitment to the judiciary, we are not able to get A Class men at all, is unwise. I see instances of judicial officers, Judges of the High Courts becoming administrators, and coming back to the judiciary, because, I suppose, the Government is not able to find sufficient material from the Bar to fill vacancies in the judiciary. It seems in every province the type of people that come up to the top so far as judicial officers are concerned is not about the best that we could possibly get. In these circumstances, this trend of empowering the judiciary beyond all reason and making it a regular administration by itself, will perhaps lead to a greater danger than we can now contemplate. I do not know if at this stage I can appeal to the mover of this amendment to remove the three-year limit, which is superflous and meaningless and which may not be carried into effect, and which would then be a matter of inducing the provincial Governments to flout the Constitution, and allow the view to be expressed as a mere sentiment as other Articles in this Part happen to be. I do not know if Dr. Ambedkar will ever be persuaded, particularly in view of the fact, I think, that the Congress party has approved of the draft in this particular form; but I think there is no harm in pointing out the obvious difficulty in the wording of this particular amendment, which perhaps is otherwise quite unexceptionable.

Shri B. Das (Orissa: General): Mr. Vice-President, Sir, I suggest to the House to postpone consideration of this amendment of Dr. Ambedkar to a later date. The Congress is meeting very shortly at Jaipur. When the people were harassed by the former British Government, we thought we had no justice from the British Government and we wanted separation of the judiciary from the executive. That suspicion does not exist now. We have to examine whether separation today is necessary.

Unfortunately, I find India is lawyer-ridden. In this House, more than fifty per cent. of the members are lawyers. The Municipalities have more lawyers than are necessary. The Ministry has got a large number of lawyers: I am speaking of our own Government here. Though it is a pious wish of this House that in three years the judiciary must be separated from the executive, because it is not included in the Fundamental Rights, we have to consider, and I think this House will allow the Congress at Jaipur to consider, whether the huge expenses that would be incurred, the country can afford to bear.

There had been Pay Committees of Government of India and the Provinces who have not thought of lowering the salary level of the Executive or Judicial Officers. This House had accepted Village Panchayats. Dr. Ambedkar was generous to refer to the Congress principles. Is it practicable to-day? I support my friend Mr. Krishnamachari that it is not possible in three years. It will take ten or twenty years to give effect. Otherwise most of the Provincial Governments will go bankrupt if they pay the salaries that the Judicial Officers are getting. Incidentally I will allude to one fact. I find even the Government of India recently increased the number of Federal Court Judges from three to five. We go on generously providing high judicial appointments and now we want to provide separate judiciary from the executive, provide more lawyers and munsifs and district judges to allow more lawyers to argue the case on both sides. Where will the poor man be! I would respectfully suggest to this House to allow this amendment to stand over and let us see what the Jaipur Congress thinks on the subject after one year of freedom. Remember the Congress has not met since we won our freedom or so-called freedom from the British. If we have won our independence, let us try to think it out in our era of independence.

Mr. Vice-President: The House stands adjourned till 10A.M. to-morrow.

The Assembly then adjourned till Ten of the Clock on Thursday, the 25th November 1948.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VII

Thursday, 25th November 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

DRAFT CONSTITUTION-*contd.*

Article 39-A

Mr. Vice-President (Dr. H. C. Mookherjee): Notice of an amendment has been received from Dr. Ambedkar. Will you please move your amendment, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar: (Bombay: General): Mr. Vice-President, I move:

> That in article 39-A delete the words beginning from "secure" up to "separation of", and in their place substitute the word "separate".

So that the article 39-A, with this amendment would read as follows: -

> "The State shall take steps to separate the judiciary from the executive in the public services of the State."

The House will see that the object of this amendment is to eliminate the period of three years which has been stated in the original article as proposed by 39-A. The reasons why I have been obliged to make this amendment are these. There is a section of the House which feels that in these directive principles we ought not to introduce matters of details relating either to period or to procedure. These directive principles ought to enunciate principles and ought not to go into the details of the working out of the principles. That is one reason why I feel that the period of three years ought to be eliminated from article 39-A.

The second reason why I am forced to make this amendment is this. The expression "three years" has again brought about a sort of division of opinion amongst certain members of the House. Some say, if you have three years period, then no government is going to take any step until the third year has come into duration. You are practically permitting the provincial legislatures not to take any steps for three years by mentioning three years in this article. The other view is that three years may be too short. It may be that three years may be long enough so far as provinces are concerned, where the administrative machinery is well established and can be altered and amended so as to bring about the separation. But we have used the word "State" in the directive principles to cover not only the provincial governments but also the governments of the Indian States. It is contended that the administration in the Indian States for a long time may not be such as to bring about this desired result.

Consequently the period of three years, so far as the Indian States are concerned, is too short. All these arguments have undoubtedly a certain amount of force which it is not possible to ignore. It is, therefore, thought that this article would serve the purpose which we all of us have in view, if the article merely contained a mandatory provision, giving a direction to the State, both in provinces as well as in the Indian States, that this Constitution imposes, so to say, an obligation to separate the judiciary from the executive in the public services of the State, the intention being that where it is possible, it shall be done immediately without any delay, and where immediate operation of this principle is not possible, it shall, none the less, be accepted as an imperative obligation, the procrastination of which is not tolerated by the principles underlying this Constitution. I therefore submit that the amendment which I have moved meets all the points of view which are prevalent in this House, and I hope that this House will give its accord to this amendment.

Prof. Shibban Lal Saksena: (United Provinces: General): Sir, Dr. Ambedkar has already moved an amendment, that is he has added a new article No. 39-A. Is it permissible to a member to amend his own amendment?

Mr. Vice-President: Yes. I would request you all to bear in mind that we have to go to the fundamentals and not to technicalities.

Shri R. K. Sidhwa (C. P. and Berar: General): Mr. Vice-President, Sir, I am very glad that Dr. Ambedkar has moved this amendment and that at this late stage better counsels and sense have prevailed. In article 36 a similar time limit has been mentioned in connection with a very important matter - primary education. I objected to it, then saying that in the directive principles, no such time limit should be fixed. But my voice was one in the wilderness and the article was carried. But I am very glad at this late stage, better sense has prevailed and the time limit in this article has been sought to be removed.

Yesterday my friend Mr. Das stated that this question of separation of the executive and the judiciary has absolutely changed in view of the attainment of freedom. I was rather surprised to hear such an argument. If a principle, a basic principle was bad at the time of the British regime, I fail to understand how it can be good in free India. The basic principle is this, that the judiciary and the executive functions are combined. The District Magistrate is the prosecutor and he is also the administrator of justice. May I ask whether under these circumstances, can impartial justice be dispensed by the same person who prosecutes and also at the same time sits in judgment over that case?

As Dr. Ambedkar stated yesterday, ever since its inception the Congress has been stating that these two functions must be separated if you really want impartial justice to be done to the accused persons.

The arguments advanced yesterday were that in Free India the conditions have changed and that therefore it is not desirable that these two functions should be separated. The real secret, so far as I know, of those who advocate retaining the same position is that they want to retain their power. If the Honourable Ministers of the Provincial Governments feel that these two should not be separated, it is because they feel the power of appointments, which is in their patronage, would go away from them to the High Court Judges. I am very sorry if that is so. I am glad however that some of the Provinces have already started in this direction; but if any Provincial Governments feel that under the changed condition this change should not come, I will be very sorry for them because nothing has changed in the very fundamental principle after we had attained our freedom; on the contrary after the freedom or even during the partial freedom that we had, I would have preferred that our Congress Governments should really have taken an initiative in this matter. I am very glad to observe that some of the Provinces are going in that direction. The High Court Benches, even in the British regime, have stated times without number that if you really want impartial justice done, these two departments must be separated.

While the time-limit has been removed, I expect, Sir, that after the passing of this Constitution or rather immediately I should say, I would desire these two functions should be separated. I therefore expect that while the time-limit has been removed, the Ministries in the Provinces will realize their duty and see that these two functions are separated in the interests of right and impartial justice.

With these words I commend the amendment that has been moved, for the acceptance of this House.

Mr. Vice-President: I shall now put this amendment to the vote.

Pandit Hirday Nath Kunzru (United Provinces: General): Sir, it is an important amendment and I hope you will allow the House to express its opinion on it.

Mr. Vice-President: Will you please come to the microphone then?

Pandit Hirday Nath Kunzru: Mr. Vice-President, the proposition that judicial functions should be separated from the executive was placed before the House yesterday by Dr. Ambedkar. I think that he gave the matter his very careful consideration before proposing that this separation should take place in three years.

Everyone knows the importance of this subject. The demand for the separation of the judicial from the executive functions so that the executive may have nothing to do with the administration of justice, is about fifty years old, and when Dr. Ambedkar brought forward his proposal I thought that the Government of India were desirous that this reform should be accomplished as speedily as possible.

I know, Sir, that this proposition would have been included in the Chapter relating to Directive Principles and would, therefore, not have been binding either on the Government of India or on any State and I wondered whether probably for that reason it was not included among the Directive Principles drafted by the Drafting Committee. But the matter having come before the House, and Dr. Ambedkar's proposition having been accepted, it is a matter of regret and deep regret to me that he should now seek to modify the proposition in such a way as to leave it to the discretion of the local Governments when the reform that we have all been insisting on for half a century should be carried out.

Dr. Ambedkar, while defending the deletion of the period, mentioned in his proposition, said that some people held the view that it might create the impression that nothing was to be done for three years. I wonder, Sir, whether he was satisfied with his own explanation. There is no one here so simple as to feel that the insertion of his proposal in the Draft Constitution would have made the Provincial Governments feel that they could rest comfortably for three years and that such action as they might choose to take might be taken only when this period was about to expire.

Had this proposition not been passed by the House yesterday the matter would have been quite simple. Frankly, I attach no value to any of the Principles included in the Chapter on Directive Principles, particularly as there is at the commencement of that Chapter an article saying that nothing in that Chapter can be judicially enforced. But the matter having been placed before, and accepted by, the House it is unfortunate that any change should be sought to be made in it. The impression that will be created now will be that the State is not serious in separating the judicial from the executive functions and that it means to take its own time in order to bring about the separation. Had this proposition not come before us, we could still have felt that this separation which is so important to the impartial administration of justice might be carried out within a reasonable period of time. But if the period of three years is now deleted and the matter is left entirely to the discretion of the authorities, the effect of this deletion will be very unfortunate. It is bound to create both in official and non-official circles the feeling that the reform is not considered to be of any great importance, that other reforms may easily be given precedence over it, and that it is merely an ideal to be kept in view by the authorities.

Therefore, I feel strongly that the House should not agree now to the amendment proposed by Dr. Ambedkar. Why should Dr. Ambedkar or any other person now try to bring about a change? Frankly, I see no obvious reason in favour of such a step. This proposal will be one of the directive principles included in the Draft Constitution. The period of three years will not therefore be binding on any authority. If it is feared that it might not be within the resources of any province to introduce this reform within three years, the fact that the provision would not have been mandatory would have enabled that province to take a little longer time in order to separate judicial from executive powers. It would not have compelled any province regardless of its financial or administrative position to carry out the proposal in three years. I see no reason therefore why a change should be made. On the contrary, I see every reason why it should not be made. It would be most unfortunate, it would be most undesirable, it would be an act of public disservice, to give the public and the authorities the impression that this vital reform may be postponed indefinitely. I therefore oppose the amendment now proposed by Dr. Ambedkar and I hope that it will be strenuously resisted by the House.

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): Mr. Vice-President, the Honourable Member who has just spoken referred to the Government of India in this connection. May I, on behalf of that Government, explain the position and express my regret at the fact that the Government of India as such, jointly certainly and largely even individually, is not intimately connected with the proceedings of this House as it ought to and should be? It should not be taken that any matter put forward here comes from the Government of India as such, although the Government is intensely interested in it naturally and would like to place their views before this House whenever it is possible. There are, if I may say so with all respect to this House, a number of matters which they have considered, on which the Government might have liked to place their views before this House, but owing to the stress of circumstances, owing to the fact that while this House is sitting matters of extreme moment are before the Government of India, whether in the domestic field or the international field, that many members of the Government are perhaps at the present moment more over-burdened with these problems and with work that even normally is so difficult, that it is their misfortune not to be able to give such time to these very important considerations of the Constitution as they ought to. I regret that on my own part, and I think the loss is entirely mine.

Coming to this present amendment, if I may again make some general observations with all respect to this House, it is this: that I have felt that the dignity of a Constitution is not perhaps maintained sufficiently if one goes into too great detail in that Constitution. A Constitution is something which should last a long time, which is built on a strong foundation, and which may of course be varied from time to time - it should not be rigid - nevertheless, one should think of it as something which is going to last, which is not a transitory Constitution, a provisional Constitution, a something which you are going to change from day to day, a something which has provisions for the next year or the year after next and so on and so forth. It may be necessary to have certain transitory provisions. It will be necessary, because there is a chance to have some such provisions, but so far as the basic nature of the Constitution is concerned, it must deal with the fundamental aspects of the political, the social, the economic and other spheres, and not with the details which are matters for legislation. You will find that if you go into too great detail and mix up the really basic and fundamental things with the important but nevertheless secondary things, you bring the basic things to the level of the secondary things too. You lose them in a forest of detail. The great trees that you should like to plant and wait for them to grow and to be seen are hidden in a forest of detail and smaller trees. I have felt that we are spending a great deal of time on undoubtedly important matters, but nevertheless secondary matters - matters which are for legislation, not for a Constitution. However, that is a general observation.

Coming to this particular matter, the honourable speaker, Pandit Kunzru, who has just spoken and opposed the amendment of Dr. Ambedkar seems to me, if I may say so with all respect to him, to have gone off the track completely, and to suspect a sinister motive on the part of Government about this business. Government as such is not concerned with this business, but it is true that some members of Government do feel rather strongly about it and would like this House fully to consider the particular view point that Dr. Ambedkar has placed before the House today. I may say straight off that so far as the Government is concerned, it is entirely in favour of the separation of judicial and executive functions *(Cheers)*. I may further say that the sooner it is brought about the better *(Hear, hear)* and I am told that some of our Provincial Governments are actually taking steps to that end now. If anyone asked me, if anyone suggested the period of three years or some other period, my first reaction would have been that this period is too long. Why should we wait so long for this? It might be brought about, if not all over India, in a larger part of India, much sooner than that. At the same time, it is obvious that India at the present moment, specially during the transitional period, is a very mixed country politically, judicially, economically and in many ways, and any fixed rule of thumb to be applied to every area may be disadvantageous and difficult in regard to certain areas. On the one hand, that rule will really prevent progress in one area, and on the other hand, it may upset the apple-cart in some other area. Therefore, a certain flexibility is desirable. Generally speaking. I would have said that in any such directive of policy, it may not be legal, but any directive of policy in a Constitution must have a powerful effect. In any such directive, there should not be any detail or time-limit etc. It is a directive of what the State wants, and your putting in any kind of time-limit therefore rather lowers it from that high status of a State policy and brings it down to the level of a legislative measure, which it is not in that sense. I would have preferred no time-limit to be there, but speaking more practically, any time-limit in this, as Dr. Ambedkar pointed out, is apt on the one hand to delay this very process in large parts of the country, probably the greater part of the country; on the other hand, in some parts where practically speaking it may be very difficult to bring about, it may produce enormous confusion. I think, therefore, that Dr. Ambedkar's amendment, far from lessening the significance or the importance of this highly desirable change that we wish to bring about, places it on a high level before the country. And I do not see myself how any Provincial or other Government can forget this Directive or delay it much. After all, whatever is going to be done in the future will largely depend upon the sentiment of the people and the future Assemblies and Parliaments that will meet. But so far as this Constitution is concerned, it gives a strong opinion in favour of this change and it gives it in a way so as to make it possible to bring it about in are as where it can be brought about - the provinces, etc. - and in case of difficulty in any particular State, etc., it does not bind them down. I submit, therefore, that this amendment of Dr. Ambedkar should be accepted. *(Cheers).*

Dr. Bakshi Tek Chand (East Punjab: General): Mr. Vice-President, Sir, I rise to lend my whole hearted support to the amendment which has been moved by Dr. Ambedkar today. The question of the separation of executive and judicial functions is not only as old as the Congress itself, but indeed it is much older. It was in the year 1852 when public opinion in Bengal began to express itself in an organised form that the matter was first mooted. That was more than thirty years before the Congress came into existence. After the Mutiny, the movement gained momentum and in the early seventies, in Bengal, under the leadership of Kisto Das Pal and Ram Gopal Ghosh, who were the leaders of public opinion in those days, definite proposals with regard to the separation of judicial and executive functions were put forward. Subsequently, the late Man Mohan Ghosh took up this matter and he and Babu Surendranath Bannerji year in and year out raised this question in all public meetings.

When the Congress first met in the session in Bombay in 1885, this reform in the administration was put in the fore front of its programme. Later on, not only politicians of all schools of thought, but even retired officers who had actually spent their lives in the administration, took up the matter and lent their support to it. I very well remember the Lucknow Congress of 1899 when Romesh Chunder Dutt, who had just retired from the Indian Civil Service, presided. He devoted a large part of his presidential address to this subject and created a good deal of enthusiasm for it. Not only that: even retired High Court Judges and Englishmen like Sir Arthur Hobhouse and Sir Arthur Wilson, both of whom subsequently became members of the Judicial Committee of the Privy Council, lent their support to this and they jointly with many eminent Indians submitted a representation to the Secretary of State for India to give immediate effect to this reform.

In the year 1912, when the Public Service Commission was appointed, Mr. Abdur Rahim, who was a Judge of the Madras High Court and was for many years the President of the Central Legislature, appended a long Minute of Dissent and therein he devoted several pages to this question.

Therefore, Sir, the matter has been before the country for nearly a century and it is time that it is given effect to immediately. One of the Honourable Members who spoke yesterday, observed that this matter was of great importance when we had a foreign Government but now the position has changed, and it may not be necessary to give effect to it. Well, an effective reply to this has been given by the Honourable the Prime Minister today. He has expressly stated that it is the policy of the Government, and it is their intention to see that this reform is given immediate effect to.

Not only that, Sir, another objection was raised that on financial grounds it will not be feasible to separate the judiciary from the executive. Well, to this, again, an effective reply has come from the province of Bombay. Soon after the Congress Government assumed office in 1946 in Bombay, it appointed a Committee to look into this question. It was presided over by a Judge of the Bombay High Court and consisted of eleven other Members. It submitted its report on 11th October 1947. I have got a copy of that report in my hands. I do not think it is necessary to give detailed extracts from that report. This Committee has come to the unanimous conclusion that the separation of judicial and executive functions was a feasible and practical proposition. So far as the financial aspect was concerned, they examined the matter in great detail and have estimated that the additional expense will be about ten lakhs of rupees a year. From this you will find that the proposition is such that it is not financially impracticable. It is feasible. The Honourable the Prime Minister of Bombay who happens to be here today tells me that his Government is going to implement the scheme at the earliest possible opportunity.

The Honourable Shri B. G. Kher: I confirm it.

Dr. Bakshi Tek Chand: I am glad to hear that he confirms it. This gives the quietus to these two objections which have been raised, that because of the changed circumstances, because we have attained freedom, it is no longer necessary and that the financial burden will be so heavy that it might crush provincial Governments. Both these objections are hollow.

One word more I have to say in this connection and that is, that with the advent of democracy and freedom, the necessity of this reform has become all the greater. Formerly it was only the district magistrate and a few members of the bureaucratic Government from whom interference with the judiciary was apprehended, but now, I am very sorry to say that even the Ministers in some provinces and members of political parties have begun to interfere with the free administration of justice. Those of you, who may be reading news paper reports of judicial decisions lately, must have been struck with this type of interference which has been under review in the various High Courts lately. In one province we found that in a case pending in a Criminal Court, the Ministry sent for the record and passed an order directing the trying Magistrate to stay proceedings in the case. This was something absolutely unheard of. The matter eventually went up to the High Court and the learned Chief Justice and another Judge had to pass very strong remarks against such executive interference with the administration of justice.

In another province a case was being tried against a member of the Legislative Assembly and a directive went from the District Magistrate to the Magistrate trying the case not to proceed with it further and to release the man. The Magistrate who was a member of the Judicial Service and was officiating as a Magistrate had the strength to resist this demand. He had all those letters put on the record and eventually the matter went up to the High Court and the Chief Justice of the Calcutta High Court made very strong remarks about this matter.

Again in the Punjab, a case has recently occurred in which a Judge of the High Court, Mr. Justice Achru Ram, heard a *habeus corpus* petition and delivered a judgment of 164 pages at the conclusion of which he observed that the action taken by the District Magistrate and the Superintendent of Police against a member of the Congress Party was *mala fide* and was the result of a personal vendetta. These were his remarks.

In these circumstances, I submit that with the change of circumstances and with the advent of freedom and the introduction of democracy, it has become all the more necessary to bring about the separation of the judiciary from the executive at the earliest possible opportunity.

My honourable and respected friend, Pandit Kunzru, thinks that the deletion of the three years limit has got some sinister motive behind it. I myself was originally in favour of such a time limit being fixed, but for the reasons which have been so lucidly put before this House by the Honourable Prime Minister, it is neither desirable nor necessary. A time limit of this kind may, in certain cases, defeat the very object in view. I have mentioned the case of Bombay where they are going ahead with the separation. I am told that the Madras Government had also appointed a similar Committee which has reported on the same lines as the Bombay Committee. Thus we have got two of our principal provincial governments taking action in this matter. In the Punjab, a scheme for separation of the judiciary from the executive was prepared many years ago by a Committee appointed by the Government of the united Punjab. I have no doubt that in the East Punjab also steps will be taken in this direction. At the same time we have to take the case of the newly formed administrations and Indian States who are merging or forming Unions amongst themselves and are States for purposes of this clause. Some of these newly set-up administrations may require a longer time limit than three years. Therefore, Sir, fixing a time limit would not be a proper thing.

For these reasons I support the amendment which has been moved by Dr. Ambedkar today.

Shri Lokanath Misra: (Orissa: General): Sir, we are all beholden to Honourable Pandit Nehru for his frank and straight advice on this matter, because as I see and as I have heard the proceedings of the House, for some days, everybody is trying to put in changes in the Constitution as if it is an election manifesto. Now, Sir, as a lawyer I know the difficulties of the lawyer, the difficulties of the litigants as also the difficulties of the law courts. My first point is this that we are perhaps going to put in this article in the Directive Principles for the better administration of justice, and to that end the article that we are going to put in would not serve any purpose because for better administration of justice, we want first of all just laws. Unfortunately due to our slavery, we have so many bad laws that, however justly they may be administered, they cannot give you justice. Therefore, we must have just laws. I am sure that in the new order we will frame our laws in such a manner that their administration would give us justice. Apart from that, it is said here that there must be separation of the judiciary from the executive. Perhaps we do not thereby mean that the judiciary should not be executive and the executive should not be judicious. I should rather say and it is my experience that when the executive works, it becomes injudicious and when the judiciary works, it becomes too dilatory. Therefore, while separation of the judiciary from the executive there must be, we must at the same time make people know and make the judicial officers and executive officers know that when an executive officer executes, he must do it judiciously and when a judicial officer or a judge executes, he must do it in time. I will give you one example. Sir, in my own province of Orissa, we recently passed a law called the Tenants Protection Act. We passed it in all good sense and we know that it will do people good, but although a year has passed, I have found that it has never been put into practice for the simple reason that the law of evidence is so defective, the law of enquiry is so defective and the judges are so half-hearted. Even though the Act has been passed, it has given no good. Therefore, the mere separation of the judiciary from the executive will not serve our purpose. We require something more.

Then again, Sir, I should say another thing which we require for the proper administration of justice. If we expect any good from the separation of the judiciary from the executive, we must be sure of one thing. The profession of law, being a private business, does not really help justice. It feeds on fat fees and forged facts. Lawyers maybe as much officers of the Courts as the judges but they have no prestige unless they earn fat fees. Of course for this the lawyers may be to blame to some extent, but, Sir, the lawyers have to earn their living. They have to win their cases and to win their cases they have to formulate evidence and do all sorts of things, and unless they win one or two cases, they have no chance. Therefore I say that unless the professions of law and medicine become a State business, you cannot have proper administration of justice either for rights or for health and disease. That means that just as government pleaders are engaged, attorneys are engaged, the profession of law should be paid and controlled by the State to the extent that they need only help justice and not have to promote perjury or forgery to win a case and please their clients. But now the fact remains that this side wins or that side loses, but in all sides truth and justice are lost.

Mr. Vice-President: Are you supporting or opposing the amendment?

Shri Lokanath Misra: I am supporting the amendment in principle. I was just going to say that it is simply a claptrap device. If we are whole-heartedly for the administration of better justice, mere separation of the judiciary from the executive would not do. Sir, I therefore beg to submit that if we are sincere in our desire for better administration of justice, not only should the judiciary be separated from the executive but the State should also see that law becomes so simple and so few and at the same time so intelligible to the masses that law is nothing far away and frightful and better administration of justice becomes a reality and does not remain a farce.

(Amendments Nos. 1010 to 1012 were not moved.)

Mr. Vice-President: We have had a reasonable amount of debate, and I would like to put the matter to vote.

Shri H. V. Kamath: (C. P. & Berar: General): It is a very important matter that is before the House.

Mr. Vice-President: I am afraid there are many more speakers. I would like to accommodate them, but it is now impossible. I am sorry. I shall put this amendment to vote.

Mr. Vice-President: The question is: -

That after article 39, the following new article be inserted:

"39-A. The State shall take steps to separate the judiciary from the executive in the public services of the State."

The motion was adopted.

Mr. Vice-President: The question is:

That article 39-A stand part of the Constitution.

The motion was adopted.

Article 39-A was added to the Constitution.

Mr. Mohd. Tahir (Bihar: Muslim:) Mr. Vice-President, Sir, I beg to move:

That after article 39, the following new article be inserted and the rest of the articles be renumbered: -

"40. It shall be the duty of the State to protect, safeguard and preserve the places of worship such as Gurdwaras, Churches, Temples, Mosques including the graveyards and burning ghats."

Today, we are framing the constitution of our great country and the eyes of every individual of our great country are fixed on this Assembly to see what we are doing and what we are granting for them. At this important and historical period, Sir, I have moved my amendment, a simple amendment by which I want that the State should be responsible for the protection, safeguard and preservation of religious places of worship for all communities of the Indian Nation. There was a time when this country was ruled by the Englishmen, by the foreigners through a constitution framed by them, - of course a constitution which was foreign to us. In that Constitution, of course, no such idea was incorporated, for the simple reason that the Britisher had the policy to play a game at the cost of the different communities of the Indian Nation. But, now we see that the country is ours, the State belongs to us and, of course, we have a right to claim the protection of our religious places of worship. Unfortunately, Sir, the Father of the Nation is not amongst us today; otherwise I can say without any fear of contradiction that I must have had his sacred consent for the acceptance of this amendment. Anyhow, I appeal to every individual member of the House and especially to every member of the Congress that they will give strong support for the acceptance of this amendment and I also appeal to the Honourable mover, Dr. Ambedkar, to give due consideration to it.

Sir, only yesterday, the House was bold enough to give effect to prohibition. The House was bold enough to give protection to the cows of our country and I hope that the House will be still bolder to give protection to the religious places of worship.

Sir, with these few words, I appeal again to every honourable Member of this House to give support to this simple and very light amendment.

Lastly, I would say that this amendment is the only amendment which would show one of the best qualities which can be found in this whole constitution for a secular state. With these few words, Sir, I move.

Shri M. Ananthasayanam Ayyangar (Madras: General): Mr. Vice-President, Sir, it is certainly the duty of the State to protect all places of public worship such as Gurdwaras, Churches, Temples, Mosques and also graveyards and burning hats. The general law of the land - the penal law - has made ample provision for this. The Honourable mover of this amendment wants three things to be done and they are to protect, safeguard and preserve. So far as "to protect and safeguard" are concerned, it is the duty of the State to protect all places of public worship whether of property, whether belonging to an individual or a community. Particularly, places of public worship will be protected and safeguarded against all invasion, against all aggression and any molestation. That is one of the fundamental rights that is contained in the earlier part, Part III. Therefore, it need not be a directive here. But so far as the preservation of the places of public worship is concerned, there is the difficulty. We will assume that a temple is abandoned by the community which was erstwhile utilising that for public worship. Is it the duty of the State to preserve that, though it may have been a place of public worship? Article 39 provides that it shall be the obligation of the State to protect every monument or place or object of artistic or historic interest. These it will certainly preserve. 'Preserve' includes maintaining or keeping it in the same condition. If every temple and every gurdwara is to be maintained, which may be abandoned by a community, then it will be imposing an unnecessary obligation on the State and diverting the tax-payers' money to purposes which are not legitimate charges upon it. On the other hand, it is the duty of the community to maintain and preserve every gurdwara and temple. All that can be expected of the State is that it should see that there is no molestation, it should protect them against all aggression. That is all that can be expected and for that there is ample provision in the Fundamental Rights and also in the general Criminal Law. On the whole, I am sorry to oppose this amendment, however much I might like that all these places of worship to whichever community they might belong must be protected. They must be safeguarded. I am equally one with him that places of God ought not to be molested. There is ample provision already. Therefore, this amendment need not be accepted.

The Honourable Dr. B. R. Ambedkar: Sir, I do not accept the amendment.

Mr. Vice-President: I will now put the amendment to vote.

The amendment was negatived.

Article 40

Mr. Vice-President: The motion before the House is:

That article 40 form part of the Constitution.

There are a number of amendments which I shall read one after the other.

(Amendments Nos. 1016 and 1017 were not moved.)

Mr. Vice-President: No. 1018. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: I understand Mr. Kamath is moving an

amendment.

Shri H. V. Kamath: I shall be moving my amendment after Dr. Ambedkar has moved his.

The Honourable Dr. B. R. Ambedkar: Sir, I move: "that for the existing article 40, the following be substituted: -

"40. The State shall -

(a) promote international peace and security;

(b) seek to maintain just and honourable relations between nations; and

(c) endeavour to sustain respect for international law and treaty obligations in the dealings of organised people with one another."

Sir, this amendment merely simplifies the original article 40 and divides it into certain parts separating each idea from the other so that any one who reads the article will get a clear and complete idea of what is exactly intended to be covered by article 40. The propositions contained in this new article are so simple that it seems to be super-arrogation to try to explain them to the House by any lengthy speech.

Sir, I move.

Mr. Vice-President: There are certain amendments to this which I am calling out. No. 74 Mr. Sarwate.

Shri V. S. Sarwate (United States of Gwalior-Indore-Malwa-Madhya Bharat): Mr. Vice-President, Sir, I beg to move an amendment to this amendment. My amendment stands thus:

"That in amendment No. 1018 of the list of amendments, in article 40, after the words "The State shall - " and before sub-clause (a), this new clause be inserted and the existing clause be renumbered accordingly: -

(a) foster truthfulness, justice, and sense of duty in the citizens;"

Sir, the House may note that this amendment seeks to embody the characteristics of the Gandhi an ideology. Mahatmaji led our struggle for independence with these characteristics and won it. The House may further note that the amendment begins with truthfulness. I need hardly point out that in Mahatmaji's view, truth was God and if I may be permitted to say so, I think he attached more importance to truth than to non-violence. There may be exceptions to non-violence; there is none to truth. Those who do not believe even in God certainly do believe in truth. Society is based on truth. Therefore, he styled his autobiography not as Experiments after non-violence, but as Experiments after truth. Therefore, I commend to this House this amendment which embodies these characteristics.

I would anticipate certain objections that may be raised to this. The first objection may be that this is too general and too vague to have any practical effect. I would submit that if this be the objection, I stand in honourable company, because, the rest of the clauses probably may be subject to the same objection. I may further point out that if need be, concrete steps which could be taken to bring into effect this amendment can be suggested. But, that is not necessary. I believe after all the principles given in this Chapter are of such a nature that they are fundamental, that they are basic, and that efforts to implement them to the fullest extent would have to be taken as long as society goes on. That is exactly the description which may be applied to this amendment also. I would say only a few more words, Sir, I would submit that in the whole of the Constitution as it stands, one would be painfully surprised that there is absolutely nothing which shows one way or the other and which sheds light on the fundamental principles of the Gandhi an philosophy.

Another objection that may be taken possibly is this: this need not be said because such moral principles are not laid down in a Constitution. I would very respectfully submit that it is not at present the model which is followed in Constitutions. For instance, in the Constitution of the U. S. S. R., in the first Chapter which gives the political foundations and economic foundations, they have given the famous sentence of Marx: "To those who shall need, sufficient shall be given; to this every man must work according to his ability; every man must get according to his needs."

They have given in this draft Constitution the fundamental ideas which move you to the adoption of the Constitution and accordinly, I would commend this to the good sense of the House. I am sure that my honourable Friends and colleagues and others, those who have followed Mahatma Gandhi in this struggle, would like to have in this Constitution something which he had given to us, and which he has left for us ever to remember and follow.

Shri H. V. Kamath: Mr. Vice-President, Sir, at the outset, may I say that a single amendment which I had given notice of has been split up into three different amendments, numbers 82, 83 and 84. I am not saying this as a carping critic; but I find that it would have been better if this had appeared as a single amendment as I had sent it. I know our office is heavily overworked and I appreciate that they are doing very well in the face of the heavy odds which they are contending with. I shall read it as one amendment by your leave. It will read thus.

Mr. Vice-President: I understand that they have been broken into three amendments because you seek to make alterations in three different places - not continuously. That is a technical explanation for a technical objection.

Shri H. V. Kamath: If the three amendments are taken separately and not together, they will have no meaning. Anyway that is a minor objection. I do not want to press it. With your permission, Sir, I would like to read it as one amendment. Sir I move -

"That in amendment No. 1018 of the List of Amendments in article 40, after the word 'shall' the words 'endeavour to' be inserted, in clause (b) the words 'seek to' be deleted; in clause (c) the words 'endeavour to' 'be deleted".

So that if this amendment be accepted by the House the amendment of the Drafting Committee will read as follows: -

"The State shall endeavour to (a) promote international peace and security; (b) maintain just and honourable relations between nations; and (c) sustain respect for international law and treaty obligations in the dealings of organised people with one another."

This amendment seeks only a slight structural change in the amendment brought forward by Dr. Ambedkar so as to bring out or indicate the directive character of the principle embodied in article 40. It is recognised and it has been always India's endeavour to promote international peace and security and to enhance respect for international law and treaty obligations. I think, Sir, and I am sure the House will agree with me when I say that Indian with her ancient cultural and spiritual heritage and her tradition - centuries old tradition of non-aggression - is best qualified to enhance respect for international law and treaty obligations. It is common knowledge that within the last thirty years regard for international law and treaties had sunk to a low level and treaties are regarded as mere scraps of paper. I hope that in the new world in which we are living today and in which we are playing and are going to play such a vital part, we will be able to bring about a vital change in international relations, so that at an early date we will have really one world Government or one Super-State to which the various nation-States of the world will have surrendered part of their sovereignty and to which all these nation-States will owe willing allegiance and will accept the Sovereignty of this Super-State. I do not wish to add anything more but I will only content myself with saying that in these days there is a tendency to regard international relations as not of paramount importance, but that tendency ought to be curbed, and we ought to give more attention to international affairs so that the world can really become one free world.

My friend Mr. Sarwate's amendment does not deal with the subject contained in article 40. Mr. Sarwate will see that article 40 deals with international relations and the amendment that he has moved is something which deals with the qualities of citizens in India. I do not think that is really relevant to the article under consideration and I think it cannot find a place here. Sir I move my amendments Nos. 82, 83 and 84 as one amendment to Dr. Ambedkar's amendment No. 1018.

Mr. Vice-President: Prof. Shibban Lal Saksena. Yours is the same as Mr. Kamath's.

Prof. Shibban Lal Saksena: Sir, I do not move:

Mr. Vice-President: Amendment No. 1019 - Mr. K. T. Shah.

Prof. K. T. Shah (Bihar: General): Mr. Vice-President, Sir, I beg to move-"That for article 40, the following be substituted: -

> "40. The Federal Republican Secular State in India shall be pledged to maintain international peace and security and shall to that end adopt every means to promote amicable relations among nations. In particular the State in India shall endeavour to secure the fullest respect for international law and agreement between States and to maintain justice, respect for treaty rights and obligations in regard to dealings of organised peoples amongst themselves."

Sir, in commending this motion to the House I would begin by recognising at once that, as far as the surface goes, there seems to be not much difference in the ideals sought to be attained by my amendment and those in the wording of article 40 as it stands. The difference may appear to be the difference of wording only. I submit, however, that though the difference seems to be a difference, superficially judging, of wording only, to me at any rate the difference in wording seems to conceal a difference of approach, a difference of out-look, perhaps also a difference in intention.

I would urge, Sir, that we should leave no room for doubt about this matter. I will point out for instance that the original clause as it stands requires -

> "That the State shall promote international peace and security by the prescription of open, just and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among governments and by the maintenance of justice and respect for treaty obligations in the dealings of organised people with one another".

Now I have emphasised in this connection that by such articles in our Constitution, we want to convey, not merely some vague promise or endeavour to promote, or even an obligation to promote international peace and security etc. I want, first and foremost, the State in India to be pledged to promote international peace and security.

The recent wrangles that we have seen in the International Security Council of the U. N. O. in regard for instance, to disarmament, the entire history in fact for the last twenty years or so of the problem of disarmament, would go far to convince any impartial observer that the powerful nations of the world do not really intend to disarm. They do not desire peace and security for peoples, but only for their friends and associates, and of course, for themselves. Now so long as you continue to indulge in a race between yourselves as to who shall disarm first, it is unlikely that you would be finding any great progress in an all-around disarmament, as the first step to securing international peace. I would submit that somebody will have to make a beginning and such a beginning cannot be made unless an open, frank declaration of policy, pledging a nation unreservedly to peace, to the maintenance of international law and friendship is given. Unless that is given, it would be impossible to make a real beginning in the task of all-round disarmament and securing and maintenance of peace.

We are, I admit, living today in a heavy atmosphere of all-round distrust and suspicion. And in that atmosphere, it is impossible to find people in any country willing to expose their own national security and independence, by taking the first step towards real disarmament. For us, however, in this country, I venture to submit to this House, there have been the teachings and the example of our great leader who made Non-violence, most clearly and unmistakably the rule of conduct, not only for individuals but also for nations. That non-violence was not, as I am afraid some people have been inclined to believe, a mere matter of, shall I say, political chicanery or practical expediency. It was a matter of religious belief, at least with him who preached it. It, therefore behaves us who claim to be following in this footsteps, and who claim to uphold his teachings, that this State at least, of which he has been proclaimed the father, should be pledged from the outset to the maintenance of peace.

May I, in this connection recall to this House the very categoric declaration which Mahatma Gandhi made at the time of the Round Table Conference which he attended. He said that if he got Swaraj, if the Congress was master in this country, one of the first things he would advise it to do would be to disband the army and the police, and anything else which savoured of violence in the organization of the Indian State. I do not know whether you would be prepared at this time, and living under the circumstances in which we are living, to carry out literally such a desire as that. But I know this, that unless we make a beginning, and pledge ourselves to the maintenance of peace, and to ensure security to all countries, we shall be making these professions sound too hollow to be believed. We would then indeed be in the good company of people who make loud professions for the maintenance of peace, but at the same time go on arming themselves to the teeth, making up piles of atomic bombs and threatening each other at every crisis, which is of their own creation, so that peace seems to be as distant as ever and certainly not as permanently established as one would desire it to be.

There are other circumstances, Sir, which also incline me to place this categoric declaration before the House, and desire that it be incorporated in our basic Constitution. The possibility merely of promoting peace and respect for international law in the world today may involve us in those combinations of nations which are taking place whereby rival imperialisms seems to be arrayed against each other. These combinations involve each part, each associate and each ally in their own designs for which we may have no taste. It has, in the past history, been our common complaint, that we have been dragged against our will, without our consent, into the imperialistic, aggressive wars of Britain. Now, when we are free, now when we may claim to shape our own foreign policy, and determine our relations with other people ourselves, would it not be as well for us to declare that we at least from the start, shall pledge ourselves to peace that we as a people will take an oath whereby for no reason shall we resort to arms, to settle our differences with other countries, and with other peoples. If we are prepared to do so, then I do not see why we may not accept the amendment I am placing before the House.

Sir, reasons less idealistic than those I have so far referred to also indicate a course which I have now proposed. We are not only comparatively very poor in the matter of armaments, we are not only backward in all the material equipments that ensure some success in modern warfare, but we have not, I venture to think, that industrial background, that background of very highly developed modern mechanical or chemical industry or the scientific technique which alone is an assurance for securing adequate armament from our own resources, and so a chance for victory in the end, and for making an effective contribution for the maintenance of peace, at least for those, at any rate who believe in securing peace by piling up armaments.

We have been, I see, buying second-hand materials, like the cruiser that was ready for the scrap heap which we are supposed to have bought recently, or planes or other arms. Very often these weapons and vehicles are nothing more than what is designed for the scrap heap by their original owners, and these are unloaded upon us, and I do not know at what price. In any case, what I mean to say is that we are completely dependent, for our initial supplies of such material, upon outside producers.

And Sir, the mischief of this state of affairs does not end there. Modern armaments are so highly specialised, parts of these weapons and vehicles and instruments are so extremely standardised and inter-changeable, that once you begin to get your supplies of materials for warfare from a particular source, we shall be bound for ever to that particular source. If you change, the armament material already acquired will prove futile and useless.

Under these circumstances, for us to get involved in any particular combination, which compels us to model our armies, navies and air-forces upon the organizations and equipments of other places, and by keeping pace with them, so to say, in the race for armaments and ever more armament, would to my mind, be to spell disaster, and continued dependence in a most vital particular upon others which we should do our best to avoid.

The one thing that seems to me to be the best guarantee for avoiding any complications of this kind is here and now, to take a vow, so to say, pledge ourselves, as a people against any form of warfare, and for ever stand to maintain and uphold peace and international security for all countries of the world including our own. This, Sir, is not a matter of verbal profession only. I hope nobody would think that this implies mental reservation which, I for one, would utterly denounce. This is an expression as much of an idealism that has governed our actions and policies so far, as also of material consideration which I for one cannot omit placing before the House in commending this motion to it.

(Amendments No. 1020 to 1024 were not moved.)

Mr. Vice-President: Amendment No. 1025 in the joint names of Shri Damodar Swarup Seth and Shri Mohanlal Gautam.

Shri Damodar Swarup Seth (United Provinces: General): Sir, I move:

That in article 40, the following words be added at the end:

"It shall also promote political and economic emancipation and cultural advancement of the oppressed and backward peoples, and the international regulation of the legal status of workers with a view to ensuring a universal minimum of social rights to the entire working class of the world."

Sir, article 40 so far as it goes appears to be appropriate and good, but unfortunately it does not go far enough. While it rightly lays stress on promotion of international peace and security, it sadly ignores some of the basic causes which generally lead to conflagration and consequent devastation and destruction of the world. In this article nothing has been said about political and economic emancipation of the oppressed and backward people, nor has anything been said about the ensuring of minimum of social rights to the entire working class of the world through international regulation of their legal status.

It is clear that as we see, unless the basic causes of breach of peace and security are removed, it will not be possible to maintain peace, national or international, by simply arriving at an understanding between nations and nations. The continuance of the oppressed and backward people in this world has generally been a great menace to world peace. It offers temptation and encouragement to the exploiter and the blood-sucker in his nefarious job of exploitation and blood-sucking. It extends the hands of capitalism and nourishes imperialism and colonialism, paving the way for regional and international warfare.

So far as the working class is concerned, we see that it has not yet been able to secure even the universal minimum of their social rights. The workers of the world even today are the salt of the earth; it is they who produce wealth, it is they who make the world worth living in, but we see that they are nowhere living in a comfortable position. We see everywhere in this world that millions and millions of them are being changed into beggars without any homes or hearths. It is a point worth consideration that, when the workers who produce all the wealth of the world are not in a position to maintain themselves, it is difficult to consider who else will be able to live. I ask in all humility, when the salt has lost its savour wherewith is it to be salted? When the workers of the world die, who else will live in this world? India was till the other day an oppressed nation and I wonder if even today it is counted amongst the progressive people. It is therefore essential that now when we are making the Constitution of free India we, both in national and international interests, lay true emphasis on political and economic emancipation of the oppressed and backward classes and no ensuring the universal minimum to the entire working class of the world through international regulation of their legal status the lack of which so long has been causing breaches of peace and security. Unless that is done, Sir, I am afraid any efforts to promote peace and security will not be possible. I therefore hope that my amendment which is apparently very innocent and harmless will be accepted by this House ungrudgingly.

Prof. B. H. Khardekar (Kolhapur): Mr. Vice-President, Sir, I am here to support the amendment moved by Dr. Ambedkar, and to say a few words in general on article 40. I have promised you, Sir, to be very brief and I may say I cannot help being relevant.

In supporting the article, I wish to say a few words about two or three things: The position of international law today in the light of recent history; the relations between the different nations, and the role or the part - the very great part - that our country has to play in regard to the different nations.

Mr. Austin, a great jurist, says that there is no such thing as international law at all - if there is anything it is only positive morality. Very briefly he gives three reasons: that there is no legislature, no judiciary, no executive. In saying that there may be positive morality I think even there he is wrong. If there were to be morality amongst nations, well, we would not have all that has been going about. If there is a morality amongst nations today it is the morality of robbers. If there is any law today it is the law of the jungle where might is right. That is why I think the part that India has to play and has played, is covered by Dr. Ambedkar's amendment which has not only verbal elegance to recommend it but also the intention that the country should take to certain actions if necessary. The part that India is to play is certainly very important because foundations of international morality have to be laid and only a country like India with its spiritual heritage can do it.

In support of Austin we find jurists like Gray. On the other hand, there are some international jurists like. Hall, Westlake, Oppenheim and others who, because of their excessive zeal and anxiety to give international law a name and a shape, argue almost feverishly - somewhat childishly, if they are to be summarised - that is what they appear. Their contention is that it is very necessary to have international law and therefore we have international law. I might make it appear stupid by saying, "I think it is necessary for me to have a thousand pounds in my pocket; and if I think that I have a thousand pounds in my pocket, my place would be in the lunatic asylum". Their wishes are father to their thought, and if wishes were horses beggars would ride; if there were to be an international law, peace would prevail. But that is unfortunately not the position. Mr. Brown, Jennings and others sit on the fence and take the middle course. They say that international law is neither a panacea nor a chimera. It is a thing in the process - it is growing, it is becoming. I subscribe to a certain extent to this view that if nations, and particularly if India were to lead the way, we may have some sort of international law in spite of all the chaos that we see today. Some efforts made so far I may refer to, within a couple of minutes (that I have got), in giving certain substance to the theories of the international jurists. The League of Nations, as you know, was an inglorious failure, unfortunately. Why? Because it was more or less a league of robbers. I met a friend of mine, who explained to me the reasons why the League of Nations failed so ingloriously. His father had told him: The headquarters of the League were situated in Switzerland at Geneva; salubrious climate, majestic Alps, sumptuous Swiss food, appetising women, exotic music and the hall for debate was something that gave sufficient exercise to the vocal organs - and the League came to nothing. It could not come to anything, because it was an institution meant to perpetuate a wrong that was perpetrated by the Treaty of Versailles. After the League, its successor is the United Nations. This also seems to be a weak, pusillanimous and impotent agency. But our Prime Minister has done a very wise, very diplomatic and morally also a very sound thing by lending his support to this weak agency. An agency which is meant for good things must be strengthened and I think the Article that we have in the directive is meant to be directed towards that particular end. India, as I said, has a spiritual heritage. The mission of India is the mission of peace. Right from Ram Tirth and Vivekananda down to Tagore and Gandhiji, if he has done anything, has very much strengthened it. Throughout history, it is not because we have been weak but because it has been in our blood that we have been carrying on this mission of peace. Non-violence is in the soil and in the heart of every Indian. It is not something new. Gandhiji, if he has done anything, has very much strengthened it. Throughout history it is not because we have been weak but because it has been in our blood that we have always been peaceful, never aggressive. Therefore, it is in keeping with our history, with our tradition, with our culture, that we are a nation of peace and we are going to see that peace prevails in the world.

Now, Sir, I have some doubts about certain parts of the article that we are to be friends of all. But common sense and experience teach us that those who are friends of all sometimes have no friend at all. Therefore, when we want ends and means to be pure, we should make our policy somewhat clear. To Russia, we may and should say "we accept and we appreciate your aims and ideals, but your means are rather crude, sometimes they are very doubtful." To England and to America, we must say "we have very many misgivings about your wines and ideals. Your means are very polished, very very civilised". So we should show a certain indication in our foreign policy and when we have men like Pandit Nehru at the helm of foreign affairs and when the foundations of peace and non-violence have been laid down by the Father of the Nation, this country need not despair of its future; it can even hold out a future to the whole of the world.

Shri Biswanath Das (Orrisa: General): Sir, I stand to support the motion of the Honourable Dr. Ambedkar which has given a clear lead to the country. The Amendment which is to come as article 40 reiterates our policy and position regarding India's international relations. While the contribution of the West to international relations and promotion of international security was first the Hague Conference and secondly the League of Nations and now, thirdly, the United Nations Organisation, India even when she was in fetters and bondage, had her mighty contribution, not in the shape of influence of prowess or wealth, but by bringing her thought into the field of international concept, - the mighty, intellectual and moral influence of a Tag ore and a Gandhi who taught nothing short of intentional amity, honourable and open relations between nations and countries. This is a mighty contribution to the betterment of international relations in a world that is out for cut-throat competition in armament; and soon after, is bound to come into the field keen economic rivalry. This being the position today, it is difficult for India to decide what her international relations are going to be and what part she is going to play in the world. The motion of my Honourable friend Dr. Ambedkar not only lays down what we ought to do and what we have to do, but also states the limitations within which India is to play her role in international transactions with other nations. The role is honest; the role is upright; the role is open. India, under the leadership of Mahatma Gandhi, our great leader, has learn to take to such open course of action. There is nothing hidden in our ways. There is nothing secret in our ways. That explains the difference between the course of action adopted by other State from those adopted by India.

Coming to our relations either present or future with the United Nations Organisation, we see that that Organisation is divided into blocs. We have stated in the clearest terms that we belong to no bloc, despite the fact that we are a young nation, a new born free state, with feeble power though our resources are mighty and have yet to be developed. In this strife between two big blocs, ours is a difficult and unenviable position. We have not to be in blocs and we have to fend for ourselves for our own defence and for our own security. Though our respected leader, the Honourable Pandit Jawaharlal Nehru, has told us that he found no theocracy or no communal tendency in the near and Middle East States, we have the latest announcements in the Press that the very slogan of "Islam in danger" is bringing most of the Muslim Arab countries together against us. That is one difficulty. Our neighbour, the Pakistan State, always considers us unfortunately as enemy No. 1 despite the fact that we agreed to bring Pakistan into existence so as to bring about peace and amity between us, the two states. She regards us however like an enemy and raises the cry `Islam in danger' which brings Muslim countries together.

Secondly, Sir, despite the unanimity of purpose disclosed by the united action of representatives from Pakistan and India, the fact remains that the Muslim countries gave the go-by to India when the South-West African question was discussed by the U. N. O. This leads us to the belief that they are made to play the game of the Britisher, the unseen hand of Britain and the unseen hands of South Africa and Britain together. These explain our difficulty and helplessness in the international sphere. I have already stated that our leaders have emphatically announced that we do not belong to any bloc. We are not helped by any bloc and attempts are even being made by the different blocs not to do anything which helps India on her way to progress. That being the position I find little reason for my friend Seth Damodar Swarup coming forward with an amendment calling upon the Constituent Assembly to accept a position which is least air to the best interests of the country. Sir, we are called upon to free the politically and economically exploited people of the world. Where is the necessary force to back this great programme of freeing the politically and economically exploited races of the world today in India? It might be that after some time India will be their beacon light and focus attention on the exploited countries of the world. That is our hope. But Heaven knows how long it will take for us to be able to do it. It is in the hands of God. I would therefore beg of Mr. Damodar Swarup and appeal to him to withdraw his amendment which expresses the point of view of the Socialists. I support the amendment moved by Dr. Ambedkar which clearly and fully brings out the aspirations of India. I fully support it.

Shri B. M. Gupta (Bombay: General): Sir, I rise to support the amendment moved by Dr. Ambedkar. It is really a matter for sincere gratification that the cardinal principle of our foreign policy that has been laid down in this article as proposed in the promotion of peace, international peace and security. There is no doubt it is a very desirable thing. All the world over, in the deep recesses of the human heart there is a passionate longing for peace and Mahatma Gandhi was the embodiment of this yearning for peace. After the devastation caused by two world wars, the world is again threatened with a third war and the world is anxious to avoid that catastrophe. Personally it would have given me greater satisfaction if, instead of merely laying down our objective as the promotion of peace, we could have devised and emphasised some method for the promotion of peace. I think Mahatma Gandhi has suggested one method. He laid down the principle of arbitration for the settlement of labour disputes. That principle could be very well extended to other departments of life and also to international disputes. I think it would have been better if we had provided that arbitration should be resorted to if we want to avoid war. We should hold out some substitute for war. Naturally there cannot be a better substitute than arbitration. Therefore I would have been very much gratified if we had laid down here that our international policy would be to encourage the settlement of disputes through arbitration. I do not want to move any amendment to that effect myself, but I certainly would like to stress that and I shall be very glad if this suggestion is acceptable to the Mover and he himself volunteers to bring forward such an amendment. With this suggestion, I support the amendment moved by Dr. Ambedkar.

Shri M. Ananthasayanam Ayyangar: Mr. Vice-President, though it comes as the last article, article 40, in this Part, I consider it as one of the most important articles. When a storm is raging we cannot escape it by keeping aloof. If we want to have peace and progress in this country it is absolutely necessary that the nations around us also maintain peace and are in the march of progress economically and socially. Therefore we must lay emphasis on this article which seeks to insist upon our taking part in the settlement of international disputes by arbitration and by peaceful means. I am not satisfied that this article is sufficient for this reason that even in the Charter of the Nations on which the U. N. O. is based, one or two articles are missing. That was the reason why the League of Nations failed. The Nations of the world have not come to an agreement that all people should be set at liberty, small and big alike, and that all nations or races occupying particular territories ought to be set free to manage their own affairs. This sentiment did not find a place in article 10 of the League of Nations. Neither does it find a place in a Charter of the United Nations today. Until this is done, I do not think there will be any real peace in the world. Even today the coloured people in Africa and other parts of the world are not assured that they will be set free. Mandates are imposed upon them and they never end. Mandates are merely transferred from one hand to another hand and these people are kept under perpetual domination. The territorial integrity of the various countries are protected by collective security. That means that Holland will be allowed to continue here stranglehold on Indonesia and France will be allowed to keep its possessions in Asia and Africa. Whether we suggest resort to arbitration for the settlement of disputes or some other peaceful method, these things will continue. The last war broke out because England was an Imperialist power and even chhota Belgium was an Imperialist power and this encouraged nations like Germany and Japan to attempt to become imperialist powers too.

I would like very much that we should have some such clause that it shall be the duty and the constant endeavour of the Government of India to see that all people in the world are released from the domination of other people, that each people big or small, each nation or race big or small, get freedom to manage their own affairs within the territory which God has given them. Situated as we are, we cannot do it. For this purpose, arbitration is the sole means of settling international disputes. This also finds a place in the United Nations Charter. I would like, Sir, with your permission to add a clause, clause (d), to the amendment moved by my honourable friend, Dr. Ambedkar.

If it is agreeable to the House and if you accept it, the clause will be -

> "and (d) to encourage the settlement of international disputes by arbitration."

This is the clause (d) of Mr. Gupta's amendment but he did not move it. The other items in the amendments moved by Dr. Ambedkar would not be really effective unless you suggest the means by which they could be given effect to. International relations can be peaceful, International agreements - trade and other agreements - can be enforced only by arbitration and not by resort to arums. Therefore, Sir, if the House accepts and if the honourable Dr. Ambedkar finds it convenient to accept it, I would suggest that the following be added as sub-clause (d) to his amendment:

> "and (d) to encourage the settlement of international disputes by arbitration."

Mr. Vice-President: Does the House give leave to Mr. Ayyangar to make that addition to the amended clause of Dr. Ambedkar?

Honourable Members: Yes.

Mr. Vice-President: Mr. Ayyangar, will you move it formally?

Shri M. Ananthasayanam Ayyangar: Sir, I move that in the amendment of Dr. Ambedkar, at the end add the following sub-clause: -

> "and (d) to encourage the settlement of international disputes by arbitration."

Shri Mahavir Tyagi (United Provinces: General): Sir, I am opposed to this.

Mr. Vice-President: If you want to discuss the amendment moved by Mr. Ayyangar, Mr. Tyagi, you are perfectly entitled to speak.

Shri Mahavir Tyagi: Sir, the article as sought to be amended by Dr. Ambedkar is a mere pious wish. It does not add any substance to the Constitution. It may be all right when delegates go to foreign countries, mix and familiarise themselves with the delegates from other countries. But when I see the phrases used here. I wonder whether you are really thinking of war against any nation, because whenever I saw any nation speaking in these terms, they were always immediately followed by their guns and aeroplanes. This phraseology has been misused by other nations. I have my suspicions. We cannot question our own motives. You talk of arbitration of international disputes. But where are the arbitrators? We have seen the arbitrators who came here and have seen the way they have been functioning. It is very difficult to get honest arbitrators. How can anybody arbitrate in such matters? Sir, I prefer war in such cases. War is also a philosophy, it is both a curse and a blessing. If these are our objectives, if we want to maintain peace and seek to maintain just and honourable relations between nations, then I say it is not possible if we remain week and remain merely a meadow of green grass for bulls to come and graze freely. For the purposes mentioned in this clause what we want is armament, both of will and weapons, moral armament as well as physical armament. We should see to it that our nation is militarily strong. We should see to it that our army, our navy and air force remain strong. That should be the directive that we should give to our future government of India if only to achieve our laudable objective of "world peace". As it is, we are a pygmy in the world. Who cares for you unless you are strong? Unless your argument has guns behind it, nobody would appreciate your arguments. Our present position is weak. I do not say that we are weak against any of our immediate neighbours but to count in the international field, we should be a first-class power. Our aim should be to become a first-class power, a strong power, so that our voice, our pleadings and our arguments may have some weight and people may know that they should not annoy this great country and that would mean a war. So, Sir, I want to reserve one privilege as a man of war, that in case we fail to achieve these objects peacefully, we shall war and accomplish these objects. With these words of reservation, I support whatever you have said, because it is all a pious wish.

Dr. P. Subbarayan (Madras: General): Mr. Vice-President, Sir, I am proposing only a small verbal amendment to Dr. Ambedkar's amendment clause (c) and that is to use the word to `foster' instead of `sustain'. Dr. Ambedkar says that he will accept this amendment. The House will give me permission to move this.

Shri T. T. Krishnamachari (Madras: General): Why?

Dr. P. Subbarayan: The reasons are obvious. I think my honourable friend, Mr. krishnamachari knows it as well as I do.

Shri M. Anathasayanam Ayyangar: You want to use the word `foster' instead of the word "sustain".

Dr. P. Subbarayan: Because `sustain' will imply force. I do not think that we want to use force of any kind either in the future Government of India or in the Government as it is constituted today.

The Honourable Dr. b. R. Ambedkar: Sir, I accept Mr. Kamath's three amendments. I accept Dr. Subbarayan's amendment and I accept the amendment moved by my honourable friend, Mr. Ananthasayanam Ayyangar. I do not accept any other amendment.

Mr. Vice-President: The question is that for article 40, the following be substituted: -

"40. The Federal Republican Secular State in India shall be pledged to maintain international peace and security and shall to that end adopt every means to promote amicable relations between nations. In particular the State in India shall endevour to secure the fullest respect for international law and agreement amongst States and to maintain justice, respect for treaty rights and obligations in regard to dealings of organised peoples amongst themselves."

The motion was negatived.

Mr. Vice-President: The question is that for the existing article 40, the following be substituted: -

"40. The State shall endeavour to -

(a) promote international peace and security;

(b) maintain just and honourable relations between nations;:

(c) foster respect for international law and treaty obligations in the dealings of organised people with one another, and

(d) encourage the settlement of international disputes by arbitration."

The motion was adopted.

Mr. Vice-President: The question is that in article 40, the following words be added at the end;

"It shall also promote political and economic emancipation and cultural advancement of the oppressed and backward peoples, and the international regulation of the legal status of workers with a view to ensuring a universal minimum of social rights to the entire working class of the world."

The motion was negatived.

Mr. Vice-President: The question is:

"That article 40, as amended, stand part of the Constitution."

The motion was adopted.

Article 40, as amended, was added to the Constitution.

New Article 40-A

(Amendment No. 1026 was not moved.

Amendment No. 1027 in the name of Shri Algu Rai Shastri was allowed to stand over.)

Shri Gopal Narain (United Provinces: General): Mr. Vice-President, Sir, I gave notice of several amendments on the last date and I did it when I found that the Members of this august House have tabled thousands of amendments and they wanted that every pious and noble sentiment may be incorporated in this Constitution. I also ran in the race, though I was of the opinion that this Constitution has already become very lengthy. I also felt that it should not be filled up with all the details; otherwise it may be made more ridiculous. Now I find that better sense is prevailing and Members are not moving the amendments now. My purpose has been served and with these few general remarks. I do not want to move this amendment or any other amendments tabled by me.

(Amendments Nos. 1029 to 1031 were not moved.)

Prof. K. T. Shah: This is part of Part v. and there is a big question of principle involved in it. I also thought that according to the understanding reached, we should now be going over to the earlier amendments. But I am in your hands, Sir. I do not mind moving this amendment now.

Mr. Vice-President: If you want to move it, you are at perfect liberty to do so. If you do not want to move it now, you may do it at another place.

Prof. K. T. Shah: I should like to reserve it when we come to Part V. I shall take it up then.

(Amendments Nos. 1029 to 1031 were not moved.)

Mr. Vice-President: That finishes Part IV.

Part III

Shri M. Ananthasayanam Ayyangar: May I request you, Sir, to take up Part III?

Mr. Vice-President: That is also to be found in the Orders of the day. We take up Part III. The first amendment is in the name of Professor K. T. Shah, amendment No. 238.

Prof. K. T. Shah: Sir, I beg to move:

"That for the heading `Fundamental Rights' under Part III, the following be substituted: -

'Fundamental Rights and Obligations of the State and the Citizen.'"

Sir, on an earlier occasion, while moving an amendment I pointed out that the Constitution seems to leave out completely the Obligations side of human behaviour, and insists more and more.....

Shri M. Ananthasayanam Ayyangar: Sir, I believe Professor K. T. Shah is moving amendment No. 238, to change the heading. May I request him to take this up after we dispose of the articles? The title as it is, "Fundamental Rights". He wants to include Obligations also. After we dispose of this part, if we find that any articles referring to obligations are introduced substantively, then we can move for the change of the title. In case no article referring to any obligation, is introduced in the substantive portion, there is no purpose in changing the title to include Obligations also. I would request him to allow this amendment to the title to stand over until we exhaust the substantive provisions of Part III.

Prof. K. T. Shah: I am quite willing to agree to the suggestion that this may stand over. I would only point out to my honourable Friend that it is not merely a particular section or sections which include Obligations that would justify a change in heading. I would like by this change in the title to draw attention to an aspect of the Constitution which has been omitted. However, if I am allowed to holdover this amendment, I shall try to bring it to the notice of the House on a later occasion. Meanwhile, I agree to the suggestion.

Mr. Vice-President: This amendment stands over for the present.

(Amendment No. 239 was not moved.)

Mr. Vice-President: Amendment No. 240 stands over.

(Amendments Nos. 241 and 242 were not moved.)

The Honourable Shri Ghanshyam Singh Gupta (C. P. & Berar: General): Sir, Amendment No. 243 becomes redundant. Article 28 has already been passed. If it had not been passed. this would have been necessary. I do not move this amendment.

Article 7

Mr. Vice-President: The motion before the House is:

That article 7 form part of the Constitution.

We will take up the amendments one by one.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That the following words be added at the end of article 7: -

'or under the control of the government of India'."

Sir, this amendment was thought necessary because apart from the territories which form part of India, there may be other territories which may not form part of India, but may none-the-less be under the control of the Government of India. There are many cases occurring now in international affairs where territories are handed over to other countries for the purposes of administration either under a mandate or trusteeship. I think it is desirable that there ought to be no discrimination so far as the citizens of India and the residents of those mandated or trusteeship territories are concerned in fundamental rights. It is therefore desirable that this amendment should be made so that the principle of Fundamental Rights may be extended to the residents of those territories as well.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I beg to move -

"That with reference to amendment No. 246 of the List of Amendments, in article 7, the words `and all local or other authorities within the territory of India or under the control of the Government of India' be deleted."

Sir, along with this, I desire to move the second part of amendment No. 247 because they are related and may be disposed of conveniently together. Sir, I beg to move -

"That before the words `In this Part' the figures and brackets `(1)' be inserted and the following new clause after clause (1) so framed be inserted: -

"(2) The provisions of this Part shall so far as maybe, apply to all local or other authorities within the territory of India or under the control of the Government of India."

At the time I gave notice of this amendment I thought that the whole of the article 7 as redrafted by the Drafting Committee would be moved together. But really only a small amendment has been moved to the original article 7. What I want to do by these amendments is to remove the words - "all local and other authorities within the territory of India" from the article and reintroduce them in a separate clause. In article 7 "State" is defined to mean the Parliament of India and the Government of the Legislature of each of the State *i.e.*, the provinces and Indian States and other States and all *local and other authorities* within the territory of India.

This, I am very sorry to say, creates some amount of anomaly in this context. In fact I have no difficulty in applying the provisions of part III to local and other authorities i.e., District Boards, Municipalities etc., but I object only to the Municipalities and District Boards and other authorities to be styled a `State'. One honourable gentleman, Pandit Lakshmi Kanta Maitra, objected to the use of the word `State' even to Indian States and the Provinces because they do not represent full sovereignty, but full sovereignty is not necessary for using the word `State' in this connection. But I submit that by no stretch of imagination can District Boards and Municipalities be called State'. Therefore what I have attempted to do is to remove these words from the article which should be renumbered as clause (1) of the article and add clause (2) just to say that "the provisions of this Part shall, so far as may be, apply to all local or other authorities etc." This avoids the anomaly of describing the local bodies as `States' and at the same time attains the same object by removing those words from the body of article 7 and relegating them to clause (2). I submit this will remove the anomaly of District boards etc., being described as `State' and at the same time serve the purpose.

Syed Abdur Rouf (Assam: Muslim): Sir, I beg to move-

"That in article 7, for the word `or' the word `and' be substituted."

Sir, in this article we are going to enumerate what are the States and that enumeration is exhaustive and not merely illustrative. Therefore in my opinion the word "and" will be happier than the word `or'. Though the word `or' has got conjunctive sense, it has got other senses as well. In literature it may be quite alright but in matters of law where legal terms are to be used, when we can find a more concise word, we should not use less concise ones. Therefore I recommend this amendment for the acceptance of the House.

Mr. Vice-President: Now it is open to general discussion. I should have said Amendment No. 249 is blocked by Dr. Ambedkar's.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): Sir, I consider that it is not advisable that an expression in a legislative enactment should bear different meanings indifferent parts of the enactment. It will create confusion. Therefore I wish this definition of `state' has not been entered in this article at all. Further this expression 'state' includes the government of India and its parliament, the governments of the states, *i.e.*, the Provincial states, I think, and its legislature and the local bodies. I know that local authorities have Ben defined in the General Clauses Act, as District Boards and Municipalities. But I do not know what those `other authorities' are. Is there-any necessity for us to include other authorities which are not defined either here or anywhere else? Therefore, Sir, as far as this part of the Constitution is concerned, the State is defined in a manner which is comprehensive of all institutions, whether they are legislative bodies, executive bodies or executive authority or the municipal or district boards or for the matter of that even the co-operative institutions, or according to me, even other authorities, such as the sub-magistrates of a locality. So the word `State' is used to include a man in authority under the circumstances anywhere. That is too wide a definition of the word `State'. When this definition is given to the same expression used, say for instance in article 13 let us see what is its effect. I may read to you, Sir, sub-clause (2) of article 13.

> "Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law, relating to libel, slander, defamation, sedition or any other matter which offends against decency or morality or undermines the authority or foundation of the State."

That means the local body or the executive of a province or even a Sub-Magistrate might pass any order or the local body might pass any bye-law or resolution modifying the Fundamental Right given under sub-clause (a) of clause 1 of article 13.

Now, it may be contended that the expression is "making any law". Now, let us see whether `law' has been defined here. Law has not been defined for the entire part, but it has been defined for a certain article - article 8, clause(3). There, it is stated that -

> "..........law' includes any Ordinance order, bye-law, rule, regulation, notification, custom or usage having the force of law in the territory of India or any part thereof."

But law has not been defined generally, but it has been defined only for the purpose of article 8, to cover any order that is passed, any bye-law; that suite very well there, as we are abrogating all laws which are inconsistent with Fundamental Rights. If any Magistrate or any municipal body passed any law which derogates from the Fundamental Rights, that shall be considered void. So far so good. But has law not been defined for the purpose of Part III? It maybe argued from the analogy of the law defined under clause(3) of article 8, that any order or bye-law passed by a local body or order that may be passed by any other authority may be included in the expression `Law' in Part III. But what that "any other authority" is, has not been defined. Therefore, it may be contended, and very rightly perhaps, that a Magistrate or a local body or even a collector or even a Minister might pass an order, or make a notification abridging the rights that are given under sub-clause (a) of clause (1) of article 13. Therefore, my submission is, especially in the absence of a definition of law, and in the light of the definition of law under clause(3) of article 8, it will not only create confusion, but it might tend to the usurpation of those rights, and to nullify and abridge the fundamental rights given under clause (1).Sir, I am aware that article 7 says, "unless the context otherwise requires,....". I know that it might be contended that that expression answers my objection. But my submission is this. It is not only law that is passed by a legislature that is law. What is law, must be made quite clear. Unless that is done, the executive might pass an order, or put out a notification and that too might claim to come under this expression. Otherwise, as far as this part is concerned, there is no place at all for any executive authority to make any law to make anything, say anything or do anything. You have stated in all these places - "Nothing...shall.. prevent the State from making any law, imposing in the interests of public order restrictions on the etc. etc." That clearly shows that a magistrate might pass an order restricting the right of a person or persons to assemble peacefully. So, when this expression is susceptible of being interpreted as giving authority to a district magistrate, an executive body to abridge the rights given here, with equal weight it maybe contended by a local body or by some other authority - and you have not defined your authority. Therefore, I submit, if it is meant that all the authorities mentioned in this article have got the right to abridge rights, the fundamental rights mentioned in clause (1) of article 13, it might lead to absurd results. As I said, a magistrate or even a petty officer in authority can rightly claim under this article to have the authority to abridge a citizen's rights. Therefore, my submission is, either this article is unnecessary, or if you really mean that any manor any officer in authority has got right to abridge the fundamental rights, I submit that this clause should not find a place here at all. It leads to confusion.

I wish that the Member in charge of piloting this Constitution would make it more clear and satisfy us before we are in a position to vote in favour of this resolution.

Mr. Vice-President: I would request Dr. Ambedkar to enlighten us about the points raised here by Mr. Ali Baig. We are laymen and we would like to hear him.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, I must confess that although I had concentrated my attention on the speech of my friend who moved this amendment, I have not been able to follow what exactly he wanted to know. If his amendment is to delete the whole of article 7, I can very easily explain to him why this article must stand as part of the Constitution..

The object of the Fundamental Rights is two-fold. First, that every citizen must be in a position to claim those rights. Secondly, they must be binding upon every authority - I shall presently explain what the word" authority" means - upon every authority which has got either the power to make laws or the power to have discretion vested in it. Therefore, it is quite clear that if the Fundamental Rights are to be clear, then they must be binding not only upon the Central Government, they must not only be binding upon the Provincial Government, they must not only be binding upon the Governments established in the Indian States, they must also be binding upon District Local Boards, Municipalities, even village panchayats and taluk boards, in fact, every authority which has been created bylaw and which has got certain power to make laws, to make rules, or make by-laws.

If that proposition is accepted - and I do not see anyone who cares for Fundamental Rights can object to such a universal obligation being imposed upon every authority created by law - then, what are we to do to make our intention clear? There are two ways of doing it. One way is to use a composite phrase such as "the State", as we have done in article 7; or, to keep on repeating every time, "the Central Government, the Provincial Government, the State Government, the Municipality, the Local Board, the Port Trust, or any other authority". It seems to me not only most cumbersome but stupid to keep on repeating this phraseology every time we have to make a reference to some authority. The wisest course is to have this comprehensive phrase and to economies in words. I hope that my friend will now understand why we have used the word "State" in this article and why this article must stand as part of this Constitution.

Mr. Vice-President: I will now put this amendment to the vote. First of all, we have amendment No. 21 of Mr. Naziruddin Ahmad, which is an amendment to amendment No.246.

The question is :

"That with reference to amendment No. 246 of the List of Amendment in article 7 the words "and all local or other authorities within the territory of India or under the control of the Government of India" be deleted."

The motion was negatived.

Mr. Vice-President: The next amendment is No. 246 moved by Dr. Ambedkar.

The question is: that the following words be added at the end of article 7:

"or under the control of the Government of India."

The motion was adopted.

Mr. Vice-President: Then we come to amendment No. 247 as amended by No. 22.

The question is:

That in article 7, for the words and inverted commas" the State" the word and inverted commas ` "State" ' be situated, and before the words "In this Part" the figure and brackets "(1)" be inserted, and the following new clause (1)so framed be inserted :

"(2) The provisions of this Part shall, so far as maybe, apply to all local authorities within the territory of India or under the control of the Union Government."

The motion was negatived.

Mr. Vice-President: The question is: that in article 7,for the word "or" the word "and" be substituted.

The motion was negatived.

Mr. Vice-President: The question is: that article 7, as amended, stand part of the Constitution.

The motion was adopted.

Article 7, as amended, was added to the Constitution.

Article 8

Mr. Vice-President: Now we go on to the next article.

The motion is:

That article 8 stand part of the Constitution.

There are a number of amendments. No. 250 is by Dr. P. K. Sen but he is not in the House. No. 251 is in the name of Mr. Kamath.

Shri. H. V. Kamath: I am not moving it.

Mr. Vice-President: Then there is No. 252 by Pandit Lakshmi Kanta Maitra.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Mr. Vice-President, Sir, I move to:

> That the proviso of clause (2) of article 8 be deleted.

The purpose of this amendment is self-evident, and as I have been strictly enjoined not to make any speech I simply move this amendment.

Sir, I move.

Mr. Vice-President: Then there are amendments No. 253to 258. Is any Member going to move his amendment?

The amendments were not moved

Shri Lokanath Misra: Sir, I want to move amendment No.259 standing in my name. I beg to move: that after clause (2) of article8, the following new clause be inserted and the existing clause (3) be re-numbered as clause (4):

> "(3) The Union or the State shall not undertake any legislation or pass any law discriminatory to some community or communities, or applicable to some particular community or communities and no other."

In moving this new article I seek than supplementing article 35 which we have passed. Article 35 directs the state to do certain things, that is, to bring about a uniform civil code. My article simply says what the state should not do, so that it may not frustrate the very purpose for which article 35 has been enacted. Sir, deliberately we have chosen that our state is a secular state and we have tried to get rid of all the wronglings of religion because of the belief that although religion was made to unite mankind it has been found that it has disunited mankind and has brought various disputes. Rightly, therefore, have we declared that our State would be a secular State and thereby we mean that everybody who inhabits this lend, who is a citizen is just a man and his human needs will be fulfilled and his religion, if he has any, will be taken care of by the individual himself.

If we approve of this purpose, to give mankind that equality, that sense of justice, then when we are here to legislate for a future constitution, we must make it a fundamental right that we will not legislate in a manner and on a matter which will discriminate between one community and another. Our law must be so broad-based, must be so very intrinsically sound that it must apply to every human being, every citizen of this land. When you make any difference between citizens in this land, you can make it only on the lines of community and community directly means religion and we have deliberately eschewed religion. Therefore, to be frank enough, to be bold enough, to be true enough to our professions, we must make it a point that whenever we bring anything on the anvil of legislation, it must be such that it will apply to one and all of this land ad there will be no differentiation. Let people say: We have one fundamental safeguard against inequality and injustice. Here is the law. It applies to everybody, - be he a Rajah, be he a Praja, be he a Hindu, be he a Muslim, be he a Parsi, be he a Christian. That itself is enough safeguard, because it will apply to every citizen equally. If the law is bad, it is bad for everybody; if it is good for everybody. Therefore, I say this must be a fundamental principle. We must accept it here and now that any law that henceforward we may be legislating must be applicable to one and all. To that effect, I candidly place before this House that to avoid all future doubts, all disparity, all discrimination, all distinction, we must make it a law and a fundamental law that the Union or the States shall not undertake any legislation or pass any law discriminatory to some community or communities, or applicable to some particular community or communities and no other. This House has very frankly, openly and boldly accepted the principle in article 35. I simply beg this House to make that article complete and self-sufficient. that gave only a direction; this gives a positive mandate for what we should not do, because by not doing all these things, by discriminating between citizens and communities we have divided the country and let it not lead to greater divisions. I submit that unless we accept this principle, our idea of a united Nation, of a united making and of equality of every citizen in this land will be frustrated. I therefore commend this new article to the consideration of this great House.

The Assembly then adjourned till Ten of the Clock on Friday, the 26th November 1948.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VII

Friday, the 26th November 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

STATEMENT *re* EIRE ACT

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): Mr. Vice-President, Sir, the House is aware that certain developments have taken place recently in Eire which affect the relationship of Eire with other Commonwealth countries. On the 17th of November the Eire Act, entitled the Republic of Ireland Act, was given a first reading in the Dail. The second reading took place on the 24th of November.

In view of the close relationship that has existed between Eire and the other Commonwealth countries, it was considered desirable to clarify the position that would result from the passage of this Bill. The Government of India have been in communication on this subject with the Government of the United Kingdom and the Government of Eire and both these Governments have been good enough to inform us of the position, as they view it, that will arise after the passage of the Republic of Ireland Act. They have sent us the texts of the speeches made in their respective Parliaments on this subject.

As the passage of this Act might affect Indian citizens in Eire and Eire citizens in India, the Government of India are naturally interested in a clarification of this subject.

In the course of the speech made by Mr. Costello, the Prime Minister of Eire, on the second reading of the Republic of Ireland Bill on the 24th November in the Dail, he said:

"In the new Bill provisions will be made to ensure that Commonwealth citizens shall be afforded comparable rights to those afforded to our citizens in the British Commonwealth. There is one thing I should like to make clear to our friends in Britain and in the Commonwealth generally; it is that after the passage of this Bill we will continue, provided they so desire, the exchange of citizenship rights and privileges. Ireland does not now, and when the External Relations Act is repealed, Ireland does not intend to, regard their citizens as foreigners or their countries as foreign countries. Throughout, the position of the Irish Government is, that while Ireland is not a member of the British Commonwealth of nations, it recognises and confirms the existence of a specially close relationship arising not only from ties of friendship and kinship but from traditional and long established economic, social and trade relations based on common interests with the nations that form the British Commonwealth. This exchange of rights and privileges, which it is our firm desire and intention to maintain and strengthen, in our view constitutes a special relationship which negatives the view that other countries could raise valid objections on the grounds that Ireland should be treated as a foreign country by Britain and the Commonwealth countries for the purpose of this exchange of rights and privileges. These are the considerations which we put forward to Britain and the Commonwealth countries. We find that they, on their part, were equally determined not to regard the passage of this Bill as placing Ireland in the category of foreign countries or our citizens in the category of foreigners, but were prepared to continue the exchange of citizenship and trade preference rights. Accordingly, the factual exchange of rights that has existed hither to will continue unimpaired. By reason of the fact that we have eliminated from this exchange controversial forms, we may reasonably hope that a greater spirit of goodwill and co-operation will actuate this factual relationship."

On the part of the United Kingdom, Mr. Attlee, the Prime Minister, made the following statement in the House of Commons yesterday, the 25th November 1948:

"In 1937 a new constitution was enacted in Eire in which the Crown played no part. The Eire Executive Authority (External Relations) Act which was passed in 1936, however, authorised His Majesty the King to act on behalf of Eire in certain matters within the field of external affairs as and when advised by the Eire Executive Council to do so. In December 1937, the U.K. Government stated, after consultation with the Governments of Canada, Australia, New Zealand, and South Africa, that they, like those Governments, were prepared to treat the new Constitution as not effecting a fundamental alteration in the position of Eire as a member of the Commonwealth.

On the 7th September last the Prime Minister of Eire, Mr. Costello, announced that the Eire Government were preparing to repeal the External Relations Act. Subsequently, Mr. Costello confirmed this intention."

Mr. Attlee then refers to various discussions with the Eire Ministers in order to explore the consequences which would flow from the legislation proposed in Eire:

"As a result of these discussions the United Kingdom Government have been able to give the most careful consideration to the relations between the U.K. and Eire when the Republic of Ireland Bill comes into force. The U. K. Government recognise that, as has been stated by Eire Ministers, Eire will then no longer be a member of the Commonwealth. The Eire Government have however, stated that they recognise the existence of a specially close relationship between Eire and the Commonwealth countries and desire that this relationship should be maintained. These close relations arise on ties of kinship and from traditional and long established economic, social and trade arrangements based on common interest. The U.K. Government for their part fully associate themselves with the views expressed by Mr. Mac Bride and are at one with the Eire Government in desiring that these close and friendly relations should continue and be strengthened.

Accordingly the U.K. Government will not regard the enactment of this legislation by Eire as requiring them to treat Eire as a foreign country or Eire citizens as foreigners. The other Governments of the Commonwealth will, we understand, take an early opportunity of making a statement as to their policy in the matter.

So far as Eire citizens are concerned the position in the U.K. will be governed by the British Nationality Act,1948. The Eire Government have stated that it is their intention to bring their legislation into line with that in Commonwealth countries so as to establish by Statute that in Eire, citizens of Commonwealth countries receive comparable treatment."

I should like to associate the Government of India with the Statements made in the Eire and British Parliaments and to say that we are perfectly prepared to continue on a reciprocal basis the exchange of citizenship rights and privileges with Eire. What our future relationship with the Commonwealth is going to be is a matter which, the House knows, is under close consideration and I trust that a satisfactory solution will be arrived at before very long. For the present we are concerned with the situation as it is. I should like to make it clear that after the passage of the Republic of Ireland Bill, we shall not consider Ireland in the category of foreign countries or her citizens in the category of foreigners, provided Ireland offers our country and our citizens the same rights and privileges.

I should like to add that between Eire and India there has been for a long-time past a close bond of sympathy and friendly feeling. The Government of India trust that as in the past there will continue to be close and cordial relationship between the Governments and peoples of Eire and India.

Shri H. V. Kamath (C. P. & Berar: General): May I request you to be so good as to direct that copies of the Republic of Ireland Bill and of the speeches made there on in the Dail Eireann, and by Mr. Attlee in the House of Commons are supplied to Members of this House, as also the statement made by the Honourable Pandit Jawaharlal Nehru?

Mr. Vice-President (Dr. H. C. Mookherjee): That can be supplied. For that we have got to obtain the documents first. When they are secured, they will be supplied to all the Members.

The Honourable Pandit Jawaharlal Nehru: In the statement I have already made I have quoted extensively from the speeches of Mr. Costello and Mr. Attlee in their respective Parliaments so that the honourable Member's point will perhaps be met if a copy of my present statement including the references to the statements made in the Dai Eire Ann and in the House of Commons in London is distributed. That certainly can be done. As to the copy of the Republic of Ireland Bill, certainly it can be made available, but I am not quite sure if it is possible to do so very soon. Perhaps it will meet the purpose of the House if some copies are obtained and placed on the table of the House.

Mr. Vice-President: That would meet the situation, I think. I now call upon Shrimati Durgabai to move the motion which stands in her name.

MOTION *re* ADDITION OF SUB-RULES TO RULE 38-P

Shrimati G. Durgabai (Madras: General): Mr. Vice-President, sir, I beg to move the following motion standing in my name:

"(a) That the existing rule 38-P be renumbered as sub-rule (1) of rule 38-P, and to the said rule as so renumbered the following sub-rules be added:--

> (2) The President shall have the power to disallow amendments which seek to made merely verbal, grammatical or formal changes.
>
> (3) The President shall also have the power to select for consideration and voting by the House the more appropriate or comprehensive amendment or amendments out of the amendments of similar import and any such

> amendment not so selected may, unless withdrawn, be deemed to have been moved and may be put to the vote without discussion'."

Sir, let me make it clear at the very outset that my object in bringing this motion before the House is mainly to secure quicker disposal of the very large number of amendments so far received to the Draft Constitution and thus expedite the work before us. I believe there are already more than four thousand amendments received to the Draft Constitution. I consider that it would be very difficult for us to consider such a large number of amendments within a reasonable time and therefore it is considered essential that a special procedure should be devised in order to secure quicker disposal of the work and also expedite the work. Sir, the procedure suggested by me in the amendment placed before you, if adopted by the House, would not only help us to secure this object but also enable us to spend the limited amount of time available on more useful amendments and also amendments of a substantial nature. The object of the rule is to give the Chair the power to select the more appropriate or comprehensive amendment or amendments out of the amendments of similar import. It also gives the Chair the power to disallow such amendments as seek to make merely verbal or grammatical or formal changes. Sir, before I commend the motion for the acceptance of the House, I appeal to all to understand the scope of my amendment in the spirit in which it is placed before you. It need not create any fears or apprehensions in the minds of Members or any section of the Members of the House that it seeks to curtail their privileges. In giving this power to the Chair, I do not think that we are doing anything unusual and I am also sure that the Chair in exercising this power would displease none but please all. We have ample reason to believe that the Chair would be very judicious in exercising this power. With these few remarks I commend my motion to this House for its acceptance.

Mr. Vice-President: We shall now take up the amendments one by one.

Mr. Naziruddin Ahmad (West Bengal: Muslim): May I offer my remarks now?

Mr. Vice-President: There will be general discussion after the amendments have been moved. You would be given sufficient time to put your point of view before the House. The first amendment stands in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: Mr. Vice-President, Sir, I think it is my duty, while moving the amendments which stand in my name, to give expression to certain general thoughts which arise in my mind, but before doing so it will be proper for me to move the first amendment, which stands in my name. Sir, I beg to move:

> "that in the proposed sub-rule (2) of rule 38-P, after the words 'President shall', the words `after hearing the Member who has given notice of any amendment' be inserted."

Mr. Vice-President: Are you not moving amendment No. 1?

Mr. Naziruddin Ahmad: I am sorry, I missed it. I also move:

> "that the proposed sub-rule (2) of rule 38-P be deleted."

Mr. Vice-President: I suggest, Mr. Naziruddin Ahmad, that you also make now any general observations you wish to make.

Mr. Naziruddin Ahmad: I bow to your ruling.

Sir, I should have thought that the rules, which are in existence and which have been framed after a considerable amount of care and based on other models, are sufficient to give ample power to the Chair to regulate the debate. These rules were framed on the supposition that the Members also exercise a considerable amount of discretion and restraint in their speeches. The present motion implies a kind of suspicion about the willingness and ability of the Members to keep to that wholesome line as well as perhaps a little doubt as to the ability of the Chair under the ordinary rules to regulate the debate. What are the rules which are applicable to this situation? An amendment can be ruled out very justly if it is irrelevant, mere tedious repetitions and the like, defamatory or unparliamentary or objectionable from that point of view. What has happened which has induced the charming lady to come forward here to move this amendment? I submit that the experience of what has happened in the House gives a clue. For some time past, I very much regret to find that amendments of a so-called drafting or formal nature or of some grammatical significance are being ruled out practically in the debates, not that you, Sir, rule them out, but in the treatment of those amendments, Members are to a certain extent hustled by some Members in the House and the replies given are often few, laconic and unhelpful, and in many cases there are no replies but a large number of counter-allegations and facts are adduced.

I submit that a consideration of the proposed rules will show how carelessly these amendments have been drafted, and what mistakes lie almost in every line of these amendments. It is from a consideration of these amendments alone that the great necessity of allowing drafting improvements follows.

Sir, the motion is to the effect that the President shall have the power to disallow amendments which seek to make merely verbal, grammatical or formal changes. I have already submitted that they can always be ruled out on grounds of irrelevance, repetition and various other well-known reasons. But can they be properly rejected, merely on the ground that they are verbal? Can there be any amendment which can be described as merely verbal which changes the meaning of the context? Then, there is the question of grammatical amendments. I think the little mistakes which the honourable Mover of the Draft Constitution has committed have startled many Members. I ask you, Sir, in all humility: should you rule out an amendment merely because it is a grammatical amendment? Does it necessarily follow that a grammatical amendment is an unsubstantial amendment, that it has no relation to the clauses to which it appertains? I believe grammar is an agreed set of rules for the sake of clarity and clearness of meaning. Grammar is nothing if it does not add to clarity of thought, expression and writing. In these circumstances, I believe that the proposed sub-clause (2) of rule 38-P is absolutely misconceived.

Then coming to formal changes, can you rule out a formal change or should you rather be inclined to rule out a mere verbal-looking change because behind a verbal-looking change, there may lurk an important change in the meaning of the passage? In these circumstances, I beg to submit that there is a fear that though all the Members have absolute confidence in the strict impartiality and extreme kindness with which you have been dealing with them, there lies a suspicion behind these changes that the Honourable Mr. Vice-President will perhaps be unable to regulate the procedure with the existing rules. I submit, Sir, that Members have always shown a disposition cheerfully, willingly and readily to obey your rulings and your helpful guidance. I submit it would be far better to leave the matter in the hands of Members, leave them to the good sense of individual Members and the good sense of the House. Instead of trying to force the hands of Members and to a certain extent put you, Sir, in an awkward position, I submit that these rules should go. These are the things which strike me at the moment. For sometime, I feel that amendments of a drafting or formal nature or which look like them are being regarded with some amount of disfavour. They are being apparently rejected without any debate, without any argument and without any sufficient consideration. I submit, Sir, that this gives a sense of frustration amongst Members who have come here in a humble capacity to assist in the framing of a first-class Constitution. Sir, the momentous Constitution which we are making today would be a farcical affair otherwise. It would be copied as a model by other Constituent Assemblies in the world. We find hundreds of years after the speeches, the proceedings of Constituent Assemblies are read by constitutional lawyers and historians with a great deal of interest. I ask you, Sir, and my honourable Friends in the House as to whether these proposed changes are at all called for and whether they do not cast a suspicion upon the general body of Members as well as individual members as to their willingness and ability to stick to the strict rules of business.

Sir, as to the drafting of these rules, the less said the better. I submit that the proposed clause (2) is absolutely unnecessary. Then coming to clause (3), we have a startling piece of draftsmanship and I say that it has been so carelessly, so hopelessly drafted that it should be rejected on the face of it altogether. That shows the need of a careful revision in the House of a far more important document than these amendments themselves, namely, the Constitution. Sir, in clause (3), the first part deliberately clashes with the second.

The first part, Sir, seeks to select certain amendments for consideration. For what purpose? The amendment says "the amendment not so selected may be put to the vote". What do we come to? You have been specifically requested to select an amendment and for what purpose? The purpose is to select the amendment and then put to the vote a different amendment, namely, the one not so selected! Therefore, I beg to submit the very drafting of clause (3) is absolutely, hopelessly and ridiculously faulty. I have never spoken in this strain at any time in this Assembly, but circumstances, tendencies and the whispers we hear all round compel me to speak like this. Can the House accept clause (3) where the latter part absolutely rejects the former? I submit, Sir, I have tabled an amendment to remove the word `not' and then you can make some sense out of it. I shall request you to reject this amendment because it is verbal' and because it is verbal I shall bow to your ruling. We will have enacted a piece of legislation which shall have no meaning at all. While pointing out the dangerous character of the word `not', I shall seek your permission not to move for its deletion and leave the House and the honourable Members to consider what has been really achieved.

Then, Sir, I submit, part (b) seeking to introduce Rule 38-W is also mischievous. It is also badly conceived and badly drafted. What is the effect of this rule? It purports to remove a lacuna, that is the supposed absence of any power of the Vice-President to act as President within the meaning of certain rules. Sir, I find on a close examination that the powers of the Vice-President have never been defined with clarity, and it is attempted at this late stage to meet the situation. I submit, Sir, that as we have provided for a Vice-President without defining his powers, it is obvious that the Vice-President has the powers of the President or the Chairman, as the case may be. Supposing for the sake of argument that a further clarification was necessary, Rule 38-W falls far behind the requirements of the situation. I submit that it is attempted by this

Rule to regularise any irregularity which may have been committed by you, Sir, in giving rulings, declaring decisions regarding the orders of the House. If for one moment we can assume that you have been acting illegally--which I hope and believe you are not--once we concede that you have not be enacting with jurisdiction, then, this power given by the proposed Rule 38-W will not legalise what has happened already. In fact, if it is supposed that you have no power to do anything beyond the mere fact of presiding, then, what will happen to the acts done by you, Sir, as the presiding officer of this august House, before the passing of the rule? I have attempted to regularise the procedure. I should have thought that such a suspicion was unnecessary; but If the suspicion has any legal basis, if you entertain any suspicions in this respect, you should have something by way of introducing a new Rule 14-A as I have suggested in my amendment, that the Vice-President shall have all the powers of the President in certain respects, with the important Explanation that this Rule shall have retrospective effect as if it was passed on the 4th of November of from the date on which you have been pleased to preside over the deliberations of this House.

In an amendment of a rule consisting of only two provisions, one an amendment to Rule 38-P and the other anew Rule 38-W, there are so many gross errors. I submit that this will show.......

Shrimati G. Durgabai: Mr. Vice-President, Sir, I have not moved that part of the motion (b).

Mr. Vice-President: That has not yet been moved.

Mr. Naziruddin Ahmad: I realise the force of this submission. But, am I to understand that this will not be moved?

Shrimati G. Durgabai: I have only moved the first motion.

Mr. Vice-President: Why not put it conditionally, 'if'.

Mr. Naziruddin Ahmad: `If' such a motion is moved afterwards, it shows lack of appreciation of the points in issue. I was suggesting certain considerations from a general point of view: do we require drafting amendments or what are merely described as merely drafting amendments as distinct from substantial amendments--as if drafting amendments are not substantial amendments? This un-precise way of thought is staggering to those who have any experience in this line. I submit that the entire House would rather protest against the introduction of these Rules. We are entitled from the draftsmen or from the members in charge of these legislations some clarity of thought, clarity of expression and purposeful writing. I submit, Sir, these Rules lack all these essential qualities.

On the merits, I submit, Sir, sub-rule (2) should go. You cannot be asked to rule out an amendment merely because it is `verbal', `grammatical' or `formal'. I submit, the powers which you have got already, the great traditions which we have hitherto built up and the great rules of the House of Commons and other Parliaments which are before us are quite sufficient. The most important thing is the good sense of the Members and Movers. In this respect, so far as I am concerned, Sir, I am perfectly willing to obey the slightest wishes of the House properly expressed, privately or publicly. What are you going to do with regard to mistakes of a similar nature which lurk everywhere in the Constitution? Not that these mistakes show any lack of power or draftsmanship on the part of the eminent authors of the Bill; but every Bill should be revised. We have not got a second Chamber. The Bill has not gone through a Select Committee. At an earlier stage, I suggested a select Committee; that is the place where drafting amendments and other things could be coolly and properly discussed. That was ruled out on the ground that it was dilatory. Some of the amendments were carelessly described by eminent members as merely dilatory or of a frivolous nature. I think the word `frivolous' cannot be applied to any Member of this House. If there is anything frivolous, the rules give you ample power to rule them out. I submit from every possible point of view, from the point of view of general convenience, from the point of view of general efficacy of the rules which have been found efficacious so far, these new rules should be dropped.

Am I to move all the amendments, Sir?

Mr. Vice-President: I think you had better move all the amendments which stand in your name dealing with sub-rules(2) and (3). If you want to make any further observations, you are at liberty to do so.

Mr. Naziruddin Ahmad: In regard to amendment No. 2 which I have already moved, I have sought to introduce a clause that before rejecting an amendment, you would be pleased to give the Member who is ruled out a chance of expressing his opinion, giving his reasons. I have no doubt that while rejecting an amendment on the ground suggested in the rule, in view of the fact that your hands are attempted to be forced, I think this provision should be necessary. But I may well leave it to the good sense of the House and your innate sense of justice and fair-play which you have so far displayed. Then I come to amendment No. 6.

I beg to move:

"That in the proposed sub-rule 38-P, for the word 'amendments' the words `such amendments' be substituted."

This is only verbal.

Then I move No. 8:

"That in the proposed sub-rule (2) of rule 38-P, the comma after the word `verbal' and the word, `grammatical' be deleted."

I submit the office or officer who has dealt with the amendment is apparently unfamiliar with this method of expression of a deletion or a comma and a word. In fact for purposes of clarity this is perfectly admissible as is shown by all the leading authorities on legislative drafting. I submit it often happens that if I move for the deletion of the word" grammatical", the effect would be that the comma is left behind which would be wrong. They two go together but they have been treated by the office as separate amendments. Then, Sir, I also move amendment No. 9:

"That in the proposed sub-rule (2) of rule 38-P the words `and to remit them to the Drafting Committee' be added at the end."

I do not exactly know my own position. Unofficially I am hearing that I am the object of these proposed rules. I am the target. It is an open secret that I am the target--not the unhappy target but the happy target. If that is so, I should acknowledge a deep debt of gratitude to the honourable lady Member who has done me this signal honour, *viz.*, proposing the most unconstitutional, most undemocratic rule expressing want or faith in a particular Member in the House and also with a lurking suspicion about the ability of the Chair--whoever may be for the time being occupying the Chair--his ability to conduct the proceedings of the House. Sir, in these circumstance I feel highly honoured by this. My object is not to carry amendments. My object is in my own humble way to suggest improvements. It may be that in the ultimate analysis and on further consideration, I may be proved to be wrong and my amendments unsubstantial. I shall be very glad if they are ruled out after consideration but that is not what is taking place. I have not been moving all my amendments. There are similar amendments in various groups where I have moved only one as a type and I have refrained from moving the rest because I know the same arguments will be repeated. In these circumstances I beg to submit that the rules should not be directed against one or two men. The other rule is--Part (3) of the rule--perhaps directed against another respected and indefatigable member of the House, *viz.,* Professor K. T. Shah. In fact this is the impression which is freely being given out. I do not think, Sir, you should be given rules to gag Members. Even if the rules are accepted by the unanimous vote of the House you will not exercise them without asking for the reason, without knowing the purpose and the effect of the amendments. I submit amendments cannot be ruled out on their face value. They may have, and they often have, very substantial value. I submit the way the amendments are being dealt with in the House gives co lour to that impression. While we are framing the Constitution, while we are providing for freedom of thought and expression and action subject to certain well-recognized checks, here you are checking, curtailing the very freedom of debate, the freedom of an individual Member who has devoted some time and energy in a humble attempt in a most insignificant capacity to improve the drafting. But I am not discouraged by the fact that they are not accepted. A good work according to philosophers is its own reward and I shall be happy if after all these, these rules are accepted and my amendments are ridden roughshod over. Provided I have attempted to do my duty, I shall be happy. If I am ruled out the responsibility will not be mine. The responsibility will be that of the Members and of you, Sir. I submit that these rules should be withdrawn. From a drafting point of view they are badly handled and they are misconceived. They give out a very bad dour. There is something like a High Command feeling behind these rules. I submit that this gives the impression of totalitarianism. If you do not tolerate the reasonable debate of the minority--I am using the word minority not in the communal sense but in a numerical sense--then the freedom that you think of would be a mockery. If this Constituent Assembly should show us this example, then the underlings of Government, the various Provincial Authorities will ride rough-shod over the minority and that is fatal to democracy. The efficacy of democracy is the right given to a minority to express their views freely, subject only to rules of relevancy and other rules which are well known. These artificial rules for the sake of decency, for the sake of appearance and for the good name of the House, should be dropped. I submit, Sir, these proceedings will be read all the world over and I submit that we should..........

Mr. Vice--President: May I point out that these should come towards the end. There are several amendments standing in your name which should be moved first of all.

Mr. Naziruddin Ahmad: Sir, I move:

"That the proposed sub-rule (3) of rule 38-P be deleted."

No. 13, about the absurd word `not', I do not move. I will leave to the honourable

Member in charge of the amendment to keep it and try to make out a meaning.

Mr. Vice-President: Mr. Biswanath Das--Are you moving No. 15? In that case Mr. Naziruddin Ahmad will not move it.

Shri Biswanath Das (Orissa: General): I will move it.

Mr. Naziruddin Ahmad: May I say what I feel about it. With regard to amendment No. 15 which my honourable Friend has kindly intimated his desire to move, I may say that it will not do to proceed without a discussion. The proviso that you will select some amendments without discussion is purposeless and meaningless. There should be discussion. How can you ask the House to give its opinion without discussion? After all democracy is Government by debate, by free exchange of thought, but what is attempted to be given here is an authority to be given to you to select amendments without discussion.

Then, Sir, I move amendment No. 17:

"That after the proposed sub-rule (3) of rule 38-P, the following proviso be added:

'Provided that before the President so selects any amendment, the member who has given notice of any amendment shall have the right to explain the nature and purport of his amendment'."

I have made my purpose absolutely clear. I submit that all the safeguards which I have suggested are necessary, or we should content ourselves with the existing rules.

Sir, in case there are mistakes of the nature I have suggested, should we allow them to go on uncorrected, and to remain in the Constitution as so many faults and blemishes? Or should we ask the Drafting Committee to revise them and correct them where necessary? What should be the procedure, and what are the characteristics of the amendments which should be left to the drafting committee? How will the Drafting Committee understand the meaning and purport which a member attaches to his amendment if you do not give him an opportunity to explain them? Is he to dance attendance on the Drafting Committee and be its suitor, or should he be a litigant humbly making his submissions before the Drafting Committee? Sir, these are weighty considerations for removing the blemishes in the Constitution. I have said enough and if this does not convince the House, and if still I am ruled out, I shall cheerfully bow down to the decision of the House, knowing that I have discharged my duty. Thank you, Sir.

Mr. Vice-President: I have to inform the House that I have in my hand a letter of authority from our President which I shall read out, and I think that will clear up much of the misunderstanding. It runs thus:

"I hereby delegate to the Vice-President, Dr. H. C. Mookherjee, my powers and duties under all the rules in Chapter VI of the Constituent Assembly Rules excepting rules38-U and 38-V therein."

Shri B Das (Orissa: General): Sir, on a point of information. I would like to know if there is any time limit on speakers on this motion. If there is none, I suggest, you have the prerogative to lay down a time limit so that filibustering speeches may not be made.

Mr. Vice-President: I am not inclined, in a matter of such vital interest, to place any time limit on any one, so long as irrelevant matters are not introduced in the discussion.

Now, Mr. Kamath may move Amendment No. 3.

Shri H. V. Kamath: Mr. Vice-President, Sir, the motion moved by my honourable Friend Shrimati Durga Bai seeks to clothe or invest the President with certain extraordinary powers, and as a consequence, to abrogate or abridge the inherent rights of Members of this House, either inherent or conferred upon them by the rules of procedure which we have already passed. I am sure that none of my colleagues here, no colleague of mine here, will lightly or willingly surrender any of his rights, and I am equally sure that the President and you, Sir, will, as you have always been, be zealous in the vindication of the rights of Members of this House. I desire, therefore, to request my colleagues here to bestow their very earnest consideration on the motion before us today, and I would appeal to you, Sir, also to permit a full discussion on the motion before the House.

Coming now to my amendment, Sir, it is purely a verbal amendment which seeks to bring this clause or sub-rule inconformity with the rules that we have already passed. If the House turns to rule No. 31, sub-rule (4), the language employed there is--

> "The Chairman may disallow any amendment which he considers to be frivolous or dilatory."

But the expression here that--"The President shall have the power to disallow . . ." is a very clumsy expression. I have not seen it used in any of the rules which make up this booklet which is with every one of us--Rules of Procedure and Standing Orders. It is far more correct to say that "the President may disallow amendments. . . . etc." On this proposed sub-rule (2) I have to make one observation. This seeks to give special powers to the President by empowering him to disallow amendments. But after being disallowed what will happen to these amendments? Will they be consigned to the waste-paper basket or even to some less envious fate? Under rule 38-R even suggested changes in punctuation and marginal notes have to be referred to the Drafting Committee. If so, I do not see why we should not adopt the very amendments. I am glad to see that my honourable Friends Mr. Pataswar and Mr. Gupta have tabled amendments to this effect and I hope the House will agree to this course, namely, that all these amendments disallowed under rule 38-P(2) shall be referred to the Drafting Committee for consideration and necessary action.

Then, Sir, I shall not move amendment No. 7 because If the amendment suggesting reference to the Drafting Committee is adopted, there is no need for this to be moved.

My next amendment is No. 11 which relates to rule 38-P(3), and in which for the words "The President shall have power to select", etc., I seek to substitute the words "may select", etc. The reasons I gave for my first amendment apply with equal force to this also.

I then come to my amendment No. 12 which seeks to insert the words "same or" before the word "similar". Instead of saying "amendments of similar import" I think it is more comprehensive to say "amendments of the same or similar import".

My next amendment is No. 14 which seeks to substitute the word "may" for "shall" wherever it occurs. Under the existing rules the President has two kinds of powers,--

discretionary and mandatory. In the Rules of Procedure which we have adopted, you find that in the case of mandatory powers the word used is "shall" and in the case of discretionary powers the word used is "may". Rule 33 says that the President has no discretion and has got to put the motion to the vote. Here when the President has selected for consideration and voting any one amendment or amendments which in his judgment are proper or comprehensive, all the other amendments which have not been so selected must be deemed to have been moved and must be put to the vote. There is no discretion allowed to the President and the word "shall" in place of "may" will bring out the meaning of the proposed sub-rule.

Here again the construction of the proposed sub-rule is to my mind very defective. It is said here that any amendment not so selected may, unless withdrawn, be deemed to have been moved. But an amendment cannot be withdrawn unless it has been moved in the House; it can be withdrawn then only by leave of the House. I do not understand, therefore, how the proposed sub-rule is to be construed, *i.e.*, an amendment shall be deemed to have been moved unless withdrawn. The question of withdrawal arises only after it has been moved in the House; therefore this portion of the sub-rule has to be rewritten and recast.

Again I fail to see how any motion can be deemed to have been moved unless it is actually moved in the House. It is a strange procedure which, I am sure, will not be sanctioned in any other legislature in the world. Unless an amendment is formally moved in the House the President cannot assume that it has been so moved. I submit that this is a fundamental matter and I hope the House will not accept the amendment as it stands. If the Member does not want to move the amendment he will say so; and if he wants to move it he must be given a chance to move it in the House, and if it is not so moved it should be deemed to have been not moved at all. If it has not been moved it certainly cannot be put to the vote. So any amendment that a Member wishes to move must be formally moved in the House. The proposed sub-rule seeks to abrogate the right of a Member to move an amendment in the House and seeks to confer that power indirectly on the President. I do not see how this can bed one--is it by some sort of jugglery or magic? If we adopt this procedure it may waste more time of the House and the remedy may be worse than the disease. Therefore I have tabled the proviso amendment No. 16, which reads:

"That in the proposed sub-rule (3) of rule 38-P, after the words `without discussion' at the end, the following provision be added:

"Provided that a member whose amendment has not been so selected for consideration shall, if he so desires, be permitted by the President to state why his amendment should be considered'."

This, Sir, seeks to protect and vindicate the inherent right of a Member of this House, and I am sure, Sir, that you will be the last person to abrogate or abridge any of the inherent rights of Members of this House.

To illustrate my point, I would only say this: that this amendment to proposed sub-rule 3 relates to amendments of substance--substantial amendments. Therefore, no Member here, I hope, will surrender to the President his right of moving amendments in the House.

It may be argued that the President will select wisely such an amendment which covers all the other amendments tabled on that subject, or which are of similar import.

Perhaps this may be acceptable in case the President gives priority to those Members who have tabled amendments to participate in the discussion. But even that, Sir, I personally will not accept and every Member who wishes to move his amendment must be given the right to move it in the House.

Take, for instance, the amendments that have been suggested to the Preamble to our Constitution. There are various amendments invoking God. Perhaps, the President advised by the Drafting Committee, or the Consultative Committee, or some other persons in high places, might select one of these amendments. But if you peruse them and scrutinise them carefully, you will find that every amendment, besides an invocation to God, does contain certain other matters which are not covered by other amendments, and certainly if only one amendment is selected and the rest are not, Members who have given notice of the other amendments will have no chance to put their point of view before the House.

I therefore appeal to this House and to you not to pass this motion as it has come before the House. It has got to be drastically and radically reworded and recast so as not to infringe the rights of the honourable Members of this House. If I may be pardoned for saying so, if this motion is passed as it has come before us, I have no doubt in my mind that this sovereign body, the first sovereign body in India's recent history, will become the laughing-stock of the world.

Shri Biswanath Das: Sir, I move:

"That in the proposed sub-rule (3) of rule 38-P, the words `without discussion' he deleted."

I do not know whether I have to thank myself or be sorry that I should have been scheduled with my honourable Friend, Mr. Naziruddin Ahmad, though altogether from a different point of view. Sir, in the first place, I must frankly state that I fully support my friend, Shrimati Durgabai for this amendment. This is a very necessary and useful one and has our fullest support. The reason for this is that we have been here for the last three weeks, and need I say that we have not been able to finish even 21 articles in the course of these 21 days that we have been sitting. The country outside is anxiously waiting to have a Constitution for our country so that the new set-up will be in working order at least from 26th January 1949. That being their anxiety, we share with our countrymen this anxiety. We are anxious therefore to see that this phase of our activity should terminate as early as possible. From that point of view I welcome and support the resolution of my friend, Shrimati Durgabai.

Having stated so far, I will state why I have given notice of this amendment. I will just take the stages that we have been following in connection with our work, namely: first, we have passed the Objectives Resolution and thereafter motions for appointment of committees came before this House. They were discussed on each occasion. The committees sat and deliberated and submitted their reports. The reports were discussed threadbare in this House--word by word and phrase by phrase--and they were voted upon. Principles were determined and all these were handed over to the Drafting Committee--a set of expert gentlemen elected by us--to put them in proper phraseology. It has been seen in the course of these 21 days that the honourable Members of the Drafting Committee have, so far as possible, brought in expressions and used those with great care and caution from constitutions of countries which have been working their constitutions for ages. If English language, a comma, a full stop, idioms, or any set phraseology has to be questioned, I should say they have done ample justice in their selections and in the choice of their expressions and phrases. These have been amply demonstrated in the course of our discussions both here and elsewhere. That being so, there is, I believe, little need for us to waste time over verbal, grammatical or formal changes in words and phrases in the shape of amendments.

If one day has to be allotted for one article. I am afraid we have to sit for more than one year because we have 313 articles and then there are eight schedules each of which also has a number of sections. I shudder to think what extent of time will be necessary if we have to go on discussing every amendment of which notice is given, irrespective of the fact that what it wants discussed is perhaps a comma, a semi-colon, a grammatical error, etc.; which have also to be debated and voted upon in this House. Under the circumstances the resolution that has been moved by Shrimati Durgabai is very necessary after our experience of the last 21 days.

Looking at the Chair, I must frankly say that, you, Sir, have given us ample scope, despite protests from certain quarters, to express our views and have on no occasion given room for any honourable Member to feel that his point of view was not allowed to be properly placed before the House.

Speaking of the Congress party, I may mention that we have been meeting from day to day not even excluding Sundays for two, three and four hours at a stretch discussing these amendments and other possible and necessary amendments. I feel, Sir, that the consultative committee appointed by the Congress party is doing ample justice to their work and that explains why new amendments that have not been given notice of by honourable Members have also been brought in, discussed and adopted by the House. All these go to show that ample caution is being exercised in this regard in our anxiety to see that a proper Constitution is evolved.

Sir, the motion moved by Shrimati Durgabai is comprehensive enough. It gives scope for fair discussion and expresses the fullest confidence in the Chair to give ample opportunities to Members to discuss all aspects of every question. It makes mention of 'comprehensive amendment'. It is very clear. To give an illustration: Suppose amendments 1, 2, 3, 4, 5, 6, 7 and 8 have been given notice of. The Vice-President selects No. 8 or 7 and 8. These will be fully discussed and all shades of opinion would be placed before the House before the vote is taken on them. But I do not know why Shrimati Durgabai says at the end of the proposed sub-rule (3) `without discussion'. Nothing is being done without discussion. We discuss the whole thing. Nothing remains to be discussed after the comprehensive amendments have been debated, and that is why I have tabled my amendment for the omission of the words `without discussion'. I differ from my friend Mr. Naziruddin Ahmad in thinking that any amendment is put to the vote without discussion. That will be an injustice to the Honourable House and is never done. The procedure of the Constituent Assembly is different from that of the Legislatures. The Constituent Assembly has got its own procedure which allows full scope for the discussion of resolutions and other motions. If our friends want to take in Constitution-making as much time as the representatives of the States took in America in the 18th century, we will have to sit at it for one or two years and even more. Are my friends willing and anxious to devote that amount of time for this purpose? I say that the country is anxiously waiting for a Constitution. We want to bury alive this Act of 1935 as early as possible. How long are we to go on with Adaptations? Therefore I request my friends to accept the motion before the House, of course without the words without discussion', for, nothing is done here without discussion.

Sir, in this work-a-day world, we cannot afford to spend so much time over a Constitution which may be changed in course of time. After all, the provisions for effecting a change in the Constitution are more elastic than those provided in other Constitutions. Under the circumstances there need be no anxiety on this score.

Before I conclude I would quote a story from Srimath Bhagavatham. Emperor Khatwanga was taken to Heaven. It was then found that he had still a few *nimishas* or seconds of life on earth still remaining. He runs away from the heaven with the idea of serving his people even during those few remaining seconds. What should we learn from this? Are we to stay long here discussing commas and semi colons in these days of trouble, strain and distress throughout the country? Why cannot we leave these to the Drafting Committee of experts who have spent so much of their valuable and useful time on it? In the circumstances I appeal to my friends to accept the motion with the amendment I have suggested.

With these few words I move my amendment.

Mr. Vice-President: The amendments are now open for general discussion.

Shri Damodar Swarup Seth (United Provinces: General): Mr. Vice-President, Sir, with your permission and to my great pain and sorrow, I propose to oppose the motion moved by honourable Shrimati Durgabai and oppose it, Sir, with all the vehemence at my command. Sir, I wonder whether we are considering the Draft Constitution of free Independent India clause by clause in all seriousness and solemnity or whether we are rushing through an emergency legislation to be passed by a certain date and if it is not passed by that date, the heavens will fall and the earth will stop moving on its axis. Already, a very large number of amendments have been whipped off and vetoed by the majority party and more will be vetoed by them in future. And now this motion to amend the rules to give more power to the Honourable the President to disallow certain amendments; if that is the attitude, it is possible that he majority party or the party in power may have their own way, but, Sir, it will not be possible to deceive the Indian people that this Constitution has been made by them and for them. We may deceive the world outside, but we cannot certainly deceive our own selves. Because the majority party have got in their hands the proverbial lath they can have the proverbial she-buffalo of their choice, but what about the Indian people and also what about the party in majority too? As I have just said, a very large number of amendments which ought to have been moved by the members of the majority Party have been vetoed. So, there is no democracy even in the majority party, what to say of others, Sir. It is dictatorship of the party bosses pure and simple. I therefore say, Sir, that the motion is not suited to the conditions of the day. I have full faith in the dignity, impartiality and honesty of the Chair and I have every hope that the Chair will uphold the rights of the House. But, Sir, the passing of this motion will mean that we have bid goodbye to democracy. Democracy requires that every amendment here, every amendment tabled, must be discussed in all its aspects. There should be no party-whip for not moving amendments. As I have said, Sir, we are not doing anything that can be characterised as an ordinary job. We are considering the Draft Constitution of free, independent India; we are moulding our destiny. So, no amendment which has been tabled should be disallowed. If amendments are vetoed like this, that will be a negative attitude to democracy. I therefore, Sir, appeal in all humility even to the members of the majority party that it is in their own interests as also in the interests of the public, that they insist on moving every amendment and discuss it in all its aspects. By doing that, they will be doing the sacred duty which has been entrusted to them by the Indian people. If, however, they in their intoxication of being in majority, neglect this duty, then they may pass this Constitution as they like but the Indian people will never own that Constitution. As I said on a previous occasion, I repeat once more that this Constitution has not actually been made by the Indian people and it will at best be considered to have been made and passed by only fifteen per cent. representatives of the population of this country and that too by indirect election which in the words of Professor Laski maximises corruption. I therefore hope, Sir, that this House will seriously ponder over this motion and reject it and will give the House an opportunity to discuss and consider in all their aspects all the amendments which have been so far tabled.

Prof. K. T. Shah (Bihar: General): Mr. Vice-President, Sir, I am much obliged to you for allowing me this opportunity to express my sense of deep regret and resentment against this amendment to the rules calculated to pounce upon what little liberty of speech we have in this House. We, Sir, may not be all able to cast pearls of wisdom before honourable Members; but I trust that you will not regard, and those responsible for drafting this Constitution will not regard, us all as swine before which pearls of wisdom cannot be cast even by them.

The new amendment to the Rules tries to shut out amendments which are supposed to be, or which are taken to be, merely verbal, grammatical, or formal. Verbal amendments, Sir, have been made often, not only by the other Members of this House, but also by the draftsmen themselves. If such a rule is to be in operation against only those who have not had the honour to belong to the Drafting Committee, but is not to be used against those who, after having drafted after very careful weighing of each phrase, after earnest consideration of the various articles and clauses of this Constitution, discover that they are not what the draftsmen actually intended them to convey, and try to alter words or make verbal amendments, it would hardly be fair, especially if non-official Members should not be at liberty to do so. This, in my opinion, would be so unjust and unparliamentary that I trust this House will not entertain such a proposition.

Sir, the other day I had the misfortune to suggest what looked like a merely verbal amendment, that is, to change the words, "all citizens" to "every citizen". Much to my surprise, I was happy to find that even the learned Dr. Ambedkar was able to see the justice of that suggestion, and made a promise that he would consider, and consider favourably, what looked like only a mere verbal change. On the other hand, an amendment which Dr. Ambedkar himself made to article 40 was also, unless one was able to see the arguments which he was pleased to advance in support of it, a verbal amendment. The idea remains substantially the same.

Verbal amendments of this kind, whatever the appearance, are suggested, not merely for the fun of producing a debate or for seeing one's name in the papers. Verbal amendments very often embody a difference in expression which is a difference of approach, if not also of the ideal behind. And though we may not all be authorities on English lexicography, we may nevertheless be able to indicate a difference in outlook and a difference in viewpoint, by a change of words, which is not necessarily to be discarded because we happen to be not gifted with the technical skill and the specialised knowledge and experience in legal draftsmanship.

In support of this view, I would further suggest, Sir, that there is ample power in the rules as they stand for the Chair to economies the time of the House, if this is the only reason why an attempt is now made to curtail freedom of speech and the freedom of debate in this House. I suggest that after all we are making a constitution which, we hope, will last for some years; and the attitude which I find so often in many exalted quarters, that after all, there is now full power with us to revise or change it, should not affect our outlook on this matter. It may be that we are not able to maintain the constitution which we draft now for a long period of years. We may have occasion,--circumstances may prove stronger than our desires,--to make changes, and the Constitution which we sit down to draft today may not last as long as we may desire. Nevertheless, I think it is not in the mind of any Member that the constitution which we draft today so solemnly and so seriously should be changed tomorrow, because by lack of foresight, by want of discussion, by the absence of light thrown upon all corners of it, so to say, we were unable to perceive at the right moment all that lurked in the wording of the Constitution, and suddenly we discovered that we had provided for that which was not intended.

Sir, lawyers are a very clever class of people. They necessarily have to be clever, because they are eminently parasitical; they live upon the quarrels, the misfortunes, and tragedies of mankind; and, therefore they would always find a way of re-discovering any interpretation, inventing a meaning, providing an outlook which perhaps the original authors of the Constitution never intended. This cannot, of course, be avoided, so long as the legal profession endures in the manner it endures today. But it may at least be safeguarded if we have proper discussion, if all angles of approach, all expressions of opinion are before this House, for it finally to judge in the matter, and take the best that appeals to its sense of fairness and propriety in the matter of the constitution.

Sir, I am unable to follow the reasoning which requires that we must expedite this constitution, and seeks the method of expediting in some such curtailment of the opportunities of debate of the members as we find in this amendment of the Rules. Sir, if you really desire to curtail the time spend upon this matter, I put it to you: why should we not meet twice a day or meet for a longer time, or sit during the summer? Or are we so soft, are we so intent upon comfort and enjoyment to ourselves, that we can only think of meeting in the most fashionable season, in a most comfortable room, most comfortable conditions, and eschew our duty, merely because in the heat of summer or in the midst of social engagements, we will not find it so convenient?

I put it to you, Sir, that if you lengthen the sittings, for instance, if you sit in the afternoons from 3 to 9, you will have a very good evidence as to how many Members ventilate their opinions. See to it, Sir, that you tax our energies properly. See to it Sir, that you make full demands on our enthusiasm, or desire to work for the country through this door; and you will find that only those who are willing to stand the strain will be present. The time will thus be effectively curtailed without any wastage, without any feeling that the minority, or those who may not have the favour of the majority, may be left out of their fair share in shaping this Constitution.

I put it to you, Sir, and to the whole House, that the one and only way to deal with this Constitution, deal with it properly, deal with it satisfactorily, deal with it so that the generations which come behind us may bless us for making it, is to provide proper time and not to curtail the time. If you desire to hurry--and I personally see no reason why we should hurry--you should meet longer, more often, why, even during the time when the Legislature is in session, which body can very well meet at night, and deal with those parts of the constitution which demand detailed knowledge, which require for full discussion not so many broad principles and occasions of declamation, but which necessitate earnest study and detailed knowledge of matters like finance, matters like judicial procedure, and so on.

I do not wish to take the time of the House by enumerating the many sections. Correct expression in each would require not merely a knowledge of English, not merely a mastery of punctuation, not merely appropriateness inform; it would require very much more detailed knowledge of the history and economics of this country, which I venture to think will not be served by your hurrying through the Constitution in the manner which seems to be fashionable and favoured by the majority today. In so doing, I do not think that the majority is serving the interests of the country, if they desire to curtail liberties of speech, if they desire to make rules or amend rules, which will diminish the opportunities we have of placing our views, our outlook, our angle of approach, before this House. Very often, Sir, when we draft amendments in the seclusion of our study, we have only one brain to go by. We come here and see the light of our fellows. When we come here and find other expressions, other angles of approach, are properly backed by facts or reason. I for my part, am quite prepared to say, I would have no hesitation, no shame in revising my own judgment, and accepting the wiser judgment of others. But that cannot be done if that judgment is placed before us without reason, and if it is not illustrated with some facts. If you shut out the means of approach, if you shut out, Sir, the very door of discussion, if you put amendments which are tabled here "without discussion" to vote, you will deny the most elementary right of freedom to speech to Members. But that would mean that you are backed by the brute majority behind you, and not the reasoning intelligentsia of the country with you.

Sir, I would like to put it from another angle. After all, you have very learned technical draftsmen at your service. Ask them, enquire of them enquire even of this Chairman of the Drafting Committee itself whether other countries, who have had to make their constitution after larger experience than ourselves, have not also taken time over this matter of such vast importance for unborn generations as well as the present? Sir, the Government of India Act itself took several years to get through Parliament, a body which has much greater experience than we may have in making such enactments. The French people had after liberation devoted two years just to the making of the Constitution alone. The American people, when they became free and had only 13 few states with a population not even a hundredth of ours, took two years to pass the constitution, without reckoning all the wrangles that went on before the final Draft was settled from time to time, before they came to the United States, as it is now called.

Sir, I can give you innumerable examples where time has been taken and rightly taken. Why, the fundamental constitution of the country should be studied, should be considered, should be viewed from every angle before it is passed. And that will not be served, I repeat, Sir, by your hurrying through in this manner. If, therefore, it is open to me to move, I would certainly suggest that this matter be referred back to the Drafting Committee itself, or the Steering Committee of this House or whatever the appropriate body may be, to see to this matter. I am not against expediting, getting the constitution as rapidly passed as possible. I am against this being very hurriedly gone through; I am against its being gone through in a slip-shod manner, and that is why I suggest to you: Let us discover other ways like more time being devoted to it, and more space being devoted. Let us also remember that we are often reproached with getting our allowances, unearned. I, therefore, suggest, Sir, that the House will do well indeed, if instead of passing a motion like this today, which they can very well pass with a majority pledged to it, you will reconsider the matter, and bring it up again with such amendments in time and so on, if you find there is a desire for obstructiveness for its own sake. That would permit the fullest possible discussion, that would leave no room for anybody to feel that their expression was not fully placed before them and at the same time serve to make the Constitution full, complete and accurate, and much better than attempts like this would let it be. Thank you, Sir.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. Vice-President, Sir, I had given notice of an amendment to the amendment No. 7 of Mr. Kamath; but it has been time-barred and so I will only explain my view point. I had wished that at the end of Mr. Kamath's amendment No. 7, the following words be added: "and clause (a) (3) be deleted."

I have carefully heard the speeches of my friends Mr. Damodar Swarup Seth and Professor K. T. Shah, and other friends. I feel that they are equally earnest about passing this Constitution with all the speed that is possible. At present, the way in which we are proceeding it has taken nine days to pass twenty articles. It comes to about two articles a day on the average. In the Constitution we have got 315 articles and eight Schedules, so that, normally, it should take at this rate about two hundred days to pass the whole Constitution. This is the minimum time which I think will be required, because, we all know that during these nine days the Congress Party members have not been moving most of their amendments, and only a very few amendments are moved on their behalf. I do not think that things could be done quicker than they are being done now, and I do not think that there is any possibility of passing this Constitution unless we give at least 200 days for this purpose. There is only one way available to do it quicker and that is by increasing the time of our sittings. Even if we increase the time of the sittings from three hours to five it will take many days still. I personally feel that we are not wasting any time even now, for the time which is saved is used by the Congress Party in selecting the amendments, which amendments to move and which not to move, and in this way, that really saves the time of the House. I do not think there can be any method by which we can go at a quicker rate.

This particular motion of my friend Shrimati Durgabai supposes that some quicker progress is possible by this method; I personally feel that it will not serve this purpose. First of all, we have got Mr. Naziruddin Ahmad who has tabled many amendments of a formal nature; he himself is not moving most of them. Similarly, with regard to the second part of clause (3), which says that amendments which are over-lapping or of a similar import, shall not be moved, I feel that this is something very serious. There may be an umber of amendments on a particular subject, and the House may be willing to accept one amendment and not the other selected by the Chair. Although it has been stated that they will be deemed to have been moved. I personally feel that it will not be proper to deem them to have been moved unless they are commended to the House by a speech by the mover. I feel that it would be undemocratic to deem amendments to have been moved without their being moved in the House. Though we are not really saving very great time of the House, we would be giving rise to a justified complaint on behalf of many Members that by this we are trying to gag them. I do not think they will be gagged because you will always allow those amendments which have substance in them to be moved. But, still, it could be complained by those who are opposed to the Congress that they are being hustled and gagged. Therefore, it is my earnest wish to commend to my friend Shrimati Durgabai to reconsider this motion and to see whether it is proper to press it, and whether the real purpose would be served by this motion. I feel very intensely that the Constitution is a permanent thing and as such there should not be any complaint that we are not properly considering it. I hope this motion will be reconsidered and that my remarks will be borne in mind my friends.

Shri B. N. Munavalli (Bombay States): Mr. Vice-President, Sir, I am in entire agreement with the motion so far as its substance is concerned; but in so far as it curtails the privileges and rights of individual Members of the House, I am constrained to oppose it.

Sir, we have been meeting here and discussing article by article, but we have not been discussing in vain. It is only on important points and important amendments that discussions are taking place. Some of the honourable Members have been wise enough, when they found that their amendments have no substance, to withdraw them. Under these circumstances, I think that by passing this motion, we will be laying down a very bad precedent for the other legislatures to follow. I therefore strongly oppose this motion and appeal to the House, that as a Sovereign Body, the precedents that we lay down are likely to be followed by other legislatures, if we pass this motion; it will be a bad precedent and honourable Members should oppose this motion.

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, I must strongly oppose the motion put forward by Shrimati Durgabai. Even when our President has not got these extraordinary powers such as are suggested in the motion, by experience we have found, by seeing the proceedings of this House, it has given rise to so many misgivings, in the minds of ordinary Members of this House. I may explain what I am saying. I have got here a copy of two whips issued by the Congress Party meeting. Every day before the holding of the session of this House,............

Mr. Vice-President: They are not supposed to be referred to here.

Maulana Hasrat Mohani: I want to say that everyday........

Mr. Vice-President: Will you please stop referring to these Congress whips? They are not supposed to be documents to be used here.

Maulana Hasrat Mohani: What I find here is that it appears to be that whatever is decided there is being carried out here to the word. This gives rise to a misgiving on the part of ordinary Members, because it makes the whole thing to be a one-party business, or even I consider one man's show. If that is the case, if we give extraordinary powers to the President, I would be justified in asking the question, where is the use of holding this farce of a Constituent Assembly if it is to be a party business, I mean the business of the Congress Party, or an one man's show?

Shri Algu Rai Shastri (United Provinces: General):*[Mr. President, I thank Shrimati Durgabai for bringing forward a motion to expedite the passage of the Constitution and save our time. I do not agree with my friends who have opposed this motion. I think it is improper to say that the Constitution is being rushed through. We know that it is long since the Constituent Assembly was formed, that it has been given ample time to prepare the Constitution and that a Drafting Committee composed of able persons has been busy preparing this Draft Constitution. We had already accept edits fundamental principles, we had also accepted the Fundamental Rights embodied in the Draft constitution. It does not appear proper to move, at this stage, mere grammatical amendments seeking to insert "the" or to dot the`I's' or cross the t' s in some places in the Draft Constitution. To move such amendments, I think, is sheen injustice to the people at whose expense the entire administrative machinery is functioning. We ought to save every pie and every minute.

I have listened to what my friend Seth Damodar Swarup has just said. Here in this House he says that there should be no hurry in considering the Draft Constitution; while outside the House I have heard these very friends say "The work of framing the Constitution is taking a considerable amount of time. God knows when it will be finalised and elections will be held under the new Constitution". It is necessary and in fact people are anxious that we should finalise the Constitution quickly and hold fresh elections on the basis of adult suffrage, in which every person of the age of twenty one years may exercise his vote and elect his real representative in order that the administration may be under the control of the real representatives of the people, and the administration may justly bear the name of a Popular Government. The present Constituent Assembly has been formed by means of indirect election. People holding views like my friend Seth Damodar Swarup even go to the length of saying that the present Constituent Assembly is a useless body and that it should be dissolved and the Draft Constitution prepared by it should be placed before a fresh Assembly elected on the basis of adult franchise. Seth Damodar Swarup and people of his way of thinking say all these things and at the same time they demand here more and more time for considering this Draft Constitution. The present suggestion, or I should say the motion before the House, may perhaps require modification here and there, but the motion as a whole is a welcome one and I endorse whole-heartedly the object behind it. It confers power on the President to disallow amendments which seek to make merely verbal or grammatical changes--such as comma, semi-colon and such other things. The Drafting Committee itself may effect such changes. The Consultative Committee which sits every day or the other bodies that are there can effect such changes. I said in the very beginning that English is not our language but we have drafted the Constitution in that language. I am afraid we cannot easily detect any grammatical mistakes that might have been committed. It is unnecessary for me to remark that we are not well conversant with its phraseology and other niceties of idioms. A man from England may go on amending this draft throughout his life. We would like this Constitution in English to be repealed and substituted by a constitution written in our own language. It is for this reason that we are unable to make it as perfect as we would like. In so far as the question of improvement of the language of the Draft is concerned there is one difficulty. Pandit Nehru, Dr. Ambedkar and Shri K. M. Munshi are all brilliant masters of English language. But the style of each is marked with his individuality. It is evident that none of us is in a position to judge which of these brilliant styles is correct from the point of view of the English usage, and which words and idioms are appropriate and which are not. I believe the purpose and the meaning in view would be substantially conveyed whatever style we may agree to employ for our purposes. I therefore, submit that amendments aiming to improve the language of the Draft are entirely useless, and we should not waste our time in considering such amendments.

As regards the many amendments which are more or less similar in form or have the same object but have been tabled by different members, I would submit that the House should select one of these and consider it only. We can, I submit, depend in this respect on the discretion of Mr. President. If he declares an amendment to be an all embracing one, which, in his opinion, would enable us to improve the language of the Draft, that amendment may be taken up for consideration by the House. It is true that there must be opportunity for a full expression of opinion, but in my view it is not proper that there should be long-winded speeches or that the proceedings should be unnecessarily prolonged day after day.

I may, in this connection, draw your attention to what the people of India are already saying about us. If you travel in a 3rd class compartment of a railway train you would find what the people think about us, from the disparaging references to the electric fans, the pleasing light, and the other amenities provided to us while we are drawing up a constitution for them.

Shri K. T. Shah gave to us the instances of other countries which devoted two or even three years for framing their constitution. But may I ask how many years have been devoted by us to the same task? Till now, we have devoted two years to it. How is it then people still say that sufficient time has not been given to us to consider and pass our constitution? We must remember that each day we sit here involves an expenditure of thirteen to fourteen thousand rupees of public money--or it may be even twenty-four to twenty-five thousand rupees for all I know. This is the price the country is paying for each sitting of this House. It is plain that we cannot continue to put this heavy financial burden on the poor people of our country. It is well known that our people are not prosperous. We cannot, I submit, continue to tax the slender resources of our people in this manner for a mere idle discussion of the niceties of idioms and words.

One can appreciate, no doubt, the incurring of expenditure on experts or for the purpose of enabling Members of this House to introduce really thought-provoking amendments or to suggest new ideas. It is plain that in this respect there would not be what may be termed `a gagging order' in this House. No one, I submit, is being stifled in this respect. I submit that the charge levelled here that the expression of opinion is being stifled and that decision are being taken on the strength of a brute majority is without any substance. There is every opportunity for ample discussion. I submit that it is no use complaining and blaming the country for returning to this House a majority of members of a party whose numerous sacrifices for the people were in the people's minds at the time of elections and which really has the confidence and support of the vast majority of the nation. If we look at Russia we find that the Communist Party has absolute domination over the State. It alone controls and carries on the administration. No one, I believe, can condemn the Communist party for this condemnation there can be only when a party begins to act unjustly. But if the party assembles to discuss questions, and if its members come to an unanimous agreement, and if it continues to serve the people, there is no occasion, I submit, for any complaint or criticism. There is complete freedom of expression; really valuable ideas come before us and thereby we are able to make progress in our affairs. The business of the House also is expedited by the party functioning in this manner, and I believe that the country also will be grateful to the party for acting in this manner.

In the circumstances I do not see on what ground people here grumble against this party practice. But even if they grumble, the people approve the practice of the party, discussing questions in its meetings so that its spokesmen may express their opinions in the House and so that the other members of the party may not indulge in unnecessary speeches and the time of the House may be saved. I submit, that we would be involved in an unending affair and would not be able to make any progress towards the completion of our business, if we listen to those who wish to adopt delaying tactics and to be free to make changes in punctuation marks, as a comma here and a full stop there. In my opinion, such a course would be grossly unfair to our poor people. I believe it will not do to agree to the proposal that Members should be permitted to speak without any restriction or that there should not be a rule--what some Members here refer as 'Section 144'--for the regulation of the debate in the House.

May one enquire what ideas, what wonderful ideas, you are going to place before the House if you get unrestricted freedom of speech? It is clear that Members may move amendments only if these contain some new ideas or some new suggestions which would remove substantial defects in this Draft. I am sure that Mr. President would not prevent anyone here from moving such amendments for improving the Draft. In my opinion the motion which has been brought forward by Shrimati Durgabai only states that only one amendment--and the one which is the most comprehensive--out of several amendments having the same form and object but tabled by different Members, would be permitted to be moved. I believe, under this proposal, every one of those who gave notice of his intention to move any one of such amendments would have full freedom to place before the House any new suggestions he may have, while participating in the debate on the selected amendment. But no one would have freedom to indulge in mere repetition. Repetition is not allowed in any Parliament or Legislature or any where else. I repeat that in no country and in no parliament is there freedom to indulge in `mere repetition'. There is no reason why this rule should not be enforced here. I, therefore, fully support the motion brought forward by Shrimati Durgabai and totally dissent from those who have opposed it.]*

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, I support the motion made by our friend Shrimati Durgabai. I am afraid Prof. K. T. Shah and other friends who have tabled amendments and who have spoken against this motion have unnecessarily created a panic though there is absolutely no cause for alarm. I am sure they would all agree with me and with the mover of the motion that on merely verbal, formal or grammatical changes, we should not spend much of our time. After all, the same idea can be put in various forms or various shapes endlessly. Are we to go on spending time upon them all? Of course, I agree with Prof. Shah that we should not hustle ourselves. But on important issues, power is given to the President to select such amendments as will cover in substance all the other amendments, and if one such amendment does not cover the substance, two or three or four amendments can be selected by him. We do not restrict his power in this direction at all. He can choose one or more amendments for the purpose of discussion.

Moreover, it is not as if all these amendments are ruled out once and for all. According to Rule 38-R, they are before the committee which will ultimately incorporate them so far as they are found useful, in substance or in improving the language and so on, when the Draft Constitution comes before us for final adoption. This rule that we are bringing in does not take away the efficacy of rule No. 38-R.

Moreover, this is not a novel procedure that we are bringing in. When the Irish Bill was before the House of Commons--and that is the Mother of Parliaments, and it never wants to hustle anybody--they had this rule in the House of Commons, that is Standing Order No. 28, and this present motion which has been placed before this House is copied, word for word, from the Standing Order No. 28 of the Mother of Parliaments. Therefore, it cannot be said that this will stifle discussion, and I am surprised that our friends should unnecessarily get alarmed about it.

Then, as regards substantial propositions, any number of such propositions can come up before us. The President can allow them, and others can be taken to have been moved. It is not as if they are thrown out. The President is not, under this rule, called upon to prevent discussion of important matters. As a matter of fact, he has been allowing them. All the amendments on a particular article are allowed to be moved and discussion is allowed on them and also on the main article. Under these circumstances, where is the necessity for any alarm?

So far as the Congress Party is concerned, it does go through all the amendments and find out what amendments should come up before the House. But with regard to the other, we have noticed how many amendments are being moved. We can spend 50 days or two months or three months on these discussions. But should there not be an end to it? It is true we should not stifle ourselves, but expedition also should be there. We have already spent two years. Of course the opinion of every Member here is absolutely necessary to shape the discretion and the decision of this House. But we all realise that none of us is here to waste time. That is understood by all. But each one of us should know what he should do in the interest of expedition, while at the same time not losing sight of the necessity for discussions on important issues. I would appeal to my friends not to work themselves into a panic regarding this rule which is intended merely to expedite matters, consistently with the efficiency of our discussions.

It has been suggested that we may have sittings both in the morning and in the evening, and if the House is willing, we can have this arrangement from next Monday. But that alone will not be helpful without this rule. I therefore submit that this rule, as proposed by Shrimati Durgabai, should be accepted by the House, without any amendment.

Shri H. V. Kamath: Sir, on a point of information. Is a copy of the Rules of Procedure of the House of Commons, or the particular rule referred to by Mr. Ayyangar before you? Otherwise, I would request him to supply a copy to you.

Mr. Vice-President: Yes, it is here.

Maulana Hasrat Mohani: Sir, may I know, on a point of information whether the particular rule referred to in the Rules of Procedure of the House of Commons relates to ordinary business or to the business of constitution making? I think as far as constitution making is concerned, nowhere in the world is such an obstacle introduced on free discussions.

Mr. Vice-President: Is the Member asking for information or supplying information?

Shrimati G. Durgabai: Mr. Vice-President, Sir, I do not think I should take up the time of the House any more, to answer the charges made against my motion, by some Members of this House. Already, my Honourable friend Mr. Ayyangar has taken the trouble to answer some of the points raised by those Members who opposed my motion. But I consider it necessary to answer one point. I have heard some Members say that this is quite an unusual procedure that we are adopting here. But I submit, there is nothing unusual about it. And just now one Member asked whether the procedure that we now adopt is used only with regard to ordinary Bills or with regard to the business of constitution making. Mr. Ayyangar has already said that the same procedure was adopted under Standing Order No. 28 of the House of Commons with regard to the passage of the Irish Home Rule Bill. Not only that. Even in connection with the passage of the Government of India Act 1935, the same procedure was adopted to expedite the work. There are various kinds of procedures designed to secure the quick disposal of work, and we thought that this one which we have suggested, is the least dangerous, and also the most acceptable to the Members of this House. Therefore, I ventured to bring this motion before you, expecting unanimous consent to its adoption. But all sorts of points have been raised and I have heard Members say that this rule would defeat the principle of democracy and also that it would shut the mouths of Members. I submit there is nothing of that kind in my motion. I have already explained that in moving this amendment, my object was not to curtail the privileges of members. If they would only go through my amendment carefully, they would never find fault with me because it is only discussion of such points which are merely verbal or grammatical that would be affected by this amendment. We have gone through the voluminous lists of amendments and found that many of them are of a merely verbal or grammatical nature. It is only these amendments that will be disallowed. Already rule 38-R is there under which the Drafting Committee can again go through these amendments and if necessary can incorporate them. Therefore all the discussion that has taken place against this amendment is unnecessary, and I appeal to the House to unhesitatingly accept this motion of mine. The President has made it clear that he will be very judicial in exercising his power, and in selecting amendments he will displease no one but please everyone.

Sir, I again appeal to the House to accept this motion.

Shri H. V. Kamath: Sir, my honourable Friend Mr. Ayyangar has sought to mislead the House by quoting rule 28 of the House of Commons. That rule supports amendment No. 16 that I have moved.

Shri M. Ananthasayanam Ayyangar: My friend cannot go on making another speech. If he does not accept it, let him not.

Shri H. V. Kamath: I will with your permission, Sir, read that rule 28.

"In respect of any motion or in respect of any Bill under consideration either in Committee of the whole House or on report Mr. Speaker or in Committee the Chairman of ways and means and the Deputy Chairman shall have power to select new clauses or amendments to be proposed, and may, if he thinks fit, call upon any member who has given notice of an amendment to give such explanation of the object of the amendment as may enable him to form his judgment upon it." I also want to incorporate it, that every member who has given notice of an amendment................

Mr. Vice-President: That cannot be done now. But in order to prevent a heated discussion I will take the liberty of going outside my duties and pointing out that this sub-rule (3) does not prevent the President, if of course you have confidence in him to that extent, from making such are quest to Members who have submitted amendments.

I shall now start taking votes on the amendments.

An Honourable Member: Does the President already have these powers?

Mr. Vice-President: If he had them there would be no sense in bringing forward this motion.

Mr. Vice-President: The question is:

That the proposed sub-rule (2) of rule 38-P be deleted.

The motion was negatived.

Mr. Vice-President: The question is:

That in the proposed sub-rule (2) of rule 38-P, after the words "President shall", the words "after hearing the member who has given notice of any amendment" be inserted.

The motion was negatived.

Mr. Vice-President: The question is:

That in the proposed sub-rule (2) of rule 38-P, for the words "shall have the power to" the word "may" be substituted.

The motion was negatived.

Mr. Vice-President: The question is:

That in the proposed sub-rule (2) of rule 38-P, for the word "amendments" the words "such amendments" be substituted.

The motion was negatived.

Mr. Vice-President: The question is:

That in the proposed sub-rule (2) of rule 38-P, the words "and to remit them to the Drafting Committee" be added at the end.

The motion was negatived.

Mr. Vice-President: The question is:

That the proposed sub-rule (3) of the 38-P be deleted.

The motion was negatived.

Mr. Vice-President: The question is:

That in the proposed sub-rule (3) of rule 38-P, for the words "shall also have the power to" the words "may, further," be substituted.

The motion was negatived.

Mr. Vice-President: The question is:

That in the proposed sub-rule (3) of rule 38-P, for the word "similar" the words "same or similar" be substituted.

The motion was negatived.

Mr. Vice-President: The question is:

That in the proposed sub-rule (3) of rule 38-P, for the word "may" wherever it occurs, the word "shall" be substituted.

The motion was negatived.

Shri Biswanath Das: Sir, I beg leave of the House to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President: The question is:

That in the proposed sub-rule (3) of rule 38-P, after the words "without discussion" of the end, the following proviso be added:--

"Provided that a member whose amendment has not been so selected for consideration shall, if he so desires, be permitted by the President to state why his amendment should be considered."

The motion was negatived.

Mr. Vice-President: The question is:

That after the proposed sub-rule (3) of rule 38-P, the following proviso be added:--

"Provided that before the President so selects any amendment, the member who has given notice of any amendment shall have the right to explain the nature and purport of his amendment."

The motion was negatived.

Mr. Vice-President: The question is:

"That the existing rule 38-P be renumbered as sub-rule(1) of rule 38-P, and to the said rule as so renumbered the following sub-rules be added:

> (2) The President shall have the power to disallow amendments which seek to make merely verbal, grammatical or formal changes.
>
> (3) The President shall also have the power to select for consideration and voting by the House the more appropriate or comprehensive amendment or amendments out of the amendments of similar import and any such amendment not so selected may, unless withdrawn, be deemed to have been moved and may be put to the vote without discussion."

The motion was adopted.

Mr. Vice-President: If I may say so, I would appeal to Members to make better use of their time.

Shrimati G. Durgabai: Sir, I move:

"That after Rule 38-V, the following new Rule be inserted:--

Definition.--38-W. In this Chapter (excepting in rules38-U and 38-V thereof), the expression 'President' includes any person for the time being presiding over the Assembly."

The Honourable the President of this House has delegated his powers to the Vice-President on his behalf to exercise all functions under Chapter VI-A of the Rules of Procedure, excepting in regard to Rules 38-U and 38-V. These two rules, I am sure the Honourable Members are aware, relate to authentication of Bills. Excluding these two

Rules, the President now has delegated all other powers under Chapter VI-A to the Honourable the Vice-President now presiding over the Assembly to exercise all functions on his behalf.

Since it has already taken place, it is considered essential to introduce this new rule and incorporate it in the Rules of the Procedure of this Assembly.

In short, that is the object of my motion. I hope that the House would find no difficulty in accepting it.

Sir, I move:

Mr. Vice-President: We shall now take up the amendments from 18 to 23.

Mr. Naziruddin Ahmad: Sir, I move:

"That the motion relating to the insertion of new rule 38-W be deleted."

By way of alternative amendment, I move:

"That for the motion relating to the insertion of new rule 38-W the following motion be subtituted:-

(b) That after Rule 14, the following new Rule 14-A be inserted:--

Person presiding to have powers of president in certain cases

"14A. The person presiding over the Assembly under rules 13 powers of President in and 14 shall have all the powers of the President under Chapter certain cases. V of these rules except under rules 38-U and 38-V."

Sir, I also move:

"That to the new rule 14-A, the following Explanation be added:--

'*Explanation.*--This rule shall have retrospective effect as if it was made on the 4th day of November 1948.'"

Sir, I move:

"That in the proposed rule 38-W, for the words `any person for the time being presiding over the Assembly' the words `the Chairman' be substituted."

Sir, I move:

"That in the proposed rule 38-W, the following Explanation be added:--

'*Explanation.*--This rule shall have retrospective effect as if it was made on the 4th day of November 1948.'"

Before proceeding further, I want to make one point quite clear. I fully agree with the principle of this amendment and I fully support the principle. But I regret that I cannot accept it in the present form. It is, as I have already indicated, badly conceived and badly drafted, and I shall show how it is so.

Sir, the powers of the Vice-President are described in Rules 13 and 14. Rule 13 says that "in the absence of the President, the Vice-President, as the President may determine, shall preside over the Assembly." So in the absence of the President, you have been by special nomination or request been presiding over this Assembly.

Then Rule 14 says: "If the President is absent and there is no Vice-President present to preside over the Assembly, the Assembly may choose any member to perform the duties of the Chairman."

I find there has been a serious lacuna here and this has been rightly spotted by the Honourable Member, Shrimati Durgabai, namely, that the powers of the Vice-President have never been defined anywhere. It has never been stated anywhere that the Vice-President, beyond presiding shall have any powers of deciding matters according to rules. I should have submitted, as I have submitted before, that the provision giving power to the Honourable the Vice-President to preside, includes the power to give rulings, to declare the decisions of the House: and we have been doing that during the absence of the Honourable the permanent President on account of illness. Sir, if however, it is thought that the Honourable the Vice-President, beyond presiding, must according to the rules be deemed not to have any further powers, that he has to sit mute as a silent witness to what is happening in the House without being able to control the debate, to call any Member to order and may do this and may not do that as the presiding officer of the House, then I think one would be going too far. But supposing that is so, that beyond the power to preside you have no further power to act otherwise, that is, to give decisions of the House, give rulings on points of order. If this is the lacuna, it has to be cured with effect from the date that you began to preside and not with effect from today. If there is a lacuna and it has to be remedied, then the remedy has to be given retrospective effect.

That is in short the effect of my amendment. In fact, I wish to give it retrospective effect: that is one great principle. I think the moment we are disposed to accept the principle of this amendment, retrospectively follows as a necessary corollary. Then, Sir, the question is, where will you put it? Rules 13 and 14 indicate the powers of the Vice-President and, in the absence of the Vice-President, any person duly elected by the House to preside. I think this is the proper place to insert the provision. I suggest, therefore, that the place of the proposed new rule is after rule 14 as rule 14-A.

Then, supposing, for the sake of argument,--I have to guard against all possible cases--it is felt that the location should not be after rule 14, but exactly at the place where Shrimati Durgabai would place it, that is at 38(W), then retrospectively must be given by means of amendment No. 23 by means of an explanation that this rule shall have retrospective effect, as if it was made on the4th day of November 1948. But 4th is not accurate. I have to put a day in anticipation because on the 4th day of November we began to sit, but you began to preside somewhat later. But if this date is changed from the date on which you began to preside over the House, this amendment should be made. I have taken it a little backward to obviate all objections. But if any objection is taken on the ground of this date I shall accept any amendment that may be suggested. The only reason for not putting the actual date was my ignorance thereof. I submit retrospective effect must be given. If there is no need to make the rule, everything is alright. But if this rule is adopted, then what will happen to the suspected illegality committed by you prior to this date and since you began to preside? I submit the rule is absolutely unnecessary or, in the alternative, it should be given retrospective effect either in rule 14-A or at the place suggested by Shrimati Durgabai with the explanation suggested in my amendment (No. 23). If the House is disposed to accept the amendment moved by Shrimati Durgabai, it should be inserted after the proposed rule 38-W. In any case the Explanation giving retrospectively must be inserted either here or there.

Mr. Vice-President: The motion and the amendments are now open for discussion.

Shrimati G. Durgabai: Sir, I am sorry I cannot accept the amendments of my Honourable friend Mr. Naziruddin Ahmad, because we have to propose definition of the term `the President' under the rules. What he said was that after rules 13 and 14, we should bring in 14-A. It has no place, because the term `the Chairman' in two places has been defined as one presiding over the Assembly. But our purpose is not that. Under Chapter VI-A, the Vice-President has been given the power by the President. Therefore it is necessary to define the term there, and his amendment to bring this as 14-A, after 13-A does not fit in. Therefore I am sorry I cannot accept his amendment.

Mr. Vice-President: I shall now put the amendments, one by one, to vote.

Mr. Naziruddin Ahmad: I am prepared to accept the position as explained by Shrimati Durgabai. But no reply has been given to my arguments in support of amendment No. 23. Supposing we accept the amendment of Shrimati Durgabai, the Explanation would come as in amendment No. 23 in the amendment.

Shrimati G. Durgabai: Sir, I do not think amendment No.23 is necessary. The explanation is quite unnecessary, because the powers of the President are already there, under delegation.

Mr. Vice-President: Being a negative motion, amendment No. 18 to delete new rule 38-W is out of order.

Mr. Naziruddin Ahmad: I beg leave to withdraw my amendments Nos. 19, 20 and 22.

Amendments Nos. 19, 20 and 22 were, by leave of the Assembly, withdrawn.

Mr. Vice-President: I shall now put amendment No. 23 to vote.

The question is:

"That in the proposed rule 38 W, the following Explanation be added:--

'*Explanation.*--This rule shall have retrospective effect as if it was made on the 4th day of November 1948.'"

The motion was negatived.

Mr. Vice-President: I shall now put the new Rule 38-Wto Vote.

The question is:

"That after Rule 38-V, the following new Rule be inserted:--

'Definition.--38-W. In this Chapter (excepting in rules 38-U and 38-V thereof), the expression `President' includes any person for the time being presiding over the Assembly.'"

The motion was adopted.

Article 8--contd.

Mr. Vice-President: We have a quarter of an hour more. We can resume discussion of article 8 of the Draft Constitution.

Pandit Lakshmi Kanta Maitra: (West Bengal: General): We may adjourn now.

Mr. Vice-President: Our time is valuable. We should not waste a quarter of an hour.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for clause (3) of Article 8, the following be substituted:--

(3) In this article--

> (a) the expression `law' includes any Ordinance, order, bye-law, rule, regulation, notification, custom, or usage having the force of law in the territory of India, or any part thereof;
>
> (b) the expression `laws in force' includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any past thereof may not be then in operation either at all or in particular areas."

Sir, the reason for bringing in this amendment is this: It will be noticed that in article 8 there are two expressions which occur. In sub-clause (1) of article 8,there occurs the phrase "laws in force", while in sub-clause(2) the words "any law" occur. In the original draft as submitted to this House, all that was done was to give the definition of the term "law" in sub-clause (3). The term "laws in force" was not defined. This amendment seeks to make good that lacuna. What we have done is to split sub-clause (3) into two parts (a) and (b), (a) contains the definition of the term "law" as embodied in the original sub-clause (3), and (b) gives the definition of the expression "laws in force" which occurs in sub-clause (1) of article 8. I do not think that any more explanation is necessary.

Mr. Mohd. Tahir (Bihar: Muslim): Sir, I beg to move:

"That in clause (3) of article 8, for the words `custom or usage' the words custom, usage or anything 'be substituted."

I do not want to make a long speech. I only want to say that the word "anything" will be more comprehensive if it is used after the word "usage". It is legal phraseology to say "custom, usage or anything having the force of law". Dr. Ambedkar has moved another amendment. If that amendment is accepted, I suggest that this amendment also may be accepted by the House With these words, I move.

Mr. Naziruddin Ahmad: Sir, before I move my amendment, I beg to point out that as a comprehensive amendment has been moved by the honourable Dr. Ambedkar, I think the present amendment should be suitably adapted to apply to that amendment. I wish to move the second part of it only.

Mr. Vice-President: First of all, find out whether he accepts it or not.

Mr. Naziruddin Ahmad: Unless I argue the matter, he will not accept it. I think, Sir, this amendment will have to be accepted.

I beg to move:

> That in amendment No. 260 which has been moved by Dr. Ambedkar, the words "custom or usage having the force of law in the territory of India or any part thereof" be deleted.

Mr. Vice-President: How can you add to that amendment without giving notice? It is out of order. You can only make a suggestion.

Mr. Naziruddin Ahmad: I have already given notice of an amendment to the original article. In view of the amendment of Dr. Ambedkar, there should be consequential changes.

Mr. Vice-President: All right.

Mr. Naziruddin Ahmad: Sir, I hate to waste the time of the House, but I wish to ask the House to consider the absurdity that these words which I seek to delete will lead to. The absurdity is that in the first part of clause (3) we say that "law" includes "custom or usage having the force of law in the territory of India or any part thereof". Regarded apart from the context, this is absolutely unexceptionable. Law must be supposed to include "custom or usage having the force of law", but we must look to the application of the definition in the context. This must be read along with clause (2) of article 8. In clause (2) it is stated that" the State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void". I respectfully draw the attention of the House to the word "make" in line I and to the word "made" in line 3 of sub-cause (2). Sir, you say that "the State shall not make any law" and also that "law includes custom or usage having the force of law". Therefore applying the explanation in clause 3(a) to clause (2), what is said is "the State shall not make any law, *i.e.*, `make' any custom or usage having the force of law". The point is that" custom or usage having the force of law" is not `made' by anybody. It grows "Custom" has been defined in the Oxford Dictionary as follows:-

> "Custom means in law the usage which by continuance has acquired the force of law or right especially the special use of a locality, trade, society or the like."

Therefore in no sense a custom is made by the State. A custom is made usually by the people of a locality or a family or group or the like. It is made by continuance of an observance. Here you use the words "the State shall not make any law, *i.e.* custom or usage having the force of law". Even in independent India the State cannot have any hand in the making of a custom or usage having the force of law. I think these words should be deleted. These are the difficulties which beset me at every stage. I submit, Sir, that these words are not happy in the context and should be deleted.

The Honourable Shri B. G. Kher: (Bombay: General): Sir, the wording is `includes', not "means".

Mr. Naziruddin Ahmad: I am very glad for the kind interruption. It does not remove my difficulties at all. Does it mean to say that the State `makes' a custom or usage? Still you have the difficulty to face that the State has to make a law including custom or usage.

The Honourable Shri B. G. Kher: Of course, it means whenever necessary That is always understood in law. I am sorry to interrupt.

The Honourable Dr. B. R. Ambedkar: Probably he may not find it necessary to continue his speech if I refer to him this fact, namely, that the expression "law" in (3) (a) has reference to law in 8(1).

Mr. Naziruddin Ahmad: I am again grateful for the kind interruption of Dr. Ambedkar that the words `custom and usage' have the force of law and so forth. This explanation applies also to clause (2), that is, the State shall not make any law. My remarks do not relate to article 8(1) but to 8(2). The difficulty is exactly where it was. I am not wiser, though happier for the kind interruption.

(Amendments Nos. 263 and 264 were not moved).

Mr. Vice-President: Article 8 is now open for general discussion.

Honourable Members: We should like to adjourn now.

Mr. Vice-President: As there seems to be a difference of opinion, the House stands adjourned till 10 o'clock tomorrow.

Shri Satyanarayan Sinha: (Bihar: General): We shall meet on Monday.

Mr. Vice-President: I should have thought that as we were very anxious to have the money of the country, we would also meet on Saturday. The House stands adjourned till ten 1o'clock tomorrow.

The Assembly then adjourned till Ten of the Clock on Monday, the 29th November 1948.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VII

Monday, the 29th November 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the Pledge and signed the Register:

Shri Balwant Singh Mehta (United State of Rajasthan).

STATEMENT *re* FUTURE PROGRAMME

Mr. Vice-President (Dr. H. C. Mookherjee): Before we start discussion of article 8, which has not yet been put to the vote, I beg leave to inform the House that at one time it was decided, of course informally, that we should meet tomorrow from 3 P. M. to 8 P. M., then a large number of Members represented to me that it would be inconvenient for various reasons. Therefore from tomorrow we shall meet at 9-30 A. M. and carry on till 1-30 P. M. That would give us four hours of work daily.

The second thing which I have to tell the House is that we shall meet up to the 13th of December and then break up, and reassemble on the 27th December. The exact time will be notified hereafter.

Article 8--(contd.)

Mr. Vice-President: Does any honourable Member wish to speak on article 8? If not, I should like to put it to vote.

Pandit Hirday Nath Kunzru (United Provinces: General): Sir, there is no quorum. I do not want to hold up the proceedings but in a House like this we cannot do anything at all consistently with the rules.

(The bells were rung.)

(There being no quorum.)

Mr. Vice-President: The House stands adjourned fro a quarter of an hour.

The Assembly then adjourned till Twenty-five minutes past Ten of the Clock.

The Assembly reassembled at Twenty-five Minutes Past Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

Mr. Vice-President (Dr. H. C. Mookherjee): I understand there is another Member who has to sign the roll and take the pledge.

The following Member took the Pledge and signed the Register:--

Lt. Col. Dalel Singh (United State of Rajasthan).

STATEMENT *re* TIME OF MEETINGS

Mr. Vice-President: For the benefit of those Members who did not attend the House in time, I have to announce here again that from tomorrow we shall assemble at 9-30 A.M. and continue up to 1-30 P. M. and that we shall hold the last meeting of the current session on the 13th and reassemble on the 27th December. Our last day will be the 13th December and we shall reassemble on the 27th December; the exact time will be announced hereafter.

May I in all humility suggest that it is improper on the part of Members to be unpunctual in attending the House? We have lost 20 minutes in this way today and I do not know how we shall be able to explain it to the public *(Hear, hear).*

Article- 8 (contd.)

Mr. Vice-President: Shall we resume discussion of article 8? Is there any honourable Member who wishes to speak on it?

The Honourable Dr. B. R. Ambedkar (Bombay: General): Mr. Vice-President, the amendment of Mr. Naziruddin Ahmad, I think, creates some difficulty which it is necessary to clear up. His amendment was intended to remove what he called an absurdity of the position which is created by the Draft as it stands. His argument, if I have understood it correctly, means this, that in the definition of law we have included custom, and having included custom, we also speak of the State not having the power to make any law. According to him, it means that the State would have the power to make custom, because according to our definition, law includes custom. I should have thought that construction was not possible, for the simple reason that sub-clause (3) of article 8 applies to the whole of the article 8, and does not merely apply to sub-clause (2) of article 8. That being so, the only proper construction that one can put or it is possible to put would be to read the word `Law' distributively, so that so far as article 8, sub-clause (1)was concerned, Law would include custom, while so-far as sub-clause (2) was concerned, `Law' would not include custom. That would be, in my judgment, the proper reading, and if it was read that way, the absurdity to which my Friend referred would not arise.

But I can quite understand that a person who is not properly instructed in the rules of interpretation of Statute may put the construction which my Friend Mr. Naziruddin Ahmad is seeking to put, and therefore to avoid this difficulty, with your permission, I would suggest that in the amendment which I have moved to sub-clause (3) of article 8, I may be permitted to add the following words after the words "In this article". The words which I would like to add would be--

"Unless the context otherwise requires"

so that the article would read this way--

"In this article, unless the context otherwise requires--

> (a) The expression `law' includes any Ordinance, order, bye-law, rule, regulation, notification, custom, or usage having the force of law in the territory of India or any part thereof;
>
> (b) the expression . . . .' "

I need not read the whole thing.

So, if the context in article 8 (1) requires the term law to be used so as to include custom, that construction would be possible. If in sub-clause (2) of article 8, it is not necessary in the context to read the word law to include custom, it would not be possible to read the word `law' to include custom. I think that would remove the difficulty which my Friend has pointed out in his amendment.

Mr. Vice-President: I shall put the amendments, one by one, to vote. I am referring to the numbering of the amendments in the old list.

I put amendment No. 252, standing in the name of Mr. Mahboob Ali Baig to vote. The question is:

"That the proviso to clause (2) of article 8 be deleted."

The amendment was adopted.

Mr. Vice-President: Then I put amendment No. 259, standing in the name of Shri Lokanath Misra. The question is:

"That after clause (2) of article 8, the following new clause be inserted and the existing clause (3) be renumbered as clause (4) :--

(3) The Union or the State shall not undertake any legislation, or pass any law discriminatory to some community or communities or applicable to some particular community or communities and no other."

The amendment was negatived.

Mr. Vice-President: Then I put amendment No. 260, as amended by Dr. Ambedkar. The question is:

"That for clause (3) of article 8, the following be substituted:--

(3) In this article, unless the context otherwise requires,

> (a) The expression `law' includes any Ordinance, order, bye-law, rule, regulation, notification, custom, or usage having the force of law in the territory of India or any part thereof ;
>
> (b) the expression `laws on force' includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repeated, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.'"

The amendment was adopted.

Mr. Vice-President: The question is:

"That in clause (3) of article (8) for the words custom or usage' the words `custom, usage or anything' be substituted."

The motion was negatived.

Mr. Vice-President: The question is.

"That in clause (3) of article (8) for the words custom or usage having the force of law in the territory of India or any part thereof' be deleted."

The motion was negatived.

An Honourable Member: May I know whether you are referring to the old or new list of amendments?

Mr. Vice-President: I was referring to the old list for the purpose of convenience. Henceforward we shall go according to the numbering in the new list, which was, I understand, distributed to honourable Members last evening.

The question is:

"That article 8, as amended, stand part of the Constitution."

The motion was adopted.

Article 8, as amended, was added to the Constitution.

Article 8-A

Pandit Balkrishna Sharma (United Provinces: General): There are some other amendments to article 8 in the form of inserting a new article 8-A.

Mr. Vice-President: Those are new articles which will be taken up presently.

Amendments Nos. 266 to 269 and 272 relate to language and script, which should stand over as that has been the decision of the House. I shall take up Amendment No. 270 standing in the name of Prof. K. T. Shah.

Prof. K. T. Shah (Bihar: General) : Sir, I beg to move:

"That after article 8, the following new article be added :--

'8-A. Unless the context otherwise requires, the Rights of Citizens herein defined in this Part of the Constitution shall be deemed to be the obligation of the State as representing the community collectively : and the obligations of the citizens shall be deemed to be the Rights of the State representing the community collectively.' "

Sir, I do not wish to waste the time of the House. May I point out that this amendment is in substance the same as was rejected by the House when it was considering the Directives. I think the old number was 848. In substance it amounts to the same thing. I can make out a case to show that it is slightly different, both in numbering and perhaps in intention, but as I have no desire to waste the time of the House, I would beg leave to withdraw this amendment, as it seeks to make rights and obligations of the State and citizen conversely obligations and rights.

Mr. Vice-President: Has the honourable Member the permission of the House to withdraw his amendment?

The amendment was, by leave of the Assembly, withdrawn.

Prof. K. T. Shah: Sir, if I may speak against myself, it seems to me, Amendment No. 271 on the List is somewhat out of order, because it is a mere recommendation to the Draftsman to insert a clause, rather than a specific amendment, or a clause itself. I do not wish to move it.

Mr. Vice-President: The next amendment is No. 273 in the new list in the name of Mr. L. N. Misra.

Shri Lokanath Misra (Orissa: General): Sir, I beg to move:

"That after article 8, the following new article 8-A be inserted :--

RIGHT OF SUFFRAGE AND ELECTION

8-A. (1) Every citizen who is not less than 21 years of age and is not otherwise disqualified under this Constitution or any law made by the Union Parliament or by the Legislature of his State on any ground, *e.g.*, non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at such elections.

(2) The elections shall be on the basis of adult suffrage as described in the next preceding sub-clause but they may be indirect, *i.e.*, the Poura and Grama Panchayats or a group of villages, a township or a part of it having a particular number of voters or being an autonomous unit of local self-government shall be required to elect primary members, who in their turn, shall elect members to the Union Parliament and to the State Assembly.

(3) The Primary Members shall have the right to recall the member they elected to the Parliament or the

Assembly of the State.

(4) A voter shall have the right to election and the cost of election shall be met by the State.

(5) Every candidate must be elected by the People and even if there is no rival, no candidate shall be elected unless he gets at least 1/3 of the total votes.' "

Sir, in moving this new article I have in mind the elections that are to come on the basis of adult suffrage. As a worker in the villages and as a man knowing his own people I beg to submit that this new article I propose will give real prestige and meaning to adult suffrage and democracy. I would submit that although I am not yet a man who would carry weight in the House, in the name of democracy, democracy of the intelligent will, we must frame our election rules for adult suffrage in such a manner that we will not reduce democracy to ridicule or adult suffrage to a sham. The first paragraph and the first sentence of the 2nd paragraph of this new article I propose are just reproduction of articles 67(6) and 149(2). Therefore I need not say much about this.

Paragraph (2) is very important and we have almost decided that the next elections or the future elections shall be on the basis of adult suffrage. It means that every citizen who is not otherwise disqualified under the statute and is 21 years of age or more shall be entitled to be a voter, and will elect members to the Union Parliament or the State Assemblies. This is a great aspiration, but we know our people. They are simple, they are good. But they are not as clever or as intelligent as the diplomats or the members that will be coming to represent them in the many Houses. While granting adult suffrage we must save it and shape it by making such an arrangement that every adult who is entitled to be a voter will be in a position to choose his representative intelligently and correctly. Not only that; having chosen his representative intelligently and correctly, he will be in a position every moment to assess what his representative does in the many Houses, either at the Centre or in the States. You will see from the Draft Constitution that for every 750,000 persons we will have one representative in the Union Parliament. I beg to submit that that is too big a number, and unless we do not mean what we say, it will be difficult for one member to educate those 750,000 people, to do them any good, to serve them, to know their mind, and having known their mind to come to the House and represent their grievances and do whatever is possible for them. I therefore submit that adult suffrage should be indirect--indirect in the sense that having decided the constituencies which, let us say, will be a region consisting of about 750,000 voters, we will divide that constituency into local self-governing units and these unit swill be required to elect their primary members. Suppose we have 750,000 people. Granting that every village or self-governing unit has about 1,000 voters, we will have about 750 units. Suppose every unit has a panchayat whose number might be three or five, we will have 750 x 5, that is, about 3,750 primary members. And those 3,750 primary members will be required to elect their representative either to the Union Parliament or to the State Assembly. If that happens it will be quite good because those 750,000 people will be electing their primary members to a strength of 3,750, and those 3,750 members will use their discretion and they will know the man they will be selecting as their representative. That will be a healthy and real process of election. If that is not going to be done, we all know what happens and therefore will happen in elections. We may raise a dust; we may make a hue and cry; raise slogans and mesmerism. In a day or two in course of one month in five years we will be lecturing, speaking and raising the emotions of people and asking them for party devotion. The result will be that only for a month in five years people will be in terrifying touch with the political busy-bodies. We would be giving them hopes and those hopes will dash down and evaporate as soon as the elections are over. That will not be a desirable real thing. If we really mean that adult suffrage will be educating the people and elections will be an instructive process, we can have no other way of achieving our object than by dividing the constituencies into local self-governing units--manageable units. Those units will be in close touch with the representatives and the representative swill be in touch with the units, and there will result real process of instruction, advice and guidance. I beg to submit that it has been a great shame that democracy works in the name of the people, but the people are nowhere in the picture. For men are little and their capacity cannot transcend their limited experience or grow except by continuous building upon their historic and traditional past. They can control great affairs only by acting together in the country and controlling small affairs and finding through experience men whom they can entrust with larger decisions. This is how they can talk rationally for themselves. Democracy can work only if each state is made up of a host of little democracies and rests, not on isolated individuals however great, but on groups small enough to express the spirit of neighbourhood and personal acquaintance. I hope I need not speak much about that. This great House, this learned House, this responsible House knows and can picture the state of things that will happen when there will be adult suffrage. It is a vast thing without yet any plan or arrangement. By that we may get some party strength, but we cannot educate the people and give them the strength and the authority that they really possessor ought to possess.

Coming to (3)--primary members shall have the right tore call the member they elected to the Parliament or the Assembly of the State--this is a very real fundamental right. We know that when we are returned to the Assemblies we come there as representing the masses for five years. But what we care for is the party caucus--the high command--and if it is pleased we are all right. We do not care for the people. I therefore submit that if we are to be real members representing the people, our first concern should be the people. They must be our masters. If we serve them well we are there; if we do not we must go out. But that does not happen now. Therefore it is essential that if people have aright to elect members they must have the right to recall them if things go wrong. The right to recall is a fundamental right in democracy. Unless we have that we cannot have proper democracy. I therefore submit to you that if we are going to give the people a right to elect their representatives who will rule in their name, we must at the same time give them the right to recall the representative if things go wrong. In fact what happens here is, we do not care for the people; there is somebody high up and he selects people. He says so and so must be elected and it is done. Therefore the selected person's primary business is to look up and not down. It is a bad state of democracy and I say we must stop it.

Then regarding (4),--a voter shall have the right to election and the cost of election shall be met by the State--I say so, because to come to the Assembly is not a profession or a profiteering business. If that is the concern of the State and if a person who comes to the Assembly comes to serve the people, it is necessary that the State must see that his election expenses are borne by the State. Otherwise some landlords and some capitalists will build up a party to set up candidates and those candidate swill be returned. Let us say here is a poor man, a good worker, an honest man ; but he has neither the money nor the party backing. The result is he cannot stand for election. It he stands he comes to ridicule. If you say that the election is as much in the interest of the State as the President or the Ministers or the bureaucracy, you must say that in the same manner as they are brought to being, legislative members should also come to the Assembly, the State bearing their election expenditure in a regulated and therefore in the least expensive and most organized manner. This may be laughable, but this is just and fair and unless we make such a provision no sincere, honest and real worker can be returned at least for the next fifteen or twenty years. If we do not do so now, we invite only revolution. And revolution will make everything topsy-turvy. It will have to be done, then by the fire of the people instead of our intelligent understanding, if we chose it now. Therefore the cost of the elections must legitimately and in fairness to the cause be borne by the State because election as such is a State affair and is not a private concern. It need not stagger us now. We must not allow members to come calculating profit and loss, calculating how much money they will be making in five years and therefore how much they may beg, borrow or steal for this parliamentary investment.

Mr. Vice-President: Mr. Misra, I must now ask you to stop because you have had two instalments.

Shri Lokanath Misra: All right, Sir.

Shri Algu Rai Shastri (United Provinces: General):*[Mr. President, I rise to oppose the amendment moved by my Friend. My first reason for doing so is that it has no relation to the question raised here. Matters relating to elections have been dealt with in the Draft Constitution at other places where it has been stated as to how the legislature shall be formed, who shall be the members of the legislatures; what shall be their rights; what shall be the procedure of their elections. Amendments of this nature maybe moved in the article dealing with such things. This amendment is totally irrelevant to Fundamental Rights of the Draft Constitution. This is my first reason. Moreover, my Friend proposes therein that the State should incur the expenses of election for all the candidates seeking election. He says that seeking election to any Legislative is not a business proposition for any candidate. Consequently it is very necessary that the State should bear the election expenses. My worthy Friend has forgotten the fact that if the State begins to practice this generosity every one whose name may appear on the electoral roll and who may be eligible for election will seek election--if not for any other reason, at least for the fun of it. No state in the world can hope to remain financially solvent if it adopts the practice of bearing the election expenses of the candidates. As there would be no financial risk involved in seeking election, for the State would be bearing them all, and as every one would have the freedom to seek election, I am afraid that every one would try his luck especially when he would not be losing anything in particular by being defeated at the polls. It is very improper to move an amendment that contains such a proposal or to support it enthusiastically on the ground that it is very important and ensures democracy and smooth functioning of the Government. This amendment should be rejected outright and should never be accepted.]*

The Honourable Dr. B. R. Ambedkar: I cannot accept this amendment.

Mr. Vice-President: The question is:

"That after article 8, the following new article 8-A be inserted :--

`RIGHT OF SUFFRAGE AND ELECTION

8-A. (1) Every citizen who is not less than 21 years of age and is not otherwise disqualified under this Constitution or any law made by the Union Parliament or by the Legislature of his State on any ground, *e.g.*, non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at such elections.

(2) The elections shall be on the basis of adult suffrage as described in the next preceding sub-clause but they may be indirect, *i.e.*, the Poura and Grama Panchayats or a group of villages, a township or a part of it having a particular number of voters or being an autonomous unit of local self-government shall be required to elect primary

members, who in their turn, shall elect members to the Union Parliament and to the State Assembly.

(3) The Primary Members shall have the right to recall the member they elected to the Parliament or the Assembly of the State.

(4) A voter shall have the right to election and the cost of election shall be met by the State.

(5) Every candidate must be elected by the People and even if there is no rival, no candidate shall be elected unless he gets at least 1/3 of the total votes.'"

The motion was negatived.

Article 9

Mr. Vice-President: The motion before the House is:

that article 9 form part of the Constitution.

Shri C. Subramaniam (Madras: General): Sir, I move:

"That the second para. of clause (1) of Article 9 be numbered as new clause (1a), and the words `In particular' in the new clause so formed, be deleted."

The reason for the amendment is this: article 9 as it stands is a little bit misleading. 9(1) says: "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or any of them". Then it says:" In particular, no citizen shall, on grounds only of religion, race, caste, sex or any of them, be subject to any disability, liability, restriction or condition with regard to--

(a) access to shops, public restaurants, hotels and places of public entertainments, or..........".

It would look as if, after a general clause saying that the State shall not discriminate, we give instances wherein the State shall not discriminate by using the words `In particular'. As a matter of fact it is not so. After the words `In particular' that clause refers to access to shops, etc. That is not a case where the State has the power to discriminate. Therefore it should read as a separate clause. That is why I have suggested that the words `In particular' should be removed and it should form a separate clause as 9(1a) thus: "No citizen shall, on grounds only of religion, race, caste, sex or any of them be subject to any disability,........".

Mr. Vice-President: The Member who has given notice of amendment No. 276 may now move the second part of it, *viz.,* to insert the words "discrimination" and "and public worship" after the words `liability' and `public resort' respectively.

(The amendment was not moved.)

Mr. Vice-President: The next two, (277 and 278) are verbal amendments and are therefore disallowed. The words "class or community" are, in my opinion, not necessary. These are implied in the word `religion'.

Amendment No. 282 standing in the name of Shri Prabhu Dayal Himatsingka is a comprehensive amendment and may now be moved.

As the Member is absent, Syed Abdur Rouf may move amendment No. 280.

Syed Abdur Rouf (Assam: Muslim): I move, Sir:

"That in Article 9, after the word `sex' wherever it occurs, the words `place of birth' be inserted."

The intention of this article is to prohibit discrimination against citizens. We have prohibited discrimination on grounds of `religion, race, caste or sex'. But I am afraid, Sir, the evil elements who might attempt to make discrimination against citizens will do so not on the ground of religion, race, caste or sex. To attempt to make discrimination on grounds of religion will be too frontal an attack for anybody to dare. As for caste, the same argument applies. As for "sex", I do not think that in the middle of the twentieth century there will be anybody attempting to make any discrimination on that ground. What was possible in bygone days is not possible now. Now, let us examine whether the word "race" can save the situation. Race has got a very comprehensive meaning and applies in cases like the Aryan race, the Dravidian race, the Mongolian race, etc. If anybody wants to make any discrimination on the ground that a particular gentleman belongs to a particular province, the word "race" cannot stand in his way. In my opinion attempts may be made to make discrimination against citizens on ground of place of birth and that under the guise of local patriotism. To guard against this possibility, I have brought in this amendment and I hope that it will be accepted.

Mr. Vice-President: I will not allow amendment No. 279 to be moved but it will be put to the vote. We next come to amendment No. 281. I regard this amendment as merely verbal and therefore over-rule it. Then we come to amendments Nos.283 and 285. Amendment No. 283 may be moved. Professor K. T. Shah.

Prof. K. T. Shah: It is more or less the same as the one moved recently and I do not wish to waste the time to the House by further remarks.

(Amendments Nos. 285, 284, the latter part of 288, and No. 291 were not moved.)

Mr. Vice-President: Then we come to amendment No. 286, first part. This is merely a verbal amendment and therefore it is disallowed. I need hardly point out that the word" creed" is unnecessary in view of the more comprehensive word "religion". Then we come to amendment No. 286, second part. Amendments Nos. 293 to 301, 304, 305, 306 and 208, are all amendments of similar import and therefore are to be considered together. It seems to me that amendment No. 293standing in the name of Professor K. T. Shah is the most comprehensive.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That in clause (1) of article 9, for sub-clauses (a) and (b) the following be substituted :--

'any place of public use or resort, maintained wholly or partly out of the revenues of the State, or in any way aided, recognised, encouraged or protected by the State, or place dedicated to the use of general public like schools, colleges, libraries, temples, hospitals, hotels and restaurants, places of public entertainment, recreation or amusement, like theaters and cinema-houses or concert-halls; public parks, gardens or museums; roads, wells, tanks or canals; bridges, posts and telegraphs, railways, tramways and bus services; and the like.' "

Sir, in seeking to move this amendment, I am not merely trying to give a list of places of public use or resort, or those dedicated to public service, from which in the past discrimination has been made and individuals of particular communities or classes have been excluded for no other reason except their caste or birth. In a Constitution founded upon the democratic equality of all citizens, I think it would be absurd, it would be wholly out of place, to allow any such discrimination being made. All places, therefore, which are either wholly or partly maintained out of public funds, or in any way encouraged, supported or protected by the State, should be accessible, I suggest, in equal measure to all citizens irrespective of caste, sex, birth, etc.

Clearly this is the intention of the article, and I am only seeking to expand and express it more clearly than has been done in the wording of the article as it stands. It is the more so as, in later articles, there seems to have been some exceptions introduced which might permit denominational, sectarian, or communal institutions not only to flourish; but to flourish at the cost of the public. I think it would be a very vicious principle if we tolerate this kind of exclusiveness which would be a blot on real democracy. If you mean definitely and clearly that there shall not be any sectarian or denominational exclusiveness; if you mean definitely and clearly that places of such utility as schools, or hospitals or asylums shall not be reserved for any reason for the members of a given sect or community, then I think it is not too much to demand that these should be made open and accessible to all citizens of this country. And because we have had in the past very distressing experience of, let us say, wells not being allowed to be used by members of a particular class, or canals not being allowed to be used except on certain occasions or under certain conditions, ands till more so, schools, hospitals and other places of this kind which are of very urgent public necessity, I think it would be not acting up to the ideals of this Constitution If there is not perfect and real equality amongst the citizens of this country.

The excuse is often made that a given institution is maintained, or at least initially founded, by some donations of a munificent member of a given community, and that in his original deed of trust setting up the institution and providing the funds, he makes it a condition that only members of a given community or members of a given caste or sub-caste are to be admitted to the benefits of such an institution. I think it is a lack of civic sense, and evidently against the idea of equality of citizenship, that such institutions were maintained exclusively or predominantly for certain communities.

In the past, when the Government of the country was in the hands of an alien race, and that race itself was deliberately making exclusion against the children of the soil a common feature of this policy for holding this country by maintaining clubs, hospitals, schools and other such places for their own compatriots so to say, there could be some understanding why their example might be followed also by those, at any rate, who imitated them in most respects. But now that principle,--the cause of all exclusiveness, is no more in this country, now that we are directly recognising and founding our constitution on the equality of all citizens, I submit that to introduce or permit exclusiveness in any way, whether directly stated or through a provision like this included in the Constitution, will make for a tendency of exclusiveness which should be reprobated by us, and should be therefore disallowed.

Our Constitution should make it expressly clear that all citizens being equal, their public institutions, and places of public resort, etc., which I have mentioned in my amendment, should be quite open, and must be open, to all those who are citizens of the country. There may be, it is possible, some claim that any particular class or community bears the cost of maintenance, if not wholly, at least in part, on its own shoulders. I have tried to make the amendment so far comprehensive that, even where an institution of this kind, or a place of public resort of this kind, is founded exclusively and maintained entirely by the donation of any particular individual, if it receives any public recognition, protection, safeguard, or encouragement of any kind, from a public authority, it would come within the scope of this article and as such would be made accessible to all equally.

I do not think that in any such provision, there would be any injustice to any vested interests, not only because from its very start such a vested interest would be regarded as objectionable in my eyes. It would be open to such munificent founders without losing so to say their cheap and easy method of securing immortality for themselves, to widen the terms of that trust, if the trust deed stands in the way, and make it possible for all to enjoy the benefits or advantages of such an institution equally.

We have had in every city in India, such exclusive institutions devoted to a sect. Recently we had a distressing spectacle of a public hospital in Bombay, not being accessible to any other community than that of the founder, which raised a considerable agitation in certain quarters. The refusal of the use of that hospital was openly defended on the ground that the foundation was a particular class foundation expressly so stated, and as such not available for use to members of other communities.

I think examples like this can be quoted without number from the experience of any place of considerable population in this country. But the fact that such examples do occur, and that such experience is within the memory and argument for us to accept this amendment of mine, and make it impossible hereafter to authorize any person or any community or class to say that given institution, whether school, temples, hospitals, theaters, restaurants or whatnot shall be exclusively reserved for their benefit, if in the slightest degree it receives financial help or assistance or encouragement or safeguard from the State. I hope the amendment will commend itself to the House and the principle of it will be incorporated in the Constitution.

(Amendments No. 38 of List I, Nos. 294, 295, 296, 297,298, 300, 301, 304, 305, 306, 308, and 287 were not moved.)

Mr. Vice-President: Amendment No. 288 standing in the name of Mr. Naziruddin Ahmad consists of three separate amendments. The first amendment is merely verbal and is therefore disallowed. The second and third are the same as amendments Nos. 278 and 284. I am therefore not allowing these also.

(Amendments Nos. 292 and 302 were not moved.)

Shri Guptanath Singh (Bihar: General): Sir, I have not come here to compete with my honourable Friends who table and move irrelevant and useless amendments, but I have come here to make.......

Shri H. V. Kamath (C. P. and Berar: General): Mr. Vice-President, is the honourable Member in order in making such a statement in this House?

Mr. Vice-President: I think you had better go on with your speech.

Shri Guptanath Singh: I have come, Sir, to move this little amendment to make the article comprehensive. So, Sir, with your permission, I beg to move:

> "That in sub-clause (b) of the second paragraph of clause (1) of article 9, after the words `wells, tanks,' the words `bathing ghats' be inserted."

I have deleted the word `kunds' from the original amendment and I only want that "bathing ghats" should be included here.

(Amendments Nos. 307 was not moved.)

Mr. Vice-President: Amendments Numbers 309 and 322 are the same. Amendment No. 322 is more comprehensive. I shall allow that amendment to be moved at the proper time.

Then, amendments Nos. 310, 312, 320 and 321 are of similar import. Of these I think amendment No. 310 is the most comprehensive one.

(Amendment No. 310, 312, 320 and 321 were not moved.)

Mr. Vice-President: So, these amendments go. Then, we take up amendment No. 311.

(Amendment No. 311 was not moved.)

Mr. Vice-President: Amendment No. 313 is disallowed as being verbal. Amendment No. 314. Dr. Ambedkar.

Shri H. V. Kamath: Mr. Vice-President, Sir, may I ask whether this is not merely a verbal or at best a formal amendment liable to be disallowed? It merely seeks to substitute the words `State funds' in place of the words the revenues of the State'.

Mr. Vice-President: I shall keep that in mind. Dr. Ambedkar, will you please deal with that point also?

The Honourable Dr. B. R. Ambedkar: Sir, I move:

> "That in sub-clause (b) of the second paragraph of clause (1) of article 9, for the words `the revenues of the State' the words `State funds' be substituted."

The reason why the Drafting Committee felt that the words "the revenues of the State" should be replaced by the words "State funds" is a very simple thing. In the administrative parlance which has been in vogue in India for a considerably long time, we are accustomed to speak of revenues of a Provincial Government or revenues. That is the terminology which has been in operation throughout India in all the provinces. Now, the honourable members of the House will remember that we are using the word `State' in this Part to include not only the Central Government and the Provincial Governments and Indian States, but also local authorities, such as district local boards or taluka local boards or the Port Trust authorities. So far as they are concerned, the proper word is `Fund'. It is therefore desirable, in view of the fact that we are making these Fundamental Rights obligatory not merely upon the Central Government and the

Provincial Governments, but also upon the district local boards and taluka local boards, to use a wider phraseology which would be applicable not only to the Central Government, but also to the local boards which are included in the definition of the word `State'. I hope that my honourable Friend Mr. Kamath will now understand that the amendment which I have moved is not merely verbal, but has some substance in it.

Sir, I move.

Mr. Vice-President: There is an amendment to amendment No. 314. That is amendment No. 40 in List I standing in the name of Pandit Thakur Das Bhargava. He is not here. Therefore, I need not discuss the relevancy or otherwise of this particular amendment. The next one is amendment No. 41 in List I, in the name of Shri Phool Singh. He is also absent. We now pass on to amendment No. 315 standing in the name of Mr. Mohd. Tahir and Saiyid Jafar Imam.

Mr. Mohd. Tahir (Bihar: Muslim): Sir, with your permission, I want to bring to your notice that I had one amendment No. 286. We have not decided anything about that amendment. Of course, the first part has been disallowed; the second part still remains.

Mr. Vice-President: I said that that will be put to the vote. Now, I cannot allow you to speak on that. If I make an exception in your favour, everybody else would claim the same right.

But, I think I have to make one point clear. This does not preclude the honourable Member from speaking on his amendment No. 286 if he gets a chance to speak while participating in the general discussion.

Mr. Mohd. Tahir: Sir, I beg to move

> "That in sub-clause (b) of clause (1) of article 9, for the words `State or dedicated to the use of the general public' the words `State or any local authority or dedicated to the use of the general public and any contravention of this provision shall be an offence punishable in accordance with law' be substituted."

Sir, in moving this amendment I submit that so far as the first part of my amendment is concerned, *viz.*, the addition of `local authority,' I do not press because the definition which has been given of `State' includes local authority as well and therefore I do not press it. But so far as the penal clause is concerned, I will submit a few words and I will press it. Sir, in fact this article in our Constitution gives us a lesson that we should realise the equality of human beings as such and therefore it is necessary that some penal clause should be added in this article. For your information I may bring it to your notice and to the notice of the House as well that in certain parts of our country as we know there are roads through which the people of scheduled castes and other low castes are not allowed to walk. In certain parts of our country we have found that if a scheduled caste mangoes to draw water from the well, he immediately meets with his death. These are the sentiments which are working in the minds of certain sections of our country and therefore if we are really sincere that we are going to give relief to those who have been disregarded so long, then I submit that this penal clause must be added in this article. In view of this I hope that the whole House will agree, if at all they are sincere to give this relief to the general people, to add this penal clause and accept my amendment as such. With these few words, I move.

Mr. Vice-President: Amendments Nos. 316 to 319 not moved. No. 323 Prof. K. T.

Shah.

Prof. K. T. Shah: Sir, I beg to move:

"That at the end of clause (2) of article 9, the following be added:--

'or for Scheduled Castes or backward tribes, for their advantage, safeguard or betterment.'"

The clause, as it is, stands thus:--

"Nothing in this article shall prevent the State from making any special provision for women and children."

Sir, it must be distinguished from the preceding article. I read it, at any rate, that this is a provision for discrimination in favour of women and children, to which I have added the Scheduled Castes or backward tribes. This discrimination is in favour of particular classes of our society which, owing to an unfortunate legacy of the past, suffer from disabilities or handicaps. Those, I think, may require special treatment; and if they do require it, they should be permitted special facilities for some time so that real equality of citizens be established.

The rage for equality which has led to provide equal citizenship and equal rights for women has sometimes found exception in regard to special provisions that, in the long range, in the interest of the country or of the race, exclude women from certain dangerous occupations, certain types of work. That, I take it, is not intended in any way to diminish their civic equality or status as citizens. It is only intended to safeguard, protect or lead to their betterment in general; so that the long-range interests of the country may not suffer.

In regard to the scheduled castes and backward tribes, it is an open secret that they have been neglected in the past; and their rights and claims to enjoy and have the capacity to enjoy as equal citizens happens to be denied to them because of their backwardness. I seek therefore by this motion to include them also within the scope of this sub-clause (2), so that any special discrimination in favour of them may not be regarded as violating the basic principles of equality for all classes of citizens in the country. They need and must be given, for some time to come at any rate, special treatment in regard to education, in regard to opportunity for employment, and in many other cases where their present inequality, their present backwardness is only a hindrance to the rapid development of the country.

Any section of the community which is backward must necessarily impede the progress of the rest; and it is only in the interest of the community itself, therefore, that it is but right and proper we should provide facilities so that they may be brought up-to-date so to day and the uniform progress of all be forwarded.

I have, of course, not included in my amendment the length of years, the term of years for which some such special treatment may be given. That may be determined by the circumstances of the day. I only want to draw your attention to the fact that there are classes of our citizens who may need through no fault of theirs, some special treatment if equality is not to be equality of name only or on paper only, but equality of fact. I trust this will commend itself to the House and the amendment will be accepted.

Mr. Vice-President: Now the article is open for general discussion. I call upon Mr.

Raj Bahadur of Matsya Union to speak.

Shri Raj Bahadur (United State of Matsya): Mr. Vice-President, Sir, as you announced to-day in this House that amendments Nos. 280, 282 and 279 would be taken up for discussion, I studied them again and a new meaning, which did not occur to me previously, disclosed itself to me. In amendment No. 280 which was moved by my Friend Syed Abdur Rouf, the words used are "place of birth", whereas in the amendment that was to be moved by Mr. Prabhu Dayal, the word 'descent' also occurs. It is unfortunate that that amendment of Mr. Prabhu Dayal has not been moved. Even so, when we study the article we observe that whereas discrimination is sought to be eliminated on other grounds, nothing has been said about the discrimination on the basis of descent, on the basis of privileges enjoyed by some on account of their dynastic or family status. I, therefore, suggested an amendment to amendment No. 280, to the effect that the words "place of" be deleted, from the words sought to be inserted in the article by the amendment No. 280. It is clear that the words "place of" occurring before the word "birth" have restricted and limited the meaning of the whole amendment to the "place of residence" only. Therefore, if the words place of are deleted, we may achieve a double objective. Firstly that the word `birth' when it occurs in the context of the whole article would imply not only residence, but also "descent", and as such the purpose which was contemplated by the mover of the amendment 282 shall be satisfied.

Mr. Vice-President: I said this would be a general discussion but you are putting forward your amendments; I can hardly allow that. You can speak upon the whole clause and incidentally refer to your amendment. Kindly excuse me if I ask you to carry out my wish and speak on the article generally.

Shri Raj Bahadur: Yes, Sir. What occurs to me is this. We have seen it in the past and even at present, in the matter of distribution of offices and appointments in the State or in the matter of rights and privileges enjoyed on the basis of property etc., that there has been some discrimination on account of "descent"; on account of dynasty or family status as also on account of factors of an allied nature. It is my humble submission that when we are here to forge our constitution, we should eliminate allsorts of distinctions arising on the basis not only of religion, caste, sex etc, but also on the basis of family and descent. While I agree that the purpose and the idea that is covered by amendment No. 280 is necessary, I would also suggest that something must be put in this article which may obviate all possibilities of, and eliminate all chances of discrimination, favouritism, or nepotism, on the basis of birth or descent. It is common experience, rather it is a kind of grievance with most of us that in the distribution of offices and appointments of the State and also in the services, some discrimination is observed on the basis of birth and descent. We see it in the recruitment to the Air Force, and to some extent in the Army or else wherein the services of the Government. It is a grievance with us that people who are better placed and who happen to be born with a silver spoon in their mouth get better chances than those born in mud huts or cottages in the villages. All must, however, have equal chances.

There is to be a provision in the Constitution to the effect that there shall be Raj Pramukhs and not Governors, in the States and the States' Unions and in this we observe there would be discrimination again on the basis of birth or descent, on the basis of one's being a prince or a member of a royal family or not. That sort of discrimination also should be eliminated. In fact all such discriminations should be eliminated.

Shri S. Nagappa (Madras: General): Mr. Vice-President. Sir, this clause as a whole gives independence, especially to the class for which this amendment is intended. I think you are aware that as a result of the hard lab our and struggle under the leadership of Mahatma Gandhi, the country has become free politically. But this particular section of the population is doubly free, in that it is not only politically free, but it is also socially free. I hope the Honourable Pandit Jawaharlal Nehru who is the true successor of Mahatma Gandhi will see to it that we in this section of the population are made economically free too and are elevated. Freedom means political, social and economic freedom. Two aspects of freedom have been covered by this particular amendment, thanks to the efforts of Gandhiji who has brought about such a social revolution.

I would have been much more pleased, if this clause which intends to give social rights to this particular community had been more expansive and explanatory. Take for instance, the question of access to shops. Shops means places where you can purchase things by paying money. But there are places where you can purchase service. I would like to know if these places are also included in the word 'shop'. When I go to a barber's shop or a shaving saloon, I do not buy anything concrete, but I purchase lab our. So also laundries. There I purchase the services of a washer man. I would like to know from the honourable the Mover if the word shop' includes all these kinds of places like laundries and saloons.

I come to clause (b) where reference is made to places of public resort maintained wholly or partly out of the revenues of the State. But what about other places which are not maintained either partly or wholly out of the revenues of the State? I would request that these words "maintained wholly or partly out of the revenues of the State" to be deleted. That would be better. Anyway, I would like to get some explanation from the mover of this clause as to what places are covered by this clauses. I am glad of the social revolution brought about by Mahatma Gandhi, within such a short period of years, from 1932 to 1948--only 16 years. Within this short period age-long disabilities and sufferings have been removed. I am confident that it will not take much time, especially with a statutory provision of this sort to carry the reform further. I hope that the Prime Ministers in the provinces would take note of this particular provision and see that before the Act is adopted, even the remaining disabilities vanish away, without waiting for the adaptation of this Act.

The third aspect of freedom remains, that is, economic freedom, and I hope that our Prime Minister will look to the economic elevation of the downtrodden classes. I support the clause whole-heartedly, and in doing so, request the mover to explain whether the word shop includes places of the kind I have referred to, and also whether places of public resort include places like burial or cremation grounds. These are not maintained out of public revenues or by public bodies, they being generally maintained by religious bodies. I would like to know whether there is to be a separate burial or cremation ground for these unfortunate sons of the soil, or whether all aspects are covered by this clause. I have raised this point so that these points may so down in the record of the proceedings of the House and be useful, if some lawyer were to misinterpret the meaning of the clause in some court of law. Most of our courts are courts of law and not justice. One should be more correct in framing the clause. I would like to know whether the honourable the Mover has considered this aspect of the matter. If he can include these words not I shall be pleased: otherwise if he can come forward and explain whether these disabilities are covered I shall be satisfied. At least it will be on record of the proceedings of this House, so that lawyers who attempt to misrepresent......

Shri K. Hanumanthaiya (Mysore State): Sir, I take objection to the honourable Member's remarks about lawyers that they are used to "misrepresenting".

Mr. Vice-President: I would ask Mr. Nagappa not to try to answer the honourable Member.

Shri S. Nagappa: I am not abusing lawyers. I am only saying what they are doing..........

Shri K. Hanumanthaiya: That is worse.

Mr. Vice-President: Mr. Nagappa is not carrying out my request.

Shri S. Nagappa: Besides wells and tanks there are other places where one can draw water. I would like to have a full explanatory answer from the honourable Member.

Sardar Bhopinder Singh Man (East Punjab: Sikh): *[Mr. Vice-President, I feel that the Fundamental Rights, which are being conceded, will be incomplete if places of worship are not included in the list. It is often seen in life in India that the doors of many temples and other places of worship, meant for the public use, are not kept open for all sections of people by their custodians or Pujaris. This is a dark aspect; its prevalence has reduced these centres of love and fellow-feeling into breeding grounds for communalism and mutual hatred. This begets ill-will and hatred against one another. The greatest achievement of the Father of the Nation was to have the gates of temples opened for the untouchables. Today, we have yet to fulfil those expectations. An argument may be advanced that people, who are not aware of the ways to be followed and of the reverence to be shown there, cannot be allowed entry into temples or the places of worship. But my answer to that would be that if any such person wants to visit a temple, due precaution should be taken about him. But there is no reason of the discrimination, that one person may be allowed entry while another is stopped from doing so. I say this gap should be filled up, and this stigma should be removed from the face of India. These barriers of religion, which divide people of India from one another, should be uprooted forever. Therefore, I wish that this lacuna should be removed by accepting the amendment of Prof. K. T. Shah or amendments Nos. 296 and 297.]*

Mr. Mohd. Tahir: Sir, this article says:

> "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or any of them.
>
> In particular, no citizen shall, on grounds only of religion, race, caste, sex or any of them, be subject to any disability, liability, restriction or condition with regard to--
>
> (a) access to shops, public restaurants, hotels and places of public entertainment.'

In this connection I have my amendment in which I have suggested that after the word `hotels' the words *"Dharamsalas, Musafirkhanas"* be added. Sir we find that these two institutions are regularly run throughout our country by private funds. If a traveller who is in need of accommodation happens, fortunately or unfortunately, to be a scheduled caste or any other caste man who is not liked by the management of the *Dharamsala* he is not allowed to halt in the Dharamsala. And so is the case in respect to *Musafirkhanas* also. Therefore I submit that these words *"Dharamsalas, Musafirkhanas"* should be added

Prof. Shibban Lal Saksena (United Provinces: General): Sir, this article should not have been put in this form. I would have wished that only the first three lines of this clause remained in the Draft and the rest were omitted. "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or any of them," should be enough; by adding the sub-clauses we are really subtracting from the generality of the first clause. I personally also think that after we have provided for the abolition of untouchability under article 11, this particular sub-clause providing for the elimination of disabilities in regard to tanks, wells, roads is unnecessary. So far as such disabilities arise from untouchability, nobody will henceforward be able to practise them. Under article 11 no one can discriminate against any person on the ground of untouchability, as it has been made an offence punishable by law. I personally feel that the clause about the use of wells, tanks, roads, etc., does not seem to be worthy of finding a place in our constitution; for such disabilities as exist are merely transitory and will vanish with time. But if it becomes permanently incorporated in the constitution people in other parts of the world will despise us for the existence of such discrimination in the past. Article 11 is in fairly wide terms, so that every discriminatory action which is supposed to be due to untouchability will be forbidden. I therefore think that these sub-clauses are unnecessary and all these amendments would not have been moved if we had confined the article to the first three lines only. I may also point out the revolutionary character of this article. I know that there are hundreds of Hindu shops where food is served to Hindus only. Food is a matter where Hindus have got special habits and they generally will not allow anybody to enter the place where they eat food. I hope that the Hindu society will realise that they have now to change those habits and that anybody who is not a Hindu will be able to enter these shops or hotels where so far food is served to Hindus only. I think this is a very serious thing because henceforth it will be a fundamental right of every citizen to enter any Hindu Hotel. Anybody can now claim entry to any place where food is sold. I therefore think that we must prepare the ground to give effect to this change which is of a far-reaching character. Otherwise, there will be clashes everyday. I wish this clause (a) were kept as a directive principle of State Policy and were not made a fundamental right. That would have given the necessary time to Hindu Society to adjust itself to the needs of the situation. This portion of the article is particularly unnecessary in view of article 11 which provides for the banning of untouchability.

Shri R. K. Sidhwa (C. P. & Berar: General): Mr. Vice-President, Sir, I consider this sub-clause--sub-clause (b) of article 9--an important clause, I see that under this clause "places of public resort" cover places of amusements and the like and therefore there is no necessity to mention all the places like theaters and cinemas. Personally I feel that gardens and all these things are covered by this word "resort". It has been suggested that the words "places of worship" should also be included here. So long as this country has many religions I do not think it advisable to insert these words in this clause. It can be done only when we attain one religion in this country.

But there is one point to which I would like to draw the attention of the mover of the article. The words used here are "the use of wells, tanks, roads and places of public resort..." Ordinarily what we mean by "public" is every person or collection of persons of all communities, irrespective of caste of creed. But while I was referring to the Indian Penal Code I found the word "public" is defined in a restricted manner. Section 12 of the Indian Penal Code says that the word "public" includes "any class of the public or any community...". The description "any class of the public" means that a Sanatani will be a "class of the community". The definition of the word `public' is in such a restricted manner that if a well is to be dug by a Sanatani in a village he will not allow the use of that well to the reformist or the Scheduled caste. I do not know whether the attention of the honourable Mover has been drawn to this. I am only giving an illustration about one community. The Hindu will not allow the Muslim to draw water from that well, or vice versa. It may be said that this relates to the offences caused under the Indian Penal Code. But the Indian Penal Code relates to so many other offences. I do not know whether there is another Act where the word "public" is defined collectively irrespective of any cast or community. I had tabled an amendment also and I do wish that this should not be left in any ambiguity because this is the fundamental, the basis, on which we are protecting the rights of every citizen. For any breach of the fundamental right anybody can go to a court. Why should we leave it ambiguous and allow the public to go to the Supreme Court for getting the meaning of the word "public" defined? Why should we not make it very clear here and say that "public" means everyone irrespective of caste or creed, particularly when you have a restricted definition in the Penal Code? I therefore submit, with due respect to the knowledge of the legal luminaries that this matter should be made clear. To me, to every layman the meaning of the word `public' is clear; but we find the meaning different in the law books. This matter therefore requires explanation to avoid any kind of complication in the future.

(One or two honourable Members rose to speak.)

Mr. Vice-President: You must forgive me if I am unable to meet the wishes of honourable Members. I want the full co-operation of the House and I ask it specially just now. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Sir, dealing with the amendments which have been moved, I accept Amendment No.280 moved by Mr. Rouf.

Shri Syamanandan Sahaya (Bihar: General): Will the honourable Member give his views also about amendments which have not been moved?

The Honourable Dr. B. R. Ambedkar: I am very sorry I cannot give opinions regarding amendments which have not been moved.

Shri Syamanandan Sahaya: It was no fault of the member concerned.

The Honourable Dr. B. R. Ambedkar: I cannot help it. I accept the amendment of Mr. Rouf adding the words "place of birth", I also accept the amendment (No. 37 in List I) by Mr. Subramaniam to amendment No. 276 dropping the words "In particular" in clause (1) of article 9.

With regard to amendment No. 303 moved by Mr. Guptanath Singh, I am prepared to accept his amendment provided he is prepared to drop the word "kunds" from his amendment.

Shri Guptanath Singh: I have already done that, Sir.

The Honourable Dr. B. R. Ambedkar: Then, among the many amendments which I am sorry I cannot accept, I think it is necessary for me to say something about two of them. One is amendment No. 315 moved by Mr. Tahir which requires that any contravention of the provisions contained in article 9 should be made a crime punishable by law. My Friend Mr. Tahir who moved this amendment referred particularly to the position of the untouchables and he said that in regard to these acts which prevent the untouchables from sharing equally the privileges enjoyed by the general public, we will not be successful in achieving our purpose unless these acts, preventing them from using places of public resort, were made offences. There is no doubt that there is no difference of opinion between him and other Members of this House in this matter because all of use desire that this unfortunate class should be entitled to the same privileges as members of the other communities without any let or hindrance from anybody. But he will see that that purpose is carried out entirely by the provisions contained in article 11 which specifically deals with untouchability: instead of leaving it to Parliament or to the State to make it a crime, the article itself declares that any such interference with their rights shall be treated as an offence punishable by law. If his view is that there should be a provision in the Constitution dealing generally with acts which interfere with the provisions contained in article 9, I would like to draw his attention to article 27 in the Constitution which places an obligation on Parliament to make laws declaring such interferences to be offences punishable by law. The reason why such power is given to Parliament is because it is felt that any offence which deals with the Fundamental rights should be uniform throughout the territory of India, which would not be the case if this power was left to the different States and Provinces to regulate as they like. My submission therefore is that, so far as this point is concerned, the Constitution contains ample provision and nothing more is really necessary.

With regard to amendment No. 323 moved by Professor K. T. Shah, the object of which is to add "Scheduled Castes" and "Scheduled Tribes" along with women and children, I am afraid it may have just the opposite effect.

The object which all of us have in mind is that the scheduled castes and castes and scheduled tribes should not be segregated from the general public.

For instance, none of us, I think, would like that a separate school should be established for the Scheduled Castes when there is a general school in the village open to the children of the entire community. If thee words are added, it will probably give a handle for a State to say, `Well, we are making special provision for the Scheduled Castes'. To my mind they can safely say so by taking shelter under the article if it is amended in the manner the Professor wants it. I therefore think that it is not a desirable amendment. Then I come to may Friend Mr. Nagappa. He has asked me to explain some of the words which have been used in this article. His first question was whether "shop" included laundry and shaving saloon. Well, so far as I am concerned, I have not the least doubt that the word `shop' does include laundry and shaving place. To define the word `shop' in the most generic term one can think of is to state that `shop' is a place where the owner is prepared to offer his service to anybody who is prepared to go there seeking his service. A laundryman therefore would be a man sitting in his shop offering to serve the public in a particular respect, namely, wash the dirty cloths of a customer. Similarly, the owner of a shaving saloon would be sitting there offering his service for any person who enters his saloon.

The Honourable Shri B. G. Kher (Bombay: General): Does it include the offices of a doctor and a lawyer?

The Honourable Dr. B. R. Ambedkar: Certainly it will include anybody who offers his services. I am using it in a generic sense.

I should like to point out therefore that the word 'shop' used here is not used in the limited sense of permitting entry. It is used in the larger sense of requiring the services if the terms of service are agreed to.

The second question put to me was whether `place of public resort' includes burial grounds. I should have thought that very few people would be interested in the burial ground, because nobody would care to know what happens to him after he is dead. But, as my Friend Mr. Nagappa is interested in the point should say that I have no doubt that a place of public resort would include a burial ground subject to the fact that such a burial ground is maintained wholly or partly out of public funds. Where there are no burial grounds maintained by a municipality, local board or taluk board or Provincial Government or village panchayat, nobody of course has any right, because there is no public place about which anybody can make a claim for entry. But if there is a burial ground maintained by the State out of State funds, then obviously every person would have every right to have his body buried or cremated therein.

Then my Friend asked me whether ponds are included in tanks. The answer is categorically in the affirmative. A tank is a larger thing which must include a pond.

The other question that he asked me was whether rivers, streams, canals and water sources would be open to the untouchables. Well, rivers, streams and canals no doubt would not come under article 9; but they would certainly be covered by the provisions of article 11 which make any interference with the rights of an untouchable for equal treatment with the members of the other communities an offence. Therefore my answer to my Friend Mr. Nagappa is that he need have no fears with regard to the use of rivers, streams, canals, etc., because it is perfectly possible for the Parliament to make any law under Article 11 to remove any such disability if found.

Shri S. Nagappa: What about the courses of water?

The Honourable Dr. B. R. Ambedkar: I cannot add anything to the article at this stage. But I have no doubt that any action necessary with regard to rivers and canals could be legitimately and adequately taken under article 11.

Shri R. K. Sidhwa: What about the interpretation of the word `public'?

The Honourable Dr. B. R. Ambedkar: My Friend Mr. Sidhwa read out some definition from the Indian Penal Code of the word `public' and said that the word `public' there was used in a very limited sense as belonging to a class. I should like to draw his attention to the fact that the word 'public' is used here in a special sense. A place is a place of public resort provided it is maintained wholly or partly out of State funds. It has nothing to do with the definition given in the Indian Penal Code.

Shri Mahavir Tyagi (United Provinces: General): May I know what is to happen to the amendments which have been declared by you as verbal amendments? Among them I fear there are some which really aim at making a substantial change in the meaning of the clause or article concerned.

Mr. Vice-President: In that matter I am the sole judge. You have given me discretionary power and I propose to exercise that power in my own way.

Shri Mahavir Tyagi: I want information. I do not dispute your judgment or your right. I only want to know whether the sense of the House will be accommodated in regard to the amendments ruled out or whether such amendments will be considered by the Drafting Committee or some other body? My suggestion is that you will be doing well the House if you will kindly appoint a small sub-committee which will go into these verbal amendments and find out whether some of them at least aim at effecting a change in the meaning of the clause concerned. I do not dispute what you said. They are out of order because you have ruled them as such. But even commas and full stops have some value. My only request is that......

Mr. Vice-President: May I suggest a better way which might appeal to you, way which is better than the appointment of a sub-committee? Those who think that their amendments are of some substance may approach the Drafting Committee directly themselves. If they do so I am sure due consideration will be shown to them.

Shri Mahavir Tyagi: Now I am satisfied, Sir.

Mr. Mohd. Tahir: As the Honourable Dr. Ambedkar has answered my points to my satisfaction with regard to amendment No. 315, I ask for leave to withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President: Now I will put the rest of the amendments to the vote of the House. Dr. Ambedkar has accepted the first one.

The question is:

"That for amendment No. 276 in the List of Amendments, the following be substituted--

"That the second Para of clause (1) of article 9 be numbered as new clause (1a), and the words `In particular' in the new clause so formed, be deleted.'"

The motion was adopted.

Mr. Vice-President: The next amendment is 279. The question is:

"That in article 9, after the word `race' the word birth' be inserted."

The amendment was negatived.

Mr. Vice-President: The next one is No. 280 which, I understand, Dr. Ambedkar has accepted. The question is:

"That in article 9, after the word `sex' wherever it occurs, the words `place of birth' be inserted."

The amendment was adopted.

Mr. Vice-President: Then we come to the second part of amendment No. 286. The question is:

"That in sub-clause (a) of clause (1) of article 9,after the words `restaurants, hotels' the words `Dharamsalas, Musafirkhanas' be inserted."

The amendment was adopted.

Mr. Vice-President: Amendment No. 293. The question is:

"That in clause (1) of article 9, for sub-clauses (a) and (b) the following be substituted:--

'any place of public use or resort, maintained wholly or partly out of the revenues of the State, or in any way aided, recognised, encouraged or protected by the State, or place dedicated to the use of general public like schools, colleges, libraries, temples, hospitals, hotels and restaurants, places of public entertainment, recreation or amusement, like theaters and cinema-houses or concert-halls; public parks, gardens or museums; roads, wells, tanks or canals; bridges, posts and telegraphs, railways, tramways and bus services; and the like.'"

The amendment was negatived.

Mr. Vice-President: Then we come to amendment No. 296.The question is:

"That in sub-clause (a) of clause (1) of article 9,after the words 'of Public entertainment' the words 'or places of worship' be inserted."

The amendment was negatived.

Mr. Vice-President: I do not remember what happened to 299. To be perfectly sure, I am going to put it to the vote. The question is:

"That in sub-clause (a) of clause (1) of article 9, the word `public' be deleted."

The amendment was negatived.

Mr. Vice-President: Then amendment No. 301 standing in the name of Mr. Tajamul Husain. The question is:

"That in sub-clause (a) of clause (1) of article 9, between the words `public' and `restaurants' the words places of worship 'Dharamsalas, Musafirkhanas' be inserted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 303 as revised. I understand that Dr. Ambedkar has accepted it. The question is:

"That in sub-clause (b) of the second paragraph of clause (1) of article 9, after the word `wells, tanks' the words `bathing ghats' be inserted."

The amendment was adopted.

Mr. Vice-President: Then amendment No. 305. The question is:

"That in sub-clause (b) of clause (1) of article 9,after the word `roads' add a comma and also the words hospitals, educational institutions'."

The amendment was negatived.

Mr. Vice-President: Amendment No. 314. The question is:

"That in sub-clause (b) of the second paragraph of clause (1) of article 9, for the word 'the revenues of the State' the words 'State funds' be substituted."

The amendment was adopted.

Mr. Vice-President: Then the last amendment standing in the name of Professor Shah. No. 323. The question is:

"That at the end of clause (2) of article 9, the following be added:--

'or for Scheduled Castes or backward tribes, for their advantage, safeguard or betterment.'"

The amendment was negatived.

Mr. Vice-President: Now, I shall put the article as revised to the vote. The question is:

That article 9, as amended, form part of the Constitution.

The motion was adopted.

Article 9, as amended, was added to the Constitution.

Article 10

Mr. Vice-President: Shall we pass on to the next article, new article 9-A? The amendments here are in the form of Directive Principles. I disallow them. Then we go to article 10.

Shri T. T. Krishnamachari (Madras: General): I think the idea is to hold this over.

The Honourable Dr. B. R. Ambedkar: I request you to hold this article over.

Mr. Vice-President: Then we may go to the next article, 10-A.

(Amendment No. 369 was not moved.)

Article 11

Mr. Vice-President: We now come to article 11. The motion before the House is that article 11 form part of the Constitution. We shall now take up the amendments one by one. No. 370 is out of order. Amendments Nos. 371, 372, 373 and also 375 and 378 are of a similar character. I suggest that amendment No. 375 be moved.

(Amendments No. 375 and No. 371 were not moved.)

Mr. Vice-President: No. 372. Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I move:

"That for article 11, the following article be substituted:--

'11. No one shall on account of his religion or caste be treated or regarded as an `untouchable'; and its observance in any form may be made punishable by law.' "

I submit that the original article 11 is a little vague. The word "untouchability" has no legal meaning, although politically we are all well aware of it; but it may lead to a considerable amount of misunderstanding as in ale gal expression. The word `untouchable' can be applied to so many variety of things that we cannot leave it at that. It may be that a man suffering from an epidemic or contagious disease is an untouchable; then certain kinds of food are untouchable to Hindus and Muslims. According to certain ideas women of other families are untouchables. Then according to Pandit Thakurdas Bhargava, a wife below 15 would be untouchable to her loving husband on the ground that it would be `marital misbehaviour'. I beg to submit, Sir, that the word `untouchable' is rather loose. That is why I have attempted to give it a better shape; that no one on account of his religion or caste be regarded as untouchable. Untouchability on the ground of religion or caste is what is prohibited.

Then, Sir, I have one more word to say in this connection and that is that in line 3 of this clause in the midst of the sentence, the word 'Untouchability' begins with a capital letter. This is a matter for the Drafting Committee.

(Amendments 373 and 378 were not moved.)

Mr. Vice-President: Amendments Nos. 374, 376, 377, 379, 380 and 381. I regard as verbal amendments and they are disallowed. Amendment No. 372 alone is moved. The article is now open for general discussion. I call upon Mr. Muniswamy Pillai to speak.

Shri V. I. Muniswamy Pillai (Madras: General): Mr. Vice-President, it is a matter of great satisfaction that this Constitution has brought out a very important item and thereby untouchability is to be abolished in this great land of ours. Sir, though article 9 concedes many of the facilities that are required for the abolition of untouchability, the very clause about untouchability and its abolition goes a long way to show to the world that the unfortunate communities that are called `untouchables' will find solace when this Constitution comes into effect. It is not that a certain section of the Indian community that will be benefited by this enactment, but a sixth of the population of the whole of India will welcome the introduction and the adoption of a section to root out the very practice of untouchability in this country. Sir, under the device of caste distinction a certain section of people have been brought under the rope of untouchability, who have been suffering for ages under the tyranny of the so-called caste Hindus and all those people who style themselves as landlords and zamindars, and were thus not allowed the ordinary rudimentary facilities required for a human being. The sting of untouchability went deep into the hearts of certain sections of the people and many of them had to leave their own faiths and seek protection under religions which were tolerant. I am sure, Sir, by the adoption of this clause many a Hindu who is a Harijan, who is a scheduled class man will feel that he has been elevated in society and he has now got a place in society. I am sure that the whole country will welcome the inclusion of article 11 in this Constitution.

Dr. Monomohon Das (West Bengal: General): Mr. Vice-President, Sir, this clause about untouchability is one of the most important of the fundamental rights. This clause does not propose to give any special privileges and safeguards to some minority community, but it proposes to save one-sixth of the Indian population from perpetual subjugation and despair, from perpetual humiliation and disgrace. The custom of untouchability has not only thrown millions of the Indian population into the dark abyss of gloom and despair, shame and disgrace, but it has also eaten into the very vitality of our nation. I have not a jot of doubt, Sir, that this clause will be accepted by this House unanimously; not only the Indian National Congress is pledged to it, but for the sake of fairness and justice to the millions of untouchables of this land, for the sake of sustaining our goodwill and reputation beyond the boundaries of India, this clause which makes the practice of untouchability a punishable crime must find a place in the Constitution of free and independent India. Ire fuse to believe, Sir, that there is even a single soul in this august body who opposes the spirit and principle contained in this article. So, I think, Sir, that today the 29th November 1948 is a great and memorable day for us the untouchables. This day will go down in history as the day of deliverance, as the day of resurrection of the 5 crores of Indian people who live in the length and breadth of this country. Standing on the threshold of this new era, at least for us, the untouchables, I hear distinctly the words of Mahatma Gandhi, the father of our nation, words that came out from an agonized heart, full of love and full of sympathy for these down-trodden masses. Gandhiji said: "I do not want to be reborn, but if I am reborn, I wish that I should be born as a Harijan, as an untouchable, so that I may lead a continuous struggle, a life-long struggle against the oppressions and indignities that have been heaped upon these classes of people." The word Swaraj will be meaningless to us if one-fifth of India's population is kept under perpetual subjugation. Mahatma Gandhi is no more among us in the land of the living. Had he been alive today, no mortal on earth would be more pleased, more happy, more satisfied than him. Not only Mahatma Gandhi, but also the other great men and philosophers of this ancient land, Swami Vivekananda, Raja Ram Mohan Roy, Rabindranath Tagore and others who led a relentless struggle against this heinous custom, would also be very much pleased today to see that independent India, Free India has at last finally done away with this malignant sore on the body of Indian society. As a Hindu, I believe in the immortality of the soul. The souls of these great men, but for whose devotion and life-long service India would not have been what she is today, would be smiling upon us at this hour at our courage and boldness in doing away with this heinous custom of untouchability.

Last of all, I cannot resist the temptation of saying a few words about our great and eminent Law Minister and Chairman of the Drafting Committee, Dr. Ambedkar. It is an irony of fate that the man who was driven from one school to another, who was forced to take his lessons outside the class room, has been entrusted with this great job of framing the Constitution of free and independent India, and it is he who has finally dealt the death blow to this custom of untouchability, of which he was himself a victim in his younger days.

Sir, I thank you for giving me this opportunity to express my views on this matter.

Shri Santanu Kumar Das (Orissa: General): *[Mr. Vice-President, I am grateful to you, Sir, for giving me an opportunity to express my views on clause 11 of the Draft Constitution.

This clause is intended to abolish the social inequity, the social stigma and the social disabilities in our society. Every body desires that the practice of untouchability should somehow be abolished but not body appears to be very helpful in its abolition. When everybody desires that this practice should be abolished, I fail to see why so much time should be wasted in a long discussion over it. The fact is that we merely want to enact laws about it and expect the rural people to observe these laws. We must ourselves first observe the law for otherwise there would be no sense in asking others to act upon it. If we fail to observe it, it would be impossible to root out this evil. Provincial Governments enact laws for the welfare of the Harijans; they pass bills for the removal of untouchability, for the removal of disabilities and for permitting temple entry but you will be surprised, Sir, if I tell you that our members act as fifth columnists in the rural areas, for they tell the people there that these laws are not in force and thus they themselves act against the law. I would request the Members of the House to try their best to make the law effective so that this present social inequity in the country may be removed. Sir, I support the clause whole-heartedly.]*

Shrimati Dakshayani Velayudhan (Madras: General): Mr. Vice-President, Sir, we cannot expect a Constitution without a clause relating to untouchability because the Chairman of the drafting Committee himself belongs to the untouchable community. I am not going into the details of the history and the work done by all the religious heads from time immemorial. You know that all the religious teachers were against the practice of untouchability. Coming to a later period, we found a champion in the person of Mahatma Gandhi and one of the items of the constructive programme that he placed before the country is the abolition of untouchability. While I was a student in the College, one of my class-mates approached me for subscribing to a fund for the abolition of untouchability. My reply was, `you people are responsible for this and therefore it is for you to raise the money and it is not proper that you should ask me for money'. Even from my younger days, the very thought of untouchability was revolting to me. Even in public places like schools, untouchability was observed whenever there was a tea party or anything of that kind. What I did on those occasions was that I always non-cooperated with those functions. The change of heart that we find in the people today is only due to the work that has been done by Mahatma Gandhi and by him alone. We find that there is a vast change in the outlook and attitude of the people today towards the untouchables. Nowadays what we find is that the people who are called caste Hindus dislike the very idea of, or the very term, `untouchability' and they do not like to be chastised for that, because, they have taken a vow that they are responsible for it and that they will see that it is abolished from this land of ours. Even though there is a large improvement on the part of the so-called caste Hindus, we cannot be satisfied with that. When this Constitution is put into practice, what we want is not to punish the people for acting against the law, but what is needed is that there should be proper propaganda done by both the Central and Provincial Governments. Then only there will be improvement that we want. If the Provincial and Central Governments had taken action previously I think there would have been no necessity for an article of this kind in this Constitution. Last year I brought a resolution before the Constituent Assembly for declaring that untouchability should be made unlawful. When I approached Panditji, he said that this is not a Congress Committee to move such a resolution, and that it will be taken up in course of time. My reply was that if a declaration was made in the Constituent Assembly, it will have a great effect. Even people in South Africa were chastising us because we were having this practice here. If a declaration is made by the Assembly here and now, it will have a great effect on the people and there will be no necessity for us to incorporate such a clause in the Constitution.

Mr. Vice-President: You have exceeded the time-limit. It is only because you are a lady I am allowing you.

Shrimati Dakshayani Velayudhan: The working of the Constitution will depend upon how the people will conduct themselves in the future, not on the actual execution of the law. So I hope that in course of time there will not be such a community known as Untouchables and that our delegates abroad will not have to hang their heads in shame if somebody raises such a question in an organisation of international nature.

Prof. K. T. Shah: Mr. Vice-President, Sir, lest I be misunderstood on the remarks that will follow, may I say at the very outset that I am not against the spirit of this article, or even its actual wording. I think, however, that the wording is open to some correction; and if the Honourable the Chairman of the Drafting Committee will consider what I am going to place before him just now, and before the House, I believe he might find room for some amendment himself of this article.

In the first place I would like to point out that the term `untouchability' is nowhere defined. This Constitution lacks very much in a definition clause; and consequently we are at a great loss in understanding what is meant by a given clause and how it is going to be given effect to. You follow up the general proposition about abolishing untouchability, by saying that it will be in any form an offence and will be punished at law. Now I want to give the House some instances of recognised and permitted untouchability whereby particular communities or individuals are for a time placed under disability, which is actually untouchability. We all know that at certain periods women are regarded as untouchables. Is that supposed to be, will it be regarded as an offence under this article? I think if I am not mistaken, I am speaking from memory, but I believe I am right that in the Quran in a certain `Sura', this is mentioned specifically and categorically. Will you make the practice of their religion by the followers of the Prophet an offence? Again there are many ceremonies in connection with funerals and obsequies which make those who have taken part in them untouchables for a while. I do not wish to inflict a lecture upon this House on anthropological or connected matters; but I would like it to be brought to the notice that the lack of any definition of the term 'untouchability' makes it open for busybodies and lawyers to make capital out of a clause like this, which I am sure was not the intention of the Drafting Committee to make.

One more example I will give, Sir, which is of a hygienic, or rather sanitary, character, that seems to be completely overlooked by the draftsman. What about those diseases, and people who suffer from, which are communicable, and so necessarily to be excluded and made untouchables while they suffer? I remember, Sir, the case of a very well-known personage who was suffering from leprosy, and whom consequently a Public Carrier Company refused to carry from a particular place to another place. All the wheels of Government were moved to obtain a certificate that he may be carried in the plane without any harm to other passengers. I do not know whether it was his cheque-book or his munificence that helped him to get over that particular disability. But I am sure the example should be a warning to our Drafting Committee. Again, if a municipality, for instance, makes a temporary regulation about Quarantine, and makes it necessary that people suffering from communicable diseases or infectious or contagious diseases shall be segregated for a while until they are cured, and shall be regarded as untouchables, will it be an offence under this article? Surely it ought not to be possible for anybody to say that the action of that particular municipality is "unconstitutional" and so an offence at law. I trust the Chairman of the Drafting Committee will find that there is some sense in the suggestion I have put forward; and that he will not deal with it as a common opposition.

The Honourable Dr. B. R. Ambedkar: I cannot accept the amendment of Mr. Naziruddin Ahmad.

Mr. Vice-President: Dr. Ambedkar, do you wish to reply to Mr. Shah's suggestion?

The Honourable Dr. B. R. Ambedkar: No.

Mr. Vice-President: I now put amendment No. 372 to vote.

The question is:

"That for article 11, the following article be substituted:--

"11. No one shall on account of his religion or caste be treated or regarded as an `untouchable'; and its observance in any form may be made punishable by law.'"

The amendment was negatived.

Mr. Vice-President: I now put article No. 11.

The question is:

"That article 11 stand part of the Constitution."

The motion was adopted.

Article 11 was added to the Constitution.

Honourable Members: "Mahatma Gandhi ki Jai".

Articles 11-A and B

Mr. Vice-President: We have five minutes and I propose to utilize it. There are two new articles 11-A and B standing in the name of Mr. Lari. Amendment No. 382.

Mr. Z. H. Lari (United Provinces: Muslim): Mr. Vice-President: I move:

"That after article 11 the following new articles be inserted:--

'11-A. Imprisonment for debt is abolished.

11-B. Capital punishment except for sedition involving use of violence is abolished.'"

Sir, the two clauses are distinct and consequently when considering and adopting them it is not necessary for the House to accept both simultaneously or to reject both. It is open to the House to accept one and not to accept the other or to accept both.

Mr. Vice-President: Why not move that separately.

Mr. Z. H. Lari : Then I move 11-B first. The House will remember that in the last session of the House, when sitting as the law making body, a Bill was before the House to amend Section 53 of the Indian Penal Code. That Bill went to the Standing Advisory Committee of the Ministry of Home Affairs that met on 20th march 1948. There they thought and decided that this matter of capital punishment should be considered by this body. That is why they deferred consideration of that Bill. Now I put it before the House in the form as desired by the Standing Committee.

So far as the question of abolition of capital punishment is concerned, it has been done so in various other countries. At least in thirty countries, including the Dominion of New Zealand, Russia, Holland, Belgium, Switzerland, capital punishment has been abolished. Only the other day this question came up before the House of Commons and the principle was accepted. No doubt, the House of Lords came in the way and the result was that the Bill before the House of Commons providing for the abolishing of capital punishment had to be rejected. But so far as the House of Commons is concerned, the principle of it has been accepted.

Now, I will place only three considerations before this House. The first consideration is that human judgment is not infallible. Every judge, every tribunal is liable to err. But capital punishment is irrevocable. Once you decide to award the sentence, the result is that the man is gone. It may be that a mistake would have been committed by a tribunal. And I know of cases where subsequently it was found out that the man punished was not the real offender. But it was not within the power of any human being to get the mistake rectified. This is one consideration.

The second consideration is that human life is sacred and its sanctity is I think, accepted by all. A man's life can be taken away if there is no other way to prevent the loss of other human lives. But the question is whether capital punishment is necessary for the sake of preventing crimes which result in such loss of human lives. I venture to submit that at least thirty countries have come to the conclusion that they can do without it and they have been going on in this way for at least ten years, or twenty years, without any ostensible or appreciable increase in crimes. Therefore, the result of the experience gained by all these countries shows that you can govern the country without resorting to this punishment. That is the second consideration for this House.

The third consideration is that this is a punishment which is really shocking and brutal and does not correspond with the sentiments which prevail now in the present century. My submission would be that if we can do away with this capital punishment, it would be a good thing for the country and for the people. Many decades back, Dickens said that this punishment really encourages that section of the population which is determined on committing murders, to commit murders because that is accompanied by a sort of martyrdom. That concerns only that class of criminals who want to commit murders deliberately and with a purpose. To those who commit murders on an occasion which provides them with some sort of provocation, my submission would be that they can be better punished if life imprisonment is inflicted upon them because they will live for many more years and repent their actions and possibly reform themselves.

Lastly I would submit that the reformative element in punishment is the most important one, and that should be the dominant consideration.

Keeping all these considerations in mind, namely, of fallibility of human judgment, sanctity of human life and the purpose of punishment, we should vote for abolishing capital punishment.

I have made one exception, i.e., of a situation which involves danger to the State. Naturally, when the existence of the state is at stake, and many more lives might be lost, it may be said that we should not take any risks. I say the time will come when even that exception will disappear. But for the sake of incorporating an article in the Constitution, we may accept this exception, and it will be open to the Parliament of the land to go further in two or three years' time and abolish capital punishment completely.

With these words, Sir, I move.

Mr. Vice-President: Then, will you move 11-A to-morrow?

Mr. Z. H. Lari: No Sir, I will not move it.

Mr. Vice-President: The House stands adjourned till 9-30 A.M. to-morrow.

The Constituent Assembly then adjourned till Half-past Nine of the Clock on Tuesday, the 30th November 1948.

[Translation of Hindustani Speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VII

Tuesday, the 30th November 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Half Past Nine of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the Pledge and signed the Register:

The Honourable Shri Krishna Ballabh Sahay (Bihar: General)

DRAFT CONSTITUTION-*Contd.*

New Article 11-B.

Mr. Vice-President (Dr. H. C. Mookherjee): We shall now resume discussion on amendment No. 382. Shri Amiyo Kumar Ghosh.

Shri Amiyo Kumar Ghosh (Bihar: General): Mr. Vice-President, Sir, I do not wish to make a long speech on the subject that is before us, nor do I propose to oppose the principle involved in the amendment which was moved yesterday by my Friend Mr. Lari, but, Sir, I oppose its being incorporated in the Constitution. By incorporating such a clause in the Constitution, practically we fetter the hands of the State for all time to resort to such punishment even if it is required by the exigencies of time.

Sir, it is true that the punishment is inhuman, it is true that the judges may err and there is the chance of innocent persons being sent to the gallows, but at the same time we will have to bear in mind that society does not consist of unmixed good elements only. There are evil elements too, and in order to check those evil elements from usurping the society or over awing the society at any time, the State may require such penalties to be imposed on persons who want to terroriz a the society.

I think that with the growth of consciousness, with the development of society, the State should revise a punishment of this nature but the proper place of doing such a thing is not the Constitution. We can do it by amending the Indian Penal Code where such penalty is prescribed for different offences. We are now passing through a transitional period, serious problems are confronting us, different sorts of situations are arising every day, and so it is quite possible that at times the State may require imposition of such grave penalties for offences which may endanger it and the society. Therefore, Sir, on principle I agree that the capital punishment should be abolished, but the proper place for doing such a thing is not to provide a clause to that effect in the Constitution and tie the hands of the State, but it should be done by amending the Indian Penal Code or such other laws which impose such penalty. As I have already stated, the State may require the imposition of such penalties from the exigencies of circumstances and if such a clause is provided in the Constitution, the State will be unable to prescribe such a punishment without amending the constitution, which is a difficult matter.

Under these circumstances I oppose the amendment moved by Mr. Lari.

Shri K. Hanumanthaiya (My sore): Mr. Vice-President, Sir, the amendment moved by Mr. Lari is sponsored on the ground of consideration and following progressive ideas. The abolition of capital sentence is a matter open to argument, and I wish to differ from him. We have to look at this problem from two points of view: one from the point of view of the convict himself and the other from the point of view of the State. From the point of view of the convict, I had an idea that the convict would relish a life sentence in preference to execution. Some days back, I happened to read one of Bernard Shaw's dramas; it was Avery good drama concerning the great heroine of France and there she prefers to be burnt alive rather than be kept in prison for a life time. He brings out that idea very beautifully in the drama, I had to change my opinion that the convict would prefer to be kept alive almost untouched by social inter course and aloof behind the prison walls. The convict would any day prefer to go out of the world instead of being kept almost like a dead person behind the prison walls for a life time.

Then from the point of view of the State, a man who has no consideration for human lives does not deserve any consideration for his own life. Society is based not merely on reformation, but also on the fear instinct principle. To forget all other considerations except the question of reforming the convict does not hold the field and it has never held the field. If every man who takes away the life of another is assured that his life would be left untouched and it is a question of merely being imprisoned, probably the deterrent nature of the punishment will lose its value. The practice in prisons today is if a man is sentenced to life, he will be released, after concessions and remissions now and then given, in the course of about seven and a half years. Therefore, if a man who kills another is assured that he has a chance of being released after seven or eight or ten years, as the case may be, then everybody would get encouragement to pursue the method of revenge, if he has got any. For example, let us take this Godse incident.

Mr. Vice-President: No reference should be made to this particular individual.

Shri K. Hanumanthaiya: If a man who resorts to kill an important or a great man and if he is assured that he would be released after seven years or eight years, as the case may be, he would not hesitate to repeat what he has done, and conditions being what they are today, it would be very unwise from the point of view of the safety of the State and stability of society, to abolish capital sentence.

The Honourable Dr. B. R. Ambedkar (Bombay: General): I do not accept the amendment.

Mr. Vice-President: I shall put the amendment to vote. The question is:

That after article 11 the following new article be inserted:--

"11-B. Capital punishment except for sedition involving use of violence is abolished."

The amendment was negatived.

Article 10

Mr. Vice-President: We can now go back to Article No.10. The motion before the House is:

"That Article 10 form part of the Constitution."

I shall now go over the amendments and then we may have a general discussion.

Amendment No. 326 is verbal and is disallowed.

As regards No. 327 perhaps Mr. Tahir will meet the objection which has been held by some people that the amendment is unintelligible.

Mr. Mohd. Tahir (Bihar: Muslim): Sir, I beg to move:

That in clause (1) of article 10, after the words "of employment" the word "acquisition be inserted.

In this connection, I do not want to make any long speech. I simply want to mention that there are two aspects, one of employment and one of acquisition. Employment has a ready been mentioned; so I want that acquisition also should be added. That is all.

(No. 328 and No. 329 were not moved.)

Mr. Vice-President: Nos. 330 and 331 being verbal are disallowed.

(No. 332 was not moved.)

Amendments Nos. 333, 335 and 337 (first part), are the same. I can allow the first part of amendment No. 337.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I beg to move:

"That clause (2) of article 10, for the words "on grounds only" the words "on grounds" be substituted.

It is really a motion for deletion of the word "only" which seems to be redundant or rather causing some difficulty. The same difficulty has been felt by a large number of Honourable Members, as is evidenced as is evidenced by several amendments to the same effect.

Mr. Vice-President: The next one is No. 334.

Shri Lokanath Misra (Orissa: General): Sir, I beg to move:

"That in clauses (2), (3) and (4) of article 10, be deleted."

On this matter I need not make a long speech. To my mind clause (1) covers all cases and clause (2) is definitely included in clause (1), and clause (3) which refers to reservation of appointments to backward classes is really unnecessary because it puts a premium on backwardness and inefficiency. Everybody has a right to employment, food, clothing, shelter and all those things, but it is not a fundamental right for any citizen to claim a portion of State employments, which ought to go by merit alone. It can never be a fundamental right. If we accept that as one, it may be generous but this generosity will itself be a degradation to those people who are favoured with it. I think clause (4) is quite unnecessary because ours being a secular State, it should keep its hands clean of all religious institutions and the State need not bother about the management of any religious institutions. Therefore, there should be no thought of reservation of appointments in committees with reference to those religious institutions which are outside the care of the State. For these reasons, I consider clauses (2), (3) and (4) unnecessary.

Mr. Vice-President: Amendments 336 and 341 are of similar import. I can allow 336 to be moved.

Mr. Naziruddin Ahmad: I beg to move:

That for clause (2) of Article 10, the following clause be substituted:--

"(2) Every citizen shall be eligible for office under the State irrespective of his religion caste, sex, descent or place of birth."

I have slightly altered my amendment in consequence of the form 'the State adhered to by the House.

The only reason for suggesting this amendment is that it is more direction form.

Shri H. V. Kamath (C. P. and Berar: General): I do not move amendment No. 341, Sir.

Mr. Vice-President: Mr. Tahir may now move the second part of his amendment No. 338; the first part being verbal, I disallow it.

Mr. Mohd. Tahir: I move:

That in clause (2) of Article 10, after the words `for any office', the words `or employment' be inserted.

Sir, the clause as proposed to be amended by me would read:

"(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth or any of them, be ineligible for any office or employment under the State."

It is very simple and clear that, so far as `office' is concerned, the clause is all right. But, as regards employment which in my opinion means also employment else where than in an office, there is no provision. I therefore think it necessary that the words `or employment' should be added after `office'. I hope the Mover will accept it.

Mr. Vice-President: Mr. Ananthasayanam Ayyangar may now move No. 342.

(Amendment No. 342 was not moved.)

Mr. Vice-President: Professor Shah may now move amendment No. 339,

Prof. K. T. Shah (Bihar: General): I beg to move:

That in clause (2) of Article 10, after the words 'place of birth' the words `in India' be added.

The clause as proposed to be amended by me would read:

"No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth in India, or any of them be ineligible for any office under the State."

Sir, the object of moving this amendment is to point out that this country is vast enough to meet from her own resources of manpower all that is needed to fill any office of responsibility and trust with efficiency in this country. We have examples of other dominions and countries making an implied reservation in their countries; that is to say, reserving offices, reserving posts, and reserving employment primarily for their own citizens and so we shall not be lacking in models to copy or precedents to follow. I suggest that if these words `in India' are added to the clause as it stands, it does not necessarily mean that discrimination shall be made against those not born in India. All that it wants to convey is that no discrimination shall be made against anybody born in India, on account of his place of birth. I consider this is not only a very reasonable suggestion, but also a very necessary one. In the short space of time that we have achieved this independence of ours, and given the influence that seems to be still working to pull us along the lines of commonwealth allegiance and association, we do not know how and where we may be getting to. Personally, I hold the view that by making a reservation of this kind, not only is no injustice or invidious discrimination intended, but what is necessary for our own protection, development and advancement can only be achieved by our own children, by the sons and daughters of the soil only. As such the first claim, a preferential claim for any available employment in this country, should be that of the natives of the land.

Sir, it is unnecessary to point out that the citizens or the nationals of this country have been discriminated against, and discriminated against very shamefully, in certain parts of the commonwealth as it is called now, like South Africa. Elsewhere, if they do not say so openly in the Constitution, if they do not say so by any specific legislation, they nevertheless maintain a policy of "White Australia", or White Canada, impliedly conveying the desire that coloured people are not wanted; or if they go there, they shall be under disabilities that will for ever handicap them.

If this is the experience that we are getting even today, even after achieving our independence. I do not see why we in this country should not also take care, that our Constitution primarily and preferentially reserves all available places of employment, of trust, or responsibility for the children of the soil.

As I started by saying, this does not at all mean that you shall make a categorical discrimination against the citizens of other countries, though there are plenty of examples of that kind even in the existing Constitutions of some of the leading countries of the world. We would certainly not be starting on a new track altogether, even if we were to make a provision of that kind. Given the history that we have, given the suffering that we have endured, given the exclusion of our own countrymen from our public service in all branches by the foreigners who ruled and distorted the requirements of country's advancement it would be, to me at any rate, not only nothing surprising, but nothing in proper if we do make a categorical and positive provision, making a clear exception in the case of those who have exploited and abused their position in this country.

However, Sir, we have been told on good authority that we should let bye-gones be bye-gones, and that we must forget the unfortunate past of this kind. I personally would not be responsible for reviving unpleasant memories, if we can overcome them. It is, therefore, I want to add a clear injunction, that only those born in India, and owing allegiance to this country, shall get any place of responsibility or trust in this country. I would not, indeed, lay it down in the Constitution negatively, *i.e.*, I would not require that no one born outside India shall hold any place of trust or responsibility, profit or power in this country, however justified one may feel from past experience. But while that amount of liberalism may well be shown even by us in spite of our memories, I should certainly think that the reservation I am suggesting is equally necessary, if not more so, *viz.*, that the responsible employment in places of trust available in this country should be reserved for the nationals of this country only. We have in the recent past been obliged to use powers of this kind against those who have discriminated against our nationals in their own jurisdiction. This might be difficult to do hereafter under the new Constitution if a provision of this kind remains in the Constitution, and there was no authority for us to make a discrimination of the kind I am conveying. I therefore think that there is nothing improper, that there is nothing out of order in making a suggestion that the places of employment, opportunities of service in the country should be reserved for the nationals of the country. I hope the House will accept it.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, I want to say a few words.

Mr. Vice-President: You can do it during the general discussion.

Shri M. Ananthasayanam Ayyangar: Sir, when you called out amendment No. 77 in List No. 2, I did not follow you. It also arises in connection with article 10. With your leave I beg to move:

"That with reference to amendment No. 338 of the List of Amendments........"

Shri H. V. Kamath: On a point of order. Sir, is the amendment now under discussion or the article and the amendments?

Shri M. Ananthasayanam Ayyangar: I am moving an amendment.

Mr. Vice-President: The position seems to be that, when I called out his name previously to move his amendment, Mr. Ayyangar's mind was elsewhere and he did not follow what was happening. He wants to move his amendment now. Am I right?

Shri M. Ananthasayanam Ayyangar: Yes, Sir, that is the position.

Mr. Vice-President: You can move it as a special concession. I hope I have the support of the House behind me.

Honourable Members: Certainly.

Shri M. ananthasayanam Ayyangar: Sir, with your permission, I beg to move--

"That with reference to amendment No. 338 of the List of Amendments:--

(i) in clause (1) of article 10, for the words "in matters of employment", the words "in matters relating to employment or appointment to office" be substituted; and

(ii) in clause (2) of article 10, after the words "ineligible for any" the words "employment or" be inserted."

This is only intended to clarify the position and also to include the word "office" so that it may be more comprehensive. This does not require any further elaborate speech. I request the House to accept this amendment.

Shri Jaspat Roy Kapoor (United Provinces: General): Mr. Vice-President, Sir, I beg to move:

"That in clause (2) of article 10, after the word 'birth' the words `or residence be inserted."

Thereafter the clause will read as follows:--

"No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth or residence, or any of them, be ineligible for any office under the State."

Sir, the object of my amendment is that every citizen of the country, where ever he might be living, should have equal opportunity of employment under the State. Every citizen irrespective of his place of residence should be eligible for employment under the State anywhere in the country. Sir, there being only one citizenship for the whole country, it should carry with it the unfettered right and privilege of employment in any part and in every book and corner of the country. A citizen residing in the province of Bengal, Madras, Bombay or C. P. should be eligible for employment in the U. P. and similarly a resident of the U. P. should have the right and privilege of employment in any other province of the country, provided of course he possesses the other necessary qualifications for the office. Every citizen of the country, Sir, I think, must be made to feel that he is a citizen of the country as a whole and not of any particular province where he resides. He must feel that whosesoever he goes in the country, he shall have the same rights and privileges in the matter of employment as he has in the particular part of the country where he resides. Unfortunately, Sir, for some time past we have been observing that provincialism has been growing in this country. Every now and then we hear the cry, "Bengal for Bengalis", "Madras for Madrasis" and so on and so forth. This cry, Sir, is not in the interests of the unity of the country, or in the interests of the solidarity of the country. We find that some provincial governments have laid it down as a rule that for employment in the province the person concerned should have been living in the province form any years.

One of the provinces, Sir, I am told, has laid it as a rule that they will employ only such persons as have resided within the province for fifty two years. I do not know how far it is correct. Possibly there is some exaggeration in the report that has been conveyed to me, butt he fact remains that provincial governments are being pressed by the citizens of the province to lay down such rules in order to prevent residents of other provinces from seeking service under that provincial government. I can easily understand a provincial government laying it down as a rule that only those who possess adequate knowledge of the provincial language shall be eligible for employment in the province. I can also understand, Sir, a rule being laid down that a person who wants employment in the province should have adequate knowledge of local conditions.

Mr. Vice-President: I am hearing other honourable Members more than the Member who is occupying the rostrum.

Shri Jaspat Roy Kapoor: I was submitting, Sir, that I can easily understand provincial governments, in the interests of efficiency of the services, laying it down as a rule that only those who have adequate knowledge of the provincial language shall have employment in the province. I can also understand their raying down that persons seeking employment in the province must have adequate knowledge of the local conditions. All that is easily understandable in the interests of efficiency of the services, but to lay it down as a rule that one should have resided in the province for fifty-two years to become eligible for employment seems to me, Sir, to be simply absurd. It a man of fifty-two seeks employment, he can serve only for three more years. I submit, Sir, that this is a tendency which must be checked with a strong hand. I, therefore, submit that in the matter of employment there should be absolutely no restriction whatsoever unless it is necessary in the interests of the efficiency of the services. The unity of the country must be preserved at all costs; the solidarity of the country must be preserved at all costs. We must do everything in our power to preserve the unity of the country, and the amendment that I have moved arms at this and is a step in this direction; and I, therefore, commend it for the acceptance of the House.

Mr. Vice-President: There are two amendments to amendment No. 340. The first is Amendment No. 81 in list III.

Shri K. M. Munshi (Bombay: General): I beg to move:

"That in amendment No. 340 of the List of amendments, in clause (2) of article 10, for the words `or residence' proposed to be inserted, the word `residence' be substituted."

This is a verbal amendment, because in the next phrase the words "or any of them" are used. This is just to bring the whole language of the clause to run in an appropriate way, I move this amendment.

Mr. Naziruddin Ahmad: Are not verbal amendments prohibited now?

Shri K. M. Munshi: It is for the Chair to rule whether this falls within this category or not.

Mr. Vice-President: I am very thankful to the honourable Member for the suggestion he has made. It will betaken into account. Mr. Munshi, you may go on.

Shir K. M. Munshi: That is all I want to say. It only eliminates the word `or' which occurs after the word 'residence' in the clause as it stands.

Shri Alladi Krishnaswami Ayyar (Madras: General): The amendment which I have the honour to move runs in these terms:

That with reference to amendment No. 340, after clause (2) of article 10, the following new clause be inserted:--

"(2a) Nothing in this article shall prevent Parliament from making any law prescribing in regard to a class or classes of employment or appointment to an office under any State for the time being specified in the First Schedule or any local or other authority within its territory, any requirement as to residence within that State prior to such employment or appointment."

The object of the amendment is clear from the terms and the wording of it. In the first part of the article, the general rule is laid down that there shall be equal opportunity for all citizens in matters of employment under the State and thereby the universality of Indian citizenship is postulated. In paragraph 2 of article 10, it is expressed in the negative, namely that no citizen shall be ineligible for any office under the State by reason of race, caste, sex, descent, place of birth and so on. The next two clauses are in the nature of exceptions to the fundamental and the general rule that is laid down in the first part of the article. Now what the present amendment provides for is this that in case of appointments under the State for particular reasons, it may be necessary to provide that residence within the State is a necessary qualification for appointment by and within the State. That is the object of this amendment and instead of leaving it to individual states to make any rule they like in regard to residence, it was felt that it would be much better if the Parliament lays down a general rule applicable to all states alike, especially having regard to the fact that in any matter concerning fundamental rights, it must be the parliament alone that has the power to legislate and not the different Units in India. Under these circumstances, I propose this amendment for the consideration of the House.

Shri H. V. Kamath: On a point of clarification, Sir, may I know from my honourable friend, Mr. Alladi Krishnaswami Ayyar whether the words here expressed "any State for the time being specified in the First Schedule" applies to all the four parts of the First Schedule"? The first Schedule consists of four parts. Three parts refer to the States and the last part refers to the Andaman and Nicobar Islands; and we have already adopted article 1 which states in sub clause (2) that "the States shall mean the states for the time being specified in Parts I, II and III of the First Schedule. May I know from him whether "any State for the time being specified in the First Schedule" means all the States and territories comprised in all the four parts of the First Schedule? In that case the language of this amendment will have to be modified. It will have to read "under any state or territory in the first four parts, I, II, III and IV of the First Schedule," and if you want to retain only the word `State', then it will be `under any state specified in Parts I, II and III of the First Schedule.'

The Honourable Dr. B. R. Ambedkar: It is quite obvious that we have not specified parts. We have merely said `First Schedule' and First Schedule includes all the States in the First Schedule.

Shri H. V. Kamath: Article 1 says `the States included for the time being specified in Parts I, II and III of the First Schedule.' The territories comprised in Part IV is not a State according to our Constitution.

The Honourable Dr. B. R. Ambedkar: There should be no attempt to make any distinction at all.

Shri H. V. Kamath: If my point is unanswerable, I have nothing to say.

Shri Alladi Krishnaswami Ayyar: If you only refer to the First Schedule, you will find that Part I refers to the territories known immediately before the commencement of this Constitution as the Governor's Provinces. Part II deals with the territories known immediately before the commencement of this Constitution as the Chief Commissioners' provinces, of Delhi, Ajmer-Merwara and so on. Part III deals with Indian States. All these three categories are referred to and described as `States' in Article 1. Part IV of Schedule 1 are Andamans and Nicobar Islands. These are not States but territories.

Shri H. V. Kamath: I do not know how you get over this difficulty; Andaman and Nicobar Islands is not a State.

Shri Alladi Krishnaswami Ayyar: The Andamans would be under the jurisdiction of the Centre and they will be part of the Central jurisdiction. There this principle as to residence within that particular locality does not apply to Andaman and Nicobar Islands. The idea is that so far as Andaman and Nicobar Islands are concerned, the Centre must have a free hand. So far as States in parts I, II and III alone are concerned they must be invested with the authority to provide `residence' within the State as a necessary qualification.

Shri H. V. Kamath: It will be consistent if you say 'under any State or territory comprised in Parts I, II, III and IV of the First Schedule,' or "any State specified in Parts I, II and III of First Schedule". Otherwise it will not.

Mr. Vice-President: I suggest that the House will kindly let me go on with the other amendments and in the meantime the honourable Member may go and try to persuade Mr. Alladi Krishnaswami Ayyar to accept his point of view. I think that is the most practical solution of our difficulty. *(Interruption).*

Mr. Naziruddin Ahmad: I suggest that as this is only a verbal amendment, the matter may be left over to the Drafting Committee.

Mr. Vice-President: Let me pass on the next amendment. We are not putting it to the vote just now.

Shri M. Ananthasayanam Ayyangar: Sir, I beg to move:

"That in clause (2) of article 10, after the word `ineligible', the words "or discriminated against" be inserted."

Sir, not only can discrimination be made at the outset when a person is appointed, but after the appointment takes place, he may be permanently kept in the first post which he occupied originally. In the matter of promotions etc., there may be discrimination. Ineligibility for appointment may not cover these classes of cases. Therefore, to make it clear and to give effect to the intention of the particular clause, the words "or discriminated against" are necessary. I request the House to accept the same.

(Amendment No. 343 was not moved.)

Shri Damodar Swarup Seth (United Provinces: General): Sir, I beg to move:

"That clause (3) of article 10 be deleted."

Sir, the reason for my submission is that though the clause on the face of it appears to be just and reasonable, it is wrong in principle. Who will not believe it, Sir, that reservation of posts or appointments in services for the backward classes means the very negation of efficiency and good Government? Moreover, it is not easy to define precisely the term `backward'; nor is it easy to find a suitable criterion for testing the backwardness of a community or class. If this clause is accepted, it will give rise to castism and favouritism which should have nothing to do in a secular State. I do not mean that necessary facilities and concessions should not be given to backward classes for improving their educational qualifications and raise general level of their uplift. But, Sir, appointments to posts should be only left to the discretion of the Public Services Commission, to be made on merit and qualification, and no concession whatever should be allowed to any class on the plea that the same happens to be backward.

Mr. Vice-President: Then, we come to amendments numbers 345 to 349. These are of similar import.

Pandit Lakshmi Kanta Maitra: (West Bengal: General): I am not moving amendment No. 345, Sir.

Mr. Vice-President: From amendments numbers 346 to 349,I have selected amendment No. 348 which stands in the name of Pandit Hirday Nath Kunzru.

Pandit Hirday Nath Kunzru: (United Provinces: General): Mr. Vice-President, Sir, I beg to move:

"That in clause (3) of article 10, for the words `shall prevent the State from making any provision for the reservation' the words `shall, during a period of ten years after the commencement of this Constitution, prevent the State from making any reservation' be substituted."

If this amendment is made, Sir, clause (3) would read as follows:

"Nothing in this article shall, during a period of ten years after the commencement of this Constitution, prevent the State from making any reservation of appointments of posts in favour of any backward class of citizens who........etc."

Sir, I am not in principle against the protection of the interests of classes that are at present unable to look after themselves unaided; but this article, as it is, presents several difficulties. In the first place, the word 'backward' is not defined anywhere in the Constitution. There is another article in the Constitution, namely article 301, that provides for the appointment of a Commission to enquire into the condition of the backward classes. But, it is stated there that only those classes will come within the purview of the enquiry that are educationally or socially backward. There too there is no enumeration of the classes to which the enquiry will refer. This article is even more indefinite. Whether any class is backward or not, should not be left to the law courts to decide. It is therefore our duty to define the term 'backward' so that there may be no dispute in the future about its meaning.

My second point Sir, is this. While granting protection to communities that have been left behind in the race of life, is it desirable that any special provisions laid down for them should operate indefinitely? Or is it desirable both in the interest of the backward classes and the State that any special provisions made for these classes should be of limited duration? It this article remains as it is and if reservation of appointment or posts can be made in favour of any backward class indefinitely, the State might come to think that it had done its duty by these classes by making this provision. I think and I believe that the House, if left to itself, would agree that it is desirable that the operation of such a provision should come under review from time to time so that we may be able to see whether the State had taken such steps as were necessary in order to lift these classes from their present position and enable them to compete on terms of equality with the other classes.

Sir, my third argument is that the provision with regard to the reservation of seats in the legislatures for the minorities, which must include the depressed classes and the scheduled tribes, according to the draft constitution is to be of limited duration. Now nobody can deny at the present time that a provision of this kind is necessary for these classes and it must be obvious to everybody here that representation in the legislature is of far greater importance than representation in services. If a community is represented in the legislature, its representatives can voice its demands from time to time and can see that any injustice done to that community either in the matter of appointment to posts or in any other matter is rectified. But if it ceases to be represented in the legislature, whatever protection might be granted to it in this or that matter, it will be in a far more helpless condition than if it were deprived of any other special aid. Now it has been provided in the Constitution that the reservation of seats for the minorities which include the scheduled tribes and depressed classes, who must according to any definition be regarded as backward, is limited to ten years. Article 305 lays down that the provision for the reservation of seats for the minorities which include the scheduled tribes and depressed classes, who must according to any definition be regarded as backward, is limited to ten years. Article 305 lays down that the provision for the reservation of seats for the minorities according to their population shall continue in force unchanged for ten years and no more. On the expiration of then years from the commencement of the Constitution this "provision shall lapse unless its operation is extended by an amendment of the Constitution. Now is it not desirable that a similar limitation should bell aid down in clause (3) of article 10 ? Indeed it can be applied with greater force to article 10 than to the reservation of posts for the minorities in the Central and Provincial administrations. If clause (3) of article 10 is to be in conformity with the scheme for the protection of the interests of the backward classes, I submit that it is not merely desirable but necessary that the amendment that I have proposed should be made.

Lastly, Sir, I should like to know what is the relationship between clause (3) of article 10 and article 296. Article 296 provides that the claims of minor it communities shall be taken into consideration consistently with the maintenance of efficiency in the administration in the making of appointments to services and posts in connection with the affairs of the Union or of a State for the time being specified in Part I of the First Schedule. Now in so far as clause (3) of Article 10 applies to all States specified in the First Schedule, the difference between it and article 296, which applies only to States specified in Part I of the First Schedule, is clear. But beyond that it is far from clear what the relationship between these two articles is. Article 296 relates to minorities. The claims of the minority communities can betaken into consideration in making appointments to services only on the ground that they are backward. Though it is the word `minority' that is used, in article 296 and the expression `backward classes' is used in article 10 (3), it seems to me that in fairness to the country protection can be granted to any class, whether you call it a backward class or a minority, only on the ground that it is backward and if left to itself, would be unable to protect its interests. This shows the need for clearing up the connection between the two articles that I have just referred to. Apart from this, I should like to know whether if clause (3) of article 10 were passed, it would be possible for sections within the various communities to ask for special protection for themselves in the matter of appointments to services or posts. It may be that if clause(3) of article 10 is passed, it will not be possible for the State to make any reservations in the services for minorities as such. But will it not be a temptation to sections of these and other communities to claim that they are backward in order to get the protection of clause (3) of article 10 ? Sir, I submit that we should have a system that would not encourage fissiparous tendencies and under which it will not be to the interest of any class to claim that it is backward. It is desirable therefore to limit the operation of any special protection that we may grant--protection of whatever kind--that its duration should be limited, so that the legislature may from time to time be able to see how it has worked and how the State has discharged its duty towards the protected classes. Unless this is done, I venture to think that article 10 would not be in conformity with the intention of the constitution tore move all those conditions on account of which special protection is necessary. We are all aware that when the Report of the Minorities Committee was considered by the House, the entire House was anxious that reservations of whatever kind should be done away with as quickly as possible. It was recognized that for the time being they were necessary, but it was insisted on that whatever protection might be considered necessary now, should be granted temporarily only, so that the population of the country might become fully integrated, and no community or class might be tempted to claim special advantages for itself. On these grounds, Sir, I venture to put forward my amendment though I have no doubt whatsoever, that it will not find favour with my friend Dr. Ambedkar.

Mr. Vice-President: The other amendments which are placed in the same category are Nos. 346, 347, and 349. I want to know whether it is proposed that I should put them to vote.

(Amendments Nos. 346, 347, 349, 350, 351 and 352 were not moved.)

No. 353 and 360 are of the same nature, and I would like to have them considered together.

(Nos. 353 and 360 were not moved).

Shri V. I. Muniswamy Pillay (Madras: General): I do not move amendment No. 353, but would like to make a statement.

Mr. Vice-President: You can do so during the general discussion.

Then we come to No. 354 to No. 357.

(No. 354 and No. 355 were not moved).

Mr. Aziz Ahmad Khan (United Provinces: Muslim): *[Mr. President. I propose:

That in clause (3) of Article 10 the word "backward" be omitted.

Sir, I would like to submit that at the time when the minority Report was submitted to this House, the word "backward" was not there and we had finally decided that it is unnecessary to include the word "backward". Moreover, if you look at the Draft Constitution, you will find that there are several articles of such a nature that, in case this amendment is not accepted, those articles become opposed to article 10; I refer to articles 296 and 299.

I have listened with attention the speech just delivered by Shri Kunzru. His object was to emphasise that under the new conditions created in India, if any protection is to be given, it could be given only to those particular classes of people who are educationally or culturally backward. Only such people require protection and not the minorities. In his opinion, no class or group as such requires any protection under the existing conditions. In my opinion, however, only those people require protection who have misgivings that in case protection is not given, their rights will not be preserved. I think that in case state services are monopolised by one particular class, then others might think that their existence has been ignored. This very idea will become a source of creating unpleasantness in the country. To my mind, therefore, this amendment is essential. I am of the opinion that in the new set up which we have to make in the country, we should neither create nor multiply differences. Nevertheless, it is a fact that due to the changes which we are introducting in the country, there are minorities who require protection. Safeguards should be provided for them and this can be done easily.

Sir, by article 296 such a safeguard has been provided and in article 299 also a similar provision has been made. I would like to submit that if as a matter of fact we are shaping this country in such a manner that there should not remain any difference, then it is necessary that there should not be any impediment that might create a feeling in the mind of an individual who has educational and citizenship qualifications that his claims are being ignored. Therefore, if this Article is not amended, then there will be doubts and misgivings among the minorities that they are being ignored. I do not say that it is necessary to recruit 20 per cent. Sikhs, 15 per cent. Christians or 15 per cent. Muslims in the public services of our country. I want only this much that if the Sikhs, the Muslims, the Christians and similar other groups living in the country, have educational and other requisite qualifications, then their claims should not be overlooked. Therefore, I think if this word be deleted from this article, then we shall not be accused of overlooking the claims of any particular class. To my mind if the word 'backward' is deleted, then the hand of the Government will be strengthened in such a way that it will enable the Government from time to time to make adequate arrangement sin case the claims of any particular group are overlooked in public services. I think that this article would fetter the powers of the Government so tightly that they will not be able to remove the defects and the differences which exist today and they will continue. On these grounds, I hope that the

House will accept this amendment which is certainly inconsonance with the Minority Committee's Report.]*

Mr. Vice-President: There is an amendment to this amendment, that is No. 43 of List No. 1. I see it is not going to be moved. Then there is amendment No. 357 standing in the name of Shri Shankar Rao Deo and Acharya Jugal Kishore; they are not in the House. We next come to amendment No. 358 which is a verbal amendment. I can allow amendments Nos. 359, 361 and 362 to be moved. No. 359 is in the name of Shri Ranbir Singh, he is not in the House. Then comes No. 361--Shri Lokanath Misra.

Shri Lokanath Misra: I am not moving .

Mr. Vice-President: Then 362 stands in the names of Dr. Pattabhi and others. They are not moving it. Then No. 363 in the name of Prof. Shah. The second part of this amendment and amendment No. 366 are the same.

Prof. K. T. Shah: Sir, I beg to move:

"That in clause (4) of article 10, after the words `in connection with' the word `managing' be added, and the words or denominational' and `or belonging to a particular denomination be deleted."

The amended article as suggested by me would read:--

"Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with managing the affairs of any religious institution or any member of the Governing Body thereof shall be a person professing a particular religion."

The other words would be deleted.

As I understand the purpose of this article, I think what is wanted is that any exclusive religious institution, specifically concerned with a particular sect or denomination, should be conducted by people professing that religion, sect or faith, and that none not so professing should be allowed to be associated with the management of it. If you use the very much broader words, that is to say "in connection with"--"any person holding any office in connection with"--I venture to think that those words may also include any *honorary* office or a mere place of honour in recognition of some donation, or some special gifts or some other service, which it would not be right and proper should go wholly unrecognised for mere reasons of difference in religious belief, especially if such institutions are conducting or having other activities besides merely religious or sectarian.

As illustration, may I give this. I can conceive of, let us say, educational institutions like universities or hospitals or other similar foundations, which may be regarded as devoted to or connected with a particular religion, in the governance of which a provision like this, without the amendment I am suggesting, may work needless mischief. In those bodies the mere holding of an honorary fellowship, or senator ship, or some kind of an honorary lecturer ship should not be excluded. I am sure it was not the intention of the draftsmen to exclude such merely honorary connection. But I feel that their wording, as it stands, is liable, at least in the laymen's judgment, to be misconstrued; and at times offer opportunity to extra-clever lawyers to make new capital out of such provision.

So, I for one would not like to leave any room for the exercise of such ingenuity at the expense of the Community, or of the interests or the ideals which we are accepting here. In making provision of this kind, it seems to me, if I may make a general observation, that the draftsmen seem to be torn between two rival ideals: one suggesting the Constitution for a wholly secular State, in which religion has no official recognition, and therefore trying to make, so far as the civic life of the community is concerned, no provision or distinction in favour or in connection with a religion sect or a denomination.

On the other hand, there seems to me to be a pull--somewhat sub-conscious pull, if I may say so--in favour of particular religions or denominations, whose institutions, whose endowments, whose foundations, are sought to be protected and kept exclusive by making exceptions of this kind. After all, this clause (4) is an exception to the main principle of the article; and, being an exception, it seems to secure immunity or exclusiveness for the management of the institutions of particular denominations, which the draftsmen somehow sub-consciously have sought to provide. That is to say, without denying the basic principle of a secular State, they have introduced by the back door so to say new amendment or exceptions, which seem in my eyes to take away the spirit of the whole provision as contained in this article.

I think, therefore, that if it was made clear by the addition of the words that I have suggested, namely, that no one not professing a particular religion need be associated with *managing* the affairs of that institution it would suffice. It would serve the purpose, if such purpose is to be served, of the original Foundation; and at the same time it would give you all the safety, all the unconcern, if I may put it that way, of a State which favours no particular religion.

There is nothing objectionable in my amendment that I can see, though I shall listen with interest to any opposition or objection which the draftsmen or their champions may have. Until they say so, and convince me to the contrary perhaps it would be just as well to commend this amendment with these words to the House.

(Amendment No. 364 was not moved.)

Mr. Vice-President: No. 365 is verbal and is disallowed.

(Amendments Nos. 367 and 368 were not moved.)

Mr. Vice-President: Regarding No. 82 on list II, there was some objection raised by Mr. Kamath.

The Honourable Dr. B. R. Ambedkar: He is satisfied with the explanation given by Mr. Munshi.

Shri H. V. Kamath: No, Sir. It has not removed my difficulty. It has not removed the doubts in my mind. Let them explain again, if they can. I do press my point.

The Honourable Shri Ghanshyam Singh Gupta (C. P. & Berar): The point raised by Mr. Kamath is really ticklish and it requires some consideration. There seems to be no doubt about it. Now, Sir, the amendment reads thus:

> "Nothing in this article shall prevent Parliament from making any law prescribing in regard to a class or classes of employment or appointment to an office under the State for the time being specified in the First Schedule or any local or other authority within its territory any requirement as to the residence within that State prior to such employment or appointment."

Now, the word "State" occurs in two places in the Draft Constitution. One is in Article 1 and the other is in Article 7. The meaning of the word state in Article 1 is comprehensive and mostly relates to the territorial side of it, and in Article 7 it relates to the authoritative side of it, the Government part of it. I shall read the latter: Article 7 says:

> "Unless the context otherwise requires, the State includes the Government and the Parliament of India and the Government and the Legislature of each of the States and of local or other authorities within the territory of India or under the control of the Government of India."

So article 7 which defines the word "State" does not define the territory but it defines the authority of the State. Article 1 defines the territory of the State. The amendment speaks of both. So, when we say employment or appointment to an office under any State, there we say the authority of the State; so there is nothing wrong because article 7 would mean all the territories of the States in Schedule I. As soon as we say that "In this part, unless the context otherwise requires, the State includes all........"so far as this article 7 is concerned, the whole of Schedule I is covered and there is no doubt about it. Then, Sir, article 10 refers to appointment to an office under the State,--there is nothing wrong because here "under the State" means as defined in article 7, and because the definition of article 7 covers the whole of the State including the territories in the First Schedule. That is all right. But when we come to the other part of it, as to residence within that State, there the rub arises. The residence cannot be in the authority; the residence must be in the territory and therefore we cannot invoke Article 7;we must necessarily go to Article 1 and when we go to Article 1, therein part (4) of Schedule I becomes excluded. This is my point.

Mr. Vice-President: Before we start the general discussion, I would like to place a particular matter before the honourable Members. The clause which has so long been under discussion affects particularly certain sections of our population--sections which have in the past been treated very cruelly--and although we are today prepared to make reparation for the evil deeds of our ancestors, still the old story continues, at least here and there, and capital is made out of it outside India. Every time we seek to place discussions in the international sphere on a high plane, it is at once thrown in our teeth that we have been treating certain sections of our brethren in a very unjustifiable way. I would therefore very much appreciate the permission of the House so that I might give full freedom of discussion on this particular matter to our brethren of the backward classes. Do I have that permission?

Honourable Members: Certainly.

Mr. Vice-President: I will first call upon Mr. Gurung.

Shri H. V. Kamath: Before you proceed to the discussion of the article, won't you finalise the amendment of Mr. Alladi Krishna Swami Iyer? The difficulty raised by me has not yet been answered.

Mr. Vice-President: That will be taken up later on.

Mr. Naziruddin Ahmad: I have a preliminary matter. This contravenes some amendment which has already been accepted. There is in line 3 in amendment No. 82 the expression "any State." We have accepted the expression "the State."

Mr. Vice-President: I cannot permit you to speak now. Mr. Gurung may speak.

Shri Ari Bahadur Gurung (West Bengal: General) Mr. Vice-President, I thank you very much for the opportunity given me to speak on this occasion. I am particularly happy to note the provision in clause 3 of this article which says.

"Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens who, in the opinion of the State, are not adequately represented in the services under the State."

Sir, may I take it that the word `backward' includes three categories of people, namely Scheduled Castes, and Tribals and one particular class which is not included so far, under the term `backward' although it is educationally and economically backward? If I may say so, Sir, 90 percent. if not more of the Indian people are educationally and economically backward; the meaning of the word `backward' seems to be vague to me. I feel I shall be failing in my duty to a particular section of the Indian people, *viz.*, the Gurkhas, if I do not voice their feeling at this stage.

The Gurkhas, I must bring to the notice of the House, are three millions, if not more, domiciled in India. They are educationally and economically backward. I feel that the Gurkhas who are domiciled in India should have the same privilege as other backward communities in India. Sir, it is a known fact that the Gurkhas have played their part in the preservation of the independence of India and are now actually fighting in Kashmir after fighting in Hyderabad. They have had their share of the work in the preservation of India's independence. I assure the House that the Gurkhas who are now domiciled in India owe their full allegiance to the Indian Government. There had been a deep-rooted suspicion in the minds of many that the Gurkhas owe allegiance to the Government of Nepal. Today, on the floor of the House, I assure you that the Gurkhas who are domiciled in India owe allegiance to the Government of India and not to the Government of Nepal. These Gurkhas will not hesitate to shed their last drop of blood to preserve the independence that we have got.

There has been a very good gesture since the 15th August 1947 regarding the Gurkhas. When the Britishers were ruling in India, the Gurkhas were given only Viceroy's Commissions in the Army, but since 1948, many Gurkhas have been given emergency commissions as officers and I understand some of them have risen to the rank of Colonels too. This grant or recognition has been a very good gesture.

Now this clause in article 10 makes a provision in favour of the backward classes of citizens who in the opinion of the State are not sufficiently represented in the services of the State. Today, I feel that the Gurkhas who had their opportunity to serve in the army and are educated, with this provision, may be taken to the civil side of the administration. I hope that the Gurkhas who have shown their bravery and valour in the army would show equal intelligence and integrity in the civil departments.

Thank you very much, Sir.

Shri R. M. Nalavade (Bombay: General): Mr. Vice-President, Sir, I am very glad to express the support of the depressed classes to article 10 which is now under discussion. In this article, particularly in clause (3) there is provision made for reservation in the services for the backward classes. But the words 'backward classes' are so vague that they could be interpreted in such a way as to include so many classes which are even educationally advanced. They are found mentioned in the list of backward classes. If the words `Scheduled Castes' might have been used it would have been easier for the depressed classes to get adequate representation in the services. Our experience in the provinces, though there are provisions for reservation in the services, is bitter. Even though the depressed classes are educated and qualified, they are not given chances of employment under the Provincial Governments. Now that we have provided for this in the Constitution itself, there is no fear for the Scheduled castes. According to this clause we can be adequately represented in the provincial as well as in the Central services. I therefore support this clause on behalf of the depressed classes.

Dr. Dharam Prakash (United Provinces: General): *[Mr. Vice-President, it is an undoubted fact that "backward" class has not been defined so far and there is no possibility of its being defined in the near future. In fact there is no community which does not have a section of people which is backward, whether economically or educationally or socially. Thus there are backward people in every community. Personally I believe that if there is to be any reservation for backward classes in the services it is very necessary to see as to what is the present position and what is to be the future of a particular class which has been backward for centuries, whether religiously or economically or socially. This view needs careful consideration.

The first objectionable feature of this clause is that it can be instrumental in bringing about a great crisis even in the present circumstances. Every honourable Member knows that our national government has inherited an administrative machinery which always had a very narrow communal, provincial or religious outlook. Even now it is an undeniable fact that whenever the question of reservation in services arises, the people of any province holding a majority of posts or the person holding any office are led by provincial or individual interests in making appointments. If the person concerned belongs to the province of the officer he is favoured from the provincial point of view. If he belongs to his community, he is favoured from the communal point of view and if he belongs to his caste, sub-caste or section, he is favoured from that point of view. The officer does not take into consideration the merit of the candidate but only sees whether he can serve his interest. Therefore he encourages such people alone to join the services. It cannot be expected of this machinery of the old pattern, which is moving at its present speed with great effort, that it will act impartially in making appointments to the services. This is a great danger and to remove it, I think, it is necessary to clarify impartially as to who are the backward classes. This may remove the difficulty. The atmosphere in the country today is such as compels us to demand reservation not in the services but also in the Legislatures. Otherwise I am of the opinion that in a country, which has become free and the constitution of which is being framed with full freedom, there is no necessity for reservation. But the great difficulty which forces us to make a demand for reservation is that there is no such generosity and impartiality in our society as a society needs for its welfare nor is there any possibility of its being there in the near future. Therefore, as it has been suggested by the amendment, I submit that the words 'backward class' should be substituted by `depressed class' or `scheduled class' because the latter have a definite meaning. Among the scheduled castes have been included an umber of those classes which are accepted by all to be backward. Therefore I support this amendment in the form that the words `backward class' should be substituted by the words `scheduled caste.' I think that reservation in services too is necessary for them for some time. Otherwise I do not even like to have any reservation in the legislatures. I personally hold the view that in this free country it is not proper to make reservation for Hindus, Muslims, Christians and Sikhs on the ground that they are minorities. But in so far as that section of Hindus is concerned who are called Harijans, and they are really backward,--it appears to be appropriate that there should be reservation for some time. That too should be for some time only. When they reach the same level of culture as other sections of the population have, I would be the first person to oppose any reservation whatsoever for them. So long as they do not attain that position, I favour reservation. Therefore, I submit that with the addition of these words reservation in services will prove to be useful instead of being harmful.]*

Shri Chandrika Ram (Bihar: General): *[Mr. President, I rise to express my support for article 10. Several amendments have been moved for inserting the words "Scheduled Castes" after the words "Backward classes" in this article. I would like this to be done. Members are perhaps aware of the fact that the question of reservation for Depressed Classes and Scheduled Castes was discussed by the Advisory Committee but it was lost by a single vote. Otherwise there would have been, legally binding provisions for reservation in services for the Harijans. But as it is, I find that people are wondering why the expression "Backward Classes" has been put in this article and why is it that `Backward Class' has not been properly defined. The members of the House who have had occasion to go through the Census Reports specially of the years 1921 and 1931, would have found that the expression `Backward Class' has, in away, been defined therein. So far as I think, and this opinion is borne out by these Reports, our society is divided into three sections--The highest consisting of that section of our society which is known as `Caste Hindus' and the lowest of the section known as Scheduled Castes or Harijan, while the third occupying a middle position between these two and consisting of a large portion of our people is what may be termed as the Backward Class. I am sorry that this backward class for whose cause Honourable Pandit Hirday Nath Kunzru has pleaded, has not been given reservation in Legislatures, that is neither in the assemblies nor in the councils. I may cite Bihar as a casein point. According to the Census Report, the backward class constitutes a major section of the population of the province. But you will find that with the only exception of Ahir community no other community has been given representation in the Council or Assembly of the province. Their population in the province is about five millions. There are altogether 152 seats in the Assembly and 30 seats in the Council; but in both the Houses the Backward Class has got only two seats. No doubt they are not treated as untouchables. Moreover from the educational and economic point of view they are in a much better condition than the other communities. If a community, however, is to progress and occupy a high position in society it is essential that it must possess political rights. If a community, howsoever large it may be within a society and whatever pre-eminence it may have reached in the matter of its culture, does not possess political rights and has also no political representation in the Council and the Assembly, I am afraid, I cannot see how it can have the same status as the other communities in the eyes of the State. I, therefore, think that just as we have provided for reservations for the Harijans in Services, in Assemblies and in Councils, it would be proper on our part to make similar provision for backward classes also for whom Pandit Hirday Nath Kunzru has argued so feelingly. We have provided so many privileges to Harijans on the ground that they are backward and I fail to understand why the same argument should not be applied for providing reservations for the backward classes. I think that this is a view requiring serious consideration. We are framing a constitution for our country by which we intend, and this has been specifically stated in the preamble, to secure to all citizens `Justice, social, economic and political.' But I think that we are actually denying political rights to a large section of our countrymen who constitute in my opinion, a majority of the population. We profess to be providing equal opportunity to all but in fact we are denying this to the backward classes. Therefore, if we really mean to secure equal opportunity to all we should, in article 10, not only provide for reservation of appointments or posts in favour of backward class of citizens but should also provide for reservation of seats in Legislatures for them. I would like to answer the objection of many members against the retention of the words 'backward class' in this article.

Particularly my socialist friends Seth Damodar Swarup and Pandit Lokanath Misra have moved amendments seeking deletion of the word `backward class.' The first observation I would like to make in this connection is that I do not understand why Sethji who is a member of the Socialist Party, which, as is well known, desires to secure representation for every section of the population, should be raising an objection against the provision in this clause which is for the benefit of the `Backward Class.' To those who think that no backward class exists in the country, I would only say that they are blind to the facts of the history of our country, to the progressive society of today and to the conditions obtaining at present. I therefore commend wholeheartedly the lab ours of the Drafting Committee in this respect. With these words, Sir, I support the amendment as it is.]*

Shri P. Kakkan (Madras: General): Mr. Vice-President, Sir, I am very glad to support article 10. The poor Harijan candidates hitherto did not get proper appointments in Government services. The higher officers selected only their own people, but not the Harijans. Sir, even in the matter of promotions, we did not get justice. The Government can expect necessary qualifications or personality from the Harijans, but not merit. If you take merit alone into account, the Harijans cannot come forward. I say in this House that the Government must take special steps for the reservation of appointments for the Harijans for some years. I expect that the Government will take the necessary steps to give more appointments in Police and Military services also. For example, in Kashmir the poor Harijans are fighting with great vigour. I say in this House that the Harijans must be given more jobs in this Government and be encouraged by the Government. With these few words, finish my speech, Sir.

Shri V. I. Muniswamy Pillay: Mr. Vice-President, Sir, in the first two clauses of article 10, it has been made clear that all citizens will have a general right for the services, but when we come to clause (3), by putting the word `backward' which has already been pointed out by one of the honourable members, it has not been defined properly. So this throws me in confusion, whether the communities that were left out early in the administration for their due share have been provided for. Sir, in the great upheaval of making a Constitution for this country, I feel that the communities that have not enjoyed the loaves and fishes of the services should not be left out. It is for this purpose, I gave notice of an amendment and a further amendment signed by more than fifty members has been presented to this House, but for reasons well-known to you, Sir, I could not move that amendment. But I wish to make it clear that unless there is an assurance that these communities--I specially mean the Scheduled castes--are given a chance, unless there is an assurance that these communities will at all times betaken into account and given enough and more chances in appointments, their uplift will still stand over. The other day, Sir, our Honourable Deputy Premier, Sardar Patel, has clearly said that not only justice must be done to the Harijans, but their case must be treated with generosity. It is in that view and spirit I request that a clear indication should be given by this House that the interests of the Scheduled Castes will be looked after. Sir, some honourable Members feel that reservation is not necessary. I think this is unwholesome thinking, because so long as the communal canker remains in the body politic, I feel there will be communities coming up for reservation; but the case of the Scheduled Caste is not pleaded on a matter of communalism, because they have been left in the lurch and due to their lack of social, economic and educational advancement for years and decades it is necessary, and I also feel that their case must be presented in this House vehemently, so that we may get justice at all times. At the same time I may tell this House that it is not the object of any of the leaders of the Harijan community to perpetuate the communal bogey in this land for ever, but so long as they remain so backward in getting admission into the services, it is highly necessary that they must be given some protection. Sir, in the past, the Government of India had made provision experiencing their inadequacy in the services; and even in my own province the Government of Madras have issued a communal G. O. and thereby they have given chances for the Harijans. Apart from that all those people who have been recruited from the Scheduled Castes have proved worthy of the choice. If I may say so, Sir, even in the Military, we know that in Kashmir they have played their part most efficiently and the very existence of the Chairman of the Drafting Committee here shows the ability that the Scheduled castes posses.

Shri T. Channiah (My sore): Mr. Vice-President, Sir, the retention of the word 'backward' in clause (3) of article 10 has created some doubt among honourable members from the Madras province. It is a fact, of course, Sir, that the word 'backward' has not been specifically defined in the Draft Constitution. Honourable Members coming from Northern India have been puzzled to note that honourable members coming from the south are very particular about this word 'backward'. In Northern India, for instance, the honourable members coming from Northern India are aware that there is a clear distinction between Hindus and Muslims; that much they understand very clearly. They also know that among the Hindus there are classes of people who are agricultural classes, and also people who are engaged in artisan works. They also belong to the backward class. In South India, Sir, the term `backward classes' is very distinct. The Backward classes in South India, as I am aware, are either socially backward or educationally backward. The only classes who do not fit in this context namely clause (3) of article 10 are those who are economically forward. They feel that the word backward, if retained, will come in the way of their interest, namely, entertainment of these classes in the services. Therefore, Sir, the backward classes of people as understood in South India, are those classes of people who are educationally backward, it is those classes that require adequate representation in the services. There are other classes of people who are socially backward; they also require adequate representation in the services The economically forward class of people are really disinterested in the word `backward' appearing in clause (3) of article 10.

To give a clear picture of this, Sir, I would like to state what obtains in Mysore. There are two classes of vacancies, A and B classes. For the A Class vacancies, both the Brahmins and the Non-Brahmins are competent to apply, whereas for the B class vacancies, only the backward classes are entitled to compete. Sir, these backward communities suffer from two disabilities, namely, social disabilities and educational disabilities. It is from these two points of view, that the State Government has specifically provided the appointments in the B class. Therefore, Sir, it is but right that the word "backward" appearing in clause (3) of article 10 should be retained. As the Honourable Dr. Ambedkar has rightly said, the retention of the word 'backward' will be very appropriate also for this reason, namely, that clauses (1) and (2) of article 10 would be null and void if this word `backward' is not retained in clause(3) of article 10.

Mr. Vice-President: Sorry, there are other speakers who want to speak.

Shri T. Channiah: I am really sorry that the honourable Pandit Kunzru should have felt that the backward class should be given this opportunity only for a period of ten years. Sir, I want this reservation for 150 years which has been the period during which opportunities have been denied to them.

Mr. Vice-President: Mr. Channiah, will you please go to your seat?

Shri Santanu Kumar Dass (Orissa: General): *[Mr. Vice-President, it is not my desire to say anything in connection with Backward classes which are being discussed here. The evil effects of foreign rule in our country prevent us from immediately deleting all provisions relating to Reservations from our Constitution. So long as these conditions continue in our country we will continue to demand reservations in the services for the Harijans and the scheduled castes, for these are covered by the term `backward class'. We will goon scrutinising the number of Harijans, Muslims and Christians in the services. Nowadays a minority fears that without reservation it would not be able to gain seats in Elections or employment in services. You know that there are many vacancies in the Railway and Postal Departments. These posts are advertised. We receive interview letters and our candidates come from distant places for interview, but their cases are not at all considered and they are totally ignored, whereas those who have been working as apprentices are selected as they have a strong backing from their departments. What do we gain by these advertisements? When there is a chance we are ignored. Then, why do you advertise at all? Is it only to please Panditji or Sardarji?]*

Mr. Vice-President: You are wandering from the point.

Shri Santanu Kumar Dass: *[This also puts the gazette officers of the scheduled castes and minority community into difficulty. Seth Damodar Swarup has just said that there is no need for reservations as Public Service Commission would secure impartiality. But in this connection I would like to point out that though there is a Public Service Commission, and candidates appear at its examination and many of those who qualify appear in the lists, yet when there is a chance of filling posts those who have not even appeared at the examination are taken in. How does it happen? It happens because such people have a strong backing which enables them to get selected. I am afraid the continuation of Public Service Commissions would be of no use for us.

At present there is reservation in the elections and thereby we get a chance to discuss our problems here. But If there was no such reservation it would not be possible for us to come here as we would not be able to win in the general elections. I therefore, submit that there should be reservation in services and elections.

There is one thing more: It has been said that reservation should be kept for ten years. Why only for ten years? If we get equal rights within two years all would be on the same level after that period and there would be no need for reservations. With these words I support the article.]*

Shri Jaspat Roy Kapoor: Sir, may I submit that many of us do not appreciate the Marshal going to the speaker and asking him to resume his seat?

Mr. Vice-President: I am sorry for what the Marshal did; but it was not at my request. He is over-zealous.

Shri H. J. Khandekar: (C. P. & Berar: General): Sir, may I request you one thing with reference to the time limit? The speakers here are mostly Harijan speakers and they require some time to explain the situation. I would therefore request you to increase the time limit so that they can explain and support this article very well.

Mr. Vice-President: Yes.

Shri H. J. Khandekar: Mr. Vice President, Sir, I have come here to support article 10 which is being discussed in the House. Before supporting it I congratulate the friend who in the Drafting Committee has inserted this word 'backward' in article 10 clause (3). If this word `backward' had not been here, the purpose of the scheduled caste would not have been served as it should be. The condition of the scheduled castes has been explained by many friends who made their speeches in the House. The condition is so deplorable that though the candidates of the scheduled castes apply for certain Government posts, they are not selected for the posts because the people who select the candidates do not belong to that community or that section. I can give so many instances about this because I have got the experience from all provinces of the country that the scheduled caste people though they are well qualified do not get opportunity and fair treatment in the services. It would have been better If the word `scheduled caste' as has been proposed by an amendment by my friend Mr. Muniswamy Pillay would have been inserted in this article. Because the term `backward' is so vague that there is no definition of this word anywhere. I do not agree with my friend Mr. Chandrika Ram saying that the definition of the word `scheduled caste' and a list of the castes included in the scheduled caste. But I think the friend who has inserted this word in this article is aiming at the community known as the scheduled caste and when this Constitution is passed and when the article comes into operation, I hope that the Executive who will operate this clause or this Constitution will also aim at the community known as scheduled castes. Our revered leader Thakkar Bapa is in the House. He has been working for this community for about sixteen years as the General Secretary of the Harijan Sewak Sangh. He knows the difficulties of this community socially, economically, educationally, religiously and even politically. If I may say here leaving aside all these aspects, and if we consider the aspect politically, this community is not represented anywhere if no reservation of seats are given to that community.

Mr. Vice-President: You had better confine yourself to the article under discussion. How does politics enter into the picture at all?

Shri H. J. Khandekar: Therefore, if I leave aside the political aspects of the community and come to the social, educational, economical and religious aspects, the condition of the scheduled caste in this respect also is more deplorable than that of any man living in this country. I may say, that if a candidate of the scheduled caste applies for a particular post in the Government of India or in the Provincial Governments he is ordinarily ignored. There are commissions for recruiting these candidates. There is a Federal Public Service Commission, there are provincial Commissions; and while recruiting--you know, Sir, we people are educationally backward and we cannot come in competition with the other communities--If the qualifications for the Harijan candidates are not relaxed, our candidates will not be able to compete with the candidates of the Brahmin community or the so-called Savarna Hindus. Then if our candidates go to the F. P. S. C. or the Provincial Commissions they will not be successful in the selections as these commissions are not represented by us. I therefore think that while bringing this clause into operation, the F. P. S. C. or the Provincial Commissions should be instructed to relax the qualifications in connection with the Harijan candidates or the Scheduled Caste candidates and there should also be Harijan representatives on these commissions. Moreover, Sir, I know and the House and you too, Sir, know that the Government of India--I mean the present Government of India--has issued a circular about the services for the Scheduled caste. They have said that in higher services 12 1/2 per cent. of the seats are reserved for the scheduled caste and in the lower services 16 1/2 per cent. are reserved for them.

Sir, if you just see how the recruiting of Scheduled castes candidates is going on in practice, you will find that not even 1 per cent. of these candidates has been recruited in the higher services and in the lower services of the Government of India. Look at the Provincial Governments that have been run by our popular ministries. Even in those provinces, the scheduled castes have no adequate representation in the services. I, therefore, would have been very glad if after or before the word "backward", the word "scheduled castes" had been inserted, because this term `backward' is a vague one and while making the selections, communalism will arise and the commissions, I do not blame them, will be helpless. As was said here by certain friends of mine, communalism is going on, and provincialism is going on and other things are also going on and I am afraid if these things are continued, even if this clause is brought into operation, the scheduled castes will never get a chance, as the word `backward' would be interpreted in such a way that we people would get no chance in the services because the people of other castes will also claim to be backward and get the chances on reserved posts. Therefore, Sir, before resuming my seat, I would request you to see that the machinery which will operate this clause should be so pure, that no discrimination of any sort should be made between scheduled castes and other people who come under the category of backward classes. With these words, Sir, I take my seat.

Mr. Mohamed Ismail Sahib (Madras: Muslim): Mr. Vice-President, Sir, this word `backward' I cannot understand in the context in which it is put here in clause (3) of article 10. If one reads the clause without this word, then one can quite clearly and easily understand its meaning. But when the word `backward' is inserted, it obscures the meaning a great deal. The word `backward' has not been defined at all anywhere in this Constitution. But I may tell you it has been defined in certain places. In Madras it has got a definite and technical meaning. There are a number of castes and sub-castes called backward communities. The Government of Madras have counted and scheduled more than 150 of these classes in that province and in that province when you utter the word `backward', it is one of those 150 and odd communities that is meant, and not any community that is generally backward. And I may also say that those 150 and odd communities constitute almost the majority of the population of that Province, and every one of these communities comes from the Hindus--the majority community. In that list the scheduled castes are not included, and if you include the scheduled castes also in the class of those backward communities, then all of them put together, will form decidedly the majority of the whole population of that province. I want to know whether by inserting the word `backward' here you mean the same backward classes as the Madras Government means, I want to know the meaning of the word. I submit that it should not in any way be taken to mean that the backward classes as those of the minor it communities such as Muslims, Christians and the Scheduled caste people are excluded from the purview of this clause. As a matter of fact, there are backward people amongst then on-majority people as well. The Christians are backward. As a matter of fact they are not adequately represented in the services of the provinces. So also the Muslims, and also the Scheduled Castes. If any provision is made, it has to be made for such really backward people. It may be pointed out that such a provision is made in article 296 under the minorities rights. It at there the article does not speak of the reservation for those people in the services as this clause (3) does. Therefore, it is here, and that in the fundamental rights that such a provision ought to be made for such minorities as the Muslims, Christians and the Scheduled Castes.

Then Sir, I am opposed to the amendment moved by Pandit Kunzru. He says that the Government shall have the right or option of providing for reservation only for a period of ten years. Sir, the measure or yard-stick in any such matter should not be the period of time. The backwardness of the people is the result of conditions which have been persisting and in existence for several centuries and ages, and these will not die off easily. So the measure really should be the steps that are being taken to liquidate that backward condition, and it should be the forwardness of the people which has resulted as a consequence of those steps. Therefore, when these people advance and have come forward as much as any other community in the land, then these very reservations would automatically disappear. I feel that no period need be stipulated at all for this purpose. That period might be less than ten years, or it may be more than ten years, according as the backwardness persists or disappears. The measure, as I said, should be the effect and result of the steps that are being taken for removing and eliminating those conditions which go to make the backwardness. I would now request the mover of the motion to at least remove the word `backward' and make it clear to the House that here, when the clause speaks of reservation, it means also minority communities, who stand in need of such reservations.

Sir, there is only one more point which I have to touch upon. When we speak of reservations and rights and privileges, the bogey of communalism is being raised. Sir, communalism does not come in because people want their rights. When people find that they are not adequately represented, they rightly feel that they must have due representation and then such a demand comes up. It comes because of their non-representation in the services, and because of their discontent. When such discontent is removed, the unity of hearts comes in. It is the unity of hearts and not any attempt at a physical unity that will do good to the country and to the people. The differences will be there, but there must be harmony and that is what we all really want, and that harmony can be brought about only by creating contentment amongst the people. And reservation in services is one of the measures we can adopt to bring about contentment among the people. You can then say to the people, "Look here, you have your proper share in the services and you have nothing to complain." When people themselves find that they are given as good an opportunity as others, harmony will be there and the so-called communalism will not come in at all. There are countries which have followed the procedure which I am advocating and quite effectively, they have eliminated communalism. Therefore, I say that one of the ways of removing disharmony and producing harmony, is to make provision for the people's representation in the services and to make them feel that they have got a real share and an effective share in the governance of the country.

Sardar Hukam Singh (East Punjab : Sikh): Mr. Vice-President, Sir, the point that I want to press before this House has already been touched upon by one or two Members. The Honourable Pandit Kunzru has said that he wants to enquire what relation there is between article 10 and article 296. Certainly if we take article 10, clause (1), it is laid down there that "there shall be quality of opportunity for all citizens in matters of employment under the State". That would mean that when posts are to be filled, that would be done by open competition and the topmost men would be taken in. That is quite all right; that should be the procedure.

But when we look at articles 296 and 297, those two articles lay down that claims of all minorities shall betaken into consideration:--

> "Subject to the provisions of the next succeeding article the claims of all minority communities shall betaken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments........"

To me it seems that there is some conflict between these two articles. If we are to fill up these posts by open competition and on merit, certainly we cannot give recognition to the claims of all minorities. Then the best men would be taken in and if some members of the minorities do happen to succeed, that would not be on the consideration of their claims as minorities but that would be under article 10 as equal citizens of the State. If they get those posts in open competition, it is all right; but if they are not adequately represented by that method, then what article296 implies is, that special consideration shall be shown to them to see that their representation is made up.

Sir, there can be only one of these two things--either there can be clear equal opportunity or special consideration. Article 10 says there shall be equality of opportunity, then it emphasises the fact by a negative clause that no citizen shall be discriminated on account of religion or race. It is quite good, but when no indication is given whether this would override article 296 or article296 is independent of it, we are certainly left in the lurch. What would be the fate of the minorities?

In clause (3) this new phrase "backward class" of citizens has been introduced. We had heard of "depressed classes", "scheduled castes", but this "backward class of citizens", so far as our part of the country is concerned, we have never seen used in any statute. Just now we have been told that "backward classes" have been defined in the Province of Madras; that may be, but that is not within my knowledge. Whereas this new term has made apprehensive the members of the scheduled castes and they have pressed here that it should be made clear that it only applies to them, if it is for their benefit, at the same time it has made the minorities apprehensive whether they are being included, as Pandit Kunzru said, whether "backward classes" would include those minorities as well, whether if they are not adequately represented any concession would be shown to them; and If they are not to be included in this phrase then what would be their fate under article 296. Unless we reconcile these two articles--296 and 10--the safeguards that are being provided in article 296 become illusory and there is apprehension in our minds as to whether that article would be to our benefit at all.

Shri K. M. Munshi: Mr. Vice-President, Sir, the criticism that has been placed before the House so far has revolved round two points. The first point is the scope of amendment No. 82 moved by my honourable friend Shri Alladi Krishnaswami Ayyar; the second is about the word "backward". I propose to deal with the first question particularly in view of what was said by my honourable friend Mr. Gupta and the comments made by my honourable friend Mr.Kamath.

I want the House to realise the scope of this article. In article 10, clause (2), the House has added the word "residence" to the various restrictions that are mentioned there.

Shri T. T. Krishnamachari (Madras: General): It has not been added, it was merely suggested.

Shri K. M. Munshi: It has been moved that it should be added; I stand corrected. We have moved an amendment to this effect implying thereby that we are going to support it and I hope we are going to get the support of the House. The amendment seeks to insert the word "residence" in clause (2); that would mean that no State, not even a local authority like a municipality or a local board, can ever make a rule that the incumbent of an office or an employee shall be a resident of that particular place. This would lead to great inconvenience. For instance, there is an amendment to insert the words "office" and "employment" separately; that would include offices which do not carry a salary. Then, take for instance the chairman of a local board. It may become necessary for a Provincial Legislature to lay down a residential qualification. The Provincial Legislature, however will not have the power to do so unless the House accepts the amendment which has been moved by my honourable friend Shri Alladi. All that amendment No. 82 seeks to do is this: if the clause with regard to residence has to be qualified and a residential qualification has to be imposed, it can only be done by the Parliament, that is by the Central Legislature. The reason of this change is that there should be uniformity with regard to this qualification throughout the whole country and that this provision should not be abused by some Legislature by imposing an impossible residential qualification.

The second difficulty which evidently has been present before the minds of some of the Members of the House is with regard to the word "State". I would like to draw the attention of the House to the different meanings of the word "state" used in the Constitution. The amendment says, "Any State for the time being specified in Schedule I". So we have to find the meaning of the word "State". I may now refer to article 1 which says:--

> "India shall be a Union of States.
>
> The States shall mean the States for the time being specified in Parts I, II and III of the First Schedule".

Now, if you go to the First Schedule, the Schedule is headed "State and Territories". So far as the First Schedule is concerned, Parts I, II and III refer to the States organised into a separate autonomous Government; while the territories are described in Part IV--Andaman and Nicobar Islands. Therefore, the words "Any State for the time being specified in the First Schedule" would cover only the States mentioned in Parts I, II and III but would not include the Andaman and Nicobar Islands.

Some difficulty has been felt by one or two members with regard to the definition of the word "States".

Shri H. V. Kamath: May I draw my learned friend Mr. Munshi's attention to the language used in the First Schedule? Part I refers to "territories" as well--"the territories known immediately before the commencement of this Constitution as the Governors' Provinces". The word "territory" is used there and not merely in connection with Andaman and Nicobar Islands. In Parts I, II, and IV the word employed is "territory".

Shri K. M. Munshi: If the Honourable Member is good enough to follow the submissions which I am making, I am sure he will be convinced, unless he is determined not to be convinced, in which case it it a different matter.

Shri H. V. Kamath: The boot, Sir, is on the other leg.

Shri K. M. Munshi: What I am saying is, if you look at the words of article 1, it says: "The States shall mean the States, `&c.". These do not include the Central Government of the Union. It only means the autonomous States which are mentioned in Parts I, II and III. As regards Part IV you will find in clause 3, sub-clause (2)--"the territories for the time being specified in Part IV of the First Schedule. . . . .". Therefore Nicobar Islands are not a State within the meaning of article 1. They are a territory. These territories are not governed by any legislature of their own nor are they a state with any autonomous powers. They are directly controlled by the Centre and the Centre cannot make a distinction with regard to its own services between a resident of one province and another. It must treat every citizen equally. The scheme of this amendment therefore, if it is seen in this light, is that with regard to the States in Parts I, II and III and in respect of any office under such States, a residential qualification can be imposed by the legislature.

The other difficulty was in regard to article 7. The article uses the words "the State". They are almost made into a term of art and apply only to the words "the State" used in Part III, that is for the purpose of Fundamental rights. It has no application to either the Schedule or to the States falling within article 1. Therefore, when the amendment under discussion says "any State" it cannot mean 'the State' as defined in article 7. I submit this amendment, makes it perfectly clear that it is for the purpose of services under the States mentioned in Part I, II and III that the Central Legislature can enact a legislation, not with regard to any part of the territory which is directly controlled by the Central Government. It would be quite wrong in principle, I submit, that the Central Government should make distinctions between the residents of one province and another. Therefore, the amendment as it stands, I submit, is perfectly correct.

Shri H. V. Kamath: Mr. Vice-President, if I heard my friend aright, he did say just now that the words "any State" refers to only Parts I, II and III of the first Schedule. Then, why not say specifically and definitely in this amendment--"any State for the time being specified in Parts I of the First Schedule to III" and be done with it?

Shri K. M. Munshi: I may humbly point out to my friend that the heading of the First Schedule is "the States and Territories of India" under articles 1 and 4, and Nicobar Islands are territories; they are not States. Therefore, it is perfectly clear to any one who compares the two articles. I cannot add any further explanation to what I have given.

Shri H. V. Kamath: If the wise men of the Drafting Committee think so, and as ultimately they will have their own way in regard to this amendment right or wrong, I do not want to press this point.

Shri K. M. Munshi: The meaning as I understand it,--and I hope I have made it clear to the House--is perfectly clear and requires no further comment on my part.

The other point that has been raised--of course, it will be dealt with exhaustively by my Honourable friend Dr. Ambedkar when he replies generally--is about the use of the word "backward." There is one point of view which I would like to place before the House. I happen not to belong to the Scheduled Castes; and I am putting that point of view, which possibly may come better from me than my Honourable friend Dr. Ambedkar. Certain members of the Scheduled Caste shave expressed a doubt whether by the use of the word "backward classes" their rights or privileges or opportunities will be curtailed in any manner. I cannot imagine for the life of me how, after an experience of a year and a half of the Constitutent Assembly any honourable Member of the Scheduled Castes should have a feeling that they will not be included in the backward classes so long as they are backward. I cannot also imagine a time when there is any backward class in India which does not include the Scheduled Caste. But the point I want to draw the attention of these Members to is this. Look at what has been going on in this House for the last year and a half. Take article 11. From the first time the draft was put before the sub-committee of the Minorities Committee--the Fundamental Rights Committee--there has not been a single member of the non-Scheduled castes who has ever raised any objection to it. On the contrary, we members who do not belong to the Scheduled castes, have in order to wipe out this blot on our society, been in the forefront in this matter. Not only that, but article 296 and even this particular proviso has been put in and supported fully by members of other communities and have been supported by the whole House. There need, therefore, be no fear that the House, as constituted at present or hereafter, will ever make a distinction or discriminate against the Scheduled Castes. That fear, I think, is entirely unfounded. What we want to secure by this clause are two things. In the fundamental right in the first clause we want to achieve the highest efficiency in the services of the State--highest efficiency which would enable the services to function effectively and promptly. At the same time, in view of the conditions in our country prevailing in several provinces, we want to see that backward classes, classes who are really backward, should be given scope in the State services; for it is realised that State services give a status and an opportunity to serve the country, and this opportunity should be extended to every community, even among the backward people. That being so, we have to find out some generic term and the word "backward class" was the best possible term. When it is read with article 301 it is perfectly clear that the word "backward" signifies that class of people--does not matter whether you call them untouchables or touchables, belonging to this community or that,--a class of people who are so backward that special protection is required in the services and I see no reason why any member should be apprehensive of regard to the word "backward."

Pandit Hirday Nath Kunzru: This is begging the question. To argue like this is to argue in a circle.

Shri K. M. Munshi: Well, I have not been able to trace the circle so far, in spite of my learned friend's attempt to make me do it.

An Honourable Member: Who are those backward classes?

Shri K. M. Munshi: Article 301 makes it clear that there will be a Commission appointed for the purpose of investigating what are backward classes. Some reference has been made to Madras. I may point out that in the province of Bombay for several years now, there has been a definition of backward classes, which includes not only Scheduled Castes and Scheduled Tribes but also other backward classes who are economically, educationally and socially backward. We need not, therefore, define or restrict the scope of the word `backward' to a particular community. Whoever is backward will be covered by it and I think the apprehensions of the Honourable Members are not justified.

Shri T. T. Krishnamachari: Mr. Vice-President, Sir, I am afraid I am in a position of disadvantage, coming as I do after Mr. Munshi, whom the House knows as a very learned lawyer. I now see that his technique in advocacy is to confuse the judge, as--if I had heard him aright--he must have confused the minds of those Members of this House who had some doubts in regard to the provisions of article 10. Sir, I was reading recently in a newspaper the comments on this Constitution by a celebrated authority--Prof. Ivor Jennings. Vice-Chancellor of the Ceylon University--and he characterises this chapter of fundamental rights as a paradise for lawyers. And, as a piece of loose drafting, article 10 takes the palm. My own view, if I may be permitted to state it, is that this article had better not find a place in this Chapter on Fundamental Rights.

Let me take clause (1): "There shall be equality of opportunity for all citizens in matters of employment under the State." What class of citizens? Literates? Illiterates? Could an illiterate file a suit before the Supreme Court alleging that he has been denied equality of opportunity? This is not my own view. This is a statement of the view which I found expressed in Professor Jennings' criticism.

I now move on to clause (2). I am afraid this House has been put to a lot of trouble merely because of the attempt to accommodate my Honourable Friend Shri Jaspat Roy Kapoor by including the word `residence' in this clause after the word `birth'. This has been beginning of all the trouble. We have had an amendment by Shri K. M. Munshi and another by Shri Alladi Krishnaswami Ayyar. Is it at all necessary to include the word `residence?' I put it to the House that it is not necessary, because if there is discrimination because of `residence' as there may be, you are not going to cover it up by putting it in here and taking it out in clause 2 (a).

An Honourable Member: Delete 2 (a) then.

Shri T. T. Krishnamachari: That is a matter for the House. But I suggest to the House that we can be impartial in this matter. We shall deny Mr. Jaspat Roy Kapoor the right to put in `residence' and we shall deny Shri Alladi Krishnaswami Ayyar the occasion to bring in an explanatory sub-clause which would whittle down the concession given as much as possible.

Now let us turn to the wording of the particular amendment moved by Shri Alladi Krishnaswami Ayyar on which my Honourable Friend Mr. Munshi dilated at length. Sir, as I said before, I am not presuming to give any advice on the matter. Let us see what the Parliament is going to do? Is it going to pass a comprehensive law covering the needs of all the States, all the local bodies, all the village panchayats (which will also be States under the definition in Article7) and all the universities? Or, is it going to enact fresh legislation as and when occasion arises and as and when a particular local body or university or village panchayat asks for special exemption? Nothing is known as to what is naturally contemplated. We do not know what procedure is going to be laid down for this purpose, and this clause is so beautifully vague that we do not know whether Parliament is at all going to be moved in the matter for a comprehensive piece of legislation. Even then what is the type of legislation it could enact?

The proposal of my friend Shri Jaspat Roy can be nullified if Parliament decides that there should be residence of at least ten years before a person can qualify for an officer in the area. Or, is Parliament going to put down one year or is it going to cover the position of refugees by putting in six months or nothing at all? My own view is that, instead of putting in a clause like 2 (a) which is so vague,--the doubt raised by my friend Mr. Kamath is quite right--we can safely trust the good sense of Parliament. We are leaving the whole thing to the good sense of Parliament, the legislatures, the Supreme Court and the advocates who will appear before that Court when we enact this Constitution in the manner in which it has been presented to us. I am afraid there must be some region where you must leave it to the good sense of some people, because we are here trying to prevent the good sense of people from nullifying the ideas which we hold today.

Sir, the amendment of Shri Alladi Krishnaswami Ayyar says: ".....under any State for the time being specified in the First Schedule or any local or other authority within its territory, any requirement as to residence within that State prior to such employment or appointment." I cannot really understand where any State comes in here, even after hearing the very able advocacy and admirable advocacy of Shri Munshi in support of the amendment. I suggest that both the amendments be dropped. If any particular State disregards our views and insists on residential qualification it would not matter very much.

I now come to clause (3). Quite a number of friends objected to the word `backward' in this clause. I have no doubt many of them have pointed out that when this House took a decision in this regard in this particular matter on a former occasion the word `backward' did not find a place. It was an after-thought which the cumulative wisdom of the Drafting Committee has devised for the purpose of anticipating the possibility of this provision being applied to a large section of the community.

May I ask who are the backward class of citizens? It does not apply to a backward caste. It does not apply to a Scheduled caste or to any particular community. I say the basis of any future division as between `backward' and forward' or non-backward might be in the basis of literacy. If the basis of division is literacy, 80 per cent. of our people fall into the backward class citizens. Who is going to give the ultimate award? Perhaps the Supreme Court. It will have to find out what the intention of the framers was as to who should come under the category of backward classes. It does not say `caste.' It says `class.' Is it a class which is based on grounds of economic status or on grounds of literacy or on grounds of birth? What is it?

My honourable Friend Mr. Munshi thinks that this word has fallen from heaven like manna and snatched by the Drafting Committee in all their wisdom. I say this is a paradise for lawyers. I do not know if the lawyers who have been on the Committee have really not tried to improve the business prospects of their clan and the opportunities of their community or class by framing a constitution so full of pitfalls.

Shri K. M. Munshi: Well, my honourable friend can attempt to become a lawyer.

Shri T. T. Krishnamachari: I am afraid I may have to, when people like Mr. Munshi desert the profession for other more lucrative occupations. If my friend wants me to say something saucy I can tell him that I could attempt that and do some justice to it.

Shri K. M. Munshi: You can, I know.

Shri T. T. Krishnamachari: I must apologise to you, Mr. Vice-President, for carrying on a conversation with Mr. Munshi notwithstanding the fact that he has been provocative. Anyhow the subject is not one which merits such sallies.

Sir, coming back to the merits of clause (3) my feeling is that this article is very loosely worded. That the word backward' is liable to different interpretations is the fear of some of my friends, though I feel that there is no need for such fear, because I have no doubt it is going to be ultimately interpreted by the Supreme authority on some basis, caste, community, religion, literacy or economic status. So I cannot congratulate the Drafting Committee on putting this particular word in; whatever might be the implication they had in their mind, I cannot help feeling that this clause will lead to a lot of litigation.

Sir, before I sit down I would like to put before the House a suggestion not to block the issue further either by admitting the amendment of Shri Jaspat Roy Kapoor or, as a sequel to it, the amendment of Shri Alladi Krishnaswami Ayyar.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, I am going to say at the outset, before I deal with the specific questions that have been raised in the course of the debate, that I cannot accept amendment No. 334 moved by Mr. Misra; nor can I accept the two amendments moved by my friend, Mr. Naziruddin Ahmad, Nos. 336 and 337. I am prepared to accept the amendment of Mr. Imam No. 338, as amended by amendment No. 77 moved by Mr. Ananthasaynam Ayyangar. I am also prepared to accept the amendment of Mr. Kapoor, *viz*. No. 340, as amended by amendments Nos. 81 and 82 moved by my friends Mr. Munshi and Mr. Alladi Krishnaswami Ayyar.

I do not think that I am called upon to say anything with regard to amendments Nos. 334, 336 and 337. Such observations, therefore, as I shall make in the course of my speech will be confined to the question of residence about which there has been so much debate and the use of the word "backward" in clause (3) of article 10, My friend, Mr. T. T. Krishnamachari, has twitted the Drafting Committee that the Drafting Committee, probably in the interests of some members of that Committee, instead of producing a Constitution, have produced a paradise for lawyers. I am not prepared to say that this Constitution will not give rise to questions which will involve legal interpretation or judicial interpretation. In fact, I would like to ask Mr. Krishnamachari if he can point out to me any instance of any Constitution in the world which has not been a paradise for lawyers. I would particularly ask him to refer to the vast storehouse of law reports with regard to the Constitution of the United States, Canada and other countries. I am therefore not ashamed at all if this Constitution hereafter for purposes of interpretation is required to be taken to the Federal Court. That is the fate of every Constitution and every Drafting Committee. I shall therefore not labour that point at all.

Now, with regard to the question of residence. The matter is really very simple and I cannot understand why so intelligent a person as my friend Mr. T. T. Krishnamachari should have failed to understand the basic purpose of that amendment.

Shri T. T. Krishnamachari: For the same reason as my honourable Friend had for omitting to put that word originally in the article.

The Honourable Dr. B. R. Ambedkar: I did not quite follow. I shall explain the purpose of this amendment. It is the feeling of many persons in this House that, since we have established a common citizenship throughout India, irrespective of the local jurisdiction of the provinces and the Indian States, it is only a concomitant thing that residence should not be required for holding a particular post in a particular State because, in so far as you make residence a qualification, you are really subtracting from the value of a common citizenship which we have established by this Constitution or which we propose to establish by this Constitution. Therefore in my judgment, the argument that residence should not be a qualification to hold appointments under the State is a perfectly valid and a perfectly sound argument. At the same time, it must be realised that you cannot allow people who are flying from one province to another, from one State to another, as mere birds of passage without any roots, without any connection with that particular province, just to come, apply for posts and, so to say, take the plums and walk away. Therefore, some limitation is necessary. It was found, when this matter was investigated, that already today in very many provinces rules have been framed by the provincial governments prescribing a certain period of residence as a qualification for a post in that particular province. Therefore the proposal in the amendment that, although as a general rule residence should not be a qualification, yet some exception might be made, is not quite out of the ordinary. We are merely following the practice which has been already established in the various provinces. However, what we found was that while different provinces were laying down a certain period as a qualifying period for posts, the periods varied considerably. Some provinces said that a person must be actually domiciled. What that means, one does not know. Others have fixed ten years, some seven years and so on. It was therefore felt that, while it might be desirable to fix a period as a qualifying test, that qualifying test should be uniform throughout India. Consequently, if that object is to be achieved, *viz.*, that the qualifying residential period should be uniform, that object can be achieved only by giving the power to Parliament and not giving it to the local units, whether provinces or States. That is the underlying purpose of this amendment putting down residence as a qualification.

With regard to the point raised by my friend, Mr. Kamath, I do not propose to deal with it because it has already been dealt with by Mr. Munshi and also by another friend. They told him why the language as it now stands in the amendment is perfectly in accord with the other provisions of this Constitution.

Now, Sir, to come to the other question which has been agitating the members of this House, *viz*., the use of the word "backward" in clause (3) of article 10, I should like to begin by making some general observations so that members might be in a position to understand the exact import, the significance and the necessity for using the word "backward" in this particular clause. If members were to try and exchange their views on this subject, they will find that there are three points of view which it is necessary for us to reconcile if we are to produce a workable proposition which will be accepted by all. Of the three points of view, the first is that there shall be equality of opportunity for all citizens. It is the desire of many Members of this House that every individual who is qualified for a particular post should be free to apply for that post, to sit for examinations and to have his qualifications tested so as to determine whether he is fit for the post or not and that there ought to be no limitations, there ought to be no hindrance in the operation of this principle of equality of opportunity. Another view mostly shared by a section of the House is that, if this principle is to be operative--and it ought to be operative in their judgment to its fullest extent--there ought to be no reservations of any sort for any class or community at all, that all citizens, if they are qualified, should be placed on the same footing of equality so far as the public services are concerned. That is the second point of view we have. Then we have quite a massive opinion which insists that, although theoretically it is good to have the principle that there shall be equality of opportunity, there must at the same time be a provision made for the entry of certain communities which have so far been outside the administration. As I said, the Drafting Committee had to produce a formula which would reconcile these three points of view, firstly, that there shall be equality of opportunity, secondly that there shall be reservations in favour of certain communities which have not so far had a `proper look-in' so to say into the administration. If honourable Members will bear these facts in mind--the three principles, we had to reconcile,--they will see that no better formula could be produced than the one that is embodied in sub-clause (3) of article 10 of the Constitution; they will find that the view of those who believe and hold that there shall be equality of opportunity, has been embodied in sub-clause (1) of Article 10. It is a generic principle. At the same time, as I said, we had to reconcile this formula with the demand made by certain communities that the administration which has now--for historical reasons--been controlled by one community or a few communities, that situation should disappear and that the others also must have an opportunity of getting into the public services. Supposing, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest extent, what would really happen is, we shall be completely destroying the first proposition upon which we are all agreed, namely, that there shall be an equality of opportunity. Let me give an illustration. Supposing, for instance, reservations were made for a community or a collection of communities, the total of which came to something like 70 per cent. of the total posts under the State and only 30 per cent. are retained as the unreserved. Could anybody say that the reservation of 30 per cent. as open to general competition would be satisfactory from the point of view of giving effect to the first principle, namely, that there shall be equality of opportunity? It cannot be in my judgment. Therefore the seats to be reserved, if the reservation is to be consistent with sub-clause (1) of Article 10, must be confined to a minority of seats. It is then only that the first principle could find its place in the Constitution and effective in operation. If honourable Members understand this position that we have to safeguard two things namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State, then, I am sure they will agree that unless you use some such qualifying phrase as "backward" the exception made in favour of reservation will ultimately eat up the rule altogether. Nothing of the rule will remain. That I think, if I may say so, is the justification why the Drafting Committee undertook on its own shoulders the responsibility of introducing the word `backward' which, I admit, did not originally find a place in the fundamental right in the way in which it was passed by this Assembly. But I think honourable Members will realise that the Drafting Committee which has been ridiculed on more than one ground for producing sometimes a loose draft, sometimes something which is not appropriate and so on, might have opened itself to further attack that they produced a Draft Constitution in which the exception was so large, that it left no room for the rule to operate. I think this is sufficient to justify why the word `backward' has been used.

With regard to the minorities, there is a special reference to that in Article 296, where it has been laid down that some provision will be made with regard to the minorities. Of course, we did not lay down any proportion. That is quite clear from the section itself, but we have not altogether omitted the minorities from consideration. Somebody asked me: "What is a backward community"? Well, I think any one who reads the language of the draft itself will find that we have left it to be determined by each local Government. A backward community is a community which is backward in the opinion of the Government. My honourable Friend, Mr. T. T. Krishnamachari asked me whether this rule will be justiciable. It is rather difficult to give a dogmatic answer. Personally I think it would be a justiciable matter. If the local Government included in this category of reservations such a large number of seats, I think one could very well go to the Federal Court and the Supreme Court and say that the reservation is of such a magnitude that the rule regarding equality of opportunity has been destroyed and the court will then come to the conclusion whether the local Government or the State Government has acted in a reasonable and prudent manner. Mr. Krishnamachari asked: "Who is a reasonable man and who is a prudent man? These are matters of litigation". Of course, they are matters of litigation, but my honourable Friend, Mr. Krishnamachari will understand that the words "reasonable persons and prudent persons" have been used in very many laws and if he will refer only to the Transfer of Property Act, he will find that in very many cases the words "a reasonable person and a prudent person" have very well been defined and the court will not find any difficulty in defining it. I hope, therefore that the amendments which I have accepted, will be accepted by the House.

Mr. Vice-President: I am now going to put the amendments to vote, one by one.

The Honourable Dr. B. R. Ambedkar: I am sorry I forgot to say that I accept amendment No. 342.

Mr. Vice-President: The question is:--

"That in clause (2) of article 10, for the word `on grounds only' the words `on grounds' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That clauses (2), (3) and (4) of article 10 be deleted."

The motion was negatived.

Mr. Vice-President: The question is:

"That for clause (2) of article 10, the following clause be substituted:--

"(2) Every citizen shall be eligible for office under any State irrespective of his religion, caste, sex, descent or place of birth."

The motion was negatived.

Mr. Vice-President: I shall put to vote amendment No.338 as amended by No. 77 of List No. 1 which has already been accepted by the Chairman of the Drafting Committee. The question is:--

"(i) That in clause (1) of article 10, for the words in matters of employment', the words `in matters relating to employment or appointment to office' be substituted."

(ii) That in clause (2) of article 10, after the words ineligible for any' the words `employment or' be inserted."

The motion was adopted.

Mr. Vice-President: The question is:

"That in clause (2) of article 10, after the words place of birth' the words `in India be added."

The motion was negatived.

Mr. Vice-President: I will now put amendment No. 340 as modified by amendment No. 81 of List No. III to the vote.

Shri H. V. Kamath: I submit, Sir, that amendments 81and 82 will have to be put to the vote first.

Mr. Vice-President: There is no difference so far as I can see in regard to amendment No. 81 and if you insist, I am prepared to put it separately. I would like to carry the House with me, so long as it is legitimate.

Shri H. V. Kamath: I think it would be better, but I do not insist.

Mr. Vice-President: You do not insist. Then let me proceed in my own inadequate way.

Mr. Vice-President: The question is:

"That in clause (2) of articles 10, after the word 'birth' the word `residence' be inserted.

The motion was adopted.

Mr. Vice-President: The question is:

That after clause (2) of article 10, the following new clause be inserted:--

"(2a) Nothing in this article shall prevent Parliament from making any laws prescribing in regard to a class or classes of employment or appointment to an office under any State for the time being specified in the First Schedule or any local or other authority within its territory, any requirement as to residence within that State prior to such employment or appointment."

The motion was adopted.

Mr. Vice-President : The question is:

"That in clause (2) or article 10, after the word 'ineligible' the words `or discriminated against' be inserted."

The motion was adopted.

Mr. Vice-President: The question is:

That clause (3) of article 10 be deleted.

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (3) of article 10, for the words `shall prevent the State from making any provision for the reservation' the words `shall, during a period of ten years after the commencement of this Constitution, prevent the State from making any reservation' be substituted."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (3) of article 10 the word `backward' be omitted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in clause (4) of article 10, after the words `in connection with' the word `managing' be added, and the words or denomination' be deleted."

The amendment was negatived.

Mr. Vice-President: I shall now put the article as a whole as amended by amendment No. 338, (as modified by amendment No. 77), as amended by amendment No. 340 as modified by amendments numbers 81 and 82 of list III, and as further amended by amendment No. 342. The question is.

That this Article in this modified form stand part of the Constitution.

The motion was adopted.

Article 10, as amended, was added to the Constitution.

Article 12

Mr. Vice-President: We come to Article 12.

An Honourable Member: What about Article 10-A, Sir?

Mr. Vice-President: So far as our records show, that was finished. That was not moved.

The motion before the House is:

"That article 12 form part of the Constitution."

The first amendment is No. 383, standing in the name of Pandit Lakshmi Kanta Maitra and others.

(Amendment No. 383 was not moved.)

Mr. Vice-President: Amendment No. 384 is out of order.

(Amendment No. 385 was not moved.)

Mr. Vice-President: Amendments Nos. 386 and 392 may be considered together. I can allow amendment No. 386 to be moved. It stands in the name of Shri Kamleshwari Prasad Yadav.

(Amendments numbers 386 and 392 were not moved.)

Mr. Vice-President: Amendments Nos. 387 and 394 are of similar import. I shall allow amendment number 387 to be moved. One thing more: before you speak, I want to know whether Mr. A. K. Menon in whose name amendment No. 394stands, wants to press it.

Shri A. K. Menon: (Madras: General): No, Sir.

Shri T. T. Krishnamachari: Sir, I move:

"That in clause (1) of article 12, after the word "title" the words `not being a military or academic distinction' be inserted."**

Sir, article 12 clause (1) will read, as amended, as follows:

The history of this particular article the Members of the House know very well. Generally, public opinion has been against any titles being granted. The House is also aware that consequent on India becoming independent, several people who had accepted titles from our British Rulers in the past had given up their titles, though some of them do retain them still. There has been a proposal at one stage that it is the intention of the members of the Drafting Committee to exclude only hereditary titles or other privileges of birth; but Dr. Ambedkar has chosen not to move it. Actually, if he had moved it, it would have made the position of those people who did not have any hereditary titles, but resigned their titles with the advent of independence, very difficult. Then, it would mean that the Government could grant titles like Dewan Bahadur, something analogous to knighthood, and so on. It would put those people who have been patriotic enough to resign their title sat the time that we got independence in a very invidious position.

Even now, in my view, the article is not complete; because, without a specific non-recognition of titles already granted by the British, those people who have been good enough to resign their titles have no benefit. Some have resigned their titles in order to get jobs; and they have got jobs. Other people have resigned; and they have got nothing out of it. Some people have kept their titles and those titles are recognised by the present Government. It makes the position of those people who have resigned their titles very sad. It may probably be that in course of time the Government will refuse to recognise those titles. I know the one Paper which is very near to the Government refuses to recognise such titles. Personally, I think, if the House would permit me to make a personal remark, from my point of view, the retention of titles is beneficial. Here is an honourable Member of the House who bears the same name as mine. He even went to England along with me. He is a titled gentlemen; I am not and that helps to avoid confusion and I am glad he retained his title. That is by the way. What I really mean by this amendment is that certain type of titles has to be permitted. For instance, honourable Members of this House know that the Government have decided on three types of Military distinction to be granted in the future Mahavir Chakra, Parama Vir Chakra and Vir Chakra. Please do not confuse this with the name of our friend Mahabir Tyagi, a very distinguished Member of this House, to whom the title was given by his parents. In course of time, these Vir Chakras will become Bir Chakras. This amendment is moved to make provision for these Military distinctions.

In regard to academic distinctions, you may ask, academic distinctions are not conferred by the State. It may probably be that, some time later, the State might be willing to revive titles like Mahamahopadhyaya which will probably be classed as academic.

Even so, in consonance with the definition of State in article 7, the University becomes a State and no one in the House can say, that the University is something completely divorced from State. So much so, the titles granted by Universities or academic institutions have to be provided for as one cannot completely exclude it from the scope of clause (1) of article 12 as it stands now, The House might ask whether those titles earned by us by sitting for an examination come under the scope of article 12 because the holder had to sit for an examination and get it. These will not come under article 12. But there are titles which are *Honoris Causa.* For instance the House knows that our Prime Minister, Deputy Minister, Ministers and Governor-General are being showered with Doctorates wherever they go and wherever there happens to be a mushroom University. To provide for contingencies of that sort we are providing by this amendment that academic distinctions should be excluded from the scope of this sub-clause. I hope the House fully understands the meaning of this amendment, which in my view takes stock of things to come and provides for them. I hope the House will accept my amendment.

Mr. Vice-President: Amendments No. 388, 389, first part of 390, 391, 395 to 397 are of similar import. 389 may be moved.

Shri Lokanath Misra: Sir, I beg to move:

"That in clause (1) of article 12, after the words "be conferred" the words "or recognised" be inserted."

Sir, this is a small amendment. I beg to submit that if you are going to abolish all titles, it is also proper that those people who have already titles rightly or wrongly should no more be recognized. We know that titles are appendages and titles give a different view to the man and we know instances where people have got titles which they do not deserve and the entitled gentlemen belies the import of the title. I therefore submit that we should not only abolish all titles, we should also cease to recognise any title that has been conferred, but recognised by none of us.

Mr. Vice-President: I would like to know whether them over of amendment No. 388 wants it to be put to vote.

Shri H. V. Kamath: Yes, Sir.

Mr. Vice-President: No. 390 first part. I want to know whether this should be put to vote.

Prof. K. T. Shah: Yes.

Mr. Vice-President: 391 is the same. 393, 396 and 397are not moved. 390 (second part) is disallowed as being a verbal amendment. I can allow 398, 399 and 400 to be moved.

(Nos. 398 and 399 were not moved).

Mr. Naziruddin Ahmad: Mr. Vice-President, Sir, I beg to move:

"That for clause (2) of article 12 the following clause be substituted:--

"(2) No title conferred by any foreign State on any citizen of India shall be recognised by the State."

This word `the' before "State" is a consequential change. Sir, the clause which this amendment seeks to replace runs thus:--

"No citizen of India shall accept any title from any foreign State."

What is prohibited by the original clause is the 'acceptance' of a title. I would ask: if anybody accepts any foreign title, what is the penalty which is provided? No penalty is provided for accepting it. The State has no means of giving effect to this clause. If anybody accepts a title from a foreign State, what are you going to do--send him to rigorous imprisonment for six months?

The Honourable Dr. B. R. Ambedkar: The State shall not recognize it.

Mr. Naziruddin Ahmad: I am grateful for the interruption. My amendment is exactly this that no title conferred by any foreign State on the citizens of India shall be recognised by the State. The honourable Member Dr. Ambedkar has stated very kindly that the State shall not recognize it. That is really the form in which it should be stated. Supposing any title is conferred upon any honourable Member here by a foreign State and if he accepts it, you have no means of effecting a compliance with clause (2). All that you can do as has been rightly pointed out by Dr. Ambedkar is that you do not recognise it; and that is the form in which this amendment stands. I do not think any further authority is necessary than the interjection of Dr. Ambedkar to support my amendment.

(Amendments Nos. 401, 402 and 403 were not moved.)

Shri Algu Rai Shastri (United Provinces: General): *[I am not moving this amendment because a similar amendment was moved earlier by Shri Krishnamachari and I agree with him. I, therefore, do not move my amendment.]*

Mr. Vice-President: 404 is not moved. 405, 407, 410 and411 are of similar nature. I rule that amendment No. 405 maybe moved.

(Amendments Nos. 405, 407, 410, 411 and 406 were not moved.)

Mr. Vice-President: Amendment Nos. 408 and 409 are verbal ones and therefore I disallow them. Now for general discussion. Mr. Kamath.

Shri H. V. Kamath: Mr. Vice-President, Sir, with your permission, I want to say a few words in support of the amendment.

Mr. Vice-President: I can allow you discussion on the clause as a whole, but cannot allow you to speak about your own amendment.

Shri H. V. Kamath: With your permission, I want to refer to the amendment of some other member. I want to say something in support of the amendment moved by my friend Mr. Lokanath Misra. But before I come to that, I would like to say one or two words about the doubt or difficulty raised by my friend Mr. Naziruddin Ahmad in the course of his motion on amendment No. 400. He wanted to know if a member of the House, or for the matter of that, if a citizen of India, is invested with a title by any foreign State, what will happen? Shall we sentence him to rigorous imprisonment? But I say the remedy is easy. We can say that the citizen who accepts that title forfeits his citizenship of India. Such a remedy is open to us, in accordance with the provision of this article.

Mr. Naziruddin Ahmad: But there is no provision to that effect.

Shri H. V. Kamath: I suppose it will flow from the existing provision.

Now, coming to the amendment which was moved by Mr. Misra, and which I am going to support, the amendment says that titles should neither be conferred nor recognized by the State. I think, it is a very important provision in the new set-up of our country. It is one thing to say that titles should not be conferred and quite another thing to say that titles shall not be recognized. Unfortunately, Sir, even today in our country, even after the British have quitted our country, the toys or the baubles that the British have left behind still remain with us. Of course, we cannot compel our fellow-citizens, our brethren here, to give up the titles that they might have received at the hands of their erstwhile British Masters. There may not be any compulsion. But certainly, we can see to it that the State, that is to say, the Government does not in any way recognise those titles. I will illustrate my point. In most, or at least some of the government documents, records or communiqués or press-notes issued by the Government from time to time, officers of the State, including ambassadors abroad, are referred to along with their titles. If Ire member aright, our Charge-d-Affaires in Paris, and our Ambassador in America, whenever their names are mentioned by the Government in a press-note or communique, their titles go along with their names. The titles are not dropped. I for one, fail to see why Government should continue to recognise or mention these titles in the course of their official communiqués or notes.--I remember very well, that after the Russian Revolution, and after the revolution in Turkey 25 years ago, whatever titles had been bestowed by the former regime were abolished and those who did not choose to give up such titles were given no importance whatsoever. The State did not refer to those titles whenever they referred to the names.

Of course, it may be argued against the amendment of Mr. Misra, that it is not possible to make this a justiciable right. But certainly, I fail to see, if clause(1) of article 12 can be made a justiciable right, why not this? I have got very serious doubts on the point whether clause (1) of article 12 can be a justiciable, fundamental right. No title shall be conferred by the State. But if the State inadvertently or in a fit of absent-mindedness or due to some other cause, does confer titles, what can be done against the State? After all, the State itself has conferred the title. Will you proceed against the State? If you can proceed against the State in that eventuality, there is no reason why the State cannot be proceeded against, if the State in any way recognises a title conferred by the erstwhile British masters. I therefore, support Mr. Misra's amendment. So far as those titles are concerned which are still with us unfortunately, and so far as those title-holders are concerned the Government of India should not recognise them in any way whatsoever in their documents or references or in any other way. If there is any legal difficulty about incorporating it as a justiciable fundamental right, I shall be happy to hear from my learned friend Dr. Ambedkar that the principle is acceptable, and if it can be embodied in the Constitution somewhere, or if it could be brought forward in Parliament by means of a special bill, to the effect that the State will not recognise titles, then I shall be happy. I also hope that in that event, my friend Mr. Misra will not press his amendment.

Shri R. K. Sidhwa (C. P. and Berar: General): Mr. Vice-President. Sir, the conferment of titles during the British regime has been so scandalous that a large section of the people of the country has always viewed it with contempt. Therefore I am very glad that in this House and everywhere outside also, today the conferment of titles is looked upon with equal contempt, and this Constitution rightly provides that there should be no titles conferred upon anyone by the State.

If you refer to clause (3) a concession has been made of a person upon whom a title is conferred by a foreign State. Sir, if our State does not recognise in our own country the conferment of titles, I really fail to understand why we should allow even a foreign State to confer a title upon one of our own citizens. I am of the opinion that the word `title' should be omitted from the clause. It says--

> "No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, title or office of any kind from or under any foreign State."

Sir, emoluments, we can understand. Presents we can understand, but why titles? The whole object of this article is not to confer titles: then why include `title' in clause (3)? The beauty of this article is really spoilt by this little word. I support this article, but I should have preferred that foreign states also should not be allowed to confer any title on any of our countrymen.

The Honourable Dr. B. R. Ambedkar: Sir, I accept the amendment moved by my Friend Mr. T. T. Krishnamachari.

With regard to the amendment moved by my friend Mr. Naziruddin Ahmad, he wanted the word "acepted" to be substituted by the word "recognised". His argument was, supposing the citizen does accept a title, what is the penal provision in the Constitution which would nullify that act? My answer to that is very simple: that it would be perfectly open under the Constitution for Parliament under its residuary powers to make a law prescribing what should be done with regard to an individual who does accept a title contrary to the provisions of this article. I should have thought that that was an adequate provision for meeting the case which he has put before the House.

With regard to the second point of Mr. Kamath, if I have understood him correctly, he asked whether this is a justiciable right. My reply to that is very simple: it is not a justiciable right. The non-acceptance of titles is a condition of continued citizenship; it is not a right, it is a duty imposed upon the individual that if he continues to be the citizen of this country then he must abide by certain conditions, one of the conditions is that he must not accept a title because it would be open for Parliament, when it provides by law as to what should be done to persons who abrogate the provisions of this article, to say that if any person accepts a title contrary to the provisions of article 12 (1) or (2), certain penalties may follow. One of the penalties may be that he may lose the right of citizenship. Therefore, there is really no difficulty in understanding this provision as it is a condition attached to citizenship; by itself it is not a justiciable right.

Shri H. V. Kamath: My point is about recognition of existing titles by the State.

The Honourable Dr. B. R. Ambedkar: As I said in reply to my friend Mr. Naziruddin Ahmad, it is open for Parliament to take such action as it likes, and one of the actions which Parliament may take is to say that we shall not recognise these titles.

Shri H. V. Kamath: I want Dr. Ambedkar to accept the principle. Parliament can do what it likes later on.

The Honourable Dr. B. R. Ambedkar: Certainly it is just commonsense that if the Constitution says that no person shall accept a title, it will be an obligation upon Parliament to see that no citizen shall commit a breach of that provision.

The Assembly then adjourned till Half Past Nine of the Clock on Wednesday, the 1st

December 1948.

** "No title not being a military or academic distinction shall be conferred by the State."

[Translation of Hindustani Speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VII

Wednesday, the 1st December 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi at Half Past Nine of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee), in the Chair.

DRAFT CONSTITUTION-(*contd.*)

Article12-(*contd.*)

Shri H. V. Kamath (C. P. & Berar: General): Sir, before we proceed with the business of the day, may I request you to be so good as to see that my learned friend, Shri Alladi Krishnaswami Ayyar, who is frequently called upon to give us the benefit of his sage counsel is allotted a seat somewhere in the centre of the hall, neither too much to the right nor to the left so that he may be heard and appreciated in the House?

Mr. Vice-President (Dr. H. C. Mookherjee): We shall try to meet the wishes of the House.

We finished our discussion on Article 12 and Dr. Ambedkar gave his reply. I am sorry I cannot accommodate those Members who want to reopen it. I shall now put the different amendments to the vote one after the other.

Mr. Vice-President: The question is:

"That in clause (1) of article 12, after the word `title' the words `not being a military or academic distinction' be inserted."

The motion was adopted.

Mr. Vice-President: The question is:

"That in clause (1) of article 12, after the words `be conferred' the words `or recognised' be inserted".

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (1) of article 12, after the word State' the words `and the State shall in no way recognize any title conferred by the British Government on any citizen of India prior to August 15, 1947' be inserted."

The motion was negatived.

Mr. Vice-President: The question is:

"That in clause (1) of article 12, after the word conferred 'the words `or recognised' be inserted."

The motion was negatived.

Mr. Vice-President: The question is:

"That for clause (2) of article 12, the following clause be substituted. '(2) No title conferred by any foreign State on any citizen of India shall be recognised by any State'."

The motion was negatived.

Mr. Vice-President: The question is:

"That article 12, as amended, stand part of the Constitution."

The motion was adopted.

Article 12, as amended, was added to the Constitution.

Article 13

Mr. Vice-President: We shall now take up article 13 for consideration.

Shri Damodar Swarup Seth (United Provinces: General): Sir, I beg to move:

"That for article 13, the following be substituted:

'13. Subject to public order or morality the citizens are guaranteed--

(a) freedom of speech and expression;

(b) freedom of the press;

(c) freedom to form association or unions;

(d) freedom to assemble peaceably and without arms;

(e) secrecy of postal, telegraphic and telephonic communications.

13-A. All citizens of the Republic shall enjoy freedom of movement throughout the whole of the Republic. Every citizen shall have the right to sojourn and settle in anyplace he pleases. Restrictions may, however, be imposed by or under a Federal Law for the protection of aboriginal tribes and backward classes and the preservation of public safety and peace.' "

Sir, article 13, as at present worded, appears to have been clumsily drafted. It makes one significant omission and that is about the freedom of the press. I think, Sir, it will be argued that the freedom is implicit in clause (a), that is, in the freedom of speech and expression. But, Sir, I submit that the present is the age of the Press and the Press is getting more and more powerful today. It seems desirable and proper, therefore, that the freedom of the Press should be mentioned separately and explicitly.

Now, Sir, this article 13 guarantees freedom of speech and expression, freedom to assemble peaceably and without arms, to form association and unions, to move freely throughout the territory of India, to sojourn and settle in any territory, to acquire and hold and dispose of property, and to practise any profession or trade or business. While the article guarantees all these freedoms, the guarantee is not to affect the operation of any existing law or prevent the State from making any law in the general interests of the public. Indeed, Sir, the guarantee of freedom of speech and expression which has been given in this article, is actually not to affect the operation of any existing law or prevent the State from making any law relating to libel, slander, defamation, sedition and other matters which offend the decency or morality of the State or undermine the authority or foundation of the State. It is therefore clear. Sir, that the rights guaranteed in article 13 are cancelled by that very section and placed at the mercy or the high-handedness of the legislature. These guarantees are also cancelled, Sir, when it is stated that, to safeguard against the offences relating to decency and morality and the undermining of the authority or foundation of the State, the existing law shall operate. This is provided for in very wide terms. So, while certain kinds of freedom have been allowed on the one hand, on the other hand, they have been taken away by the same article as I have just mentioned. To safeguard against "undermining the authority or foundation of the State" is a tall order and makes the fundamental right with regard to freedom of speech and expression virtually ineffectual. It is therefore clear that under the Draft Constitution we will not have any greater freedom of the press than we enjoyed under the cursed foreign regime and citizens will have no means of getting a sedition law invalidated, however flagrantly such a law may violate their civil rights.

Then, Sir, the expression `in the interests of general public' is also very wide and will enable the legislative and the executive authority to act in their own way. Very rightly, Sir, Shri S. K. Vaze of the Servants of India Society while criticising this article has pointed out that if the mala fides of Government are not proved--and they certainly cannot be proved--then the Supreme Court will have no alternative but to uphold the restrictive legislation. The Draft Constitution further empowers the President, Sir, to issue proclamations of emergency whenever he thinks that the security of India is in danger or is threatened by an apprehension of war or domestic violence. The President under such circumstances has the power to suspend civil liberty.

Now, Sir, to suspend civil liberties is tantamount to a declaration of martial law. Even in the United States, civil liberties are never suspended. What is suspended there, in cases of invasion or rebellion, is only the *habcas corpus* writ. Though individual freedom is secured in this article, it is at the same time restricted by the will of the legislature and the executive which has powers to issue ordinances between the sessions of the legislature almost freely, unrestricted by any constitutional provision. Fundamental rights, therefore, ought to be placed absolutely outs de the jurisdiction, not only of the legislature but also of the executive. The Honourable Dr. Ambedkar, Sir, while justifying the limitations on civil liberties, has maintained that what the Drafting Committee has done is that, instead of formulating civil liberties in absolute terms and depending on the aid of the Supreme Court to invent the doctrine or theory of police powers, they have permitted the State to limit civil liberties directly. Now, if we carefully study the Law of Police Powers in the United States, it will be clearly seen that the limitations embodied in the Draft Constitution are far wider than those provided in the United States. Under the Draft Constitution the Law of Sedition, the Official Secrets Act and many other laws of a repressive character will remain intact just as they are. If full civil liberties subject to Police Powers, are to be allowed to the people of this country, all laws of a repressive character including the Law of Sedition will have either to go or to be altered radically and part of the Official Secrets Act will also have to go. I therefore submit that this article should be radically altered and substituted by the addenda I have suggested. I hope, Sir, the House will seriously consider this proposal of mine. If whatever fundamental rights we get from this Draft Constitution are tempered here and there and if full civil liberties are not allowed to the people, then I submit, Sir, that the boon of fundamental rights is still beyond our reach and the making of this Constitution will prove to be of little value to this country.

Mr. Vice-President: Do I understand that amendment No.441 will not be moved? I shall not allow any discuss on but I shall put it to vote. Do I understand that the mover does not intend to move this amendment.?

(Amendment 441 was not moved.)

(Amendments No. 413 and No. 414 were not moved.)

Mr. Vice-President: Amendments Nos. 415 and 418. They are the same. I will allow amendment No. 415 to be moved. It stands in the names of Pandit Lakshmi Kanta Maitra and others, including Mr. Kamath.

Shri Mihir Lal Chattopadhyay (West Bengal: General): Sir, I beg to move:

"That in clause (1) of article 13, the words `Subject to the other provisions of this article' be deleted."

Various provisos have been mentioned in this Section in clauses (2), (3), (4), (5) and (6). Therefore the words "subject to the other provisions of this article" are unnecessary.

Mr. Naziruddin Ahmad (West Bengal: Muslim): I submit that this is a drafting amendment.

Mr. Vice-President: Proceed, Mr. Chattopadhyay.

Shri Mihir Lal Chattopadhyay: Moreover, this section deals with Fundamental Rights and there should be positive enumeration of these rights and privileges at the beginning and it should not begin with provisos. Each proviso should in the natural course come afterwards. I therefore move this amendment.

(Amendment No. 419 was not moved.)

Mr. Vice-President: Then we come to amendment No. 416 standing in the name of Prof. K. T. Shah.

Prof. K. T. Shah (Bihar: General): Mr. Vice-President, Sir, I beg to move:

"That in clause (1) of article 13, for the words, "the other provisions of this article" the words `this constitution and the laws there under or in accord there with at any time in force' be substituted, and after the words all citizens shall have' the words `and are guaranteed' be added."

The article, as amended, would read:

"Subject to this Constitution and the laws there under or in accord there with at any time in force, all citizens shall have and are guaranteed the right" etc.

Sir, my purpose in bringing forward this amendment is to point out that, if all the freedoms enumerated in this article are to be in accordance with only the provisions of this article, or are to be guaranteed subject to the provisions of this article only, then they would amount more to a negation of freedom than the promise or assurance of freedom, because in everyone of these clauses the exceptions are much more emphasised than the positive provision. In fact, what is given by one right hand seems to be taken away by three or four or five left hands; and therefore the article is rendered nagatory in any opinion.

I am sure that was not the intention or meaning of the draftsmen who put in the other articles also. I suggest therefore that instead of making it subject to the provisions of this article, we should make it subject to the provisions of this Constitution. That is to say, in this Constitution this article will remain. Therefore if you want to insist upon these exceptions, the exceptions will also remain. But the spirit of the Constitution, the ideal under which this Constitution is based, will also come in, which I humbly submit, would not be the case, if you emphasise only this article. If you say merely subject to the provisions of this article, then you very clearly emphasise and make it necessary to read only this article by itself, which is more restrictive than necessary. I am aware it might be said that, under the rules of interpretation, the whole Constitution will have to be read together and not only one clause of it. If so, I ask where is the harm in then saying, as you have said in many other articles, "subject to the provisions of this Constitution"? and "subject also to the laws in force at any time and the laws there under"? Those laws which have not been abrogated or abolished under this article or any other article will be enforced. Those new laws which you make in accordance with this article will also be enforced, so that all the safeguards that you wish to introduce, and which you may wish to maintain against any abuse of the freedoms guaranteed or granted by this Constitution, will be available.

Why then should we draw attention and emphasize only this article, which is more full. I repeat, of exceptions and delimitations of freedom than of freedom itself? The freedoms are curtly enumerated in 5.6 or 7 items in one sub-clause of the article. The exceptions are all separately mentioned in separate sub-clauses. And their scope is so widened that I do not know what cannot be included as exception to these freedoms rather than the rule. In fact, the freedoms guaranteed or assured by this article become so elusive that are would find it necessary to have a microscope to discover where these freedoms are, whenever it suits the State or the authorities running it to deny them. I would, therefore, repeat that you should bring in the provisions of the whole Constitution, including its preamble, and including all other articles and chapters where the spirit of the Constitution should be more easily and fully gathered than merely in this article, which, in my judgment, runs counter to the spirit of the Constitution. Somebody described yesterday the Constitution as a paradise for lawyers. All written Constitutions, and even un-written ones, do admit themselves to legal chicanery of a very interesting type. Constitutions of Federal States are generally more so. But whether or not it was deliberately intended to be so, this particular Draft seems to be a very fertile ground for legal ingenuity to exercise. And that will, of course, be at the expense of the Community. Whether the State wins or loses, the public, the country in any case, will lose to one small section, that of the legal practitioners.

I also suggest that it would not be enough to enumerate these freedoms, and say the citizen shall have them. I would like to add the words also that by this Constitution these freedoms are guaranteed. That is to say, any exception which is made, unless justified by the spirit of the Constitution, the Constitution as a whole and every part of it included, would be a violation of the freedoms guaranteed hereby.

For instance, sub-clause (5) uses such a wide expression as to make anything come within the scope of the exception, and suffice to deny the practical operation of the freedoms that by one big clause you are supposed to guarantee. I, therefore, think that it is necessary to make the substitution I have suggested in this article, that the words "this Constitution and the laws there under or in accord there with at any time in force" may be substituted for the words "the other provisions of this article" and after the words "all citizens shall have" the words "and are guaranteed" be added. I hope the amendment will prove acceptable to the House.

Mr. Vice-President: Amendment Nos. 417 and 418 are of similar import. I can allow No. 417 to be moved. This amendment stands in the name of Mr. Lari.

An Honourable Member: He is not in the House.

Mr. Vice-President: Then amendment No. 418 which stands in the name of Shri Mukut Behari Lal Bhargava.

The amendment was not moved.

Mr. Vice-President: Amendment Nos. 420, 421, and 424 are of similar import and I suggest that the House should consider them together. I suggest that amendment No. 421 be moved. This stands in the name of Prof. K. T. Shah.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

> "That in sub-clause (a) of clause (1) of article 13,after the word `expression'; the words `of thought and worship; of press and publication;' be added."

so that the article as amended would read:

"Subject to the other provisions of this article, all citizens shall have the right--

> (a) to freedom of speech and expression; of thought and worship; of press and publication;"

In submitting this amendment, I must confess to a feeling of amazement at the omission whether it is by oversight or deliberate. I do not know of these very essential and important items in what are known as Civil Liberties. The clause contents itself merely with the freedom of speech and of expression. I do not know what type of freedom of speech the draftsman had in mind when he adds to it the freedom of expression separately. I thought that speech and expression would run more or less parallel together. Perhaps "expression" may be a wider term, including also expression by pictorial or other similar artistic devices which do not consist merely in words or in speech.

Allowing that is the interpretation, or that is the justification for adding this word "expression", I still do not see why freedom of worship should have been excluded. I am not particularly a very worshipful man myself. Certainly I do not indulge in any overt acts of worship or adoration. But I think a vast majority of people feel the need and indulge in acts of worship, which may often be curtailed or be refused or in other words be denied unless the Constitution makes it expressly clear that those also will be included. All battles of religion have been fought--and it must be very well known to the draftsman that they are going on even now--in connection with the right of free worship. The United States itself owes its very origin to the denial of freedom of worship in their original home to the Fathers of the present Union some 300 odd years ago. That is why in most modern constitutions, the freedom of worship finds a very clear mention. I certainly feel therefore that this omission is very surprising, to say the least. Unless the Drafting Committee is in a position to explain rationally, is in a position to explain effectively why this is omitted, I for one would feel that our Constitution is lacking and will remain lacking in a most essential item of Civil Liberties if this item is omitted.

The same or even a more forceful logic applies to the other "freedom of the press, and freedom of publication." The freedom of the press, as is very well known, is one of the items round which the greatest, the bitterest of constitutional struggles have been waged in all constitutions and in all countries where liberal constitutions prevail. They have been attained at considerable sacrifice and suffering. They have now been achieved and enshrined in those countries. Where there is no written constitution, they are in the well established conventions or judicial decisions. In those which have written constitutions, they have been expressly included as the freedom of the press.

Speaking from memory, I am open to correction, although I think it would not be necessary, even the United Nations Charter gives good prominence and special mention of freedom of the press. Why our draftsmen have omitted that, I find beyond me even to imagine. I dare say they must have very good reasons why the freedom of the press has not found specific mention in their draft. But, unless and until they give the reasons and explain why it has been omitted, I feel that an amendment of the kind I am proposing is very necessary.

The Press may be liable to abuse; I feel there may have been instances where the press has gone, at least in the mind of the established authority, beyond its legitimate limits. But any curtailment of the liberty of the press is, as one of the present Ministers, who was then a former non-official member, called, a "black Act," in the last but one session of the legislature when there was an attempt to curtail the liberty of the press under certain circumstances. This endeared him at least so much to me that in spite of many differences with him. I felt he had done yeoman service, though singly opposing even at the third reading of the Bill.

With the presence of such men in this House, I am amazed that in this Constitution a very glaring omission has taken place in the draft by leaving out the freedom of the press. I cannot imagine, why these draftsmen, so experienced and so seasoned, should have felt it desirable to leave out the freedom of the press, and leave it to the charity of the administrators of the Constitution when occasion arose to include it by convention or implication, and not by express provision. Freedom of the press, I repeat, is apt to be misunderstood, or, at any rate, apt to be regarded as licence which you may want to curtail. There are many ways by which laws can be passed or laws can be administered whereby you can regard the liberty as verging upon licence and as such to be curtailed. To omit it altogether, I repeat, and Ire peat with all the earnestness that I can command, would be a great blemish which you may maintain by the force of the majority, but which you will never succeed in telling the world is a progressive liberal constitution, if you insist on my amendment being rejected.

Mr. Vice-President: Amendment No. 420. Is it pressed?

(Mr. Naziruddin Ahmad rose in his seat to speak.)

You need not come. I only want to know whether you intend to press this, in which case, I shall put it to the vote.

Mr. Naziruddin Ahmad: Sir, I wish to speak on this.

Mr. Vice-President: You can speak in the course of the general discussion, provided, of course, you get a chance.

You have given me the power to rule out; take yours eat, please; it will be put to the vote.

Mr. Naziruddin Ahmad: Without any debate, Sir?

Mr. Vice-President: Amendment No. 422.

(Shri Lakshminarayan Sahu came to the rostrum.)

You are not allowed to speak. Do you want to press it?

Shri Lakshminarayan Sahu (Orissa: General): Yes, Sir.

(Amendment No. 424 was not moved.)

Mr. Vice-President: Amendment No. 423 is disallowed.

(Amendment No. 425 was not moved.)

Mr. Vice-President: Amendment No. 426.

Giani Gurmukh Singh Musafir (East Punjab: Sikh): *[I do not wish to move my amendment, as it is covered by clause (1) of the Explanation to article 19.]*

Mr. Vice-President: I cannot follow what he is saying.

An Honourable Member: He is not moving the amendment.

(Amendment No. 427 was not moved.)

Mr. Vice-President: Amendments numbers 428, 429, 430 and 432 are of similar import and are therefore to be considered together. Amendment No. 428 may be moved.

Mr. Naziruddin Ahmad: Sir, am I to move all the amendments and speak, on all of them?

Mr. Vice-President: On amendment No. 428 only.

Mr. Naziruddin Ahmad: Will all the others be put to the vote?

Mr. Vice-President: Of course.

Mr. Naziruddin Ahmad: Sir, I beg to move:

"That at the end of sub-clause (c) of clause (1) of article 13, the words `for any lawful purpose' be inserted."

The Honourable Shri K. Santhanam (Madras: General): Sir, on a point of order, sub-clause (4) covers exactly this position in greater detail.

Mr. Naziruddin Ahmad: I had carefully thought about this objection, Sir, and I was just going to mention the difficulty of that view. That is the only reason why I have come here to move the amendment.

Mr. Vice-President: Proceed.

Mr. Naziruddin Ahmad: Sir, all that I wish to convey by means of this amendment is that the people's freedom of speech, freedom of forming associations or unions, and moving freely throughout the territory and residing in any place, should be subject to the condition that they do it for a lawful purpose.

So far as Mr. Santhanam is concerned, he does not quarrel with the principle. His contention is that these conditions are sufficiently expressed in the clauses (2), (3), (4), (5) and (6). I shall draw the attention of the House and particularly of Mr. Santhanam to sub-clause (b) of clause (1) of article 13. It gives the right to assemble 'peaceably and without arms'. The words `peaceably and without arms' should be objectionable from the point of view of Mr. Santhanam because it may be argued that the words are unnecessary and the condition is sufficiently provided for in clause (3). I submit that the amendments which stand in my name are merely an application of this method of draftsmanship to the other sub-clauses. I submit if we have them in the sub-clauses (b), they should also be in (a), (c), (d), (e), (f) and (g). If we introduce the words "for any lawful purpose" there, they will be beyond the scope of any legislature to interfere. But if we are satisfied with clauses (2), (3), (4), (5) and (6), they can be interfered with by the Legislature. So there is this difference that with the inclusion of the words in the sub-clauses as I suggest, they would be part of the Fundamental Right. That is, if any one speaks, he should do so for a lawful purpose; if he forms associations and unions, he should do it in a lawful manner, *i.e.*, he should not join or form into a conspiracy or other forbidden things of the sort. Then if he wants to move throughout the territory of India, I think this should be also limited by the condition that it should be for a lawful purpose. No male person should enter a female compartment in railway carriage or enter into lady's dressing room: and then somebody might say "I shall reside in this Assembly Hall"; there must be limiting conditions. My point is if you insert them in sub-clauses (a), (c), (d), (e), (f) and (g), as you have already inserted specifically in sub-clause (b)--if you insert them in these sub-clauses, then they will be part of the Fundamental Right and clauses (2), (3), (4), (5), and (6) will not give any power to the legislatures to abrogate them. This is the reason which induced me to move this amendment. Sir, this point of view should be carefully considered.

(Amendments No. 431 and Nos. 433 to 437 were not moved.)

Mr. Vice-President: No. 438 and first part of 443. Mr. Kamath.

Shri H. V. Kamath: Mr. Vice-President, I move:

"That after sub-clause (g) of clause (1) of article 13the following new sub-clause be added:

I move this amendment, as amended by my own amendment No. 79 in List No. II, which runs thus:

"That for amendment No. 438 of the List of Amendments, the following be substituted:

"That after sub-clause (g) of clause (1) of article 13,the following new sub-clause be added:--

(h) to keep and bear arms;

and the following new clause be added after clause (6):

(7) Nothing in sub-clause (h) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing, in the interests of public order, peace and tranquility, restrictions on the exercise of the right conferred by the said sub-clause.' "

Sir, I feel a little pardonable pride in moving this amendment before the House today. Considering as I do that it puts an end or brings to an end one phase of our ignominious past, the past of more than a hundred years, and in view of the importance of this matter involved in the amendment, may I appeal to you, Sir, to give me a little latitude in the matter of time, because I want to put the case in its entirety before the House? And may I also make a personal request to Dr. Ambedkar or whoever it may be that will reply on behalf of the Drafting Committee, to pay close attention to what is going out in the House? Yesterday we found at the fag end of the day Dr. Ambedkar--perhaps he was a bit fagged out and tired--I felt that he had not followed the debate on titles.

Mr. Vice-President: I will not allow you to make any reference to what happened yesterday.

Shri H. V. Kamath: Before I come to the amendment itself may I say a word as to an important omission which has been made before article 13? I find from the Report of the Fundamental Rights Sub-Committee over which the Honourable Sardar Patel presided, the rights from 13 up to 18 have been titled or designated as the Rights of Freedom. This sub-title `Rights of Freedom' has been omitted from the draft as presented to the Assembly now. In this report which I am reading--Report of the Committee--First Series from December 1946 to July 1947--the sub-title is `Rights of Freedom' just before we come to article 13.

Then, Sir, I come to the amendment itself. It is common knowledge to all of us who have lived and worked in India during the last thirty years or more that this has been a universal demand emanating from all sections of the population, firstly as a protest against the degrading and humiliating Arms Act passed by the British Government in the last century, and secondly, Sir, as a guarantee of the right of self-defence. This demand has been embodied in various Congress Resolutions during the last two decades. The most important Resolution and most historic, the most momentous was the Resolution on Fundamental Rights passed at Karachi. I read, Sir, from that Resolution the relevant extracts:

> "This Congress is of opinion that to enable the masses to appreciate what Swaraj as conceived by the Congress will mean to them, it is desirable to state the position of the Congress in a manner easily understood by them. In order to end the exploitation of the masses, political freedom must include real economic freedom of the starving millions. The Congress, therefore, declares that any constitution.

Mark these words--any constitution.

> * * * which may be agreed to on its behalf, should provide or enable the Swaraj Government to provide for the following......"

and various fundamental rights are enumerated, among them being this one--

> "Every citizen has the right to keep and bear arms in accordance with Regulations and reservations made in that behalf."

I find, Sir, from this list of Fundamental Rights, adopted at the Karachi session of the Congress, almost all of them have been incorporated in this Draft Constitution, except this one, and this is a very serious omission.

I might also make an observation about this amendment, that I am in a very good company, because amendment No. 443which is similar to my amendment has been tabled by the General Secretaries of the Congress-Shri Shankar Rao Deo and Acharya Jugal Kishore.

Mr. Vice-President: Do you suggest that it is the work of the Congress only? I thought it is the co-operative work of all the parties.

Shri H. V. Kamath: But, Sir, all will agree that the dominant party in this House is the Congress Party, and if this party is not going to stand by its past professions, if it is going to prove false to its past, and not implement its resolution of the past, what has that party come to? If the fundamental idea of this resolution passed at Karachi is to be given the go-by, I ask this House, shall we not fall in the estimation of the people of the country? Sir, this demand has not been a mere demand. I very well remember that in Nagpur in 1923 or 1924 there was a Satyagraha movement against the Arms Act and this Satyagraha movement attracted Satyagrahis from all over-India. That went on for six months, and the Congress put its seal of approval on this Satyagraha movement against the Arms Act. Today we may say that conditions have changed and we do not want this sort of thing to be incorporated in our fundamental rights. But, Sir, I will come to that argument a little later.

I can appreciate the force of the argument that this absolute right should not be conceded today. Perhaps there is a lurking fear in the minds of those in power that the right may be abused. For that reason I have given this proviso in conformity with and in line with the other provisos which have been embodied in this article. I am personally not very much in favour of these elaborate provisos. Here again, I would like to draw the attention of the Honourable Dr. Ambedkar to pages 21 and 29 of this Report of the Committees' First Series. On page 21, we have the Report of the Fundamental Rights Sub-Committee presided over by the Honourable Sardar Patel, and later on the same report was discussed in the Assembly and modifications were made in that, and the elaborate provisos which appeared in the original report of the Fundamental Rights Committee do not find a place in the resolution on the report which was adopted by the Constituent Assembly. This perhaps needs an explanation from Dr. Ambedkar.

Reverting to the subject matter of the amendment. I have already said that I do not want to make this right absolute. That is why I have tabled this proviso, imposing restrictions in the interests of public order, peace and tranquility. It may be said that saboteurs and other elements are abroad in the country and these may abuse this privilege and take advantage of this privilege conferred upon the ordinary citizen. But may I tell the House that saboteurs and other evil elements, villains and criminals have managed and will always manage to get arms, Arms Act or no Arms Act; and it is the law-abiding citizen who has always suffered in the bargain, and it is he who has to be protected against these elements. The history of the last twelve months has proved this to us most unmistakably, that those who suffer in these criminal riots and disturbances are not the violent elements or the saboteurs, but the law-abiding citizens, and these have to be protected.

Again, the argument may be put forward that we should incorporate only such rights about which there is fear that they might be denied to the citizen. But if we examine this argument a little closely, and also this article, in the light of this argument, we will find that rights like free movement throughout India; freedom to reside and settle in any part of India, and such other rights about which there is no doubt or fear that they will be denied, have been incorporated in this article. But this one right, to keep and bear arms has not found a place in this article. If this very diluted proposal of mine, if even this very abridged freedom to bear arms is not acceptable to the House, I am afraid it will create a most unfortunate impression on our countrymen that the Government does not trust the people, that the Government has no faith in the people, that the Government is afraid of the people. It is all right. Sir, for Ministers of Government to say, "We are here to protect you". But, with security guards outside their bungalows, it is very well for them to put forward this plea. But the ordinary citizen has no armed guard about him, no guards standing outside his house. If the Government wishes to convey the impression to the people that the Government has no faith in them, that it is afraid of them, if that is the attitude of the Government, then it is welcome to say so. It will prove to the people that you are not a popular government, that you are a government which has no faith in the people. If you are a popular government, this is the least that you can do today to put an end to this ignominy of the past one hundred years.

It may be argued also that the Congress and Mahatma Gandhi and our leaders have taught us to defend ourselves by Ahimsa, and not by Himsa, by non-violence and not by violence. But, Sir, may I, in all humility remind the House that Mahatma Gandhi used to say, "Resist, defend, non-violently, if possible, but violently, if necessary. What I hate is cowardice." And this doctrine, Sir, has been propagated recently by the Honourable Sardar Patel himself who has been going about the country asking the people never to run away, never to be cowards, but to resist violently if necessary, not to run away from the assassin, from the hooligan, from the criminal. Defend yourself by all means and at all costs. I find my honourable Friend Mr. Shankar Rao Deo laughing in his seat. He is welcome to smile or laugh but I may tell him that he laughs best who laughs last. He has tabled an amendment here. I do not know whether he is serious about it. In the end I will only say that if we of the Congress party who are in a majority desire to prove true to our past, if we have the desire in us to implement all the resolutions that we have adopted in the past, if we do not want to live with the lie in our soul, I appeal to the House to accept this amendment and put an end to one of the most disgraceful phases of our ignominious past of over a hundred years.

Mr. Vice-President: May I ask whether the first part of amendment No. 443 is going to be pressed?

Shri Shankarrao Deo (Bombay: General): No, Sir.

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, I want to give my wholehearted support to the motion of my honourable Friend who has just moved his amendment........

Mr. Vice-President: May I suggest that instead of starting the general discussion we postpone it till all the amendments have been moved. We shall try our best to give the Maulana Sahib an opportunity to speak. Will he kindly resume his seat? (Laughter)

Order, order. The Maulana Sahib is perfectly within his rights if he wants to speak. I am sorry, Maulana Sahib, to ask you to go back to your seat. It is regrettable to greet an old Member of this House in this fashion.

Mr. Mohammed Ismail Sahib (Madras: Muslim): Sir, I move:

"That after sub-clause (g) of clause (1) of article 13, the following new sub-clause be added:--

(h) to follow the personal law of the group or community to which he belongs or professes to belong.

(i) to personal liberty and to be tried by a competent court of law in case such liberty is curtailed'."

Shri C. Subramaniam (Madras: General): On a point of order, Sir, the House has already passed an article in the Part on directive principles that there should be a uniform civil code. Here the Honourable Member wants to move that everybody should have the liberty to follow the personal law of the group or community to which he belongs or professes to belong. This is going contrary to the article which has already been passed. We have already decided that as far as possible personal law should come under a uniform civil code and this amendment is against the principle of that article.

As regards the other part of the amendment, it should be discussed when we take up article 15.

Mr. Vice-President: It is no point of order. Mr. Mohammed Ismail Sahib may continue his speech.

Mr. Mohammed Ismail Sahib: It is really true that I made a similar proposal when the directive principles were under discussion. I made it clear that this question of personal law ought really to come under the chapter Fundamental Rights and I also said that I shall, when the opportunity came, move this amendment at the proper time.

Person law is part of the religion of a community or section of people which professes this law. Anything which interferes with personal law will be taken by that community and also by the general public, who will judge this question with some commonsense, as a matter of interference with religion. Mr. Munshi while speaking on the subject previously said that this had nothing to do with religion and he asked what this had to do with religion. He as an illustrious and eminent lawyer ought to know that this question of personal law is entirely based upon religion. It is nothing if it is not religious. But if he says that a religion should not deal with such things, then that is another matter. It is a question of difference of opinion as to what a religion should do or should not. People differ and people holding different views on this matter must tolerate the other view. There are religions which omit altogether to deal with the question of personal law and there are other religions like Hinduism and Islam which deal with personal law. Therefore I say that people ought to be given liberty of following their personal law.

It was also stated by Dr. Ambedkar on the floor of this House that the question of following personal law was not immutable. There were, as a matter of fact, sections of Muslims who do not follow the personal law prescribed by Islam, but that is a different matter. It is not reasonable to say that simply because a section of people do not want to follow a certain law of a certain religion or a certain part of that religion that other people also should not follow the law and that sections of people should be compelled not to follow that part of the religion which certain other sections of the same community are not following.

That is not really reasonable, Sir, and it is really immutable to the people who follow this law and this religion, because people, as they understand it, have not got the right to change their religion as they please. There may be people who contravene their own religion, but that is a different matter and we cannot compel others also to contravene their religion. Here the question of personal law affects only the people who follow this law. There is no compulsion exercised thereby on the general community or the general public. This House will remember that on another question, which is really a religious question--I mean the question of cow-slaughter--an obligation has been placed upon other communities than the one which considers the prohibition of cow-slaughter as a religious matter. But then, Sir, respecting the views and feelings of our friends, the minority communities who have got the right and privilege of slaughtering and eating the flesh of cows have agreed to the proposal put before the House, though that is going beyond affecting one particular community alone. Here, Sir, observance of personal law is confined only to the particular communities which are following these personal laws. There is no question of compelling any other community at all.

Pandit Thakur Dass Bhargava (East Punjab: General): Is the honourable Member aware of the restrictions of cow-slaughter in Pakistan?

Mr. Vice-President: Will the honourable Member kindly address the Chair.?

Mr. Mohammed Is mail Sahib: I cannot hear him properly. I do not know what my friend is trying to say.

Mr. Vice-President: Do not pay any attention to that. Will the Honourable Member continue?

Pandit Thakur Dass Bhargava: I was enquiring of the honourable Gentleman if he knows that there is a restriction on cow-slaughter in Pakistan, in Afghanistan and in many Muhammadan countries. In India also the Muhammadan kings placed such a restriction.

Mr. Mohammed Ismail Sahib: They might have or not have made a provision of that sort. My point is that this is a question which affects a particular community, but because that community wanted to prevent that slaughter the other community, which need not prohibit that slaughter has agreed to that proposal. But with regard to personal law, it concerns a particular community which is following a particular set of personal laws and there is no question of compelling other people to follow that law and it is the question of the freedom of the minority or the majority people to follow their own personal law. As a matter of fact, I know there are an innumerable number of Hindus who think that interference with the personal law is interference with their religion. I know, Sir, that they have submitted a monster petition to the authorities or to the people who can have any say in the matter. Therefore it is not only Muslims but also Hindus who think that this is a religious question and that it should not be interfered with. The personal law of one community does not affect the other communities. Therefore, Sir, what I urge is that the freedom of following the personal law ought to be given to each community and it will not interfere with the rights of any other community.

Again, Mr. Munshi stated that Muslim countries like Egypt or Turkey have not any provision of this sort. Sir, I want to remind him that Turkey is under a treaty obligation. Under that treaty it is guaranteed that the non-Muslim minorities are entitled to have questions of family law and personal status regulated in accordance with their usage. That is the obligation under which Turkey has been placed and that is obtaining in Turkey now.

Then again with regard to Egypt, no such question of personal law arose in that country. But what is to be noted is that whatever the minorities in that country wanted has been granted to them: in fact more than what they wanted has been granted. And if personal law had also been a matter in which they wanted certain privileges, that would also have been granted.

Then there are other countries. Yugoslavia has agreed to give this privilege to the Muslims in following their family law and personal law.

Therefore, what I am asking for is not a matter which is peculiar to myself or to the minority community in this country. It is a thing, Sir, well understood in other parts of the world also.

Sir, I also move:

"That after clause (6) of article 13, the following new clauses be added:

` '(7) Nothing in the clauses (2) to (6) of this article shall affect the right guaranteed under sub-clause (h) of clause (1) of this article'."

This is consequential. The personal law is presumed to be guaranteed by the previous amendment, that is the new sub-clause (h) to clause (1) of article 13, and this clause(7) seeks to preclude any interference with the question of personal law as a result of clauses (2) to (6).

Then coming to the new clause (i), it reads thus:

"to personal liberty and to be tried by a competent court of law in case such liberty is curtailed."

This has nothing to do with the minority or the majority. It concerns itself with the right of every citizen. Personal liberty is the core of the whole freedom. It is the basis upon which the freedom of the land must be built. But here, Sir, in this bulky Constitution this question of personal liberty is left almost as an orphan. Only one mention is made of personal liberty, *i.e.*, in article 15 and it is left there, it is left to be taken care of by `procedure established by law'. I do not here enter into the controversy whether it should be "by due process of law', or "by procedure established by law". But what I want to say is that only a mention has been made in the Constitution with regard to personal liberty. But personal liberty is the most fundamental of the fundamental rights and it ought not to be dealt with in such a cursory manner, as it has been done in the Constitution.

I request your permission to read a quotation to illustrate how the Constitutions of other countries have dealt with this all-important question of personal liberty.

Much smaller countries than India have taken a more serious and, if I may say so, a sacred view of this question. The Polish Constitution says, among other things: 'If in any case the judicial order cannot be produced immediately'--(it is only on a judicial order that a man's liberty can be curtailed)--`it must be transmitted within 48 hours of the arrest stating the reasons for the arrest. Persons who have been arrested and to whom the reasons for the arrest have not been communicated within 48 hours, in writing over the signature of judicial authorities, shall be immediately restored to liberty.'

'The laws prescribe the means of compulsion which maybe employed by the administrative authority to secure the carrying out of their order.'

Then again, the same Constitution says; "No law may deprive a citizen, who is the victim of injustice or wrong, of judicial means of redress."

Sir, another State, *viz.*, Yugoslavia, in regard to this matter goes even further. It has provided:

"A man after he is informed of the reasons for the arrest or detention has got the right........"

Shri C. Subramaniam: Questions of personal liberty come only under article 15. They are irrelevant under this article. It is article 15 that deals with personal liberty thus: "No person shall be deprived of his life or personal liberty except according to procedure established by law, nor shall any person be denied equality before the law or the equal protection of the laws within the territory of India." Therefore what is the use of discussing the question of personal liberty under article 13?

Mr. Mohammed Ismail Sahib: I have already referred to this point. Of course it is mentioned there. But to say that because it is mentioned there it is necessary that the matter should be discussed only there is not correct. I am of the view that this subject is more appropriately brought under article 13 which speaks of the various freedoms of the citizen. Of these freedoms, this is the most important. Therefore there is nothing wrong in my saying that this all-important question must be brought under article 13. With that view I have tabled this amendment and I am speaking on this amendment.

Sir, my amendment, which I have moved with your permission, says that the citizen shall be guaranteed his personal liberty. As I was saying, the Constitution of Yugoslavia has provided: "No person may be placed under arrest for any crime or offence whatever save by order of a competent authority given in writing stating the charge. This order must be communicated to the person arrested at the time of arrest or within 24 hours of the arrest. An appeal against the order for arrest may be lodged in the Competent Court within three days. If no appeal has been lodged.--(this is important)--`within this period, the police authorities must as a matter of course communicate the order to the competent court within 24 hours following. The court shall be bound to confirm or annul the arrest within 2 days of the communication of the order and its decision shall be given effect forthwith. Public officials who infringe this provision shall be punished for illegal deprivation of liberty.' "

Sir, ours is a bulky Constitution. Our friends congratulated themselves in having produced the bulkiest Constitution in the world. And this Constitution from which I read out an extract just now contains only 12 articles. It is a much smaller Constitution than ours and yet in the matter of personal liberty it has made such an elaborate provision as that I mentioned. This bulky Constitution of ours does not find more than a few words where this all important question of personal liberty is concerned.

Now, Sir, there are various Public Safety Acts enacted and enforced in the various provinces of the country. Here, personal liberty as it stands is almost a mockery of personal liberty. A man is being arrested at the will and pleasure of the executive. He is put in prison and he does not even know for what he has been imprisoned or for what charge he has been detained. Even where the law puts the obligation on the Government to reveal to him the reasons for which he has been detained, the executive takes its own time to do so. There are cases in which the persons concerned were not informed of the charge for weeks and months and when the charges were communicated, many of them were found to be of such a nature that they could not stand before a court of law for a minute. No right has been given to a detenu or a person arrested or detained to test the validity of the order before a court of law. This kind of administration of law was not known even under foreign rule, that is, under

British rule.

Now, Sir, another contention is being indulged in, and that is that it was different when the Britisher, the foreigner was in the country and that now its is our own rule. True, but that does not mean that we can deal with liberty of the citizens as we please. Bureaucracy is bureaucracy, whether it is under foreign rule or self-rule. Power corrupts people not only under foreign rule, but also under self-government. Therefore, Sir, the citizen must be protected against the vagaries of the executive in a very careful manner as other self-governing countries have done. In almost every country in the world, they have made elaborate provision for protecting the personal liberty of the citizen. Why should India alone be an exception, I do not understand. Therefore, the framers of the Constitution, I hope, will reconsider this question and make suitable provisions for the protection of the liberty of the person.

Sir, in this amendment of mine I have not gone elaborately into the question of personal liberty. I only want the citizen concerned to be given the right of going to, and being tried by, a court of law, if his personal liberty is curtailed. That one precious right I want to be given to every citizen of India.

May I also, Sir, move the other consequential amendments included in amendment No 502. I have moved only the one on page 53 of the List of Amendments, namely new sub-clause (7). That relates to personal law. May I move now the other portion of the amendment relating to new clauses(8) and (9) on page 54 of the List?

Mr. Vice-President: The Honourable Member may do so, but without making a speech.

Mr. Mohammed Ismail Sahib: Sir, I move that the following new clauses be added:

"(8) Nothing in clauses (2) to (6) shall affect the right guaranteed under sub-clause (i) of clause (1) of this article.

(9) No existing law shall operate after the commencement of this Constitution so far as the same affects adversely the right guaranteed under sub-clause (i) of clause (1) of this article and no law shall be passed by the Parliament or any State which may adversely affect the right guaranteed under sub-clause (i) of clause (1) of this article."

These are only consequential amendments.

Mr. Vice-President: We shall now go on to amendments Nos. 442, 499, the second part of 443, 468 and 501. These are all of similar import. I hold that the only two amendments which can be moved under the new regulations are amendments Nos. 442 and 499. The others will be voted on.

Shri M. Ananthasayanam Ayyangar (Madras: General): All these relate to free choice in the election of representatives. In a sense this is a new subject and may on that account be held over for consideration.

Mr. Vice-President: What about 499?

Pandit Thakur Dass Bhargava: That also relates to the same subject.

Mr. Vice-President: The whole group will be held over for consideration.

(Amendment No. 444 was not moved.)

Mr. Vice-President: Amendment No. 445.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That the following new clause be added after clause(1) of article 13:

'Liberty of the person is guaranteed. No person shall be deprived of his life, nor be arrested or detained in custody, or imprisoned, except according to due process of law, nor shall any person be denied equality before the law or equal protection of the laws within the territory of India.'"

Sir, this again is of the same species of amendments which I am trying my best to place before the House, that is to say, the enunciation and incorporation of those elementary principles of modern liberal constitutions in which it is a pity our Constitution seems deliberately to be lacking. The liberty of the person, ever since the consciousness of civil liberties, has come upon the people, has been the main battleground of the autocrats and those fighting against them. In no single instance other than this has the power of autocracy wanted to assert itself against the just claims of the individual to be respected in regard to his personal freedom. The liberty of the person to fight against any arbitrary arrest or detention, without due process of law, has been the basis of English constitutional growth, and also of the French Constitution that was born after the Revolution. The autocrat, the despot, has always wished, whenever he was bankrupt of any other argument, just to shut up those who did not agree with him. It was, therefore, that any time the slightest difference of opinion was expressed, the slightest inconvenience or embarrassment was likely to be caused by any individual, the only course open to those who wanted to exercise autocratic power was to imprison or arrest or detain such a person without charge or trial. It has been in fact in many modern constitutions among the most cardinal articles that the liberty of the person shall be sacred, shall be guaranteed by the Constitution. We are covering new ground and should not omit to incorporate in our Constitution those items which in my opinion ought to be sacrosanct, which would never lose anything by repetition, and which would also add to our moral stature.

This Constitution, Sir, was drafted at a time when people were going through extraordinary stress and strain. The tragic happenings of some twelve or fourteen months ago were no doubt responsible for influencing those who drafted this Constitution to feel that in the then prevailing goods it was necessary to restrict somehow the freedom of the individual. Therefore it is that the freedom of the individual, the sacredness and sanctity of personal liberty has been soft-pedalled in this Constitution. But now after an interval of fourteen months. I would suggest to this House that these sad memories should be left to the limbo where they deserve to remain. We have had no doubt the unfortunate experiences in which individuals moved by whatever sentiments had tried to exert violence and do injury to their fellows which no civilised State can put up with. It was therefore at the time necessary that such individuals should be apprehended immediately. In emergencies like this, in cases like this, if you wait for performing the due processes of law, if you wait for reference to a magistrate for the issue of a proper warrant, or compliance with all the other formalities of legal procedure to be fulfilled, it is possible that the ends of justice may not be served, it is possible that the maintenance of law and justice may be endangered. But, Sir, I venture to submit to this House that was an extraordinarily abnormal situation which we hope will not recur. Constitution should be framed, not for these abnormal situations, but normal situations and for reasonable people who it must be presumed will be normally law-abiding and not throw themselves entirely to the mercy of these goondas. We are making a constitution, Sir, for such types of people and not for those exceptions, the few who might have temporarily lost the possession of their senses, and who therefore maybe dealt with by extraordinary procedure.

We have in this Constitution as we have in many other Constitutions provisions relating to a state of emergency where the normal Constitution is suspended. I am not at all enamoured of these extraordinary exceptions to the working of constitutions; but even I might conceive that in moments of emergency it may be necessary, however regrettable it maybe, to suspend constitutional liberties for the time being. But we must not, when framing a constitution, always assume that this is a state of emergency, and therefore omit to mention such fundamental things as civil liberties.

I, therefore, want to mention categorically in this Constitution that the liberty of the person shall be respected, shall be guaranteed by law, and that no person shall be arrested, detained or imprisoned without due process of law. That process it is for you to provide. That process it is for laws made under this Constitution to lay down. And if and in so far as that process is fulfilled, there is no reason to fear that any abuse of such individual liberty will take place. Why then deny it, why then omit the mention of personal liberty that has all along been the mark of civilised democratic constitutions against the autocratic might of unreasoning despots? I am afraid, looking at the fate of most of my amendments, that I may perhaps be hurling myself against a blank wall. But I will not prejudice my hearers and certainly not the draftsmen by assuming that they are unreasoning until they prove that they are guilty of utterly unreasoning opposition.

Mr. Vice-President: Amendments Nos. 446, 447 and 448.These are all of similar import. Amendment No. 448 may be moved. It stands in the joint names of Shrimati Renuka Ray, Dr. Keskar, Shri Satish Chandra and Shri Mohanlal Gautam.

(Amendments Nos. 448 and 446 were not moved.)

Mahboob Ali Baig Sahib Bahadur: (Madras: Muslim): Sir, there is another amendment in my name, amendment No. 451: that is for the deletion of clauses (2), (3), (4), (5), and (6).

Mr. Vice-President: That comes under another group which will be dealt with hereafter.

Mahboob Ali Baig Sahib Bahadur: Then, alternatively, I shall move amendment No. 447. Sir, I move:

"That clauses (2) to (6) of article 13 be deleted and the following proviso be added to clause (1):

'Provided, however that no citizen in the exercise of the said right, shall endanger the security of the State, promote ill-will between the communities or do anything to disturb peace and tranquillity in the country'."

Mr. Vice-President, Sir, to me it looks as if the fundamental rights are listed in clause (1) only to be deprived of under clauses (2) to (6), for in the first place, these fundamental rights are subject to the existing laws. If in the past the laws in force, the law-less laws as I would call them, the repressive laws, laws which were enacted for depriving the citizens of their human rights, if they have deprived the citizens of these rights under the provisions under clauses (2) to (6), they will continue to do so. The laws that I might refer to as such are the Criminal Law Amendment Acts, the Press Acts and the several Security Acts that have been enacted in the Provinces. And these clauses (2) to (6) further say that if the existing laws are not rigorous, repressive and wide enough to annihilate these rights, the States as defined in article 7 which covers not only legislatures, executive Governments and also the local bodies, nay, even the local authorities can complete the havoc. I am not indulging in hyperbole or exaggeration. I shall presently show that there is not aniota of sentiment or exaggeration in making this criticism. Fundamental rights are fundamental, permanent, sacred and ought to be guaranteed against coercive powers of a State by excluding the jurisdiction of the executive and the legislature. If the jurisdiction of the executive and the legislature is not excluded, these fundamental rights will be reduced to ordinary rights and cease to be fundamental. That is the import, the significance of fundamental rights.

Then, Sir, it is said by Dr. Ambedkar in his introductory speech that fundamental rights are not absolute. Of course, they are not; they are always subject to the interests of the general public and the safety of the State, but the question is when a certain citizen oversteps the limits so as to endanger the safety of the State, who is to judge? According to me, Sir, and according to well recognised canons, it is not the executive or the legislature, but it is the independent judiciary of the State that has to judge whether a certain citizen has overstepped the limits so as to endanger the safety of the State. This distinction was recognised by the framers of the American Constitution in that famous Fourteenth Amendment which clearly laid down that no Congress can make any law to prejudice the freedom of speech, the freedom of association and the freedom of the press. This was in 1791, and if the American citizen transgressed the limits and endangered the State, the judiciary would judge him and not the legislature or the executive.

Even in the case of Britain where there is no written constitution two prominent and effective safeguards were there. They were governed by the law of the land. The law of the land is the law which gave them freedom of thought, freedom of expression and they cannot be proceeded against without due process of law. These were the two safeguards. It is only in the German Constitution that we find restrictions such as those in clauses (2) to (6). It is only in the German Constitution that the fundamental rights were subject to the provisions of the law that may be made by the legislature. That means that the citizens could enjoy only those rights which the legislature would give them, would permit them to enjoy from time to time. That cuts at the very root of fundamental rights and the fundamental rights cease to be fundamental. I dare say, Sir, you know what was the result. Hitler could make his legislature pass any law, put Germans in concentration camps without trial under the provisions of law made by the legislature of Germany. We know what the result was. It was regimentation, that every German should think alike and anybody who differed was sent to concentration camps. Totalitarianism, fascism was the result.

(Mr. Vice-President rang the time bell.)

I would request you to give me some time more. I am just developing the point.

Mr. Vice-President: Sorry, you cannot have time without my permission. At the proper time, I would request you to finish and take your seat. I hope you will respect my wishes.

Mahboob Ali Baig Sahib Bahadur: Sir, it is these wide considerations that were responsible for the deletion of such clauses by this august Assembly on the 30th April,1947, when Sardar Patel who was the Chairman of the Committee to report on Fundamental Rights, presented these Fundamental Rights. He moved for the deletion of all these provisos and in the discussion on the 30th of April 1947, many prominent men including Pandit Jawaharlal Nehru took part, and all these provisos were deleted. The proceedings can be found on pages 445 to 447. Here, the Prime Minister of India says:

> "A fundamental right should be looked upon, not from the point of view of any particular difficulty of the moment, but as something that you want to make permanent in the Constitution."

Therefore, Sir, in this august Assembly on the 30th of April 1947, after discussion in which prominent men including Mr. Munshi took part, these provisos were deleted. This departure now to re-introduce these provisions, I submit, with great respect, is a departure which is retrograde and I submit, Sir, that we ought not to allow it. My submission is that the existence of these three provisos is the very negation of the Fundamental Rights. I would request you to consider this question from three or four points of view.

(Mr. Vice-President again rang the time bell.)

With your permission, Sir,...........

Mr. Vice-President: No; there are many more speakers. I must now insist upon your obeying my orders.

Mahboob Ali Baig Sahib Bahadur: A few more minutes, Sir.

Mr. Vice-President: I have given you enough time. There are other speakers. I have an obligation towards them also.

Now, we shall go to the next two amendments. One is amendment No. 449 and the other is amendment No. 453. Of these two, I think amendment No. 453 is more comprehensive and may be moved. It stands in the joint names of Dr. Pattabhi Sitaramayya and others. There is also an amendment to that amendment.

Shri M. Ananthasayanam Ayyangar: Sir, I submit that this amendment No. 453** which stands in our joint names maybe taken as formally moved. I find in the order sheet, in list No. IV a further amendment to this amendment. I accept that amendment, Sir. If you kindly give permission to move that amendment, I shall accept it and it is not necessary to move this amendment.

Mr. Vice-President: Mr. Munshi.

Shri H. V. Kamath: On a point of order, Sir, unless this amendment is moved, no amendment can be moved to this. This cannot be taken as moved.

Mr. Vice-President: Do you want that he should read over the amendment? I overlooked it. Mr. Munshi.

*** That for clause (2) of article 13, the following be substituted:--*

"Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law relating to libel, slander, defamation, offences against decency or morality or sedition or other matters which undermine the security of the State."

Shri K. M. Munshi: (Bombay: General): Mr. Vice-President, Sir, I beg to move amendment No. 86 in the additional list which runs as follows: That for amendment No. 453 of the list of Amendments, the following be substituted:

"That for clause (2) of article 13, the following be substituted:--

'(2) Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law relating to libel, slander, defamation, or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State.' "

Sir, before I go to the merits of the amendment, I should like to point out a verbal error which I am sure my honourable Friend Dr. Ambedkar will permit me to correct. After the words, "shall affect the operation of any existing law", I propose that the words "in so far as it relates to" should be added; because, that connects this clause with "to libel, etc." This would make the meaning clear and I am sure my Honourable Friend will accept it.

As regards the merits, the changes sought to be made are two. In the original clause, the word 'seidtion' occurs. The original clause reads as follows: "relating to libel, slander, defamation, sedition or any other matter". The amendment seeks to omit the word 'sedition'. Further the amendment seeks to substitute the words "undermines the authority or foundation of the State" by the words.....

Mr. Naziruddin Ahmad: On appoint of order, Sir, we have not got this amendment at all. In list IV the number does not tally at all. I believe, Sir, it was circulated today and it can not be taken up. We should be given some breathing time in order to understand what is going on.

Mr. Vice-President: I think amendments to amendments can be permitted up to the time when the amendment is moved. I understand that this was placed on the table before each member.

Shri K. M. Munshi: Really speaking, the original amendments numbers 458 and 461 have been brought under a single amendment. There is nothing new in this amendment, Sir.

Mr. Vice-President: Go on, Mr. Munshi.

Pandit Hirday Nath Kunzru: (United Provinces: General): Sir, may I request Mr. Munshi to read out his amendment, once again? What is it an amendment to?

Shri K. M. Munshi: This is amendment to amendment No. 453, on page 29. In effect, it combines two amendments which are already on the list. This is how it reads:

"That for clause (2) of article 13, the following be substituted:-

'(2) Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law relating to libel, slander, defamation'."

Then comes another change.

"or any matter which offends against decency or morality."

Then comes another change.

"of which undermines the security of, or tends to overthrow the State."

That is exactly the wording of amendment No. 461.

The object of...

Shri Mahavir Tyagi (United Provinces: General): May I take it that the word 'morality' has been taken out?

Shri K. M. Munshi: I read the word 'morality'.

Mr. Vice-President: You need be under no sort of apprehension so far as that is concerned.

Shri K. M. Munshi: The House will not permit me to do anything of the sort. Sir, the importance of this amendment is that it seeks to delete the word 'sedition' and uses a much better phraseology, *viz*. "which undermines the security of, or tends to overthrow, the State." The object is to remove the word 'sedition' which is of doubtful and varying import and to introduce words which are now considered to be the gist of an offence against the State.

Shri Amiyo Kumar Ghosh (Bihar: General): On a point of information, I want to know whether without moving the original amendment, as amendment, to it can be moved?

Mr. Vice-President: The amendment was moved formally.

Shri K. M. Munshi: I was pointing out that the word 'sedition' has been a word of varying import and has created considerable doubt in the minds of not only the members of this House but of Courts of Law all over the world. Its definition has been very simple and given so far back in 1868. It says "sedition embraces all those practices whether by word or deed or writing which are calculated to disturb the tranquility of the State and lead ignorant persons to subvert the Government". But in practice it has had a curious fortune. A hundred and fifty years ago in England, in holding a meeting or conducting a procession was considered sedition. Even holding an opinion against, which will bring ill-will towards Government, was considered sedition once. Our notorious Section 124-A of Penal Code was sometimes construed so widely that I remember in a case a criticism of a District Magistrate was urged to be covered by Section 124-A. But the public opinion has changed considerably since and now that we have a democratic Government a line must be drawn between criticism of Government which should be welcome and incitement which would undermine the security or order on which civilized life is based, or which is calculated to overthrow the State. Therefore the word 'sedition' has been omitted. As a matter of fact the essence of democracy is Criticism of Government. The party system which necessarily involves an advocacy of the replacement of one Government by another is its only bulwark; the advocacy of a different system of Government should be welcome because that gives vitality to a democracy. The object therefore of this amendment is to make a distinction between the two positions. Our Federal Court also in the case of Niharendu Dutt Majumdar Vs King, in III and IV Federal Court Reports, has made a distinction between what 'Sedition' meant when the Indian Penal Code was enacted and 'Sedition' as understood in 1942. A passage from the judgement of the Chief Justice of India would make the position, as to what is an offence against the State at present, clear. It says at page 50:

> "This (sedition) is not made an offence in order to minister to the wounded vanity of Governments but because where Government and the law ceases to be obeyed because no respect is felt any longer for them, only anarchy can follow. Public disorder, or the reasonable anticipation or likelihood of public disorder is thus the gist of the offence. The acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency."

This amendment therefore seeks to use words which properly answer to the implication of the word 'Sedition' as understood by the present generation in a democracy and therefore there is no substantial change; the equivocal word 'sedition' only is sought to be deleted from the article. Otherwise an erroneous impression would be created that we want to perpetuate 124-A of the I. P.C. or its meaning which was considered good law in earlier days. Sir, with these words, I move this amendment.

Shri H. V. Kamath: On a point of clarification, may I ask my learned friend Mr. Munshi to examine whether the deletion of the word 'other' from the phrase 'any other matter' will not create some doubt or difficulty about the meaning of this amendment? Because if he will look up article 13 in the Draft Constitution, he will find that the phrase used is "any other matter". Here the word 'other' is deleted which will mean that so far as slander, defamation and libel are concerned, they can not offend against decency or morality, but only some other matter can. Is it the contention of Mr. Munshi that neither defamation, slander nor libel offends against decency and morality?

Shri K. M. Munshi: In the original clause of this article as drafted the words were—"libel, slander, defamation, sedition or any other matter which offends against decency or morality or undermines the authority or foundations of the State." Here we have omitted the word 'sedition'. Slander and defamation need not be necessarily connected with a violation of decency or morality nor do they undermine the authority of the State: the words "any matter" indicate as independent category. One category is libel, slander and defamation. The other category is any matter which offends against the State. The word 'other' therefore would be in appropriate.

Shri H. V. Kamath: In the draft article the antecedents of the words 'other' matter were libel, slander, defamation and sedition, all of them.

Shri K. M. Munshi: I cannot agree with my honourable friend.

Mr. Vice-President: Do you press amendment 449?

Mr. Naziruddin Ahmad: Yes.

Mr. Vice-President: It will be put to vote. We next come to 450, 451, 452, 453, 465 and 478--all are of similar import and should be considered together. Amendment 450 is allowed.

Sardar Hukum Singh (East Punjab: Sikh): Mr. Vice-President, Sir, I beg to move:

"That clause (2), (3), (4), (5) and (6) of article 13 be deleted."

Sir, in article 13 (1), sub-clauses (a), (b) and (c), they give constitutional protection to the individual against the coercive power of the State, if they stood by themselves. But sub-clause (2) to (6) of article 13 would appear to take away the very soul out of these protective clauses. These lay down that nothing in sub-clauses (a), (b), (c) of article 13 shall effect the operation of any of the existing laws, that is, the various laws that abrogate the rights envisaged in sub-clause (1) which were enacted for the suppression of human liberties, for instance, the Criminal Law Amendment Act, the Press Act, and other various security Acts. If they are to continue in the same way as before, then where is the change ushered in and so loudly talked of? The main purpose of declaring the rights as fundamental is to safeguard the freedom of the citizen against any interference by the ordinary legislature and the executive of the day. The rights detailed in article 13(1) are such that they cannot be alienated by any individual, even voluntarily. The Government of the day is particularly precluded from infringing them, except under very special circumstances. But here the freedom of assembling, freedom of the press and other freedoms have been made so precarious and entirely left at the mercy of the legislature that the whole beauty and the charm has been taken away. It is not only the existing laws that have been subjected to this clause, but the State has been further armed with extraordinary powers to make any law relating to libel, slander etc. It may be said that every State should have the power and jurisdiction to make laws with regard to such matters as sedition, slander and libel. But in other countries like America it is for the Supreme Court to judge the matter, keeping in view all the circumstances and the environments, and to say whether individual liberty has been sufficiently safeguarded or whether the legislature has transgressed into the freedom of the citizen. The balance is kept in the hands of the judiciary which in the case of all civilized countries has always weighed honestly and consequently protected the citizen from unfair encroachment by legislatures. But a curious method is being adopted under our Constitution by adding these sub-clauses (2) to (6). The Honourable Mover defended these sub-clauses by remarking that he could quote at least one precedent for each of these restrictions. But it is here that the difference has, that whereas in those countries it is the judiciary which regulates the spheres of these freedoms and the extent of the restrictions to be imposed, under article 13, it is the legislature that is being empowered with these powers by sub-clauses (2) to (6). The right to freedom of speech is given in article 13(1)(a), but it has been restricted by allowing the legislature to enact any measure under 13(2), relating to matters which undermine the authority or foundation of the State; the right to assembly seems guaranteed under 13(1)(b), but it has been made subject to the qualification that legislation may be adopted in the interest of public order--13(3). Further under 13(4) to 13(6), any legislation restricting these liberties can be enacted "in the interest of the general public". Now who is to judge whether any measure adopted or legislation enacted is "in the interest of the general public" or "in the interest of public order", or whether it relates to "any matter which undermines the authority or foundation of the State"? The sphere of the Supreme Court will be very limited. The only question before it would be whether the legislation concerned is "in the interest of the public order". Only the bona-fides of the legislature will be the main point for decision by the Court and when once it is found by the court that the Government honestly believed that the legislation was needed "in the interest of the public order", there would be nothing left for its interference. The proviso in article 13(3) has been so worded as to remove from the Supreme Court its competence to consider and determine whether in fact there were circumstances justifying such legislation. The actual provisions and the extent of the restrictions imposed would be out of the scope of judicial determination.

For further illustration we may take the law of sedition enacted under 13(2). All that the Supreme Court shall have to adjudicate upon would be whether the law enacted relates to "sedition" and if it does, the judiciary would be bound to come to a finding that it is valid. It would not be for the Judge to probe into the matter whether the actual provisions are oppressive and unjust. If the restriction is allowed to remain as it is contemplated in 13(2), then the citizens will have no chance of getting any law relating to sedition declared invalid, howsoever oppressive it might be in restricting and negativing the freedom promised in 13(1)(a). The "court" would be bound to limit its enquiry within this field that the Parliament is permitted under the Constitution to make any laws pertaining to sedition and so it has done that. The constitution is not infringed anywhere, and rather, the draft is declaring valid in advance any law that might be enacted by the Parliament--only if it related to sedition. Similar is the case of other freedom posed in article 13(1) but eclipsed and negatived in clauses (2) to (6).

It may be argued that under a national government, the legislature, representative of the people and elected on adult franchise, can and should be trusted for the safe custody of citizens' rights. But as has been aptly remarked, "If the danger of executive aggression has disappeared, that from legislative interference has greatly increased, and it is largely against this danger that the modern declarations of fundamental rights are directed, as formerly they were directed against the tyranny of autocratic kings."

The very object of a Bill of Rights is to place these rights out of the influence of the ordinary legislature, and if, as under clauses (2) to (6) of article 13, we leave it to this very body, which in a democracy, is nothing beyond one political party, to finally judge when these rights, so sacred on paper and glorified as Fundamentals, are to be extinguished, we are certainly making these freedoms illusory.

If the other countries like the U.S.A. have placed full confidence in their Judiciary and by their long experience it has been found that the confidence was not misplaced, why should we not depend upon similar guardians to protect the individual liberties and the State interests, instead of hedging round freedom by so many exceptions under these sub-clauses?

Sir, I commend this amendment to the House.

Mr. Vice-President: The next amendment on the list is the alternative amendment No. 451, in the same of Mr. Mahboob Ali Baig.

Mahboob Ali Baig Sahib Bahadur: Sir, I move:

"That the following words be inserted at the beginning of clauses (2), (3), (4), (5) and (6) of article 13:--

'Without prejudice and subject to the provisions of article 8."

My purpose in moving this amendment is twofold. Firstly, I want to know the mind of Dr. Ambedkar and the Drafting Committee how article 8 stands in relation to these provisos. It may be asked whether these clauses (2) to (6)are governed by article 8 or not. If these clauses are governed by article 8, may I refer to article 8 itself. It says:

"All laws in force immediately before the commencement of this Constitution in the territory of India, in so far as they are inconsistent with the provisions of this Part."

The words "inconsistent with the provisions of this part" do not affect the existing laws relating to libel, the existing laws relating to restrictions on the exercise of the rights with regard to association or assembly. That means that the existing laws mentioned in clauses (2) to (6) are not all rendered void under Article 8. The intention is clear from the footnote that is appended to article 15, where the reason for the inclusion of the word "personal" is given There it is said:

"The Committee is of opinion that the word 'liberty' should be qualified by the insertion of the word 'personal' before it, for otherwise it might be construed very widely so as to include even the freedom already dealt with in article 13."

Thus it is very clear that if the existing law relates to libel, if it relates to meetings or associations, or freedom of speech or expression, then that existing law stands in spite of the fact that article 8 says that any law in force which is inconsistent with the fundamental rights is void. So we come to this position. In the past the existing laws, for instance, the Criminal Law Amendment Acts, the Press Acts or the Security Acts laid down restrictions which are inconsistent with the liberties mentioned in clause (1).They shall be in operation and they are not rendered void. That seems to be the meaning that can naturally be attached to this.

The second point which I wish to submit is this. By the Constitution certain powers are given to the legislature or the executive. Whether a court can question the validity or otherwise of such action, order or law is another question. My opinion is that where there is a provision in the Constitution itself giving power to the legislature or in this case the State covering the legislature, executive, local bodies and such other institutions, the jurisdiction of the court is ousted, for the court would say that in the constitution itself power is granted to the legislature to deprive, restrict or limit the rights of the citizen and so they cannot go into the validity or otherwise of the law or order, unless as it is said there is *mala fides.* It is for the authorities to judge whether certain circumstances have arisen for which an order or law can be passed. Anyhow I pose this question to the Chairman of the Drafting Committee whether in these circumstances, *viz.*, where there is in existence a provision in the constitution itself empowering the legislature or the executive to pass an order or law abridging the rights mentioned in clause (1), the court can go into the merits or demerits of the order or law and declare a certain law invalid or a certain Act as not justified. In my view the court's jurisdiction is ousted by clearly mentioning in the constitution itself that the State shall have the power to make laws relating to libel, association or assembly in the interest of public order, restrictions on the exercise of....

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, if I might interrupt my honourable friend, I have understood his point and I appreciate it and I undertake to reply and satisfy him as to what it means. It is therefore unnecessary for him to dilate further on the point.

Mahboob Ali Baig Sahib Bahadur: The third point which I would submit is this. The new set up would be what is called parliamentary democracy or rule by a certain political party, by the party executive or party government and we can well imagine what would be the measure of fundamental rights that the people would enjoy under parliamentary democracy or rule by a party. In these circumstances is it not wise or necessary in the interest of the general public that the future legislatures ruled by a party or the executive ruled by a party are not given powers by this very constitution itself? For as has been said 'power corrupteth' and if absolute power is placed in the hands of party government by virtue of the terms of this constitution itself, such legislature or executive will become absolutely corrupt. Therefore, I move that if at all these provisos are necessary, they must be subject to the provision that no law can be passed, no law would be applicable which is inconsistent with the freedoms mentioned in sub-clause (1). Sir, I move.

Mr. Vice-President: The next group consists of amendments Nos. 454, 455, 469, 475, 481, and the first part of 485. They are of similar import and I allow amendment No.454 to be moved. There are certain amendments to the amendment also.

Pandit Thakur Dass Bhargava: Sir, I move:

"That in clauses (2), (3), (4), (5) and (6) of article 13 the words "affect the operation of any existing law, or" be deleted."

To this clause an amendment has been given by the Honourable Dr. Ambedkar.

Mr. Vice-President: May I suggest that when you move amendment No. 454 you move it along with your new amendment?

Pandit Thakur Dass Bhargava: I have moved No. 454, to which an amendment, stands in the name of the Honourable Dr. Ambedkar. To this latter I have given an amendment which is No. 3 in today's list. I have also given two other amendments to amendment No. 454. So I shall, with your permission, move them in one bloc.

Sir, I move:

"That with reference to amendment No. 49 of list 1 of the Amendment to Amendments--

> (i) in clause (2) of article 13 for the word 'any' where it occurs for the second time the word 'reasonable' be substituted and the word 'sedition' in the said

> clause be omitted.
>
> (ii) that in clauses (3), (4), (5) and (6) of article 13 before the word 'restrictions' the word 'reasonable' be inserted."

The net result of these amendments is the following: I want that the words 'affect the operation of any existing law or" be deleted and also that before the word "restrictions" in clauses (3), (4), (5) and (6) the word "reasonable" be placed. I also want that in clause (2) for the word 'any' where it occurs for the second time, the word 'reasonable' be substituted.

If my suggestion is accepted by the House then clause (3) would read:

> "Nothing in sub-clause (b) of the said clause shall prevent the State from making anything, imposing in the interests of public order reasonable restrictions on the exercise of the right conferred by the said sub-clause."

As regards the effect of amendment No. 454, if the following words are taken away--

> "Affect the operation of any existing law, or"

the result will be that, not that all the present laws which are in force today will be taken away, but only such laws or portions of such laws as are inconsistent with the fundamental rights according to article 13, will be taken away, and article 8 will be in force.

Now I will deal with these amendments separately. I want to deal with 454 first.

You will be pleased to observe that so far as article 8 is concerned, it really keeps alive all the laws which are in force today, except such portions of them as are inconsistent with the fundamental rights conferred by Part III. These words--"affect the operation of any existing law, or"......

Mr. Vice-President: How can you deal with a thing unless it is moved by Dr. Ambedkar?

Pandit Thakur Dass Bhargava: In the first instance, a resolution has been passed by this House that all amendments shall be taken as moved without being formally moved. Secondly, if you allow me another chance to speak on the amendment when moved by Dr. Ambedkar, I will be content to move my amendment then. Only with a view to save time, I have taken this course and, I had asked for your permission, though it was unnecessary to do so.

Mr. Vice-President: All right.

Pandit Thakur Dass Bhargava: Thank you. I was speaking of the effect of the words--"affect the operation of any existing law, or" and I submitted to the House that so far as the words of article 8 go, even if these words are not there, all the present laws shall be alive. They shall not be dead by the fact that article 8 exists in Part III. The article reads thus:

> "All laws in force immediately before the commencement of this Constitution in the territory of India, in so far

as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void."

So that the real effect which this Constitution wants to give is that so far as those laws are inconsistent, they should be made inoperative, The rest will continue. So If these words are not there--"affect the operation of any existing law, or"--that would make no difference. If you examine the amendment to be moved by Dr. Ambedkar, the result is the same because in his amendment the words "in so far as it imposes" appear. Thus article 8 governs article 13 according to my amendment as well as his. The amendment of Dr. Ambedkar is unnecessary if the House accepts my amendment No. 454.

Mr. Vice-President: It seems to me that if Dr. Ambedkar moves his amendment, then your amendment will not be necessary at all.

Pandit Thakur Dass Bhargava: My amendment will still be necessary as it deals with other matters also.

Mr. Vice-President: I do not wish to discuss the matter with you.

Pandit Thakur Dass Bhargava: There are several clauses in this Constitution in which an attempt has been made to keep the present laws alive as much as possible. Article 8 is the first attempt. According to article 8 only to the extent of inconsistency such laws will become inoperative. Therefore, any further attempt was unnecessary.

In article 27 an attempt has again been made to keep alive certain of the laws that come within the purview of article 27 in the proviso. Then again not being content with this, another section is there in the Constitution, namely, article 307, which reads:

> "Subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority."

The laws in force are defined in Explanation No. 1 and there is clause (2) which deals with certain aspects of the question. Even if these sections were not there, even then the general principle is that the law would continue in force unless repealed by any enactment or declared illegal by any Court. Therefore, so far as the continuance of the present law is concerned, the words "affect the operation of any existing law, or" are surplus, unnecessary and futile. But I would not have submitted this amendment before the House if these words were only surplus. They have another tendency and that has been emphasized by the previous speaker. There are good many amendments in the list of amendments to the same effect. I have received representations from various bodies and persons who have said in their telegrams and letters that these words should be removed, because the apprehension is that as article 8 is part of the Constitution, so is article 13 part of the Constitution. In sequence article 13 comes later and numerically it is of greater import. If article 8 is good law, so is article 13. As a matter of fact article 13 is sufficient by itself, and all the present laws, it may and can be argued, must be continued in spite of article 8. This is the general apprehension in the public mind and it is therefore that Dr. Ambedkar has also been forced to table an amendment No. 49 to my amendment No. 454.

This interpretation and argument may be wrong; this maybe unjustifiable; but such an argument is possible. In my opinion the law must be simple and not vague and ununderstandable. Therefore these mischievous and misleading words should be taken away. As they have further the effect of misleading the public I hold that these words, unless taken away, shall not allay public fear.

When I read these different sections from 9 to 13 and up to 26, and when I read of these Fundamental Rights, to be frank I missed the most fundamental right which any national in any country must have *viz.*, the right to vote.

Mr. Vice-President: That is not the subject matter of the present discussion. The honourable Member should confine his remarks to his amendment.

Pandit Thakur Dass Bhargava: In considering article 15also the House will come to the conclusion that the most important of the Fundamental Right of personal liberty and life has not been made justiciable nor mentioned in article 13. If the House has in its mind the present position in the country, it will come to the conclusion that the present state of things is anything but satisfactory. Freedom of speech and expression have been restricted by sub-clause (2). Fortunately the honourable Member Mr. Munshi has spoken before you about deletion of the word sedition. If these words 'affect the operation of existing laws' are not removed the effect would be that sedition would continue to mean what it has been meaning in spite of the contrary ruling of the Privy Council given in 1945. If the present laws are allowed to operate without being controlled or governed by article 8 the position will be irretrievably intolerable. Thus my submission is that in regard to freedom of speech and expression if you allow the present law to be continued without testing it in a court of law, a situation would arise which would not be regarded as satisfactory by the citizens of India.

Similarly, at present you have the right to assemble peaceably and without arms and you have in 1947 passed a law under which even peaceable assemblage could be bombed without warning from the sky. We have today many provisions which are against this peaceable assembling. Similarly in regard to ban on association or unions.

The Honourable Dr. B. R. Ambedkar: Is it open to my honourable Friend to speak generally on the clauses?

Mr. Vice-President: That is what I am trying to draw his attention to.

The Honourable Dr. B. R. Ambedkar: This is an abuse of the procedure of the House. I cannot help saying that. When a member speaks on an amendment, he must confine himself to that amendment. He cannot avail himself of this opportunity of rambling over the entire field.

Pandit Thakur Dass Bhargava: I am speaking on the amendment; but the manner in which Dr. Ambedkar speaks and expresses himself is extremely objectionable. Why should he get up and speak in a threatening mood or domineering tone?

Mr. Vice-President: Everybody seems to have lost his temper except the Chair. *(Laughter).* I had given a warning to Mr. Bhargava and, just now, was about to repeat it when Dr. Ambedkar stood up. I am perfectly certain that he was carried away by his feeling. I do not see any reason why there should be so much feeling aroused. He has been under a strain for days together. I can well understand his position and I hope that the House will allow the matter to rest there.

Now, I hope Mr. Bhargava realises the position.

Pandit Thakur Dass Bhargava: I will speak only on the amendment. But when a Member speaks on an amendment, it is not for other members to decide what is relevant and what is not.

Mr. Vice-President: I was about to say so, but I was interrupted.

Pandit Thakur Dass Bhargava: Sir, I repeat that unless and until these offending words are removed and if the present law is allowed to continue without the validity of the present laws being tested in any court, the situation in the country will be most unsatisfactory. I am adverting to the present law in order to point out that it is objectionable and if it continues to have the force of law, there will be no use in granting Fundamental Rights. Therefore I am entitled to speak of the Fundamental Rights. I will certainly not speak if you do not allow me, but I maintain that whatever I was and am saying is perfectly relevant. (Hon. Members: 'Go on'). Sir, if I do not refer to the situation in the country and to the fact that this law does not allow the present state of tension in the country to be moved, what is the use of the Fundamental Rights. I ask.

Mr. Vice-President: Kindly remember one thing which is that you may refer to it in a general manner and not make that the principal point of your speech on this occasion. You may refer to all that in such a way as to adopt a via media where your purpose will be served without taking up more time than is actually necessary.

Pandit Thakur Dass Bhargava: I am alive to the fact that it is a sin to take up the time of the House unnecessarily. I have been exercising as much restraint as possible. I thank you for the advice given by you. I will not refer to the present situation also if you do not like it.

But a few days ago the Honourable Sardar Patel, in a Convocation Address delivered by him, told the whole country that the labourer in the field and the ordinary man in the street has not felt the glow of India's freedom. Nobody feels that glow today, though India is free. Why? If the Fundamental Rights are there and if they are enjoyed by the people, why is there not this glow of freedom? The reason is that these offending words seem to nullify what article 8 seems to grant in respect of the present laws and people do not take us seriously. That is the cause of the general apathy of the people. If I referred in connection with this matter to the present situation , my object was only to emphasise that the present situation is very unsatisfactory. I will leave the matter at that.

As regards the amendment for the addition of the word 'reasonable' I will beg the House kindly to consider it calmly and dispassionately. We have heard the speeches of Sardar Hukam Singh and Mr. Mahboob Ali Baig. Both of them asked what would happen to the Fundamental Rights if the legislature has the right to substantially restrict the Fundamental Rights? That is quite true. Are the destinies of the people of this country and the nationals of this country and their rights to be regulated by the executive and by the legislature or by the courts? This is the question of questions. The question has been asked, if the Legislature enacts a particular Act, is that the final word? If you consider clauses (3) to (6) you will come to the conclusion that, as soon as you find that in the Statement of Objects and Reasons an enactment says that its object is to serve the interests of the public or to protect public order, then the courts would be helpless to come to the rescue of the nationals of this country in respect of the restrictions. Similarly, if in the operative part of any of the sections of any law it is so stated in the Act, I beg to ask what court will be able to say that, as matter of fact the legislature was not authorised to enact a particular law. My submission is that the Supreme Court should ultimately be the arbiter and should have the final say in regard to the destinies of our nationals. Therefore, if you put the word 'reasonable' here, the question will be solved and all the doubts will be resolved.

Sir, one speaker was asking where the soul in the lifeless article 13 was? I am putting the soul there. If you put the word 'reasonable' there, the court will have to see whether a particular Act is in the interests of the public and secondly whether the restrictions imposed by the legislatures are reasonable, proper and necessary in the circumstances of the case. The courts shall have to go into the question and it will not be the legislature and the executive who could play with the fundamental rights of the people. It is the courts which will have the final say. Therefore my submission is that we must put in these words "reasonable" or "proper" or "necessary" or whatever good word the House likes. I understand that Dr. Ambedkar is agreeable to the word "reasonable". I have therefore put in the word "reasonable" to become reasonable. Otherwise if words like "necessary" or "proper" had been accepted, I do not think they would have taken away from but would have materially added to the liberties of the country. Therefore I respectfully request that the amendment I have tabled maybe accepted so that article 13 may be made justiciable. Otherwise article 13 is a nullity. It is not fully justiciable now and the courts will not be able to say whether the restrictions are necessary or reasonable. If any cases are referred to the courts, they will have to decide whether restriction is in the interests of the public or not but that must already have been decided by the words of the enactment. Therefore the courts will not be able to say whether a fundamental right has been infringed or not. Therefore my submission is that, if you put in the word "reasonable", you will be giving the courts the final authority to say whether the restrictions put are reasonable or reasonably necessary or not. With the words, I commend this amendment to the House.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"that with reference to amendment No. 454......"

Shri H. V. Kamath: On a point of order, Sir, has amendment No. 454 been moved?

Mr. Vice-President: Please continue.

The Honourable Dr. B. R. Ambedkar:

"with reference to amendment No. 454 of the List of amendments--

(i) in clauses (3), (4), (5) and (6) of article 13, after the words 'any existing law' the words 'in so far as it imposes' be inserted, and

(ii) in clause (6) of article 13, after the words 'in particular' the words

> 'nothing in the said clause shall affect the operation of any existing law in so far as it prescribes or empowers any authority to prescribe, or prevent the State from making any law' be inserted."

Syed Abdur Rouf (Assam: Muslim): On a point of order, Sir, I think that Dr. Ambedkar's amendment cannot be an amendment to amendment No. 454. Amendment No. 454 seeks to delete clauses (2), (3), (4), (5) and (6), whereas Dr. Ambedkar's amendment seeks to insert some words in those clauses and cannot therefore be moved as an amendment to an amendment.

Mr. Vice-President: It seems to me that what Dr. Ambedkar really seeks to do is to retain the original clauses with certain qualifications. Therefore I rule that he is in order.

Shri H. V. Kamath: This will have the effect of negativing the original amendment.

Mr. Vice-President: Kindly take your seat.

The Honourable Dr. B. R. Ambedkar: From the speeches which have been made on article 13 and article 8 and the words "existing law" which occur in some of the provisos to article 13, it seems to me that there is a good deal of misunderstanding about what is exactly intended to be done with regard to existing law. Now the fundamental article is article 8 which specifically, without any kind of reservation, says that any existing law which is inconsistent with the Fundamental Rights as enacted in this part of the Constitution is void. That is a fundamental proposition and I have no doubt about it that any trained lawyer, if he was asked to interpret the words "existing law" occurring in the sub-clauses to article 13, would read "existing law" in so far as it is not inconsistent with the fundamental rights. There is no doubt that is the way in which the phrase "existing law" in the sub-clauses would be interpreted. It is unnecessary to repeat the proposition stated in article 8 every time the phrase "existing law" occurs, because it is a rule of interpretation that for interpreting any law, all relevant sections shall be taken into account and read in such a way that one section is reconciled with another. Therefore the Drafting Committee felt that they have laid down in article 8 the full and complete proposition that any existing law, in so far as it is inconsistent with the Fundamental Rights, will stand abrogated. The Drafting Committee did not feel it necessary to incorporate some such qualification in using the phrase "existing law" in the various clauses where these words occur. As I see, many people have not been able to read the clause in that way. In reading "existing law", they seem to forget what has already been stated in article 8. In order to remove the misunderstanding that is likely to be caused in a layman's mind, I have brought forward this amendment to sub-clauses (3), (4), (5) and (6). I will read for illustration sub-clause (3) with my amendment.

> "Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law, imposing in the interests of public order."

I am accepting Mr. Bhargava's amendment and so I will add the word "reasonable" also.

> "imposing in the interests of public order reasonable restrictions on the exercise of the right conferred by the said sub-clause."

Now, the words "in so far as it imposes" to my mind make the idea complete and free from any doubt that the existing law is saved only in so far as it imposes reasonable restrictions. I think with that amendment there ought to be no difficulty in understanding that the existing law is saved only to a limited extent, it is saved only fit is not in conflict with the Fundamental Rights.

Sub-clause (6) has been differently worded, because the word there is different from what occurs in sub-clauses (3), (4) and (5). Honourable Members will be able to read for themselves in order to make out what it exactly means.

Now, my friend, Pandit Thakur Dass Bhargava entered into a great tirade against the Drafting Committee, accusing them of having gone out of their way to preserve existing laws. I do not know what he wants the Drafting Committee to do. Does he want us to say straightaway that all existing laws shall stand abrogated on the day on which the Constitution comes into existence?

Pandit Thakur Dass Bhargava: Not exactly.

The Honourable Dr. B. R. Ambedkar: What we have said is that the existing law shall stand abrogated in so far as they are inconsistent with the provisions of this Constitution. Surely the administration of this country is dependent upon the continued existence of the laws which are in force today. It would bring down the whole administration to pieces if the existing laws were completely and wholly abrogated.

Now I take article 307. He said that we have made provisions that the existing laws should be continued unless amended. Now, I should have thought that a man who understands law ought to be able to realize this fact that after the Constitution comes into existence, the exclusive power of making law in this country belongs to Parliament or to the several local legislatures in their respective spheres. Obviously, if you enunciate the proposition that hereafter no law shall be in operation or shall have any force or sanction, unless it has been enacted by Parliament, what would be the position? The position would be that all the laws which have been made by the earlier legislature, by the Central Legislative Assembly or the Provincial Legislative Assembly would absolutely fall to pieces, because they would cease to have any sanction, not having been made by the Parliament or by the local legislatures, which under this Constitution are the only body which are entitled to make law. It is, therefore, necessary that a provision should exist in the Constitution that any laws which have been already made shall not stand abrogated for the mere reason that they have not been made by Parliament. That is the reason why article 307 has been introduced into this Constitution. I, therefore, submit, Sir, that my amendment which particularizes the portion of the existing law which shall continue in operation so far as the Fundamental Rights are concerned, meets the difficulty, which several honourable Members have felt by reason of the fact that they find it difficult to read article 13 in conjunction with article 8. I therefore, think that this amendment of mine clarifies the position and hope the House will not find it difficult to accept it.

(Amendment No. 50 to amendment No. 454 was not moved.)

(Amendments Nos. 455, 469, 475 and 481 were not moved.)

Mr. Vice-President: Then we shall take up amendment No.485, first part. The

House can well realize that I am going through a painful process in order to shorten the time spent on putting the different amendments to the vote.

Syed Abdur Rouf: I want the first part of the amendment to be put to the vote.

Mr. Vice-President: Then we come to another group, 456,472, 484 and 495.

(Amendments Nos. 456, 472, 484 and 495 were not moved.)

Mr. Vice-President: The next group consists of amendments Nos. 457, 466, 473 and 494.

(Amendments Nos. 457, 466, 473 and 494 were not moved.)

Mr. Vice-President: Then amendment No. 458 standing in the name of Mr. Mohd. Tahir and Saiyid Jafar Imam.

Shri M. Ananthasayanam Ayyangar: That has already been covered by Mr. Mahboob Ali Baig's amendment.

Mr. Vice-President: Still, it would depend upon the Mover.

Mr. Mohd. Tahir (Bihar: Muslim): Sir, I beg to move:

"That in clause (2) of article 13, after the word 'sedition' the words 'communal passion' be inserted."

Now, Sir, we find that under this clause we are giving powers to the State to make laws as against certain offences such as libel, slander, defamation, sedition and similar offences against the State. Now I want that these words "communal passion" be also added after the word "sedition"--which means, agitating or exciting the minds of one community as against the other.

These words, Sir, libel, slander, defamation, sedition, are the common words found in the Indian Penal Code and fortunately or unfortunately, we find that this word does not find a place in the Indian Penal Code. The reason is very simple, because, the Indian Penal Code and the old laws were framed by a Government which was foreign to us. Now, this is the time when we must realise our merits and demerits. We know that the agitation and the excitement of communities against communities have done a great loss and disservice to our country as a whole. Therefore, Sir, I think that the addition of this word is necessary. To tell the truth, I would say that if in our country which is now an independent country, we are really sincere to ourselves, this word also must find a place in the Constitution. I would request and appeal to Dr. Ambedkar and the House as a whole to give sound reasoning and due consideration for the addition of this word.

At the end, Sir, I may submit that an amendment has been moved by Mr. Munshi and I do not know whether it is going to be accepted or not. In case that amendment is going to be accepted by the House. I would appeal that this word may be given a place in that amendment or wherever it is found suitable. With these words. Sir, I move.

Mr. Vice-President: We come next to amendment No. 459. It is in the name of Mr. Thomas. It is verbal and therefore disallowed.

Next we take up amendments nos. 460, 461 and the second part of 462. I would allow amendment No. 461 to be moved because that I regard as most comprehensive of the three. That is covered by Mr. Munshi's amendment. Is amendment No.460 moved?

Pandit Thakur Dass Bhargava: I do not want to move it.

Mr. Vice-President: Amendment No. 462; Mr. Kamath.

Shri H. V. Kamath: It is covered by amendment No. 461.

Mr. Vice-President: Amendment No. 462, first part. I was dealing with the second part just now. The first part is more or less a verbal amendment and is disallowed.

Then, amendments Nos. 463 and 464 coming from two different quarters are of similar import. Amendment No. 464, standing in the name of Shri Vishwambhar Dayal Tripathi may be moved.

(Amendment No. 464 was not moved.)

Mr. Vice-President: What about amendment No. 463, in the name of Giani Gurmukh Singh Musafir?

Giani Gurmukh Singh Musafir: Not moving, Sir.

Mr. Vice-President: Then, we take up amendments nos. 467 and 474. Amendment no. 467 may be moved. It stands in the name of Mr. Syamanandan Sahaya.

Shri Syamanandan Sahaya (Bihar: General): Sir, I beg to move:

"That in clause (3) of article 13, the word 'restrictions' the words 'for a defined period' be added."

Sir, in moving this amendment before the House, what was uppermost in my mind was to see whether actually even in the matter of the three freedoms so much spoken of, namely, the freedom of speech, freedom of association and freedom of movement, we had really gone to the extent that every one desired we should. I must admit that I did not feel happy over the phraseology of the clauses so far as this general desire in the mind of every body, not only in this House, but outside, obtained. I will, Sir, refer to the wording of sub-cause (b) of clause (1) of article 13. This sub-clause lays down that all citizens shall have the right to assemble peaceably and without arms. This is the Fundamental Right which we are granting to the people under the Constitution. Let us see how this fits in with clause (3) of article 13which is the restricting clause. Clause (3) lays down that nothing in sub-clause (b) of the said clause (1) shall affect the operation of any existing law, or prevent the State from making any law, imposing in the interests of public order restrictions on the exercise of the right conferred by the said sub-clause, Sir, the only right which we are giving by sub-clause (b) is the right to assemble peaceably and without arms. This right to assemble is not a general right of assembly under all conditions. To assemble peaceably is the first condition precedent and there is also a second condition. That condition is that the assembly should be without arms. On the top of these conditions we are laving down in sub-clause (3) that there shall be a further restricting power in the hands of the State. I would much rather that clauses (3) and (4) did not form part of our Constitution. But, if the Drafting Committee and the other people who have considered the matter carefully think that it is necessary to lay down restrictions even in the matter of assembling peaceably and without arms, I might respectfully submit that it would be necessary to further restrict this restricting power by saying that any law restricting this power must be for a specified period only. I do not think the House will agree that any State should place on the statute book a permanent law restricting this Fundamental Right of peaceful assembly.

The most that the Constitution could accommodate a particular Government at a particular time under a particular circumstance was to give it the power to restrict this right under these conditions but for a specified and defined period only and that I submit, Sir, is the purpose of my amendment. The best interpretation that one could put on this clause is that the Drafting Committee has erred too much on the cautions side in this matter and they have probably kept the Government too much and the citizens too little, in view. I will submit that both in sub-clauses (3) and (4) the words 'for a defined period' should be added in order that if a State at any time has to pass legislation to restrict these rights, they may do so only for a period. It does not mean that once a State has passed such a legislation it is debarred from following it up by a second legislation in time if necessary but we must lay down in the Constitution that we shall permit of no such restrictive law to be a permanent feature of the law of the land. A State should not be empowered to pass a legislation restricting permanently peaceful assembly and assembly without arms. I think such a general power in the armoury of any State, however popular or democratic, would not be desirable. In the larger interests of the country, and particularly at the formative stage of the country, to give such wide powers in the hands of the State and with regard to such Fundamental rights as, freedom of speech, freedom of assembly and freedom of movement would, I believe, be harmful and result in the creation of a suffocating and stuffy atmosphere as opposed to the free air of a truly free country. Sir, I move the amendment and commend it to the acceptance of the House.

(Amendment No. 470 was not moved.)

Mr. Vice-President: 471 is disallowed as verbal. Nos.476 and 477 are of similar import. I allow 476.

The Honourable Dr. B. R. Ambedkar: Sir I move--

"That in clause (4) of article 13, for the words 'the general public' the words 'public order or morality' be substituted."

These words are inappropriate in that clause.

Mr. Vice-President: 477 is identical, 479, 480 and 486are of similar import

(Amendments Nos. 479, 480, and 486 were not moved.)

Mr. Vice-President: 482 and 483.

(Amendment No. 482 was not moved.)

Mr. Vice-President: 483--Sardar Hukam Singh.

Sardar Hukam Singh: Sir, I beg to move:

"That in clause (5) of article 13, after the words 'existing law' the word 'which is not repugnant to the spirit of the provisions of article 8' be inserted."

The Honourable Dr. Ambedkar has rightly appreciated our fears and we feel that is the object of most of the amendments that have been moved Certainly there are fears in our minds that if these articles stand independently--articles 8 and 13,--then there is a danger of different constructions being put on them. Dr. Ambedkar has emphasised that if relevant articles of the Constitution are in question, all those articles that relate to one subject shall be taken into consideration when some construction is going to be put by any Court and then article 8 would govern because it says that "All laws in force immediately before the commencement of this Constitution in the territory of India, in so far as they are inconsistent with the provisions of this Part, shall to the extent of such inconsistency, be void". That we have adopted, and this is what we feel that it should be made clear that certainly those parts which are inconsistent would be void to that extent. If that is the object as Dr. Ambedkar has explained, then why not make it clear in this section as well. Where is the harm? I do not see that we would lose anything or that it would change the beauty of the phraseology even if we make it clear that these provisions are subject to article 8. This is to be admitted that there are certain laws in force just at present that restrict the liberty of the people. For instance I can quote the Land Alienation Act in Punjab. That allows only certain castes to purchase land of their own caste and precludes other castes to purchase that land. If this distinction were based on some economic ground, if it were to be enacted that all small tillers' rights would be safeguarded and their small lands would not be alienable, we could understand that alright and such a provision would be welcome. But when the discrimination is there, we too feel that such a law should stand abrogated so far as it is inconsistent with the provision in clause (5) or article 13. Because that gives freedom to acquire hold and dispose of property and if that law remains--Land Alienation Act, as it is and definition is not changed of the "agriculturist", there would be a conflict and there might be certain constructions by Court which would be unfair. So if that is the object as Dr. Ambedkar has explained that article 8 would govern, then we should make it clear and that is why I have suggested that after the words 'existing law' the words 'which is not repugnant to the spirit of the provisions of article 8' be inserted. That is my object and it should be made clear beyond any doubt.

Mr. Vice-President: Then we come to amendment No. 485, second part, standing in the name of Syed Abdur Rouf, and the first part of amendment No. 488 standing in the joint names of Dr. Pattabhi Sitaramayya and others. The latter seems to be the more comprehensive of the two and may be moved.

(Amendment No. 488 was not moved.)

Mr. Vice-President: Then in that case, the second part of amendment No. 485, standing in the name of Syed Abdur Rouf may be moved.

Syed Abdur Rouf: Sir, I beg to move:

"That in clause (5) of article 13, for the word 'State', the word 'Parliament' be substituted."

Sir, in sub-clauses (d), (e) and (f), we have got the most valuable of our Fundamental Rights. But clause (5) seems to take away most of our rights, because States have been given power to restrict, to abridge and even to takeaway the rights if and when they like. We remember the word 'State' has been defined as to include even local authorities etc. within the territory of India or under the control of the Government of India. Even village panchayats, small town committees, municipalities, local boards all these, to a certain extent become States, and it has been left to these States to deal with these valuable Fundamental rights. Sir, I will bring one instance before you. Suppose, due to political views, a particular village or panchayat area is divided between the majority and the minority. Now, if the majority of the Panchayat by a resolution asks the minority not to move freely in the area or to reside there, or to dispose of their property, which law will prevent the majority from doing so, and which law is there to safeguard the interests of the minority? As these; are most valuable rights, the State should not be trusted with making laws regarding these rights. In my opinion, Sir, it is only the Parliament which can to the satisfaction of the people, deal with these questions. As it is very dangerous to leave this power in the hands of the small States, which will comprise even village panchayats, we must be very careful and, therefore, I suggest that in place of 'State', the word 'Parliament' should be substituted.

Mr. Vice-President: Then amendments Nos. 487, 489 and 490 are of similar import. No. 487 may be moved.

(Amendment No. 487 was not moved.)

Mr. Vice-President: Amendment No. 489 standing in the joint names of Mr. Mohd. Tahir and Saiyid Jafar Imam.

Mr. Mohd. Tahir: Sir, I beg to move:

"That in clause (5) of article 13, the word 'either' and the words 'or for the protection of the interests of any aboriginal tribe' be omitted."

Sir, I am not going to make any speech in this connection, but want only to submit that the removal of these words would make the clause of a general character, which certainly includes the safeguards of the interests of the aboriginal tribes as well. I understand the Drafting Committee was also of this opinion, but I do not know why this clause was worded in this manner. Anyhow, I think it better to delete the words in the manner I have suggested.

Mr. Vice-President: Amendment No. 490 is the same as the one now moved, and it need not be moved.

Amendment No. 488, second part, and No. 491 are of similar import. Amendment

No. 491, standing in the name of Dr. Ambedkar may be moved.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, I move:

"That in clause (5) of article 13, for the word 'aboriginal', the word 'scheduled' be substituted."

When the Drafting Committee was dealing with the question of Fundamental Rights, the Committee appointed for the Tribal Areas had not made its Report, and consequently we had to use the word 'aboriginal', at the time when the Draft was made. Subsequently, we found that the Committee on Tribal Areas had used the phrase "Scheduled Tribes" and we have used the words "scheduled tribes" in the schedules which accompany this Constitution. In order to keep the language uniform, it is necessary to substitute the word "Scheduled" for the word "aboriginal".

Mr. Vice-President: There is, I understand, an amendment to this amendment, and that is amendment No. 56 of List I, standing in the name of Shri Phool Singh.

(Amendment No. 56 of list I was not moved.)

Mr. Vice-President: That means this amendment No. 491 stands as it is.

Then we come to amendment No. 488.

(Amendment No. 488 was not moved.)

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That in clause (6) of article 13, for the words 'public order, morality or health', the words 'the general public' be substituted."

The words 'public order, morality or health' are quite inappropriate in the particular clause.

Mr. Mohd. Tahir: *[Mr. President, my amendment No. 500 is as follows:

"That after clause (6) of article 13, the following new clause be added.

'(7) The occupation of beggary in any form or shape of person having sound physique and perfect health whether major or minor is totally banned and any such practice shall be punishable in accordance with law.'"

Sir, I have moved this amendment for this reason that, if the House agrees with this amendment surely it will result in solving to a great extent the difficulties of labour which exist in our country. Our industries, which are very vital and in many places have failed due to lack of labour, can flourish to a great extent. Besides, I would like to state that in our country *thousands, lakhs* nay *crores* of human beings will imbibe the spirit of self-reliance and self-respect. We see that in our country many able-bodied persons who can work and can earn their livelihood, are to be found begging on road sides. If you tell them that they can work, that they can maintain themselves by earning their livelihood and can do good to their country by their labour, they would say in reply "Sir, this is our ancestral profession and we are forced to do it". I would like to say that there are so many countries on this earth: but if you look around, you will find this ugly spot only on the face of our country. Therefore, I want that there should be some such provision in our Constitution as would be beneficial to our country. Obviously, those that are helpless, for instance many of our unfortunate countrymen, who are blind lame and cannot use their hands and feet, really deserve some consideration. In such cases begging on these and other similar grounds may be justified. But even in this matter, I would submit that the State should be responsible and some such institution or home be founded in some places where they might be brought up, while those that are able-bodied and healthy should be forced to work. By doing so, our labour problem will be solved to a great extent and crores of human beings, who have taken to begging as profession, would be prevented from doing so. This will create in them the spirit of self-respect and self-reliance. Therefore, I hope that Dr. Ambedkar will accept this amendment of mine and the House will also help me by accepting it. With these words, I submit this amendment for the consideration of the House.]*

The Assembly then adjourned till Half Past Nine of the Clock on Thursday, the 2nd December 1948.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VII

Thursday, the 2nd December 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Half Past Nine of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee), in the Chair.

DRAFT CONSTITUTION-*(Contd.)*

Article 13-Contd.

Mr. Vice-President (Dr. H. C. Mookherjee): We shall resume discussion of Article 13.

I should like to know the views of the House as to the way we should deal with the following amendments--we postponed consideration of these amendments yesterday:

Amendments No. 442, No. 499, second part of No. 443,No. 468 and No. 501.

Shri M. Ananthasayanam Ayyangar (Madras: General): May I suggest that in as much as these relate to the free choice of vote and some other matters which are not already prescribed in article 13, these may stand over and be allowed to be moved as a separate clause later on in the Fundamental Rights, and that we need not delay the passing of article 13, amendments with respect to which have already been moved, and the discussion may start?

Mr. Vice-President: Is that the view of the House?

Honourable Members: Yes, yes.

Mr. Vice-President: Then we shall proceed with the general discussion of the article. A large number of honourable Members desire to speak on this article. Therefore, with the permission of the House, I would like to limit the duration of the speeches to ten minutes each ordinarily. I shall extend the time wherever I consider necessary. Have I the permission of the House to fix this time-limit?

Honourable Members: Yes.

Shri H. V. Kamath (C. P. and Berar: General): On a point of order, Sir, Two amendments have been held over. Unless they are moved, how can general discussion on the article as a whole go on?

Mr. Vice-President: What are those amendments please?

Shri H. V. Kamath: No. 499 and No. 442.

Mr. Vice-President: They will form part of a new clause.

Sardar Bhopinder Singh Man (East Punjab: Sikh): *[Mr. Vice-President, I regard freedom of speech and expression as the very life of civil liberty, and I regard it as fundamental. For the public in general, and for the minorities in particular, I attach great importance to association and to free speech. It is through them that we can make our voice felt by the Government, and can stop the injustice that might be done to us. For attaining these rights the country had to make so many struggles, and after a grim battle succeeded in getting these rights recognised. But now, when the time for their enforcement has come, the Government feels hesitant; what was deemed as undersirable then is now being paraded as desirable. What is being given by one hand is being taken away by the other. Every clause is being hemmed in by so many provisos.

To apply the existing law in spite of change conditions really amounts to trifling with the freedom of speech and expression. From the very beginning we have stood against the existing laws, but now you are imposing them on us. You want to continue the old order so that there should be no opportunity of a trial, of putting up defence and of an appeal. If a meeting is held, then for breaking it up lathis may be used, and people may be put into jail without trial; their organisations may be banned and declared illegal. We do not like this shape of things. If you want to perpetuate all that, then I would like to say that by imposing all these restrictions you are doing a great injustice. There are a few rights to which I attach very great importance. You have included them in the articles relating to directive principles of State policy, and so we cannot go to a Court of law for their enforcement. You are diluting these rights with the result that nothing solid remains.

Mr. Vice-President, I want that these rights should not be restricted so much, and all opposition that is peaceful and not seditious should get full opportunity, because opposition is a vital part of every democratic Government. To my mind, suppression of lawful and peaceful opposition means heading towards fascism.]*

Seth Govind Das (C. P. and Berar: General): *[Mr. Vice-President, article 13 is the most important of all the articles concerning Fundamental Rights. The rights that have been granted to us by these articles are all very important. Yesterday Shri Damodar Swarup Seth and Shri K. T. Shah moved their amendments in this House. The purport of the amendments is that the rights which have been given to us with one hand are being taken away by the other hand. This may be true to some extent but if we consider the present national and international situation as also the fact that we have achieved freedom only recently and our government is in its infancy, we shall have to admit that it was necessary for the government to retain the rights it has done after granting these fundamental rights. We should see what is happening in our neighbouring country, Burma. We should also keep in view what is happening in another great country of Asia--I mean war-torn China. In view of what is happening in our neighbouring countries and of the situation in our own country, we should consider how necessary it is that the Government should continue to have these powers.

I would have myself preferred that these rights were granted to our people without the restrictions that have been imposed. But the conditions in our country do not permit this being done. I deem it necessary to submit my views in respect to some of the rights. I find that the first sub-clause refers to freedom of speech and expression. The restriction imposed later on in respect of the extent of this right, contains the word 'sedition'. An amendment has been moved here in regard to that. It is a matter of great pleasure that it seeks the deletion of the word 'sedition'. I would like to recall to the mind of honourable Members of the first occasion when section 124 A was included in the Indian Penal Code. I believe they remember that this section was specially framed for securing the conviction of Lokamanya Bal Gangadhar Tilak. Since then, many of us have been convicted under this section. In this connection many things that happened to me come to my mind. I belong to a family which was renowned in the Central Provinces for its loyalty. We had a tradition of being granted titles. My grandfather held the title of Raja and my uncle that of Diwan Bahadur and my father too that of Diwan Bahadur. I am very glad that titles will no more be granted in this country. In spite of belonging to such a family I was prosecuted under section 124 A and that also for an interesting thing. My great grandfather had been awarded a gold waist-band inlaid with diamonds. The British Government awarded it to him for helping it in 1857 and the words "In recognition of his services during the Mutiny in 1857" were engraved on it. In the course of my speech during the Satyagraha movement of 1930, I said that my great-grandfather got this waist-band for helping the alien government and that he had committed a sin by doing so and that I wanted to have engraved on it that the sin committed by my great-grandfather in helping to keep such a government in existence had been expiated by the great-grandson by seeking to uproot it. For this I was prosecuted under section 124 A and sentenced to two years' rigorous imprisonment. I mean to say that there must be many Members of this House who must have been sentenced under this article to undergo long periods of imprisonment. It is a matter of pleasure that we will now have freedom of speech and expression under this sub-clause and the word 'sedition' is also going to disappear.

The next matter to which I would like to draw your attention is sub-clause (b) of this article. The expression "to assemble peacefully without arms", occurs in it. I want to draw your attention to the words "without arms" in particular. I agree that we should have the right of assembling in this way without arms only. We had accepted the creed of non-violence and through it we have achieved freedom. It is true that in the present world situation we are compelled to maintain armies. But I hold that the welfare of humanity can be secured by means of non-violence alone. We should have a right of assembling but assembling without arms.

I would also like to draw your attention to the two following sub-clauses and these are sub-clauses (f) and (g) which run as follows:

> "to acquire, hold and dispose of property;" and
>
> "to practise any profession or to carry on any occupation, trade or business."

Speaking for myself I may say that just as I hold that humanity cannot achieve its welfare except through non-violence so also I do believe that there cannot be stable peace, unless and until private property is abolished. I am not a socialist or a communist but at the same time I hold that what the big capitalists, traders, zamindars, talluqdars have to do to protect their property does not allow of their enjoying true happiness. It is not true to say that people lacking wealth alone are unhappy. They are no doubt unhappy but in the present economy the moneyed are more unhappy than the money less, and this band of gold is today crushing the rich man's neck. This wealth has been in their possession for long and that is why they are anxious to retain it. It is not for pleasure that they want to keep it. If they are forcibly deprived of their wealth, socialism or communism would not be established. The example of Russia bears testimony to it. Individual property was expropriated there by force and the result has been that it could not be destroyed. On the other hand it is increasing. But if we make an effort to change values in this country and the world and bring about such a psychological atmosphere as makes people eager to rid themselves of the burden of property, we would have reached the desired goal and there would then be the possibility of the establishment of a true socialistic state. There has been change in values in the world from time to time. It is a historical fact that at one time man devoured man. At that time the man who had the capacity of devouring the greatest number of men, must have been worshipped by the society, because he must have been recognised as the bravest among them. Times changed to usher in the epoch of slave-trade. Respectability was judged by the number of slaves one had. Those conditions changed. Today the capitalists are characterised by our society as plunderers and dacoits. They no doubt make such remarks about capitalists, but I may be excused for saying that the majority of the socialists are such that if they were to get hold of this property, they would forsake socialism. The necessity is for a change in outlook. If there is a change in values by the propagation of these ideas in society and if the capitalists are looked down upon as thieves and pilferers by everyone they would not like to keep their wealth. Such a change of mind and heart can be brought about only through non-violence. I hope that in time to come the articles concerning property will not find a place in the Constitution.

I heartily support the whole of the article 13 on the Fundamental Rights.]*

Shri Jaipal Singh (Bihar: General): Mr. Vice-President, Sir. So far as I am concerned, this particular article in no way frightens me, although the various fundamental rights have been hedged in by so many exceptions. To me it is obvious that whatever we put into the Constitution, its value, its use to us will depend upon the way we work all these things. But there are one or two things on which I would like Dr. Ambedkar to enlighten me. The first point on which I would like his clarification is in regard to the amendment which he has moved, amendment No. 491, where in he seeks to substitute the word "aboriginal" by the word "scheduled". Sir, I am always at a disadvantage whenever anything affecting aboriginals has to be discussed at this stage for the obvious reason that the two reports of the Tribal sub-committees have not been fully discussed on the floor of this House, with the result that the House has not been able to obtain its collective view point or arrive at a collective decision as has been the case with all the other articles, that is to say, articles which affect the non-tribals of our country.

Take the question of this word 'tribal'. As far as I know neither of the sub-committees had gone into the work of scheduling. I know it for a fact that the sub-committee of which I was a member did nothing of the sort and, in fact, bodily the Drafting Committee has just put into the Draft Constitution whatever obtained in the Government of India Act. Now, look at the list.

My second point that I want to have clarified is whether the advisory councils or the regional councils, which are envisaged in the recommendations of the two sub-committees, will operate outside the so-called scheduled areas. If they do not, then I want to know from Dr. Ambedkar what is going to happen to the Adibasis, who are in millions, outside those scheduled areas. As far as I can understand the language of the Constitution, the regional councils and the advisory councils are to advise the Governor to participate as it were in the legislation of the State only in regard to the scheduled areas. Well, once it is accepted that the regional councils and the advisory councils may operate also outside the scheduled areas then my point is met.

Take the case of West Bengal. In West Bengal, according to what is proposed, there shall be no scheduled areas; in West Bengal there are 16 lakhs of Adibasis. I want to know what is going to happen to them. There is no regional council; there will be no advisory council there. Who is going to advise the Governor in regard to their welfare, in regard to whatever should be done or should not be done, what act may operate for them or against them? I think that is a point that has to be clarified.

Sir, the Tribes inventory that is in this Draft Constitution is most unsatisfactory. I will exemplify one or two cases. Sir, you yourself come from West Bengal. Bengal has been carved into three provinces, Bengal united, now West Bengal, Bihar and then Orissa. The British had their own arguments for their territorial boundaries. At the present moment, you know it only too well that none of these three provinces seems to be satisfied with the boundary alignment. West Bengal wants something of Bihar; Bihar also wants something of West Bengal. Orissa also is clamouring for some more territory from Bihar. That is the present political situation, but, how does it affect the Adibasis? Now the Tribal Sub-Committee in a way has been outmoded to this extent that lakhs and lakhs of States people have been integrated into provinces. Take the question of Orissa. When the Tribal Sub-Committee went to Orissa it had to deal only with those areas that were excluded or partially excluded. The present position is that about 24 States have been integrated into Orissa and several others into the Central Provinces. Most of these States are overwhelmingly populated by Adibasis. What happens in regard to them? Whatever scheduled areas the Sub-Committee has recommended is really insignificant. It does not cover the whole Adibasis population, particularly of the two provinces of the Central Provinces and Orissa.

I would like Dr. Ambedkar, therefore, to tell me quite clearly that whatever provisions, whatever little concessions that he desires this Constitution should have, will apply also to those areas that are not particularly specified within the scheduled areas.

Then I come to article 13 (1) (b), namely, to "assemble peaceably and without arms". I have to point out that this matter of the Arms Act has been very mischievously applied against the Adibasis. Certain political parties have gone to extremes to point out that because Adibasis carry bows and arrows, lathis or axes, which they do daily as a normal part of their life, which they have done for generations and generations, and what they are doing today they have done before, that they are preparing for trouble.

Let me give you the instance of the Oraons. We have in this Assembly only one Oraon member. Now the Oraon group of Adibasis constitutes the fourth largest block of Adibasis in India. Just about now, they have what we call Jatras or Melas. These are annual occasions for their cultural activities. They have a certain ceremony in which the head of the Oraon village will carry the flag and the rest of them carry lathis with them and proceed into the various akhadas or villages. It is a festival for the people; they have done it in a harmless way for generations and generations and, now we have been told last year and the year before last that we should not carry weapons. I do not mind pointing out there are several Members here from Bihar who will never be able to get back to their homes unless they are escorted with people and with arms. In my own part, we live in the jungles and every one, even women, may I point out, carry what might be designated arms, but they are not arms in that sense. Whenever we have to hold meetings, if people come with their own usual things, I want to know whether it is going to be interpreted that we are assembling unpeaceably and carrying arms for an unlawful purpose. These are the only points, Sir, that I want to have clarified.

I will give one more instance. Every seven years, it is the custom in Chota Nagpur to have what they call. Era Sendra, Janishikar. Every seven years, the women dress as men and hunt in the jungles--dressed as men, mind you. That is the occasion when naturally women like to show masculine prowess. They arm themselves like men with bows and arrows, lathis, belas and so forth. Now, Sir, according to this particular article in the Constitution, the Government might interpret that women every seven years were getting together for a dangerous purpose. I urge the House to do nothing that is going to upset the simple folk. They have been among the most peaceful citizens in our country and we should be very very cautious in doing anything which might be misunderstood by them and lead to trouble.

Sir, I have, as I have said, no difficulty in accepting this particular article, but I thought I should seek clarification from Dr. Ambedkar on these two particular points.

Mr. Vice-President: Mr. Hanumanthaiya.

Kazi Syed Karimuddin: (C. P. & Berar: Muslim): I have not caught your eye, Sir.

Mr. Vice-President: Unfortunately, I have only two eyes. They will be turned to your side the next time.

An Honourable Member: Why do you not have a third eye, Sir?

Mr. Vice-President: Why can you not come to the front Bench? I say it is the fault of the House that they unanimously chose an old man as the Vice-President. His eye-sight is not as good as that of younger men. Mr. Hanumanthaiya.

Shri K. Hanumanthaiya (Mysore): Mr. Vice-President, Sir, this article incorporates some of the most cherished rights of us all. For the last sixty and odd years during which the freedom movement was taking shape, we made innumerable speeches and sacrifices in order to win the fundamental rights that are incorporated in this article. But, the point of view of many members here as well as the opinion of some people outside is that these fundamental rights have been so much curtailed that their original flavour is lost. Sir, every law, whether it is in the form of a right or a duty, takes shape according to the condition of the society then prevailing. We went through a course of suffering and sacrifice which were imposed upon us by the repressive laws of British imperialism; this naturally made us votaries of unadulterated fundamental rights and that was our hope. But, ultimately when we emerged out of those innumerable difficulties, we are faced, within our own society, with elements who want to take advantage of those rights in order to do violence to men, society and laws. Hence it is that the Drafting Committee as well as the Governments in the various provinces and the Centre, are hard put to safeguard these rights in their pristine purity. No man who believes in violence and who wants to upset the State and society by violent methods should be allowed to have his way under the colour of these rights. It is for that purpose that the Drafting Committee has thought it fit to limit the operation of these fundamental rights.

The question next arises whether this limiting authority should be the legislature or the court. That is a very much debated question. Very many people, very conscientiously too, think that the legislature or the executive should not have anything to do with laying down the limitations for the operation of these fundamental rights, and that it must be entrusted to courts which are free from political influences, which are independent and which can take an impartial view. That is the view taken by a good number of people and thinkers. Sir, I for one, though I appreciate the sincerity with which this argument is advanced, fail to see how it can work in actual practice. Courts can, after all, interpret the law as it is. Law once made may not hold good in its true character for all time to come. Society changes; Governments change; the temper and psychology of the people change from decade to decade if not from year to year. The law must be such as to automatically adjust itself to the changing conditions. Courts cannot, in the very nature of things, do legislative work; they can only interpret. Therefore, in order to see that the law automatically adjusts to the conditions that come into being in times to come, this power of limiting the operation of the fundamental rights is given to the legislature. After all, the legislature does not consist of people who come without the sufferance of the people. The legislature consists of real representatives of the people as laid down in this Constitution. If, at a particular time, the legislature thinks that these rights ought to be regulated in a certain manner and in a particular method, there is nothing wrong in it, nothing despotic about it, nothing derogatory to these fundamental rights. I am indeed glad that this right of regulating the exercise of fundamental rights is given to the legislature instead of to the courts.

Then, Sir, here in article 13, about seven fundamental rights are incorporated. I wholeheartedly feel the Drafting Committee has done well in incorporating the first four freedoms, freedom of speech and expression, freedom to assemble peaceably and form associations, and to move freely throughout the territory of India. The next three clauses, to reside and settle in any part of the country, to acquire, hold and dispose of property, and to practise any profession, or to carry on any occupation, trade or business, Sir, in my opinion do not take the character of fundamental rights. They are not really fundamental rights. They are matters incidental to legislation, that can be passed either by the Parliament or the legislatures of the Units. I find these three rights which are incorporated as fundamental rights in this article 13 are not so treated by any other country except, perhaps, Ireland and Switzerland. In America, we do not find these three rights incorporated as fundamental rights. To acquire property, to settle down in a particular town, to practise any trade or profession in any part of the country he likes, are not really fundamental rights. I may be pardoned if I say this that the men who did the work of shaping these constitutional proposals, a majority of them, have come from the uppermost strata of society. After all, they can think of what suits their psychology and their class or their strata of society. It is from that point of view they have framed these three rights. Really speaking, whether these three rights are fundamental or not, we ought to judge from the point of view of the people of the villages and people of the Units. I for one feel that these are rather not rights, but liabilities that are sought to be imposed upon the people of the villages and of the Units. I very much wish that the Drafting Committee and this Assembly could now delete these three rights and relegate them to the discretion of the legislature of the Units but now it is too late and we have to accept them somehow or anyhow. Here arises a conflict in the future that the Units in order to safeguard the rights and interests of the people within their respective areas, may try to circumvent these three rights that are conferred by this Constitution. It will happen. I have no doubt whatsoever in my mind, that here arises a plentiful source of litigation. Yesterday I happened to read Sir Ivory Jennings' opinion about our Fundamental Rights. He says, the rights conferred in this Chapter and especially in this section are so complicated, are worded in such a verbose manner, that it will be a fruitful source of income to constitutional lawyers. There is a good deal of truth in it. The enunciation of the Fundamental Rights and the exceptions added on by provisos are so worded--and they had to be like that because it is impossible to foresee all exigencies, and make provision for them now alone--that there will be litigation on a scale which none of us have ever seen or contemplated. Every man who feels aggrieved can go to any Court of Law and the Supreme Court will be full of cases between individuals and individuals, between individuals and State, between State and State, between the Central Government and State Governments. This litigation--I do not suppose--will be helpful to the interest of the country. Litigation--I need not argue about it--litigation surely ruins both the Parties to it. There is a Kannada proverb the meaning of which is "a successful party in a case is as good as defeated and a defeated party in a case is as good as dead". And whenever there arises litigation in interpreting these clauses, political controversies also arise conferring fundamental rights in this manner--especially the last three clauses--will continuously raise political storms in the shape of litigation in regard to interpretation of these Fundamental Rights.

Kazi Syed Karimuddin: Mr. Vice-President, Sir, there is no denying the fact that this article is the very life of the Draft Constitution. Without this article the Constitution will be a dead letter. It must also be understood that the Rights contemplated under article 13 are admittedly inalienable rights and the point involved is whether these rights can be delegated to the Governments or we are going to lay down principles which cannot be subject matter of legislation or the vagaries of the legislatures. My submission is that these are Fundamental Rights regarding individuals a contemplated under article 13 which cannot be made subject matter of the vagaries of the Legislatures. Clauses (2) to (6) of this article rob the people of the only guarantee which will make them secure and my submission is that clauses (2) to (6) are very dangerous clauses. Suppose, in a State there is a political party, which is hostile to the Central Government and they frame laws to the great detriment of the political minority or the religious minorities. What can be done? People have to suffer and there would be untold miseries. Particularly the wording 'subject to operation of existing laws' is very unjust. What is the situation today in India? Practically there is a state of siege. There are Goonda Public Safety Act, etc. in all the provinces in which there is neither appeal, nor any warrant is necessary for arrest, and searches can be made without justification. In spite of this, the article lays down that the existing laws will be recognized. These unjust laws which do not provide appeals and which do not provide any proper representation will be recognized under article 13. There is no doubt that we are living in an emergency period but that does not mean that article 13 should be inconsonance with emergencies. Another part of the article is the right to assemble peacefully and without arms. What greater restriction could have been laid down by the framers of the Constitution than this and in spite of that the legislatures of the States are empowered to have more restrictions as embodied in clauses (3) and (4). Now the point is whether a particular legislation is in the interest of the people, or whether that can be delegated to the judiciary or to the States' Legislatures. My submission is that you must realise that we cannot entrust the interpretation of these clauses in the Fundamental Rights to the vagaries of legislatures. In the State Legislatures the majority is capable of practically oppressing the minorities, political or communal. The very purpose of this Fundamental Right is being defeated. The Fundamental Rights are being enacted only with a view to placing restriction son the legislation. By these clauses (2) to (6) we are enlarging the scope of this article 13 and we are enlarging the scope of the powers of the Provincial Legislatures or States. This is entirely to the detriment of the political or religious minorities. If this article as it stands is passed, my submission is that it will be taking away those rights which are given in article 8 of the Constitution. There is no parallel to these restrictions in any Constitution of the world. In the American Constitution all these rights have been entrusted to the judiciary simply because the political parties who are elected from time to time cannot be entrusted with the interpretation of laws. The main principle should have been whatever is not forbidden should have been allowed. Apart from that, two amendments have been moved, one by Mr. Mohamed Ismail and the other by Mr. Tahir. My submission is that both these amendments are very innocent and both these are very necessary for the protection of the minorities. Mr. Ismail's amendment advocates that personal law should be respected and this should be embodied in this Constitution. The people outside and the Members of the Constituent Assembly must realize that a Muslim regards the personal law as part of the religion and I really assure you that there is not a single Muslim in the country--at least I have not seen one--who wants a change in the mandatory provision of religious rights and personal laws and if there is any one who wants a change in the mandatory principle, or religion as a matter of personal law, then he can not be a Muslim. Therefore if you really want to protect the minorities--because this is a secular State it does not mean that people should have no religion--if this is the view of the minority Muslims or any other minority that they want to abide by personal law, those laws have to be protected. The amendment of Mr. Tahir is very important and I feel that every Member of the Constituent Assembly must realize that it is important because we have seen after 15th August, whether Muslims are responsible or the Hindus are responsible for communal passion, it has eaten away everything that is good in society. It was really a canker that was destroying the society and would have done so but for the Central Government. Then communal passion should be made an offence. In my opinion this is a very vital amendment that has been moved and it should be accepted by Dr. Ambedkar; Sir, as I have said even Dr. Ambedkar in his book 'States and Minorities' has said--

"No law shall be made abridging the freedom of the press, of association and of assembly except for consideration of public order and morality."

In 1947 he was agreeable that only the first part of article 13 should be enacted in our Constitution and within a year he is so changed that he has placed so many restrictions that take away what has been given under article 8.

Mr. Vice-President: You seem to make the mistake that Dr. Ambedkar is responsible for everything connected with this Draft Constitution. There was the whole Drafting Committee.

Kazi Syed Karimuddin: My submission is that if you take the opinion of the minorities in this House--a Sikh representative has spoken, and I am speaking now--and if you take votes, you will find that the minorities in the country will say that article 13 is not sufficient protection for them. Therefore, I earnestly plead for deletion of clauses (2) to (6). I strongly support the other two amendments to which I have referred. If article 13 is passed as it stands, it is not acceptable to the minorities. It is no freedom of speech that you are guaranteeing It is no freedom of the press that you are giving. You are giving by one hand and taking it away by the other.

Chaudhari Ranbir Singh (East Punjab: General): Mr. Vice-President, Sir, I am not in agreement with those who are for abolition of these provisions from the text during the transitional period. This is why I gave notice of two more provisions to article 13. They are as under:

"That the following new clauses (7) and (8) be added to article 13:

'(7) Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law or prevent the State from making any law imposing restrictions on non-agriculturists to acquire and hold agricultural land, for the protection of the interests of the tillers of the soil or the peasantry.

(8) Nothing in sub-clauses (d), (e) and (f) of the said clause shall prevent the State from making laws to declare the minimum of economic holdings of land inalienable'."

Sir, after further consideration, I changed my mind and did not move these amendments, because I think in sub-clause (5) of the article, the words "in the interests of the general public" denote, mean and cover my point that whenever the imposition of restrictions is found to be necessary for the protection of the interests of the tillers of the soil and labourers, the governments will have the right to impose the necessary restrictions on any section of the society, or may allow to continue such laws as are already in existence, which the Governments think are necessary for the protection of the interests of the peasantry or labourers.

I come from East Punjab, and there is a law which is known as the Land Alienation Act, according to which certain classes are debarred from acquiring land, by law. I agree with my Friends, specially Harijans who advocate that the Harijans and other persons who are actually the tillers of the soil should have the right to acquire land. But I fail to understand the argument that each and every person whether he is a tiller of the soil or not, should be put on a par with the tillers of the soil, and should have the liberty to acquire agricultural land. If that is to be the case, then we will be creating a new problem--the problem of zamindaries,--the same problem of zamindaries which we are abolishing or have promised to abolish from our country. In several provinces, laws for the abolition of the zamindari system have already been enacted. As regards the Punjab, I am of the view, that it cannot be denied that the absence of zamindari system in the Punjab in its acute form as it exists in other provinces is the result of the Land Alienation Act, and this is the real reason why the agriculturists are in a more advanced position in the Punjab than in other provinces. I therefore, feel very strongly and rightly that the legislatures of the State and the various governments should have the full liberty to impose restrictions on the non-tillers of the soil on acquiring or holding agricultural lands, and to declare a minimum economic holding of land inalienable, for the protection of the interests of the tillers of the soil or the peasantry.

Moreover, the overwhelming majority of the population of our country depends on agriculture and they are the tillers of the soil. So the words "general public interests" can mean only the interests of the peasantry and the labourers, and not only the interests of the vocal middle intelligentia and vested people.

Mr. Vice-President: Maulana Hasrat Mohani *(Cheers)* I am glad the House recognises the excellent services rendered by Maulana Hasrat Mohani to this country. He was the first to stand for total independence of our Mother-Land.

Maulana Hasrat Mohani (United Provinces: Muslim): *[Mr. Vice-President, when I rose to speak, my first impulse was to support whole-heartedly the amendment moved by Mr. Kamath and even now I have come here with that idea. In the later speeches and amendments, one amendment has been moved by Mr. Muhammad Ismail of Madras and I give my full support to it. Besides, I also support the amendment of Mr. K. T. Shah. Mr. Muhammad Ismail in the second part of his amendment has made mention of personal liberty. Mr. K. T. Shah's amendment is also of similar nature. I shall speak at the end about his amendment. First of all, I would like to give full support to Mr. Kamath's amendment. Mr. Kamath has said that everyone should have the right to bear arms. This is a test amendment. If Dr. Ambedkar and his committee are honest, then surely they ought to accept this section and include it in the article at once. If he wavers or raises any objection as I know he is capable of doing, as Dr. Ambedkar's legal abilities are established, and if he wishes, he can turn night into day and day into night and can prove it conclusively,--then I would like to tell him that this is a test amendment and, if you do not include it, it would mean that your tendency is the same as that of the British Government. You know what the Britishers had done. They had promulgated the Arms Act in India. The result was that all the inhabitants of Hindustan were kept as imbeciles. If you also have the same design, then it is a different matter. But if there is any national Government and an Indian Government, then there is no reason why you should deprive anybody of this right. If you too will forge an Arms Act and will deprive the people of this right, then I would say that your attitude and way of doing things is much worse than that of the Britishers. It will be much worse. The

Arms Act, enforced by the British Government, was applicable to one and all with the exception of the ruling class. We were under the impression that under our own Government this restriction will be removed. Unfortunately at present here we have a party Government and they want to retain it, so that the Act may be applied against their political opponents and may not be enforced against their own party men.

On the basis of my own experience, I would like to say something about U. P. In particular I would tell you about Kanpur city which I represent. The U. P. Government there have singled out the Socialists, the Communists, Independent-Socialists,--including Muslims--Forward Blockists and even those who were suspected of standing against them as rival candidates in the elections and put restrictions on them, and on one plea or the other they were brought under the provision of the Defence of India Act. Some were branded as Goondas, others were stamped as Communists, there were others who were told that they were supporting Hyderabad and collecting funds. There were yet others who were told that they were connected with those members of the Communist Party who are working under ground and they were sent to jails. In short, they applied this Act against all rival parties, and such was the ill treatment against the Muslims that every Muslim of position at Kanpur was house-searched and even if a kitchen-knife was found in his house, the Arms Act was applied and he was sent to jail. Some of them have been released and some are still in jails. Therefore, I would like to submit that for you, who are a party Government, this is a test amendment. You ought to accept Mr. Kamath's amendment and give the right of bearing arms to everybody. If you are not prepared to do this, then you will be setting an Indian bureaucracy in place of the English bureaucracy.

Another point which I should like to submit is that the amendments of both Mr. Ismail and Prof. Shah are of similar nature. As regards personal rights and liberty I would like to say that so long as you do not prove anything openly against anybody in a court of law, it should not be lawful to detain anybody under Defence of India Rules, be he your rival party man or any other. If you send somebody to jail under Defence of India Act or under some other ordinance, then what would happen to the right of *Habeas Corpus*, and who would give that right, since the High Court will have no jurisdiction over it? And even if High Court interferes in one or two cases, it does not mean that it will be possible in all cases. Therefore, I submit that this should not be included and that everybody should have personal liberty.

I would like to submit my third point in few words, namely, regarding Mr. Is mail's amendment which has been supported by several members. I would like to say that any party, political or communal, has no right to interfere in the personal law of any group. More particularly I say this regarding Muslims. There are three fundamentals in their personal law, namely, religion, language, and culture which have not been ordained by human agency. Their personal law regarding divorce, marriage and inheritance has been derived from the Qoran and its interpretation is recorded therein. If there is any one, who thinks that he can interfere in the personal law of the Muslims, then I would say to him that the result will be very harmful.]*

I say from the floor of this House that they will come to grief. Mussalmans will not submit to any interference in their personal law, and if anybody has got the courage to say so then I declare.....

Mr. Vice-President: Order, order.

Maulana Hasrat Mohani: He should remain convinced--and I declare in the House--

that Mussalmans will never submit to any interference in their personal law, and they will have to face an iron wall of Muslim determination to oppose them in every way.

(Interruption)

Shri Vishwambhar Dayal Tripathi (United Provinces: General): Will you give the right of human sacrifice to those who believe in it and may claim it under the pretext of their personal law?

(More interruptions)

Mr. Vice-President: Will honourable Members please take their seats?

Shri Brajeshwar Prasad (Bihar: General): I rise to support article 13 with all its reservations and safeguards. These restrictions are necessary in our national interest. Let me adduce the reasons for saying so.

An Honourable Member: Is the honourable Member reading his speech?

Mr. Vice-President: He is reading his speech and I have given him permission to do so.

Shri Brajeshwar Prasad: Personal freedom has to be curtailed if the menace of capitalism is to be met. Nation-states of the nineteenth century were not confronted with even a small part of the dangers that confront a modern state. Political conspiracies of international dimensions were unknown. The political criminal in the pursuit of his nefarious designs resorted to methods and anties very well known to the administrators of old. The laws and judicial institutions were strong enough to grapple with these problems. The technique and methods widely employed by modern law-breakers cannot effectively be checked by judicial institutions and ordinary laws of the nineteenth century. The state must be vested with wide discretionary powers and the freedom of the individual must be seriously curtailed if the parasitical class that thrives on profit and exploitation is to be liquidated and the communists are to be checked from endangering the safety and existence of all the institutions of our modern life.

Shri Rohini Kumar Chaudhari (Assam: General): The honourable Member is reading his speech so swiftly that we cannot follow him. May I suggest that his speech should be taken as read?

Mr. Vice-President: Do you agree, Mr. Brajeshwar Prasad, that it should be taken as read? (After a pause) Mr. Brajeshwar Prasad does not agree to the suggestion made by the Honourable Member Shri Rohini Kumar Chaudhari.

Shri Brajeshwar Prasad: It is wrong to regard the State with suspicion. Today it is in the hands of those who are utterly incapable of doing any wrong to the people. It is not likely to pass into the hands of the enemies of the masses. And constitutional guarantees of individual freedom will not for long remain sacrosanct if the machinery of the State passes into the hands of the reactionaries. If you want to prevent the political reactionaries from gaining political power and ascendancy, the rulers of the land must be vested with large discretionary powers.

In a modern progressive State there is not much conflict between the individual and the

State. For the State is composed of individuals. It is we ourselves purged and purified of our selfishness. The individual has no power of his own, separate and distinct from the State. The State and the individual are the two sides of the same coin.

In the nineteenth century the executive authority had not developed the technique and mechanism of the modern State. It had very little part to play in the life of its citizens. The executive authority in the modern State has a dominant part to play. It is not handicapped by any lack of technique. The needs of modern life, of socialism and collectivism cannot be fulfilled if the State is not vested with ample powers. The trend of modern politics is towards regimentation of ideas and conduct. The doctrines of Mill and Spencer have become thoroughly unrelated to the needs and demands of the age. It is the society and not the individual which has become the object of primary concern and loyalty both of political theorists and actual administrators. The objective conditions of our modern life have relegated the individual from the Olympian heights of honour and glorification accorded by the individualist school to a position of utter insignificance and neglect.

Individual freedom is risky in a community where more than 80 per cent of the people are sunk in the lowest depths of poverty, illiteracy, communalism and provincialism.

It is sheer illusion to think that the personal rights of the individual can be firmly secured if these are laid down in the Constitution in clear language without any reservations and safeguards. The enjoyment of these rights is dependent upon the fulfilment of certain social conditions outside the scope of any constitution. Man can never enjoy the blessings of personal freedom as long as society remains organized on the basis of capitalism, as long as the menace of war and foreign intervention looms large on the horizon, as long as poverty, illiteracy, communalism and provincialism remain in our midst. It is only with the decline of the forces of organized religions and the establishment of a World State based on the ideals of economic equality and political liberty that man will be able to achieve the content of personal freedom.

It is not entirely due to the wickedness or ignorance of constitution makers that there are restrictions on individual rights. The legacy of centuries of backwardness and foreign misrule cannot be wiped out by one stroke of the pen. The concomitants of the age cannot be brushed aside by any constitutional guarantees. Constitutional guarantees merely facilitate the achievement of personal rights, which are essentially of an inward character, to be secured by the exercise of reason and proper conduct. We must think, speak and act properly if we are to obtain and enjoy the rights of personal freedom. It is only with the growth and development of education to communal dimensions that the foundations of personal liberty can be securely laid.

Shri H. V. Kamath: Sir, may I request my Friend to have a few full-stops if not other punctuation marks?

Mr. Vice-President: The Honourable Member's time is up. But what Mr. Kamath said has certainly not added to the dignity of the House.

Prof. Yashwant Rai (East Punjab: General): *[Mr. Vice-President, Sir, the Harijans of the Punjab are very much indebted to the Chairman of the Drafting Committee for having included article 13 in the Constitution. At present it is the custom in the Punjab that only one particular community can purchase land and take to agriculture. But the Harijans, 90 per cent of whom are cultivators, are not permitted to purchase land to cultivate, or to build houses. When this article receives the assent of the House, they will have the facility of purchasing land for building their houses, as also land for agricultural purposes if they have the capacity to do so. I hope that the many handicaps from which the Harijans suffer in Punjab, causing the clashes that are taking place in almost every village between them and the landlords, as a result of which they are kept confined to their houses in some villages, as also their other difficulties will not have to be faced by them in future. They find themselves in their present plight though they thought that the Congress Government would be a national Government and on coming to power it would permit them to purchase land and would remove all their difficulties. Our Indian National Congress was wedded to the creed that on establishing its Government every one will get house-building and agricultural facilities and no one will have any difficulty on these accounts. People are also realising that now the Congress is in power all these facilities will have to be afforded to the Harijans.

Therefore clause (f) of article 13 is very necessary because it provides the facilities we wanted. I think that the difficulties with which we are faced today will soon disappear. I therefore support this article.]*

Shri Rohini Kumar Chaudhari: Mr. Vice-President, Sir, I must congratulate the House for having decided to drop the word "sedition" from our new Constitution. That unhappy word "sedition" has been responsible for a lot of misery in this country and had delayed for a considerable time the achievement of our independence.

While on this article, I should also like to draw the attention of the House to the unhappy condition which had prevailed so far as the relations between us and the people of the tribal areas were concerned. The British Government wanted to keep these regions as their own preserve, not having imagined for a moment that they will have at any time to quit this country. They wanted to keep the tribal people completely under them for all ages to come and they wanted to have the hills as their own place of preserve and therefore they had introduced rules which prevented the ordinary people of the plains from mixing with their brethren in the hills. I am glad, Sir, that in this article we have laid down that all people will be able to travel freely throughout the territory of India. But it is most unfortunate that we cannot do away with the proviso to say that a particular State may lay down a law by which this freedom of movement can be restricted. Sir, I can only draw the attention of the House to a very unfortunate incident which took place even after the achievement of independence. A few months ago some Members of the Central Legislature headed by our friend the Honorable Mr. Santhanam had occasion to pay a visit to the Manipuri State. Although the officers of the Provincial Government had allowed us to go there freely, we were held up there for more than an hour by the orders of the Manipur State. I believe that after the passing of this Constitution such a state of things will never occur and that immediately after the passing of this Constitution steps will be taken to allow us free ingress and egress to those parts of the States which are now inhabited by the scheduled tribes. There should be greater friendliness between the scheduled tribes and the people of the plains and all steps should be taken to remove the barriers to our movement in those places.

Then, Sir, I am glad to find in this article that people will be free to carry on their profession in any part of India. That is quite good in so far as it stands on paper, but many times the British Government said they would never allow a lawyer to practise in any of these hills. I believe, Sir, after the passing of this article of the Constitution, steps will be taken to remove any restriction on any professional man practising in any part of India.

It is now my misfortune to have to say a few words about Professor Shah's amendment No. 416. It is very easy, I should say much easier, to deal with one who writes out his amendments and thinks over them. But it is very difficult and dangerous to deal with one who carries all his amendments, thousand and one of them, in his brain and then directly pours them out from his brain on the floor of this House. Sir, amendment No. 416 introduces certain words about things being subject to the provisions of this Constitution, and all those things. On the one hand we find that the House has practically agreed to remove these words "Subject to the provisions of this Constitution". But we find the Professor Sahib has put that jumble of words in that amendment. Does he want to use these words to rhyme in the Constitution? Poets are fond of using several words just for the sake of rhyming. If it is intended for the sake of rhyming to use all those words, I can understand it, but otherwise I think they are meaningless. I would also warn my friends against the use of the word `guaranteed'. We have seen, Sir, advertisements of all and sundry articles promising guarantee. I have myself been a victim of such an advertisement. A big full-page advertisement of a certain medicine guaranteed that if you use that medicine for seven days you will benefit your health and become strong like Sandow. The word `guarantee' was actually there. But what I found after using that medicine for seven or fourteen days was that the medicine had no effect. It did not bring about any improvement in my health. Also in the case of a lot of jewellery in the market, though they were all chemical jewels, the merchants offer guarantee to the effect that the jewellery will retain its brightness and quality. But after a fortnight the brightness disappears and the thing becomes black in colour. So, the use of the word 'guarantee' is very perilous. It is not necessary to use that word in this country. We in India are so much used to this word that when we see it used we begin to suspect it. When we see anything guaranteed, we understand that it is not guaranteed and is not genuine. Therefore it is better to leave the Constitution as it is without the word `guarantee'. Without that word we can understand it better. Then we shall know that there is no attempt to cover-up anything not wanted. The clause, as it is without the word `guarantee' is quite all right.

Sir, this article with the amendments which have been accepted has my whole-hearted acceptance.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. Vice-President, this article may be truly stated to be the charter of our liberties and this is probably the most important article in the whole Draft Constitution. In the original form in which it was presented to this House, it was open to many criticisms and they were justified. Now I think it has been materially altered. The promise made by Dr. Ambedkar to accept the amendment of Mr. Bhargava and others gives me hope that this article in its final form will be a real charter of our liberty.

Sir, let us analyse the criticisms made in some of the amendments moved by my friends. First of all, the criticism is that all the provisos were meant to nullify the liberties given in the first clause. But if we carefully examine each of the sub-clauses, we will find that this criticism is not justified. In clause (2), the word 'sedition' has been taken away, and the word 'authority' has been dropped. So that, what remain in clause (2) are the exemptions of laws relating to libel, slander, defamation, or any matter which offends against decency or morality or undermines the foundation of the State. These alone will remain on the Statute Book.

As was pointed out yesterday, even in America where the courts are given absolute power, the Supreme Court has been obliged to limit it. What we are doing is that instead of the Supreme Court we ourselves are limiting this thing. This limitation in the present form is less wide than it originally was. I think this should satisfy the House.

In this connection I only want to say one word more. Clause (1) (a) says that every citizen shall have the right to freedom of speech and expression. As proposed in one of my amendments we should bring in here the freedom of the Press. I hope Dr. Ambedkar would bring in some amendment to include freedom of the press in this sub-clause.

As regards clause (3), I am glad that after the addition of the word 'reasonable' it has become a much wider charter of liberty. It now reads:

"Nothing in sub-clause (b) of the said clause shall affect the operation of any law, or prevent the State from making any law, imposing in the interests of public order 'reasonable' restrictions on the exercise of the `right conferred by the said sub-clause'."

Under this, the existing laws, in so far as they impose restrictions which are not in the interests of public order or morality, are nullified. Everybody will admit that public order has to be provided for. The sub-clause as amended is much better than what it was. The Supreme Court could now lay down what offends against public order and what does not.

Coming to clause (4), I must say that lab our will now feel that today they have got their charter of liberty. They can now form unions subject to reasonable restrictions in the interests of public order or morality. So, labour today will thank Dr. Ambedkar for accepting amendments which modified the original clause. In the original form you could not hold a meeting because it would be against the wishes of the general public. Now you will have to prove that the decision to ban a meeting is in the public interest or morality. This is the great charter of liberty for labour.

Then I come to clause (5). This qualifies sub-clauses (d), (e) and (f). It says: "Nothing in sub-clauses (d), (e) and (f), shall affect the operations etc. etc." "or for the protection of the interests of the Scheduled Castes". We have added the word 'reasonable' therein. It is very important. The rights such as freedom to move about throughout the country are very important. Some friends pointed out that there are many laws at present in existence in the East Punjab, for instance, which are really very bad and that this clause will not nullify many of them.

And then there is clause (6) which relates to carrying on of professions. After the amendments that have been accepted this clause also has become much better.

One thing more I want to say. Mr. Kamath in his amendment wants the right to bear arms. In most Constitutions throughout the world this right has been recognised. We ourselves throughout recent history have asked that this should be our right. In fact I remember, when Mahatma Gandhi wrote to Lord Irwin in 1930 about the Eight Points, which he wanted to be accepted, one was about this right to bear arms. The question of this right to bear arms dates back to 1878 when, after the mutiny, the British Government disarmed the Nation. I think that after freedom we should at least allow this thing, as only an armed people can support the Government. I hope Dr. Ambedkar will do something about it.

Then as regards sedition, our great leaders like Lokmanya Tilak and others were the victims of section 124-A. I congratulate Dr. Ambedkar for having put in the clause a sit has emerged.

Shri H. J. Khandekar (C. P. and Berar: General): *[Mr. Vice-President, I rise to submit to the House my views on article 13. I believe that if the man-in-the-street were to read this article up to sub-clause (g) he would most likely begin to believe that this country has secured its freedom and that every individual within it has also been granted the right of freedom. But if the same person were to proceed further in his study of this article and goes through the sub-clauses (2), (3), (4), (5) and (6) he would revise his opinion and become fully convinced that our country has not as yet attained Swaraj in its correct sense. It would mean that what had been granted by the right hand has been taken away by the left, in the succeeding sub-clauses. I believe that a majority of the Members of this House hold the same view in this respect as I do.

If we confine ourselves to an examination of clause(1), we find, Sir, that the rights granted to the citizens of India under this article are many. Sub-clause (a) specifically grants freedom of speech and expression--for securing which, as you and the majority of the Members of this House are aware, we resorted to individual Satyagraha under the leadership of Mahatma Gandhi in the year 1941, and as a consequence thousands, nay, hundreds of thousands of people of this country had to rot in the prisons. At that time all of us believed that when Swaraj is established every citizen of this country would also secure for himself the right of freedom of speech and expression. We, no doubt, find that article 13 grants this freedom of speech and expression. But all this has been taken away indirectly by clause (2).

I may point out that the Provincial Governments have recently enacted many repressive laws. I am afraid that article 13 will allow these laws to remain in force even in the future. What is worse, this article leaves scope for the enactment of further repressive laws in future. In several provinces such laws as the Goonda Act, Essential Services Act, and Public Safety Act have been passed. It may come as a surprise if I inform the House that, since the advent of the Popular Ministries, Section 144 has been constantly reigning in the big cities of this country. Consequently there cannot be a public gathering of even five or seven persons in cities, nay, not even for carrying on conversation among themselves or giving vent to their ideas and feelings. If this situation continues also in the future, I am afraid that the freedom which he had been wishing to establish in this country, the freedom that has been granted in Clause (1) (a) of article 13, will be entirely lost under clause (2) of that article.

I feel, Sir, that I should discuss before you each of these sub-clauses, one by one, so that I may be in a position to request you in the end that this article should be sent back to the Drafting Committee with a request that, after having carefully reconsidered it and having put in it what is really required in the circumstances of the country, it should resubmit it to the House. I believe that the House would then pass it with pleasure. But I am afraid that all would be lost if the article is passed as it is today.

Again sub-clause (b) of clause (1) grants, Sir, the right "to assemble peacefully and without arms." But clause (3) of the article takes away the entire significance of this sub-clause. Similarly sub-clause (c) grants the right 'to form associations or unions'. Thus we are given the impression that we would have the right to form associations or unions and thus to carry on organised agitation. For instance, we are given to believe that we could carry on organised agitation for the welfare of Lab our, that we can make, in an organised fashion, a demand for the grant of bonus, and if necessary can assemble in public meetings to back up this demand. The truth is that the law restricting the right of holding public meetings would be enforced. Consequently in view of such a law or laws of this kind to be passed in future it may not be possible to hold any public meeting. Thus it is clear that the Government would be in a position to prevent if it so desires, any agitation by Lab our for demanding bonus, since all these restrictive laws would be applicable to the workers also. I, therefore, fail to see the significance of the right of forming associations when I find that its substance is taken away by clause (4). I submit that this article is neither for the good of lab our nor of the general community.

Further we read of the right to 'move freely throughout the territory of India'. This is sub-clause (d). Under it every citizen of India would have the right to move freely into any province or any village of India. But the substance of this right is taken away by clause (5). I would make this clear by an illustration. It is a matter of great amazement that in this country there is a law known as the Criminal Tribes Act under which a persons is considered a criminal from the moment of his birth. There're also some unfortunate communities in this country whose members would not have the right to move freely in the territory of India granted under this sub-clause to every citizen of India. I believe, Sir, that you are aware that under the Criminal Tribes Act the people following pastoral occupations cannot go to any particular part of India they would like to go. Now they do not have that freedom. We have in our province a tribe known as Mang Garodi. If it has to go from the village of Khape to the village of Janwanver it is followed by the Police who sees to it that it goes only to the latter village and nowhere else. Similarly if it goes from Janwanver to Katol the Police of the former place would go up to Katol to entrust the Police of the latter place to keep watch over it. Thus they have no freedom of movement, whatever freedom of movement is now given under sub-clause (d) is taken away by clause (5) of the same article. If the intention is not to give to the criminal tribes, who are also citizens of India, the freedom which they are entitled to, it is something extremely unjust.

Similarly further on we find the right `to acquire, hold and dispose of property'. My friend Prof. Yashwant Rai has said with reference to this freedom that there is an unfortunate section--the scheduled castes--in the Punjab who cannot purchase land on account of the provisions of the Land Alienation Act. Moreover the right that you have granted by this sub-clause to every citizen has been taken away by the clause which permits the Land Alienation Act to remain in force even in future. Thus the right which the Harijans should also, like other citizens, get under this Constitution would not be available to the Harijans of the Punjab on account of the Land Alienation Act of the Punjab.

Pandit Thakur Dass Bhargava (East Punjab: General):*[This article would most certainly confer this right.]*

Shri H. J. Khandekar: By what article please?

Pandit Thakur Dass Bhargava: It will be conferred by this very article 13.

Shri H. J. Khandekar: I do not find this specified here. If this article is passed as it is, the rights that the Harijans of the Punjab should get will not be available to them.

Mr. Vice-President: May I point out to you that it would be better if you address the Chair and not carry on conversation among yourselves?

Shri H. J. Khandekar: Very well, Sir, Sub-clause (g) grants the right to practise profession or to carry on any business etc. But all these rights are taken away by clause (6). I would like to place before you, Sir, the difficulty we would be placed in by these provisions. The most unfortunate people in this country, in my opinion, are the sweepers. Whatever we may talk about the grant of rights to these unfortunate sweepers the fact remains that these unfortunate people have never been given any rights by any person in India nor have they ever enjoyed any right said to have been granted to them. To talk of their "freedom to practise any profession or trade" is a mockery to them. I do not know of the conditions prevailing in other provinces but I know what happens in my province. If a sweeper working under a Municipal Committee desires to give up his work, in my province, he would have to give a notice in writing addressed to the District Magistrate of his intention to do so and can leave his service only if that officer agrees to release him. I am of the view that even the very name of sweeper is a matter of contempt by people. I have consequently held the opinion and have repeatedly said to the sweepers, and I would like again to communicate this opinion through your, Sir, to the sweepers of this country, to give up their present occupation which makes them looked down upon as untouchable by the people of the country, because their work is considered to be so dirty and polluting. I advise them to take to such occupations as are followed by other people. If the sweepers of the whole country were to leave, on my advice, their present occupation, and which they could in exercise of the freedom granted by the clause (8), I am sure that they would invite against them the objection of clause (6) which refers to service in public interest. The fact is that if all the sweepers of Delhi, or Bombay or Calcutta were to stop cleaning latrines, sweeping the streets, they would be said to be acting against public interest; and under this law and under the Essential Services Act they would be compelled to do this work. Then how can you say that all human beings shall have equal rights under this sub-clause? The handicaps from which we suffer, from which the peasant suffers, from which the workers suffer, from which the sweepers suffer would continue to remain even under this article, if it remains as it is. It is, therefore, my submission, and I believe that the House after having heard what I have already said, would consider it proper, that this article should be referred back to the Drafting Committee for being amended. It may then be placed before the House for adoption. This is my proposal, With these words I resume my seat.]*

Shri Algu Rai Shastri (United Provinces: General): *[Mr. Vice-President, all the important aspects of fundamental freedom have been dealt with in article 13. From this point of view this article is very important. It is going to be accepted with some minor amendments. Many friends have attacked its provisions on the grounds that the fundamental rights conferred by this article have been taken away by the limitations imposed therein. I feel that along with freedom responsibility is essential. The friends who urge that the rights given in this article have been taken away under the sub-clauses (2), (3), (4), (5) and (6), have not taken have not taken into consideration the people who will elect members to the legislatures which have been authorised under these provisions to apply these restrictions, and the people who would compose these legislatures. I submit that those who would sit in the legislatures would be representatives of the people and they will impose only those restrictions which they consider proper. Such restrictions would be in the interest of the people. Only those restrictions will be imposed which would be necessary in the interest of public health, unavoidably necessary for the maintenance of public peace and desirable from the viewpoint of public safety. No restriction will be imposed merely to destroy the liberties of the people.

Freedom is a great art--even greater than the art of music and dancing. One who is adept in music or dancing keeps his voice under control and maintains restraint and control over his bodily movement, and on the movement of his feet. He has to move in accordance with certain recognised rules of music and dancing. He cannot sing and dance out of tune and time, in an unrestrained manner. He remains fully bound to the rules. Full freedom is being conferred upon us but it can never mean that we should not be under any restrictions whatsoever. Freedom of speech does not mean that we can give expression to whatever comes to our mind without observing any limitation or rule in this respect. In legislatures we have to follow certain rules and regulations. We are here as the representatives of the sovereign people but even then there are hundreds of restrictions upon us. Freedom by its nature implies limitations and restrictions.

'Kavihin Arth Akhar Bal Sancha, Kartal Tal Gatihin Nat Nacha'

The dancer dances to the measure of clapping. The poet is bound by the significance of words. A dancer dances according to certain fixed timings and never makes a false movement. His movements are in harmony with the tall. When a nation or a community attains freedom, it begins to bear a great responsibility on its shoulders. We cannot therefore say that the restrictions that have been imposed will retard our progress.

One of my friends made a reference to the Bhang community. I have been working amongst them since 1924. I have thus a personal experience extending over a period of twenty four years. There can be no doubt about the indescribable wretchedness of the Bhang is and of our other so called untouchable brethren. It is indeed very deplorable. But the restrictions provided for in article 13 do not imply that Bhang is will continue to remain bound to their present occupation. Under this article there would be no compulsion for any person to follow any particular occupation. This article as a matter of fact, instead of prescribing the compulsory pursuit of any occupation, provides for unrestricted freedom to every individual to follow any vocation he pleases. I think that the freedoms granted under sub-clauses (f) and (g) need clarification. In sub-clause (f) is specified the right of a person to acquire, hold and dispose of property; while in sub-clause (g). It is stated that there is freedom of a person to practise any profession or to carry on any occupation, trade or business or other means of livelihood of one's choice. It is true that the State has been authorised to restrict this freedom in sub-clauses (5) and (6). But a little reflection would show that it was necessary to limit the freedom so widely provided for in sub-clauses (f) and (g) of clause (1) of article 13. Such unrestricted freedom as is provided in these two sub-clauses could not be free from grave danger. For instance, we have in our society the practice of prostitution. Is this to continue in future also as it has done till now? It should not in any circumstances be permitted to continue. Evidently there must be some provision whereby its practice may disappear by providing for a profession worthy of being adopted. Evidently restrictions have to be imposed on it.

Again, there is freedom in our society to earn one's livelihood by selling intoxicants. In the directive Principles we have now included a provision for the introduction of Prohibition but in the Fundamental Rights we have given every one the unrestricted rights to earn his livelihood. Both the provisions appear to be contradictory to each other. Thus it is necessary to provide that no one shall be permitted to earn a living by selling intoxicants except for medicinal purposes.

Again begging is a common profession in our society today. Should it be permitted to continue as it is? I submit that there should be a good arrangement for bringing it to an end.

We have now attained freedom. We should do nothing which may endanger it. It is our duty to be good citizens. We have also to see that freedom is not misused. Up till now we were under foreign rule. Indian subjects received step-motherly treatment from the rulers. In England no intoxicant can be mixed with any medicine other than in the prescribed proportion but here bottles of country wine are being sold openly in the market. Our `Freedom'--our own mother--can never permit us--her children--to have this because she cannot permit her children to go astray.

Good citizenship implies restrictions:

"SATYAM BRUYAT PRIYAM BRUYAT NA BRUYAT SATYAMAPRIYAM"

Be truthful and sweet in speech, but do not speak out the unpleasant truth. Anyone has the freedom to state the truth, but not the freedom to speak out the unpleasant truth. This is a restriction and good citizens have to accept this restriction. I beg, therefore, to express my appreciation of article 13 read with the amendment moved by Dr. Ambedkar and which already been referred to.

I would like to make another observation. I feel that the rights guaranteed in sub-clauses (f) and (g) are rather too wide. I have already said something about freedom of making a living.

I shall resume my seat after saying a few words about the right to acquire property. The type of freedom being guaranteed implies that the capitalists and feudal aristocrats would have full rights to acquire and dispose of property. But the mode in which property is being acquired and held is such as permits the property owners to have all the benefits while workers who create this property have all the toil as their share. `The ox produces and the horse consumes'--this saying is being fulfilled. Of course, this should not be so. I submit that this right of property should be so interpreted in future as to permit the transformation of individualistic capitalism into State capitalism. All the means of production and the distribution of the commodity should be owned and controlled by the State and not by the individual. "Unless the individual ownership yields place to collective ownership--social ownership--there cannot be real Swaraj."

To reach this goal it is necessary that these restrictive provisions should be interpreted in this way. With these words I express my support for this article.]*

Shri Amiyo Kumar Ghosh (Bihar: General): Mr. Vice-President, Sir, we are dealing today with one of the most important clauses of this Constitution. We are dealing with the freedom of citizens. That is to say what rights the Indian people have under this Constitution. On reading the entire clause, I feel that the rights which have been recognised under sub-clause (1) of this article have been to a great extent abrogated by the subsequent provisos. In a Constitution, there are two important points, namely what are our rights and what form of Government we are going to have. These are the two important subjects in a Constitution and others flow from them and therefore one expects that so far as the rights of the people are concerned, they should be expressed in clear, simple and straight language, so that a common man when he reads the Constitution can understand exactly and precisely what are his rights and what are the checks to his rights. I do not propose to say that at times of emergencies or grave needs, freedom does not require to be checked to a certain extent. I believe in checks and balances, but at the same time, I must say that those checks should be very precise, and clear and should not be couched in ambiguous language and left to courts for decisions.

Now you will find, Sir, that in all these sub-clauses (2), (3), (4), (5) and (6) we have used the words "interest of general public", `general public interest' `public order' and `property' without defining them and I think it will take centuries for the Supreme Court to exactly say what really these words mean. By incorporating such words in the sub-clauses, wide powers have been given to the Central and the Provincial Legislatures to frame laws by which they can restrict the freedom which has been given to the people under sub clause (1) of this article. I do not like to enter into any criticism of this article, but the only thing I want to say is that the entire clause is very disappointing.

Specially, I will draw the attention of the Honourable Dr. B. R. Ambedkar to sub clause (5). Now, Sir, in this sub-clause (5) the rights which have been recognised in sub-clauses (1) (d), (e) and (f) above have been practically negatived and have given rise to grave anxiety in the minds of many regarding the exact position in matters of residence, acquisition and disposition of properties. The exact significance of clause (5) in respect of (e) and (f) requires further clarification. Next I cannot understand why in this clause, the words, "for the protection of the interests of any aboriginal tribe" have been incorporated. What it exactly means I fail to understand. Does it mean the 'tribal area' or does it mean that wherever any aboriginal tribe lives, irrespective of their numbers the legislatures can frame laws safeguarding their interest as, for instance, if there be 15 aboriginals living in Delhi, can the Central Legislature frame a law by which they can restrict the rights of other people in the interests of these fifteen or sixteen aboriginals? I could understand that wherever there may be some aboriginals the legislature can make a law, by which they can restrict the rights of all others for the protection of those few.

Sir, I feel the position is ambiguous and clumsy and should be made clear. I fail to understand why clause (d) has been tacked with sub-clause (5). Free movement has been restricted by that sub-clause. My own personal view is that there should not have been any restriction regarding movement. The citizens should have been given a free right to move. Only on administrative or political grounds the Central or provincial legislatures could be empowered to frame laws judiciously by which they can restrict the movement of the people and this power should be worked sparingly and in very emergent circumstances. In every matter of freedom, restrictions have been imposed in the interest of general public. What this interest is, we do not know and has not been stated anywhere. Such words can be interpreted differently in different States and the Centre and may give rise to separate and conflicting laws. Sir, this would create great confusion. Therefore, I submit, if this article is read and viewed, it only gives rise to disappointment, and with a little more effort and with as light inclination this article could have been framed in such a language that it would have been a model article in the whole of the Constitution.

Mr. Vice-President: Mr. T. T. Krishnamachari.

Shri Mahavir Tyagi: May I know, Sir, is it by reference to the slips that you are calling the speakers?

Mr. Vice-President: I am not prepared to give you information as to how I conduct my work.

Shri Gopal Narain (United Provinces: General): So that we need not stand every time. Have we to stand every time or send slips, Sir?

Mr. Vice-President: The remedy lies in your hands; you can do both, you can send a slip and stand, or you can don either.

Shri T. T. Krishnamachari (Madras: General): Sir, as the speaker that spoke before me said, this is perhaps the most important article in this Part and one which enumerates the rights for the attainment of which we in India have undergone all the troubles to obtain our freedom. Actually, Sir, it is in the manner in which the State is going to allow the people to use the rights enumerated in this particular article that the people can feel that all that they have done in the past and the sacrifices that they have made in the past to obtain freedom was worth while.

Sir, I do not say that this article is perfectly worded; nor can I maintain that the exceptions to parts of this article provided by clauses (2), (3), (4), (5) and (6) do not curtail the liberty and the right conceded to individual citizens in clause (1). But, as a student of politics, I have to realise that there can be no absolute right and every right has got to be abridged in some manner or other under certain circumstances, as it is possible that no right could be used absolutely and to the fullest extent that the words conveying that right indicate. It is merely a matter of compromise between two extreme views. Having got our freedom only recently, it is possible that we want all the rights that are possible for the individual to exercise, unfettered. That is one point of view. The other view is that having got our freedom, the State that has been brought into existence is an infant State which has to pass through various kinds of travail, and what we could do to ensure that the State continues to function un-impaired should be assured even if it entails an abridgment of the rights conferred by this article. I have no doubt in my mind that, though I have had to say something perhaps harsh on certain occasions in regard to what the Drafting Committee has done generally, in this article, the Drafting Committee has chosen the golden mean of providing a proper enumeration of those rights that are considered essential for the individual, and at the same time, putting such checks on them as will ensure that the State and the Constitution which we are trying to bring into being today will continue unhampered and flourish.

Sir, language is always rather a difficult affair. What language conveys to me it may not convey to another person, and as my honourable Friend Dr. Ambedkar put it, we are legislating in a language which is foreign to us, the exact import of which we do not understand. Should we do it in one of our own languages? The difficulty would be all the greater for the reason that the language of one set of people is not the language of another set of people. Besides, precise thinking in our own language so that we could adopt it for constitutional purposes has not yet developed. Actually we have to depend for the interpretation of the particular restrictions that are enumerated herein on the Supreme Court or some other authority that would come into being in the future, to ensure that the peoples' rights are not abridged.

Speaking today in the context of the situation in which we are placed, we cannot but envisage that those rights will be abridged in order to maintain the stability of the State. This State that has now been brought into being has been put to a lot of travail in the first eighteen months of its existence and every Member of this House knows it. Special powers are needed by the Government to meet not merely with the refugee problem, not merely with the fact that there are various forces in this country which do not like this State to grow in the present form, but also with the various economic troubles that now face this country. Are we to build up our Constitution, putting in these restrictions which are necessary today in the light of things that stand as they stand today, or are we to visualise a time when things will be normal and when it will not be necessary for the State to use these powers, is the problem. Again, I think, the Drafting Committee and my honourable Friend Dr. Ambedkar have chosen the golden mean in this particular matter.

There is one other matter on which I would like to lay stress before I sit down. We in this House, though the bulk of us belong to one party, have got different ideas on economic matters. We were all together in one particular fact that the British should go; we are all united in the desire that we should have a stable constitution which will ensure to the common man what he needs most, what he did not obtain in the former regime. But, in the achievement of that goal in the methodology to be adopted for the achievement of that goal our ideas vary considerably, and vary from one end to the other. I am happy to see that the Drafting Committee has chosen to avoid importing into this particular article the economic implications in the enumeration of fundamental rights that obtain in other constitutions. I think it has been a very wise thing. I know a friend of mine in this House has objected to one particular sub-clause (f) of article 13, namely, to acquire, hold and dispose of property. I would like to assure him and those who hold the opinion that he holds that this does not really mean that there is any particular right in regard to private property as such, no more than what any person even in absolutely socialistic regime will desire, that what he possesses, what are absolutely necessary for his life, the house in which he lives, the movables that he has to possess, the things which he has to buy, should be secured to him, which I think any socialistic regime, unless it be communistic, will concede, is a right that is due to an individual.

Actually the economic significance that attaches to any enumeration of Fundamental Rights, such as the rights conceded in the Bill of Rights in the American Constitution and the addition to these in the Fourteenth Amendment, finds no place so far as this particular Constitution is concerned, and I am able to say that that is one of the bull features of this Draft Constitution. We have chosen to avoid as far as possible, in spite of the fact that the vested interests are still with us and they have a certain amount of influence--we have chosen to avoid as far as possible laying that stress on the importance of the economic surroundings which is a significant feature of the American Constitution, and I do hope that my honourable Friend, who objected to a particular sub-clause in this article namely clause (f), will now realise that it has no meaning so far as property rights are concerned except in something that is dear to an individual and which is very necessary to concede in an enumeration of rights of this nature.

Sir, the future, what it is going to be none of us really know, but we almost of us--envisage that the future will be one which will be bright, the future will be one where the State is going to be progressive, where the State is going to interfere more and more in the economic life of the people not for the purpose of abridgment of rights of individuals, but for the purpose of bettering the lot of individuals. That is the State that I envisage, a State which will not be inactive, but will be active and interfere for the purpose of bettering the lot of the individual in this country; and I do feel, Sir, that as it is a well known canon that in any Constitution that is forged there should be a reconciliation of past political thought which will at once pave the way for a new level of thinking, a new level of progressive and critical thinking. I think those conditions are at any rate possible in an enumeration of the Rights such as is found in article 13. Sir, there is no use our comparing this particular article which happens to be the crux of the Fundamental Rights with either what obtains in the commentaries of the English Constitution or what obtains in the text of the American Constitution or any other Constitution, for the reason that the setting is totally different. There is no use anybody saying that a particular feature is not found in the English Constitution. English jurisprudence is something totally different for the reason that English Parliament does not provide for the enumeration of all these rights which is absolutely based on custom on which you cannot depend for ever because Parliament there is supreme and can make laws contravening every recognised custom. They do not have to have a Constitutional amendment for that purpose. Parliament can formulate new laws which might cut right across the conventions, and the usages of the Constitution established over centuries. But so far as the American example is concerned--and certainly there are other examples which are modeled on the American example--there is one distinction between our own way of thinking and what the Founding Fathers in America thought and what was sustained in America until recently, *viz.*, the economic basis of the American Constitution is something totally different from what we envisage to be the economic basis of our Constitution. So any analogy is only applicable up to a point, and therefore any of our friends who seek to import particular provisions of the American Constitution or particular words either in this particular article or in later articles, have to recognize that the bulk of the opinion of this House is something totally different from the economic bias that more or less determined the American Constitution, right at the inception and later on as well, on which bias legal literature has built up several conventions attached to that Constitution.

Sir, I would like to say this that the amendments proposed by my honourable Friend Dr. Ambedkar particularly to clauses (4), (5) and (6) are a great improvement on the original draft and my own view is that they do take away the lacunae that existed in the original draft. But I should like to lay emphasis on one particular amendment moved by my Friend Mr. Munshi who is not here. The value of that amendment happens to be only, to a very large extent, sentimental. The word `sedition' does not appear therein. Sir, in this country we resent even the mention of the word sedition' because all through the long period of our political agitation that word `sedition' has been used against our leaders, and in the abhorrence of that word we are not by any means unique. Students of Constitutional law would recollect that there was a provision in the American Statute Book towards the end of the 18th Century providing for a particules law to deal with sedition which was intended only for a period of years and became more or less defunct in 1802. That kind of abhorrence to this word seems to have been more or less universal even from people who did not have to suffer as much from the import and content of that word as we did. Just all the same the amendment of my honourable Friend Mr. Munshi ensures a very necessary thing so far as this State is concerned. It is quite possible that ten years hence the necessity for providing in the Fundamental Rights an exclusion of absolute power in the matter of freedom of speech and probably freedom to assemble, will not be necessary. But in the present state of our country I think it is very necessary that there should be some express prohibition of application of these rights to their logical end. The State here as it means in the amendment moved by my honourable Friend Mr. Munshi as I understand it, means the Constitution and I think it is very necessary that when we are enacting a Constitution which in our opinion is a compromise between two possible extreme views and is one suited to the genius of our people, we must take all precautions possible for the maintenance and sustenance of that Constitution and therefore I think the amendment moved by my honourable Friend Mr. Munshi is a happy mean and one that is capable of such interpretation in times of necessity, should such time unfortunately come into being so as to provide the State adequate protection against the forces of disorder.

Sir, one other matter which I would like to mention before I sit down is this. Sub-clause (c) of art. 13 (1) is very important. I do not know if people really realise as they would know in other countries and particularly in U.S. ,labour has had to undergo an enormous amount of trouble to obtain elementary rights on matters of the recognition of their rights, in the matter of the right to assemble together as a Union. I do not think that in my view clause (4) of this particular article unnecessarily abridges the rights conferred by sub-clause (c) of clause (1). My own feeling is that we have more or less sought to cut across the difficulties which the other countries have faced in this particular matter and we have ensured for labour the very legitimate right to come together, to agitate and to obtain for themselves and for the members of their Union the rights that are justly theirs. That I think is more or less a charter for workers in this country and I am happy to see that the vested interests have not tried in any way to abridge this particular right. On the whole, Sir, this particular article with the amendments proposed by my honourable Friend Mr. Munshi and the three amendments proposed for clauses (4),(5) and (6) by Dr. Ambedkar and also the addition of the word `reasonable' which has been brought in by my honourable Friend Mr. Thakur Dass Bhargava, represents in my opinion a fairly reasonable enumeration of our rights and a fairly conservative abridgment of those rights. The working of these particular rights depends upon the genius of our people, upon how we develop ideas of liberty which are still today in a very undeveloped state. It is no doubt true that our leaders are sometimes hasty, they want more powers, when they are faced with difficult situations and they think the only way in which they could deal with them is to have more powers. They do not recognize that they are leaders of the people the chosen leaders of this country each one with a personality of his own and the aggregate effect of their personality and their influence can cut right across the necessity for any drastic powers. That kind of confidence will come only later on--at the moment they merely want to follow in the footsteps of people who preceded us in the government of this country, who had no touch or contact with the people, who could never get on to a platform and persuade the people to do any particular thing, who only wanted powers which could be exercised through the medium of the bureaucracy. That mentality will change, and will surely change, because our leaders are very eminent people. Surely, the House will realise that the Prime Minister and the Deputy Prime Minister, if they get upon a platform can sway millions of people if they could only get their voices to reach them. It only depends upon the type of leaders that we get for the abridgment of these rights which are enumerated here to become a dead letter, and that is in the lap of the gods. For the time being we have done the very best possible which human ingenuity can devise.

Sir, I support the article before us.

Shri Lakshmi Narayan Sahu (Orissa: General): *[Mr. Vice President, I would like to make an observation with regard to article 13 which is now under discussion. The article confers certain rights on the citizens, but the words 'subject to the other provisions of this article' occurring in the very beginning of the article, serve as a warning to us that the article confers freedom, no doubt, but that it is only within a limited sphere. Moreover the sub-clauses (2), (3), (4), (5) and (6) that follow, re-emphasise that unless the freedom granted is enjoyed within the prescribed limits, people would get into great difficulty. I feel, however, that both the words `subject to other provisions of this article' and the sub-clauses (2), (3), (4), (5) and (6) should be deleted from the article. We shall be able to visualize the true picture of our freedom only when this has been done. So long as the sub-clauses remain, we can not have a correct picture of our freedom. Moreover I feel that liberty has been considerably narrowed during the drafting process. It is just like the narrowing of the size of a temple as a consequence of its main entrance being made too large during the process of constructing the temple. It is of no use whatever. There is an Oriya proverb which is meant for such a situation. It is-

Ghare na pasuna chal vaguchi Devalku Mukhashala Bil Gala.

It means that it is no use making a house with so small an entrance that one's entry into the house is rendered difficult without striking his head against the door-frame. Though there has been considerable discussion on the article, we wish that we discuss it more thoroughly and that the Drafting Committee gives more consideration to it. Thus, whatever drawback we find in the article should be removed. In my opinion sub-clauses (2), (3), (4), (5) and (6), must be deleted. Unless this is done we shall not have the taste of freedom and shall continue to remain in a condition of fear. Those who till recently were seeking to organise disobedience of laws are, being today, in the seat of power, apprehensive of the violation of laws by other people, and under this apprehension, are seeking to make the law so comprehensive and rigid as to prevent any one outside the ruling group from going beyond its control. I would like to say that article 13 which is now under discussion betrays an un understandable apprehension on the part of authority. The fact is that there are many provisions in this Draft Constitution which would prevent the citizens from committing any disorder. Thus article 25 provides that "The right to move Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed". I submit, therefore, that all the restrictive provisions contained in article 13 should be deleted. My belief is that article 25 will be as helpful to the government as to good citizens. Unless the restrictive provisions of this article are deleted, we cannot properly enjoy our National Freedom. Moreover it had always been our loud assertion that self-government is better than good government. Now we have grown indifferent to self-government and are raising the slogan of good government. With so many rigid provisions what good government can you have and for whom?

Those who are in power at present are apprehensive that the people and political parties other than those of the ruling group would practise disobedience of laws. That is why so many restrictive provisos have been included in the Draft Constitution. It is precisely why I insist that the Fundamental Rights should be treated as fundamental and inviolable. It is not proper therefore to delimit them by so many restrictive clauses and sub-clauses.

There is one observation I would like to make about the Adibasis. I agree to a certain extent with what Shri Jaipal Singh has said. Adibasis move about with arms. This article lays down that all citizens shall have the right "to assemble peaceably and without arms". We should therefore consider whether or not this clause takes away from the Adibasis their customary right to bear arms. In view of the provisions contained elsewhere in the constitution. I think, this will not affect the right of Adibasis to bear arms. If this view be correct Adibasis need not fear the loss of their right. Though I have no objection to the words "assemble peaceably and without arms" being put in here, yet I feel that nowhere in the Draft Constitution can be found any provision regarding the repeal of the Arms Act and the grant of the right to the people to bear arms--a right which is essential to make our people fearless. Therefore, I would like that a provision for the repeal of the Arms Act and making it permissible to the people to bear arms be include din the Draft. I would not like to say anything more about this matter.

We often talk of minorities today but we should stop this kind of talk now. What is a minority? When we are going to make one and the same provision for all, I fail to see who remains to constitute the minority. It may be said against this view that the Depressed Classes are a minority, the aboriginals are in a minority and the Muslims are in a minority. But once it is conceded that a particular group is a minority there is the danger that many other groups would begin to clam our for being considered as minorities. Formerly in the political sphere the Muslims were considered a minority. But then the Depressed Classes got themselves included in this category. I am afraid that among the Depressed Classes themselves new groups would begin demanding the status of a new minority. The same is, in my opinion, the case of the aboriginals. I would, therefore, like that the word `minority' wherever it occurs in the Draft Constitution should be deleted and the article 13 should be so drafted that all may feel that they have got real Swaraj and that they have no cause for apprehension and that they have as unrestricted a freedom as any one else.]*

Shri Deshbandhu Gupta (Delhi): *[Mr. Vice-President, I have had an opportunity once before of representing my views on the recommendations of the Drafting Committee. I was not at that time in a position to congratulate my Friend, Dr. Ambedkar and the Drafting Committee, on certain of there commendations, which related to the Chief Commissioners' Provinces. But today. I feel that on article 13, which relates to our Fundamental Rights, and particularly after this amendment as it stands, the Drafting Committee deserves our hearty congratulations.

Some of my friends here have objected saying that what has been given by one hand has been taken away by the other. But if you ponder a little, you will find that it is not so. If some one is given a freedom by which the freedom of the other is curtailed, then I would say, that such a demand is not for the right type of freedom. For example, it has been stated that restrictions have been imposed on the movement of people belonging to the criminal tribes. I would like to ask, why should not restrictions be imposed on the movement of the criminal-tribe people, when they are a source of danger to other law-abiding citizens? Could anyone be serious in saying that restrictions and conditions imposed on the criminal tribes should not have been imposed at all? Or that the presence of those restrictions and conditions has in any way curtailed our freedom? Similarly in respect of land, it has been stated that henceforth our Harijan brethren would not be able to purchase any land for themselves and the Land Alienation Act would continue to stand as it is. It is perfectly correct to say that the most objectionable feature of the Land Alienation Act was that certain castes had been mentioned therein. For example, a Bania or a Brahmin or a Harijan could not purchase land. It was wrong. But in fact, that restriction is being swept aside today by the conferment of the Fundamental Right that all citizens shall have the right to acquire property. From now on, if any restriction is imposed, it would have to be proved whether it is proper or improper. That question would be decided, under the provisions of this section, by the Supreme Court. It is a big gain. Formerly, the phraseology of the article was defective, but that defect has been removed by the acceptance of the amendment of my Friend, Pandit Thakur Dass Bhargava, which seeks to add the word 'reasonable'. Now, there is nothing to warrant the imposition of any undue restriction. If there would be any, then against that an appeal could be preferred, and that would be decided by our Supreme Court which would be composed of great experts in India. That is why I feel that we should welcome this article and that it would be wrong to give an impression that it curtails our freedom in any sense. We should realise that our country is now a free country. I agree with my Friend, Shri Algu Rai Shastri that, along with rights, certain obligations and responsibilities have also come upon us. If we do not stand by those obligations then our freedom would be the freedom of the jungle. That freedom, I think, would not be such as to merit a welcome from us. Therefore, I think, this article as amended, should be accepted by us. We should realise that it forms the basis of our constitution, and it is a thing of which we can rightly feel proud and which will raise us in the estimation of the whole world.]*

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, I consider article 13 as the most important article, as it deals with some of the fundamental rights which are common to all free countries and all free citizens in the world. A number of amendments have been moved to this article which can all be classified under three heads. Some want to remove all restrictions on the rights that have been set out in clause (1). The fundamental rights guaranteed in clause (1) of article 13 are freedom of speech and expression, assembly and association, right to move freely inside the territory, right to practise any profession, right to reside--these are the fundamental rights that have been guaranteed. There are exceptions to these fundamental rights that have been setout in this clause and they are to be found in the subsequent clauses (2), (3), (4), (5) and (6). Some of the amendments are for the deletion of the clauses; and some to make improvements so that these provisos may not take away the rights that have been guaranteed under clause (1).

Pandit Thakur Dass Bhargava has moved an amendment saying that if any restrictions have to be imposed upon these rights that have been guaranteed in clause (1), they must all be reasonable. I believe that that amendment would sufficiently meet the situation.

Regarding freedom of speech we have improved upon the restriction that has been imposed in clause (2). The word sedition has been removed. If we find that the government for the time being has a knack of entrenching itself, however had its administration might be it must be the fundamental right of every citizen in the country to overthrow that government without violence, by persuading the people, by exposing its faults in the administration, its method of working and so on. The word `sedition' has become obnoxious in the previous regime. We had therefore approved of the amendment that the word `sedition' ought to be removed, except in cases where the entire state itself is sought to be overthrown or undermined by force or otherwise, leading to public disorder; but any attack on the government itself ought not to be made an offence under the law. We have gained that freedom and we have ensured that no government could possibly entrench itself, unless the speeches lead to an overthrow of the State altogether.

Then there are certain amendments which have been given for adding to the fundamental rights that have been set out. They require some detailed consideration. The foremost of those amendments relates to guaranteeing that every citizen shall have the right to exercise his personal law. Let us see what this means. We have already discussed personal law at some length in the Directive clause where a direction has been given that a uniform code of civil law must be evolved early or late. Amendments have been moved that unless a provision is made in the Fundamental Rights there is no safety and that the majority community may introduce its own personal law or flagrantly violate the personal law of any community. Let us take the communities. There are three main religions. Let us take Muhammadanism. There is absolutely no provision in the Fundamental Rights that you ought to ride rough-shod over their personal law. The law of the land as it exists today gives sufficient guarantee so far as that is concerned. But our friends who moved the amendments wanted a double guarantee that their personal law ought not to be interfered with. My submission is that it is impracticable, for, in an advanced society, even the members who belong to a particular community may desire their personal law to be changed. Let us take the Muhammad an law. I would only refer to two or three amendments that have been made to that law as set out in the Shariat. As recently as in 1939 the Central Legislature passed a law for enabling the dissolution of Muslim marriages under certain circumstances. You will be pleased to note that under the Muslim Law, a man has got the unilateral right to declare a marriage void by pronouncing the word *talak* and there is another form of divorce called kulamp. Woman normally has no right to dissolve a marriage. She has to go to a court of law and various matters have to be set out such as impotency and soon. All that has been made easy now. Another consideration is that a woman who cannot lead a family life with the husband in the same household is entitled under certain conditions to separation. These have hitherto not been envisaged nor provided for in the Dissolution of Muslim Marriages Act. As a member of the Assembly I was a member of one of the committees that considered this question. We left the question entirely for the Muslims Members concerned to settle. The Shariat Law was introduced in the Assembly and an Act was passed bringing into line with the Shariat Law the different pieces of legislation in the provinces of India. This was done four years ago. The Wakf Validation Act was passed in 1930. A time may come when members belonging to the particular community may feel that in the interests of the community progressive legislation has to be enacted. But if we make a provision here that the personal law shall not be interfered with, there will not be any right to the members of that community itself to modify that law. Therefore it is not necessary that we should introduce it as a fundamental right. There is absolutely nothing in this Constitution which allows the majority to override the minority. This is only an enabling provision. Without the consent of the minority that is affected, no such law willed framed. I therefore feel it is unnecessary to include it in the Fundamental Rights.

Then my friend, Mr. Kamath wanted that we should have the right to bear arms and that this right should be put in the Fundamental Rights. It is true that for a long time the Congress has been from year to year passing resolutions that we must have the right to bear arms. The situation has changed now. We were then slaves and wanted to equip ourselves sufficiently so that in case of need we can use the arms for getting out of the foreign yoke. But, today in the civilised world I should like to ask my honourable Friend if he feels that everybody should be allowed to fight even to defend himself. Except in extreme circumstances no force should be used. Even when force has to be used, it must be concentrated in the State. The State it is that must stand between man and man and citizen and citizen when they want to fight. No individual citizen ought to be allowed to attack another. Very often the right to bear arms is abused.

Shri H. V. Kamath: Not even in self-defence?

Shri M. Ananthasayanam Ayyangar: Very often defence is offence in the hands of strong young men whose blood is very warm like that of my friend. Mr. Kamath's defence very often means offence.

Shri H. V. Kamath: I strongly protest against that remark, Sir.

Shri M. Ananthasayanam Ayyangar: I am sorry, Sir.

Mr. Vice-President: He has expressed his regret.

Shri M. Ananthasayanam Ayyangar: I have the greatest regard for my young friend and his youthful enthusiasm.

So far as the communal point is concerned, there is an amendment here which requires it to be included as a fundamental right. I am afraid it is not possible to do so. There is provision made in the Penal Code under sections 153 and 155-A for the purpose. That is ample.

As regards freedom of thought, I am surprised to see an amendment moved saying that freedom of thought ought to be allowed. Nobody can prevent freedom of thought. It is a fundamental right. It is only freedom of expression that has to be allowed. Now, freedom of press means freedom of expression. As regards the secrecy of telegraphic and telephonic communications, it is a debatable point and we ought not to allow any change in the existing provision.

Now, therefore, except the amendments which are acceptable to Dr. Ambedkar, the others should not be accepted. They are objectionable and ought not to find a place in the Constitution.

Shri Satyanarayan Sinha (Bihar: General): I move that the question be now put.

Mr. Vice-President: An enquiry was made of me as to how I have tried to conduct the proceedings of this House. I refused to supply the information at that time, because I thought it might be left to my discretion to explain how I conduct the proceedings. I see that I have not been able to satisfy all the members who desire to speak. At the present moment I have here 25 notes from 25 different gentlemen all anxious to speak. There is no doubt that each one of them will be able to contribute something to the discussion. But the discussion cannot be prolonged indefinitely. This does not take into account those other gentlemen equally competent to give their opinion who stand up and who have denied to themselves the opportunity of sending me notes. I have tried to get the views of the House as a whole. If Honourable Members will kindly go through the list of speakers who have already addressed the House they will find that every province has been represented and every so-called minority from every province has been represented. In my view, in spite of what Pandit L. K. Maitra says, Bengalees are a majority. In my view therefore the question has been fully discussed. But, as always, I would like to know whether it is the wish of the House that we should close this discussion.

Honourable Members: Yes, yes:

Mr. Vice-President: Then I call upon Dr. Ambedkar to reply.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Mr. Vice-President, Sir, among the many amendments that have been moved to this article 13, I propose to accept amendment No. 415, No. 453 as amended by amendment No. 86 of Mr. Munshi, and amendment No. 49 in list I as modified by Mr. Thakur Dass Bhargava's amendment to add the word 'reasonable'.

Mr. Vice-President: Will you kindly tell us how you propose to accept amendment No. 415.

The Honourable Dr. B. R. Ambedkar: The amendment which seeks to remove the words `subject to the other provisions of this article'.

Mr. Vice-President: And then?

The Honourable Dr. B. R. Ambedkar: Then I accept No.453 as modified by amendment No. 86, and amendment No. 49 in List I as modified by the amendment of Pandit Thakur Dass Bhargava which introduces the word `reasonable'.

Now, Sir, coming to the other amendments and the point raised by the speakers in their speeches in moving those amendments, I find that there are just a few points which call for a reply.

With regard to the general attack on article 13 which has cent red on the sub-clauses to clause (1), I think I may say that the House now will be in a position to feel that the article with the amendments introduced therein has emerged in a form which is generally satisfactory. My explanation as to the importance of article8, my amendment to the phrase "existing laws" and the introduction of the word "reasonable" remove, in my judgment, the faults which were pointed out by honourable members when they spoke on this article, and I think the speeches made by my friends, Professor Shibban Lal Saksena and Mr. T. T. Krishnamachari and Mr. Algu Rai Shastri, will convince the House that the article as it now stands with the amendments should find no difficulty in being accepted and therefore I do not want to add anything to what my friends have said in support of this article. In fact I find considerable difficulty to improve upon the arguments used in their speeches in support of this article.

I will therefore take up the other points. Most of them have also been dealt with by my friend, Mr. Ananthasayanam Ayyangar and if, Sir, you had not called upon me, I would have said that his speech may be taken as my speech, because he has dealt with all the points which I have noted down.

Now, the only point which I had noted down to which I had thought of making some reference in the course of my reply was the point made by my friend, Professor K. T. Shah, that the fundamental rights do not speak of the freedom of the press. The reply given by my friend, Mr. Ananthasayanam Ayyangar, in my judgment is a complete reply. The press is merely another way of stating an individual or a citizen. The press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editor of a press or the manager are all citizens and therefore when they choose to write in newspapers, they are merely exercising their right of expression, and in my judgment therefore no special mention is necessary of the freedom of the press at all.

Now, with regard to the question of bearing arms about which my friend Mr. Kamath was so terribly excited, I think the position that we have taken is very clear. It is quite true and everyone knows that the Congress Party had been agitating that there should be right to bear arms. Nobody can deny that. That is history. At the same time I think the House should not forget the fact that the circumstances when such resolutions were passed by the Congress no longer exist.

Shri H. V. Kamath: A very handy argument.

The Honourable Dr. B. R. Ambedkar: It is because the British Government had refused to allow Indians to bear arms, not on the ground of peace and order, but on the ground that a subject people should not have the right to bear arms against an alien government so that they could organise themselves to overthrow the Government, and consequently the basic considerations on which these resolutions were passed in my judgment have vanished. Under the present circumstances, I personally myself cannot conceive how it would be possible for the State to carry on its administration if every individual had the right to go into the market and purchase all sorts of instruments of attack without any let or hindrance from the State.

Shri H. V. Kamath: On a point of clarification, Sir, the proviso is there restricting that right.

The Honourable Dr. B. R. Ambedkar: The proviso does what? What does the proviso say? What the proviso can do is to regulate, and the term `regulation' has been judicially interpreted as prescribing the conditions, but the conditions can never be such as to completely abrogate the right of the citizen to bear arms. Therefore regulation by itself will not prevent a citizen who wants to have the right to bear arms from having them. I question very much the policy of giving all citizens indiscriminately any such fundamental right. For instance, if Mr. Klamath's proposition was accepted, that every citizen should have the fundamental right to bear arms, it would be open for thousands and thousands of citizens who are today described as criminal tribes to bear arms. It would be open to all sorts of people who are habitual criminals to claim the right to possess arms. You cannot say that under the proviso a man shall not be entitled to bear arms because he belongs to a particular class.

Shri H. V. Kamath: If Dr. Ambedkar understands the proviso fully and clearly, he will see that such will not be the effect of my amendment.

The Honourable Dr. B. R. Ambedkar: I cannot yield now. I have not got much time left. I am explaining the position that has been taken by the Drafting Committee. The point is that it is not possible to allow this indiscriminate right. On the other hand my submission is that so far as bearing of arms is concerned, what we ought to insist upon is not the right of an individual to bear arms but his duty to bear arms. (An Honourable Member: Hear, hear.) In fact, what we ought to secure is that when an emergency arises, when there is a war, when there is insurrection, when the stability and security of the State is endangered, the State shall be entitled to call upon every citizen to bear arms in defence of the State. That is the proposition that we ought to initiate and that position we have completely safeguarded by the proviso to article 17.

Shri H. V. Kamath: (rose to interrupt).

Mr. Vice-President: You do not interrupt, Mr. Kamath. You cannot say that I have not given you sufficient latitude.

The Honourable Dr. B. R. Ambedkar: Coming to the question of saving personal law, I think this matter was very completely and very sufficiently discussed and debated at the time when we discussed one of the Directive Principles of this Constitution which enjoins the State to seek or to strive to bring about a uniform civil code and I do not think it is necessary to make any further reference to it, but I should like to say this that, if such a saving clause was introduced into the Constitution, it would disable the legislatures in India from enacting any social measure whatsoever. The religious conceptions in this country are so vast that they cover every aspect of life, from birth to death. There is nothing which is not religion and if personal law is to be saved, I am sure about it that in social matters we will come to a standstill. I do not think it is possible to accept a position of that sort. There is nothing extraordinary in saying that we ought to strive hereafter to limit the definition of religion in such a manner that we shall not extend beyond beliefs and such rituals as may be connected with ceremonials which are essentially religious. It is not necessary that the sort of laws, for instance, laws relating to tenancy or laws relating to succession, should be governed by religion. In Europe there is Christianity, but Chistianity does not mean that the Christians all over the world or in any part of Europe where they live, shall have a uniform system of law of inheritance. No such thing exists. I personally do not understand why religion should be given this vast, expansive jurisdiction so as to cover the whole of life and to prevent the legislature from encroaching upon that field. After all, what are we having this liberty for? We are having this liberty in order to reform our social system, which is so full of inequities, so full of inequalities, discriminations and other things, which conflict with our fundamental rights. It is, therefore, quite impossible for anybody to conceive that the personal law shall be excluded from the jurisdiction of the State. Having said that, I should also like to point out that all that the State is claiming in this matter is a power to legislate. There is no obligation upon the State to do away with personal laws. It is only giving a power. Therefore, no one need be apprehensive of the fact that if the State has the power, the State will immediately proceed to execute or enforce that power in a manner that may be found to be objectionable by the Muslims or by the Christians or by any other community in India.

We must all remember--including Members of the Muslim community who have spoken on this subject, though one can appreciate their feelings very well--that sovereignty is always limited, no matter even if you assert that it is unlimited, because sovereignty in the exercise of that power must reconcile itself to the sentiments of different communities. No Government can exercise its power in such a manner as to provoke the Muslim community to rise in rebellion. I think it would be a mad Government if it did so. But that is a matter which relates to the exercise of the power and not to the power itself.

Now, Sir, my friend, Mr. Jaipal Singh asked me certain questions about the Adibasis. I thought that was a question which could have been very properly raised when we were discussing the Fifth and the Sixth Schedules, but as he has raised them and as he has asked me particularly to give him some explanation of the difficulties that he had found, I am dealing with the matter at this stage. The House will realize what is the position we have laid down in the Draft Constitution with regard to the Adibasis. We have two categories of areas,--scheduled areas and tribal areas. The tribal areas are areas which relate only to the province of Assam, while the scheduled areas are areas which are scattered in provinces other than Assam. They are really a different name for what we used in the Government of India Act as `partially excluded areas'. There is nothing beyond that. Now the scheduled tribes live in both, that is, in the scheduled areas as well as in the tribal areas and the difference between the position of the scheduled tribes in scheduled areas and scheduled tribes in tribal areas is this: In the case of the scheduled tribes in the scheduled areas, they are governed by the provisions contained in paragraph V of the Fifth Schedule. According to that Schedule, the ordinary law passed by Parliament or by the local Legislature applies automatically unless the Governor declares that that law or part of that law shall not apply. In the case of the scheduled tribes in tribal areas, the position is a little different. There the law made by Parliament or the law made by the local legislature of Assam shall not apply unless the Governor extends that law to the tribal area. In the one case it applies unless excluded and in the other case, it does not apply unless extended. That is the position.

Now, coming to the question of the scheduled tribes and as to why I substituted the word "scheduled" for the word "aboriginal" the explanation is this. As I said, the word "scheduled tribe" has a fixed meaning, because it enumerates the tribes, as you will see in the two Schedules. Well, the word "Adibasi" is really a general term which has no specific *legal de jure* connotation, something like the Untouchables. It is a general term. Anybody may include anybody in the term `untouchable'. It has no definite legal connotation. That is why in the Government of India Act of 1935, it was felt necessary to give the word `untouchable' some legal connotation and the only way it was found feasible to do it was to enumerate the communities which indifferent parts and in different parts and in different areas were regarded by the local people as satisfying the test of untouchability. The same question may arise with regard to Adibasis. Who are the Adibasis. Who are the Adibasis? And the question will be relevant, because by this Constitution, we are conferring certain privileges, certain rights on these Adibasis. In order that, if the matter was taken to a court of law there should be a precise definition as to who are these Adibasis, it was decided to invent, so to say, another category or another term to be called 'Scheduled tribes' and to enumerate the Adibasis under that head. Now I think my friend, Mr. Jaipal singh, if he were to take the several communities which are now generally described as Adibasis and compare the communities which are listed under the head of scheduled tribes, he will find that there is hardly a case where a community which is generally recognised as Adibasis is not included in the Schedule. I think, here and there, a mistake might have occurred and a community which is not an Adibasi community may have been included. It may be that a community which is really an Adibasi community has not been included, but if there is a case where a community which has hitherto been treated as an Adibasi Community is not included in the list of scheduled tribes, we have added, as may be seen in the draft Constitution, an amendment whereby it will be permissible for the local government by notification to add any particular community to the list of scheduled tribes which have not been so far included. I think that ought to satisfy my friend, Mr. Jaipal Singh.

He asked me another question and it was this. Supposing a member of a scheduled tribe living in a scheduled area or a member of a scheduled tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local government, within whose jurisdiction he may be residing, the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But, so far as the present Constitution stands, a member of a scheduled tribe going outside the scheduled area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practically impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them.

Sir, I hope I have met all the points that were raised by the various speakers when they spoke upon the amendments to this clause, and I believe that my explanation will give them satisfaction that all their points have been met. I hope that the article as amended will be accepted by the House.

Mr. Vice-President: I shall now put the amendments which have been moved, which number thirty, to the vote one by one. Amendment No. 412. The question is:

"That for article 13, the following be substituted:--

"12. Subject to public order or morality the citizens are guaranteed--

(a) freedom of speech and expression;

(b) freedom of the press;

(c) freedom to form association or unions;

(d) freedom to assemble peaceably and without arms;

(e) secrecy of postal, telegraphic and telephonic communications.

13-A. All citizens of the Republic shall enjoy freedom of movement throughout the whole of the Republic. Every citizen shall have the right to sojourn and settle in anyplace he pleases. Restrictions may, however, be imposed by or under a Federal law for the protection of aboriginal tribes and backward classes and the preservation of public safety and peace."

The amendment was negatived.

Mr. Vice-President: Amendment No. 415. I understand it has been accepted by Dr. Ambedkar.

The question is:

"That in clause (1) of article 13, the words "Subject to the other provisions of this article" be deleted".

The amendment was adopted.

Mr. Vice-President: Second part of amendment No. 416.The first part of the amendment has been already blocked as amendment No. 415 has been accepted.

The question is:

"That in clause (1) of article 13, after the words "all citizens shall have" the words "and are guaranteed" be added."

The amendment was negatived.

Mr. Vice-President: Amendment No. 420.

The question is:

"That before sub-clause (a) of clause (1) of article 13, the following new sub-clause be inserted:--

"(a-1) to freedom of thought;"

The amendment was negatived.

Mr. Vice-President: Amendment No. 421.

The question is:

"That in sub-clause (a) of clause (1) of article 13, after the word "expression", the words "of thought and worship; of press and publication;" be added."

The amendment was negatived.

Mr. Vice-President: Amendment No. 422.

The question is:

"That at the end of sub-clause (a) of clause (1) of article 13 the words "both in the Press and the Platform" be inserted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 428.

The question is:

"That at the end of sub-clause (c) of clause (1) of article 13, the words "for any lawful purpose" be inserted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 429.

The question is:

"That in sub-clause (d) of clause (1) of article 13, after the words "move freely" the words "in a lawful manner" be inserted."

The amendment was negatived.

Mr.Vice-President: Amendment No. 430.

The question is:

"That in sub-clause (e) of clause (1) of article 13, after the words "and settle" the words "in a lawful manner" be inserted.'

The amendment was negatived.

Mr. Vice-President: Amendment No. 482.

The question is:

"That in sub-clause (g) of clause (1) of article 13, after the words "or business" the words "in a lawful manner" be inserted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 438 as modified by amendment No. 79 of List II.

The question is:

"That for amendment No. 438** of the List of amendments, the following be substituted :--

"That after sub-clause (g) of clause (1) of article 13, the following new sub-clause be added:-

"(h) to keep and bear arms;"

and the following new clause be added after clause (6):--

"(7) Nothing in sub-clause (h) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing, in the interests of public order, peace and tranquility, restrictions on the exercise of the right conferred by the said sub-clause."

The amendment was negatived.

Mr. Vice-President: Amendment No. 440.

The question is:

"That after sub-clause (g) of clause (1) of article 13, the following new sub-clause be added:--

> (h) to follow the personal law of the group or community to which he belongs or professes to belong.
>
> (i) to personal liberty and to be tried by a competent court of law in case such liberty is curtailed."

The amendment was negatived.

Mr. Vice-President: Amendment No. 502.

The question is:

"That after clause (6) of article 13, the following new clauses be added:-

"(7) Nothing in clauses (2) to (6) of this article shall affect the right guaranteed under sub-clause (h) of clause (1) of this article.

"(8) Nothing in the clauses (2) to (6) shall affect the right guaranteed under sub-clause (i) of clause (1) of this article.

"(9) No existing law shall operate after the commencement of the Constitution so far as the same affects adversely the right guaranteed under sub-clause (i) of clause (1) of this article and no law shall be passed by the Parliament or any State which may adversely affect the right guaranteed under sub-clause (i) of clause (1) of this article ."

The amendment was negatived.

Mr. Vice-President: Amendment No. 445. I shall explain one thing. Honourable Members will note that I am calling out the amendments in the order in which they were moved. That is why the numbers are not consecutive. Amendment No.445.

The question is:

"That the following new clause be added after clause (1) of article 13:--

"Liberty of the person is guaranteed. No person shall be deprived of his life, nor be arrested or detained in custody, or imprisoned, except according to due process of law, nor shall any person be denied equality before the law or equal protection of the laws within the territory of India."

The amendment was negatived.

Mr. Vice-President: Amendment No. 447.

The question is:

"That clauses (2) to (6) of article 13 be deleted and the following proviso be added to clause (1):--

"Provided, however, that no citizens in the exercise of the said right, shall endanger the security of the State, promote ill-will between the communities or do anything to disturb peace and tranquility in the country."

The amendment was negatived.

Mr. Vice-President: Amendment No. 453 as modified by amendmeant No. 86 of List IV. I understand it has been accepted by Dr. Ambedkar.

The question is:

"That for clause (2) of article 13, the following be substituted:--

"(2) Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating or libel, slander, defamation or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State."

The motion was adopted.

Mr. Vice-President: Amendment No. 449.

The question is:

"That after clause (1) of article 13, the following new clause be inserted:--

"(1-A) Nothing in sub-clause (a) shall affect the operation of any existing law or prevent any State from making any law relating to sedition or conspiracy.

The amendment was negatived.

Mr. Vice-President: Amendment No. 450.

The question is:

"That clauses (2), (3), (4), (5) and (6) of article 13 be deleted."

The amendment was negatived.

Mr. Vice-President: The second alternative in amendment No. 451.

The question is:

"That the following words be inserted at the beginning of clauses (2), (3), (4), (5) and (6) of article 13:--

"Without prejudice and subject to the provisions of article 8."

The amendment was negatived.

Mr. Vice-President: Amendment No. 452.

The question is:

"That clauses (2), (3), (4), (5) and (6) of article 13 be deleted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 458.

The question is:

"That in clause (2) of article 13, after the word "sedition" the words "communal passion" be inserted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 465.

The question is:

"That clauses (3) and (4) of article 13 be deleted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 478.

The question is:

"That clauses (5) of article 13 be deleted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 454 as modified by amendment No. 49 of List I. I understand it has been accepted by Dr. Ambedkar.

The question is:

"That with reference to amendment No. 454 of the List of amendments-

(i) in clauses (3), (4), (5) and (6) of article 13,after the words "any existing law" the words "in so far it imposes" be inserted, and

(ii) in clause (6) of article 13, after the words "in particular" the words "nothing in the said clause shall affect the operation of any existing law in so far as it prescribes or empowers any authority to prescribe, or prevent the State from making any law, be inserted."

The motion was adopted.

Mr. Vice-President: The question is:

"That in clauses (3), (4), (5) and (6) of article 13,before the word "restrictions" the word "reasonable" be inserted."

The amendment was adopted.

Mr. Vice-President: Amendment No. 485.

The question is:

"That in clause (5) of article 13, the word "affect the operation of any existing law, or" be deleted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 467.

The question is:

"(1) That in clause (3) of article 13, after the word "restrictions" the words "for a defined period" be added."

I think the `Ayes' have it.

But before I declare the result finally I must point out that there is some kind of misunderstanding. Let me read the amendment. It was moved by Mr. Syamanandan Sahaya:

"That in clause (3) of article 13, after the word "restrictions" the words "for a defined period" be added."

I definitely remember that several people spoke against it. I am going to put the amendment once again. Amendment No.467.

The question is:

"(1) That in clause (3) of article 13, after the word "restrictions" the words "for a defined period" be added."

The amendment was negatived.

Mr. Vice-President: I trust that in future, honourable Members will take more care before they give their verdict.

Mr. Vice-President: I put amendment No. 474 to vote.

The question is:

"That in clauses (4) of article 13 after the word" restrictions" the words "for a defined period" be added."

The amendment was negatived.

Mr. Vice-President: Amendment No. 476.

The question is:

"That in clause (4) of article 13, for the words "the general public" the words "public order or morality" be substituted.'

The amend meant was adopted.

Mr. Vice-President: Amendment No. 483.

The question is;

"That in clause (5) of article 13, after the words "existing law" the word "which is not repugnant to the spirit of the provisions of article 8" be inserted."

The amendment was negatived.

Mr. Vice-President: I put No. 485 (second part), to vote.

The question is:

"That in clause (5) of article 13, for the word "State" the word "Parliament" be substituted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 489.

The question is:

"That in clause (5) of article 13, the word `either' and the words `or for the protection of the interests of any aboriginal tribe' be omitted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 491.

The question is:

"That in clause (5) of article 13, for the word "aboriginal" the word "Scheduled" be substituted."

The amendment was adopted.

Mr. Vice-President: Amendment No. 497.

The question is:

"That in clause (6) of article 13, for the words "morality or health" the words "the general public" be substituted."

The amendment was adopted.

Mr. Vice-President: I put amendment No. 500 to vote.

The question is:

"That after clause (6) of article 13, the following new clause be added:

'(7) The occupation of beggary in any form or shape for person having sound physique and perfect health whether major or minor is totally banned and any such practice shall be punishable in accordance with law.'"

The amendment was negatived.

Mr. Vice-President: The question is:

"That article 13 in the form in which it emerges after the different amendments which have been passed here stand part of the Constitution."

Article 13, as amended, was adopted.

Article 13, as amended, was added to the Constitution.

Article 14

Mr. Vice-President: We come to new article 14.

(Amendment No. 504 was not moved.)

Shri H. V. Kamath: What about 13-A? That is, amendments 89, 90 and 92 of List V.

Mr. Vice-President: That has been held over. I was referring to No. 504.

Now the motion is:

"That article 14 form part of the Constitution."

Honourable Members have been supplied with a list which indicates the manner in which I propose to conduct the proceedings of the House. No. 505 has been disallowed as being verbal. 506 may be moved.

Pandit Thakur Dass Bhargava: May I take the liberty of pointing out that my amendment (No. 505) is not mercy verbal? It is an amendment of substance also.

Mr. Vice-President: Then I will give my ruling later on. Mr. Naziruddin Ahmad will carry on his work.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. Vice-President, I beg to move:

"That in clause (1) of article 14, after the words "greater than", the words "or of a kind other than" be inserted."

Sir, clause (1) provides--I am reading only the material part--

"No person shall be subjected to a penalty greater than that which might have been inflicted under the law at the time of the commission of the offence."

It guards against any punishment `greater than' is provide to be inflicted upon a person. I have attempted to insert after the words `greater than' the words `or other than' that which might have been inflicted. There are many cases where a punishment of fine only is provided. Suppose a man is fined one lakh of rupees. An Appellate Court may turn it to an imprisonment during the sitting of the Court. That will violate the provision that where fine alone is provided for, an imprisonment may be substituted on the ground that it is not greater than that. My amendment seeks to limit the powers of Courts to inflict punishment not only as to the extent but also to the kind. There are different kinds of punishments--fine, imprisonment, whipping, forfeiture and hanging and the like where only a particular kind of punishment is specifically provided, you should not award any punishment other than that. That is in short the effect of this amendment. Where whipping alone is provided. You cannot award a fine. Where fine alone is provided, you cannot award imprisonment or whipping or forfeiture. Where forfeiture of movables only a provided, you cannot forfeit immovables. Where forfeiture of articles relating to which crime has been committed is provided, you cannot forfeit other kinds of things. So if we leave the powers of the courts as in the clause it gives the Court the power to give any punishment not sanctioned by law. If clause (1) is to be retained, the Court should also be limited to the class of punishment provided. To me it seems that there is here a lacuna-rather oversight which should be corrected.

Mr. Vice-President: As regards amendment No. 505, I can allow the Member to move the second part of it. Pandit Thakur Dass Bhargava.

Pandit Thakur Das Bhargava: Sir, I beg to move.

"That in clause (1) of article 14, for the words `under the law at the time of the commission' the words `under the law in force at the time of the commission' be substituted."

Sir, if you kindly examine the definition of the expression 'law in force' as given in the explanation under article 307, it would appear that the words `the law' and the words 'the law in force' have different meanings. Moreover as the words in the previous part of the article also appear as 'law in force', it is very necessary and proper in this juxtaposition that the amendment that I have suggested should be accepted. That is all I have to submit.

Mr. Vice-President: Amendment Nos. 507, 508 and 511 are of the same import. The most comprehensive one, *i. e*, No.507, may be moved.

(Amendments Nos. 507, 508 and 511 were not moved.)

Amendments Nos. 509 and 510 are of similar import and may be moved together. They are in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: Sir, I beg to move:

"That at the end of clause (2) of article 14, the words "otherwise than as permitted by the Code of Criminal Procedure, 1898" be added."

Sir, I am moving these amendments with considerbale anxiety in my mind. The first anxiety is that I may perhaps overstep my time limit; they second anxiety is that there are a large number of observant and powerful eyes directed against me and I am afraid that a point of order may betaken at any time; and the third anxiety is the huge `No' against me will be echoed by honourable Members and this will reverberate as thunder clap under which my feeble `Aye' will be lost.

Then the other difficulty is that I have to crave the indulgent attention of the Honourable the Chairman of the Drafting Committee to the point I am raising. I shall restrict my point strictly to the limits of relevancy.

Sir, the words which I seek to insert deals with an important principle of criminal procedure. Clause (2) which I seek to amend runs as follows:

"(2) No person shall be punished for the same offence more than once."

A very sacred sentiment has prompted the introduction of this clause; but considered from the point of view of criminal law, it has its loop-holes.

Clause (2) seems to be rather sweeping. There are cases where a man may be legally punishment twice for the same offence, and I shall submit the circumstances, with the relevant laws. Sir, the principal which deals with this subject finds a place in section 403, sub-section (1) of the Code of Criminal Procedure. The point of this. The law of punishment twice has been enacted.

Shri T. T. Krishnamachari: Sir, on a point of order. Can any Member of this House move an amendment referring to an enactment made by a legislature subordinate to this House? I am afraid the amendment itself is out of order.

Mr. Naziruddin Ahmad: Anything else may be out of order, but not the amendment. We have already referred to and saved `existing laws'--enactments of subordinate legislatures in article 9 and in other places. I was only referring for handy consideration to the Criminal Procedure Code. I cannot pretend to submit that Section 403, or any principle embodied in it, or any sound principle even is binding upon this House, not even the soundest of propositions, because this is a sovereign House.

I was submitting for consideration certain principles of the Criminal Procedure, not that I suggested at all that they will be binding on this House, but only that they worthy of consideration.

Sir, it often happens--I shall submit examples from general principles because I think they would be more acceptable to Mr. Krishnamachari--it often happens that a man is punished by a Court which has no jurisdiction; It is a very ordinary experience in criminal Courts that the Judge on appeal or the High Court or the Privy Council--and now the Federal Court and later on the future Supreme Court--may and does find that the conviction is without jurisdiction. Meantime, the man has been convicted. If you say that he cannot be convicted twice, then orders of re-trial by appellate and revisional Courts would be absolutely out of the question. If a man is tried by a Magistrate or a Court having no jurisdiction, and if he is punished, that is the first punishment.

And then if it is found that the Court had no jurisdiction to try the case, what is often done is that there is a re-trial. But if you enact the principle of clause (2) that a man shall not be punished for the same offence more than once, the effect would be that if a man is punished by a Court of competent jurisdiction but there is a lacuna in the trial, or by a Court of competent jurisdiction the result will be to shut out any further trial at all. Are-trial after a conviction is an ordinary incident of daily experience in criminal Courts.

Sometimes, Sir,............

(After a pause)

Sir, I desire to monopolise the attention of the Honourable Member the Chairman of the Drafting Committee; otherwise it will be useless to argue. If he says "No", the whole House will echo him.

Mr. Vice-President: Dr. Ambedkar, Mr. Naziruddin demands your wholehearted attention. He says that if you say "No", the House will say "No". *(Laughter).*

Mr. Naziruddin Ahmad: The point which I was submitting is a point of general importance. The point is that if a man is convicted by a court of law--that is the first conviction--it may be that there is some lacuna in the trial. The accused appeals to the Court of Sessions. The Court finds that there was a lacuna in the trial or that the Court had no jurisdiction. But it may order a re-trial. Clause (2) which would effectively prevent further trial because it may involve a second conviction. There may be a first conviction of an offender in the hands of a Court, and this clause will effectively prevent a re-trial order by a superior court. This is one of the simplest examples. The principle should be not merely convicted, but the principle should be that a man cannot be tried again, tried twice, if he is acquitted or convicted by a Court of competent jurisdiction, while the conviction or acquittal stands effective. In fact, it is not the first conviction that is important; it is the ultimate legality and finality of the conviction that has to be respected; the finality should attach not only to conviction but also to acquittal. What are you going to do with regard to a person who is finally acquitted after a fair trial, and when the acquittal is not set aside and is therefore final and binding? You say nothing about that. You simply say that a man should not be convicted twice for the same offence. A man acquitted shall also not be liable to be tried again. You say nothing about that but confine you attention to the bogey of double punishment. I submit that the so-called theory of double punishment is not all and does not give a complete picture. Take for example, a man fined Rs. 50 for an offence by a Magistrate having no jurisdiction; then he appeals to an appellate Court. The appellate Court will, by virtue of clause (2) be precluded from sending it for re-trial on any technical ground, even on the ground that the Court had no jurisdiction.

The relevant section which caused some amount of suspicion in the mind of a distinguished Member of the House, Mr. T. T. Krishnamachari, I shall with his permission and with your permission, Sir, and with the permission of the House, read. Not that it is binding, but it is a crystallised wisdom which has been handed down to us from generation to generation. Sub-section (1) of section 403 says:

> "A person who has been once tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence, shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence".

I think, Sir, this is the proper form. It may be argued that the Criminal Procedure Code is a sufficient safeguard against injustice, but if you introduce it here it is a justiciable right, and we have already provided that any violation of any fundamental right is justiciable and would nullify all existing laws contrary, and therefore it will have the effect of abolishing or rather nullifying the wholesome law as laid down in sub-section (1) of section 403. I submit that the clause has got to be very carefully considered and, if necessary, should be re-drafted.

I submit that double punishment for the same offence in such cases does not in fact work injustice. What happens in such cases is that the punishment already suffered or inflicted is taken into account or adjusted in giving the final punishment in a re-trial. That is the effect of this amendment.

Mr. Vice-President: Do you intend to move amendment No.509?

Mr. Naziruddin Ahmad: No, Sir. It deals with the same principle and I do not wish to move it.

Mr. Vice-President: I have found from the last two days' experience that 9.30 A.M. is too early an hour for many Members of the House. They seem to think that others will come at the proper time and they need not come, with the result that there is difficulty in starting our work at the proper time. I have therefore decided that from tomorrow we shall start at 10 A.M. and break up at 1.30 P.M.

The Assembly then adjourned till Ten of the Clock on Friday the 3rd December, 1948.

---

*"That after sub-clause (g) of clause (1) of article13, the following new sub-clause be added:--

(h) to keep and bear arms in accordance with regulations or reservations made by or under Union Law."

**"That in clauses (2), (3), (4), (5) and (6) of article 13, the words "affect the operation of any existing law, or" be deleted."

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VII

Friday, the 3rd December 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

STATEMENT *RE.* EIRE ACT

Mr. Vice-President (Dr. H. C. Mookherjee): When our Prime Minister laid before the House the conditions which govern the entry, or rather, the withdrawal of Ireland from the United Kingdom, there were a few Members ......*(Interruption).*

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): May I say something on this, Sir?

Mr. Vice-President: Yes.

The Honourable Pandit Jawaharlal Nehru: I merely wish to state that I have placed on the Table of the House a telegram that I have received from the Foreign Minister of Eire. In the course of some discussion, I remember--I forget who it was--when an honourable Member wanted to have a copy of the new Bill which is being considered by the Irish Parliament, I said I would enquire. I asked for it by telegram; we do not have it here. We have been informed that the actual Bill is coming by air mail, but by telegram they have sent us the text of the Bill which is a very short one, four or five Sections of a line each. That is laid on the Table of the House for such Members as wish to see it.

Shri S. V. Krishnamurthy Rao (Mysore State): Will you please have it cyclostyled and circulated to all members?

The Honourable Pandit Jawaharlal Nehru: No, Sir, I object. The telegram is laid on the Table and members can see it.

Mr. Vice-President: Before we begin the business of the House, I would like to inform honourable Members that I have received a letter from our President informing me that he is making rapid improvement and that it is very likely that he will be able to resume his duties from the 27th. He has expressed his regret on account of his inability to preside over the deliberations of this House and I have informed him already that we are fully aware of the circumstances which are responsible for his absence. I understand from the papers that he reaches his 64th year today. May I, with the permission of the House, send him our congratulations and at the same time assure him how much we feel his absence? In this connection, I shall also tell him that though I am fully aware of my many lapses from the technicalities of parliamentary practice, I have been able to carry on so far with the goodwill of the House.

Honourable Members: Certainly.

DRAFT CONSTITUTION-contd.

Article 14-contd.

Mr. Vice-President: We shall now resume discussion of article 14. Amendment 510 was moved. 509 will be put to vote. So we next come to 512.

Kazi Syed Karimuddin (C. P. & Berar: Muslim): Mr. Vice-President, Sir, I beg to move--

That in article 14, the following be added as clause (4):--

> "(4) The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized."

This is a very important amendment. You will be pleased to find that this finds place as article 4 in the American Constitution and in the Irish Constitution there are clauses(2) and (5) which are similar and in the German Constitution there are articles 114 and 115 on the same lines. In the book of Dr. Ambedkar--Minorities and States--on page 11, item No. 10, a similar provision has been made. Thus, this is an amendment, the correctness of which cannot be challenged. What is the situation in India today? In India, in practically every province, there are Goonda Act and Public Safety Act which do not provide for any appeals or representations, and which give no opportunity to the persons concerned to defend themselves. Arrests are made without warrant and searches without justification. We are being governed by lawless laws and there is no remedy for the redress of grievances on account of unauthorised arrests and searches.

We have seen in 1947, and in the beginning of 1948, that hundreds of thousands of people were arrested and houses were searched merely on suspicion. The result is that the morale of the members of the Muslim minority community was undermined and they were treated just like criminals in the country. I will give the house one very important instance. Whenever we went to an aerodrome to go to Delhi, our belongings were searched without any reason, without any cause and without any warning. I will now give another instance. When there was police action in Hyderabad, every Muslim worth the name was arrested without any justification in the adjoining provinces. If those Muslims were really traitors they ought to have been prosecuted, punished and hanged. But people who had nothing whatever to do with Hyderabad were arrested under the pretence that they were taken only under protective custody. Well, if they were taken only under protective custody, why were their women and children who were outside not taken under this protective custody?

Therefore my submission is that unless this fundamental right that I have asked for in this amendment is guaranteed, there will be no end to these arrests without warrants and to these searches without justifications. I have moved this amendment in the earnest hope that it would be accepted.

Mr. Vice-President: The next amendment in the List is the one standing in the name of Mr. Kakkan.

Shri P. Kakkan (Madras: General): Sir, I do not want to move it. But, with your permission I wish to speak on it.

Mr. Vice-President: That I cannot permit. I can give the honourable Member an opportunity to speak in the course of the general discussion on article 14. I think, as there are no other amendments to this article, the House can now take up the general discussion of this article. Mr. Kakkan may now make the speech he wanted to.

Shri P. Kakkan: Mr. Vice-President, I had given notice of an amendment to this article only with a view to speak on it.

Sir, what I have got to say concerns the jail administration. In the jails they make a distinction between prisoners and prisoners in allotting duties in the jails. If a prisoner belongs to the Harijan community he is compelled to do scavenging work, no matter what his class or rank or education is. Prisoners belonging to other communities are not similarly forced to do scavenging work. On this occasion I desire to express my opinion and my feeling that this distinction in the matter of the allotment of work to prisoners inside the jails should be removed forthwith. Sir, I know from experience that the members of the Harijan community are treated in jails very cruelly, as if they are God's creatures and that He created them for doing scavenging work. I earnestly hope that this distinction will be removed hereafter and that Harijans will get impartial treatment everywhere. It is with this object that I have stated in my amendment that no person convicted for any offence shall be compelled to work in jail *(caste war)* in respect of religion, caste, race or class. I thank you, Sir, for giving me this opportunity to speak.

Shri T. T. Krishnamachari (Madras: General): Mr. Vice-President, Sir, the point I have to place before the House happens to be a comparatively narrow one. In this article 14, clause (2) reads thus: `No person shall be punished for the same offence more than once'. It has been pointed out to me by more Members of this House that this might probably affect cases where, as in the case of an official of Government who has been dealt with departmentally and punishment has been inflicted, he cannot again be prosecuted and punished if he had committed a criminal offence; or, per contra, if a Government official had been prosecuted and sentenced to imprisonment or fine by a court, it might preclude the Government from taking disciplinary action against him. Though the point is a narrow one and one which is capable of interpretation whether this provision in this particular clause in the Fundamental Rights will affect the discretion of Government acting under the rules of conduct and discipline in regard to its own officers, I think, when we are putting a ban on a particular type of action, it is better to make the point more clear.

I recognise that I am rather late now to move an amendment. What I would like to do is to word the clause thus: `No person shall be prosecuted and punished for the same offence more than once." If my Honourable Friend Dr. Ambedkar will accept the addition of the words `prosecuted and' before the word `punished' and if you, Sir, and the House will give him permission to do so, it will not merely be a wise thing to do but it will save a lot of trouble for the Governments of the future. That is the suggestion I venture to place before the House. It is for the House to deal with it in whatever manner it deems fit.

Mr. Vice-President: Does the House give the permission asked for by Shri T. T. Krishnamachari?

Honourable Members: Yes.

Mr. Vice-President: Now I will call upon Dr. Ambedkar to move the amendment suggested by Shri T. T. Krishnamachari.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, with regard to the amendments that have been moved to this article, I can say that I am prepared to accept the amendment moved by Mr. T. T. Krishnamachari. Really speaking, the amendment is not necessary but as certain doubts have been expressed that the word `punished' may be interpreted in a variety of ways, I think it may be desirable to add the words "prosecuted and punished".

With regard to amendments Nos. 506 and 509 moved by my friend, Mr. Naziruddin Ahmad..........,

Mr. Naziruddin Ahmad: It is No. 510.

The Honourable Dr. B. R. Ambedkar: Anyhow, I have examined the position the whole day yesterday and I am satisfied that no good will be served by accepting these amendments. I am however prepared to accept amendment No.512 moved by Mr. Karimuddin. I think it is a useful provision and may find a place in our Constitution. There is nothing novel in it because the whole of the clause as suggested by him is to be found an the Criminal Procedure Code so that it might be said in a sense that this is already the law of the land. It is perfectly possible that the legislatures they are so important so far as personal liberty is concerned that it is very desirable to place these provisions beyond the reach of the legislature and I am therefore prepared to accept his amendment.

With regard to amendment No. 513 moved by my friend, Mr. Kakkan......

An Honourable Member: It was not moved.

Mr. Vice-President: What about amendments Nos. 505 and 506?

The Honourable Dr. B. R. Ambedkar: I have already said that I am not prepared to accept amendment Nos. 506 and 510.

Mr. Vice-President: Have you anything to say about amendment No. 505, the second part of it as modified by amendment No. 92 in List V? Perhaps you have overlooked it. It is in the name of Pandit Thakur Dass Bhargava.

The Honourable Dr. B. R. Ambedkar: I accept the amendment moved by him.

Mr. Vice-President: I am putting the amendments one by one to the vote.

Amendment No. 505 as modified by amendment No. 92 of List V. I understand that Dr. Ambedkar accepts it. The question is:

"That in clause (1) of article 14, for the words `under the law at the time of the commission' the words `under the law in force at the time of the commission' be substituted."

The amendment was adopted.

Mr. Vice-President: Amendment No. 506. The question is:

"That in clause (1) of article 14, after the words" greater than" the words "or of a kind other than" be inserted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 510. The question is:

"That at the end of clause (2) of article 14, the words other wise than as permitted by the Code of Criminal Procedure, 1898' be added."

The amendment was negatived.

Mr. Vice-President: Amendment No. 512 moved by Kazi Syed Karimuddin and accepted by Dr. Ambedkar. The question is:

That in article 14, the following be added as clause(4):--

> "(4) The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized."

I think the `Ayes' have it.

Shri T. T. Krishnamachari: The Noes have it.

Mr. Vice-President: I will again put it to the vote.

I think the `Ayes' have it.

Shri T. T. Krishnamachari: No, Sir, the Noes have it.

Mr. Vice-President: I shall first of all call for a show of hands.

(The Division Bell was rung.)

Shri Mahavir Tyagi (United Provinces: General): May I propose that this question might be postponed for the time being and a chance be given for the Members to confer between themselves and arrive at a decision. Even the British House of Commons, sometimes converts itself into a committee to give various parties a chance to confer and arrive at an agreed solution.

Mr. Vice-President: I am prepared to postpone the voting on this amendment provided the House gives me the requisite permission. I would request the House to be calm. This is not the way to come to decisions which must be reached through co-operative effort and through goodwill. Does the House give me the necessary power to postpone voting on this?

The Honourable Pandit Jawaharlal Nehru: Mr. Vice-President, Sir, as apparently a slight confusion has arisen in many members' minds on this point, I think, Sir, that the suggestion made is eminently desirable, that we might take up this matter a little later, and we may proceed with other things. It will be the wish of the House that will prevail of course. I would suggest to you, Sir, and to the House that your suggestion be accepted.

Dr. B. V. Keskar (United Provinces: General): Can it be done after the division bell has rung?

Mr. Vice-President: I never go by technicalities. I shall continue to use common-sense as long as I am here. I have little knowledge of technicalities, but I have some knowledge of human nature. I know that in the long run it is good sense, it is common-sense, it is goodwill which alone will carry weight. I ask the permission of the House to postpone the voting.

Honourable Members: Yes.

Article 15

Mr. Vice-President: Then we shall pass on to the next article. The next amendment is No. 514 but as Mr. Lari is absent, I shall pass on to the next article.

Shri T. T. Krishnamachari: May I suggest that discussion of this article be postponed, as it is being examined and the Members of the House would like to take some more time for the consideration of this particular article?

Article 15-A

Mr. Vice-President: Very well: Then I pass on to article 15-A (New article). Amendment No. 534 seeks to rule out capital punishment. I think it is blocked in view of the fact that a similar amendment was put to vote and rejected.

(Amendments Nos. 535 and 536 were not moved.)

Article 16

Mr. Vice-President: The motion before the House is that article 16 form part of the Constitution.

An Honourable Member: What about article 15?

Mr. Vice-President: Article 15 has been held over--Honourable Members must have been inattentive not to hear the suggestion made by Mr. T. T. Krishnamachari and accepted by the Chair. Amendment No. 537 I rule out of order as it is a negative amendment.

(Amendments Nos. 538, 539 and 540 were not moved.)

Amendment No. 542 is already covered by the provision relating to ban on cow-killing passed by the House previously.

Shri C. Subramaniam (Madras: General): Mr. Vice-President, Sir, I find some difficulty in accepting this article as an article coming under fundamental rights. The article reads: "Subject to the provisions of article 244 of this Constitution and of any law made by Parliament, trade, commerce and intercourse throughout the territory of India shall be free." Before referring to the difficulty, which I feel, I will refer the House to the sections in the Draft Constitution which deals with trade and commerce.

There are three Articles 243, 244 and 245 which deal with this subject `inter-state trade and commerce' in the body of the Draft. Then in the list of legislative powers in the Union list, we find in article 73 "inter-state trade and commerce subject to the provisions of entry 33 of List No. II". Then item 32 in List II is "trade and commerce within the state; markets and fairs"; and item 33 refers to the" regulation of trade, commerce and intercourse on other States for the purposes of the provisions of article 244 of this Constitution." Therefore, you will find inter-state trade and commerce, subject to article 244, is a Union subject. Parliament can deal with it. Trade and commerce within the state and inter-state commerce as provided in article 244 are given to the State Legislatures. You will find, Sir, that in article 244, even though it might be inter-state trade and commerce, the State Legislature is given certain powers to impose certain taxes and impose certain restrictions. Having this in mind, if we come to article 16, we find the words "subject to the provisions of article 244 of this Constitution", that is, even in respect of inter-state trade and commerce, the State Legislature has been given certain powers and that is not touched by this article. Therefore leaving that, the article would read "subject to the provisions of any law made by Parliament, trade and commerce and intercourse through the territory of India shall be free". I really fail to understand how this can be a fundamental right and whether there is any right at all reserved. The very conception of a fundamental right is that there is a certain right taken out of the province of the legislature either of the Union or the State. To put it in other words, the sovereignty vests in the public, but that sovereignty is delegated to the legislatures or the sovereignty is expressed through the legislatures in respect of certain subjects.

But, in respect of certain fundamental rights we say the Parliament or the Government shall have no power of interference. So much so, the sovereignty of the people is absolute in that respect. It is neither delegated, nor is anybody else authorised to deal with that sovereignty. If we examine this article in that view, what is the residue of right left which could not be touched either by the legislature of the Union or by the legislature of the State? You find stated here, "Subject to the provisions of any law made by Parliament, trade, commerce and intercourse throughout the territory of India shall be free". Here, the sovereignty of the Parliament is absolute. There is no right which is taken out of the province of the legislatures. The right which is reserved here as a Fundamental right should be one, which neither the Union Legislature nor the State Legislature can touch. There is no such right left here. Mind you, here the wording in article 16 is, `Subject to any law made by Parliament' without any limitation whatsoever. So much so, it comes to this: there shall be free trade throughout the territories of India, subject to the powers of Parliament. I respectfully submit that that would not be a fundamental right.

I know there are certain friends of mine who think that the vesting of powers in the Parliament as against the State itself is a fundamental right. That was what was expressed by certain friends. If that logic is extended to its conclusion, all the subjects dealt with in List I would be fundamental rights! That is not the case. The very conception of a fundamental right is that neither the Parliament, nor the State legislatures shall have power to interfere. Here, you make the Parliament sovereign. Only subject to the powers of Parliament, there shall be free trade, commerce and intercourse throughout the territories of India. I find it difficult to see what is the right which has been taken out of the province of the legislatures, either the Parliament or the State legislatures, and which has been reserved here as a fundamental right. It may be all right to say that in respect of free trade, only the Parliament shall have power. That is allocation of administrative powers or legislative powers between the Union legislature and the State legislature. Certainly that is not a fundamental right. As one of my friends pithily put it, it is a fundamental right in favour of the Parliament; it is not a right in favour of any citizen or class of citizens. In these circumstances, I wish the honourable Mover, though I find him preoccupied with other things,--I do not know whether he has followed my speech--to explain how this comes under the Chapter on Fundamental Rights, and what is the right reserved.

Mr. Vice-President: May I suggest, Mr. Subramaniam, that you make a definite suggestion so that Dr. Ambedkar may be in a position to reply?

Shri C. Subramaniam: The definite suggestion is this. For the sake of Dr. Ambedkar, I shall state my point again. My complaint in regard to article 16 is this. There is no right which has been taken out of the province of the legislature, either of the Union or of the States, to say that a fundamental right has been reserved in article 16. Because, you will find it is stated here, "Subject (leaving alone reference to article 244) to the provisions of any law made by Parliament, trade and commerce and intercourse throughout the territory of India shall be free". You see the right is subject to any law made by Parliament without any restrictions whatsoever. You have secured the sovereignty of the Parliament in respect of this subject, and Parliament can do anything. To be a fundamental right, it should have been taken out of the province of the legislatures, either of the Union or of the States. I find there is left no residue of any right which could not be touched either by Parliament or by the State legislature and as such, it would not properly come under the Chapter on Fundamental Rights. It may be a matter of allocation of powers between the Parliament and the State legislatures in saying that the Parliament alone shall deal with subjects relating to free trade within the territories of India. We can as well put in entry 73 of List I. You canal so make some restriction in entries 32 and 33 of List II, that it shall be subject to matters relating to free trade in India. I would request the Honourable mover, to enlighten me whether, as a matter of fact, there is any right left which has been taken out of the province of the legislatures and the Government and whether it will be proper to have article 16 here, in this chapter dealing with fundamental rights.

The Honourable Shri K. Santhanam (Madras: General): Sir, the only way to test whether article 16 is necessary is to find out the consequences of deleting article 16. Suppose article 16 is not there, what will happen? According to the lists in the schedule, the Centre will have the right to legislate on all matters of trade between the various provinces, and according to article 243, no province can make any discrimination against any province or State. According to article 244, there can be no discrimination taxation. According to article 244 (b), every State (this includes every provincial legislature) will have the right to impose by law such reasonable restrictions on the freedom of trade, commerce or intercourse with that State as may be required in the public interests. Therefore, each provincial legislature and each State legislature will have the right to impose restrictions on the freedom of trade, commerce or intercourse. Supposing a variety of restrictions are imposed by all the legislatures and it is found desirable to rationalise them, to bring them into some kind of uniformity, there will be no power vested in any agency. Article 16 gives that power to the Parliament. It cannot interfere with the provincial jurisdiction so far as trade and commerce are concerned within that particular province.

Shri C. Subramaniam: That authority is provided for in article 245.

The Honourable Shri K. Santhanam: Article 245 says:"Parliament may by law appoint such authority as it considers appropriate for the carrying out of the provisions of articles 243 and 244 of this Constitution and confer on the authority so appointed such powers and such duties as it thinks necessary". This is only for the purpose of regulation; it does not provide any legislative power for any co-ordination, correlation or standardisation of all the restrictions that may be imposed by the various legislatures, and therefore, that power is contained in article 16. Mr. Subramaniam asks, then it means that the whole power is taken out of the hands of the province. I say, it is not.

Shri C. Subramaniam: My point is this: A fundamental right is not a question of conferring power on Parliament or on the State legislature; it is taking away both from the Union Parliament and from the State legislature; that alone is a fundamental right. Fundamental rights do not deal with allocation of powers at all.

The Honourable Shri K. Santhanam: I do not think Mr. Subramaniam is correct. A fundamental right may consist of this provision that the State legislature shall not interfere in one matter and that that matter can be interfered with only by Parliament; or a fundamental right may be that the Parliament shall not interfere with a matter and only the State legislature may do it. Distribution of powers and the consequent results on the citizens are as much matters of fundamental rights which accrue to the individual. If all the clauses on fundamental rights are scrutinised you will find that in many cases, we have made provision that in this matter, the Parliament may interfere, but the State legislature may not interfere. Therefore, I think that in the interests of freedom of trade, article 16 is absolutely essential and without article 16, the whole structure may become so complicated that almost fancy restrictions and fancy laws may be made by the provincial legislatures, and the internal trade of India may become clogged and obstructed. Therefore, I suggest that article 16 should continue.

Shri M. Ananthasayanam Ayyangar: (Madras: General): Sir, I do not find any inconsistency nor do I find article 16 unnecessary. I agree with my friend. Mr. Subramaniam that if there is nothing left and the whole sphere of inter-state commerce can be regulated either by the States concerned or by the Parliament, there is no need for Fundamental right but I do not agree that there is nothing left as he expects or as he is afraid. Some rights of freedom of speech etc. are given under article 13. Article 16 ensures freedom of trade, commerce and intercourse throughout the territory of India. That is the Fundamental Right. Exceptions are made under article 244 in favour of the States and of any law made by Parliament under the other article. So far as laws made by Parliament are concerned, Parliament can act only in so far as certain powers are conferred on it under list I. So far as the States are concerned they can come under list II. Entry No. 32 in the State List refers to trade and commerce within the States. Now so far as trade and commerce within the State is concerned, it is the exclusive jurisdiction of the States. I am only giving an instance as to why this article is necessary in the Chapter on Fundamental Rights.

In my presidency there are two districts; one is in the north and the other is in the south, growing cotton, one is in the Andhra and the other is in the Tamil Nadu. Today the district in the south is a progressive district and it has an umber of cotton mills and is utilising all cotton and is sending out yarn and cloth to other parts of the Presidency. There is a move in the northern district which grows cotton to establish certain spinning mills. We will assume that the Madras Government tries to impose certain restrictions and says that the new spinning mill that is going to be established in Cuddappah shall not send any of its yarn to any of the districts which have been already served by the Coimbatore mills. There is absolutely no provision here which prevents this. Unless a proviso is given to that extent, there is nothing preventing any State or any particular State making discrimination between one district and another. Under article 243 we cannot make any distinction between one state and another. But within the State itself there is nothing preventing a State from exercising its right by way of discrimination. There is a possibility. Let us take Bombay Presidency. Ahmedabad has got textile mills. Bombay also has got some mills. Now it is open to the legislature to prevent, as it is, the Southern portion of the Bombay Presidency from developing its resources altogether by imposing a restriction that it shall not send any of its produce or products to any other part of the Bombay Presidency.

Shri C. Subramaniam: May I point out it is covered by13 (g)?

Shri M. Ananthasayanam Ayyangar: 13 (g) says:--

"to practice any profession or to carry on any occupation, trade or business."

You are allowed to carry on an occupation by manufacturing this but it is not as if you can carry on a business irrespective of any other consideration.

Pandit Lakshmi Kanta Maitra (West Bengal: General): It deals with commerce and intercourse.

Shri M. Ananthasayanam Ayyangar: It deals with commerce and trade and there is a third word `intercourse' also. I am coming to it. So far as commerce and trade is concerned I beg to submit that it is not covered by article 13(g). Let us now refer to sub-clause (6) which says--

"(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing in the interests of public order, morality or health, restrictions on the exercise of the right conferred by the said sub-clause and in particular prescribing or empowering any authority to prescribe, the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business."

But it does not mean that you can impose any sort of restriction. It comes under clause (g). It comes under clause (6) of article 13 and therefore there is necessity for an independent clause like article 16, which gives to every man freedom of trade, commerce and intercourse throughout the length and breadth of India.

As regards the word `intercourse' also, apart from trade and commerce, for various purposes intercourse from one province to another is necessary. That is also not provided for in the Fundamental rights either in article 13or elsewhere.

Shri C. Subramaniam: That is purely the province of the Parliament.

Shri M. Ananthasayanam Ayyangar: With reference to States, what happens?

Shri C. Subramaniam: You cannot discriminate.

Mr. Vice-President: I am afraid there is a lot of infringment of Parliamentary procedure and of irregularity among people who have more experience than I have.

Shri M. Ananthasayanam Ayyangar: Article 243 says--

> "No preference shall be given to one State over another nor shall any discrimination be made between one State and another by any law or regulation relating to trade or commerce, whether carried by land, water or air."

This prevents discrimination between one State and another State. There is no article here which says that you ought not to discriminate between one part of a State and another part of the State. This is also covered by article 16; I beg to submit, Sir, that so far as discrimination between one area of the State and another is concerned there is no provision: and if not for any other reason, at least for this, this article is necessary.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, what I understood from Mr. Subramaniam, if I have understood him correctly is not that he objects to article 16, but his objection is directed to the place which this article finds. He says that although there may be utility and necessity so far as this article is concerned, it ought not to find a place in the fundamental rights. And his second point, if I have understood him correctly is that as this article is made subject to article 244, article 16 may be completely nullified, and to use his own words, no residue of it might be left if the powers given under article 244 were exercised. I think I am right in thus summarising what he said.

Now, I quite appreciate the argument that this article 16 is out of place in the list of fundamental rights, and to some extent, I agree with Mr. Subramaniam. But I shall explain to him why it was found necessary to include this matter in the fundamental rights. My Friend, Mr. Subramaniam will remember that when the Constituent Assembly began, we began under certain limitations. One of the limitations was that the Indian States would join the Union only on three subjects--foreign affairs, defence and communications. On no other matter they would agree to permit the Union Parliament to extend its legislative and executive jurisdiction. So he will realise that the Constituent Assembly, as well as the Drafting Committee, was placed under a very serious limitation. On the one hand it was realised that there would be no use and no purpose served in forming an All-India Union if trade and commerce throughout India was not free. That was the general view. On the other hand, it was found that so far as the position of the States was concerned, to which I have already made a reference, they were not prepared to allow trade and commerce throughout India to be made subject to the legislative authority of the Union Parliament. Or to put it briefly and in a different language, they were not prepared to allow trade and commerce to be included as an entry in List No. I. If it was possible for us to include trade and commerce in list I, which means that parliament will have the executive authority to make laws with regard to trade and commerce throughout India, we would not have found it necessary to bring trade and commerce under article 16, in the fundamental rights. But as that door was blocked, on account of the basic considerations which operated at the beginning of the Constituent Assembly, we had to find some place, for the purpose of uniformity in the matter of trade and commerce throughout India, under some head. After exercising considerable amount of ingenuity, the only method we found of giving effect to the desire of a large majority of our people that trade and commerce should be free throughout India, was to bring it under fundamental rights. That is the reason why, awkward as it may seem, we thought that there was not other way left to us, except to bring trade and commerce under fundamental rights. I think that will satisfy my friend Mr. Subramaniam why we gave this place to trade and commerce in the list of fundamental rights, although theoretically, I agree, that the subject is not germane to the subject-matter of fundamental rights.

With regard to the other argument, that since trade and commerce have been made subject to article 244, we have practically destroyed the fundamental right, I think I may fairly say that my friend Mr. Subramaniam has either not read article 244, or has misread that article. Article 244 has a very limited scope. All that it does is to give powers to the provincial legislatures in dealing with inter-state commerce and trade, to impose certain restrictions on the entry of goods manufactured or transported form another State, provided the legislation is such that it does not impose any disparity, discrimination between the goods manufactured within the State and the goods imported from outside the State. Now, I am sure he will agree that that is a very limited law. It certainly does not take away the right of trade and commerce and intercourse throughout India which is required to be free.

Shri C. Subramaniam: The clause says that it shall be lawful for any State to impose by law such reasonable restrictions on the freedom of trade, commerce or intercourse....as may be required in the public interests.

The Honourable Dr. B. R. Ambedkar: Yes, but reasonable restrictions do not mean that the restrictions can be such as to altogether destroy the freedom and equality of trade. It does not mean that at all.

Sir, I therefore submit that the article as it stands is perfectly in order and I commend it to the House.

Mr. Vice-President: I shall now put the article to the vote.

The question before us is that:--

Article 16 stand part of the Constitution.

The motion was adopted.

Article 16 was added to the Constitution.

Article 17

Mr. Vice-President: Now we come to article 17.

The motion before the House is that article 17 form part of the Constitution.

There are a number of amendments to this article, and they will be gone through now. The first in my list is No.543. It is a negative one and is therefore ruled out.

There is an amendment to this amendment, that is No. 93in List V, standing in the name of Shri Ram Chandra Upadhyaya.

(Interruption by Mr. Kamath.)

Yes, Mr. Kamath, you are observing that there are other amendments?

Shri H. V. Kamath (C. P. and Berar: General): Yes, Sir. No. 544.

Mr. Vice-President: But I have not called out that. I was dealing with No. 543, and amendment No. 93 to amendment No. 543.

Shri H. V. Kamath: But Sir, that has not been moved. How can an amendment to that amendment be moved or even called?

Mr. Vice-President: Are you pointing out my mistake? Have I not already confessed that I am innocent of all these rules? Is it necessary to-rub it in every time, Mr. Kamath?

Now, we come to amendment No. 544, standing in the name of Kazi Syed Karimuddin.

Shri H. V. Kamath: I do not in the least presume to advise you, Sir.

Kazi Syed Karimuddin: Mr. Vice-President, Sir, I move:

That for article 17, the following be substituted:

"17. Neither slavery nor involuntary servitude such as *begar* except as a punishment for crime shall exist within the Union State."

Sir, there is not much of a change in the amendment I am moving. But article 17(1) does not cover cases in which prisoners are asked to work, a prisoner is asked to work against his own free will. If this article is allowed to remain as it is, then the jail authorities will not be allowed to take work from the prisoners. Therefore I have mentioned the words "except as a punishment for crime". I may point out that such an article finds a place in the American Constitution also.

Mr. Vice-President: Amendment No. 545. Shri Damodar Swarup Seth.

Shri Damodar Swarup Seth (United Provinces: General): Sir, I move:

"That the following words be added at the beginning of clause (1) of article 17:--

'Servitude and serfdom in all forms as well as'."

I do not think this is a point on which one is required to speak at length. I will therefore, only like to submit that in some States serfdom and servitude in some form or another prevails. Moreover, in the South customs like devadas is have taken root.

Pandit Lakshmi Kanta Maitra (West Bengal: General): What is serfdom as distinguished form servitude?.

Mr. Vice-President: The Honourable Member wants to know from you what is the meaning of serfdom.

Shri Damodar Swarup Seth: It is a form of servitude or I may say, `slavery' that prevails in States.

Mr. Vice-President: Probably it is his idea with respect to this distinction between serfdom and servitude.

The next three amendments are Nos. 546, 547 and 548, of which the most comprehensive is No. 546, standing in the name of Prof. K. T. Shah.

Prof. K. T. Shah (Bihar. General): Sir, I move:

"That in clause (1) of article 17, for the words Traffic in human beings and begar', the words `Traffic inhuman beings or their dedication in the name of religion to be Devadas is or be subject to other forms of enslavement and degradation and begar' be substituted."

In commending this motion I should like to point out that by "Traffic in human beings". I understand the possibility of buying and selling as if these human beings were chattels, and as such ought to be prohibited. The common understanding interprets these words to mean slavery as it was practised in olden countries, and, until recent times, even in the so-called civilized countries of Europe or America. It is but right that such traffic should be abolished.

But the traffic in human beings is not confined only to what was known as slavery in recent times. It happens,--and perhaps it happens on a much larger scale than innocent Members of this House may be aware--in what is known as White Slave traffic, namely, the buying and selling of young women for export or import, from one set of countries to another; and their permanent enslavement or servitude to an owner or proprietor of the establishments of Commercialised vice probably for life.

This is covered no doubt by ordinary forms of legal contract, where the contracting parties are presumed to be free agents. How far such legal contracts are truly lawful if interpreted in the spirit of the law, I cannot say. But that these contracts offend very much against the commonsense of all civilized humanity, I am prepared to assert.

Accordingly, I would like it very clearly to be understood by this amendment that "traffic in human beings" does not consist only of buying and selling of what were formerly known as slaves: but also this new type of slavery which in effect is a very large scale commercialised vice that the so-called civilized countries have popularised, or, may I say, have made an industry of.

This may not perhaps have been in the minds of the draftsman of this clause. But I think the House would do well to bear it in mind, and to accept this amendment by which such a practice would be perfectly clearly and expressly prohibited.

I have, no doubt, worded my amendment with reference to a particular form of slavery which prevails in this country to a large extent, namely, dedication, in the name of religion, of young women to be *Devadasis,* and as such devoted to immoral traffic almost from an immature age. This also I think ought to be stopped. The name or cloak of religion should not help all those who indulge in such traffic; and the Constitution should make no bones about prohibiting this, if I am right in reading the spirit of this article which would prohibit all kinds of traffic inhuman beings.

Forced labour is no doubt an evil; and the peculiar form of it, which is known by the word "begar", that is to say of compulsory work without payment, and work at command, should also be stopped. But more than anything else. I would like by this amendment to emphasize this highly immoral, and; I was going to say, inhuman traffic, which prevail on a very large scale, much larger than perhaps the House realizes, and as such I commend this amendment to the House.

Mr. Vice-President: Amendment No. 547.

Shri B. Das (Orissa: General): Sir, I do not move but I wish to speak.

Mr. Vice-President: I cannot allow you to speak. Do you want that it should be put to the vote?

Shri B. Das: No Sir, I do not move. Could you not allow me to say a word?

Mr. Vice-President: I cannot because that will create a general flutter in the House. You will have to take your chance.

Mr. Vice-President: Amendment No. 548.

Giani Gurmukh Singh Musafir (East Punjab: Sikh): Sir, my amendment reads:

> "That in clause (1) of article 17, after the words, human beings' the words `including prostitution' be inserted."

Mr. Vice-President: Do you want to move it?

Giani Gurmukh Singh Musafir: *[I merely want to say something.

Mr. Vice-President: I cannot say that every Member who has sent in an amendment would find time to speak. I must make this clear, because we have to hurry.

(Amendments 549, 550 and 552 were not moved.)

Amendment No. 551: This is a verbal amendment and therefore it is disallowed.

(Amendment 553 was not moved.)

Amendment No. 554: This is a verbal amendment and therefore it is disallowed.

Amendments Nos. 555, 558 and 560 are to be considered together, I can allow No. 555 to be moved.

Shri Jaspat Roy Kapoor (United Provinces: General): I am not moving amendment No. 555.

Sardar Bhopinder Singh Man (East Punjab: General): Mr. Vice-President, Sir, I beg to move--

"That in clause (2) of article 17, after the words" caste or class" the words "and shall pay adequate compensation for it" be inserted."

Sir, with the addition of my amendment clause (2) will read thus:

"Nothing in this article shall prevent the State from imposing compulsory service for public purposes and shall pay adequate compensation for it."

Begar is a sort of forced work from labourers and we have sought to abolish it and prohibit it in the country. The idea is that the worker should not be made to work against his will, but however an exception is made that the State can impose compulsory service for public purposes. Now, supposing the State requires any property and deprives any citizen of it, there is the accepted principle that it shall pay compensation, adequate price, for it. Similarly, when the State deprives a worker of his lab our, (and I believe his labour is his property for the labourer) then I want that the State should pay compensation for it.

Shri H. V. Kamath: Mr. Vice-President, Sir, I beg to move--

"That in clause (2) of article 17, for the word" public" the words "social or national be substituted."

At the outset, may I just say that the non-English word in this article--begar--has nowhere been defined and it will be better if we define it somewhere in the constitution, if not in this article itself. Now, coming to the amendment, to my mind the word "public" does not bring out the meaning or significance of the purport of clause (2) of this article as much as the word "social" or "national" will. We all know that the services of the State--Government services--are referred to as "public services", but "national service" or "social service" has got a wider and a higher, a more comprehensive connotation than the word "public service". I remember very well that during the proceedings of the National Planning Committee, which was brought into being by Netaji Subhas Chandra Bose and presided over by Pandit Jawaharlal Nehru and to which my friend Prof. K. T. Shah rendered yeoman service for a period of well over three or four years, in that report it was suggested that all citizens should be conscripted for some social service; and Pandit Nehru when speaking on this subject went to the length of saying that no student should be awarded his academic degree unless and until he puts in six months or a year of some kind of social service. The word used there was "social service", not "public service". The word "national" has got even a still higher connotation than the word "social". My friend Dr. Ambedkar yesterday referred to this type of national service. When there is a war; when there is an emergency; when the stability of the State is threatened; when there is an emergency; when the stability of the State is threatened; when there is an insurrection; then in particular the question of national service will arise and then also will arise, as he referred to yesterday, the duty of the citizens to bear arms. In these cases, I say there must be conscription, I do not mean for military service only but for some kind of service in the national cause. Even conscientious objectors must be asked to do some kind of service, though not necessarily to bear arms and go to the front line.

Here, I would also suggest that not merely there should be no discrimination of religion, race, caste or class, but there should be no discrimination of sex either. In this connection, however I would like to sound a note of caution and that is, against the unqualified enforcement of the duty to bear arms. The duty to bear arms, to my mind, without the corresponding right to bear arms, is one of the characteristics of a totalitarian State, a police raj or a military dictatorship, and not of a democratic State which the Preamble says our future India is going to be. The enforcement of the duty to bear arms is only the outward expression of the idea or doctrine of "dying" for the State. We must die for the State. The expression of this doctrine is the duty to bear arms. But every citizen has a higher duty to perform, and that is to "live" for the State--live for the State, and not merely die for the State--and this doctrine of "live for the State" is connected with the right to bear arms.

In the end I suggest that clause (2) of this article may be re-worded, and for the word "public service" the words "social or national" should be substituted. I would have had no objection if they had said just "public service", but "service for public purposes" is hardly appropriate, and to my mind the significance and meaning of this clause would be better expressed if we say that "nothing in this article shall prevent the State from imposing compulsory service for social or national purposes". Sir, I move.

(Amendment No. 557 was not moved.)

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move--

> "That in clause (2) of article 17, after the words "discrimination on the ground" the word "only" be added."

This, Sir, is a very small, but in my opinion, a very important amendment. If it is accepted the clause would read:

> ".....in imposing such service the State shall not make discrimination on the ground only of race, religion caste or class."

The significance of this is so clear that, even though I have moved it, I trust the Draftsmen will accept it.

Mr. Vice-President: The clause is now open for general discussion. Giani Gurmukh Singh will now speak. I give him five minutes.

Giani Gurmukh Singh Musafir: *[Mr. Vice-President, article 17 is a useful provision in the Constitution, but there are one or two short-comings which should be removed. In this connection I had given notice of an amendment but I could not get an opportunity to speak on it. I would like to say that prostitution is not in accord with the Indian civilization.

It was imported from the West and with the departure of Western rulers it must come to an end. In clause (1) of article 17, after the words "Traffic in human beings" the word "Prostitution" must be included, for then alone the dignity of this clause will be increased, and defect removed. Another suggestion has been moved by Sardar Bhopendra Singh Man. It is a very good suggestion that, if the Government imposes compulsory service in the public interest, then the workers must get adequate compensation. It is good to specify in clause (2) of this article that in imposing compulsory service no discrimination on the ground of race, religion, caste or class shall be made. The right of imposing compulsory service conceded to the Government by this clause, is more or less absolutely vested in them. Even now, the government officials through their influence impose compulsory service. If provision is made to pay compensation, then this defect will disappear and the usefulness of this clause will be enhanced. Hitherto the practice of `Begar' was a source of oppression to the poor. Now this clause would not fit in, if it is passed without providing for payment of compensation. I do not propose to say more, as the Vice-President has already ruled; and therefore, without taking much of the, time of the House, I shall mention only two points, firstly that the curse of prostitution should go from this country and secondly, compensation must be paid for compulsory service.]*

Shrimati G. Durgabai (Madras: General): Mr. Vice-President, let me assure you that I will take up only one or two minutes of the valuable time of the Assembly. I want to say a few words on this article. There is the amendment of Professor Shah intended to substitute in clause (1) `Traffic in human beings or their dedication in the name of religion to be Devadasis or be subject to other forms of enslavement and degradation as well as begar', for the words `Traffic in human beings and begar.'

Sir, if any province has suffered from this bad practice of dedication of devadas is in the name of religion, it is the province of Madras. The worst form of this custom existed in Madras for a long time. I do not know whether this custom of dedication exists in any other province in any form. But we all know that in several ways this was practised. But, I do not think, while appreciating the object of Professor Shah in bringing forward this amendment and while being thankful to him for having realised the necessity for removing this evil, that this amendment is necessary. Madras has already prohibited this practice under a law passed a few years ago. It is no more in vogue there. Though some relics of that system still exist, these, I am sure, will disappear in course of time. I should mention in this connection my appreciation of the efforts put in by reformers like Mrs. Muthulakshmi Reddi. It is mainly on account of her efforts that this evil is no more there. Our deep debt of gratitude is due to her for her efforts. As I said, Madras has passed a law prohibiting this custom. I do not therefore think it necessary to include this provision in article 13, although I very much appreciate the spirit which has actuated Professor Shah to move this amendment.

Mr. Vice-President: I now call upon Shri B. Das to speak. He is almost the father of the House and must set an example of brevity.

Shri B. Das: Sir, on the previous occasion when we were discussing the Fundamental Principles I pointed out the need for including in the Draft Constitution the removal of this great social evil, the traffic in women. This traffic means use of force to compel women to life of prostitution. When we talk of traffic in women--which is a great social evil all over the world--I did dilate upon it last time and said that we should not be prudes and attempt to hide the fact that there existed this traffic in women in India. Sir, I bow to the decision elsewhere that I should not move my amendment which sought to add the words `particularly in women' after the words `Traffic in human beings'.

Sir, let us confess and admit that there is this traffic in women for which men everywhere are responsible. Women were often removed from Orissa. I pointed out that in the great Bengal disaster in 1943-44, lakhs of women were spirited away to the Punjab and North-West Frontier Province. Sir, young women were taken away by the alien Government into the camps of soldiers and they were thus lost to humanity, lost to family, lost to us as good citizens. So, we mere men should not fight shy of this and feel that by including an amendment of this kind we will be confessing the existence of this traffic in women in this country. That is why I gave notice of the amendment. If the House is willing to accept Shrimati Durgabai's amendment or even the amendment of Professor Shah who has confined his amendment to the Devadasi system and has not thought of the influence of dances before temples which preserve our national art and music from time immemorial.

Shri H. V. Kamath: Has Shrimati Durgabai given notice of any amendment to this article, Sir?

Mr. Vice-President: She has not.

Shri B. Das: She has sent in one to Dr. Ambedkar.

Mr. Vice-President: I have no knowledge of it.

Shri B. Das: I am sorry, I misunderstood. However, I think we will not be justifying our constitution on fundamental rights if we do not accept and admit our great sins by including the words "traffic in women" and try to save the situation now and hereafter.

Shri Raj Bahadur (United State of Matsya): Mr. vice-President, Sir, *begar* like slavery has a dark and dismal history behind it. As a man coming from an Indian State, I know what this *begar,* this extortion of forced lab our, has meant to the down-trodden and dumb people of the Indian States. If the whole story of this *begar* is written, it will be replete, with human misery, human suffering, blood and tears. I know how some of the Princes have indulged in their pomp and luxury, in their reckless life, at the expense of the ordinary man, how they have used the down-trodden labourers and dumb ignorant people for the sake of their pleasure. I know for instance how for duck shooting a very large number of people are roped in forcibly to stand all day long in mud and slush during cold chilly wintry days. I know how for the sake of their game and people have been roped in large numbers for beating the lion so that the Princes may shoot it. I have also seen how poor people are employed for domestic and other kinds of labour, no matter whether they are ailing or some members of their family are ill. These people are paid nothing or paid very little for the labour extorted from them. This is not the whole story. As I said in the beginning, it would make really a terrible reading if the whole story is told. I know that very often these tyrannies are perpetrated upon poor people by the petty officials. Not only do these petty officials perpetrate such tyrannies but they also extort bribes from the labourers who want to escape the curse of this *begar*. While making my observations on this article, I would like to say that I am opposed to the amendment which has been moved by Sardar Bhopindra Singh Man providing for compensation in case of compulsory labour on works for public purposes, because I feel that there is a possibility that, if this amendment is accepted, it may be misused and people might be forced against their will.

Summing up, I may add that article 13 constitutes the charter of freedom for the common man, and this article is a sort of complement to that charter of freedom. This frees the poor, down-trodden and dumb people of the Indian. States--I cannot say anything of other provinces--from this curse of *begar.* This *begar* has been a blot on humanity and has been a denial of all that has been good and noble inhuman civilisation. Through the centuries this curse has remained as a dead weight on the shoulders of the common manlike the practice of slavery. The members of the Drafting Committee and this Constituent Assembly are entitled to the grateful thanks of the dumb downtrodden millions who would be freed by this article from this curse of *begar.*

Shrimati Renuka Ray (West Bengal: General): Mr. Vice-President, Sir, I shall try to be as brief as possible.

The awakened conscience of women in India and the world is fully alive to the problem of the traffic in women and cannot tolerate its continuance. Sir, if we do not accept the amendment of Mr. B. Das, it is not because we do not appreciate his purpose. We realise that he wishes to place particular emphasis on the problem of the traffic in women, but I do think that the article as it stands does cover it. I am merely pointing this out because it may be thought that the women members of this House are not alive to this problem. It is one of the most urgent of all problems on which women's organisations in this country, have of cussed their attention for some time past.

As for the amendment that my honourable Friend, Mr. K. T. Shah, moved, I agree with Shrimati Durgabai that legislation has covered this problem in regard to Madras, but I think that if Mr. Shah's amendment could be accepted by this House so that the Devadasi system--the dedication of women in temples--is abolished by a categorical provision in the Constitution, it would be better procedure as the custom still lingers in some areas. Otherwise it is to be hoped that legislation abolishing the custom in other parts where it still exists will soon come in. I want to stress the fact that women are fully alive to the fact that it is the dual standards of morality that have led to traffic in women. It is when society realises fully the need for doing away with dual standards of morality that this article that is being adopted can really come into effect and become a reality and not merely a paper provision in the Constitution.

Acts for the prevention of immoral traffic in women do exist already in this country but their operation is not effective and even if legal flaws are amended, these can only become really effective when men's minds change towards this problem, whereby a section of women are at the mercy of exploiters whereby the very dignity of women hood is lowered.

Mr. Vice-President: Mr. Nagappa, please show that you deserve the confidence that the House has placed in you by limiting yourself to five minutes.

Shri S. Nagappa (Madras: General): I will not take much time, Sir.

This practice of *begar* is prevalent in my own part of the country, especially among the Harijans. I am glad that the Drafting Committee has inserted this clause to abolish *begar*. Sir, whenever cattle die; the owner of the cattle wants these poor Harijans to come and remove the dead cattle, remove the skins, tan them and make chappals and supply them free of cost. For this, what do they get? Some food during festival days. Often, Sir, this forced labour is practised even by the government. For instance, if there is any murder, after the postmortem, the police force these people to remove the dead body and look to the other funeral processes. I am glad that hereafter this sort of forced labour will have no place. Then, Sir, this is practised in zamindaries also. For instance, if there is a marriage in the zamindar's family, he will ask these poor people, especially the Harijans, to come and white wash his whole house, for which they will be given nothing except food for the day. This sort of forced labour is still prevalent inmost ports of the presidency.

Another thing that I want to bring to the notice of the course is that whenever the big zamindar's lands are to be ploughed, immediately he will send word for these poor people, the Harijans, the previous day, and say: "All your services are confiscated for the whole of tomorrow; you will have to work throughout the day and night. No one should go to any other work." In return, the zamindar will give one morsel of food to these poor fellows. Sir, this sort of forced labour is in practice in the 20th century in our so called civilised country. I am very thankful to this Drafting Committee. I support this article.

Shri T. T. Krishnamachari (Madras: General): Mr. Vice-President, Sir, I am here primarily to oppose the amendment moved by my honourable Friend, Prof. K. T. Shah, in that it imports into the consideration of this article facts which ought not to be taken into account in a consideration of the fundamental rights that are to be incorporated in the Constitution.

Sir, if the House would permit me a moment to deal with the general principles which are the basis of this particular Part, it is that we want to ensure certain amount of rights to the individual, so that he will be ennobled. We also want to bar legislation from creeping in into those rights, which it is absolutely necessary should be maintained intact so that the individual's status might be protected. There is no point in our trying to import into this particular Part reform of all the abuses, which our society is now heir to. If those abuses are such where vested interests are likely to seek perpetuation of those abuses, well, I think we have to provide against them, but if public opinion is sufficiently mobilised against those abuses, I do not think we ought to put a blot on the fair name of India, possibly, by enacting in our constitution a ban on such abuses. Abuses which will disappear in course of time cannot disappear all at once by our putting a ban on them in the constitution. Looking as I do at such matters in that light, I wish most a my honourable Friends in this House will not try to import into these fundamental rights age-old peculiarities of ours that still persist, bad as they are in particular parts of society which can be made to disappear by suitable legislation in due course, perhaps in two, three or four years. My honourable Friend Shrimati Durgabai pointed out that this system of Devadasis obtaining it India has been abolished by legislation in Madras. There is nothing to bar other provinces from following suit and I think public opinion is sufficiently mobilised for all provinces undertaking legislation of that type. Why then put it into the fundamental rights, a thing which is vanishing tomorrow? I think the same principle might be adopted in the rest of the article that would come before the House in this particular part, namely, what we could achieve in the matter of social reform by normal legislation, we need not seek to put into the fundamental rights, but if it is a matter where the vested interests for purposes of economic gain want to perpetuate a particular anti-social custom that obtains amongst us, well, I think, it is perfectly right that we should put it into the Fundamental Rights. I think some form of forced labour does exist in practically all parts of India, call it `begar' or anything like that and in my part of the country, the tenant oftentimes is more or less a helot attached to the land and he has certain rights and those are contingent on his continuing to be a slave.

We are trying to root it out, and by putting it in the fundamental rights it will hasten legislation to wipe out evils of that kind as it will then become an obligation of the State. I would only mention to the House that let us not seek to enlarge the scope of these articles by putting in evils which can be wiped out by legislation, on which public opinion is sufficiently mobilised, but only import into it such considerations against which vested interests might conceivably take a firm stand. Sir, I support the article that is being considered by the House.

Shri Mahavir Tyagi: May I seek your permission, Mr. Vice-President. I want to clear some doubts which arise in my mind in regard to this article.

Mr. Vice-President: I am sorry, it is too late.

Shri Mahavir Tyagi: I must be told as to how I can catch your eye or draw your attention.

Honourable Members: Order, order.

Mr. Vice-President: The House has pronounced its decision.

Shri Mahavir Tyagi: Can anyone, by handing over slips or by standing every time, catch your eye, Sir?

Mr. Vice-President: The House has pronounced its decision.

Shri Mahavir Tyagi: What is the decision?

Mr. Vice-President: You ask the House.

Shri Mahavir Tyagi: I feel it is very unfair.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, I should like to state at the outset what amendments I am prepared to accept and what, I am afraid, I cannot accept. Of the amendments that have been moved, the only amendment which I am prepared to accept is the amendment by Prof. K. T. Shah, No. 559, which introduces the word "only" in clause (2) of article 17 after the words "discrimination on the ground". The rest of the amendments, I am afraid, I cannot accept. With regard to the amendments which, as I said, I cannot accept one is by Prof. K. T. Shah introducing the word 'devadasis'! Now I understand that his arguments for including `devadasis' have been replied to by other members of the House who have taken part in this debate, and I do not think that any useful purpose will be served by my adding anything to the arguments that have already been urged.

With regard to the amendment of my honourable Friend, Mr. H. V. Kamath, he wants the words `social and national' in place of the word `public'. I should have thought that the word `public' was wide enough to cover both `national' as well as `social' and it is, therefore, unnecessary to use two words when the purpose can be served by one, and I think, he will agree that is the correct attitude to take.

With regard to the amendment of my honourable Friend Shri Damodar Swarup Seth, it seems to be unnecessary and I, therefore, do not accept it. With regard to the amendment of Sardar Bhopinder Singh Man, he wants that wherever compulsory labour is imposed by the State under the provisions of clause (2) of article 17 a proviso should be put in that such compulsory service shall always be paid for by the State. Now, I do not think that it is desirable to put any such limitation upon the authority of the State requiring compulsory service. It may be perfectly possible that the compulsory service demanded by the State may be restricted to such hours that it may not debar the citizen who is subjected to the operation of this clause to find sufficient time to earn his livelihood, and if, for instance, such compulsory labour is restricted to what might be called `hours of leisure' or the hours, when, for instance, he is not otherwise occupied in earning his living, it would be perfectly justifiable for the State to say that it shall not pay any compensation.

In this clause, it may be seen that non-payment of compensation could not be a ground of attack; because the fundamental proposition enunciated in sub-clause (2) is this: that whenever compulsory labour or compulsory service is demanded, it shall be demanded from all and if the State demands service from all and does not pay any, I do not think the State is committing any very great inequity. I feel, Sir, it is very desirable to leave the situation as fluid as it has been left in the article as it stands.

Shri H. V. Kamath: On a point of information, Sir, is Dr. Ambedkar's objection to my amendment merely on the ground that it consists of two words in place of one? In that case, I shall be happy if the wording is either 'social' or `national' in place of `public'.

The Honourable Dr. B. R. Ambedkar: It is better to use a wider phraseology which includes both.

Shri Rohini Kumar Chaudhuri: (Assam: General): May I know, Sir, does the honourable Member accept amendment No.548, which deals with prostitution, and which was moved by Giani Gurmukh Singh Musafir?

The Honourable Dr. B. R. Ambedkar: I understand it was not moved.

Mr. Vice-President: It was not moved.

I shall now put the amendments to vote one by one.

Amendment No. 544 standing in the name of Kazi Syed Karimuddin.

The question is:

"That for article 17, the following be substituted:--

"17. Neither slavery nor involuntary servitude such as *begar* except as a punishment for crime shall exist within the Union State."

The amendment was negatived.

Mr. Vice-President: Amendment No. 545 standing in the name of Shri Damodar Swarup Seth.

The question is:

"That the following words be added at the beginning of clause (1) of article 17."

"Servitude and serfdom in all forms as well as."

The amendment was negatived.

Mr. Vice-President: Amendment No. 546 standing in the name of Professor K. T. Shah.

The question is:

"That in clause (1) of article 17, for the words" Traffic in human beings and begar", the words "Traffic inhuman beings or their dedication in the name of religion to be Devadasis or be subject to other forms of enslavement and degradation as well as *begar*" be substituted."

The amendment was adopted.

Mr. Vice-President: Amendment No. 560 standing in the name of Sardar Bhopinder Singh Man.

The question is:

"That in clause (2) of article 17, after the words "caste or class" the words "and shall pay adequate compensation for it" be inserted."

Sardar Bhopinder Singh Man: Sir, I request the permission of the House to withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President: Amendment No. 556 standing in the name of Mr. Kamath.

The question is:

"That in clause (2) of article 17, for the word" public" the words "social or national" be substituted."

The amendment was negatived.

Mr. Vice-President: Amendment No. 559 standing in the name of Professor K. T. Shah, accepted by Dr. Ambedkar.

The question is:

"That in clause (2) of article 17, after the words "discrimination on the ground" the word "only" be added."

The amendment was adopted.

Mr. Vice-President: I shall now put the article as a whole as modified by amendment No. 559 to vote.

The question is:

That article 17 as modified by amendment No. 559 form part of the Constitution.

The motion was adopted.

Article 17, as amended, was added to the Constitution.

Article 18

Mr. Vice-President: We now go to the next article.

The motion is that Article 18 form part of the Constitution.

The first amendment is No. 561. This is negative and therefore, it is out of order.

Amendments numbers 562 and 564: No. 562 standing in the name of Professor Shibban Lal Saksena and 564 standing in the name of Shri Damodar Swarup Seth and others are of similar import and have therefore to be considered together. Amendment No. 562 is allowed to be moved.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, I am not moving the amendment; but I would like to speak on the article.

Mr. Vice-President: Then, I will allow amendment No.564 to be moved.

Shri Damodar Swarup Seth: Sir, I beg to move:

"That the following be added at the end of article 18:

'Nor shall women be employed at night, in mines or in industries detrimental to their health.'"

Sir, it is a matter of great satisfaction that in article 18 protection has been afforded to children of minor age. But, unfortunately, for reasons not known to me, no protection has been provided for the fairer and softer sex, who had been in the past, employed in mines even at nighttime and in industries which are injurious to their health. I therefore think, Sir, that it is just and desirable that the addition suggested should be made in this article so that women may also be provided with due protection and may not be employed in mines at night and in industries which are not suited to their delicate health and position in society. I therefore hope that the House will accept this amendment of mine.

Mr. Vice-President: Then, comes amendment No. 563.

(Amendments 563 and 565 were not moved.)

The article is open for general discussion.

Prof. Shibban Lal Saksena: Sir, I am very glad that this article has been placed among fundamental rights. In fact, one of the complaints against this charter of liberty is that it does not provide for sufficient economic rights. If we examine the fundamental rights in the Constitutions of other countries, we will find that many of them are concerned with economic rights. In Russia particularly, the right to work is guaranteed; the right to rest and leisure, the right to maintenance in old age and sickness etc., are guaranteed. We have provided these things in our Directive Principles, although I think, properly, they should be in this Chapter. Even then, this article 18 is an economic right, that no child below the age of fourteen shall be employed in any factory. I feel, Sir, that the age should be raised to sixteen. In other countries also the age is higher; we want that in our country also this age should be increased; particularly on account of our climate, children are weak at this age and the age should be raised.

So also, I want that women should not be employed in the night or after dusk and before dawn in the factories. In fact all the progressive countries in the world have forbidden female labour after dusk and before dawn. This question was debated at length during the discussion on the Factory Act in the Parliament. I think that this is a question of very fundamental importance and this should be laid down in the Fundamental Rights that the States shall not employ women after dusk or before dawn. Sir, if this important thing had been done, we would have been hailed by innumerable women workers in the country--especially as it is a question of employing women in mines and factories. You know there was a great furore in the country during the war when women were allowed to work in mines, and I personally think that this must be considered as something very important and I hope Dr. Ambedkar will see his way to include it.

The Honourable Dr. B. R. Ambedkar: I do not accept the amendment moved by Mr. Damodar Swarup--No. 564.

Mr. Vice-President: I put the amendment No. 564 to vote.

The question is:

"That the following be added at the end of article 18:--

'Nor shall women be employed at night, in mines or in industries detrimental to health.'"

The amendment was negatived.

Mr. Vice-President: Now I put the motion--

The question is:

"That article 18 stand part of the Constitution."

The motion was adopted.

Article 18 was added to the Constitution.

Article 18-A

Mr. Vice-President: Now we come to a new article in the form of amendment No. 566.

Prof. K. T. Shah: Mr. Vice-President, I beg to move.

"That the following new article be inserted under the heading "Rights relating to Religion" occurring after article 18:--

> '18-A. The State in India being secular shall have no concern with any religion, creed or profession of faith; and shall observe an attitude of absolute neutrality in all matters relating to the religion of any class of its citizens or other persons in the Union.'"

This, Sir, ought not to be a controversial matter at all. We have proclaimed it time and again that the State in India is secular; and as such it should have no concern--I should think that would follow logically--with the affairs of any religion, with the profession of any particular faith, creed or belief.

By this I do not wish to suggest that the neutrality of the State in matters of religion should mean the utter ignorance or neglect of institutions or services which may, in the name of religion or belief, be conducted by people professing a particular form of faith. All I wish to say is that with the actual profession of faith or belief, the State should have no concern. Nor should it, by any action of it, give any indication that it is partial to one or the other. All classes of citizens should have the same treatment in matters mundane from the State. And even those who may not be citizens of this State, by living within it, should receive the same treatment.

The citizens of this Union obviously belong to all professions, a wide variety of faiths or religious beliefs. To take one or the other, or even to suggest that one or the other is favoured or assisted or aided by the State in its mundane affairs at any time--if I may put it so,--would not be in the interest of the State. For it would give any other section of the people professing another belief, the impression that any particular section is preferred.

If the State can--and I believe it can very easily--promote all mundane services, all worldly activities and utilities which are for the benefit of the community collectively--no matter by what section they are carried on--then, according to my amendment, there ought to be no objection. But if the State is associated in any way with the promotion of any particular form of profession or faith, then I think it would be highly objectionable for a secular organization to do so.

Accordingly I am suggesting that "The State in India being secular shall have no concern with any religion, creed or profession of faith". I am again and again emphasis in g this aspect of religion because that is by its very essence, a non-worldly activity, and as such the State which is--may I say it without any disrespect--essentially an earthly organization, should have no concern.

One could dilate upon this matter for an indefinite period. I do not regard occasions of this kind, or debates of this nature to be opportunities for unconscious self-revelation or deliberate professions of one's own attitude. I therefore will not take the time of the House in going further into this subject which I am sure would interest everybody sufficiently, at any rate, to consider favourably my amendment.

(Amendment No. 567 was not moved.)

Mr. Vice-President: No. 568.

Shri T. T. Krishnamachari: May I point out that this amendment relates to a matter more or less akin to 13-A which you were good enough to keep in abeyance for the time being?

Mr. Vice-President: Then it may stand over.

(Amendment No. 569 was not moved.)

Mr. Vice-President: I put amendment No. 566 to vote.

The question is:--

"That the following new article be inserted under the heading "Rights relating to Religion" occurring after article 18:

> '18-A. The State in India being secular shall have no concern with any religion, creed or profession of faith; and shall observe an attitude of absolute neutrality in all matters relating to the religion of any class of its citizens or other persons in the Union.'"

The amendment was negatived.

New articles 19 to 22.

Mr. Vice-President: Then we go to No. 570.

The first part is naturally disallowed.

Prof. Shibban Lal Saksena: First put the article to vote.

Mr. Vice-President: The article has been put to vote and passed. Now the second alternative is the same as No.591 and will be considered along with that. The third amendment or alternative is the same as 618 and will be considered along with the other one. The last amendment has a negative effect.

Shri Lokanath Misra (Orissa: General): I do not think, Sir.

Mr. Vice-President: I am afraid you are challenging the competence of the Chair which you are not entitled to do under the Rules.

Shri Lokanath Misra: The first part of my alternative is not the same as 591, because in that I wanted to drop the word `propogate' while it is different in 591.

Article 19

Mr. Vice-President: That was considered when the decision was made. The motion before the House is:

"That article 19 from part of the Constitution."

I shall go over the amendments one by one.

(Amendment No. 571 was not moved.)

No. 572, first alternative.

Mr. Tajamul Husain (Bihar: Muslim): Sir, I do not wish to move part one of my amendment. I have put my amendment in two parts, and with your permission, Sir, I would like to move the second part.

Mr. Vice-President: You can do that later.

Mr. Tajamul Husain: But then, Sir, later on comes the amendment No. 573 in the name of my Friend Mr. Himatsingka, and if that is not moved, then my amendment which is similar to it also goes out.

Mr. Vice-President: No, if he does not move it then you will get your chance. And if No. 573 is moved, even then you can have your say during the general discussion. Nos. 573, 576, 577 and lastly 582 may be considered together. Of them, I take No. 573 standing in the name of Mr. Himatsingka. Is he in the House?

(The Member was not present and Amendment No. 573 was not moved.)

The next would be No. 572, second part.

Mr. Tajamul Husain: Sir, I beg to move--

"That in clause (1) of article 19, for the words "practise and propagate religion" the words "and practise religion privately" be substituted."

Sir, under article 19, clause (1) all persons are entitled to freedom of conscience and the right freely to progress, practise, and propagate religion. (I agree, Sir, that people should have the right to freely profess and practise religion, but I am afraid, it will be wrong to allow people to propagate religion in this country.) Sir, my speech will be brief, because I have been seriously ill and I feel the strain while speaking.

I feel, Sir, that religion is a private affair between oneself and his Creator. It has nothing to do with others. My religion is my own belief, and your religion, Sir, is your own belief. Why should you interfere with my religion, and why should I interfere with your religion? Religion is only a means for the attainment of one's salvation. Supposing I honestly believe that I will attain salvation according to my way of thinking, and according to my religion, and you Sir, honestly believe that you will attain salvation according to your way, then why should I ask you to attain salvation according to my way, or way, should you ask me to attain salvation according to your way? If you accept this proposition, then, why propagate religion?) As I said, religion is between oneself and his God. Then, honestly profess religion and practise it at home. Do not demonstrate it for the sake of propagating. Do not show to the people that this is your religion for the sake of showing. (If you start propagating religion in this country, you will become a nuisance to others.) So far it has become a nuisance.

I submit, Sir, that this is a secular State, and a secular state should not have anything to do with religion. So I would request you to leave me alone, to practise and profess my own religion privately. That is all I wish to say, Sir, because I am not keeping good health. I commend my amendment to the Honourable House and especially to the Honourable Dr Ambedkar, hoping that he will accept it. With these words, I sit down.

Mr. Vice-President: Amendment No. 570 in the name of Mr. Misra. Do you want it to be put to the vote?

Shri Lokanath Misra: Sir, I wanted to move it.

Mr. Vice-President: I know. But that has been disallowed. I want to know if you want it to be put to the vote.

Shri Lokanath Misra: Yes, Sir.

(Amendment Nos. 576, 577, First Part of 582 and 575 were not moved.)

Mr. Vice-President: Then the next amendment is No. 578 in the name of Mr. Naziruddin Ahmad. This is disallowed as being a verbal amendment. Then I come to amendments No. 579and No. 580. They are almost identical, and therefore I am asking the mover to move No. 579. That also stands in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: Sir, I move:

"That in clause (1) of article 19, for the words `are equally entitled to freedom of conscience and the right', the words `shall have the right' be substituted."

It is almost a verbal amendment.

Mr. Vice-President: Do you want me to put amendment No.580 to the vote?

Mr. Naziruddin Ahmad: Yes, sir.

Mr. Vice-President: Amendments Nos. 574, 581, 582 (second part), 587, 588 and 589 are of similar import and are to be considered together. Amendment No. 581 is allowed to be moved.

Mr. Naziruddin Ahmad: I am not moving it.

[Amendments Nos. 574, 582 (second part) and 587 were not moved.]

Mr. Tajamul Husain: Sir, I beg to move:

"That Explanation to clause (1) of article 19 be deleted and the following be inserted in that place:--

> 'No person shall have any visible sign or mark or name, and no person shall wear any dress whereby his religion may be recognised.' "

Mr. Naziruddin Ahmad: On a point of order. Does the Honourable Member refer to invisible signs or marks or names? By banning visible signs, does he prefer invisible signs and marks? How can there be invisible names?

Mr. Vice-President: Do you like to say anything?

Mr. Tajamul Husain: I have not been able to follow my honourable Friend, Mr. Naziruddin Ahmad. He seeks clarification on the point as to how there could be invisible signs. My intention is that there should be no visible sign, or mark or name by which a person shall be recognised. You have a name "Pershad", by which you know a person is a `Kayasth'. You have the name "Syed" by which you know that a person is a Muhammadan. My amendment may be badly worded but my friend Mr. Naziruddin only knows about commas, semi-colons and full-stops.

Mr. Vice-President: You need not dilate on it.

Mr. Tajamul Husain: I wish to point out that religion is a private affair between man and his God. It has no concern with anyone else in the worlds. What is the religion of others is also no concern of mine. Then why have visible signs by which one's religion may be recognised? You will find, Sir, that in all civilized countries--and civilized countries now-a-days are the countries in Europe and America--there is no visible sign or mark by which a man can be recognised as to what religion he professes. In this country unfortunately, you can find out a man's religion he professes. In this country unfortunately, you can find out a man's religion by his visible sign or mark. I need not dilate on this. I will only give the points. In civilized countries people have family names, namely, Disraeli or Birkenhead. From these names you cannot say that Disraeli was a Jew and Birkenhead was Christian. If you hear the name of Lord Reading, you cannot say to what religion he belongs. There was a man in England whose name was Lovegrove. You cannot say to what religion he belongs, though I know he was a Muslim. There are many Christians in England who have become Muhammadans. So in those countries you cannot find out to what religion a man belongs simply by his name. In this country, of course, I have told you, Sir, from a person's name you can find out his religion. You hear of the name of Pershad. In my province it means a kayasth. If you hear of Ojha or Jha you know that the persons is a Brahmin. In Bengal you know that a person of the name of Mookerjee must be a Brahmin, and so forth. So I do not want these things. I know I am 100 years ahead of the present times. But still, I shall have my say.

In civilized countries in England there was a time when there was no uniformity of dress. In this country you find all sorts of dresses.

You find dhoties, you find pyjamas, you find kurtas, you find shirts,--and again, no shirts, no dhoties, nakedness, all sorts of things. That was the same thing in England at one time.

Maulana Hasrat Mohani: On a point of order,--whatever Mr. Tajamul Husain is suggesting, he must adopt it himself first. He must change his own name, because seeing his name one can say he is a Muslim.

Mr. Tajamul Husain: I am sorry for the interruption of the Maulana. My name I will change when the whole country adopts my resolution. Then, he will not be able to find out what I am and who I am.

Now, Sir, I was talking about dress. There was a time in England when there was no uniformity, but the Honourable the Law Minister will agree with me that an Act was actually passed in Parliament by which there was uniformity of dress and now in England and in the whole of Europe and in America there is uniformity of dress. We are one nation. Let us all have one kind of dress; one kind of name; and no visible signs. In conclusion, I say we are going to be a secular State. We should not, being a secular State, be recognised by our dress. If you have a particular kind of dress, you know at once that so and so is a Hindu or a Muslim. This thing should be done away with. With these words, I move my amendment.

(Amendment 589 and 583 were not moved.)

Prof. K. T. Shah: Mr. Vice-President, I beg to move-

"That the following proviso be added to clause (1) of article 19:

> "Provided that no propaganda in favour of any one religion, which is calculated to result in change of faith by the individuals affected, shall be allowed in any school or college or other educational institution, in any hospital or asylum, or in any other place or institution where persons of a tender age, or of unsound mind or body are liable to be exposed to undue influence from their teachers, nurses or physicians, keepers or guardians or any other person set in authority above them, and which is maintained wholly or partially from public revenues, or is in any way aided or protected by the Government of the Union, or of any State or public authority therein. "

Sir, the main article gives the right of freedom of propaganda. I have no quarrel with the right that anybody professing any particular form of belief should be at liberty, in this Liberal State, to place the benefits or beauties of his particular form of worship before others. My only condition--and the amendment tries to incorporate that--is that this freedom should not be abused, as it has been in the past. In places or institutions, where people of tender age or those suffering from any bodily or mental infirmity, are exposed to undue influence, they are liable to be influenced more by the personality of those in authority above them than by the inherent advantages and unquestionable reasoning in favour of a particular religion, and as such result in conversion. That is not a genuine change of opinion, but is the result of undue influence that ought to be stopped.

I have no quarrel at all with those who would change their opinion after full and mature consideration of such material as may be available to them regarding the beliefs that they inherit from their parents. Most of the religious beliefs in this world are not,--may I say without any offence--a matter of reasoned conviction; they are an acquired habit or an inherited prejudice which may not stand the strain of conviction on the opposite side, or reasoning on the controverting side. Accordingly, anybody who desires the mind of the public to be alert free from prejudic and open to conviction, will not object to permitting such freedom of propaganda that may result in conversion.

I have no objection therefore to anybody speaking, writing, preaching, in any place of public resort, in any open space, in parks, gardens, theatres or any other public place, even to people of tender age or even to people of unsound mind or body; because in those places they are not suffering from any disability, nor are those who are teaching or preaching in those public places in a place of authority, in a place where they can exercise undue influence; and as such it can be presumed that it is rather the force of their argument, the strength of their reasoning that has resulted in proselytising without any undue influence, or unfair authority, upon those people. But when, as in a school or a college, in an hospital or asylum, those who are set in authority as teacher or preacher, physician, guardian or nurse, take advantage of their peculiar position to influence them, to place before them another way of looking at life and its purpose than that they have had from birth, then I think undue influence is exercised and as such objectionable.

Even that may be permitted so far as that particular Institution does not benefit in any way from public revenues, or is not aided, protected, or encouraged by any public authority in the Union or in any part of it.) I hope the House realises the extreme moderation of my amendment, and the tightness of the restriction that I have put so far as this proviso is concerned, namely, that it will operate only on people in a place or institution where they are suffering from some kind of disability, whether of age or of unsound mind or body, and where, therefore, their change of belief if it is brought about would be open to suspicion.

That is one reason. Then again, the preaching or propaganda which may be objected to is by or from people who are set in authority above the young, the helpless, disabled or of unsound mind, that is, as teacher or nurse or guardian. That is also a very substantial limitation.

Thirdly, the institutions or places carrying on propaganda of this kind resulting in conversion from one religion to another to which we object are places which are maintained wholly or partly by public revenues. They may be receiving financial grant; or they may be receiving recognition, which is perhaps more valuable than a direct money grant, and charging fees from the public, so that they may benefit even though nominally they may not be taking any grants from public revenues, or they may be aided or protected by any public authority.

With these three very substantial restrictions I am sure nobody would quarrel or object to my amendment, especially to the idea of propaganda of a kind which is calculated to change the religion or form of belief or worship inherited with one's parentage, if that propaganda is done by people in authority above them; and they in the meantime are suffering from some kind of disability of the type I have illustrated.

I know, Sir, this is liable to excite strong feeling. There are religions which are professedly proselytising. There are religions which leave the matter of religion to every person's own conscience, and do not indulge in proselytising. Whatever that be, without quarrelling with the freedom of preaching one's religion, I hold that it is the most moderate form of request to the professors or preachers of those religions, which want to proselytise, that they should at least observe this much self-restraint, viz., that any institutions maintained by any form of public assistance or receiving any form of public encouragement should not be utilised by them for propaganda or proselytisation, so that the minds not quite free from other influences, minds suffering from some kind of handicap, shall not be unduly influenced.

Sir, I have tried to use no expression in the course of these few remarks which might give the slightest occasion for anybody to feel alarmed at the restraint which I am suggesting should be put upon their right to propagate religion. I have not quoted a single instance which may be found in plenty, where undue advantage has been taken to effect conversions in a manner which may be regarded as most reprehensible. Those who are blinded by their faith are welcome to their belief. But I would beg them to realise that in suggesting that those who are suffering from disabilities shall be free from activities of this kind, they will not misunderstand me when I say that I have not the slightest objection to their holding their beliefs and even propagating them but that they should not indulge in this illicit form for carrying on their religious activity.

Professing no particular religion myself, I can give an assurance to the House that I am not actuated by any feeling of partiality for one or opposition to another. I only wish that this may be left as a matter of purely personal concern. When you meet at a social gathering or congregational union this much decency should be observed that you shall not carry on your influence in an undue manner, but only rely upon the convincing character of your arguments. Sir, I commend the motion to the House.

The Honourable Shri Ghanshyam Singh Gupta: (C. P. and Berar: General): Sir, I move:

That in the Explanation to clause (1) of article 19,for the word `profession', the word `practice' be substituted.

Article 19. Sir, is very comprehensive. It says: "All persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion." Now, as to freedom of conscience: It means that a man is free either to have a religion or no religion. If a man has a religion, then he is free to profess whatever religion he likes, either Islam, or Hinduism, or Buddhism or Sikhism and so on. Then, professing that religion, he is free to practise the dictates of that religion. For instance, if Islam requires that there should be a namaz, a Muslim is free to practise it and also to propagate it. What I would humbly submit is this: The wearing of kirpan may more appropriately be called the practice of religion than the profession of the Sikh religion. This is all I have to say.

Mr. Vice-President: It seems that there is an amendment to this amendment. As I understand that it is not going to be moved, the next one that can be moved is only

591 standing in the name of Shri Lokanath Misra.

Shri Lokanath Misra: Mr. Vice-President, if you will permit me to speak on the general discussion of the article as a whole I would not move this amendment at all.

Mr. Vice-President: How can I guarantee that? I must observe a timetable. Whether you get a chance or not will depend upon the shape the debate takes. You are at liberty to move this amendment.

Shri Lokanath Misra: I beg to move--

"That at the end of Explanation to clause (1) of article 19, the words "and for the matter of that of any other religion" be inserted."

I would have been very glad if I had a chance to speak generally on article 19 and not move this amendment. To my mind, if article 13 of this Draft Constitution is a Charter for liberty, article 19 is a Charter for Hindu enslavement. I do really feel that this is the most disgraceful Article, the blackest part of the Draft Constitution. I beg to submit that I have considered and studied all the constitutional precedents and have not found anywhere any mention of the word `propaganda' as a Fundamental Right, relating to religion.

Sir, We have declared the State to be a Secular State. For obvious and for good reasons we have so declared. Does it not mean that we have nothing to do with any religion? (You know that propagation of religion brought India into this unfortunate state and India had to be divided in to Pakistan and India). If Islam had not come to impose its will on this land, India would have been a perfectly secular State and a homogenous state. There would have been no question of Partition. Therefore, we have rightly tabooed religion. And now to say that as a fundamental right everybody has a right to propagate his religion is not right. Do we want to say that we want one religion other than Hinduism and that religion has not yet taken sufficient root in the soil of India and do we taboo all religions? Why do you make it a Secular State? The reason may be that religion is not necessary or it may be that religion is necessary, but as India has many religions, Hinduism Christianity, Islam and Sikhism, we cannot decide which one to accept. Therefore let us have no religions. No. That cannot be. If you accept religion, you must accept Hinduism as it is practised by an overwhelming majority of the people of India.

Mr. Vice-President: We shall resume the discussion on Monday. A request has come to me from my Muslim brethren that as today is Friday we should now adjourn. I think we ought to show consideration to them an adjourn now to meet again on Monday at Ten of the clock.

Mr. Misra may then deliver the rest of his speech.

The House then adjourned till Ten of the Clock on Monday, the 6th December 1948.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME VII

Monday, the 6th December 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the Pledge and signed the Register:--

Shri K. Chengalaraya Reddy (Mysore).

DRAFT CONSTITUTION-Contd.

Article19-(Contd.)

Mr. Vice-President (Dr. H. C. Mookherjee): We shall now resume discussion on article 19.

Shri Lokanath Misra (Orissa: General): Sir, it has been repeated to our ears that ours is a secular State. I accepted this secularism in the sense that our State shall remain unconcerned with religion, and I thought that the secular State of partitioned India was the maximum of generosity of a Hindu dominated territory for its non-Hindu population. I did not of course know what exactly this secularism meant and how far the State intends to cover the life and manners of our people. To my mind life cannot be compartmentalised and yet I reconciled myself to the new cry.

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): Sir, are manuscripts allowed to be read in this House?

Mr. Vice-President: Ordinarily I do not allow manuscripts to be read, but if a Member feels that he cannot otherwise do full justice to the subject on hand, I allow him to read from his manuscript.

The Honourable Pandit Jawaharlal Nehru: May I know what is the subject?

Mr. Vice-President: Mr. Lokanath Misra is moving an amendment to article 19. I ask the indulgence of the House because Mr. Lokanath Misra represents a particular point of view which I hold should be given expression to in this House.

Shri Lokanath Misra: Gradually it seems to me that our 'Secular State' is a slippery phrase, a device to by-pass the ancient culture of the land.

The absurdity of this position is now manifest in articles 19 to 22 of the Draft Constitution. Do we really believe that religion can be divorced from life, or is it our belief that in the midst of many religions we cannot decide which one to accept? If religion is beyond the ken of our State, let us clearly say so and delete all reference to rights relating to religion. If we find it necessary, let us be brave enough and say what it should be.

Shri S. Nagappa (Madras: General): The honourable Member is reading so fast that we are not able to follow him.

Mr. Vice-President: Order, order.

Shri Lokanath Misra: But this unjust generosity of tabooing religion and yet making propagation of religion a fundamental right is some what uncanny and dangerous. Justice demands that the ancient faith and culture of the land should be given a fair deal, if not restored to its legitimate place after a thousand years of suppression. We have no quarrel with Christ or Mohammad or what they saw and said. We have all respect for them. To my mind, Vedic culture excludes nothing. Every philosophy and culture has its place but now (the cry of religion is a dangerous cry.) It denominates, it divides and encamps people to warring ways. (In the present context what can this word propagation' in article 19 mean? It can only mean paving the way for the complete annihilation of Hindu culture, the Hindu way of life and manners. Islam has declared its hostility to Hindu thought. Christianity has worked out the policy of peaceful penetration by the back-door on the outskirts of our social life. This is because Hinduism did not accept barricades for its protection. Hinduism is just an integrated vision and a philosophy of life and cosmos, expressed in organised society to live that philosophy in peace and amity. But Hindu generosity has been misused and politics has over run Hindu culture. Today religion in Indian serves no higher purpose than collecting ignorance, poverty and ambition under a banner that flies for fanaticism. The aim is political, for in the modern world all is power-politics and the inner man is lost in the dust. Let everybody live as he thinks best but let him not try to swell his number to demand the spoils of political warfare. Let us not raise the question of communal minorities anymore. It is a device to swallow the majority in the long run. This is intolerable and unjust.

Indeed in no constitution of the world right to propagate religion is a fundamental right and justiciable. The Irish Free State Constitution recognises the special position of the faith professed by the great majority of the citizens. We in India are shy of such recognition. U. S. S. R. gives freedom of religious worship and freedom of anti-religious propaganda. Our Constitution gives the right even to propagate religion but does not give the right to any anti-religious propaganda.

If people should propagate their religion, let them do so. Only I crave, let not the Constitution put it as a fundamental right and encourage it. Fundamental rights are in alienable and once they are admitted, it will create bad blood. I therefore say, let us say nothing about rights relating to religion. Religion will take care of itself. Drop the word `propagate' in article 19 at least. Civilisation is going headlong to the melting pot. Let us beware and try to survive.

Mr. Vice-President: There are two amendments in my list, i.e., 592 and 593.

They are of similar import and may be considered together. Of these two, amendment No. 593 standing in the name of Mr. Kamath is more comprehensive and I allow it to be moved.

Shri H. V. Kamath (C. P. & Berar: General): Mr. Vice-President, Sir, I move:-

That after clause (1) of article 19, the following new sub-clause be added:-

["(2) The State shall not establish, endow, or patronize any particular religion. Nothing shall however prevent the State from imparting spiritual training or instruction to the citizens of the Union."]

The amendment consists of two parts, the first relating to the disestablishment or the separation of what you may call in Western parlance the Church from the State, and the second relates to the deeper import of religion, namely, the eternal values of the spirit.

As regards the first part of the amendment, I need only observe that the history of Europe and of England during the middle ages, the bloody history of those ages bears witness to the pernicious effects that flowed from the union of Church and State. It is true enough that in India during the reign of Asoka, when the State identified itself with a particular religion, that is, Buddhism, there was no `civil' strife, but you will have to remember that at that time in India, there was only one other religion and that was Hinduism. Personally, I believe that because Asoka adopted Buddhism as the State religion, there developed some sort of internecine feud between the Hindus and Buddhists, which ultimately led to the overthrow and the banishment of Buddhism from India. Therefore, it is clear to my mind that (If a State identifies itself with any particular religion, there will be rift within the State. After all, the State represents all the people, who live within its territories, and, therefore, it cannot afford to identify itself with the religion of any particular section of the population. But, Sir, let me not be misunderstood. When I say that a State should not identify itself with any particular religion, I do not mean to say that a State should be anti-religious or irreligious. We have certainly declared that India would be a secular State. But to my mind a secular state is neither a God-less State nor an irreligious nor an anti-religious State.

Now, Sir, coming to the real meaning of this word religion', I assert that `Dharma' in the most comprehensive sense should be interpreted to mean the true values of religion or of the spirit. `Dharma', which we have adopted in the crest or the seal of our Constituent Assembly and which you will find on the printed proceedings of our debates: ("Dharma Chakra pravartanaya")--that spirit, Sir, to my mind, should be inculcated in the citizens of the Indian Union. If honourable Members will care to go just outside this Assembly hall and look at the dome above, they will see a sloka in Sanskrit:

"Na sa Sabha yatra na santi vriddha

Vriddha na te ye na vadanti dharmam."

That `Dharma', Sir, must be our religion. `Dharma' of which the poet has said.

Yenedam dharyate jagat (that by which this world is supported.)

That, Sir, which is embodied which is incorporated in the great sutras, the Mahavakyas of our religions, in Sanskrit, in Hinduism, the Mahavakya `Aham Brahma Asmi', then `Anal Haq' in Sufism and `I and my Father are one'--in the Christian religion--these doctrines, Sir, if they are inculcated and practised to-day, will lead to the cessation of strife in the world. It is these which India has got to take up and teach, not merely to her own citizens, but to the world. It is the only way out for the spiritual malaise, in which the world is caught today, because the House will agree, I am sure, with what has been said by the Maha Yogi, Sri Aurobindo, in one of his famous books, where he says:

> "The master idea that has governed the life, the culture, social ideals of the Indian people has been the seeking of man for his true, spiritual self and the use of life as a frame and means for that discovery and for man's ascent from the ignorant natural into the spiritual existence."

I am happy, Sir, to see in this Assembly today our learned scholar and philosopher, Prof. Radhakrishnan. He has been telling the world during the last two or three years that the malaise, the sickness of this world is at bottom spiritual and therefore, our duty, our mission, India's mission comes into play.

If we have to make this disunited Nations--so called United, but really disunited nations--really United, if we have got to convert this Insecurity Council into a real Security Council, we have to go back to the values of the spirit, we have to go back to God in spirit and truth, and India has stood for these eternal values of the spirit from time immemorial.

Coming to the second part of the amendment, which reads: "Nothing shall however prevent the State from imparting spiritual training or instruction to the citizens of the Union", I attach great importance to the same. India has stood through the ages for a certain system of spiritual discipline,) spiritual instruction, which has been known throughout the world by the name of "Yoga"; and Sri Aurobindo, the Maha Yogi, has said again and again, that the greatest need today is a transformation of consciousness, the upliftment of humanity to a higher level through the discipline of Yoga.

May I, Sir, by your leave, read what a Western writer, Arthur Koestler has written in one of his recent books called "Yogi or commissar"? "Yogi" stands for spirituality and "commissar" stands for materialism. In that book the writer observes: "Will mankind find a doctor or a dictator? Will he be yogi or commissar? The yogi does in order to be; the commissar, the capitalist, does in order to have; Western democracy needs more yogis"; that is the conclusion reached by this Western author.

Here, Sir, I would like to draw the attention of the House to the value and the importance that all our teachers, from time immemorial, from the Rishis and the Seers of the Upanishads down to Mahatma Gandhi and Netaji Subhas Chandra Bose have attached to spiritual training and spiritual instruction. Netaji Subhas Chandra Bose went to the length of prescribing spiritual training and spiritual instruction to the soldiers of the Azad Hind Fouj. In the curriculum, in the syllabus of the Azad Hind Fouj, this item of spiritual instruction was included. When I say, Sir, that the State shall not establish or endow or patronise any particular religion, I mean the formal religions of the word; I do not mean religion in the widest and in the deepest sense, and that meaning of religion as the highest value of the spirit, I have sought to incorporate in the second part of the amendment. That is, the State shall do all in its power to impart spiritual training and spiritual instruction to the citizens of the Union.

In the end, I would only say this. We are living in a war-torn, war-weary world, where the values of the spirit are at a low ebb, or at a discount. Nemesis has overtaken the world which has lost its spiritual value, and unless this world returns to the Spirit, to God in spirit and in truth, it is doomed Sir, I commend my amendment to the acceptance of the House.

Mr. Vice-President: Amendment Nos. 594 and 595 are identical. I can allow amendment No. 595 to be moved.

(Amendments Nos. 595 and 594 were not moved.)

Mr. Vice-President: Amendment No. 596, Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, I beg to move:

"That in clause (2) of article 19, for the word "preclude" the word "prevent" be substituted."

This is only for the purpose of keeping symmetry in the language that we have used in the other articles.

Mr. Vice-President: There are a number of amendments to this amendment. The first is amendment No. 11 of list I, standing in the name of Pandit Thakur Dass Bhargava.

(Amendments Nos. 11 and 12 in list I were not moved.)

Amendment No. 13 standing in the name of Mr. Naziruddin Ahmad is disallowed. For the words "the State" he wants the words "any State" to be substituted.

(Amendments Nos. 597, 598, 599 and 600 were not moved.)

Amendment No. 601, Prof. K. T. Shah.

Prof. K. T. Shah (Bihar: General): Mr. Vice-President, Sir, I beg to move:

"That in sub-clause (a) of clause (2) of article 19, for the words "regulating or restricting any economic, financial, political or other secular activity "the words" regulating. restricting or prohibiting any economic, financial political or other secular activity' be substituted."

The clause as amended would read:

"Nothing in this article shall affect the operation of any existing law or preclude the State from making any law-

(a) regulating, restricting or prohibiting any economic, financial, political or other secular activity which may be associated with religious practice;.........."

These are the words that I have ventured to add, and I think they are necessary. (If the State has to have its supreme authority asserted as against, or in relation to, any Religion, which, merely in the name of religion, carries on practices of a secular kind whether it is financial, economic or political, it is necessary) that those words be added and form part of the article.

I am not content with merely "regulating or restricting" them; I should like the State also to have the power positively and absolutely "to prohibit" any such practice. Such practices in my opinion, only degrade the very name of religion. Nothing has caused more the popular disfavour of some of the most well-known and most widely spread religions in the world than the association of those religions with secular activities, and with excesses that are connected with those activities. Material possessions, worldly wealth and worldly grandeur are things which have been the doom of many an established Church. Many a well-known Religion, which has ceased to follow the original spirit or the precepts of its Founders, has, nevertheless, carried on, in the popular eye, business, trade, and political activity of a most reprehensible character. The State in India, if it claims to be secular, if it claims to have an open mind, should have, in my opinion, a right not merely to regulate and restrict such practices but also absolutely to prohibit them.

I do not wish to hurt anybody's feelings by citing specific examples of religious heads, or those claiming to be acting in the name of religion, carrying on a number of worldly activities of a most undersirable kind. They not only minister to the benefit or aggrandisement of the particular sect or class to which they belong, but, more often than not, they relate to the particular individual who for the moment claims to be the head or representative of that religion. The association of private property, the possession of material wealth, and the possibility of developing that wealth by trading, by speculation, by economic activity, which many of those carry on in the name of religion, or in virtue of their being heads of religion, are productive of evils of which perhaps the innocent Members of this House have no conception.

The facts are well-known, however, to those who have at all discerned in this matter not only that the heads of religions in the name of their religion claim exemption from income-tax out of the receipts of their own domain, but also right of any further gains that they may make by open or illicit trading, speculation, investments, or what not. I suggest that it is absolutely necessary and but right and proper, in the interests of the State, and more so in the interests of the general policy and principles on which the State is founded in India, that power be reserved in this Constitution absolutely to prohibit any such non-religious, non-spiritual activity, that in the name of religion, may be carried on, to the grave prejudice of the country as a whole, and even to the same religion of which they claim to be heads.

I have no desire as observed already, to cite illustrations. I know in advance the fate of my amendment, and, therefore, it is unnecessary for me to make the House wiser than it is by citing examples, and incurring for me the further displeasure of particular classes affected thereby.

Mr. Vice-President: Professor Shah--I cannot allow you to indulge in these remarks--I mean referring to the fate of your amendments and casting reflections on particular groups.

Prof. K. T. Shah: I was only trying to say that I know the fate of my amendments in advance; but I would not make it worse by citing examples, which might affect particular classes, and might incur for me their displeasure. If I have said anything improper I am sorry and I would apologize for it.

Mr. Vice-President: I did not say "improper". But it is bound to affect the calmness of the House and I would implore you.

Prof. K. T. Shah: Sir, I would obey all your commands and even if you put them in the name of request, I would treat them as commands. But with the experience that I have had of my amendments--however good they are I was entitled to say this. If you think otherwise, I will submit to your ruling and take my seat.

(Amendments Nos. 602 and 603 were not moved.)

Mr. Vice-President: Nos. 604, 605, 607 and 608 are similar. I allow 604 and 607 to be moved.

Mr. Vice-President: No. 607--Prof. K. T. Shah.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move-

"That in sub-clause (b) of clause (2) of article 19, after the words "or throwing open Hindu" the words "Jain, Buddhist, or Christian" be added."

The clause as I suggest would read-

"..........for social welfare and reform or for throwing open Hindu, Jain, Buddhist or Christian religious institutions of a public character to any class or section of Hindus."

Sir, I do not see why this right or obligation should be restricted only to Hindu Religious institutions to be thrown open to public. I think the intention of this clause would be served if it is more generalised, and made accessible or made applicable to all the leading religions of this country, whose religious institutions are more or less cognate, and who therefore may not see any violation of their religious freedom, or their religious exclusiveness, by having this clause about throwing open their places of worship to the public.

I think, Sir, that the freedom of religion being guaranteed by this constitution, and promised as one of the Fundamental Rights, the possibility of all religious institutions being accessible and open for all communities is a very healthy sign, and would promote harmony and brotherhood amongst the peoples following various forms of beliefs in this country, and therefore I think, Sir, that this amendment at any rate should find acceptance from those who have sponsored this clause.

(Amendments Nos. 606 and 608 were not moved.)

Shrimati G. Durgabai (Madras: General): Mr. President, Sir, I beg to move the following amendment:-

"That in sub-clause (b) of clause (2) of article 19 for the words "any class or section" the words "all classes and sections" be substituted."

Sir, if my amendment is accepted, the clause would read thus:-

> "That nothing in this article shall affect the operation of any existing law or preclude the State from making any law for social welfare and reform or for throwing open Hindu religious institutions of a public character to all classes and sections of Hindus."

Sir, the object of my amendment is to enlarge the scope of the clause as it stands. The clause as it stands, reads thus-

> "..........for social welfare and reform or for throwing open Hindu religious institutions of a public character to any class or section of Hindus."

Sir, in my view the clause as it stands is restricted in its scope, and the object of my amendment is to secure the benefit in a wider way and to make it applicable to all classes and sections.

Sir, though we are not able to make a sweeping reform or a more comprehensive reform in this direction, I feel that no distinction of any kind should be made between one class of Hindus and another.

Now, with regard to the Hindu religious institutions of a public character, we are all aware that there are various classes of these institutions, such as temples, religious maths, and educational institutions or Pathasalas conducted by these institutions, or attached to these institutions. So far as temples are concerned, I am sure that all of us are aware that almost all of the provinces, including some States, have already passed law throwing open temples to all classes or sections of Hindus. But I am equally sure that some distinction does still exist in regard to the other forms of religious institutions, such as Pathasalas, educational institutions and others managed or conducted by these religious institutions. As I have already explained, my object is to enlarge the scope of this clause, and to include within it all classes and sections of Hindus. If my amendment is accepted, then that object will be fulfilled. As I have already explained, there should not be any distinction between one class and another class of Hindus.

I think these few words will suffice to explain the object of my amendment. I commend my amendment to the House for its acceptance. Sir, I move.

Mr. Vice-President: Amendment No. 610 is disallowed because it has already been covered by something allied, under the Directive Principles.

(Amendment No. 611 was not moved.)

No. 612, standing in the joint names of Mr. Mohammed Ismail Sahib and Mr. Pocker Sahib.

The Honourable Shri K. Santhanam (Madras: General): Sir, on a point of order. This particular amendment No. 612 is not relevant to this article 19. The amendment refers to personal law, but here we are dealing only with freedom of religion. The matter touched by the amendment has already been raised in a previous article, and also in the Directive Principles.

Mohamed Is mail Sahib (Madras: Muslim): Sir, I beg to submit that my amendment is quite in order under this article, because this article speaks of the religious rights of the citizens, and personal law is based upon religion. I have made it quite clear on a previous occasion that personal law is part of the religion of the people who are observing that personal law. I only want to make it clear that this article shall not preclude people from observing their personal law. I am putting it in a negative form, because here, the article says

> "Nothing in this article shall affect the operation of any existing law or preclude the State from making any law--
>
> (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;"

This practice of personal law may, by a stretch of imagination, be brought under the secular activities associated with religion. Therefore, I propose to make it clear that so far as personal law is concerned, this article shall not affect the observance thereof by the people concerned. That is my point.

The Honourable Shri K. Santhanam: Sir, we have adopted a directive asking the State to endeavour to evolve a uniform civil code, and this particular amendment is a direct negation of that directive. On that ground also, I think, this is altogether inappropriate in this connection.

Mr. Vice-President: Would you like to say anything on this matter, Dr. Ambedkar? I should value your advice about this amendment being in order or not, on account of the reasons put forward by Mr. Santhanam.

The Honourable Dr. B. R. Ambedkar: I was discussing another amendment with Mr. Ranga here and so.......

The Honourable Shri K. Santhanam: Amendment No. 612 about personal law is sought to be moved.

The Honourable Dr. B. R. Ambedkar: This point was disposed of already, when we discussed the Directive Principles, and also when we discussed another amendment the other day.

Mr. Mohamed Ismail Sahib: On a previous occasion I put it in the positive form and here I put it in the negative form. So far as the Directive Principles are concerned, they speak of the attempts which the Government have to make in evolving a uniform civil code. Suppose they have exempted personal law, that does not mean that there can be no uniform civil code in the country. Whatever that may be, here I say under this article, in the matter of religion, people are given certain rights and this question of personal law shall not be brought in. That is what I say. The question of personal law shall not be affected when this article comes into operation. That is my point.

Mr. Vice-President: I do not know whether I am technically correct or not; but in view of the peculiar circumstances in which our Muslim brethren are placed, I am allowing Mr. Mohamed Is mail Sahib to say what he has to say and to place his views before the House.

Mr. Mohamed Is mail Sahib: Thank you very much, Sir, forgiving me another opportunity to put my views before the House on this very important matter. I beg to move:

"That after clause (2) of article 19, the following new clause be added:

(3) Nothing in clause (2) of this article shall affect the right of any citizen to follow the personal law of the group or the community to which he belongs or professes to belong.'"

Sir, this provision which I am suggesting would only recognise the age long right of the people to follow their own personal law, within the limits of their families and communities. This does not affect in any way the members of other communities. This does not encroach upon the rights of the members of other communities to follow their own personal law. It does not mean any sacrifice at all on the part of the members of any other community. Sir, here what we are concerned with is only the practice of the members of certain families coming under one community. It is a family practice and in such cases as succession, inheritance and disposal of properties by way of wakf and will, the personal law operates. It is only with such matters that we are concerned under personal law. In other matters, such as evidence, transfer of property, contracts and in innumerable other questions of this sort, the civil code will operate and will apply to every citizen of the land, to whatever community he may belong. Therefore, this will not in any way detract from the desirable amount of uniformity which the State may try to bring about, in the matter of the civil law.

This practice of following personal law has been there amongst the people for ages. What I want under this amendment is that that practice should not be disturbed now and I want only the continuance of a practice that has been going on among the people for ages past. On a previous occasion Dr. Ambedkar spoke about certain enactments concerning Muslim personal law, enactments relating to Wakf, Shariat law and Muslim marriage law. Here there was no question of the abrogation of the Muslim personal law at all. There was no revision at all and in all those cases what was done was that the Muslim personal law was elucidated and it was made clear that these laws shall apply to the Muslims. They did not modify them at all. There fore those enactments and legislations cannot be cited now as matters of precedents for us to do anything contravening the personal law of the people. Under this amendment what I want the House to accept is that when we speak of the State doing anything with reference to the secular aspect of religion, the question of the personal law shall not be brought in and it shall not be affected.

Sir, by way of general remarks I want to say a few words on this article. My friend Mr. Tajamul Husain brought forward certain amendments, Nos. 572 and 588. To tell you the truth, Sir, I did not know at that time nor do I know now whether he was serious at all when he made those proposals and what were the points which he urged in favour of his proposals I could not understand. I did not take him, and I make bold to say that the House also did not take him, seriously and therefore I do not want to waste the time of the House in replying to him.

The question of professing, practising and propagating one's faith is a right which the human being had from the very beginning of time and that has been recognised as an inalienable right of every human being, not only in this land but the whole world over and I think that nothing should be done to affect that right of man as a human being. That part of the article as it stands is properly worded and it should stand as it is. That is my view.

Another honourable Member spoke about the troubles that had arisen as a result of the propagation of religion. I would say that the troubles were not the result of the propagation of religion or the professing or practising of religion. They arose as a result of the misunderstanding of religion. My point of view, and I say that that is the correct point of view, is that if only people understand their respective religions aright and if they practise them aright in the proper manner there would be no trouble whatever; and because there was some trouble due to some cause it does not stand to reason that the fundamental right of a human being to practise and propagate his religion should be abrogated in any way.

Mr. Vice-President: The clause is now open for discussion.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Sir, I feel myself called upon to put in a few words to explain the general implications of this article so as to remove some of the misconceptions that have arisen in the minds of some of my honourable Friends over it.

This article 19 of the Draft Constitution confers on all person the right to profess, practise and propagate any religion they like but this right has been circumscribed by certain conditions which the State would be free to impose in the interests of public morality, public order and public health and also in so far as the right conferred here does not conflict in any way with the other provisions elaborated under this part of the Constitution. Some of my Friends argued that this right ought not to be permitted in this Draft Constitution for the simple reason that we have declared time and again that this is going to be a secular State and as such practice of religion should not be permitted as a fundamental right. It has been further argued that by conferring the additional right to propagate a particular faith or religion the door is opened for all manner of troubles and conflicts which would eventually paralyse the normal life of the State. I would say at once that this conception of a secular State is wholly wrong. (By secular State, as I understand it, is meant that the State is not going to make any discrimination whatsoever on the ground of religion or community against any person professing any particular form of religious faith. This means in essence that no particular religion in the State will receive any State patronage whatsoever. The State is not going to establish, patronise or endow any particular religion to the exclusion of or in preference to others and that no citizen in the State will have any preferential treatment or will be discriminated against simply on the ground that he professed a particular form of religion. In other words in the affairs of the State the professing of any particular religion will not be taken into consideration at all.) This I consider to be the essence of a secular state. At the same time we must be very careful to see that this land of ours we do not deny to anybody the right not only to profess or practise but also to propagate any particular religion. Mr. Vice-President, this glorious land of ours is nothing if it does not stand for lofty religious and spiritual concepts and ideals. India would not be occupying any place of honour on this globe if she had not reached that spiritual height which she did in her glorious past. Therefore I feel that the Constitution has rightly provided for this not only as a right but also as a fundamental right. In the exercise of this fundamental right every community inhabiting this State professing any religion will have equal right and equal facilities to do whatever it likes in accordance with its religion provided it does not clash with the conditions laid down here.

The great Swami Vivekananda used to say that India is respected and revered all over the world because of her rich spiritual heritage. The western world, strong with all the strength of a materialistic civilsation, rich with the acquisitions of science, having a dominating position in the world, is poor today because of its utter lack of spiritual treasure. And here does India step in. India has to import this rich spiritual treasure, this message of hers to the west. If we are to do that, if we are to educate the world, if we are to remove the doubts and misconceptions and the colossal ignorance that prevails in the world about India's culture and heritage, this right must be inherent,--the right to profess and propagate her religious faith must be conceded.

I have listened to some of the speeches that have been made in connection with this article. It has been objected to and it has been said that the right to propagate should be taken away. One honourable Member suggested that if we conceded the right, the bloody upheaval which this country has witnessed of late would again recur with full vehemence in the near future. I do not at all share that pessimism of my honourable Friend. Apparently my honourable Friend has not given special consideration to the conditions that are imposed in this article. The power that this article imposes upon the State to intervene on certain occasions completely demolishes all chances of that kind of cataclysm which we have seen.

It has also been said, and I am very sorry that an observation was made by an honourable Member of considerable eminence and standing, that the Christian community in its proselytising zeal has sometimes transgressed its limits and has done acts which can never be justified. An instance of Bombay was cited in defence of his position.

Mr. Vice-President: I am afraid you are making a mistake there. No particular instance, so far as I remember, was cited.

Pandit Lakshmi Kanta Maitra: Anyway I believe that was at the back of his mind. I am sorry if I have not got at it correctly. I want to say that a good deal of injustice will be done to the great Christian community in India if we go away with that impression. The Indian Christian community happens to be the most inoffensive community in the whole of India. That is my personal opinion and I have never known anybody contesting that proposition. This Indian Christian community, so far as I am aware, spend to the tune of nearly Rs. 2 crores every year for educational uplift, medical relief and for sanitation, public health and the rest of it. Look at the numerous educational institutions, dispensaries and hospitals they have been running so effectively and efficiently, catering to all classes and communities. If this vest amount of Rs. 2 crores were utilised by this Christian community for purposes of seeking converts, then the Indian Christian community which comprises only 70millions would have gone up to...........

Mr. Vice-President: Your are mistaken there: it is only 7 millions.

Pandit Lakshmi Kanta Maitra: I beg your pardon. From 7millions it would have gone to 70 millions. But the point, Mr. Vice-President, is not in the figures. The point of my whole contention is that the Christian community in India has not done that proselytising work with that amount of zeal and frenzy with which some of our friends have associated it. I am anxious to remove that mis-conception. Sir, I feel that every single community in India should be given this right to propagate its own religion. Even in a secular state I believe there is necessity for religion. We are passing through an era of absolute irreligion. Why is there so much vice or corruption in every stratum of society; Because we have forgotten the sense of values of things which our forefathers had inculcated. We do not at all care in these days, for all these glorious traditions of ours with the result that everybody now acts in his own way, and justice, fairness, good sense and honesty have all gone to the wilderness. (If we are to restore our sense of values which we have held dear, it is of the utmost importance that we should be able to propagate what we honestly feel and believe in. Propagation does not necessarily mean seeking converts by force of arms, by the sword, or by coercion. But why should obstacles stand in the way if by exposition, illustration and persuasion you could convey your own religious faith to others?) I do not see any harm in it. And I do feel that this would be the very essence of our fundamental right the right to profess and practise any particular religion. Therefore this right should not betaken away, in my opinion. (If in this country the different religious faiths would go on expounding their religious tenets and doctrines, then probably a good deal of misconception prevailing in the minds of people about different religions would be removed, and probably a stage would be reached when by mutual understanding we could avoid in future all manner of conflicts that arise in the name of religion. From that point of view I am convinced that the word `propagate' should be there and should not be deleted.

In this connection I think I may remind the House that the whole matter was discussed in the Advisory Council and it was passed there. As such I do not see any reason why we should now go back on that. Sir, the clause as it is has my whole-hearted support, and I feel that with the amendments moved by my honourable Friend Dr. Ambedkar and Shrimati Durgabai this clause should stand as part of the Constitution.

Shri L. Krishnaswami Bharathi (Madras: General): Mr. Vice-President, after the eloquent and elaborate speech of my respected Friend Pandit Maitra I though it was quite unnecessary on my part to participate in the discussion. I fully agree with him that the word `propagate' ought to be there. After all, it should not be understood that it is only for any sectarian religion. It is generally understood that the word `propagate' is intended only for the Christian community. But I think it is absolutely necessary, in the present context of circumstances, that we must educate our people on religious tenets and doctrines. So far as my experience goes, the Christian community have not transgressed their limits of legitimate propagation of religious view, and on the whole they have done very well indeed. It is for other communities to emulate them and propagate their own religions as well. This word is generally understood as if it referred to only one particular religion, namely, Christianity alone. As we read this clause, it is a right given to all sectional religions; and it is well known that after all, all religions have one objective and if it is properly understood by the masses, they will come to know that all religions are one and the same. It is all God, though under different names. Therefore this word ought to be there. This right ought to there. The different communities may well carry on propaganda or propagate their religion and what it stands for. It is not to be understood that when one- propagate his religion he should cry down other religions. It is not the spirit of any religion to cry down another religion. Therefore this is absolutely necessary and essential.

Again, it is not at all inconsistent with the secular nature of the State. After all, the State does not interfere with it. Religion will be there. It is a personal affair and the State as such does not side with one religion or another. It tolerates all religions. Its citizens have their own religion and its communities have their own religions. And I have no doubt, whatever, seeing from past history, that there will not be any quarrel on this account. It was only yesterday His Excellency the Governor-General Sri Rajaji spoke on this matter. It is very necessary that we should show tolerance. That is the spirit of all religions. To say that some religious people should not do propaganda or propagate their views is to show intolerance on our part.

Let me also, in this connection, remind the House that the matter was thoroughly discussed at all stages in the Minorities Committee, and they came to the conclusion that this great Christian community which is willing and ready to assimilate itself with the general community, which does not want reservation or other special privileges should be allowed to propagate its religion along with other religious communities in India.

Sir, on this occasion I may also mention that you, Mr. Vice-President, are willing to give up reservation of seats in the Assembly and the local Legislatures of Madras and Bombay, and have been good enough to give notice of an amendment to delete the clause giving reservation to the Christian community. That is the way in which this community, which has been thoroughly nationalist in its outlook, has been moving. Therefore, in good grace, the majority community should allow this privilege for the minority communities and have it for themselves as well. I think I can speak on this point with a certain amount of assurance that the majority community is perfectly willing to allow this right. I am therefore strongly in favour of the retention of the word `propagate' in this clause.

The Honourable Shri K. Santhanam: Mr. Vice-President, Sir, I stand here to support this article. This article has to be read with article 13, article 13 has already assured freedom of speech and expression and the right to form association or unions. The above rights include the right of religious speech and expression and the right to form religious association or unions. Therefore, article 19 is really not so much an article on religious freedom. But an article on, what I may call religious toleration. It is not so much the words "All persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion" that are important. What are important are the governing words with which the article begins, viz., "Subject to public order, morality and health".

Hitherto it was thought in this country that anything in the name of religion must have the right to unrestricted practice and propagation. But we are now in the new Constitution restricting the right only to that right which is consistent with public order, morality and health. The full implications of this qualification are not easy to discover. Naturally, they will grow with the growing social and moral conscience of the people. For instance, I do not know if for a considerable period of time the people of India will think that purdah is consistent with the health of the people. Similarly, there are many institutions of Hindu religion which the future conscience of the Hindu community will consider as inconsistent with morality.

Sir, some discussion has taken place on the word propagate'. After all, propagation is merely freedom of expression. I would like to point out that the word convert' is not there. Mass conversion was a part of the activities of the Christian Missionaries in this country and great objection has been taken by the people to that. Those who drafted this Constitution have taken care to see that no unlimited right of conversion has been given. People have freedom of conscience and, if any man is converted voluntarily owing to freedom of conscience, then well and good. No restrictions can be placed against it. But if any attempt is made by one religious community or another to have mass conversions through undue influence either by money or by pressure or by other means, the State has every right to regulate such activity Therefore I submit to you that this article, as it is, is not so much an article ensuring freedom, but toleration--toleration for all, irrespective of the religious practice or profession. And this toleration is subject to public order, morality and health.

Therefore this article has been very carefully drafted and the exceptions and qualifications are as important as the right it confers. Therefore I think the article as it stands is entitled to our wholehearted support.

Shri Rohini Kumar Chaudhari (Assam: General): Sir, I am grateful to you for giving me this opportunity for making a few observations on this very important article. It struck me as very peculiar that, although as many as four articles have dealt with religion, there is no mention of God anywhere in the whole Chapter. At first I considered it extremely strange, but after going through the matter more carefully, I found every justification for it. From the way in which the world is progressing, there is very little doubt that a time will come when we may be in a position to dispense with God altogether. That has happened in other more advanced countries and therefore I believe, in order to make room for such a state of things, the word "God" has been purposely avoided in dealing with religion itself.

It reminds me of a story, Sir, which I had heard in my student life. There was a great scientist who presented to the king something like a globe in which the whole solar system, the sun, moon and everything, was shown. Then the king who had some faith in God asked the scientist, "Where have you placed God?". The scientist said, "I have done without him". That is exactly the position today. We are framing a Constitution where we speak of religion but there is no mention of God anywhere in the whole chapter. Sir, my honourable Friend Mr. Kamath introduced `God' in his speech but at the same time he spoke about spiritual matters.) The term "Spiritual training" is somewhat ambiguous. The word "spirit" is defined in the Chambers Dictionary as a `ghost'. There are people in this world who do not fear God but they fear ghosts all the same because ghosts bring troubles while God does not. (The term `spiritual training' is very difficult for me to follow. What did my honourable Friend. Mr. Kamath, mean by spiritual training? What is the spiritual training to which he is referring? Is it training to believe in ghosts or to avoid them or is it the training to have more recourse to spirit to keep up your spirits in the evening. (What actually he meant by spiritual training is very difficult to follow. Does he mean the teaching of the great books like the Bible, the Koran and the Gita in all institutions and that the State should be in a position to endow any institution which is dealing only with the teaching of the Koran, or the Bible or the Gita? I do not think that that is the aim. That point ought to be made clear.

Another point is the propagation of religion. I have no objection to the propagation of any religion. If anyone thinks that his religion is something ennobling and that it is his duty to ask others to follow that religion, he is welcome to do so. But what I would object to is that there is no provision in this Constitution to prevent the so-called propagandist of his religion from throwing mud at some other religion. For instance, Sir, in the past were member how missionaries went round the country and described Sri Krishna in the most abominable terms. They would bring up particular activities of Sri Krishna and say, "Look here, this is your Lord Krishna and this is his conduct". We also remember with great pain how they used to decry the worship of the idols and call them names. Sir, in the new Constitution we must make it perfectly clear that no such thing will be tolerated. It is not necessary in the course of propagating any particular religion to throw mud at other religions, to decry them and bring out their unsatisfactory features according to the particular supporters of a particular religion. There should be a provision in the law, in the Constitution itself that such conduct will be met with exemplary punishment. With these words, Sir, I support the amendment subject to such verbal alterations as have been suggested by Shrimati Durgabai and the Honourable Dr. Ambedkar.

Shri T. T. Krishnamachari (Madras: General): Mr. Vice-President, Sir, I am here to support the motion before the House, *viz.*, to approve of article 19. Many speakers before me have emphasised the various provisions of this particular article and the background in regard to the framing of this article. What I would like to stress in this: Sir, we are not concerned here with compromises arrived at between the various communities. We are not really concerned with whether some advantage might be derived from the wording of this article later on by certain communities in regard to the furtherance of their own religious beliefs and practices, but I think emphasis should be laid on the fact that a new government and the new Constitution have to take things as they are, and unless the status quo has something which offends all ideas of decency, all ideas of equity and all ideas of justice, its continuance has to be provided for in the Constitution so that people who are coming under the regime of a new government may feel that the change is not a change for the worse. In achieving that particular object, I think this article has gone a long way.

Sir, objection has been taken to the inclusion of the word "propagate" along with the words "profess and practise" in the matter of religion. (Sir, it does not mean that this right to propagate one's religion is given to any particular community or to people who follow any particular religion. It is perfectly open to the Hindus and the Arya Samajists to carry on their Suddhi propaganda as it is open to the Christians, the Muslims, the Jains and the Bhuddists and to every other religionist, so long as he does it subject to public order, morality and the other conditions that have to be observed in any civilised government. So, it is not a question of taking away anybody's rights. It is a question of conferring these rights on all the citizens and seeing that these rights are exercised in a manner which will not upset the economy of the country, which will not create disorder and which will not create undue conflict in the minds of the people. That, I feel, is the point that has to be stressed in regard to this particular article.) Sir, I know as a person who has studied for about fourteen years in Christian institutions that no attempt had been made to convert me from my own faith and to practise Christianity. I am very well aware of the influences that Christianity has brought to bear upon our own ideals and our own outlook, and I am not prepared to say here that they should be prevented from propagating their religion. I would ask the House to look at the facts so far as the history of this type of conversion is concerned. It depends upon the way in which certain religionists and certain communities treat their less fortunate brethren. The fact that many people in this country have embraced Christianity is due partly to the status that it gave to them. Why should we forget that particular fact? An untouchable who became a Christian became an equal in every matter along with the high-caste Hindu, and if we remove the need to obtain that particular advantage that he might probably get--it is undoubtedly a very important advantage, apart from the fact that he has faith in the religion itself--well, the incentive for anybody to become a Christian will not probably exist. I have no doubt, Sir, we have come to a stage when it does not matter to what religion a man belongs, it does not matter to what sub-sect or community in a particular religion a man belongs, he will be equal in the eyes of law and in society and in regard to the exercise of all rights that are given to those who are more fortunately placed. So I feel that any undue influence that might be brought to bear on people to change their religion or any other extraneous consideration for discarding their own faith in any particular religion and accepting another faith will no longer exist; and in the circumstanes, I think it is only fair that we should take the status quo as it is in regard to religion and put it into our Fundamental rights, giving the same right to every religionist, as I said before, to propagate his religion and to convert people, if he felt that it is a thing that he has to do and that is a thing for which he has been born and that is his duty towards his God and his community.

Subject to the overriding considerations of the maintenance of the integrity of the State and the well-being of the people,--these conditions are satisfied by this article--I feel that if the followers of any religion want to subtract from the concessions given herein in any way, they are not only doing injustice to the possibility of integration of all communities into one nation in the future but also doing injustice to their own religion and to their own community. Sir, I support the article as it is.

Shri K. M. Munshi (Bombay: General): Mr. Vice-President, Sir, I have only a few submissions to make to the House. As regards amendment No. 607, moved by my honourable Friend, Prof. K. T. Shah, I entirely agree with him that the word `Hindu' used in this section should be widely defined. As a matter of fact, the Hindu Bill which is now before this House in its legislative capacity has defined `Hindu' so as to include the various sub-sections, but it will be more appropriate to have this definition in the interpretation clause than in this.

I have only a few words to say with regard to the objections taken to the word "propagate". Many honourable Members have spoken before me placing the point of view that they need not be afraid of the word "propagate" in this particular article. (When we object to this word, we thinking terms of the old regime. In the old regime, the Christian missionaries, particularly those who were British were at an advantage.) But since 1938, I know, in my part of Bombay, the influence which was derived from their political influence and power has disappeared. If I may mention a fact within my knowledge in 1937 when the first Congress Ministry came into power in Bombay, the Christian missionaries who till then had great influence with the Collectors of the Districts and through their influence acquired converts, lost it and since then whatever conversions take place in that part of the country are only the result or persuasion and not because of material advantages offered to them. In the present set up that we are now creating under this Constitution, there is a secular State. There is no particular advantage to a member of one community over another; nor is there any political advantage by increasing one's fold. In those circumstances, the word `propagate' cannot possibly have dangerous implications, which some of the Members think that it has.

Moreover, I was a party from the very beginning to the compromise with the minorities, which ultimately led to many of these clauses being inserted in the Constitution and I know it was on this word that the Indian Christian community laid the greatest emphasis, not because they wanted to convert people aggressively, but because the word "propagate" was a fundamental part of their tenet. Even If the word were not there, I am sure, under the freedom of speech which the Constitution guarantees it will be open to any religious community to persuade other people to join their faith. So long as religion is religion, conversion by free exercise of the conscience has to be recognised. The word `propagate' in this clause is nothing very much out of the way as some people think, not is it fraught with dangerous consequences.

Speaking frankly, whatever its results we ought to respect the compromise. The Minorities Committee the year before the last performed a great achievement by having a unanimous vote on almost every provision of its report.

This unanimity created an atmosphere of harmony and confidence in the majority community. Therefore, the word propagate' should be maintained in this article in order that the compromise so laudably achieved by the Minor it Committee should not be disturbed. That is all that I want to submit.

Mr. Vice-President: I have on my list here 15 amendments, most of which have been moved before the House. I should think that they give the views on this particular article from different angles. We had about seven or eight speakers giving utterance to their views. I think that the article has been sufficiently debated. I call upon Dr. Ambedkar to reply.

The Honourable Dr. Ambedkar: Mr. Vice-President, Sir, I have nothing to add to the various speakers who have spoken in support of this article. What I have to say is that the only amendment I am prepared to accept is amendment No. 609.

Shri H. V. Kamath: May I ask whether it will be enough if Dr. Ambedkar says: "I oppose: I have nothing to say." I should think that in fairness to the House, he should reply to the points raised in the amendments and during the debate.

Mr. Vice-President: I am afraid we cannot compel Dr. Ambedkar to give reasons for rejecting the various amendments.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. Vice-President, may I say that amendment No. 609 which has been accepted by the Honourable Dr. Ambedkar is a mere verbal amendment?

Mr. Vice-President: It will be recorded in the proceedings. We shall now consider the amendments one by one.

The question is:

"That in clause (1) of article 19, for the words 'practice and propagate religion' the words `and practise religion privately' be substituted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in clause (1) of article 19. for the words 'practise and propagate' the words `and practise' be substituted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in clause (1) of article 19, for the words `are equally entitled to freedom of conscience and the right', the words `shall have the right' be substituted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in clause (1) of article 19, the words `freedom of conscience and' be omitted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That Explanation to clause (1) of article 19 be deleted and the following be inserted in that place:--

"No person shall have any visible sign or mark or name, and no person shall wear any dress whereby his religion maybe recognised."

Mr. Vice-President: The question is:

"That the following proviso be added to clause (1) of article 19:--

"Provided that no propaganda in favour of any one religion which is calculated to result in change of faith by the individuals affected, shall be allowed in any school or college or other educational institution, in any hospital asylum or in any other place or institution where persons of a tender age, or of unsound mind or body are liable to be exposed to undue influence from their teachers, nurses or physicians, keepers or guardians or any other person set in authority above them, and which is maintained wholly or partially from public revenues, or is in any way aided or protected by the Government of the Union, or of any State or public authority therein."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in the Explanation to clause (1) of article 19, for the word `profession' the word `practice' be substituted."

The Honourable Shri Ghanshyam Singh Gupta: (C. P. & Berar: General): Sir, I wish to withdraw the amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President: The question is:

"That at the end of Explanation to clause (1) of article 19, the words 'and for the matter of that any other religion' be inserted."

The amendment was adopted.

Mr. Vice-President: The question is:

"That after clause (1) of article 19, the following new sub-clause be added:--

"(2) The State shall not establish, endow or patronize any particular religion. Nothing shall however prevent the State from imparting spiritual training or instruction to the citizens of the Union."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in article 19, the following be inserted as clause (1a):--

"(1a) The Indian Republic shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in clause (2) of article 19, for the word "preclude" the word "prevent" be substituted."

The amendment was adopted.

Mr. Vice-President: The question is:

"That in sub-clause (a) of clause (2) of article 19, for the words "regulating or restricting any economic, financial, political or other secular activity" the words "regulating, restricting or prohibiting any economic, financial, political or other secular activity" be substituted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in sub-clause (b) of clause (2) of article 19,after the words 'or throwing open to Hindu' the words 'Jain, Buddhist or Christian' be added."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in sub-clause (b) of clause (2) of article 19 for the words "any class or section" the words 'all classes and sections' be substituted."

Have you accepted it, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar: Yes, Sir.

Mr. Vice-President: The amendment has been accepted by Dr. Ambedkar.

The amendment was adopted.

Mr. Vice-President: The question is:

"That after clause 2, of article 19, the following new clause be added:--

"(3) Nothing in clause (2) of this article shall affect the right of any citizen to follow the personal law of the group or the community to which he belongs or professes to belong'.

The amendment was negatived.

Mr. Vice-President: I shall now put article 19, as amendment by amendment numbers 596 and 609 to vote. The question is:

"That article 19, as amended, from part of the Constitution."

The motion was adopted.

Article 19, as amended, was added to the Constitution.

Article 14-*(Contd.)*

Mr. Vice-President: We shall go back to Article 14. So far as I remember --I am sorry I have mislaid my notes--in article 14 there were a number of amendments which were put to the vote one after the other, and that only two amendments were being considered, when, for reasons already known to the House, we postponed their consideration. One was amendment No. 512 moved by Kazi Syed Karimuddin, and the other was a suggestion--am I right in saying that it was a suggestion made by Mr. T. T. Krishnamachari? Mr. T. T. Krishnamachari, will you please enlighten me? Was it a suggestion or was it a short notice amendment?

Shri T. T. Krishnamachari: It was a short notice amendment.

Mr. Vice-President: It was a short notice amendment admitted by me. These two only remained to be put to the vote.

Mr. Naziruddin Ahmad: With regard to amendment No. 512I have a point of order, Mr. Vice-President.

You will be pleased to remember, Sir, that amendment No. 512 was moved in the House. It was accepted by Dr. Ambedkar and then it was put to the vote. The shouts according to your estimate were in favour of its acceptance. Then some trouble arose and then shouts were again called. The shouts according to your estimate were again in favour of the amendment. What is very important in this connection, Sir, is that you declared the amendment to be carried.

Mr. Vice-President: Did I declare the amendment to be carried?

Mr. Naziruddin Ahmad: Yes, Sir. I remember.

Mr. Vice-President: Do the records show that?

Mr. Naziruddin Ahmad: The shorthand notes may be referred to. My recollection is it was declared carried *(Interruption).*

Mr. Vice-President: Kindly, in order to preserve the diginity of the House, do not interrupt Mr. Naziruddin Ahmad only because he is putting forward a point of view which may not be agreeable to a certain section of the House.

(To Mr. Naziruddin Ahmed) Kindly confine your remarks to the business on hand.

Mr. Naziruddin Ahmad: Sir, I do not wish to obstruct the majority in dealing with this amendment in any way they please. I simply suggest that if it is carried, it cannot be put again. It is against the Rules. But I have a way out, which I shall suggest and which will be constitutional. There is a rule, in our Rules, that with the consent of twenty five per cent of the Members of the House, any resolution that has been carried may be re-opened. I suggest, Sir, that if I am right that it was declared to be carried, then, it should be re-opened in the regular constitutional manner.

Mr. Vice-President: The official records of the deliberations read this way.

"Just before the voting was called, however, Shri Mahavir Tyagi made a suggestion, which was later supported by the Prime Minister, that the voting on this particular amendment be postponed as there appeared to be some confusion as to the full implications of this provision. The House agreed to the suggestion and voting on this amendment and on the article as a whole was accordingly postponed."

That shows that your whole objection falls to the ground.

(Mr. Naziruddin Ahmad rose to speak.)

Please do not argue.

I want to make certain other things clear to the House. I want to make clear the point of view from which I regard this. As I have said already, the House is the ultimate authority in this as in all matters. The House has laid down certain Rules for the conduct of the business. These Rules have been laid down mainly because the aim of the House is that the work should proceed smoothly. The smooth working of the House I regard as the really essential thing, and much more important than sticking to the Rules which the House has made and which the House can un-make at any time. When there was this confusion, to use the language of Mr. Naziruddin Ahmad, I made a reference to the House and the House agreed that the matter should be reconsidered. The House is fully competent to do so and if the House is still of that view, then the matter will be considered here and now.

Maulana Hasrat Mohani: (United Provinces: Muslim): May I know, Sir, whether the House has reconsidered or whether it is a mandate from the Congress Party who has issued a whip that it should be opposed? Do you decide to allow the House to reconsider or is it only a mandate from the Congress Party? I have got a copy of that whip in my hand, that this must be opposed.

Shri Mahavir Tyagi: (United Provinces: General): Sir, I protest against the language used and the honourable Member's referring to the whip of the Congress

Party.

Mr. Vice-President: You have done your duty as a Congress man; now I shall do my duty as the presiding officer here.

Maulana Hasrat Mohani: Sir, I stick to what I have said.

Mr. Vice-President: I am sorry....................

Shri Mahavir Tyagi: Will you please ask him to giveback the whip, which the honourable Member has no right to handle?

Mr. Vice-President: You are always the stormy petrel. While I am trying to bring peace and good humour you are interfering. I will not allow you to do so again.

As I was saying, I am very sorry that an old and experienced public man like Maulana Hasrat Mohani should have permitted himself to make references to things which are no concern of this House. As I have said more than once, though I belong to a particular political party, so long as I am in the Chair, I recognise no party at all. It is in that spirit that proceedings of this House are being conducted. I regret very much that anything should have been said challenging the way in which the proceedings have been conducted or are going to be conducted.

I ask the permission of the House once again as to whether I can re-open the matter.

Honourable Members: Yes.

Mr. Vice-President: Thank you. I am going to put amendment No. 512 to the vote.

The Honourable Shri Ghanshyam Singh Gupta: Sir, there is no question of re-opening. You had not finally said that the amendment was carried or was not carried. I want to impress upon the House that the Chair had not declared that it was either carried or it was not carried and therefore there is no question of re-opening at all. The matter is absolutely in the discretion of the Chair now. The Rules are quite clear. A vote is taken. Once it is challenged. the division bell rings. After the division bell rings, the Chair again puts it to the vote and then sends Ayes and Noes to the lobbies. The Teller counts the votes and after that, it is declared that a certain motion is lost or is carried. This was not done at all. In fact, it was in the process of declaration by the Chair that the motion is or is not carried that the Chair was pleased to say that this thing stands over. Anybody who says that the Chair finally declared that that motion was carried or lost is wrong.

Mr. Vice-President: It merely shows the depth of my ignorance. I used the word which should not have been used. I used the word `reopen'. I am glad that the matter has been set right. I only wish that I had sufficient--what shall I say--ability to act in the way in which the Honourable Mr. Gupta has done. I now put amendment No. 512 to vote.

The question is:

"That in article 14, the following be added as clause(4):--

"(4) The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized."

The amendment was negatived.

Mr. Vice-President: We come to Mr. Krishnamachari's amendment which was accepted by Dr. Ambedkar.

Shri H. V. Kamath: Is it necessary to say that Dr. Ambedkar has accepted or rejected every time?

Mr. Vice-President: Sometimes it is necessary. Not always. I now put the amendment to vote.

The question is:

"That in clause 2 of article 14 after the word `shall be' the words `prosecuted and 'be inserted."

The amendment was adopted.

Mr. Vice-President: Now the question is:

"That article 14, as amended, stand part of the Constitution."

The motion was adopted.

Article 14, as amended was added to the Constitution.

Article 15

Mr. Vice-President: Now the motion before the House is: that article 15 form part of the Constitution.

We shall go over the amendments one after another. 515 is ruled out of order. Nos. 516, 517, 518 and 532 are similar and of these I can allow 516 to be moved as also 517 both standing in the name of Shri Brajeshwar Prasad.

Shri Brajeshwar Prasad: (Bihar: General): Sir, I am not moving 516 and 517.

(Amendments Nos. 518, 532, 519 and 520 were not moved.)

Mr. Vice-President: No. 521 is blocked. Then 522, 523,524, 525, 528 and 530 are similar. I can allow 523 to be moved.

Kazi Syed Karimuddin (C. P. & Berar: Muslim): Mr. Vice-President, Sir, if the proposed amendment by the Drafting Committee is accepted and the article is allowed to stand as it is:-

> "No person shall be deprived of his life or personal liberty except according to procedure established by law........".

then in my opinion, it will open a sad chapter in the history of constitutional law. Sir, the Advisory Committee on Fundamental Rights appointed by the Constituent Assembly had suggested that no person shall be deprived of his life or liberty without due process of law; and I really do not understand how the words "personal" and "according to procedure established by law" have been brought into article 15 by the Drafting Committee.

Shri Lakshmi Kanta Maitra: Sir, is the honourable Member moving his amendment or not?

Mr. Vice-President: In order to meet the requirements of technicalities, please move your amendment first.

Kazi Syed Karimuddin: Sir, I beg to move-

> "That in article 15, for the words "No person shall be deprived of his life or personal liberty except according to procedure established by law" the words "No person shall be deprived of his life or liberty without due process of law" be substituted.

Continuing my arguments Sir, if the words "according to procedure established by law" are enacted, there will be very great injustice to the law courts in the country, because as soon as a procedure according to law is complied with by a court, there will be an end to the duties of the court and if the court is satisfied that the procedure has been complied with, then the judges cannot interfere with any law which might have been capricious, unjust or iniquitous. The clause, as it stands, can do great mischief in a country which is the storm centre of political parties and where discipline is unknown. Sir, let us guarantee to individuals inalienable rights in such a way that the political parties that come into power cannot extend their jurisdiction in curtailing and invading the Fundamental rights laid down in this Constitution.

Sir, there is an instance in the American Constitutional law in a case reported, Chambers *vs*. Florida where an act was challenged in a court of law on the ground that the law was not sound and that it was capricious and unjust. Therefore, my submission is that if the words "according to procedure established by law" are kept then it will not be open to the courts to look into the injustice of a law or into a capricious provision in a law. As soon as the procedure is complied with, there will be an end to everything and the judges will be only spectators. Therefore, my submission is, first, that the words, "except according to procedure established by law" be deleted, and then that the words "without due process of law" be inserted.

Sir, actually I had sent two amendments, one about the word "personal" before the words `liberty', and the other about substitution of the words "without due process of law" for the words "except according to procedure established by law". But somehow or other, these two amendments have been consolidated, and I am required to move one amendment. Even if my amendment about "personal liberty" is not accepted by the Drafting Committee or Dr. Ambedkar, I do not mind; but the second portion of my amendment should be accepted.

(Amendment No. 524 was not moved.)

Mr. Vice-President: Amendment No. 525. Mr. Naziruddin Ahmad. Do you want to press it?

Mr. Naziruddin Ahmad: Sir, there is a printing mistake which I want to point out.

Mr. Vice-President: All right. Then we come to No. 528 standing in the names of Shri Upendranath Barman, Shri Damodar Swarup Seth and Shri S. V. Krishnamurthy Rao.

Kazi Syed Karimuddin: Sir, I have to raise a point of order here. I said in my speech that I have tabled two separate amendments, one regarding the word 'personal' and the other regarding `due process of law'. Both these amendments have been consolidated by mistake of the Secretariat. So I have had to move the second part of my amendment. But then, according to the list supplied to us, No. 528 has been bracketted with No. 523-that is my amendment. I have moved mine, and so No. 528 cannot be moved now, but only put to vote, according to the practice followed in this House.

Mr. Vice-President: All right. We need not move No.528.

Shri S. V. Krishnamurthy Rao (My sore): But there is a difference, in that in No. 528 there is no reference to the word `personal', whereas No. 523 refers to deletion of this word.

Mr. Vice-President: But they are of similar import and I have already given my decision. We shall put No. 528 to vote.

Then No. 530 in the name of Mr. Z. H. Lari. Do you want it to be put to the vote?

Mr. Z. H. Lari: (United Provinces: Muslim): Yes, Sir.

Mr. Vice-President: Then in my list come No. 524, second part, No. 526 and No. 527. These are almost the same. No. 526 may be moved.

Mahboob Ali Baig Sahib Bahadur (Madras: General): Sir, I beg to move:

"That in article 15 for the words "except according to procedure established by law" the words, "save in accordance with law" be substituted."

In the note given by the Drafting Committee, it is stated that they made two changes from the proposition or article passed by this Assembly in the month of August, April or May of 1947. The first is the insertion of the word 'personal' before liberty, and the reason given is that unless this word `personal' finds a place there, the clause may be construed very widely so as to include even the freedoms already dealt with in article 13.

That is the reason given for the addition of the word 'personal'. As regards why the original words "without due process of law" were omitted and the present words "except according to procedure established by law" are inserted, the reason is stated to be that the expression is more definite and such a provision finds place in article 31 of the Japanese Constitution of 1946. I will try to confine myself to the second change.

It is no doubt true that in the Japanese Constitution article 31 reads like this but if the other articles that find place in the Japanese Constitution (*viz.*, articles 32, 34 and 35) had also been incorporated in this Draft Constitution that would have been a complete safeguarding of the personal liberty of the citizen. This Draft Constitution has conveniently omitted those provisions.

Article 32 of the Japanese Constitution provides that "no person shall be denied the right of access to the court." According to the present expression it may be argued that the legislature might pass a law that a person will have no right to go to a court of law to establish his innocence. But according to the Japanese Constitution article 32 clearly says that "no person shall be denied the right of access to the court". Is there such a corresponding provision in this Draft Constitution? That is the question. It does not find any place at all.

Article 34 of the Japanese Constitution provides that "no person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel, nor shall be detained without adequate cause and upon demand of any such person such cause should be immediately shown in open court in his presence and in the presence of his counsel." Such a clear right has not been given in these draft provisions.

Further, article 35 provides that the right of all persons to be secured in their homes and against entry, searches, etc. shall not be impaired, except upon warrant issued only for probable cause and so on. If for the sake of clarity and definiteness you have imported into this Draft Constitution article 31 of the Japanese Constitution you should in fairness have incorporated the other articles of the Japanese Constitution, which are relevant and which were enacted for safeguarding the personal liberty of the honest citizen. May I ask the Drafting Committee through its Chairman whether it is clear from this constitution that a man who has been arrested and detained has got the right to resort to a court and prove his innocence? It may be said that the expression "except according to procedure established by law" covers the point but the expression means "procedure established by law" of the legislature and it will competent for the legislature to lay down a provision that in the matter of detention of persons whether for political or other reasons, the jurisdiction of the courts is ousted. We know the decisions of the High Courts of India, especially of Madras and some other High Courts, where it has been laid down by these courts that it is open to the legislature to say that the courts shall not interfere with the action taken by the Government in the case of certain citizens whom they consider to be committing an offence or about to commit an offence or are likely to commit an offence. It is not open to the court to go into the merits or demerits of the grounds on which a person has been detained. The only extent to which the courts can go is to find out whether there is bona fides or *mala fides* for the action of the Government, and the burden is laid upon the person to prove that there is *mala fides* on the part of the Government in having issued a warrant of detention or arrest. Therefore the words "except according to procedure aid down by law" would mean, and according to me it does mean, that the future legislature might pass a law by which the right of a citizen to be tried by a court to establish his innocence could betaken away. I do not by this mean to convey that under certain circumstances it may not be necessary for Government to prevent a persons from committing an offence and to take the precaution of arresting him and thus prevent him from committing an offence. But I submit that there must be the right of the citizen to go to a court to prove that the ground on which he has been arrested is wrong and he is innocent. That is the elementary right of the citizen as against the executive which might be clothed with power by a party legislature which might pass a law saying that the executive is empowered to take away the liberty of a person under certain circumstances and he will have no right to go to court and prove his innocence. If the framers of the Draft Constitution are able to tell us that these words "except according to procedure established by law" do not deprive a person of his right to go before the court and establish his innocence and he is not prevented from such a course, then it will be another matter. But we must understand that the words "without due process of law" have been held in England and other countries to convey the meaning that every citizen has got the right, when an action has been taken against him depriving him of his personal liberty, to go before the court and say that he is innocent. That right is given under the expression "without due process of law" or "save in accordance with law". In England the law of the land does not deprive a man of this fundamental and elementary right. All laws that may be made are subject to the relevant principle that no man shall be convicted and no man shall be deprived of his liberty without a chance being given to him to prove that he is innocent. Therefore it must be a law, as I have submitted, which will hear him before it condemns a man.

The only reason which has been advanced in the footnote is that this is more definite and that it finds a place in the Japanese Constitution. As I have already stated, let us not sacrifice the liberty of the subject to prove his innocence, by resorting to the provisions of the Japanese Act and not complete that right of the citizen to be tried-that liberty-by omitting the other provisions of the Japanese Act. I shall be satisfied if all the provisions of the Japanese Constitution find a place here. because the other provisions clearly state that no person can be deprived of his liberty without his being given the chance to go to court and all assistance given to him. I therefore object to the words" except according to procedure established by law." If by any other method which may be said to be definite provision they can ensure that the citizen cannot be condemned without being heard by a court, I shall be satisfied. That is my reason for moving this amendment.

Mr. Vice-President: Amendments Nos. 529 and 531 are disallowed as verbal amendments.

(Amendment No. 533 was not moved.)

We can now proceed with the general discussion on article 15.

Pandit Thakur Dass Bhargava (East Punjab: General): Sir, I sent an amendment No. 525, which I wanted to amend by amendment No. 9 on List No. 1 (Third week). This and amendment No. 528 are the same. The amendment which has been moved by Mr. Karimuddin differs from these in so far as that the word "personal" before the word "liberty" does not appear in his amendment. I am opposed to the amendment of Mr. Karimuddin. The section as it is, with this amendment namely the substitution of the words "without due process of law" for the words "except according to procedure established by law" is the one which I wish to support.

In this connection the first question that arises is what is the meaning of the word 'law'? According to the general connotation of the word, so widely accepted and the connotation which has been given to this word by Austin, law means an Act enacted by the legislatures whereas I submit that when Dicey used his words "law of the land" he meant law in another meaning.

Similarly, when the Japanese Constitution and other Constitutions used this word in the broad sense they meant to convey by the word 'law' universal principles of justice etc.

According to the present section procedure is held sacrosanct whereas the word 'law' really connotes both procedural law as well as substantive law. I have used the word 'law' in the general sense. Though these words "without due process of law" which are sought to be substituted for the words in the section have not been defined anywhere, their meanings and implications should be understood fully. By using these words "without due process of law" we want that the courts may be authorised to go into the question of the substantive law as well as procedural law. When an enactment is enacted, according to the amendment now proposed to be passed by this House, the courts will have the right to go into the question whether a particular law enacted by parliament is just or not, whether it is good or not, whether as a matter of fact it protects the liberties of the people or not. If the Supreme Court comes to the conclusion that it is unconstitutional, that the law is unreasonable or unjust, then in that case the courts will hold the law to be such and that law will not have any further effect.

As regards procedure also, if any legislature takes it into its head to divest itself of the ordinary rights of having a good procedural law in this country, to that extent the court will be entitled to say whether the procedure is just or not. This is within the meaning of the word `law as it is used in this amendment and as it is generally used. The word `law' has also not been defined in this Constitution. For the purpose of article 8 the word `law' has been defined. Otherwise it has not been defined. I would therefore submit that if the words as used in the section remained, namely `procedure established by law', we will have to find out what is the meaning of the word `law'. These words would remain vague and it will result in misconceptions and misconstructions. Therefore, unless and until we understand the meaning of "due process of law" we will not be doing justice to the amendment proposed. I therefore want to suggest that the words "due process of law" without being defined convey to us a sense as used in the American law as opposed to other laws. What will be the effect of this change? To illustrate this I would refer the House to Act XIV of 1908 called the Black Law under which thousands, if not hundreds of thousands of Congressmen were sent to jail. According to Act XIV of 1908 the Government took to themselves the powers of declaring any organisation illegal by the mere fact that they passed a notification to that effect. This Act, when passed, was condemned by the whole of India. But the Government of the day enacted it in the teeth of full opposition. When the non-co-operation movement began it was civil disobedience of this law with which the Congress fought its battle. The Courts could not hold that the notification of the Government was wrong. The courts were not competent to hold that any organisation or association of persons was legal though its objects were legal. The objects of the Congress were peaceful. They wanted to attain self-government but by peaceful and legitimate means. All the same, since the Government had notified, the courts were helpless. This legislation demonstrates the need of the powers of "due process."

Similarly I will give another illustration, and that is Section 26 of the Defence of India Act. We know that the Federal Court held this Section to be illegal and a new Ordinance had to be issued. Unless and until therefore you invest the court with such power and make this Section 15 really justifiable there is no guarantee that we will enjoy the freedoms that the Constitution wants to confer upon us.

The House has already accepted the word "reasonable" in article 13. At least 70 per cent of the Acts which can evolve personal liberty have now come under the jurisdiction of the courts, and the courts are competent to pronounce an opinion on such laws, whether they are reasonable or not. The House is now stopped from adopting another principle. In regard to personal property and life the question is much more important. So far as the question of life and personal liberty are concerned they must be also under the category of subjects which are within the jurisdiction of the courts.

Therefore it is quite necessary that the House should accept this amendment. There are two ways, as suggested by the previous speakers: either you must put all the sections as in the Japanese Constitution, and we should pass many of the amendments tabled by Messrs. Lari and Karimuddin one of which you were pleased to declare carried in the first instance and which was later declared lost. They seek to introduce into the Constitution principles which the legislature will in future be unable to contravene. All those amendments regarding Fundamental Rights will be carried *ipso facto* if this one amendment of "due process" is accepted. Another thing which will be achieved by the acceptance of this one amendment is a recognition in this Constitution of the real genius of the people. In the old days we have heard of seven or eight *Rishis,* all very pious and intelligent people, holding real power in the land. To them, well versed in the *Shastras*, the ministers and the ancient kings went for advice. Those *Rishis* controlled the whole field of administration. This old ideal will practically be achieved if the full bench of the Supreme Court Judges well versed in law and procedure and possessing concentrated wisdom had the final say in regard to peoples' rights.

Mr. Vice-President: The honourable Member's time is up.

Pandit Thakur Dass Bhargava: I have to say many things more, Sir. I know the argument against this amendment is that these words `due process of law' are not certain or clear. But may I know what is the exact meaning of the word `morality' put in this Constitution.

Mr. Vice-President: I ask the indulgence of the honourable Member. I intimated to him twice that he has exhausted his time. I have half a dozen notes from people competent to speak on this point. I am quite certain that it is not the wish of the honourable Member to curtail the time which I can allow them.

Pandit Thakur Dass Bhargava: I do not want to curtail the time of the others.

Mr. Vice-President: Then you may have two minutes more.

Pandit Thakur Dass Bhargava: Thank you, Sir.

Shri Upendranath Barman: (West Bengal: General): May I say a few words at this stage, Sir?

Mr. Vice-President: I am sorry I cannot oblige the honourable Member.

Pandit Thakur Dass Bhargava: As I was saying, Sir, many other words used in this Constitution have an uncertain meaning. The words 'decency' and `morality' have not got a definite meaning.

Then, Sir, it is said this will tend to weaken the administration by the uncertainties which will be imported if this amendment is carried. But, Sir, our liberties will be certain through the particular law which may be reviewed by the court may become uncertain. The administration will not be weakened thereby. I grant that it may probably be that the administration will not have its way. But we want to have a Government which will respect the liberties of the citizens of India. As a matter of fact, if this amendment is carried, it will constitute the bed-rock of our liberties. This will be a *Magna Carta* along with article 13 with the word `reasonable' in it. This is only victory for the judiciary over the autocracy of the legislature. In fact we want two bulwarks for our liberties. One is the Legislature and the other is the judiciary. But even if the legislature is carried away by party spirit and is sometimes panicky the judiciary will save us from the tyranny of the legislature and the executive.

In a democracy, the courts are the ultimate refuge of the citizens for the vindication of their rights and liberties. I want the judiciary to be exalted to its right position of palladium of justice and the people to be secure in their rights and liberties under its protecting wings.

I commend my amendment and beg the House to pass it.

Shri Chimanlal Chakkubhai Shah *[United States of Kathiawar (Saurashtra)]*: Mr. Vice-President, Sir, the right conferred by article 15 is the most fundamental of the Fundamental Rights in this Chapter, because it is the right which relates to life and personal liberty without which all other rights will be meaningless. Therefore, it is necessary that in defining this right, we must make it clear and explicit as to what it is that we want to confer and not put in restrictions upon the exercise of that right which make it useless or nugatory. I therefore support the amendment which says that the words `without due process of law' should be substituted for the words `except in accordance with the procedure established by law.' Sir, the words 'without due process of law' have been taken from the American Constitution and they have come to acquire a particular connotation. That connotation is that in reviewing legislation, the court will have the power to see not only that the procedure is followed, namely, that the warrant is in accordance with law or that the signature and the seal are there, but it has also the power to see that the substantive provisions of law are fair and just and not unreasonable or oppressive or capricious or arbitrary. That means that the judiciary is given power to review legislation. In America that kind of power which has been given to the judiciary undoubtedly led to an amount of conservative outlook on the part of the judiciary and to uncertainly in legislation. But our article is in two respects entirely different from the article in the American Constitution. In the American Constitution, the words are used in connection with life, liberty and property. In this article we have omitted the word 'property', because on account of the use of this word in the American Constitution, there has been a good deal of litigation and uncertainty. There has been practically no litigation and no uncertainty as regards the interpretation of the words "due process of law" as applied to `life' and 'liberty'.

Secondly, Sir, in the word `liberty' that we have used, we have added the word `personal' and made it `personal liberty' to make it clear that this article does not refer to any kind of liberty of contract or anything of that kind, but relates only to life and liberty of person. Therefore, it would be wrong to say that the words `due process of law' are likely to lead to any uncertainty in legislation or unnecessary interference by the judiciary in reviewing legislation.

Sir, in all Federal Constitutions, the judiciary has undoubtedly the power which at times allows it to review legislation. This is inherent in all Federal Constitutions. In England, for example, the judiciary can never say that a law passed by Parliament is unconstitutional. All it can do is to interpret it. But in Federal Constitutions the judiciary has the power to say that a law is unconstitutional. In several articles of this Constitution, we have ourselves provided for this and given express powers to the judiciary to pronounce any law to be unconstitutional or beyond the powers of the legislature. I have no doubt in my mind that this is a very salutary check on the arbitrary exercise of any power by the executive.

Sir, at times it does happen that the executive requires extraordinary powers to deal with extraordinary situations and they can pass emergency laws. The legislature, which is generally controlled by the executive-because it is the majority that forms the executive-gives such powers to the executive in moments of emergency. Therefore, it is but proper that we should give the right to the judiciary to review legislation.

It may be said that the judiciary may, in times of crisis, not be able to appreciate fully the necessities which have required such kind of legislation. But I have no such apprehension. I have no doubt that the judiciary will take into account fully the necessities of a situation which have required the legislature to pass such a law. But it has happened at times that the law is so comprehensive that the individual is deprived of life and liberty without any opportunity of defence. What is the worst that can happen in an article like this if we put in the words `without due process of law'? Some man may escape death or jail if the judiciary takes the view that the law is oppressive. Sir, is it not better that nine guilty men may escape than one innocent man suffers? That is the worst that can happen even if the judiciary takes a wrong view.

But, in these days, the executive is naturally anxious to have more and more powers and it gets them. And we have developed a kind of legislation which is called delegated legislation in which the powers are given to subordinate officers to issue warrants and the like. For example, under the Public Safety Measures Acts, if a Commissioner of Police is satisfied that a particular man is acting against the interests of the State or is dangerous to public security, he could detain the man without trial.

We know it to our cost that even the Commissioner of Police does not look into these matters personally as he is expected to do and signs or issues warrants on the reports of subordinate officials. It is better under such circumstances that there is some checkup on the exercise of such powers if they are arbitrarily used. I therefore fully support the amendment which seeks to substitute the words "without due process of law" in place of the words which have been used in the Article. As Mr.

Mahboob Ali Baig has rightly pointed out, these words are taken from the Japanese Constitution but the Drafting Committee has omitted the other provisions which give meaning to these words. Mr. Baig's amendment which seeks to substitute the words "save in accordance with law", I am afraid, will not serve his own purpose. If he has in mind that the full import of all the provisions of the Japanese Constitution read along with the one which the Drafting Committee has put in, should be brought out here, it is better that he accepts the words, "without due process of law", rather than the words "save in accordance with law" which are taken from the Irish Constitution and which probably have the same meaning as the words put in by the Drafting Committee. I therefore fully support amendment No.528.

Shri Krishna Chandra Sharma (United Provinces. General): Mr. Vice-President, Sir, my amendment No. 523 sought the substitution of the words "without due process of law" for the words "except according to procedure established by law". This article guarantees the personal liberty and life of the citizen. In democratic life, liberty is guaranteed through law. Democracy means nothing except that instead of the rule by an individual, whether a king or a despot, or a multitude, we will have the rule of the law. Sir, the term "without due process of law" has a necessary limitation on the powers of the State, both executive and legislative. The doctrine implied by "without due process of law" has a long history in Anglo-American law. It does not lay down a specific rule of but it implies a fundamental principle of justice. These words have nowhere been defined either in the English Constitution or in the American Constitution but we can find their meaning through reading the various antecedents of this expression. As a matter of fact, it can be traced back to the days of King John when the barons wrung their charter from him, *i.e.*, the *Magna Carta*. The expression "Per Legum Terrea" in the *Magna Carta* have come to mean "without due process of law". Chapter 39 of the Charter says:-

> "No free man shall be taken, or imprisoned, diseased, or outlawed, exiled, or in any way destroyed; nor shall we go upon him, nor send upon him, but by the lawful judgment of his peers or by the law of the land."

These words were used again in 1331, 1351 and 1355. Statute No. 28 during the reign of Edward III says:-

> "No man of what state or condition so ever he be, shall be put out of his lands or tenements, nor taken, nor imprisoned, nor indicated, nor put to death, without he be brought to answer by due process of law".

Sir, in the American Constitution, these words were first used in 1791:-

> "Nor shall any person . . . . . be deprived of life, liberty or property, without due process of law".

What this phrase means is to guarantee a fair trial both in procedure as well as in substance. The procedure should be in accordance with law and should be appealable to the civilised conscience of the community. It also ensures a fair trial in substance, that is to say, that substantive law itself should be just and appealable to the civilised conscience of the community. Sir, various decisions of the American Supreme Court, when analysed, will stress the four fundamental principles that a fair trial must be given, second, the court or agency which takes jurisdiction in the case must be duly authorised by law to such prerogative, third that the defendant must be allowed an opportunity to present his side of the case and fourth that certain assistance including counsel and the confronting of witnesses must be extended. These four fundamental points guarantee a fair trail in substance.

As to social progress, my Friend Pandit Bhargava has already spoken and I need not repeat the argument here; but for your enlightenment I would like to read a judgment which clarifies the position. The judgment runs (from Willoughby on the Constitution of the United States, p.1692):

"Thus, for example, in 1875, in Loan Association *vs.* Topeka the Court said:

> "It must be conceded that there are such rights in every free government beyond the control of the state, a government which recognised no such rights, which held the lives, the liberty and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power is, after all, a despotism.......The theory of our governments, state or municipal, is opposed to the deposit of unlimited power anywhere. The executive, the legislative and the judicial branches of these governments are all of limited and defined powers. There are limitations on such power which grow out of the essential nature of all free governments-implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name. No court, for instance, would hesitate to declare void a statute which enacted that A and B who were husband and wife to each other should be so no longer, but that A should thereafter be the husband of C, and B the wife of D, or which should enact that the homestead now owned by A should henceforth be the property of B."

Sir, with these words I support the amendment.

Shri H. V. Pataskar (Bombay: General): Mr. Vice-President, I have come forward only to take a few minutes of the House for supporting the amendment No. 528 which wants to substitute "except according to procedure established by law" by the words "without due process of law". Already the legal aspect of this matter has been discussed at length in this House, but I want to place it before the House from another point of view. We are, Sir, at the present moment in a state which is going to be a democracy. Now, democracy implies party Government and party Government, in our country, is rather new and we have instances which lead us to think that the party machine at work is likely to prescribe procedures which are going to lead to the nullification of the provisions which we have made in the Fundamental Rights, which are being given to the people. We know from experience that in certain provinces there are already legislations which have been enacted and which prescribe certain procedures for detention, which have come in for criticism by the public in a very vehement manner. I therefore, submit, Sir, that it is very essential from the point of view of the right of personal liberty, that the words "due process of law" should be particularly there. With these words, Sir, I support the amendment and would not like to repeat what has been said in favour of this amendment already.

Shri K. M. Munshi: Mr. Vice-President, Sir, I want to support amendment No. 528 which seeks to incorporate the words "without due process of law" in substitution of the words "except according to procedure established by law". In my humble opinion, if the clause stood as it is, it would have no meaning at all, because if the procedure prescribed by law were not followed by the courts, there would be the appeal court in every case, to set things right. This clause would only have meaning if the courts could examine not merely that the conviction has been according to law or according to proper procedure, but that the procedure as well as the substantive part of the law are such as would be proper and justified by the circumstances of the case. We want to set up a democracy; the House has said it over and over again; and the essence of democracy is that a balance must be struck between individual liberty on the one hand and social control on the other. We must not forget that the majority in a legislature is more anxious to establish social control than to serve individual liberty. Some scheme therefore must be devised to adjust the needs of individual liberty and the demands of social control. Eminent American constitutional lawyers are agreed on the point that no better scheme could have been evolved to strike a balance between the two. Of course, as the House knows, lawyers delight to disagree and there is a certain volume of opinion against it in America, but as pointed out by my honourable Friend, Mr. C. C. Shah, we have made drastic changes in the American clause. The American clause says that no person shall be deprived of his life, liberty or property without due process of law. That clause created great difficulties with regard to laws relating to property. That word has been omitted. The word `liberty' was construed widely so as to cover liberty of contract and that word has been qualified. This clause is now restricted to liberty of the person, that is, nobody can be convicted, sent to jailor be sentenced to death without due process of law. That is the narrow meaning of this clause which is now sought to be incorporated by amendment No. 528.

Now, the question we have to consider, I submit, is only this. What are the implications of this `due process'? Due process' is now confined to personal liberty. This clause would enable the courts to examine not only the procedural part, the jurisdiction of the court, the jurisdiction of the legislature, but also the substantive law. When a law has been passed which entitles Government to take away the personal liberty of an individual, the court will consider whether the law which has been passed is such as is required by the exigencies of the case, and, therefore, as I said, the balance will be struck between individual liberty and the social control. In the result, Governments will have to go to the court of law and justify why a particular measure infringing the personal liberty of the citizen has been imposed. As a matter of fact, the fear that in America the `due process' clause has upset legislative measures, is not correct. I have not got the figures here, but I remember to have read it somewhere in over 90 per cent of the cases on the `due process' clause which have gone to the American courts, action of the legislatures has been upheld. In such matters involving personal liberty Governments had to go before the court and justify the need for passing the legislation under which the person complaining was convicted. In a democracy it is necessary that there should be given an opportunity to the Governments to vindicate the measures that they take. Apart from anything else, it is a wholesome thing that a Government is given an opportunity to justify its action in a court of law.

I know some honourable Members have got a feeling that in view of the emergent conditions in this country this clause may lead to disastrous consequences. With great respect I have not been able to agree with this view Interruption. Take even our Public Safety Acts in the provinces. In view of the condition in the country they would certainly be upheld by the court of law and even if one out of several acts is not upheld, even then, I am sure, nothing is going to happen. Human ingenuity supported by the legislature and assisted by the able lawyers of each province will be sufficient to legislate in such a manner that law and order could be maintained.

Therefore, my submission is that this clause is necessary for this purpose and is not likely to be abused. We have, unfortunately, in this country legislatures with large majorities, facing very severe problems, and naturally, there is a tendency to pass legislation in a hurry which give sweeping powers to the executive and the police. Now, there will be no deterrent if these legislations are not examined by a court of law. For instance, I read the other day that there is going to be a legislation, or there is already a legislation, in one province in India which denies to the accused the assistance of lawyer. How is that going to be checked? In another province, I read that the certificate or report of an executive authority--mind you it is not a Secretary of a Government, but a subordinate executive--is conclusive evidence of a fact. This creates tremendous difficulties for the accused and I think, as I have submitted, there must be some agency in a democracy which strikes a balance between individual liberty and social control.

Our emergency at the moment has perhaps led us to forget that if we do not give that scope to individual liberty, and give it the protection of the courts, we will create a tradition which will ultimately destroy even whatever little of personal liberty which exists in this country. I therefore submit, Sir, that this amendment should be accepted.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. Vice-President, Sir, the debate on this article reveals that there seems to be a leaning on the part of a good number of members in this House in favour of the expression `due process' being retained and not for substituting the expression `procedure established by law', which is the expression suggested by the Drafting Committee in its last stage. I am using the words `in its last stage' because my honourable Friend Mr. Munshi has taken the opposite view.

Sir, at least in justification of the change suggested by the Drafting Committee, I owe it to myself, to my colleagues and the respected Chairman of the Drafting Committee, to say a few words, because, up to the last moment, presumably, the House is open to conviction.

The expression `due process' itself as interpreted by the English Judges connoted merely the due course of legal proceedings according to the rules and forms established for the protection of rights, and a fair trial in a court of justice according to the modes of proceeding applicable to the case. Possibly, if the expression has been understood according to its original content and according to the interpretation of English Judges, there might be no difficulty at all. The expression, however, as developed in the United States Supreme Court, has acquired a different meaning and import in a long course of American judicial decisions. Today, according to Professor Willis, the expression means, what the Supreme Court says what it means in any particular case. It is just possible, some ardent democrats may have a greater faith in the judiciary than in the conscious will expressed through the enactment of a popular legislature. Three gentlemen or five gentlemen, sitting as a court of law, and stating what exactly is due process according to them in any particular case, after listening to long discourses and arguments of briefed counsel on either side, may appeal to certain democrats more than the expressed wishes of the legislature or the action of an executive responsible to the legislature. In the development of the doctrine of `due process', the United States Supreme Court has not adopted a consistent view at all and the decisions are conflicting. One decision very often reversed another decision. I would challenge any member of the Bar with a deep knowledge of the cases in the United States Supreme Court to say that there is anything like uniformity in regard to the interpretation of `due process'. One has only to take the index in the Law Reports Annotated Edition for fifteen years and compare the decisions of one year with the decisions of another year and he will come to the conclusion that it has no definite import. It all depended upon the particular Judges that presided on the occasion. Justice Holmes took a view favourable to social control. There were other Judges of a Tory complexion who took a strong view in favour of individual liberty and private property. There is no sort of uniformity at all in the decisions of the United States

Supreme Court.

Some of my honourable Friends have spoken as if it merely applied to cases of detention and imprisonment. The Minimum Wage Law or a Restraint on Employment have in some cases been regarded as an invasion of personal liberty and freedom, by the United States Supreme Court in its earlier decisions, the theory being that it is an essential part of personal liberty that every person in the world be she a woman, be he a child over fourteen years of age or be he a labourer, has the right to enter into any contract he or she liked and it is not the province of other people to interfere with that liberty. On that ground, in the earlier decisions of the Supreme Court it has been held that the Minimum Wage Laws are invalid as invading personal liberty. In recent times I quite realise, after the New Deal, the swing of the pendulum has been other way. Even there, there has not been any consistency or any uniformity. I hope that if this amendment is carried, in the interpretation of this clause our Supreme Court will not follow American precedence especially in the earlier stages but will mould the interpretation to suit the conditions of India and the progress and well-being of the country. This clause may serve as a great handicap for all social legislation, for the ultimate relationship between employer and lab our, for the protection of children, and for the protection of women. It may prove fairly alright if only the Judges move with the times and bring to bear their wisdom on particular issues. But since the British days we have inherited a kind of faith in lawyers, legal arguments, legal consultations and in courts; I, for my part, having flourished in the law, have no quarrel with those people who believe in the lawyer. In the earlier stages of American history, lawyers ranged themselves on the side of great Trusts and Combines and in favour of Corporations who were in a position to fee them very well, sometimes in the name of personal liberty, sometimes in the name of protection of property. After all the word `personal liberty' has not the same content and meaning as is imported into it by some of our friends who naturally feel very sensitive about people being detained without a proper trial. I equally feel it but that is not the meaning of personal liberty attributed by the American Courts in the context of `due process'. I trust that the House will take into account the various aspects of this question, the future progress of India, the well-being and the security of the States, the necessity of maintaining a minimum of liberty, the need for co-ordinating social control and personal liberty, before coming to a decision. One thing also will have to be taken into account, viz., that the security of the State is far from being so secure as we are imagining at present. Take for example the normal detention cases. I may tell you as a lawyer, I am against the man being detained without his being given an opportunity; but an opportunity is not necessarily given in a court of law, as a result of argument, as a result of evidence, as a result of examination or cross-examination. Today I know in Madras a Special Committee has been appointed consisting of a Judge of the High Court, the Advocate-General of Madras and another person to go into the cases of detention and to find out whether there are proper materials or not. Now all these cases might have to go to Courts of law and possibly it is a good thing for lawyers. Though I am getting old I do not despair of taking part in those contests even in the future.

The support which the amendment has received reveals the great faith which the Legislature and Constitution makers have in the Judiciary of the land. The Drafting Committee in suggesting "procedure" for "due process of law" was possibly guilty of being apprehensive of judicial vagaries in the moulding of law. The Drafting Committee has made the suggestion and it is ultimately for the House to come to the conclusion whether that is correct, taking into consideration the security of the State, the need for the liberty of the individual and the harmony between the two. I am still open to conviction and if other arguments are forthcoming I might be influenced to come to a different conclusion.

Mr. Z. H. Lari: Mr. Vice-President, the last speaker who has spoken on this article has drawn the attention of the House to dangers to the State which are likely to arise if the article as it stands is amended by the amendment No.528 or 530. I have not got that experience which the learned speaker has but with the little knowledge of the working of the Legislatures during the last ten years, I can say that it is necessary not only in the interest of individual liberty but in the interest of proper working of legislatures that such a clause as due process of law clause should find a place in the Constitution. It is open to that speaker at the fag end of his life as a lawyer to have a fling at the profession of law but I can say that assistance of lawyers is absolutely essential to secure justice.

Shri Alladi Krishnaswami Ayyar: On a point of order. I had no fling at the profession of law.

Mr. Z. H. Lari: I stand corrected.

I feel that two things are necessary. We all know that the State, these days, is all-powerful. Its coercive processes extend to the utmost limits but still there is a phase of life which must be above the processes of Executive Government, and that is individual liberty. In America no such word as `personal' existed. There the word liberty alone existed and possibly in that state of things, it was possible to interpret it in such a way as to extend the scope of due process of law to other spheres of life but when the word `personal liberty' has been definitely inserted in the clause, I doubt whether any Court which is conscious of the requirements of a State as well as conscious of the necessities of individual liberty, will be so uncharitable to the interest of the State as to interpret it in a way to thwart the proper working of the State. My friend admitted that in the latter rulings in America itself there has been a recognition of the necessities of the State and the word has been interpreted in such a way as not to obstruct the proper working of the State. My submission would be that in this land our Supreme Court will recognise the limits of individual liberty as well as the necessities of the State and interpret it in such a way as to ensure individual liberty of a man.

Pandit Thakur Dass Bhargava: The Drafting Committee also said so in their note.

Mr. Z. H. Lari: My friend is right; and the only reason which was given by the Drafting Committee of which the honourable Speaker who preceded me was a member also, was that the words `due process of law' is not specific and the word as was used in the Japanese Constitution is more specific. No doubt the words as they stand in the Japanese Constitution are specific because the procedure is indicated and definitely laid down there. What is the essence of the due process of law? I think they are two. First is, enquiry before you condemn a man. And then there is judgment after trial. If any procedure which is adopted by any legislature provides for the hearing of a person who is suspected or is accused, and then after a proper hearing, enables him to get the benefit of a judgment based on that enquiry, my submission is, that the requirements of the due process of law are complied with. And I would beg of the House to consider whether in any country, however emergent and however unstable its conditions, is it necessary or is it not necessary that every individual citizen should feel that he will be heard before he is condemned, and that he will be dealt with in the light of the judgment based on the enquiries and not be subject to arbitrary detention? The House will also remember that lately there was the question of drafting human rights, and already such a draft has been prepared. And one of the clauses therein is that nobody should be subjected to arbitrary detention. Now, what is the way to prevent arbitrary detention? If you have the words in this clause, as they stand at present, namely, `procedure established by law' it means that the legislature is all-powerful and whatever procedure is deemed proper under the circumstances will be binding upon the courts. But, Sir, there are certain procedures which are the inherent rights of man and the should not be infringed upon by any legislative Assembly. Men as well as assemblies, or any mass of people are subject to passing emotions, and you will realise that in the present state of things, particularly keeping in view the constitution that we are going to have, namely, a parliamentary government, the legislature is controlled by a Cabinet, which means by the executive. You have also the provisions about having ordinances which means that the cabinet--a body consisting of eight to ten persons--decide upon a particular course of action, issue as an ordinance, and, the legislature then has to approve of it, otherwise it would amount to a vote of censure. Therefore the legislature in the last analysis means only the cabinet or the executive and nothing but the executive. The question before us is whether you are going to give such powers to the Executive which can infringe even the elementary rights of a person, the elementary rights of personal liberty, or whether you should not put certain checks on the executive which can be done only if you accept the amendment which has been moved by a Congress member, *i.e.*, amendment No. 528. My amendment No. 530 is exactly similar.

My friend who spoke on the other side gave instances of legislation in the British period, of rights which were curtailed, and of innocent persons jailed. But I submit with all humility, that every legislature and every government is liable to do such things which the British Government did. You cannot excuse excess of law simply because those excesses are committed by a popularly elected legislature. That is why there are two domains, one is the domain of individual liberty, and the other domain is where the State comes in to regulate our life. What do you leave to the State? You leave to the State everything except personal liberty. As to stability of the State my submission would be that if there are classes or communities which are prone to violence, there are sufficient provisions in this Constitution to deal with them--they are in article 13.There, the State can come in and curtail the liberty of such persons, and even nullify their activities. What can an individual do? If there are parties which have got objectives which run counter to the stability of the State, you have already got enough provisions where-by the State can declare those bodies unlawful. But this particular clause deals with a very small sphere of action, namely, personal liberty. My submission is that our State is not so weak as to be subverted by the activities of a particular individual, and mark that, that individual will not have the liberty to do everything. He can be brought before a court. He can be judged in a court of law; no doubt, he will have the assistance of counsel and the Government will have the obligation to produce evidence against him. Does this amount to curtailing the powers of the State? Does this amount to subverting the State? Does it amount to annihilating the State? With all respect to the previous speaker, I feel he took a very uncharitable view of the citizens of our State, and took a still more uncharitable view of the strength of the State which will emerge after the promulgation of the new Constitution. No doubt, we have to go by realities. We have to take into consideration stern facts. But I may remind the House of one thing. In America, this clause is accepted and is reproduced in the Japanese Constitution. You know the Americans have been responsible for framing the Japanese Constitution. A constitution for a fascist country, a country where individuals are prone to violence--they wanted to overthrow the peace of the world--when they were drafting a constitution for such a country, composed of such citizens, they laid down clauses 31, 32, 33 and 34 which say that nobody shall be denied access to courts, nobody shall be arrested unless causes are shown against him, and nobody shall be denied the privilege of the assistance of counsel. May I say that if the framers of this latest constitution, based on experience and knowing the nature of the people living in Japan, who are not a very peace-loving people as was demonstrated in the last war, have accepted these provisions, that means that these provisions have stood the test of time and have safeguarded the liberty of the individual and also guaranteed the integrity of the state. There are two things by which we have to go. One is experience of others. No doubt, every clause can be criticised in one way or other. But we have to be guided by experience. Here is the experience of other countries, and this has shown that the words `due process of law' can exist without jeopardising the existence of the State. Secondly, we know that not only here, but throughout the world every assembly is likely to misuse its power. It is bound to happen. Power corrupts. We should profit by the experience of other countries and by what has been observed for centuries. Or should we go by the *ipse dixit* of X, Y, Z who says that there seems to be some germ of disruption in this clause? My submission is that it is only making a bogey out of nothing. We should not be led away by this bogey into accepting this clause. If this clause is accepted, then the whole Constitution becomes lifeless. The article, as it stands, is lifeless and it makes also the whole Constitution lifeless. Unless you accept this amendment, you would not earn the gratitude of future generations. Therefore, Sir, I pray that this motion which has been supported by several members should be accepted.

With these words, Sir, I support the amendment.

Mr. Vice President: The House stands adjourned till 10A.M. to-morrow.

The Constituent Assembly then adjourned till ten of the Clock on Tuesday the 7th December, 1948.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS)- VOLUME VII

Tuesday, the 7th December, 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

DRAFT CONSTITUTION -*(Contd.)*

Article 15 -*Contd.*

Mr. Vice-President (Dr. H. C. Mookherjee) : We can now resume general discussion on article 15.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, May I request you to allow this matter to stand over for a little while?

Mr. Vice-President : Is that the wish of the House?

Honourable Members : Yes.

Article 20

Mr. Vice-President : Then we can go to the next article, that is article 20.

The motion before the House is:

"That article 20 form part of the Constitution."

I have got a series of amendments which I shall read over. Amendment No. 613 is disallowed as it has the effect of a negative vote. Nos. 614 and 616 are almost identical; No. 614 may be moved.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in the beginning of article 20, the words 'Subject to public order, morality and health,' be inserted."

Sir, it was just an omission. Honourable Members will see that these words also govern article 19; as a matter of fact they should also have governed article 20 because it is not the purpose to give absolute rights in these matters relating to religion. The State may reserve to itself the right to regulate all these institutions and their affairs whenever public order, morality or health require it.

Mr. Vice-President : I can put amendment No. 616 to the vote if it is to be pressed. Has any Member anything to say on the matter?

(Amendment No. 616 was not moved.)

Mr. Vice-President : There is, I understand, an amendment to amendment No. 614 in List No. VI. Is that amendment to amendment being moved?

Mr. Naziruddin Ahmad (West Bengal : Muslim): Yes, Sir, I move:

"That for amendment No. 614 of the List of Amendments, the following be substituted namely:--

That article 20 be numbered as clause (1) of that article and the following new clause be added at the end, namely:--

'(2) Nothing in clause (1) of this article shall affect the operation of any existing law or prevent the State from making any law for ensuring public order, public morality and public health.'"

Sir, the amendment moved by Dr. Ambedkar just now is also to the same effect. I should think that instead of the expression "subject to public order, morality and health" this expression would be better. The expression "ensuring public order etc.," is perhaps better than "subject to public order etc." This type of draftsmanship has been adopted in other places in the Constitution.

(Amendments Nos. 15 and 16 in List I and Nos. 615 and 617 were not moved.)

Shri Lokanath Misra (Orissa : General) : Sir, I move:

"That in clause (a) of article 20, after the word 'maintain' the words `manage and administer' be inserted."

One who has a right to establish and maintain an institution for religious and charitable purposes ought also to have the right, unless such institutions offend against public order and morality or any established law, to manage and administer the same. Otherwise, there will be difficulty.

Syed Abdur Rouf (Assam : Muslim) : Sir, I beg to move:

"That in clause (a) of article 20, for the words 'religious and charitable purposes', the words `religious, charitable and educational purposes' be substituted."

We are dealing here with a subject which empowers religious denominations to have the right to establish and maintain institutions for religious and charitable purposes only. Religious education is as important as religion itself. Without religious education the charitable purposes or religious purposes would lose all meaning. Therefore, I hope my amendment would be accepted by the House.

(Amendments Nos. 17 of list 1, 620 and 622 were not moved.)

Mr. Naziruddin Ahmad : Sir, I beg to move:

"That in clause (c) of article 20, for the words `and immovable property' the words `immovable and incorporeal property' be substituted."

Clause (c) provides for acquisition of movable and immovable property. It does not mention incorporeal property. Copyright is incorporeal property. It is neither movable nor immovable. The amendment would perhaps fill in a lacuna.

(Amendments Nos. 623 to 625 were not moved.)

Mr. Vice-President : Article 20 is for general discussion.

Shri Jaspat Roy Kapoor : (United Provinces : General) : Mr. Vice-President, Sir, while I accord my support to article 20, I must confess that I do not feel happy over the phraseology of it or the scope of it. I very much wish that in clause (a) thereof, the words `and charitable', were deleted. The article then should have read:

"Every religious denomination or any section thereof shall have the right: (a) establish and maintain institutions for religious purposes." Sir having conceded the right of free profession of religion and propagation of religion, surely, it is a necessary corollary that the right to establish and maintain religious institutions should be also conceded. But to concede it as a fundamental right that any religious denomination or section thereof can maintain a charitable institution exclusively for its own benefit and deny its benefit to any other section of society is certainly repugnant to the idea of fraternity and common nationality.

Let us clearly understand what the implications, the mischievous implications I should say, of this article are. It means that I, as a member of the Hindu religious community or even as a member of a section of that community called Khatris, have the right, derive the right under this article 20, to establish say *piao* or place where water is served to all. Under this article. I will have it as a fundamental right to establish a *piao* and serve therein water only to the Khatris or to other caste Hindus and not to other sections of the Hindu community, much less to Muslims or Christians. This means that there can be a Christian, hospital where only Christians may be admitted and a non-Christian, however badly he might need medical service and even if he were lying at the door of the Christian hospital dying there, may be refused admission in the Christian hospital. It means that the upper class Hindus shall have it as a fundamental right to establish a *piao*, refusing at the same time water to members of the Scheduled castes. It means, Sir, that the Muslims in a Muslim `sabil' may impose restrictions for the service of water to non-Muslims. I have been always told that serving free water to all without distinction of caste or creed is a very religious act according to Islamic law. I wonder if my Muslim friends want that they should be conceded this as a fundamental right. I wonder if my depressed or Scheduled caste friends would like that the upper caste Hindus should have this as a fundamental right that they can establish a *piao* where members of the Scheduled castes shall be denied water. I am sure neither my Muslim friends nor my Scheduled caste friends want to concede this as a fundamental right.

One of my Christian friends, Sir, for whom I have very great respect, and I may also say, very great affection-he may not be knowing it--told me the other day that a particular section of the Christians would like to have a hospital of their own where at the time of their death or at their last moments they may get the service of Christian priests. Sir, it is not my intention that they should not have this privilege and facility. They can have this privilege and facility not only in their own hospitals but in every hospital in the country. The question is not whether they should have this facility in their own hospital or in other hospitals; but it is whether it should be open to a Christian hospital to say that no non-Christians shall be allowed entry therein. I am not a Christian; but I have very great respect for the Christian religion, and I make bold to say that such an act on the part of any Christian management would certainly be a non-Christian act. Why then, Sir, should such a right be conceded as a fundamental right?

Our society already stands disunited today. There are so many castes and creeds and communities in it. We have been tolerating these communal institutions and we may have to tolerate them for sometime more. The deletion of the words `and charitable', let there be no mistake about it, will not take away the existing right or the existing concession. This is not a right. This is rather a concession to the weakness of the society. So, let this concession continue until society as a whole voluntarily realises that this is something which is against the interests of the country as a whole, something which is against the unity of the Nation and something which is against the idea of fraternity and brotherhood. Until Society voluntarily realises it, let the concession remain. But the question is, must this right or concession hereafter be recognised by a statutory law, and not only *recognised* as a right, but be granted also the sanctity, the glory and the dignity of fundamental right?

I would appeal to the honourable Members to realise the grave implications of the existence of the words `and charitable'. I will quote an instance from my own place which may perhaps bring home to honourable Members the gravity of the situation that might arise after we have passed the present article in its present form. In my place, a number of years ago, an upper class Hindu established a *piao* in a particular locality and service of water therein to the Scheduled castes was prohibited. This led to great resentment amongst us, particularly amongst Congressmen. They approached the orthodox section of the Hindu community and entreated them to remove this restriction. The orthodox people refused to agree. Ultimately, as a result thereof, there was a communal riot. Thereafter, partly by our appeal and partly by pressure, we could make them withdraw those restrictions. But, Sir, if the Constituent Assembly includes in the list of Fundamental Rights this very restriction or right of exclusion as a fundamental right, these orthodox people will fling this sacred book of our Constitution at our face and say: "How foolishly you are talking after giving us the right to impose such restrictions in respect of our *piao* ".

The highest body in the land, the sovereign constitution making body of the land having conceded it as a fundamental right, what business have you now to tell us that we are in the wrong and that we should throw open our *piaos* to all sections of the Hindu community? Therefore, Sir, I would respectfully appeal to this House to agree to delete these words.

I am told, Sir, that the retention of these words is in the interests of the minority communities. I fail to see how it is in the interests of any minority community. I fail to see how it is in the interests of even the majority community. The minority communities, it will be readily conceded, are not so rich as the majority community. Probably all the minorities put together are not so rich as the majority communities. So the majority community, if it so wishes, can establish charitable institutions in much larger numbers than the minority communities and if such majority charitable institutions restrict their use, their benefit, to the members of the majority community, surely it is the minority communities who will suffer and not the majority community, though the majority may have this thing as a black spot on their face; but that is another thing. I would, therefore, appeal to the members of the minority communities here to agree to the deletion of these words. If they agree to the deletion of these words, I am sure the House will unanimously agree to delete these words and improve this article. If they do not agree to this, we must accept this article as it stands as we must not do anything which is not agreeable and acceptable to them. With these words, Sir, I support article 20, not of course with any great pleasure but with some regret and disappointment, making a last minute appeal to the House to agree to the deletion of these words. If need be, Sir, I would appeal to my honourable Friend, Dr. Ambedkar, to postpone the final disposal of this clause and consult members of the minority communities whose champion he undoubtedly is whether they are agreeable to the deletion of these words and then amend the article accordingly.

One more point, Sir, one more reason for suggesting the deletion of these words, though this may not be of any great strength. Sir, at the last moment I am urging this poor argument because it does sometimes happen that when strong arguments fail, weak and poor arguments prevail. The heading of this sub-chapter is "Rights Relating to Religion" and surely, Sir, these words "and charitable" do not properly fit in this chapter at all. If for no other reason, at least on the grounds of technicality, I would appeal to my honourable Friend, Dr. Ambedkar, to agree to the deletion of these words. With these words. Sir, I support article 20.

Mr. Tajamul Husain (Bihar : Muslim) : Mr. Vice-President, Sir, I had no intention of speaking on this article but I find that my honourable Friends who have just spoken have been appealing to the minorities. I want to tell the House, Sir, that there is no minority in this country. I do not consider myself a minority. In a secular State, there is no such thing as minority. I have got the same rights, status and obligations as anybody else. I wish those who consider themselves as the majority community would forget that there is any minority today in this country. (An honourable member: Hear, hear.) Now, Sir, with regard to article 20, as far as I understood, my honourable Friend the last speaker wants clause (a) to be *deleted*. I will just read clause (a) of article 20:--

> "Every religious denomination or any section thereof shall have the right-
>
> (a) to establish and maintain institutions for religious and charitable purposes."

Now, Sir, this article gives the right to everybody-it does not matter to what religion he belongs or what religion he professes-to have his own private religious institutions if he so wants. If a person has got money and at the time of his death he wants to make a will and dedicate his property to some charitable purpose or religious purpose of a private nature, I do not think, Sir, that people should object to it. After all, as I have said already, religion is a private matter between the individual and his Creator, and if I, Sir, wish that my property should be utilised for a particular purpose after my death, I see no reason why the State should interfere with it. It is not a matter of public interest. After all it is a private individual who wishes that his religion should be observed in a particular manner.

Kazi Syed Karimuddin (C. P. and Berar: Muslim): What does the honourable Member have in his mind, a private or public institution?

Mr. Tajamul Husain:

"Every religious denomination or any section thereof shall have the right---

(a) to establish and maintain institutions for religious and charitable purposes---

These are the exact words in the article. I want these words to remain where they are. I do not want these words to be deleted.

The Honourable Dr. B. R. Ambedkar : I have nothing to say.

Mr. Vice-President : I will now put the amendments, one by one, to vote.

The question is:

"That in the beginning of article 20, the words "Subject to public order, morality and health," be inserted."

The amendment was adopted.

Mr. Vice-President : The question is:

"That article 20 be numbered as clause (1) of that article and the following new clause be added at the end, namely:-

'(2) Nothing in clause (1) of this article shall affect the operation of any existing law or prevent the State from making any law for ensuring public order, public morality and public health.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (a) of article 20, after the word "maintain" the words 'manage and administer' be inserted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (a) of article 20, for the words 'religious and charitable purposes' the words `religious, charitable and educational purposes' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (c) of article 20, for the words 'and immovable property' the words `immovable and incorporeal property' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

That article 20, as amended, be adopted.

The motion was adopted.

Article 20, as amended, was added to the Constitution

New Article 20-A

Mr. Vice-President : Now we come to amendment No. 626 by Mr. Mahboob Ali Baig. I disallow this because two similar amendments have been rejected by this House. These two amendments are No. 612 and No. 440. We now pass on to article 21.

Article 21

Mr. Vice-President : We shall consider the amendments one by one.

Amendment No. 627 is out of order as it has the effect of a negative vote.

(Amendments Nos. 628, 629, 630, 634, and 631 were not moved.)

Amendment No. 632. The first part of this amendment standing in the name of Syed Abdur Rouf is disallowed as being nothing but a verbal amendment. So far as the second part is concerned, I can allow it to be moved.

Syed Abdur Rouf : Sir, I beg to move:

"That in article 21, after the word `which' the words 'wholly or partly' be inserted."

If my amendment is accepted, Sir, the article will read like this: "No person may be compelled to pay any taxes, the proceeds of which wholly or partly are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination." If my amendment is not accepted, a person may be compelled to pay taxes, the proceeds of which will partly be appropriated for religious purposes. This is certainly not desirable, and I think that unless my amendment is accepted, the very intention of this article will be frustrated. Therefore, Sir, I hope that my amendment will be accepted by the House.

Mr. Naziruddin Ahmad : Mr. Vice-President, Sir, I beg to move:

"That in article 21, for the words `the proceeds of which are' the words `on any income which is' be substituted."

Sir, the purpose of the previous amendment will be served by my amendment and they must be considered together. The article says "No person may be compelled to pay any taxes the proceeds of which etc." If my amendment is accepted, it would read like this: "No person may be compelled to pay any taxes on any income etc." Sir, taxes are paid not on the proceeds, but on the income. Proceeds rather imply the gross receipts. Taxes do not apply to proceeds, but really to income. In fact, there is the further limitation of this `proceeds' which are specifically appropriated for payment of the expenses for the promotion or maintenance of any particular religious or charitable denomination. My point is that you do not appropriate the *gross proceeds* of any undertaking or any property to any religious or charitable denomination. The reason is that what you appropriate for religion or religious denomination is the income, that is, the gross receipts *minus* collection expenses and other things. I submit, Sir, that the word `income' is the more appropriate word, and if this is accepted, the difficulty pointed by Mr. Syed Abdur Rouf, while moving his amendment No. 632, will also be met. In fact, he and I felt that there is some difficulty in the context and the amendments are directed towards the same purpose.

(Amendments nos. 635 and 636 were not moved.)

Mr. Vice-President : The article is now open for general discussion.

Shri Guptanath Singh (Bihar : General): *[Mr. Vice-President, I am surprised at the fact that today we are going to perpetuate by article 21 the innumerable atrocities that have been perpetrated in India in the name of religion. It states that the property, which a person holds in the name of religious institution, would be exempted from all taxation. I hold that the property in India which stands in the name of some religion or some religious institutions such as temples, mosques and churches, is extremely detrimental to the interests of the country. That property is of no use to the Society. I would like that in our Secular State such type of folly be ended once for all in our country. The State is above all gods. It is the God of gods. I would say that a State being the representative of the people, is God himself. Therefore it should certainly have the right of taxation every type of property. Therefore, the property held in the name of religion and by religious institutions should certainly be taxed. I fear that if this article is not deleted from the Constitution, the majority of capitalists and Zamindars will try to donate their property for the advancement of religion and posing as the champions of religion would continue to perpetrate high handedness in the name of religion. Our state will become bankrupt as a consequence of the drying up of the source of taxation. I, therefore, pray that we should not make this constitution in such a way as to benefit only the Mullas, the Pandits and the Christian priests. I do not think I have any thing more to add what I have already said in this connection.]

Shri M. Ananthasayanam Ayyangar (Madras : General): Sir, I oppose both the amendments. The article says that no tax shall be imposed the proceeds of which will be specifically ear-marked for supporting any religious denomination. Syed Abdur Rouf's amendment desires that we should use the words "wholly or partly". I believe the whole includes the part, and therefore, that amendment is unnecessary. The other amendment moved by Mr. Naziruddin Ahmad (amendment No. 633) absolutely is inconsistent with the object of the article. The article says that unlike in the past where particular kings imposed a kind of tax to give importance to the religion which they professed, the article is intended to see that no such tax is imposed in any name or form, the proceeds of which will be ear-marked for encouraging any particular denomination or sect.

Mr. Naziruddin Ahmad, on the other hand, wants by his amendment to exempt the income of all temples and religious endowments. This has no bearing at all to the matter on hand. What article 21 requires is that no tax shall be imposed by the State the proceeds of which are to be appropriated for the maintenance of any particular religious denomination. I request that the article may be allowed to stand as it is. In the past we have had various Kings belonging to various denominations levying taxes in various shapes and forms. The Muhammadan Kings recovered a particular kind of tax for supproting Mosques. The Christians did not do so in this country. The ancient Hindu Kings collected a cess called the Tiruppani cess for supporting a particular temple or temples in my part of the country. In a secular State where the State is expected to view all denominations in the same light, and not give encouragement to any one particular denomination at the expense of others, this provision is absolutely necessary. This is part and parcel of the Charter of liberty and religious freedom to see that no particular denomination is given any advantage over another denomination. This article is very important and it safeguards the interests of all minorities and religious pursuits. I therefore, appeal to the members who have moved these amendments not to press them and to accept the article as it stands.

The Honourable Dr. B. R. Ambedkar : I do not accept amendment No. 632 or amendment No. 633.

Shri H. J. Khandekar : (C. P. and Berar : General) : Sir, I want to speak.

Mr. Vice-President : I am afraid it is too late. I shall now put the amendments to the vote.

The question is:

"That in article 21, after the word 'which' the words 'wholly or partly' be inserted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in article 21, for the words 'the proceeds of which are' the words 'on any income which is' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That article 21 stand part of the Constitution."

The motion was adopted.

Article 21 was added to the Constitution.

Article 22

Mr. Vice-President : The motion before the House is:

"That article 22 form part of the Constitution."

> 'The first amendment is No. 637. It is out of order as it has the effect of a negative vote. Amendment No. 638, first part, is disallowed as it has the effect of a negative vote. Amendment No. 638, second part may be moved.'

(Amendments Nos. 638 and 639 were not moved.)

Amendment No. 640. You can move only one alternative.

Mr. Mohamed Ismail Sahib (Madras : Muslim): I shall move the first alternative, Sir.

Sir, I beg to move:

"That for article 22, the following be substituted:

'22. No person attending an educational institution maintained, aided or recognised by the State shall be required to take part in any religious instruction in such institution without the consent of such person if he or she is a major or without the consent of the respective parent or guardian if he or she is a minor.' "

Sir, article 22 in the Draft Constitution as it stands puts a taboo on all religious instruction being given in State-aided schools or State educational institutions. It is not necessary for a secular State to ban religious education in State institutions. Sir, it will not be in contravention of the neutrality or the secular nature of the State to impart religious instruction. It will be going against the spirit of the Secular State if the State compels the students or pupils to study a religion to which they do not belong. But, if the pupils or their parents want that religious instruction should be given in the institutions in their own religion, then, it is not going against the secular nature of the State and the State will not be violating the neutrality which it has avowedly taken in the matter of religion. My amendment purports to make a leeway in case religious instruction is required to be given in the schools; it puts the matter in a negative form. It does not say that religious instruction must be imparted at all costs in education institutions; it only says, no compulsion shall be put upon anybody to study in any school, a religion, to which he or she does not belong. Therefore, my amendment is quite harmless and it does not go in any way against the spirit of the Constitution.

Sir, the necessity of imparting religious instruction has been recognised in many countries which are non-religious in nature. They have made religious instruction even compulsory, that is, compulsory with regard to those people who want such instruction to be given to the children in the religion to which they belong. They have not thought it fit to ban religion altogether from their Secular State. Therefore, I hold that we shall not be doing anything in violation of the secular nature of our State if we do not ban religious instruction altogether. As my amendment proposes, we shall leave the matter to the future, to the Parliament. According to my amendment, we are not saying anything now positively about religious instructions: we are only saying, no body shall be compelled to have religious instructions in a religion to which he does not belong. Whether to give religious instructions or not may be left to Parliament. According to my amendment, that is my proposal, Sir.

Prof. Shibban Lal Saksena (United Provinces : General) : Mr. Vice-President, Sir, the amendment which stands in my name is further sought to be amended by me in amendment No.19 of List I. I will therefore formally move the amendment as it is. The amendment which I had originally given is this--

"That for article 22, the following be substituted:-

'22. The State shall not compel anyone to have religious instruction in a religion not his own in schools against his wishes, but the State shall endeavour to develop religious tolerance and morality among its citizens by providing suitable courses in various religions in schools.' "

To this, Sir, I have given notice of an amendment No. 19 in List I which says--

"That clauses (1) and (3) of article 22 be deleted."

I find that deletion of clause (1) is not accepted by Dr. Ambedkar but I would like to say what I really want to say on this.

Mr. Vice-President : What about amendment No. 20?

Prof. Shibban Lal Saksena : I am not moving it. This gives freedom to impart religious instructions in certain educational institutions outside its working hours. Now, Sir, what is really intended is this, that no minority community shall be compelled to have religious instruction in a religion not his own. That is the real purpose. But although I fully appreciate the purpose, I find that this clause is worded in too general terms and it will preclude the majority community from even imparting any religious instruction to their children because of the minorities. While minorities should not be compelled to have religious instructions against their wishes, they should be provided facilities for having their religious education if the number of their children is sufficient. It should not be forbidden to provide religious education by the State. Now, after partition of this country, about 30 to 33 crores will be the majority community and if these people want that their children should have education in their religion, they will not be able to have it if this article is passed. This is not fair. What I want is that they should be enabled to have instruction in their religion provided the same facilities they are prepared to afford to children of other denominations, if the number is sufficiently large. This is the second alternative of Mr. Mohd. Ismail's amendment but he has moved the first alternative. The second was a good one. This clause as it stands will really preclude the majority from giving religious education to their children. For example the District Board in Gorakhpur will not be able to teach Gita to children in the schools. I think this should not be so. These big scriptures of the world are really meant to develop the morality and tolerance and they should be taught and I do not wish that anything in the Fundamental Rights should forbid this. I discussed this with Dr. Ambedkar and I have said that clauses (1) and (3) should be deleted, so that this would prevent anybody from forcing any instructions against their wishes, but it would not have precluded the State from imparting instruction in religion to the children of various denominations if the number was sufficient. Clause (3) is absolutely useless. It only says--

"Nothing in this article shall prevent any community or denomination from providing religious instruction for pupils of that community or denomination in an educational institution outside its working hours."

But I want that clause (1) also should be deleted because in that case it will be possible for the State to impart instruction in religion, in Gita, in Sermon on the Mount etc., to the children in the schools but not force this instruction on anybody against his wishes. So I want that only clause (2) should remain and it should be permissible to the State to give instruction in religion to children according to their desire and choice and if their guardians permit. This is what I wish but if it is not acceptable. I am not insisting on the deletion of the first part. But clause (3) should be deleted. But I would request Dr. Ambedkar to see that the clause does not forbid the institutions in the State from giving religious instruction. This clause is too wide and should be redrafted to include this.

Mr. Vice-President : Amendment Nos. 642 and 647 are of similar import and should be considered together. No. 642 may be moved.

(Amendment No. 642 was not moved.)

Amendment No. 647--Prof. K. T. Shah.

Prof. K. T. Shah (Bihar : General): Sir, I beg to move-

"That in clause (1) of article 22, after the words "in any educational institution wholly" the words "or partly" be added."

Sir, the clause as amended would be thus---

"No religious instruction shall be provided by the State in any educational institution wholly or partly maintained out of State funds;".

Sir, with all the goodwill in the world I cannot understand the reason for this particular wording that the authors of the original clause have adopted. Their stressing the word `wholly' is, in my eyes, very intriguing. If they had not said `wholly' and simply stated `maintained out of public funds' one could have understood. But if they say that `religious instruction is to be provided in any institution completely, or wholly maintained out of State funds', then I begin to question what could conceivably be the intention of the Draftsmen in putting forward these particular words. Is it the intention of the Draftsmen, that if every single pie of expenditure in connection with a given institution is met exclusively out of State funds, then, and then only, should religious instruction be prohibited there?

An Honourable Member : Yes.

Prof. K. T. Shah: If that is your intention, as somebody I hear says, then I am afraid it is impossible to agree; and I venture to submit that the principle enunciated by the opening words would be strangely belied by that wording. If, for instance, there are in the educational institution some scholarships which come from private endowments, so that the total bill is met as to 99 per cent out of State funds, and as to 1 per cent out of these endowments, then it could be said that it is not wholly maintained by the State; and, on the strength of that 1 percent of endowments or grant or donation, you will have to open the door to the provision of religious instruction. By such religious instruction is, of course, generally meant Denominational Instruction, in a public institution.

Surely that could not have been and that should not be allowed to be the meaning and interpretation of a Section like this. All institutions, or most of them, subject to the exception that is added by way of proviso--to which I will come later in another amendment--all institutions or most of them are maintained wholly or partly out of public revenues, whether they are in the form of the entire bill footed by the State, or in the shape of some grants, or in the shape of fees, etc. received from the public by regular charge: and, as such, no public institutions, as I understand it, would be free from an incursion of any particular Religious Instruction of a denomination-- and even, may I say of a controversial character.

If you permit one, you will make it impossible to refuse admission to another. That means that in a public institution, any number or any section of people who are being educated there, if only one donor can be found for each to endow a particular scholarship, or to provide for some particular item of expenditure, let us say, library grant, or some item of laboratory equipment, or some small donation for general purposes, and couple it with the condition that Religious Instruction shall be provided therein for that particular sect to which the donor belongs, then I am afraid, your educational institutions will be converted into a menagerie of faiths. There will be unexpected conflicts and controversies; and the very evil which you are out to stop by the opening words, which seem to me to enshrine a sound principle, would be all the more encouraged and supported so to say, by public countenance.

That is a state of things, which I, for one, thought must have been farthest from the intention of the draftsmen. But it seems to me, from the voice I heard a minute ago, that it is not quite as far from the intentions of the draftsmen, as in my innocence I had assumed, and it appears there is some sort of ulterior motive or *arriere pensee* which has guided the draftsmen in introducing the present wording.

Speaking for myself, if not for any considerable section of the House, I would like entirely to dissociate the State in India from any such interpretation as this. If you desire to exclude, as I think is but right, Religious Instruction from public institutions maintained from common funds, whether they be the entire expenditure of such institution, or whether they be a part only by way of a grant or by way of fees, or scholarships, or endowments of any kind met by the State out of public revenues, then it would be absurd,--I think it would be inconsistent with the basic principle of this constitution to permit Religious Instruction on the excuse that part of the expenditure is met by other than State funds.

The term "state funds" itself is very suspicious in my eyes. What exactly is meant by State funds? The draft, as I have complained more than once, is peculiarly defective in that there is a woeful lack of any definitions, so that words can be used in any sense that the occasion may require, or the vagaries of the interpreter might suggest. In the absence of any definition, specially in this connection, one is entitled to put whatever interpretation seems to one to be reasonable, to *have been probably intended by the draftsmen*. And in the light of that assumption, I feel that this clause needs amendment by the addition of the words "*wholly or partly* maintained from public revenues or State funds."

I would not object to the words "state funds" as such so much as I would object to the omission of the word "partly", which I think, must be inserted if this basic principle, if our governing ideal, is to be fully carried out, namely, that no Religious Instruction, which is inevitably of a Denominational character, should be imparted in any public educational institution maintained wholly or partly out of public funds.

I think, Sir, that the intrinsic commonsense, the intrinsic honesty and clearness of this amendment, are so great that no objection would be raised to it, and I trust I would not be disappointed in that respect.

Mr. Vice-President : Amendment No. 643, standing in the name of Sardar Hukam

Singh.

Sardar Hukam Singh (East Punjab : Sikh): Sir, I beg to move--

"That in clause (1) of article 22, after the words "shall be provided" the words "or permitted" be inserted."

Sir, I am conscious that the definition of the words "the State" as given in article 7 is very comprehensive and it include all authorities whether of the Centre or of the States, and it does include local bodies as well. Even then, I feel that the object would not be fulfilled, if we do not add these words "or permitted" as I have proposed. We are going to build a secular State. The Object of this article, so far as I have understood it, is to prohibit all religious instructions in those institutions which are maintained by the State. If the article were to stand as it is, then it would mean that the State would not provide or I might say, any authority would not provide any religious instruction in such institutions. I presume the object is not economic; we are not safeguarding against the State spending funds on imparting religious instructions, but we are providing, rather, against imparting religious education in these institutions. And in that case, our object cannot be served unless we definitely prohibit that in these institutions. Even if no provision is made for the imparting of such religious education, it should also not be permitted. I may say that the staff might take it into its head though the State has not made any provision, the imparting of such instruction, and might start imparting such religious instructions; or a particular teacher, say, might begin in his class the imparting of such instructions. Then, so far as the article stands, it would not be offended against by the action of the teacher or the staff. That object can only be achieved if we definitely ban the imparting of such instructions, when we are making the State a secular one. Therefore, I move that after the words "shall be provided", the words "or permitted" should be added, so that there would be no chance for such religious instruction being imparted in any case, institutions that are to be controlled and subsidised by the State.

Mr. Vice-President: Amendment No. 644, standing in the name of Sardar Bhopinder Singh Man.

Sardar Bhopinder Singh Man (East Punjab : Sikh) : Mr. Vice-President, Sir, I beg to move:

"That in clause (1) of article 22, the word "educational" be omitted;"

and allow the sub-clause to run as follows:-

"No religious instruction shall be provided by the State in any institution wholly maintained out of State funds:"

and thus keep up the strict neutrality of the State so far as religious matters are concerned, and to maintain the secular character of the State. Sir, I, as a member of the minority community, wholeheartedly welcome it and I believe that the State should function along that principle laid down in this article, and that in all spheres of State activity, the members of the minority community shall be left no cause of apprehension or fear and that it will happen very soon. However, Sir, I wonder why this article is permitted to remain so incomplete, because only educational institutions are mentioned here. Probably educational institutions were mentioned because in the popular opinion, they are the only places where religious instructions are given. But I may point out that there are other places or institutions which are completely and wholly maintained by State funds and which in modern times can be used as a vehicle for religious or communal propaganda very effectively. To mention one such vehicle, there is the radio. We all know how effectively it can be used as a platform for religious propaganda day after day. I want that this article should conform to its own logical conclusion and that it should be made complete, and that religious or communal propaganda should be prohibited in all state-owned institutions. Otherwise, to me it looks useless that you should prohibit communal or religious propaganda in one institution but allow it to go full blast in other spheres of activity. For example, take the Army itself; religious and communal propaganda can very easily be imparted there. I want that religious instruction should expressly be prohibited not only in educational institutions but in all institutions which are maintained by the State.

Mr. Vice-President : Amendment No. 645 standing in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in clause (1) of article 22, the words "by the State" be omitted."

The object of this amendment is to remove a possibility of doubt that might arise. If the words "by the State" remain in the draft as it now stands, it might be construed that this article permits institutions other than the State to give religious instruction. The underlying principle of this article is that no institution which is maintained wholly out of State funds shall be used for the purpose of religious instruction irrespective of the question whether the religious instruction is given by the State or by any other body.

Mr. Tajamul Husain : Mr. Vice-President, Sir, I move:

"That in clause (1) of article 22, the words "by the State" and the words "wholly maintained out of State funds" be deleted."

Clause (1) of this article reads thus:--

"No religious instruction shall be provided by the State in any educational institution wholly maintained out of State funds."

This means that religious instruction can be provided in any educational institution which is partly maintained out of State funds or which are not maintained out of State funds at all. The result would be that all private and aided schools and colleges and *pathshalas* and *maktabs* will impart religious instruction to boys and girls. I submit that this should not be allowed in a secular State. Much has been said on this subject by the previous speaker and I do not wish to go into detail, but the only thing I would like to say is, what is the use of calling India a secular State if you allow religious instruction to be imparted to young boys and girls? By this article you do not prevent if parents want to give religious instruction to their children---they are at liberty to do so at home, and nobody will object to it. In fact, every parent gives his child education well before he goes to school; generally what happens in this country is that all religious instruction is given to a boy before he attends the school; and that should be done, it is the duty of the parents to educate their children according to their own ways. But I object to a public institution, whether maintained by Government or partly maintained by Government, imparting religious instruction.

With these words, I commend my amendment to the House.

Mr. Vice-President : Amendment No. 648 is disallowed as being verbal.

(Amendments Nos. 649, 650 and 652 were not moved.)

Amendment No. 651 is disallowed as being verbal.

There is amendment No. 653 standing in the name of Prof. K. T. Shah.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That at the end of the proviso to clause (1) of article 22, the following be inserted:

'and the income from which trust or endowment is sufficient to defray the entire expenditure of such institution.' "

The proviso as amended would read:--

"Provided that nothing in this clause shall apply to an educational institution which is administered by the State but has been established under an endowment or trust which requires that religious instruction shall be imparted in such institution and *the income from which trust or endowment is sufficient to defray the entire expenditure of such institution.* "

I would refer in this connection also to some of the arguments that I advanced previously, namely, that is could and should not be the intention or meaning of this proviso, that anybody who endows, say, a Chair, a Library, a Laboratory, or some department in a College or School, should be able to say that Religious Instruction should be provided in his behalf or of his type, even though his Trust or Endowment is not enough to meet the entire expenditure of that institution.

It would be a simple proposition, as I understand this proviso to the clause as it stands, for anybody to make a Trust or Endowment, sufficient, let us say, to meet part of the cost, e.g., building and furniture; then divest himself of the care and responsibility of managing that institution, hand it over to the State, earn cheap immortality and the title of being a munificient donor, and then ask the State to carry on the institution and also to provide Religious instruction therein, negativing the principle on which the clause to which this is a proviso was founded.

The idea, as I have understood this clause, would be defeated and the clause turned into a grotesqueness I think, if such should be the result. Perhaps, it was not intended to be so twisted out of the intention. My amendment, therefore only seeks to make it clear and explicit.

Even so, I am, for my part, not entirely satisfied that any excuse should be left to provide Religious Instruction of a particular character in any public institution managed by the State, and of which only a part, or even the whole of the expenditure is coming from the grant, Trust fund or Endowment that a donor has made.

This will be the negation, I repeat, of the basic principle on which this clause is based. The omission of the words "by the State", under an amendment just moved by the Chairman of the Drafting Committee would, if adopted--and I suppose it *will* be adopted--make the position still more complicated, unless it be that by a consequential amendment the authorities themselves would see that the words "by the State" here are also omitted. I do not know that they would be omitted here. I am just suggesting a possibility or conveying a hint which may reconcile, to some extent, the main clause with the proviso.

Whether or not these words are deleted from the main clause, and whether or not these words are retained in this proviso, the objection I am urging will apply all the same. I hold that it should not be open to anybody to make a trust for an educational institution in the first instance and then hand over its management to the State and demand that in that institution, simply on the ground that the founder has been providing the capital or recurring cost of that institution, there shall be religious instruction of the type favoured by him or professed by him.

I still believe that it could not be really the intention of the authors of this clause; and this proviso which would permit any such irregularity or exception should be made explicit in the way I am trying by this amendment to do. I trust that commonsense, if not legal sense, will assert itself; and the substance, if not the actual form, of my amendment will be accepted.

(Amendments Nos. 654, 655 and 657 were not moved.)

Mr. Vice-President : Amendment No. 656 is disallowed as being verbal.

Shri H. V. Kamath (C. P. and Berar : General) : Mr. Vice-President, I move--

"That in clause (2) of article 22, the words "recognised by the State or" be deleted."

I move this amendment with a view to obtaining some clarification on certain dark corners of these two articles--articles 22 and 23. I hope that my learned Friend Dr. Ambedkar will not, in his reply, merely toe the line of least resistance and say "I oppose this amendment", but will be good enough to give some reasons why he opposes or rejects my amendment, and I hope he will try his best to throw some light on the obscure corners of this article. If we scan the various clauses of this article carefully and turn a sidelong glance at the next articles too, we will find that there are some inconsistencies or at least an inconsistency. Clause (1) of article 22 imposes an absolute ban on religious instruction in institutions which are wholly maintained out of State funds. The proviso, however, excludes such institutions as are administered by the State which have been established under an endowment or trust--that is, under the proviso those institutions which have been established under an endowment or trust and which require, under the conditions of the trust, that religious instruction must be provided in those institutions, about those, when the State administers then, there will not be any objection to religious instruction. Clause (2) lays down that no person attending an institution recognised by the State or receiving aid out of State funds shall be required to take part in religious instruction. That means, it would not be compulsory. I am afraid I will have to turn to clause 23, sub-clause (3) (a) where it is said that all minorities, whether based on religion, community or language, shall have the right to establish and administer educational institutions of their choice. Now, is it intended that the institutions referred to in the subsequent clause which minorities may establish and conduct and administer according to their own choice, is it intended that in these institutions the minorities would not be allowed to provide religious instruction? There may be institutions established by minorities which insist on students' attendance at religious classes in those institutions and which are otherwise unobjectionable. There is no point about State aid, but I cannot certainly understand why the State should refuse recognition to those institutions established by minorities where they insist on compulsory attendance at religious classes. Such interference by the State I feel is unjustified and unnecessary. Besides, this conflicts with the next article to a certain extent. If minorities have the right to establish and administer educational institutions of their own choice, is it contended by the Honourable Dr. Ambedkar that the State will say: `You can have institutions, but you should not have religious instructions in them if you want our recognition' . Really it beats me how you can reconcile these two points of view in articles 22 and 23. The minority, as I have already said, may establish such a school for its own pupils and make religious instruction compulsory in that school. If you do not recognise that institution, then certainly that school will not prosper and it will fail to attract pupils. Moreover, we have guaranteed certain rights to the minorities and, it may be in a Christian school, they may teach the pupils the Bible and in a Muslim school the Koran. If the minorities, Christians and Muslims, can administer those institutions according to their choice and manner, does the House mean to suggest that the State shall not recognize such institutions? Sir, to my mind, if you pursue such a course, the promises we have made to the minorities in our country, the promises we have made to the ear we shall have broken to the heart. Therefore I do not see any point why, in institutions that are maintained and conducted and administered by the minorities for pupils of their own community the State should refuse to grant recognition, in case religious instruction is compulsory. When once you have allowed them to establish schools according to their choice, it is inconsistent that you should refuse recognition to them on that ground. I hope something will be done to rectify this inconsistency.

Shri Jaspat Roy Kapoor : Sir, I beg to move:

"That clause (3) of article 22 be omitted."

My reasons are four. Firstly, this clause is in conflict with clause (1) of article 22 which reads: "No religious instruction shall be provided in any educational institution wholly maintained out of State funds:" I am of course reading clause (1) as it will stand after the amendment moved by Dr. Ambedkar is incorporated. So that, while clause (1) lays down that no religious instruction shall be imparted in any institution which is maintained wholly by the State, clause (3) lays down that such religious instruction can be imparted out of working hours. Obviously, therefore, these two are in conflict with each other. If clause (1) is to remain, clause (3) must go. Clause (3) cannot stand in the face of clause (1).

My second reason is that the retention of clause (3) is likely to lead to conflict between the different religious denominations, because different religious denominations may claim the right to impart religious instruction to their pupils in any institution at the same time and in the same premises. That will certainly lead to a good deal of conflict. The convenient time for imparting religious instruction, after working hours, is very limited and several religious denominations may like to impart religious instruction to their pupils in the same premises and at the same convenient hour. This will place the head of the educational institution concerned in a very embarrassing position. He may be in a dilemma as to whom he should grant permission and to whom not. If a particular denomination is refused permission it might make a very serious grievance of it and, even may, in order to exercise the fundamental right granted to that community, seek forcible entry into that institution. This is likely to lead to communal and religious riots. The retention of this clause being full of mischievous potentialities, it must be deleted.

My third reason is that the management of a denominational institution may not like that religious instruction in a different religion from its own should be imparted there. A Muslim school which may perhaps be run within the precincts of a mosque would surely not like religious instruction to Hindus being imparted there in Vedic Dharma. So also, an educational institution run by Arya Samajists would surely not like religious instruction in Koran being imparted in the premises of that institution. For this reason also this clause must go.

My fourth reason is that it is absolutely unnecessary in view of clause (2). Clause (2) already provides that religious instruction can be imparted by the management of an educational institution provided of course the students agree to it or if they are minors their guardians agree to it. Such instruction can be provided not only during working hours, but even outside working hours. So it is unnecessary in view of clause (2). For these reasons I submit that clause (3) should be deleted.

Mr. Mohamed Ismail Sahib : Mr. Vice-President, I beg to move:

> "That in clause (3) of article 22, for the word 'providing', the words `being permitted to provide' be substituted and, after the words "educational institution", the words "in, or" be inserted."

Clause (3) of article 22 refers mainly to institutions envisaged in clause (1) thereof. Therefore I think that instead of the word `providing', the words "being permitted to provide" will be more appropriate. I say this because, the institutions being State institutions, permission ought to be sought for and given for making any provision for imparting religious instruction in the schools. A religious denomination or community cannot go straightaway and say: "We are providing religious instruction in such and such schools". That is not possible. Therefore to make it more intelligible and reasonable, I want the substitution of the word "providing" by the words "being permitted to provide".

Then, Sir, I want the insertion of the words "in, or" after the words "educational institution" with these words the clause will read as follows:-

> "Nothing in this article shall prevent any community or denomination from being permitted to provide religious instruction for pupils of that community or denomination in an educational institution in or outside its working hours."

I want that permission should be given to a community for providing religious instruction in as well as outside working hours. It is only with the permission of the authorities of the institution that such provision will be made. Therefore, if the authorities find it practicable to include religious instruction inside the working hours, there is no harm. Such provision is really to be made in the interests of the pupils as a whole. As I said, this clause 23, has a bearing on clause (1) which deals with State institutions. Now, Sir, what is the objection to State institutions banning religious instruction altogether and for all time? The situation is this: Now, almost all the primary schools will become State institutions shortly and if no religious instruction is to be given in State schools, the position will be that up to fourteen or fifteen years of age boys and girls shall have no opportunity of getting religious instruction. To say that religious instruction should be given in their own homes or outside school hours is an impracticable proposition. Educational experts will readily agree that giving religious instruction outside school hours will be a burden which should not be placed on pupils of tender age. Moreover, we know what sort of instruction can be given outside school hours. Therefore, Sir, this important matter of religious instruction ought not to be treated in this step motherly fashion. People talk of trouble arising on account of religion. As I have been saying more than once, it is not really religion that is the source of trouble. It is the misunderstanding of religion that is the source of trouble. The point is that pupils must be made to understand what religion really is and for that purpose you must not leave them to learn their religion here and there in the nooks and corners of a village or a city. If religious instruction is to be in the interests of the pupils as well as the State, it should be given in public educational institutions where the followers of every religion will do their best to present their religion in the best light. This can be done, Sir, only if religious instruction is allowed to be given in the public State-owned institutions, where people will compete with each other to show the best of their religions to the world and thereby undesirable rivalries, competitions, bickerings and heart burings will really be eliminated. Sir, the second world war has turned people back to religion. Many European writers say that because people went away from religion, discarded religion, because they did not allow religion to be imparted to their children in their tender age, this calamity happened. Therefore, many political writers themselves are now stressing the need for religious instruction in State schools; moreover, we find that several constitutions in European countries have provided for the compulsory imparting of religious instruction in their respective countries. Therefore, I say not only that it is not harmful but I say that it is necessary, that it is very essential that every pupil must be taught his or her own religion in their proper age and that can be done only when they are in the primary schools. Therefore, when all these primary schools are going to be State schools, the State should not ban religious instruction altogether. As I said in a previous amendment, this must be left to the Parliament. There may be practical difficulties with regard to certain communities but these difficulties must be left to the Parliament to be dealt with according to circumstances. Because there may be difficulties for some people, certain other communities should not be deprived of their right of imparting religious instruction to their children. I once again want to stress the fact that it is in the interest of the State to give a grounding to children in religion. What is wanted for the stability of society as well as the State is moral grounding, moral background, and the only way to give this moral background is through religion. The world has so far failed in its experiences to find another substitute for religion. Even the hardboiled politicians are now turning their faces towards religion. When the whole world is returning to religion, we are here discarding religion, we belonging to people who think that religion is an inalienable part of our lives. If we want to avoid all the distressing experiences that the West has experienced, we should allow religious instruction to be imparted to pupils in the primary schools. If this is done, everything will be well and there will be happiness for all. That is why I say that permission should be given at least to the religious communities to arrange for religious instruction in or outside school hours as the case may be according to circumstances. That may be left to the future legislature.

(Amendment No. 663 was not moved.)

Mr. Vice-President : Amendment No. 664. Professor K. T. Shah.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That in clause (3) of article 22, for the words "outside its working hours" the following be substituted:

'maintained by that community from its own funds provided that no educational institutions, nor any education or training imparted therein shall be recognised unless it provides instruction or training in courses laid down for public instruction in the regular system of education for the country and complies in all other respects with methods, standards, equipment and other requirements of the national system of education.' "

Sir, the whole group of clauses lays down a principle of "no religious instruction in public educational institutions" and then seeks, as it seems to be the case, throughout this Chapter to find holes and crevices by which it can creep in like a thief in the dark, and undo the very basis and foundation of the structure we are seeking to erect.

I am free to confess that, apart from the variety of exceptions, exemptions or limitation, all sought to be imposed by this article upon its basic principle,--there is the difficulty of ambiguity of expression, the lack of clarity or insufficiency in the terms used, which makes it very difficult to devise an amendment, which might be effective in substance as well as in form, and bring out the idea more clearly and expressly than the draftsman seems to have done.

I mention one instance of ambiguity in terms, which, unfortunately, occurs also in the amendment which I am proposing, though there is, I think, no ambiguity in the term used in my amendment containing the expression 'State funds'. The term fund, as I have understood it, means in common parlance, and I venture to submit, even in legal technical terminology, not revenue or recurring income. That term means something static, something accumulated and existing, something that is what the lawyers would call 'corpus', even if they understand the Latin term in the Latin sense, 'Revenue' is something different.

Now take the clause about Institutions maintained from State funds. I for one find it very difficult to understand what 'funds' are meant here as intended by the draftsman for the maintenance of institutions. I am, of course, not anxious to read Bhagvat before buffaloes. But I must say that in trying to understand the meaning of this article, I feel it necessary to at least expose my own difficulties and handicaps in understanding precisely the terminology used, and seek clarification from those who have the handling, the making, and drafting of this Constitution in their hands.

I make no secret of the fact that I am against public educational institutions being used for providing Religious Instruction in this country, or any country, but in this country particularly, because of the variety of sects and denominations. They are, of course, called each a religion; but they very often forget the basic truth of all religion, and exalt each its own particular brand or variety of it, as any advertizer in the market lauds his own wares. But even assuming that that is permissible, outside office hours so to say, outside the normal school hours, care must at least be taken that that is not done at the expense of the normal education, and all the requirements of that education and training, in the shape of building, staff, equipment, standards, methods etc.

Now, it is by no means clear, at least in this clause(3), as it stands, that even if instruction is permitted or suffered to be provided outside the normal hours, whether that may be done at the expense of the ordinary curriculum. That will have to be, I take it, enforced in every school, whether maintained by public funds, or not. I insist, therefore, in this Amendment, that whoever wishes to provide such instruction, whatever community desires to provide such instruction, may do so, if you so agree, by its own funds. But they must be sufficient to meet the full cost; and in the full sense of the term, it must be after the school hours, in such a manner that there is no prejudice whatsoever of the ordinary curriculum prescribed standards of attainment, methods of instruction, equipment, etc.

This, in my opinion, is liable very seriously to be sacrificed and endangered if you do not introduce some such safeguard as I am seeking to make by my amendment. Our only weapon is that, if any community so desires to insist upon the pre-eminence if not exclusive importance being given to religious instruction, and is prepared to spend monies thereafter, let it do so. But the State should certainly not recognise any education given in such an institution, and in training equipment provided by that institution, unless it conforms to the public standards, and public requirements of such education and training being given up to a prescribed degree.

I have some experience of educational institutions trying to ignore, in one respect or another, one or all of these requirements. Those who have had experience of inspecting these institutions and reporting upon them to the appropriate authorities will realize what I mean when I say that the greatest difficulty lies in keeping these institutions up to a given mark, and to see from time to time that these standards are maintained.

In countries where a common standard prevails, this difficulty also exists. But in countries where there are conflicting ideals, namely secular education, material considerations in professional training and technical training, and at the same time there is, so to say, the demand of specialized religious instruction, I am afraid one or the other of these may suffer in order that the former or the latter may succeed. I feel it is imperative to require that not only shall all the funds for the provision of such instruction be supplied by the community which desired to provide it, but in addition, on pain of its education being not recognized, on pain of its degrees, diplomas and certificates not being accepted as sufficient qualification for its alumini when they seek any post or office, they shall see to it that the standards, equipment, buildings, staff and other requirements of the national system of education, and its code of regulations are fully complied with. If that is done, then probably the great evil which I find in the provision of religious instruction in a country like this would be mitigated, if not eliminated altogether.

(Amendment No. 665 was not moved.)

Mr. Vice-President : The clause is now open for general discussion.

Shrimati Renuka Ray (West Bengal : General): Mr. Vice-President, Sir, while supporting this article, there are one or two points on which I should like some elucidation. Prof. K. T. Shah has brought forward a point which really needs to be cleared up. Part (1) of this article says: "No religious instruction shall be provided in any educational institution wholly maintained out of state funds". There is likelihood of this being misinterpreted in the future, so as to nullify its very object. As he has pointed out even if a small donation is paid to a public school, it can be held that such a school is not wholly maintained out of State funds, and therefore denominational religious instruction may be given. I hope that when Dr. Ambedkar speaks, he will clearup this point because it is a very important one. If such interpretation can be given then it is necessary to have safeguards against it.

In this country we have seen the exploitation, and the prostitution of what we call religion and we have seen to our bitter cost what is done in the name of denominational religion. It has not only led to the dis-memberment and division of our country, but it has not also led to the worst horrors that could be perpetrated in the name of religion. Now, when we are building for the future, we must build in such a manner that we are able to do so untrammelled by the legacy of the past. The only real way in which this could be done is to see that the next generation are educated in such a manner that they are not actuated by motives that divide and disintegrate man from man, but that the religion of humanity is much greater to them than religious dissensions on a denominational religious basis. If that is to be so, we must be very careful, now that we are building up the Constitution for the future, that there shall not be in the fundamental rights any kind of confusion as to the kind of instruction that is to be given at least in those institution that are maintained out of public funds. If we use this word "wholly", there is likely to be this confusion that has been already pointed out and I would like to hear from Dr. Ambedkar if it is possible for him either to accept this amendment or at least to assure the House that no such interpretation will be possible in the future.

I would again urge that he should accept in particular the amendment for the deletion of clause (3) which has been moved by Mr. Jaspat Roy Kapoor, because as he has pointed out there is no doubt that if this clause remains, there is likelihood that in a certain area where there may be a small number of schools or only one school, a fight between the various denominations as to which particular type of religious instruction should be given out of school hours may ensue. Therefore, it is much better that clause (3) be deleted from this article.

I am sure that all those in this House and the country outside will agree with me that above all things, it is necessary that the instruction that is given to the citizens of the future shall be such that the idea of a Secular State in which all citizens are equal comes into being, and the provision for this adopted in our Constitution becomes a living reality. This can only be done if education which is the very basis on which we build our Society is so imparted to the young that they do not learn to realise the distinctions which separate man and man, but rather to learn that the underlying unity of humanity is more fundamental and the basis of religion to which they must adhere.

Shri V. I. Muniswami Pillai : (Madras : General): Mr. Vice-President, Sir, when we are on the very important work of evolving a secular State for this country, I feel that the second clause in article 22 is a very important one and I welcome it.

Sir, it will be in the knowledge of this sovereign body that certain institutions in the past, due to the aid that was given by the former Government, under the garb of imparting education to the masses, have taken a different stand. This has led to masses of the unfortunate communities embracing a religion that was not their own. This article makes it clear that any educational institution receiving aid from the State should not indulge in matters of religious education. This mostly helps those unfortunate communities that have fallen a prey in this respect.

Sir, further it goes to say that in the case of a minor, unless the parent has given his consent, he should not be given religious instruction or required to attend any religious worship. I feel, Sir, it is not always possible for the parents to give this consent and the institutions that are working in the rural areas and outskirts of towns will not get the genuine consent of the parents in this respect. This important duty of seeing whether the consent given is genuine and true, falls upon the local authorities who will have to verify and create agencies so that the students or pupils that are attending any institutions of certain denominations are not converted to other religions. This is my emphatic plea and I am hopeful that the local Government will take care about what is said about consent. I entirely welcome the provisions of this article 22 of the Constitution.

Shri V. S. Sarwate : [United States of Gwalior- Indore-Malwa (Madhya Bharat)]: Mr. Vice-President, Sir, I rise to support this article as it stands except clause (3). As I see it, I think article 20, 21 and 22 are to be read together. Certain propositions evolve out of them. The first is that the State is secular and it shall not impart any religious education in schools maintained by itself. Further, clause (1) of article 22 lays down that the States hall not give any religious instruction in such schools as are entirely maintained out of State funds and these shall not be allowed to give religious education. This is the first proposition. But, it does not follow that the State either bans religion or despises it. Its attitude is perfectly neutral. Article 20 allows any religious denomination to have its own schools. As I read article 21, I understand it to mean that if any particular community wants to tax itself for the purpose of imparting religious education, the Government would help it by undertaking to collect such a tax. What is done by article 21 is this: that the State will not force anybody to pay such a tax. But, it may collect and pay over to such communities, if the communities agree to pay a particular tax for the purpose of imparting religious education. As I see from the word 'wholly' I do think that if the State wants to partially aid any school which is imparting religious instructions, it is enabled to do so and I think it is right. If any community does maintain a school and imparts particular religious education and it deserves help from the State, the State should be in a position to give such aid. Therefore, the word 'wholly' is necessary and I oppose the other amendment which has been moved inserting the words `or partly'. One need not be obsessed by what happened in the past. I know and I have read in schools and colleges where certain religious education was imparted. I am grateful for the teachings which I received there but there were certain objectionable features. In one educational institution there was a religious instruction imparted in the first hour and if we did not attend in that hour, we were marked absent for the rest of the periods. In another college where I learnt, it was necessary that we attended a religious worship and if we did not attend it, we were subjected to certain fines. These were objectionable features and these are to be removed. They are removed by clause (2). Nobody is required to attend such religious worship or to attend such classes where religious education is given. But it does not prohibit the State from giving aid to such institutions; what is only meant is nobody against his will will be required or forced and compelled to receive such education or attend such religious worship, and I think this is a very salutary provision and also the permission which is given to the State to aid such institutions is also necessary. Otherwise I believe certain very good institutions in the country would suffer.

Kazi Syed Karimuddin : Mr. President, Sir, in my opinion the provisions of article 22 except clause (3) are very salutary and I really do not understand how these provisions have been opposed by Mr. Ismail from Madras. In the state of things as they stand today, in my opinion, it is much better for the minorities to avoid religious controversies, conflicts and religious dogmas to be taught in the schools and we have seen in the past, as several speakers the other day have said, that in Missionary schools people were persuaded to have conversion form one faith to the other because of the undue influence or monetary gains. Now in a secular State, where religion will be a personal matter, my submission is that in educational institutions wholly managed or wholly aided by the Government or State, religious education should not be provided. It is said, Sir, that unless religious education is given in the schools financed by the State it would not be possible for the minorities to be educated in their religion. My submission is that if the communities want that their children should be educated or should be given religious education, then it will be their duty to educate their children in *Pathsalas* or schools. The amendment moved by Professor Shah in my opinion cannot be acceptable at the present stage. His amendment is that no religious instruction should be provided by the State in any educational institution wholly or partly maintained out of public funds. Today as things stand in India there is Aligarh University, there is Banaras University and there are several colleges run by the Christian Missionaries which are aided by the Government. If his amendment is accepted today there will be hundreds and thousands of institutions which will be closed down immediately. Let us proceed very cautiously. For that the provision in clause (2) is very salutary. In aided schools or institutions in which there will be no compulsion on the students to take a particular religious education. I think the opposite point of view can be partially met by clause (2). It has also been stated that the word 'educational' should be removed from clause (1) and it is stated that Radios may be used to propagate and teach a particular religion. This is a State which has been declared to be secular and if a secular State decides to propagate a particular religion through radios, it will not be worth the name that it is a secular State. In my opinion it is more a question administrative policy and the word 'educational' need not be taken away from clause (1).

Sir, it has been stated that religious education should be given at home. I also oppose this. In aided schools run by communities religious education can be given and the amendment of Mr. Tajamul Husain cannot be accepted that religious education should be given at home. I contemplate a position that if parents are atheists--for instance Mr. Tajamul Husain by another amendment demands that the people should have no name and they should not have any particular dress--in that case, there will be no religious education in their houses; and if people are only to be known by numbers and not by names, then it will be very difficult for them to be educated or instructed in religious theology. Therefore my submission is that article 22 as it stands is not to the disadvantage or detriment of the minorities.

But I really object to clause (3). What has been given in clauses (1) and (2) has been taken away in clause (3). It says---

> "Nothing in this article shall prevent any community or denomination from providing religious instruction for pupils of that community or denomination in an educational institution outside its working hours."

But who would be responsible for imparting the religious education in such institutions? Any outside agencies who would be giving religious instructions to the boys may not be acceptable to the authorities and moreover much mischief will be done if this religious education is given in outside hours by people who are irresponsible and by people who will be recklessly teaching boys that may be to the detriment of the nation. Therefore I support article 22 as it stands with the deletion of clause (3).

Shri M. Ananthasayanam Ayyangar : Sir, I support the article as it stands without clause (3). Instead of Professor Saksena's amendment, I would urge that the House may accept amendment No. 661. Mr. Saksena's amendment originally as it stands is that both clauses (1) and (3) of this article may be omitted but when moving the amendment he gave up the portion relating to clause (1) and pressed his amendment in regard to clause (3). Instead of that amendment No. 661 relating exclusively to the deletion of clause (3) may kindly be accepted. Sir, in supporting this clause in this article, I am very much pained that religious instruction is not to be taught in any school in a country which is full of religion. Inside our schools, we may refuse to teach religion to the children. But outside the schools we cannot forget our denominations. Religion, according to me, is the basic foundation of any society; all morality, and all good principles have to be traced to religion. But situated as we are, it is unfortunate that we are not able to come to any arrangement regarding the teaching of religion to our children in our schools.

Sir, there are two sets of amendments moved regarding this article. One requires that various provisions for the teaching of religion in the schools must be made for all the children. Another set of amendments wants that the stringent provisions of today against the teaching of religion should be made even tighter, and that even in cases where educational institutions are not exclusively run by the State and where the State does not maintain the institution wholly, no religious instructions should be imparted, and that even in institutions which are partly aided by the State, or are recognised by the State, religion ought not to be taught. That is another set of amendments. I, Sir, feel that neither the one nor the other set is possible in the circumstances in which we are situated today. We are pledged to make the State a secular one. I do not, by the word 'secular', mean that we do not believe in any religion, and that we have nothing to do with it in our day-to-day life. It only means that the State or the Government cannot aid one religion or give preference to one religion as against another. Therefore it is obliged to be absolutely secular in character, not that it has lost faith in all religions. Not even members incharge of the Government have lost faith in religion. I am sure none of us is to that extent an iconoclast or non-believer. We all do believe in some religion or other, including those who have spoken and taken part in the deliberations about this article in the Constitution. But it is regrettable that we have not been able to evolve a universal religion, a religion where the religions practices need not cloud the issues. We all believe in the existence of one God, in prayer, in meditation and so on. We all believe in the ultimate surrender to Him and that by sacrifice and service alone we can hope to realise Godhead. These are common to all religions. The Bhagavat Gita lays down that by sacrifice and service we have to see Godhead inhumanity, that service to humanity is the essence of God. I will not go into all the details; suffice it to say that I regret that in the circumstances in which we are, we are not able to teach religion to our children. If we introduce the teaching of one religion, even if there is only one boy belonging to another religion in that school, we have to make provision for the teaching of his religion also. And we know very well that even under one religion there are sects and sub sects. There are Hindus of various sects. And then there is Jainism, Buddism, Christianity, and there are the Muslims, the Parsis and so on. Therefore it is not possible, it is physically impossible for the State to make provisions for the teaching of all the religions. The only thing, under the circumstances that we can do is to avoid religious instructions in State-aided schools. If a small contribution is made by some agency and religious instruction is provided, it will all the same, be controlled by the local authority, and if the teaching is rabid, and if hatred is being taught in the school, certainly the grant can be withheld and other measures adopted to stop that kind of thing. It is not obligatory upon the State to give its grants irrespective of the way in which the educational institution is being run. So we need not think that religious instruction will be given in an institution where the major portion is contributed by the State and a small contribution--may be a farthing--is contributed by some other agency. We need not make it part and parcel of the Constitution here. I am sure no government would contribute 99 per cent and allow an educational institution to impart religious education because 1 per cent comes from some other source. Therefore, we need not accept either the one set of amendment or the other set, but confine ourselves to amendment No. 661 and amendment No. 645.

Mr. Vice-President : Much as I would like to accommodate other members, for whose opinions I have great respect, I find we have already had a number of speakers. Twelve amendments have to be put to vote. Nine amendments have been moved and I think six speakers have already spoken. I feel this article has been discussed sufficiently. I now call on Dr. Ambedkar to speak.

Pandit Lakshmi Kanta Maitra (West Bengal : General) : Sir, I want to get one or two points cleared. I am not going to make a speech. I want only to get one or two points explained.

Mr. Vice-President : I have already given my ruling. I cannot allow any further speeches, especially as you and I belong to the same Province.

Pandit Lakshmi Kanta Maitra : Belonging to the same province has nothing to do with this. I only wanted to have clarification on one point.

Mr. Vice-President : My decision is final, Panditji. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, out of the amendments that have been moved, I can persuade myself to accept only amendment No. 661 moved by Mr. Kapoor to omit sub-clause (3) from the article, and I am sorry that I cannot accept the other amendments.

It is perhaps, desirable, in view of the multiplicity of views that have been expressed on the floor of the House to explain at some length as to what this article proposes to do. Taking the various amendments that have been moved, it is clear that there are three different points of view. There is one point of view which is represented by my friend Mr. Ismail who comes from Madras. In his opinion, there ought to be no bar for religious instruction being given. The only limitation which he advocates is that nobody should be compelled to attend them. If I have understood him correctly, that is the view he stands for. We have another view which is represented by my friend Mr. Man and Mr. Tajamul Husain. According to them, there ought to be no religious instruction at all, not even in institutions which are educational. Then there is the third point of view and it has been expressed by Prof. K. T. Shah, who says that not only no religious instruction should be permitted in institutions which are wholly maintained out of State funds, but no religious instruction should be permitted even in educational institutions which are partly maintained out of State funds.

Now, I take the liberty of saying that the draft as it stands, strikes the mean, which I hope will be acceptable to the House. There are three reasons, in my judgment, which militate against the acceptance of the view advocated by my friend Mr. Is mail, namely that there ought to be no ban on religious instructions, rather that religious instructions should be provided; and I shall state those reasons very briefly.

The first reason is this. We have accepted the proposition which is embodied in article 21, that public funds raised by taxes shall not be utilised for the benefit of any particular community. For instance, if we permitted any particular religious instruction, say, if a school established by a District or Local Board gives religious instruction, on the ground that the majority of the students studying in that school are Hindus, the effect would be that such action would militate against the provisions contained in article 21. The District Board would be making a levy on every person residing within the area of that District Board. It would have a general tax and if religious instruction given in the District or Local Board was confined to the children of the majority community, it would be an abuse of article 21, because the Muslim community children or the children of any other community who do not care to attend these religious instructions given in the schools would be none-the-less compelled by the action of the District Local Board to contribute to the District Local Board funds.

The second difficulty is much more real than the first, namely the multiplicity of religious we have in this country. For instance, take a city like Bombay which contains a hetrogeneous population believing in different creeds. Suppose, for instance, there was a school in the City of Bombay maintained by the Municipality. Obviously, such a school would contain children of the Hindus believing in the Hindu religion, there will be pupils belonging to the Christian community, Zoroastrian community, or to the Jewish community. If one went further, and I think it would be desirable to go further than this, the Hindus again would be divided into several varieties; there would be the *Sanatani* Hindus, Vedic Hindus believing in the Vedic religion, there would be the Buddhists, there would be the Jains-even amongst Hindus there would be the Shivites, there would be the Vaishnavites, Is the educational institution to be required to treat all these children on a footing of equality and to provide religious instruction in all the denominations? It seems to me that to assign such a task to the State would be to ask it to do the impossible.

The third thing which I would like to mention in this connection is that unfortunately the religions which prevail in this country are not merely non-social; so far as their mutual relations are concerned, they are anti-social, one religion claiming that its teachings constitute the only right path for salvation, that all other religions are wrong. The Muslims believe that anyone who does not believe in the dogma of Islam is a *fakir* not entitled to brotherly treatment with the Muslims. The Christians have a similar belief. In view of this, it seems to me that we should be considerably disturbing the peaceful atmosphere of an institution if these controversies with regard to the truthful character of any particular religion and the erroneous character of the other were brought into juxtaposition in the school itself. I therefore say that in laying down in article 22 (1) that in State institutions there shall be no religious instruction, we have in my judgment travelled the path of complete safety.

Now, with regard to the second clause I think it has not been sufficiently well-understood. We have tried to reconcile the claim of a community which has started educational institutions for the advancement of its own children either in education or in cultural matters, to permit to give religious instruction in such institutions, notwithstanding the fact that it receives certain aid from the State. The State, of course, is free to give aid, is free not to give aid; the only limitation we have placed is this, that the State shall not debar the institution from claiming aid under its grant-in-aid code merely on the ground that it is run and maintained by a community and not maintained by a public body. We have there provided also a further qualification, that while it is free to give religious instruction in the institution and the grant made by the State shall not be a bar to the giving of such instruction, it shall not give instruction to, or make it compulsory upon, the children belonging to other communities unless and until they obtain the consent of the parents of those children. That, I think, is a salutary provision. It performs two functions....

Shri H. V. Kamath : On a point of clarification, what about institutions and schools run by a community or a minority for its own pupils--not a school where all communities are mixed but a school run by the community for its own pupils?

The Honourable Dr. B. R. Ambedkar : If my Friend Mr. Kamath will read the other article he will see that once an institution, whether maintained by the community or not, gets a grant, the condition is that it shall keep the school open to all communities. That provision he has not read.

Therefore, by sub-clause (2) we are really achieving two purposes. One is that we are permitting a community which has established its institutions for the advancement of its religious or its cultural life, to give such instruction in the school. We have also provided that children of other communities who attend that school shall not be compelled to attend such religious instructions which undoubtedly and obviously must be the instruction in the religion of that particular community, unless the parents consent to it. As I say, we have achieved this double purpose and those who want religious instruction to be given are free to establish their institutions and claim aid from the State, give religious instruction, but shall not be in a position to force that religious instruction on other communities. It is therefore not proper to say that by this article we have altogether barred religious instruction. Religious instruction has been left free to be taught and given by each community according to its aims and objects subject to certain conditions. All that is bared is this, that the State in the institutions maintained by it wholly out of public funds, shall not be free to give religious instruction.

Pandit Lakshmi Kanta Maitra : May I put the honourable Member one question? There is, for instance, an educational institution wholly managed by the Government, like the Sanskrit College, Calcutta. There the *Vedas* are taught, *Smrithis* are taught, the Gita is taught, the *Upanishads* are taught. Similarly in several parts of Bengal there are Sanskrit Institutions where instructions in these subjects are given. You provide in article 22(1) that no religious instruction can be given by an institution wholly maintained out of State funds. These are absolutely maintained by State funds. My point is, would it be interpreted that the teaching of *Vedas*, or *Smrithis,* or *Shastras* or *Upanishads* comes within the meaning of a religious instruction? In that case all these institutions will have to be closed down.

The Honourable Dr. B. R. Ambedkar : Well, I do not know exactly the character of the institutions to which my Friend Mr. Maitra has made reference and it is therefore quite difficult for me.

Pandit Lakshmi Kanta Maitra : Take for instance the teaching of Gita, Upanishads the Vedas and things like that in Government Sanskrit Colleges and schools.

The Honourable Dr. B. R. Ambedkar : My own view is this, that religious instruction is to be distinguished from research or study. Those are quite different things. Religious instruction means this. For instance, so far as the Islam religion is concerned, it means that you believe in one God, that you believe that *Pagambar* the Prophet is the last Prophet and so on, in other words, what we call "dogma". A dogma is quite different from study.

Mr. Vice-President : May I interpose for one minute? As Inspector of Colleges for the Calcutta University, I used to inspect the Sanskrit College, where as Pandit Maitra is aware, students have to study not only the University course but books outside it in Sanskrit literature and in fact Sanskrit sacred books, but this was never regarded as religious instruction; it was regarded as a course in culture.

Pandit Lakshmi Kanta Maitra : My point is, this. It is not a question of research. It is a mere instruction in religion or religious branches of study.

I ask whether lecturing on Gita and Upanishads would be considered as giving religious instruction? Expounding Upanishads is not a matter of research.

Mr. Vice-President : It is a question of teaching students and I know at least one instance where there was a Muslim student in the Sanskrit College.

Shri H. V. Kamath : On a point of clarification, does my friend Dr. Ambedkar contend that in schools run by a community exclusively for pupils of that community only, religious education should not be compulsory?

The Honourable Dr. B. R. Ambedkar : It is left to them. It is left to the community to make it compulsory or not. All that we do is to lay down that that community will not have the right to make it compulsory for children of communities which do not belong to the community which runs the school.

Prof. Shibban Lal Saksena : The way in which you have explained the word "religious instruction" should find a place in the Constitution.

The Honourable Dr. B. R. Ambedkar : I think the courts will decide when the matter comes up before them.

Mr. Naziruddin Ahmad : The honourable Member has proposed to accept the deletion of clause (3). It is an explanatory note. I would ask if its deletion will rule out the application of the principle contained therein even apart from the deletion.

The Honourable Dr. B. R. Ambedkar : Well, the view that I take is this, that clause (3) is really unnecessary. It relates to a school maintained by a community. After school hours, the community may be free to make use of it as it likes. There ought to be no provision at all in the Constitution.

Now, Sir, there is one other point to which I would like to make reference and that is the point made by Prof. K. T. Shah that the proviso permits the State to continue to give religious instruction in institutions the trusteeship of which the State has accepted. I do not think really that there is much substance in the point raised by Prof. Shah. I think he will realise that there have been cases where institutions in the early part of the history of this country have been established with the object of giving religious instruction and for some reason they were unable to have people to manage them and they were taken over by the State as a trustee for them. Now, it is obvious that when you accept a trust you must fulfil that trust in all respects. If the State has already taken over these institutions and placed itself in the position of trustee, then obviously you cannot say to the Government that notwithstanding the fact that you were giving religious instruction in these institutions, hereafter you shall not give such instruction. I think that would be not only permitting the State but forcing it to commit a breach of trust. In order therefore to have the situation clear, we thought it was desirable and necessary to introduce the proviso, which to some extent undoubtedly is not in consonance with the original proposition contained in sub-clause (1) of article 20. I hope, Sir, the House will find that the article as it now stands is satisfactory and may be accepted.

Mr. Vice-President : I am now putting the amendments to vote one after another. First of all, I put the first alternative in amendment No. 640.

The question is:

"That for article 22, the following be substituted :--

'22. No person attending an educational institution maintained, aided or recognised by the State shall be required to take part in any religious instruction in such institution without the consent of such person if he or she is a major or without the consent of the respective parent or guardian if he or she is a minor' ."

The amendment was negatived.

Mr. Vice-President : Next we come to No. 641 as amended by No. 19 of list No. 1. I shall first put No. 19 of list No. 1.

The question is:

"That for amendment No. 641 of the List of Amendments, the following be substituted :--

'That clauses (1) and (3) of article 22 be deleted' ."

The amendment was negatived.

Mr. Vice-President : I shall now put amendment No. 641.

The question is:

"That for article 22, the following be substituted :--

> '22. The State shall not compel anyone to have religious instruction in a religion not his own in schools against his wishes, but the State shall endeavour to develop religious tolerance and morality among its citizens by providing suitable courses in various religions in schools'."

The amendment was negatived.

Mr. Vice-President : The next one is amendment No. 647.

The question is:

"That in clause (1) of article 22, after the words `in any educational institution wholly' the words `or partly' be added."

The amendment was negatived.

Mr. Vice-President : Now amendment No. 643.

The question is:

"That in clause (1) of article 22, after the words 'shall be provided' the words 'or permitted' be inserted."

The amendment was negatived.

Mr. Vice-President : The next one is No. 644.

The question is:

"That in clause (1) of article 22, the word 'educational' be omitted."

The amendment was negatived.

Mr. Vice-President : The next one is No. 645.

The question is:

"That in clause (1) of article 22, the words 'by the State' be omitted."

The amendment was negatived.

Mr. Vice-President : The next one is the No. 646.

The question is:

"That in clause (1) of article 22, the words, 'by the State' and the words 'wholly maintained out of State funds' be deleted."

The amendment was negatived.

Mr. Vice-President : The next one is No. 653.

The question is:

"That at the end of the proviso to clause (1) of article 22, the following be inserted :--

'and the income from which trust or endowment is sufficient to defray the entire expenditure of such institution'."

The amendment was negatived.

Mr. Vice-President : The next one is 658.

The question is:

"That in clause (2) of article 22, the words 'recognised by the State or' be deleted."

The amendment was negatived.

Mr. Vice-President : The next one is No. 661. This has been accepted.

The question is:

"That clause (3) of article 22 be omitted."

The amendment was adopted.

Mr. Vice-President : The next one is No. 662.

The question is:

"That in clause (3) of article 22, for the word 'providing' the words 'being permitted to provide' be substituted and after the words 'educational institution' the words 'in, or' be inserted."

The amendment was negatived.

Mr. Vice-President : The last one is 664.

The question is:

"That in clause (3) of article 22, for the words 'outside its working hours', the following be substituted :--

> 'maintained by that community from its own funds provided that no educational institutions, nor any education or training imparted, therein shall be recognised unless it provides instruction or training in courses laid down for public instruction in the regular system of education for the country and complies in all other respects with methods, standards, equipment and other requirements of the national system of education' ."

The amendment was negatived.

Mr. Vice-President : The question is:

"That article 22, as amended, stand part of the Constitution."

The motion was adopted.

Article 22, as amended, was added to the Constitution.

(Amendment No. 666 was not moved.)

Article 22A (New Article)

Prof. K. T. Shah : Sir, I beg to move:

"That after article 22, the following new article be inserted :--

'22-A. All privileges, immunities or exemptions of heads of religious organisations shall be abolished' ."

It may not be, perhaps, very commonly known that Heads of Religious organisations are in the enjoyment of certain extra-territorial or extra-civil privileges. They enjoy civic immunities, privileges or exemptions, which mark them out as a class apart, but which cause in many instances heavy losses to the public purse, and gravely prejudice public interest.

I do not of course object to the nominal or formal privilege enjoyed by them of titles, precedence, honorifies and the like. Some of these Heads of Religion are considered to be equal in rank to ruling princes. They are accordingly given a salute of eleven guns, at their own cost of course if fired; and are in a position to demand that that honour be paid to them. As I said just now, I do not object to that, because each time they ask for such a mark of respect, they would themselves pay for it. But there are immunities and exemptions which mark them out as apart from the rest of the citizens of the land; and as such offend the simple principle that all citizens of this country are amongst themselves equal, without any distinction of rank, or birth, or faith or sex.

This I consider to be objectionable in principle, because the inequality thereby created is of a character which has a direct and material bearing on the rights guaranteed by the constitution to the citizens. Religious Headship, if it is truly to be so regarded in the spirit in the essence, in which it was conceived, would make the holder of that position entirely apart from...

Shri Krishna Chandra Sharma (United Provinces : General) : To whom is the honourable Member proposing to give such rights? This is a Chapter on Fundamental Rights. This proposal has nothing to do with those rights.

Prof. K. T. Shah : That is for the Chair to say.

Mr. Vice-President : Professor Shah may go on.

Prof. K. T. Shah : Sir, I am stating that this is a violation of the Fundamental Rights granted. I am not asserting any new rights. I would mention one or two illustrations of such exemptions, which used to be allowed, and which I think are still being allowed, such as for instance exemption from Income-Tax and Customs Duties on goods imported from abroad for the use of the religious heads. These exemptions from customs duties under the Sea Customs Act and the Income-tax Act are claimed by virtue of the traditional privileges conceded to them as a matter of courtesy in a class society. I am not able to tell what precisely is the loss that the State has to suffer from the grant of these privileges to the several Heads of the several communities, who have sufficient fondness for outside goods or foreign articles to be constantly importing them on a large scale. Though these are articles of luxury, and though the heads of religious sects have sufficient income, they escape customs duties, and they demand exemption from income-tax.

Mr. Vice-President : Order: There is too much noise inside the House.

Prof. K. T. Shah : In that regard also, Sir, I am not able to give the exact amount of loss that this country suffers from this source today. In view of the very high level of taxation now prevailing on incomes, such exempted incomes ought to bring in substantial sums. For many Heads of Religion, have usually incomes running into lakhs, even crores, and, as such, if the same rate of taxation were imposed on them as on others, if the same manner of tax collection was adopted with reference to them also; if the same rigid and exacting technique was followed in regard to tax collection from these people, I should imagine the public exchequer would benefit very substantially. Under the existing rate an income of a crore of Rupees will yield a tax of Rs. 92 1/2 lakhs; and if there are 10 heads of religions like the Aga Khan, they would keep away from the public Treasury 9.25 crores or more.

It is not perhaps so much the amount of money which is lost to the State by the existence of these privileges and immunities of the Heads of Religion which may attract your attention. It is the essentially mundane character, the essentially worldly nature of these privileges, and, may I say, the consequent degradation of religion by such means which only mean material objects and material prosperity that ought to be objected to. As such these privileges and immunities should be disallowed after or on the passing of this Constitution. I hope the point appeals to the House and will be accepted.

Mr. Vice-President : Amendments Nos. 668 and 669 relate to language and script and have therefore to be postponed for the present.

Shri Damodar Swarup Seth may now move his amendment No. 670.

Mr. Z. H. Lari (United Provinces : General) : On a point of order, Sir. The article in respect of which an amendment was moved previously is quite different from the article which is sought to be inserted by the later amendment.

Mr. Vice-President : I thought it would save time if the amendments are moved one after another.

Mr. Z. H. Lari : But there cannot be a discussion on two Articles simultaneously. One article has to be disposed of before another is taken up for consideration.

Mr. Vice-President : Does the honourable Member want to discuss the thing now?

Mr. Z. H. Lari : Yes.

Mr. Vice-President : That can come later.

Mr. Z. H. Lari : But these two are different articles and the amendments are distinct ones.

Mr. Vice-President : When the honourable Member comes upto speak, he can say that he is discussing such and such article or amendment. Or, if he wants, I can ask Mr. Damodar Swarup to speak later.

Mr. Z. H. Lari : That would be the proper procedure.

Mr. Vice-President : That is right technically. But I would save the time of the House by proceeding in the manner I have done. I am indifferent whether you start this way or that way.

Shri R. K. Sidhva (C. P. and Berar : General): May I know whether it is your ruling or Mr. Lari's ruling?

Mr. Vice-President : I know that the honourable Member Mr. Lari will be quite willing to accept my ruling. But I want to please everybody. That is my weakness. Does Mr. Lari abide by my request?

Mr. Z. H. Lari : I bow to your decision, Sir.

Shri Damodar Swarup Seth (United Provinces : General): Sir, I beg to move:

"That the following new article be inserted after article 22 :--

'22-A. The use of religious institutions for political purposes and the existence of political organization on religious basis is forbidden' ."

The Draft Constitution very rightly and justly guarantees to all citizens...

The Honourable Dr. B. R. Ambedkar : Article 19 (2) (a) covers this.

Mr. Vice-President : I am told that article 19 (2) (a) covers your point.

Mr. H. V. Kamath : Article 19 (2) (a) regulates or restricts political or other secular activities associated with religion, while Seth Damodar Swarup's amendment forbids them altogether. Between a complete taboo and mere regulation there is a lot of difference.

Pandit Thakur Dass Bhargava (East Punjab : General): There was an amendment to article 19 (2) seeking to add 'prohibiting' and the amendment was not accepted by the House.

Mr. Vice-President : It practically means the same thing as Seth Damodar Swarup's amendment. I am afraid this thing has already been covered. I cannot allow it.

Amendment No. 671. This is about cow slaughter. Already covered.

Amendment No. 672 is about language and script. So it means that we have only one amendment No. 667, and the objection of Mr. Lari has been met automatically. Amendment No. 667 of Professor K. T. Shah is now for general discussion.

Shri Krishna Chandra Sharma : Mr. Vice-President, Sir, I do not see any meaning in Professor Shah's amendment with regard to the fundamental rights. The amendment runs thus :-

> "All privileges, immunities or exemptions of heads of religious organisations shall be abolished."

To say that such and such a man shall not have such and such a right is no right given. Therefore I fail to understand where the question of fundamental right arises in this proposal and how it can find a place in the chapter on fundamental rights. This proposal, I beg to submit, is out of place and as such should not find a place in this chapter of the Constitution.

Secondly, I beg to submit that Professor Shah seems to be very much afraid of religion. What is wrong with religion is not the religion itself but its wrong propagation or its propagation by inefficient or undesirable persons. Religion as such is the basis of all morality, all social and ethical values and all human institutions. I do not find what is wrong with religion itself. There might be something wrong with religion if it is handled by wrong people, if it is propagated by incompetent people.

Shri Rohini Kumar Chaudhari (Assam : General) : Sir, I oppose the motion which was moved by my honourable Friend Professor Shah. I do not understand why he should be so much against religious heads. My honourable Friend, I think, knows that there are provisions in the Civil Procedure Code whereby even ex-Ministers may be exempted from appearing in court for some months. In our part of the country there are Shatradhikars who are exempted generally speaking from appearing in any court. It would revolutionise the minds of their disciples if by any chance they are made to appear in any court and give evidence. When Professor Shah is not saying any word against the privileges which are now enjoyed by some privileged persons like high officials and Ministers of the State, why is he so anxious to curtail the privileges of heads of religious organisations in the Constitution itself, instead of allowing it to the discretion of the courts to extend the exemptions or privileges in some cases which are really necessary?

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, the amendment probably is quite laudable in its object but I do not know whether the amendment is necessary at all. In the first place, all these titles and so on which religious dignitaries have cannot be hereafter conferred by the State because we have already included in the fundamental rights that no title shall be conferred and obviously no such title can be conferred by the State. Secondly, as my honourable friend is aware perhaps, no suit can lie merely for the enforcement of a certain title which a man chooses to give himself. If a certain man calls himself a Sankaracharya and another person refuses to call him a Sankaracharya, no right of suit can lie. It has been made completely clear in Section 9 of the Civil Procedure Code that no suit can lie merely for the enforcement of what you might call a dignity. Of course if the dignity carries with it some emoluments or property of some sort, that is a different matter, but mere dignity cannot be a ground of action at all.

With regard to the amenities which perhaps some of them enjoy, it is certainly within the power of the executive and the legislature to withdraw them. It is quite true, as my honourable Friend Mr. Chaudhari said, that in some cases summons are sent by the magistrate. In other cases when the man concerned occupies a bigger position in life, instead of sending summons, he sends a letter. Some persons, when appearing in courts, are made to stand while some other persons are offered a chair. All these are matters of dignity which are entirely within the purview of the legislature and the government. If there was any anomaly or discrepancy or disparity shown between a citizen and a citizen, it is certainly open both to the legislature and the executive to remove those anomalies. I therefore think that the amendment is quite unnecessary.

Mr. Vice-President : The question is:

"That after article 22, the following new article be inserted :--

'22-A. All privileges, immunities or exemption of heads of religious organisations shall be abolished' ."

The motion was negatived.

Article 23

Mr. Vice-President : We shall now proceed to the next article. The first amendment is No. 673 which is disallowed for the obvious reason that it practically amounts to a negative vote. Then we come to amendment No. 674.

Shri Lokanath Misra (Orissa: General): Sir, I beg to move:

"That for article 23, the following article be substituted :--

> '23. Without detriment to the spiritual heritage and the cultural unity of the country, which the State shall recognise, protect and nourish, any section of the citizens residing in the territory of India or any part thereof, claiming to have a distinct language, script and culture shall be free to conserve the same' ."

Sir, in moving this substitution for the existing article No. 23, I am speaking nothing new nor anything against what has been said in article 23. It is a fact and it has been rightly recognised in article 23 that we have different scripts, different languages and even different cultures in the territory of India and they have been recognised and, preserved and they must flourish, but I should say, as all roads lead to Rome and ought also to lead to Rome, all these cultures, all these languages and all these scripts must be taken as a means to a common end, which the State must recognise, nourish and protect. In fact, it has been our desire and it has been the very soul of the birth of our freedom and our resurgence that we must go towards unity in spite of all the diversity that has divided us. I, therefore, submit to the House that although we have many languages, many cultures, many scripts, many religions, it may not yet be impossible for us to find out if there is something common for India bequeathed even from the hoary past, which has been running on till today, vitalizing and inspiring us. Just as there is the ocean to which all the rivers go, to the cultural ocean, to the spiritual ocean that is India, that has been our heritage, all our rivers of culture, language and script, hopes and aspirations must go and from a mighty ocean ever full. Sir, this article 23 which is an article recognising diversity must find out a way for our unity and unless we have that unity, the state administration or the State rolling machine, just a rule of external law, cannot bring us to unity. Therefore for a real unity, for a homogeneous unity, and natural unity, we must evolve a certain philosophy, a certain culture, and a certain language which will contain and carry everything and still be more than everything and must at the same time be running from the ageless past to the eternal future. I therefore, submit, Sir, this amendment, which I am suggesting will find favour with the House and the House will realize that, without developing this unity which can be brought about only on a very high plane, on the plane where we are one, inspite of the appearance that we are many and in the plane of the heart, which is the home of the spirit and also in the sphere of culture, which we have all been nourishing, there cannot be a real unity and we will have no real contribution to the world civilization or the amity of man, his peace and prosperity. I therefore commend this amendment to the favourable consideration of this House.

Maulana Hasrat Mohani (United Provinces : Muslim): May I suggest that we keep this amendment for a decision afterwards or till such time as we decide what shall be the language which will be accepted as the universal language for the whole country and which is the script? May I suggest that this amendment shall stand over?

Mr. Vice-President : Maulana Sahib, I have not been able to make out what you wish to say. Do you mean amendment No. 674 or the whole article?

Maulana Hasrat Mohani : This amendment, Sir.

Mr. Vice-President : Mr. Lokanath Misra says "without detriment to the spiritual heritage and cultural unity of the country which the State shall recognise, etc." Therefore, the question of language and script does not occur anywhere. It is quite possible to think of cultural unity, though the languages used in different parts of India may be different. So I do not quite see your objection.

Shri Lokanath Misra : What I referred to are our hopes and aspirations, the future to which we will go in our pilgrimage. I do not say that we do something here and now.

Maulana Hasrat Mohani : I think that this amendment should stand over as you have decided in the case of many other amendments. We cannot possibly decide this, unless we decide which will be the language of the whole country and which will be the script. How can we say that now?

Mr. Vice-President : This amendment has nothing to do with the national language or the script. It is quite in order here.

(Amendment No. 675 was not moved.)

Mr. Z. H. Lari : Mr. Vice-President, Sir, I move:

"That for clause (1) of article 23, the following be substituted :--

> '(1) Minorities in every unit shall be protected in respect of their language, script and culture, and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect' ."

This amendment which I have moved is not a new motion. It is really a motion to restore the original decision of this House taken in April 1947. You will remember, Sir, I was not then a Member, but I find from the reports of the Committee, First series, 1947, that the Committee on Fundamental Rights reported that this clause should run in the way in which I have put. At page 30 of that report, the clause runs thus:

> "Minorities in every unit shall be protected in respect of their language, script and culture, and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect."

This recommendation of the Committee on Fundamental Rights was approved by this August House in April 1947. But curiously enough, the Drafting Committee.....

Mr. Vice-President : Is it a sub-committee of the Fundamental Rights Committee?

Mr. Z. H. Lari : Yes; it was a sub-committee and it was approved by this House as well, but the Drafting Committee which was charged with the duty of framing the Draft Constitution on the basis of resolutions adopted by this House changed the phraseology and the present sub-clause stands thus now:

> "Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script and culture of its own shall have the right to conserve the same."

The reasons which have led me to move this amendment in order to restore it to its original condition can be briefly stated.

Sir, I believe it is accepted on all hands that cultural and educational rights have to be protected and this is the intention of article 23. There can be no gainsaying on that point. The clause as it originally stood and as it was approved by this House intended to lay down that no laws, no regulations shall be passed which would adversely affect a minority in maintaining and fostering their own culture and language. That is to say, no such laws shall be passed which would nullify a right which was being conceded to a linguistic minority. If the clause were to stand as I have put it and as the House originally approved, the result would be that there will be adequate remedy at the disposal of a minority, to see that the intentions of this House are carried into effect. But, if you look to the language used in the Draft Constitution, it comes to this only that the minority or a section of the citizens shall be entitled to conserve its own language. What does it mean? What is its effect? It simply means this that a body of citizens shall be entitled to use their own language in their private intercourse. But the question is whether they will be entitled to use their own language in elementary education given at the state expense. No doubt, under another clause of this article, a minority can establish institutions of its own and by virtue of this clause (1), it will be open to that minority to impart, say, elementary education through its own mother tongue. But if the State were to establish institutions as it would do,--naturally there will be so many minorities which will not be in a position to start institutions of their own--, then the question arises, will it be possible for the minority to demand that, in those institutions which are being established by the State, in pursuance of any legislation, municipal or provincial, which makes free elementary education compulsory, elementary education be imparted through the medium of their own language?

An Honourable Member : Impossible.

Mr. Z. H. Lari : There is a voice which says it is impossible. If it is impossible and if the intention of the House is that even while receiving elementary education, it will not be necessary for the State to make adequate arrangements, then, my submission would be that the whole clause will be a paper transaction and nothing more. Anyway, at present I am drawing the attention of the House to its own decision and beg of them to consider whether there is any reason why their decision, arrived at after due consideration, should be set at nought. If the language were an improvement on the original clause, I would necessarily submit that improvement is permissible. But the question is, does the changed phraseology of this clause improve on the intention of the House, does it give effect to the intention of the House, or does it nullify the intention of the House? For the time being, I would request the Members to concentrate on this point. If it be the opinion of Dr. Ambedkar that really by the changed and different phraseology, the intentions, the import of that article are not changed and the same remains, then I have no objection. But my submission is this: the clause as it stands becomes innocuous: it is of no effect at all. It states a truism; it is not a fundamental right at all. Who can prevent any minority or any class of citizens from using their own culture and language to the extent that it is possible for them to do so irrespective of legislation or regulation that may be made by the State? The House will recognise that the field of education will be entirely covered by state institutions and unless the old clause is put in, I think there will be great difficulty. This is not the only place where such a clause was sought to be placed on the statute book. I may refer to article 113 of the German Constitution which runs like this:

"Sections of the population of the Reich speaking another language may not be restricted whether by way of legislation or administration in their free racial development. This applies specially to the use of their mother tongue in education as well as in the question of internal administration and the administration of justice."

Therefore, it is not a new thing that this House has done, or the Committee on Fundamental Rights had proposed. Considering the import of this article, my submission would be that the original clause should be restored and this changed phraseology should not be accepted by this House.

With these words, Sir, I move.

Mr. Vice-President : The House stands adjourned till 10 A. M. tomorrow.

The Assembly then adjourned till Ten of the Clock on Wednesday, the 8th December, 1948.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME VII

Wednesday, the 8th December, 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Members took the Pledge and signed the Register:--

Shri Manikya Lal Verma (United State of Rajas than).

Shri Gokal Lal Aawa (United State of Rajasthan).

DRAFT CONSTITUTION--(Contd.)

Article 23--(Contd.)

Mr. Vice-President (Dr. H. C. Mookherjee): We shall now resume discussion of article 23 to which two amendments have been moved. Amendment No. 677 relates to national language and script and is therefore postponed. Amendments Nos. 678,679,680 and 681 (1st part) are to be considered together as they are of similar import. I can allow No. 678 to be moved.

The Honourable Dr. B. R. Ambedkar (Bombay : General): Sir, I move--

"That in clause (1) of article 23, for the words "script and culture" the words "script or culture" be substituted."

The only change is from 'and' to 'or' and the necessity of the change is so obvious that I do not think it is necessary for me to say anything regarding the same.

Mr. Vice-President : There is an amendment to this amendment--No. 25 of List No. I in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Mr. Vice-President, Sir, I beg to move--

"That with reference to amendment No. 678 of the List of Amendments, in clause (1) of article 23, for the words "residing in the territory of India or any part there of" the words "residing in any part of the territory of India" be substituted."

Sir, the text says: 'a section of the citizens residing in the territory of India or any part thereof'. The expression 'or any part thereof' implies, if the passage is fully written out 'a section of the citizens residing in the *whole* of the territory of India or *any* part thereof.' I submit that no part of the citizens can reside in the 'whole' of the territory of India. It must necessarily reside in a part of India. So the words 'in the territory of India or any part thereof' would be in appropriate implying a false suggestion. I submit that if we say--'residing in any part of the territory of India', that would be quite enough. Perhaps the phraseology used in the context was due to an oversight. It gives an illogical appearance or a false suggestion that a people or a group of citizens can possibly reside in the whole of India. The further conditions of a part of India having a 'distinct language, script or culture' in the article really limit the purpose to any part of India.

Mr. Vice-President : Amendment No. 679.

Shri H. V. Kamath (C. P. & Berar : General) : I have been forestalled by Dr. Ambedkar. So, I do not move No. 679.

Mr. Vice-President : Do you wish to press No. 680?

Mohamed Ismail Sahib (Madras: Muslim) : Yes.

Mr. Vice-President : Do you wish that 681 first part should be put to vote?

Prof. K. T. Shah (Bihar : General) : First part is covered by Dr. Ambedkar's amendment. But I would like to move the second part.

Mr. Vice-President : The second part of amendment No.681 may now be moved.

Prof. K. T. Shah: Sir, I beg to move part (2) of my amendment which says--

"That in clause (1) of article 23, after the word "conserve" the word "develop" be added."

The amendment portion would then be that--

"Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve and develop the same."

Sir, I look upon culture of mankind, and the culture of every section of mankind, as not merely a static phenomenon but as a progressive and developing fact. To my mind, therefore, even more important than conserving it at some stage to which it has risen, is the need to develop it. And the culture of a country or a community is much wider and larger and deeper, than its script or language, as I shall show below, and hence this amendment.

Speaking of the languages of the various sections of the country, they have, in recent years, especially during the last two or three generations, been developed and cultivated up to a point at which many of them have become suitable, in my judgment, to become the vehicles for the imparting of any state of instruction, right up to the University standard. Nevertheless, there can be further development; and they ought to be further studied and promoted and developed and expanded, so as to be suitable means of expression, intercourse, and instruction or education to a much wider scale than is the case today. I, therefore, think that if you grant the right to its conservation you must also grant the right for its development, its progressive improvement and expansion.

Speaking of culture, I think that is not a single item, either of area, language or script. It is a vast ocean, including all the entirety of the heritage of the past of any community in the material as well as spiritual domain. Whether we think of the arts, the learning, the sciences, the religion or philosophy, Culture includes them all, and much else besides. As such, it is progressive, and should be regarded as being capable of constant growth as any living organism. If, therefore, you include in the Fundamental Rights this section, i.e., the right to "conserve" the same, whether or not there is any attack or danger for the mere preservation of it, I see no reason why you should not couple with the right to conserve the right to develop. That is why the suggestion that I am putting forward, namely, the right to develop. Side by side with the right to conserve there must also be the right to develop the culture of any community.

You cannot hit at this amendment, you cannot negative it, without at the same time annulling the remaining portion of the clause, namely, conservation of a static position. But development is more progressive, more dynamic; and as such should commend itself to those who have the drafting and piloting of the Constitution in their hands.

Mr. Vice-President : Then comes No. 682 which stands in the name of Seth Govind Das; but I think it should stand over seeing that it relates to national language and script.

Then we come to amendment No. 683.

(Amendment No. 683 was not moved.)

As amendment No. 683 was not moved, amendment No. 52 of List III is disallowed. Then comes amendment No. 684 in the name of the Maharaja of Parlakimedi. He is absent.

(Amendment No. 684 was not moved.)

Amendment No. 685 standing in the name of Shri Algu Rai Shastri.

Shri Algu Rai Shastri (United Provinces : General) : Sir, my amendment relates to the property clause, article 24, and I shall move it when that article is taken up. It does not belong to this article and it is by a misprint that it happens to be here.

Mr. Vice-President : Then shall I take it that you want it to stand over?

Shri Algu Rai Shastri : It can be taken up at the proper place.

Mr. Vice-President : No. 686 also in the name of Shri Algu Rai Shastri.

Shri Algu Rai Shastri : I am not moving it, but I want to make a few observations on it.

Mr. Vice-President : You can do that during the general discussion. Then I come to amendment No. 687, standing in the names of Prof. N. G. Ranga and Shri Ananthasayanam Ayyangar. And then there is the first part of No. 688 of Shri Jaspat Roy Kapoor, and No. 705 also in the name of Shri Jaspat Roy Kapoor. These are to be considered together as they are of similar import. I can allow No. 687 to be moved.

Shri M. Ananthasayanam Ayyangar (Madras : General) : Sir, I beg to move:--

That in clause (2) of article 23 for the words "No minority" the words "No citizen or minority" be substituted.

I want that all citizens should have the right to enter any public educational institution. This ought not to be confined to minorities. That is the object with which I have moved this amendment.

Mr. Vice-President : As regards the first part of amendment No. 680, I want to know whether Mr. Kapoor wants it to be voted.

Pandit Thakur Dass Bhargava (East Punjab : General) : But Sir, there is my amendment No. 26 to amendment No. 687.

Mr. Vice-President : Yes, I stand corrected. There are certain amendments to these amendments which I shall take up one after the other. One is No. 26 in List I in the names of Shri T. T. Krishnamachari and Pandit Thakur Dass Bhargava. Do you move it Mr. Bhargava?

Pandit Thakur Das Bhargava : Sir, I beg to move.

That for amendment No. 687 of the List of amendments, the following be substituted:

"That for clause (2) of article 23, the following be substituted:--

"(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them."

and sub-clauses (a) and (b) of clause (3) of article 23 be renumbered as new article 23-A".

Sir, I find there are three points of difference between this amendment and the provisions of the section which it seeks to amend. The first is to put in the words 'no citizen' for the words 'no minority'. Secondly that not only the institutions which are maintained by the State will be included in it, but also such institutions as are receiving aid out of state funds. Thirdly, we have, instead of the words "religion, community or language", the words, "religion, race, caste, language or any of them".

Now, Sir, it so happens that the words "no minority" seek to differentiate the minority from the majority, whereas you would be pleased to see that in the Chapter the words of the heading are "cultural and educational rights", so that the minority rights as such should not find any place under this section. Now if we read Clause (2) it would appear as if the minority had been given certain definite rights in this clause, whereas the national interests require that no majority also should be discriminated against in this matter. Unfortunately, there is in some matters a tendency that the minorities as such possess and are given certain special rights which are denied to the majority. It was the habit of our English masters that they wanted to create discriminations of this sort between the minority and the majority. Sometimes the minority said they were discriminated against and on other occasions the majority felt the same thing. This amendment brings the majority and the minority on an equal status.

In educational matters, I cannot understand, from the national point of view, how any discrimination can be justified in favour of a minority or a majority. Therefore, what this amendment seeks to do is that the majority and the minority are brought on the same level. There will be no discrimination between any member of the minority or majority in so far as admission to educational institutions are concerned. So I should say that this is a charter of the liberties for the student-world of the minority and the majority communities equally.

The second change which this amendment seeks to make is in regard to the institutions which will be governed by this provision of law. Previously only the educational institutions maintained by the State were included. This amendment seeks to include such other institutions as are aided by State funds. There are a very large number of such institutions, and in future, by this amendment the rights of the minority have been broadened and the rights of the majority have been secured. So this is a very healthy amendment and it is a kind of nation-building amendment.

Now, Sir, the word "community" is sought to be removed from this provision because "community" has no meaning. If it is a fact that the existence of a community is determined by some common characteristic and all communities are covered by the words religion or language, then "community" as such has no basis. So the word "community" is meaningless and the words substituted are "race or caste". So this provision is so broadened that on the score of caste, race, language, or religion no discrimination can be allowed.

My submission is that considering the matter from all these standpoints, this amendment is one which should be accepted unanimously by this House.

Mr. Vice-President : There are two other amendments standing in the name of the honourable Member, namely, Nos.27 and 28.

Pandit Thakur Dass Bhargava : I do not propose to move either of them. I want to move No. 31.

Mr. Vice-President : That comes in another category. So the honourable Member is not moving Nos. 27 and 28.

[Amendments Nos. 705, 691 and 688 (second part) were not moved.]

Maulana Hasrat Mohani (United Provinces : Muslim) : I had an amendment to this amendment of the Honourable Dr. B. R. Ambedkar because I thought he was sure to move it. Now that he has withdrawn it, where am I to go?

Mr. Vice-President : You can only take your seat. Such things happen in political life.

So all the amendments to amendment 691 fall through.

We now come to No. 692.

Pandit Thakur Dass Bhargava : What happens to amendment No. 690?

Mr. Vice-President : That will come later on. These are being taken together as being of similar import. I am trying to ascertain whether these are to be put to vote or not.

I am afraid I cannot allow amendment 692 to be moved because it is covered by the amendment to amendment No. 687.

Mr. Vice-President : Amendment No. 689: this is a verbal amendment and therefore it is disallowed.

(Amendments Nos. 693, 694, 696, 697 (first part) and 698 were not moved.)

We now come to Amendment No. 690 which is in the name of Pandit Thakur Dass Bhargava.

Pandit Thakur Dass Bhargava : I propose to move an amendment to this. Sir, I move:

"That for amendment 690 of the list of amendments, the following be substituted:

"That in clause (3) of article 23, the word 'community' wherever it occurs be deleted."

This is an amendment to amendment No. 690. There is not much to be said. The word "community" as I said before has no meaning. No common characteristic can differentiate one community from another which is not covered by the words "religion or language". These words sufficiently cover the field that is sought to be covered by the word "community". Therefore the word "community" has no meaning in that provision and therefore it should be deleted.

Mr. Vice-President : Amendment No. 695: this is a verbal amendment and therefore it is disallowed.

[Amendments Nos. 697 (second part) and 699 were not moved.]

Amendment No. 700 is disallowed as it is covered by another amendment regarding the Directive Principles.

Amendments Nos. 701 and 702 are to be considered together as they are of similar import.

(Amendments Nos. 701, 702 and 703 were not moved.)

Amendment No. 704 is more comprehensive and may be moved.

Shri Damodar Swarup Seth (United Provinces : General) : Sir, I beg to move:

That for sub-clause (a) of clause (3) of article 23 the following the substituted:--

"(a) Linguistic minorities shall have the right to establish, manage and control educational institutions for the promotion of the study and knowledge of their language and literature, as well as for imparting general education to their children at primary and pre-primary stage through the medium of their own languages."

While in sub-clause (a) of clause (3) of article 23,obviously minorities based on religion and community have been recognised, my amendment recognises only minorities based on language. I feel, Sir, that in a secular state minorities based on religion or community should not be recognised. If they are given recognition then I submit that we cannot claim that ours is a secular state. Recognition of minorities based on religion or community is the very negation of secularism. Besides Sir, if these minorities are recognised and granted the right to establish and administer educational institutions of their own, it will not only block the way of national unity, so essential for a country of different faiths, as India is, but will also promote communalism, and narrow anti national outlook as was the case hitherto, with disastrous results. I therefore submit that only minorities based on language should be recognised and be granted the right to establish and administer educational institutions and that too for the purpose of promotion of their language and literature and for imparting primary and pre-primary education in their own language. Higher studies are to be conducted in the national language of the state. I therefore submit, Sir, that this amendment is most harmless and innocent and hope that it will be accepted by the House quite unreservedly.

(Amendment No. 706 was not moved.)

Prof. K. T. Shah : Sir, I beg to move:

That the following proviso be added to sub-clause (a) of clause (3) of article 23:--

"Provided that no part of the expenditure in connection with such institutions shall fall upon or be defrayed from the public purse; and provided further that no such institution, nor the education and training given therein shall be recognised, unless it complies with the courses of instruction, standards of attainment, methods of education and training, equipment and other conditions laid down in the national system of education."

Substantially speaking, it seems to be the same amendment or similar to the one I moved yesterday or the day before, viz., amendment No. 664. Only, there it was in a more positive form and here it is in a negative form, making it more clear that whatever be the foundation or endowment, in the first instance, of any such national institutions, no part of the expenditure should fall upon the public purse--neither partly nor wholly.--This I consider is necessary to provide specifically in view of the possibility of any party taking advantage of the positive provision made above. I should not like to waste the time of the House beyond just pointing out that this in reality is not identical, but that in substance it is the same. I am afraid I have not much hope of making the House change its viewpoint within 48 hours, and therefore I do not wish to take any more time of the House by speaking on it.

(Amendment No. 713 was not moved.)

Mr. Z. H. Lari (United Provinces: Muslim): Sir, I beg to move:

That after clause (3) of article 23, the following new clause be inserted:--

"(4) Any section of the citizens residing in the territory of India or any part thereof having a distinct language and script shall be entitled to have primary education imparted to its children through the medium of that language and script."

A notice of an amendment to this amendment has been given by Mr. Karimuddin. I would gladly accept it when it is moved. That amendment is for the addition of the words `incase of substantial number of such students being available.'

The first question that arises in this connection is whether it is necessary, either in the interests of a minority or of society, that primary education should be imparted through the medium of one's mother tongue. It is a very legitimate question to ask and I propose to give an answer to it. Only recently, the Government of India accepted a Resolution and published it in the Gazette of August 14, 1948. In the course of that Resolution they say:

"The principle that a child should be instructed in the early stages of its education through the medium of the mother tongue has been accepted by the Government. All educationists agree that any departure from the principle is bound to be harmful to the child and therefore to the interests of society."

That resolution further goes on to say, 'Conditions like these make it impossible for any State or Province to adopt any single language as the medium of instruction. An attempt to adopt one language in a province where groups of people speaking different languages reside and to impose it on all is bound to lead to discontentment and bitterness. It will affect inter-provincial relations and set up vicious circles of retaliation.'

And, towards the end they say:

"The Government of India is of opinion that in the larger interests of the country, it is desirable that the policy enunciated above should be followed by all provincial and State Governments".

Therefore, according to this very Resolution it is accepted that it is essential in the interests of society as well as of the minority that its children should be imparted primary education through the medium of the mother tongue.

I would refer this House, at this stage, to a reply given by the Honourable Maulana Abul Kalam Azad, the Education Minister in the Dominion Parliament at its session held in September last.

The Honourable Shri K. Santhanam (Madras: General): May I point out to the honourable Member that his amendment implies that every child has got the right to primary education immediately? Without that right this right cannot be sought. Therefore we have given a Directive....

Mr. Z. H. Lari : That is a different question. I will deal with it afterwards. I am here drawing the attention of the House to a reply given by the Education Minister to a question put in the Dominion Parliament.

Mr. Vice-President : I suggest that Mr. Lari keeps in mind the point of view put forward by Mr. Santhanam.

Mr. Z. H. Lari : I would. But here is the report of the interpellation. Replying to Shri S. V. Krishnamurti Rao, Maulana Abul Kalam Azad, the Education Minister said that the mother tongue of the child would be the medium of instruction in primary schools, i.e., up to junior basic stage from the age of six to eleven as stated in the Resolution of the Government on the subject and added: "The Central Advisory Board of Education in their report on postwar educational development in India, published in 1944, recommended that the medium of instruction in the secondary stage should be the mother tongue of the pupils."

Therefore, so far as the necessity of such a provision is concerned, it cannot be denied.

The next question is, does this right partake of a fundamental character so as to find a place in this Chapter. The first Constitution of a Free India that was framed was the Nehru Report under the able guidance of that prince among patriots, Pandit Motilal Nehru. One of the Fundamental rights suggested therein ran as follows:

"Adequate provision shall be made by the State for imparting public instruction in primary schools to the children of members of minorities through the medium of their own language and in such script as is in vogue among them". The nature and the fundamental character of this right has been accepted by that very Resolution of the Government of India to which I referred earlier. Therein they say:

"All provincial languages are Indian languages and there is little reason why any province in India should seek to deprive the children inhabiting that province of their fundamental right to receive education through the medium of the mother tongue."

Therefore even the nature and character of this right has been fully accepted by the present Government of India as well as by those seven leaders who framed the Nehru Report.

Now the third question arises. It is also very relevant. Is it necessary to put in this Chapter, after the clear acceptance of such a policy by the Government of India for the time being? I have personal experience of my province, which shows that it is absolutely necessary. I would give an instance in this regard. The House will note that the United Provinces is a bilingual province. Therein two languages, namely, Hindi and Urdu have been used and widely read by members belonging to different communities. If I only give you the figures of students appearing at the two examinations, viz., high school and middle school, you will find that at least one third of the students offered Urdu as their language. In 1944 the students who took Hindi numbered 11,617 while those who offered Urdu numbered 7,167;

In	1945	do.	12,423	do.	7,426;
	1946	do.	14,222	do	8,244;
	1947	do.	18,302	do.	13,080.

Therefore you will see that two-thirds of the students who appeared at the high school examinations offered Hindi and one-third offered Urdu.

But, now what happens? All of a sudden in May last, a curriculum was published the result of which, according to my reading, was absolute elimination of Urdu. I was assured that was a misapprehension. But when the classes opened in July 1948, I find that my reading was correct. My child of six, came and said: "Today my master asked me that I should do all the sums in Hindi and Hindi only." He was further told not to bring Urdu Book. I was surprised. On enquiry I found the same condition in all schools. I wrote letters to all concerned and I was assured again that a G. O. was being issued to the effect that wherever there was a demand by students for being taught in Urdu, this should be done. Subsequently I wrote a letter to the Principal of the College to make arrangements for teaching Urdu. I received a reply in the negative. He said no such arrangement can be made. Ultimately, when I forwarded that letter to the Minister for Education, the reply came in October to the effect that arrangements can be made only when the majority of the guardians want that education in Urdu should also be imparted. The Resolution of the Government of India and all the answers given were intended for the facility of a minority which is less than 50 percent, but that facility was denied and made dependent on will of the majority. The result is that in a Province wherein to use the words of that noble soul, our own Prime Minister, began the process which was to continue for several centuries for the development of a mixed culture in North India; Delhi and what are known now as the United Provinces became the Centre of this just as they had been and still continue to be the Centre of Old Aryan culture. They are the seat of the old Hindu culture as well as of the "Persian culture", teaching of Urdu, the moinspring of Muslim culture has been banned. In Lucknow and in Allaha bad, where Urdu owing public is of sufficient strength in fact in most places, so far as primary education is concerned, no arrangement has been made for teaching through the medium of one's own mother tongue. I know of Allahabad positively and of Lucknow too which is considered to be the centre of Urdu, so far as primary education is concerned, in those two places no arrangement exists whatsoever for teaching the children of the minorities through their mother tongue. Therefore this experience of mine in my own province shows that there is necessity for such a provision, and that such a provision should find a place in the Constitution. But I am conscious of one difficulty, rather two difficulties. One difficulty is, supposing the numbers of students who want to have a particular language as the medium of instruction were few in number. That difficulty has been obviated by the amendment which has been given notice of by Kazi Syed Karimuddin.

There is another difficulty which has been pointed out. I have said here, "any section of the citizens". It may be that people of one province, very few in number, residing in another province may claim that their children should be given instruction through the medium of their own language. But that objection can be met by substituting the word 'minority' for the words "section of the citizens". I think Begum Aizaz Rasul has given notice of that amendment.

After these two amendments, the clause will read---

> "Any minority residing in the territory of India or any part thereof having a distinct language and script shall be entitled to have primary education imparted to its children through the medium of that language and script in case of substantial number of such students being available."

Now to take up the objection of Mr. Santhanam. In the Directive Principles we say that the State shall endeavour to provide education up to the age of fourteen and so on and so forth. You remember, Sir, that that clause as it originally stood was--

"Every citizen is entitled to free primary education and the State shall endeavour to provide......" etc.

The words "Every citizen is entitled to free primary education" were deleted and the speaker, when moving that deletion, said that this was of a fundamental character and therefore such a clause could hardly find a place in that chapter. That is why I have given notice of another amendment which says that there should be an article in the fundamental rights that every citizen is entitled to receive primary education. So far as the clause in the Directive Principles is concerned, it does not relate to primary education only but relates to secondary education as well. Any how, we are dealing with the cultural and educational rights of the minorities here, (and the educational right that I want to have inserted here is that primary education should be imparted through the medium of the mother tongue. It does not say that they must be given primary education but if there is any arrangement for primary education, then that primary education should be imparted through the medium of one's mother tongue. There is thus no legal obstacle.) With these words, Sir, I move my amendment.

Mr. Vice-President : Amendment No. 58 of List III standing in the name of Kazi Syed Karimuddin.

Kazi Syed Karimuddin (C. P. & Berar: Muslim): Mr. Vice-President, Sir, it is unnecessary for me to explain the scope of the amendment moved by Mr. Lari. I have an amendment to move to the amendment of Mr. Lari which runs like this:

"That in amendment No. 714 of the List of Amendments, in the proposed clause (4) of article 23, the following words be added at the end:--

'in case of substantial number of such students being available' ."

Sir, according to the fundamental rights, freedom of movement and freedom of trade and commerce have been granted and it is just possible that people may be moving freely from one part of the country to another and settling in other provinces. Moreover, there would always be Government servants who would be transferred from one province to another. Take for example the case of the city of Delhi. There are Madras is; there are Bengalees; there are Muslims; there are Telugu people also in Delhi. If no provision is made for their education in the primary schools, it would be very difficult for their children to be educated in their own mother tongue at least in the primary stage of schooling. Therefore my submission is that Mr. Lari's amendment is not only important from the Muslim point of view, from the minorities' point of view, but also from the point of view of those who come from Bengal and Madras or other provinces. Therefore the amendment of Mr. Lari with my amendment should be accepted.

Mr. Vice-President : There is a short notice amendment standing in the name of Begum Aizaz Rasul.

Begum Aizaz Rasul: (United Provinces : Muslim): Sir, I beg to move--

"That in the amendment moved by Mr. Lari for the words section of the citizens' the word 'minority' be substituted."

The clause will then read--

"Any minority residing in the territory of India or any part thereof having a distinct language and script shall be entitled to have primary education imparted to its children through the medium of that language and script."

Sir, my amendment speaks for itself, and after hearing Mr. Lari, I do not think it is very necessary for me to go into details about this. The word "minority" has been defined in the Draft Constitution. I think that it is necessary that minorities who have a distinct language and script should have this right guaranteed to them by the State, that the children of these minorities will have all facilities provided to them to have primary education imparted to them in their mother tongue. Sir, It is an accepted principle all over the world that a child in the primary stages of education should have that education imparted to it in its mother tongue. I do not think that there can be any difference of opinion regarding this matter. It is impossible for a child who belongs to a section of the people whose language and script is different to that of the State to receive education in another language, because that militates against the very principle of learning. You cannot burden the mind of the child by forcing him to receive his primary education in an alien tongue and script. Sir, the object of this amendment is in no way meant to debar the children of minorities from learning the language of the State. It is in the interests of the children of the minorities themselves that they should learn the language of the State, whatever that language may be, as their economic future as well as entry in services, etc., depends that they should be well conversant with the language of the State. Therefore it should not be taken that I am in any way opposing the idea of the children of minorities learning the language of the State--but mine is a fundamental point because on good foundations of learning can education be effective. Sir, I do not think that it would have been necessary to have moved this amendment at this stage, but there are practical difficulties which we have experienced and therefore it is necessary that in the fundamental rights some provision should be made which would make the position clear and which would guarantee to the children of the minorities living in the territory of India the right to be given instruction in their own mother tongue in the primary stages. With these words, Sir, I move this amendment and hope that it will be accepted.

(Amendment No. 715 was not moved)

Mr. Vice-President : The article is open for general discussion.

Shri Mihir Lal Chattopadhyay (West Bengal : General) : Mr. Vice-President, Sir, this particular article 23 of the Draft Constitution is a definite guarantee to the minorities that their language, culture and script will be protected in every way. There are different kinds of minorities in this country and all these minorities based on language, script and culture will really find a great protection in this article. It is true that in different provinces of this country there are minorities living who have languages different from the language of the majority and it is a fact that in many provinces in India the minorities based on language are subjected to various types of disabilities and as a result, for some time past, there is a subdued voice in the country about the tyranny and imperialism of language. The other day, Mr. T. T. Krishnamachari made a reference about the Imperialism of language. I have no quarrel with him on this matter but I do not know how long it will take for a citizen of this country to accept joyfully a national language that is the language of this country, but it must be acknowledged that a minority having a definite and distinct language of its own, but residing in a province, where the provincial language is different, ardently seeks to maintain its language and its culture without being interfered in any way. It is true that this country is divided into different provinces and each and every province has got a provincial language of its own, but unfortunately, in the matter of demarcating the provinces, the British Government did not take much care about demarcating on the basis of language and for that matter in almost every province there are minorities and there has really arisen some danger of the language and culture of the minorities in the different provinces being put under numerous disabilities.

This article 23 gives an assurance to the minorities that their languages will be guarded, the minorities will be able to conserve their own languages and not only conserve, but a definite development also can be made by them. The minorities also will find no discrimination made in the matter of Government aid for the protection and development of their languages. This article 23, is, therefore in every way a great charter of right for the different linguistic minorities in the different provinces of India. It is necessary that the minorities living in a province should not all the time feel themselves isolated and consider themselves as something definite and distinct from the nationals of that province in civic life. The minorities have also to adopt themselves to the language and the culture of the provinces they live in to a large extent. No minority should live in a province as a foreigner as the British people or their half-brothers in India have lived all these years; but the majority also should have maximum consideration for the minorities in the provinces so far as their language and culture are concerned. In fact a new example has been set by the Congress the other day when the Congress directed some of the Provincial Congress Committees that the minority having a language different from the language of the province, will be allowed to carry on correspondence with the provincial Congress Committees in the language of that minority.

The demand which is being heard from various quarters about realignment of provinces or rather redistribution of provinces on linguistic basis, will be satisfied to a large extent by the provisions of this article in the Draft Constitution. The minorities are mightily afraid of their languages being put out of existence by the aggression of the majorities, who might be very unsympathetic towards the minorities in these matters. The minorities are zealous about guarding their own language and culture, and quite naturally they should be so. The majority must have some sympathetic understanding about the feeling and outlook of the minorities. By that alone, in the different provinces, the cry that has arisen about the redistribution of territories on a linguistic basis will stop to a large extent. We all know that soon after the partition of India into two parts, the question of redistribution of provinces on linguistic basis is be set with many difficulties. It is a problem that will take a long time to settle. But, it is to be remembered that if minorities are subjected to tyranny and oppression and aggression by the majority in the matter of language and culture, there will be trouble in this country and the Governments in the provinces will be faced with difficulties. Therefore, this article 23 is a clear direction to the majority in the different provinces to look after the interests of the minorities so far as language and culture are concerned. If the majority in dealing with the minorities tries to understand their view point and tries to safeguard their interests so far as language and culture is concerned. I think the voice that has risen in India about the immediate re-distribution of provinces on linguistic basis will be consoled to a large extent.

I wholeheartedly support this article.

Shri R. K. Sidhwa : (C. P. & Berar : General) : Sir, regarding this article on education based on religion or otherwise, I would have certainly preferred a very clear and unambiguous provision. Sir, some of the provisions of this article are contradictory. While the Constitution has recognised that all communities have a right to give education on religion, article 22 states that where State aid is given, there shall be no religious education provided. Again, there is a proviso that communities which do not expect any State aid shall have a right to give education on religion according to their choice and custom. Personally, Sir, I feel that as far as religious education is concerned, it should have been mentioned in unambiguous terms that wherever an educational institution receives State aid, there shall be no religious education taught in those institutions. My objection is not because I am averse to religion. I believe in religion, Sir, I believe in the existence of God. But, I do feel today that the religious books of the various communities are translated by various authors in a manner which has really brought disgrace to several religions. The authors have translated some of the very beautiful original phrases in their own language to suit their own political ends, with the result that today on religious grounds we know the country has broken into various pieces. I therefore desire, Sir, that in the matter of education, which is the fundamental basis of our future, it should have been clearly stated that under the existing circumstances, there shall be no religious education provided in any institution which receives State aid.

As I have stated, Sir, while the State has not recognised any religion, they have allowed those institutions which do not receive State aid to impart religious education in their institutions. I do not want to go into the various phases of the religious scriptures which are being taught in the various schools. I know of instances where in the name of religion communal hatred has been taught. I do not know whether in this new era when we will be functioning under this Constitution, the same type of religious education would be taught. There is no restriction regarding that kind of religious instructions that are being given in various schools. I can quote them; but I do not want to create any kind of ill-feeling between community and community. I only wish that in this matter the Constitution should have made it clear as to what education means as far as religious education is concerned. On that matter, this chapter is silent; not only silent, but I apprehend that in the name of religion, there will be the same type of religious education taught in the institutions. I have been reading and re-reading these two chapters and I feel that there is no kind of control over such kind of schools and colleges. On the contrary, it will be stated that the Constitution has given them freedom to teach religion in any manner they like. Knowing fully well, as we do, what religion in this country means to various communities, this chapter, I feel, Sir, should have been more clear.

As far as the suggestions and amendments that where various communities and minorities reside, education should be in their language. I find clause (b) is clear, although I would certainly have preferred the amendment of Damodar Swarup Seth, which is very clear. I do not think the State denies this even in this Constitution. Here, the minorities must not be misunderstood to mean religious minorities; minorities mean various classes of people. For instance, in Bombay, there are eighteen classes of people. Just now four lakhs of Sindhis are in Bombay. The Corporation have recognised the Sindhi language. Although they have not recognised the Sindhi language, they have opened schools for them. I do feel there is provision in this Constitution wherever there are such classes or linguistic communities or sub-communities, the State shall provide all facilities to them. If the State were to deny that, that State will not be discharging their duty. I am quite clear that the Constitution has made provision to that effect. In the Directive principles also we have stated that every child, no matter to whatever class he belongs, shall be imparted education compulsorily by the State. There is no fear as far as this is concerned, that all children, whether they belong to any small minority or linguistic minority, would be provided education in their own mother tongue.

Mr. Lari's amendment therefore is out of place. I am clear that the Constitution has provided for this and if such education is not provided, I would state that the State and the provinces and the provincial Governments would be failing in their duty and not discharging their duty by providing that kind of education which it is their duty to provide.

Shri Jaipal Singh (Bihar : General): Mr. Vice-President, Sir, I have great pleasure in welcoming this article, more so as it has been suitably amended by Dr. Ambedkar, and I hope his amendment will be accepted by the House. Sir, to me this article seems to open a new era for India. Recently there has been such a lot heard about linguistic provinces, and, my friend from West Bengal has already hinted that this particular article opened a way for a realignment of provincial boundaries, for the creation of fresh provinces. Sir, I do not look upon this article in that light. I do not believe that provinces should be carved out purely on a linguistic basis. There are other factors also that must be considered. There is the administrative convenience; there may be the geographical argument; there may be the economic demand and various other factors which must be taken into account before the linguistic argument can be given the emphasis that is demanded of people who feel aggrieved that they are a linguistic minority in any particular province. I do hope that once this article is passed by this Assembly, all the Governments of the provinces will see to it that its spirit is implemented immediately. They need not wait till the Constitution as a whole is brought into existence. Already in my part of the world there is a tremendous--a very unhealthy--linguistic warfare going on. It is assuming dangerous proportions, in my own case, in Chota-Nagpur hitherto--on the ground of language, attempts are being made to snatch a bit to the east, snatch a bit to the south, snatch a bit to the west. No consideration whatever is given to the fact that there are other grounds also which have to be taken into consideration, e.g., the question whether administratively this or that portion should be taken out of a particular area. I urge, and I have urged this before elsewhere also, that language by itself is no argument for the creation of new provinces or for realignment of boundaries. I do hope in my part of the world--particularly the Provinces of Bihar, Orissa and West Bengal will now see a new way of approaching this linguistic problem. In Bihar, for example, the Bengali-speaking people have always made the grievance that they were being victimised by the Hindi-speaking majority of the province. Sir, much has happened in the past--it is an ugly chapter--but I do hope now that this particular article will be in the Constitution that even the linguistic minorities may look forward to a confident future where they will have opportunities of conserving and developing their own particular languages. Sir, when we talk of languages, we generally think of languages that have a highly developed literature, that have a script and so forth. I would like to urge that languages that have not a script also deserve to be conserved and, to use Prof. Shah's amendment,--'developed'. I have been trying to look through the figures in the language census that has been provided us and I find that the languages of this country have been divided into five main divisions and in this division I find that the aboriginal languages have been classified separately. Now take the language which is known as the Mundari group of languages. According to the census I find there are very nearly 5 million people who speak the Mundari language. How many members are there in this House really who know that Mundari is a very rich language, that there is the Mundari Encyclopaedia -- 14 Volumes of it? Yet, can it be said that in Mundari speaking areas that language is being encouraged? Is not the practice that every ruling class tries to drown whatever language there is in the country? We have had instances where a ruler has been an Oriya, he has forced Oriya upon the people of his State. The British came and they tried to thrust English down our throats. May be in Bengali-speaking areas, Bengali is insisted upon. Sir, I accept that, whatever be the provincial language, every person must learn that language. We have yet to decide what the rashtrabhasa will be—what shall be our national language. Everyone of us must learn that language. I want to urge that the languages must be conserved and developed. I realize that, in many instances, particularly of the aboriginal people, it would mean their learning three languages, *viz.,* their own, the provincial language and also the rashtra-bhasha or the national language. But I do not think it would be too much of as train. After all the mother tongue is such that it does not exact the speaker much, but the main thing is this that all the provinces wherever there are linguistic minorities—I hate to use the word 'minority' in that sense—wherever there are linguistic minorities, the provinces should take a positive step in encouraging, in conserving, in developing all the languages that are capable of being conserved and developed. There are certain languages that will go under. I do not think there is much point in trying to keep alive a language that has not enough vitality in itself, that could not on its own momentum compete against other languages. I am not trying to defend those languages that have come and gone but I am thinking of languages that have survived through thousands and thousands of years and, if. they are developed, they are capable of teaching us much about the past. I may give an instance. Now we know very little about ancient Indian history. That is largely because the most ancient stock of people who lived in this country, their languages have not been studied by the new-comers. It is a sad fact today that most of the aboriginal languages have been studied by foreigners. I doubt if there is a single Prime Minister of any province who can speak the aboriginal language of the majority of the aboriginals in his province. I doubt if there is a single minister in this country today who can speak any aboriginal language. If we are to develop these pre-Aryan languages, we shall find revelations from the 'Asurs' for example, we shall know more of the early days of the incoming of the Arya-speaking people. There are many things yet to be learnt about the ancient past, not only of the people but of the country as a whole. I look at article 23 from various angles. Sir, I have great pleasure in welcoming this article and I do hope that the Provincial Governments will act according to the spirit of this article long before the Constitution actually comes into existence so that the bitterness that there is in the provinces on account of this linguistic warfare may gradually disappear and all linguistic minorities may feel that their languages will not be victimised, that they may develop their languages as they like and that their language has a rightful place in the country.

The Honourable Shri K. Santhanam : Mr. Vice-President, Sir, this article deals with one of the most difficult problems which free India will have to face. The problems <of religious minorities and of scheduled castes are legacies of the past and I expect that in the near future they will simply lapse owing to the lapse of time and owing to circumstances. But the question of the linguistic minorities will be a problem for many decades to come and I am afraid, it is going to cause the country a great deal of trouble.

Sir, I have great sympathy with Mr. Lari and others who plead that more categorical assurances should be given by the Constitution for the linguistic minorities. But I am afraid it is not possible to go further than what the article tries to do. It protects them in three different ways. Clause (1) of article 23 gives the right to every minority to conserve its own culture.

Maulana Hasrat Mohani: This is no right. What is it?

The Honourable Shri K. Santhanam : Sir, you will remember that throughout Europe, after the first World War, all that the minorities wanted was the right to have their own schools, and to conserve their own cultures which the Fascist and the Nazis refused them. In fact, they did not want even the State schools. They did not want State aid, or State assistance. They simply wanted that they should be allowed to pursue their own customs and to follow their own cultures and to establish and conduct their own schools. Therefore I do not think it is right on the part of any minority to depreciate the rights given in article 23(1).

Sir, in clause (2) of article 23 they are protected against discrimination. It is just possible that there may be many provinces based on language and therefore the Government, the ministry and the legislature will be composed dominantly by members of the majority language. This right of non-discrimination will then become fundamental and valuable.

And then in clause (3) of this article, it is provided that when the State gives aid to education, it shall not discriminate against any educational institution, on the ground that it is under the management of a minority, whether based on community or on language, and this will be particularly applicable to the linguistic minorities. In every province, there are islands of these linguistic minorities. For instance, in my own province of Tamil Nadu there are islands, in almost every district, of villages where a large number of Telugu-speaking people reside. In this connection we have to hold the balance even between two different trends. First of all, we have to give to large linguistic minorities their right to be educated—especially in the primary stages—in their own language. At the same time, we should not interfere with the historical process of assimilation. We ought not to think that for hundreds and thousands of years to come these linguistic minorities will perpetuate themselves as they are. The historical processes should be allowed free play. These minorities should be helped to become assimilated with the people of the locality. They should gradually absorb the language of the locality and become merged with the people there. Otherwise they will be aliens, as it were, in those provinces. Therefore, we should not have rigid provisions by which every child is automatically protected in what may be called his mother-tongue. On the other hand, this process should not be sudden, it should not be forced. Wherever there are large numbers of children, they should be given education—primary education—in their own mother-tongue. At the same time, they should be encouraged and assisted to go to the ordinary schools of the provinces and to imbibe the local tongue and get assimilated with the people. I feel this clause does provide for these contingencies in the most practicable fashion.

Sir, Mr. Lari wanted an amendment which seeks to provide that every child, rather that every section of the citizens, shall be entitled to have primary education imparted to its children through the medium of the language of that section. I suppose what he means is that wherever primary education is imparted at the expense of the State, "such provisions should be made. But this, I think, would give the minority or section of people speaking a language the complete and absolute right to have primary education which the people of this country do not have today. In the directives we have provided that in fifteen years' time there should be universal primary education. But no one knows whether the financial and other conditions in the country would permit of universal primary education to be established even then. Today no one in India can ask for primary education as a right as only ten per cent, of the population get primary education. Therefore, it is not possible to accept Mr. Lari's amendment, because that would lead to all kinds of difficulties, If it were passed, then anyone can go to the Supreme Court and say that his child must get education in a particular language. That is not practicable, and I do not think even his intention is at all that.

At the same time, I think, what he has pleaded for must be kept in mind as a general policy. It should be the direction of the Central and the Provincial Governments to see that wherever there are congregations of boys and girls having a distinct mother tongue, schools should be provided in that language. I hope that will be the policy adopted all over the country, especially as, if there is going to be new linguistic revisions of the boundaries, all the border areas will be full of this problem. I hope the report of the linguistic Provinces Commission will contain some wise provisions to be adopted in this behalf. There should be no difficulty or hardship whatsoever in provinces when they are rearranged on a linguistic basis. For instance, if a Telugu goes to one area or the other, he should not have any hardship. As I said, this is a most difficult and complicated problem and it cannot be dealt with in detail in the fundamental rights. This article 23 provides as much security as can be done in the Constitution. Other securities will have to be provided for both by Parliamentary and provincial legislation, and I hope it will be done in due course.

Mr. Z. H. Lari : May **I** know what machinery he would suggest for the enforcement of those general principles he has just enunciated?

The Honourable Shri K. Santhanam : I have got my own ideas, but it is not for the Constitution to incorporate them. When we meet in Parliament, I shall be glad to put forward my proposals in this direction. For instance, there can be a special linguistic commission to look after these linguistic minorities, to be appointed by Parliament and this commission can tour round the country and look into grievances wherever they may be felt and make suggestions.

Mr. Z. H. Lari : But let me remind that according to the Minister for Education, U.P., it is a provincial subject and he cannot be guided by a resolution of the Government of India.

The Honourable Shri K. Santhanam : I may remind Mr. Lari that wherever people are self-governing, you have to persuade them, even when they are in the wrong; otherwise there is no machinery or commission which can be imposed from outside, either on the provincial ministry or on the central ministry.

Mr. Vice-President : I cannot allow arguments inside the House. Mr. Santhanam, you had better go to your seat. Mr. Biswanath Das.

Shri Biswanath Das (Orissa : General): Sir, I wish I were able to congratulate our Honourable colleagues—the members of the Drafting Committee, but I am sorry I cannot do anything except disapproving portions of this article.

Sir, we have been accustomed to the notion of having two cultures, namely the oriental and the occidental cultures. But our honourable, friends the wise men of the Drafting Committee, have not only given us idea of multicultures but also perpetuated cultural zones; they have not only given scope to perpetuate these cultural zones, but they have also given scope for various kinds of linguistic and script difficulties, not only in India, but also in the Provinces to come in. Thanks to Pakistan it has created a refugee problem for India, a refugee problem where friends migrating not in thousands and lakhs, but in millions are to be distributed all over India. I would appeal to you, to visualise the difficulties of provinces, wherein people from different linguistic areas like Sind, Frontier and East Bengal are to be distributed in various provinces and States in India. Are you going to give them a right to perpetuate their script and their language irrespective of the fact how small or how few they may be?

I should appeal to you to consider this question cooly and seriously.

Are your finances so very extensive as to provide for anything that is called upon to be done, even for a small percentage of people? For myself, personally, I have no objection because I yield to none in my anxiety to give all necessary facilities in India to linguistic minorities and groups. But are you going to give this latitude as called upon here?

It was probably in the year 1938, the Honourable Prime Minister of Madras, who now adorns the gaddi of our mighty ancestors, Indraprastha, I mean His Excellency Rajagopalachariar, told a deputation of Oriya gentlemen at Berhampore railway station that "Well, the time will come when you and your people living in Madras will have to learn in the language of the province. Each minority population distributed in a province has to learn the language of the province."

A different principle has been enunciated altogether in this article. Those who know say there are Oriyas in Andhra and Andhras in Orissa who know the language of the place in which they are staying. So also is the case with people living in Gujarat, the U. P., in Bengal and such like places. Are you, gentlemen, going again to revive the whole thing in all its freshness? This is a serious question and I want you to think seriously over this.

I thank my friend, Mr. Jaipal Singh, for having given a full picture of what his demand is going to be. I want you also to consider that aspect of the question. These are not easy things taken away by snap words. I would therefore appeal to you to consider the whole question in its entirety with all the repercussions it might bring on the future of India.

Shri T. T. Krishnamachari (Madras: General): On a point of order: is the honourable Member addressing the Chair or a public meeting?

Shri Biswanath Das : **I** know this more than my honourable Friend, having had a longer period of legislative experience. My own misfortune is that I am not able to face you however much I would like. Therefore from the nature of things I am called upon to address my friends however much the rules desire that 1 should address you. There need therefore be no attempt at coaching in this respect.

Mr. Vice-President : Will you please go back to your own work?

Shri Biswanath Das : Thank you very much. He should save himself and me from advising. The British Government had given us religious minorities. What are those religious minorities? I claim that my Muslim brothers are blood of my blood and bone of my bone. They are mine and I belong to them and they belong to me. There is absolutely no difference so far as their culture is concerned. The culture is ours. It is oriental culture, I do not again see any reason why any trouble would come in on the score of language. So far as my Muslim brethren are concerned, I may say that no less a person than the ex-Prime Minister of Bengal had told me during his visit to Orissa that he was surprised to see that some Muslims in Orissa could talk better Hindi than he himself could do. That is the position of Muslim friends in our country. Go to the South, and you find Muslims in Andhara, Tamilnad and the rest talking Telugu and Tamil and not Urdu.

Therefore, their language and culture are one. I would therefore appeal to the honourable Members of this House to look at that aspect of the question.

Having said so much on (1) and (2), I come to (3)(b) which states that the State shall not in granting aid to educational institutions discriminate against any educational institution on the ground that it is under the management of a minority whether based on religion, community or language. Therefore, hereafter be it clearly understood that every minority, living in the remotest village, will claim a special aid for an institution in his language, and that has to be conceded: otherwise both the High Courts and the Supreme Court are his places of refuge. That is a serious thing and I appeal to you to consider this very seriously.

Having stated so much about this, I come to the question of linguistic provinces, which has been referred to by my friend. It took my breath away to hear Mr. Jaipal Singh giving out his dicta on the question of linguistic division of provinces. Orissa was first in the field to begin this agitation for linguistic provinces.

Mr. Vice-President : I cannot permit you to take up the time of the House with the question of linguistic provinces.

Shri Biswanath Das : I am not. But this was stated and I am replying to it. Orissa first began agitation for linguistic provinces. Others followed us. Therefore the people and the Government of India had to think about this question and the result was that, the Government of India in their despatches of 1911 enunciated accepting the principle which was subsequently adopted by Congress in 1921, namely, the linguistic division of provinces and the Federation of India above them. That was the principle that was accepted not only by an alien Government, who never had sympathy for our aspirations but also by all the thinking minds of India, belonging to all schools of thought, including Muslims, Christians and other religious denominations. Therefore, it comes too late in the day in the mouth of my honourable Friend, Mr. Jaipal Singh now to decry this position. If you want an Adibasi-stan, by all means demand it and those who want to concede it let them say so openly. I am not here to side-track issues. The difficulties such as those pointed out should be borne in mind and I appeal to my friends to take a serious view of the difficulties that I have placed before them and the finances that are required to put into operation article 23 in this regard. Though I bow down to the joint wisdom of the House and my party, I must clearly state before the honourable Members of this House that I do protest against some of these provisions and I have already stated my arguments.

Shri O. V. Alagesan (Madras : General): Sir, this clause seeks to conserve the scripts and languages of sections of citizens. It is very necessary, in view of the fact that the various provincial scripts are now being threatened with extinction, if I may say so.

There is a point of view put forward that the Devanagiri script should be substituted for all the provincial scripts. The All India University Teachers Convention which recently met in Delhi under the chairmanship of a well known political leader has passed a resolution that there should be a common script for all the Indian languages. When it is recognised that the various provincial languages of India are more ancient, more developed and richer in content and expression than the common language, Hindi, it will be realised that this step will cause great dissatisfaction and heart-burning. It is said that there is no organic unity between the script and the language. I do not know. It is for eminent educationists to offer their opinion on the matter. All I can say is that there are certain special sounds in every language which can be expressed only by the ancient script with which the language has been associated. It is not possible otherwise.

This idea was even mooted by Mahatma Gandhi once but he at once saw the inherent contradiction in the position that obtained in the country. We have got for one and the same language two scripts. For Hindi or Hindustani there are two scripts, namely the Arabic or Persian and the Devanagri scripts. So he gave up the idea and began himself [earning the various provincial scripts.

In this matter of scripts and languages I say that the Government of the Union should follow an enlightened policy, similar to that being followed in the U.S.S.R. There they did not countenance the idea of imposing the Russian language or script on the other linguistic minorities. They called such imposition by the name of Russian Chauvinism. I do not want Devanagri Chauvinism to be countenanced in this country also. In the U.S.S.R. there were languages without scripts. They went out of the way to provide scripts for them. They did not provide the Russian script but they provided the Latin script. Similarly in India there are languages without scripts. The Konkani language which is spoken by the honourable Father De'Souza, an eminent member of the House, is without a script. Tulu is another spoken language without a script and I think many of the Adivasi languages are without scripts and for each of these languages the Government should provide the alphabet. This clause should be interpreted rather liberally and we should provide scripts for languages without scripts, in which case I have no objection if the Devanagri script is provided for such languages. But to say that we will provide Tamil, for instance, with the Devanagri script is something understandable and inconceivable; and what is the object with which such a proposition is propounded? The object is to achieve inter-provincial unity.

Instead of achieving inter-provincial unity I know such a step will hamper it. So it is necessary, when we are going to evolve or decide upon a common All-India language for governmental and administrative purposes, we should not aggravate the situation by saying anything about the script or by speaking of the abolition of the various provincial scripts. By trying to preserve and conserve and advance the provincial scripts and languages we will, I think, evolve greater national solidarity and unification. Sir, I commend this clause for the acceptance of the House.

The Honourable Pandit Govind Ballabh Pant (United Provinces : General): Sir, I am sorry that I have to intervene in this debate. I had no such intention. I had imposed a self-denying ordinance upon myself and have as a rule refrained from encroaching upon the time of the House. I want the time that we have at our disposal to be economised and the Constitution to be adopted as speedily as may be possible. But for the remarks made by one of the Speakers I would not have come to the microphone today. The observations made by Mr. Lari have compelled me to make a few remarks which I think will remove any misunderstanding that his speech might otherwise have created.

So far as this clause is concerned I fully support it. Luckily Mr. Lari has not said that anything has been done in my province against the letter or spirit of this clause. So far as that goes he has not made any assertion or insinuation......

Mr. Z. H. Lari : I was speaking on the amendment, and had to confine myself to that.

The Honourable Pandit Govind Ballabh Pant : So you admit that so far as this particular clause that has been accepted by the Union Powers Committee and the Drafting Committee is concerned there is nothing that is being done which can be said even by Mr. Lari as being against the letter or spirit of this clause. He thinks that it is not adequate enough for his purpose and therefore he wants it to be amended.

Mr. Z. H. Lari : No, I could say a lot but had no occasion.

The Honourable Pandit Govind Ballabh Pant : So far as his amendment goes, I think many speakers have commented on it and have controverted the arguments advanced by him. I do not consider it necessary to add to the weight of the arguments that have been put forward by them. I should, however, like to mention some facts and some principles which have to be borne in mind. We in this Union of India owe a duty to all citizens who live in this land and we have to do things in such a way as would enable us to make the maximum use of the resources that are available today or that may be available tomorrow. Mr. Lari cannot expect us to feed the fad of anybody at the expense of the tax-payer. In our country, vast numbers are illiterate and they have to be given the benefit of at least primary education. Primary education, in order that it may be made even universal, will cost millions and millions. Now, how are our schools to be established and how are our schools to be run? If every school should have two or three sets of teachers, one knowing Nagari and the other knowing Urdu, indiscriminately regardless of the number of students interested in either are we capable of providing for that financially? If such a policy were followed, then we would not be able to introduce universal primary education,—not to talk of compulsory primary education,—till Doomsday. Obviously, you have to examine the situation in every place and then provide such machinery as would yield maximum results.

Sir, so far as my own province is concerned, I do not think there is any linguistic division based on religion. (Honourable Members: 'Nowhere[1].) whether it be Hindi, or Hindustani or Urdu, there are many among Hindus who can speak in what is called Urdu and who can write Urdu and some who perhaps can write Urdu alone. There are many Muslims, especially in the villages, who use only Devanagri character and speak in Hindi only and know nothing else.

Maulana Hasrat Mohani : In the villages nobody speaks Hindi.

Mr. Vice-President : That is an interruption of a privileged individual. Do not mind that.

The Honourable Pandit Govind Ballabh Pant : He may rest assured that after the assurance that I have received from the Chair, I will not take notice of his remarks *(Laughter).* As I was saying, once you bear in mind that there is no particular language attached to the followers of any particular religion, then the question of language with reference to or *vis-a-vis* any minority, does not arise at all. No language is the language of the Hindus and no language is the language of Muslims. (Honourable members: *'hear, hear'.)* Especially so far as primary education is concerned and primary classes are concerned, where education of an elementary type is given, there can be no room for any difference of opinion regarding the principle that I have just enunciated. For, in those schools only elementary ideas are propounded and they are propounded in a form which is ordinarily intelligible to everyone. So, there is no question of anything being done that might be prejudicial to any minority as such.

There are men who know Hindi and whose children may be learning Urdu. There are Hindus who know Urdu and there are Muslims who, as I said, know Hindi and Nagari character, and Nagari character and Hindi alone. So, to present it as a communal problem or as a minority problem, while the question of Fundamental Rights is being discussed, is to give it a wrong colour. I submit that the question does not arise in this connection at all.

Then Mr. Lari made some astounding remarks. He said that in Lucknow and in Allahabad, there was no place where Muslims could receive education of a primary character in Urdu. There are Islamia Schools and there are Madrassas and also Government schools and there are Muslim schools and Muslim colleges in both the places and therein hundreds of Muslim boys are receiving education. I cannot understand how Mr. Lari could have made himself responsible for such an inaccurate statement.

Mr. Z. H. Lari : I have got before me the letter from the Principal of the Basic College itself. No arrangement exists in any Government or Municipal school.

The Honourable Pandit Govind Ballabh Pant: I am coming to that. Have a little patience. So far as I am aware there has been no reduction in the number of Muslim students in our schools and colleges in the province during this year. I may also state that there has been no general complaint about any inconvenience having been caused to any class of boys by the system that is in force today. Mr. Lari had some controversy with our Minister for Education and certain communications were published in the press. The view of Mr. Lari was controverted by some respected Muslims of my province and some Members of the legislature disagreed with him and gave expression to their views in the columns of newspapers. He is probably aware of that Mr. Ismail Ahmed's note was probably seen by him. He says no. It is not right to notice only what suits one. *(Laughter).* From that one can see what is his method of examination of public questions and of forming opinions thereon.

Now, the boys are taught in primary schools in their mother-tongue, and the mother-tongue of Hindus and Muslims and all boys is more or less the same. There is no difference whatsoever. Those who, in the olden days, were obsessed by the idea of separatism have not been able to shed it off even now, (Honourable Members: *'Hear, hear')* and the ghost of 'Two *nations'* seems to be lingering somewhere, even within the precincts of this very august Chamber. Otherwise, I think, such a bogey would now have been raised here.

I had received a letter from Mr. Lari in this connection and I consulted our Deputy Secretary and Deputy Director Mr. Abdur Rahman Khan. I gathered from the latter that the arrangements that had been made were quite satisfactory. In the circumstances I think I am entitled to rely on the advice and information of those who know more about every school in the Province than Mr. Lari.

I may also inform honourable Members that we are still giving considerable sums by way of grants for the Islamia schools and the Madrassas to which only Muslim boys have access. So, to insinuate here that any discrimination was being made against Muslim students is hardly fair, much less can it be said to be charitable.

Coming now to the specific case of Mr. Lari's son, I tried to find out the facts and was told that there are very few boys in that class who wanted to have Urdu as their script. They were mostly, excepting perhaps a few—perhaps Mr. Lari's son was the solitary exception—satisfied with the arrangements. Mr. Lari can say how many boys were therein that class who shared his view or whose guardians shared his view and wanted

Mr. Z. H. Lari : All shared my view, but the principal said: 'Nothing of the sort'. "No option was permissible".

The Honourable Pandit Govind Ballabh Pant : So far as **I** am aware his boy is the only one in the class who desired this separate arrangement *(Laughter).* Now, there are no doubt schools in Allahabad where Devanagari character which has been accepted as the National script of the Province is in use.

He could however have sent his boy to one of the other Islamia schools and to other schools where the Urdu script is adopted and training in the form and in the manner which would have suited Mr. Lari is given. Does he expect the House to accept that where there is one boy, where there are ten boys, there should be two sets of teachers, one for nine hundred or a thousand boys and the other for ten? If so, how is the cost to be met? How are we to explain this to the taxpayer? Then, one has to take into account also the fact that there are not only men who want this script or what they regard as high-flown Urdu to be adopted in the schools but we have also certain cosmopolitan cities where we have fair numbers of Maharashtrians, Gujaraties and others. Should we then have, because there are five or ten Bengali boys or because .there are five or ten Gujarathi boys, different sets of teachers who will give instruction in Bengali or in Marathi or in Gujarathi or in Telugu for the benefit of the few boys that are there? Nobody can accept that and they have never asked for it. They have accepted the position and they have always been contented with the arrangements that have been made. Now, if anyone presses here for an arrangement under which anyone wishing to give preference to Urdu should be provided with a new set of teachers in every school to give training in that script and in that language. I am afraid the government will not be able to meet his wishes. It is not possible for any Government to do that, and Mr. Lari has himself accepted the amendment, so far as I understand, that was moved here that such arrangements should be made only where there are substantial numbers. I think that amendment was moved by Kazi Syed Karimuddin.

"in case of substantial number of such students being available."

Now, these are exactly our instructions that where substantial numbers of such students are available, arrangements should be made; where the numbers are not substantial, then we cannot incur such expenditure. Can anything be more equitable, can anything be more generous? The fundamental article that we are adopting here does not require us to make any provision like that at all. It only gives freedom to the followers of a language which is different from the national language, from the State language, to preserve their language. It does not require the government to make any special provision for them. But we have gone much beyond that, and we have given special privileges. We have made necessary arrangements for them. There are thousands and thousands of such boys who are receiving instruction today and we are spending large amounts on their education. We want to encourage education among them, to attract even large numbers, to make things as easy as may be possible, but there is a limit beyond which no government can go. and I sometimes find myself in a very difficult position and feel a little distressed, if not dismayed, by the charges that are glibly made in utter disregard of attempts sincerely and earnestly made by us to accommodate every section of the people and to give every possible facility to every single individual in the province. We hope that such statements of an irresponsible character will not be made and more than that, that nobody here will allow himself to be misled by the sort of remarks which are neither based on facts, nor are correct, and which ignore the duty of the State to the general body of citizens and the obligations that the State owes to the vast majority of people living under its protection. In a case like this, to raise a linguistic problem in a manner like this as though it was is a communal problem is most unfortunate. Instead of helping the cause which I would like to assist to the best of capacity, it will create difficulties and hurdles. I hope greater care will be taken in dealing with such questions in future.

An Honourable Member : The question be now put.

Mr. Vice-President : Motion for closure has been moved and I would call upon Dr. Ambedkar to speak. Or do you want to prolong the discussion?

Honourable Members : No.

Maulana Hasrat Mohani: Sir, an exception should be made in my case and I will be glad if will give me some time to speak. I gave notice of an amendment but I was cheated by Dr. Ambedkar. Please allow me to have me say.

Mr. Vice-President : All right, please come to the mike.

Maulana Hasrat Mobani : *[Sir, my intention was simply to move an amendment to amendment No. 691 here which sought to amend the amendment to be moved by Dr. Ambedkar, But later on when other amendments were also moved, one of these amendments, No. 676 was moved by Mr. Lari. I whole-heartedly support it. The reason is, as Mr. Lari stated, that the Sub-committee which was appointed by this House to deal with the

Fundamental Rights had unanimously laid down the following principle:—

"Minorities in every Unit shall be protected in respect of their script and culture and no laws regulating them may be enacted".

This is a comprehensive principle. I fail to understand how Dr. Ambedkar could frame a new principle and introduce an altogether different proposal in the Draft. Mr. Lari had raised serious objections to it. I, too, seriously protest against it. He should not have done so. It was passed by the Committee in May 1947, and was adopted by the House.

Now, I would like to say something about the amendment which I had moved in this connection. As certain events have occurred and Mr. Pant, the Premier of my province and Mr. Santhanam have said something about this, I would like to reply to them briefly. It is this: Mr. Santhanam has said that the amendment of Mr. Lari, namely, amendment No. 676, would certainly give us protection. He also stated that language and script are included in it and when after fifteen years, this question will be settled, then we shall consider it. Then again, when Mr. Lari raised the point as to what would be done in our province; the reply was: "The decision of the Central Government is not binding as Education is a provincial subject." That is why the Advisory Committee has not accepted it. It is not going to accept it. The reply given was: "you will have to flatter the majority of your province. They will decide." I say: What is the idea of fixing a time limit of fifteen years? I would like to mention what the attitude of the Government has been in the United Provinces uptil now. Wherever Englishmen came, they introduced English, but it was only higher education which was imparted through the medium of English. Justice demands that we should 'give the devil its due'. I will praise them to this extent that they had fixed English only for the purpose of higher education. So far as secondary and primary education was concerned, they had introduced the same system which is in vogue in our province up till now. There was separate vernacular educational institution for Vernacular Middle Education. There were high schools for imparting education through the medium of English. That is to say, for those who wanted to accept English as medium of instruction in higher education, the high school medium of instruction used to be English. For those who did not want it, there were Vernacular schools everywhere in the districts. Mr. Pant asked how it was possible to bear double and triple expenses. How have we been doing it up till now? Was not Vernacular in use up till now? Was not this arrangement made in every town, in every village and in every district? And is it not a fact that those whose mother tongue was Urdu, if they wanted to use Urdu script up to secondary stage, were allowed to do so up to the Middle Standard? This was adopted even by those who claimed Hindi as their mother tongue and in fact they used to speak in Hindi. Those who wanted to go up to Intermediate and B.A. Classes for learning English, they used to get themselves admitted in high schools. The least that I would demand of my provincial government is this: Leave the question of fixing a common language

to the Union. I have absolutely no concern with that. You may decide to have Hindustani or Hindi or Sanskrit as your interprovincial language. Do whatever you like, but the question of medium of instruction and language to be followed in each province should be distinct. If you want to accept Hindi for the United Provinces I have no objection. But so far as medium of instruction is concerned, as long as Urdu is our mother tongue, it is ours by right and forms part of the Fundamental Rights. Today, if it is demanded of the Government to provide education for the people through the medium of their mother tongue and their script, arrangements shall have to be made in Government Schools and
if you will not do it—then ....]

An Honourable Member: You may go to Pakistan.

Maulana Hasrat Mohani : *[You may go to Hindukush and settle there from where you have come. Why we should go? We have come from Central Asia.]

Mr. Vice-President : **It** is cruel on the part of honourable Members to bait an old gentleman.

Maulana Hasrat Mohani: *[If it is so, then in reply I would tell both Mr. Pant and Mr. Santhanam, as they too have asked where the money is to come from and how it would be possible to make duplicate arrangements, in case there is only one student, I say that the assertion just made that the Muslims residing in villages speak Hindi language is totally wrong. I challenge Pandit Pant or anyone else, who so desires, to accompany me to any village and talk to a Muslim on any subject in Hindi. He will get the reply in Urdu. They speak cent per cent Urdu. It is another thing that we say 'Khushi' while they may pronounce it as 'Khusi'. We say 'Hafiz' while they may pronounce it as 'Hafij'. We say 'Gharib', and they may say 'garib'. We say 'Naqd', and they may say 'Nagad'. Beyond that, there is no other difference. I will accept your contention that Hindi is the mother tongue of the" village people only when you go to any village and ask this question to a villager: "Kya 'Barsat' shuru ho gai?" His reply would be, "Barkha shuru ho gai". But that is pure Urdu. I shall accept your assertion if he replies that 'Barkha arambh ho gai hai. If he uses the word 'arambh' I will agree that Hindi is his mother tongue. If he uses the word 'shuru' then that would be Urdu. My claim is that cent per cent people of U. P. speak Urdu. Those who say that the language spoken by the U.P. Muslim is Hindi, are totally in the wrong. I challenge you to hold a referendum on this issue. If you cannot do that, then look to the language used in the villagers' programmes by the A.I.R. It would reveal to you that they pronounce 'Khushi' as 'Khusi'. Seldom a Sanskrit word is used in their language. If that is so, how can you say that the language of the rural areas is Hindi? Therefore, I challenge you on the point. You have no right to say that Hindi is the language of U. P. villages. So much about the amendment of Mr.

Lari.

I would appeal to Honourable Dr. Ambedkar to accept, as being the decision of the House, and of our Fundamental rights Committee, amendment No. 676 which has been moved by Mr. Lari. You may accept or reject it. It depends on your sweet will. You have a majority with you which consists mainly of one party.

I oppose the amendment; put it to the vote. Where is the use of having the farce of this Constituent Assembly?]

Mr. Vice-President: I cannot allow you to use this expression *(Interruption):* Kindly take your seat. I am quite able to maintain order in the House without your assistance. Maulana Saheb, you have already taken ten minutes; I will give you only two minutes more.

Maulana Hasrat Mohani : *[I want only five minutes. I will finish within five minutes.]

Mr. Vice-President : All right.

Maulana Hasrat Mohani: *[Now I want to say a few words about my amendment, which is an amendment to the amendment, not yet moved by Dr. Ambedkar. As my amendment has been declared out of order, I want to say something about it.

After great deliberation I submitted my amendment to Dr. Ambedkar's amendment No. 691 because it so happens that an amendment or any other thing put forth by him is generally accepted and so along with that mine too might have been accepted and Honourable Vice-President too, who has been vested with discretionary powers to allow or disallow a motion, selected No. 691 out of so many others, viz., out of 691, 692, 693, 694, 696, 697 and 698, which are all of similar import, to be moved in the House. Is it justice not to allow me to move it now? Why does not Dr. Ambedkar move his amendment? I think it has not been moved because thereby the minorities would have got their right in full.

It is made clear that every important minority shall have the right to receive education in its own mother tongue and script.]

Pandit Thakur Dass Bhargava : *[Maulana Sahib! May I tell you that article 23 (2) has nothing to do with language or script. It is regarding the right of admission into the educational institutions.]

Mr. Vice-President: Pandit Thakur Dass Bhargava, you should address the

Chair. I am sorry I should have to point this out to you.

Maulana Sahib, I have given you another five minutes.

Maulana Hasrat Mohani : *[Only two or three sentences, Sir. I am finishing. Therefore I want to state that the Advisory Board too have decided that every one has the right to receive education in his own mother tongue. In relation to University Education also it has been decided that medium of the mother tongue would be retained. Hence, you have got no right to avoid it.

The question of language and script is of very great importance. The fall of Turkish Empire was because it attempted to force their language upon others. As their rule has come to an end, similarly you will also not be able to rule.]

Shri Satyanarayan Sinha (Bihar : General) : The question be now put, Sir.

Mr. Vice-President: Two more requests have been made. I do not think I can allow this discussion to continue. Dr. Ambedkar.

Pandit Hirday Nath Kunzru (United Provinces : General): Sir, this subject is an important one. Will you be so indulgent as to allow me to speak?

Mr. Vice-President : We are always prepared to hear you. Our only regret is you do not speak very often.

Pandit Hirday Nath Kunzru: Mr. Vice-President. Sir, the subject that we are discussing today is one of fundamental importance. We are dealing with Fundamental Rights. We have tried to approach this subject in such a way as to ensure the people of India in general and the members of various classes and communities in particular that their basic rights will be fully safeguarded by the State. One of the most important rights that any community can claim relates to language and culture. I am not surprised therefore that clause 23 has led to a prolonged discussion. The article as it is gives such minorities as have a distinct language, script and culture, the right to conserve them. Bui it is not clear whether in the primary schools started by Government the languages and scripts of the minorities will be taught in case the parents of a substantial number of the pupils demand that their children should be given instruction in their own languages.

Sir, this is a subject of the utmost importance. Anyone acquainted with the history of Eastern Europe knows what conflicts the denial of the claims of the minorities on this subject have led to. One of the most important questions that engaged the attention of the League of Nations was the protection not merely of the general civil rights of the minorities but also of their right to use their own language in areas where they formed a substantial proportion of the population.

The amendment moved by my friend Mr. Lari as amended by Mr. Karimuddin's amendment seems to be one that deserves the serious and sympathetic consideration of the House. Though put forward in the interests of the Muslim community it will afford protection to all minority communities. India is not the only country where there is a diversity of language. There are other countries too where people speak more than one languages. The most not able case is that of Russia. There is one language that serves as the *Lingua Franca* of the territories ruled over by the Russian Government and that is Russian. But at the same time the development of the local languages is encouraged and every effort is being made to raise the culture of the local communities to a high pitch. Russia has gone so far in this direction as to give a script even to those communities under its rule that possessed none before. It has thus assured all the communities subject to it that it proposes to grant them complete protection in regard to all those distinctive things that they value, to all those things that enable them to take pride in their own history and achievement, in all those things that make them feel that they have not merely received benefits from other communities but have also been in a position to place something of value before them. If our Muslim friends today, actuated by a similar feeling, demand that their children should be given instruction in primary schools through their own language and script, where a sufficient number of them asks for this, the demand cannot be considered as extravagant. It is a demand which we should, if we are actuated by justice, be ready to grant.

Pandit Thakur Dass Bhargava : Who is opposing this demand?

Pandit Hirday Nath Kunzru: In view of the heated discussion that has taken place and my inability to understand whether the amendment was going to be accepted or not, I have thought it necessary to place my own views before the House. If my Friend Pandit Thakur Dass Bhargava has guessed the feeling of the House accurately no one will be happier than myself.

Pandit Thakur Dass Bhargava : The Honourable Pandit Govind Ballabh Pant has accepted the principle in his speech.

Pandit Hirday Nath Kunzru: I was not in the House when Pandit Govind Ballabh Pant spoke but my information is that the amendment moved by Mr. Lari as amended by Kazi Karimuddin has not been accepted by Pandit Pant, or Dr. Ambedkar.

Pandit Thakur Dass Bhargava : It has not been accepted because it is not justiciable as the right to primary education itself is not justiciable at present.

Pandit Hirday Nath Kunzru : Sir, now my honourable Friend Pandit Thakur Dass Bhargava shifted his ground. He says that the amendment has not been accepted because the right is not justiciable. Does this mean that he too is going to oppose the amendment of article 23 in the sense demanded by Mr.

Lari? If he is, then what was the point of his question? How did he get up and ask, who was opposing the amendment?

Mr. Vice-President : I am sorry I permitted the first interruption. It is leading to endless trouble.

Pandit Hirday Nath Kunzru : Sir, I am grateful to you for permitting it, for it has enabled me to clarify my position and to understand where my honourable Friend Pandit Thakur Dass Bhargava stands. If the only objection of the House to the insertion of Mr. Lari's amendment to article 23 is that it is not justiciable, will Government give an undertaking that this amendment will form part of the Chapter containing the Directive Principles of State Policy?

An Honourable Member : There is no Government here.

Pandit Hirday Nath Kunzru : After all Dr. Ambedkar who is the Chairman of the Drafting Committee is the Law Minister of the Government of India.

Mr. Vice-President : That is accidental.

Pandit Hirday Nath Kunzru : If he is prepared to say that the principle underlying the amendment will be included in Part IV, I for one shall be perfectly satisfied. But an Honourable Member says that he is not prepared to accept it. It should be obvious now to my friend Pandit Thakur Dass Bhargava that it is necessary for one who is for full tolerance in the matter of language, script and culture, to stand before this House and place his convictions before it. I am very sorry, indeed, to find from the interruptions of a number of my friends that the general feeling in the House is against Mr. Lari's amendment. Frankly, Sir, I cannot understand members standing up for full rights for the minorities objecting to the claim put forward on behalf of the Muslim community, by Mr. Lari. The amendment put forward by him might have seemed to be too wide, for if it were accepted, it would enable the Muslim community to claim that Urdu should be taught even when there was one boy in a school who wanted to learn it. But the amendment of Mr. Karimuddin has completely removed that fear, and Mr. Lari, I understand, has accepted that amendment.

Mr. Z. H. Lari : Yes.

Pandit Hirday Nath Kunzru: It is therefore, clear that the Muslim community will be able to exercise the right asked for by Mr. Lari only where a substantial number of Muslim students are available to profit by instruction in Urdu. I ask the House whether on any ground of justice and tolerance, they can deny such a reasonable claim. It does not interfere in the least with the establishment of a *lingua franca* for the whole of India. (Honourable Member: it does, it does.) It does not, in the least. If my honourable Friend reads the history of Eastern Europe and of Russia with a dispassionate mind (Honourable Members: Why not Indian history?), he will find that his fears are completely groundless. The dissatisfaction of the minorities has risen to a dangerous pitch only in those countries where their just claims in respect of the preservation and promotion of their culture have been denied. But those countries that have treated the minorities justly in this respect have received their full support in the political sphere. I ask my countrymen to profit by these examples and take a warning from the history of Eastern Europe. Comparative peace was restored in Eastern Europe only when the League of Nations was able to intervene as far as was practicable in the circumstances to protect the language and culture of the minorities. Do we want, in utter disregard of this history, to pursue the dangerous path of fanatical nationalism as the majorities in Eastern Europe did for a number of years? An honourable Member asks me what led to the second world war. I have never claimed that there has been only one cause of conflict throughout the world. Many causes have led to wars in the past, and are still keeping the nations of the world estranged from one another. But does that mean that we may thoughtlessly add to these causes and deny elementary justice to the minorities, because we have it in our power to pass any measures that we like? The mere fact that that power is in our hands should make us pause, and go out of our way to treat the minorities generously. My friends, I request you with all the earnestness at my command, I request you as a humble servant of the mother-land, I request you as one of your sincere well-wishers to think seriously before you reject Mr. Lari's reasonable amendment. It does not go beyond the necessities of the case; and we shall be putting ourselves hopelessly in the wrong if we use our majority tyrannically to turn it down. I hope that the House, notwithstanding the feeling that the discussion has excited, will consider the matter dispassionately and in a spirit of justice, toleration and generosity accept Mr. Lari's amendment.

Mr. Vice-President : Dr. Ambedkar.

Prof. Shibban Lai Saksena (United Provinces : General) ; Sir, I have to say something, and

Mr. Vice-President : I cannot allow the discussion to be prolonged any longer, and my decision is final in this matter.

Prof. Shibban Lai Saksena : To allow some people and not to allow others is not proper.

Mr. Vice-President : I know it is considered improper. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, of the amendments which have been moved to article 23, I can accept amendment No. 26 to amendment No. 687 by Pandit Thakur Dass Bhargava. I am also prepared to accept amendment No. 31 to amendment No. 690, also moved by Pandit Thakur Dass

Bhargava. Of the other amendments which have been moved I think there are only two that I need reply to, they are, No. 676 by Mr. Lari and amendment No. 714 also by Mr. Lari. I think it would be desirable, if in the course of my reply I separate the questions which have arisen out of these two amendments.

Amendment No. 676 deals with cultural rights of the minorities, while the other amendment, No. 714, raises the question whether a minority should not have the Fundamental Right embodied in the Constitution for receiving education in the primary stage in the mother tongue.

With regard to the first question, my Friend, Mr. Lari, as well as my Friend, Maulana Hasrat Mohani, both of them, charged the Drafting Committee for having altered the original proposition contained in the Fundamental Right as was passed by this House. It is quite true that the language of paragraph 18 of the Fundamental Rights Committee has been altered by the Drafting Committee, but I have no hesitation in saying that the Drafting Committee in altering the language had sufficient justification.

The first point that I would like to submit to the House as to why the Drafting Committee thought it necessary to alter the language of paragraph 18 of the Fundamental rights is this. On reading the paragraph contained in the original Fundamental Rights, it will be noticed that the term "minority" was used therein not in the technical sense of the word "minority" as we have been accustomed to use it for the purposes of certain political safeguards, such as representation in the Legislature, representation in the services and so on. The word is used not merely to indicate the minority in the technical sense of the word, it is also used to cover minorities which are not minorities in the technical sense, but which are nonetheless minorities in the cultural and linguistic sense. For instance, for the purposes of this article 23, if a certain number of people from Madras came and settled in Bombay for certain purposes, they would be, although not a minority in the technical sense, cultural minorities. Similarly, if a certain number of Maharashtrians went from Maharashtra and settled in Bengal, although they may not be minorities in the technical sense, they would be cultural and linguistic minorities in Bengal. The article intends to give protection in the matter of culture, language and script not only to a minority technically, but also to a minority in the wider sense of the terms as I have explained just now. That is the reason why we dropped the word "minority" because we felt that the word might be interpreted in the narrow sense of the term, when the intention of this House, when it passed article 18, was to use the word "minority" in a much wider sense, so as to give cultural protection to those who were technically not minorities but minorities nonetheless. It was felt that this protection was necessary for the simple reason that people who go from one province to another and settle there, do not settle there permanently. They do not uproot themselves from the province from which they have migrated, but they keep their connections. They go back to their province for the purpose of marriage. They go back to their province for various other purposes, and if this protection was not given to them when they were subject to the local Legislature and the local Legislature were to deny them the opportunity of conserving their culture, it would be very difficult for these cultural minorities to go back to their province and to get themselves assimilated to the original population to which they belonged. In order to meet the situation of migration from one province to another, we felt it was desirable that such a provision should be incorporated in the Constitution.

I think another thing which has to be borne in mind in reading article 23 is that it does not impose any obligation or burden upon the State. It does not say that, when for instance the Madras people come to Bombay, the Bombay Government shall be required by law to finance any project of giving education either in Tamil language or in Andhra language or any other language. There is no burden cast upon the State. The only limitation that is imposed by article 23 is that if there is a cultural minority which wants to preserve its language, its script and its culture, the State shall not by law impose upon it any other culture which may be either local or otherwise. Therefore this article really is to be read in a much wider sense and does not apply only to what I call the technical minorities as we use it in our Constitution. That is the reason why we eliminated the word "minority" from the original clause.

But while omitting this word "minority" I think my Friend, Mr. Lari forgot to see that we have very greatly improved upon the protection such as was given in the original article as it stood in the Fundamental Rights. The original article as it stood in the Fundamental Rights only cast a sort of duty upon the State that the State shall protect their culture, their script and their language. The original article had not given any Fundamental Right to these various communities. It only imposed the duty and added a clause that while the State may have the right to impose limitations upon these rights of language, culture and script, the State shall not make any law which may be called oppressive, not that the State had no right to make a law affecting these matters, but that the law shall not be oppressive. Now, I am sure about it that the protection granted in the original article was very insecure. It depended upon the goodwill of the State. The present situation as you find it stated in article 23 is that we have converted that into a Fundamental Right, so that if a State made any law which was inconsistent with the provisions of this article, then that much of the law would be invalid by virtue of article 8 which we have already passed.

My Friend, Mr. Lari and the Maulana will therefore see that there has been from their point of view a greater improvement than what was found in the original article. Certainly there has been no deterioration in the position at all as a result of the change made by the Drafting Committee.

Coming to the other question, namely, whether this Constitution should not embody expressly in so many terms, that the right to receive education in the mother tongue is a Fundamental Right: Let me say one thing and that is that I do not think that there can be any dispute between reasonably-minded people that if primary education is to be of any service and is to be a reality it will have to be given in the mother tongue of the child. Otherwise primary education would be valueless and meaningless. There is no dispute, I am sure, about it and in saying that I do not think it necessary for me to obtain the authority of the Government to which I belong. It is such a universally accepted proposition and it is so reasonable that there cannot be any dispute on the principle of it at all. The question is whether we should incorporate it in the law or in the Constitution. I must frankly say that I find some difficulty in putting this matter into a specific article of the Constitution. It is true, as my honourable Friend Pandit Kunzru observed, that the difficulty that might be felt in administering such a Fundamental Right is to some extent mitigated or obviated by the amendment moved by my Friend Mr. Karimuddin *viz-,* that such a principle should become operate in the case a substantial number of such students were available. I would like to draw the attention of my friend Mr. Karimuddin that his amendment does not really solve the difficulty, which stands in the way of his accepting the principle. First, who is to determine what is a substantial number? Let me give an illustration. Supposing the matter is to be left to the Executive, as it must be, and the Executive made a regulation that unless there were 49 per cent of such children seeking education in a primary school then and then only it will be regarded as a substantial number. Will that satisfy him if such an authority was left with the Executive? Then supposing you make this matter a justiciable matter, as it undoubtedly would be when you are introducing it as a Fundamental Right and no Fundamental Right is fundamental unless it is justiciable, is it proper, is it desirable that the question whether in any particular school a substantial number was available or not should be dragged into a court of law, to be determined by the court? I cannot see any other way out of the difficulty. Either you must leave the interpretation of the word "substantial" to the Executive or to the judiciary and in my judgment neither of the methods would be a safe method to enable the minority to achieve its object. Therefore my submission is that we should be satisfied with the fact that it is such a universal principle that no provincial government can justifiably abrogate it without damage to a considerable part of the population in the matter of its educational rights. Therefore I submit that the article as amended should be accepted by the House.

Mr. Vice-President : The question is:

That for article 23, the following article be substituted:—

"23. Without deteriment to the spiritual heritage and the cultural unity of the country, which the State shall recognise, protect and nourish, any section of the citizens residing in the territory of India or any part thereof, claiming to have a distinct language, script and culture shall be free to conserve the same."

The motion was negatived.

Mr. Vice-President : The question is: That for article 23, the following article be substituted:—

"(1) Minorities in every Unit shall be protected in respect of their language, script and culture, and no laws or regulations may be enacted that may operate oppressively or prejudicially in this respect."

The motion was negatived.

Mr. Vice-President : The question is:

That in clause (1) of article 23, for the words "script and culture" the words "script or culture" be substituted."

The motion was adopted.

Mr. Vice-President : The question is:

That with reference to amendment No. 678 of the List of Amendments in clause (1) of article 23, for the words "residing in the territory of India or any part thereof the words "residing in any part of the territory of India" be substituted.

The motion was negatived.

Mr. Vice-President : The question is:

That in clause (1) of article 23, after the word "conserve" the word "develop"' be added.

The motion was negatived.

Mr. Vice-President : The question is:

That in clause (3) of article 23, the word "community" wherever it occurs be deleted.

The motion was adopted.

Mr. Vice-President : The question is:

That for clause (2) of article 23, the following be substituted:—

"No citizen shall be denied admission in to any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them; and sub-clauses (a) and (b) of clause (3) of article 23 be renumbered as new article 23-A."

The motion was adopted.

Mr. Vice-President : The question is:

That for sub-clause (a) of clause (3) of article 23 the following be substituted:—

"(a) Linguistic minorities shall have the right to establish, manage and control educational institutions or (he promotion of the study and knowledge of their knowledge and literature, as well as for imparting genera! education to their children at primary and pre-priniary stage through the medium of their own languages."

The motion was negatived.

Mr. Vice-President : The question is:

That the following proviso be added to sub-clause (a) of clause (3) of article 23:—

"Provided that no part of the expenditure in connection with such institutions shall fall upon or be defrayed from the public purse; and provided further that no such institution, nor the education and training given therein shall be recognised, unless it complies with the courses of instruction standards of attainment, methods of education and training, equipment and other conditions laid down in the national system of education."

The motion was negatived.

Mr. Vice-President : Does the Honourable Member, Mr. Lari accept amendment No. 53 on List III standing in the name of Kazi Karimuddin?

Mr. Z. H. Lari : Yes, Sir, I do.

Mr. Vice-President : Does he also accept the amendment of Begum Aizaz Rasul?

Mr. Z. H. Lari: I do not.

Mr. Vice-President: Then I shall put to the House amendment No. 714 as amended by amendment No 53 on List III standing in the name of Kazi Karimuddin.

Shri Rohini Kumar Chaudhari (Assam : General): On a point of order, Sir, I would ask whether in the absence of the Member who has moved the amendment; his amendment could be put to vote.

Mr. Vice-President : Is Mr. Chaudhari certain that the absence of Kazi Syed Karimuddin from the House would automatically close his amendment from being voted upon?

Shri Rohini Kumar Chaudhari : No, because it is acceptable to Mr. Lari who is in the House and whose amendment is being voted upon.

Mr. Vice-President : **I** am going to put the question now.

Pandit Thakur Dass Bhargava : Before you put the question, I want to raise a point of order. In my humble opinion, the subject matter of this amendment No. 714 cannot be justiciable because we have not made primary education itself justiciable. Therefore this amendment is itself out of order. When the primary right to primary education is not justicable or capable of being enforced in a court of law, this ancillary right cannot be made justiciable and hence this amendment cannot be put to the House. It is out of order, and no Fundamental Right can be based upon it.

Shri L. Krishnaswami Bharathi (Madras: General): It is now too late to raise this point of order.

Mr. Vice-president : That is what I was going to say. It is too late now to raise this objection.

Pandit Thakur Dass Bhargava : I raised this objection earlier, when Pandit Kunzru was speaking.

Mr. Vice-President : I am going to put the amendment to vote.

The question is:

That after clause (3) of article 23, the following new clause be inserted:—

"(4). Any section of the citizens residing in the territory of India or any part thereof having a distinct language and script shall be entitled to have primary education imparted to its children through the medium of that language and script in case of substantial number of such students being available,"

The motion was negatived.

Maulana Hasrat Mohani : I call for a Division.

Mr. Vice-President: **I** cannot allow a Division because the voices are quite decisive. I want honourable Members not to do anything by which the time of the House would be wasted. I am very sorry and regret that my request—a very reasonable one—was not accepted.

Mehboob Ali Baig Sahib Bahadur (Madras : Muslim): May I speak at this stage, Sir?

Mr. Vice-President : It is too late now.

Now, before putting the amendment of Begum Aizaz Rasul to vote, as it was not circulated to Members, I shall read it out:

In the amendment of Mr. Lari, No. 714, for the words "section of the citizens" after the word 'Any', substitute the word 'minority'.

The question is:

That the amendment be adopted.

The motion was negatived.

Mr. Vice-President : Now I shall put the article, as amended, to vote.

Pandit Hirday Nath Kunzru: I am sorry to interrupt the proceedings. But if some Members of the House want a Division on this question with a view to finding out how many are for and how many are against the motion of Mr. Lari, I do not think the time of the House will be wasted if your grant their request. Just by a show of hands the number of those who vote either way could be known.

Mr. Vice-President : **It** can be done if there is a sufficiently large demand for it. Still, I would impress upon you one fact and that is it is good to preserve the goodwill of the House. And this is not the way to do it. I would request you to consider my proposal once again. Wherever possible, I have given every possible facility to every minority and so much time that the majority has sometimes been deliberately reduced to a minority by me; I expect sincerely that the minorities will accept what I say. This is one of the ways in which I would request them to co-operate with me. If not, I am prepared to accede to their request. What is your decision?

Honourable Members : Yes.

Mr. Vice-President : Now I shall put the article, as amended, to vote.

The question is:

That article 23, as amended, stand part of the Constitution.

The motion was adopted.

Article 23, as amended, was added to the Constitution.

Mr. Vice-President : Thank you, Gentlemen. The House stands adjourned to Ten of the Clock on Thursday, the 9th December 1948.

The Assembly then adjourned till Ten of the Clock on Thursday, the 9th December 1948.

---

*[Translation of Speach]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VII

Thursday, the 9th December, 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

DRAFT CONSTITUTION-(*contd.*)

New Article 23-A

Mr. Vice-President (Dr. H. C. Mookherjee): Our work for today starts with the consideration of amendment No. 716. It stands in the name of Professor K. T. Shah.

Prof. K. T. Shah (Bihar : General): Mr. Vice-President, Sir, I beg to move:

> "That under the heading "Right to Property" the following new article be added:
>
> > '23-A. All forms of natural wealth, such as land, forests, mines and minerals, waters of rivers, lakes or seas surrounding the coasts of the Union shall belong to the people of India. No private property shall be allowed in any of these forms of the country's wealth; nor shall they be owned, worked, managed or developed, except by public enterprise exclusively.' "

Shri B. Das (Orissa : General): On a point of order, Sir, how can 23-A about nationalisation of property be moved when we have not dealt with article 24 which deals with the right of property. I would respectfully suggest that, if you allow Professor Shah to move article 23-A, it may be moved after we have dealt with article 24.

Prof. K. T. Shah : I would point out, Sir,....

(Shri B. Das rose to speak.)

Mr. Vice-President : I want to hear what Professor Shah has to say.

Prof. K. T. Shah : There is a misapprehension on the part of Mr. Das. This does not talk of nationalising all existing private property. I am only enunciating a principle which may in legal parlance be called the right of eminent domain of the State. Therefore it is merely an assertion that natural wealth belongs to the people, to the State. That does not mean that which is already in private possession is to be nationalised. Nor does it exclude the possibility of lands, forests, etc. being held, as delegated owners, by the present holders or subsequent holders under the eminent domain of the State. I see no difficulty in this.

Shri B. Das: My view is that article 24 deals with right to property, whether it belongs to a private citizen or to the State. This amendment can only be discussed when we discuss article 24 and Professor Shah can move his amendment afterwards.

Shri R. K. Sidhwa (C. P. & Berar : General): Mr. Vice-President, I think that what my honourable Friend Mr. Das said is quite correct. We are discussing article 23--cultural and educational rights--and if this article is passed....

Mr. Vice-President : The honourable Member need not repeat what Mr. Das has already said.

Shri R. K. Sidhwa : I am only emphasising it, Sir, to draw your attention.

Syed Muhammad Saadulla (Assam : Muslim): Mr. Vice-President, Sir, may I draw your attention to the motion itself as I read it at page 75 of the notice of amendments? Prof. Shah's amendment runs as follows: "That under the heading `Right to Property', the following new article be added" and "Right to Property" is the heading of article 24 and not of 23.

Mr. Vice-President : I rule that Prof. Shah be allowed to move this amendment under 24-A. So far as amendments Nos. 717 and 718 are concerned, they are already covered by the earlier decisions of this House relating to Directive Principles.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Those rights which are not justiciable are covered but those in connection with fundamental rights have not been covered at all. At that time an understanding was reached that this will be considered along with the Fundamental Rights.

Mr. Vice-President : Is it your contention that these both should go under the Directive Principles and also here? That is not possible. I rule it out of order.

Article 24

Shri T. T. Krishnamachari (Madras : General) : It is the desire of many Honourable Members of this House that this article should not be taken up now, but taken up later, because we are really considering various amendments to it so as to arrive at a compromise and Dr. Ambedkar will bear me out in regard to this fact.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Yes, Sir, I request that article No. 24 be kept back.

Mr. Vice-President : Is that the wish of the House?

Honourable Members : Yes.

Mr. Z. H. Lari (United Provinces : Muslim) : Then what about article 15, Sir?

Mr. Vice-President : The consideration of that article has been postponed for the time being.

(To Mr. Kamath.) You want to say something about the amendment dealing with Military training in article 24?

Shri H. V. Kamath (C. P. & Berar: General): There are those amendments which do not relate to "Right to Property", and which have been given notice of as new articles to be inserted after article 24. What about these?

Mr. Vice-President : They will be taken up after article 24.

Article 25

Kazi Syed Karimuddin (C. P. and Berar : Muslim) : Mr. Vice-President, Sir, article 25 lays down in clause 4 "The rights guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution." Now I move my amendment:

> "That the consideration of article 25 be postponed till the consideration of Part XI of this draft constitution."

In article 280, it is laid down "Where a Proclamation of Emergency is in operation, the President may by order declare that the rights guaranteed by article 25 of this Constitution shall remain suspended for such period not extending beyond a period of six months after the proclamation has ceased to be in operation as may be specified in such order."

If article 25 is passed today, then we are accepting the provisions of article 280 because clause (4) of article 25 says that "the rights guaranteed by this article shall not be suspended except otherwise provided for by this Constitution." We have very serious objections to the passing of article 280. The emergency Provisions contained in articles 275 to 280 are of an extraordinary nature and some of them militate against the fundamental principles of federalism and do not find any parallel in any world constitutions and there are several amendments to be moved to articles 275 to 280. So by acceptance of this article, we will be accepting the provisions of article 275 to 280. Moreover, this article says "as otherwise provided for by this Constitution." This article cannot be considered at all unless the provisions in articles 275 to 280 are taken into consideration. Therefore, my submission is that before articles 275 to 280 are passed, we are incompetent to consider the provisions of article 25.

The Honourable Dr. B. R. Ambedkar : Sir, I do not think that because this article is subject to the provisions of the other articles to which my honourable Friend, Mr. Karimuddin has referred, it is not possible for us to consider this article now, because, as will be seen, supposing we do make certain changes in article 285 or others relating to that matter, we could easily make consequential changes in article 25. Therefore, it will not be a bar. Therefore, it is perfectly possible for us to consider article 25 at this stage without any prejudice to any consequential change being introduced therein. Supposing some changes were made in the articles that follow.....

Kazi Syed Karimuddin : Then why not postpone this?

The Honourable Dr. B. R. Ambedkar : No.

Mr. Vice-President : I am going to put this amendment to vote, because if it is carried, then the consideration of all the amendments will be postponed.

Mr. Vice-President : The question is:

"That the consideration of this clause be postponed till the consideration of Part XI of this Draft Constitution."

The motion was negatived.

Mr. Vice-President : Amendment No. 782 is disallowed. Amendment No. 783, standing in the name of Mr. Naziruddin Ahmad.

The Honourable Shri K. Santhanam (Madras : General): On a point of order, Sir, this amendment suffers from vagueness. There is no particular meaning.

Mr. Vice-President : Let us hear what Mr. Naziruddin Ahmad has to say.

Mr. Naziruddin Ahmad: Mr. Vice-President, Sir, I beg to move:

"That for clause (1) of article 25, the following clause be substituted, namely:

> '(1) Every person shall have the right by appropriate proceedings to enforce the rights conferred by this Part.' "

Sir, it is suggested by Mr. Santhanam that the amendment is vague. I submit that it is not vague.

The Honourable Shri K. Santhanam: Appropriate proceedings,--judicial, administrative or executive?

Mr. Naziruddin Ahmad : Proceedings in a Court.

The Honourable Shri K. Santhanam: Where is the Court?

Shri M. Ananthasayanam Ayyangar (Madras : General) : Neither the procedure nor the forum is indicated in the amendment.

Mr. Naziruddin Ahmad : Perhaps there is some mis-print; I do not know. If there is no mis-print, it is certainly open to the comment that it is vague.

The only point that I had in mind was that the right to move the Supreme Court by appropriate proceedings is guaranteed. I wanted to allow the people to move other Courts also. If there is a fundamental right granted here, and if any poor man is forced to move the Supreme Court....

The Honourable Dr. B. R. Ambedkar : See sub-clause (3).

Mr. Naziruddin Ahmad : That sub-clause empowers some other specified Courts to deal with this subject; but I wanted to make it more general, that the fundamental rights should be capable of being enforced by a motion in any Court. In fact, all Courts should be open to the people. If there is a fundamental right which is violated, and if the man whose right is violated is a poor man, it would be wrong to drive him to the

Supreme Court or some other Court duly empowered in this behalf, which will be some superior Court. I want to see that all Courts have the power to decide fundamental rights or breaches of fundamental rights and this should be given to all Courts civil or criminal. If a difficult point of constitutional right is raised in any civil or criminal Court in a small case, then, that Court should be enabled to decide it immediately. Instead of that, this clause (1) would force the party to move the Supreme Court or some other selected Court duly empowered in this behalf.

I admit fully that the drafting of this amendment is certainly open to the comment that it is a little vague; but I am suggesting the principle. If the principle is acceptable, then, the amendment may be changed accordingly. This point is at the back of my mind; perhaps in a hurry, I made a mistake; it should be, "by appropriate proceedings *in any Court*". In fact, the actual wording of the amendment is not very important.

Mr. Vice-President : There is an amendment to this amendment. No. 43 standing in the name of Mr. V. S. Sarwate.

Shri V. S. Sarwate (United State of Gwalior-Indore-Malwa Madhya Bharat): Sir, I shall move the amendment after Dr. Ambedkar has moved his.

Mr. Vice-President : Yours is an amendment to amendment No. 783.

Shri V. S. Sarwate: And also, alternatively to amendment No. 794.

Mr. Vice-President : You want to move it when we come to amendment No. 794. Is that your wish?

Shri V. S. Sarwate : Yes, Sir.

(Amendment No. 784 was not moved.)

Mr. Naziruddin Ahmad : Sir, I beg to move:

"That in clause (1) of article 25, for the words 'Supreme Court', the words 'Supreme Court or any other Court empowered under clause (3) to exercise the powers of the Supreme Court' be substituted."

Sir, we have in clause (3) already attempted to provide the authority to Courts other than the Supreme Court to exercise those rights. This is consequential upon clause(3).

(Amendment No. 786 was not moved.)

Mr. Vice-President : Amendments Nos. 787, 788 and 793 are of similar import and will be considered together. Amendment No. 788 seems to be the most comprehensive.

(Amendment No. 788 was not moved.)

Mr. Vice-President : Then, we can take up amendment No.787 standing in the name of Mr. Kamath.

Shri H. V. Kamath : Mr. Vice-President, I move amendment No. 787 of the List of amendments as amended by amendment No. 64 in List 4 (III week). I move:

> "That for clause (2) of article 25, the following be substituted:
>
> > '(2) The Supreme Court shall have power to issue such directions or orders or writs as it may consider necessary or appropriate for the enforcement of any of the rights conferred by this part.' "

At the outset let me make it clear that I am a mere layman and not a professional lawyer or a legal or constitutional expert like my Friend Dr. Ambedkar; but I know a bit of law though not very much of it, and I will have my say on the basis of the little knowledge of law which I possess. This clause of article 25 relates to the power of the Supreme Court to issue orders for the enforcement of any of the Fundamental Rights mentioned in part III. I think that so far as the Supreme Court is concerned, it is not necessary to lay down what particular writ it should issue. After all, Sir, it may be that with the growth of legal and constitutional precedents, other writs than these mentioned here in this article may be evolved, and whenever a particular case comes up before the Supreme Court, it may be that the Court will take all the aspects of the case into consideration and issue such a writ--might be one of these, or a new writ may be evolved. I think this particular clause of the article is a very regrettable instance to my mind of what is called in legislation--`Legislation by reference'. When we are dealing with the Supreme Court consisting of eminent judges and jurists, it is not wise for us nor desirable to lay down what particular writs the Supreme Court should issue in a particular case. Therefore, all things considered, I feel that so far as the Constitution is concerned, we should just say this much that the Supreme Court should issue such orders or directions or writs as the Court may consider necessary or appropriate in any particular case. I therefore move, Sir, that for clause (2) of this article the following be substituted:

> "The Supreme Court shall have power to issue such directions or orders or writs as it may consider necessary or appropriate for the enforcement of any of the rights conferred by this part."

I hope that Dr. Ambedkar will tell us why he thinks it necessary to specify the particular writs here and not just leave it to the Supreme Court to decide what particular writs or orders or directions it should issue in any particular case. I hope he will not merely stand on prestige or some such consideration but will give satisfactory and valid reasons why we should insist on mentioning these particular writs in this clause of the article.

(Amendment No. 788 was not moved.)

Mr. Vice-President : Nos. 789 and 790 are similar and I allow 790 to be moved.

(Amendment No. 790 was not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, I understand that Mr. M. A. Baig is not in the House. Will you permit me to move 789. I am going to accept this amendment. It shall have to be moved formally.

Mr. Naziruddin Ahmad : I desire to move it if that is acceptable to the House.

Mr. Vice-President : Does the House permit Mr. Naziruddin Ahmad to move this?

Honourable Members : Yes.

Mr. Naziruddin Ahmad : Sir, I move:

"That in clause (2) of article 25, for the words 'in the nature of the writs of' the words 'or writs, including writs in the nature of' be substituted."

Sir, this is a red letter day in my life in this House, that this is a single amendment which is going to be accepted. This amendment is a foster-child of mine and that is why perhaps the honourable Member is going to accept it. It requires no explanation.

Shri H. V. Kamath : On a point of order. Is my Friend right in saying it is going to be accepted when it is only moved.

Mr. Naziruddin Ahmad : I heard a rumour that it is going to be accepted.

Mr. Vice-President : Nos. 791 and 792 are disallowed as verbal amendments.

(Amendment No. 793 was not moved.)

Mr. Vice-President : Nos. 794, 795 and 799 are similar and are to be considered together. 794 is allowed to be moved.

The Honourable Dr. B. R. Ambedkar : With your permission I will just make one or two corrections to some words which crept into the drafting by mistake. Sir, with those corrections, my amendment will read as follows:

"That for the existing sub-clause (3) of article 25, the following clause be substituted:

> 'Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2) of this article, Parliament may by law empower any other Court to exercise within the local limits of its jurisdiction all or any of the powers excercisable by the Supreme Court under clause (2) of this article.' "

The reason for inserting these clauses (1) and (2) is because clauses (1) and (2) refer to the Supreme Court.

Mr. Vice-President : There are two amendments to this amendment. One is No. 44 and the other is 45 of List I (III week) and Mr. Sarwate's amendment No. 43. Mr. Sarwate.

Shri V. S. Sarwate : Sir, the amendment which I move stands thus:

"That at the end of amendment No. 794 of the list of amendment, the following be added:

`*Explanation*.--The Supreme Court, in deciding matters arising out of this article, shall have the power to go into questions of fact.' "

Sir, the scheme which we have adopted in this Chapter regarding Fundamental Rights consists, first, that the rights themselves are enumerated in broad terms and then by clauses which follow, the Legislature has been given power to put restrictions on the rights in certain matters specified in those clauses. Lest the legislature should exceed its powers, or makes legislation in excess of the requirements of the case, a safeguard is provided by the present article. Now, it is possible to argue that the court can only see whether the legislature has passed an Act in respect of that matter, without going into the details, or it may be argued that the court has no power to go into the details, and to determine the issues whether a particular case required or necessitated or justified the passing of that particular legislation. It is necessary to provide for such a contingency, because by article 13, the legislature has been given power to make 'any law'. The terms are wider than if it had been expressed in the way that the legislature has power to penalise such and such matters. The expression used is 'any law' which is wider than if it had been only power to penalise. Therefore it is necessary in each case for the court to see whether the particular legislation meets exactly the requirements of the case, whether it does not exceed the requirements of the case. Getting panicky a legislature may pass a legislation where it may not be necessary to have any such legislation. Therefore I have added this explanation. The very wording of the explanation shows that it does not add anything to or substract anything from the original clause, but it only explains something. It may be argued that this is may be a certain doubt expressed in this respect, and so to remove and to avoid such doubts being raised, and to make it more specific and more outside the pale of any doubt, I have tried to add this explanation. I commend it to the House and to the Mover, for acceptance.

Mr. Vice-President : Then amendment No. 44 and amendment No. 45 in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Sir, I do not want to move No. 45 because it is open to some objection. I shall move only No. 44.

Sir, I beg to move:

"That in amendment No. 794 of the list of Amendments, in the proposed clause (3) of article 25, the words 'without prejudice to the powers conferred on the Supreme Court by clause (2) of this article' be deleted."

Sir, the original article tries to confer powers on *any other Courts*, powers which may be exercised by the Supreme Court, under clause (1). As we have already stated in this clause, Parliament may by law empower any other Court. The words "any other court" indicates that this is a supplementary power to be given to other courts, without any prejudice to the powers of the Supreme Court. The powers of the Supreme Court are defined very precisely as absolutely supreme over all other Courts. So the words "without prejudice to the powers of the Supreme Court" would be unnecessary. In fact, there is no possibility of any doubt that the Supreme Court has over-riding powers. In these circumstances, the words seem to me to be unnecessary. Therefore, they should be deleted. In fact, the powers of the Supreme Court are very specific in this respect. The very name--Supreme Court--indicates that it is supreme in all matters. If we keep the words, we would suggest that the rights of the Supreme Court are not supreme, it really indicates some doubt that the Supreme Court is not perhaps supreme in legal matters. That is the reason for asking for the deletion of these words.

(Amendments Nos. 795 and 799 were not moved.)

Mr. Vice-President : Amendment No. 796 is disallowed on the ground that it is only a formal amendment.

(Amendments Nos. 797, 798, 800 were not moved.)

Amendment No. 801 standing in the joint names of Shri Kamath and Mr. Tajamul Husain.

Shri H. V. Kamath : I shall make way for Mr. Tajamul Husain.

Mr. Tajamul Husain (Bihar : Muslim): Mr. Vice-President, Sir, I beg to move:

"That clause (4) of article 25 be deleted."

Sir, under article 9, the State shall not discriminate against any citizen on the grounds of religion, caste, etc. That means that a citizen is allowed to enter any shop, restaurant, hotel etc. He is allowed to use wells, tanks, roads and other things. Under article 13, the citizen is allowed to practise his profession, and carry on his trade in any way he likes. Under article 25, a citizen can move the Supreme Court for the enforcement of his rights mentioned above, and the Supreme Court can issue order in the nature of *Habeas Corpus* or *Mandamus* etc. But Sir, clause(4) of article 25 speaks of the suspension of the rights of citizens which I have just now mentioned. Article 280 says that where a proclamation of emergency is in operation the President can suspend the fundamental rights guaranteed to the citizens. This, I submit, should not be allowed. If such a right is allowed to the President, under the Constitution, then the right of equality as mentioned in article 9 will cease to exist for the time being. And citizens will not be allowed to use wells, tanks, roads, etc. Freedom of speech will have to be suspended; right to practise one's profession will also go; protection of life as guaranteed under article 15 will go; freedom of conscience will go; the right to move the Supreme Court will go. I think it is very dangerous to give all these powers to the President. After all what are we? We are only the representatives of the people--we are the people. When we have framed the Constitution we will dissolve ourselves and another set of people will come. They will also be the representatives of the people. They will be the same as ourselves--there can be no difference between us. Have we got the right to bind down those people? Can we say to them `Thou shalt not do this; thou shalt do this'? It is a free country. If the people want to have revolution, let them have revolution. What right have we to prevent that? Therefore I say that no power should be given to any person, however big--to the President of the Republic or to anybody else--to suspend any Fundamental Rights guaranteed under this Constitution. With these words I commend my amendment to the House.

Kazi Syed Karimuddin : Mr. Vice-President, Sir, I move:

"That in clause (4) of article 25, for the words "as otherwise provided for by this Constitution" the words "incase of rebellion or invasion and when State of Emergency is proclaimed under Part XI of this Constitution" be substituted."

Sir, I cannot agree to the amendment moved by Mr. Tajamul Husain saying that the whole of clause (4) should be deleted. There are occasions in the country when actually there is an invasion and rebellion inside and no President will be so foolish as to restrict activities which have no concern with the invasion or rebellion like discrimination between man and man and even untouchability. Therefore in order to maintain peace and tranquility in the country, it would be necessary to suspend some of the provisions under articles 13 and 25, but to say that every clause and sub-clause under article 13 and 25 will be suspended as soon as there is invasion or war is, I think unimaginable. My amendment lays down that the rights guaranteed by this article shall be suspended only when there is invasion because the provisions in articles 275 to 280 lay down that even if there is an immediate danger of war articles 13 and 25 will be suspended not only for the period of the emergency but six months even beyond that period of emergency. It has been laid down under article 280 that 'where a Proclamation of Emergency is in operation, the President may by order declare that the rights guaranteed by article 25 of this Constitution shall remain suspended for such period not exceeding beyond a period of six months after the proclamation has ceased to be in operation as may be specified in such order.' I was pleading very earnestly that the provisions of article 25 should be passed over and considered after the passing of the provisions under articles 275 to 280. Now we are taking into our hands the question of suspending the provisions of articles 13 and 25 when we do not know the picture that would emerge under the provisions of articles 275 to 280. Now the rights are to be suspended in consideration of provisions that are yet to be made and which have not been accepted by the House. I thought that Dr. Ambedkar would oppose this proposal. But I bow to the decision of the House. Now the position before us is that we are going to accept clause (4), if at all it is accepted, for considerations and provisions which are not yet passed, and the House may reject them. In reply to that it has been stated that necessary changes will be made. Well, I have made the necessary change and it is before the House to accept or reject. And it is this, namely, that incase of rebellion or invasion and when a State of Emergency is proclaimed under Part XI of the Constitution--that is, articles 275 to 280--these rights can be suspended. My submission is that unless there is a declaration of a State of Emergency and unless there is actual invasion or rebellion inside, the rights granted under articles 13 and 25 should not be suspended. For example, suppose a party in a province which is hostile to the party in power at the Centre comes into power in the province. And suppose there is a quarrel between the Provincial Government and the Central Government and the party disobeys some of the orders issued from the Centre. Immediately the President, thinking that there is domestic violence inside the province, can suspend that part of the Constitution according to the emergency law. The result would be that every right of the individual citizen under article 13 will be suspended. Therefore, the two conditions which I have laid down in my amendment are that in cases of invasion and rebellion these rights should be suspended. I do not say that these rights should never be suspended, although in England and America there is no such provision for suspending such rights. But our country is passing through a transition and through a crisis; and if these rights are not suspended during such times there will be great turmoil in the country. I therefore plead that the amendment which I have moved should be accepted.

Mr. Vice-President : Amendment No. 803 is a verbal amendment and is disallowed.

(Amendment No. 804 was not moved.)

Mr. Naziruddin Ahmad : I shall move amendment No. 805.

Shri M. Ananthasayanam Ayyangar : It is also a verbal amendment.

Mr. Naziruddin Ahmad : Sir, I move:

"That in clause (4) of article 25, for the word 'guaranteed', the word 'conferred' be substituted."

As Mr. Ananthasayanam Ayyangar has suggested that it is a verbal amendment, I shall at once explain the reason why I have moved it. I confess that it is very nearly a verbal amendment. But the only reason why I have moved it is because I have the authority of amendment No. 811 to the same effect standing in the name of Dr. Ambedkar himself. In fact he has tried to change the word "guaranteed" by the word "conferred". My amendment is exactly the same as amendment No. 811. If No. 811 is acceptable to the House, No. 805 should also be equally acceptable. May I submit that amendment No. 791 standing in my name is not a mere verbal amendment? It changes the sense altogether, and may I be permitted to move it in a one minute speech?

Mr. Vice-President : No.

Mr. Naziruddin Ahmad : It changes the meaning. I ask you to consider it. I will be willing to bow to your considered decision.

Mr. Vice-President : In that case you will not move it.

(Amendment No. 806 was not moved.)

As amendment No. 806 has not been moved, an amendment to it by Pandit Bhargava (No. 46 in the list) falls through.

(Amendment No. 807 was not moved.)

The article is now open for general discussion.

Shrimati G. Durgabai (Madras : General): Mr. Vice-President, Sir, I have great pleasure in supporting this article. While doing so, I wish to place a few points before the House for its consideration.

Sir, the right to move the Supreme Court by appropriate proceedings for the enforcement of a person's rights is a very valuable right that is guaranteed under this Constitution. In my view this is a right which is fundamental to all the fundamental rights guaranteed under this Constitution. The main principle of this article is to secure an effective remedy to the fundamental rights guaranteed under this Constitution. As we are all aware, a right without an expeditious and effective remedy serves no purpose at all, nor is it worth the paper on which it is written. Therefore, as I have already stated, this article secures that kind of advantage that it will ensure the effective enforcement of the fundamental rights guaranteed to a person.

Sir, then, all of us are aware, and the Drafting Committee is quite alive to the fact, that in recent times in England the procedure under ancient writs has been considerably modified and a simple remedy by a petition has been substituted for writs in a recent enactment in England. Perhaps that is the reason why the Drafting Committee has put in this article directions or orders in the nature of writs of *habeas* *corpus* etc.

Another point is that the right that is vested in the Supreme Court in no way affects the right of the High Courts in any part of India to issue similar writs or to enable Parliament to make laws empowering any other Courts to exercise the same power within the local limits of its jurisdiction. The question might arise in this connection as to what happens if the High Court refuses to issue a writ, and whether in the absence of a specific provision to that effect, an application for the issue of a writ is barred to the Supreme Court. To that my answer is, "No", because I consider that in these matters there is no question of *res judicata.* A person can move any number of courts and before any judge an application for the issue of this writ, though the Supreme Court naturally takes into consideration the order passed either by the High Court or any other Court in granting or refusing to issue this writ. Therefore, the application is not barred.

There are some other points also to be mentioned in this connection, but I feel these are the two main questions that might arise in this connection. One is whether the right that is vested in the Supreme Court bars the right of the other High Courts to issue similar writs; that question, I think, I have answered. The other question is whether in the case of concurrent jurisdiction, that is if the High Court refuses to issue this writ, whether an application is barred to the Supreme Court. That also I have answered by stating that any number of times a person can go to any number of Courts and move this application. Sir, with these few words I have great pleasure in supporting this article. I commend it to acceptance of the House.

Rev. Jerome D'Souza (Madras : General): Mr. Vice-President, I too should like to join my distinguished colleague, Shrimati Durgabai, in expressing gratification at the passing of this very important article which may justly be considered to be of the gravest character, and of the most far-reaching importance. I am sure, Sir, that Members of this House will recall to their minds that today is exactly the second anniversary of the opening of this great Assembly, and surely it is not without some significance that, nearing the end of our discussion on the Fundamental rights, this coping-stone of the structure of those rights should be placed today.

I should like to draw the attention of the House, Sir, to the implications of this article, implications which possibly are not obvious at the first reading. This House, and through this House the Legislatures that have to rule this country in future, by a laudable and significant act of self-denial or self-abnegation, places under the power of a Supreme Judicature the enforcement of certain laws and certain principles, and remove them from the purview and the control of the Parliaments which will be elected in future years. They wish to put these rights beyond the possibility of attack or change which may be brought about by the passions and vicissitudes of party politics, by placing them under the jurisdiction of judges appointed in the manner provided for later on in this Constitution. Sir, it is because we all believe,--and that is the implication of this chapter of fundamental Rights,--that man has certain rights that are inalienable, that cannot be questioned by any humanly constituted legislative authority, that these Fundamental Rights are framed in this manner and a sanction and a protection given to them by this provision for appeal to the Supreme Court.

As I said, Sir, the implication of this is that an individual must be protected even against the collective action of people who may not fully appreciate his needs, his rights, his claims. And the sacredness of the individual personality, the claims of his conscience, are, I venture to say, based upon a philosophy, an outlook on life which are essentially spiritual. Sir, if all our people and their outlook were entirely materialistic, if right and wrong were to be judged by a majority vote, then there is no significance in fundamental rights and the placing of them under the protection of the High Court. It is because we believe that the fullest and the most integral definition of democracy includes and is based upon this sacredness of the individual, of his personality and the claims of his conscience, that we have framed these rights.

I say, Sir, further that in the last analysis we have to make an appeal to a moral law and through the moral law to a Supreme Being, if the highest and the fullest authority is to be given and the most stable sanction to be secured for these fundamental rights. Sir, Mahatma Gandhi, in one of his unforgettable phrases, referring to the desire to have a secular Constitution and to avoid the name of the Supreme Being in it, cried out, "You may keep out the Name, but you will not keep out the Thing from that Constitution". And, Sir, I believe that these fundamental rights and their implications are really tantamount to a confession that beyond human agencies and human legislatures there is a Power which has to be submitted to, and there are rights which have to be respected.

Sir, we have introduced in these Fundamental Rights certain provisions--necessary perhaps in present conditions--that in Government institutions instruction in different religions may not be given, in order that the calm atmosphere of our institutions may not be disturbed by controversies. But I hope and pray that those provisos, prudent though they are, may not exclude the teaching of ethical principles based upon truths acceptable to all, upon the existence of a Supreme Being and the rights of the individual conscience formed under His guidance. I am sure that religious controversies could be avoided on the basis of those universally accepted truths. It is certain that our national culture and civilization are based upon and permeated by this belief and this conviction; otherwise there would be no meaning in these fundamental rights. A speaker who preceded me asked: "Why is it that provision has been made to change this Constitution? Why should not these sacred rights be placed beyond the possibility of abrogation?" I would answer him: "If the convictions and the faith of our people go away, there is no use in trying to protect these rights by sanctions. The rights and the sanctions would be illusory. But if faith remains, no one will want to touch them."

By this article we give to our Supreme Judicature a power, a status and a dignity which will call from them the highest qualities of integrity and uprightness. The full meaning of this article should be borne in mind when we come to that Part of the Constitution beginning with article 103, when we shall have to scrutinise the steps by which an upright and absolutely fair judiciary will be established in this land. When we consider that Part, let us recall these Rights and make sure that all these various provisions will be enforced in a just and fearless manner.

I now pass on to the next consideration and I beg the indulgence of the House to permit me to say a few words about the manner in which the Minority rights and Fundamental Rights are in extricably mingled together in this Part of the Constitution. Sir, I believe this is a right and necessary mingling. After all, what the minorities ask is that the right of the individual may be safeguarded in an inescapable manner. If that is done, "minority rights" as such would not and need not exist. It is because in a democratic system of Government where a majority vote may do injustice to a minority, that certain specific references to the minorities have to be made. But ultimately, in the last analysis, if the individual's right to his religious convictions, to his cultural preferences, to the rights which accrue to him as a man endowed with free will and reason and charged with the obligation of personal salvation, if these are safeguarded, "minority rights" as such need not find expression. That is why, mingled with these general rights, references are made to minorities. I should like to say on behalf of my own community which I have the honour to represent here--I am sure I am also voicing the feelings of many others--that if these rights are really safeguarded in the manner in which they are sought to be safeguarded in this Constitution, if the Fundamental Rights including as they do minority rights, are assured in an absolutely indubitable manner, no kind of political safeguards will be necessary for us and we shall not demand them, as long as, I say, this part of the Constitution is enforced without any kind of "encroachment" or misinterpretation.

Sir, the desire of our country and of our leaders is to work for the political homogeneity of this vast country. Unfortunately that political homogeneity was threatened, and to some extent destroyed by the need to give political safeguards to minorities. But remember those safeguards were asked for or were deemed necessary for the sake of religious and cultural and individual rights and not merely for the sake of political privileges or any emoluments which might come from them. And, as long as these, cultural and personal rights are safeguarded, we do not need any other political safeguard. Therefore, Sir, I hope and beg that we may ever remember that in the measure that these fundamental rights, protected in the last analysis by the Supreme Court, are enforced and carried out integrally and honourably, to the last implications of them, the desire for political safeguards and to that degree of political separatism and partial autonomy which it implies will not arise in this country. We will do nothing to raise that slogan once again. As far as the small Christian community is concerned we have gone a great way in giving up those political safeguards and we are prepared to go further and give up the reservations which have been made in certain provinces. And if we do so, it is because we know that in the spirit in which these fundamental rights have been guaranteed, there is for us an assurance of safety and a confidence which does not need to be propped up or further affirmed by political safeguards and privileges.

There are, I know, Sir, certain other safeguards still maintained in this Constitution, such as economic safeguards for backward communities and so forth. I believe that a transitory measure of this kind is necessary; it is wise and prudent to reassure many sections of our people in this way. But, Sir, I submit that the full and logical implications of what we are doing now is that a time should come when even the economic and other assistance to be given should not be based upon the claims of classes as a whole, but should be based upon the claims of the individual. I am sure, Sir, a time will come when all those who claim and need special assistance, will get it, without reservations and safeguard son the basis of communities; when our legislatures and the leaders of the country will be able to think out individual tests, in which the communal or social background may certainly be taken into account, but which will give that assistance or that concession to all individuals, without limiting it to particular castes or classes. It is only on this ground and on this understanding that class differences, in so far as they are dangerous politically and lead to political separatism, will be eliminated. If, on the other hand, cultural, religious and other rights of this nature are safeguarded, I do not see why the variety and the diversity of this country should not be a source of strength and glory rather than a source of political weakness such as they threatened to be in recent years. We earnestly trust that the spirit in which these rights will be enucleated, interpreted and enforced in future years by our Judges, the spirit in which the majority community will give effect to them, will allay all fears and encourage the minorities in the path which they have deliberately chosen now, of giving up political safeguards. Thus alone in the near future--I do not wait for a distant future--in the near future, will the political homogeneity of these three hundred and thirty million people be an accomplished fact, and the members of all communities standing shoulder to shoulder in their civic equality, but maintaining their right to their own faith, their convictions and their ideals, and drawing their individual strength from those beliefs and from those convictions will work together for the prosperity and greatness of our motherland. *(Applause).*

Shri M. Ananthasayanam Ayyangar : Mr. Vice-President, Sir, the Supreme Court according to me is the Supreme guardian of the citizen's rights in any democracy. I would even go further and say that it is the soul of democracy. The executive which comes into being for the time being is apt to abuse its powers, and therefore the Supreme Court must be there, strong and un-trammelled by the day to day passions which may bring a set of people into power and throw them out also in a very short time. In less than three or four years during which a parliament is in being, many governments may come and go, and if the fundamental rights of the individual are left to the tender mercies of the Government of the day, they cannot be called fundamental rights at all. On the other hand, the judges appointed to the Supreme Court can be depended upon to be the guardians of the rights and privileges of the citizens, the majority and the minority alike. So far as the fundamental rights are concerned, my humble view is that there is no difference between the rights and privileges of individual citizens, whether they belong to the majority community or to the minority community. Both must be allowed to exercise freedom of religion, freedom of conscience, must be allowed to exercise their language and use the script which naturally belongs to them. These and other rights must be carefully watched and for this purpose the Supreme Court has been vested with the supreme ultimate jurisdiction. So far as the rights of the minorities are concerned, some other provision has also been made in this Constitution in article 299, under which a special officer or officers are to be appointed to watch their interests and to report to the President of the Union, as also to the Governor, on how far the minority rights that have been enumerated in this and the other parts of the Constitution are being observed, and it is the duty of the President or the Governor to lay this report before the legislature. But this in itself will not do unless the Supreme Court is watchful and is allowed to pull up any executive government if it goes astray.

Sir, I agree with my predecessors who have spoken that this is the most important article in the whole constitution as it is the guardian of the people's rights. So far as I know, in recent years some provincial legislatures have passed laws abrogating the writ of *habeas corpus*. Such latitude with people's rights ought not to be allowed in any event.

Then as regards clause (4), my friend suggested that this clause ought to be removed. I do not agree with him, though I agree that the wording here is a little broad and is likely to be abused. I am sure that amount of latitude ought to be given to the government of the day. If any emergency is proclaimed, I am sure that the rights guaranteed by this article will be suspended only for the period of the emergency but not for another six months after the emergency is over, though it is open to the President to allow the same state of affairs to continue for a period of six months after the emergency is over. It is equally open to the President to say that this clause will be abrogated only during the period of the emergency and not for a further period of six months after the expiry of the emergency.

Shri H. V. Kamath : On a point of clarification, Sir, may I invite my friend's attention to clause (4) of this article as well as article 280 and request him to read them together. Article 280 says that:

> "The President may be order declare that the rights guaranteed by article 25 of this Constitution shall remain suspended for such period not extending beyond a period of six months after the proclamation has ceased to be in operation as may be specified in such order."

Is not clause (4) liable to be misconstrued, when it is read with article 280? Does article 280 cover all the fundamental rights? Does it mean, Sir, that even such rights as rights of anti-untouchability, religious and cultural rights will also be suspended?

The Honourable Dr. B. R. Ambedkar : I will deal with this.

Shri M. Ananthasayanam Ayyangar : Article 280 does not mean that the President will have to suspend these rights. He is not bound to suspend them or suspend all of them. It is not obligatory on the President to suspend the rights enumerated in this part. Therefore article 280 need not create any apprehension. Moreover, the person who is clothed with this power is the President of the Union, who ranks along with the Supreme Court judges. The President is not incharge of the administration. It is his ministers who are incharge of the administration. He only intervenes when necessary. Under these circumstances I am sure that the rights that have been enumerated in this part are safe in the hands of the Supreme Court and also in the hands of the President. Therefore, so far as the amendments that have been tabled by my friend Mr. Naziruddin Ahmad are concerned, I do not agree with him. Nor is it necessary to include under clause (1) other courts also. Provision has been made in sub-clause (3) for clothing other courts with powers similar to the powers that have been conferred upon the Supreme Court. Clause (4) guarantees not only the rights that have been guaranteed in clause (1) but also those guaranteed in clause (3). My friend, Mr. Naziruddin Ahmad, wants to incorporate what is contained in clause (4) in clause (1). The wording as it stands seems to be enough, and his amendment is not necessary. It is also not definite. It is rather clumsy. Under these circumstances, I am opposing the amendments moved by Mr. Naziruddin Ahmad and also the amendment relating to the deletion of clause (4).The article as it stands may be accepted.

B. Pocker Sahib Bahadur (Madras : Muslim) : Mr. Vice-President, Sir, I wish to speak a few words on this article. As was observed by Mr. Ananthasayanam Ayyangar, I would say that this is the most important article of the whole Constitution and we have to take care to see that the rights conferred by this article are not watered down or in any way modified by other articles or even by the other clauses of this every article. Now, Sir, recent experience after we gained independence has taught us that we have to be much more careful in safeguarding the individual liberties and the rights of the citizens now than when we were ruled by the foreigners. I must say that the recent behaviour of certain provincial governments has taught us that it is very necessary to take careful measures to see that they are not allowed to behave in the manner they have behaved. I am referring to the way in which the sacred rights and liberties of the person were being dealt with by certain provincial governments under the cloak of the powers that they are said to possess. Very often, Sir, it has become the fashion with these Provincial Governments to say: "Well, some state of emergency has arisen and therefore, in the public interest, we shall utilise the powers conferred by the Public Safety Act and we shall have to curtail the liberties of so many people and put them in jail". And this is done without those people knowing on what grounds they are arrested, what is the sin that they have committed against the State or against the peace of the country, in order to deserve the curtailment of their liberty in this irresponsible fashion; and they are kept in that state of mind for weeks and months, without even being told what the ground is on which they are arrested and detained, even though the Government is bound to furnish them with the reasons for their arrest and detention, under the provisions of the Act under which the Government proposed to arrest them.

Now, Sir, if we look at the irresponsible way in which things were done very recently, it is very necessary that we must have very strong safeguards against the misuse and abuse of the powers which may be conferred on these Governments. I would say, Sir, that one principle which we have to bear in mind and we should always keep in view in framing this Constitution is that ministries may come and ministries may go, but the judicial administration must go on unaffected by the vicissitudes in the lives of these ministries and the changes in the Government. It is more to preserve their own power, I mean, the power of the particular party or the clique in power that these measures are resorted to than for any public purpose. Such a state of affairs should never be allowed to be tolerated. I shall refer to one instance, Sir.

In Madras the legislature was in session and all of a sudden, one evening, a notification was issued that the legislature was prorogued. For what reason it was done, nobody knew, and the next morning an ordinance was issued. To what effect? Apart from so many other things, there was the Public Safety Act and under that Act many people were arrested and detained in jail, without even being told what they are arrested for and why they are detained. Well, they were forced to resort to such remedies as were available under the existing law and applications were pending in the High Court for issue of writs of *Habeas Corpus* and the High Court issued in deserving cases writs of *Habeas Corpus*. The moment a person was released by the order of the High Court, that very moment he was re-arrested and put in jail again. And not satisfied with all these apparently, the Government felt annoyed by the independent way in which the High Court was exercising the legal powers conferred on it under Section 491 of the Criminal Procedure Code. What happened was that one evening the Legislature was prorogued and the next morning an ordinance was issued, even taking away the power of the High Court to issue writs under section 491 of the Criminal Procedure Code. Now, Sir, is there any *bona fides* in this? Can any reasonable man say that this could be done with any *bona fides*? This is the most scandalous way in which the powers conferred on the Government were being exercised. Under the cover of the powers conferred on them, they have acted in the most irresponsible way. Therefore, it is that I say, Sir, that the powers of courts should not be made to depend upon the will and pleasure of the Government and they should under no circumstances be allowed to interfere with the powers that vest in courts of law. If the very guarantee of personal liberty on which democratic form of Government is based and the powers vested in courts of law to enforce such rights independently are allowed to be interfered with, no one is safe. Of course, if is not a question of majority community; it is not a question of minority community but the powers that be at the time clap in jail such of the individuals or groups of people, whom they do not like and whom they do not want to be at liberty, perhaps for the fear that they may undermine the power which they are enjoying. It is one thing to make safeguards on occasions when there is general disturbance of the peace of the country, but it is quite another thing to give full powers to the Governments to do anything they like under the guise of these 'emergency powers' and empower them to take away powers vested in Courts of Law to protect the personal liberty of citizens.

Now, Sir, I would only like to point out this, that this is certainly one of the very important rights which has been conferred under this Constitution, but I am afraid, Sir, that clause (4) takes away with one hand what is given by the other, and therefore, I would heartily support the amendment that has been moved for the deletion of this clause. There is no necessity for that clause at all. Of course, as regards the powers to be exercised in case of emergency, there is provision under section 280 and even that would require modification and we shall have to deal with it when we reach that article, but by the provisions of this clause whatever powers are given by the previous clauses are interfered with and I would strongly support the amendment for the deletion of this clause. There is no necessity for it and as has been already pointed out by one of the honourable Members this will lead to a conflict with article 280 and there will be complications arising out of it. With these few words, I support the amendment for the deletion of this clause.

Prof. Shibban Lal Saksena (United Provinces : General) : Mr. Vice-President, Sir, now we have come to this last part of this Chapter and this article 25 gives the right to every citizen in the country to see that all the liberties guaranteed in this chapter are made available to him. He can go to the Supreme Court and demand that these laws be enforced. Sir, this is the crowning section of the whole chapter. Without it, all the articles which we have passed will have no meaning. As my honourable Friend, Mr. Ayyangar, has said, this is the most important section in the Constitution. This is, in fact, what makes all the fundamental rights become real. Everybody can have his remedies if any wrong is done to him, under this article.

I think, Sir, the article as it has been worded is very proper, and the demand for the deletion of clause (4) is not a proper one, at the present stage of our national development; though as a matter of principle, it may be said to be correct. In America and England there are no provisions under which the fundamental rights can be suspended. In fact, in England we have no such rights; they are unwritten rights. Still, in the present stage of our development, when the State is in fact being built up. I think this provision for the suspension of the rights in an emergency, as provided in the Constitution, is necessary. There will be an occasion for us to examine those articles under which these articles can be suspended and we will see whether those provisions are reasonable. But to say that even in an emergency, in a rebellion or on other such occasions, there should be no power to the State to suspend this Part of the Constitution, will, I think, be going too far, especially at this time of our national development. I think very soon when our State becomes stable, we shall be able to drop clause (4).

Clause (3) empowers the Parliament to make laws to empower the local courts to decide this question. I think this is also taking away to some extent the rights conferred here. Sir, the Supreme Court is the final authority. I have in fact a very high respect for the Supreme Court. I want that the Supreme Court should be a sort of a body almost independent of the Parliament. It should not be interfered with by the Parliament as in America. I therefore, think that this clause (3) which says that the Parliament will have power to make laws empowering any other court to decide this thing should not have been here. If Parliament does not want that the full import of the rights should be granted, they may empower any court to deal with this subject. I hope that in the first ten or fifteen years during which we experiment with this

Constitution, we shall realise whether any Parliament is so determined as to make these rights null and void.

Sir, clause (2) gives the famous rights which are given all over the world, writs of *habeas corpus* and others. I think everybody will agree that this is very important and very good. Therefore, I think the article as it is, can be accepted, though, I think in later years if clause (3) is against the fundamental principles, it may be dropped. When our State becomes stable, clause (4) may also be dropped. That I think would be the proper form of this article after some time, when our democracy has become stable.

Sir, when we consider this article as the operative part of this chapter, we may review what we have done. In fact, this is a Chapter on Fundamental Rights. We have guaranteed against discrimination of all sorts; we have guaranteed that untouchability shall be abolished, which will be the most historic act done by the Assembly so far; we have granted the Charter of Liberty in article 13. I hope we will also pass article 15 wherein personal liberty and equality before law shall be guaranteed. Then, we have provided safeguards to minorities, both religious and cultural. The right to property has yet to be finally adopted. I think all these rights are the most important rights, the most valued rights of any citizen. I also want to say to my friends who yesterday thought that they were not sufficient to guarantee the rights of minorities, that the ultimate right of the minority is the good will of the majority. I personally feel that the majority has gone to the farthest extent in this matter. I may also point out one thing. The Fundamental Rights Committee was appointed before the partition took place. In fact, these rights were written in this form before the partition had taken place. The minorities' rights were laid down on the basis that there will be no partition. Yet, we have not changed them. I am not letting out a secret when I say that our great leader Sardar Patel told us, "kindly do not interfere with these rights, religious and cultural, because they form part of an agreement arrived at before the partition." If anybody says that these rights are not enough, I think it is the height of ungratefulness. I think we have guaranteed rights which our people will, probably, tell us in the future that we bartered away these rights. We have now declared that no religious education shall be given in the schools. Thirty crores of our people are Hindus; yet they shall not have the right to be taught even the universal religious book, the Gita, in the schools. Why have we done that? Because, at that time, before the partition, it was thought that in view of the fact that there are various religions, let it not be done. Now, when only three crores out of thirty-three are the minority, still, the majority is denying itself the opportunity of teaching the children the religious precepts of its community. Yet, we have not changed these rights, because our leader has told us not to interfere with them. I think the way in which the majority has tried to accommodate the minority will be taken note of and it shall not be right for anybody to come forward and loudly accuse the majority that it has not provided sufficient safeguards. I think the real guarantee of the minority is the good will of the majority. I hope that with these fundamental rights, we will be able to produce in this country a State which shall be a State based and inspired by the ideals of the great leader, the father of the Nation, so that we can have in our country a really secular State; a State based on the ideals of Mahatma Gandhi.

With these words, Sir, I support this article.

Prof. N. G. Ranga (Madras : General): Mr. Vice-President, Sir, I am unable to understand the line of argument advanced by those friends who want clause (4) to be deleted, and who do not want to vest in the President of the Republic the power to suspend these fundamental rights under article 280 in case of emergencies. Sir, it has been said by more than one speaker that this article is the greatest guarantee for individual liberty in our country and that the Supreme Court is being set up as the biggest champion of the liberties of our people. But, has it been considered by these friends that just as individuals and groups have their rights, the society as a whole has certain rights *vis-a-vis* individuals and groups which are bent upon destroying that society, subverting the social order and dissecting the social organisation through violent means? Is it not a fact, Sir, that in the recent decades of this century there have been such attempts made by organized groups and minorities in different countries to subvert the social order and destroy the social life of the majority of the people themselves? What is the guarantee then for the continuance of the social order and social rights of the majority of the peoples in the different countries if an organized violent effort is made by a tiny minority? No effort has been made in this Constitution and in this Chapter to safeguard such a society. It may be said that there is a safeguard for the State; but is it not a fact that in Germany and Italy, a group of people organized for violence were able to get at the State and then subvert the whole of the society and destroy the fundamental rights of the majority of the people themselves? Is it not also a fact that in Soviet Russia even today an organized minority is in the saddle and is incharge of the State and is able to deny the fundamental rights not only to the whole of the majority of the people there, but also the fundamental rights of these individuals, as are being detailed here? Therefore, Sir, it is as well for us all to keep in mind this extreme need that society as a whole should safeguard itself against the possibility of organized minorities based upon violence, intent upon the use of violence, trying to use that violence. My Friend Mr. Pocker has tried to create a sort of bogey out of what had happened in Madras. Similar things could easily have happened in other provinces also. Can we deny, Sir, or can anyone else deny the fact that there were people at that time in Madras Presidency who made it their business to use all possible violent means in order to subvert our own society in the South, in order to go to the aid of a gang of people who had made themselves the enemies of the society as a whole in India and of the State, the Indian State as well as the Provincial States? Sir, what is it that the Madras Government could have done except what it had actually done--just catch hold of those people, restrain their liberties for a temporary period in order to prevent them from going to the rescue or from abetting the violent means and methods adopted by the Razakar movement in a particular part of our country? It cannot be denied by these friends that many of these friends whose liberty had to be restrained for a time had been, directly or indirectly, in league with those people who had their contacts with the Razakar movement; and under those circumstances how could it be possible for any society to safeguard itself except by telling these friends that they should hold themselves in check and if they could not do so voluntarily it would be the charge of the Society, of the State, to restrain the liberties of these people for a time?

Secondly, Sir, let us not forget that there is a world-wide conflict today between two great ideologies. There is totalitarianism on the one side, and on the other side, there is democracy. In this conflict we have to decide what we are going to do. These Fundamental rights can come to be exercised only by that society and those individuals who have a due respect for law, who have a due respect for fundamental rights of other people along with themselves and who therefore are prepared to behave themselves with a due sense of responsibility and restraint. Wherever such conditions do not obtain and wherever there are groups and parties who organize and make it their business to destroy the State and try to capture the State, certainly it would not be possible for any State or Society to respect these fundamental rights.

That is the first pre-requisite for the exercise of these fundamental rights. Sir, it is a well-known fact that these concepts of fundamental rights have emerged out of the terrible sufferings that people have had to go through during the last two centuries in different countries all over the world. These are all sacred rights, rights that are sanctified by the very experiences of people in different countries. It is all true but why are these rights being conceded and how are they being claimed? Because the personality of the individual is found to be inviolable. The individual is found to be just as violable as society. An individual's right to liberty has got to be safeguarded at all costs, in every possible manner by the society as well as the State. If the life of that society itself is endangered, then.

Maulana Hasrat Mohani (United Provinces : Muslim): What about the right to strike?

Mr. Vice-President : Maulana Saheb, please do not interrupt.

Prof. N. G. Ranga: Mahatma Gandhi himself has already answered it in regard to strikes. It is possible for anyone to be allowed to go on strike or groups of people to go on strike provided they keep themselves non-violent. The moment they over-step the bounds of non-violence and begin to exercise violence against others who do not believe in that line of action re-strikes,--whether you call them strikes or lock-outs, they have got to be banned and the people who indulge in these lock-outs have got to be dealt with in the only way by which society can possibly do so in order to safeguard itself. Sir, let us remember that individuals can exist not in vacuum but in a society. Therefore, the first condition precedent for any individual for the exercise of fundamental rights is the existence of society the fundamentals of which, the soundness of which is its own organization. Therefore, those individuals who do not believe in social life, who are anti-social, who are intend upon disrupting and destroying society necessarily cannot be expected to claim and enjoy these fundamental rights. This is a very fair condition that every individual has got to satisfy.

Another thing is, it is not the Supreme Court which is going to ensure the exercise of this fundamental right to individuals or groups as much as an individual's and group's own capacity to stand up to its own fundamental rights and make the necessary sacrifice. It can do so in one of two ways. One is that of the Western World, that is, resorting to violence. The other is that of Mahatma Gandhi--resorting to *Satyagraha*. Now, a *Satyagrahi* cannot at one and the same time be both non-violent and violent in his expression, in his activities, in his incitement of others, in the various other methods that he adopts in order to subvert the society. A *Satyagrahi* has necessarily to be a peculiar individual, an individual distinguished from other individuals by the degree to which he can restrain himself and also ask his own followers to restrain themselves and pursue a non-violent line of action both in word, thought and action. Now such a *Satyagrahi* can always safeguard his own fundamental rights. In view of the fact that everyone cannot be a *Satyagrahi* and ordinary people also have got to be safeguarded, these fundamental rights are being enshrined in this particular chapter. Therefore those who wish to enjoy this fundamental right, to safeguard their enjoyment, have got to discharge particularly their duty towards society as a whole. There may be groups and there are groups in this country, there may be individuals and there are plenty of them in this country, who do not believe in their duties towards society, but who only wish to exploit to the uttermost possible extent these fundamental rights. We know, Sir, of certain pamphleteers; we know of certain organizations; also we know of certain other communal champions who wish to exploit these liberties. What is it that Society has got to do? If they are only of negligible importance, then it is open to the ordinary rule of law to restrain them. But if on the other hand they become sufficiently powerful and vociferous they have got to be dealt with by the State as such and If they attain a province-wide or a nation-wide importance, it will be the duty of the President of the Republic to invoke article 280 and declare an emergency and suspend the operation of these fundamental rights and deal with these gentlemen as they deserve to be.

Shri H. V. Kamath : Does my honourable Friend, Prof. Ranga, propose to deal with even vociferous minorities?

Prof. N. G. Ranga: Yes, but only those people who are vociferous in abusing others, without any sense of responsibility, without any restraint and without any sense of morality; and we know that we have had plenty of such people who were the cause of lot of disturbances, and....

Mr. Vice-President : The answer you have already given is sufficient.

Prof. N. G. Ranga: Thank you, Sir.

Then, Sir, it is true the majority also can go mad, and therefore the people have to be protected from their tyranny. The majority can go mad in an organized and in an unorganized fashion. If they go mad in an unorganized fashion, without any leadership from the State, or society or anybody, then it is the duty of the State to come into the arena and deal with those people as best as it might, even at the peril of its own existence. A State which is not prepared to restrain its own unorganized or disorganized majorities, who believe in inflicting private punishment upon various people, whether they are organised or not, such a state does not deserve to exist. But on the other hand, If the majority is organized and it begins to function through the State itself, then who is to guarantee and uphold these fundamental rights? It may be said that the Supreme Court would be expected to do so. It is also quite possible that when an organized majority is functioning through the State and begins to misbehave in this fashion, the Supreme Court might be set at naught as it happened in Nazi Germany and Fascist Italy. Then what is the guarantee for these individuals or groups? There is a book by Prof. Laski called "Liberty in the modern State" in which...

Shri Krishna Chandra Sharma (United Provinces : General) : But what is the point? What is the relevancy of all that you say now to the point under discussion?

Prof. N. G. Ranga: There he makes it perfectly clear that.

Mr. Vice-President : Mr. Sharma wants to know to what extent what you say is relevant to the article under discussion.

Shri H. V. Kamath : Sir, it is for you to decide.

Mr. Vice-President : But I want to hear Prof. Ranga I think there is some connection however slight.

Prof. N. G. Ranga: The Supreme Court expected to issue writs, mandamus, and various other things. If there were an organised party which refuses to respect these writs issued by the Supreme Court, what is the guarantee then for these fundamental rights? That is the relevancy. My answer is, it is the duty of every group to offer Satyagraha, provided that Satyagraha is carried out, and is offered in the Gandhian fashion, in a non-violent manner, and in a self-sacrificing fashion; these are the conditions under which Satyagraha can be offered. That is the instrument that Mahatma Gandhi has fashioned for the country and.

Shri H. V. Kamath : Sir, is the right to offer Satyagraha a fundamental right?

Prof. N. G. Ranga : Sir, I can only say that it is basic to all your fundamental rights. But Satyagraha need not be enshrined in any constitution. It can be enshrined only in the capacity of the people to offer sacrifice, and to offer themselves also as sacrifice. This conception of fundamental rights has come into existence in the world only because there were so many people in the history of the world who were prepared to offer themselves to martyrdom in order to establish these rights, in order to get this conception accepted by the whole of the civilized world and by the whole of the democratic world as fundamental rights.

Lastly, Sir, I wish to sound a note of warning. Let us remember that we can exercise these rights only within the orbit or within the ambit of democracy, and whenever there is serious danger to the very concept of democracy, to the exercise of democratic functions, to the institutions of democracy, it must be the duty of the State as well as that of the President of our Republic to set aside these fundamental rights in order to safeguard our people. Our friends, of course, who claim to belong to some sort of minority are nervous about it. But let me warn them in this way. It may be that their religion countenances totalitarianism, may be their cult countenances totalitarianism, but there can be no place for totalitarianism in this country, and if ever any group or individual were to try to establish totalitarianism in this country, especially to establish a totalitarian State, then it will be the sacred duty of the Supreme Court as well as that of the President of the Republic of this Country to see that this Constitution is maintained at all costs, and these fundamental rights are not allowed to be exercised by those people or groups in such a way as to jeopardise our society.

Mr. Vice-President: Shri Rohini Kumar Chaudhari. You will please be brief.

Shri Rohini Kumar Chaudhari (Assam : General): Mr. Vice-President, Sir, this is the first time that I have brought these books to my table, and the House need not be apprehensive because I have brought them here, that I will be unnecessarily long or irrelevant. I would only like to tell you, sir, once again that I am rather short of hearing, so far as bell-rings are concerned, though I can hear all right where whispering accusations are made.

Mr. Vice-President : I wish I had known this before, I would have thought twice before calling you to the mike !

Shri Rohini Kumar Chaudhri: Sir, I welcome this article because the enunciation of these fundamental rights would be meaningless if this article were not here to enable us to get our justice from the Supreme Court. I can quite understand the coyness of my friend Mr. Naziruddin Ahmad while he was moving his amendment. After all the man who is always fond of finding out small faults of drafting has been caught napping, and it has been found, and he has himself admitted it, that the whole of his amendment is not explicit. But I would submit that what he intended to convey has been conveyed by the article itself. Every person will have the right to move the Supreme Court whenever he finds that a fundamental right has been infringed. Supposing we want to say that the Queensway is open to traffic, one need not say that every person shall have the right to go through Queensway. Similarly, the article as it stands here is quite explicit and does not require the amendment tabled by Mr. Naziruddin Ahmad.

I also welcome the provision which has been made herein that in some cases the Supreme Court may delegate its powers to some other courts. That will be a blessing to distant places like Assam and Coorg, because people from such places will find it extremely difficult to come and seek relief in the Supreme Court which is bound to be located somewhere in the United Provinces or Delhi. But at the same time I would like to mention here that such power of delegation should be exercised very sparingly because after all the personnel of the Supreme Court would no doubt be more qualified than the personnel of a High Court. Therefore to shut out the possibility or the chance of any particular province from coming to the Supreme Court and of making the High Court to exercise the Supreme Court jurisdiction would be some what anomalous.

I now come to the fourth clause of article 25. I wish I had spoken before my honourable Friend Mr. Ananthasayanam Ayyangar had spoken because he would have been able to explain some of the difficulties which I feel about this clause. Furthermore, I as well as most members of the House look upon our honourable Friend Mr. Ananthasayanam Ayyangar as something akin to Guru Dronacharya of old who can, notwithstanding his personal feelings and opinions, give a proper interpretation of the provision as taken by the framers of this draft. [Subject to correction I consider that clause (4) should have been omitted or there should be a substantial modification of this clause. The Fundamental rights are in the very nature of them rights which should never be taken away from the people. According to this clause these Rights can be taken away in a state of emergency.] Article 280 says that in a state of emergency the President can keep the whole of article 25 suspended. Let us see what will be the result of this suspension--what will be the evil effect and what may be the possible good effect of this suspension. The evil effect of this suspension would be that in a state of emergency you can ignore article 11 which deals with untouchability. That is to say we conceive a set of circumstances which would entitle the State or any person to infringe against article 11 and go without any punishment. Any state, or any temple or any authority can infringe article 11 in a state of emergency. Does this House support such a view? Will the House under any circumstances agree to a suspension of the Constitution in so far as article 25 is concerned, and allow people who infringe against it to go with impunity?

Let us take again article 17 where traffic in human beings has been prohibited. Does the House agree that a suspension of the Constitution should take effect so that the people can indulge in traffic in human beings with impunity? I say that such a state of things may actually take place. Remember the last war when actually traffic in human beings was carried on for the exigencies of the war. What is after all the Women's Volunteer Service? What was W. A. C.? Everybody knows for what purpose the Women's Volunteer and Auxiliary Corps were organized and what functions they carried on. Traffic in human beings was actually carried on there, and it was carried on during the war in different cities where women were actually engaged for dancing and other purposes in order to keep up the morale of the troops. Do you, by agreeing to a suspension of article 25, countenance the possibility of traffic in human beings of this kind in a state of emergency which is spoken of during the war? I therefore wish that this last clause--clause (4)--of this article should either be deleted or amended in such a manner that it is not possible to suspend the entire article at any time but it can be suspended under certain most unavoidable circumstances. But, as a matter of fact I cannot envisage any circumstance which would make it necessary for you to suspend this article in any respect. During a state of emergency what you may want to suspend is article 13 where freedom of speech, freedom of association and all these things have been mentioned. It may be necessary during a period of emergency or when war is actually going on, to restrict the freedom of speech and the freedom of movement and other rights which are mentioned in that article. But that article also contains in every phase of it provisos which empower the State to restrict those rights. So far as that article, provisions which are most essential during a state of emergency, is concerned you have already got limitations and restrictions mentioned in the article itself. For that purpose the suspension of article 25 is not necessary. Therefore in my humble opinion, and subject to corrections and explanations which might be given by my honourable Friend Dr. Ambedkar or by any other member in this House, I would submit that it would be better from every point of view to do away with this clause (4) altogether or to amend it in a suitable manner.

Pandit Lakshmi Kanta Maitra (West Bengal : General): Do you suggest that article 280 should also be deleted?

Shri Rohini Kumar Chaudhari : I was referring to article 280 in my speech.

Mr. Vice-President : You are not called upon to answer that.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, of the amendments that have been moved to this article I can only accept amendment No. 789 which stood in the name of Mr. Baig but which was actually moved by Mr. Naziruddin Ahmad. I accept it because it certainly improves the language of the draft. With regard to the other amendments I shall first of all take up the amendment (No. 801) moved by Mr. Tajamul Husain and the amendment (No. 802) moved by Mr. Karimuddin. Both of them are of an analogous character. The object of the amendment moved by Mr. Tajamul Husain is to delete altogether sub-clause (4) of this article and Mr. Karimuddin's amendment is to limit the language of sub-clause (4) by the introduction of the words `in case of rebellion or invasion'.

Now, Sir, with regard to the argument that clause (4) should be deleted, I am afraid, if I may say so without any offence, that it is a very extravagant demand, a very tall order. There can be no doubt that while there are certain fundamental rights which the State must guarantee to the individual in order that the individual may have some security and freedom to develop his own personality, it is equally clear that in certain cases where, for instance, the State's very life is in jeopardy, those rights must be subject to a certain amount of limitation. Normal, peaceful times are quite different from times of emergency. In times of emergency the life of the State itself is in jeopardy and if the State is not able to protect itself in times of emergency, the individual himself will be found to have lost his very existence. Consequently, the superior right of the State to protect itself in times of emergency, so that it may survive that emergency and live to discharge its functions in order that the individual under the aegis of the State may develop, must be guaranteed as safely as the right of an individual. I know of no Constitution which gave fundamental rights but which gives them in such a manner as to deprive the State in times of emergency to protect itself by curtailing the rights of the individual. You take any Constitution you like, where fundamental rights are guaranteed; you will also find that provision is made for the State to suspend these in times of emergency. So far, therefore, as the amendment to delete clause (4) is concerned, it is a matter of principle and I am afraid I cannot agree with the Mover of that amendment and I must oppose it.

Now, Sir I will go into details My Friend Mr. Tajamul Husain drew a very lurid picture by referring to various articles which are included in the Chapter dealing with Fundamental Rights. He said, here is a right to take water, there is a right to enter a shop, there is freedom to go to a bathing ghat. Now, if clause (4) came into operation, he suggested that all these elementary human rights which the Fundamental part guarantees--of permitting a man to go to a well to drink water, to walk on the road, to go to a cinema or a theatre, without any let or hindrance--will also disappear. I cannot understand from where my friend Mr. Tajamul Husain got this idea. If he had referred to article 279 which relates to the power of the President to issue a proclamation of emergency, he would have found that clause (4) which permits suspension of these rights refers only to article 13 and to no other article. The only rights that would be suspended under the proclamation issued by the President under emergency are contained in article 13; all other articles and the rights guaranteed there under would remain intact, none of them would be affected. Consequently, the argument which he presented to the House is entirely outside the provisions contained in article 279.

Shri H. V. Kamath : What about article 280?

The Honourable Dr. B. R. Ambedkar : All that it does is to suspend the remedies. I thought I would deal with that when I was dealing with the general question as to the nature of these remedies, and therefore I did not touch upon it here.

Taking up the point of Mr. Karimuddin, what he tries to do is to limit clause (4) to cases of rebellion or invasion. I thought that if he had carefully read article 275, there was really no practical difference between the provisions contained in article 275 and the amendment which he has proposed. The power to issue a proclamation of emergency vested in the President by article 275 is confined only to cases when there is war or domestic violence.

Kazi Syed Karimuddin : Even if war is only threatened?

The Honourable Dr. B. R. Amedkar : Certainly. An emergency does not merely arise when war has taken place--the situation may very well be regarded as emergency when war is threatened. Consequently, if the wording of article 275 was compared with the amendment of Mr. Karimuddin, he will find that practically there is no difference in what article 275 permits the President to do and what he would be entitled to if the amendment of Mr. Karimuddin was accepted. I therefore submit, Sir, that there is no necessity for amendments Nos. 801 and 802. So far as I am concerned, No.801 is entirely against the principle which I have enunciated.

I will take up the amendments of my friend Mr. Kamath, No. 787 read with No. 34 in List III, and the amendment of my friend Mr. Sarwate, No. 783 as amended by No. 43. My friend Mr. Kamath suggested that it was not necessary to particularize, if I understood him correctly, the various writs as the article at present does and that the matter should be left quite open for the Supreme Court to evolve such remedies as it may think proper in the circumstances of the case. I do not think Mr. Kamath has read this article very carefully. If he had read the article carefully, he would have observed that what has been done in the draft is to give general power as well as to propose particular remedies. The language of the article is very clear:

"The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

The Supreme Court shall have power to issue directions or orders is the nature of the writs of......"

These are quite general and wide terms.

Shri H. V. Kamath : On a point of explanation, Sir. With the accepted amendment of my friend Mr. Baig, the clause will read thus:

"The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus*,...."

The Honourable Dr. B. R. Ambedkar : Yes, the words "directions and orders" are there.

Shri H. V. Kamath : And "writs".

The Honourable Dr. B. R. Ambedkar : Yes.

While the powers of the Supreme Court to issue orders and directions are there, the draft Constitution has thought it desirable to mention these particular writs. Now, the necessity for mentioning and making reference to these particular writs is quite obvious. These writs have been in existence in Great Britain for a number of years. Their nature and the remedies that they provided are known to every lawyer and consequently we thought that as it is impossible even for a man who has a most fertile imagination to invent something new, it was hardly possible to improve upon the writs which have been in existence for probably thousands of years and which have given complete satisfaction to every Englishman with regard to the protection of his freedom. We therefore thought that a situation such as the one which existed in the English jurisprudence which contained these writs and which, If I may say so, have been found to be knave-proof and fool-proof, ought to be mentioned by their name in the Constitution without prejudice to the right of the Supreme Court to do justice in some other way if it felt it was desirable to do so. I, therefore, say that Mr. Kamath need have no ground of complaint on that account.

My friend Mr. Sarwate said that while exercising the powers given under this article, the Court should have the freedom to enter into the facts of the case. I have no doubt about it that Mr. Sarwate has misunderstood the scope and nature of these writs. I therefore, think, that I need make no apology for explaining the nature of these writs. Anyone who knows anything about the English law will realise and understand that the writs which are referred to in the article fall into two categories. They are called in one sense "prerogative writs", in the other case they are called "writs in action". A writ of *mandamus*, a writ of prohibition, a writ of *certiorari*, can be used or applied for both; it can be used as a prerogative writ or it may be applied for by a litigant in the course of a suit or proceedings. The importance of these writs which are given by this article lies in the fact that they are prerogative writs; they can be sought for by an aggrieved party without bringing any proceedings or suit. Ordinarily you must first file a suit before you can get any kind of order from the Court, whether the order is of the nature of *mandamus*, prohibition or *certiorari* or anything of the kind. But here, so far as this article is concerned, without filing any proceedings you can straightaway go to the Court and apply for the writ. The object of the writ is really to grant what I may call interim relief. For instance, if a man is arrested, without filing a suit or a proceeding against the officer who arrests him, he can file a petition to the Court for setting him at liberty. It is not necessary for him to first file a suit or a proceeding against the officer. In a proceeding of this kind where the application is for a prerogative writ, all that the Court can do is to ascertain whether the arrest is in accordance with law. The Court at that stage will not enter into the question whether the law under which a person is arrested is a good law or a bad law, whether it conflicts with any of the provisions of the Constitution or whether it does not conflict. All that the Court can inquire in a *habeas corpus* proceedings is whether the arrest is lawful and will not enter into the question--at least that is the practice of the Court--of the merits of the law. When a person is actually arrested and his trial has commenced, it is in the course of those proceedings that the court would be entitled to go into the facts and to come to a decision whether a particular law under which a person is arrested is a good law or a bad law. Then the court will go into the question whether it conflicts with the provisions of the Constitution. Consequently, the amendment moved by my friend Shri V. S. Sarwate, if I may say so, is quite out of place. It is not here that such a provision could be made. If he refers to article 115, he will find that a provision for similar writs has been made there. But those are writs which could be issued inconnection with questions of fact and law. They would certainly be investigated by the Courts.

Now, Sir, I am very glad that the majority of those who spoke on this article have realised the importance and the significance of this article. If I was asked to name any particular article in this Constitution as the most important--an article without which this Constitution would be a nullity--I could not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it and I am glad that the House has realised its importance.

There is however one thing which I find that the Members who spoke on this have not sufficiently realised. It is to this fact that I would advert before I take my seat. These writs to which reference is made in this article are in a sense not new. *Habeas corpus* exists in our Criminal Procedure Code. The writ of *Mandamus* finds a place in our law of Specific Relief and certain other writs which are referred to here are also mentioned in our various laws. But there is this difference between the situation as it exists with regard to these writs and the situation as will now arise after the passing of this Constitution. The writs which exist now in our various laws are at the mercy of the legislature. Our Criminal Procedure Code which contains a provision with regard to *habeas corpus* can be amended by the existing legislature. Our Specific Relief Act also can be amended and the writ of *habeas corpus* and the right of *mandamus* can be taken away without any difficulty whatsoever by a legislature which happens to have a majority and that majority happens to be a single-minded majority. Hereafter it would not be possible for any legislature to take away the writs which are mentioned in this article. It is not that the Supreme Court is left to be invested with the power to issue these writs by a law to be made by the legislature at its sweet will. The Constitution has invested the Supreme Court with these rights and these writs could not be taken away unless and until the Constitution itself is amended by means left open to the

Legislature. This in my judgment is one of the greatest safeguards that can be provided for the safety and security of the individual. We need not therefore have much apprehension that the freedoms which this Constitution has provided will be taken away by any legislature merely because it happens to have a majority.

Sir, there is one other observation which I would like to make. In the course of the debates that have taken place in this House both on the Directive Principles and on the Fundamental Rights. I have listened to speeches made by many members complaining that we have not enunciated a certain right or a certain policy in our Fundamental Rights or in our Directive Principles. References have been made to the Constitution of Russia and to the Constitutions of other countries where such declarations, as members have sought to introduce by means of amendments, have found a place. Sir, I think I might say without meaning any offence to anybody who has made himself responsible for these amendments that. I prefer the British method of dealing with rights, The British method is a peculiar method, a very real and a very sound method. British jurisprudence insists that there can be no right unless the Constitution provides a remedy for it. It is the remedy that makes a right real. If there is no remedy, there is no right of all, and I am therefore not prepared to burden the Constitution with a number of pious declarations which may sound as glittering generalities but for which the Constitution makes no provision by way of a remedy. It is much better to be limited in the scope of our rights and to make them real by enunciating remedies than to have a lot of pious wishes embodied in the Constitution. I am very glad that this House has seen that the remedies that we have provided constitute a fundamental part of this Constitution. Sir, with these words I commend this article to the House.

Shri H. V. Kamath : On a point of clarification, Sir, as we are dealing with justiciable fundamental rights and the guaranteeing of these by the Supreme Court and in view of the fact that article 280 has also been invoked, will it not be more desirable to say that "the rights guaranteed by this article shall not be suspended wholly or in part".... or any similar set of words which the legal luminaries may choose?

The Honourable Dr. B. R. Ambedkar : "Shall not be suspended" covers both. It is unnecessary to specify it.

Mr. Vice-President : I will now put the amendments one by one to the vote.

The question is:

"That for clause (1) of article 25, the following clause be substituted, namely:

> '(1) Every person shall have the right by appropriate proceedings to enforce the rights conferred by this Part.' "

The amendment was adopted.

Mr. Vice-President : The question is:

"That in clause (1) of article 25, for the words 'Supreme Court' the words "Supreme Court or any other Court empowered under clause (3) to exercise the powers of the Supreme Court" be substituted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 787 standing in the name of Mr. Kamath.

Shri H. V. Kamath : In view of the remarks made by Dr. Ambedkar on this matter, I do not wish to press it.

The amendment was, by the leave of the Assembly, withdrawn.

Mr. Vice-President : Then we come to amendment No. 789 standing in the name of Mr. Mahboob Ali Baig, but moved by Mr. Naziruddin Ahmad.

The question is:

"That in clause (2) of article 25, for the words `in the nature of the writs of' the words 'or writs, including writs in the nature of' be substituted."

The amendment was adopted.

Mr. Vice-President : Amendment No. 794 standing in the names of Dr. Ambedkar, Mr. Madhava Rau and Mr. Saadulla.

The question is:

"That for existing clause (3) of article 25, the following clause be substituted:

> `(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2) of this article, Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2) of this article.' "

The amendment was adopted.

Mr. Vice-President : Amendment No. 43 of List 1 standing in the name of Mr. Sarwate.

Shri V. S. Sarwate : I do not wish to press it.

The amendment was, by leave of the Assembly, withdrawn

Mr. Vice-President : Amendment No. 44 of List 1.

The question is:

"That in amendment No. 794 of the List of Amendments, in the proposed clause (3) of article 25, the words `Without prejudice to the powers conferred on the Supreme Court by clause (2) of this article' be deleted.' "

The amendment was negatived.

Mr. Vice-President : Amendment No. 801.

The question is:

"That clause (4) of article 25 be deleted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 802 standing in the name of Mr. Karimuddin. The question is:

"That in clause (4) of article 25, for the words `as otherwise provided for by this Constitution' the words 'in case of rebellion or invasion and when State of Emergency is proclaimed under Part XI of this Constitution' be substituted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 805 by Mr. Naziruddin Ahmad. The question is:

"That in clause (4) of article 25, for the word 'guaranteed' the word 'conferred' be substituted."

The amendment was negatived.

Mr. Vice-President : I will now put to the vote article 25 as amended by amendments Nos. 789 and 794. The question is:

That article 25, as amended, stand part of the Constitution.

The motion was adopted.

Article 25, as amended, was added to the Constitution.

Article 25-A

Mr. Vice-President : We next come to article 25-A. Amendment No. 808 by Mr. Lari.

(The amendment was not moved.)

Article 26

Mr. Vice-President : We then come to article 26. The motion before the House is:

That article 26 form part of the Constitution.

Amendment No. 809 is of a negative character and therefore disallowed.

(Amendment No. 810 was not moved.)

Amendments Nos. 811 and 812 are of similar import. I should say they are almost identical. I allow 811 to be moved.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in article 26 for the words 'guaranteed in' the words 'conferred by' be substituted."

This part does not guarantee but only confers these rights. Therefore to bring the language in conformity, I propose this amendment.

Mr. Vice-President : There is an amendment to this amendment. No 48 of List 1.

(The amendment was not moved)

(Amendment No. 813 was not moved.)

I shall now put article 26 to vote.

Shri T. T. Krishnamachari: How can the article be put to the vote before the amendment is put to the vote?

Mr. Vice-President : The question is:

"That in article 26 for the words 'guaranteed in' the words 'conferred by' be substituted."

The amendment was adopted.

Mr. Vice-President : The question is that:

That article 26, as amended stand part of the Constitution.

The motion was adopted.

Article 26, as amended, was adopted to the Constitution.

Article 27

(Amendments Nos. 814, 815 & 816 were not moved.)

Mr. Vice-President : Amendments Nos. 817 and 818 are to be considered together. 817 may be moved; it stands in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for clause (a) of article 27 the following be substituted:

> `(a) with respect to any of the matters which, under clause (2a) of article 10, article 16, clause (3) of article 25, and article 26 may be provided for by legislation by Parliament, and' , "

The object of introducing this addition of clause (2a) of article 10 is because this is a new clause which was adopted by this House. It is, therefore, necessary to make a reference to it in this article.

Mr. Vice-President : There is an amendment to this amendment.

The Honourable Dr. B. R. Ambedkar : I have moved it as amended.

Mr. Vice-President : I see.

(Amendment No. 818 was not moved.)

Amendment No. 819 is a verbal amendment. Amendment No.820 may be moved.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for the words `to provide for such matters and for prescribing punishment for such acts' the words `for prescribing punishment for the acts referred to in clause (b) of this article' be substituted."

Mr. Vice-President : Amendment No. 48 of List I standing in the name of Mr. Naziruddin Ahmad. Does he wish to move it?

Mr. Naziruddin Ahmad : Sir, I beg to move:

"That in amendments Nos. 820 and 822 of the List of amendments, in article 27 and in the proviso to article 27, the words 'in this article', wherever they occur, and the words 'of this Constitution' in the Explanation be deleted."

Mr. Vice-President : It is very much like a verbal amendment.

Mr. Naziruddin Ahmad : Yes, Sir; because I was called, I had to obey the ruling of the Chair and that is why I came to the mike to move it, but this is verbal.

Mr. Vice-President : I am very grateful. I take it that you are not moving it.

Mr. Naziruddin Ahmad : No, Sir. I have already moved the amendment, but I do not wish to press it.

Mr. Vice-President : Amendments Nos. 822 and 823 are of similar import. No. 822 can be moved.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for the proviso and explanation to article 27, the following be substituted:

> 'Provided that any law in force immediately before the commencement of this Constitution in the territory of India or any part thereof with respect to any of the matters referred to in clause (a) of this article or providing for punishment for any act referred to in clause (b) of this article shall, subject to the terms thereof, continue in force therein, until altered or repealed or amended by Parliament.'

`Explanation.--In this article the expression `law in force' has the same meaning as in article 307 of this

Constitution.' "

(Amendments Nos. 50 of List No. 1, 65 of List No. IV and 823 were not moved.)

Mr. Vice-President : The article is now open for discussion.

(At this stage Mr. Kamath rose to speak.)

Mr. Vice-President : I hope you will permit me to get the things through before we disperse, in which case, I shall adjourn the House at 1 o'clock.

Shri H. V. Kamath: I am equally anxious. Mr. Vice-President, I am here seeking only a little light from Dr. Ambedkar with regard to his amendment No. 820 moved by him. I fail to see clearly why the words in the article as it stands at present should be substituted by the words he proposes to. In case his amendment is accepted, it will mean that Parliament shall have power only for prescribing punishment for the acts referred to in clause (b). Then what about the Parliament's power to make laws with respect to any of the matters which under this power are required to be provided for by legislation in clause (a)? Does he intend by his amendment to take away the power which is sought to be conferred by clause (a) of this article? It is conceivable that there are certain matters about which there are not laws already in force. Therefore, if there be such matters with regard to which there is no law in force, does he intend by his amendment to take away the power sought to be conferred by clause (a) of this article, which is `to make laws with respect to any of the matters which under this Part are required to be provided for by legislation by Parliament'? The amendment seeks to give power only for prescribing punishment and not for making laws with respect to the matters required to be provided for by legislation under this Part. I want to know exactly what the import of his amendment is and why this clause (a) is sought to be amended in this fashion.

The Honourable Dr. B. R. Ambedkar : I am sorry, Mr. Kamath has not been able to understand the scheme which is embodied in article 27. This article embodies three principles. The first principle is that wherever this Constitution prescribes that a law shall be made for giving effect to any fundamental right or where a law is to be made for making an action punishable, which interferes with Fundamental Rights, that right shall be exercised only by Parliament, notwithstanding the fact that having regard to the List which deals with the distribution of power, such law may fall within the purview of the State Legislature. The object of this is that Fundamental Rights, both as to their nature and as to the punishments involved in the infringement thereof, shall be uniform throughout India. Therefore, if that object is to be achieved, namely, that Fundamental Rights shall be uniform and the punishments involved in the breach of Fundamental Rights also shall be uniform, then, that power must be exercised only by the Parliament, so that there may be uniformity.

The second thing is this. If there are already Acts which provide punishments for breaches of Fundamental rights, unless and until the Parliament makes another or a better provision, such laws will continue in operation. That is the whole scheme of the thing. I do not see why there should be any difficulty in understanding the provisions contained in article 27.

Shri H. V. Kamath : I am sorry, Sir, that Dr. Ambedkar has not been able to follow me clearly. *(Laughter)*

The Honourable Dr. B. R. Ambedkar : It is quite possible.

Mr. Vice-President : Mr. Kamath, it may be the other way.

Shri H. V. Kamath : Sir, he has answered a different point from the one which I raised. My point was different. Perhaps he was not listening to me carefully. He was talking to some one else. If you will permit me, Sir, I shall try to explain the point.

Mr. Vice-President : Yes; but do not address the House; you must address the Chair.

Shri H. V. Kamath : I am addressing you, Sir, as I always do. The difficulty that arises is this. In the article as it stands at present, clause (a) gives Parliament alone the power. I do not question this; I agree Parliament and Parliament alone should have the right. You say here Parliament shall have power to make laws with regard to any of the matters. Further on, you say that Parliament shall, as soon as may be, after the commencement of this Constitution, make laws to provide for etc., etc. Now, Dr. Ambedkar wants to substitute this latter part by amendment No. 820. You want to omit the words "provide for such matters" and retain only the proviso as regards punishment. What about making laws for such matters? Why do you delete that portion? Why do you retain only the part regarding punishment? That was my point, but Dr. Ambedkar has answered a different point.

The Honourable Dr. B. R. Ambedkar : The reason why for instance, I have introduced an amendment in clause (a) is because it is only in specific matters that Parliament has been given this penal authority and these article are referred to in my amendment. My friend Mr. Kamath will see that clause (a) contains no reference to any of the articles which specifically give Parliament the power to make laws. It is to make that point clear that I thought it would be desirable to make a reference to clause (2a) of article 10, article 16, clause (3) of article 25 and article 26, because, these are the specific articles which are to be dealt with exclusively by Parliament.

Mr. Vice-President : I shall now put the amendments to vote. All of them stand in the name of Dr. Ambedkar.

Amendment No. 817 as amended by amendment No. 56 of List III.

The question is:

"That for clause (a) of article 27 the following clause be substituted:

> `(a) with respect to any of the matters which under clause (2a) of article 10, article 16, clause (3) of article 25, and article 26, may be provided for by legislation by Parliament, and,' "

The amendment was adopted.

Mr. Vice-President : Amendment No. 820.

The question is:

"That for the words 'to provide for such matters and for prescribing punishment for such acts' the words `for prescribing punishment for the acts referred to in clause (b) of this article' be substituted."

The amendment was adopted.

Mr. Vice-President : Amendment No. 822.

The question is:

"That for the proviso and explanation to article 27, the following be substituted:

> `Provided that any law in force immediately before the commencement of this Constitution in the territory of India or any part thereof with respect to any of the matters referred to in clause (a) of this article or providing for punishment for any act referred to in clause (b) of this article, shall, subject to the terms thereof, continue in force therein, until altered or repealed or amended by Parliament.

`*Explanation.*--In this article the expression `law in force' has the same meaning as in article 307 of this Constitution.' "

The amendment was adopted.

Mr. Vice-President : The question before the House is:

"That article 27, as amended, stand part of the Constitution. "

The motion was adopted.

Article 27, as amended, was added to the Constitution.

Mr. Vice-President : The House stands adjourned till Ten of the Clock tomorrow.

The Assembly then adjourned till Ten of the Clock on Friday the 10th December 1948.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VII

Friday, the 10th December 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

B. Pocker Sahib Bahadur (Madras : Muslim): Mr. Vice-President, Sir, may I have your permission to move that the House adjourn at one o'clock as to-day is Friday and the Muslim members have to attend their Jumma prayers?

Mr. Vice-President (Dr. H. C. Mookherjee): We shall adjourn at one o'clock. That much of consideration will be shown to our Muslim brethren and I am quite sure that the House agrees with me.

Honourable Members : Yes.

B. Pocker Sahib Bahadur : Thank you, Sir.

DRAFT CONSTITUTION -(*Contd.*)

Article 27-A

Mr. Vice-President : We shall consider Amendment No. 824 to article 27-A.

(The amendment was not moved.)

Mr. Vice-President : Amendment No. 825 also in the name of Dr. Raghuvira. He is not in the House.

(Amendment No. 825 was not moved.)

Mr. Vice-President : Now we come to Part V. On page 106 of the printed list of amendments, we have amendment No.1032 on the new articles 41--44 in the name of Shri Gopal Narain.

Prof. K. T. Shah (Bihar : General): Sir, may I remind you that an amendment of mine was held over--amendment No.1030--which involves a big principle. By agreement it was held over with article 40-A. That is on page 105.

Mr. Vice-President : Yes, amendment No. 1030, Prof. K. T. Shah.

New Article 40-A

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That after article 40, the following new article be inserted:

> `40-A. There shall be complete separation of powers as between the principal organs of the State, *viz,* the Legislative, the Executive, and the Judicial.' "

Sir, I regard this as the most important, the very basic requirement of what I would call a Liberal constitution. I am aware, Sir, that this Draft has been founded on the compromise between what are known as Presidential governments and Parliamentary governments. The Parliamentary government has a sort of link between the Executive, the Legislative and the Judiciary. The Presidential tries to keep no such link, and has complete separation of powers between the three principal organs of the State, each embodying the sovereignty of the people in the different aspects of a State's activities.

The ideal, however, and the reasons for that ideal, which have guided many modern States in basing their constitution upon a doctrine of complete separation have arisen from bitter past experience. In the constitutions like that of England centuries ago, the ultimate combination of all authority in the person of the King, had lead to many evils culminating in a Civil War, ending in the execution of one king, and a bloodless Revolution leading to the abdication or expulsion of another king. The arrangement which was evolved thereafter has been kept in conformity with the genius of the British people, not so much by a written Constitution, as by evolving constitutional conventions, supported by centuries of usage. And these have become even more sacred than the written word in a written constitution.

But I do not think this will be applicable to us in this country at this moment. I do not think that it would be easy to realise in new grounds, where new experiments of self-government are being tried on an imperial scale. As such I feel persuaded that when we start our own Constitution, when we make a beginning in this land, in the working of democracy, I think it would be best if we have complete separation of powers between the three principal organs of the State.

For one thing, Sir, if you maintain the complete independence of all the three, you will secure a measure of independence between the Judiciary, for example, and the Executive, or between the Judiciary and the Legislature. This, in my view, is of the highest importance in maintaining the liberty of the subject, the Civil Liberties and the rule of law. If there was contact between the Judiciary and the Legislature, for instance, if it was possible to interchange between the highest judicial officers and the membership of the legislature, then, I am afraid, the interpretation of the law will be guided much more by Party influence than by the intrinsic merits of each case. The Legislature in a democratic assembly is bound to be influenced by Party reasons rather than by reasons of principle.

I am not decrying Parties. Please do not misunderstand me. All I am saying is that after all, Parties are mundane, dealing with mundane things, and as such they are bound to attach much more importance to considerations of the moment, to merely transitory ideas, to importance of personalities, by which a Judiciary would not be affected. It is of the utmost importance that the Judiciary should be above suspicion, and, therefore, out of or above any contamination. I hope the word is not hard to anybody. It should be above contamination by political prejudices that are rife in all political parties.

If contact or connection is maintained between the Judiciary and the Executive organs of the State, there is also the possibility of undue influence, of misleading, of misdirecting and mis-influencing those who are appointed to interpret the Constitution, those who are appointed to be guardians of Civil Liberties, those who have to administer justice.

In the environment in which we are living, in the traditions under which our judicial system has been evolved, I am afraid justice is a very costly luxury. It is really not the easy privilege of the poor man. Though you have provided a number of appeals, though you have provided a hierarchy of powers, you have also evolved, side by side, a most costly, a most wasteful, a most extravagant system of legal advice and legal assistance by professional lawyers, which only those who have undergone protracted litigation know how costly it is, how confusing, and how almost prohibitive it is, to ordinary mortals.

But even so, even granting that justice must not be cheap and must be available to those who can pay for this luxury, let it not be tainted, I beg you, let it not be influenced by considerations other than the intrinsic merits of each case.

When the chapter dealing with the Judiciary comes up before the House I may have occasion to move other amendments to point out where and how our present system suffers. But we should have the ideal of absolute purity of justice; even though it should happen to be class justice, let us make it at least free from taint of ulterior motives. The administrators of justice are unconsciously or sub-consciously coloured by their own inherited or acquired class prejudice. That cannot be helped all at once. But leaving that aside, and leaving aside even such a matter as was discussed yesterday in the House--of having the right to move the Supreme Court--I would say that, so long as you have not merely the combination of the Judiciary and the Executive, but also the possibility of translation from a high judicial office to an equally high or sonorous executive office; so long would your Judiciary be open to suspicion, so long your administration of justice would suffer by personal privileges or personal ambitions, and so long, therefore, you will not be able to maintain your civil liberties to the degree and in the manner of purity that is highly desirable in a country like this.

I would, therefore, suggest, in the first place, that the Judiciary should in any case be completely separated, and should attach regard only to the written letter of the law, irrespective, let us say, of the debates in this House at the time the Constitution itself was passed, irrespective of Party or personal considerations, irrespective of any other motives that might otherwise affect human and mundane things.

The same logic, in a different form, applies also to the case of the Legislature and the Executive. The less contact, there is between them, the better for both, I venture to submit. The executive is in a position to corrupt the House; the executive is in a position to influence votes of the members, by the number of gifts or favours they have in their power to confer in the shape of offices, in the shape of Minister ships, in the shape of Ambassadorships, in the shape of Consulships, and any number of offices which the Executive has it in its power to bestow. We have come to a stage in political evolution when the old system called the "spoils system" is no longer upheld in any civilised country. But yet, in fact, it does happen that fifty, sixty, seventy, a hundred people may be open to be influenced by those who have it in their power to distribute even the highest offices of the State. In England, for instance, out of 615 Members of Parliament, something like 70 members are Cabinet Ministers or Parliamentary Secretaries, or other Ministers and so on. This on a minor scale--I hope the House will pardon me for saying so--we are trying to reproduce here, by creating Ministers and Ministers of State and Deputy Ministers, and I suppose Parliamentary Secretaries to come. These may be--and I am sure they are--all honourable people influenced entirely by the desire of offering their services and their talents to the service of the country. But still the fact remains that the influence of the Party system, the idea of favouring one's own people, those who agree with them and become their camp-followers, is a much more influential and important consideration, than the absolute and exclusive eye to the merits or the fitness or the appropriateness of an individual for an office.

It is the exigency of Parliamentary government, as it has been developed in the West and which we are copying, that the consideration most prominent in such appointments is how many votes can an individual bring if he is appointed to a given ministerial office rather than how much real service he would be able to render to the country. As such I for one unhesitatingly and unexceptionally condemn the system of Parliamentary Government, the system of a link between the Legislature and the Executive on which this Constitution is based.

I know that my voice almost appears as a voice in the wilderness. But I think it is my duty to place this on record that, after a close study of the working of Constitutions elsewhere, after a close study stretching over perhaps thirty-five years of the development of political institutions in this country, and their influence on our public life, on our public morality, on even our private relations, I venture to suggest that this is not a very healthy example we are copying; and that the sooner we get rid of the combination of executive, judiciary and legislature in some supreme Cabinet, in some supreme authority, the better for us it would be.

Lastly, Sir, I come to the division between the Executive and the Legislature. It has worked for over a hundred and fifty years in America, quite satisfactorily, where the Legislature and the Executive are kept wholly apart. They had before them, much more than we have before us, the model of the English Constitution where the combination had already been achieved to a degree of perfection, that was looked upon even by such students as Burke or Fox as the basis of their Civil Liberties, of the liberalism of the English Constitution.

Nevertheless, under the influence and aegis of scholars and thinkers of the type of Jefferson, they did devise a constitution which kept completely apart the Legislature, the Executive and the Judiciary. For a hundred and sixty years that Constitution has worked without any serious difficulty. Even in the midst of wars, and even under internal civil war, they have been able to maintain their freedom and their liberal constitution. That would not have been the case, if they had started on the same lines, and worked their Party system in the same manner that the Whigs used for perhaps a century.

I could go on saying a great deal on this subject without once repeating myself. But I am aware that the patience of the Chair is not unlimited; and I know the temper of the House is not very sympathetic; and so having said my say in this matter, I would commend my proposition such as it is to the House.

Shri K. Hanumanthaiya (My sore): Sir, I listened with great respect to Prof. Shah's argument about his amendment. I fear the new clause he has moved is completely out of tune with the constitutional structure which this House has proposed and the Drafting Committee has adumbrated. We in this House have given our approval to parliamentary system of government, and what Prof. Shah sponsors in his amendment is, I might say, the Presidential executive. Of course, we can argue about the merits and demerits of both the systems, but we have come to accept the Parliamentary system to be suitable to this country and for very good reasons that system seems to be better adapted to conditions in India than Presidential executive. I think instead of having a conflicting trinity it is better to have a harmonious governmental structure. If we, as he says, completely separate the executive, judiciary and the legislature, conflicts are bound to arise between these three Departments of Government. In any country or in any Government, conflicts are suicidal to the peace and progress of the country. The first and foremost foundation on which a Government or society can work is peace to begin with and if there is separation--not separation but Prof. Shah wants complete separation--then conflicts are sure to arise between these three Departments of Government. Therefore, I say that in a Governmental structure it is necessary to have what is called "harmony" and not this three-fold conflict.

Then, it has become the fashion of the day with some people to decry the executive and make the judiciary look as if it is the paragon of all virtues. I would respectfully place this view before Prof. Shah and people of his way of thinking. Whereas judges no doubt are impartial and they have no sides to take, we must remember also that the executive governments in India or any where else in the world, have to work under very difficult circumstances. To carry on a government and to please people is not an easy matter. Many a time they work under difficult circumstances with danger to their lives. They will naturally incur displeasure. Some people are prone to take advantage of these conditions and displeasures to raise controversies and to decry the executive. To continually decry the executive and the legislature and to exalt the judiciary is not doing service either to the judiciary or to the governmental structure. If understand the term correctly, independence of the judiciary means that the executive or its officers should not interfere in the day to day administration of justice. That does not mean, as some people interpret it, that the judiciary must be the master of the executive or should be on a par with the executive government. Government in any country must govern. The powers of governing should vest with one set of people and it is unsafe for us to divide it into three equal parts and especially in the extreme degree that Prof. K. T. Shah contemplates. Even in America, though theoretically there is complete separation of powers between these three departments, we all know the party system of Government softens its rigours to a very great extent. In America there are two well organised parties and these parties determine what is to be done in their respective party meetings. At these meetings, conflicts which could have arisen between these three departments of Government, are softened, smoothened and ironed out so that the evils of this system are eliminated. Sometimes when one party has a majority in the Legislature and another in the executive, conflicts surely arise. In order to make the judiciary impartial it is unnecessary for us to exalt it to the position of the Government or the Legislature. It is wrong to argue that a few judges of the Supreme Court are better than four hundred Members of the Legislature, the duly chosen representatives of the people, or the accredited leaders of the nation. This is a topsy-turvy argument. The sooner we give up this psychology which is born of political controversies, the better. Therefore, I oppose the new clause. My main reason is that this House is wedded to a parliamentary system of democracy and this new clause is out of place in such a constitutional structure.

Prof. Shibban Lal Saksena (United Provinces : General) : Sir, I agree with my friend, Mr. Hanumanthaiya that the clause as it stands here in the amendment will not be in its proper place in the Constitution. Yet I cannot help saying that I agree to a very great extent with the reasoning advanced by my learned friend, Prof. K. T. Shah. We have experimented with parliamentary democracy for so many years. Now I personally feel that, though Dr. Ambedkar in his original address very clearly told us that we have to choose between the British system and the American system, and said that the American system gives more security and the British system more responsibility, yet we had decided here to choose more responsibility; if it were left to his choice he would have preferred the American system. I agree to a very great extent about the evils of the present Parliamentary system. We have seen Parliamentary parties in so many provinces like in Sind, in Bengal and in other places, where Ministers try to keep their parties by giving bribes to the people who have even four or five votes so that the majority party may remain in being. I feel that this system where in people have merely to keep the majority in power is being put to abuse. I know that in England they are working the system in a perfect manner. But they have a tradition of 700 years. They have developed their methods whereas we are just entering upon our democratic freedom and we cannot imitate it to perfection. It will have to wait until the whole national character changes and it is not possible that we can imitate England. Probably our slavery has led us to imitate the British system. If left to ourselves we would have copied the American system. In that system there is complete separation of the judicature from the legislature and the legislature from the executive. The legislature there can pass any laws which it thinks best for the country and the President has to obey them. Here the Leader of the majority party must have the House with him. The House will only pass those laws which the party thinks are necessary. The legislature cannot be independent of, but it has to be submissive to, the executive. In most places where the leaders are outstanding, the parties will say "ditto" to what they say and the real will of the majority will not be voiced. Therefore I think this becomes more like a one-man Government than anything else. In America, people are free; they can pass laws even against the President. There have been cases where in spite of the laws passed by the legislature--the Congress--it has been set aside by the Supreme Court and the President has to see that any action of his is not against the fundamental laws of justice. The Supreme Court is far more powerful than anyone else. I, however, think that now we have gone too far to change the basis of our Constitution, because in the last two years we have passed everything in accordance with the British Constitution, and probably it is too late now in the day to change the whole system. But I do think that there is great force in what Prof. Shah has said and though this amendment is not in its proper place, still I do think that this House will remember that although we are all for a system which has been tried in England and is being worked out there in a satisfactory manner, still in our country we will have to be careful to develop traits which make that constitutional working possible. In England, they could throw out even Churchill in the new elections although he was the man who saved England and her freedom. Have we that sort of characteristic in our country where we can throw out anyone if we think he is not good enough? What is necessary for our country we must do, even though it may be against the will of the biggest person. Until then, we cannot work Parliamentary democracy. I therefore think that this amendment has given this House an opportunity to express its doubt as to whether we have done wisely in accepting the present system. But I think it is now too late in the day to change the whole system and also that this amendment has no place at this time. It should have really come as a change of the whole system. But still, I think that where the Supreme Court is concerned, I wish it were appointed by the majority in the legislature and not by one single person. Everywhere, its independence must be guaranteed and I have given amendments that the Supreme Court must be completely independent of the judicature and the legislature. It must be the one body which should decide what is guaranteed with respect to our liberty, etc. I hope this amendment will at least help us to see that the Supreme Court's independence is not in any way minimized. In regard to this I heard one of the most eminent authorities in the Assembly say "Today the High Courts are not independent; they are influenced by the political consequences of their actions".

I hope in future our Supreme Court will be free from these influences and that they will do what is necessary and observe the principles inherent in this Constitution.

Kazi Syed Karimuddin (C. P. and Berar : Muslim): Sir, I am entirely in agreement with the amendment of Prof. K. T. Shah. I know that the system approved by the Constituent Assembly is a Parliamentary system of government but even then I had urged the adoption of a non-parliamentary system of government in India. We have seen since 1920, that the working of the Government of India Act and other Local Self-Government Acts based on the Parliamentary system of Government has demonstrated a miserable failure. In the Parliamentary system of government, it is as clear as daylight that the political opponents are practically crushed, neglected and ignored; we have no conventions and we have no discipline and it is very difficult for our people who are not trained in Parliamentary system of Government to put up with opposition in the country. What we have seen in India is this: that the Ministers are slaves of the legislature and they have to depend for their existence and for their continuance in office on the popular views of the people in the country. They cannot use their independent judgment; they cannot use their independent discretion; the result is that those who keep them in power influence the judgment and the discretion of the Ministers to the great detriment of those who are in opposition. In this country there are heterogeneous people, with different principles and with different programmes. We have seen in the country, particularly in Noakhali, in Bihar and in the two Punjabs, arson, murders and looting. It has all happened because the Governments were based on Parliamentary systems. The Ministers in both the Punjab, in Noakhali and in Bihar did not take up a strong attitude partly because they cannot go against the popular frenzy of the people which was prevailing in Bihar, Noakhali and in the Punjab. Therefore, if you want perfect peace in the country, if you want tranquility in the country, if you want political parties or political opposition to thrive in the country, it is very necessary that there should be a non-parliamentary system of government.

Now, it has been practically accepted on the floor of the House that the judiciary here, under the Parliamentary system of Government, can never be independent and, if it is not independent, the guaranteeing of the Fundamental Rights about personal liberty and property will be only farcical. Unless the judiciary is independent of the executive and the legislature, it is impossible to have protection under the Fundamental Rights and to have decisions which will be based on independent considerations.

My friend from Madras, while opposing this amendment gave three reasons. He said that it is impossible to create a harmonious structure in which political parties can work together in a non- Parliamentary system of Government. My submission is that under Parliamentary system, it is not a harmonious structure, but a structure in which political opponents are crushed. A harmonious structure is one in which all parties are allowed to work in a harmonious way in which the opposition is accommodated. Therefore, it cannot be said that in a Parliamentary system of Government, where there is no discipline or toleration, one can expect a harmonious structure.

Then, Sir, it was said that there would be a great conflict between the legislature, the executive and the judiciary, if there is a non-Parliamentary system of Government. My submission is that it will all be to the good if the judiciary is independent of the executive and disagrees with the excesses committed by the legislature. It would be a healthy sign in a democratic State. Then, it was said that the Ministers and the executive have to please the people. Well, that is exactly the reason why we want a non-Parliamentary system of Government. We want separation between the legislature, the executive and the judiciary only because in trying to please the people they commit such excesses that their opponents are killed, crushed, neglected and ignored. Therefore I say, the reasons advanced by my honourable Friend from Madras in favour of a Parliamentary system of Government go against him. We want a system of Government in which there is minimum pleasing of the supporters. It is wrong to say that the system of Government which exists in England alone is based on democracy. There are other systems such as the American system based on democracy. It cannot be said that the American model is not based on democracy. If you really want a stable and a strong government, if you really want communalism to die out, you must create an atmosphere in which popular frenzy will have no room and in which political opposition will be tolerated. We do not want vacillating governments and ministers who have to please their supporters for their continuance in office. Therefore I very strongly support the amendment moved by Prof. K. T. Shah.

The Honourable Shri K. Santhanam (Madras : General): Mr. Vice-President, there is no doubt that Prof. Shah has raised a question of great constitutional importance. Unfortunately, however, he is a little too late. This Assembly has already discussed the question and taken a decision in favour of Parliamentary system of Government and, on the basis of that decision, the entire Constitution has been drafted by the Drafting Committee. So, unless a revolutionary change of opinion has taken place among the majority of Members, Prof. Shah's position is hardly a practicable one at the present moment. Therefore I do not want to go in detail into this question of the Presidential *versus* parliamentary executive. I may remark, Sir, that this so-called complete separation of legislative, executive and judicial powers is, even in the American Constitution, a myth to a considerable extent. Though the Supreme Court of the United States is said to be completely separate from the executive, we have seen how President after President has tried to manipulate the Supreme Court by appointing judges to suit his own views. Whenever there has been a conflict between the President and the Supreme Court, the President has had only to wait till some judge retired and then put in his own nominee in his place and get judgments in his own favour. Therefore, so long as the President is the ultimate appointing authority, the authority of the judiciary has to some extent to be dependent on the executive. But, so far as our Constitution is concerned, it lays down that our Supreme Court will be as independent of the executive and the legislature as the Supreme Court of the United States. To that extent Prof. Shah's desires have been fulfilled in the Constitution.

Prof. Shibban Lal Saksena : There the judges are appointed by the Congress and the Senate.

The Honourable Shri K. Santhanam : Where?

Prof. Shibban Lal Saksena : In the United States of America.

The Honourable Shri K. Santhanam : But it is the President who has to nominate them.

Prof. Shibban Lal Saksena : But he has to get the consent of the Senate.

The Honourable Shri K. Santhanam : Yes; whether with the consent of the Senate or not, the appointing authority is the President. Therefore the President will give the choice only to his nominee and so, whether it is A, B, C, or D, he will nominate only those people who conform to his views, especially on the most important questions. But barring the appointing authority, so far as the independence of the judiciary, is concerned, we have provided for such independence in our Constitution as in any other Constitution. Therefore the real issue is regarding the merits of the Presidential and Parliamentary types of executive. Sir, two or three years ago I was myself strongly inclined towards the presidential type of executive for the Central Government of India, but after listening to the discussions and after further consideration, I am now convinced that it is not perhaps as desirable for the country as I once thought it was because, Sir, the future of this country is that of an economic State. If we are to be mainly a police State, certainly the separation of the executive and the legislature will be of great importance. If strength and stability are the only considerations or even the main considerations to be borne in mind in framing the Constitution of India, then I do think that there is a strong case for the presidential executive but today what is more important than stability or strength is quick economic progress. Even our stability, even our strength will be dependent upon the tempo in which the economic reconstruction of India can be proceeded with. I believe that Prof. K. T. Shah is very anxious that the Indian economy should be reconstructed on socialist lines as quickly as possible, but if there is presidential executive, I think his desires in this respect will be greatly checkmated. One of the defects of the presidential system is that the executive and the legislature may be at loggerheads very frequently. This has been the case in the United States, and when they are at loggerheads for a period of three or four years till either the legislature is renewed or the President is re-elected, the whole thing will be a deadlock. Sir, I do not think in this country we could afford to lose even a period of three or four years in such conflicts. All the advantages of the presidential executive in the form of a free hand for the President and stability for the executive will be lost even if a small period of conflict arises. Sir, we have to-socialise many industries, establish new corporations, create new forms of credit, for all of which the daily co-operation of the executive and the legislature is of the greatest importance. Unless this co-operation is forthcoming at least in the formative period of Indian freedom, then our progress which has already been delayed by the foreign rule will be further delayed and popular impatience at the delay of economic reconstruction will break all bounds and ordered democracy may become impossible. Therefore, Sir, as the Central Government is going to be vested with more powers than I had thought, as we are to be a little more unitary than federal, it is all the more essential that the executive and the Parliament at the Centre should form one integral whole and function as one unit. Unless they do so, the whole progress of the country will be delayed. If on the other hand we had trusted provincial autonomy to a far greater extent and left all constructive programmes and economic reconstruction to the units, then I would have been for responsible government in the provinces and presidential executive at the Centre, for then the Center's business will be only to keep India safe and united and to allow the units to function in the economic sphere freely; but it has been considered desirable--and on very strong grounds--that the Central Government of India should have an active, continuous and formative part in the economic reconstruction of the whole country and for this purpose only a responsible Cabinet or the Parliamentary executive will suffice. Therefore I hope Prof. K. T. Shah will reconsider his views and withdraw his amendment. In any case, I oppose the amendment.

Mr. Vice-President : I am well aware that there are many more Members who want to speak and who are fully competent to deal with this subject, but I think that it has been discussed sufficiently. Therefore I shall call upon Dr. Ambedkar. I am sorry to disoblige honourable Members, but I think they will recognise the fact that we have to make a certain amount of progress daily.

Shri Lokanath Misra (Orissa: General): But many points have been left untouched.

Mr. Vice-President : Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General): Mr. Vice-President, Sir, this matter, as honourable Members will recall, was debated at great length when we discussed one of the articles in the Directive Principles which we have passed. It was at my instance that it was sought to incorporate in the Directive Principles an item relating to the separation of the executive and the judiciary. Originally the proposition contained a time limit of three years. Subsequently as a result of discussion and as a result of pointing out all the difficulties of giving effect to that principle, the House decided to delete the time limit and to put a sort of positive imposition upon the provincial governments to take steps to separate the executive from the judiciary. On that occasion, all this matter was gone into and I do not think that there is any necessity for me to repeat what I said there. There is no dispute whatsoever that the executive should be separated from the judiciary.

With regard to the separation of the executive from the legislature, it is true that such a separation does exist in the Constitution of the United States; but if my friend, Prof. Shah, had read some of the recent criticisms of that particular provision of the Constitution of the United States, he would have noticed that many Americans themselves were quite dissatisfied with the rigid separation embodied in the American Constitution between the executive and the legislature. One of the proposals which has been made by many students of the American Constitution is to obviate and to do away with the separation between the executive and the judiciary completely so as to bring the position in America on the same level with the position as it exists, for instance, in the U. K. In the U. K. there is no differentiation or separation between the executive and the legislature. It is advocated that a provision ought to be made in the Constitution of the United States whereby the members of the Executive shall be entitled to sit in the House of Representatives or the Senate, if not for all the purposes of the legislature such as taking part in the voting, at least to sit there and to answer questions and to take part in the legal proceedings of debate and discussion of any particular measure that may be before the House. In view of that, it will be realised that the Americans themselves have begun to feel a great deal of doubt with regard to the advantage of a complete separation between the Executive and the legislature.

There is not the slightest doubt in my mind and in the minds of many students of political science, that the work of Parliament is so complicated, so vast that unless and until the Members of the Legislature receive direct guidance and initiative from the members of the Executive, sitting in Parliament, it would be very difficult for Members of Parliament to carry on the work of the Legislature. The functioning of the members of the Executive along with Members of Parliament in a debate on legislative measures has undoubtedly this advantage, that the Members of the Legislature can receive the necessary guidance on complicated matters and I personally therefore, do not think that there is any very great loss that is likely to occur if we do not adopt the American method of separating the Executive from the Legislature.

With regard to the question of separating the Executive from the Judiciary, as I said, there is no difference of opinion and that proposition, in my judgment, does not depend at all on the question whether we have a presidential form of government or a Parliamentary form of government, because even under the Parliamentary form of Government the separation of the judiciary from the Executive is an accepted proposition, to which we ourselves are committed by the article that we have passed, and which is now forming part of the Directive Principles. I, therefore, think that it is not possible for me to accept this amendment.

Mr. Vice-President : I shall now put the amendment of Prof. K. T. Shah to vote.

Prof. K. T. Shah : Can I speak a few words in reply, Sir? This is a new article, and not an amendment.

Mr. Vice-President : Though it may be an article, it is an amendment to the Draft Constitution. This would create a very awkward situation. We have established a convention after a good deal of difficulty, and I am quite sure Prof. Shah would realize the difficulties of the Chair.

(Prof. Shah resumed his seat.)

Mr. Vice-President : Thank you. You are most reasonable and helpful.

The question is:--

"That after article 40, the following new article be inserted:

> `40-A. There shall be complete separation of powers as between the principal organs of the State, viz., the Legislative, the Executive, and the Judicial.' "

The motion was negatived.

Mr. Vice-President : So far as I remember, our work commences with amendment No. 1033. This is disallowed as a formal amendment.

Amendment No. 1034 is I think blocked in view of the fact that a new article--39-A--has been already accepted by the House.

Then we come to article 41.

Article 41

Mr. Vice-President : After going through the amendments one by one, I find that amendments Nos. 1037, 1038 and 1039 are mainly concerned with the name our Motherland would bear. I think they ought to be held over for the present. That pertains to article 1, the consideration of which we have postponed for the time being.

The Honourable Shri K. Santhanam : I want to know whether it is your ruling that these amendments are not relevant to these articles. If you decide to keep them over, then we cannot pass that article.

Mr. Vice-President: You are a pundit in these technicalities. Could we not transfer them to article 1 by some device or other, so that we could pass this article?

The Honourable Shri K. Santhanam: If the name is changed in article 1, the consequential changes will be made. These amendments may be ruled out for the present and may be taken up when you take up article 1.

Shri H. V. Kamath (C. P. & Berar : General): I did not hear a word of what the honourable Member said.

Mr. Vice-President : Mr. Santhanam, please come to the mike and explain the position. Please do not get impatient, Mr. Kamath.

Shri H. V. Kamath : We are impatient to hear him, Sir.

The Honourable Shri K. Santhanam: When we take a decision regarding the names to be used, even if we take a decision either in the title or in article 1, the consequential changes will be made throughout the Constitution. Therefore, I do not see any necessity that we should take it up at every point. If you want to pass this article, then all these things will have to be treated as not relevant to this particular article. Otherwise, every such article will be held up and these amendments would be kept pending and so long as they are not disposed of, we cannot pass the article. Therefore, I suggest that all such amendments should be taken as not pertaining to any particular article, but pertaining to the general Constitution.

Mr. Vice-President : I think that for practical reasons, we should adopt the procedure suggested by Mr. Santhanam.

Then we come to amendment No. 1035. This deals not only with the future name of our motherland, but is also concerned with the salary of the President. So it is ruled out.

Prof. K. T. Shah : Sir, I beg to move:-

"That for article 41, the following be substituted:--

> `41. The Chief Executive and Head of the State in the Union of India shall be called the President of India.' "

I do not read the alternative, and I shall confine myself only to the main proposition.

In the title of the President, instead of the clause giving it barely as it stands, I should like that there be some indication of the status and power of the President. There shall be a President of India whose position and title should be made a little more clear and definite than it is at present. I therefore, describe him as "the Chief Executive and Head of the State".

I take it that there is no dispute regarding the status and position of the President as the Head of the State. That is, in a way different from the Head of the Government, which may be the Prime Minister or the President himself, as I had conceived it. But whether or not there is a separate head of the Government, there must be, for formal, ceremonial and solemn occasions, a representative of the people collectively embodying the sovereignty of the whole people and of the State as a whole. As such, I think, it would be better if my amendment is substituted for the original article, and the President is also described as the Chief Executive and Head of the State in the Union of India, called the President of India. I do not think I need take the time of the House by dilating upon this, because all that I can say would be a verbal expansion of the idea so briefly put forward in this amendment. Therefore, without taking further time, I commend it to the House.

Mr. Vice-President : You do not move the second part?

Prof. K. T. Shah : I do not move the second part.

Mr. Vice-President : Amendment No. 1037 has been ruled out for reasons already known to the House. Amendment No.1038 has also been ruled out.

(Amendment No. 1039 was not moved.)

The article is now open for general discussion, although I do not think there is any need for it.

Shri Mahavir Tyagi: (United Provinces : General): Sir, I do not want to take up much of the time of the House; but since I have not taken any for the last week or more, I think I deserve taking a minute.

My only point is to emphasise the amendment tabled by Prof. K. T. Shah which points out a direction which is very important from the point of view of a discussion on the floor of this House. There is a lack in the constitution. He has rightly pointed out--I do not know whether this is the proper place to mention this idea--that we must define as to who is the representative of the people so far as sovereignty is concerned. He says: "the Head of the State in India represents the sovereignty of the people." We have not yet decided the question of the residence of sovereignty. I had moved an amendment on this point and it was promised that it would be taken up for consideration when we discuss the Preamble to the Constitution. I am waiting for that opportunity. Sir. But, I feel that the Head of the State must also represent the sovereignty of the people. After all, how otherwise will the people express themselves? No Government in democratic countries can ever claim to be fully representative of the people as a whole. The Government here, although they represent the ambitions and aspirations of the people, and even though they are the most popular people in the country, it cannot be said that they are the representatives of the total population of India; they are not the representatives of the whole people because they have a party bias and a party manifesto on which they have been elected. The Government must as a rule represent the majority party in the country. A Government cannot therefore be the true spokesman of the whole people. There must be some unit, some authority, some person in whom paramountcy or sovereignty should be vested, in whom the prerogatives of the people should be vested. I therefore submit, Sir, that it would have been a good idea if we had laid down that the President was not only the Executive Head of the State but also a symbol of the sovereignty of the people.

Sir, I want to make a distinction between people and the State. The State has always the bias of administration. In the problem of the governed and the governor, whether it be democracy or any other cracy, the State governs and the people are governed. It is therefore necessary that in a democratic State full chance of expression should be given to the minorities or opposition. Because, when the minorities speak in a House of Legislature or in a Parliament, they speak purely with the bias of the people. In this House, as it is, if it were sitting as Legislative Assembly--we are now the Constituent Assembly--Dr. Ambedkar and his colleagues would always represent the bias of the administration. They know the difficulties of administration; but the people want their own bias to be expressed irrespective of what the administrative difficulties are. Such expressions and demands always come through the mouthpiece of the opposition, which has to be protected against the majority rule.

Mr. Vice-President : Will you kindly explain how the question of the President comes in here?

Shri Mahavir Tyagi : I want to emphasise that it is an essential requirement of the Constitution that the sovereignty of the people must also be vested in some person or somebody other than the Government. I only want to press the argument that the Government, however popular it may be, cannot claim to be sovereign. It would have been a good idea if the President were made a symbol of the people's will so that he could command respect and devotion from all alike. He could then stand between the people and the Government. In that case he would have the capacity not only of being the Executive Head, but also of being the representative of the sovereignty of the people so that in him the minorities also could find their reflection and protection. Sovereignty lies in the people; but how will it express itself? It cannot be expressed by the Government, because the Government is not the total people. Sometimes, it may be majority of only fifty one per cent and it may also be possible that a forty-nine per cent minority may go unrepresented altogether. If the House agrees to vest the paramountcy and all prerogative and sovereignty in the people, then there must be some authority where from the sovereignty may flow and express itself.

The Honourable Shri K. Santhanam: On a point of information, Sir in this Constitution, Parliament is the repository of the sovereignty of the people. That is the scheme of all constitutions where we have the Parliamentary executive.

Shri Mahavir Tyagi: My friend has taken me aback; I cannot immediately reply to his argument. But, I feel that sovereignty will not be represented by the Parliament because the Parliament also included the Council of States. I must submit that the Council of States is not representative of the people because as envisaged here, the

Council of States will be the representative only of the majority parties in the provinces. That House will not come through the single transferable vote system of proportional representation; it will be a House of the States and the members thereof must represent the various States which in turn are again the representatives of the majority party. In these circumstances, the members of the Upper House will be representatives of their Governments and not of the people. There are to be 250 members of the Council of States. They will always be biassed by the difficulties of Governments in the various States. They will come here to represent their Governmental difficulties and to poise their demands from the point of view of their Governments. I submit.....

Shri T. T. Krishnamachari: (Madras: General): They will also be elected by the majority party.

Mr. Vice-President : Instead of being floored.......

Shri Mahavir Tyagi: I cannot be floored.

Mr. Vice-President : Instead of being floored.....

Shri Mahavir Tyagi: I am in possession of the floor myself.

Mr. Vice-President : Instead of being floored, will it not be better if you reserve these observations to the proper time?

Shri Mahavir Tyagi: I am aware of your anxiety to finish the discussion early. Sir, my friend Mr. T. T. Krishnamachari says that as the members of the Council of States will also be elected by the elected representatives of the people, they will represent the people. I claim they will not. For instance I have been elected by the people in my province as an M. C. A. but if I am deputed to be on the Public Service Commission, certainly in the Commission I shall act purely as a member of the Commission; I will not use my capacity as a representative. Likewise, when you elect members to the Council of States, they cannot use their representativeship of the people, they will represent their respective States. They are deputed to represent the Governments. I therefore submit that the Parliament will not be so ideal a representative of people's sovereignty, as the Parliament will always be run by the majority party. If those who are governed cannot express themselves direct, then let their mouth-piece--the President--speak for them and let him guard the interest of the minorities and also of the people as a whole. I submit, Sir, it is a question which warrants deep consideration. I therefore hope that the House will give due consideration to the suggestion made.

Shri H. V. Kamath: Mr. Vice-President, this article 41 shares the honour with article 1 as being the shortest article in the Constitution. This is a seven-word article and there need not be much discussion on this very short article. I do not therefore propose to dilate upon the doctrine of Sovereignty which has been adumbrated by my friend Professor Shah and further adverted to by my friend Mr. Tyagi. I want, Sir, by your leave, to draw the attention of the House to the manner in which this article as it was adopted by this Assembly last year in August 1947 has been sought to be modified in the Draft Constitution. I hope, Sir, Dr. Ambedkar is paying attention. I wish to draw his attention to the modification that has been made in the article after it was adopted last year by this Assembly. I do not know what reasons the wise men of the Drafting Committee had to make such an alteration in this article. I have got the Reports of Committees--First Series and Second Series--both agree so far as the wording of this article is concerned. The original draft presented by the Committee over which Pandit Jawaharlal Nehru presided and of which Committee, I think, Dr. Ambedkar too was a member, of the Union Constitution Committee,--that report was presented by Pandit Jawaharlal Nehru on the 4th July 1947 and considered by the Assembly and adopted partly by this Assembly sometime in August 1947. If Dr. Ambedkar turns to this Report as adopted by the Assembly, he will see that the article corresponding to article 41 reads as follows:-

> "The Head of the Federation shall be the President (Rashtrapati)."

Now in the draft the article has been modified to read as follows:--

"There shall be a President of India." On the Committee which presented this report to the Assembly last year, not merely Dr. Ambedkar but along with him some of the wise men of the Drafting Committee--the majority of the wise men--were on the Committee. I think only Mr. Madhava Rao and Mr. Khaitan were not on the Union Constitution Committee. The others were all present in the Committee and they have not appended a minute or a note of dissent to the Report of the Constitution Committee presented by the Committee to the Assembly. I want to know from Dr. Ambedkar why this word 'Rashtrapati' has been deleted from the article which appears in the Draft Constitution today. Is it because, Sir, that we have now developed--latterly developed, cultivated a dislike--a new-fangled dislike of some Indian or Hindi words and try to avoid them as far as possible in the English draft of the Constitution? I have not in mind the word 'Pradesh'; but certainly we have adopted words like 'beggar' and 'panchayat'. I wonder how many Britishers, how many Anglo-Americans know the words 'beggar' and 'panchayat'--except those Britishers who have served in India. I therefore want to know the reason which actuated Dr. Ambedkar and the wise men of the Drafting Committee to delete this word 'Rashtrapati' from this article as it has been presented to the Assembly. Is the reason this, that title or that name or designation, that appellation should be reserved exclusively for the Congress President. President of the Congress Organization which functions today, and perhaps will function even after this new Constitution has come into force? The argument may be advanced that the word 'Rashtrapati' is not much in vogue, has not been in vogue in India for many years. I do not know whether Dr. Ambedkar has been very familiar or acquainted with this title or word 'Rashtrapati' during the last twenty-five years. During the last two generations, however, the word 'Rashtrapati' has gained common currency, has been in vogue to describe the person who is the Head of the Congress Organization, meaning the Head of the Nation. Or is it because that the wise men of the Drafting Committee when they shook themselves free of certain shackles--because when they were members of the Constitution Committee, Pandit Nehru was there who had been Rashtrapati himself but when they shook themselves free from the shackles of other members like Nehru, they got together as seven members of the Drafting Committee, did they think that this word 'Rashtrapati' is not very pleasant or well-sounding or is it because in their heart of hearts they did not have really much regard for this word apart from the person who used to be the Rashtrapati in former times?

Mr. Vice-President : You need not give the reasons for Dr. Ambedkar's action.

Shri H. V. Kamath: I just wanted to put forward the reasons that might have actuated Dr. Ambedkar and put forward my own point of view. So I would like to know from Dr. Ambedkar, in view of the article as passed by the Assembly last year unanimously, why he and his colleagues of the Drafting Committee have sought to delete this word 'Rashtrapati' from the article as it appears in the Draft Constitution.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, before I take up the points raised by Prof. K. T. Shah in moving his amendment, I would like to dispose of what I might say, a minor criticism which was made by Mr. Kamath. Mr. Kamath took the Drafting Committee to task for having without any warrant altered the language of the report made by the committee dealing with the Union Constitution. If I understood him correctly, he accused the Drafting Committee for having dropped the word "Rashtrapati" which is included in the brackets after the word President, in paragraph 1 of that committee's report. Now, Sir, this action of the Drafting Committee has nothing to do with any kind of prejudice against the word "Rashtrapati" or against using any Hindi term in the Constitution. The reason why we omitted it is this. We were told that simultaneously with the Drafting Committee, the President of the Constituent Assembly had appointed another committee, or rather two committees, to draft the constitution in Hindi as well as in Hindustani. We, therefore, felt that since there was to be a Draft of the Constitution in Hindi and another in Hindustani, it might be as well that we should leave this word "Rashtrapati" to be adopted by the members of those committees, as the word "Rashtrapati" was not an English term and we were drafting the Constitution in English. Now my friend asked me whether I was not aware of the fact that this term "Rashtrapati" has been in current use for a number of years in the Congress parlance. I know it is quite true and I have read it in many places that this word "Rashtrapati" is used, there is no doubt about it. But whether it has become a technical term, I am not quite sure. Therefore before rising to reply, I just thought of consulting the two Draft Constitutions, one prepared in Hindi and the other prepared in Hindustani. Now, I should like to draw the attention of my friend Mr. Kamath to the language that has been used by these two committees. I am reading from the draft in Hindustani, and it says:-

"HIND KA EK PRESIDENT HOGA....."

The word "Rashtrapati" is not used there.

Then, taking the draft prepared by the Hindi Committee, in article 41 there, the word used is (PRADHAN). There is no "Rashtrapati" there either.

Shri H. V. Kamath: But, Sir, the point I raised was that the article as adopted by this House had word "Rashtrapati" incorporated in it. The reports of the Hindi or Hindustani Committees are not before the House, and all that I wanted was that this word should find a place in the Draft Constitution now being considered here.

The Honourable Dr. B. R. Ambedkar : And I am just now informed that in the Urdu Draft, the word used is "Sardar". *(Laughter).*

Now, Sir, I come to the question which has been raised substantially by the amendment of Prof. K. T. Shah. His amendment, if I understood him correctly, is fundamentally different from the whole scheme as has been adopted in this Draft Constitution. Prof. K. T. Shah uses the word "Chief Executive and the Head of the State". I have no doubt about it that what he means by the introduction of these words is to introduce the American presidential form of executive and not the

Parliamentary form of executive which is contained in this Draft Constitution. If my friend Prof. Shah were to turn to the report of the Union Constitution Committee, he will see that the Drafting Committee has followed the proposals set out in the report of that Committee. The report of that Committee says that while the President is to be the head of the executive, he is to be guided by a Council of Ministers whose advice shall be binding upon him in all actions that he is supposed to take under the power given to him by the Constitution. He is not to be the absolute supreme head, uncontrolled by the advice of anybody, and that is the Parliamentary form of government. In the United States. Undoubtedly, there are various Secretaries of State in charge of the various departments of the administration of the United States, and they carry on the administration, and I have no doubt about it, that they can also and do as a matter of fact, tender advice to the President with regard to matters arising under their administration. All the same, in theory, the President is not bound to accept the advice of the Secretaries of State. That is why the United States President is described as the Chief Head of the Executive. We have not adopted that system. We have adopted the Parliamentary system, and therefore my submission at this stage is that this matter which has been raised by Prof. K. T. Shah cannot really be disposed of unless we first dispose of article 61 of the Draft Constitution which makes it obligatory upon the President to act upon the advice of the Council of Ministers. Do we want to say it or not, that the President shall be bound by the advice of his Ministers? That is the whole question. If we decide that the President shall not be bound by the advice of the Council of Ministers, then, of course, it would be possible for this House to accept the amendment of Prof. K. T. Shah. But my submission is that at this stage, the matter is absolutely premature. If we accept the deletion of article 61 then I agree that we would be in a position to make such consequential changes as to bring it into line with the suggestion of Prof. Shah. But at this moment, I am quite certain that it is premature and should not be considered.

Mr. Vice-President : I am now going to put the amendment to vote, amendment No. 1036, first part, standing in the name of Prof. K. T. Shah. The question is:

"That for article 41, the following be substituted:--

> 'The Chief Executive and Head of the State in the Union of India shall be called the President of India.' "

The motion was negatived.

Mr. Vice-President : The article will now be put.

The question is:

"That article 41 stand part of the Constitution".

The motion was adopted.

Article 41 was added to the Constitution.

Article 42

Mr. Vice-President : The motion before the House is:

"That article 42 form part of the Constitution."

Shri H.V. Kamath: On a point of order, this article 42 is out of place. The order should have been "The President and his election"--the articles relating to this matter should have come first, and "Powers of the President" should have come after the election of the President. My authority for this is the report of the Union Constitution Committee which the Assembly adopted last year. I should therefore think that this article 42 must be considered after article 43.

Mr. Vice-President : This matter can be mentioned when we come to the third reading of the Constitution.

Shri H. V. Kamath : But this should be noted by the Drafting Committee.

Mr. Vice-President : I see Dr. Ambedkar's pencil moving rapidly.

Now, to take up the amendments: Nos. 1043 and 1049 are disallowed as being verbal. Amendment No. 1040 by Prof. K. T. Shah.

Prof. K. T. Shah : Mr. Vice-President, I beg to move-

"That for clause (1) of article 42, the following be substituted:

> `(1) The sovereign executive power and authority of the Union shall be vested in the President, and shall be exercised by him in accordance with the Constitution and in accordance with the laws made thereunder and in force for the time being' ."

or alternatively,

"(1) The executive authority, power and functions of Government shall be vested in the President and shall be exercised by him in accordance with the Constitution and the law with the advice and help of such ministers, officers or servants of the State as may be deemed necessary by him."

Before explaining the difference that there is between two alternative forms of the same idea, I should like to point out, if I may, that the argument which has been urged by the Chairman of the Drafting Committee about the appropriate place of any amendment or alteration suggested in this House is a little out of place itself. The reason is that after all this is an order settled by the Drafting Committee, and we can only give amendments on the order as it is.

An argument was also urged that if--and I agree with it--we go on holding over amendments and articles, their mutual correlation may be forgotten or overlooked; and therefore, it would be safest perhaps, and in the best interests of a full discussion, that a definite order is established. We submit most cheerfully to the suggestion you gave, at the very outset of the debate on an article that some stated amendments would be taken up and in the stated order.

That is a perfectly reasonable and proper thing to do but when an amendment or article is placed before the House, and then suddenly a surprise is sprung upon Members that this is out of place or out of time, I think it is somewhat unfair. Let those who are responsible for drafting make up their mind in what order they will take

Chapter by Chapter, and we can understand that and shall co-operate. The idea that we will, in the middle of discussions, switch over from one article to another or one section to another, makes it, I submit in all humility, a little difficult for those who are responsible for a number of amendments to keep track, and to marshal their own arguments. One comes prepared for a particular set of articles; and one is suddenly told that they are not to be taken up or that it is not their place and so on. However much one may carry one's own argument in one's head, one feels a little upset to be asked all of a sudden to make up one's mind whether this thing is to be moved or not to be moved.

Secondly, having moved, the argument or suggestion that this is not the proper place etc. and that a given amendment be taken after another article has been dealt with is, again I submit, a little difficult for members, because it might, so to say, pre-judge the main issue. If you hold it over and get to the later article....

Mr. Vice-President : Are you not moving my amendment, Prof. Shah?

Prof. K. T. Shah : I am placing my difficulty, because the same argument may be used here again that this is out of place. That is why I am replying to it. I am very much afraid having heard this line of reasoning--I do not say that the reasoning is false--I am only saying that it makes it difficult for us to put forward, in the only way in which we can put forward, the amendments, namely, according to the order prescribed or given in the book.

Having said this, I would like to point out quite frankly that naturally all my amendments hang together, and that they arise out of a certain view of the Constitution, out of a certain view of the distribution of powers, of finances etc. which may not be accepted; but which nevertheless is a possible, a known alternative way of doing it.

I have, therefore, brought forward this amendment. I trust it will be examined or dealt with on its merits, and not merely on the ground that it is out of place or it cannot now be discussed. I venture to submit that even if the basic principle is other than I thought would be acceptable to the House, even then, on a point like this, viz., the powers and place of the President may be considered quite irrespective of the governing or basic principle; and if adopted, can be fitted in even in the scheme of the Constitution which you have accepted.

I would, therefore, suggest that the powers and functions of the President should have the place as if they are the powers and functions of the sovereign people being exercised by the Chief Executive of the State. He will be the Chief Executive, I take it, for the time that he is in office, just as the King of England is the Chief Executive, even though the powers are not so thoroughly separated in the British Constitution as they are in the American Constitution.

I, therefore, put forward this point No. 1 that it would be no answer to, to my amendment to say that it is not in harmony with the basic principle of this Constitution namely, that of the Parliamentary Government, and not of the Presidential kind and as such it need not be discussed. I submit that it can be very well fitted in even in the terminology I have used with the basic idea of the Constitution that you have accepted, even though I am free to admit my own conception was slightly different.

To proceed, Sir, I would like the President's powers to be very clearly defined, and be exercisable in accordance with the Constitution. I take it there is no question on that. No one will say that the President is supra-Constitution. The President is a creature of the Constitution, and must work under the Constitution. No further words are, therefore, necessary to explain that emphasis which should be--in fact, it is there--in the main clause 2.

The next point is that it must be in accordance with the laws made there under. Now, in a variety of articles you have given power to Parliament to make laws. If the laws are made under the Constitution, which allow or explain or expand the powers given to the several organs of Government, then it is quite in order to suggest that they should be in accordance with the laws made there under.

Last comes advice--the advice of the Ministers, officers and servants of the Union. I think that also is important to include in the position of the President as it is. Later on I have tried to elaborate this point in a subsequent amendment which I shall deal with when I come to it.

In this case, however, because I want that my suggestion should not be merely thrown overboard because it is inconsistent with the basic principle adopted in drafting this Constitution, I have tried to harmonise the Ministerial responsibility--I mean the doctrine of Ministerial responsibility--with also the position of the President as the head of the State and Chief Executive. I once more take the analogy of the King of England, who has to act on the advice of the Ministers. At least that is the constitutional position. Every Act begins: "let it be enacted by the King's Most Excellent Majesty, with the advice of the Lords Spiritual and Temporal and the Commons". Every action is the action of His Majesty in each particular matter as advised by the particular Minister. The whole doctrine that "the King can do no wrong" loses its import if the doctrine of ministerial advice and ministerial responsibility is not there. I have, therefore, laid it down, by this amendment, that the President must act in accordance with the Constitution and in accordance with the laws made therein and according to the advice of his ministers.

The addition of the "officers and servants of State" I have felt also necessary to be quite clearly expressed in the Constitution. The President should be entitled not merely to listen to all that the Minister alone says to him; he must have power to consult any other expert, or any other officer, or servant of the State in India who may give him his views. It was, of course, the custom of the regime preceding the present that the Secretaries, for example, of Departments had direct access to the head of the Government, along with or independent of the Member-in-charge of a Government Department. And though I am not keen on restoring that principle, or that system of the Secretaries being entitled to give independent and often conflicting or opposite advice to the head of the Government, as against their Minister-in-charge, I certainly think that it would do no harm to the working of the constitutional machinery if the President is entitled, as a matter of right, to send for any expert officer, and ask his advice, say, for example, the Attorney-General, the Advocate-General, should the President have a legal doubt with regard to his own position, *vis-a-vis* his own Ministers.

He should be entitled, I submit, as head of the State and finally responsible person, to know what the expert in the department thinks. Under the Parliamentary party system it will not be his veto, he would have no right to discard the advice of his

Minister. The Minister's advice will eventually prevail. But it will prevail only after the President has drawn attention, according to my conception, to the other aspects of the matter which the Minister has over looked, or ignored.

It has been said by a great constitutional writer, analysing the Constitution of England a century ago, that the functions of the King,--the permanent Executive in Britain,--is to warn, to advise and eventually to surrender. The President, in the way that I am conceiving the matter here, would have also the right to advise--not the advise from personal prejudice, but the advise from an informed expert opinion having been previously obtained, as a matter of right, to elucidate any point coming before him: and then telling his Minister concerned or the Ministry as a whole that this is the proper view. If you do not think it is proper, very well then, you are the finally responsible party and you can do as you think proper. But in the Constitution a right must be provided for the President to be able to obtain advice from the servants of the Crown.

I am not suggesting that he should be free to go outside the country for such advice. I am not suggesting that he should invite foreign experts to advise him. He should be entitled to seek advice from his Ministers in the first place: then from the officers and from the servants of the State. This I think is in perfect harmony even if you conceive and take this Constitution to be on the principle of Ministerial responsibility, and so perfectly proper to accept it. I, therefore, commend this motion to the House.

(Amendment No. 1041 was not moved.)

Mr. Mohd. Tahir (Bihar : Muslim) : Sir, I move:

"That in clause (1) of article 42, after the words 'and may' the words 'on behalf of the people of India' be inserted."

Now, Sir, if my amendment is accepted, the article will read as follows:

"The Executive power of the Union shall be vested in the President and may on behalf of the people of India be exercised by him in accordance with the Constitution and the law."

Article 41 which we have adopted just now gives us to understand that the President will be the head of the State. Now, Sir, a man can use his powers legally in two ways only: either in his personal capacity or on behalf of somebody else. Therefore, we have to see how the President has to exercise these powers--whether on his own behalf or on behalf of somebody else. In this connection I will draw the attention of the House to page 3 of the Government of India Act, 1935, where in we find that the Governor-General used to exercise the executive power on behalf of the then King Emperor of India: But now the ownership of this country has been transferred to none but the people of India alone. Therefore, it is necessary that all the powers that have to be exercised in this country have to be exercised on behalf of the people of India.

In this connection I will also point to article 49 of this Constitution wherein the oath has been prescribed for the President and it says that--

"I,...........do solemnly affirm that I will faithfully execute the office of President of

India and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well being of the people of India."

Now, Sir, if my amendment is not accepted, article 42(1) coupled with the form of oath, will surely mean that the personality of the President is somewhat above the people of India which it is absolutely not. I submit that because the ownership of the country vests only with the people of India, all the powers that have to be exercised by the President must be exercised on behalf of the people of India alone and on behalf of none else. Therefore I hope this amendment of mine will be accepted by the House.

(Amendment No. 1044 was not moved.)

Prof. K. T. Shah : Mr. Vice-President, I move:

"That for clause (2) of article 42, the following be substituted:

`(2) Without prejudice to the generality of the foregoing provision and in accordance with this Constitution and the laws made there under for the time being in force, the President shall--

> (a) convene or dissolve the Legislature of the Union, and place before it any proposal for legislation or for sums of money needed for the good government and efficient administration of the country, or for its defence, or to provide for any sudden calamity in any part of the Union or any other emergency;
>
> (b) have the power to assent to the laws duly passed by the Union Legislature;
>
> (c) conduct and supervise any Referendum that may be decided upon to make to the Sovereign People in accordance with this Constitution;
>
> (d) have the power to declare war, and make peace;
>
> (e) be the supreme commander of all the armed forces of the Union;
>
> (f) appoint all other executive and judicial officers, including the ministers, representatives of the Union in foreign countries as ambassadors, ministers, consuls, trade commissioners and the like; as well as the commanding officers in the armed forces of the Union;
>
> (g) do all acts, exercise all powers and discharge all authority necessary or incidental to the power and authority vested in him by and under this Constitution;
>
> (h) have power to refuse assent to any legislative proposal passed by both Houses of Parliament; or to recommend to Parliament that any legislative proposal passed by Parliament be reconsidered for reasons stated by the President, provided that any legislative proposal duly passed by Parliament, if refused assent by the President only once; and that the same proposal if passed in an identical form by Parliament in the next following sessions of that body, shall be deemed to have been duly passed and become an Act of the Legislature, notwithstanding that the President has refused or continues to refuse to assent thereto;
>
> (i) in every case in which the President refuses to assent to any legislative proposal duly passed by Parliament, the President shall record his reasons for

> refusing to assent and shall forward the reasons thus recorded to Parliament;
>
> (j) in any case where the President, having duly submitted to Parliament, or to the People's House thereof, a legislative proposal he deems necessary for the safety of the State, its integrity or defence or to safeguard the nation's interests in a national emergency, finds that Parliament is unwilling to consider or pass that proposal, may refer such a proposal to the people of the country; and if the proposal is approved, on such reference, by a majority of not less than two-thirds of the citizens voting, it shall forthwith become a law of the land. If on such reference the proposal is not approved by the requisite majority, it shall be deemed to have been negatived, and shall be treated as void and have no effect."

Sir, this is, I admit, a somewhat lengthy amendment intended to clear and make definite the powers of the President.

Before I come to the innovations or new ideas inserted in these powers as put forward by me, may I point out one item, which perhaps the draftsmen might consider favourably, namely that in the first clause of the article it has been stated that the executive power of the Union shall be vested in the President and "may be exercised" by him in accordance with the Constitution and the law? I am not a practising lawyer, and, therefore, not be able to understand clearly the meaning of this 'may' in this connection. But, speaking only as a commonsense man, I feel that this 'may' is productive or likely to produce considerable mischief. If 'may' in an option to the President, and there is no obligation by law of the Constitution upon him to exercise the powers in accordance with the Constitution and the law there under, or in accordance with the advice of his Ministers, then I am afraid many powers--that is my reason for bringing in this amendment--may be exercised by him, which may not be against the written letter of the Constitution, but which in his judgment are necessary and, therefore, taking shelter under this expression 'may', he may do so.

For my part, however, I wish to leave no room for doubt; and, therefore, in a previous amendment I said 'shall' instead of 'may'. And, now, lest there be any further doubt or any margin or no-man's land, or any dubious position in which both may claim equal authority or equal powers, instead of the rather mild description which is given in article 42 (1), I have tried to explain and make clear all the 8 or 10 items, I have specifically enumerated them.

A good many of them are, of course, beyond question, such as the right to convene or dissolve Parliament. These will, of course, be done on the advice of the Ministers. So also the right to declare war or peace. This is merely a titular power, and it is also to be exercised on the advice of the Ministers. Next we have the right to assent to legislation passed by Parliament. I need not, I think, take the time of the House in explaining those conventionally adopted articles. The necessity for stating them, since you are stating them very briefly, or if I may say so, compendiously and clearly, is there, and it would be better to define and put them in full.

I come next to the question of the right to refuse assent. It may seem as if it was an innovation of my own. I do not think it is an innovation, because, technically at any rate, in the model on which this Constitution is based or appeals to be made, *viz.* that of the United Kingdom, the King's veto is not abolished, as the veto of the House of Lords for instance is modified. There, there are a number of conventions which have for centuries past guided the ministers and the people in dealing with any exercise of royal authority whether by prerogative or otherwise which does not infringe the spirit, if not the letter of the Constitution as well.

Here, however, we are making a new Constitution, and we are starting upon a new democratic career on a very large national scale. After all, you must remember that the United Kingdom compared to India is perhaps not one-tenth or one-twelfth in size; and, in point of the population, it is perhaps one-sixth or one-fifth in strength of numbers. Therefore, what may have suited that country and its ways may not suit us. At any rate, they have a long history of precedents and conventions behind them. We have to make those precedents and conventions. I therefore submit it would be as well for us not to leave any room for doubt, and make precise and explicit the powers that we are vesting in the President.

The right to give assent carries with it the right to refuse assent, unless you positively state that the President will not be able to refuse assent. In my amendment I have, however, laid down the conditions under which the right to refuse assent may be safeguarded. The right to refuse assent is given only once. In spite of the refusal, if Parliament proceeds with the legislation in identical form, whether or not the President agrees, it will become law. The privileges of the President, according to my amendment, only lies in his stating the reason for refusing his assent. Being popularly elected, as I conceive it, he is bound, in his sense of true responsibility to the people, to lay before their representatives the reasons which have actuated him in refusing assent. I do not think there is anything revolutionary in making such a suggestion.

The second innovation is in regard to reference to the people, or Referendum. Now, this Constitution does not provide for reference to the people, not withstanding the fact that we talk again and again of the people's sovereignty, of the people being the ultimate sovereign of this country. Our regard for reference to the people, or consultation with the people, is expressed if at all only in a quinquennial election, a general election to Parliament. In a general election, however, so many issues are mixed up; so many cross-currents take place; so many moves and counter-moves happen that the consultation with the people, or the verdict of the people on such variety of issues is only nominal, if I may say so without any disrespect.

If you seriously, if you sincerely, if you really desire that the people shall be sovereign, if you want that the people be consulted in any emergency when your two organs of power, *viz.*, the Legislature and the Executive, are unable to agree, then the test will lie in your readiness to consult the people. It may be that the emergency may be so momentous that you cannot dissolve Parliament. It may be that the state of emergency may be such that the President cannot retire, and will not tender his resignation. Or it may be only a matter involving such strong difference of opinion that neither is prepared to yield. At that moment it is but right that the view of the people should be ascertained on the specific single issue worded so as to admit of a categorical answer, 'Yes' or 'No'.

Surely the test of this Constitution enshrining the sovereignty of the people is not merely the lip-loyalty that seems to be very common in this Draft. The argument could be urged, and was urged by those who were against people's sovereignty in fact and in name, that the people are not ready; or that they are not educated enough to give any decisive opinion on such complicated issues of foreign or local policy. I trust that in this House, we shall not hear such an argument. Backward as we may be--only ten or twelve percent of us may be literate--whatever may be our deficiency or handicaps, I take it that we are all sincere, true in our belief that ultimately the people are sovereign. Where there is collective wisdom, there is after all real salvation. *Vox populi vox Dei*--The voice of the people is the voice of God.

That, I take it, is not merely a figure of speech, is not merely a maximum used to hypnotise children, but is intended for serious legislators to take into account and act up to it. I invite you, therefore, with all the earnestness I command to consider this matter seriously. If you think that you will take counsel together, on this amendment before giving a positive decision, here at least I am agreeable to hold over this amendment. But I beg of you with all the earnestness at my command that, if you are sincere in your desire to make the people truly sovereign, if you want them to be trained in the art of working democracy, if you desire that they shall be the final arbiters on all issues, then for goodness' sake, do not treat this with your Party label of opposition, right or wrong.

I have not conceived my role in this House as a cussed opposition, to oppose things on every ground and on any ground. I take myself to be a friendly critic, always ready to offer constructive views with such brains or such ability as I have. It may be that they do not appeal to you for one reason or another. But here is a case in which I venture to submit that, if your really believe in the sovereignty of the people, if you honestly believe that the people are the true masters of our destiny, you cannot shirk this amendment. Do not decline it on merely technical grounds of its being not in proper time or place or out of place and such other camouflage. Let me also point out that I have not omitted to put in certain conditions and safeguards, so that if and when you consult the sovereign people you will not merely have a chance decision, but the considered opinion of a real majority of our voters. In that case, even if the decision is wrong, we shall all be in the same boat. It is far better to sink with our fellows than swim with our masters.

(Amendments Nos. 1046 and 1047 were not moved.)

Mr. Vice-President : Amendment No. 1048 standing in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : I beg to move:

"That for sub-clause (a) of clause (3) of article 42, the following be substituted:

> '(a) be deemed to authorise or empower the President to exercise any power or perform any function which by any existing law is exercisable or performable by the Government of any State or by any other authority; or' "

Sir, I beg to submit that this amendment will have an effect quite contrary to some of the amendments which have been moved by Prof. K. T. Shah. It purports to limit the power of the President in this way that, if any power is specifically exercisable by any State or any local authority, the President will not be empowered to exercise those powers. In fact, I want to make the President a perfectly constitutional President. It has been pointed out that Parliamentary legislation in the United Kingdom is in the form that "Be it enacted by the King's Most Excellent Majesty on the advice of the Lords Spiritual and Temporal and the Commons in this Parliament assembled" etc. Sir, I beg to submit that this does not give the King any power. The British are an extremely conservative people. They carry on with old forms. Although the King's power is practically entirely extinct, the old form is kept up. To introduce this form here would be to give the President plenary powers to override the Executive and to a large extent flout the decisions of the Legislature. Therefore, I think that the powers of the President should be limited to those of a strictly Constitutional President. The amendment seeks to debar the President from exercising any powers exercisable by the Provinces or the local or other authorities. The present amendment should be considered from this point of view. I do not wish to dilate on the merits and demerits of the proposition any further. This is a view point, which, I submit, should be considered by the House.

(Amendment No. 1050 was not moved.)

Mr. Vice-President: The article is open for general discussion.

Shri R. K. Sidhwa (C. P. & Berar : General) : Mr. Vice-President, Sir, I closely followed the amendment moved by my honourable Friend, Prof. K. T. Shah, and also listened to his speech with rapt attention. I give credit for his tenacity for bringing in his view-point by various ways in this House, and to see that they are implemented by changing the very fundamentals of this Constitution from time to time. In this amendment that he has proposed, Sir, it will be seen that many of the clauses refer to the fundamental changes, and some of them, of course, could be provided in the rules and regulations to be made after the Constitution comes into force. But that apart, Sir, I will presently show to this House how some of the suggestions that he has made in this amendment may be commendable for acceptance if a different type of Constitution were to be framed, but the fact is that we have taken a decision on a democratic Parliamentary system of Government and if his proposal is accepted, it cannot fit in or suit the provisions we have provided in the Constitution.

For instance, in his amendment, Prof. Shah says: The President shall place before the Legislature of the Union 'any proposal for legislation or for sums of money needed for the good government and efficient administration of the country. He wants that the President should be empowered with those powers. I want to know, Sir, how it would fit in with an Executive responsible to the Legislature, if the power of spending of money is vested in the President. It is the very negation of the very fundamental principle that we have accepted after a long discussion of five days in the opening session of this Constituent Assembly.

Then he says: "or for its defence, or to provide for any sudden calamity in any part of the Union or any other emergency;". Our Constitution has provided power to the President for emergency purposes, but may I know, Sir, in a responsible Legislature does Prof. Shah want the powers to declare war or peace to be entrusted absolutely to the President? Even in a responsible Parliamentary Government that will be certainly most objectionable. If a war has to be declared, the President will certainly have the power; he is the supreme head of Defence under our Constitution, but the House has to be taken into confidence. The Government has to consider this point. Suppose this clause is passed, and some autocrat President comes into existence and says: "I want to declare a war in view of some exigencies arising here or around our country". Would this be called a responsible Government? Absolutely not, Sir.

Then in clause (h) of his amendment he says that when both Houses of Parliament pass the bills, they go to the President. That is understandable. Again they come before the 'House and then with a certain majority he wants those bills to be passed. There may not be a very serious objection to that, but I find Sir, if his clause (i) is accepted, there would be a deadlock always between the President's action and the Parliament and if all these clauses are finalised, it will come to nothing else, but a chaos between the Government and the President and who would like, Sir, the President being entrusted with the powers of the Executive? Certainly we do not want them.

As regards the type of Government, Sir, some of the provisions of the American type of Government may be good, but let me tell you, Sir, I have pondered over this matter as to what type of Government should be suitable to our country and I have come to the conclusion that the British Parliamentary procedure, which is really democratic, barring Soviet system of Government, is really suited to our country. Secondly, what is wrong, I ask, in the Constitutional democracy? Similarly as we are running elections on a party system, it is run on a party system in England. Prof. Shibban Lal stated "Mr. Churchill was thrown out by the electorate although he was considered to be the best man during war-time." Perfectly right. Mr. Churchill stood in the election through a party and he was considered as the best man during war and he was not accepted by the majority for peace time. Similarly it may happen in our country. We have the party system, elections, etc. I therefore contend, Sir, that the amendments which my honourable Friend Prof. Shah has given notice of may be good; he deserves credit for his trying to convert the Members of this House to his point of view. I do not dispute his sincere belief, but I must say that the House has considered that a particular type of Government is really desirable and I think, Sir, these amendments cannot fit in and would not fit in the Constitution. I do feel that some of them may be good, but the House has taken a decision on the type of Government and I therefore oppose the amendment proposed by Prof. K. T. Shah.

Shri Jagat Narain Lal (Bihar : General) : Mr. Vice-President, Sir, I would have liked very much to vote for the amendment moved by Prof. K. T. Shah, but I feel that it runs counter to the view which we have held, so far as introduction of democracy in our country is concerned. It seems clear that Prof. Shah sticks to the view that the President of the Indian Union should wield the same powers and authority as the President of the American Republic. If that is his intention, as I take it to be, I think we would all agree that we do not share that view. So far as our Constitution goes, the powers which we propose to vest in the President are the powers more or less on the lines of the Irish Republic. There are several models with regard to this. One is the latest, the power wielded by the President of the Irish Republic. So far as Great Britain is concerned, we all know that the King is a constitutional head and there is no such thing as President and he has certain powers, privileges and other conventions. The power wielded by the French President are more or less nominal. He is more of a titular head. Under the Weimar Constitution, the Chairman-President used to wield great powers, but we see that even the Chairman-President of the Reich, even he, in declaring war had to take the approval of the ministers and the Reich itself. Even in making treaties and alliances, he had to take their approval. But Prof. Shah makes a more drastic proposal. He says that even wars and treaties he can make. He does not say that in so many words, but he wants to leave it to the Constitution rather than to convention. If he makes wars or treaties, he may consult; he will, as a matter of course, consult. But he does not want to provide for that in the Constitution. Therefore, Sir, I feel it is not possible to agree with Prof. K. T. Shah. There is a fundamental difference in the view that he takes of the powers which are to be given to the President of the Indian Union. I feel he wants it to be on the American model, whereas we feel that the powers which we want to vest in the President are not to be on that model, but, I take it, more or less on the model of the powers vested in the

President of the Irish Republic.

Sir, I do not want to prolong the debate; I have finished.

Shri K. M. Munshi (Bombay : General) : Mr. Vice-President, Sir, the previous speakers have already drawn attention to the fact that the amendments moved by my honourable Friend Prof. Shah not only to this article, but to the subsequent articles, create a fundamental change in the whole structure of the Constitution that this House has envisaged for the last year and a quarter. At the earlier stage of the Union Constitution Committee, It was decided, I think possibly with one or two dissident voices, that our Central Government should be based on the English model and that the American model or rather the model of the United States of America was to be rejected for two valid reasons. The two issues that have been before the House and the several Committees were these: what would make for the strongest executive consistently with a democratic constitutional structure, and the second issue is which is the form of executive which is suited to the conditions of this country. I fail to see how from any of these points of view, the amendments of my honourable Friend can find favour with this House.

Already reference has been made to an amendment moved by my honourable Friend and lost in this House about the separation of powers. It must not be forgotten that the American Constitution was made long ago, in the 18th Century. The makers were then guided by Montaigne's interpretation of the British Constitution that there was separation of powers in England. They thought that they were translating Montaigne's analysis into a constitutional structure. The powers that were given to the President in the Constitution of America were based on what is now held on all accounts to be a misreading of the British Constitution in the 18th Century.

As already pointed out by my honourable Friend Dr. Ambedkar, even in America, they have found it impossible to maintain the principle of separation of powers. We know that the Constitution in America is not working as well as the British Constitution, for the simple reason that the Chief Executive in the country is separated from the legislature. The strongest Government and the most elastic Executive have been found to be in England and that is because the executive powers vest in the Cabinet supported by a majority in the Lower House which has financial powers under the Constitution. As a result, it is the rule of the majority in the legislature; for it supports its leaders in the Cabinet: which advises the Head of the State, namely, the King or the President. The King or the President is thus placed above party. He is made really the symbol of the impartial dignity of the Constitution. The Government in England in consequence is found strong and elastic under all circumstances. The power of the Cabinet in England today is no whit less than the powers enjoyed by the President of the United States of America. By reason of the fact that the Prime Minister and the whole Cabinet are members of the legislature, the conflict between the authority wielding the executive power and the legislature is reduced to minimum; really there is none at all; because, at every moment of time, the Cabinet subsists only provided it carries with it the support of the majority in the Parliament. It is that character of the British Constitution that has enabled the British Government to tide over the many difficulties which it has had to face during the last 150 years. Therefore, between the two Executives, one on the American model and the other on the British model, there can be no question of preference. The British model has been approved by every one including leading American constitutional experts as really better fitted for modern conditions.

Apart from that, the second issue which the House has to consider is, what is the best form suited to Indian conditions. We must not forget a very important fact that during the last 100 years, the Indian public life has largely drawn upon the traditions of the British Constitutional law. Most of us, and during the last several generations before us, public men in India, have looked up to the British model as the best. For the last thirty or forty years, some kind of responsibility has been introduced in the governance of this country. Our Constitutional traditions have become parliamentary and we have now all our provinces functioning more or less on the British model. As a matter of fact, today, the Dominion Government of India is functioning as a full fledged Parliamentary Government. After this experience why should we go back upon the tradition that has been built for over 100 years, and try a novel experiment which was, as I said, framed 150 years ago and which has been found wanting even in America? I, therefore, submit that from this point of view that the whole scheme put forward by the various amendments of Prof. Shah has not been accepted by the House so far, has not yielded the best possible result elsewhere and is against the tradition which has been built up in India. Therefore, I submit, Sir, that the amendment should be rejected.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. Vice-President, Sir, Prof. Shah's amendment, if it meets with the acceptance of the House, would mean that the House, for the reasons which Prof. Shah has assigned, is going back upon the decision reached by various Committees of this House as well as by the Constituent Assembly after considerable deliberation on previous occasions.

Apart from this question that it will involve going back upon the decision solemnly reached, there are weighty reasons why what may be called the Cabinet type of Government should be preferred in this country to what is generally known as the Presidential type of Government. In the first place the idea is to take the various units and provinces and the States into the Federation. There is at present no idea of effacing the Rulers from the various States. What are we going to do in the case of the States if you are going to have what is called the Presidential system at the Centre? Does it mean that in the States the Rulers will again be invested with real executive power and the legislatures be confined purely to their legislative functions? It will be against the marked tendency of the times. It will create insuperable difficulties in the Indian States. That is one point which may be considered.

The second thing is that so far as the provinces in India are concerned, we have been accustomed to something like the Cabinet form of Government for some years. We have got into that frame-work. Before that, Dyarchy was in force for some time. And we have been working responsible Government for some time in the different units in India. In dealing with the American Presidential system it must be remembered that the Presidential system is in vogue not merely in the Centre but in the different States in America. There is complete separation between the Legislature and the Executive, not merely in the Centre but also in the different States. It is also necessary to take into account the historic conditions under which the Presidential system was started and worked in America. The distrust of George III, the conditions under which the rebellion was started, the perpetual feud between the Parliament and the Executive and the earlier history of the Petition and the Bill of Rights, they all account to a very large extent for the Presidential system in America, apart from the theories inculcated by Montesco and other leaders of political thought as to the necessity of separation of functions between the Legislature and the Executive. Then there are obvious difficulties in the way of working the Presidential system. Unless there is some kind of close union between the legislature and the Executive, it is sure to result in a spoil system. Who is to sanction the budget? Who is to sanction particular policies? The Parliament may take one line of action and the Executive may take another line of action. An infant democracy cannot afford, under modern conditions, to take the risk of a perpetual cleavage, feudor conflict or threatened conflict between the Legislature and the Executive. The object of the present constitutional structure is to prevent a conflict between the Legislature and the Executive and to promote harmony between the different parts of the Governmental system. That is the main object of a Constitution. These then, are the reasons which influenced this Assembly as well as the various Committees in adopting the Cabinet system of Government in preference to the Presidential type. It is unnecessary to grow eloquent over the Cabinet system. In the terms in which Bagehot has put it, it is a hyphen between the Legislature and the Executive. In our country under modern conditions it is necessary that there should be a close union between the legislature and the Executive in the early stages of the democratic working of the machinery. It is for these reasons that the Union Constitution Committee and this Assembly have all adopted what may be called, the Cabinet System of Government. The Presidential system has worked splendidly in America due to historic reasons. The President no doubt certainly commands very great respect but it is not merely due to the Presidential system but also to the way in which America has built up her riches. These are the reasons for which I would support the Constitution as it is and oppose the amendment of Prof. Shah.

The Honourable Dr. B. R. Ambedkar : I am sorry I cannot accept any of the amendments that have been moved. So far as the general discussion of the clause is concerned, I do not think I can usefully add anything to what my friends Mr. Munshi and Shri Alladi Krishnaswamy Ayyar have said.

Mr. Vice-President : I am putting the amendments one by one to vote. First part of No. 1040. The question is:

"That for clause (1) of article 42, the following be substituted:

> `(1) The sovereign executive power and authority of the Union shall be vested in the President, and shall be exercised by him in accordance with the Constitution and in accordance with the laws made thereunder and in force for the time being.'"

The motion was negatived.

Mr. Vice-President : I put the second part of No. 1040.

The question is:

"That for clause (1) of article 42, the following be substituted:

`(1) The executive authority, power and functions of Government shall be vested in the President, and shall be exercised by him in accordance with the Constitution and the law with the advice and help of such ministers, officers or servants of the State as may be deemed necessary for him.' "

The motion was negatived.

Mr. Vice-President : I put Amendment No. 1042 to vote.

The question is:

"That in clause (1) of article 42, after the words 'and may' the words 'on behalf of the people of India' be inserted."

The motion was negatived.

Mr. Vice-President : I put amendment No. 1045

The question is:

"That for clause (2) of article 42, the following be substituted:

`(2) Without prejudice to the generality of the foregoing provision and in accordance with this Constitution and the laws made thereunder for the time being in force, the President shall--

> (a) convene or dissolve the Legislature of the Union, and place before it any proposal for legislation or for sums of money needed for the good government and efficient administration of the country, or for its defence, or to provide for any sudden calamity in any part of the Union or any other emergency;
>
> (b) have the power to assent to the laws duly passed by the Union Legislature;
>
> (c) conduct and supervise any Referendum that may be decided upon to make to the Sovereign People in accordance with this Constitution;
>
> (d) have the power to declare war, and make peace;
>
> (e) be the supreme commander of all the armed forces of the Union;
>
> (f) appoint all other executive and judicial officers, including the ministers, representatives of the Union in foreign countries as ambassadors, ministers, consuls, trade commissioners and the like; as well as the commanding officers in the armed forces of the Union;
>
> (g) do all acts, exercise all powers and discharge all authority necessary or incidental to the power and authority vested in him by and under this Constitution;
>
> (h) have power to refuse assent to any legislative proposal passed by both Houses of Parliament; or to recommend to Parliament that any legislative proposal passed by Parliament be reconsidered for reasons stated by the President, provided that any legislative proposal duly passed by Parliament, if refused assent by the President only once; and that the same proposal if passed in an identical form by Parliament in the next following sessions of that body, shall be deemed to have been duly passed and become an Act of the Legislature, notwithstanding that the President has refused or continues to refuse to assent thereto;

> (i) in every case in which the President refuses to assent to any legislative proposal duly passed by Parliament, the President shall record his reasons for refusing to assent and shall forward the reasons thus recorded to Parliament;
>
> (j) in any case where the President, having duly submitted to Parliament, or to the People's House thereof, a legislative proposal he deems necessary for the safety of the State, its integrity or defence or to safeguard the nation's interests in a national emergency, finds that Parliament is unwilling to consider or pass that proposal, may refer such a proposal to the people of the country; and if the proposal is approved, on such reference, by a majority of not less than two- thirds of the citizens voting, it shall forthwith become a law of the land. If on such reference the proposal is not approved by the requisite majority, it shall be deemed to have been negatived, and shall be treated as void and have no effect."

The motion was negatived.

Mr. Vice-President : I now put No. 1048 to vote.

The question is:

"That for sub-clause (a) of clause (3) of article 42,the following be substituted:

> `(a) be deemed to authorise or empower the President to exercise any power or perform any function which by any existing law is exercisable or performable by the Government of any State or by any other authority; or' "

The motion was negatived.

Mr. Vice-President : Now the question is:

"That article 42 stand part of the Constitution."

The motion was adopted.

Article 42 was added to the Constitution.

Article 43

Mr. Vice-President : We have some 12 minutes more and I propose to go on to the next article.

The motion is:

"That article 43 form part of the Constitution."

Amendment No. 1051--Mr. Damodar Swarup.

Shri Damodar Swarup Seth (United Provinces : General) : Sir, I beg to move:

"That for articles 43 and 44 the following be substituted:

> `The President shall be elected by means of the single transferable vote by an electoral college composed of the members of Parliament and an equal number of persons elected by the

Legislatures of the States on population basis under the system of single transferable vote.' "

Sir, article 43 provides, for the election of the President of the Union of India, an electoral college composed of the members of both Houses of Parliament and elected members of the Legislatures of the States, while article 44 lays down the details of the procedure to be adopted in the elections of the representatives of the States. Now, so far as the system of proportional representation by means of the single transferable vote is concerned, I hope every honourable Member of the House will welcome it. But so far as the inclusion of members of the Council of States and the members of the Legislative Councils of the States is concerned, I am opposed to their inclusion in the election of the President. Not only that, Sir, I am opposed to the very existence of these Houses under the new Constitution. Now, Sir, bicameral legislation is no more regarded as an essential feature of the Federal polity or of a sound democratic Constitution. At best it is a conservative device to delay progress. Sir, Prof. Laski has very rightly remarked that the safeguards required for the protection of the unit of a federation do not need the Armour of a second chamber. All the requisite protection to the units of a federation is secured by the terms of the original distribution of powers embodied in the Constitution, and the right to judicial review by the courts. In all federal States, Sir, the party system operates alike in both the chambers of the legislatures, and the members of the second chamber are also elected on party system. Not only that, they work and vote also under the guidance of the party in much the same way as members of their respective parties in the Lower House. The relative strength of the national parties in the two Houses is no doubt different, but this difference in the number of members of the two Houses only promotes confusion and deadlock. Neither is it wise to entrust the protection of regional and national interests to two different chambers of federal legislature; nor have second chambers justified their existence by protecting the regional and national interests. The members of both the chambers have reacted to national and regional interests in much the same way. The principle of representation of constituent units as political entities through nomination by the local executive, or election by the legislature of the units is also not accepted by modern thinkers as valid. While most of the members of the Council of State are to be elected by indirect election, some are also to be nominated. The system of nomination, Sir, is undemocratic, while that of indirect election, in the words of Prof. Laski, "is the worst system which maximises corruption. Now, Sir, as for the details of the procedure of election given in article 44, and in the foot-note to that article, I submit that it is not only complex, but very complicated, and do not ensure uniformity in the scale of representation of the State. My amendment, on the other hand, Sir, suggests a system which is very simple and can be operated without much difficulty, and does, at the same time, ensure uniformity, as desired, in the scale of representation of the State. I therefore, hope that the House would have no hesitation in accepting this amendment of mine.

(Amendment No. 1052 was not moved.)

Mr. Vice-President : There are two or three amendments of the same type and I want to know which of them is going to be pressed. They are amendments Nos. 1053, 1055, 1057,1059 and 1062.

(Amendments Nos. 1055, 1059 and 1062 were not moved.)

Mr. Vice-President : So we have two amendments of the same type, Nos. 1053 and 1057. I can allow No. 1053 standing in the name of Prof. K. T. Shah to be moved.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That for article 43 the following be substituted:---

> `43. The President shall be elected by the adult citizens of India, voting by secret ballot, in each constituent part of the Union.' "

Mr. Vice-President : You can continue your speech on Monday.

The House stands adjourned to 10 A. M. on Monday.

The Constituent Assembly then adjourned till Ten of the Clock on Monday, the 13th December 1948.

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VII

Monday, the 13th December, 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

DRAFT CONSTITUTION-*(Contd.)*

Article 43-*contd.*

Prof. K. T. Shah : (Bihar : General): Sir, I have moved...........

Shri T. T. Krishnamachari (Madras : General): Sir, on a point of order, may I know whether Prof. Shah can bring in again the scheme that he had outlined in one or two earlier amendments of his and which had all been negatived in this House? He is really persisting in one particular scheme in all his amendments and is the honourable Member in order in moving this amendment?

Prof. K. T. Shah: My reply to that point of order is clear. I had foreseen this objection and that is why I have worded my amendment in such a manner that this particular objection will not apply. The principle of complete separation of powers between the various organs of Government is rejected. But that does not preclude the President, even if these powers are not separated, from being elected by popular vote, whatever his powers. Unless it is intended that I shall not be allowed to move any amendment, I do not see how the objection can arise. I leave it to the Chair. I am entirely in your hands, Sir. I do not think that the honourable Member's arguments can apply at all. It was because of this that I have worded each of my amendments in such a way that risking the possibility........

Mr. Vice-President (Dr. H. C. Mookherjee): Prof. Shah is in order.

Prof. K. T. Shah : Sir, I have moved already:

> "That for article 43, the following be substituted:---
>
> `43. The President shall be elected by the adult citizens of India, voting by secret ballot, in each constituent part of the Union.' "

The original article provides for the election of the President by an electoral college consisting of the members of the Central Legislature as well as those of the Provincial or States legislatures. That I think is not sufficiently representative of the people's will; and as such I at least am persistent enough to insist upon the people's will being always held supreme.

I have felt it necessary, even apart from any other scheme, that at every point, wherever I can help it, the sovereign people shall come in, whether you like it or not, and that the people's will be asserted, whether you like it or not. It is therefore I suggest that every adult citizen shall have his share in electing the head of the State; and accordingly, instead of indirect election through the representatives of the legislatures which may be elected after two, three or four years interval, I would suggest that every time a presidential election takes place, that election shall be by the votes of the people themselves.

I will give you both positive or negative arguments for this amendment. I have been accustomed to this kind of suggestion that, either my amendment is not in proper time, or this is not the proper place for it, or the third dimensional argument,--"I oppose it." These are the three--dimensional answers to my arguments. In reply I hold that this is the only time and the only place where I can bring forward this particular amendment; and as for opposition without reason I am of course sufficiently reasonable not to take notice of it.

The point I wanted to make is this. On a previous occasion it was suggested that the principle having been settled, it is brought up in another shape today, and so this amendment should not be taken up. I put it to you, Sir, and through you to the House, that even if one had put up this idea at the time that the general principles of the Constitution were considered, I would invite the House dispassionately to consider the point I am making now, namely that 14 or 15 months ago, when we decided upon what are called the leading principles, and nothing more than the leading principles, we were under a stress and strain, and were passing through difficult circumstances and were under influences, which, I venture to submit, deflected our judgment, unbalanced our outlook, and, therefore, we voted for and accepted ideas, which, in my opinion, were not then, and are not consistent with the idea of a true, real, working democracy, in every sphere of life. If you wish to go back on it I have nothing more to say. After 15 months we are now in a position to take a more sober, balanced, and impartial view of the situation. As such if we are true to our ideals, if we are true to the principles which we have proclaimed from the house-top, if we are true to the slogans on which we asked the old Imperialist regime to quit and yield place to the children of the soil, I put it to you, Sir, that there is nothing improper, there is nothing out of the way for me to put before the House this amendment. It is after all for the House to judge. I only want to submit to the House the considerations on which it can accept my point of view.

If the Draft before us is treated on the ground that it is something like the report of a Select Committee on a Bill coming before the House, I still say that at that stage any member would be entitled to have his say even on that ground. As I have read the rules, even at the stage of a Select Committee Report before the House, a Member can say that the entire report be sent back for reasons arising out of it, without questioning the principle of the Bill, and, in this case, of the Draft.

Thirdly, after all, the principles that you have accepted, as I have understood them, are the principles contained in the Objectives Resolution; and nothing that I am saying here involves going back upon that Resolution. The Objective principle assures us that ours is a democratic, secular, sovereign republic. That is in no way questioned by my amendment. For the rest they are matters of detail.

Having given you these three reasons against the objection that this is not the time nor the place. I would now pass on to say that, positively considered, the

President, whether you make his term three, four or five years, will be, during that period, unless he is guilty of any offence for which he can be impeached and removed, the head, not only of the Government even under your scheme, but will also embody the sovereignty of the people, as Mr. Tyagi pointed out in this House the other day.

And as representing the sovereignty of the people, in their collective capacity, at home and abroad, he must be in a position to command the confidence of the people, be they majority or minority. And I at least hold the view that the President, once elected, ceases to be a party man even as the President of this House is. So I have only suggested that the President will be the President of the whole Indian Union, who will be equally respected, equally reverenced and obeyed by every citizen, no matter whether he voted for him or not at the time of the election.

Thinking in these terms I hold that we should arm the President with the authority to say that he represents the people. It is no use telling him that there may be conflict between the Prime Minister, or the majority party in the House, and the President elected by the people. Such a conflict need not arise. The President will function only in an emergency; he will function, not ornamentally only, but in a representative capacity with the representatives of other countries. Accordingly this sort of argument would seem to be puerile namely, that you want the President to be a sort of mere gramophone of the Prime Minister. I do not want the President to be anything but the head of the State and representative of the people in their collective capacity and in their sovereignty. For this reason I hold that the President, not being a creature of party majorities in the Centre or the local legislatures but a real representative of the people, and one elected to function as the head of the State and as its representative, this fact is a conclusive argument.

In this view I may say that the possibilities of conflict between the Ministry and the head of the State, or other difficulties are, in my opinion, matters of detail, which, given good sense, given loyalty to the central theme of this constitution, given sincerity amongst you the makers of the Constitution, may be easily solved. I take the view that you will do very well to have the President elected by the adult vote, instead of by an indirect round about method. After all your Parliament is liable to be dissolved at anytime. Though a maximum term of four or five years for the People's House, is provided, there is also provision for its dissolution at any time. The local Legislatures in the States may also be dissolved. The President on the other hand will be elected for a definite period. As such he will be outside the turmoil of party passion, will be outside the momentary ups and downs--the vicissitudes of parliamentary fortunes; and will be much more likely to maintain balance, and to give a degree of stability to our Government which it may not have under party passions. Accordingly I commend this amendment and I trust it would be considered on its merits, and not on mere pettifogging points of order.

(Amendments Nos. 1054, 1061, 1067 were not moved.)

Mr. Vice-President : Amendments Nos. 1056, 1058, 1060 and 1068 are all of similar import, and can be taken together.

(Amendments Nos. 1058, 1056, and 1060 were not moved.)

Mr. Mohd. Tahir (Bihar: Muslim): Mr. Vice-President, Sir, I beg to move:

"That in clause (b) of article 43, the word 'elected' be deleted."

In this article we are going to form the electoral college for the election of the President. It has been said that the President shall be elected by members of an electoral college consisting of (a) the members of both Houses of Parliament and (b) the elected members of the Legislatures of the States. I want that the word 'elected' in (b) should be deleted. My reasons for doing so are these. In the election of the President are we going to be more democratic or are we going to be guided by some sort of imperialistic ideas? If we delete the word 'elected' I assure the House that we will be more democratic in this respect, because members of either House--they are elected or nominated--but the members as such must have equal rights and privileges so far as the business of the Legislature is concerned. Therefore it appears to be very improper that there should be a distinction between members and members. Whether a member is elected or is nominated he must have equal rights and privileges so far as the voting for the President is concerned. In this way I think we will be more democratic in our action. Therefore I submit that the amendment which I have moved may be duly considered by the House as well as by the honourable Mover and accepted. With these words I move.

Mr. Tajamul Husain (Bihar : Muslim): Mr. Vice-President, Sir, I beg to move:

"That in clause (a) of article 43, for the words `the members' the words `the elected members' be substituted."

I shall read article 43. It says: "The President shall be elected by the members of an electoral college consisting of (a) the members of both Houses of Parliament, and (b) the elected members of the Legislatures of the States". Clause (a) says that the President shall be elected by the members of both the Houses of Parliament. The Upper House has got nominated members while the lower House, the House of the People, has got only elected members. So the President, it appears from this article, will be elected both by elected members and by nominated members of Parliament. And clause (b) says that the President will be elected by the elected members of the Provincial Legislatures. I cannot understand why only the *elected* members of the Provincial Legislature are to elect him while both elected and nominated members of the Central Legislature are to elect him. This seems to me to be anomalous. Article 44 tells us how the members are to vote. There is no provision either in this article or anywhere in the Constitution as to how nominated members are to vote. There are provisions only for elected members. Therefore I think that there is some drafting mistake. That is the reason why I have moved this amendment that the word 'elected' be added in clause (a) of article 43, so that both the elected members of the Central Legislature and the elected members of the Provincial Legislatures will elect the President. There will be no nominated members voting, and there is no provision as to how a nominated member is to vote. My amendment is very simple. I have not much to say. I have no doubt the House will accept it and also that the Honourable Dr. Ambedkar will accept the amendment.

Mr. Vice-President : I am not putting amendment No. 1063 standing in the name of Dr. Ambedkar and others to vote, because it is identical with 1064 which has just been moved.

Do you accept it, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Yes, Sir.

Mr. Vice-President : Then I will not put it to vote.

An amendment to amendment No. 1064 standing in the name of Shri Gokulbhai Daulatram Bhatt was not moved as the honourable Member is not in the House.

I disallow, as merely verbal, amendments Nos. 1065 and 1066.

Shri S. Nagappa (Madras : General): I do not move amendment No. 1069, Sir.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, I move:

"That to article 43, the following explanation be added:--

`Explanation.--In this and the next succeeding article, the expression "the Legislature of a State" means, where the legislature is bi-cameral, the lower House of the legislature.' "

It is desirable that this amendment should be made, because there may be two legislatures in a State and consequently if this amendment is not made it will be open also to the Members of the Upper Chamber to participate in the election of the President. That is not our intention. We desire that only Members who are elected by popular vote shall be entitled to take part in the election of the President. Hence this amendment.

Mr. Vice-President : Mr. Mohd Tahir may now move his amendment No. 23 to this amendment.

Mr. Mohd Tahir: I beg to move:

"That in amendment No. 1070 of the List of Amendments, in the proposed explanation, for the words `the Lower House of the Legislature', the words `the Legislative Assembly of the State' be substituted".

Now, Sir, with due respect to my friend Dr. Ambedkar I am moving this amendment. In my opinion, the term `Lower House of the Legislature' has got no existence of its own. Because, we have defined 'the Legislatures' of the States not only in this draft Constitution, but also it will be found in the Government of India Act. There the Legislatures of the State have been defined either as the Legislative Council or the Legislative Assembly. We have given a particular definition for the Houses in the States, namely one, called Legislative Council and the other the legislative Assembly, in article 148 of the draft Constitution. Therefore my humble submission is that wherever we have to use a term regarding either of these Houses, we must use only the term which has been defined in our Constitution and no other.

Sir, we will now consider how the term 'Lower House' originated. I believe it originated from the fact that till now the Members of the Legislative Assembly are being elected by the common people, the general masses of the country paying 6 annas or 12 annas as chowkidari tax and so on, whereas the members of the Legislative Council are being elected by people having higher qualifications. From this difference the feeling naturally arose in the minds of the people that the Legislative Assembly is the Lower House and the Legislative Council the Upper House. This distinction I submit should not continue in our minds after achieving the independence of India. Therefore to my mind it does not appear to be fair to call the Legislative Assembly the Lower House. In no respect can the Assembly be said to be the Lower House. In respect of the number of members, the Assembly is greater than the Council. Also, the Legislative Assembly has got more powers than the Legislative Council of the States. In conclusion I submit that I base my arguments on the first point, namely that when we have given a particular definition as regards the Chambers of the States, it is in all fairness desirable that we should use only that expression namely, the Legislative Council and the Legislative Assembly and no other.

Mr. Vice-President : The article is now open for general discussion.

Shri K. Hanumanthaiya (Mysore): Mr. Vice-President, we listened with great respect to the arguments of Prof. Shah. He wants the President to be elected by adult citizens. To begin with, there is a technical difficulty. If the President is to be elected by adult citizens, every citizen gets the right to vote. Under the electoral system, the voters' list is prepared according to some rules and certain people who are lunatics, who are convicted people and who have lost their sannads are not entitled to vote. But in this term 'adult citizen' is included even citizens who are not entitled to vote at the general elections. That means that for the Presidential election those disqualified at the general election can vote, if the wording found in the amendment of Prof. Shah is adopted.

Secondly, Sir, the Constitution which is before the House has adopted the Parliamentary system of government. A Parliamentary system presupposes responsible government. The government is carried on not directly by the people but by the duly elected representatives of the people and inconsonance with that principle, the framers of this Constitution have wisely made the presidential election an indirect election, not a direct election as Prof. K. T. Shah envisages.

Thirdly, Prof. Shah wants that the President should be a non-party man. If the procedure that Professor Shah envisages is adopted, he will certainly become a party candidate. The presidential candidate who has to carry on an election campaign from one corner of the country to another will certainly be put up by some party or another and that election campaign will naturally generate party feelings and the man who is elected to the presidential office through this means will never be able to forget his party affiliations and he will not serve the purpose that Prof. Shah has in view. On the other hand, Sir, if he is elected by the members of the legislatures and the Parliament, he is more likely to be a non-party man, just as the Speaker of the Assembly or the Parliament is likely to be. Therefore, the purpose that Professor has in view that the President should be a non-party man will be better served by his being elected by the legislature and not directly by the people.

Then, Sir, Prof. Shah wants the President to be a real sovereign. That is not the intention of the framers of this Constitution. In this Constitution, the President is given the position of reigning and not ruling. The President here is more or less analogous to the King of England in the United Kingdom. If we give the President real power and make him the real executive head, the whole structure as envisaged by the Drafting Committee changes its character. This amendment does not fit into the picture of this Draft Constitution and should therefore be rejected.

Shri Biswanath Das (Orissa: General): Sir, my honourable Friend Prof. K. T. Shah, has raised a very important issue, viz., to introduce the system now in vogue in the United States of America. Sir, today in democratic countries, two different systems are working, one is the system now in vogue in the U.S.A. and the other is the Cabinet system of responsible government. We appointed a Committee, the Union Committee. This Committee, after due deliberation, weighing the *pros and cons*, all the advantages and difficulties of the working of the constitutions in various countries, have devised a system of responsibilities which is known as the system of Cabinet responsibility. Sir, the report of that Committee was adopted by the honourable Members of this House. It was up to Prof. Shah to have moved and taken a decision on this issue at that time. The Drafting Committee have only given shape to the decisions of the honourable Members of this House. It is, I am afraid, too late in the day to change the structure of our Constitution. A change in the system naturally means a change in a great many articles of this Constitution. Practically it disturbs the very basis of this Constitution. I would therefore appeal to my honourable Friend not to press his amendment. Sir, in justification of his plea, he has appealed to us to think of a President who would be a non-party man. I would plead with him that he has undertaken an impossible task. Sir, party system is the very basis of democracy. How on earth could you find a President who is a non-party man? Even the President of the United States is not a non-party man. Those who have seriously followed the working of the American Constitution and especially the last Presidential election must have come to the conclusion that it is the party system that is functioning in America. If Professor Shah thinks of a non-party President, he will have to think of something other than democracy. Sir, Turkey had a sort of non-party government but it has given it up in preference to a party system of government and elections have been introduced. You have to think of a totalitarian state if you think of a non-party President. It is impossible in the very nature of things. Therefore his plea that the President is and ought to be a non-party man does not at all appeal to me.

Sir, the whole question turns upon one issue, viz., who is going to be responsible to the people of the country with regard to the administration. A President coming through the direct vote of the people as such has an independent existence outside the sphere of the Parliament. It so happens that sometimes, as honourable Members may have seen conflicts do arise between the Parliament and the President, and it makes a smooth working of the machinery difficult. Sometimes important programmes may be upset because of these differences. Even the Parliamentary system has its own difficulties. The Parliamentary system is in vogue in very many countries. In France, difficulty was experienced with the cabinet system of government with the result that in their new constitution some modification has been made with the result that they hope that hereafter the Parliamentary executive in France will be more stable than before. Therefore it is for my honourable Friend Prof. Shah to devise ways by which this Parliamentary system of government, the Cabinet system of government will function well and properly with stability. I would appeal to him that a change in the important structure of our Constitution is not possible at this stage. We haves at long and the country is waiting for a Constitution. I would appeal to him and also to the other honourable Members of this House to see that we speed up the discussion of the Constitution and pass it as early as possible. The Union Committee have given due attention to this question, and I would appeal therefore that the article may be accepted and the amendment may be rejected.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, of the amendments that have been moved, I can only accept 1064 and I very much regret that I cannot accept the other amendments.

Now, Sir, turning to the general debate on this article, the most important amendment is the amendment of Prof. K. T. Shah, which proposes that the President should be elected directly by adult suffrage. This matter, in my judgment, requires to be considered from three points of view. First of all, it must be considered from the point of view of the size of the electorate. Let me give the House some figures of the total electorate that would be involved in the election of the President, if we accepted Prof. K. T. Shah's suggestion.

So far as the figures are available, the total population of the Governors' provinces and the Commissioners' provinces is about 228, 163, 637. The total population of the States comes to 88, 808, 434, making altogether a total of nearly 317 millions for the territory of India. Assuming that on adult franchise, the population that would be entitled to take part in the election of the President would be about 50 per cent. of the total population, the electorate will consist of 158.5 millions. Let me give the figures of the electorate that is involved in the election of the American President. The total electorate in America, as I understand--I speak subject to correction,--is about 75 millions. I think if honourable Members will bear in mind the figure which I have given; namely, 158.5 millions, they would realize the impossibility of an election in which 158.5 millions of people would have to take part. The size of the electorate, therefore, in my judgment forbids our adopting adult suffrage in the matter of the election of the President.

The second question which has to be borne in mind in dealing with this question of adult suffrage is the administrative machinery. Is it possible for this country to provide the staff that would be necessary to be placed at the different polling stations to enable the 158.5 millions to come to the polls and to record the voting? I am sure about it that not many candidates would be standing for election and they would not like non-official agencies to be employed, for the simple reason, that the non-official agency would not be under the control of the State and maybe open to corruption, to bribery, to manipulations and to other undesirable influences. The machinery, therefore, will have to be entirely supplied from the Governmental administrative machinery. Is it possible either for the Government of India or for the State Governments to spare officials sufficient enough to manage the election in which 158.5 millions would be taking part? That again seems to me to be a complete impossibility. But apart from these two considerations, one important consideration which weighed with the Drafting Committee, and also with the Union Committee, in deciding to rule out adult suffrage, was the position of the President in the Constitution. If the President was in the same position as the President of the United States, who is vested with all the executive authority of the United States, I could have understood the argument in favour of direct election, because of the principle that wherever a person is endowed with the same enormousness of powers as the President of the United States, it is only natural that the choice of such a person should be made directly by the people. But what is the position of the President of the Indian Union? He is, if Prof. K. T. Shah were to examine the other provisions of the Constitution, only a figurehead. He is not in the same position as the President of the United States. If any functionary under our Indian Constitution is to be compared with the United States President, he is the Prime Minister, and not the President of the Union. So far as the Prime Minister is concerned, it is undoubtedly provided in the Constitution that he shall be elected on adult suffrage by the people. Now, having regard to the fact, to which I have referred, that the President has really no powers to execute, the last argument which one could advance in favour of the proposition that the President should be elected by adult suffrage seems to me to fall to the ground. I, therefore submit that, having regard to the size of the electorate, the paucity of administrative machinery necessary to manage elections on such a vast scale and that the President does not possess any of the executive or administrative powers which the President of the United States possesses, I submit that it is unnecessary to go into the question of adult suffrage and to provide for the election of the President on that basis.

Our proposals in the Draft Constitution, in my judgment, are sufficient for the necessities of the case. We have provided that he shall be elected by the elected members of the Legislature of the States, who themselves are elected on adult suffrage. He is also to be elected by both Houses of Parliament. The lower House of the Parliament is also elected directly by the people on adult suffrage. The Upper Chamber is elected by the Lower Houses of the States Legislatures, which are also elected on adult suffrage. Therefore, having regard to these provisions, I think Prof. K. T. Shah's amendment is quite out of place. I, therefore, oppose that amendment.

Mr. Vice-President: I shall now put the amendments to vote, one by one Amendment No. 1051 standing in the name of Damodar Swarup Seth.

The question is:

"That for articles 43 and 44 the following be substituted:--

"The President shall be elected by means of the single transferable vote by an electoral college composed of the members of Parliament and an equal number of persons elected by the legislatures of the States on population basis under the system of single transferable vote."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1053 standing in the name of Professor K. T. Shah.

The question is:

"That for article 43, the following be substituted:--

`43. The President shall be elected by the adult citizens of India, voting by secret ballot, in each constituent part of the Union.' "

The amendment was negatived.

Mr. Vice-President : Amendment No. 1057 standing in the name of Mr. Karimuddin.

The question is:

"That for article 43, the following be substituted:--

"43. The President shall be elected on the basis of adult suffrage."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1068 standing in the name of Mr.

Mohammed Tahir.

The question is:

"That in clause (b) of article 43, the word "elected" be deleted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1064 standing in the name of Mr. Tajamul Husain.

The question is:

"That in clause (a) of article 43, for the words "the members" the words "the elected members" be substituted."

The amendment was adopted.

Mr. Vice-President : Amendment No. 1070 standing in the name of Dr. Ambedkar.

The question is:

"That to article 43 the following explanation be added:--

"Explanation.--In this and the next succeeding article, the expression "the legislature of a State" means, where the legislature is bicameral, the Lower House of the legislature."

The amendment was adopted.

Mr. Vice-President : Amendment No. 23 of List I (Fourth Week) standing in the name of Mr. Mohammed Tahir.

The question is:

"That in amendment No. 1070 of the list of amendments in the proposed explanation, for the words "the Lower House of the Legislature" the words "the Legislative Assembly of the State" be substituted."

The amendment was negatived.

Mr. Vice-President : I shall now put the article to vote.

The question is:

"That article 43, as amended stand part of the Constitution."

The motion was adopted.

Article 43, as amended was added to the Constitution.

Article 15

Mr. Vice-President : With the permission of the House, I should like to revert to an article left over: that is article 15. I have before me the proceedings of the House from which it appears--this was considered on the 6th December last--that general discussion had concluded and I had called upon Dr. Ambedkar to reply. At that time it was suggested that efforts should be made to arrive at some kind of understanding so that those who had submitted certain amendments might feel satisfied. I do not know the position now; but we cannot wait any longer. Dr. Ambedkar, will you please make the position clear? If no understanding has been arrived at, I would ask you to reply.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, I must confess that I am somewhat in a difficult position with regard to article 15 and the amendment moved by my Friend Pandit Bhargava for the deletion of the words "procedure according to law" and the substitution of the words "due process".

It is quite clear to any one who has listened to the debate that has taken place last time that there are two sharp points of view. One point of view says that "due process of law" must be there in this article; otherwise the article is a nugatory one. The other point of view is that the existing phraseology is quite sufficient for the purpose. Let me explain what exactly "due process" involves.

The question of "due process" raises, in my judgment, the question of the relationship between the legislature and the judiciary. In a federal constitution, it is always open to the judiciary to decide whether any particular law passed by the legislature is *ultra vires* or *intra* vires in reference to the powers of legislation which are granted by the Constitution to the particular legislature. If the law made by a particular legislature exceeds the authority of the power given to it by the Constitution, such law would be *ultra vires* and invalid. That is the normal thing that happens in all federal constitutions. Every law in a federal constitution, whether made by the Parliament at the Centre or made by the legislature of a State, is always subject to examination by the judiciary from the point of view of the authority of the legislature making the law. The 'due process' clause, in my judgment, would give the judiciary the power to question the law made by the legislature on another ground. That ground would be whether that law is in keeping with certain fundamental principles relating to the rights of the individual. In other words, the judiciary would be endowed with the authority to question the law not merely on the ground whether it was in excess of the authority of the legislature, but also on the ground whether the law was good law, apart from the question of the powers of the legislature making the law. The law may be perfectly good and valid so far as the authority of the legislature is concerned. But, it may not be a good law, that is to say, it violates certain fundamental principles; and the judiciary would have that additional power of declaring the law invalid. The question which arises in considering this matter is this. We have no doubt given the judiciary the power to examine the law made by different legislative bodies on the ground whether that law is in accordance with the powers given to it. The question now raised by the introduction of the phrase 'due process' is whether the judiciary should be given the additional power to question the laws made by the State on the ground that they violate certain fundamental principles.

There are two views on this point. One view is this; that the legislature may be trusted not to make any law which would abrogate the fundamental rights of man, so to say, the fundamental rights which apply to every individual, and consequently, there is no danger arising from the introduction of the phrase 'due process'. Another view is this: that it is not possible to trust the legislature; the legislature is likely to err, is likely to be led away by passion, by party prejudice, by party considerations, and the legislature may make a law which may abrogate what may be regarded as the fundamental principles which safeguard the individual rights of a citizen. We are therefore placed in two difficult positions. One is to give the judiciary the authority to sit in judgment over the will of the legislature and to question the law made by the legislature on the ground that it is not good law, in consonance with fundamental principles. Is that a desirable principle? The second position is that the legislature ought to be trusted not to make bad laws. It is very difficult to come to any definite conclusion. There are dangers on both sides. For myself I cannot altogether omit the possibility of a Legislature packed by party men making laws which may abrogate or violate what we regard as certain fundamental principles affecting the life and liberty of an individual. At the same time, I do not see how five or six gentlemen sitting in the Federal or Supreme Court examining laws made by the Legislature and by dint of their own individual conscience or their bias or their prejudices be trusted to determine which law is good and which law is bad. It is rather a case where a man has to sail between Charybdis and Scylla and I therefore would not say anything. I would leave it to the House to decide in any way it likes.

Mr. Vice-President: I shall now put the amendments one by one to vote. No. 523.

The question is:--

"That in article 15, for the words "No person shall be deprived of his life or personal liberty except according to procedure established by law" the words "No person shall be deprived of his life or liberty without due process of law" be substituted."

The amendment was negatived.

Mr. Vice-President : The question is--

"That in article 15, for the words "except according to procedure established by law" the words "due process of law" be substituted."

The amendment was negatived.

Mr. Vice-President : No. 528.

Shri S. V. Krishnamurthy Rao (Mysore): I do not press it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President: No. 530.

The question is:--

"That in article 15, for the words "procedure established by law" the words "due process of law" be substituted."

The amendment was negatived.

Mr. Vice-President : No. 526

The question is:--

"That in article 15 for the words "except according to procedure established by law" the words "save in accordance with law" be substituted."

The amendment was negatived.

Mr. Vice-President : No. 527.

The question is:--

"That in article 15 for the words "except according to procedure established by law" the words "except in accordance with law" be substituted."

The amendment was negatived.

Mr. Vice-President : I shall put the article to vote.

The question is:--

That article 15 stand part of the Constitution.

The motion was adopted.

Article 15 was added to the Constitution.

Article 44

Mr. Vice-President : We shall now take up article 44.

The motion is:--

That article 44 form part of the Constitution.

I am going to call over the amendments one by one.

No. 1071 is of a negative character and is therefore disallowed.

(Amendments Nos. 1072 and 1073 were not moved.)

Amendment No. 1074 is disallowed as being formal.

Amendment No. 1075--Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Sir, I move--

"That in sub-clause (c) of clause (2) of article 44, for the words "such member" the words "the elected members of both Houses of Parliament" be substituted."

Before proceeding to give the reasons for the amendment I would like with your permission to go back for a minute to clause (2) of this article and explain the scheme as set out in sub-clauses (a) and (b) of that clause. Honourable Members will see that the President is to be elected by elected Members of the Lower House of each State Legislature and by elected Members of both Houses of Parliament--the two to form a single electoral college. Sub-clause (1) of article 44 says that as far as practicable there shall be uniformity in the scale of representation of the different States in the election of the President. It would have been possible to achieve this uniformity by the simple method of assigning each member of the electoral college one vote. But this is not possible because of the disparity between the members of the Legislature and their ratio to population that exists between the different classes of States. In the case of States in Part I of the First Schedule, article149(3) fixes the scale of representation--one representative for every one lakh of population. In the case of States in Part III, no such scale is laid down. The scale may vary from State to State. In one State, it may be one representative for every 10,000 population. In another, it may be one for every 20,000. That being the position, the value of the votes cast in the election of the President by the members of the State Legislatures cannot be measured by the simple rule of assigning one vote one value. The problem, therefore, is how to bring about uniformity in the value of the votes cast by members who do not represent the same electoral unit. The formula adopted to obtain the value of a vote cast by an elected member of the Legislature of a State is to divide the population of that state by the total number of elected members of the Legislature of that State; and to divide the quotient so obtained by 1,000, and if the remainder is not less than 500 then add one to the dividend. This is what is stated in sub-clauses (b) and (c) of clause(2).

I now come to the amendment to sub-clause (c) which I have moved. With regard to the votes cast by members of Parliament, we are confronted by the same problem, namely, the disparity in the electoral units and consequent disparity in the value of the votes cast by them. This disparity also arises from the same causes. In the first place, the Council of States being elected by the State Legislature reflects the same disparity which exists between States in Part I and States in Part III. In the second place, there is the same disparity in the ratio of seats to population as between States in Part I and Part III in the election of members of Parliament.

There are two ways of achieving uniformity in the voting by members of Parliament. One is to divide the total number of votes capable of being cast by members of all the State Legislatures by the total number of members of all the State Legislatures and the quotient will be the number of votes which each member will be entitled to cast. The other method is to divide the total number of votes capable of being cast by members of the Legislatures of all the States by the total number of elected members of both Houses of Parliament. The first method is set out in sub-clause (c) as it stands. The second method is embodied in the amendment to sub-clause (c) which I have moved. The difference between the two methods lies in this. In the first method all members of the electoral college taking part in the election of the President are treated on the same footing in the matter of valuation of their votes. According to the second method the members of Parliament are given equal strength in the matter of voting as the members of the State Legislatures will have. It is felt that members of Parliament should have a better voice than what sub-clause (c) as it stands does. Hence the amendment.

Mr. Vice-President : No. 1076 is disallowed as being formal.

Amendment No. 1077--Mr. Mahavir Tyagi.

Shri Mahavir Tyagi (United Provinces: General): Sir, I may be permitted to move 1078 instead of 1077.

Mr. Vice-President : No. 1077 will not be put to vote. I allow 1078 to be moved.

Shri Mahavir Tyagi : Sir, I beg to move--

"That for clause (3) of article 44, the following be substituted:--

(3) The election of the President shall be held by secret ballot and in accordance with the system of majority preferential voting by the single alternative vote."

Sir, the system of majority preferential voting by the single alternative vote is the name of the method which has been envisaged in this article. Proportional representation by the single transferable vote is always as a rule used in such elections where the constituencies are plural and minorities are given the privilege of sending their representatives according to the proportion of the number amongst the electors. It is said that in Ireland the election of the President is held by single transferable vote. I submit that everything that is done else where should not be taken to be a gospel truth. From the very amendment the House will understand that while it elects only one man for one office, and there is only one office vacant which is going to be filled, the minorities cannot have any representation. It is proportional representation. How will they have a proportion in one man--that man belongs to one party. The minorities will have no proportion in that one President elected by proportional representation. Unless the constituency is plural the proportion does not come in. So it is neither proportional representation because he is a "representative"; generally speaking--in ordinary parlance--I do not know--one might be very critical and look into the dictionary--but generally speaking one representative is known as "representative". If there are more than one man then they may be known as "representation". One is not known as "representation".

Pandit Lakshmi Kanta Maitra (West Bengal : General) : What is majority preferential system?

Shri Mahavir Tyagi : I am coming to that. A single constituency for election is neither proportional because the minority does not get any proportion in one seat, Nor is it representation because representation always signifies a number of persons together, and not one person. One representative is known as representative. Therefore it is neither proportional nor representation. Nor is it a transferable vote. Transferable vote means a vote which is transferred from one person to another in the manner in which it is described in the single transferable voting system. The balance of a candidate's vote after his election, is transferred to another candidate. It is not a question of transferring the balance of votes here. There is only one candidate. The whole voting will be alternative so that if one candidate gets defeated and his name is eliminated, then the vote is altered as it is from the name of the defeated candidate; instead of the voter's first choice, the vote goes to his second choice. So this system, although it is called proportional, is not, in fact, proportional. Neither is it representation, as I have just now explained Nor is it a "single vote". As it is, every voter in the legislatures of the States will have about 99.8 or 99.7 votes. Here it is not a case of one man, one vote as is envisaged in the single transferable vote system. The total population of a state will first be divided by thousand, and the result will be further divided by the number of voters in the electoral college in the province, which means that the number of votes one member of the Assembly will cast may be about 100, never more than 100, it may be 99 point or so. I must also point out that in sub-clause (b) it is stated--

> "if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub-clause (a) of this clause shall be further increased by one;"

Here, by some clerical error probably, they have forgotten to mention what is to happen to the balance if it is less than half. Unless you mention that less than half will not be taken care of, or less than half shall be disregarded, the authorities may not disregard it. Just as in sub-clause (c) you have stated that fractions exceeding one-half will be counted as one and other fractions disregarded, so also you should have said something in sub-clause (b). Otherwise, the exact wording of this sub-clause (b) will be adhered to and each member of the legislative assembly in the Provinces and States may have not only 99 point something or 98 point something votes, but the calculation can go on to 98.0032 and so on. So a further serious defect will arise in the working of the complicated system of single transferable vote. On an average there will be 3,300 representatives of the States legislatures; and each one of them will have not only one vote, he will have so many votes. How can we call it a single transferable vote? They will not be a uniform number; one member will have 98 point something votes and in some other states it may be 80 votes only. So the number of votes each member will possess and cast will vary from State to State.

It is also not mentioned here that these so many votes with a voter will be given only to one candidate. Sir, I would very much like to draw the attention of the honourable Dr. Ambedkar to the effect of the clause as it stands at present. Each member of a legislative assembly will get a number of votes which will vary from legislature to legislature. I am sorry the honourable Dr. Ambedkar is not attentive.

Mr. Vice-President : Dr. Ambedkar, Mr. Tyagi wants to invite your attention to some points.

Shri Mahavir Tyagi : I want to invite attention to one point. The number of members in the legislatures in the provinces and States will be approximately 3,300 and.........

Shri S. Nagappa : Sir, can the honourable Member address another honourable Member? He has to address the Chair.

Shri Mahavir Tyagi : I am addressing the Chair. I want the honourable Member to pay attention to..........

Mr. Vice-President : Mr. Nagappa will kindly take his seat.

Shri Mahavir Tyagi: According to the calculations envisaged here, there will be approximately 3,300 members in the legislatures of the provinces and States. The votes they will have will not be one each. Each one of them will have as many votes as can be obtained by dividing the population of the State by one thousand, and dividing the result again by the number of legislators in the State. This means that each member will have not one vote, but as many as 98 votes or 97 votes or 80 votes and so on. How can you call such a system as single transferable vote?

I want to guard against one more defect, of which no notice seems to have been taken. You have not said that all these votes will be cast to one candidate. Suppose I am a legislator in U. P. and I have 98:5 votes and there are four candidates for one seat. You have never said that all the votes should be given by me to one candidate only. I may give 90 votes of mine to one candidate, 4 to another and 5 to a third and so on. I can thus distribute my votes to the candidates according to my choice. You have said that each elector will have about 98 votes, but you have not said that all of them will have to be cast to one candidate. That being so, how will your single transferable system stand? I would request you to look into this and please correct this clerical error. You have not said that all the votes will be given to one candidate cumulatively and that they cannot be distributed among so many candidates.

Secondly, the single transferable vote does not exist here, because nobody has a single vote, everybody has plural votes. The number of voters will be 3,300 in State legislatures and the total number of votes will be about 3,30,000. And then the same number of votes will be cast here in Parliament by 735 voters. Therefore, here every voter will have something like 460 votes. In Ireland the system of single transferable voting might suit because there each voter has one vote, but it will not suit us here because here each one does not have one vote, but so many, and the number of votes a legislator gets varies from province to province or State to State.

Now, I come to the proposal I have made. My proposal is--

"The election of the President shall be held by secret ballot and in accordance with the system of majority preferential voting by the single alternative vote."

According to this system, votes can be transferred from one candidate to another and the candidate who gets the minimum number of votes will be eliminated from the contest, and his votes will be altered and counted in favour of the next higher candidate of his choice. And this process of elimination will proceed on till there remains only one candidate in the contest. He will be declared elected. I therefore submit that my phraseology is more suitable although the method will remain practically the same. Only there is a technical difficulty which I have pointed out.

Begum Aizaz Rasul (United Provinces : Muslim): Sir, I beg to move:

"That in clause (3) of article 44, the words "in accordance with the system of proportional representation" be omitted.

My arguments have more or less been covered by the speech of the previous speaker. The object with which I move this amendment is that the first condition of proportional representation is the existence of a multiple member constituency. If only one man is to be returned then the question of proportional representation does not arise and this point has been clearly made out by Mr. Tyagi. Therefore I do not want to take up the time of the House in repeating his arguments. It might have been understood that the single transferable vote would have been beneficial in this election, because it would have meant the elimination of candidates who got the least number of votes. I will give an example of proportional representation in a constituency which is a multi-member constituency. For instance, if there are 100 voters and 5 people have to be returned and party A gets 50 votes, B gets 25 and C gets 25, in ordinary election all the candidates returned will come from Party A. Whereas in proportional representation Party A will get 3, B will get 1 and C will get 1. The idea is that the proportion of the electorate is reflected in the number of persons elected. For this it is essential that there is more than one seat but when there is only one seat how can the proportion of the electorate be represented in that seat, because one seat cannot be portioned into 3 or 2? Therefore I believe that this system of proportional representation will certainly not be correct for the election of the President and the minority as such where it is able to send in its candidate in a multiple member constituency cannot do so in a constituency which can only return one member. Hence it is that I have moved this amendment.

(Amendments Nos. 1080, 1081 and 1082 were not moved.)

Mr. Naziruddin Ahmad (West Bengal : Muslim): Sir, I propose to more amendment No. 25 on List I (Fourth Week) in place of Amendment No. 1083, because this amendment is acceptable to the honourable Member Dr. Ambedkar.

I beg to move:

"That for amendment No. 1083 in the List of amendments the following be substituted:

"That for the explanation to article 44, the following Explanation be substituted:--

"Explanation.--In this article, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.' "

This amendment really combines the purpose of amendments Nos. 1081 and 1083. Amendment No. 1081 tabled by Dr. Ambedkar wanted to get rid of the first part of the Explanation. Amendment No. 1083 which stood originally in my name really wanted to effect certain important verbal changes in the latter part of the Explanation and the amendment which I have moved combines the purposes of both these amendments.

With regard to the elimination of the first part of the Explanation, which corresponds to Dr. Ambedkar's amendment, I need not say anything. I shall confine myself to that part of the amendment with which I am concerned. In fact the House will be pleased to note that article 44 deals with the election of the President. By article 43 of the members of the Houses of Parliament at the Centre and the elected members of the Legislatures of the States are sought to be empowered to vote at the presidential election. By sub-clause (a) to clause (2) of article 44 it is provided that every member of the State legislature shall have a certain number of votes and that would be dependent upon the population of the State. But it is provided in the Explanation as it stands in the text that this population should be taken from the 'last preceding census'. I submit that the original Explanation may lead to an impasse, as for instance, when the election is going to be held the figures of the 'last preceding census' may not be available. For example if there is a census on the 1st January 1951, as it is normally expected to be, and if there is an election of the President in February or March 1951--within two or three months of the Census--the figures of 'the last preceding census' will not be available. It takes about a year to prepare and publish the census figures. Thus if we keep the phraseology of the Explanation as it is we shall be bound to assign votes to the members of the State legislature in proportion to the population as ascertained in the last preceding census, whereas the figures of the last preceding census would not be available for the purpose. The result will be that the election of the President cannot be held. In these circumstances I have suggested the amendment that we should take the population from the last preceding census 'for which the relevant figures have been published'. By these words the impasse would be avoided. If election is held within a short time of the census and the figures of that census are not available, then this amended Explanation will allow the figures of the previous 1941 census to be relied upon. That would remove the impasse which otherwise could not be avoided as we will have definite figures to go upon. In these circumstances I submit that the amendment should be accepted.

Mr. Vice-President : The article is now open for general discussion.

Prof. K. T. Shah : Mr. Vice-President, Sir, I had tabled an amendment on this clause suggesting its entire deletion which obviously was out of order, and has, therefore, been ruled out. My object in submitting that amendment however, was to point out that the whole article sets up a machinery, not only very complicated and likely to give rise to serious disputes as regards the actual number of votes which a State may be entitled to, but which will fail, I submit, in the original purpose for which proportional representation by single transferable vote was devised. Proportional representation by single transferable vote is intended, I submit, to reflect in the legislative body all the shades of political philosophy, all the different interests, all the different opinions that may be found in a country, provided they can muster a given figure, say, 50,000 or 100,000, or whatever may be supposed to be the figure, which is entitled to have its voice heard in the legislative or similar large bodies. Proportional representation, therefore, is not suited, I submit, where the election is of the executive head, and where, after all a single individual is to be elected. I agree that you can work it on a proportional basis by having several candidates, and the votes of the different candidates are transferred from one to another according to the order of preference. That, however, will bring you something to this effect, that your finally elected President was the chosen representative, in the first degree, of let us say one-third: that he was the chosen representative in the second degree about one-tenth, that he was the chosen representative in the third degree--supposing there are three candidates--of one twentieth. This is a minority representative not of a majority.

I have had some experience of Proportional representation in the University of Bombay, and I have known that preferences as low as nine, ten, twelve and fifteen have actually been counted. Do you wish your President to be elected by transfers so that the fifteenth choice of a group may eventually succeed and he would eventually be elected? He would not be the representative even of a majority in the first degree--he would be the representative of a majority by a number of transfers, so that in the first degree he may actually be the representative of a minority. This is undesirable in the interests of national solidarity.

A properly organised minority may secure a sufficient number of votes for the individual or the candidate to stay on, until by transfer, re-transfer and re-retransfer he finally secures an absolute majority. That majority will be a misleading and a highly ambiguous majority, in which the major portion of the country will not be reflected.

I further feel that the machinery necessary for transfer and retransfer of anybody who gets last on the roll, so to say, of the list of candidates above will be itself causing difficulties, compared to which the difficulties urged on a previous occasion by the mere force of numbers does not appear to me to be so great. The latter difficulty seems to me to be needlessly exaggerated--that 200 million, voters voting will make the election impossible. The 200 million voters will not all be voting at one place and at one time. That is physically impossible. But 200 million voters scattered, let us say, in 20,000 centres and each centre voting its proportion of voters is not at all a difficult thing which would rise to the level of an impossibility. We can, therefore, rule out completely the question of actual popular representation in the choice of the head of the State as impossible. Nor is the administrative machinery in my mind so difficult to provide. If only you look back to the history of representative institutions in this country, at the Centre, or in the Provinces, from only about thirty or forty years ago you will find that the electorate has, at each change, jumped eight or ten or twenty times; and that those who had held that the mere size of the electorate would make it impossible to work it have proved false prophets.

Take the last rise in the electorate form a few hundred thousands rising, to about 35 millions, a rise of some 100 times. And if a suggestion like the one I had the honour to put before the House was accepted, you would raise it only be seven or eight times. That would not be a insurmountable difficulty.

In any case the difficulty created by the system of Proportional Representation, and the reflection that the President actually may not be the choice in the first degree of a majority, would undermine the very basis of respect and reverence that the Head of the State should command.

I suggest, therefore, that the system of Proportional representation, apart from the other difficulties that have been put before the House by those who have moved amendments, should itself convince the House that it is a very dangerous--not to say vicious--principle, and as such ought to be disregarded. By all means have it, if you like, in the composition of your Legislature.

By all means have it, if you like, in the composition of other similar bodies. But when you select the head of the State, or of any unit within the Union, you should avoid the principle of Proportional Representation, as it is a double-edged sword that may cut both ways. It may represent all shades of opinion; at the same time it may bring to the head of affairs a man who is a representative in the first degree, only of a minority.

On these grounds I support the amendment that the principle of proportionate representation be deleted and that the article be amended accordingly.

Shri A. V. Thakkar (United States of Kathiawar : Saurashtra). Mr. Vice-President, Sir, I do not propose to speak on the question of proportional representation but on another point regarding the 'last preceding census'. As is well known, since the census of 1941 was taken there have been very great changes in the population of the country, particularly in certain Provinces. I would refer to the Provinces of East Punjab and West Bengal. I would also refer to the small changes in the United Provinces and Bombay. There large numbers of Hindus and Sikhs and other population have come in and added largely to the general population in those four Provinces. At the same time a large number of Muslims have left these four Provinces and gone to Pakistan. Therefore the census of 1941 has been made thoroughly unrepresentative of the numbers of people residing in these four Provinces. I would suggest that the last preceding census, namely the one of 1941, has very little value, looking at it from a common sense point of view. Government may therefore arrange to have either a new census taken for the whole country specially for the purpose of this Constitution or necessary arrangements may be made early for taking the new census of these 4 Provinces. It may be suggested that the census of 1951 may be advanced by one year, say, it may be taken in the year 1950 instead of in 1951. Or a special census may be taken only for these four Provinces which I have mentioned and the number of seats representing the population of those Provinces be determined there from. Unless this is done it will be very unfair to certain communities. I will name only one instance.

I will give the instance of the Scheduled Castes of the Punjab. Large numbers of these people residing in West Punjab have come over to East Punjab and their number has inconsequence very much increased. The number of seats that the Scheduled Castes will get--specially reserved for them--will be much fewer, being nearly one-half of what they are entitled to get under the existing population of these castes. The same thing applies to the Scheduled Castes of West Bengal also, though to a smaller extent. In East Punjab the difficulty is a very serious one. Therefore this minority would not get half its due representation if the figures of the preceding census were adopted.

Shri Rohini Kumar Chaudhari (Assam : General): *[Mr. Vice-President, on this last day of the fourth session, but not at the very closing period, of this Constituent Assembly I desire to speak in Hindi in this House. I have come to entertain this desire as a result of the visit I made a few days ago to the Hindi Sahitya Sammelan which was meeting under the Presidentship of Seth Govind Das. My friend Shri Prakasam made a speech in Hindi in the Sammelan, and it was such as to make him known for his courage in every part of the country. Indeed his speech was so very sweet and fine as to cause the spread of his fame as a man of courage in all parts of the world. It made me reflect that if Shri Prakasam, a resident of the Dec can, could make such a fine speech in Hindi there was no reason why I could not do so........]

Mr. Vice-President : Are you speaking on article 44 or any other matter?

Shri Rohini Kumar Chaudhari : *[And I concluded that I could not fail in my attempt to speak in Hindi simply because I am an Assamese.] Sir, I have exhausted my Hindi.

Mr. Vice-President : You will kindly make better use of your time.

Shri Rohini Kumar Chaudhari : My honourable Friend Mr. Thakkar Bapa, in the course of his speech, referred to the United Provinces and the Punjab. Very naturally he has forgotten Assam--In Assam, in 1941 the war was almost at the door and the census was taken in a very haphazard manner. Therefore it is all the more necessary for the province of Assam to have this amendment, which will allow us to take into consideration the relevant figures which may be arrived at just before the election, adopted. If we can have a census which will show the figures of different provinces as they now stand for the purpose of preparing the electoral rolls it will be of very great advantage. Take the case of Assam. Even the actual numbers of people who have come in as refugees to Assam from East Bengal have not yet been taken. We surmise that some 3 or 4 lakhs of people have thus come to Assam already. Therefore it is necessary that these figures should be taken into consideration at the time of fixing the total number of members for the provinces. At present, the population of Assam minus the district of Sylhet has been taken; but many from Eastern Bengal and from Sylhet have come to Assam and their figures must be taken into consideration in fixing the total number of seats for the province. This should be done also for fixing the number of seats in the electorates. Therefore I commend to this House the acceptance of the suggestion that the latest census figures may be taken into consideration at the time of delimiting the constituencies.

Pandit Lakshmi Kanta Maitra : Mr. Vice-President, Sir, article 44 with which we are dealing now provides that as far as practicable there shall be uniformity in the scale of representation based on population of the different States at the time of the election of the President. It will thus be seen that this article, innocuous as it seems, constitutes the very backbone of the working of this Constitution. This article incidentally provides for the mechanism of representation in the different legislatures constituting the units of the Indian Union. The framers of this draft Constitution have come to the conclusion that they should try to bring about a workable uniformity in the representation that is going to be given to the different States. Now, in the Explanation of this article, it has been provided that 'population' in this article means, the population as ascertained at the last preceding census. To this, Sir, an amendment has been moved by my friend Mr. Naziruddin Ahmad which runs as follows: "The latest census of which the relevant figures have been published." These words are to be put in place of the words 'the last preceding census'. I understand that this amendment is going to be accepted by the honourable Chairman of the Drafting Committee which for all practical purposes means that it will be accepted by the House. Personally speaking I do not see how this amendment at all improves the position. In my opinion it makes the position worse. Sir, anybody with commonsense can understand what 'the preceding census' means, but few can appreciate what is meant by 'the latest census of which the relevant figures have been published'.

Sir, nobody knows, after a census has taken place, when the figures thereof are going to be published. It might be one year, two years or three or four years. When an election takes place, it is quite possible, I should rather say probable--that at that particular point of time the preceding census will not give you the relevant figures because it takes a lot of time to publish them. I therefore do not see how this amendment is going to improve the position. Unless the executive government--for a census is after all the function of the executive government and is conducted under orders of the executive government--takes proper steps to see that the publication of figures follows immediately the enumeration, I believe that the safeguard that is sought to be provided by way of giving uniformity of representation is going to be in a very large measure defeated. I want this aspect to be carefully considered. It is not as simple as we think.

Let us see how it will operate to the prejudice of certain provinces, apart from the question that enumeration and publication will not follow simultaneously and there is bound to elapse an interval of a pretty long time. Sir, we had the last census in 1941. I wish that my honourable Friend, Mr. Rohini Kumar Chaudhary from Assam, who started speaking in Hindi but broke down and started again in English, could make his point clear by making a straight speech in English. He had a point to make which unfortunately he could not. There is a very important point involved in this. In provinces like Assam, undivided Bengal, undivided Punjab, Sind and the North-West Frontier Province, where there was a preponderant body of Muslim population, there was at the time of the last census of 1941, a competitive race for increasing the numbers, and in these provinces that I have mentioned, except in Assam--I am not quite sure of Assam even though in Assam also a Muslim League Government was in power--it is a fact that communities developed a pathological interest in enhancing their numbers so as to get the maximum benefit in the next succeeding Constitutional Reforms. I cannot talk of other provinces because the Muslim community there was in a minority and no Muslim League Government was in power. So far as the provinces, I have mentioned, are concerned, I can say from my personal knowledge and experience--and I think Members from these provinces will testify to the same fact--that this was the state of affairs. The Census Commissioner also made an observation to that effect. Therefore, if today the census figures of 1941 are going to be any guide for fixing the number of seats in the particular provinces I have mentioned, we will get a very misleading picture of the population of these provinces indeed. Mind you, in undivided Bengal for more than ten years before partition, the Hindu community had absolutely no voice, had nothing to do with the Government or any of its departments. In any case, they were not in any important position and the dice were heavily loaded against them. Hence we clamoured then and I do maintain even now that the figures of 1941 are in no way any index to the real population of these provinces. Now, after the 15th August 1947, some of these provinces were divided. Bengal was divided; West Bengal came within the Indian Union. East Punjab came into the Indian Union. Assam was divided and a portion was retained by Assam and a portion went to Pakistan. Sind and the Frontier in toto went over to Pakistan. Thereafter followed the terrible upheavals which everybody knows, as a result of which East Punjab came to be denuded of all Muslims and the West Punjab of all Hindus. The course of events compelled us to change the scale of representation for East Punjab and West Bengal in the present Constituent Assembly. Today the position is that you do not know if there is any Muslim soul in East Punjab or whether there is any Hindu soul in West Punjab. From Sind, I think more than seventy-five per cent. of the Hindus have already come over to the Indian Union. So far as Bengal is concerned, lakhs of people have already come over to West Bengal from East Bengal.

You might differ about the figures. Some may put it at twenty lakhs, others at thirty lakhs or at something more, but the most conservative estimate would be twenty lakhs from Eastern Pakistan due to this partition business, and the number is increasing day by day because the exodus still continues. By the time the general election under the new constitution is held, there will be a further influx and the number may swell to forty lakhs. The influx of people from East Pakistan began in 1941. When the Japanese entered the war against Great Britain, people left Eastern Bengal and came in very large numbers to West Bengal, in quest of jobs, war service, contracts and all the rest of it. Then came the disastrous Bengal famine of 1943 and again very large numbers of people moved from Eastern Pakistan to Calcutta where there was a greater chance of getting a morsel of food than in Eastern Bengal. Thus in 1943 the influx intensified-which brought in a much larger number of people than the ravages of the Japanese war. I therefore ask the Chairman of the Drafting Committee to take this fact carefully into consideration that the population of West Bengal today is not to be judged by the published and ascertained figures in the census of 1941, that it is considerably in excess of them and the excess is due to the facts I have mentioned. First, the influx commenced with the Japanese aggression. Secondly it was intensified by the famine of 1943. Thirdly it has gone beyond all proportions due to the friendly activities of our friends in Eastern Pakistan. This is continuing and will continue, I am sure, notwithstanding all that we do in the Inter-Dominion Conferences. Therefore, Sir, the net result would be that if West Bengal is to be allocated seats on the principle of uniformity based on population figures of 1941 census as envisaged in this article, it will occasion grave injustice to the province which will be hopelessly under-represented in the legislatures, both Central and provincial.

If you want to avoid this, if you want a just and fair deal to be given to the provinces of West Bengal, East Punjab, Bombay and to the City of Delhi, where vast numbers of refugees from Pakistan have come and settled and have swelled their normal population, as indicated in the census figures of 1941, the first thing that the Government should do is that, before they put into effect the Constitution in so far as it relates to the composition of legislatures, they should order an *ad hoc* census in these provinces. I understand that the usual census would be due in 1951 and I further understand that the Government of the day is not prepared to wait till then for General Election under the new Constitution. They want to expedite the election in accordance with the Constitution which will be adopted. If this decision of the Government to enforce the Constitution and to hold the General Election there under, before the year 1951 stands, it is of utmost importance that there should be a fresh census before that, and that census should be ordered here and now for the provinces of West Bengal, East Punjab, Delhi and Bombay. These are the Provinces which are greatly affected, and I hope this aspect of the question would engage the serious attention, in the first instance, of the Chairman of the Drafting Committee, who, I am sure, will realize the injustice that would otherwise be occasioned. And I trust that he would advise the Government, of which he forms an important limb, that this should be given effect to before the Constitution is put into operation.

Sir, I have on several occasions, here and elsewhere, brought this matter to the notice of the authorities. I have pleaded with them for mercy and for justice in this respect. I want the House to bear in mind the consequences that would otherwise follow. On the one hand, the Hindu community would be hopelessly under-represented in the legislatures and on the other, there is every likelihood of the Muslim community getting heavy excess of representation, if the census figures of 1941 are acted upon. This would be a grave political injustice and I caution the Government to take note of this.

Sir, I do not know whether I can really support this amendment with all my heart. As it is, I do not believe that this amendment improves the situation in any way. Anyway the whole matter is left to the House, and if the House thinks that the amendment of Mr. Naziruddin Ahmad will improve matters, I have nothing to say. Personally, I am of opinion that it does not improve matters.

Mr. Vice-President: I have here slips from four eminent members of our House. So far as I have been able to judge, the question centres round a particular amendment and I also believe that sufficient light has been thrown upon it. If honourable Members insist on their right to speak, I am willing to ask them one by one. On the other hand, if they are good enough to accept my suggestion, then the business of the House can be expedited. I am in their hands.

Many Honourable Members: A short discussion may be allowed.

Maulana Hasrat Mohani (United Provinces : Muslim): I want only two minutes, Sir.

Mr. Vice-President: Please come to the mike.

Maulana Hasrat Mohani: Mr. Vice-President, I have come here today simply to point out a very serious defect in this article and in all other sections relating to the election system that we have adopted in India, and that is this. The general procedure adopted in India and elsewhere also is that if there be only one candidate and there is only one seat, that candidate is automatically elected. I think this is a very serious defect in our system of election. In Soviet Russia even if there is only one candidate, still the election is held, as there is always a chance that a person may manoeuvre to remove the names of other rival candidates and in this way the electorate may be in a position to oppose him by a majority vote. Then it will not be on the basis that there is one candidate or one seat. I may say that I have not proposed any amendment in this Constitution because from the very beginning, I hold that this whole thing is absurd. I do not accept its authority. I regard this Constituent Assembly as not competent and therefore, I have not moved any amendment. I simply make a suggestion that something should be added by the Honourable Dr. B. R. Ambedkar and his Committee to remove this defect and adopt the same course that has been adopted in Soviet Russia. There, even when there is only one candidate, the election is still held to find out if it is not possible that the majority may be opposed to him. Even supposing there is not a sufficient number to oppose the man, I think, we are not justified in electing him automatically and taking him a selected.

Mr. Naziruddin Ahmad: With your permission, Sir, can I speak a few words?

Mr. Vice-President: I cannot break a convention which has been established after very great difficulty. Prof. Shibban Lal Saksena.

Prof. Shibban Lal Saksena (United Provinces : General) : Mr. Vice-President, Sir, I want to draw the attention of the House to one fact, to which my honourable Friend Mr. Tyagi referred. Herein, we have provided for proportional representation for the election of the President. I think that there is some mistake in this clause. Proportional representation is possible by means of the single transferable vote, but here every member will have more votes than one and they will be calculated according to elaborate and complicated calculations and I do not think that proportional representation is possible in such a case. I feel that Mr. Tyagi has rightly pointed out that the only way to elect the President in the first case can be by elimination. There should be voting and the man who gets the minimum votes should be discarded.

Then among the remaining candidates, there should again be voting and the candidate with the minimum number of votes should be discarded. In this way among the remaining two candidates, the man who gets more should be elected. That is the only way in which one man can be elected with the majority of votes. Proportional representation is not a direct method especially when every single voter in the Central Parliament will have a larger number of votes attached to him than members of the Provincial Legislature. What will happen is that the voters of the Central Legislature will give their first preferences to somebody, and similarly voters of the Provincial Legislatures will give preference to some other person and the preferences, when they are carried over to other members, are very difficult to calculate, because their ways are different. I, therefore, think that the Drafting Committee should reconsider this matter and substitute the system which I have suggested, and in that way, we can be sure that the man who is elected will have a real majority of votes and not votes which are less than 50 per cent. That I think should be one change in the article.

About the census, Sir, I also feel that there has been a great change in the population figures during the last ten years, especially in the big cities. I know in Cawn pore, the population in 1941 was four lakhs; now it is about ten lakhs. I do not know what will be the number of seats allotted to it and similar big cities. As has been pointed out by my honourable Friend, in the provinces of Punjab and Bengal, there has been a large exodus. I also know that the refugees who have come from outside, about a crore, have been distributed to all the provinces. I therefore agree with the revered Thakkar Bapa that there should be a census before the election. I must also suggest one thing. We are prepared to follow the principle of adult suffrage in the elections. We can allot seats for the first term on the basis of the number of electors in the various communities. Out of a population of 33 crores, you will have fifteen crores of voters and the seats may be distributed according to the proportion of the voters in the various communities. I think that is a better method. Either we do away with proportional representation altogether: that is one method of getting over the difficulty; still there will be difficulty in giving seats to the various provinces. I think this is a general difficulty and something should be done to remove it.

The amendment given notice of by Mr. Naziruddin Ahmad will only improve matters, if there is a census before the election takes place. If that is the purpose, I think that is a proper amendment to be accepted.

I think this system of election of the President by the different States is a proper system, when we have rejected the system of direct election. Personally, I would have preferred direct election in which every voter would have voted for the election of the President by a direct vote. Although the President has no powers, still he would have great prestige. In fact, our President will be the substitute for the King in England. If the King in England has got prestige far above the Prime Minister, I think our President should have that prestige. I think this is the only method by which you can have an election in which the voters in every province will take part. I think at least this section should be reviewed by the learned Doctor to see that the system of proportional representation is replaced by the other system that I have recommended.

Shri R. K. Sidhwa (C. P. & Berar: General): Mr. Vice-President, Sir, this article relates to two important points: one relating to the election of the President in accordance with the system of proportional representation by means of the single transferable vote, and the other about the census on the population figures on which the representation of the different States has to be fixed.

Now, I consider, Sir, that the single transferable vote system is one of the best systems that has been produced. It gives the voter first choice, second choice and third choice for the election of a candidate. But, there is one factor: the single transferable vote system would work satisfactorily when there are more than one seat. Here is a question of electing one President. Therefore, I feel that while the system is very good, it would create many difficulties and complications if we adopt the method of the single transferable vote of which we have got sufficient experience. I would have preferred the elimination system in the election of the President. That would also give the right of voting to every voter and the candidate who gets the largest number of votes will be elected. For example, if there are five candidates, the man who gets the lowest number of votes is eliminated from the list. Then, all the voters again vote among the four remaining candidates, and whosoever gets the lowest number is again eliminated. Again, the same voters vote between the remaining three. At the end, all the voters exercise their vote between the remaining two. That means, each voter exercises the right for every candidate. In the election of the President, I would personally prefer the elimination system which would be really beneficial and efficient in working. I feel that the single transferable vote system would work satisfactorily where there are more than one seat and where a small minority has also the right of being returned.

Coming to the census, Sir, this is a very important matter and I should think that the point advanced by my honourable Friend Thakkar Bapa should not be lost sight of. Many honourable members have spoken on this subject and we all know that, after the partition, the 1941 census figures in certain provinces will certainly not work satisfactorily. I will give you an illustration. In Sind, there were thirteen lakhs of people. Except two lakhs who are now there, who could not be evacuated for want of transport, there are eleven lakhs of Sindhis who are scattered over the various parts of the country. There are four lakhs of them in Bombay; about two and a half lakhs in the United Provinces. I may tell you that there are many of them in Ajmere and in the various other States. I may also tell you that forty five per cent of the population of Ajmere consists of Sind his. In Rajputana States, Jaipur, Jodhpur, there are nearly two lakhs of them. How could we rely on the 1941 census figures? Again, the 1941 census figures were defective. On account of the war, actually, the behest was issued by the then Government that the census should be taken on a very moderate scale. If you refer to the 1931 and the previous census, you will find that particulars are recorded in respect of all columns so that it gives you an idea of what our population consisted of. In the 1941 census, half the number of columns have been done away with. That had a reaction on the number of the population in the various provinces. I therefore consider it a very suicidal policy if the 1941 census is to be taken into consideration, particularly for the four or five provinces where the refugees have migrated. I do not know the real meaning of Mr. Naziruddin's Amendment. The amendment says, "the latest census of which the relevant figures have been published". Assuming that the election is to take place in 1950, the latest figures would be those of the 1941 census. When it is said that Mr. Naziruddin's amendment is going to be accepted, I would like clarification on the point what is conveyed by the phrase, "latest census of which the relevant figures have been published." The latest figures are already there of the 1941 census. I feel that before the election takes place, there should be a census, particularly for the provinces to which the refugees have migrated. Otherwise, I think a great injustice would have been done to them if for no fault of theirs they should be denied the right of voting by taking into consideration the 1941 census figures. I consider, Sir, this is a very important matter.

Mr. Naziruddin Ahmad's amendment creates complications and that requires clarification.

Shri H. V. Kamath: (C. P. & Berar: General): Mr. Vice-President, I rise to reinforce the plea that has been made by our venerable colleague. Thakkar Bapa and ably supported by our friend Pandit Lakshmi Kanta Maitra. It is common knowledge that the census of 1941 was taken under extraordinary circumstances. A World War of tremendous magnitude was on and hundreds of thousands of people were displaced from their homes and scattered not merely all over the country but all over the world. This was one fact which contributed to the incorrect enumeration of the last census of 1941. Since then we have had catastrophes and calamities in rapid succession; for four years thereafter that War raged, and in the middle of the war we had a famine and then soon after the war, we had vivisection of the country. These calamities have led to the uprooting of vast masses of the population, the destruction of large numbers of people and certainly to movements of large numbers of people from one part of the country to another. If we want to be fair at the next election and provide proper and just representation to the people, it is very necessary that there should be a correct enumeration before the elections are held.

Mr. Naziruddin Ahmad : You may have a special census. How can you proceed without figures? My attention was directed to the figures-not the 1941 census.

Shri H. V. Kamath : I do not insist upon a regular census being held before the elections but we must have the figures, not merely for the purpose of this article, but as we all know the Constitution provides for and I think we adhere to the principle of reservation for certain communities like the Scheduled Castes and the Muslims. Unless we know and we have the figures of these communities for whom reservation will be made in the legislature, how can we allot the number of seats for these communities? It is hoped in some quarters that perhaps at no distant date people who have migrated from Pakistan to India and *vice versa* may be enabled to go back, to their countries. I think it is a vain hope and I do not think the *status quo ante* will be restored in the near future. I remember, Sir, in this connection last year when the Provincial constitution was discussed here in this House, my friend Mr. Khandekar raised this point about the Scheduled Castes. He said that in 1941 the enumeration of Harijans was defective and that it was an underestimate and therefore he wanted that before the next elections there should be a re-enumeration in the whole of India. In my opinion this applies not only to Harijans but to all the communities which have got to be properly represented in the Legislature under the New Constitution. Replying to Mr. Khandekar, Sardar Patel, if I remember aright, though he did not make any promise, but he assured Mr. Khandekar and others of his way of thinking that this point will be duly borne in mind and considered and that before the elections we would try our best to arrive at correct figures for the population of the various communities in this country. My friend Mr. Algu Rai Shastry the other day referred to the non-representation of Sindhi Hindus in this Assembly. It is a great anomaly that though, after the partition the East Punjab non-Muslims or Hindus and the West Bengal Hindus have been re-presented---their re-presentations have been increased after the movement of these people from West Punjab to East Punjab and from East Bengal to West Bengal,--Sind has gone by default. Sind is now represented neither in this House nor in the Pakistan Constituent Assembly. They have lost the one seat which was allotted to them, because the Hindus that have migrated from Sind to India are scattered. Some are in Bombay, some are in C.P. and I do not know where the others are scattered, and therefore it is difficult for any Provincial Assembly to elect any Sindhi as from that province because under our representation system, there must be at least 10 lakhs of people for one representative in this Assembly. But whatever that may be, we ought to have the enumeration of all these masses of people who have migrated either from Sind or West Punjab or East Bengal or the Frontier to India, prior to the next elections. Unless we have a correct record of all these movements of very large numbers of peoples, almost unparalleled in our recent history, it will be unfair and unjust to the people of our country to hold elections before the correct enumeration is made, if not by the regular census, at least by an *ad hoc* census as my friend suggested.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I accept the amendment No. 25 of List 1 to amendment No. 1083 moved by my friend Mr. Naziruddin Ahmad. The other amendments I am sorry, I cannot accept. Now, Sir, in the course of the general debate, two questions have been raised. One is on the amendment of Mr. Naziruddin Ahmad. It has been pointed out by various speakers that it would be very wrong to base any election on the last census *viz.*, of 1941. I am sure there is a great deal of force in what has been said by the various speakers on this point. It is true that the 1941 census was in some areas, at any rate, a cooked census; a census was cooked by the local Government that was in existence, in favour of certain communities and operated against certain other communities. But apart from that, it is equally true that on account of the partition of India there has been a great change in the population and its communal composition in certain provinces of India, for instance, in the East Punjab, Bombay, West Bengal and to some extent in U. P. also. In view of the fact that the Constitution provides for representation to various communities in accordance with their ratio of population to the general population, it is necessary that not only the total population, of every particular province should be ascertained but that the proportion of the various communities to which we have guaranteed representation in accordance with their population should also be ascertained before the foundations of the Constitution are laid down in terms of election.

I have no doubt about it that the Government will pay attention to the various arguments that have been made in favour of having a true census of the people before the elections are undertaken. If I may say so, one of the reasons which persuaded me to accept the amendment of my friend Mr. Naziruddin Ahmad is that he used the word 'latest' in preference to the word 'last' . I thought that the word 'last' had a sort of a local colour in the sense that the last census may mean the periodical census which is taken every ten years; and the last census means the census taken before any operation of election is started.

Mr. Naziruddin Ahmad : I did not use those words. I said the last preceding census.

The Honourable Dr. B. R. Ambedkar : Anyhow, I did not pay much attention to what he said. But that certainly is my idea, that this clause shall not prevent the Government from having a new census before proceeding to have elections for the new legislature. I think that should satisfy most Members who have an apprehension on this point.

Shri Mahavir Tyagi : May I take it that you give an assurance that such a census will be taken ?

The Honourable Dr. B. R. Ambedkar : I cannot possibly give an assurance. But no government will overlook the vast changes that have taken place in the composition and the total population of the different provinces. We have guaranteed representation to a great population consisting of various minorities. There has been a great deal of debate, as honourable Members know, over the question of weight age, and we know that weightage has been disallowed. If we now have the elections and allow them to take place and the seats to be assigned on the existing basis of population, when as a matter of fact, that basis has been lost by migrations, it might result in weightage to various communities, and no representation to certain communities. Obviously in order to avoid such a kind of thing and to see that no community has any weight age, undoubtedly, government will have to see that the census is a proper census.

Pandit Lakshmi Kanta Maitra: I want to know whether the honourable Member means that no election under the new Constitution should be held unless this census was taken.

The Honourable Dr. B. R. Ambedkar : Well, it seems to me only a natural conclusion, because the seats for the elections cannot be assigned unless the populations of the various communities are ascertained. Therefore, that seems to me the logical conclusion, and a new census will be inevitable.

The other question that was greatly agitated by Mr. Tyagi and by Begum Aizaz Rasul and certain other members related to the election of the President. Now, there are two ways of electing the President. One way is to elect him by what is called a bare majority of the House. If a man got 51 percent., he would be elected. That is one way of electing the President and that is the simple and straightforward one. Now, with regard to that, it may just happen that the majority party would be in a position to elect the President without the minority party having any voice in the election of the President without the minority party having any voice in the election of the President. Obviously no Member of the House would like the President to be elected by a bare majority or by a system of election in which the minorities had no part to play. That being so, the election of the President by a bare majority has to be eliminated, and we have to provide a system whereby the minorities will have some voice in the election of the President. The only method of giving the minorities a voice in the election of the President is, so to say, to have separate electorates and to provide that the President must not only have a majority but he must have a substantial number of votes from each minority. But that again, seems to me, to be a proposition which we cannot accept having regard to what we have laid down in the constitution, namely, that there shall be no separate electorates. The only other method, therefore, that remained was to have a system of election in which the minorities will have some hand and some play, and that is undoubtedly the system of proportional representation, which has been laid down in the Constitution.

Mr. Naziruddin Ahmad : There is to be transferability. How can there be proportional representation when there is only one man to be elected?

The Honourable Dr. B. R. Ambedkar : I really cannot go into this question in detail. To do so I will have to open a class and lecture on the subject; but I cannot undertake that task at this stage. However, it is well-known and everybody knows how the system works.

Mr. Vice-President : These interruptions show that some Members are not aware of the true nature of proportional representation. You need not pay attention to these interruptions.

Maulana Hasrat Mohani: What are you going to do if there is only one candidate?

The Honourable Dr. B. R. Ambedkar : If there is only one candidate, he will be elected unanimously (Laughter), and no question of majority or minority arises at all.

The other question asked by Mr. Tyagi was whether there was any procedure for eliminating candidates.

Shri Mahavir Tyagi : On a point of information, Sir.

The Honourable Dr. B. R. Ambedkar : No I cannot yield. I am answering your point. Your point was whether there was a process of elimination in the point before me is that I want that the election of the President or the General representation involves elimination. Otherwise it has no meaning. The only thing that we have done is that instead of having several proportional representations, we have provided one single proportional representation, in which every, candidate at the bottom will be eliminated, until we reach one man who gets what is called a "quota"

Shri Mahavir Tyagi : But in the Parliament the system of alternative votes is adopted.

The Honourable Dr. B. R. Ambedkar : Alternative is only another name for proportional.

Sir I have nothing further to say on this point.

Shri Mahavir Tyagi : Sir, I want to know........

Mr. Vice-President : Mr. Tyagi, my difficulty is I cannot compel the Chairman of the Drafting Committee to answer your questions. Neither can I compel him to clarify your doubts.

I am going to put these amendments, one by one to vote.

I put amendment No. 1075 to vote.

The question is:

That in sub-clause (c) of clause (2) of article 44, for the words "such member" the words "the elected members of both Houses of Parliament" be substituted.

The amendment was adopted.

Mr. Vice-President : No. 1078. The question is:

That for clause (3) of article 44, the following be substituted:

"(3). The election of the President shall be held by secret ballot and in accordance with the system of majority preferential voting by the single alternative vote."

That amendment was negatived.

Mr. Vice-President: No. 1079. The question is:

That in clause (3) of article 44, the words "in accordance with the system of proportional representation" be omitted.

That amendment was negatived.

Mr. Vice-President : The question is:

That for the Explanation to article 44, the following Explanation be substituted:

"Explanation.--In this article, the expression 'population' means the population as ascertained at the last preceding census of which the relevant figures have been published.

The amendment was adopted.

Mr. Vice-President:-- The question is:

"That article 44, as amended, stand part of the Constitution."

The motion was adopted.

Article 44, as amended, was added to the Constitution.

ARTICLE 45

Mr. Vice-President : The honourable Member concerned may move amendment No. 1084. I would like honourable Members to be as brief as possible, in which case we would be able to get through the article before the House concludes its deliberations today. But that does not mean that I am asking anybody not to speak or to omit important points which they might like to make.

Shri T. T. Krishnamachari : Sir, the honourable Member's amendment is substantially the same as the article, and deals only with the substantive part of the clause and not with the proviso. Is there any object in the honourable Member moving his amendment?

Mr. Mohd. Tahir: There is a difference in the meaning of the amendment and the article, and I shall explain how.

The Honourable Dr. B. R. Ambedkar : It is not an amendment at all: it is merely a transposition of the words. There is no difference at all.

Mr. Mohd. Tahir: There is some difference...

Mr. Vice-President : I do not want to stand in the way of any honourable Member but there does not seem to be much in this amendment. However, the honourable Member may move it.

Mr. Mohd. Tahir: Sir, I beg to move:

That for the substantive part of article 45, the following be substituted:--

"The term of office of the President shall be five years from the date the President enters upon the Office."

The point was raised now that between the article as it stands and the amendment there is no difference. First I will deal with the article as it stands. It says "The

President shall hold office for a term of five years from the date on which he enters upon his office". Supposing the election of the President takes place in 1950 after the general election and the constitution of the Parliament, if there is a casual vacancy in the office of the President in 1951 or 1952, in that case the President will be holding office for five years, that is he will have the office from 1951 to 1955, whereas the Parliament which was constituted in 1950 ends in 1954. My amendment means that the term of office of the President will be for five years, which means that if there is any casual vacancy or the election of the President takes place in 1950 and then there is a casual vacancy in 1951, the office of the President who will be elected in the casual vacancy will end in 1954, that is the term of five years when the Parliament ends. This is the difference which I have made out in my amendment of the article as it stands.

The question now arises as to why I have moved this amendment. The only point before me is that I want that the election of the President or the General election should not be influenced by any authority in power. The election must always be free and democratic. For instance, if a man is elected as President in the casual vacancy and he continues in office after the term of the Parliament ends at the Centre, it follows that the man who will remain in office as President will easily influence the General election as well as the election of the President. I want, Sir, that there should be no influence on the general election or on the election of the President in any case and therefore if the article as it stands means that the President who is elected in a casual vacancy will also hold office only for the remaining term of five years, that is to say his office will run according to the term of the Parliament, then of course I am not going to press my amendment. But in case it means that the term of Parliament will end and the office of the President will continue, then surely my amendment will stand and I will press it. With these words I move and I hope the position will be made clear.

(Amendment No. 1085 was not moved.)

Mr. Vice-President : Amendment No. 1086 is disallowed as it is a verbal amendment.

Amendments Nos. 1087 and 1088 are identical. Dr. Ambedkar may move No. 1087.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

That in clause (a) of the proviso to article 45, for the word "resignation" the word "writing" be substituted.

Mr. Mohd. Tahir: Mr. Vice-President, Sir, I beg to move:

That in clause (a) of the proviso to article 45, for the words "Chairman of the Council of States and the Speaker of the House of the People" the words "members of the Parliament" be substituted.

I will not be very long. I only wish to submit that if the President, who has been elected by the members of the Parliament, wants to vacate his office by resigning his post, in all fairness it is desirable that he should address his resignation to the members of the Parliament and not to anyone else. The resignation letter may be handed over to the office, namely to the Speaker or to the Chairman of the Council of States, but he must address his resignation to the members of Parliament who elected him as President and to none else.

Mr. Vice-President: The next amendment is No. 1090 standing in the name of Mr. B. M. Gupte with an amendment to it by himself (No. 26 in List I. Fourth Week).

Shri B. M. Gupte (Bombay: General): I desire to move the amendment in a slightly modified form. The modification is only formal. It is with regard to the re-arrangement of the clause. I seek your permission and that of the honourable House to move it in the revised form.

Mr. Vice-President : Does the House give permission to Mr. Gupte to move his amendment in a slightly different form? Of course it is not possible at this hour to supply copies of this to all the Members. So Mr. Gupte may read the original and the altered forms of the amendment.

Honourable Members : Yes.

Shri B. M. Gupte: Sir, I beg to move:

That for amendment No. 1090 the following be substituted:--

(1) Article 45 be re-numbered as clause (1) of that article.

(2) In clause (a) of the proviso to the said clause as so re-numbered for the words "Chairman of the Council of States and the Speaker of the House of the People" the word "Vice-President" be substituted.

(3) In the said article as re-numbered add the following clause:--

"(2) Any resignation addressed to the Vice-President under clause (a) of the proviso to clause (1) of this article shall forthwith be communicated by him to the Speaker of the House of the People."

Sir, the clause as it stands in the Draft Constitution provides that the resignation shall be addressed to two persons, namely, the Chairman of the Council of States and the Speaker of the House of the people. This is obviously inconvenient. It is therefore better that provision should be made that one person should receive the resignation and be responsible to set the machinery in motion to fill the vacancy. And that person is most properly the Vice-President. I have therefore provided that the Vice-President should receive the resignation. But at the same time it is desirable that the Speaker of the House of the people should also know it, and therefore by a subsequent clause I have provided that the Vice-President shall forthwith communicate this fact of resignation to the Speaker of the House of the people. I therefore hope the amendment will be acceptable to Dr. Ambedkar and to the House.

Mr. Vice-President : Does Mr. Kamath wish to move his amendment to this (No. 27 of List I. Fourth week)?

Shri H.V. Kamath : No. That has been covered by the amended amendment just now moved by Mr. Gupte.

Mr. Naziruddin Ahmad : Sir, I beg to move:

That for the words "House of the People" in paragraph (a) of the proviso to article 45 and in all the other places where these words occur, the words "National Congress" be substituted.

Sir, in the future Constitution there will be two Houses at the Centre; the popular House would be called the House of the People and the Upper House will be called the Council of States. My proposal is that the popular House should be named after the National Congress which has been largely instrumental in obtaining freedom for this country.

Shri T. T. Krishnamachari : But actually the Congress still exists.

Mr. Naziruddin Ahmad : I want to perpetuate the name of the National Congress and want it to be assimilated in the Constitution itself.

Mr. Vice-President : I think you need not take up the time of the House.

Mr. Naziruddin Ahmad : I shall be very very brief. The struggle for independence has been going on for the last sixty years or more and it is to culminate in the session of the Congress in Jaipur under the presidency of Dr. Pattabhi Sitaramayya. I submit that the struggles and the services of the National Congress be recognized officially and the popular House be named after it.

I have the American precedent where the Legislature is called the Congress I have chosen, however, here to give that name to the popular House which really represents the will of the people. I believe it is an amendment based on sentimental grounds.

Maulana Hasrat Mohani : Are you a member of the Congress?

Shri S. Nagappa : He wants to be now.

Mr. Naziruddin Ahmad : It does not require one to be a member of the Congress to recognize or admit facts.

Mr. Vice-President : I beg of you to remember that we have only twenty minutes left.

Mr. Naziruddin Ahmad : Sir, I submit that on sentimental grounds alone the amendment should be accepted. In fact the culmination of today's independence represents the blood, toil, tears and the sweat of the Indian National Congress.

Mr. Vice-President : Does Mr. Kamath wish to move amendment No. 1092?

Shri H. V. Kamath : Here also I have been forestalled by Mr. Gupte and so it does not arise.

(Amendments Nos. 1093 and 1094 were not moved.)

Giani Gurmukh Musafir : (East Punjab : Sikh): *[Sir, My amendment is:

That in clause (b) of the proviso to article 45 after the words "violation of the constitution" the words "or of law" be inserted.

In relation to the President clause (b) says--"The President may for violation of the Constitution be removed from office by impeachment in the manner provided in article 50 of this Constitution".

After the words 'violation of the constitution' it is very necessary to add the words 'or of law'. The President should be impeached not only for the violation of the Constitution but he should be treated in the same manner for the violation of law too.]

Mr. Naziruddin Ahmad : I beg to move:

That in proviso (c) of article 45, after the word 'term' the words 'or resignation as the case may be' be inserted.

By this proviso, the President shall continue in office, notwithstanding the expiration of his normal term of his office, till his successor enters upon his office. I want to make the proviso to apply when he resigns before his normal term expires. This amendment is practically a drafting amendment worthy of consideration:

Mr. Vice-President: As no Member has desired to speak on the general discussion of this article, I propose to ask Dr. Ambedkar to reply to the debate. I have received a slip requesting for an opportunity to speak just now. It has come too late.

The Honourable Dr. B. R. Ambedkar : Sir, the only amendment that I accept is No. 1090 as amended by Mr. Gupte's amendment. The others I am sorry I cannot accept. There has been no point raised by any Member which requires any explanation.

Mr. Vice-President : I am going to put the amendments to vote.

The question is:

"That for the substantive, part of article 45, the following be substituted:--

'The term of office of the President shall be five years from the date the President enter upon the Office.' "

The amendment was negatived.

Mr. Vice-President : Now, the question is--

That in clause (a) of the proviso to article 45 for the word 'resignation' the word 'writing' be substituted.

The amendment was adopted.

Mr. Vice-President : The question is--

That in clause (a) of the proviso to article 45, for the words 'Chairman of the Council of States and the Speaker of the House of the People' the words 'members of the Parliament' be substituted.

The amendment was negatived.

Mr. Vice-President : Now I shall put amendment No. 1090 as modified by amendment No. 26(A) standing in the name of Shri B. M. Gupte to the vote of the House.

The question is:

That--

(1) Article 45 be re-numbered as clause (1) of that article.

(2) In clause (a) of the proviso to the said clause as so re-numbered for the words 'Chairman of the Council of States and the Speaker of the House of the People' the word 'Vice-President' be substituted.

(3) In the said article as re-numbered add the following clause:--

> "(2) Any resignation addressed to the Vice-President under clause (a) of the proviso to clause (1) of this article shall forthwith be communicated by him to the Speaker of the House of the People."

The amendment was adopted.

Mr. Vice-President : The question is:

That for the words 'House of the People' in paragraph (a) of the proviso to article 45 and in all the other places where these words occur, the words "National Congress" be substituted.

The amendment was negatived.

Mr. Vice-President : The question is--

That in clause (b) of the proviso to article 45, after the words 'violation of the Constitution', the words 'or of law' be inserted.

The amendment was negatived.

Mr. Vice-President : The question is--

That in proviso (c) of article 45, after the word 'term' the words 'or resignation as the case may be' be inserted.

The amendment was negatived.

Mr. Vice-President : The question is--

That Article 45, as amended, stand part of the Constitution.

The motion was adopted.

Article 45, as amended, was added to the Constitution.

Mr. Vice-President : It is now a quarter past one.

Shri T. T. Krishnamachari : The next article has only one small amendment.

Article 46

Mr. Vice-President : We shall now take up the next article. Article 46 is now before the House for its consideration.

As amendment No. 1097 is for the deletion of the article I disallow it.

The amendment of Professor Shibban Lal Saksena to this amendment falls as the main amendment has been ruled out.

Shri Krishna Chandra Sharma (United Province : General) : Sir, I move:

That in article 46 the words 'once' , but 'only once' be deleted.

My amendment is a very simple one. It is to the effect that if a capable and efficient man is available, why should he not be allowed to serve a second term by seeking re-election and giving the benefit of his service to the nation as long as he is efficient and capable of service.

(Amendment No. 1099 was not moved).

Shri H. V. Kamath : Mr. Vice-President, I move:

"That in article 46, after the words 'only once' a comma and the words `but he shall not be so eligible if he has been removed from office by impeachment in the manner provided in article 50' be added."

Even considering as the article as it stands, I think this amendment is to a certain extent necessary, purely for the purpose of clarifying the content of the article. But now, in view of the amendment moved by Shri Krishna Chandra Sharma, it is necessary for us to make this absolutely clear. It is likely that, in case Mr. Sharma's amendment is accepted, a person may contest the election again for the presidentship some years after his first or second term. It may be said against this amendment that the party nominating a candidate will certainly not nominate a person who has been removed from office by impeachment. But, considering that public memory is so short and even party memory is short, and there have been instances in various countries of the world where men who have been accused and impeached for corruption and other nefarious practices have been able to fill some office or other at a later date when people had forgotten the past such a provision becomes necessary. Such things have happened in many countries and it is not unlikely that such a thing may happen here also--God forbid--when party memory being short one cannot completely exclude the possibility of some person who has been guilty of corruption or other misdemeanor being put up to contest the election many years later. Therefore it is only to clarify the whole content of this article that a person who has been impeached cannot stand for election at any time say, 5,10 or 20 years later that I have moved this amendment. It is necessary to lay down that even though people may forget or overlook the fact that a person had been impeached and removed from office, he should not have the right to contest the election for the President ship of the Indian Union.

Shri Mahavir Tyagi : Sir, the amendment that I am moving is a very simple one. I move--

"That the following proviso be added to article 46:--

'Provided that it will not apply in the case of a Vice-President who holds or who has held such office only temporarily in an acting capacity.' "

The article deals with the admissibility of the President holding office a second time. My point is that a Vice-President who holds or who has held such office only temporarily in an acting capacity should not be debarred from standing for election to Presidentship twice. Of course, if "officiating" by the Vice-President is not considered as holding office or some such meaning is given, then my amendment will not be necessary. Either Dr. Ambedkar may accept my amendment or he may please clarify this point in his speech.

Mr. Vice-President : Even though this article is a very small and simple one, many honourable Members want to speak. I do not want to prevent them from speaking but I would request them to withdraw their slips. If they insist on making their speeches before an already tired House, I am quite certain that what they may urge will not be taken into consideration. This is my view but I may be wrong.

Honourable Members : We will draw our request to speak.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I am prepared to accept the amendment of Mr. Sharma, i.e., No. 1098, for the deletion of the words "once, but only once".

With regard to Mr. Kamath's amendment, I think the proper time when this matter could be discussed will be when the issue as to the qualifications of the person standing for Presidentship is raised.

To Mr. Tyagi I may say that in view of the deletion of the words "once, but only once", his fears about the Vice-President are groundless.

Mr. Vice-President : I shall now put the amendments one by one to the vote. Amendment No. 1098. The question is:

"That in article 46 the words 'once, but only once' be deleted."

The amendment was adopted.

Mr. Vice-President : Then amendment No. 1100.

Shri H. V. Kamath : In view of Dr. Ambedkar's statement, I do not want to press it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President : Then Mr. Tyagi's amendment. It does not arise after Dr. Ambedkar's speech, but some pandit of technicalities might say that I did not put it to the vote. So I want to know if Mr. Tyagi withdraws it or not.

Shri Mahavir Tyagi: Sir, I withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President : The question is:

That article 46, as amended, form part of the Constitution.

The motion was adopted.

Article 46, as amended, was added to the Constitution.

Mr. Vice-President: There has been a suggestion that the House should be adjourned for a few days for reasons which must be known to you all. Under the rules as they stand at present, the presiding officer does not have the power to adjourn the House for more than three days. Now I ask the House to permit me to adjourn the House for fourteen days, i.e., till 10 A.M. on Monday the 27th December.

Shri T. T. Krishnamachari : Sir, a proper motion may be moved that the House may be adjourned for fourteen days.

Mr. Vice-President : I do not care how you bring it about. If what you suggest is the procedure, I am quite willing and a resolution may be brought forward in that form.

Shri Satyanarayan Sinha (Bihar: General): You can ask the House whether it is agreeable.

Mr. Vice-President : Is the House in favour of adjourning for fourteen days?

Honourable Members : Yes.

Mr. Vice-President : The House stands adjourned till 10 A.M. on Monday the 27th December.

The Assembly then adjourned till Ten of the Clock on Monday the 27th December 1948.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME VII

Monday, the 27th December, 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

Mr. Vice-President (Dr. H. C. Mookherjee): I have just received a letter from our President informing me that he has improved greatly, but there has been a slight relapse, which has compelled him to take a few days' rest. He, however, hopes to be here by the beginning of next year and to conduct the proceedings of the House on and from the 3rd of January next. I am sure the House will allow me to convey to him the greetings of the Season and along with that to assure him that we shall do our best to make as much progress as possible, so as to lighten his work. Is that the wish of the House?

Honourable Members : Yes, yes.

DRAFT CONSTITUTION -(Contd.)

Article 47

Mr. Vice-President : We shall now resume our discussion and start with article 47.

(Amendments Nos. 1102 and 1103 were not moved.)

Amendments Nos. 1104, 1105 and 1106 are of similar import; Amendment No. 1104 may be moved.

(Amendments Nos. 1104, 1105, 1106 and 1107 were not moved.)

Amendment No. 1108 is by Prof. K. T. Shah. I shall draw his attention to the last sentence of the new sub-clause, i.e., sub-clause (d) proposed to be added by this amendment. He may please compare it with clause (1) of article 47. It is for him to decide.

Prof. K. T. Shah (Bihar : General): Clause (1) of article 47 gives some positive qualifications. What I propose to move is somewhat of a negative character, and therefore I thought that the two can go together.

Mr. Vice-President : All right.

Prof. K. T. Shah : Sir, May I move?

Shri T. T. Krishnamachari (Madras : General) : May I point out that the latter part of this amendment is already barred. We have already accepted article 46 in an amended form, by which the President can be elected *ad infinitum*, any number of times. So the latter part of his amendment is barred and cannot be moved.

Mr. Vice-President : Have you heard what the honourable Member has said?

Prof. K. T. Shah : I have heard that, Sir. If I may again make a submission, that reaffirms the same thing. I do not see how it is finally passed.

Mr. Vice-President : I do not want to put any kind of stop to what you want to say, but it does seem to me that it is not needed. But I do not want to impose my will on you.

Prof. K. T. Shah : Sir, I quite realize that this new change in article 46 affects the latter portion and therefore, I will not move that portion. The other portion still remains and if you will permit me, I will move the other part.

Mr. Vice-President : Yes.

Prof. K. T. Shah : Sir, I move:

"That after sub-clause (c) of clause (1) of article 47, the following new sub-clause be added :

> '(d) and is not disqualified by reason of any conviction for treason, or any offence against the State, or any violation of the Constitution';"

The amended clause would then read:

"No person shall be eligible for election as President unless he--

> (a) is a citizen of India,
>
> (b) has completed the age of thirty-five years; and
>
> (c) is qualified for election as a member of the House of the People;
>
> (d) and is not disqualified by reason of any conviction of treason, or any offence against the State, or any violation of the Constitution."

As I just now mentioned, these amendments that I would like to introduce put emphasis on the negative side, or disqualifications, as against the positive side of qualification referred to in clauses (a), (b) and (c). I submit, of course, to the judgement of the House in having deleted the restriction included in the original draft of article 46, namely that no one should hold office as President once again. I regret, of course, that that should have commended itself to the good sense of the House, for I fear that the possibility of holding in unlimited succession the office of the President is apt to lead to undersirable consequences, on which one need not now dilate. Sir, you remember that the foundation or rather the destruction of the Republic of Rome was inaugurated by the life consulship of Caesar, which afterwards ended in a hereditary empire. But, as I started by saying, now that the House has in its wisdom, found that it is undesirable to introduce this restriction, I will submit to the good sense of the House, and not insist on the latter part of my amendment.

Even so, the qualifications that I have introduced in my amendment need, I think, to be positively or specifically stated. It is no use saying that all this is understood; and that no one with common sense would like to have any one as President who has been guilty of treason, or who has violated the Constitution. Many things, Sir, are matters of common sense which, under unknown conditions of the future or party passions, and in the heat of the election fever, may be found to be so completely ignored or extenuated that all those disqualifications may be forgotten.

The inclusion, therefore, of this categoric disqualification is a safeguard for the free and honest working of the Constitution, which, I think, should be acceptable to this House.

The disqualification in regard to treason is particularly important, because now that precedents have taken place in such matters, even as trial of defeated enemies for the so-called war crimes, you might begin to feel that whatever you may have done in perfect good conscience may nevertheless be found to be a penalty of your defeat under the influence of party passions, and as such may be liable to charges or accusations against which, in the prevailing atmosphere, there may be no defence, or no possibility of effective safeguard.

Fearing this I desire to leave no room for any doubt at all on the subject. Let the Constitution itself from the start make this particular point clear, that any one convicted of treason must be disqualified for being elected President. To me it seems that there could be no objection to this amendment being accepted; and though perhaps this is in a milder form, I personally hold the sin of violating the Constitution equally serious, and certainly consider that also ought to be made a disqualification for any future candidature in regard to President ship.

The later clauses will show that you have provided very effective safeguards for convicting any one as regards violation of the Constitution. If under those safeguards, with due process of law and fair administration of justice, a party has been properly convicted of violating the Constitution in any serious particular, then I think that in itself ought to be a bar against the candidature of any such party. On those grounds I think the drafter of the Constitution should accept this amendment, and that it ought to be included in the Draft in order that anybody who is guilty of treason, or who has been guilty of violating the Constitution, should be excluded.

I commend this to the acceptance of the House.

Mr. Vice-President : Amendment No. 1109. Verbal; disallowed. Amendments numbers 1110 to 1112 are of similar import. The first of these may be moved. It stands in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Mr. Vice-President, Sir, I move:

"That in clause (2) of article 47, and in Explanation to clause 2, for the words 'any office or position of emolument', wherever they occur, the words 'any office of profit' be substituted."

Sir, this amendment is merely intended to improve the language of the draft.

Mr. Vice-President : Amendment No. 1111. Should that be put to the vote?

Shri H. V. Kamath (C. P. & Berar : General) : Dr. Ambedkar has stolen a march over me; this does not arise.

Mr. Vice-President : Amendment No. 1112.

Shri Mihir Lal Chattopadhyay (West Bengal : General) : That is already covered, Sir.

(Amendment No. 1113 was not moved.)

Mr. Vice-President : Amendments numbers 1114, 1115 and 1116 are verbal and are disallowed.

Amendment No. 1117, Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for sub-clause (a) of the Explanation to clause (2) of article 47, the following be substituted:-

> '(a) he is the Governor of any State for the time being specified in Part I of the First Schedule or is a Minister either for India or for any such State ; or' "

The object of this amendment is to remove a disqualification that might arise on account of the fact that a Governor of a State or a Minister is holding an office of profit under the Crown. It is desirable that the Governor of a State as well as a Minister both at the Centre and in the States should be permitted to stand for election and the rule of office of profit under the Crown should not stand in their way.

(Amendment No. 1118 was not moved.)

Mr. Vice-President : Amendments numbers 1119 to 1122 are verbal and are disallowed.

(Amendment No. 1123 was not moved.)

Amendment No. 1124.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move.

"That after clause (b) of the Explanation to clause (2) of article 47, the following be added:-

> 'provided that any such Minister shall, before offering himself as candidate for such election, resign his office'."

Sir, I am sure it could not have been intended by the draftsmen that a person in the position of a Minister should continue to be a Minister, and yet offer himself as a candidate. This is one of the items which to me appear to be a matter of commonsense and as such should be accepted; but, of course, where an extraordinary sense prevails, commonsense may not get a chance. I would therefore, like to point out that there is a great danger in a Minister holding the Minister ship, and yet offering himself as a candidate, and resorting to, or his workers and canvassers resorting to practices, which cannot but be condemned under any same system of constitutional Government. Accordingly, that ought to be prohibited by the fundamental constitution.

It is in order to guard against this danger that I would provide, in the Constitution itself, that any Minister, if he chooses to be a candidate for any such office, should first resign his post and offer himself like any other ordinary citizen, for this honour. Whatever he has gained by way of influence, whatever he has previously acquired by way of prestige, connection, etc., will still remain to him; they would not be lost to him. They may be an asset to him. But, let him not be at all liable to the suspicion that continuing in office, he is able to, even if he does not actually do so, utilise his office and position of influence in order to get elected or get more votes. That, I repeat, is a matter of serious import to the Constitutional freedom and good government of the country, and as such, this amendment should be accepted without any opposition. I commend it to the House.

Mr. Vice-President : There is an amendment to this amendment. It is number 27 in List I, fifth week, standing in the name of Pandit Thakurdas Bhargava.

(The amendment was not moved.)

Amendment No. 1125.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That the following new clause (c) to the Explanation of clause (2) of article 47 be added:

> '(c) Any person elected President shall, before he enters upon the functions and responsibilities of his office declare and divest himself of all his right, title, share, property and interest in any enterprise, business or trade which is in any way aided or supported by the Union Government; and all such right, title, share or interest of the President shall be bought up by the Government of India'."

I regard this, Sir, as amongst the most cardinal amendments that I have had the honour to put before this House. This theme will recur from different angles as amendments to different articles hereafter. I would like to make it clear, however, that I have deliberately worded in the different cases the same idea in a different manner, not only because the verbal objection may apply that it has been already disposed of, but also because the angle of approach in the different articles is slightly different. Accordingly, whereas, one might be rejected, it does not necessarily become impossible for another to be accepted.

That, Sir, however, is a matter for you at the time when the other amendments come up for decision. But, I would like to say that the principle contained in this amendment is of the highest importance for an honourable and idealistic Government of the State.

Ideals, Sir, seem to be very much at a discount, except, of course, for declamation from public platforms. From the public platform we declare day in and day out the high ideals which we all profess to follow, and which we call upon our friends and admirers to follow, always thinking that they apply to the other fellows and not to ourselves, assuming that our conduct is beyond reproach. I feel, however, that even in a regime of saints entirely, it is by no means superfluous to offer a suggestion of this kind that, at any rate, the Head of the State should be, even more than Caesar's wife, above any suspicion what-so ever.

If he has any holding, if he has any interest, if he has any property to which he could seek or obtain advantage by any act of his policy or his Government's policy, which in the least he is in a position to influence, then, I submit to the House, he would be liable as head of the State, and the entire Government would be liable, to suspicion and discredit, and it ought not to be permitted.

Sir, it must be within the knowledge of many Members of this House, who are at all interested in contemporary history of the world, that one of the matters that affected the otherwise heriocally worshipped President of the German Reich, in the days before the Nazis came to power, was that President Hindenberg allowed himself to be persuaded to help in the so-called assistance to Eastern Prussian landlords which paved the way for his discredit, and which led, in my opinion at any rate, to the establishment of the Nazi power.

That I hope all will agree was an undesirable thing for Germany, and its consequences have already been realised. This, therefore, is a counsel of perfection, or at any rate, a caution which we will do well to adopt, and to implement in our Constitution.

That the President should be free from any entanglements, that the President should be free from any interest other than that of the State as a whole, that he should be open to no temptation except the desire to serve his country to the best of his ability, even in the ornamental post that he may be given in the Constitution, is of such supreme importance that I think we cannot be too strong, and too definite about removing from his path every possible, every imaginable, every conceivable temptation. Accordingly, here is a constructive, a positive requirement that, before the President enters upon the functions of his office, before he can be inducted in his office, he must make a clear declaration of all his title, right or interest in any property, industry or business in any of these things he may have held as a private citizen before he became President. Further, he must divest himself of it, and Government should take over that right or buy it from him.

This means that notwithstanding this provision, the holder of the Presidential office is not punished, he is not penalised, he is not impoverished, by the mere acceptance of or election to the Presidency. In his position, there would be, financially speaking, no change, no reduction. Morally speaking, however, his stature would grow far more; if you at all consider moral values, if you at all have any ideal that the Head of your State shall be free from any temptation, that the Head of the State shall be free even from any suspicion, then I put it to you that you cannot possibly, in decency, reject this amendment of mine.

By this, I am calling upon you to be true to those ideals which you are proclaiming everyday *ad nauseam* and which nevertheless, many of you at least, are openly breaking everyday in their lives. That being so, I have no hesitation in asking the House that this proposition, for the reason that I have stated, should be accepted, on pain of our being regarded as only preaching ideals for the purposes of hum bugging others, enunciating maxims which you do not believe yourselves. I make no apology in putting forward this amendment, and I trust without dissent this amendment will be accepted.

Mr. Vice-President : We shall proceed to put the amendments to vote.

Shri H. V. Kamath : We want discussion, Sir.

Mr. Vice-President : If you insist on it, I am prepared to allow it.

Shri H. V. Kamath : Mr. Vice-President, by your leave I rise to lend my support to the amendment of Professor K. T. Shah, No. 1108, moved by him just a short while ago-the first part. The first part of No. 1108 lays down certain disqualifications for the office of the President of the Indian Republic. On the last day of the last Session before we adjourned for recess, when I moved amendment No. 1100 providing for laying down certain disqualifications for the office of President, viz., that if he has been impeached for violation of the Constitution, that will act as a bar to his contesting an election for the Presidentship again, when I moved that amendment, Dr. Ambedkar told the House that amendment was not in its proper place but should come up at a later stage, i.e., in article 47 which lays down certain qualifications or disqualifications for the office of President ship. I am glad to find that my Friend and scholar Prof. Shah has brought in this particular provision for violation of the Constitution and consequent impeachment as a part of this amendment just moved by him. I realise that article 83 of the Constitution provides--article 83 reads--

> "A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament ......
>
> (e) or if he is so disqualified by or under any law made by Parliament."

It is conceivable that the future Parliament of Free India will make certain provisions to this effect as to who will be qualified and who will be disqualified. But to my mind this is far too important a matter to be left to the decision of Parliament. This goes to the root of the matter, the disqualifications on the score of treason or on the score of offence against the State or on account of impeachment because of violation of the Constitution-it is possible that when we come to article 83 we might incorporate certain of these disqualifications or all of them as disqualifications for being a member of the House of Parliament but we must be clear on this point, as to whether we shall leave them to a future Parliament to decide or whether we will incorporate these things in the body of the Constitution. I therefore would request Dr. Ambedkar when he rises to reply to this debate, to tell us clearly whether he will leave it to the Parliament of future India or whether he will embody these disqualifications clearly and plainly-plain as a pike staff-without any equivocation in this article 83. That much Sir, for the amendment No. 1108 of Prof. Shah.

Coming to amendment 1125 just moved by him, I am inclined to think that the principle embodied in this amendment is a very sound one. I would certainly welcome the proposition that a person on being elected President of the Indian Union must at least declare to Parliament, or to the people and the nation, what interests, and what shares he holds in any enterprise, business or trade in the country. In the last Budget Session of the Legislative Assembly, if I remember aright, this Assembly adopted the Factory Act, and one of the clauses or sections in that Act was to the effect that even the medical officer of a factory, when he is appointed to his post, must declare to the board of directors or the management or the government, what interests, shares or other similar interests he holds in the factory or in any of the allied concerns of that particular undertaking. If we are going to enforce such a thing in the case of a mere petty officer in a factory, it stands to reason that the President of the Indian Union must declare to the nation and to Parliament what interests he holds in any business or trade or enterprise in the country. I recognise and I do admit that the President is not invested with considerable power. But nobody would deny the fact that the President has been invested with considerable influence, and that influence can be abused by a President if he is not of the proper or right type. We have just come from the Jaipur Session of the Congress--at least some of us--where only a few days ago, the Congress passed a resolution on the standards of public conduct. Are we, Sir, here, serious about implementing that resolution or not? Inspite of the subsequent deletion at the instance of Pandit Nehru at the Jaipur Session, it applies to all Congressmen, from top to bottom. And if it applies to all Congressmen, certainly, the code of public conduct that we are going to lay down for Free India, should apply to all, Congressmen or non-Congressmen whenever they hold a post, high or low in the country. Certainly, Sir, the President's post, the President's position, is very important and if we are earnest about this resolution about public conduct. I would certainly plead before this House that the President of the Indian Union must publicly before entering his office, tell us, tell Parliament, what interests and what shares he has in any business or other enterprise in the country, lest on any occasion, on any tempting occasion, he might abuse his position for the furtherance of any particular undertaking in which he is more interested.

Sir, I will not go so far as Prof. K. T. Shah and say that such rights or interests must be bought up by the Government of India. I would suggest that once he has declared what his interests and shares are, in any particular business or undertaking, then the matter must be left to the Parliament to decide in what way those rights or interests are to be dealt with, or administered or disposed of. If this much is admitted or conceded, that the President shall be obliged to declare and disclose his interests, then we can leave it to the Parliament of India to deal with this matter and decide how to dispose of or deal with the particular matter brought before it.

Mr. Vice-President : Dr. Ambedkar.

Shri Syamanandan Sahaya (Bihar: General): Sir, I have.....

Mr. Vice-President : I have called Dr. Ambedkar, I am sorry. But have you any amendment?

Shri Syamanandan Sahaya : No, I have no amendment, but...

Mr. Vice-President : If you had come to the front, you could have caught my eyes, because in that direction there is a bad glare.

Shri R. K. Sidhva (C. P. & Berar: General): But, Sir, we have not had adequate discussion of this article. Only one member has spoken.

The Honourable Dr. B. R. Ambedkar : If they want further discussion, I have no objection.

Mr. Vice-President : Dr. Ambedkar has been good enough to say he does not mind if other Members also speak. Will Shri Syamanandan Sahaya please come to the mike?

Shri R. K. Sidhwa : Sir ....

Mr. Vice-President : Mr. Sidhwa will always have the last word. I shall give him the last word.

Shri Syamanandan Sahaya : Mr. Vice-President, Sir, I am here to support the amendment which has been moved by Prof. K. T. Shah.

The Honourable Dr. B. R. Ambedkar: Which amendment of Prof. Shah?

Shri Syamanandan Sahaya: Amendment No. 1124 which reads like this:

> 'provided that any such Minister shall, before offering himself as candidate for such election, resign his office'.

Sir, it is not always that I have the good fortune to agree with Prof. K. T. Shah but I do feel that in this particular amendment which he has proposed, he has raised a very vital point, and I do think that in a matter like this, even through there may have been different decision elsewhere, this House must remain firm because Prof. K. T. Shah, in his amendment, desires to lay down a principle which has been accepted all over the world (Cries of No, No.) Yes, Yes. Everybody has the right to place his information and his knowledge. Even in the present Congress Committees, a person who desires to stand as President of the Provincial or District Congress Committee has to resign his seat, not merely as a Minister, but even as a member of the Legislative Assembly.

Pandit Balkrishna Sharma (United Provinces: General): No, No. You do not know. Do not go on generalising like that.

Shri Syamanandan Sahava : I come from a Province where this rule obtains; this is a very good rule. If other provinces are not following it, they are doing it to their own disaster.

Mr. Vice-President : You need not reply to these interruptions.

Shri Syamanandan Sahaya : I shall accept your advice, Sir. It is a very good advice.

Now, the position is, that the place which the President will occupy in our Constitution is a very high and important one, indeed, and it would be very unwise and unsafe if a person who is already a Minister, working as such, stands for election as President. Even though such a person may not himself desire it, the fact remains that a Minister in power is likely to gather more support, directly and indirectly, than another person. It is therefore only fair and reasonable that the election of a President must be carried on in such a manner that no individual person may have any additional advantage over his opponents.

Considering the position that obtains in this country at present, it is hoped that there may not be much difficulty among the persons who happen to occupy this high position. They also have a high standard of morality and I have no doubt that they will themselves resign before they stand for President ship. But we are laying down in this Constitution a rule by which, if a Minister desires or chooses to stand as a candidate for election, he can do so and contest the whole of the election, occupying all the time the position of a Minister. That, Sir, in my opinion, would not be the right course to adopt, and considering the difficulties that one can foresee, it would only be proper that it should be laid down that no person who occupies the position of a Minister should stand as a candidate as long as he occupies that position. He should first be asked to resign and then he can stand and contest the presidentship like anybody else.

Before I close I would like the House to visualize a situation that will arise when a Minister is a candidate for election as a President. It will be like this. Who is the candidate? A minister. Who are the voters? Members of the different Assemblies. Who are the Polling officers? Servants of the Government, some of them may be under the ministry concerned. How does this look? Even assuming that there will be everything fair, I ask: Does it look fair to frame a constitution which not only sanctions but encourages such a situation?

Shri Algu Rai Shastri (United Provinces : General) :*[Mr. Vice-President, Sir, I rise to oppose the amendments moved by Prof. K. T. Shah, more specially his last one, No.1125 on the list. I may repeat what has been said several times previously and it is that the type of constitution Prof. K. T. Shah has in view can either be accepted in its entirety or cannot be accepted at all. At times such amendments as the present one, are moved by Prof. K. T. Shah which seek to make some changes in the constitution or in the basic concept on which it is founded. If a single amendment of Prof. Shah is accepted in any part of the Constitution, the entire structure of the constitution would be changed. His idea in moving this amendment is that our President--the President of our Republic--should be a person who has no private financial interests of his own at all. He wants that the President of our Republic should have no financial interest at all but at the same time in course of his speech he has said that if the President has any shares in any property the same should be purchased by the Government so that he may not become a pauper. The dread of private property seems to have influenced him in making this proposal even though he does not seem to desire the abolition of private property itself. He does not propose to expropriate the person, who is to be elected President, of his entire property. It is thus plain that he does not stand for the abolition of private property. His only objective is that any person, after being elected President, should sell away all his financial interests or they may be acquired by the Government, and that such a person should make a specific declaration that he has no financial interest anywhere. It appears to me that these two ideas are contradictory to each other. On the one hand the institution of private property would remain when we allow him to own the monied wealth he receives on sale of his property and such an ownership is permitted by Prof. Shah because he apprehends that otherwise such a person will become a pauper. On the other hand he seems in my opinion, to have in view Plato's idealistic and Utopian communism under which rulers shall have no property, no financial interest and no money of their own and there would be a common kitchen and the rules would be leading an ideal life like saints and hermits having no personal financial interests. We can very well lay down in the Constitution that a person who owns a property or has any shares in any enterprise shall not be eligible for President ship. The object behind the amendment moved by Professor K. T. Shah is that after a person is elected President he should hold no share in any property but he can hold the same before being elected. In my opinion Professor Shah should aim at the abolition of individual ownership of property and nationalisation of the same so that no individual may possess any property. But we have already accepted and given a place to individual ownership of property in the articles we have passed earlier. Now at this stage it does not appear necessary to me to pass a provision enjoining upon a person to make a particular declaration and relinquish all his financial interests in order that he may honestly discharge the duties of his office. Of course, I do visualise a society in which the individual ownership of property is gradually abolished and commodity be brought under social ownership. I would prefer such a society. We can not accept the ideal of Plato's or such a communism which reduces our life to a mere hotel life. Such a society cannot be stable. It is possible to establish such a society in small communes. But it is difficult to run even a small municipal board on these lines. I have seen that the financial questions bedevils the working of even small bodies. Even in the 'Maths' of Sadhus disputes arise for succession to the Gadi. We must keep the reality in view and from the point of view of reality the proposed restriction is unnecessary. I, therefore, oppose the amendment moved by Mr. Shah.

The other amendment moved by Mr. Shah, which lays down that if any minister seeks election as President, he should resign from the ministerial office before doing so, cannot be accepted. It is evident that a minister who seek selection as President would not be in a position to secure votes of this vast population either by purchase or by undue influence exercised under the powers he possesses as minister. The people or the prospective voters in the Presidential election cannot be beguiled or coerced to sell their votes. This amendment too seems unnecessary and therefore in my opinion it ought to be rejected and the original article as standing in the Draft Constitution should be accepted.]

(Interruption)

Mr. Vice-President : It is not proper for experienced parliamentarians to heckle a speaker in that way.

Mr. Tajamul Husain (Bihar : Muslim) : Mr. Vice-President, I am, and in fact the whole House is, very grateful to you and also particularly, I would say, to the Honourable Dr. Ambedkar, for allowing us to speak. We know your powers. You can stop us at any time you like. But I would always request you to allow us even at this stage to speak as we are for the first and the last time drawing up a constitution for the whole of India. You will pardon me for using the word "gagging" officially. But do not gag us. Let us speak. The Constitution is not going to be framed within a year as the Government of India are expecting. They are mistaken. It does not matter if it finishes in two or three years, but give us time to speak.

Coming to the amendment I wish to point out that, as far as I understand it, the amendment of my honourable Friend, Prof. K. T. Shah implies that a person who wishes to stand for the presidentship of the Indian Republic should resign his seat if he happens to be a Minister, or resign his seat if he happens to be a Member of the

Legislature. An honourable Member from my province of Bihar has just spoken and he has stated that the law in his province is that a Member of a Legislature who wishes to become the President of the Provincial Congress Committee has to resign his office. There was vehement opposition to this. I entirely agree with the opposition that is not the law. We find here that that the last President of the Congress, Mr. Kripalani, was also a Member of this House and a Member of the Dominion Parliament. Here we find that the Honourable the Speaker of the U. P. is a member of this House. This is not the kind of thing in Bihar. Since the Congress started its activities under the guidance of Mahatma Gandhi, Dr. Rajendra Prasad, the President of this House, was the President of the Provincial Congress Committee for a number of years. It is unfortunate that he had to leave our Province and come over to Delhi. When he came to Delhi and left Bihar somebody who was not a member of the legislature was elected as President and he died. Then we elected a member of the Provincial Assembly and he had to resign his seat in the Assembly. We wanted him to resign and he resigned. Afterwards another member of the provincial assembly was elected and he also had to resign his seat in the Assembly. So we in Bihar have this convention, though not as a law or rule, that a member of the legislature when he wants to become President, before he seeks election he must resign. It is a very good and healthy convention. After all the first President of the Indian Republic will be the first gentleman of this land and equal to any monarch in the world. We want that before he becomes President he should cease to have any connection with any legislature. Before his election as President a Minister, whether at the Centre or in the Provinces, must cease to be a minister: he must come in as a simple man, a non-member of any legislature, stand for election and get elected. That is what people want. This is a very simple amendment and it should be accepted by the House and by Dr. Ambedkar. That is all I have to submit to the House and I thank you, Sir, for permitting me to speak.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, I regret that I am unable to accept any of the amendments which have been moved by my honourable Friend, Prof. K. T. Shah. There are three amendments which have been moved by Prof. K. T. Shah. One of them relates to the Minister as a candidate for the Presidency and the other two amendments relate to the President. I propose to divide my observations in reply to his speeches on the three amendments into two parts. In the first part I propose to devote myself to his amendment relating to the Minister.

Prof. K. T. Shah's amendment requires that if a person is holding the office of a Minister and wishes to contest an election, the first condition must be that he shall resign his office as a Minister. In other words, ministership by itself would be a disqualification for election. It seems tome that Prof. K. T. Shah has not devoted sufficient attention to his amendment. In the first place, if a Minister resigns then this amendment is unnecessary. The second point which I think Prof. Shah has not considered and which seems to me to be very crucial is this. Supposing we accept his amendment that a Minister shall resign before he stands as a candidate for Presidentship, it is quite clear that between the period of the dissolution of the old Parliament and the time when the new Parliament assembles there can be no Ministers at all in charge of the administration. And the question that we have to consider is this. What is to happen to the administration during the period which is involved between the dissolution of the old Parliament and the assembly of the new Parliament? Are we to hand over the administration to the bureaucrats or the heads of the administrative departments to carry on until the new Parliament is elected? Or is there to be some kind of expedient whereby we are to go about and find a set of temporary Ministers who would take charge of Government during this short period of two or three months and thus forego the opportunity of contesting elections and becoming Ministers themselves in a new Parliament for the full period of their term? It seems to me that the amendment of Prof. K. T. Shah, if accepted, would create complete administrative chaos in the Government of the country and therefore I submit.....

Shri L. Krishnaswami Bharathi (Madras : General) : It does not refer to all Ministers: it only refers to one minister.

Shri Mahavir Tyagi (United Provinces : General) : And to deputy Minister also.

The Honourable Dr. B. R. Ambedkar : Supposing every Minister wants to contest the election and therefore every Minister will have to resign.

Prof. K. T. Shah referred to the fact that the Ministers generally monkeyed with the election or may manipulate or exercise their influence over the administration. That of course, to some extent, is probably true. But in order to eliminate the influence which Ministers exercise or might exercise on the elections the Draft Constitution has provided under certain articles (articles 289 to 292) for a special machinery to be in charge of what are called Election Commissions both in the Centre as well as in the Provinces, which would take charge of the elections to Parliament as well as to the State legislatures. They are to have complete superintendence, control and management of elections, so that whatever possibility that there exists of Ministers exercising their influence over elections has been sought to be eliminated and consequently the fear which Prof. K. T. Shah entertains has really no place at all. I am therefore, for these reasons, unable to accept his amendment.

Coming to his amendments which deal with the President, his first amendment No. 1108 sets out certain disqualifications such as conviction for treason, any offence against the State or any violation of the Constitution, etc. The reason why, for instance, we have not specifically mentioned in this particular article under discussion these disqualifications, will be obvious if the Members recall that we have made other provisions which would have the same object which Prof. Shah has in his mind. In this connection I would like to draw the attention of the House to sub-clause (c) of article 48 which requires that "the President shall be a person who shall be qualified for election to Parliament". Now the qualification for election to Parliament are laid down in article 83. Sub-clause (e) of article 83 leaves it to the Parliament to add any disqualifications which Parliament may think it necessary or desirable to add. It is therefore possible that the Parliament when it exercises the powers which are given to it under sub-clause (e) of article 83 may think it desirable to include in the list of disqualifications (it is empowered to add to those already enumerated under article 83) some of the propositions which Prof. K. T. Shah has enunciated in his amendment. I therefore submit that, although this particular clause does not refer to the disqualifications mentioned by Professor Shah, it is quite possible and open to Parliament to add them by any law that it may make in sub-clause (e) of 83.

Shri H. V. Kamath : On a point of clarification. Mr. Vice-President, if matters like 'unsound mind' and 'undischarged insolvent' are found important enough to be embodied in the article itself, what is the point in leaving this more vital and fundamental thing to Parliament and not giving it a place in the Constitution itself?

The Honourable Dr. B. R. Ambedkar : I do not know. It is a mere matter of logic. It is perfectly possible to say that every disqualification should be laid down here. It is perfectly possible to say that some essential things may be laid down here and the others left to the Parliament. I cannot see any inconsistency in that at all.

Now coming to the last amendment of Professor Shah, No. 1125, I think a careful perusal of the language he has used is very essential. What the Professor wants is that every person who has to be a President shall, before assuming office, divest himself of his interest, rights, title, etc. in any business or concern which is being sponsored by Government or carried on by Government either itself or through any agency, and secondly that the Government should buy that interest from the President. In regard to this, the first thing that strikes me is that this is one of the most novel propositions that I have ever seen. I do not remember that there is any Constitution anywhere in the world which lays down any such condition. I should have thought that if any such condition was necessary it is in the Constitution of the United States where the President has got an opportunity of exercising administrative control, and administrative discretion and therefore the greatest opportunity of personal aggrandisement exists there. And yet, the Constitution of the United States is absolutely silent about any such condition at all. Professor Shah no doubt has tabled his amendment because he looks upon it as a merely consequential amendment to the original proposition which he had enunciated in the form of his amendment, namely, that the President should have the same position as that of the President of the United States. But our Constitution has completely departed from the position which has been assigned to the President of the United States. As I have stated over and over again, our President is merely a nominal figurehead. He has no discretion; he has no powers of administration at all. Therefore, so far as our President is concerned, this provision is absolutely unnecessary. If at all it is necessary it should be with regard to the Prime Ministers and the other Ministers of State, because it is they who are in complete control of the administration of the State. If any person under the Government of India has any opportunity of aggrandising himself, it is either the Prime Minister or the Ministers of State and such a provision ought to have been imposed upon them during their tenure and not on the President.

The third question that arises--I think it is a very concrete question--is this. Supposing we laid down any such condition; is it possible in the circumstances in which we are living, to obtain any candidate who would offer himself for the Presidentship and subject himself to the conditions which have been laid down by Professor Shah? I doubt very much whether even Professor Shah would offer himself to be President of the Indian Union if these conditions are laid down.

Prof. K. T. Shah : It is not my custom to interrupt speakers at all. But may I give him this categoric assurance that as far I myself am concerned, he can rest assured that there will be complete fulfillment of these conditions. *(Laughter).*

The Honourable Dr. B. R. Ambedkar : I am glad. But this country could not carry on under the assumption that Professor Shah would be the only candidate who would offer himself for President ship. *(Laughter)* Safety lies in multiplicity of candidates. Therefore we have to consider whether, from a practical point of view, we should have a sufficient number of candidates offering themselves for this particular post. And I have not the least doubt about it that, notwithstanding the very virtuous character of this amendment we should practically be suspending this particular provision from the Constitution if we accept this amendment

For these reasons I do not accept any of the amendments.

Shri H. V. Kamath : Is Dr. Ambedkar opposed even to the disclosure of the candidate's interest or share? Is he opposed even to a declaration like that?

The Honourable Dr. B. R. Ambedkar : But that is not the amendment.

Shri H. V. Kamath : That is part of the amendment.

The Honourable Dr. B. R. Ambedkar : But that is not the amendment

Mr. Vice-President : I will now put the amendments to vote one by one.

The question is :

"That after sub-clause (c) of clause (1) of article 47, the following new sub-clause be added:

> '(d) and is not disqualified by reason of any conviction for treason, or any offence against the State, or any violation of the Constitution'."

The amendment was negatived.

Mr. Vice-President : The question is :

"That in clause (2) of article 47, and in Explanation to clause 2, for the word 'any office or position of emolument', wherever they occur, the words 'any office of profit' be substituted."

The amendment was adopted.

Mr. Vice President : The question is:

"That for sub-clause (a) of the Explanation to clause (2) of article 47, the following be substituted :

> '(a) he is the Governor of any State for the time being specified in Part I of the First Schedule or is a minister either for India or for any such State; or'."

The amendment was adopted.

Mr. Vice-President : The question is:

"That after clause (b) of the Explanation to clause (2) of article 47, the following be added:

'provided that any such Minister shall, before offering himself as candidate for such election, resign his office'."

The amendment was negatived.

Mr. Vice-President : The question is:

"That the following new clause (c) to the Explanation of clause (2) of article 47 be added :

> '(c) Any person elected President shall, before he enters upon the functions and responsibilities of his office declare and divest himself of all his right, title, share, property and interest in any enterprise, business or trade which is in any way aided or supported by the Union Government; and all such right, title, share or interest of the President shall be brought up by the Government of India'."

The amendment was negatived.

Mr. Vice-President : I shall now put the article as amended to vote. The question is :

"That article 47, as amended, stand part of the Constitution."

The motion was adopted.

Article 47, as amended, was added to the Constitution.

New Article 47-A

Mr. Vice-president : Amendment No. 1126 is almost the same, though not quite the same, as amendment No. 1125. Professor Shah may move it.

Prof. K. T. Shah : I beg to move:

"That after article 47, the following new article be inserted :

> '47-A. Any person elected President shall, before he enters upon the functions and responsibilities of his office declare and divest himself of all his right, title, share, property and interest in any enterprise, business or trade, which is in any way aided or supported by the Union Government; and shall make over all such right, title, share, or interest to Government of India, to be held, during his term of office, in trust for him'."

As you have been kind enough to point out, this is not quite identical with the previous amendment that I had the honour to submit to this House. Whereas in the previous amendment I had suggested that the interest of the President be *bought over* by the State, here it is to be held in a trust for him. He remains the owner, and only is saved any kind of temptation, any kind of manipulation that may be possible in the business, trade or interest that may be in any way supported or aided by the State. Sir, I have been surprised at the lack of argument which has characterised the opposition to the previous amendment. If in answer to one's serious points, one is to be faced with such assumptions as that all the Ministers, for Instance, might like at one and the same time to stand for the Presidency, and if that is permitted, there would be chaos, then I think it is equally open to hold that every Minister might become ill at one and the same moment and unable to discharge the functions of his office, thus leaving it to the bureaucracy to carry on the administration. This is no argument of an earthly or reasonable character. Any such cataclysmic event may happen, but in such a case of course, mere human ingenuity may be powerless to cope with it. But if you wish to object to my amendments on reasonable level grounds, and not take flights of fancy into the unreal, then I submit that in this matter there is no contradiction or impossibility that I am asking you to agree to.

The idea that you will have no candidate for the Presidency, merely because the constitution calls upon him to declare his interests and divest himself of all his right, title, share, property and interest, in any industry, trade, or business, which is in any way aided or supported by the State of which he is the head is to my mind reducing the matter to an absurdity. After all, with all due respect to the Honourable Dr. Ambedkar, I think there are not in this country a majority of people who have any such right, or title, or property. The over-whelming majority of this country's people are without such interests. The possibility, therefore, of finding a candidate who has no interest in such matters will not certainly be so catastrophically small as Dr. Ambedkar in his opposition mood might fear.

If Dr. Ambedkar is thinking of only that class to be eligible to the Presidency who have such rights, who have such interests and shares, while I would point out that such a course would be unfair, I hope he will realise that it is desirable to safeguard them against any temptation of the kind that this amendment tries to guard against.

The fact, moreover, that no other Constitution contains any such provision is no reason, in my opinion, why, under the guidance of such a genius as Dr. Ambedkar, we should not break new ground. We might as well make our own precedents which Americans may copy as we have copied this from the English or Anglo-Saxon races. Why should Dr. Ambedkar and his colleagues be so afraid of taking a new step, even though the new step may be one in the right direction ?

In all his arguments I did not hear anything to show that the proposition that I am advancing is in itself wrong.

Mr. Vice-President : Professor Shah, may I request you not to reply to Dr. Ambedkar.

Prof. K. T. Shah : Dr. Ambedkar went out of his way. It is against my practice.....

Mr. Vice-president : May I suggest that as both of us belong to the same profession, we should prove superior to this weakness.

Prof. K. T. Shah : I bow to your order; but I do feel, Sir, that argument seems to be absent, and prejudice seems to predominate in a discussion of this kind. If that is so, then I in my determination would go on moving every one of my amendments, whatever the result may be. I am also equally clear, that, before the eyes of the world, before those who have no prejudices of their own, we will not be holding ourselves as model legislators if we insist on rejecting such amendments for future generations. That is all I have to say, Sir.

Coming to the amendment proper, may I point out that in this I have tried deliberately to guard against being over-ruled, merely for repeating myself by changing the wording. It was urged, and urged quite unfairly, that this would cover enterprises "carried on" by the State. Nothing of the kind. Here I am speaking only of any trade, industry or business, which is aided or supported by the State. That is a totally different thing from an industry or business being carried on by the State. I should have thought that those who have drafted this Constitution knew the difference between 'being carried on' by the State, and 'being aided or supported' by the State. If they do not understand this difference, I am sorry the drafting should have been done by people who cannot distinguish between simple propositions of this nature.

They might equally misunderstand or misread the difference between "buying over" and "holding in trust", which again in my opinion are totally different propositions. The English Constitution, Sir, is founded on conventions, not on any written document. That, I trust, even Dr. Ambedkar will admit. That being so, may I give him one illustration of the kind of rectitude that is expected from high officers of State. There was the case, Sir, some forty years ago, when the English Navy was thinking of going over to oil-burning instead of coal-burning. Oil was produced by Joint Stock Companies holding interests abroad while coal was produced at home. Admiral Fisher, who was then the First Sea Lord of the Admiralty, was to preside over the Committee which was appointed to investigate into the matter of changing over from coal to oil. There were three members of the Committee and they were all of the same view. Their recommendations were, therefore a foregone conclusion. Admiral Fisher, who had some oil shares in the Anglo-Persian and Iranian Oil Company, and who knew what the results of his recommendation would be, went over to the then King Edward VII, and asked for his advice. He knew the prospects of those shares once the report was published. The King advised, and the Admiral accepted his advice, that he must divest himself immediately of those shares if he was an honourable man, as he stood to gain considerable advantage from the change over from coal to oil. Admiral Fisher may not have a prototype here; but I for one hope that in this country, led and brought to this stage by Gandhiji, there are people who will be willing, only too willing, if elected to such exalted office as head of the State, to divest themselves of such rights and interests as might expose them to the slightest shade of suspicion. Even in the municipality of Bombay we have a convention that any member, who is interested in any enterprise carried on by the corporation, shall not vote when that matter comes up for consideration before the Corporation. If that ideal is not suitable for you to copy, if that is a proposition which is not acceptable to you, I am very sorry that this House should be using the name in vain of people like Gandhiji, when we are not carrying out their ideals in this Constitution.

Mr. Tajamul Husain : May I speak, Sir?

Mr. Vice-President : If you insist.

Mr. Tajamul Husain : Mr. Vice-President, Sir, I am again thankful to you because you are exercising your powers in my favour. I have come to support the amendment of my honourable Friend, Professor K. T. Shah, in its entirety. His amendment is a very fair one. He wants that the person elected as President of the Republic should declare and divest himself of all his rights, shares, property, etc. in any enterprise, business or trade which is in any way aided or supported by the Union Government and should make over such rights, etc. to the Government, to be held in trust during the period he is occupying his exalted office as President of the Indian Republic. Now, Sir, in my opinion, this is a fair amendment but I am afraid that this amendment will not be accepted by the Honourable Dr. Ambedkar. Professor Shah comes forward with beautiful amendments but they are all lost because the honourable Member in charge of the Draft Constitution is not in favour of them. Therefore, with your permission, I want to move a verbal amendment to this.

Mr. Vice-President : I cannot allow you to do that. In that case other people would also come forward with verbal amendments. You may make a suggestion for the acceptance of Dr. Ambedkar.

Mr. Tajamul Husain : My suggestion is this: Mr. Shah's amendment does not say that when a person is elected President he should declare and divest himself of all his personal property. He only says that he should divest himself of his rights, shares or interests in any concern aided or supported by government and that such rights, etc. should be taken over and held in trust for him by the Government of India. I say that as it would come to the Government of India, I thought that Dr. Ambedkar would accept it. If, Dr. Ambedkar as the Law Minister of the Government of India is not going to accept it, then instead of the 'Government of India', let it go to the President's wife and children. That is a very simple matter. The article as amended would read thus :

"Any person elected President shall, before he enters upon the functions and responsibilities of his office, declare and divest himself of all his right, title, share, property and interest in any enterprise, business or trade, which is in any way aided or supported by the Union Government; and all such right, title, share or interest of the President shall be bought up by the President's wife and children, if he has none then to Dr. Ambedkar himself, the Law Minister."

With these words, I support the amendment and I move my oral amendment.

Mr. Vice-President : There is no amendment to be moved.

The Honourable Dr. B. R. Ambedkar : Sir, I have nothing to say.

Mr. Vice-President : The question is :

"That after article 47, the following new article be inserted :

> '47-A. Any person elected President shall, before he enters upon the functions and responsibilities of his office, declare and divest himself of all his right, title, share, property and interest in any enterprise, business or trade, which is in any way aided or supported by the Union Government; and shall make over all such right, title, share, or interest to Government of India, to be held, during his term of office, in trust for him'."

The motion was negatived.

Article 48

Mr. Vice-President : On going through the amendments one by one, I find that amendments Nos. 1127, 1128 and 1130 are of similar import. Amendment No. 1130 seems to be the most comprehensive and may be moved.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I move:

"That in clause (1) of article 48 :-

> '(a) for the words 'either of Parliament or' the words 'of either House of Parliament or of a House' be substituted;
>
> (b) for the words 'member of Parliament or' the words 'member of either House of Parliament or of a House' be substituted;
>
> (c) for the words 'in Parliament or such Legislature, as the case may be,' the

words 'in that House' be substituted'."

There was some defect in the original language and we have tried to improve it.

Mr. Naziruddin Ahmad (West Bengal : Muslim): Mr. Vice-President, we have already decided by accepting certain rules that amendments which are intended to beautify the language of an article will not be allowed. Improving the language is not now one of the objectives of an amendment. Before the amendment was moved, it looked like an imposing amendment, but Dr. Ambedkar has clearly admitted that it was intended merely to improve the language of the article. In that view, although it has been moved, it need not be put to the vote.

Mr. Vice-President : Certain powers have been given to the Chair and the Chair is going to exercise them in the way which seems best.

I understand that there is an amendment to this amendment--Amendment No. 28 of List 1 (fifth week) standing in the name of Mr. V. S. Sarwate.

Shri V. S. Sarwate [United State of Gwalior--Indore--Malwa (Madhya Bharat)]

Sir, I move:

"That in amendment No. 1130 of the List of Amendments in article 48, before the words 'House of Parliament' the words 'of the ruling family of Indian States and is in receipt of political pension or of an allowance on account of privy purse' be inserted."

The amendment purports to say that if a member of the ruling family of an Indian State is elected President, he would have to divest himself of the allowance or the privy purse which he may be receiving.

My object is that the President of this Republic should be of such convictions and wedded to such an ideology as would be republican and democratic. Obviously a person who was lately a ruler of an Indian State and is in receipt of a privy purse or allowance is not expected to fulfill this requirement. It has been said that the President is more or less a nominal figure-head. All the same I would point out that the President is expected in times of emergency to discharge certain very grave and important functions and duties. Further, from his status and position he is expected to give a certain incentive and a certain directive in the best interests of the democratic republic, which we are trying to establish in India. Now all these requirements cannot be expected to be fulfilled by one who has been brought up and who belongs to a family, which must beholding and must have held traditions which are entirely different from those ideas which we call republican or democratic. Therefore, what is required by this amendment is that a late ruler of an Indian State should not be allowed to become President. That, however, does not debar him from standing for election, but debars him to this extent that if he is elected, he may not continue to receive the allowance. The amendment, if further read carefully, will show that the junior members of the ruling families are not debarred from standing or for holding the position of the President, since such junior members would not be in receipt of any allowance on account of privy purse. I need not point out that the Governors and the Governor-General, and especially the new President is expected, from conviction and from his bringing up and from his whole psychological set up, to be a person who would be so entirely devoted to democracy and republic, that there may not be the least shadow of doubt regarding his opinions, his democratic and republican opinions; but this is not likely to be expected in the case of a late ruler. Therefore, my submission is that this amendment may be accepted by the Mover of the original amendment.

Mr. Vice-president: Amendment No. 1127 stands in the name of Giani Gurmukh Singh Musafir. Does he want me to put it to the vote ?

Giani Gurmukh Singh Musafir (East Punjab : Sikh) : No, Sir.

Mr. Vice-President: Amendment No. 1128. Do you want me to put it to the vote?

Mr. Naziruddin Ahmad : Yes, Sir.

Mr. Vice-President : Amendment No. 1129. Verbal; disallowed.

Amendment No. 1131. Verbal; disallowed.

Amendment No. 1132. This may be moved.

(The amendment was not moved.)

Mr. Vice-President : Amendments numbers 1133 and 1134 are practically the same. Amendment No. 1133 may be moved.

Mr. Naziruddin Ahmad : On a point of order, Sir, this is merely a verbal amendment.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in clause (2) of article 48, for the words 'or position of emolument' the words 'of profit' be substituted."

Sir, this amendment is just for the sake of uniformity.

Mr. Vice-President : Amendment No. 1134. Do you want me to put this to the vote?

Shri H.V. Kamath: I have been forestalled by Dr. Ambedkar; but I would like to move amendment No. 1135.

Mr. Vice-President : We have now only come up to amendment No. 1134. Amendment No. 1135. You can move it.

Shri H. V. Kamath : I move, Sir,

"That in clause (3) of article 48, the words 'the President shall have an official residence and' be deleted."

That is to say, the clause will read thus, if the amendment is accepted.

"There shall be paid to the President such emoluments and allowances, etc. etc.........."

In moving this amendment, Sir, I seek a little light from Dr. Ambedkgr.

The Honourable Dr. B. R. Ambedkar : Which amendment?

Shri H. V. Kamath : Amendment No. 1135. My purpose in moving this amendment before the House is to request Dr. Ambedkar to throw a little light upon the necessity for incorporating such an insignificant, such a minor detail in our Constitution. I recognise, I admit freely that this Constitution, perhaps we are proud of the fact, is the bulkiest in the whole world. The emblem and crest that we have selected for our Assembly is an elephant. It is perhaps in consonance with that that our Constitution too is the bulkiest that the world has produced. Sir, May I ask in all humility whether there is any sense or any point in cumbering the Constitution with details like the President having a residence? If this be accepted, will it not be equally appropriate to say that the President shall have so many servants, the President shall have so many peons, chaprasis, the President shall have an A. D. C., the President shall have a Private Secretary, and what not? It may be argued, I see, Sir, that the President's residence is a symbol and therefore it must be mentioned in the Constitution. I do not know how many precedents there are for a thing like this to be embodied in the Constitution.

An Honourable Member : The Irish Constitution.

Shri H. V. Kamath : I am coming to that. In the American Constitution I do not know whether the White House is mentioned in the Constitution. White House is universally recognised as the President's official residence. coming to England, I suppose 10, Downing Street is more universally known than Buckingham Palace among students of politics or present day affairs. 10, Downing Street which is the Prime Minister's residence is more widely known than Buckingham Palace. In our Constitution there is no reference to the Prime Minister's residence; we have mentioned only the President's residence. In our Constitution, the President is, more or less, as Dr. Ambedkar has just now said, a figure-head and the Prime Minister is a far more powerful individual than the President. In the fitness of things, I personally feel that the Prime Minister's official residence should be mentioned rather than the President's residence.

Another little point is this. Suppose, the President has two residences--formerly I suppose the Governor in most of the provinces and even at the Centre the Governor-General had two residences, one for summer and one for the other seasons--suppose there are two residences, will this article debar the State from granting or sanctioning two residences for the President, one of summer and one for non-summer seasons? Will this come in the way? Therefore, the point is, why bother about this little thing like a residence for the President? After all, the President will not live under a tree or on a maid an; he will have a roof over his head; he will have a house; that goes without saying. After all, we are now aspiring to provide a roof over the head of everybody in our country. Does the House mean to say, does Dr. Ambedkar mean to say that the President will have no roof over his head? He may have one, two or three residences. Who knows how many he will have? Why restrict by means of this article the right of the Government or the nation to provide more than one residence to the President? Therefore, I feel, Sir, that this is--I do not know how this has crept into the Constitution--too paltry, too trifling a detail to be incorporated in the Constitution, and tends to burden our Constitution with unnecessary, irrelevant and superfluous detail.

I therefore move that this portion of the article regarding the provision of official residence for the President be deleted.

(Amendments Numbers 1136 and 1137 were not moved.)

Mr. Vice-President : Amendment No. 1138 standing in the name of Professor K. T. Shah.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That in clause (3) of article 48, after the words 'shall have an official residence' the following be added:-

> 'and such secretarial, clerical, or expert consultative assistance at public expense as he may consider necessary for the due discharge of his duties and responsibilities under the Constitution, or the laws made thereunder for the time being in force'."

Sir, this is one of the few inoffensive amendments which I have dared to put forward. It seems to be so self-evident that, except in extraordinary flights of fancy, imagination and impossibility, no one should question this. Accordingly I will not waste the time of the House by putting forward specific arguments in support of that. I trust the good sense of the House will lead it to accept the amendment.

Mr. Vice-President : Amendment No. 1139. Verbal; disallowed.

Amendment No. 1140, standing in the name of Professor K. T. Shah.

Prof. K. T. Shah : Sir, I beg to move--

"That the following new clause be added to article 48:--

'(5) Every President on completion of his term of office, and retirement, shall be given such pension or allowance during the rest of his life as Parliament may determine, provided that during the life time of any such President in retirement, the pension or allowance granted to him shall not be varied to his prejudice'."

This, Sir, is another novel idea which is not found in the American Constitution, and as such it is also trying to break new ground. I trust that, however, will not be regarded as an argument in itself against my motion, that since even the wise Americans have not provided for this contingency, we in India need not do so.

If that argument should be urged, may I mention that in one of the later amendments to the Parliament Act or Ministers' Salaries Act, the hoary old Mother of Parliament has provided for the Prime Minister's pension on retirement, and, if I am not mistaken, even for the Leader of the Opposition. Lest I should be misunderstood by this word, I wish no one will think me guilty of any personal implication in that latter statement. I am only quoting a provision of the law made by the British Parliament providing for the retiring Prime Minister a reasonable competence, so that one who has held the dignity of the Prime Minister of the United Kingdom should not be reduced to circumstances wherein, as in the case of Mr. Asquith, his friends would have to come to his assistance, and provide a sort of trust to enable him to pass his remaining years in peace.

Sir, it is a matter of no small concern to all of us that one who has held the office of the President of India should not, by force of circumstances, by economic necessity, be compelled to have recourse to any service, trade, business or activity of any sort, or even to political manoeuvring, which might bring him a competence. It must be the greatest of our public ideals, the greatest of our public concerns that whoever has been elected Head of the State shall, on retirement, be adequately provided with what is considered at the time adequate sustenance for him who has been President of India.

This has both a precedent, as I have just pointed out, and a principle in its favour. Take for instance, the provision made for Judges of the High Court who also hold apart of the Sovereign power of the State, and who on retirement are without question provided with a pension everywhere in the world. You have plenty of precedents for it, I mean for some retiring pension for the President. If you can provide and if you should provide some retirement allowance to high judicial officials on their retirement, why should you not provide for the Head of the State embodying the Sovereignty of the people though even for a time, some sort of an allowance or pension--call it what you like--which would have him from being reduced by necessity to resort to means that may not be considered honourable, or that may not be considered befitting the dignity of one who has been Head of the State?

Sir, the Constitutions, from which precedents are usually cited, were drafted at a time and were made for a people where those coming up for such offices were presumed to be so well off, so well provided and in possession of such worldly wealth, that the provision was a superfluous or unnecessary.

In fact it has been said as regards the President of America, or of the Prime Minister of England, that very often they have retired poorer by thousands than when they entered upon their office. And yet no compensation was found necessary to spend their retirement on a decent livelihood. What does that signify? In this case, Sir, if ideals such as have been preached in this country are at all to be realized in actual fact, if the poorest is to be able to claim one day to have at least the right to be elected President, if one who has no right, title or interest in any industry, aided, supported or protected by the State, and not merely *carried on* by the State, then in such matters I hope the mere consideration of economic necessity after the post has been filled with honour and dignity will not debar such a person otherwise highly qualified from being chosen as a candidate or being chosen successfully as the occupant of the post.

I think, Sir, that the consideration in favour of making some such provision by Parliamentary enactment is so overwhelming that if not in the words that I have had the honour to put forward, in some other way and in some other form, the principle embodied in this amendment will commend itself to the Draftsmen and those who support him; and as such will become part of the Act.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I regret I cannot accept the amendments which have been moved. Professor Shah's amendment No.

1138 seems to be somewhat superfluous. It provides that the President shall be given Secretariat assistance. There is no doubt about it that it will be done whether there is any provision in the constitution or not.

With regard to his second amendment No. 1140 prescribing that a pension be given to the President on his retirement, I find that while I am agreeable to the sentiment that he has expressed that persons who serve the public by becoming members of Parliament undergo a great deal of personal sacrifice and that it is desirable that they should not be left unprovided for towards the end of their lives, it seems rather difficult to accept this particular amendment also. According to him, every person who becomes President and serves his term of office, which is 5 years, shall, at the end of 5 years be entitled to a pension. The second difficulty is that according to his amendment his pension shall not be altered during his life-time. Now supposing for instance one person who has been a President and has filled his full term of years and has obtained a pension under the amendment of Professor Shah, suppose that he is again elected to be the President, what is the position? The position is that he continues to get his salary as the President in addition to that he will also be entitled to his pension. We would not be in a position even to reduce the pension in order to bring it down to his salary. Therefore, in the form in which the amendment is moved, I do not think that it is a practical proposition for anyone to accept. But there is no doubt about the general view that he has expressed, that after a certain period of service in Parliament, Members, including the President, ought to be entitled to some sort of pension, and I think it is a laudable idea which has been given effect to in the British Parliament, and I have no doubt it that our future Parliament will bear this fact in mind.

Then, with regard to the question raised by Professor Kamath about residential....

Shri H. V. Kamath : Sir, I am not Professor Kamath.

The Honourable Dr. B. R. Ambedkar : But he is quite entitled to be called Professor because he speaks so often. *(Laughter.)*

Shri H. V. Kamath : God forbid I should ever become a professor. *(Laughter.)*

The Honourable Dr. B. R. Ambedkar : Well, my friend Mr. Kamath asked me to explain why we have included this provision here, with regard to the official residence of the President, and he also twitted me on the fact that I was burdening the Constitution by mentioning it and other small minutiae. It might be though that this is a small matter and might not have been included in the Constitution. But the question I would like to ask Mr. Kamath is this. Does he or does he not intend that the President should have an official residence and that Parliament should make provision for it? And is there very much of wrong if the proposition was stated in the Constitution itself? If the intention is that........

Shri H. V. Kamath : Sir, may I know whether the Prime Minister will or will not have an official residence?

The Honourable Dr. B. R. Ambedkar : Yes, this is merely a matter of logic, I want to know if he does or does not support the proposition that the President should have an official residence. If he accepts that proposition, then it seems to me a matter of small import whether a provision is made in the Constitution itself or whether the matter is left for the future Parliament to decide. The reason why we have introduced this matter in the Constitution is that in the Government of India Act, in the several Orders in Council which have been issued by the Secretary of State under the authority conferred upon him by the Second Schedule of the Government of India Act, official residences, both for the Governor-General and the Governors have been laid down; and we have merely followed the existing practice in incorporating this particular provision in the Constitution; and I do not think we have done any very great violence either to good taste or done something which we do not intend to do.

Shri H. V. Kamath : On a point of clarification, Sir, may I know whether this particular clause of article 48 will stand in the way of the President being provided with more than one official residence? It speaks of the President having "an official residence."

The Honourable Dr. B. R. Ambedkar : Not at all. There may be two official residences.

Then, with regard to the amendment of Mr. Sarwate, No.28, I would like to say that this matter may have to be considered when we deal with the Constitution of the States which will accede to the Indian Union. Today the situation is so fluid that it is very difficult to make any provision of the sort which has been suggested by Mr. Sarwate.

Mr. Vice-President : The amendments will now be put to vote, one by one.

Amendment No. 1130, standing in the name of Dr. Ambedkar.

"That in clause (1) of article 48 :--

> '(a) for the words 'either of Parliament or' the words 'of either House of Parliament or of a House' be substituted,
>
> (b) for the words 'member of Parliament or' the words 'member of either House of Parliament or of a House' be substituted,
>
> (c) for the words 'in Parliament or such Legislature, as the case may be,' the words 'in that House' be substituted."

The amendment was adopted.

Mr. Vice-President : Amendment No. 28, standing in the name of Mr. Sarwate.

"That in amendment No. 1130 of the List of Amendments in article 48, before the words 'House of Parliament' the words 'of the ruling family of Indian States and is in receipt of political pension or of an allowance on account of 'privy purse' be inserted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1128, standing in the name of Mr. Naziruddin Ahmad.

"That for clause (1) of article 48, the following clause be substituted, namely:--

> `(1) If the President is a member of any Legislature of the Union or of any State, he shall be deemed, on his making and subscribing the oath under article 49, to have resigned such membership'."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1133, standing in the name of Dr. Ambedkar.

"That in clause (2) of article 48, for the words 'or position of emolument' the words 'of profit' be substituted."

The amendment was adopted.

Mr. Vice-President : Amendment No. 1135, standing in the name of Mr. Kamath.

"That in clause (3) of article 48, the words 'the President shall have an official residence and' be deleted."

The Amendment was negatived.

Mr. Vice-President : Amendment No. 1138, standing in the name of Prof. K. T. Shah.

"That in clause (3) of article 48, after the words 'shall have an official residence' the following be added:--

> 'and such secretarial, clerical, or expert consultative assistance at public expense as he may consider necessary for the due discharge of his duties and responsibilities under the Constitution, or the laws made thereunder for the time being in force'."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1140, standing in the name of Prof. K. T. Shah.

"That the following new clause be added to article 48:--

> '(5) Every President on completion of his term of office, and retirement, shall be given such pension or allowance during the rest of his life as Parliament may determine, provided that during the life time of any such President in retirement, the pension or allowance granted to him shall not be varied to his prejudice'."

The amendment was negatived.

Mr. Vice-President : The question before the House is that article 48, as amended, form part of the Constitution.

The motion was adopted.

Article 48, as amended, was added to the Constitution.

New Article 48-A

Mr. Vice-President : Now we come to the new article 48-A and amendment No. 1141 standing in the name of Prof. K. T. Shah. It will be seen that this amendment is similar to amendments No. 1125 and No. 1126 which have been negatived. Therefore it is disallowed.

Article 49

Mr. Vice-President : We now come to article 49.

The motion before the House is:

"That article 49 form part of the Constitution."

We will go through the amendments, one by one.

First is amendment No. 1142, standing in the name of the Honourable Shri G. S. Gupta; it is a verbal amendment and is disallowed.

Amendments Nos. 1143, 1144 and 1145 are of similar import. No. 1144 may be moved, standing in the name of Shri T. T. Krishnamachari.

Shri T. T. Krishnamachari : Mr. Vice-President, Sir, I move:

"That in article 49, after the words 'Chief Justice of India' the words 'or, in his absence the senior-most Judge of the Supreme Court available' be inserted."

Sir, this is only making a provision in case the Chief Justice of India is not present, some other Judge should do his function, and it is but proper that the senior-most judge of the Supreme Court should do this function. Sir, I trust the House will accept the amendment because it needs no further explanation.

Mr. Vice-President : Dr. Ambedkar, do you accept that amendment?

The Honourable Dr. B. R. Ambedkar : Yes, I do.

Mr. Vice-President : Then I need not put No. 1143 to vote.

Then comes amendment No. 1145, standing in the name of Shri Jaspat Roy Kapoor.

(Amendment No. 1145 was not moved.)

Mr. Vice-President : Then comes amendment No. 1146, standing in the name of Mr. Kamath.

Shri H. V. Kamath : Mr. Vice-President, Sir, by your leave, I move this amendment No. 1146 in a slightly amended form, as follows:-

"That in the affirmation or oath in article 49, for the words 'I, A. B. do solemnly affirm (or swear)', the following be substituted:-

'In the name of God, I, A. B, do swear'

or alternatively,

'I, A. B. do solemnly affirm'."

Sir, as I read the Constitution carefully I was left with a sadly uncomfortable feeling that there was a void in the Constitution, that there was a vacuum in the Constitution.

Mr. Vice-President : Mr. Kamath, Are you not moving your amendment inserting the words, "in the name of God"?

Shri H. V. Kamath : I have amended my own amendment.

Mr. Vice-President : I see, you are amending your own amendment.

Shri H. V. Kamath : Yes, Sir. When I perused the Constitution, I was left with the feeling that there was a void in it. We had forgotten, I do not know why, to invoke the grace and blessing of God. To me it is odd, it is passing strange that before an Indian Assembly, speaking on the Indian Constitution I have to come and stand before you today to plead for this amendment: to plead that God may find a place in our Constitution. I should have thought, Sir, that the Preamble itself should have opened with an invocation to God. Well, that is coming later on and we will see what will happen to that. Perhaps, it was the will of God that the Constitution should be barren of His name and that later on the name of God should be invoked in the course of a discussion on the Constitution. May I ask, Sir, do my friends think--those of them who do not attach any importance or value to this invocation--that by banishing God, by banishing the word 'God' from their minds and thoughts, or from the Constitution they arrogate to themselves the idea that thereby they are banishing God Himself from the Constitution? God forbid, that they should entertain any such thought. Do they think that it is possible to legislate God out of existence? The more, Sir, we avoid God, the more we try to flee from Him, the more He pursues us. There is a beautiful poem, "The Hound of Heaven" by Francis Thompson, which describes the state of mind of one who tried to flee from God.

"I fled Him down the nights

And down the days,

I fled Him down the arches of the years, etc."

and so he goes on: then he says:

"But with unhurrying chase, unperturbed pace

The feet of God pursued him,

"And a voice beat more instant than the feet,

All things betray thee

Who betrayest me."

In India, Sir, with our ancient culture, with our spiritual genius, with the heritage to which all of us are heirs--one and all of us--it is needless for me to say how every activity of ours in every field of endeavour has been permeated through and through with the idea of an offering to God, the deepest spiritual idea. According to Hindu customs and traditions, our ceremonies open and begin with the invocation "Hari Om Tat Sat". Our Muslim friends have the Koran Sharif whose every verse starts with the invocation "Bismilla Al Rahaman Al Rahim". Our Sikh friends' Guru Granth Sahib opens with "Ekonkara Satnama Karta etc." Our Christian friends have been commanded by their Saviour to "Give up all thou hast and follow Me". The same idea has found a place in our own philosophy, namely, in the Gita:

Sarva Dharman Parityajya, Mamekam Sharanam Vraja

Give up everything, even all Dharmas and seek refuge in me alone that is "God". Therefore it is needless to dilate very much upon this amendment of mine. As I have already said every act of ours from eating and drinking to the highest worship, is an offering, a dedication and a sacrifice to God, namely:

yat karoshi yadashnasi yajjuboshi dadasi yat

yattapasyasi kaunteya tatkurushva madarpanam

And here Sir, it is something very solemn that we are doing, and even if eating and drinking is to be an offering to God, then this Constitution which is a sacred task, must be an offering to God also. Our own teachers--all the old sages and seers and Rishis--up to the days of Mahatmaji and Netaji have been dominated by a supreme idea, namely that all our actions must be acts of sacrifice to God. I do not want to tell the House how the minds and souls of Mahatmaji and Netaji Subhas Chandra Bose were permeated with this love and "bhakti" of God and how they bathed their being ever and anon in the life-giving waters of the Eternal. Coming, Sir, to our own leaders of today, such as Sardar Patel, Rajen Babu our President, and our Governor-General Shri Rajagopalachari, you will permit me to quote from some of their recent speeches where they have enjoined upon us not to forget God in our daily activities.

The Governor-General, Sir, on Thanks-giving Day after the Hyderabad operations, in his speech, stated:

> "Ministers, Generals, Soldiers, Police and Citizens, all are entitled to our gratitude. But nothing moves in this world but God moves it. We imagine we have done great things."

In our own conceit we imagine we have done great things. Proceeding, the Governor-General said:

> "The truth is that God did those things. Let us be humble and deserve the grace which he so abundantly pouredon us. Let us not be proud. Let us daily fill our hearts with mutual love and trust."

Our President, Dr. Rajendra Prasad, last year when he broadcast a message on Independence Day, said:

"With the help of God and under the leadership of Gandhiji we have won the battle of freedom and gained our objective."

Sardar Patel recently in Bombay declared:

"We are grateful to God that we have succeeded in establishing stabilized conditions in our country to a certain extent."

I therefore feel that in a Constitution, apart from invoking the grace and blessing of God in the Preamble itself, when a solemn thing like an oath or affirmation is concerned, it will be an empty performance, if when we take a solemn oath we do not do it in the name of God. Netaji Subhas Chandra Bose in Singapore, when he became the Commander-in-Chief and Provincial President of the Arzee Hukumat-e-Azad Hind, took the oath which ran thus:

"Ishwar ke nam par main pratigy karta hun."

Therefore, Sir, in the end, I would appeal to the House that we are heirs to an immortal and a spiritual heritage, a heritage which is not physical, nor material nor temporal: a heritage which is of the spirit--a spirit that is, ever was, and ever shall be, a heritage that is eternal. Let us not squander this invaluable heritage. Let us not dissipate this heritage: let us remain true to our ancient heritage, our spiritual genius. Let us not lightly cast away the torch that has been handed down to us from time immemorial. Let us in the words of Swami Vivekananda aspire to conquer the world spiritually. Let us blaze forth a trail that will be the light of the world as long as the sun and moon and stars endure. I shall only end with the words which were ever on Mahatma Gandhi's lips:

"Ishwar Allah tere nam

Sabko sanmati de Bhagvan."

This amendment of mine, as amended, today I have moved before the House so that on this matter which I consider vital and fundamental we may have a unanimous House. Therefore I have amended with your leave, Sir. the original amendment No. 1146 and in the amended form I move it before the House and commend it to the House for its acceptance.

Shri Mahavir Tyagi: Sir, I beg to move: that for amendment No. 1146 the following be substituted:

"That in article 49 for the words 'do solemnly affirm (or swear)' the following be substituted:--

swear in the name of God

'do----------------------------'."

solemnly affirm.

This will mean that those who believe in God will swear in the name of God and there will be liberty for those agnostics, who do not believe in God, only to solemnly affirm, so that there will be freedom for one's faith. My amendment is practically the same as Mr. Kamath's except that the change of words is made for those who do not believe in God, so that they can 'solemnly affirm' and others 'swear in the name of God'.

While moving this amendment I want to take the opportunity of expressing my views with regard to the name of God. In fact I am glad and proud of the amendment which my Friend Mr. Kamath has moved. This is the first time that the Constituent Assembly is considering the question whether it would bring in the name of God in the Constitution or not. In fact we should have brought it in the very beginning but since the Preamble did not come under consideration, we shall make another effort to invoke the name of God when we start to consider the Constitution from the beginning.

The Constituent Assembly having passed a resolution saying that the State will be a secular State, a lot of misunderstandings have been created on account of that resolution. It is for us to clear them. The name of God does not, in my opinion, interfere with the secularity of the State, because when a person elected as President goes to take the oath, even though a President, he is not virtually a President before he takes the oath: he is simply a person. He has no official capacity when he approaches the altar to take the oath. He is just an individual in his personal capacity and in that capacity he takes the oath. And even if the name of God were to interfere in any way with the secular character of the State, it would be so only when an official takes the name. Till such time as the President takes the oath he remains only a person. And when a person takes an oath he does it according to his personal faith.

Shri L. Krishnaswami Bharathi : What is the distinction?

Shri Mahavir Tyagi : Those who can see the distinction can find it out. An oath is a personal matter and it must be observed with all solemnity and the occasion when an oath is taken is a very solemn one, especially when the head of the State takes the oath. Personal religion does not allow of any temple, altar or rites. It is confined purely to one's internal cult of the Supreme God and the eternal obligations of morality. This is the personal religion of each individual. It is this personal point of view. My friend wanted to know as to what was the distinction. The distinction is that personal religion pure faith in God; it does not permit of any practice, profession, or rite. God is neither a physical precept nor a mental concept. It is the spiritual realisation pure and simple. There is no rite attached to it. No temples are needed nor any altars. I well understand the philosophy or the logic of the state being secular. For, in every land, where there are so many religions and so many communities, one cannot give any particular colour to the State. The State must in such cases be secular, so that the consolidation of the nation may be achieved. We have many religions and communities in India. But the name of God is a common factor among them all. Every section believes in God, every group believes in God and every community believes in God. Therefore if we bring in the name of God in the constitution of our State, it will help us to unify the state, and will implement the secular character of the State rather than disturb its secularity. This is only by way of argument. The fact is that since we announced in this Assembly that ours was going to be a secular State, the announcement has given rise to all sorts of interpretations and misgivings. People began to think that as far as Government was concerned it had banished God altogether. I hope the Constituent Assembly by bringing in the name of God here will to some extent clarify the misunderstandings. Some vain kind of politicians in their attempt to imitate some fashionable slogans of the West have allowed themselves to believe that in a secular State God is taboo. A secular State means the state of Truth and God and eternity without prejudice to any particular religion. In India all our culture, and all our policy and civilization has been spun and woven round the one nucleus, God, and if God is banished I do not know what Swaraj will mean to India. Personally I along with so many others, seniors and juniors, and millions of people fought for thirty years for Swaraj. The Swaraj of my conception was Ram Raj. It was not the political freedom alone that mattered. If I may be permitted to say so, I care a tuppence for political freedom. India did not only mourn the loss of her political freedom but her real grief has been the loss of her freedom of spirit. Our spiritual freedom was first hit when Somnath was attacked. Since that time, all these hundreds of years, India has not been feeling free. Real Swaraj means "Ram Raj" How this idea of secularity has been misinterpreted, I will not be going out of the subject if I take the house into confidence and inform them that very recently at a conference of A. I. R. officials they came to the unanimous decision that the recitation of the Gita and the Ramayana, the Koran and the Bible should now be stopped. If secular State means that our children will not know about the Ramayana or listen to the Gita or the Koran or the Granth what is political freedom worth? This is stretching the meaning too far. If God is banished from this "Ram Rajya", India will become Ayodhya without Ram. I submit, Sir, by 'Ram' I mean Hindu God and also Christian God. (Laughter) I submit that God is a common factor and therefore we must invoke Him here and also in the Preamble when the occasion arises. Even in the British Parliament, when they assemble, they do so only after prayers. They hold prayers. In the proceedings you will find that the Parliament met at such and such an hour and after 'prayer' began their proceedings. Theirs is not a communal State too. In Ireland, as also in many other places, God is not forgotten. I am indebted to my Friend Mr. Kamath who introduced this word 'God' here. We worship God and our faith must be recorded. India believes in God and therefore the Indian State must remain a State of God. It must be a godly State and not a godless State. This is our meaning of secularity. With these words I move my amendment.

Shri R. K. Sidhwa : I do not move amendment No. 1147.

Kazi Syed Karimuddin (C. P. & Berar : Muslim): Mr. Vice-President I move: That in the Form of Oath in article 49, the words "and that I will devote myself to the service and well-being of the people of India" be deleted. My reason for the deletion of these words is that the very purpose of taking an oath or making an affirmation is that certain obligations are created in law. If there is a breach of this oath, then there is the impeachment of the President or the Vice-President. As a citizen of India, of course, a person will be devoted to the service of the people. Therefore it is not necessary that in the oath you must have this pious declaration. You will see that in the form of oath prescribed in the American Constitution, the latter part of this oath is not mentioned. Therefore my submission is that the latter portion should be deleted as it is only a pious declaration.

In regard to the amendment moved by Mr. Kamath I wish to say a few words. I was very glad that he held a brief on behalf of God and pleaded that God should not be banished from our Constitution. My submission is that if his amendment is accepted we will be excluding those people who have no faith in God at all. There are so many people in this country and elsewhere who have no faith in God. I may cite the example of the Jains. They do not believe in God and there are many who are atheists. If Mr.

Kamath's amendment is accepted you will be excluding those people from becoming the President. If his amendment is accepted you will be creating an obligation on people that they should have faith in God.

Shri H. V. Kamath : Mr. Karimuddin has not seen my amendment. If he has seen it, he has not understood it.

Kazi Syed Karimuddin : The monopoly of understanding is with you only. *(Laughter).*

Shri H. V. Kamath : Sometimes.

Mr. Vice-President : Do you want to explain it? Yours is an amendment to the amendment of Mr. Karimuddin.

Kazi Syed Karimuddin : My submission is that in a secular State, when you are framing a Constitution, why should there be a classification of people at the time of taking the oath? Whether they believe in God or not, should not be indicated. It is contrary to the spirit of democracy that any insertion of God should be made in the Oath in the Constitution. My submission is that non-mentioning of God is not banishing Him.

Mr. Naziruddin Ahmad : I may point out, Sir, by way of clarification, that Mr. Kamath's amendment does not insist that the President should have real faith in God. According to it, he has merely to begin with the name of God.

Prof. K. T. Shah : Sir, I beg to move:

"That in article 49, after the words 'well-being of the people of India' the following be added:

'and will throughout the term of my office as such president so conduct myself as to leave no ground for any charge of seeking to promote my own interest or my family's aggrandisement, and that in any act I may have to do or appointment I may have to make, I shall consider only the interest of the public service and of the country collectively."

I am afraid this is rather a delicate matter. But there is an old adage that fools rush in where angels fear to tread. As I have been qualifying myself very highly and frequently for the former title, I am afraid I must keep to the role even in this delicate matter.

The oath of the President, apart from other things, must include in my opinion, an assurance and an affirmation that he will only look to the interest of the country, to the service of the people; and not think of his own interest or of the aggrandisement of his family in any act that he may have to do and in any appointment that he may have to make.

It is indeed a pity, Sir, that in this House there are, so far as I can judge, such few voices being raised in support of that purity of the governmental machinery which has been taught to us as the inevitable consequence of what was just described as Ram Rajya in this country. Sir, I must, at the cost of becoming wearisome by repetition, insist that those ideals which have been professed during our struggle against the Imperialist outsiders must not merely be copy-book maxims; they must be living realities, and be implemented and must become an actual fact of daily life, agreed to by everybody in the country from the highest to the lowest.

The symbol of that, I further submit, can nowhere be more vividly insisted upon than in this part of the oath of the President, that, during his term of office, he shall so conduct himself as to leave no ground for any suspicion of seeking to promote his own private interests, or secure the aggrandisement of his own family, in any act he may do or in any appointment he will make; but that he will always and entirely consider the interests of the country collectively as a whole and not of any individual.

It is a pity, also Sir, that it has become necessary to emphasise what on the face of it seems to be such an obvious proposition. It would not have been necessary to include it, if only we had not bitter experience of people forgetting their own professions, of people forgetting the great principles that they themselves had uttered. For, once they had acquired power, they suffered from intoxication of power and position and allowed it so freely to mount to their heads that they forget what they had stood for throughout their lives, and violate in deed and in fact everyday what they had professed themselves.

Sir, power is a dangerous drug. It is new in this country and I am told--I have no experience of my own--that new wine is much more heady than old. I do think that whatever may have happened in the past, in the new Constitution we must see to it that the head of the State and the principal officers working under him for the benefit of the country, are free from any suspicion, any charge, any ground even to believe that they, in their several acts, in their several offices or appointments, have thought of anything but the good of the country according to their light.

Sir, I know that in human affairs some ground can always be found for such fears, and where good ground is not found, rumour may be busy imagining or fabricating things which are not at all there, or exaggerating things which may be only seedlings. I am also aware, Sir, that man is liable to err, with the best of intentions. The provision that I am seeking to make by this amendment is not intended to punish such errors made in good faith, in ignorance, or in the absence of proper light. What I am seeking to guard against by this amendment is a deliberate misuse or abuse of office and power, so that, instead of the interests of the country collectively, being attended to by those in power or authority, only the family interests or the individual's own interests may be promoted.

This has happened in other countries; and notwithstanding our heritage, notwithstanding our insistence upon popularising God even in such matters, we are liable, I take it, to repeat other people's follies as well. The mere presence of the name of God, I am afraid, will not be an insurance against the frailty of man. That being so, I want it to be clearly reaffirmed, I want it to be reinforced that those who hold the trust, the highest office under the people, and have in their power, in two, three or four years, to mould the destinies of the country, shall, atleast to their own judgment and according to their lights, be free from any accusations of the kinds I have contemplated in this amendment.

It is invidious, Sir, to mention specific instances. It is unnecessary, Sir, to quote examples of this kind which most of us may know. As the saying goes, in my part of the country at any rate, while everybody knows the name of his wife, none will utter it. That being so, I certainly am not prepared to violate that maxim, and mention names which may or may not be accurate. But I think there ought to be no difference of opinion that the head of the State should be free from any such charges. Hence, even if we may not have an absolutely destitute person as President, or a person without any family entanglements, a person without any connections or dependents, even then we should insist upon such safeguards as will see to it that human frailty is not reinforced by individual temptation, or constitutional laxity, and permit things which should never be done. The human brain is ingenious and lawyers there are who will reinforce that ingenuity. Cases are not wanting in the past when persons deliberately misinterpreted or violated the spirit of their own oath, if not the letter. I remember the case of a former Lord Chancellor of England who had in his power vast patronage of appointments to which he appointed only his own relatives. When this scandal grew to such an extent that only his sons, nephews and grandsons had any chance of appointment at all, the House of Lords appointed a Committee of Inquiry to find out whether or not such charges were well-founded. Appearing before the committee the Lord Chancellor--I think it was Lord Elden--had the temerity to say, before this Committee, quite solemnly "I have taken *an oath* that I will appoint only those whom I know to be so and so. And whom do I know better than my sons or nephews? He forgot to add that it was only those whom he knew to be qualified that he was to appoint, and not only those whom he only knew. That was a difference and a distinction which his learned Lordship did not care to remember at the moment.

The case is also very well known of Queen Victoria, who, at the time of the disestablishment of the Anglican Church in Ireland in 1869, brought out her Coronation Oath to show that she had taken an oath to uphold and maintain the Church of England. She had forgotten that she had taken an oath only to maintain the Church of England in *England*, but not necessarily all over the world, or even whole of the United Kingdom. In this way, the opposition of the Queen was got over.

My point is that even though it may be possible to abuse or deliberately misinterpretation misapply the terms of the oath, the oath in itself is a guarantee of some sort. I know it is not an absolute knave-proof guarantee; but it is a guarantee of some sort that those who hold such offices will always be reminded of their obligations, of their promises that they will so conduct themselves as to be free from any suspicion of the kind that is implied in many acts or utterances of those who have high offices in their power as a gift. As I said before, this matter is so self-evident and so important that there ought to be no opposition to a proposition like this. I hope the House, true to the traditions which it has been upholding, will accept my amendment.

Shri R. K. Sidhwa : Mr. Vice-President, Sir, this is a simple clause relating to the oath to be taken by the President. Sir, I am a firm believer in the existence of God and also in religion but I must say, Sir, that it will not be proper to insert the word 'God' in our Constitution simply because we invoke the blessings of God. God is everywhere if you really believe in Him. God is here in this House. He is omnipresent. If you really believe in the existence of God, it is no use merely putting it in the Constitution and taking consolation from it. There is no use the President taking his oath in the name of God and then do something quite contrary to the teaching of God. There is another factor to which I object; I do not share the view of my Friend, Mr. Karimuddin that in a secular State the word 'God' cannot come in. A secular State does not mean that an individual cannot believe in God. That theory is certainly not tenable to any reasonable man, but I do believe, Sir, that day in and day out, we do say that religion shall have nothing to do with our Constitution, and that religion is our private concern. I certainly believe in God and I think religion is my own business. It is nobody's business to tell me in what respect and in what method you believe in God and you approach your religion. In India, we feel that God is a symbol of religion; and in the name of religion, we know, Sir, how disastrous things are happening in this country; each community believes in God in his own way. The belief of the Hindus is quite different, that of the Muslims in quite different and so also that of the Parsis and the Christians. I, therefore, do not want that our Constitution should in any way be marred by the word "religion", but if my friends have a consolation in bringing in God, and that is to their satisfaction, let them have it. I only want to say, Sir, that it would have been better if the word 'God' and the religious point of view were avoided. What I would really have preferred is that the public should have been remembered by the President, when he takes the oath. He should have stated that in the presence of the people......

Mr. Vice-President : Is that the amendment you are suggesting?

Mr. R. K. Sidhwa : I am only stating that from the Irish Constitution. There the President takes the oath in the name of the people of the whole country. He says: "I swear before the People of the whole country" and at the end of the oath states "if I break my oath, I will submit myself to the severest punishment from the State." I have heard this morning sermons being preached that the President should be a man of integrity, sincerity and honesty, and the resolution of the Jaipur Congress was quoted. But the President does not say "I shall be subject to the severest punishment if I do not carry out the injunctions that have been imposed upon me and I make that solemn affirmation before the people of this country".

Mr. Vice-President : I really find that you are moving amendment No. 1147 quoting the very words.

Mr. R. K. Sidhwa : These are the words of the Irish Constitution, Sir.

Mr. Vice-President : I do not deny that, but you are quoting from the amendment which you did not want to move.

Mr. R. K. Sidhwa : This is not my amendment and if it is so, I wish to state that I have borrowed it from another Constitution just as so many things have been borrowed by so many eminent persons in this House.

Mr. Vice-President : Not at all; I am merely suggesting that you are quoting the amendment which you did not move, i.e., Amendment No. 1147.

Mr. R. K. Sidhwa : I bow to your ruling. I can not challenge what you say. I merely stated that it is merely a reproduction of the Irish Constitution.

Mr. Vice-President : It is certainly an amendment which stands in your name.

Mr. R. K. Sidhwa : I only wanted to say that the oath should be one appealing more to the people of this country, for whose interest and well being, we are preparing this Constitution.

Shri M. Thirumala Rao (Madras : General): Mr. Vice-President, Sir, I do not know why the light goes off as soon as I approach the mike. All of us are in need of greater light, especially after my honourable Friend, Mr. Sidhwa's speech, who has protested too much by God and who wants to eliminate God from the Constitution. Sir, it is strange how the honest and god-fearing people who have drafted this Constitution have got so much fear of God that they have altogether banished Him from the Constitution ! Sir, I want to bring to the notice of this House that during the last 30 years, the Congress struggle has gone on definite lines of ideology, led by one of the greatest men of the world. Truth and non-violence have been our weapons and they have been uniquely used by large masses of people and during all these years, the people who fought for that freedom of this country have got a concept of what that freedom should be like. Mahatma Gandhi is worshipped in this country not because he is merely a political leader, but because he is a gentleman, a person who has personified in himself the spirit of the nation that has survived the onslaught of many invasions from far-off countries. Civilizations of the world have gone before us; the civilizations of Egypt and Babylon have perished, but the civilization of India has survived all these centuries, because there is something in the very make-up of this nation, which has got its roots deeply inspiritual emotion. If you eliminate that spiritual emotion, then India has no right to exist and would have ceased to exist long ago. All of us have fought under the able guidance of Mahatma Gandhi and Mahatma Gandhi has enthused and inspired us with definite ideals of the governance of our country. Unfortunately as irony would have it, the drafting of this Constitution has fallen into the hands of those people whose lives have not touched Mahatma Gandhi's ideology at any point except with the single exception of my honourable Friend, Mr. Munshi there.

Shri K. M. Munshi (Bombay : General): Thank you, Sir.

Shri M. Thirumala Rao : Therefore it is a disappointment that we have not really understood the genius of our people. We have always said, wherever we have gone, that the very basis of our life is embedded in religion. Go to the western countries. There the King stands for the country and God. The King stands for the religion of the community and you have seen the western universities. Oxford and Edinburgh--and all the older universities that provide the tradition in the oldest abbeys that are built along with the universities--these ancient cities of learning have given the first place to religion or the spiritual conduct of the nation. Therefore, what I suggest is this: that this constitution is going to safeguard the real genius, the real civilization of this country. How are they going to safeguard it? A provision has been made for atheists. The Chairman of the Drafting Committee who has got such a soft corner for atheists, who are a handful in this country, should have shown greater enthusiasm for safeguarding the spiritual heritage of the vast masses of this country ! Such of those who have gone to Jaipur would have witnessed the real life of the nation is still alive with them. Thousands and thousands of people with genuine emotion in their hearts and tears welling in their eyes were looking at either Sardar Patel or Pandit Nehru, as the real symbols of the nation. I had occasion to watch a handful of Sikhs; they were telling us--about fifteen or twenty of them:

"Hamko Darshan Pura Hogia."

Where does the word 'Darshan' come from? It is a word of religion. If they were looking at our leaders, it was not because they have got a regimented press and regimented armies behind them. Mahatma Gandhi was great not because of the regimented press, state and the armies to support him like the dictators, Stalin, Hitler and Mussolini of the West. The moment you want to banish God from your daily life, as reflected in the Constitution, that moment you have no right to exist. They in the

West have banished God from the regimented State of Russia; they have forgotten God in the regimented State of Germany and Italy and you have seen the fate that has overtaken them. Therefore, what I say is if you want to reflect the real genius of our people, let us stand by God; God as such is such a wide term; God is an all embracing term. It is a common noun to which a proper name is given by each religion.

I have seen the amendments of my honourable Friends, Prof. K. T. Shah and R. K. Sidhwa. You want that a man should take the oath, affirming that he will behave properly, that he will be honest and that he will be everything. All these things are contained in 'God'; much more is contained in that one word 'God' by which you are asked to swear and you say that you will not define the name of God in discharging you public duty. Therefore, Sir, the amendment which has been so ably moved by my honourable Friend Mr. Kamath really reflects the genuine genius of our country. I am sure this country and this Constitution will have to undergo a thorough transformation before it finally settles down to evolve this nation as one of the greatest nations of the East, to uphold the real culture of this country as a leader of the world. Therefore, Sir, this amendment has not come a bit too late and I am glad the party has accepted it.

An Honourable Member : Which party has accepted?

Shri M. Thirumala Rao : I think it is understood what I mean by 'party'. I hope the House will unanimously accept this amendment.

Shri K. M. Munshi : Mr. Vice-President, Sir, I think the honourable Member who spoke against my honourable Friend Mr. Kamath's amendment got that there was an amendment by my honourable Friend Mr. Mahavir Tyagi which leaves it free to those who do not believe in God to affirm solemnly the words of the oath. The only point before the House is, when a person believes in God, is he to swear by God or swear by somebody else? The amendment of my honourable Friend Mr. Kamath as amended by my honourable Friend Mr. Mahavir Tyagi's amendment fulfils the true criterion that when a man actually believes in God, he must swear by Him and not merely swear without His name or in the name of somebody else. We know in the olden days people used to swear by the cow's tail or by the *peepul* tree. The idea is that swearing must be in the name of God, in the most solemn belief that a man possesses.

My friend who spoke last was pleased to refer to me as one who was closely connected with Mahatma Gandhi out of the Members of the Constituent Assembly. I do not know whether it is true. But, I myself have felt--I am free to confess--that we are emphasising the absence of God in this Constitution too much. My opinion was that we should have His name in the Preamble; but the general opinion was different. But when it comes to swearing, I see no reason why any person should fight shy of the name of God. I fail to understand how this offends against the conception of a secular State. A secular State is used in contrast with a theocratic Government or a religious State. It implies that citizenship is irrespective of religious belief, that every citizen, to whatever religion he may belong, is equal before the law, that he has equal civil rights, and equal opportunities to derive benefit from the State and to lead his own life; and nothing more. A secular State is not a Godless State. It is not a State which is pledged to eradicate or ignore religion. It is not a State which refuses to take notice of religious belief in this country. As a matter of fact, every State recognises this. We have done it in passing the fundamental rights with regard to religion. Religion is the richest possession of man and even under this secular State, a person having a religious belief will be fully entitled to it in the way that he likes. Any State that seeks to outlaw God, will very soon come to an end.

We must take cognisance of the fact that India is a religious-minded country. Even while we are talking of a secular State, our mode of thought and life is largely coloured by a religious attitude to life. When Mahatma Gandhi died, the State procession which carried him to the funeral ground ended in religious ceremonies. His ashes were immersed in a hundred rivers of India. I may mention to you my own experience. When the ashes of Mahatma Gandhi were taken to be immersed in the Sangam in Hyderabad, the Hyderabad State, as it then was, officially joined in it. Over 200,000 Muslims joined in it. Religious ceremony was performed at the Sangam according to the Hindu style in a congregation which consisted of Hindus, Muslims, Christians and members of other communities. That shows that the subconscious mind of India is highly religious. We should not be ashamed of it. And it will be a day of disaster for India if, by some legislative trick, our State is converted into an irreligious, Godless State. We need not fear that a secular State is inconsistent with a religious mind among the people.

As an honourable Member has said before, if India has anything to give to the world, it is the outlook on life deeply imbued by spirituality, by awareness of God in our midst. If Indian culture has any meaning at all, it is that there is God and that a man can rise to the dignity of divinity in this very life if he becomes an instrument of God. The lever with which Mahatma Gandhi created the present nationalism and won for us a free State was the religious-mindedness of India. This mind will continue to be religious, and the State in India cannot be secular in the sense of being antireligious. It does not mean that a man who believes in God should not swear by Him when pledging himself to the service of his country. This is my submission on this point.

Mr. Tajamul Husain : Mr. Vice-President, Sir, every religion says that nothing can be done without the wish or order of God. Therefore, the logical conclusion is that my honourable Friend Mr. Kamath came to propose the name of God by the wish of God. And I have come here also by the wish and order of God to say that he does not want His name here at all. I have come here to oppose the amendment of Mr. Kamath; I will give my reasons later on.

First of all, I want that article 49 should be deleted from this Constitution. What is the use of having an article which says that the highest officer, the President, when he becomes President should take an oath or affirmation? What is the necessity? My honourable Friend Dr. Ambedkar, who is an eminent lawyer, knows that 99 per cent of the witnesses who go into the witness box and take an oath or affirmation mentioning Almighty God, go to tell the untruth. *(Interruption.)*

Mr. Naziruddin Ahmad : Witnesses never take oath in the name of God unless they specially agree to. *(Interruption).*

Mr. Vice-President : It would be better if honourable Members do not interrupt.

Mr. Tajamul Husain : I thought the Honourable Mr. Naziruddin Ahmad who is a lawyer from Burdwan--I am told he is a very good criminal lawyer--knew that when a witness goes to the witness box he says:

> *"Allah ya Bhagwan ko nazir ho kar boltae ham."*

He says, "in the name of God, I express........"

I was saying that article 49 should be deleted. I can move it without sending it in writing, because I oppose the whole thing. I say, Sir, that this Constitution is made by us--human beings. We cannot say this is a perfect Constitution. Nobody can say that. The word of Almighty is perfect and so why have the name of God in an imperfect Constitution? Why make Him cheap and why bring Him here? Sir, this constitution is going to be translated and the translation will come before the House and will be passed. What translation are you going to have? Whose name are you going to have? We all know that God is one but we have created thousands of Gods and your God is different from my God and Mr. Sidhwa's is different from someone else's. Whose God are you going to have? Why should Mr. Sidhwa take the oath in the name of some God which is not the name of his God? Supposing it is translated and the word 'Bhagwan' is there, can you compel the Parsee or Christian or a non-Hindu to say that when he becomes a President? Either you do not want him to become the President or if he does, he cannot swear that. Why have His name? We will worship Him in any way we like in our homes. I do not want to repeat the argument of Mr. Sidhwa. He has spoken very ably on this matter. There are Indians who do not believe in God at all. How are they going to take this oath? With these words I move:

> "That article 49 be deleted."

Rev. Jerome D'Souza (Madras : General) : Mr. Vice-President, it is not without some emotion that I rise to speak a few words on this amendment of Mr. Kamath. I am sure my honourable Colleagues in this House will have no doubt as to the purport of what I am going to say here. I have made references to this solemn subject more than once before this House, and so it is not without satisfaction that I notice and wholeheartedly approve of the suggestion or the amendment of Mr. Kamath. Nevertheless Sir, accepting and welcoming this amendment, I cannot help feeling that far too great a significance to the "official", to the "Constitutional" aspect of it, has been given to this very moderate suggestion, by some of the speakers that have preceded me. If I may be permitted to say so, our honourable Friend Mr. Munshi struck the right note and put matters in the right proportion. What does this amendment propose to do? Does this amendment commit the Constitution or the Constitution-making body here to a solemn and unequivocal profession of belief in God and in God apprehended by a concept clearly defined and unanimously held? If it were so, objection might have been raised to it, but no such thing is implied here. What is asked here is this: when the most honoured position in our country is being given by the choice of this country to a man of outstanding personality, ability and character, we want him to come to the threshold of that office and to make a promise of service to the country in the manner that is most binding and most solemn that we can think of; we want him to draw his strength from the deepest fountains and springs of action within him for the service of his country. And knowing that the vast majority of our countrymen, Hindus or Muslims or Christians or Parsees or Sikhs draw their moral strength from trust in the Supreme Being, it gives to this chosen, this exceptional man the option of promising service to the country in that Sacred Name if he so desires. We want to give him the opportunity of making what is in his eyes the most solemn and the most binding promise. We do not impose it upon him. If there is someone who for some reason or other does not want to take that particular form, an alternative form is suggested to him. All that the Constitution-makers and we here imply by this amendment is that we accept the fact that in our country the vast majority of men are believers in God and that almost certainly, anyone who would come to this exalted officer would be moved to fulfil the functions of that office most faithfully if he promised to do so in the name of Almighty God. Taking this for a fact, we merely register that fact but make no corporate profession. I do not see therefore why this should be construed as opposed to the spirit of our Secular Constitution. Secondly, even a Secular Constitution, as Mr. Munshi pointed out, is not a Godless Constitution. It is not in opposition to the very notion of God. Only it makes no choice as between this or that particular profession, or religious section, but it does look with sympathy upon the convictions, the feelings, the desires, the hopes and aspirations of the entire people. It would not be true to the spirit of those people if it ignored this profound reality, the belief of all our people in God. To my honourable Friends who asked us, 'Have we got a uniform and clear notion of what God is before we permit the introduction of this word in our Constitution?' May I say, 'Is there anyone who is not aware in a broad and general way of what we mean by this word?' Is it necessary to enter into the discussions of Philosophers and Metaphysicians and to understand their subtle distinctions between this or that concept before accepting this term in so far as it stands for the Supreme Spiritual Reality that is behind this material and transitory world? We are making here an appeal to the eternal and everlasting foundation of all reality behind this passing, this temporal world. And in appealing to that, we are all one, Christians, Hindus, Muslims, Parsis and Sikhs, all of us knowing that above and behind what we see in time and in space, there is something that is unchangeable, Something that is eternal,--one that works for justice and peace and goodness and harmony. Our deepest instincts of brotherliness, of order, of justice, of law, of progress, are founded upon and inspired and sustained by that conviction and that Reality. My honoured colleagues will, therefore, accept this broad and general assumption as sufficient for the admission of this amendment, and permit us to include it as one of the forms by which the President will take office. In doing so, we are not cheapening the concept of God. We are not imposing it upon all and sundry, and at all times and in all places. But here, on the threshold of a most sacred and most solemn duty, the chosen leader of our country, presumed to be almost always a believer in God, is asked, if he is a believer, to promise in His sacred Name, and with all the strength of his soul and the force of his convictions to fulfil the duties that are imposed upon him. Can we doubt for a moment, that if we word that affirmation in that way, all that is deepest in him will respond to it, and that he is bound to fulfil that duty in a manner which he will not be inspired to do if a less compelling forms were used?

I therefore, request the House to waive all objections that may be based upon other considerations or scruples, and accept this amendment which will leave the fundamental secular character of the State rightly understood untouched, and to give this amendment the grace of general acceptance. By this, people of the country will certainly not be persuaded or obliged to believe that we are all here making a solemn profession of this or that particular religion, but they will at least understand that the law-makers and the Constitution-makers realise that this country and its people have a strong religious faith, and that, realising it we here make an appeal to a principle of action and a motive of nobility which are bound to be responded to, and bound to do good to the country. Therefore, Sir, with all my heart, I support this amendment of my friend Mr. Vishnu Kamath and request this House to accept it unanimously. *(Cheers.)*

Mr. Vice-President : Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I am prepared to accept the amendment moved by Mr. T. T. Krishnamachari, that is No. 1144, and also amendment No.1146 by Mr. Kamath, as amended by Mr. Tyagi's amendment.

With regard to the first amendment, that moved by Mr. T. T. Krishnamachari, not much argument is necessary. His amendment is certainly better than the amendment that stood in my name.

With regard to the second amendment No. 1146, in view of the fact that I am prepared to accept it in the form amended by Mr. Tyagi, I do not think I am called upon to enter into the merits of the question. But perhaps, it might be as well that I should say a few words as to why the Drafting Committee itself did not introduce in its original draft, the words "in the name of God." Sir, I do not think that this matter was considered fully by the Drafting Committee and therefore I cannot advance any adequate reason why they did not originally put in those words.

So far as I am concerned, I feel that this was a matter which required some consideration. If the House will permit me, I would express my own views on the matter. The way I felt about it is this. The word "God" so far as my reading goes, has a different significance in different religions. Christians and Muslims believe in God not merely as a concept, but as a force which governs the world and which governs, therefore, the moral and spiritual actions of those who believe in God. So far as Hindu theology was concerned, according to my reading--and I may be wholly wrong, I do not pretend to be a student of the subject--I felt that the word "Eswara" or to use a bigger word, "Parameswara" is merely a summation of an idea, of a concept. As I said, to use the language of integral calculus, you put sums together and find out something which is common, and you call that "S" which is merely a summation. There is nothing concrete behind it. If in Hindu theology, there is anything concrete, it is "Brahma" "Vishnu", "Mahesh", "Siva", "Sakti." These are things which are accepted by Hindus as forces which govern the world. It seems to me, that it would have been very difficult for the Drafting Committee to have proceeded upon this basis and to have introduced phraseology which would have required several under linings--God, below that Siva, below that Vishnu, below that Brahma, below that Sakti and so on and so on. It is because of this embarrassment that we left the situation blank, as you will find in the Drafting Committee.

Shri A. V. Thakkar [United State of Kathiawar (Saurashtra)] : But there is One above all.

The Honourable Dr. B. R. Ambedkar : I am, however, quite happy that this amendment has been introduced. Now, some Members have raised objections to the amendment. They are afraid that the introduction of the word God in the Constitution is going to alter the nature of what has been proclaimed to be a secular State. In my judgment, the introduction of the word God does not raise that question at all. The reason why the word God is introduced is a very simple one. The Constitution lays down certain obligations upon the President. Those obligations are obviously divisible into two categories, obligations for which there is legal sanction and legal punishment provided, and there are obligations for which there are no legal rules provided, nor any punishment is provided. Consequently, in every constitution this question always arises. What is to be the sanction of such duties, such obligations, as have been imposed upon a particular functionary for which it is not possible by law to provide a criminal sanction, a penalty? It is obvious that unless and until we decide or we believe that these moral duties for which there is no criminal or legal sanction are not mere pious platitudes, we must provide some kind of sanction. To some people God is a sanction. They think if they take a vow in the name of God, God being the governing force of the Universe, as well as of their individual lives, that oath in the name of God provides the sanction which is necessary for the fulfillment of obligations which are purely moral and for which there is no sanction provided.

There are people who believe that their conscience is enough of a sanction. They do not need God, an external force, as a sentinel or a watchman to act by their side. They think a solemn affirmation coming out of their conscience is quite enough of a sanction. If honourable Members have read the history of this matter which is embodied in the struggle between Mr. Bradlaugh and the House of Commons, they will realize that as early as 1880 or so, Mr. Bradlaugh insisted that he was a perfectly moral being, that his conscience was quite active, and that if he took the oath his conscience was enough of a sanction for him to keep him within the traces, so to say. After a long long struggle in the House of Commons, in which on one occasion Mr. Bradlaugh was almost beaten to death by the Sergeant-at-Arms for trying to sit in the House of Commons and taking part in its proceedings without taking the oath to which he raised objection. Mr. Gladstone ultimately had to yield and to provide an additional or alternative form which is called solemn affirmation. Therefore the issue that is involved in this amendment has nothing to do with the character of the State. Whether it is a secular or a religious State is a matter quite outside the bounds of the issue raised. The only question raised is whether we ought not to provide some kind of a sanction for the moral obligation we impose on the President. If the President thinks that God is a mentor and that unless he takes an oath in the name of God he will not be true to the duties he assumes. I think we ought to give him the liberty to swear in the name of God. If there is another person with whom God is not his mentor, we ought to give him the liberty to affirm and carry on the duties on the basis of that affirmation.

I therefore submit that the amendment is a good one and I am prepared to accept it.

Mr. Vice-President : You have nothing to say on the amendments moved by Mr. Karimuddin and Prof. Shah?

The Honourable Dr. B. R. Ambedkar : No, Sir.

Mr. Vice-President : The question is:

"That in article 49, after the words 'Chief Justice of India' the words 'or, in his absence the senior-most Judge of the Supreme Court available' be inserted."

The amendment was adopted.

Mr. Vice-President : The next amendment to be put to the vote is No. 1146 But this is identical with Mr. Mahavir Tyagi's amendment and if Mr. Kamath agrees I shall put this one to the vote.

Shri H. V. Kamath : I have no objection to Mr. Tyagi's amendment, as there is a mere verbal difference between his and mine.

Mr. Vice-President : Then I shall put Mr. Tyagi's amendment, which is an amendment to amendment No. 1146, to vote.

Shri H. V. Kamath : No, Sir. My amendment as amended by Mr. Tyagi should be put to the vote.

Mr. Vice-President : Yes, yes: that is understood. I did not know that you were such a stickler for forms; You break so many forms systematically

The question is:

"That in article 49 for the words 'do solemnly affirm (or swear)', the following be substituted:--

swear in the name of God

`do--------------------------'."

solemnly affirm

The amendment was adopted.

Mr. Vice-President : The question is:

"That in the form of Oath in article 49 the words, 'and that I will devote myself to the service and well-being of the people of India' be deleted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in article 49, after the words 'well-being of the people of India' the following be added:--

'and will throughout the term of my office as such president so conduct myself as to leave no ground for any charge of seeking to promote my own interest or my family's aggrandisement, and that in any act, I may have to do or appointment I may have to make, I shall consider only the interest of the public service and of the country collectively'."

The amendment was negatived.

Mr. Vice-President : The question is:

"That article 49 as amended, be adopted."

The motion was adopted.

Article 49, as amended, was added to the Constitution.

The Assembly then adjourned till Ten of the Clock on Tuesday, the 28th December 1948.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VII

Tuesday, the 28th December 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair

----

DRAFT CONSTITUTION-(Contd.)

Article 50

Mr. Vice-President (Dr. H. C. Mookherjee) : We may resume discussion of the Draft Constitution. The motion before the House is:

"That article 50 form part of the Constitution."

Shri Gopikrishna Vijayavargiya [United State of Gwalior-Indore-Malwa (Madhya Bharat)] : May we know up to what date the Assembly will continue if this can be ascertained, so that we may fix up our own programmes?

Mr. Vice-President : I shall be in a position to let the honourable Member have the information at a later date--by the end of this week or early next week.

(Amendment No. 1150 was not moved.)

Looking to the amendments I find that the first part of amendment No. 1151 and amendment No. 1152 are of similar import. Amendment No. 1152 which stands in the name of Mr. Karimuddin may be moved.

Kazi Syed Karimuddin (C. P. & Berar : Muslim): Mr. Vice-President, I move:

"That in clause (1) of article 50, after the words 'for violation of the Constitution the words 'treason, bribery or other high crimes and misdemeanours,' be inserted."

This does not require any detailed speech. Under article 50 it is mentioned that there can be an impeachment of the President in regard to the crime of violation of the Constitution. In the American Constitution the grounds I have mentioned in the amendment are also mentioned. In my opinion it is very necessary that for impeachment of the President all these grounds should be embodied under article 50.

Mr. Vice-President : Does Prof. K. T. Shah want the first part of his amendment No. 1151 to be put to vote?

Prof. K. T. Shah (Bihar : General): I want to move it.

Mr. Vice-President : It cannot be moved. But I can put it to vote.

Prof. K. T. Shah : All right.

Mr. Vice-President : Prof. Shah may move the second part of amendment No. 1151.

Prof. K. T. Shah : I beg to move:

"That in clause (1) of article 50, for the words 'either House' the words 'the People's House' be substituted."

Is this the part I am allowed to move, Sir?

Mr. Vice-President : Yes.

Prof. K. T. Shah : In bringing this amendment before the House, I am following the usual practice that if impeachment is to be made, it should be by the People's representatives and not by the other House, the Council of States. The Council of States would be composed of people not directly elected by the people. There may be some appointed elements in that House; and that Body may consist of representatives of units and interests rather than of the people themselves.

Now here are offences and the trial thereof, as against the Head of the State, which can, in my opinion, be only done by the House of the representatives of the people. After all, it is the people who are the sovereign in the scheme of the Constitution that this Draft presents, and that I have accepted. Under that scheme it should be the real sovereign, the people, who should and might, through their representatives, be empowered and entitled to try for such offences the Head of the State.

I think no further arguments are necessary from me to make it clear even to those who are fond of imitating others that this amendment only conforms to the existing practice in America and the West. This amendment, at any rate, cannot be opposed on that ground.

Mr. Vice-President : There are several amendments to this amendment. The first one is amendment No. 30 in List I of the Fifth Week. As the mover (Pandit Thakur Dass Bhargava) is absent, the amendment is not moved. The next two amendments, *viz.*, 31 and 32 also stand in his name. They are also not moved as the Member is absent.

(Amendment No. 1153 was not moved.)

Amendments Nos. 1154 and 1155 are disallowed as being merely verbal amendments.

Amendments Nos. 1156 and 1160 to 1165 are of similar import. Of these, amendment No. 1156 seems to be the most comprehensive one and may therefore be moved. It stands in the name of Shri Brajeshwar Prasad. The Member is absent and therefore the amendment is not moved.

The next comprehensive amendment is No. 1163 and may be moved. As the Member is absent it is not moved.

Then I allow Shri Shankarrao Deo to move amendment No.1160.

Shri Shankarrao Deo (Bombay : General): Mr. Vice-President, I move the following amendment which stands in my name:--

"That in sub-clause (a) of clause (2) of article 50 for the words 'thirty members', the words 'one-fourth of the total membership of the House' be substituted."

The necessity for this amendment is so obvious that I need not take the time of the House by adducing arguments in support of it. The impeachment charge is so grave that if it is proved, the President who is the head of public life and the dignity of the State will suffer. So, if anybody thinks of preferring this charge, he must do so realising the seriousness of the charge, and there must be a sufficient number of representatives coming forward to support that charge. In view of the seriousness of the step proposed, the number thirty is very small. So I suggest that at least one-fourth of the total number of members of the House should come forward to prefer such a serious charge against the President who represents the dignity of the State. I hope the House will accept this amendment.

Mr. Vice-President : Does the mover of amendment No. 1161 want it to be put to vote?

An Honourable Member : No, Sir.

Mr. Vice-President : Does Kazi Syed Karimuddin want his amendment (No. 1162) to be put to vote?

Kazi Syed Karimuddin : Yes, Sir.

Mr. Vice-President : Prof. Shibbanlal Saksena may move his amendment No. 1164.

As the Member is not in the House, the amendment is not moved.

Amendments Nos. 1157, 1158 and 1159 are of similar import. Shri Jaspat Roy Kapoor may move amendment No. 1157.

(The amendment was not moved.)

Amendment No. 1158 standing in the name of Shri B. M. Gupte may now be moved.

Shri B. M. Gupte (Bombay : General) : Mr. Vice-President, I beg to move :

"That in sub-clause (a) of clause (2) of article 50, for the words, 'after a notice' the words 'at least after 14 days notice' be substituted."

Sir, the provision as it stands today mentions the notice, but specifies no period for it. If we refer to articles 74, 77 and 158 which deal with the removal of the Deputy Chairman, Speaker, the Deputy Speaker of Parliament, and Speaker, Deputy Speaker of the State Legislature, we will find that everywhere 14 days' notice is provided. There is no reason why the same period should not be laid down here. I have therefore suggested in my amendment that 14 days' notice should be given. I hope the House will accept it.

Mr. Vice-President : Does the Member who has given notice of amendment No. 1159 (Mr. Mohd. Tahir) want that it should be put to vote?

Mr. Mohd. Tahir : (Bihar : Muslim) : Yes, Sir.

Mr. Vice-President : Amendments Nos. 1166, 1167, 1168 and 1169 are of similar import. Amendment No. 1167 may be moved. It stands in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, I move:

"That in sub-clause (b) of clause (2) of article 50, for the words 'supported by' the words 'passed by a majority of' be substituted."

Mr. Vice-President : Amendment No. 1166 standing in the names of Mr. Mohd. Tahir and Saiyid Jafar Imam.

Mr. Mohd. Tahir : I want to discuss it. My amendment is quite different from Dr. Ambedkar's. They are not the same.

Mr. Vice-President : It can be put to the vote. You can take part in the general discussion and make your point then. That will be much better. I think.

Amendment No. 1168 standing in the name of Mr. Naziruddin Ahmad. Do you want it to be put to vote?

Mr. Naziruddin Ahmad (West Bengal : Muslim): Yes, Sir.

Mr. Vice-President : It seems it is identical with Dr. Ambedkar's amendment. Then, amendment No. 1169 standing in the name of Kazi Syed Karimuddin. Do you want it to be put to vote?

Kazi Syed Karimuddin : No, Sir.

Mr. Vice-President : The next in my list is amendment No. 1170 standing in the name of Kazi Syed Karimuddin.

Kazi Syed Karimuddin : Mr. Vice-President, I move:

"That the following new sub-clause be inserted after sub-clause (b) of clause (2) of article 50:

'(c) the meeting shall be presided by the Chief Justice of the Supreme Court whose decision on the admissibility of evidence shall be final.' "

There is no mention in article 50 as to who would preside at the meetings or sittings for the impeachment of the President. Therefore I have made an attempt to add a sub-clause in which it is laid down that the meeting or sittings shall be presided over by the Chief Justice of the Supreme Court. I suppose that if this amendment is not accepted, then either the Speaker or the Vice-President will have to preside at such meetings. Obviously there is an objection to the Vice-President as he is likely to succeed if the President is removed. The Speaker also should not be allowed to preside at these meetings because generally he is elected from the majority party. When there is an impeachment of the President, political passions will be running so high that there is bound to be an imperceptible change in the Vice-President or the Speaker. There is no doubt that there are instances in India and in England when the Speaker and the Vice-President have maintained the noble traditions of the House, but it is necessary not only that there should be justice but it should appear that you are doing justice. At such a critical time when there is an impeachment of the highest man in the country, it is very necessary that the presiding officer must be the Chief Justice of the Supreme Court.

There is one more ground which is also very important and it is this that while impeaching the President, there would be several questions of law and fact and there will be also several questions about the admissibility of evidence. In a parliamentary system of government, it is not very necessary that every one should be a lawyer or a judge, but surely when there will be so many mixed questions of law and facts and of the admissibility of evidence, it would be very difficult for a layman to decide such important questions. Impeachment can be based by a layman on wild rumours and hear say evidence. To decide whether a particular piece of evidence is admissible or not, it is very necessary that a man having legal acumen and having experience of law should be the presiding officer at such meetings or sittings. Therefore my submission is that the Chief Justice of the Supreme Court who is generally detached from public life should be requested to preside at such meetings. In the American Constitution there is such a provision. We take only those provisions from other constitutions which suit us and reject others which do not suit us although they are very salutary. I make an appeal to Dr. Ambedkar to embody this amendment, particularly in view of the fact that when political passions are so high, it is very difficult for the Speaker or the Vice-President to keep up their balance.

Mr. Vice-President : Amendments Nos. 1171, 1173 and 1176 all stand in the name of Prof. Shah. I suggest that he may move them one after the other.

Prof. K. T. Shah : Am I to move only one of them?

Mr. Vice-President : You can move all the three.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That in clause (3) of article 50, for the words 'either House' the words 'the People's House' be substituted and the words 'or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation' be deleted."

For clarification I will read the clause as amended by this amendment. The clause would be:

"When a charge has been so preferred by the House of the People, the other House shall investigate the charge."

Coming to the second amendment standing in my name, I move:

"That in clause (3) of article 50, after the word 'investigated' a full stop be inserted."

Then, I move:

"That after clause (3) of article 50, the following new clause be added:

'(3A) The President shall have the right to appear and to be represented at such investigation.' "

Sir, the first amendment is in consonance with an earlier amendment I moved, by which I sought to vest the power to investigate, the power to try, in the House of the People, and the Council of States, respectively; and not be left open to *either* House. The other House may investigate, and the President should have the right to be heard and be represented at such investigation. It is, of course, but the most rudimentary principle of jurisprudence that any man who is accused of any offence should have the right of being heard; and also of being defended by competent advisors or by competent counsel at such hearing or at such investigation. The right, therefore, of the President to be heard is given by this amendment specifically by an additional clause, and not made part of an earlier clause where other matters besides this are also included. The right of the sovereign people to charge the President, in my opinion, should be left untrammelled in this matter; and, similarly, the right of the President to be heard or to be represented by competent advisers should equally be explicitly stated, without linking up or coupling this one with the other, so that there may possibly be some doubt as regards procedure. My object, therefore, in putting forward this amendment is simply to bring in clarity of procedure and the removal of any possible doubt that hyper-ingenious lawyers might bring forward, or party passions might suggest. I therefore commend these amendments to the House, without taking any more time of the House.

Mr. Vice-President : The next three amendments which are grouped together are amendments Nos. 1172, 1174 and 1175.

(The Amendments were not moved.)

Amendments Nos. 1177, 1178 and 1179 are of similar import. Amendment No. 1177 may be moved.

The Honourable Dr. B. R. Ambedkar : Sir, I beg to move:

"That in clause (4) of article 50, for the words 'passed, supported by' the words 'passed by a majority of' be substituted."

Mr. Vice-President : Amendment No. 1178 stands in the name of Mr. Mohd. Tahir and Saiyid Jafar Imam.

(Mr. Mohd. Tahir rose to speak.)

Do you want to put it to vote? You can say what you have to say in the general discussion. I shall give you an opportunity.

Mr. Mohd. Tahir : My amendment is of quite a different nature and it has to be discussed and moved.

Mr. Vice-President : You make a specific suggestion about 'two-thirds'. All right: you may come to the mike.

Mr. Mohd. Tahir : Mr. Vice-President, Sir, I beg to move:

"That in clause (4) of article 50, for the words 'not less than two-thirds of the total membership of the House', the words 'a majority of the members present and voting' be substituted."

Sir, I have moved this amendment because the provision, as it is, that is to say, requiring the votes as two-thirds, in my opinion seems to be against the spirit of democracy and it can bring in many difficulties and confusion.

I will submit before the House a very simple example. In case of the Chairman of a District Board, for instance, I think every Member of the House has got this experience. We have seen that a Chairman of a District Board for his misdeeds cannot be removed from the office unless two-thirds of the members vote against him with the result that, however dishonest he may be, it is impossible for the members to remove him from office, simply because a man in office however incompetent or dishonest he may be, at least he has got some power in his hand and by using that power, he manages that two-thirds of the members should not go against him and he keeps at least more than one-third of the members by his side, with the result that although the majority of the members are against his work in the District Board, we find that it is impossible for them to remove such a Chairman. It may be the same case with the President also, because the President will be in power and if there is solution to impeach him, then it would be very difficult for the members to remove such a President from the Office. I submit, Sir, that the most important thing that we are doing at present is the framing of this Constitution and we are deciding every article of our Constitution,--the most important thing--simply by majority of votes. Then, in the case of an officer against whom there is a resolution for impeachment--why should not such a resolution be decided by majority votes of the members present in the House? Therefore, Sir, in order to avoid all these difficulties, I have moved this amendment, and I hope this House will consider it deeply and decide that the amendment be accepted. With these words, I move.

(Amendment No. 1179 was not moved.)

Mr. Vice-President : The next three amendments standing in the name of Mr. Naziruddin Ahmad, Nos. 1180, 1181 and1182 are disallowed.

Amendment No. 1183 may be moved. It stands in the name of Prof. K. T. Shah.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That in clause (4) of article 50, after the words 'such resolution shall' the words 'be placed before the People's House, and if adopted by the latter, shall' be inserted."

The clause as altered would read:--

"If as a result of the investigation a resolution is passed, supported by not less than two--thirds of the total membership of the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall be placed before the People's House, and if adopted by the latter, shall have the effect of removing the President from his office as from the date on which the resolution is so passed."

Sir, there is one safeguard added by my amendment, namely, that immediately the judgment is passed or the resolution is adopted by the other House, according to the scheme of this Constitution, the Resolution would automatically have the effect of removing the President. I do not think that that would be quite in consonance with our conception of fair justice being done to the accused and especially in the case of such highly exalted officers, or in the case of such offences as are likely to be the subject-matter of this investigation.

After all, the cases would be in all probability cases where politics would play a considerable part. They would not be pure questions of law or fact; but a good deal of opinion, a good deal of view-point, a good deal of the angle of approach would be involved. On that account, the judgment of one House by itself should not, I suggest, be made automatically effective, and the exalted officer be made to cease immediately thereafter to have any place in the scheme of things.

In the several amendments that I have the honour to place before this House, I have, of course, laid emphasis on the fact that the one House investigates and the other House tries; one House makes the accusation, and the other House determines the validity of that accusation. In that scheme of things, I think that it is important, it is but right and proper, that the President should be not only found guilty, and a resolution to that effect be passed by the House which tried him. But what is still more important is that the resolution should be further confirmed by the other House as well.

Mr. Tajamul Husain (Bihar : Muslim): Which has accused him?

Prof. K. T. Shah : Which has accused him. You would, therefore, have the same procedure in a slightly different form, of the two Houses agreeing in a measure, which is to be a measure of Parliament. Thus would this step become a measure of the whole legislature,--and, in the last analysis, a measure as desired by the sovereign people through their representatives.

I do not think that this safeguard will in any way offend against the requirements of fairness as well as the requirements of expediting such matters. It is not a dilatory procedure by any means. What is positive in its favour is that it will give, so to say, one more chance to political passions coming down, and the party concerned getting a fair verdict or at least a chance of vindication that may otherwise be denied.

I am particularly anxious that, since the trying procedure is vested, according at least to my scheme of things, in the Upper House, which is relatively a smaller body, and composed of the representatives of interests or the Units and which therefore is not directly representative of the people's will, a resolution of that House should not be taken to be operative immediately; and that there should be one more chance of the direct representatives of the people having their final say on the matter.

Whether you regard it in the shape of a kind of reprieve; whether you regard it as a kind of supreme pardon, or whatever way you like to look upon it,--I am afraid I cannot give a correct analogy or parallel--it is one more chance, in my opinion, for real justice being done, rather than suffer momentary exigency or political prejudices to prevail. Accordingly, I put it to the House that it would be erring,--if at all it is erring,--on the side of justice and f airplay, and as such it should be accepted.

(Amendment No. 1184 was not moved.)

Mr. Vice-President : Amendment No. 1185. Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Mr. Vice-President, Sir, I beg to move:

"That in clause (4) of article 50, for the words 'date on which', the words 'time when' be substituted."

Sir, I submit this is a very important amendment. Upon the acceptance of this amendment, a deadlock would be avoided and I hope honourable Members will kindly hear what I have to say. Dr. Ambedkar is not bearing.

Mr. Tajamul Hussin : The whole House is hearing.

Mr. Naziruddin Ahmad : The whole House is useless unless Dr. Ambedkar agrees. *(Interruption.)*

Mr. Vice-President : That is a reflection, I think, *(Interruption.)*

Mr. Tajamul Husain : We want to hear you. *(Interruption.)*

Shri H. V. Kamath (C. P. & Berar : General): Is that statement in order Sir?

Mr. Naziruddin Ahmad : I withdraw it. Sir, I move amendment No. 1185. I consider this amendment to be very important and I desire the House should listen. This has reference to the impeachment of the President. It is provided that as soon as the appropriate House passes a resolution declaring that the charge against the President has been substantiated--I refer to clause (4) of article 50--it will have the effect of removing the President "as from the *date* on which the resolution is passed". I submit, Sir, that this will lead to an impasse. By another article, article 54, clause (1), it is provided that as soon as the President is removed by a resolution, the Vice-President steps in from the '*date*' on which the President is removed and, under article 54, clause (1), the Vice-President shall act "until the date on which" the new President enters upon his office. There is an amendment to that article also which is connected with this: that is amendment No. 1207. I submit, Sir, that the President, if he is removed, is removed with effect from the *time* when the resolution is passed and *not* from the *date*. I will ask the House to consider a situation. Supposing the appropriate House under clause (4) of article 50 passes a resolution, say, at one o'clock, then according to clause (4) the President is removed as from the *date* on which the resolution is passed. I ask what will happen to acts done by the President on that date before one o'clock? The President may have declared an emergency under the

Constitution in the morning; he may have, in the morning, assented to Bills. He may have appointed a Judge of the Federal Court; he may have dismissed or appointed a Ministry in the morning before his removal. If we allow clause (4) to remain as it is the President is removed with effect from the *date* on which the resolution is passed, that is, with effect from the period after the previous mid-night. The date begins after the mid-night. I ask what will happen to acts done by the President during the fateful day before his removal? I submit, Sir, his dismissal or removal must have reference to the particular *time* when he is removed. Otherwise, the Vice-President will step in as soon as there is a vacancy. This clause says the vacancy has effect from the date of his removal, that is before his removal. The Vice-President says, "I am the President with effect from the early morning of the 'date' of his removal". What will happen if the Vice-President acts retrospectively? He says, 'I am the President in the place of the President'. The President says, 'I was the President duly functioning before and up to the very moment of my removal'. I submit, Sir, that the words that he is removed with effect from the *date* on which the resolution is passed would be unhappy and would lead to absurd consequences. It will lead to a constitutional impasse and probably the Federal Court will have to decide it without any data. Commonsense says that the President should function till the *time*, that is the moment when he is dismissed, immediately after the resolution is carried. As soon as the resolution is carried, the President ceases to function. Up to that time his acts should be upheld and for that purpose the amendment is necessary. The text says that "He ceases to function with effect from the *date* on which he is removed" but the amendment says "that he would be removed with effect from the *point of time* the resolution is passed". There is a similar amendment to article 54 saying that the Vice-President shall act as President until the *date* on which the new President is appointed. In fact that must also be linked up with the *point of time* at which the new President is elected. If we provided for a whole day instead of a particular point of time, it will lead to absurdities. I submit this should be carefully considered by the House and accepted. The legality of the President's acts on the date of his removal but prior to the actual moment of his removal will be jeopardy.

Mr. Tajamul Husain : Sir, I rise on a point of order. While Mr. Naziruddin Ahmad was moving his amendment, he deliberately said that he was addressing Dr. Ambedkar who was busy otherwise and he was not addressing the House or you. Now the point is this that when a Member speaks he addresses the Chair or the House. He does not address a particular Member who is in charge of the bill. Therefore, Sir, my point of order is this that you should hold that Mr. Naziruddin is guilty of contempt of the Chair and of the whole House and if that is your finding, a charge should be framed against him as under article 50 when the President is being impeached, he should be impeached by this House--as there is no other House which can try him and we are the supreme body and sovereign body--and we will make a charge against him and we will try him and you will preside over it. As the honourable Member said deliberately that he was not addressing the Chair or the House, he is guilty of contempt of the Chair and the whole House. I want a ruling, Sir.

Mr. Vice-President : The ruling will be given after proper consideration. I do not want to do anything in a passion.

Mr. Naziruddin Ahmad : I was not addressing any individual Member. I only insisted that the most important Member in the House should listen.

Mr. Vice-President : We shall pass on to the next amendment. No. 1186.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That at the end of clause (4) of article 50, the words 'by both Houses of Parliament' be added."

And the clause would then read--I am omitting the first four lines because I have already read that-

"which resolution shall have the effect of removing the President from his office as from the date on which the resolution is passed by both Houses of Parliament."

and not only by one.

Sir, I regard *you* as the most important Member for the time being, and not the Chairman of the Drafting Committee; and I therefore address the House through you which I trust will listen sympathetically to the argument I am going to place before you, as I regard all other Members of this House to be equal *inter se.*

The point I have made is that the Resolution convicting the President on impeachment must be passed and adopted by not only one but by both Houses. It is in conformity with the general scheme of the amendments which I have suggested that one House should start the proceedings, the other should investigate and pronounce its judgment embodied in a Resolution; and that Resolution be finally confirmed by the other House.

Unless and until that is done, I have been maintaining that the cause of justice would suffer; and in the interest, therefore, of fairness and justice, this is a consequential amendment flowing from those which I have had the honour of placing before the House viz., that the Resolution must be confirmed by both Houses, and that it should have effect only on the day that it is similarly confirmed by the other House which has not tried, the impeached President along with the House which tried and passed a Resolution of that kind.

Mr. Vice-President : Amendment No. 1187.

Kazi Syed Karimuddin : Mr. Vice-President, Sir, I move the amendment standing in my name-

"That the following be added at the end of clause (4) of article 50:--

'and it shall operate as a disqualification to hold and enjoy any office of honour trust or profit under the Indian Union.' "

Clause (4) in article 50 lays down that if investigation is successful and a resolution is passed the President shall be removed from his office, but this clause (4) does not lay down any disqualification. Therefore I have moved that after the impeachment is successful and after he is removed from his office, this should operate as a disqualification to hold and enjoy any office of honour, trust or profit under the Indian Union. I hope the House will accept this amendment.

(Amendments Nos. 1188 and 1189 were not moved.)

Mr. Vice-President : The article is now open for general discussion.

Shri T. T. Krishnamachari (Madras: General): Sir, before throwing open this article for general discussion; there is one minor amendment necessary for the amendment moved by Shri Shankarrao Deo, *i.e.*, No. 1160, to make it read aright. As it is, the amendment speaks of substituting the words "one fourth of the total membership of the House." But the correct wording should be "one-fourth of the total number of members". In the event of the House accepting the amendment moved by Shri Shankarrao Deo, this minor amendment which I now suggest, is necessary, and if you think that amendment should be moved before throwing open the article for general discussion, it may be moved now.

Mr. Vice-President : Does the House allow this amendment to be moved in order to make the meaning clearer?

Honourable Members : Yes.

Mr. Vice-President : Then it may be formally moved by you, Mr. Krishnamachari.

Shri T. T. Krishnamachari : Sir, I move:

"That in the amendment No. 1160 moved by Shri Shankarro Deo, the words 'one-fourth of the total membership of the House' be replaced by the words 'one-fourth of the total number of members.' "

Mr. Vice-President : Now, Mr. Kamath can speak on the article in general.

Shri L. Krishnaswami Bharathi (Madras: General): In that case, Sir, sub-clause (b) of clause (2) of article 50 also requires a slight change. The sub-clause says--"unless such resolution has been supported by not less than two-thirds of the total membership of the House." Therefore, the same case arises there also, and that sub-clause also should be suitably amended.

Mr. Vice-President : Mr. Kamath.

Shri. H. V. Kamath (C. P. and Berar : General): Mr. Vice-President, Sir, this is an important article of tremendous import in that it provides for the arrangement, the impeachment and the removal from office, of the President of the Indian Union. In any ordinary trial, in any criminal trial, the presiding officer of the tribunal is one who is expected to be impartial, and a man of the completes integrity. I hope that we in India shall not have any occasion to invoke the aid of this article, and that all our Presidents will be thoroughly constitutional and of impeachable integrity. But Sir, we have got to make provisions against human frailty and that is why we have got to incorporate an article of this nature in our Constitution. But it is very necessary, absolutely essential that when you proceed to impeach the President of the Indian Republic for violation of the Constitution, I say it is absolutely necessary that the officer presiding over such an investigation must be a man who is above party politics, and a man of the completest integrity and impartiality. In this context, Sir, the amendment moved by Mr. Karimuddin acquires some importance. The article as it stands says that when a change has been so preferred--I am referring to clause (3) of the article,--when a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated. It is quite possible and probable that the other House may investigate the charge, or perhaps it may proceed to appoint another tribunal consisting of its own members and some others, to investigate the charge. But in either case, it is necessary that the Presiding officer of the House which is investigating the charge should not preside over the impeachment proceedings. Suppose, for instance, the Upper House prefers the charge and the Lower House investigates it. Then, what is the position? The Lower House is presided over by the Speaker. Do we intend that the Speaker of the House of the People shall preside over the impeachment proceedings? The Speaker is almost always a party man, and the President is being impeached for some violation consequent upon a conflict that might have arisen between him and the party in power. Naturally, therefore, the Speaker who is a member of the party in power cannot be expected to be impartial and of the completest integrity in this particular affair. Suppose the charge is being investigated by the Upper House after it has been preferred by the Lower House. As the article stands, the Vice-President will preside over the proceedings. But, Sir, man is after all a frail creature. The Vice-President may have at the back of his mind the idea that if the President is impeached and removed from office, he will be able to step into his shoes. The Vice-President, therefore, will be, more or less, an interested man, because, if the impeachment succeeds and the President goes out of office, the Chairman of the Council of State will be able to step into his shoes and become the President. He may be interested in seeing that the impeachment succeeds. So in either case, whether the Lower House presides over the proceedings of impeachment or the Upper House, the presiding officer of that House cannot be expected to be impartial and absolutely above party politics, or above party passions, and of the completest rectitude, in those proceedings. Therefore, it is very necessary that the Chief Justice of India should preside over the investigation of the charge preferred against the President. He must have the last word not merely upon the conduct of the trial but also on all matters such as admissibility of evidence and cognate matters. Here, I will, with your permission, Sir, quote from "The Constitutional History of the United States" by A. C. Mac Laughlin.

> "When President Andrew Johnson was being tried before the Senate--the Chief Justice presiding--a similar question about the admissibility of evidence arose, and the Senate decided that the Presiding Officer might rule on the admissibility of evidence, and the ruling should stand, unless there was a division, in which case, the question should be passed on by the Senate itself."

Here the President was being tried and the Chief Justice was presiding, and in the course of the trial, a question arose and it was ruled that the Chief Justice must have the power to decide about the admissibility of evidence. Here also, I think, the same procedure should be adopted, for the impeachment of the President of the Indian Republic, and the Presiding Officer of the investigation should be the Chief Justice of India, who is neither the Speaker of the House of the People nor the Chairman of the Council of States. I therefore, lend my support to the amendment moved by Mr. Karimuddin, to the effect that the Chief Justice of India should preside over the investigation in connection with the impeachment of the President.

Sir, Mr. K. T. Shah moved an amendment, I refer to amendment No. 1183. Of course, his whole scheme is that the charge should be preferred by the Lower House, that it must originate, that it must be initiated by the Lower House, and that it should be investigated by the Upper House. I do not subscribe to this particular proposition, that it should be initiated only by the Lower House; it may arise either in the Lower House or in the Upper House. But if it arises in either of the two Houses, the other

House investigates it. I however support him in so far as amendment No. 1183 says that the House which investigates the charge and finds it to be sustained should not have the last word as regards the removal of the President. The resolution, or the charge, if found sustained by the other House, the House other than the House that preferred the charge, that resolution must go back to the House that preferred the charge, because the President should be impeached, and removed, not by the vote of one House only, but by the vote of both Houses. Therefore, it is important that in the constitution we should provide definitely, unambiguously and unequivocally that the President, if he is to be removed at all from his high office, must be removed by the vote of both Houses and not of one House only. The arguments advanced by Prof. K. T. Shah are sound. In the course of the trial, many months may elapse and it may be that certain prejudices and party passions which dictated the preferment of the charge might subside and perhaps when it goes back to the other House, it may be--I do not say it will always be so--it may be that the charge which was preferred by that House may be found, on further reflection that it could not be justly and fully sustained. So, both amendments No. 1183 and No. 1186 moved by Prof. K. T. Shah are important in this respect because they have the effect of removing the President of India by a vote of both the Houses and not by the vote of a single House, namely, the House which investigated the charge preferred by the other House and found it sustained on evidence advanced before it. Therefore, I think, Sir, that these amendments must be incorporated in some form or other in our Constitution. Just as in a criminal trial the Police hold a preliminary enquiry and then the case comes before a Court of law where the presiding officer is above the prosecution and above the defence, similarly when the charge preferred by the other House is investigated the presiding officer must be the Chief Justice of India because he is neither the Speaker of the House of People nor the Chairman of the Council of States. That is as regards the first amendment moved by my Friend Mr. Karimuddin.

Secondly, as regards the two amendments moved by Prof. K. T. Shah to the effect that the President must be removed by the final vote of both the House and not by the vote of a single House only. This is also a very sound principle and must be embodied in the Constitution.

Then there is amendment No. 1187 of my Friend Mr. Karimuddin again, that the President, after he has been impeached and removed from office, must not be eligible for any office of profit or honour or trust in the Indian Union. It follows--I think it is a matter of integrity in public life, of the standards of public conduct which we proclaimed at Jaipur the other day--it follows that the President........

My Friend Mr. Husain is smiling chuckling to himself. I do not know what his smile means, whether the Jaipur......

Mr. Tajamul Husain : It does not follow.

Shri H. V. Kamath : I leave it to Mr. Husain to explain why it does not follow. I will say only this much, that the President has been removed for a gross violation of the Constitution by an impeachment and an adverse vote of both the Houses; do we contemplate, do we visualise that such a man, such a high dignitary, when he has been removed by Parliament from office should be eligible for an office of trust or honour in the Indian Union? No, a thousand times no. We shall keep such a man away from all office and all honour or trust so far as our country is concerned. I therefore lend my support to amendment No. 1187 as well.

Pandit Thakur Dass Bhargava (East Punjab: General):*[Mr. Vice-President, I do not agree with the wording of this article 50. In the first instance there is this defect in article 50 that only the President has been mentioned therein, though there would be many occasions when the Vice-President would act as President. For that there is no provision. In such cases, if there is any violation of the Constitution, the responsibility would clearly be that of the Vice-President, who would be held responsible for his actions. For this reason, the Vice-President should also have been mentioned in this article.

Another short-coming which I find in this article is that the words "Violation of the Constitution" have nowhere been defined. There can be "Violation of the Constitution" in various ways, e.g., by not conforming to the instructions contained in Schedule Four; by not fulfilling the undertaking imposed by the Oath under Article 49, and in failing to carry out his other functions. Hence, these words "Violation of the Constitution" are vague and require clarification. The President will be the highest official of the Indian Union, and there is a possibility of his being unnecessarily harassed for his act on account of the presence of those vague words. This is a very undesirable position.

The third short-coming, which I find, is that in the face of the vague wording, the condition of thirty members giving notice of such resolution is not a sufficient safeguard. I think a notice by one-fourth of the total membership should be necessary. This amendment is very necessary, and I support it. The additional safeguard that the Resolution should be passed by two-thirds of the total membership is also necessary.

The stage for investigation could be reached after these conditions have been satisfied, and the enquiry will then be conducted by the other House. Under article 50 (3), either the House would investigate the charge itself or appoint somebody else for the work. If the House undertakes the investigation itself, then there is no reason why the President of the House should not continue to act as President. The Speaker of the House of People--is most trustworthy person and he is above all party-politics. He can be fully trusted to act justly without fear or favour. The argument of Mr. Kamath that since the Chairman of the Council of States would also be the Vice-President and so he is not likely to act justly because by the removal of the President he gets a chance to act otherwise, is untenable. Firstly, he would not be the only judge and secondly he would not be so characterless as to cast away all fairness. In this connection, an important question that arises is that if after investigation the charge is substantiated, then the condition of fixing the two-third majority of member would make the right of impeachment quite illusory. To fetter justice by so many restrictions is not proper. There are sufficient and proper safeguards against frivolous accusations in sub-clauses (a) and (b). The result of the enquiry of the House being in support of the charge or the judgment of the Supreme Court or any higher court to that effect, will change the whole position. Under these circumstances there is no necessity of the condition that the Resolution should be confirmed by a two-thirds majority; rather, a bare majority should be enough. If as a result of investigation the charge is not proved, then the question of passing the resolution does not arise. If a two-thirds majority has the right to pass a resolution only in the event when it supports the charge, then it would be an insult to the House, which has investigated the charge, or to the Court appointed for the purpose. In the other case, there is no occasion or justification for passing a resolution. Of course, if the charge is proved the House should have the right to confirm the resolution by bare majority. The entire article 50 remains quite vague and unsatisfactory by not providing any definite machinery and method of investigation in 50 (3) and by not indicating the result as a definite outcome of the investigation in 50 (4). No doubt, this article would be rarely put to use, but, even then, whenever it would be used difficulties in its proper application will have to be faced. In it present form its correct interpretation would become impossible.

My submission is that if the amendments, to which I have alluded, are not incorporated, then many difficulties would crop up. Another minor point which I want to make is that in cases where the violation of the Constitution by the President is so expressly pronounced that both the Houses want to play the accusers, then the question will arise which House would be the accuser and which the investigating authority. Though it is not probable, there is no provision here for such a contingency. There should be some provision that in such and such cases the House of the People should be the accuser and the Council of States should be the investigating authority. With these words I support the article.]

Shri Kuladhar Chaliha (Assam: General): Mr. Vice-President, Sir, while you have given a chance to the important, more important and the most important people, I am glad that you have now given a chance to the most unimportant side of the House.

The trial of the President is a very important matter and requires careful consideration from the Members of this House. Mr. Karimuddin's amendment seems to be very sensible, very fair and impartial. When we try a man of distinguished position and dignity the trial should be presided over by such a person who would be detached from party passions and prejudices. And who could that person possibly be? The Chief Justice of the Federal Court can be the only person who will be the fit person. He will bring into the trial such impartial views as the Speaker will be unable to do. In trying our highest personage it is necessary that we should have a man presiding who will be absolutely free from any bias and who will be free from party prejudices. The Speaker, however high a person he might possibly be, will yet not be away from party leanings and party prejudices, as we find everywhere.

This is a very small amendment and it requires consideration not because it has come from a party, or from a person who does not belong to our party--if that is the consideration I think we will be doing an injustice to ourselves--but we should be fair to all who bring sensible amendments. I wish I could have followed Pandit Bhargava who spoke in high-flown Hindustani which is not understandable by us, but from what I partially followed it was hardly convincing. The Speaker will not be able to bring in proper discussion on the subject. Apart from that he may not be a great lawyer. He may be a very popular person, but he may not be the best person, and may be one backed by the majority. As such his ideas about the admissibility or inadmissibility of evidence will be a matter of great conjecture, and they may possibly be swayed by rumours and other things. And evidence may be let in which may cause prejudice to the great personage. I suggest that we should view this amendment dispassionately and allow the Chief Justice to preside over the trial of the President who will be the most distinguished man we will have in our country. As such I humbly suggest that you may consider the matter and think over the amendment of Mr. Karimuddin.

In the American constitution they have made provision for the Chief Justice to preside over such trial. In fact, in the trial of President Johnson, it was found that unless he had been there the President would have been dismissed. But he allowed such evidence that was proper and therefore the President just escaped from being chucked out and dismissed from office. Similarly in our country also we should try to be fair and just.

I think our party will consider this very wholesome and sensible amendment which has been so ably supported by Mr. Kamath.

Shri B. Das (Orissa: General): Sir, I speak with much diffidence. We are trying to create a democratic President, but we are suspicious and the House is suspicious. The Members, after the recess, after returning from Jaipur, are very much subdued. They do not frankly and openly say what is in their mind. Yet, the few amendments that have been moved by those with whom I do not see eye to eye, and others stabled and not moved show that there is suspicion in the minds of Members.

Mr. Vice-President : Is it necessary for Mr. Das to refer to Jaipur? Members have again and again referred to it. I do not know what Jaipur has to do with the proceedings of this House.

Shri B. Das : I do not know why Members are subdued ! Article 47 to 50 are the most important articles regarding the President. Are we creating a democratic President or are we creating a Frankenstein? Under article 50, we are discussing at present about our suspiciousness of the President and are considering in what way he can be prosecuted for misdemeanours to the Constitution. That shows that we are not creating a democratic President. By means of the various amendments moved and not moved, many Members want to further restrict the hands of the President. Human minds have travelled far backwards and to the memory of Napoleon, a common man who was elected as President and became an autocratic Emperor. We have the recent memories of South American Presidents who suddenly became great autocrats and dictators in those so-called republics which abound in South America. Unfortunately, we have to see whether we are giving any dictatorial powers to our President. Though he may be guided by a democratic Cabinet, is it safe to entrust him with dictatorial powers? With all human weaknesses, will a democratic President remain democratic and not turn autocratic? Sir, the amendments that have not been moved indicate that we are human beings and have our suspicions about the democratic President turning autocratic. Many want that he should not be a baby of 35 years, but should be an elderly statesman. My own amendment No. 1185 I did not move, hoping that the President will prove to be a gentleman always. It is to this effect: No President should seek service under the Union Government or as the Governor of a State after he retires from the Presidentship of the Republic of India. Why should that human weakness manifest in our elderly statesmen? Why should he seek to become an Ambassador or a Governor? Sir, these things are agitating our minds. It is for the democratic President to prove that he is above all these allurements.

Sir, I have had experience of these suspicious conducts in the recent past, in the days of British Government; a Governor of Madras, after retirement, came here as the Governor-General of India and his wife looked at it as a means of getting fabulous presents and other gains. We have to consider whether the democratic President we are going to have under articles 41 to 51 will not later on turn out to be autocratic President and accept presents and other perquisites. Such presents are not small sums. The jewellery and other presents go up to lakhs and crores. We have to see that our future President, his wife, his daughters or his daughter-in-laws are not allowed to accept such presents. I wish that my esteemed Friend Dr. Ambedkar devises a provision which will make all presents received by a President or his family during the time he occupies the Gadi at Delhi accrue to the Nation and become State property. The benefit of such presents should not go to the President or his dependants.

Sir, if I sought permission to speak, I did so only to voice the feelings of many Members. We are all human beings. We are not Thakkar Bapa or Mahatma Gandhi or even you, Mr. Vice-President. My mind is suspicious. All my political career I have been suspicious of every Englishman and I have been suspicious of those who have been trained in the British traditions. Therefore I want to know what we are going to do to allay these suspicious. The speeches made on the floor of the House show that we are suspicious of our President. That being the case, why not we make matters clear? We cannot expect that because we may have a President well trained in the school of Mahatma Gandhi, others may not seek Governorships and the like. While considering the article under reference we have to bear in mind that we are giving autocratic powers to pass Ordinances and other dictatorial controls to the President and the Cabinet. Sir, these are my observations.

Mr. Tajamul Husain: *[Mr. Vice-President, my learned Friend Mr. Tahir has moved amendment No. 1178......]

Mr. Vice-President : Our South Indian friends have repeatedly told me that they cannot follow highflown language. You are at liberty to speak in any language you like; but if you want to influence their votes you must speak in English. It is for you to decide.

Mr. Tajamul Husain : Because a friend or mine Pandit Bhargava spoke in beautiful Hindustani, I wanted to show to the House that I was also capable of speaking in my mother tongue as well as a person from Delhi, although I come from a long way off, Bihar.

Mr. Vice-President : He comes from East Punjab.

Mr. Tajamul Husain : Punjabi is not Hindustani. However, I shall speak in English, Sir.

Mr. Tahir has moved his amendment to this article. The article says that when the Parliament wants to censure the President of the Indian Republic it should at least pass a resolution to that effect by a majority of not less than two-thirds of the members present and voting. Mr. Tahir says: 'No, that is wrong. In a democracy it should not be done like that. It should be done by a simple majority of votes.' I have come here to oppose his amendment.

Now, if the President of the Indian Republic is to be turned out of office by a simple majority of one or by the casting vote of the person presiding at that time, then what would happen?

The President will be a mere tool in the hands of the majority party of the House. We do not want a President like that. We do not want a President who should flatter the majority party, no matter what party is in power, Congress, Socialist or Communist. We do not want the President to look to the majority party in the House.

Once elected, let him become impartial absolutely and not look for favours at the hands of any party. Therefore, I support the draft article as it is. If the President is to be impeached, let him be impeached by a majority of two-thirds of the members present.

Now, Sir, I come to amendment No. 1183 moved by my Friend Prof. K. T. Shah. He wants that in clause (4) of article 50, after the words "such resolution shall" the words "be placed before the People's House and if adopted by the latter, shall" be inserted. Article 50 lays down the procedure for the impeachment of the President. There are two Houses, the Upper House and the Lower House, the Council of States and the House of the People. Now, Article 50 says that either of the two Houses may frame a charge against the President and when one House--suppose the Lower House--frames the charge, accuses or makes certain allegations against the President of the Republic, the other House, the Council of States shall enquire into it, which means that the other House will act as judges and the House which is accusing will be only the complainant or the prosecutor. In legal jurisprudence you will find that the person who accuses should not be the judge. That is why we have been fighting that the judiciary should be separated from the executive. As soon as time permits, that is going to be done. It suited the British Government to be the accuser as well as the judge, but now that we are having democracy, now that India has become independent, the accuser should not be the judge. Therefore I have come here to oppose the amendment moved by my Friend Prof. K. T. Shah.

The next amendment is 1185 moved by Mr. Naziruddin Ahmad. His is a simple amendment. He wants that the President shall cease to be President shall cease to be President from the time when such a resolution has been passed, instead of the date on which the resolution is passed. This appears to be reasonable and simple. Suppose the meeting is held at 10'clock in the morning and the motion of censure is passed, the President according to the existing clause (4) will remain President till twelve in the night on that date. According to the amendment of Mr. Naziruddin Ahmad, the moment the Resolution is passed, the President automatically ceases to be President. I think this is reasonable and should be accepted.

Then I come to amendment No. 1186 moved by Prof. K. T. Shah that at the end of clause (4) the words "by both Houses of Parliament" be added. He wants that both the Houses of Parliament should try the President of the Republic when one of the Houses has accused him. I do not want to repeat my argument but what he wants is that both the accusers and the judges should sit together and deliver judgment on the case. As the accuser should not be the judge also, I oppose this amendment also.

Next comes amendment No. 1187 moved by my honourable Friend Kazi Syed Karimuddin. In this article, it is nowhere mentioned as to what is going to happen to the President of the Republic after he ceases to be the President on account of the censure motion passed against him. When the President is removed, he will be unfit to hold any office, but it must be mentioned in this Constitution also. I think the amendment of Mr. Karimuddin is very reasonable and I therefore support it. When a President is removed, it shall operate as a disqualification to hold and enjoy any office of honour, trust or profit under the Indian Union. Of course, that will be done but I want it to be in black and white.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, of the many amendments which have been moved to this article, I can accept only two. One is No.

1158 moved by my Friend, Mr. Gupte providing of fourteen day's notice for the discussion of a motion to impeach the President. The second amendment which I am prepared to accept is amendment No.1160 moved by my Friend Mr. Deo, as amended by Mr. T. T. Krishnamachari. I think the original provision in the Draft Constitution did not lay down sufficient number of members as a condition precedent for the initiation of the motion. I think the change provided by the amendment is for the better and I am therefore prepared to accept it.

Now, Sir, I come to the other amendments which I am sorry to say I have not been able to accept but which I think call for a reply. The amendments which call for a reply are the amendments moved by Prof. K. T. Shah, Nos. 1151, 1171, 1173, 1176 and 1186. Sir, the amendments which have been moved by Prof. K. T. Shah refer to two questions. The first is the scheme of impeachment which has been laid down in the Draft Constitution and the second relates to the right of the President to appear and defend through a lawyer before the House which is investigating the charge against the President. So far as the second amendment of Prof. K. T. Shah is concerned. I do not see that there is any necessity for any such amendment at all; because Prof. Shah referred to the article--I think it is sub-clause (4) or (3),--it makes ample provision for permitting the President not only to appear before the investigating House, but also to be represented by any other person, namely, a lawyer. All that Prof. K. T. Shah has done is to separate this particular part of that clause and to put it as sub-clause (3) (a) in order to make it an independent proposition by itself. I do not think that here is any such necessity for the device that he has adopted.

Now, I come to the first part, namely, the drawbacks which he has shown in the scheme of impeachment provided in the Draft Constitution. Before I proceed to reply to his points, I think it is desirable that the House should have before it a clear picture of the provisions of the scheme embodied in the Draft Constitution. Any one who analyses this article will find that it embodies four different propositions. Firstly, the motion for impeachment may be initiated in either House, either in the Council of States or in the House of the People. Secondly, such motion must have the support of a required number of members. Thirdly, the House which has passed the motion for investigation shall not be entitled to investigate the charge. And fourthly, that the House which has investigated the charge, if it finds the President guilty must do so by a majority of two-thirds.

These are the four propositions which have been embodied in this particular article. Now Prof. Shah's proposition is that the Upper House should have nothing to do with the impeachment of the President and that the jurisdiction to impeach the President, to investigate and to come to its own conclusions must be solely vested in the House of the People. I have not been able to understand the reasons why Prof. K. T. Shah thinks that the Lower House is in a special way entitled to have this jurisdiction vested in it. After all the trial of the President or his impeachment is intended to see that the dignity, honour and the rectitude of the office is maintained by the person who is holding that particular office. Obviously, the honour, the dignity and the rectitude of that office is not merely a matter of concern to the Lower House, it is equally a matter of concern for the Upper House as well. I do not, therefore, understand why the Upper chamber which, as I said, is equally interested in seeing that the President conducts himself in conformity with the provisions of the Constitution should be ousted from investigating or entertaining a charge of any breach of conduct on the part of the President in his integrity and it is equally concerned as the House of the People. Prof.

K. T. Shah felt so sure about the correctness of his proposition that he said in the course of his argument that only those who have been slavishly copying the other constitutions would have the courage to oppose his amendments. I do not mind the dig which he has had at the Drafting Committee. As I said in my opening address, the Drafting Committee in the interests of this country has not been afraid of borrowing from other constitutions wherever they have felt that the other constitutions have contained some better provisions than we could ourselves devise. But I thought Prof. K. T. Shah forgot that if there was any person so far as I am able to see, who has practised slavish imitation of the Constitution of the United States, I cannot point to any other individual except Prof. Shah. *(Laughter)*. I thought his whole scheme which was just a substitute for the scheme of Government embodied in the Draft Constitution was bodily borrowed with commas and semi-colons from the United States Constitution, and when he was defeated on his main proposition, his worship of the United States Constitution has been so profound, so deep, that he has been persisting in moving the other amendments which, as he himself knows, are only consequential and have no substance in themselves. I therefore do not mind the dig that he has had at the Drafting Committee.

The other proposition which Prof. K. T. Shah has sought to introduce in the Constitution is that there should be a concurrence of the other House. He has evidently decided to accept the main scheme embodied in the Draft Constitution. What he wants is that even if the one House which has investigated the offence has come to a conclusion, that conclusion ought not to have effect unless it has been adopted by the other House. I cannot understand why, for instance, the verdict of a jury--and this is no doubt a sort of jury, which will investigate and come to a conclusion--I do not understand why the verdict of one House, which it would have come to after investigation should be submitted to another jury. I have never known of any such principle or precedent at all. Secondly, I do not understand what is to be the effect if the other House does not adopt. Is the other House required to adopt only by bare majority or two-thirds majority? Supposing the other House does not adopt the conclusion which has been arrived at by one House, what is to be done? Obviously there will be a tie. Prof. K. T. Shah provided, in my judgment, no remedy for the dissolution of that tie. For these reasons, I am unable to accept any of the amendments moved by Prof. K. T. Shah.

There is another amendment which I might deal with because it is analogous to the amendments moved by Prof. K. T. Shah, and that is amendment No. 1178 moved by my Friend, Mr. Mohd. Tahir. He says that it is unnecessary to provide for a two-thirds majority for a charge of being guilty of violation of the Constitution. He thinks that a bare majority is enough. Now, Sir, I think my Friend, Mr. Mohd. Tahir has not taken sufficient notice of the fact that a motion for impeachment is very different from a motion of no confidence. A motion of no confidence does not involve any shame or moral turpitude. A motion of no confidence merely means that the party does not accept or the House does not accept the policy of the Government. Beyond that no others censure is involved in a no confidence motion. But, an impeachment motion stands on a totally different footing. If a man is convicted on a motion for impeachment, it practically amounts to the ruination of his public career. That being the difference, I think it is desirable that such an important consequence should not be permitted to follow from the decision of a bare majority. It is because of this difference that the Drafting Committee provided that the verdict of guilty should be supported by a two-thirds majority.

Now, Sir, I come to the amendments of my honourable Friend, Kazi Syed Karimuddin. His first amendment which I propose to take for consideration is amendment No. 1152. By this amendment he wants to add treason, bribery and other high crimes and misdemeanours after the words, 'violation of the Constitution'. My own view is this. The phrase 'violation of the Constitution' is quite a large one and may well include treason, bribery and other high crimes or misdemeanours. Because treason, certainly, would be a violation of the Constitution. Bribery also will be a violation of the Constitution because it will be a violation of the oath taken by the President. With regard to crimes, the Members will see that we have made a different provision with regard to the trial of the President for any crimes or misdemeanours that he may have made. Therefore, in my view, the addition of these words, treason and bribery, are unnecessary. They are covered by the phrase "violation of the Constitution".

His other amendment is amendment No. 1170. whereby Mr. Karimuddin seeks to provide that when an investigation is being made into the charge of impeachment, the Chief Justice of India shall preside. I have no quarrel with his proposition that any investigation that may be undertaken by any House which happens to be in charge of the impeachment matter should have the investigation conducted in a judicial manner, having regard to all the provisions which are embodied in the Criminal Procedure Code and the Evidence Act. As I said, I have no quarrel with his objective; in fact, I share it. The only point is this: whether this is a matter which should be left for the two Houses to provide in the Rules of Procedure or whether it is desirable to place this matter right in the Constitution in a definite and express manner. My Friend Mr. Karimuddin will see that in sub-clause (3) it is provided that the House shall investigate, and therefore it is quite clear that both the Houses of Parliament in making the rules of procedure will have to embody in it a section dealing with the procedure relating to impeachment. Because, it may be, at one time the initiation may take place in the Upper Chamber and trial may take place in the Lower Chamber, and *vice versa*. So both the Houses will have to have a section dealing with this matter in the procedure of each House. That being so, there is nothing to prevent the legislature from setting out in that part of the procedure of the two Houses that wherever that investigation is made either the Chief Justice shall preside or some other judicial officer may preside, and therefore it seems to me that his object will be achieved if what I submit it carried out by the procedural part of the Rules of the two Houses. This provision is therefore quite unnecessary.

I come to his third amendment, No. 1187. He wants that the Constitution should lay down the disqualifications which must necessarily arise out of a charge of guilt on impeachment. The language that he has borrowed I see is from the United States Constitution. My view with regard to this matter is this. So far as membership of the legislature is concerned, as I pointed out on an earlier occasion, the matter is covered by the provision contained in article 83 which lays down the disqualifications for membership of the legislature. As I then stated, it would be perfectly possible for Parliament in laying down additional disqualifications to introduce a clause saying that a person who has been impeached under the Constitution shall not be qualified to be a member of the legislature. Therefore, by virtue of article 83, it would be perfectly possible to exclude a President who has been impeached from membership of the legislature.

The only other matter that remains is the question of appointment to office. It seems to me that there are several considerations to be borne in mind. It is quite true that the provisions of the Draft Constitution leave this matter open. But, I think it would be perfectly possible for Parliament, when enacting a Civil Servants Act, as I have no doubt the future Parliament will be required to do, to lay down the qualifications for public service, their emoluments and all other provisions with regard to public service. Obviously, it would be open to Parliament to say that any person who has been impeached under the law of the Constitution shall not be a fit person to be appointed to any particular post, either an ambassadorial post, outside the Government, or inside the Government in any particular department. Therefore, that matter, I see, can also be covered by parliamentary legislation.

Shri H. V. Kamath : Am I to understand that Dr. Ambedkar is personally in favour of this amendment?

The Honourable Dr. B. R. Ambedkar : Yes; I think there is nothing in this amendment except the fact that this was met by other ways.

Now, Sir, the other question is this: is it necessary to have these disqualifications laid down specifically and expressly in the Constitution? It seems to me that there is no necessity, for two reasons. One is that no person who has been shamed in this manner by a public trial and declared to be a public enemy would ever have the courage to offer himself as a candidate for any particular post. Therefore, that possibility, I think, is excluded by this consideration. The second is this: whether the people of this country would be so wanting in sense of public duty and public service to elect any such person, if he, as a matter of fact, stood. I think it would be too shameful an imputation to the people of this country to say that it is necessary to make an express provision of this sort in the Constitution because the people of this country are likely to elect persons who are criminals, who have committed breach of trust and who have failed the public in the performance of their public duties. I think these weaknesses are inherent in all societies and no good purpose will be served by advertising them by putting them in the Constitution. I therefore think that the amendments, however laudable they are, are not necessary to be embodied in the Constitution.

Mr. Vice-President : The amendments which have been moved will now be put to vote.

Amendment No. 1152 standing in the name of Kazi Syed Karimuddin.The question is:

"That is clause (1) of article 50, after the words 'for violation of the Constitution', the words 'treason, bribery or other high crimes and misdemeanours', be inserted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1151 standing in the name of Prof. K. T Shah: First part.

The question is:

"That in clause (1) of article 50, after the words 'is to be impeached for' the words 'treason or' be added."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1151 standing in the name of Prof. K. T. Shah: Second Part.

The question is:

"That in clause (1) of article 50, for the words 'either House' the words `the People's House' be substituted."

The amendment was negatived.

Mr. Vice-President : I now put to vote amendment No.1160 as modified by the amendment of Mr. T. T. Krishnamachari.

The question is:

"That in sub-clause (a) of clause (2) of article 50, for the words `thirty members', the words 'one-fourth of the total number of members' be substituted."

The amendment was adopted.

Mr. Vice-President : The question is:

"That in sub-clause (a) of clause (2) of article 50, for the words 'thirty members' the words 'hundred members' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in sub-clause (a) of clause (2) of article 50, for the words 'after a notice' the words 'after at least 14 days notice' be substituted."

The amendment was adopted.

Mr. Vice-President: The question is:

"That in sub-clause (a) of clause (2) of article 50, for the words 'moved after a' the words, 'moved after fourteen days'be substituted."

The amendment was adopted.

Mr. Vice-President : The question is:

"That in sub-clause (b) of clause (2) of article 50, for the words 'supported by' the words 'passed by a majority of' be substituted."

The amendment was adopted.

Mr. Vice-President : The question is:

"That for sub-clause (b) of clause (2) of article 50, for the following be substituted:--

> '(b) such resolution has been supported by a majority of the members
> present and voting'."

The amendment was negatived.

Mr. Vice-President : I am not putting No. 1168 to vote because it is the same as 1167. It is already covered.

The question is:

"That the following new sub-clause be inserted after sub-clause (b) of clause (2) of article 50:

> `(c) the meeting shall be presided by the Chief Justice of the Supreme Court whose decision on the admissibility of evidence shall be final'."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (3) of article 50, for the words 'either House' the words 'the People's House' be substituted and the words 'or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation', be deleted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (3) of article 50, after the word 'investigated' a full stop be inserted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That after clause (3) of Article 50, the following new clause be added:--

`(3A) The President shall have the right to appear and to be represented at such investigation.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (4) of article 50, for the words 'passed supported by' the words 'passed by a majority of' be substituted."

The amendment was adopted.

Mr. Vice-President : The question is:

"That in clause (4) of article 50, for the words `not less than two-thirds of the total membership of the House', the words 'a majority of the members present and voting' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (4) of article 50, after the words 'such resolution shall' the words 'be placed before the People's House, and if adopted by the latter, shall' be inserted."

The amendment was negatived.

Mr. Vice-President : The question is: Amendment No.1185.

Mr. Naziruddin Ahmad : Sir, no reply has been given to my amendment by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I said I oppose it.

Mr. Vice-President : The question is:

"That in clause (4) of article 50, for the words 'date on which', the words `time when' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That at the end of clause (4) of article 50, the words 'by both Houses of Parliament' be added."

The amendment was negatived.

Mr. Vice-President : The question is:

"That the following be added at the end of clause (4) of article 50:--

> 'and it shall operate as a disqualification to hold and enjoy any office of honour, trust or profit under the Indian Union.' "

The amendment was negatived.

Mr. Vice-President: The question is:

"That article 50, as amended, stand part of the Constitution."

The motion was adopted.

Article 50, as amended, was added to the Constitution.

Article 51

Mr. Vice-President : We come to article No. 51.

The motion is:

"That article 51 form part of the Constitution."

We shall take the amendments one after another. Amendments Nos. 1190 and 1191 are of similar import and are to be considered together. No. 1190 may be moved.

(Amendments Nos. 1190 and 1191 were not moved.)

No. 1192 is disallowed.

No. 1193, first alternative, and Amendment No. 1194 are similar and are to be considered together and I can allow1193 to be moved--first alternative. Mr. Tahir.

Mr. Mohd. Tahir : Sir, I beg to move:

"That in clause (2) of article 51, for the words 'six months' and the words 'full term of five years as provided in article 45 of this Constitution' the words 'three months' and the words 'remaining term of five years in which the vacancy so occurs' be substituted respectively."

Sir, regarding the period of six months and three months I would only submit that it is a matter of importance and it is better that the sooner it is decided the better it is and the period of six months is too long and therefore I have suggested that it should be decided in three months only.

Now I come to the second point. In such cases the office will remain only for the remaining term of five years in which the vacancy so occurs. Supposing the President is elected and after one year of his term the vacancy has occurred by his removal or resignation or anything otherwise, then in that case the new President who will be elected will hold the office for the remaining term of 5 years. In doing so, Sir, I want that the term of the Parliament and also the term of the office of the President should run parallel side by side so that after every five years when there is a new Parliament, there must also be a new President--a new air and new breath. If it be not so, then to my mind it appears that there would be some difficulties. Supposing the President is elected after two years when the vacancy occurs, then he will continue in office for another two years after the new Parliament is elected. Then there may occur two difficulties. Suppose the President belongs to a certain party and unfortunately in the next election that party does not come in with a majority. Then what will be the position of the President who is still continuing in office? Certainly, he will have to vacate the office on many grounds. Either he will resign from his office or the party which comes in with a majority will not consider him suitable to their own views, aims and objects.

Secondly, I would submit that if a President who is in office at the time of the elections continues in his office for some more years after the election, then it is but natural that the President, being in power, certainly will influence the elections for the new Parliament, and in my opinion, any influence exercised on the elections is against--it is hopelessly against--the spirit of democracy. Moreover, nobody can check it, because the President in power will naturally want to continue in power, and therefore, the party to which he himself belongs, must come into power. Therefore he will exercise all his influence to see that such a party comes into power. Therefore, it is quite undesirable that the President should continue in office beyond a period, when Parliament comes to an end. Therefore, I submit that in all fairness, it would be desirable that the office, of the President and the term of life of the Parliament should run side by side, for equal periods of time. With these few words I submit my amendment to the House for its acceptance.

Mr. Vice-President : You can move the alternative amendment also.

Mr. Mohd. Tahir : Sir, the second alternative amendment runs as follows:

"That for article 51 the following be substituted:--

> '51. If the office of the President becomes vacant by reason of his death, resignation, removal or otherwise, the Vice-President shall act as President for the remaining term of office in which the vacancy so occurs'."

In moving this amendment, Sir, I submit that when the question of election of President or the Vice-President comes before Parliament or before the country, it is but natural that the Parliament and the country as a whole, will think of selecting the best two men of the country to be the President and the Vice-President. The best two men are elected as President and Vice-President, and after that, if the vacancy arises in the office of the President, there is no reason why the third person should be elected for that office, and not the next best man who has already been elected as Vice-President and who has been in office, and who has had experience of the office in which he has been working for a certain period. Therefore, in all fairness, I am of the opinion that in case of vacancy of office of President, the Vice-President in office should automatically be in the President for the time that remains unexpired, and for which that office has fallen vacant.

With these few words, Sir, I submit my amendment to the House for its acceptance. I hope the House will consider these amendments seriously and accept them.

Mr. Vice-President : Amendment No. 1198, standing in the name of Prof. K. T. Shah.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That the following new clause be added after clause(2) of article 51:--

'(3) During the interval between the date when a vacancy in the office of the President occurs, and the date when new election to that office is completed, and the name of the new President announced, the Vice-President, provided for in the next following article, shall hold the office of and act as President of the Union'."

Sir, this is only a consequential amendment, trying to fill in the gap between the removal, resignation or death of one President and the election of his successor. Some arrangement must be made for the interim period, whether it is three months or six months or whatever period it may be, between the election of the new President and the demise or removal of his predecessor. This is at least one example in which, may I make a present of my non-imitation of the American Constitution. There, after all, the Vice-President automatically takes charge in such emergency and election is avoided. Here we have insisted upon not only election, but election not for the balance of the period remaining. but for the full term of the office. If the Honourable Chairman of the Drafting Committee will consider the spirit as well as the wording of my amendment, he will find that there are much fewer imitations in mine than in his,--the only difference being that he has imitated several more constitutions, while I have reserved my "worship"--as he called it--for only one.

This, however, does not affect the simple provision that some interim provision must be made, and so far as I can see, the Draft does not make any satisfactory arrangement for the interim period during which the office may remain vacant. My amendment only seeks to provide for a consequence and hence, I hope the House will accept it.

Mr. Vice-President : Amendments Nos. 1195, 1196 and 1197 are disallowed, being verbal ones. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I am sorry I cannot accept the amendment moved by Prof. K. T. Shah. His amendment seems to be covered altogether by article 54 (1). I fail to find any difference between the amendment that he has moved and the provision contained in sub-clause (1) of article 54. I think if he considers this article, he will find that his amendment is unnecessary and superfluous.

With regard to the other amendment, the point of difference is that any one who is elected as a result of the resignation and so on, should only occupy the Chair of the Presidentship during the balance of the term, while the provision contained in the Constitution is to the effect that if a person is elected as a result of resignation, death and so on he should continue to be the President for the full term prescribed by the Constitution. I see no reason why the term of office of a person who has been elected to the office should not be the full term prescribed by the Constitution and why he should be limited only to the balance of the term. I therefore, see no justification for the amendment at all.

Mr. Vice-President: I shall put amendment No. 1193--first alternative--standing in the name of Mr. Mohd. Tahir to vote.

The question is:

"That in clause (2) of article 51, for the words 'six months' and the words `full term of five years as provided in article 45 of this Constitution' the words 'three months' and the words 'remaining term of five years in which the vacancy so occurs' be substituted respectively."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1194 standing in the name of Prof. K. T. Shah.

The question is:

"That in clause (2) of article 51, for the words 'hold office for the full term of five years' the words 'hold office for the balance of term of five years' be substituted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1193, second alternative, standing in the name of Mr. Mohd. Tahir.

The question is:

"That for article 51 the following be substituted:--

> '51. If the office of the President becomes vacant by reason of his death, resignation, removal or otherwise, the Vice-President shall act as President for the remaining term of office in which the vacancy so occurs'."

The amendment was negatived.

Mr. Vice-President: The question is:

"That article 51 stand part of the Constitution."

The motion was adopted.

Article 51 was added to the Constitution.

New Article 51-A

Mr. Vice-President : Now we come to amendment No. 1199 standing in the name of Prof. K. T. Shah.

Prof. K. T. Shah : Sir, am I allowed to move the second part of the amendment relating to pension?

Mr. Vice-President : The question of pension to the President was dealt with in a former amendment by you?

Prof. K. T. Shah : Yes, Sir, that is why I asked the question.

Mr. Vice-President : Then the second part may be left out.

Prof. K. T. Shah : Then I will not move this amendment.

Article 52

Mr. Vice-President : Then we come to article 52.

I find the amendment deals with a matter which is concerned with article 1 and I disallow it on the understanding that if any similar change is made in article 1 then the Drafting Committee itself will make the change in the course of the Third Reading. Are you willing to accept that, Mr. Kamath?

Shri H. V. Kamath : I will not move the amendment, Sir.

Mr. Vice-President : So, I can put article 52 to cote.

The question is:

"That article 52 stand part of the Constitution."

That motion was adopted.

Article 52 was added to the Constitution.

Article 53

Mr. Vice-President : Then we come to article 53.

Amendment No. 1201 is being disallowed because it has the effect of a negative vote. Amendments Nos. 1202 and 1203 seem to be identical and I therefore allow amendment No.1202 to be moved.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in article 53, for the words 'or position of emolument' the words 'of profit' be substituted."

Mr. Vice-President : Then No. 1204 standing in the name of Mr. Mohd. Tahir.

Mr. Mohd. Tahir : I am not moving it, Sir.

Mr. Vice-President : Then amendment No. 1205 standing in the name of Dr. Ambekar.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That to the proviso to article 53, the following be added:--

> 'and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under article 79 of this Constitution'."

The provision is intended to prevent making a double profit.

Mr. Vice-President : There is one amendment sent in by Mr. Naziruddin Ahmad, No. 33. This is formal and is disallowed.

Now I am putting these amendments to vote. Has any Member anything to say on these amendments?

Shri H. V. Kamath : On a point of information, Sir, with reference to amendment No. 1205, will the Vice-President, when he acts as President, draw the salary and allowances of the President or those of the Vice-President only?

The Honourable Dr. B. R. Ambedkar : The salary of the President, salary of the office.

Mr. Vice-President: Then I am putting these amendments to vote. I shall put No. 1202 standing in the name of Dr. Ambedkar.

The question is:

"That in article 53, for the words 'or position of emolument' he words 'of profit' be substituted."

The amendment was adopted.

Mr. Vice-President: Do you want me to put your amendment to vote, Mr. Naziruddin Ahmad, which is identical with the previous one?

Mr. Naziruddin Ahmad : No. Sir.

Mr. Vice-President: Then I shall put to vote amendment No. 1205.

The question is:

"That to the proviso to article 53, the following be added :--

> 'and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under article 79 of this Constitution.' "

The amendment was adopted.

Mr. Vice-President: The question is:

"That article 53, as amended, stand part of the Constitution."

The motion was adopted.

Article 53, as amended, was added to the constitution.

Article 54

Mr. Vice-President: Then we come to article 54.

The motion before the House is:

"That article 54 form part of the Constitution."

There is amendment No. 1206 standing in the name of Mr. Mohd. Tahir.

Mr. Mohd. Tahir: I am not moving it, Sir.

Mr. Mohd. Tahir: Then No. 1207. As amendment No. 1185 has been disallowed.......

Mr. Naziruddin Ahmad: This is a different situation altogether, Sir. I shall show it in a minute.

Mr. Vice-President: All right.

Mr. Naziruddin Ahmad: Sir, I beg to move :

"That in clause (1) of article 54, for the words 'date on which', the words 'time when' be substituted."

Sir, I shall be extremely short. These words occur in clause (1) of article 54. It says that the Vice-President shall act as the President during a vacancy 'until the *date* on which' a newly elected President enters upon his office. I shall ask the House to consider only one example. Suppose the Vice-President acts in a vacancy in the President's office and a new President is elected and enters upon his office at noon on the 1st of January. By this clause it is laid down that the Vice-President shall act as President 'until the date on which' the new President enters upon his office. So he can act only up to the 31st of December, because he can act only, "until the *date* on which" the new President enters upon his office which is the 1st of January. From the midnight of the 31st December till the noon of the 1st January when the new President enters upon his office, there will be no one to preside over the functions of the Government of India. There will be no President; there will be no Vice-President. The amendment seeks to fill up this political vacuum.

Mr. Vice-President: Amendments Nos. 1208 and 1209 are merely verbal and are therefore disallowed.

Amendments Nos. 1211 and 1210 are of similar import but the former is more comprehensive and may be moved.

The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That to clause (3) of article 54, the following be added :-

> 'and be entitled to such privileges, emoluments, and allowances as may be determined by Parliament by law until provision in that behalf is so made, such privileges, emoluments and allowances as are specified in the Second Schedule'."

This merely makes good an omission in the Draft Constitution.

Mr. Vice-President: Amendments Nos. 1212 and 1213 have been blocked as article 49 has been adopted.

Shri H. V. Kamath: Sir, with regard to amendment No.1211 moved by the Honourable Dr. Ambedkar I would like to say something. He said a short while ago that the Vice-President will have the same emoluments and allowances as the President while acting as such, whereas under this amendment he will "be entitled to such privileges, emoluments, and allowances as may be determined by Parliament by law and unit provision in that behalf is so made, such privileges, emoluments and allowances as are specified in the Second Schedule". If the Vice-President acts as

President why make a distinction like this that until Parliament enacts in that behalf he will get emoluments and allowances according to the Second Schedule. When he acts as President he must get the emoluments of the President all the time and I should like to know why this difference is made.

Pandit Thakur Dass Bhargava: Sir, article 54 (3) says :

> "The Vice-President shall, during, and in respect of, the period while he is so acting as, or discharging the functions of the President, have all the powers and immunities of the President."

The amendment which has been moved by Dr. Ambedkar speaks of privileges, emoluments and allowances but there is no reference to the duties and liabilities of the Vice-President when he is acting as President. If the Vice-President violates the constitution there is no provision that he should be impeached or dealt with in any manner.

When we proceed further to article 56 we find that by a resolution of both House he can be made to vacate his office. But in regard to the violation of the Constitution and in regard to the failure of discharge of his duties there is no provision. When he is acting as President he should be liable to the same liabilities and duties as the President. Therefore I would have liked that the words "duties and liabilities" were inserted after the words "powers and immunities" which would have met the exigencies of the circumstances. I have given an amendment to this effect but since it has not been circulated I do not propose to move it formally but I would like Dr. Ambedkar to consider the proposition of the addition of the words "duties and liabilities" after the words "powers and immunities", which will make the section complete and make up the obvious lacuna.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, I find that in the amendments that have been moved there are really three points which have been raised. One point which has been raised by my friend Mr. Naziruddin Ahmad relates to time. We all know by now how very meticulous my friend Mr. Naziruddin Ahmad is and he wants to have the Constitution specifically state the time when a President frees himself from office and other person takes over that office. I do not know whether so much meticulousness is necessary in this Constitution. However, what I find difficult to accept in the amendment which he has moved is that he has not particularised what is system of timing which he has in mind. Is it the Greenwich time, the Standard time, the Bombay or Calcutta time? ....

Mr. Naziruddin Ahmad: I mean the actual time of appointment.

Dr. B. R. Amberdkar: What is the time may be very different. Unless he prescribes the system I do not think that the introduction of the word time introduces any greater clarity or definiteness at all.

Secondly, so far as this particular clause is concerned I find that his amendment is quite unnecessary, because if he will read sub-clause (1) of article 54 he will see that it is stated "to fill such vacancy enters upon his office". Surely the entering upon office will be at sometime in the day-it may be midnight or it may be 12 o'clock in the day. Therefore time is specified so to say by implication and this amendment is there for quite unnecessary.......

Mr. Naziruddin Ahmad: The clause provides that the Vice-President shall act until the 'date' on which the new President enters upon his office and not the time when he does so.

The Honourable Dr. B. R. Ambedkar: Surely it will be sometime on some day on which he will enter the office. He may probably consult an astrologer to find out what is the auspicious moment. However, the amendment is quite unnecessary.

My Friend Mr. Kamath said that in replying to the debate on the previous article I stated or rather in moving my amendment I stated that the Vice-President when acting as the President shall have the same emoluments as the President. He found some difficulty in reconciling that statement with the amendment which I have moved, which gives the Parliament the power to fix the salary of the Vice-President when acting as the President. If my Friend Mr. Kamath were to turn to page 161 of the Draft Constitution he will find that there is a schedule fixing the salary of the President and paragraph 5 of that schedule definitely provides for the salary of the President. Surely when a person is acting as the President, no matter at what early stage in life he has climbed to that post, he will be entitled to get that salary according to this Constitution. But it was felt that it might be necessary to leave the matter to Parliament to fix a different scale of salary for a person who is assuming the office of the President expressly for a very short duration. Parliament may not like to give him the same salary, because the tenure of his office is certainly not of the same duration as that of the President himself. Consequently, if Parliament makes no provision, then he gets the salary of the President. But Parliament may make provision to give him a different salary. It is for that purpose the amendment has been moved.

Shri H. V. Kamath: Sir, may I invite the attention of my honourable Friend Dr. Ambedkar to article 48 clause (4) which lays down that the emoluments and allowances of the President shall not be diminished during his term of office? Am I to understand that you make a distinction between the Vice-President acting as President and the President?

The Honourable Dr. B. R. Ambedkar: Yes, certainly.

Shri H. V. Kamath: Sir, just now when I raised objection to an amendment to the last article, Dr. Ambedkar said that the Vice-President shall draw the salary and allowances of the President while acting as President.

The Honourable Dr. B. R. Ambedkar: Unless Parliament otherwise provides, the Vice-President gets the salary of the President when he acts for him. There is no reason why Parliament should not be given authority to fix the scales of pay of a President who may be therefor a short duration.

Pandit Bhargava raised another point and that was to the effect that there was no provision for the impeachment of the Vice-President when acting as President. Obviously when a Vice-President becomes the President, all the duties and obligations which are imposed upon the President fall upon him without making any express mention of the fact at all. If during his tenure of office as President the Vice-President commits any of the offences or acts which expose the President to the risk of being impeached, he will not have any kind of immunity by reason of the fact that he is either a Vice-President or is acting as President *pro tempore*. There is therefore no necessity for making any provision for it.

Mr. Naziruddin Ahmad: Mr. Vice-President, may I ask......

The Honourable Dr. B. R. Ambedkar: I do not submit myself to any cross examination at this stage.

Mr. Vice-President: Mr. Naziruddin Ahmad may go back to his seat.

Mr. Naziruddin Ahmad: I want to draw the attention of the Honourable Dr. Ambedkar to an oversight.

Mr. Vice-President: He refuses to listen to it. What can I do? I cannot compel him to listen.

Mr. Naziruddin Ahmad: No one can compel him. the point is that in clause (3) of article 54.........

Mr. Vice-President: I am going to put the amendment to vote. Dr. Ambedkar has said that he will not give any reply.

Mr. Nazirudding Ahmad: I hope he will reconsider the matter.

Mr. Vice-President: I have not called upon Mr. Naziruddin Ahmad to speak.

Mr. Naziruddin Ahmad: Sir. I want only to draw the attention of the House to a point which might influence the votes.

Mr. Vice-President: Why not do so at the third reading stage ? I am going to put the amendment to vote.

Mr. Naziruddin Ahmad: But, Sir, this is a matter of great importance.

Mr. Vice-President: You think so, May I ask you respectfully to go back to your seat?

Mr. Naziruddin Ahmad: I shall comply with your request.

Mr. Vice-President: I shall now put amendment No. 1205 standing in the name of Mr. Naziruddin Ahmad to vote.

The question is:

"That in clause (1) of article 54, for the words 'date on which', the words 'time when' be substituted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That to clause (3) of article 54, the following be added:-

> 'and be entitled to such privileges, emoluments, and allowances as may be determined by Parliament by law and until provision in that behalf is so made, such privileges, emoluments and allowances as are specified in the Second Schedule'."

The amendment was adopted.

Mr. Vice-President: The question is:

"That in clause (3) of article 54, after the words 'have all the powers', the words 'and privileges, emoluments' be added."

The amendment was negatived.

Mr. Vice-President: The question is:

"That article 54, as amended, stand part of the Constitution."

The motion was adopted.

Article 54, as amended, was added to the constitution.

Article 55

Mr. Vice-President: The House will now take up for consideration article 55.

The first amendment to this article stands in the name of Shri Himmat Singh K. Maheshwari. As the Member is not in the House it is not moved.

Amendments Nos. 1215 of Mohd. Tahir and 1218 of Prof. Shah are of similar import. Prof. Shah may move his amendment.

Prof. K. T. Shah: Mr. Vice-President, I beg to move:

"That in clause (1) of article 55 for the words 'by the members of both Houses of Parliament assembled at a joint meeting in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot' the words 'at the same time and in the same manner as the President' be substituted."

May I point out that, though it goes against myself this was in consonance with the method of election of the President as originally suggested by me in an amendment on adult franchise which this House has been pleased to reject? I wonder whether I would be quit in order to move it.

Mr. Vice-President: I would ask the honourable Member to use his discretion.

Prof. K. T. Shah: I am not fond of hearing my own voice. I only want to point out the discrepancy that is there.

Mr. Vice-President: I think then the honourable Member had better not move it.

This need not, therefore, be put to vote.

Mr. Mohd. Tahir: I beg to move:

"That for clause (1) article 55, the following be substituted:

'(1) The Vice-President shall be elected in the same manner as provided in article 43'."

Article 43 lays down the manner in which the President is to be elected. I think, Sir, that so far as the election of the President and the Vice-President is concerned, there should not be any distinction as to the manner thereof. As for the position of the Vice-President, it is the same as that of the President. Of course there is the division of labour and division of work. They occupy more or less the same position and therefore there should be no distinction between them in the manner of their election.

My second point is that the President is to be elected by both Houses of Parliament as well as by the members of the Legislatures of the States. If we do not elect a Vice-President in the same manner, it means that we are going to deprive the Legislatures of the States of the right of electing him. Therefore it would be quite unfair to the members of the Legislatures of the States to deprive them of the power to elect the Vice-President. I have therefore suggested in this amendment that the Vice-President should also be elected in the same manner as the President.

(Amendments Nos. 1216 and 1217 were not moved.)

Mr. Naziruddin Ahmad: Mr. Vice-President, Sir , I beg to move:

"That in clause (1) of article 55 the words 'assembled at a joint meeting' be omitted and the clause as so amended, be renumbered as article 55."

Sir, to my mind, the words which I want to delete create an anomaly. Sir, the provision is to this effect:"The Vice-President shall be elected by the members of both Houses of Parliament assembled at a joint meeting." I submit that for the purpose of electing the Vice-President, the members of both Houses of Parliament must *vote* but they need not at all *assemble at a meeting*. They need not assemble and there need be no meeting. We are familiar with the system of election by members to various Committees. The members do not at all meet at a meeting. They are not required even to assembly formally in the House to be presided by the Speaker or the President or the Vice-President or the Deputy Speaker as the case may be. They are not even required or expected to assemble at the same time. There is no joint meeting or any meeting at all. There is no quorum required. They may come between the prescribed hours to the appointed place and the Returning Officer or the Polling Officer records their votes. Even if one member comes and votes, it is enough. No meeting implying the simultaneous presence of a certain number of members is necessary. Sir, the idea of any meeting or a joint meeting is absolutely inapplicable to a matter of votes. It is for this reason that I am asking the House to accept the deletion of the words "assembled at a joint meeting". If these words words are deleted, the clause will read thus:

"The Vice-President shall be elected by the members of both Houses of Parliament .... by means of single transferable vote."

The members need not at all assemble at a meeting. That would involve a number of conditions and a set paraphernalia under the procedure rules which do not apply to a matter of voting. I submit that these words are unnecessary and are misleading and should be deleted. Then the second part of the amendment is to the effect that this may be regarded as an independent article. That is merely formal. The first part of the amendment, I submit, should be carefully considered.

Mr. Vice-President: Amendment No. 1220 standing in the names of Begum Aizaz Rasul and Mr. Naziruddin Ahmad. The Begum Sahiba is not here and so you can move it, Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: Sir, I beg to move:

"That in clause (1) of article 55, the words 'in accordance with system of proportional representation' be deleted."

Sir, the matter has been much mooted in the House as to whether there can be proportional representation when there is only one seat to be filled. There may be many candidates for one seat and so the votes may be transferable. By transferability you elect the most popular man. I will give an illustration. If there are one hundred voters and there are ten seats to be filled up, then ten members representing one group can elect one member and that one member elected by the ten electors represents one-tenth of the electors and that is proportional representation in the body elected. Sir, I want to draw the attention of Dr. Ambedkar to this point. In fact I find that he often misses my points and forgets to reply. I am particularly anxious to draw his attention to this point and it is this. If there are one hundred voters and ten seats, then ten voters forming a group can elect one and that one elected by the said ten voters represents one-tenth of the seats by proportional representation. He represents one-tenth of the voters. Proportional representation applies to a plurality of seats. There can be no proportional representation where only one person is to be elected. He cannot split up his person and represent separately a one-tenth and nine-tenths fractions of electors. As for instance, if you, Sir, are elected by this House, then you do not by any means proportionately represent different groups of the electors. There cannot be any proportional representation in the case of one man seat.

With regard to the transfer of votes, that is a proposition which is really acceptable. If at the first counting of votes the first man gets less than half the votes polled, then at the second counting the vote's transferred are again appropriately allocated, the first man at the first calculation may not be the first man in the second or subsequent calculations. By means of the device of the transferability of votes, the person or persons having the largest support gets or get elected. Even in cases of single seats, it is desirable to have transferable votes but there is no proportional representation, i.e. one man elected can not proportionally represent different groups of electors. Proportional representation according to this system is inevitable in case of a plurality of seats. But in the case of a one seat or one man election, he does not represent any section proportionately at all. Proportional representation is not applicable to a one man vacancy. I think, Sir, there has been a considerable amount of confusion about this proportional representation. I want to draw a distinction between election by proportional representation and transferability of votes. They must not be mixed up together and I think there is a risk of these two independent categories being muddled together as part of each other.

(Amendments Nos. 1221 and 1222 were not moved.)

Mr. Vice-President : Amendment No. 1223 is disallowed as being merely verbal.

Amendment No. 1224 Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir I move:

"That in clause (2) of article 55, for the words 'either of Parliament or' the words 'of either House of Parliament or of a House' for the words 'member of Parliament or' the words 'member of either House of Parliament or of a House', and for the words 'in Parliament or such Legislature, as the case may be' the words in that House' be substituted respectively."

This is only to improve the language. There is no point of substance in it.

(Amendments Nos. 1225, 1226 and 1227 were not moved.)

Mr. Vice-President : Amendments Nos. 1228 and 1229 are of similar import.

(Amendment Nos. 1228, 1229 and 1230 were not moved.)

Amendment No. 1231 standing in the name of Prof. K. T. Shahs may be moved.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That in sub-clause (c) of clause (3) of article 55, after the words 'Council of States' the following be added:--

> 'and is not disqualified by reason of any conviction for treason, or any offence against the safety, security or integrity of the State, or any violation of the Constitution, or has been elected and served more than once as President or Vice- President of the Union'."

Even if the last words are not quite proper after the decision of the House on article No. 46, I trust the preceding disqualifications that I have suggested would be acceptable to the House.

Sir, there is a school of thought which seems to consider *infra dig* for this Constitution to provide specifically the disqualifications that may attach to candidates for certain offices. I am afraid, I cannot share this view, particularly as these are political offices, in which disqualifications like those enumerated above may become merely a matter of opinions and unless they are laid down positively in the Constitution people may be found, not only having the courage which Dr. Ambedkar was pleased to doubt, but even having the effrontery, to stand as candidates after having been suspected or charged with violation of Constitution duly proved or even of treason. Treason can be even without violation of the Constitution. May I say, treason will not be called treason if it succeeds, for the very good reason that nobody would dare call it treason then. In that way of looking at it, I feel it necessary that a specific provision be made laying down disqualification on the three or four grounds that I have mentioned.

The violation of the Constitution or conviction for treason are items, which in regard to political offences, or in regard to political offices, cannot be merely taken for granted; we cannot, therefore, assume in safety that even if no one would have the courage, or even if nobody has the effrontery, to disregard its disqualification clearly attaching to an individual was conceded, the electorate would have the common-sense, the decency not to return them. I for one am not so enamoured of any electorate so narrow as is provided in the Draft Constitution to trust that, by party influences, by party prejudices, it may not be possible to disregard such disqualification if the Constitution is silent on the subject. Accordingly, Sir, I commend this motion to the House.

Mr. Vice-President : The next two amendments Nos. 1232 and 1233 are disallowed as being verbal.

Amendments Nos. 1234 standing in the name of Dr. Ambedkar, 1235 and 1239 standing in the name of Mr. Naziruddin Ahmad are of similar import and I am, therefore asking Dr. Ambedkar to move his amendment, which seems to me the most comprehensive one.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in clause (4) of article 55, for the words 'or position of emolument' wherever they occur the words 'of profit' be substituted."

Mr. Vice-President : Amendment No. 1235 stands in the name of Mr. Naziruddin Ahmad. Does he want me to put this to the vote?

Mr. Naziruddin Ahmad : No, sir, the previous amendment will cover it.

Mr. Vice-President : What about amendment No. 1239?

Mr. Naziruddin Ahmad : The same consideration would apply.

(Amendment No. 1236 was not moved.)

Mr. Vice-President : Amendment Nos. 1237 and 1238 are verbal and are, therfore, disallowed.

Amendment No. 1240 stands in the name of Dr. B. R. Ambedkar. He may move it.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for sub-clause (a) of the Explanation to clause (4) of article 55, the following be substituted:--

> '(a) he is the Governor of any State for the time being specified in Part I of the First Schedule or is a minister either for India or for any such State, of'."

This matter has already been debated last time.

(Amendment No. 1241 was not moved.)

Mr. Vice-President : Amendments Nos. 1242, 1243 and 1244 are disallowed as being merely verbal amendments.

Amendment No. 1245 stands in the name of Prof. K. T. Shah. I think there is no use in moving this amendment.

Prof. K. T. Shah : All right, sir.

Mr. Vice-President : Amendments Nos. 1246, 1247 and 1248 are disallowed as being verbal.

MR. Naziruddin Ahmad : They are not 'merely' verbal; they are verbal, no doubt.

Mr. Vice-President: I am afraid, I do not agree with you.

(Amendments Nos. 1249 and 1250 were not moved.)

Mr. Vice-President: Amendment No. 1251 standing in the name of Prof. K. T. Shah, that also is blocked. Amendments Nos. 1252, 1253, 1254 and 1255--I am afraid they are also verbal and I, therefore disallow them.

Mr. Naziruddin Ahmad : Amendment No. 1255 is not verbal.

Mr. Vice-President : If it is not verbal, then it is formal.

Mr. Naziruddin Ahmad : So long as it is rejected, it does not matter how it is rejected.

(Amendments Nos. 1256 and 1257 were not moved.)

Mr. Vice-President : That brings us to the end of the amendments. The article is now open for general discussion.

Mr. Tajamul Husain : We have got ten minutes more and I shall finish before that. Mr. Vice-President, Sir, I take up first amendment No. 1215 moved by my honourable Friend Mohd. Tahir. His amendment seeks to say that the Vice-President shall be elected in the same manner as provided in article 43. Article 43 provides for the election of the President. How is he elected ? He is elected by the elected members of both the Houses of Parliament and by the elected members of both Houses of legislature in the States where there are two Houses. According to article 55 with which we are dealing, he is to be elected not in this manner, but by both the Houses of Parliament, at a joint meeting of the Parliament, the Central Legislature. I oppose this amendment because there is a difference between the President and the Vice-President. The Vice-President has to preside at the meetings of the Council of States. The President of the Republic has nothing to do with presiding at meetings of the legislature. The Vice-President has nothing to do, till he becomes the President in case of vacancy on account of death etc., with the provincial or State legislature. Therfore, article 35, as framed in the Constitution is correct, in my opinion.

The next amendment is amendment No. 1219 moved by my honourable Friend Mr. Naziruddin Ahmad. His amendment is that in clause (1) of article 55, the words "assembled at a joint meeting" be omitted. He does not want that the Vice-President should be elected at a joint meeting of the two Houses. He does not say by which House he is to be elected. Therefore, it has no sense and it should be rejected.

Next, I come to amendment No. 1220 again by Mr. Naziruddin Ahmad and Begum Aizaz Rasul, which says that in clause (1) of article 55, the words "in accordance with the system of proportional representation" be deleted. We are dealing entirely with the system of proportional representation in the election of the President. Supposing there are more than one candidate, say, three or four candidates. That is the safest method, and by the process of elimination you know exactly the votes secured by each according to the system of proportional representation by means of single transferable vote, I presume. That is the best system in a country like this. Therefore, I oppose that amendment also.

Next, I come to the amendment moved by the Honourable Member in charge of this Draft Constitution, the Honourable Dr. Ambedkar. That is amendment No. 1224. I have the honour to oppose this also. My submission is this. When the Honourable Dr. Ambedkar was speaking, I was busy; otherwise, I would have risen on a point of order. My point of order is this and it could be raised even now. A member cannot move many things in one motion. There must be one specific resolution or motion. He has brought in three or four things. If you read this, you will have to rule it out of order. It is hopelessly illegal. I do not know how, he could have moved four things in one amendment. He says that in clause (2) of article 55 for the words "either of Parliament or" the words "of either House of Parliament or of a House", for the words "member of Parliamentor" the words "member of either House of Parliamentor of a House" and for the words "in Parliament or such legislature, as the case may be" the words "in that House" be substituted. These are four separate amendments. I may accept one and reject the other. Therefore, I think you should rule it out of order; that would be a very good thing.

Mr. Vice-President : Unfortunately, it cannot be done now. Your advice comes rather too late.

Mr. Tajamul Husain : On a point of order, I am sure Dr. Ambedkar will agree it is never too late.

The Honourable Dr. B. R. Ambedkar : The Office could have done it.

Mr. Tajamul Husain : I hope he will agree if I say that a point of law could be raised at any time. At any time, you can say it is out of order.

Mr. Vice-President : Probably he took advantage of my ignorance of procedure.

Mr. Tajamul Husain : Because of my mistake, I do not see any reason why a wrong thing should go in. It all depends on your ruling.

Next I come to amendment No. 1231 moved by my honourable Friend Prof. K. T. Shah. He says that in sub-clause (c) of clause (3) of article 55, after the words "Council of States" the following be added: "and is not disqualified by reason of any conviction for treason, or any offence against the safety, security or integrity of the State or any violation of the Constitution or has been elected and served more than once as President or Vice-President of the Union." I think this is hopelessly wrong. I cannot understand why this amendment has been allowed. You will find article 83 which deals with the disqualifications of the members. Article 83 says that a person shall be disqualified for being chosen as, and for being a member of either House of Parliament if he holds any office of profit under the Government of India or the Government of any State, if he is of unsound mind and stands so declared by a competent court, if he is an undischarged insolvent, if he is under any acknowledgment of allegiance or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power, and if he is so disqualified by or under any law made by Parliament. Everything comes there; all these things are mentioned in article 83. Therefore, according to article 83, he cannot be a member and is not entitled to be a member of the Council of States. According to article 55, sub-clause (3), he has to be qualified for election as a member of the Council of States. Therefore to add this in clause (3) has no sense, is meaningless. I am sure Dr. Ambedkar will never accept it and the House will not accept it.

I have divided the amendment into two parts; I have already dealt with the first part. The second part of the amendment says, "or has been elected and served more than once as President or Vice-President of the Union". Supposing he has served as Vice-President or President for one term, why prevent him from becoming Vice-President again if he happens to be a very qualified man and the people want him and the legislature wants him? I had sent in an amendment to the effect that President could be elected more than once, but as I was not in the House I could not move it; but it was accepted by the House that the President could be elected more than once. Therefore, why prevent the Vice-President from being elected more than once?

Sir, it is exactly 1-30 now and I have finished.

Mr. Vice-President: The House stands adjourned to ten of the clock tomorrow.

The Assembly then adjourned till Ten of the Clock on Wednesday, the 29th December 1948.

[Translation of Hindustani Speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VII

Wednesday, the 29th December 1948.

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following members took the pledge and signed the Register:--

1. Shrimati Annie Mascarene (Travancore).

2. Shri Sita Ram Jaju, [United State of Gwalior-Indore- Malwa (Madhya Bharat)].

DRAFT CONSTITUTION-(Contd.)

Article 55-(Contd.)

Mr. Vice-President (Dr. H. C. Mookherjee): We shall now resume discussion on article 55. Mr. Bharathi.

Shri L. Krishnaswami Bharathi (Madras : General): Mr. Vice-President, Sir, article 55 is under general discussion. The House might remember that yesterday Mr. Naziruddin Ahmad moved an amendment standing in his name under No. 1220. Though we cannot straightaway accept the amendment, I felt there was very great force in his contention. His amendment was to delete the words 'proportional representation' in article 55. As I understood him, he had no objection to the transferability of vote, but he took objection to the phraseology of that system. In fact, he said that there is no question of proportional representation when the candidate to be elected is only one. There is no idea of proportional representation in such a case of single-member constituency. That word means in the resultant election there must be some proportion; in proportion to the strength of the electors, you get seats there. And therefore he took objection to the words 'proportional representation'.

I happened to go through some literature on the subject and I found there is great force in what he said. The same difficulty was felt in England, and there was a Royal Commission to go into the question of all electoral systems. As a result, two bills were introduced in 1908 in the House of Commons by Mr. Robertson and they found that 'proportional representation' was not the proper word. The system is all right, *i.e.,* the transferability of voting, when there is a multiplicity of candidates; when the election to be made is only for one candidate, it is obvious that in order to get an absolute majority, we must have what is known as transferability. That is admitted. But in the case of single-member constituency they have hit upon the word--the proper word is what they call 'alternative vote'. I only take leave, Sir, to read an authority on the subject--Humphreys--in this connection. This is what the author says:--

> "In recent years the phrase "alternative vote" has been employed in England, and was adopted by the Royal Commission on Electoral Systems as a means of distinguishing the use of the transferable vote in single member constituencies from its use in multi-member constituencies."

There is a difference made in multi-member constituencies, and the words 'proportional representation' have meaning and therefore though the transferability is maintained, in order to distinguish from the system of multi-member constituencies the single-member constituencies, they used the word 'alternative vote'. The memorandum of Mr. Robertson's Bill goes on to say-- "The principle of the alternative vote is extremely simple. Its purpose and mechanism is set forth in the memorandum of Mr. Robertson's Bill, which is as follows:--

> "The object is to ensure that in a parliamentary election effect shall be given as far as possible to the wishes of the majority of electors voting. Under the present system when there are more than two candidates for one seat it is possible that the member elected may be chosen by a minority of the voters.
>
> "The Bill proposes to allow electors to indicate on their ballot papers to what candidate they would wish their votes to be transferred if the candidate of their first choice is third or lower on the poll and no candidate has an absolute majority. It thus seeks to accomplish by one operation the effect of a second ballot.

I therefore, think that this word which has been in vogue not only in England but in the Australian States also ever since 1911 must be taken advantage of and incorporated in our constitution so as to distinguish the present case from the case of plural-members constituencies and to avoid the absurdity of having the word 'proportional representation'.

It may not be possible straightaway to accept this suggestion, but I would request Dr. Ambedkar and the Constitutional Adviser, Sir B. N. Rau to give consideration to this idea. There is no particular reason why, when an exact and precise word is there, which has been in use in England, we should not have it. After all, we have to make some rules or lay down some process to indicate what exactly is meant by this system. There are a number of systems even in the single transferable vote system--the Hare system and others. We may have to bring in a bill or some rule to indicate the difference. Objection may be raised that we are now familiar with the word--proportional representation. But, I submit that we are not familiar with it in the case of single member constituencies, and this is the first time that we are having a single member constituency. Therefore, it is but proper that we should think of the word--"alternative vote", as it was accepted by the Royal Commission or Electoral System.

Thank you, Sir.

Mr. Vice-President: Dr. Ambedkar.

The Honourable. Dr. B. R. Ambedkar (Bombay : General) : Mr. Vice-President, Sir, I regret that I cannot accept any of the amendments which have been moved, to this article. So far as the general debate is concerned, I think there are only two amendments which call for any reply. The first is the amendment moved by Mr. Tahir, No. 1215. Mr. Tahir's amendment proposes that the same system of election which has been prescribed for the President should be made applicable to the election of the Vice-President. Now, Sir, the difference which has been made in the Draft Constitution between the system of election to the Presidentship and the system of election for the Vice-Presidentship is based upon the functions which the two dignitaries are supposed to discharge. The President is the Head of the State and his powers extend both to the administration by the Centre as well as of the States. Consequently, it is necessary that in his election, not only Members of Parliament should play their part, but the Members of the State Legislatures should also have a voice. But when we come to the Vice-President, his normal functions are merely to preside over the Council of States. It is only on a rare occasion, and that too for a temporary period, that he may be called upon to assume the duties of a President. That being so, it does not seem necessary that the Members of the State Legislatures should also be invited to take part in the election of the Vice-President. That is the justification why the Draft Constitution has made a distinction in the modes of election of these two dignitaries.

The second amendment which calls for a reply is the amendment moved by Mr. Naziruddin Ahmad, No. 1219. He has suggested that the word "assembled" should be dropped. Now, the reason why the word "assembled" has been introduced in this article is to avoid election being conducted by posting of ballot papers. We all know that the postal system, when used for the purpose of electioneering is liable to result in failure. Either the ballot papers posted may not reach the destination and may be lost in transit; or it is perfectly possible for a candidate to send round his agents in order to collect the ballot papers so that he may obtain possession of them, sign them himself and send them on without giving any opportunity to the elector himself to exercise his freedom in the matter of election. It is for this reason that it was decided that the election should take place when the two Houses assemble, so as to prevent the misuse of posting. Now, I do not think that the calling together of a meeting of the Members of Parliament for this purpose is going to introduce in practice a difficulty, or is going to introduce any inconvenience. After all, Members of Parliament would be meeting together for the purposes of legislation, and it would be perfectly possible to have the election during one of those sessions. I, therefore, submit that the original language is the more justificable one, in view of the circumstances I have mentioned.

Now, Sir, with regard to Prof. K. T. Shah's amendment that the disqualifications with regard to the Vice-President should be specified in the Constitution itself, that is a matter which I have already dealt with when replying to a similar amendment moved by him with regard to the President, and I said that this is a matter which could be provided for by law made by Parliament.

With regard to the suggestion which has been made both by Mr. Bharathi and Mr. Naziruddin Ahmad about the use of the words "alternative vote", all I can say is this. If it is merely a matter of change of language, it might be possible for the Drafting Committee at a later stage, to consider this matter. But if--and I am not prepared to commit myself one way or the other--the alternative vote does involve some change of substance, then I am afraid it will not be possible for us to consider this matter at any stage at all.

Mr. Vice-President : I am now going to put the different amendments to vote, one by one.

The question is:

"That for clause (1) of article 55 the following be substituted:

> `(1) The Vice-President shall be elected in the same manner as provided in article 43.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (1) of article 55, the words 'assemble data joint meeting' be omitted, and the clause as so amended, be re-numbered as article 55."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1220, standing in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad (West Bengal : Muslim): Sir, in view of the assurance given that it will be considered by the Drafting Committee, I will not press this amendment.

Mr. Vice-President : Is there the necessary permission of the House not to put it to the vote?

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President : The question is:

"That in clause (2) of article 55, for the words 'either of Parliament or' the words 'of either House of Parliament or of a House', for the words 'member of Parliament or' the words 'member of either House of Parliament or of a House', and for the words 'in Parliament or such Legislature, as the case may be' the words 'in that House' be substituted respectively."

The amendment was adopted.

Mr. Vice-President : The question is

"That in sub-clause (c) of clause (3) of article 55, after the words `Council of State', the following be added:-

"and is not disqualified by reason of any conviction for reason, or any offence against the safety, security or integrity of the State, or any violation of the Constitution, or has been elected and served more than once as President or Vice-President of the Union."

The amendment was negatived.

Mr. Vice-President: The question is:

That in clause (4) of article 55, for the words "or position of emolument" wherever they occur the words "of profit" be substituted.

The amendment was adopted.

Mr. Vice-President: The question is:

That for sub-clause (a) of the Explanation to clause(4) of article 55, the following be substituted:

> "(a) he is the Governor of any State for the time being specified in Part I of the First Schedule or is a minister either for India or for any such State, or".

The amendment was adopted.

Mr. Vice-President: The question is:

That article 55, as amended, stand part of the Constitution.

The motion was adopted.

Article 55, as amended, was added to the Constitution.

Article 56.

Mr. Vice-President: We now proceed to article 56.

The motion is:

That article 55 form part of the Constitution.

The first amendment is 1258. The first alternative is disallowed as being verbal. The second alternative may be moved.

(Second alternative of amendment No. 1258 was not moved.)

Prof. Shah--Amendment No. 1259.

Prof. K. T. Shah (Bihar: General): Mr. Vice-President, Sir, I beg to move:

That article 56 be numbered as clause (1) of the article and the following new clauses be added after that:

> (2) The Vice-President shall have an official residence and there shall be paid to the Vice-President such emoluments and allowances, not exceeding those granted to the President, as may be determined by Parliament by law, and until provision in that behalf is made by Act of Parliament, the Vice- President shall be paid a monthly salary of Rs. 4,500.
>
> (3) The emoluments and allowances of the Vice-President shall not be diminished during his term of office.
>
> (4) Every Vice-President, on completion of his term of office and retirement shall be given such pension or allowance during the rest of his life as Parliament may by law determine, provided that, during the life time of any such Vice-President in retirement and pensioned, such pension or allowance shall not be diminished.'"

In presenting this motion to the House, I have to put forward three grounds which I hope will commend themselves to the House. The provision of an official residence for the Vice-President is no less important than that for the President. I hold it, Sir, that high officers of Government should not be obliged to rent their premises, and be in anyway obliged to the landlord by hiring accommodation from them. Not only is the great evil of Pugree system that is going on at the present time under the Rent control system in itself a source of great temptation, and so must be condemned, and kept out of access to such exalted dignitaries. The relationship of landlord and tenant, where under quite possibly such important officials may fall into a position of undue influence being exercised upon them, and their conduct in their office be affected thereby, is by itself a source of evil.

It is therefore a simple proposition which I trust no one would take exception to, viz., that high Government officials, who have in their power executive or other influence to wield, should not be at the mercy or under the influence of any private individual who may seek his own advantage through that influence.

I am aware that the Vice-President is, under this Constitution, not given any position of executive power or patronage; and, as such, it is quite arguable that in his case, at any rate, the main ground on which I urge this will not be applicable. But on the other hand, I would submit that after all the Vice-President would be the second personage in the country in point of social status and importance. Even if he has no executive authority or political patronage to give, he is a personage and dignitary who should be safe guarded against all temptation. It is but right that he should be saved from any chance even of a possible misuse of his position to the disadvantage of public service, and to the advantage of some private individual having his ear, so to say.

The second point is in regard to the Vice-President's salary and allowances. This, under my amendment, may be provided for by Act of Parliament. It is not that it is to be provided either by a motion in Parliament where the motion may be carried by simple force of party majority; or that it is an *ad hoc* decision to be varied from time to time. I want this also to be fixed by law; and I want the law to be quite clear that during the tenure of the office of the Vice-President, the salary, allowances and emoluments, shall not be varied to his prejudice or diminished.

The terms I have used are some what different from being "varied to his prejudice". I simply suggest that they shall not be diminished in figures. This, again, is a proposition which ought not to be taken exception to. The Vice-President will be the President of the Council of States; and he would have other active duties or possible functions, and a social position of high eminence to maintain. He would be, however, ornamental, a whole-time officer. He should not be, therefore, allowed or permitted to engage in any private trade, business, industry, occupation or profession, whereby he may be obliged to neglect any part of his duties. It is, therefore, necessary that a reasonable salary or emoluments should be provided for him.

I add the limiting clause also that such salary, etc., should not exceed that of the President. It must, however, be sufficient to enable the Vice-President to maintain his place with the dignity and status that we associate with such high offices.

Finally, I have asked that a pension, or retirement allowance, be given to the Vice-President, as I had proposed it should be given to the President as well. I urged on a former occasion that, in this country, these high offices should not be the exclusive monopoly of the rich, who may not need any allowance or any provision for them in retirement. They are in such a position because by other means they are able to make sufficient provision for themselves not to care for the pittance that may be allowed by the State by way of pension.

I hope our Government, under this Constitution, will not be charged with the accusation, which has been hurled against it that it is intended to be a Government of the Rich, for the Rich, by the Rich. Let it be, at least in theory, a Government under a Constitution which has provided equal opportunities for all, and which will, therefore, make it possible,--even if it is theoretically possible only,--for the poorest in the land to a spire to such offices and to do so without any risk of being further impoverished or burdened with debt.

I accordingly desire that a proper provision be made for such officers on their retirement, so that they may be free from temptation, from want, and from penury; so that they may end their days, after a life-time in the country's service, in peace and comfort, if not in luxury.

I do not, of course, desire that any "luxury" should be available to these personages, which is not available to the rest of the country. But I do not want, also, to conceal the view that, even if the holder of such office has held it only once for the full period, he should be given a retirement pension.

An argument was urged on a previous occasion, when a similar proposition was put forward to the House by me, that I had not been particularly careful as regards what would happen if the same person should once again hold a similar office, or any other office, and was as such in receipt of the salary etc., attached there to, I trust commonsense will enable those who object in this manner to perceive that, such pension would not be paid or payable, if there is concurrently any other office held. It is distinctly and exclusively a pension or allowance payable only on retirement, and while in retirement. I was, therefore, amazed to hear the argument put forward the other day that I had not mentioned whether the President, for example, if he retired and was in possession of a national pension, whether he would be allowed any other salary; or, if he was reelected, whether any such salary would be continued side by side with pension. I can only characterise such opposition as arising merely out of prejudice, and not out of any reasoned, rational perception of the point I have been urging. I am powerless to fight against such prejudice, and, therefore, trust to the good sense of the House, and commend my motion to the House as such.

Mr. Vice-President : There are two amendments standing in the name of Pandit Thakur Dass Bhargava. Is the honourable Member going to move them?

Pandit Thakur Dass Bhargava (East Punjab: General): I am not moving these two amendments.

Mr. Vice-President: Amendments 1260, 1261 and 1262 are verbal amendments and as such they are disallowed.

Amendment 1263 stands in the name of Prof. K. T. Shah. This may be moved.

Prof. K. T. Shah : Mr. Vice-President, I beg to move.

"That in paragraph (b) of the proviso to article 56, after the words "be removed from his office for" the following be added:

> `reason duly proved, or for any violation of the Constitution duly established, or for conviction for any offence constituting a disqualification for election to the office of a President, Vice-President or member of Parliament, or for physical or mental incapacity duly certified, or for bribery and corruption, duly proved.' "

This amendment also embodies very simple propositions, which however, need to be stated. I hold the view, Sir, that if you leave the Constitution,--and, at that, a written Constitution, unbacked by any conventions or precedents, without clear statements of such possibilities, then you open the door wide to great abuses of the clauses, or of the practices that may prevail in the actual working of the Constitution.

It is a different matter in a country, where, even though the Constitution is not a written document, there are well-established conventions or precedents, which guide the conduct of public men in office. In this country, we are, for ourselves and by ourselves, making a Constitution for the first time. In this country we are taking the responsibility of shaping public morality, and the canons of governance for the first time in our hands. At this time, with a written Constitution. I for one do not think it right that we should leave such important matters merely to the so-called commonsense, the sense of propriety of the public at large or public opinion to regulate. I, for one, think it is necessary that, categorically, the Constitution must expressly state these matters.

The result would be that the holders of big offices may be removed from their offices for given reasons. All the items on which I desire that such office holders may be removed from their office, or may be declared unqualified, are those which occur not in one but in several Constitutions of leading nations, and several more of subordinate bodies like Municipalities even in this country.

That being so, I think no exception should be taken to this proposition namely, that anybody convicted of treason, or of an offence against the Constitution, or for violation of the Constitution or involving moral turpitude like bribery and corruption, should continue in his office, despite such a thing being urged and proved against him.

The question of bribery and corruption involving moral turpitude is a much more serious as well as a much more difficult proposition to establish. It is difficult, not only because those who take bribes take jolly good care that they are not easily caught. The evidence will not be quite easily obtainable, I would not, of course, say that, merely on suspicion of high officers taking bribes, they should be condemned. On the contrary, they must be properly placed before the duly constituted courts of justice. They must be duly tried. They must be fully heard in their defence; and every facility should be given to them to exculpate themselves from any such charge, if they have means of doing so. I am perfectly aware that those who enjoy high position, and who hold high offices, live in glass houses. Their every act, every utterance, every movement, is liable not only to public comment, but also to public misinterpretation.

I would accordingly not throw them to the wolves so summarily or unreservedly to say that on a mere charge or suspicion they should be condemned. But if, after proper trial under proper procedure, before a competent court of law, unsuspected of any partiality for, or any favour to, anybody, they are proved guilty of having taken bribes, or in any way of having been liable to undesirable influences, then it is but right and proper that they should be removed from their high office and prevented from further misgoverning the country.

The same argument applies to mental and physical incapacity. Sir, if we are indifferent, if we do not insist upon this, also, it is not that the individual holding such office may benefit; it is that those concerns, those departments, those interests which are placed in his charge may suffer. It is, therefore, purely in the interests of public service, in the interests of public morality and efficiency of the administration that I am suggesting the inclusion in the Constitution in express and unambiguous terms that those proved unfit, those suffering from mental or physical disability should be removed from their offices. This, I trust Sir, will not be taken exception to, and would be accepted, if not by the draftsman, at least by the general good sense of the House.

Mr. Vice-President : Amendment No. 1264 standing in the name of Mr. Kamath, and 1266 standing in the names of Mr. Tahir and Saiyid Jafar Imam, and 1269 standing in the name of Mr. Mahboob Ali Baig, are of similar import. Of these amendment No. 1264 seems the most comprehensible and Mr. Kamath may move it. Is the honourable Member moving it?

Shri H. V. Kamath (C. P. & Berar : General): Yes, Sir. But it has been my misfortune again that four separate amendments which I sent in have been lumped together as one amendment, and so I am labouring under a handicap. I wish to move only the third part of this amendment. There are four amendments lumped together in this one. I do not blame the office for that............

Mr. Vice-President: Does the honourable Member propose to move the other three also?

Shri H. V. Kamath: Only the third one.

Sir, I move:

"That in clause (b) of the proviso to article 56, for the words 'agreed to by the House of the People', the words 'agreed to by a similar resolution of the House of the People' be substituted."

I wonder why the Drafting Committee preferred to be so delightfully vague as they have been in this part of the proviso. The draft on this article merely says that the resolution should be agreed to by the House of the People. It is admitted on all hands that brevity, clarity and precision should be the hallmarks of a sound Constitution. Nobody will however say that our Constitution is noted for its brevity. We take pride in the fact that our Constitution is the bulkiest in the world. Some are more proud of this fact than others. Yet, in parts of the Constitution, I find that the Drafting Committee have been seized by a strange affection for brevity, but unfortunately at the expense of clarity and precision. Here for instance they have not laid down what majority should be required for the resolution. Whether it should be unanimously agreed to, or whether it should be two-thirds majority or three-fourths majority or a simple majority has not been laid down in the proviso. I hope Dr. Ambedkar will pay some attention to this point and reply to it.

I would like to draw the attention of the House to article 50 regarding the impeachment and removal from office of the President, which we passed yesterday. There we laid down that the majority of the House in either case is required for the removal on impeachment of the President. Here is a similar article regarding the removal of the Vice-President of the Indian Republic. But strangely enough it is not stated therein clearly whether the resolution passed by a majority of all the then members of the Council of States should be agreed to by the entire House of the People or passed by a bare majority. If this article and proviso are left as they are, it will certainly be difficult later on; difficulties will be encountered. Suppose for instance the resolution is passed by a bare majority in the Council of States. As regards the House of the People, the article is silent on the point as to what majority is required for the passing of the resolution. It is essential in my judgment that the article must specify as to what majority is required for the resolution of the Council of States to be agreed to by the House of the People. Unless this is specified this might land us in trouble later on.

May I point out another defect in this proviso? Yesterday we passed article 50 regarding the removal of the President from office upon impeachment. There we deemed it sufficient that a Resolution of the House investigating the charge preferred by the other House should be adopted for the removal of the President from Office. But here, so far as the removal of the Vice-President is concerned, we lay down that the Resolution passed by the Council of States must be agreed to by the House of the People. Yesterday I pleaded in support of Prof. Shah's amendment to the effect that the President should be removed on a resolution or vote of both Houses of Parliament and not on the vote of a single House of Parliament. As regards the removal of the Vice-President, we lay down that the resolution for removal should be adopted by both Houses of Parliament, but for the President we think it sufficient if only one House adopts a resolution for removing him from office. This is a strange anomaly which signifies that we are attaching greater importance to the removal of the Vice-President than to the removal of the President from office.

By your leave, Sir, I will just say a word about the amendment just now moved by Prof. Shah. I am afraid my friend has not read article 79 which provides for the emoluments, the salary and allowances of the Chairman of the Council of States who is in our Constitution the Vice-President of India. Had he read that article he would not have moved that part of his amendment No. 1259 which relates to this question.

Mr. Vice-President : To the next amendment there is an amendment standing in the name of Pandit Thakur Das Bhargava. He is not moving it I understand. The main amendment is also not moved.

Does Mr. Mohd. Tahir want his amendment No. 1266 to be put to vote?

Mr. Mohd. Tahir (Bihar : Muslim) : Sir, as Mr. Kamath has moved only a part of amendment No. 1264, I hope you will permit me to move my amendment.

Mr. Vice-President : That cannot be done. We have established a convention on those lines. I now want to know whether the honourable Member wants me to put it to vote or not?

Shri H.V. Kamath : He is right, Sir. As I did not move my entire amendment which consists of four parts his amendment may be allowed to be moved. I moved only the third part of my amendment. His amendment relates to another matter and therefore it is not blocked.

Mr. Mohd. Tahir : May I move all three amendments Nos. 1266, 1267 and 1268 together?

Mr. Vice-President : You may move No. 1266 only. No. 1267 will fall under another group as will be seen from the copy of the notice regarding grouping of amendments sent to honourable members.

Mr. Mohd. Tahir: I beg to move:

"That in clause (b) of the proviso to article 56, for the words 'all the then members of the Council' the words 'the members of the Council present and voting' be substituted."

Now, Sir, if my amendment is accepted the clause will read thus:

"The Vice-President may be removed from his office for incapacity or want of confidence by a resolution of the Council of States passed by a majority of the Members of the Council present and voting".

Now, Sir, in this connection I want to submit that the existing provision says "by a resolution of the Council of States passed by a majority of all the then members of the Council". I want to make a distinction between "all the then members of the Council" and "the members of the Council present and voting". Now, the provision "all the then members of the Council" also includes those members who, although they are members of the Council, may be absent from the Council, but the intention evidently is that the resolution should be moved and passed by those members who are present and voting Sir, Dr. Ambedkar is not attending to this.

Mr. Vice-President : Dr. Ambedkar, Mr. Tahir wants your attention.

Mr. Mohd. Tahir : I was saying that the provision "by a majority of all the then members of the Council" also includes those members who, although they are members of the Council, may not be present in the Council, while the intention evidently is that the resolution should be passed by a majority of the members who are present and voting. Therefore I submit that the wording "members of the Council present and voting" will be more suitable than the existing words "all the then members of the Council". With these words, I move.

Mahboob Ali Baig Sahib Bahadur (Madras : Muslim) : Mr. Vice-President, Sir, I move:

"That in clause (b) of the proviso of article 56, for the words "all the then members of the Council and agreed to by the House of the People", the following be substituted:

> `not less than two-thirds of the total membership of the Council and agreed to by the House of the People by a majority of not less than two-thirds of its total membership.' "

Sir, the Constitution provides for the election of a Vice-President who discharges the functions of the President in the absence of the President for any reason whatever, for instance, if he is absent on account of illness or other causes. He also discharges the functions of the President when the office of the President falls vacant. Therefore the office is a sufficiently important one. That he is also asked to preside over the Council of States is only an incidental thing. He is the *ex officio* Chairman of the Council of States. Therefore, Sir, this office of Vice-President has been made sufficiently important. Now, the method of election to this Office has been made simpler, even though I would have wished that it were also made as elaborate as the election of the President, but we have accepted his election to be made by the members of both Houses. The occupant of such an important Office, who discharges the very important functions of the President and is entitled to all the powers and immunities of the President as is stated in clause (3) of article 54,--should he be dispensed with by a simple majority of the Council of States and to be agreed to by the House of the People in a light manner? That is the question to be considered. I submit that I am in agreement with those members who moved an amendment that his removal also should be done in a similar manner and in the same way by which the President is removed for incapacity, for treason and other things. I support those amendments which say that he should be treated in the same footing as the President in the matter of his removal from office, but if for any reason the Chairman of the Drafting Committee is not prepared to go to that length, it is but fair that the Vice-President should be removed from office for incapacity or for want of confidence by a double majority of two-thirds. It may be said that if the Council of States has no confidence in the Vice-President, he should be removed by a simple majority because the words that are used are "for his incapacity or for want of confidence", but we are forgetting one thing. He is not only the person who presides over the Council of States but he is also the person who discharges the very important functions of the President. I agree that when the Council of States is not in favour of his continuance as its Chairman, no doubt there is some reason for saying that he should be removed, but we are forgetting, as I said, that he will be functioning as the President also during his absence for whatever reason and during a vacancy. This is a very important function and therefore, Sir, if the Chairman of the Drafting Committee is not agreeable to his removal on the same footing as the President is to be removed, at least he should be removed from office only by a double majority of two-thirds of both the Houses. Sir, I move.

Mr. Vice-President: Amendment No. 1265 is disallowed as being verbal.

Amendment No. 1268 is disallowed for a similar reason.

Then we come to the four amendments which have been grouped together in the papers circulated to honourable members--1267, 1270--1272. Of these 1270 is the most comprehensive and may be moved. It stands in the names of Shri Nand Kishore Das and Shri Biswanath Das.

(Amendment No. 1270 was not moved.)

Then amendment No. 1267 can be moved. Mr. Mohd. Tahir.

Mr. Mohd. Tahir: Mr. Vice-President, Sir, I beg to move:

"That in clause (b) of the proviso to article 56, for the words 'fourteen days notice' the words 'fourteen days notice in writing signed by not less than thirty members of the Council of States' be substituted."

I will be very short in this matter as we have already adopted in respect of the President that such resolutions should be submitted, signed by one-fourth of the total members of the House. Now, as regards the Vice-President, I do not understand why we should not adopt this provision also that a notice like this must be signed by at least 30 members of the Council of States and then only it can be admitted. I hope Dr. Ambedkar will give due consideration to this and will agree to adopt this amendment.

(Amendments Nos. 1271 and 1272 were not moved.)

Mr. Vice-President : Amendment No. 1273 stands in the name of Mr. Naziruddin Ahmad. This is verbal and is therefore disallowed.

Amendment No. 1274 can be moved.

Mr. Naziruddin Ahmad : Mr. Vice-President, Sir, I beg to move:

"That in proviso (c) of article 56, after the word 'term', the words, 'or resignation or removal as the case may be' be inserted."

Proviso (c) provides that the Vice-President must continue in office notwithstanding the 'expiration of his term'. I want to make the passage read as follows: "the expiration of his term or resignation or removal as the case may be". The 'expiration of his term' usually means the usual efflux of time for which he holds the office. 'Resignation or removal' must also be included to make the passage complete. It was only to clarify this that I have suggested this amendment.

Mr. Vice-President : The article is now open for general discussion. Mr. Sidhwa and after him Mr. Tajamul Husain will speak. I give the two names together.

Shri R. K. Sidhva (C. P. & Berar : General) : Mr. Vice-President, Sir, with regard to amendment No. 1259 moved by my honourable Friend, Prof. K. T. Shah, he states that an official residence should be provided for the Vice-President and that his emoluments and allowances should be fixed in the Constitution; and while suggesting that, he gave his reasons that if we do not fix the emoluments and if we do not give him a reasonable salary and also provide him with a house, it is likely that he would be tempted to many kinds of vices; he gave certain illustrations. Now, Sir, I shall deal with these matters.

As regards the Vice-President's post, as we all know, we have passed article 53, which states that the Vice-President shall be *ex-officio* Chairman of the Council of States, and as such his salary will certainly be fixed. The Chairman of the Council of States, who will be holding a very responsible post will certainly get a salary as is definitely stated in article 79. Article 79 states, Sir, that all the salaries of the President, Chairman of Council of States, the Speaker, the Deputy Speaker will be fixed. My honourable Friend, Prof. K. T. Shah feels that it should be laid down in the Constitution. I do not think, Sir, that in the Constitution we should lay down a salary for the post of Vice-President. The President's and the Governors' salaries have been fixed for certain reasons that we know very well, that their salaries should not be changed from time to time but it is only fair--the Vice-President is after all a subordinate to the President--his salary should be subject to the vote of the House.

Prof. K. T. Shah goes further and says that his salary should not exceed those granted to the President, as if he feels that the Vice-President is superior to the post of the President, and therefore we must fix a bigger salary than what the President is likely to get. From this point of view, it will be seen that while we all admit that the Chairman of the Council of States and the Vice-President should be given a salary--there is also provision to this effect--I do not agree with him and I hope the House will not agree with him that the salary should be laid down in the statute.

Now, Sir, coming to the residence, my honourable Friend, Prof. Shah, stated that in this rent control business, if we do not allow him a residence, it is likely that he might come in conflict and then he would be tempted to many kinds of vices. I do not accept such a proposition for this reason. Today we have a Speaker of this Constituent Assembly. He is not provided with any house and yet the Government have requisitioned a house for him. Similarly for the State Ministers, who do not get official residences and the Deputy Ministers. Still the Government have requisitioned houses for them for that purpose. I do not know what rent they are charged, but ordinarily, it is the custom that the Government officials are charged 10 per cent of their salaries. And, therefore, Sir, it is an exaggeration to say that if we do not provide an official residence, an officer will have to go to the Rent Controller [sic] and say: "If you give me this house, I will pay you so much." I do not think any Vice-President would ever condescend to do such a thing and it would be a sorry day if we have a Vice-President, who really would go to that length. From this point of view, Sir, I consider Prof. Shah's fears are uncalled for.

Prof. Shah laid great stress upon corruption. He said he wants to pay the Vice-President and all the officials and all our Ministers a reasonably high salary, so that they may not be tempted to any kind of corruption or bribe. If we accepted that argument and pay more salary to make a man honest, well, I think, Sir, that proposition looks to me as most absurd and ridiculous. An honest man is an honest man. An honest man, even if he draws a salary of Rs. 20, is honest. A dishonest man, if he draws a salary of Rs. 20,000, is dishonest, Sir. I know that some of the Executive Councillors in the past drawing a salary of Rs. 5,000 have been found to be corrupt. I know some of the Governors drawing a salary of Rs. 10,000 and I know that some of the Viceroys drawing a salary of Rs. 20,000 have been known to be corrupt and many of my friends in this House and in this country know that there had been Viceroys drawing salaries of Rs. 20,000 who have been proved to be corrupt and have taken bribes and some of the Governors too. Sir, I would not like to mention their names; but I know the House will share the view with me. Therefore it is wrong to state,--it is a fallacy and I will never accept it--that you must pay a man more to make him honest. I know of men who draw Rs. 15 and Rs. 20 being honest although they could not make both ends meet in the maintenance of their families. If a man gets a smaller salary, he adjusts his household budget accordingly. If you merely want to pay a higher salary to make him honest, I will never accept that proposition. Wherever it has been tried, it has simply failed. Therefore, I am sorry I cannot accept the argument advanced by my honourable Friend Prof. K. T. Shah while moving his amendment, although in theory it looks laudable that you should give more salary to make a man honest. I have seen in my public life what has happened in the case of public servants drawing more salaries, and I know how corrupt they have been. With these words, Sir, I oppose very strongly the amendment moved by my honourable Friend Prof. K. T. Shah.

Mr. Tajamul Husain (Bihar : Muslim) : Mr. Vice-President, Sir, I will take up first the amendment moved by my honourable Friend Prof. K. T. Shah, that is, amendment

No. 1259. His amendment says that there should be an official residence for the Vice-President of the Indian Republic, that there should be fixed by Parliament emoluments and allowances to the Vice-President, and till that is fixed, his pay should be Rs. 4,500 and that his pay should not be diminished during his term of office, and also that he should get a pension after retirement to maintain the dignity of the high office which he had held during the term of his office of five years. I have come to support this amendment. The speaker just before me, my honourable Friend Mr. Sidhwa, said, what is the use of mentioning the salary of the Deputy President when it is mentioned in article 79 of the Constitution? I at once looked up article 79 and found that the salary of the Deputy President is not mentioned at all. The salary of the Chairman, the Deputy Chairman, Speaker and Deputy Speaker of the Upper Chamber and the Lower Chamber, the Council of States and the House of the People has been mentioned. Sir, these are two distinct things. He is the Vice-President as well as the Chairman of the Council of States. He is elected as Vice-President and by virtue of his office, *ex-officio* he becomes the Chairman of the Council of States. Now, Sir, what do we find in England? We have got the Lord Chancellor who is the Chairman of the House of Lords. At the same time, the Lord Chancellor holds office as the supreme head of the judiciary. He is supposed to be higher than the Lord Chief Justice of England. He gets a salary as the Chairman of the House of Lords $4,000 and as the highest Judge in the land, he gets a salary of $6,000, total, $10,000. When he retires from office, he gets a pension of $4,000. Now, Sir, in order to maintain the dignity of such a high office, these things should be allowed to him and what should be the salary of the Vice-President of the Indian Republic should be mentioned in the Constitution. That is the reason why I have come to support this amendment.

I take up next the amendment moved by my honourable Friend Prof. K. T. Shah. I again support this amendment. That amendment says as follows. I will just read from the article 56 with which we are dealing, only a few words: "(b) A Vice-President may be removed from his office for incapacity or want of confidence," and for no other reason, the amendment moved by my honourable Friend Prof. K. T. Shah mentions that apart from these two things, there must be something else and this is how he has worded his amendment. The clause as amended would read this way. "A Vice-President may be removed from his office for reason duly proved or for any violation of the Constitution duly established, or for conviction for any offence constituting a disqualification for election to the office of a President, Vice-President or member of Parliament, or for physical or mental incapacity duly certified, or for bribery and corruption duly proved." I think, Sir, no argument is needed for this simple matter. All these things are very important and they should be inserted in this Constitution in article 56 (b). Therefore, I support this amendment of Prof. K. T. Shah.

I next take up the amendment moved by my honourable Friend Mr. Kamath. I regret, Sir, I have to oppose it. I want your ruling, Sir, on this point. Here we find that my honourable friend Mr. Kamath has sent in five distinct and separate amendments in one amendment.

Shri H. V. Kamath : I am sorry that my honourable Friend Mr. Tajamul Husain did not follow what I said before I moved the amendment. I said that I had sent them as four separate amendments, but unfortunately they have appeared as one in the book of amendments, for no fault of mine. I moved only one of the four.

Mr. Vice-President : Mr. Kamath moved the third part of his amendment only. He did not move the other parts.

Mr. Tajamul Husain : Unfortunately, when Mr. Kamath was moving his amendment, I was not in the House. So I did not know what he actually moved. I want to know whether he moved only one amendment or all the amendments.

Mr. Vice-President : Only the third part.

Mr. Tajamul Husain : Only one amendment? Then, I have nothing to say against it. If he had moved all the amendments, I would have asked for your ruling. It may be the mistake of the office. I have nothing to do with that. Each amendment must be moved distinctly and separately.

Now, coming to amendment No. 1269 moved by my honourable Friend Mr. Mahboob Ali Baig, I oppose this amendment. He says that in clause (b) of the proviso of article 56 for the words "all the then members of the Council and agreed to by the House of the People", the following be substituted: "not less than two-thirds of the total membership of the Council" etc. He wants that when a censure motion is being brought against the Vice-President, there must be a majority of two-thirds. Yesterday, Sir, as regards the censure motion against the President, I said that the President must not be a mere tool in the hands of the majority party and there must be a two-thirds majority. Today I am saying that a bare majority is quite sufficient. My reason is different from what I said yesterday. My reason here is that he is only acting as the Speaker of the House. He is the Chairman of the Council of States and everywhere in the civilized world you will find and also in India you will find in the Parliament here and in all the Provincial Legislatures, the Speaker can be removed by a simple vote of majority. Therefore he must have the confidence of the majority of the people. Therefore I oppose. Otherwise he will become too autocratic. He must protect the whole House proved by a majority of a single vote. Therefore I oppose.

The next is No. 1274 by Mr. Naziruddin Ahmad who wants to add the words "or resignation or removal as the case maybe in proviso (c) of article 56. The clause will then read--

> "The Vice-President shall, notwithstanding the expiration of his term or resignation or removal as the case may be, continued to hold office until his successor enters upon his office."

I strongly oppose this. This clause (c) simply means that when his term has expired and another election is being held and his successor has not been found, he must continue in office till his successor is duly found and duly installed in his place but when the Deputy President or the Chairman of the Council of States has been removed, removed for certain reasons like bribery etc., we do not want him to continue even for one minute. I would not like to sit in a House where the Presiding Officer has been found guilty of bribery. He must go at once. As regards resignation, he resigns as he becomes incapable or has been compelled to do so and we do not want him even then. I quite agree that when his term expires after five years, then he must remain till his successor is found but if he has been removed, he must get out at once. I therefore oppose strongly the amendment of Mr. Naziruddin Ahmad.

Pandit Thakur Dass Bhargava : Sir, the Vice-President as such will have two capacities--No. 1, while he is acting as President and No. 2, while acting as the President of the Council of States. Now in regard to his capacity as President, it is clear that if he violates the Constitution he would come under the purview of article 50 and will be impeachable and removable from his office as President. So far as the question of his removal is concerned in regard to article 56 as President of the Council of States, the provisions are exactly the same as are applicable to the Speaker of the House of People. Perusal of article 77 (c) would show that the language is almost the same for the Speaker of the House of People as for the Vice-President who will fill the office of President of the Council of States and I do not think that any change is necessary at all. My apology for taking the time of the House only consists in my anxiety to emphasise one point which struck me and that was that the Vice-President should lose his office as such *ipso facto* if he is successfully impeached under article 50. In regard to this I have been assured that the position is clear and it will be done in some other manner except by providing under article 56. I tabled an amendment which I have not moved because I have been assured that the rules will provide for it. When I speak on this point, it is only to bring it to the notice of the authorities that some provision should be made so that by virtue of successful impeachment under article 50 the Vice-President may be removed without any want of confidence being shown by a Resolution as provided under Clause (b). The mere fact that he has been successfully impeached is in my opinion, quite sufficient for his removal from the position of Vice-President and therefore this should be made clear. I only wanted to bring out this point and, get an assurance that the rules will provide for it.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I regret my inability to accept any of the amendments that have been moved to article 50. I should, however, like to meet some of the points that have been made by those who have moved the amendments. Sir, the first amendment was by Prof. Shah which laid down that provision should be made for pay and pension for the Vice-President. This is a matter which Prof Shah has also raised in connection with the office of the President and I had stated my objection to making any such provision in the Constitution itself.

The Honourable Shri K. Santhanam (Madras : General): May I point out that in Second Schedule express provision has been made?

The Honourable Dr. B. R. Ambedkar : Having explained my position with regard to that point, I shall not repeat what I have said then. Coming to sub-clause (b) of article 56, various points have been raised. First of all a point has been raised that the words 'bribery, corruption etc.' should be added. Personally I do not think that any such particular phrase is necessary. Want of confidence is a very large phrase and is big enough to include any ground such as corruption, bribery etc. Therefore that amendment, in my judgment, is not necessary. The second point that has been made is that the removal of the Vice-President should be governed by the same rules as the removal of the President *viz.*, that there should be a majority of two-thirds. Now, Sir, with regard to that point. I would like to draw the attention of the House that although the Constitution speaks of Vice-President, he really is a Chairman of the Council of States. In other words, so far as his functions are concerned, he is merely an opposite number of the Speaker of the House of People. Consequently in making a comparison or comment upon the provisions contained in sub-clause (b) of article 56 those provisions should be compared with the articles dealing with the removal of the Speaker and they are contained in article 77 (c). If this article 56 (b) is compared with the article 77 (c), members will find that the position is exactly identical. The same rules which are made applicable to the removal of the Speaker are also made applicable to the removal of the Vice-President who, as I have stated, is really another name for the Chairman of the Council of States. Consequently, the requirement of two thirds majority is unnecessary.

And then my friend Mr. Kamath has raised what I might call a somewhat ticklish question. He said that sub-clause (b) of this article speaks of a majority, while when the reference is made to the House of the People, no such phraseology is used. Now, the matter is quite simple. Whenever we have said that a certain resolution has to be passed, it is understood that it has to be passed by a majority of the House. It is only when a special majority is mentioned that a reference is made to a majority and not otherwise. Now, I quite agree that his argument is that although we do not mention or specify any particular majority with respect to the Council of States, we have still used the phraseology--passed by a majority. Why is this distinction made? Why is this distinction between the phraseology used in regard to the Council of States and in regard to the House of the People? Now, the difference has been made because of the word "then" occurring there. That word "then" is important. The word "then" means all members whose seats are not vacant. It does not mean members sitting or present and voting. It is because of this provision, that all members who are members of Parliament and whose seats are not vacant, that their votes also have to be counted, that we have said--passed by a majority of the then members.

Shri H. V. Kamath : Does it mean the total number of members of the Council of States?

The Honourable Dr. B. R. Ambedkar : Yes. The word 'then' is necessary.

Shri H. V. Kamath : On a point of clarification, Sir. Yesterday in article 50, we used the phraseology 'passed by a majority' in place of the two-thirds majority. Should we not do the same thing here, to make the meaning clearer?

The Honourable Dr. B. R. Ambedkar : I shall explain it presently. The reason is due to the fact that we have to use the word 'then' which is intended to distinguish the case of members present and voting, and members who are members of the House whose seats are not vacant, and voting.

Shri H. V. Kamath : Am I to understand that unless otherwise specified, when you say a resolution is passed or adopted, it means that it is by a simple majority?

The Honourable Dr. B. R. Ambedkar : Yes.

Now, coming to the point raised by my friend Mr. Tahir, amendment No. 1266. If I understood him correctly, what he says is that the resolution of no-confidence should require to be passed by two-thirds. This may be good or it may be bad. I cannot say. All I can say is that this provision is also on a par with the provision regarding the want of confidence in the Speaker. There also we do not require that it should be passed by two-thirds majority or two-thirds of the members of the House.

Then, coming to the amendment of my friend Mr. Naziruddin Ahmad, who wants that in clause (c) after the word "term" words such as resignation etc. should be inserted. This amendment is absolutely unnecessary, because this article does not make any provision for filling casual vacancies. There is no necessity for making any provision for casual vacancies because under article 75, sub-clause (1) there is always the Deputy Chairman who is there to step in whenever there is any casual vacancy.

Consequently such an amendment is unnecessary.

Sir, I hope that with this explanation, the House will accept the article as it stands.

Mr. Vice-President : I may now put the amendments, one by one to vote. The question is:

"That article 56 be numbered as clause (1) of the article and the following new clauses be added after that:

> '(2) The Vice-President shall have an official residence and there shall be paid to the Vice- President such emoluments and allowances, not exceeding those granted to the President, as may be determined by Parliament by law, and until provision in that behalf is made by Act of Parliament, the Vice-President shall be paid a monthly salary of Rs. 4,500.
>
> (3) The emoluments and allowances of the Vice-President shall not be diminished during his term of office.
>
> (4) Every Vice-President, on completion of his term of office and retirement shall be given such pension or allowance during the rest of his life as Parliament may by law determine, provided that, during the life time of any such Vice-President, in retirement and pensioned, such pension or allowance shall not be diminished.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That in paragraph (b) of proviso to article 56, after the words "be removed from his office for" the following be added:

> 'reason duly proved, or for any violation of the Constitution duly established, or for conviction for any offence constituting a disqualification for election to the office of a President, Vice-President or member of Parliament, or for physical or mental incapacity duly certified, or for bribery and corruption, duly proved.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (b) of the proviso to article 56, for the words "agreed to by the House of the People" the words "agreed to by a similar resolution of the House of the People" be substituted".

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (b) of the proviso to article 56, for the words 'all the then members of the Council' the words 'the members of the Council present and voting' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (b) of the proviso of article 56, for the words 'all the then members of the Council and agreed to by the House of the People', the following be substituted:

> 'not less than two-thirds of the total membership of the Council and agreed to by the House of the People by a majority of not less than two-thirds of its total membership.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (b) of the proviso to article 56, for the words 'fourteen days' notice' the words 'fourteen days' notice in writing signed by not less than thirty members of the Council of States' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in proviso (c) of article 56, after the word 'term', the words, 'or resignation on removal as the case may be' be inserted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That article 56 stand part of the Constitution."

The motion was adopted.

Article 56 was added to the Constitution.

Article 57

Mr. Vice-President : Now we come to article 57.

The motion before the House is that article 57 form part of the Constitution.

There are only two amendments tabled so far, Nos. 1275 and 1276. No. 1275 standing in the name of Mr. Naziruddin Ahmad is disallowed as it has the effect of a negative vote.

No. 1276 standing in the name of Prof. K. T. Shah may be moved.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move that in article 57 after the words "the functions of the President" the words "or Vice-President" be added.

The article as amended would then read as follows:--

"Parliament may make such provision as it thinks fit for the discharge of the functions of the President or Vice-President in any contingency not provided for in this Chapter."

Sir, I am at a loss to understand why while providing for "*any contingency*" the words Vice-President should have been omitted, in laying down provision for the discharge of the functions entrusted to the President. Such a contingency might quite possibly occur when the President, for one reason or other,--let us say, for having lost confidence of the House, or having been impeached successfully,--is unable to discharge his functions; and the Vice-President has gone insane. That is a contingency which is not utterly out of possibility; and as such I do not really see why this simple contingency has not been foreseen by the draftsmen. The draftsman has been quick enough in many cases, to propose amendments of his own to his own Draft, and to see to it that others support him also, when he finds that certain matters have been omitted in the first Draft, they subsequently occur to him in the amendments proposed by others, and, taking the hint from them, he tables his amendments, which, of course have the unanimous support of the House expect one. But here I find a case in which I do not think the draftsman will be well advised to say that this amendment is unnecessary.

I have just now mentioned a particular contingency and said that when both these high officers may not be able to, or may not be permitted, under the Constitution, to perform or discharge their functions, in that contingency it is but necessary that some such provision be made.

As this is an article of the Constitution, I take it that the ordinary legislature would not be allowed to step in, and rectify the omission by making provision, should that contingency occur. You may say that there will be the Parliament, and Parliament will make the necessary provision for such a contingency. But if a provision is made expressly by the Constitution--and the Constitution has presumably deliberately left out the addition of the word "Vice-President"--then I put it to the House that it is an omission which, at this stage, we ought to correct. I therefore, without further argument, suggest that this amendment at least ought to be accepted. It is utterly unoffensive, it does not reflect anything on the skill, ingenuity or foresight of the Draftsman, and as such I trust the Draftsman will agree to accept it.

Mr. Tajamul Husain : Mr. Vice-President, I wish to oppose the amendment just moved by my friend Prof. K. T. Shah. My reasons are two. No. 1 is this Article 57 says that "Parliament may make such provision as it thinks fit for the discharge of the functions of the President in any contingency not provided for in this Chapter". Now, my friend Prof. Shah wants the addition of the words "or Vice-President". Now, Parliament will have power, if his amendment is accepted, to make provision either for the President or for the Vice-President; it cannot make for both. Supposing it makes provision only for the Vice-President and not the President, then what happens? The word "or" is therefore absolutely wrong. Parliament may very well say, "we make provision for the Vice-President and no provision for the President to discharge his functions at all."

The second objection is, supposing the word "or" is removed and "and" had been there, or Prof. Shah had meant "and", then I beg to submit that the Vice-President has no functions to perform at all as Vice-President; so, what provision for the discharge of his functions can anybody make or the Parliament make? He functions only as the Chairman of the Council of States. We are not dealing with him here as Chairman of the Council of States. So I oppose the amendment, because he has no functions or duty to perform.

The Honourable Dr. B. R. Ambedkar: I am afraid Prof. K. T. Shah has not considered the matter as fully as he ought to have before moving his amendment. The omission of the Vice-President from article 57 is a very deliberate one, because as my friend Mr. Tajamul Husain has just now pointed out, his main functions, which are those of the Chairman of the Council of States, have been amply provided for by article 75 (1) where there is a Deputy Chairman who will function in his absence. It is therefore unnecessary to introduce any such amendment in article 57.

My friend Prof. Shah said that I was really borrowing very liberally from the amendments of other friends whenever I found that the Draft was in some way defective. I think Prof. K. T. Shah, if I may say so, has indirectly paid me a compliment because, as Emerson has said, "A genius is the most indebted man" and I am certainly most indebted to my friends.

Mr. Vice-President : I am now putting the amendments to vote.

The question is:

"That in article 57, after the words 'the functions of the President' the words 'or Vice-President' be added."

The amendment was negatived.

Mr. Vice-President : There are no other amendments.

The question is:

"That in article 57, stand part of the Constitution."

The motion was adopted.

Article 57 was added to the Constitution.

Article 58

Mr. Vice-President : We now pass on to the next article No. 58.

The motion is:

"That article 58 form part of the Constitution."

We have a number of amendments, of which only No. 1281 will be allowed. The other amendments are verbal and are therefore disallowed.

(Amendment No. 1281 was not moved.)

Mr. Vice-President : I shall put this article to vote.

The question is:

"That article 58 stand part of the Constitution."

The motion was adopted.

Article 58 was added to the Constitution.

Article 59

Mr. Vice-President : The motion is:

"That article 59 stand part of the Constitution."

We have a number of amendments. No. 1282 is disallowed as it has the effect of a negative vote. 1282-A may be moved.

(1282-A was not moved).

Amendments Nos. 1283 and 1284. There are a number of amendments to them also, but they are disallowed as being verbal. No. 1285 may be moved.

(Amendment No. 1285 was not moved.)

Amendment No. 1286.

Mr. Tajamul Husain : Mr. Vice-President, Sir, I beg to move:

"That clause (3) of article 59 be deleted."

Sir, in my opinion, the President only should have power to suspend, remit or commute a sentence of death. He is the supreme Head of the State. It follows therefore that he should have the supreme powers also. I am of opinion that rulers of States or Provincial Government should not be vested with this supreme power. The President of the Federation should be the supreme authority in respect of offences committed against Federal Subjects. I say that there must not be divided loyalty on this subject. When the States came into the Federation they accepted the operation of the Federal Laws in their States and they accepted to that extent that the Federal Government was supreme and the President of the Federation as representing the Federal Government can alone be the authority who can grant pardons. In the U.S.A. the President grants pardon in all the States. These are matters of the most vital importance to the existence of the Centre and therefore the power of pardon could not be given to anybody except the Head of the Federal Government, that is the President or the Indian Union or the Indian Republic. If the ruler of a State exercised powers of pardon in respect of offences relating to those subjects which they themselves had conceded to the Federation it would amount to taking away with one hand what they had given with the other. In regard to the subjects conceded by the State to the Union the State ceases to be sovereign to that extent. The Federal Law is binding upon every citizen and there is a direct relation between the citizen and the Federal Government. When there is a breach of the federal law the representative of the Federation must have the inherent power of pardon. Therefore I think where the question of pardon is involved the more serious the offence the higher should be the authority to grant the pardon. I have already pointed out about America. In England too the pardon is granted only by the King on the advice of his Home Minister, but pardon is granted only by the representative of the State. In those days when there was no talk of partition of this country they were thinking of a weak Centre with three or four subjects like Communications, Defence, Foreign Affairs, etc., and the provinces were to enjoy complete autonomy. Now that the country has been partitioned we people who are the citizens of this country have decided once for all that the Centre will not be weak but a strong one, that we would have the strongest possible Centre. If this is our aim the head of the Central Government must have this power. With these words, Sir, I move my amendment and I hope it will have the support of the whole House, including my honourable Friend Dr. Ambedkar and also you, Sir.

Mr. Vice-President : Amendment No. 1287 is disallowed as being formal.

(Amendment No. 1288 was not moved.)

Mr. R. K. Sidhwa : Sir, my honourable Friend Mr. Tajamul Husain has proposed to delete clause (3) of article 59 and his argument was that he wanted to keep the authority of the President supreme. Nobody denies that. If the honourable Member would see article 59 (1) it says:

> "That President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence....."

Similarly powers are vested in the Governors and they can also suspend, remit or commute a sentence of death. In my opinion it is very healthy they should continue to vest this power which existed under the old regime in the Governors of the provinces, for this reason that the Governor of a province is better informed of a particular case of pardon which is referred to him. As far as the President is concerned when the question goes to him, he has to refer the matter first to the Governor and if the Governor has not exercised his right properly the President goes into the whole matter and exercises his right. In the matter of commuting a sentence of death it is only fair that the powers should also be with the Governor and the supreme power should remain with the President. The Governor is a popular governor and is responsible in a sense to the legislature, as he is the nominee of the Premier or the Prime Minister. If he acts wrongly, as my friend fears, then the legislature is there to keep a vigilant watch over him. Therefore I do feel that the present position which is retained in the Draft Constitution is very desirable and we should retain those powers.

As far as rulers are concerned I am not very clear. But I do feel that in the constitution that will be framed by the various constituent assemblies of the States they will see that the ruler is made responsible to the legislature and he will also be like the head of provinces a mere figurehead of the State. From that point of view I would support even the power being vested in the ruler, although I make a qualification to my statement that at present I do not know what the position of the ruler is. If the ruler is autocratic and not responsible to the legislature certainly I would not like to give him that power. But assuming as I do that the rulers of the States are going to be made responsible to the legislatures I support the article as moved by Dr. Ambedkar. The commuting of a sentence of death is a very important power and we do not want straightaway that the matter should go to the President. Let the Governor, who knows his province very well and can consult his Premier, exercise the function. The President is for the whole of India. Even if the matter goes to him he has to consult first the Governor and the Governor has to consult his

Premier. From that point of view I oppose the amendment of Mr. Tajamul Husain.

Mr. Vice-President : Does Dr. Ambedkar wish to say anything on this amendment moved by Mr. Tajamul Husain?

The Honourable Dr. B. R. Ambedkar : Yes: Sir: It might be desirable that I explain in a few words in its general outline the scheme embodied in article 59. It is this: the power of commutation of sentence for offences enacted by the Federal Law is vested in the President of the Union. The power to commute sentences for offences enacted by the State Legislatures is vested in the Governors of the State. In the case of sentences of death, whether it is inflicted under any law passed by Parliament or by the law of the States, the power is vested in both, the President as well as the State concerned. This is the scheme.

With regard to the amendment of my friend Mr. Tajamul Husain, his object is that the power to commute sentences of death permitted to the Governor should be taken away. Now, sub-clause (3) embodies in it the present practice which is in operation under which the power of commuting the death sentences is vested both in the Governor as well as in the President. The Drafting Committee has not seen any very strong arguments for taking away the power from the Governor. After all, the offence is committed in that particular locality. The Home Minister who would be advising the Governor on a mercy petition from an offender sentenced to death would be in a better position to advise the Governor having regard to his intimate knowledge of the circumstances of the case and the situation prevailing in that area. It was therefore felt desirable that no harm will be done if the power which the Governor now enjoys is left with him. There is, however, a safeguard provided. Supposing in the case of a sentence of death the mercy petition is rejected, it is always open, under the provisions of this article, for the offender to approach the President with another mercy petition and try his luck there. I do not think there is any great violation of any fundamental principle involved or any inconvenience that is likely to arise if the provisions in the draft article are retained as they are.

Mr. Vice-President : Now I will put the amendment of Mr. Tajamul Husain to vote. The question is:

"That clause (3) of article 59 be deleted."

The amendment was negatived.

Mr. Vice-President : I shall now put article 59 to vote. The question is:

"That article 59 stand part of the Constitution."

The motion was adopted.

Article 59 was added to the Constitution.

Article 60

Mr. Vice-President : The House will now take up for consideration article 60 of the Draft Constitution. Mr. Ahmed Ibrahim may move amendment No. 1289.

K. T. M. Ahmad Ibrahim Sahib Bahadur (Madras: Muslim): I have given notice of an amendment to this amendment.

Mr. Vice-President : Yes, I received it just now. The honourable Member may move it.

K. T. M. Ahmad Ibrahim Sahib Bahadur : Sir, I move:

"That the proviso to clause (1) of article 60 be deleted."

The object of my amendment is to preserve the executive powers of the States or Provinces at least in so far as the subjects which are included in the Concurrent List. It has been pointed out during the general discussion that the scheme of the Draft Constitution is to whittle down the powers of the States considerably and, though the plan is said to be a federal one, in actual fact it is a unitary form of Government that is sought to be imposed on the country by the Draft Constitution. Members from all parties, irrespective of party affiliations, have condemned during the general discussion this aspect of the Draft Constitution. They have repeatedly shown that this Draft Constitution is in spirit a unitary form of Government and not a federal one.

Now, Sir, even in the Lists of Subjects drawn up and attached to the Constitution, a very large number of subjects which are usually in the Provincial List have been transferred to the Concurrent List and the Union List, with the result that we find only a small number of subjects included in the Provincial List. Article 60 (1) (a) seeks to take away from the States the executive power even with regard to those few subjects which are included in the Concurrent List. This, Sir, will be depriving the States of a large portion of even the little executive power that will otherwise be left to them under this Draft Constitution. It may be said that this has to be done for the sake of common interest, for uniformity, for defence and for emergencies. But I would point out that there is no necessity at all to take away even this limited power from the ......

The Honourable Shri K. Santhanam : May I point out to the honourable Member that the deletion of the proviso to clause (1) will vest the entire executive power and Concurrent subjects at the Centre.

K. T. M. Ahmad Ibrahim Sahib Bahadur : I am coming to that.

The Honourable Shri K. Santhanam : May I point out to the honourable this proviso will be as stated by me.

K. T. M. Ahmad Ibrahim Sahib Bahadur : I am coming to that. I have given notice of another amendment to obviate that difficulty. It is to the effect that the word 'exclusive' be inserted in article 60 (1) (a) between the words 'Parliament has' and the word 'power'. The result of this will be that the executive power of the Union will be confined only to those subjects with respect to which it has exclusive power to make laws. I think this would remove the doubt expressed by my honourable Friend. The executive power under my amendment.......

The Honourable Shri K. Santhanam : Has the honourable Member the permission of the Chair to move this amendment?

K. T. M. Ahmad Ibrahim Sahib Bahadur : The Vice-President has been kind enough to permit me to move this amendment and in pursuance of that permission. I have moved the amendment.

Shri L. Krishnaswami Bharathi : How does it read now?

K. T. M. Ahmad I brahim Sahib Bahadur : It reads as follows:--

> "Clause (1) (a) to the matters with respect to which Parliament has exclusive power to make laws."

Therefore the executive power of the Union shall not extend to matters with respect to which it has no exclusive power to make laws, i.e., matters included in the Concurrent List. Sir, under the present Government of India Act we do not have any such provision. In page 6 of the letter of the Chairman of the Drafting Committee to the Honourable President of the Constituent Assembly, in paragraph 7, he points out-

> "Under the present Constitution, executive authority in respect of a Concurrent List subject vests in the province subject in certain matters to the power of the Centre to give directions."

He says then--

> "In the Draft Constitution the Committee has departed slightly from this plan."

"I must point out, Sir, that it has not departed slightly from this plan but on the other hand the Drafting Committee has opened the floodgates to the Central Government to enable it to make as many inroads as possible into the powers of the provinces and states with respect to the Concurrent subjects, as the proviso reads:

> "Provided that the executive power referred to in sub-clause (a) of this clause shall not, save as expressly provided in this Constitution or in any law made by Parliament....."

Therefore not only has the Union Government executive power in respect of subjects included in the Concurrent List to the extent it is specifically conferred by this Constitution but Parliament may also from time to time make legislation conferring on the Union Government executive power in regard to subjects included in the Concurrent list, with the result that all the subjects may be removed from the Concurrent List and transferred to the Federal List in course of time. It is not fair, Sir, that provincial autonomy should be whittled down to such an extent. In actual practice it will come to that. I know, Sir, that to obviate this difficulty, my honourable Friend, Pandit Kunzru, has given notice of an amendment for the omission of the words "or in any law made by Parliament". It will in away remove the difficulty but not the entire difficulty. That is why I am persisting in moving my amendment. Sir, under the present Government of India Act, even though the Central Government can give only directions to the provincial governments in regard to these subjects, in actual practice the provincial governments are not able to carry on their administration without any hindrance or impediment from the Central Government on account of this power to give directions. We have heard very often repeated by our Ministers that even though they do not see eye to eye with certain directions issued by the Central Government, they are helpless and cannot do what they consider best. Even with regard to the food policy they say they are able to do what they consider to be best in the interests of the province, as they have to obey the directions of the Central Government in this matter. Very often after their return to Madras from Delhi, our ministers point out that though they do not agree with the views of the Central Government, they have to carry out their directions because these directions have been issued under the law, even though they do not believe that the policy adumbrated by the Central Government in regard to the matter will be successful.

I hope, Sir, that the House will recognise the importance of this amendment. As I pointed out, already the powers of the provincial governments have been considerably taken away and if this clause also remains as it is, provincial autonomy will become almost a nullity. Even under the present provisions, powering Parliament to legislate for conferring executive power on the Union will be only glorified district boards and municipalities, and this clause empowering Parliament to legislate for conferring executive power on the Union Government with regard to any subjects included in the Concurrent list will be only another nail in the coffin of provincial autonomy.

Mr. Vice-President : Amendments Nos. 44 and 45 may be moved together.

Pandit Hirday Nath Kunzru (United Provinces: General) : Mr. Vice-President, I beg to move:

"That with reference to amendment No. 1289, in the proviso to clause (1) of article 60, the words 'or in any law made by Parliament' be deleted."

and

"that with reference to amendment No. 1289, after clause (1) of article 60 the following clause be inserted :

> (1a) Any power of Parliament to make laws for a State with respect to any matter specified in entries 25 to 37 of the Concurrent List shall include power to make laws as respects a State conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties upon the Government of India or officers and authorities of the Government of India as respects that matter, not with standing that it is one with respect to which the Legislature of the State also has power to make laws."

Sir, there are federations of all kinds. There are federations for instance of the United States of America, Canada and Australia, but in none of these federal Constitutions does the Central Government enjoy the right to issue executive directions to the provincial or State governments. In Canada, concurrent powers of legislation have been given both to the Dominion Government and the provincial governments in regard to two subjects, agriculture and immigration. In Australia, there are a large number of subjects in respect of which both the Commonwealth and the States can legislate. Yet in neither of these countries is the Central Government in a position to direct the State nor provincial government to exercise their authority in any particular way. Our Constitution, however, departs, from this principle. Under the Government of India Act, 1935, the Central Government have the right to issue instructions to provincial governments in respect of certain matters. Those matters are connected either with subjects that are exclusively within the jurisdiction of the Central Legislature or are contained in Part II of the Concurrent List. If the language of the proviso to article 60 is accepted, the Central Government will have the right to issue instructions to the Provincial Governments with regard to the manner in which they should exercise their executive authority in respect of all subjects in the Concurrent List. What we have to consider is whether circumstances have arisen that make it necessary or desirable that such a power should be conferred on the Central Government.

The Honourable Shri K. Santhanam : May I point out to the honourable Member that it is only when Parliament makes a law and gives that power that it will extend in any State?

Pandit Hirday Nath Kunzru : I perfectly understand it. That is obvious. If Mr. Santhanam will bear with me for a while, he will find that I shall not omit to refer to this matter.

I do not see, Sir, that there is any reason why so large a power should be conferred on the Central Government. We have to be clear in our minds with regard to the character of the Constitution. While we may profit by the experience of other federal countries and need not slavishly copy their constitutions, it is necessary that the federal principle should be respected in its essential features. We should not go so far in our desire to give comprehensive powers to the Central Government to deal with emergencies as to make the Provincial Governments virtually subordinate to the Central Government. Whatever powers may be conferred on the Central Government if the federal principle is to be given effect to, the Provincial Governments should be coordinate with and not subordinate to the Central Government in the provincial sphere. If this principle is accepted by the House, I think that the proviso in the article under discussion would be found to be contrary to the relations that ought properly to subsist between the Central and the Provincial Governments. The proviso, as honourable Members know, runs as follows:

> "Provided that the executive power referred to in sub-clause (a) of this clause shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws."

If this is accepted, it will be open to the Central Legislature to pass a law empowering the Central Government to issue directions to the Provincial Governments with regard to the manner in which the law should be executed. Under the Government of India Act, 1935, such a power was conferred on the Central Government, but it was more restricted. Sub-section (2) of section 126 of the Government of India Act, 1935 lays down that the executive authority of the Dominion shall also extend to the giving of directions to a Province as to the carrying into execution therein of any Act of the Dominion Legislature which relates to a matter specified in Part II of the Concurrent Legislative List and authorises the giving of such directions," and no bill or amendment dealing with this matter be introduced without the previous sanction of the Governor-General. In the new order, it is quite obvious that the Governor-General, who will be the Constitutional Head of the State, cannot be entrusted with the power given to the Governor-General by this sub-section. But there seems to me to be no reason why the power conferred by sub-section (2) of section 126 of the Government of India Act, 1935 should be widened in the manner proposed in the proviso to article 60 of the Draft Constitution. It is true that the Central Government will not have the right to issue instructions to the Provincial Governments with regard to the execution of any law, unless the law itself provides that such instructions should be issued. But this is certainly no check on the power of the Central Legislature. The Central Legislature itself will be the judge of the propriety of conferring such a power on a Government that is responsible to it. What I am seeking to do by my amendment is to protect the Provincial Governments against any unnecessary encroachment on their powers by the Central legislature and Central

Government.

Now, Sir, it may be pointed out to me that if the words "or in any law-made by Parliament" are deleted from the proviso, the Central Government will not enjoy even the limited power conferred on it by sub-section (2) of Section 126 of the Government of India Act, 1935. I think, Sir, that this can be provided for under article 234. I have accordingly given notice of an amendment to article 234 that would enable the Central Government to issue instructions to provincial Governments with regard to the execution of laws relating to items 25 to 37 of the Concurrent List if the central legislature by law authorises the Central Government to do so.

There is, however, one other matter to which it is necessary to draw the attention of the House. The second part of my amendment goes beyond anything contained in the Government of India Act, 1935. I may be asked how I am proposing an extension of the power of the central legislature and through it of the Central Government when the purpose of my amendment is to see that the executive authority of the provincial Governments is not unnecessarily restricted by orders issued to them by the Central Government under laws passed by Parliament. Honourable Members will remember that a few weeks ago, the Deputy Prime Minister introduced a Bill in this House the object of which was to amend the Government of India Act, 1935. It was stated in the Statement of Objects and Reasons attached to that Bill that experience had shown that uniform principles in the review of awards made by the Central and provincial industrial tribunals should be adopted under the overall control of the Central Government. It was therefore proposed in the Bill that the Central Government should, in addition to the right of issuing instructions to the provincial Governments in regard to the manner in which their authority should be exercised, also have the power to confer power on their own officers regarding the execution of laws dealing with any of the matters referred to in the Concurrent List. I should not like to go into the merits of that Bill; but we have to take into account the fact that in the present circumstances it is necessary so to widen the powers of the Central Government as to enable them to impose duties on their own officers in respect of certain matters if any law made by Parliament permits them to do so. The matters with which the Bill introduced by the Honourable Sardar Vallabhbhai Patel is concerned are industrial matters and a few other matters. Broadly speaking, these matters are covered by items 25 to 37 of the Concurrent List contained in the Draft Constitution. These matters are, but for two items, the same as those contained in Part II of the Concurrent List in the Government of India Act, 1935. It appears to be reasonable in the present circumstances when Labour is becoming conscious of its rights, when questions relating to it have to be settled on an all-India basis, that in all these questions that might involve the settlement of disputes between labour and the employers, there ought to be a power vested somewhere, in order that matters of importance may be dealt with in an uniform manner. I do not know when the Bill introduced by the Honourable Sardar Patel will be considered by the House. But, I have little doubt that the power asked for by him will be conferred on the Central Government by the House. If that is done, it is obvious that the Draft Constitution will have to be amended so that it may be brought into line with the Government of India Act, 1935. I have anticipated this necessity and have therefore brought forward an amendment authorising the Dominion Parliament to confer powers or impose duties on the Central Government or any of its officers in respect of entries 25 to 37 of the Concurrent List. It seems to me, Sir, that the amendment proposed by me meets the needs of the case. There is no reason whatsoever why the Central Government should be given the wide power that the passage of the proviso would confer on the Central

Executive under laws passed by the Central Parliament.

I should like, Sir, to refer to one more matter before I resume my seat. Under the Government of India Act, 1935, the power of the Dominion legislature to pass laws authorising the Central Government to confer powers and impose duties on their own officers with respect to matters in regard to which provincial legislatures could make laws could be exercised only when a declaration of emergency had been issued declaring that the security of India was threatened by war. So far as I remember, Sir, in no other contingency was the Central Legislature allowed to authorise the Central Government, or to place the Central Officers in a position to deal with the execution of laws on matters included in the Concurrent List. In proposing therefore my second amendment, it will be seen that I have not copied the provisions of the Government of India Act, 1935. I have departed considerably from the provisions of that Act but I have done so in so far only as circumstances have proved that the departure is necessary. It is incumbent on my honourable Friend Dr. Ambedkar to show that the wide power that he has asked for is essential in the present circumstances if law and order are to be maintained in India or if its security is not to be threatened or if problems arising in the new circumstances are of such a character that the country will be able to deal with them only when the Provincial Governments have been made practically subordinate to the Central Government. As I do not feel that any such circumstances have arisen, I have proposed the amendments that I read out a little while ago. I hope, Sir, that they will receive the careful consideration of the House.

(Amendments Nos. 1290 and 1291 were not moved.)

Mr. Vice-President : Amendment No. 1292 is disallowed as a verbal amendment.

Mr. Naziruddin Ahmad: It is not merely verbal. It will change the sense. In fact, my amendment will set up a different authority altogether.

Mr. Vice-President : I am afraid I do not agree with you.

Amendment No. 1293 is disallowed as verbal.

The article is open for general discussion. Mr. Mohamed Is mail Sahib.

Mr. Mohamed Ismail Sahib (Madras : Muslim): Sir, I support the amendments moved by Mr. K.T. M. Ahmad bra him, of the intention to move which I have also given notice. Sir, in the footnote under article 60 the Drafting Committee says--

"The Committee has inserted this proviso on the view that the executive power in respect of Concurrent List subjects should vest primarily in the State concerned except as otherwise provided in the Constitution or in any law made by Parliament."

The impression which this note creates in the minds of the readers is that some power or more power than is apparent in the article is being sought to be vested in the provinces but any such impression is removed by what the Chairman of the Drafting Committee says in para. 7 of his letter to the President of the Constituent Assembly. He speaks of the saving clause in the proviso and says--

"The effect of this saving clause is that it will be open to the Union Parliament under the new Constitution to confer executive power on Union authorities, or if necessary, to empower Union authorities to give directions as to how executive power shall be exercised by State authorities."

That is being made clearer by the next sentence in which he says--

"In making this provision the Committee has kept in view the principle that executive authority should for the most part be co-extensive with legislative power."

Wherever the Centre has been endowed with legislative power, it is being sought to endow it with executive power as well. Our amendments seek to correct this position and say that the Centre might have legislative power on the subjects included in the concurrent list but at least the executive power ought to be left in the hands of the units--the provinces. Sir, I have to make a few remarks in connection with the scheme of this Constitution. It is said that the American Constitution has been based on a suspicion of the Central authorities that the people in power in the Centre would seek to encroach, whenever there is an opportunity, on the powers of the States, i.e. the component parts or units and also of the individuals. It was contended not only at that time when that Constitution was made but also subsequently and even at the present time that such a conception of a Constitution is well based on facts, because it is admitted that when people come to power, more often than not the power corrupts them. Therefore too much of power should not be invested or placed in the hands of the executive and the supreme authority. But so far as our draft Constitution goes, the contrary seems to be the method which has been adopted. It has been based on the suspicion of individuals and the component units. The idea seems to be that the individuals will always be scheming and conspiring to set the authority at nought and the units would always be on the look-out for doing something wrong. Therefore, Sir, though the scheme of things as adumbrated in the Draft Constitution is alleged to be on a federal basis, it is really over-weighting the Centre with too much power. That is not salutary at least under the circumstances obtaining in our country. That is not good to the country as a whole. Ours is a country of vast distances and a huge population. Therefore it is not conducive to efficiency to over-concentrate power in the Centre. Units must be left with adequate powers in their hands. It must not be the basis of this Constitution that patriotism and anxiety for the welfare of the people are the sole monopoly of the Centre. It must be admitted that the Provinces and individuals also are as patriotic as anybody else. Therefore, their rights and powers must not be sought to be encroached upon. The basis of this Constitution seems to be suspicion, in the first place of the individuals and then in the second place of the units. Sir, where the individuals are concerned, it has not even been conceded that individuals have got an irreducible amount of right to personal freedom. The personal freedom that has been conceded under article 15 is beset with serious, and not only a serious, but fatal modifications so much so these modifications have eaten up and swallowed up the right of personal freedom. It does not recognise that an individual has got any irreducible right which cannot be taken away by any law. And so far as the Provinces or Units are concerned, the same spirit seems to prevail. By various provisions, the powers of the Provinces are sought to be taken away; and in the interest of efficient government and good government, I think that spirit ought not to prevail; and the powers of the units must not be encroached upon.

These amendments of ours, while providing for the maintenance of the legislative powers of the Centre where the appropriate subjects are concerned, want to restrict the executive field of the Centre. Therefore, I think, they are very reasonable amendments which the House should support. I also know that if only Members are given the right to vote as they please, and if they are given the freedom of vote on this particular question at least, I know Sir, many Members will vote for these amendments. I know personally, Sir, there are many Members who feel with me in the matter of these amendments.

Mr. Vice-President : May I suggest that these remarks are not called for here?

Mohamed Ismail Sahib Bahadur : Sir, I am speaking, with your permission, of what I know to be the feeling of many of my colleagues here on this very important matter. In these amendments is involved the efficiency of the government and therefore the welfare of the whole country and of the people. These amendments seek to eliminate any friction or any conflict that may arise in the future between the Centre and the Provinces. If time and again the Centre seeks to encroach upon the rights and powers of the units, then, there is sure to be conflict and friction and these amendments only seek to remove any such conflict. And I wanted to make it clear that I am not alone in this feeling of mine, that I am not alone in this opinion, but that there are many others irrespective of party affiliations. Therefore, I would very much like that the colleagues of mine in this House be given freedom of vote to vote as they please. In that case, the Chairman of the Drafting Committee will know whether there is real support among the Members of this House for the idea contained in these amendments. If the Chairman of the Drafting Committee does not find it in his mind to accept these amendments, may I appeal to him, atleast to accept the amendment to our amendment moved by Pandit Kunzru which seeks to remove the words "or in any law made by Parliament". That at least would mean something. That would go to some extent to alleviate the conditions which I have got in mind and which I have been trying to express here. It will to a certain extent restrict the encroachment upon the powers of the Provinces. Therefore, I would appeal to the House and to the Chairman of the Drafting Committee to consider at least the much milder amendment which seeks to eliminate the words "or in any law made by Parliament".

Mr. Vice-President : I have just received information about the sudden death of Sir Akbar Hydari, Governor of Assam. He was not a member of this House, but we all know the excellent work he has done for our country and we also know that we are indebted not only to him but also to his father. The offices of the Government of India are already closed. It is true that His Excellency was not a member of this House, but still I think we ought to adjourn as atribute to him and as a mark of respect to his memory.

The House stands adjourned till 10 A. M. tomorrow.

The Constituent Assembly then adjourned till Ten of the clock on Thursday, the 30th December 1948.

[Translation of Hindustani Speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VII

Thursday, the 30th December 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

DRAFT CONSTITUTION-(*Contd.*)

Article 60-(*Contd.*)

Mr. Vice-President (Dr. H. C. Mookherjee): I have just received notice of an adjournment motion signed by Shri Mahavir Tyagi. It is ruled out of order under Rule 26 of the Rules of Procedure and Standing Orders of the Constituent Assembly of India. Does the House want to know the contents of this adjournment motion?

Honourable Members : Yes, yes.

Mr. Naziruddin Ahmad (West Bengal : Muslim): Sir, on a point of order. Is an adjournment motion in this House permissible?

Mr. Vice-President : I shall read out the adjournment motion:

"I beg to move that the House do adjourn to discuss the attitude of the Government of India in respect of the recent attacks on Indonesia."

It is ruled out of order under Rule 26 of the Rules of Procedure and Standing Orders of the Constituent Assembly of India.

We can now resume discussion on article 60. Is Pocker Sahib Bahadur in the House?

B. Pocker Sahib Bahadur (Madras : Muslim): Mr. Vice-President, this clause as it stands is sure to convert the Federation into an entirely unitary form of Government. This is a matter of very grave importance. Sir, we have been going on under the idea, and it is professed, that the character of the Constitution which we are framing is a federal one. I submit, Sir, if this article, which gives even executive powers with reference to the subjects in the Concurrent List to the Central Government, is to be passed as it is, then there will be no justification at all in calling this constitution a federal one. It will be a misnomer to call it so. It will be simply a camouflage to call this Constitution a federal one with provisions like this. It is said that it is necessary to give legislative powers to the Centre with regard to certain subjects mentioned in the Concurrent List, but it is quite another thing, Sir, to give even the executive powers with reference to them to the Centre. These provisions will have the effect of practically leaving the provinces with absolutely nothing. Even in the Concurrent List there is a large number of subjects which ought not to have found place in it. We shall have to deal with them when the time comes. But this clause gives even executive powers to the Centre with reference to the subjects which are detailed in the Concurrent List. In this connection, since the question has been expounded with great lucidity and ability by the Honourable Pandit Kunzru, I do not want to take up the time of the House in dealing with those aspects.

Now I would just like to point out one aspect of the matter and it is this. In such a big sub-continent as India, it will be very difficult for the authorities in the Centre to appreciate correctly the requirements of the people in the remotest parts of this country, and this disability is there even with regard to legislation. But even if executive power, with reference to those laws dealing with subjects in the Concurrent List, is given to the Centre, the result will be that if any person is aggrieved by the way in which the law is executed in a very remote part of the country, he has to resort to the Centre which may be thousands of miles away, and it is not all people that can fly from one part of the country to the other in a few hours. I submit, Sir, that if we just look into the Concurrent List as it is, we shall find that there are very many subjects which ought not to have found a place in it. Anyhow, if those subjects are to be dealt with by an executive which is under the Centre, it will be a very great hardship, and I do submit that the machinery itself will be very inefficient and will be a blot on the administration.

If with reference to such subjects as are mentioned in the Concurrent List, the people suffer by the bad way in which the executive carries on the administration, then the result will be that the persons who have got a grievance will have to go a very great distance to have matters redressed, and even then it will be very difficult for the authorities in the Centre to realize the difficulties. It has been pointed out that as matters stand now as regards the subjects in the Concurrent List, the executive authority is in the provinces, and to do away with that practice and to centralise even the executive powers in the Centre with regard to all these subjects in the Concurrent List is a very backward step. Even from 1919 onwards when the Britishers were ruling, Provincial Autonomy was considered to be one of the objects of the Reforms. Now after we have won freedom, to do away with Provincial Autonomy and to concentrate all the powers in the Centre really is tantamount to totalitarianism, which certainly ought to be condemned. It has become the order of the day to call a dog by a bad name and hang it. Well, if some group of persons agitate for protecting their rights as a group, it is called communalism and it is condemned. If Provinces want Provincial Autonomy to be secured to allow matters peculiar to them to be dealt with by themselves, well, that is called provincialism, and that is also condemned. If people press for separation of linguistic Provinces it is called separatism and it is condemned. But I only wish that these gentlemen who condemn these 'isms' just take into consideration what the trend of events is. It is leading to totalitarianism; they ought to condemn that in stronger language. But I am afraid that the result of the condemnation of these various 'isms', namely communalism, provincialism and separatism, is that it leads to totalitarianism or as even fascism. If there are separate organisations for particular groups of people who think in a particular way, well, that is condemned as communalism or as some other 'ism'. If all kinds of opposition are to be got rid of in this sort of way, well, the result is that there is totalitarianism of the worst type, and that is what we are coming to having regard to the provisions in this Draft Constitution as they stand.

Therefore, it is high time that we take note of this tendency and see that we avoid it and that we do not come to grief. I submit that at least as regards this provision, the amendment only seeks to make a very moderate demand, namely that with reference to matters in the Concurrent List, even though the Centre may have legislative power, the executive power with reference to those subjects should be left to the Provinces. This is a very moderate demand, and as has already been pointed out, honourable Members from various Provinces do feel that these executive powers should be left to the Provinces. But as we all know, they are not able to give effect to their views for obvious reasons, and I do not want to raise questions which may create a controversy. But I would submit that those honourable Members who do really feel that this amendment is one which is for the good of the people and that according to their conscience it ought to be carried, ought not to hesitate from giving effect to their views according to their conscience. I would remind honourable Members that the duty we have to perform here is a very sacred one and that we answerable to God for every act we are doing here, and if the defence is that we did not act according to our conscience on account of the whip that is issued, I submit, Sir, the honourable Members will realise that it is no defence at all.

Shri L. Krishnaswami Bharathi (Madras : General) : Sir, is it necessary to make all these references?

B. Pocker Sahib Bahadur : I am making all these references on account of facts which cannot be denied.

Mr. Vice-President : I am afraid Mr. Pocker Sahib is raising a controversy.

B. Pocker Sahib Bahadur : Mr. Vice-President, Sir, I have already stated that I do not want to enter into this controversy, but I have got every right to appeal to each and every honourable Members.

Mr. Vice-President : Nobody is preventing the honourable Member from doing it.

B. Pocker Sahib Bahadur : I have got a right of appeal to every individual Member to exercise his right of vote according to his conscience. That is why I am making these submissions. I have to make this appeal on account of obvious reasons on which I do not want to dwell. The honourable Members know, I know, and the Honourable the Vice-President knows it. Therefore, I do not want to dwell on those aspects of the case.

Mr. Vice-President : The Honourable the Vice-President, has absolutely no knowledge of this.

B. Pocker Sahib Bahadur : Well, Sir, I hope the Honourable the Vice-President, will not compel me to dilate more on this topic. Anyhow, I take in that the Honourable the Vice-President knows that Party Whips are issued and Members are being guided by these Whips, to put it in a nutshell. That is a fact well-known and cannot be denied, and therefore, it is, that I make this special appeal to the honourable Members that if they are satisfied in their conscience that this is a matter in which they should support the amendment, they ought not to hesitate from doing so, and if they so require they ought to seek the permission of the Party to which they are affiliated.

Shri T. T. Krishnamachari (Madras : General): Mr. Vice-President, Sir, I feel it my duty to oppose the two amendments that are before the House, to article 60. Sir, the two amendments fall into two distinct categories. The amendment that was proposed by my honourable Friend Mr. K. T. M. Ahmed Ibrahim merely sought to cut out the proviso to sub-clause (1) of article 60. That was the original state of the amendment. If the amendments were carried in that particular form, it would mean that the Federal executive power will be co-extensive with the legislative power that the Union has, namely, not only will it extend to List I but it will also extend to List III.

Subsequently apparently my honourable Friend found out his mistake and has sought to amend the body of sub-clause (1) of article 60, which limits the power of the Federation in regard to executive matters and completely prevents it from exercising it in the field of Concurrent legislation. Well, that, Sir, the House is aware, will mean going back on the present provisions of the Government of India Act. The position was remedied by my honourable Friend Pandit Hirday Nath Kunzru. With his characteristic precision he framed an amendment which will exactly fit in with the position that was envisaged in the Government of India Act of 1935. It does not concede any more executive power to the Centre than what it has under the Government of India Act, 1935. Sir, there is also a considerable amount of difference in the approach of the Movers of the two amendments. The three speakers who supported the amendment of Mr. Ibrahim, including the mover, objected to the proviso to article 60(1) on political grounds. My honourable Friend Pandit Hirday Nath Kunzru objected to it on theoretical grounds. Let me first deal with my honourable Friend Pandit Kunzru's objections. He said that Federation or Federalism in in the Draft Constitution before the House will become a farce if the position that is taken up by the Government of India Act in regard to the sphere of executive action that could be exercised by the Central Government in the concurrent field is changed, if the i's are dotted or the t's are crossed. Pandit Kunzru is a person who is well known for his wide reading. His experience is profound and I shall not seek to controvent his right to lay down the law. But, nevertheless, he made a fundamental mistake in saying that there is a particular type of federalism or constitution which alone can be called federal and that the word 'Federal' or 'Federalism' had a complete connotation of its own, excluding every possible inroad into it. I must also point out that Pandit Kunzru made a big blunder in characterising our draft Constitution as being something which would not be federal if the proviso of the article is retained.

Sir, in regard to what is a Federal Constitution, there are various interpretations. It varies widely. For instance, the Canadian Constitution which is one of the four prominent Federal Constitutions in the world is characterised by some as not being wholly federal. On the other hand it does happen that in the actual working of the Constitution, it is more federal than the Australian Constitution which, from the strictly constitutional point of view, is undoubtedly fully federal. It is said often times that a Constitution becomes Federal because of the fact that the component units are first formed and then the Centre is created. That is the opinion expressed by Lord Hal Dane in 1913 as an obiter in a matter that was referred to him arising out of an Australian litigation wherein he mentioned that the Canadian Constitution was not Federal in so far as, while the British North American Act was passed by Parliament, the Centre and the Provinces were created at the same time.

Similarly there are other views in regard to what makes a Federation. Another view is that the residuary power must lie with the units and not with the Centre. Where and how this fact exactly detracts from the concept of Federalism nobody knows. This particular aspect is emphasised by reference to the United States Federation. If that is so, undoubtedly the Draft Constitution before the House is not federal, for one reason that the residuary power is not vested in the units; for another reason that it (the Draft Constitution) creates both the Centre and the Provinces at the same time.

Sir, If we are to accept this view, we would be merely theorising in regard to Federation. I hold the view that we have no reason to take a theoretical view of the Draft Constitution at this stage. The concept of this Constitution is undoubtedly Federal. But, how far Federalism is going to prove to be of benefit to this country in practice will only be determined by the passage of time and it would depend on how far the various forces inter-act conceding thereby to the provinces greater or lesser autonomy than what we now envisage. But I will repeat once more the fact that in actual practice it has happened that in Canada the provinces have greater amount of liberty of action under a Constitution which is not avowedly fully Federal, than in Australia where the interference by the Centre into the affairs of the units has been considerable.

Pandit Hirday Nath Kunzru (United Provinces : General) : May I interrupt my honourable Friend to ask whether he is aware that in Canada the power of the provinces is greater than it is supposed to be because of the decisions of the Privy Council?

Shri T. T. Krishnamachari : It only supports my statement of fact that the Indian Constitution, when it is passed, will either become fully federal or partially federal in actual practice over a period of time. It may be that if we are going to leave the field of authority for the Centre and the units completely undefined, the courts may interpret it one way or the other. It is conceivable that if we say nothing about the exercise of the executive powers in the Concurrent List, the courts may interpret it one way or the other and the Constitution may become more federal or less federal as circumstances arise and the views of the judges in this regard and the decisions they arrive at. So, I think the interruption of my honourable Friend is without any force and I see no reason why I should answer it at greater length.

Sir, in regard to this question of executive action in regard to concurrent powers on which actually the objection is being taken, the position is that the Government of India Act has been framed with a certain amount of attention for precision. Professor K. C. Wheare, in a short but exhaustive work on Federal Government, has pointed out this particular fact--though he does not concede that the Government of India Act establishes a full federation--that that Act is one of the most notable examples of Federation where the powers of the Centre and the units are clearly defined and the three Lists are more or less exhaustive.

Sir, in regard to the provisions of this Concurrent List, the Draft Constitution or the 1935 Act are by no means unique. The fact is that the Australian Constitution practically leaves the entire field of legislative action in the Concurrent List save for a few that are enumerated in Section 52 of the Australian Constitution. Section 61 which is the corresponding section in the Australian Constitution to article 60 of our Draft Constitution says that the executive power extends to the execution and maintenance of the Constitution and of the laws of the Commonwealth. And an attempt by a State to interfere with the free exercise of the executive power by the Commonwealth was declared invalid in 1903 in a case D'Emden *vs.* Pedden. The position in regard to the distribution of powers in the Australian Constitution is however nebulous and assuredly the framers of the Government of India Act were conscious of that fact and that is why they have framed the three lists which are far more precise.

Sir, if you look back to what happened in Canada where passage of time has more or less delimited the precise scope of Federal and Provincial executive power, we find that there has been room for friction in various important matters. And in the Rowell-Sirois Report on Dominion-Provincial Relations, certain changes have been recommended. They have recommended that in the field of labour legislation particularly, and in the field of social services like Unemployment Insurance, etc., the power should be given to the Federation not only for the purpose of legislation which it possesses to some extent, but also in the field of executive action. With this background let me, Sir, now examine the position in the Government of India Act in regard to the allocation of powers under the Concurrent List in view of our experience of the last twelve years.

Sir, the Joint Select Committee in dealing with this particular aspect of the separation of powers and also in investing the Central and Provincial Governments with executive powers in respect thereof have been rather careful.

Sir, they say--

> "We think the solution is to be found in drawing a distinction between subjects in the Concurrent List which on the one hand relate, broadly speaking, to matters of social and economic legislation, and those which on the other hand relate mainly to matters of law and order, and personal rights and status. The latter from the larger class, and the enforcement of legislation on these subjects would, for the most part, be in the hands of the Courts of the Provincial authorities responsible for public prosecutions. There can clearly be no question of Federal directions being issued to the Courts, nor could such directions properly be issued to prosecuting authorities in the provinces. In these matters, therefore, we think that the Federal Government should have in law, as they could have in practice, no powers of administrative control. The other class of concurrent subject consists mainly of the regulation of mines, factories, employer's liability and workmen's compensation, trade unions, welfare of lab our, industrial disputes, infectious diseases, electricity...... In respect of this class, we think that the Federal Government should, where necessary, have the power to issue directions for the enforcement of the law, but only to the extent provided by the Federal Act in question."

Sir, that was the plan envisaged in the Government of India Act. That was the reason why a sub-clause was added to Section 126, i.e., sub-clause (2), which gives power to the Centre to give executive directions in so far as the subjects covered by Part II of the Concurrent List is concerned. Sir, I want to tell my honourable Friends in this House that in actual practice we found that so far as Part II is concerned executive directions were not adequate to achieve the objects of the legislation undertaken by the Centre. Sir, it raised a very important problem. Who is to be ultimately responsible for carrying out the objects of such legislation in a responsible government? The provincial governments are responsible to the provincial legislatures and it has happened so far that the provincial executive has often said, "Oh, the Centre has given its directions, we have no funds, we have no administrative machinery, we do not know what to do and it is unfair that it should be our business to do the actual work in these matters when somebody else lays down the law." The present scheme in the Government of India Act is defective by reason of the fact that the field of executive responsibility blurs. We do not know where it begins and where it ends, and one of the reasons why this proviso has been put in which has been carefully worded, is that, where the Government of India want to lay the executive responsibility squarely on the shoulders of the provinces or the units, it can do so by not mentioning in their legislation that they are possessed of any executive power in regard to any particular legislation. This is a variation of the provision contemplated in Section 126 (2) and it is a wise variation in so far as the lines of demarcation are clearly laid down. The

Government of India where it is possible or necessary, perhaps in the field of social legislation, in social insurance, unemployment and perhaps lab our, will take over the executive responsibility by laying down in the related Acts that the executive authority shall be that of the Government of India, Where there is no specific provision the executive responsibility will be that of the provinces and the provincial ministries cannot shirk their responsibility for carrying out the objects of the legislation. Sir, I wish that my honourable Friend, Mr. Jagjivan Ram, who has been in charge of some pieces of welfare legislation, would speak on this subject, because times without number we have found that we have had to sail very close to colourable legislation in such matters. That, Sir. I think is a very valid reason, a reason which is dictated by experience, for us to put a provision of the nature of the proviso in clause (1) of this article which I can assure you, does not detract an iota from the federal character of this Draft Constitution. After all, what is a federal constitution? It is one that lays down precisely the field where the units are supreme and another field where the Centre is supreme. Where it is not possible to demarcate this clearly it has got to be done in some other manner where the responsibility will be precisely indicated, and this proviso to article 60 makes the constitution more federal than it would otherwise be. Therefore I think the objection of my honourable Friend, Pandit Hirday Nath Kunzru, is without any point; it is without any reference to the experience of the 1935 Act which has been gained during these twelve years; it is without reference to the theory and practice of federalism; it is without reference to the experience of Australia and Canada and therefore has got to be rejected.

Sir, I shall turn my attention to the other amendment, the originally imperfect amendment, which seeks to give greater powers to the provinces in regard to concurrent subject, and practically limits the powers of the Centre in the executive field to nothing, which was moved by my honourable Friend, Mr. K. T. M. Ahmad Ibrahim and ably supported by Mr. Muhammad Ismail and Mr. Pocker. Sir, the House will be aware that these honourable Members are fairly important people, particularly Mr. Muhammad Ismail who happens to be the President of the Muslim League in India and the virtual successor to Mr. Jinnah. When he makes a political statement, it cannot be dismissed as being something which is of no value. One of the reasons why the Government of India Act is so elaborate, one of the reasons why such great emphasis on provincial autonomy was laid in the past, one of the reasons why we in this country agreed to the Cabinet Statement of May 16, 1946, was the fact that the Muslim League wanted complete freedom of action in the provinces which it controlled. Sir, that circumstance no longer exists owing to the dissection of the country into two. That circumstance has now faded into obscurity, and therefore it seems to me that my honourable Friend is simply starting the trouble from the beginning viz., the agitation that provinces should have greater powers when actually there is no attempt to fetter the powers of the provinces. If there is any opposition to this Draft Constitution, it is a political opposition, rather than an opposition to any particular feature of this Draft Constitution. My honourable Friends have warned us that we have a conscience, that we have to act according to that conscience. I may tell the honourable Members of this House that their conscience will not be affected in any way if they approve of article 60, as it stands, that they may rest assured that there will be no inroads into the freedom of action of the provinces and that really no real limitation of the executive power of the provinces is contemplated. Provincial opinion will be adequately represented in the Parliament to be: the *pros* and *cons* of each particular piece of legislation contemplated in this article will be adequately canvassed before the Centre is granted executive power in regard to any subject which falls in the Concurrent List. I might again draw the attention of the House to what was mentioned in the Joint Select Committee's report in respect of the 1935 Act that they did not contemplate that even in the matter of giving executive directions under Section 126 (2), it would be done right over the wishes of the provinces, because after all the Centre was not something apart from the provinces. Even in the future the Central Legislature will only consist of representatives of the units. In one House it will be representative of the unit legislatures. In the other House it will be representative of the people of the units. The Centre can have no existence in the future apart from the provinces or units and why therefore suspect the *bona fides* of that legislature and say that legislature will grant powers to the Centre in such a manner as would fetter the freedom of action of the units?

Sir, on the other hand, as I said once before, this proviso precisely delimits the functions of the Centre and the units. There will be no more ambiguity, no more blurring of responsibility. I feel that intrinsically the article is sound and the House will not, I have no doubt, be guided by the threats uttered by these appeals to conscience, the threat of the totalitarian state of things to come which my honourable Friends from Madras of the Muslim League think is going to come to pass. Sir, this article......

B. Pocker Sahib Bahadur : Is it not a fact that whips are being issued over such questions?

Shri T. T. Krishnamachari : I have no desire to answer my honourable Friend. Whips may be issued. We know what is being done. It is a matter of convenience. If some of us do not congregate together and get through the work that is to come before the House by mutual agreement, I am afraid this House will have to sit for three or four years. By acting together some of us, not exactly the members of one Party but a number of people who act together are only expediting the framing of this Constitution for our country. Well, I can conceive that my honourable Friend does not want a constitution for this country. If that is his idea, well, he might object to the method by which we are carrying on the work. Sir, I think these allegations are without any point. The basis of the opposition is political. It has its origin in the fact that the Muslim League never wanted India to be a strong country, with a strong government. Therefore, Sir, I hope the House will dismiss all these vague threats and all these allegations and support the article before it.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Mr. Vice-President, Sir, I am sorry that I cannot accept either of the two amendments which have been moved to this proviso, but I shall state to the House very briefly the reasons why I am not in a position to accept these amendments. Before I do so, I think it is desirable that the House should know what exactly is the difference between the position as stated in the proviso and the two amendments which are moved to that proviso. Taking the proviso as it stands, it lays down two propositions. The first proposition is that generally the authority to execute laws which relate to what is called the Concurrent field, whether the law is passed by the Central Legislature or whether it is passed by the Provincial or State Legislature, shall ordinarily apply to the Province or the State. That is the first proposition which this proviso lays down. The second proposition which the proviso lays down is that if in any particular case Parliament thinks that in passing a law which relates to the Concurrent filed the execution ought to be retained by the Central Government, Parliament shall have the power to do so. Therefore, the position is this; that in all cases, ordinarily, the executive authority so far as the Concurrent List is concerned will rest with the units, the Provinces as well as the States. It is only in exceptional cases that the Centre may prescribe that the execution of a Concurrent law shall be with the Centre. The amendments which have been moved are different in their connotation. The first amendment is that the Centre should have nothing to do with regard to the administration of a law which relates to matters placed in the Concurrent field. The second amendment which has been moved by my honourable Friend, Pandit Kunzru, although it does not permit the Centre to take upon itself the execution of a law passed in the Concurrent field, is prepared to permit the Centre to issue directions, with regard to matters falling within Items 25 and 37, to the Provincial Governments. That is the difference between the two amendments.

The first amendment really goes much beyond the present position as set out in the Government of India Act, 1935. As honourable Members know, even under the present Government of India Act, 1935, it is permissible for the Central Government at least to issue directions to the Provinces, setting out the method and manner in which a particular law may be carried out. The first amendment I say even takes away that power which the present Government of India Act,1935, gives to the Centre. The amendment of my honourable Friend, Pandit Kunzru wishes to restore the position back to what is now found in the Government of India Act, 1935.

Pandit Hirday Nath Kunzru : I go a little beyond that. The second part of my amendment goes beyond any power which the Government of India now enjoy under the Government of India Act, 1935.

The Honourable Dr. B.R. Ambedkar: Well, that may be so. That I said is the position as I understand it. Now, Sir, I will deal with the major amendment which wants to go back to a position where the Centre will not even have the power to issue directions, and for that purpose, it is necessary for me to go into the history of this particular matter. It must have been noticed--and I say it merely, as a matter of fact and without any kind of insinuation in it at all,--that a large number of members who have spoken in favour of the first amendment are mostly Muslims. One of them, my Friend Mr. Pocker, thought that it was a sacred duty of every Member of this House to oppose the proviso. I have no idea...........

B. Pocker Sahib Bahadur : I have not said that, Sir. I only said that it is the duty of every Member to act according to his conscience.

The Honourable Dr. B. R. Ambedkar : By which I mean, I suppose that every Member who has conscience must oppose the proviso. It cannot mean anything else. *(Laughter.)*

B. Pocker Sahib Bahadur : Certainly not.

The Honourable Dr. B. R. Ambedkar : Now, Sir, this peculiar phenomenon of Muslim members being concerned in this particular proviso, as I said, has a history behind it, and I am sorry to say that my honourable Friend, Pandit Kunzru forgot altogether that history; I have no doubt about it that he is familiar with that history as I am myself.

This matter goes back to the Round Table Conference which was held in 1930. Everyone who is familiar with what happened in the Round Table Conference, which was held in 1930 will remember that the two major parties who were represented in that Conference, namely the Muslim League and the Indian National Congress, found themselves at loggerheads on many points of constitutional importance.

One of the points on which they found themselves at loggerheads was the question of provincial autonomy. Of course, it was realised that there could not be complete provincial autonomy in a Constitution which intended to preserve the unity of India, both in the matter of legislation and administration. But the Muslim League took up such an adamant attitude on this point that the Secretary of State had to make certain concessions in order to reconcile the Muslim League to the acceptance of some sort of responsible Government at the Centre. One of the things which the then Secretary of State did was to introduce this clause which is contained in Section 126 of the Government of India Act which stated that the authority of the Central Government so far as legislation in the concurrent field was concerned was to be strictly limited to the issue of directions and it should not extend to the actual administration of the matter itself. The argument was that there would have been no objection on the part of the Muslim League to have the Centre administer a particular law in the concurrent field if the Central Government was not likely to be dominated by the Hindus. That was so expressly stated, I remember, during the debates in the Round Table Conference. It is because the Muslim League Governments which came into existence in the provinces where the Muslims formed a majority such as for instance in the North-West Frontier Province, the Punjab, Bengal and to some extent Assam, did not want it in the field which they thought exclusively belonged to them by reason of their majority, that the Secretary of State had to make this concession. I have no doubt about it that this was a concession. It was not an acceptance of the principle that the Centre should have no authority to administer a law passed in the concurrent filed. My submission therefore is that the position stated in Section 126 of the Government of India Act, 1935, is not to be justified on principle; it is justified because it was a concession made to the Muslims. Therefore, it is not proper to rely upon Section 126 in drawing any support for the arguments which have been urged in favour of this amendment.

Sir, that the position stated in Section 126 of the Government of India Act was fundamentally wrong was admitted by the Secretary of State in a subsequent legislation which the Parliament enacted just before the war was declared. As honourable Members will remember, Section 126 was supplemented by Section 126-A by a law made by Parliament just before the war was declared. Why was it that the Parliament found it necessary to enact Section 126-A? As you will remember Section 126-A is one of the most drastic clauses in the Government of India Act so far as concurrent legislation is concerned. It permits the Central Government to legislate not only on provincial subjects, but it permits the Central Government to take over the administration both of provincial as well as concurrent subjects. That was done because the Secretary of State felt that at least in the war period, Section 126 might prove itself absolutely fatal to the administration of the country. My submission therefore is that Section 126-A which was enacted for emergency purposes is applicable not only for an emergency, but for ordinary purposes and ordinary times as well. My first submission to the House therefore is this: that no argument that can be based on the principle of Section 126 can be valid in these days for the circumstances which I have mentioned.

Coming to the proviso,.......

B. Pocker Sahib Bahadur : With your permission, Sir, may I just correct my learned Friend? This Constitution is being framed for the present Indian Union in which there is not a single province in which the Muslims are in a majority and therefore there is absolutely no point in saying that it is the Muslim members that are moving this amendment in the interests of the Muslim League. It is a very misleading argument based on a misconception of fact and the Honourable Minister for Law forgets the fact that we in the present Indian Union, Muslims as such, are not in the least to be particularly benefited by this amendment.

The Honourable Dr. B. R. Ambedkar : I was just going to say that although that is a statement of fact which I absolutely accept, my complaint is that the Muslim members have not yet given up the philosophy of the Muslim League which they ought to. They are repeating arguments which were valid when the Muslim League was there and the Muslim Provinces were there. They have no validity now. I cannot understand why the Muslims are repeating them *(Interruption.)*

Mr. Vice-President : Order, order.

The Honourable Dr. B. R. Ambedkar : I was saying that there is no substance in the argument that we are departing from the provision contained in Section 126 of the Government of India Act. As I said, that section was not based upon any principle at all.

In support of the proviso, I would like to say two things. First, there is ample precedent for the proposition enshrined so to say in this proviso. My honourable Friend M. T. T. Krishnamachari has dealt at some length with the position as it is found in various countries which have a federal Constitution. I shall not therefore labour that point again. But I would just like to make one reference to the Australian Constitution. In the Australian Constitution we have also what is called a concurrent field of legislation. Under the Australian Constitution it is open to the Commonwealth Parliament in making any law in the concurrent field to take upon itself the authority to administer. I shall just quote one short paragraph from a well known book called " Legislative and Executive Power in Australia" by a great lawyer Mr. Wynes. This is what he says:

"Lastly, there are Commonwealth Statutes. Lefroy states that executive power is derived from legislative power unless there be some restraining enactment. This proposition is true, it seems, in Canada, where the double enumeration commits to each Government exclusive legislative powers, but is not applicable in Australia. Where the legislative power of the Commonwealth is exclusive--*e.g.*, in the case of defence--the executive power in relation to the subject of the grant inheres in the Commonwealth, but in respect of concurrent powers, the executive function remains with the States until the Commonwealth legislative power is exercised."

Which means that in the concurrent field, the executive authority remains with the States so long as the Commonwealth has not exercised the power of making laws which it had. The moment it does the execution of that law is automatically transferred to the Commonwealth. Therefore, comparing the position as set out in the proviso with the position as it is found in Australia, I submit that we are not making any violent departure from any federal principle that one may like to quote. Now, Sir, my second submission is that there is ample justification for a proviso of this sort, which permits the Centre in any particular case to take upon itself the administration of certain laws in the Concurrent list. Let me give one or two illustrations. The Constituent Assembly has passed article 11, which abolishes untouchability. It also permits Parliament to pass appropriate legislation to make the abolition of untouchability a reality. Supposing the Centre makes a law prescribing a certain penalty, certain prosecution for obstruction caused to the untouchables in the exercising of their civic rights. Supposing a law like that was made, and supposing that in any particular province the sentiment in favour of the abolition of untouchability is not as genuine and as intense nor is the Government interested in seeing that the untouchables have all the civic rights which the Constitution guarantees, is it logical, is it fair that the Centre on which so much responsibility has been cast by the Constitution in the matter of untouchability, should merely pass a law and sit with folded hands, waiting and watching as to what the Provincial Governments are doing in the matter of executing all those particular laws? As everyone will remember, the execution of such a law might require the establishing of additional police, special machinery for taking down, if the offence was made cognizable, for prosecution and for all costs of administrative matters without which the law could not be made good. Should not the Centre which enacts a law of this character have the authority to execute it? I would like to know if there is anybody who can say that on a matter of such vital importance, the Centre should do nothing more than enact a law.

Let me give you another illustration. We have got in this country the practice of child marriage against which there has been so much sentiment and so much outcry. Laws have been passed by the Centre. They are left to be executed by the provinces. We all know what the effect has been as a result of this dichotomy between legislative authority resting in one Government and executive authority resting in the other. I understand (and I think my friend Pandit Bharagava who has been such a staunch supporter of this matter has been stating always in this House) that notwithstanding the legislation, child marriages are as rampant as they were. Is it not desirable that the Centre which is so much interested in putting down these evils should have some authority for executing laws of this character? Should it merely allow the provinces the liberty to do what they liked with the legislation made by Parliament with such intensity of feeling and such keen desire of putting it into effect? Take, for instance, another case--Factory Legislation. I can remember very well when I was the Labour Member of the Government of India cases after cases in which it was reported that no Provincial Government or at least a good many of them were not prepared to establish Factory Inspectors and to appoint them in order to see that the Factory Laws were properly executed. Is it desirable that the labour legislations of the Central Government should be mere paper legislations with no effect given to them? How can effect be given to them unless the Centre has got some authority to make good the administration of laws which it makes? I therefore submit that having regard to the cases which I have cited--and I have no doubt honourable Members will remember many more cases after their own experience--that a large part of legislation which the Centre makes in the concurrent filed remains merely a paper legislation, for the simple reason that the Centre cannot execute its own laws. I think it is a crying situation which ought to be rectified which the proviso seeks to do.

There is one other point which I would like to mention and it is this. Really speaking, the Provincial Government sought to welcome this proviso because, there is a certain sort of financial anomaly in the existing position. For the Centre to make laws and leave to provinces the administrations means imposing certain financial burdens on the provinces which is involved in the employment of the machinery for the carrying out of those laws. When the Centre takes upon itself the responsibility of the executing of those laws, to that extent the provinces are relieved of any financial burden and I should have thought from that point of view this proviso should be a welcome additional relief which the provinces seek so badly. I therefore submit, Sir, that for the reasons I have given, the proviso contains a principle which this House would do well to endorse. *(Cheers).*

Mr. Vice-President : I shall now put the amendments to vote.

The question is:

"That with reference to amendment No. 1289 of the List of Amendments, in sub-clause (a) of clause (1) of article 60, between the words 'Parliament has' and the word 'power', the word 'exclusive' be inserted."

The amendment was negatived.

Mr. Vise-President : The question is:

"That with reference to amendment No. 1289 after clause (1) of article 60, the words 'or in any law made by Parliament' be deleted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That with reference to amendment No. 1289 after clause (1) of article 60 the following clause be inserted.

> '(1a) Any power of Parliament to make laws for a State with respect to any matter specified in entries 25 to 37 of the Concurrent List shall include power to make laws as respects a State conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties upon the Government of India or officers and authorities of the Government of India as respects that matter, notwithstanding that it is one with respect to which the Legislature of the State also has power to make laws.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That the proviso to clause (1) of article 60 be deleted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That article 60 stand part of the Constitution."

The motion was adopted.

Article 60 was added to the Constitution.

Article 61

Mr. Vice President : The motion before the House is:

"That article 61 form part of the Constitution."

The first amendment, No. 1294, by Mr. Baig may be moved.

Mahboob Ali Baig Sahib Bahadur (Madras : Muslim) : Mr. Vice-President, I beg to move:

> "That for the existing Clause (1) of article 61, the following be substituted:
>
> > `1(a) There shall be a Council of Ministers to aid and advise the President in the exercise of his functions,
> >
> > (b) The Council shall consist of fifteen ministers elected by the elected members of both the Houses of Parliament from among themselves in accordance with the system of proportional representation by means of a single transferable vote, and one of the ministers shall be elected as Prime Minister, in like manner."

Sir, the purpose of moving this amendment is firstly, to secure in the executive *i.e.*, the Cabinet, proper representatives and secondly, to secure representatives from all sections of the people. The method by which ministers are appointed to the cabinet as envisaged in the Draft Constitution and as has been the practice in the past under the Government of India Act, 1935, and previous thereto also, is that the leader of the party which has been returned in majority is called upon by the Governor or the Governor-General, as the case may be, and he is asked to form a government; and he chooses his colleagues in the Cabinet. That is the practice in the past and that is what is envisaged in this Draft, and that is in accordance with the form of government in what is called Parliamentary democracy. My conception of democracy is not the conception of democracy as can be considered, or as can be gauged from the system of government called Parliamentary democracy. According to me, Parliamentary democracy is not democracy at all. Democracy, according to me, is not a rule by mere majority; but it is rule by deliberation, by methods of deliberation on any particular matter, by taking into consideration all sections, who make up the people in general. Now, let us see what actually happens, at the time of the formation of a cabinet. Take for instance, the case of a Parliament consisting of 200 members. If 105 members were returned by a particular party, one of the members who is elected as the leader out of the 105--and he may have been elected by a majority of only 60, he is called by the President and is asked to form the Government. That is, out of two hundred members, the man who gets 60 votes is called by the President to form the government and he becomes the Prime Minister and this Prime Minister chooses his own men without reference to the will and to the opinion of his own party, or of the members of the Parliament. He may choose his own men. He is really in great difficulty sometimes. If he chooses a certain member as his Minister, there are others who are up against him; but he has been given the choice. So the net result is............

Shri H. V. Kamath (C. P. and Berar : General): Sir, on a point of order. The second part of the amendment moved by Mr. Baig relates to the appointment of Ministers which forms the subject matter of article 62. So it cannot be moved as an amendment to article 61.

Mr. Vice-President : There is an amendment, I understand, which will cover your objection.

Mahboob Ali Baig Sahib Bahadur : Therefore, Sir, according to the Draft

Constitution, the person who is supported by 60 persons out of a membership of 200 persons belonging to the House..........

Mr. Vice-President : Mr. Kamath will please turn to amendment No. 1302 standing in the name of Mr. Baig, and he will get the requisite information to answer his objection.

Mahboob Ali Baig Sahib Bahadur : He is called upon to form the Cabinet. He might choose any person as his Minister, who, in the opinion of his own party, may not be suitable for a minister ship, not even taking into consideration the opinion of the entire House. Therefore, my submission is that this kind of appointment of the Executive to rule over the country is anything but democratic. In the first place, as I said, they are not chosen by the entire House consisting of 200 persons, and even the Leader who is called the Prime Minister and who forms the Cabinet is not elected by a majority of the House, and in the case of other members of the Cabinet, they are not chosen at all by the people.

It may, however, be said that the party has been returned in a majority and therefore the Leader has got the right to choose his men. But I submit, Sir, that it is by a legal fiction that these members of the Cabinet are chosen. It may so happen that if election takes place in the case of individual ministers, they may not be elected at all. Shall we then call these Ministers--the Ministers of the people? Can we say that they have been elected in a democratic way, and appointed in a democratic way? Surely not. It is only by a legal fiction that they are there. Therefore, my submission is that it is not the democratic way.

Still, it is said that Parliamentary democracy has been a success in England and other places and so on and so forth. My submission is that I do not agree with the statement that is Parliamentary democracy at all. Sir, I am rather amused, though I am very much concerned also when people say that Parliamentary democracy based upon party politics is the best method. I must say that this kind of democracy obtaining in what is called Parliamentary democracy is far from being democratic, and all the ills and all the evils of the internal revolutions and internal changes in governments in Europe, specially, are due to these political parties, one political party coming into power and the other political party trying to pull it down. That is what is happening there. Can we not have democracy without parties and without any political parties? My conception of the future politics is non-party politics..........

An Honourable Member : Communal parties.

Mahboob Ali Baig Sahib Bahadur : Certainly not, Sir. You are wrong. Do not be obsessed with that idea; the sooner you get rid of it the better.

Mr. Vice-President : Mr. Baig, please address the Chair.

Mahboob Ali Baig Sahib Bahadur : I am addressing you, Sir. It is the tendency amongst some of our Friends that whenever a man, belonging to a different religion than them, speaks he has to be heckled. That is unfortunate. But I am propounding the idea whether we cannot have non-party politics.

Shri Algu Rai Shastri (United Provinces : General) : It is a narrow-minded party politics view that you are propounding.

Mahboob Ali Baig Sahib Bahadur : If my friend wants an instance, I can quote him the instance of Switzerland. In that country you have not got what are called political parties being returned there. There, after members are elected to the Parliament, they elect their own Ministers to the Cabinet. That is what has been happening there and for the last several centuries you have not had any revolutions in that country. There has been no such thing like one party coming into power and suppressing or oppressing another party and all that sort of thing.

What was the conception of democracy in the past? In those days it was not political parties that formed governments. Non-party politics prevailed and the best men were chosen from all sections of the people. They were sent to Parliament and these Members of Parliament themselves choose their rulers and executives.

Now, Sir, the reason why persons belonging to one political party are nervous about the party in power is that each political party is trying to retain power and when it is in power it exercises that power to oppress and suppress all other parties. Such things should not be. The only political party we should have is the party that works for the welfare of the country. If our representatives that are sent to the legislatures and to Parliament sit together and deliberate about which is the best method of democracy and promulgate laws which are beneficial to the people, be it for nationalization or for any other purpose, where is the necessity, I ask, then for political parties?

Pandit Thakur Dass Bhargava (East Punjab : General): How will you ensure collective responsibility?

Shri Algu Rai Shastri : How will you ensure collective responsibility? That is the question.

Mahboob Ali Baig Sahib Bahadur : When there are no political parties, the Cabinet that will be chosen will be non-political and the only aim before their mind will be the welfare of the country and they will co-operate with one another for that purpose. That is my conception. Therefore, as I submitted, the present method by which the Prime Minister and the members of the Cabinet are chosen is something which cannot be called democratic, because all the members do not have a hand in choosing the Premier. Their own party men have the right to choose and even in the party, if the leader gets one vote more than his opponent, he becomes the leader and it is he who chooses the other members of the Cabinet. Therefore, the appointment of these Ministers to the Cabinet is something which is undemocratic and cannot be called democratic at all. That is the first point I would like to urge.

In the second place I am visualizing to myself how to get rid of all the nervousness and troubles that countries have in this world on account of such political parties, such as, the Communist Party, the Socialist Party and the Democratic Socialist Party, all of which come into existence, each with its own programme, and when in power, in order to retain that power, suppress and oppress others. There is no necessity for all this. Every party or group will proclaim that its programme is the best for the country. But when the aim is the good and welfare of the country, is there any necessity for any division amongst the persons calling themselves as members of the Socialist Party, the

Democratic Socialist Party, the Communist Party, and so on? So, from that point of view, I am visualizing a state of things in which the members who are sent by the people should choose their own men and elect them to the legislatures. That is the democratic method.

Therefore I move that due consideration may be paid to my point of view and I hope that Members will not be so uncharitable as to stigmatise this because I am a Mussalman and think I have something else in my mind. There is nothing ulterior in my mind at all. We are entitled to talk on general topics without being accused of ill motives.

Shri R. V. Dhulekar (United Provinces: General): May I know from you whether Switzerland is a country or a cosmopolitan hotel?

Mr. Vice-President: You need not answer that question. The next amendment is in the name of Prof. K. T. Shah--amendment No. 1295.

The Honourable Shri K. Santhanam (Madras : General) : There is a similar amendment in his name, amendment No.1300, and that may be moved also.

Mr. Vice-President : I wish to inform the honourable Member that there are certain amendments to this amendment.

So will the honourable Member move the amendments as I call them out Prof. Shah--amendment No. 1295.

Prof. K. T. Shah (Bihar : General): Sir, I move:

> "That in clause (1) of article 61, the words 'with the Prime Minister at the head' be deleted."

The article as amended would read:

> "There shall be a Council of Ministers to aid and advise the President in the exercise of his functions."

In suggesting that the designation of the Prime Minister should be kept out of the Constitution, I am not specifically opposed to the institution of the Prime Minister. The Prime Minister as an institution has been well-known to the Constitution of England ever since Sir Robert Walpole was in charge of that office. And yet to the British Constitution even today he is not known. All the social status, official prestige, and other precedence he has got is by way of Orders in Council, than by a specific provision in the Constitution.

Mr. Tajamul Husain (Bihar: Muslim): May I know from Prof. Shah that, though he says that the Constitution of England does not know whether the Prime Minister exists, is it not a fact that the whole world knows that there is a Prime Minister of England?

Prof. K. T. Shah : I have not said that the Prime Minister as an institution should be abolished. But I am only suggesting that he should be kept out of the Constitution. That does not mean that he should not be known as Prime Minister, or he should not exist in fact. Nothing of the kind. It only means that, as far as the Constitution goes, the Ministers should be described as Ministers by themselves; and any separate importance or status or description should be kept out of the Constitution to permit a degree of flexibility, which may otherwise be lacking.

A Minister of Finance we do not describe here as a Minister of Finance likewise in the case of a Minister of Defence, though there may be Minister of Defence, we do not provide for one specifically in the Constitution. Similarly, there will be the Prime Minister, without the Constitution providing for that office in so many words or describing him as such, and making him at integral part of the Constitution. In fact, of course, we should always have a Prime Minister.

As I started by saying, Sir, the institution of the Prime Minister is a very useful one, and may serve as a machinery for holding together a party: a means to expedite business, regulate and distribute work and, in many other ways, be a useful help in working the Constitution.

But on the theoretical side of the Constitution, I submit it is not absolutely necessary--and I rather think it is not even desirable--that we should insist upon the retention of the Prime Minister *qua* Prime Minister, as the head of the Council of Ministers.

The second reason I have for suggesting this amendment is that I regard the Ministers to be not only equal amongst themselves, but because, if for any reason, the Prime Minister may be unwelcome or any of his colleagues becomes unwelcome, we should not be obliged to have a complete change of the entire Ministry. The power which this Constitution as a Constitution seeks to confer upon the Prime Minister makes it inevitable that a degree of power will concentrate in his hands, which may very likely militate against the working of a real, responsible and democratic Government.

It may be,--it has often happened,--that only a particular Minister is unwelcome on a particular occasion; or that a particular policy of Government is unwelcome. Now, if only a particular Minister is unwelcome, I personally think it is undesirable to sacrifice the whole Cabinet under the doctrine of collective responsibility, which comes on later in this article. We should rather provide for the possibility of dropping one or another Minister, without the necessity of changing the entire Cabinet. It may be that with the authority that the Prime Minister will possess, he will still be able to drop out one Minister, and yet carry on the Government as a collective Cabinet substituting the entire Ministry by another.

I consider, however, that the danger becomes greater when the Prime Minister himself may be the object of such want of confidence or unpopularity. At such a moment the Prime Minister should have the right, against perhaps the majority of his own colleagues, to dissolve Parliament, or rather the House of the People; and at least have a chance of one more delay to vindicate himself if he so desires.

I hold the view, Sir, that this would not only be in the interests of real, responsible and democratic Government functioning; but also in the interests of the Ministry concerned, or its policy. Accordingly, I have put forward this amendment, which, however, I repeat, does not by convention make it impossible for the Prime-Ministership continuing, nor exclude the powers and functions which we now associate with the Prime Minister being vested in one such Minister. I commend the amendment to the House.

Mr. Vice-President : Amendment No. 1296 standing in the name of Shri Ram Narayan Singh. The Member is absent.

(The amendment was not moved.)

Then, amendments Nos. 1297 and 1298 standing in the names of Mr. Mohd. Tahir and Saiyid Jafar Imam. They may be moved together.

Mr. Mohd. Tahir (Bihar : Muslim) : Mr. Vice-President, Sir, I beg to move:

"That at the end of clause (1) of article 61 the following be inserted:

> 'Except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.' "

If this amendment is accepted, then the article will read thus:

"There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion."

Now, my second amendment is as follows:--

"That the following new clause be inserted after clause (1) of article 61 and the existing clause (2) be renumbered as clause (3):

> '(2) If any question arises whether any matter is or is not a matter as respects which the President is by or under this Constitution required to act in his discretion, the decision of the President in his discretion, shall be final and the validity of any thing done by the President shall not be called in question on the ground that he ought or ought not to have acted in his discretion.'"

In moving these amendments, I want that the President of India, although he is a 'nominal President' in the words of my honourable Friend Mr. Kamath, still I want that the President should not be tied down all round. At least this House should be generous enough to give him the freedom of using his discretionary powers. In introducing this exception, I would submit that it is not a novel exception; if you will be pleased to look at article 143 of the Draft Constitution you will find that the same exception has been allowed in respect of the Governors and the Ministers of the State. When the Governors of the States have been given power to exercise certain powers in their discretion, I do not see any reason why this innocent power should not be granted to the President of India.

I need not make any long speech in this connection. I close my speech with the hope that my honourable Friend Dr. Ambedkar will consider this question seriously and decide in favour of my amendments. With these few words, Sir, I move.

Mr. Vice-President : Then there are amendments Nos. 1299 and 1300 by Prof. K. T. Shah.

Prof. K. T. Shah : May I move both of them together? There is a further amendment to one of them.

Mr. Vice-President : Yes.

Prof. K. T. Shah : Sir, I beg to move:

"That at the end of clause (2) of article 61, the words 'except by the High Court of Parliament when trying a President under section 50' be inserted."

As advised by you, I will also move my amendment No.1300 now.

I beg to move:

"That after clause (2) of article 61, the following new clauses be inserted:--

> '(2A) On every change in the Council of Ministers, and particularly on every change of the holder of Prime-Minister ship, the Prime Minister (alternatively, the President) shall present the new minister as the case may be to the People's House of Parliament, and shall ask for a vote of confidence from that body in the particular minister newly appointed. In the event of an adverse vote in the case of a particular minister, the minister concerned shall forthwith cease to hold office and a new minister appointed. If a vote of confidence in the Council of Ministers collectively is refused, the Council as a whole shall resign and a new Ministry formed in its place.
>
> (2B) Every minister shall, at the time of his appointment, be either an elected member of one or the other House of Parliament, or shall seek election and be elected member of one or the other House within not more than six months from the date of his appointment, provided that no one elected at the time of a General Election, and appointed minister within less than six months of the date of the General Election, shall be liable to seek election.
>
> (2C) No one who is not an elected member of either House of Parliament shall be appointed minister unless he gets elected to one or the other House of Parliament within six months of the date of his appointment.
>
> (2D) Not less than two-thirds of the members of the Council of Ministers shall at any time be members of the People's House of Parliament; and not more than one-third of the members of the Council of Ministers shall at any time be members of the Council of States. Members of the Council of Ministers may have such assistance in the shape of Deputy Ministers or Parliamentary Secretaries as Parliament may by law from time to time determine, provided that no one shall be appointed Deputy Minister or Parliamentary Secretary who at the time of his appointment was not an elected member of either House of Parliament, or who is not elected within six months of the date of his appointment to a seat in one or the other House of Parliament.
>
> (2E) No one shall be appointed Minister or Deputy Minister or Parliamentary Secretary, who has been convicted of treason, or of any offence against the sovereignty, security, or integrity of the State, or of any offence involving moral turpitude and of bribery and corruption and liable to a maximum punishment of two years' rigorous punishment."--

Mr. Vice-President : The honourable Member may move amendment No. 47 in List IV of the Fifth Week.

Prof. K. T. Shah : I beg to move:

"That in amendment No. 1300, just moved by me, at the end of clause (2E), the following be added:-

> 'Every Minister shall, before entering upon the functions of his office, declare all his right, interest or title in or to any property, business, industry, trade or profession, and shall divest himself of the same either by selling all or any such right, interest, or title in or to any property, business, industry, trade or profession in open market or to Government at the market price; and further, shall take an oath ever to consider exclusively the interests of the country and not seek to promote his own interest or aggrandisement of his family in any act he may do or appointment he may have to make.' "

Sir, with regard to amendment No. 1299, I would like it to be realised that, ordinarily, the advice that any Minister may have tendered to the President should be regarded as strictly confidential, and, therefore, not open to enquiry in any ordinary manner. But if and when it should happen that either the President or any Minister is on trial, particularly the President, and Parliament has ordered an enquiry either by itself in the process of impeachment, or caused any such enquiry to be made, it is necessary in the interests of justice, where particularly the very advice tendered is in question, whether or not the Constitution has been followed or violated, then it is but right and proper that the High Court or Parliament should been titled to enquire into the question as to what advice was tendered.

The question would turn, in such an event, upon a question both of fact and of opinion; and the fact in that case would be the advice given to the President, who can, under the scheme of this Constitution, always plead that he acted in accordance with the advice of his Minister. If the advice is not to be enquired into by anybody, then I think it would go hard with the President, when and if he should be impeached, that he is not able to produce his best defence in the shape of the advice which his Minister gave him. On that ground, I think the amendment I have suggested would meet such a contingency, and as such ought to be accepted.

As regards the next amendment, I would like to point out that it deals with three or four important matters, which I do not find equally clearly provided in this Constitution and in this place. The Ministers being collectively responsible to the legislature, it is obvious that they must be members of that body. Later on in this Constitution, there are clauses dealing with the legislatures in which some provisions of that kind occur. To those clauses I have the honour of giving notice of some amendments. But here, I think, is the proper place where we should insert a definite provision, that the Ministers who are responsible to Parliament should have a seat at the time of the formation of the Ministry in the Parliament, in either House of Parliament; or that, if they have no such seat, then within six months of their appointment as Ministers, they should find seats. This is a very simple proposition, conformable to the practice prevailing in widely popular Constitutions, like that of England; and as such ought to find no opposition.

Sir, the other matter that I have suggested is not an absolute one. I have only suggested that not less than two-thirds of the members of the Council of Ministers should at any time be members of the House of the People. The House of the People should obviously have a greater importance, since a vote of confidence in that body alone would sustain the Ministry. That being so, the presence of a considerable majority of Ministers in that House is I think of the utmost importance. The other House, being an equal partner or concurrent in most of the functions of Parliament, it follows that that body should also have a certain number of Ministers present therein, who would be able to explain the Government point of view or the Ministry's point of view to that body. Therefore I have suggested that not less than two-thirds should be present in the Lower House, and not more than one-third in the Upper House or the Council of States. This also corresponds roughly with the membership, under this Constitution, of the House of the People and of the Council of States respectively. I, therefore, think that that particular amendment also should not in any way be objected to.

The point further that Ministers, whatever they call themselves, should be entitled to assistance by way of Parliamentary Secretaries and Deputy Ministers is a matter of convenience in Parliamentary procedure. It is necessary that, by the mere absence or inability to attend for any Minister owing to overcrowded time with public business for the Chief or any other Ministers, it may not happen that the House has in it no one to explain the Ministry's point of view in regard to any matter that is coming before the House. The Constitution should accordingly provide for or facilitate the appointment of such Parliamentary assistance as is contemplated in this clause of my amendment in the shape of Deputy Ministers or Parliamentary Secretaries as they may be called.

Obviously these Ministers would not be Ministers of the same rank as the Chief or Cabinet Ministers. They should be expressly and clearly declared by the Constitution to be only aides, or assistants, to the Cabinet Ministers in charge of the various departments of State. But their appointment must be specifically provided for in the Constitution, and not be left to the exigency of the moment for a particular Ministry.

The number and the exact functions of these assistant Ministers may be determined by Parliament from time to time, so that these appointments would not be a mere matter of executive decree which Parliament need not confirm, or may not be required to confirm.

The doctrine of collective responsibility that this article is based upon would require, in my opinion, that the vote of confidence of the House should be available for each new appointment, and also for the collective Ministry as well when first appointed; and if the vote is not forthcoming, the Minister or the Ministry, should resign and a new one appointed in his or its place.

Lastly, Sir, is the question of rectitude of the Ministers concerned in their official duties. On an earlier occasion; while dealing with the President. I had the honour of making the suggestion that the President should declare all his right, title and interest in any business, property, trade or industry, that he may have held or carried on before election; and that such right, title, etc., should be either sold or be disposed of; or should be made over to be held in trust by the Government during the period that he holds the office of President. I was told, Sir, at that time that the President being more or less a figurehead or ornamental chief executive of the State, as he would have no powers which may at all injure the interests of the State, it would be unnecessary to compel him to disclose his right, title and interest, to require the same to be disposed or to be made over to the Government to be held in trust for him during his term of office. At that time I was further told that if such a suggestion were made in regard to the executive authority proper, viz., the Ministry, then perhaps it may be considered.

I am not so foolish as to believe that this very guarded statement--I cannot call it an assurance,--would be strictly acted upon, particularly as I have the misfortune to put forward that idea. Taking, however, the Draftsman to be also the spokesman in this matter, may I venture to remind him of his very guarded and carefully worded assurance--I would hardly call it an assurance--or the observation that he had made, and ask him to consider this question favourably at least at this stage; and to see whether, if not in my words, at least in some other words, some such assurance may be given so that the Ministers, the real executive heads of the country, may be free from temptation, and may devote themselves exclusively to the interests of the country, without thinking of themselves or of their families. I hope this amendment will be accepted.

Mr. Vice-President : There is an amendment to this amendment. No. 46 in the name of Mr. Kamath.

Shri. H. V. Kamath : Mr. Vice-President, Sir, I move:

"That in amendment No. 1300 of the List of amendments, in the proposed new clause (2E), all the words occurring after the words 'moral turpitude' be deleted."

My Friend, Prof. Shah, has just moved amendment No.1300 comprising five sub-clauses. I dare say neither Dr. Ambedkar nor any of my other honourable Friends in this House will question the principle which is sought to be embodied in Clause (2E) of amendment No. 1300 moved by Prof. Shah. I have suggested my amendment No. 46 seeking to delete all the words occurring after the words "moral turpitude" because I think that bribery and corruption are offences which involve moral turpitude. I think that moral turpitude covers bribery, corruption and many other cognate offences as well. Sir, my friends here will, I am sure, agree with me that it will hardly redound to the credit of any government if that government includes in its fold any minister who has had a shady past or about whose character or integrity there is any widespread suspicion. I hope that no such event or occurrence will take place in our country, but some of the recent events have created a little doubt in my mind. I refer, Sir, to a little comment, a little article, which appeared in the Free Press Journal of Bombay dated the 8th September 1948 relating to the **** Ministry. The relevant portion of the article runs thus:

"The Cabinet (the * * * * Cabinet) includes one person who is a convicted black marketeer, and although it is said that his disabilities, resulting from his conviction in a Court of Law, which constituted a formidable hurdle in the way of his inclusion in the interim Government, were graciously removed by the Maharaja."

Mr. Vice-President : I did not hear you. Otherwise I would not have allowed you to quote any names.

Shri H. V. Kamath : I am only reading from a written article in a paper.

Mr. Vice-President : I am helpless now. I would not have allowed you to give the name of the State but I would have allowed you to read the extract.

Shri H. V. Kamath : "Although the disabilities were graciously removed by the Maharaja, how can the public forgive and forget his sin against society? How can a Government, having in their fold such elements, be called a popular Government? Inclusion of such elements, apart from being a mockery of democracy would blot out the prestige of Government, and would consequently fail at its very inception to create enthusiasm and confidence in the public mind. Will this anomaly be rectified before it is too late?'

I do not know if this was absolutely justified but then to give even a handle to newspapers writing in this fashion about any Ministry or any Government is certainly not creditable to the Government nor is it in the public interest. I do not know whether this anomaly was rectified later on. I hope that it will be a disqualification imposed on any prospective Minister of any State or in the Central Government of our country.

It may be argued that this particular amendment has no place here and we might as well prescribe this disqualification in article 83 which relates to the disqualifications of a member of the House of the People, because a Minister will be chosen from among the Members of the House of the People, but there is one difficulty in this matter, which I would request Dr. Ambedkar to clear in the course of his reply to this debate. Article 83 as it stands, includes no disqualification of this nature. There is an omnibus sub-clause in it which reads:

"(e) if he is so disqualified by or under any law made by Parliament."

Certainly I visualise the possibility, may, the certainty of Parliament prescribing various disqualifications, but certainly that Parliament will assemble after the elections under the New Constitution, after perhaps Ministries have been formed in the States and in the Centre, and therefore, if article 83 does not specifically lay down the disqualifications for the Members of the House of the People or the Ministers, we cannot be certain that certain persons who have been guilty or who have been suspected of certain offences will be excluded from the membership of a Cabinet in a State or at the Centre, because Parliament if it takes cognizance of this particular aspect of the matter, after Governments have been formed in the State and at the Centre, will certainly meet and pass a law, but that will be subsequent to the formation of the Government in the States and in the Centre. Therefore, at the very inception or initiation of this Constitution, we must have provision in this regard imposing disqualifications with regard to the Members of State or the Central Cabinets.

I, therefore, Sir, move this amendment to the effect supporting Prof. K. T. Shah's amendment, [the last part of it, (2E) of 1300] and I move that the words occurring after the words "moral turpitude" be deleted, because their import is comprised in the words "moral turpitude".

Mr. Vice-President : Before I call upon the next Member who has an amendment in his name, I would like to have the permission of the House to this effect that in our official proceedings when the extract from that paper occurs, the name of the State should be represented by stars. Is the necessary permission given? It would look more dignified. We have got to keep up the prestige of this House and that is one way of doing it.

Shri H. V. Kamath : I have no objection.

Mr. Tajamul Husain : No one has any objection.

Mr. Vice-President : Thank you.

(Amendment No. 1301 was not moved.)

Mr. Vice-President : The article is now open for general discussion.

(To Shri Mahavir Tyagi) There are a large number of Members who want to speak, and I therefore ask you to be as brief as possible.

Shri Mahavir Tyagi (United Provinces: General): Mr. Vice-President, Sir, I do not want to take more time of this House, but I would like to point out one thing. My honourable Friend, Mr. Mahboob Ali Baig has suggested that the Cabinet should be elected by the House on the basis of the single transferable vote system. It seems to be quite a good thing to use such high sounding words everywhere, but my friend forgets that it was to avoid the evil of two or three or, as my friend suggests, fifteen minds working separately in a Cabinet that we had to undertake such a tremendous sacrifice. The country had only recently the experience of a cabinet in which there were two parties working together. If the Cabinet were not so evilly composed by the British, we should not have partitioned India into two. We have given away the best and the most precious part of our land, and have separated willingly. We have obtained this unanimity in the Cabinet at a very great price indeed, and at a very great cost. Thousands of our friends and citizens of this country were killed and massacred on the other side, and thousands of equally good people, who were quite innocent, were killed on this side too. After all that has happened and after this bitter and bloody experience of ours, does my friend still insist on composing a cabinet in which there will be so many parties represented? An election, by the single transferable vote, means that any man who has 30 votes at his command will come into the Cabinet which deals with the highest priority secrets of the State; it decides upon budgets; it has so many treaties and other important functions to perform. Do you mean to suggest that as many parties as there are in the House should all come into the Cabinet, so that they may never decide an issue or keep a secret? Are we going to throw ourselves into such a chaotic condition as to have a Cabinet which will not be of one mind? Sir, I do not want to dilate on it. The House understands that no Cabinet can live even for a day if all the members of the Cabinet are not of one mind.

Then again, my honourable Friend, Prof. K. T. Shah proposes that whenever a Minister is appointed by the Premier, he should seek the vote of confidence of the House. Although obviously this is true, like the Premier all other Ministers must also have the confidence of the House, but then again, there is one point slightly finer and that is if every member of the Cabinet is required to seek votes for himself or is put to trial on the first day he is appointed. It will mean that only such persons will be Ministers as will have their own followings and personal parties in the House. Such a minister will have a tendency to keep his personal party always alive and active and aloof. In fact when a Minister comes and joins a Cabinet, he merges his whole self, and all his influence into the Cabinet. He has no voice of his own; he speaks the voice of the Premier and acts according to the decisions of the Cabinet. In the Cabinet he has no personal entity left because he becomes absolutely one with the whole Cabinet. If there are 15 ministers, every one of them becomes an indivisible part of the whole Cabinet. The Premier speaks for himself and his Cabinet, and the Ministers for the Cabinet and the Premier. So under these conditions if the amendment of Prof. K. T. Shah is accepted it will virtually mean that the Premier will be on trial whenever another Minister is appointed. It is always a vote of confidence in the Premier. The House can appoint only one Premier. And once a Premier is appointed, he then takes into his Cabinet colleagues of his own choice with whom he can share all the secrets and responsibilities of the State.

How can he allow every Minister to keep a separate circle of his own personal influence in the House? If the Ministers will have such sort of relationships with the members, the Cabinet will be open to all sorts of corruption, because no one can keep a number of members always ready to back him as his pocket Borough, unless he tries to appease them. It is always unhealthy and undemocratic that Ministers should be allowed to retain their own small influences in the House. In a democracy, it is the majority party which is given the power to rule, to administer. The majority party decides upon a Premier, because the wish of the whole country is that such and such a party will rule. The Cabinet therefore has to be loyal to the majority party which has the mandate of the people to run the Government on their behalf. The administration shall be run on the lines of the manifesto which has been approved by the general electorate. Therefore, I submit that the Cabinet must be of one mind, and it could be of one mind only when all the members come through the Premier and look up to him and not to the House for their sanction. They must be popular in the House; but they must be popular to bring strength to the Premier, to bring strength to the party and not popular individually. Every Minister pools his personal strength, influence and following together with his colleagues completely, and thus enjoys the loyalty of and draws his strength from a much bigger group of members in the House. I therefore submit that both these amendments will stultify the whole fabric of democratic Constitution. This type of group-cabinet has nowhere been tried so far. I therefore press that both the amendments must be opposed on principle and I oppose the amendments.

Mr. Vice-President : Mr. Raj Bahadur from Matsya Union. I would request you to be brief because there are a number of Members who want to speak.

Mr. Tajamul Husain : Five minutes to each, Sir.

Shri Raj Bahadur (United States of Matsya): Mr. Vice-President, Sir, I join my honourable Friend Shri Mahavir Tyagi, in opposing the amendment that has been moved by Mr. Mahboob Ali Baig. Mr. Mahboob Ali Baig has put forward an amendment which unfortunately shows a tendency on the part of some of the Members in this House to get back somehow the spirit of separatism and division by one method or another. It is unfortunate that despite the generous attitude that the Congress party as the majority party has shown towards all the minority parties in general and the Muslim minority in particular, such like things should come in. I see within and behind the lines of this amendment a devise to introduce the evil of communalism and separatism by the back-door method. *(Hear, hear)*

I submit that Mr. Mahboob Ali Baig has advanced three main arguments in favour of his amendment. Firstly, he says that Parliamentary democracy is an evil and it is no democracy at all. I am surprised to hear such a categorical statement made on the floor of this House. We know that Parliamentary democracy has been on the anvil of experience during the course of three hundred years in one country at least, and we also know that leaving certain notable exceptions almost all the countries of the world are today trying to achieve and progress towards the attainment of Parliamentary democracy. It is too late in the day therefore to curse Parliamentary democracy as an evil. He says that it would be unfortunate, if a majority of sixty per cent should be allowed to rule one hundred per cent of the population. I would submit that all acts in human society have got to be judged and decided on the principle of *"summum* *bonum"*, greatest good of the greatest number, and that judgment of decision could be made by the electorate as such on the basis of majority of votes only. To say that the type of democracy that obtains in Switzerland would suit our requirements is not to state the whole truth at all. Nor would it be a sound proposition. We know that in Switzerland three distinct nationalities, German, French and Italian combined together in a confederacy. It was done in order to suit the exigencies of their own situation. I would submit that the type of democracy in Switzerland would not suit our requirements at all. We have had some taste of it in the days when the Muslim League Party, through the "good offices" of Lord Wavell entered into a sort of coalition with the Congress Party. What ensued thereupon is recent history. We know how from top to bottom the virus of separatism and communalism permeated the rank and file of the services and the entire body politic. We know how difficult it became to make any progress. We know how we could not execute or implement any schemes of policies. The result of all this was that the country had to be partitioned. We are not going to repeat the same experiment again. I would submit in the end that it is only meet and proper that we should cast away our prejudices and bias, if any, against the unity or the unification of the country. With these words, I oppose the amendment that has been put forth by my honourable Friend Mr. Mahboob Ali Baig.

Mr. Tajamul Husain : Sir, I shall be very brief in my statement. I take up first amendment number 1294 moved by my honourable Friend Mr. Mahboob Ali Baig. Now, article 61 says: "There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions." Mr. Mahboob Ali Baig's amendment is that there shall be fifteen Ministers and secondly, that they should be elected in accordance with the system of proportional representation by means of the single transferable vote. He does not mention that the Prime Minister will be the head of this Cabinet. These are his three main objections to this article. I do not agree with the amendment of my honourable Friend Mr. Mahboob Ali Baig. (*Hear, hear*). The first point is that he wants the number of Ministers to be fixed in the Constitution. How can we fix the number? He wants fifteen Ministers. Suppose we require only ten, what are we to do with the other five? Suppose we require twenty, we cannot appoint them. Therefore, I say, Sir, that it is absurd to fix the number of Ministers in the Constitution. There is no Constitution in the whole world which fixes the number of Ministers. It is for the Parliament, it is for the Cabinet itself to find out how many Ministers are required for the work.

As regards proportional representation, Sir, what would be the result? Article 61 contemplates that after the general election, the party which is in a majority will elect its leader and that leader will be called upon by the President or the Governor-General, whoever he may be, to form the Ministry. He will be called the Chief Minister or the Prime Minister and he will submit the names to the President. If you have, Sir, election by means of the single transferable vote and proportional representation, a man may be elected who does not see eye to eye with the majority party. What will happen then? Every country wants a smooth working of the Constitution, (*Interruption*) in day to day working. I submit that it would be absurd. Then, you must have Coalition Government every time whether a particular party is in the majority or not.

In England you had a Coalition Ministry. Because at onetime when the Labour Party came to power they had not an absolute majority on account of the existence of other parties--the Liberals and Conservatives--and they formed Coalition Ministry for the purposes of the First Great War and the Second Great World War. But to have

Coalition Ministry everyday is absurd. Therefore I oppose this. The next amendment is of Prof. Shah who does not want that the Prime Minister should be the Head. Everywhere Prime Ministers are the Head. So I oppose this. The Article says--

"There shall be a Council of ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions."

My friend says the Prime Minster shall not be at the Head. I don't agree, Sir. In England the Prime Minister is the Head. This is the English system and it has been working satisfactorily for a number of years. My friend says that there is no mention of it in their Constitution but I submit that they never had a Constituent Assembly. The Constitution evolved itself. They did not have a Prime Minister in those days. It gradually grew and they found that the office of the Prime Minister at the head of the Cabinet was absolutely essential and they have got him now and it is working quite satisfactorily and it is right to have it under our Constitution also. Therefore I oppose that amendment also.

Now I come to No. 1297 by Mr. Tahir. Sir, the article says that the Council of Ministers will advise the President. The amendment says:

"Except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion."

Sir, I do not accept this.

Kazi Syed Karimuddin (C. P. and Berar : Muslim): Is he replying on behalf of Dr. Ambedkar?

Mr. Tajamul Husain : Sir, I am not replying on behalf of Dr. Ambedkar or anybody else. I am speaking what actually I feel should be done. I have supported many amendments moved by Dr. Ambedkar and I have opposed many amendments moved by him. My friend Mr. Karimuddin never opposed any amendment of Dr. Ambedkar, but I did. So it does not mean that I am supporting Dr. Ambedkar. I do not know which amendment Dr. Ambedkar is going to accept. If my friend Mr. Karimuddin knows before hand what is going to be accepted by Dr. Ambedkar, then he must be in the confidence of Dr. Ambedkar.

Mr. Vice-President : Order, order. Mr. Tajamul Husain, if I were there, I would not mind this kind of interruption. You go on with your speech and do not mind the observations of your friends.

Mr. Tajamul Husain : I will go on with my speech; but sometimes one has to reply to baseless allegations. I am sorry I am taking more time of the House that I ought to have. Now I come to No. 1297 by Mr. Tahir. He wants that when the President wants to exercise his individual discretion, then the Cabinet shall not give him advice. Sir, I oppose this one also. We do not want the President or the Governor to use his individual discretion at all. In those day when the British were here they wanted to safeguard their own interest under the Government of India Act, 1935.That was absolutely necessary under that Act to check the Congress Ministries in their opinion, but now every thing has changed. His Majesty the King of England does not exercise his individual discretion at all. He merely follows the advice tendered by the Cabinet. If he does not accept the advice, he must go and not the Cabinet. Ultimately he will have to go. Therefore we have been mostly following the British Constitution--I think that there should be no question of individual discretion at all. If advice is tendered by the Cabinet, the President must accept that. Now, amendment No. 1298.

Mr. Vice-President : That will be blocked if 1297 is rejected and so you need not touch upon it.

Mr. Tajamul Husain : I now come to Prof. Shah's amendment. His first amendment is that every time the Minister or the Prime Minister is appointed or elected as the case may be, he should seek a vote of confidence from the House. This is a novel procedure. I have not heard anywhere that such procedure is being adopted. A new man has come; you must give him a trial. If you find after a time that he is not working to your liking, remove him. But why, every time the Prime Minister is appointed, should he be brought before the House and ask for a vote of confidence? This should not be accepted. His amendment No. 2 is that every minister must be an elected member of either House and if he is not, he should seek election within six months. I accept this amendment. *(Interruption).*

Yesterday I used the words "I support my own amendment". There was a fling at me. Now I used the word 'I accept this amendment'. Because we all are one.

Even now in the Provincial Legislatures a nominated member of the Upper House may be appointed as Minister. We do not want that. We want him to be elected. This is reasonable.

The third amendment is that not less than two-thirds of the members of the Council of Ministers shall at any time be members of the House of the People and not more than one-third of the Council of Ministers shall at any time be members of the Council of States. I am not prepared to agree to this. I do not accept it and I do not support it; I oppose it. Supposing the majority party in the House of the People--we shall call it the Conservative Party, the Congress must go and the Congress will go and there will be Lab our, Conservative and some other parties on economic basis--supposing there is a Conservative party in Lower House which is in majority and is asked to form the Ministry and the Leader of the Party is asked to form a Ministry by the President. This amendment says he must get one-third at least from the Council of States. Supposing in the Upper Chamber you have not got one-third of that party, what will happen. That will mean having people who are not of the same view. That is also objectionable.

There should be no limit to the number. Let there be Ministers from the Lower House or from the Upper House, it does not matter. But they must all be of one party.

The next point is that Parliament may appoint Deputy Ministers and Parliamentary secretaries. That, I suppose, will be done and there is no objection to that, and I support that amendment.

Lastly, there is the statement that no one should be appointed if he is found guilty by a competent court of moral turpitude or any other offences, etc., etc., and I think that this provision is good and so I support him there.

Sir, with these words, I resume my seat.

The Honourable Shri K. Santhanam : Mr. Vice-President, Sir, the House should be a little careful in interpreting articles 61, 62, 63 and 64. They should not be interpreted literally, because they embody conventions of the cabinet system of government evolved in Great Britain as a result of a long struggle between the King and Parliament. At every stage of this struggle the King yielded some power, but was anxious to preserve his prestige. Therefore, at the end of the struggle, the King gave up all his power, but preserved all his forms. Therefore, it is said here that there shall be a Council of Ministers with the Prime Minister at the Head to aid and advise the President in the exercise of his functions. That does not mean that normally, the function of the Prime Minister is to aid or advise the President in the exercise of his functions. In fact, the position is altogether opposite, or the reverse. It is the Prime Minister's business with the support of the Council of Ministers, to rule the country and the President may be permitted now and then, to aid and advise the Council of Ministers. Therefore, we should look at the substance and not at the mere phraseology, which is the result of conventions. Of course, it may be asked why we should adopt these conventions, and why we should not put them into precise legal language. It might have been desirable to do so, but I do admit that it would not be easy, because the Prime Minister and the Council of Ministers are entities depending upon the confidence of the House which may vary from day to day, and at any moment it may cease to have confidence in them. Therefore, to embody the position of the Prime Minister and the Council of Ministers in the Constitution may bring about a degree of rigidity which maybe inconsistent with the elasticity of the cabinet system of government. The greatest advantage of the British type is its elasticity. So long as the Prime Minister and the Council of Ministers have got the confidence of the House, they are absolutely sovereign and they can do anything, but the day they lose that confidence, they become weaker and weaker and no one can say what their position will be at any particular moment. It is to embody this fluid position that we have had to adopt the words of the British convention. Therefore, there is no use interpreting them literally and then finding fault with them. Take for instance, clause (2) "The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court."

Now, my friend Prof. K. T. Shah has an amendment to this effect that there should be an exception, and that these matters can be enquired into, when there is an impeachment, by the High Court of Parliament. First of all, to speak of the High Court of Parliament is to obscure the language of the Constitution, because Parliament is something different, it is not a court at all. Normally no advice is tendered by the ministers to the President at all. They simply pass orders. They come to decisions and they execute the decisions. Therefore, there can be no question of impeachment of a President for any advice given by the Prime Minister or the Council of Ministers. Therefore there is no question of taking that advice into consideration in matters of impeachment.

Now, Sir, I wish to say one or two words regarding the amendments which have been moved. I do not think it is right to suggest that Mr. Baig's amendment is based on any communal or other calculations. It is one of the recognised systems of government. The Swiss system, for instance, believes in an elected executive. It is something between the American executive and the Parliamentary executive. Therefore, though there is no presidential system, there is a sort of stable executive. In certain circumstances, that system may be advantageous. But for a country like

India which is very big and which has very wide and diverse interests and the Parliament of which may consist of violently opposed elements, it cannot be a suitable system. It is on that ground and not on any *mala-fide* motives that it should be rejected.

Sir, Prof. K. T. Shah has been fighting such a lonely battle that I hardly like to criticise him. But he has taken upon himself too much of a task and that too quite unnecessarily. If he had concentrated on specific points, he might have carried greater weight. As it is, he has allowed himself to table such long amendments which I believe he has not been able to scrutinise himself. Take for instance amendment No. 1300 (2C). He says:

> "No one who is not an elected member of either House of Parliament shall be appointed minister unless he gets selected to one or the other House of Parliament within six months of the date of his appointment."

Now, when is the minister to be appointed? When does the period of six months begin? Before he is appointed, he must be elected, and before he is elected, six months may pass. So it is an obvious absurdity. Apparently, he has not had time to look into it. When he tables many amendments on matters which should be the result of careful consideration of committees, naturally he lets himself down. Whenever we are considering a complicated constitution of this type, individual members will have to content themselves with pointing out particular points and stressing particular amendments, instead of trying to re-draft the entire constitution. It is merely taking up the time of the House without adding to its knowledge and I humbly make the suggestion to Prof. K. T. Shah to concentrate on points where it will be practicable to improve the Constitution without trying to put forward an alternative constitution.

Thank you, Sir.

Mr. Vice-President : Dr. Ambedkar.

Shri Lakshminarayan Sahu (Orissa : General): Sir, this is a very important article on which I would like to ....

Mr. Vice-President : I know there are many Members who would like to speak on this article, but the time at the disposal of the House is extremely limited and I also feel that it has been sufficiently debated on.

Shri Lakshminarayan Sahu : But, Sir.......

Mr. Vice-President : Kindly do not try to over-rule the chair. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I am sorry I cannot accept any of the amendments which have been tabled, either by Mr. Baig or Mr. Tahir or Prof. K. T. Shah. In reply to the points that they have made in support of the amendments they have moved, I would like to state my position as briefly as I can.

Mr. Mahboob Ali Bag's amendment falls into two parts. The first part of his amendment seeks to fix the number of the Cabinet Ministers. According to him they should be fifteen. The second part of his proposition is that the Member of the Cabinet must not be appointed by the Prime Minister or the President on the advice of the Prime Minister but should be chosen by the House by proportional representation.

Now, Sir, the first part of his amendment is obviously impracticable. It is not possible at the very outset to set out a fixed number for the Cabinet. It may be that the Prime Minister may find it possible to carry on the administration of the country with a much less number than fifteen. There is no reason why the Constitution should burden him with fifteen Ministers when he does not want as many as are fixed by the Constitution. It may be that the business of the Government may grow so enormously big that fifteen may be too small a number. There may be the necessity of appointing more members than fifteen. There again it will be wrong on the part of the Constitution to limit the number of Ministers and to prevent him from appointing such number as the requirements of the case may call upon to do so.

With regard to the second amendment, namely, that the Ministers should not be appointed by the President on the advice of the Prime Minister, but should be chosen by proportional representation. I have not been able to understand exactly what is the underlying purpose he has in mind. So far I was able to follow his arguments, he said the method prescribed in the Draft Constitution was undemocratic. Well, I do not understand why it is undemocratic to permit a Prime Minister, who is chosen by the people, to appoint Ministers from a House which is also chosen on adult suffrage, or by people who are chosen on the basis of adult suffrage, I fail to understand why that system is undemocratic. But I suspect that the purpose underlying his amendment is to enable minorities to secure representation in the Cabinet. Now if that is so. I sympathise with the object he has in view, because I realise that a great deal of good administration, so to say, depends upon the fact as to in whose hands the administration vests. If it is controlled by a certain group, there is no doubt about it that the administration will function in the interests of the group represented by that particular body of people in control of administration. Therefore, there is nothing wrong in proposing that the method of choosing the Cabinet should be such that it should permit members of the minority communities to be included in the Cabinet. I do not think that that aim is either unworthy or there is something in it to be ashamed of. But I would like to draw the attention of my friend, Mr. Mahboob Ali Baig, that his purpose would be achieved by an addition which the Drafting Committee propose to make of a schedule which is called Schedule 3-A.It will be seen that we have in the Draft Constitution introduced one schedule called Schedule 4 which contains the Instrument of Instructions to the Governor as to how he has to exercise his discretionary powers in the matter of administration. We have analogous to that, decided to move an amendment in order to introduce another schedule which also contains a similar Instrument of Instructions to the President. One of the clauses in the proposed Instrument of Instructions will be this:

> "In making appointment to his Council of Ministers, the President shall use his best endeavours to select his Ministers in the following manner, that is to say, to appoint a person who has been found by him to be most likely to command a stable majority in Parliament as the Prime Minister, and then to appoint on the advice of the Prime Minister those persons, including so far as practicable, members of minority communities, who will best be in position collectively to command the confidence of Parliament."

I think this Instrument of Instructions will serve the purpose, if that is the purpose which Mr. Mahboob Ali Baigh as in his mind in moving his amendment. I do not think it is possible to make any statutory provision for the inclusion of members of particular communities in the Cabinet. That, I think, would not be possible, in view of the fact that our Constitution, as proposed, contains the principle of collective responsibility and there is no use foisting upon the Prime Minister a colleague simply because he happens to be the member of a particular minority community, but who does not agree with the fundamentals of the policy which the Prime Minister and his party have committed themselves to.

Coming to the amendment of my friend, Mr. Tahir, he wants to lay down that the President shall not be bound to accept the advice of the Ministers where he has discretionary functions to perform. It seems to me that Mr. Tahir has merely bodily copied Section 50 of the Government of India Act before it was adapted. Now, the provision contained in Section 50 of the Government of India Act as it originally stood was perfectly legitimate, because under that Act the Governor-General was by law and statute invested with certain discretionary functions, which are laid down in Sections 11, 12, 19 and several other parts of the Constitution. Here, so far as the Governor-General is concerned, he has no discretionary functions at all. Therefore, there is no case which can arise where the President would be called upon to discharge his functions without the advice of the Prime Minister or his cabinet. From that point of view the amendment is quite unnecessary. Mr. Tahir has failed to realise that all that the President will have under the new Constitution will be certain prerogatives but not functions and there is a vast deal of difference between prerogatives and functions as such.

Under a parliamentary system of Government, there are only two prerogatives which the King or the Head of the State may exercise. One is the appointment of the Prime Minister and the other is the dissolution of Parliament. With regard to the Prime Minister it is not possible to avoid vesting the discretion in the President. The only other way by which we could provide for the appointment of the Prime Minister without vesting the authority or the discretion in the President, is to require that it is the House which shall in the first instance choose its leader, and then on the choice being made by a motion or a resolution, the President should proceed to appoint the Prime Minister.

Mr. Mohd. Tahir : On a point of order, how will it explain the position of the Governors and the Ministers of the State where discretionary powers have been allowed to be used by the Governors?

The Honourable Dr. B. R. Ambedkar : The position of the Governor is exactly the same as the position of the President, and I think I need not over-elaborate that at the present moment because we will consider the whole position when we deal with the State Legislatures and the Governors. Therefore, in regard to the Prime Minister, the other thing is to allow the House to select the leader, but it seems that that is quite unnecessary. Supposing the Prime Minister made the choice of a wrong person either because he had not what is required, namely, a stable majority in the House, or because he was a *persona non-grata* with the House: the remedy lies with the House itself, because the moment the Prime Minister is appointed by the President, it would be possible for the House or any Member of the House, or a party which is opposed to the appointment of that particular individual, to table a motion of no-confidence in him and get rid of him altogether if that is the wish of the House. Therefore, one way is as good as the other and it is therefore felt desirable to leave this matter in the discretion of the President.

With regard to the dissolution of the House there again there is not any definite opinion so far as the British constitutional lawyers are concerned. There is a view held that the President, or the King, must accept the advice of the Prime Minister for a dissolution if he finds that the House has become recalcitrant or that the House does not represent the wishes of the people. There is also the other view that notwithstanding the advice of the Prime Minister and his Cabinet, the President, if he thinks that the House has ceased to represent the wishes of the people, can *suo moto* and of his own accord dissolve the House.

I think these are purely prerogatives and they do not come within the administration of the country and as such no such provision as Mr. Tahir has suggested in his amendment is necessary to govern the exercise of the prerogatives.

Now, Sir, I come to the amendments of Prof. K. T. Shah. It is rather difficult for me to go through his long amendments and to extract what is really the *summum bonum* of each of these longish paragraphs. I have gone through them and I find that Prof. K. T. Shah wants to propose four things. One is that he does not want the Prime Minister, at any rate by statue. Secondly, he wants that every Minister on his appointment as Minister should come forward and seek a vote of confidence of the Legislature. His third proposition is that a person who is appointed as a Minister, if he does not happen to be an elected Member of the House at the time of his appointment, must seek election and be a Member within six months. His fourth proposition is that no person who has been convicted of bribery and corruption and so on and so forth shall be appointed as a Minister.

Now, Sir, I shall take each of these propositions separately. First, with regard to the Prime Minister, I have not been able to understand why, for instance, Prof. K. T. Shah thinks that the Prime Minister ought to be eliminated. If I understood him correctly, he thought that he had no objection if by convention a Prime Minister was retained as part of the executive. Well, if that is so, if Prof. K. T. Shah has no objection for convention to create a Prime Minister, I should have thought there was hardly any objection to giving statutory recognition to the position of the Prime Minister.

In England, too, as most students of constitutional law will remember, the Prime Minister was an office which was recognised only by convention. It is only in the latter stages when the Act to regulate the salaries of the Minister of Cabinet was enacted. I believe in 1939 or so, that a statutory recognition was given to the position of the Prime Minister. Nonetheless, the Prime Minister existed.

I want to tell my friend Prof. K. T. Shah that his amendment would be absolutely fatal to the other principle which we want to enact, namely collective responsibility. All Members of the House are very keen that the Cabinet should work on the basis of collective responsibility and all agree that is a very sound principle. But I do not know how many Members of the House realise what exactly is the machinery by which collective responsibility is enforced. Obviously, there cannot be a statutory remedy. Supposing a Minister differed from other Members of the Cabinet and gave expression to his views which were opposed to the views of the Cabinet, it would be hardly possible for the law to come in and to prosecute him for having committed a breach of what might be called collective responsibility. Obviously, there cannot be a legal sanction for collective responsibility. The only sanction through which collective responsibility can be enforced is through the Prime Minister. In my judgment collective responsibility is enforced by the enforcement of two principles. One principle is that no person shall be nominated to the Cabinet except on the advice of the Prime Minister. Secondly, no person shall be retained as a Member of the Cabinet if the Prime Minister says that he shall be dismissed. It is only when Members of the Cabinet both in the matter of their appointment as well as in the matter of their dismissal are placed under the Prime Minister, that it would be possible to realise our ideal of collective responsibility. I do not see any other means or any other way of giving effect to that principle.

Supposing you have no Prime Minister; what would really happen? What would happen is this, that every Minister will be subject to the control or influence of the President. It would be perfectly possible for the President who is no *ad idem* with a particular Cabinet, to deal with each Minister separately singly, influence them and thereby cause disruption in the Cabinet. Such a thing is not impossible to imagine. Before collective responsibility was introduced in the British Parliament you remember how the English King used to disrupt the British Cabinet. He had what was called a Party of King's Friends both in the Cabinet as well as in Parliament. That sort of thing was put a stop to by collective responsibility. As I said, collective responsibility can be achieved only through the instrumentality of the Prime Minister. Therefore, the Prime Minister is really the keystone of the arch of the Cabinet and unless and until we create that office and endow that office with statutory authority to nominate and dismiss Ministers there can be no collective responsibility.

Now, Sir, with regard to the second proposition of my friend Prof. K. T. Shah that a Minister on appointment should seek a vote of confidence. I am sure that Prof. K. T. Shah will realise that there is no necessity for any such provision at all. It is true that in the early history of the British Cabinet every person who, notwithstanding the fact that he was a Member of Parliament, if he was appointed a Minister, was required to resign his seat in Parliament and to seek re-election because it was felt that a person if he is appointed a Minister will likely to be under the influence of the Crown and do things in a manner not justified by public interest. The British themselves have now given up that system; by a statute they abrogated that rule and no person or Member of Parliament who is appointed a Minister is now required to seek re-election. That provision, therefore, is quite unnecessary. As I explained a little while ago, if the Prime Minister does happen to appoint a Minister who is not worthy of the post, it would be perfectly possible for the Legislature to table a motion of no-confidence either in that particular Minister or in the whole Ministry and thereby get rid of the Prime Minister or of the Minister if the Prime Minister is not prepared to dismiss him on the call of the legislature. Therefore, my submission is that the second proposition of Prof. K. T. Shah is also unnecessary.

With regard to his third proposition, viz., that if a person who is appointed a member of the Cabinet is not a member of the Legislature, he must become a member of the legislature within six months, I may point out that this has been provided for in article 62 (5). This amendment is therefore unnecessary.

His last proposition is that no person who is convicted may be appointed a Minister of the State. Well, so far as his intention is concerned, it is no doubt very laudable and I do not think any Member of this House would like to differ from him on that proposition. But the whole question is this whether we should introduce all these qualifications and disqualifications in the Constitution itself. Is it not desirable, is it not sufficient that we should trust the Prime Minister, the Legislature and the public at large watching the actions of the Ministers and the actions of the legislature to see that no such infamous thing is done by either of them? I think this is a case which may eminently be left to the good-sense of the Prime Minister and to the good sense of the

Legislature with the general public holding a watching brief upon them. I therefore say that these amendments are unnecessary.

Shri H. V. Kamath : I am afraid Dr. Ambedkar has lost sight of amendment No. 47 in List IV of the Fifth Week.

Mr. Vice-President : He is not bound to reply to everything. The reply to that amendment has been given by Mr. Tajamul Husain.

The Honourable Dr. B. R. Ambedkar : That does not require any reply. All that has to be left to the Prime Minister.

Mr. Vice-President : I will now put the amendments, one by one, to vote.

The question is:

"That for the existing clause (1) of article 61, the following be substituted:

> '1(a) There shall be a Council of Ministers to aid and advise the President in the exercise of his functions,
>
> (b) The Council shall consist of fifteen ministers selected by the elected members of both the Houses of Parliament from among themselves in accordance with the system of proportional representation by means of the single transferable vote, and one of the ministers, shall be elected as Prime Minister in like manner.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (1) of article 61, the words 'with the Prime Minister at the head' be deleted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That at the end of clause (1) of article 61 the following be inserted:

> 'Except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion.' "

The amendment was negatived.

Mr. Vice-President : Amendment No. 1298 of Mr. Mohd. Tahir is blocked by the rejection of amendment No. 1297, I am not therefore putting it to vote.

I shall now put to the vote of the House amendment No.1299 of Prof. K. T. Shah. The question is:

"That at the end of clause (2) of article 61, the words' except by the High Court of Parliament when trying a

President under section 50' be inserted."

The amendment was negatived.

Mr. Vice-President : I will now put amendment No. 1300 of Prof. Shah as amended by amendment No. 47 of List IV of the Fifth Week to vote.

The question is:

"That after clause (2) of article 61, the following new clauses be inserted:

> '(2A) On every change in the Council of Ministers, and particularly on every change of the holder of Prime-Minister ship, the Prime Minister (alternatively, the President) shall present the new minister as the case may be to the People's House of Parliament, and shall ask for a vote of confidence from that body in the particular minister newly appointed. In the event of an adverse vote in the case of a particular minister, the minister concerned shall forthwith cease to hold office and a new minister, the minister concerned shall forthwith cease to hold office and a new minister appointed. If a vote of confidence in the Council of Ministers collectively is refused, the Council as a whole shall resign and a new Ministry formed in its place.
>
> (2B) Every minister shall, at the time of his appointment, be either an elected member of one or the other House of Parliament or shall seek election and be elected member of one or the other House within not more than six months from the date of his appointment, provided that no one elected at the time of a General Election, and appointed minister within less than six months of the date of the General Election, shall be liable to seek election.
>
> (2C) No one who is not an elected member of either House of Parliament shall be appointed minister unless he get elected to one or the other House of Parliament within six months of the date of his appointment.
>
> (2D) Not less than two-thirds of the members of the Council of Ministers shall at any time be members of the People's House of Parliament; and not more than one-third of the members of the Council of Ministers shall at any time be members of the Council of States. Members of the Council of Ministers may have such assistance in the shape of Deputy Ministers of Parliamentary Secretaries as Parliament may by law from time to time determine, provided that no one shall be appointed Deputy Minister or Parliamentary Secretary who at the time of his appointment was not an elected member of either House of Parliament, or who is not elected within six months of the date of this appointment to a seat in one or the other House of Parliament.
>
> (2E) No one shall be appointed Minister or Deputy Minister or Parliamentary Secretary, who has been convicted of treason, or of any offence against the sovereignty, security, or integrity of the State, or of any offence involving moral turpitude and of bribery and corruption and liable to a maximum punishment of two years' rigorous punishment.
>
> Every minister shall, before entering upon the functions of his office, declare all his right, interest or title in or to any property, business, industry, trade of profession, and shall divest himself of the same either by selling all or any such right, interest, or title in or to any property, business, industry, trade or profession in open market or to Government at the market price; and further, shall take an oath ever to consider exclusively the interests of the country and not seek to promote his own interest or aggrandizement of his family in any act he may do or appointment he may have to make.' "

The amendment was negatived.

Mr. Vice-President : Amendment No. 46 of List IV is blocked. Mr. Kamath will understand why I am not putting it to vote. It is blocked by the rejection of amendment No.1300 as amended.

Now I will put article 61 to the vote of the House.

The question is:

"That article 61 stand part of the Constitution."

The motion was adopted.

Article 61 was added to the Constitution.

Article 62

Mr. Vice-President : The House will take up for consideration article 62. The motion is:

"That article 62 form part of the Constitution."

Mr. Mahboob Ali Baig may move amendment No. 1302. No, I see that it is blocked by the decision in regard to the previous article.

Mahboob Ali Baig Sahib Bahadur : Yes, Sir. That is so.

Mr. Vice-President : Amendment No. 1303 standing in the name of Kazi Syed Karimuddin may now be moved.

I should tell the Mover that parts (1) and (2) are blocked. He may move part (3) only.

Shri T. T. Krishnamachari : May I point out that if parts (1) and (2) of this amendment are blocked as result of the rejection of a previous amendment, the rest of the amendment cannot be moved?

Mr. Vice-President : Part (3) of the amendment may be moved. It deals with the removal of a Member of the Cabinet.

Kazi Syed Karimuddin : Sir, in view of the ruling given by you that sub-clauses (1) and (2) of my amendment are barred, it has really become difficult for me to make a speech on parts (3) and (3A).

The Honourable Shri K. Santhanam : Is it not barred by the rejection of an earlier amendment? Unless the Ministers are elected, this will not follow at all. The thing is meaningless as it is.

Kazi Syed Karimuddin : It is not meaningless.

Mr. Vice-President : Kindly let Mr. Santhanam speak.

The Honourable Shri K. Sanathanam : Part (3) is consequential upon part (2). Only if (2) is accepted, part (3) can be considered. It will have no meaning otherwise. It is only if Ministers are to be elected this will arise. Here the Ministers are merely appointed by the President. Then the amendment will make them irremovable. His point is that if they are elected they should not be removed.

Kazi Syed Karimuddin : My amendment is regarding the removal of Ministers.

Shri T. T. Krishnamachari : May I point out, Sir, that if sub-clause (2) of article 62 remains and is not being omitted, part (3) of amendment No. 1303 cannot be moved. Sub-clause (2) of article 62 says: "Ministers shall hold office.........., etc." If that remains, part (3) of the honourable Member's amendment, cannot have any place in it.

Mr. Vice-President : Mr. Karimuddin wants a special provision for the removal of Members of the Cabinet. Is that not so?

Kazi Syed Karimuddin : Yes.

Mr. Vice-President : Mr. Krishnamachari's contention is that this is barred. Why?

Shri T. T. Krishnamachari : If the Honourable Member wants to achieve his object, sub-clause (2) has to be omitted first. If parts (1) and (2) of his amendment are not moved, the third part would not fit in at all.

Kazi Syed Karimuddin : Parts (1) and (2) have nothing to do with part (3) of my amendment.

Mr. Vice-President : This may be interpreted as a substitute for (2) and (3). At any rate I allow him to make his point.

Kazi Syed Karimuddin : Mr. Vice-President, Sir, I move amendment for the inclusion of sub-clause of (3) and (3A):

> "(3) A member of the Cabinet shall not be liable to be removed except on impeachment by the House on the ground of corruption or treason or contravention of laws of the country or deliberate adoption of policy detrimental to the interests of the State.
>
> (3A) The procedure for such impeachment will be the same as provided in article 50."

Sir, my submission is that at present the executive machinery of the government in the country is deteriorating very fast because the legislators and all those who belong to the majority parties in the assemblies exercise very great influence on the Ministers. If the Ministers do not listen to the legislators and their supporters, the result is that they are likely to be removed. Under these circumstances it is clear that even the Congress High Command have felt that a procedure should be evolved by which the Ministers should not be compelled to accede to the requests of the legislators and their supporters. In C. P. the Honourable Pandit Misra has issued clear instructions that government servants should not allow any interference by Congressmen and their supporters. This means that in this country the executive is being influenced by those who are supporters of the party. Until the Ministers feel secure in their seats, it is possible that there will be interference in the day to day administration of the country. Therefore my submission is that, in order to have a stable and a formidable government, which would not be influenced by the people in the street or by their supporters, it is very necessary that it should not be removable by the House. I have laid down in (3) "except on impeachment on the ground of corruption or treason or contravention of the laws of the country or deliberate adoption of policy detrimental to the interests of the State," they shall not be removed.

Shri Mahavir Tyagi : What about a no-confidence motion? Can it be moved or not?

Kazi Syed Karimuddin : No.

(Amendments Nos. 1304, 1305, 1306, 1307 and 1308 were not moved.)

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That in clause (1) of article 62, before the words 'and the other ministers' the words 'from the members of the party commanding a majority of votes in the People's House of Parliament' be inserted."

The amended clause would read:

"The Prime Minister shall be appointed by the President from among the Party commanding a majority of votes in the Peoples' House of Parliament, and the other Ministers etc."

Sir, this is just to clarify the idea that the Ministry is not only collectively responsible to the legislature, but also that it is homogeneously selected and that therefore it is guaranteed the confidence of the House. That is, I think, necessary to clarify in the Constitution itself in order to secure that the Ministry is not only stable, but is commanding the confidence of the House. Those who accept the principle of collective responsibility of the Ministry to the chosen representatives of the people, should not find any fault with this suggestion as it is only clarifying what is no doubt the intention of the whole clause, and in fact of the whole Constitution.

I realise that I making myself somewhat unpopular with those who do not like the number or nature of the amendments that I have put forward, or are unable to follow in the multiplicity of the clauses that I have suggested the essence of those clauses. I very much regret that I cannot help doing so, because I do not judge that my function is merely to get anything accepted by those who will not accept. None so blind as will not see, nor none so deaf as will not hear. My function, Sir, is not to get those amendments successfully through. My function is, I hold, to place my view on each point before the House; and it is for the House as a whole to accept or reject after hearing my arguments. Prophets are never honoured in their own time. I do not look upon the task that I have assigned to myself as merely to get my views successfully adopted. I am deeply grateful to my friend Mr. Santhanam, who was pleased to commiserate with me on that heavy burden I have placed on myself which he considers unnecessary. But, I repeat, Sir, I do not view my work here merely in the light of the successful acceptance of the proposals that I have been putting forward in the House. I have, under the procedure of this House to propose, not an alternative Constitution, but only amendments to each particular clause as it comes up.

Accordingly, without going out of the rules, it would be impossible for me to convey to the House the ideas that I have before me. It may be very well for those who once stood for the separation of powers between the executive, the legislature and the judiciary, to change places, to think different about it now that they may have changed their chair. I have no objection to that. But, for my part, I have never believed in the doctrine that consistency is not a virtue in politics. Consistency may not be a virtue among politicians. Unfortunately, not being able to accept that doctrine, I continue to present my ideas to the House regardless altogether of the fate with which the House might accept them. Every time I have attempted to put forward particular principles, the House is unwilling to see eye to eye with me; but I assure you that unless I am barred altogether by a specific motion of the House that all amendments tabled by me shall be rejected even before they are moved. I will present every one of my amendments, speak on them, and abide by whatever fate they may have in the House.

Mr. Vice-President: The House stands adjourned till 10 A.M. tomorrow.

The Constituent Assembly then adjourned till Ten of the Clock on Friday, the 31st December 1948.

[Translation of Hindustani Speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME VII

Friday, the 31st December 1948.

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

DRAFT CONSTITUTION-(*Contd.*)

Article 62-(*Contd.*)

Mr. Vice-President (Dr. H. C. Mookherjee) : We shall now resume discussion of article 62.

(Amendments Nos. 1310 and 1311 were not moved.)

Nos. 1312 and 1329 are of similar import. No 1329 may be moved. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : (Bombay: General) : Sir, I move:

"That after clause (5) of article 62, the following new clause be inserted:--

> '(5) (a) In the choice of his Ministers and the exercise of his other functions under this Constitution, the President shall be generally guided by the instructions set out in Schedule III-A, but the validity of anything done by the President shall not be called in question on the ground that it was done otherwise than in accordance with such instructions.' "

Mr. Vice-President : There is an amendment to this amendment, viz., No. 50 of List IV in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad (West Bengal : Muslim): Mr. Vice-President, Sir, I beg to move:

"That in amendment No. 1329 of the List of Amendments, in the proposed new clause 5(a) all the words commencing with 'but the validity' to the end be deleted."

Sir, the amendment which has just been moved by the honourable Member Dr. Ambedkar introduces a new clause (5)(a) to article 62. It provides that the President in choosing his Ministers as well as "in the exercise of other functions" under the Constitution, would be generally guided by the Instrument of Instructions. With regard to this part of the clause I have no quarrel. But the last few lines which I have sought to omit seem to be open to serious objection. At least they require clarification. The words which I want to delete are the following--"but the validity of anything done by the President shall not be called in question on the ground that it was done otherwise than in accordance with such instructions."

I submit, Sir, that these words imply a serious encroachment on the Constitution. The earlier part of the clause affects also "other functions" under the Constitution. These words are all-embracing. In fact, the "other functions" under the Constitution mean all sorts of functions. The choice of Ministers should be matter which should not be open to question at all. But the validity of any other functions, I submit, should not be immune from question. In fact, under the Constitution, the President would be a constitutional President. He would be acting on the advice of Ministers. So in the exercise of his other functions under the Constitution, he would be acting on the advice of his Ministers. The effect of the words which I seek to delete would be that it would give the President absolute and autocratic power in the exercise of his "other functions" under the Constitution. That is too much to concede. The real effect of the President being a constitutional President would be that the Ministry or a Minister may advise the President to do anything which is not constitutional, and the effect of the words which I seek to delete would be that a clearly unconstitutional act, or which may amount even to a deliberate, open violation of the Constitution would not be open to question. The new clause says that such an act of the President "shall not be called in question". The prohibition is absolute. It cannot be called into question in any place, in any manner. It would not be open to question in a Court of law, in the legislature or anywhere else. I do not know whether any criticism in a newspaper questioning the legality or even the propriety of an act of the President would be prohibited under this clause. But the plain meaning of these words would be at any rate to shut out any discussion of it in the Legislature or in a Court of law where an unconstitutional act should be effectively challenged. I submit, Sir, that these words are too wide to be accepted. I do not suggest or believe that they were introduced to cover and protect a deliberately perpetrated unconstitutional act. I do not believe it. But the effect of these words would nevertheless be this. They would cover or protect from question in any way any act done by a Minister or by a Ministry through the President and a Minister will thereby secure a kind of protection which he should not enjoy. A Minister will be enabled to use the President as an effective shield to support an unconstitutional act. The sanctity of the Constitution would thus be seriously impaired, its authority seriously undermined, if a perfectly unconstitutional act is shut out from any kind of discussion or question, under the latter part of this clause. I submit, Sir, this is a very serious encroachment on the rights of the citizens so eloquently guaranteed with so much flourish in the Constitution. These rights would be absolutely nullified if a President can be coaxed, persuaded, on the advice of a Minister to act in an unconstitutional manner. I submit that this is an effect which is undesirable and, perhaps, not intended. I, therefore, seek the elimination of even any possibility of any question as to the unconstitutionality of an act of the President being in any way shut out. At any rate I seek clarification. I think that the rights of the citizens should be protected from this sort of encroachment under the last few lines.

Mr. Vice-President : Amendment No. 1312. Mr. Mohd. Tahir and Saiyid Jafar Imam, do you want this amendment to be put to vote?

Saiyid Jafar Imam (Bihar : Muslim): Yes.

(Amendment No. 1313 was not moved.)

Mr. Vice-President : Amendments Nos. 1314, 1315, 1316,1317, 1319 and 1320 are all of similar import. No. 1315 seems to be the most comprehensive and may be moved. It stands in the name of Shri Damodar Swarup Seth.

(Amendment No. 1315 was not moved.)

Amendment No. 1314, standing in the name of Shri Kesava Rao may be moved.

(Amendment No. 1315 was not moved.)

Amendment No. 1316, standing in the names of Mr. Mohamed Ismail and Mr. Pocker Sahib, may be moved.

B. Pocker Sahib Bahadur (Madras : Muslim): Sir, I beg to move:

"That for clause (2) of article 62, the following be substituted:--

`(2) The ministers shall hold office so long as they enjoy the confidence of the House of the People.' "

Sir, I may at the outset say that this amendment has no communal character, and there is no political motive behind it. I have to make this statement in view of my past experience. What this amendment asks for is only to put in writing in the Constitution what is admitted to be the convention. No doubt, the convention prevails, that the Ministers shall hold office only so long as they enjoy the confidence of the House of the People. So long as the Ministers enjoy the confidence of the House of the People, certainly they will not be dismissed by the President. But as a matter of practice, it is not a fact to say that the Ministers hold office during the pleasure of the President. It is really a fiction to say that the Ministers hold office during the pleasure of the President. It is not so, as a matter of fact. No doubt, the convention prevails in Great Britain and some other countries. But when we are providing for the country a written Constitution, I do not see any reason why we should hang on to the conventions that obtain in other parts of the world. Even when we have got an opportunity to put down everything clearly in the Constitution, should we be left to quote the precedents of the United Kingdom or the United States? There is absolutely no harm in putting on paper, in the Constitution, the actual state of affairs, namely, that the ministers shall hold office so long as they enjoy the confidence of the people. I am saying this in anticipation of the only possible objection to this amendment, viz., that it is a convention that obtains in the rest of the world and therefore it is not necessary to put it down in writing in the Constitution. As a matter of fact, I feel myself at a disadvantage on account of the procedure that is being followed; under this procedure one is not in a position to know what the real objection to an amendment is until the Honourable Dr. Ambedkar gets up and states his objection. He has the last word on the subject. There is no opportunity for the Mover or any of the other members of the House to deal with the objections or tell the House whether the objections are valid or not. I am not in the least questioning the procedure. I simply state what the procedure followed is. Therefore I am driven to the necessity of anticipating what possible objection there can be to an innocent amendment like this.

From what was mentioned by the Honourable Shri K. Santhanam in connection with the discussion of article 61, I gather that this will be the possible objection, namely that this is a convention that obtains elsewhere and therefore it will be difficult to put it down on paper and it is also unnecessary. To this anticipated objection I submit that we should not continue to be slavish here after too, when we have obtained our freedom. No doubt until now we have been slavishly following the convention or procedure adopted in Great Britain and in other parts of the British Commonwealth. But, having obtained freedom to do what we feel to be for the best for our country, why should we not put down our ideas in the Constitution itself? I see no reason why we should again be hanging on even here after to precedents and conventions obtaining else where and not put down what we desire to be the law in our Constitution? The conventions referred to in other countries are there because of the fact that they have unwritten Constitutions. At least so far as these aspects are concerned, why should we leave them in an unspecified manner to be fought out in the Supreme Court? There is no necessity for that when we have an opportunity to put these down in the Constitution now. Why cannot we state this clearly? Where is the harm or danger in doing so, I cannot understand.

Sir, as I said I have anticipated the possible objection to my amendment and I say that that is no objection at all. On the other hand, we must put down in writing clearly what the convention is.

Now, Sir. I also heartily support the amendment moved by my honourable Friend Mr. Naziruddin Ahmad for the deletion of the latter part of the amendment moved by the Honourable Dr. Ambedkar. Mr. Naziruddin's amendment is to omit the words "but the validity of anything done by the President shall not be called in question on the ground that it was done otherwise than in accordance with such instructions". Mr. Naziruddin Ahmad's amendment only seeks to delete what is attempted to be taken away from that which is given by the first part of the amendment of the Honourable Dr. Ambedkar. If the latter part of the amendment of Dr. Ambedkar is not there, it will mean something. Otherwise his amendment would only be a paper amendment and a pious wish without any substance in it and helpful to nobody. Therefore I heartily support the amendment of Mr. Naziruddin Ahmad.

Now, Sir, so far as my amendment is concerned, before resuming my seat, I would only mention this: that as I have already said, I am driven to the necessity of anticipating the possible objections to it and reply thereto. Another possible objection that I can think of to my amendment is, according to the experience I have gained in the discussion on other clauses, that the amendment, is communal. To that I say that this amendment is entirely non-communal and non-political and there is no other motive behind it. It affects only the constitutional aspect of the problem. Only it happens to be moved by a member who is a Muslim. I say this, Sir, because yesterday I was surprised to find that Dr. Ambedkar, in his reply to an amendment moved by Mr. K. T. M . Ahmed Shah pointed out to the House that it must be remembered that the amendments are moved and supported only by Muslims. I ask, Sir, whether an amendment or the reason behind it loses any force by the fact that the Mover is a Muslim or a Christian or a member of the Scheduled Castes or of other minority communities? I am very sorry to find that, while Dr. Ambedkar is doing very great service to the country in having undertaken this most difficult task at so much sacrifice of pushing through the Constitution, I never expected that he of all people would resort to such reasoning.

Mr. Vice-President : Please confine yourself to your amendment. You are going out of your way.

B. Pocker Sahib Bahadur : Sir, I do not want...

Mr. Vice-President : Kindly carry out my suggestion.

B. Pocker Sahib Bahadur : I am carrying out your suggestion. I want to say I am only appealing to the House that, in considering the validity or the propriety of this amendment, the fact that the Mover is a Muslim should not be taken into consideration. Sir, I am entitled to say that in view of what has happened with reference to the other amendments moved by some Muslim members.......

Mr. Vice-President : You need not dilate upon it.

B. Pocker Sahib Bahadur : That is right, Sir. I entirely agree. I only wanted to make that point clear; that is all. I only wished to mention that the discussion in this House should be kept at a higher level than what it would be if such kind of reasoning is adopted for opposing amendments of members of minority communities.

Mr. Mohamed Ismail Sahib (Madras : Muslim) : On a point of information, Sir, may I know whether, in view of the fact that the movers of amendments have not got the right to reply and particularly in view of the fact that certain serious statements have been made by some members and also personal reflections have been cast on members, they cannot reply to them when there is an opportunity of doing so; more particularly when they have a legitimate opportunity to reply to the reflections and unjustified and unwarranted statements that were made in the House. In all legislative proceedings, the mover of a serious amendment, a substantive amendment, has got the right to reply at the end, but you have ruled, Sir, to the contrary, to which we submit. However, have we not got the right to reply to the statements made, when there is an opportunity and that too an opportunity which does not take the Member out of his way?

Mr. Vice-President : I certainly shall not hinder any member from replying to unjustifiable reflections. On that I am perfectly clear in my mind. At the same time I must use my powers in order to persuade members when they make such reply to use language which may not provoke irritation. It is this that was responsible for the request I made to Pocker Sahib. I think you will agree that this is the best way of proceeding with our work without unnecessary friction.

Mr. Mohamed Ismail Sahib : I quite appreciate and agree to the advice you have given, Sir, that members should not use any provocative language. That advice of yours, I hope, is addressed to all sections of the House.

Mr. Vice-President : Has the Chair ever been guilty of saying anything which is meant for one section of the House only? I do not think that has ever been the case.

Mr. Mohamed Ismail Sahib : That is what I wanted you to emphasise, Sir. This interruption of mine has been occasioned by certain provocative statements that have been made. They were quite unwarranted. Therefore, I am grateful to you for saying that this advice of yours is meant not to one section but to all sections of the House. I beg your pardon for interrupting.

Mr. Vice-President : Pocker Sahib, please continue.

B. Pocker Sahib Bahadur : Sir, I would respectfully follow your advice. I do not want to make either any provocative statements or to dilate more upon the topic. I have already mentioned what I wanted to mention, viz., the fact that a particular member belongs to a particular community ought not to be a ground for stating that a particular argument has no value or should not hold water, as it proceeds from a member of a particular community. I say this particularly for the reason that it is the duty of each and every member of this House to keep the debate on a high level and we should never go down to a low level to which we will be driven if such statements are resorted to. I do not want to pursue this matter further. Sir, I move this amendment and leave it to the House to consider the same without any reference to the question that it is a Muslim who has moved it.

(Amendment No. 1317 was not moved.)

Mr. Vice-President : Amendment No. 1319. Prof. Shah, do you want it to be put to vote?

Prof. K. T. Shah (Bihar : General) : Yes, Sir.

Mr. Vice-President : There is an amendment to this amendment. I allow that to be moved. No. 48 of List IV.

Mr. Naziruddin Ahmad : I desire that this also should be put to the vote.

Mr. Vice-President : Amendment No. 1320 standing in the names of Mr. Tahir and Mr. Jafar Imam. Do you want it to be put to vote?

Mr. Mohd. Tahir (Bihar : Muslim): Yes, Sir.

Mr. Vice-President : There is an amendment to this. No.49 of List IV.

Mr. Naziruddin Ahmad : I desire that this also should be put to the vote.

(Amendments Nos. 1318 and 1321 were not moved.)

Mr. Vice-President : Amendment No. 1322 standing in the name of Mr. Mihir Lal Chattopadhyay.

Mr. Naziruddin Ahmad : On a point of order, Sir. This is a good amendment, but it is purely verbal.

Mr. Vice-President : It is a good amendment, though it is verbal. Therefore it is allowed.

Shri Mihir Lal Chattopadhyay (West Bengal : General) : Mr. Vice-President, Sir, I move:

"That in clause (3) of article 62, after the word 'Council', the words 'of Ministers' be inserted."

Obviously, this is a simple amendment but I consider it to be very necessary. The word 'Council' has been used in the body of the Draft Constitution in different places to express different meanings. It is desirable that in this clause nothing should be left vague and uncertain. It should be precise and definite. I hope Dr. Ambedkar and the House will have no difficulty in accepting this.

(Amendments Nos. 1323 and 1324 were not moved.)

Mr. Mohd. Tahir : Sir, I beg to move:

"That for clause (5) of article 62 the following be substituted:

> `(5) A minister shall at the time of his appointment as such, be a member of the Parliament.' "

Before I submit a few words regarding my amendment I would draw the attention of the House to the existing clause of the article. Clause (5) says:

"A minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a minister."

This shows that even if a person is not a member of the Parliament he can be appointed as a minister. In this connection I would submit that it is wholly against the spirit of democracy that a person who has not been chosen by the people of the country should be appointed as a minister. When the Parliament is constituted it is evident that it will be a House consisting of more than 300 members and they will all be members elected by the people of the country and there is no reason why an outsider who is not a member of the Parliament should be appointed as a minister. It cannot be imagined that out of a total of 300 or 400 members of the Parliament the President or the Leader of the party will not be able to find out a suitable person to be taken into the ministry and hence he will be forced to choose a minister who is not a member of the Parliament. I think that it goes against the spirit of democracy; rather it cuts at the very root of democracy not to choose a minister from out of the members of the Parliament chosen by the people of the country. Therefore I submit that this clause should be replaced by my amendment.

After this I want to say a few words regarding the amendment which has been proposed by my honourable Friend Dr. Ambedkar, viz., No. 1329. On this matter I have also given notice of an amendment, No. 1312, which reads:

"In choosing his Ministers the President shall be generally guided by the instruction set out in Schedule 4(A)."

Now my friend has brought up a similar amendment, though not exactly the same thing, and has selected the Schedule to be 3(A). I would point out that Schedule 3(A) is not the proper place nor should this schedule be numbered as Schedule 3(A), because in the existing schedules we find that Schedule 4 gives the instructions to the Governors and Schedule 3 is the form of declaration. Therefore I submit that if any proper place is to be given to this schedule it can only be either Schedule 4 or 4(A). It cannot be given a place as Schedule 3(A). Besides this, in the amendment proposed by my honourable Friend the last portion, viz., "but the validity of anything done by the President shall not be called in question on the ground that it was done otherwise than in accordance with such instructions", is in fact the negation of the instruction that has been given to the President. The spirit of this schedule is that in choosing the ministers the President should have regard to giving proper representation to the minorities in the Ministry. The instruction as has been laid down by my honourable Friend Dr. Ambedkar gives me to understand that the idea that proper representation should be given to the minorities in the Ministry cannot be met if this portion is maintained in the amendment. In fact, my honourable Friend has been very generous here to give discretionary power to the President, whereas in his speech yesterday he was clear to the House that no discretionary power should be given to the President and the House had adopted it. By this amendment, in other words, he has given some discretionary power to the President. My submission would be that the Instrument of Instructions to the President should be very simple and clear as has been laid down in my amendment and I hope my honourable Friend Dr. Ambedkar will consider it and be pleased to amend his amendment accordingly, so that the Instrument of Instructions may stand very simple and clear.

Prof. K. T. Shah : Sir, I beg to move:

"That in clause (5) of article 62, for the words 'for any period of six consecutive months, is' the words 'after his appointment, is for any period of six consecutive months' be substituted."

The amended clause would then read:

"A minister, who after his appointment is for any period of six consecutive months not a member of either House of Parliament shall at the expiration of that period cease to be a minister."

This I take it must have been the intention. If for any consecutive period of six months, whether on account of his going abroad or doing other work which prevents him from being a member of the House, he is to be disqualified or that he should cease to be a minister, I think it could not have been the intention. What the intention of this clause must have been is that if a Minister is, *after* his appointment as Minister, not a member for six consecutive months, whether as originally not elected, or has not been able to find subsequently election to the House, he should cease to be a member. This, Sir, is merely a consequence of the principle of collective responsibility of a Minister, which requires every Minister to be a member of one or the other House of Parliament. As such I do not think it is necessary to present any elaborate case in support of this amendment. I commend it to the House.

Mr. Vice-President : There is an amendment to this amendment No. 71 of list V standing in the name of Mr. Krishnamachari. Does he move it?

Shri T. T. Krishnamachari (Madras : General): Mr. Vice-President, Sir, I beg to move:

"That in amendment No. 1326 of the List of Amendments for the word 'after' (in the words proposed to be substituted), the words 'from the date of' be substituted."

If this amendment is accepted, it will read: "from the date of his appointment, is for any period of six consecutive months" and so on. This is a very minor amendment. It makes the meaning very precise and indicates from when the six months will operate. I trust the House will accept it.

Shri H. V. Kamath (C. P. and Berar: General): May I suggest to my Friend Mr. Krishnamachari that consistently with the import and meaning of his amendment the word "any" should be substituted by the word "a". The word "any" makes no sense in this context.

Shri T. T. Krishnamachari : Personally I have no objection, though I do not think it will make any material difference.

(Amendment No. 1327 was not moved.)

Prof. Shibban Lal Saksena (United Provinces: General): Sir, I beg to move:

> "That in clause (5) of article 62, for the words 'either House of Parliament' the words 'House of the People' be substituted."

This has been further amended by my amendment to this amendment No. 72 of list V. I beg to move:

> "That for amendment No. 1328 of the List of Amendments the following be substituted:
>
> > `That in clause (5) of article 62, for the words "is not a member" the words "is not an elected member" be substituted.' "

This is an amendment of a fundamental character. We have provided in the Constitution for nomination of twelve members to the Council of States. There will be twelve members who are nominated in that Council and in the Lower House Anglo-Indians will also be nominated. According to this clause (5) as it stands, members who have not been returned by the electorate shall be able to be permanent Ministers of the Government. This is altogether against all democratic methods. Formerly, I had desired that only members of the Lower House who were elected by the General Electorate should be eligible to be appointed as Ministers but after seeing the opinion of many Members I thought that my amendment should not be so extreme, but I do feel that unless everybody who is a Minister has got the confidence of the electorate, he should not be appointed as one. I therefore want that instead of "is not a member" it should be "is not an elected member". You may remember, formerly, when we were discussing the election of the President, we provided that only elected members should be entitled to vote. Now, if members nominated are not fit to vote at the Presidential election, if we do not credit them with that much responsibility, surely to be a Minister of the Government of India is a far more responsible office. The same will be the case about any Cabinet in any province. Therefore, if nominated members are not fit to vote for the President's election they are also not fit to be appointed Ministers of any Government. Every Minister who is a member of a Cabinet must seek open election and if he is returned, only then he should be appointed a Minister. Otherwise, what will happen is this. In many provinces we shall have Upper Chambers, and there too there will be nominated members and if these nominated members may become Ministers I am sure an occasion might arise when the whole Council of Ministers is composed of nominated members excepting perhaps the Prime Minister. That will be a very extraordinary situation indeed. It would be a complete negation of democracy. Therefore I want this question to be properly understood. Probably, this was the purpose of my honourable Friend Dr. Ambedkar and what he meant was that if a Minister does not become a member of either House within six months, he ceases to be a Minister. By this, he surely meant that he should be elected and I would very much welcome it from him if that is his purpose, and I expect he will accept my amendment. I hope in this way he will see that Government is absolved from the charge that in our Constitution there could be Cabinets where except the Prime

Minister all the Ministers are nominated. Especially in the State legislatures, as at present provided about two-thirds of the members in the Upper Chamber shall be nominated and if any Prime Minister thinks of nominating only those members, then the whole Cabinet will become a sort of nominated Cabinet and that surely is utterly against democratic principles. Similarly, in the Central Parliament also, the twelve members whom the President may nominate may be persons the majority of whom may be appointed to the Cabinet. It may be that such a thing may not arise, but it is quite possible and we should see that no Prime Minister is able to allow his power to be so misused. I therefore think that the addition of the word "elected member" would make the whole thing perfectly right. I hope Dr. Ambedkar will accept this amendment. Sir, I move.

(Amendments Nos. 1330 and 1331 were not moved.)

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

> "That after clause (6) of article 62, the following new clause be inserted:
>
> > '(7) Every Minister shall, before he enters upon the functions and responsibilities of his office, make a declaration and take steps in regard to any right, title, corresponding to those provided in this Constitution for the President and Vice-President, and shall take an oath--or make a solemn declaration--in the presence of the President and of his colleagues in the following form.' "

Sir, I see that the form is not printed here. I do not know whether it was some separate slip that I had given which is left out or forgotten or has been lost, but the oath actually suggested has not been printed. I hope, Sir, that would not be an objection.

Mr. Vice-President : That will not be an objection. At the same time, I have to make it clear that the form has not been received by the office.

Prof. K. T. Shah : I may have forgotten. I am not blaming the office. The form is one which I have read on the former occasion, Sir, I have not got that paper here, but I can say from memory.

Mr. Vice-President : You may proceed with your speech.

Prof. K. T. Shah : This, Sir, is an amendment which in principle I have been pressing for from a variety of angles, whether as regards the President or the Minister or the Prime Minister. It was to me a very painful and surprising phenomenon that yesterday, when one of the most satisfactory reasoned replies was given to one of my amendments by the Chairman of the Drafting Committee, this particular point was not answered; I do not know, whether it remained unanswered by oversight, or by deliberate omission. I had taken care to remind him that he had assured me, or at any rate, he had made a sort of promise when discussing a similar matter in regard to the President that when or if the matter occurred in connection with the Ministers, who had the real effective executive power under this Constitution, he might consider it. I say, Sir, it was extremely surprising that such a careful, painstaking champion of the Draft should have, notwithstanding a pointed reminder, chosen to remain altogether silent and the silence was still more intriguing, when one of the honourable Members actually asked whether there was any answer to that particular point. It seems either that the Honourable the Chairman of the Drafting Committee has no answer or does not wish to answer, or has made a promise which is so embarrassing that he does not wish now to be even reminded of it.

Whatever it may be, Sir, I beg to place before this House that even in the Press that particular item seems to have been completely overlooked, whether it was by oversight just as the form is not printed here,--my mistake of course,--or for any reason, one particular most essential item that in my opinion would guarantee a purity, an honesty, an honourableness in the working of our Government seems to be killed by a strange conspiracy of silence. I trust that this is a matter, at least when we are dealing with the Ministers, that the draftsman will take note. It is not a matter of changing a comma or a semi-colon; it is not a matter of substituting ministers for Council of Ministers; it is a matter, Sir, which goes to the very foundation of the actual working of the governmental machinery; and, as such, Sir, I hope that those who have it in their power to mould, form, and shape this Constitution, to put it into a proper wording, and to give it a sound working character, will appreciate the desire with which the principle is placed before them from one angle and another, with a view to make them realise that we do stand in need of some such provision in our Constitution.

I was advised, Sir, yesterday from a high authority, that if I had not taken upon myself this unnecessary task of putting forward amendments to every clause, and if I had concentrated myself on a few principles, I might have proved more useful. Sir, I do not measure the usefulness of my amendments by the number of them which are carried. I measure the usefulness of my amendments merely by the degree of thought and interest or opposition I provoke; and, as such, I feel perfectly satisfied, whether or not they are accepted, if the honourable Members, including Ministers of the Government of India, are given furiously to think in the matter; and have to reply specifically to points of that character. Here, however, Sir, is a case in which I seem to have, whether consciously or unconsciously, accepted and acted up to such an honourable and exalted advice; and appear to have concentrated myself on this principle. On this I have been labouring time and again, from one angle and another. And yet what is the fate? Failure, of course, to persuade the drafting and piloting block to see eye to eye with me. There is no possibility of an effective reply. There is no gainsaying the desirability of the points I am making. And yet not only do I get no reply; the very point I urged is suppressed or blacked out even in the press. And this conspiracy of silence, to say the least, is amazing. I trust on this occasion the silence will be broken; I trust on this occasion I will be given, what has been called "a crushing reply". And I trust this time, at any rate, the reply will be so crushing that I will cease to put forward, at least to this House, this kind of amendment.

Mr. Vice-President : There is an amendment to this amendment. It is No. 51 of List No. IV and stands in the name of Mr. H. V. Kamath.

Shri H. V. Kamath : Sir, I move:-

That for amendment No. 1332 just moved by my honourable Friend, Prof. K. T. Shah, the following be substituted:-

"That after clause (6) of article 62, the following new clause be inserted:

'(7) Every minister including the Prime Minister shall, before he enters upon

> his office, make a full disclosure to Parliament of any interest, right, share property or title he may have in any enterprise, business or trade, directly owned or controlled by the State, or which is in any way aided, protected or subsidised by the State; and Parliament may deal with the matter in such manner as it may, in the circumstances, deem necessary or appropriate.' "

My amendment, Sir, does not go as far my honourable Friend, Prof. K. T. Shah's goes. I only seek through this amendment that a minister before he enters upon his office shall disclose to Parliament whatever share, interest or title he may have in any business or enterprise that may be owned, controlled or subsidised by Government and I leave it to Parliament to deal with the matter as best as it can. It may call upon him to sell it to Government; Parliament may call upon him to make it over to be administered in trust for him or the Reserve Bank may hold it in safe trust. I leave it to Parliament as our sovereign legislature to decide the best course that may be adopted in the circumstances for dealing with this particular matter.

I would, by your leave, Sir, like to read from the Factory Act, to which I referred in a previous occasion, the Act which we passed during the last session of the legislative Assembly. There is a section, Section 8 in this Factory Act, of 1948, which provides for the appointment of Factory Inspectors and one clause of this section is to the effect:-

> "No person shall be appointed as Factory Inspector or having been so appointed shall continue to hold office, who is or becomes directly or indirectly interested in the factory or in any process or business carried on therein, or in any patent or machinery connected therewith."

Sir, there is another section, Section 10, providing for the appointment of Factory Doctors, Certifying Surgeons. That also provides that:

> "Certifying Surgeon. No person shall be appointed to be or authorised to exercise the powers of a Certifying Surgeon, or having been so appointed or authorised, continue to exercise such powers, who is or becomes an occupier of a factory or is or becomes directly or indirectly interested therein or in any process or business carried on therein or in any patent or machinery connected therewith or is otherwise in the employ of the factory."

Now, it is obvious, it is plain as a pike staff, that the relationship of a Minister of State is far more intimate, is fraught with far greater possibilities for good or for evil than the relationship of a Factory Inspector or Certifying Surgeon to his particular factory or any connected business. What is sauce for the goose must be sauce for the gander as well. If this principle is applied on a larger scale, I do not see why this principle laid down for the Factory Inspector and Certifying Surgeon in the Factories Act should not be applied to Ministers of State.

You will permit, me, Sir, to remind the House of what Dr. Ambedkar told us a couple of days ago when replying to the debate on Article 47. I hope I have his leave as well to remind the House and remind him too about the words he used when replying to that debate. Referring to an amendment regarding a similar provision for the President to declare to Parliament and to divest himself of all right, interest, share or title in any business or enterprise owned or controlled, subsidised or aided by the State, Dr. Ambedkar said, "If at all such a provision is necessary, it should be with regard to the Prime Minister and the other Ministers of State, because, it is they who are in complete control of the administration of the State, If any person under the Government of India has any opportunity of aggrandising himself, it is either the Prime Minister or the Ministers of State and such a provision,--mark his words--such a provision ought to have been made--he did not say may be made, he said 'ought to have been' imposed--on their tenure and not on the President." I hope Dr. Ambedkar will reply to this particular amendment after great consideration and in detail and I hope he will not find a way out of the tangle that might have been caused by the words, by the language that he employed on a previous occasion. I hope he will stick to the views which he expressed only a couple of days ago, not a year or two ago; and I hope during these two days, he has not been prevailed upon, or he has not had the occasion or opportunity, or has not been persuaded to change his views in the matter. After reminding the House and Dr. Ambedkar about what he himself said a couple of days ago, I do not think there is anything more for me to say, but that Dr. Ambedkar will not hesitate to uphold his own view, not a very ancient view, but a very recent view and will see his way to accept this amendment.

(Amendment Nos. 1333, and 1334 and 1335 were not moved.)

Mr. Vice-President : The article is now open for general discussion.

It is suggested that the next two amendments Nos. 1336 and 1337 also deal with similar matters and may be taken up here. Prof. Shah, will you please move your amendment No.1336?

Mr. Naziruddin Ahmad : That is a new article.

Prof. K. T. Shah : It is a new article; it is not an amendment.

Mr. Vice-President : Just as you please.

Prof. K. T. Shah : I am in your hands. If you ask me to move it now, I shall do so.

Mr. Vice-President : I thought the general discussion may take place together. Today, as honourable Members are aware, we have to adjourn the House at 1 p.m. in order to afford facilities to our Muslim brethren to the Jumma prayers. If there is no objection, I would like Prof. K. T. Shah to move his amendment now.

Shri Amiyo Kumar Ghosh (Bihar: General): Sir, this is anew article. We may dispose of article 62 first, and then take up this new article.

Mr. Vice-President : Suppose we forget the niceties of law for one occasion.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That after article 62, the following new article be inserted:

> '62-A. No one shall be elected or appointed to any public office including that of the President, Governor, Minister of the Union or of any State of the Union, Judge of the Supreme Court or of any High Court in any State in the Union, who-
>
> (a) is not able to read or write this express in the English language; or
>
> (b) within ten years from the day when this Constitution comes into operation, is not able to read or write or express himself in the National language;

> (c) or who has been found guilty at any time before such election or appointment of any offence against the safety, security or integrity of the Union; or
>
> (d) of any offence involving moral turpitude and making him liable on conviction to a maximum punishment of two years imprisonment;
>
> (e) or who has not, prior to such election or appointment, served in some public body, or done some form of social work, or otherwise proved his fitness, capacity and suitability for such election or appointment as may be laid down by Parliament by law in that behalf.' "

Sir, these are some of the points which, in my opinion, should be positively fulfilled; or they should negatively act as disqualification for any person to hold such exalted offices as that of the President, Minister, Governor, Judge and so on.

The points that I am making may seem at first sight to be so obvious that it may appear somewhat improper to put them in the Constitution. I am free to admit, however, that, for instance, the first item in my amendment seems to be of that category, namely ability to read or write and express himself in the English language. At the present time, Sir, however, constituted as we are, and with the absence of a national language of our own, it is important that members should be able to exchange, in some sort of a common medium of intercourse, their ideas on crucial matters in the Constitution or in any piece of legislation, or other legislative work that may come before Parliament hereafter. Judging from that point of view, and without wanting to provide that English should for ever continue to be the medium of intercourse of this country, or over this Sub-Continent, I think it but right to require that, unless persons who choose to be or who are elected to be members of either House of Parliament, are able to express themselves in some common language that others of their fellows may understand, it would be improper, it would be against the interest of the country to do so.

Opinion, Sir, I quite realize, may differ on this subject, honestly differ, perhaps very hotly differ. But I submit, Sir, that very often we are all familiar with the phenomenon in this House of speeches delivered in one language which fall absolutely meaningless upon the ears or minds of other Members of this House. It is but fair not only to those Members who cannot follow the language, but it is also in fairness to the speakers themselves, that, I submit, some common medium of expression should be used, so that everybody should be in a position to follow and do justice to the remarks. I at least do not think that any Member of this House is intended merely to raise his hands. I do believe that every member intelligently and carefully follows all that is said: and, as such, it would be a loss to the House if anything said in this House is not, for mere lack of following the language or understanding the idiom in which some idea is expressed, it should be lost upon any section of the House. It is for this reason, Sir, that I make this provision in the Constitution, at least for ten years to come.

In the next clause I require a similar provision to be made for the national language. I am equally strong on the subject that once we have got over this initial hurdle, once we have been able to fix upon a national language, within the given period of ten years--and I think that period is sufficiently long for this purpose,--every member should be expected to know, or be able to read and write and express himself in the national language. Once again, the basic logic is the same in this case as in the former, viz., that people should be able to express themselves in some common medium of speech that is understood by all their fellow members. It must therefore be made a categorical requirement that, not only we must have a national Language which is, so to say, a statutory provision more often broken than observed, but it should be a living force, so that in this House or its successor, or in the Parliament, we should be able to exchange in our own language all the thoughts, in all the fineness and technicality that such legal documents require. I think, therefore, that no further argument is necessary to support the provision of such a positive qualification from those who aspire to hold high offices in the country that I have enumerated or described in my amendment in the first governing clause.

As regards the clause with reference to moral cleanliness of those who aspire to such offices that, again, is almost self-evident and I trust there can be and will be no opposition to accept such a provision as this. I fear that if we take things for granted, as it might be urged that in a case like this it must be taken for granted, we may land ourselves into difficulties, or embarrassments, to put it mildly, which it might be as well for us to avoid from the beginning.

Here, again, is may I say, Sir, another of those fundamental principles on which I seem to have concentrated myself as I was advised the other day on high authority, but to no avail, at least as regards some people who are otherwise convinced.

Finally, Sir, I insist upon the qualification that those who aspire to be members of such legislature, or to hold such high offices, must themselves have some positive qualification. I am not just now thinking of purely academical qualifications. I am thinking of those more mature, deeper, fuller indices or measures of qualifications, which might be provided by constructive work, or social service, or some other work that is much more tangible evidence of fitness and suitability of such people for the posts, than mere academical qualifications. Those latter are very often the work merely of a good memory rather than of a good character, or a good general outlook on the part of the person concerned, not a means or index of judging his real, objective fitness for such responsibilities. The criteria--or indices--I am suggesting will provide better, more reliable means of judging the suitability of particular individuals for the posts they aspire to, or which they may be asked to fill.

With these words, Sir, I commend this motion to the House.

Mr. Vice-President : There are two amendments to this amendment. One is No. 52 of List IV in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Mr. Vice-President, Sir, I beg to move:

"That in amendment No. 1336 of the List of Amendments, in the proposed new article 62-A the words 'Judge of the Supreme Court or of any State in the Union' be deleted."

Sir, the proposed new article 62-A is of a very comprehensive character. In fact through this amendment Prof. Shah, with his characteristic thoroughness, has sought to introduce certain conditions as to public servants and specially Ministers, Presidents and even Judges of the High Court and of the Supreme Court. The test he would lay down for them are (a) that they must be able to read and write and express themselves in the English language; then perhaps alternatively, (b) they must know the national language, and (c) and (d) that they must not have been found guilty of any offence and (e) they must be of proved fitness.

Sir, with regard to the idea behind this amendment, I have nothing to say, I also support the idea. But I do consider that the Judges of the High Court and of the Supreme court should be outside these tests-not that I desire that they should be illiterate or be incapable of expressing themselves in English or in the national language, or that they should have been connected of offences involving moral turpitude or that they need not have any provable fitness-far from it. But I do submit that in this very Draft Constitution itself we have provided certain standards by which the Judges of the High court and of the Supreme Court are to be appointed. In clause (2) of article 193 we have clearly provided that a person can be appointed a Judge of the High Court only if he has been a judicial officer or an Advocate of a certain standing, and under clause (3) of article 103, no person can be appointed a Judge of the Supreme Court unless he has been a Judge of the High Court or an Advocate for a period. I believe that Advocates are at least expected to be, for any length of time that we can now foresee, literate or be capable of expressing themselves in English. At present we have a galaxy of lawyers in the House-Dr. Ambedkar, Mr. K. M. Munshi, Mr. Ananthasayanam Ayyangar and a lot of others, Alladi Krishnaswamy Ayyar (A voice: And yourself) of course my humble self. There are a lot of Advocates in the country and I believe that they will, at least for a long time to come, be literate.

It could perhaps be safely assumed that, with the spread of compulsory primary education, lawyers would be literate, and if one is not literate, he cannot be a lawyer. To be a lawyer and also an Advocate, one has to pass certain tests in literacy and commonsense. So that if one is not literate he could not be an Advocate and so he could not be appointed a Judge of a High Court and he could not also be appointed Judge of the Supreme Court.

Then with regard to expressing themselves in the national language, I think if and when English is to be discarded, Advocates and Judges must necessarily possess the minimum literacy qualifications which are required of them and they ought to be able to express themselves in the national language. With in a foreseeable period of time, an Advocate, a Judge of the High Court or of the Supreme Court must necessarily be able to express themselves in the English language, so long as it is current, and thereafter, of course, in the national language.

I also believe that no person who is guilty of any offence involving moral turpitude can be appointed Judge of a High Court or of the Supreme Court. He would initially cease to be an Advocate and therefore cannot be appointed a Judge. A provision like this for Judges is therefore absolutely unnecessary, though we are indebted to the indefatigable labours of Mr. Kamath who disclosed here yesterday, that a Minister has been appointed in a certain area who had a previous conviction relating to black-marketing. Although Ministers of this type may be appointed, Judges cannot possibly be so appointed. I devoutly hope that we should rather cease to be a free country than contemplate even the possibility of Judges being appointed who have previous convictions for offences involving any moral turpitude or be illiterate.

Shri H. V. Kamath : Is my honourable Friend of the view that a person convicted of black-marketing may be appointed a Minister? I am astonished.

Mr. Naziruddin Ahmad : I did not express any personal view. I was careful to state that we were indebted to the labours of Mr. Kamath himself for the discovery. In fact, it was he who said yesterday that a Minister had been appointed at a certain place who had been convicted of an offence involving moral turpitude relating to black-marketing. So such an event is conceivable. Such considerations may be applicable to a Minister but not to a Judge. I therefore submit that these words relating to Judges should be deleted. In fact it would be highly insulting to the Judges of the High Court and of the Supreme Court themselves to be told that no one should be appointed a Judge who had no literacy qualifications or who had previous convictions. These words should therefore be deleted.

Mr. Vice-President : The next amendment to this amendment is No. 73 in List V. But it is disallowed because it has previously been covered.

Then amendment No. 1337, standing in the name of Mr. Bharati.

(Amendment No. 1337 was not moved.)

Now, the article is open for general discussion. Mr. Sidhwa.

Shri R. K. Sidhwa (C. P. & Berar : General): Mr. Vice-President, Sir, this article has created a lot of discussion by way of amendments, particularly as regards clauses (1),(2) and (5). The rest of them are formal. Clause (1) relates to the appointment of the Prime Minister by the President and the former appointing his colleagues as other ministers. Several amendments have been moved which state that the President should call the person who enjoys the confidence of the House and who could form a stable ministry. Sir, this is really a very good suggestion undoubtedly and from our past experience we know that the Governors of some provinces have intentionally called, for their own convenience and for their own purpose, a person who did not enjoy the confidence of the House, and who had hardly a following of a small minority, to form a cabinet. We have got the instances of Bengal, of Assam, of Orissa, of Sind and of the Punjab. And these Governors created hell and created mischief by appointing a person who did not at all enjoy the confidence of the House. And what was the other aspect of it? When a ministry was thus formed under the 1935 Act, no session could be called, until the next budget session came, once in a year. So the man enjoyed the benefits of his Ministry for full one year, and then when the budget came, he had consolidated his position by offering various kinds of bribes and jobs to members, and showed that he enjoyed the confidence of the House. Of course, I do realise under the new constitution, conditions have changed, and in the Instrument of Instructions it is stated that the Prime Minister should be such and such who enjoys the confidence of the House--that is in Schedule III A. I know that the Schedule also forms part of the Constitution. Therefore, I say this is a good suggestion. Keeping in mind all that has happened in the past, I support this motion, for this reason that our Governors and our Presidents will not be irresponsible persons. If a President were to call a person who really did not enjoy the confidence of the House that President would be subject to impeachment under these clauses and the Prime Minister also to dismissal.

Sir, I know that in the past, requisitions were sent to a Governor to call a session of the legislature for the purpose of a no-confidence in the ministry, but the Governor did not call such a session. But today the position is quite different. If such a mistake is committed, the President shall have to call for a session, otherwise he will be subject to many disqualifications that we have passed in the various articles. Therefore, fearing in my own mind the same apprehensions that are in the minds of honourable Members, still I do not want to take that view which existed in the past, and I support clause (1) as stated in the draft article.

The other important clause is No. (5) which states that a minister who, for any period of six consecutive months, is not a member of either House of Parliament shall at the expiration of that period cease to be a minister. Such a clause existed in the 1935 Act, and it has been borrowed from there. I wish that such a clause should not exist in our Constitution, for the simple reason that in our new legislature there will be about five hundred members, and if we cannot secure a minister with technical or expert knowledge that may be necessary it would be a slur on the legislature if it does not contain a single person with the requisite expert knowledge. Apart from that, Sir, our whole Constitution is based on the Parliamentary system of Great Britain and in Great Britain elections are run on the party system. There they take care to see that persons who are likely to be Ministers, with special knowledge and who are experts, are given party tickets, and they see to it that those candidates are returned. We also shall be running, under this Constitution, similar party elections, and care should be taken to see that persons with special knowledge are given tickets to contest the seats. Sir, I do not understand why, except probably in the case of the Ministry of Law and that of Finance, where knowledge of certain special subjects is required, the other Ministers should have any special expert qualifications, except commonsense, practical knowledge, ability, perseverance, strong will, tenacity of purpose and a pushing nature. These are the qualifications that a Minister should possess, rather than mere theoretical knowledge. These are the qualifications the Ministers should possess. A man with theoretical knowledge fails as we know, in practical politics. In my opinion a man with practical knowledge is far superior to one who possesses only theoretical knowledge. Sir, even assuming that we want a person with theoretical knowledge, I am sure that the party running the elections will take care to see that such a person is given a party ticket. Further I consider it a slur on the Legislature that we should have to go outside the ranks of members for filling the post of a particular Minister. Such things have happened in the past. But hereafter it will be unnecessary to have in the Cabinet, as we have in the Legislatures, a combination of Members some of whom do not necessarily advocate the policy of the party in power. I therefore feel that this matter should be really considered from that point of view. In the British Cabinet I have not seen anyone who is not a Member of Parliament is taken in the cabinet. Whatever may have happened in the past, today this is the case. It may be argued that a non-Member would be in the Cabinet only for six months. I object for even one day an outsider to be a member of the cabinet. Why should we have for six months a non-Member who should hold office when we can find among Members suitable person? I therefore do contend that this clause should be deleted.

Now coming to the last amendment of my friend Prof. Shah, I may say it is a laudable one. There could be no objection to it. But I do feel that he has given great prominence to the English language by saying that the office of Governor, President and Ministers should be given to those persons in the first instance who know English and who, within ten years, learn the national language. My reaction to such a clause is that the President, the Governors and the Ministers should be only those who know both English and the national language at the very outset. The term of office of these dignitaries is five years and we have passed a clause laying down that the Governor shall be elected once and only once more, that is to say for ten years in all. If the Professor's amendment is accepted, it will mean that by the time a President or Governor is expected to learn the national language he would have retired. Of course I do not think it is appropriate to insert it in the Constitution. Even on merits, such a provision would be defective in that it is the national language that should be given importance and not English. We cannot, I agree, summarily reject the English language. Therefore we may provide that if a person does not know the national language along with English he should not be deemed to be qualified to hold the office of President, Governor, etc.

As far as the other clauses are concerned, particularly those relating to honesty, integrity, maximum punishment for moral turpitude and so on are concerned, I know that in the 1935 Act such provisions exist. They may well find a place in the disqualification clause for those who contest elections. It is not enough to lay down these things for the big offices only. No man who has been convicted or punished for moral turpitude would be chosen as a candidate for election. From that point of view, while the other clauses of the amendments are commendable, I do feel, this has no place here. This may find a place in the general disqualification clause which we shall be providing in the case of the Governors, the President and even the Ministers.

With these words I support the article except clause (5) for which I have stated that the Chairman of the Drafting Committee will again reconsider in view of my suggestions. Unfortunately he was not present when I presented forceful arguments in support of my contention. Otherwise he would have certainly considered, this matter. I hope he will bear in mind my point and agree that such a clause in a Free India Constitution should not exist. With these words I commend the article for acceptance.

Shri Mahavir Tyagi (United Provinces : General): Sir, I rise to oppose this amendment. There is some misunderstanding in the minds of some of my friends here. They feel, as my friends Kazi Karimuddin, Mr. Pocker Sahib and others feel, that the Prime Minister and his Cabinet are the representatives of the House. Politically speaking, and speaking from the point of view of democracy, they are not liable to represent the House. No Prime Minister represents the House. The House is represented by the Chair here. It is only the Chair through whom the House can express itself. The Prime Minister represents the majority party in the House and therefore the Prime Minister cannot be elected by the whole House. Any person who is elected by the whole House has to represent the whole House. So, if the Prime Minister were to be elected by the whole House, then morally he would have to be responsible to the whole House. The Prime Minister is not responsible to the whole House. He is responsible only for the majority outside that has sent him here. Though he keeps in view the views of the opposite party also, he cannot be elected by the whole House. If he is to be elected by the whole House, then his position as party Leader will be gone altogether, because even those who have cast their votes in the ballot against him will claim him as their representative. Just as in the case of a constituency which elects a Member, the member thus elected is expected to represent even the views of those who voted against him, the Prime Minister also, if the whole House were to elect him, would have to represent even the party in opposition. Such an election is against the principles of a party-system democracy. He represents the general will of the masses outside, the vast bulk of the population who have voted his party as the party of their choice. Though he, of course, protects the minorities as a matter of duty yet he continues to represent the majority party only. The case of the President is quite different. He is elected by all the parties, which means by all the elected representatives of the people. He therefore acts as the guardian of all alike. As the head of the State, it is only through him that the general will of the people is expressed. The ministers should be made to invoke the general will. The President contains the biggest representation in him. Such a President shall therefore have the right of appointing the Ministers. We have already clarified the issue by providing in the Constitution, further on, as Instrument of Instructions to the President that when he appoints the Ministers he will see to it that they shall enjoy the confidence of the House. But the appointment should be made by the President because he is the only one person in whom the whole nation has invested its sovereignty and therefore the amendment of Mr. Pocker Sahib goes against the whole set up of democracy.

Then another amendment has been moved in which it is said that the Ministers will hold office so long as they enjoy the confidence of the House. In the Draft Constitution the position virtually comes to the same. The Ministers are appointed by the President and when that sole representative of the people appoints the Ministers, it is only he who will dispense with their services if circumstances so demand. The House is always at liberty to pass a vote of confidence or no-confidence. A vote of no-confidence in the Cabinet passed by the House is always a recommendation to the President to see that the Ministry should go and another appointed in its place. This point is further on enunciated in the Constitution. I therefore oppose this amendment also.

Then there is the amendment of Prof. Shah in which he says that Ministers should know the English language for ten years, and Hindi after the next ten years. I happen to be an anarchist by faith so far as literacy is concerned. I do not believe in the present-day education. I am opposed to the notion of literacy also, even though it has its own value. If I were a boy now, I would refuse to read and write. As it was, I practically refused to read and write and hence I am a semi-literate. The majority in India are illiterate persons. Why should they be denied their share in the administration of the country? I wonder, why should literacy be considered as the supreme achievement of men. Why should it be made as the sole criterion for entrusting the governance of a country to a person, and why Art, Industry mechanics, Physique or Beauty be not chosen as a better criterion, Ranjit Singh was not literate. Shivaji was not literate. Akbar was not much of a literate. But all of them were administering their states very well. I submit, Sir, that we should not attach too much importance to literacy. I ask Dr. Ambedkar, does he ever write? Probably he has got writers to write for him and readers to read to him. I do not see why Ministers need read and write. Whenever they want to write anything, they can use typists. Neither reading nor writing is necessary. What is necessary is initiative, honesty, personality, integrity, intelligence and sincerity. These are the qualifications that a man should have to become a Minister. It is not literacy which is important.

Shri H. V. Kamath : Does my redoubtable friend want to keep India as illiterate as she is today?

The Honourable Dr. Ambedkar : Have you any conscientious objection against literacy?

Shri Mahavir Tyagi : No, Sir.

Shri B. H. Khandekar (Kolhapur) : I wish to raise my small voice in support of the lone and indefatigable fighter, Prof. K. T. Shah. I am here to support particularly his amendment No. 1332. I want complete elimination of the possibility of corruption as far as the Ministers are concerned. I differ from him in the case of the President. I make a very great distinction between the President and the Ministers for the following reasons: The President has no executive power. Sir, the President is the one, only one, the best and the highest citizen of the country. He is the delight of crores of eyes and he is the balm of the people's heart. It is not proper to have any suspicion with regard to this real idol of the people. I am not being superstitious at all. But the Ministers are on a different footing and are very different persons. They have executive authority and they are too many comparatively. In this country, Sir, you know that some men are very great but they are very few. I remember having seen a cartoon the day before in one of the weeklies--I believe it is Shankar's--that now-a-days two persons are always found doing all the work--Pandit Jawaharlal Nehru and Sardar Patel. One or two may be added to this class but the rest are what I may call comparatively very ordinary persons.

Now, I wish honourable Members to revive their memory of their college days and to think of a very great book on political philosophy--the Republic of Plato. Plato in trying to give us an ideal state, makes it incumbent on the Governors to have absolutely no personal interest in any property. He goes even further and says that Governors should not have even families. We in this country talk a lot of idealism, of very high ideals, but when it comes to actual practice, it seems to me that we fall deplorably low. If it is impossible to carry out Plato's utopian ideas, at least we should go as far as possible to approach the ideal. I would not have been so suspicious but for the singular service rendered by my honourable Friend Mr. Kamath in giving a particular example, a deplorable case, a scandalous case from a certain State in this country where a person, although convicted for black marketing, became a Minister. That is really most scandalous. It is not only in the States but also in the provinces that there are so many rumours about widespread corruption. These might be rumours but you cannot have smoke without fire: as the Sanskrit saying goes:

"Yatra yatra dhoomah

Tatra tatra wahnih."

When we talk of Gandhiji and bring his name every time, let us try to be in a small measure worthy of that great man and if I were to bring in an amendment to Prof. Shah's amendment at this late hour I would go so far as to say that ministers should not only make a declaration of their interests and their property but they should also make a declaration of their relatives and friends. There is so much of favouritism, nepotism and partiality that we seem to be going down and down though we have achieved great things. I do wish to support to a certain extent the amendment moved by Prof. Shah with regard to the ministers or high officials having a knowledge of English during the transition period. It was very interesting to listen to the animated talk of Mr. Mahavir Tyagi. He was almost for the elimination of literacy and he reminded us of Shivaji and others. I merely wish to remind the House about the skit that a French King had when he heard about Abraham Lincoln's definition of democracy as being "the government of the people, by the people and for the people." The French King immediately blurted "Democracy is government of the cattle by the cattle and for the cattle." If we are going to have democracy by illiterate men, it will be a democracy as described by the French King.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, of the amendments that have been moved I am prepared to accept amendment No. 1322 and 1326 as amended by No. 71 on List V. As to the rest of the amendments I should just like to make a sort of running commentary.

These amendments raise three points. The first point relates to the term of a minister, the second relates to the qualifications of a minister and the third relates to condition for membership of a cabinet. I shall take the first point for consideration, viz., the term of a minister. On this point there are two amendments, one by Mr. Pocker and the other by Mr. Karimuddin. Mr. Pocker's amendment is that the minister shall continue in office so long as he continues to enjoy the confidence of the House, irrespective of other considerations. He may be a corrupt minister, he may be a bad minister, he may be quite incompetent, but if he happened to enjoy the confidence of the House then nobody shall be entitled to remove him from office. According to Mr. Karimuddin, the position that he has taken, if I have understood him correctly, is just the opposite. His position seems to be that the Minister shall be liable to removal only on impeachment for certains specified offences such as bribery, corruption, treason and so on, irrespective of the question whether he enjoys the confidence of the House or not. Even if a minister lost the confidence of the House, so long as there was no impeachment of that minister on the grounds that he has specified, it shall not be open either to the Prime Minister or the President to remove him from office. As the Honourable House will see both these amendments are in a certain sense inconsistent, if not contradictory. My submission is that the provision contained in sub-clause (2) of article 62 is a much better provision and covers both the points. Article 62, (2) states that the ministers shall hold office during the pleasure of the President. That means that a minister will be liable to removal on two grounds. One ground on which he would be liable to dismissal under the provisions contained in clause (2) of article 62 would be that he has lost the confidence of the House, and secondly, that his administration is not pure, because the word used here is "pleasure". It would be perfectly open under that particular clause of article 62 for the President to call for the removal of a particular minister on the ground that he is guilty of corruption or bribery or maladministration, although that particular minister probably is a person who enjoyed the confidence of the House. I think honourable Members will realise that the tenure of a minister must be subject not merely to one condition but to two conditions and the two conditions are purity of administration and confidence of the House. The article makes provision for both and therefore the amendments moved by my honourable Friends, Messrs. Pocker and Karimuddin are quite unnecessary.

With regard to the second point, namely the qualifications of ministers, we have three amendments. The first amendment is by Mr. Mohd. Tahir. His suggestion is that no person should be appointed a minister unless at the time of his appointment he is an elected member of the House. He does not admit the possibility of the cases covered in the proviso namely that although a person is not at the time of his appointment a member of the House, he may nonetheless be appointed as a minister in the cabinet subject to the condition that within six months he shall get himself elected to the House. The second qualification is by Prof. K. T. Shah. He said that a minister should belong to a majority party and his third qualification is that he must have a certain educational status. Now, with regard to the first point, namely, that no person shall be entitled to be appointed a Minister unless he is at the time of his appointment an elected member of the House, I think it forgets to take into consideration certain important matters which cannot be overlooked. First is this,--it is perfectly possible to imagine that a person who is otherwise competent to hold the post of a Minister has been defeated in a constituency for some reason which, although it may be perfectly good, might have annoyed the constituency and he might have incurred the displeasure of that particular constituency. It is not a reason why a member so competent as that should be not permitted to be appointed a member of the Cabinet on the assumption that he shall be able to get himself elected either from the same constituency or from another constituency. After all the privilege that is permitted is a privilege that extends only for six months. It does not confer a right to that individual to sit in the House without being elected at all. My second submission is this, that the fact that a nominated Minister is a member of the Cabinet, does not either violate the principle of collective responsibility nor does it violate the principle of confidence, because if he is a member of the Cabinet, if he is prepared to accept the policy of the Cabinet, stands part of the Cabinet and resigns with the Cabinet, when he ceases to have the confidence of the House, his membership of the Cabinet does not in any way cause any inconvenience or breach of the fundamental principles on which Parliamentary government is based. Therefore, this qualification, in my judgment, is quite unnecessary.

With regard to the second qualification, namely, that a member must be a member of the majority party, I think Prof. K. T. Shah has in contemplation or believes and hopes that the electorate will always return in the election a party which will always be in majority and another party which will be in a minority but in opposition. Now, it is not permissible to make any such assumption. It would be perfectly possible and natural, that in an election the Parliament may consist of various number of parties, none of which is in a majority. How is this principle to be invoked and put into operation in a situation of this sort where there are three parties none of which has a majority? Therefore, in a contingency of that sort the qualification laid down by Prof. K. T. Shah makes government quite impossible.

Secondly, assuming there is a majority party in the House, but there is an emergency and it is desired both on the part of the majority party as well as on the part of the minority party that party quarrels should stop during the period of the emergency, that there shall be no party government, so that government may be able to meet an emergency--in that event, again, no such situation can be met except by a coalition government and if a coalition government takes the place, *ex hypothesi* the members of a minority party must be entitled to become members of the Cabinet. Therefore, I submit that on both those grounds this amendment is not a practicable amendment.

With regard to the educational qualification, notwithstanding what my Friend Mr. Mahavir Tyagi has said on the question of literary qualification, when I asked him whether in view of the fact that he expressed himself so vehemently against literary qualification whether he has any conscientious objection to literary education, he was very glad to assure me that he has none. All the same, I wonder whether there would be any Prime Minister or President who would think it desirable to appoint a person who does not know English, assuming that English remains the official language of the business of the Executive or of Parliament. I cannot conceive of such a thing. Supposing the official language was Hindi, Hindustani or Urdu--whatever it is--in that event, I again find it impossible to think that a Prime Minister would be so stupid as to appoint a Minister who did not understand the official language of the country or of the Administration, and while therefore it is no doubt a very desirable thing to bear in mind that persons who would hold a portfolio in the Government should have proper educational qualification, I think it is rather unnecessary to incorporate this principle in the Constitution itself.

Now, I come to the third condition for the membership of a Cabinet and that is that there should be a declaration of the interests, rights and properties belonging to a Minister before he actually assumes office. This amendment moved by Prof. K. T. Shah is to some extent amended by Mr. Kamath. Now, this is not the first time that this matter has been debated in the House. It was debated at the time when similar amendments were moved with regard to the article dealing with the appointment and oath of the President and I have had a great deal to say about it at that particular time and I do not wish to repeat what I said then on this occasion. My Friend Mr. Kamath reminded me of what I said on the occasion when the article dealing with the President was debated in this House and I do remember that I did say that such a provision might be necessary......

Shri H. V. Kamath : May I remind Dr. Ambedkar of what exactly he said? I am reading from the official type-script of the Assembly Secretariat. These are his very words:

> "If any person in the Government of India has any opportunity of aggrandizing himself, it is either the Prime Minister or the Ministers of State and such a provision *ought* to have been imposed upon them for their tenure but not upon the President."

The Honourable Dr. B. R. Ambedkar : That is what I was saying. What I said was that such a provision might be necessary in the case of Ministers, and my friend Mr. Kamath also read some section from the Factory Act requiring similar qualifications for a factory inspector. Now, Sir, the position that we have to consider is this: no doubt, this is a very laudable object, namely, that the Ministers in charge should maintain the purity of administration. I do not think anybody in this House can have any quarrel over that matter. We all of us are interested in seeing that the administration is maintained at a high level, not only of efficiency but also of purity. The question really is this: what ought to be the sanctions for maintaining that purity? It seems to me there are two sanctions. One is this, namely, that we should require by law and by Constitution,--if this provision is to be effective--not only that the Ministers should make a declaration of their assets and their liabilities at the time when they assume office, but we must also have two supplementary provisions. One is that every Minister on quitting office shall also make a declaration of his assets on the day on which he resigns, so that everybody who is interested in assessing whether the administration was corrupt or not during the tenure of his office should be able to see what increase there is in the assets of the Minister and whether that increase can be accounted for by the savings which he can make out of his salary. The other provision would be that if we find that a Minister's increases in his assets on the day on which he resigns are not explainable by the normal increases due to his savings, then there must be a third provision to charge the Minister for explaining how he managed to increase his assets to an abnormal degree during that period. In my judgment, if you want to make this clause effective, then there must be three provisions as I stated. One is a declaration at the outset; second is a declaration at the end of the quitting of this office; thirdly, responsibility for explaining as to how the assets have come to be so abnormal and fourthly, declaring that to be an offence followed up by a penalty or by a fine. The mere declaration at the initial state.....

Mr. Naziruddin Ahmad : How could you trace or check invisible assets or secret assets?

The Honourable Dr B. R. Ambedkar : The whole thing is simply good for nothing, so to say. It might still be possible, notwithstanding this amendment, for the Minister to arrange the transfer of his assets during the period in such a manner that nobody might be able to know what he has done and therefore, although the object is laudable, the machinery provided is very inadequate and I say the remedy might be worse than the disease.

Shri H. V. Kamath : May I, Sir, presume that Dr. Ambedkar at least accepts the amendment in principle and that he has not resiled from the view which he propounded the other day, that he has not recanted?

The Honourable Dr. B. R. Ambedkar : I do not resile from my view at all. All I am saying is that the remedy provided is very inadequate and not effective, and therefore, I am not in a position to accept it.

Prof. Shibban Lal Saksena : Make it more comprehensive.

The Honourable Dr. B. R. Ambedkar : I cannot do it now. It was the business of those who move the amendment to make the thing fool-proof and knave-proof, but they did not.

Now, Sir, I was saying that nobody has any objection; nobody quarrels with the aim and object which is behind this amendment. The question is, what sort of sanction we should forget. As I said, the legal sanction is inadequate. Have we no other sanction at all? In my judgment, we have a better sanction for the enforcement of the purity of administration, and that is public opinion as mobilised and focussed in the Legislative Assembly. My honourable Friend, Mr. H. V. Kamath cited the illustration of the Factory Act. The reason why those disqualifications had been introduced in the case of the Factory Inspector is because public opinion cannot touch him, but public opinion is every minute glowing, so to say, against the Ministry, and if the House so desires at any time, it can make itself felt on any particular point of maladministration and remove the Ministry; and my submission, therefore, is that there is far greater sanction in the opinion and the authority of the House to enforce purity of administration, so as to nullify the necessity of having an outside legal sanction at all.

Shri Lokanath Misra (Orissa: General): Is that not a more impossible task?

The Honourable Dr. B. R. Ambedkar : Democracy has to perform many more impossible tasks. If you want democracy, you must face them.

Now, Sir, I come to the amendment of my honourable Friend, Mr. Naziruddin Ahmad. He wants the deletion of the latter part of the amendment which I moved. His objection was that if the latter part of my amendment remained, it would nullify the earlier part of my amendment, namely, the obligation of the minister to follow the directions given in the Instrument of Instructions. Yes, theoretically that is so. There again the question that arises is this. How are we going to enforce the injunctions which will be contained in the Instrument of Instructions? There are two ways open. One way is to permit the court to enquire and to adjudicate upon the validity of the thing. The other is to leave the matter to the legislature itself and to see whether by a censure motion or a motion of no confidence, it cannot compel the Ministry to give proper advice to the President and impeachment to see that the President follows that advice given by the Ministry. In my judgment, the latter is the better way of effecting our purpose and it would be unfair, inconvenient, if everything done in the House is made subject to the jurisdiction of the court, so that any recalcitrant Member may run to the Supreme Court and by a writ of injunction against the Speaker prevent him from carrying on the business of the House, unless that particular matter is decided either by the Supreme Court or the High Court as the case may be. It seems to me that that would be an intolerable interference in the work of the Assembly. Even in England the Parliament is not subject to the authority of the Court in matters of procedure and in the conduct of its own business and I think that is a very sound rule which we ought to follow, especially when it is perfectly possible for the House to see that the Instrument of Instructions is carried out in the terms in which it is intended by the President and by the Ministry. Sir, I oppose this amendment.

Prof. Shibban Lal Saksena : What about nominated members being in the Cabinet?

The Honourable Dr. B. R. Ambedkar : I have dealt with that.

Mr. Vice-President : I shall now put the amendments one by one to vote.

The question is:

"That for clause (3) of article 62, the following clauses be substituted:

> '(3) A member of the Cabinet shall not be liable to be removed except on impeachment by the House on the ground of corruption or treason or contravention of laws of the country or deliberate adoption of policy detrimental to the interests of the State.
>
> (3A) The procedure for such impeachment will be the same as provided in article 50.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (1) of article 62, before the words 'and the other ministers', the words from the members of the party commanding a majority of votes in the People's House of Parliament' be inserted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That after clause (5) of article 62, the following new clause be inserted:

> '5(a) In the choice of his Ministers and the exercise of his other functions under this Constitution, the President shall be generally guided by the instructions set out in Schedule III-A, but the validity of anything done by the President shall not be called in question on the ground that it was done otherwise than in accordance with such instructions.' "

The amendment was adopted.

Mr. Naziruddin Ahmad : There is an amendment to this amendment which should be put to vote first.

Mr. Vice-President : The question is:

"That in amendment No. 1329 of the List of amendments, in the proposed new clause (5a) all the words commencing with 'but the validity' to the end be deleted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That after clause (1) the following new clause be inserted as clause (2) and the existing clauses be re-numbered:

> '(2) In choosing his Ministers the President shall be generally guided by the instruction set out in Schedule 4 (A).' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That for clause (2) of article 62, the following be substituted:

> '(2) The ministers shall hold office so long as they enjoy the confidence of the House of the People.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That in amendment No. 1319 of the List of amendments, for the words 'People's House of Parliament' (in the words proposed to be substituted), the words 'House of the People' be substituted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1319 standing in the name of Professor K. T. Shah.

The question is:

> "That in clause (2) of article 62, for the words 'during the pleasure of the President' the words 'such time as they possess the confidence of a majority in the People's House of Parliament' be substituted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 49 in List IV standing in the name of Mr. Naziruddin Ahmad.

The question is:

"That in amendment No. 1320 of the list of amendments, for the word 'maintains' the word 'enjoys' be substituted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1320 standing in the name of Mr. Mohamed Tahir.

The question is:

> "That the following be inserted at the end of clause(2) of article 62: 'and till such time as the Council of Ministers maintains the confidence of the Parliament.' "

The amendment was negatived.

Mr. Vice-President : Amendment No. 1322 standing in the name of Shri Mihir Lal Chattopadhyay.

The question is:

"That in clause (3) of article 62, after the word 'Council' the words 'of ministers' be inserted."

The amendment was adopted.

Mr. Vice-President: Amendment No. 1325 standing in the name of Mr. Mohamed Tahir.

The question is:

"That for clause (5) of article 62, the following be substituted:

> '(5) A minister shall at the time of his appointment as such, be a member of the Parliament.'"

The amendment was negatived.

Mr. Vice-President : Amendment No. 1326 as amended by amendment No. 71 of list V as further amended by Shri Krishnamachari and Shri Kamath.

The question is:

"That in clause (5) of article 62, for the words 'for any period of six consecutive months is' the words 'from the date of his appointment, is for a period of six consecutive months', be substituted."

The amendment was adopted.

Mr. Vice-President : Amendment No. 1328 as modified by amendment No. 72 of list V.

The question is :

"That in clause (5) of article 62, for the words 'is not a member' the words 'is not an elected me' be substituted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1332 standing in the name of Prof. K. T. Shah.

The question is:

"That after clause (6) of article 62, the following new clause be inserted:

> '(7) Every Minister shall, before he enters upon the functions and responsibilities of his office, make a declaration and take steps in regard to any right, title, corresponding to those provided in this Constitution for the President and Vice-President, and shall take an oath--or make a solemn declaration--in the presence of the President and of his colleagues in the following form.' "

The amendment was negatived.

Mr. Vice-President : Amendment No. 51 of List IV standing in the name of Mr. Kamath:

The question is:

"That for amendment No. 1332 of the List of amendments the following be substituted:

That after clause (6) of article 62, the following new clause be inserted:

> '(7) Every minister including the Prime Minister shall, before he enters upon his office, make a full disclosure to Parliament of any interest, right, share, property or title he may have in any enterprise, business or trade, directly owned or controlled by the State, or which is in any way aided, protected or subsidised by the State; and Parliament may deal with the matter in such manner as it may, in the circumstances, deem necessary or appropriate.' "

The amendment was negatived.

Mr. Vice-President : Amendment No. 52 of list IV, standing in the name of Mr. Naziruddin Ahmad.

The question is:

"That in amendment No. 1336 of the list of amendments, in the proposed new article 62-A, the words 'Judge of the Supreme Court or of any High Court in any State in the Union' be deleted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1336 standing in the name of Professor K. T. Shah.

The question is:

"That after article 62, the following new article be inserted:

'62-A. No one shall be elected or appointed to any public office including that of the President, Governor, Minister of the Union or of any State of the Union, Judge of the Supreme Court or of any High Court in any State in the Union, who--

> (a) is not able to read or write any express in the English language ; or
>
> (b) within ten years from the day when this Constitution comes into operation, is not able to read or write or express himself in the National language;
>
> (c) or who has been found guilty at any time before such election or appointment of any offence against the safety, security or integrity of the Union ; or
>
> (d) of any offence involving moral turpitude and making him liable on conviction to a maximum punishment of two years imprisonment
>
> (e) or who has not prior to such election or appointment, served in some public body, or down some form of social work, or otherwise proved his fitness, capacity and suitability for such election or appointment as may be laid down by Parliament by law in that behalf.' "

The amendment was negatived.

Mr. Naziruddin Ahmad : There is an amendment to this amendment. That should be put to vote first.

Mr. Vice-President : That was put to vote before. Probably, the honourable Member did not follow the proceedings closely.

The question is:

"That article 62, as amended, stand part of the Constitution."

That motion was adopted.

Article 62, as amended, was added to the Constitution.

Mr. Vice-President : We shall now pass on ....

Shri T. T. Krishnamachari : Mr. Vice-President, may I suggest that the House do take up article 67 in view of the fact that it is the desire of a number of Members of this House that these articles which relate to elections should be disposed of first, so that the election machinery might be got ready?

B. Pocker Sahib Bahadur : Mr. Vice-President, I very strongly object to the procedure suggested. As a matter of fact Members are entitled to know what is the order in which the business of the House would proceed. If all of a sudden, for the whim of any particular Member, some particular article should be taken at once, I submit, that it will put the honourable Members of this House to a great deal of inconvenience and it will be impossible for them to get on. Article 67 is a very important article and if that is to be dealt with first, it ought to be announced by you and honourable Members should have sufficient notice of such advancement and therefore, I strongly object to the suggestion made by my honourable Freind Mr. T. T.

Krishnamachari.

Mr. Vice-President : I should like to remind honourable Members that the suggestion made by Mr. T. T. Krishnamachari cannot be given effect to without securing the permission of the House, which I would take in due course.

Secondly, so far as the technical objection is concerned, I should like to remind the honourable Member that in the agenda that has been sent, we have distinctly stated that a particular Part would be taken up. There is no such specification. Lastly, I should remind him that grouping of the amendments in question has been forwarded to honourable Members. That objection, I overrule.

The real objection is whether the House as a whole whishes to take up article 67. I should like to inform the House that it has been intimated to me that in several provinces the electoral rolls are almost complete and in some provinces the rolls have been completed. It is up to us to facilitate the passing of these articles because if any serious modification is made, then, the work of the provincial Governments would be seriously interfered with. We have to keep that in mind. But it is for the House to decide whether it will stand on its dignity and go on increasing the difficulties of the provincial Governments.

Pandit Hirday Nath Kunzru : (United Provinces : General) : Sir, may I put a consideration before you in this connection? So far as I remember, the Drafting Committee has suggested an amendment to this clause. This amendment requires that instead of the proportion of elected seats assigned to the States in this article, the number assigned to each State should be substituted. I think therefore, that it would be desirable that this article should be taken up not now, but on Monday next. That would not involve practically any delay at all. We are very near one o'clock and as it is Friday, I suppose in accordance with our ordinary convention, the House will disperse at one o'clock.

Mr. Vice-President : Yes.

Pandit Hirday Nath Kunzru : If we take up the clause on Monday, we shall have time to consider the matter more fully and also to acquaint ourselves with what was done on a previous occasion in connection with the representation of the States here. We shall have time to consult Dr. Ambedkar himself on the point.

Mr. Vice-President : That seems a more reasonable objection. I am quite prepared..........

Mr. Naziruddin Ahmad : Sir, I have got a more important consideration to submit.

Mr. Vice-President : We shall now go on with article 62-A. We shall take up article 67 on Monday. In that connection, I would remind the House and that there are other articles also dealing with election provisions. These are articles 149, 150, 289, 290 and 291. Information as to the way in which the various amendments are proposed to be grouped by me will be given to honourable Members in due time so that as soon as article 67 is finished we can proceed to article 149, and then article

150 and so on.

Mr. Naziruddin Ahmad : Will that lead to acceleration of business at all? If article 67 is passed, it will not be operative because until we pass the whole Constitution after the third reading and it is signed by the President...........

Mr. Vice-President : We shall consider that question when we pass article 67. Probably, the ingenuity of some lawyers will be able to find some way by which we can obviate this difficulty.

Article 62-A

We come to articles 62-A and 62-B. Amendment No. 1338.

Prof. K. T. Shah : Sir, I beg to move:

"That after article 62, the following new article 62-A, be inserted:--

> '62A. No one selected to be a Minister shall be a member of Parliament in either House, and if already a member of either House, he shall, before accepting the office of a Minister, resign his seat in the Legislature. The provisions of article 48-A shall apply to every Minister *mutatis mutandis.*
>
> 62-B. A Minister shall have the right to sit in either House of Parliament, and to address the House or any of its committees, at any time he deems necessary, but not vote on any issue coming before any such body.' "

Sir, may I say, before I commend this motion to the House, that this has arisen out of a scheme of amendments which I had in mind when I was proposing that the Executive or the Ministry should be separate from the Legislature and all organs of the State should be separate from one another. That having been rejected by the House, I wonder if it would be in order to move the first part of this motion.

Mr. Vice-president : Take the second part.

Prof. K. T. Shah : In that case I am proposing the second part that the Ministers should be entitled to sit and speak in either House no matter to what House originally they belong, or are elected to.

Pandit Thakur Dass Bhargava : May I point out that this is the subject matter of article 72?

Prof. K. T. Shah : Then I will move this at that time.

Mr. Vice-President : Shall we proceed to the next article or shall we adjourn now. Article 63 may not be finished today. I would like to have the whole of Monday for article 67.

Prof. Shibban Lal Saxsena : We can finish article 66. It is a small one.

Mr. Vice-President : I do not want to start on a fresh article because that would interfere with our work on Monday, and I suppose from Tuesday we have some other business to engage our attention. I have got to inform the House that it is more than probable that we shall come to the end of our labours on the 8th January; but there will be a sitting on Saturday, the 8th January. A formal announcement will be made later but I am giving the information in advance so that honourable Members may not experience any difficulty in reserving their accommodation.

The House stands adjourned till ten a.m. on Monday next.

The Assembly then adjourned till Ten of the Clock on Monday, the 3rd January 1949.

[Translation of Hindustani Speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VII

Monday, the 3rd, January 1949.

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

DRAFT CONSTITUTION-(*Contd.*)

Article 66

Mr. Vice-President (Dr. H. C. Mookherjee) : Before we begin the work of the House, I am sure that honourable Members will agree with me if I ask them to stand for a minute in silence to show our gratitude to the Source of all life, and the Source of all energy whom we all worship in our different ways, that at last there has been this cease-fire arrangement at Kashmir.

(The Assembly stood for a minute in silence.)

Thank you all.

We shall begin our work today by taking by taking up article 66 which has to be passed before we can pass on to article 67.

The motion before the House is:

"That article 66 form part of the Constitution."

Amendment No. 1353 to this article, standing in the name of Mr. Naziruddin Ahmad is disallowed as it is not substantive.

Nos. 1354, 1335 and 1358 are of similar import and No.1355 may be moved. It stands in the name of Shri Brajeshwar Prasad.

(Amendments Nos. 1354 and 1355 were not moved.)

No. 1358 may be moved, standing in the names of Shri Lokanath Misra and Shri Mohan Lal Gautam.

Shri Lokanath Misra (Orissa : General) : Sir, I beg to move :

"That in article 66 the words 'and two Houses to be known respectively as the Council of States' be deleted."

If this amendment is accepted, the article would read like this:--

"There shall be a Parliament for the Union which shall consist of the President and the House of the People."

The effect will be that there will be no second Chamber to be called the Council of States.

Sir, I beg to submit that I am not against second Chambers on principle. But in the present temper of our people, and in view of the manner of the constitution of the second Chamber as has been envisaged in the Draft Constitution, I do not think there is any real need for the second Chamber, nor do I think that it will serve any useful purpose. Sir, so far as I have studied the Constitution and the constitutional precedents, it is now admitted almost on all hands that second Chambers are out of date. The only argument that is generally advanced in favour of such a chamber is that it will have a sobering effect on the decisions of the Lower House which is more representative of the people and that the people are now restive. I therefore submit that unless the manner of the Constitution of this second Chamber is changed and we are in a position to accept something which will be purely Indian based on Indian culture of deep, all-pervasive view and on Indian sentiment and temperament based and nurtured on our traditions which alone can have a sobering influence, the creation of an Upper House by itself will have no influence on the House of the People. But this is not to be and therefore I do not think there is a real need for the second Chamber. Its creation will only result in so much waste of public money and so much waste of time. I therefore submit that if the House is not prepared to change the Constitution of the second Chamber as proposed in the Draft Constitution, it will be much better for us to do away with the second Chamber altogether. I am glad that my own province of Orissa has already decided against a second Chamber and we are going to have only one Chamber. I do not think that without a second Chamber the country will be any the poorer for it, as now we stand.

Mr. Vice-President : Amendments Nos. 1356 and 1359 are of similar import. Begum Aizaz Rasul may move amendment No.1356.

Begum Aizaz Rasul (United Provinces : Muslim) : Sir, I beg to move:

"That in article 66, for the words "There shall be a Parliament for the Union which', the words 'The Legislature of the Union shall be called the Indian National Congress and' be substituted."

The Article will then read:

"The Legislature of the Union shall be called the Indian National Congress and shall consist of a President and two Houses to be known respectively as the Council of States and the House of the People."

Sir, my object in moving this amendment is that the word 'Parliament' may be substituted by a name which will convey to the people of India and to the world the name of the party that instituted the struggle for the freedom of the country. If the words 'Indian National Congress' are substituted for the word 'Parliament', the participation of the Congress in the national struggle will be permanently commemorated. This will also save the Congress from degenerating in course of time as all political parties are bound to do. It will liberate the Indian people from the glamour of the Congress and make it possible for them to exercise their vote democratically for otherwise the name of the Congress will unduly influence their emotions. This is more necessary because the Congress in the past was a movement rather than a party. It represented the Nation's urge to freedom and attracted people to suffering and sacrifice. Today, with its transformation into a party, it may become a happy hunting ground for political adventurers and successful black-marketeers.

The word 'Congress' is not new. It is used for the American Parliament and if adopted for India will certainly convey to the world the ideals and principles for which the Indian National Congress stands for. I therefore think that it is in the fitness of things that in this Constitution of India, the words 'National Congress' should be substituted for the word 'Parliament'. I hope that this suggestion of mine will receive the attention and sympathy it deserves. With these few words I move my amendment.

Mr. Vice-President : Now, in List I of the VI Week, amendment No. 1 standing in the name of Shri R. K. Sidhwa seeks to amend the amendment just moved. Mr. Sidhwa may move it. I see that Mr. Sidhwa is not in the House. The amendment is therefore not moved.

Prof. Shah's amendment comes next. Before I ask Prof. Shah to move I would like to know from Mr. Lari whether he wants amendment No. 1359 to be put to vote. I see that Mr. Lari is not in the House. Prof. Shah may now move amendment No. 1357.

Prof. K. T. Shah (Bihar : General) : Mr. Vice-President, I beg to move:

"That in article 66, the words 'The President and' be deleted."

The amended article would then read:

"There shall be a Parliament for the Union which shall consist of two Houses to be known respectively as the Council of States and the House of the People."

Sir, in presenting this amendment to the House I want to bring to its notice the fact that the clause as it stands is merely an imitation, and, in my opinion, an unnecessary imitation, of the British system where the king still forms an integral part of the entire Governmental machinery, the entire Constitution, and particularly of the Parliament. All the laws are made by "the King's Most Excellent Majesty, with the advice and consent of the two Houses". Justice is administered in the name of the king. The Post Office functions in the name of His Majesty. The army, the navy, all defence forces, all civil services are in the service of His Majesty.

That, however, is a state of affairs, which is not quite suited to, and should not be imitated in, this country's Constitution. The King-in-Parliament is not only a traditional institution; but has some solid constitutional foundation to rest on, such as, for instance, the large margin of Prerogative powers which the king exercises. No doubt, he exercises those powers on the advice of His Ministers, but they still reside in the King only.

In the case of the President in India, on the other hand, it is I think, a very misleading analogy to make him the Indian counterpart of the King in England. The comparison is, therefore, very misleading to make the President an integral part of the Legislative organ of the Indian Union.

The President would not only not have the Prerogative authority in all respects that the King has; it is in my view, the basic idea of this Constitution, unless I have grievously misunderstood it, that the President would be only a figurehead, who will act everywhere and every time only with the advice of his Ministers and with the advice of his Ministers alone. By himself he will be nothing but the ornamental head of the State.

If this conception of the President's place in our Constitution is correct, and 1 see noting in the Constitution to contravene that view, then I submit that the inclusion of the President in article 66, making him an integral part of the parliamentary machinery, is utterly out of place; and as such it should be avoided.

This Constitution, Sir, is not like the British Constitution growing up from age to age, from generation to generation, from century to century. It is a Constitution which has been made by the authority of the King making one concession after another, surrendering one prerogative after another foregoing one power after another or consenting to use it only on the advice of his Minister. It is by the authority, and in the name of the people of India that the Parliament of India will function; and, as such, the President, even though the people's chosen representative, need not be--and should not be,--associated with the legislature as an integral part thereof.

I think a blind imitation of this kind of the British convention or British constitutional practice, carried to this extent, will only land us in difficulty. For the theory on which the British Constitution is formed is utterly different from that on which ours is based. The British Constitution is very largely based on convention and tradition. Large portions of these conventions are still unwritten and uncertified, leaving an indefinite margin for adoptation to circumstances. And those which have been written and codified are only the various legislative enactments of Parliament, which, however, themselves are founded only on accepted traditions, conventions or precedents.

In our case, on the other hand, we are writing this Constitution for the first time by our own efforts. As such for us to associate the President with our Parliament, in the same manner as the King is associated with the British Parliament is, I submit, utterly out of place.

I suggest, therefore, that these words should be deleted. Lest anybody should feel that this, again, arises out of my old idea and amendment about the separation of powers between the chief executive, the chief legislature, and the chief judiciary, let me assure you that that is no longer my submission now; and that that idea in no way affects this amendment now before the House. "The President" can very well be removed from this clause, without in any way infringing upon the doctrine of combined powers or collective responsibility on which this Draft Constitution is based. Accordingly I trust that this amendment will commend itself to the House.

(Amendments Nos. 1360, 1361, 1362, 1363 and 1364 were not moved.)

Mr. Vice-President : The article is now open for general discussion.

Shri M. Ananthasayanam Ayyangar (Madras : General): I am sorry, Sir, that I have to oppose all the amendments that have been moved. The amendments relate to three aspects. Number one and the most important of them seeks to restrict the scope of this article to the House of the People alone. That is, the mover of this amendment does not want an Upper House. Sir, it is common knowledge that in this country so far as we are concerned, there is so much enthusiasm and if for no other reason, we must find opportunity for various people to take part in politics. Therefore it is necessary that we should have another House where the genius of the people may have full play. The second reason is that whatever hasty legislation is passed by the lower House may be checkmated by the go-slow movement of the Upper House. The third reason is that the Upper House is a permanent body, while the Lower House is not. These are some of the reasons why, constituted as we are at present, it is necessary that in the interests of the progress of this country we should have a second House.

Then, Sir, so far as the name is concerned, there has been a suggestion that has been moved by my honourable Friend, Begum Aizaz Rasul and there is a similar amendment also standing in the name of Mr. Lari. Both of them want the name of the Parliament to be changed into the Indian National Congress. I appreciate their motives. It is the Congress which fought for the freedom of this country and therefore these friends who sympathise with the Congress, though they are not participants in this organisation, recommend that the name of this organisation should be associated with the name of the Parliament of the Union. However, laudable this may be, if it is accepted, it would lead to the accusation that a one-party government has been established in this country. The very same friends might say, "Look at what is happening. The Congress, the fighting organisation, has established a one-party rule in the country. It has even lent its name to the Parliament of the Union". If this suggestion is accepted, it may even prove to be the death-knell of the Congress, for it would no longer be able to function as a political party, to fight its way against the various reactionary political parties which are still raising their heads, mostly based on community and religion. Therefore, Sir, this is not at all acceptable.

Then, as regards the amendment moved by my honourable Friend, Prof. K. T. Shah, that the word 'President' should be removed and ought not to be associated in any shape or form with the administration of the country. I would ask him to refer to article 42 which has already been passed and where it is laid down that the executive power of the Union shall be vested in the President of the Republic to be exercised by him in accordance with the Constitution and the law. The President has been made a very important functionary in the whole scheme of things, and in the Constitution he is the chief executive authority. Executive power is co-extensive with legislative power. Therefore it is not mere copying of the United Kingdom practice, but independently also we have to come to the same conclusion. Therefore it is necessary that the word 'President' should be retained. Otherwise, there will be a lacuna.

I submit, Sir, for the consideration of the House that the article as it stands may be accepted and that all the amendments should be rejected.

The Honourable Dr. B. R. Ambedkar (Bombay : General): I do not accept any of the amendments nor do I think that any reply is called for.

Mr. Vice-President : I shall now put the amendments one by one to vote. Amendment No. 1358. The question is:

> "That in article 66, the words 'and two Houses to be known respectively as the Council of States' be deleted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1356. The question is:

"That in article 66 for the words "There shall be a Parliament for the Union which' the words 'The Legislature of the Union shall be called the Indian National Congress and' be substituted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1357. The question is

"That in article 66, the words 'The President and' be deleted."

The amendment was nagatived.

Mr. Vice-President : The question is:

"That article 66 stand part of the Constitution."

The motion was adopted.

Article 66 was added to the Constitution.

Article 67

Mr. Vice-President : We next come to article 67. The motion is:

"That article 67 form part of the Constitution."

Shri L. Krishnaswami Bharathi (Madras : General): Mr. Vice-President, I have an humble suggestion to make in the matter of producer when we deal with this article. You will be pleased to see that this article relates to the composition of the Houses of Parliament, the two Houses, namely, the Council of States and the House of the People. It contains nine clauses, and I would suggest that in the interest of clarity of discussion, this article may be split up into three parts: one relating to the composition of the Council of States-clauses (1) to (4); clauses (5) to (7) relate to the composition of the House of the People: clauses (8) and (9) are consequential, relating to both the Houses, regarding the census and the effect on the enumeration of the census.

I talked this matter over with Dr. Ambedkar and he himself said that he had marked it like that in his book, and that he proposed to make certain changes of transposition during the third reading. It may not be therefore quite possible straightway to split it at present, but I would request you to have all the amendments to the Council of States, clauses (1) to (4), taken together and discussions may be concentrated regarding them first, and the article may be kept open for amendments. After the discussion is over, you may put the whole clause together. All this I suggest in the interest of clarity so that when honourable Members deal with the Council of States they may confine their discussion on it and later on they may concentrate their discussion on the part of the article relating to the House of the People.

Mr. Vice-President : Have you anything to say, Dr. Ambedkar, regarding this matter, namely, the suggestion of Mr. Bharathi?

The Honourable Dr. B. R. Ambedkar : I am quite agreeable to the suggestion for the purpose of facilitating discussion.

Mr. Vice-President : Then we can take up the amendments in their particular order.

The first amendment is No. 1365. It is negative and is therefore disallowed.

Amendments Nos. 1366, 1367, 1379 and 1408 may be considered together.

Amendment No. 1366 may now be moved. It is in the name of Shri Mohan Lal Gautam.

Since he is not in the House, we pass over it.

The next amendment is No. 1367, in the name of Shri Lokanath Misra.

Shri Lokanath Misra : Since we have passed over amendment No. 1366, I do not want to move my amendment. It does not fit in now.

Shri M. Ananthasayanam Ayyangar : The question does not arise !

Mr. Vice-President : The next amendment is in the name of Prof. K. T. Shah--No. 1379.

Prof. K. T. Shah : Sir, I beg to move:

"That clause (2) of article 67 be deleted."

Clause (2) reads as follows:

"The members to be nominated by the President under sub-clause (a) of clause (1) of this article shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely,--

(a) literature, art, science and education;

(b) agriculture, fisheries and allied subjects;

(c) engineering and architecture;

(d) public administration and social services."

As the clause stands, Sir, it offends in my eye for two reasons. First of all, the element of nomination introduced here, however small, militates against the symmetry of the Constitution of our Legislative bodies. And it fundamentally mars the principle of election. I hold that with regard to both these chambers, in the way we are making this Constitution, the Legislative organ should be wholly elected and so the element of nomination should be completely excluded, however small it may be. Its being brought in, in this way, only affects, as I have said, the internal symmetry of the Legislative bodies. It must therefore, be avoided and excluded.

The second reason why I should not like this clause as it stands to be there in the Constitution is: that the various interests or elements selected by nomination are arranged in a somewhat mixed manner. It is not quite consistent intrinsically, logical or scientific.

For instance, "art" is mentioned separately and "science" is distinct--which it may very well be: "Engineering" and "architecture" are mentioned separately in another sub-clause. Now it is generally agreed that "architecture" is one of the fine Arts; and if that is so, I, for one, fail to see the reason of its separate mention, after you have mentioned the generic term "Art".

Moreover, "science, literature and education"--are mentioned each separately by name. These are, once more not logically divided one from another. There, again, I really fail to understand what should be the purpose of this separate enumeration. For, consider this. If by "education" it is intended to include both "Art and Science", through, let us say, such institutions as the Universities, I do not see why they should not be mentioned by their names as universities, and why they should be specifically stated, each apart from the other as Arts, Sciences, or Literature.

Literature again is usually included, at least in the University terminology, in the Fine Arts or in the Faculty of Arts. Accordingly to mention Literature, Science and Arts separately seems to be utterly incongruous, illogical and overlapping........

Shri L. Krishnaswami Bharathi : May I submit that there is an amendment to be moved by Dr. Ambedkar? It is No. 1380. It deletes all these portions, and includes only Arts and Sciences with Social Service. If the honourable Member bears in mind that it is likely to be accepted, the discussion need not be concentrated on this matter. He may be pleased to see amendment No. 1380, wherein Dr. Ambedkar is to move the deletion of the whole clause and substitute only the four categories. So I may request you to ask the honourable Member to cut short the discussion.

Mr. Vice-President : Have you been able to understand the honourable Member?

Prof. K. T. Shah : I have quite understood the honourable Member's suggestion, but have certain points to advance, which I may, if I am allowed to, though I do not insist on it. I have seen Dr. Ambedkar's amendment; and I not only think that it is probably going to be accepted, but I know that it is certain to be accepted. Still I feel that there are points of view which this House might be freely allowed to hear, without such impatient attempts to smoother discussion. But if you do not wish it, I will not press my view.

Mr. Vice-President : Please go on.

Prof. K. T. Shah : Thank you, Sir. Take "Engineering". It is much more "Technology" or what used to be called in the United States Technocracy, which might be mentioned instead of Engineering. It would include much more than" Engineering". As it stands, it creates a needless anomaly.

Take yet another illustration, Social Services, which do not include public utilities presumably: and then again "Public administration". I for one do not understand what is meant by "Public Administration," in this connection of composing a legislative body. Is it intended to bring in the Civil Service? By common consent it is thought best to keep the Civil Service out of politics. Is it intended by "Public Administration" to bring in heads of departments, or their nominees? The old Indian Constitution gave a place to secretaries; but I think there is no room for them in the legislature now. Or does "Social Service" mean something different from "Education", because Education has been separately mentioned already? One would have thought that social service, among the most important of which is Education, would be represented through all the categories in the ordinary system of election, and would not need a special mention by itself. But if you must make special mention of it, then I do not see why you single out only Education. You use a general word like "Social Service"; and yet include only that, presumably because you mention it separately, and leave out "Health" which may also be mentioned separately.

Accordingly it seems to me that this classification is not quite logical. It also offends against the principle, at least in my eyes, of the symmetry of the legislative body, by including in it the element of nomination. For these two main reasons I think the whole clause should be deleted, and substituted by something different which Dr. Ambedkar's amendment no doubt provides for to some extent; but does not provide for in the manner that I would have wished it to. As I would not have any right to speak on this amendment again, or take part in the general debate, I think it is just as well that the House should be put in possession of my point of view on the matter.

Mr. Vice-President : You may also move amendment No. 1408.

Prof. K. T. Shah : Sir, I beg to move:

"That Clause (4) of Article 67 be deleted."

Clause (4) of article 67 reads "the representatives of the States for the time being specified in Part II of the First Schedule in the Council of States shall be chosen in such manner as Parliament may by law prescribe".

Here, again, I take my ground on the principle of equality amongst the constituent States. Whatever may be the variety or the differences amongst themselves, in regard to area, population, resources, or whatever other criterion you select for judging of the importance of the several States, so far, at any rate, as you accept the principle of a Federal Union, you ought to make the States equal *inter se*.

On that basis I do not quite subscribe to the view propounded in clause (4) of the article, whereby it is left to Parliament to distribute the seats amongst the States, and not provided for in the Constitution itself. I have tabled another amendment which would suggest that the states should be represented equally in the Council of States, that is by the same number of delegates that any other State may have. On that ground also this clause seems to be superfluous, and I move that it be deleted.

(Amendments Nos. 1368 and 1372 were not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for clause (1) of article 67, the following be substituted:

> '(1) The Council of States shall consist of not more than two hundred and fifty members of whom--
>
> (a) twelve members shall be nominated by the President in the manner provided in clause (2) of this article; and
>
> (b) the remainder shall be representatives of the States.' "

The only important thing is that the number fifteen has been brought down to twelve.

Mr. Vice-President : There are six amendments to this amendment which I am calling out one by one. The first is amendment No. 2 on list No. 1 (Sixth Week) in the name of Mr. L. N. Misra.

Shri Lokanath Misra: Sir, I beg to move:

"That in amendment No. 1369 of the List of Amendments, in the proposed Clause (1) of article 67, for the word 'two' the word 'one' be substituted."

It comes to this that the council of State shall consist of not more than one hundred and fifty Members. In moving this amendment reducing the number to one hundred and fifty I have only one intention and it is this, that from our actual experience we find that such a huge number of people either in the House of the People or in the Council of States does not serve any very useful purpose. And we know that there is real difficulty in finding out so many Members who will be qualified and quite interested in such law-making. We see from the proceedings of this very House which consists of more than three hundred Members that so few of us take real part in and are really useful to constitution making.

Mr. Vice-President : That is a reflection I can not allow.

Shri Lokanath Misra : I am sorry, Sir. It is no reflection. I therefore submit that instead of having two hundred and fifty Members it will serve the purpose of the second Chamber if we have one hundred and fifty Members. In that case there will be a saving of money and time. I therefore submit again that the number two hundred and fifty may be reduced to one hundred and fifty.

Mr. Vice-President : Amendment No. 3 of List I, standing in the name of Mr. L. N. Sahu may be moved.

Shri Lakshinaryan Sahu (Orissa : General) : (Began to speak in Hindi).

Mr. Vice-Presidnet : I wish only to make a request to the honourable Member. Many of our Members coming from South India do not know Hindi. Probably if he wants to convince them it would be better if he speaks in English. But he is at perfect liberty to speak in any language he wants.

Shri Lakshminarayan Sahu : No, Sir. I will speak in Hindi.

*[**Mr. Vice-President :** I rise to speak a few words in support of the amendment which stands in my name and is now before the House. It is:

"That in amendment No. 1369 of the List of Amendments, sub-clause (a) of clause (1) of article 67 be deleted."

My reason for moving it is that we do not favour the system of nomination. The truth is that under no condition and in no place do we approve of it. Therefore, when we are framing our Constitution afresh we must consider very seriously whether we should do away with this system or not. My submission is that nomination in whatever place or form it may be--and I may add that indirect election is also a form of nomination--should be abolished.

I submit that we should consider with all earnestness the grounds, if any, which justify the original provision for fifteen nominated members of as amended now, for twelve nominated members. We should think why this provision for nominated members is made. Is it because they are so highly talented as to make us desire their presence as members in the said House? If that be so we can get such people from Universities--through election. I fail to understand what prevents this being done. My submission is that we should make some provision for the election of such talented persons who fail to get elected to the Legislature from the general constituencies. Unless we keep this in view, the Constitution that we are framing would not be to the liking of the majority. If we authorise the President to nominate these twelve members, he will always be accused of favouritism by quite a good number of people. People will complain that instead of nominating the right and able persons the President has nominated his own favourites. I am afraid that the danger of the President being subjected to unfair criticism would always be there. It is evident that it is the most undesirable thing that the Leader of our Nation, the Supreme Head of our Republic should thus be an object of unfair criticism. I would, therefore, submit Sir, that the provision for nomination be deleted and in its place Functional Representation be provided. It is said by some people that Functional Representation has been tried and found seriously defective in Ireland. But I submit, Sir, that it is bound to succeed if it is tried along with Panel System. I do not think that I need say much against the system of nominations, but in this connection I may draw your attention to the fact that till recently, we members of the Assemblies and Councils in India used to go to one person--Mahatma Gandhi--for advice and used to manage our affairs in the light of his advice. Even if there be any person who is as really great as Mahatma Gandhi was, and for bringing in whom this system of nomination is being provided for and who is not willing to come in through elections, well we can go to him and have his advice. If there be any person of great learning or scholarship who may be unwilling to contest election, well, for myself I can say that I would feel no hesitation in going to him for seeking his advice. We used to go to Mahatma Gandhi for his advice. Similarly, if any able and competent person does not seek election, we may go to him and have his advice. We may constitute a board of such meritorious and learned persons to aid and advise us. The system of advisory board does exist in Russia. We may constitute an advisory board for every minister. Instead of doing what I have already suggested, if we authorise the President to nominate twelve persons, bitter allegations of favouritism and nepotism will be levelled against him and that would not be desirable. Therefore, I propose, Sir, that the provision of nomination should be totally deleted.

With these words I resume my seat.]

Mr. Naziruddin Ahmad (West Bengal : Muslim) : I do not wish to move Amendment No. 5 of List I (Sixth week), because it is merely verbal. I therefore, confine myself to Amendment No. 4.

Sir, I beg to move:

"That in amendment No. 1369 of the List of Amendments, in sub-clause (a) of the proposed clause (1) of article 67, for the words 'twelve members' the words 'not more than 6 per cent of the total number of members of the House' be substituted."

Shri S. V. Krishnamurthi Rao (Mysore): I suggest that this may be ruled out of order as the number originally fixed is 15 and the total number is 250. Six per cent will be again 15.

Mr. Naziruddin Ahmad : It would not be fifteen. I submit, Sir, that the original clause of article 67 was to the effect that the Council of States shall consist of 250 members. By the amendment moved by Dr. Ambedkar it now stands as *not more than* 250 members.

Mr. Vice-President : He says he seeks to fix the maximum; therefore, it is slightly different. You need not labour the point. He may go on.

Mr. Naziruddin Ahmad : In the new clause you make the House one of not more than 250 members. Therefore, by Dr. Ambedkar's amendment, the number of members in the Council of States would fluctuate. It may be less; it will never exceed 250. The number of nominated members should bear a proportion to the actual number of members in the House. This number should also fluctuate in proportion. I have, therefore, suggested 6 per cent which would be 15 only if the maximum number of members in the House is taken. Otherwise, if the number of members is less, the number of nominated members would also be less. They should, I submit, bear some relation to each other. In fact if the number be reduced to twelve, an arbitrary figure, that would bear no relation to the actual number. The actual number in the House may be considerably less. So, I think, Sir, a proportion of 6 per cent of the total membership of the House would be more convenient and more logical.

[Amendment No. 6 in List I (Sixth Week) was not moved].

Pandit Hirday Nath Kunzru (United Provinces : General) : Mr. Vice-President, Sir, it has just been suggested to me that it would be better if instead of moving my amendment now, I move it as an amendment to Amendment No. 1378, which is to be moved by Dr. Ambedkar. It is all the same to me, Sir, when I move this amendment. If you agree to the view that I have expressed, I can move this amendment a little later.

Mr. Vice-President : Yes; I agree.

I have admitted a short notice amendment standing in the name of Sardar Hukam Singh. It may be moved now.

Sardar Hukam Singh (East Punjab : Sikh) : Mr. Vice-President, Sir, I beg to move:

"That in amendment No. 1369 of the List of Amendments, in sub-clause (a) of the proposed clause (1) of article 67, for the words 'in the manner provided', the words 'from amongst the categories of persons illustrated' be substituted".

Sir, it might be thought that this is a very small affair; but I have to submit and I request that some attention might be paid to this, because I think there is some force in my amendment.

Amendment No. 1369 says that twelve members shall be nominated by the President in the manner provided in clause (2) of this article. According to this amendment, we should expect that some manner, which means method or mode of doing things, will be laid down in clause (2) of this article. But, when we look to this clause, there is no method or mode provided; no manner is provided there. What we find is that the members to be nominated by the President under sub-clause (a) of clause (1) of this article shall consist of persons having special knowledge or practical experience in such matters as the following. Therefore, no manner or method is provided by this clause (2). Rather, there is a class of persons or categories of citizens and these categories or classes are illustrative, they are not exhaustive. They are described here as the categories from amongst whom the President shall nominate twelve members that are proposed to be selected under clause (1). My objection is that instead of putting in these words that these twelve shall be nominated by the President in the manner, it ought to be, from amongst the categories of persons illustrated in clause (2). This is the only amendment and I request that some attention might be paid to this.

(Amendments No. 1370 was not moved.)

Mr. Vice-President : There are three amendments which may be considered together. amendments numbers 1371, 1373 and 1374. Of these, the first seems to be the most comprehensive and may be moved.

(Amendments Nos. 1371, 1373 and 1374 were not moved.)

Amendments Nos. 1375 and 1376. Amendment No. 1375 may be moved. Amendment No. 1376 is identical with amendment No.1375. So, I am not going to put it to vote. Amendment No.1375, Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-president, Sir, I beg to move:

"That the proviso to clause (1) of article 67 be deleted."

With your permission, Sir, may I also move amendment No. 1378? It is in substitution of this proviso.

Mr. Vice-President : Yes.

The Honourable Dr. B. R. Ambedkar : Sir, I beg to move:

"That the following new clause be added after clause (1) of article 67:

> '(1a) The allocation of seats to representatives of the States in the Council of States shall be in accordance with the provisions in that behalf contained in Schedule III-B.' "

Mr. Vice-President : The amendment of Pandit Kunzru may now be taken up. It is amendment No. 7.

Pandit Hirday Nath Kunzru : Mr. Vice-President, Sir, I beg to move:

"That to clause (1a) of article 67 as now moved, the following words be added:

> 'Provided that the ratio of the total number of representatives of the States for the time being specified in Part III of the First Schedule to their total population shall not exceed the ratio of the total number of representatives of the States for the time being specified in Parts I and II of that Schedule to the total population of such States.' "

Sir, the proviso to clause (1) of article 67, the deletion of which has been moved by Dr. Ambedkar, runs as follows:

"Provided that the total number of representatives of the States for the time being specified in Part III of the first Schedule shall not exceed forty per cent of this remainder."

that is, forty per cent of the elected members of the Council of States. It has now been proposed by Dr. Ambedkar that as many seats in the Council of State should be allocated to the States specified in Part III of the First Schedule as may be laid down in Schedule III-B. We have not got this Schedule before us. We do not therefore know what proportion the representatives of the States mentioned in Part III of the First Schedule will bear to the representatives of the States included in Part I of the First Schedule.

Sir, during the Round Table Conference, the Rulers of the States insisted that they should be given greater representation both in the Assembly and in the Council of State than their population warranted. In other words, they asked for weightage in both the Houses of the Central legislature and it was therefore laid down in the Government of India Act, 1935, that the representatives of the States shall be forty per cent of the total representatives in the Council of State whether elected or nominated and that in the Assembly, the number of representatives of the States should be one-third of the total number of elected representatives. The Union Powers Committee recommended that the proportion of the representatives of the States mentioned in Part III of the First Schedule should be 40 percent of the total number of elected representatives in the Council of States. In other words, in this respect it approved of the provision contained in the Government of India Act, 1935, but it departed from that Act in regard to the representation of the States in the Legislative Assembly. The Draft Constitution follows the recommendations of the Union Powers Committee which were accepted by the House last year. Dr. Ambedkar has now moved that no percentage should be fixed for the representatives of the States specified in Part III of the First Schedule but that the seats allocated to the States should be as laid down in a schedule to be attached to the Draft Constitution. Now, Sir, when the Government of India Act, 1935, was passed by the British Parliament, the situation was very different from what it is now. The States were then not prepared to join the Federation except at a price. Apart from this, it suited the British

Government to give weightage to the States. In the new order, however, the position of the States formerly known as the Indian States, has completely changed. Their representatives in this House themselves want that their position should be assimilated to that of the provinces. There is no reason therefore why the weightage given to the States in the Government of India Act, 1935, should be continued any longer.

Sir, I have already said that the Draft Constitution, so far as the representation of the States in the House of the People goes, has not adopted the provision relating to this matter in the Government of India Act, 1935. If honourable Members will turn to clause (5) of article 67, they will find that the proviso to sub-clause (b) of this clause lays down that the ratio of the total number of representatives of the States for the time being specified in Part III of the First Schedule to their total population shall not be in excess of the ratio of the total number of representatives of the States for the time being specified in Parts I and II of that Schedule to the total population of such States. The Draft Constitution insists that the States shall be represented in the House of the People in accordance with their population. What I want is that in the Council of States the representation of the States specified in Part III of the First Schedule should also be fixed in accordance with the same principle. Sir, I may be told that as the Upper Chamber will be known as the Council of States, it means that the number of the representatives of the States specified in Parts III and Parts I and II cannot be fixed in accordance with their total population. If such an objection were put forward, I should regard it as purely superficial. Had I said that in the proviso to sub-clause (b) of clause (1) of article 67 for the word 40, the figure 25 or 30 should be substituted, no such objection could have been brought forward. I seek however to achieve the same purpose in a different way. My amendment cannot really therefore be objected to, on the ground that it would go against the principle that seems to underlie the composition of the Council of States.

Again, Sir, if honourable Members turn to clause (8) of article 67, they will find that it has been laid down there that "upon the completion of each census the representation of the several States in the Council of States and of the several territorial constituencies in the House of the People shall, subject to the provisions of article 289 of this Constitution, be readjusted by such authority, in such manner and with effect from such date as Parliament may, by law, determine." This shows that population is to be taken into account in determining representation not merely in the House of the People but also in the Council of States. My amendment is thus in complete accord with the provisions of Clause (8).

Sir, I have moved this amendment because notwithstanding the new proposal made by Dr. Ambedkar it is not clear that the representatives allotted to the States specified in Part III of the First Schedule will not be 40 per cent of the total number of elected members of the Council of States or in excess of what their population entitles them to. It is true that it is not going to be laid down in so many words in the Constitution that the representatives of the States in Part III of the First Schedule should bear a fixed proportion to the total number of elected members in the Council of States but the allocation of the seats may be such as to bring this about in practice. I want to prevent this and to ensure that as between the States specified in Parts III and Parts I and II of the First Schedule, seats should be divided in accordance with their population. We have already done away not merely with separate representation in this Draft Constitution but also with weight age. If we have done away with weightage in the case of the various communities, there is no reason why we should retain it in connection with the representation of the States mentioned in Part III of the First Schedule.

For these reasons, Sir, I hope that my amendment will commend itself to my honourable Friend Dr. Ambedkar and therefore to the whole House.

Mr. Vice-President : Amendment No. 9 in List I, standing in the name of Prof. Saksena.

Prof. Shibban Lal Saksena (United Provinces : General) : Sir, I beg to move my amendment which is:

"That in amendment No. 1378 of the List of Amendments, for the proposed clause (1a) of article 67, the following be substituted:

> '(1a) The allocation of seats to representatives of the States in the Council of States shall be based on the following principles:
>
> (i) one representative for every million population up to the first seven million population in each State in Schedule I, provided that no State shall have less than one representative in the Council of States,
>
> (ii) one representative for every two million population after the first seven millions.' "

Sir, I had, along with this amendment, given a chart showing the numbers of seats to be given to each of the States, and I do not know why it is missing here. In fact, when we were discussing the Report of the Constitution Committee, we had laid down that the maximum number of representatives from any province shall be twenty, and we laid down the numbers for each Province. The system then envisaged was not scientific or logical. I think that the numbers should be laid down on the basis of population up to a limit and that is why I have laid down the limit of one representative for every million up to seven millions, and after that, one representative for every two millions of the population. In this way, we can see to it that the bigger States have lesser numbers of representatives and the smaller States shall get a little weightage which we want to give them. That will be more scientific. Otherwise, it may be that the U. P. will have twenty seats, and Bihar also twenty. If the chart I referred to, and had been here, it would have made the position clearer, by showing what is the number of seats I would allot for each State. Sir, I submit the method I suggest is the proper method of distributing the seats and I request that it may be accepted by the House.

Mr. Vice-President : Amendment No. 10 of List I, standing in the name of Shri Phool Singh.

(Amendment No. 10 of List I was not moved.)

Amendment No. 11 of List I, standing in the name of Shri Lokanath Misra.

Shri Lokanath Misra : Sir, I beg to move:

"That in amendment No. 1378 of the List of amendments, in the proposed clause (1a) of article 67, for the words 'in accordance with the provisions in that behalf contained in Schedule III-B' the words 'on the basis of equal representation to each of the component States, the number of which representation shall in no case be more than *three*' be substituted."

Sir, the idea I have in my mind, when I move this amendment to the amendment moved by Dr. Ambedkar is this. Since the Council of States is going to represent the States, it is but fair to the States units that these units should be dealt with as units and every unit is equally represented. Otherwise, there is no sense in saying that the States shall be represented in the Council of States. In fact, in the United States of America and in other countries where there are second chambers, representing the interests of the States, the representation given to these units is always the same. We also know that the elected members of our Council of States will be returned by the Lower House of the State Assemblies, and if we say that the election will be in some other form, either in proportion to their population or on some other basis and yet people with the same qualification, the Council of States will serve no real purpose, except a purpose of unnecessary duplication of the House of the People. In fact, the House of the People itself will be representative of the people of the States themselves, because the States will be sending in either representatives to the House of the People on almost the same basis. Therefore, if we do not accept this principle, that of taking every State as an equal unit, and sending in their representatives to safeguard or protect their special interests, there is no sense or meaning in having a Second Chamber to represent the States. Though we have Schedule III-B, the position, I feel, should be made clearer that the Council of States will be representative of the State interests, and therefore the States, as States, and as autonomous units, must be equally represented. On this ground, I suggest that the allocation of seats to the representatives of the State in the Council of States should be on the basis of equal representation to each of the component States, the number of which representation shall in no case be more than three. Why I fix upon the figure three is this. I feel that if three members come from every State, that will be sufficient to safeguard the special interests of the States, and their special problems. After all, this is to be a sobering House, a reviewing House, a House standing for quality and the members will be exercising their right to be heard on the merits of what they say, for their sobriety and knowledge of special problems; quantity, that is, their number, is not of much moment, and I think three is just sufficient for the purpose.

Mr. Vice-President : Amendment No. 12 in List I, standing in the name of Shri Lakshminarayan Sahu.

*[**Shri Lakshminarayan Sahu :** Mr. Vice-President, my amendment runs thus:

"That in amendment No. 1378 of the List of Amendments after the proposed clause (1a) of article 67, the following new clause (1b) be inserted:

> '(1b) Steps should be taken to see that, as far as possible, men from dice rent units are represented.' "

The reason why I move this amendment is that in view of my previous proposal to delete clause 1(a) of article 67 it is necessary that a proviso be made that every member of the Council of States should come there only as a representative of some state. It is because of this that by this amendment I have sought to include a proviso so that representatives from each unit may be able to get into the Council of States. No mention has been made there of the number of representatives from each province and each unit and therefore, we do not have any idea as to the composition of the Council of States, I, therefore, entirely endorse the amendment moved by Pandit

Hirday Nath Kunzru. The amendment moved by Shri Shibban Lal Saksena is, as I understand it, also intended to secure representatives in the Council of States for every State. But I find that there are three categories of States. It would be better if we could put all of them in a uniform pattern. It is quite possible that the small states which are neglected now-a-days and are unrepresented may later on desire to have representation in the Council of States. But there are many such small States as will have no opportunity of securing any seat in the Council of States in the ordinary course of things. It is for this reason that I am moving this amendment. I need not add anything further.]

Prof. K. T. Shah : Sir, I beg to move:

> "That the proviso to clause (1) of article 67 be deleted and the following new clause be added after clause (1):
>
> > '(1a) Parliament may by law establish a Consultative Council of Representatives of Agriculture (25), Industry (15), Commerce (10), Mining, forestry and Engineering (10), Public Utilities (5), Social Services (5), Economists (5), to advise Parliament and the Council of Ministers on all matters of policy affecting Agriculture, Industry, Commerce, Mining, Forestry, Engineering, Public Utilities and Social Services; and prepare or scrutinise proposals for legislation concerning any of these items.
> >
> > *Explanation.*--The number given in the brackets after each group is the total number of representatives from each section.
> >
> > Members of this Council shall have, individually or collectively no administrative or executive duties, functions or responsibilities. Every member of this Council shall be paid such salaries, emoluments or allowances as Parliament may from time to time provide.' "

Sir, this is an innovation, not borrowed, I can assure the honourable Chairman of the Drafting Committee, from any of the present Constitutions. Some thing similar to this was to be found in the now defunct Weimar Constitution of Germany; but even that precedent has been radically modified.

The suggestion here is three-fold : It is an advisory Council, consisting of certain special interests elected by organisations in those interests, like agriculture, forestry, mining, engineering, trade, industry, social services and so on.

Dr. Jivraj N. Mehta (Baroda) : May I know why Members of the Medical profession have been left out of the amendment?

Prof. K. T. Shah : I would be very willing to accept an amendment to that effect provided you choose to move it. It is an oversight on my part, for which I personally apologise to you. My amendment, however, does not mention either the learned profession of law or the members of the Clerical Order. If the House desires to rectify the omission I have no objection. But I would like to make it clear that it is not so much any profession that is sought to be represented, as the various interests, or the various items in which the country as a whole is interested, and not the exclusive interest, in an economic sense, of those bodies.

Sir, this will be an advisory council which will have no executive or administrative functions according to the amendment I have tabled. It would advise in all matters on legislative proposals that may be coming up before Parliament, or which Parliament may direct them to scrutinise.

Sir, legislation is now-a-days becoming so extremely complex, so varied, and so numerous,--if I may speak individually or severally of the Acts passed by Legislatures now-a-days, that an average member of Parliament would find it extremely difficult to make up his mind, or even to understand the special provisions couched in technical language that grow up or that have to be sanctioned by Parliament.

It is becoming more and more a fine art, not merely in drafting the legislative proposals, which by itself is an extremely complicated task; but also in laying out the various items and satisfying the various interests that have to be provided for. It is even now a convention generally established and commonly followed, whereby the various interests not directly represented in Parliament can put forward their case before the Departments and make their own alternative proposal. Whether it is Insurance Legislation or Labour Legislation or Banking, or Shipping, or Trade marks legislation, those concerned see to it that their case is placed before the authorities. The Minister in charge of such legislation generally hears them before the final draft is made. If the Minister concerned does not so consult the interests concerned, then the Select Committee on the Bill sometimes hears representatives or representations from the interests concerned, before the legislation is passed by Parliament.

On this basis, I think it would be of the utmost benefit to have this consultation, not only to the interests concerned, but also to the proper co-ordination of the particular pieces of legislation with the rest of the social economic framework under which the country is to live. It does happen that, when individual items of legislation come up, only those concerned or interested specially, directly or personally, take any intelligent interest in the various clauses as well as in the general principle underlying; while the rest of the House,--by far the large majority,--remains relatively indifferent. Whether by the guidance of the Party organization, or by personal loyalties, votes are cast not so much by the provisions and their implications understood properly, but by influences of the kind I have just mentioned.

It is, therefore, not in the interests of proper legislation that we should have a body of laymen--and popular representatives are bound to be laymen only in the majority of cases in law-making that come up before Parliament--who should be passing laws, without any advice or guidance from recognised experts upon the complicated pieces of legislation which almost every year come before Parliament. They should have a non-interested, or dis-interested, and impartial body of advisers who are competent to advise by their study, training and experience in all such matters, who would have no executive or administrative function, who would not be law-makers themselves, and who would be sufficiently respected outside to influence the decisions in the best interests of the country. Sir, the practice is growing in many countries whereby Parliament passes organic laws, of great social importance, but allows more and more powers to departments to make bye-laws, or rules under such laws, which enables the bureaucracy--I am not using the term in any objectionable sense, call it the permanent services,--to make elaborate codes under these laws. These codes are not enacted by Parliament. These codes are, no doubt, sometimes laid on the table of the House, in the presumption that members if they have any objections to the rules, will point them out. But as a matter of fact, these codes are scarcely ever scrutinised by members when once they are enacted under the authority of the law by the departments concerned and so they become laws by fiat of the bureaucracy without any proper understanding by members of Parliament.

This, Sir, is a practice which has led an eminent jurist, Lord Hewett, Chief Justice of the King's Bench Division in England, to describe it as The New Despotism. It really amounts to arming the civil services, arming the permanent officials, with a vast margin of power and discretion that practically amounts to a denial of civil liberties, or at any rate the ordinary freedoms of the citizen.

This, Sir, I submit, is not in the interests of the free institutions which we are planning for. I, therefore, suggest that it would be in the interests of the freedom of the people, and also the interests of sound legislation, that we should have a body of disinterested advisers chosen with an eye only to their experience training and qualification, and not burdened with any other duties as our Ministers are, not charged with any other administrative or executive functions and remunerated sufficiently to be beyond any influence other than the interests of the country, and so able to devote their entire time to the particular subjects that come up for legislation. I hope this amendment will be accepted.

Mr. Vice-President : Amendment No. 1380 standing in the name of Dr. Ambedkar.

The Honourable Dr. B. R Ambedkar : Mr. Vice-President, Sir, I move:

"That for clause (2) of article 67, the following be substituted :

> '(2) The members to be nominated by the President under sub-clause (a) of clause (1) of this article shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely :
>
> Letters, art, science and social services.' "

Mr. Vice-President : There are some amendments to this amendment which I am calling out one after the other. No. 13 in the name of Mr. Kamath.

(The amendment was not moved.)

No. 14 standing in the name of Mr. Lokanath Misra.

Shri Lokanath Misra : Mr. Vice-President, Sir, I beg to move:

"That in amendment No. 1380 of the List of amendments, in the proposed clause (2) of article 67, for the words 'special knowledge or practical experience' the words 'real knowledge of or actual devotion for', and for the words 'Letters, art, science and social services' the words 'History of ancient Indian philosophy and culture, art and science and social services towards reconstruction of Introspective India' be substituted."

Sir, I am really thankful to Dr. Ambedkar for introducing this amendment and for placing the words "Letters, arts, science and social services" much better than the original. In fact, in my humble opinion as I have conceived this Council of States, to me it represents our past, as the House of the People represents our present. Our future no doubt is in the hands of God. I say that we can have that sobering influence we need, only if we can build our mind and our ideas on our past. I suggest that India to be India must know her lofty past, and the members of the Council of States nominated by the President should be people who know our past, our history, our philosophy and our culture. Therefore, instead of having letters, let us say history, philosophy and culture. All our efforts should be towards one direction and that direction can only be an ideal which will bring up India to her past, *i.e.*, to her own. The nominated members by the President should represent these four things, and to bring home a justification of this point, I need not make a speech of my own. I will only quote some lines from an essay "India and the Western World" by Captain Anthony M. Ludovici (England). He says:

"We are credibly informed by anthropologists that often all that is needed for the ultimate extinction of a particular race is, not violence, disease, or some vicious habit introduced by the European, but merely the despondency generated by the imposition of new forms of behaviour and belief--a state of mind which by diminishing their zest and *joie de vivre*, undermines their will to survive.

Now, when we grasp how deep attachment to native culture-forms may be, even among the random bred stocks of Europe, need we be surprised to learn that among peoples whose capacity for change and for suffering change has a tempo different from our own, the impact of new and powerful culture, sometimes imposed rapidly with every artifice of proselytization, force and example has resulted in a complete renunciation of every hope, belief and desire.

* * * * *

He (the European) was in a position to coerce recalcitrants and by means of the importunacies of his proselytizing and commercial agents, to provoke acts of hostility which often provided the excuse for retaliatory military measures. If, therefore, certain races survived the impact, not only as a united people, but also, above all, as a community still observing their traditional culture-forms, including the worship of the gods of their fathers the phenomenon partook of the nature of a feat so stupendous in recuperative power and stamina as to amount almost to a miracle--a miracle of resistance, faith and loyalty.

Well, we now know that, up to a point, India performed that miracle. Thanks to the relatively high evolution and intricacy of her own culture, her large population as compared with the numbers of her invaders, and above all, of the high intellectual level of her leaders, and their steadfastness as custodians of the people's cherished habits of mind and body, India should, in the millenniums to come, stand as a proverb and example among nations, as a country....."

Mr. Vice-President : How long do you propose to read this? It seems to have little connection with your amendment.

Shri Lokanath Misra: I will be short, Sir, it is relevant, as a foreign appreciation of what we are:

"as a country which, against forces almost everywhere else triumphant, contrived for centuries--in fact until the eve of the ultimate recovery of her freedom--to uphold and continue, without irretrievable loss, her own life and her own way of life."

Sir, I beg to submit, that in drafting this Constitution we dare not forget our own. The Council of States should represent our past and that could be done only by the President nominating only those who represent our great past of great intellectual fervour, high morals, deep and lofty flights of the spirit.

Mr. Vice-President : Amendment No. 15 standing in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Mr. Vice-President, Sir, I beg to move:

"That in amendment No. 1380 of the List of Amendments, in the proposed clause (2) of article 67 after the word 'science' the words 'philosophy, religion, law' be inserted."

Mr. Vice-President : Why not move amendment No. 17 also? That too stands in your name.

Mr. Naziruddin Ahmad : I also beg to move:

"That in amendment No 1380 of the List of Amendments, at the end of the proposed clause (2) of article 67, the words commencing 'Letters, art, etc.' be numbered as sub-clause (a) of that clause and the following new sub-clause be added thereafter:

'(b) journalism, commerce, industries, law.' "

Sir, I beg to submit that the original clause (2) of article 67 contains a number of categories, representing different intellectual spheres from which members could be nominated by the President. In fact there is a number of such items, namely, (a) literature, art, science and education: (b) agriculture, fisheries and allied subjects: (c) engineering and architecture: (d) public administration and social services. Of this long list, only three have been accepted in Dr. Ambedkar's amendment, namely, "art, science and social services" and a new item has been added, namely, "letters". I submit, Sir, that there is a danger in restricting the choice of the President in the matter of nomination to only four classes and rejecting the others. There is no reason why the choice should not be rather wide than restricted. However, my amendment (the first amendment which I have moved) wants to introduce Philosophy, Religion and Law. Sir, I submit that Philosophy is peculiarly Asiatic in origin. So is Religion. All the great Philosophies and all the great Religions emanated from the East. There is no reason why we should give up the Philosophers or the men who are the leaders of Religion. It is only the other day that at the instance of Mr. Kamath we introduced the name of Almighty in the constitution. In fact the President is to take the oath of office in the name of God. Having agreed to give the Almighty a place in the Constitution, I think that Religion which follows from God should also have some recognition in this Constitution. It is often hinted that Religion is a very bad thing and that it leads to quarrels. I submit, Sir, that Religion never leads to quarrels. It is communalism that leads to quarrels and not Religion. All the great Religions are really good and supply a fundamental moral basis for humanity to act. Therefore, Religion should not be discarded; so also with Philosophy. A philosophical attitude is particularly useful for a House like this; particularly when a Member finds that his amendments are not listened to or his speeches are not listened to by the Honourable the Chairman of the Drafting Committee, he cannot but be Philosophical. So for God's sake, do not discard Philosophy too.

Then comes the matter of Law. I submit, Sir, Law should also be represented. The legal talent of the Upper House should particularly be strengthened, because the Upper House will rather be a revising chamber and Law should be particularly represented. Men like Sir Tej Bahadur Sapru, Shri Alladi Krishnaswami Ayyar...

Shri L. Krishnaswami Bharathi : Sir B. N. Rau.

Mr. Naziruddin Ahmad : Yes, Sir. B. N. Rau too. I am thankful for the suggestion. These are very useful names. I think their names should not be shut out from the choice of the President. It may be that at any future election we may lose Dr. Ambedkar himself, and there should be some means of bringing him in by a presidential nomination. Then there is the Rt. Honourable Mr. Jayakar. These are really great men of the Law and their addition, or rather the choice of the President in their selection should be very useful. In these circumstances they should also have some place.

Then with regard to the second amendment: I have also tried to introduce Journalism, Commerce, Industry and Law, Law has already been suggested in my previous amendment. With regard to Journalism, journalists have also a great duty to perform. In fact, they are a kind of go-betweens between the Legislature and the people and between the people and the Legislature. Ideas which are expressed in the legislature are disseminated by the journalists, and ideas which prevail among the people are also brought to the notice of the legislators by journalists. A democracy is run by the three States--the Executive, the Legislature and the Judiciary. To these must be added the newspapers which have been described as the Fourth State. They also play a very important part in the role of freedom of a country. Journalism should also be one of the categories from which the President could make his selections.

Then we come to Commerce. We want to associate those great commercial magnates who are really the wealth producers in the country and they should also be represented and their advice and counsel would be of great help. So also with Industry.

These are the different categories from which the selection should be made.

I submit that the introduction of these classes will not in the least compel the President to select or nominate anyone from any of them. The choice would be reasonably wide and I submit that this amendment should be accepted by this House.

In making the suggestion about Journalism, Commerce, Industry and Law, I took them from a suggestion made by a few learned lawyers who considered the Draft Constitution in the "Indian Law Review" of Calcutta. It is a quarterly journal. It is in volume 2 at page 9 onwards. There, with regard to this very clause of this article, they have suggested that Journalism, Commerce, Industry and Law should also be represented. They said that there is no reason why these important professions and callings should not be included as well. The great point which I wish to suggest to the House is that the choice should not be restricted, but should be widened. It would be an advantage to have different professions and callings in the list so as to make the choice of the President easier and better.

Mr. Vice-President : The next amendment in our list is amendment No. 16 in List No. 1 standing in the name of Mr. Sidhwa.

Shri R. K. Sidhwa (C. P. & Berar : General): I am not moving my amendment.

Mr. Vice-President : The next amendment is No. 18 in List No. 1 standing in the name of Shri B Das.

Since Shri B. Das is not in the House we pass it over.

The next amendment is No. 1381. I find this is of similar import to 1383, 1384,1385 and right up to 1392. All these amendments may therefore be considered together.

Amendment No. 1381 standing in the name of Shri Prabhudayal Himatsingka may be moved.

Shri Prabhudayal Himatsingka (West Bengal : General): I am not moving my amendment.

(Amendments Nos. 1381 to 1394 were not moved.)

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That for clause (3) of article 67, the following be substituted:

> '(3) All members of the Council of States shall be elected. Each constituent State shall elect 5 members by votes of adult citizens.' "

Sir, this is in consonance with the general principle I am advocating, namely, that the Legislature shall be constituted only by elected representatives election being by whatever method you may agree to.

Secondly, that, in the Council of States, all constituent parts of the Union--call them States. Units or what you like--shall be equally represented. Whereas in the lower House, or the House of the People you may have representation in accordance with number, in the Upper House or the Council of States the representation is more of the territory of the Unit, of the special interests of the Unit or region, than of the people pure and simple.

And these, also, I would suggest should be elected rather than nominated, co-opted, or chosen by any other method. The whole body should be elected; and none but elected representatives should come there.

Next, the representatives, so far as they are representatives of the Units, should be equal in number amongst themselves--that is to say, for each State the same number be returned,--so that it will bring some sense of a real Federation working, rather than of discrimination or differentiation as between the Units. On these grounds I commend my proposition to the House.

Mr. Vice-President : Amendment No. 1396 is formal and is therefore disallowed.

(Amendment No. 1397 was not moved.)

Mr. Vice-President : The first part of amendment No. 1398. and amendment No. 1402 are identical. I can allow the first part of amendment No. 1398 to be moved.

Mr. Mohd. Tahir (Bihar: Muslim): What about the second part?

Mr. Vice-President : That will come at the proper place.

Mr. Mohd. Tahir : Sir, I beg to move:

"That in sub-clause (a) of clause (3) of article 67, the word 'elected' where it occurs for the second time be deleted."

I have moved this amendment because I think that there should not be any distinction between the elected members and the nominated members so far as the election of the representatives in the Council of States is concerned. Nominated Members, as soon as they become Members of the House, should enjoy all the rights and privileges of a Member as such.

I had moved a similar amendment in respect of the election of the President of India, but in that respect the House adopted that only the elected members should be allowed to vote for the President of India. In that case there was some meaning to it, because if a President who nominates certain members to Parliament again stands for the Presidentship election, there would have been some difficulty for the members nominated by the said President in exercising their votes. But so far as the election of the representatives of the Council of States is concerned, I do not think that there is any reason why the nominated Members of the Legislature as such should be debarred from voting in the election of their representatives in the Council of States. I hope that taking all these facts into consideration the House will accept my amendment.

Mr. Vice-President : Now you may move the second part of the amendment. They will be voted upon separately. Do you want amendment No. 1402, which is identical, also to be put to vote?

Mr. Mohd. Tahir : Yes.

Mr. Vice-President : You may move the second part of amendment No. 1398.

Mr. Mohd. Tahir : Sir, I beg to move:

"That in sub-clause (a) of clause (3) of article 67 the words 'Legislative Assembly' be substituted for the words 'Lower House'. "

In this connection I would require the special attention of my honourable Friend Dr. Ambedkar. I have moved this amendment because in article 148 of the Draft Constitution the Legislative of the States has been defined as the Legislative Assembly and the Legislative Council; and there is no such term as has been suggested in article 67, that is to say, the 'Lower House'. In this connection I think my Friend Dr. Ambedkar was more conscious than myself because while we were discussing article 43 he introduced an explanation, namely, that "in this and the next succeeding article the expression 'the Legislature of the States' means, where the Legislature is bicameral the Lower House of the Legislature." This explanation, Sir, he had to add while we were discussing article 43, which means that this explanation is meant for article 43 and article 44 only. Therefore, Sir, in order to clear the position in the article under discussion, I think there is no other alternative but to accept my amendment; or I would request my Friend, Dr. Ambedkar to introduce an explanation as he has done in article 43, because unless it is done, the meaning of the article will not be clear, and I hope, Sir, this would be duly considered and accepted by the House.

Mahboob Ali Baig Sahib Bahadur (Madras : Muslim): Mr. Vice-President Sir, I beg to move:

"That in sub-clause (a) of clause (3) of article 67, for the words 'Lower House', the words 'two Houses' be substituted."

The sub-clause as proposed to be amended by this amendment reads like this:

"67 (3) (a) where the Legislature of the State has two Houses, be elected by the elected members of both the Houses."

I do not see any reason, Sir, why, when there are two Houses in the Provincial Legislature, the elected members of the Upper House should be excluded from taking part in the election. I am not thinking of those who may be nominated to the Upper House. I am urging that those members of the Upper House who have been elected may be allowed to take part in the election. On principle, there is no reason at all why the elected members of the Upper House should be excluded. That is the reason why I move this amendment.

I have got one other amendment. No. 1407, Sir. I may be allowed to move that also.

Mr. Vice-President : There are three amendments of similar import . One is amendment No. 1400, the other is No.1403 and the last is No. 1407. Amendment No. 1407 seems to me to be the most comprehensive. Mr. Baig can move that amendment.

Mahboob Ali Baig Sahib Bahadur : The other amendment that stands in my name is Amendment No. 1407.

Sir, I beg to move:

"That in clause (3) of article 67, the following new sub-clause (d) be added:-

> '(d) The election under sub-clause (a) and (b) shall be in accordance with the system of proportional representation by means of the single transferable vote.' "

Shri Mahavir Tyagi (United Provinces : General): On a Point of order, there is a similar amendment standing in my name just before that of Mr. Baig. I have not been allowed to move that amendment.

Mr. Vice-President : Because the three amendments have been moved together, namely, Nos. 1400, 1403 and 1407, as the honourable Members will find by reference to papers already circulated and in my view, Amendment No. 1407 seems to be the most comprehensive. The honourable Member will have his chance later on.

Mahboob Ali Baig Sahib Bahadur : I am glad that some Members are of the same opinion as I am with regard to the method of election, particularly my honourable friend, Mr. Mahavir Tyagi, and I am glad when we come to this part of the Constitution Mr. Mahavir Tyagi has changed his mind. I remember quite well when I moved for the election of the President in the earlier part of the Constitution, Mr. Mahavir Tyagi was, I should say uncharitable.

Shri Mahavir Tyagi : That was the President's election this is of the Council of

States.

Mr. Vice-President : I think it would be better to substitute the word "emphatic".

Mehboob Ali Baig Sahib Bahadur : Perhaps he did not understand. But now he finds that the method of election by a system of proportional representation by means of the single transferable vote is not injurious for the solidarity of the country. I remember at that time........

Mr. Vice-President : May I suggest that instead of making remarks on the past attitude of Mr. Mahavir Tyagi, another honourable Member of this House, the honourable Member may proceed with his own amendment. Probably that would save the time of the House.

Mahboob Ali Baig Sahib Bahadur : Now, Sir, this House has already accepted the system of election under article 55, that is, in regard to the election of the President.

"The Vice-President shall be elected by the members of both Houses of Parliament assembled at a joint meeting in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot."

Therefore, Sir, there is nothing new or extraordinary in my proposing this method of election.

Further, Sir, may I refer to the opinions of certain authorities who are competent to speak on this matter which are referred to in the Constitutional Precedents, supplied to the Members of this House by the Constitutional Adviser? The opinions of persons who are competent to speak on this method of proportional representation are these:

"One of the best safeguards for minority rights and interests is the system of election by proportional representation with the single transferable vote (P.R) which has already been adopted in a large number of countries; Switzerland is a conspicuous example:

> 'In the past there were bitter differences, religious and cantonal. But for a long period of years now, government has been stable. The responsibility for forming a government rests upon parliament; its first duty is to elect an Executive. The Swiss parliament is elected by proportional representation.' "

The late Lord Howard of Penrith, who was Britain's representative at Berne, Stockholm, Madrid and Washington, and who made a study of the working of governments, wrote as follows:

"Two fundamental requirements of democracy, first that Government should be an expression of the people's will and secondly that it should work both smoothly and stably and not be subject to frequent crises, seem to have been met more successfully by the Swiss system than by any other in the world."

Another authority has stated like this:

"Sir Samuel Hoare addressing his constituents in Chelsea expressed the view that representative Government might function more satisfactorily in Europe if the Swiss rather than the British form of Government was adopted. The New York review Free World organised an unofficial round table discussion on the future of Italy. In this discussion Colonel Raudolfo Pacciardi, an active member of the Left, said: 'The frequent crises of the Latin democracies, which have so greatly discredited representative democracy, can be avoided by a constitutional form like that which has been developed in Switzerland."

This was issued by the Proportional Representation Society in June 1945.

Therefore, this method of election represents the expression of the people's will and it will be more stable as well as responsible. My submission is that all the fears that some people might entertain that this method of election would involve the country in sections and it will go against the solidarity of the country are false. Some people who are really communally minded smell a rat in anything in regard to this kind of representation; that is unjustifiable. This is the most scientific and most democratic method of representing the people of a country in a democratic system of Government. I, therefore, commend these two amendments, firstly that the elected members of the Upper House also should be allowed to take part in the election and secondly that the method of election should be by this system, that is proportional representation by means of the single transferable vote. Sir, I move.

Mr. Vice-President : The other two amendments which have been dealt with together are amendments Nos. 1400 and 1403.

Shri Mahavir Tyagi: Sir, these are my amendments and I beg to submit that I may be allowed to move these amendments separately so that the House may decide on the issues separately.

Mr. Vice-President: Come to the mike please.

Shri Mahavir Tyagi: Sir, I beg to move:

"That at the end of sub-clause (a) of clause (3) of article 67, the following words be added:

> 'in accordance with the system of proportional representation by means of the single transferable vote.' "

Sir, while moving this amendment.

Mr. Vice-President : I am afraid I have not given the honourable Member permission to move his amendments. I want to know the reason why he wants to move them. They are of similar import as amendment No. 1407.

Shri Mahavir Tyagi: That is perfectly true. My reason is the House can decide the issue in one case in one way and in the other, in another way. Therefore. I want to give the fullest opportunity to the House.

Mr. Vice-President : I can give the honourable Member an opportunity of making his point in the general discussion; but I cannot depart from the convention which has already been established. His two amendments will be put to vote one after the other.

Shri Mahavir Tyagi: Shall I have my say now, Sir?

Mr. Vice-President : I shall certainly give the honourable Member an opportunity in the general discussion.

Mr. Vice President: Amendment No. 1401, Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Mr. Vice-President, Sir, I beg to move:

"That at the end of sub-clause (a) of clause (3) of article 67 the word 'and' be added and the word 'and' at the end of sub-clause (b) be omitted."

I also beg to move amendment No. 1404:

"That sub-clause (c) of clause (3) of article 67 be omitted."

Sir, so far as this sub-clause is concerned, it introduces some anomalies. Clause (3) where this sub-clause occurs relates to the representation of the States. Sub-clause (a) deals with the representation of States having a legislature with two Houses. Sub-clause (b) deals with representation of States having a legislature with one House.

Mr. Vice-President : Mr. Naziruddin Ahmad, you might move amendment No. 1404 also.

Mr. Naziruddin Ahmad : Yes, Sir. That is the amendment which I have also moved.

Mr. Vice-President: And one speech.

Mr. Naziruddin Ahmad : Sub-clause (c) deals with representation of States having no legislature. States here comprise the Provinces, the Chief Commissioner's Provinces and the Indian States. All the Provinces, however, have legislatures and they will have legislatures too in the future constitution. Sub-clause (c) therefore really affects the States which are now called Indian States and the Chief Commissioners' Provinces. Where there is no legislature, power is being given to the Parliament to prescribe or determine the manner of choosing their representatives. I submit this would be an encroachment on the rights of those States--specially the Indian States. These States having no legislature have a district identity, a modified kind of sovereignty. Dr. Ambedkar conceded the other day that they have some kind of sovereign rights, though not full sovereign rights. The mere fact that they have no legislature is no ground why their representation should be left to be determined by the Parliament. If they have no legislature for the time being there must be a President, or a Raj Pramukh or some authority who or which would function in the State. If the business of the State, its administration its executive and the judiciary and other matters could be carried on by some authority, that authority should also deal with the prescribe how the representatives of that State should come to the House. Therefore, this sub-clause is anomalous. Parliament may perhaps come in when there is a gap when there is really a constitutional vacuum in the State. The only void that is contemplated is the absence of any House of Legislature. There is not a political vacuum. But, still the State may have an organised Government without a legislature and their representation should really be a matter for them. It really is a question of the terms of the Accession. In fact, if a State having no legislature has acceded on certain terms, then sub-clause (c), to be valid, must come within those terms. As I see it, sub-clause (c) goes beyond the terms of Accession, and is an encroachment upon the sovereign or semi-sovereign rights of these States. I therefore submit that Parliament would not be entitled to deal with their representation. It would be beyond its competence. The States should be left to decide their own representation. In fact, it is due to them that they should decide their own representation. A legislature is desirable but by no means a constitutional necessity. The fact that they have no Legislature does not debar their expressing themselves as to how they will be represented.

In these circumstances, I submit that sub-clause (c) should be deleted. But I also feel that some appropriate provision recognizing the right of States themselves having no legislatures to determine their own representation may be substituted. In the shortness of time at my disposal I could not submit an alternative proposition but the question is one of principle. If the principle is acceptable to the House, a suitable substitute may easily be introduced. As at present advised, I submit that Parliament would not be a legal and constitutional substitute for the authority of the States whatever be the form of Government or the nature of the authority which really functions.

With these few words, I submit that my amendment should be accepted.

(Amendment No. 1405 was not moved.)

Mr. Vice-President : No. 1406 disallowed as verbal.

(Amendment No. 1409 was not moved.)

No. 1410 is disallowed.

I would like to put one suggestion before the House, before the general discussion begins. It is this. I have broken many of the Rules of Procedure, some through ignorance others deliberately. I am going to break a convention already established deliberately, but I think I ought to get the permission of the House. This article falls under two separate board divisions. The first four clauses deal with representation in the council of States and the last few provisions deal with representation in the House of the People. My suggestion is that first of all we discuss the first part, i.e., the first four clauses dealing with representation in the Council of States. The amendments relating to these clauses have been moved one after another. Now I want to give an opportunity to honourable Members to take part in the general discussion on these four clauses. After that I intend to call upon Dr. Ambedkar to reply and after that only these amendments will be put to vote. Then we shall take up the amendments concerned with the clauses (5) onwards. Then the amendments will be moved, and then again a similar procedure will be followed. But this procedure is only for this clause. Have I the permission of the House?

Honourable Members : Yes.

Mr. Vice-President : Now these four clauses are open for general discussion. I call upon Mr. Rohini Kumar Chaudhari.

Shri Rohini Kumar Chaudhari: (Assam : General): Mr. Vice-President, Sir, I wish to say a few words on this article. My honourable Friend Moulvi Mohammad Tahir has moved an amendment objecting to the use of the word 'Lower House'. Practically speaking as is known to everybody, the lower House means really the Upper House.

That is the House which has a more important voice and has the upper hand in the administration of the province. Similarly the House of Commons is the House of the Commoners and the House of Lords is the House of the Lords. All the same the House of Commons exercises more powers than the House of Lords and nobody for a moment suggests that the name should be changed for that purpose only. Further more the use of the word 'Lower House' connotes that there must be an Upper House in the same province. Now so far as the Upper House is concerned, its members have been denied many privileges--for instance, one would have normally expected that in selecting or in electing members of the Council of States. their compeers, the member of the Upper House should certainly have a voice. Because after all the birds of the same feather flock together and there is a sort of sympathy between members of the Upper House in a province and the members of the Council of State in the Center but, Sir, when you are not giving them the privilege which is exercised by the ordinary members of the Lower House or the Assembly, you must console them by calling them members of the Upper House. Therefore from that point of view also the words 'Lower House' should be allowed to remain where they are firstly because the Lower House does not mean a House of Lower dignity but it has to be used for purposes of expediency; and secondly, Sir so long as we think that we must have a second legislature in a Province, there should be one which is called 'Upper House' because as a matter of courtesy we should call them Upper House because we are not giving them many privileges.

Then I also want to say a few words on the amendment of Prof. Shah. It is certainly democratic to expect that members of any House should be elected but there is one difficulty in the way. If you leave the representation entirely to election in a Council of state the class of people whom we want to nominate by this article, *i.e.*, the class of people who must have some special knowledge in agriculture, fishery, administration and social service, these people generally fight shy of election and will never be able to come to the House and therefore it is necessary in the exigencies of circumstances that some provision should be left for nomination so that the House may get the advantage of people who would normally not like to enter into a contest of election and at the same time whose services to the Legislature would be very useful.

With these words, Sir, I support the first part of the article.

Shri R. k. Sidhwa : Mr. Vice-Preisdent, Sir, this article so far as it relates to the Council of States contains two parts, one is clause 1 (a) which has been amended by Dr. Ambedkar by reducing fifteen members which he had originally suggested for nomination to twelve members and in clause (2) where the Drafting Committee had suggested about 14 categories under which the nomination had to be made, he has moved an amendment of 4 categories. Now this is the most contentious clause in this article, which ought to require the serious attention and consideration of the House. There is an election and also nomination in the clause. I have stood all along my whole life for election in all legislatures and public bodies and local bodies.

Not that I do not realise that conditions have changed today, but I do feel that even under the changed conditions, the power that is vested in the President may be misused, I mean the power of nomination. This, Sir, is a matter in which we cannot challenge the action of the President, because it is a matter which is absolutely within his discretion. A certain person 'A' may be more desirable to be nominated, but according to the President, another person, 'B' may be considered more suitable and he may nominate 'B'. The House cannot, and no one can challenge that choice or nomination of the President. No one can say that the President can be impeached because he has done something in bad faith or anything of that kind. I am afraid, Sir, that there will be a good deal of bickerings, that while able persons are available, some favourites, or some persons who are in the good books of the President or some persons who are always around the President, are nominated. Human nature being what it is, such a thing is quite possible. I am not stating something new, for persons above these things are exceptional. The President has to take into consideration so many factors when making his selection and at that time, qualifications or merit or service or sacrifices may be set aside or ignored. Therefore, I do feel that even these nominations should not be there, because they will lead to bickerings and out of them bickerings will accrue. The very fact that while the Drafting Committee had laid down some thing like fourteen categories, the Chairman of the Drafting Committee has now come forward with an amendment seeking to change the number to four, and also the number of amendments moved to this particular article show the degree of difference of views. One view is that experts will be required only for a few subjects such as law etc. which are rather technical. But it was asked, why have you left out health? Sir, I do not attach much importance to Law. There are many lawyers in this House, and some quite as competent as Dr. Ambedkar, if I may be permitted to say so. I am only saying that natural temptations will arise, and they are arising, as is shown by the various amendments that have been moved. Therefore, I feel, Sir, that these nominations, in the present juncture, should be done away with.

Coming to Prof. K. T. Shah's amendment I would certainly advocate the suggestion or rather the amendment moved by him proposing the appointment of advisory committees. I do not subscribe to his view completely. For instance, I do not agree with the various numbers and various other experts he has suggested, such as 25 for agriculture and so on. I do not subscribe to so many categories coming in. But certainly, I feel that there is scope for advisory committee of experts. For instance, we may require experts in civic life and also experts in Social life. We cannot ignore the civic service amongst the villages and local bodies. But I do not think such an advisory body should be provided for in the Constitution. In case nomination is to be there then as an alternative we may have these advisory committees on some two or three selected subjects. But that can be done by Parliament by enacting an Act. These persons need not be given undue prominence by making a provision in the Constitution for these advisory committees. According to the conditions that may be prevailing at an election, the Parliament may decide to have certain experts to be attached to particular ministries. But let the House itself be given an opportunity to find out from its own Members whether certain members with expert knowledge on particular subjects are available. If that is not possible, then Parliament can make a law to have Advisory Committees appointed. Sir, today you know we had to seek the advice of economic experts in view of the serious economic conditions in the country. But such an outside body would not be quite desirable, if we are to get a completely unbiased opinion or advice. But if they are in the service of the State, as suggested, they can be trusted to give unbiased opinions.

I would, however, like to make it quite clear that I am opposed to nominations, and the above suggestion is only made as an alternative. We cannot take it, that because we have all been elected, therefore, nomination will be harmless. As I have stated, we cannot expect everybody to be of sterling character, though we wish all of us were of sterling character, and that when we decide upon a person, we do so without any favouritism or any other such considerations, and select the really best man for the place.

With this reservation, Sir, I support the article.

Mr. Vice-President : Shri Mahavir Tyagi.

Shri Mahavir Tyagi : Sir, I must thank you for giving mean opportunity to express my views on this article. I wanted to move an amendment, but you were pleased to rule that it has been already covered by an amendment.

Mr. Vice-President : Yes, your amendments Nos. 1400 and 1403.

Shri Mahavir Tyagi : Yes, Sir. I wanted to say that "in accordance with the system of proportional representation by means of the single transferable vote" may be added at the end of sub-clause (a) of clause (3) of article 67, and in the same manner, similar modifications may be made to sub-clause (b). But I have not much to say now. My Friend Mr. Mahboob Ali Baig has already moved an amendment which I think has the same purpose. But I think the words he has suggested will not fit in properly with the existing words, and I am afraid Dr. Ambedkar will have to take the trouble of setting right the whole sentence. Mr. Baig has suggested that a new sub-clause (d) may be added. Now, sub-clauses (a), (b) and (c) all form part of one big sentence. The sentence begins like this;

> "The representatives of each State for the time being specified in Part I or Part III of the First Schedule in the Council of States shall.. etc., etc."

and then come sub-clause (a), (b) and (c). If another sub-clause (d) is added, as suggested by my Friend Mr. Mahboob Ali Baig, it will read:

> "(d) The election of the representatives of each State.... shall be in accordance with the system of proportional representation, etc., etc."

That will create a construction which is neither here nor there. I feel that my amendment is much more simple and does not lead to any such difficulties. I hope my suggestion will be considered by the House, because if it is accepted, then Dr. Ambedkar will not have to trouble himself about re-adjusting the wording of the article.

Sir, the Council of States will be represented by those members who are sent into the Council by the respective States, by general election, by majority voting, which means that the representatives of the States will not have any member belonging to the minority party of the respective States. It means that, if in the States the election is not by means of the single transferable vote, the minorities will have no representation at all in the Council of States. Sir, I do not agree with the type of democracy in vogue in Europe. This is the biggest fraud which the politicians of the world are unconsciously practising on the masses. Under the existing system of elections the masses do not get any real representation at all. All democracies based on party basis are the monopoly of the chosen few, the literates and the intelligentsia. They form parties and the elections are run on party lines. This being the case, the seats are held by the same set of people who are borne on the crest of the wave of emotion of the masses. The emotion of the masses is excited, fanned and inflamed by the politicians. So much so, that when people go to the booth, they go swayed by the emotion created by the head of the election campaign. When an elector goes to the polling station, he is not his normal self. His emotions are excited and he forgets his individuality. Mass mind is a separate entity. When the elector votes under his emotions, he does not exercise his individual judgment. He is swayed by the election propaganda. Under the circumstances even the representatives of the majority party are not really representatives of the normal mind of the masses. It is only those members of the minority who are either defeated at the elections or have won that represent the real spirit of the masses to some extent. They are the only bold ones who have withstood the attacks, hits, and pushes of the majority party and who have kept their heads cool and aloof amidst waves of mass emotion created by election propaganda and stuck to their principles. So, those who belong to the minorities should be always cared for and looked upon as people who hold to their own opinions staunchly. Therefore, although democracy as practised in the western countries is a hoax and a fiction, it has survived so long because of the opposition. It is the opposition that reflects the true voice of the people. It is the opposition that sustains democracy. Were it not for this, democracy would have long ago crashed and fallen down. I believe in the democracy.....

Mr. Vice-President : The honourable Member's time is up.

Shri Mahavir Tyagi : Please give me one more minute, Sir. I assure you I shall be giving useful suggestions.

Mr. Vice-President : But the honourable Members is taking away the democratic right of others to speak.

Shri Mahavir Tyagi : According to Mahatma Gandhi real democracy is Ram Raj where everyone puts himself and all his power and possession under the supreme control of the general will. Each in fact becomes an indivisible part of the whole body, and indivisible member of the body. Although he acts according to the total will of the people as a whole, even so he obeys himself alone and maintains his freedom. Under such a democracy an attack on the individual is a hit on the total body of the people and a hurt on the total body is a hurt on each individual. We have, however, adopted the western model of democracy which I cannot help. There must therefore be parties in our body politics. Let us therefore give seats in the Council of States to some Members holding the views of the opposition also. Such members can get elected only if my amendments are accepted. Only then Members who are opposed to the party in power in the States can come in. Whenever high State policy is under discussion we can have the advantage of the views of the other side only if they are allowed to come in by this method. The Democracy of the western type is based on free play of the opposition. Without good opposition the democracy will become one legged, it would limp and tumbledown. With these words I hope that my amendments will be accepted.

Mr. Mohamed Ismail Sahib (Madras : Muslim) : Mr. Vice-President, I want to say only a few words and will not take more than one or two minutes.

Under clause (2) of article 67, the different classes from amongst whom the President is to nominate members to the Council of States have been given. In the reason for omitting trade and commerce and industry, the Drafting Committee says that these people can as well come through the general election in view of adult suffrage. Sir, for the same reason you could have omitted to give representation by nomination also to the classes of the people enumerated in sub-clauses (a) to (d).

They can also come through general elections under adult suffrage.

Sir, I do not know that the importance of commerce is in any way less than the importance of the other classes of people enumerated in this clause. Therefore I think it is very reasonable and fair that trade and commerce also should be included.

Sir, now coming to clause (3), in the various sub-clause, nominated members are being sought to be excluded from having anything to do with the election or the choice of representatives to the Council of States from the States. Sir, if no nomination is provided for at all, that is another thing and I would have no quarrel at all. But you think that nomination is necessary and are providing for the nomination of certain people. Then, when you have recognised the importance of nominating people and when you have actually nominated them to the Council of States, it will not do to discriminate against them. It will not be at all fair to place them at a disadvantage and give them an inferior status. When you have recognised their importance and nominated them, they must also be treated equally, after they have been nominated, with the other members who have been elected and who form part of the various bodies. Therefore I am not able to see the reason why these people should be eliminated from having anything to do with these elections.

Then, Sir, a word with regard to the system of proportional representation proposed in more than one amendment to this article. It is said that this system of election will lead to fissures and divisions amongst the People. But, in reality, it would not be leading to that result or effect at all, because people know that under this system of election every group of people has got an effective say in the election. Therefore every group will be drawn towards the other group. When it is a question of election they will be made to work with each other. They will be compelled to seek the franchise of every group. Therefore it will really bring the people together instead of disintegrating them. It will make each group seek the franchise of other people. Therefore it would really work for unity rather than for disunity. Sir, I think that the Chairman of the Drafting Committee would see the reasonableness of this proposal and would recommend to House the acceptance of this system.

Mr. Vice-President : Dr. Ambedkar.

(Pandit Hirday Nath Kunzru rose to speak.)

Mr. Vice-President : What is it that you want to say, Pandit Kunzru?

Pandit Hirday Nath Kunzru : I would like to say something about this question of proportional representation before Dr. Ambedkar rises to reply.

Shri L. Krishnaswami Bharathi : In the general discussion only two people have spoken so far, Sir.

Mr. Vice-President : On the whole four people have spoken. But I would allow you to speak, Pandit Kunzru, but please confine yourself to the question of proportional representation only.

Pandit Hirday Nath Kunzru : Mr. Vice-President, as it has been proposed that the members of the Council of States should be elected by the Lower Houses of the provincial legislatures, it is necessary that a system should be laid down for the election of the members as would be fair to men holding different views. It has accordingly been suggested that in their election the system of proportional representation by means of the single transferable vote should be used. Honourable Members may be afraid that, if this system is accepted, it would mean the introduction of communal electorates by the backdoor. We know the evils of communal electorates. We know that the partition of India is the direct result of such electorates. We have therefore to be on our guard against any system of election that would lead to the maintenance of the old evil in a new form, but let us consider whether the acceptance of the suggestion that has been made would in practice amount to the election of the members of the Council of States by people belonging to separate communities. In order to clarify our minds, it is necessary for us to consider how the members of the provincial legislative assemblies will be elected. They will not be elected on the basis of communal electorates. The electorates will be mixed. They will have consist of men of all communities, and the men returned by mixed electorates are not likely to be imbued with communal virulence. It should not be supposed that the representatives of any community would be able to get in merely by the votes of the members of that community. They will have to seek the suffrages of mixed electorates and it may therefore be supposed--we may take it for granted--that if they want to maintain their position, if they want to be re-elected, they will have to follow a policy that is not based on religious or communal divisions. Now if we get such members in the Lower Houses of the provincial legislatures, is there any reason to fear that if the system of proportional representation by means of the single transferable vote were introduced for the election of the members of the Council of States, the evils of communal electorates would be maintained or intensified? Sir, we ought not to consider this question entirely from the point of view of the representation of different communities. We ought also to consider the need for the representation of persons holding views that are not popular, and the method of proportional representation would enable fair representation to be given to minorities holding views different from those of the majority. Unless the system of proportional representation is introduced, the views that are unpopular would never be represented. Take, Sir, the election of members to the Constituent Assembly. There are some members of this House who do not belong to the Congress and have yet been able to get elected. They have been able to secure their election because of the existence of the method of proportional representation with the single transferable vote for the election of the members of the Constituent Assembly. But for this system no one who was not a Congressman could have been here.

Maulana Hasrat Mohani (United Provinces : Muslim) : Hear, hear.

Pandit Hirday Nath Kunzru : I think therefore that it is desirable that we should adopt the system of proportional representation by means of the single transferable vote in connection with the election of the members of the Council of States. I need not repeat that these members will be elected by provincial representatives who have not been returned on a communal ticket so to say. They will be elected by men who will owe their election to an electorate that will consist to an overwhelming extent of members of the majority community. There need be no reasonable fear therefore that the election of members of the Council of States by means of proportional representation would mean the reintroduction of communal electorates with all the evils that they involve. On the contrary, I think that in the changed circumstances this method would enable a fair representation of the views of sections that would otherwise be overwhelmed and would not be able to make their voice heard, to be secured.

Mr. Vice-President : Dr. Ambedkar

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, I am agreeable to amendments Nos. 1369, 1375, 1378,1380,1400 and 1403. With regard to the last two amendments (Nos. 1400 and 1403) those are also covered by an amendment moved by Mr. Mahboob Ali Baig. It is amendment No. 1407. I would have been glad to accept that amendment but unfortunately, no examining the text of that amendment, I find that it does not fit in with the generality of the language used in clause (3) of article 67. That is the only reason why I prefer to accept amendment No. 1403, because the language fits in properly with the language of the article.

With regard to the other amendments, I think there are only three which call for special consideration. One is an amendment by Mr. Kunhiraman. The aim and object........

Mr. Vice-President : It was not moved.

The Honourable Dr. B. R. Ambedkar : Then I do not think I need say anything about it. There remain only two-one is the amendment of Mr. Kunzru. He was very naturally considerably agitated over the proviso which stood in the Draft Constitution and which provided for the 40 per cent representation to representatives of the States. I think it is desirable that I should clear the ground and explain what exactly was the reason why this proviso was introduced and what is the present position. It is quite true that in the Government of India Act, it was provided that although the States population formed one-quarter of the total population of India as it then stood in the Lower House, the States got representation which was one-third of the total and in the Council of States they got two-fifths representation which was 40 per cent. That is not the origin as to why this proviso was introduced in the Draft Constitution. I should therefore like to go back and give the history of this clause.

Members of the House will remember that this House had appointed a Committee known as the Union Powers Committee. That Committee recommended a general rule of representation, both for people in British India as well as people in the Indian States and the rule was this: That there should be one seat for every million up to five millions, plus one seat for every additional two millions. As I said, this was to be a rule to be applicable both to the provinces as well as the States. But when the report of the Union Powers Committee came before the Constituent Assembly for consideration, it was found that the representatives of the States had moved a large number of amendments to this part of the report of the Union Powers Committee. Great many negotiations took place between the representatives of the Indian provinces and the representatives of the Indian States. Consequently, if honourable Members will refer to the debates of the Constituent Assembly for 31st July 1947, my friend and colleague, Mr. Gopalaswami Ayyangar, who moved the adoption of the Report of the Union Powers Committee, moved an amendment that the States representation shall not exceed 40 per cent. Now that rule had to be adopted or introduced in the Draft Constitution. So far as I have been able to examine the proceedings, I believe that this proviso of granting the States 40 per cent representation was introduced not so much with the aim of giving them weightage but because the number of States was so many that it would not have been possible to give representation to every State who wanted to enter the Union unless the total of the representation granted to the State had been enormously increased. It is in order to bring them within the Union that this proviso was introduced. We find now that the situation has completely changed. Some States have merged among themselves and formed a larger Union. Some States have been integrated in British Indian provinces, and a few States only have remained in their single individual character. On account of this change, it has not become as necessary as it was in the original state of affairs to enlarge the representation granted to the States, because those areas which are now being integrated in the British Indian provinces do not need separate representation. They will be represented through the provinces. Similarly, the States which have merged would not need separate representation each for itself. The totality of representation granted to the merged States would be the representation which would be shared by every single unit which originally stood aloof. Consequently, in the amendment which I have introduced, and which speaks of Schedule 3-A, which unfortunately is not before the House, but will be introduced as an amendment when we come to the schedules, what is proposed to be done is this:

We have removed this 40 per cent ratio granted to the States and there will be equality of representation in the Upper Chamber, both to the Indian State as well as to the Provinces, and I am in a position to give some figures, which, although they are not exact for the moment, are sufficient to give a picture of what is likely to be the contents of Schedule 3-A.

According to Schedule 3-A, the provinces will have 141 seats. The Chief Commissioners' provinces will have two and the States will have seventy altogether. Consequently, the total of elected members to the Upper Chamber will be 213. Add to that twelve nominated seats. That would bring the total to 225. Our clause, as amended, says that the total strength of the Council of States shall not exceed 250. You will thus see that the allocation of seats which it is proposed to make in Schedule 3-A satisfies two conditions, in the first place it removes weightage and secondly, it brings the total of the House within the maximum that has been prescribed by the amendment that I have made. I think the House will find that this is a very satisfactory position.

Pandit Hirday Nath Kunzru : May I ask my honourable Friend whether the States in Part III of the first Schedule have been represented in accordance with their population?

The Honourable Dr. B. R. Ambedkar : Yes, everybody will now get population ratio.

Then I come to the second amendment--No. 1377 by Prof. K. T. Shah. Prof. K. T. Shah proposes that there should be a council of the representatives of agriculture, industry, commerce and other special interests created by statute. It will be a permanent body of people. The States shall be required to give them salaries, allowances, and the duty of this council, as proposed by Prof. K. T. Shah, is that it shall have the statutory duty of giving advice to Government, and the Government will have the statutory obligation of consulting this body, and it shall not be permissible for the Government, I take it, to introduce any measure which on the face of it does not bear the endorsement that the statutory body has been consulted with regard to the contents of that Bill. I believe that is the purpose of Prof. K. T. Shah's amendment.

There are various objections to this. In the first place anyone who has held any portfolio in the Government of India or in the Provincial Governments will know that this is the normal method which the Government of India and the Provincial Governments adopt before they finalise their legislative measures: there is no proposal brought forth by the Government of India in which the Government of India has not taken sufficient steps to consult organised opinion dealing with that particular matter. It seems to me that this provision which is a matter of common course is hardly necessary to be put in the Constitution. I therefore think that from that point of view it is unnecessary.

Then I should like to tell the House that it is proposed that at a later stage I should bring in an amendment which would permit the President to nominate three persons either to the Council of States or to the House of the People who shall be experts with regard to any matter which is being dealt with by any measure introduced by Government. If it is a matter of commerce, some person who has knowledge and information and who is an expert in that particular branch of the subject dealt with by the Bill, will be appointed by the President either to the Council of States or to the Lower House. He shall continue to be a member of the legislature until the Bill is disposed of; he shall have the right to address the House, but he shall not have the right to vote. It is through that amendment that the Drafting Committee proposes to introduce into the House such expert knowledge as the Legislature at any particular moment may require. That justifies, as I said, the rejection of Prof. K. T. Shah's amendment; and also the other amendments which insisted that the other clauses of this article requiring that agriculture, industry and so on be also represented, become unnecessary. Because, whenever any such expert assistance is necessary, this provision will be found amply sufficient to carry out that particular purpose. Honourable Members might remember that in the 1919 Act when Diarchy was introduced in the Provinces a similar provision was introduced in the then Government of India Act which permitted provincial Governors to nominate experts to the House to deal with particular measures. Sir, I suppose and I believe that this particular proposal which I shall table before the House through an amendment will be sufficient to meet the requirements of the case.

Shri R. K. Sidhwa : Will the nomination clause remain?

The Honourable Dr. B. R. Ambedkar : Yes.

Mr. Vice-President : I shall now put amendment No. 1379 to vote. The question is:

"That clause (2) of article 67 be deleted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That clause (4) of article 67 be deleted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in amendment No. 1369 of the List of Amendments, in the proposed clause (1) of article 67, for the word 'two' the word 'one' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in amendment No. 1369 of the List of Amendments, sub-clause (a) of clause (1) of article 67 be deleted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in amendment No. 1369 of the List of Amendments, in sub-clause (a) of the proposed clause (1) of article 67, for the words 'twelve members' the words 'not more than 6 per cent, of the total number of members of the House' be substituted."

The amendment was negatived.

Mr. Vice-President : I shall put the short notice amendment of Sardar Hukam Singh to vote. The question is:

"That in amendment No. 1369 of the List of Amendments, in sub-clause (a) of the proposed clause (1) of article 67, for the words, 'in the manner provided' the words 'from amongst the categories of persons illustrated' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That for clause (1) of article 67, the following be substituted:

`(1) The Council of States shall consist of not more than two hundred and fifty members of whom--

(a) twelve members shall be nominated by the President in the manner provided in clause (2) of this article; and

(b) the remainder shall be representative of the States'."

The amendment was adopted.

Mr. Vice-President : I shall put amendment No. 1375, standing in the name of Dr. Ambedkar, to vote.

It reads:

"That the proviso to clause (1) of article 67 be deleted."

Shri L. Krishnaswami Bharathi : On a point of Order, Sir. Amendment No. 1375 is out of order in view of the fact that we have already adopted amendment No. 1369 which is a substitution of the clause including the proviso. The proviso has been omitted now by the acceptance of the new clause. There is no point in having an amendment about something which is not in existence.

Mr. Vice-President : Then I shall not put it to vote.

Mr. Vice-President : The question is:

"That to clause (1-a) of article 67 as now moved, the following words be added:

> 'Provided that the ratio of the total number of representatives of the States for the time being specified in Part III of the First Schedule to their total population shall not exceed the ratio of the total number of representatives of the States for the time being specified in Parts I and II of that Schedule to the total population of such States'. "

The amendment was negatived.

Mr. Vice-President : The question is:

"That in amendment No. 1378 of the List of Amendments for the proposed clause (1-a) of article 67, the following be substituted:

> '(1-a) The allocation of seats to representatives of the States in the Council of States shall be based on the following principles:
>
> (i) one representative for every million population up to the first seven million population in each State in Schedule I, provided that no State shall have less than one representative in the Council of States;
>
> (ii) one representative for every two million population after the first seven millions'."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in amendment No. 1378 of the List of Amendments, for the proposed clause (1-a) of article 67, for the words 'in accordance with the provisions in that behalf contained in Schedule III-B' the words 'on the basis of equal representation to each of the component States, the number of which representation shall in no case be more than *three*' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is :

"That in amendment No. 1378 of the List of Amendments, after the proposed clause (1-a) of article 67, the following new clause (1-b) be inserted :

'(1-b) Steps should be taken to see that, as far as possible, men from different units are represented.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That the following new clause be added after clause(1) of article 67:

> '(1-a) The allocation of seats to representatives of the States in the Council of States shall be in accordance with the provisions in that behalf contained in Schedule III-B'."

The amendment was adopted.

Mr. Vice-President : The question is:

"That the proviso to clause (1) of article 67 be deleted and the following new clause be added after clause(1):

> '(1-a) Parliament may by law establish a Consultative Council of Representatives of Agriculture (25), Industry (15), Commerce (10), Mining, Forestry and Engineering (10), Public Utilities (5), Social Services (5), Economists (5), to advise Parliament and the Council of Ministers on all matters of policy affecting Agriculture, Industry, Commerce, Mining, Forestry, Engineering, Public Utilities and Social Services; and prepare or scrutinise proposals for legislation concerning any of these items.

Explanation.--The number given in the brackets after each group is the total number of representatives from each section

Members of this Council shall have, individually or collectively, no administrative or executive duties, functions, or responsibilities. Every member of this Council shall be paid such salaries, emoluments, or allowances as Parliament may from time to time provide'."

The amendment was negatived.

Mr. Vice-President : The question is :

"That in amendment No. 1380 of the List of Amendments, in the proposed clause (2) of article 67, for the words 'special knowledge or practical experience' the words 'real knowledge of or actual devotion for', and for the words 'Letters, art, science and social services' the words 'History of ancient Indian Philosophy and Culture, art and science and social services towards reconstruction of "Introspective India" ' be substituted respectively."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in amendment No. 1380 of the List of Amendments, in the proposed clause (2) of article 67, after the word 'science' the words 'philosophy, religion, law' be inserted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in amendment No. 1380 of the List of Amendments, at the end of the proposed clause (2) of article 67, the words commencing 'Letters, art, etc.' be numbered as sub-clause (a) of that clause and the following new sub-clause be added thereafter:

'(b) journalism, commerce, industries, law.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That for clause (2) of article 67, the following be substituted:

'(2) The members to be nominated by the President under sub-clause (a) of Clause (1) of this article shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely:

Letters, art, science and social services.' "

The amendment was adopted.

Mr. Vice-President : The question is:

"That for clause (3) of article 67, the following be substituted:

'(3) All members of the Council of States shall be elected. Each constituent State shall elect 5 members by votes of adult citizens.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That is sub-clause (a) of clause (3) of article 67, the word 'elected' where it occurs for the second time be deleted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in sub-clause (a) of clause (3) of article 67, the word 'elected' where it occurs for one second time be deleted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in sub-clause (a) of clause (3) of article 67, the words 'Legislative Assembly' be substituted for the words 'Lower House.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That in sub-clause (a) of clause (3) of article 67, for the words 'Lower House' the words 'two Houses' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (3) of article 67, the following new sub-clause (d) be added:

> '(d) The election under sub-clause (a) and (b) shall be in accordance with the system of proportional representation by means of the single transferable vote.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That at the end of sub-clause (a) of clause (3) of article 67, the following words be added:

> 'in accordance with the system of proportional representation by means of the single transferable vote.' "

The amendment was adopted.

Mr. Vice-President : The question is:

"That in sub-clause (b) of clause (3) of article 67, after the words 'of that House' the words 'in accordance with the system of proportional representation by means of the single transferable vote' be inserted."

The amendment was adopted.

Mr. Vice-President : The question is:

"That at the end of sub-clause (a) of clause (3) of article 67, the word 'and ' be added and the word 'and' at the end of sub-clause (b) be omitted."

The amendment was negatived.

Mr. Vice-President : The question is :

"That sub-clause (c) of clause (3) of article 67 be omitted."

The amendment was negatived.

Mr. Vice-President : It thus appears that there are altogether 5 amendments which have been carried, namely Nos. 1369, 1378, 1380,1400 and 1403.

I am now in a position to make a formal announcement to the House that we definitely adjourn from the 8th of this month, but we do sit on the 8th Saturday. The House now stands adjourned to 10 A.M. tomorrow.

The Assembly then adjourned till Ten of the Clock on Tuesday, the 4th January 1949.

[Translation Of Hindustani Speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VII

Tuesday, the 4th January 1949

The constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

DRAFT CONSTITUTION -(*Contd.*)

Article 67-(Contd.)

Mr. Vice-President (Dr. H. C. Mookherjee): Before we begin the business of the Houses, I have to inform honourable Members that yesterday information was received that members of the R.S. S. would somehow secure entrance into the lobbies and galleries in order to create disturbance. Fortunately, this was prevented. May I request honourable Members to issue visitors' cards for those only who are personally known to them in order that we may proceed with our business without any interruption?

We shall now take up discussion of article 67. The first amendment on the list is amendment No. 1411. This is disallowed as being verbal.

Then we have amendments Nos. 1412, 1413 first part, 1414 first part and 1415 first part. These are identical. Amendments 1415 standing in the name of Kazi Syed Karimuddin is allowed to be moved.

Kazi Syed Karimuddin (C. P. & Berar : Muslim): Mr. Vice-President, Sir, I move:

> "That in sub-clause (a) of clause (5) of article 67, the following words be deleted:--
>
> 'Subject to the provisions of articles 292 and 293 of this Constitution';
>
> and the following words be added at the end :--
>
> > 'in accordance with the system of proportional representation with multi-member constituencies by means of cumulative vote'."

Sir, the present electoral system, of single member constituency according to me, is very defective. The one pervading evil of democracy is the tyranny of the majority that succeeds in carrying elections. To break off that point is to arrest danger. The common system of representation perpetuates the danger and the only remedy is proportional representation. That system is also profoundly democratic for it increases the influence of thousands of those who would have no voice in the Government and it brings men more near an equality by so contriving that no vote shall be wasted and that every voter shall contribute to bring into Parliament a member of his own choice and opinion. Sir, another objection to the present electoral system is that the system does not even guarantee the rule of majority. We have innumerable instances of this type in England and America. The Conservative majority of 1924 was unreal because it polled 48 per cent of votes and it was supposed to be the majority party in the country. Then in America, Presidents Hayes and Harrison became Presidents in 1876 and 1888 when they secured votes less than the votes secured by their adversaries. In so far as this is concerned, the present electoral system is really perverse. This system may even deprive the minorities of their just share of representation as to render them important. An instance of this has happened in the Irish election. The most ardent defenders of the system would hardly deny the right of the minority to some representation and it is worthy if note that one of the reasons advanced by Glad stone was that such a system tended to secure representation for minorities. This is found to be wrong in Ireland; yet as prophesied in the debates of 1885, the minorities in the South and West of Ireland have since that date been permanently disfranchised. In the eight Parliaments of 1885 to 1911 they had been without representation. Therefore my submission is that the present system as it stands does not guarantee a majority rule as people commonly suppose and does not guarantee a representation to minorities, not necessarily religious, even the political minorities. Today we are faced with an electoral system in which there is no guarantee except the reservation of seats that has been embodied in articles 292 and 293. By my amendment I plead that if proportional representation is guaranteed the reservation of seats even on religious grounds must go. It has been accepted on all hands that communalism must be uprooted from the soil of this country. We have has had evil effects of it and the Dominion Parliament is already committed to this stand because a Resolution has been already passed that no communal party may be allowed to function in the country. Therefore separatism, communalism and isolationism must disappear from the body politics of India but we cannot ignore the existing conditions in the country. We find that there is a movement for the establishment of a Hindu Raj. We find that there is an R.S. S. organisation also in the country. In view of this we have to proceed cautiously and gradually, and therefore we have to find out a way that communalism must go and the minorities must be represented in the legislatures.

Now there are two methods before us. One is the reservation of seats as has been provided in the Constitution, i.e. under article 292. The other is proportional representation. There are very serious defects about the provision of reservation of seats because it is based on religious grounds. It defeats the very objects for which it is adopted because the chosen representatives of the community for which reservation is given cannot be secured. then as I had already said in the general discussions, that even a false convert for the purpose of election will defeat a choice representative and the minorities will be engaging lawyers who would argue the cases against their own clients; but it is wrong to say that it is communal because it is the majority that would elect the representatives of the minorities mainly and not the minority communities.

The system which I regard as the best is the system of proportional representation. It is not based on religious grounds and it applies to all minorities, political, religious or communal. There are three objections to this system, which are generally argued and debated. The first is that there would be very large constituencies and it would be very difficult to manage the voters. The second objection is the instability of the Government and the third is the establishment of Coalition Governments. Now in regard to the first objection, I think it is not tenable at all. In a large constituency if the party system works, then there is no question of the candidate coming in contact with the voters. The party machinery would work successfully. It is wrong to suppose that there will be instability of Government because the majority is bound to secure majority in the House and the majority is bound to form a Government. Then about the Coalition Government, in my opinion, where there is heterogeneous population, it is very necessary that we should have Coalition Governments. It will not be a bad thing that various representatives elements should have to be consulted in forming a Ministry. The country is passing thorough transition and Communism is knocking at our door. It is very necessary that the opposition whether it is communal or it is a political will have to be accommodated. We are about to transfer the Government of this country from the middle classes to those whom I might describe as the wage-earning class. This is an immense change which is realised by very few people in the country. The Congressmen are of opinion that they are bound to sweep the polls and therefore they support the Draft Constitution which establishers a majority rule, making no effective provisions for the benefit of either communal or political minorities in the country. They are wrong and they would be found to be wrong. No organization in the world has reconciled the conflicting claims of labour and capital, tenant and landlord and it is impossible to keep them under one banner. Look around us, communism is spreading with alarming speed and once it catches the imagination of the working classes, its potentiality is very grave. Suppose the working classes take a fancy for socialist dogmas or communist dogmas, they being in majority, are bound to capture power in absence of any provision to protect political or communal minorities. In order to provide against such contingencies the system of proportional representation is the only method. Secondly without any sacrifice of democratic principles, it can afford protection to communal minorities also. Without any spirit of communalism representatives of political and communal minorities can be elected. In the absence of this, the country can be plunged into communism.

Shri L. Krishnawami Bharathi (Madras : General) : Sir, may I request the honourable Member to read slowly?

Kazi Syed Karimuddin : I am not reading. I am only referring to my notes. You can come here and see it for yourself.

Mr. Vice-President : Mr. Karimuddin, I suggest you speak more slowly.

Kazi Syed Karimuddin : Sir, in the general election and according to the present electoral system if the pendulum swings in favour of communism, all schemes of development will be lost and if it swings in favour of communalism, the secular nature of the State will be lost; and if the minorities are neglected, whether they are political, or communal, and crushed and kept out of Parliamentary activities, it will be a good fodder for the communists and they will sit in their lap. Therefore, it is part of wisdom to persuade the opposition to take of the ways of constitutionalism and the only way to do it is the introduction of the system of proportional representation. I prophesy that if this is not done, it will lead to chaos. That does not mean that I oppose the continuance of the present regime. I want the Congress to live longer because they have given peace, tranquility and a secular State to all the communities in India but this cannot be guaranteed unless the system of proportional representation is introduced.

Now, Sir, the first part of my amendment says that there should be abolition of the provision of reservation of seats in case the proportional representation is granted; otherwise not. Sir, in fact when I spoke about the abolition of reservation of seats and adoption of proportional representation, there was an incorrect idea that I was pleading for the abolition of reservation of seats unconditionally. I had stated and I state even today that if proportional representation is introduced, there should be no provision regarding the reservation of seats. Once you accept that there are minorities and also that some recognition has to be given to them, then my submission is that the House should be pleased to introduce the system of proportional representation.

Mr. Vice-President : Then amendment No. 1412 which stands in the name of Mr. Mohd. Tahir. Do you want it to be put to vote Mr. Tahir?

Mr. Mohd. Tahir (Bihar : Muslim): No, I do not want to move it.

Mr. Vice-President : Well in that case the amendments to that amendment, that are Nos. 19 and 20, standing in the name of Pandit Thakur Dass Bhargava fall through. But do you want to move them, Mr. Bhargava? I find that they relate to not only amendment No. 1412, but to other amendments also.

Pandit Thakur Dass Bhargava (East Punjab : General) : Sir, though I do not want to move those amendments, with your permission, I would like to make a statement about them.

Mr. Vice-President : You can do so in the course of the general discussion. I shall bear that in mind. So I score them out. Then we come to amendment No. 1413, standing in the name of Pandit Lakshmi Kanta Maitra.

Pandit Lakshmi Kanta Maitra (West Bengal : General): I am not moving it Sir.

(Amendment No. 1414, first part was not moved).

Mr. Vice-President : Then we come to the second part of No. 1414, second part of 1415 and No. 1421. These are of similar import and may, therefore, be considered together. Amendment No. 1415 may be moved. It stands in the name of Kazi Syed Karimuddin; I am referring to the second part of No. 1415.

Kazi Syed Karimuddin : Sir, I have moved both parts of No. 1415.

Mr. Vice-President : All right. I am sorry I did not follow. Then No. 1414 falls through, as Mr. Lari is absent. Then we come to amendment No. 1416 and amendment No. 1417, amendment No. 1416 stands in the name of Prof. K. T. Shah.

Prof K. T. Shah (Bihar : General) : Mr. Vice-President, Sir I beg to move:

"That in sub-clause (a) of clause (5) of article 67,for the words 'not more than five hundred representatives of the people of the territories of the States directly chosen by the voters' the words 'such members as shall, in the aggregate, secure one representative for every 500,000 of the population in all the constituent parts of the Union, whether States or territories directly administered by the Centre. All members of the People's House shall be chosen directly by the votes of adult citizens. The votes shall be cast in a secret ballot and voting shall be on the basis of Proportional Representatives with Single Transferable Vote' be substituted."

Sir, by this amendment, I seek to make, three changes.

The first is to avoid a maximum number of representatives being fixed by the constitution for the People's House of Representatives. It is, I think, not in accord with the correct principle of popular representation that it must be the people's voice which must be the final authority in the governance of a country calling itself a democracy. Under such a principle the Constitution should not fix permanently the maximum number of representatives for the popular chamber.

We have observed the tendency, during the last three or four censuses, towards a steady increase of the population of our country at every decennium. The last census shows an increase of as much as 15 per cent in ten years. If, now, you fix the absolute maximum number, it would happen that you might change the number of persons represented by each representatives in an undesirable direction. That is to say, the representative character of each representative would become lesser and lesser, as he would be representing larger and larger numbers.

I feel, Sir, that if you make representation of very large numbers of voters to be concentrated on a single member, So to say, you may not have a correct verdict of the people on a multiplicity of issues that are usually placed before the electorate at a general election.

A general election-and that is presumably contemplated here-is always an occasion when a number of issues come before the voters, in which the people, that is, the voters are likely to be confused, because of the varying, and often conflicting, pulls of the different issues on which they are asked to give each a single vote. This being the unavoidable case at each such election, I think it may be as well to fix no maximum number of representatives for the representation of the people. Instead we should allow the number to shape itself according to the varying population.

It is true that is your census is a decennial affair, it may not give you the correct guide for every election in the interval between two censuses assuming that elections come at least once in five years, if not more frequently. Even so, since we have agreed to take the last preceding census as the basis, and that census is now more than eight years old--apart altogether form the originally doubtful character of that census taken during the war,--the next general election may itself be not correctly representing all people, especially if you fix a maximum number of representatives to start with. In other later general elections, the five-year interval would not make so great a variation. That variation may be about 5 per cent or 6 percent or 7 1/2 per cent. This only means that representatives would number so many more on that amount of change, it may not be impossible for a proper electoral machinery to cope with.

Taking that to be the case, I would suggest that a limit is 500,000 population be fixed as being entitled to be represented. This would be much more likely to reflect the real opinion of the people, even on a number of issues, than if you fix the total number of representatives at 500 as is contemplated under this clause. The number would, no doubt, increase, if the population tends to increase. It is therefore, possible that the maximum for the coming two decades may reach the figure of, say 600, or even more. Even with that number, I do not think that, for a country of the size and population of the Union of India, it is to large a number of representatives.

Anybody interested primarily in expediting things, and in governing the country according to a few people's will naturally not like large number of deliberation, and the larger the time taken in passing laws or resolutions, representatives. The larger the number the greater, of course, is the chance, of deliberation, and the larger the time taken in passing laws or resolutions. The scrutiny of government's executive actions would also be from a greater variety of angles by interpellations and the like. Those, therefore, in favour of expenditing public business may not quite like this suggestion.

Those, on the other hand, who think more of the people and their wishes, would not, and should not, find in this, in my opinion, a hindrance or handicap to good government. The possibility of varying or increasing number of representatives should not, by itself, be regarded as an objection. In fact, even in the clause as it stands, the very idea that you think it necessary to fix the maximum number of representatives indicates that, even in this scheme, there is a possibility of variation in number; and as such, my amendment is, by itself, not to be condemned.

My second point is in relation to the scheme of voting. There are, in later clauses, some other amendments which I have tabled, and which when they come up, I will discuss. I will, therefore, not take up the time of the house at this moment.

As regards the scheme of voting, I only insist that voting should be by secret ballot, by adult citizens; and that it should be by means of a scheme of Proportional Representatives under the device of the single transferable vote. I do not propose to descant at length, upon the theoreatical grounds in favour of Proportional Representation or against it, as the previous speaker has placed a fairly exhaustive case before you. I would only like to add, lest I should be misunderstood, that the principle of Proportional Representation is not intended so much to perpetuate communal minorities, as to reflect the various shades of political opinion which after all, should be reflected in your Legislature, if you desire to be really a demarcatic government. The French system for instance, strictly speaking, is not based on Proportional Representation; and yet, different shades of political opinion are reflected in the French Assembly. Even so French Governments in the third Republic had an average life, it is said, of perhaps not more than eleven months. On that count, however, the principle is not necessarily to be condemned, as the public opinion of all shades gets a chance of expression and there is in it, if not greater stability, at least greater reflection of popular will than would be the case in a system of absolute vote that is apparently contemplated here.

The possibility of securing varying shades of political opinion will give a chance not only for minorities to be duly reflected in the Legislature of the country but also for them to assert themselves, and to convert themselves into a majority, which perhaps, those who might confuse Proportional Representation as synonymous with the possibility of communal representation would do well to consider. On these grounds, Sir, I commend this motion to the house.

Shri H. V. Kamath (C. P. & Berar : General) : Mr. Vice-President, I move, Sir:

"That in sub-clause (a) of clause (5) of article 67, for the words 'representatives of the people of the territories of the States directly chosen by the voters' , the words 'members directly elected by the voters in the States' be substituted."

The clause as it appears in the Draft Constitution reads thus :

"(5) (a) Subject to the provisions of articles 292 and 293 of this Constitution, the House of the People shall consist of not more than five hundred representatives of the people of the territories of the States directly chosen by the voters."

If my amendment is accepted by the House, the clause will read thus:

"Subject to the provisions of articles 292 and 293 of this Constitution, the House of the People shall consist of not more than five hundred members directly elected by the voters in the States."

The House will see that my amendment makes for brevity, clarity and precision and further, seeks to eliminate the convolutions of language which mar the construction of the clause as it stands at present. I do hope that Dr. Ambedkar and the House will not have any difficulty in or objection to accepting it. I will only say one word more. If my amendment is accepted by the House, certain consequential changes will follow in sub-clause (2) of the clause (5) and in the proviso thereto. In the sub-clause as well as in the proviso, the words "representatives of the States" will have to be altered to 'members' in conformity with the amendment which has been moved to sub clause (a) of clause (5). I commend this amendment to the acceptance of the House.

Mr. Vice-President : Amendments Nos. 1418, 1419 and 1420 are of similar import. I allow Prof. Ranga to move amendment No. 1419.

(Amendments Nos. 1418 to 1423 were not moved.)

Prof. K. T. Shah : Mr. Vice-President, I beg to move:

"That the following be added after the words 'the States' in sub-clause (b) of clause (5) of article 67:--

'and Territories directly governed by the Centre'."

Sir, the existing clause provides only for those States which are mentioned in the Schedule attached. The Schedule does not mention considerable territories, with considerable population in them, which are directly administered by the Centre. Lest their claim to representation be overlooked altogether and they be denied representative institutions in themselves, and go without representation at the Centre also. I think it is but proper and necessary specifically to include them in this clause.

It has been alleged, and I have heard it said on very high authority, that the people of some of these territories, of a given area now administered directly by the Centre, are so backward, so lacking in education and the country so undeveloped, as not to deserve representative institutions at all. The remark I am referring to was made at the Jaipur sessions of the Congress with special reference to Cutch.

I was, I confess, surprised to hear such a sweeping condemnation being enunciated by such high authorities in respect of a territory such as Cutch, which is being directly administered by the Centre. Sir quite a good proportion of the business enterprise and industrial activity of the city of Bombay has come from the Cutch people settled there. It is true that those Cutch people have more or less become permanent citizens of Bombay, though they retain their connection with the State of Cutch and may, under the changed conditions of today well make substantial contribution to the rapid advancement of the area and its inhabitants today. But that is no reason to calumniate the whole province or State as lacking in education, development, enterprise or understanding of the resources, or the possibilities of the

State.

This, Sir, is, in my opinion, very unfair to a whole people who have made their contribution to the country's general awakening and advance. To deny the people there, on such grounds, representation either in the State itself, or in the Centre as part of the Union, is highly retrograde say the least.

The possibility therefore, of other similar territories being also ignored and going unrepresented has become so vivid in my mind, that I have felt it necessary to table this amendment and specifically to include them in this clause with the words that I have suggested being added. I commend this to the house.

Mr. Vice-President : The first part of amendment No 1425 and amendment No. 1426 standing in the name of Mr. Kamath are identical. I propose that amendment No. 1425 may be moved, the first as well as the second part. Mr. Kamath, do you want your amendment No. 1426 to be put to vote?

Shri H. V. Kamath : I see that Dr. Ambedkar has stolen a march over me, and so I do not propose to move my amendment.

Mr. Vice-President : Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : I am not moving it.

Mr. Vice-President : Then we come to amendment No. 1427 standing in the name of prof. K. T. Shah.

Prof. K. T . Shah : Amendments Nos. 1428 and 1429 also stand in my name. Can I move all these together?

Mr. Vice-President : You can move them one after the other. After moving all the three amendments, you can make one speech covering all of them.

Prof. K. T. Shah : Mr. vice-President, Sir, I move:

"That in sub-clause (b) of clause (5) of article 67, the words 'divided, grouped or' be deleted."

"That in sub-clause (b) of clause (5) of article 67, after the word 'constituencies', the following be added :-

> 'so that each State being constituent part of the Union, or Territory governed directly by the Centre is a single constituency by itself if its population is not less than a million; or grouped with such adjoining States or Territories as together have a population of not less than a million."

"That is sub-clause (b) of clause (5) of article 67, after the word 'constituencies' a full-stop be added; the word 'and' following immediately be deleted; and the word 'the' be printed with a capital 'T'."

Sir, the purpose of these amendments is consequential upon what I have already moved; that is to say, we should form constituencies in such a manner that each constituency has at least the representative possibility of two seats not less than a million, population, therefore, is the limit which I would suggest should be the unit in the device of Proportional Representation by which representation is to be secured.

Proportional Representation, Sir, would not be feasible or even possible for single member constituencies. At any rate it will not yield the same results as are expected by those who believe in the principle. It is but right therefore, and proper that you should have multi-member constituencies; and the minimum must not be less than two.

It is on that basis, and this understanding of the principle we have already adopted in the Constitution of this very assembly, that I have suggested a unit of a million population. I have also suggested, in a previous amendment, the minimum population requiring representation to be 500,000. These two together, I think, would provide every constituency with not less than two representatives.

Most of the states will be able, each by itself, to provide such constituencies. There will, of course, be some States which will be much larger; and as such the working of Proportional Representation would in them fit in very successfully. All States as well as territories governed from the Centre would by this means receive their full measure of representation. It would enrich the representative character of the Union Legislature; it would provide expression for all shades of opinion, it would help to place before the Union Legislature; all aspects of the problems that come before it for legislation or otherwise for disposal.

As I have stated already, I think it is but right and proper that we should have constituencies arranged or grouped in such a manner, formed in such units, as would secure the fullest possible representation on a Proportional Representation basis for every constituent part of the Union which may also enable every shade of political opinion to be represented. Sir, I commend this to the House.

(Amendment No. 1430 was not moved.)

Shri H. V. Kamath : May I make a submission, Mr. vice-President? I thought that Dr. Ambedkar was moving his amendment No. 1425 and so I said that my amendment would not be moved. It appears that Dr. Ambedkar is not moving his amendment . His amendment consists of two parts and he has not separated the two. Therefore, will you kindly permit me to move my amendment No. 1426?

Mr. Vice-President : All right.

Shri H. V. Kamath : Mr. Vice-President, I move Sir:

"That in sub-clause (b) of clause (5) of article 67,the words 'of India' be deleted."

Sub-clause (b) of clause (5) as it appears in the Draft Constitution reads as follows:--

"For the purpose of sub-clause (a), the States of India shall be divided, etc."

Now, obviously the words 'of India' are redundant and superfluous, and in my judgment they should be deleted because the States in the Draft Constitution always mean the States of India. Therefore, Sir, I move that the words 'of India' should be deleted in this sub-clause, and if this is accepted, the sub-clause will read as follows:--

"For the purpose of sub-clause (a), the States shall be divided, etc."

This is quite clear. There is no need for me to expatiate upon this point. I commend his amendment to the House for its acceptance.

Prof. K. T. Shah : Mr. Vice-President, Sir, I move:

"That the proviso to sub-clause (b) of clause (5) of article 67 be deleted."

This, is consequential, Sir, from the previous amendments that I have moved. In as much as I do not desire that a maximum figure should be fixed for representatives in the House of the People, it follows that such maximum or proportion being fixed as between the two Chambers would also be out of place. If my previous amendments are accepted, then this would follow as a matter of course. I, therefore, do not think it necessary to take any further time of the House. I commend the amendment for the acceptance of the House.

Mr. Vice-President : Amendment No. 1432 is verbal and is therefore disallowed.

Amendment No. 1433 both alternatives and amendment No.1437 are of similar import. Amendment No. 1437 may be moved. It stands in the name of Prof. Shibban Lal Saksena.

(The amendments were not moved)

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, with your permission and the permission of the House I wish to move amendment No. 1434 in a slightly altered form. There will be some verbal changes in accordance with a similar amendment which has already been accepted by the House.

I beg to move:

"That in sub-clause (c) of clause (5) of article 67, for the words 'last preceding census', the words 'last preceding census of which the relevant figures have been published' be substituted."

This is the form in which another similar amendment was found to be acceptable to the honourable Member, Dr. Ambedkar. This matter has already been discussed in the House and the principle has already been accepted in another context, namely, that if we have to depend upon a census, it must be a census of which the figures are available. We cannot depend upon a census for which figures are not yet available. If we are to hold an election, almost immediately after a census is held the figures will not be available. It takes about a year to make the figures available. We have to do a lot of things depending upon census figures before an election. In these circumstances one has to depend upon the previous census of which figures are available. This matter was well discussed in the House and the principle was accepted and this amendment is practically consequential upon the acceptance of that motion.

Shri. L. Krishnaswami Bharati : Sir, I beg to move:

"That with reference to amendment No. 1434 of the List of Amendments, in sub-clause (5) of Article 67, for the words 'members to be elected at any time for', the words 'representatives allotted to' be substituted."

Clause (c) reads as follows:

"The ratio between the number of Members to be elected at any time for each territorial constituency and the population of that constituency as ascertained at the last preceding census shall, so far as practicable, be the same throughout India."

As per clause (b), there shall not be less than one representative for every 750,000 of the population and not more than one representative for every 500,000 of the population. That latitude being given, it is just possible that they may not be uniformity of representation throughout India. The object of this clause is to secure a uniform scale of representation throughout India, whatever it may be, and in order to secure this uniformity this clause is introduced. But the wording "members to be elected at any time for each territorial constituency" does not bring out the sense fully and hence my amendment that for the words "members to be elected at any time for", the words "representatives allotted to" be substituted. If my amendment is accepted the clause would read:

"The ratio between the number of representatives allotted to each territorial constituency and the population of that constituency as ascertained at the last preceding census shall, so far as practicable, be the same throughout India."

It is in order to bring out the sense more clearly that this amendment is moved.

(Amendment Nos. 1435 and 1436 were not moved)

Mr. Vice President : No. 1438 is disallowed as being formal.

(Amendments Nos. 1439, 1440, 1441 and 1442 were not moved.)

Amendment No. 1443 is disallowed as being verbal.

(Amendments Nos. 1444 and 1445 were not moved.)

Mr. Naziruddin Ahmad : Sir, I beg to move:

"That clause (7) of Article 67 be omitted."

This clause deals with territories other than States. The objection to this clause is that it gives the right to Parliament to determine the representation of areas other than the States. With regard to these territories, I submit, as I submitted in connection with another similar amendment, that if any area is governed by any authority, that authority should decide its representation. That principle should be fixed in the Constitution. It should be left to an appropriate authority in the area to whom representation is given. There would be some authority functioning in those areas and it is for that authority to fix their own representation and not for Parliament. It may be a referendum or the like. In fact, it deprives certain areas of the right of self-determination.

Mr. Vice-President : Amendment No. 1447 Prof. K. T. Shah.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That in clause (7) of article 67, for the word 'may' the word 'shall', for the word 'territories' the words 'the territories' and for the words 'other than States' the words 'directly governed by the Centre on the same basis as in the case of States which are constituent parts of the Union' be substituted respectively."

The amended clause would read:--

"Parliament shall, by law, provide for the representation, in the House of the People, of the territories directly governed by the Centre on the same basis as in the case of States which are constituent parts of the Union."

That would put all those territories on a par as between themselves.

I have already mentioned, Sir, that there are considerable chunks governed directly by the Centre; and perhaps there may be more hereafter, if new territories desire to form part of the Union. And if even for a while these are to be directly governed by the Centre, it is but right and fair that they should be also receiving some representation.

I would, therefore, make it compulsory by the Constitution that they too be provided with adequate representation. Their representation should be on the same basis as that for other States already forming part of the Union, i.e., one representative for every 500,000 population. There should be no talk about any territory being more developed, and therefore better fitted to be represented, while others are called less developed and backward and therefore not fitted to be properly represented either in their own land or in the Union as part of the Union. This kind of talk might suit the alien power which ruled in the land up till 18 months ago; and for that power the entire country was deemed for a long time to be unfit for representative institutions. Had those ideas prevailed, we should not be shaping this Constitution for a free-India today. It is of the essence of such institutions and of the task of working them, that people learn to use them by using them. No amount of teaching their use will make people learn to use them as the actual responsibility of using them. Accordingly, I feel that this flows directly from the previous amendments which I have moved and should, as such, be accepted.

Sir, I commend it to the House.

Mr. Vice-President : Then we come to amendments Nos.1448 and 1449 which are disallowed as they are merely verbal.

Amendment No. 1450 standing in the name of Pandit Lakshmi Kanta Maitra may be moved.

Pandit Lakshmi Kanta Maitra : Mr. Vice-President, Sir, I beg to move:

"That in clause (8) of article 67, after the word 'readjusted' the words 'on the basis of population' be added."

Clause (8) of article 67 provides that upon the completion of each census the representation of the several States in the Council of States and of the several territorial constituencies in the House of the People shall, subject to the provisions of article 289 of this Constitution, be readjusted by such authority in such a manner, with effect from such date, as Parliament by law may determine. My amendment is that this readjustment should be made on the basis of population. The amendment is self-explanatory and I need not labour the point. I commend the amendment for the acceptance of the House.

Mr. Vice-President : There is an amendment to this amendment, No. 43 of List II, standing in the name of Mr. L. K. Bharathi.

Shri L. Krishnaswami Bharathi : I am moving it, Sir, I beg to Move:

"That with reference to amendment No. 1450 of the List of Amendments, after clause (8) of article 67, the following new proviso be inserted:--

> 'Provided that such readjustment shall not affect representation to the House of the People until the dissolution of the ten existing House'."

Sir, sub-clause (8) of article 67 reads as follows:

> "Upon the completion of each census the representation of the several States in the Council of the States and of the several territorial constituencies in the House of the People shall, subject to the provisions of article 289 of this Constitution, be readjusted by such authority, in such manner and with effect from such date as Parliament may, bylaw, determine."

The object of this sub-clause is, that after the elections to the Legislature--either the Council of States or the House of the People, as the case may be--census may happen to be taken and new figures may be available; and we have of course to adjust the number of seats in accordance with the census figures available then. But it may not be quite possible to provide representation in accordance with the figures available thereafter, but it has got to be done only at the subsequent elections. So, in order to obviate this difficulty, whenever there is some census taken and figure available, in terms of which we have got to adjust, it has to be adjusted only later on at the subsequent election and should not have anything to do with the existing Council of State or the House of the People. A similar provision is found in article 149, sub-clause (4).It is an omission here and I have sought to bring it here so that it may be in line with the scheme as found in article 149. I hope this amendment will be accepted by the House.

Mr. Vice-President : Amendment No. 1451 standing in the name of Shri Nandlal comes next. The honourable Member is not in the House.

Amendment No. 1452 standing in the name of Mr. Mahboob Ali Baig may be moved.

Mr. Mahboob Ali Baig Sahib (Madras : Muslim) : Mr. Vice-President, Sir, I beg to move:

"That article 67, the following new clause (10) be added:--

> '(10) The election to the House of the People shall be in accordance with the system of proportional representation by means of a single transferable vote'."

Sir, I am only proposing the extension of the principle which we accepted yesterday in the matter of election to the Council of States. I am very much gratified to find, Sir, that yesterday the House recognised the principle underlying this method of election and I need not repeat all the arguments that I adduced yesterday in support of this system and to establish the fact that this system of election is more democratic and more scientific. But by the speeches of some honourable Members of this House, especially my honourable Friend. Pandit Kunzru, an impression was created on this House that in that particular case, namely, in the case of the Council of States, the electorate therefore are the Members of the legislature, who were elected on a joint electorate and not on communal electorate. Therefore, there was no danger, if this system is adopted for the election of Council of States and of any council, of any communal party coming in. That was the reason, he said, he was supporting it. Thereby he meant, if I may be permitted to say inferentially, that if the method of election would enable communal parties to be returned to the legislature, he would not support it. My submission is that there is no scope for any communal body as such being returned by this method, and if it could be returned, it would be returned in the same way as any body holding different views from the majority party could be returned. If there is no objection to a section of people holding views different from the majority they could get into the legislatures by this method. I do not see any reason why any communal body should have the right to be returned. The reason why Pandit Kunzru supported this method for the Council of States, he said, was that people holding different views must be enabled to be returned, although they may be holding the view which was not held by the majority. That was the reason why he said that proportional representation method is good, because it enabled people, who held different views from the majority, to enter the legislature.

Therefore, Sir, my submission is that if there is any defect is this system of election, according to me, it is this Parliamentary democratic system, it is the political party system that is responsible and not the method as such. On a former occasion, I said that because of this party system, this Parliamentary democracy where one party is returned and it tries to dominate another and make it impossible for the minority party to be returned and all repression and suppression takes place, it is for that reason, Sir, I said this form of Government based upon Parliamentary democracy is not desirable. Whatever it is, Sir, my submission is this method of election, this method of proportional representation by single transferable vote will enable peoples and parties in the country, who hold views different from the majority party, to be represented in the legislatures. What is true in the case of election to the Council of States is equally true in the case of election to the House of the People. Why should it be different, I ask, if this method would enable a party or section of persons, who hold different views from those views held by the majority, if this method enables those persons to be represented there and thereby they form what is called 'an Opposition Block'? Can you think of any parliamentary democracy where there is no opposition? Unless there is opposition, Sir, the danger of its turning itself into a Fascist body is there. An opposition can come into existence only if persons holding different views from the majority are enabled to be returned to the legislature. So, Sir, by this method and by this method alone, I submit there can be a strong opposition in a parliamentary democracy. So, my submission is, in the first place, on principle, there is nothing wrong in it and as I said, it is more scientific and democratic, and I submit, that it will enable sections having different views from the majority party to be returned and thus form an opposition to the party in power. Otherwise, it will degenerate the party in power into a fascist body. Therefore, Sir, I commend this method even in the case of election to the House of the People.

Sir, I do not move the other alternative amendment.

Mr. Vice-President : The article--clauses (5) up to the end--is now open for general discussion.

Pandit Thakur Dass Bhargava (East Punjab: General): Mr. Vice-President, Sir, clause (5) of article 67 speaks of the fixation of 500 representatives to the House of the People and also says that these representatives shall be directly chosen by the electors and clause (b) speaks of territorial constituencies. I sent in amendments, in regard to these two sub-sections and the purport of the amendments was that a reference to article 292 be deleted, as also that the territorial constituencies should be of contiguous areas and there should be no special constituencies or reserved constituencies. As a matter of fact, this clause (5) only speaks of one method of the choice of the voters and does not say in what particular way these electors will have the right to choose the representatives. An amendment was sought to be moved by Mr. Karimuddin to the effect that the representation should be by way of proportional representation by the use of cumulative voting, which to my mind clearly means a reversion to separate electorates. I propose that these two clauses and the question of the reservation of seats under article 292 and other articles which relate to elections may be fully discussed at the time when we are on those articles and not separately here. Because, if we choose to make modifications in article 292 or 293 as they stand, the right of proper occasion to amend or adopt them will be when we will be considering these articles. Therefore, my humble submission is that in regard to clause (5) we may take it that unless articles 292 and 293 are disposed of, we shall not be debarred from moving amendments there and modifying them as we choose. I therefore propose that discussion about reservation of seats, delimitation of constituencies and the method of delimiting them be postponed to the time when we consider articles 292 and 293.

In regard to the rest, I also wanted to propose an amendment to clause (6) that illiteracy should also be regarded as one of the grounds for not giving a vote on the basis of adult suffrage. If a person is illiterate, he should not be granted the right to vote. As a matter of fact, my idea in moving this amendment was not to deprive any persons of their right of voting, because I am very much in favour of adult suffrage. I wanted that as the elections are not coming on before another two years or one year, by that time, every elector should educate himself and could at least know how to read and write, as in my opinion reading and writing can be acquired by any person in three months. It will give a great fillip to the drive for adult education and to the electors to make an attempt to know how to read and write, if we condition the exercise of the right of voting to literacy. When I consider, Sir, the number of electors which will come on the electoral roll if we allow the basis to be adult suffrage, I am astounded by the magnitude of the problem. According to calculations, I understand that there will be something like twelve crores of voters. In a population of thirty crores, it is not a wrong estimate to think that the number of voters may be twelve crores. If there are 500 representatives, it means that each constituency will consist of at least 240,000 voters, if there are single members constituencies. If there are multi-member constituencies, then if a constituency is formed for the purpose of electing four members, there will be something like 960,000 voters. At the present time in ordinary elections for the Central Legislative Assembly, we had from 8,000 to 40,000 voters. With this increase of numbers, I shudder to think how we will be able to arrange for the elections. It will require not one or two days as at present for the elections; it will require, I think, about a month. The number of booths will be very large. I think the magnitude of the problem is such that it must give serious cause for doubt whether we would be able to hold these elections in the manner in which we want them to be held. How will this large electorate be educated? How will you approach these electors so that the elections might be good. When I consider that there is a proposal to have multiple constituencies, and reserved constituencies, the situation becomes all the worse. So far as I think, at present, a person belonging to the Depressed classes, etc., is known only in his Taluka; he is not known over several districts. If the Constituency is spread over several districts, I do not know how the elections would be real. The electors will never have occasion to know who the person elected is. Therefore, to obviate this difficulty, I would suggest, for the first ten years, just limit this right of voting to literate people. We will be doing a thing which will be really useful. Otherwise, in my humble opinion, these elections will be a great farce. Therefore, my submission is that if the House is so advised, we should have the provision of literacy put in clause (6).

Similarly, I have to make one point more; that is about sub-clause (c) of clause (5). The words in the article are "as ascertained at the last preceding census". The population as ascertained at the last preceding census will, in many cases, be absolutely wrong. In East Punjab lakhs of people have come from West Punjab and gone away from East Punjab. Similarly in West Bengal, people are still coming in from East Bengal. In regard to Delhi, there has also been a large influx of population. The last preceding census will not give the correct figures and if we consider the present position, the figures will be quite incomparable with the real figures in which the population is to be found in these places. Therefore we shall have to have recourse to some other expedient, and the expedient which has been suggested is in article 313. I doubt very much if we would be able to arrive at the real figures from the number of electors. The right figures about the population from the number of electors will be at best a conjecture and it will not be in accordance with the true principles set out in clauses (5) to (8). Therefore, my humble submission is that with regard to East Punjab and West Bengal, unless a census is taken, we will not be correct in our figures. This will entail a good length of time. If the elections are coming in 1952 or 1951, then the position can be solved; otherwise, you will have to take a census before these provisions can be given effect to, or the words "as ascertained at the last preceding census will have to meaning for us. If these words are taken in their literal sense and no adaptation is made, it would mean for such of the Muslims, about 50 lakhs as have left East Punjab, you will reserve about fifty seats in the local legislature whereas the population of the Muslims at present is said to be about two lakhs. These are real difficulties which have to be solved. Unless we solve these difficulties, my own apprehension is that there will be no real elections.

In regard to article 292, I have to submit one more word. In clause (5), the reference to article 292 is certainly not wanted, because article 292 deals with direct elections, in regard to constituencies and in regard tore served constituencies also. The present position is that they are proposed to be chosen by direct elections. The reference to article 292 is absolutely unnecessary. Even if it is kept, I would, with your permission, repeat this that I take it that the reference to article 292 does not bind the House and we would be able to modify article 292. I do not want to conceal my feelings from this House that I want that there should be no reservation of constituencies for any communities, i.e., no reservation of seats for any community. I only want that so far as the Scheduled castes are concerned, there may be reservation of representation, which we can do on the lines suggested in article 293. We do not want any reservation of seats because if you consider the whole question, and if you consider the multiple constituencies, the entire elections will be absolutely unreal. Our difficulty is that we have not realised how these constituencies will be formed. When the matter comes to the House in a concrete form, I am perfectly sure that the House will not even touch the reservation of seats with a pair of tongs.

With these remarks, Sir, I support article 67.

Shri Deshbandhu Gupta (Delhi): *[Mr. Vice-President, I want to draw the attention of the House specially to parts (b) and (c) clause (5) of article No. 67. My learned Friend, Pandit Thakur Dass Bhargava, has also drawn the attention of the House and has pointed out that if we are relying on the last census figures for fixing the number of representatives then it would affect adversely, specially in the case of East Punjab, West Bengal and Delhi. I want to point out that so far as East Punjab is concerned only a little less of the population which has gone away from East Punjab to the Pakistan, has come from Pakistan to East Punjab, and therefore the population of East Punjab has not swollen much. But as regards Delhi, it is an admitted fact, that its population has greatly swollen by the influx of refugees more than in any other town. According to the last census, Delhi's population was about 9 lakhs, but at present it is estimated to be about 19 lakhs. Therefore it would be very unfair for the Delhi province should the number of representatives be fixed according to the last census.

Mr. Vice-President, that is why I want Dr. Ambedkar and others to keep this fact in view. I hope that in regard to Delhi and other cities, whose population has swollen apart from the natural causes, due to the partition of the country, this fact would be borne in mind when seats are allotted to them. I think that in clause (c) if for the words 'actual population' the words 'actual number of voters' are inserted, then there would be ground for any objection from any body. Therefore, I want this fact to be borne in mind, and as has been provided by article 313 of the adaptation clause or under it, or in any other form, an assurance to this effect should be given; otherwise grave injustice would be done to Delhi and other towns, which have absorbed our refugee, uprooted brethren from Western Pakistan, who would be denied their due representation in the House.]

Shri Prabhudayal Himatsingka (West Bengal : General): Mr. Vice-President, Sir, in connection with clause (5) of article 67, Pandit Thakur Dass Bhargava has tried to explain the difficulties that are likely to be encountered in having a proper election. The proposal is to have one member for five to seven and a half lakhs of persons and roughly speaking we may expect that there will be about three lakhs voters in each constituency. However if the election is expected to be properly held and in order to avoid the malpractices that are seen in elections on a large scale where a large number of voters are concerned, some device will have to be found whereby the voters may be identified and false voting may be eliminated. Sir, we know from the elections that we have had to run in the past that where a large number of voters are concerned, a very large amount of malpractice is possible on account of the voters not being known to the persons or authority who are there as Polling Officers. So some method of identification should also be devised in connection with such elections.

As regards the different amendments which have been suggested about multiple constituencies and cumulative votes, Pandit Thakur Dass Bhargava has also explained that it will be a very wrong thing to do it because, as it is, the constituency will be very big and if you have multiple seats, the troubles of a candidate can be better imagined than described. If you have multiple constituencies, even the best man cannot expect to be returned without a contest. If there are more than one seat in a constituency, there will be more candidates and everyone of them, whether he is the best man to be selected or not, will have to come by actual contest and there will be, if it is a four seat constituency, about twelve to thirteen lakhs of voters and it it is more, it will be similarly more and the trouble that a candidate will have to go through will be enormous.

Therefore, Sir, the various amendments that have been moved in order to have multiple constituencies or plural voting should be opposed and defeated.

With these words, I support the motion as it stands.

Mr. Vice-President : Sardar Bhopinder Singh Man. The time at our disposal is extremely limited. As there are quite a large number of honourable Members who want to speak, I am offering special facilities to those coming from East Punjab because they have very strong feelings on this matter, and I hope the House will see the reason for this special concession given to them. Now, you will kindly confine your remarks to as short a time as possible.

Sardar Bhopinder Singh Man.

Sardar Bhopinder Singh Man (East Punjab: Sikh): *[Mr. Vice-President, while discussing this article, two points have emerged clearly on which we, as a minority, feel strongly. In your last meeting you had decided without any reservation that so far as minorities were concerned, they had been given reservation of seats on principle. While accepting this principle you had given them an option that if they decide to give it up, they could do so gladly. But I feel that while reopening this question, that offer has been withheld; nay the right is being snatched away from them. Where is the occasion, I fail to understand, for being in such a hurry, to make a change so early, and for snatching away a right which had been conferaded on us in the last meeting? I can understand this much that after the expiry of ten years, when the minorities feel that the majority has gained their full confidence, then they should give up this right of their own accord.]

Mr. Vice-President : I am afraid that you are speaking on the right of separate representation: that has nothing to do with the clause in hand. I appeal to you to confine your remarks to the subject of the clause under discussion.

This is my final ruling.

Sardar Bhopinder Singh Man : [Mr. Vice-President, I would like that at the time of forming these constituencies, particular care should be taken to make them plural constituencies. The right which you have conferred on the minorities can be preserved only if you make the constituencies in such a way that they should be able to represent themselves. It is necessary, because the minorities have not gained full confidence of the majority up till now. There is yet another point. Pandit Bhargava is trying to have the constituencies so shaped that the rural should be amalgamated with the urban constituencies. But the standard of literacy in the rural areas is so low that while competing with the urban areas, they can never succeed. Besides the old dispute between the producers and the consumers still exists. Whatever we produce, we sell them in 'Mandies' and when 25,000 votes shall be pitted against us, to my mind, the people of the rural areas shall never be able to send their representatives while contesting with the people of urban areas and the stockists. What will be the result under such circumstances? The result will be that the producers whose standard of literacy is low and who live in far-off small hamlets, would not be able to send their representatives through elections. Another result will be that the 'Man dies' would become centre of activites for ever and the village would be cut off from the political current of the country. The twenty or twenty five thousand voters of mandies will always try to suppress the villagers politically. We in the Punjab feel that so long as there is fundamental difference between the procedures and the consumers, they should have separate constituencies. Therefore, what we want is that the delimiting Committee should not be influenced by Pandit Bhargava's speech and this difference should be kept intact, namely, the rural constituencies should be kept separate from the urban constituencies.

There is yet another point. In East Punjab a large population is fluid. Some have migrated to Delhi and a part of it is going back out of Delhi. Then again it is not known what population has stayed in the Punjab and how much has migrated. In these circumstances, it is unavoidable that a census should be taken in East Punjab. To my mind, without an accurate census, confusion might prevail. Therefore, I am of the opinion that arrangements should be made for taking of a census immediately, and the rural and the urban constituencies should be formed separately and they should be plural.]

Sardar Hukam Singh (East Punjab : Sikh): Mr. Vice-President, Sir, we have provided that reservation be made for minorities under the present Constitution, reservation of seats, I mean. Certainly there are two methods only by which we can safeguard the interests of minorities. Up to now, the minorities have enjoyed separate electorates and some weightage as well. That has gone, because we have decided that on principle and basically that is a wrong method and no minority should have any weightage or any separate electorate. There are, as I said, only two methods, one recommended by the Minorities Committee, that there should be reservation of seats and that is also provided in the Draft Constitution under Articles 292 to 299. I agree with Pandit Thakur Dass Bhargava when he said that it would be better if both these clauses were taken together, and the discussion of this part of article 67 taken up at the time when article 292 was also being discussed. The amendments that are now before the House, by Mr. Karimuddin and another honourable Member, certainly are the opposite or the alternative of the reservation of seats, provided in those sections. Sir I am of opinion that if separate electorates have perpetuated communalism, which is so detestable and reprehensible, this reservation of seats, does no less (hear, hear). I think it is rather more harmful for the minorities, and it does not safeguard their interests. But it is, on the other hand, beneficial to the majority. When you are reserving, say 30 per cent, for the minorities, indirectly you are reserving 70 per cent for the majority. This allowance or concession or option to contest unreserved seats as well, is in my opinion, very illusory when it is brought into actual practice. Further, this reservation, though it is not just now before the House, because the two methods are to be discussed side by side, I am taking it,--and I crave the indulgence of the House in listening to me patiently,--this reservation of seats is rather harmful and would create the same atmosphere that we abhor so much. When the minorities see that certain Members of their own community, offensive to them, are being pushed up and backed by the majority community, certainly the relations would get strained and our object would not be fulfilled at all. And secondly, under this reservation of seats, the majority would be able to secure some Members from the minorities of their own choice, while there will be a certain proportion that would be returned by the minorities themselves. So there will be two sections and a further rift would be created between the sections of the minority community itself.

Shri L. Krishnaswami Bharathi : Sir, on a point of order, we are not discussing here the question of reservation of seats, and so I would like to know if these remarks are relevant.

Mr. Vice-President : They are relevant in the sense that the honourable Members is defending proportional representation. Am I right?

Sardar Kukam Singh : Yes.

Shri L. Krishnaswami Bharathi : But this is a matter of great importance on which we will have to concentrate and so more time will have to be allotted if we are discussing it. I wanted to bring that aspect of the matter, because it is a very big issue and...

Mr. Vice-President : In accordance with my general policy, I shall allow Sardar Hukam Singh to speak and to refer to the question of reservation of seats, by way of illustrating the advantages of the system under discussion.

Shri L. Krishnaswami Bharathi : Sir, I should not be understood as wishing to shut out such discussion at all, but what I wanted to..

Mr. Vice-President : Will the honourable Member please take his seat?

We must be generous and we as a majority community must be generous to the minorities (*hear, hear*). It has proved its generosity so far; let not that tradition be broken.

Now please continue Sardar Hukam Singh.

Sardar Hukam Singh : I am thankful to the House and to the Vice-President, though I do not crave for any generosity at this moment. I will not discuss that point further.

Sir, it has been argued here by more than one Member that plural member constituencies and cumulative voting would be too costly and unworkable. My position is that if separate electorates are detestable and if reservation of seats is objectionable, then some method has to be devised by which the rights of minorities can be safeguarded and that this is the only method suggested in the amendments that can be considered. If it is cumbersome and if it is costly, then it has to be settled in accordance with the democratic principles that we are following now. And my submission is that this is the only mode by which we can satisfy the minorities and stick to our principles that we have chalked out so far.

Shri V. I. Muniswamy Pillai (Madras : General): Mr. Vice-President, Sir..

Mr. Vice-President : May I request the honourable Members to take as little time as possible? There are many honourable Members who desire to speak and I would like to accommodate as many of them as possible.

Shri V. L. Muniswamy Pillai : Sir, in supporting article 67. I may say that I specially welcome sub-clause (6) which envisages adult suffrage. Speaking for the Scheduled Castes I may say that this kind of election is highly needed at a time like this when we have just secured freedom for this country. Under the Poona Pact, the Scheduled Castes had to submit to two elections--the panel election and the general elections. I know as a matter of fact that this has caused great inconvenience to the candidates.

Sir, one of the Members of the Assembly has moved for the adoption of the cumulative system of voting. I feel that this cumulative system of voting under the present set-up is most dangerous, because the communities will have to go away from the main body of electors. So I feel that on no account should this cumulative system be encouraged. The distributive system of voting is bound to bring the various communities together and prove worthy of the labours undergone by them in maintaining the freedom that we have won.

One of the Members, speaking on this article, observed that reservation of seats for the minorities must go and, at the same time, generously stated that, so far as the Scheduled Castes are concerned, they should not be disturbed. Sir, I welcome the statement made by Pandit Bhargava. This matter of the reservation of seats and protection for the minorities has been dealt with in this sovereign body and we have come to certain decisions. If there is a feeling that this matter should be re-opened, the proper place to do that will be when we discuss articles 292 and 293. Whatever it may be, I feel and also every Member of the Scheduled Castes in this sovereign body feels that the protection given to this community should not be disturbed. You yourself know, Sir, in your tours throughout the country, the disabilities of the Harijan community. The Minorities Report has considered those things and this sovereign body after considering that report has agreed to give some protection to the minority communities. That being so, without taking more time of the House I will conclude by saying that the safeguards and the protection afforded to the Scheduled Castes and tribes should not be disturbed. When we deal with articles 292 and 293, as I said, we can have elaborate discussion on the various points that may be raised then as regards protection for minorities.

Mr. Vice-President : Mr. Khandekar may now address the House. I expect him to confine his remarks to the matter under discussion and to take as little time as possible. There are limits to the patience of the majority community on this question.

Shri S. Nagappa (Madras : General): My friends say that there is no limit to their patience.

Mr. Vice-President : That was a remark meant for Mr. Khandekar only.

Shri H. J. Khandekar (C. P. & Berar : General): *[Mr. Vice-President, I rise to express my views on the matter that is at present engaging the attention of the House. When we go through clause (5) of article 67, we find that the provisions of this clause are subject to the provisions of articles 292 and 293. Article 292 provides for reservation of seats for minority communities and since I myself belong to a scheduled caste--a minority community, I am glad that this House has accepted the article. The Minorities Sub-Committee and the Advisory Committee had also recommended to the House for reservation of seats for minorities. I need not say much about the condition of the minority communities to which I belong. The scheduled castes constitute that section of the country which has been kept suppressed by the other sections for the last thousands of years and which has been denied social and political rights.

I may recall to you, Sir, that under the Government of India Act, 1919, provision had been made for the nomination of persons belonging to the scheduled cases for some seats reserved for this purpose in the Provincial Legislatures. Our representatives present at the Round Table Conference had made a demand that seats be reserved for scheduled castes according to the numerical strength. But to the misfortune of our community, Mr. Macdonald gave an award according to which the scheduled castes which have a population of 75 millions in the country, got only seventy two seats out of a total of 1580 seats, that is, the Macdonald Award allotted us seats many times less than what we should have been given, according to our population. I am very glad that when the Award was announced, Respected Bapu undertook a fast in Yervada Jail as a result of which the Poona Pact gave the scheduled castes 151 seats out of a total of 1580 in the Provincial Legislatures, i.e., just double of what they had been given under the Macdonald Award. I therefore express gratitude to Respected Bapu on behalf of my community. But in this connection I can say that allotment of 151 seats was also not in proportion to our numerical strength and as my Friend Mr. Muniswamy Pillai has observed, we had to contest two elections under the Poona Pact. First, for Panel election there was contest amongst ourselves and after that in the general election we contested the candidates of other communities. At that time there was cumulative system of voting for us and not the distributive system. My Friend Mr. Kazi Syed Karimuddin has moved an amendment, No. 1415 on the list, seeking to introduce cumulative system of voting. If it is accepted, elections will be held on the basis of cumulative system of voting. Under this system if there be two seats, one reserved and the other general, in a constituency every voter would be given two ballot papers and he would have the option to cast both of his votes for one candidate or distribute these among two candidates. In this case naturally a voter, to whichever community he may belong, will cast both of his votes for the candidate belonging to his community and not to person of other communities. Communal rivalry therefore will continue. We have to do away with communalism as early as possible and therefore I oppose that amendment. As I belong to Harijan community whose elections were so far held on the basis of the cumulative system of voting, I have more experience of it than others. I have still in my mind the disastrous results of the cumulative system.

The minorities Sub-Committee and the Advisory Sub-Committee which were formed by this Assembly and above all Dr. Ambedkar himself who has been the greatest supporter of separate electorate have disapproved of separate electorate and have, by voting for joint electorate, eliminated the canker of communalism from our polity. I thank them all for this. In the circumstances I have no option but to interpret this move of Kazi Syed Karimuddin as motivated by the desire to secure separate electorates by indirect means, for while on the one hand we would be abolishing separate electorate, on the other we would be retaining it by having the cumulative system of voting. If we accept the amendment, it is plain that its consequences would be that members of a community would under the cumulative system of voting, cast their votes for the candidate belonging to their community, and thus separate electorates will continue to exist indirectly. I therefore oppose the amendment moved by Mr. Kazi Syed Karimuddin.

There is another point to which I would like to draw the attention of Dr. Ambedkar, and I hope he would give his consideration to it. Sub-Clause 5(c) of the article refers to a census. A few days ago a clause in which the expression "latest census" occurs, was discussed and passed by this House. It would be better if we add the word 'latest' before the word 'census' in this clause also in order to bring it into uniformity with that clause. I may state the reason why I make this suggestion. In the next election to be held under article 292, minorities will have some reserved seats in the Provincial Assemblies. They will have one seat for every one hundred thousand of population and in the Central Assembly one seat for every million of population. I am sorry to have to say, Sir, that we do not trust the census figures recorded in 1941 because the population of Harijans shown in that census is very incorrect. Therefore, Sir, unless a fresh census is taken and the population of Harijans ascertained, I do not believe we would be allotted our due numbers of seats. I may submit, Sir, that according to our population there should have been sixty members from amongst our community in this House, because before partition our population was sixty millions. In this connection I am sorry to say, Sir, that in spite of the announcement of the British Government and the decision of the Congress, that Harijans would also have representation according to their population, only twenty seven representatives of Harijans are here in this House. And I may add that it is something painful to me.

We would like to return our representatives according to our population. Even if it be found that it comes to only twenty millions we would not mind sending only twenty members. But a census must be taken before elections are held. I am sure our population can under no circumstances be only twenty millions. Even today when the country has been partitioned, our population is at least sixty millions. I make this assertion without referring to the exact figures of our population. But I am sure that if reservation of representation for the scheduled castes--on the basis of one representative for every one hundred thousand of their population--is maintained in the next elections and for this purpose figures of their population are collected it would be found that their population even now is not less than seven crores. It is a well known fact, Sir, that the birth rate is high among the poor. We have no money, no learning, but we possess great capacity for producing children. I emphatically say that we are not less than seventy millions today in India. In view of these facts fresh census should certainly be taken.

With these words, Sir, I would appeal to Honourable Dr. Ambedkar that while replying to the debate he would kindly make the position clear regarding the words "preceding census" that occur in this clause. I submit, Sir, that unless a fresh census is taken, neither the provision for reservation of seats, nor electorates would be helpful to any minority. It may be that if a fresh census is taken elections are delayed. But I do not think that it must need be so. Even if the elections are to be delayed we should not be affected by that prospect. People of every section of the country say that there should be amelioration in the conditions of the Harijans. But this should not remain with these people merely a matter of lip sympathy. It should rather be their sincere desire and ought to be translated into practice. Even if elections are delayed by a year or soon account of the suggestion made above, we should not mind such delay.

With these words, Sir, I support the article and oppose the amendment moved by Mr. Kazi Syed Karimuddin.]

Shri Biswanath Das (Orissa : General): Sir, I have come to support the article and in doing so, I feel it necessary to place certain facts before the Assembly. Sir, I think that articles 67 and 149 should have been discussed together because they are correlated and one is complementary or supplementary to the other. As such, I feel that it could have been a great convenience to the honourable Members of this House if both these articles had been discussed together. I have to place before the honourable Members of this House the immensity of the resolution that they are passing today. We are giving our seal of approval to the most important principle, namely the principle of adult suffrage, by which every adult--male or female--in this country irrespective of the fact that he is a plains-man or belonging to the hill tribes or to the scheduled caste, becomes a voter and as such shares the responsibilities and anxieties of the administration of the State and becomes an equal citizen absolutely and in all respects. Having adopted this important principle it is necessary that we realise the immensity of the proposal. This makes me feel that we will hereafter have an electorate which in no case will be less than twenty crores. It may be more. My honourable Friend Pandit Thakur Dass Bhargava I think did less than justice when he stated that the number of voters may be somewhere between 15 and 16 crores. Our population is 32 crores and if those below 21 are eliminated I feel sure that the number of voters is bound to exceed 20 crores. 15 percent is taken as children of the school-going age, who are below 14. If that is so, I have no hesitation in saying that 25 per cent may as well be taken as people below the age of 21. As such three-fourths of the entire existing population may be taken as voters. Therefore, the country and the Government will have to keep themselves ready so meet the immensity of the proposal that they are accepting today. There would thus be a minimum of twenty crores of voters, which would mean that there should be about 2 lakhs polling stations and four lakhs of polling officers. I do not know how long it will take to conduct and finish the elections. I therefore appeal to the Government and also to you as the person primarily in charge of this work, so far as we are here concerned, to take immediate action in time to set up the machinery to carry out this stupendous task. It is through you that we are devising a special agency for this purpose, namely the election commission but that does not minimise the tremendousness of the task.

Having stated so far about the immensity of the problem, I would come to two areas which give enough cause for anxiety. These are the States and provinces in the north and also the provinces of West Bengal and Assam. In these two different and distinct areas there has been hug migration of the population. Lakhs and millions of people have migrated either to Pakistan or have come away from there. We have reservation of seats; and not only that, incertain cases, as in the case of the aboriginal population, the constitution has prescribed that whether they live on the hills or on the plains they have to be taken together and seats to be reserved on that basis. That being the position I think it would be doing a grave injustice to the people of East Punjab as also to the states bordering Pakistan in the North and also probably to the Union of Sourashtra and Bombay, as also to the two provinces of Assam and West Bengal, if a census is not taken. I think a census is called for, because of article 149. This article lays down that the basis of representation has to be devised on the figures of the previous census. The previous census is the one that was taken in 1941. It is a fact within common knowledge that due to the war and in the name of paper shortage and the like the then government did not think it necessary to take a full-fledged census. Not only that but what little information was gathered was also left aside with the result that an abridged census was taken. Ever since, much water has flown under the bridges. Therefore it is necessary that to be fair to these areas in the North-East and the North-West early census is necessary. A special census in these areas for this purpose should be undertaken. In this connection need I invite your attention to what has been done in Pakistan? In Pakistan they have undertaken a census in the Provinces of Sind and the West Punjab as also in East Bengal and they have come to certain conclusions for the purpose of representation in the Constituent Assembly after this census. What was done in Pakistan could have easily been done in India and need I say that even today it is not too late for a census to be taken in all seriousness without further delay.

Having said so much about census I come to another aspect of this question. Soon after passing the Third Reforms Act in the British Parliament the late lamented Gladstone declared in the House of Commons that the time has come when they should find more money and put forth all their exertions to educate their "little masters". Who are these little masters? These little masters are the voters: they are the real masters. What have you done to educate your little masters? In this country the percentage of literacy is about ten per cent. Female literacy is much lower; so also is the case with the scheduled castes. As regards literacy among the hill tribes whom you have enfranchised in full and given the right to vote, it is practically next to nothing. What a tremendous risk you have taken? You are calling upon them to vote, but who are they? A very highly inflammable class of people who have up to date absolutely no experience either of propaganda or of voting in elections. Therefore I warn you to take early steps in this regard, so that the difficulties that I have placed before you are minimised. And what have you done in this regard to minimise them? You have done nothing. Last year it was my misfortune to have an interpellation in the Constituent Assembly (Legislative) to know whether Government have undertaken to appoint an organisation to delimit the constituencies. The reply was that it had already been done. What is the sort of delimitation that you have already undertaken? The Provincial Governments are asked to delimit the constituencies; they have asked their officials and some blessed official sits and delimits the constituencies. Is that the sort of delimitation that you are going to have under this Constitution? I warn the Government, and through you, Sir, I beg of the honourable Members of this Constituent Assembly to see that these conditions are changed. Immediate action is necessary to see that delimitation of constituencies is undertaken and necessary steps in that regard should immediately be taken.

With these words, Sir, I fully support the article, but with the warning that I have given.

Maulana Hasrat Mohani (United Provinces: Muslim):*[Sir, I had very little to say about article 67, but one thing has compelled me to speak something regarding this.]

Shri S. Nagappa: Mr. Vice-President, the Maulana can speak in English.

Mr. Vice-President : Can the honourable Member not speak in English?

Maulana Hasrat Mohani : I have to make an effort.

Mr. Vice-President : That does not matter, we care only for thoughts, not for your language.

Maulana Hasrat Mohani: *[And what is that mentioned in this article which has compelled me to express my thoughts? It is this: clause (5) (a) reads thus: "Subject to the provisions of articles 292 and 293 of this Constitution, the House of the People shall consist of not more than five hundred representatives of the people of the territories of the states directly chosen by the voters." The meaning of this clause and of article 293 is that seats have been reserved for minorities. I am, therefore, strongly opposed to reservation of seats and there should be no reservation under any circumstances. I say that there is absolutely no need of reservations, after we have made provision for joint electorates and adult franchise. The two cannot go together. When the electorates would be joint, it would mean that everybody will have the right to stand and to contest from each and every constituency. On communal basis you are making its scope limited as you have already said that you would like to give reservations to the Muslims because they are in minority. I do not know about scheduled castes, but a friend of mine has just said that you would not like to give them any reservation. Why do you call the Muslims a minority? They can be termed as a minority only when they function as a communal body. So long as Muslims were in the Muslim League, they were in a minority. But if they elect to form a political party without any restriction leaving it open to any community, then you should remember that whenever political parties would be formed, the Muslims would give fight by forming coalitions. Therefore, I say that Muslims would not like to be called a minority. To say that Muslims are in minority is to insult them. I cannot tolerate this even for a moment. I have had a talk with several Members. They have told me: We are conceding this to the Muslims out of generosity. I ask: Who is asking for this generosity? Muslims will become part of the majority party and they will become majority. We do not want any generosity or concession from you. Does any Muslim require it? Concession to whom? We refuse to accept any concession. In case majority party or the Congress party accepts reservation of seats, its claim for creating a secular State and of putting an end to communalism would be classified. I say, you have not put an end to communalism. The proof is that this hob-goblin, namely that Muslims are 14 per cent and Hindus are 86 per cent, and that the Muslims being 14 per cent, reservation should be given to them--still persists in your mind. I think that the question of reservation of seats has been raised by the Nationalist Muslims who had always been your slaves and slaves of the Congress. You want to reserve these seats for them and when these 14 or 15 per cent seats are reserved they would get them first of all. I take the responsibility, we will isolate the nationalists. Muslims will form coalitions and shall defeat the purpose of your device and I am sure that the Muslims shall not remain in minority.]

Giani Gurmukh Singh Musafir (East Punjab : Sikh): *[Mr. Vice-President, I had no mind to speak today but as an important matter is under discussion, I would very much like to express my opinion. I am therefore thankful to you, Sir, for giving me this opportunity to speak. Two points have been raised concerning article No. 67, one is regarding the census and the other about the constituencies. In clause (5) of the article there is a reference to article 292 which deals with the question of minorities and hence it would be relevant here to speak about the reservation of the minority problems. It would be to my liking if the chapter pertaining to the minorities is altogether removed; without that there can be no salvation for the country. There remains the question of reservation. Howsoever much one may ponder over the question, he is bound to come to the conclusion that reservation on population basis is of no good to the minorities; and particularly for the Sikhs, reservation is of no use. I am afraid, now the situation is taking such a turn--it may be said the Sikhs are more particular to reservation even than others. I know, at present such things pertaining to matters of policy and others alike, are going on, and which are quite natural during such interim periods. I will not go into the details. Our leaders might have before them some considerations on grounds of expediency and so I would not go into that matter. But this much I would like to make clear that if reservation is retained in the Constitution, it would not be because of the Sikhs. In other words, what I mean to say is that Sikhs would not be in the least benefited by reservation. To cramp them with reservation is to check all their progress. Of course I do think of the Harijans and Scheduled Castes in this connection. But at the same time I think that just as the poison of separate electorate is being removed from this Constitution, similarly no other canker should be allowed to remain by which the communalism may again spread. To achieve this end healthy conventions can be established. Suitable representation can be made through nominations, as would leave no room for objection from any one.

The second point is regarding the constituencies. Pandit Thakur Dass Bhargava had tabled an amendment but it was not moved, and he did not even press for it. This, however, is quite another matter. In my opinion, urban and rural constituencies should be kept separate. Time is not yet ripe to have joint electorates. People of rural areas need education first. They are very backward at present, while people of urban areas are advanced. If one is on the top and the other is on the floor, they cannot meet. In other words a motor-car and a Tonga cannot be run together. It is necessary to gradually raise the level of the man at the bottom, and it will also be necessary for the man on the top to mould his mentality in such a way as to treat the man below like his own brother. Only after this has been done, the purpose will be achieved. I do not mean thereby that disparity between the urban and rural areas should be perpetuated, and I do not lay much emphasis on the point that village people are backward. It is possible that in other aspects there is more awakening in the rural areas, but it is a fact that they have not much resources. They are so placed that only our government can make any arrangements for them. At present access to villages is difficult. For these reasons I think that rural constituencies should be kept separate, otherwise village people would be at a disadvantage. With these words I support this article.]

Prof. Shibban Lal Saksena (United Provinces: General) : Mr. Vice-President, Sir, out of the articles which we have passed so far excepting perhaps articles Nos. 13 and 25 which guarantee fundamental freedoms, this article I think is the most important article. Here we are giving the right to vote to every adult citizen of India, and I think, people will realize later on what this really means. The election so far has been held on a narrow franchise, and now if in the new census the population of India is nearly 35 crores, we should have an electorate of about 20 crores in the country. Even America has got only about 5 or 6 crores of voters. But here 20 crores of voters will go to the polls to elect their representatives. I think this fundamental right of adult suffrage guaranteed to all people is the most important part of the Constitution. It has raised great hopes in us and today we are realising the ideal for which we have fought for the last so many years. I think that in clause (6), which guarantees this right, the word 'crime' has also been included as disqualifying a person from being a voter. I feel that even those persons who have been to jail, but have come back afterwards and reformed themselves should not be debarred from becoming voters, and I, therefore, think that the word 'crime' should not have been there. I have no objection to all other conditions, non-residence, unsoundness of mind, etc. being there.

Then, Sir, this article is an omnibus article providing for the constitution of the Council of States and the House of the people. Sir, I cannot refrain from saying that I am one of those who believe in only one Chamber and not two Chambers. Here they have provided for two Chambers and the worst part of this is that in the Upper Chamber we shall have twelve nominated Members; and we passed the other day that even those Members, who have been nominated and who will never seek the vote of the people, can become Ministers also. I think this is a most undemocratic aspect of our Constitution. Everybody who was a specialist in literature, art and science could surely have got...

Mr. Vice-President : May I ask the honourable Member to refrain from referring to business which has already been passed. The present discussion is with regard to clause (5) up to the end. That was what was agreed to by the House.

Prof. Shibban Lal Saksena : If that is the position. I will refrain from referring to the earlier clauses, although I think we are discussing the whole article.

Then, Sir, another thing in this article is the provision for delimitation of constituencies having a population between 5 lakhs and 7 1/2 lakhs. I think the upper limit was unnecessary. It is not provided anywhere how the exact figure between these two limits will be determined, but I think the average figure will be the figure suited for allotment of seats to every province, and will be somewhere about 6,25,000. I personally think that the clause as it stands, will create great difficulties.

There will have to be big multiple constituencies of 13 lakhs and twenty lakhs population and I do not think poor candidates will be in a position to contest in such constituencies. If we want reservation for minorities, big multiple constituencies cannot be avoided. Only those people who are rich will then be able to get elected. Besides reservations will keep communal passions alive. I therefore think we must have no reservations. In fact, I was very glad to hear my honourable Friends Maulana Hasrat Mohani and Giani Gurmukh Singh Musafir when they said that they do not want any reservation. I think this Constitution must completely abolish all reservation. Let us have a completely secular State where every one will be a free citizen of India and every one can get elected irrespective of his community. I am sure communal passions will die out in a few years and there will be no need for any reservation. I think the time has come, and certainly by the time the elections are held, we shall require no special reservations. If we decide to have reservation for minorities, then the amendment which Dr. Ambedkar did not move should have been moved; otherwise, there will have to be very big constituencies. Even if there is to be one general seat, one Harijan seat and one other reserved Muslim seat in a particular constituency, there will be about eleven lakhs of voters which each candidate will have to canvass and no ordinary person can approach eleven lakhs of voters with his limited resources. Then, there will have to be innumerable booths; I do not know how many booths will be required. I think it will be an impossible task and so even from practical considerations, I think reservations should cease. Again, it is also possible, if there are to be very big multiple constituencies, some people may not be able to get a fair chance; their sphere of influence may be broken up or it may be resumed for a minority community.

Therefore, the only possible and practical course is that there should be no reservations. I am sure the fear of the minorities will soon be removed and I am sure that the People who are now in favour of reservation will also come forward and say that they do not want any reservation. If no reservation is made, we must see that a larger number of members of the minority communities are returned than their population entitles them to.

Sir, the proviso to sub-clause (2) of clause (5) is proposed to be omitted. This is also not fair. Under article 67 clause (1), in the Council of States, the number of representatives of the States shall not exceed forty percent. Here, in the Lower House the proportion is sought to be abolished. If the States remain to some extent what they are today, if they only accede to the extent of Defence, Communications, etc., this abolition of the proviso will not be possible. The number of representatives from the States may be larger than is warranted by their population. I think the original proposition was better. The States should have seats only in proportion to their population. If the States come into line with the provinces, and the distinction is obliterated, then of course there will be no objection to the omission of the proviso.

Sir, I had given notice of an amendment for the deletion of clause (7). My purpose was, I did not want that Parliament should have the power to make laws to provide for the representation in the House of the People of territories other than States. This is a matter for the Constitution and not for the Parliament. Parliament may always try to make laws in favour of the party which is in power. Parliament should be debarred from making laws in respect of such matters. I think clause (7) should be deleted, because it gives to Parliament the power of creating additional seats in the House of the People.

Sir, these are very important considerations. We have already discussed so many amendments and I think the verdict of the House will be soon known. Only those amendments which are accepted by Dr. Ambedkar will be accepted by the House. Even though this article is not as I wish it to be, still I think it is a very important article and it should be passed.

Shri M. Ananthasayanam Ayyangar (Madras : General): Mr. Vice-President, Sir, I shall address myself only to some of the more important amendments of substance that have been moved relating to clauses (5) to (8) of article 67.

Sir, I am much obliged and it is very gratifying to see that members of the minority communities, particularly, my honourable Friends Mr. Karimuddin and Mr. Mahboob Ali Baig were against any reservation for their community. In its place, they have suggested two methods of election; one, proportional representation by means of the single transferable vote, and the other proportional representation by means of cumulative vote.

Mahboob Ali Baig Sahib Bahadur : May I correct my friend? I never said anything about reservation of seats.

Shri M. Ananthasayanam Ayyangar : Very well; I stand corrected. So far as my friend Mr. Karimuddin is concerned, he did not want any reservation. In its place he wanted election by proportional representation by means of the cumulative vote. Mr. Mahboob Ali Baig evidently wants to run with the hare and hunt with the hounds. He wants both this and that; I will come to him later. The majority opinion seems to be against reservation that is provided for in articles 292 and 293. I also find that with the exception of the Scheduled Castes, so far as the provision for others is concerned, there is the other opinion also from members who do not belong to the minority community that such reservations ought not to exist. Of course, this matter will stand over and will be discussed more elaborately when we come to article 292 and 293. In the interests of the minorities themselves, I would urge that it would not be very useful to them if they insist on reservations, because ....

Mr. Vice-President : Are you speaking on article 292?

Shri M. Ananthasayanam Ayyangar: No; I am referring to the alternative that has been proposed.

Shri Jaspat Roy Kapoor : (United Provinces: General): Why not delete reference to article 292 here from this clause?

Shri M. Ananthasayanam Ayyangar : That is the subject matter of the amendment moved by my honourable Friend Mr. Karimuddin. He wanted reference to articles 292 and 293 to be omitted and in its place add something relating to the method of election: proportional representation by means of cumulative vote. Therefore, if I have said anything in regard to the absence of reservations, which is the substance of articles 292 and 293, I submit with all respect that I am absolutely relevant in what I have said. Mr. Karimuddin's amendment wants to do away with reservations referred to in article 292 and article 293 and in its place, he feels that it would be more useful if the minorities could have proportional representation with cumulative voting. Two methods of election have been suggested. With all respect to the mover, I would suggest that proportional Representation by means of the single transferable votes is not practicable at all. These are large constituencies and each constituency will consist of population ranging between five lakhs and seven and a half lakhs. Further, we are not an advanced country; many of the people are not literate. The literate population of our country is no more than fourteen per cent. Exercising preference by means of the single transferable vote is impossible. We commit mistake seven on the floor of the House in the Legislative side when we elect members of the Standing Committees in Legislature for the various Departments. We do not exercise our votes properly. Therefore it is impossible to expect the illiterate voters to be able to exercise their votes properly. For a long time to come it is unthinkable having regard to the low progress of literacy in our country.

Then as regards proportional representation by means of cumulative votes, my suggestion is that that has been tried regarding the scheduled caste primary election. I would refer to Volume III of the Constitutional Precedents published by Sir B. N. Rau; at page 161 he has appended an Appendix to the Chapter on the system of representation. Therein he says--

> "The number of seats a party captures in an election depends on the correctness with which it has gauged the support it commands in each of the constituencies, and set up the right number of candidates on its behalf."

As an illustration he says in the Appendix how the Congress lost both seats by miscalculation when it was possible for the Congress to have captured at least one seat. That is what happended in 1937 in the C. P. Legislative Assembly elections-- Bhandars Sakoli (General Rural). Both seats were lost to the Congress. Then the Congress party contested in the Bombay Legislative Council, Bombay city and Suburban Districts, two out of four seats. If it had under-estimated or over-estimated its electoral strength and nominated less or more candidates, it would have lost a seat. Now therefore this cumulative election would not absolutely be appropriate.

Shri L. Krishnaswami Bharathi : That is not proportional representation.

Shri M. Ananthasayanam Ayyangar : That is also a kind of proportional representation. I advocate neither the system by single transferable vote nor by cumulative vote. The one is impossible and the other would not meet the purpose. In that way social justice would not be rendered. On these grounds neither the amendment of Mr. Karimuddin nor that of Mr. Baig is worth considering. I oppose both of them. Prof. Shah suggested that there ought not to be any restriction on the number of members in the House of the People. He said there must be as many as possible. My impression is 500 is large enough. Already, in a House which consists of three hundred members, almost every day we have to ring the bell to get a quorum; and so what is the good of multiplying the number? There will not be effective representation. The smaller the number of members, the more effective it will be. Of course it ought not to be too small. Five hundred seems to be quite a good number. Besides 500 is not such a fixed and an inviolable number at that: because under articles 292 and 293 provision is made for nomination in the case of Anglo-Indian community if they are not represented. Likewise, for the territories which did not form part of the States, the Parliament is entitled under the article clause (7), by law, to provide for their representation in the House of the People. The five hundred under clause (5), are representatives only from States. There can be in addition to the five hundred, some Anglo-Indian members and also members representing territories other than those from the States. Under those circumstances five hundred is not a definite number; but it ought not to be increased enormously.

Then my friend, Pandit Thakur Dass Bhargava, suggested that a kind of qualification ought to be imposed, though he did not move the amendment that literates alone ought to be allowed to vote. Sir, I want a clause insisting that there must be imposition of penalty on those people who refrain from voting. For a long time to come unless people in this country are compelled to come to the Polling Station, many people may not care to exercise their votes at all, and if you put a further qualification that they must be literate, I am sure none will take interest. You are giving adult suffrage and the vote of a single individual may not count. If most of our people are not literate till now, whose fault it is? It is too much to expect that everyone will become literate within a period of two years. Moreover, literacy is not the only qualification. I know a number of people who are not literate but have very good common sense,-more than people with academic qualifications.

Pandit Thakur Dass Bhargava : Signing the name can be learnt in two months.

Shri M. Ananthasayanam Ayyangar : With what effect? It is idle to think that merely if a man is able to sign his name, he will immediately become such a literate and educated man as to exercise his vote properly; I should say such a qualification is unnecessary. Wisely he has not moved an amendment to that effect. On the other hand it may be necessary in the future years when the election becomes so costly and people may not come to the polling station that you may have to have a provision, as exists in some other constitutions, that there must be a compulsion on voters to come and vote. As regards early elections, I would wish that even from now the various provincial Governments must take up the task of making up the list of qualified voters and also delimiting constituencies. That is the object with which we have come to some of these articles and have taken up only those articles which relate to elections. We are also proceeding from here, with the leave of the House, to consider article 148. Therefore, I believe that the Central Government will take steps to issue instructions to Provincial Governments to prepare these lists and also delimit constituencies early with a view to have the elections early next year.

I support the formal amendments moved by my Friend Dr. Ambedkar and oppose the amendments moved by Mr. Karimuddin and Mr. Baig and also by Prof. Shah.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I accept the amendments Nos. 1417, 1426, 1431 of Prof. Shah, 1434 as amended by the mover of that amendment and as amended by the amendment No. 42 of List II and No. 43 of List II. Of the other amendments, on a careful examination, I find that there is only one amendment on which I need after any reply. That is amendment No. 1415 of my Friend Mr. Karimuddin. His amendment aims at prescribing that the election to the House of the People in the various States shall be in accordance with the proportional representation by single transferable vote. Now, I do not think it is possible to accept this amendment, because, so far as I am able to judge the merits of the system of proportional Representation, in the light of the circumstances as they exist in this country, I think, that amendment cannot be accepted. My Friend Mr. Karimuddin will, I think, accept the proposition that proportional representation presupposes literacy on a large scale. In fact it presupposes that every voter shall be literate, at least to the extent of being in a position to know the numericals, and to be in a position to mark them on a ballot paper. I think, having regard to the extent of literacy in this country, such a presupposition would be utterly extravagant. I have not the least doubt on that point. Our literacy is the smallest, I believe, in the world, and it would be quite impossible to impose upon an illiterate mass of voters a system of election which involves marking of ballot papers. That in itself, would, I think, exclude the system of proportional representation.

The second thing to which I like to draw the attention of the House is that at any rate, in my judgment, proportional representation is not suited to the form of government which this Constitution lays down. The form of government which this Constitution lays down is what is known as the Parliamentary system of government, by which we understand that a government shall continue to be in office not necessarily for the full term prescribed by law, namely, five years, but so long as the Government continues to have the confidence of the majority of the House. Obviously it means that in the House where there is the Parliamentary system of Government, you must necessarily have a party which is in majority and which is prepared to support the Government. Now, so far as I have been able to study the results of the systems of Parliamentary or proportional representation, I think, it might be said that one of the disadvantages of proportional Representation is the fragmentation of the legislature into a number of small groups. I think the House will know that although the British Parliament appointed a Royal Commission in the year 1910, for the purpose of considering whether their system of single-member constituency, with one man one vote, was better or whether the proportional representation system was better, it is, I think, a matter to be particularly noted that Parliament was not prepared to accept the recommendations of that Royal Commission. The reason which was given for not accepting it was, in my judgment, a very sound reason, that proportional Representation would not permit a stable government to remain in office, because Parliament would be so divided into so many small groups that every time anything happened which displeased certain groups in Parliament, they would, on that occasion, withdraw their support from the Government, with the result that the Government losing the support of certain groups and units, would fall to pieces. Now, I have not the least doubt in my mind that whatever else the future government provides for, whether it relieves the people from the wants from which they are suffering now or not, our future government must do one thing, namely, it must maintain a stable government and maintain law and order. (*Hear, hear*). I am therefore, very hesitant in accepting any system of election which would damage the stability of government. I am therefore, on that account, not prepared to accept this arrangement.

There is a third consideration which I think, it is necessary to bear in mind. In this country, for a long number of years, the people have been divided into majorities and minorities. I am not going into the question whether this division of the people into majorities and minorities was natural, or whether it was an artificial thing, or something which was deliberately calculated and brought about by somebody who was not friendly to the progress of this country. Whatever that may be, the fact remains that there have been these majorities and minorities in our country; and also that, at the initial stage when this Constituent Assembly met for the discussion of the principles on which the future constitution of the country should be based, there was an agreement arrived at between the various minority communities and the majority community with regard to the system of representation. That agreement has been a matter of give and take. The minorities who, prior to that meeting of the Constituent Assembly, had been entrenched behind a system of separate electorates, were prepared, or became prepared to give up that system, and the majority which believed that there ought to be no kind of special reservation to any particular community permitted, or rather agreed that while they would not agree to separate electorates, they would agree to a system of joint electorates with reservation of seats. This agreement provides for two things. It provides for a definite quota of representation to the various minorities, and it also provides that such a quota shall be returned through joint electorates. Now, my submission is this, that while it is still open to this House to revise any part of the clauses contained in this Draft Constitution and while it is open to this House to revise any agreement that has been arrived at between the majority and the minority, this result ought not to be brought about either by surprise or by what I may calla side-wind. It had better be done directly and it seems to me that the proper procedure for effecting a change in articles 292 and 293 would be to leave the matter to the wishes of the different minorities themselves. If any particular minority represented in this House said that it did not want any reservation, then it would be open to the House to remove the name of that particular minority from the provisions of article 292. If any particular minority preferred that although it did not get a cent per cent deal, namely, did not get a separate electorate, but that what it has got in the form of reservation of seats is better than having nothing, then I think it would be just and proper that the minority should be permitted to retain what the Constituent Assembly has already given to it.

Pandit Thakur Dass Bhargava : But there was no agreement about reservation of seats among the communities and a number of amendments were moved by several Members for separate electorates and so on, but they were all voted down. There was no agreement at all in regard to these matters.

The Honourable Dr. B. R. Ambedkar : I was only saying that it may be taken away, not by force, but by consent. That is my proposition, and therefore, I submit that this proportional representation is really taking away by the back-door what has already been granted to the minorities by this agreement, because proportional representation will not give to the minorities what they wanted, namely, a definite quota. It might give them a voice in the election of their representatives. Whether the minorities will be prepared to give up their quota system and prefer to have a mere voice in the election of their representatives, I submit in fairness ought to be left to them. For these reasons, Sir, I am not prepared to accept the amendment of Mr. Karimuddin.

Mr. Vice-President : I shall now put the amendments, one by one, to the vote of the House.

Shri H. J. Khandekar : On a point of information, Sir, may I ask Dr. Ambedkar, what about the preceding census? He has not said anything when he amended article 35 the other day. About the preceding census, is he prepared to amend it by saying 'the latest census' ?

Mr. Vice-President : Mr. Khandekar may come to the rostrum and speak.

The Honourable Dr. B. R. Ambedkar : I have accepted the amendment of Mr. Naziruddin Ahmad as amended by him and as amended by Shri Bhargava.

Mr. Vice-President : I shall now put the amendments to vote.

The question is:

"That in sub-clause (a) of clause (5) of article 67, the following words be deleted:--

'Subject to the provisions of articles 292 and 293 of this Constitution'; and the following words be added at the end:--

'in accordance with the system of proportional Representation with multi-member constituencies by means of cumulative vote'." ' The amendment was negatived.

Mr. Vice-President: The question is:

"That in sub-clause (a) of clause (5) of article 67,for the words 'not more than five hundred representatives of the people of the territories of the States directly chosen by the voters, the words 'such members as shall, in the aggregate, secure one representative for every five hundred thousand of the population in all the constituent parts of the Union, whether States or territories directly administered by the Centre. All members of the People's House shall be chosen directly by the votes of all adult citizens. The votes shall be cast in a secret ballot and voting shall be on the basis of Proportional Representation with Single Transferable Vote' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in sub-clause (a) of clause (5) of article 67, for the words 'representatives of the people of the territories of the States directly chosen by the voters', the words 'members directly elected by the voters in the States' be substituted."

The amendment was adopted.

Mr. Vice-President : The question is:

"That the following be added after the words 'the States' in sub-clause (b) of clause (5) of article 67:--

'and Territories directly governed by the Centre'."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in sub-clause (b) of clause (5) of article 67, the words 'divided, grouped or' be deleted."

The amendment was negatived.

The Honourable Dr. B. R. Ambedkar : Amendment No. 1426 for dropping the words of India may be put, Sir.

Mr. Vice-President : That comes later. I am putting the amendments to vote in the order in which they were moved.

The question is:

"That in sub-clause (b) of clause (5) of article, 67, after the word 'constituencies', the following be added:-

> `so that each State being constituent part of the Union or Territory governed directly by the Centre is a single constituency by itself if its population is not less than a million; or grouped with such adjoining States or Territories as together have a population of not less a million'."

The amendment was negatived.

Mr. Vice-president : The question is:

"That in sub-clause (b) of clause (5) of article 67, after the word 'constituencies' a full stop be added, the word 'and' following immediately be deleted and the word 'the' be printed with a capital 'T'."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in sub-clause (b) of clause (5) of article 67, the words 'of India' be deleted."

The amendment was adopted.

Mr. Vice-President : The question is:

"That the proviso to sub clause (b) of clause (5) of article 67 be deleted."

The amendment was adopted.

Mr. Voice-President: The question is:

"That with reference to amendment No. 1434 of the List of Amendment in sub-clause (c) of clause (5) of article 67, for the words 'members to be elected at any time for', the words 'representatives allotted to' be substituted."

The amendment was adopted.

Mr. Vice-President: I shall now put amendment No. 1434 as modified by the mover himself to vote. Is it necessary for me to read out the amended amendment?

Honourable Members : No, Sir.

Mr. Vice-President : The Question is:

"That in sub-clause (c) of clause (5) of article 67, for the words 'last preceding census', the words 'last preceding census of which the relevant figures have been published' be substituted."

The amendment was adopted.

Mr. Vice-president: The question is;

"That clause (7) of article 67 be omitted."

The amendment was negatived

Mr. Vice-President : The question is:

"That in clause (7) of article 67, for the word 'may' the word 'shall', for the word 'territories' the word 'the territories', and for the words 'other than States' the words 'directly governed by the Centre on the same basis as in the case of States which are constituted parts of the Union' be substituted respectively."

The amendment was adopted.

Mr. vice-president : The question is:

"That with reference to amendment No. 1450 of the List of Amendments, after clause (8) of article 67, the following new proviso be inserted:--

> 'Provided that such readjustment shall not affect representation to the House of the People until the dissolution of the then existing House.' "

The amendment was adopted.

Mr. Vice-president : The question is

"That in clause (8) of article 67, after the word 'readjusted' the words 'on the basis of population' be added."

The amendment was negatived

Mr. Vice-President : I shall now put the first alternative in amendments No. 1452 to the vote of the House.

The question is:

"That to article 67, the following new clause (10) be added:-

> `(10) The election to the House of the people shall be in accordance with the system of proportional Representation by means of the single transferable vote.' "

The amendment was adopted.

Mr. Vice-President : I shall now put article 67, as amended to the vote of the

House :

The question is:

"That article 67, as amended, stand part of the Constitution".

The motion was adopted.

Article 67, as amended, was added to the Constitution.

Mr. Vice-President : The house stands adjourned till 10A.M. Wednesday, the 5th January 1949.

The Assembly then adjourned till Ten of the Clock on Wednesday, the 5th January 1949.

[Translation Of Hindustani Speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VII

Wednesday, the 5th January 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

LETTER FROM THE PRESIDENT

Mr. Vice-President (Dr. H. C. Mookherjee): Before we start the business of the House, I would like to read a letter which I received last evening from our President. This reads:

> "I am thankful for your letter conveying to me your and the House's greetings of the season. I need hardly say how I appreciate such expression of goodwill. I am sorry I could not come even for the last few days of the current session. My plan to start on the first failed because I had fever on the 28th accompanied with severe cough."

Then he says:

> "I hope the House will excuse my absence in the circumstances. I am trying as best as I can to recover but somehow I have had a bad time for several months now. As the season becomes milder and warmer, I hope to improve as I do in all summers."

With the permission of the House, I would like to reply to this letter to the effect that we hope that he will not only recover but fully recover and will conduct the proceedings of the House in May next when we meet once again.

We now come to item No. 2, motion to be moved by the Honourable Sardar Patel.

GOVERNMENT OF INDIA ACT (AMENDMENT) BILL

The Honourable Sardar Vallabhbhai J. Patel (Bombay :General) : Sir, I beg to move:

> "That the Bill to amend the Government of India Act, 1935, be taken into consideration."

The measure before the House is a composite one, and in fact it covers a variety of fields of administration. By experience we have found that some changes in these directions are necessary, and in respect of one field, *viz.*, the States, it is found necessary statutorily to recognise the changes that have taken place in the States during the period of last year and also to regularise them. Now, the House is aware--at least many Members who attended the last session of the Assembly must be knowing--that the working of the Trade Disputes Act has created certain anomalies and difficulties. Under the Trade Disputes Act the provinces have set up Industrial Tribunals for the purposes of disposing of disputes. In the working of these Tribunals, decisions have been given by various Tribunals which are not uniform, at least as regards the principles underlying the decisions. This has created complications and there is a general desire that it would be desirable to have uniformity with regard to the principles governing these decisions. Therefore, the suggestion has been made to the Government that a Central Tribunal or Appellate Authority should be established so that the decisions of this Tribunal may set up a sort of Case Law which would be a guidance for the Provincial Tribunals as well as bring about uniformity in the main principles governing their decisions. Now, that is one thing.

The other thing is that we had consulted the Provincial Governments and they have all agreed more or less in the necessity of a Central Board of Censors for films. In this respect also, the Central Government should have powers and for that purpose also we propose to introduce a sort of amendment in this Act. Both the Provincial Governments and the film industry have welcomed the Central Board of this kind which will lay down principles for uniform treatment of films and ensure that those principles are implemented in actual practice. Also we are experiencing constitutional difficulties in pursuing certain statistical enquiries. For all these reasons, it has become necessary to secure in the executive sphere power in respect of these matters.

We felt that the Dominion Legislature should have the power to confer such executive functions on the Dominion agency by law of the Dominion, and consequently an amendment was also considered necessary under Section 126-A of the Government of India Act, but after further consultation with Provincial Premiers who are naturally jealous of the powers of their legislatures and rightly sensitive to any encroachment on those powers, we propose to introduce with their advice and with their consent, an amendment of a restricted nature which confines itself to certain specific matters.

Again, the industrial policy of the Government of India makes it necessary that the Central Legislature should have powers in respect of a number of other industries. Firstly, these powers can be derived under Section 34 of List I of the Seventh Schedule, but as that gives Government power to legislate only on development, it is doubtful whether in relation to production, supply or distribution similar powers would be available to the Centre. The House will appreciate that, without such power, control on development will be unreal and ineffective. It is therefore proposed in the Bill to make some additions to the Federal legislative list, but subsequently after discussions with the Provincial Premiers to which I have already referred, it was decided to make an alteration in the arrangements contemplated in the Bill and to secure the object which we have in view by including certain matters in the scope of clause 2 as would be amended on the lines mentioned, in the Concurrent List. This would give the Dominion Legislature power to legislate in respect of these industries and also to confer executive power in respect of them.

I now come to clause 3 of the Bill. This amendment is considered necessary on account of the provisions of sub-section (3) of Section 61 of the Government of India Act, according to which the Legislative Councils of the provinces of Madras, Bombay, United Provinces and Bihar are permanent bodies subject to the condition that, as near as may be, one-third of the members of the Councils should retire every third year. The retirement under these provisions was due in United provinces in September last and the elections have already taken place there, but in Madras, Bombay and Bihar they are to take place in March or April. It is considered by those Governments that in view of the likelihood of the new Constitution coming into force in the near future elections for the Upper Chamber which would become necessary by retirement should be avoided. In these circumstances, we have considered it necessary to take powers to extent the terms of office of members of the Councils who may be due to retire under sub-section (3) of Section 61 of the Government of India Act.

Now, I come to Clause 6 of the Bill. The House knows that as a result of merger agreements which have been signed by rulers, full jurisdiction in regard to administration of twenty five States in Orissa, fifteen States in Central provinces, three States in Madras, thirty five full-powered States and one hundred and forty semi-jurisdictional States in Bombay, and three States in East Punjab has been handed over to the Government of India who have delegated their powers to the Provincial Governments concerned under the Extra-Provincial Jurisdiction Act which was passed by the Central legislature. In addition to this, certain States have been taken over by the Central Government and entrusted to officers of the Central Government who have been appointed as Chief Commissioners and these are known as Chief Commissioners' provinces. These are, firstly, the East Punjab Hill States. They are about fifteen to twenty in number,--very small States--which have all been lumped together; and in view of their special condition we have taken them over and formed a Chief Commissioner's province. Other States taken over in this manner are: Cutch, Bilaspur and Mayurbhanj which subsequently been handed over to Orissa. These have been formed as Chief Commissioners' provinces. In the case of Cutch it has been done on account of its special position, namely, that it has a big, long border line with Pakistan and is an undeveloped area neglected for a very long time, with hardly any railway, no modern conveyance, no roads etc., and if you want to see a thousand-year old mediaeval State, Cutch is the only one in India. This State, however, has a first-class major port to be developed and the Government of India propose to spend a large amount of money on it. Then a railway from Cutch--metre gauge--is to be laid connecting it to Deesa. There is also a proposal to have another railway--board gauge--right up to Viramgam. In these circumstances and because of the long border between the two Dominions, it was considered necessary to take over the State's administration and form a separate Chief commissioner's province.

The legal position in regard to the administration of these provinces is that laws are made by notification issued in the name of the Chief Commissioner under Section 4 of the Extra-provincial Jurisdiction Act which was passed by the Central Assembly in 1947. The administration is carried on under the provisions of this Act either by the Central Government or the Provincial Governments. It is clear that the process of administrative integration which these agreements were designed to bring about has thus been partially achieved. The laws of the Central Legislature and the appropriate Provincial legislatures do not apply as such to the States which have been merged or which are being administered by these Chief Commissioners. The Finances of these States do not form part of the finances of the Dominion or the province concerned, but have to be kept separately for the time being. So we naturally considered how best we could bring about complete administrative integration, which was the aim and purpose of the merger agreements which have been signed by the rulers and accepted by the Government of India. It was all first thought that this can be done by an order under Section 290 of the Government of India Act by increasing the areas and altering the boundaries of the provinces, but Section 290 makes no mention of the acceding State and it is therefore extremely doubtful whether the Government General is competent by an order under that Section to direct the integration of the territories of acceding States to the provinces. It is for a variety of reasons that these merger agreements were entered into and the integration of these States should not longer be delayed. It is therefore considered necessary to make in the Government of India Act of 1935 a provision enabling the governance of an acceding State or States, whose rulers have entrusted jurisdiction and power to the Dominion Government, either as part of a Governor's province or a a Chief Commissioner's province. Such a provision is necessary for political, constitutional and administrative reasons. politically, it will hasten the process of integration and will provide a means for all these areas being represented in the legislatures of the provinces in which they have been merged. At present, although the States have been merged, there is no arrangement by which they could be represented in any manner in the provinces concerned. Constitutionally, the provision will enable the Dominion and the Provincial legislatures to have a legal basis for enacting legislation for these areas, and administrative convenience of complete merger is undoubtedly very great. There is also a provision in the Bill for adjustment of territories between a province and a neighbouring acceding State. If such adjustment is considered expedient or necessary for reasons of administration, it cannot be done at present. I might illustrate this by an example. There are about 12 1/2 villages which form the Chief Commissioners province known as Panth Piploda, of which the House may know. These villages are not at one place and are situated at different places and are in such a position that their administration is practically neglected. The area cannot be governed properly and to have such a small unit of villages situated at different places is, constitutionally speaking, a problem which requires immediate solution. Now, these States, on account of their geographical position and other reasons, can only be properly merged or administered along with Madhya Bharat. they are all situated in the midst of this area.

I hope, Sir, that I have given the House sufficient justification for the measure which I have placed before the House. There are a large number of amendments proposed, particularly to clause 6. The list of amendments for which notice has been given is too long, but I hope I have given sufficient explanation for the justification for the Bill and honourable Members will reconsider them and it will not be necessary for many of them to be moved in the House.

Sir, I move that the Bill be taken into consideration.

Shri Yudhishthir Misra (Orissa States): Mr. Vice-President, Sir, I want to take part in the general discussion on the motion before the House and make some observations about the provisions of the Bill for the administration of certain States whose rulers have ceded full and exclusive power and authority to the Government of India. According to the provisions of the Bill, some States such as the States which now comprise the Himachal Pradesh will be constituted into a Chief Commissioner's province and other such as the Orissa and Chattisgarh States, Deccan States and Pudukottah State will be administered as parts of the neighbouring provinces. The integration of the Orissa and Chattisgarh States took place in January 1948 and since then these States have been under the administration of the provinces of Orissa and Central Provinces. The integration was the result of agreements between the rulers on the one hand and the Government of India on the other. The people of these States or their representatives never came into the picture. They were neither consulted about the process of integration nor was their opinion taken about the actual administration of the States to which they belonged. The right of self-determination has been denied to them as a result of which there is great discontent in these States. The popular opinion in the Orissa States as reflected through the Regional council affiliated to the All-India States peoples Conference, was not for unconditional merger. The Orissa States being educationally, politically and economically backward, they apprehended domination and exploitation by the province in services, legislature and in developmental schemes. Hence, their acceptance of the idea of one administration between the States and the province was conditional upon certain terms and conditions which should have been entered into between the people of the States and the province. The idea could not materialise as the people of the States were not taken into confidence and the agreement was purely the affair of the Government of India, the provincial Government and the rulers of the States. The unconditional integration of the States has to a certain extent, reduced the people of the States to subjection and justified the apprehensions which they had entertained. To all intents and purposes they are treated as conquered people and instead of the Ruler's Raj there is in the States the Raj of the administrators. There is, no doubt, in each state an advisory Committee, but the advice and suggestions of these advisory committees are never taken seriously. There are two Executive Councillors, as far as the Orissa States are concerned, but they are, I submit with all humility, mere show-boys and they are never consulted in important and vital matters.

Sir, in this connection, I beg to bring to the notice of the house that when the question of the personal property of the rulers was considered by the Government of Orissa and an agreement was entered into by the Government of Orissa with the rulers of those states, these executive Councillors were never consulted and the wishes of the people of the states with respect to the property were never taken into consideration.

No doubt, Sir, certain measures have been taken by the Provincial Government to meet the demands of the States people, but they pale into in significance in the face of the States people, but they pale into insignificance in the face of the mal administration in certain cases that has taken place in the wake of integration.

Sir, Corruption has increased and there is more exploitation than before. Every village has been converted into a liquor shop and the evils of drinking have increased. The medical grants for the purpose of medicine etc., for the State hospitals have been reduced. The substantial pay of some of the employees of the States, especially the low-paid employees, has been reduced and the primary schools which were managed by the respective State Governments have been converted into stipendiary schools as a result of which the teachers of these primary schools will not get any dearness allowance and the benefit of provident Fund. in some of the States the road development programmes have been held up.

Now, Sir, it is proposed that besides the privy purse which has been granted the rulers, the relatives of the rulers will be given some allowances. This idea of granting more allowances to the rulers will be given some allowances. This idea of granting more allowances to the rulers of the States or their relatives is quite against the wishes of the people and there is no reason why these rulers should be granted more money than has been granted to them under the agreement. But, Sir, even against the wishes of the people, the provincial government is prepared to consider their cases. I do not know what has happened to that proposal. Now, Sir, before the integration of the States and after the integration, the provincial government had held out certain assurances to the people, saying that the provincial government will not reduce the pay, especially of the law-paid employees of the States and that the education and other amenities which the people were enjoying will not suffer in the hands of the Provincial Government, but in many cases these assurances have been falsified and the provincial Government have not kept the promises which they held out to the People before integration.

Now, Sir, I submit that it is the duty of the Central Government to see that the States area should be given certain priorities in the developmental works by the provincial Government and that the people of the States do not lose the little amenities of life which they were then enjoying. Therefore, I the States to the provincial Government, as is contemplated in the Bill, the Government of India should have instituted an enquiry into the present administration of the States and should have ascertained that nothing is done against the interests of any section of the people of the States.

Sir, in the amending Bill, a provision has been made to consult the Provincial Government for the purpose of passing orders by the Governor-General making the States parts of the province, but no provision has been made to ascertain the views of the people. When the fate of the people of the States is going to be decided, it is meet and proper that the people of the States should also be consulted. If it is not possible for the Government of India to accept this suggestion, at least the popular organisations of these States should be consulted, before the orders are passed, about the manner in which the States will form a part of the province.

Now, Sir, I think that for the interim period, before the new Constitution is adopted and passed, the representatives from the States should be consulted on all the problems which are special to them and that the administration should be carried on according to the advice of those representatives.

Sir, if no constitutional guarantees can be given to the people of the States, as I have suggested, I submit, that before making the order under the proposed Section 290-A, the Governor-General should give some directions to the province to act according to the advice of the representatives of the States on certain special problems.

Shri Ram Chandra Upadhyaya (Matsya Union): *[Mr. Vice-President, as a representative of the people of the State, I welcome this amending Bill. In particular I support the amendment now being proposed in Section 6. I believe that it would be in the interest of the people. I, therefore, desire to make some observations in order to refute the remarks made in this connection by shri Yudhishthir Misra. I may state that in my opinion this amendment is very much in our minor individual or group interests. Not many days ago the problem of the States was considered to be so difficult of solution that on the departure of the foreign rulers from this country the people of other lands seriously apprehended that India would be crushed out of existence under the heavy load of these States. It is a matter of deep congratulation, however, for the Government of India that it has felt the necessity of adding a new section, *i.e.*, Section 290-a, to the Government of India Act. It shows what great progress we have been able to make during this period of one year. It is my belief that we would soon be able to settle even the few matters that remain. I may in this connection drew your attention to what I consider to be a special feature of this Act, and it is the following:-

"Where full and exclusive authority, jurisdiction, and powers for and in relation to the Government of any Indian State or of any group of such States are for the time being exercisable by the Dominion Government the Governor-General may by order direct."

I believe that the shortest path that the people of the States need follow for securing a complete and final solution of the problem of the states is to induce the Princes of their States to transfer all their powers to the Government of India. A number of States, as Sardar Patel has already informed us, have agreed to adopt this course, but there are also quite a number of States who have not agreed to do so. I think, that after what has happened in Hyderabad, no Prince would dare raise objections to the adoption of this course of action. I have, however, apprehensions about the attitude of the new class of rules--the class consisting of Popular Leaders--that is now emerging in the Indian States. What we have read about Bhopal is a matter of regret to us today as it was even before. Many of the political workers and popular leaders of the Indian States believe that they would be able to maintain their leading position only if the small States are permitted to maintain their separate existence. But in my opinion it is a grave mistake on their part to entertain such a belief, and they are thus hampering the unification of India. It is a matter of great amazement that such people should hold the belief that a petty State like Bhopal can maintain its separate existence. Still more amazing is that traitors like Chaturnarayan Malaviya should hold the idea that they can maintain their leadership though the separate existence of such a small State as Bhopal. I have also come across a similar statement about the leaders of Tehri Garhwal. But if we desire to make India great and glorious it is our duty to disabuse the minds of our political workers of such notions. It has already been a made clear by Sardar Patel and it is also plain to all of us that the Princes can no more stand in the way of the progress of India. At such a time it would be a matter of deep regret if anyone of us put new obstacles in the path of India's progress. It is for this reason that I would like to emphasise again that it is our duty to define our objectives clearly and precisely.

Another feature of this section to which I would like to draw your attention is the provision for the transformation of some States into Chief Commissioners Provinces. I think that this is also a correct course to follow. I believe that we shall have to merge the States to form Chief Commissioners' or Governors' Provinces before we can merge them with the Indian Union. There are some people who claim that popular opinion should be ascertained before the adoption of this course. But in my opinion, if this was to be done the progress of the country would be considerably delayed. I am afraid that plebes cite or referendum for this purpose would not be very useful, because the people of the States are so backward at the present time that they would not be able correctly to appreciate the issues involved and would not consequently favour the right course of action. India is taking big strides in the direction of progress. But her march towards progress would be retarded if we the people of the State begin to hold a referendum. I, therefore, urge that we should not insist on these claims. In my opinion it would be quite sufficient if the views of the Congress Party in each State are ascertained and acted upon in the matter of the merger of the States with one another. Any attempt to consult a wider section of opinion is likely to create serious complications.

Shri Yudhishthir Misra has remarked that in view of the unsatisfactory way in which the administrations of many of the State are working now-a-days one begins to entertain the opinion that the people were much better of before than what they are or would be when the proposals now being made for their welfare have been carried out. It cannot be doubted that previously when their were small States the people had some conveniences arising from the fact that the High Courts and the administrative headquarters were, on account of their proximity to the people, easily accessible to them. They could run to them and speedily secure the redress of their grievances. But this facility would no more be available to the people on the merger of a State with a big province. People, no doubt, attach quite a great importance to this facility. But it appears to me that we should not give any importance to our petty gains or losses of this kind in order that India, our country may proper and progress.

We should rather think of the advantages we would have six months hence. It is only in our taking a long and not a short view of our interests that the good of India Lies.]*

Mr. Vice-President: You are not obeying the Bell.

Shri Ram Chandra Upadhyaya: *[It is quite possible that we may have difficulties for some time as a result of the merger of a State with any province.

For instance, if Dholpur or Bharatpur merge with the United provinces, their people will have to travel a great distance in order to reach Lucknow or Allahbad. But we should remember that the other people of that province have also to travel great distances for the same purpose. I, therefore, submit that ignoring these minor inconveniences, we should concentrate our attention only on the ways and means which would enable us to make our future glorious and bright and which would prove the most fruitful for us. I believe, in view of the above considerations, that Section 6, in the form it is dratted, is quite appropriate. We should, ignoring for the time being our petty difficulties, adopt it without any amendment.]*

Shri B. H. Khardekar (Kolhapur): Mr. Vice-President, Sir, I welcome this Bill. Actually it was overdue. This Bill will put an end to the anomalous position that has been created in the case of certain merged States, Of course, there are a few defects in the Bill. I will point them out later on.

First, Sir, I will make a few general observations and then discuss particulars. You know, sir, the Englishmen left India ....

Mr. Vice-President: I suggest that the honourable Member refer to these clauses merely and that he could take part in the general discussion on the several clauses, especially clause 6 which is concerned directly with the States. In that way, we shall save the time of the House.

Shri B. H. Khardekar: Yes, Sir. I come to particulars. Sir, it is, now about eleven months since some of the States have merged; and because there was no such enactment, they could not be absorbed into the provinces. This Bill rights the wrong which has been there for a long time. In a short time, I will describe the nature of the wrong that was there. For these ten or eleven months, in most of the States, there has been what might be called the Administrator's autocratic rule. The disadvantages, some of them, of the provincial Governments crept in whereas the advantages could not be had. I shall give one notable instance, that of education. Particularly in one State, as also perhaps in several others, education in the last regime was entirely free, right from the primary up to M. A. and M.Sc. After the merger, fees have been imposed. As against that the teachers' salaries have unfortunately remained the same. Let me in a minute or two describe the nature of the Administrator's rule in general. These Administrators, most of them in all the important places, have been members of the old I. C. S. In our school we interpreted the I. C. S. as one who is neither Indian, nor civil nor a servant. Today, of course, he is mostly Indian, but the other description fits him. In most of the States, Political life of whatever nature it was came to an end suddenly. In place of the old autocrat,--the old autocratic Rulers had ceased to be autocratic because some sort of constitutional rule was introduced--this new official autocrat came in. Sir, I will describe briefly the state of affairs in one State. Section 144 of the Criminal Procedure Code prevails permanently and there also partiality was to be found and a certain group allowed certain facilities. There have been arrests, detentions, detentions without limit, for eight or nine months. That is why. Sir, most of the members here, who love personal liberty were very anxious that the expression 'without due process of law' should be included in article 15. A number of papers which even indirectly criticised or attempted of criticise the Administrator have been banned. The language of the civil servant is anything but civil. He uses such expressions as, "I will shoot you; I will imprison you; I will extern you, your family and your children". Such uncivilised bullies, unfortunately, bring discredit to the Government they represent. A certain high official was not only dismissed without powers, but he was actually served with a notice of externment. The Position of that high official is very high indeed. He is a former minister of a provincial Government; he was a member of the Constituent Assembly and so on and so forth. If I am to use parliamentary language and yet use the strongest expression, I would say, Sir that this regime is the opposite of heaven. I would request the States Ministry to enquire into the conduct of such officials. I know that such officials, in some cases, came in, had to come in, as a result of certain *"pagal"* ministries; but representatives of Government should not try to surpass the *"pagal"* ministry itself.

A defect in this particular Bill is that the provinces are to be consulted as regards the absorption of certain States; but the people of the States are not to be consulted. Self-determination is the very essence of democracy. If you are going to deprive the people of choosing their own province or Chief Commissioner's Province, you are really denying democracy itself. And that is why I would, when the time comes, support Pandit Thakur Dass's amendment. Now, Sir, I have a few words to say about the policy the Government of India have followed as regards merger. To Sardar Patel the Nation owes a great debt of gratitude for having made the map of India better, clearer and cleaner; but there has been certain misunderstanding as also certain defects in the policy of merger. The declared policy of the Government of India is that a State should merge only when the Ruler and the people so desire. First, I have my theoretical objection to this policy because we have declared the people to be the sovereign. Now suppose there is an obstinate Ruler who does not want to give away his rights as a Ruler and the people desire merger--as in most cases it might be so--what are we going to do? Then by some underhand methods we may have to persuade him. That is not proper. Then the other position is, most of the Rulers have suddenly become very patriotic and because they look more to their monetary financial interests they have decided to be loyal to the Indian Union; these persons who were enemies of the country and the people formerly, persons to whom the name of Gandhiji was something that infuriated them, persons for whom the very sight of Gandhi cap gave severe headache, such persons have become patriotic all of a sudden and have agreed to merge. I am not grudging this epithet which has been used by Sardar Patel to these people. After all in conducting State administration, some statesmanship is necessary and where a goat is to be sacrificed, it must be fed previously; so, where the States are to be wiped out, they may be flattered for a time. In this case what of the people? I want a very clear declaration on the point. Ultimately all States must go. I do not want relics of barbarism and feudalism to remain anywhere in this country. But the process of merger should be such that when the States are swallowed, no bitterness is left in the mouth and the merger should be for the happiness and for the good of all. So my recipe or my humble suggestion to Sardar Patel in this important matter--I know he is a very great man and he is a very practical politician--but as a youngster looking up to an elder with deep reverence and respect, I wish to throw a few humble suggestions. Sir, for the States--viable states which have not yet merged, a date should be fixed for the plebiscite. The people must be consulted; that is what I think; and three months previously the Ruler of the State concerned should be humbly advised to leave the State and go to some foreign country--Europe or America; let him enjoy himself. Then after a short time Sardar Patel should pay a flying visit to the State, discuss matters in a friendly manner with the leaders of public opinion. That would behalf the battle won. India, I think has got a magic weapon in the moral and spiritual armoury of the country and that magic weapon or mantra is Pandit Nehru. Just before the plebiscite Pandit Nehru should be persuaded to pay a flying visit and deliver a short lecture. I dare say there is not a single Indian heart that can possibly resist Pandit Nehru; by such means, by proper means--after all those of us who believe in Gandhism, we should not only have laudable and proper ends but our means also must be proper. So even when we are trying to do away with relics of feudalism, let our means be worthy of the Father of the Nation.

Shri Rohini Kumar Chaudhari (Assam: General): Mr. Vice-President, Sir, in my opinion the question which is to be considered by the House is not so much the merits of the provisions of this Bill, but the question is one of principle as to how far will you allow the Dominion Government to interfere in the provincial affairs. I quite admit, Sir that in cases of emergency, it is expedient and not only expedient but desirable that the Dominion Government should have the right of interference and we have to consider how far these provisions of this Bill have kept within its limits, reasonable limits of interference or whether at any time the powers which have been sought to be exercised by virtue of this Bill are liable to be abused and cause discontent in the administration of provinces. Sir, there have been a number of amendments will not be moved and much less carried, excepting perhaps in the case of my honourable Friend the Premier of U. P. whose weight, I believe, will enable him to carry some of his amendments. I find a curious coincidence so far as the amendments to this Bill are concerned. I find most of the clauses are not wanted by some member or the other. For instance, clause 1 is not wanted and there is an amendment for deletion of this clause by no less a person than my Friends Mr. Krishnamachari and Mr. Bharathi. Deletion of clause 2 is wanted by the Honourable Pandit Pant and deletion of clause 3 is wanted by my honourable Friends Mr. Chaliha and Mr. Lakshminarayan Sahu. Deletion of clause 4 is wanted by Rai Bahadur Lala Raj Kanwar. Deletion of clause 5 is wanted by the honourable Pandit Kunzru. Deletion of clause 6 is wanted by Rai Bahadur Lal Raj Kanwar. Deletion of sub clauses (b) and (c) of clause 7 is wanted by Mr. T. T. Krishnamachari. There for, Sir, if you are going to allow all these movers of amendments to have their way, very little will be left of the Bill itself. *(Laughter)*. It seems to me, Sir that the only clause which is wanted by the Members of this House is sub-clause (a) of clause.......

Mr. Vice-President: How do you infer that all the Members will want to have even that?

Shri Rohini Kumar Chaudhari: I find all the other clauses are not wanted by one Member or the other clauses are not wanted by one Member or the other and so.....

Mr. Vice-President: Then all that you can logically infer is that ten persons do not want seven clauses. As I was taught in my school days, this is what one would call the dangerous inductive leap.

Shri Rohini Kumar Chaudhari: That is quite correct, Sir. This is a Bill of seven clauses, six of which are not wanted by some one or the other and so the only clause which the House unanimously desires to consider is sub-clause (a) of clause 7, in respect of which there has been no amendment for deletion.

Shri T. T. Krishnamachari (Madras: General): Not correct.

Shri Rohini Kumar Chaudhari: And therefore, Sir, ...

Mr. Vice-President: An honourable Member says that even that statement is not correct.

Shri Rohini Kumar Chaudhari: May be so but in any case that is the most important provision of this Bill, and I would warmly support the proposal of the provision contained in this Bill to the effect that the development of industries should be left, in deserving cases, in the hands of the Dominion Government. I have watched with close interest the process of development of industries in the various provinces, and I have to say it with regret that if this matter had been left entirely in the hands of the Dominion Government, we could have seen greater development of our industries even within the short time in which the National Government has been functioning. Therefore, I have not the least hesitation to support that clause, I mean that portion of the clause, where development of industries has been sought to be taken entirely by the Government of India. But I do not agree to the latter portion of this clause, namely, that trade and commerce within a province, and production and supply of goods, should at any time be left entirely under the control of the Government of India. I am of the opinion that as far as the production supply of particular commodities are concerned, no restrictions should be imposed upon their supply to a province, if they do not want it or if they would like to have it substituted by some other article, It may seem as if I am anticipating matters, but all the same, I humbly submit that the proposal which has been mentioned in the amendment proposed to be moved by my honourable Friend Pandit Pant should receive the support of the entire House, and the Provinces should be left free to exercise their own discretion in the matter of trade and commerce in a province in which the industry exists.

With these words, I wish to close my remarks.

Mr. Vice-President: Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. Vice-President, Sir, I am in general agreement with the principles of the Bill, except as to a single point, and that is in regard to a portion of clause 6.

Mr. Vice-President: If that is so, may I appeal to you not to take more than five minutes?

Mr. Naziruddin Ahmad: Sir, five minutes will be more than amply sufficient for me.

Sir, with regard to this clause, all that I object to is as to the provision for incorporating certain acceding States as part of a Governor's Province, or of a Chief Commissioner's Province. Sir, it is not on political considerations that I raise this point, but purely on legal considerations,. It should be noted that the Honourable Mover of the Bill when be introduced it, he was simple Sardar Patel, but today I am happy to feel that he is already a Doctor of Law, a degree which he richly deserves, and I believe the legal considerations which I shall submit before him will receive his personal consideration.

Some of the States have acceded and have transferred their right of management or `administration' of these States to the Dominion Government to be `*administered'* in any manner they please, and through any agency they please. My point is and I shall develop it later on at the appropriate stage, that this concession on the Part of the Rulers of those States, to allow the *administration* of the States, does not include the power to convert there States into so many Provinces and incorporate them as parts of a Province so as to absolutely lose their identity or their integrity. That is a king of power which has not been given by the agreement.

Shri M. Ananthasayanam Ayyangar (Madras: General) It is only as if such area formed part of......

Mr. Naziruddin Ahmad: I have noted the words "as if" But even then, it assumes powers which as I shall submit later on, cannot be justified by constitutional considerations.

Sir, these States were absolutely free when the British left. The only relation between these States and Indian would be dependent upon an agreement or the Instrument of Accession or Supplementary Instrument of Accession. There has already been an Instrument of Accession and later on, afresh agreement delivering the right of management of these States to the Government of India. But in conceding power of *administration* of these States, the power to incorporate them into a Province and to put them together in a manner which will make it impossible for anyone to separate them later on, I submit, has not been given and would be beyond to separate them later on I submit, has not been given and would be beyond the scope of the agreement. The whole situation, as I shall submit later on, is a question of construction of the second agreement.

Sir, at this stage, I do not desire to take up the time of the House and elaborate the point. With these few words, I support the general principles of the Bill all through, except that portion of it to which I have referred.

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, I think that if my honourable Friend, Sardar Patel, is determined to put the cart before the horse and you are determined to support him in this view, I am afraid there is no occasion to discuss this Bill now, considering the Objectives Resolution of this Assembly which definitely stated-

> "The Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent, Sovereign Republic....."

Sir, I submit that the whole of the Government of India Act of 1935 is based upon a foolish theory of the dominion-hood of India. Every word of that Act is based upon that theory, and if we have to carry out our determination and achieve the objects set out in Objectives Resolution, I think there is no occasion, and it will be simply a waste of time and energy--to discuss this wretched thing, the Government of India Act, 1935. Where is the use of it ? Of course, if we have got some secret understanding that you have resolved that in spite of you declaring yourselves a Republic, you will remain within the British Commonwealth, and if you are going to coin some new phrase as I said sometime ago, if you say that you will be a republic dominion, as Holland is, proposing to do with Indonesia, and if that Republic will remain in the arms of the Commonwealth, we be making fools of ourselves. If we accept this Bill, we may become a Republic, but ours will be a republic dominion. We will still be staying within the 'British Commonwealth'. Sir, even if the word 'British' is dropped from the 'British Commonwealth', the position will be no better, because, if we remain in the Commonwealth it will mean that we will be no have to co-operate with Holland and Belgium and with the rest of the Western Bloc which has been formed with the express purpose Soviet Russia. If a war breaks out in future between the Anglo-American Bloc and the other side, we will have to co-operate with the Western Bloc. It will man that we say good-bye to our determination to remain neutral in any future world war. It will mean that we give up everything for which we any future world war. It will mean that we give up everything for which we have stood fore. If we say at this stage that we are going to leave the British Commonwealth and if we say that we will become a republic, there will remain no link of the British Crown. If there is no link of the British Crown, then what will be the basis of our remaining within the British Commonwealth ? People say it will be on the basis of common citizenship and the first will citizen will be the British King. Sir, to this I say that when we see the attitude of south Africa, New Zealand and Canada, it is absolutely futile to accept any common citizenship. Therefore I say that we will have nothing to do with any citizenship common citizenship or first citizenship. We will have no longer anything to do with this tom-foolery. Therefore if we are determined to establish are public in India, by all means attempt to introduce it and reject the 1935 Act and everything connected with the dominionhood of India. Everything else is futile and absolutely irregular. I say it is immoral to do any other thing at this stage.

Sir, I wanted to say this in the beginning when my Friend the Honourable Sadar Patel introduced this Bill. I wanted to oppose him in the beginning. But unfortunately you, Sir, did not catch my meaning, ruled me out of order and put my opposition to the vote with outgiving me any chance to express myself. For the reasons given above, I request my honourable Friend Sardar Patel not to waste time and energy on such a wretched thing as the Government of India act, 1935.

Shri T. T. Krishnamachari: Sir, I move that the question be now put.

Mr. Vice-President: I think we have devoted sufficient time to the general discussion. Altogether seven honourable Members belonging to different parts of India, including the States people who I understand are vitally concerned with the Bill, have spoken. I shall now put the question.

Does Sardar Patel wish to give any kind of reply ?

The closure is of course, accepted.

The Honourable Sardar Vallabhbhai J. Patel: Sir, there have been a few speeches on this measure, but all of them were restricted to the provisions which relate to the States. In other respects there has been no discussion at all, and I take it there will be hardly any time spent on those clause.

Sir, so far as clause 6, which affects the States, is concerned, I find from the general tenor of the speeches that those who spoke supported more or less in every way, the general principles of the Bill. Some of the criticisms were, to my mind, irrelevant in the sense that some of them questioned the manner in which the merger has taken place, and some related to the question of changes in the administration adversely affecting the area which has been merged. For instance, an honourable Member from Orissa who first spoke, while supporting the measure, complained about some changes that have been brought about by the merger in the area of the State administration. He pointed out that some of the facilities they were getting when the area was administered by the ruler were not being given, after the merger by the Orissa Government. It is quite possible and conceivable that a benevolent ruler might have spent some more money for the good of the people in that area and that the Orissa government might not have found it possible to do so in that particular are in that particular form. I may say that the whole idea of merger, as conceived, is not to keep small bits of territories separately for the purpose of administration. When a merger has taken place it is possible that they may lose some smaller or minor advantages. But the whole idea is to look at it from a broader point of view and to have a better administration on the whole and to bring backward areas to the level of the provincial administration. Now, when you want a larger good to be obtained, it is quite conceivable that you may have to make smaller sacrifices. But when it is proposed to merge these areas, the smaller sacrifices should not be considered worthy of complaint. Otherwise merger would be impossible.

Now, the honourable Member from Alwar talked about Bhopal.

Shri Biswanath Das (Orissa : General): I am not rising to a point of order. On a point of information may I ask the Honourable Minister for States whether it is not a fact that the Government of Orissa have in this year's budget allotted fifty lakhs of rupees for the benefit of this very state over and above the income derived there from ? May I know whether this information is correct ?

The Honourable Sardar Vallabhbai J. Patel: That is really supporting what I have already stated that they may make smaller sacrifices but get larger good. If the Orissa Government has provided large sums of money in their budget for these areas, there is nothing very surprising in it. Indeed they are expected to do so, and if the Orissa Government takes care that the interests of these small areas are looked after properly which I have no doubt they will do, this complaint which is based on an apprehension will soon disappear. Therefore the honourable Member who first spoke on this question will take note of the fact that the Orissa Government is anxious to give all facilities and perhaps more than they were getting when the administration worked as a smaller unit.

Now, referring to the question which was raised by the honourable Member from Alwar about Bhopal, I do not wish to say anything about questions which are not yet settled and which are under discussion as any discussion of the all that if the people of any State want merger or want to join the Union, there will hardly be any strong objection from any rules because I do not conceive the possibility of the existence of smaller units against the wishes of the people. So, if the people of Bhopal want union or merger with any adjoining area, I have no doubt that the Ruler or the Nawab of

Bhopal will not come in the way, because after all in this age no Ruler can safely defy the wishes of his people. That is really the idea of democracy; and when we are now beginning a democratic from of Government all over India, smaller units cannot stand if there is such a severe conflict between the Ruler and the ruled. The fault lies not with the Ruler but with the people themselves. You know that wherever ministries are formed even in the smaller units, ministries create a sort of vested interest and the ministers are not willing to merge and the stronger in their will to remain separate than the Ruler himself. So a general discussion about the question of merger of the States that remain now is not very advisable. It is better to work among the people of the States than to raise the question here, but can trust us to do all that is possible to bring about uniformity all over India with the consent of the Rulers as well as the ruled. There will be no obstacle if all people consider the interests of the people concerned instead of their own personal short-sighted interests of office or vested interests.

Now the honourable Member from Kolhapur raised several controversial issues so far as the administration of Kolhapur is concerned. I do not think it would so far as the administrative routine and the difficulties of that administration at this stage. Perhaps the House is aware of the Committee of Enquiry which was appointed by the Government of India to go into the administration of this state, presided over by a Judge of the High Court of Bombay. The Report of Justice Coyajee has already been published and I would request those honourable Members who come from the States and who are interested in this affair to read that report. It is a very sad state of things which has been described in that report. After the unfortunate incident of the murder of Mahatma Gandhi, a group of people took it into their heads to harass and molest people called Brahmins in that area, because a Brahmin young man was supposed to be responsible for that murder. A whole family bearing that name was burnt alive. Several houses of the Brahmins were burnt, property looted and tremendous persecution torture was practised on a large scale. There was a popular Ministry at the time. There was no administrator at the time. Our friend from Kolhapur said that the administration of the administrator who was a Civil servant was the opposite of heaven in parliamentary language. You ask those people who suffered during the days of persecution whether what he described as a popular government was really haven or hell of the worst type. I do not think we would be justified inbeing proud of our democracy if popular administrations behave in this manner. It is a very sad thing. We appointed an administrator with the consent of the Prince. The Prince asked for an administrator. That report condemns the Ministers. I do not wish to proceed further in the matter. What he says is that a time should be fixed by which a plebiscite can be taken of the people of Kolhapur for the merger. Evidently from his speech I gather that he is against merger. Well, we are not forcing on the people of any area or any State if the people do not want merger. If the people stand for merger at one time and at another time for keeping the States separate, if they want merger if there is no ministry and are against merger if they are in the ministry, it is not easy to take a plebiscite, there is a danger of terrorising people and practising criminal acts of violence on a very large scale. I can assure the House that no State has been merged against the wishes of the people and there have been no complaints in the case of any merger up till now. In future also there will be no complaints from any quarter except those who stand out against the general wishes of the people of that area for personal reasons. Whatever we have done up till now has been done with the will and the free will of the Princes as well as of the people of that area. I can say this also, that some of the Princes, smaller Princes, who first signed the merger agreement, long time afterwards on second thought complained, perhaps on some advice given to them by some lawyers, and wanted to question the merger agreement in court. I advised them not to waste money over lawyers and courts and that if they wanted to go back on the merger agreement, I would tear up the merger papers and allow them to go but that they should not return and come to me for safety or security. When I accepted their merger, it was at a time when I had to give them protection because the administration that they were carrying on in those areas was so unpleasant that the people in some cases took possession of the palaces. Therefore, the question of a merger now is not very important because most of the States have either formed unions or have merged and there are those that have remained out. There are Princes who, if they are convinced that it is in the interest of the country as a whole that they should make further sacrifices, will be prepared to do so. If there is any Prince who takes a recalcitrant attitude, then it will not be for me to do anything in the matter. It will be between him and the people to settle accounts.

Therefore, to the honourable Member who has come from Kolhapur, I give this warning: that I do believe that a large majority of the people of Kolhapur wants a merger, and if I can convince the Prince or the Ruler for a merger, then those who stand out against the merger will have no mercy later on. When the world is progressing rapidly, people who put obstacles will have to find out other venues than this.

We want to finish this process of removing these administrative ulcers in the country in small bits, on account of which we have so many difficulties. I appeal to all those who come from those areas to be more reasonable and more sensible and not to talk of what was being done in the past. Here my friend quotes examples of his administration of the education department in his time when there was no administration in Kolhapur. A little efficiency in education in his time is nothing when we see the miseries through which the people have had to pass recently. But after all, what is going to happen after the merger? As it is, it is going to be merged in the Bombay Province. At any rate Kolhapur will have to admit that merger with the province of Bombay is not going to bring about inferiority or inefficiency of administration.

Now there is our Friend, Mr. Naziruddin Ahmad, who is afraid of the administrative entity being destroyed or the State's entity being destroyed. I do not know whether his is a legal objection or just qualms of conscience. But I would say that with regard to the States that have merged, the Rulers and the people have voluntarily ceded all their administrative jurisdictions. Except for the privy purse and certain other rights about their prestige and position which have been secured to them, the rest has been ceded to us and there is no illegality involved in them. If he says that the people have not been consulted, I will ask him to point out one place where this is so. If people do not complain, it is because we have ascertained the wishes in the form in which wishes can be ascertained in this area. You will admit that there are no electoral rolls. There is nothing in that form to ascertain the wishes, except keeping your fingers on the pulse of the people and it is for this that there is no complaint from them.

Now, there is our Friend, Mr. Rohini Kumar Chaudhari, who in his analysis of the amendments has negatived the whole Bill. I need not say anything about that. But he has referred to only one question--that of the Industrial Bill and he supports it. So it requires no answer.

I do not know whether I can say anything about Maulana Hasrat Mohani. Now that he finds that this House is not supporting him and is not exercising its own sovereignty which he claims, it will be against his conscience to sit in the House. He had better not take part in its proceedings which do not conform with his principles.

Maulana Hasrat Mohani: I will not allow you to have your way. I am here for that purpose.

The Honourable Sardar Vallabhbhai J Patel: That is all I have to say. I am glad that the House has supported the Bill generally and we may now proceed to discuss the amendments.

Mr. Vice-President: The question is:

"That the Bill to amend the Government of India Act,1935, be taken into consideration at once."

The motion was adopted.

Mr. Vice-President: I find that there is an amendment, No. 4, in the name of Shri T. T. Krishnamachari and Shri L. Krishnaswami Bharathi and also that there are two amendments to this amendment.

Shri T. T. Krishnamachari: With your permission and the permission of the House I would like to move amendment No. 1in the supplementary list instead of No. 4 in the original list. Sir, I move:

"That after clause 1, the following clause be inserted:

Interpretation--

`1A. The Interpretation Act, 1889, applies for the interpretation of this Act as it applies for the interpretation of an Act of Parliament."

This is more or less a formal amendment in that it provides for the interpretation of this Act. The Act that is referred to here happens to be the Interpretation Act of 1889 of Great Britain. Originally as the Government of India Act stood, because it was enacted by the British Houses of Parliament, this Interpretation Act applied. But in the present setting this Act will not apply unless special mention is made in the body of the Bill to that effect. I therefore hope that the House will accept the amendment.

Mr. Vice-President: The next amendment is in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: Sir, with your permission and the leave of the House, I would like to move my amendment in a modified form, which is consequential upon a change in the original motion. I desire to move an amendment to the motion put to the House by Shri T. T. Krishnamachari namely, that Clause 1-A be inserted in the form in which it appears in the supplementary list No. 1. I shall not move for the deletion of the whole clause but only the latter half. Sir, I move:

"That in amendment No. 1 in the supplementary List, in the proposed Clause 1-A, the words `as it applies for the interpretation of an Act of Parliament' be deleted."

In deleting these words I fully support the principle that the Interpretation Act of

1889 should apply to the interpretation of this Act. In fact this amendment really removes an anomaly. To all parliamentary Acts the Interpretation Act of 1889 applies and therefore it applies to the Government of India Act also. But the present Bill says nothing to indicate in the Bill as to what Interpretation Act would apply,--the British Act or the Indian General Clauses Act. It is doubtful if the latter Act applies to the Bill. This amendment really removes this doubt. The words which I desire to delete are merely arguments in support of the operative part of the clause. The clause with the amendment would read:

> "1-A. The Interpretation Act, 1889, applies for the interpretation of this Act."

I submit that this is quite enough. The last part "as it applies for the interpretation of an Act of Parliament" merely supplies an argument or a descriptive clause. As no argument or descriptive clause of this nature is permissible in a legislative enactment these words should be deleted, not that the argument or the explanation is invalid,--the argument or the explanation is quite proper--but this should be removed from the effective part of the clause. I hope that the House would consider this point.

The Honourable Shri B. G. Kher (Bombay: General): Sir, the honourable Mover of the amendment has not given the reason in his amendment but has indicated the manner in which the Interpretation Act applies. "As" means "in the same manner as". The honourable Member, Mr. Naziruddin Ahmad has understood the word "as" in the sense of "because", as if the mover of the original motion had intended to give an argument.

Mr. Vice-President: The question is:

"That after clause 1, the following clause be inserted:

> `1-A. The Interpretation Act, 1889, applies for the interpretation of this Act as it applies for the interpretation of an Act of Parliament."

The motion was adopted.

Mr. Vice-President: Since the House has adopted the first amendment it means that the House negatives the second one in the name of Mr. Naziruddin Ahmad. I shall now put clause 1-A to the House:

The question is:

"That clause 1-A stand part of the Bill."

The motion was adopted.

Clause 1-A was added to the Bill.

The Honourable Dr. Syama Prasad Mukerjee (West Bengal: General): Sir, I beg to move:--

"That for clause 2, the following be substituted:

`2. *Amendment of section 8 of the Government of India Act,* 1935--

In section 8 of the said Act,--

(a) in clause (i) of the proviso to sub-section (1);after the words `in this Act' the words `or in any law made by the Dominion Legislature with respect to any of the matters specified in the next succeeding sub-section' shall be inserted; and

(b) after sub-section (1), the following sub-section shall be inserted, namely:--

(1-A) The matters referred to in clause (i) of the proviso to sub-section (1) of this section are--

(a) industrial and lab our disputes;

(b) trade and commerce in, and production, supply and distribution of, products of industries the development of which is declared by Dominion law to be expedient in the public interest;

(c) the sanctioning of cinematographic films for exhibition; and

(d) inquiries and statistics for the purpose of any of the matters in the Concurred Legislative List.'"

Sir, when clause 2 was inserted as drafted, the idea of the Government was that in respect of the entire Concurrent List it should be open to the Dominion Legislature to pass laws for the purpose of exercising executive function. At present so far as the Concurrent List is concerned the Dominion Legislature may pass laws which will supersede any laws passed by the provinces; but so far as executive authority goes, it can be discharged only by the provincial governments. In the new constitution, under article 60 which has already been adopted, it has been laid down that even with regard to the Concurrent List it will be open to the Dominion Parliament to pass laws for the purpose of exercising executive action. The question arose whether any such powers should be taken over by the Dominion Parliament during the interim period. At present under the Government of India Act, the Dominion Parliament and the Dominion Government can exercise authority in respect of matters which normally fall in the Concurrent List in three ways. We have the Essential Supplies Commodities Act which relates to certain specific commodities such as foodstuffs and certain other commodities in respect of which the Dominion Parliament and the Dominion Government have complete legislative and executive powers. This power will lapse in 1951. Secondly, we have a provision which lays down that development of industries which, in the opinion of the Dominion Parliament, is of all-India importance, can betaken up by the Dominion Parliament. But that relates only to the development of any industry which may be so described by the Dominion Parliament. It has been felt that in respect of industrial development it is not sufficient that the Dominion Parliament or the Dominion Government should have power only for the purpose of developing industries which are deemed to be of an all-India importance. Development has been interpreted to exclude regulation and control of such industries and also trade and commerce in such industries, control of production and distribution of the products of such industries. For that purpose it was first thought expedient that wide powers might be taken by the Dominion Parliament even during the interim period by a suitable amendment of the Government of India Act. Apart from industrial development there were certain other matters like statistics, censoring of films and also industrial disputes, in respect of which it was thought desirable that the Central

Government should take adequate powers.

So far as industrial and lab our disputes are concerned, as has been explained by Sardar Patel, this is a Provincial subject, but it has been felt desirable that there should be some uniformity of legislation followed by necessary executive action with regard to the industrial tribunals which may be constituted under Provincial laws for the purpose of settling disputes. After consultation with the Provincial Government and some of the Provincial Premiers, and representatives of Provincial Governments who were present in Delhi, it has been deemed desirable that during the interim period completely wide powers need not be taken over by the Government of India, but a suitable amendment may be made only in respect of those particular items which are now of an urgent character and which require an immediate solution. For this purpose, you will find from Amendment No. 9 that we have referred to industrial and labour disputes, trade and commerce in, and production, supply and distribution of, products of industries the development of which is declared by Dominion law to be expedient in the public interest: the sanctioning of cinematographic films for exhibition; and inquiries and statistics for the purpose of any of the matters in the Concurrent Legislative List. This will mean a consequential change in clause 7, as originally provided in the Bill. The latter portion of clause (a) will be omitted and put in the Concurrent List. The result will be that so far as legislative powers are concerned, the Dominion Parliament will have ample powers to pass laws wherever necessary and such laws will supersede provincial laws, if any; so far as the executive authority is concerned in respect of these matters, it will also be open to the Dominion Parliament to pass laws and take over responsibility for executive administration, incase such a step is considered to be desirable or necessary. Sir, it is not intended that the Provincial Governments should not be utilised for purposes of co-ordinating the policy of the Central Government even in respect of those matters where central regulation and control are necessary in the interests of the whole country. Obviously in normal circumstances, the executive machinery, which will be utilised, will be the Provincial Governments themselves. But if an occasion arises when it is necessary for the Central Government to exercise executive authority in respect of matters, which are considered to be of an all-India importance, power to do so has to be taken over by the Government of India and the Dominion Parliament. A question has arisen whether this power should be exercised by the Dominion Legislature without consultation with the Provincial Governments. Hitherto whenever the Central Government or the Dominion Legislature had an occasion to take steps for introducing legislation for development of industries, previous consultations did take place with the Provincial Governments. I believe on a suitable occasion when the matter comes up a little while later, Sardar Patel will give an assurance on behalf of the Government that during the interim period before the new Constitution comes into force, if it is necessary for the Central Government to move in accordance with the powers which are now proposed to be taken under Amendment No. 9, previous consultation with Provincial Governments will always be held and the results of such consultation will be placed before the Legislature for information.

With these words, Sir, I move that the amendment be accepted.

Mr. Vice-President: There are four amendments to this amendment, which I shall call out one after another. The first is by Mr. Naziruddin Ahmad. No. 3 in the list.

Mr. Naziruddin Ahmad: It is only a formal amendment and therefore, I am not moving it.

Shri T. T. Krishnamachari: Mr. Vice-President, Sir, I move:

"That in the new clause 2 proposed for substitution by amendment No. 9 of the original list of amendments, for the words `said Act' the word, figure and brackets `Government of India Act, 1935 (hereinafter referred to as the said Act)' be substituted."

This is a formal amendment, which makes the amendment moved by my honourable Friend Dr. Syama Prasad Mukerjee complete. I hope the House will accept it.

Pandit Hirday Nath Kunzru (United Provinces: General): Sir, it is unnecessary for me to move my amendment in view of the amendment moved by Dr. Syama Prasad Mukerjee.

Mr. Vice-President: Clause 2 is now open for general discussion. Pandit Kunzru will kindly come to the mike.

Pandit Hirday Nath Kunzru: Mr. Vice-President, the Statement of Objects and Reasons appended to the Bill before us asks for more executive power for the Government of India in the interest of the establishment of uniform principles with regard to the review of awards made by the Provincial and Central industrial tribunals. Sardar Patel, in asking that the Bill be taken into consideration also dwelt on this matter only. I think, therefore, that I am justified in concluding that this is the only reason for which Sardar Patel is asking that the Dominion Legislature should have power to confer executive functions on Central officials in connection with laws relating to the concurrent field.

It is obvious, Sir, when one reads the amendment proposed in the Bill that it goes far beyond the needs of the case. The question that is being discussed now was raised by me in connection with article 60 of the Draft Constitution which was discussed the other day. My honourable Friend Dr. Ambedkar was unable to accept my point of view and in the course of an excellent speech gave what he thought were convincing reasons against the acceptance of my amendment. This Bill only seeks to bring the Government of India Act in line with the Draft Constitution. I should have thought therefore that the matter had been finally decided by the Constituent Assembly and that it would not come up for consideration again. It seems now, however, that the House is prepared to accept the point view, that I fruitlessly urged the other day, in connection with the amendment of the Government of India Act, 1935. I do not know, Sir, whether the Provincial Governments will be able to enjoy the freedom that they seek to have only till the Draft Constitution comes into force or whether the amendment moved by my honourable Friend Dr. Syama Prasad Mukerjee means that the House is prepared to revise its opinion in connection with article 60 of the Draft Constitution. For my part, Sir, I welcome the amendment moved by Dr. Mukerjee.

Sir, Dr. Ambedkar said the other day in the course of his speech to which I have referred that it was necessary that the Dominion legislature should be in a position to pass laws extending the executive power of the Dominion officials to matters relating to the concurrent field. To explain what he meant he referred to any legislation that the Centre might pass in regard to untouchability and the failure of the provincial Governments to give effect to the Child Marriage Restraint Act. It is undoubtedly desirable that when the Central Legislature passes a measure it should be loyally given effect to by all the provinces. But, it is quite possible that in some provinces there may be little sympathy with a measure that has found favour with the Central Legislature. My honourable Friend Dr. Ambedkar said that in such a case it was eminently desirable that the Central Legislature should be able to authorise the Central officials to see that the law passed by it was properly executed.

Shri T. T. Krishnamachari: Not always.

Pandit Hirday Nath Kunzru: I have referred only to the two illustrations given by Dr. Ambedkar and I do not think that I have so far unfairly summarised his arguments.

Sir, I think that if the Central Government went so far as to appoint officials of its own to give effect to anti-untouchability laws or the Child Marriage Restraint Act, it would find itself in a serious predicament. The magnitude of the task would, I think, be beyond its powers and the consequences of its coming into conflict with provincial Governments would be so unwelcome that I am certain that any power that the Dominion legislature may have to authorise the Dominion officials to execute certain laws relating to the concurrent field is not likely to be exercised in practice. My honourable Friend Dr. Ambedkar referred to the case of Australia in respect of which I had made an erroneous statement. I accept Dr. Ambedkar's correction. But although the Commonwealth Government in Australia can ask its own officers to execute laws passed by it even in the concurrent field. Australia is, in respect of population, a very small country. I am not aware that in practice, in matters of any importance, it has actually asked the Commonwealth officials to execute laws that it should be the proper responsibility of the States Governments to enforce. In a country like India, Sir, though the Union legislature may be authorised to confer executive functions as respects laws relating to the concurrent field on Dominion officials, the size and population of the country would render it virtually impossible to put such a law into practice. I think, therefore, that the amendment moved by Dr. Syama Prasad Mukerjee is timely. It reminds the House that it is going too far in its desire to have a strong Centre. We all desire a strong Centre. We do not want that the Central authority should be unable to enforce obedience to its laws in vital matters. The unity and integrity of India depend on the authority and prestige of the Central Government. But there is a limit that must be set to the powers of the Union Legislature and the Union Government. We should not in pursuance of a theory make ourselves responsible for a policy that might lead to serious consequences. It seems to me that the amendment moved by Dr. Syama Prasad Mukerjee is going to be accepted by the House, but I hope that its acceptance will lead to a reconsideration of the decision the House has already arrived at in connection with article 60 of the Draft Constitution.

Shri B. Das (Orissa: General): Sir, I was all along unhappy since this Bill was circulated, that this Bill should try to incorporate absolute executive powers which the British Government took in its hands since 1939 in one shape or other. Consequently, Sir, I welcome the amendment which my friend Dr. Syama Prasad Mukerjee has moved whereby the executive power has been restricted. I am glad he has the support of Pandit Govind Ballabh Pant and that the amendment was jointly tabled by my honourable Friends Pandit Pant and Dr. S. P. Mukerjee. Sir, I think the House is very restive over any encroachment of democracy inside the Government as well as outside the Government. This is not the first occasion on which I have spoken of that reprehensible measure-Section 126-A of the Government of India Act, 1935, which the

British House of Commons passed in 1939 and gave retrospective effect to it from 1937.Clause 2 wants to incorporate one of the original sub-paras of Section 126-A. Clause 5 wants to incorporate another sub-section of that reprehensible measure passed in the House of Commons after the War in 1939.

Sir, democracy is under trial and it is particularly under trial in a new Sovereign State like India. The foreign rulers ruled India and looked at India through Section 126-A. I cannot understand how the legal advisers of the Government of India or even how the Constitutional Adviser of this august Assembly advised that in peace time Section 126-A in its various forms should be incorporated in the first Sovereign Bill that this Sovereign House is going to pass. It was a great surprise to me and it gave me great pain. Today I feel relieved that Dr. Mukerjee had voiced the differences which the Government of India has itself had and I wholeheartedly support the motion. I hope later on my friend Pandit Pant will move the other amendment to delete clause 5. I am happy this Sovereign House is functioning as a democratic legislature and not going to give its Government autocratic powers that are required in time of war and not in time of peace.

The Honourable Pandit Govind Ballabh Pant (United Provinces: General): Sir, I had given notice of a similar amendment. In fact my name is coupled with that of Dr. Syama Prasad Mukerjee with regard to the amendment which he moved a few minutes ago. I consider it necessary to make a few observations as my reasons for giving notice of the same and identical amendment may not be identical with his. So while welcoming and supporting this amendment, I should like to state why I have considered it necessary to do so.

Section 8 of the Government of India Act gave the Federal Centre the power to appoint its own executive organization only with regard to matters included in List I. Every Federal structure involves distribution of legislative and executive functions, powers and duties. The jurisdiction of each organ, so far as it maybe possible, has to be earmarked and demarcated. We have under our Constitution now agreed to the fundamental basis of a Federal structure. In 1935 too, when that Act was passed, a Federation consisting of provinces and States was envisaged. The powers of the Federation were defined and also those of the provinces or the States that were to form its component parts. As honourable Members are doubtless aware, three lists were prepared. List I dealt with Central subjects with regard to which the Centre had the power to legislate and to have its own agency and machinery for their execution. List II contained provincial subjects and provinces alone had the authority to pass the laws to appoint suitable agency for their administration. Besides these two, there was a Concurrent List and it is with reference to that List that this amendment has been proposed. Now the Concurrent List was essentially concerned with provincial subjects, *i.e.* subjects which were considered to be appropriate for purposes of legislation as well as execution of these laws by the provinces themselves. But some exception was made in order to secure uniformity in the matter of legislation where such uniformity might be considered desirable. Under the scheme of that Act--and our Constitution is modelled on that Act for the most part,--the Centre has no executive authority with regard to Concurrent subjects. It could issue directive to provinces but it could not appoint its own agents in order to execute the laws that came within the purview of List III. That is why this amendment has been moved. Thus under the scheme of the 1935 Act so far as List III was concerned, the Centre had an overriding legislative authority but it had no executive authority beyond this that it could issue directives.

Now, the original clause of this Bill made a very wide provision. It in tended to give power to the Centre to appoint its own agency for the execution of any or all of the subjects mentioned in the Concurrent List. That is hardly possible ands altogether improbable, because it is not conceivable that the Centre could administer all the subjects that are included in the Concurrent List, in all the Provinces of India. That is beyond the capacity of even the most resourceful and powerful Centre. It would have led to a great deal of confusion, if we had two parallel agencies and machineries in the provinces to deal with matters that came within the purview of the Concurrent List. The Concurrent List includes criminal law, it includes civil law, it includes arbitration. It includes also miscellaneous subjects such as boilers, engines and so on and so forth. Now, if we had parallel agencies appointed on the one hand by the Provinces and on the other by the Centre, for the execution laws relating to these matters, then there would be confusion and chaos and no government would be able to function with efficiency. That is why under the original scheme of the 1935 Act, the duty of carrying out the laws relating the subjects included in the Concurrent List was imposed exclusively on the provinces, because thus alone could orderly administration of those subjects be ensured. I personally feel and think, that was a prudent arrangement. That was desirable. But all the same, the art of government is a practical one and adjustments have to be made from time to time; only whatever we do must conduce to greater efficiency, to greater economy, to greater public good and greater convenience. All these should be taken into account. So I would not altogether exclude the possibility of sometimes arrangements being made by the Centre for administering the subjects which at present might be included in the Concurrent List. So, so far as the general principle is concerned, I believe, the present Government of India accepts it, that concurrent subjects should ordinarily be administered by the Provinces. It is also, I think, accepted that no change should be made in the present system of administration except with the consent and, if I may say so, the concurrence of the provinces. We on our part, are ever ready to place ourselves at the disposal of the Centre. In fact there is no occasion for any conflict now; and howsoever much one may feel that another course might perhaps be preferable. If the Centre takes a decision, one does not only reconcile oneself to it, but I for one would think that is the only right decision, and I am, perhaps, in the wrong. That may be the case, even with respect to this particular clause. But now when we made the analysis of the provisions of this clause, we found that the reason given for it in the Statement of Objects and Reasons only suggested the appointment of judges of appellate industrial courts in order to settle lab our and industrial disputes. Honourable Members might have seen the amendments that I notified previously on the basis of that Statement of Objects and Reasons. I had suggested that in the circumstances, you might make a change in the lists, so as to meet the exigencies of the present situation. When I discussed the matter with the Honourable Home Minister, and the Honourable Minister for Industries and the Honourable Minister for Labour, we found that besides this one matter, there were two or three others also with regard to which they thought that it would be desirable to make some provision, although they had not been mentioned in the Statement of Objects and Reasons. So this amendment was recast. On the one hand, it upholds the principle that with regard to concurrent subjects, the executive authority would ordinarily vest in the provinces. On the other hand, it also accepts that there may be occasions when it may be necessary to make a departure, and it may be necessary for the Centre to step in and even to appoint its own agency and machinery. I do not yet know whether the Centre will actually do so. If I may submit with great humility, there are two sides to the shield, and some times, the Centre sees one and the provinces perhaps see the other. So one may look at one side of the shield and not attach any importance to the other side. But the advantages of one side may be more than out-balanced by the disadvantages of the other. So, unless we take a balanced view of the whole thing, it is difficult to say that the next advantage lies in any particular course that might suggest itself to any Honourable Minister who maybe in charge of a particular subject. I do not suggest that in the case of the particular subjects that are mentioned in these amendments there may be such difficulties. But I do think that the basic principle should be adhered to. Otherwise it will lead to confusion. So the position with which some of us were confronted was this, that this Bill had contemplated an over-riding executive authority in the Centre with regard to concurrent subjects. Well, that as I said, seemed to me, to be against the basic principle of the Government of India as well as of the pivotal principle of a federal structure. So some way out had to found. On the other hand there was the experience of the Honourable Ministers at the Centre who had found that their powers with regard to these particular subjects were not adequate enough to enable them to discharge their duties and obligations satisfactorily. So we hit upon this compromise, that with regard to these subjects, the powers should be conferred on the Centre. Now, that power does not by itself enable the Centre to appoint executive agents, but it gives them the option to bring such a measure in this House and if this House approves of it, then it will be open to them to appoint their own agents. I believe that it will still be simpler and easier if they were to appoint the Provincial Governments themselves as their agents for administering these subjects. We are there in the provinces to carry out their wishes to us are no less than behest. Whatever communications we get from the Centre, we try our best to give effect to the directions and even to the hints contained in them and it will be our privilege to do so even in future. I hope, however, that things will be arranged in such a manner that there will be no occasion for any confusion. What I am afraid of is confusion in the matter of administration. In the field of administration there should be no overlapping so far as it can be avoided. The ambit of provincial autonomy has been clearly defined. All the spheres of provincial administration, whether legislative, executive or judicial, should remain untampered with, so that responsibility may be imposed on the provinces and their sense of responsibility may not be impaired. On the other hand, after all, as I said we have to be guided by practical considerations and no theories can be allowed to override the demands of the actual hard realities of the day.

So, while supporting this amendment, I express the hope that there will be no desire to impose any fresh executive on the provinces and that the utmost use will be made of the provinces even in the execution of laws that may be framed with regard to these subjects.

Mr. Vice-President: Does Sardar Patel wish to offer any remarks?

The Honourable Sardar Vallabhbhai J. Patel: No, Sir. These are agreed proposals.

Mr. Vice-President: Then I shall put the question.

The question is:

"That clause 2 as amended by amendment No. 9 and further modified by Amendment No. 4 do from part of the Bill."

I am sorry I find I have to put amendment No. 4 to vote first.

The question is:

"That in the new clause 2 proposed for substitution by amendment No. 9 of the list of amendments, for the words said Act' the words, figure and brackets `Government of India Act, 1935 (hereinafter referred to as the said Act)' be substituted."

The amendment was adopted.

Mr. Vice-President: The question is:

"That for clause 2, the following be substituted:

`2. Amendment of section 8 of the Government of India Act, 1985-

In section 8 of the said Act,--

(a) in the clause (i) of the proviso to sub-section (1), after the words `in this Act' the words `or in any law made by the Dominion Legislature with respect to any of the matters specified in the next succeeding sub-section' shall be inserted; and

(b) after sub-section (1), the following sub-section shall be inserted, namely:--

(1-A) The matters referred to in clause (i) of the proviso to sub-section (1) of this section are--

(a) industrial and lab our disputes;

(b) trade and commerce in, and production, supply and distribution of, products of industries the development of which is declared by Dominion law to be expedient in the public interest;

(c) the sanctioning of cinematographic films for exhibition; and

(d) inquiries and statistics for the purpose of any of the matters in the Concurrent Legislative List.'"

The amendment was adopted.

Mr. Vice-President: I shall now put clause 2, as amended, to the vote of the House.

The question is:

"That clause 2, as amended, stand part of the Bill."

The motion was adopted.

Clause 2, as amended, was added to the Bill.

Mr. Vice-President: The House will now take up clause 3for consideration.

Amendment No. 15 standing in the name of Shri Kuladhar Chaliha has the effect of a negative vote. It is therefore disallowed. The first alternative in amendment No. 16standing in the name of Shri T. Prakasam also has the effect of a negative vote and is therefore disallowed. Shri Prakasam may move the second alternative in amendment No.16. I understand that the mover does not want to move it. The next three amendments to this clause, Nos. 17, 18 and19, I understand are also not moved.

I shall now put clause 8 to vote.

The question is:

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

Mr. Vice-President: The House will take up clause 4 for consideration.

Amendment No. 20 standing in the name of Rai Bahadur Lala Raj Kanwar is disallowed as having the effect of a negative vote.

The next two amendments, Nos. 21 and 22, I understand, are not being moved.

I shall now put clause 4 to the vote of the House.

The question is:

"That clause 4 stand part of the Bill."

The motion was adopted.

Clause 4 was added to the Bill.

Mr. Vice-President: Now we come to amendment No. 23standing in the name of the Honourable Pandit Govind BallabhPant.

The Honourable Pandit Govind Ballabh Pant: Sir, I am just moving the amendment, but I will not take much time. I beg to move:

"That after clause 4, the following new clause be inserted:--

4-A. *Insertion of new section* 108-A.-Before section 109in Chapter II of Part V of the said Act, the following section shall be inserted, namely:--

Previous sanction of Governor-General for certain legislative proposals.

108-A. No Bill or amendment providing for the exercise of the executive authority of the Dominion with respect to any of the matters specified in sub-section (1-A) of section 8 shall be introduced or moved in the Dominion Legislature except with the previous sanction of the Governor-General, and the Governor-General shall not give his sanction to the introduction of any such Bill or the moving of any such amendment unless be is satisfied that the views of the Government of the Provinces and the Acceding States concerned have been ascertained.'"

Sir, I have only suggested in this amendment that before any Bill or any amendment is introduced in the House with regard to the matters mentioned in section 8 or in clause 2 which we have just passed, the provinces should be consulted, that there should be a certificate to that effect and that the papers relating to such correspondence should be placed on the table. I do not want to take the time of the House by any lengthy speech in support of this amendment. The substance of this amendment is, I believe, acceptable to the Honourable the Home Minister. So far as the form is concerned, I do not worry too much about it. So, if he will be pleased to accept in substance what this amendment proposes, I will be prepared to withdraw it in form. With these words I propose this amendment.

Mr. Vice-President: There is an amendment to this amendment.

Shri T. T. Krishnamachari: That is not being moved.

The Honourable Sardar Vallabhbhai J. Patel: I entirely agree with the Honourable Pandit Pant with regard to the substance of this amendment. I therefore give him an assurance that no Bill will be introduced in the Legislature at the Centre of the nature mentioned without giving a reasonable opportunity to the provinces for giving their opinion. Therefore it would be quite appropriate if he withdraws the amendment.

The Honourable Pandit Govind Ballabh Pant: With the leave of the House I withdraw the amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President: Now we come to clause 5. Amendment No. 24 is that the clause be deleted and it is therefore disallowed. Amendment No. 28 standing in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: Sir, I beg to move:

"That in clause 5, at the end of the proposed section 126-A, the following be added ....."

Shri T. T. Krishnamachari: Mr. Vice-President, Sir, may I suggest that since the intention of the mover of the Bill is to ask for this clause to be withdrawn, this amendment is not necessary and need not be moved.

The Honourable Sardar Vallabhbhai J. Patel: We have accepted a change in clause 2 and so there is no point in keeping clause 5. I think it may be deleted.

Mr. Vice-President: The motion is:

"That clause 5 stand part of the Bill."

The motion was negatived.

Mr. Vice-President: Then we come to clause 6. Amendment No. 29 is disallowed as it has a negative effect.

Mr. Vice-President: Amendment No. 38 standing in the name of Mr. Naziruddin Ahmad. If you have no objection, we shall take it that the amendment has been read. You can make your remarks upon it.

Mr. Naziruddin Ahmad: Sir, I move:

"That in clause 6, in clause (a) of sub-section (1) of the proposed new section 290-A, the word `or' occurring at the end, the whole of clause (b) of sub-section (1) and the proviso to sub-section (1) be deleted."

the words `shall be administered', substituted.

or, alternatively,

That in clause 6, in clause (b) of sub-section (1) of the proposed new section 290-A, for the words `shall be administered', the words "shall with their consent be administered" be substituted.

or, alternatively,

That in clause 6, in sub-section (1) of the proposed new section 290-A, for all the words beginning with `the Governor-General may Order direct' to the end of clause (b) of the said sub-section, the following be substituted:--

> `the Governor-General may by Order direct that the State or the group of State shall be administered in all respects as if the State or the group of States were--
>
> (a) a Governor's or a Chief Commissioner's province, or
>
> (b) with the consent of the State or State concerned, as part of a Governor's province.'"

I have to draw the attention of the House to clause 6 for the insertion of the proposed new section 290-A. With regard to clause (b) of sub-section (1) of Section 290-A,the part which I object to is that "the State or group of States shall be administered in all respects as if the State or the group of States formed part of a Governor's or a Chief Commissioner's province......". The point which I would like to urge is that the States have entered into an agreement which is called the merger agreement. Under the terms of that agreement, this proposal to treat them as if they formed part of a Governor's or a Chief Commissioner's province would not be legal. Sir, I have to submit that if it is done, with the consent of the State or the States concerned, everything will be all right. So, the first part of my amendment is that the whole clause (b) be deleted. The next part of the amendment is in the alternative form that it may remain with the addition of the words "with the consent of the State or States concerned". The third alternative is the State is to be administered as an independent Governor's province or a Chief Commissioner's province or as a part of it only with their consent.

The reason which induced me to move these amendments is this: It appears that some States, compendiously described as Eastern States, entered into several agreements with the Central Government to the effect that the Ruler cedes to the Dominion Government "full and exclusive authority, jurisdiction and powers for the governance of the State and agrees to transfer the administration of the State to the Dominion Government" with effect from a certain date and the Dominion Government will be competent "to exercise such powers, authority and jurisdiction in such manner and through such agency as they may think fit". The effect of this agreement to my mind is that the State or the Ruler on behalf of this State in each case has ceded to the Government of India the management or the "administration" of the State. That power which has been ceded to the Government of India may be exercised directly or through an agency. What I object to is that this management or rather administration cannot be exercised so as to destroy or alter the identity or the integrity of the State. What has happened is that these States, a large number of them, have been, by virtue of these agreements, actually amalgamated with the Province of Orissa. That, I submit, absolutely destroys their identity. Orissa is a Governor's Province under the Government of India Act. So far as these small States are concerned, their Constitutions are rather obscure, but they are totally dissimilar to the constitution of the Province to which they are to be amalgamated. I submit that while entrusting the governance or rather the administration of the States to the Government of India to be carried on directly or through agency, no power has been given to convert these States into a part of a Governor's province. They could be managed fully and with full authority by the Province of Orissa but without in the least affecting their integrity or character and cannot be merged as part of Orissa. That is the point which I wish to submit before the House. *(Interruption).*

With regard to the interjection of my honourable Friend, Mr. Ananthasayanam Ayyangar, he has pointed out that it is not actually merging the State in the Governor's province but that is to be treated only "as if" it is part of a Governor's province. I fail to see any real or practical distinction or difference between the two, though there is some verbal difference. In fact, these States are to be treated just like the province, and in effect these States are to be completely merged. or rather sub-merged, in the province. The words "as if" do not at all relieve the situation. To emphasise them would be to shut our eyes to reality--they are, in fact, already actually a part of Orissa.

The House will be pleased to consider the well known legal position. In fact, when the British left, these States did attain some kind of independence or sovereignty. This was conceded by the Honourable Dr. Ambedkar during the debate on the consideration of the Draft Constitution. Some honourable Members had suggested that these States had no sovereignty, but on a proper consideration, the Honourable Doctor, presumably on behalf of the Government of India and in full concurrence with the Government, cleared the position, namely, that they have some kind of sovereignty. Call it a modified kind of sovereignty or inferior kind of sovereignty, but some kind of sovereignty they enjoyed.

With regard to this, there is a section in the Government of India Act, as adapted, enabling these States to accede and it may be by different documents. The accession, however, is strictly limited to the terms of the accession. That is absolutely clear from the Government of India Act, Section 6, Sub-section (2). In fact, the powers ceded or subjects acceded to must be clearly specified. In these circumstances, the question really will depend upon the construction you put upon the documents. One is the instrument of accession and the second is dated the 14th or the 15th of December 1947. There were a number of similar documents executed by many Rulers of States on or about these dates. These two documents are crucial and their terms would be extremely important and the question will depend upon what powers and jurisdiction and authority have been really conceded to the Government of India--keeping in view only one point, namely, the power to merge the State in a Governor's province as part thereof. Whether this power has been clearly, specifically or by necessary implication really granted is the only point. In interpreting the second document, which is really material, namely, the document dated the 14th or 15th of December, I find there are certain difficulties and I wish frankly to state them before the House both for and against the interpretation which I am seeking to introduce. In the preamble to this document, there is the expression--

> "Whereas in the immediate interest of the State and the people the ruler is desirous that the administration should be integrated as early as possible with the province of Orissa....."

In fact, the Preamble clearly states a desire that the States concerned should be integrated with the Province of Orissa.

Mr. Vice-President: Though I do really admit that I have very little knowledge of these matters, it does seem to me as though you are talking in a general way. You ought to talk about your own amendment. This is not general discussion. These things would have been more appropriate in the general discussion.

Mr. Naziruddin Ahmad: I bow to your ruling but this, as I am going to point out, is directly concerned with the point.

Mr. Vice-President: I am afraid I do not agree with you. I must ask you to speak on the amendment.

Mr. Naziruddin Ahmad: These are the matters in the amendment. I am stating before the House the difficulty which lies against my contention. I must fairly state that also.

Mr. Vice-President: Quite so. You have your conviction, but the House has its opinion also, and probably the conviction of 299 members is much more important than the conviction of a single Member.

Mr. Naziruddin Ahmad: Of course so, but every Member has the right to speak.

Mr. Vice-President: You are not to argue but to follow my suggestion.

Mr. Naziruddin Ahmad: What is your suggestion?

Mr. Vice-President: That you speak on your amendment.

Mr. Naziruddin Ahmad: I submit, Sir, that I was speaking on my amendment.

Mr. Vice-President: Directly then, not in a round-about manner.

Mr. Naziruddin Ahmad: I am not round-about.

Mr. Vice-President: I am afraid you are arguing.

My opinion holds good here.

Mr. Naziruddin Ahmad: Of course, Sir. The difficulty is that the subject is a very intricate one. I submit that this desire for integration which is clearly against me appears only in the Preamble and not in the body of the agreement which is really the operative part, and it is a well known rule of interpretation that any wish or opinion or desire inserted in the Preamble is not effective and has no weight unless the same finds a place in the body of the document also. This rule is well established. I submit that in the body of article 1, which is really directly in point, it is said "full and exclusive authority and jurisdiction and powers" but only in relation to the governance or the administration of the State. The State only agrees for the above reasons that the administration should be transferred. There are two important points in this connection. One is that the agreement relates to the governance of the State and transfers the "administration". It does not transfer sovereignty, what remains of that sovereignty at the time of execution of the instrument of accession. Whatever is left as the remainder out of the rights that were carved out of that sovereignty, that remains. There is no mention of 'integration' in the body of the document. Only the right of administration has been transferred. I submit that in administering any property which is left to your care, you cannot alter its character. Supposing for instance any one is asked to administer a certain business, say a business in sugar. You ask a managing agent, or a Receiver or an Administrator to administer it. The managing agent or the Administrator has a quinine business. He converts the sugar business into a quinine business. Instead of producing something sweet, he produces some thing bitter. I submit, Sir, that you are going to do the same thing here. You are asked to administer a State with distinct and distinctive laws, rules, forms of constitution, forms of government. You want now to change them and convert it into a part of a Governor's province with different rules and constitution. It is not merely a physical combination between the two but a complete merger and a metamorphosis as a result of which the State loses its distinctive character and identity altogether. Suppose a man in difficulty left his wife to the care of a friend; the friend transfers the wife to some other friend, converting her as the latter's own wife. This is what is going to be done.

Mr. Vice-President: A not very happy illustration.

Mr. Naziruddin Ahmad: The power to administer is a power to manage. In managing or administrating a thing you cannot convert it to something else. That is the simple position. The Honourable Dr. Patel referred to certain legal opinion having been obtained for the States. There are opinions, not of insignificant lawyers like me, but some very weighty opinions like those of Sir T. B. Sapru and others which are against the legality of the merger. They are clearly of opinion--I think the opinion has been circulated to the Government of India also that it is illegal.

The Honourable Sardar Vallabhbhai J. Patel: This Department keeps away from outside legal opinion.

Mr. Naziruddin Ahmad: Quite so, the question should be considered, independently of any outside opinion, on its merits by the House. I submit that there is a body of weighty opinion, and the matter should be carefully considered. In these circumstances I submit that item (b) of sub-clause (1) really goes against the provision in the Agreement. I submit the Agreement should be carefully considered. I find there is nothing in the agreement which justifies the conversion, of a State of one kind to one completely of a different kind. This in short is the simple proposition which I submit. I must make it absolutely clear that in doing so I am actuated only by the desire to regularise things. If there is anything irregular or if there is any lacuna, I think the Rulers should be asked in their own interests to execute another document just to transfer this right so as to treat their States as part of a Governor's province. Suppose at some future date.............

Mr. Vice-President: I have already given twenty minutes to the honourable Member.

Mr. Naziruddin Ahmad: Is it your desire that I should stop?

Mr. Vice-President: Yes.

Mr. Naziruddin Ahmad: Thank you, Sir.

Shri T. T. Krishnamachari: Sir, I move:

"That in clause 6, in sub-section (3) of the proposed new section 290-A, after the words `give such' the word 'supplemental' be inserted."

It is more or less a formal amendment. The words mentioned in the clause are `incidental' and consequential'. `Supplemental' is also necessary.

The Honourable Sardar Vallabhai J. Patel: I accept it.

Mr. Vice-President: Amendment No. 64 to be moved by Shri Himatsingka.

Shri Prabhudayal Himatsingka (West Bengal: General): Sir, I move:

"That in clause 6, in the proposed new section 290-B, for the words `by the Government of' the words `in all respects by' be substituted."

Section 290-A makes provision for the administration of certain acceding States which are being tacked on to the Chief Commissioner's provinces or Governor's provinces. This is the contrary case where any part of the area included in a Chief Commissioner's province is to be tacked on to some acceding State. I am therefore suggesting that it shall be administered in all respects, so that there may be no doubt as to the authority of the state to which it is tacked on, to administer in all respects, executive and legislative authority and other authorities. This will be on par with the previous provision.

The Honourable Sardar Vallabhbhai J. Patel: I accept it.

Shri T. T. Krishnamachari: Sir, I move:

"That in clause 6, in sub-section (2) of the proposed new section 290-B, after the words `contain such' the word 'supplemental' be inserted."

This is similar to the previous amendment, moved by me and I hope the House will accept it.

Mr. Vice-President: Clause 6 is now open for general discussion. I shall call upon the States' people because they are the people who are principally concerned. Mr.

Gopikrishna vijayavargiya. I am sorry I cannot give you too much time.

Shri Gopikrishna Vijavargiya [United States of Gwalior-Indore-Malwa (Madhya-Bharat): Mr. Vice-President, Sir, I am not taking much of the time of the House and particularly I have to reply to the amendment moved here by Mr. Naziruddin Ahmad. I come from a State and I say it is not the rulers but it is the States' people who are most concerned in this affair. It is not a legal question really, although law is required everywhere, but it is a political question. We do not want to divide this country into so many pieces and so many principalities and, therefore, it has been a consistent demand of the people of the States that the several States must go and we should form one India, and so whatever the States Ministry has done and whatever agreements have been entered into, they are in the interests of the people. After all, the people of the so-called British Indian Provinces and the States are all one, and therefore whatever has been done is in the interests of the country. I must say, Sir, that the words `as if' are quite sufficient from the legal view point and it maintains whatever little distinction is necessary. I rather wish that these states should be completely obliterated from the face of India and not even this distinction should be maintained, and therefore, I will say that all these legal objections to this section must go and we must pass this section as it is here.

Shri Ratan Lal Malaviya (C. P. & Berar: States): *[Mr. Vice-President, Sir, I rise to support Honourable Sardar Patel's Bill seeking to amend the Government of India Act, 1935, and specially clause 6. The truth is that the Chhattisgarh States had an earnest desire that all of them should be merged in order that they may share in the progress being made by the provinces and also to make their own contribution to the progress of the country as a whole. When, on 14th December 1947, Honourable Sardar Patel reached Kattak, the representative of the Chhattisgarh States submitted to him a memorandum requesting for an early merger of the States on the lines followed in merging certain states in Orissa. I am glad that the Chhattisgarh States have been merged in C. P. On the 1st January, every where in the States, the merger celebrations were held and there was rejoicing among the people, After 1st January, *i.e.*, after the States were merged, the Provincial Government tried its best to bring about improvement in the States and took certain measures in quick succession for their development which gave us satisfaction that the merger had been beneficial to us. But the Provincial Government could not pull on well with the representatives of the States. There arose there from some trouble which still continues. The amendment Act, which is before the House should be passed so that the State representatives may have the right to advise the Provincial Government and the State administration maybe conducted in the light of their advice. On the 1st January, *i.e.,* one month after the merger, an Advisory Board for the States in Orissa was formed and their representatives were also taken in the Executive Council. But the C. P. Government could not do the same. The representatives of the States in C. P. tried for the formation of such a board. If C. P. had formed an Advisory Council to secure the co-operation in the matter of the State administration and had taken on the board some state representatives, there would have been no discontent. It maybe that there were difficulties owing to which the C. P. Government did not form such a board. But with the acceptance of this clause the difficulties, if any, would be removed.

Sir, in this connection I may inform you that since our representatives were not in any way associated with the Government of the Central Provinces, it happened that the reports submitted by State officials against our workers,--and I may add these were responsible workers.--were accepted by the Government in due course. Naturally this led to some trouble in the initial stages.

Besides, as our representatives were not associated with the administration, many excesses were committed in the realisation of the land revenue. When we approached the Prime Minister and the Government with our grievances, the officials felt annoyed with us and started cases against our workers, and I may add that a number of workers have recently been sentenced to imprisonment. Similarly, rates in respect of forest were considerably enhanced which caused considerable discontent in the States. The facilities which the States previously enjoyed were also curtailed and this too created resentment. If the Provincial Government had cared to secure our co-operation, as would be obligatory in future by virtue of this clause, the difficulties which we are facing today and the conditions that have been created would not at all have been there.

With the passage of this clause, the representative of the people would be able to render some services to the people and the people would have an opportunity of conveying their wishes to the Government. With these words, Sir, I commend clause 6 of the Bill and express my gratitude to Honourable Sardar Patel for bringing it forward.]*

Mr. Vice-President: Sardar Patel, do you wish to say anything?

The Honourable Sardar Vallabhbhai J. Patel: I have nothing to say.

Mr. Vice-President: I shall now put the amendments one by one to vote.

Amendment No. 38 standing in the name of Mr. Naziruddin Ahmad:

The question is:

"That in clause 6, in clause (a) of sub-section (1) of the proposed new section 290-A, the word `or' occurring at the end, the whole of clause (b) of sub-section (1) and the proviso to sub-section (1) be deleted,

or, alternatively,

That in clause 6, in clause (b) of sub-section (1) of the proposed new section 290-A, for the words `shall be administered', the words "shall with their consent be administered" be substituted.

or, alternatively,

That in clause 6, in sub-section (1) of the proposed new section 290-A, for all the words beginning with `the Governor General may by Order direct' to the end of clause (b) of the said sub-section, the following be substituted:-

> `the Governor-General may by Order direct that the State or the group of States shall be administered in all respects as if the State or the group of States were-
>
> > (a) a Governor's or a Chief Commissioner's province, or
> >
> > (b) with the consent of the State or States concerned, as part of a Governor's province.'"

The amendment was negatived.

Mr. Vice-President: Amendment No. 56 standing in the name of Mr. T. T. Krishnamachari.

The question is:

"That in clause 6, in sub-section (3) of the proposed new section 290-A, after the words `give such' the word 'supplemental' be inserted."

The amendment was adopted.

Mr. Vice-President: Amendment no. 64 moved by Mr. Prabhudayal Himatsingka.

The question is:

"That in clause 6, in the proposed new section 290-B, for the words `by the Government of' the words `in all respects by' be substituted."

The amendment was adopted.

Mr. Vice-President: Amendment No. 75 standing in the name of Mr. T. T. Krishnamachari.

The question is:

"That in clause 6, in sub-section (2) of the proposed new section 290-B, after the words `contain such' the word 'supplemental' be inserted."

The amendment was adopted.

Mr. Vice-President: The question is:

"That clause 6, as amended, stand part of the Bill."

The motion was adopted.

Clause 6, as amended, was added to the Bill.

Mr. Vice-President: We take up clause 7. Amendment No.80 standing of the name of Mr. T. T. Krishnamachari.

Shri T. T. Krishnamachari: Mr. Vice-President, Sir, I move:

"That in sub-clause (a) of clause 7, in the proposed paragraph 34 of the Federal Legislative List, the words 'trade and commerce (whether or not within a province) in, and production, supply and distribution of, products of such industries' be deleted."

Sir, the reason for this amendment primarily was different; but now, in view of the fact that article 2 has undergone a change and also in view of the fact that my honourable Friend Mr. Govind Vallabh Pant is going to move amendments numbers 87 and 88, this will be necessary in order to clarify the position, because the words that are now sought to be omitted are being put in List III of Schedule 7, by the amendments Nos. 87 and 88. I hope the House will accept this amendment.

The Honourable Pandit Govind Ballabh Pant: With your permission, Sir, I should like to move....

Mr. Vice-President: All the three amendments?

The Honourable Pandit Govind Ballabh Pant: Yes, Sir: amendments 84, 87 and 88. I move:

"That in sub-clause (b) of clause 7, in the proposed paragraph 27 of the Provincial Legislative List, for the words `34 of List I' the words `31 (A) of List III' be substituted."

"That in sub-clause (c) of clause 7, in the proposed paragraph 29 of the Provincial Legislative List, for the words and figures `34 of List I' the words and figures `31-A of List III' be substituted."

"That in clause 7, the following new sub-clause be inserted at the end:-

`(d) after paragraph 31 of the Concurrent Legislative list the following paragraph shall be inserted as paragraph 31(A):-

> 31(A). Trade and commerce in, and production, supply and distribution of, products of industries, the development of which is declared by Dominion law to be expedient in the public interest under paragraph 34 of List I.'"

Sir, all the four amendments Nos. 80, 84, 87 and 88 are inter-connected and inter-linked and they must stand or fall together. According to the Bill, development of industries where development under Dominion control is declared by Dominion law to be expedient in the public interest, regulation and control of such industries, trade and commerce (whether or not within a province) in, and production, supply and distribution of, products of such industries, were to be included in List I. That is, all these subjects were to be brought within the exclusive jurisdiction of the Federal Legislature and the Federal Government. Now, that would have led to several other difficulties and complications. We all realise that so far as development of industries, where development under Dominion control is declared by Dominion law to be expedient in the public interest and regulation and control of such industries should vest in the Centre. According to the entry already contained in the Federal Legislative List, development of industries where development under Dominion control is declared by Dominion law to be expedient in the public interest, is already included and there is no intention of making any change so far as that is concerned. But, as proposed in this amendment regulation and control of such industries should also be placed under the jurisdiction of the Federal Legislature. So, so far as the first two parts of this clause are concerned, they will stand as they are. But with respect to the rest, that is, trade and commerce (whether or not within a province) in, and production, supply and distribution of, products of such industries, it is proposed by the series of amendments to which I referred at the outset, that these should be included in the Concurrent List and consequential changes should be made in the other amendments. So, the main point that is before the House is whether trade and commerce (whether or not within a province) in, and production, supply and distribution of, products of such industries should or should not be transferred from this class to List III, that is, instead of being included in List I they should form part of List III.

I think honourable Members will agree that the amendments that I am proposing will serve the purpose which the original clause had in view fully and will at the same time avoid other difficulties and complications which might arise if these items were not included in the Concurrent List. For, by including these in the Concurrent List, the power is vested in the Centre to legislate with regard to these matters. Power is also vested by virtue of clause 2, which has already been amended, to appoint agents directly for the administration of any of these subjects so that the Centre can have plenary, comprehensive and if it so chooses even exclusive control with regard to these matters. But, whatever the Centre may do, I venture to submit that it will still be necessary for the provinces to exercise a number of functions within their own provincial boundaries with regard to these matters. So, if these are made the exclusive charge of the Centre, then, the provinces will not be free to discharge the duties and obligations which will necessarily devolve on them. In order to enable the provinces to play their part subject to the overriding powers that will now vest in the Centre, it is necessary to include these items in the Concurrent List and that is what I propose. Even now when we have got the Essential Supplies Act, the Centre generally frames a few basis rules and leaves the rest to the provinces. We in the provinces have been issuing orders rules and regulations with regard to these matters in our respective provinces. Whatever be the position hereafter, it will still be necessary for the provinces to exercise these powers. In our own province for example, we propose to introduce a bill so that the distribution of building materials may be regulated, that no steel or iron or coal etc, be supplied for the purpose of any building which is likely to cost more than Rs. 25,000. That is under our consideration. Now unless these items are included in the Concurrent List, we have no power to introduce such a bill in our Legislature. Besides, as I said, if these items are placed in List I, the Centre will not find it possible to administer these subjects in an efficient way. They require a very extensive network and I think it is not possible for the Centre to manage these things without the active co-operation and support of the provinces. So I propose that the amendments to which I referred at the outset be accepted unanimously by the House.

Mr. Vice-President: There are two amendments which have to be considered further. The one is No. 9 in the name of Mr. Naziruddin Ahmad which is disallowed as verbal.

Mr. Naziruddin Ahmad: It should be considered by the Draftsmen.

Mr. Vice-President: I suppose it will be. Is it necessary to hold a general discussion on this clause?

Honourable Members: No.

Mr. Vice-President: Then I shall put the amendments to vote one after another.

The question is:

"That in sub-clause (a) of clause 7, in the proposed paragraph 34 of the Federal Legislative List, the words 'trade and commerce (whether or not within a province) in, and production, supply and distribution of, products of such industries' be deleted.'

The amendment was adopted.

Mr. Vice-President: The question is:

"That in sub-clause (c) of clause 7, in the proposed paragraph 29 of the Provincial Legislative List, for the words and figures `34 of List I, the words and figures 31-A of List III be substituted."

The amendment was adopted.

Mr. Vice-President: The question is:

"That is clause 7, the following new sub-clause be inserted at the end:-

(d) after paragraph 31 of the Concurrent Legislative List the following paragraph shall be inserted as paragraph 31(A):-

31(A). Trade and commerce in, and production, supply and distribution of, products of industries, the development of which is declared by Dominion law to be expedient in the public interest under paragraph 34 of List I."

The amendment was adopted.

Mr. Vice-President: The motion is:

"That clause 7, as amended, stand part of the Bill."

The motion was adopted

Clause 7, as amended, was added to the Bill.

Mr. Vice-President: The question is:

"That clause 1 and the Long Title form part of the Bill."

There is an amendment to this.

Shri. T. T. Krishnamachari: Mr. Vice-President, I move:

"That for clause 1 the following clause be substituted:--

'Short title and commencement.	1. (1) This Act may be called the Government of India (Amendment) Act, 1949.
	(2) It shall come into force on the 15th day of January,1949."

Sir, the first sub-clause is necessary because the date has to altered and the second one precisely states when the Act will come into force.

Sir, I move.

Mr. Vice-President: I now put the amendment to vote. The question is:

"That for clause 1 the following clause be substituted:-

'Short title and commencement. 1. (1) This Act may be called the Government of India (Amendment) Act, 1949.

(2) It shall come into force on the 15th day of January,1949."

The amendment was adopted

Mr. Vice-President: The motion is:

"That clause 1, as amended, stand part of the Bill."

The motion was adopted.

Clause 1, as amended, was added to the Bill.

Mr. Vice-President: The question is:

"That the Long Title and the Preamble stand part of the Bill."

The motion was adopted.

The Honourable Sardar Vallabhbhai J. Patel: Sir, I move:

"That the clauses 1(A), 2, 3 and 4 be renumbered as clauses 2, 3, 4 and 5 respectively."

Mr. Vice-President: The question is:

"That the clauses 1(A), 2, 3 and 4 be renumbered as clauses 2, 3, 4 and 5 respectively."

The motion was adopted.

The Honourable Sardar Vallabhbhai J. Patel: Sir, I move:

"That the Bill, as amended, be passed."

Mr. Vice-President: The question is:

"The Bill, as amended, be passed."

The motion was adopted.

Mr. Vice-President: The House stands adjourned till ten tomorrow.

The Assembly then adjourned till Ten of the Clock on Thursday, the 6th January 1949.

[Translation of Hindustani Speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME VII

Thursday, the 6th January 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

DRAFT CONSTITUTION -(Contd.)

New Article 147-A

Mr. Vice-President (Dr. H. C. Mookherjee): We shall take up discussion of article 148. But I am informed that article 147-A comes under the same chapter and so with the permission of the House we can take up article 147-A.

The motion before the House is:

"That article 147-A form part of the Constitution."

This is in the name of Prof. K. T. Shah.

Prof K. T. Shah (Bihar: General): Mr. Vice-President, Sir,.........

Mr. Vice-President: I understand that a similar amendment in the case of the Centre was rejected by the House.

Prof. K. T. Shah: Yes, Sir. But I may point out respectfully that in that case the proposal was to separate all powers; but here it is only the legislature that is sought to be separated.

Mr. Vice-President: All right; you may move your amendment.

Prof. K. T. Shah: Sir, I move:

"That before article 148, the following new article147-A be added:--

> "The Legislature of every State shall be wholly separate from and independent of the Executive or the Judiciary in the State'."

Sir, while it is no doubt part of my thought on this subject that the powers of the organized government, in a State calling itself federal and democratic, should be separate, one from the other, I have deliberately worded my amendment in such a way that even though the other structure may remain what it is, the local legislature may be separate from the executive and the judiciary. The separation of the two is intended to secure the independence of the legislature and also freedom from any influence of the legislature over the judiciary. I would rather emphasise on this occasion and in this connection the separation of the judiciary, the independence of the judiciary, than of the legislature, as such. When we consider the judiciary, I would place similar amendments with definite reference to the judiciary. In this case, I would like to point out that whereas the law-making body makes laws after due consultation and contacts with the juristic advisers that they may have, or the technical draftsmen who may assist them, nevertheless, they should not have any contact with the judiciary as such, lest the knowledge of what took place in the legislature, the knowledge of the debates, discussions, promises or assurances given, or even *obter-dicta* that may be thrown out on the floor of the Legislature by either side, may influence judgment. It is an accepted principle--and I think quite a right one--that the judiciary in their interpretation of a written Constitution should not be influenced by anything that took place in the debates on a given piece of legislation. In a federal constitution, it is inevitable that questions may crop up time and again, not only of the interpretation of ordinary legislation, but also of the very constitutional aspect of a given legislation, or acts of the Executive under the Constitution. It is but right and proper that the legislature should be completely free from the influence or any chance of being influenced by the two other organs of the State. Further, the Judges themselves having pre-conceptions--so to say, of the nature or intention of the law--are likely to give an interpretation not necessarily in consonance with the true doctrine of interpretation, but rather, because of their pre-knowledge, so to say, of the intention, even if the meaning is not properly given in the wording as finally decided upon.

For these reasons, Sir and for securing the purity, both of the Legislature and of the Judiciary, I commend this motion to the House, that the two should be completely separate.

Mr. Vice-President: Dr. Ambedkar will reply to the amendment.

The Honourable Dr. B.R. Ambedkar (Bombay: General): Sir, I oppose the amendment, and all that I need say is this, that the basic principles of the amendment is so fundamentally opposed to the basic principles on which the Draft Constitution is based, that I think it is almost impossible, now to accept any such proposal.

Mr. Vice-President: I am now going to put the amendment to vote.

The question is:

"That before article 148, the following new article 147-A be added:--

> 'The Legislature of every State shall be wholly separate from and independent of the Executive or the Judiciary in the State'."

The amendment was negatived.

Article 148

Mr. Vice-President: Now we come to article 148.

The motion before the House is:

"That article 148 form part of the Constitution."

Amendments Nos. 2222, 2223, 2224, and 2225, and amendment No. 2227 are of similar import. No. 2225 standing in the name of Prof. Shibban Lal Saksena may be moved.

(Amendments Nos. 2222 and 2225 were not moved.)

Amendment No. 2223 and No. 2224 may be moved; both are in the name of Shri Brajeshwar Prasad.

Shri Brajeshwar Prasad (Bihar: General): I am not moving them.

Mr. Vice-President: Then No. 2227, standing in the name of Shri Nand Lal may be moved.

Master Nand Lal (East Punjab: General): I am not moving it.

Mr. Vice-President: Then, in List II of Sixth Week, there is an amendment to amendment No. 2222. As it is not moved, Prof. Shah may move amendment No. 2226.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move--

"That for the existing clause (1) of article 148, the following be substituted:--

> `(1) For every State there shall be a Legislature which shall consist of such number of Houses, not exceeding two, as Parliament shall determine by law in each case.; provided that it shall be open to the Legislature of any State to request the Parliament of the Union to change a bicameral into unicameral Legislature, and such request being duly made and received, Parliament shall pass the necessary legislation'."

Sir, the original clause as it stands reads:

"For every State there shall be a Legislature which shall consist of Governor; and

> (a) in the States of ...., two Houses,
>
> (b) in other States, one House."

I wish to put the States on a par and suggest that the legislature of every State should be eventually determined by an Act of Parliament, and subsequently altered, if so desired, at the request of the State concerned.

Sir, I do not believe in a bicameral Legislature at least for the States. I think a Second Chamber is not only not representative of the people as such; but even if and where it is representative of the people, even if and where it has been made in such a way as to represent some aspect of the country other that the pure popular vote, even then it is there more as a dilatory engine rather than a help in reflecting popular opinion on crucial questions of legislation.

Apart from the classic example of the House of Lords, which is a hereditary reactionary and non-elected body, even where the Second Chambers are elected, they deflect the legislative machinery, for one thing; they involve considerable outlay from the public exchequer on account of the salaries and allowances of Members and incidental charges. They only aid party bosses to distribute more patronage, and only help in obstructing or delaying the necessary legislation which the people have given their votes for.

Those who like to defend the Second Chamber are, more often than not, champions of vested interests, which find a place in these bodies and as such find an occasion rather to defend their own special, sectarian or class interests than to help the popular cause.

On the question of Second Chambers, therefore, Sir, I think it is a clear division of political opinion, whether or not it is the will of the people alone which should prevail or some separate interest or special interests be also allowed a say. It must also be admitted that in the course of centuries in the course of history, wherever there have been two chambers, means have been devised to make the popular will eventually prevail. The only result of the Second Chamber, therefore, is that wherever democracy is in working order as an effective machinery of Government the only use of the Second Chamber is to delay, or to obstruct legislation rather than to make it utterly impossible for the popular will eventually to prevail.

In England, in America and elsewhere, the Second Chamber is ultimately made infective. If that is the experience of the world, I do not see why that experience should be neglected and in the States we should repeat a machinery of legislation which is bound to be only expensive and dilatory rather than useful.

The case of the Centre is different. It is so because the interests to be represented are more particularly those of the Units than of the country which is represented in the Lower House. Though a Second Chamber may therefore quite properly be provided for the Central Legislature, the arguments that may be advanced in defence of such arrangements at the Centre would not apply in my opinion to the Units. Accordingly I suggest that the place of the Second Chamber may be left entirely to the Units themselves. In the first instance Parliament may determine according to the size, the population, the area and perhaps also the presence of special interests, if any, and lay down a legislative composition as in its judgment the Central Parliament thinks proper. But eventually the Unit itself and the Legislature of the Unit must have the right to say what is most suited for its requirements; and if such a request is made it should be entitled to demand a revision of the original Act as a matter of course and provide for whatever single chamber form of legislation it desires, is necessary and proper for its case.

I have therefore suggested in my amendment that thought in the first instance Parliament may lay down for each particular State a form of legislature that it thinks is suitable for given areas, in the ultimate analysis the people in the Units must be able to say whether they want a Second Chamber in their case. This is not therefore summarily a rejection of the Second Chamber here and now. This is not to say that by Constitution we shall make it impossible for local opinion to prevail in the matter. All that I am asking is that in the event of the people of any Unit so desiring, they should be at liberty and entitled to demand of the Central Parliament that, in their case at any rate, a Second Chamber is needless and therefore should be done away with, where as for others there may be a Second Chamber if the people of that unit so desire. I therefore recommend the motion to the House.

Mr. Vice-President: The next amendments Nos. 2228 and 2229 standing in the name of Mr. Naziruddin Ahmad are disallowed as being merely verbal.

Mr. L. N. Sahu may move amendment No. 2230.

Shri Lakshmi Narayan Sahu (Orissa : General): *[Mr. Vice-President, the amendment that I am moving before the House is:

> "That in sub-clause (a) of clause (1) of article 148 after the words 'States of' the word 'Orissa' be inserted."

It implies that Orissa should have two Houses instead of one and that one of these two should be the Upper Chamber. My Friend Shri K. T. Shah observed a little while ago that a Second Chamber is not very essential and that it may only be constituted where the popular will demands it. There does not appear to be anything objectionable in this proposition. But the constitution, as now being framed, makes provision for a Second Chamber. What I demand is that this provision should continue for the future as well. Second Chambers are functioning even now in Assam, Madras and Bihar. It was not felt necessary to have Second Chambers for the other provinces. I think that a Second Chamber is not needed in Assam at present. But in my opinion it would not be proper for us to decide that a Second Chamber is not necessary for Orissa merely on the ground that the Members from Orissa do not desire to have one. My submission is that there should be the at least this provision, that there can be a Second Chamber if it is demanded by the will of the people. It would then be possible for us to decide whether we need a second Chamber or not. We have adopted the American Constitution as a model in drafting our Constitution. Under the American Constitution, however, bicameral legislatures exist in all the States. Besides, we want a bicameral legislature at the Centre in order that Provinces may be represented there in. Recently twenty-five States have been merged in Orissa. So far they were separate from Orissa. Recently they have been merged in Orissa. A Second Chamber, therefore, is very necessary there.

An objection raised by a few people is that dilatory tactics are adopted in the Second Chamber and therefore it is unnecessary. As for dilatory tactics, the can be adopted even where there is only a single Chamber. For instance the Hindu Code Bill is under consideration for the last four or five years. Many people fear that if Chamber is constituted well-to-do-persons and big capitalists would be able to secure its membership quite easily. But this is what I would like to happen. Now that our country is free and until we establish a socialist State here, we should give every opportunity to men of outstanding ability and wealth to take their due share in the governance of the country. There is absolutely no justification for denying them this share. I may add that there cannot be any harm done if a few rich men are able easily to secure election to the Second Chamber. Besides, we exclude one important fact from our consideration when we criticize the proposal for a Second Chamber. It is that most probably elections are not going to be on the basis of proportional representation in the Provinces. It is, therefore, quite probable that minorities would fail to secure their due representation in the legislatures. Political parties are not yet properly formed in our country. So long as parties are not properly organised, it is possible for people of all shades of opinion to secure election only through the system of proportional representation. But there being no proportional representation, a Second Chamber appears to be essential, till parties come to be organised on a proper basis, for, then those Sections which fail to get representation in the Lower House would have a chance of getting representation in the Second Chamber.

We see that many people do not very much like a Second Chamber. But as I said a little before, Orissa has been newly formed. Twenty-five States have been merged in it recently. Therefore a Second Chamber should certainly be provided for Orissa. Besides, changes are taking place fast in our country as in the world. The creeds of Socialism, Communism and so many other isms are appearing, and are making big advances. In order to delay there's changes to ponder over them and to control them, it is absolutely necessary to have a Second Chamber. Prof. Shah observed that the House of Lords in England is tradition-ridden. But this need not frighten us, for the Second Chamber we are going to constitute would not be of the type of the House of Lords. It will be altogether of a different kind. I may add that even the English people feel the necessity of a Second Chamber, for even there is a move to make it strong and effective. Further, ours is not a unitary type of government. It is federal, even though many powers of the Units have been taken over by the Central Government. I, therefore, submit that two Houses are absolutely necessary, for there is very great need of careful thought being given to all the problems that may arise. I may add that when the Centre would be so very powerful it is necessary that there should be two Chambers in the provinces. In any case a second Chamber must be provided for Orissa in the new Constitution that we are framing. I would like to add that this question of a Second Chamber may be left over to be decided by the will of the people of Orissa, and till the people take a decision in the matter we should take no decision but keep this question open.]*

Shri L. Krishnawami Bharathi (Madras: General): Sir, I move:

"That in sub-clause (a) of clause (1) of article 148,after the words 'in the States of' the word 'Madras' be inserted."

Honourable Members will see that article 148(1) reads:

"For every State there shall be a Legislature which shall consist of the Governor; and

(a) in the States of ...."

(here there is a blank to be filled in later on.)

My amendment, if accepted, will fill up the blank to some extent, in the States of Madras : that is to say, in the States of Madras there shall be two House--one the legislative Assembly and the other the Legislative Council.

Sir, it was understood that Members representing the different provinces should meet together and come to a decision as to whether they would like to have a Second Chamber for their province. Accordingly, Members belonging to the different provinces met separately, and the representatives of Madras also met similarly under the presidency of Rashtrapati Dr. Pattabhi Sitaramayya, and after sufficient discussion it was decided that Madras shall have two Chambers. Recently this decision was come to, but last year......

Shri Mahavir Tyagi (United Provinces: General): On apoint of order, may I know if it is necessary that honourable Members from all the provinces that have decided to have two Chambers should come here and move separate amendments for their provinces: Cannot the decisions reached by those Members be included in one full list?

Mr. Vice-President: If the honourable Member will have patience for a few minutes longer, he will find the answer to this query given by the Chairman of the Drafting Committee.

Shri L. Krishnaswami Bharathi: I was saying that the Members representing Madras met together and decided sometime last year, when a similar decision was come to, and to regularise it we met recently and decided accordingly.

There is some opposition to this idea of a Second Chamber. I am inclined to think that it is born more out of prejudice of the present Second Chambers and the general view is, and I also agree with that view, that the idea of a second Chamber is to prevent or check hasty legislation. Experience has shown that so far as the proceedings of this Assembly are concerned, last year we decided many matters. In similar matters we have come to decisions and it was only submitted to the Drafting Committee to put them in order. But we find that we are revising many articles: even article 150, where we fixed a limit is undergoing constant changes. That shows that there is always need for some time to elapse.

In this connection, I might invite the attention of the House to an interesting incident reported in the life of George Washington. It appears that Thomas Jefferson was protesting very strongly against the idea of a Second Chamber, to Washington. Mr. Farr and reports this incident very interestingly: they were taking coffee at breakfast time. Suddenly George Washington asked: "Why, Mr. Jefferson, why are you pouring the coffee into your saucer?" Jefferson replied: "To cool it". Even so, we want to cool legislation by putting it into the saucer of the senatorial Chamber. That is a forceful way of expressing the idea and as we are going to be constituted, it is to check or prevent hasty legislation and not at all to impede progressive legislation. There shall be no mistake about it; the idea is not to check progressive legislation but to have some time so that cool, calm and deliberate conclusions may be arrived at.

Therefore, there is absolute need for a Second Chamber for some time, and as I understood Prof. K. T. Shah, I think he wanted that there must be some provision so that if we did not want a second Chamber later on, we must be able to do away with it, not necessarily by amending the Constitution, which is not an easy affair, but provision must be made in the Constitution itself. That is how I understood him.

If the Prof turns to article 304, sub-clause (2), a provision there for is therein made. That provision enables the Units or the Legislative Assemblies of the different States or Provinces, as the case may be, to initiate proceedings in a particular assembly with a view not to have the Second Chamber. That is a broad clause which enables a Provincial Legislative Assembly to decide upon the number of Houses if they so desire. With your kind permission, I may be allowed to read that portion of article 304 (2)....

Shri S. Nagappa (Madras: General): Not necessary

Shri L. Krishnaswami Bharathi: Why? It is not for Mr. Nagappa alone: I am reading it for the enlightenment of the House. I suppose, Sir, I have your permission. If Mr. Nagappa knows it, that does not mean that others need not be enlightened.

Article 304(2) reads:

> "Notwithstanding anything in the last preceding clause, an amendment of the Constitution seeking to make any change in the provisions of this Constitution relating to the method of choosing a Governor or the number of Houses of the legislature in any State for the time being specified in Part I of the First Schedule may be initiated by the introduction of a Bill for the purpose in the Legislative Assembly of the State or, where the State has a Legislative Council, in either House of the Legislature of the State, and when the Bill is passed by the Legislative Assembly or, where the State has a Legislative Council, by both Houses of the Legislature of the State, by a majority of the total membership of the Assembly or each House, as the case maybe, it shall be submitted to Parliament for ratification, and when it is ratified by each House of Parliament by a majority of the total membership of that House it shall be presented to the President for assent and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill."

So, provision has been made. As I was speaking, some honourable Members wanted to know whether there was a possibility of the Provincial Assembly scrapping it. I looked it up and I thought it my duty to invite the attention of the House to the provision made in this Constitution. I therefore hope that this amendment will be accepted.

Sir, I move:

Mr. Vice-President: There is an amendment to this amendment--No. 46 of List II, standing in the name of Dr. Ambedkar. Is the honourable Member going to move it?

The Honourable Dr. B. R. Ambedkar: Sir, I move:

> "That for amendment No. 2231 of the List of Amendments, the following be substituted:-
>
>> 'That in sub-clause (a) of clause (1) of article 148, after the words 'in the States of' the words 'Madras, Bombay, West Bengal, the United Provinces, Bihar and East Punjab' be inserted'."

Sir, I should like to state to the House that the question of whether to have a second Chamber in the provinces or not was discussed by the Provincial Constitution Committee, which was appointed by this House. The decision of that Committee was that this was a matter which should be left to the decision of each province concerned. If any particular province decided to have a second Chamber it should be allowed to have a Second Chamber, a second Chamber should not be imposed upon it. In order to carry out this recommendation of the Provincial Constitution Committee it was decided that the Members in the Constituent Assembly, representing the different provinces should meet and come to a decision on this issue. The Members of the different provinces represented in this Assembly therefore met in groups of their own to decide this question and as a result of the deliberations carried on by the Members it was reported to the office that the provinces which are mentioned in my amendment agree to have a Second Chamber for their provinces. The only provinces which decided not to have a second Chamber are the C. P. & Berar, Assam and Orissa. My amendment gives effect to the results of the deliberations of the representatives of the different provinces in accordance with the recommendation of the Provincial

Constitution Committee.

Sir, I move.

Mr. Vice-President: Then we come to amendment No. 2232 standing in the name of Shri Mohanlal Gautam. Amendment No.2233 also is in his name. The honourable Member is not in the House, so these two amendments go out.

The article is open for general discussion.

Shri Kuladhar Chaliha (Assam: General): Mr. Vice-President, Sir, one of the most vexed questions of political science is the problem of a Second Chamber. In the 19th century in Europe, Second Chambers were necessary in order to check hasty legislation, but in modern days even if a second Chamber is allowed to exist we must restrict its powers so that it may not be a clog on our progressive ideas.

Almost all the important States had Second Chambers in olden days, but Turkey and Bulgaria have dispensed with them. The Second Chambers are regarded as an essential element of feudal constitutions. They are the exceptions to the rule of the Constituent units not to have any Second Chambers anywhere. In the U. S. S. R. and in the Union of South Africa the Constituent units are all unicameral. In the Dominion of Canada we find that out of eight Provinces only two have Second Chambers. In the case of Switzerland out of 18 Cantons, except two, all the other 16 are unicameral. In Weimar Germany half the States were unicameral.

The Second Chambers seem to have been created by force of tradition. It seems that the vested interests--men of dignity and nobility--want that they should adorn the benches where they can find some defence against the attack on their rights. It is said that wherever there are vested interests which require defence, the Second Chamber will always be claimed. In India we find that where there are Zamindars they want the Second Chamber. We find from the claims made by the different Provinces that are now claiming the Second Chamber, there are the vested interests, there are the Zamindars, and they want to be protected against the majority. But then in these progressive days legislation will be held up if we have a Second Chamber, and therefore we should not allow these Second Chambers to exist. Yet, we find that there is a certain amount of desire on the part of some of the Provinces. Assam has rightly said that they are not in want of it; Orissa has also said that they are not in want of it and C. P. has also said that. It is in the fitness of things that they have done so.

A Second Chamber is nothing but a clog in the way of progressive legislation. In our old Central Legislature, by delaying tactics, we have held up the Hindu code for about four or five years. It is very easy to obstruct progressive legislation as we have done in the case of the Hindu Code. But if we have another Second Chamber I think it will only be adding further trouble in the way of passing progressive legislation. It is really surprising that some of our Provinces are claiming that there should be Second Chambers even today. They should think that this is rather a burden to them than adding to their progress; the Second Chamber in the past has clogged some very good pieces of legislation in Europe and other countries. I think as a modern people we should get rid of these ideas and we should march forward. Therefore, we should not have Second Chambers in our country.

Secondly, there is another thing. We do not find a sufficient number of leaders in our Provinces to man the Second Chamber. In the smaller and backward Provinces we feel the difficulty and we have rightly voted against the Second Chambers. Even in the bigger Provinces I think we have not been able to produce a sufficient number of leaders who can man it very well.

An Honourable Member: That may be the case in your Province

Shri Kuladhar Chaliha: I see. There may be an exception but then it does not prove the case--it rather proves the other way.

You will only be clogging the progress of the country by having second Chambers in Bombay, Madras and other Provinces, so that there may not be any advance. That is how things will be done. These four Provinces will be a clog to us and they will be a drag on our progress. Therefore, the sooner they get rid of this idea and the sooner Dr. Ambedkar withdraws that amendment, the better it will be for the country. Before accepting the amendment, I trust the House will consider it properly and see whether they would like their progress to be clogged, as they want to do.

Shri K. Hanumanthaiya (Mysore): Mr. Vice-President, Sir, the Draft Constitution makes provision for either unicameral or bicameral legislature, as the case may be; it leaves the choice to the States concerned and some States have chosen to have unicameral legislatures. We are very familiar with the arguments for and against a bicameral legislature. I merely want to draw the attention of the House to the practical aspect of the matter. The people who advocate a bicameral legislature usually say that it is a device against hasty legislation. My Friend Mr. Bharathi gave a very picturesque illustration.

I want my friends who are in favour of a bicameral legislature to remember that we are framing a Constitution for a responsible system of Government. That presupposes party system. Party system of Government works in a peculiar way and not in the way of unicameral or bicameral legislature as such. Every major decision is taken in the party meeting and not in the Upper House or in the Lower House. So that real legislature from the point of view of practical politics seems to me, Sir, to be the party meeting. Once the question is decided in the party meeting, it does not matter whether the question is brought up before the Lower House or the Upper House, or even if there are ten Houses; there is no question of preventing hasty legislation, once the party decision is taken on the subject. Hence when...

Shri O. V. Alagesan (Madras: General): Will not the members of the Upper House be the members of the party also?

Shri K. Hanumanthaiya: That is exactly what I was going to say. You are arguing for me. The party in power will certainly have under the Constitution we are framing a majority both in the Upper House and the Lower House, because it happens to be an elected legislature. Once the joint meeting of the Party Members of both the Upper House and the Lower House takes a decision, that decision goes through irrespective of the opposition or the arguments to the contrary. Such being the case, it is a costly formality to have two Chambers. My Honourable Friend Bharathi gave an illustration of a cup and saucer to show the utility of the second Chamber. Whether it is the cup or the saucer into the which the coffee is poured, it is the pot that determines the temperature of the coffee. The pot here is the party meeting; it determines the way we have to vote. Therefore, I really do not see how the Second Chamber under the existing circumstances will be able to show us a better way or a sober way.

I have got another point, Sir. In a federation the legislative field is to a very great extent restricted so far as the legislatures of the unit are concerned. Much of the legislative field and administrative field is taken under the present Constitution by the Centre and what remains is very restricted. For that restricted field, to have two House, I fear, is really a very costly and unnecessary affair. Apart from the point of view of legislation, there is also the point of view of administration from which we have to examine this problem. The Ministers who are popular leaders have to devote much of their time to visitors. It is the experience of every Minister in India that much of his time is taken away by visitors and by people who come to see them for all sorts of purposes and very little time is left to them. If we have got two Houses, probably the Lower House will have to sit several months in the year and in addition to it The Ministers would have to spend necessarily much of their time in the Upper House also. I think practically they have to do talking all the time administrative work suffers inconsequence. In fact, If I may claim to know a little of the working of the Ministeries in India in the units and the States, they are usually charged with inefficiency. The speed with which administrative work used to be done in the olden days is not done now. That is the specific charge levelled against the various ministries in the units. I do not know how it is in the Centre. But the real reason is they have no time; they have to be talking all the time. it is better in the interests of efficiency and speed of the administration to do away with the Second Chamber.

Mr. Vice-President: Many speakers would like to speak on this subject.

Mr. K. Hanumanthaiya: Very well, Sir. I have done.

Shrimati Renuka Ray (West Bengal: General): Mr. Vice-President, I am one of those who hold the opinion that the bicameral legislature in the present context of things is unnecessary, if not retrograde. Sir, in India, particularly at the present moment, when we need to go through a good deal of legislation in the economic and social field, which has been long overdue during the years of foreign rule, I do feel that the Second Chamber, particularly in the provinces will be very dilatory. The only reason advanced for having a second Chamber is that we can thus prevent hasty or careless legislation. But, Sir, when there is a Governor, in the Province and a President at the Centre, who is empowered to send back to the legislature any Bills which may have been enacted carelessly, for revision, I do not think that this excuse obtains. However, Sir, the majority of provinces have decided to have a second chamber and therefore, in the present Constitution, we shall be embodying it. I want to point out only this, that even if we at the present moment do have to agree to have second chambers in the provinces, there should be some provision in the Constitution that the second chambers can be got rid of as speedily as possible, not at the initiative or the votes of both Houses of Legislature in the provinces, but according to the desire of the Lower House alone. I do not think that it is right that whether a chamber shall continue to exist or not, should be left to the chamber to decide in any way. Although there is an article in the Draft Constitution regarding the manner in which the provinces may decide later not to have Second Chambers, if they do not wish to, that article prescribes that this can be done by both Houses of the Legislature. I hope, Sir, that when the time comes, at least the House and Dr. Ambedkar will agree that it should be the Lower House alone which shall decide whether the Second Chamber should continue or not. As I said before, I do not think that bringing in the Second Chamber is going to be helpful at the present moment. I do understand that the composition of the Second Chamber is going to be fundamentally different from the composition of the Upper Houses of the past. But all the same in the present context of things, as I have said, it will be very much better if we had just one Chamber. As we have seen during the past year or so, while this Constituent Assembly has been functioning as a Dominion Legislature and with an unicameral Chamber, even so the procedure by which legislation is enacted is slower than we desire. I do not see why it is necessary, particularly in the Provinces, that we should go in for a second Chamber, and if we do so, at least let us provide that the Lower Houses in the Provinces are in a position to rid themselves of this encumberance as soon as possible.

Shri O. V. Alagesan: Mr. Vice-President, Sir, the Principle of a second Chamber directly comes before us only today. It was considered by the House when the Report of the Provincial Constitution Committee was submitted to the House not in a direct manner, but in a sort of a backdoor way, I should say.

Shri L. Krishnaswami Bharathi: How?

Shri O. V. Alagesan: Because, the Honourable Sardar Vallabhai Patel, who moved the Provincial Constitution Committee report for the consideration of the House said that the Committee generally agreed that there should be only one House of legislature; but, then, he went on to describe the procedure that the Honourable Dr. Ambedkar just now told the House. The choice was left to the Members of the Constituent Assembly from the various provinces; they were asked to decide whether they should have a Second Chamber or not for their province. This liberty was good in a sense; but that very same liberty prevented the House from going into the question in a deeper way and examining it on its merits. When the Honourable Sardar Patel moved the particular clause dealing with this matter, he expressed the hope that the small provinces may not elect to have a Second Chamber. But, actually it turned out that the six provinces enumerated by Dr. Ambedkar have elected to have a Second Chamber. They did not do it, I submit, on merits. What has been originally conceived as an exception has come to stay as a rule.

Shri L. Krishnaswami Bharathi: May I point out, Sir, that the honourable Member was not present on that occasion and that therefore he is not entitled to say this?

Shri O. V. Alagesan: That was because I was not well. That does not take away my right to express my opinion.

Mr. Vice-President: Please try to address the Chair; do not try to reply to Mr. L. Krishnaswami Bharathi.

Shri O. V. Alagesan: Yes, Sir. That particular procedure made the Members of the various provinces think," Let us have this ornament of a second Chamber." On the other hand, if the question had been placed before the House in a direct and straightforward way, I think the House might have decided against a second Chamber. That was my submission. Since this is the first occasion when we are dealing with this question on merits, this House has got every right to say that we shall not have a second Chamber now.

Then, it was said that these six provinces happen to be big ones now. In some future date they may get split up. Then, what is the provision? They cannot easily get rid of this second Chamber. Already there is an objection to the formation of linguistic provinces on the ground of their financial instability. This will be an additional reason for that, because, the cost of the second Chamber will be an unnecessary burden on the small provinces when they are formed.

Several speakers before me showed how a second Chamber is an unnecessary anachronism. I will say that this is a sort of an old age pension device for the politicians. When we deal with the composition of the second Chamber, I think I shall be able to explain how it will be a demoralising influence and not a helpful influence in the politics of the State. My Friend, Mr. Krishna swami Bharathi, gave us the cup and saucer example given by Washington. I beg to submit that we have far advanced several centuries from the days of Washington and enlightened constitutional opinion in America today is against a second Chamber. Several experts have prepared a model constitution for the United States of America. They have omitted this bicameral system and have recommended only a unicameral legislature for the States. Though, up till now, only one State has elected to have a unicameral system. I shall quote an American authority on this specific matter and it will be clear how this Second Chamber acts as a reactionary Chamber. The argument often advanced in favour of the second Chamber is that it will be a check on hasty legislation by the lower Chamber. He shows how it is only a myth. The learned author says:

> "While this idea might seem reasonable and logical, the practice of the bicameral system has contributed little or no evidence in support of this theory. On the contrary, large numbers of instances indicate that politicians have played one House against the other to defeat proposals for which there was a wide public demand, and that they have in this way succeeded in avoiding personal responsibility for their action."

In such unexceptionable words the bicameral system has been condemned by this author. So, I would like first of all that this principle of a second Chamber for the Provinces should be outright rejected by this House and if that is not possible, if the House does not propose to do that, I would request that there should be at least a provision by which the lower Chamber in any province will be able to do away with the second Chamber by a simple resolution. As it is, sub-clause (2) of article 304 was quoted. Even there, the procedure is rather complicated. When the majority in the lower House is rather precarious, the Upper House, because it will naturally stand for its preservation, may defeat the purpose. Again, it has to be approved by Parliament to come into force. So, that provision should be altered so as to permit the lower Chamber to do away with the upper Chamber by a simple resolution passed by a majority of the lower House.

Sir, I have done.

Shri T. T. Krishnamachari (Madras: General): Mr. Vice-President, Sir, I have listened with the attention that a discussion on a matter like this deserves, to the speakers that spoke before me. Speaking for myself, I am in sympathy with many of those who opposed the idea of the introduction of a second Chamber in the provinces. It is a matter that has been debated all over the world ever since the idea of constitutions came into being, whether second Chambers are necessary or not, and it admits of a wide room for difference of opinion. I am not, Sir, today concerned with examining whether it is right to have a second Chamber for the provinces or not. What I wish to point out to this honourable House is that this House on a former occasion has accepted certain fundamental principles which were intended to serve as a guide for the Drafting Committee to frame the Constitution. The question is whether these principles could be given the go by means of the negation of an article, without the whole thing being overhauled or upset in the proper way, namely by a proper number of people wanting a complete change in a decision made by this honourable House on a previous occasion according to the rules made for that purpose.

Sir, it may be open to question what is a fundamental principle and what is not. For instance, if we had said that a President is not necessary for this Constitution, that would be going against a fundamental decision made by this House on the report of the Union Constitution Committee. Similarly, if we say that a Governor is not necessary for a State, that would, again, be going against a fundamental principle. It would not be, Sir, going against a fundamental principle based on a decision of the House if we say that the Governor is to be elected in such and such a manner or be nominated in such and such a manner or that the President is to be elected in such and such a manner. On the 18th of July 1947, this House accepted the broad outlines of the Provincial Constitution Committee's report, particularly in regard to Rule 19 which bears some relation to the article that is being discussed by the House.

The Honourable Sardar Vallabhhai Patel moved--

> "There shall for every province be a Provincial Legislature which will consist of the Governor and the legislative Assembly; in the following provinces, there shall, in addition, be a Legislative Council."

Actually, the provision was fairly carefully framed so as to give the maximum amount of latitude to each province to decide whether or not to have a second Chamber. Some of my honourable Friends have referred to the manner in which this decision was arrived at. Sir, after the particular rule was passed by this House, at the appropriate time the Secretariat of the Constituent Assembly sent summons for Members representing each particular province to meet on a particular day and arrive at a decision whether or not to have a second Chamber. Sir, I think it is not disclosing any confidence or making any breach of confidence if I say that I was one of those who stoutly opposed the introduction of second Chamber so far as Madras province was concerned in the meeting of the representatives of that province and I was outvoted, but I do not think that merely because the decision of a large number of Members who represented my province ran counter to my own views that I could take advantage of the discussion on this clause to go against not merely the decision of the legislators of my province but also against the decision arrived at by this honourable House on the 18th July 1947. Sir, the proper course undoubtedly would be, for such of the Members as feel that this is not the proper thing to do, to take advantage of Rule 32 of the Rules of procedure of the House and have the whole question mooted once again by getting the requisite number of Members to sign a requisition for reopening this particular question. That is the proper way to go about this business and I do feel that, though the House can ordinarily reject this particular article 148 either in its entirety or a portion of it,--there is nothing to prevent a sovereign House from doing a thing which it wants to do,--I think in all decency we cannot go against a principle which has been accepted on the 18th July 1947, a principle which was further supported by meetings of the representatives of the various provinces meeting separately and deciding whether or not a particular province will have an Upper House. It is a different matter completely if this House should decide that the constitution of the Upper House should be different from what it was decided on the 18th July 1947, or what is mentioned in this Draft Constitution as drafted by the Drafting Committee. I shall have something to say about that at the appropriate time. But we are perfectly entitled to say that the Upper House shall be elected in entirety by the Lower House, that the Upper House should be nominated in its entirety by the

Governor, that the Upper House should be elected from all kinds of mushroom constituencies, that the Upper House should only represent lab our and not vested interests or conversely that the Upper House should only represent vested interests and not lab our, or that there should be equal representation of both, and it may or may not have representatives of functional interests in the province--all these things are matters in which the House has got perfect liberty morally to go into and make appropriate changes if it so feels disposed. But I do feel that in view of the commitments that we have already entered into on 18th July 1947 and a further reinforcement of that commitment agreed to by the fact that representatives of provinces have to second Chambers in those particular provinces which have been enumerated by the amendment moved by my honourable Friend Dr. Ambedkar, I think it is not right for the House to go further into the original question as to whether or not a particular province should have an Upper House and the matter should therefore be left at that and the article should be accepted in the form in which it has been presented to the House.

Shri Biswanath Das (Orissa: General): I do not like to inflict on this House a review of the working of the Upper Chambers in various States in the world. That is a function beyond the possibility of the limitations in which I am here. Sir, enough to say that the sort of second Chamber that is called upon to be constituted in the provinces is in many ways different from the ones that you find in very many States today functioning in the World Enough we have got a second Chamber at the Centre. The second Chamber in the Centre is also shorn of the usual prestige and responsibility which is attached to it in advanced States like U.S.A. Nowadays it need hardly be stated that the Chamber which has an indirect election, and much less a Chamber having a nomination, has the least prestige and influence in the country and much less to arrest the progress of any legislation, be it hasty or revolutionary. Under these circumstances, the system that is being devised and kept ready to be utilized for the Second Chamber in the provinces is not very helpful. We have in ita conglomeration of various things. You have in it an indirect election, you have in it a nomination, you have init an admixture of election and panel again leaving to the will of the Ministries. Under these circumstances, the system that is devised for the second Chamber is not useful and I must say that is not going to be helpful. Therefore it cannot influence the decision of the Lower House of which it will be merely a reflection-a sad reflection. Sir, secondly, it cannot check hasty legislation if the Lower House is going to make any hasty legislation because of the limitation under which it is to work. Sir, under these circumstances the second Chamber that is devised for the provinces is not helpful and, need I say, will be a costly show. So far as our province is concerned, I must thank the honourable Members of this House and more especially those who are responsible for the decision of leaving this to the provinces. It is in the fitness of things that the delegates from the provinces are called upon to decide this question. I do not see how much could be said or stated against the point as was mentioned by Mr. Krishnamachari. True it is that it was left to the provinces. My friend says the provinces have decided. I do not know when they decided. I come from the Province of Orissa. We delegates from Orissa were never called upon to discuss this question except once and that decision was against the constitution of the Second Chamber.

Sir, I have thanked, and I again thank the Committee as also the honourable Members of this House, for leaving this question entirely to the Provinces. Speaking for ourselves, we have taken extraordinary precautions in coming to the conclusion that we did. We intimated the Ministers, and also the Premier of Orissa who happens to be a Member of this honourable House, though he was absent. We also had the views of the Ministry, and we had before us the views of the Premier, and also those of the Member delegates. And to make ourselves doubly sure, we also invited the representatives of all the States who had merged into Orissa and also those of the States who intended to merge into Orissa; all these were invited and they were allowed to take part in the deliberations. Therefore, as a result of the combined deliberation of all these persons, unanimously we came to the conclusion, with the single exception of one Member, Mr. Sahu. We came to the majority conclusion that we shall not have a second Chamber. Sir, second Chambers are only ornamental. But if they were merely ornamental, that would have been something, because ornaments have their value, they make even things attractive. But here it is so very expensive, it entails such a heavy burden on the provincial exchequer, with no useful purpose, that it makes me feel that it is absolutely unnecessary and that it is an appendage which it is better if it is thrown out.

Mr. Vice-President: Dr. Ambedkar.

Shri H. V. Kamath (C. P. & Berar: General): Mr. Vice-President,......

Mr. Vice-President: Mr. Kamath comes from the C. P. which has no upper Chamber. *(Laughter.)*

Shri H. V. Kamath: That is exactly, Sir, why I would like to speak.

Mr. Vice-President: I thing the point has been sufficiently discussed. Some four more honourable Members would probably like to speak, but we have already spent one and a half hours, and we have to make a definite progress every day. I offer my apologies to those gentlemen who have been disappointed; that is all I can offer in the present circumstances. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, I regret I cannot accept any of the amendments that have been moved to this particular article. I find from the speeches that have been made that there is not the same amount of unanimity in favour of the principle of having a second Chamber in the different provinces. I am not surprised at the views that have been expressed in this House against second Chambers. Ever since the French Constituent Assembly met, there has been consistently a view which is opposed to second Chambers. I do not think the view of those who are opposed to second Chambers can be better put than in the words of Abbe Seiyes. His criticism was two-fold. He said that if the upper House agreed with the lower one, then it was superfluous. If it did not agree with the lower House, it was a mischievous body and we ought not to entertain it. (Laughter). The first part of the criticism of Abbe Seiyes is undoubtedly valid, because it is so obvious. But nobody has so far agreed with the second part of the criticism of Abbe Seiyes. Even the French nation has not accepted that view; they too have consistently maintained the principle of having a second Chamber.

Now, speaking for myself, I cannot say that I am very strongly prepossessed in favour of a second Chamber. To me, it is like the Curate's egg--good only in parts. (Laughter.) All that we are doing by this Constitution is to introduce the second Chamber purely as an experimental measure. We have not, by the Draft Constitution, given the Second Chamber a permanent place, we have not made it a permanent part of our Constitution. It is a purely experimental measure, as I said, and there is sufficient provision in the present article 304 for getting rid of the second Chamber. If, when we come to discuss the merits of article 304 which deals with the abolition of the second Chamber, honourable Members think that some of the provisions contained in article 304 ought to be further relaxed so that the process of getting rid of the second Chamber may be facilitated, speaking for myself, I should raise no difficulty (hear, hear), and I therefore suggest to the House, as a sort of compromise, that this article may be allowed to be retained in the Constitution.

Mr. Vice-President: I am now going to put the amendments to vote, one by one.

The question is--

"That for the existing clause (1) of article 148, the following be substituted:--

> `(1) For every State there shall be a Legislature which shall consist of such number of Houses, not exceeding two, as Parliament shall determine by law in each case; provided that it shall be open to the Legislature of any State to request the Parliament of the Union to change a bicameral into unicameral Legislature and such request being duly made and received, Parliament shall pass the necessary legislation'."

The amendment was negatived.

Mr. Vice-President: The question is--

"That in sub-clause (a) of clause (1) of article 148 after the words `States of' the word `Orissa' be inserted."

The amendment was negatived.

Mr. Vice-President: The question is--

"That for amendment No. 2231 of the List of Amendments, the following be substituted:--

> `That in sub-clause (a) of clause (1) of article 148, after the words `in the States of' the words `Madras, Bombay, West Bengal, the United Provinces, Bihar and East Punjab' be inserted'."

The amendment was adopted.

Mr. Vice-President: No. 2231, standing in the name of Shri L. Krishnaswami Bharathi need not be put to vote.

Now, the question before the House is:

"That article 148, as amended, stand part of the Constitution."

The motion was adopted.

Article 148, as amended, was added to the Constitution.

Article 149

Mr. Vice-President: Then we come to article 149.

The motion before the House is:

"That article 149 form part of the Constitution."

Coming to the amendments, I find that amendment No.2234, and the first part of amendment No. 2235 are identical. No. 2234 may be moved.

(Amendment No. 2234 was not moved.)

Amendment No. 2235 may be moved, standing in the name of Mr. Lari.

(Amendment No. 2235 was not moved.)

Amendment No. 2240. The Member who has given notice of it is not moving it.

Amendment No. 2236 of Mr. Naziruddin Ahmad is disallowed as being verbal.

Amendments Nos. 2237 and 2238 are of similar import. The latter being the more comprehensive one may be moved. The Member concerned, is not moving it. Therefore amendment No. 2237 may be moved. This is also not moved.

Then we come to amendment No. 2239 standing in the name of Shri Damodar Swarup Seth. It may be moved. I understand that the Member is not in the House. It is not therefore moved.

Amendments Nos. 2241 and 2242 are identical. Amendment No. 2241 may be moved. It stands in the name of Dr. Ambedkar.

An Honourable Member: It is not being moved. (Voices: Member not in the House') *(Laughter.)*

Mr. Vice-President: (Seeing the Honourable Dr. Ambedkar coming into the Chamber) Honourable Members are at perfect liberty to go out to take a cup of coffee or have a smoke. They will kindly realise the difficulties of those who are accustomed to both these types of relaxation. Honourable Members will agree that Dr. Ambedkar is entitled to relaxation of that sort. The Chair has nothing to do but to listen to the debates, but Dr. Ambedkar has to listen to the debates and reply. *(Laughter.)*

I understand that Shri Lokanath Misra and Shri Nand Lal are not moving amendment No. 2242.

Amendment No. 2243 is disallowed as it is verbal.

Amendment No. 2244 and the first part of amendment No. 2245 are identical. The latter may be moved. As the mover Prof. Shibban Lal Saksena is not in the House, it is not moved. Therefore amendment No. 2244 may be moved. The members concerned are not moving it. The second part of amendment No. 2245 is also not moved for the reason that the Member is not in the House. The next amendment, viz., 2246,standing in the names of Mr. Mohd. Tahir and Saiyid Jafar Imam, also is not moved, the

Members concerned being absent.

Now, Prof. Shah may move amendment No. 2247, as also amendment No. 2248 immediately following.

Prof. K. T. Shah: Mr. Vice-President, as suggested by you, I shall move both the amendments now. I beg to move:

"That the following new clauses be added after clause(2):--

> `(2-a) No person shall be entitled to be a candidate or offer himself for election to either House of a State Legislature, if Bicameral, or to the Legislative Assembly of the State, who is duly certified to be of unsound mind, or suffering from any other physical or mental incapacity, duly certified, or is less than 25 years of age at the time of offering himself for election, or has been proved guilty of any offence against the safety, security or integrity of the Union, or of bribery and corruption, or of any malpractice at election, or is illiterate
>
> No one who is unable to read or write or speak the principal language spoken in the State for as eat in whose Legislature he offers himself for election, or after a period of ten years from the date of the coming into operation of this Constitution, is unable to read or write or speak the National Language of India, shall be entitled to be a candidate for or offer himself to be elected to a seat in the State Legislature, or either House thereof.
>
> (2-b) The election shall be on the basis of proportional representation with a Single Transferable Preference Vote. For the purpose of election, every State shall be deemed to be a single constituency, and every member shall be deemed to have been elected in the order of Preference as recorded by thee lectors; and this arrangement shall hold good in the case of a General Election, as well as at a by-election, if and when one become necessary:
>
> Provided that where there is a second chamber in any State, the voters may be grouped, for electing members to the Legislative Council, on the basis of Trade, Profession, occupation or interest recognised for the purpose by an Act of the State Legislature, each trade, profession, occupation or interest voting as a single constituency for the entire State'."

and

"That clause (3) of article 149 be deleted and the following be substituted:--

> `The representation in the State Legislature shall be on the basis of one representative for every lakh of population:
>
> Provided that the total number of members in the legislative Assembly of a State shall in no case be less than sixty'."

There are several points in amendment No. 2247 which have, on an earlier occasion, been brought before the House. They refer to the disqualifications and qualifications which were stated while discussing the composition of the Central Legislature. The House apparently did not agree with me and, on that occasion, at any rate, rejected my proposal. I am again bringing it forward from the point of view now of the local legislatures, I hope with better fate.

The point, however, of great importance is that even if you cannot make all the voters literate within the time that the legislatures are constituted, you should certainly insist, in my opinion, upon candidates for the high office of the legislature to be qualified in certain ways, or not to suffer from disqualification in other ways.

The qualifications I have suggested are quite modest, not very exacting and in no way offend against the basic principles of democracy, that is to say, every individual should have the right to choose his representative. That being conceded, it may yet be desirable that those who offer to represent should at least have the minimum qualifications not of property, not of economic strength, not of any measure that indicates inequality as between citizens, but of capacity to render service, ability to understand the issues coming before them and honesty enough impartially to record their votes in the legislature so that you may have a fair legislation for the benefit of the country. I think that though it may be possible to have even between equally qualified and equally honourable men, differences on grounds of principle, we should differentiate between people who suffer from certain disabilities of the type I have suggested in this amendment. I put it to those who are responsible for this draft and to the House also that, even if we decide as we have decided and must insist upon that, without waiting for the coming of complete literacy, all the adult population should have the vote, we should nevertheless insist that the candidate must to start have certain qualifications and not suffer from certain disqualifications which I have tried to illustrate. These are only illustrations, not, so to say absolute qualifications or indexes of merit in themselves. I have stated nothing more than the minimum requirements for understanding the issues that would come before the legislature. As such I think it is but right and proper that at least in the case of candidates we must insist upon these qualifications. Those who become Members should similarly be free from certain practices or convictions against them; that may be taken also as the common-places of constituting legislatures and should not require any further argument on my part.

There is a point which I have made in a part of this amendment that deals with proportional representation. I am afraid the House is not in favour of that idea and therefore I will not labour the point. It is liable to be ruled out of order and therefore I shall not myself press it.

The last point stressed in my amendment No. 2248 is that the representation in the State Legislature shall be on the basis of one representative for every lakh of population: Provided that the total number of Members in the Legislative Assembly of a State shall in no case be less than sixty. The former is I admit an arbitrary selection. It may be varied. I only put it forward because I thought it is indicative of the State Legislature being really representative of large numbers of the population at the same time keeping the membership within manageable proportions. A lakh is a large number. Adult voters in a population of one lakh would be about fifty to sixty thousand and as such the possibility of securing a clear verdict on the multiplicity of issues that may be placed before the provincial electorates at the time of the general election would be too great to enable a voter justly to say that every single issue before that electorate has been clearly voted upon by all the voters even if all go to the polls.

But while recognising the limitation, I have also in mind the practical requirements of having legislative assemblies of manageable sizes and as such, this kind of arbitrary selection is necessary. That can only be remedied, I think, if you continue the process of legislative organisation in units of smaller and smaller population, that is to say, carry it from your huge provinces down to some district or municipal level where perhaps you will have a much more direct representation and therefore direct self-government of the people. But as the provinces or States now stand, it seems unavoidable to select a figure such as the one that is selected and for that I claim no more merit than that it is likely to give you a more direct and more full representation of the people than any larger number. For the rest, the second part of the amendment gives the minimum and not the maximum. I am against keeping a clause which gives the maximum number of representatives to be found in any province of any State on the ground that by fixing such a maximum, whatever the figure may be, you deny the larger electorate really speaking, the right to assert itself. it is not that you are disfranchising, it is that you are combining them in such a manner that considerable portions may neutralise the effect of other portions and as such your representative body may not be truly representative. On these grounds I commend these two amendments to the House.

Mr. Vice-President: The next amendment is No. 2249 standing in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, with your permission I wish to move the alternative amendment to this, *i.e.*, No. 48 in List II as I think that form it may be acceptable to the House. Sir, I move:

> "That for amendment No. 2249 of the List of Amendments, the following be substituted:-
>
>> `That in clause (3) of article 149, for the words 'last preceding census', the words `last preceding census of which the relevant figures have been published' be substituted'."

This principle has already been accepted in two other contexts. It is laid down in clause (3) that there should be one representative for every lakh of the population. It is stated also that that population will be found from last preceding census. My point is that the figures of the preceding census may not be available and in that case we may have to go to the immediately preceding census of which figures are available. Some doubt has been expressed in the House whether it would be wise to depend upon the 1941 census, that is to say, that the 1941 census is already obsolete in view of the mass exchange of population. Not only in the case of West Bengal and East Punjab but other provinces also the population figures have been disturbed. So far as the next elections are concerned, I suggest that there should be a fresh census or some method of ascertaining the actual number of persons in each province and if communal reservations are allowed, we shall also need the figures on a communal basis. In any case, some method of ascertaining the population figures is absolutely inevitable. This principle has already been accepted.

(Amendment No. 61 of List IV was not moved.)

Mr. Vice-President: Amendment No. 62 of List IV standing in the name of Mr. T. T. Krishnamachari.

Shri T. T. Krishnamachari: Mr. Vice-President, Sir, I move:

> "That with reference to amendment No. 2249 of the List of Amendments, in clause (3) of article 149, for the

words 'every lakh' the words `every seventy five thousand' be substituted."

Sir, as the House will understand, this amendment seeks to meet certain objections that may possibly be raised to fixing the figure at a lakh in the case of areas which are backward where the population is sparse but the area is very large. Such areas abound in the country in very many provinces. There are a good number of pockets where perhaps a whole taluk does not contain more than seventy five thousand people. Actually in the Constitution we envisage that every voter should be able to exercise his vote, but distance happens to be a very important factor in the exercise of that vote. It might be that in an area where there are about seventy five thousand people, if the total number of voters are roughly half of seventy five thousand, because of the distance to the polling booth, even a fraction of the thirty five or thirty seven thousand voters may not exercise their votes; and the problem therefore is that we must minimise those factors which will prevent the voter from exercising his vote. Actually, in the Constitution which is based on adult suffrage, we are making no provision with regard to transit for the voter to go to the polling booth. Distance will be a vital factor for a number of people in exercising their votes. Sir, it is a matter of common knowledge to Members of the House who have had to face elections that the person who has the largest number of conveyances is usually the person who succeeds in an election, though it often happens that people go in one person's conveyance but vote for another person: But, by and large, the person who is able to command the largest number of conveyances is able to secure the largest number of votes. If possible, we should minimise the effect of this particular factor operating in our future constitution. Having in view the peculiar conditions of our country, the peculiar conditions in the various provinces, it seems right that the limit ought to be lowered from one lakh to seventy five thousand, though the sequel to it would be that there would be variations in the number of voters in constituencies, but we shall perhaps be able to insert provisions in this Constitution later on so as to minimise these variations to the lowest possible limit. Taking my own province, we may probably have six or seven such constituencies where the population will be seventy five thousand, but this will not detract from the representative character of the legislature concerned or do any injustice to the areas which are more thickly populated. This is a saving clause which is very necessary in order to provide representation for the backward areas. I hope, Sir, the House will accept this amendment.

May I also move the related amendment which is No. 662.

Mr. Vice-President: You can do it later on.

Mr. Naziruddin Ahmad: I have a point of order. You will be pleased to find that in the notice sent to me with reference to amendments Nos. 2249 and 2250 that in the first place neither of these have been moved. Secondly, in place of 2249 I have moved another amendment and that has a reference to a different subject altogether. In fact it has a reference to the census but the present amendment deals with the number of units.

Mr. Vice-President: Kindly come up to the `mike'. You are inaudible to me.

Shri T. T. Krishnamachari: May I suggest that the House has already agreed to his moving an amendment to his amendment No. 2249 and as such he may be restrained from raising any further point of order.

Mr. Naziruddin Ahmad: In raising this point of order I have nothing to say against the merits of the amendment. My point will be a technical one. It is said in this amendment that it is with reference to amendments Nos. 2249 and 2250.That is amendment No. 62 in List IV.

Mr. Vice-President: Wait, wait. Do not be in such a hurry

Mr. Naziruddin Ahmad: This amendment is sought to be moved with reference to amendments Nos. 2249 and 2250. I have not moved the first one. But I have moved a substitute amendment with regard to No. 2250. If by implication a reference is being made to the substitute amendment. That will be found to relate to a different subject.

Mr. Vice-President: Your contention is that it is not right to move amendment No. 62 in List IV here

Mr. Naziruddin Ahmad: Yes, I want to clarify the position.

Mr. Vice-President: The position is quite clear and the commonsense view is that it should come here.

Mr. Naziruddin Ahmad: In that case we should also get an opportunity of coming in by reference to other amendments. In that case I shall be happy.

Mr. Vice-President: I shall try to accommodate you as I have done except in the case of verbal amendments.

Shall we now go on to amendment No. 2250, standing in the name of Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar: Not moving.

Mr. Vice-President: In that case amendment No. 59 in List III falls through.

Amendments Nos. 2251, 2252 and 2253 may be moved one after the other.

Amendment No. 2251 is passed over as the honourable Member is not in the House.

Amendment No. 2252 is in the name of Shri Rohini Kumar Chaudhari.

Shri Rohini Kumar Chaudhari (Assam: General): Sir, here I am, moving an amendment after all Sir, I move:

> "That in clause (3) of article 149, for the words 'autonomous districts' the word `State' be substituted."

I think, Sir, I have to cut short my jubilation because there is an amendment to this amendment and I think that it would be more acceptable. Therefore, Sir, I merely move this amendment so that the other one may be moved.

Mr. Vice-President: The amendment to this amendment stands in the name of the Honourable Shri Gopinath Bardoloi.

The Honourable Shri Gopinath Bardoloi (Assam: General): Sir, I move:

"That with reference to amendment No. 2252 of the List of Amendments, after the words `autonomous districts of Assam' the words `and the constituency comprising the Cantonment and Municipality of Shillong' be added."

It will be seen, Sir, from the amendment that has been proposed by Mr. Krishnamachari, which I hope the House will accept, that the old formula of a lakh of population has been substituted by 75,000 population. That could apply I feel to all the places except the "autonomous districts of Assam" which the amendment of Mr. Krishnamachari contemplates. By this amendment we propose to exclude also the constituency comprising the Cantonment and Municipality of Shillong. That Constituency consists of about 38,000 population. At present it represents not only a constituency with a seat for a male, but also a female constituency. That is to say, a constituency of less than 40,000 people, represents two seats today. To exclude it altogether from the category of a constituency without allowing any representation whatsoever would in my opinion be very wrong. In view of that, I have tabled this amendment and I hope the House will accept it.

In connection with the amendment which has been tabled by Mr. Rohini Kumar Chaudhari, I want to add this only. What that amendment proposes to do, is to exclude altogether the Province of Assam from the operation of the clause about the lakh population. I feel, Sir, that with the acceptance of the amendment proposed by Shri Krishnamachari our difficulty about the number of seats will be easy to solve. What is more, the difficulties which might otherwise arise--the same sort of difficulties that have arisen in this Assembly over the number of seats--would be obviated if we accept a general formula. In my opinion the 75,000 formula is a good one. Therefore, I do not think there is any necessity for taking into consideration the motion of Mr. Rohini Kumar Chaudhari tabled in No. 2252. I therefore request the House to accept my proposal that the constituency comprising the Cantonment and Municipality of Shillong be excluded from the operation of this 75,000 clause proposed by Mr. Krishnamachari.

Mr. Vice-President: The next amendment No. 2253 is in the name of Rev. Nichols-Roy. As he is not in the House it is passed over.

(Amendment No.2254 was not moved.)

The Honourable Dr. B.R. Ambedkar: Sir, I beg to move:

"That for the proviso to clause (3) of article 149, the following be substituted:--

> `Provided that where the total population of a State as ascertained at the last preceding census exceeds three hundred lakhs, the number of members in the Legislative Assembly of the State shall be on a scale of not more than one member for every lakh of the population of the State up to a population of three hundred lakhs and not more than five members for every complete ten

lakhs of the population of the State in excess of three hundred lakhs:

Provided further that the total number of member sin the Legislative Assembly of a State shall in no case be more than four hundred and fifty or less than sixty'."

Mr. Vice-President: There are a number of amendments to that amendment. Shall I call the movers one after another? There are amendments Nos. 31 to 34. No. 31 stands in the name of Mr. Sidhwa.

Mr. R. K. Sidhwa (C. P. & Berer: General): I am not moving it, Sir.

Mr. Vice-President: No. 32 stands in the name of Prof. Shibban Lal Saksena. The honourable Member is not in the House. Nos. 33 and 34 stand in the name of Shri Kamleshwari Prasad Yadav; he is not in the House. Then we come to No. 49 standing in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: I beg to move:

"That in amendment No. 2255 of the List of Amendments, in the proposed first proviso after the words `the last preceding census' the words `of which the relevant figure shave been published' be inserted.

Sir, the principle has already been accepted.

Mr. Vice-President: Then we have amendment No. 63, standing in the name of Shri Jaspat Roy Kapoor.

Shri Jaspat Roy Kapoor (United Provinces: General): Sir, I am not moving it. Nor am I moving amendments Nos. 64 and 65.

Mr. Vice-President: Then we have No. 66 standing in the name of Shri T. T. Krishnamachari.

Shri T. T. Krishnamachari: Sir, I beg to move:

"That in the proviso to clause (3) of article 149, for the words `three hundred' the words `five hundred' be substituted."

This, I think, will not necessitate the House accepting the amendment of Dr. Ambedkar. Dr. Ambedkar's amendment seeks to explain why and wherefore the limit should be raised from 300 to 450; the logic of it is explained along with the manner how it is to be computed, but this is not necessary in view of the fact that there will be a body coming into being, whether constituted by the Provincial Legislature or by Parliament in whichever way the House might ultimately decide, which will definitely lay down how the maximum of the number of Members of each Lower House of the Legislature in a Province should be arrived at. Therefore, I think it is not necessary to go through the process of explaining in what manner the number is to be raised beyond the figure 300.

It is also felt that the figure 450 may not be adequate in the case of the large provinces with a growing population, particularly, for instance, U. P. and Madras, where the population is much above the 50 million mark. Therefore it was felt that 500 will not be an unduly large number in view of the fact that the House itself has approved of this limit for representation to the House of the People so far as the Centre is concerned.

These factors have emboldened me to move this particular amendment which I think appropriately enough should be an amendment to Dr. Ambedkar's amendment and which I hope he would be good enough to accept and withdraw his own amendment, so that the House can decide straightaway whether it would like the figure to be raised from 300 to 500.

Sir, I move.

Mr. Vice-President: Then we come to No. 2256 standing in the name of Begum Aizaz Rasul.

Begum Aizaz Rasul (United Provinces: Muslim): Sir, I move:

"That in the proviso to clause (3) of article 149, for the words `three hundred' the words `four hundred and fifty' be substituted.

The House will remember that last year when the discussion on the different clauses of the Constitution was taking place, the House decided that the maximum number of Members in any House in the Provincial Legislature should not exceed 300. Later on, it became apparent that my Province, the United Provinces, stood to lose a great deal by this clause. The population of the United Provinces, is over 55 million and it would be very unfair to that Province if the maximum number of Members for the Lower House was fixed at 300. I think this honourable House will agree that some amendment in that direction is necessary. The reason why I supported the maximum number of 300 members last year was that a House consisting of more than 300 Members would be a very unwieldy House and the discussions in a very big House on legislation would not give results that would be conducive to good working of a legislature in a State. But as I have made it clear, our Province stands to lose a great deal if this maximum number is adhered to and I am therefore moving this amendment.

I am glad to see that the Chairman of the Drafting Committee, the Honourable Dr. Ambedkar, has also seen the injustice and the unfairness of limiting the number of Members to 300 and is moving an amendment to that effect. My amendment, therefore, is strengthened a good deal by the amendment that has been moved by the Honourable Dr. Ambedkar. I hope that the number of 450 will be accepted. Though according to the population our number really should have been above 550, considering that a House of 550 or more would be an extremely unwieldy House, I feel that the number of 450 serves the purpose and we would be willing to make a sacrifice and have a lesser number of Members than our population demands. I hope, therefore, that this amendment of mine, if it is supported by the Honourable Dr. Ambedkar, will be accepted by the House.

With these few words, I move this amendment.

Mr. Vice-President: There is an amendment to this amendment, No. 35 of List No. 1 standing in the name of Pandit Thakur Dass Bhargava. Is he moving it?

Pandit Thakur Dass Bhargava (East Punjab: General): I am moving another amendment, Sir.

Sir, I beg to move:

"That with reference to amendment No. 2249 of the List of Amendments, in clause (3) of article 149, after the word 'census', the following be added:--

> `except in the case of East Punjab and West Bengal where fresh census will be taken to ascertain the population before the first election sunder this Constitution'."

This is a very simple amendment and I need not take the time of the House for pressing it. The exodus has resulted in the variation of the proportion of the population in the Punjab and West Bengal and the population concerned is not so trifling as to be ignored. Therefore, it is absolutely necessary that fresh census should be taken. If fresh census is not taken, then some other means must be found whereby the population of these parts may be ascertained rightly. Unless this is done, the difficulty will be that in regard to reserved constituencies, such communities as for instance, the Muslims, who have gone away from here, five million of them, will get much more representation than would be allotted to the Hindus and Sikhs, who have come in very considerable numbers--I think they are more than four millions. Therefore, my submission is that either fresh census should be taken or some other steps should be taken to see that these words "last preceding census" do not entail hardship to the rest of the population, who have come here.

I, therefore, submit, as was observed by me two days back that either a fresh list of electors should be so prepared and the population should be ascertained from that source if that is possible, but my humble submission is that it will be more or less a conjecture. The right thing would be to take a fresh census of these two Provinces before the first elections are held.

Mr. Vice-President: You may also move your next amendment.

Pandit Thakur Dass Bhargava: So far as this amendment is concerned, this relates to Amendment No. 2260 and I will move it after that amendment is moved.

(Amendments Nos. 2257 and 2258 were not moved.)

Mr. Vice-President: Amendment No. 2259 stands in the name of Pandit Thakur Dass Bhargava and two others and amendment No. 2263 stands in the name of Prof. Shibban Lal Saksena. These two amendments are of similar import. Amendment No. 2263 may be moved.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. Vice-President, Sir, I beg to move:

"That for amendment No. 2263 of the List of Amendments, the following be substituted:--

`That after clause (3) of article 149, the following new clause be inserted:--

> (3a) The ratio between the number of members to be allotted to each territorial constituency in a State and the population of that constituency as ascertained at the last preceding census of which the relevant figures have

> been published shall, so far as practicable, be the same throughout the State'."

Sir, if we glance at clause (3) of article 149 together with the amendment of Mr. Krishnamachari, just moved, in every Legislative Assembly, we shall have the maximum of 500 and a minimum of 60, but there is no provision that every constituency shall be equal. In my Province of U. P. there may be one constituency of 25,000; there may be another constituency of 2 lakhs and a third even 3 lakhs. This is something which leaves a lacuna in the Constitution. I cannot understand how the constituencies can be so different, one having 1 lakh, another 2 lakhs and a third 5 lakhs. This is certainly a grave lacuna in this Constitution.

I only want to draw the attention of the House to sub-clause (c) of clause (5) of article 67, wherein we have provided, although it is one representative for every 5 to 71/2 lakhs, that the ratio between the number of members to be elected at any time for each territorial constituency and the population of that constituency as ascertained at the last preceding census shall, so far as practicable, be the same throughout India. It is provided that the constituencies shall be equal and that means if in the U. P. we decide to have constituencies of the average size of 61/4 lakhs, then so far as practicable, the representation will be equal. But this will not be so in actual practice; one will be 5 lakhs and another 71/2 lakhs. Therefore all the constituencies shall be equal and the same throughout India. Similarly I want in the States also the same and when there are various constituencies, they must be nearly equal. I think that unless this is provided for in some of the provinces, there will be grave consequences. There may be provincial jealousies which may play a role; some may get the upper hand and may be able to provide those seats. They may have more seats, having one for 10,000, and there may be others where they do not want to give more seats and they may provide one seat for 2 lakhs. I therefore think that what we have provided as safeguard in article 67 should be followed. I hope, Sir, this amendment will be accepted by the House, especially Provinces like East Punjab and West Bengal who will be particularly affected. Sir, I move.

Mr. Vice-President: Amendment No. 2259 cannot be moved, but it can be voted on. Does Pandit Thakur Dass Bhargava want that a vote should be taken on this?

Pandit Thakur Dass Bhargava: No, Sir.

(Amendments Nos. 2260 and 2261 were not moved.)

Mr. Vice-President: Amendment No. 2262. Verbal; disallowed.

Pandit Thakur Dass Bhargava: With your permission, Sir, I move an amendment to Mr. Shibban Lal Saksena's amendment number 67, which runs thus:

> "That after clause (3) of article 149, the following new clause be inserted:--
>
> > `(4) The ratio between the number of members to be elected at any time for each territorial constituency and the population of that constituency as ascertained at the fresh census mentioned in clause (3) shall so far as practicable be the same throughout the East Punjab and the West Bengal Province'."

In moving this amendment, Sir, I base my case on article 67 (3) which we have already passed. I have just heard an argument from my honourable Friend Mr. T. T. Krishnamachari who said that they want to arrange the constituencies in such a manner that such constituencies as have not got facilities of communication might be given a less number of electors whereas those constituencies which are developed in point of communication etc., may not have the same number of electors. My humble submission is that this will not be fair. If you do not make all the constituencies equal or so far as practicable equal in the provinces, there will be much confusion and bitterness. I understand the real notion of democracy is one man one vote and not a collection of men and a collection of votes. It is not areas which we are recognising, but the number of population which we are recognising for giving a candidate to a particular constituency. Therefore, my humble submission is, that the principle which the House has already accepted in relation to article 67(3) is the sound principle. Otherwise it might happen that in East Punjab and West Bengal such constituencies might be formed as may not be equal for all the communities. This will engender a great amount of bitterness and confusion. Therefore, my humble submission is, so far as East Punjab and West Bengal are concerned, first of all a census must be taken and after that, it will be best to have as far as possible constituencies with equal numbers of population. If the original amendment of Mr. Shibban Lal Saksena is passed by the House, the difficulty in East Punjab and West Bengal would be that the last census is not accurate and does not represent the true percentage of the communities. Therefore, I have already moved that a census must first be taken and then the constituencies must be so arranged that they represent almost equal number of the population.

Sir, I move.

Mr. Vice-President: The article is now open for general discussion.

Shri R. K. Sidhwa: Mr. Vice-President, Sir, in clause (3) of this article, there was originally a proviso that the total number of Members in the Legislative Assembly of a State shall in no case be more than three hundred or less than sixty. When this proviso came up for discussion last year, the House will remember, I opposed it very strongly; but, Sir, I did not carry the House with me. I am very glad that on second thought, the Drafting Committee have thought it themselves advisable to make an improvement on this proviso, and remove the words three hundred and increase it to four hundred and fifty. There is an amendment now proposed that the maximum should be five hundred. I am at least glad that though the fullest latitude and fullest opportunity according to the population,--will not be given even under this maximum, this deficiency which would have considerably come in the way of equal representation in the legislature has been removed.

Similarly, Sir, last year, when we were discussing one of the clauses regarding the term of the legislature which was proposed by the House as four years, I moved an amendment to extend it to five years; and the House did not accept it. But when our Constitutional Adviser went to foreign countries, he was advised that in Ireland and other countries, the term of a legislature was five years; and the proposal has come before us and that we have accepted. This shows that our amendments are not want that credit to myself; but I am very glad that this amendment has been brought before the House today after mature consideration.

It has been stated, Sir, that the larger the number of members, it will be a cumbersome Assembly. I cannot understand this. If three hundred is not an unwieldy number, I fail to understand how the number five hundred could be regarded as cumbersome. Why should we be apprehensive of a larger number? Are there not in foreign countries legislatures of six hundred and seven hundred? You are copying the Constitution of the Parliament of England. Are there not 600 members in the House of Commons? I want to know where is the harm. It these provinces the United Provinces and Madras, which are the largest, are not going to accommodate and give an equal right of returning members to the legislature, then, they have no business to remain so large. They must be prepared for a partition if they are not going to take in 600 members according to their population. I am of the view, Sir, that if there is to be one member for every 75,000 of the population, the number of seats in the United Provinces comes to 650, and why should they deny that right to 150 members. If you are afraid of a larger number of members in your province, you must be prepared to increase the limit from 75,000 to 1,25,000. That is a different matter. So long as you accept a certain percentage or proportion, then there must be uniformity and you should not deny the right of returning members because you are a big province. Provinces must be prepared to accommodate everybody; one should not say that he has no accommodation and therefore he is not prepared increase that number. Similarly is the case of Madras. If there are five crores of population, there must be 500 members. But, with all that, I am really very glad, and I congratulate the Drafting Committee, that they have, though at a late stage, seen the wisdom of increasing the maximum number. Sir, I entirely support the amendment of my friend Mr. Naziruddin Ahmad about census and I go further than that and support my friend Pandit Bhargava. This matter has been repeatedly stated in this House that you cannot ignore the exodus and the number of persons who have migrated from one province to another and without taking a proper census, you cannot be really doing service to that class of people who have unfortunately come out. I know the Constituent Assembly has issued an order to the Provincial Governments that irrespective of residential qualifications, their names should be entered in the electoral rolls; but I know in certain provinces, *e.g.,* in Bombay, it is not being fully followed. It is merely an executive order and the authorities are not going to take that into consideration seriously because they feel that it is a very expensive method and unless they are given sufficient money for the purpose, sufficient enumerators, etc. It is not possible to put in the census all those refugees who have come out from Pakistan. I therefore feel, while there has been no official announcement on this matter, Dr. Ambedkar should make an official statement on this matter as to really what would be the position even under the amendment of Mr. Naziruddin which I understand is going to be accepted. It is stated latest census' What is the meaning of that. Will it mean that all those who have come from Pakistan will be really enumerated in the electoral rolls? If that is so, the language is not very clear and some sort of declaration will have to be made, if we are not going to put that in the Constitution, that the provincial Governments should bear that in mind in preparing electoral rolls.

Sir, I am happy that an improvement has been made in the proviso that whatever the number, the members should be elected according to the population basis that we are going to accept, *viz.,* 75,000. With these words I support, Sir, this article.

Sardar Hukam Singh (East Punjab: Sikh): Mr. Vice-President, Sir, I will confine myself to the amendment moved by Mr. Thakur Dass Bhargava and I fully support that. It is very essential that census must be taken before elections are held. Mr. Thakur Dass Bhargava has confined himself to two provinces and as we know, there has been mass migration from these provinces. If we were so rely on the previous or last census, certainly it would be very unfair to these provinces. I take this opportunity of bringing it to the notice of the Government that besides being unjust and unfair to the provinces, if this last census were to be relied upon, it will be particularly harmful to my community--the Sikhs. As is well known, they have not confined themselves after coming over from the West Punjab by settling in the East Punjab. They have gone further and in large numbers to the Provinces of Delhi and U. P. If we were only to depend upon the previous census, and for the present only fresh electoral rolls were to be prepared, then as we are proposing in the new constitution that seats would be reserved, as is so far provided in the Draft--and we do not know if this will be changed afterwards but so far we can safely say that seats are to be reserved on the population basis--then it will be very unfair. Mere preparation of electoral rolls would not give them sufficient representation because in Delhi and U. P. they would not get any representation if the last census were to be relied upon. My humble request to Government is that census should first be prepared and then elections should be held and particularly of these provinces, Punjab and Bengal because otherwise it would not only be simply unjust and unfair but would be definitely harmful to my community.

Dr. Monomohan Das (West Bengal: General): Mr. Vice-president, Sir, some apprehension appears before our mind about the word last preceding census' in article 149. This point was cleared by our Honourable Law Minister during the time of the discussion of some previous articles. Some of our friends have brought amendments to the effect that new census should be taken, at least in the provinces of West Bengal and East Punjab before the elections are fought. I like to add one-point to the arguments that have been put forward for taking a new census before the elections. Sir, vehement propaganda by some political parties was carried on during the last census of 1941 in Bengal. The contention of the propaganda was that Hindus as a nation should not give any caste against their numbers. So about 44 lakhs of Hindus were mentioned with no caste mentioned against them. From the census it cannot be known how much or what part of the 44 lakhs of Hindus are from Scheduled Castes and what part are from Caste Hindus. Now a controversy has arisen between the Scheduled Castes of West Bengal and the Caste Hindus. The Caste Hindus claim that all these 44 lakhs of Hindus belong to Caste Hindus only and the Scheduled Caste people claim that a substantial part of this 44 lakhs are Scheduled Castes.

Shri Mihir Lal Chattopadhyay (West Bengal: General): May I know whether a person is bound to give his caste when the census is taken?

Dr. Monomohan Das: I am not speaking of the question whether he is bound to give his caste or not.

Mr. Vice-President: Will you please allow me to make a few remarks. There is a sense of grievance and as I have said, whatever the technicalities of the case be, let the sense of grievances be ventilated. Very often when a grievance is ventilated, it loses half its rancour or its passion. Remember that you wanted five minutes but you have already spent five minutes.

Dr. Monomohan Das: If a new census is to be taken before the elections, then we have nothing to quarrel but if for some reasons, the new census is not taken before the elections and the records of the 1941 census be taken as our guidance for the new elections, then this point must be solved by the Government. I mean, Sir, what part of this 44 lakhs Hindus are Caste Hindus and what part of them are Scheduled Caste. Sir, I thank you for this opportunity.

Shri Rohini Kumar Chaudhari: Mr. Vice-President, Sir, I hope honourable

Members will excuse me if in this discussion I speak only of Assam and nothing but Assam.

Honourable Members will be pleased to recollect that a short while ago I read out an amendment in which I had asked for making an exception in the case of Assam. I wanted such an exception because there was this qualification of one lakh population for a constituency. If that condition had remained, a great mischief would have been done to the people of the province of Assam. But fortunately that condition has been removed by the amendment which the House was pleased to accept and which was moved by Mr. T. T. Krishnamachari. In order to make the position more comprehensible, I would like to draw the attention of the House to page 188 of the Draft Constitution, and Part I of the Table there. There, the autonomous districts have been enumerated. There are the Khasi and Jaintia Hills District, excluding the town of Shillong, the Garo Hills District the Lushai Hills District, the Naga Hills, the North Cachar, and the Mikir Hills portion of Nowgong and Sibsagar Districts. Now, in the Khasi and Jaintia Hills District, as also in the Mikir Hills portion of Nowgong and Sibsagar Districts, there is a large population which does not belong to the tribal denomination; and if article 149 stood as it did originally, great harm would have been caused to these non-tribal people of these areas. If honourable Members will kindly look at sub-clause (5) and (6) of article 294, they will find this--

"(5) The constituencies for the seats reserved for any autonomous district of the State of Assam shall not comprise any area outside that district."

So if the position had stood as it was before, then a portion of the city of Shillong--the Cantonment and Administration of Shillong, will not come under the constituency of the Khasi and Jaintia Hills District at all.

In article 294, clause (6) it is stated--

"(6) No person who is not a member of a scheduled tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district....."

That is to say, if any portion which has a large population of non-tribal people is included in the autonomous district, that large portion of non-tribal people will be entirely disenfranchised. In that case, it is meaningless to have any right or franchise, if it does not take along with it the right to stand for election.

So far as Shillong is concerned, it has been excluded from the Khasi and Jaintia Hills, vide Part I of Table on page 188. If the population of Shillong is less than 75,000, then Shillong will not have any separate constituency. But by this amendment which was moved by Mr. Bardoloi, an exception has been made in the case of Shillong. If it stood as it was, in that case, the non-tribal people would not be included in the Khasi and Jaintia Hills, and they will be completely disenfranchised. The same difficulty would be felt in the case of the Mikir Hills also, because if the area which is inhabited by the Mikirs only are taken aside, then the non-tribal population in the Mikir Hills will not come to 75,000.

Now, one difficulty has been removed, by excluding Shillong from the operation of this 75,000 formula. My object in moving the amendment was that in order to remove all the complication Assam might have been made exceptional together. In the past, Assam has been made an exception in various matters, both in favour of and against Assam, mostly against Assam. I think there was at one time exception made in the case of Assam being considered a province--that was recommended by the Cabinet Mission. Similarly, it might have been possible and it might have been better if Assam had been entirely excluded and my amendment accepted. But wiser heads have thought that my amendment had better not be moved, and I thought, Sir, that I had to agree to that.

Mr. Vice-President: But you have not thanked me, Mr. Chaudhari, for making an exception in your case and allowing you to speak, though you have not moved the amendment.

Shri Rohini Kumar Chaudhari: Thank you Sir; but I did not speak on my amendment.

Mr. Vice-President: That is all right. I only wanted to make my position clear to the House. I allowed the honourable Member to speak, in my own unconventional way; he only read out the amendment. The convention was broken because Mr. Chaudhari had something important to talk about areas in Assam which had not been touched upon by Mr. Bardoloi.

Shri Raj Bahadur of Matsya Union.

Shri Raj Bahadur (United State of Matsya): Mr. Vice-President, Sir, I regret I have to express my dissent from the provisions prescribing and restricting the maximum number of representatives provided for the Lower House in the Provinces. It has been restricted to a maximum of 500, and it has been provided that for every one lakh or 75,000 there shall be one member. But this provision is bound to lead to a disparity and inequality in the right of representation allowed to the people from province and province. We can easily see that in smaller provinces the people would get better right of representation, and hence a better vote, as compared to people in provinces where the population is bigger. For instance, if we take Bihar and Orissa and compare it with Madras or U. P. the people of Bihar and Orissa will be getting one member for every 75,000 and the people of U. P. will be getting hardly one member for a lakh and 25 thousand or a lakh and 50 thousand. I submit it would have been better if the scale of representation had been universal and uniform for all the provinces. It is obviously desirable that in our Constitution, the scale of representation should not vary from province to province or from State to State. Even the argument that the House would become cumbersome if no maximum is fixed, does not, I think cut at the root of my suggestion. We can see that in the House of Commons in England there are as many as 640 members and during the course of an experience of 300 years that number has not proved cumbersome or unwieldy to the oldest democratic State in the world. Therefore, it cannot be unreasonable to suggest that the people of U. P. or Madras should be allowed the full quota of members which may be calculated on the basis of one member for every one lakh or 75,000, of their population. Sir, I am submitting all this because I am interested in this matter as a representative of a State vitally affected by the provision. The States which have merged or which are about to merge with the U. P. or other provinces are all interested in this question, because if you restrict the number of seats for example in U. P. or Madras to a maximum of 500, the people of such States which propose to enter these provinces will obviously stand to lose. The people of Bharatpur and Dholpur are eager to merge their identity with the people of U. P. because of their traditions, history, folklore, culture,, and language, etc., etc. If the people of Bharatpur and Dholpur are allowed the right of self-determination, which, I am sure, no Member in this House would deny them and if they go to the U. P., it will not be fair if all the 500 seats are already taken up by the present population of the United Provinces and the people of Bharatpur or Dholpur or of any other State which joins U. P., are deprived of their right of representation in the legislature.

Secondly, there is the question of those States which would merge after the first elections. We know that the boundaries of our provinces are still in a ferment. From day to day experience, we might come to realise that certain provincial boundaries have to be changed and consequently the population of certain areas would be affected. There should be some provision by which the population of the affected areas are secured the right of representation. Therefore, I submit that if there had been no maximum fixed it would have been much better. When the power to de-limit the constituencies and to take decisions on other consequential matters have been left to the discretion of provincial Governments under article 291 and 312, it would be proper if the right of fixing the maximum number of members in the legislatures is also left to the discretion of the provinces or the States concerned.

Next, I wish to submit that the grounds of disqualification of a voter as provided in clause (2) of article 149 have been made exhaustive. We notice that these grounds have been limited to certain conditions only, and I think that the powers and authority of the legislatures of the provinces, also have been restricted, in this respect to the grounds mentioned in the said clause. But it is possible that cases of high treason, sedition, undischarged bankruptcy or illiteracy may have to be included among these grounds. Hence it would have been better if the list of these grounds is not made exhaustive but only illustrative.

Lastly I have to submit that so far as the amendment moved by Prof. Shah is concerned, I do not see any ground for its acceptance. To disqualify a voter no certificates of unsoundness of mind or body are needed. When the grounds of disqualifications are laid down in the Constitution or in the Provincial Acts, there should be no necessity for such a provision. To revert to my first tow points, I may submit again that in view of the changing boundaries of provinces and States, my suggestions may still be considered.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Mr. Vice-President, while we are in the midst of discussion of article 149, I think quite unexpectedly a matter of very great importance has been raised and, fortunately several honourable Members have realised the importance of the subject and given their views or it.

Sir, there are two things in particular which should demand the vary serious consideration not only of the Members of the House but also of those who are in authority. In the present case by `those in authority' I mean my honourable Friends Dr. Ambedkar, the Honourable Minister in charge of the Bill, I mean the Draft Constitution.

Shri H. V. Kamath: This is not a Bill.

Pandit Lakshmi Kanta Maitra: I quite realise that. But Dr. Ambedkar is the one Member who has been piloting this measure in this House and so all the credit and discredit go to him. And I want to warn him that if there are certain matters which are likely to bring discredit to his fair name, he should desist from talking for a moment and list end to me.

Sir, the two points to which I would confine my observation now are, one, the representation in the provincial legislatures based on certain figures of population and, two the principle of uniformity. What is more important and pertinent to the point is that, besides the quantum of representation, there is the other vital principle involved, namely, that there should be absolute uniformity with regard to the scale of representation based on that population.

Two amendments have been moved in this connection, one by Pandit Thakur Dass Bhargava which seeks to further amend the amendment moved by Prof. Shibban Lal Saksena. When these two amendments are read together, it will be realised that what is sought to be done by these amendments is nothing extraordinary, but bare minimum justice, political justice to all concerned. In a democratic State, the mechanics of representation cannot be based on any haphazard or slipshod foundation. There must be a definite principle or principle son which the whole scheme of representation should be based. It should be based in such a way that the fundamental concept of democracy does not suffer. I think this proposition is beyond challenge.

Now let us see how it is going to affect certain parts of the Indian Dominion and certain States within that Dominion if article 149 is accepted by the House as it is. It is all very well to say that representation will be based on population which has been ascertained at the last preceding census. Theoretically it is absolutely unexceptionable, provided the Government is in the mood to wait decennial census would be due about the year 1950, a year hence. If it is to be held preparations must be set on foot from now on or six months hence if the census is to betaken very seriously and is to be conducted expeditiously before the year 1950 runs out. Now, on a previous occasion in connection with an earlier article, I explained at great length the dangers, the difficulties that certain provinces in India would have to suffer if the previous census figures, which for all practical purposes would mean the census figures of 1941. are acted upon in the case of West Bengal, East Punjab, Bombay and Delhi. The present amendment no doubt relates only to the two provinces, West Bengal and East Punjab. The House will remember that with regard to these four provinces including West Bengal and East Punjab, I emphatically declared--and I am glad that several members who followed me after that supported me--that it would be practically useless to depend on the census figures of 1941 with regard to representation in the new scheme of things. Who is therein this country, at least in this House, who does not know that the census figures of certain provinces were cooked up in 1941 with the object of getting political advantage in the succeeding stage of political reforms? That is all well-known, and is it necessary for me to repeat it in this House in season and out of season to those who are in authority? There should be a clear realisation of this position. Now, we are going to start on a clean slate. (At this stage the lights failed in the Chamber). It is all darkness. I see nothing but darkness for the province of West Bengal if this political injustice is done to them, as also in the case of East Punjab.

Mr. Vice-President: The needful will be done as far as possible. You please continue, Pandit Maitra.

Pandit Lakshmi Kanta Maitra: The difficulty is that I do not see whom I am addressing.

Honourable Members: You need not see our faces.

Pandit Lakshmi Kanta Maitra: Sometimes faces give encouragement. Sir, the House is aware that this principle of representation was accepted in the case of the Central Legislature, the Parliament of India, in article 67. The amendments now moved propose to bring the representation in the provincial legislature in line with that which has been provided and accepted by the House for the Parliament. Sir, the arguments I advanced on the last occasion need not be repeated now, but some of them will bear repetition here.

With regard to my ill-fated province of West Bengal and also East Punjab, I want the House to realise that the vast migration that has taken place in these two provinces should be officially recognised. It has been recognised for relief and rehabilitation to some extent, but for political adjustment, for granting political rights and franchise, this recognition is equally necessary. I deem it more necessary than the question of rehabilitation and resettlement. You cannot effectively rehabilitate and resettle people, unless at the same time you give them political rights and privileges for the coming governance of the country. Therefore, Sir, I think that this question should be decided by the authorities under pressure from this House. There should not be any further dilly-dallying or shilly-shallying with this question. The problem is very simple. It is this that the 1941 census figures have not been accepted by us with regard to the province of West Bengal. That is also true of East Punjab. West Punjab has been completely denuded of Hindus and East Punjab has been similarly denuded of Muslims. Therefore the census figures of 1941 are absolutely no guide to the real position of things with regard to East Punjab. With regard to west Bengal, I pointed out--and I point out this once again and, I hope, for the last time--that this migration started not from 1947 only. This migration started since the end of 1941 when Japan entered the war against Great Britain. Vast areas of East Bengal now comprising Eastern Pakistan were evacuated by order of the military aurthorities for various military preparations such as the construction of airfields, areodromes and other military installations. Those areas were completely cleared and the people were driven in quest of their livelihood to the province of West Bengal, particularly to Calcutta and Greater Calcutta, the industrial areas where numerous production centres had been opened. Thousands and thousands of people came over with their families to West Bengal from areas like Chittagong, Tippera, Chandpur, etc. for personal safety from the Japanese bombs which were dropped on those areas and which was not a pleasant experience to have. Then came the disastrous famine of 1943. My province has the unique distinction of having a number of calamities, one closely following another, and yet the province has survived. Do you want it to survive or do you want to give it a death blow and extinguish it for ever? Are you going to give West Bengal minimum political justice or not? I ask this simple question and want a straight answer. Sir, the famine of 1943 brought lakhs and lakhs of people to West Bengal from East Bengal in quest of food. Even today in West Bengal the price of rice per maund is Rs. 16 or Rs. 17,whereas it is about Rs. 50 in East Bengal, which is supposed to be the granary of Bengal. In those days, there was more chance of getting food in West Bengal and Calcutta than in the desolate corners of East Bengal. We do not know what is the population position now. The Famine Commission put the deaths at thirty lakhs. Every community claims that it is that community who suffered most.

An Honourable Member: It is the Scheduled Castes who suffered most.

Pandit Lakshmi Kanta Maitra: I have heared this statement from responsible quarters that it is the Scheduled Castes who suffered most. It is true. It is the women and the children who were the worst suffers. The whole point of my contention is that in this province after the last census had taken place the situation had developed from year to year to such an extent that the whole equilibrium--if it existed at all--in the proportions that are given in the census figures, has been completely destroyed. Then came the division of the country and the partition of the Province of Bengal into East and West. The House is aware that the undivided province of Bengal got cut up into three parts--West Bengal, East Bengal and North Bengal: the districts of Jalpaiguri and Darjeeling were allotted to West Bengal. It had a tongue of Pakistan territory in between and migration has been going on both in the northern area from this area of Pakistan and throughout the southern portion.

Mr. Vice-President: What I am afraid of is that both of us coming from the same province, and I being in agreement with you views, Members may say that I am partial. That is an ordeal which I would like to avoid.

Pandit Lakshmi Kanta Maitra: I do not want to create any embarrassment for the Chair. So far as I am concerned, I am not a novice in parliamentary activities and I get the indulgence of the House. If the House so desires I will stop.

Honourable Members: Go on, go on.

Mr. Vice-President: Now it is all right. You can go on.

Pandit Lakshmi Kanta Maitra: This migration has been going on and it is perfectly open to the authorities, if they want to shirk any responsibility for the unfortunate victims from East Bengal, to quarrel about the figures but the fact is that migration is continuing. Does my honourable Friend, Dr. Ambedkar, the hero of this whole show, know that thousands of scheduled casts people are pouring into the Indian Union? I am sure he knows it. I look up to him to take a dispassionate view, because he is the one man whom we can get hold of here quickly, expeditiously and effectively perhaps He is the one man who has to realise the gravity of this and to tell those who differ from him that this is a matter which must be tackled in right earnest. Some say the migration figures go into 15 lakhs. We have our own figures, but 20 lakhs is the official figures of West Bengal.

Mr. Vice-President: Today it is 20 lakhs !

Pandit Lakshmi Kanta Maitra: I can understand the position of the authorities to put down the figures as low as possible, but the fact is that at least 20 lakhs have been driven into the Indian Dominion by the very kind treatment of our friends in Pakistan, and more will continue to come; I am confident of that. But the whole question is: Are these people going to be left in the lurch? They have left their hearths and homes. They have left behind everything. I am talking of West Bengal, because the Punjab case is well known. They have all become destitutes and they have come over here. But there is less appreciation of what is happening there because the facts about it are being much less dramatised. Are these people not going to have any political justice and any representation, when they have cast in their lot with us in this Dominion and when they have settled down here and when they desire that they should be part and parcel of the Indian Union? They in their own way joined in this struggle for freedom and they made their sacrifices which are by no means negligible. It is all very well to say that if we want to take a census of East Punjab and West Bengal the elections will be deferred by one year. What does it matter? Are you going to deprive lakhs of people of their legitimate right of representation in the legislatures of the country? Do you want to have expedition at the cost of justice? That is a simple question you have to answer. Are we anxious to have expeditious elections at the sacrifice of these people? That is for you to answer. I am told that a rule of thumb has been invented by which the electoral roll will go on being prepared and thereafter it will be multiplied by two and the number of the population will be obtained. But why not go about it in a straight forward way and have a general census? With our resources will it not be possible to finish the census business and at the same time carry on the preliminaries for holding the elections? That Constitution has to be finalised and it cannot be finalised before August in any case: there is the Third Reading and all that: then there is the date for its coming into operation and then a date for the delimitation of constituencies. If you start now, you can hold a census for this province. In case you cannot do that, then some arrangement must be made for these unfortunate provinces of West Bengal and East Punjab. They cannot be made to fit in with your census figures because you demand that elections should be held forthwith.

Sir, the observation from an honourable Friend, who is closely associated with the honourable Member in charge of this Bill created some kind of consternation in our mind. His idea seems to be that the scale of representation could vary according to different parts of the country because some parts are well developed from the point of view of communications and others are not. This means that according to his idea--which, I believe, will catch the official mind, and I do not know whether it is a reflection on the official mind--that where 50,000 people can have representation by one Member, in another area 1,20,000 people will have one seat. This would be the height of injustice. Democracy demands that one man/one vote should have an equal value. There is a differentiation in value if 50,000 people are asked to elect one man and 1,20,000 people are also asked to elect only one man. There is a lot of difference. Therefore that will cause great discontent in the whole of East Punjab and West Bengal. This discontent borders on bitterness and I ask the Honourable the sponsor of this Bill, Dr. Ambedkar, to take steps to see how this can be eliminated so that we can go on in this business with perfect amity, concord and goodwill. Let no sense of rankling injustice be left in the minds of those who are clambering for this bare modicum of justice. These two amendments provide that not only shall this representation be based on the figures of population but these figures must be the latest figures from a census to be held for the purpose, be it even an ad hoc census. In any case the census figures of 1941 will be no index of the real population of these areas. There has been a considerable change. That is one point.

The second point is that the sizes of the constituencies should not be made to vary from place to place in the sense that the population should not be made to vary. If you fix one seat for 75,000 or one seat for one lakh, by all means try to see that in every constituency throughout India the proportion is maintained--one lakh people having one representation or 75,000 people having one representation. But it will be a travesty of justice if 50,000 are given one seat and one lakh of people are also given one seat. There will then be enormous scope for jerrymandering. I think I should sound a final note of warning that this condition must cease. The authorities must make up their mind and make a declaration that so far as these two Provinces are concerned the census figures for 1941 will not be acted upon and that a fresh census will betaken or that a fresh mechanism for ascertaining the real population figure of these two Provinces--West Bengal and East Punjab--is brought into action before this particular article is implemented.

Sir, I support wholeheartedly the amendment of Prof. Saksena as sought to be modified by Pandit Thakur Dass Bhargava. I thank you, Sir, and I thank the House also.

The Assembly the adjourned till Ten of the Clock on Friday, the 7th January 1949.

[Translation of Hindustani Speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VII

Friday, the 7th January 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

Article 149-(Contd.)

DRAFT CONSTITUTION-(*Contd.*)

Mr. Vice-President (Dr. H. C. Mookherjee): We shall now resume discussion on article 149.

Shri L. Krishnaswami Bharathi (Madras: General): Mr. Vice-President, Sir, article 149 is under general discussion. Sub-clause (3) is very important. Mr. T. T. Krishnamachari has moved two amendments with a view to induce the scale of representation to 75,000 per representative. The clause refers to a scale of not more than one representative for every lakh of the population and further the proviso limits the number of members to a maximum of 500. The effect of the amendment of Mr. Krishnamachari, if accepted, will be to have not more than one representative for every 75,000 and the maximum of the total strength of the House will be 500. It is very difficult to understand whether an increase in the number of members to a particular legislature will add to the efficiency of the Assembly. But certain major provinces like the U. P. and Madras have desired this increase, and it is perhaps well that we accept it, but at the same time, I would like to impress the need for not filling up the total strength or the maximum fixed.

Sir, in America, though the scale of representation is fixed at about 30,000 per representative, I understand, actually it is ten times that number. If for every 30,000 a representative were to be elected, the Senate will be somewhere about 4,000, but really it is must less, and therefore, it must be borne in mind that this is only a maximum and it is for the Provincial Legislatures concerned to fix the number. Some Honourable Members felt the need for adding certain more representatives if States accede or merge later on. I would submit it is not wise to exhaust the number--500--and then ask for more. The wiser course will be to reduce the number, say to 450, at the initial constitution and then, if certain States merge later on after the Assembly is constituted, to provide for them. That will be a better course instead of adding further provisos to the clause.

Mr. Krishnamachari yesterday said that the idea of reducing the number to 75,000 is with a view to provide for backward areas, that is to say, the proportion in certain backward areas will be less; that is, in those areas there will be a representative for every 75,000 whereas in other areas naturally the proportion will be much higher. While I perfectly sympathise with the idea we should not, I feel, Sir, allow any loophole for gerrymandering later on. We have already had a similar provision in article 67, where we have stated that there shall be uniformity of representation throughout India. I would very much like, Sir, that within a province there must be uniformity as, far as practicable in the scale of representation, that is two say, the variation ratio between the number and the total population in one particular constituency shall as far as practicable, be uniform throughout, that particular State or Province. It is not absolutely possible to have mathematical uniformity. We cannot have 82,824 everywhere. It is necessary that we will have some variations, but variation shall not be so great. It cannot be 75,000 in one constituency and two lakhs in another constituency.

Shri S. Nagappa (Madras: General): Not two lakhs but a lakh and fifty thousand.

Shri L. Krishnaswami Bharathi: There is no lakh and fifty thousand here. The principle of uniform scale of representation should be adopted. As far as practicable, there shall be uniformity. Sir, with the maximum of 500, I have certain figures. In the United Provinces the ratio of representatives will be a lakh and ten thousand per seat. In Madras it will be 98,682 per seat on an average, if we exhaust all the 500 seats, which is very unlikely; if the number is reduced, the proportion will be increased. I think though there is the scale of 75,000, both the U. P. and Madras cannot have the advantage because if they have 75,000, the maximum will be exceeded, and therefore, we have a lakh and ten thousand in the U. P. and 98,682 in Madras, per seat.

Sir, no doubt Mr. Krishnamachari said that it is with a view to provide for certain backward areas. I am afraid that cannot be introduced into the Constitution with this principle I mentioned in view.

I must inform this House of certain important matter in this connection Madras is a composite province, consisting of 4 linguistic areas, the Andhras, Tamils, Malabar and Canarese. Sir, there are five districts, know as Rayalaseema in the Andhra part, which are really backward and which deserve every encouragement. There has been some understanding between the two groups of Andhra areas with reference to this matter. Rayalaseema consists of five districts, Bellary, Cudappa, Anantapur, Kurnool and Chittoor. There is another group called the coastal districts consisting of five or six districts, Vizagapatam, East Godavari, West Godavari, Kistna, Guntur and Nellore. In 1937, there was a kind of understanding between these two groups under which Rayalaseema, the famine stricken area, shall have equal representation on the basis of district. Sir, it has to be mentioned that these districts are sparsely populated and they very rightly claimed weightage, and came to some kind of understanding. We have it from there port of the Linguistic Provinces Commission that this matter has not been finally agreed to by the two groups. I do not want to go into the details of the question. I am only submitting that it is only with a view to provide for these backward areas that this limit is reduced. So far as I am concerned, it must be entirely a matter between the Andhras themselves to decide and into which I shall not go. But so far as other areas are concerned, if these five districts, the famine stricken districts of Rayalaseema are given representation at the rate of 75,000 per seat, and other areas have to provide otherwise, the ratio will be 107,000 per seat. I have worked out certain figures. They will show that Rayalaseema will get 116 seats, the rest of the Andhras will get 118 seats, Tamil Nadu will get 216 seats, Malabar 36 seats and South Canara 14 seats on this basis. On this scale of representation, the balance will be entirely upset by this. That is to say, the Andhra group will get 234 seats whereas

Tamil Nad will get 216 seats; the population of Andhras is twenty millions and that of the Tamils is twenty--three million. So, all these things will raise difficulties. It is not in this province alone that we come across this difficulty; I am told similar is the case in other provinces. An honourable Member was telling me that in Bombay there are certain areas which are backward. It is just possible that there are other backward areas also. If we introduce this kind of thing, it will bristle with difficulties and it is not very good that we have it in the Constitution. At the same time, we must have this principle. If this cannot be introduced, at least, we must inform the proper authorities, the Delimitation Committee that as far as practicable, there shall be uniformity throughout the State. That is the most important thing and therefore though I have great sympathy with the backward areas I support the amendment moved by Prof. Shibban Lal Saksena.

Shri Kuladhar Chaliha (Assam: General): Sir, it is really difficult to follow the argument of the previous speaker. We have our own difficulties in our province. For certain reasons, the last census was made in a way which did not show exactly what the population was. It was manipulated in such a way that the party in power had the figures according to their wish. In fact, there was inflation of certain communities and the figures were manipulated in such a way that the correct figures did not come out properly. It was like this: the General community was so reduced that it become only about 39-2 per cent., We find that the Tribal community went up as far as 29 per cent., the Muslims about 22 per cent and the Scheduled Castes about five per cent. If a proper census is taken, probably, the General community would be further increased. Therefore, a census is necessary to be taken in Assam as well. I support Mr. Lakshmi Kanta Maitra that a new census should be taken in Assam; otherwise, the General community will suffer very severely and grievously.

It is necessary that in the fixing of seats and in the allocation of seats to different communities we should be fair and just to everybody. In the last census the figures were so manipulated that the General community has become a minority in Assam and if reservations are to be given with so-called minorities then, I think, they would be further reduced and they will have no proper place in the Constitution. It is like this. The General community has already suffered in the last census taken by the party in power. If reservations going to be given to the tribal and other people who have not got the necessary number, seats will be taken out of the General community and the majority will be reduced to such a minority that they will have to be protected and they will have to be given reservation. I therefore request the House to take this into consideration that a new census should be taken in Assam also.

Apart from that, there has been a certain amount of immigration from Eastern Pakistan and West Bengal. There are certain Scheduled Castes and members of other communities who have also to be properly enumerated. There are a certain number of people who just go there for a few months and come back from Eastern Pakistan. We should as certain the number of these people who go there simply for the purpose of earning something in the tea estates and other places. If without ascertaining these things, seats are given then probably we will be doing an in justice to the General community and other communities. I request the House that proper census be taken for Assam also and Assam be included in the census for which an amendment has been given by Mr. Rohini Kumar Chaudhari.

Shri S. Nagappa: Mr. Vice-President, Sir, this is a very important point especially from the point of view of the representatives of Rayalaseema. I do understand according to the fundamental principles, one cannot ask for weight age but this is not a communal weight age. We are not asking as a matter of social backwardness or political backwardness but this is economically an area that has been backward for centuries and ages and that is why representation given to this area will enable the representatives of this area to fight for their betterment. That was one of the reason why the people of Rayalaseema especially in Andhra Desa have agreed to a pact called the Sree Bagh Pact in 1937 and there they said the representation between Rayalaseema and the Circars will be in the ratio of 6:5. There are five districts in Rayalaseema and 6 in the Circars and these 11 districts have entered into a pact that representation should go, irrespective of population, on the ratio of 6:5 even in the Cabinet but that is a pact entered by only two sections of one and the same province.

Shri L. Krishnaswami Bharathi: Representation in the Cabinet is not in the Pack.

Shri S. Nagappa: We are not asking this representation from Tamil Nadu. Now according to the principles laid down in the constitution here the representation will be given to Madras province and out of that there will be an Andhra quota. Out of this Andhra quota between Rayalaseema and circars we will have our own agreement. For Instance, If the Circars get a seat for every 125,000, for 75,000 the Rayalaseema may get one representative. It solves our problem. Why we ask this is because Rayalaseema is two-thirds of Andhra Desa in area but the population is only one-third.

Shri L. Krishnaswami Bharathi: That is not correct.

Mr. Vice-President: Please do not interrupt the speaker.

Shri S. Nagappa: From the figures here I can give my friend if he wants, the population of Circars is two-third and that of Rayalaseema one-third roughly, but the area in Rayalaseema is two-third of Andhra Desa.

This was the agreement we have entered into and I would request members to see that our agreement is respected. I do not claim this on broad principles; but it is due to the backwardness of the area economically and politically, that we have to claim this.

Prof. N. G. Ranga (Madras: General): Mr. Vice-President, we are all in favour of the general principle that so far as possible there should be no distinction within the same State, between one constituency and another, as far as it quota of representation in the local legislature is concerned. But at the same time there are certain special needs of certain areas based upon their social and economic condition excluding communal considerations, religious considerations, any anti-national or unnational considerations in regard to which certain special provisions have to be made enable the people of the politically and economically backward or under develop areas to stand on their own legs and minimise the distinction between them and the other more advanced areas than if more principle of uniformity were to be accepted. Sir, as Mr. Nagappa has just now told you, the representatives of these two section of the Andra Dasa had met together in 1937 and come to an amicable settlement among themselves. I need not go into details in respect of population or their areas, bug it is true that one area known as Circars is very thickly populated and the other area known as Rayalaseema is very thinly populated. The Circars is also economically a little more advanced and much less subject to famines than Rayalseema. Therefore, these peoples have agreed among themselves that from out of the usual quota of representatives that the Circars should be entitled to according to the principle of uniform representation as between one constituency and another, they would like to give away a portion and distribute it between these districts of Rayalaseema as per their own population basis. Now, this is an agreement that was reached when the Provincial Congress Committee was presided over by Dr. Pattabhi who happpens to be the Rashtrapathi today of the Indian National Congress. I happen to be the President of the Provincial Congress Committee today, and I am bound to honour that agreement. It is the universal wish of the Andhras to see that this agreement is put into practice and is honoured so far as praticable under the present conditions, constitutionally and politically. Small variation this side or that side may have to be made and the parties concerned will be quite agreeable to that but this much of weight age we are all agreed to give to Rayalaseema. How it is to be given in terms of this constitution is a ticklish problem. All these years we have been very much worried about it and it is because of this uncertainty the relations between these two areas have come to be a little strained, because it was felt by the representatives of Rayalaseema that quite possibly this House might stand in the way of the implementation of the Sree Bagh Pact. But now that this House has already given its consent to the principle of a certain amount of variation in the total strength of the population as between different constituencies so far as the Central Legislature is concerned varying from 500,000 to 750,000 as any between any two constituencies, there has arisen the hope in our hearts that quite possibly the House might be willing to make it possible for us to make a similar distinction between the consistencies of Rayalaseema on the one side and the Circars on the others. It is only reasonable on our part to ask for this much of consideration from this House for three reasons. One is, this distinction has already been agreed to so far as the Central Legislature is concerned. Another is, the people concerned in these two areas are within the Andhra Desa and have already agreed upon it and there has been no dissentient voice at all in regard to this matter and the acceptance of this will only be conducive to the development of better relations between these peoples in any one State than in simply sticking to some dull principle of uniformity and then not swerving this side or that side and not making any special provision in favour of any one area within this country. Thirdly, this House also accepted in the case of Assam. Assam also is faced with a similar difficulty so far as the tribal people are concerned. There, in the so-called autonomous tribal are as certain special provisions are made in this constitution in order to protect their interests and in order to safe guard or assure their orderly and speedy progress in the near future.

Sir, for the above three reasons, I appeal before this House, and also before those who are responsible for the drafting of this Constitution, and for helping us in drafting the various alterations we are deciding upon, to accommodate these special needs of Andhra, and thus to help us in looking after the special interests of Rayalaseema, and thus bring about greater harmony between these people.

Sir I have to state only one more fact. The most important consideration that was placed before the Linguistic Commission which visited our areas recently is this. Some of the representatives of the Rayalaseema urged for the immediate formation of the Andhra Province and for the implementation of the Sree Bagh Pact, so for as it is practicable under the present circumstances, in the manner that may be accepted by this House and by Parliament so that it would be possible for the Rayalaseema people also to wipe out all the difference that there may be, between the Circars and the Rayalaseema. If you are to remove the difficulties that stand in the way of their coming together, then I can assure you that so far as this particular area is concerned--and it is nationality separated even now from the rest of the province, or State of

Madras,--it will be possible for the Central Government to create this Andhra province without any difficulty whatsoever,--social economic, religious or financial or any other difficulty. Therefore, I urge most sincerely before this House the advisability of making a special provision in the case of this area, just as it has already agreed to make a special provision in the case of Assam.

Thank you, Sir.

Shri Deshbandhu Gupta (Delhi: General): Mr. Vice-President, Sir, my Friend Pandit Thakur Dass Bhargava has already given arguments in favour of taking census of East Punjab and West Bengal before the next elections take place. I do not wish to take the time of the House, therefore, by elaborating the arguments which he has already advanced yesterday. I only wish to point out that Delhi falls under the same category as East Punjab and West Bengal.

Pandit Thakur Dass Bhargava (East Punjab: General): I mentioned that also.

Shri Deshbandhu Gupta: Thank you. Delhi too is in the same category because not only has there been exodus of many Muslims from Delhi to Pakistan, but Delhi is particularly affected by the large number of people who have came from Pakistan and who are now living in Delhi. Perhaps, Delhi is only city whose population has been almost doubled by these changes of populations. According to the last census, the population of Delhi was about nine lakhs, whereas it is believed that at present the population is somewhere near 19 lakhs; taking the city alone it is about 15 lakhs. It is only fair, therefore, that when this question is considered, Delhi's claim should not be ignored, and that it should be treated in the same manner as West Bengal or East Punjab.

Sir, I have nothing more to say, except that whatever assurances are given and whatever methods are adopted by Government for the satisfaction of East Punjab and West Bengal, for assessing the present populations of these areas which have been affected by the partition on India, the same methods should be made applicable in the case of Delhi as well.

The Honourable Shri Gopinath Bardoloi (Assam: General): Mr. Vice-President, Sir, I am speaking in reference to the amendment of Pandit Thakur Dass Bhargava, in respect of the census in East Punjab and West Bengal. I am sorry to point out that although in this House several references have been made regarding the population of Assam, the case of Assam was not taken into consideration along with those of East Punjab and West Bengal. Mr. Chaliha has just now spoken about the population position in Assam, under the last census. The last census was strongly opposed by the Congress Party in the Assam Legislature in 1941 on the ground that it did not actually represent the actual population strength of Assam. Now, things have very much changed under the partition arrangements and in the altered circumstances that have come into existence in the mean time. According to the official figures that we have got, about three to four lakhs people have come from East Bengal as refugees in the same way as large numbers have come from.........

Mr. Vice-President: May I ask the honourable Members there to take their seats?

The Honourable Shri Gopinath Bardoloi: People have come into Assam in the same way as people from West Punjab have come to East Punjab and people from

East Bengal have gone to West Bengal. A population of four lakhs is not a small number, and to exclude them from any representation would, I believe be a grievous wrong, and it would be unjust. I therefore, suggest that Dr. Ambedkar be pleased to accept, in the category of East Punjab and West Bengal, Assam also. It is more or less, a formal amendment and the facts I have submitted have already been placed before the House. I have only to repeat my request that Assam also may be included in the category of East Punjab and West Bengal. I consider that any attempt at representation, without taking into consideration the iniquity of the last census, as well as the populations that have come into Assam in the meantime, would be something which should not be tolerated. In view of this, Sir, I beg to submit that my proposal to include Assam with East Punjab and West Bengal be taken into consideration.

Shri Kallur Subba Rao (Madras: General): Sir, I wish to make a few remarks on this subject as I come from the Rayalaseema districts. If the constitution-makers had provided in this article for maximum and minimum population strength for a seat, as they have dome in the case of representation of the States in the People's House, it would not have been necessary to speak on this occasion at all. You have provided 75,000 as the minimum, but have not set any upper limit. The difference between the Rayalaseema people and the Andhras is only about this. The Ceded districts are famine districts and are known to be so from the beginning of history. They comprise mainly mountainous areas. I represent a constituency or a taluk which is the largest in area or size with the lowest number of people. Even if you fix the minimum at 75,000 population for a seat, the voters of a constituency like mine would have to go 15 miles to the nearest polling booth to exercise their franchise. That is why we want that, on the population basis, the Ceded districts must be given more representation. And they are economically and politically backward. This drawback of the population of the Ceded districts has long ago been recognised and an agreement reached between the Andhras of the Circars and the Rayalaseema people. This arrangement does not affect Mr. Bharathi or the people of Tamil Nad. We are not going to deny the right or representation of Madura to Mr. Bharathi. We are only considering the representation of the Andhra area and whether Rayalaseema should get more and Circars less under the agreement. That is why we request the House to make a provision for upper limit so that in the State that is going to be formed, there may be amicability and agreement. There is no question of Rayalaseema being against the Andhra province. But the difficulty is one of representation. The population of Rayalaseema is 60 lakhs and that of the Circars is 125 lakhs. I request the House to accept the amendment.

Dr. B. Pattabhi Sitaramayya (Madras: General): Mr. Vice-President, Sir, I am sorry to have to intervene in this debate which has proved to be a somewhat controversial one. But, as one intimately connected with that part of the country around which the controversy has cent red, I feel it my duty to say what we all exactly feel in the matter. There appears to be little more in the controversy than appears on the surface. Whenever a controversial issue arises it is our habit of mind to say to the parties that the involved in it to come together, sit round a table and convince each other by easy arguments of love and not refer it to a third party for arbitration or adjudication. That is a noble principle. This noble principle has been adopted by the Andhra people. They are the second largest community in India, next to the Hindi-speaking people. Even leaving out the 85 lakhs of our people in the Nizam's territory whom we do not want to absorb unless they want to come in,--let there be no misunderstanding,--we who form three crores in all are about eighteen millions in the Madras presidency in the northern part thereof. The Madras presidency has Madras as its capital and there, nearly half the population is Andhra and the other half is in the south of the city. They speak four different languages. In the Legislature of Madras, there is a Babel of tongues. People do not understand one another. But that is different matter.

Sir, we have been asking for a separate province for the last thirty five years. We were asked to wait till a National Government came to power. Through that National Government has now come into existence it appears that the claim for the division of Andhras appears to recede much further than ever before. Whatever it be, we have come to some kind of understanding amongst ourselves.

When I was President of the Andhra Provincial Congress Committee--an office which was thrust upon me--during the regime of the first Congress Ministry, we came to an understanding with the Ceded Districts or Rayalaseema on certain principle and on a very good basis. There it was a question of give and take. The people of the coastal districts, who are more advanced and who enjoy deltaic cultivation, are in every way more prosperous and have got the better of the people of Rayalaseema in trade, in commerce, in industry, in education and in public service, tough the whole of the Andhradesa itself is behind-hand, taken as a whole, when compared to the people of the southern part of the province. As between the two parts of the Andhradesa, the coastal regions are highly advanced and the other areas are highly backward. In these two parts, even the soil conditions are totally different. On cut side you cannot even get a stone with which to drive away a dog, and on their side, you cannot get a clod of earth for any purpose what so ever. That side is stony and mountainous and its three-fifths of the area is inhabited by only about one-third of the population; and the rest of the territory, two-fifths in area is inhabited by two-thirds of the total population. Apart from the cultural, social commercial, industrial and economic advance, taking more numbers into consideration, we are two times more numerous and more dense per square mile than they. If that be so, is it not a matter deserving the consideration of this House? Are you going to adopt your principle and your policies on the basis of the steam road-roller which levels down the tall oaks to the height of the short poppies? That is not desirable.

Sir, the other day, the case of Assam was presented to the House and the House was good enough to say, `Well, we will make an exception in the case of Assam. There are four kinds of areas there. Therefore the rule of thumb does not apply. We cannot apply the same measure of representation to all the provinces of India. India is a huge continent with a variety of climates as well as surface and soil and civilization more or less. Therefore there are different degrees of progress in different areas. In those circumstances there must be some kind of elasticity in the methods and measure of representation employed. And what is the elasticity that we plead for? It so only this: Do not put the basis of representation as high as one lakh. Have 75,000 as the minimum so that the sparely populated areas of Andhradesa may get 90 seats. When they get 90 seats, and for the rest of the area you have the quantum as one lakh, we will get 120 seats. By this means the disparity in representation between the two areas can be brought down and it will not be easy for the people of one area to override the interests of the people of the other area.

Now take the administration in the two areas. There is a complaint that one part of the country has not received that amount of attention which it is entitled to and therefore it has remained in a backward state. There is no tank-water or well-water to drink in that part of the country and perpetually famine reigns supreme. Almost every three years it has to be declared a famine area and operations costing crores of rupees have to be taken on hand. It would have been of great help if constructive endeavors had been made in time to ensure water-supply and other amenities in those areas. But nothing of that kind is done. Nobody listens to them. When the Andhra province comes into existence pretty large sums will have to be spent in that area. It is not an easy matter. But even so we have to give them to help in order to bring their representation to a higher level. What is the good of India having self-government if the States are lacking in equal representation? I never considered India free so long as one Unit was under a despotic ruler. We have fortunately tided over that condition. What is the good of a province being considered independent when half of it, may two-thirds of it is backward, has no water to drink and no food to eat and is behind-hand both economically and educationally? We want to bring up the hilly areas of our country to the same level as ourseleves, even if progress in that direction may be slow. When that is the case, what is the meaning in the framing of a rule which will arrest the progress of the country? Therefore I say an off-hand solution may not be found helpful and in this behalf I wish to appeal to Dr. Ambedkar who has taken so much trouble in order to push this draft Constitution through this House. He has been circumspect, reasonable and eloquent and he has brought a comprehensive judgment to bear upon these matters. We agreed day before yesterday to grant a seat for every 75,000 of the population. Unfortunately I had to go to Amritsar yesterday evening and came back this morning. In the meantime this amendment has come up. This amendment is harsh on one portion of the area. If it is not there, it would be harsh on the Punjab, it is said. Therefore the case of the Punjab has to be considered, the case of Assam has to be considered the case of Andhra has to be considered. All these matters require attention. Make your rules therefore as elastic as possible. Give detailed attention to each of these subjects and then deal with them at leisure and not in a hurry. After all, for the preparation of the electoral rolls, all these details may not be necessary, though the furnishing of these details will greatly facilitate that task. Even if the electorates have to be formed, they can be formed in the month of May or June. We are in a hurry to prepare the electoral roll and we must know the basis and we have passed a rule that twenty-one years should be the age limit. Therefore the provincial governments can go on with the preparation of their electoral rolls, but even if other points be necessary, I say, please take a little time and do consider and bring up this subject tomorrow so that we may have an agreed solution instead of trying to confuse the whole audience who may not be really able to grasp the full details or all the bearings of this subjects. Beyond this, I will not say anything. Whenever we bring up a question, it is said, "Oh, let the Tamils and the Andhras agree". We agree. Then you raise the question, "Let all the Andhra agree". We agree. Then you say, "No this does not answer my rule of thumb." This kind of thing is mean ingress and it looks as though the result, if not the intention, is sidetrack the major problem. If the more advanced people say, "We do not want a seat for every seventy-five thousand or one lakh; we want a seat for two lakhs; we want to raise you to a position of equality with us", is it repugnant to your sense of justice? Is it repugnant to your political principles or administrative policy? I cannot understand that. Therefore please allow this matter to come up at leisure so that an agreed understanding may be arrived at.

Mr. Vice-President: So much goodwill has been shown to the me by the House, so much kindness is bestowed on me that I suggest that I do not call upon Dr. Ambedkar to make his reply today but that we pass on to some other business, so that all the parties concerned may have an opportunity of putting their heads together and arriving at an agreed solution. After all, framing the Construction is a co-operative effort and we must do all that we can to make it a success.

Some Honourable Members: Thank you, Sir.

Article 63

Mr. Vice-President: We shall now pass on to article 63.

The motion is:

"That article 63 form part of the Constitution."

(Amendments Nos. 1339 and 1340 were not moved.)

Amendment Nos. 1341 and 1339 are disallowed as being merely verbal amendments.

Amendment No. 1343 standing in the name of Mr. R. V. Thomas. I understand that he is no longer a Member of the House.

Amendment No. 1344 standing in the name of Mr. Naziruddin Ahmad may now be moved.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. Vice-President, Sir, I beg to move-

"That for clause (4) of article 63, the following clauses be substitute namely:

> `(4) The Attorney-General shall retire from office upon the resignation of the Prime Minister, but he may continue in office until his successor is appointed or he is re-appointed.
>
> (5) The Attorney-General shall receive such remuneration as the President may determine'."

Sir, I have brought this amendment to make this clause similar to a corresponding clause which appears in the provincial constitution. The House may be pleased to consider article 145. In article 145 there is provision for an Advocate-General for the State.

I feel that arguments which I may advance should be listened to by at least one Member upon whom so much rests, but with the lapse of time and experience one has to grow a little indifferent to the effect his speeches really produce in the House. In fact I find that Dr. Ambedkar is engaged in a very much more important conference, a subject which must be much more important than the subject matter of this amendment, but I think it will be needless or useless for me tot wait upon the pleasure of Dr. Ambedkar's attention, and I think I should go on the with the amendment, trusting that the House may be some chance accept my view.

Sir, article 145 deals with the Advocate-General who corresponds to the Attorney-General at the Centre. Clause(1) of article 145 deals with the appointment of the Advocate-General. Clause (2) corresponds to clause (2) of the present article. Clauses (1) and (2) of article 145really correspond to clauses (1) and (2) of the present article. Clause (3) and (4) of article 145 really important. Clause (3) provides that "That

Advocate-General shall retire from office upon the resignation of the Chief Minister in the State, but he may continue in office untill his successor is appointed or he is re-a pointed." Clause (4)provides that "That Advocate-General shall receive such remuneration as the Governor may determine." The provisions of theses two clauses do not appear in article 63. I submit, Sir, that the provisions of these two article, 63and 145, should be similar as they deal with two similar offices. One is the Attorney-General of India and the other is the Advocate-General of a State. The principle which I want to introduce by this amen dement is that the position of the Attorney-General of India and that of the Advocate-General in the Provinces should stand on the same footing. In fact in the Provinces the Advocate-General is to form so much a part of the Ministry that on the fall or resignation of the Ministry he has also to retire along with the retirement of the Ministry. it is a wholesome principle that the Advocate-General forms part of the Ministry and stands or falls with the rise and fall of the Ministry. It is also necessary that the Advocate-General must function so long as he is not re-appointed or a successor to him is appointed, because routine work cannot otherwise be carried on by the Governor or any other officer, he being a specialist and his retention on office for that temporary period is desirable, and that he must receive a pay which the Governor may determine. I submit that a similar principle should apply to the Attorney-General of India. In fact he should also so much form part of the Government that he should also retire with the retirement of the Ministry. There is no reason why a difference should be made between the Attorney-General of India and the Advocate-General of a State. It may be, I do not know, that this difference was not intentional. It maybe doe to an accidental omission rather than deliberate policy. It is for this reason that I have attempted to draw the attention of the House to the difference and i suggest that the difference should be eliminated. As many honourable Members may not have any opportunity of considering individually the difference between these two articles. I have pointed out the difference and I hope they will give the matter due consideration.

Prof. K. T. Shah (Bihar: General): Sir, I beg to move:

"That in clause (4) of article 63, for the words `as the President' the words `as the Parliament by law' be substituted."

The amendment if adopted would change the article to read:

"The Attorney-General shall hold office during the pleasure of the President and shall receive such remuneration as the Parliament may be law determine."

I do not like even as it is the proviso of this article which would make the Attorney-General hold office during the pleasure of the President. But it may be that a convention would be established whereby the Attorney-General, as suggested in the preceding amendment, may form part of the cabinet, and may retire or take office along with the Ministry. If the constitution does not provide specifically to the contrary there is no bar to a convention of this kind developing and the Attorney-General ranking as the Chief legal adviser of Government, so that his office will technically be at the pleasure of the President.

So far as his emoluments are concerned, I think it would be proper if his emoluments are left not to be determined by order of the President, but by an act of Parliament as those the Ministers. The President would, it is quite true, act on the advice of the Ministers; but even so the salary and allowances of the Attorney-General should be determined I think by an Act of Parliament, and should not therefore be varied in any particular term while, a given individual holds office, to the prejudice of that individual. I think the ground is perfectly simple and I hope the amendment will commend itself to the House.

Shri Prabhudayal Himatsingka (West Bengal: General): Sir, I beg to oppose the amendments moved by Mr. Naziruddin Ahmad and Prof. K. T. Shah. The article as it stands is what should be accepted by the House. There is certainly difference between the Advocate-General of a province and the Attorney-General of India. Sub-clause (4) provides that the Attorney-General shall hold office at the pleasure of the President and I think that should serve the purpose. If there is a change in the Ministry that necessarily need not mean the going out of office of the Attorney-General also, but in the provinces with the change of ministry the Advocate-General also, but in the provinces with the change of ministry the Advocate-General should be required to retire unless he is appointed again. Therefore, I oppose the amendments moved and I support the article as it stands.

Mr. Vice-President: Dr. Ambedkar:

Mr. Naziruddin Ahmad: He has not listened. He is getting his instructions, Sir

Mr. Vice-President: That is hardly a charitable remark to make.

Mr. Naziruddin Ahmad: It is not. I am forced to make the remark, Sir.

Mr. Vice-President: will the honourable Member kindly resume his seat?

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, I do not know whether any reply is necessary.

Mr. Naziruddin Ahmad: No, not at all There has been no debate on the amendment. It would be unfair to the House to be called upon to vote without any reply. Rather than have the amendment put to vote without any consideration, I would beg leave of the House to withdraw it.

Mr. Vice-President: Has the honourable Member the leave of the House for withdraw his amendment No.1344?

Some Honourable Members: No.

Mr. Vice-President: The question is:

"That for clause (4) of article 63, the following clause be substitute, namely:

> (4) "The Attorney-General shall retire from office upon the resignation of the Prime Minister, but he may continue in office until his successor is appointed or he is re-appointed.
>
> (5) The Attorney-General shall receive such remunerating as the President may determine'."

The Amendment was negatived.

Mr. Vice-President: The Question is:

"That is clause (4) of article 63, for the words' as the President' the words 'as the Parliament by law' be substituted."

The amendment was negatives.

Mr. Vice-President: The question is:

"That article 63 stand part of the Constitution."

The motion was adopted.

Article 63 was added to the Constitution.

Article 64

Mr. Vice-President: We now come to article 64. The motion before the House is:

"That article 64 form part of the Constitution."

There are two amen dements (1346 and 1348) standing in the name of Prof. K. T. Shah. He may move then one after the other.

Prof. K. T. Shah: Sir, I Move:

"That in clause (1) of article 64, for the word President' the words `Government of India' be substituted" and,

"That in clause (2) of article 64, for the word President', where it occurs for the first time, the words Government of India', for the word `President', where it occurs for the second time, the words `Council of Ministers', and for the word `President' where it occurs for the third time the words `Government of India' be substituted respectively, and the following proviso be added at the end of clause (2):-

> `Provided that nothing in this article shall invalidate any act or word of Government expressed in the name of a particular Department or Ministry'."

The amended article would then read:

"All executive action of the Government of India shall be expressed to be taken in the name of the Government of India.

Orders and other instruments made and executed in the name of the Government of India shall be authenticated in such manner as may be specified in rules to be made by the Council of Ministers, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Government of India:

Provided that nothing in this article shall invalidate any act or word of Government expressed in the name of a particular Department or Ministry."

While accepting that the President would be the head of the Government, I shall do not quite understand why all the Government business should be carried on and orders issued in the name of the President. Even if you are following the practice in England, according to this draft, the orders etc. of the Government in England are by "His Majesty's Government". It is surely not so in India-at least I hope it is not intended that the Government in India would hereafter be described as "the President's Government". The Government is the Government of India, and I do not see why the impersonal and collective form should be substituted by the personal and direct form of the President. In my reading of the Constitutions this offends against every principle that this Draft Constitution is otherwise based upon and I see no reason why decisions of the Government of India in their executive sphere should be expressed in the name of the President. By the express provision of this Constitution the President is outside the turmoil of parties, while the Government of India is definitely going to be a party Government or even a coalition Government which may have varying fortunes. If so there is every ground to suggest that the orders of Government be in the name of Government themselves collectively and not in the name of the President. It is for that reason that the first amendment has been suggested.

The second amendment is consequential. Rules which will regulate the framing and issue of orders will of course be made by the Council of Ministers. The President should, therefore, not intervene at all in this direction and the orders will be expressed in the name of the government of India. If by any chance or for any special occasion any Department has to issue, let us say, a circular or an ordinance or some particular orders relating to the doings of that particular Department. and the order concerned is expressed in the name of that Department or Ministry, that should not by itself invalidate the order merely because it is not spoken of as in the name of the Government of India. To me this procedure seems to be not only more simple but more in accordance with the theory of the Constitution, and therefore I hope the House will accept it.

(Amendment No. 1347 was not moved.)

Mr. Vice -President: The article is now open for general discussion.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, Prof. K. T. Shah who has moved the amendments Nos. 1346 and1348 has tabled his amendments in accordance with a different scheme which he envisaged; and in pursuance of that he has tabled amendments almost to every clause, or to the majority of the clauses, in this Constitution. He wanted a different kind of Government in this country, namely, the Presidential system a opposed to the parliamentary system.

Prof. K. T. Shah: On a point of correction, this is keeping the President outside the Presidential system that I wanted. It is on their Draft that I wanted to make the amendment.

Shri M. Ananthasayanam Ayyangar: I am glad that for once my friend has tried to help other party. My friend, Prof. Shah will find that we have already given our seal of approval to article 66, which says:

> "There shall be a parliament for the Union which consist of the President and two Houses to be known

respectively as the Council of States and the Houses of the People."

Therefore the president of the Union becomes an integral part of the Parliament of the Indian Union. In another section, the executive power is co-extensive with the power of the Legislature. Thus at one stage he becomes a necessary, element and at another stage he ceases to be in the turmoil of the day-to-day administration. Prof. Shah wanted by an amendment to article 66 to do away with the President and restrict it only to the two Houses-he wanted only one House. But the amendment was lost and the President has become a permanent fixture. So far as Parliament is concerned, I do not see any reason why the executive authority ought not to be exercised in his name.

Let us turn to article 42. It says:

"The executive power of the Union shall be vested in the President and may be exercised by him a accordance with the Constitution and the Law."

That was also passed by this House. In view of articles 42and 66, where in the one of case the President is the executive authority and in the other the President with the two Houses, constitutes Parliament, the President has been firmly fixed up in both the places. This Article, that is article 64, is only carrying out the substantive provisions of articles 42 and 66, by saying that" all executive action of the Government of India shall be expressed to be taken in the name of the President".

He is the Chief Executive authority. He is the first person and in case of dissolution of Parliament, who is the person to dissolve it? It is the President who is vested with the authority. During day-to-day administration, except in regard to legislative portions and legislative is dissolved the Ministry also is dissolved. If an occasion arise like that, the President has to exercise the powers.

Let us address ourselves to another reason that has been given. My friend Prof. Shah wants that executive action should be taken in the name of the Government. The President means the President means the President on the advice of the Ministers. He cannot act independently. Action is taken in his name though it is action of the Government as a whole, that is, consisting of the President and the Ministry. Thus it is impossible to get him out of the framework. The President is the chief executive authority action should betaken in the name of the President.

I oppose both the amendments of Prof. Shah-Nos. 1346and 1348-and request the Houses to pass the article 64 as it stands.

Shri Raj Bahadur (United State of Matsya): Mr. Vice-President, Sir, I come here to oppose the amendment that has been moved by Prof. K. T. Shah. From the various amendments that he has been moving from time to time, I am led to think that he is moving according to a set plan and that he wants the Presidential system of constitution instead of the Parliamentary system of democracy for the country. But, with all respect to his erudition and experience. I see that he has not been consistent even in that. When we discussed article 42, by which the entire executive power of the Union is vested in the President, he himself moved two amendments, Nos. 1040 and 1045 to that article and one of his amendment reads as follows:-

"The sovereign executive power and authority of the Union shall be vested in the President, and shall be exercised by him in accordance with the Constitution and in Accordance with the laws made there under and in force for the time being."

By implication it means obviously that all executive actions should be taken by and in the name of the President, Which is exactly the import, meaning and the implication of article 64, under discussion. I, therefore, fail to see any reason for Prof. K. T. Shah to go now behind the terms of his own amendment, which he moved to article 42. What we mean clearly enough is that the entire executive power of the Union vests in the President and all governmental orders, and instruments shall be made in the name of the President. It is no anomaly and no inconsistency under any known democratic principles to get the orders issued in the name of the President and as such, I submit, there is no reason for the House to accept the amendment which has been moved by Prof. Shah.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-president, Sir, I do not think any reply is called for.

Mr. Vice-President: The Question is:

"That in clause (1) of article 64, for the word' President' the Words `as the Parliaments by law' be substituted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in clause (2) of article 64, for the word' President', where it occurs for the first time, the words' Government of India', for the word 'President', where it occurs for the second time, the words 'Council of Ministers', and for the word 'President' where it occurs for the third time the words 'Government of India' be substituted respectively, and the following proviso be added at the end of clause (2):-

> 'Provided that nothing in this article shall invalidate any act or word of Government expressed in the name of a particular Department or Ministry'."

The amendment was negatived.

Mr. Vice-President: The Question is:

"That article 64 stand part of the Constitution."

The motion was adopted.

Article 64 was added to the Constitution

Article 65

Mr. Vice-president: Amendment No. 1349 has the effect of a negative vote, and is, therefore, disallowed.

Amendment no. stands in the name of Shri H. V. Kamath and may be moved.

Shri H. V. Kamath (C. P. & Berar: General): Mr. Vice-president, I move Sir, "That in clause (a) of article 65, after the word" President' a comma and the words as soon as they are made,' be inserted."

This clause as it stands at present, reads as follows;-

"It shall be the duty of the Prime Minister-

> to communicate to the President all decisions of the Council of Ministers,....."

If may amendment be accepted by the House, the clause, as amended, would read thus:--

"It shall be the duty of the Prime Minister--

> to communicate to the President, as soon as they are made, all decisions of the Council of Ministers."

The amendment is more or less formal, and only makes for clarity of the meaning of the clause. In my judgment, there is no need whatever for such a clause in the Constitution and I think that it may as well be incorporated in the Rules of Business of the Cabinet. But somehow or other, it has found its way in the Constitution and any amendment which seeks to eliminate it would be disallowed as it seeks to negative the motion. Personally I should have wished that the article as a whole were not there, because it is merely some of the Rules of Business of the Cabinet; and what they should do in this matter must be purely a routine affair and must have been embodied in the Rules of Business of the Council of Ministers. But as it has come before us, I would only move this amendment, with a view to obtaining greater clarity of this particular sub-clauses (a), because decisions of the Council Ministers, if they are not communicated as soon as they are made,-it may be, of course, that they will be communicated very soon after that-but to make it absolutely clear, we might as well provide for this, that all the decisions of the Cabinet must be communicated to the President as soon as they are made, so that if a contingency arises, as visualized in sub-clauses (b) and (c), the President may call for information and if the President so requires, any matter which has been considered by the Cabinet already, may be re-opened by them, as provided for in sub-clause (c) of this article. Delay perhaps may be dangerous in this matter as in so many others, and therefore with a view to eliminate any delay, any procrastination in these matters, I move, Sir, that decisions of the Cabinet must be communicated to the President as soon as they are made. I move amendment No. of the List of Amendments and commend it to the acceptance of the House.

Mr. Vice-President: There is an amendment to this amendment No. 71 of List No. V (Sixth week) standing in the name of Mr. R. K. Sidhva-Member not in the House.

Then we come to Amendment No. 1351 standing in the names of Shri. A. K. Menon and Shri. B. M. Gupta.

(The amendment was not moved).

Amendment No. 1352 stands in the name of Prof. K. T. Shah.

Prof. K. T. Shah: This is a matter of detail and I would like to be excused form, moving this amendment.

Mr. Vice-President: There is only on amendment now before the House and the clause is open for general discussion. Dr. Ambedkar, would you like to say anything?

The Honourable Dr. B. R. Ambedkar: No. Sir, I do not accept Mr. Kamath's amendment.

Mr. Vice-president: The question is:

"That in clause (a) of article 65, after the word President' a comma and the words `as soon as they are made,' be inserted."

The amendment was negatived.

Mr. Vice-president: The question is:

"That article 65 stand part of the Constitution."

The motion was adopted.

Article 65 was added to the Constitution.

Mr. Vice-President: Ordinarily, we close at 1 p.m. in order to accommodate our Muslim brethren. Today, we close just now to accommodate ourselves. The House stands adjourned till 10 A.M. tomorrow.

Shri M. Ananthasayanam Ayyangar: May I request you, sir,............

Mr. vice-president: The Houses has been adjourned; no further business can be transacted now.

The Assembly then adjourned till Ten of the Clock on Saturday the 8th January, 1949

[Translation of Hindustani Speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME VII

Saturday the 8th January, 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookerjee) in the Chair.

MOTION *RE.* PREPARATION OF ELECTORAL ROLLS

Mr. Vice-President (Dr. H. C. Mookherjee): The item on the agenda is a motion from the Chair.

Shri H. V. Kamath (C. P. & Berar: General): On a point of information, Sir, may I request you to be so good as to tell us under what provision of the Rules of Procedure of our Assembly this motion is being moved from the Chair? To my knowledge, there is no such provision in the Rules of the Assembly which we have adopted, according to which a motion of this nature can be brought forward by the Chair. So, Sir, we would like to know under what extraordinary provision or rule this procedure is being adopted because I would say in all humility that the draft of the motion that is being brought forward before this House today is not merely not above criticism but also there is scope for correction not only from the point of view of draftsmanship but also that of substance as well. Therefore I would beg of you to tell us whether there is any Rule which we have adopted which authorises the Chair to bring forward a motion of this nature, and whether once having been moved from the Chair, all criticism and discussion would be shut out on this motion.

Shri Rohini Kumar Chaudhari (Assam: General): May I also request you to kindly enlighten whether any amendment will be allowed on this motion because it contains some controversial matters also?

Mr. Naziruddin Ahmad (West Bengal: Muslim): I also think that the resolution requires some amendments. If it is moved from the Chair, it will be impossible for us to suggest any amendments or even to discuss the same. I have already suggested to Sir B. N. Rau some amendments. In the circumstances it would be far better to allow some Minister to move the Resolution so that we can have a discussion on this. That would be far more satisfactory.

Shri R. K. Sidhwa (C. P. & Berar : General): Sir, my point is whether this House is competent to pass a resolution of the nature that you are going to propose. I feel that under Section 291 it is the Dominion Parliament that can issue instructions regarding the franchise and the elections. Sir, you will remember that our President, I do not know under what authority, issued an injunction for the appointment of a Commission for the work of going into the question of the linguistic provinces; and my Friend Mr. Bharathi challenged that and wrote a letter to the President, saving that under Section 290, the creation of provinces can only be done by the Government of

India and the Dominion Parliament. I would like to know, Sir, whether this House is competent to pass a resolution of the nature that you are going to propose in view of explicit provision under Section 291 of the Government of India Act.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Sir, so far, two specific points have been raised, one by my honourable Friend Mr. Kamath and the other by my honourable friend Mr. Sidhwa. Mr. Kamath wants you to point to the particular rule by which you are empowered to make a motion of the nature contemplated in today's agenda. With regard to that, I may say that it is a well-established procedure that on certain occasions, the President can move a resolution, if the House permits it. We had a precedent recently when Dr. Rajendra Prasad moved a resolution from the Chair--the condolence resolution on the death of Mr. Mohammad Ali Jinnah. We have got that precedent, and I do not think there is any bar to the Chair making this motion, though personally I would have liked Dr. Ambedkar or somebody else to move the resolution.

With regard to the other point, the one raised by Mr. Sidhwa, I feel, and I am sure the House will agree with me in that, as this is a sovereign body, there is nothing to stand in the way of this sovereign body moving a resolution of this nature. Of course, the Constituent Assembly in the legislative Section is competent to pass an order like this. But the Constituent Assembly, as the Constitution making body, has a much wider and larger sphere of power than the Constituent Assembly, Legislative Section, and I think it is perfectly right and it is perfectly within the competence of this House to pass a resolution authorising the Provincial Governments to go forward with the necessary preliminaries connected with the coming elections. Therefore, I think the second point raised, the one raised by Mr. Sidhwa, is not a very important one of substance.

Sir, another point was raised by Mr. Sidhwa, that in connection with the appointment of the Linguistic Provinces Commission. Of course, there is a good deal of difference of opinion with regard to that. There is one body of opinion which thinks that it was *ultra vires.* But I am not going to enter into the merits of that question and of the order appointing that Commission. But I would point out that no resolution was passed or moved in the Constituent Assembly for that purpose, and that point must be borne in mind. Here the question is entirely different. Here the House, the Constituent Assembly by a resolution is going to authorise the Provincial Governments to do certain things, and I think there is no illegality or irregularity about it.

Shri H. V. Kamath: Sir, on a point of explanation, I would only say that there is a world of difference between a condolence resolution and a motion of this nature. *(Laughter.)*

Shri R. V. Dhulekar (United Provinces: General): Sir, I submit that this sovereign body can direct the Legislative Assembly. The necessary direction may be issued by this Constituent Assembly to its Legislative side to have this motion passed there, and so we can get out of the impasse that has been created now. If this motion is moved from the Chair here, there is on the one side the difficulty that amendments cannot be moved, and on the other side there is the objection that we are not here sitting as a legislative body at this time. Therefore, I would propose two ways, either of which may be adopted. This motion may be sent to the Constituent Assembly's legislative side. Or we may as well convert this Assembly for a day or two, or even for a day, to sit as the Legislative Assembly. I submit that either of these two courses may be followed.

Shri Jagat Narain Lal (Bihar: General): Sir, may I propose a third course? That is that if there is no concensus of opinion about the resolution being moved from the Chair, it may be allowed to be moved by any member and then it may be taken up as an ordinary resolution and discussion allowed, though I do not think there is any room or any debate on it.

Pandit Thakur Dass Bhargava (East Punjab: General): Sir, I beg to submit that so far as the question of legality of the motion is concerned, it is perfectly competent for the Chair to make this motion. This is a sovereign body and I do not know why such a motion cannot be made from the Chair. The only question which I wish the House to consider is whether this is the appropriate course. Usually motions from the Chair are such as are not subject to debate. But my difficulty is that this resolution contains very controversial matters and I myself have tabled two amendments to it. In regard to clause (4), my amendment seeks that the refugees should not be ordered or be burdened with the liability of filing a declaration of their intention, etc., etc. That is a very important point, because fifty or sixty lakhs of people being asked to go to a court to file such a declaration is no trifling matter. Similarly, in regard to clause (3), I have sent in an amendment that the date 31st March 1948 be changed to 31st March 1949.

Mr. Vice-President: I may be ignorant of technicalities, but may I point out in all humility that no reference can be made to any amendment till the resolution itself has been actually moved?

Pandit Thakur Dass Bhargava: Sir, I am not moving my amendment, but am only submitting that if this resolution is moved from the Chair, then no amendment will be allowed to be moved. I fully realise the anxiety of those who want elections to take place in 1950--and I am also of the same view, that the elections should take place as quickly as possible. Therefore, I want to be helpful rather than to be obstructive. But all the same I want the amendments to be allowed to be moved in the House. If the resolution is moved from the Chair we will not be allowed to do so and to have our say, in regard to clauses (3) and (4). Therefore the suggestion made by Mr. Dhulekar may please be adopted, and the matter may be sent to the Legislative Section, or a directive may be sent by this House to the Legislative Section and action may be taken by that body in response to the order from this Constituent Assembly.

Seth Govind Das (C. P. & Berar: General): Sir, I could not follow the controversy that has been raised here. I think, Sir, that the controversy has been raised on......

An Honourable Member: In Hindi, please.

Seth Govind Das: *[The objections that have been raised here do not appear to me to be very appropriate. The fact is that we have adopted, during the last two or three days, provisions which are more or less similar to the ones for which the present motion is being placed before us and which are more specifically stated in it. I think that what is intended by this motion is only that the next elections should be held in 1950, and I believe that was precisely the intention when we adopted articles 67 and 148. In my opinion it is meaningless to debate the question whether the President has or has not the right to make this motion. The President always has certain inherent rights, even though they may have not been specified in the Rules. When the occasion arises he can make use of these inherent rights. Again it appears to me to be entirely meaningless to discuss whether this Assembly possesses or does not possess the right of adopting a motion of this kind, and I think so for the simple reason that we have asserted not once but many times that this Assembly is possessed of all rights of sovereignty. Moreover when I consider the motion itself, I do not find anything in it to which one can object. It may be that its wordings may be improved by minor changes here and there. But I am sure that no disaster would occur even if we pass the resolution as it is, without making any change at all. I have already said that some two or three days ago we approved almost all the proposals contained in the present motion. It is our desire that elections should be held at an early date and that these might be held in 1950 at the latest. This resolution contains specifically the provisions which all of us have already accepted. I therefore fail to understand what occasion there is for any debate on this motion. We have much other important work to do and it is but proper that the motion made by you be adopted unanimously by the House.]*

Shri H. V. Kamath: May I only point out sub-rule (2) of rule 25 which says that notice of every motion shall be given by a Member? Sir, when you are the Chairman, I dare say you are not regarded as a Member.

Mr. Vice-President: It is rather embarrassing for me to have to defend the procedure I propose to adopt. But I recognise one fundamental fact and that is that this House is supreme and that there is need for a motion of this sort. These facts I cannot forget. I also maintain that, if this motion is adopted by this supreme Body, that by itself would justify the procedure. (*Hear, hear.*) That is my feeling.

Then, as regards the amendments, I find that only two have been received which of itself proves that I have practically the whole House behind my proposal. I therefore propose to move it from the Chair.

I was conscious that there are some learned pandits of rules and procedure who would try to prevent the Chair from moving this much-needed resolution. Therefore I have drafted out a statement which I shall now place before the House. Honourable Members will agree with me that there is necessity for the moving of this resolution and for the passing of it also.

We have been, during the past few days, devoting our attention in the Constituent Assembly to the consideration of the articles of the Draft Constitution relating to the Constitution and composition of our future Central and Provincial Legislatures. This, as honourable Members are aware, is with a view to enabling the necessary electoral machinery to be set up, so that the preparation of the electoral rolls and other connected matters can be taken in hand without delay.

As a matter of fact, the Constituent Assembly Secretariat has, under the direction of the President, already taken certain steps for the purpose. In some of the Provinces and States, the first stage of the work, namely, the preparation of the preliminary rolls, is almost complete. The articles which we have so far adopted lay down the principles and the basis on which the we have so far adopted lay down the principles and the basis on which the electoral work has to be carried out. But this is not all. We have also to indicate the time within which to complete the elections, as the electoral rolls will have to be prepared with reference to a set date, and prescribe authoritatively the qualifications for voters, etc.

This matter was considered at a meeting of the Steering Committee held on 5th January 1949 and that Committee decided that a resolution on the subject should be brought forward before the Assembly and that it would be in the fitness of things if such a resolution were moved from the Chair. Incidentally, the resolution will also allay the suspicions harboured in certain quarters, however unjustified such suspicions may be, that we are not very serious about bringing the new Constitution into force early.

I have further to remind the House that people outside do not very well appreciate the difficulties which we have to face today. I have been receiving letters from many quarters in India and, as the House is probably aware, I belong to a community which was formerly a minority and which is today a majority community. Now, members of my community with whom I have been in contact have been sending me letters from all parts of India asking why there is so much delay. These people do not seem to appreciate the difficulties which we are facing, namely, first of all, the troubles which happened after India was partitioned, the refugee problem, our troubles in Hyderabad, out troubles in Kashmir and then the general disintegration of the economic structure of the country. These people who do not appreciate these difficulties think that this august Body is delaying its work for reasons which are uncharitable and to which I do not want to refer. Doubtless many Members also have some knowledge of the state of feeling in the country. It is therefore necessary that these misgivings should be allayed. It is necessary that the public should know that we are seriously thinking about holding our elections at the earliest possible date.

I shall go further and say that I belong to a particular political organisation. I hope Members will admit that I have not allowed my political affiliations in any way to sway me in the way in which the work of the House has been conducted. That particular political organisation has been the target of attack from more than one quarter. It is therefore necessary that its position should be made clear. This is the reason why I am moving the following Resolution from the Chair. I hope honourable Members will appreciate its importance and pass it immediately without any kind of discussion or any kind of amendment which, again I may say, I do not propose to admit *(Laughter).*

The motion is:

"Resolved that instructions be issued forth with to the authorities concerned for the preparation of electoral rolls and for taking all necessary steps so that elections to the legislatures under the new Constitution may be held as early as possible in the year 1950.

Resolved further that the State electoral rolls be prepared on the basis of the basis of the provisions of the new Constitution already agreed to by this Assembly and in accordance with the principles here in after mentioned, namely:--

(1) That no person shall be included in the electoral roll of any constituency--

(a) if he is not a citizen of India; or

(b) if he is of unsound mind and stands so declared by a competent court.

(2) That 1st January 1949 shall be the date with reference to which the age of the electors is to be determined.

(3) That a person shall not be qualified to be included in the electoral roll for any constituency unless she has resided in that constituency for a period of not less than 180 days in the year ending on the 31st March 1948. For the purposes of this paragraph, a person shall be deemed to

> be resident in any constituency if he ordinarily resides in that constituency or has a permanent place of residence there in.
>
> (4) That, subject to the law of the appropriate legislature a person who has migrated into a Province or Acceding State on account of disturbances or fear of disturbances in his former place of residence shall be entitled to be included in the electoral roll of a constituency if he files a declaration of his intention to reside permanently in that constituency.

Shri H. V. Kamath: On a point of clarification only, may I ask, Sir, why, after having passed the two articles 67(6) and also 149(2), the disqualification of unsoundness of mind only has been included in clause (b) of para 1 of the motion, while both the other articles include other disqualifications such as crime or corrupt or illegal practice? This is only for clarification.

Another point is that in sub-clause (a) of paragraph (1) of your motion, it is stated that "no person shall be included in the electoral roll of any constituency if he is not a citizen of India," but unfortunately, Sir, we have not passed the article on citizenship and therefore it may raise difficulties for the enumerator or the officer in charge of the electoral rolls as to who is a citizen and who is not.

(Shri Rohini Kumar Chaudhari rose to speak).

Mr. Vice-President: Would you like to say anything on this matter? I cannot allow any amendment or any discussion, but if you want to answer the points raised by Mr. Kamath, you are quite welcome.

Shri Rohini Kumar Chaudhari: I want your clarification on a point. First of all, sub-clause (1) (b) of the motion says that "No person shall be included in the electoral roll of any constituency if he is of unsound mind and stands so declared by a competent court". It means, Sir, that a man...

Mr. Vice-President: I am not allowing any discussion.

Shri Rohini Kumar Chaudhari: I am only asking a question.

Mr. Vice-President: Order, Order. Yes, Mr. Tyagi.

Shri Mahavir Tyagi (United Provinces: General): I beg to request you, Sir, to kindly reconsider your ruling of not allowing any discussion. I hope I have a right to make a submission to the Chair on the ruling of the Chair. If there is a resolution to which the whole House agrees, then such are solution may be moved from the Chair. It is only such resolutions that are moved in Parliament by the Chair. If, however, the subject matter of the resolution is such that amendments are warranted, then it must not be moved from the Chair. I submit, Sir, that this is a sovereign body and as such the provincial legislative assemblies may quote your ruling of today. There may be occasions in future when resolutions are sought to be moved from the Chair, in order to prohibit any discussion on it. I submit, Sir, that this may establish a sort of convention in the whole of India. I request that you may kindly agree to some Member or one of the Ministers moving this Resolution so that, if there is any Member who wants to improve upon the language or the idea or to oppose it, he may not be debarred from doing so. I submit that you may please reconsider your ruling or at least announce that it will not go as a precedent in future.

The Honourable Shri Purushottam Das Tandon (United Provinces: General): Sir, I would rather have not spoken but duty compels me to say a word, though it may not be very pleasant. The procedure which is now proposed to be adopted to stifle discussion on a motion which is moved from the Chair. I submit, is one which is unheard of. Whatever knowledge of parliamentary procedure that I possess, I submit with all the earnestness at my command that the Chair should only move a motion which is accepted by the whole House and that even if there is one man--I am not talking of two--who wants to move an amendment,--then the business of the Chair is to say immediately that it will not move such a motion but call upon some member to move it. If the Government of the day sponsor this motion, let them do so, but let not the Chair be a party to stifling discussion in the House on the ground that a proposition has been moved from the Chair.

The Honourable Shri Ghanshyam Singh Gupta (C. P. & Berar: General): Sir, I endorse every word of what Tandonji has said.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, it is not a little surprising to find that such eminent men like Tandonji are opposed to such an innocuous Resolution and take exception to it.

The Honourable Shri Purshottam Das Tandon: I would accept the Motion but it is only the procedure that is proposed to be adopted which, I submit, is not acceptable.

Pandit Thakur Dass Bhargava: Some sixty lakhs of refugees are involved and all of them will be obliged to file a declaration and spend at least two rupees each.

Shri M. Ananthasayanam Ayyangar: Sir, after all what does the resolution want?

Honourable Members: No. no.

Shri M. Ananthasayanam Ayyangar: I will address myself only to the question of procedure. Sir, I am supporting the motion which has been moved by you.....

Honourable Members: No, no. Address yourself to the question of procedure.

Shri M. Ananthasayanam Ayyangar: On the Point of order raised, Sir, there is no point. Such resolutions have been moved from the Chair in the past.

So far as the Resolution itself is concerned, this is long overdue. This Resolution must have been moved much earlier. People outside want to know what is happening in this House. The dignity of the House and the dignity of the country requires that a Resolution of this kind should be moved. The sooner we pass it, the better for us.

Shri Algu Rai Shastri (United Provinces: General): I want to know, Sir, why the honourable Member himself does not move the resolution?

Mr. Vice-President: When I proposed to adopt a particular procedure, I thought I had practically the whole House behind me with the exception of one single honourable Member who had submitted two amendments. Now I find from what has happened just now that there is a sharp difference of opinion and that most Members--or at least many Members--feel that a proposition like this should not be moved from the Chair. I am after all a creature of the House. That Recognized. But honourable Members will admit that in everything which I have done I have always asked the permission of the House, and what is more, I have obtained it in every case. Here I admit, I made a wrong estimate of the feelings of the House. Probably, that is due to the fact that I am no longer in Constitution House. At any rate, the feeling is there. I therefore request some honourable Member to move this Resolution.

Pandit Lakshmi Kanta Maitra: You have formally to withdraw it.

Mr. Vice-President: It seems that before this can be done, I have to withdraw this Resolution formally. Have I to withdraw it formally?

Honourable Members: Yes, Sir.

Mr. Vice-President: All right, it is done with the permission of the House.

(Several honourable Members rose to speak.)

Mr. Vice-President: Pandit Nehru wants to speak. Pandit Nehru.

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): Sir, I beg to move the following Resolution:

"Resolved that instructions be issued forthwith to the authorities concerned for the preparation of electoral rolls and for taking all necessary steps so that elections to the legislatures under the new Constitution may be held as early as possible in the year 1950.

Resolved further that the State electoral rolls be prepared on the basis of the provisions of the new Constitution already agreed to by this Assembly and in accordance with the principles hereinafter mentioned, namely:--

(1) That no person shall be included in the electoral roll of any constituency--

(a) if he is not a citizen of India; or

(b) if he is of unsound mind and stands so declared by a competent court.

(2) That 1st January 1949 shall be the date with reference to which the age of the electors is to be determined.

(3) That a person shall not be qualified to be included in the electoral roll for any constituency unless he has resided in that constituency for a period of not less than 180 days in the year ending on the 31st March 1948. For the purposes of this paragraph, a person shall be deemed to be resident in any constituency if he ordinarily resides in that constituency or has a permanent place of residence therein.

(4) That, subject to the law of the appropriate legislature, a person who has migrated into a Province or Acceding State on account of disturbances or fear of disturbances in his former place of residence shall be entitled to be included in the electoral roll of a constituency if he files a declaration of his intention tore side permanently in that constituency."

I do not wish to say much about this Resolution except perhaps to clear a misapprehension.

A reference was made by some honourable Member to the Government perhaps putting forward this Resolution as a Government. Of course, Government as such has not moved this Resolution and Government as such is not functioning in this Assembly. This Resolution has come from the Steering Committee. It is the responsibility of the Steering Committee. That Committee felt that they were proposing a Resolution which, in effect, embodied a matter which has been already decided by the House and there was nothing novel or fresh in it; therefore they ventured to suggest that the Honourable the Vice-President might move it from the Chair. Whether that is a fact or not, I do not think we need go into that. It never occurred to the Steering Committee that there was anything novel in this Resolution which might be objected to.

So far as the Government is concerned, the Government some time back took steps to ask the Provincial Governments to get electoral rolls prepared. As a matter of fact, even if this Resolution was not passed, the Government of course can proceed with the preparation of those rolls, but there will be this difficulty, that in the event of the Constituent Assembly at a later stage perhaps varying the qualifications or something, then all the electoral rolls that have been prepared or might be prepared might become useless. It was therefore desirable to have some indication of the wishes of the Constituent Assembly in this matter. In the last few days, this House has been considering the provisions in regard to elections. Having done that, therefore, this Resolution merely embodies them.

Then some honourable Member referred to the fact that only two qualifications, or disqualifications are mentioned in clause (1). What this Resolution says is that all that the Constituent Assembly has so far decided has to be taken into consideration. It is not considered necessary to say all that.

Then you will find in clause (3) a certain date given about residence--180 days in the year ending March 31st, 1948. That date was simply given there because some rolls have already been prepared on that basis and if this is not done they might become useless and one has to start afresh.

This is all I have to say, except to submit that in effect there is nothing new in this which the House has not decided. It may be there is some minor variation.

I heard--rather I think I heard--an objection that under clause (4) a large number of refugees and others might find it difficult to be enrolled. As a matter of fact, it is not intended to create any difficulty or any obstruction in the way, but surely some kind of intention has to be given; otherwise you cannot enrol everybody without knowing whether he wants to be here, whether he proposes to stay here, or not. It is for Provincial Governments to take step to facilitate this process. Suppose a person who enrols has not even the intention to stay. Therefore, it is proposed here that some kind of intention should be declared of permanent residence. You will see that that clause was really meant to be in favour of the refugees because normally speaking you lay down some qualification therefore that clause was put into facilitate their this process. Suppose a person who enrols has not even the intention to stay. Therefore, is proposed here that some kind of intention should be declared of permanent residence. You will see that clause was really meant to be in favour of the refugees because normally speaking you lay down some qualification of residence, etc., in a particular locality. Now, because many of the refugees who have come here may not be able to fulfil that qualification, therefore that clause was put in to facilitate their coming in. That clause, perhaps some people think, is an obstruction. That clause was put in because the residence clause does not apply to them. If the residence clause applies, then there is no difficulty. Since the residence clause does not apply, in the case of recent comers, it becomes very difficult to enroll them unless there is some other fact to grip and that other fact to grip is that they declare their intention in future tore side. If there is no past and no future, the present slips away. One does not quite know whom to put in and whom not to put in. Therefore I submit that whatever is said in this Resolution not only flows from what the House has decided, but naturally flows from it, and with all respect I really do say that there is nothing in this Resolution which should raise any controversy. Sir, I move.

Shri Algu Rai Shastri: May I request you, Sir, to allow me to ask the Mover to explain one point? The citizenship clause still remains held up. How can there be any electoral roll, unless we have decided the fact as to who is a citizen of India and who is not ?

The Honourable Pandit Jawaharlal Nehru: These electoral rolls can be prepared and are going to be prepared. Whatever the future decision of the Assembly in regard to the citizenship clause might be it will only affect the preparation of those rolls slightly. The citizenship does not affect the vast number of people in this country. It affects only two types of persons ultimately, (1) persons who may be called "refugees" (2) Indians who reside outside India--which I say is more important. They are affected certainly. So far as the refugees are concerned, what I have just mentioned covers them , that is, we accept as citizens anybody who calls himself a citizen of India. But there is difficulty in respect of people residing outside India. Since that matter is to be decided by the Assembly later it is not a very difficult matter to arrange for them later on. They will come into the picture after we know what the decision of the Constituent Assembly is. It does not interfere with the work. Only a very small part of the work is delayed till you decide that. As soon as you decide that, effect will be given to it.

Mr. Vice-President: I suggest that honourable Members who need clarification had better put their questions, so that our premier may answer--only those who want clarification.

Shri Mahavir Tyagi: What about amendments?

Mr. Vice-President: They will come later on. So long as it was moved by the Chair, no discussion was permissible, but now that the Resolution has been moved by an honourable Member of the House, there will be discussion--of course, it must be limited by the consideration of time.

Sardar Bhopinder Singh Man (East Punjab: Sikh): On a point of clarification. Though ordinarily 180 days have been prescribed in the matter of residence, it has been relaxed in the case of refugees in that they have merely to file a declaration of intention to reside permanently in the constituency I want clarification on this point, as to whom such a person should file his declaration of intention; and if he has to file that declaration before some District Magistrate, obviously it will be very expensive and cumbersome. I want that it should be least expensive, so that the very right which is sought to be given to the refugees will not be tampered with.

Shri H. V. Kamath: Mr. Vice-President,....

Shri Mahavir Tyagi: On a point of order: I wish to say that the procedure that you are adopting now is novel. To raise objections and to get the reply from the Mover every time means that the Mover of the Resolution will have so many speeches to make and will have to go on clarifying question. I suggest that the discussion should be held on the lines as it was done in the past.

Mr. Vice-President: An extraordinary procedure must be followed on extraordinary occasions.

Shri H. V. Kamath: I would like a little more light on this point which I raised a little while ago about disqualifications for voters that will be included in the new rolls that we are undertaking. Clause (1)(b) of this motion refers to only one disqualification and that is if he be of unsound mind and stands so declared by a competent court. But, Sir, I may invite your attention and the attention of the House to article 67 (6), as well as article 149 (2) which this House has adopted already. I will read the relevant portion on either of these articles because they are identical. That portion which is relevant to our present purpose reads thus:

> "Every citizen who is not less than 21 years of age and is not otherwise disqualified under this Constitution, or under any Act of Parliament on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at such elections."

It may be argued that these disqualifications will be prescribed or laid down by Parliament later on. But, Sir, we have extracted or culled two disqualifications--one of non-residence and the other of unsoundness of mind.

Clause (1) and clause (3) of today's motion refer to two disqualifications; one is non-residence and the other is unsoundness of mind. I want to know why the other three disqualifications--that is, of crime, or corrupt or illegal practice--have been excluded from the list of disqualifications. I want to know whether a person who has been convicted for crime in the past, or of corrupt or illegal practice at previous elections, shall be qualified to be registered as a voter, or whether all criminals, all those who have been convicted of corrupt or illegal practices in the past--will start with a clean slate, and whether they will have a sort of *"prayashchit"*. In honour of the new Constitution we are going to adopt, will they be declared free from all sin and crime and start with a *"Tabula rasa"*--a clean slate ?

Another point for clarification is about citizenship. That has been referred to by may friend already and I too referred to if earlier . It would be a rather difficult position, in case this Assembly revises or changes or alters the article on citizenship . It will mean so much addition labour to the authorities concerned for changing the electoral rolls.

I will only say that I yield to none in my desire that the elections should be held very soon. I should have preferred that the elections should have been held even at the end of this year so that people may not have the impression that Government is trying to entrench itself in its present position. This contingency would never have arisen of bringing up this motion today by an extraordinary procedure.......

Mr. Vice-President: You wanted clarification. That is finished, I think.

Shri H. V. Kamath: ...... had the Assembly met in May and October last as we had planned to do. But unfortunately we did not meet and this is the consequence.

Mr. Vice-President: It is only waste of time. You wanted clarification and you have put your case.

Shri H. V. Kamath: I have done, Sir.

(At this stage Shri Algu Rai Shastri was proceeding to the mike.)

Mr. Vice-President: Please wait your turn. Mr. Chaudhari has been asked to speak: just one point for clarification and nothing else

Shri Rohini Kumar Chaudhari: This morning through some strange coincidence my mind and my friend's mind have been working on the same lines. I wanted to refer to a very sound proposition and that was with reference to sub-paragraph (b) of clause (1) of the resolution. Sub-paragraph (b) says that no person shall be included in the electoral roll of any constituency "if he is of unsound mind and stands so declared by a competent court".

If this stands as it is Sir, then unless there is a declaration from a competent court, no one who is of unsound mind can be excluded from the electoral roll. This is giving a great privilege to people of unsound minds. We generally know that in every village and town such and such a man is insane. We know it very well. But if this Resolution is given effect to as it stands, then those people of unsound mind who have not been so declared by a competent court will be entitled to have their names included in the electoral roll. I hope the honourable Mover of the resolution will take notice of this fact that it is very difficult and it is a very lengthy process to have a person declared as a man of unsound mind. We have to approach the Judge of our district and then make an application for the appointment of a Curator as well as for a declaration that a particular person is of unsound mind. That process takes a long time, and if we start today to exclude persons of unsound mind from the electoral roll, we must start a civil suit immediately. In the absence of such a declaration these people can go into the electoral roll, and they will go into the roll. That is the position if this Resolution is given effect to. Otherwise, we have found that people of unsound minds are to be excluded. There is no such qualification: there is no such rider........

Mr. Vice-President: The honourable Member is indulging in a general discussion. I think he wanted clarification

Shri Rohini Kumar Chaudhari: That is the clarification--whether by this sub-paragraph you want that all persons of unsound mind should be included in the electoral roll unless they are so declared by competent court.

In the other portions of this Constitution we find that the word is not qualified in this way. There it says "persons of unsound mind". Here it is something more. It is not only that he is of "unsound mind" but he must be declared so by a competent court.

Then, Sir, in the last two lines of clause (4), it is said that such person shall be entitled to be included in the electoral roll of a constituency, if he files a declaration of his intention to reside permanently in that constituency, if he files a declaration of his intention tore side permanently in that constituency. I do not see why we should have the word `permanently'. As we all know, the refugees are generally located in refugee camps, and they are transferred from one place to another and no refugee, whatever his intentions may be, can say today that he is going to reside permanently in a particular place. Therefore, I would submit that the word `permanently' should be dropped from this Resolution. Otherwise, there will be a great limitation placed on the refugees and no refugee, if he is honest, will be in a position to make a declaration nor would he be entitled to inclusion in the electoral roll.

Then, Sir, I was asking another question and that is, that we have not discussed the citizenship right as yet. May we take it that the word `citizen' may be interpreted, as we understand it, in the usual way or whether there is any technical meaning attached to it? I may remind the House, at least those Members who are my contemporaries, that there was a text book called `The Citizen of India' by Lee Warner in the Entrance course; and may we follow the definition as laid down there, or in the absence of any definition in the new Constitution, may we follow the ordinary definition?

There is one other point, Sir, and I particularly refer to the use of the words: `31st March 1948'. By this is meant180 days preceding the 31st March 1948. I think, if we calculate in this manner, most of the members of the Central Assembly will be disenfranchised, because we are sitting here for long since January 1948.

Shri Algu Rai Shastri *[Mr. Vice-President, I submit that in the Resolution moved by Honourable Pandit Jawaharlal Nehru there is no provision for the delimitation of the constituencies. I do not see how preparation of electoral rolls can be taken in hand until and unless a decision about the delimitation of constituencies has been taken and arrangements have been made to put it into practice. The rule is that the names of votes are entered in the electoral rolls according to the constituency to which they belong. One fails to understand how, unless the constituencies are delimited, the electoral roll can be prepared or it is plain that it would not be possible to say in which place a person is to be registered as a voter. It appears to me that in the matter of preparing the electoral rolls we are going to act as if it was merely the taking of a census, but I am afraid that this process would not enable us to prepare the electoral rolls of each particular constituency. If this assumption of mine is correct I believe all the lab our spent on it would have been simply wasted.

While the anxiety to hold elections at an early date is understandable,-- and we and the whole House are with you in this matter and as a matter of fact this Resolution has been moved with that object only--it is also necessary to keep in view the fact that the electoral rolls cannot be prepared correctly on account of the constituencies not having been delimited so far. I am afraid that even if their preparation is taken in hand at this stage the rolls so prepared may be found to be entirely useless and prohibitively expensive.

It is true that the question relating to citizenship, that had been raised by me, has been answered to a certain extent by Pandit Jawaharlal Nehru. But I submit, Sir, that even if a few people only are likely to be adversely affected, it is desirable that ample provision may be made so that not even a single person entitled to be a voter maybe deprived of his voting right. I cannot lay too much emphasis on it, for it is evident that this is the most valued right of a voter and one which he must be given the opportunity to exercise. It is my submission, Sir, that there should be some provision so as to avoid the least possibility of even a single person otherwise entitled to be a voter, losing his right of vote. I am afraid that the difficulties arising as a result of the question of citizenship have not been fully removed as yet. I suggest that some words should be added in this Resolution which would clearly define as to who have the right of vote. Moreover, when the electoral constituencies are delimited, it would be easy to prepare the electoral rolls for such constituencies. I submit, therefore, that the questions of citizenship and the delimitation of constituencies should be solved before the preparation of electoral rolls is taken in hand. I have great I have great doubt that the object with which this Resolution has been placed before this House would be realised, unless these two questions are first solved. I, therefore, press my suggestion that more light should be thrown on these matters. I may add that citizenship and delimitation of constituencies are the keystones of any scheme of electoral rolls and as such an electoral roll cannot be prepared unless these have been properly defined. In any case, if it be said that even without them electoral rolls can be prepared, I would like to know how that miracle can be performed. This at least needs more clarification than what has been given as yet.]*

Shri Deshbandhu Gupta (Delhi): Mr. Vice-President, Sir, the point of order that I want to raise is this: The second part of the resolution reads like this. It says that the electoral roll should be prepared on the basis of the provisions of the new Constitution already agreed to by the Assembly, whereas article 149, which deals with adult suffrage etc and all the other provisions, has not yet been agreed to by this Assembly. So I suggest that until article 149 is passed, this Resolution cannot be taken up; otherwise it will be putting the House in a very awkward position.

Shri Mahavir Tyagi: Sir, may I move my amendment?

Mr. Vice-President: I rule that first of all the points raised for clarification by honourable Members would be answered by Pandit Nehru, and after that we will decide as to what should be done.

The Honourable Pandit Jawaharlal Nehru: Sir, I am very reluctant to appear again and again and speak repeatedly, and my only desire is to clear up any misunderstandings which may exist. In fact, I had no intention of moving this Resolution at all. This is not in any sense an official Resolution. I thought there was some misunderstanding about the Government coming into the picture, and you desired that somebody should move it. Two or three points that have been raised, if I may say so, are due to some misunderstanding, because I really do not myself grasp the significance of those points. For instance, one of the points raised by Mr. Kamath is that only two disqualifications are mentioned and not others. If you will see the Resolution, it says: "....the State electoral rolls be prepared on the basis of the provisions of the new Constitution...... agreed to by this Assembly.....". That is one thing and the other is "in accordance with the principles". That is all those mentioned in the Constitution are there; it is in addition to that something that is further mentioned. There are two things: if he is not a citizen of India and if he is of unsound mind. I will confess to the House frankly that saying that "if he is not a citizen of India" is rather unnecessary. I mean to say, it is a fact; the Constitution is based on that, and if it is left out, it makes no difference. It is really to round off, I may say, and it makes no difference.

There was another point raised by Mr. Rohini Kumar Chaudhari to which he seemed to attach importance and that is about the unsound mind.....

Shri H. V. Kamath: On a point of clarification, may I ask why.....

The Honourable Pandit Jawaharlal Nehru: It is impossible to continue. We cannot have clarification of every word and every sentence.

Honourable Members: Order, order.

The Honourable Pandit Jawaharlal Nehru: Am I in possession of the House or not?

Mr. Vice-President: (Addressing Mr. Kamath) You are always asking for clarification.

The Honourable Pandit Jawaharlal Nehru: May I submit there should be a limit to the points of clarification that a certain honourable Member raise in ten minutes.

Shri H. V. Kamath: It is for the Chair to decide.

The Honourable Pandit Jawaharlal Nehru: I am asking the Chair. On a plea of clarification, explanation, the time of the House that is taken is extra-ordinary; I think it is really misusing the time of the House.

Shri H. V. Kamath: That may be Pandit Nehru's view, but you, Sir, must judge.

The Honourable Pandit Jawaharlal Nehru: I submit, Sir, that as regards Mr. Chaudhari's point, about the unsound mind, what the Assembly has passed is certain disqualifications, which include `any law made by the legislature ..... relating to non-residence, unsoundness of mind, crime or corrupt or illegal practice etc.'. Now, it is obvious that an unsound man is normally considered unfit to exercise this privilege. But, who is to determine it? The law. When the law is made, well and good. At the present moment we have no such law. What is stated here is this. If a competent court says so, that must be accepted. I do not quite follow Mr. Chaudhari's argument; it is not easy to hear from this side what a person says from the other side. From what I gather, is every person to go to a court for a declaration that a man is of unsound mind? I do not understand why anybody should go there at all. A few persons of unsound mind may get into the rolls. But, many persons of unsound mind who are not declared to be of unsound mind come in and not only vote, but do many other functions too. We cannot simply help it. What we want to guard against is this. A person should not be ruled out on account of some prejudice or wrong decision. There must be some guide to the enumerator. The decision of a court surely must be recognised by the man who has to prepare the electoral roll. For the rest, if a further law is passed by the Constituent Assembly, I should think that would be good. But, it is quite impossible not to accept the decision of a court. It is not necessary, I submit, for you at this stage to say, subject to any other rule that may be made. If this House passes any other rules, the enumerator will follow them. This is a preliminary electoral roll. You cannot go into too great specifications and details. These rolls will, no doubt, be checked later or in accordance with the rules and laws passed by this Assembly or by the provincial Assemblies as the case may be. But, in the first instance, too many details cannot be gone into. You must remember that the man who is going to prepare them is an ordinary type of enumerator and he will have to go by his own lights which may not be very great. Afterwards, they would be checked by the other people concerned. So that, first of all, the disqualifications mentioned in the Constitutions as it is being passed will, of course, be given effect to. If you like, you may leave out, "If he is not a citizen of India", because it is redundant. But, the second thing is desirable, because, there is no test of unsoundness. There may be a closer test. Anyhow, this is a wide enough test: that if a competent court declares a man to be of unsound mind, we may accept that. If the court does not say so, we may accept that he is sound or unsound. If we pass any further rules, they will be followed.

An honourable Member asked as to where the declaration as to intention to reside is to be filed. Obviously, before the registering authority. He has not to go to any court. He may declare before the enumerator who puts down his name. The fact is that we should try to make this as simple and as easy as possible for the party concerned. The earliest way is for the enumerator to be informed.

One point was raised by Mr. Chaudhari, about people in the refugee camps. It is a very valid point. I think some special provision should be made to permit them to vote. For the moment, suddenly, I cannot say what it should be. But, I entirely agree that that is a valid point and special provision should be made. In fact, it was intended that they should vote. Nobody is going to reside permanently in a refugee camp. (*Interruption*).

Mr. Vice-President: We cannot permit any more interruptions.

The Honourable Pandit Jawaharlal Nehru: There is one important matter which might perhaps give rise to some misapprehension. In clause (4) it is said. "subject to the law of the appropriate legislature, a person who has migrated into a province, etc., etc.,". The words "subject to the law of the appropriate legislature" might create doubts and confusion. I should like, subject to the permission of the House, and you, Sir, permitting me to do so, to delete these words, "subject to the law of the appropriate legislature" and to say thus: "That Notwithstanding anything in clause (3), a person who has migrated into a province etc.". It was the object of clause (4), that the residential qualification in clause (3) should not apply to the refugees. I think, the clause should read:"(4) That, notwithstanding anything in clause (3), a person who has migrated into a Province or Acceding State etc., etc." I think this makes it clear.

Shri R. K. Sidhwa: The word "permanently" in clause (4), line 6 may be removed.

The Honourable Pandit Jawaharlal Nehru: Intention to reside for six weeks or two weeks would not be enough. I can assure the House that this resolution is in the nature of a directive. I would request the House to consider that this is not part of the Constitution. It is not a statute. The words need not be precisely looked upon from the point of view of a statute. These are general directions given to the Government which they will transmit to the enumerators, etc. As I said, even without this resolution, the Government can take those steps, of course subject to this House later on laying down any fresh qualifications, which might upset the rolls already prepared. I entirely agree that this question of camps should not come in the way of person voting. But, if you leave out the word "permanently" then you make it too loose. Any person can say, `I intend to reside here', meaning thereby that he intends to reside there for the next two weeks. That would make a farce of the whole thing. The idea is, nobody can guarantee what he is going to do for the rest of his life; but the intention should be more or less to reside permanently in that area.

Shri Bikramlal Sondhi (East Punjab: General): It may be stated, "to reside permanently in the Indian Union". He may go from one camp to another.

The Honourable Pandit Jawaharlal Nehru: Those in the camps should be specially dealt with. I can give an assurance to the House that this residential clause will not come in their way.

Shri Bikramlal Sondhi: What is the harm in removing the word "permanently"?

The Honourable Pandit Jawaharlal Nehru: You may leave out the word "permanently" from the point of view of the men in the camps; that does not apply to them. A way will have to be found out for them. If you leave out the word "permanently" in the case of those who are elsewhere, not in the camps, vague migrants also may come in. That is a clause in favour of the refugees.

Shri Bikramlal Sondhi: Will any stamp be required for this declaration?

The

Honourable Pandit Jawaharlal Nehru: The House will have to decide that. We want to facilitate this process and not to make it difficult by requiring stamps, etc. So far as I can say straight off, I do not think any stamp will be necessary. I do not see why that is necessary.

Shri Bikramlal Sondhi: Provincial Governments require this declaration on stamp paper.

The Honourable Pandit Jawaharlal Nehru: No stamps are necessary. To facilitate this, we shall inform the provincial Governments that this will be free.

Shri S. Nagappa (Madras: General): Most of our people are illiterate; it would be better if the declaration is allowed to be oral. *(Interruption).*

The Honourable Pandit Jawaharlal Nehru: I am sure the House wants that this process should be facilitated and obstructions should not be put in the way in the nature of stamps, fees etc. We propose to issue such directions to the Provincial Governments. it is difficult to go into the details at this moment. I understand that instructions have been issued that there should be no fees or stamps for this.

Pandit Lakshmi Kanta Maitra: The word "constituency" should be deleted. We have not yet delimited constituencies. Nobody knows what will be his constituency.

The Honourable Pandit Jawaharlal Nehru: I am prepared to accept the word "area" for the word "constituency".

One word more about the introduction of the word unsound mind'. That was taken from the present Government of India Act that is functioning now. In the Sixth Schedule of the Government of India Act it says-

> "No person shall be included in the electoral rolls for, or vote at any election in, any territorial constituency, if he is of unsound mind stands so declared by a competent Court".

Shri Mahavir Tyagi: Sir, may I move my amendments?

Mr. Vice-President: Why are you so impatient? Have you no faith in the Chair?

Shri Mahavir Tyagi: I have no faith in the procedure that is being followed.

Mr. Vice-President: You have no right to question the procedure once the ruling has been given.

Shri H. J. Khandekar (C. P. & Berar: General): This House has a right to question you, Sir.

Mr. Vice-President: The rules, which you are found of quoting, will tell you that you are wrong.

I understand Pandit Nehru will have to be away and the amendments which I have received will be allowed to be move done after another and I understand there is the Chairman of the Drafting Committee who will reply to them. Now I want to ask Shri Rohini Kumar Chaudhari whether in view of the explanation already given by Pandit Nehru, he still wishes to move the second part which deals with sub-para. (4).

Shri Rohini Kumar Chaudhari: Sir, I want more clarification.

Mr. Vice-President: Please come to the mike. Now that the discussions have started and amendments have been received, I cannot permit further amendments to be submitted. Mr. Chaudhari

Shri Rohini Kumar Chaudhari: Mr. Vice-President, Sir, I beg to move:

The Honourable Dr. B. R. Ambedkar (Bombay: General): If the Honourable Members will not speak loudly, it is very difficult for me to catch anything of what they say

Shri Rohini Kumar Chaudhari: Sir, I beg to move:

> "That in sub-section (b) of the Resolution the words 'and stands so declared by competent Court' be deleted".

Sir, we have gone through many elections and we have seen that in the previous electoral rolls and in previous constitutions, and even in the Draft Constitution which we are considering in this House, the word `unsound mind' has nowhere been qualified by the words which have appeared in this Resolution, and to which I have taken exception. As honourable Members of the House are aware, there is a fairly large number of people of unsound mind who are unfortunately not cared for by their brethren in India. We see some of them--at least the male portion of them who are roaming about freely and causing disturbance to themselves and their relations. But there are so many others particularly amongst the females of whom we do not know at all and I am told that there is a larger percentage of people of unsound mind among the females. Ninety-nine per cent of these have not been so declared by any competent court but anyone who is in charge of the preparation of electoral rolls knows very well that these people are of unsound mind but nobody will take care to go to any court and have a declaration made for them.

Mr. Vice-President: You are repeating the arguments which you put forward before the House once. I would appeal to you to take as little time as possible. As the House is aware we are going to disperse today. The House is equally aware that we must at least get through article 149. May I appeal once again that if there is anything new you may bring forward but not repeat the old arguments?

Shri Rohini Kumar Chaudhari: If I am allowed to speak I will finish it more quickly. What I wish to say is the procedure which has been followed hitherto is quite correct because if you put a Patwari or anybody else as in charge of the work of preparing the electoral rolls, he will exclude anybody whom he knows to be of unsound mind. So this qualification ought to be deleted. Nowhere have I found this qualification made. So I say this ought to be deleted and no difficulty will be created by deletion of that because if anybody is aggrieved that he has been unlawfully excluded, he can go up to the higher authorities and the returning officer will consider all those cases. If you do not exclude them, then all the unsound people will go into the electoral rolls.

My second amendment is:

"That in sub-paragraph (4) the word `permanently' occurring in line 6 be deleted."

Now, if I give an instance, I think the honourable Members will be convinced about the reasonableness of my amendment. I have heard that there are about 50,000 refugees--Sindhi refugees in Bombay--and they are going to be transferred to Bengal or Assam. Now these people have been in Bombay so long and they make a declaration that they wish to stay permanently in Bombay. They would like to be near my Friend Mr. Sidhwa. By the time the electoral rolls are prepared they may be transferred to Assam. Then what is the use of having all those people entered in the Bombay electoral rolls? Similarly, if they come to Assam before the election and they cannot be included there because the electoral rolls for Assam will have been prepared before and the time for declaration will have been past, what is the use of having this sub-para unless you remove the word 'permanently' from this sub-para? Therefore, in the case of a refugee who has no such intention, or at any rate whose intention does not mean anything so far as elections are concerned, if you retain the word "permanently" in this clause, you will practically be depriving him of the franchise. Therefore, I request that this word be removed.

Mr. Vice-President: I have to inform the House that unless we make satisfactory progress, we shall have to sit again in the after noon today, in order to get through at least article 149, and probably to-morrow also. (*Interruption*) I am in the hands of the House. It was not I who created any difficulty probably the House will admit that.

Shri K. Hanumanthaiya (Mysore): Sir, I wish to move an amendment to the effect that the words "in the year 1950" occurring at the end of the first para, be deleted. The effect will be that the sentence will end thus--

"........that elections to the Legislatures under the new Constitution may be held as early as possible."

My intention in moving this amendment is that whatever we say or what ever we do must be quite accurate. Sir, this is not the first time that we have declared it to be our intention that the elections should be held as early as possible; it was declared in this very Assembly that the elections should be held in 1948. If we go on repeating dates which it is almost impossible to keep, to that extent this House would get a kind of odium at the hands of the people. Therefore it is better to state our declaration to hold the elections as early as possible. It may not be possible to hold the elections in 1950, or it may be possible to hold them earlier. We are going to work this adult franchise for the first time and we do not know how long it will take us to prepare the electoral rolls and divide the country into proper constituencies and things of an allied nature. Therefore, in order to be more accurate in our resolutions, I would urge on this House not to put down any specific date, but to say that ...

Shri L. Krishnaswami Bharathi (Madras: General): There is no specific date laid down.

Shri K. Hanumanthaiya: By date, I mean the year 1950. It may not be possible to hold the elections in 1950, and previously we have found that we could not stick to the year we had proposed. Our Prime Minister once said that elections should be held in 1948, and it has not been possible to have them in 1948. I do not want the words of the Prime Minister or of this House to be treated in that fashion. We must be more serious about what we say. Therefore, I suggest that the phraseology may be slightly changed and we may say that the elections should be held as early as possible, in order to be truthful to ourselves and to the people.

Shri Mahavir Tyagi: Sir, I beg to move:

"That all the words occurring after the words `This Assembly' in the first paragraph, be deleted."

If this amendment of mine is accepted, then the resolution would read:--

"Resolved that instructions be issued forthwith to the authorities concerned for the preparation of electoral rolls and for taking all necessary steps so that elections to the legislatures under the new Constitution may be held as early as possible in the year 1950.

Resolved further that the State electoral rolls be prepared on the basis of the provisions of the new Constitution already agreed to by this Assembly."

That is what I want this Resolution to be.

In moving this amendment, I want to submit that from the beginning to end, the language of this Resolution has been very unfortunate and unhappy. In the first place, we must all be conscious of the fact that there is a distinction between our resolutions and the articles of the Constitution. We are a sovereign Body, no doubt, but the words uttered here and the resolutions passed here do not carry the same value or weight before the eye of the law as the regular articles of the Constitution. We must pass a

Bill or Constitution. The resolution has no legal value and the legality of an action done through this Resolution maybe questioned, especially in the matter of constitution-making.

Pandit Balkrishna Sharma (United Provinces: General): What does the honourable Member think about the Objectives Resolution that was passed in this House?

Shri Mahavir Tyagi: It was an Objectives Resolution only, and it has no legal value. The value lies in this book and nowhere else.

Mr. Vice-President: You will please keep to your point; in that way, we may be able to avoid an afternoon session. A veteran speaker like you should not be disturbed by such interruptions.

Shri Mahavir Tyagi: Thank you, Sir. What I say is that the Government cannot act without a definite article in the Constitution. Every authority issues and comes out from one or the other of the articles of the Constitution and not from a Resolution. This Resolution only expresses the wish of the House that we do not want to delay democracy from going down to the people.

Pandit Balkrishna Sharma: What about the directive?

Shri Mahavir Tyagi: I do not want to be disturbed. (Laughter). Democracy or freedom has come only up to the Constituent Assembly, it has not yet filtered down to the masses, and it will do so only when the villager exercises his freedom and goes to the booth to cast his vote. Therefore we are in a hurry to see that this freedom goes down to him. The electoral rolls should be got ready soon. The Constituent Assembly is anxious that the elections should take place as early as possible. The Resolution, however, says that "the State electoral rolls be prepared on the basis of provisions of the new Constitution already agreed to by this Assembly". That means, agreed to up to the time of the passing of this Resolution, and the most important part has to be agreed to in the afternoon session and not now. Up till now, we have only half done it.

Mr. Vice-President: May I suggest that the Resolution will bear not the time, but the date?

Shri Mahavir Tyagi: That is good, so that evening may also be included in the morning.

Well, Sir, as I said, this is merely an expression of our desire that we are anxious to issue instructions to the Provincial Governments so that they may be ready with whatever preliminary work needs to be done in connection with the preparation of the electoral rolls. The electoral rolls will not be ready and cannot be prepared by an authorisation of the kind which the Resolution seeks to do. The orders of Government are necessary for that. This Resolution is therefore an innocent one. It only gives the provincial governments and the Central Government the authority of the Constituent Assembly to go ahead with the preliminary work necessary for the preparation of the electoral rolls. Hence, without going into details, if we limit the scope of the Resolution to the necessities of the case, we require only the first two paragraphs of it. Only when we attempt to go into details, difficulties arise. For instance, as my friend stated, the citizenship clause has not been adopted. Even if we sit till midnight, it cannot be done. Under this Resolution, the authorities can prepare village or Mohalla electoral rolls without naming as of this or that constituency. The constituencies can be delimited only later on. The electoral lists now prepared will help also the delimitation of the constituencies later on. The rolls thus prepared will be preliminary to the real work that lies ahead. The spirit of the Resolution cannot be found fault with. It only informs the country that we are anxious to start the elections. Let us not go into detail sat this stage. To depend on these incomplete and ineffective details will be something like "driving a peg in the sky and hanging our hopes on it". (*Interruption*.) Sir, I am inclined to yield to this interruption.

Shri H. J. Khandekar: May I ask for information what value will this Resolution have when we have not passed article 292 which deals with the minority question, reservation for the minorities, and so on?

Shri Mahavir Tyagi: The question of minorities does not arise at all. This Resolution will only enable the Governments concerned to prepare the list of adults everywhere.

Shri H. J. Khandekar: The seats are reserved for the minorities on population basis and if the voters lists are complete without census how can you distribute the seats for minorities on population basis?

Shri Mahavir Tyagi: This difficulty will not arise at this stage. I know there has been no delimitation of constituencies. Only the work of collecting the names of all adults in the villages and towns is meant by this resolution. These registers of electors will be attached to various constituencies as soon as they are described and delimited.

Shri H. J. Khandekar: Sir, the Honourable Shri Tyagi has not followed me.

Mr. Vice-President: I am afraid I cannot permit this discussion. Mr. Khandekar may read out those points in the course of his speech.

Shri Mahavir Tyagi: I am submitting, Sir, that the preparation of the 1st of adults does not come either in the way of reservation or delimitation of constituencies. This Resolution only enables the Government to prepare report of general list of all adults resident in different localities. Therefore it is a very innocent Resolution and may be adopted as amended by my amendment. With these few words I support the proposition, subject to my amendment.

Mr. Vice-President: Prof. Shibban Lal Saksena may now move the amendment. I can allow him only five minutes.

Prof. Shibban Lal Saksena (United provinces: General): Mr. Vice-President, I beg to move.

"That (1) for `1st January 1949', the words `1st January 1950' be substituted;

(2) for `constituency' wherever it occurs in this Resolution, the word `area' be substituted .

(3) for `file a declaration of', substitute 'signifies';

(4) the word `permanently' be deleted."

I should like to say, Sir.......

Mr. Vice-President: I should like to suggest that you leave out the word 'Permanently as it has been dealt with by another Member.

Prof. Shibban Lal Saksena: Sir, we have fixed January 1st 1949 as the date with reference to which the age of the electors is to be determined. We have stated that the elections shall be held in 1950. They may be held as late as December 1950. Therefore if we adopt the date proposed for the age, we will be excluding all those men who would become qualified to vote on 1st January 1950. I feel that we should not disenfranchise a large number of persons in this way. About a crore of persons who will be 20 Years of age on 1st January 1949 will become 21 Years of age on 1st January 1950, and we should not disenfranchise these people for the first election.

Then, I agree with Mr. Tyagi that this Resolution is not a direction to the Governments. We cannot override the provisions of the Constitution which we have passed. We have not passed as yet the provisions relating to delimitation of Constituencies. So at present we should say `areas'. We can prepare the rolls for areas and afterwards, when we have passed the Constitution, we can group these areas together into constituencies. At present we should use the word 'area' instead of `constituency'. That will be much more helpful and also accurate. When the `constituencies' are not there you cannot frame the rolls for them. But you can enrol voters in each area. The difficulty is greater for the minorities. Seats may be reserved for them and if they do not know what the constituencies are in which such seats have been reserved for them, it will not be very helpful to them. By merely passing a Resolution of this kind we cannot form constituencies. I therefore think that the word area should be substituted for constituency.

Then I come to the filing of declarations. Many of our refugee friends are not literate and may have to seek the aid of petition writers to make and file applications. That means money and expense to them. I think that the man who seeks to vote in any area should simply say: I want to reside in this area. That should be enough to qualify him for the vote.

There should not be any filing of applications. Merely signifying the intention to beside should be enough. I do not think there should be any difficult procedure for this purpose. If you ask a villager who is not a literate person to file an application like this, other people will exploit him and make money. That is why I say that mere signifying one's intention to reside in the constituency should be enough for his enrolment.

Then, Sir, the word `already' is there. We have not passed article 149, and so the word `already' is not strictly opposite. Therefore it should be removed.

There is another point which Mr. Tyagi raised that this Resolution of ours cannot have any legal force. I think there is much to be said about that. What we have passed in article 67, clause (6), is that "The election to the House of the People shall be on the basis of adult suffrage; that is to say, every citizen who is not less than twenty-one years of age and is not otherwise disqualified under this Constitution or under any Act of Parliament on the ground fanon-residence, unsoundness of mind, crime or corrupt or illegal practice shall be entitled to be registered as a voter at such election."Now, Sir, we are not constituted as the Parliament and therefore the Resolution has no right to say that only such and such men will be included in the rolls and not others. I think this resolution is only a sort of direction. As such, it will have no legal effect, unless an Act is passed that men who are of unsound mind or who have committed crime shall not be voters. I think this should be properly studied by Dr. Ambedkar, so that we may not be faced with any difficulty over this.

With these words, I commend this amendment to the House.

Pandit Thakur Dass Bhargava: Mr. Vice-President, Sir it is very unfortunate that a Resolution of this kind should be debated so hastily in this House. I got a copy of the resolution only at about eight in the morning today and when I came here, I tabled amendments on which I want to speak. But I have now found many more difficult problems in this Resolution and I would beg of you kindly to permit me to speak when the resolution is being discussed or permit me now to give in detail all my objections on this subject. If you permit me to speak on the whole Resolution now, I will finish my speech now.

Mr. Vice-President: You can use you discretion.

Pandit Thakur Dass Bhargava: My submission is that the subject matter of this Resolution is one which as a matter of fact should have been contained in an Act of the legislature. In the first place, Sir, as has been pointed out by Mr. Tyagi, I doubt very much whether a resolution of this character will have any legal force in the sense that an Act will have. We have already passed article 67, clause (6). In clause (6) we have laid down that the disqualifications for electors must be either under this Constitution or under an Act of Parliament on the ground of on-residence, unsoundness of mind, crime or corrupt or illegal practice. So far as the question of disqualification on the basis of non-residence is concerned, I am afraid that paragraph (3) and (4) of this resolution trespass on sacred ground which ought to be covered only by an Act of Parliament. We cannot by a resolution say that a person should declare his intention to live in a constituency to be included in the electoral roll of that constituency. That has no binding force.

Similarly in regard to persons of unsound mind. I find that if this Resolution is given effect to, those persons of unsound mind who have already been so declared by a competent court will not be included, but those persons of unsound mind who have not been declared will have to be included. The Act of Parliament contemplated in article 67, clause (6), may be passed in 1950 or 1949. We are anticipating that Act. How can you fix by a mere resolution the date 1st January 1949 or say "unless he has resided in that constituency for a period of not less than 180 days in the year ending on the 31st March 1948"? My submission is that only an Act of Parliament can fix such dates. A resolution cannot fix those dates.

Similarly, the present law about naturalisaiton and citizenship is in force. We cannot by a resolution do away with those laws. Those Acts, have got the force of laws and a mere resolution cannot do away with them. My sub-mission is that this Resolution is against the present law and the principles contained in article 67, clause

Apart from this, Sir, unless you pass the citizenship clause, you cannot have an electoral roll of citizens. When the constituencies have not been delimited, I doubt very much if the words "resided in that constituency" have got nay meaning. After all, till the constituencies are delimited, we cannot know whether a person will reside in this constituency or that constituency. Now the population basis is seventy-five thousand and it will be very difficult to find out, when the electoral rolls are being prepared, whether a person lives in constituency A or constituency B. My submission is that everything in this Resolution seems to put the cart before the horse, because the constituencies have not been defined so far, the citizenship clause has not been passed. It may be said that by way of preparation some kind of register may be prepared, but the word used is 'electoral roll'. Then, if it is to be prepared, it does not require any resolution. I understand that since the last eight months this preparation is going on. Are the electoral rolls already prepared illegal? If they are not illegal, this Resolution is unnecessary, and if they are illegal, they cannot be made legal by passing this Resolution. My submission is that it would have been better if we had not brought forward this Resolution which has got no binding force as compared with the law in the form of an Act of Parliament.

Now, Sir, with regard to the particular amendments that I have submitted for you consideration, the words in sub-clause (4) are: "file a declaration of his intention". We have just been told by the Honourable the Prime Minister that when the enumerator--by that I take it we mean the person who is in charge of the preparation of the electoral roll--goes to a village, he should obtain a declaration from those refugees. Now, Sir, I want this Resolution to make two things clear. Number one is that no stamp will be charged from them. Number two is this. The person in charge of the preparation of electoral rolls should go to the villages and get the declarations there. Now a mere declaration by howsoever a prominent or high authority will not be enough. After all, it will be the provincial governments who will have to do this job. They may not be able to send patwaris or enumerators who are in charges of these rolls to each village and it may be that these refugees may have to spend Rs. 2 each and come to the headquarters and get the declaration made. They are illiterate people. They will be put to all sorts of untold sufferings. Many of the members of this House are fully aware that if such kind of declaration is to be filed, it may be that many people may extort some sort of illegal gratification from these people and only allow them to put the declarations and become voters if those persons are paid something. These difficulties have to be encountered. My submission is, if you want to have a rule of this kind, you must see that all kinds of faciliteis are extended to the refugees either by executive order or by embodying them in this Resolution, so that there will be no difficulty in regard to these refugees. These refugees are a sort of special charge of the Government of India and all kinds of facilities must be given to them.

Now, Sir, I have given notice of another amendment also, relating to the date, 31st March, 1948. My humble submission is that this Resolution is not competent to fix this date, but if any date is to be fixed, I would humbly, suggest that the date may be the same as in clause (2). Is January 1949 or 31st March, 1949 may be the date so that the right of a citizen who is a citizen up till today, up till31st March, 1949 or up till 1st January 1949 may not betaken away. There is no reason why, so far as he is concerned, the question of residence should come in his way. My submission is that this date may be the same, or it may probably be 31st March 1949 because I do not think that before March 1949 the orders or the subject matter of this Resolution will be put into effect, and until this is effected, we should put the date as late as possible. There is no sense in putting this date 31st March 1948 so as to exclude many people or to put obstacles in the way of many people. My submission in regard to both these amendments is that they may be accepted by the House.

Mr. Vice-President: There is an amendment in the name of Mr. Nagappa. In view of the explanation already offered by Pandit Nehru, does he still insist on moving his amendment?

Shri S. Nagappa: Yes, Sir. I beg to move the amendment that stands in my name, namely:

"That in paragraph (4) the following words occurring after the word 'constituency' in the last but one line, namely,

> `if he files a declaration of his intention to reside permanently in that constituency' be deleted."

My reasons are these. We know that in our country only10 or 12 per cent are literates. Now, "filing a declaration" means what? If it is "making" a declaration, it is a different thing. Supposing an officer goes to a person, if he records the declaration made by the person, I can understand it. But filing a declaration means, it must be a declaration in writing. Now, I am glad that the honourable the Mover made it clear that one need not affix any stamp, but that does not take away the burden of filing a declaration in writing--writing it, getting it signed and filing it before the officer concerned. So my point is, if you want to delete, delete the whole clause. Otherwise, there is my alternative amendment. I would like to move it also with your kind permission, namely, to say "if he files or makes a declaration". If we put it that way both the literate and the illiterate people may have the chance of getting themselves enrolled as voters.

Mr. Vice-President: May I point out to the honourable Member that this has been already accepted by Dr. Ambedkar?

Shri S. Nagappa: If it is accepted, well and good. In that case, where is the necessity for me to move it, if you say are accepting it?

The Honourable Dr. B. R. Ambedkar: I have heard the honourable Member and I have heard others also. I have understood all their arguments and I think a repetition of their arguments, so far as I am concerned, is quite unnecessary. I have understood them already.

Mr. Vice-President. The Resolution is now open for general discussion.

Seth Govind Das: *[Mr. Vice-president, Sir, I am not a lawyer not do I intend splitting hairs. I would like only to say something regarding the objects and motives that lie behind the Motion which has been placed before us.

There are two kinds of Members in this House. One class consists of those who are also connected with the public life outside this Constituent Assembly and the other, I maybe excused for saying so, consists of those who are connected only with this

Assembly. I am prepared to accept that the electoral rolls of he present and prospective voters are being prepared. I concede that even without this Motion there would have been no hindrance in that work. But at the same time I would like to say that, in spite of the preparation of the electoral rolls, the slow progress of this Constituent Assembly in the completion of its work and the delay occurring in the framing of our Constitution are such as have given birth to different kinds of misconceptions about us in the minds of the people. I have got some connection with the public life outside this House and I therefore know what is being said outside. Some people say that those who are Members of this Constitutent Assembly or of the Legislative Assembly as also those who are our Ministers in the Centre or in the provinces, are determined to stick to their places and to delay the elections as long as possible. Some people say that if we intend giving the right of vote to every citizen who is 21 years of age, elections cannot be held until the census of 1951 and an umber of other preliminaries have been completed. Others hold that it would not be possible successfully to hold elections if these are to be held after the principle of adult franchise has been adopted. I would like to emphasis the fact that all such misconceptions and sentiments which are prevailing in the whole of the country would be totally removed by this Motion. By adopting this Motion we would be proving that we are not anxious to delay the elections. We also make it clear to the people that the elections are possible on the basis of adult franchise. I do not know why it is said that such an election cannot possible be held. It is no doubt true that the country has a huge population, as also a very large area. But even though I accept that the country is large and that every person of 21 years will have the right of vote, I am not ready to accept the proposition that elections on that basis can not be held here. The main argument advanced by some people in support of this proposition is that the number of voters would be so large, polling booths would be so many and the numbers of persons required to control these booths would be so huge that it would simply be impossible to hold the elections successfully. I consider such fears to be entirely ridiculous. Even though all the citizens of this country are not literate, we can have able persons who can maintain orderly voting at these polling booths. If assessors can be summoned to sit in the law courts, such educated persons as are not government employees can be summoned to work educated at the polling booths. We should concentrate our view on the object and moves behind this Motion. We should not be splitting hairs. It is not desirable for us to give too much attention to the question of syntax--of the appropriateness of the colons, semi-colons and commons. This is a Motion and not a Bill or a draft legislation. The Government expresses only its intentions by means of such motions, and it is usually made in order to give some assurance to the people. The Objects of this Motion is to give a message to the governed and the public, or rather to give an assurance to the people that though we are here, yet we are not anxious to remain here for ever. Through this Motion we wish to make it clear that we believe in true democracy; we wish to express that even after granting franchise to all such countrymen of ours as are twenty-one years of age, we are determined to hold elections in 1950. This Motion has been brought before the House with these objects and sentiments and I support this Motion because I entirely agree with those objects and entertain the same sentiment. I support the original Motion. After this Motion has been adopted all the apprehensions prevailing in the minds of the people of this country would be totally removed and anew hope would begin to fill their hearts. I would like to remind you of the days when the Constituent Assembly started functioning. The country appeared to be full of a new life, and people took great interest in the proceedings of the constituent Assembly. But the work of the Assembly has gradually become so prolonged that people have begun forming funny ideas about it and have not much interest in the daily proceedings of the Assembly. By adopting this Motion it would be proved that we wish to hold elections in 1950, and we also make it clear that we want to frame the Constitution as early as possible and in this way we remove the apprehensions of the people. If we look therefore to the objects of the Motion and consider the motives lying behind it, we will have to agree that the acceptance of this Motion is quite necessary, if not for legal purposes, for the realisation of these objects and satisfaction of these sentiments. I support the motion.]*

The Honourable Shri K. Santhanam (Madras: General): Sir, I do not want to take up the time of the House to any considerable extent. The exact effect of this Resolution should be realized. I do not think it will have the same validity as the clauses of our Constitution. I think the effect will be something like a declaration on a provisional basis for preparation of electoral rolls. As soon as a Constitution has been formally brought into force, the electoral rolls prepared under these provisions will have to be duly ratified by the rules and the authorities under the new Constitution. All that it means is that the authorities which will have to do it will take note of the fact that this was passed by the Assembly and they will try to see that no changes are made, or only the most necessary changes are made in the electoral rolls prepared under these provisions.

Sir, I think the difference in the dates between clauses (2) and (3) are not only unnecessary but embarrassing. The Prime Minister explained that the date of 31st March 1948 in clause (3) is intended to conserve the electoral rolls that have already been prepared under the directions of the Government of India. That is a legitimate purpose, otherwise the whole electoral roll will have to be changed.

In clause (2), all people who attain the age of 21 years up to 1st January 1949 will have to be included. I shall just give an indication of the numbers involved. I think every year 10 million people attain, the age of 21 years from the age of 20. The average age in India is 30. Therefore, in every age group, especially in the middle age groups, there will be 10 million people involved. Therefore, by putting 1st January 1949, in clause (2), we include at least 75 per cent, of those 10 millions: that is, 7 1/2million new voters will have to be brought into the registers already prepared. That means a complete overhaul of the electoral registers. Therefore, if we want preparation of new electoral rolls, we should adopt the suggestion of Pandit Thakur Dass Bhargava. Let us take 31st March 1949--that will have the merit of giving the franchise to people qualifying up-do-date. Otherwise if we want the maintenance of the old registers let us have 31st March 1948 in clause (2) also. We need not then add to the registers in any large numbers. Therefore, there should be some coordination between these two clauses.

In clause (4), there has been much argument about the word "permanently". The intention was that the refugees should declare their intention to reside in India permanently, while they could reside in a particular constituency for some time. That is the intention. Even a citizen is not expected or required to reside in any constituency permanently. A citizen is required to reside only for a period of six months before a particular date. Therefore, I do not think that in the case of refugees some new and onerous condition is being put forward. All that is meant is that he should declare his intention to reside in the constituency; but he should also declare his intention to reside in India permanently.

One more point, Sir, is--I think it is even more important than the preparation of electoral rolls--that the Delimitation Commission should be appointed as early as possible. It may be argued that the preparation of electoral rolls will have to precede the delimitation. I do not think it is correct because on the basis of adult franchise, delimitation has to be based on the population and not so much on the electoral rolls. Therefore, the two processes can proceed simultaneously and I do suggest to the Government of India that they should immediately appoint--if necessary from instructions from the President of the Constituent Assembly--a Delimitation Commission, so that the entire work of constituencies will be over by the end of this year, so that the final preparation of the electoral rolls and the appointment of other agencies for thee lections can be proceeded with expeditiously.

There is also another consideration which requires the appointment of the Delimitation Commission as soon as possible. Even in the preparation of electoral rolls, the final printing and other matters will have to be taken up only constituency by constituency. Now, according to the provisions we have already adopted, every constituency must have approximately the same number of people. Therefore, unless the constituencies are delimited, we will not know the area for which the electoral rolls will have to be prepared. That means that the final preparation will have to wait for the delimitation of the constituencies. This should be proceeded with as soon as possible. Sir, I hope that these points will be considered by those who have to give effect to this Resolution. As I pointed out at the beginning, this Resolution is in the nature of provisional directions to the Government of India on behalf of the Constituent Assembly to prepare the spade work. The final directions will have to be given by the President or such authority as will come into existence after August 15th next, if fortunately we are able to put the Constitution into force by that date.

Mr. Mohamed Ismail Sahib (Madras: Muslim): Mr. Vice-President, Sir, it is true that preparations for elections and carrying on of the elections have been delayed. Much as we may regret this delay, I do not think that a resolution of this sort will in any way be a proper compensation for this delay. As I see this Resolution, I find many difficulties crop up. From the very wording of this resolution, I find that this delay cannot be cut short, as the matter stands. First of all, the resolution says in its first clause "that no person shall be included in the electoral roll of nay constituency" and then (a) and (b) and so on. But we are not told who is to be included; it puts the matter in a negative way. How those who prepared the electoral rolls are to proceed is not said here positively. Then, Sir, the only positive clause here is No. (4). There it says: "That, subject to the law of the appropriate legislature, a person who has migrated into a province or Acceding State on account of disturbances" and so on "shall be entitled.....". That is the only positive clause here. And we are not told who are he persons who are to be included in the electoral rolls otherwise. It has to be made clear. Then again, the dates given in clauses (2) and (3)are such that they will disenfranchise the vast number of people who would otherwise be entitled to vote when the elections actually take place. Sir, it is said in defence of these dates that if we adopt any further dates, the preliminary electoral rolls that have already been prepared would be disturbed and upset. On that account I urge that millions of people ought not to be disenfranchised. The authorities may adopt in the place of these dates other dates, whatever may be the inconvenience in the preparation of the electoral rolls, because the franchise of the people is surely more important than the inconvenience that may be caused to the authorities concerned, who are engaged in the preparation of electoral rolls. Here, Sir, for determining the age, the date 1st January 1949 is given. It will not at all be difficult for determining the age if, say, a date such as the 1st January 1950 or even the 31st March 1950 is taken as the basis. That must be done, though it may cause some inconvenience in the matter of correcting the electoral rolls that have already been prepared.

Then again, Sir, for residence the date is fixed as the 31st March 1948. That can very conveniently be fixed as 31st March 1949, because in this case, those who prepare the electoral rolls must know where a person has actually resided in a particular place or constituency up to a particular period. Therefore, I think we cannot adopt the same date as we adopt as the basis for determining the age. However, this date can be changed into 31st March 1949.

Then again, in clause (4) I spoke of the difficulties which are confronted in the matter of this resolution. There is one phrase, in this clause (4). It says: "That, subject to the law of the appropriate legislature...". Here the honourable the Mover of the Resolution evidently has in mind the procedure that is to be adopted in this matter. But the phrase, as it stands, means that the appropriate legislature may even change the meaning of this clause, and may even change the phraseology. There is nothing here in this Resolution to say that the appropriate legislature shall not do anything to affect the franchise of the people concerned here in clause (4). Therefore, that has to be made clear. What is contemplated here must be made clear by making the phraseology of this clause clearer; that is, we have to make it clear that it is only the procedure that is intended, not the law itself, and the meaning of this Resolution shall not be tampered with or shall not be affected by any legislation that may be resorted to hereafter.

Then again, there is a lot of force in what some of the movers of the amendments said, with reference to certain words and phrases in this Resolution. It was pointed out that the word "already" refers only to the provisions that are passed before this Resolution is passed. If this word is retained here, that would really lead to a lot of contention and controversy. Therefore, there is no harm.......

Mr. Vice-President: May I say that the deletion of word "already" has been accepted?

Mr. Mohammed Ismail Sahib: So far so good.

Then, I do not know what the honourable Mover or his representative is going to do in the matter of this citizenship. There must be some instruction as to who should be included. Here you have said who should not be included in the electoral rolls. There must be some positive instruction as to who should be included.

Then again, I think there is a great deal of force in the contention that the Resolution cannot have legal force. The Honourable Mr. Santhanam explained that this is not meant to have any legal force or authority at all and that it is only for the purpose of facilitating the preliminary work of the preparation of electoral rolls and preliminary work of preparing for the general elections. It may be so. But, in course of these preparations, certain things might crop up. Certain people may go to a court of law, for example, for example, for including their names or for setting aside the exclusion of their names. What force will this Resolution have and what will be the position of those contestants and what will be the position of this Resolution? That has also to be seriously considered. That is why I said that the delay which we want to compensate for cannot in any way be abrogated by such a Resolution as this. We would have done very well to expedite the passing of the Constitution and then taken up this question of conducting elections.

The Honourable Shri Satyanarayan Sinha (Bihar: General): Sir, the question may now be put.

Mr. Mohamed Ismail Saheb: Then, again, Sir, the question was raised with regard to the minorities.

An Honourable Member: There are no minorities.

Mr. Mohamed Ismail Saheb: It may be said that this question can be gone into after the preparation of electoral rolls, and that the electoral rolls can be so arranged, or can be so changed as to suit the provisions that may yet be passed by this honourable House. But, that would also lead to a lot of difficulties and inconvenience, and thereby we are not saving any time at all. That is what I wanted to say. Now, the whole point in bringing forward this Resolution is to avoid any great delay. My question is, are we really doing that?

The Honourable Shri Satyanarayan Sinha: Sir, I again move that the question be now put.

Some Honourable Members: No, No.

Mr. Vice-President: I would like to know the view of the House with regard to the closure motion just moved.

The Honourable Shri Satyanarayan Sinha: You may put it to vote, Sir.

Mr. Vice-President: I am putting to vote the closure motion.

The question is:

"That the question be now put."

The motion was adopted.

Mr. Vice-President: Dr. Ambedkar.

May I suggest that you read the resolution in the accepted form before you reply?

The Honourable Dr. B. R. Ambedkar: Yes; I will indicate the changes that I am going to accept.

Shri Deshbandhu Gupta: May I know, Sir, before Dr. Ambedkar proceeds to reply whether you have given any ruling on the point of order raised by me. I had raised a point of order that, unless the word "already" goes, this Resolution will be of no use because article 149...

Mr. Vice-President: I think the word "already" has already been omitted.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, with your permission, I propose to reply to the debate on behalf of the mover of this resolution.

Before I proceed to deal with the detailed amendments, I should like to propose myself certain amendments in the Resolution as was moved by the Mover.

The first amendment that I propose is, to delete the word "already" from paragraph 2.

My second amendment is to delete clause (a) from sub-clause (1), and delete also the letter and brackets "(b)" in the beginning of the second sub-clause, so that sub-clause (1) will read thus:

> "That no person shall be included in the electoral roll of any constituency if he is of unsound mind and stands so declared by a competent court."

Then, in paragraph (4), I propose to make the following amendments. For the words "subject to the law of the appropriate legislature" in line of that paragraph, my amendment would be "notwithstanding anything in paragraph(3) above". In line 5 of that paragraph, for the words "a constituency", substitute the words "an area".

In the same line of the same paragraph, after the word "files", add the words, "or makes".

For the word "constituency" in the last line of the same paragraph, substitute the word "area".

These are my amendments. I shall briefly explain my amendments. The amendment which I have moved to drop the word "already" meets the point of order that was raised by Shri Deshbandhu Gupta.

Shri H. V. Kamath: On a point of order, Sir, has Dr. Ambedkar moved fresh amendments? In that case, there should be a discussion on those amendments. I want your ruling, Sir.

Mr. Vice-President: There is a Latin proverb which I learnt years ago.

"Summum justice summum injuris."

The letter of the law killeth but the spirit giveth the life.

Shri. H. V. Kamath: In this Assembly, Sir, we have to observe as far as possible, the letter as well as the spirit of the law.

Mr. Vice-President: I am going by the spirit of the law. I do not care what rule I break.

Shri. H. V. Kamath: May I say, Sir,.......

Mr. Vice-President: Will the honourable Member kindly resume his seat?

Shri H. V. Kamath: This is a desperate procedure, Sir, That is all I can say.

The Honourable Dr. B. R. Ambedkar: Sir, as I said, it is quite true that the word "already" raises the complications which Mr. Deshbandhu Gupta mentioned and it is only right that his objection should be removed by the deletion of the word "already".

With regard to the second amendment dropping clause (1), it seems to be quite unnecessary, because, the purport of that clause is embodied in paragraphs (3) and (4).

With regard to my next amendment to substitute the words "notwithstanding anything in paragraph (3) above" for the words "subject to the law of the appropriate legislature", my submission is that the original words were really unnecessary and inappropriate in a clause of that sort. Sub-clause (4) is really an exception to clause (3).That matter has been cleared by my amendment.

With regard to the word "constituency" I have substituted the word "area" in order to meet the criticism that at the stage when the rolls are prepared there are no constituencies and all that a man can indicate is an area, not a constituency, because, constituencies are not supposed to be in existence then.

My amendment for the addition of the words "or makes" meets the criticism that has been made that there are many people who are illiterate, who may not be in a position to sign an application and file it before a particular officer. The addition of the words "or makes" permits an oral declaration to be made either before a District Magistrate or before an officer who is preparing the electoral rolls. I think that objection is fairly met.

I will now take into consideration the other amendments which have been moved to this Resolution.

Shri L. Krishnaswami Bharathi: May I suggest one amendment to the Mover that his reason for amending 'constituency' in Para. (4)...

Mr. Vice-President: You cannot tell it to the House. You can tell it to Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: I am prepared to make the necessary consequential changes. As I said, I will turn to the other amendments and I take the amendment of my Friend Mr. Tyagi. If I understood him correctly, he had no objection to the Resolution in its general terms. What he wanted was that the details should be deleted. It seems to me that the position taken by my Friend Mr. Tyagi indicates that he has confusion in his mind about what the objective or the aim of the Resolution is. The aim of the Resolution is merely to make a declaration that it is the intention of this Assembly that as far as possible, election may be held sometime in 1950 but the object of the Resolution is to convey some positive directions to the authorities in charge of preparing the electoral rolls which is the basis of all elections. It would be futile and purposeless merely to make a declaration that this Constituent Assembly desires that the election should take place in the year 1950 without giving the directions to the authorities concerned in the matter of preparing the electoral roll. Because unless the electoral rolls are prepared in time sufficiently before the date of thee lection, no election can take place at all. The second part of the Resolution contains directions to the various authorities and unless the directions are embodied in the Resolution, the Resolution is merely a pious declaration which means nothing. It is setting out an objective without setting out the methods and the instruments by which that objective can be carried out and I think my friend Mr. Tyagi will understand that really speaking the part of the Resolution which he wants to omit is more important than the part of the Resolution which he wants to retain. Now I come to the amendment of my friend Mr. Hanumanthaiya.

Shri Mahavir Tyagi: What is your view about the word already'?

The Honourable Dr. B. R. Ambedkar: I have already said that I would delete it. Coming to the amendment of Mr. Hanumanthaiya, he wants to omit the words `in the year 1950'. His argument has a good deal of sense behind it, because according to him if this Constituent Assembly were to make this declaration by this Resolution fixing 1950 as a target and if for some reason, either connected with the preparation of electoral rolls or some other circumstances, it becomes impossible to have elections in 1950, the Assembly would be placed in a somewhat difficult position. The Assembly might be accused of treating this as a trifling matter when as a matter of fact it is of great substance. But at the same time in view of what the Mover of the Resolution said that there is a certain amount of feeling in the country that we are not going as fast as we ought to in the passing of this Constitution, that our procedure is more leisurely, more dilatory and that is due to our not being very serious in having an early election, it is to remove that sort of feeling in the country that it is necessary to fix some target date and it is from that point of view that the retention of the words `in the year 1950' becomes necessary. Of course, if reasons justified the postponement of the date, it would but be necessary for the Assembly to postpone the date of elections; and I am sure about it that if the Assembly is in a position to place before the country grounds which are substantial and which are not mere excuses, the country will no doubt understand the change and the postponement of the date.

Now my friend Mr. Saksena wants that instead of the 1st Jan. 1949 the date 1st Jan. 1950 be substituted. Mr. Bhargava wants that for 31st March 1948, the date 31st March 1949 be substituted. Now having regard to what has already been done, it is not possible to accept either of these amendments. Mr. Saksena's amendment, if I understood him correctly, has the object that there ought not to be a considerable time lag between the date on which the electoral roll is prepared and the date on which election is held. In other words, the electoral roll must not be very stale and out-of-date. Now it seems to me that if our election is going to take place in 1950, the electoral roll which is prepared on the basis of the voter's qualification as his being an adult on 1st January 1949 cannot, by any stretch of imagination, be deemed to be a stale roll. My Friend Mr. Saksena must be aware of the fact that all electoral rolls generally lag behind the date of election by one year.

Prof. Shibban Lal Saksena: It will become two years old

The Honourable Dr. B. R. Ambedkar: Therefore if persons who are entitled to be voters in the electoral rolls on the basis of their single solitary qualification which we have, *viz.*, his being a man of 21 years of age on the 1st January 1949 and if the election takes place in the year 1950 on some date not possible to prescribe, I think it cannot be said that the electoral roll will be a stale roll.

Now I am coming to the amendment of Pandit Bhargava. He wants that the date of 31st of March 1949 be substituted. it is not possible to accept that amendment because in the expectation of the election taking place in the year 1950, instructions were already issued to the various Provincial Governments on the 1st March 1948 to proceed to prepare the electoral rolls on the basis of adult suffrage. It seems tome that if we accept the amendment of Pandit Bhargava, we shall have to waste all the work that has already been done by Provincial Governments on that basis. I do not think there will be any waste of work already done, because all those who on the 1st January, 1948 would be adults, would be added on to the roll that has already been prepared.

The Honourable Shri K Santhanam: Is it not necessary also to change the date 1st January 1949 to 31st March 1948,in sub-para. (2)?

The Honourable Dr. B. R. Ambedkar: No, I do not think so.

Now, I come to the amendment of my friend Mr. Chaudhari. It seems to me that he is asking for something which is quite impossible, if not ridiculous. He says that every person who is of unsound mind should be deprived of his vote. We all agree that unsound persons should not be included in the voters' list. But the question remains as to who is to determine whether a person is of unsound mind or not. It seems to me that unless the qualification which is introduced in this motion says that a person can be excluded from the electoral roll only when he has been adjudged to be of unsound mind by some impartial judicial authority, seems to be the soundest proposition. Otherwise, to give the authority to a village Patwari not to enter a certain person in the electoral roll because he thinks that he is of unsound mind is really to elevate a cabin boy to the position of the captain of a ship, and I think it is not possible to accept such an amendment.

My friend Mr. Kamath raised some question with regard to a clause that was passed the other day, in which in addition to unsoundness of mind, certain other disqualifications were mentioned, particularly those relating to crime.

Shri Deshbandhu Gupta: Will all the inmates of lunatic asylums be included in the electoral rolls, in the first instance?

The Honourable Dr. B. R. Ambedkar: I do not know the case of other provinces, but so far as Bombay is concerned, unless the Chief Presidency Magistrate declares a person to be of unsound mind no lunatic asylum would admit him.

Mr. Vice-President: Yes, that is the case in Bengal.

The Honourable Dr. B. R. Ambedkar: And it seems to be the case in Bengal also. It is there in the Lunacy Act.

Now, with regard to the question of crime all that I need say is this that the Drafting Committee, in using the word `crime' in that particular article, was merely reproducing the provision contained in the Sixth Schedule of the Government of India Act, and I do not think that the Drafting Committee had anything more in mind than what is stated in that article. According to that article, the commission of a crime is not by itself any disqualification. The disqualification is only when a person is punished and detained in imprisonment. It is during the period of imprisonment that he loses the right to vote. That point can be further accommodated when we come to the additional disqualifications mentioned in the article to which Mr. Kamath referred.

Shri H. V. Kamath. Am I to understand that grounds of crimes, corrupt or illegal practices etc. of which a person may be convicted in the past will not act as a disqualification or bar to his registration as a voter?

The Honourable Dr. B. R. Ambedkar: Yes, and those willed prescribed by Parliament.

Mr. Vice-President: I am going to put to vote the amendments which have been moved in this House, one by one. The first one is that standing in the name of Shri Rohini Kumar Chaudhari. And he has two amendments. I am putting them to vote, one by one. The question is:

"That in sub section (b) of the Resolution the words 'and stands so declared by a competent Court' be deleted."

The amendment was negatived.

Mr. Vice-President: Then I put the second part. The question is:

"That in sub-paragraph (4) the word `permanently' occurring in line 6 be deleted.

(Interruption.)

The amendment was negatived.

Mr. Vice-President: I know that schoolboys on the eve of the vacation behave not always wisely.

The next amendment is that of Pandit Thakur Dass Bhargava. The question is:

"That for the words `files a declaration' substitute the words `expresses the intention'."

But this is covered by what Dr. Ambedkar has accepted.

Then his other amendment is that is that in paragraph3, for the words "31st March 1948", substitute the words "31st March 1949".

The amendment was negatived.

Mr. Vice-President: Then we come to the amendment of Mr. Hanumanthaiya.

Shri K. Hanumanthaiya: Sir, I seek permission of the House to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President: Then we come to the amendment of Mr. Nagappa. But that is covered by Dr. Ambedkar's amendment and so it will not be put to vote.

Then there is the amendment of Mr. Tyagi.

Shri Mahavir Tyagi: Sir, I request leave of the House to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President: Then comes the amendment of Prof. Saksena seeking to substitute 1st January 1950, for the words 1st January 1949.

The question is:

"That the words `1st January 1949' in sub-paragraph (2) be substituted by `1st January 1950'."

The amendment was negatived.

Mr. Vice-President: The second part has been accepted by Dr. Ambedkar and therefore need not be voted on. Then we come to the third part. But that is also covered by Dr. Ambedkar's amendment.

But he has a further amendment to the effect.

The question is:

"That the word `permanently' in the last line of sub-para. (4) be deleted."

The amendment was negatived.

Mr. Vice-President: Now, I put the Resolution, as amended by Dr. Ambedkar's amendments, to vote. Does the House want me to read it out?

Honourable Members: No, no.

Mr. Vice-President: So the question is:

"That the *Resolution, as amended, be accepted."

The motion, as amended, was adopted.

DRAFT CONSTITUTION -*(Contd.)*

Article 149-*(Contd.)*

Mr. Vice-President: Now we come to article 149. I think there has been sufficient discussion on this article and Dr. Ambedkar will now reply.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, in reply to the debate on article 149, I wish, first of all, to make clear my position with regard to my own amendment which was No. 2255. I want the permission of the House to withdraw this amendment; and in lieu of that Iaccept amendment No. 2249, as amended by amendment No. 48 of List II by Mr. Naziruddin Ahmad.

I also accept amendments Nos. 62 and 66 of List IV by Sri T. T. Krishnamachari, amendment No. 2252 as modified by the amendment No. 67 of Shri Shibban Lal Saksena.

Now, Sir, so far as the general debate on the article is concerned, it seems to me that there are only two points that call for reply. The first point is with regard to the census figures to be adopted for the purpose of the new elections. A great deal of argument was concentrated by many speakers on the fact that the census in certain provinces is not accurate and does not represent the true state of affairs so far as the relative proportions of the communities are concerned. I think there is a great deal of force in such arguments and, if I may say so, there is enough testimony which one can collect from the Census Commissioners' Reports themselves to justify that criticism. I had intended to refer to the statements made by the Census Commissioners on this issue. But, as there is no time, I think I had better not refer to them. Further, the large majority of the members who have spoken on this subject know the facts better than I do. I only want to ad done thing and that is that if any people have suffered most in the matter of these manipulations of census calculations by reason of political factors, they are the Scheduled Castes (*Hear, hear*). In Punjab for instance, the other communities are trying to eat up the Scheduled Castes in order to augment their strength and to acquire larger representation in the legislature for themselves. These poor people who have been living mostly as landless labourers in villages scattered here and there, with no economic independence, with no support from the authorities,--the police or the magistracy,--have been, by certain powerful communities, either compelled to return themselves as members of that particular community or not to enumerate themselves at the elections at all. The same thing has happened to a large extent, I know, in Bengal. For some reason which I have not been able to understand, a large majority of the Scheduled Castes there refused to return themselves as Scheduled Castes. That fact has been noted by the Census Commissioners themselves. I therefore completely appreciate the points that have been made by various members who spoke on the subject that it would not be fair to take the figures of that census.

---

* Resolved that instructions be issued forthwith to the authorities concerned for the preparation of electoral rolls and for taking all necessary steps so that elections to the Legislatures under the new Constitution may be held as early as possible in the year 1950.

Resolved further that the State electoral rolls be prepared on the basis of the provisions of the new Constitution agreed to by this Assembly and in accordance with the principles hereinafter mentioned, namely-

(1) That no person shall be included in the electoral roll of any area if he is of unsound mind and stands so declared by a competent court.

(2) That 1st January 1949 shall be the date with reference to which the age of the electors is to be determined.

(3) That a person shall not be qualified to be included in the electoral roll for any area unless he has resided in that area for a period of not less than180 days in the year ending on the 31st March1948. For the purposes of this paragraph, a person shall be deemed to be resident in any area if he ordinarily resides in that area or has a permanent place of residence therein.

(4) That, notwithstanding anything in paragraph (3) above a person who has migrated into a Province or Acceding State on account of disturbances or fear of disturbances in his former place of residence shall be entitled to be included in the electoral roll of an area if he files or makes a declaration of his intention reside permanently in that area .

An Honourable Member: What about Assam?

The Honourable Dr. B. R. Ambedkar: It may be true of Assam also. I am not very well acquainted with it. As I said I fully appreciate the point that to take those census figures and to delimit constituencies or allocate seats between the different constituencies and between the majority and minority communities would not be fair. Something will have to be done in order to see that the next election is a proper election, related properly to the population figures of the provinces as well as of the communities. All that I can do at this stage is to give an assurance that I shall communicate these sentiments to those who will be in charge of this matter and I have not the least doubt about it that the matter will be properly attended to.

Sir, if the Members who are interested in it are not satisfied with the assurance that I am giving now, they can at some stage--it is not possible to do it now--move an amendment to article 149 permitting the President to have an interim census, if he deems it necessary, taken, for the purpose of removing the grievances to which they have referred. In fact, I have with me a draft which might be considered at a later date. Some such draft like this may be considered: "Provided further that the initial representation of the several territorial constituencies of the legislative assembly of any State may be determined in such other manner as the President may by order direct." That would be general enough and would deal with the difficulty which has been pointed out.

An Honourable Member: Why do you not move it now?

The Honourable Dr. B. R. Ambedkar: There is no time for it now. If Members are not prepared to rely upon the assurance given by me some such motion may be moved at the appropriate stage.

With regard to the point raised by my honourable Friend Prof. Saksena in amendment No. 64, I may say that I wholeheartedly support it. I think the proviso he has sought to introduce is a very necessary one. The House will remember that it deals with weight age in representation. We have, in this Constitution, eliminated all sorts of weight ages. Weight age to all minorities we have eliminated. Weight age to territories in the representation in the Central Legislature we have eliminated. Weight age between representatives in British India and representatives of Indian States we have eliminated. I think therefore that it is only right that the same principle should apply to representation in legislatures. I therefore accept that amendment.

Sir, I do not think there is any other point worthy of consideration or calling for reply. I therefore recommend to the House the acceptance of article 149, as amended.

Mr. Vice-President: I am now going to put the amendments to vote one by one.

The question is:

"That the following new clauses be added after clause(2):--

`(2-a) No person shall be entitled to be a candidate or offer himself for election to either House of a State Legislature, if Bicameral, or to the Legislative Assembly of the State, who is duly certified to be of unsound mind, or suffering from any other physical or mental incapacity, duly certified, or is less than 25 years of age at the time of offering himself for election, or has been proved guilty of any offence against the safety, security or integrity of the Union, or of bribery and corruption, or of any malpractice at election, or is illiterate.

`No one who is unable to read or write or speak the principal language spoken in the State for a seat in whose Legislature he offers himself for election, or after a period of ten years from the date of the coming into operation of this Constitution, is unable to read or write or speak the National Language of India, shall be entitled to be a candidate for or offer himself to be elected to a seat in the State Legislature, or either House thereof.'

'(2-b) The election shall be on the basis of proportional representation with a Single Transferable Preference Vote. For the purpose of lection, every State shall be deemed to be a single constituency, and every member shall be deemed to have been elected in the order of Preference as recorded by the electors; and this arrangement shall not hold good in the case of a General Election, as well as at a by-election, if and when one become necessary:

Provided that where there is a second chamber in any State, the voters may be grouped, for electing members to the Legislative Council, on the basis of Trade, profession, occupation or interest recognized for the purpose by an Act of the State Legislature, each trade, profession, occupation or interest voting as a single constituency for the entire State'."

The amendment was negatived

Mr. Vice-President: Amendment No. 2248. The question is:

"That clause (3) of article 149, be deleted and the following be substituted:-

> "The representation in the State Legislature shall be on the basis of one representative for every lakh of population:
>
> Provided that the total number of members in the Legislative Assembly of a State shall in no case be less than sixty'."

The Amendment was negatived.

Mr. Vice-President: There is a short notice amendment to amendment No. 2249 by Pandit Thakur Dass Bhargava.

Pandit Thakur Dass Bhargava: I would like to withdraw it, Sir.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President: Amendment No. 48 of List II. The question is:

"That for amendment No. 2249 of the List of Amendments, the following be substituted:-

"That in clause (3) of article 149, for the words "last preceding census of which the relevant figures have been published" be substituted'."

The amendment was adopted.

Mr. Vice-President : Amendment No. 62 of List IV. The question is:

"That with reference to amendments Nos. 2249 and 2250 of the List of Amendments in clause (3) of article 149, for the words 'every lakh' the words 'every seventy-five thousand' be substituted."

The amendment was adopted.

Mr. Vice-President: Then we come to amendment No. 2252 as amended by a short notice amendment of Mr. Bordoloi which reads:

"With reference to amendment No. 2252 of the List of Amendments, after the words 'autonomous districts of Assam' the words 'and the constituency comprising the cantonment and municipality of Shillong' be added."

The amendment was adopted

Mr. Vice-President: Amendment No. 66 of List IV. The question is:

"That with reference to amendments Nos. 2256, 2257 and 2258 of the List of Amendments, in the proviso to clause (3) of article 149, for the words 'three hundred' the words 'five hundred' be substituted."

The amendment was adopted.

Mr. Vice-President: Dr. Ambedkar wanted the leave of the House to withdraw his amendment No. 2255. Is that permission given?

Honourable Members: Yes.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President: Amendment no. 49 of List II. It is blocked.

Then we come to amendment No. 2256. The question is:

"That in the proviso to clause (3) of article 149, for the words 'three hundred' the words 'four hundred and fifty' be substituted."

The amendment was negatived

Mr. Vice-President: Amendment No. 35 of list I.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President: Amendment No. 67 of List IV. The question is:

"That after clause (3) of article 149, the following new clause be inserted:-

'(3-a) The ratio between the number of members to be allotted to each territorial constituency in a State and the population of that constituency as ascertained at the last preceding census of which the relevant figures have been published shall, so far as practicable, be the same throughout the State'."

The amendment was adopted.

Mr. Vice-President: There is an amendment to amendment No. 67 but it is blocked.

Prof. Shibban Lal, do you want me to put your amendment No. 2263 to the vote? It has been amended by No. 67.

Prof. Shibban Lal Saksena: It is not necessary to put it to vote now.

Mr. Vice-President: I shall now put the article in its present form to vote. The question is:

"That article 149, as amended, was added to the Constitution.

The amendment was adopted.

Article 149, as amended, was added to the Constitution.

Mr. Vice-President: There is one announcement which has got to be made. I have received definite information and instructions from our President that he would like to have the next session of the Constituent Assembly on Monday, the 16th May. Under rule 19 of the Rules of Procedure, the President enjoys the power of fixing the date but he cannot adjourn the House for more than three days. I therefore seek the permission of the House to make this announcement formally.

Pandit Lakshmi Kanta Maitra: But why does he want to fix the date before hand?

Mr. Vice-President: I am sorry. I cannot give you the reason.

The Honourable Shri K. Santhanam: The date may be fixed by a motion put before the House and carried.

The Honourable Shri Satyanarayan Sinha: Sir, I move that the House do adjourn to the 16th May next.

The motion was adopted.

Mr. Vice-President: The House stands adjourned to Monday, the 16th May. The

Assembly then adjourned till Monday, the 16th May 1949.

[Translation of Hindustani Speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME VIII

Monday, the 16th May 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Members took the Pledge and signed the Register:-

(1) The Honourable Shri Binodananda Jha (Bihar: General).

(2) Sardar Suchet Singh (Patiala and East Punjab States).

(3) Shir Kaka Bhagwant Roy (Patiala and East Punjab States).

CONDOLENCE ON THE DEATH OF SHRIMATI SAROJINI NAIDU

Mr. President: Honourable Members, this is the first time that we meet in this Assembly since the passing away of Shrimati Sarojini Devi. Her life had been dedicated to the service of the country and her steadfastness during the great struggle through which we had to go was exemplary. She had been one of the makers of the India of today, and the loss which the country has sustained cannot be easily repaired. I wish the Members to show respect to her memory by standing in their places for a moment.

(All the Members stood up in silence)

PROGRAMME OF BUSINESS

Mr. President: Before taking up the items on the agenda, I desire, to make few preliminary remarks with regard to the programme for this Session.

Honourable Members will recollect that during the last Session we were able to deal up to the 67th article of the Draft Constitution. Some four articles before article 67 were left over for consideration at a later stage. We dealt with two other articles dealing with the question of elections. The Steering Committee of the Constituent Assembly met the other day and decided that we must take up in the first instance those other articles which dealt with elections so that the preparations for the next elections might go on without interruption. I therefore propose to take up those articles, a list of which I believe has been supplied to honourable Members.

We have still a great deal of work to get through in this Session. Out of 315 articles of the Constitution we have dealt only with 65 up to now and then there are eight Schedules. We have therefore to get through the work as quickly as possible. I do not wish in any way to curtail discussion, wherever discussion is considered necessary, and on questions of vital importance. But I would expect the Members to confine their remarks to the important points and not to repeat themselves. It we proceed in a business like way I hope we shall be able to complete this work before the Anniversary of our Independence on 15th August next. My attempt will be to complete the work before then.

A question has been raised about the time of the sitting during this Session. There have been two suggestions made to me: one, that we should sit in the morning and the other that we should sit in the afternoon. It is for the House to decide this. Personally I have no choice in the matter. Whatever the House decides I shall accept. We shall sit for about 4 hours every day. If we sit in the mornings it will be from 8 to 12 noon and if we sit in the afternoon, it will be from half past three to half past seven. I will make the announcement at the end of the day after knowing the views of honourable Members.

We shall now take up the agenda. The first item is the Resolution of which notice has been given by the Honourable Pandit Jawaharlal Nehru.

Seth Govind Das (C. P. & Berar: General): *[Mr. President, before you begin the proceedings of the final session today, I would like to remind you of what you have said before and ask what you are going to do in this connection, as this is the only occasion for that.]*

Mr. President: I do not think that question arises as this stage. We shall take it up when the time comes.

RESOLUTION *RE* RATIFICATION OF COMMONWEALTH DECISION

The Honorable Shri Jawaharlal Nehru (United Provinces: General): Mr. President, Sir, I have the honour to move the following motion:-

"Resolved that this Assembly to hereby ratify the declaration, agreed to by the Prime Minister of India, on the continued membership of India in the Commonwealth of Nations, as set out in the official statement issued at the conclusion of the Conference of the Commonwealth Prime Ministers in London on April 27, 1949."

All honourable Members have been supplied with copies of this Declaration** and so I shall not read it over again. I shall merely point out very briefly some salient features of this Declaration. it is a short and simple document in four paragraphs. The first paragraph, it will be noticed, deals with the present position in law. It refers to the British Commonwealth of Nations and to the fact that the people in the Commonwealth owe a common allegiance to the Crown. That in law is the present position.

The next paragraph of this Declaration states that the Government of India have informed the Governments of the other Commonwealth countries that India is soon going to be a sovereign independent Republic; further that they desire to continue her full membership of the Commonwealth of Nations, accepting the King as a symbol of the free association, etc.

The third paragraph says that the other Commonwealth countries accept this and the fourth paragraph ends by saying that all these countries remain united as free and equal members of the Commonwealth of Nations. You will notice that while in the first paragraph that is referred to as the British Commonwealth of Nations, in the subsequent paragraphs that is referred to only as the Commonwealth of Nations. Further you will notice that while in the first paragraph there is the question of allegiance to the Crown which exists at present, later of course this question does not arise because India becoming a Republic goes outside the Crown area completely. There is reference, in connection with the Commonwealth, to the King as the symbol of that association. Observe that the reference is to the King and not to the Crown. It is a small matter but it has certain small significance. But the point is this, that so far as the Republic of India is concerned, her constitution and her working are concerned, she has nothing to do with any external authority, with any King, and none of her subjects owe any allegiance to the King or any other external authority. That Republic may however agree to associate itself with certain other countries that happen to be monarchies or whatever they choose to be. This Declaration therefore states that this new Republic of India, completely sovereign and owing no allegiance to the King, as the other Commonwealth countries do owe, will nevertheless be a full member of this Commonwealth and it agrees that as a symbol of this free partnership or association rather, the King will be recognised as such.

Now, I am placing this Declaration before this honourable House for their approval. Beyond this approval, there is no question of any law being framed in accordance with it. There is no law beyond the Commonwealth. It has not even the formality which normally accompanies treaties. It is an agreement by free will, to be terminated by free will. Therefore there will be no further legislation or law if this House approves of this. In this particular Declaration nothing very much is said about the position of the King except that he will be a symbol, but it has been made perfectly clear-it was made perfectly clear-that the King has no functions at all. He has a certain status. The Commonwealth itself, as such, is no body, if I may say so; it has no organisation to function and the King also can have no functions.

Now, some consequences flow from this. Apart from certain friendly approaches to each other, apart from a desire to co-operate, which will always be conditioned by each party deciding on the measure of co-operation and following its own policy, there is no obligation. There is hardly any obligation in the nature of commitments that flow. But an attempt has been made to produce something which is entirely novel, and I can very well understand lawyers on the one hand feeling somewhat uncomfortable at a thing for which they can find no precedent or parallel. There may also be other feeling that behind this there might be something which they cannot quite understand, something risky, something dangerous, because the thing is so simple on the face of it. That kind of difficulty may arise in people's minds. What I have stated elsewhere I should like to repeat that there is absolutely nothing behind this except what is placed before this House.

One or two matters I may clear up, which are not mentioned in this Declaration. One of these, as I have said, is that the King has no functions at all. This was cleared up in the course of our proceedings; it has no doubt been recorded in the minutes of the Conference in London. Another point was that one of the objects of this kind of Commonwealth association is now to create a status which is something between being completely foreign and being of one nationality. Obviously the Commonwealth countries belong to different nations. There are different nationalities. Normally either you have a common nationality or you are foreign. There is no intermediate stage. Up till now in this Commonwealth or the British Commonwealth of Nations, there was a binding link, which was allegiance to the King. With the link, therefore in a sense there was common nationality in a broad way. That snaps, that ends when we become a Republic, and if we should desire to give a certain preference or a certain privilege to any one of these countries, we would normally be precluded from doing so because of what is called the "most favoured nation clause" that every country would be as much foreign as any other country. Now, we want to take away that foreignness, keeping in our own hands what, if any, privileges or preference we can give to another country. That is a matter entirely for two countries to decide by treaty or arrangement, so that we create a new state of affairs-or we try to create it-that the other countries, although in a sense foreign, are nevertheless not completely foreign. I do not quite know how we shall proceed to deal with this matter at a later stage. That is for the House to decide-that is to say, to take the right, only the right to deal with Commonwealth countries, should we so choose, in regard to certain preferences or privileges. What they are to be, all that, of course, we shall in each case be the judge ourselves. Apart from these facts there has nothing been decided in secret or otherwise which has not been put before the public.

The House will remember that there was some talk at one stage of a Commonwealth citizenship. Not it was difficult to understand what the contents of a Commonwealth citizenship might be, except that it meant that they were not completely foreign to one another. That un-foreignness remains, but I think it is as well that we left off talking about something vague, which could not be surely defined, but the other fact remains, as I have just stated: the fact that we should take the right to ourselves, if we so chose to exercise it at any time, to enter into treaties or arrangements with Commonwealth countries assuring certain mutual privileges and preferences.

I have briefly placed before this House this document. It is a simple document and yet the House is fully aware that it is a highly important document or rather what it contains is of great and historical significance. I went some weeks ago as the representative of India to this Conference. I had consulted my colleagues here, of course previously, because it was a great responsibility and no man is big enough to shoulder that responsibility by himself when the future of India is at stake. During the past many months we had often consulted each other, consulted great and representative organizations, consulted many Members of this House. Nevertheless when I went, I carried this great responsibility and I felt the burden of it. I had able colleagues to advice me, but I was the sole representative of India and in a sense that future of India for the moment was in my keeping. I was alone in that sense and yet not quite alone because, as I travelled through the air and as I sat there at that Conference table the ghosts of many yesterdays of my life surrounded me and brought up picture after picture before me, sentinels and guardians keeping watch over me telling me perhaps not to trip and not to forget them. I remembered, as many honourable Members might remember, that day nineteen years ago when we took a pledge on a bank of the River Ravi, at the midnight hour, and I remembered the 26th of January the first time and that oft-repeated Pledge year after year in spite of difficulty and obstruction, and finally, I remembered that day when standing at this very place, I placed a resolution before this House. That was one of the earliest resolutions placed before this honourable House, a Resolution that is known as the Objectives Resolution. Two years and five months have elapsed since that happened. In that Resolution we defined more or less the type of free Government or Republic that we were going to have. Later in another place and on a famous occasion, this subject also came up, that was at the Jaipur Session of the Congress, because not only my mind, but many minds were struggling with this problem, trying to find a way out that was in keeping with the honour and dignity and independence of India, and yet also in keeping with the changing world and with the facts as they were, something that would advance the cause of India, would help us, something that would be strictly and absolutely true to every single pledge that we have taken. It was clear to me that what ever the advantages might be of any association with the Commonwealth or with any other group, no single advantage, however great, could be purchased by a single iota of our pledges being given up, because no country can make progress by playing fast and loose with the principles which it has declared. So, during these months we have thought and we had discussed amongst ourselves and I carried all this advice with me. May I read to you, perhaps just to refresh your minds the Resolution passed at the Jaipur Session of the Congress? It might be of interest to you and I would beg of you to consider the very wording of this Resolution:

> "In view of the attainment of complete independence and the establishment of the Republic of India which will symbolise with Independence and give to India the status among the nations of the world that is her rightful due, her present association with the United Kingdom and the Commonwealth of Nations will necessarily have to change. India, however, desires to maintain all such links with other countries as do not come in the way of her freedom of action and independence and the Congress would welcome her free association with the independent nations of the Commonwealth for their common weal and the promotion of world peace."

You will observe that the last few lines of this Resolution are almost identical with the lines of the Declaration of London.

I went there guided and controlled by all our past pledges, ultimately guided and controlled by the Resolution of this honourable House, by the Objectives Resolution and all that has subsequently happened; also by the mandate given to me by the All-India Congress Committee in that Resolution, and I stand before you to say with all humanity that I have fulfilled that mandate to the letter *(Loud Cheers)*. All of us have been during these past many years through the valley of the Shadow; we have passed our lives in opposition, in struggle and sometimes in failure and sometimes success and most of us are haunted by those dreams and visions of old days and these hopes that filled us and the frustrations that often followed those hopes; yet we have seen that even out of that prickly thorn of frustration and despair, we have been able to pick out the rose of fulfillment.

Let us not be led away by considering the situation in terms of events which are no longer here. You will see in the resolution of the Congress that I have read out, it says that necessarily because India becomes a Republic, the association of India with the Commonwealth must change. Of course. Further it says that free association may continue subject only to our complete freedom being assured. Now, that is exactly what has been tried to be done in this Declaration of London. I ask you or any honourable Member to point out in what way the freedom, the independence of India has been limited in the slightest. I do not think it has been. In fact, the greatest stress has been laid not only on the independence of India, but on the independence of each individual nation in the Commonwealth.

I am asked often, how can you join a Commonwealth in which there is racial discrimination, in which there are other things happening to which we object. That, I think, is a fair question and it is a matter which necessarily must cause us some trouble in our thinking. Nevertheless it is a question which does not really arise. That is to say, when we have entered into an alliance with a nation or a group of nations, it does not mean that we accept their other policies, etc.; it does not mean that we commit ourselves in any way to something that they may do. In fact, this House knows that we are carrying on at the present moment a struggle, or our countrymen are carrying on a struggle in regard to racial discrimination in various parts of the world.

This House knows that in the last few years one of the major questions before the United Nations, at the instance of India, has been the position of Indians in South Africa. May I, if the House will permit me, for a moment refer to an event which took place yesterday, that is, the passing of the resolution at the General Assembly of the United Nations, and express my appreciation and my Government's appreciation of the way our delegation have functioned in this matter and our appreciation of all those nations of the United Nations, almost all, in fact, all barring South Africa, which finally supported this attitude of India? One of the pillars of our foreign policy, repeatedly stated, is to fight against racial discrimination, is to fight for the freedom of suppressed nationalities. Are you compromising on that issue by remaining in the Commonwealth? We have been fighting on the South African Indian issue and on other issues even though we have been thus for a dominion of the Commonwealth. It was a dangerous thing for us to bring that matter within the purview of the Commonwealth. Because, then, that very thing to which you and I object might have taken place. That is, the Commonwealth might have been considered as some kind of a superior body which sometimes acts as a tribunal or judges, or in a sense supervises the activities of its member nations. That certainly would have meant a diminution in our independence and sovereignty, if we had once accepted that principle. Therefore we were not prepared and we are not prepared to treat the Commonwealth as such or even to bring disputes between member nations of the Commonwealth before the Commonwealth body. We may of course, in a friendly way discuss this matter; that is a different matter. We are anxious to maintain the position of our countrymen in other country in the Commonwealth. So far as we are concerned, we could not bring their domestic policies in dispute there; nor can we say in regard to any country that we are not going to associate ourselves with that country because we disapprove of certain policies of that country.

I am afraid if we adopted that attitude, then, there would be hardly any association for us with any country, because we have disapproved of some thing or other that that country does. Sometimes, it so happens that the difference is so great that you cut off relations with that country or there is a big conflict. Some years ago, the United Nations General Assembly decided to recommend to its member States to withdraw diplomatic representatives from Spain because Spain was supposed to be a Fascist country. I am not going into the merits of the question. Sometimes, the question comes up in that way. The question has come up again and they have reversed that decision and left it to each member State to do as it likes. If you proceed in this way, take any great country or a small country; you do not agree with every thing that the Soviet Union does; therefore, why should we have representation there or why should we have a treaty of alliance in regard to commercial or trade matters with them? You may not agree with some policies of the United States of America; therefore, you cannot have a treaty with them. That is not the way nations carry on their foreign work or any work. The first thing to realise I think in this world is that there are different ways of thinking, different ways of living and different approaches to life in different parts of the world. Most of our troubles arise by one country imposing its will and its way of living on other countries. It is true that each country cannot live in isolation, because, the world as constituted today is progressively becoming an organic whole. If one country living in isolation does something which is dangerous to the other countries, the other countries have to intervene. To give a rather obvious example, if one country allows itself to become the breeding ground of all kinds of dangerous diseases, the world will have to come in and clear it up because it cannot afford to allow this disease to spread all over the world. The only safe principle to follows is that, subject to certain limitations, each country should be allowed to live its own life in its own way.

There are at present in the world several ideologies and major conflicts flowing from these ideologies. What is right or what is wrong, we can consider at a later stage, or many be something else is right. Either you want a major conflict, a great war which might result in the victory for this nation or that, or else you allow them to live at peace in their respective territories and to carry on their ways of thinking, their way of life, their structure of State, etc., allowing the facts to prove which is right ultimately. I have no doubt at all that ultimately, it will be the system that delivers the goods-the goods being the advancement and the betterment of the human race or the people of the individual countries-that will survive and no amount of theorising and no amount of warfare can make the system that does not deliver the goods survive. I refer to this because of the argument that was raised that India cannot join the Commonwealth because it disapproves of certain policies of certain Commonwealth nations. I think we should keep these two matters completely apart.

We join the Commonwealth obviously because we think it is beneficial to us and to certain causes in the world that we wish to advance. The other countries of the Commonwealth want us to remain there because they think it is beneficial to them. It is mutually understood that it is to the advantage of the nations in the Commonwealth and therefore they join. At the same time, it is made perfectly clear that each country is completely free to go its own way; it may be that they may go, sometimes go so far as to break away from the Commonwealth. In the world today where there are so many disruptive forces at work, where we are often at the verge of war, I think it is not a safe thing to encourage to break up any association that one has. Break up the evil parts of this; break up anything that may come in the way of your growth, because nobody dare agree to anything which comes in the way of a nation's growth. Otherwise, apart from breaking the evil parts of the association, it is better to keep a co-operative association going which may do good in this world rather than break it.

Now this declaration that is placed before you is not a new move and yet it is a complete reorientation of something that has existed in an entirely different way. Suppose we had been cut off from England completely and we have then desired to join the Commonwealth of Nations, it would have been a new move. Suppose a new group of nations wants us to join them and we join them in this way, that would have been a new move from which various consequences would have flown. In the present instance what is happening is that a certain association has been existing for a considerable time past. A very great change came in the way of that association about a year and eight or nine months ago, from August 15, 1947. Now another major change is contemplated. Gradually the conception is changing. Yet that certain link remains in a different form. Now politically we are completely independent. Economically we are as independent as independent nations can be. Nobody can be 100 per cent independent in the sense of absolute lack of inter-dependence, but nevertheless India has to depend on the rest of the world for her trade, for her commerce and for many supplies that she needs, today for her food unfortunately, and so many other things. We cannot be absolutely cut off from the world. Now the House knows that inevitably during the past century and more all kinds of contacts have arisen between England and this country, many of them were bad, very bad and we have struggled throughout our lives to put an end to them. Many of them were not so bad, many of them may be good and many of them good or bad whatever they may be, are there. Here I am, the patent example of these contacts, speaking in this honourable House in the English language. No doubt we are going to change that language for our use but the fact remains that I am doing so and the fact remains that most other Members who will speak will also do so. The fact remains that we are functioning here under certain rules and regulations for which the model has been the British Constitution. Those laws existing today have been largely forged by them. Therefore we have developed these things inevitably. Gradually, laws which are good we will keep and those that are bad we will throw away. Any marked change in this without something to follow creates a hiatus which may be harmful. Largely our educational apparatus has been influenced. Largely our military apparatus has been influenced by these considerations and we have grown up naturally as something rather like the British Army. I am placing before the House certain entirely practical considerations. If we break away completely, the result is that without making sufficient provision for carrying on in a different way we have a gap period; of course if we have to pay a price, we may choose to do so. If we do not want to pay the price, we should not pay it and face the consequences.

But in the present instance we have to consider not only these minor gains, which I have mentioned to you, to us and to others but if I may say so, the larger approach to world problems. I felt as I was conferring there in London with the representatives of other Governments that I had necessarily to stick completely and absolutely to the sovereignty and independence of the Indian Republic. I could not possibly compromise on any allegiance to any foreign authority. I did that. I also felt that in the state of the world today and in the state of India and Asia, it would be a good thing if we approached this question in a friendly spirit there which would solve the problems in Asia and elsewhere. I am afraid I am a bad bargainer. I am not used to the ways of the market place. I hope I am a good fighter and I hope I am a good friend. I am not anything in between and so when you have to bargain hard for anything, do not send me. When you want to fight, I hope I shall fight and then when you are decided about a certain thing, then you must hold to it and hold to it to the death, but about other minor things I think it is far better to gain the goodwill of the other party. It is far more precious to come to a decision in friendship and goodwill than to gain a word here and there at the cost of ill will So I approached this problem and may I say how I felt about others. I would like to pay a tribute to the Prime Minister of the United Kingdom and to others also there because they approached this in that spirit also, not so much to get some debating point or a change of a word here and there in this Declaration. It was possible that if I had tried my hardest I might have got a word here and there changed in this Declaration but the essence could not have been changed because there was nothing more for us to get out of that Declaration. I preferred not to do so because I preferred creating an impression, and I hope a right impression, that the approach of India to these and the other problems of the world was not a narrow-minded approach. It was an approach based on faith and confidence in her own strength and in her own future and therefore it was not afraid of any country coming in the way of that faith, it was not afraid of any word or phrase in any document but it was based essentially on this that if you approach another country in a friendly way, with goodwill and generosity, you will be paid back in the same coin and probably the payment will be in even larger measure. I am quite convinced that in treatment of nations to one another, as in the case of individuals, only out of goodwill will you get goodwill and no amount of intrigues and cleverness will get you good result out of evil ways. Therefore, I thought that that was an occasion not only no impress England but other also, in fact to some extent the world, because this matter that was being discussed at No. 10 Downing Street in London was something that drew the attention of the entire world. It drew the attention of the world, partly because India is a very important country, potentially so, and actually so too. And the world was interested to see how this very complicated and difficult problem which appeared insoluble, could be solved. It could not be solved if we had left it to eminent lawyers. Lawyers have their use in life; but they should not be spread out everywhere. It could not have been solved by these extreme, narrow-minded nationalists who cannot see to the right or the left, but live in a narrow sphere of their own, and therefore forget that the world is going ahead. It could not be solved by people who live in the past and cannot realise that the present is different from the past and that the future is going to be still more different. It could not be solved by any person who lacked faith in India and in India's destiny.

I wanted the world to see that India does not lack faith in herself, and that India is prepared to co-operate even with those with whom she had been fighting in the past; provided the basis of co-operation today is honourable that it is a free basis, a basis which would lead to the good not only of ourselves, but of the world also. That is to say, we would not deny that co-operation simply because in the past we have had a fight, and thus carry on the trail of our past "karma" along with us. We have to wash out the past with all its evil. I wanted if I may say so in all humility, to help in letting the world look at things in a slightly different perspective, or rather try to see now vital questions can be approached and dealt with. We have seen too often in the arguments that go on in the assemblies of the world, this bitter approach, this cursing of each other, this desire not, in the least, to understand the other, but deliberately to misunderstand the other, and to make clever points about it. Now, it may be a satisfying performance for any of us, on occasion to make clever points and be applauded by our people or by some other people. But in the state of the world today, it is a poor thing for any responsible person to do when we live on the verge of catastrophic wars, when national passions are roused, and when even a casually spoken word might make all the difference.

Some people have thought that by our joining or continuing to remain in the Commonwealth of Nations we are drifting away from our neighbours in Asia, or that it has become more difficult for us to co-operate with other countries, great countries in the world. But I think it is easier for us to develop closer relations with other countries while we are in the Commonwealth than it might have been otherwise. That is rather a peculiar thing to say. Nevertheless I say it, and I have given a great deal of thought to this matter. The Commonwealth does not come in the way of our co-operation and friendship with other countries. Ultimately we shall have to decide, and ultimately the decision will depend on our own strength. If we are completely dissociated from the Commonwealth, for the moment we are completely isolated. We cannot remain completely isolated, and so inevitably by stress of circumstances, we have to incline in some direction or other. But that inclination in some direction or other will necessarily be a give-and-take affair. It may be in the nature of alliances, you give something yourself and get something in return. In other words, it many involve commitments, far more than at present. There are no commitments today. In that sense, I say we are freer today to come to friendly understandings with other countries and to play the part, if you like, of a bridge for mutual understanding between other countries. I do not wish to place this too high; nevertheless, it is no good placing it too low either. I should like you to look round at the world today and look more especially during the last two years or so, as the relative position of India and the rest of the world. I think you will find that during this period of two years or even slightly less, India has gone up in the scale of nations in its influence and in its prestige. It is a little difficult for me to tell you exactly what India has done or has not done. It would be absurd for anyone to expect that India can become the crusader for all causes in the world and bring forth results. Even in cases that have borne fruit, it is not a thing to be proclaimed from the housetops. But something which does not require any proclamation is the fact of India's present prestige and influence in world affairs. Considering that she came on the scene as an independent nation only a year and a half or a little more ago, it is astonishing--the part that India has played today.

One thing I should like to say, and it is this. Obviously a declaration of this type, or the Resolution that I have placed before the House is not capable of amendment. It is either accepted or rejected. I am surprised to see that some honourable Members have sent notices of amendments. Any treaty with any foreign power can be accepted or rejected. It is a joint Declaration of eight, or is it nine, countries-and it cannot be amended in this House or in any House. It can be accepted or rejected. I would therefore, beg of you to consider this business in all its aspects. First of all, make sure that it is in conformity with our old pledges, that it does violence to none. If it is proved to me that it does violence to any pledge that we have undertaken, that it limits India's freedom in any way, then I certainly shall be no party to it. Secondly, you should see whether it does good to ourselves and to the rest of the world. I think there can be little doubt that it does us good, that this continuing association at the present moment is beneficial for us, and it is beneficial in the larger sense, to certain world causes that we represent. And lastly, if I may put it in a negative way, not to have had this agreement would certainly have been detrimental to those world cause as well as to ourselves.

And finally, about the value I should like this House to attach to this Declaration and to the whole business of those talks resulting in this Declaration. It is a method, a desirable method, and a method which brings a touch of healing with it. In this world which is today sick and which has not recovered from so many wounds during the last decade or more, it is necessary that we touch upon the world problems, not with passion and prejudice and with too much repetition of what has ceased to be, but in a friendly way and with a touch of healing, and I think the chief value of this Declaration and of what preceded it was that it did bring a touch of healing in our relations with certain countries. We are in no way subordinate to them, and they are in no way subordinate to us. We shall go our way and they shall go their way. But our ways, unless something happens, will be friendly ways; at any rate, attempts will be made to understand each other, to be friends with each other and to co-operate with each other. And the fact that we have begun this new type of association with a touch of healing will be good for us, good for them, and I think, good for the world *(Cheers).*

Prof. Shibban Lal Saksena (United Provinces: General): Sir, I beg to move the following amendment to the motion:-

> "(1) That in the motion, for the words 'do hereby ratify' the words 'has carefully considered' be substituted:"
>
> (2) That the following be added at the end of the motion:-

"and is of opinion that membership of the Commonwealth is incompatible with India's new status of a Sovereign Independent Republic. Besides, the terms of membership are derogatory to India's dignity and her new status, and as such are bound to circumscribe and limit her freedom of action in international affairs and tie her down to the chariot-wheel of Anglo-American power bloc. India with a population of 350 millions out of a total population of about 500 millions of the whole of the Commonwealth cannot accept the King of England as the Head of the Commonwealth in any shape or form. Also, India cannot become the member of a Commonwealth, many members of which still regard Indians as an inferior race and enforce colour bar against them and deny them even the most elementary rights of citizenship. The recent anti-Indian riots in South Africa, the assertion of the all White policy in Australia and the execution of Ganapathy and the refusal to commute the death sentence on Sambasivan in Malaya in spite of the representations of the Indian Government clearly show that India cannot derive any advantage from the membership of the Commonwealth and the Britain and other members of the Commonwealth cannot give up their Imperialist and racial policies.

Considering all these facts, and also considering the fact that the Congress Party, which is in an absolute majority in the Constituent Assembly and in other provincial legislatures in the country, has had the complete independence of India with the severance of the British connection as its declared goal at the time of the last general elections, any new relationship in contravention of that policy with the British Commonwealth can only be properly decided by the new Parliament of the Indian Republic, which will be elected under the new constitution on the basis of adult suffrage.

This Assembly therefore resolves that the question of India's membership of the Commonwealth be deferred until the new Parliament is elected and the wishes of the people of the country clearly ascertained. The Assembly calls upon the Prime Minister of India to inform the Prime Minister of Great Britain and other members of the Commonwealth accordingly."

Sir, I have heard with great attention the historic speech of my Leader, the Prime Minister. He himself said that this is a historic occasion and the Declaration he has asked us to ratify is also a historic Declaration. In the recent past there have not been many such occasions when we have been called upon to decide issues of such great moment; perhaps the most recent occasion comparable to it was that when the country was called upon to decide the issue of India's partition. That issue was not discussed by this House but was decided by the All-India Congress Committee. We know the fruits of the decision that was taken on that occasion have not been very good. I was one of the most bitter opponents of the partition plan. Today also I have to voice my disagreement with my leader on this London Declaration to which he has agreed already and which he wants us to ratify.

Pandit Balkrishna Sharma (United Provinces: General): Sir, on a point of order, I should like to know whether in view of the almost negative character of the amendment it is in order.

Mr. President: The honourable Member himself said that it is "almost a negative" and not "a negative "; so I have therefore allowed it.

The Honourable Shri Jawaharlal Nehru: Sir, I should like to have your ruling regarding international treaties and whether such an amendment would be in order when a treaty of this type by the Government of the day has been concluded. I do not know a treaty can be accepted or rejected; amendment cannot be made to a treaty.

Mr. President: Here we go by the rules and I have to see whether under the rules the amendment is in order. What the effect of that on the treaty will be I do not know but I think under the rules the amendment is in order and therefore I have allowed it. Of course it is for the House to reject it if it thinks it should not be passed.

Mr. Z. H. Lari (United Provinces: Muslim): May I know whether the ratification of this Declaration is within the province of his House as a constitution-making body?

Mr. President: Yes, I think it is.

Prof. Shibban Lal Saksena: I am asking this House neither to accept this Declaration nor to reject it but only to postpone its consideration until the country has given its verdict upon this momentous issue. The Prime Minister himself said just now that when he was negotiating this Declaration alone in London, he felt the burden of a heavy responsibility on his shoulders, but the feeling that he had consulted his colleagues here before he went helped him to shoulder the burden. I think this Declaration is a violation of the election pledges contained in the election manifesto of the Congress Party on which the overwhelming majority in this House was elected and this House is therefore not competent to ratify this declaration. My amendment only embodies what my Leader the Prime Minister has himself taught us all his life. I shall quote from his address to the All India Convention held in Delhi on March 19, 1973 where all the legislators elected on Congress ticket had assembled and he reminded us of our election manifesto. This is what he said then:

> "I would have them remember the Election Manifesto and the Congress resolutions on the basis of which they sought the suffrage of the people. Let no one forget that we have entered the legislatures not to co-operate in any way with British imperialism but to fight and end this Act which enslaves and binds us. Let no one forget that we fight for independence."
>
> "What is this Independence? A clear, definite, ringing word, which all the world understands, with no possibility of ambiguity. And yet, to our misfortune, even that word has become an object of interpretation and misinterpretation. Let us be clear about it. Independence means national freedom in the fullest sense of the word; it means, as our pledge has stated, a severance of the British connection. It means anti-imperialism and no compromise with empire. Words are hurled at us, - dominion status, Status of Westminster, British Commonwealth of Nations, and we quibble about their meaning. I see no real commonwealth anywhere, only an empire exploiting the Indian people and numerous other peoples in different parts of the world. I want my country to have nothing to do with this enormous engine of exploitation in Asia and Africa. If this engine goes, we have nothing but good-will for England, and in any event we wish to be friends with the mass of the British people."
>
> "Dominion status is a term which arose under peculiar circumstances and it changed its significance as time passed. In the British group of nations, it signified a certain European dominating group exploiting numerous subject peoples. That distinction continues whatever change the Status of Westminster might have brought about in the relations inter se of the members of that European dominating group. That group represents British imperialism and it stands in the world today for the very order and forces of reaction against which we struggle. How then can we associate ourselves willingly with this order and these forces? Or is it conceived that we might, in the course of time and if we behave ourselves, be promoted from the subject group to the dominating group, and yet the imperialist structure and basis of the whole will remain more or less as it is? This is a vain conception having no relation to reality, and even if it were within the realms of possibility, we should have none of it, for we would then become partners in imperialism and in the exploitation of others. And among these others would probably be

> large numbers of our own people."
>
> "It is said, and I believe Gandhiji holds this view, that if we achieved national freedom, this would mean the end of British imperialism itself. Under such conditions there is no reason why we should not continue our connection with Britain. There is force in the argument for our quarrel is not with Britain or the British people, but with British imperialism. But when we think in these terms, a larger and a different world comes into our ken, and dominion status and the Statue of Westminster pass away from the present to the historical past. That larger world does not think of a British group of nations, but of a world group based on political and social freedom."

Mr. President: Is the honourable Member going to read out the whole speech?

Prof. Shibban Lal Saksena: No. I have only one more paragraph.

> "To talk, therefore, of dominion status in its widest significance, even including the right to separate, is to confine ourselves to one group, which of necessity will oppose and be opposed by other groups, and which will essentially be based on the present decaying social order. Therefore, we cannot entertain this idea of dominion status in any shape or form; it is independence we want not any particular status. Under cover of that phrase, the tentacles of imperialism will creep up and hold us in their grip, though the outer structure might be good to look at."
>
> "And so our pledge must hold and we must labour for the severance of the British connection. But let us repeat again that we favour no policy of isolation or aggressive nationalism, as the word is understood in the Central European countries today. We shall have the closest of contacts, we hope, with all progressive countries, including England, if she has shed her imperialism."

This was in 1937. I will now quote a small paragraph from the declaration of the 10th August 1940. This is the conclusion of a long article that Panditji wrote on "The Parting of the Ways." He said:

> "That is the goal of India-a united, free, democratic country, closely associated in a world federation with other free nations. We want independence, but not the old type of narrow, exclusive independence. We believe that the day of separate warring national States is over."
>
> "We want independence and not dominion or any other status. Every thinking person knows that the whole conception of dominion status belongs to past history: it has no future. It cannot survive this War, whatever the result of this War. But whether it survives or not we want none of it. We do not want to be bound down to a group of nations which has dominated and exploited over us: we will not be in an empire in some parts of which we are treated as helots and where racialism runs riot. We want to cut adrift from the financial domination of the City of London. We want to be completely free with no reservations or exceptions, except such as we ourselves approve, in common with others, in order to join a Federation of Nations, or a new World Order. If this new World Order or Federation does not come in the near future we should like to be closely associated in a federation with our neighbours--China, Burma, Ceylon, Afghanistan, Persia. We are prepared to take risks and face dangers. We do not want the so-called protection of the British army or navy. We shall shift for ourselves."
>
> "If the past had not been there to bear witness, the present would have made us come to this final decision. For even in this present of war and peril, there is no change in the manner of treatment accorded to our people by British imperialism. Let those who seek the favour and protection of this imperialism go its way. We go ours. The parting of the ways has come."

Sir, it is a most serious thing to oppose a Resolution moved by no less a person than Panditji, but I have felt that the occasion is such that I must voice what I feel. I feel from the innermost depths of my being that we are committing a mistake, a mistake as great as that which took place on the occasion of accepting the Mountbattan plan accepting the partition of the country. There are occasion in history when men must voice what they feel without care for consequences. I feel that this amendment which I have place before you should be considered calmly and coolly.

Sir, since our leader signed the Declaration on the 27th April, I have carefully read and studied, every speech that he has delivered in party meetings and in public, and heard every talk of his that has been radio-ed. I have read all the comments in the papers on this Declaration. I have also read what Sardarji has had to say upon it. I have very seriously considered whether we were really gaining something for our country, but I feel that the gains are so little compared to the losses that a ratification of the Declaration would be suicidal.

Our leader has just now told us that critics like me are living in the past, that they are not living in the present and that they cannot see the future. That is the charge he made against some of the leaders for whom we and he both have great respect and I have deliberated upon it very coolly. I have tried to see that the extracts I have quoted were only meant for the past and do not hold true for the present. But I find they enunciate principles which do not change. Also I feel that the present has not changed. Almost as soon as the Prime Minister had signed the Declaration, that brave Indian leader of Malayan Trade Unions, "Ganapathy, was executed, and today when we are going to pass this resolution, Sambasivam, another brave Indian in Malaya, may have been either already executed this morning or may probably be waiting to be hanged today. I feel that British imperialism goes its own way and it will not be deflected no matter what we do to try to cajole it or to win it over. It has its own purpose. I am surprised that our Prime Minister, who is respected all over the world for his idealism sometimes forgets these simple things. See what is happening in South Africa where Indians are being bounded out like an enemy. We can forget the past, but how can we shut our eyes to the present? True, we must not allow sentiment to come in our way in deciding great issues. And even though the whole country is sentimentally against the ratification of this declaration, I will now look at it from the point of view of the concrete advantages that we are told we shall get from it. Personally speaking, I could not find any advantages. Suppose we cut ourselves away from the Commonwealth. Suppose we say that we are an Independent Republic, and a Republic is completely incompatible with monarchy. What will happen? It may be that there will be certain difficulties in the beginning but have we not pledged ourselves to overcome all difficulties in the beginning but have we not pledged ourselves to overcome all difficulties incidental to freedom? Therefore, these temporary difficulties will have to be overcome: but our great nation must not continue to be bound down to a small country like England for ever. I feel Sir, that when India cuts herself away from the Commonwealth, she shall have the respect of the world which is due to a completely free nation and she shall inspire confidence in the world when it knows that she is really unattached to any bloc. By aligning ourselves with the Commonwealth we certainly join one power bloc. We cannot get rid of this fact. We are joining the Anglo--American power bloc. We cannot take any decision which is against the decision of this power bloc.

Pandit Balkrishna Sharma: May I know, if the honourable Member is aware that even Members of the Commonwealth differ in the United Nations Organization on international questions?

Prof. Shibban Lal Saksena: I fully know that they differ but only on unimportant details. But I say that being in the Commonwealth we shall have to go with them on major issues. We cannot oppose them unless we want to break with them. Therefore by being in the Commonwealth, we will have to follow them and to that extent our independence will be circumscribed. Already Russia feels that we have joined the Anglo--American power bloc. Observer Mr. Marin in, writing in Monday's *Pravda* of Moscow, on the 30 April declared "that however Constitutional Forms are altered, the relations between Britain and India remained unchanged except for the introduction of a new military political basis. India's reform as a republic was being used to strike a new bargain between the British and Indian leaders involving the transformation of this "Republic" into an "Anglo-American lever in Southeast Asia." British observers regarded India as the 'Key to Asia which is the Eastern Front in the present cold war' and naturally the United States and Britain wished to own this key. For this purpose they were employing economic pressure through loans and frank intimidation.

"The Basic purpose of the London meeting is the Labour Government's desire to bind the Dominions with a chain of new far-reaching military obligations including them in the system of aggressive policy of the Anglo-American bloc thus striving to weaken the action of centrifugal forces now destroying the British Empire.'"

Sir, communist China has also declared that by signing this declaration, our country has joined the Anglo-American power bloc. We have always hoped and imagined that India and China will work together. That hope is now shattered. Indo-China, Siam, Malaya and Burma are already under communist influence. What then becomes of India's leadership of Asia? One-third of Asia is part of Russia. China forms another one-third of Asia, and it is going communist. Of the remaining one-third, only India and Pakistan and some middle-east countries remain outside the communist away. By joining the Commonwealth, India becomes hostile to this major part of Asia which is under communist influence. So our leadership of Asia goes with our membership of the Commonwealth. If we sever connection with the Commonwealth and remain really unattached, we earn the respect of Russia and other countries under communist influence also and then the countries in the Anglo-American bloc will also woo our friendship.

By joining the Commonwealth we lose our bargaining power with all the countries in the world. We sell our hard-won freedom and do not get even the proverbial mess of pottage in return. In fact, India becomes the last bastion of Anglo-American Imperialism in its fight against Russia. So far China was the frontier of Soviet influence in the east, and was the battle-ground where American forces were fighting communism behind the Kuomintang. China is now lost to America. India is therefore best fitted to be the new battle-ground from where Anglo-American forces can fight the advancing tide of communism. By joining the Commonwealth therefore, we are joining the third world war on the Anglo-American side against Russia. That is why I am so strongly opposed to this motion and desire my amendment to be accepted.

Sir, I agree with Acharya Narendra Dev that Russia does not want war and we would be in a much better position to promote world peace and maintain world peace if we say that we will not be in the Commonwealth. I have said that I honestly feel. I feel that if I did not say this I would not have done my duty. From the 26th January 1931 I have been taking the Independence Pledge-our leader made a reference to it-

and that Pledge says that this British Empire has ruined India economically and politically and spiritually and therefore severance of the British connection is essential for our independence. I, therefore feel that as one who has taken that Pledge I cannot with a clean conscience support this Resolution. I therefore wish that this amendment of mine be accepted and a decision on this issue be deferred and the country be called upon to give its decision on this momentous issue.

Shri Lakshminarain Sahu (Orissa: General): *[Mr. President, I only wish to move that the following be added to the Resolution moved by Pandit Jawaharlal Ji.

"Provided the Commonwealth does not allow discrimination of Indians in South Africa and Australia and also metes out equal justice to all the component units of Commonwealth in social and economic matters."

While moving this, I am already feeling a bit apprehensive, because Pandit Nehru has just told us that it would not be proper to change what has been decided upon in an international gathering. I therefore wish to draw his attention to the fact that the proviso moved by me does not alter the implications of the international decision. But I wish to insert this provision in order to avoid the doubts that have arisen in our minds.

First of all, I want to say that it has always been the view of the society to which I belong, the Servants of Indian Society, that the association between India and Britain is due to some deep mystery. I personally believe it is due to Divine Providence, and with this idea, Mr. President, I wish to say, that the former anarchists have now become moderates. But I have, and many people have, misgivings in their minds on account of the change that has come about in the views of Pandit Jawaharlal Nehru who used to be till recently an anarchist. When I think of the Resolution moved just now, I am reminded of a function called Phool Sabha (Entertainment Function) which is held at the time of marriage celebrations. In this Phool Sabha every one talks of nice things and each and all are lost in mirth. I feel that the recent Commonwealth Conference was like that Phool Sabha. I wish that the Constituent Assembly should complete the Constitution first and after that we should go out of the Dominion Status for a day and the next day we should join it again. If that happens, we can consider ourselves to be independent, and later on join the Commonwealth of our own will. It appears to us that we have been caught unawares in the meshes of the trap that the British have so cleverly and secretly laid for us. Such a doubt, in any case, does arise at times in our mind. My own fear is that all this has been done to break into pieces the United India with which we had been so far familiar. It was for the first time in the viceroyalty of Lord Curzon that it had been decided to partition Bengal into two fragments. That partition gave birth to a genuine Indian national movement. Long after that, Burma was separated from us-Burma which had been an integral part of our State. Again we have witnessed the partition of India itself at the time when the British found themselves compelled to give *Swaraj* to India. In a way this partition was effected by exploiting our intense eagerness for *Swaraj*. The country came to be divided into two parts, and millions were ruined as a consequence of that division. It is my feeling that only a few have yet had a consciousness of the freedom that has come to us. But the common people, those whom we term as the masses, have not their life affected in the least by this advent of freedom.]*

Mr. President:*[Please excuse me. Are you speaking on the amendment or on some other subject?]*

Shri Lakshminarain Sahu: *[This is my amendment:

"Provided that Commonwealth does not allow discrimination of Indians in South Africa and Australia and also metes out equal justice to all the component units of the commonwealth in social and economic matters."

Mr. President: *[I know that.]*

Shri Lakshminarain Sahu: *[I want equal justice. When we remain in the Commonwealth I must say that we should receive equal justice. If we do not get equal justice, what is the advantage of remaining in the Phool Sabha? Phool Sabha are held during marriages and people chew betel leaves and enjoy it. It is said that after attaining independence we have attained a very high prestige. But I do not understand in what way we have attained a high prestige. I do not want that we may become superiors and others may go down but I do want that justice should be done to us. Unless this is done, nothing would have been gained. We do not get civil rights in Africa; we cannot purchase land: colour bar is prevailing there. Pakistan too, which was with us a few days back and rather belonged to us, has also joined the Commonwealth. We know how we have been treated in the Kashmir affair. We know that we joined the Commonwealth. We know how we have been treated it the Kashmir affair. We know that we joined the U. N. O. but gained nothing thereby. That is a very big organisation. The Commonwealth is comparatively a smaller one. If we gain anything out of it, I can understand that we have gained independence. I only want that while we remain in the Commonwealth, we should surely demand that we should not be ill-treated in any way anywhere. When there is no such machinery in the Commonwealth which can compel South Africa to behave, there appears to me to be no reason why we should remain in it. We should try to create such a machinery and should raise this point again and again there, otherwise there can be no gain out of it.

I do not want to speak at length, Mr. President, for want of time; but I would like to know whether we have joined the Commonwealth because England wanted us to do so or because we desired to do so. I understand England desired it since long and Mr. Churchill desired the same from the year 1944. He stated in his speech in 1944:-

> "The vast development of air transport makes a new bond of union, and there are new facilities of meeting, which will make the councils of the British Commonwealth of Nations a unity much greater than ever was possible before, when the war is over and when the genius of the air is turned from the most horrible forms of destruction to the glories of peace."
>
> "When peace returns, and we should pray to God it soon may, the conference of Prime Ministers of the Dominions, among whom we trust India will be reckoned and with whom the colonies will be associated, will, we hope, become frequent and regular facts and festivities of our annual life."

I would like that instead of remaining festivities of our annual life, these should be of some advantage to us and we should get our due rights. Until we create such an atmosphere, there is no difference between remaining in or out of the Commonwealth. It appears that we are afraid of Russia's advent. Uptil now we had been saying that we will not join any bloc of the U. N. O. and had spirited discussion over this question, but today it appears to have been decided that we are against Russia and in favour of the Anglo-American bloc. There can be no doubt about it. Whatever it may be, I am neither a supporter of Russia nor am I a supporter of Anglo American bloc. I want that my country should be in line with others, but by the British policy we lost Pakistan, we lost even Ceylon which had remained with us since the days of Shri Ramachandra and we lost Burma. This is my amendment and to gain this end I have moved it. I do not want to say anything more but I want that our Prime Minister should certainly bear it in mind that our representative, joining the international conferences, should not be deluded by feast and festivity, but he should try to raise the prestige of our country.]*

Shri H. V. Kamath (C. P. & Berar: General): Mr. President, referring to the second supplementary list of amendments, I am not moving Nos. 1,2 and 3. As regards No 4. I find that Mr. Sahu's amendment is on the same lines. So I am not moving that amendment also, but by your leave, Sir, I will speak on the motion.

Mr. President: As there are no other amendments, Mr. Kamath may continue the discussion.

Shri H. V. Kamath: Mr. President, let me at the outset felicitate the Honourable Shri Jawaharlal Nehru on the energy of body and mind that he has expanded during the last month, may, during the last year or more, as a result of which the London decision has emerged into light and reality. His achievement at this conference has been referred to or criticised by various people in various ways. The truth or the quality of the achievement to my mind lies between the description given to it by Sardar Vallabhbhai Patel referring to it more or less as a personal triumph and the reference to it made by the Congress President, Dr. Pattabhi Sitaramayya as nothing new. The truth or the equality of it lies somewhere between these two opinions or views of the London achievement.

The declaration which is referred to in this motion has three concrete aspects. Firstly, if we cast a glance at paragraph 1 and the subsequent paragraph, we find that the Commonwealth is described as the British Commonwealth of Nations in paragraph 1. It is later referred to as merely the Commonwealth of Nations. That is to say that the first aspect of this London decision or formula is the dropping or the deletion of the word "British" from the designation of this group of nations. Secondly, the formula has attempted in a subtle manner, perhaps not very easy to understand for a lay man, to reconcile the sovereign independent Republic, that we are going to be in a short while, with continued association or membership in this Commonwealth of Nations with the King as its Symbolic head.

It is a new development, may I say, in political theory, this association of an independent Republic with the Commonwealth of Nations, which has a king at its head. The last aspect of the Declaration is that this Common wealth of Nations which we have joined as a full member will co-operate, will strive, will endeavour in the path and in the pursuit of peace, liberty and progress. We have to examine this Declaration in the light of these three aspects to which I have referred. The first one deals with the title which is a formal one, just a change in the facade in the appearance of this group of nations. But I was rather disconcerted to read the other day Mr. Attlee's answer to a question in the House of Commons on the 2nd of May. Hardly was the ink dry on the paper on which this Declaration was drafted and signed, only five days later, Mr. Attlee in answer to a question said that there had not been an official change in the designation of this group of nations. By your leave I would like to quote verbatim this reply given by Mr. Attlee to a conservative Member of the House of Commons, Mr. Walter Fletcher. The Prime Minister, Mr. Attlee, on the 2nd May, five or six days after this Declaration was proclaimed to the world said in a Parliamentary reply:

"There was no agreement to adopt or exclude the use of any other terms, namely Commonwealth, British Commonwealth or even Empire........."

"The terminology, if it is to be useful keeps pace with developments, without becoming rigid or doctrinaire, with constitutional developments in the Commonwealth, the British Commonwealth and the Empire." Again he refers to all these three, the Commonwealth, the British Commonwealth and the Empire. "This has been the subject of consultations between H. M. G. and other Commonwealth countries and there has been no agreement to adopt etc." This is the official reply given by him (Mr. Attlee) to a Member of the House of Commons. "There has been no agreement to adopt or exclude the use of any one of these terms nor any decision in the United Kingdom to do so."

Mr. Fletcher further asked if it was appreciated that the words 'the British Empire' were held in high respect by many throughout the Empire and would the Prime Minister (Mr. Attlee) see that by daily use they were not pushed out of the picture? Mr. Attlee replied that "opinions are different in different parts of the Commonwealth and Empire and it is better to allow people to use what they like best;" that is to say, he said that there had been no official change in the description or the designation of this group of nations, called "the Commonwealth of Nations."

So far as the content of this particular change, namely the deletion of the word "British" in the declaration, is concerned, I am not at all satisfied. Have we by agreeing to drop the word "British" done away with all racial policies in the Commonwealth? If it is going to be a Commonwealth of Nations, where East and West, British, Indian and even others, may be associated, have we guaranteed or have we made sure that all anti-non-white,-I will not say pro-British or pro-white, policies have been completely given up? I was happy to learn from the Honourable Pandit Nehru that our fight against the Apartheid or fight against racial fascism in South Africa continues, but may I ask in all humility, Sir why this issue, vital as it is, was not broached and why this was not raised at all in this Conference in London, where Mr. Malan and his opposite numbers in various countries were present? There were no reasons given either by Pandit Nehru or anybody else why this was not pressed at this Conference. Perhaps the only reason given against raising that issue was that we are fighting on other planes and that there was no need to raise this issue in this Conference. I wish that a serious attempt had been made to raise and discuss the racial policies within the Commonwealth countries at this London Conference, but as it is, it has not been done and our only hope is that at an early date this Commonwealth guided or goaded by world events, world developments, will abandon racial policies in favour of a really democratic policy and in favour of a really non-racial policy.

Then, Sir, I come to the second aspect of it. We as sovereign Independent Republic are going to continue as a Member of this Commonwealth of Nations, a full member. The only change that has been made is a change between the past and the present. I am no prophet and I think nobody can say what the future will bring and so I am talking only of the past and the present. The only change to my mind between the past and the present so far as this aspect is concerned is that we hold no longer any allegiance as such to the Crown, but the King as a symbolic head of this group of nations remains. Now, Sir, as a Republic, we are going to have our own Head; the Head of the Federation, the Head of the Union of India will be our Head; the Head of the Federation, the Head of the Federation, the Head of the Union of India will be our Head. I would not have minded this Declaration if it had merely stated "The Government of India have declared and affirmed India's desire to continue her full membership of the Commonwealth of Nations and her acceptance of the king as the symbol of the free association of its independent member nations." If that has stopped there, I think it would have been far happier, but to tag on a later clause " and as such as the head of the Commonwealth" was not desirable. What is the position? We are in the Commonwealth, a full member and not a member nation which is bound by close association or a close tie as Eire has done recently. Eire has ceased to be a member and Mr. Costello said when he moved the Republic of Ireland Bill--I am reading Sir, from a copy of the memorandum circulated to the Members of the Assembly in the last session. The Honourable Pandit Nehru referred to this in a speech during that session, and he quoted from Mr. Costello's speech.

Mr. Costello, moving the Bill, said:

> "The position of the Irish Government is that while Ireland is not a member of the British Commonwealth of Nations, it recognises and confirms the existence of a specially close relationship arising from traditional and long established economic, social and trade relations, based on common interests with the nations that form the British Commonwealth."

This is the formula that Eire has adopted. I fail to see why a similar formula could not have been evolved for India as well without our being a full member of the Commonwealth, and as such a party, though not directly, but indirectly to all that is going on within this Commonwealth. Pandit Nehru referred to the bad things, evil things, many undesirable distasteful things that are going on in this Commonwealth. He said, we are all concerned about this; we are all anxious; we are exercised about these matters; but we will fight them in another way. Sir, was it not possible for us, as Eire has done, to enter into a specially close relationship, without continuing as a full member of the Commonwealth subject to all the limitations and restrictions and various commitments that may be made within the Commonwealth amongst its members? In this connection, Sir, I should like to bring to your notice of the House one significant development that took place in the London Commonwealth Premiers Conference of October. We were told, at least in the Press and in other ways, that there were no defence commitments of any sort, neither tacit nor explicit. I would like to place before the House for its consideration an important paragraph in the communique issued at the close of the London Conference. I am reading from an American Paper which published the full text of the communique issued on October 22 at the close at the London Conference which Pandit Nehru attended as the Prime Minister of India. I do not know if this appeared in the Indian papers; I am quoting from an American paper which published the whole of the communique. The relevant paragraph reads thus:

> "The United Kingdom Government outlined the nature of its association with other Western European nations under the Brussels treaty as a regional association within the terms of the United Nations Charter. There was general agreement,"-mark the words "there was general agreement"-I do not know if the words "general agreement" mean unanimous or whether our Prime Minister differed on this point-"that this association of the United Kingdom with her European defence neighbours was in accordance with the interests of the other members of the Commonwealth, the United Nations and the promotion of world peace."

I do not know if this position stands today, whether we approve or we agree with whatever commitments have been entered into by the United Kingdom Government with her European neighbours, whether they are in our own interests or whether we wash our hands clean of them. If we are pursuing an independent positive foreign policy, neither allied to the Western Bloc nor to the Eastern Bloc, how can we say that we approve or we agree that your contract, your defence commitments with your European neighbours are in our own interests also and that this agreement will promote world peace, because this agreement which later resulted in the Atlantic Pact, has been fiercely attacked by some other European nations? The U. S. S. R. went so far as to say that they were not even consulted about this Atlantic Pact and had they been consulted, certainly they would have been a party to it and that they might have guaranteed the collective maintenance of world peace. They were not consulted and it had been concluded behind their back; I do not wish to sit in judgment; but the Soviet Government did say that this pact was aimed at them because it was signed behind their back...........

Pandit Balkrishna Sharma: May I, on a point of information, Sir, know from the honourable Member if we have accepted either the Brussels Treaty or the Atlantic Pact?

Shri H. V. Kamath: If my honourable Friend had followed me alight, I am sure he would not have raised this point.

Pandit Balkrishna Sharma: There is no Atlantic Pact here.

Shri H. V. Kamath: I am not discoursing on the Atlantic Pact. I would request him to follow closely what I say and not keep on writing and now and then get up and make a remark.

The point I am making out is how far we are committed to the maintenance of the *status quo* of the Commonwealth generally, and particularly in Malaya. in South-East Asia and perhaps in Burma, and also Africa. We read in this morning's papers that in another two years, Britain will transfer Tripolitania to Italian trusteeship. The old mentality, the old outlook of the 19th century persists. As if they are mere chattel, they transfer a country from one trusteeship to another, as if the people are not concerned at all. This is the British policy even today. Colonialism is rampant; imperialism is rampant in most parts of Asia. Are we subscribing to this? Are we going to be a party even impliedly though not explicitly, indirectly if not directly? Are we going to be a party to all that is going on, racialism, colonialism, imperialism, in this Commonwealth, because Attlee has said, "we can call it Empire if you like; it is an Empire, may be a Commonwealth; we have not made any official change at all." Here comes the part that is being played by Britain today in Malaya and also in Burma. Burma is our neighbouring country, and a good neighbour at that. We have had very cordial relations, not merely political-after all these are evanescent and fleeting-but deeper spiritual and cultural relations with Burma. It is natural for us to be interested in Burma, in the welfare of the Burman people and the defence of a Government that will ensure the peace and security in our neighbouring country. So is Pakistan, I can understand; so is perhaps Ceylon. Britain says they have given up Imperialism, colonialism, racialism; why on earth then should Britain be interested in this Burma affair? To my mind, there is only one answer to this, and that is, Britain is interested in Burma because Burma borders on Malaya. Malayan tin and Malayan rubber are far more important to Britain than perhaps even Burmese peace or Burmese security or Burmese freedom. Therefore when they see that Burma is threatened, that Burma is going down-God forbid that-then they wake up and tell themselves, "Here we are, if

Burma goes under, Malaya is all but lost; and Malaya should not be lost". That is why today Malaya is following a policy of terrorism, suppression and repression of democracy and nationalism, and the entire nationalist movement is being attempted to be suppressed in Malaya. We have no reason to complain that communism is gaining ground in South-East Asia, in Siam and in other parts, because the French, the Dutch, and the British imperialists have not given up their old game. They are still at it. Therefore, when I read in the papers that Britain, India, Pakistan and Ceylon are going to aid Burma, I felt there was something fishy, because Britain to my mind has got ulterior motives because of her interest in Malaya and her brother imperialists of France are concerned in Vietnam Indo-China, and the Dutch in Indonesia. If Britain had washed its hands of Imperialism and Colonialism in Asia, then certainly she could tell the Malayan people to set up their own Government and withdraw as they did from India but they do not say so. They say 'We are sticking on in Malaya' and the French say 'We are sticking on in Indo-China' and the Dutch say 'We are going to stay on in Indonesia'. The development in South East Asia is a portentous development and so long as the U.K. Government is a party to all these that are going on-and the U.K. is a brother member of the Commonwealth, and whatever U.K. may say that the Malayan government may decide what they like, U. K. cannot wash its hands clean of blood of Ganapathy who was executed a few days ago and of another Indian who is perhaps being executed today. The U.K., through its Colonial Office, is responsible for what is going on in Malaya. Can we say with our hand on our heat that so long as U.K. Government follows such policy in Malaya, Australia flaunts its "White Australia" policy, and South Africa follows its anti-Indian policy, that we freely and willingly continue to be members of the Commonwealth, because this declaration does not lay down any conditions whatever for our continuance as members of the Commonwealth? It only says that the Government of India have declared and affirmed their desire to continue as a member. Nothing is laid down beyond a bold and blank statement that we will continue as members of the Commonwealth irrespective of what may happen in the Commonwealth. That, Sir, is something which I do not like, and my personal fear is that Britain is anxious that India should pull her chestnuts out of the Asian fire. Britain is interested in this that India should help her to maintain *status quo* in Asia. I hope we will not do it but Britain is interested in this, I am sure. I hope we shall not help Britain to pull her chestnuts out of the Eastern fire and that we will follow our own independent foreign policy.

Then I come to the third aspect of it and that is that we have agreed to freely co-operate in the pursuit of peace, liberty and progress. Very fine words but fine words butter no parsnips. Britain has always stated that she stands for progress, liberty and peace and what not. George Bernard Shaw, to whom Pandit Nehru presented a few mangoes the other day, once wrote in one of his plays-it is, I believe, in 'Man and Super Man'-to the effect that it is amazing how Britain adapts her diplomatic policy. When Britain wants to behead a king, she does it on Republican principles. When Britain wants to restore a king, she does it on Royalist or monarchical principles. When Britain wants to colonise another country, she does it on humanitarian principles and when she wants to commit any outrage or crime, she does it on the eternal principle of justice. I am sure that today Britain can very well say after accommodating Republican India in the Commonwealth that they have done what they have done on Commonwealth principles, on libertarian principles, and on the principles of peace. She may even say on fraternal principles but we have to go deeper into this and search for the content of this formula that has been placed before us. We must see how far this group of Nations will co-operate in the pursuit of peace, liberty and progress. This Commonwealth is a house divided against itself. It is half-slave and half-free. A house divided against itself cannot stand and a group of nations half-slave and half-free cannot endure. Therefore unless these cankers within the Commonwealth are surgically removed or somehow or other put an end to, I am sure in my own mind that this Commonwealth of Nations can never go freely in the pursuit of peace, liberty and progress. I do not want to be a prophet of evil or to forebode evil tidings or evil things what it is, so long as Australia follows its all White policy, so long as the Apartheid policy is pursued by South Africa and Britain herself follows her colonial and Imperialist policy in Asia, this heterogeneous body can never work together for the pursuit of world peace and welfare of mankind. It may be that Britain has in mind peace, that is, the *status quo,* for her own territories and her Empire but what we are aiming at is laid down in the Objectives Resolution viz., we will co-operate and we will strive our very best for the promotion of world peace and welfare of mankind. Are we going to do that under the present arrangement? Shall we be able to do it and how far shall we be able to do it? I wish more light is thrown on this matter by the Prime Minister. The crucial test to my mind is how far we will be able to follow our own policy because we are wedded-our India with her ancient heritage-to peace, to world peace, how far we can follow a policy both in foreign affairs and in defence matters which will conduce to the promotion of world peace and welfare of mankind, and how far we will not be tied down to some bloc of nations. We are anxious not to join either the Eastern or Western bloc but we have created a new bloc. I hope this new group or bloc will not work to our detriment nor will come in the way of our evolving a sound foreign policy and a sound defence policy. It has been stated that there are many advantages that may accrue from this union. What advantages they are I want to know, whether in foreign affairs or in defence or in economic matters. Is it because our Sterling balances are lying there that we want to be in the Commonwealth till we recover every pie of it? It is common knowledge, and the whole world knows it that the policy pursued in this matter by the U.K. Government has not been characterised by sterling integrity. I hope the Financial Delegation which is going shortly to London will be able to prevail upon the U.K. Government to follow a more honest policy with regard to our Sterling balances.

Again, it is suggested that India cannot afford to live in isolation. That is one argument put forward. It is seriously suggested that those nations which are not in this group or on that group or the Commonwealth-and there are many like that-are all living in isolation? In the world today, whether you join one group or not, in the world as it is constituted today, no nation can be in isolation. If a country does not join this Commonwealth of Nations, does it mean that it is in isolation? The Commonwealth of Nations needs India far more than we need the Commonwealth. If this psychological fact had been kept in mind, perhaps we might have had a far better deal. If this fact had guided our policy, we might have fared better. We must not forget that little nations like Turkey in the world have at times stood alone. At the close of World War I, Kemal Ataturk with his ragged army stood alone against many of the powerful countries of Europe and beat them back. The Russian army, ill fed and ill-clad, similarly stood alone against England, France and many other countries after the Revolution, and it triumphed. It is the spirit that ultimately counts. This spirit of defeatism that has gripped us, must be shed. It is weakness, it is cowardice in our minds, hearts and in our spirit. I feel that what we need today is the advice which Sri Krishna gave to Arjuna on the field of battle, just before the battle of Kurukshetra began:-

Kalevyamasmgay: Parth Neitavychupadhate

Chhudram Hridayadaurbalyam tyaktvotisth paramtap.

And lest my Friends should complain that I quote a shloka and do not translate it, let me, Sir with your permission give the gist of this shloka. Shri Krishna here asks Arjuna not to give way to weakness or cowardice. He says, "it does not befit you, Arjun. This weakness of heart is shameful. Give it up at this moment. Stand up and fight." This should be our outlook, and I hope that at least in future it will guide our policy. We are a nation of at least 300 millions and more and we can fight any evil in the world, alone if need be. I would rather stand alone than surrender my ideals of democracy, and of equality and liberty for which we have stood and fought and sacrificed all these years. If the Commonwealth stands in the way of these ideals, if it stands in the way of these ideas being implemented, I would rather stand alone. Mahatma Gandhi taught us to do so. Lokamanya Tilak taught us this. Mahayogi Arabindo taught us this. Netaji Subhas taught us this. You, Sir have always advised us so. We must be strong in our hearts and rely on our own strength, and our leaders Pandit Nehru and Sardar Patel have ever told us that the world can do us no harm. It is only our own inner weakness that can crush us, not any external danger. If we are strong in our own inner strength, nobody can prevail against us. I hope this fact will guide us in the future in our relations with the Commonwealth of Nations. I am not at all happy over the formula, and over the declaration placed before the House. I think it might have been more happily worded. I feel we could have had a better deal. But it is a *fait accompli* with which we are faced. As Pandit Nehru says, it is a treaty which has been concluded. At any rate, I will only say this much, that I accept the Declaration in the hope that the policies of the Commonwealth of Nations will be guided by human considerations in future, and that racialism, colonialism, and imperialism will all be shed and abandoned, and that the Commonwealth of Nations will lead the world on these right lines. I fear it is a distant ideal, but with God all things are possible; and I hope God will guide us aright so that we shall have a real human brotherhood-not a brotherhood of Commonwealth nations only- but a real human brotherhood in this world, in one free world, ere long.

Mr. President: Shri Ananthasayanam Ayyangar.

I would request Members now to confine their speeches to fifteen minutes.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, I wish to congratulate the Honourable the Prime Minister for the statesmanlike manner in which he has entered into the arrangement the Declaration of which this House is asked to ratify. It is a natural consequence of our declaring this country as a sovereign, independent Republic. No country in the world can afford today to live isolated. It is necessary for us to get into some kind of arrangement with other free nations of the world, by some pact of friendship by which we can be bound together with those who are trying to establish permanent peace in the world. Therefore, nobody in this country need feel sorry for the arrangement that has been made. On the other hand, if we had not entered into some such arrangement, we would be failing in our duty, to restore and re-establish peace in the world. I felt at one stage when the negotiations were going on, and for some time before that even, when there were some rumours that there would be a common or dual citizenship established, I felt a little nervous. What kind of citizenship would it be, and what commitments and obligations would be put on our country, these we could not envisage. But now I have a sense of relief. There is no such dual citizenship, and no commitment whatsoever. We are absolutely free. It is not a constitutional or political relationship whatsoever. We are friends, and that has been recognised by this arrangement which we are asked to ratify in the form of this Declaration. In the matter of war, and in all other matters also, and in trade relations, we are absolutely free. We may remember that during 1939, all the Dominions passed in their respective parliaments their decision to enter into the War. In South Africa, we all remember, by a narrow majority, Smuts was able to bring South Africa into the War. It was open even to Dominions to stay out of the War. When we declare ourselves to be a Free, Independent Sovereign Republic, it is always open to us to keep ourselves free. We are not tied to one bloc or other. We are not tied to the apron strings of the British Government. We are not longer under the domination of Britain. We are equal partners, if there can be partners without any kind of obligations. It is only a question of friendship. We can choose our relations. This has brought a sense of relief to the whole world. There were war clouds and gradually they are dispersing, and this act of statesmanship makes it more probable and possible that war would recede very much into the background. War is put off by this act of statesmanship. I understand from some persons who have recently come from England, the European continent and from America that they are extremely satisfied with this act of our Prime Minister. Long ago some one said, the East and West can never meet. But by this act of statesmanship, the East and West have met. I am sure this meeting will be permanent, and the chords of friendship will become stronger and stronger.

I do recognise that in the speeches made here, by some Members, there is a touch of suspicion. We have been for a hundred and fifty years under the domination of Great Britain. I am not accusing my friends, but they are not alive to the changed circumstances. They are still staying and thinking in the old state of affairs when we were subjected to the domination of Great Britain. Speeches made here have tended in that direction. They have also some justification in that there is racial discrimination persisting in one of the members of the Commonwealth South Africa. Another member of the Commonwealth, Australia, is insisting upon the white-man policy. A third member, Malaya, is ruthlessly destroying some of our people for trivial things, even for carrying a weapon. These things exist, but the moment we enter into some relationship we cannot expect at these to fade away in a trice. I am sure there will be a change of heart among the other members of the commonwealth and even the so-called anti-Indian propaganda will not here after continue. So long as relations are strained between one country and another a number of unpleasant things might be said; but there will soon be a change-over. I am sure even in England a volume of sensible opinion is in favour of continuing this relationship. I am confident that no Englishman and no person who is interested in peace in the world will hereafter speak unwisely a word against the interest of India. I was glad to see in this morning's paper that some Resolution was passed in the U.N. Assembly at the instance of Mexico and another country that there must be a kind of arrangement, a round-table conference, to look into the affairs of South Africa. I am sure that before long the affairs of South Africa will be settled amicably. I was told by the Prime Minister on another occasion that Australia and New Zealand were anxious that we should continue as members of the Commonwealth of Nations. If so, I am sure they will change their policy towards India; but we must give them some time. They started in an era of suspicion but that will gradually disappear. Love or affection or friendship is not one-sided; is must be mutual. We have started in the right direction, we have nothing to lose but everything to gain. In regard to defence and many other things we cannot cut ourselves adrift from the many advantages to be gained. Our nationals are strewn over the length and breadth of the world. What is to happen to them the moment we declare ourselves as a sovereign independent. Republic and do not enter into an arrangement of this type? In Mauritius and other places there are many of them; they will be turned out as aliens. They are not nationals of those countries and they have not given up their nationality of this country. So this arrangement will be good for our nationals in these other countries.

There is another advantage. If we do not have this, a number, of onerous obligations will be placed on us. America does not easily enter into an arrangement of help with any other country. I still hold that so far as our foreign policy is concerned it should be a policy of strict neutrality. We are entitled to join or not to join any power bloc. I am sure with the help of Providence we will be able to stand between two warring countries and establish permanent peace and avoid war altogether. I say that even those persons who have referred to Malaya, Australia and South Africa are not against this Declaration. They only want that it should be modified to this extent that there must be a change of heart in this matter. But let us not put any conditions; let us trust to the good will and good sense of those persons who wanted us to be members of this Commonwealth along with them. In this Declaration it may appear as if it was India who was anxious to continue this relationship with the Commonwealth. That may be the language but we should not be led away by the language alone. The other side was equally anxious; otherwise there could not be this Conference of Premiers and this Declaration could not be brought out. It may read as if before we became a sovereign republic we were anxious to make this declaration. But they tried out a formula and the British Commonwealth of Nations was changed into the Commonwealth of Nations. Now we cannot deceive ourselves that we have no foes in the world; there are many enemies who are jealous of our position in the world. Our prestige and stature have gone up and in a very short time we have grown very tall. It is up to us not to do anything which will be derogatory to that stature.

Then there is another consideration. Irrespective of anything else, if I am asked on which side I lean I shall surely declare that I shall only lean towards the side of democracy, and will not align myself with any dictatorship. That matter is not coming up before us now; but all the same if there is any reason for entering into a kind of association with the Commonwealth of Nations it is exactly because this Commonwealth is wedded to democracy pure and simple. Look at this democracy that prevails in Great Britain. I wonder at the manner in which they exercise this democracy. There were several heroes of the war, Stalin and Churchill, etc. But what happened to Churchill? Overnight they threw him overboard and he is now in the opposition without a following. It is that kind of democracy that we should join; and so we should join hands with Great Britain which has the mother of parliaments, the forerunner of democracies throughout the world.

As for the amendment of my Friend Prof. Shibban Lal Saksena, I do not think there is any need for it. What he says is that soon after the constitution is passed there will be an election on adult franchise and it should be decided then whether we should continue our membership or not of the Commonwealth. To that my answer is that if we say that we continue our membership of the Commonwealth now there is nothing to prevent a future Parliament snapping it. Immediately they take office they can in the very first meeting of the legislature pass a Resolution discontinuing their membership of the Commonwealth. Between now and then there will be enough time to see whether the other members of the Commonwealth change their attitude towards India. If their attitude does not change by that time we will be on firmer ground in telling them that they are not our friends. Therefore, we are not committing ourselves to any course of action which is irrevocable. I therefore appeal to my honourable Friend not to press his amendment. I would have been glad if he had not moved it. Naturally this is born out of suspicion. Hitherto the meaning of Commonwealth was that our wealth was their wealth and their wealth was their own. Hereafter that will change and it will be a Commonwealth for all. I appeal to the House to accept the Prime Minister's motion without any alteration.

Shri Damodar Swarup Seth (United Provinces: General): *[Mr. President, with your permission, Sir, I would like to oppose the motion moved by the Honourable Prime Minister of India for the ratification of the Declaration made by him at the Commonwealth Prime Ministers Conference in London. Sir, you have just said that the question whether India should remain in the Commonwealth or not has a direct bearing on the Constitution we are going to frame. I, therefore, feel that our Prime Minister in making a commitment that India would continue to remain in the Commonwealth, even before any decision had been taken on this question by the Constituent Assembly, has acted beyond his authority. It was not within his competence, Sir, to do so. If I remember aright, prior to the Commonwealth Premiers Conference our Prime Minister had repeatedly assured us, that the question whether India should remain in the Commonwealth or not would ultimately be decided by the Constituent Assembly. It may be argues, Sir, that this Declaration made there by our Prime Minister is not by itself the last word in the matter and that is why its ratification by this Assembly is sought. I would, most humbly submit Sir, that by agreeing to remain in the Commonwealth the Prime Minister has most adversely affected the sovereign character of this Constituent Assembly and has put it in a situation in which it is forced to ratify the declaration made by him at the Commonwealth Conference. This is so because the refusal of the Assembly to ratify the declaration would amount to a loss of confidence of the Assembly and of the people of India in him. Therefore, the Constituent Assembly has now no alternative but to ratify the agreement made by him. I am fully aware of the condition in which this Assembly was elected. It is almost a one-party body and it can easily be led to do what the Government in power may desire to do. But even then, I would say the Prime Minister should not have agreed to remain in the Commonwealth without the Constituent Assembly having taken a final decision on the question. He could have waited for a few days more. He could have made the Declaration he gave at the London Conference after the Constituent Assembly had formally accepted it. But he thought it proper, for reason best known to him, to make that Declaration and thereby he virtually agreed to keep India a member of the Commonwealth.

I would submit to the House, Sir, that the Declaration made by our Prime Minister at the London Conference is not an unimportant or ordinary matter. It is in utter violation of the pledge that our leaders had been repeatedly taking and making the people of this country to take for the last seventeen years on the 26th January under the National Flag.

Sir, today when the Father on the Nation is no more physically amongst us, we see that in his name, in the name of truth and non-violence, every day sermons are given to the people to follow the ideal path shown to us by him. We are not content with that alone. We even give sermons to the other countries of the world and tell them that the only way to establish peace and security in the world is to follow the ideals of truth and non-violence enunciated by Mahatma Gandhi. I fail to understand how, after the pledges reiterated by millions and millions of people for the last seventeen years, we can expect the people of other nations to follow the ideals of the Father of our Nation and with what face we can ask the world to follow the path which we are ourselves giving up so shamelessly.

Sir, the Declaration that India would remain in Commonwealth has been made by our Prime Minister but we are not told what special benefits we are likely to have by remaining in it. We are told that whatever has happened at the Commonwealth Prime Ministers' Conference in no way entails any commitment or imposes any restriction on the Indian people or the Government of India. Most humbly I would submit Sir, that a common person like me is unable to appreciate how we can remain free from obligations and restrictions after having joined a particular bloc. If really we are free from such entanglement I do not see the reason of our joining that particular bloc, nor can I understand why the other members of the bloc want you to be in it. In my opinion the membership of a bloc logically implies certain obligations on the part of any new state which joins it as also on the other members of the bloc which induce a new state to join the bloc. It is another thing that the terms and conditions of joining the bloc may not be placed before us today. It may be argued that it is only two year ago that we secured our independence and as such it is not possible for us to maintain it against the aggression of other countries. It may also be that our leaders have in mind that if any war breaks our, India would not be able to protect herself without the help of the British Navy. If really this idea has influenced us to join the Commonwealth, I would like to submit that no country in the world of today, can rely on another country for securing its protection. Have we forgotten the events that took place during that last War? The British navy could afford to send only two battle ships to protect Singapore and these two had no aircraft carriers with them, and everyone knows that they failed to defend Singapore. The position that the British Navy and the British Government will grow stronger in future and will be in a position to render us more help for the protection of our land is, in my opinion as also in the opinion of my colleagues, an extremely doubtful one.

Besides, all the member countries of the Commonwealth barring India, Pakistan and Ceylon are, members of the bloc known as the Anglo-American bloc. Thus it is not very difficult for us to understand that there can be no other meaning of binding India with the tail of Commonwealth except that of joining the Anglo-American bloc.

It is urged that India can gain many advantages by remaining with England and America. She can receive financial aid. She can receive aid for promoting her industrialisation. It can also be said that a powerful country like America can give adequate aid to India in the next war and she will do so. Sir, for the moment I accept that America will give us the aid that we ask for. I admit that American aid in times of peace would be very beneficial to India. But I think that in times of war it would be in a way suicidal for us to depend on American aid. The way American aid has been given to China is a lesson to us. No sooner did the American government see that the power of the government headed by Chiang Kai Shaik was failing, than if left that government to the mercy of the Communists. I can also accept that during a period of war America will strive its best to supply arms and other things to India; but Sir, we should not forget that oceans roll between India on the one side and America and England on the other. It would not be easy matter for aid to flow to India in such troubled times. There would be sub-marines operating on the seas and bombs and atom-bombs would be raining from the skies. Therefore even if America sincerely wants and strives its best to aid us, it can be doubted whether that aid would reach us at all. Then, as I have said, a great distance separates us from these countries and it will be a long time before the aid reaches us. But, Sir, if we take into consideration the present circumstances, we find that we are surrounded by Communist powers and their sympathisers. We see Russia on the border of Pakistan and we see her on the border of Kashmir too. The Chinese Communists are gaining more and more strength every day. We are not blind to what the Communists are doing in Malaya and we are aware that Burma too is not free from the Communist danger. I do not think that any one amongst us can like or entertain the prospect of the Russian troops entering the borders of India within a week of the outbreak of a war at some future date, while we expect aid from U.S.A. as a result of having joined the Anglo-American bloc. Why should we then place ourselves in a situation which may lead the Russian bloc to think that we are setting up ourselves against it? It is the misfortune of our people or in other words I may say that our foreign policy has been such as to create misgiving in my mind. Even today circumstances do exist which make Russia doubt our intentions and consider us to be allied with the bloc opposed to her. It was probably for this reason, if I mistake not, that our Ambassador, who stayed in Russia for about an year and a half, was not even once given the opportunity of having an audience with Mr. Stalin, the highest dignatory of the Russian Government. Now that we have linked ourselves to the Commonwealth it can be said that we have openly declared that we have joined the Anglo-American bloc. We can imagine to some extent the danger that is likely to follow.

Besides, Sir, if we leave aside the countries which I have just now mentioned, that is to say Pakistan and Ceylon, what concern have we with the commonwealth? We have nothing to do with them even from the point of view of culture, civilization, language, colour and race. Still the members of the Commonwealth are desirous of our association. There appears to be something wrong at the bottom. Our Prime Minister may not have told us in clear words the details of the Prime Ministers' Conference but the Prime Minister of South Africa openly said that they needed to retain India in the Commonwealth and that if she had not stayed on, it would have meant damage to the Commonwealth. He added that it would have been to the determent of everyone of them and that was why they all tried to retain her and now they were all happy about India's staying in the Commonwealth.

Sir, it is not a hidden fact that whatever is happening in China is a two-sided affair. On the one hand, the Communist power wants to bring the whole of China under its authority and on the other, America wants to bring it under its influence by helping Nationalist China. When America saw that Nationalist China was slipping out of its hands she, I believe, felt the necessity of bringing round India into its bloc through the Commonwealth. The reason for it is that India occupies a strategic position in Asia. We should keep this in mind, Sir, as also every impending danger.

I just now remarked: have we any such relation with the other Commonwealth Countries as may compel us to remain with them, especially when we see that our brethern are being very much ill-treated in South-Africa? We have not forgotten the incidents that occurred in Durban recently. The White Australian policy is still being followed in Australia.

In the lands our brethern reclaimed by their labour--the barren land of Africa, that labour is being paid back to them today by not allowing them even to sit with the whites in hotels, trains, buses etc. There appears to be no reason for that and while maintaining our national dignity and remaining in the Commonwealth it is intolerable to us that such treatment should be meted out to our brethern. It is also intolerable to us that we should associate with those people in the Commonwealth who treat our countrymen worse than dogs. The British Government may be styling itself as a

Socialist government but it cannot be denied, that Socialist Government is in no way different from an Imperialist government. No doubt the British Government has quit India but even today fifteen to twenty countries are being exploited by Britain. Sir, for the last fifteen or twenty years, we have been opposed to Imperialism; we have opposed it and we have taken pledges to end Imperialism, to help the people who were groaning under the heels of Imperialism. Then how can we bind ourselves to the British Commonwealth with Britain as one of its members? How can we say it to the world that we are the opponents of imperialism and that we will defend the countries which are being exploited by her?

All these things, Mr. President, are such as I think deserve our serious consideration. If the House is able to realise this and feel these dangers, it should never ratify the motion moved by the Prime Minister, but should rather give a mandate that after the adoption of this Constitution, India will have the same Status in the world as an independent Republic has, that is, India would have nothing to do with the British Commonwealth after the adoption of this Constitution.

Mr. President, I know, that in the present context my words are perhaps a cry in the wilderness. But I have to say with regret that after the attainment of India's independence, our view-point itself has undergone a change amongst our leaders,-who used to talk of revolution till yesterday. Every thing revolutionary now seems to be reactionary and all their reactionary acts seems to them as progressive. This fact needs hard thinking, because owning to this, our future seems to be very dark. You will excuse me if I say that our Prime Minister has recently said about the party to which I am proud to belong, that it is a reactionary party, which still has about itself, the bad odour of old things, and is therefore unable to feel the fragrance of the garden of Commonwealth. But I would say that the idea of Commonwealth is not new. It has not been conceived by Mr. Attlee or by our Prime Minister. Our Prime Minister would not have forgotten that in July, 1944, the then Prime Minister of Britain Mr. Churchill, while speaking on the Empire units had drawn a certain picture of Commonwealth, which was not different from the picture that has emerged today. Mr. President, it may be that the view our Prime Minister has expressed about the Socialist party may be correct in his opinion, but what I am saying is that by crying down old things we do not mean that we should given up our beliefs, that we should forget our principles. Principles are always old, beliefs are always old, but to leave them, to be driven away by the current of changing world without caring for principles or beliefs, does not become a living nation. Such a course may suit a people who have no principles but is unbecoming for us. Mr. President, I therefore would like to conclude these remarks with an appeal to this House to take a decision on this Resolution in the light of the need of the hour.]*

Mr. President: Please stop. Now, we have only five minutes to one. So we shall have to stop, but before we adjourn I have to communicate to you a sad news which has just been communicated to me. One of our members, Shri F. Kothawala, was travelling yesterday from Bombay and coming to Delhi to attend this meeting. On the way he developed heart trouble and expired in the railway train. I wish Members to stand in their places to show our respect to his memory.

(All the Members stood up in silence)

Mr. President: I take it that the House will permit me to convey our sympathies to the members of his family.

We have now to fix the time for the meeting tomorrow. I mentioned earlier in the day that two suggestions had been made, morning session and afternoon session. I am told that the majority of Members are in favour of the morning session from eight to twelve. Is that correct?

Many Honourable Members: Yes.

Mr. President: If that is so, we shall sit from eight A.M. tomorrow. The House is adjourned till 8 o'clock tomorrow morning.

The Assembly then adjourned till Eight of the Clock on Tuesday, the 17th May 1949.

[Translation of Hindustani speech.]

** "The Government of the United Kingdom, Canada, Australia, New Zealand, South Africa, India, Pakistan and Ceylon, whose countries are united as Members of the British Commonwealth of Nations and owe a common allegiance to the Crown, which is also the symbol of their free association, have considered the impending constitutional changes in India.

"The Government of India have informed the other Government of the Commonwealth of the intention of the Indian people that under the new constitution which is about to be adopted India shall become a sovereign independent Republic. The Government of India have however declared and affirmed India's desire to continue her full membership of the Commonwealth of Nations and her acceptance of the King as the symbol of the free association of its independent member nations and as such as the Head of the Commonwealth.

"The Governments of other countries of the Commonwealth, the basis of whose membership of the Commonwealth is not hereby changed, accept and recognise India's continuing membership in accordance with the terms of this Declaration."

"Accordingly the United Kingdom, Canada, Australia, New Zealand, South Africa, India, Pakistan and Ceylon hereby declare that they remain united as free and equal members of the Commonwealth of Nations, freely co-operating in the pursuit of peace, liberty and progress."

Tuesday, the 17th May 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

RESOLUTION *RE* RATIFICATION OF COMMONWEALTH DECISION--*Contd.*

Seth Govind Das (C. P. & Berar: General): *[Mr. President, I rise to support this motion and to oppose the amendments moved in respect to it. The first question that arises in this connection is whether the agreement accepted by our Honourable Prime Minister in any way restricts our freedom or our democracy, from the political, economic or any other point of view. I wish to say that our country will remain entirely free even after this agreement is accepted. When the question of our Prime Minister's visit to Great Britain was raised, I had asked a question in the Parliament whether any decision could be taken there which would create any obstacle in our country's future republican status. Our Prime Minister had clearly stated in reply thereto that he was not going to accept any such decision there. When Shri Damodar Swarup Seth stated yesterday that our Prime Minister had done something which he had no right to do, I was astonished to hear Shri Damodar Swarup remark that the complete independence, which we were striving for all these twenty-eight years, has ended, and that our Prime Minister had not consulted us on this issue before going to England. I wish to tell Shri Damodar Swarup that the Jaipur Session of the Congress itself, under whose banner we fought our battle for independence for the last twenty eight years, had given its decision in this respect and our Prime Minister has simply given a practical shape to that decision.

The truth is that the world has now become very small. The countries of the world have come very near to each other; such means of transport are now available to us that we can go from one place to another within a few hours, whereas in olden days we used to take a few weeks in doing so. In these circumstances, can we stand aloof, and if we cannot, what should we do? Moreover, we can revoke this agreement at will.

Yesterday, Mr. Damodar Swarup had remarked that the fact of joining a bloc implies that we will have to remain in that bloc in foul as well as in fair weather. I wish to say that if this agreement has any peculiar characteristic, it is this, that while remaining in Commonwealth we are not bound to accept every decision of the Commonwealth. The next question that arises is that if we have to associate with somebody, then with whom should we do so? We have a very old connection with Great Britain. Till the achievement of our independence, we had a different kind of connection with her, but now that we have attained our freedom, another type of relationship has been established. Till the attainment of our independence a sort of struggle had been going on between Great Britain and us for the attainment of that independence, and I admit that there was some bitterness in that struggle. According to the philosophy of Mahatma Gandhi, which is now before the world, we can have no enmity with anybody. Still there was necessarily some bitterness due to the struggle. Later on the circumstances changed. We became free and achieved an independence due to Mahatma Gandhi's greatness, without any bloodshed. Now there is no friction, no bitterness between

Great Britain and ourselves. That bitterness has now given place to friendship. If we look at things from our old angle of vision, we find ourselves faced with difficulties. Yesterday Mr. Kamath had quoted a shloka from the Gita. I wish to remind the members of this Constituent Assembly of another shloka from the Gita itself. If we look at everything from the old angle of vision due to anger, we are reminded of this shloka of Lord Shri Krishna which says:-

Krodhadbhavati samodha, sammohat smriti vibhramah,
Smiriti bramshat budhinasho budhinashat pranashyati.

(Anger gives rise to wrong thinking which creates forgetfulness. Forgetfulness destroys wisdom, and by that a man perishes).

Thus, in these matters, we should not allow anger or resentment to over power us, and we should make our decision after taking into consideration the present circumstances.

I heartily congratulate our Honourable Prime Minister for facing the actual circumstances of today. He is the same leader of ours under whose Presidentship we had adopted for the first time the complete independence resolution at Lahore. He has done what was best for the country in the circumstances.

The Commonwealth that we have joined, I agree, is not yet a real commonwealth. I know that the condition of our nationals in South Africa is undoubtedly a matter of pain to us. But to the people of South Africa is ought to be a matter of shame. I also admit that the White Policy which is being followed in Australia is unbecoming of the Commonwealth. But the question is whether we would be able to bring about any change in all these matters if we do not join the Commonwealth? You are aware of what is being done in U. N. O. about the question of Indians in South Africa. These questions, in fact, have no bearing in our joining the Commonwealth. We will have to solve these problems in a different way. It would not be proper for us to take any decision under the influence of anger. It is the feeling of some people that as a result of this agreement we may have to side with the Anglo-American bloc in the event of any war which may break out in future. But our Prime Minister has repeatedly made it clear that our remaining in the Commonwealth does not imply that we would be under any obligation to join them in any war that may break out in future.

I, however, hope and believe that at some future date we shall be in a position to assume the leadership of the other nations of the Commonwealth by virtue of the balance of power shifting in our favour on account of our philosophy, our approach to life, our man-power and the natural resources available to our country. A dream, the dream of the federation of mankind, is already present in the imagination of people all the world over. It is a dream, a pleasant dream. I know not whether this dream is one that can ever be fulfilled, but if it be possible to translate into concrete reality. I can say, in view of the position we hold today, that our country would be able to make its contribution to the fulfillment of this dream by bringing about the establishment of the federation of mankind. I would like to congratulate the Prime Minister again, and I conclude with a personal prayer to God that the agreement entered into by our country for the stable peace, freedom and an all-round progress of the people of the world, may prove a blessing not only to us but to the world as a whole.]*

Pandit Thakur Das Bhargava (East Punjab: General): *[Mr. President, I support this motion with all the force at my command. On this occasion I offer, without the least trace of hesitation in my mind my congratulations to the Prime Minister. It is not, as put by Sardar Patel, his personal triumph alone, it is also a triumph for that policy of straight-forwardness which our country has been following. Our Prime Minister has on many occasion explained the highlights of our national policy. The most fundamental and central factor in it is that India is a sovereign independent Republic. To those who seek to confuse the issue by quoting from the old speeches of Pandit Nehru I would like to say that they should not forget that it was Pandit Nehru who for the first time taught us on the banks of the Ravi to fight for complete independence and that he did so at a time when many people used to consider dominion status as the substance of independence and when many made no distinction whatever between independence and dominion status. They must remember that at that time he had put before our eyes a standard of Independence which could be a matter of pride for any first-rate power. They must also remember that it was he who placed before us the Objectives Resolution which is considered as the very soul of our Constitution. I fail to understand why people should be surprised if he brings forward before us this Resolution which gives us status in the world. Those who give such a weight to his speeches should also have the sense to realize that the same wisdom and idealism with which he had drafted those resolutions are being used by him in seeking to secure our acceptance of this Declaration with a view to advance the interest and glory of our country. Why should they feel hesitant when he asks us to accept it? Speaking for myself I can say that I welcome and support it most heartily because I find it in accordance with the objectives which have been always before us.

The second highlight of our foreign policy is our determination to extend our aid and support to the nations which are comparatively suppressed. The third fundamental principle which we have always kept in our mind is that we should not improperly align ourselves with any political bloc and lastly that we should not be a party to the violation of the rights of any nation. It is our duty not to act contrary to these four principles.

But the agreement, the ratification of which is being sought by this resolution, is not only in complete conformity with all the four principles but is also calculated to promote them. I have not the least doubt that this Resolution is not only quite proper in itself but also reflects correctly the objective dear to our heart. I would like, Sir, to draw your attention on to some past history. It has been asked what advantage we would have by means of this agreement. We have also been asked to keep the debit side of this agreement in our view. Many people here think of weighing in a common scale the advantages and disadvantages that are likely to accrue to us by this agreement, and I agree that this is a valid criterion. I would in this connection like to submit that we should remember that the effects of history are as significant as those of geography and that we cannot escape from these effects, do what we may. For the last few centuries, Great Britain had been ruling us not because we liked it but on account of the compulsions of history. So long as we needed them we retained them and they proved useful to us. We may, by the way, cast a glance at our Ordnance factories today which are producing arms and ammunition. We will find that the officers and managers of these factories are English Officers. It cannot be denied that we cannot confidently assert that we have made as much progress during these two years as other countries could make after centuries. I accept that the Government of Nehruji and Sardar Patel has raised us very high in the estimation of the world during these two years and we will achieve an equal status with other countries, which is our due. But this can be achieved only gradually. We should not foresake wisdom. We should no doubt adopt such methods as may enable us to become as free as the other nations of the world. All of us will have to admit that the consequence of their contact for centuries has been that in all aspects of our life, whether it be the composition of our Legislature or the constitution of our state, whether it is the system of our law or the organisation of our army or navy, the character of our industry or the way of our living, the outlook with which we approach life or the culture that we possess, the method of progress adopted by us or the path of advancement chosen by us, all have evolved a new pattern or way of life which is more or less like the one which the great countries of the Commonwealth have adopted. The fact is that even though we want to establish a Republic in our country we follow the Democratic way of life along with Great Britain and other democracies.

If we follow anybody today it is the Parliament of England which is the Mother of Parliaments. The Constitution that we are framing here today is in fact based on the Government of India Act of 1935. I do not suggest that we, who have an ancient civilization and are an independent nation, are seeking to copy anybody. We do not want to copy anyone at all but at the same time we should not forget that we cannot snap the connection of years all at once. At present if we need and part of an aeroplane we have to approach Britain. If at Delhi we purchase any machine, we have to approach Britain for its parts. We are at present dependent upon England for all our machinery. Why do we then ignore the fact that it is necessary for us to maintain, for some time at least, the connections we had with some countries for a very long time? It is true that we have severed our connection from the British Crown. We Have done the correct thing. But would it not be wise to continue our connections with that country for some time to come when it is to our advantage to do so? We did a similar thing in 1947 in accepting in our Assembly that Lord Mountbatten would be our Governor General and General Auchinleck our Commander-in-Chief. But so long as it is not so, would it be wise to turn out all those England Officers who are running our factories? So long as it is advantageous to us, it is in our interest to stay in the Commonwealth. No association is always harmful. It is said that the British and the Americans are pleased over our decision to stay in the Commonwealth. I am also very much pleased over it because all associations are for mutual gain. It has been said that it would have been better if we had not accepted the King of England as the symbolic head, if we had solved the South-African problem and if we had put an end to the White Australian policy by entering into some agreement. I humbly submit that such things could not have been included in that agreement. If Pandit Nehru had raised this question the representatives of other countries would have told him that they were not prepared to talk to him about it, because even now there were untouchables in India who had no right even to purchase land, and that so long as such conditions prevailed in India, they were not prepared to talk to him. May I ask whether we had ended in India the evils which we want other countries to remove? It is my assertion that we have not. A number of honourable Members have tried to introduce such things here by tabling amendments. I say that this is altogether irrelevant and that we cannot adopt any new proposal in regard to such matters.

It has been said that we are entering an association which concerns the Anglo-American bloc and therefore we will become members of that bloc and as such we will cause offence to Russia. It has also been said that, if Russia so desires, her troops can reach India within hours. I humbly submit that this is altogether wrong. You will pardon me if I give a commonplace example. It is said that it was bad of such and such a person's mother to have got an husband. But if after that she left him it was all the worse. We had this association for a long time. It was possible that other countries would have cancelled this association as soon as we declared that our country was a republic and would have told us that we might go our own way as we were not associated with the King. Our Pandit Nehru had not gone to England to appeal to the countries concerned somehow to include our country in the association. He went there because these nations wanted to retain their old connections, whether we accepted allegiance to the King or not. Today every Indian can hold his head high. He is not under any other government except the Sovereign Indian Republic. This is of prime importance. Had they said that we could be included on some other condition and not on this condition, then this question could have been raised. So far we had vehemently opposed this Commonwealth democracy because we had no equal status in it. But now that every member is an equal partner in it, why should we hesitate to join it? If today other countries feel it necessary to associate with India, India also has a need to associate with other countries. I cannot accept even for a minute that our Assembly can have any hesitation in ratifying this agreement. In fact it is a great triumph for us that while we would not owe any allegiance to the Crown, the other countries owing such allegiance to the Crown are and would be eager for our association with them. Obviously the ratification of the agreement is to our advantage. Besides, there are other factor which must be kept in view in assessing the value of this agreement today. The political and economic conditions of our nationals in the British possessions will be very adversely affected if this link is broken today.

There is a small council in the UNO which has been formed with a view to raise the standard of living of the countries that have a very poor standard. In the last parliamentary conference which was attended by the representatives of thirty-four countries, there was a proposal that the name of the British Commonwealth should be changed into Commonwealth and in fact it was so changed. Dwelling upon the economic condition of my country I had said in that conference that England did not do justice to India. India has a coastal line of five thousand miles but England had left no ship with us. We have railway tracks extending over forty thousand miles but we have not a single workshop where locomotives may be manufactured. There is absolutely no justification for withholding the sterling balance of seventeen hundred million pound's belonging to a poor country like India, I would like to suggest that a council, as the one in the UNO, should also be formed in the Commonwealth so that it may help to raise the standard of living of the member countries that have a very poor standard of living. May I ask you which country can help us in getting our needs supplied today? Will Russia help us? Can we expect this help from U.S.A.? I feel, Sir it is the duty of England and other member countries of the Commonwealth to do justice in the matter and help a lending hand to India in improving her economic condition. If they desire any benefit from us, we too must gain some benefits from them. The Commonwealth has been recognised in the International Trade Charter and according to this Charter the Commonwealth must give the same privileges to other countries of the world that it receives from them. Therefore it is wrong to say that our joining the Commonwealth will antagonise Russia. There is no question of Russia being antagonised. There is absolutely no occasion to cut off our age-long connections with other countries.

It has been an ancient tradition with India that whenever she has formed friendship with any nation she has always stood true to her friends and fulfilled her obligations honestly. We should not now cut off our old connections with them and thereby give them a chance to feel aggrieved.

There is no doubt that the organisation of the Commonwealth has neither any secretary nor any president. The British King is said to be the head of the organisation. But to be frank, I fail to understand his position. However, he will nor preside over the meetings of the Commonwealth, he will not function as its president and will never give his casting vote. There is absolutely no question of veto. He will never have the occasion to use these powers. It is said that the King has no function at all in the Commonwealth. This agreement has less significance than even a treaty and you can scrap it any moment you like. Thus all the members will remain independent in the common family of Commonwealth. It is not a partnership but an association in which we all are as members and therefore it elevates our position. As members of this association we can manage our affairs, in a more effective way. With these words, Sir, I lend my full support to this motion.]*

Mr. Tajamul Hussain (Bihar: Muslim): Mr. President, Sir, recently Pandit Jawaharlal Nehru went to England and there entered into an agreement with six other independent countries; and now we, the representatives of the people of India, are asked to ratify that agreement. The question before us is whether we are to ratify that agreement or not. At this stage, I do not propose to discuss the merits or demerits of that agreement. It is immaterial for my purpose whether that agreement was good, bad or indifferent. I say, Sir, and I have no doubt the House will agree with me, that we have no option, but to ratify that agreement. My reason are obvious and simple. Pandit Nehru did not enter into that agreement as Pandit Nehru. He entered into that agreement as our Minister for Foreign Affairs, as our Prime Minister and as our leader, and as the sole representative and spokesman of the people of India, and in the name of the people of India. Therefore we cannot afford to let him down at this stage. I have already said it is a treaty and......

An Honourable Member: Even if it is bad?

Mr. Tajamul Hussain: He is our representative and as such he went there, and we never asked him not to go, though we knew he was going. Did you ask him to consult the House as to what he was going to do? Such things never happen. Did the Prime Minister of Canada consult his people there? But we are told, and we have listened to the statements of our leaders, and we know that the people here were consulted, and the Deputy Prime Minister told us that he was in entire agreement with what had been done. Is there any sensible man who is not in agreement? When our representative goes and enters into an agreement, it does not matter what agreement it is, we must follow it and ratify it. That is my view, Sir.

Now, let us see what that agreement is. India is an independent country. Now it is absolutely independent. It is under no country, and it is as independent as the United States of America or the United Kingdom, or any other country in the world. It has full sovereign powers. It can make and unmake anything. It can make war with any country. It can negotiate peace with any country. No country can interfere with our internal or external affairs. At present we are a member of an association commonly known as the Commonwealth of Nations. The question before us is: should we continue to be a member of that Commonwealth of Nations? I say, Sir, if it is to our advantage-and it is to our advantage-we must remain in it. As far as I can see, the only objectionable feature is that the King is our Head at present but that objectionable feature has been very ably removed by our Prime Minister. No longer the King of England is the King of India. He will only remain as the symbolic Head of the Commonwealth of Nations. India under this Agreement or Treaty will owe no allegiance to the King. If our President of the Republic were to go to England or America or Russia or to any country in the world, he will be treated as the Head of our State. If the King of England were to come here, or the President of the United State of America, he will be treated no more than as the Head of a free State. The King of England will not be treated as the King of India anywhere. We will respect him as the Head of his State as they would respect our President as the Head of another independent State.

And what is the Commonwealth of Nations? As I have already said, it is only an association of Prime Ministers of seven different independent countries, and each member can leave that association whenever he likes. To give an illustration. Supposing England were to declare war against Russia, what would India do? There are only three things that India can do. It can side with England as against Russia, which I am sure India will never do, and I am sure Pandit Nehru will never do that. The second is, that India may remain neutral. That will be done. The third alternative is that she might side with Russia as against England. If that happens, then the association of nations known as the Commonwealth of

Nations will break up like the League of Nations. It will, *ipso facto*, dissolve. Therefore, I say although we remain a member of the Commonwealth, we will be absolutely free. And I am of opinion and very strongly of opinion that if India remains in it, as she is going to remain, there will be no war in the world. The possibility of war will be removed; and in this way, India would have made a great contribution to the peace of the world. This, in my humble opinion, is sufficient reason for us to remain as a member of the Commonwealth.

Mr. President: Pandit Balkrishna Sharma. But before he begins I would like to make one observation. I have received a number of slips from Members expressing their desire to speak, and slips are pouring in even today. Yesterday a Member raised the objection that I should not go by the slips, and that I should see particular Members standing in their places. I propose to follow that practice, and those Members who have sent in their names in the slips are also expected to stand up in their place, if they wish to speak.

Pandit Balkrishna Sharma (United Provinces: General): Sir, I have very carefully followed the speeches that have been delivered here in opposition to the motion of the Honourable the Prime Minister of India and I have also followed the criticisms of the so called "Left-wingers" in the press regarding this Declaration of the Commonwealth Prime Ministers' Conference. After having read all those objections I have come to the conclusion that those objections can be put into more or less six categories.

One objection which has been raised is that the Declaration of the Commonwealth Prime Ministers' Conference to which India has assented is repugnant to our traditions and, in order to prove that our traditions have been anti-British, extensive quotations from the speeches of the Honourable the Prime Ministers himself as also from the resolutions of the All India Congress Committee have been given. This is the first objection which has been raised.

The second objection that has been raised is that by so doing we are perhaps entering into an unholy alliance with British Imperialism.

The third objection boils down to this that by our so doing we are definitely joining the Anglo-American bloc in international politics and thereby we are losing our independence in international affairs, which is our right by virtue of our being a sovereign independent Republic.

The fourth point which has been made out by the oppositionists is that even though we have become independent we are still continuing to be an appendages of the British Foreign Office, that we tie ourselves to the chariot wheels of British Imperialism and British foreign policy and British foreign policy.

The fifth point which has been made out by the oppositionists is that democracy and headship of the King are two incompatibles which go ill together. And the sixth objection is about racialism in the Commonwealth Countries.

These in the main are some of the points which have struck me to be of a fundamental nature as conceived by the oppositionists and I want to take *seriatim* these points.

Let me begin considering the objection that this association with the Commonwealth countries on our part is repugnant to our traditions....

An Honourable Member: Certainly.

Pandit Balkrishna Sharma: My honourable Friend without understanding the implication of his interruption comes out with a very brave exclamation "Certainly". If he will bear with me for a minute he will find that after all his certainty is not so certain as he considers it to be. We were reminded of the speech which our leader delivered at the Legislators' Convention in 1937; and my Friend Prof. Shibban Lal Saksena said that it was definitely laid down as our policy that we will have no truck with British Imperialism, that in every sense the British connection has to be severed and that in the famous parting of the ways message our leader definitely said that we do not wish to be tied down to the coat tail of the British Foreign Officer nor that we wish to be guided in any way in our external affairs by Whitehall.

When we take into consideration all these objections we will clearly see that what this new Declaration contemplates has absolutely nothing to do with what we objected to in the British connection. When we objected to the British connection, we naturally objected to British domination, to British guidance committing us, against our wishes, even to the extent that we could be dragged into a major war without being consulted by the Britishers through a fiat from NO. 10 Downing Street or from the Mother of Parliaments. Nothing of that sort is contemplated in this Declaration. Time and again it has been said that we are free to carry on our foreign policy just as we do in our internal affairs and that we are free to do anything we like. In these circumstances I do not know how those declarations made by the Prime Minister in his capacity as the leader of the Indian Nation and how those resolutions of the All India Congress Committee or the Indian National Congress can be quoted in support of the opposition to this Declaration of the Commonwealth Prime Ministers' Conference. Today the situation has altogether changed. British connection today is not what it was during those days and it was to that sort of connection that we took exception and not to the one that is contemplated in this Declaration.

The second objection, namely, that we are entering into an unholy alliance with British Imperialism seems to me to be without any foundation whatsoever. When we think in terms of British Imperialism naturally our friends are under the impression that we shall be allying ourselves with all that Britain is doing in colonial countries. Let me tell you that this is not so. We have nothing to do with that. We can very well oppose what the Britishers are doing in Malaya, what the Dutch are doing in Indonesia or what the French might be doing in Indo-China. Have we not done so? Even when we are a Dominion, which we are till today, when we have not declared ourselves a Soverign Republic except in our Objectives Resolution (we are still in the midst of our constitution), time and again have we not taken up the cause of the colonial countries and fought out their battles in the United Nations as well as in the world at large? Has this our connection with the British Government come in the way of our fight for those oppressed nations? If that is not so, then to say that by entering into this alliance or this association with the Common wealth countries, we are trying ourselves to the coat-tail of British foreign policy or that we are playing the role of the henchmen of British Imperialism is absolutely without foundation: I should say it is absolutely untrue.

The third point in that we are joining the Anglo-American bloc. I do not think we are joining any bloc whatsoever. Times without number the Minister for External Affairs, who is also our Prime Minister, has said that so far as our foreign policy is concerned it is yet in a process of evolution and so far as possible we are trying to keep ourselves free from any blocs. We are not joining the Russian bloc; we are not joining the Anglo-American bloc. There have been people who have critisized the Prime Minister's foreign policy, some of them on the ground that we should have rightway joined the Anglo-American bloc; and there are others who have maintained that we should have joined the Russian bloc. But we have steered clear of these power blocs. As a result of that in the U. N. O., even though our voice be feeble, yet it has begun to be heard with a certain amount of respect and even in those quarters where we were looked down upon as an appendage of this or that bloc our view is receiving respectful attention. And, therefore, I say, that this sort of criticism that we are joining this or that bloc is absolutely incorrect. My Friend, Prof. Shibban Lal Saksena said: "Well, one-third of Asia is Russia; then China has gone Communist; Burma, Malaya and Indonesia are going Red. Why then should we have at this hour joined what is called this Anglo-American bloc? "Firstly, his premises are wrong. We have not joined any bloc. And secondly what after all does he mean? Because China has gone Red, because one-third of Asia is already, Red, Because Indonesia and Malaya and even Burma are on the road to becoming Red, should we therefore also try to become Red? Does he mean that we should try to become Red because our neighbours are going Red? Well, Sir, if I were convinced that our going Red will be in the best interest of the country and of humanity at large, I will be the first man to raise my hand in favour of our going Red. But, unfortunately, from what we have read of the foreign policy as also of the internal policy of Russia we are convinced that it is not ultimately in the interests either of the down-trodden or of the world at large. Why? Because there is some fundamental difference, a difference which arises from the very philosophy of Communism. When we talk of the so-called scientific socialism, I am constrained to say that this scientific socialism is unadulterated, undiluted, pure bunkum, for the year simple reason that the socialistic concepts which were based on the 19th century idea of science are today no more scientific, because science has changed beyond all recognition. The 19th century science did not know what the principle of indeterminacy was. But today science declares from house-top that it cannot know anything and everything even about an electron. The so-called scientific socialism tries to explain away all human activities by certain preconceived notions, the notions of materialism. What after all is this materialism? Materialism is disappearing today in the form of mathematical equations; and yet they talk of this scientific socialism. I say, Sir, that it is neither scientific nor social. I would say it is anti-social, because before the Ogre of the State the individual is being sacrificed every minute of his existence.

Therefore, I say that if only we could fundamentally agree with the principles of socialism or communism, we shall be the first to go in for it. But, unfortunately, we find that it is unscientific, that it is unsocial. It is for this reason that we are refusing to join the Russian bloc. Similarly we are refusing to join what is called the Anglo-American Bloc. We are perfectly free to carry on our foreign policy as we like and I see no reason why people should come here and advance all sorts of arguments against the proposition that is before this House.

One thing which I would like to point out to this House is that it will not do today to think in terms of what a philosopher like Herbert Spencer has called traditional bias. There are many kinds of biases; there is the traditional bias, there is the religious bias; there is even the scientific bias. Of course, our whole history--the history of the last 28 years of our struggle against Great Britain--is replete with anti-British feelings. But has not the Father of the Nation given us the message of hating a system, but not hating the individuals behind it? And today we who hated that system are responsible for getting that system changed by the very people who upheld that system and it is for that reason that we are joining hands with them.

As the Prime Minister himself has said there are no commitments. We have not in any way committed ourselves to the foreign policy of the British Commonwealth of Nations. Any country of the Commonwealth is free to take up any line that it likes in the United Nations Organisation. We have done so; even Australia has done so. Then to trot out the argument again and again that we are tying ourselves to the chariot wheel of British Imperialism seems to me to be absolutely futile.

Sir, I was very much impressed by the speech which my Friend, Shri Kamath, made yesterday. He very cogently and very rationally tried to pose certain questions. One of the questions that he posed was whether by entering into this association with the Commonwealth of Nations we shall be deriving any advantage. Well, we gave our consent to this policy not only in this Assembly but even in our great national organisation, the Indian National Congress. With our eyes wide open we authorised the Prime Minister to carry on these negotiations. Did we not take all the *pros* and *cons* into consideration at that time? We did and we knew and we know that it is definitely to our advantage. After all the military science in our country is till in its infancy and there are very many advantages that we can derive from our association with Great Britain in regard to our defence measures. Then again there are so many things that we have to do by way of economic rehabilitation and in these matters we can get expert advice and guidance from Great Britain and from the other Commonwealth countries. Why should we deny ourselves that advantage, especially when it has been made clear that the King does not come in the picture any where, except that he is being recognised only as the Head of the Commonwealth, which again means very little,-very little for the simple reason that he can no more interfere in our internal administration. Our Ambassadors are not to be appointed in his name; they will be appointed in the name of the Head of our State, who will be the President.

With these words Sir, I Commend the motion of our Honourable Prime Minister for having brought round the statesmen of the Commonwealth of Nations to agree to a proposition which is in every way to our advantage.

With these words, Sir, I commend the motion of the Honourable Prime Minister for the acceptance of this House.

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, I am inclined to support my Friend, Prof. Shibban Lal Saksena, and also my Friend, Damodar Swarup Seth, for the following reasons: I support Mr. Saksena because he has adopted the same plea in his amendment as was adopted by me in the beginning when this Assembly met first. I said then and I say it even now that this House is not competent to frame this Constitution, because this House was elected on a very narrow electorate and that of a communal nature--rank communal nature-and it has resulted in the formation of a single party in this Assembly, and therefore it is ridiculous and absurd to entrust the constitution--making power to it. That party represents only one view and that is the only party in existence. When I say that, when I am of the opinion that this House is incompetent to frame the Constitution, it is obvious that I must support Mr. Saksena who wants the same as myself. He says, postpone the declaration of your ultimate object and your ultimate policy until a new House is elected on the broad principle of joint electorates.

Well, Sir then I support my Friend, Mr. Damodar Swarup, on the ground that I want to meet the excuse brought forward by the Prime Minister in this way. He says: "All right, we will become a Republic, but we cannot remain isolated. We will have to have some sort of relation with some power." I quite see that point. But I can argue, "How is it that you are only going to placate the British Commonwealth people? Why do you not adopt the freer course which is more honest? When you claim that you have become an Independent Socialist Republic, why do you not say that you will enter into separate alliances and agreements with all free countries on the basis of the principle laid down by the political group of late Lokamanya Tilak who said that he will enter into an alliance with all other free countries by means of responsive co-operation and will co-operate with only those free countries who are willing to adopt the same cause in regard to our country?" It is no use making alliances with countries like South Africa. The attitude of that country towards our nationals is well known. Even countries like Canada, Australia and New Zealand do not allow any of us Indians to set foot on their soil. How can we go and have alliances with such people? I cannot under stand how a man of such keen intellect as the Honourable the Prime Minister can have alliances with countries like South Africa, Canada, Australia and New Zealand? I think it is beneath our dignity to seek such alliances. We ought to refuse to have anything to do with them. As a matter of fact we once broke off our relations with them. We recalled our representative from South Africa. Now we are reversing that policy and adopting the policy of conciliation. I had to hang my head in shame when I read the other day in the papers that our Prime Minister had now become friends with Dr. Malan and Mr. Churchill. When he went to England he remained in association with such born enemies of Indian independence. I cannot understand what brought about this change of mentality in our Prime Minister. He ought not to have met and spoken to Mr. Churchill at all. He ought not to have mixed with people like Dr. Malan. My misgivings have come true as I find that after these meetings, a real change has come in his attitude. Formerly Mr. Churchill use to abuse the attitude of our Prime Minister. Now a change has come over him. That is a sure sign that we are not on the right path. When a policy of ours is appreciated by people like Mr. Churchill and Dr. Malan, we need no more proof to declare that the whole thing is absurd. Therefore I say that I support both these amendments. At the same time I know it is a futility to propose an amendment to a proposal to ratify the unfortunate Declaration of our Friend the Prime Minister. It is incapable of being amended. It must be ended. There is no possibility of amending it. This Declaration says that India will retain the full partnership of the Commonwealth of Nations and at the same time says also that the King will be the head of that Commonwealth. When you accept full partnership in the Commonwealth, how can you escape accepting the King as the Head of the Commonwealth? Therefore the King is the head of the Indian Republic also. I cannot understand this thing. I am not given to hair-splitting and I do not find any reason to try to make a difference between Tweedledum and Tweedledee. Either you belong to the Commonwealth or you do not belong. I do not want any monster of this kind which is at once a Republic and a Dominion. It is absurd on the face of it. Therefore I say that we need not propose any amendment to this Resolution. It is useless to do so. We should throw out this Declaration and the Resolution at once without anything being left to chance. I am rather inclined to say that I am at one with my friend and co-operator Sarat Bose in his description of this Declaration that it is no more and no less than a great betrayal. I am inclined to go a step further and say that it is not only a betrayal of the Independence of India, but it is a betrayal of all the efforts of all Asiatic countries who are struggling to gain their independence. We have before us the examples of Viet-Nam, Indonesia and Burma. The Members of our Delegation are trying to impose the same thing on Indonesia and Burma; Well, it is beyond my comprehension to account for this change of mentality in people like our Prime Minister. How is it that the President of Indonesia who did not believe in this camouflage and therefore said that he would not accept anything less than the re-establishment of the Republic at Jogjakarta and would not have any Pact unless and until it was re-established got the support of Soviet Russia for his proposal and how is it that our representatives intervened and got the motion postponed indefinitely? I suspect that they want to compel the Indonesia to adopt the same course which has been adopted by our Prime Minister here. Holland also is willing to accept Indonesia as a Republic on condition that the Republic remains a part of the Dutch Dominion. The European nations are making fools of us. Holland wants to make fools of the Indonesians. They say, "We will accept your Indonesian Republic provided that the Republic remains in our Empire". The same is said by France to the people of Viet-Nam. They say, "All right, we accept your Republic provided you remain in the French Empire." I find that these imperialists have coined new phrases and new technical terms. What are these terms? Sometimes they say a Republic Dominion. Our Prime Minister is going to accept that. Also in the case of Viet-Nam and the other, they want to have colonial republics. I do not understand these terms. They want to have colonial republics. I do not understand these terms. They are beyond my comprehension. I do not find in this resolution and this Declaration anything more than acceptance of these terms. As I said, as regards Burma also, they are willing to intervene and help Burma. The Burmese people were wise enough to reject the whole thing because they suspected that we and the British will go there and ask them to adopt the same policy as we are going to adopt. What it amounts to is that we are willing to support you, we are willing to help you, provided you join the British Empire. Even if you do not say this, the whole thing will come to that. We are trying to postpone a decision in Burma, Malaya and Indonesia. We are not only following a very bad policy. We are betraying the cause of Indian independence. We are betraying the cause of all Asiatic countries who are struggling to gain their freedom. You are indirectly in a way compelling them to adopt the same course as you have adopted.

I have only two questions to put to the Prime Minister and I have done. My first question is this. If you do not want to remain in isolation and if you want to have some connection with the powers in the Commonwealth how is it that you do not impose any condition? If you want to enter into an alliance with any of these Dominions, England or America, you are free to do that but only as a completely free Republic, nothing less than that. If you want to have separate agreements or alliances with other countries, you are free to do that with the condition that the whole thing should be based on the good principle of responsive co-operation.

The other question is this. Our Prime Minister says that we will remain strictly neutral. We will not join the Anglo American bloc or the Russian bloc. If it is possible to remain neutral to the last, I would have nothing to say, but it may become impossible to remain neutral. It may come to your joining one bloc or the other. In that eventuality, what is your position? I am not going to make only negative criticisms. I am going to make a positive suggestion. If things come to that pass. We should refuse to join one group or the other. We should adopt an attitude of benevolent neutrality, but the benevolent neutrality should be in favour of Soviet Russia, because America and England are imperialist and capitalist. I cannot understand how a man of such foresight as our Prime Minister is even willing to hear any proposal of our joining this Anglo-American bloc which is at once imperialist and capitalist. As far as Soviet Russia is concerned, I say that we should favour it because Soviet Russia is neither capitalist nor imperialist. Therefore I say this Resolution should be rejected without any amendment.

Pandit Hirday Nath Kunzru (United Provinces: General): Mr. President, in assessing the value of the agreement entered into by our Prime Minister at the last Prime Ministers Conference in London, we have to consider whether it is consistent with our self-respect, and beneficial to our national interests. I felt when I read the agreement that it satisfied both these condition, and I never felt more convinced of this than after listening to the opposition speeches yesterday. Sir, the agreement has been criticised on the ground that it may limit the freedom of action of India in some hidden way or that it may make her an accomplice of the Anglo American bloc in its efforts to accomplish its nefarious ends. The Dominions owe allegiance to the same King. Yet it has been recognised formally since 1926 and legally since 1931 that their status is equal to that of England in all matters, internal and external. That this equality is real is proved conclusively by the neutrality of Eire during the last war. That a small country could exercise the power to arrive at a free decision in respect of matters involving the very existence of England and her daughter countries, shows that the Dominions have really as much of freedom as England herself to arrive, even in a time of crisis, at a decision in conformity with their national interests. Need we have any fear in these circumstances that India which will owe no allegiance to the British King in future will be in a worse position, will have even less freedom to order her internal affairs or to follow her own foreign policy than the Dominions, if she remained associated with the Commonwealth of Nations? I do not think, Sir, that it can be maintained even in theory that India has, because of this agreement, lost an iota of her freedom to decide the most crucial matters in accordance with her best interests.

Now, Sir, let us take the other argument. Will our continued membership of the Commonwealth of Nations in any way, directly or indirectly, make us partners in the crimes of the Anglo-American bloc, should they follow policies contrary to the freedom of small nations and to the maintenance of peace in the world? My Friend, Mr. Kamath, is reported to have said yesterday that he preferred isolation to association with the British Commonwealth of Nations, because this association involved a possible risk of India becoming so entangled in the policies followed by the Anglo-American bloc as to be compelled to fall in line with them even against her own wishes. Does the history of the last thirty years show that isolation is a complete guarantee of our non-entanglement in world affairs? America followed the policy of isolation for a century and a quarter. It was the corner-stone of her foreign policy. It was associated with the great idea of Washington and yet soon after the First World War broke out, America notwithstanding her having remained aloof from European affairs for a century and a quarter, notwithstanding the great distance that separated her from the Western Hemisphere was compelled by events to join the war on the side of the Allies.

Take again the Second World War. There were a good many Americans who wanted the America should maintain a position of perfect neutrality so that whatever happened in Europe, she might not be regarded as a partner of any bloc and yet, world events, her interests, her cultural and political affinities with the Allies compelled her to throw her weight on the side of the Allies. It is obvious, therefore, that people who think that isolation is a guarantee of our non-entanglement in the policy of the Anglo-American bloc are labouring under a delusion. They are following a chimera and if their advice were followed, India, notwithstanding her keeping aloof from the Commonwealth of Nation would not be able to escape the compulsion of events and in the meanwhile would suffer from all the disadvantages from which those nations do that are unable out of hesitation or pusillanimity to make up their minds and declare their policies courageously.

Again, Sir, Members of the Assembly who think that India till this agreement was arrived at was following a policy of neutrality are completely mistaken. Whatever excuse they might have had for this opinion last year, they have none for it this year. The Prime Minister, in winding up the debate on India's foreign policy during the last Budget discussion, made it clear that his policy was not that of neutrality. He only wanted that India should be free to decide in a crisis what course she should follow. If there are any Members of this House who are so simple as to believe that whatever might happen in the rest of the world, India can shut her eyes to it and that we can live as if we belonged to another planet, they should have questioned the statement of the Prime Minister in March last. Not having questioned it then, indeed, so far as I see, having listened to it with approval, I do not understand how they can maintain now that India should follow a policy of isolation which leads to no advantage, but which is as disadvantageous to us as any policy can be. Sir, if I may just add a word on this subject, I should like to say that the policy followed by the Prime Minister and the Government of India in regard to Indonesia, which has received more moral help from India than from any other member of the United Nations Organisation, has shown that India is not now a tool in the hands of the British of Commonwealth statesmen. India knows what her interest are and has the courage to pursue a policy even in opposition to that of stronger nations.

Sir, it seems to me that the objections that have been urged against the agreement are based on the belief that, by joining the Commonwealth of Nations, we have conferred a favour on England or the Dominions. I think there can be no greater mistake than imagining that because our status is equal to that of any other nation, our stature, our political position in the world is also equal to that of the bigger and more advanced nations. It is obviously to the benefit to the Commonwealth that India should continue to be a member of it; but it is no less obvious that India's economic, defence and scientific interests require that she should remain in the Commonwealth at least for some time. No international agreement, in fact, Sir, no agreement between individuals can have any value unless it is of advantage to all the parties concerned. How can it than be urged against this agreement which is helpful to us that it enables England and the Commonwealth to feel that their position is stronger now that it would have been with India outside the Commonwealth? If we want industrial aid, we go to Britain; if we want to know what are the latest scientific developments in the economic or in the military sphere, we as a rule go to England. If we want weapons, if we want to give higher military training to our officers, we again think of England. What is the good in these circumstances of disregarding the reality and imagining that while other countries need our help, we can stand aloof from all of them and maintain our national existence in full vigour?

Sir, some speakers who were not for the outright rejection of the agreement urged yesterday that as Assembly was elected for a particular purpose only, it is not morally entitled to ratify the agreement. They want that the ratification of the agreement should be postponed till a new Assembly elected under the Republican Constitution comes into existence. Frankly speaking, I cannot understand this line of argument. If we feel that the agreement lowers our international position or is opposed to our national interest, let us reject it now. But, if it is to our good in all respects, if we feel that in the present world situation, it will not merely promote our interest but also promote world harmony, establish concord between the East and the West, build a bridge between two civilisations, why should we postpone its ratification till another Assembly is elected? If our ratification now were to deprive the new Assembly of its power to denounce the agreement, such a proposition would have considerable force in it. But, the next Assembly will be as free to arrive at a decision on this matter as the present Assembly is. So far as I can see, India now having entered into a treaty with England, will be free to leave the Commonwealth of Nations even without giving any previous notice. I entirely agree with the Prime Minister that had India left the Commonwealth of Nations and aligned herself with any other nation, her course of action might have led to criticism in international circles. But what India has done now is natural. She is seeking no new alliance; she is only trying to retain old friends because democratic ideals inspire all of them and because, though there may be linguistic differences between us, our outlook in social, cultural and political matters is broadly speaking the same.

Sir, I congratulate the Prime Minister on his decision and unhesitatingly ask the House to ratify this decision because it is in the best interests of India and the Maintenance of peace in the world.

Sir K. M. Munshi (Bombay: General): Mr. President, Sir, I rise to support the resolution which was moved by the Honourable the Prime Minister yesterday. I also join in the felicitations given to him by the last speaker in achieving not only a great personal triumph, but a triumph for India. By his broad statesmanship, India today is a partner with England in the common venture of the Commonwealth, not a tail of the Commonwealth as was said by one speaker yesterday. We are also, in companionship with other nations with democratic ideals, contributing towards world peace. Therefore, Panditji has not only achieved personal distinction, but invested India with high leadership in the affairs of the world and I think he deserves the congratulations not only of this House but of the whole country.

Sir, the opposition to the agreement which is entered into by Panditji in this matter is based on various grounds not only in this House, but outside. But if we analyses all the arguments put forward, in substance it is the expression of a distrust of Great Britain. For several years--for three-fourths of a century--the attitude of India towards Britain was one of hostility. It has left its legacy behind. Now most of the opposition which comes against this particular agreement arises from nothing else but a relic of the past mental attitude in considering every association with Britain to be prejudicial to India. The mental frontiers of public opinion in India were no doubt built in the past for fighting Britain but now, in the light of the new changes, they require to be readjusted. There is no reason to believe that a time can ever arise when Britain can acquire the same position with regard to India which it had before 15th August. Today it is recognised all the world over that we are completely independent of Great Britain and no more form a part of its Empire. It is recognised all the world over that India is the only stabilising factor in Asia and potentially the guardians of world peace in our part of the world. Any fear, therefore, any distrust of Britain, I submit, is entirely misplaced and most of the arguments which are advanced against the proposition moved by the Honourable the Prime Minister are based upon this distrust.

There is one argument which I would like to deal with. It is that this Commonwealth is nothing but the old British Commonwealth of Nations in another from. This argument is entirely based on a fallacy. The British Commonwealth of Nations was entirely different both in the scope and content to the new Commonwealth which is now envisaged by this Declaration. As the House knows very well the old British Commonwealth or rather the British Commonwealth, which exist and which will disappear on the 15th August next when our Constitution will be passed, was defined by the Balfour Declaration in these terms:-

> "Autonomous Communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown and freely associated as members of the British Commonwealth of Nations."

Now part of this is also embodied in the well known Statue of Westminster. Nothing of it has been left so far as this declaration is concerned. In the first instance, the Nations which are going to be members of this Commonwealth are to be independent nations. That is the wording of the Declaration here. Secondly they are not united by a common allegiance to the Crown. This is the most important element in the new Commonwealth. The British Commonwealth, as is well-known, depended for its existence on what is called the "Unity of the Crown". I remember to have read in one of the books of Berriedale keith, one of the great constitutional lawyers, that the unity of the Crown and the allegiance to the King-I am speaking from memory-are the basis on which the British Commonwealth of Nations is founded and when that goes, the British Commonwealth of nations will be disintegrated. The fact remains that there is no allegiance to the Crown in the new Commonwealth and there is no unity of the Crown as contemplated by the old constitutional laws of the British Empire. Take for instance the word 'British Empire' in the old Balfour Declaration. In composition at that time the free countries-the self-governing Dominions-were mostly British by birth. Today we-the citizens of India-are in a majority in the new Commonwealth.

The predominant composition is not British. In the British Empire and the British Commonwealth of Nations, the unity was preserved by the army, predominantly British, which functioned in the name of His majesty. After the 15th August 1947, the Indian army was the army of an independent dominion but after the 15th August next it will no longer be His Majesty's forces. There is no British army left in India which would control the country. Therefore, to the extent it is a complete departure from the old British Commonwealth of Nations.

Secondly, there is no unity of the Crown at all in the new Commonwealth. The theoretical basis on which the British Commonwealth was founded was that there was one King and all the different legislatures, different Governments and different courts throughout the British Commonwealth spoke and acted in the name of the King. Hereafter in this Commonwealth so far as India is concerned, its Government, its legislature and its courts will act in the name of the President of the Republic who will be the representative of the sovereign people of India. Take again the other basic theory which underlay the British Commonwealth. That theory was that the King was the sole depository of power and that no legislation could be enacted unless assent was given by the King or in his name. That will go so far as India is concerned. The fundamental unity of the Crown on which the old Commonwealth was based will disappear under the new Commonwealth. Therefore to say that the old Commonwealth will continue under a new name is not correct.

Another doctrine on which the British Commonwealth was founded was the allegiance of every citizen to the King. In the Stature of Westminster, it is put in the forefront as the basic doctrine on which the British Commonwealth was founded. In the new Commonwealth there is no allegiance to the King. Allegiance would imply personal relation between every citizen of the Commonwealth wherever he may be and the King. So far as citizens of India are concerned, they will owe no allegiance to the King of England. Their allegiance will be to the Republic of India. No basis of the old British Commonwealth is projected into the new Commonwealth. Therefore I submit the argument that this is the same commonwealth in a different form is really not valid at all.

There is no doubt that, as in the old British Commonwealth, the King is the symbolic Head of the Commonwealth. But the Honourable Prime Minister made it clear that in the old Commonwealth the king has the status and function of the Head of the Commonwealth while in the new one he has the status but not the function. To the extent the King continues as a symbol of the free association but without any function whatever and no citizen of India would owe allegiance to him. This new Commonwealth, as I could gather from the Declaration, is a free association of independent nations; each nation member will be free to enter its own regional and international obligations. It will be only united with others by common ideals and interest. Its main advantage will be, as described by the Prime Minister of Great Britain, Mr. Attlee, in the House of Commons recently as 'close consultation and mutual support' and the King will only be the symbol of this free association.

I submit, therefore that this Commonwealth is an entirely new conception and no one need be under the impression that the old British Commonwealth is only being projected in another form.

Sir, many of the speakers before me have described this Commonwealth more or less like the old pandits who describe Brahman-*"Neti," "Neti,"* "it is not this," "it is not this," "it is not this." I would humbly submit that the Commonwealth has a positive advantage, and that it is a positive factor. In my opinion, Sir, it is an indispensable alliance which is needed not only in the interest of India, but in the interest of world peace. Sir, India wants nothing more today than world peace. We can only consolidate and enlarge our new - found freedom if for a generation or more, the world is at peace. It is of the highest interest, therefore, for us that we should do our utmost, do everything in our power, by which world peace, could be maintained at any rate, in our region. India cannot, Sir, possibly be helpful in this direction unless she enters into an alliance with others members of the Commonwealth, as it is done in this case. It is very easy to talk about world peace. We have been talking for years about collective security. But collective security is not a *mantra* to charm serpents with, nor is it a kind of opiate to lull people into inactivity. It really implies preparation, defensive preparations, standardisation of weapons, co-ordinated research and planning and industrial co-operation between nations on a very large scale. As I conceive it, one of the greatest merits of the Commonwealth is that it provides these benefits. Strategically India commands the Indian Ocean. But inversely, it is to my mind, the one source of danger, the one direction from which we may get the best support in days of difficulty and again the one direction from which our danger may come. And of this Indian Ocean we must not forget, Australia on the one side and South Africa on the other, are the pillars, the two extreme out-posts. And any alliance which enables us to maintain defence preparations in the Indian Ocean will be of the greatest advantage to India. From that point of view I consider this new Commonwealth as of the greatest importance to India and its future.

Sir, the Prime Minister has said on more than one occasion that it is high time we forgot our old distrust of England. Great Britain and India have for a hundred and fifty years been associated closely in culture, in thought many of our political and legal institutions and our democratic ideals, we have shared with England in common. And looking a few years ahead into the future also, I submit that an alliance between Great Britain and India in the interest of world peace will be the most effective instrument of collective security. From this point of view this House ought to congratulate itself on achieving this new alliance, the members. From this point of view, I think, this House as well as the country ought to welcome this new Commonwealth, and I have no doubt both the House and the country will fully support it. Sir, this is all I have to say.

Prof. K. T. Shah (Bihar General). Mr. President, Sir, sponsored as this resolution is by the Leader of the House, and supported as it is by the powerful advocacy of Pandit Kunzru, one feels a natural hesitation in opposing its substance. Nevertheless, I will try to place before this House a few arguments, under three main heads, according to which, in my opinion, this House would do well to reject the motion.

Sir, the form of the motion itself is, to me, objectionable. I mean the word "ratify" is open to objection. This word suggest something previously authorised and now requiring in the final form to be ratified. I am afraid I cannot recall any such authorisation for this step-previous discussion and determination by this House according to which a momentous agreement like this could have been entered into, and the House should now be called upon to ratify that decision. I entirely agree with the Honourable the Prime Minister that the matter is for ratification or rejection; and that there is very little room for amendment. A suggestion was made by some friends for deferring or postponing the matter and eliciting public opinion on it. These suggestion may have their own claims. But I feel that the word "ratification" of a proposition, not previously determination upon by this House considered, discussed, and agreed to in substance, is calling up the House to register a decree entered into by the Head of the Government.

Now, to that, as a mere matter of principle, I feel most reluctant to agree. The tendency to confront the House with a *fait accompli,* and thereby to require the House to accept or reject a proposition like this, is in my opinion not likely to lead to that freedom of discussion, that fullness of ventilation of all shades of opinion, which I think are indispensable for the healthy growth of democratic sentiment in this country.

This, however, is not the only ground on which I would like this House to reject this proposition. There are other, and in my opinion, much more weighty reasons, of a constitutional importance, which incline me to say that the proposition is ill-timed, ill-conceived, and unlikely to result in any substantial benefit to this country.

In the first place, Sir, we are told that there is no change, virtually speaking, in the existing association of the independent nations called hitherto the British Commonwealth of nations, and now re-christened into Commonwealth of Nations. If there is no change, where is the necessity now for us to make this agreement? If the situation now is as it was, if we are as we were before the Declaration of the Prime Ministers, if we are in the same position of sovereign independence, and absolutely uninfluenced by any outside authority in our domestic or foreign relations, then I fail to understand what could be the necessity for entering into or committing ourselves to this Agreement. If this Agreement does not take us any further, if it does not involve us into new commitments, then I think it is superfluous. If it does involve us into commitments, then it would be dangerous; and we should think before we enter into an agreement like this. That, I think, is a consideration well worth pondering over, before we give our consent to a proposition like this. If there is no substantial change, then I feel it unnecessary to accept this agreement.

Secondly, we are told that the King will be the symbolic head of this loose association or loose union between the various independent nations, previously called the British Commonwealth, or the British Empire, and now called the Commonwealth of nations. This is also suggestive. I thought when we passed the Objectives Resolution, when we declared our intention to constitute ourselves into a Sovereign, Independent Republic, we had said the last on our connection with the British Empire. Now, in this form and at this stage to bring in the headship of the English King, or even the symbolic headship of the English King, seems to me, to say the least, highly anomalous. We are passing through an age in which we are demolishing, disestablishing, if I may say so, Kings and kingships in our own country, which can claim longer generation and much better record of resistance to the powers of darkness in this very country than the Kingship or Royalty of England can.

I have, Sir, no desire to involve the British Royalty in any kind of party sentiment. But I must point out that in this country there were and have been Kings who claim their descent from Rama, and who could show a record of a thousand years' resistance to the powers of darkness, to aggression and suppression, which was regarded and rightly regarded as some of the most heroic achievement in this country. I have shed no tear on the disappearance of these anachronisms because I do not believe in kingship in this democratic age, I do not regret that those vestiges those descendants of the ancient dynasties of this country have begun or been made to disappear, one after another. I am in fact of the opinion that it is one of the greatest achievements that the present Government has to its credit in bringing about the unification and democratisation of this country. But I cannot help asking:- With this record to our Government's credit, why should we at this stage accept even the symbolic headship of the British King?

We have been told, Sir, that this sentiment is the result of our recent past in which our mentality has been formed and coloured by a constant attitude of hostility, of distrust and suspicion of Britain and the British. I plead guilty to that, but offer no apology for holding such apprehensions. This is a mentality which is still in most of us; and when we are asked to forget and forgive the past I cannot but feel that the forgetting is to be all on their side, and the forgiving is to be all on our side. We must forgive all the record of a century of exploitation, of suppression and oppression, of denial of our rights and liberties, of the sacrifice of our interests and sabotage of our ambitions because we have been made into an independent Republic. We must forgive all that, wipe it clean from our memory, and join hands with those who only the other day were our exploiters, who only the other day involved us in wars which were none of our seeking, and which cost us thousands of lives and crores upon crores of money, and who even today in my opinion, are not free from the suspicion that they are having their own mental reservations in inviting, in almost tempting us to accept this agreement.

It is not merely of the past that I am thinking of when I ask this House to remember the record that Britain has had in this country. Even at the present time, many of the so called Dominions of Britain, independent nations as they now are, not only flaunt a policy of racial discrimination and distinction against us: but they are proclaiming to the world that they would maintain a "White Australia" or a "White" Africa policy. And, what is more, today they refuse even to agree to any ordinary and peaceful method of seeking settlement of such disputes.

We have, in contradistinction to the amorphous British Commonwealth of Nations, the United Nations Organisation. This is after all a Union of those who pledge themselves to the democratic way of living. There is a definite constitution a regular charter. There are institutions: there are legislative and executive organisations. In contrast with that, on the showing of the sponsors of the agreement themselves, in the case of the Commonwealth of Nations (the word "British" is now omitted to manage or humour our sentiments) there is no common constitution, there is no charter, there is no common organisation, there is no machinery for securing justice as between the various members of that organisation or Commonwealth. There is no machinery for registering complaints or making an investigation or adjudication of a dispute.

In preference to the United Nations Organisation, what is there, for us at least in India, in the British Commonwealth of Nations, that we should now, within a year and a half of our independence, become members of that organisation? I repeat I cannot see any necessity, I cannot see any wisdom, I cannot see any advantage in asking this House of this country to accept membership of this Commonwealth: the more so as, on their own showing, there is going to be no change. After all if in the British Commonwealth of Nations we are also an independent sovereign Republic of India, so are we in the United Nations Organisation. By its very framework, by its very narrowness in that it is limited only to the members of the erstwhile British Commonwealth or the British Empire, it is suggestive of a grouping within a larger world group, a grouping within the United Nations which is highly objectionable. The United Nations is a much more world-wide organisation, claiming allegiance of many more nations of the world and actually showing itself more active in redressing wrongs than the British Commonwealth of Nations............

Mr. Tajamul Hussain: On a point of information, may I ask the honourable Member as to what are the disadvantages?

Prof. K. T. Shah: If my honourable Friend will have some patience I will deal with the disadvantages also.

Let me now proceed with my argument and I am trying to examine what advantages you are expecting from such agreement just now to ask me to agree to this proposition. I for one see no advantage so far.

I have so far placed this matter on a purely constitutional ground. Let me now take up the economic side of the matter. The economic side seems to me to be still more formidable against the acceptance of this proposition, because I see no advantage likely to result to us from joining a Commonwealth of this kind. If Britain herself in her present position is dependent for her own national recovery upon outside support, upon American help, it stands to reason that she will not be in a position to assist us on the much more widespread and much more intensive plan of development that we are thinking of. If we have to receive support, if we need in our ambitions of development assistance of any kind, I am afraid Britain is unlikely to give us that assistance.

The Honourable the Prime Minister declared in his speech that he is not a good bargainer. I am afraid perhaps that is true. But I must also remind the House that Britain is a good bargainer, and that British statesmen are such good bargainers who by their appearance, by their suavity and by their diplomacy may seem to suggest that bargaining is the last thing in their mind; and yet all the time make the most effective bargain which the victim may perhaps discover ten years hence. At the time it may not appear as a bargain; and so it may not seem well for us to press for a *quid pro quo.* Britain by its tradition of two hundred years is a nation of shopkeepers, and as such she is best fitted for securing the best bargain. Though other people may forget, the memories that we have of Britain's bargaining ability are only of the other day; and so I cannot overlook that.

From this agreement, therefore, I personally see no economic advantage or benefit likely to result to this country by a closer association with the Commonwealth. If anything, we are likely to lose by our association with that country. Here I would invite the attention of my honourable Friend who interrupted me a few minutes ago to see what the disadvantages are. I do not know whether he realise that in man-power we are more than five times the British man-power, perhaps almost seven times the manpower, of Britain and dominions combined. I am talking of the white population just now. In resources, and still more in potential resources, we are probably much more important by ourselves then they are. In actual economic situation, notwithstanding our handicaps of the day, which are passing handicaps, the real natural position is far more balanced with us than it is with them. With Britain particularly the national economy is highly unbalanced and with other Dominions also for the time being. In our association with these countries, who are under the necessity of receiving more than they can give us, their whole economy is so organised that they must sell more than they consume of their own material and conversely consume more than they produce of their own requirements. For such people an organisation of this kind can only mean a hope or possibility of securing some advantage for themselves. But for us there can be no hope of advantage by a closer association.

I will be forgiven, I hope, by the House if I remind the Members of the tale of imperial preference during the last fifteen or twenty years to which this country had been subject. If imperial preference is to wear a new appearance now, as the British Commonwealth of Nations is going to wear a new designation, I cannot but warn this House against any snare of that kind. Though it may not today be spread before us, it will in time be laid before us, for inveigling us into accepting an advantageous position to the British trader compared perhaps with our own or at the sacrifice of our own.

Sir, we had the other day an invitation graciously extended to foreign capital for investment in India, in which British capitalists were particularly singled out for so to say, special butterification. I fear I was unable to accept that attitude then nor can I accept this attitude today as regard the advantage at all likely to flow from closer association with the British Commonwealth in an economic sense.

Sir, Britain may not have been played out; I do not think that Britain is at her last gasp. But I certainly think that Britain is no more the workshop, the carrier and the banker of the world that she used to pride herself on being in the last century. And those countries which have means of their own, those countries which have resources of their own, have manpower of their own to rise and achieve that very position, for themselves, -those countries are not likely to benefit from the association of a country which may not be bankrupt. Formally speaking, but which is yet unable to pay off its debt and is compounding with her creditors.

Further, the gradual association and the closer dependence of Britain's economy on the United States makes you more than ever doubtful as to the propriety, the wisdom, and the necessity of countries like us, just emerging into independence and intent on our own economic development, so associating, so tying themselves up with such other countries, that in matters economic their whole machinery may be also made dependent upon their class system, their vested interests, their methods, their policies of exploitation such as they have been in the past, such as they may quite possibly be hereafter, if you are not strong enough to resist.

Sir, here is a danger which may not be easily perceived by those who only see the surface and no more. We have been advised, Sir, not to look too much into the past. We have been advised also not to think too much of the present, but to have our eye on the future. Sir, I am not a prophet, and cannot, therefore say what the future has in store for us. But judging from current events, judging from the tendencies now quite clear on the surface, judging from developments that have taken place in the four years since the war ended, it seems to me that, economically speaking, this association that we are now called upon to ratify with the other nations of the British Commonwealth has no economic advantages for us, either in the shape of financial help or industrial development, except of course that we will have to pay through our nose. Of course anything can be of advantage if you do not count the cost. If you are prepared to pay anything for it, then I have nothing more to say. But the fact remains that if you balance the advantages and disadvantages properly, if you put the debits and credits together correctly, I do not think any Chartered Accountant would be able to show you a balanced balance-sheet in regard to our relations, present or future with the British Commonwealth of Nations.

One word more and I have done. The political aspect of the situation is no less important than is sought to be made out here. We are told, Sir, that we cannot live in an isolated cell of our own. We certainly cannot. Nor does anybody suggest that we should try and live in an isolated compartment of our own. It would be a folly; it would be impossible in the present setup of things for any country, however large, to follow a policy of isolation. But to say that does not mean that the only association possible for us is with the British Commonwealth of Nations. We have willingly and whole heartedly joined the United Nations Organisation, which, as I said, is a world-wide organisation. We have pledged our co-operation and support to them. We are trying to take advantage of the machinery provided by the UNO for the various kinds of political groupings. But that is not the same thing as becoming closely associated with the British commonwealth of Nations, which, by the very fact of that association is likely to give rise to suspicion to others; and, as such, likely to convert them into potential enemies which we need not have.

We have been told, Sir, that our education has been moulded on the British precedent; we have been told, Sir, that our whole administration and financial structure is fashioned on the British model. But is that also a reason why we should continue that which might quite conceivably be harmful even? If will be more a signal, in my opinion, of danger and warning rather than an invitation to a greater hospitality and closer association. I have much more to say on this aspect of the matter, but I do not wish to trespass on your patience, and, therefore with these words I invite the House to reject this proposition.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. President, sir, I have to congratulate, if I may, the Honourable the Prime Minister for having solved a most knotty problem, a problem which was regarded as somewhat insoluable in certain quarters some months ago. The resolution which we are asked to affirm does not in any way detract from the position which the Constituent Assembly has taken up from the outset. India is to be a Sovereign Independent Republic, both in her internal affairs and external relations. The Crown will have no place whatever either in the internal relations or in the external relations. The President of the Union will represent India both in the internal spheres and in external relations. We do not require any credentials either by or in the name of the British Crown for transacting our business with foreign countries. In matters of war in peace, in trade relations, we will be masters of our household. There will be no economic entanglements of any kind. So far as the Dominions are concerned, both India and the Dominions are at arms length. India will be entitled to pursue a foreign policy which is suited to the best interests of India. The only point that is urged against the acceptance of the Agreement is that there is no reason why the first Part of the Statute of Westminster should be embodied in the Declaration, namely, that the Crown is to be the symbol of the free association of the Members of the British Commonwealth. The second part of the Declaration, found in the preamble of Statute of Westminster viz., the part dealing with allegiance to the Crown has been advisedly omitted. Therefore the only link is that of the King being the symbol of the free association of the members of the Commonwealth of Nations. If there is to be a symbol, it will be very difficult to fit in the President of the Union into the framework. It is not a feasible idea to have alternatively, say, the Prime Ministers of England and the Dominions and the President of India as the heads of the association. As the Crown still continues to be the head of other Dominions, and as we are entering into a kind of voluntary association, the King as the symbol, is perpetuated. But it is necessary to note that it is nothing more than a symbol. The Crown will have no functions, no duties and no rights *vis-a-vis* the various Units of the Commonwealth. That is the position of the Crown.

Now therefore, are there any radical objections to this scheme that has been adopted is the one question before us. In regard to this point, what I would like to invite the attention of the House to is that this association has not even any resemblance to the Atlantic Pact or the UNO. At least in regard to the UNO, though the sovereignty of the different Units is in terms declared in the UNO, taking the various parts of the UNO you may come to the conclusion that to some extent there are provisions which detract from the sovereignty of the individual members of the UNO.

Similarly, there is no question of our involving ourselves in any alliances like the Atlantic Pact, because there are no commitments either in regard to defence or in regard to war or other matters. Therefore it is the least onerous task that has been undertaken by our Prime Minister. The republican status of India is in no way affected at all in the external sphere or in the internal sphere and the position of the President will in no way be affected. In fact the Declaration is silent on this point. Supposing the King of England visits India, he will not get any kind of priority or precedence over our President. Our President would be the representative of India and the King of England will have no sort of precedence over him inspite of the fact that he may be the link of the Commonwealth of Nations within the limits of India or in any other place. In other places, including the Dominions and England, the President will have the rank of an independent sovereign.

Then the only question that has been sometimes debated is, 'Why not we stand aloof altogether? Why not we take up the position which Ireland has taken?' The one point which we have to remember in this connection is that Ireland may be in a position to get all the advantages of citizenship everywhere having regard to the fact that her kith and kin are scattered over Canada, Australia and America and they will be in a position to cement the relationship between the Dominions and America. You can easily understand why they are willing to give the go-by to all ideas of citizenship so far as an Irish citizen is concerned even in England. Therefore it is necessary to exactly appreciate the position of Ireland. First, Ireland is a very small country very near Great Britain; and secondly, Irishmen are scattered all over the Dominions. Therefore they will be in a position to get all the advantages of the contact and can have the best of both the worlds without being members of the Commonwealth of Nations. That explains the real position of Ireland and it also to some extent satisfies the sentiments of the Irish people. We will have to consider our own position, not in the setting of what Ireland has done or may do, but in the setting of what is in the best interests of our own country. Though it may not be germane for the purpose of understanding this Resolution, you will have to take into account various factors such as the Army organisation under the existing relations, the various conditions which have to be established in the matter of capital importation and so on. For these purposes a certain degree of contact or perpetuation of contact in an effective form will be an advantage to this country.

These are matters which I have no doubt must have weighed with the Honourable the Prime Minister in coming to this Agreement without in any way sacrificing the independence, the dignity, and the constitutional position of India as per the terms of the Constitution.

One other point which you may take note of is that without the alteration of a comma or putting in any kind of prefix this Constitution can go through without the mention of the Crown in any parts of it. The Preamble will be there. Necessary changes may be made to fit in the different parts of the Constitution with the preamble. But the Crown will come nowhere in any part of this Constitutional structure. It is a very loose association which has some advantages. Nobody, no country in the present day can live in what may be called splendid isolation. It is one thing to become the slave of another nation and become a victim of its economic policy and it is quite another thing to maintain one's individuality. It is said that if you sever your constitutional relations altogether, there will be independence. That is wrong. It all depends upon the strength which you develop. Look at China. She was for a very long time theoretically independent and had to depend upon other countries. Similarly, our country may be theoretically independent with no connection with Britain or the British Crown. But until you develop your own strength you will be subject to control by other nations. Therefore, the only way in which to approach the problem is to see that there is nothing in the way of developing our strength and if we so desire to break off at any time we choose. If, for example, Britain does not conduct herself properly it will be quite open to the next Government or the next Parliament which will be elected on universal suffrage to snap the tie. Therefore it is a question of expediency. I cannot understand the argument on the one side that it means nothing and on the other side it means everything. You have no right to read between the lines when the Prime Minister makes an open declaration. You will have to take him at his word. There is no reason why, having regard to our knowledge of our Prime Minister, you should think that he has entered into any kind of understanding with somebody else. The understanding is there in the declaration. Are you or are you not willing to abide by the Declaration?

Another point was put forward, *viz,* that this question should have first been ratified. I have never heard it said that before you enter into a pact with other nations you must discuss with others the minute details of that pact. In the past the whole scheme was adumbrated before this House on several occasions. The Congress had agreed to support in principle this alliance or union, it does not matter what you call it. Having done that, to say that every comma, every semi-colon and every sentence of this agreement that should be placed before this House before it is entered into is meaningless. The Prime Minister goes there and he carries out in letter and in spirit the mandate of this House and the Congress, and he now comes back and asks you to ratify it. What is wrong in this procedure? Does it conflict with the international procedure adopted by any civilised country in the world? This is a point which I cannot understand. I have never heard it said that all the details of an agreement must be discussed before a Parliament or a Constituent Assembly, that every clause of it should be discussed and approved, and then the other parties to the agreement should either accept it or reject it. The one point that you have to consider is whether the Prime Minister has in any way deviated from the instruction given to him by the Congress or the Constituent Assembly.

Now, I am also quite clear on this point that so far as India is concerned, there is no commitment of any kind. It is entitled to pursue its own foreign policy, domestic policy or industrial policy. Even as a Dominion India is having an independent line of her own without reference to the other Dominions at times even at cross-purposes with England, the latter having remained neutral on difficult occasions when she found that she could not side with one or the other. Even her neutrality is an advantage to us. For example, whenever there is a conflict between one member of the Commonwealth and ourselves, her neutrality will be an advantage to us. The point to note is that we have no commitment to enter into any power bloc. India is the one country which has no kind of commitments. Under those circumstances, I think to have friends with whom you can discuss things without any commitments is a great advantage, unless you want to live in isolation in the complicated world of the present day. When really there are no commitments, any criticism of the decision is merely legalistic, unless the critics want-that there should be commitments. Does Professor Shah want that there should be commitments? Do the other people who indulged in a caveat against the agreement want commitments? If you want, then those commitments will have to be bilateral. You cannot have unilateral commitments. Therefore that arguments is rather contradictory. On the one side you do not want to enter into any bloc and you do not want to have any commitments. If you want to derive tangible concrete advantages from any particular group of people, then you must be willing to yield to the other side. Even in the economic sphere it is wrong to think that you can be independent only if you stand aloof from other nations. Take America. America is able to dominate the other nations? It is because she has got money, she has got wealth, she has got immense resources, she is able to dominate the whole world. Look at the independent nations of Europe. Is it because they are not independent they are being dominated? They are independent republic in every sense of the term, but yet they are being dominated. For a growing country like India to remain in the Commonwealth without any commitments of any kind will be an advantage in the interests of peace and the future good relations of the world, and I do not think there can be any better exponent of world peace than our Prime Minister. I have no doubt whatsoever that if he finds that there are any entanglements under the cover of this free association, with the King as the symbol of that association he will be the first one to advise you to scrap that association. Under these circumstances, let us not be afraid of meeting another person because he is going to swallow you. That means you are timid; you have no confidence in yourself. If you have confidence in yourself, in this compact you will be able to assert your individuality. Under these circumstances, having regard to the considerations I have set out, we should accord an enthusiastic and unanimous support to the agreement reached by our Prime Minister. He has shown himself to be taller - even though he may be short physically-than all the other Ministers from the different parts of the Commonwealth as a result of this Conference. He has achieved what we have fought for and at the same time he has preserved our continued relationship with the Commonwealth.

Mr. Mohamed Ismail Sahib (Madras: Muslim): Mr. President, Sir, I have come forward to support wholeheartedly the Resolution that has been place before this House by the Honourable Prime Minister. At the outset, I want to congratulate him on his having raised his own status in the international sphere along with that of this country. Sir, I need not say such in support of the Resolution after what Pandit Kunzru, Mr. K. M. Munshi and Shri Alladi Krishnaswami Ayyer and similar other Members have spoken about it. If I want to speak, I want to do so only to demonstrate the fact that it is not one or two groups that are in support of the policy which has been adumbrated by the Prime Minister, but many groups the vast majority of the people of the country are supporting him in the stand that he has taken. It is only for that purpose that I have come forward to speak in support of this Resolution. Firstly, when we are speaking at present about such important matters, we must not always be thinking of the past. We have to leave the past behind and we should not be harping on what happened in the past. We should not be thinking in terms of the past. In the past we were a dependent country struggling for our independence and so any proposal as is now put before us would have then been viewed with suspicion and we would have fought against such proposals. Now the position is altogether different. We are now a free nation. We are free to choose our own course of action. Therefore, when the position is altogether different now, I do not know why we must be spending so much of our time in criticising in this manner the action that has been taken by the Honourable Prime Minister as the spokesman of a free nation. Now Sir, what is our position today? We are a Dominion of the Commonwealth; we have not yet become a sovereign independent Republic according to the Constitution, which has not yet been passed. Even under this position, Sir, what are our rights? We can make our own choice; we are free to do anything we please. It is under that assumption that certain of our friends are advising us to reject the Resolution that is placed before the House. Even when we are under the Crown and even when we are accepting the Crown as the Head of the Commonwealth, of which we are a Member, even now those Members assume and rightly assume that we are free to do as we please and, therefore, what is their objection in continuing in the same position, even when we declare that we are a Republic under the new Constitution? Then, Sir, take the Resolution itself or the Declaration, which was issued in London after the conclusion of the Commonwealth Conference. That Declaration is simple. The Prime Minister has assured us that there is nothing behind it, that there is no secret pact or any private understanding with the other Prime Minister or powers that be in the other dominions of the Commonwealth; and, therefore, as it is, it is a simple declaration and what it is that we are fighting against in that Declaration, passes my understanding; it only reiterates the present position that though in the near future India may declare itself to be a Republic, the rights we have got and the position which we are enjoying now will not in any way be whittled down is what is assured by that Declaration. Then also, when we accept the King as the symbol of association instead of the Head of the Commonwealth, we will be free to do whatever we may want to do at that time. Our position in the matter of our internal affairs and also external affairs is not in any way sought to be affected by that Declaration.

Now the amendments that are placed before the House are to this effect: One is that the consideration of this Resolution must be postponed until after the Constitution is passed. For what purpose? Now, if that amendment is accepted, what will be the position? Then, the position will be that we shall still continue to be a member of the Commonwealth. Then that amendment means that our position of being free to make our own choice is not being affected in any way. If so, how it will be affected if we pass the Resolution, I do not understand. Then, the second amendment is that until Africa and Australia agreed to treat Indians on a par with the other citizens of the Commonwealth, we should not ratify this Resolution. But, would we not be in a better position, if we pass this Resolution and continue to be a member of the Commonwealth, to treat with them in that matter and achieve our object? And it does not in any way prevent us from taking whatever action we please on those questions though we may continue to be a member of the Commonwealth under the arrangement that has been come to by our Prime Minister with the other Ministers.

Sir, I do not want to say much more on this subject and I only want to remind the House that today or tomorrow we cannot as a country or as a nation stand alone. If we have to create or maintain any relationship with any other country of the world, this is the best arrangement, the arrangement that is placed before us now. Under this arrangement there is no commitment whatever for us. If it is a treaty that our friends want us to enter into with other countries, it will put so many conditions and restrictions upon us as it will, of course put upon also the other countries entering into the treaty. But now, as it is, according to this arrangement, there is no commitment whatever. We are as free as the bird of the air can be. Take a treaty; there will at least be time-limit for the continuance of that treaty, but here there is not even that time-limit. Under this London Declaration or under this Resolution, which is placed before this House, we are free to change our position under the circumstances and it will serve us both ways: It will give us a favourable position in the comity of nations and at the same time it will maintain our perfect freedom of action, and it is for this purpose, Mr. President, I wholeheartedly support the Resolution.

Shri Khandubhai K. Desai (Bombay : General): Mr. President, Sir, I have not the least hesitation in supporting the motion moved by the Honourable the Prime Minister. I support this motion not as a politician nor as a lawyer nor as a student of international questions. My support to this motion is from the point of view of how that agreement has reacted on the common people of this country. There is no doubt that the handling of the this question by our Prime Minister has raised the prestige and the status of India in the comity of the nations in the world. The opposition to this motion was mainly based on, in my opinion, fear and inferiority complex. I must say to those friends that the people of this country are more buoyant, more cheerful, more courageous and they are not afraid of dealing with any nation in the common interest. The way in which some of the friends who have opposed this motion spoke betrays really no confidence in themselves. It has rightly been pointed out by some speakers here that we must cease to live in the past; we must live in the present with certainly an eye on the future. The present agreement really is a great contribution to changing the hitherto character of the Commonwealth. Our Prime Minister has been instrumental in changing the whole picture of what was upto now called "the British Commonwealth of Nations". Incidentally he has substantially also helped the other nations who were members of the defunct British Commonwealth of Nations.

The masses of this country look at the status which we have attained as an independent sovereign nation from one point only and that is, how far our present status will contribute to the promotion of world peace. It has been stated that there are commitments implied in this association. The Prime Minister had very clearly pointed out that there are no commitments whatsoever. There is one commitment and that commitment is to promote world peace. I think he has given us a very great lead, a welcome lead in the very first act of the new nation in international politics. The question before us is whether we as an independent nation should take up the attitude of an ostrich. If there are fears, if there are dangers, if there are difficulties, they have to be faced. You cannot simply in an ostrich-like attitude sit aside and say, there is no fear. There is fear to world peace and we as a nation must contribute towards the promotion of that world peace. To those friends who want this motion to be rejected, I say that they are running away from efforts towards the promotion of the world peace. The present agreement does create a forum where our representative can go and discuss and place our points of view with regard to the promotion of world peace. There is absolutely no commitment. Of course, the old hatred against the Britishers, and our fear of them still persists, but we must overcome them. It has also been stated that the Britishers are past masters in bargaining and therefore they will cheat us. That is all old complex. Can world peace be maintained, be promoted by fear complex, by suspicion, by distrust? No. If efforts for world peace are to be made by our nation--and I think that our nation has got a definite mission and that definite mission has to be fulfilled--you should have some friends in the world where you can percolate your ideas. Prof. Shah has stated that he has suspicion, distrust, that he has this that and the other. How long are you going to harbour this distrust, suspicion, this year? You have to live in the world. You are affected whether you like it or not by world politics, by world affairs. Let it not be said that when there was occasion, when there was the opportunity to talk with the world statesmen, you have failed. Instead of expressing our gratification at what our Prime Minister has said. some of the speakers have incoherently attacked this agreement. Some of these friends talk the old language and feel that they are leftists or radicals. In my view they are neither leftists nor radicals. They are conservatives; they are reactionaries; they want to live in a state which is static. Our Prime Minister's efforts at the Commonwealth were more or less dictated by his progressive outlook on world affairs.

Sir, only the other day, a week back, the representatives of the working classes of this country met at Indore in annual session and the question of this agreement came up for discussion. I was surprised to find that there was unanimous support for this agreement, and on one ground alone and that was this. They state in their resolution: "Without impairing in the least degree India's status as a completely independent sovereign Republic, it enables it to play an increasingly positive role towards the promotion of world peace". As far as the masses of the country, as well as the masses of other countries are concerned, they are only interested in world peace so that they can progress and live in peace and harmony.

It has been stated that this House is incompetent to deal with this question. One amendment says, let us wait to ratify this convention till the new legislature is elected under our new Constitution. I cannot see any force in this argument. This Assembly can and will pass the Constitution, will decide the future of this country; it has got all that status. But, it cannot, according to them ratify this small agreement. I think it is wrong thinking and it does not stand on logic. We are well advised to pass the motion placed before us by our Prime Minister without any hesitation whatsoever.

Sir, while entering into this agreement our Prime Minister must have had in his mind the mission which he has been called upon as the heir of Mahatma Gandhi to carry out in this world, and he has given his consent to this agreement with a view to see that a forum is created where he can place his mission of world peace, so that the Commonwealth of Nations may be the beginning of an organisation of nations with Potentiality of further expansion towards world peace:

With these few words, I support the motion.

Shri Kameshwar Singh of Darbhanga (Bihar: General): Mr. President, allow me to avail myself of this opportunity to offer my humble felicitations to the Honourable the Prime Minister on the success of his mission. He has steered clear of the conflicting dogmas and, taking a realistic view of the situation, has placed India in a position from which she can usefully promote the peace of the world.

The status of India as a free and independent country has been recognised. As a sovereign democratic Republic, the people inhabiting this country will not owe allegiance to the Crown as they had hitherto done. She has to vindicate her honour and dignity in the world and she will do so by throwing off all her fetters whether external or internal. Complete sovereignty will vest in the people of India and she will stand with her head erect with the other free nations of the world.

But, as things are, no country can remain in isolation in the present-day world. Specially, for a country like ours, which has thrown off the foreign yoke only recently and is struggling hard to stand on her own feet, it is impossible to think that she will have nothing to do with others. She will be stultifying her growth and even imperilling her freedom if she takes up that attitude. She has therefore, through her able Prime Minister, shown great statesmanship by agreeing to remain a member of the Commonwealth. This Commonwealth has changed its character and assumed a new form. The members of the Commonwealth have according to convention and through agreement changed its structure and pattern. It has been emphasised that allegiance to the Crown is not the essential feature of the Commonwealth organisation. India, on the other hand, has agreed to regard the King of England and dominions as the symbolic Head of the Commonwealth. All this has been done by agreement in pursuance of a very high objective, namely the establishment of peace and prosperity in the world. India like any other country can walk out of the Commonwealth at any moment she feels that her national ideals and aspirations will not be fulfilled by remaining within that organisation. The agreement is for a specific purpose and it can be broken if the parties to that agreement do not act in a manner which may achieve that end. Our Prime minister has categorically said that this does not mean alignment of India with any of the power blocs. As a staunch believer in the tenets of democracy she could not have taken any other step. It would have been the negation of all her cherished ideals if she had lent her support to the forces that are insidiously spreading the totalitarian influence in the world. She cannot see human freedom and human dignity destroyed by the adoption of a cult according to which a human being is treated as a machine.

India has to look to her own national interest and situated as she is today her close association with the Commonwealth is the result of the compulsion of necessity.

Past events have shown that in this new set up of Commonwealth India can play a decisive role in the affairs of the world. She is by common consent the leading country in South-East Asia. Both history and geography entitle her to ensure the peace of the world. But she can discharge that function only if she is strong both militarily and economically. She can be made so by the co-operation of the Commonwealth countries and America. Therefore, no better alliance could be possible to stem the tide of unrest which is surging in all parts of the world and threatening the fundamental principles of human liberty with extinction.

Some people have charged our Prime Minister with the crime of allying this country with British Imperialism. A greater falsehood could not have been uttered. With the freedom to leave the Commonwealth at will such charges are baseless. Knowing as we do his antecedents we feel sure that by having him in the discussion of Commonwealth countries the whole tenor will be changed and the peace of the world assured.

Begum Aizaz Rasul (United Provinces: Muslim): Sir, I come to give my wholehearted support to the motion moved by the Honourable Prime Minister yesterday and I join in the felicitations that have been extended to him on the floor of this House. I am rather surprised at the amount of criticism that has been levelled against the action of the Prime Minister in agreeing that India should remain in the Commonwealth. Since this news was published in the paper the general opinion not only in this country but all over the world has been in favour of the action that has been taken by the Prime Minister and I therefore should have thought that in this House there would have been more unanimous support of what the Prime Minister had done in elevating the position of India in the eyes of the world and raising its prestige. The hearts of Indians have been filled with pride at the very high position that the Prime Minister of India occupied in the deliberations of the Commonwealth Conference and in the Prime Minister Conference, and there is no doubt that today the position that our Prime Ministers enjoys amongst the statesmen of the world is far above that enjoyed by any other Prime Minister. They look up to India for leadership of Asia and I make bold to say that the Prime Minister enjoys that leadership not only by the circumstances in which he placed on account of the position of India in Asia, but by the statesmanship he has shown in the Political arena, not only for the last two years since India achieved independence but during the vast number of years that he has been in the political field under the guidance of Mahatma Gandhi. Sir, the main question that is being asked by critics is: What are the advantages that accrue to India by remaining in the Commonwealth? But I ask a counter question what are the disadvantages that accrue to India by remaining in the Commonwealth? Sir, points regarding the political and economic aspects of this country *vis-a-vis* Great Britain have been ably dealt with by Pandit Kunzru, Mr. Munshi and others. We cannot forget that inspite or perhaps on account of British rule in India we have come to think on those lines which are very akin to the lines of thought that are followed by people, in Britain and in the countries of the Commonwealth and it stands to the credit of Great Britain and to the statesmen of Great Britain that in spite of the fact that they ruled India for 150 years, they have been able to achieve the goodwill and friendship of this country after their departure from here. But I think it stands to the greater credit of India and to its Prime Minister that he has been able to shake away the old ties of suspicion and mistrust that were prevalent in India against Great Britain and has been able to accept the hand of friendship extended to India in order that India may progress on the lines of peace and prosperity. Sir, I believe that criticism and opposition to this is mainly based upon mistrust-not only mistrust but a fear complex.

But I feel that fear complex must be shed and we must realise that conditions now are vastly different to what they were before. India is now a free country, and master of its own destiny, and we who have trust in India's greatness must realise that we cannot go forward unless we do away with small things like suspicion and distrust and accept friendship when it is offered. Sir, I have just said that there are many things akin with British thought in India today. I do not think that we should hesitate in saying that the democratic system as prevalent in India today is exactly on British lines. We are aware that India is the youngest members in the comity of democratic nations. We like the way in which Britain has built up its democratic Institutions and has worked them during the last few centuries-and therefore if we follow the lines of British democracy, we feel that we are going on right lines. Today in India our institutions, our parliamentary life, our local self-Government, our administrative machinery, etc., are more or less based on British lines. Our army and defence organisations have been built up on British lines. Therefore remaining in the Commonwealth will certainly be to our advantage.

It has been said that Britain is a poor country and will not be able to help us financially. We do not want Britain's financial help. We certainly can go forward with our own industrial development, and the development of our own resources, and make India rich and prosperous. We do not want any country's financial help. But we want their help and their guidance, their advice and the advice of their technicians, so that India may develop on the lines she desires to develop.

There is also no doubt that Britain and the countries of the Commonwealth are today the greatest factor working for world peace. India has always aligned itself on the side of peace, and it would certainly co-operate with those countries which wish to build up world peace, with countries which have no desire to fight, but which desire only to prosper and let other countries of the world also prosper. Therefore, I think it is in the fitness of things that India should remain in the Commonwealth of Nations. I do not see any disadvantage in it. I feel that it will be to the benefit of India to be associated with countries that are working towards world peace.

We cannot also forget that Indian ideology is opposed to communism. There is no doubt that we do not want communism in our country, and we know that Britain and the countries of the Commonwealth are also opposed to communism. Therefore, that is also a common factor between the two. As has been repeatedly pointed out if at any time there comes a stage when India feels that its association with the nations of the Commonwealth is to its disadvantage, there is nothing to debar it from coming out of it. Therefore, I feel that it is entirely to the advantage of India and consistent with its prestige and dignity to remain in the Commonwealth.

With these few words, Sir, I wholeheartedly support the motion of the Honourable Prime Minister.

Shri Prabhu Dayal Himatsingka (West Bengal: General:) Mr. President, Sir, I wholeheartedly support the Resolution moved by the Honourable the Prime Minister. I find the opposition that has been voiced here is based mostly or suspicion; the argument seems to be that the Declaration contains more than meets the eye. But it has been expressly stated by the honourable Prime Minister that he has not agreed to anything which is not recorded in the Declaration. As a matter of fact, we can easily imagine that there cannot possibly be anything beyond what is there.

It has also been pointed out that India stands to lose by entering into this sort of agreement. But I say there is no disadvantage in continuing to remain a member of the Commonwealth of Nations. On the contrary, there are number of positive advantages, and that is why the agreement that has been arrived at has been welcomed by the people of the country.

Sir, as has been mentioned by previous speakers, India's economy, India's defence, everything that we have in India is more or less based on the model of English economy and business. Our connection with England having been for so many years, our thoughts, our actions, our lines of approach, are all mostly common with those of the nations of the Commonwealth. In our industries, most of the factories, have been supplied by England. Our business connections are with the different Commonwealth countries. We have to realise a very large amount of money from England. These are various factors which go in favour of continuing our alliance, our association with the Commonwealth Nations which previously were known as the British Commonwealth of Nations. Prof. Shah has said that the Honourable Prime Minister has placed before the House an accomplished fact and this

House is now called upon to ratify a thing which he was not authorised to do. I cannot see how that argument can be put forward. This House expressly authorised the Prime Ministers to proceed to England and to join in the Conference of Prime Ministers that had been called. I may say that public opinion is overwhelmingly in favour of this agreement and that the Prime Minister has done something which very few people could have imagined was possible to be done in the position that has been accepted by this country. The position of independent sovereign Republic has been made to fit in with the ideas of the other members of the Commonwealth with regard to the Crown who regard the Crown as the Head of their State. The Honourable the Prime Minister has accomplished almost an impossible task and I wholeheartedly support the Declaration and the Resolution moved by him.

Mr. Frank Anthony (C. P. & Berar: General): Mr. President Sir, I am aware that it will be thought, if not said, by certain Members of the House that my views on this particular Resolution are a foregone conclusion, and that I must necessarily have a bias in favour of the Resolution. I feel Sir, that being an Anglo-Indian, with regard to this particular Resolution, I am placed in a fortunate position. I believe I can say that I can appreciate the point of view of my fellow Indians and I can also understand the point of view of many British people.

Sir, before I develop my other argument, I would like to answer a point raised by Prof. Shah, which was, partially answered by Sir Alladi. In spite of Prof. Shah's professions to the contrary, I could not help feeling that what he said dripped not only with a little vitriol, but certainly with a good deal of past venom. Prof. Shah took exception to the use of the word "ratification". He felt that this word represented something reprehensible, that the Prime Minister had sought to present the House with a fait accomplish and force it down its throat. Sir, as a lawyer, I find that thesis not only slender, but utterly untenable. The Prime Minister went to England on behalf of the peoples of India-his chief principals. He went as their agent, as their super-agent, and it is axiomatic in law that when a person goes as the agent with trust and responsibility, and if his principals feel that he has acted not *mala fides,* that he has acted in their best interests, then they are bound to ratify any undertaking that he may have entered into on their behalf. Is there any one in this House who will dare say that the Prime Minister was prompted by *mala fides*? Will anyone say that he was not prompted only by the desire to secure the best interests of India against the present background?

Sir, I can only feel that much of the opposition to this kind of resolution is inspired by a jumble of complexes, inhibitions, and may I say, motives. I feel perhaps one of the reasons which has inspired opposition to it is an ill-concealed-I say it without offence-an ill-concealed slave mentality. It is understandable that a country which has been under political subjection for generations, perhaps for hundreds of years, that people in such a country who belong to the common rut cannot escape the consequences of two hundred years of political subjection overnight. This opposition is inspired. I feel, to some extent by an evident, though not admitted, inferiority complex. There are may public men who cannot envisage any association with European nations without this inferiority complex vitiating their psychology. They feel that an association with a European nation must necessarily imply European hegemony on one side and Asian subordination on the other. Once again I say without offence, it is a concomitant of political subjection of people who have fought political slavery and fought it essentially with the weapon of shibboleths, slogans and propaganda. They have had to use these shibboleths and slogans in place of facts. They induce in themselves a kind of self-hypnosis. We talk glibly and vocally of India being the leader of Asia. We say glibly that it is inconsistent with India's position as the leader of Asia to be political appendage of the Commonwealth of Nations. I am one of those who believe, and believe passionately, that it is India's heritage that she should become the leader of Asia, the India should be looked up to by the nations of Asia as their natural leader. It is a heritage which is yet to be striven for and achieved. We cannot achieve it by living in a world of illusion, by believing that we can substitute realities by shibboleths and slogans.

Prof. Shah asked a rhetorical question: What are the advantages of adopting this resolution, and in a cavalier and airy manner he answered that question to his own satisfaction. He asked, if there are no advantages and no disadvantages, what is the point of adopting and endorsing this resolution. This is political blindness par excellence. It is typical of the kind of attitude that some of our public men wallow in.

But what are the realities--nobody has referred to it--as to what secession from the Commonwealth would have meant? It would have meant one thing. I do not know many of our people realise it. A person like the Prime Minister can and does realise it. There has always been--let us understand it--a section of British public opinion supported by a reactionary and conservative press fed by British administrators who have spent their administrative lives in this country fighting the Congress, who have identified the Congress with the Hindus and because of that have developed a blind spot of prejudice against the Hindus and the Congress. There has always been that section of British public opinion which is anti-Hindu and anti-Congress. And if India had seceded from the Commonwealth, this section would have seized avidly on this session to stir up a state of anti-Indian sentiment in the country. We are fortunate in that we have a person of the stature of the Prime Minister. While dealing a blow to this reactionary anti-Indian section he has mobilised and given strength to the new forces which are emerging in England-forces of friendliness towards this country. I am quite confident that secession would have meant in the first place coolness between Britain and India and subsequently an irrevocable estrangement. And it is for my friends who glibly mouth slogans and shibboleths to answer honestly whether India today, is in a position to estrange some of the most powerful countries in the world. And I go further and say secession would have not only led to coolness and subsequent estrangement between this country and Britain, it would have led inevitably to estrangement between India and America. Let us have no illusions about it. I am not advocating chauvinism or Machiavellianism. I think it was Macaulay who has said that British diplomacy has been struck midway between moral principle on one side and expediency on the other. I believe that those who are building India cannot ignore expediency. I am not talking of opportunism : I am talking of realism. It is an accepted fact that the building up of all our schemes, our hopes, the building of India economically, industrially and aye, militarily also, all these depend in no small measure on our continuing cordial relations both with Britain and with America.

I am one of those who feel that India cannot, that India dare not, live in an international vacuum. It is all very well for some of our public men to talk in vacuo, to talk of neutrality, which is something absolutely unrelated to realities in the international sphere. Absolute neutrality is not only an academic, it is today an unreal, an unattainable ideal. India trying to live in an international vacuum would have discovered, as Burma perhaps has already discovered, that theoretical independence may mean vacuous inanity. Theoretical independence, in disregard of realities, may well mean in a period of stress and need, helpless and hopeless isolation.

There is another aspect that I want to place before the House. What is the attitude of those who oppose this resolution towards Pakistan? Our relations with Pakistan have not been as cordial or as friendly as many of us would have liked. I was one of India's representatives at the Commonwealth Parliamentary Conference and my colleagues will bear me out when I say that many of the Pakistan representatives definitely tried to create a feeling that India dominated by the Congress is inevitably anti-British, that India has no intention of staying within the Commonwealth. They wanted to work up this feeling in order to mobilise British sentiment on their side, to antagonise it against India. I feel that if we had seceded our secession would have rejoiced the hearts of those people in Pakistan who have no friendly feeling towards India and I feel certain also that the resources and friendliness that are today being given to India by Britain and by America, if we had seceded, would have been diverted from India, diverted increasingly to Pakistan. That is a consideration which I feel many of my friends have not taken account of.

I appreciate as much as anyone else does the bitterness and indignation of every self-respecting Indian at the racial arrogance, the racial tyranny practised by a member of the Commonwealth. But if as a premise or shall we say, as a presupposition, before entering into relations with any nation, we require that nation should in all its dealings measure up to certain perfect moral standards then perhaps we would never be able to enter into relationship with any nation of the world. And because the Commonwealth of Nations, in my opinion, consists of one or two blacklegs, one or two renegades, is that any reason why we should in a mood of petulent frustration, a mood of inferiority, walk out and abjure all the definite advantages that association with democratically-minded members of the Commonwealth can and do give us?

Perhaps I am striking a discordant note when I say I do not believe that association with the Commonwealth is going to improve our relations with South Africa. But I do believe that our association will mean that all the influences and the resources--the imponderables exercised in no small degree by America and by England will be thrown in on the side of India and that matters may not get worse. From my own experience, I believe--I may be wrong-ultimately we will only be able to resolve the South African question according to the measure of our own strength. And that is why I say that our policy must be broad-based, and the India's strength should be built up most rapidly. It may take us five years; it may take us ten years. But any realist, any sober person must realise that in the world we are living in today, in the final analysis, one's strength is measured exactly by one's military might, and that is why I feel that ultimately we will only be able to resolve the South African-Indian question when we are in a position to be able to demonstrate militarily--as the Japanese did--at Durban. But that is, as I have said, no reason for leaving the Commonwealth, because it may consist of one or two blacklegs or renegades.

And, finally, Sir, I want to end with this note. As I said, it is fortunate that India has today leaders of the present stature-persons who have been able to rise, as Prof. Shah has not been able to rise, above bitterness and iron of recent political events; that while the dust and din of political battle and political struggle have not subsided, they have the vision to see without that vision being blurred, to be able to judge without their judgment being clouded, where India's best interests lie. Sir, can any one say to this House that anyone in this country has discharged his duties to the people more selflessly than the Prime Minister? And, if answer that question, as we are bound to answer it, then whatever decision he has taken has been taken against the background of his knowledge, which is perhaps much greater than the knowledge of anyone of us, in the sole interest of India. What then can any Indian do but wholeheartedly to endorse the resolution which has been moved in this House.

The Honourable Shri Satyanarayan Sinha (Bihar: General): Sir, I move that the question be now put.

Mr. President: The question is:

That the question be put.

I think the majority is in favour of closure.

The Honourable Shri Jawaharlal Nehru (United Provinces: General): Mr. President, Sir, we have had a fairly full debate since yesterday and many honourable Members have spoken in approval of this motion. In fact, if I may say so, some of them have even gone a little further than I might perhaps have gone. They have drawn some consequences and pointed out some implications which for my part I would not have approved or accepted. However, it is open to all of us and to each one of us to see the future in a particular way.

So far as this resolution of mine and the Declaration of London are concerned, what we have got to see are these : number one, that it fulfills or at any rate it does not go against any pledges of ours; that is to say, that it takes India forward, or does not come in the way of India going forward to her natural destination of a Sovereign Independent Republic. Secondly, that it helps India, or does not hinder India in making rapid progress in the other domains in the course of the next few years. We have, in a sense, solved the political problem, but the political problem is intimately connected with the economic condition of the country. We are being faced by many economic difficulties. They are our domestic concern, no doubt, but obviously the world can help or hinder any policy that we might adopt. Now, does this proposal which is contained in this Declaration help our speedy progress economically and otherwise or not? That is another test. I am prepared to admit that even without external help, we will go ahead. But obviously it will be a far more difficult task and it will take a much longer time. It is not an easy matter to do that.

The third test is whether in the world, as it is today, it helps in the promotion of peace and the avoidance of war. Some people talk about encouraging this particular group or that, this bloc or that. We are all, I am afraid, in the habit of considering ourselves or our friends as angel and others the reverse of angels. We are all apt to think that we stand for the forces of progress and democracy and others do not. I must confess that in spite of my own pride in India and her people, I have grown more humble about talking in terms of our being in the vanguard of progress or democracy.

In the last two or three years we have passed through difficult times, humiliating times. We have lived through them. That has been something in our favour. We have survived them. But I hope we have learned our lesson from them. For my part I am a little chary now of condemning this or that person or this or that nation, because the hands of no individual or nation are clean in such matters. And there is far too much of the habit of condemning other nations as being the wrong-doers or the war-mongers, and yet doing exactly the same thing oneself.

If one looks round the world--of course one favours certain policies-one is against some things and thinks that those are dangerous and might lead to war, but others are not. But the most amazing thing that strikes me is this: if you look back during the last thirty years or more which have comprised two wars and the period between these wars, you will find the same cries, changing slightly with changed situation of course, but nevertheless the same cries, the same approaches, the same fears and suspicions and the same arming on all sides and war coming. The same talk of this being the last war, the fight for democracy and all the rest of it is heard on every side. And then the war ends, but the same conflicts continue and again the same preparation for war. Then another war comes. Now that is a very extraordinary thing, because I am convinced that hardly anybody in this wide world wants war, barring a few persons or groups who make profit by war. Nobody and no country wants war. As war becomes more and more terrible they want it still less. Yet some past evil or *Karma* or some destiny goes on pushing people in a particular direction, towards the abyss and they go through the same argument and they perform the same gestures like automatons.

Now are we fated to do that? I do not know, but anyhow I want to fight against that tendency of talking about war and preparation for war. Obviously no country and no Government of any country dare allow its country to be unprepared for contingencies. We have to prepare ourselves unfortunately, unless we are brave enough to follow the policy that Mahatmaji laid down. If we are brave enough, well and good, we take the chance. I do believe that if we are brave enough that policy would be the right policy. But it is not so much a question of my being brave or your being brave, but of the country being brave enough to follow and understand that policy. I do not think we have been brought up to that level of understanding and behaviour. Indeed when we talk about that great level, I should say that in the last year and a half we have sunk to the lowest depths of behaviour in this country. So let us not take the name of the Mahatma in vain in this country. Anyhow we cannot, no Government can, say that it stands for peace and do nothing at all. We have to take precautions and prepare ourselves to the best of our ability. We cannot blame any other Government which does that, because that is an inevitable precaution that one has to take. But, apart from that, it seems to me that some Government or many Government go much further. They talk all the time of war. They blame the other party all the time. They try to make out that the other party is completely wrong or is a war-monger and so on and so forth. In fact they create the very condition which lead to war. In talking of peace and our love of peace we or they create the conditions that in the past have invariably led to war. The conditions that ultimately generally lead to war are economic conflicts and this and that. But I do not think today it is economic conflict or even political conflict that is going to lead to war, but rather the overmastering fear, the fear that the other party will certainly overwhelm one, the fear that the other party is increasing its strength gradually and would become so strong as to be unassailable and so each party goes on arming and arming with the deadliest weapons. I am sorry I have drifted off in this direction.

How are we to meet this major evil of the day? Some people say, "join up with this group which stands for peace", while others say "join up with the other group" which, according to them, stands for some other kind of peace or progress. But I am quite convinced in my own mind that by joining up in this way, I do not help the cause of peace. That, in fact, only intensifies the atmosphere of fear. Then what am I to do? I do not believe in sitting inactively or practising the policy of escapism. You cannot escape. You have to face the problem and try to beat it and overcome it. Therefore the people who think that our policy is a kind of passive negation or is an inane policy, they are mistaken. That has not been ever my idea on this subject. I think it is and it ought to be our policy, a positive policy, a definite policy, to strive to overcome the general trend towards war in people's minds.

I know that in this huge problem before the world India may not be a strong enough factor. She may be a feeble factor to change it or alter it. That may be so. I cannot claim any necessary results. But nevertheless I say that the only policy that India should pursue in this matter is a positive, definite policy of avoiding this drift to war by other countries also and of avoiding this atmosphere becoming so charged with fear suspicion, etc., and of not acclaiming this country or that, even though they may claim to make the world rational, but rather laying stress on those qualities of those countries which are good, which are acceptable and drawing out the best from them and thereby, in so far as it may be possible, to work to lessen the tensions and work for peace. Whether we succeed or not is another thing. But it is in our hands now to work with might and main in the direction we consider right, not because we are afraid or fear has overwhelmed us. We have gone through many frightful things and I do not think anything is going to happen in India or the world that is going to frighten us any more. Nevertheless we do not want this world to suffer or go through another world disaster from which you and I cannot escape and our country cannot escape. No policy can make us escape from that. Even if war does not spread to this country, even so if the war comes from abroad it will engulf the world and India. We have to face this problem.

This is more a psychological problem than a practical one, although it has practical applications. I think that in a sense India is partly suited to do it, partly suited because in spite of our being feeble and rather unworthy followers of Gandhiji, nevertheless we have imbibed to some small extent what he told us. Secondly, in these world conflicts you will see there is a succession of one action following another; inevitably one leading to another and so the chain of evils spreads; war comes and the evils that follow wars come after that and they themselves lead to another war and that chain of events goes on and each country is caught within this cycle of *Karma* or evil or whatever you call it. Now, so far these evils have brought about wars in the West, because in a sense these evils were concentrated in the Western powers; I do not by any means say that the Eastern powers are virtuous. So far the West or Europe has been the centre of political activity, has dominated the politics of the world. Therefore their disputes and their quarrels and their wars have dominated the world.

Now, fortunately we in India are not inheritors of these hatreds of Europe. We may like a person or dislike something or an idea, but we have not got that past inheritance on our backs. Therefore it may be slightly easier for us in facing these problems, whether in international assemblies or elsewhere, to deal with them not only objectively and dispassionately but also with the goodwill of others who may not suspect us of any fund of ill-will derived from the past. It may be that a country can only function effectively if it has a certain strength behind it. I am not for the moment thinking of material or war strength--that of course counts--but the general strength behind it. A feeble country which cannot look after itself how is it to look after the World and others? All these considerations I should like this House to have before it and then to decide on this relatively minor question which I have placed before the House, because I had all those considerations and I felt first of all that it was my duty to see that Indian freedom and independence was in no way touched.

It was obvious that the Republic that we have decided on will come into existence. I think we have achieved that. We would have achieved that, of course, in any event, but we have achieved that with the goodwill of many others. That, I think is some additional achievement. To achievement it with the goodwill of those who perhaps are hit by it is some achievement. It shows that the manner of doing things-the manner which does not leave any trace of hatred or ill-will behind it, starts a fund of goodwill-is important. Goodwill is always precious from any quarter. Therefore I had a feeling when I was considering this matter in London and later, in a small measure perhaps, I had done something that would have met with the approval of Gandhiji. The manner of it I am thinking of, more than the thing itself. I thought that this in itself would raise a fund of goodwill in this world-goodwill which in a smaller sense is to our advantage certainly, and to the advantage of England, but also in a larger sense to the advantage of the world in these psychological conflicts which people try to resolve by blaming each other, by cursing each other and saying that the others are to blame. May be somebody is to blame; may be some politicians or big men are to blame, but nobody can blame those millions of men who will die in these catastrophic wars. In every country the vast masses of human beings do not want wars. They are frightened of wars. Sometimes this very fright is exploited to revive wars because it can always be said that the other party is coming to attack you.

Therefore, I want this House to consider not only that we have achieved something politically--that we would have achieved in any event, nobody would have been able to prevent us--but what has a certain relevancy and importance is that we have achieved it in a way that helps us and helps others, in a way which does not leave evil consequences behind when we think that we have profited at somebody else's expense and that somebody thinks of that always and wants to take revenge later on. That is the way and if the world functions in that way problems will be solved far more easily and wars and the consequences of wars will perhaps be fewer. They would be no more. It is easy to talk about the faults of the British or of the imperialism and the colonialism of other countries. Perfectly true. You can make out a list of the good qualities and the bad qualities of every nation today, including certainly India. Even if you made that list, the question still remains how anyone is going to draw the good from the other parties and yourself and to lay the foundations for good in the future.

I have come to the conclusion that it does not help us very much either in the government plane or in the national plane to lay stress on the evil in the other party. We must not ignore it; we have to fight it occasionally. We should be prepared for that, but with all that, I do not think this business of maintaining our own virtues and blaming the other party is going to help us in understanding our real problem. It no doubt gives an inner satisfaction that we are virtuous while others are sinners. I am talking in religious phraseology which does not suit me, but the fact is that I do wish to bring this slightly moral aspect of this question before this honourable House. I would not dare to do any injury to the cause of India and then justify it on some high moral ground. No government can do that. But if you can do a profitable business and at the same time it is good on moral grounds, then obviously it is worthy of our understanding and appreciation. I do summit that what we have done in no way, negatively speaking injuries us or can injure us, what we have done in no way negatively speaking, injuries us or can injure us. Positively, we have achieved politically what we wanted to achieve and we are likely to progress, to have more opportunities of progress, in this way than we would otherwise have in the next few years.

Finally, in the world context, it is something that encourages and helps peace, to what extent I do not know; and lastly, of course, it is a thing which in no way binds this country down to any country. It is open to this House or Parliament at any time to break this link, if they so choose, not that I want that link broken. But I am merely pointing out that we have not bound the future down in the slightest. The future is as free as air and this country can go any way it chooses. If it finds this way is a good way, it will stick to it; if not, it will go some other way and we have not bound it down. I do submit that this resolution that I have placed before this House embodying, approval of the Declaration, the decision at the Conference in London, is a motion which deserves the support and approval of this House, not merely, if I may say so, a passive approval and support, but the active appreciation of all that lies behind it and all that it may mean for the future of India that is gradually unrolling before our very eyes. Indeed all of us have hitched our wagons to the Star of India long ago. Our future, our individual future depends on the future of India; and we have thought and dreamt of the future for a long time. Now we have arrived at a stage when we have to mould by our decisions and activities this future at every step. It is no longer good enough for us to talk of that future in terms merely of resolutions, merely in terms of denunciations of others and criticism of others; it is we who have to make it for good or ill; sometimes some of us are too fond of thinking of that future only in negative terms of denouncing others. Some Members of this House who have opposed this motion and some others who are not in this House, who have opposed this motion, I have felt, have been totally unable to come out of that cage of the past in which we all of us have lived, even though the door was open for them to come mentally out. They have reminded us and some of our friends have been good enough to quote my speeches, which I delivered fifteen and twenty years ago. Well if they attach so much value to my speeches, they might listen to my present speech a little more carefully. The world has changed. Evil still remains evil, and good is good; I do not mean to say that it is not; and I think imperialism is an evil thing, and wherever it remains, it has to be rooted out and colonialism is an evil thing and wherever it remains, it has to be rooted out, and racialism is an evil and has to be fought. All that is true. Nevertheless the world has changed; England has changed; Europe has changed; India has changed; everything has changed and is changing: and look at it now. Look at Europe which for the last three hundred years has a period of magnificent achievement in the arts and sciences and it has built up a new civilization all over the world. It is really a magnificent period of which Europe or some countries of Europe can be greatly proud, but Europe also during those three hundred years or more has gradually spread out its domination over Asia and Africa, has been an Imperialist power and exploited the rest of the world and in a sense dominated the political scene of the world. Well, Europe has still, I believe, a great many fine qualities and those people there who have fine qualities will make good, but Europe can no longer be the centre of the world politically speaking, or exercise that influence over other parts of the world, which it has done in the past. From that point of view, Europe belongs to the past and the centre of world history, of political and other activities, shifts elsewhere. I do not mean to say that any other continent, becomes a dominating force, dominates the rest-not in that way. However, we are looking at it in an entirely changed scene. If you talk of British Imperialism and the rest of it, I would say that there is no capacity for imperialism even if the will was there; it cannot be done. The French are, imperialistically, in parts of Asia. But the fact remains that capacity for doing it is past. They may carry on for a year or two years, but it just cannot be done. The Dutch may do it elsewhere and if you look at it in the historical perspective all these things are hangovers of something past and the thing cannot be done. There may be strength behind today; it may last even a few years and therefore, we have to fight it and therefore, we have to be vigilant-I do not deny that-but let us not think as if Europe or England was the same as it was fifteen or twenty years ago. It is not.

I was saying about our friends who have criticised us and taken this rather negative and passive view. I mentioned at another place that their view was static. I said that, in this particular context, it was rather reactionary and I am sorry I used that word because I do not wish to use words that hurt and I do not wish to hurt people in this way; I have certainly the capacity to use language, clever language to hurt people, and dialectical language, but I do not wish to use it, because we are up against great problems, and it is poor satisfaction just to say a word against an opponent in an argument and defeat him by a word, and not reach his heart or mind, and I want to reach the hearts and minds of our people *(Loud cheers)* and I feel that whatever our domestic differences might be--let there be differences honestly felt--we do not want a cold regimentation of this country *(Cheers)*.

So far as foreign affairs are concerned, there may also be differences, I do not deny that, but fundamental things before any man who is--whatever else he may be--an Indian patriot, who wants India to progress and the world also to progress, must be necessarily Indian freedom, that is, complete freedom, India's progress, economically and the rest, India playing a part in this freedom of the world and the preservation of peace, etc., in the world. These are the fundamental things: India must progress. India must progress internally. We can play no part unless we are strong in our country economically and otherwise. How we should do so internally may be a matter of difference of opinion. Now I think it should be possible for people who differ considerably in regard to our internal policy, it should be possible for us to have more or less unified foreign policy in which they agree or mostly agree. May I make myself clear? I do not wish in the slightest to stop argument or comment or criticism; not that; and I want that; it is a sign of healthy nation, but I do wish that argument to be the argument just of a friend and not of an opponent who sometimes uses that argument, not for argument's sake, but just to injure the opposite party, which often is done in the game of politics. I do not see any major difference for any person. I do see a major difference between those individuals or groups who think in terms of other countries and not of India at all as the primary thing. That is a basic difference and with them it is exceedingly difficult to have any common approach about anything; but where people think in terms of India's independence and progress in the near future and in the distant future and who want peace in the world, of course, there will be no great difference in our foreign policy. And I do not think there is, in fact, although it may be expressed differently. Although a Government can only speak in the language of a Government, others speak a language which we all used to speak, of opposition and agitation. So, I would beg this House, and if I may say so, the country to look upon this problem not in any party spirit, not in the sense of bargaining over this little matter or that.

We have to be careful in any business deal not to lose a thing which is advantageous to the nation. At the same time, we have to look at this problem in a big way. We are a big nation. If we are a big nation in size, that will not bring bigness to us unless we are big in mind, big in heart, big in understanding and big in action also. You may lose perhaps a little here or there with your bargainers and hagglers in the market place. If you act in a big way, the response to you is very big in the world and their reaction is also big. Because, good always brings good and draws good from others and a big action which shows generosity of spirit brings generosity from the other side.

Therefore, may I finish by commending this resolution to you and trusting that the House will not only accept it, but accept it as something, as a harbinger of good relations, of our acting in a generous way towards other countries, towards the world, and thus strengthening ourselves and strengthening the cause of peace.

Mr. President : The House will recollect that there are two amendments to the motion. I would put the motion of Prof. Shibban Lal Saksena; if it is carried, it will obviate the necessity of putting the other amendment to vote.

Shri Lakshminarayan Sahu (Orissa: General): *[Mr. President, I beg leave of the House to withdraw my amendment.]*

Mr. President: Mr. Lakshminarayan Sahu wants to withdraw his amendment. Does the House permit him to do that?

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Mr. Shibban Lal Saksena's amendment alone now remains. I now put Mr. Shibban Lal's amendment to vote.

The question is :

That in the motion, for the words "do hereby ratify" the words "has carefully considered" be substituted and

That the following be added at the end of the motion:

"and is of opinion that membership of the Commonwealth is incompatible with India's new status of Sovereign Independent Republic. Besides, the terms of membership are derogatory to India's dignity and her new status, and as such are bound to circumscribe and limit her freedom of action in international affairs and tie her down to the chariot-wheel of Anglo-American power bloc. India with a population of 350 millions out of a total population of about 500 millions of the whole of the Commonwealth cannot accept the King of England as the Head of the Commonwealth in any shape or form. Also, India cannot become the member of a Commonwealth, many members of which still regard Indians as an inferior race and enforce colour bar against them and deny them even the most elementary rights of citizenship. The recent anti-Indian riots in South Africa, the assertion of the all-White policy in Australia and the execution of Ganapathy and the refusal to commute the death sentence on Sambasivam in Malaya in spite of the representations of the Indian Government clearly show that India cannot derive any advantage from the membership of the Commonwealth and that Britain and the other members of the Commonwealth cannot give up their Imperialist and racial policies."

"Considering all these facts, and also considering the fact, that the Congress Party, which is in an absolute majority in the Constituent Assembly and in other provincial legislatures in the country, has had the Complete Independence of India with the severance of the British connection as its declared goal at the time of the last general elections, any new relationship in contravention of that policy with the British Commonwealth can only be properly decided by the new parliament of the Indian Republic, which will be elected under the new Constitution on the basis of adult suffrage."

"This Assembly therefore resolves that the question of India's membership of the Commonwealth be deferred until the new Parliament is elected and the wishes of the people of the country clearly ascertained. The Assembly calls upon the Prime Minister of India to inform the Prime Minister of Great Britain and other members of the Commonwealth accordingly."

The amendment was negative.

Mr. President: I now put the original motion to vote.

The question is:

"Resolved that this Assembly do hereby ratify the declaration, agreed to by the Prime Minister of India, on the continued membership of India in the Commonwealth of Nations, as set out in the official statement issued at the conclusion of the conference of the Commonwealth Prime Minister in London on April 27, 1949."

The motion was adopted

(Loud Cheers)

Maulana Hasrat Mohani: Sir, I want to know categorically who are in favour of this Resolution, and who are against it. Besides, I want to know who are neutral.

Mr. President: Do you want a division?

Several Honourable Members: It is too late now.

Maulana Hasrat Mohani: My contention is this. Those who are neutral are against this Resolution. I want to Know........

Mr. President: There is no means of knowing who the neutrals are.

Maulana Hasrat Mohani: This decision of the House will not be final... *(Interruption)*

Mr. President: Does the Maulana want a division?

Maulana Hasrat Mohani: Yes, Sir...*(Interruption).*

Maulana Tajamul Hussain: Sir, it is too late now to demand a division. He should have asked for it immediately before you had declared that it had been carried. It is too late now.

Maulana Hasrat Mohani: This is wrong. I at once rose.

Mr. President: I do not think even if the Maulana gets a division, he would get the votes. I do not think it is necessary now to have a division because it is asked for too late.

We adjourn now till 8 o'clock tomorrow morning.

The Assembly, then adjourned till 8 A.M. on Wednesday, the 18th May 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME VIII

Wednesday, the 18th May 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

GOVERNMENT OF INDIA (AMENDMENT) BILL

Mr. President: The first item on the agenda is a Bill of which notice had been given by the Honourable Sardar Vallabhbhai Patel. On account of his ill-health, Sardar Vallabhbhai Patel had to leave this place and he has asked me to allow the Honourable Mr. Gadgil to take charge of that Bill. Mr. Gadgil.

The Honourable Shri N. V. Gadgil (Bombay: General): Sir, I beg to move for leave to introduce a Bill further to amend the Government of India Act, 1935.

Mr. President: The question is:

"That leave be granted to introduce the Bill further to amend the Government of India Act, 1935."

The motion was adopted.

The Honourable Shri N. V. Gadgil: Sir, I introduce the Bill.

Mr. President: The bill is introduced.

The Honourable Shri H. V. Gadgil: Sir, I beg to move:

"That the Bill further to amend the Government of India Act, 1935, be taken into consideration by the Assembly at once."

The object of the Bill is to amend the Government of India Act in regard to two provisions. The first provisions is Section 97 under which only a law of the Constituent Assembly can change the constitution, powers and functions of the Coorg Legislative Council and the arrangements with respect to revenues collected in Coorg and expenses in respect of Coorg. At the time European representation in the Provincial Legislatures was abolished, the point was overlooked that in Coorg that representation would still continue. At present there are two Europeans in the Coorg Legislative Council and it is considered in appropriate that this anomaly should be allowed to continue. At the same time, it is unnecessary to promote a Bill for this specified purpose in the Constituent Assembly. Even otherwise it would be convenient to have powers vested in the Governor-General to make changes in the present constitution of Coorg. Provision in the amending Bill would enable Government to do so by and order.

The second provision relates to certain changes in the Federal and Concurrent Legislative Lists. According to item 1 of List I, the Centre has power of preventive detention for reasons of state connected with defence, external affairs or relations with acceding States; but executive power to deal with actual detenus rests with the Provinces because 'persons subjected to preventive detention under Dominion authority' is item 34 of the Concurrent List. On the other hand, item 1 of the Provincial Legislative List gives power to Provinces both for preventive detention for reasons connected with the maintenance of public order and for persons subjected to such detention. There is no reason why this differentiation between the powers of the Central Government and of the Provincial governments to deal with their respective detenus should be maintained. The Bill, therefore, provides for persons subjected to detention under Central authority being subjected also to the executive control of the Centre. This has been done by suitably amending paragraph 1 of the Federal Legislative List.

We have also been experiencing considerable difficulty in inter-Provincial transfer of detenus. The detenus being subject to absolute Provincial control have therefore to be confined within that particular province. Hitherto, wherever in extreme cases of necessity an occasion has arisen for such transfers, the provisions of the Bengal Regulation III of 1818 have been utilised. This is clearly an unsatisfactory procedure. The need for transfer arises from congestion in the particular province or from the desire on the part of the detenu himself to seek transfer to his own Province or, for administrative convenience for the Provincial Government, to transfer him elsewhere. In two recent cases, we had to use Regulation III of 1818. There was demand from some persons of Punjabi extraction in West Bengal to be transferred to East Punjab. This request cannot be met because there is no power at present vesting in Provinces to transfer their detenus. The amendment to the Concurrent Legislative List, which has been proposed, would, therefore, solve this difficulty in that it would enable the Centre to legislate for such transfers, leaving it to the Provinces to take necessary executive action.

Sir, I move.

Mr. President: There is notice of an amendment to this motion in the name of Mr. Ananthasayanam Ayyangar.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, I am not moving any of the amendments but I would like to say a few words.

Mr. President: Pandit Thakur Das Bhargava also has given notice of the same amendment.

Pandit Thakur Das Bhargava (East Punjab: General): I am not moving, Sir.

Shri M. Ananthasayanam Ayyangar: Sir, this Bill consists of two portions, one of the provisions relating to Coorg. Under Section 97 of the Government of India Act the existing regulations relating to the Legislative Council, collection of revenues and making of expenditure etc. in relation to Coorg will continue to be in force until laws and regulations are modified by similar rules made by the Constituent Assembly which has been vested with powers under Section 8 of the Independence Act. The amendment that is contemplated is that for 'the Constituent Assembly' the words `Order of the Governor-General' have to be substituted. My own feeling is that however high a dignity the Governor-General might be, he represents the Executive and it is not right to vest these powers in the Executive and take them away from the Constituent Assembly. it is said that the Constituent Assembly always retains its power. It may be so but it will have to be done in a circuitous manner when once the powers relating to the Constituent Assembly under Section 97 are taken away from the Section by virtue of this amendment. That is my first objection. But we are passing the Constitution in a couple of months and for the interval of three months we need not object to vesting the Governor-General with this power. If it is a matter of expediency and if it is considered necessary to immediately rectify certain defects like removing the anomaly of having Europeans in the Coorg Legislative Council, an Order-in-Council by the Governor-General may be more expeditious than the elaborate procedure of amendment of the Government of India Act. From that point of view no doubt this amendment may be accepted; but it is opposed to the general principle that the executive ought not to have control over or interfere with the Legislature and it must only be the supreme sovereign legislature that must be clothed with the power to interfere with the composition of the Legislature.

The other portion of the amendment relates to giving power to transfer items from the Concurrent List to the Federal List. Today under the Federal List, item No. 1, to detention for purposes of defence, external affairs, or matters relating to acceding States, is exclusively in Federal List. In the case of persons detained for security purposes, so far as the Provinces are concerned, the power to detain the person is vested exclusively in the Province. The purpose of this Bill is to bring the provisions relating to detention of persons for defence and external affairs purposes also into line with persons detained by Provincial Government for purposes of security. But I have my own doubts as to the propriety or the advisability of this amendment. I say this for the following reasons. There are no special jails maintained or run by the Centre. Whoever is detained whether by the Centre or by a Province, that person has to be detained under order of Provincial Government, in a provincial jail. In the case of an emergency, such as an outbreak of cholera or plague in a particular jail, it would not be easy for the Provincial Government to correspond with the Centre, ask for instructions and await orders as to whether a particular prisoner ought to be transferred from one jail in the same unit or province to another jail in that province. This difficulty may arise. So it was considered proper in the Government of India Act, 1935, as also in the Government of India Act, as adapted and continuing in force, and in the Draft Constitution placed before the House which we are considering now, to have provisions for making persons who have been detained by the order of the Dominion Government not an exclusively Federal concern, but a concurrent subject. I do not see the wisdom of transferring the right or transferring this entry from the Concurrent List to the Federal List, and clothe the Federal Government exclusively with this jurisdiction. However, I am not pressing the point. We may consider the matter again when considering the Constitution and when we come to this entry. This Bill is only a temporary measure and I accept it as it has been laid before the House, though I doubt whether this amendment which is sought to be effected by this Bill is at all proper or necessary.

Pandit Thakur Das Bhargava: Mr. President, Sir, though this Bill appears to be harmless and innocuous, yet in my humble opinion, it is not a Bill which should be passed in this House. The first point that emerges for consideration is that as given in the statement of Objects and Reasons, the sole object of clause 2 is that the European representation in Coorg should be taken away. But is appears from clause 3, that this purpose is not achieved by a direct method. I would also rather like that this Bill had been directed to this purpose only. But I feel that this Bill contains more than what is needed for the hour, and the canon of legislation is that you must always bring a Bill to meet the particular situation and it should not be too wide. This Bill, Sir, is too wide.

The second objection that I have to this Bill is that it seeks to substitute the powers of the Governor-General for the powers of the Constituent Assembly. If the Legislature, in its wisdom, has given these powers to the Constituent Assembly, it does not stand to reason that the executive should be armed exclusively with these powers.

About clause 4 also I have my doubts. At present the words in List 1 are--

> "preventive detention for reason of State connected with defence, external affairs, or relations with the acceding States."

In List II, the clause reads-

> "preventive detention for reason connected with maintenance of public order; persons subjected to such detention."

In List III, Concurrent List, the words are-

> "Removal of prisoners and accused persons from one unit to another unit."

But in clause 34, List III we find the words-

> "Persons subjected to preventive detention under the authority of the Union."

If this Bill had been confined to the malady which is sought to be cured, as given in the Statement of Objects and Reasons, no person could take any sort of objection to it. In that statement, we find that because there are difficulties in the transfer of detenus, therefore this Bill is sought to be brought before this House, whereas as a matter of fact the real purpose of this Bill is not expressed in the Statement of Objects and Reasons. The real purpose seems to be that the powers of the Provincial Governments may be taken away in regard to persons who are undergoing preventive detention for reasons of State, connected with defence, external affairs or relations with acceding States. When a Bill of this nature is brought in, it would have been better if the real purpose was expressed expressly. It is different from the one given in the Statement of objects and Reasons. There seems to be some distrust of Provincial Government. Their powers are sought to be taken away. I for one would rather like that the present powers which the Dominion Government enjoys and the powers of the Provincial Government were both enlarged. In my view of things, the Provincial Government also should have powers in regard to person who are undergoing preventive detention for reasons of State defence, external affairs, etc. and the Dominion Government should be given powers in regard to persons who are undergoing preventive detention in respect of the maintenance of public order, because the Dominion government has got no jails of its own. All its detenus live in the jails belonging to provincial governments, and if there is distrust of provincial governments when prisoners are sent by the Dominion Government to their jails, they can certainly do whatever they like.

My objection to this is that there should not be any discrimination between detenus of the Central Government and the detenus of the Provincial Governments. I remember in 1942, when certain detenus were sent from Delhi to Lahore, the rules for their interviews and for other matters were quite different. The Delhi detenus were treated in a different manner from the detenus of the Punjab Government. I do not like this discrimination, and I want that the same rules should govern all the detenus, whatever the reasons for their detention may be. After all, the person detained is quite innocent in the eye of law, whatever the reason be, unless brought in for trial in a court of law. Therefore, the same treatment should be accorded to the detenus, whether they belong to the Provincial Governments or to the Dominion Government. If we do not have this provision there is likelihood of discrimination between the detenus of the Dominion Government and the detenus of the Provincial Governments.

Moreover I do not understand the significance of paragraph (b)

It runs:

"Removal from one unit to another unit of prisoners, accused persons and persons subjected to preventive detention for reason connected with the maintenance of public order."

According to List No. 1, paragraph 1, there is no power in the Dominion Government with regard to people detained for reasons connected with the maintenance of law and order. So I fail to see how this power can be given to the Dominion government in regard to their removal when originally it has no right to keep them in custody. It is thus logically necessary that you must arm the Dominion Government with powers relating to the persons of such detenus. Moreover, in the centrally administered areas or in a given set of circumstances it may happen that the Central Government may require these powers. I know that it is only a temporary measure for two months and so I think we should not take any time of the House by moving amendments. At the same time I want that in making the constitution we should guard against these discrepancies coming in. If the principle of the Bill is going to be repeated in the new constitution I for one will be bound to oppose it. I beg the House to keep these principles in view in deciding the matter.

The Honourable Shri N. V. Gadgil: Sir, this is a very simple thing and really does not justify so much discussion. Two things are contemplated: one is to remove certain anomalies in the administration of the Act, and for that the procedure laid down in section 97 is rather complicated and a simpler procedure is therefore suggested. The other is the difficulty of removing persons from one province to another who are prisoners of the Central Government. This difficulty is sought to be removed by making suitable provisions. No big principle is involved, and if any principle is at all involved it is only for a very short period.

Mr. President: The question is:

"That the Bill further to amend the Government of India Act, 1935 be taken into consideration by the Assembly at once."

The motion was adopted.

Clause 1 to 4 were added to the Bill.

The Title and Preamble were added to the Bill.

The Honourable Shri N. V. Gadgil: Sir, I move :

"That the Bill further to amend the Government of India, 1935 as settled by the Assembly be passed."

Mr. President: The question is:

"That the Bill further to amend the Government of India, 1935 as settled by the Assembly be passed."

The motion was adopted.

ADDITIONS TO CONSTITUENT ASSEMBLY RULES 38-A (3) AND 61-A

Shrimati G. Durgabai (Madras: General): Sir, I beg to move:

"(i) That the following amendment to the Constituent Assembly Rules be taken into consideration :-

After sub-rule (2) of rule 38-A, the following sub-rule be added:

'(3) In this rule, the reference to the Government of India Act, 1935, includes references to any enactment amending or supplementing that Act, and, in particular, reference to the India (Central Government and Legislature) Act, 1946.'

(ii) that the provision mentioned in the Constituent Assembly Notification No. CA/76/com/RR/48, dated the 2nd August, 1948 he made part of the Constituent Assembly Rules, as shown in the amendment below, with effect from 8-5-1948 :-

In chapter X of the said rules, after rule 61 the following rule be added:-

'*Execution of orders as to costs*- 61-A. Any order made by the President under rule 61 as to costs may, except where such costs are wholly payable out of the sum deposited as security under rule 54, be produced before the principal Civil Court of original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, or, where such place is within the local limits of the ordinary original civil jurisdiction of a High Court, before the Court of Small Causes having jurisdiction there, and such Court shall execute such order or cause it to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit."

These motions, Sir, are non-controversial and no elaborate explanation is needed. But I feel it is my duty to offer a few words of explanation as to the need for these amendment. With regard to the first motion the object of the proposed amendment is that sub-rule (1) of rule 38-A of the Constituent Assembly rules, as it stands at present enables the Constituent Assembly to make amendments to the Indian Independence Act or any order, rule, regulation or other instruments made thereunder, or to the Government of India Act, 1935, as adapted. There are, however, certain other parliamentary enactments supplementing or amending the Government of India Act e.g.. the India (Central Government and legislature) Act, 1946; and it is doubtful if the reference to the Government of India Act, 1935, in that sub-rule will include references to those enactments. Our rules thus may be held as making no provision at all with regard to Bills which seek to make amendments to such enactments. The new sub-rule (3) to rule 38-A now proposed seeks to fill in this lacuna.

This is only a formal provision and therefore requires no further detailed explanation.

With regard to the second motion the necessity for the amendment arose in this way that the rules of the Constituent Assembly did not make any provision for a procedure for recovery of costs in cases of election where such costs are not payable out of the security deposit. Hitherto Section 12 of the Indian Election and Inquiries Act of 1920 which provided for the execution of order as to costs made by the Central or Provincial Government on the

Report of Commissioners appointed to hold an inquiry in respect of an election to a chamber of any legislature has been applied to cases of this kind. But there was one difficulty that the said Act was extended only to provinces and not to any Indian State. So the procedure in Section 12 did not apply to cases where the respondent was a subject of an Indian State. Therefore the Honourable the President considered it necessary to make a provision of this kind and now this is sought to be incorporated in the Constituent Assembly Rules as already indicated in the notification issued.

The effects of this amendment are two: that the Constituent Assembly being a sovereign body, such a provision will apply throughout the territories of India. Also they will have the effect of a law passed by the legislature. It would also be binding on all courts situated whether in a province or in an Indian State in the same way. Sir, this is the only object and these are the effects of the amendments proposed by me in this motion. Sir, I move and I commend my motion for the acceptance of this House.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I feel some difficulty about the insertion of the proposed new rule 61-A. I do not object to the principle of the rule: I rather concede that some such provision is necessary. My difficulty is as to the place where this is to be inserted and as to the exact form it should take. This rule is practically an amendment to the Code of Civil Procedure. The President may order costs; and this rule proposes to enact a machinery by which the costs may be realised. It says that the election costs must be realised from the amount already deposited and in so far as the cost is not realised from the amount deposited, that amount may be realised by presenting the order before an appropriate Court as if it is a decree for money. I submit that this really is an attempt to amend the Code of Civil Procedure. It provides for execution of an order of the President which is not already provided for in that Code and this rule will practically have the effect of amending that Code. I have, however, my doubts as to the efficacy of a rule of this nature.

This question that I would ask the House to consider is whether an amendment of the Rules of Procedure of this House will have the effect of really vesting the Court with the jurisdiction of executing orders for costs passed by the President. The Code of Civil Procedure can only be amended by an amending Act. We have already decided in this House that this Constituent Assembly will sit in two different capacities-one as a constitution-making body which it is now, and the other as a legislative body in another chamber. We have decided also that amendments to the Government of India Act and the Indian independence Act can be made in the House, and we have just now passed a Bill to amend the Government of India Act, 1935, in this House. With regard to the proposed amendment of the Code of Civil Procedure the proper procedure would be a real downright amendment of the Code by means of a Bill, and if that course is considered advisable, the proper venue would be this House in its legislative capacity where a proper Bill is to be introduced. If it is considered so urgent that this provision should find a place on the Statue Book at once, the Governor-General may be approached for an Ordinance and in due course this Ordinance may be replaced by a permanent statutory enactment effecting a proper amendment of the Code of Civil Procedure. The difficulty as I submitted, would be whether an amendment of our Procedural Rule would really vest the Court with the necessary jurisdiction. I await a clarification of the situation by competent authorities.

There are again certain drafting errors of a very serious nature which would make the rule, even if it is binding, ineffective in certain cases. It is provided that where there is no High Court where a person against whom cost is granted resides, the highest Court of original jurisdiction for the area would execute the order for costs, that is the Court of the District Judge will execute the order for costs. With regard to those who live within the jurisdiction of High Courts, the Small Cause Courts having jurisdiction there will execute the order. There is a little confusion of thought here. There are two kinds of High Courts-- High Courts situated in the Presidency Towns and those situated in other places. This fundamental distinction has been lost sight of in drafting this new sub-rule. With regard to the Presidency Towns--Bombay, Madras and Calcutta--there are Presidency Small Cause Courts and there will be no difficulty with regard to persons residing within the original jurisdiction of those High Courts and the orders for costs would be executed by the Small Cause Courts situated there. But there are other High Courts which are not situated in presidency towns like Allahabad in the U. P., Nagpur in the Central Provinces, Patna in Bihar and Simla in East Punjab and Shillong in Assam where the Presidency Small Cause Act does not apply and there are no Presidency Small Cause Courts. There are the usual Civil courts of District Judges but no Small Cause Courts as there are within the jurisdiction of the original side of the High Court situated in the Presidency towns. In section 5 of the Presidency Small Cause Courts Act (Act XV of 1882) it is provided that there shall be, in each of the towns of Calcutta, Madras and Bombay, a Court which would be Small Cause Court. With regard to the other towns, where there are High Courts, there will be no Small cause Courts. As it is, with regard to the High Courts which are not situated in Presidency towns, there will be no Small Cause Courts which will execute these orders.

In these High Courts which are not situated in Presidency towns, there are no such Small Cause Courts. With regard to Presidency town, the Small Cause Courts have also some limit to their pecuniary jurisdiction. It may be that the order for costs may be a sum exceeding the pecuniary jurisdiction of these Courts in the Presidency towns. These are the difficulties which strike me and it is for these reasons that I have submitted a motion for deletion which has been properly rejected on the ground that it contravenes the rules. But I desire to point out these difficulties and ask for clarification, and if necessary abandonment of the rule for the time being and approaching. His Excellency the Governor-General to promulgate on Ordinance, and thereafter to pass an Act in the appropriate House. There are these procedural difficulties which have not apparently been thought of in drafting these rules. These are matters which require consideration at the hands of competent lawyers in the House and a suitable solution found. That is all I wish to submit.

Shrimati G. Durgabai: Sir, the difficulty pointed out by Mr. Naziruddin Ahmed is not any serious difficulty. I may explain that our legislature cannot make any provision which would be applicable to all Indian States. Since the object of my amendment is to see that the order is binding on all courts and also applicable to Indian States, this object could not be achieved if this amendment is not made. The legislature is not really competent to make any provision which could be applied to all Indian States. This is the only sovereign body that could make an amendment to that rule. Also, there is already a provision in the rules of the Constituent Assembly of India, rule 52, which says that no election could be called in question by any court. This has barred the jurisdiction of the courts. Therefore it is perfectly within the competence of this House to make this amendment. I do not think that the difficulty anticipated by Mr. Naziruddin Ahmed would in any way create any obstacle. I hope he will be satisfied with the explanation I have now given.

Mr. President: I shall now put two suggested amendments separately to vote.

The question is:

"(i) After sub-rule (2) of rule 38-A, the following sub-rule be added :-

'(3) In this rule, the reference to the Government of India Act, 1935, includes reference to any enactment amending or supplementing that Act, and, in particular, reference to the India (Central Government and Legislature) Act, 1946.' "

The motion was adopted.

Mr. President: The question is:

"(ii) The provision mentioned in the Constituent Assembly Notification No. CA/76/Com/RR/48, dated the 2nd August, 1948 be made part of the Constituent Assembly Rules, as shown in the amendment below, with effect from 8-5-1948 :-

In Chapter X of the said rules, after rule 61 of the following be added :-

'Execution of orders as to costs-61-A. Any order made by the President under rule 61 as to costs may, except where such costs are wholly payable out of the sum deposited as security under rule 54, be produced before the principal Civil Court of original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, or, where such place is within the local limits of the ordinary original civil jurisdiction of a High Court, before the Court of Small Causes having jurisdiction there, and such Court shall execute such order or cause it to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit.' "

The motion was adopted.

DRAFT CONSTITUTION--*(contd.)*

Mr. President: We shall now take up the consideration of the Draft Constitution of India.

Seth Govind Das (C. P.& Berar: General): *[Mr. President, before you proceed with the consideration of the articles of the Constitution, I wish to place before you a matter for your consideration. I do so because during the last session of the Constituent Assembly, you had made the following announcement in this House on the 2nd May, 1947 :-

"I was wondering whether we could have a translation made of this Constitution as it is drafted as soon as it is possible, and ultimately adopt that as our original constitution. In case of any ambiguity or any difficulty arising as to interpretation, the English copy will also be available for reference, but I would personally like that the originals should be in our main language and not in English language, so that our future judges may have to depend upon our own language and not on foreign language."

Since then, I have recently toured all the non-Hindi speaking provinces. I visited Bombay, Gujarat, Maharashtra, Assam, Bengal, Orissa, Kerala, Andhra, Tamil Nad, Karnatak, Mysore, Travancore, and Hyderabad. Every where I found that the people were of the opinion that our original constitution should be in our national language. We already known the views of the Hindi speaking people. I am also aware that the Committee appointed by you in this connection recently has translated into Hindi all the articles adopted by us here.

I request you that in order to avoid any difficulty in future, it would be proper that along with draft articles in English, the articles in out national language should also be taken up so that the Constitution should also be ready in the national language, and that it may be-as stated by you-the original and main document. We should decide this question just now, otherwise there will be a lot of difficulty later on. I therefore request that some decision should be taken on this question.]*

Mr. President: It is true that at one stage of the proceedings, I made that statement to which reference has been made. In pursuance of that I appointed Committees to prepare translations of the Draft which was made originally in the English language. Three translations were prepared by certain gentlemen, one in Hindi, another in what is called Hindustani and the third in what is called Urdu. All these three translations were printed and I believe copies have been circulated to the Members. I understood, however, that none of these drafts was acceptable to a large body of Members, and the Steering Committee passed a resolution asking me to appoint a Committee of experts to prepare another translation which would be as accurate as possible but at the same time also intelligible to the public at large. I have appointed that Committee and that Committee is doing the work at the present moment. I am not sure if that Committee has been able to complete in final form the translation even of those article which have been already accepted and adopted by this House. The other day I attended one of the meeting of that Committee and I found that they were still struggling with one of the articles which come rather early. Some progress must have been made since than but I am not sure how far they have gone up to now. I still stick to my opinion--I do not know if that is shared by all the Members of this House-but I still stick to my opinion that it would be in keeping with our nation dignity and honour if we can pass our Constitution in original form in our own language, (Cheers) but I do find that this difficulty has faced us all these months, and I can only hope that the Committee which has been appointed will be able to give us a satisfactory translation in time for being placed before this House and accepted by it. I am not in a position to say that today, but as soon as I can get that translation, I shall place the matter before the House.

Shri M. Thirumala Rao (Madras: General): On a point of clarification, Sir, in the event of a satisfactory translation in Hindi being available, is it proposed to give up the adoption of this constitution in English?

Mr. President: I do not think so, because the original has been prepared in English language and it has to be adopted, but we can also adopt it in our own language if the translation is satisfactorily prepared.

The Honourable Shri K. Santhanam (Madras: General): I take it that even then it will be duly debated because many of us may have amendments to suggest to the Hindi translation.

Mr. President: Of course, it will be open to any member of the House to move any amendments to the translation, so far as the language is concerned, but not with regard to the substance because the substance will have been accepted in the English language.

We shall new proceed to the consideration of the Draft Constitution. The House dealt with articles up to 67. We shall now proceed further. The Steering Committee was of the opinion that we might adopt the articles dealing with election matters first. That is, I think, the wish of the House also. But I understand that it will not be possible to proceed with those articles today and we can take them up from tomorrow. Today we begin with article 68 and such articles only dealing with election matters as fall within today's discussion, and those that come later will be taken up tomorrow.

There is one article of which notice has been given by way of amendment. i.e.,67-A. It will be taken up first.

New Article 67-A

The Honourable Dr. B. R. Ambedkar (Bombay: General): Mr. President, Sir, I move:

"That after article 67, the following new article be inserted :-

'67-A. (1) The President may nominate persons not exceeding three in number to assist and advise the Houses of Parliament in connection with any particular Bill introduced or to be introduced in either House of Parliament.

(2) Every person so nominated in connection with any particular Bill shall, in relation to the said Bill, have the right to speak in, and otherwise to take part in the proceedings of either House and any joint sitting of the Houses of Parliament and any Committee of Parliament of which he may be named a member, but shall not, by virtue of such nomination, be entitled to vote nor shall he be entitled to speak in or otherwise to take part in the proceedings of either House or any joint sitting of the Houses or any Committee of Parliament in relation to any other matter."

Sir, the necessity for this article being inserted in the Constitution is this: The House will remember that the composition of the Upper Chamber was originally set out in paragraph 14 of the report of the Union Constitution Committee. In that paragraph it was stated that the Drafting Committee should adopt as its model the Irish system nominating fifteen members of the Upper Chamber out of a panel constituted by various interests such as science, literature, agriculture, engineering and so on. When the Drafting Committee took up this matter, Sir, B. N. Rau, who had in the meanwhile gone on tour, had a discussion with Mr. De Valera and the other members of the Irish Government as to how far this system which was in operation in Ireland had been a successful thing, and he was told that the panel system had completely failed with the result that the Drafting Committee decided to drop the provision suggested in paragraph 14 of the report of the Union Constitution Committee, and proposed a simple measure, viz. to endow the President with the authority to nominate fifteen persons the Upper Chamber representing special knowledge or practical experience in science, literature and social services. After the Drafting Committee had prepared this Draft, the matter was again reconsidered by the Union Constitution Committee and at this session of the Union Constitution Committee, the Committee proposed that the total number of nominations which was originally restricted to fifteen should be divided into two classes, viz., that there should be a set of people nominated as full members of the House and they should have special knowledge and practical experience in art, science, literature and social services and that three other persons should be nominated as experts to assist and advise Parliament in the matter of any particular measure that the Parliament may be considering at the moment.

The first part of the recommendation of the second session, if I may say so, of the Union Constitution committee has already been incorporated in article 67 which has already been passed by the Assembly. It is to give effect to the second part of the recommendation of the Union Constitution Committee that this article is proposed to be introduced in the Constitution. Honourable Members will see that this article limits the functions of the members nominated thereunder. The functions are to assist and advise the Houses in a particular measure that may be before the House; in other words, the members who would be nominated under article 67-A, their term and their duration will be co-terminous with the proceedings with regard to a particular Bill in relation to which they are nominated by the

President to advise and assist the House.

From the second paragraph of article 67-A it will be noticed that they are only entitled to take part in the debate, whether the debate is taking place in the House as a whole or in a particular committee to which they are nominated by the House as a whole or in a particular committee to which they are nominated by the House as members thereof; but they are not entitled to vote at all, so that the addition of these three members will certainly not affect the voting strength of the House. I am sure that the House will accept this new provision contained in article 67-A. If I may point out to the House, the provision contained in article 67-A of nominating experts to the House is not at all a new suggestion. Those members of the House who are familiar with the provisions of the Government of India Act of 1919 know when it introduced a popular element in the House, it also contained a provision which empowered the Governors of the different provinces to appoint experts to deal in a particular manner when the House is considering such a measure. I think it is a useful provision and it would do a lot of good if such a provision was introduced in the Constitution.

Pandit Thakur Das Bhargava: Sir, with your permission, I wish to bring to your notice that so far as this new provision is concerned, no notice of it was given before and we did not know if such a provision was going to be brought before the House. In the printed book which has been circulated to us, this does not appear there. This is the first time that we are informed of its existence. I beg of you under these circumstances to kindly hold this section over, so that we may be able to table proper amendments to this article. So far as the provision of article 67-A go, they appear, on a cursory examination, to be extremely wide. We have just heard that the powers of these persons who will be nominated will be co-terminous with the proceedings of a particular Bill, but there is nothing in this section to indicate that. Similarly I understand that the words " In relation to the said Bill" are too wide. I can understand if the House agrees to the appointment of experts and then their powers should be limited to the time when the Bill is on the anvil of the Legislature and only in so far as the Bill is being considered. These words "in relation go to the said Bill" might mean that whenever a provision of this kind is taken up any of those matters in regard to.....

Pandit Hirday Nath Kunzru (United Provinces: General): The honourable Member is not audible.

Mr. President: Does the honourable Member want that the discussion of this article be held over?

Pandit Thakur Das Bhargava: Exactly.

Mr. President : Is that the wish of the House that it should be held over?

Shri T. T. Krishnamachari (Madras: General): We may go on with the discussion now and if the Drafting Committee want to reconsider it, we can do so later on.

Mr. President: The suggestion is that this thing was not circulated before and Members wish to have time.

The Honourable Dr. B. R. Ambedkar: I have no objection if the House wants that the consideration of this matter be postponed.

Mr. President: We shall postpone it today and we shall take it up later.

Article 68

Mr. President: The motion is:

"That article 68 from part of the Constitution."

We shall now take up the amendments to this article.

(Amendments Nos. 1453 and 1454 were not moved.)

Amendment No. 1455 stands in the name of Mr. Naziruddin Ahmed. I think that is a verbal amendment. Will you like to move it? With regard to these verbal amendments, I was going to make a suggestion to the Honourable Dr. Ambedkar. With regard to them, he might consider them in consultation with the Members who have given notice of such verbal amendments and such of them as would be accepted could be taken up at the time when the motion is placed before the House as having been accepted and we would save the time of the House in that way, but with regard to those which are not acceptable, of course, we shall have to consider what to do with them.

The Honourable Dr. B. R. Ambedkar: The Drafting Committee may be very glad to follow that procedure.

Mr. President : It will save a lot of time and I will leave out all these verbal amendments or amendment which are of a drafting nature, and which do not touch the substance of the article.

Amendment No. 1456 stands in the name of Mr. Naziruddin Ahmed. It is also of a drafting nature.

Mr. Naziruddin Ahmad : No, Sir. It is not of a drafting nature.

Mr. President : The amendment is for substituting the word "third" for the word "second".

Mr. Naziruddin Ahmed: Sir, I do not move it.

(Amendment Nos. 1457, 1458, 1460 and 1461 were not moved.)

Mr. President: Amendment No. 1459 is more or less of a drafting nature. Amendment No. 1462 is verbal. Amendment No. 1463 is of a drafting nature.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That in the provision to clause (2) of article 68, for the words 'by the President' the words 'by Parliament by law' be

substituted."

It is not necessary to offer any explanation for the amendment which I have moved. It will be seen that the clause as it stands vests the power of extending the life of Parliament in the President. It is felt that this is so much of an invasion of the ordinary constitutional provisions that such a matter should really be vested in Parliament and that Parliament should be required to make such a provision for extending the life of itself by law and not by any other measure such as a resolution or motion.

(The amendment to Amendment No. 1460 was not moved.)

Mr. President: Amendment No. 1465: that is covered by Dr. Ambedkar's amendment. It is not necessary to take it up.

Prof. K. T. Shah (Bihar: General): Mr. President, I move:

"That in the provision to clause (2) of article 68, the full-stop at the end of the sentence be substituted by a semi-colon and the following be added :-

'provided further that the People's House, elected after the Proclamation has ceased to operate, shall hold office for the balance of the period of 4 years for which it would have been elected if the dissolution had taken place in the normal course under this section. The same provision shall apply to any Parliament elected after the dissolution of its predecessor if it had been dissolved before the completion of the normal term of 4 years'."

In suggesting this amendment, I want to emphasis two principles: one that any Parliament elected after or immediately after a great national emergency is likely to be influenced very much by the very fact of that emergency. If, therefore it is elected for the full period and not for the balance of the period that would then be remaining, it is likely that such a Parliament may be called upon to deal with issues that may never have figured, or figured in a minor key at the general election which elected that Parliament. I think, if Parliament is to represent and reflect the popular sentiments of the issue that come before it from time to time, its length should be not so long that it might cease to be in full harmony with popular sentiment that may be changing under changing circumstances from time to time. It is therefore, of the utmost importance that the life of the Parliament should not be too long.

By a previous amendment, I had tried to make the life four years. That however being merely a matter of relatively small importance, I did not choose to move that amendment. But, here, I should like to emphasise that the fact that Parliament has to be elected after the Proclamation has ceased, but the effect of the emergency has not passed away, is of importance, and that we should elect that Parliament only for the balance of the period for which its predecessor had been elected, and a balance still remains unexpired.

My reason, as I have already stated is that a Parliament elected under the stress of a grave emergency, influenced by the effect of that emergency sufficient to cause a Proclamation or even a suspension of the Constitution, would not be reflecting the normal sentiment of the people. It is, therefore, best that, in order to secure continued representation of the people properly and the popular opinion fully Parliament should be elected only for the balance of the period.

If that principle is accepted, then, I think the next clause follows as a mere corollary. That is to say, in every case, after a Proclamation of a state of emergency, and Parliament elected should be elected only for the balance of the period and not for the full period that would normally be prescribed under the Constitution.

It would also serve, I think, though I do not attach much magic to that, the purpose of maintaining a certain symmetry in our constitutional development, a period of five years being selected as the normal life of a popular legislature, and as such that quinquennial period should go on repeating from time to time in regular series, any interruption caused by the occurrence of an emergency such as has been provided for in this section being guarded against by permitting the new Parliament to be elected only for the balance of the period remaining unexpired at the time of the emergency.

I think is a very simple matter, and if accepted, it would make Parliament always more fully in accord with the popular sentiment than it would be if you allow it to be elected for a full period even though elected under the stress of a great national emergency which has passed, but whose effects are not over.

I commend the motion to the House.

Mr. President: There is one difficulty. You have not moved the other amendment which stood in your name fixing the period to four years.

Prof. K. T. Shah: I am quite willing to make that five.

Mr. President: Could you do that at this stage.

Prof. K. T. Shah: I am in your hands. I deliberately did not move it.

Mr. President: We shall consider that later. Mr. Mihir Lal Chattopadhyaya.

Mr. Mihir Lal Chattopadhyaya (West Bengal: General): I am not moving my amendment.

Mr. President: Two amendments have been moved, one by Dr. Ambedkar and the other by Prof. K. T. Shah. Both of them and the article are open for discussion.

Mr. Tajamul Husain (Bihar: Muslim): Mr. President, I rise to oppose the amendment moved by the Honourable Dr. Ambedkar. My reason for opposing it is this. His amendment is that after the word 'President' the words 'with the consent of the Parliament' be inserted. Article 68 says:

> "That the period may, while a Proclamation of Emergency is in operation, be extended by the President for a period not exceeding one year, etc."

Supposing the Parliament is not in session, then what are we to do in that case? After all the President represents the whole of India. He must have some very wide powers and this power should, in my opinion, be left in the hands of the President specially when the Parliament may not be in session and it is a matter of emergency. Therefore I oppose the amendment and I want the provision to remain as it is in the Draft Constitution.

The next is the amendment of Professor Shah. I have two objections to it. It may be verbal objection. After, all, this is an amendment and if it is passed, it will go down in the Statute Book. So every word must be correct. Here he uses the words 'People's House'.

There is no such thing as 'People's House' in the Draft Constitution. It is the House of the People. Another thing is as you yourself have pointed out to my Friend Mr. K. T. Shah that the period be mentions is 4 years while we have already accepted that the period should be five years. With these two objections to this amendment, I trust the House will agree with me and accept either of these two amendments and let the words as mentioned in the Draft Constitution remain.

Shri R. R. Sidhwa (C. P. & Berar: General): Mr. President, with regard to my Friend Professor Shah's amendment, he desires that in the event of an emergency when the House is dissolved, the term of the Parliament should be not five years but the remaining period from which the original House was dissolved. To me it seems peculiar. If the House is to be dissolved, it will be dissolved, under extraordinary conditions and the House is not going to be dissolved on a mere petty issue. When there is a deadlock in the House, when the Ministry is not stable or the House is not functioning alright, then somebody would step in to dissolve so that a new House could be formed, and for that purpose surely the electorate has to be told that the members who have been returned have not functioned well and therefore there had been a deadlock and the proceedings of the House could not be carried out and therefore the full period of five years should be given to that new House. Professor Shah has not quoted any instance whereby he could have told the House that in the event of dissolution there have been instances in of this nature that he desired that had been introduced. I know of an instance in India when an Assembly was dissolved after the election within one year when there was a deadlock and the electorates returned absolutely 50 percent new members, and the House functioned for the full period. It should be so because if in the past members had not behaved well, it was no reason why the new members should be deprived of the full period. I therefore contend that the full period should be allowed to the new House as is prevalent everywhere in the world and the right of the new members should not be deprived because of the mistake or misbehaviour of the previous members. I therefore oppose this amendment.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, I am thankful to Dr. Ambedkar for the amendment which he has moved. But I personally felt that the provision itself should go. It will mean that under some emergencies the House which is elected for five years may last even up to ten years. Suppose a war intervenes and an emergency is declared, and there are no election. The war may be prolonged one-such a thing occurred in England only recently and the Parliament then continued for nine years. America even in the midst of war had her elections and after four years they had a new House of representatives as well as a New Senate at the very height of war. I feel that the people must have an opportunity of electing their representatives every five years and no emergency should be permitted to take away this right of people. If in certain circumstances the life of the Parliament has to be extended, some limit should be placed on the period up to which its life may be increased. This limit should not exceed one year.

Mr. President: The honourable Member has given no notice of any amendment for omitting the proviso.

Prof. Shibban Lal Saksena: I am speaking on the motion.

Mr. President: You are opposing the whole proviso. That is your speech. Dr. Ambedkar could not move an amendment to that effect even at this stage. I do not think that question arises.

Prof. Shibban Lal Saksena: This is a lacuna in the Constitution and it will deprive the people of the right to elect their representatives after every five years.

Shri T. T. Krishnamachari: Mr. President, Sir, so far as the amendment No. 1464 is concerned, I think the House will pass it without demur, but in regard to Professor Shah's amendment I must say that I perfectly sympathise with him in that he has taken considerable pains to visualise a contingency that might occur; but there are certain aspects of the matter which defeat the very purpose that he has in mind. Actually his amendment has not been very carefully worded to suit contingencies where the period of emergency might be say for four and a half years. If the period of emergency is for four and a half years, is the new House to be elected only for six months and if the emergency continues for five years, for how long is the new House to be elected? These are the absurdities that arise if the amendment is accepted, because when we meticulously look for contingencies which will arise in the future we are apt to overlook certain other contingencies which will make our ideas perhaps infructuous as we are not able to provide for all possible things that might arise. So while I perfectly sympathise with Professor Shah's idea that elections like a Khaki election should be avoided if possible and the House that has been elected on that basis should not be perpetuated, I think human ingenuity is powerless against such things happening. So I would appeal to him not to press his amendment because it contains in itself germs which defeat the purpose for which he has tabled his amendment. so I think, barring Dr. Ambedkar's amendment which I hope the House will accept, the article can go in as it is.

The Honourable Dr. B. R. Ambedkar: Mr. President, Sir I do not think that anything has been said in the course of the debate on my amendment, No. 1464, which calls for a reply. I think the amendment contains a very sound principle and I hope the House will accept it.

With regard to the amendment moved by my friend Prof. shah, I think some of the difficulties which arise from it have already been pointed out by my Friend Mr. T. T. Krishnamachari. Election after all, is not a simple matter. It involves tremendous amount of cost, and I it would be unfair to impose both upon the Government and upon the people this enormous cost of too frequent elections for short period. I, quite sympathise with the point of view expressed by Prof. Shah, that it has been the experience throughout that whenever an election takes place immediately after a war, people sometimes become so unbalanced that the election cannot be said to represent the true mind of the people. But at the same time, I think it must be realised that war is not the only cause or circumstance which leads to the unhinging, so to say, of the minds of the people from their normal moorings. There are many other circumstances, many incidents which are not actually wars, but which may cause similar unbalancing of the mind of the people. It is no use, therefore, providing for one contingency and leaving the other contingencies untouched, by the amendment which Prof. Shah has moved. Therefore, it seems to me that on the whole it is much better to leave the situation as it is set out in the Draft Constitution.

Mr. President: I will now put the amendment, No. 1464.

The question is:

"That in the proviso to clause (2) of article 68, for the words 'by the President' the words 'by Parliament by law' be substituted."

The amendment was adopt.

Mr. President: Then there is the further proviso suggested by Prof. Shah in his amendment No. 1466.

The question is:

"That in the proviso to clause (2) of article 68, the full-stop at the end of substituted by a semi-colon and the following is added :-

'Provided further that the People's House, elected after the Proclamation has ceased to operate, shall hold office only for the balance of the period of 4 years for which it would have been elected if the dissolution had taken place in the normal course under this section. The same provision shall apply to any Parliament elected after the dissolution of its predecessor if it had been dissolved before the completion of the normal term of 4 years'."

The amendment was negatived.

Mr. President: Then I put the whole article as amended by Dr. Ambedkar's amendment.

The question is:

"That article 68, as amended, stand part of the Constitution."

The motion was adopted.

Article 68 as amended, was added to the Constitution.

Article 68-A

Mr. President: Now I come to the new article sought to be put in article 68-A Dr. Ambedkar.

The honourable Dr. B. R. Ambedkar: Mr. President, Sir, I beg to move:

"That the following new article be inserted after article 68 :-

'68-A. A person shall not be qualified to be chosen to fill a seat in Parliament unless he-

(a) is a citizen of India;

(b) is, in the case of a seat in the Council of States, not less than thirty-five years of age and, in the case of a seat in the House of the People, not less than twenty-five years of age, and

(c) possesses such other qualifications as may be prescribed in this behalf by or under any law made by Parliament.' "

Sir, the object of the article is to prescribe qualifications for a person who wants to be a candidate at an election. Generally, the rule is that a person who is a voter, merely by reason of the fact that he is a voter, becomes entitled to stand as a candidate for election. In this article, it is proposed that while being a voter is an essential qualification for being a candidate, a voter who wishes to be a candidate must also satisfy some additional qualifications. These additional qualifications are laid down in this new article 68-A.

I think the House will agree that it is desirable that a candidate who actually wishes to serve in the Legislature should have some higher qualifications than merely being a voter. The functions that he is required to discharge in the House require experience, certain amount of knowledge and practical experience in the affair of the world, and I think if these additional qualifications are accepted, we shall be able to secure the proper sort of candidates who would be able to serve the House better than a mere ordinary voter might do.

Mr. President: There are certain amendments to this: No. 80 in the list of amendments to amendments, by Mr. Naziruddin Ahmad. This also seems to be a drafting amendment, and I would leave it to the Drafting Committee to settle it, in consultation with the mover.

Then No. 81 also looks like a drafting amendment. It seeks to add the words "and voter" at the end. I leave it also because it is more or less of a drafting nature.

(Amendments No. 82, NO. 83 and No. 84 were not moved.)

Then we come to the other list which has been circulated today. Amendment No. 4 of that list, by Sardar Hukam Singh and Mr. Lakshminarayan Sahu.

(The amendment was not moved.)

I have got notice today of another amendment by Shrimati Durgabai.

Shrimati G. Durgabai: Sir, I beg to move:

"That in the new article 68-A proposed for insertion after article 68, in clause (b) for the word 'thirty-five' the word 'thirty' be substituted."

The object of this is to lower the age to 30 from 35 for a seat in the Council of States. It was held for some time that greater age confers greater wisdom on men and women, but in the new conditions we find our boys and girls more precocious and more alive to their sense of responsibilities. Wisdom does not depend on age. It was also held that the upper House consisted of elders who should be of a higher age as it was revising chamber which would act as a check on hasty legislation. But that is an old story and the old order has been replaced by the new. As I said our boys and girls are now more precocious and the educational curriculum is now so broad-based that it will educate them very well in respect of their civic rights and duties. I therefore think we should give a chance to these younger people to be trained in the affairs of State. I said wisdom does not depend on age. Our present Prime Minister became President of the Congress before he was 40 and Pitt was 24 when he became Prime Minister of England. Therefore we have no reason to fear that because a man is only 30 he will not be able to perform his functions in relation to the State. I hope the House will accept this amendment. Sir, I move.

Mr. President: The amendment and the original proposition are both open to discussion now.

Shri H. V. Kamath (C. P.& Berar: General): Sir, I was happy to hear my honourable friend Shrimati Durgabai say that wisdom does not depend on age; I hope she will agree that it is irrespective of sex as well. (Several honourable Members: "Question".) Those friends who question this will answer their own question by coming here and convincing this House. This constitution does not discriminate against sex and I hope that with our traditions of philosopher women like Gargi, Maitreyi and Ubhayabharati, wisdom will not discriminate against sex. Our greatest epic, the Mahabharata-has recognised this in a well-known shloka which runs as follows :-

Na tena Vriddho bhavati Yenasya palitam shirah

Yo Vai yuvapyadhiyanastam devah sthaviram vidhu.

It means

A person is not old or wise, merely because his hair has turned white.

I have therefore no hesitation in supporting Shrimati Durgabai's amendment lowering the age limit for membership of the Council of States. I would have gone further and made the age limit the same for both Houses and reduced it to 21. It was said that Pitt became Prime Minister of England at an early age. I think he entered Parliament at 21 or a little over 21, and became Prime Minister at 24. These are of course exceptions and we cannot legislate on the basis of exceptions. But on the whole I think it is wise to lower it from 35 to 30. There may, however be one difficulty about this. I shall invite your attention to article 152, under which, in the case of the legislature of a State, the age is 35 for membership of the upper House. I hope that when we come to that article this amendment will be borne in mind, and what we have done for the upper House in the Centre will apply to the upper Houses of the provinces or States, and the age limit there also will be lowered to 30 years. When a person below 35 can fill a seat in the upper House in the Centre there is no reason why he cannot do it in the States. Another difficulty, which perhaps is not of much moment, is article 55(3) which we have passed already and cannot now amend, wherein it is laid down that in order to be Vice-President a person must have completed 35 years. Now the council of States will be presided over by a person who is a member of the Council. In Shrimati Durgabai's amendment the age limit is proposed to be lowered from 35 to 30. It means that we are reduced to this position, that every member of the Council of States will not be qualified to contest or stand for the election of the Vice-President of the Council of State, because if a person is between 30 to 35 he will not be eligible for election. Merely because he is below 35 he will not be able to fill the office of Vice-President. This is an anomaly which is rather distasteful to me. The person is elected to the Council of State, and the Council of State can elect a Vice-President from among themselves but this age bar comes in the way, which is to my mind unfortunate. If this article is adopted I see no way of getting over this difficulty unless the article already passed is amended suitably. A person who is a member of the House must be ipso facto eligible for any election that may be held by the House. But under the amendment of Shrimati Durgabai this is made an impossibility simply because a man happens to be between 30 to 35. If a man is fit to occupy a seat in the upper House. I see no reason why be should not be competent to fill the office of the Vice-President of the Council of States, but should be debarred merely because of age. I hope the wise men of the Drafting Committee will look into this anomaly and try to rectify it as far as their wisdom permits them to do so.

Mr. President: I do not think there is any inconsistency or contradiction between the two. This question may be considered by the Drafting Committee.

Prof. Shibban Lal Saksena: Sir, I frankly confess that I am not happy over the amendment of Dr. Ambedkar. I do not think it improves the constitution. As has been pointed out there have been cases in the world where younger men than 25 years of age have occupied the highest position. The case of the younger Pitt was just cited: Shankaracharya became a world teacher when he was 22 and died when he was only 32. Alexander had become a world conqueror when less than 25 years of age and died when he was 32. Our country of 300 millions may produce precocious young men fit to occupy the highest positions at an age younger than 25 and they should not be deprived of the opportunity.

Part (2) of this amendment unnecessarily restricts young voters from becoming candidates. This clause will disqualify persons for election who state their age as being less than 35. This question of age should have no connection with the qualification of a man to become a candidate for election.

The third part is even more dangerous. A Parliament of today may impose such restrictions as might enable the party in power to defeat its opponents.

The party in power by their majority may pass laws and prescribe qualifications for candidates which might help the party against their opponents. This power which is being given to the parliament to prescribe qualifications for candidates by a simple majority is dangerous. I therefore think that the whole amendment is not very happy and I would urge Dr. Ambedkar to see whether he cannot withdraw it.

Mr. Tajamul Husain: Sir, I rise to support the amendment to the amendment moved by my honourable Friend Shrimati Durgabai. The amendment which Dr. Ambedkar has moved is that the age of a person who wants to be a candidate for a seat in the Council of State must be at least 35. The amendment to amendment is that the age should be 30. In fact I am of opinion that it should be less than 30. When a person has attained his majority he should be eligible. As there is no amendment to this effect I have no alternative but to support the amendment moved by Shrimati Durgabai.

Sir, I am reminded of a Persian couplet which says:

Bazurgi ba aql ast na ba sal. Kawangri ba dil ast na ba mal.

The first part means that seniority is not according to age but according to wisdom. I shall not translate the second part. If a person is a genius, why prevent him from entering the Council of State though he may be under 30? Mr. Kamath mentioned the example of the younger Pitt. There was the case of Shankaracharya who died at the age of 33 but before that he had attained the position of a world teacher. There were the instances of Rama, Krishna and Buddha, who attained enlightenment when very young. There are many other instances in history. Sir, I strongly support the amendment moved by Shrimati Durgabai.

As regards the amendment of Dr. Ambedkar I do not see eye to eye with it. There are three qualifications mentioned. I am of opinion that the qualification of a person to fill a seat in the Parliament is that he should be a voter on the list. The moment a man's name is on the voters' list you cannot prevent him from either standing for election or voting. The election Officer will be there and after the identification is completed nobody can prevent him from voting. If he is not 35 but 25 why prevent him from standing as a candidate? The ordinary principle of law is that if a person can vote he can also stand for election. This amendment will go against a well recognised principle as it will mean that a voter cannot stand for election. This should be withdrawn by Dr. Ambedkar. Once a man is a voter he should be eligible for election and therefore Sir, I oppose the amendment of Dr. Ambedkar with the request that he should make a suitable change in it.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): Sir, the amendment moved by my Friend Dr. Ambedkar is not an innocent one. It is a dangerous one and is opposed to democratic principles.

In the previous article, No. 67, clause (6), the qualifications for a person to become a voter are mentioned. It is definitely stated there under what circumstances he can be a voter and under what circumstances he cannot be a voter. You have clearly stated that he must be a man of 21 years of age. Such a person not otherwise disqualified under what this constitution or any

Act of Parliament on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practices shall be entitled to be registered as a voter at such election. So, Sir, in this clause you have definitely laid down the principles on which this Constitution or any Act of Parliament might disqualify a person from becoming a voter. But what do we find in this amendment now? In this amendment, clause (3) is an omnibus clause which gives power to the future Parliament to disqualify a person from becoming a member of Parliament for any reason whatsoever. You have nor circumscribed the circumstances with regard to which a disqualification may be legislated for, as we have done in the case of a voter. So, a reactionary Parliament, a capitalist Parliament might legislate saying that in order that a person may be enabled to stand for election he must own 5,000 acres of land or pay one lakh of rupees as income-tax. You can imagine, Sir, how a reactionary Parliament in future might restrict the membership of Parliament to such persons as they consider fit in their own view. Sir, what we have provided for in this Parliament, that is adult suffrage, might be taken away later. What is given by one hand might be taken away by the other by prescribing impossible proprietary qualifications, for instance. Thus a citizen may be deprived of his right to stand for election in these circumstances.

Further it is a recognised principle that when you are making a Constitution you should leave the future legislature to lay down the qualifications of persons who want to stand for election. It is surprising that while unnecessary provisions have been introduced in the Constitution, the most important provision which qualifies or disqualifies a man from becoming a member of this Parliament is sought to be left to the future Parliament. That is against principle; as Dr. Ambedkar himself has said, you are now preparing a machinery for qualifying a person to be a citizen and who, under certain circumstances, becomes a voter and a member of Parliament or a Minister or President or Vice-President. While you prescribed qualifications for a voter, while you prescribed qualifications for a man to become a President or vice-President and so on and so forth, there is no reason why you should, in the case of a person who should be made eligible to stand for election, leave the matter to a future Parliament. It is dangerous and it is opposed to principle. That is the most important and dangerous provision in the first part of this amendment. As for clause (b) I am one with those who consider that when once you have been declared as a voter you must be entitled to stand for election. The very fact that you are broad-basing representation to Parliament by giving suffrage to persons of a certain age with certain qualifications must enable every voter to stand for election. I know there are Constitutions which provide different qualifications for persons to become members of Parliament. That is true. It is true more in the case of the Council of States than in the case of the House of the People. Whatever that might be, I might even consent to raising the age-limit for a member who seeks election, but I am opposed to the future Parliament being given the right to legislate with regard to the qualifications or disqualifications for a man becoming a Member of Parliament. I humbly submit that Dr. Ambedkar will take into consideration this serious objection and withdraw his amendment and bring it forward if necessary with suitable amendments.

Shri T. T. Krishnamachari: Mr. President, Sir, I have only to say a few words, about the amendment of Shrimati Durgabai to the amendment moved by Dr. Ambedkar. Objection has been taken to this amendment by my honourable friend Shri Kamath on the ground that while the qualifying age for a Vice-President who is Chairman of the Council of State happens to be 35, there is no point in reducing the age of the members of that body. I am afraid my honourable Friend has found an inconsistency in this particular amendment without really examining why the age of the Vice-President has been fixed 35. I would ask him to look into article 47 which fixes the age of the President at 35. Naturally, since the Vice-President is expected to take the place of the President when there is a vacancy, article 55 has fixed the age of Vice-President also at 35. This has no relation at all to the age of the members of the Council of States. So there is no anomaly at all, I would point out, in fixing a definite age as qualifying age for membership of the Council of State which is lower than the age fixed for its Chairman. I hope the House will appreciate that there is no anomaly and that the age of the Vice-President has been fixed at 35 for altogether different reasons. It has nothing to do with the qualifying age of the members of the Council of State. So far as the other points raised against Dr. Ambedkar's amendment are concerned, I think Dr. Ambedkar will adequately answer them, though I feel that the objections are trifling and beside the mark, for the reason that it does not necessarily mean that the qualifications of a candidate should also be the qualifications of the voter. They have in the past even in our own legislature been different and it is so in very many other countries. So there is no very great sin in having one set of qualifications for candidates and another set of qualifications less rigid for the voters. Much has been made about this rather trifling point by saying that the amendment of Dr. Ambedkar is mischievous and iniquitous. I do hope that the House would realise that these remarks really exaggerate the position and have really no bearing on the problem. I support the amendment of Dr. Ambedkar as amendment by Shrimati Durgabai's amendment.

The Honourable Dr. B. R. Ambedkar: I am prepared to accept the amendment of Shrimati Durgabai. I cannot accept any other amendment.

Mr. President: Do you wish to reply?

The Honourable Dr. B. R. Ambedkar: I do not think it is necessary for me to reply except to say that if I accept the amendment of Shrimati Durgabai, it would in certain respects be inconsistent with article 152 and 55, because in the case of the provincial Upper House we have fixed the limit at thirty five and also for the Vice-President we have the age limit at thirty-five. It seems to me that even if this distinction remains, it would not matter very much. Further it is still open to the House, if the House so wishes, to prescribe a uniform age limit.

Mr. President : I will now put the amendment to vote, and also the article if the amendment is accepted as amended. Before doing so, I desire to make an observation but not with a view to influencing the vote of the House. In this country we require very high qualifications for anyone who is appointed as a Judge to interpret the law which is passed by the legislature. We know also that those who are expected to assist Judges are required to possess very high qualifications, for helping the Judge in interpreting the law. But it seems that members are of opinion that a man who has to make the law needs no qualifications at all, and legislature, if we take the extreme case, consisting of persons with no qualifications at all may pass something which is nonsensical and the wisdom of all the lawyers and all the Judges will be required to interpret that law. That is an anomaly but it seems to me that in this age we have to put up with that kind of anomaly and I for one, although I do not like it, would have to put up with it.

The question is:

"That in the new article 68-A proposed for insertion after article 68, in clause (b) for the word 'thirty-five' the word 'thirty' be substituted."

The amendment was adopted.

Mr. President: The question is:

"That article 68-A, as amended, stand part of the Constitution."

The motion was adopted.

Article 68-A, as amended, was added to the Constitution.

Article 69

Mr. President: There are certain amendments. No. 1469 by Shri

Brajeshwar Prasad.

(The amendment was not moved.)

Prof. K. T. Shah: Mr. President, Sir, I beg to move:

"That in clause (1) of article 69 for words 'twice at least in every year, and six' the words 'once at least in every year at the beginning thereof, and more than three' be substituted."

With this change, the amended article would read :-

"The Houses of Parliament shall be summoned to meet once at least in every year at the beginning thereof, and more than three months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session."

May I point our, Sir, before commending this motion to the House, that there is a later amendment of mine which is complementary to this, and, if read together, might save the time of the House, and also make the point I am going to make more intelligible. So, if you will permit me to move the later one now (No. 1474), it would be better.

Mr. President: Yes.

Prof. K. T. Shah: Sir, I move:

"That after clause (1) of article 69 the following proviso be inserted :-

'Provided that Parliament or either House, thereof, once summoned and in session, shall continue to remain so during the year; and each sitting shall be deemed to be continuous for the entire Parliamentary year notwithstanding any interruption due to holidays, adjournment, or prorogations.' "

Sir, this clause seems to me to have been provided in conformity with the prevailing practice under which the legislature sits at two sessions during the year, the budget, session, and the legislative session usually held in the autumn. Now, to my mind, this practice has arisen out of the convenience of the then Government, and also because the functions of the Parliament in those days were very limited. The powers and authority, and therefore, the work coming to the share of the then Legislature was of an extremely limited nature, and therefore limited sittings were naturally deemed to be sufficient to cope with the work then coming before Parliament. With the increase in the work of Parliament, and with the greater responsibility following upon that work, with the increase also in the number of members, from about 150 to 500 at least under this Constitution when it comes into operation, it seems to me that the sittings cannot be and should not be interrupted in the manner in which they used to be interrupted by something like six months; and the business of the House should not be allowed to be broken up in the manner that was customary in the past.

It is the practice in England, also, to regard the Parliament's sessions as a continuous one for the whole Parliamentary year, not withstanding holidays for Christmas, Easter and other occasions. The British Parliament works for something like two hundred days in a year, as against less than 100 days' work by our Legislature. Our Parliament does, if I may say so without any disrespect, a very limited amount of work, at least as measured by the hours we put in. We work five days a week of 4 3/4 hours each or less than 24 hours per week, half a normal worker's week. Naturally, therefore, the work of the Parliament, whether in regard to the supervision of administration or in regard to acting as the financial watch-dog, or any matters of policy, let alone all the details of legislation, has to be very hurriedly any sketchily done. It cannot be done within the limited time, and the very short hours during which the Indian legislature had been accustomed to sit all this time.

As illustration of my arguments, may I mention, that is within the experience of most of us, for instance, that during question time, a majority of the questions put down for the day remain unanswered on the floor of the House. This is the one method for criticising, scrutinising supervising, controlling and checking the acts of the administration. But under the limited time available to do other business, this duty cannot really be discharged in the manner that it should be discharged. There are numerous restrictions or conditions to guard against the right of interpellation being abused, about notice, the form of the question, and the manner in which supplementaries can be put. The entire province of keeping the general administration of the country under check cannot, by this means of questions, be satisfactorily carried out, simply because the time at our disposal is so limited to get through all the work that comes before the House.

There are other aspects of Parliamentary duties, which suffer similarly and for the same reason. Consider, for instance the Budget. We have now a Budget of some 350 crores; votes for crores upon crores are passed with hardly more than two or three hours discussion, of which the Minister proposing the demand for grant takes away more than half the time, in either proposing or replying. For a total Defence Budget of Rs. 160 crores in round terms we could give only 3 3/4 hours, so that the actual suggestions made by the House have to be limited to a very, very small fraction of the time available. Our discussion can hardly get time for constructive, helpful suggestion. I consider this incompatible with the full discharge of parliamentary duties, and with the full working of the democratic machine, if the popular sentiment is to be properly and fully expressed in Parliament on matters of such momentous importance.

When the present practice was laid down, it was quite possible, because more than half the budget of the country was outside our competence to discuss. A good portion of the administrative activities was also barred from discussion or review by the Assembly. The limited time, therefore, may have sufficed at that time. But with the new Constitution, with the new powers and with the increased responsibility as also with the increased membership, I think the restriction of the House by the Constitution to something like 100 days session in the year at most is, to say the least, not allowing sufficient scope for the discharge of parliamentary responsibility.

I am aware that the word "at least" is there. I realise, therefore, that there is nothing to bar parliamentary being called into session for a longer period, and its remaining in session for a longer period. But the very fact that such a term has to be introduced in the Constitution, that such a provision has to be made in so many words, that the maximum permissible interval is six months, and that it is not left to Parliament to regulate its own procedure, its own sittings, its own timings, seem to me indicative that the mind of the draftsman is still obsessed with the practice we have been hitherto following. I consider it objectionable; and if we are to get away from that practice, it is important that an amendment of the kind that I am suggesting should be accepted.

It is all the more important because large issues of policy, large matters, not only of voting funds, but determining the country's future growth, that is, to shape the future of this country for years to come, have to be very scantily treated; and the Parliament's response to it, the discussion in Parliament about it, becomes, to say the least, perfunctory. Time is an important element in allowing a proper consideration. I am, therefore, suggesting that between any two sessions of Parliament in a year not more than three months should elapse; and that the year's session should be regarded as a continuous single annual session, during which the work of Parliament should be performed, should be carried out with the utmost possible sense of responsibility that the representatives of the people feel they owe to the electors.

The details of the sittings, the details of procedure, etc., should naturally be left to the House, as they are provided for in this Constitution. I have nothing more to say about that. I do think that judging from the experience we have had so far, and judging from the fact that provision has had to be expressly inserted regarding the number of sittings that the Parliament should make in a year, or the frequency with which Parliament should be called into session during the year, it is imperative that we must amend the provisions by some such manner as I am suggesting. I do hope that the reason I have adduced would commend itself to the House and that my amendments will be accepted.

(Amendment No. 7 in the names of Shri Lakshminarayan Sahu and Sardar Hukum Singh was not moved.)

Shri H. V. Kamath: Sir, I move:

"That in clause (1) of article 69, for the word 'twice' the word 'thrice' be substituted."

I am afraid that when this article 69 was framed by the Drafting Committee, they were not able to shake off the incubus of the Government of India Act. Dr. Ambedkar when he moved the resolution for the consideration of the Draft Constitution admitted that much of this Constitution has been influenced by the Government of India Act, and wisely, too, but here I thing that this provision about summoning the Parliament at least twice during the year was more or less copied bodily, copied verbatim from the Government of India Act without any consideration as to what additional duties and responsibilities have devolved or are going to develop upon the Parliament of Free India. It is well-known that the American Congress and the British Parliament meet for nearly 8 to 9 months every year. The business of the State in modern times has become so intricate and elaborate of course, I am talking of Parliament in a democracy in this country and not under dictatorship and I hope we are going to have democracy in this country and not dictatorship-that no parliament in a democracy can fulfill its obligations to the people and fulfill its duties and responsibilities unless the Parliament sat every year for over six months to say the least. During the last Budget session of the session of the Assembly there was a flagrant instance of a Minister of Government confessing to the Assembly that certain expenditure was incurred in a supplementary manner in anticipation of the approval of sanction of the Assembly. Dr. Matthai, the Finance Minister for the Government, when he presented his supplementary demands got them passed through-I would have said rushed through, but after all we are all members trusting one another, having full confidence in one another-in half a day or perhaps less than two hours. He was constrained to admit to the House "I have no explanation to offer why sufficient time was not given to the Assembly to discuss or why so much expenditure was incurred without the sanction of the House." My honourable Friend Prof. K. T. Shah said that the figure ran into crores of rupees and such a huge amount of expenditure was incurred without the approval or sanction of the Parliament. Dr. Matthai contented himself with saying that it was incurred in anticipation of the approval or the sanction of the House, and the House just tittered, laughed and passed the supplementary demands. This irregularity, Sir, would have been obviated if Parliament had sat and assembled during the year from time to time, not merely during those prescribed period, prescribed during the British regime-Summer session and Autumn session-had Parliament met more often, and various items of expenditure had been presented to the Assembly on various occasions-then this sort of confession by a Minister of a Government, which is to say the least, not very happy, would not have been made and there would have been no cause for Minister of Government to make such a confession. The honourable the Speaker of the Assembly Mr. Mavalankar in an informal talk with some of us during the last session said: "We cannot get through the business if we go on like this. If we want to do justice to ourselves and to the country, it is imperative and obligatory that the Parliament sits for not less than seven or eight months in the year."

I hope Dr. Ambedkar, on behalf of the Government, visualises such a position and is convinced of the necessity for Parliament meeting more often and for longer periods than it does at present. I would not have pressed this amendment but for the fact that in human affairs the minimum prescribed tends to become the maximum. In economic matters we have the classic instance of the minimum wage; the minimum wage tends in most industries to become the maximum wage. Here, in a similar manner, I am afraid the minimum prescribed will tend to become maximum. We have had the experience during the British regime. The Government of India Act laid down that Parliament shall assemble at least twice every year; there has hardly been any year in which Parliament met more than twice a year. Therefore, I move that the Constitution should lay down that Parliament should meet at least thrice a year: the budget session which is a long session, a session in the middle of the year, say July or August for two months, and again in the autumn or winter, October or November. then only, we shall be able to discharge our responsibility to the people and to the country. I move, Sir.

Mr. President: Amendment No. 1472 is more or less of a drafting nature.

(Amendment No. 1473 was not moved.)

Amendment No. 1475 is also of a drafting nature. Amendment No. 1476 is also of a drafting nature. Prof. Shah, amendment No. 1477 also appears to me to be of a drafting nature. If you agree, we may leave it there.

Prof. K. T. Shah: I think there is a question of substance in it.

Sir, I beg to move:

"That in sub-clause (a) of clause (2) of article 69, the words 'the Houses or either House of' be deleted."

The amended clause would read:

"(2) Subject to the provisions of this article, the President may from time to time---

(a) summon Parliament to meet at such time and place as he thinks fit."

That is to say, the authority of the President is not required for summoning either House as I conceive it here. Normally, the Upper House is, according to the theory of this Constitution, a continuous body, not liable to dissolution. Therefore, it is always there: If this provision ever should apply, it would apply only to the House of the People, so far as summoning is concerned.

I am not quite clear myself whether, at the beginning of any year, the Upper House also would have to be summoned; or whether, in continuous existence, it may be taken to be sitting; or its own procedure may regulate its being called into session.

In order to get round that difficulty, I have simply suggested the omission of these words, particularising either House of Parliament, and confining the wording only to the summoning of Parliament. There is a difference, I submit, in using the term Parliament, and particularising either House of Parliament, as it suggests the authority of the President even for the other body which is continuously in session. If it is considered that not withstanding the Upper House being continuously in session, at each occasion it has to be summoned,-at least each year it has to be summoned,-apart from a joint session, of course, I think that is a way of looking at this provision which seems to me be somewhat anomalous. I am therefore suggesting that that purpose, whatever that purpose may be, would be served by keeping the term Parliament instead of particularising 'either House of Parliament.' I therefore commend this amendment to the House.

Mr. President: No. 1478.

Prof. K. T. Shah: Sir, I beg to move:

"That at the end of sub-clause (a) of clause (2) of article 69 the following be added :-

'Provided that if at any time the President does not summon as provided for in this Constitution for more than three months the House of the People or either House of Parliament at any time after the dissolution of the House of the People, or during the currency of the lifetime of the House of the People for a period of more than 90 days, the Speaker of the House of the People or the Chairman of the Council of States may summon each his respective House which shall then be deemed to have been validly summoned and entitled to deal with any business placed or coming before it.' "

This, Sir, is a serious matter, implying that in case the President does not summon the House of Parliament for a period longer than permitted under the constitution, we must have some machinery to counteract such an eventuality. Power is, therefore, given, under this amendment, to the Speaker or the Chairman of the Upper House to convene each his own respective House, without waiting for the authority of the President to do, and without the President doing so himself.

It may be suggested that this is an attitude suspicion; or lack of confidence in the President: and therefore it is a point which ought not to be provided for in this Constitution. Written Constitutions, particularly of the kind that we are drafting for India ought to provide against such contingencies as have either occurred in our own history, or have occurred elsewhere. We must learn from our own as well as from other people's experience. It is necessary for us to guard against their recurrence if you consider such developments undesirable. Presidents there have been in the history of other countries, if not our own, who have taken the law into their own hands; and have by the very power of the Constitution so to say subverted utterly, and undone the intent and purpose of the Constitution. In case such a contingency should occur there must be provision in the Constitution itself to remedy it; and we should not wait for an amendment of the Constitution when such difficulty actually occurs to help us to guard against the consequences of such difficulties.

I am therefore suggesting that if at any time, for any reason, the President does not convene-it may never happen, but it is a possibility which is worthwhile guarding against-either House of Parliament, does not convene the House of the People for more than 90 days after its last adjournment, power must be available to the presiding authority of either House to take action, to call the House into session and continue the work of that House. The feeling of suspicion, if it is so alleged, is an outcome of the knowledge of past history of other countries. There is besides no guarantee that such a thing will not happen at all in this country. If you really are of opinion that there is no reason for us either to anticipate or fear that such a thing should ever occur on this soil, why have any written constitution at all? A few minutes ago, an amendment was moved by the Chairman of the Drafting Committee himself to a previous article which transfer power originally vested in the President, from the President to Parliament itself for extending the life of Parliament in the case of emergency.

Now, if you yourself are aware that such a power may be liable to be abused, and if you want to guard against such an abuse by providing that action may be taken by Parliament only, I see nothing wrong in my suggesting that, in the event of contingencies of the kind I am apprehending occurring, there must be machinery available in the Constitution itself to meet the situation. We should not wait for a later change or amendment of the Constitution whereby automatically and with the minimum of friction, we may be able to achieve our objective.

As I said before the history of the world is full of incident of that character by which Constitutions have been subverted. It is, therefore, only a mark of prudence that we should at this time take heed of such a contingency or possibility and make provision accordingly. I accordingly commend this amendment also to the House.

Mr. President: The next is also yours. 1479.

Prof. K. T. Shah: Sir, I move:

"That in sub-clause (b) of clause (2) of article 69, after the words 'the Houses' the words 'over a period not exceeding three months' be added."

This I think is consequential on my previous suggestions and therefore if the previous one is accepted, I hope this also will be accepted.

(Amendment Nos. 1480 and 1481 were not moved.)

Prof. K. T. Shah: Sir, I beg to move:

"That the full-stop at the end of sub-clause (c) of article 69 be substituted by a comma and the following be added :-

'on the advice of the Prime Minister, if such dissolution is earlier than the completion of the normal term as provided for in section 68(2); provided that the reasons given by the Prime Minister for such dissolution shall be recorded in writing.' "

I also move:

"That after clause (2) of article 69, the following be inserted :-

'(3) If at any time the President is unable or unwilling to summon Parliament for more than three months after the prorogation or dissolution of the House of the People and there is in the opinion of the Prime Minister a National Emergency he shall request the Speaker and the Chairman of the Council of States to summon both Houses of Parliament, and place before it such business as may be necessary to cope with the National Emergency. Any business done in either House of Parliament thus called together shall be deemed to have been validly transacted, and shall be valid and binding as any Act, Resolution or Order of Parliament passed in the normal course:

Provided further that if at any time the President is unable or unwilling to summon Parliament for a period of more than three months or 90 days after prorogation or dissolution of the House of the People, and the Prime Minister is also unable or unwilling to make the request aforesaid, the Chairman of either House of Parliament may do so, and the House of Parliament thus called together shall be deemed to be validly convened and entitled to deal with any business placed before it.' "

Sir, this amendment follows the same logic that I tried to put before the House a little while ago. In the first of these amendments I am trying to say, that, in the event of Parliament having to be dissolved earlier than its normal period, i.e. before five years, there must be some special reasons why such a dissolution is deemed necessary. My amendment does not seek to place any bar upon such dissolution being made. I only suggest that it shall be on the advice of the Prime Minister, as it will of course be in the normal course; and not on the authority of the President. I only require that the Prime Minister shall record his reasons in writing. For those reasons may constitute, in my opinion, valuable Constitutional, precedents for future, and may be of immense value in subsequent generations.

On the basis, therefore, the first amendment is, I hope, utterly innocuous, and would be acceptable to the House. It is doing no more than giving constitutional authority and mandate for reasons to be recorded by the Prime Minister every every time that he requires the dissolution of the House of the People earlier than its normal term.

In regard to the second amendment the matter is a little more serious. It contemplates the possibility of the President being unable or unwilling to call Parliament together. That is a contingency that cannot be utterly ignored at all. It may not happen frequently-let us hope it will not happen at all. In that contingency I suggest that the Prime Minister should be entitled to request the presiding authority of either House to convene each its own House, and to continue with such business of Parliament as may be impending or may be necessary. In the second provision I further contemplate the possibility of the Prime Minister refusing or unwilling to make such a request, and the President being also unable or unwilling to convene Parliament together. In that case, on the assumption that the two principal authorities, the two Chief Executive authorities of the country, are either unable or unwilling to make such a request, or to carry out their own constitutional duty, power should be reserved to the presiding authority of the House-of either House-to convene its own body into session, and continue the business of the country as in normal course.

Mr. President : Will you please say how No. 1483 differs from No. 1478?

Prof. K. T. Shah : In the case of No. 1478 it is only the President that is thought of, and the Prime Minister is not interposed with a request to summon either House. The proviso makes it clear further that if the President and the Prime Minister be both unwilling to do so, then the presiding authority of either House should call the meeting. In No. 1483 power is given to the presiding authority of either House to do so, irrespective of those two conditions which are inserted later on in No. 1483. That I think is the difference between the two amendments.

Mr. President : I thought one was covered by the other.

Prof. K. T. Shah : To some extent. The later one is more specific. The Prime Minister is the moving authority in the first case. But if he is not willing to move, then the power operates. But the power can operate also independently of any question of the ability or willingness of the executive.

Mr. President : Supposing No. 1478 is carried, do you think No. 1483 is necessary?

Prof. K. T. Shah : No. That is the difficulty of moving these together before vote is taken on any. If No. 1478 is carried, then I myself would say it is unnecessary to move these. But I am putting the various things in my name, as I have thought of several contingencies, and if one is not carried another might be acceptable. With my experience of these amendments, I thought perhaps it might be as well to guard against such possibilities. That is why I am commending these motions to the House. I hope they will be accepted.

Mr. President : The article and the amendments are open for discussion.

Shri R. K. Sidhva : Mr. President, Sir, article 69 relates to the summoning of the sessions of the Houses of Parliament. It says that the Houses of Parliament shall meet compulsory twice a year, and leaves it to the choice of the President, if he feels it necessary, to summon it from time to time. That proviso exists in the 1935 Act also. I think in the 1935 Act, instead of "twice" it is only "once". From experience I have seen that generally Minister are reluctant to face the legislature and therefore, they avoid calling the sessions of the legislature, except in some cases when the session is to be held under the law. Under the new set-up, when we are framing our Constitution on the British Parliamentary system. I fail to understand why for the purpose of procedure of our business, we shall also not follow the same procedure. I have seen from my experience of the last two years that important official business even has been held over for want of time. Several Ministers have got according to them, other important work to perform and they have no time for legislative business. As an illustration, I may mention that during the last session of the Parliament, eleven important official Bills had to be held over, not to speak of many important non-official Bills and Resolutions. Now, these important Bills could have been disposed of if we had continued sitting, until the beginning of this session of the Constitution making body and thus we would have saved from waste of one full month in between. But the Ministers were busy with their ordinary routine work. I therefore, say that some new procedure has to be found out, as is done in Parliament in England where they do not require their Ministers to come up every time to pilot the business, but entrust the work to their deputies. It cannot be advanced as an excuse by the Minister that they had not the necessary time, and therefore they could not complete the work. There should be a rule, as in England that Parliament should sit continuously throughout the year. Under the rules we have a question-hour and it is a very crucial hour for the honourable Ministers, because that is the hour when the Members are supposed to get information from the Government, and I know in some cases the Ministers wanted to do away with this question-hour on certain days in order to cope with the accumulation of other work. It did actually happen so, although it is compulsory under rules. In the British Parliament also this question-hour is considered very important. There they have night sittings also. Some of our Members here, I know are averse to sitting longer hours. But I humbly submit that the Members themselves, should feel that under the new conditions they will have to give more time to this work. If we cannot devote more time, we certainly will not be discharging our duty towards our constituencies, and we will have no place in the new set-up. In the new set-up, when there will be six hundred members in our Parliament, I want to know how the work will be disposed of if there is going to be only two sittings in a year : I feel more sittings will have to be called, by law. Sir, the argument is advanced that when legislative business has got to be brought before Parliament, the Parliament will be summoned. But I have given you an illustration of important official business being held over, for want of time. It has been held over to the autumn session. I am sure it will not be finished in that session also, and will have to go to the next year's Budget Session. And in the Budget Session, we know crores and crores of rupees and Supplementary Demands up to about Rs. 80 crores were disposed of in three hours, despite protests from members. No more time was given, and the excuse was that we have no other time available. This method we have to change, if we really want to represent the people, and if we really want to scrutinise important items of the budget affecting our finances. And therefore, I contend that the four days that had been allowed to the Budget discussion, which of course by our agitation was increased to five days, is quite insufficient to dispose of a budget of about three hundred crores and also the Railway Budget. In all we took only three weeks as against three to four months in the British Parliament. Of course, under the rules, before 31st March, we have to pass the expenditure. But why not adopt the procedure of the British Parliament where payment to the services is made by a particular date? After that the discussion on various items of the budget can continue. If in the new People's Parliament of ours, we are not allowed full time for discussion of the budget, then, I submit in all humility, that it will be a mockery of democracy. We are told that we follow no other system of government except the British Parliament. But why do not you follow it in all respects, and not merely mistake it up when it suits you and leave it out when it does not? I am very strongly of the opinion that a House of six hundred members, the real representatives of the people, will have no opportunity to serve the people if you have only two sessions. At present budget session lasts from February to about tenth of April, it is only 53 days, deducting Saturdays and Sundays. The Autumn session is only three weeks, which minus Saturdays and Sundays comes to only about 16 or 17 days. My point, therefore, is that the session should last continuously for the year, except for a month or two months' intervening for recess, as it exists in Parliament. I hope Dr. Ambedkar will examine my arguments and, if he finds they are just, and reasonable see that the necessary provisions are made in the Act. It will smoothen the procedure and disposal will be much quicker. We are complaining of delays in correspondence etc. in the offices. But are we ourselves quick enough in the disposal of legislative business? It is disgraceful for us that during the last few months for want of time important official business had to be held over to the next session. If the Ministers feel that legislative business requires more sittings, then the Members have no business to say "no." But members also have become lukewarm and when they find Ministers unwilling to continue they also agree to the adjournment of the House. I therefore think that for the better disposal of business in future a suitable amendment should be made.

Mr. President : I desire to point out to honourable Members that at the rate at which we are going we may have to follow Mr. Sidhwa's advice and sit throughout the year; and I hope Members will consent not only to longer sessions but to longer sittings every day and, instead of one sitting only, have two or three sitting every day if necessary. Personally I have no objection to that, because I want the Constitution to be finished as soon as possible. I hope honourable Members will bear Mr. Sidhwa's remarks in mind whenever the question comes up of increasing the number of sittings or the number of hours.

Mr. Tajamul Husain : Sir, I will first deal with the amendment of Mr. Kamath which wants there should be three sessions of Parliament instead of two as mentioned in the Draft Constitution. I support this amendment, because it is common experience that in the budget session which is generally for two months we are not able to do anything except pass the budget and a few Bills. Therefore I support the proposal for three sessions viz., the budget session the summer session and the autumn session. There is a similar amendment by Prof. Shah (No. 1470) which wants that Parliament should be called at the beginning of the year and should continue throughout the year with intervals in between. This also appears to be reasonable, and it does not matter to me which one of these two is accepted.

Another amendment has been moved by Prof. Shah with which I agree, that if the President of the Republic is unable to summon the legislature either the Chairman of the Council of States or the Speaker of the lower House should have power to summon it. If they also do not do that the Prime Minister should in writing make a request to these two gentlemen to summon it. But supposing they refuse what will happen? In such case I think the Prime Minister himself should have power to call the Houses of Parliament. This is only to provide for an emergency and the Prime Minister is surely more important than anybody else. If he thinks there is an emergency to justify calling the Parliament, he should have power to do so. Sir, I support this amendment also.

Prof. Shibban Lal Saksena : Sir, this article has been criticised from two points of view, -viz., that the sittings of Parliament should be continuous and the President should not have the power to stultify the legislature by refusing to summon it. On the first point, I agree with Mr. Kamath and Mr. Sidhwa. The meetings of our present Parliament are too few and even Ministers complain that they have no time to be able to give an account of their actions throughout the year during the budget discussions. In fact they have resented only one or two hours being given to them for this purpose. I am sure my honourable Friend Dr. Ambedkar himself must have felt that the House has not been sitting long enough. We should follow the House of Commons in this respect and I hope the example left by the foreign rulers who had set up a mock parliament in India will not be continued any longer, and our Parliament will be a Parliament in the real sense of the term. It will have the opportunity to scrutinise every pie of expenditure and taxation. We should have very much longer sittings of the Parliament to enable it to discharge its duties properly. As regards the amendment of Prof. Shah about the summoning of Parliament by the Speaker etc., I think under our constitution which is modelled on the British systems, the President is only a substitute for the King and as such he has not much power. Therefore I do not think Prof. Shah's fears are justified and therefore these provisions are unnecessary. It would have been proper under the American type of constitution because there the President has very great powers and can defeat the purpose of the legislature, but in our constitution where he is merely a symbolic head he can do no harm. After all there are provisions to remove him by impeachment, though I hope such occasion will not arise. I therefore think Prof. Shah's amendment is not proper. But at regards the sittings of Parliament I agree we should have continuous sessions of the Parliament.

The Honourable Dr. B. R. Ambedkar : Sir, I regret that I cannot accept any of the amendments which have been moved to this article. I do not think that any of the amendments except the one which I have chosen now for my reply calls for any comment. The amendments moved by Prof. Shah raise certain points. His first amendment (No. 1470) and his second amendment (No. 1479) refer more or less to the same subject and consequently I propose to take them together to dispose of the arguments that he has urged. In those two amendments Prof. Shah insists that the interval between any two sessions of the Parliament shall not exceed three months. That is the sum and substance of the two amendments.

I might also take along with these two amendments of Prof. Shah the amendment of Mr. Kamath (No. 1471) because it also raises the same question. It seems to me that neither Prof. Shah nor Mr. Kamath has understood the reasons why these clauses were originally introduced in the Government of India Act, 1935. I think Prof. Shah and Mr. Kamath will realise that the political atmosphere at the time of the passing of the Act of 1935 was totally different from the atmosphere which prevails now. The atmosphere which was then prevalent in 1935 was for the executive to shun the legislature. In fact before that time the legislature was summoned primarily for the purpose of collecting revenue. It only met for the purpose of the budget and after the executive had succeeded in obtaining the sanction of the legislature for its financial proposals both relating to taxation as well as to appropriation of revenue, the executive was not very keen to meet the legislature in order to permit the legislature either to question the day-to-day administration by exercising its right of interpellation or of moving legislation to remove social grievances. In fact, I myself have been very keenly observing the conduct of some of the provincial legislatures in India which function under the Act of 1935, and I know of one particular province (I do not wish to mention the name) when the legislature never met for more than 18 days in the whole year and that was for the purpose of the legislature's sanction to the proposals for collecting revenue.

Mr. Tajamul Husain : Who was responsible for that?

The Honourable Dr. B. R. Ambedkar : As I was going to explain the same, mentality which prevailed in the past of the executed not wishing to meet the legislature and submitting itself and its administration to the scrutiny of the legislature was responsible for this kind of conduct.

Pandit Hirday Nath Kunzru : Which province was it?

The Honourable Dr. B. R. Ambedkar : You better let that lie. I can tell my honourable Friend privately which province it was. It was felt that if such a thing happened as did happen before 1935, it would be a travesty of popular government. To summon the legislature merely for the purpose of getting the revenue and then to dismiss it summarily and thus deprive it of all the legitimate opportunities which the law had given it to improve the administration either by question or by legislation was, as I said, a travesty of democracy. In order to prevent that sort of thing happening this clause was introduced in the Government of India Act, 1935. We thought and personally I also think that the atmosphere has completely changed and I do not think any executive would hereafter be capable of showing this kind of callous conduct towards the legislature. Hence we thought it might be desirable as a measure of extra caution to continue the same clause in our present Constitution. My Friends Mr. Kamath and Prof. Shah feel that is not sufficient. They want more frequent sessions. The clause as it stands does not prevent the legislature from being summoned more often than what has been provided for in the clause itself. In fact, my fear is, if I may say so, that the sessions of Parliament would be so frequent and so lengthy that the members of the legislature would probably themselves get tired of the sessions. The reason for this is that the Government is responsible to the people. It is not responsible merely for the purpose of carrying on a good administration : it is also responsible to the people for giving effect to such legislative measures as might be necessary for implementing their party programme.

Similarly there will be many private members who might also wish to pilot private legislation in order to give effect to either their fads or their petty fancies. Again, there may be a further reason which may compel the executive to summon the legislature more often. I think the question of getting through in time the taxation measures, demands for grants and supplementary grants is another very powerful factor which is going to play a great part in deciding this issue as to how many times the legislature is to be summoned.

Therefore my submission to the House is that what we have provided is sufficient by way of a minimum. So far as the maximum is concerned the matter is left open and for the reasons which I have mentioned there is no fear of any sort of the executive remaining content with performing the minimum obligation imposed upon them by this particular clause.

I come to the amendment of Prof. Shah (No. 1477). By this particular amendment Prof. Shah wants to omit the words "either House" from clause 67(2) (a). I could not understand his argument. He seemed to convey the impression-he will correct me if I am wrong-that because the upper chamber is not subject to dissolution it is not necessary for the President to summon it for the transaction of business. It seems to me that there is a complete difference between the two situations. A House may not be required to be dissolved at any stated period such as the Lower House is required to be dissolved at the end of five years : but the summoning of that House for transacting business is a matter that still remains. The House is not going to sit here in Delhi every day for 24 hours and all the twelve months of the year. It will be called and the members will appear when they are summoned. Therefore it seems to me that the power of summoning even the Upper House must be provided for as it is provided for in the case of the lower Chamber.

Then I take the two other amendments of Prof. Shah (Nos. 1473 and 1478). The amendments as they are worded are rather complicated. The gist of the amendments is this. Prof. Shah seems to think that the President may fail to summon the Parliament either in ordinary times in accordance with the article or that he may not even summon the legislature when there is an emergency. Therefore he says that the power to summon the legislature where the President has failed to perform his duty must be vested either in the Speaker of the lower House or in the Chairman or the Deputy Chairman of the Upper House. That is, if I have understood it correctly, the proposition of Prof. K. T. Shah. It seems to me that here again Prof. Shah has entirely misunderstood the whole position. First of all, I do not understand why the President should fail to perform an obligation which has been imposed upon him by law. If the Prime Minister proposes to the President that the Legislature be summoned and the President, for no reason, purely out of wantonness or cussedness, refuses to summon it, I think we have already got very good remedy in our own Constitution to displace such a President. We have the right to impeach him, because such a refusal on the part of the President to perform obligations which have been imposed upon him would be undoubtedly violation of the Constitution. There is therefore ample remedy contained in that particular clause.

But, another difficulty arises if we are to accept the suggestion of Professor K. T. Shah. Suppose for instance the President for good reasons does not summon the Legislature and the Speaker and the Chairman do summon the Legislature. What is going to happen? If the President does not summon the Legislature it means that the Executive Government has no business which it can place before the House for transaction. Because that is the only ground on which the President, on the advice of the Prime Minister, may not call the Assembly in session. Now, the Speaker cannot provide business for the Assembly, nor can the Chairman provide it. The business has to be provided by the Executive, that is to say, by the Prime Minister who is going to advise the President to summon the Legislature. Therefore, merely to give the power to the Speaker or the Chairman to summon the Legislature without making proper provisions for the placing of business to be transacted by such an Assembly called for in a session by the Speaker or the Chairman would to my mind be a futile operation and therefore no purpose will be served by accepting that amendment.

With regard to the last amendment, No. 1482 moved by Prof. K. T. Shah, the purpose is that the President should not grant the dissolution of the House unless the Prime Minister has stated his reasons in writing for dissolution. Well, I do not know what difference there can be between a case where a Prime Minister goes and tells the President that he thinks that the House should be dissolved and a case where the Prime Minister writes a letter stating that the House should be dissolved. Professor K. T. Shah, in the course of his speech, has not stated what purpose is going to be served by this written document which he proposes to be obtained from the Prime Minister before dissolution is sanctioned. I am therefore unable to make any comment. If the object of Prof. K. T. Shah is that the Prime Minister should not arbitrarily ask for dissolution, I think that object would be served if the convention regarding dissolution was properly observed. So far as I have understood it, the King has a right to dissolve Parliament. He generally dissolves it on the advice of the Prime Minister, but at one time, certainly at the time when Macaulay wrote English History where he has propounded this doctrine of the right of dissolution of Parliament, the position was this : it was agreed by all politicians that, according to the convention then understood, the King was not necessarily bound to accept the advice of the Prime Minister who wanted a dissolution of Parliament. The King could, if he wanted, ask the leader of the Opposition if he was prepared to come and form a Government so that the Prime Minister who wanted to dissolve the House may be dismissed and the leader of the Opposition could take charge of the affairs of Government and carry on the work with the same Parliament without being dissolved. The King also had the right to find some other Member from the House if he has prepared to take the responsibility of carrying on the administration without the dissolution of the House. If the King failed either to induce the leader of the Opposition or any other Member of Parliament to accept responsibility for governing and carry on the administration he was bound to dissolve the House. In the same way, the President of the Indian Union will test the feelings of the House whether the House agrees that there should be dissolution or whether the House agrees that the affairs should be carried on with some other leader without dissolution. If he finds that the feeling was that there was no other alternative except dissolution, he would as a Constitutional President undoubtedly accept the advice of the Prime Minister to dissolve the House. Therefore it seems to me that the insistence upon having a document in writing stating the reasons why the Prime Minister wanted a dissolution of the House seems to be unless and not worth the paper on which it is written. There are other ways for the President to test the feeling of the House and to find out whether the Prime Minister was asking for dissolution of the

House for bona fide reason or for purely party purposes. I think we could trust the President to make a correct decision between the party leaders and the House as a whole. Therefore I do not think that this amendment should be accepted.

Mr. President : I shall now put the amendments to vote one by one.

The question is :

"That in clause (1) of article 69, for the words 'twice at least in every year, and six' the words 'once at least in every year at the beginning thereof, and more than three' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in clause (1) of article 69, for the word 'twice' the word 'thrice' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That after clause (1) of article 69, the following proviso be inserted :-

'Provided that Parliament or either House thereof, once summoned and in session, shall continue to remain so during the year; and such sitting shall be deemed to be continuous for the entire Parliamentary year notwithstanding any interruption due to holidays, adjournment, or prorogation.'"

The amendment was negatived.

Mr. President : The question is :

"That in sub-clause (a) of clause (2) of article 69, the words the Houses or either House of' be deleted."

The amendment was negatived.

Mr. President : The question is :

"That at the end of sub-clause (a) of clause (2) of article 69, the following be added :-

"Provided that if at any time the President does not summon as provided for in this Constitution for more than three months the House of the People, or either House of Parliament at any time after the dissolution of the House of the People, or during the currency of the lifetime of the House of the people of more than 90 days, the Speaker of the House of the People or the Chairman of the Council of States may summon each his respective house which shall then be deemed to have been validly summoned and entitled to deal with any business placed or coming before it."

The amendment was negatived.

Mr. President : The question is :

"That the full-stop at the end of sub-clause (c) of article 69 be substituted by a comma and the following be added :-

"On the advice of the Prime Minister, if such dissolution is earlier than the completion of the normal term as provided for in section 68(2); provided that the reasons given by the Prime Minister for such dissolution shall be recorded in writing.'"

The amendment was negatived.

Mr. President : The question is :

"That after clause(2) of article 69, the following be inserted :

'(3) If at any time the President is unable or unwilling to summon Parliament for more than three months after the prorogation or dissolution of the House of the People and there is in the opinion of the Prime Minister a National Emergency he shall request the Speaker and the Chairman of the Council of States to summon both Houses of Parliament, and place before it such business as may be necessary to cope with the National Emergency. Any business done in either House of Parliament thus called together shall be deemed to have been validly transacted, and shall be valid and binding as any Act, Resolution or Order of Parliament passed in the normal course :

'Provided further that if at any time the President is unable or unwilling to summon Parliament for a period of more than three months or 90 days after prorogation or dissolution of the House of the People, and the Prime Minister is also unable or unwilling to make the request aforesaid, the Chairman of either House of Parliament may do so, and the Houses of Parliament thus called together shall be deemed to be validly convened and entitled to deal with any business placed before it.'"

The amendment was negatived.

Mr. President : The question is :

"That is sub-clause (b) of clause(2) of article 69, after the words 'the Houses' the words 'over a period not exceeding three months' be added."

The amendment was negatived.

Mr. President : All the amendments have been rejected.

The question is :

"That article 69 stand part of the Constitution."

The motion was adopted.

Article 69 was added to the Constitution.

New Article 69-A

Mr. President : There is notice of a fresh article given by several Members. No. 1484 Mr. Ramalingam Chettiar.

Shri T. A. Ramalingam Chettiar : (Madras : General) : Sir, I will move it at a more convenient stage. It is not necessary at this stage to move it.

Article 70

Mr. President : Then we come to article 70. There are two amendments of a drafting nature by Mr. Kamath, Nos. 1485 and 1486.

Shri H. V. Kamath : They are not of a drafting nature. If however you hold they are, I shall not insist on moving them.

Mr. President : There is no other amendment.

The question is :

"That article 70 stand part of the Constitution."

The motion was adopted.

Article 70 was added to the Constitution.

Article 71

Mr. President : There is one amendment No. 1487 of which notice has been given. It is negative in character and so I do not allow it to be moved.

Amendment No. 1488 by Prof. Shah. This is covered by article 70 which we have already adopted.

Prof. K. T. Shah : I am not moving it, Sir.

(Amendment No. 1489 was not moved.)

Mr. President : Amendment No. 1490 by Prof. Shah.

Prof. K. T. Shah : Mr. President, Sir, I move :

"That in clause (1) of article 71, for the words 'and inform Parliament of the cause of its summons' the words 'on the general state of the Union including financial proposals and other particular issues of policy he deems suitable for such address' be substituted."

The amended article would read :

"At the commencement of every session the President shall address both Houses of Parliament assembled together on the general state of the Union, including financial proposals and other particular issues of policy he deems suitable for such address."

There is a difference in the wording here and the way I have suggested. I should like the President's address to concern itself mainly with the general issues of policy, or the prospects before the country, rather than with the specific causes of the summons. It is the practice in the British Parliament for the King, at the opening of the Parliament, to deliver the Address from the Throne. In that, generally, the issues are mentioned. The main proposals for legislation that the Government proposes to bring forward are mentioned, and specific mention is also made of the demands and the supplies that may be expected. Now, if you say merely the "causes of the summons", it will mean the immediate necessity of the day; whereas if freedom is left to the President to review the general state of affairs, and also to indicate the broad lines of proposed legislation and the policy that may be placed before the House, I think the latitude would be much greater. The officials review, so to say, of the country's situation would go a long way to help the people to realise the way their Government is functioning; and also to be aware from time to time of the tasks that their Government is undertaking, and how far these tasks are being discharged.

I think that, as a non-party head of the State, for the time at any rate, representing the Republic, the President should give a general review, and not merely confine himself to the causes for which the House is being summoned and hence this amendment. I place it before the House.

Mr. President : The other three amendments Nos. 1491, 1492 and 1493 are of a drafting nature and are disallowed. The article and the amendment moved are now open to discussion.

Dr. P. S. Deshmukh (C. P. & Berar : General) : You have ruled, Sir, that amendment No. 1487 is not admissible since it is purely a negation of the clause. I submit, Sir, that I do not feel convinced as to the necessity of the clause itself, much less of the amendment that has been moved by Professor K. T. Shah. Sir, we have already passed a clause by which it shall be open to the President to address either House of Parliament. Now by this clause we are trying to make it absolutely binding on the President that at the commencement of every session he shall address both the Houses of Parliament assembled together and the purpose also has been stated. We have also just had a lengthy debate on the necessity of calling Parliament frequently and some of the honourable Members were insistent that it would be desirable if the Parliament were to meet all the year round, excepting during certain recesses that it may enjoy. I feel, Sir, that nowhere, not even in the British Constitution, it is compulsory upon the King to send an address every time the Parliament meets. So I am really at pains to understand a deliberate provision for compelling our President, whose place and office is more akin to that of King of England. He is the Constitutional Head of India and to compel him that he must give an address and he must also inform the causes which have led him to call the Parliament does not appeal to me. I feel, Sir, that there is no necessity, nor any very useful purpose will be served by having this compelling clause, passed by the House. Of course Prof. K. T. Shah's amendment goes much too far. He also wants that the clause should include the subjects on which he will deliver his address. This will be binding the President's discretion too much. There is also no necessity for a provision in the Constitution by which time for discussion of the President's speech would have compulsorily to be allotted. I think, Sir, what we have provided for is more than enough and there is no necessity for compelling him that he must address every session and that he must address the session on a particular list of subjects. I think there is no necessity for this clause and I would be glad if Dr. Ambedkar could agree to the omission of it.

The Honourable Dr. B. R. Ambedkar : Prof. K. T. Shah simply wants, in the terms in which he has used, stated explicitly, what in my judgment is implicit in the phrase 'causes of its summons'. I think this phrase is wide enough to include everything that Prof. K. T. Shah wants and if I may say so, this phraseology, namely "shall address and inform Parliament of the causes of its summons" is a phrase which we find used in British Parliament. If Prof. Shah were to refer to Campion's book on the rules of the House of Commons, he will find that this phraseology is used there and after a long and great deal of search for a proper phraseology, we are fortunate enough in finding these words in Campion and I think it is a good phrase and ought to be retained since it covers all that Prof. K. T. Shah wants. Prof. K. T. Shah said that there ought to be a provision for the President also to send messages and to otherwise address the House. I thought that there was definite provision in article 70 which we just now passed, which enables the President to address both Houses of Parliament, also to send messages and the messages may be in relation to a particular Bill or may be any other proceedings before Parliament. I do not think that anything more is required than what is contained in Article 70 so far as the independent right of the President addressing the House is concerned and that is amply provided for in article 70. I therefore think that there is no necessity for this amendment at all.

Mr. President : The question is :

"That in clause (1) of article 71, for the words 'and inform Parliament of the cause of its summons' the words 'on the general state of the Union including financial proposals, and other particular issues of policy he deems suitable for such address' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That article 71 stand part of the Constitution."

The motion was adopted.

Article 71 was added to the Constitution.

Article 72

Mr. President : The motion is :

"That Article 72 form part of the Constitution"

(Amendment No. 1494 was not moved.)

Prof. K. T. Shah : Sir, I beg to move :

"That in article 72, after the word 'India' the words 'if elected member of Parliament' be inserted."

and the amended article would read as follows :-

"Every Minister and the Attorney-General of India, if elected member of Parliament, shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses and any Committee of Parliament of which be may be named a member, but shall not by virtue of this article be entitled to vote."

My amendment, Sir, seeks to make only such ministers as are elected members of parliament to have this right. I think it is a part of the theory on which this Constitution seems to be based that ministers should be responsible to the legislature. That responsibility could be exercised only if they are able to answer for themselves, so to say, as members of Parliament and sitting in Parliament.

The right extended to those who are not members of parliament, and yet are allowed to speak or take part in the proceedings in either Houses of Parliament, or of any committee thereof, of which such a person may be named a member, appears to me to be an anomaly, if after allowing the right to speak, you do not grant him the right to vote. It is at the same time true that a person who is not a member of a body can have no right to vote in that body. The idea is that the Minister or the Attorney-General, who is in possession of material information and reasoning that may very well influence the judgment of the House, necessitates that such a party should be in a position to place his point of view before the body of which he is a member and where he is speaking. But if he is not a member of that body, the position becomes very difficult, in as much as those who are there are also aware that he has no right to vote and has no place, therefore, as one of them in the House.

The doctrine of ministerial responsibility requires in my opinion that all the principal Ministers should also be members of the legislature; and if they are members of the Legislature, then, as a matter of right they will be entitled to speak as well as vote in the House of which they are members. If you wish to extend this facility to Ministers to 'either House', even if one is not a member of that 'either House', then I think it would be better to word this a little differently. I suggest that if you are an elected member of either House, you may nevertheless be entitled to speak in the other House, just to make known your point of view and explain any particular problem that may be before the other House of which you are not a member when that other House comes to discuss it. But the position in this article as I see is this:

A minister who is entitled to speak and take part in the proceedings, or be member of a committee, and who has the right to speak but has not the right to vote, is liable to feel the sense of responsibility much less. Apart from being an anomaly in the Constitution itself, of a Minister being allowed to speak, but not to vote, it would undermine the sense of Ministerial responsibility that is essential.

I therefore suggest that the right of speaking and taking part in the proceedings, as well as becoming members of any committee, should also go with the right to vote; provided that the party is an elected member of the House. I say definitely "elected member" because these experts, for instance, who are, under the provisions of the article adopted earlier by this House, permitted to be nominated by the President for any specific purpose as experts to advise and assist in the passage of any Bill or any other measure, they naturally not being elected, are not representatives of the people; and as such may rightly be confined to giving their expert opinion on the matters before the House, and advising on which they are specifically nominated, but not voting on the question. I can understand therefore that such people may be excluded from the right of voting. But, Ministers in a Constitution based on the principle of Ministerial responsibility should, I think, be not only entitled to take part in the proceedings of any House, but should be members of that House with right of voting as well. Accordingly I commend this amendment to the House.

(Amendment No. 1496 was not moved.)

Mr. President : Amendment No. 1497 is of a drafting nature.

The article and the amendment are now for consideration.

Shri H. V. Kamath : Mr. President, I regret I have not been able to follow the import of Professor K. T. Shah's amendment and therefore I rise to oppose it.

The article as it stands is to my mind quite clear. The article conveys the meaning that any Minister or Attorney-General shall have the right to participate in the debate, but by virtue of this article itself will not be entitled to vote. My friend Professor Shah wants to insert a provision that a Minister or Attorney-General if an elected member of Parliament shall have the right to speak etc., but shall not be, virtue of this article, entitled to vote. Does he wish to tell the House that a Minister or the Attorney-General even after being an elected member of Parliament shall not have the right to vote? It comes to this : that he wants to provide that a Minister or the Attorney General even after being an elected member of Parliament shall have the right to speak in, or otherwise participate in the proceedings of the House, but shall not be entitled to vote. Then, I ask my learned Friend Professor Shah, who is entitled to vote? If you want to debar even elected members of Parliament from exercising their vote in Parliament, I fail to see to whom he wants to give the right of voting. Does he wants to confer this right on those members of Parliament who are nominated. Who are not elected? I really fail to see what purpose is being served by the amendment which he has moved. The article as a matter of fact provides for two distinctive categories, as it stands, so far as I have been able to understand it. One is, Minister pending their election and the Attorney-General who may be nominated. Because a Minister under article 61 (5) may hold his office for six months without being an elected member of the House and under article 63 the Attorney-General need not be an elected member of the House. The President can appoint any person who is qualified to be appointed as a Judge of the Supreme Court to be the Attorney-General. For either contingency we have to provide for. This, to my mind, is what this article does. Therefore, clear as I am in my mind that this article 72 debars only nominated members of Parliament from necessarily exercising their vote and does not take away that right of voting from elected members of the House whether a Minister or otherwise, I fail to see with what purpose Professor Shah has moved his amendment and I therefore appeal to the House to reject his amendment.

Mr. Tajamul Hussain : Sir, there are only five minutes at my disposal and I propose to finish my speech in those five minutes.

Now, Professor Shah has moved two amendments. His first amendment is to delete the words "Every Minister and". Therefore, he does not want a Minister to participate in the debate. The result would be this. Supposing in a Province or the Indian Union, there are....

Mr. President : That amendment has not been moved. You are referring to amendment No. 1494. Only amendment No. 1495 has been moved.

Mr. Tajamul Hussain : I am sorry I made a mistake. I am now dealing with amendment No. 1495 that has been moved by Professor Shah in which he says that the words "if elected member of Parliament" be inserted after the words "Attorney-General of India". He means that the Attorney-General of India shall be an elected member of Parliament. My objection to this is this. Suppose there is no qualified member of the Bar elected, you cannot guarantee that of the person elected, one must be a qualified member from the Bar-how are you going to have an elected member as the Attorney-General? My Friend Mr. Kamath has already dealt with article 63 which provides that the President can appoint as the Attorney-General for India from amongst the Judges of the Supreme Court. Therefore, I submit that the amendment moved by Professor Shah that the Attorney-General must be an elected member has no sense at all. I do not understand why he has moved that amendment. With these words, I oppose the amendment.

The Honourable Dr. B. R. Ambedkar : Sir, I do not think Professor Shah has really understood the underlying purpose of article 72. In order that the matter may be quite clear, I might begin by stating some simple fundamental propositions. Every House is an autonomous House; that is to say, that it will not allow anybody who is not a member of that House either to participate in its proceedings or to vote at the conclusion of the proceedings. The only persons who are entitled to take part in the proceedings and to vote are the persons who are members of that House. Now, we have got an anomalous situation and it is this. We have got two Houses so far as the Centre is concerned, the Upper House and the Lower House. It is quite possible that a person who is appointed a Minister is a member of the Lower House. If he is in charge of a particular Bill, and the Bill by the Constitution requires the sanction of both the Houses, obviously, the Bill has not only to be piloted in the Lower House, but it has also to be piloted in the Upper House. Consequently, if a person in charge of the Bill is a member of the Lower House, he would not ordinarily be in a position to appear in the Upper House and to pilot the Bill unless some special provision was made. It is to enable a person who is a member of the Lower House and who happens to be the Minister in charge of a Bill to enable him to enter the Upper House, to address it, to take part in its proceedings that article 72 is being enacted. Article 72 is really an exception to the general rule that no person can take part in the proceedings of a House unless that person is a Member of that House. It is essential that the Minister who happens to be a member of the Upper House must have the right to go to the Lower House and address it in order to get the measure through. Similarly if he is a member of the Lower House, he must have the liberty to appear in the Upper House, address it and get the measure through. It is for this sort of thing that article 72 is being enacted. The same applied to the Attorney-General. The Attorney-General may be a member of the Lower House. He may have to go to the Upper House but being a member of the Lower House he may not have the legal right to appear in the Upper House. Consequently the provision has been made. Similarly if he is a member of the Upper House, he may not be having a legal right to enter the Lower House and address it. It is therefore for this purpose that this is enacted. We have limited this right to take part in the proceedings only. We do not thereby give the right to vote to any Minister who is taking part in the proceedings of the other House. Because we do not think that voting power is necessary to enable him to carry out the proceedings with regard to any particular Bill. I thought my friend also said that the word 'Minister' ought to be omitted, and the word 'elected person' ought to be introduced; but that again would create difficulty because we have stated in some part of our Constitution that it should be open for a person who is not an elected member of the House to be appointed a Minister for a certain period. In order to enable even such a person it is necessary to introduce the word 'Minister' and not 'person'. That is the reason why the word 'Minister' is so essential in this context. I oppose the amendment.

Mr. President : I now put the amendment to vote.

The question is :

"That in article 72, after the word 'India' the words 'if elected member of Parliament' be inserted."

The motion was negatived.

Mr. President :I put the article to vote.

The question is :

"That Article 72 stand part of the Constitution."

The motion was adopted.

Article 72 was added to the Constitution.

Mr. President : The House stands adjourned till Eight O'clock tomorrow morning.

The House then adjourned till Eight of the Clock on Thursday the 19th May, 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VIII

Thursday, the 19th May 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad in the Chair.)

DRAFT CONSTITUTION-*(contd.)*

New Article 72-A, B and C

Mr. President : We have now to proceed with the discussion of the articles of the Draft Constitution. The next thing to take up is amendment No. 1498 of Prof. K. T. Shah.

Prof. K. T. Shah : (Bihar : General) : Sir, I do not wish to move the new article 72-A, I shall move only 72-B and 72-C. There is, I find a small misprint in the amendment as printed here. The word cannot be "Minister" of Parliament, but "Member" of Parliament. With your permission I am making the correction.

Sir, I beg to move :

> "That after article 72, the following new articles be inserted :-
>
> > `72-B. A Member of Parliament may vacate his seat by resignation in writing addressed to the Speaker of the People's House, or to the Chairman of the Council of States, as the case may be. Any Member of Parliament who accepts any office or post carrying a salary, shall be deemed forthwith to vacate his seat, and cease to be a Member of Parliament. No one shall continue to be a Member of either House who is convicted of any offence of-
> >
> > (a) treason against the sovereignty, security, or integrity of the State,
> >
> > (b) of bribery and corruption,
> >
> > (c) of any offence involving moral turpitude, and liable to a maximum punishment of two years rigorous imprisonment.
> >
> > 72-C. All expenses in connection with Election to parliament of all Candidates, whether at the time of a General-Election or a Bye-Election shall be defrayed out of the Public Treasury, in accordance with a scale prescribed by Parliament; provided that any candidate securing less than 10 per cent of the votes cast at the election shall not be entitles to claim such expenses.'"

Sir, these two additions that I am suggesting lay down in the first place the manner in which Members of Parliament can resign their office or be relieved of it. Particularly, importance should attach to the disqualification for sitting and voting in Parliament even after a member is once elected, if guilty of any of the offences mentioned. Anybody convicted of treason, bribery or corruption or of any offence involving moral turpitude, would obviously be unfit to sit in Parliament. I think some machinery should be provided to allow automatically such persons to be excluded from membership of Parliament, even though they might have been elected in the regular way.

The second proposition is more important from the point of view of expenses. I suggest that all election expenses should be paid out of the public treasury, in accordance with a certain prescribed scale; and that anyone who fails to secure a given percentage of votes should not be entitled to claim such expenses. My purpose in laying down this is that one of the handicaps which makes democracy in actual practice a failure is the heavy cost of seeking representation, seeking election, to public bodies like the Central Parliament for a large country like this. The ordinary expenses may run to such amounts that only large Parties with large Party funds can alone carry on election campaigns, extending over months perhaps, and involving hundreds of workers to canvas votes. Private individuals who can afford to stand on their own must have very large bank balances to be able to do so. Now, it does not necessarily mean that persons who have considerable means of their own, or who are able to command influence in large well organised Parties with large funds at their disposal would be the best representatives of the people. I, therefore, suggest-that is the practice elsewhere too-that election expenses should be met from the public treasury, so that there may be no unfair or improper advantage to the richer candidates as against the poorer candidates.

I also suggest that the scale of expenditure should be laid down so that there is no abuse of this privilege. I have suggested that election expenses be met out of the public treasury both at the general election and at the bye election. I have also added the safeguard that any candidate who secures less than 10 per cent. of the votes cast cannot claim such expenses. This is some guarantee, that the facility, the help will not be abused by any candidate. The provision I suggest would be of substantial help to candidates who for lack of funds would otherwise not be able to come forward for such public service.

I think the principle is sufficiently sound for me to commend it to the House.

Mr. President : Does any Member wish to speak on this amendment of Prof. K. T. Shah?

Shri H. V. Kamath (C. P. & Berar : General) : Mr. President, I take it, Sir, that Professor Shah has not moved 72-A and that he has moved only 72-B and 72-C.

I submit, Sir, that as regards 72-B there is no need for a new article at the present stage. If Professor Shah would take the trouble of referring to an article which will come up before us shortly, namely, article 83, he will find that it provides for disqualifications of Members-either for being, chosen as Members of Parliament, or for continuing as Members. The various disqualifications have been laid down in sub-clauses (a), (b), (c), (d) and (e). Sub-clause (e) is comprehensive in this sense, that a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament if he is so disqualified by or under any law made by Parliament. It is true enough that sub-clauses (a), (b), (c) and (d) do not envisage the contingencies visualised by Professor Shah. But the new Parliament which will be elected under this Constitution will, I hope, Sir-in spite of the misgivings which you expressed yesterday as regards the dangers inherent in the adult franchise and the wider rights and privileges that are being conferred under the Constitution-be composed of persons imbued with wisdom and public spirit, and that in spite of all those handicaps and disadvantages we shall be able to elect persons to this Parliament who will discharge their duties to the electorate and the country with wisdom and sagacity. I am sure that this new

Parliament under the new Constitution will frame such rules as will debar such Members from sitting or continuing in either House of Parliament as have been convicted of any of the offences which are mentioned by Prof. Shah in this new article 72-B. The case mentioned in the amendment is so obvious that nobody who is imbued with the right public spirit will say that a member convicted of treason, bribery or corruption or any other offence involving moral turpitude should be allowed to continue as a Member of either House of Parliament. It is derogatory not merely to the dignity of the Houses of Parliament but also derogatory to the good sense and wisdom of the people who elected them as members of Parliament. I therefore feel that the amendment of Prof. Shah 72-B is unnecessary at this stage and out of place here. As regards 72-C I think it is a mere matter of procedure which can be regulated later on when the procedure for the elections to Parliament and bye-elections comes up before Parliament. I therefore feel that both the amendments are out of place and need not be considered at this stage. I appeal to the House to reject both the amendments.

Mr. Tajamul Husain (Bihar : Muslim) : My honourable Friend Prof. Shah has moved two amendments-72-B and 72-C. I find that I am not prepared to agree with my honourable Friend and I therefore oppose both the amendments. Under 72-B my honourable Friend wants that if any member of Parliament is guilty of moral turpitude he should cease to be a member. As has been pointed out by Mr. Kamath, this is already mentioned in article 83. So this is absolutely redundant here. Apart from that, if he wishes to move this amendment he should move it at the proper place when we are discussing article 83, and so at this stage it should be thrown out.

As regards 72-C the point of my honourable Friend Prof. Shah is that Government and the public treasury should meet the expenses of all the candidates who stand for Parliament. I oppose this also because this is not the practice in any civilised country in the world where there is a parliamentary system on democratic lines. We may have to spend crores of rupees. Also look at the number of people who will stand when they know that they will not have to spend out of their pockets for their elections. If Prof. Shah thinks that individual candidates should not spend money from their pockets let the party which sponsors their candidature spend the money and not the government. I oppose this amendment because at present our country is not rich enough to meet the individual expenses of a candidate.

Prof. K. T. Shah : I should like to withdraw my amendment 72-B, if I may.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

"That after article 72 the following new article be inserted :-

> 'All expense in connection with Election, to Parliament of all candidates whether at the time of a General-election or a Bye-Election shall be defrayed out of the Public Treasury, in accordance with a scale prescribed by Parliament; provided that any candidate securing less than 10 per cent of the votes cast at the election shall not be entitled to claim such expense.'"

The amendment was negatived.

Article 73

Mr. Tajamul Husain : Sir, before we proceed I would like to know whether you could now take up article 73 as we were given to understand that only those articles will be taken up for discussion which relate to election matters, so that the electoral rolls may be prepared as soon as possible. I submit that article 73 does not deal with election matters : it deals with the offices of the President, Vice-President and so on.

Mr. President : We wanted to take up the articles dealing with election matters but I was told that honourable Members were not yet quite ready and wanted a day or two before those articles could be taken up. That is why I have accommodated them and we shall go on with those articles from Monday next.

The motion is :

"The article 73 form part of the Constitution."

(Amendments Nos. 1499, 1500 and 1501 were not moved.)

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Sir, I would like to move Amendment No. 1502. It is not a formal amendment.

Sir, I beg to move :

"That in clause (2) of article 73, for the words 'another member' the words a member be substituted."

The text as it stands rather favours the election of 'another member' and not the member who has ceased to be the Deputy Chairman. According to article 74, a Deputy Chairman shall vacate his office if he ceases to be a member or he may resign. When an election of a Deputy Chairman takes place he would be debarred from contesting for no fault of his. I submit that for the words 'another member' the words 'a member' be substituted, leaving it open to the outgoing Deputy Chairman to contest the seat if he has meanwhile been re-elected.

There is however one contingency in sub-clause (c) of article 74 where the Deputy Chairman may be removed for want of confidence. I do not know whether it is desired to allow him also to contest. At any rate, this is a matter which requires consideration and I shall be content if it is considered by the Drafting Committee, because there is a complication in sub-clause (c). It may be desired that he may not be allowed to contest, but in the other case there is no reason why he should not be allowed to be a candidate.

There is one other thing which I would suggest here, if I am permitted. Clause (1) of article 73 is a repetition of what we have already accepted and it is a mere duplication. Clause (1) says : "The Vice-President shall be the *ex-officio* Chairman of the Council of State," I beg to draw the attention of the House to article 53. This is identical with clause (1) of article 73.

Article 53 also runs to the same effect. It says : "The Vice-President shall be *ex-officio* Chairman of the Council of States". There are certain conditions and there is a proviso. I submit that the same provision, word for word, has already been accepted in article 53 which is fuller and more complete. At any rate we have made the same provision in identical terms in article 53. Therefore sub-clause (1) is a mere duplication. We certainly do not desire to have two Chairman of the Council of States. Therefore clause (1) should be deleted or the two clauses may be put separately and clause (1) ruled out. I hope that the Honourable Dr. Ambedkar will consider this and see whether we should provide for the same thing twice.

Mr. Tajamul Husain : Sir, Mr. Naziruddin Ahmad wants that instead of the words 'another Member' there should be the words 'a Member'. I oppose it. My reason is this : clause (2) of article 73 runs thus :

"The Council of States shall, as soon as may be, choose a member of the Council to be Deputy Chairman thereof, and so often as the office of Deputy Chairman becomes vacant the Council shall choose another member to be Deputy Chairman thereof."

The point is this. Supposing a Deputy Chairman has been removed from office for certain reasons, if the word 'another' is there the Council cannot choose him, but some other member. That is why the word 'another' is put in. When a Deputy Chairman resigns or if he is not wanted again-if he is removed we cannot have him again-another member will have to be chosen. If you have the words 'a member' there, the Council may choose the same member again. Therefore the words 'another member' are more appropriate and more correct and better than the words 'a member'. I oppose the amendment.

The Honourable Dr. B. R. Ambedkar (Bombay : General) Mr. President, Sir, I cannot help saying that the amendment moved by Mr. Naziruddin Ahmad is a thoroughly absurd one and is based upon an utter misconception of what the clause deals with. He does not seem to understand that there is a distinction between re-election of a person to the same office and a new election. What we are dealing with in article 73 is not re-election, but a new election. A new election is the result of a vacancy in the office by reason of the circumstances mentioned in article 74. By reason of article 74 the same person has ceased to be a member of the House, you cannot say that they may elect 'a member' which may mean the same person who previously held office. Consequently in order to meet this contingency, the proper wording is 'another member', which may mean the same person who previously held office. Consequently in order to meet this contingency, the proper wording is 'another member' because that member has become disqualified under article 74. Therefore the wording of article 73 is perfectly in order. I may state here that if a member ceases to be a member by efflux of time, he can be re-elected, because he is 'another member'.

Mr. President : The question is :

"That in clause (2) of article 73, for the words 'another member' the words 'a member' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That article 73 stand part of the Constitution."

The motion was adopted.

Article 73 was added to the Constitution.

Article 74

Mr. President : Article 74 is for consideration. Amendment No. 1503 is covered by another already passed.

(Amendments Nos. 1504 to 1508 were not moved.)

Mr. President : As there are no amendments to article 74 I will put it to the House.

The question is :

"That article 74 stand part of the Constitution.'

The motion was adopted.

Article 74 was added to the Constitution.

Article 75

Mr. President : Article 75 is for consideration.

(Amendments Nos. 1509, 1510 and 1511 were not moved.)

There is an amendment to amendment No. 1511. As amendment No. 1511 is not moved, it does not arise.

The question is :

"That article 75 stand part of the Constitution."

The motion was adopted.

Article 75 was added to the Constitution.

Mr. President : There is notice of a new article 75-A-amendment No. 28 of List II.

New Article 75-A

Shri T. T. Krishnamachari (Madras : General) Sir, I beg to move :

"That after article 75, the following new article be inserted :-

> '75-A. At any sitting of the Council of States, while any resolution for the removal of the Vice-President from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of the last preceding article shall apply in relation to every such sitting as they apply in relation to a sitting, from which the Chairman or, as the case may be, the Deputy Chairman, is absent.'"

Sir, the reason for this new article is that in the event of proceedings being taken against the Chairman or the Deputy Chairman for their removal, the Chairman or the Deputy Chairman might be present in the House to answer the charges against him; and if he is present, unless it is expressly stated that he will not preside, the Chairman or, when he is absent, the Deputy Chairman, will have to preside. In order to obviate this particular difficulty, this new article is being moved.

Dr. P.S. Deshmukh (C. P. & Berar : General) : I cannot hear anything.

Shri T. T. Krishnamachari : This amendment is being moved to overcome the technical difficulty that will arise in the case of proceedings against the Chairman, or the Deputy Chairman, as the case may be, of the Council of States. The article is self-explanatory and the difficulty that it seeks to overcome will be clear to any member who reads the article.

Shri H. V. Kamath : Mr. President, Sir, I feel that the article as has been moved before the House suffers from a slight lacuna. The lacuna has arisen because the article merely says that the Chairman or the Deputy Chairman shall not preside on any occasion when the question of his removal from office is under consideration. So long as the article does not provide specifically, does not lay down explicitly in so many words that somebody else from the House or outside the House shall preside on such occasions, the article as it stands, cannot to my mind be clear in its significance or its import. The article must at the same time state that the House shall elect somebody from within the House or appoint somebody else to preside on such occasions. Otherwise, it will mean that when the question of removal of the Chairman is under consideration, the Chairman shall not preside; but who will preside?

I feel that this lacuna must be removed before the article is passed by the House. The article as it stands cannot be accepted by the House.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, no such difficulty as has been pointed out by Mr. Kamath is likely to arise, and there is, I submit, no lacuna whatsoever. The position will be this : If the Chairman is being tried, so to say-I am using the popular phrase-then, although he is present, the Deputy Chairman shall preside. If the Deputy Chairman is being tried, the Chairman will preside; and when the Deputy Chairman is being tried, if the Chairman is not present to preside, then what the new clause says is that clause (2) of article 75 will apply. Clause (2) of article 75 says that "During the absence of the Chairman or the Deputy Chairman from any sitting of the Council of States, such person as may be determined by the rules of procedure of the Council, or if no such person is present, such other person as may be determine by the Council shall act as Chairman." Therefore that difficulty is met by the application of clause (2) of article 75 to the case dealt with by this new article 75-A.

Mr. President : The question is :

"That after article 75, the following new article be inserted :-

'75-A. At any sitting of the Council of States, while any resolution for the removal of the Vice-President from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration," the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of the last preceding article shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman or, as the case may be, the Deputy Chairman, is absent.'"

The motion was adopted.

Article 75-A was added to the Constitution.

Article 76

Mr. President : The motion is :

"That article 76 stand part of the Constitution."

(Amendment No. 1512 was not moved.)

Mr. President : Amendment Nos. 1513, 1514, 1515 are all verbal and therefore disallowed.

Amendment No. 1516 by Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : I do not wish to formally move this amendment, but I want to make a few remarks. A similar amendment of mine was very kindly characterised by Dr. Ambedkar as absurd. I submit, Sir, my amendment was not absurd. There is yet time to reconsider the matter in the Drafting Committee. What I wanted to submit to the House was that if the Deputy Chairman loses his seat by resignation or by losing his membership, and if he is re-elected as a member, he should not be debarred from contesting. The only difficulty was in clause (c) of article 74. I think it is a very substantial matter that if a Deputy Chairman loses his seat but is re-elected, then he should not be debarred from contesting. That was the point I wanted to bring to the notice of the House. The House has already declared itself against the amendment, and so I do not wish to move it. I only submit that the amendment is not at all absurd but rather very reasonable.

The Honourable Dr. B. R. Ambedkar : We have already dealt with that amendment, and a similar was moved by my honourable Friend to article 73.

Mr. President : That has already been disposed of. As regards article 76 there is no amendment.

(Amendments Nos. 1517 and 1518 were not moved.)

Mr. President : The question is :

"That article 76 stand part of the Constitution."

The motion was adopted.

Article 76 was added to the Constitution.

Article 77

Mr. President : The motion is :

"That article 77 form part of the Constitution."

(Amendments Nos. 1519, 1520 and 1521 were not moved.)

Shri H. V. Kamath : Sir, I move :

"That in clause (b) of article 77, for the words 'to the Deputy Speaker' the words 'to the President' be substituted."

This amendment of mine relates merely to a matter of procedure. I feel that when the Speaker of the House of the People resigns his office, it will be far better if he addresses his resignation to the President and not to the Deputy Speaker, because the Deputy Speaker holds an office subordinate to him.

I am not suffering from any false sense of dignity, but procedure in these matters, as in others, must be regulated by what I may call decorum and the proprieties of the particular occasion and, therefore, it seems to me that when you have provided that when the Deputy Speaker resigns, he addresses the Speaker and sends his resignation to him, I feel that it is proper that the Speaker should address it, not to the Deputy Speaker, but to the President of the Union of India. I hope and trust that Dr. Ambedkar will see the propriety of a procedure like this and will accept this amendment of mine which provides that in the event of resignation by the Speaker, his resignation will be addressed to the President and not to the Deputy Speaker Sir, I therefore, move my amendment No. 1522 standing in my name and commend it to the acceptance of the House.

(Amendments Nos. 1523 and 1524 were not moved.)

Mr. Naziruddin Ahmad : Amendment No. 1525 is verbal.

Mr. President : I also thought so.

(Amendments Nos. 1526, 1527 and 1528 were not moved.)

I think these are all the amendments to article 77. There is only one amendment moved to this article.

Prof. Shibban Lal Saksena (United Provinces : General) : Sir, I wish to oppose the amendment moved by Mr. Kamath. I feel that he has forgotten that the President is the Executive head and we want that the Speaker and the Deputy Speaker should be completely independent of the Executive and when, therefore, it is provided that the Speaker should send in his resignation to the Deputy Speaker, it only means that the independence of the Speaker and the House over which he presides should be maintained. If we send it to the President, it means we send it to the Executive. It is a very healthy principle that the Speaker and the Deputy Speaker should be completely independent of the Executive. I therefore hope that Mr. Kamath will not press his amendment.

Mr. Tajamul Husain : Mr. President, Sir, I support the amendment moved by my honourable Friend Mr. Kamath and I think that when the Speaker wishes to resign, he should send his letter of resignation not to an office who has been working under him, but to someone higher in authority, i.e., the President of the Republic. This would be better, Sir, I think, for the dignity of the House. My honourable Friend Prof. Saksena said that he wants to keep the dignity of the House. The House of the People is intermingled with the President in many ways and you cannot separate one from the other; it is impossible; and the President of the Republic, after all, Sir de *jure* is the head of the House of the People. These are the two heads and it is really right and proper that when he wishes to resign, the letter should go to the highest tribunal that is the President, than to his subordinate. With these words, I support the amendment moved by my honourable Friend Mr. Kamath.

The Honourable Dr. B. R. Ambedkar : Sir, I am sorry I cannot accept the amendment moved by my honourable Friend, Mr. Kamath. The existing article is based upon a very simple principle and it is this, that a person normally tenders his resignation to another person who has appointed him. Now the Speaker and the Deputy Speaker are persons who are appointed or chosen or elected by the House. Consequently these two people, if they want to resign, must tender their resignations to the House which is the appointing authority. Of course, the House being a collective body of people a resignation could not be addressed to each member of the House separately. Consequently, the provision is made that the resignation should be addressed either to the Speaker or to the Deputy Speaker, because it is they who represent the House. Really speaking, in theory, the resignation is to the House because it is the House which has appointed them. The President is not the person who has appointed them. Consequently, it would be very incongruous to require the Deputy Speaker or the Speaker to tender their resignations to the President who has nothing to do with the House and who should have nothing to do with the House in order that the House may be independent of the executive authority exercised either through the President or through the Government of the day.

Shri H. V. Kamath : On a point of information may I know from Dr. Ambedkar what is the procedure prevailing in the case of the Speaker of the Central Legislative Assembly today?

The Honourable Dr. B. R. Ambedkar : The position today is so different. Does he ask about the present position or the position that he wants to create? Under the Government of India Act the Assembly and the Speaker are the creatures of the Governor-General. Consequently, the Speaker is required to address his resignation to the Governor-General. We do not want that situation to be perpetuated. We want to give the President as complete and as independent position of the executive as we possibly can.

Shri H. V. Kamath : Even under the Government of India Act, is not the Speaker elected by the Assembly?

The Honourable Dr. B. R. Ambedkar : That is wrong. He is no doubt elected; but his election is required to be approved by the Governor-General.

Shri H. V. Kamath : I beg leave to withdraw the amendment, Sir.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

"That article 77 stand part of the Constitution."

The motion was adopted.

Article 77 was added to the Constitution.

Article 78

Mr. President : The motion is :

"That article 78 form part of the Constitution."

(Amendments Nos. 1529 and 1530 were not moved.)

The amendment to amendment No. 1530 does not arise because the amendment itself is not moved.

(Amendment No. 1531 was not moved.)

There is no amendment that has been moved to article 78.

The question is :

"That article 78 stand part of the Constitution."

The motion was adopted.

Article 78 was added to the Constitution.

New Article 78-A

Mr. President : There is notice of an amendment by Mr. T. T. Krishnamachari to add a new article 78-A.

Shri T. T. Krishnamachari : Mr. President, Sir, I move :

"That after article 78, the following new article be inserted :-

> '78-A. At any sitting of the House of the people, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside and the provisions of clause (2) of the last preceding article shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker, is absent.'"

Sir, this new article is exactly the same in content as article 75-A Which the House was good enough to accept. The need for this article has been explained fully by the Honourable Dr. Ambedkar. I hope the House will have no difficulty in accepting this new article as it relates to the House of the People in the same way as the previous article 75-A relates to the Council of States. Sir, I move.

Mr. President : I desire to put this amendment straightaway as this is the same as a previous article adopted, with this difference that this relates to the House of the People whereas the previous article relates to the Council of States. I take it that no further discussion is necessary.

The question is :

"That after article 78, the following new article be inserted :-

> 78-A. At any sitting of the House of the People, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside and the provisions of clause (2) of the last preceding article shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker, is absent.'"

The motion was adopted.

Article 78-A was added to the Constitution.

Article 79

Mr. President : The motion is :

"That article 79 form part of the Constitution."

(Amendment Nos. 1532,1533 and 1534 were not moved.)

Mr. President : There is no amendment moved to article 79.

The question is :

"That article 79 stand part of the Constitution."

The motion was adopted.

Article 79 was added to the Constitution.

New Article 79-A

Mr. President : There is article 79-A given notice of by Dr. Ambedkar and Shri Ghanshayam Singh Gupta.

The Honourable Dr. B. R. Ambedkar : I would like this to stand over.

Mr. President : Article 79-A stands over. There is another article 79-A given notice of by Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Mr. President, Sir, I beg to move :

"That after article 79, the following new article be inserted :-

> '79-A. (1) The Chairman shall preside at a meeting of the Council of States, and in his absence, the Deputy Chairman shall preside; and in his absence, any one of the panel of Chairmen appointed by the Chairman and selected by him for the purpose, shall preside; and in their absence any member of the Council of States elected by the Council shall preside.
>
> (2) At a meeting of the House of the People the Speaker shall preside, and in his absence, the Deputy Speaker shall pride, and in his absence a member of the panel of Chairmen appointed by the Speaker and selected by him for the purpose, and in their absence, any member elected by the House shall preside.
>
> (3) At a joint.........'"

The Honourable Shri K. Santhanam (Madras : General) : On a point of order, Sir, this is already provided in article 75.

Mr. President : Clause (1) and (2) are already covered by articles 75 and 78.

Mr. Naziruddin Ahmad : In that case, I shall move clause (3).

The Honourable Shri K. Santhanam : Even clause (3) has been provided for.

Mr. President : Clause (3) is covered by article 98 (4). If you want to move your amendment, you can take it up then. That would be the proper stage.

Mr. Naziruddin Ahmad : But a duplicate provision has today already been accepted by the House.

Article 80

Mr. President : I remember that; it is not necessary to repeat that. We take it that that amendment is not moved. We may go to article 80.

The motion is :

"That article 80 form part of the Constitution."

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I move :

"That in clause(1) of article 80, for the words "Save as provided in this Constitution' the words 'Save as otherwise provided in this Constitution' be substituted."

Sir, this is just a slip and it has to be corrected.

Mr. President : Amendment No. 1537. I take it this amendment is of a drafting nature. Amendment No. 1538. Mr. Kamath, this is covered by the amendment which has just been moved.

Shri H. V. Kamath : The second part is new, Sir.

Mr. President : You may move the second part.

Shri H. V. Kamath : Sir, may I at the very outset bring to your notice that I had sent five amendment separately, but they have been brought together, three in one amendment No. 1538 and two as amendment 1541. I do not wish to blame the office in any way; the office is working very hard and it is quite possible that on account of pressure of work this has happened. I would only crave your indulgence to move these amendments separately.

Mr. President : Yes.

Shri H. V. Kamath : I shall move only the last two portions in 1538, and, also by your leave, 1541 because that relates to the same clause.

Mr. President : Sir, I move :

"That in clause (1) of article 80, after the words 'at any sitting' the words 'of either House' be inserted and the words 'other than the Chairman or Speaker or person acting as such ' be deleted."

and further

"That in the second paragraph of clause (1) of article 80 before the words "The Chairman' the words 'Provided that' be inserted."

I am not moving the second half of the amendment 1541.

Shri T. T. Krishnamachari : May I point out that House has already adopted 68-A which is exactly the same as the amendment now sought to be moved by Mr. Kamath?

The Honourable Dr. B. R. Ambedkar : Yesterday we adopted 68-A which covers the same point.

Mr. President : He is dealing with 1538 and first part of 1541.

Shri T. T. Krishnamachari : I am sorry.

The Honourable Shri K. Santhanam : I suggest Mr. Kamath may move them separately. We may want to support one and oppose the other.

Shri H. V. Kamath : 1538 and 1541 go together; otherwise the picture will not be complete. If my amendments are accepted, the article would read thus-

"Save as otherwise provided in this Constitution, all questions at any sitting of either House or joint sitting of the House shall be determined by a majority of votes of the members present and voting.

Provided that the Chairman or Speaker, etc."

I do not wish to expatiate upon this amendment. I think these amendments are fairly obvious because the first amendment seeks to insert the words 'of either House'. It stands to reason that we must make everything clear. There is the other clause subsequent to that which refers to joint sitting of the Houses.

As regards the other two amendments which in my view must be taken together or rejected together, I would only say that at times I feel that this Draft Constitution has been encumbered with needless verbiage, words which might have been reduced in number, words which might have been omitted. I am aware that the elephant is one of our emblems but I am sure the House does not agree we should make the Constitution an elephantine one. Our sages and wise men have written sciences and philosophy in brief Sutras and one of our greatest men-I think it was Vyasa himself who took pride in his sloka when he said-

(Shlokardhena pravakshyami yaduktam granthakotibhim.)

[What crores of Granthas have said I will say in half a verse.]

But here we are repeating words which are absolutely unnecessary and which might have been easily, without any detraction of meaning or derogation to the propriety of the article, omitted. I wish we had a Constitution much less bulky. The other day some friends of mine who were students in a college wrote to me after they had perused the Draft Constitution-they are students of politics-they said half in jest and half in earnest that the future generation of students will curse many of us who have presented the country with such a bulky document.

Mr. President : Is all this necessary for this amendment?

Shri H. V. Kamath : I only wanted to make my point clear. I will come straight to the point, as you have been pleased to remark that it is not necessary for the amendment. I only wish to say that here in clause (1) of article 80 we find that these words 'Chairman or Speaker or person acting as such' has been repeated in the first para as well as the second para. In the first para the meaning is quite clear without the incorporation of these words 'other than the Chairman or Speaker etc.' If they just add a proviso like 'Provided that' the meaning that the draftsmen have in mind will be clearly brought out and we will be saved the burden of at least 8 or 9 words in this one article. If we proceed in this fashion with many articles, I am sure that at least a thousand words might be omitted from this

Constitution.

I therefore move the latter two-third portions of No. 1538 and the first half of No. 1541 and commend these for the acceptance of the House.

(Amendments Nos. 1542, 1543, 1544, 1545, 1546, 1547 and 1548 were not moved.)

Mr. President : No. 87 of Amendment to Amendments.

Acharya Jugal Kishore (United Provinces : General) :Sir, I move :

"That with reference to amendment No. 1536 of the List of Amendments, in clause (1) of article 80, after the word 'sitting' where it occurs for the first time, the words 'of either House' be inserted."

This is only a verbal change and I hope the House will accept the amendment.

Mr. President : The amendments and the article are open to discussion now.

Mr. Naziruddin Ahmad : Mr. President, Sir, with regard to article 80, I have to point out one drafting lacuna for the consideration of the Drafting Committee. After clause (1) there is a complete paragraph which should bear a clause number. I think this is an isolated instance where a paragraph has not been numbered. This paragraph should be numbered 1(a) and the subsequent clauses re-numbered.

With regard to another aspect of drafting, I would suggest for the consideration of the Drafting Committee this : In certain places in articles 78, 79, 80, 81 and 82, the word "the" has been treated with considerable amount of affection. It has been used rather very freely. But in other places there is considerable amount of antipathy to the word "the"; as for instance in article 79, there is the expression "the Chairman" "the Deputy Chairman" "the Speaker", "the Deputy Speaker" etc. But in articles 78, 80 and 81, the word "the" in similar context does not appear. But the word again appears in article 82.

Shri M. Ananthasayanam Ayyangar (Madras. General) : On a point of order Sir, you have ruled out verbal amendments. Is it open to my Friend to speak on these verbal amendments? It is for the purpose of enabling us to get along with the substantial portion of the work and to confine ourselves to the substance and in order not to spend away time that you have ruled out verbal amendments. Then what is the use of taking up our time in another form by speaking on them?

Mr. President : I only wanted to know on which side the Member's sympathies lay, whether in favour of or against the word "the". That apart, I would request the honourable Member to discuss it with the Members of the Drafting Committee.

Mr. Naziruddin Ahmad : Sir, I have already finished. But let me point out that my honourable friend in taking up this point of order has taken up more time than I would have done. I have simply pointed out these two points for the kind consideration of the Drafting Committee and I have finished.

Prof. Shibban Lal Saksena : Mr. President, Sir, my objection to this article is with regard to the words "joint sitting of the Houses". In this Draft Constitution, it is article 88 that deals with joint sittings of both Houses. That is a question of principle, and I am one of those who think that there should be no joint sittings of the two Houses. Therefore, I hope that even if this article is passed just now as it is, and if article 88 is amended or dropped, I hope this portion of article 80 also will be dropped.

The Honourable Dr. B. R. Ambedkar : Sir, I am sorry I cannot accept the amendment of Mr. Kamath.

Shri H. V. Kamath : Which of my amendments? I moved three amendments, separately.

The Honourable Dr. B. R. Ambedkar : The one which he moved just now. I find in the book, one consolidated amendment. He might have spoken on different parts of it. But the amendments as it stands is a single one.

Shri H. V. Kamath : Sir, I sent them separately, and I spoke on them separately. With your leave, Sir, I may point them out. Firstly, adding "of either House" after the words "at any sitting". Secondly deleting of the words "other than the Chairman or Speaker or person acting as such". Thirdly inserting the words "provided that" at the commencement of the second para. I would like to know which of these three the honourable Member is accepting, whether he is rejecting all the three or two or one.

The Honourable Dr. B. R. Ambedkar : I am referring to the honourable Member's amendment No. 1538, which so far as the official document is concerned, appears to be a single amendment.

Shri H. V. Kamath : Sir, I asked your leave, to move them separately.

Mr. President : Mr. Kamath has moved these three things. But they can be separately taken also. As amended, the article would read like this :

> "Save as otherwise provided in this Constitution, all questions at any sitting of either House or joint sitting of the House shall be..."

The Honourable Dr. B. R. Ambedkar : I find I can accept No. 87 in the consolidated list of amendments. It serves my purpose, and therefore I accept it.

Mr. President : That covers the first part of the your amendment. Then there is the second part of the amendment. I would rather begin with amendment No. 1536.

The question is :

> "That in clause (1) of article 80, for the words 'Save as provided in this Constitution' the words 'Save as otherwise provided in this Constitution' be substituted."

The amendment was adopted.

Mr. President : Then we come to No. 87 on the List of Amendments to amendments, moved by Acharya Jugal Kishore.

The question is :

"That with reference to amendment No. 1536 of the List of Amendments, in clause (1) of article 80, after the word 'sitting', where it occurs for the first time, the words 'of either House' be inserted."

The amendment was adopted.

Mr. President : Then we come to the third amendment which is Mr. Kamath's amendment. It is to this effect.

"That the words in the first paragraph of clause (1) 'otherwise than the Chairman or Speaker or person acting as such' be deleted, and at the beginning of the second paragraph 'provided that' be added, with of course, necessary changes in the punctuation."

The amendment was negatived.

Mr. President : The I put the article, as amended to vote.

The question is :

"That article 80, as amended, stand part of the Constitution."

The article, as amended, was adopted.

Article 80, as amended, was added to the Constitution.

Article 81

Mr. President : Then we come to the next article, article 81.

The motion is :

"That article 81 form part of the Constitution."

There is an amendment of which notice was given by Mr. Tahir and Mr. Jafar Imam. But they are not here and so it is not moved. Then there is amendment No. 1550, standing in the name of Mr. Kamath.

Shri H. V. Kamath : That does not arise now, in view of article 68-A adopted yesterday; and so I do not move it, Sir.

Prof. K. T. Shah : Mr. President, Sir, I beg to move :

"That in article 81, for the words 'President, so some person appointed in that behalf by him' the words 'Speaker of the House of Representatives or Chairman of the Council of States, or some person appointed in that behalf by the Speaker or the Chairman of the Council of States, be substituted."

The amended article would then read that :

"Every member of either House of Parliament shall, before taking his seat, make and subscribe before the Speaker of the House of Representatives or Chairman of the Council of States, or some person appointed in that behalf by the Speaker or the Chairman of the Council of States, a declaration according to the form set out for the purpose in the Third Schedule."

Sir, my purpose in submitting this amendment is to keep out the President of the Republic from taking part in what I regard to be a purely internal concern of the House. The President of the Republic should have no concern with such matters. I think it is a very simple matter relating to the internal autonomy of the House and as such ought to find no objection.

Sir, I commend the motion to the House.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in article 81, for the words 'a declaration', the words 'an affirmation or oath' be substituted."

Mr. President : All the amendments have been moved. They are open to discussion now. Does anyone wish to speak?

Mr. Tajamul Husain : Mr. President, Sir, I rise to oppose the amendment No. 1551 moved by my honourable Friend, Prof. K. T. Shah. At present the procedure is this. When the House is elected, one from amongst the Members of the House is appointed by the Governor-General to preside at their meetings and then the election of the Speaker and the Deputy Speaker takes place. Now, Sir, article 81 says that the affirmation or oath should be taken before the President or some person appointed in that behalf by him. The amendment is that it should not be taken before the President, but should be taken before the Speaker of the House of people or Chairman of the Council of States, or some person appointed by the Speaker or Chairman.

Now, Sir, I think, this has no meaning. I think the practice as it stands now is more reasonable than what is proposed in this amendment because before the oath there is no Speaker. With these words, Sir, I oppose the amendment moved by Professor Shah.

Shri H. V. Kamath : Mr. President, Sir, I have come here just to seek a little clarification from my honourable Friend, Dr. Ambedkar, in regard to his amendment No. 1554 which he has just now moved and which seeks to substitute for the words "a declaration", the words "an affirmation or oath". May I, Sir, invite your attention to the fact that the House has already adopted article 49 which provides for an affirmation or oath by the President or person acting as or discharging the functions of the President before entering office. The affirmation or oath provided therein was amended to the effect that the President or person acting as or discharging the functions of the President, should before he enters upon his office take the oath or affirmation in the following form :-

"I. A, B. in the name of God, do swear", or "I, A, B, do solemnly affirm"...

May I have an assurance from my honourable Friend Dr. Ambedkar as well as from the House that the affirmation or oath referred to in article 81 will be on the same lines as provided for in the amended article 49 of the Constitution?

Mr. President : I take it that it is obvious that the Schedule will have to be amended so as to fit in with the wordings of this clause.

There is a notice of an amendment to the Schedule also to bring it into conformity with the article. There is one difficulty which has struck me. Under article 81 every member of either House of Parliament has to affirm or take the oath before the President or some person appointed by him in that behalf. That will happen on the very first sitting of the Parliament when the members will take the oath or make the affirmation. Supposing a member joins in the middle of the session after a bye-election. Will he be able to take the oath or make the affirmation before the Speaker or the Deputy Speaker as the case may be?

The Honourable Dr. B. R. Ambedkar : Sir, I am sorry to say that I cannot accept the amendment moved by my Friend Professor Shah. I think Prof. Shah has really misunderstood the sequence of events, if I may say so, in the life of a candidate who has been elected until the time that he becomes a member of the House. If Prof. Shah were to refer to article 81 and also note the heading "Disqualifications of Members" the first thing he will realise is that merely because a candidate has been elected to Parliament, does not entitle him to become a member of Parliament. There are certain, What I may call, ceremonies that have to be gone through before a duly elected candidate can be said to have become a Member of Parliament. One such thing which he has to undergo is the taking of the oath. He must first take the oath before he can take his seat in the House. Unless and until he takes the oath he is not a member and so long as he is not a member he is not a member he is not entitled to take a seat in the House. That is the provision. Unless candidates take their oath and take their seats they do not become members and they do not become entitled to elect the Speaker. That is the sequence of events,- election, taking of the oath, becoming a member and then becoming entitled to the election of the Speaker. Therefore the election of the Speaker must be preceded by the taking of the oath.

Having regard to this sequence of events it would be impossible to say that the oath shall be taken before the Speaker, because the Speaker is not there and the Speaker cannot be elected until the elected candidates become members. Therefore the authority to administer the oath must necessarily be vested in some person other than the Speaker. That being the position the question is in whom this power to administer the oath shall be vested. Obviously it can be vested only in the President or in some other person to whom the President may transfer his authority in this behalf. In accordance with this sequence of events the only course to adopt is to vest the authority to administer the oath either in the President or in some other person appointed in that behalf by him. It cannot be done by vesting the authority in the Speaker, because the Speaker does not exist at all then.

Now I come to the point raised by our President. What happens to a newly elected member in a bye-election with regard to the taking of the oath? Has he to go to the President or can he take the oath before the Speaker? The answer to that question is that the President will, after the Speaker has been elected, confer upon him by order the authority to administer the oath on his behalf, so that when a newly elected candidate appears in Parliament for the purpose of taking the oath, it will be administered to him by the Speaker as the person authorised by the President. Consequently in the case of a newly elected person it would not be necessary for him to go before the President or some other presiding authority appointed by the President.

That is the sequence of events and it would be seen that article 81 is so framed as to fit in with this sequence. Even today, if I may say so, the same procedure is followed. The President (or the Governor-General) appoints somebody when the House meets for the first time to preside over it. Every member then take the oath or makes the affirmation before the presiding authority. After the oath is taken the presiding authority proceeds to conduct the election of the Speaker and when the election of the Speaker is completed, the person chosen as the presiding officer retires and the Speaker continues to occupy the place of the presiding officer with the authority of the President to administer the oath to any member who comes thereafter. Therefore, as I said, the original Draft is in keeping with the sequence of events and the provision which is usually made for the President to confer his authority on the Speaker will prevent the newly elected person from having to go to the President to take the oath.

Mr. President : Should it be necessary for the Speaker to derive his authority to administer the oath from the President?

The Honourable Dr. B. R. Ambedkar : I submit constitutionally it is, because the administration of the oath is an incident in the constitution of the House, over which the Speaker has no authority.......

Mr. President : I am not thinking of that stage. I am thinking of a subsequent stage after the Speaker has been elected.

The Honourable Dr. B. R. Ambedkar : I think there is nothing wrong or derogatory, for the simple reason that the constitution of the House, its making up, the legal form of the House is a matter which is outside the purview of the Speaker. The Speaker is in charge of the affairs of the Parliament when the Parliament is constituted and the Parliament is not constituted unless the oath is taken by the members. Therefore the taking up of the oath is really a part and parcel of constituting the House in accordance with the provision and so far as that is concerned I think that authority does not belong to the Speaker and need not belong to the Speaker.

Mr. President : Supposing at a subsequent meeting of the House the Speaker happens to be absent and a new member comes on a day when the Deputy Speaker or some other person is in the Chair.

The Honourable Dr. B. R. Ambedkar : The authority given to the Speaker becomes vested not only in the Speaker but also in the Deputy Speaker, in the Panel of Chairmen or any other person occupying the Chair for the time being.

Mr. President : The Speaker will have to depend upon the delegation of authority.

The Honourable Dr. B. R. Ambedkar : We have to depend upon the goodwill of all the functionaries created by the Constitution.

Maulana Hasrat Mohani : Unless and until all the members take the oath I should like to know how the Speaker can delegate his authority to any other person :

Mr. President : I will now put the amendments one by one to vote. The question is-

"That in article 81, for the words 'President, or some person appointed in that behalf by him' the words 'Speaker or the House of Representative or Chairman of the Council of States, or some person appointed in that behalf by the Speaker or the Chairman of the Council of State' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in article 81, for the words 'a declaration', the words 'an affirmation or oath' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That article 81, as amended, stand part of the Constitution."

The motion was adopted.

Article 81, as amended, was added to Constitution.

Article 82

Mr. President : The motion is :

"That article 82 form part of the Constitution."

(Amendment No. 1555 was not moved.)

Mr. President : I suggest that 1556 and 1557 are covered by 1558. If it is moved and if Prof. Shah is not satisfied, he can move Amendment No. 1556.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I beg to move :

"That after clause (1) of article 82, the following new clause be inserted :-

'1.(a) No person shall be a member both of Parliament and of the Legislature of a State for the time being specified in Part I or Part III of the First Schedule, and if a person in chosen a member both of Parliament and of the Legislature of such a State, then at the expiration of such period as may be specified in rules made by the President that person's seat in Parliament shall become vacant unless he has previously resigned his seat in the Legislature of the State'."

Sir, it requires no comment. It is the ordinary rule.

Mr. President : I think that covers amendments Nos. 1556 and 1557. Mr. Naziruddin Ahmad may move his amendment No. 1559 if he thinks that it is not of a drafting nature.

Mr. Naziruddin Ahmad : Sir, I move :

"That in sub-clause (a) of clause (2) of article 82, for the words 'becomes subject to any disqualifications mentioned in', the words ' is disqualified under' be substituted."

Article 82(2) says :

"If a member of either House of Parliament -(a) becomes subject to any of the disqualifications mentioned in clause (1) of the next succeeding article;"

For these, I would substitute the words 'is disqualified under clause (1) of the next succeeding article'. The next succeeding article is to this effect that a person "shall be disqualified" under certain contingencies. If those contingencies really happen the disqualification is automatic and absolutely complete. The text says; if a member becomes "subject to any of the disqualifications." I say, "if he is disqualified under sub-clause (1)" of the next succeeding article, the expression 'subject to any disqualification' implies that the event is likely to happen and therefore I suggest 'is disqualified' which indicates a completed fact. The real clause which deals with disqualification 'implies that the event is likely to happen and therefore I suggest 'is disqualified' which indicates a completed fact. The real clause which deals with disqualification is very absolute and deals with this matter as a completed fact. I suggest therefore that my amendment be accepted. I do not deny that the amendment is somewhat of a drafting nature. But I submit that the implications would be different. If you do not think that this should be considered by the Drafting Committee, I desire that it should be put to vote.

Shri H. V. Kamath : Mr. President, I move :

"That in clause (2) of article 82, the following new sub-clauses be added :-

> (c) or if he is recalled by the electors in his constituency for failure to properly discharge his duties,
>
> (d) or if he dies.'"

As regards (d) I do not think much need be said. I fail to see why this contingency was not provided for in this article. It may be that Dr. Ambedkar may say that when a member dies, it naturally follows that his seat will be vacant. But you may remember that this Constituent Assembly laid down in rule 2 or 3 that a seat will be declared vacant either on account of resignation, death or otherwise of a member. Therefore I feel that nothing would be lost if we provide in this article that upon a member's death his seat will fall vacant.

As regards the first part of my amendment, I may say that all democracies, at least in theory, and some of them in actual practice, have provided for the recall of members or perhaps Ministers, in the event of their failing to discharge their duties to the constituency concerned. I think the Swiss Federal Constitution has incorporated a provision to this effect and some of the American States have also a similar provision. This provision, Sir, goes a long way to fulfil what, to my mind, an ideal democracy should be. I am not sure that we in this country will have an ideal democracy and you, Sir, yesterday rightly observed that there are many dangers inherent under the new dispensation. I feel and I am sure the House will agree that since adult franchise is being introduced by this Constitution, we should take early steps, vigorous steps, towards adult education also, because, to my mind, adult franchise without adult education will not work efficiently-I will not say it will be a failure-but it will not be in the best interests of the country. If it is visualised that there will be adult franchise with a duly and properly educated electorate, then it is desirable that a member of Parliament should fulfil his duties to the satisfaction of his constituents, and the electorate must have the right, must have the feeling, must have the satisfaction, the conviction that, if their elected member does not so fulfil his duties, they have the right to recall him. It is common knowledge that in modern Parliamentary democracies, a member once elected has no responsibility to his constituents and he continues to sit in Parliament till the next election arrives and then he goes to the electorate asking for their votes. This is hardly a satisfactory state of affairs and I feel that there is no harm if an educated electorate is invested with the power to recall a member elected by them. I perfectly agree that as long as the electorate is not properly educated, there is every danger that the electorate, on considerations other than the right ones, out of pique or ignorance or malice or some such motive, might decide to recall him; but on the whole, by and large, the electorate that we are going to create is a huge electorate and if this principle is accepted, we might devise some sort of machinery to implement it, and we might also fix the proportion, whether two-thirds, three-fourths or four-fifths of the electors should be necessary before a member is recalled. This is a matter of detail which can be decided later on. I move this amendment and commend it for the acceptance of the House.

Mr. President : Amendments Nos. 1561 and 1562 are covered by the amendment moved by Mr. Kamath.

(Amendment No. 1563 was not moved.)

Amendment No. 1564 is of a drafting nature and therefore disallowed.

(Amendment No. 1565 was not moved.)

Prof. K. T. Shah : Sir, I do not wish to move Amendments Nos. 1566 and 1567, but if you would permit me, I would like to move the latter part of Amendment No. 1568.

Mr. President : Yes.

Prof. K. T. Shah : I move :

> "That after clause (3) of article 82, the following new clause be inserted :-
>
> > '(4) No one who is unable to read or write or speak the National Language of India after ten years from the day this Constitution comes into operation shall be entitled to be a candidate for, or offer himself to be elected to, a seat in either House of Parliament."

This I think, is very important from the point of view of developing and universalising the use of the national language. Whatever our professions with regard to the need for building up and popularising the national language at the present time, for such technical purposes as law or the constitution, we have yet to develop it. That cannot be developed unless we introduce some form of compulsion, at least in the Legislatures; so that no one who is unable to understand or speak or write in the national language should be entitled to be a candidate or be elected to the national legislature. I realise that all at once such a thing would be difficult and therefore I am suggesting that only within a period of ten years, or after ten years from the day on which the Constitution comes into operation, everyone who offers himself as a candidate for election to either House of Parliament shall be expected to know the national language sufficiently to read and write that language. I think that in the situation in which we are, it is important and necessary that some such provision should be introduced in the Constitution and hence my proposal. I hope it will prove acceptable to the House.

Mr. President : There is notice of an amendment No. 89 by Mr. Lakshminarayan Sahu to amendment No. 1568. But that does not arise since 1568 has not been moved. Amendment No. 1569 by Mr. Sahu is covered by the amendment moved by Mr. Kamath, and it is not necessary to move it separately. Now the amendments and the original proposition are open to discussion.

Mr. Tajamul Husain : Mr. President, Sir, I first take up the amendment of Dr. Ambedkar. His amendment says that no one shall be a member of two legislatures at the same time. That is a very sound principle. If a member is elected to two legislatures, he must resign his seat in one or the other. That is what has happened now. Some Members of this House are also members of provincial legislatures. That is an anomaly which this amendment seeks to remove. Therefore I support it.

Then amendment No. 1559 by Mr. Naziruddin Ahmad. I support that also. The words used by the Drafting Committee are "subject to any disqualifications". Now, "subject to any disqualification" is quite different from "is disqualified. "Is disqualified" is a definite thing that a member has become disqualified. "Subject to any disqualifications" is an indefinite thing. I think that this amendment should be supported. Now comes Amendment No. 1560 of my honourable Friend, Mr. Kamath, which I oppose, Sir. He says that the seat shall be declared vacant if the member is recalled by the constituency for failure to properly discharge his duties. Now, Sir, what happens in politics? Supposing there is an election and there are three candidates for one seat and supposing there are 1,000 voters. Two candidates, who have not succeeded, secure 300 votes each and the person who has succeeded has secured 400 votes, although 600 voters are against him, and in spite of that, he has succeeded. Now when he becomes a member of the House those 600 voters may join against him and say : "Well, you have failed to properly discharge your duty and we recall you." I think it is a very dangerous provision, Sir, and I think it should not be accepted. The second provision is that the seat should be declared vacant if the member dies. Naturally if he dies, the seat must be declared vacant; it cannot but remain vacant when the member is dead and my honourable Friend will pardon me if I think his amendment is absurd.

Shri H. V. Kamath : May I remind my honourable Friend that he was himself a party to the rule which we passed in this Assembly?

Mr. President : He remembers all that. We need not remind him.

Mr. Tajamul Husain : With these words, I resume my seat.

Shri R. K. Sidhwa (C. P. & Berar : General) : Mr. President, Sir, with regard to Mr. Kamath's amendment, it is neither workable nor practicable. He says : "or if he is called by the electors in his constituency for failure to properly discharge his duties". Now who is to decide? 'Electors' means that a referendum has to be actually taken by some authority just as he is elected by an authority through the ballot box. I know, Sir, some constituencies disapproving the actions of a member have passed resolutions against a member in a public meeting. 5,000 or 10,000 or 500 can make a declaration that a member has lost the confidence of the electorate and he should be recalled. May I ask whether it is the view of the electorate? Out of that 4,000 or 5,000 three-fourth members may not be voters. They may be simply others as public men. It is therefore not possible unless it is stated that it must be by the same process by which he is elected, by the regular process of voting in a ballot-box; if such a system is adopted, I can understand, but that is not possible, that is nowhere workable and, therefore, Sir, I contend on the face of it, this amendment should not be accepted. As for the member dying, even today if a member dies, under the present Act, new elections take place. The office knows that. I, therefore, feel that this amendment should not be accepted.

The Honourable Dr. B. R. Ambedkar : I do not accept any of the amendments of Mr.

Naziruddin Ahmad or of Mr. Kamath either.

Mr. President : I shall now put the amendments to vote one after another.

The question is :

"That after clause (1) of article 82, the following new clause be inserted :-

> '1.(a) No person shall be a member both of parliament and of the Legislature of a State for the time being specified in Part I or Part III of the First Schedule. and if a person is chosen a member both of Parliament and of the Legislature of such a State, then at the expiration of such period as may be specified in rules made by the President that person's seat in Parliament shall become vacant unless he has previously resigned his seat in the Legislature of the State."

The amendment was adopted.

Mr. President : The question is :

"That in sub-clause (a) of clause (2) of article 82, for the words 'becomes subject to any disqualifications mentioned in the words 'is disqualified under' be substituted.

The amendment was negatived.

Mr. President : As regards Mr. Kamath's amendment, I shall put the clauses separately because there is another amendment which I did not allow to be moved.

The question is :

"That in clause (2) of article 82, sub-clause be added :-

> (c) or if he is recalled by the electors in his constituency for failure to properly discharge his duties.'"

The amendment was negatived.

Mr. President : The question is :

"That in clause (2) of article 82, the following new sub-clause be added :-

> `(d) or if he dies.'"

The amendment was negatived.

Mr. President : Then we come to Amendment No. 1568, the second paragraph.

The question is :

"That after clause (3) of article 82 the following new clause be inserted :-

> 'No one who is unable to read or write or speak the National Language of India after 10 years from the day this Constitution comes into operation shall be entitled to be a

candidate for or offer himself to be elected to, a seat in either House of Parliament.'"

The amendment was negatived.

Mr. President : The question is :

"That article 82, as amended, stand part of the Constitution."

The motion was adopted.

Article 82, as amended, was added to the Constitution.

New Article 82-A

Mr. President : There is Amendment No. 1570 in the name of Prof. Shah and Mr. Jhunjhunwalla. That relates to the qualification of candidates and I think we have already dealt with this question. It is covered by a decision already taken.

Prof. K. T. Shah : I do not move, Sir.

Article 83

Mr. President : The motion is :

"That article 83 form part of the Constitution."

We have a number of amendments to this article.

(Amendments Nos. 1571, 1572, 1573 and 1574 were not moved.)

Amendment 1575-This is already covered by an article already adopted and relates to qualification of candidates. This need not be moved.

Mr. Naziruddin Ahmad : Sir, I beg to move :

"That in sub-clause (b) of clause (1) of article 83, for the words 'is' of unsound mind and', the words is declared by a competent court to be of unsound mind' be substituted."

Sir, the original text lays down the test of the qualifications if a man is of unsound mind. No test is indicated. Who is to find whether a man is of unsound mind or not? Under these circumstances, it is usual to lay down an objective test. That is the test of a finding of a court of law. It will be extremely dangerous to leave it as vague as this. I beg to submit that there is unsoundness of mind or less almost in every man. It depends on a question of degree or it depends upon the context. If a man is highly sound, he may say......

Mr. President : If the honourable Member will refer to clause (b) of article 83, he will find : "if he is of unsound mind and stands so declared by a competent court;"

Mr. Naziruddin Ahmad : I need not press it.

(Amendments Nos. 1577, 1578, 1579 and 1580 were not moved.)

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I move :

"That for sub-clause (d) of clause (1) of article 83, the following be substituted :-

> '(d) if he has ceased to be a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State and.'"

(Amendment to Amendment No. 1581 was not moved.)

(Amendment Nos. 1582, 1583 and 1584 were not moved.)

Mr. President : Amendment No. 1585, I think that is covered by amendment No. 1581. Do you think it is anything different from 1581?

Shri H. V. Kamath : I am asking for the deletion of some words, Sir. I move :

"That in sub-clause (d) of clause (1) of article 83, the words 'or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power' be deleted.'"

Sir, I am following the sound maximum which I laid down a few minutes ago that as far as possible, we might dispense with needless verbiage and try to be as brief as possible, of course, without sacrificing the meaning or significance or importance of an article, and to compress it into as few words as possible. Brevity is not merely the soul of wit; it is also the soul of truth. Here, I feel that in sub-clause (d) of article 83, the first part is adequate to cover any circumstance arising out of the second part of sub-clause (d). A person who is under any acknowledgment of allegiance or adherence to a foreign power, if he is disqualified, it stands to reason, it follows ipso facto that a person who is a subject or a citizen, which is a matter of graver moment than merely owing allegiance or adherence to a foreign power, must be disqualified. A subject or a citizen or one who is entitled to the rights or privileges of a subject or a citizen of a foreign power, certainly stands in a category which in comparison with the first part of the sub-clause of this article, is of more serious import. If we disqualify a person who merely owes allegiance or adherence to a foreign power, we need not explicitly say that a subject or a citizen is disqualified. If one category is disqualified, in my humble judgment it must follow as the night doth the day, that a citizen or a subject must also be disqualified. I therefore move, in the interests of brevity and elimination of unnecessary verbiage, that this amendment be accepted.

(Amendment No. 1586 was not moved.)

The Honourable Shri Ghanshyam Singh Gupta (C. P. & Berar : General) : Amendment No. 1587 is merely of a drafting nature.

Mr. President : I would ask Dr. Ambedkar to consider this, because it might create some difficulty. The existence of the word 'and' at the end would mean that all the disqualifications should concur.

The Honourable Shri Ghanshyam Singh Gupta : That is what I fear, Sir.

Mr. President : Any one of them should be a sufficient disqualification. If you add the word 'and', it means that all the disqualifications must concur. In that sense, it is not merely verbal.

The Honourable Shri K. Santhanam : The word 'and' must be changed into 'or'.

The Honourable Shri Ghanshyam Singh Gupta : I considered that to be a verbal slip only. It becomes substantial if it is changed into 'or'.

Mr. President : If you add 'or', it would be clear.

The Honourable Shri Ghanshyam Singh Gupta : May I move it formally, Sir?

Mr. President : Yes.

The Honourable Shri Ghanshyam Singh Gupta : Sir, I move :

"That the word 'and' occurring at the end of sub-clause (d) of clause (1) of article 83 be deleted."

Sir, the meaning is quite clear and you have so well expressed it that, if we keep the word 'and', it may mean that all the disqualifications contained in sub-clauses (a), (b), (c), (d) and (e) may be necessary. It may just mean that if one suffers from one of these disqualifications, it may not be enough to disqualify him. Therefore, it is necessary that the word 'and' should be removed and it should be replaced by the word 'or'. Or, even if we do not keep the word 'or', then, too, it would be all right.

The Honourable Shri K. Santhanam : Mr. President, I think another verbal change is needed. The clause, as it is, says, "subject or citizen of a foreign power". I think it must be, "foreign State". I think there is some incoherence.

Mr. President : Dr. Ambedkar has moved amendment No. 1581. That alters the wording.

(Amendment No. 1588 was not moved.)

Mr. Naziruddin Ahmad : Mr. President, I beg to move :

"That sub-clause (e) of clause (1) of article 83 be omitted."

Clause (1) of article 83 deals with various disqualifications for being a member of either House. Sub-clause (b) deals with the ordinary well-known classes of disqualifications. Sub-clause (e) which I seek to delete is to this effect :

"If he is so disqualified by or under any law made by Parliament."

I submit this delegates to the Parliament the power to disqualify a lot of people. Instead of this being clearly defined in the Constitution, it leaves the future Parliament to prescribe or invent new kinds of disqualifications. I submit that it may in certain circumstances be extremely dangerous and a political party may ban its opponents by a disqualification imposed by Parliamentary legislation. It may, in certain circumstances be dangerous to allow such a thing. Disqualifications should be very clearly defined in the Constitution itself and should not be left to be determined or invented by legislature. That is why I seek to delete this sub-clause.

Mr. President : No. 1590.

Shri R. K. Sidhva : Sir, he has referred to convictions, moral turpitude etc. in (e), (f) and (g), they will only form part of rules. Return of election expenses does not come in the Constitution. All these points have been discussed and covered.

Prof. Shibban Lal Saksena : Sir, I move :

"That sub-clause (e) of clause (1) of article 83 be omitted and the following sub-clauses (e), (f), and clauses (2) and (3) be substituted in its place and existing clause (2) be re-numbered as clause (4) :-

'(e) if after the commencement of this Constitution, he has been convicted or has in proceedings for questioning the validity or regularity of an election, been found to have been guilty, or any offence or corrupt or illegal practice relating to elections which has been declared by an Act of Parliament to be an offence or practice entailing disqualification for membership of this Legislature, unless such period has elapsed as may be specified in that behalf by the provisions of that Act.

'(f) if after the commencement of this Constitution he has been convicted of any criminal offence involving moral turpitude by a court and sentenced to transportation or to imprisonment for more than two years unless a period of five years has elapsed since his release.

'(g) if after the commencement of this Constitution having been nominated as a candidate for the Union and State Legislatures or having acted as an election agent of any person so nominated he has failed to lodge a return of election expenses within the time and in the manner required by any Act of Parliament or of any State Legislature, unless five years have elapsed from the date by which the return ought to have been lodged or the President has removed the disqualification :

Provided that a disqualification under paragraph (g) of this sub-section shall not take effect until the expiration of the month from the date by which the return ought to have been lodged.

"(2) A person shall not be capable of being chosen a member of Parliament while he is serving a sentence of transportation or of imprisonment for a criminal offence involving moral turpitude."

"(3) When a person who, by virtue of a conviction and a sentence becomes disqualified by virtue of paragraph (e) or (f) of sub-section (1) of this article is at the date of the qualification a member of Parliament, his seat shall, notwithstanding anything in this article, not become vacant by reason of the disqualification until three months have elapsed from the date thereof or, if within those three months as appeal or petition for revision is brought in respect of the conviction or the sentence, until that appeal or petition is disposed of, but during any period during which his membership is preserved by this sub-section, he shall not sit or vote."

As I stated yesterday, the Parliament should not be given power to lay down conditions which will disqualify men from being candidates. In fact even the Government of India Act did not give this power to the Federal Parliament and there they had laid down certain definite conditions which disqualified a candidate. I think this provision is liable to be abused by any party in power which may like its opponents to be disqualified. I have therefore suggested this amendment. As was suggested by another Friend here yesterday the new Parliament may say 'Nobody can stand for election unless he pays income-tax or unless a high revenue is paid by him'. It is not quite impossible that sometimes reactionaries may come into power and they may not want any of their opponents to be elected. So I feel that this power of laying down qualifications and disqualifications of candidates should not be given to Parliament but the Constitution should provide these qualifications and disqualifications. The Constitution should definitely lay down the disqualifications of candidates. I hope that Dr. Ambedkar will include this in the draft.

(Amendments Nos. 1591 to 1608 were not moved.)

Mr. President : There is one point which I would like the Drafting Committee to consider in this case. If we refer to clause (2) of this article, there is no mention of Chairman or Vice-Chairman, Speaker or Deputy Speaker of the House of People. They also hold positions of profit. They are also paid officers.

The Honourable Dr. B. R. Ambedkar : Not under the Government. So they do not come under this.

Mr. President : That is all right.

All amendments have been moved. If anyone wishes to speak on these, he may do so.

Dr. P. S. Deshmukh : Mr. President, I wish to oppose the two amendments moved by my Friend Mr. Kamath and another by Professor Saksena. One refers to article 83, clause 1 (d) and the other to (e). Mr. Kamath has objected to the enumeration of the various categories of the connection of an individual citizen or resident of India with foreign powers and foreign States. He thinks and rightly so that the whole includes the part. Although that may be correct, I think so far as connection with foreign powers and States are concerned, it would be safer to define all the categories and to make the definition of this connection as exhaustive as possible. I agree with him that brevity should be our utmost concern and just as the Sanskrit Poets considered the omission of a single superfluous word as equivalent to the birth of a son, we might keep this high ideal before us. But so far as this particular sub-section is concerned, I think it should stand as it is. The second amendment moved by Prof. Saksena which has been supported by another honourable Friend refers to the clause 1 (e). The honourable Members are apprehensive that the Parliaments to come may, somewhat frivolously or to suit the party in power, introduce disqualifications which are unreasonable. I am sure no Parliament will act in a spirit which is not supported by the Constitution. These disqualifications again in their very nature are likely to be of an emergent character and I do not feel apprehensive that there is any likelihood of its being abused. In fact if there is no such provision, the hands of the Parliament would be tied and even it is necessary to prevent a body of persons from interfering with the Indian Republic they will be powerless to do so. So it is very necessary that such a provision should be there and I have no fear that it is likely to be abused at any time. After all the party in power, if it has really the support of the people, should have perfect liberty to act in any particular manner and pass an enactment which would be necessary under the circumstances. If at any time the Parliament acts frivolously it shall be answerable to the people. So I feel, Sir, that both these amendments may be rejected by the House.

Shri Rohini Kumar Chaudhuri (Assam : General) : Mr. President, sir, I only wish to draw the attention of the House to one provision namely sub-clause (b) under article 83 (1) "if he is of unsound mind and stands so declared by a competent court," and I hope the soundness of my mind will not be questioned if I say that this clause is not so happily worded as it should be. Sir, I presume that it is the desire of the authors of the Draft

Constitution that no person of unsound mind should be allowed to be a member of this House, and I believe that the present House has been so selected, and that no person of unsound mind has been able to creep into this House. Sir, if you allow this clause to stand as it does, it will mean that there will be a large number of persons of unsound minds coming in, because the qualification is there that the man must be declared to be of unsound mind, by a competent court. This question was also raised on the last day of the previous session, and after that, I had tried to find out through the agency of the Government of India, that is to say, by putting questions in the Legislative section of the Constituent Assembly to find out how many of the lunatics who are actually in the different asylums in India have been declared by a competent court to be persons of unsound mind. If you make further investigations into this matter, you will find that not even ten per cent of all the persons who are now undergoing treatment in the different asylums and mental hospitals in India have been declared to be persons of unsound mind, by a competent court. My question is whether you will allow such persons who are actually in the asylums and mental hospitals to be enrolled as voters and also to stand for election. We know that in every village and in every town, there are a certain number of persons who go about like lunatics, and who are actual lunatics, and whom everybody, even the child who pelt stones at them, knows to be a lunatic. It is quite possible, and generally it is true that nobody has taken the trouble to declare them as persons of unsound mind, or to be enrolled? Every villager, every citizen in a town knows that such and such person is of unsound mind, that he is a raving lunatic. Will there be any agency to prevent him from being enrolled as a voter, or standing for election?

Mr. President : But is there any chance of such a person being elected unless the whole electorate is of unsound mind?

Shri Rohini Kumar Chaudhuri : But, Sir, I can enrol him if I can get his vote. Unless a competent court declares him to be of unsound mind, he can enrol himself. This declaration is obtained only if the person is a moneyed man and has property and his relative have to deal with his property. In other cases where do we find a person going in for such a declaration? There is no occasion to do so. It may also be that the person is so violent that he has got to be controlled by a court, but even in that case, he is only sent for observation for a few days and afterwards no such declaration is obtained. If you want to leave a loop-hole for persons of unsound mind to come in and have a voice in the selection of the members of the future House, you may leave the clause as it is. If you want to shut out such persons, the words "declared by a competent court" should be deleted. I say this because from my own experience, I know a vast majority of persons of unsound mind have not been so declared by any competent court.

Mr. President : Does anyone else want to speak? Has Dr. Ambedkar to say anything?

The Honourable Dr. B. R. Ambedkar : I do not accept any of the amendments, except amendment No. 1587, standing in the name of the Honourable Shri G. S. Gupta.

Mr. President : I will put the amendments, one by one, to vote.

The question is :

"That for sub-clause (d) of clause (1) of article 83, the following be substituted :-

> '(d) if he has ceased to be a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or

adherence to a foreign State and.'"

The amendment was adopted.

Mr. President : Then there is the amendment of Mr. Kamath No. 1585. But that does not arise now after accepting Dr. Ambedkar's amendment.

There is then Mr. Gupta's amendment No. 1587, that the word "and" should be deleted. Or has it to be substituted by "or"?

The Honourable Dr. B. R. Ambedkar : It is the same thing; either deleted "and" or substitute 'or' for 'and'.

Mr. President : The question is :

"That the word 'and' occurring at the end of sub-clause (d) of clause (1) of article 83 be deleted."

The amendment was adopted.

Mr. President : Then there is Prof. Saksena's amendment No. 1590.

Prof. Shibban Lal Saksena : Sir, I request leave of the House to withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : There is then No. 1589, in the name of Mr. Naziruddin Ahmad.

The question is :

"That sub-clause (e) of clause (1) of article 83 be omitted."

The amendment was negatived.

Mr. President : These are all the amendments. I will not put the article.

The question is :

"That article 83, as amended, stand part of the Constitution."

The motion was adopted.

Article 83, as amended, was added to the Constitution.

Article 84

(Amendments Nos. 1609 to 1618 were not moved.)

Mr. President : The question is :

"That article 84 stand part of the Constitution."

The motion was adopted.

Article 84 was added to the Constitution.

(Amendment No. 1619 was not moved.)

Article 85

Mr. President : The motion is :

"That article 85 form part of the Constitution."

(Amendments Nos. 1620-1624 were not moved.)

Shri H. V. Kamath : Mr. President, I move :

"That in clause (3) of article 85, for the word 'as are enjoyed by the members of the House of Commons of the Parliament of the United Kingdom at the commencement of this Constitution the words 'as were enjoyed by the members of the Dominion Legislature of India immediately before the commencement of this Constitution' be substituted."

Sir, my knowledge of the various Constitutions is not as vast or as profound as that of Dr. Ambedkar, but relying on my meagre knowledge of these constitutions, I venture to state that this is the first instance of its kind where reference is made in the Constitution of a free country to certain provisions obtaining in the constitution of another State. I see no valid reason why this should be done. It may be that the rights and privileges which we are going to confer upon the Member of Parliament of free India will be identical with, or more or less similar to, those enjoyed by the Members of the House of Commons in the United Kingdom. But may I ask, Sir, in all humility, "Is it necessary or is it desirable when we are drafting our own Constitution, that we should lay down explicitly in an article that the provisions as regards this matter will be like those of the House of Commons in England?"

It may be argued in support of this proposition that there is nothing derogatory to the dignity of our Constitution or of our State in making reference to the United Kingdom. It may be further reinforced by the argument that now that we have declared India as a full member of the Commonwealth, certainly there should be no objection, or any sort of compunction in referring to the House of Commons in England. But may I suggest for the serious consideration of the House as to whether it adds-it may not be derogatory, or detract from the dignity of the Constitution-but does it add to the dignity of the Constitution? We say that such and such thing should be what it is in the United Kingdom or in America. Will it not be far better, far happier for us to rely upon our own precedents, or our own traditions here in India than to import something from elsewhere and incorporate it by reference in the Constitution? It is not sufficient to say that the rights and privileges and immunities of Members shall be such as have been enjoyed by the Members of the

Constituent Assembly or Dominion Legislature just before the commencement of this Constitution? Personally, I think, Sir, this would be far better. I venture to hope that my honourable Friends in this House will be inclined to the same view that instead of quoting or citing the example of the United Kingdom it would be far better for us to rely upon the tradition we have built up here. Surely, nobody will dispute the fact that the privileges and immunities enjoyed by us here today are in no way inferior to, or worse than, those enjoyed by members of the House of Commons in the United Kingdom.

As a matter of fact, I think most of us do not know what are the privileges of the member of the House of Commons. We know very well what our privileges at present are. Therefore, Sir, it is far better to build on our own solid ground, rather than rely on the practices obtaining in other countries.

With these words, I commend this amendment for the consideration and acceptance of the House.

(Amendment No. 1626 was not moved.)

Shri Jaspat Roy Kapoor : (United Provinces : General) : Mr. President, I beg to move :

"That in clause (4) of article 85 after the words 'a House of Parliament' the words 'or any committee thereof' be inserted."

After the insertion of these words clause (4) will read thus :

"The provision of clauses (1), (2) and (3) of this article shall apply in relation to person who by virtue of this constitution have the right to speak in, and otherwise take part in the proceedings of, a House of Parliament or any Committee thereof as they apply in relation to members of Parliament.

The object of any amendment is to bring clause (4) in conformity with clause (2) of this article. According to clause (2) a member of Parliament is immune from any proceedings in a court of law in respect of anything which he may speak on the floor of the House and also in respect of whatever he may say in a committee of the Parliament. Similarly this privilege has been conferred under clause (4) on any non-member of Parliament also but only in respect of what he may say on the floor of the House but not in respect of what he may say in a committee of the Parliament. I see no reason why this privilege should be restricted in the case of a non-member of Parliament. I think it is very necessary that this privilege must be extended in its entirety to a non-member of Parliament also in respect of what he may say when he is speaking either as a member of the Committee or even as a witness there. Generally I think we shall be calling in the assistance of experts to give us the benefit of their experience and knowledge on technical subjects. Often members of the learned professions to give evidence before it, so that right decisions on important subjects may be reached. That being so, I think it is very necessary that whatever is said either in evidence or otherwise by persons who are invited by the sub-committees of Parliament to speak before them, whatever they say, must also be privileged. This is an important omission and hence my amendment which I hope would be readily accepted by the House.

(Amendments Nos. 1628 to 1630 were not moved.)

Prof. K. T. Shah : Sir, I move :

"That after clause (4) of article 85, the following new clause be inserted :-

> '(5) In all matters of privilege of either House of Parliament or of members thereof the House concerned shall be the sole judge and any order, decree or sentence duly passed by that House shall be enforced by the officers or under the authority thereof.'"

Sir, this is a simple proposition well known in constitutional practice in other countries also, that a sovereign legislature is the sole judge of the privileges of its members as well as of the body collectively. It follows, therefore, as an inevitable corollary that any breach thereof should be dealt with by the House concerned, and any order or sentence passed by it should also be enforceable by its own officers or under its authority.

I am enunciating no new proposition that, by virtue of this Constitution, every House of Parliament should be the sole judge of its collective privileges as well as the privileges of its members, whatever they are; and that any breach of such privileges should be dealt with by the House concerned similarly, any sentence passed also shall be executed by its own officers or under its authority. Sir, I commend the amendment to the House.

Mr. President : The article and the amendments thereon are now open for discussion.

Prof. Shibban Lal Saksena : Sir, I wish to oppose the amendment moved by my honourable Friend Mr. Kamath. He said that instead of the privileges of the members of the House of Commons in the British Parliament we should enjoy the privileges of this Dominion legislature of India. So far as I know there are no privileges which we enjoy and if he wants the complete nullification of all our privileges he is welcome to have his amendment adopted. Yet I do feel that reference to the privileges enjoyed by the members of the House of Commons in our Constitution would not be desirable. Many members do not know what those privileges are. I, therefore, suggest that the learned Doctor who is in charge of the Draft Constitution should append some appendix containing the privileges of members of the House of Commons and those should be our privileges too. It may be a long appendix no doubt, but many Members are not aware of these privileges. Also it will not be proper for us to refer in our constitution to privileges of members of House of Commons which are liable to change. We can give ourselves these privileges as they exist at a particular point of time. The Parliament will of course have the power to frame its privileges but until it frames these privileges, Members should enjoy the privileges enumerated in the proposed appendix. We must therefore define the privileges enjoyed by the members of the House of Commons and put them as an appendix to our constitution, so that Members will know what these privileges are. I hope Mr. Kamath will not press his amendment in the present form which will only mean the nullification of all privileges of the members of this House for several years to come.

I want to draw attention to one other aspect of clause (2) of article 85, which says :

> "No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee there of, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings."

The privilege is given only in respect of publication "under the authority of either House of Parliament. "This is a very important thing. About ten or fifteen years ago an honourable Member of the Central Assembly, Pandit Krishna Kant Malaviya, had made a speech in the House which was suppressed by the papers but he published his speech in his paper at Allahabad. Prosecution was launched on the ground of this publication. If I make a speech and the Government sees that it is not published in the press and I publish it in may own paper I may become liable to prosecution. Whatever I speak in the House should be privileged. If the public is not to know what I said here, I cannot discharge my duties to the electorate which has chosen me. I want the privilege which is qualified in this clause to be absolute so that whatever is spoken in this House may be published in any paper and people may know what has been said here. In fact all that is said here will be published in Government publications and will be available to the public but very few people can read them. It is very important that journals and newspapers should have the privilege of publishing all that is said here. Sir, if any member of the House abuse his privileges as a member, the House has the power to remove him from the House. I do not think that any fear of abuse of such privileges need prevent us from granting such rights to members. If the President finds that any member is abusing his rights and privileges he will check him and expunge objectionable passages from his speech. I hope the learned Doctor Ambedkar will see that the privileges of the members are made absolute with reference to publication of their speeches both inside and outside and not confined to publications by or under the authority of Parliament. This is a matter of great importance to the Members.

Shri H. V. Kamath : A word of personal explanation, Sir. I may tell my honourable Friend Prof. Shibban Lal that the acceptance of my amendment will not be tantamount to no privileges. I may remind him that under the rules of procedure which this House sitting as the Legislature has tentatively adopted, there will be a Committee of Privileges which will go into the matter and define the various privileges of Members of the House.

Mr. Naziruddin Ahmad : I wish to draw the attention of the House to certain aspects of article 85. it deals with the privileges and immunities of Members. The first clause says that there shall be freedom of speech in Parliament. The second clause says that publication is also privileged provided it is a publication by or under the authority of either House of Parliament. It does not cover publication of speeches by the press outside. I think the right of a Member to speak anything in the House must be guaranteed-subject of course to the rules of procedure and the ruling of the President or the Speaker. It is very desirable that the speeches made in any of the Houses which are not objectionable and are not ruled out by the Speaker or the Chairman should also be fully published outside also without the authority of the Houses of Parliament. I submit that the freedom of the Press is a very important item among the rights of the people. If anything could be published by or under the authority of the House, the Press should have freedom to publish it. It is essential that the Press should be enabled to publish the proceedings of the House and also offer fair comments on them. It is somewhat anomalous that the Press could not publish what can be published by the authority of the House. This is a lacuna in the Draft Constitution which requires careful consideration.

With regard to clause (3) of the article I may say that the provision is vague. The privileges and immunities it provides for are of the vaguest description possible or imaginable. This clause has been bodily lifted from the existing Government of India Act enacted in England where the rights and privileges of the Members of the House of Commons are known and they have quite properly referred to them. I submit that, after Independence, we cannot relate our rights to those available to the members of the House of Commons. We should have our rights clearly and specially defined. In fact, the privileges of the Members of the House of Commons are not statutory. They are embedded in the Common Law to be found in the text-books which are many and also in case law which are scattered in many places. No one can tell us what the privileges are. Sir, to give Members here privileges similar to those enjoyed by the Members of the House of Commons is to give the Members practically no privileges at all. If a Member who wants to move about in his constituency desires to know his rights, he will have to take the help of an English attorney or Counsel to enlighten him. The Members of the House of Commons have freedom from arrest while going to or from Parliament and while doing work connected with Parliament. What about the many other undefined rights? These should all be defined and not left vague as at present. I suggest that at the end there should be added a Schedule defining the rights pending the House of Parliament making adequate laws in this respect. I submit we cannot leave the matter like this here.

As regards the amendment moved by Mr. Jaspat Roy Kapoor, I think it should be accepted. He wants to insert the words 'or' any committee thereof' in clause (4) after the words 'a House of Parliament'. These words are there in clause (2). This is a vital clause. The rights and privileges of Members should not be left to be ascertained from next-books on English law. They are no longer applicable to us. These should be specially and clearly defined as suggested by me.

Dr. P.S. Deshmukh : Sir, I am constrained to express considerable sympathy with the point of view that the privileges should not be left vague as is now being done. The privileges of the Members of Commons are well understood and well defined and so there should be no difficulty in enumerating them in a Schedule. I think it is not very satisfactory to say that the privileges shall be that of such and such a person in such and such a place Either the privileges are definite or they are vague. If they are well-defined and definite there should be no difficulty in stating them *in extenso*. If they are vague and indefinite it is wrong to console ourselves with a mere reference to such a thing. To say that the privileges shall be those of the members of the House of Commons in England is certainly vague. There is no use merely referring to some exterior body and the privileges enjoyed by that body or its members. It is better to make an effort to specify and define those privileges. Moreover, Sir, there should not be any difficulty in saying "as defined in the Schedule" and then set out the privileges actually in that schedule. I think, Sir, this point of view has considerable force and I hope my honourable Friend, Dr. Ambedkar, will oblige the House by finding a suitable solution for this. This article is most important and I am sure we will not allow it to be passed in a hurry because it embodies the privileges and rights of the members of Parliament.

So, far as the publication of the reports is concerned, I would like to support the point of view that has been raised by my Friend, Professor Saksena. We know the efficiency with which our printing office prints the official reports. If the members were entirely to depend or even the press were entirely to depend upon the speeches being published in the official reports, there would be nothing known outside the House of the happenings inside the House for months to come. That is the situation which actually obtains now. In spite of all efforts, we have not been able to rectify or remedy this state of things. So, I think that the privilege ought to be embodied somewhere, so that so long as a particular speech has been made in the House, there is no offence committed if it happens to be published in the papers.

These are two points of view which deserve consideration and I hope Dr. Ambedkar will feel inclined to agree with me.

Shri Alladi Krishnaswami Ayyar (Madras : General) : Sir, in regard to the article as it stands, two objections have been raised, one based upon sentiment and the other upon the advisability of making a reference to the privileges of a House in another State with which the average citizen or the members of Parliament here may not be acquainted with. In the first place, so far as the question of sentiment is concerned, I might share it to some extent, but it is also necessary to appreciate it from the practical point of view. It is common knowledge that the widest privileges are exercised by members of Parliament in England. If the privileges are confined to the existing privileges of legislature in India as at present constituted, the result will be that a person cannot be punished for contempt of the House. The actual question arose in Calcutta as to whether a person can be punished for contempt of the provincial legislature or other legislatures in this country. It has been held that there is no power to punish for contempt any person who is guilty of contempt of the provincial or even the Central Legislature, whereas the Parliament in England has the inherent right to punish for contempt. The question arose in the Dominions and in the Colonies and it has been held that by reason of the wide wording in the Australia Commonwealth Act as well as in the Canadian Act the Parliament in the both places have powers similar to the powers possessed by the Parliament in England and therefore have the right to punish for contempt. Are you going to deny to yourself that power? That is the question.

I will deal with the second objection. If you have the time and if you have the leisure to formulate all the privileges in a compendious form, it will be well and good. I believe a Committee constituted by the Speaker on the legislative side found it very difficult to formulate all the privileges, unless they went in detail into the whole working of parliamentary institution in England and the time was not sufficient before the legislature for that purpose and accordingly the Committee was not able to give any effective advice to the Speaker in regard to this matter. I speak subject to correction because I was present at one stage and was not present at a later stage. Under these circumstances I submit there is absolutely to question of *infra dig*. We are having the English language. We are having our Constitution in the English language side by side with Hindi for the time being. Why object only to reference to the privileges in England?

The other point is that there is nothing to prevent the Parliament from setting up the proper machinery for formulating privileges. The article leaves wide scope for it. "In other respects, the privileges and immunities of members of the Houses shall be such as may from time to time be defined by Parliament by law and, until so defined, shall be such as are enjoyed by the members of the House of Commons of the Parliament of the United Kingdom at the commencement of this Constitution." That is all what the article says. It does not in any way fetter your discretion. You may enlarge the privileges, you may curtail the privileges, you may have a different kind of privileges. You may start on your own journey without reference to the Parliament of Great Britain. There is nothing to fetter the discretion of the future Parliament of India. Only as a temporary measure, the privileges of the House of Commons are made applicable to this House. Far from it being *infra dig*, it subordinates the reference to privileges obtained by the members of Parliament in England to the privileges which may be conferred by this Parliament by its own enactments. Therefore there is no *infra dig* in the wording of class (3).

This practice has been followed in Australia, in Canada and in other Dominations with advantage and it has secured complete freedom of speech and also the omnipotence of the House in every respect. Therefore we need not fight shy of borrowing to this extent, when we are borrowing the English language and when we are using constitutional expressions which are common to England. You are saying that it will be a badge of slavery, a bodge of sefdom, if we say that the privileges shall be the same as those enjoyed by the members of the House of Commons. It is far from that. Today the Parliament of the United Kingdom is exercising sway over Great Britain, over the Dominions and others. To say that you are as good as Great Britain is not a badge of inferiority but an assertion of your own self-respect and also of the omnipotence of your Parliament. Therefore, I submit, Sir, there is absolutely no force in the objection made as to the reference to the British Parliament. Under these circumstances, far from this article being framed in a spirit of servility or slavery or subjection to Britain, it is framed in a spirit of self-assertion and an assertion that our country and our Parliament are as great as the Parliament of Great Britain.

Shri H. V. Kamath : On a point of clarification, Sir, may I ask my honourable jurist Friend Mr. Alladi Krishnaswami Ayyar whether the Constitutions of Canada and Australia to which he has referred, whether those constitutions is providing for this matter which is under discussion make direct reference to the Constitution of the U.K. and the House of Commons in the U.K.?

Honourable Members : They do.

Shri Alladi Krishnaswami Ayyar : I said both in the Canadian and in the Australian Constitutions. The Canadian was earlier and the Australian was later. With regard to the Canadian constitution it was felt that there might be a lacuna and they had to pass special legislation in regard to committee procedure there.

Shri H. V. Kamath : I could not hear, but I suppose that does not matters.

Mr. President : In the Australian Constitution there is a direct reference to the House of Commons of the United Kingdom :

> Section 49, -- The powers, privileges and immunities of the Senate and of the House of Representatives, and of the members and the Committee of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

Practically the same words are used here.

Shri Jagat Narain Lal (Bihar : General) : Sir, I want to speak with regard to clause (2) as I have not been able to share the point of view expressed by Mr. Naziruddin Ahmad and some other friends. I feel that so far as the members of parliament are concerned, clause (2) seeks to give them two privileges or immunities. One is with regard to vote and the other is with regard to the speech which they may deliver in the Parliament and which might be published under the authority of the Parliament. My friends want further immunity. They want that the member who has delivered a speech in the parliament should have a further immunity, should have the right and privilege of publishing their speech outside in the Press. That may relate to the freedom of the Press, but that does not pertain to the freedom of the member so far as his speech or his vote in the parliament is concerned. I think that is stretching a point too far and it is neither fair nor proper. If a member, for example wants to deliver a speech in the parliament, not for the purpose simply of making an honest speech, but for the purpose of maligning some body or some institution and he starts straightaway by delivering a speech and publishing the same in so many other papers outside, I should say, that is not an honest expression of opinion and that is not a *bona fide* expression of opinion either. Therefore, I would like honourable Members to confine the privileges which are given and the immunity which is sought to be given to members of parliament only to those two which are contained in clause (2). I have nothing further to add.

Shri Rohini Kumar Chaudhuri : Mr. President, Sir, my first impression on this section was that it was rather restrictive of the privileges of a member of a parliament or legislature, but on second consideration....

An honourable Member : You are not audible.

Shri Rohini Kumar Chaudhuri : I advise you to go to the doctor. Sir, I am very sorry to learn that I am not audible. There may be some defect in my voice. If there is no defect in my voice. I would ask my honourable Friends who complain about it to go immediately and consult a ear specialist.

Sir, as I said my first impression of this article 85 was that it was rather restrictive, restrictive of the privileges of a member of a parliament or a legislature. But on second thought I found that my honourable Friend Dr. Ambedkar has been very wise. I think he has been wiser by experience because I know that in future there will be more women Members of the legislature than there are now. The strategy which they have played by the non-reservation of special seats in the future legislature only goes to prove that they will get more seats when they do not ask for it. That is the ordinary human experience. If a woman does not ask for anything you give her more. If she asks, you may sometimes refuse. So in future, I am sure, Sir, partly on account of the Hindu Code which is in the air, there will be more women Members of the legislature and when you are convinced of that and when my honourable Friend Dr. Ambedkar is convinced of that, it is only a measure of caution that the privileges of members should be hereafter more curtailed than it is now, but there is one thing, Sir, which I am rather apprehensive about and it is this. Sir, while you are alive people are eager to find defects in you; your defects are sometimes exaggerated; sometimes defects which do you not possess are attributed to you; but when you are dead and gone, when, for instance, I am not in this House, when the condolence resolution is passed, qualities which I may not possess are spoken of as my own and paraded in the House. So you are more admired when you are dead than when you are alive. So I believe is all right that our speeches which are delivered here are published in the ordinary proceedings; that is all right and there is no fault in that. Nobody can find fault with that, but you may have a relation, you may have a friend, you may have your own son who would like to publish your speech, who would like to publish your speech in a book form, but supposing those speeches contain certain objectionable points, then he would be prosecuted. There may be various speeches, Sir, which are worthy of publication and you publish it because the ordinary Government proceedings are not available to every body. You publish it or some friend of yours publishes it and then he has not that privilege and he will be prosecuted. That is a danger which this cause as it stands will bring about. So I would say that *bona fide* proceedings which the Speaker or the President has not expunged, which the Speaker or the President has not stopped should be allowed to be published. The President or the Speaker has the right to stop any speech which incites people to violence, to stop any speech which contains defamatory remarks, and the Speaker and the President have the inherent right always to do so. Why should you like the Speaker or the President will allow a member to make defamatory remarks against any member in the House or any member who is not in the House? Why should you presume that the President will allow a speech to remain which incites people to violence. Once a speech is made and the Speaker does not think it fit to be expunged, why should you stop its publication by other papers than the government publications? I do not find any reason except one which might have prompted Dr. Ambedkar to consider that there would be more women Members and loose talk and therefore it would be better to stop that. If he has adopted that reason, I am entirely at one with him. Otherwise, I find no Justification for this clause.

There is another aspect. It has been seriously object to by some Members of the House about the reference to the House of Commons of the United Kingdom. Of course, It would have been much better if it was possible to avoid such a reference. It has been pointed out that even in countries like Canada and Ireland, these provisions are incorporated in their constitutions. After all, the Canadians are merely people of England; most of them have gone from England. Blood is thicker than water. There is no harm in the Canadians adopting entirely the Constitutions of England. In the case of Ireland also the same remarks apply. But that does not apply to the Indians. We can not claim that the same blood runs in our veins or that we came originally from England and settled here. Of course matters have changed considerably. So long as we are in the Commonwealth, we might also flatter ourselves and think that the same blood flows in our veins also. For the present, so long as we are in the Commonwealth, there should be no objection in retaining these words.

Mr. President: I think we have had a fair discussion on this; I would request Members to be short.

Pandit Lakshmi Kanta Maitra: (West Bengal: General): Mr. President, Sir, article 85 is apparently innocent but in my opinion there are certain features which should attract more than a mere passing notice of honourable Members of this Hose.

Two points have so for been discussed. Once is that the right and privileges that accrue to the members of Parliament shall be the same as prescribed for the member of the House of commons of the Parliament of the United Kingdom at the commencement of this Constitution. My honourable Friend Shri Alladi Krishnaswami Ayyar has explained the reason why this has been put in that way. Speaking personally, I feel that this sort of legislation by reference, that is to say, making certain legislative provisions, not in the form of substantive provisions, but by reference to the constitutions of foreign countries should, in my opinion, not be acceptable to the house. We are framing a constitution for a free, independent sovereign republic. In the body of that Constitution itself, we are going out of our way to prescribe the rights and privileges for the interim period by reference to what is contained for the members of the House of Commons of the Parliament of the United Kingdom, though there also there is no exhaustive list of the rights and privileges which the Members enjoy. It is a matter of deep sentiment that these words should not have found a place here. I would much rather go without any privileges for the next few months or a year for which we shall be functioning- I would much rather go without any specified privileges than make provision therefore by reference to foreign legislation. That disposes of one part.

The other part relates to the immunity with regard to publication of the proceeding of the House, which bears on the freedom of speech. Here, Mr. President, with your indulgence, I would like to place certain historical facts which should be carefully considered by every single Members of this House. You are going to provide that whatever you do in this House, your speeches or your conduct inside the House is absolutely privileged, and that immunity attaches only to the publication made by the Government of India or by the authority of the House. That means that any speech we make here, if it is printed and published in the official debates, is absolutely immune and the court has no jurisdiction to take cognisance of any case arising out of that, be it slander, or libel or whatever it be. Mr. Jagat Narain Lal has placed a point of view which is of course worthy of our consideration. It is quite possible that the privilege can be abused in that way, but there is also the other side of the shield. Let me tell you how this question arose in our Parliament.

The House may perhaps recall that one Miss Bina Das shot at the Governor of Bengal, Mr. Stanley Jackson. She was arrested; the Governor was not killed. In the course of her trial, she made a statement in the court. This statement could not be available anywhere in the country. It so happened that one member of the Central legislature, at that time, in the course of his speech on the repressive policy of the Government in Bengal read out the entire statement given by Miss Bina Das in the course of her trial. That was a revealing document. She gave the entire history of the genesis of the terroristic outrages in Bengal and particularly the circumstances that compelled her to take to that drastic step against the Governor of Bengal. Not a single line of that was allowed to come out in the Press on the ground of security by the British Government. The question arose when the speech of the honourable Member of the Central legislature which contained that statement came to be published. The Government said it could be not be published. Sir B. L. Mitter the Law Member of the Government of India stoutly resisted its publication - a speech in the course of which he simply narrated the full text of the statement made by the accused Miss Bina Das in connection with her trail. That was in 1934. In 1935 or 1936- I do not exactly recollect, probably it was in 1935-we had been discussing the Criminal Law Amendment Bill in Simla. In the course of the general debate on the Criminal Law Amendment Bill, a speech was delivered by my late lamented Friend, Pandit Krishna Kanta Malaviya in which he gave a resume of the so-called terroristic outrages in the country and tried to explain how to policy of the British Government had been mainly responsible for the morbid psychology which compelled young men and women to take to the cult of the bomb and the revolver. It was a magnificent speech. We were surprised that the next morning, non of the papers did publish a single sentence of the two-hour speech, a written speech which was delivered by my Friend Pandit Krishna Kanta Malaviya. The Government of the day, the Home Minister, I think it was Sir Henry Craik, took jolly good care to see that not a single line of that speech came out in the Press. He could only print and publish it on pain of penalty. Thereafter, my Friend Mr. Malaviya published the entire text of that speech-the speech as it is-in his own paper, Abhyudaya. At once the Government of the day came down upon him, he was not prosecuted but a security was demanded from his paper. Now when this was done, we on the floor of the House of the Legislative Assembly in 1936 raised a debate and brought a censure motion. We took the stand that the privilege of the house was infringed in-as-much as when a member made a speech on the floor of the House which was printed and published in the Government publication or assembly Debates and when he made a verbatim transcript of the whole thing in his own paper, immunity should also be extended to it. There were elaborate arguments by honourable Member on either side. The then Law Member Sir Nripendra Nath Sircar came out with a statement-at that time surprising-that the House had no privileges though all time the House had been acting in the belief that it had certain rights and privileges. He said 'This House has no privilege'. Be that as it many owing to our pressure the matter was settled then. This raises a very important point. I am surprised today at this changes of attitude of those my friends and colleagues, who were with us in those days and who condemned the stand of the Government of those days and stoutly maintained that a published report of the proceedings, if honestly made by any private agency should also be entitled to protection. In those days they were the people who were all of the same opinion. Today we conveniently forget that and we do not allow that same privilege to be extended to non-Government publication. I realise that it is quit possible that in the course of the debate a member might be making references which if made outside will not give him immunity in a Court of law; but frivolous charges are not allowed to be made by the Speaker in the House. As a matter of fact the Standing Orders also provide that you cannot digress and make all manner of scurrilous or objectionable speeches. If you make libellous or slanderous speeches, the Speaker pulls you up. A member cannot say things unless he is sure about them and can substantiate them. Whenever reference like that are made, by any particular member, the Speaker or President of the Chamber at once calls him to order. If in spite of that, the Member is firm and makes a speech with certain objectionable remarks what happens? When the government publishes that in the shape of records of Debates, there is no harm. If the Government prints them in large numbers, one can buy and distribute them as he likes with impunity. Put if at a later stage for instance an honourable Member wants to publish his own speeches or some of his relations wants to publish them and they make a verbatim transcript of these very speeches delivered by him which are published in the Official Debates, if they publish them in their own books, then no immunity is attached to that. It is preposterous, whatever the excuse may be for that. I ask the House to carefully consider this.

Shri M. Ananthasayanam Ayyangar: Sir, I am not a little surprised at the manner in which my honourable Friend Pandit Lakshmi Kanta Maitra wants to claim what according to me, is not a privilege but licence. We are not trying to claim any thing more then what in the Mother of Parliaments those members in England who have striven for liberty of speech inside and outside the House have claimed and are claiming. Now let him consider one or two aspects. Outside this House Members are not entitled to either speak sedition or make defamatory statements, but inside the Hose itself one many make any statement whatsoever, either attacking the Government or preach violence to overthrow the State or even defamatory statements, If you think it is on the public interest. In the Government of India Act, 1919, seditious statements and libellous defamatory statements were tabooed and were not allowed to be made.

Pandit Lakshmi Kanta Maitra: Subject to the permission of the Speaker you can make any speech.

Shri M. Ananthasayanam Ayyangar: It has been removed in the Act of 1935.

Pandit Lakshmi Kanta Maitra: Standing orders are not made under that Act.

Shri M. Ananthasayanam Ayyangar: Under the 1919 Act no seditious words could be uttered even inside the House. If any were made, the Speaker will pull up the member who was making any seditious or defamatory statement. That was the time when the foreign bureaucracy was trying to have its stranglehold upon us and did not allow us any freedom. But under the 1935 act Adaptation laws we had been given freedom of speech in the House. There, any member of the House can utter any statement which he may not be able to make outside. Whatever he is not able to say outside, merely because he becomes a member and he makes any statement,-is that not to be confined? He is given the privilege for a particular purpose. Here members can say what they like with a view to convert the other Members of the House to their own view. They may even advocate violence. A Member when making speeches in the House cannot be looking round here and there, afraid of Criminal Laws. It is very dangerous and it is impossible for the country to progress towards democracy if he has to make speeches under those limitations. So, absolute freedom is given inside the House. My Friend wants that even if he makes an absolutely improper statement for which, if he makes it outside, he will be liable under the sedition section,-merely because he makes a statement here, he wants to go out and print them. My Friend, Mr. Rohini Kumar Chaudhuri, wants to ask his son to publish a lakh of copies and broadcast to the whole world the world that have been uttered by his father. What my Friend, Pandit Maitra, wants is this. He wants to make all kinds of defamatory statements, leaving alone for the time being seditious statement. Some of us are so left-wingers as to want to make all sorts of statements against Government, whether it is our own Government or any foreign Government. We have not yet got out of the rut. In the House we can make any kind of statement against anybody. If we utter them outside, the Courts of law will not give you redress. In the House it is open to me to say that Pandit Maitra is a dishonest man. Outside, if I say that, I will be liable to be proceeded against.

Pandit Lakshmi Kanta Maitra: I perfectly allow you to do it.

Shri M. Ananthasayanam Ayyangar: In the public interest, if it is necessary, I ought not to be afraid of saying in the House.

Pandit Lakshmi Kanta Maitra: The moment you say Maitra is a dishonest person, the Speaker will call you to order.

Shri M. Ananthasayanam Ayyangar: The President is not entitled to do it under the existing law.

Pandit Lakshmi Kanta Maitra: Absolutely, if you make any personal aspersion.

Shri M. Ananthasayanam Ayyangar: If it is necessary in the public interest for me to say anything against the personal conduct of an individual, I am entitled to say so. I feel that under the present Government of India Act-and this article is only a copy of it-I am entitled to say that, if it is in the public interest. After all it is privilege and it is an exception, as ordinarily you ought not to make any defamatory statement against private individuals, or make violent statements that will overthrow the State. So any exception so made is a privilege and we should not grudge its limitation. If at all those statements are to be printed, they can be only in those reports. Even copies of those reports ought not to be made outside. If a man goes to the extent of buying a copy of the official Reports, let him do it. As the members might know making defamatory statement alone is not liable to punishment but any person who published it also is liable. Why should a person print a million copies and publish it? It is a different offence altogether. It is an offence in itself. The maker of a defamatory statement is liable to punishment, as also the person who publishes it. To say that you have got it here printed, and so you can reproduce it, any number of copies of it, is not correct. It is not a privilege, but a licence. The honourable Member says there is no opportunity for explanation, but explanation or no explanation, a defamatory statement is a defamatory statement.

Shri Lakshmi Kanta Maitra: It is an astounding proposition.

Shri M. Ananthasayanam Ayyangar: My Friend says it is an astounding proposition. He referred to a statement made by a girl and to its not being allowed to be published. Complaints were made against the government of those days. But if it had been this present government even, I would say that the statement should not be allowed to see the light of day. It is an abuse of a privilege. It is a license. For what purpose is such a statement to be published? To destroy the established order of society, to destroy the feeling between man and man, and to throw the whole community into confusion. I repeat such a thing is an abuse of a privilege in such circumstances, it is an exception made to the ordinary rule. In facts, it is a special weapon given into our hands and that weapon has to be used carefully. Members must be able to speak freely in the House without constant fear of any one dragging them into a court of law; otherwise to that extent they will not be discharging their duty to the country properly. It is for that purpose that this privilege is given, but is must be restricted to free speech inside the House. Repetition outside cannot be allowed. Merely because a person is a Member, he cannot do anything he likes; that is the positions. That it is the positions in the British Parliament, and we want to be in line with them in this. I am opposed to any amendment, and I want the clause as it stands to be accepted. As regards the reference to the House of Commons, I see no harm, especially as recently we have becomes a member of the Commonwealth of Nations. This is in tune with what we have been doing, and we can do so, till we give up the English language altogether, as you yourselves suggested yesterday.

Mr. President: We have had a very interesting discussion on something which is not the subject-matter of any amendment. There is no amendment moved to alter or modify the particular clause on which Pandit Maitra has spoken. There is no amendment on that point at all.

Now, I will take votes. Does Dr. Ambedkar wish to say anything.

The Honourable Dr. B. R. Ambedkar: No, unless Mr. Kamath wants me to say something in reply to him. Mr. Alladi and others have already given the reply, and I will also be saying mostly the same thing, probably in a different way.

Mr. President: No. 1625, Mr. Kamath's amendment.

The question is:

"That is clause (3) of article 85, for the words 'as are enjoyed by the member of the house of commons of the Parliament of the United Kingdom at the commencement of the Constitution' the words 'as were enjoyed by the Dominion Legislature of India immediately before the commencement of this Constitution' be substituted."

The amendment was negatived.

Mr. President: Then No. 1627, Shri Jaspat Roy Kapoor's amendment. I understand Dr. Ambedkar is willing to accept it.

The question is:

"That in clause (4) of article 85, after the words 'a House of Parliament' the words 'or any committee thereof' be inserted."

The amendment was adopted.

Mr. President: Then Prof. Shah's amendment No. 1631.

The question is:

"That after clause (4) of article 85, the following new clause be inserted:-

> (5) In all matters of the privileges of the House of Parliament or of members thereof the House concerned shall be the sole judge and any order, decree or sentence duly passed by that House shall be enforced by the officers or under the authority thereof.'"

The amendment was negatived.

Mr. President: Now I put article 85, as amended by Shri Jaspat Roy Kapoor's amendment No. 1627, to vote.

The question is:

"The article 85, as amended, stand part of the Constitution."

The motion was adopted.

Article 85, as amended, was added to the Constitution.

Mr. President: Before we adjourn, I desire to make one suggestion to the House. Members are probably aware that there is going to be a meeting of the All-India Congress Committee at Dehra Dun on Saturday and Sunday next. The suggestion has been made that we might adjourn for one day; but I do not think we should stop the proceedings of this House because of this meeting. I suggest that on Monday instead of meeting in the morning, we may meet in the afternoon, if that is acceptable to the Members. On Monday we may meet in the afternoon instead of the morning, to enable those who return from Dehra Dun to attend our session. I suggest five to eight o'clock in the evening on Monday next.

Honourable Members: Yes.

Mr. President: The House now stand adjourned till tomorrow at 8 o'clock.

The Assembly then adjourned till Eight of the Clock on Friday, the 29th May, 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS)- VOLUME VIII

Monday, the 23rd May 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Five of the Clock in the afternoon Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION-(*Contd.*)

Article 67-A-(*Contd.*)

Mr. President : We will take up article 67-A which was taken up the other day and was postponed.

The Honourable Dr. B. R. Ambedkar : (Bombay : General): Sir, I move for permission of the House to withdraw this article.

Mr. President : I think he did not move it and so there is no question of withdrawing it.

Mr. B. Pocker Sahib (Madras: Muslim) : No, it was taken up and the house is in possession of it. The honourable Member should therefore give his reasons for withdrawing it.

Mr. President : Yes, I am sorry I made a mistake. The honourable Dr. Ambedkar may give his reasons for withdrawing the article.

The Honourable Dr. B. R. Ambedkar : Sir, my reason is this. As I explained on the last occasion, we have made a provision for nominating certain persons to parliament. The original proposal was to nominate fifteen persons; subsequently it was decided that these fifteen persons should be divided into two categories, *viz.*, twelve representing literature, science, arts, social services, and so on; and a further provision should be made for the nomination of three persons to assist and advise the Houses of Parliament in connection with any particular Bill. I feel Sir, that the provision which is already contained in article 67 which permits the President to have twelve persons nominated to Parliament would serve the purpose which underlies this new article 67-A. The services that would be rendered by the persons nominated, if article 67-A were passed into law, would be also rendered by the persons who would be nominated under article 67; and therefore the nominations under article 67-A would be merely a duplication of the nominative system covered in article 67. Besides, it is felt that in an independent Parliament which is fully sovereign and representative of the people there should not be too much of an element of nomination. We have already twelve; there may be some nominations also regarding the Anglo-Indians; and it is felt that to add to that nominated quantum would be derogatory to the popular and representative character of Parliament. That is why I wish to withdraw this article 67-A.

Article 67-A was, by leave of the Assembly withdrawn

Statement *re.* Articles 92 to 99

The Honourable Dr. B. R. Ambedkar : Sir, I propose that we start now with article 100.

Mr. President : I take it that the discussion on article 92 to 99 should be held over for the time being to enable the business relating to finance and finance bills to be considered further.

The Honourable Dr. B. R. Ambedkar : Yes. The position is this. When article 90 was under debate I suggested that the debate should not be concluded and that the article should not be put to the vote because I discovered, at the last moment, a flaw in the article, which I thought is necessary to rectify. Now if that flaw is to be rectified, then articles 96 to 99 also require to be reconsidered in the light of that article. Article 91 we have passed. Article 92 to 99 require further consideration and therefore I want those articles to be held over for the time being. But we can being with article 100.

Seth Govind Das (C. P. & Berar : General). *[Mr. President, article 99 relates to our language and if consideration of articles 92 to 99 is postponed now, may I know when article 99 will be discussed? As I stated the other day, we have to adopt our Constitution in our national language also. I am told that the translation committee appointed by you has already translated the first fifty articles. Hindi version of these articles may be taken up at this stage also for consideration. If consideration of article 99 is deferred I would like to be enlightened on two points *viz.,* when it will be taken up and whether the Hindi version of the articles that have already been translated can be taken up and discussed, irrespective of whether article 99 has been passed or not by that time.]

Mr. President:* [So far I have no information from the committee. I do not know how far they have proceeded. We can consider the translation of the articles already passed, if it is ready. Therefore there should be no difficulty if we do not take up the Hindi version now.]*

Seth Govind Das : *[My point remains yet unanswered, Sir. Consideration of articles 99 stands deferred, but I want to know for how long it is deferred.]*

Mr. President: *[I cannot say exactly for how long it remains deferred but certainly we shall take it up at some future date.]*

Seth Govind Das : *[May I take it that when articles, that are passed here, are rendered into Hindi and are submitted to you, they will be taken up for consideration even if article 99 is not adopted?]*

Mr. President: *[I cannot say anything at this stage. I shall have to think over the matter and fix a time for it. It is just possible that article 99 may have to be held over for some time.]*

We shall then start with article 100.

Shri H. V. Kamath: (C. P. & Berar: General): May I bring to your notice another aspect of this matter, namely, if we jump over certain articles we are taken unawares, when articles are taken up for which we are not quite prepared. I request that you will consider this matter for the future, if not today.

Mr. President: The Constitution has been before the Members for a pretty long time and I assume Member have studied the Draft. The number of amendments itself shows that the whole Draft has been considered in great detail by all the Members. So nobody is being unawares if an article, which does not come after the article which we have considered, is taken up. But we shall accommodate the Members in this respect and I do not think any serious inconvenience is caused if we take up article 100 and those that follow it.

Article 100

Mr. President : Amendment No. 1784, of which notice has been given by Shri Himmat Singh K. Maheshwari, is not really an amendment. It is a negative amendment so far as that is concerned.

Amendment No. 1785 is by Mr. Naziruddin Ahmad. That is a drafting amendment. So we can leave that there.

The question is:

"That Article 100 from part of the Constitution."

The motion was adopted.

Article 100 was added to the Constitution.

Article 101

Mr. President : Article 101.

Shri H. V. Kamath : Sir, I move:

"That in clause (1) of article 101, after the words, 'called in question', the words 'in any court' be inserted."

I only wish to make explicit what I believe is tacit in this article, and I suppose what is meant here is that the validity of any proceedings shall not be called in question in any Court, and therefore to make it quite clear and explicit I suggest the insertion of these words.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I move:

"That in clause (2) of article 101, for the words 'or other member', the words, 'and no member' be substituted."

Clause (2) in the article runs thus:

"No officer or other Member of Parliament........." and so forth.

In fact, 'No officer or other Member' seem to imply that an officer is a Member of the House. The word 'other' is absolutely misleading. It gives a false impression. The amendment is accepted would make the passage run like this;

"No officer and no Member of Parliament.........." and so forth.

In fact, I want to draw a distinction between an officer and a Member. This is the simple reason for this amendment'. I do not wish to move the next amendment.

Mr. President : I think that seems to be an unnecessary amendment.

The Honourable Shri K. Santhanam : (Madras: General): I think both the amendments are mistaken. In the one case, the proceedings are not to be called in question in any court, while in the other case the Speaker and the Deputy Speaker may be rightly called officers of Parliament. So they must also be exempted. I think that is the intention of that clause.

Mr. President : Does it cover the other officers?

The Honourable Shri K. Santhanam : 'An officer of Parliament' will include the Speaker and other officers appointed by the Speaker for the purpose of Parliament. It is intended to be comprehensive and not restricted.

Mr. President : 'No Member' will also include the Speaker?

The Honourable Shri K. Santhanam : The Speaker will also be a Member. So I think the words 'other Member' is used.

Mr. President : Supposing it is 'no officer' and 'no Member' is will include Speaker and Deputy Speaker.

The Honourable Shri K. Santhanam : May be. I do not think there is any great harm.

Mr. President : Probably it is intended that other officer should be protected, as for example, the Marshal.

The Honourable Shri K. Santhanam : 'Officers' includes all officers. The question is whether 'Member' should be there. There would not be any particular difficulty felt if it is left as it is. So far as the first part is concerned, I do not think we would restrict it by putting in the words 'and no member'.

Shri K. M. Munshi (Bombay: General): There is something wrong with the loud speaker in front of you, Sir.

The Honourable Dr. B. R. Ambedkar : Sir, with regard to the amendment of Mr. Kamath, I do not think it is necessary, because where can the proceedings of Parliament be questioned in a legal manner except in a court? Therefore the only place where the proceedings of Parliament can be questioned in a legal manner and legal sanction obtained is the court. Therefore it is unnecessary to mention the words which Mr. Kamath wants in his amendment.

For the reason I have explained, the only forum there the proceedings can be questioned in a legal manner and legal relief obtained either against the President or the Speaker or any officer or Member, being the Court, it is unnecessary to specify the forum. Mr. Kamath will see that the marginal note makes it clear.

With regard to the amendment moved by my Friend Mr. Naziruddin Ahmad, he has not understood that the important words in sub-clause (2) are 'in whom powers are vested'.

Mr. Naziruddin Ahmad : For maintaining order.

The Honourable Dr. B. R. Ambedkar : 'No officer of other Member of Parliament in whom powers are vested' are the persons who are protected by sub-clause (2). The Speaker is already an officer and also a Member. No power has to be conferred upon him. The Constitution confers the power on him. Therefore, having regard to the fact that it is only 'other member' that is to say, Member besides the Speaker or the Deputy Speaker as the case may be who requires to be protected. Therefore the word 'other' is important.

Mr. President : What is the effect of the words 'or for maintaining order?

The Honourable Dr. B. R. Ambedkar : Supposing there is a brawl in the House I do not like to put it that way. But, supposing there is a brawl in the House, and the Speaker, not finding any officer at hand to remove a certain Member, asks certain other Member who is present to remove the Member who is causing the brawl. Then that particular Members is the Member who is invested with this authority by the Speaker and he would come under "other Member"

Mr. President : 'Or any other officer who is not a Member of the House' Does he come under that.

The Honourable Dr. B. R. Ambedkar : 'Officer' would be there.

Shri H. V. Kamath : May I ask for some clarification? Mr. Santhanam, referring to my amendment said that the validity of any amendment can be called in question not merely in the court of law, but also in a legislature. Does Dr. Ambedkar agree with him?

The Honourable Dr. B. R. Ambedkar : I am responsible for the explanation I have given.

Shri H. V. Kamath : As regards the other point mentioned by Dr. Ambedkar that the marginal sub-head is clear, may I point out that in the other forum, *viz.,* the Legislative Assembly. I was told that the marginal headings have nothing to do with legislation as such and that articles or sections are taken without reference to the marginal headings. If this is so, if you do not read the marginal heading and the article together, the meaning to my mind is not clear.

The Honourable Dr. B. R. Ambedkar : On that point there are two views. One is that the marginal note is not part of the section and the other view is that the marginal note is: for instance, Mr. Mavalankar when he was in Bombay held the view that the marginal note was not the part of the section, but the present Speaker of the Bombay Assembly recently said that the marginal note was very much part of the section as it gives the key to the meaning of the section.

Mr. President: The question is:

"That in clause (1) of article 101, after the words 'called in question', the words in any court' be inserted."

The amendment was negatived.

Mr. President: The question is:

"That in clause (2) of article 101, for the words 'or other member', the words, 'and no member' be substitued."

The amendment was negatived.

Mr. President: The question is:

"That article 101 stand part of the Constitution."

The motion was adopted.

Article-101 was added to the Constitution.

PART V-CHAPTER III

Mr. President : Part V-Chapter III.

(Amendments Nos. 1789 and 1790 were not moved.)

Prof. K. T. Shah : (Bihar: General): Sir, I beg to move:

"That in heading to Chapter III of Part V for the word 'Legislative' the word 'Extraordinary' be substituted."

It would then be

'Extraordinary Powers of the President'.

I particularly wish to draw attention to this aspect that any power the Head of the State or the Chief Executive has should be of an executive character. If any other powers are proposed to be put in under this article, it should be clearly understood that they are extraordinary; that is to say, they are not to be employed in normal times, in ordinary circumstances. Of course in extraordinary circumstances, as in the case of an emergency, the use of extraordinary powers would be both necessary and justified. I think that is important, therefore to make it clear, in the heading itself that this is an avowedly extraordinary power which may take the form of the legislation without our calling its legislative power. Legislative power the executive head should not have. Or it may even take the form of an executive decree or whatever form seems appropriate in the circumstances. The point that I wish to stress is that we must not, by any mention here imply or convey or suggest that the law making powers of the President are any but extraordinary powers. I think this is sufficiently clear, and will be acceptable to the House.

Mr. Tajamul Husain (Bihar: Muslim): Sir, Chapter III deals with the legislative powers of the President. Professor Shah wants that instead of the word "legislative" the word "extraordinary" should be used. Article 102 makes it clear that it is an extraordinary power of the President. It is nothing but extraordinary but it is still legislative power. Therefore I oppose this amendment.

Mr. President: I do not think that any further discussion is necessary. The question is:

"That in heading to Chapter III of Part V for the word 'Legislative' the word 'extraordinary be substituted."

The amendment was negatived.

Article 102

Mr. President: Then we come to the article itself. The first amendment is No. 1792 by Shri Damodar Swarup Seth.

(The amendment was not moved)

Shri H. V. Kamath : Mr. President, Sir, I request permission at the outset to move this amendment in two parts. By some accident they have been lumped together in the Secretariat as one amendment.

Mr. President : Yes.

Shri H. V. Kamath : Sir, I move:

"That in clause (1) of article 102, for the words 'when both Houses', the words when one or both Houses' be

substituted."

If we turn to article 69 of the Constitution, and read clause (2) thereof, we find that the President may from time to time summon the Houses or either House of Parliament. So it is not unlikely that at a particular time both Houses may not be in session but only one House may be in session. Therefore I would restrict the power of the President only to such occasions when no House will be in session. According to this article the President is empowered to promulgate ordinances when both Houses are not in session. As I have already stated, referring to article 69, an occasion may arise when one House will be in session. Therefore to make this clear, we will have to say "except when both Houses or one of the Houses of Parliament are in session."

My second amendment, that is the latter half of amendment No. 1793,* is purely verbal. I only move it formally and leave it to the Drafting Committee for its consideration, because it is obvious that the President may promulgate one ordinance or more than one ordinance. The article, as it stands, uses the plural. To provide for the contingency I have mentioned, I move this amendment. It is purely verbal and I do not wish to dilate on it any further.

There is a third amendment, amendment No. 1794, which stands in my name. On re-reading this article 102, I think it is not necessary because the President, before satisfying himself, will have recourse to every means at his disposal including consultation with his Council of Ministers. Therefore I do not propose to move amendment No. 1794.

Mr. President : Amendment No. 1795 is verbal and therefore disallowed.

Sardar Hukum Singh (East Punjab: Sikh): Amendment No. 1794 stands in my name also. I would like to move it.

Mr. President : I will give you an opportunity later.

Mr. B. Pocker Sahib : Mr. President, Sir, I move:

"That to clause (1) of article 102, the following proviso be added :-

"Provide that such ordinance shall not deprive any citizen of his right to personal liberty except on conviction after trial by a competent court of law.

"Sir, this is a very important matter and affects the fundamental right of every citizen to be tried by a competent court of law before he is deprived of his liberty. No doubt there may be circumstances in which action should be taken immediately but that should not deprive the citizen of his fundamental right of being tried by a court of law. The reason why I have given notice of this amendment is the recent experience we have had in the various provinces in the matter of enforcing ordinances and even the Public Safety Acts which have taken the form of ordinances. The ordinances were later made into law, but the important matter to be noted is that the fundamental right of the citizen to be tried by a court of law has been lost to him. I know that in the province of Madras there have been hundreds of cases in which even the provisions made in the Public Safety Act passed by the legislature of that province have not been complied with the persons were arrested and detained in custody not merely for weeks but for months without even being the grounds for which they were arrested. This is a very scandalous state of affairs. You might have come across the judgments of the High Court which were published in the Press and this practice has been condemned in strongest words by the High Court of Madras, very recently. After all there may be some emergency in which some extraordinary power has to exercised, but that should not in any way deprive a citizen of his elementary right, and after all, I do not know why the citizen should be deprived of that right, even though emergencies might arise, in which quick action is necessary. But the scandalous way in which even the Public Safety Act has been administered in an eye-opener to us that to give such a power to the President to pass ordinances, which give unrestricted powers to deprive the citizens of their liberty, should not be tolerated; and therefore, Sir, I submit that this is a very necessary and desirable proviso that should be added to this clause, and I would request the House to take into considerations the recent experiences in the administration of Public Safety Ordinances and Public Safety Acts, by which innocent citizens have been kept without trial for months and months together in very many cases a person is kept in custody for months and months and then he is just released without giving any reason. I submit, Sir, that in future there should be no rule for tolerating such a state of affairs, and therefore I would request honourable Members of this House to pay serious considerations to this aspects of this matter and though the drafters of this clause may have in view the Communists or such other bodies, even that is no justification for depriving the citizens of their liberty, entirely by such ordinances and that too indefinitely. Therefore, I submit, Sir, that this House may be pleased to accept this amendment.

Mr. President : Amendment No. 1797 is covered by an amendment which has been moved by Mr. Kamath.

(Amendments Nos. 1798 and 1799 were not moved.)

Shri Jaspat Roy Kapoor (United Provinces: General): Mr. President, I have given notice of an amendment to No. 1798.

Mr. President : Amendment No. 1798 has not been moved. No question of moving an amendment to an amendment, which has not been moved, arises.

Shri Jaspat Roy Kapoor : I am sure it will be readily accepted by Dr. Ambedkar. It is a formal amendment, but yet necessary.

Mr. President : If it is a formal amendment, you can talk it over with him.

Shri Jaspat Roy Kapoor : I leave it to you whether it may be allowed to be moved or not.

The Honourable Dr. B. R. Ambedkar : It is not in the printed list.

Mr. President : It is in the list which has been circulated today. Item No. 39-List II (Second week).

Shri Jaspat Roy Kapoor : I submit, Sir, that the words "assented to by the President" in the clause (2) of article 102, may be deleted, because they are obviously redundant. It is a Bill which is assented to and not an act. Once a Bill has been assented to by the President, it becomes an Act. Thereafter, no further assent of the

President is necessary.

Mr. President : This is not an amendment to an amendment. It is really an amendment to the original article.

Shri Jaspat Roy Kapoor : It is only an amendment with reference to that amendment.

Mr. President : I have disallowed that kind of amendment on a previous occasion, which comes under the guise of an amendment to an amendment. I rule this out also.

(Amendment No. 1800 was not moved.)

Shri H. V. Kamath : Mr. President, Sir I move:

"That in sub-clause (a) of clause (2) of article 102, after the words 'both Houses of Parliament', the words within four weeks of its promulgation' be inserted."

If my amendment be accepted by the House, the clause will read thus:

"Every such ordinance, shall be laid before both Houses of Parliament within four weeks of its promulgation, etc. etc."

The importance or the appropriateness of this amendment of mine arises out of a lacuna which has crept in here. No article in this Chapter provides for the life of an ordinance promulgated by the President. So far, we were under the impression, at least going by the experience of the Government of India Act and the ordinance making power of the Governor General provided for therein, that an ordinance expires or dies a natural death at the end of six months. But, some how or other, this Chapter is silent on that point.

Mr. President : The article says, "shall cease to operate at the expiration of six weeks from the re-assembly of Parliament."

Shri H. V. Kamath : Six weeks from the re-assembly of Parliament. Suppose, Parliament is not summoned at all. We expect our President to be a Constitutional President and that he would always act upon the advice or direction of Parliament. But if the President is inclined to dictatorship, or to exercise dictatorial powers,- who knows what the future has in store for us?- and if this article is left as it is, he may very well refrain from summoning Parliament to consider the emergency that has arisen or the circumstances which has made it necessary for him to promulgate the ordinance. If we read the entire chapter, we will find that there is no time limit specified for summoning Parliament. The article merely says that the ordinance shall be laid before both Houses of Parliament. For that also there is no time limit. Then, it shall cease to operate at the expiration of six weeks from the reassembly of Parliament. Suppose the President summons Parliament, say, after one year- Dr. Ambedkar says 'no' by a gesture-perhaps he is constitutionally minded and he does not aspire to dictatorial powers if he be elected President-certainly a man different from him might take unfair advantage of this article and refrain from summoning Parliament within a reasonable period. Therefore, I think it is necessary ....

Mr. President : Article 69 clause (1) might take the position clear. It says: "The

Houses of Parliament shall be summoned to meet twice at least in every year and six months shall not intervene between their last sitting in one session and the date appointed for their first sitting in their next session."

Shri H. V. Kamath : He can summon the next session six months after promulgating the ordinance. Then, six weeks after the re-assembly of Parliament, the ordinance expires. This means that an ordinance can continue in force for seven and a half months or a day or two less than seven and a half months, and not six months as it was even during the British regime. This is a very important chapter in as much as we are seeking to clothe or to invest the President with certain powers against which the Congress and all patriots fought during the British regime,-I mean the ordinance-making power of the Governor-General. I want to restrict this power as far as we can. Therefore, I want to provide a constitutional safeguard against the misuse of this article. I want this article to provide that an ordinance promulgated by the President shall be laid before Parliament within four weeks of its promulgation. There is no practical difficulty about this at all. Parliament can be summoned, I am sure, as it is done in many other countries, even within two weeks. You can summon an emergent session, and four weeks is a liberal period of time within which to summon both Houses of Parliament.

If we turn to article 275, there it is definitely laid down in sub-clause (c) of clause (2) that a Proclamation "shall cease to operate at the expiration of six months...." But, here, as I have already pointed out, this lacuna has crept in and I would be happy if it is definitely laid down that an ordinance promulgated by the President would expire at the end of six months. I do not know how this oversight has overtaken the wise men of the Drafting Committee. I would be happy if this safeguard is laid down in this chapter to the effect that no ordinance shall continue in force after the expiry of six months, or that every ordinance will die a natural death at the end of six months. If that be not accepted, then, I think my amendment is the only way out, that Parliament must be summoned within four weeks of the promulgation of the ordinance. The article provides that it shall cease to operate within six weeks after that. This would make the ordinance making power very much restricted. This would give an ordinance a life of ten weeks at most. It may happen that now and then the President may have to promulgate ordinances and it may be that it will not be practicable, for various reasons to summon Parliament every time. But, then, it must be made clear in this article that no ordinance shall have effect six months after promulgation. I hope Dr. Ambedkar, even if he does not accept my amendment-I am not pressing my amendment in case this article stipulates the maximum life of an Ordinance,-will provide specifically for this, that no ordinance shall continue in force as the expiration of six months and from the date of its promulgation. We should not leave it merely to the working of article 69, because under that article, as I have already calculated by simple arithmetic, an ordinance could continue in force for seven and a half-months. I hope therefore, that the Drafting Committee would reconsider this matter and definitely provide for an ordinance expiring at the end of six months from the date of its promulgation, at the latest.

Mr. President : Amendment No. 1802. I think this amendment goes with amendment No. 1805. Both of them might be moved together. Would you like to move both the amendments together or separately?

Pandit Hirday Nath Kunzru (United Provinces : General): I do not propose to move amendment 1805. Sir, I beg to move:

> "That in sub-clause (a) of clause (2) of article 102, for the words 'six weeks from the re-assembly of Parliament' the words 'thirty days from the promulgation of the Ordinance' be substituted."

Article 102 requires that:

> "An Ordinance promulgated under this article 'shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of Parliament, or if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of these resolutions."

This is a vital matter to which the Constitutions recently passed in several European countries have attached the greatest importance. The power of passing an Ordinance is equivalent to giving the executive the power of passing a law for a certain period. If there is such an emergency in the country as to require that action should be immediately taken by the promulgation of an Ordinance, it is obviously necessary that Parliament should be summoned to consider the matter as early as possible. Suppose that law and order in the country are seriously affected and the Government of the day consider it necessary that an Ordinance should be promulgated at once in order to prevent the situation from deteriorating or to bring in under control, it is obvious that if the Legislature is not sitting, the Executive must be enabled to arm itself with adequate power to maintain the peace of the country; but it is equally necessary that the Legislature should be summoned without avoidable delay to consider the serious situation that makes the promulgation of the Ordinance necessary. I do not therefore see why an Ordinance promulgated by the Governor-General should be in force for several months. The article, as it is, implies two things, first that the Ordinance will remain in force as long as Parliament does not meet, and secondly that even that Parliament meets, it will not expire immediately but will remain in force for six weeks from its re-assembling unless it is disapproved by both Houses before the expiry of that period. I know that a similar procedure is laid down in the Government of India Act, 1935, but such a procedure was understandable in the circumstances in which the act was passed. That Act was not meant to confer full responsible Government on us. The executive was not even partially responsible to the Legislature. The provisions of the Act were such as to enable the British Government to exercise authority with regard to the maintenance of law and order in the country in the last resort. All that has changed now. We have now a responsible Ministry. There is no reason therefore why the process laid down in the Government of India Act, 1935, should be sought to be copied in the new Constitution.

Sir, There are several countries in which the Executive does not possess this power. There are some countries in which the Executive though armed with the power of promulgating decrees before it. Take for instance France. My impression is that the period during which an Ordinance can remain in force there is much shorter than it will be if article 102 is passed by the Assembly. I do not think that in the new circumstances there is any justification for arming the Executive with the wide powers conferred on it under the Government of India Act 1935. All legislation, and ordinance is a particular kind of Legislation, should be subject to the approval of Parliament and this approval should be sought as early as possible.

Sir, I shall make my meaning clearer by giving an illustration. suppose soon after the winter session of the Assembly a situation requiring the promulgation of an Ordinance manifests itself in the country. Normally another session will be held only in October or November next. If article 102 is accepted the Ordinance will remain in force for about six months and possibly six weeks thereafter. The maximum period during which the Ordinance may remain in force can therefore be seven and a half months. This obviously is much too long a period and there is no reason why the Executive should have the power to legislate for so long a period. I think therefore that the period should be long enough to enable the legislature to meet and consider the extraordinary situation requiring the promulgation of an Ordinance, at any rate an Ordinance made necessary by factors affecting the peace or security of the country. For instance, if there are certain tariff laws that require to be changed immediately in the economic interests of the country, the Executive may well make the necessary change and nothing may be lost if we wait for six, seven or eight months and the Legislature considers the ordinance only after that. But when the ordinance relates to the peace or security of the country, or to similar circumstances, requiring extraordinary action to be taken by the executive under an Ordinance, then I think, we have to see that the period during which the Ordinance remains in force is as short as possible, and that any legislation that may be required should be passed by Parliament after a due consideration of all the circumstances.

Sir, my objection is not merely that the period during which the ordinance may remain in force is too long; it also relates to the character of the Ordinance that may be promulgated. The executive may not be required in all its details. It is therefore necessary that the legislature should be given an opportunity, not merely of considering the situation requiring the passing of an Ordinance, but also the terms of the Ordinance. It is quite possible, Sir, that the legislature, while taking the view that some legislation is necessary, may not agree completely with the Executive, and may modify the Ordinance that has been promulgated. For these two reasons, Sir, I consider it very necessary that the power of passing an Ordinance given to the executive should be much more limited than it would be under article 102. I hope that my honourable Friend Dr. Ambedkar will give the matter the consideration that it deserves and will agree with me that this is a matter in regard to which, if necessary, the House may be asked to postpone consideration, if he is not ready with the necessary amendment.

It is quite possible Sir, that the amendment in the form in which I have put it may be defective. It may be perfectly easy for any Member to get up and point out the defects in it. But what is necessary is not that destructive criticism should be resorted to, but that such action should be taken as will be consistent with the new constitutional status of the country, and be in conformity with the responsibilities of the legislature.

Mr. President : May I just point out that you have to move amendment No. 1805 also, as that becomes necessary in case this amendment is accepted.

Pandit Hirday Nath Kunzru : Yes, Sir, I agree. I see that it should be moved. I therefore move, Sir:

> "That the Explanation to clause (2) of article 102 be omitted."

I need not say anything about this amendment, because it is a necessary consequence of the amendment that I have already moved.

Mr. President : Mr. Jaspat Roy Kapoor has given notice of an amendment to this amendment. Does he move it?

Shri Jaspat Roy Kapoor : No, Sir.

Mr. President : Prof. Shah.

Prof. K. T. Shah : Mr. President, Sir, I beg to move:

"That in sub-clause (a) of clause (2) of article 102, after the word 'Parliament', where it first occurs, the words 'immediately after each House assembles' be inserted; after the word 'and' where it first occurs the words 'unless approved by either House of Parliament by specific Resolution' and after the word 'operate' the word 'forthwith' be inserted; and the words 'at the expiration of six weeks from the re-assembly of Parliament, or if, before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; be deleted."

Sir, the amended clause would be thus:

"Every such Ordinance shall be laid before both Houses of Parliament immediately after each House assembles, and unless approved by either House of Parliament by specific Resolution, shall cease to operate forthwith."

The words "at the expiry of six weeks, etc. etc.", will be all gone.

Sir, the principle of my amendment is the same as that which found such a powerful support from Pandit Kunzru. Most of us, I am sure, view with a certain degree of dislike or distrust the ordinance-making power vested in the Chief Executive. However we may clothe it, however it may necessary, however much it may be justified, it is a negation of the rule of law. That is to say, it is not legislation passed by the normal Legislature, and yet would have the force of law which is undesirable. Even if it may be unavoidable, and more than that, even if it may be justifiable in the hour of the emergency, the very fact that it is an extraordinary or emergency power, that it is a decree or order of the Executive passed without deliberation by the Legislature, should make it clear that it cannot be allowed, and it must not be allowed, to last a minute longer than such extraordinary circumstances would require.

This power is either not given in many constitutions, to the chief executive; or if given it is restricted as effectively and rigorously as possible, in some such manner as is proposed by this amendment. That is to say, if the ordinance has to be passed, in the hour of emergency or to meet extraordinary circumstances, it must be laid before either Houses of Parliament immediately it assembles; and unless each House approves of it by a Specific Resolution, it must cease to operate forthwith. This is the minimum needed in the interests of civil liberty.

I think we cannot show our distrust of this extreme power in the hands of the Executive more clearly than by requiring that, unless Parliament approves and thereby makes it, so to say, its own Act, unless the Legislature makes it its own enactment, executive legislation of this kind, passed by the President, must cease to operate immediately. We must leave no room for any doubt as to the maximum length of time during which the Presidential Ordinance can remain in operation. If Parliament is not in sessions, or if a general election is pending and therefore Parliament is not able to meet a margin of time may be allowed; but it must be the shortest possible. In that case, of course, other amendments which have been moved will operate, and I hope will operate, that is to say, the maximum life of the Ordinance must be limited by the Constitution. Even if it is any time necessary, even if it is unavoidable and justifiable under an emergency, the maximum life of the ordinance must be limited to three or four weeks, or six weeks at the most. The period is immaterial: the principle is important. By saying that the period is immaterial I do not suggest that it can be extended to any length. All I say is that between three, four or six weeks not much material difference may be found. Ordinance-making by itself being an unusual, extraordinary, and undesirable power, it should be qualified by a maximum period being described for its life.

Secondly, if a longer period or duration appears necessary, in any case within that period, the Parliament must be called; and either house must consider the Ordinance, and unless approved by each House by a special resolution the ordinance must be deemed forthwith to cease to operate.

On those terms, and under those limitations only, I think it may be possible to agree to this extraordinary power being vested in the President.

It is true that though the nominal authority which makes the Ordinance, is that of the President, he would be acting only on the advice of the Prime Minister and the Prime Minister naturally would be responsible to Parliament, where the ordinary remedies of responsible Ministries may take effect. Inspite of this factor, I would not leave it to the exigencies, or to the possibilities of party politics, to see that such extraordinary powers are exercised at any time or for any time, and that is why I would require, under the constitution and by the constitution, that a maximum period is prescribed to the life of an ordinance; and that a definite procedure be laid down whereby the ordinance can be approved by either house of Parliament by a specific resolution. Otherwise it shall cease to operate immediately thereafter. I hope this very important matter will commend itself to the House, and the amendment will be accepted.

(Amendments Nos. 1804, 1806, 1807 and 1808 were not moved.)

Sardar Hukam Singh : Sir, I beg to move:

"That in clause (1) of article 102, after the words 'except when both Houses of Parliament are in session' the words 'after consultation with his Council of Ministers' be inserted."

This is so evident that I might be met with the reply that in all constitutions it is supposed that the constitutional head always acts on the advice of his Council of Ministers and in other constitutions it is never put down expressly that he should do so. With that consciousness I have moved this amendment, because I feel that we are framing a written constitution wherein we are giving every detail, with the result that it is so cumbersome and bulky. Under such circumstances I feel that a matter of such importance and which is so apparent must be expressly put down. It may be said that conventions would grow automatically and the President shall have to take the advice of his Ministers. My submission is that here conventions have yet to grow. We are making our President the constitutional head and we are investing him with powers which appear dictatorial. Conventions would grow slowly and as this constitution is written and every detail is being considered, why should we leave this fact to caprice or whim of any individual, however high he may be? If we clearly put down that he is to act on the advice of his Ministers, it is not derogatory to his position. with these words, Sir, I move my amendment.

Shri R. K. Sidhva (C.P. & Berar : General): On a point of order, Sir, the amendment moved by Mr. Pocker is out of order. His amendment reads:

> "Provided that such ordinance shall not deprive any citizen of his right to personal liberty except on conviction after trial by a competent court law."

If you refer to article 15 under Fundamental Rights, which we have already passed, it says:

> "No person shall be deprived of his life or personal liberty except according to procedure established by law, nor shall any person be denied equality before the law or the equal protection of the laws within the territory of India."

This article which we have passed definitely defines what are the personal liberties and how they should be safeguarded. Hence this amendment would be out of order.

Mr. President : I do not think it is out of order. It is not consistent with article 15 which we have passed. It only confirms it. Therefore I, allow the amendment.

Dr. P. S. Deshmukh (C.P. Berar : General): Sir, there are a good many amendments moved to this article. It is quite natural for the House to emphasise that the ordinary powers of the Parliament shall not be circumscribed nor the Parliament's wishes defeated in any indirect way. It is with that intention that many Honourable Members of this House have come forward to limit the period of time of the operation of the ordinance and to insist that the President shall call a session of the Houses of Parliament at the earliest possible moment. I am afraid I have not been much impressed by the speeches in support of any of the amendments that have been moved.

The first amendment that has been moved by Mr. Pocker has been moved at a very wrong place. Not only has adequate provision been made already by the House regarding arresting of any person without there being any law under which he can be arrested but this is not the place where such an amendment should be moved because essentially I do not think that the House need fear that the President would misuse his power for the sake of arresting people without providing for it, or would promulgate an ordinance only for the sake of depriving any set of the citizens of India of their liberties. In any case the fundamental rights having already been approved I do not think there is any need for the amendment moved by Mr. Pocker. At the present moment many people have lost their liberties under the laws of detention, the Public Safety Act and other laws passed in the Provinces. Honourable Members are correct in complaining that the provisions of the Public Safety Acts operating in the provinces have been somewhat arbitrarily and oppressively used and that it has caused considerable amount of dissatisfaction. But we are not dealing with the provinces, or their powers. we are here dealing with the legislative powers of the President and we have got to take notice of the fact that at the present moment Governments have ceased to be merely policemen or judges. But now-a-days there is nothing that is outside the sphere of governmental activity. Amongst other things, Governments of the present day are shop-keepers; they are commission agents and even contractors. Every sort of duty that an ordinary citizen was performing is being performed by the State under the exigencies of the present circumstances. I therefore feel, Sir, that the powers that we are giving to the President are all the more necessary because the day to day administration has become so complex.

Take, for instance, the administration of the controls. There are a thousand and one occasions when it would be necessary for the Executive to possess some such power. In the present extraordinary times through which the world is passing, Sir, I think it is absolutely necessary and desirable that the Head of the State should be empowered with these extraordinary powers.

Shri H. V. Kamath : The Constitution is not framed merely for extraordinary times; it is intended for many many years to come.

Dr. P. S. Deshmukh : I am sure, Sir, that the provisions that exist in this Constitution are such that there is no possibility of their being abused in ordinary circumstances also.

Pandit Kunzru said that it was well for the British Government to have had a section like this in the Government of India Act, 1935, when the Government was irresponsible. But when the Government is responsible to the Legislature there is no fear of its being abused. I think Pandit Kunzru has himself suggested a reply to his own argument. I am sure no president will act without the consent of the Cabinet and no Cabinet will act without the consent of the majority of the Members of the House. So, any power that is likely to be exercised under this Section by the President will have the tacit approval and consent of the Legislature, and for that reason I think the amendment of Sardar Hukum Singh is also not necessary. No President can continue to be in office if he were to issue ordinances which have not the consent of the Cabinet and ultimately of the Legislature. I, therefore, think, Sir, that there is no need for the safeguard which have been suggested. When the power of withdrawal of Ordinance has been given to the President, I am sure, Sir, he will, as constitutional head-as the guardian of the people-not permit any legislative measure to continue for a day more than is absolutely necessary.

Then, Sir, as a consequence of the amendment which Pandit Kunzru has moved, he wants to omit the explanations. Now, actually, Sir, there are not two explanations. There is only one explanation. The third sub-clause of the article is also, in my opinion, a very important provision. It reads as follows:

> "If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void."

I think this provision should satisfy Mr. Pocker Sahib also, because if the legislative power exercised by the President goes counter to any of the Fundamental Rights, to that extent it shall be *ipso facto* void and shall be of no consequence whatever.

Under all these circumstances, Sir, I do not think there is need of any of the amendments that have been moved. I think the time which has been stated here, will probably be quite sufficient. But if in spite of this Dr. Ambedkar feels that he is convinced by the arguments that have been advanced and wants to make a provision for the immediate calling of the Parliament within the period of thirty days, I should have no objection, but I feel, Sir, that there is no likelihood of the legislative powers given to the President being misused and the powers of the sort which have been mentioned in the article are essential.

Mr. Tajamul Husain : Sir, I should first take up amendment No. 1802 moved by my honourable Friend Pandit Kunzru. Now, Sir, sub-clause (a) of clause (2) says that every ordinance shall be laid before Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of Parliament, etc. My honourable Friend Pandit Kunzru says that it should cease to operate at the expiration of thirty days from the promulgation of the Ordinance. I submit, Sir, I am unable to understand this. Ordinances are promulgated only in cases of emergencies. Suppose an emergency is such that it would last for more than thirty days, then what are we to do in that case?

Shri H. V. Kamath : Sir, the honourable Member has not properly understood Pandit Kunzru's amendment.

Mr. Tajamul Husain : Sir, I was not here when Pandit Kunzru moved his amendment. But from his amendment it is clear that he wants that the Ordinance should cease to operate at the expiration of thirty days from the time of promulgation of the ordinance. If that is the case, then I will place an example before you. Supposing the House of the People is dissolved today for the purpose of general election. It may take more than one month and in that case as soon as the dissolution takes place, the next day an emergency arises and the President of the Union promulgates an Ordinance. What are you going to do? There are no more members. How are you going to summon Parliament again? I oppose the amendment.

Now let me take amendment No. 1796 moved by Mr. Pocker. He says: 'Provided that such ordinance shall not deprive any citizen of his right to personal liberty except on conviction after trial by a competent court of law.' I cannot understand this. This is an extraordinary procedure. Ordinance means extraordinary procedure. In such an emergency the question of personal liberty does not arise. We do know what will happen at that time. Therefore his amendment also should be opposed.

The amendment moved by Sardar Hukam Singh says that when an Ordinance is promulgated, there should be prior consultation with the council of Ministers. It is very reasonable. we should support it. After all, the Prime Minister and the Cabinet are the chief representatives of the people. No doubt the President also represents the entire Union. But the Prime Minister and his Cabinet are I think more responsible people and they should be consulted before an Ordinance is promulgated. Therefore I support that amendment.

Mr. Mahboob Ali Baig Sahib (Madras: Muslim): Mr. President, Sir, I am in complete agreement with the amendment moved by Pandit Kunzru and also with the amendment moved by Mr. Pocker. I will speak first on the amendment moved by Pandit Kunzru. I think it must be possible for my Friend Dr. Ambedkar to accept it. Pandit Kunzru has clearly pointed out that the ordinance regime might continue for six months, and for six weeks added on to six months. Now the question is whether it is desirable that in a democracy, where you have got people's representatives in the country who could be summoned at short notice, that you should give any opportunity to the executive to postpone calling the Parliament which the executive is entitled to do for six months and give six weeks more. It is I submit undemocratic and will lead to executive oppression, to say the least. what I find in the present day is the tendency on the part of Members of the Cabinet to bring forward legislation or make proposals in the Constitution itself based upon the present fears. The Government in power or the persons in charge of these matters consider that tension always exists and provision must be made for it, giving the executive power to meet any contingency. Well, we are prepared to give power to the executive to meet any contingency. Well, we are prepared to give power to the executive to meet the situation the moment any contingency arises. When Parliament can be called at once within a week or ten days, I do not see any reason why we should allow an opportunity to delay calling the Parliament in order to decide whether the ordinance promulgate should continue. It is fraught with danger and the chances are that the executive might arrogate to itself the powers and will be tempted to postpone calling the Parliament. so, Sir, democratically-minded Dr. Ambedkar must be able to accept the suggestion embodied in the amendment of Pandit Kunzru.

Now, with regard to the amendment of Mr. Pocker. I do not want to revive the controversy which arose in the course of the discussion of article 15. There it was ruled that the protection of personal liberty can be in accordance with the procedure laid down by law, that is by parliament. We have passed that. But why should we now not protect the liberties of the persons even from the arbitrary rule of the President, even though it may be for six months or two months? The merit of article 15 which was passed in that Parliament is to legislate with regard to the procedure. It is Parliament that has to lay down the procedure with regard to certain matters. For instance, when a man is deprived of his liberty without being brought to trial he may be clapped in jail, in accordance with the procedure laid down by Parliament. But now why should a single individual, the President, be allowed to pass an ordinance by which he might deprive a person of his liberty without letting him to be tried by a court of law? Therefore I support this amendment. i think it must be possible for Dr. Ambedkar to accept them.

The Honourable Dr. B. R. Ambedkar: Mr. President. Sir, my Friend, Pandit Kunzru, has raised some fundamental objections to the provisions contained in this article 102. He said in the course of his speech that we were really reproducing the provisions contained in the Government of India Act, 1935, which were condemned by all parties in this country. It seems to me that my Friend, Pandit Kunzru, has not borne in mind that there are in the Government of India Act, 1935, two different provisions. One set of provisions is contained in Section 42 of the Government of India Act and the other is contained in Section 43. The provisions contained in Section 43 conferred upon the Governor-General the power to promulgate ordinance which he felt necessary to discharge the functions that were imposed upon him by the Constitution and which he was required to discharge in his discretion and individual judgement. In the ordinances which the Governor-General had the power to promulgate under Section 43 the legislature was completely excluded. He could do anything-whatever he liked-which he thought was necessary for the discharge of his special functions. The other point is this; that the ordinances promulgated by the Governor-General under Section 43 could be promulgated by him even when the legislature was in session. He was a parallel legislative authority under the provisions of Section 43. It would be seen that the present article 102 does not contain any of the provisions which were contained in Section 43 of the Government of India Act. The President, therefore, does not possess any independent power of legislation such as the powers possessed by the Governor-General under section 43. He is not entitled under this article to promulgate ordinances when the legislature is in session. All that we are doing is to continue the powers given under Section 42 of the Governor-General to the President under the provisions of article 102. They relate to such period when the legislature is in recess, not in session. It is only then that the provisions contained in article 102 could be invoked. The provisions contained in article 102 do not confer upon him any power which the Central Legislature itself does not possess, because he has no special responsibility, he has no discretion and he has no individual judgment. Consequently my suggestion is that the argument which was propounded by my friend, Pandit Kunzru, went a great deal beyond the provisions of article 102. If I may say so, this article is somewhat analogous--I am using very cautious language--to the provisions contained in the British Emergency Power Act, 1920. Under that Act, also, the King is entitled to issue a proclamation, and when a proclamation was issued, the executive was entitled to issue regulations to deal with any matter, and this was permitted to be done when Parliament was not in session. My submission to the house is that it is not difficult to imagine cases where the powers conferred by the ordinary law existing at any particular moment may be deficient to deal with a situation which may suddenly and immediately arise. What is the executive to do? The executive has got a new situation arisen, which it must deal with *ex hypothesi* it has not got the power to deal with that in the existing code of law. The emergency must be dealt with, and it seems to me that the only solution is to confer upon the President the Power to promulgate a law which will enable the executive to deal with that particular situation because it cannot resort to the ordinary process of law because, again *ex hypothesi,* the legislature is not in session. Therefore it seems to me that fundamentally there is no objection to the provisions contained in article 102.

The point was made by my Friend, Mr. Pocker, in his amendment No. 1796, whereby he urged that such an ordinance should not deprive any citizen of his fundamental right of personal liberty except on conviction after trial by a competent court of law. Now, so far as his amendment is concerned, I think he has not read clause (3) of article 102. Clause (3) of article 102 lays down that any law made by the President under the provisions of article 102 shall be subject to the same limitations as a law made by the legislature by the ordinary process. Now, any law made in the ordinary process by the legislature is made subject to the provisions contained in the Fundamental Rights articles of this Draft Constitution. That being so, any law made under the provisions of article 102 would also be automatically subject to the provisions relating to fundamental rights of citizens, and any such law therefore will not be able to over-ride those provisions and there is no need for any provision as was suggested by my Friend, Mr. Pocker, in the amendment No. 1796.

The amendment suggested by my friend, Mr. Kamath, *i.e.,* 1793, seems to me rather purposeless. Suppose one House is in session and the other is not. If a situation as I have suggested arises, then the provisions of article 102 are necessary because according to this Constitution no law can be passed by a single House. Both Houses must participate in the legislation. Therefore the presence of one House really does not satisfy the situation at all.

Shri H. V. Kamath: Does it mean that when one House only is in session, say, the House of the People, the President will still have this power?

The Honourable Dr. B. R. Ambedkar : Yes, the power can be exercised because the framework for passing law in the ordinary process does not exist.

Shri H. V. Kamath: Shameful, I should say.

The Honourable Dr. B. R. Ambedkar : Now I come to the other question raised by my Friend, Mr. Kunzru, in his amendment No. 1802. His suggestion is that such legislation enacted by the President under article 102 should automatically come to an end at the end of thirty days from the promulgation of the ordinance. The provision contained in the draft article is that it shall continue for six weeks after the meeting of

Parliament. Now, the reason why my Friend, Pandit Kunzru, has brought in his amendment is this: he says that under the provisions contained in the draft article, a much longer period might elapse that six weeks, because he thinks that the executive may take, say, a month or two for summoning Parliament. If Parliament is summoned, say in four months, then the six weeks also might be there-that would be practicable-or it might be longer if the Executive delays the summoning of the Parliament. Well, I do not know what exactly may happen, but my point is this that the fear which my honourable Friend Pandit Kunzru has is really unfounded, because we have provided in another article 69, which says that six months shall not elapse between two sessions of the Parliament, and I believe, that owing to the exigencies of parliamentary business, there will be more frequent sessions of the Parliament than honourable Members at present are inclined to believe. Therefore, I say, having regard to article 69, having regard to the exigencies of business, having regard to the necessity of the Government of the day to maintain the confidence of Parliament, I do not think that any such dilatory process will be permitted by the Executive of the day as to permit an ordinance promulgated under article 102 to remain operation for a period unduly long, and I therefore, think that the provisions as they exist in the draft article might be permitted to remain.

Shri H. V. Kamath: Mr. President, Sir, may I ask one last question? Is it not repugnant to our ideas of conceptions of freedom and democracy, which are, I presume, Dr. Ambedkar's also, not to lay down the maximum life of an ordinance in this article?

The Honourable Dr. B. R. Ambedkar : My own feeling is this that a concrete reason for the sentiment of hostility which has been expressed by my honourable Friend, Mr. Kamath as well as my honourable Friend Mr. Kunzru, really arises by the unfortunate heading of Chapter "Legislative powers of the President". It ought to be "Power to legislate when Parliament is not in session". I think if that sort of innocuous heading was given to the Chapter, much of the resentment to this provision will die down. Yes. The word 'Ordinance' is a bad word, but if Mr. Kamath with his fertile imagination can suggest a better word, I will be the first person to accept it. I do not like the word "ordinance", but I cannot find any other to substitute it.

Mr. President: There is another amendment which has been moved by Sardar Hukam Singh in which he says that the President may promulgate ordinances after consultation with his Council of Ministers.

The Honourable Dr. B. R. Ambedkar : I am very grateful to you for reminding me about this. The point is that amendment is unnecessary, because the President could not act and will not act except on the advice of Ministers.

Mr. President: Where is the provision in the Draft Constitution which binds the President to act in accordance with the advice of the Ministers?

The Honourable Dr. B. R. Ambedkar : I am sure that there is a provision, and the provision is that there shall be a Council of Ministers to aid and advise the President in the exercise of his functions.

Mr. President: Since we are having this written Constitution, we must have that clearly put somewhere.

The Honourable Dr. B. R. Ambedkar : Though I cannot point it out just how, I am sure there is a provision. I think there is provision that the President will be bound to accept the advice of the Ministers. In fact, he cannot act without the advice of his Ministers.

Some Honourable Members: Article 61 (1).

Mr. President: It only lays down the duty of the Ministers, but it does not lay down the duty of the President to act in accordance with the advice given by the Ministers. It does not lay down that the president to accept the advice. Is there any other provision in the Constitution? We would not be able even to impeach him. because he will not be acting in violation of the Constitution if there is no provision.

The Honourable Dr. B. R. Ambedkar : May I draw your attention to article 61, which deals with the exercise of the President's functions. He cannot exercise any of his functions, unless he has got the advice, 'in the exercise of functions.' It is not merely to 'aid and advise'. "In the next exercise of his functions" those are the most important words.

Mr. President: I have my doubts if this word could bind the President. It only lays down that there shall be a Council of ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. It does not say that the President will be bound to accept that advice.

The Honourable Dr. B. R. Ambedkar : If he does not accept the advice of the existing ministry, he shall have to find some other body of ministers to advice him. He will never be able to act independently of ministers.

Mr. President: Is there any real difficulty in providing somewhere that the President will be bound by the advice of the ministers?

The Honourable Dr. B. R. Ambedkar : We are doing that. If I may say so, there is a provision in the Instrument of Instructions.

Mr. President: I have considered that also.

The Honourable Dr. B. R. Ambedkar : Paragraph 3 reads: In all matters within the scope of the executive power of the Union, the President shall, in the exercise of the powers conferred upon him, be guided by the advice of his ministers. We propose to make some amendment to that.

Mr. President: You want to change that. As it is, it lays down that the President will be guided by the ministers in the exercise of executive powers of the Union and not in its legislative power.

The Honourable Dr. B. R. Ambedkar : Article 61 follows almost literally various other constitutions and the Presidents have always understood that that language means that they must accept the advice. If there is any difficulty, it will certainly be remedied by suitable amendment.

Shri H. V. Kamath: You will be leaving this article silent on the subject of the maximum life of an ordinance which can extend to seven and a half months. It is impossible.

Mr. President: Is Mr. Kamath going to make a second speech on his amendment.

The Honourable Dr. B. R. Ambedkar : Our President is quite different from the President of the United States.

Shri H. V. Kamath: I only wish to say that inframing this article, we have gone one better than the British regime and it is a most atrocious position.

Mr. President: You have already made your speech. I do not think you are entitled to make that observation at this stage. I will now put the amendments to vote.

The question is:

"That in clause (1) of article 102, for the words 'when both Houses', the words 'when one or both Houses' and for the words 'such Ordinances', the words 'such Ordinance or Ordinances' be substituted respectively."

The amendment was negatived.

Mr. President: The question is:

"That in clause (1) of article 102, after the words 'except when both Houses of Parliament are in session', the words 'after consultation with his Council of Ministers' be inserted."

The amendment was negatived.

Mr. President: The question is:

"That to clause (1) of article 102, the following proviso be added :-

"Provided that such ordinance shall not deprive any citizen of his right to personal liberty except on conviction after trial by a competent court of law.'"

The amendment was negatived.

Mr. President: The question is:

"That in sub-clause (a) of clause (2) of article 102, after the words 'both Houses of Parliament' the words 'within four weeks of its promulgation' be inserted."

The amendment was negatived.

Mr. President: The question is:

"That in sub-clause (a) of clause (2) of article 102, for the words 'six weeks from the re-assembly of Parliament' the words 'thirty days from the promulgation of any Ordinance' be substituted" and

"That the explanation to clause (2) of article 102 be omitted."

The amendment was negatived.

Mr. President: The question is:

"That in sub-clause (a) of clause (2) of article 102, after the word 'Parliament', where it first occurs the words 'immediately after each House assembles' be inserted; after the word 'and' where it first occurs the words 'unless approved by either House of Parliament by specific Resolution' and after the word 'operate' the word 'forthwith' be inserted; and the words 'at the expiration of six weeks from the re-assembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions;' be deleted."

The amendment was negatived.

Mr. President: I think those are all amendments.

The question is:

"That article 102 stand part of the Constitution."

The motion was adopted.

Article 102 was added to the Constitution.

CHAPTER IV

Mr. President: There is an amendment of which I have notice that a new article be added, article 102-A. We shall take it up.

There is an amendment with regard to the heading of the Chapter.

Amendment No. 1809 by Mr. Naziruddin Ahmad about the numbering of the chapter: I do not think it is necessary to take it up.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in the heading to Chapter IV of Part V, for the words 'Federal Judicature' the words 'Union Judiciary' be substituted."

This is merely consequential to the earlier article where India has been described as a Union.

Mr. President: The question is:

"That in the heading to Chapter IV of Part V for the words 'Federal Judicature' the words 'Union Judiciary' be substituted."

The amendment was adopted.

Mr. President: Mr. Gupta's amendment is the same as the previous one.

New Article 102-A

Prof. K. T. Shah: Sir, I move:

"That under Chapter IV of Part V, the following new article be added :--

"102-A. Subject to this constitution the Judiciary in India shall be completely separate from the wholly independent of the Executive or the Legislature."

Sir, this amendment enunciates a very important proposition in constitution making, which I have urged from a variety of angles already, but which I should now like to urge from this angle, in the hope that, at least for securing the independence of the Judiciary, it may commend itself to the House.

Sir, the principle of the separation of powers has been regarded in many countries as the foundation stone of democratic Government. Unfortunately, I have not been able to persuade the House, in regard to this very important principle, on other occasions that I had enunciated it either generally or in regard to the Legislature. In the case, however of the Judiciary, I submit that the proposition is still more important than any where else. After all, in this country, the history of the popular movement has been associated ever since its commencement with the demand that the Judiciary at least should be separate from and completely independent of the Executive. One of the characteristics of the preceding Government was that, upto a considerable stage in the scale of judicial organisation, the powers of the judiciary and the executive were combined in one and the same officer. That was the situation to which exception was taken ever since the democratic movement began in this country.

Though it has not even now found acceptance in this constitution in the fullness of form that I would have desired, I am sure that a majority even in this House does not object in principle to this proposition. I have, however, made it a much wider proposition. In this amendment: it is not merely the separation of the Judiciary from the Executive, but also its independence, and I want it to be also separate from the legislature and the executive as well.

The presence of the judicial element in the legislature is, I think of no advantage, no help either to the legislature or to the judges themselves, inasmuch as the Judges, if members of the Legislature, are liable to be influenced by the debates of the proceedings that may have taken place in the making of the law, and not keep themselves strictly to the letter of the law as it may come before them in any specific case. It has, however, been accepted as a very sound principle of administration of justice, that Judges do not concern themselves with anything that has happened in the legislature while the law in question was being passed, and whatever arguments were used, whatever points were made while the law was under discussion in that body, must have no weight with the Judges. They must confine themselves only to the final Act of the legislature as it has been worded and they remain the supreme authority for interpreting that law as and when any matter comes up before them involving such law.

That, I think, in itself is a very sound position and ought to be normally emphasised in the Constitution. Hence, that part of my amendment, which relates to the separation and independence of the Judiciary from the legislature.

Much more important, from the point of view of civil liberty and the general democratic character of the governance of the country, is the complete separation of the Judiciary from the Executive in every way that we can possibly guarantee. I think it is of the utmost importance that the Judiciary, which is the main bulwark of civil liberties, should be completely separate from and independent of the Executive, whether by direct or by indirect influence. The possibility of the translation, that has frequently occurred in the past, of high judicial officers being available for promotion or transfer to equally high or even higher executive offices, is, in my opinion, itself a temptation against which Judges should be guarded. By law, I think, Judges should be barred from any such translation from the judicial to executive offices, however eminent, however imposing that office may be, lest, in such translation, they should be even indirectly influenced, and that they should model their judgments, unconsciously perhaps, in the hope of proper appreciation being shown at suitable moments by the powers that be.

I think this cannot be emphasised too much in a country particularly like this, new yet to the forms of democratic Government, new yet to the limits of Party Government and party dispensation of not only the loaves and fishes of office, but also their advantages, that the Judiciary should be completely independent, and in no sense open to influence in any way by the executive. The spectacle used to be frequent in the past,-perhaps this is within the knowledge of many of us here, when superior executive officers did not scruple even to issue instructions, certainly demi-official advice, as to the course of legal proceedings. I trust that is no longer the case now in this country. But lest there may be the slightest unconscious room for influence being exercised by the Executive upon the Judiciary, I suggest the very possibility should be avoided. The Constitution should therefore definitely provide that the Judiciary shall be completely separate from and independent of the Executive or the Legislature. I trust this simple proposition will find no objection and will be accepted by the House.

Shri K.M.Munshi: Mr. President, Sir, I have only a few remarks to offer with regard to the amendment proposed by my Friend Professor Shah. In this amendment as the House will see, two ideas have been mixed up. The first is about the separation of Judicial from the Executive Powers. The other is the independence of the Judiciary. Now if I may remind the house, the doctrine of separation of powers which was originally put forward by Montesquieu in the middle of the eighteenth century was the basis on which the Constitution of the United States of America was framed. But the last 150 years of experience has shown that the doctrine of separation of powers cannot be maintained in a modern State. Today we find the Executive appointing numbers of tribunals of a quasi-judicial character. We find a large number of rules made by the Executive under law regulating conduct of different kinds. In modern State the Executive enjoys certain powers of legislation as well as of deciding disputes. We also find Industrial courts which are taking upon themselves the right to adjudicate upon rights between the parties. On the other hand we find that the Judiciary has sometimes to perform functions which may be Executive in a very narrow sense. Therefore the doctrine of separation of powers is an exploded doctrine. This Constitution has been based on an entirely different principle, adopting the British model. We have invested the Judiciary with as much independence as is possessed by the Privy Council in England and to a large extent, by the Supreme Court of America; but any water-tight compartments of powers have been rejected. That is with regard to separation of powers.

As regards the question of the independence of the Judiciary, which my Friend Professor Shah emphasised, ample care has been taken in this Chapter that the judicial system in India under this Constitution should be an integrated system, and that it should be independent of the Executive in so far as it could be in a modern State. The House will see as it proceeds to deal with this Chapter that once a Judge is appointed, his remuneration and allowances etc. remain constant. Further he is not removable except under certain conditions like a two-thirds majority of the two Houses. He is precluded from practicing afterwards and I am sure he is not going to look up to any future prospects from Government after his term of Judge is over. These are considered sufficient guarantees of the independence of the Judiciary throughout those countries which have adopted England as the model. These safe guards are there. Largely however it will depend on how the Judiciary works, what the spirit of the Legislature is and what spirit the Executive works. That is a matter which principally lies with the public opinion in the country as well as with those working the Constitution. But so far as the Judiciary is concerned, it is as independent as in any other country of the world and there should be no fear that by reason of not accepting the first part of Professor Shah's amendment the independence of the Judiciary would in any way be crippled or whittled down.

Shri R. K. Sidhva: Mr. President, Sir, the Congress is committed for the last over fifty years that the Executive should be separated from the Judiciary. The main reason that this has been advocated every time and this subject came up before the public is that it is bad in principle. The prosecutor and the Judge should not be the same person and that is what is at present existing in this country and there has been miscarriage of justice in past when the Prosecutor and the Judge is the same person who sits on trial over the accused person. I would not go on stating details because it is very well known to the people as to why we have been advocating the separation of these two functions and it is absolutely necessary that these two functions should be separated. But, Sir, I might state that this question came up for discussion in this House in the last Assembly and we discussed it for nearly three hours. If you will kindly see the Directive Principles of State Policy there has been an article passed-article 39-A-which says:

> "The State shall take steps to separate the judiciary from the executive in the public services of the State."

Now it is one of the articles which has been passed and adopted as a Directive Principle given to the Governments that may be in Office, and that is of greater force than the amendment which my Friend Professor Shah desires to move. The matter having been already discussed and decided and forming part of one of articles, while I agree in principle about this matter, as it has been discussed threadbare on the floor of this House in the last Session. I see no reason why we should again put in another clause on this matter and complicate the issue. 'Directive' means in my opinion that it has a greater force than this article. It may be that any Government may not accept that Directive Policy. Well, for that matter, the measure lies in the hands of the Legislature if they do not accept this Directive Policy. I therefore contend that while I accept in principle, as the matter has been discussed threadbare for three hours as far as I remember and forms part of an article, there is no necessity for passing a resolution of this nature.

Dr. P. K. Sen (Bihar: General): Sir, I cordially support the amendment moved by my honourable Friend Prof. Shah. The question as to the combination of judicial and executive functions has been mooted, I do not know, how many times. From the time of Raja Ram Mohan Roy this question about the absolute necessity of separating judicial and executive functions has been before the nation. I was rather taken by surprise-in fact it took my breath away-when my honourable Friend Mr. Munshi said that it was an exploded doctrine that there should be no combination of executive and judicial functions. Of course the question does not arise in connection with the Judges of the Supreme Court or the Judges of the High Courts.

Mr. President: I may point out that here in this Chapter we are concerned only with the Union Judiciary. Here we are not concerned with the subordinate judiciary or any other judiciary. there is no question of combination of functions so far as the Union is concerned, between the Executive and the Judiciary.

Dr. P. K. Sen: But, Sir, the amendment, I think is:

> "Subject to this Constitution, the Judiciary in India shall be completely separate from and wholly independent of the Executive or the Legislature."

It does not necessarily come under the Union Judicature. I should submit that what ever the proper place for it, which can be a matter of dispute, the principle itself-and the amendment represents a principle-is one which we must accept. Now is the time for us definitely to say that there should be a separation between the Executive and the Judiciary. I do recognise that coming as it does at this particular place, it seems that it is under Union Judicature, but that is not the case. The amendment simply says this, that under Chapter IV, of Part V, a new article should be added. Let there be a separate heading even. I do not know at which place exactly it should appear. But that is really immaterial. I do hope that this amendment will not be rejected in a hurry, but that the House will really give its considered opinion that it should be regarded as accepted doctrine. It is a very important principle that we have insisted upon for many years past, and therefore it should be embodied in our Constitution. It does not come under Federal Judicature, or under the High Court even; but it is notorious that in the Subordinate Judiciary, there is this combination of functions practically everywhere in India, and it is this which leads to the mischief that we have complained against for many many years. I therefore, beg to support the amendment.

Shri H. V. Kamath: Mr. President, I rise to support the amendment that has been moved by my Friend Prof. Shah, seeking to incorporate a new article, article 102-A, in the Constitution. I was rather surprised to hear Mr. Munshi come forward and plead against the separation of the judicial and executive powers, considering that the House has already passed an article, as Mr. Sidhva rightly pointed out-article 39-A-in the Directive Principles of State Policy which lays down that the State shall take steps to secure the separation of the judiciary from the executive in the public services of the State. The original article, 39-A, as moved before the House, specified a time limit, namely a period of three years from the commencement of this Constitution. Subsequently, however, the time limit was eliminated, and article 39-A was passed without the specification of any period or time limit within which this separation of the two functions was to take place. This deletion of the time limit aroused suspicions in various parts of the country, among judges among lawyers, who thought there was really an attempt to shelve the whole issue for an indefinite period. Soon after this 39-A was adopted by this House, the Chief Justice of the Patna High Court Mr. Clifford Manmohan Agarwala, while inaugurating the Bihar Judicial Officers' Conference referred to this article- I am reading from the Hindustan Times of the 9th December

1948-and said,

> "Is it not obvious that having discovered that power over those appointed to administer the criminal law helps to lubricate the creaking machinery of administration, the Government is reluctant to part with that power, even though the public they claim to represent demands this long over-due reform and even though they themselves are fully aware that is a necessary step if the administration of criminal law is to command the confidence of the people for whose protection it exists?"

When the amendment incorporating this article 39-A was moved in this House, in November or December last the honourable Pandit Jawaharlal Nehru said that the Government of India were entirely in favour of the separation of the judiciary from the executive.

Mr. President: Mr. Kamath, was that remark of the Chief Justice made in reference to this article?

Shri H.V.Kamath: Yes, regarding the suspicion that was aroused. I was reading from the Hindustan Times of the......

Mr. President: Does it refer to this particular article?

Shri H. V. Kamath: It refers to the suspicion. Shall I read the whole extract? It says that this article seeking to eliminate a period, or time limit arouses suspicion in the minds of various people, and "this suspicion was voiced eloquently by the Chief Justice of the Patna High Court etc. etc." The late Sarojini Devi "who also spoke at this Conference of Bihar Judicial Officers" I am again reading from the Hindustan Times of the same date.

Mr. President: I am afraid all these references have nothing to do with this particular article.

Shri H. V. Kamath: I only want to refer to article 39-A without the time limit of three years, and this aroused suspicion in the minds of various people. Though we know as the Prime Minister has stated, the Government of India were entirely in favour of the principle of separation, yet, by agreeing to omit this limit of three years, many people suspected or thought that we were not earnest about it. In my judgment, the paramount need for an independent judiciary arises from the fact, firstly, that we are here building a federal Union Constitution where an independent judicial authority is necessary to arbitrate or to settle disputes that might arise between the Centre and the Units; and secondly in my humble judgment, it is essential that the citizen should in a democratic state be in a position to refer complaints against the State to an impartial authority. These two functions which I just referred to, namely, the functions of the judiciary to adjudicate or settle disputes between the Centre and the Units in the first place, and to give justice to the citizen as against the State cannot be fulfilled unless and until the judiciary is separate from the executive and is completely independent of the executive. Therefore, in the context of the free State that we are going to build, the free democratic State that we are going to build up in our country, an independent judiciary should assume a high priority, before we proceed to confer fundamental rights upon the citizen, or before we allocate various functions and powers between the Centre and the Units. If the judiciary is not there to protect and safeguard these rights that you confer on the citizen, how are we going to preserve the sanctity of our Constitution? Therefore, I say, I was rather not prepared to hear

Mr. Munshi say that it is an exploded doctrine and that it has no validity in the present age. On the contrary, Sir, I make bold to say that with the increasing in roads upon personal liberty and democratic freedom that we witness all over the globe today, that need for such separation and for an independent judiciary was at no time higher than it is today. Therefore, Sir, I support the amendment that has been brought before the House by my Friend, Prof. K. T. Shah and appeal to the House to accept this amendment.

Shri Alladi Krishnaswami Ayyar (Madras: General): I have a number of objections to the amendment moved by Prof. Shah. In the first place it is not germane to the chapter which deals with the constitution and the functions of the Supreme Court. The general question as to the relation between executive and the judiciary is not the subject of the chapter. As a matter of fact, we have not in the Draft Constitution a general chapter relating to the Judicature, the High Court, the Supreme Court and the Subordinate Courts. If that were so and if we were defining the relation between the executive and the judiciary, possibly it might be different. If there is to be any article of that description it must find a place in some other part of the Constitution.

The second point is that this House has already considered the general question in some form when the fundamental rights were debated by the House. Having regard to the present condition of things, it would be impossible to work the constitution in the first few years, it was felt, if immediately the question of the separation of the executive and the judiciary is to be undertaken. Therefore this amendment goes against the spirit of the resolution which has already been arrived at by the House. That is the second point.

Thirdly, a general clause like this may place the whole administration out of gear. I shall illustrate it in a minute.

From the date the Constitution comes into being there shall be a complete separation of the executive and the judiciary. Today, as a matter of fact in the framework of the administration in the different provinces of India, there is a certain combination of fusion between the executive and judicial functions. How exactly is the administration to work in the meantime if you have a general article of this description, without having specific provisions in regard to the judiciary and upon the way in which the judiciary is to work in different parts of the Constitutions? leaving that apart, there are weighty constitutional objections to an article of this description. I may at once mention that I am in wholehearted agreement with the general principle of the separation of the executive from the judiciary functions. But if you put a general article like this or an amendment like this in the Constitution, it is likely to give rise to considerable difficulties. If only we survey the working of administrative institutions in different parts of the world, including America, where this theory of separation is recognised--at least the separation of the executive from the judiciary-you will find a large number of quasi-judicial functions being invested in what may be called executive or administrative bodies. Without that the ordinary administration cannot get on. Those functions may not be completely judicial in the sense in which the functions are to be discharged by a Court of Law. But certainly their work bears upon the rights and obligation between parties.

I would ask the Members of the House to take any volume of the United States Supreme Court reports and the number of cases which have come up from what may be called the Inter-State Commission and various other quasi-judicial commissions working in different parts of America. No doubt in those cases there is the ultimate recourse of the Supreme Court. Apart from the difficulty to it, it is impossible to work a modern administrative machinery without some kind of judicial functions being vested in administrative bodies. I might mention that even without a clause as to separation an article in the Australian Constitution, investing the Judicial power in Courts, has given rise to difficulties. There the expression used is 'Judicial powers shall be vested in so and so'. The question has arisen in Australia whether income tax tribunals exercising quasi judicial functions could deal with the question of assessment at all. After considerable difficulty and exploring the history of Courts and tribunals, the Privy Council got over the thing and pointed out that a body which is exercising judicial functions but is not exercising judicial powers may not be strictly a Court.

Therefore, even if we are anxious to put this through, it must be undertaken by the different Legislatures. The Legislatures in undertaking such legislation will have to examine the various functions which have to be discharged by administrative, quasi-administrative, quasi-judicial tribunals, and then see how far the ultimate recourse to the Courts or the Superior Courts can be guaranteed, consistent with quasi-judicial functions being invested in administrative bodies.

I think a general article like this will land us in considerable difficulty. While I do not want to espouse the cause of the executive or to say that there should not be any separation between the executive and the judiciary it requires a certain exploring of the whole field and you must be in a position to go into the entire field of administrative working, have a regard to the way in which the thing is being worked in countries where this theory of separation is recognised, profit by their example in recent times and see that we avoid the pitfalls into which they have fallen. That is the proper way to approach this problem.

I therefore oppose the amendment on these grounds: first that it is not germane to the particular chapter: secondly, that it involves the exploring of the whole field of general administration: that it is sure to put the whole administration out of gear: fourthly, the words 'wholly independent' and 'wholly separate' will lead of considerable difficulty.

I oppose the amendment of Prof. K. T. Shah.

Dr. P. S. Deshmukh: Sir, I regret I cannot find myself in a line with Prof. K. T. Shah and I cannot support the amendment moved by him. There have been two speeches made on the other side (Shri K. M. Munshi and Shri Alladi Krishnaswami Ayyar) but I regret to have to say that they were not fully audible, and so if I repeat a point here or there I shall be forgiven. As a matter of fact, I want to be as brief as possible.

The amendment that has been proposed wants two things. It wants the separation of the executive from the judiciary and it also wants to provide for the independence of the judiciary. So far as the Supreme Court is concerned it is separate from the Executive and no question of separation therefore arises. The second thing which Prof. Shah wants to achieve is independence. Now how is independence of the Supreme Court be secured? If we look into the Constitutions of various other countries it is nowhere provided how the judiciary of any particular country shall be independent. The independence of the judiciary is secured more by a proper selection of the method of the appointment of the judges, by providing that there shall be no interference by the executive in the judicial functions of the judicature, by making the judges not easily removable and so on and not by a direct provision that the Judges of the Supreme Court shall be independent. I would make bold to say, irrespective of what I heard Mr. Munshi and Shri Alladi Krishnaswamy Ayyar say (I do not know if I heard them correctly) that I, for one, take the view absolutely and emphatically that the independence of the judicature is provided for in the Draft Constitution, which is before the House, and beyond this it is not necessary and advisable to go. We cannot make it independent by saying that it shall be independent, just as we cannot create an opposition just by saying that certain Members should form an opposition. In the same way you cannot have an independent judiciary by telling them "You are independent." Actually from my own experience of the judiciary in India for a long time I can safely say that an Indian judge is likely to be more independent than he should be, rather than contrary. If one were to observe the working of the judiciary of India as a whole, the High Court Judges, and the Federal Court Judges, I can safely say that even without providing for this clause by which we propose to tell them that they are not amenable to executive influence, they have acted as independently as the country would like them to act. From that point of view I say that the provisions are absolutely adequate, and that we are providing for an adequately independent judicature. I would like to differ respectfully from Mr. Munshi if he thought and says, that it is not possible to provide for an independent judiciary. In my view it is absolutely necessary to provide for an independent judicature but I feel convinced that provisions in this chapter secure this purpose.

I have a small suggestion to make. I have already stated that our Constitution is neither a Union nor a Federation: It is a hotch-potch of both. Dr. Ambedkar is bringing forward an amendment for the alteration of the word "Federal" to the word "Union". I do not think there is much meaning in that. But so long as there is any trace of federation in the constitution, I would beg of Dr. Ambedkar to give this important subject an independent part of itself in the constitution rather than include it in another part and give it only a chapter. The three essential elements of a constitution which is federal in character are the Legislature, the Executive and the Judicature. As far as dignity is concerned the Judicature is no less than the other two and should therefore have for itself a separate part. That suggestion I would like to make to Dr. Ambedkar. It should not be left to Chapter IV but should have a separate part for itself.

Mr. Naziruddin Ahmad : Sir, I wholeheartedly support the principle of the amendment which has been moved. Much has been said as to the propriety of putting it at this place and also as to the exact wording. What I wish to emphasise is the principle behind the separation of the judiciary from the Executive and the independence of the Judiciary. As to where it should be inserted and what should be the exact wording is a matter which is of secondary consideration. In fact, in discussing and deciding upon this important issue it is very desirable to keep these two matters entirely distinct. If we do not like the principle we should say so plainly but if we do, then the question of its being placed in the proper place or its exact wording can be a matter of adjustment in the House.

It is somewhat surprising to hear in the House after over fifty years of agitation for securing the independence of the Judiciary, that the independence of the Judiciary is no longer a desirable thing. In one form or another, it has been suggested here that this is not the proper time, and that this country is not now suited to this experiment of separating the Judiciary and the executive, and the independence of the Judiciary is no longer a covered thing. We have been under slavery for centuries and it seems to me that we have not yet been able to get rid of that slave mentality, so that having obtained independence we want to subjugate our judiciary to the wishes and whims of the executive. From the Congress and Muslim League platforms as also in the press and everywhere else the cry was that the Judiciary must be made independent and separate from the Executive.

Mr. Tajamul Husain : What about the Mahasabha platform?

Mr. Naziruddin Ahmad : They also, I believe, supported this principle. There is no one today who does not support the principle, except those who are now in power and who hitherto cried for it the most. Having obtained power they do not want to part with it so as to make the Judiciary independent of, and separate from, the Executive. That is the impression that I get from listening to the debate.

The poisonous effect of joint executive and judiciary functions is notorious. Cases have happened where the Government or the Prime Minister telegraphed to the District Magistrate that a particular case should be decided or dealt with in a particular manner. These matters have come to the notice of the High Court. One such case arose in Calcutta only a few years ago and there were severe strictures made about it. This is also happening today. It is a revealing thing that in these days of independence such things are possible. In fact, the magistracy is controlled indirectly by wire-pulling from the top. I submit that the arguments of one very distinguished Member of the House and a distinguished lawyer, Mr. Munshi, require adequate consideration. Mr. Munshi seems to suggest that the separation and independence of the judiciary is not practicable at this stage and the argument he has advanced is somewhat unexpected, if I may respectfully say so. He pointed out that we have taken rule-making powers. There are the Industrial Courts and other things where Government has to take decisions. I would however submit that rule-making power has nothing to do with the separation of the judiciary and executive. Take as much power as you like. A democratic House will give you power that is needed. You can pass any laws you like. All that the independence of the judiciary means is that within the rules you make, the power that you give to the Courts, should be allowed to be exercised without Executive interference-that when a magistrate exercises judicial functions he should be above any influence. The worse thing that he can do is to refuse real justice to the people. If there is one thing which will thrill the hearts of people and will make our independence a solid achievement it is the confidence in the Judiciary. The moment you let any person think that he will not have confidence in the Judiciary, the stability of the Government will be undermined. I submit that from this point of view the independence of the Judiciary should be guaranteed. It is not as if this is being asked for too soon. This is a reform for which we have been asking for a long time. What is the argument today against this reform? It is the argument which the British Government had been advancing for over fifty years. We are repeating their argument today. I submit that the principle should be accepted here and now without any qualification and without any mental reservation. I submit that the rule-making power and the need for interference by the State in many matters will not really go to the root of the matter. The judiciary may yet remain independent of them. The executive should have the power to make rules. But within the narrow limits of powers given to Court, let them be exercised independently. Sir, a distinguished Member of the House with rich judicial experience has pointed out that this agitation is as old as the time of Raja Ram Mohan Roy, more than a hundred years ago. In fact this has been the strongest plank in the platform of our nationalist agitation. I mean to say that if the judiciary is not separated from the influence of the Executive there will be intellectual corruption. There will be undermining of the faith of the people in the judiciary.

Shri Alladi Krishnaswami Ayyar, another distinguished lawyer and jurist and a great patriot has given us the view that he accepts the principle, but says that this is not the time for it. The present time does not allow it, he says. I implore the House to consider whether we should be repeating the arguments of the bureaucratic British Government in refusing to accept the reform at once. Sir, I have said enough. I do not wish to prolong the debate. I simply wish that the principle should at once be accepted without any reservation.

Mr. President: It is eight o'clock now. I think we had better close the discussion.

Shri Brajeshwar Prasad (Bihar: General) : May I have one minute of the time of the House to speak on this motion?

Mr. President: I think the House is not willing to hear further speeches now.

The Honourable Dr. B. R. Ambedkar : Sir, I do not think any reply is necessary. If I may say so, it was rather unfortunate that Professor Shah should have moved this amendment. This matter was discussed in great detail when we were discussing the Directive principle of State Policy. I do not therefore see why this matter was raised again and why there was a debate. The matter had been practically concluded in article 39-A.

Mr. President: I will now put the amendment to vote.

The question is:

"That under Chapter IV of part V, the following new article be added:

"102-A, Subject to this constitution the Judiciary in India shall be completely separate from and wholly independent of the Executive or the Legislature.' "

The motion was negatived.

The Assembly then adjourned till Eight of the Clock on Tuesday, the 24th May, 1949.

---

* That for the words "Such Ordinances" the words "Such Ordinance or Ordinances" be substituted.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS)- VOLUME VIII

Tuesday, the 24th May, 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten minutes past Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

The Honourable Shri Ghanshyam Singh Gupta (C.P. & Berar : General): Sir, could we not do something to be punctual? It pains me very much to see that we commence our business eleven minutes late. This is very bad for us and it ought to be a matter worthy of your consideration that we should be punctual.

Mr. Tajamul Husain (Bihar: Muslim): For that we are to blame. The fault is ours. We do not come here in time.

The Honourable Shri Ghanshyam Singh Gupta: What I once did in the C.P. Assembly was that I entered punctually and when I found that there was no quorum, I told honourable Members that I would retire for five minutes to see whether there was quorum. This was the solitary instance and I have found that I have not to wait even for five seconds. It is a matter of very great concern that this august House should commence its work eleven minutes after time.

Mr. President: I am glad that the honourable Member has drawn attention to this. I myself have been waiting for the past twenty minutes in the chamber. I hope the point that he has raised will receive due consideration at the hands of honourable Members and it will not be necessary for me to take the step which he took in the C.P. Assembly. From tomorrow we shall always be here exactly in time.

We shall now take up article 103.

DRAFT CONSTITUTION -*(contd.)*

Article 103

Mr. Tajamul Husain : Mr. President, Sir, my amendment is a very simple one. I beg to move:

> "That in clause (1) of article 103, before the words 'Chief Justice' the word 'Supreme' be inserted.'"

Now I will read article 103, clause (1).

"There shall be a Supreme Court of India consisting of a Chief Justice of India and such number of other judges not being less than seven as Parliament may by law Prescribe.'"

If my amendment is accepted, the amended clause will read :-

"There shall be a Supreme Court of India consisting of a Supreme Chief Justice of India, etc.'"

According to this article, the Chief Justice of the Supreme Court will be called the Chief Justice of India and the Chief Justice of a provincial High Court will also be called a Chief Justice. I am of the opinion that there must be a distinction between these two. No doubt the Chief Justice of India is called the Chief Justice of India and the other is only a Chief Justice. We have distinguished between the Prime Minister of India and the provincial prime Ministers. The Prime Minister of India will be called the prime Minister but the provincial head will be called only the premier. Then again, the Advocate-General of India will be called the Attorney-General, while in a province he will be called the Advocate General. We have distinguished here also. The Auditor-General of India will be called the Auditor-General, while in a province he will be called only the Auditor-in-Chief. Therefore in order to distinguish between the Chief Justice of a provincial High Court and the Chief Justice of the Supreme Court, we should call the Chief Justice of India the Supreme Chief Justice of India instead of merely the Chief Justice of India the Supreme Chief Justice of India instead of merely the Chief Justice of India. With these words I move my amendment and I hope it will be accepted.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Mr. President, Sir, I move:

"That in clause (1) of article 103, for the words 'and such number of other judges not being less than seven, as Parliament may by law prescribe' the words 'and until Parliament by law prescribes a larger number, of seven other judges' be substituted."

The object of this amendment is that the constitution of the Supreme Court should not be held over until Parliament by law prescribes the number of Judges. The amendment lays down that seven Judges will constitute the Supreme Court.

(Amendment No. 1815 was not moved.)

Shri Krishna Chandra Sharma (United Provinces: General): Sir, I move:

"That for clause (2) of article 103 the following be substituted :-

'Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal and shall hold office until he attains the age of sixty-five years:

Provided that in the case of appointment of a Judge, other than the Chief Justice, the Chief Justice of India shall always be consulted.'"

Sir, read with article 61, my amendment would carry the same meaning and purpose as the provisions of Section 200 of the Government of India Act, 1935. Under that Section the Chief Justice and the other Judges of the Federal Court are appointed by the King and the King is supposed to act on the advice of his Ministers. Now under article, 61, the President of India shall act on the advice and instance of his Ministers. Again, Sir, in the United States of America, the Chief Justice of the Supreme Court is appointed by the president on the advice and with the consent of the Senate. In the other Dominions also, the representative of the King, on the advice of the Ministry concerned, appoints the Chief Justice and other Judges of the Supreme Court. So my amendment is quite in accord and in line with what prevails in the United States, is provided in the Government of India Act, 1935, and is the practice in the other Dominions as well. Sir, I move.

Mr. President: There are two other amendments which are more or less to the same effect that is, 1822 and 1823. I do not think it is necessary to move those amendments separately, but I will take them as representing more or less the same view-point as conveyed in amendment No. 1816. We shall take the amendment which may be considered to be the best from the point of view of language.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. President, Sir, I move:

"That for clause (2) of article 103, the following clauses be substituted:-

'(2) The Chief Justice of Bharat, who shall be the Chief Justice of the Supreme Court, shall be appointed by the President subject to confirmation by two-thirds majority of Parliament assembled in a joint session of both the Houses of Parliament.'

"(3) Every judge of the Supreme Court, shall be appointed on the advice of the Chief Justice of Bharat by the President under his hand and seal and shall hold office until he attains the age of sixty-five years.'"

Provided that :

"(a) a judge may, by writing under his hand addressed to the President, resign his office;

(b) a judge may be removed from his office in the manner provided in clause (5)."

Sir, in this amendment I have provided that the Chief Justice of the Supreme Court shall be appointed by the President, but it shall be confirmed by at least two-thirds majority of both the Houses. At present, clause (2) provides that the president shall appoint the Chief Justice of the Supreme Court, which means that the Prime Minister or the Executive shall appoint him. The Chief Justice of the Supreme Court should be completely independent of the Executive and it is this principle which I want to introduce in this section. At present he shall be a creature merely of the executive and the President shall appoint him on the advice of the Prime Minister. This will take away some independence of the Supreme Court. We are here providing for the highest tribunal of justice in our country. This tribunal should be above suspicion and no executive should be able to have any influence upon him. If the Chief Justice is appointed by the President or the Prime Minister then his independence is compromised. I therefore want, Sir, that the Chief Justice shall be appointed by the President of course, but at least two-thirds members of the Parliament shall approve his name. This means that the President shall and will be the prime mover in the appointment but if the name he chooses is not one which can be approved by the members of Parliament by at least two-thirds majority, then that name shall be changed and another name shall be proposed which shall be acceptable to two-thirds majority of both Houses. In this manner, there is some initiative to the President also. He will be the man who will give the names, but the name will only be accepted if two-thirds majority of both the Houses support him, so that the President shall have the initiative, but the man chosen will be such who shall enjoy the confidence of both the Houses of Legislature. This method has two advantages; it gives the executive the right of choosing the person who they think will be proper, but it will not exercise that right in a party spirit but shall decide it in a manner that all the members of both the Houses, or at least a two-thirds majority of them, shall approve that name. Therefore, Sir, I think that the provision which I am suggesting will be a far better provision than the one contained in the draft already. At present, Sir, the judges also have not to be appointed on the advice merely of the Chief Justice of the Supreme Court, but they are appointed in consultation with the Supreme Chief Justice, which means even in their appointments the Executive has got the major hand. I think, Sir, that this should not be. Every judge of the Supreme Court should be appointed on the advice merely of the Supreme Judge of the Supreme Court, so that they may derive their authority from the Chief Justice and not from the Executive. This, I think, Sir, is a very important thing and should be incorporated in our Constitution. We have all along said that we want an independent judiciary; that is the pride of many peoples and that is the pride of the United States of America. I think we too want that our Chief Justice and the Supreme Court should be above suspicion. These should be completely independent, so that a man can feel that they shall be absolutely independent of the Executive. To my mind my amendment is very important and I therefore, hope that the Members here will see that they make some changes so that the Chief Justice of the Supreme Court does not become a creature merely of the Executive, and the President appoints him on his recommendation.

I also feel, Sir, that this provision about consultation with the High Courts in States is an anachronism. The States shall now not have an independent existence as they have merged. Probably it was intended when they were not given that right, but now this should not be there. I hope, Sir, that Dr. Ambedkar will see that this is removed and things are brought up to date, and we shall have an independent judiciary which shall be absolutely independent of the Executive. I have already provided that the initiative shall be entirely that of the President, which means that the Executive shall have the right to suggest the names, but out of the names, it will be the Assembly, the joint session of both the Houses which will choose the name they think proper, by the two-thirds majority in a proper manner. Sir, I move.

(Amendment No. 1818 was not moved.)

Mr. B. Pocker Sahib (Madras: Muslim) : Sir, I move:

"That for clause (2) and the first proviso of clause (2) of article 103, the following be substituted:-

'(2) Every judge of the Supreme Court other than the Chief Justice of India shall be appointed by the President by warrant under his hand and seal after consultation with the concurrence of the Chief Justice of India; and the Chief Justice of India shall be appointed by the President by a warrant under his hand and seal after consultation with the judges of the Supreme and the Chief Justice of the High Court in the States and every judge of the Supreme Court shall hold office until he attains the age of sixty-eight years.'"

Now, Sir, in giving this amendment, I wanted to see that the appointment of the judges of the Supreme Court is not in any way affected by political influences. It is with that view that this amendment has been given and in that view. I am very strongly supported by the opinions given by the Federal Court and the Chief Justices of the various High Courts, which have been submitted to this body. That memo has been circulated to the honourable Members of this House. Sir, you will permit me to read only some of the sentences from that memo. This is what it says:

"It appears that a certain provincial Government has issued directions that the recommendations of the Chief-Justice, instead of being sent to the Premier, should be sent to the Chief-Secretary, who, in some instances, has asked the Assistant Secretary to correspond further with the High Court in the matter. Thus, there seems to be a growing tendency to treat the High Court as a part of the Home Department of the province. With a view to check this tendency which is bound to undermine the position and the dignity of the High Courts and lower them in the estimation of the public, the Judges assembled in conference were unanimously of opinion that a procedure on the following lines must be laid down for the appointment of High Court Judges:

> "The Chief Justice should send his recommendation in that behalf directly to the President. After consultation with the Governor, the President should make the appointment with the concurrence of the Chief Justice of India.

This procedure would obviate the need for the Chief Justice of the High Court discussing the matter with the Premier and the Home Minister and justify his recommendations before them. It would also ensure the recommendation of the Chief Justice of the High Court being always placed before the appointing authority, namely, the President. The necessity for obtaining the concurrence of the Chief Justice of India would provide a safeguard against political and party pressure at the highest level being brought to bear on the matter."

It is said later on that *mutatis mutandis,* the very same principles apply to the appointment of the Judges of the Supreme Court. The same memo points out:

> "It is therefore suggested that article 193 (1) may be worded in the following or other suitable manner. 'Every Judge of the High Court shall be appointed by the President by a warrant under his hand and seal on the recommendation of the Chief Justice of the High Court after consultation with the Governor of the State and with the concurrence of the Chief Justice of India.' "

Further, it is stated:

> "The foregoing applies *mutatis mutandis* to the appointment of the Judges of the Supreme Court. Article 103 (2) may also be suitably modified."

I submit, Sir, the views expressed by the Federal Court and the Chief Justice of the various High Courts assembled in conference are entitled to the highest weight before this Assembly, before this provision is passed. It is of the highest importance that the Judges of the Supreme Court should not be made to feel that their existence or their appointment is dependent upon political considerations or on the will of the political party. Therefore, it is essential that there should be sufficient safeguards against political influence being brought to bear on such appointments. Of course, if a Judge owes his appointment to a political party, certainly in the course of his career as a Judge, also as an ordinary human being, he will certainly be bound to have some consideration for the political views of the authority that has appointed him. That the Judges should be above all these political considerations cannot be denied. Therefore, I submit that one of the chief conditions mentioned in the procedure laid down, that is the concurrence of the Chief Justice of India in the appointment of the Judges of the Supreme Court, must be fulfilled. This has been insisted upon in this memo. and that is a very salutary principle which should be accepted by this House. I submit, Sir, that it is of the highest importance that the President must not only consult the Chief Justice of India, but his concurrence should be obtained before his colleagues, that is the Judges of the Supreme Court, are appointed. It has been very emphatically stated in this memo. that it is absolutely necessary to keep them above political influences. No doubt, it is said in this procedure that the Governor of the State also may be consulted; but that is a matter of minor importance. It is likely that the Governor may also have some political inclinations. Therefore, it is that my amendment has omitted the name of the Governor. That the judiciary should be above all political parties and above all political consideration cannot be denied. I do not want to enter into the controversy at present, which was debated yesterday, as to the necessity for the independence of the judiciary so far as the executive is concerned. It is a matter which should receive very serious consideration at the hands of this House and I hope the Honourable the Law Minister will also pay serious attention to this aspect of the question, particularly in view of the fact that this recommendation has been made by the Federal Court and the Chief Justice of the other High Courts assembled in conference. I do not think, Sir, that there can be any higher authority on this subject than this conference of the Federal Court and the Chief Justices of the various High Courts in India.

Another point, which I have raised in my amendment is that the age of retirement of the Supreme Court Judges should be raised to 68. It has been found in recent years that there are many High Court Judges who have retired at the age of sixty, who are very energetic and who are well fitted to discharge the duties for a number of years more. Apart from that, there are very cogent reasons given in this memo. Why the age of retirement of the Judges of the Supreme Court should be raised to sixty-eight. In this memo it is stated that there may be a difference of three to five years between the age of retirement of a Judge of a High Court and that of the Supreme Court. The very same memo, says that the age of retirement of the High Court Judges may be fixed at sixty-five and that of the Judges of the Supreme Court may be fixed at sixty eight. As regards the age of retirement of the Judges of the High Court, the matter has to be discussed when those relevant sections are taken up for consideration. I do feel, Sir, that the age of retirement of the High Court Judges should be raised to sixty-two or sixty-three, and that of the Judges of the Supreme Court should be raised to sixty-eight as recommended by the Federal Court and the Chief Justices of the various High Courts of India. I submit, Sir, that this is a matter which should receive very serious attention at the hands of the honourable the Law Minister, in view of the fact that I am supported in my amendment by the recommendations of the highest judicial authority in the country.

(Amendment No. 1820 was not moved.)

Shri H.V. Kamath (C.P. & Berar: General): Amendment No. 1821 is purely of a drafting nature. I leave it to the Drafting Committee.

Mr. President: Amendment Nos. 1822 and 1823, as I said, are covered by amendment No. 1816 which has been moved.

Prof. K.T. Shah (Bihar. General): Sir, I beg to move:

"That in clause (2) of article 103, after the word 'with' the words 'the' Council of States and' be inserted."

The amended proposition would read:

"Every judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with the Council of States and such of the judges of the Supreme Court and of the High Courts in the States as may be necessary for the purpose and shall hold office until he attains the age of sixty-five years:"

Sir, this is an amendment seeking to make the appointment of Judges free from any particular influence. My amendment is that the President, if he makes the appointment, will naturally do so on the advice of the Prime Minister. In my opinion, Sir, if I may so with all respect, this Constitution concentrates so much power and influence in the hands of the Prime Minister in regard to the appointment of judges, ambassadors, or Governors to such an extent, that there is every danger to apprehend that the Prime Minister may become a Dictator if he chooses to do so. I think there are cases which ought to be removed from the political influence, of party manoeuvres. And here is one case, *viz.* Judges of the Supreme Court, who I think should be completely outside that influence. I am, therefore, suggesting that the appointment of the Judges should be made by the President, after consultation not only with the Judicial services proper, but also with the Council of States so that the party element may be eliminated or minimised, and any political influence also may be avoided.

The suggestion has further this argument in its support that just as in regard to the financial powers the Lower House or the House of People is made supreme, so in matters of this kind, in matters of making high appointments as a pure consideration of balance of power I suggest that the Council of States should be associated, if only to avoid the influence that is likely to dominate when the Prime Minister alone advises the President on such matters.

The Council of States composed, as it is of representatives of States as well as certain interests, would be, I think, more able to be balanced in this matter. Accordingly, the addition of the Council of States as an advisory body to the President in such matters will not be in any way objectionable.

There is of course the obvious precedent of the U.S.A. Senate which is associated in such matters, even though the Constitution of the U.S.A. is based, fundamentally speaking, on a somewhat different principle than that which we have adopted in this draft. Nevertheless, here is a case in which I think it would be well for us to adopt that line and associate the Council of States for advising the President in the appointment of the Supreme judiciary. I hope this will be accepted.

(Amendments Nos. 1825, 1826 and 1828 were not moved.)

Mr. President: No. 1827 is covered by other amendments moved.

The Honourable Shri K. Santhanam (Madras: General): Sir, I beg to move:

"That in clause (2) of article 193, for the words 'may be' the words 'the President may deem' be substituted."

As the clause stands the words 'may be' may come before a Court of law because somebody has to decide about the necessity and so my amendment seeks to give the President the discretion to decide which Judges it will be necessary to consult. I think the amendment is essential as otherwise the words are left vague.

Mr. President: No. 1830 and No. 1831 are already covered by No. 1829.

Prof. K. T. Shah : Mr. President, Sir, I beg to move:

"That in clause (2) of article 103, for the words 'until' he attains the age of sixty-five years' the words 'during good behaviour or until he resigns; provided that any such Judge may resign his office at any time after 10 years of service in a judicial office and if he so resigns, he shall be entitled to such pension as may be allowed under the law passed by the Parliament of India for the time being in force' be substituted."

The amended proposition would read:

"Every judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the judges of the Supreme Court and of the High Courts in the States as may be necessary for the purpose and shall hold office during good behaviour or until he resigns; provided that any such Judge may resign his office at any time after 10 years of service in a judicial office and if he so resigns, he shall be entitled to such pension as may be allowed under the law passed by the Parliament of India for the time being in force."

This is another way in which I am trying to secure the absolute-independence of the judiciary. This means that the appointments will be not for a definite period, or within a prescribed age-limit, on attaining which a Judge must compulsorily retire, but, as is the case in England, and as was quite recently the case in the United States of America, judges, particularly of the Supreme Court, should be appointed for life. They should not, in any way be exposed to any apprehension of being thrown out of their work by official or executive displeasure. They should not be exposed to the risk of having to secure their livelihood by either resuming their ordinary practice at the bar, or taking up some other occupation which may not be compatible with a judicial mentality, or which may not be in tune with their perfect independence and integrity.

I suggest, therefore, that the practice which exists in England, and which existed quite recently in U.S.A. of allowing judges to continue in their office during good behaviour, that is, practically for the rest of their lives, should be accepted.

If, however, any judge feels that, due to mental or physical causes, he is unable to carry on or do full justice to his functions, it may be open to him to resign I suggest, after ten years of service in a judicial capacity; and if he so resigns, I further suggest that he should be exposed to no want, no fear as to his ordinary livelihood. He must be completely secure in his social position, in his economic position, and as such he must be allowed a reasonable pension.

I leave the amount of this pension to be determined by law by Parliament, not for a particular judge, if and when he resigns, but as a rule for general application. Whatever be the law in force at that time, a retiring judge after ten years of service should be allowed the benefit of that law by way of a pension.

Speaking for myself, I would suggest that the pension for the such judges should be not less than their own salary while in office, so that there is no temptation left to them either to seek any other employment, or carry on any other occupation or profession by which they could eke out their existence. If the salary was sufficient to maintain them in given standard of life, the pension also should be of a similar nature.

This, however, is my personal opinion which I do not wish to be included in the Constitution, and I suggest it may be left to the law to be made by Parliament in that behalf. But the supreme principle that I have all the time been pressing upon the House is the necessity of securing the absolute independence of the judges. That I have attempted to secure, first, in the previous amendment, by the procedure for their appointment, and here, secondly, by the term of their appointment being made for the duration of good behaviour, that is to say, practically for the rest of their lives. If for any reason it becomes necessary for a judge to wish to retire from his office, or even to be removed, without of course any censure being attached, then he should be entitled to pension sufficient to maintain him in independence and in perfect security and comfort, not necessarily affluence, during the rest of his life. This, Sir, is such a simple principle that I hope there will be no objection taken to it and that the proposition will be accepted.

Shri Jaspat Roy Kapoor (United Provinces: General): Mr. President, Sir, I beg to move:

> "That in clause (2) of article 103, for the word 'sixty-five' the word 'sixty' be substituted and the words "The President, however, may in any case extend from year to year the age of retirement up to sixty-five years' be added."

Sir, my reasons for moving this amendment are there. Firstly, the ordinary age of retirement in the case of government servants is 55 years, but in the case of High Court Judges it has been raised to sixty. I see no reason why a further extension up to the age of sixty-five should be granted in the case of judges of the Supreme Court. They must, after putting in long years of service retire and make room for others to come in. I know that the Chief Justices in a conference which they held some time ago, recommended that the age of superannuation of the judges of the Supreme Court should be sixty-five. I have not been able to find in the proceedings of that conference any cogent reasons urged by the learned Chief Justices. The main reason which they have urged is that if the age of superannuation is not raised to sixty-five years, there will not be enough attraction to the High Court Judges to accept posts in the Supreme Court. I must confess that I felt considerably disappointed at this sort of argument being urged by the learned Chief Justices. We should not accept this recommendation of the Chief Justices merely in order to provide attraction to such Judges of the High Courts with whom monetary considerations weigh the most.

My second reason is, and I urge this reason with due respect to such honourable Members of this House who are above the age of sixty, that very often a person who has gone beyond the age of sixty is not very fit and is not mentally alert, to perform the strenuous duties of a judge of the Supreme Court. I know that sometimes there have been judges in the High Court who even before they have attained the age of sixty are not mentally fit to discharge the functions of a High Court Judge. Sometimes, we have found High Court Judges-and I say this with due respect to them-we have found them sleeping and snoring when the learned advocate is going on speaking.

Mr. President: That does not depend upon age.

Shri Jaspat Roy Kapoor: Of course, not always, Sir, I only say that sometimes it happens that a person who is even nearing the age of sixty is not fit to perform the strenuous duties of a High Court Judge, and much less to be able to perform the duties of a judge of the Supreme Court. I know that we cannot say that generally it is so, but I can say that sometimes it is certainly so. Therefore, my submission is that if we make it a definite rule that every Judge of the Supreme Court shall go up to the age of sixty-five, it may not be safe to do so. I know, of course, honourable Members of this House, a good many of them, are beyond the age of sixty and they are an ornament to the country. But it is not everybody who goes beyond the age of sixty that continues to be so fit and so mentally alert.

And then, Sir, my third reason is-and that is the most important of the reasons-that one who has served and has earned handsomely from the Government up to the age of sixty years should be prepared to retire and serve the society thereafter in an honorary capacity. Society has a right to expect of everyone who has attained the age of sixty to work honorarily for the benefit of the society. In our country, Sir, the ideal, the ancient ideal has been that every person in the fourth stage of his life must become a *Sanyasi* and must serve society in an honorary capacity. This is the standard which has been set before us by our ancient sages, and I think, Sir, we can reasonably expect of everybody, and more particularly of the learned ones like the Judges of the Supreme Court, to set a good example for everybody else, of service to the country in an honorary capacity after the age of sixty years. I have often thought that Government servants who are on pension after retirement and free from worry about earning a living may very well serve society in an honorary capacity in doing constructive work, in which case we may have a very good army of social workers in various spheres of activity. My amendment, however, does not absolutely bar the continuance of judges of the Supreme Court in service after the age of sixty. What I say is that ordinarily they shall retire at sixty but in exceptional cases the President, if he thinks the Judge is exceptionally capable and should be retained in the interest of good judicial administration, may keep him till sixty-five, but only by giving him extensions from year to year. I hope this amendment will be acceptable to the Honourable Dr. Ambedkar and the House.

(Amendments Nos. 1834 and 1835 were not moved.)

Shri Satish Chandra (United Provinces: General): Sir, I move:

"That in clause (2) of article 103, for the words 'until he attains the age of 65 years' the words 'for such period as may be fixed in this behalf by Parliament by law' be substituted."

There has arisen a lot of controversy over the question of age-limit which is prescribed in this clause. My honourable Friends Mr. Pocker Saheb, Mr. Naziruddin Ahmad and Mr. Mahboob Ali Baig wish it to be raised to sixty-eight years, while Shri Jaspat Roy Kapoor and Shri Mohanlal Gautam would like it to be reduced to sixty. I think our constitution is being unduly burdened with age-limits in various articles here and there. The question of age is one which can be left safely to the future parliaments to be decided and fixed, in particular circumstances, according to the needs and exigencies of the time. I endorse most of what Shri Jaspat Roy Kapoor has said and do not wish to repeat the arguments. My feeling is that this House, composed as it is of elderly gentlemen has been unfair to young men at various stages in fixing the age-limits. Our constitution has provided for the membership of Legislatures minimum age-limits which are highest in the world; and, but for the one amendment that was accepted about the eligibility for the Upper Chamber of Parliament, the age-limits should have been higher than the highest in the world. I hope my amendment will be accepted and it will be left to the future Parliament to decide the age-limit in this case. I think after the age of sixty, physical and mental incapacity overtake most people, although there are always exceptions. However I do not wish to enter into that controversial point and desire to leave such questions of detail to the future Parliament.

(Amendments Nos. 1837 and 1838 were not moved.)

Mr. Mahboob Ali Baig Sahib (Madras: Muslim): Sir, I beg to move:

"That in the first proviso to clause (2) of article 103, for the words 'the Chief Justice of India shall always be consulted' the words 'it shall be made with the concurrence of the Chief Justice of India' be substituted."

Under our proposed constitution the President would be the constitutional Head of the executive. And the constitution envisages what is called a parliamentary democracy. So the President would be guided by the Prime Minister or the Council of Ministers who are necessarily drawn from a political party. Therefore the decision of the President would be necessarily influenced by party considerations. It is therefore necessary that the concurrence of the Chief Justice is made a pre-requisite for the appointment of a Judge of the Supreme Court in order to guard ourselves against party influences that may be brought to bear upon the appointment of Judges.

This is a salutary principle and it is necessary that the concurrence of the Chief Justice should be made necessary for the appointment of the Judges of the Union Judicature. It may be said that there might be disagreement between the opinion of the President and the Chief Justice and there might be a sort of deadlock. I submit, Sir, at that higher level between the Supreme Judge and the President, there is not likely to be any such difference of opinion. Even if there was any such difference of opinion it is open to the President to just propose another name which will be acceptable to the Chief Judge. So there cannot be any serious objection to make the concurrence of the Chief Justice a necessary pre-requisite for the appointment of the Judges of the Union Judicature and that will certainly guard us against any party influences being brought to bear upon the appointments.

(Amendments Nos. 1840 and 1841 were not moved.)

Dr. P.K. Sen (Bihar: General) : Sir, I move:

"That after the second proviso to clause (2) of article 103, the following new proviso be inserted :-

'Provided further that where a Judge resigns his office on grounds of ill-health, he shall be entitled to pension as if he has continued in service until the age of sixty-five years.'"

The object of this amendment, Sir, is to keep the Judge, who has to retire on account of impairment of health, free from fear or temptation and free from the allurements of holding some office in the executive line or in the political field. It is an admitted principle, and no one is this House, I am sure, will take exception to it, that the Judge of the Supreme Court, or the Judge of the High Court, should be above all fear and temptation. Now, here is the case of a man who has served at the time when he was in health, but while he is fifty-seven or say sixty-one or even sixty-two he feels that any day he might have to retire on account of ill-health. Well, there is a natural temptation to provide something during the period when he will be out of office: We are not unaccustomed to the spectacle of a man in this country who has been a Judge of a High Court, then a Member of the Executive Council of the Governor-General of India, then back again to his province as a Member of the Executive Council of the Province, and further again transported to the Bench of the High Court. Well, this sort of thing should be avoided, and as a matter of fact if a man feels that he has got no provision at all, then he may have to go begging as it were for some employment or office or occupation, which may keep the wolf from his door. This is the object. I think in this connection. I may draw the attention of the House to clause (7) of article 103, which is also germane to this issue. It says:

"No person who has held office as a Judge of the Supreme Court shall plead or act in any Court or before any authority within the territory of India."

Although it is not really directly relevant, I may mention that I have also tabled another amendment-it is new article 103A-in which I have said that a person who is holding or has held the office of Judge of the Supreme Court shall not be eligible for appointment to any office of emolument under the Government of India or a State other than that of the Chief Justice of India or Chief Justice of the High Court, provided that the President may with the consent of the Chief-Justice of India depute a Judge of the Supreme Court temporarily on other duties: Provided further that the article shall not apply in relation to any appointment made and continuing while a proclamation of an emergency is in force if such appointment is certified by the President as necessary in the national interests.

Barring those exceptions, I desire that the Judge who has retired will not be able to engage himself in any office of emolument under the Government in any other field of activity, and that is exceedingly necessary, because otherwise there is always the phenomenon of the Judge while in office aligning himself with a political party or with commercial caucuses, which is a very undesirable thing. If all those safeguards are to be adopted, one of the most essential things to be done is also to give him the pension as if he had served up to the age of sixty-five, the utmost limit provided for by the Constitution.

It may be said that all this will be provided for by the rules. I doubt if there is any such thing in the Constitution, and when there is the express provision in the Constitution that he has to serve up to sixty-five years of age, if he does not serve-whether it be on account of ill-health or any other consideration-the result will be that he will only get proportionate pension or very little pension perhaps and naturally in that case not only will it affect his attitude while he is in office, because he will try and look about for something which he may get for the purpose of saving him from penury. I do think that the Judge should be made perfectly independent so that he can live in dignity when he is in retirement, although the retirement may be premature-before the age of sixty-five.

I hope, Sir, that in the wilderness of amendments with which we are surrounded, this little amendment will not be thrown away as if it were not necessary. I think it is very essential in the public interests of the country.

Prof. K. T. Shah : Sir, I beg to move amendment No. 1843:

"That after clause (2) of article 103, the following new clause be added:-

'(2A) Any person who has once been appointed as Judge of any High Court or Supreme Court shall be debarred from any executive office under the Government of India or under that of any unit, or, unless he has resigned in writing from his office as judge, from being elected to a seat in either House of Parliament, or in any State Legislature.'"

This follows the general principle I have been trying to lay before the Houses *viz.,* or keeping the Judiciary completely out of any temptation, and contact with the executive or the legislative side. Whether during his tenure of office, or in the ordinary course of judgeship or even on retirement, I would suggest that there should be a constitutional prohibition against his employment in any executive office, so that no temptation should be available to a judge for greater emoluments, or greater prestige which would in any way affect his independence as a judge.

I further suggest also that a judge should be free to resign his office and then it would be open to him to have all the rights of an ordinary citizen, including contesting a seat in the legislature, but certainly not during his tenure of office. I consider that these are so obvious that no further words need be added to support it. I would only say once more that in the past we had bitter experience of high-placed Government servants who had risen fairly high in the scale of service, used to secure on retirement influential positions in Britain or directorships in concerns operating in this country. On account of the official position which they had held here in the past, they were able to exercise an amount of undue influence. Such practices the Congress and other parties had frequent occasion to object to. As such I suggest that that practice should now be definitely avoided. I take it that this is also on a par with that principle, and as such should be acceptable to the House.

Shri Jaspat Roy Kapoor : Mr. President, I beg to move:

"That in amendment No. 1843 of the List of Amendments, for the proposed new clause (2A) of article 103, the following be substituted :-

'(2A) No judge of Supreme Court shall be eligible for further office of profit either under the Government of India or under the Government of any State after he has ceased to hold his office.'"

Sir, I am in agreement both with the principle and with the substance of Professor Shah's amendment No. 1843. But I am moving my amendment because I find that Professor Shah's amendment is defective in two respects. Firstly, in his amendment we have the words "Any person who has once been appointed as Judge of any High Court or Supreme Court shall be debarred from any executive office". It means that he shall be prevented from performing any duties under the Government of India or the Government of any other State even in an honorary capacity. I think it should be open to the Government of a State or the Centre to utilise the services of retired Supreme Court Judges in an honorary capacity.

The second defect in the professor's amendment is that it unnecessarily lays down that a judge of a Supreme Court shall be eligible to be a member of either House of parliament after resigning his seat. I think, Sir, it shall be applicable to every Government servant that so long as he is holding any office of profit he shall not be eligible to be a member of any legislature, be it provincial or Central. So this part of the amendment of Professor Shah is unnecessary. Hence I am moving my amendment.

Sir, the Professor has rightly said that in order to maintain the independence of the judiciary there should be no temptation before any Supreme Court Judge of the possibility of his being offered any office of profit after retirement. That is the first reason. Secondly, as I said while moving another amendment a few minutes ago, the Judges of the Supreme Court, after retirement should be prepared to offer their services to society in an honorary capacity. Thirdly, I find that this principle is going to be accepted in the case of the Auditor-General. According to article 124(3), with which we shall deal after sometime, provides that the Auditor-General shall not be offered any office after his retirement. The same principle should be made applicable in the case of the Supreme Court Judges. While I was discussing this point with a very learned Member of this House I was told that it should be open to the State to utilise the services of retired Supreme Court Judges in various capacities. I have absolutely no objection to that. But no emoluments should be offered to the retired Supreme Court Judges. A retired Supreme Court Judge may be called upon to perform various and important duties. But then he should be content with the pension which he must necessarily be receiving and no further emoluments should be offered to him.

With these words, I move my amendment and hope it will be accepted by the House.

(Amendment No. 1844 was not moved.)

Shri H.V. Kamath : Sir, I move:

"That in clause (3) of article 103, the following new sub-clause be added :-

'(c) or is a distinguished jurist.' "

The object of this little amendment of mine is to open a wider field of choice for the President in the matter of appointment of judges of the Supreme Court. The House will see that the article as it stands restricts the selection of judges to only two categories. One category consists of those who have been judges of a high court or of two or more such in succession and the second category consists of those who have been advocates of a high court or of two or more high courts in succession. I am sure that the House will realize that it is desirable, may it is essential, to have men-or for the matter of that, women-who are possessed of outstanding legal and juristic learning. In my humble judgment, such are not necessarily confined to Judges or Advocates. Incidentally I may mention that this amendment of mine is based on the provision relating to the qualifications for Judges of the International Court of Justice at the Hague. I hope the House will see its way to accept my amendment and thus give a wider choice for the President in the matter of appointment of Judges of the Supreme Court.

(Amendments Nos. 1846 and 1847 were not moved.)

Mr. Mohd. Tahir (Bihar: Muslim) : Sir, I move:

"That after sub-clause (b) of clause (3) of article 103, the following new sub-clause be inserted :-

'(c) has been a Pleader in one or more District Courts for at least twelve years.' "

Sir, clause (3) of article 103 lays down the qualifications of Judges of the Supreme Court. The clause reads:

"A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and-

(a) has been for at least five years a judge of a High Court or of two or more such courts in succession; or

(b) has been for at least ten years an advocate of a High Court or of two or more such courts in succession."

So far as the qualifications for the appointment of Judges are concerned, I want that the pleaders should also be qualified for appointment as Judges of the Supreme Court. My reason for this is that the qualification of an Advocate and the qualification of a pleader is the same. An advocate is not better qualified than a pleader. Of course an Advocate generally practices in a High Court, and a pleader practices in the District Courts, but this is a matter of convenience and nothing else. In these days, a pleader also can become an advocate by depositing a certain amount of money with the Association. As soon as he deposits the money, he becomes an Advocate. May I know, Sir, whether by simply depositing a certain amount of money he becomes more qualified than he was before? Therefore my contention is that so far as the qualifications are concerned, both the Advocates and the pleaders have got the same qualifications. Besides this, Sir, if pleaders have not got a chance of being appointed as Judges of the Supreme Court, a great injustice would be done to the class of pleaders. That is the class, Sir, which, as everybody knows, has gone through greater sacrifices in achieving the independence of the country. I do not say that it was only the pleader class that fought for the independence of the country. There are other classes who fought for it, but so far as the lawyer class is concerned, you will find that only a very few advocates or almost none of the advocates have taken part in the fighting for the independence of the country. When we are making our Constitution, it will be a great injustice if we are not going to give a chance to the pleaders as such of being appointed as Judges of the Supreme Court. Some of my friends might say that even the briefless pleaders of the District Courts will have the right to be appointed as Judges of the Supreme Court. That is not the position. There are many advocates who are briefless. Moreover, when a man is appointed as a Judge of the Supreme Court, certainly it will be seen that he is qualified to be appointed as such. My point is that so far as the qualifications are concerned, there is no difference whatsoever between the pleaders and the advocates. Therefore, if an advocate is entitled to be appointed as a Judge of the Supreme Court, there is no reason why a pleader should not be entitled to be so appointed. With these words, Sir, I move.

(Amendment No. 1849 was not moved.)

Mr. Mohd. Tahir: Sir, I beg to move:

"That after Explanation I to clause (3) of article 103, the following new Explanation be inserted and the subsequent Explanation be re-numbered accordingly :-

'*Explanation II.*- In this clause District Court means a District Court which exercise or which before the commencement of this Constitution exercised jurisdiction in any district of the territory of India.'"

I do not wish to make a speech in support of this amendment because this is only consequential on the amendment that I have moved just now. So, no further explanation is necessary.

Sir, I also move:

"That in Explanation II to clause (3) of article 103, after the word 'advocate' wherever it occurs the words 'or a Pleader' be inserted and for the words 'a person held judicial' the words 'such person held judicial' be substituted."

I am not going to say anything more on the first part of this amendment. So far as the second part of this amendment is concerned, if we look at the Explanation, it runs

thus:

"In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person held judicial office after he became an advocate. Shall be included."

Instead of "a person held, etc." it should be "such person held, etc." Instead of the article "a", it should be "such".

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in Explanation II to clause (3) after the words 'judicial office' the words 'not inferior to that a district judge' be inserted."

I also move:

"That in clause (4) of article 103, for the words 'supported by not less than two-thirds of the members present, and voting has been presented to the President by both Houses of Parliament' the words 'by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President' be substituted."

Mr. President: There is an amendment to this amendment by Dr. Bakshi Tek Chand, of which he has given notice. It is No. 101 in the printed pamphlet containing the amendments to amendments.

Dr. Bakshi Tek Chand (East Punjab: General): Sir, I do not want to move that.

Mr. President: There is another amendment, I am afraid.

Is Mr. B. Das moving his amendment No. 102? He has given notice of an amendment to this amendment, that is No. 102 in the printed list.

(The amendment was not moved.)

Shri H.V. Kamath : As regards my amendment No. 1854, it being more or less of a drafting nature may be left to the Drafting Committee. Therefore, I do not move it.

Mr. Tajamul Husain : Mr. President, Sir, I move:

"That in clause (4) of article 103, after the word 'passed' the words 'after a Committee consisting of all the Judges of the Supreme Court had investigated the charge and reported on it to the President and' be inserted."

With your permission, Sir, I will read clause (4) of article 103.

"A judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address supported by not less than two-thirds of the members present and voting has been presented to the President by both Houses of Parliament in the same session for such removal on the ground of proved misbehaviour or incapacity."

Therefore, Sir, clause (4) of article 103 deals with the procedure for the removal of a judge. It says that the President can remove a judge after an address is presented to the President by both Houses of Parliament. In my opinion, Sir, to remove a judge on the recommendation of the Parliament would be wrong in principle. If the majority party in the parliament is not in favour of a particular judge, then removal will become very easy, and the judge should always be above party politics. He should be impartial and he should never look up to the Government of the day and he must carry on his work. It does not matter who is in power. If there is an allegation against a judge, I submit, Sir, that the allegation must be enquired into first. Therefore, I suggest that all the judges of the Supreme Court form themselves into a Committee, and this Committee should investigate the charge against the particular judge, then submit its report to the President and then the President is to remove him in consultation with the parliament, provided the charges are proved against him. Therefore, Sir, my amended resolution, if accepted, will read in this way:

> "A judge of the Supreme Court shall not be removed from his office except by an order of the President passed, after a Committee consisting of all the Judges of the Supreme Court had investigated the charge and reported on it to the President and etc."

I think, Sir, it is the best course we can take as far as the removal of the judges is concerned.

Mr. President: Amendment No. 1856 stands in the name of Mr. Mohd. Tahir. I do not think it is necessary to have any speech on this. It only substitutes the words "a majority" for the words "not less than two-thirds". I take it that it is moved.

Mr. Mohd. Tahir : All right, Sir. I have no objection to it.

Mr. President: Amendment No. 1857 is a verbal amendment.

Amendment No. 1858 stands in the name of Professor K.T. Shah. Is not that covered by the words 'incapacity and misbehaviour'?

Prof. K. T. Shah : I would accept it if you think that they are covered. I do not move it.

Mr. President: Amendment No. 1859. That is also more or less covered by the amendment which has been moved by Mr. Tajamul Husain.

Amendment No. 1860 also goes with Amendment No. 1859.

Amendment No. 1861 is a verbal Amendment.

Amendment No. 1862 stands in the name of Dr. B. R. Ambedkar. That is also a formal amendment to substitute for the words "a declaration" the words "an affirmation or oath". We have made similar changes wherever that expression occurs in other parts of the Draft Constitution. I take it that it is moved.

The Honourable Dr. B. R. Ambedkar : Sir, I formally move:

> "That in clause (6) of article 103, for the words 'a declaration' the words 'an affirmation or oath' be substituted."

Mr. Mohd. Tahir : Sir, I beg to move:

"That clause (7) of article 103, be deleted.

The article runs thus:

"No person who has held office as a judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India."

This clause, as it is, would, I think, make a person quite useless after he retires from the office of a Judge. Suppose a man is appointed as a Judge of the Supreme Court and he retires and after that he has got enough ability and capacity as well as to work and do many other jobs in the affairs of the world; then, Sir, making a constitution which makes a man unable to do what he wants to do, I think, is quite unjustified. A constitution should not contain such provisions by which the activities of a person should be limited even if he has got the capacity to do it. Therefore, I think those persons who have worked as Judge of the Supreme Court and retired in due time, if they have got the capacity to work in other fields, they should be allowed to do as they are able to do. With these words, I move.

(Amendment No. 1864 was not moved.)

The Honourable Shri K.Santhanam : Sir, I beg to move:

"That in clause (7) of article 103, after the words 'any authority' the words 'or shall hold any office of profit without the previous permission of the President' be inserted."

I want to put in the words "of profit".

Sir, it has been argued by many that a Supreme Court Judge after retirement should not seek any office. To make such a complete prohibition will land us in difficulties. There is for instance, the Income Tax Investigation commission of which Mr. Justice Varadachariar is the Chairman. Similarly, we may have Enquiry Commissions and other Commissions for which these retired Judges may be the fittest persons. But my amendment tries to prevent them from holding any office of profit without the express permission of the President. Ordinarily, the President will not give such permission unless it is an office which does not militate against the independence of the Judge. Particularly, I want to prevent Supreme Court Judges from taking office in private companies such as Chairman of the Board of Directors, etc. This is absolutely essential if we want to keep our judiciary beyond all possibility of temptation. Therefore, I suggest that my amendment carries out all these purposes with the least complication or difficulty. I commend it to the House.

(Amendment No. 1866 was not moved.)

Mr. President: Amendment No. 1867: there is another article 196 in the Constitution which deals with the Judges of the High Courts. I think this is covered by that article. Do you insist on moving the amendment here also?

Prof. K. T. Shah : I do not move, Sir.

(Amendment Nos. 1868 and 1869 were not moved.)

Mr. President: We have now disposed of all the amendments of which I had notice. Those who wish to speak on any of the amendments or on the original article may do so now. I would request the Members to be brief. We have already taken two hours in moving amendments to one article.

Pandit Thakur Das Bhargava (East Punjab: General) : Sir, I support amendment No. 1817. According to the provisions of this amendment, confirmation of the appointment of the Chief Justice of the Supreme Court must be made by a two-thirds majority of the total number of members of Parliament assembled in a joint session of both Houses of Parliament. If you kindly refer to clause (4) of this article, it will appear that so far as removal of a Supreme Court Judge is concerned, an address supported by not less than two-thirds of the members present and voting should be presented to the President by both Houses of Parliament in the same session. I beg to submit that this principle is quite sound that the dismissing authority should be the appointing authority also. Therefore, the objection that the legislature should not have any influence in regard to the Judges of the Supreme Court has been laid at rest by this provision about removal. There can be no such valid objection so far as the appointment of the Chief Justice of the Supreme Court is concerned. No doubt, the appointment should be made by the President; but what is sought now is that the confirmation may be got to be made by a two-thirds majority of the total number of members of Parliament. This would inspire much more confidence in the Chief Justice of the Supreme Court and at the same time, the Chief Justice also shall get more influence and prestige when it is known that his appointment has not only been supported by the President, who practically represents the majority in the legislature, in so far as that it will be the Prime Minister who will give his advice to the President. All the same, if a two-thirds majority is insisted upon, it shall give him more influence and prestige. Moreover, the objection relating to amendment No. 1813 is also removed because the name which has been given is 'Chief Justice of Bharat'. This will be different from the name given to the Chief Justice of the High Courts.

I want to make one observation more in regard to amendment No. 1843. It has been pointed out that after retirement, no Judge of the Supreme Court should hold any office of profit, nor should he be allowed to practise in any of the courts. So far as it goes, this provision is quite wholesome; but at the same time, the restriction put upon his activities in amendment No. 1843 is not justifiable. According to me, a Judge of the Supreme Court, after retirement, is perfectly fitted to become a member of the House of the People or of the Council of States. Therefore, I am of the view that though a Judge should not be allowed to practise in any subordinate Court subsequent to his retirement, he should be allowed to continue his activities as a Member of the legislature.

The Honourable Shri Jawaharlal Nehru :(United Provinces: General): Sir, I wish to say about one particular matter with which some amendments have dealt, that is, the age-limit of the Supreme Court Judges. Some Members have proposed an amendment reducing the proposed age-limit to sixty; one of them suggested increasing it to sixty-eight. It is rather difficult to give any particular reasons for a particular age, sixty-five or sixty-six; there is not too much difference. After much thought, those of us who were consulted at that stage thought that sixty-five would be the proper age limit.

This business of fixing age-limits in India in the past was, I believe, governed by entirely the service view. The British Government here started various services, the I.C.S. which was almost manned entirely by Britishers and then later on some Indians came in and other services. The whole conception of Government was something revolving round the interests of the services. No doubt, these services served the country; I do not say anything against that. But, still, the primary consideration was the service and all these rules were framed accordingly.

Now, the other view is, how you can get the best service out of an individual for the nation. Each country spends a lot of money for training a person. Now, we have to get the best out of the training you give to a person. You should not, when he is quite trained and completely fit, discard him and get an untrained person to start afresh. Now, it is difficult, of course, to say when a person is not working to the peak of his capacity. In different professions the peak may be different with regard to age. Obviously a miner cannot work as a miner at sixty or anywhere near sixty. An intellectual worker may work more. So also about writers. It will be manifestly absurd to say that a writer must not write after a certain age, because he is intellectually weak. Or for the matter of that, I rather doubt whether honourable Members of this Assembly will think of fixing an upper age-limit for membership of this Assembly, or for any Cabinet ministership or anything of that kind. We do not do it. But the fact is, when you reach certain top grades where you require absolutely first-class personnel, then it is a dangerous thing to fix a limit which might exclude these first-rate men. I would give you one instance which came up in another place. It was the case of scientists. In such a case, can we say that he cannot work because he has reached the age of sixty? As a matter of fact, some of the greatest scientists have done their finest work after they reached that age. Take Einstein. I do not know what his age is, but certainly it should be far above sixty; and Einstein is still the greatest scientist of the age. Is any government going to tell him, "Because you are sixty, we cannot use you, you make your experiments privately"?. There are some scientists in India-first class scientists-and the question came up before me, should they retire? I pointed out that we are already short of first-rate men, and if you just push them out because of some rules fixed for some administrative purposes, which have nothing to do with the highest class of inventive brain work, it would be a calamity for us. We would not get even the few persons we have got for our purpose.

With regard to judges, and Federal Court Judges especially, we cannot proceed on the lines of the normal administrative services. We require top men in the administrative services. Nevertheless, the type of work that a judge does is somewhat different. It is, in a sense, less physically tiring. Thus a person normally, if he is a judge, does not have to face storm and fury so much as an administrative officer might have to. But at the same time it is highly responsible work, and in all countries, so far as I know, age-limits for judges are far higher. In fact there are none at all. In America the greatest judge that I believe the Supreme Court produced went on functioning till the age of ninety-two-Holmes-and he went on functioning extremely well up to the age of ninety-two for thirty or forty years running. If you go to the Privy Council of England I do not know what they are now, but some years back when I went there I saw patriarchs sitting there with long flowing beards; and their age might have been anything up to a hundred years, so far as looks were concerned. May be, you may over do this type of thing. But the point is we must not look upon this merely as a question of giving jobs to younger people. When you need the best men, obviously age cannot be a criterion. A young man may be exceedingly good, an old man may be bad. But the point is if an old man has experience and is thoroughly fit, mentally and otherwise, then it is unfortunate and it is a waste from the State's point of view to push him aside, or force him to be pushed aside, and put in some one in his place who has neither the experience nor the talent, perhaps. We are going to require a fairly large number of High Court Judges and Supreme Court Judges. Of course the number of Supreme Court Judges will be rather limited. Nevertheless, there are going to be more and more openings, and the personnel at our disposal is somewhat limited. Judges presumably in future will come very largely from the bar and it will be for you to consider at a later stage what rules to frame so that we can get the best material from the bar for the High Court Federal Court Judges. It is important that these judges should be not only first-rate, but should be acknowledged to be first-rate in the country, and of the highest integrity, if necessary, people who can stand up against the executive government, and whoever may come in their way. Now, taking all these into consideration I feel that the suggestion made by the Drafting Committee with regard to Federal Court Judges, that the age-limit should be sixty-five, is by no means unfair, for it does not go beyond any reasonable age-limit that might be suggested. Many of us here are, as you are aware, dangerously near sixty or beyond it. Well, we still function, and function in a way which is far more exhausting and wearing than any High Court Judge can be. We are functioning presumably because in the kindness of your heart, in the country's heart, you put up with us, or think us necessary. Whatever it be, you can change us and push us out if you do not like us. There is no age-limit. But the High Court Judges and Federal Court Judges should be outside political affairs of this type and outside party tactics and all the rest, and if they are fit, they should certainly, I think, be allowed to carry on. Of course every rule that you may frame may give rise to some difficulties and undesirable men may carry on. But a man appointed to the Federal Court is presumably one who has gone through an apprenticeship in the High Court somewhere. He cannot be absolutely bad, otherwise he would not have got there. He must have justified himself in a High Court as Chief Justice or something. So you are fairly assured that he is up to a certain standard. If so, let him continue. Otherwise the risk is greater, of pushing out a thoroughly competent man because of the age-limit, because he has attained the age of sixty. So I beg the House to accept the age-limit of 65 for Federal Court Judges that has been suggested.

Shri R.K. Sidhva (C.P. & Berar : General): Mr. President, Mr. Kapoor's amendment says that the age-limit should be curtailed from 65 to 60, and Mr. Satish Chandra suggests that the age should be left to the Parliament to decide. Sir, Mr. Kapoor himself was not sure in his argument whether the age sixty was the right age. He said that a judge under sixty he had come across was mentally unfit. Well, if the judge under sixty was mentally unfit, then the appointing authority, according to me, must have been mentally unfit, because it is not expected that a judge will be mentally unfit, which means mentally unsound or mad. Such a man cannot be allowed to continue. Sir, it has been argued that persons who have crossed the age of sixty are generally unfit, that they have lost all their energy. Let me tell my Friends who hold such a view that there are thousands of persons who have crossed the age of sixty, but they are younger in energy, younger in ability, younger in activity and younger in common-sense than so many of the young persons who boast of possessing these qualities. That is a fact which cannot be denied. Therefore those who say that a man after sixty is insane do not know the youngsters today. Today their constitution is such that a man of forty looks like one of sixty. Medical science says that a person is necessitated to wear glasses after forty-five, but you find youngsters of thirty years wearing glasses. The youngster of today is an old man at forty, whereas there are thousands of men above sixty who are stronger in their constitution than young men. In the judiciary older person bring a lot of knowledge and experience. I know the Pay Commission has recommended the extension of the age of pension. I do not know what Government have done about it. Of course from the administrative point of view it will block the promotion of younger people, but to say that a man is insane after sixty is nonsense. I know two Judges who lost their eyesight sat on the bench and used typewriter and they were two of the very best Judges this country has ever had. After all the Judges have got to be able and impartial, and age does not count in this matter. I myself claim to be younger than many of the young people although I have crossed sixty. It is ability that counts; and if a man has got energy and ability and perseverance, he should be kept in public service even if he is over sixty. I lay stress on this because I want that we should not be carried away by sentiment merely because we have to give a chance to younger people. You cannot discard people merely because they are over sixty years of age.

Now coming to the amendment of Professor Shah, he wants the Council of States to decide the question of the appointment of Judges. This I must strongly oppose. We want impartial and independent Judges; and if you leave it to the Council of States there is bound to be individual canvassing, in which case the question of ability, etc, will be set aside. Of course from the point of democracy it may be good to consult them because we want wider consultation and discussion but there must be a limit to it. And if you leave it to the Council of States to appoint Judges, that will be going too far. After all our Prime Minister will be a responsible person; Professor Shah stated that the prime Minister has to make appointments of Ambassadors, Governors, Judges etc. This is true; he is likely to make appointments of his choice or show favoritism, but surely he is subject to our votes. You cannot have it decided by a Council of 150 people or more; canvassing will go on and ability will be discarded. I can only say that I am surprised that of all persons Prof. Shah should have moved this amendment.

My honourable Friend, Mr. Mohammad Tahir, wants that pleaders of district courts of twelve years standing should be considered for the posts of Judges of the Supreme Court. Sir, we know of briefless and duffer barristers and lawyers who wander in the corridors of courts; are these people to be appointed Supreme Court Judges? The Supreme Court Judges should be men of experience and knowledge gathered in the High Courts and from that point of view the amendment of Mr. Tahir is objectionable.

Coming to the article itself, clause(4) contains an important provision about the removal of Judges. It says that the President can remove a Judge on an address presented by the Houses of Parliament and if two-thirds of the members present have voted for it. I do not know any case of removal of a Judge except a recent one in the United Provinces where the Governor-General at the instance of the Premier of the U.P. removed a Judge for misbehaviour. I did not know the Governor-General had this power because it has never been used although I know of one Judge who has been guilty of misuse of power. I am glad our Governor-General has made history; other Judges also will learn from this a lesson to be more careful about their character and behaviour in future. You now want in this constitution that if two-thirds majority of the two Houses sitting together want a Judge to be removed the President will dismiss him. It is good to give wide powers to legislature but it will lead to all kinds of outside influences being brought to bear on the question and no Judge will ever be dismissed. In this U.P. case several things could not be proved against the Judge and circumstantial evidence only had to be taken into account. If we leave it to the two Houses it will be difficult to remove a Judge even if he is guilty. In spite of our wanting wider powers for the legislature I cannot support this and I am surprised that this provision has been proposed in the constitution. If you leave it to the President and he misbehaves he will be accountable to us; and be will not act in an injudicious manner.

I oppose this age-limit amendment and I support the proposition as stated *minus* the power that is vested in the Legislature in Both Houses to remove a Judge.

Shri Biswanath Das (Orissa: General) : Sir, a number of important issues have been raised in the course of the discussions on article 103. Of these, the first one that I would like to discuss is the introduction of the system of elections into our Judiciary. Sir, it has been proposed that a joint Session with a two-third majority is one way of selecting the Chief Justice of India. Prof. K. T. Shah contracts the process of the election by having the election of Judges to be done by the Council of States. In any event, be it by a joint Session of Parliament or by the Council of States, the fact remains that we are trying to import a very dangerous principle, namely the process of electing Judges of the Supreme Court in place of the one that we have, namely the process of selection. Sir, intense thought has been given up this aspect of the question, whether Judges have to be selected or elected, and we have rejected the one and retained selection as the proper mode of appointing Judges.

Prof. K. T. Shah : On a point of personal explanation, I have not said that they should be elected. I have said that the Council of States should be consulted.

Shri R. K. Sidhva : It comes to the same thing.

Shri Biswanath Das : Consulting the Legislature and election are certainly technical two different processes. But in a democracy functioning, as we propose it should, under this Constitution, is it anything less to say that my Friend, Prof. Shah, wants to import election into the appointment of the Judges? I think there is nothing for me to stand corrected by the revised version given by my honourable Friend, the learned professor. We have seen the difficulties and distress of countries which have accepted the principle of such election. If you once accept the principle of election what reasons could you assign to exclude the subordinate? As has been done in America, even Public Prosecutors are to be elected by a defined electorate.

Under these circumstances, Sir, I plead with my friends that the system of appointment by a process of election be shunned and be given up for good.

Sir, I come to the question of the age-limit of the Honourable Judges of the Supreme Court. We have in ordinary Government service fifty-five years. This has been extended to sixty years in the case of the Judges of High Courts and the Supreme Court the Drafting Committee, I am afraid, have not given convincing and adequate reasons why this change was made. I see a note in which some explanation has been given, but I claim that the explanation that they have given is not adequate. One fact we cannot forget namely, that the Judges of the Supreme Court and the High Courts who are bound to be practitioners in the Bar or subordinate judicial officers, who have risen by dint of merit-in any case the private property which they have earned are their property. The constitution gives them ample safeguards regarding the tenure of service, their freedom of judgment and safeguards from interference so far as the discharge of their functions and responsibilities are concerned. Under these circumstances, I am afraid, that further reasons are necessary if my honourable Friends want us to accept even the age-limit of sixty-five years. Sir, in a country where the average duration of life was twenty-eight years under the British rule, and I believe the same period is being continued even today, there is little justification for the Honourable Judges of the High Court to go on functioning up to sixty-five years. The great Seers of Hindu society have prescribed the ways of life for us. they have provided that the closing stages of life should be reserved for *Vanaprasth* or *Sanyas*.

Are you going to close these chapters. So far as such Judges of the High Courts and Supreme Court are concerned for *Vanaprasth* and *Sanyas*? It is a very important stage of life in Hindu society. In other societies, such as among the Christians and the Muslims, they have also the necessary and natural expectation that people at the last stages of life shall have time to devote themselves either to God or to free social work. Man must have some leisure to devote himself, at least in the last days of his life, to some other work-either spiritual or social. Under these circumstances, I believe that the honourable Members of this House should not give the go-by to that normal and general expectation of society and that the limitation of sixty-five years be given up in favour of allowing the Honourable Judges of the Supreme Court, from whom the society, the country and the State expect much, either to live a *Vanaprasth* or a life of a *Sanyasi,* so that they could devote themselves to their Maker and for those who do not believe in God, at least to the service of society.

I now come to the proviso in clause (2) of article 103. It has been said: 'Provided that in the case of a judge other than the Chief Justice, the Chief Justice of India shall always be consulted.' I do not know of any reason or justification for the retention of this proviso. The Chief Justice is a very responsible person and there is no reason why he should not be consulted in the case of the appointment of the Chief Justice who is to be his successor. I think in the matter of the selection of a person to succeed the Chief Justice it will be doing in injustice to the place and position of the Chief Justice himself not to be consulted.

One other point and I shall have done. It has been stated that no office of profit should be offered to a judge in office or after retirement. I do not see much logic in this amendment. The judges of the Supreme Court are granted the highest scale of salaries, barring the Governor-General and the Governors. If at any time an office of profit under the Government is to be offered to a judge of the Supreme Court it is either the same or some other allied office involving semi-judicial functions. That being so, I do not find any justification for a restriction of the kind proposed. I do not therefore agree with those friends who hold this view. Such a proviso merely reveals a fear complex. I would appeal to my friends to give up this fear complex. I feel that the system of election as has been proposed, direct or indirect, to be imported into the appointment of judges of the Supreme Court should not be thought of and that the age-limit should be fixed at sixty and not at sixty-five. The proviso to clause (2) of article 103 is unnecessary and the restrictions sought to be imposed upon the appointment of judges of the Supreme Court to offices of profit under the States are needless restrictions which reveal nothing except fear complex.

Shri Rohini Kumar Chaudhari (Assam: General): Mr. President, I have come here purposely to warn the House against the acceptance of the suggestion made by my Friend Mr. Shibban Lal Saksena. He seems to think that any appointment which is made should be subject to confirmation by two-thirds majority of the Houses of Parliament. I submit that this is a very dangerous principle. Confirmation by two-thirds majority of the Houses Parliament means that the appointment will be at the pleasure of the leader of the majority party. Already there have been suggestions that the present Government--the Ministers in different provinces-- are interfering at times with the administration of justice. Recently, very adverse remarks were made by Mr. Justice Beaumont, Judge of the Privy Council. In the course of delivering a judgment, the Judge observed that he was constrained to say that the Congress was at one time very anxious to have separation of the judiciary and the executive and now that it has come to power they seemed to like that the old system should continue. This utterance by a very eminent Judge that there is at times room for the executive to interfere with the course of justice and this might lead to very serious consequences in future. I would therefore warn the House not to accept any proposal aimed at giving the House power to confirm the appointment of judges or agree to the suggestion that action for the removal of a judge can be taken by Parliament itself. That sort of thing should not be allowed to be accepted for a moment.

Next I come to the consideration of age. In my opinion what we have to do is to fix the minimum age of a judge and not the maximum age. We know that in England there is no age-limit for a High Court Judge or a Supreme Court Judge. A man of any age, provided he is able to conduct the judicial proceedings properly can be admitted to the Bench. It is a very wrong principle to compel a man, particularly a man of advanced age, to declare his age. In this connection I would like to warn the leaders of people, distinguished men, not to celebrate their birthdays. If at all they want to celebrate their birthday, let them not disclose their age. It is a very sad thing that a particular person whom we consider to be young--I have in mind our leader Pandit Jawaharlal Nehru--should give out that he is nearly sixty, when he allowed his birthday to be celebrated. People now know his correct age. He was vary easily passing for a man younger by ten years. Not that he wanted to do so. It is a wrong thing to remind people of one's age.

Further, so far as age is concerned, there seems no bar to the appointment of a female as Supreme Court Judge. I would ask you, Sir, where is the sensible woman who would declare her age as fifty-five even if she is fifty-five in order to get appointed to the Supreme Court Bench? Now even for the Kingdom of England would a women say she is fifty or sixty years old-- much less in order to continue as a High Court Judge. Not even for a Kingdom would a woman say so. Therefore it is a wrong principle to have the age prescribed. A man is not necessarily old because he is old in age or a woman is necessarily old because she is old in age. The maximum age should not be fixed now. It should be left to be decided by persons competent to judge in this matter.

I would refer in this connection to the amendment of Mr. Satish Chandra. He wants that the age should not be prescribed here and should be left to be fixed by the future Parliament. If we agree to that, there would be one difficulty. After the Constitution is adopted, we may have to appoint a Chief Justice for the Supreme Court and for the High Courts. If at that time no age limit is fixed there would be difficulty, if we say that is should be fixed by Parliament sitting. We would not know what sort of people we should exclude.

I want now to say a word about 'consultation'. In my opinion the amendment suggested by Dr. Ambedkar for the deletion of the line where it is said that after consultation with such of the judges of the Supreme Court and of the High Courts in the States where necessary should be accepted. After all, this is a matter which should be entirely dealt with by the President. He can, if he likes, consult anybody; if he does not like, he need not consult anybody. If he knows the man to be of outstanding ability, it is not necessary for the President to consult anybody. It should not be made obligatory. I think that the interpretation of this article is that the President is not bound to consult anybody if he does not consider it necessary to do so. If that is the interpretation, well and good. If that is not the interpretation, then I submit that it will not be proper to say that the President is bound to consult the High Court judge. After all, the Chief justice of the Supreme Court is a person of superior position in relation to the High Court Judges. It seems rather queer that the President will have to select a person of higher grade only after consulting persons of a lower grade, but that may be the tendency of democracy now-a-days. We are finding students claiming that they should be consulted over the appointment of teachers and even in the promotion of the teachers. Sometimes we come across cases where the students demands engineered no doubt--that a particular teacher should be made the headmaster. But that is not the proper way, and I submit, Sir, that a person of a lower grade should not be consulted over the appointment of people of a higher grade. We have the curious position in some parts of the country where the Public Service Commission is consulted over the appointment of a Sub-Judge or a Judge. The Public Service Commission may not have any member who has ever practised in a court of law or who has any knowledge of the qualifications of a Judge, but still the Public Service Commission is consulted. This is rather absurd. In some places a Sub-Judge has to sit for departmental examinations in law, which is held by an officer who has no idea of law. That sort of thing ought not be allowed. I therefore submit, and submit strongly, that the procedure for consulting a judicial officer of a lower grade for making appointments to a higher grade is rather unreasonable.

Then, Sir, I have to say a word about my honourable Friend, Dr. Sen's amendment. It is definitely worthy of consideration. If a High Court Judge who joins the bench after giving up practice, next year on account of illness resigns and finds himself without any resources, it will be a very sad thing. He must have some security for the future and that security should be given to him by providing for a pension. We have found cases where a member of the Judiciary has had to resign on account of illness brought about by hard mental labour. In such cases there should be some provision for pension. I am not sure, Sir, whether such a provision should be made in the constitution itself or whether it should be left to Parliament to decide or whether it should be left to the President to decide. The President may even specify in the terms of appointment of a Judge that if on account of illness he is forced to resign, he will get a pension.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, we have now reached in the discussion of this constitution, a stage which according to me is one of the most important stages if not the most important stage in the discussion of this constitution. The Supreme Court is the watchdog of democracy. In an earlier part we enacted the Fundamental Right and we are very anxious to provide the means by which these Fundamental Rights could be guaranteed to the citizens of the Union. This is the institution which will preserve those rights and secure to every citizen the right that have been given to him under the Constitution. Therefore naturally this must be above all interference by the Executive. The Supreme Court is the watchdog of democracy. It is the eye and the guardian of the citizen' rights. Therefore at every stage, from the stage of appointment of the judges, their salaries and tenure of office, all these have to be regulated now so that the executive may have little or nothing to do with their functioning. The provisions, that have been made, have been made with an eye towards that. If amendments are moved now, each amendment must be judged by the test whether it secures the independence of the judiciary which this Chapter attempts to provide for.

Now, Sir, two formal amendments have been moved, amendments Nos. 1813 and 1840, relating to the nomenclature. They want the Chief Justice of India to be called the Supreme Chief Justice. When we come to the High Court, this means that we should call the Chief Justice of the High Court as High Court Chief Justice or High Chief

Justice. Supreme Chief Justice, High Chief Justice or Law Chief Justice-- I have never heard of such a nomenclature being given to Judges. A Supreme Court is not a peculiar institution to this Country. There are Supreme Court in America and in various other places. These amendments are absolutely unnecessary and should be rejected.

Then as regards the number of judges, inasmuch as the Supreme Court has appellate jurisdiction in various matters, the number seven is not big at all. The Parliament is given the power to increase this number seven according to the needs and circumstances.

The important amendments that have been moved relate to the necessity for the President consulting the judges of the High Court in the States. Now, consultation with the Chief Justice is necessary for making appointments of Puisne Judges of the Supreme Court. So for as the Chief Justice himself is concerned, there is no higher judicial authority who may, be consulted.

Therefore that provision will have to remain. Now, as regards the appointment of Puisne Judges, the Chief Justice will be consulted, but the objection is to the consultation with the Judges of the High Courts in the States. If the President considers that such consultation is necessary, I feel that it should be open to him to do so. Whether it is necessary to consult the judges of the High Court is left to the discretion of the President. The Chief Justice of the Supreme Court may be drawn from one of the provinces of this country and might not be able to suggest as to who should be appointed Judges of the Supreme Court. Naturally therefore the President would not be able to get the necessary advice from the Chief Justice alone and would have to consult the Judges of the various High Courts. It is not obligatory on him to consult everyone of the Judges. It is optional to him, wherever he considers it necessary in the interests of proper administration of justice. That power must be given to him.

Then, it is almost fantastic--I hope the honourable Members who have moved the amendment would forgive me for saying so--but I cannot use a milder word than 'fantastic' to characterise the suggestion that the Chief Justice of India should be appointed on the recommendation of the majority of the Members of the Council of States. This will reduce it to an election and there will be canvassing to get the majority of votes. This is inconceivable and unheard of in any part of the civilised world.

Then as regards the age, some young friends want it to be reduced from sixty-five to sixty and others want to raise it from sixty-five to sixty-eight. In Canada the upper limit is seventy-five. Up to the age of seventy-five, judges can go on being in office. That may be a cold country where the age seventy-five may be the upper limit. So for as the Privy Council is concerned in Great Britain, I am told that the age for retirement is seventy. In America there is no age-limit at all. The judge of the High Court retires normally under existing law at the age of sixty and if he was appointed a few years before that, there is absolutely nothing to say against it. Our Friend, Mr. Munshi--he may not accept this, is he is offered--is quite strong and healthy and for another twenty-five or thirty years he will be able to judge between man and man and persons of that caliber must be available and the age sixty is too early an age and even in a hot climate like ours, I would like to go even to seventy, but let us be somewhat careful. So sixty-five seems to be a proper limit. Therefore the age sixty-five need not be raised nor cut down to sixty. Younger man on account of their enormous energy may go into various other fields which are open to them. For the judiciary there must be a balanced mind. Immature minds are useless. They must have sufficient experience; they must judge calmly and coolly. Old judges will not stand in the way of younger men, but the younger men may have a lot of other things to do. Youth ought not to come in the way of proper judgment and therefore, older men alone must be chosen; but there is nothing preventing a young man of extraordinary ability if he possesses a balanced mind, an enormous capacity and intellect to judge between man and man. The Chief Justice of the Madras High Court is barely forty-three and he can go on mature in age until the age of sixty-five. These are exceptional cases; otherwise you do not expect a judge to be a very young man to judge between man and man.

Then, Sir, I agree with my honourable Friend, Mr. Kamath, when he says that the choice of Supreme Court judges ought not to be limited to judges already in service and of ten years' standing. He has moved that it ought to be open to the President, if he so chooses, in the interest of proper administration of justice, to include a distinguished jurist. His amendment does not make it obligatory upon the President to choose only a jurist only among jurists. In various cases a Supreme Court has to deal with constitutional issues. A practicing lawyer barely comes across constitutional problems. A person may enter the profession of Law straightaway. He might be a member of a Law College or be a Dean of the Faculty of Law in an University. There are many eminent persons, there are many writers, there are jurists of great eminence. Why should it not be made possible for the President to appoint a jurist of distinction, if it is necessary? As a matter of fact, I would advise that out of the seven judges, one of them must be a jurist of great reputation. I am told, Sir, by my honourable Friend, Shri Alladi, whom I consulted, that some years ago President Roosevelt in the U.S.A. appointed one Philip Frankfurter. He was a Professor in the Harward University. That was a novel experiment that he made. Before that, barristers were being chosen and also persons from the judiciary. This experiment has proved enormously successful. He is considered to be one of the foremost judges, one of the most eminent judges in the U.S.A. Therefore, Sir, I am in agreement with the proposal to add a jurist also, a distinguished jurist, in the categories for the choice of a judge of the Supreme Court.

As regards good behaviour, my honourable Friend, Prof. Shah wants that the tenure of office must be during good behaviour. He has evidently forgotten that provision is coming later. No doubt in the earlier portion in clause (2) it is not definitely prescribed to continue only during good behaviour, but later on there is a provision for the removal on the ground of proved misbehaviour or incapacity. I understand this to mean that they do not want such an eminent person as the judge of the Supreme Court, his tenure ought not to be linked even at the start with, or that anyone should have, a suspicion that he may be guilty of misbehaviour. In the Australian Constitution they say that the appointment should endure so long as he is of good behaviour. Later on a provision in made that in case of misbehaviour, he may be removed. In substance there is provision here for removing a judge who is guilty of misbehaviour. Even at the outset, it is something like thinking even at the time of marriage--if the man dies, what happens. It is only certain communities that think of the death of a son-in-law even at the time of marriage and make provision for that, while other communities are a little more anxious to avoid this possibility. I would not like to lay down that a judge must be appointed only during good behaviour; there is enough provision for his removal, in case he proves himself incapable or is of bad behaviour.

Then I come to 'office'. Mr. Santhanam referred to clause (7) and says that a person who was a judge of the Supreme Court ought not to hold any office of profit except with the consent of the President. I have seen and we have seen a number of cases where important Secretaries who were drawing Rs. 3,000 to 4,000 while in office have helped some person in some industries and immediately they retired, they become Managers of this Institute or that Institute. I want to avoid this kind of selling away. Particularly, a judge cannot decide in favour of a particular person and then join his service. It is not as if this provision is absolute and it is a prohibition. With the consent of the President, he will decide as to whether this new office is or is not inconsistent with the office he held, and the President may give due permission in proper cases. I would urge upon the House to accept the amendment moved by honourable Friend, Mr. Santhanam, regarding the prohibition that a person who holds the position of a judge of the Supreme Court ought not to accept an office of profit except with the consent of the President.

Coming to Dr. Sen's amendment that person who hold the office of judgeship ought to be given pension even if for reasons of illness they are unable to continue in office before the period is over. Person that are going to be appointed judges are of there classes. A person in service will always get his pension. He is entitled to retirement in advance. Therefore, this amendment does not apply to such a person. A person who straightaway is drawn from the bar, a practicing lawyer, if he is old by the time he is appointed a judge of the Supreme Court, he must have attained sufficient reputation and amassed a sufficient sum of money. With respect to him, it may not be necessary. I no doubt agree with him that with respect not only of judges of Supreme Court but in respect of ministers also there must be a National Pension Scheme and, in fact, with respect to all persons who have rendered great service to the nation. After giving up their jobs or after the country no longer feels them necessary for public work, they ought not to be thrown on the streets, and some such person scheme must be started. That must be an all-round scheme and ought not to be confined to the judges of the Supreme Court only.

I oppose the other amendments, barring those which I have accepted. I would appeal to the House to see that the other amendments are of a formal nature, or go against the scheme of this provision which makes the judiciary absolutely independent of the executive.

Mr. President: Mr. Naziruddin Ahmed. He will be the last speaker. After his speech, we shall close the discussion.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, we are indebted to the Honourable the Prime Minister for has illuminating speech giving a true picture of men of high intellect. You can put no age-limit to men of real worth. Two honourable Members have tried to put the age-limit not only to Judgeship of the Federal court, but to all mental efficiency at sixty. I submit if this test is to be applied, Pandit Jawaharlal Nehru, who is about sixty-one would be equally unfit for public office. Mr. K. M. Munshi who is sixty-two would be equally unfit. Mr. Alladi Krishnaswami Ayyar who is sixty-six would be more unfit, and Sardar Patel who is seventy-four, who is an ornament of the country, and whose intellect is as keen as ever, would according to this argument, be equally unfit. To put the age-limit for men of real worth at sixty is meaningless. I should say childish. One Member has gone so far as to say that at sixty, a man is intellectually defunct and becomes absolutely unfit for any mental activities. His view is that the younger the man, the greater is his intellect. In fact, he would prescribe a formula that mental capacity increases in the inverse proportion to the advance in years. In other words, the younger the man he is, the more he is mentally fit for high judicial or other intellectual work. These are absurd propositions to be laid down.

While the Honourable the Prime Minister has laid and age-limit at sixty-five, I shall, with due respect to him, try to support the age-limit as sixty-eight. My reasons are these. Men in the legal profession, who are very efficient, earn a very high income. If they are to be appointed judges that means a heavy sacrifice. If you put the age-limit at sixty-five, you discourage high legal talents from accepting high judicial appointments. While you put the age-limit at sixty-five, in clause (6) you require him not to plead or act in any Court. That is a highly desirable condition; but it goes against the age-limit of sixty-five. At the age of sixty-five, very efficient people are highly alert and if they are not to be allowed to practise in the Courts, which I concede is a desirable condition, you must raise their age-limit. In fact, Judges of the Supreme Court will have very high judicial duties to perform. If you put the age-limit of sixty-five, you will be shutting out from the service of the country men of real worth and ability at the very height of their efficiency and experience. In these circumstances, I should think that the age-limit should be sixty-eight.

To ask a Supreme Court Judge to take up any position of profit under the Government with the consent of the President would be to introduce a pernicious principle. Judicial officers, especially of the highest rank should never be induced to accept any Government job. When they retire, they should never look up to Government for some sort of job after their judicial career is ended. The difficulty which has been felt by Mr. Santhanam in shutting out men of ability is not met by his amendment, but rather would be met by raising his age-limit to something like sixty-eight. In England the age-limit of ordinary Judges is 72, but there is no age-limit for Judges who are Law Lords. They hold office during the pleasure of His Majesty and that means efficiency. In England, there are various ways of ascertaining the efficiency of a Judge. There, the usual age of the highest judicial officers in the Privy Council and in the House of Lords is about seventy at the lowest. The average of men in the highest judicial posts, the Law Lords, is about eighty. We have heard from the Honourable the Prime Minister that men of ninety of even above that are in a very good alert condition of mind. Some of the greatest judgments of the Privy Council and of the House of Lords, were delivered by men who were above eighty, some at ninety. It has been suggested that the climate of India does not reconcile high age with efficiency. I submit that is a fallacy. The British put down the agelimit for High Court Judges as sixty and for ordinary officers as fifty-five. They never allowed nay efficiency to be developed. They allowed something like mechanical efficiency or a kind of clerical ability in their officers. They allowed no initiative, no freedom of thought; they crippled the men's intellect while in Government service. Now, Sir, all these adverse factors would be gone. We are breathing a free atmosphere; the ability of our officers will increase. They will have enough initiative, enough patriotism behind them to do the best work for the country. The artificial age-limit of fifty-five and sixty and the reasons therefore no longer apply. For all these reasons, I think the age-limit should be enhanced. Especially in high judicial posts, I am of opinion, not without much careful thought, that the minimum should be sixty. Efficiency as high judicial officers can rarely being before sixty. Ripe experience and alertness of mind of high judicial talents really asserts itself after sixty. I should have been very happy to put the age-limit even higher. But, that would have necessitated the condition of his being in office during the pleasure of the President. It is considered that this may be utilised or used to the detriment of high judicial abilities. Therefore, I do not wish to limit the duration of high judicial service during the pleasure of the President. I should therefore strike a *via. media* between sixty-five, and putting no age-limit, that is at sixty-eight. The duties of a judicial officer are extremely high. They do not earn their pay for nothing; they have to work very hard. They should look forward to a long career of usefulness, to induce them to give up their profession at the bar to accept high judicial post. In fact, it has been suggested against this that a man should make it as a matter of sacrifice for public service. I think, however, that a man who gives up a lucrative practice at the bar makes a tremendous sacrifice. To sacrifice and sacrifice, there must be some limit. From these considerations, I submit that the age-limit to the judges should be enhanced, and also in another context I should submit that their pay should also receive due consideration. I submit that this debate has been of a very revealing character fully deserving our attention. It has dispelled once for all the impression that any age above sixty means inefficiency. I submit that though the amendment which I have sponsored may not be accepted in the House today, its principles would be remembered and a day would come when will be compelled to raise the age-limit, at least of our highest judicial officers.

Mr. President: I think we had better close the discussion now. We have had so many speeches.

Shri B. Das (Orissa: General): But till now we have had all speeches from lawyers.

Mr. President: If you wish to speak I will not stop you. But I should think we have had a full discussion. And all the speeches were not from lawyers. For example, Mr. Sidhva is not a lawyer.

Dr. Ambedkar, would you like to say anything about the amendments.

The Honourable Dr. B.R. Ambedkar: Mr. President, Sir. I am prepared to accept two amendments. One of them is No. 1829 moved by Mr. Santhanam, and the other is No. 1845 moved by Mr. Kamath, by which he proposes that even a jurist may be appointed as a Judge of the Supreme Court. But with regard to Mr. Kamath's amendment No. 1845, I should like to make one reservation and it is this. I am not yet determined in my own mind whether the word "distinguished" is the proper word in the context. It has been suggested to me that the word "eminent" might be more suitable. But as I said, I am not in a position to make up my mind on this subject; and I would, therefore, like to make this reservation in favour of the Drafting Committee, that the Drafting Committee should be at liberty when it revises the Constitution, to say whether it would accept the word " distinguished" or substitute " eminent" or some other suitable word.

Now, Sir, with regard to the numerous amendments that have been moved, to this article, there are really three issues that have been raised. The first is, how are the Judges of the Supreme Court to be appointed? Now grouping the different amendments which are related to this particular matter, I find three different proposals. The first proposal is that the Judges of the Supreme Court should be appointed with the concurrence of the Chief Justice. That is one view. The other view is that the appointments made by the President should be subject to the confirmation of two-thirds vote by Parliament; and the third suggestion is that they should be appointed in consultation with the Council of States.

With regard to this matter, I quite agree that the point raised is of the greatest importance. There can be no difference of opinion in the House that our judiciary must both be independent of the executive and must also be competent in itself. And the question is how these two objects could be secured. There are two different ways in this matter is governed in other countries. In Great Britain the appointments are made by the Crown, without any kind of limitation whatsoever, which means by the executive of the day. There is the opposite system in the United States where, for instance, officers of the Supreme Court as well as other offices of the State shall be made only with the concurrence of the Senate in the United States. It seems to me in the circumstances in which we live today, where the sense of responsibility has not grown to the same extent to which we find it in the United State, it would be dangerous to leave the appointments to be made by the President, without any kind of reservation or limitation, that is to say, merely on the advice of the executive of the day. Similarly, it seems to me that to make every appointment which the executive wishes to make subject to the concurrence of the Legislature is also not a very suitable provision. Apart from its being cumbrous, it also involves the possibility of the appointment being influenced by political pressure and political considerations. The draft article, therefore, steers a middle course. It does not make the President the supreme and the absolute authority in the matter of making appointments. It does not also import the influence of the Legislature. The provision in the article is that there should be consultation of persons who are *ex hypothesi,* well qualified to give proper advice in matters of this sort, and my judgment is that this sort of provision may be regarded as sufficient for the moment.

With regard to the question of the concurrence of the Chief Justice, it seems to me that those who advocate that proposition seem to rely implicitly both on the impartiality of the Chief Justice and the soundness of his judgment. I personally feel no doubt that the Chief Justice is a very eminent, person. But after all the Chief Justice is a man with all the failings, all the sentiments and all the prejudices which we as common people have; and I think, to allow the Chief Justice practically a veto upon the appointment of judges is really to transfer the authority to the Chief Justice which we are not prepared to vest in the President or the Government of the day. I therefore, think that is also a dangerous proposition.

The second issue that has been raised by the different amendments moved to this article to the question of age. Various views have been expressed as to the age. There are some who think that the judges ought to retire at the age of sixty. Well so for as High Court are concerned, that is the present position. There are some who say that the Constitution should not fix any age-limit whatsoever, but that the age-limit should be left to be fixed by Parliament by law. It seems to me that is not a proposition which can be accepted, because if the matter of age was left to Parliament to determine from time to time, no person could be found to accept a place on the Bench, because an incumbent before he accepts a place on the Bench would like to know for how many years in the natural course of things, he could hold that office; and therefore, a provision with regard to age, I am quite satisfied, cannot be determined by Parliament from time to time, but must be fixed in the Constitution itself. The other view is that is you fix any age-limit what you are practically doing is to drive away a man who notwithstanding the age that we have prescribed, *viz.,* sixty-five, is hale and hearty, sound in mind and sound in body and capable for a certain number of years of rendering perfectly good service to the State. I entirely agree that sixty-five cannot always be regarded as the zero hour in a man's intellectual ability. At the same time, I think honourable Members who have moved amendments to this effect have forgotten the provision we have made in article 107 where we have provided that it should be open to the Chief Justice to call a retired Judges to sit and decide a particular case or cases. Consequently by the operation of article 107 there is less possibility, if I may put it, of our losing the talent of individual people who have already served on the Supreme Court. I therefore submit that the arguments or the fears that were expressed in the course of the debate with regard to the question of age have no foundation.

Now, I come to the third point raised in the course of the debate on this amendment and that is the question of the acceptance of office by members of the judiciary after retirement. There are two amendments on the point, one by Prof. Shah and the other by Shri Jaspat Roy Kapoor. I personally think that none of these amendment could be accepted. These amendments have been moved more or less on the basis of the provision that have been made in the Draft Constitutions relating to the Public Service Commission. It is quite true that the provision has been made that no member of the Public Services Commission shall be entitled to hold an office under the Crown for a certain period after he has retired from the Public Service Commission. But it seems to me that there is a fundamental difference between the members of the judiciary and the members of the Federal Public Services Commission. The difference is this. The Public Services Commission is serving the Government and deciding matters in which Government is directly interested, *viz.*, the recruitment of persons to the civil service. It is quite possible that the minister in charge of a certain portfolio may influence a member of the Public Service Commission by promising something else after retirement if he were to recommend a certain candidate in whom the minister was interested. Between the Federal Public Service Commission and the Executive the relation is a very close and integral one. In other words, if I may say so, the Public Service Commission is at all times engaged in deciding upon matters in which the Executive is vitally interested. The judiciary decides cases in which the Government has, if at all, the remotest interest, in fact no interest at all. The judiciary is engaged in deciding the issue between citizens and very rarely between citizens and the Government. Consequently the chances of influencing the conduct of a member of the judiciary by the Government are very remote, and my personal view, therefore, is that the provisions which are applied to the Federal Public Services Commission have no place so far as the judiciary is concerned. Besides there are very many cases where the employment of judicial talent in a specialised form is very necessary for certain purposes. Take the case of our Friend Shri Varadachariar. He has now been appointed members of a Commission investigating income-tax questions.

Shri Jaspat Roy Kapoor: Let it be in an honorary capacity.

The Honourable Dr. B. R. Ambedkar: No, he is paid. It is an office of profit under the Crown.

Therefore, who else-can be appointed to positions like this, except persons who had judicial talent? It would be a very great handicap if these very persons who possess talent for doing work of this sort were deprived by provisions such as Shri Jaspat Roy Kapoor suggests. And I have said that the relation between the executive and judiciary are so separate and distant that the executive has hardly any chance of influencing the judgment of the judiciary. I therefore suggest that the provision suggested is not necessary and I oppose all the amendments.

Mr. President: The question is:

"That is clause (1) of article 103, before the words 'Chief Justice' the word 'Supreme' be inserted"

The amendment was negatived.

Mr. President: The question is:

"That in clause (1) of article 103, for the words 'and such number of other judges not being less than seven, as Parliament may by law prescribe' the words 'and until Parliament by law prescribes a larger, number, of seven other judges' be substituted"

The amendment was adopted.

Mr. President: The question is:

"That for clause (2) of article 103 the following be substituted:-

'Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal and shall hold office until he attains the age of sixty-five years:

Provided that in the case of appointment of a Judge, other than the Chief Justice, the Chief Justice of India shall always be consulted.'"

The amendment was negatived.

Mr. President: The question is:

"That for clause (2) of article 103, the following clause be substituted:-

'(2) The Chief Justice of Bharat, who shall be the Chief Justice of the Supreme Court, shall be appointed by the President subject to confirmation by two-thirds majority of the total number of members of Parliament assembled in a joint session of both the Houses of Parliament.'

'(3) Every judge of the Supreme Court, shall be appointed on the advice of the Chief Justice of Bharat by the President under his hand and seal and shall hold office until he attains the age of sixty-five years.'

Provided that:

(a) a judge may, by writing under his hand addressed to the President, resign his office;

(b) a judge may be removed from his office in the manner provided in clause (5).

The amendment was negatived.

Mr. President: The question is:

"That for clause (2) and the first proviso of clause (2) of article 103, the following be substituted:-

(2) Every judge of the Supreme Court other than the Chief Justice of India shall be appointed by the President by warrant under his hand and seal after consultation with the judges of the Supreme Court and Chief Justices of High Courts in the States and with the concurrence of the Chief Justice of India; and the Chief Justice of India shall be appointed by the President by a warrant under his hand and seal after consultation with the judges of the Supreme and the Chief Justices of the High Court in the States and every judge of the Supreme Court shall hold office until he attains the age of sixty-eight years.' "

The amendment was negatived.

Mr. President: The question is:

"That in clause (2) of article 103, after the word 'with' the words the Council of States and' be inserted."

The amendment was negatived.

Mr. President: The question is:

"That in clause (2) of article 103, for the words 'may be' the words 'the President may deem' be substituted."

The amendment was adopted.

Mr. President: The question is:

"That in clause (2) of article 103, for the words 'until he attains the age of sixty-five years', the words 'during good behaviour or until he resigns; provided that any such Judge may resign his office at any time after 10 year of service in a judicial office and if he so resigns, he shall be entitled to such pension as may be allowed under the law passed by the Parliament of India for the time being in force' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in clause (2) of article 103, for the word 'sixty-five' the word 'sixty' be substituted and the words 'The President, however, may in any case extend from year to year the age of retirement up to sixty-five years' be added."

Shri Jaspat Roy Kapoor: Sir, I beg leave of the House to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: There is the amendment of Shri Mohan Lal Gautam No. 1834. I did not allow him to move it in the first instance because it was covered by amendment No. 1833. Does he want me to put it to the House?

Shri Mohan Lal Gautam (United Provinces: General): Sir, I beg leave of the House to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That in clause (2) of article 103, for the words 'until he attains the age of sixty-five years' the words 'for such period as may be fixed in this behalf by Parliament by law ' be substituted."

Shri Satish Chandra: Sir, I beg leave of the House to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That is the first proviso to clause (2) of article 103, for the words 'the Chief Justice of India shall always be consulted' the words 'it shall be made with the concurrence of the Chief Justice of India' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That after the second proviso to clause (2) of article 103, the following new proviso be inserted:-

'Provided further that where a Judge resigns his office on grounds of ill-health, he shall be entitled to pension as if he has continued in service until the age of sixty-five years.'"

The amendment was negatived.

Mr. President: There is an amendment to this amendment by Shri Jaspat Roy Kapoor. It is in List No. II, amendment, No. 41, namely:-

"That in amendment No. 1843, of the List of Amendments, for the proposed new clause (2A) of article 103, the following be substituted:-

'No Judge of the Supreme Court shall be eligible for further office of profit either under the Government of India or under the Government of any state after he has ceased to hold his office.'"

Shri Jaspat Roy Kapoor: I do not desire that this very useful amendment should be defeated I, therefore, beg leave of the House to withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: I shall then put Professor K.T. Shah's original amendment to the House.

The question is:

"That after clause (2) of article 103, the following new clause be added:-

"(2A) Any person who has once been appointed as Judge of any High Court or Supreme Court shall be debarred from any executive office under the Government of India or under that of any unit, or, unless he has resigned in writing in writing from his office as Judge, from being elected to a seat in either House of Parliament or in any State Legislature.' "

The amendment was negatived.

Mr. President: I shall put amendment No. 1845 as amended.

The question is:

"That in clause (3) of article 103, the following new sub-clause be added:-

'(c) or is an eminent jurist.' "

The amendment was adopted.

Mr. President: The question is:

"That after sub-clause (b) of clause (3) of article 103, the following new sub-clause be inserted:

'(c) has been a Pleader in one or more District Courts for at least twelve years.' "

The amendment was negatived.

Mr.President: The question is:

"That after Explanation I to clause (3) of article 103, the following new Explanation be inserted and the subsequent Explanation be renumbered accordingly:-

'Explanation II.-- In this clause District Court means a District Court which exercises or which before the commencement of this Constitution exercised jurisdiction in any district of the territory of India.' "

The amendment was negatived.

Mr. President: The question is:

"That in Explanation II to clause (3) of article 103, after the word 'advocate' wherever it occurs the words 'or a Pleader' be inserted, and for the words 'a person held judicial' the words 'such person held judicial' be substituted.'"

The amendment was negatived.

Mr. President: The question is:

"That in Explanation II to clause (3) after the words 'judicial office' the words 'not inferior to that of a district judge' be inserted."

The amendment was adopted.

Mr. President: The question is:

"That in clause (4) of article 103, for the words 'supported by not less than two-thirds of the members present and voting has been presented to the president by both Houses of Parliament ' the words 'by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That in clause (4) of article 103, after the word 'passed' the words 'after a Committee consisting of all the Judges of the Supreme Court had investigated the charge and reported on it to the President and' be inserted."

The amendment was negatived.

Mr. President: The question is:

"That in clause (4) of article 103, after the words 'not less than two-thirds the words 'a majority' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in clause (6) of article 103, for the words 'a declaration' the words 'an affirmation or oath' be substituted."

The amendment was adopted.

Mr. President: The question is:

"That clause (7) of article 103, be deleted."

The amendment was negatived.

Mr. President: The question is:

"That in clause (7) of article 103, after the words any 'authority' the words 'or shall hold any office of profit without the previous permission of the President' be inserted."

The amendment was negatived.

Mr. President: I shall now put the article as a whole, as amended by the amendments which have been accepted.

The question is:

"That article 103, as amended, be adopted."

The motion was adopted.

Article 103, as amended, was added to the Constitution.

Article 103 A

Dr. P.K. Sen: I do not wish to be long in my observations on this amendment. As a matter of fact it will be remembered that when I was moving my amendment No. 1842, I did refer to this amendment also and to the principle that underlines it, namely, that the man who has held the office of a Judge should not be under the necessity of seeking office afterwards, and for that purpose wooing political parties and causes or other persons, and thereby lowering the dignity of the office which he has held. As a matter of fact, this has been touched upon at various stages of the debate to which we have just listened and I have nothing further to say except this that I do not see in the Constitution as it stands now any definite provision of this character and I think it is absolutely essential that a Judge should be precluded from trying to get some office or other after he has vacated office. For that reason this provision is important, especially in this country, where we have known of person having filled offices in the Judiciary and then in the Executive and then again in the Judiciary. This sort of thing should be stopped and for that reason I do move my amendment and I hope that the House will accept it.

Mr. Naziruddin Ahmed: But the amendment has not been formally moved

Mr. President: He says he has moved it

Dr. P.K. Sen: I have not actually moved it now. I read it out on the last occasion when I was referring to it while moving my amendment No. 1842. Sir, I therefore move formally:

"That after article 103, the following new article be inserted:-

'103-A. A person who is holding or has held the office of Judge of the Supreme Court shall not be eligible for appointment to any office of emolument under the Government of India or a State, other than that of the Chief Justice of India or the Chief Justice of a High Court:

Provided that the President may, with the consent of the Chief Justice of India, depute a Judge of the Supreme Court temporarily on other duties:

Provided further that this article shall not apply in relation to any appointment made and continuing while a proclamation of Emergency is in force, if such appointment is certified by the president to be necessary in the national interest."

On these occasions it will be necessary for the State to utilise the services and the mature experience............(Interruption).

Shri T.T. Krishnamachari (Madras: General): May, I ask, Sir, if the Honourable Member's amendment can be moved, in view of the fact that amendment No. 1865 has been negatived by the House? The principle of that amendment is the same as that of amendment No. 1870.

Shri Jaspat Roy Kapoor: Amendment No. 1865 does not mention the words ' of profit'.

Mr. President: The mover added the words 'of profit'.

Dr. P. K. Sen: No, Sir. This has a very narrow scope and does not at all definitely say that kind of offices are barred. As a matter of fact it does not also mention that there may be cases of emergency where the President thinks that his ripe experience and mature knowledge should be utilised by the State, an on these occasions it would be quite proper and in the interests of the nation to appoint him to some of these posts. This has been more clearly brought out in the amendment I have submitted to this House.

The Honourable Shri K. Santhanam: Amendment No. 1843 was also to the same effect.

Dr. P. K. Sen: I think to a certain extent it may be said amendment No. 1843 covers the same kind of proposition. I leave it entirely in your hands as to whether it is not necessary in that view, or whether it is debarred from being considered be the House.

Mr. President: I think the principle enunciated in new article 103-A has been covered by the amendment referred to. There are, it is true, one or two additional matters also in this amendment. If the principle has been rejected, the question of considering ancillary matters does not arise. I would therefore let the matter be dropped, unless Dr. Sen insist upon moving it. But if he insists I shall have to put it to vote.

Dr. P. K. Sen: It is my desire that it should be discussed and a decision come to. If you think that, having regard to the fact that amendment, No. 1843 has been dealt with, I am debarred from moving this amendment, the question ends there.

Mr. President: As I have said, your amendment contains some additional factors. Technically speaking, they are not covered by amendment No. 1843. But the principle underlying it is the same as that in 1843. Therefore I would leave it to you to decide whether to press it or not.

Dr. P. K. Sen: I do press it, Sir.

Shri B. Das: I congratulate my Friend Dr. Sen, being an *ex*-High Court Judge, for the courage of his conviction in bringing forward such an amendment. Although my Friend Shri T.T. Krishnamachari had raised an objection that this amendment is out of order, I think he is out of order in raising that point of order. Sir, we Indians are a lawyer-ridden people. Our lawyers frame our Constitution, control our politics and they think that the High Courts and the Judiciary are supreme and that no Judge can be challenged. Sir, we know that in a recent case the decision of a High Court Judge of Allahabad is under examination which shows that the Judges have feet of clay. We know the case of a Judge of the Chief Court of Lucknow who in his seventieth year showed that he can reduce his age by ten years. These are the characteristics of High Court Judges, which I repeat and affirm are the common man's viewpoint. We do not think that the British idea of maintenance of justice which was dangled before the people of India should continue to be dangled even in our Constitution. I did not move my amendments to restrict job-hunger on part of ex-High Court Judges. I think if clause 103-A, is passed it will reduce the status of High Court Judges to the level of normal people and not make abnormal people of them. They think they are super-men and can do no wrong. But as a representative of the people, and not being a lawyer, I can say that the High Court Judges do things on the lines of their British predecessors and cling to British ideas. In another article--article 104-- which will come up for consideration shortly, my honourable Friend Dr. Ambedkar, as under the old Government of India Act, wants to give the Chief Justice of the Supreme Court 5,000 rupees salary and other Judges, 4,000 rupees. They are Indians all and let me hope they are all patriots. If my honourable Friends the Ministers could accept Rs. 3,000 as salary, why should a High Court Judge claim Rs. 5,000 or Rs. 4,000? I am saying that no man, even when he is occupying the highest judicial post, should claim special privileges. They are not different from our Minister at the Centre who draw only Rs. 3,000. I think some of the Provincial Governments pay much less to their Minister.

Another thing is that I have seldom seen a High Court Judge, barring those friends who come from Madras, wearing Indian dress. Two years have gone by after India become independent. Why is it that the Supreme Court Judges still cling to the old English practice and wear English costume? In the High Courts all over India also this is going on. In what way are they patriots? In what way are they going to maintain high standards of justice in India and create a new sense of social justice among the people? Sir, I am glad I got this opportunity whole-heartedly to support the amendment of Dr. P. K. Sen. I congratulate him once again that, being an ex-High Court Judge, he has the courage of his conviction to table such an amendment. Sir, I congratulate you, too, for having permitted it to be moved.

Dr. Bakhshi Tek Chand: Sir, the amendment which has been moved by Dr. P. K. Sen is not out of order. It raises a very important point and I would ask the House to consider it. One important difference between this amendment and some of the amendments which have already been considered is that it also deals with the case of a person who is holding the office of a Judge of the Supreme Court, that is to say, a Sitting Judge of the Supreme Court. In this connection, I would like to remind the House that there have been occasions on which a Judge of the Federal Court had been deputed, while holding that office, to duties which were entirely of a non-judicial character, to duties which were political, or diplomatic. A Sitting Judge was sent out to England as a member of War Council and again as a member of the War Cabinet, in spite of the protests of the Chief Justice, and while in England he took active part not only in political matters but also carried on propaganda of a highly communal character. It is very necessary that in the future Constitution provision should be made to see that such a thing does not happen again and Sitting Judges are debarred from being deputed to extra-judicial duties in this manner. This is the main difference between this amendment and the amendments which were moved and some of which have been rejected.

The Honourable Shri K. Santhanam: The words used are "has held."

Dr. Bakhshi Tek Chand: The amendment says " a person who is holding or has held the office of Judge". It will be seen that it contemplates two different cases. The first case is of " a person who is holding" the office of a Judge. With regard to this case, there has been no discussion and no amendment considered. Therefore the point of order does not arise. So far as the second part of the clause is concerned, it refers to "a person who has held" office of Judge of the Supreme Court and says that he shall not be eligible for appointment to any office, etc. With regard to them, no doubt we had certain amendment which were rejected, but in the amendment proposed by Dr. Sen there is the additional provision that the President may with the consent of the Chief Justice of India depute a Judge of the Supreme Court temporarily on other duties. That deals with the case of a sitting as well as of a retired Judge. The proviso further says that this article shall not apply in relation to any appointment made and continuing while a Proclamation of Emergency is in force, if such appointment is certified by the President to be necessary in the national interest. In cases of national emergencies, some exception may have to be made. That is the proviso suggested by Dr. Sen, If will be seen that this matter is not fully covered by the amendments which have already been considered. I submit, therefore, that the amendment of Dr. Sen is in order and should be considered.

The Honourable Dr. B. R. Ambedkar: I should like to dispose of this matter in as few words as possible. Before I do so, I should like to state what I understand to be the idea underlying this particular amendment. For the purpose of understanding the main idea underlying this amendment, I think we have to take up three different cases. One case is the case of a Judge of the Supreme Court who has been appointed to an executive office with no right of reversion to the Supreme Court. That is one case. The second case is the appointment of a Supreme Court Judge after he has held that post to an executive office of a non-judicial character. The third case is the case of a Supreme Court Judge being given or assigned duties of a non-judicial character with the right to revert to the Supreme Court. I understand that--my friend Dr. Sen may correct me if I am wrong-- this amendment refers to the third proposition, *viz,* the assignment of a Supreme Court Judge to non-judicial duties for a short period with the right for him to revert to the Supreme Court.

With regard to the first case that I mentioned, *viz.*, the appointment of a Supreme Court Judge to an executive office provide the Supreme Court Judge resigns his post as a Judge of the Supreme Court. I do not see any objection at all, because he goes out of the Supreme Court altogether.

With regard to the second case, *viz.*, the assignment of duties to a Supreme Court Judge who has retired, we have just now disposed of it. There ought to be no limitation at all.

With regard to the third case, I think it is a point which requires consideration. We have had two cases in this country. One was the case which occurred during the war when a Judge of the Federal Court was sent round by the then Government of India on diplomatic mission. We have also had during the regime of this Government the case where the Chief Justice or a Judge--I forget now--on one of the High Courts, was sent out on a diplomatic mission. On both occasions there was some very strong criticism of such action. My Friend, Mr. Chimanlal Setalvad, come out with an article in the *Times of India,* criticising the action of the Government. Personally I share those sentiments. I am, however, at present not in a position to accept the amendment as worded by Dr. P.K. Sen because the wording either goes too wide or in some cases too narrow. I am prepared to recommend to the Drafting Committee that this point should be taken into consideration. On that assurance, I would request him to withdraw his amendment.

Shri Jaspat Roy Kapoor: May I request that a decision on this clause may be held over till tomorrow because many of us would like to study it carefully.

Mr. President: Dr. Ambedkar has told us that he is willing to refer it to the Drafting Committee for its consideration.

Shri Jaspat Roy Kapoor: It might stand over.

Mr. President: When it is referred to the Drafting Committee, it means that it stands over, because when it comes back again, it will come back in the form in which it is approved by the Drafting Committee.

The Honourable Shri Satyanarayan Sinha (Bihar: General): That will serve the purpose.

Pandit Lakshmi Kanta Maitra (West Bengal: General): If a specific, definite proposition is made by Dr. Ambedkar, we can dispose of it here.

Mr. President: It will come back from the Drafting Committee in a form which will cover the points that have been raised.

Then we adjourn till 8 O'clock tomorrow morning.

The Constituent Assembly then adjourned till Eight of the Clock on Wednesday, the 25th May, 1949.

Note:- No text. (Blank Page)

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS)- VOLUME VIII

Wednesday, the 25th May 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

INDIA (CENTRAL GOVERNMENT AND LEGISLATURE) (AMENDMENT) BILL

The Honourable Dr. Syama Prasad Mookerjee (West Bengal: General): Sir, I beg to move for leave to introduce a Bill to amend the India (Central Government and Legislature) Act, 1946.

Mr. President: The question is:

> "That leave be granted to introduce a Bill to amend the India (Central Government and Legislature) Act, 1946."

The motion was adopted.

The Honourable Dr. Syama Prasad Mookerjee: Sir, I introduce the Bill.

REPORT OF ADVISORY COMMITTEE ON MINORITIES, ETC.

The honourable Sardar Vallabhbhai J. Patel (Bombay: General): Sir, I have come before you to move for the consideration of the *Report of the Advisory Committee which met during this month for the last time. The Committee has, after completion of its work, been dissolved. The House will remember that in August 1947, probably in the 8th of August, a report was submitted by the Advisory Committee, and the Minority Committee taking into consideration the Advisory Committee's report then submitted its proposals advising this House to adopt certain political safeguards for the minorities by way of reservations of seats in the legislatures on the basis of population and also certain other safeguards.

Now when this report was made, the House will remember that it was at a time when conditions were different and even the effect of partition was not fully comprehended or appreciated. At that time even when the report was passed suggesting the acceptance of reservation of seats in the Legislature on population basis, there was difference of opinion. well, a group of people of highly nationalistic tendencies led by Dr, Mookerjee, Vice Chairman of this House, from the beginning opposed such reservations in the Constitution. Rajkumari Amrit Kaur also at that time stoutly opposed these reservations, but the minorities then were apprehensive of getting the quantum of their representation due to them on basis of population; and the Advisory Committee, in spite of the difference of opinion, thought it necessary to allay the apprehensions of the minorities at that time, which they considered might be regarded as reasonable. The House will also recall that the representative of the Muslims in South India, Mr. Pocker, the no-changer and confirmed Muslim Leaguer, then proposed an amendment in this House when the proposals were submitted to the House, for introducing or continuing the separate electorates, the effects of which have been fully known and felt all over the country and perhaps, known outside too. My proposals as Chairman of the Advisory Committee were then accepted by the House practically unanimously and a general sense of appreciation was expressed by the minorities when these proposals were accepted. At a later stage we had to meet again because our proposals were incomplete in so far as the East Punjab and the West Bengal provinces were concerned, because when the House passed the proposals in the August Sessions of 1947, the effect of partition was not felt of known and the vast migrations that took place were at that time in a process of continuation and the position of the Sikhs was practically uncertain at that time. So also in Bengal the effect of the partition was not fully realized, and both the Provinces were desirous of postponing the question till the conditions were fully settled and the effects were fully realized. At a later stage in December a Committee was appointed to consider this question. A sub-committee of five persons was appointed by the Advisory Committee in which our revered President was also one of the members; Pandit Jawaharlal Nehru, myself, Mr. Munshi and Dr. Ambedkar were the members of this Committee. This Committee met and made its report in February. When this report was made the representatives of the Sikh community wanted time to consider the report and consult their community in this matter. Also when the report was put before the Advisory Committee, the Muslim representatives, some of them, had changed their opinions after full reflection for a long period since the passing of the principles of the Constitution in August Sessions of 1947; they put forward the plea that all these reservations must disappear and that it was in the interests of the minorities themselves that such reservations in the Legislature must go. It was strongly pressed by the representative from Bihar and supported by other representatives. There was then a little difference of opinion and I was anxious, and so was the Committee, that we should do nothing to take a snatch vote on a question of such vast importance. As the Sikh representatives wanted time to consider their position, we naturally adjourned and met again, during the early part of this month.

When we met this time, we found a considerable change in the attitude of the minorities themselves. Dr. Mookherjee moved a motion for the dropping of the clause on reservation of seats in the legislature on population basis. When this proposal was moved, Mr. Muniswamy Pillai, who was representing the Scheduled Castes, moved an amendment to the effect that the provision for reservation, so far as the Scheduled Castes are concerned, may be continued for a period of ten years. The general opinion in the Advisory Committee was, which was almost unanimous, that this reservation so far as the Scheduled Castes are concerned, should be continued for that period and that Mr. Muniswamy Pillai's amendment should be accepted. The Sikh representatives brought in a proposal which, to a certain extant, was an improvement on the previous position. Whatever may be the object of that proposal, the Advisory Committee thought it fit to give due consideration to the proposal of the Sikhs, because the members of the Committee always felt a sort of responsibility for the susceptibilities and sentiments of the Sikh community which has suffered vastly by the partition of the Punjab. After a full debate, the Committee came to the conclusion that the Sikh proposal to fall in line with the dropping of reservation clause was, although diluted by another proposal which, in effect, gave them a sort of reservation of certain conditions, a great improvement. The Committee considering the whole situation came to the conclusion that the time has come when the vast majority of the minority communities have themselves realised after great reflection the evil effects in the past of such reservation on the minorities themselves, and the reservations should be dropped.

In a House of about forty members of the Advisory Committee, there was only one solitary vote against the proposal. So we thought that although these proposals were accepted by this House in August 1947, it was due to us and to the House that we should advise this House to reconsider the position and put before the House a proposal which is consistent with the proclaimed principles of this House for the establishment of a genuine democratic State based purely on nationalistic principles. Therefore, when we found the changed atmosphere, we considered it our duty to come before this House to revise this former decision, which was provisional as has been laid down by this House in several cases. It is under these circumstances that these proposals have been brought before the House.

So far as the Sikh community is concerned, there is only one proposal which in effect, does not really differ from the principles that have been laid down by the Advisory Committee, because the Advisory Committee also has accepted the amendment of Mr. Muniswamy Pillai that the reservation for the Scheduled Castes must continue. The Sikhs themselves have thought that certain classes of people amongst them, who have been recent converts, and who were originally Scheduled, Caste Hindus, and suffering from the disabilities which the Scheduled Caste Hindus are suffering from the fault of the Hindu community. The Sikhs are suffering for the fault of the Sikh community and nobody else. Really, as a matter of fact, these converts are not Scheduled Castes or ought not to be Scheduled Castes; because, in the Sikh religion, there is no such thing as untouchability or any classification or difference of classes. But, as unfortunately in this country the Hindu religion is suffering from the evil effects of certain customs and prejudices that have crept into the society, so also, the reformed community of the Hindus, called the Sikhs, have also in course of time suffered from degeneration to a certain extent. They are suffering from a complex which is called fear complex. They feel that if these Scheduled Castes who have been converted to Sikhism are not given the same benefits as the Scheduled Castes have been, there is a possibility of their reverting to the Hindu Scheduled Castes and merging along with them. So, the House will realise, and I do not propose to conceal anything from the House, that religion is only a cloak, a cover, for political purposes. it is not really the high-level Sikh religion which recognises this class distinction. The Sikhs, today it should be recognised, have suffered from various causes and we have to regard with considerable tenderness of feeling in taking into consideration their existing state of mind and provide as far as possible to meet with that situation. And so when these proposals were brought to us, in fact, I urged upon them strongly not to lower their religion to such a pitch as to really fall to a level where for a mess of pottage you really give up the substance of religion. But they did not agree. Therefore, the utmost that we can do is to advise those people in their community who were wanting these safeguards to go into the classification of Scheduled Castes. These people have now agreed to be lumped into the Scheduled Castes; not a very good thing for the Sikh community, but yet they want it, and we feel, for the time being, we would make that allowance for them. Theoretically the position is logically correct. They will be all Scheduled Castes, the Ramdasis , and three or four others whatever they are, they will all be called one Scheduled Caste. The Sikhs may call them Scheduled Caste Sikhs. After all, in the eye of religion, in the eye of God and in the eye of all sensible people they are one. These advantages are there reserved for a class of people, and therefore, although there was stout opposition from the

Scheduled Castes people, who also naturally feared, and who had a justifiable fear complex that if they agreed to this, or if the House accepts this position, there is really a danger of forcible conversion from their class to the Scheduled Caste Sikhs, we have accepted it. Now our object is, or the object of this House should be, as soon as possible and as rapidly as possible to drop these classifications and differences; and bring all to a level of equality. Therefore, although temporarily we may recognise this it is up to the majority community to create by its generosity sense of confidence in the minorities; and so also it will be the duty of the minority communities to forget the past and to reflect on what the country has suffered due to the sense of fairness which the foreigner thought was necessary to keep the balance between community and community. This has created class and communal divisions and sub-divisions, which in their sense of fairness, they thought fit to create, apart from attributing any motives. We on our part, taking this responsibility of laying the foundations of a free India which shall be and should be our endeavour both of the majority-- largely of the majority--and also of the minority community, have to rise to the situation that is demanded from all of us, and create and atmosphere in which the sooner these classifications disappear the better. Therefore, I will appeal to the House, particularly to the Scheduled Castes, not to resent or grudge the concession that is made in the case of the Sikhs, and I concede that this is a concession. It is not a good thing, in the interest of the Sikhs themselves. But till the Sikhs are convinced that this is wrong, I would allow them the latitude, consistent with what we think to be our principles of just dealings. So far as the other communities are concerned, I feel that enough time was given when we met in February in the Advisory Committee when these proposals were brought forward on behalf of the minorities, particularly the Muslims, enough time was given to consult their own constituencies, their communities and also other minority communities. It is not our intention to commit the minorities to a particular position in a hurry. If they really have come honestly to the conclusion that in the changed conditions of this country, it is in the interest of all to lay down real and genuine foundations of a secular State, then nothing is better for the minorities than to trust the good-sense and sense of fairness of the majority, and to place confidence in them. So also it is far us who happen to be in a majority to think about what the minorities feel, and how we in their position would feel if we were treated in the manner in which they are treated. But in the long run, it would be in the interest of all to forget that there is anything like majority or minority in this country and that in India there is only one community (*hear, hear*). With these considerations, Sir, I move that the Report of the advisory Committee be taken into consideration, as under:-

"Resolved that the Constituent Assembly do proceed to take into consideration the Report dated the 11th May 1949 on the subject of certain political safeguards for Minorities submitted by the Advisory Committee appointed by the resolution of the Assembly of 24th January 1947.

Resolved further--

(i) that notwithstanding any decisions already taken by the Constituent Assembly in this behalf, the provisions of Part XIV of the Draft Constitution of India be so amended as to give effect to the recommendations of the Advisory Committee contained in the said Report; and

(ii) that the following classes in East Punjab, namely, Mazhabis, Ramdasis, Kabirpanthis and Sikligars be included in the list of Scheduled Castes for the province so that they would be entitled to the benefit to representation in the Legislatures gives to the Scheduled Castes."

Mr. President: I have received notice of certain amendments. But I think those amendment will arise after we have dealt with this motion for consideration of the report. They will arise in connection with the second resolution which I think the

Honourable Sardar Patel will move at a later stage. Is that the idea?

Mr. Z. H. Lari (United Provinces: Muslim): The second part is also part of the same motion. It is all one and the same. They have to be taken as a whole.

Mr. President: I take it that both the parts are moved and so we can take the amendments also at this stage.

Shri Mahavir Tyagi: (United Provinces: General): I would like to know, Sir, whether the motion for consideration of this report can be discussed generally, without taking up the amendments now. I want to know if we can have a general discussion on it.

Mr. President: There is only one motion, which is in two parts, and I have ruled that both be taken together. Therefore, the whole motion consisting of both the parts has been moved and we shall take the amendments, and then we can have discussion on the main proposition as also on the amendments.

Mr. Mohammad Ismail Khan (United Provinces: Muslim): Sir, before you call upon the movers of the amendments of move their motions, may I know whether the whole question as to how the minorities are to be represented in the legislature is open to discussion or merely the revision of the previous report on the subject of reservation of seats provided for the minorities.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Sir, I do not think that this question my honourable Friend Mr. Ismail suggests that the whole gamut of this subject will be brought under discussion. The whole history of the question is not before the House. In the course of his speech of course honourable Members might make incidentally references to the circumstances that led to the change. But certainly we sitting here are not going to discuss all that has happened since 1947 as a substantive motion.

Shri Mahavir Tyagi: Sir, on a point of order I do not know whether the House can proceed with the discussion of this motion. The motion worded as it is does not warrant the moving of any amendments. This motion as it is, is not an amendment to the Draft Constitution at all. The motion is drafted in a manner which cannot be incorporated in the constitution. It requests the Drafting Committee to redraft the clauses so as to accommodate certain changes. Taking both the parts of the resolution as it is, it warrants only a general discussion and we cannot move amendments as of it were part of the Draft Constitution.

Mr. President: It is not as a part of the Draft Constitution that this Motion has been brought before the House. There were certain decisions taken by the Advisory committee and by the House at a previous stage. It was thought that the report which has recently been made by the Advisory Committee should be first placed before this House for its consideration. If that report is accepted by the House then the necessary amendments to the Draft Constitution will be introduced at a later stage. At this stage we are only considering the report of the Advisory Committee dated the 11th of this month. The question of amendments to the Draft Constitution will arise at a later stage. This is only a general consideration of that report and because that report makes certain changes in regard to the decisions previously taken, these changes are also indicated in the second part of the Resolution. If these changes are accepted then the draft will be amended accordingly.

Shri Mahavir Tyagi: I take it then that it will be a sort of general discussion that we will have.

Mr. President: We will have the amendments to the Resolution and then the general discussion will follow.

Mr. Mohammad Ismail Khan: Sir, the whole question was discussed at the last meeting of the Constitution Assembly. The decision was reached that only reservation of seats for the minorities will be made. If the suggestion is that the reservations be done away with, does this then reopen the whole question as to how the minorities are elected to the legislatures? Or is the discussion merely to be confined as to whether reservation should be retained or not?

Mr. President: The report of the Advisory Committee confines itself only to the question of reservation at the present moment and therefore at the present stage we can only take that up.

Mr. Muhammad Ismail Khan: I submit, Sir, that any amendments going beyond that will be out of order.

Shri Jaspat Roy Kapoor (United Provinces: General): Sir, any decision which has been previously arrived at can be reopened only in accordance with rule 32 of the Rules of Procedure. That rule lays down that no question which has been once decided by the Assembly shall be reopened except with the consent of at least one-fourth of the members present and voting. Therefore, Sir, I submit that only such questions can be reopened to which one-fourth of the members present today agree. When we come to the amendments tabled by Mr. Ismail the question will arise as to which parts of it are such in regard to which reconsideration is being agreed to by at least one-fourth of the members present today.

Mr. President: I do not think that question will arise. I am quite sure that more than one-fourth, in fact the majority of the House, are in favour of the changes.

Shri Jaspat Roy Kapoor: That is true, Sir, so far as the question placed before the House by the Honourable Sardar Patel is concerned. There can be no doubt absolutely that almost the whole House will agree to the reconsideration as recommended by Sardar Patel. As regards the question raised by my honourable Friend Mr. Ismail as to whether any other matter not incorporated in the report can be taken into consideration, my submission is that it can be taken, up for consideration only when 25 per cent of the Members present here will agree.

Mr. President: We shall consider that when that question arises.

Mr. B. Pocker Sahib (Madras: Muslim): Sir, on the point of order raised, I would like to mention this. Under the present motion it is sought to take away the reservation which was decided upon previously by the House, and that reservation is based upon the fact that the minorities must have some method of representing their grievances. It is for the same purpose that the question of separate representation was also urged. When this reservation goes, the only chance of the minorities having their representation in the legislature also goes. Therefore the question of separate representation automatically arises on the consideration of this report.

Mr. Mohamed Ismail Sahib (Madras: Muslim): Sir, I have to thank you first of all for giving me and my friends an opportunity to place before the House an important question in which the minorities, not only the Muslims but also the other minorities, are vitally interested. I shall first of all move the amendment that stands in my name and that of my friends.

Sir, I move:

(a) That sub-paragraph (i) of the second paragraph of the motion be deleted, and sub-paragraph (ii) be re-numbered as sub-paragraph (i).

(b) That after sub-paragraph (i) so formed, the following sub-paragraphs be added:-

"(ii) that the principle of reservation of seats on the population basis for the Muslims and other minority communities in the Central and Provincial legislatures of the country be confirmed and retained; and

(iii) that notwithstanding any decisions already taken by this Assembly in this behalf, the provisions of Part XIV and any other allied article of the Draft Constitution be so amended as to ensure that the seats reserved in accordance with sub-clause (ii) above shall be filled by the members of the respective communities elected by constituencies of voters belonging to the said respective minorities."

Shri Jaspat Roy Kapoor: Sir, I had objected to the moving of clause (iii) of part (b) of this amendment in view of rule 32. We have on a previous occasion already taken a decision to the effect that there shall be joint electorates and there shall be no separate electorates at all. This decision can be reconsidered, I would submit, only when 25 percent, of the members present today agree to it. I submit that rule 32 specifically stands in our way.

Mr. Mohamed Ismail Sahib: Sir, I submit that the whole question of the minorities has been reopened, as a matter of fact, by the report and the Resolution that are before us. Therefore, my amendment forms only a very legitimate part of that proposal which has opened the whole question. When that part of the decision of the Assembly which relates to the reservation of seats for the minorities is being reopened, the other part is also reopened. Therefore I do not think that there is any violation of any rule of the Assembly in this connection. Therefore I may now, Sir, with your permission go on with what I have to say on my amendment.

As I was saying, the Sub-Committee appointed to report on the minority problems affecting the East Punjab and West Bengal met and recommended on the 23rd November last year that the arrangements already approved by this Assembly in August 1947 for other provinces should be applied to those provinces as well and that no deviation was necessary. While considering this report the Advisory Committee reopened the whole question. The Advisory Committee thought that they could, with advantage, reconsider the question of reservation of seats for the minorities. Sir, I do not object to this action of the Committee at all. What I want is that the subject of minorities and of safeguards for them, including that of separate electorates which forms a very vital and natural part of this question, should also be reopened.

Mr. President: May I first dispose of this question of order which has been raised by Mr. kapoor? Does any other Member wish to say anything on the point of order?

Mr. Z. H. Lari: Mr. President, the motion moved by the Honourable Sardar Patel seeks to re-open the question of representation of minorities and political safeguards for them. Once the question of representation of minorities in the Legislatures is re-opened, not only the question of removal of reservation, but also all cognate matters are necessarily re-opened. You cannot consider the question of removal of reservation of seats without considering in what manner the representation is going to be secured. Therefore, my submission is this that if the House agrees to take into consideration political safeguards for minorities, then it is open to any Member to move any amendment which relates to political safeguards and pertains to representation of minorities in the Legislatures. I, therefore, feel that all amendments given notice of are pertinent and should be allowed.

Pandit Balkrishna Sharma (United Provinces: General): May I have to your notice one fact, Sir? On the 27th August 1947, Mr. Pocker moved an amendment in the following form:

> "That on a consideration of the Report of the Advisory Committee on Minorities, Fundamental Rights, etc., on minority rights, this meeting of the Constituent Assembly resolves that all elections to Central and Provincial Legislature should as far as Muslims are concerned, be held on the basis of separate electorate."

This specific motion was defeated by the House. In view of that fact and in view of Rule 32 which regulates the proceedings of this House, I think that unless 25 per cent of the Member of the House give their consent, this amendment will be out of order.

Shri Mahavir Tyagi: Sir, on this point of order, I agree with what Mr. Lari has said. I feel, Sir, that by considering this report, we are going against the decisions which we have already taken. The point of order raised by my honourable Friend, Mr. Kapoor applies as much to the motion of Sardar Patel as it does to the amendment of Mr. Ismail. If a previous verdict of the Assembly can be revoked in the case of a motion, why should it not be revoked in regard to an amendment to the motion? Moreover, this is a very important subject and every opportunity should be given for reasonable amendments to be moved. On this vital matter I want a clear mandate from the representatives of the nation. Therefore, I submit, Sir, that such amendments must not only be allowed, but must be welcomed by the House.

Prof Shibban Lal Saksena (United Provinces: General): Sir, the amendment just now moved is a complete negation of this motion and I want your ruling as to whether it can be moved as an amendment at all?

Mr. Mohamed Ismail Sahib: Sir, I submit that when the House gave permission for Honourable Sardar Patel to move his motion, it has, I think, given permission for my amendment as well, because Sardar Patel's motion reopens a question which has already been decided by the House. When it reopens an important portion of that decision, Sir, I think the other portion also is thereby automatically reopened.

Mr. President: Two points of order have been raised in connection with this motion. The first is that the question of separate electorates has already been decided once by this House and it cannot be reopened, unless one-fourth of the Members express their consent to its reopening. The second point, which has been raised by Professor Shibban Lal Saksena, is that the amendment which is sought to be moved is a negation of the original motion and, therefore, it cannot be taken as an amendment.

On the first point, my view is that what Mr. Poker moved at that time was an amendment or something in the nature of an amendment to the motion which was then before the House and his amendment was rejected by the House and the motion was adopted. Today we are going to have a motion which was then adopted reopened: Therefore, any amendment or anything which is in the nature of an amendment to that original motion is also open to discussion. I therefore rule that the first point of order raised is not sustainable and the amendment is in order.

As regards the second point of order, I think it is not a negative one because in the amendment itself there is another method which is suggested and therefore it is not a negative one. I rule that the second point of order is also not sustainable.

Mr. Mohamed Ismail Sahib: Mr. President, Sir, I was saying that while the Advisory Committee was considering the recommendations of the Special Sub-Committee appointed to go into the question of West Bengal and East Punjab, they re-opened the whole question of minorities of all the provinces. As I said, I have no objection whatever to this action of the Committee. I only want that the whole question of minorities and the political safeguards for them may be placed before the House once again so that it may at present when it is engaged in the final stages of passing the Constitution give maturer re-consideration to the subject.

This is a subject which affects the minorities vitally and therefore it is only appropriate that the House reconsiders the matter at this stage. Sir, the report of the Advisory Committee says--and this has also been explained by the Honourable Sardar Patel--that conditions have vastly changed since August 1947 when the House came to its previous decision. The report also says that it is no longer appropriate that there should be statutory reservation of seats for minorities except the Scheduled Castes and the Tribals. I admit that the conditions have changed, and suspicions and doubts and prejudices that were entertained have been disproved by this time the atmosphere has been cleared. The Muslims have demonstrated that those suspicions were unjustified and unwarranted. They have proved that they are in fore front in the defence of the country and in upholding the honour of the motherland. So, Sir, this is the change that has taken place in the country, but this change is not in favour of abolishing even the niggardly safeguards that were given to the Muslims and other minorities. On the other hand the change is for giving them better and real safeguards. That is my opinion. The conditions now prevalent show that the Muslims are a frank and open-hearted people, that they mean what they say and that they have proved what they have all along been saying, *viz.*, that they are as much loyal citizens of the motherland as any other section of the people.

Sir, to say that the Honourable the Prime Minister and the Honourable Sardar Patel and you also, Mr. President, are imbued with a high sense of generosity and justice is one thing. All sections of the population have got the utmost reliance upon you. That is one thing. But to say that every part of the personal of the Government is imbued with the same sense of justice is another thing. As I said, the heads of Government are gentlemen with a sense of justice and generosity. But they cannot be everywhere. They cannot be in every place and always. Therefore things will happen in places which will give dissatisfaction and disappointment to certain sections of the people. Then, how are they to bring that to the notice of the Government? Can anybody say that things will go on in such a way that no section of the people will have anything to say about the affairs of the people as managed by every section of the personnel of the Government? Evidently no such claim can be made. Then, if anything happens, the people in a democratic State must have the opportunity and the right to make representations to the Head of the Government, and the Government generally.

Then, the report further on says that the Committee are satisfied that the minorities themselves feel that statutory reservation of seats should be abolished. I do not know how the Committee to be satisfied in that manner. So far as the Muslims are concerned, some members of this honourable House might have agreed to the abolition of reservation. I admit it, but then what is the nature of their agreement? What is the nature of any action of theirs with reference to the community which they seek to represent? Some of them have repudiated the ticket on which they were elected and on which they have come to the Assembly. Thereby they have demolished their representative character. Therefore, to take them as representing the views of the minorities of the Muslims, I think, is not fair. I know that there was canvassing for sometime past in connection with this question and now we have got the report before us.

Sir, I assert and say definitely that the Muslim, as a community, are not for giving up reservation. Not only that, they implore this House to retain separate electorates which alone will give them the right sort of representation in the legislatures. The Muslim League, which still is the representative organisation of the Muslim community, has more than once within this year not only expressed a definite view in favour of reservation of seats, but has also urged the retention of separate electorates. That is the position so far as the Muslim minority is concerned.

Now, if the majority community or the party in power to do away with any of these safeguards, that is one thing. But I submit that it is not fair to place the responsibility for doing away with such safeguards on the shoulders of the minority.

When we read the report and also other similar literature we got the impression that objection is being taken to the religious basis of the minorities. Indeed, in other countries, particularly of Europe, minorities are formed mainly on the basis of language and race, but here in our country the conditions are fundamentally different. Here one set of people differ from the other mainly on account of their religion. The difference in religion creates a difference in life and in outlook on matters and things connected with life. Man here in this country is measured in terms of his religion. Even the Scheduled Castes, I may say, are based only on religious beliefs. They have become a minority community on account of the religious beliefs that are current in this country. Sir, I do not think that there is any harm in basing the difference of one set of people from the others on religion. Any way, that is the practice obtaining in this country and we cannot go away from it. When we say that one is a Hindu and when we say that another is a Mussalman, nobody can deny that there exists a difference between the two, but it does not mean that these two people must fly at each other's throat. This difference has to be adjusted and is capable of being adjusted. What we want is harmony not physical oneness or regimented uniformity. We do not want that the population of a country must be made up of the followers of only one religion or one set of beliefs. That is not the idea of the sponsors of unity. Unity really means harmony, the adjustment of things which are different with different groups of people not only in this country but also in other parts of the world. Harmony is possible only when all sections of people are satisfied, are contented. If in that way they find that they are having their rights, that they are not harassed, that they are being listened to and that they are being treated as human beings, harmony will come by itself. It is again and again said that separate electorates have been creating trouble and antagonism amongst people. Are separate electorates the cause of all these troubles, Sir? Now, elections have been going on for very many years in the past on the basis of separate electorates. If the mass of the people really resented this form of election, then there ought to have been trouble at the time of the elections more than at any other time. I want honourable Members of this House to tell me whether they have heard of such trouble or rioting or disturbance at the time of elections. The truth is that the mass of the people recognise that it is the it is the right of these different sections of people to elect their own representatives. Therefore they do not resent it. I say that, because of this right of every section of the people to send their own representatives to the legislatures, people have been living on the whole happily together in the villages and elsewhere. It is not always, Sir, that people are flying at each other's throat. If it were so and of this system of separate electorates has been the cause of it, then it is at the time when that system is in operation, *i.e.,* during the election time that trouble should particularly arise. But then what is the cause of the trouble? It is the opposition, I should say, to any demand that the minority communities may make, and it is not, I think, the characteristic of the masses to because love of power is at the root of this attitude of the political parties. Sir, in other countries of Europe, special arrangements have been made for minorities, in countries like Poland, Yugoslavia, Bulgaria, Albania, Greece, Turkey and so on.

Shri M. Ananthasayanam Ayyangar (Madras: General): Are there separate electorates anywhere in those countries?

Mr. Mohamed Ismail Sahib: In Albania they have agreed to some separate electoral arrangement for the minorities, in that small country, a country of only ten lakhs of people, a small country with a small population. Even there they were not afraid that separate electorates will divide the country into smaller bits. They thought that it was a natural thing to do for the minorities. In other countries, it is not a question of separate electorates, but the minorities had the safeguards that they wanted. That is the point. They were given the safeguards which they were in need of under the conditions prevailing in those countries. In our country, under the conditions prevalent here, it is separate electorates that will give contentment to the minorities and will place them on a footing of equality with other sections of the people. It is for that reason that in this country we have been urging for separate electorates and we have been agitating for the retention of it. When special arrangements were made in the West for minorities in such matters as personal law, religious instruction etc. and in the matter of even electoral affairs in the West, it was done under the supervision and auspices of the great statesman of the world who were assembled in the League of Nations. If it was wrong, would these great statesmen of the world have agreed, that too after the first World War, to such special arrangements? They thought that there was nothing wrong in those arrangements. So much so, they even agreed in the case of the Ruthenians in Poland that they might have local autonomy. That was the view of the great statesmen of the world just when they had emerged from one of the greatest catastrophies. I mean, the first World War. So, Sir, there is nothing wrong if we ask for separate electorates in this country. Just at present there is also this difference with reference to this question. Previously our country was under foreign rule. It was said and said freely that the system of separate electorates was a device invented by the Britishers to divide the people and perpetuate their rule over them. But at present the foreigner is not here. Now we are an independent nation. It is only when people have separate electorate, the real representatives of the people having that system, can go and represent their views before the Government or in the legislature or before the majority community. What they want is only the right of self-expression. What they want is the right of being heard. The question which they may be agitating about may be decided in any way, but what is meant by separate electorates is only the right of self-expression and allied with it, the right of association. What harm is there, Sir, even now for the Assembly to hear me and to listen to my views? They may decide in whatever way they please, but should they be denied even this right of being heard? It is said that this separate electorate creates a spirit of separatism and hard words are being said about it. Hard words are no argument, Sir, I submit. This separate electorate is not separatism at all; it means the recognition of differences between one group of people and another; it means that this difference should be recognised and wherever those differences come into play the real representatives of the group of people who are subject to that difference ought to be heard by the authorities; that is what it means. Therefore, it is not really a device of separating the communities. It is really a device of bringing together people. As I said, one section of the people will go to the other section of the people, the minority community will go through their representatives to the majority community and to the Government and to the Parliament. Therefore, it is really bringing the people together and not separating them. Supposing you want to do away even with this difference between people and people I first of all want to ask you whether it is necessary. As I said unity does not consist in the regimented uniformity of all the people. Even in the present minorities and their difference cease to exist there will appear other differences and other minorities amongst the people. That is the nature of human beings. We have to face and meet such differences in the most suitable way and the most suitable way is one based upon giving contentment and satisfaction to the people concerned, of course, within legitimate bounds and limits. Therefore, I say it is not necessary to do away with such differences. It is neither right, because it will be a matter of dictation, if one group of people are asked to give up certain differences in their way of life.

Then, Sir, even supposing you persist in doing away with such differences, can you do it by ignoring them, because doing away with separate electorate means ignoring all the differences that exist between one group of people and another? Surely, Sir, ignoring them and trying to forget the differences is not the way to deal with them. It will create and breed a feeling of grievance, discontent and dissatisfaction amongst the people and this is not good to anybody or to anything.

Sir, the Schedule Castes have been given and rightly given the safeguard of the reservation of seats for them in the legislatures. They fully deserve it; they are a class of people who have been the victims of oppression, if I may say so, and so many difficulties for ages; and therefore, now when we are emerging into the world of freedom, it is only right that they should also be given the freedom of coming before the world and saying what they want to say. Therefore, Sir, this Committee has done the right thing in recommending the retention of the reservation of seats for the Scheduled castes. But when they according to the majority community form part of that latter community, they follow the same culture and same religion and when they are of the same race according to them, yet it was thought fit, Sir, that they should be given separate safeguard of the reservation of seats. When it is justified for them, Sir, is it not all the more justified in the case of other communities which are admittedly different from the majority community? Sir, this action may look like something like vindictiveness, but any arrangement based upon ill-will or vindictiveness cannot be a lasting one. I want the House to consider this aspect. The Muslims as well as the other communities want to contribute effectively and efficiently towards the harmony, prosperity and happiness of the country which is their motherland and for that purpose, they want to have equal opportunities with other people. They want to be an honourable section of the people of the land, as honourable as any other section; in the days of freedom they also want to have freedom of expressing their views. Sir, it may be said that they may express their views through the representatives elected by all the people put together. Supposing there is a difference of opinion between the minority community and the majority community, then will the representative of the majority community represent the different views of the minority, sir? Such differences may not be many, but when there are such difference they are important and it is necessary and vital that the minority people should be satisfied on those matters.

Then, Sir, how are they to represent such matters if they do not have any representatives of their own? Then again it is said that the representatives elected by Muslims will represent only Muslim, it is communal electorate and therefore, the whole thing is tainted with communalism. I do not know what is exactly meant by Communalism itself. Even the report says that it is not always easy to define what is Communalism. If by Communalism you mean exclusiveness, fanaticism and such other things, of course, the Muslims are not for it. If to say that I am a Muslim or to say that I am a Christian is Communalism, then I do not know how to help it. How can a community help being a Muslim Community or a Christian Community? It is not a joke for the minority communities always to be courting disfavor and criticism from the majority community. They also want to live as peacefully as any other section of the people, but then why do they insist upon this system of safeguards and the system of separate electorates and reservation of seats? Because they know it is only through this they can approach, make a real approach to the other people and thereby cement the harmony to which they are wedded. It is for that purpose the Muslims as well as the other minorities want this arrangement which I am pleading for and not for any other thing; and so, it is only reasonable that where differences are concerned, they should be given an opportunity, a means of representing their views. Then it does not mean that in other matters, they cannot join hands with the other sections of the people. It is not so in actual practice. As a matter of fact every honourable Member of this House has been elected on a communal basis. For the Hindus the Muslims did not vote; for the Christians the Muslims did not vote and for the Muslims neither the Hindus nor the Christians voted, and so everybody has been elected on a communal basis. Does it mean that the honourable Members hare are not able to speak for the whole people in most of the matters that come before this House? It has not warped their mind and it has not made any difference at all in dealing with matters of general import and therefore, it is not right, it is not logical to say that separate electorates really divide one people from the other. It is really this criticism, this assault on the cherished right of the people that creates this suspicion and discontent and dissatisfaction. If they are given this right, they are satisfied, they go the right way and they co-operate with the other people, and there is harmony in the land. This right they have been enjoying for a long time, from the time when features of parliamentary rule were introduced into this country. Therefore, I say that separate electorate instead of creating any trouble is really the means, the device of bringing about harmony amongst the people. It enables you, it enable the Government to know what the respective people have got in their mind and then enables you to cure those grievances and those troubles. If you do not listen to them, if you do not know what is really at the root of their discontent, you will not be able to apply the proper remedy in such a case. Therefore, it is really a means of cementing co-operation and unity among the people.

Another feature of the report is this: it says;

> "Although the abolition of separate electorates had removed much of the poison from the body politic......"

Shri B. Das (Orissa: General): Is there not any time-limit for the speeches? We must finish the debate today. If one Member is allowed to speak for more than half an hour, there are so many members who are very anxious to speak.

Mr. President: As this is the principle amendment, I have not interrupted the speaker. I hope Members will also keep their eye on the clock.

Mr. Mohamed Ismail Sahib: Perhaps this is the last time that I am pleading on behalf of the minorities over this important and vital matter. Therefore......

Shri R. K. Sidhva (C. P. & Berar: General): There are other Members who are anxious to speak. He has already taken too much time. *(Interruption)*.

An Honourable Member: He must be given time to explain his position. *(Interruption).*

Mr. President: That is why I have given this time.......

Mr. Mohamed Ismail Sahib: I think you for the latitude you have given me. Even two hours will not be long for such a subject as that.

I am quoting another statement from the report:

> "Although the abolition of separate electorates had removed much of the poison from the body politic, the reservation of seats for religious communities, it was felt, did lead to a certain degree of separatism........."

Sir, separate electorates have not been abolished. We are still under separate electorates. As I said, we all Members here have been elected under separate electorates. Reservation of seats as adumbrated in the Draft Constitution has not yet come into being. I do not know how the report says that this has removed much of the poison and how the reservation of seats does lead to a certain degree of separatism. Evidently, what they mean is that the knowledge that separate electorate have been abolished has removed a little of the poison. Here again, these are hard words. As I said, these hard words do not carry conviction and cannot be substitutes for arguments. This is what I want to submit. As I have already made out, separate electorates in their very nature are creating harmony and contentment amongst the people and enable the people to make their best contribution towards the happiness, prosperity and unity of the country. This knowledge has been there amongst the people--the knowledge that separate electorate is being abolished. Even then the people have been patient and peaceful. Why? Because they have got confidence that this august Assembly will still reconsider this question and will do them justice. Whatever that may be, I agree with one important point contained in this statement that there is now an atmosphere of good-will in the country. But that atmosphere has not been brought about in the manner suggested by the report. As I said, the trouble is not due to separate electorate of any other safeguard. The good-will is consequent upon the contentment which the people get through respect shown for their views and feelings.

Sir, I do not want to raise any controversy over the matter. I am a man of peace, and have always been working for peace and harmony. That has been acknowledged from various quarters. In this matter, I only reflect the character of my community. My community wants peace, and prosperity in the country; is wants harmony in the land. It is with that view, Sir, that I am speaking and I ask on behalf of my community that they may be given this fundamental right of representing their views before the legislatures and the Government so that they may be in a position to contribute their utmost and their best for the happiness, strength and honour of the country which is their motherland as much as it is of anybody else.

Sir, I move

Mr. President: Mr. Lari. I hope Mr. Lari will bear in mind the suggestion made by Members to be brief.

Mr. Z. H. Lari : I would, Sir.

Mr. President, I express my humble concurrence with the approach of the special sub-committee appointed by the Advisory Committee on Minorities. That Approach is--to use their own words-that "the Constitution should contain no provisions which would have the effect of isolating any section of the people form the main stream of public life." I concede a minority must aspire to be an integral part of the nation.

Mr. Tajamul Husain (Bihar: Muslim): The honourable Member has not moved his amendment.

Mr. Z. H. Lari: I know parliamentary practice. I will move it. Have patience. The minority must claim only such safeguards as are consistent with this aspiration and are calculated to give it an honoured place in the governance of the country, not as a separate indifferent entity, but as a welcome part of the organic whole. I am no longer satisfied with sending some Muslim Advocates of certain causes. It is my ambition that my representative, be he a Muslim or a Hindu, shall have an effective voice in the governance of the country. In that view of the matter, I am positively opposed to separate electorates, and I do not favour reservation of seats in the legislature. The first is positively dangerous and the other ineffectual and has the taint of separatism. But I am not content with a negative approach. It is not enough to say that reservation must cease, that it is vicious, that separate electorates is bad. These must be a positive approach to ensure due recognition of the political rights of the minorities. I want this honourable House to approach this question in the light of difficulties encountered by minorities in other secular democratic States, like Switzerland or Ireland and to consider solutions sought and found there. And this is the reason why I move, Sir, and Mr. Tajamul Husain will be satisfied now--

"That in sub-paragraph (i) of the second paragraph of the Motion, after the words 'the provisions of' the words 'article 67 and' be inserted.

That in sub-paragraph (i) of the second paragraph of the Motion, after the words 'in the said Report' the words 'with the addition that elections be held under the system of cumulative votes in multi-member constituencies and the modification that no seats be reserved for the Scheduled Castes' be inserted.

That sub-paragraph (ii) of the second paragraph of the Motion, be deleted."

My amendment merely means that there should be multi-member constituencies, of say two, three or four to be fixed by Parliament--resulting in allowing the minorities to group their votes. The solution--and I may say so with all respect, to disarm a section of the House, though it is a very meagre section--the solution that I have offered is not a Muslim League mixture, it is a solution which was made as far back as 1853 when it was advocated by Mr. Marshell in an open letter, Minorities and Majorities, their relative rights" addressed to John Russell.

The Problem of minorities is not unique to India. In all lands and in all climes there have been minorities and they have had to suffer. A writer, adapting Shakespeare coined this epigram, "Minorities must suffer, it is the badge of all their tribe". But I feel it is superficial. It is not a profound truth. To me it appears that justice to minorities is the bedrock of democracy. The reason is this. The twin principles of democracy are, one, that the majority must in the ultimate analysis govern, and second, it is the right of every individual to have some voice in sending his representative to a representative institution, and thereby have some share in selecting a government to which he owes and renders obedience. Those who have read the writings of Mill must have been impressed by his advocacy of fundamental principle of democracy, that every political opinion must be represented in an assembly in proportion to its strength in the country, and naturally so. Why is this Assembly here? The entire thirty crores of people cannot come and deliberate here. Therefore, there is the device of sending representatives. But if you adopt a method by which only 51 per cent of the people alone are represented in the legislature, it ceases to be the mirror of the nation. Now the question is, does the method of representation adopted by this House give effect to or rather does it implement the principle of democracy? At the very outset, with your permission, Sir, I will read to the House an observation of Lord Action. He says,

> "The one pervading evil of democracy is the tyranny of the majority, that succeeds. by force or fraud in carrying elections. To break off that point, is to avert the danger. The common system of representation perpetuates the danger. Equal electorates give no representation to minorities. Thirty-five years ago it was pointed out that the remedy is proportionate representation. It is profoundly democratic, for it increases the influences of thousands who would otherwise have no voice in the government and it brings men more near an equality by so contriving that no vote shall be wasted, and that any voter shall contribute to bring into Parliament a member of his own opinion."

Sir, it is this solution that I am advocating before this House. The House knows that the present in the countryside, there are three political parties-the Congress, the Socialists and the Communists. Two of them have already accepted this as the proper method of representation. On October 15th 1947, the National Executive of the Socialist Party adopted a resolution, in the course of which it says-- I would again beg to be excused for quoting it--

> "All elections should be by direct, secret, and adult suffrage, under a system of joint electorates. There should be multi-member constituencies, and voting should be according to the system of cumulative votes, thus providing for minority representation."

At about the same time, the *People's* Age contained an article about this representation, and the writer wrote thus:

"The establishment of adult franchise and joint electorates will be universally welcomed as laying the basis for a sound democratic solution. We should now appeal to the people on the basis of their common interests for a joint endeavour behind a common democratic programme. But the question still remains as to how to evolve a method of representation that would enable the minorities to elect the representatives in whom they have confidence and yet not breed separatism."

And then it says,

> "The best, the most democratic and non-communal way of ensuring this is by proportionate representation, the electorate method that obtains in the new democracies like Yugoslavia and in many of the old ones. In this no communal reservation would be needed."

Now, Sir, I think the House has not forgotten the three series of Constitutional Precedents prepared by this Constituent Assembly under the able guidance of Mr. Rau. In these, this question of proper method of representation for the minorities was discussed. I hope the House has not forgotten those volumes. If you will kindly refer of Series I, on page 17. the author, or rather the compiler remarks:

> "One of the best safeguards for minority rights and interests in the system of election by proportionate representation."

I hope one interrupter on those seats will be satisfied that he is not a Communist or Socialist. The matter is fully discussed in another volume, the third series, at the end of page 164. The compiler says:

> "There is however general agreement among the critics of proportional representation that the application of the system is a necessity in the case of countries with self-conscious, racial or communal minorities."

There you find those who were charged with the duty of exploring the possible methods of representation of minorities in a non-partisan spirit and the two major political parties, one of them likely to come into power in the future, have accepted this principle of proportional representation.

If that is not enough, you may see what is the experience of other countries. We are not framing a constitution on an absolutely new slate. There have been constitutions before: there have been difficulties encountered before and there were minorities before. The most parallel instance is that of Ireland. May I ask the House to bear in mind that in Ireland there were two religions contending against each other--the Protestants and the Catholics. Ireland too was divided as a result of agitation by the religious minorities with the result that there are two States in Ireland. At the outset both these countries adopted the system of proportional representation, Northern Ireland giving in up subsequently, where as it continues in Erie proper. What is the position there? A writer has summed up the position as follows:

> "In Southern Ireland the religious question has ceased to be a dividing line in politics."

In that part of Ireland where proportional representation exists the writer says that the religious question has ceased to be the dividing line in politics. The Writer continues:

> "The religious issue which used to be as bitter in the South of Ireland as in the North has ceased to be a feature in politics. There is no longer a Protestant Party and a Catholic Party. Far otherwise is it in Ulster. Proportional Representation was carrying out its beneficent work of appeasement there also. The Catholics and Nationalists were in a minority but were fairly represented and had no sense of grievance. The Catholics had some representation even in areas predominantly Protestant and *vice versa*. The abolition of proportional representation

was followed by an outbreak of bitterness which is still to be found today."

That is the actual experience of the working of proportional representation in one part of the country and absence of it in the other.

Those Members of the House who want to keep in touch with the politics of the day do, I believe, read the Round Table. In its issue of March 1948, While discussing the reasonableness or otherwise of proportional representation in Ireland the writer says:

> "The proof of the pudding is in the eating and this system of election has not only enabled every substantial interest to retain representation, but has given us stable government. It has solved so far as solution is possible for us the crucial problem of reconciling justice to minorities and the right of the majority to govern."

Here you have the instance of a country where similar circumstances prevailed, where agitation led to separation, where proportional representation has been tried in one part and give up in another. Is it not wise for us to take lessons from that experience which is similar to what prevails in our country?

Pandit Lakshmi Kanta Maitra: What is the population of Southern Ireland?

Mr. Z. H. Lari: Are you concerned with population or you concerned with the principle? You can easily consult the Year Book and find out the population.

The Honourable Sri K. Santhanam (Madras: General): Does he suggest that there is cumulative voting in Ireland now?

Mr. Z. H. Lari: Yes, there is proportional representation.

The Honourable Shri K. Santhanam: In the Irish constitution no voter may use more than one vote and the vote shall be by secret ballot.

Mr. Z. H. Lari: Which year do you refer to?

The Honourable Shri K. Santhanam: 1937.

Mr. Z. H. Lari: It is wrong. Read it again and you will find what I say. The issue is discussed fully in the Round Table. Please read it.

The Honourable Shri K. Santhanam: Please refer to the Constitutional Precedents supplied to you.

Mr. Z. H. Lari: The same thing happened in Switzerland. The House is aware that the canton was divided into three Constituencies one was mainly Protestant and the other mainly Catholic. The result was that in one part Catholics could not be represented and in the other the Protestants could not be represented. Proportional representation was introduced. Everybody knows that Switzerland is a happy family today, strong, democratic and secular.

The same thing has happened in Belgium. I may quote another writer again. He says:

> "The non-representation of minorities in Belgium accentuated the racial, language and religious differences between Flanders and Wallony. Flanders were represented by Catholics only, the French speaking districts by Liberals and Socialists. With proportional representation members of all these parties are returned in both areas and this has brought in its train political consolidation of Belgium."

According to the theory of democracy there should not be disenfranchisement of a minority, be it political, religious or social. If you look to logic you will find that where the election is by simple majority of 51 per cent, 49 per cent is left unrepresented. If you take realism into consideration you will see the necessity that election be so managed as to give representation to every section of the people and of you want to profit from experience you will find that in those countries where this problem arose the only solution they had was proportional representation. I would go further and say that the adoption of this method is in the national interest and that for three reasons.

1. Parliament must be the mirror of the national mind: otherwise it will not have the respect which is due to it. There are instance before where the minority has succeeded in electing the majority of the members of the House, where an election has led to the complete disenfranchisement of a section. I would point out the recent elections in United Provinces where the Socialists got about 35 per cent of the votes in 11 constituencies but not a single representative of theirs was selected. So far as the people are concerned it can be said with certainty that 35 per cent Were behind the Socialist Party but the system of election was such that the party went unrepresented absolutely. To that extent that House has fallen into disfavour and to that extent it ceases to be representative of the nation which it seeks to represent.

2.There will be no grievance for any minority. I am not one of those who believe that all the supposed or imagined grievances of a minority must be met. They must be reasonable. Their interests can be looked after so long as they are consistent with the national interest. The moment there is antagonism of conflict between their interest and the interest of the notion the minority must go to the wall. But where national interest is preserved or is not jeopardised or imperilled it is necessary to consult minority opinion. If you do that it necessarily leads to consolidation of the State. Therefore, the second advantage of proportional representation is that it will lead to the consolidation of the State.

3. If you have proportional representation you will have an opposition in the House. You will have a party not on a communal basis but based on large national issues. You will have a party which will co-operate with you so far as the integrity of the state is concerned, so far as the advancement of the prestige of the nation is concerned. It will at the same time correct you and keep you on the right path. As soon as you hold the elections you will have in the House an opposition conscious of the dignity of the nation, conscious of the necessity of defending the interests of the nation and at the same time presenting a corrective to the majority in power. Therefore I say that the solution which I have offered-- which is not my own as I have said, but which is age-old and which has been practised in so many countries--is the only sound one.

Now what is the criticism? Why don't you adopt it. As every Member of the House is aware proportional representation assumes different forms: there is the single transferable vote, there is the cumulative voting and there it list system. I have suggested proportional representation by way of cumulative voting. Well it may be said that it is only another form of separate electorate and that if you concede that, it amounts to conceding separate electorates. That was the criticism when I placed it before the U.P. Legislature. But you forget that conditions have changed from 1937. Take the case of the United Provinces where the Muslims are numerous. You are aware that in the U.P. there are 8 million Muslims, but their percentage is only 11 or 12 per cent. If you have three-member constituencies, nobody can be elected unless he gets 33 per cent, of the votes.

Therefore, this criticism that proportional representation is another form of separate electorate is, to say the least, very uncharitable. As a matter of fact, I have been elected by separate electorate here. What service do I do to my community? No doubt, I can come forward and air certain views, but does airing of certain views help my community? (An Honourable Member: It does) It does not. It only enables my Friends over there to make people bitter against me still further and to say that Mr. Lari has raised this question simply because it suits his community. But I want a representative, be he Sardar, in preference to Maulana Azad, provided I feel that in electing Sardar I have also a voice and that he is bound to respect my sentiments, because he has to come again for my votes.

But take the case of the U.P. The 10 per cent, of Muslims can easily be ignored. The test of a system is to be made at critical times, at a time when passions are running high--not when things are smooth. Therefore, my submission is that you should coolly consider the question whether apart from reservation of seats, apart from separate electorates, is there any democratic method which can ensure due rights to minorities--be it political, social or religious.

The spirit of accommodation has been the underlying tone of everything that has been done by us. Only the other day by endorsing the London decision you accepted the King as the link-a king whom you previously regarded as a symbol of Imperialism and oppression of our rights. That shows how accommodative you are. Should you not display that spirit of accommodation when you are dealing with a section of your own, whom you have agreed you cannot but have as an integral part of the nation? Why not try to console my feelings, if it is possible? As I have already said, national interests must reign supreme. If it can be pointed out that national interest cannot be served or it is in danger, I will be the first person to give it up.

Shri H. V. Kamath (C. P. & Berar: General): Why did you demand Pakistan?

Mr. Z. H. Lari: Well, if it is a personal question, I may tell may honourable Friend that I opposed the creation of Pakistan at the Delhi meeting of the Muslim League. But the question is this: is that question pertinent now? Are you not nursing old grievances? I am asking you in all fairness. You say you regard me as an integral part of the nation. But the moment you raise such criticisms you give away the whole show. You show that you do not regard me as a part of the whole, that you are still harbouring old suspicions. That is not in keeping with the spirit of accommodation displayed by you.

I am sure that in spite of all these interruptions of the kind over there, the heart of this House is very sound, at least the heart of the leaders of the country is very sound and that heart will see how the Muslim heart pulsates.

Mr. Ismail spoke of the Muslim League of Madras. Will, I am not here to enter into any controversy. But I must say that so for as the U.P. Muslim League is concerned, we have decided that the League will not take part in politics and the Madras Muslim

League has ceased to be representative.

Now, Sir, if you concede that proportional representation has to be accepted, then my third amendment, namely reservation of seats for the Scheduled Castes should disappear is really consequential, because once you accept proportional representation there is no scope for any reservation for any community.

But may I pause here for a moment and say a few words in regard to this? If you take away the representation for the Muslims, but at the same time continue it for the Scheduled Castes, two questions arise: For an intelligent mind, possibly they may not be of value. But to sentimental minds they are of great importance. The Muslim man in the street will naturally say: "Well, the Scheduled Castes are a part of the Hindu community. There is no antagonism between the Hindus as such and the Scheduled Castes. Apparently you give representation to the Scheduled Castes, because you feel possibly that you will not be able to return sufficient number of Scheduled Castes to the Legislature. If the electorate is wide awake, if the electorate is conscious, if the electorate is aware of the necessity of having representation of every portion of that community then you cannot say that reservation is necessary. The reservation shows that you are not feeling strong on the point. There is a suspicion in some minds that possibly we will not be able to overcome prejudices of the Caste People and thereby ensure the quantum of representation of the Scheduled Castes." The Muslims will say "you have not got that confidence in regard to the Scheduled Castes who have always been part of you. What about the Muslims who are still regarded in certain places with suspicion"? And there was some ground for suspicion because as you rightly said Muslim India is tantamount to Muslim League India. That is true: I do not deny it. Why should you create the impression in the Muslim mind that while you are solicitous of the interests of the Scheduled Classes and are conceding representation to them, you do not care and you are not mindful of the interests of the Muslims and, although you say that the majority community will be generous and will consider it its duty to return Muslim representatives in enough numbers, you have not at all shown the same care and the same solicitude for the Muslims? It may be that the Muslims, you think, will be able to secure representation in spite of the majority.

That is the first consideration which must weigh with the Honourable Sardar Patel. He must consider it in the psychological background.

The second thing is this: If you concede the principle of representation by reservation of seats for Scheduled Castes, do you not accept that such reservation does not go against the national interests? If it goes, why accept it? If it does not, why do you say that the Scheduled Caste people have unanimously expressed the view that they want reservation? But was the Muslim view sounded on this question? I do not think the members of the Advisory Committee- I regret to say, it is another matter I would have expressed the same opinion in the Advisory Committee If I had been there, because I do not want reservation of seats--belonging to Muslim community have got any hold on the country and cannot possibly commit the Muslims to any line of action. If you want the true opinion of that community the proper thing to do would have been for Sardar Patel to convene a meeting of the Muslim Members under his Presidentship, place the facts before them and invite opinion. I personally do not think that any member of the House should go with the feeling that the vocal members have their way and that they carry day. I am a vocal member but other members are not vocal. I do not want that my colleagues should feel that I, without consulting them and under false pretence assured Sardar Patel that this is the position. Therefore I say there are two courses open. The first is not to give reservation of seats to anybody. That is in the national interest. But if you want to give it or take it away on the basis of the view of the minority concered then take appropriate steps to have the views of that minority ascertained. I say in fairness to may colleagues, who cannot express themselves as loudly as I do, that this course may be adopted. I proceed on the assumption that the past has been forgotten. Those who refuse to forget the past, I do not take notice of. I know that their number is small. If it were opinion of the majority it will be dangerous to ignore it. But knowing as I do, I proceed on the assumption that the past should be forgotten. I am here as an integral part of the Indian nation. In that capacity alone I advocate certain courses before this honourable House. It is for the majority to accept or reject what I say. History will judge who was right. Majority sometimes is in the wrong and minority need not necessarily be always in the right. But I have the satisfaction in my own conscience that what I say is proper and in the national interest of the community. I am satisfied that it is also in the wider national interest of the nation as a whole. On that basis I have made this motion before this honourable House. I appeal to the leadership of the country to consider the matter afresh. First you should consider whether it is not possible for them to adopt a method which has been practised by others and has been successful and has not endangered the stability of the State. That would I think solve the problem for all times to come. Let us have experience of this system for ten years. The Constitution can be changed any time. Why not accept if the minority say: Let us have proportional representation?' Why not have it for two elections? Are you going to bind the succeeding generations? You are not. Perhaps you will say, "Why not you try this? It is a reasonable question. But I may point out that at that time possibly I may not be here. There is a great danger in that. But you try it for five years and if it works any danger to the integrity of the State, give it up. You formerly resolved to have reserved seats. Now you say, 'No'. What is there to prevent you from amending the Constitution six years hence? Therefore I say, be fair, be generous. *(Interruption)*. If not generous, at least be fair. I appreciate the interruption. Generosity does not appeal to me also. It is the language of the weak and the imbecile. But fairness is the right of any citizen. Therefore I say, be fair. Let us consider the question and in doing so invite also neutral thinkers and politicians from Switzerland or other countries. Let us invite them to consider this question and, if they say that I am wrong, you may proceed as you like. But, for God's sake, do give a chance, not to me as a member of the Muslim community, but to me as a member of the Indian nation. Give them: a chance to survive and to play their part in the larger interests of the country.

I have the very unpleasant task of opposing Mr. Mohamed Ismail Sahib so far as the question of separate electorate is concerned, because I have been feeling all along that my existence has been useless in this House. Having been returned on the separate electorate ticket I can say nothing more than that the Muslim community wants a particular thing. If I say anything which is in the interests of the nation as such, I am dubbed a communalist. Therefore I am now suggesting something which I have not tried, but which others have tried and given it a place.

Prof. N. G. Ranga (Madras: General): May I know, Sir, whether an argument is allowed to be repeated?

Mr. Z. H. Lari: My Friends is not aware of the art of speaking; otherwise he would not have said that things are not repeated. Things are repeated, but not *ad nauseum*. Therefore I said, be fair and consider the position as it is and then take a decision which will be conducive to the interests of all communities and to the nation and enhance the good name of the State to which we all belong.

Shri M. Thirumala Rao (Madras: General): I have got here a copy of the article on the Republic of Ireland. I do not find in it a single word of the quotation made by Mr. Lari.

Mr. President: If any Member wishes to quote that portion he may do so.

Shri M. Thirumala Rao: If I am called upon to speak I will do so.

Mr. President: The honourable Member may take his chance.

The next amendment, No. 5, is one of which notice has been given by several Members.

(Amendments Nos. 5, 6, 7 and 8 were not moved.)

Mr. President: Then there is another amendment of which I have got notice, by Shri Thakur Das Bhargava. There is notice of the same amendment by Mr. Nagappa and Mr. Khandekar.

(Both Mr. Nagappa and Pandit Thakur Das Bhargava rose to speak.)

Mr. President: I understand that the amendment of which Pandit Thakur Das Bhargava had given notice came first. Since his amendment came first, I will give him the opportunity to move it. (Addressing Mr. Nagappa) You can take your chance of speaking on it.

Pandit Thakur Das Bhargava (East Punjab: General): Sir, I beg to move:

"That the following be added to the Resolution:-

'The provision for reservation of seats and nominations will last for a period of ten years from the commencement of the Constitution."

Mr. President: Is this an amendment to the original proposition?

Pandit Thakur Das Bhargava: This is an amendment to an amendment.

An Honourable Member: But no amendment has been moved.

Pandit Thakur Das Bhargava: This is an amendment to an amendment. The practice in the House has been that when notice of amendments has been given, all the amendments are taken to be moved. That was the ruling given in the previous session. According to that, I have given notice of this amendment.

Mr. President: Strictly speaking, this is not an amendment to any amendment. If it is an amendment, it is an amendment to an amendment which you have not moved.

Pandit Thakur Das Bhargava: The practice is that amendments to amendments are allowed even when it happens to be an amendment to one's own amendment. That was the ruling by the Vice-President.

Mr. President: In dealing with th Draft Constitution, I ruled that I would accept amendments to amendments but not amendments to the original article, even though they may be given under the pretext of being amendments to amendments, if they are not given in time. On that basis I have been going on all these days. I was not informed of any previous decision by the Vice-President when he was presiding. Therefore I gave that ruling and I am following that ruling since then. I do not accept amendments out of time, amendments, which are strictly speaking not amendments to amendments but amendments to the original article.

The Honourable Shri Ghanshyam Singh Gupta (C. P. Berar: General); Sir, this can be an amendment to an amendment, amendment No. 4, by Mr. Lari, that sub-paragraph (ii) of the second paragraph of the Motion be deleted. That means that he does not want to give reservation to certain classes of the Scheduled Castes. Pandit Bhargava wants that reservation should continue for ten years.

Shri Jaspat Roy Kapoor: May I submit.......

The honourable Shri Ghanshyam Singh Gupta: I have not finished. Mr. Lari's amendment is that sub-paragraph (ii) of the second paragraph of the Motion be deleted. That means he does not want to have any reservation. Pandit Bhargava says that reservation should be there for ten years. So, this is an amendment to the other amendment. This is what I want to bring to your notice.

Shri Jaspat Roy Kapoor: I would respectfully submit that Mr. Bhargava's amendment be taken as perfectly in order because it is virtually an amendment to the other amendments which have already been moved by Mr. Mohamed Ismail Sahib and Mr. Lari. These amendments seek to amend the notion in a particular manner. All that Mr. Bhargava wants now is that the motion should be amended in a different manner. Both the previous amendments sought to amend the motion as placed before the House by the honourable Sardar Patel. Now Mr. Bhargava wants that the motion should not be amended in the manner which has been suggested in the two amendments which have been moved but in the manner in which he would not move it.

Mr. President: In that view and in the view which has been placed before the House by the Honourable Shri Ghanshyam Singh Gupta, I take it that it is an amendment to an amendment.

Pandit Thakur Das Bhargava: Sir, I move:

"That the following be added to the Motion:

"The provision for reservation of seats and nominations will last for a period of ten years from the commencement of the Constitution."

I only formally move this. If I catch your eye, I propose to speak later on the resolution.

Mr. President: The amendments and the original motion are now before the House for discussion.

Shri S. Nagappa (Madras: General): Mr. President, Sir, I congratulate the majority community and also the Minorities Advisory Committee that was appointed in order to go through the problem of the minorities in this country. Sir, there are three parties to this. Firstly, we have to congratulate the Honourable Sardar Patel on his wonderful achievement which could not be achieved by two centuries of British rule. He could do it within two years. Divisions were created by the Britishers in order to continue their rule over India perpetually. Now, that would not be done in two centuries has been done within two years. Now the minorities themselves come forward and say that they do not want any reservation. That is an achievement. The second party is the Minorities Advisory Committee and the third party is the minorities themselves. We have to congratulate all the three. Now, people may ask, "How is that you have not foregone your reservation?" I do not think we are getting reservation because we are religious minority. We are not a religious minority. We are an economic, political and social minority. We have got rid of two disabilities. Mahatmaji was kind enough to grant us two freedoms, social freedom and political freedom. Now, Sir, the majority community happens to be larger in number. You have seen where the Kauravas were hundred in number and Pandavas were five in number, they had an equal right to the kingdom. Though Lord Krishna failed in his last avatar to get independence of rather the due share in the administration of the country, yet in later generations Mahatma Gandhi achieved at the cost of his life the political freedom for Harijans; he not only achieved political freedom: but while we were hated, teased, tortured and ill-treated up to 1932, after 1932 the hatred was converted into affection. Some honourable Members have said that the Scheduled castes must have no reservation. Without asking us, this majority community has given us reservation. My honourable Friend Mr. Lari and other friends were saying: "Why should these Scheduled castes be given reservation"? We are not asking for reservation for our community. We are the people who have given protection to all the people. Three thousand years ago we gave you shelter. It is our community that gave protection to everybody. Our community does not seek protection. Well, Sir, the Britisher could not rule this country without us; the Muslims could not conquer this country without our cooperation and the Congress could not achieve freedom. It is only in 1942 that we joined the movement, and it is as a result of our joining it that we were able to drive out the Britishers. So, Sir, without our co-operation without our help no one in this country can exit. We are the right royal owners of the whole country and as the descendants of the oldest inhabitants of India, we have every right, but we are not so narrow-minded to drive others out. We have been giving protection; we have been tilling the soil; we have been toiling and moiling for the sake of others. Look at the sacrifice we have shown. We have been ill-treated for centuries and yet we have been sticking to our religion. There have been some scapegoats who have joined Sikhism and Christianity. But today seven crores of people continue to be in the Hindu religion and this only means the "suffering attitude", the sacrifice and toiling that denotes this community. So, Sir, I am not seeking protection of you, the majority community. I know you have 'one man, one vote'. After all, do you think that you are the majority community? I cam convert you into a minority community. It is only a class question that comes into existence and not the casts question. When this is the case, I need not seek any protection. I am thankful to you for the protection given by you. When you are offering the hand of help, why should I reject it? We Scheduled Castes have not invaded this country from Arabia. We have not come here from outside and we do not have a separate state to go and live if we cannot absorb other people. We are not a separate nation; we are the blood and bone of the same religion, same culture, same custom; we are the true sons of the soil. How can we be treated differently? So let not my honourable Friend make use of us and our community to plead his cause. I would request them, if at all they have any affection for us, let us have reservation for our own sake. For our part we can safeguard our interests better then anybody else. Self-help is the best help; that is a slogan and it is true. They say: "Why should you require reservation"? Freedom is not complete unless and until it is full of the three aspects. The first is social, the second is political and the third is economic. That is most important and vital to independence. I know the whole country is lagging behind so far as the economic freedom is concerned, but much more is this particular community. Even today, here and now, I am prepared for the abolition of the reservation, provided every Harijan family gets ten acres of wet land, twenty acres of dry land and all the children of Harijans are educated, free of cost, up to the University course and given one-fifth of the key posts either in the civilian departments or in the military departments. I throw a Challenge to the majority community that if they are prepared to give this much, I will forego the whole reservation. Let my Muslim friends know that we Harijan are not lagging behind in nationalism. It is we that have to fight more because it is our country. After all, you are the invaders, immigrants; you do not have as much interest as we have in this country and we are the people that produce the whole of the national wealth of country either by agricultural labour or by industrial labour. Unfortunately, just like the bees that gather honey, we work hard, but we are away from the honey; but the time will come and if you continue to be so selfish as you have been all these days, the same thing that was done to the Britisher will be repeated to you. What about you who have migrated from Central Asia, Mongolia and Manchuria? You will have to go back to your places. Even there you will be sent out. It is we that have a greater right than anybody else on the face of this country. So it is not a favour that you have done us, but you have rightly done it.

I have been telling you that the economic problem is the most important problem so far as this country is concerned. It is very easy question that can be solved if you make up your minds. You have been abolishing the zamindari all over the country. You have got lakhs and lakhs of acres of land. If you can give us, every Harijan family that is not possessing land; all the landless Harijans, at the rate of ten acres of wet land and twenty acres of dry land and educate the children to the University course, I am prepared to forgo the reservation. Here it is.

Shri Mohan Lal Gautam (United Provinces: General): Every Brahmin is prepared to become a Harijan of you give him ten acres of wet land and twenty acres of dry land.

Shri S. Nagappa: Even if the Brahmin is granted lands, then how to till? He has been having lands till now. He has to seek our protection; he has to employ us. It is something like entrusting *Rambha* to a *Napumsaka*. To my Brahmin friends I say; "What is the good of your asking for land? Land should be given to the tiller of the soil, he must be the owner of the soil. You do not want to own it for owning's sake. You must find utility for the property that you possess." It is no use my Brahmin friends saying: "I come forward and say I am prepared to be a Harijan." A Harijan cannot be converted, like a Christian or a Muslim. You must be a born Harijan, you must have birth as a Harijan; today you can become a Christian or a Muslim; the next day you can become a Sikh, if you grow a beard, but you cannot become a Harijan except by birth.

A Honourable Member : Very selfish !

Shri S. Nagappa: Do not think the Harijan community has been converting everybody. If you are prepared to take to the Harijan community, you must be prepared to scavenge and sweep. You do not want to do that and feel some dignity. You say "I am a Hindu and I cannot scavenge and sweep for others." You want to have the option: I am for the heads, but not for the tails. If at all I lose, I must lose the tails and not the heads." Is this your principle?, I ask Mr. Mohan Lal Gautam who has been kind enough to offer to become a Harijan.

As regards my honourable Friend Mr. Lari's amendment, that the reservation for the Scheduled Castes should be abolished, I thank my honourable, Friend for giving this idea to the House. But, let it remain as an ideal; it cannot be put in action. After all is said and done today, let my honourable Friend Mr. Lari remember that once upon a time, if not today, some time ago, he was a Harijan. It is the Harijans that have contributed to all these communities.

Mr. Z. H. Lari: I would be glad to become a Harijan if I could get ten acres of wet land and twenty acres of dry land.

Shri S. Nagappa: If you can scavenge, you can become a Harijan. Nobody prevents you. Community has come according to duties; no one has been labelled that he is so and so. Only if you do the work of a teacher, you can be called a teacher. If you scavenge, you are a scavenger; if you sweep, you are a sweeper. If you are so fond of becoming a Harijan, the duties are also open to you. All the friends that are prepared to scavenge, sweep.......

Mr. President: Please confine yourself to the motion before the House. We all know the duties of the Harijans.

Shri S. Nagappa: Let me come to the point. My honorable Friends who have been jealous of my community, I hope will not be so for ever.

We have already abolished reservation. I ask where was reservation for this House. We were mixed with the Caste Hindus and they have elected us. We represent the Caste Hindus. I am today giving the law not to the Harijans alone, but to all the thirty crores of people. The Constitution is not made for my community alone. I have not been returned by my community alone. Therefore, in practice, we have abolished reservations. This Parliament, this Constituent Assembly, has been elected on the basis of joint electorates. This has been accepted in the case of Christians, Sikhs, Harijans and Hindus. Only my honourable Friends who were preaching the two-nation theory have been returned by their own people. I tell you, Sir, there are some shortcomings. This good-will of the minority community has not been utilised by the majority community in a proper way. I can quote instances where they have gone back, where they have not been large-hearted. Take Madras where there are eighty lakhs of Harijans. According to the Cripps' proposal, for every million of the people, one representative should come. We are only seven. We would have been eight if there had been reservation according to the population. But it is a minor matter whether seven or eight are here; the work done is the same. Take Travancore. It is a State that is supposed to be the first and foremost so far as the Harijans are concerned. It is the first State that introduced Temple Entry. But, that State has failed to give representation to Harijans in the Constituent Assembly. Out of a population of sixty lakhs, thirteen lakhs are Harijans. These thirteen lakhs of Harijans have been ignored and four lakhs of Muslims have been given a seat. They have robbed Peter to pay Paul. That is why we want reservation, It may be stated that it is a State. Take the United Provinces. There are twelve millions of Harijans in the U. P. according to the Census of 1931. I find only six members from that province. What about Bengal? I am not in possession of the correct figures in Bengal. What about the Punjab? My honourable Friend Pandit Thakurdas Bhargava has been saying that there are eighteen lakhs of Harijans and four lakhs of Sikhs Harijans, altogether making up a total of twenty-two lakhs. I find a solitary representative from the Punjab so far as the Harijans are concerned. According to the Cripps proposal, there should have been two. Let us go to the States. What about Patiala State? Out of a population of thirty-six lakhs, nine lakhs are Harijan. There should have been at least one representative in this House. Take Madhya Bharat. Out of a population of seventy lakhs, seventeen lakhs are Harijans. When His Excellency the Governor-General visited that State, the Harijan represented to him, Sir, we are only three members in a House of seventy, though our population happens to be seventeen lakhs'. Look at the justice done by the majority community. We appeal to you, we do not claim, we appeal to their good sense, not only with folded hands, but also with bended knees, to do us justice. We crave for mercy. After all, we are voiceless, our voice is feeble. In Madhya Bharat, there are only three members; in the Constituent Assembly, nil. Because of this selfishness of yours, you are compelling us to ask for reservation. This was your testing period. If you had been large- hearted, we would have been the first and foremost persons to come and say, 'we do not want any reservation'. The fault lies in you; not in us. That is why Mahatma Gandhi said, "for the sins committed against them in olden days by your fathers and forefathers, become Harijan sevaks to wipe off those sins." It is you who are on the wrong side. If there is a dispute between a *mandir* and a *masjid*, it is our throat that was offered at the alter. If there was any Hindu-Muslim riot, it is we that fought the battle. What is the reward we get? "All right, be toiling", this is the reward. "You were my watch dog; be my slave or serf", this is the reward. Are you justified in this? You could have done this all these days when we were ignorant. Mahatmaji has removed that ignorance. He has put enough patriotism, enough conscience into our minds. You may think that Mahatmaji is no more. But you must be aware that his spirit is everywhere; his soul is everywhere. We cannot see him today; but he is watching our doings. The Congressites who have been claiming to be the descendants of Mahatmaji know that he is watching this Assembly. I leave it to you. It is for you to abolish the reservation whenever you want. I have thrown the challenge. it is for you to accept.

As regards my honourable Friend, Pandit Thakurdas Bhargava, who claims the amendment to be his, namely, that the provisions regarding reservation of seats and nomination will last for a period of ten years, I would say this. We, almost all the Harijan Members of this House, sat together and the Honourable Pandit Nehru was kind enough to explain to us that in our own interests this will be the best thing. According to his advice we have come to a decision on this point. After all, this is a question that has to be reopened by Parliament. If, after ten years, our position happens to be the same as it is today, then, it is open to the Parliament either to renew it or abolish it. This does not prevent you from coming forward within the next five or ten years or even two years with an Act of Parliament saying "Harijan have been granted their demands, they are now on a par with others and they need not have this reservation of seats". It is open to you as it is worded today. Therefore, we accepted that the reservation should continue for ten years to come from the commencement to the Constitution.

I once again thank the honourable members of the Minorities Committee, the President of it, our Honourable Sardar Patel, who has taken so much trouble in order to safeguard our rights. I thank you, Sir, for the opportunity you have given me.

Mr. President: I would ask Members to confine their remarks to ten minutes.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, the Resolution moved by Dr. Sardar Patel is an important land-mark in the constitutional history of our country, and will be referred to by future historians and constitutional writers with enthusiastic applause. Sir, at the very outset, I desire to declare that I am in compete and wholehearted agreement with the Resolution (*Hear, hear*). Sir, in the short time at my disposal, I should try to touch only the main points. The original Resolution and the two principal amendments differ as well as agree in certain respects. According to the original Resolution, the reservations to Muslims in to be abolished. With regard to the amendment moved by Mr. Ismail Sahib, Muslim reservations are to be retained. Mr. Lari wants all reservations to be abolished. So the original Resolution and Mr. Lari's amendment agree that Muslim reservation should be abolished, and this is opposed to Mr. Ismail's amendment.

Then with regard to the Scheduled Castes, the original Resolution and Mr. Ismail's amendment require them to be retained, while Mr. Lari wants them to be abolished. With regard to Sikhs to the backward classes, the position is similar. Thus, Mr. Ismail's amendment and that of Mr. Lari are in all respects directly opposed to each other.

Sir, I think that the occasion when the Muslims in India accepted reservation of seats should be recalled. That was a time when the communal situation was very unsatisfactory, and some reservations seemed at that time to be necessary. But now the situation has vastly improved and is daily improving and there is, for a long time, much harmony between the two communities. I think that reservation of any kind are against healthy political growth. They imply a kind of inferiority. They arise out of a kind of fear-complex, and its effect would be really to reduce the Muslims into a statutory minority. Then, again, Muslim reservation is psychologically linked up with separate electorates, which led to so many disasters. Therefore I should submit that to carry on reservation would only serve to perpetuate the unpleasant memory of those separate electorates and all the embitterment, that accompanied them. I submit that it will be bad even for ten years.

Then, Sir, I believe that reservation of Muslim seats, specially now, would be really harmful to the Muslims themselves. In fact, if we accept reservation and go to the polls, the relation between Hindus and Muslims which now exists will deteriorate. The great improvement in the situation that has been achieved will be lost. The Hindu-Muslim relation of the immediate past will be recalled and feelings will be embittered. There will be dissentions between Hindus and Muslims--a thing which is highly undesirable, even if we consider it even from the purely Muslim point of view. This would again create divisions amongst the Muslims themselves. In fact, if seats are reserved, one candidate may be set up by Hindus and another by Muslims. Muslims will divide. They will flock to one candidate, or the other and this will lead to division among the Muslims themselves on a false issue. I therefore submit that reservation for Muslims would be undesirable. In the present context, when we have improved relations and with the abolition of separate electorates, it is illogical and an anachronism, and it is positively injurious to the Muslims and to the body politic.

Sir, reservation is a kind of protection which always has a crippling effect upon the object protected. So for all these reasons, I should strongly oppose any reservation for Muslims. Now, Mr. Lari's amendment is to the same effect, that there should be no reservations for Muslims, and I welcome it so far as Muslims are concerned. His amendment, however, is hedged in with the condition that there should be cumulative votes. His argument was based mainly upon continental considerations. In Ireland, the fight between the two sections is everlasting. It dates-back from the very dawn of history and it is not going to end. But so far as Hindu-Muslim relation is concerned, there was only a temporary break in the cordiality between the two communities, and happily the old amity which had existed in the country from time immemorial, has again been established; it has again improved. The system of cumulative voting is not necessary, and it is extremely difficult to work. I do not think it is needed in the conditions present in India, especially among hundreds of millions of illiterate voters. I therefore submit that any kind of cumulative voting, or other intellectual abstractions of refinements of the kind are unnecessary. From the Muslim point of view alone, we do not want any reservation whatsoever.

Then, again reservation of seats to the communities was inevitably connected with separate electorates. With the removal of separate electorates, reservation of seats would be absolutely illogical. If we contest seats, not reserved seats, the result would be that Hindus and Muslims would be brought nearer to each other. Although we are a minority--and that is a fact which has been very much stressed by Mr. Lari--I think it will be impossible for any Hindu Candidate to ignore the Muslims. In fact, for one seat there will be at least two Hindu candidates, and in case of a contest, the Muslims will have an important role to play, and they may well be able to tip the scale, by playing the part of an intelligent minority, suitably aligning themselves with one side or the other. They will have a decisive voice in the elections. It may be that an apparently huge majority may at the end of the elections find itself defeated by a single vote. So no man who contests an election, however promising his prospects may be, can ignore Muslim votes. Therefore,the safety of the Muslims lies in intelligently playing their part and mixing themselves with the Hindus in public affairs. This will be a great advantage to both the communities, and without any reservations at the next election, Hindus and Muslims will freely associate with one another in the elections and in public affairs for the service of our motherland.

Those of my honourable friends who think that there should be reservations, have their eyes on the past. They are looking behind. But our eyes, the eyes of the Indian Muslims, should be facing the future. We should have a progressive outlook. Now, Indian politics contain a large number of subjects, none of which I can think of as having communal implications. In the Provinces there are the principal subjects--education, sanitation and local self-government. These subjects do not affect any community in particular or as such. Hindus and Muslims will have to stand side by side and work these subjects for the common welfare of our motherland.

In the Central sphere there are the industrial problems, irrigation schemes, the question of defence and external affairs and also the common problems of peace and order. There is nothing communal in these matters and every one is equally interested in them irrespective of his community or religion. I feel very strongly that religion should have nothing to do with politics: not that religion is to be ignored; but religion is a private matter and in public life we should cease to think in terms of communities. Whether in this Assembly or in public life outside, we are neither Hindus nor Muslims. In private life we should be devout Hindus or Muslims. So if we distinguish our outlook as between private and public life, there will be no trouble. The State should interfere as little as possible with the religious feelings of its citizens. They should be left untouched. If Muslim play their part well and intelligently, if they play their part faithfully and patriotically, their position will be respected.

With regard to other minorities I submit our position ought to be made very clear. There are the Scheduled Castes and the new Scheduled Castes among the Sikhs, there are the frontier areas, the Excluded and Partially Excluded Areas, and there is also the Anglo-Indian community. They would all be protected. The amendment of Mr. Mohamed Ismail Sahib will protect them all. But Mr. Lari would abolish them also. But the position of these minorities must be respected. It is a question of confidence in the electorate and in the system of government. If any of these minorities feels that it would not be protected unless it has been given reservation of seats, by all means let them have it. So far as the Scheduled Castes are concerned I think we have no grievance. It is a question of satisfying them. If they feel that they would be satisfied with reservation, let them have it, and in this respect Mr. Lari's amendment goes a bit too far and is an encroachment on the rights of other minorities. So also is the case with the Sikh Scheduled Castes. It is for them to say whether they would have the reservation of seats or not: it is not for us to speak for them. It is not a question of logic or argument but it is a question really of creation in each sect or community a feeling of confidence and security that by a particular scheme, it would be treated justly and fairly.

So far as the Muslims are concerned we have had a debate in the West Bengal Legislature, where I find that the Muslim opinion against reservation of seats was overwhelming. For the election to the Union Boards etc., already the system of reserving seats has been abolished and Hindus and Muslims vote side by side as friends. What is more important is that the Hindus have to seek Muslim votes. This is a very potent and a welcome factor. The Muslims should be realists as they are expected to be and they must not have their eyes on the past. They should try as quickly as possible to adjust themselves to their new environments. If they show faith in the great Hindu community, I am sure they will treat them with fairness and justice.

Dr. H. C. Mookherjee (West Bengal: General): Sir, in considering whether the House should accept the recommendations of the Advisory Committee and the resolution placed before it by Sardar Patel there are two questions which, it seems to me, the House should ask itself. The first is: are we really honest when we say that we are seeking to establish a secular state? And the second is, whether we intend to have one nation. if our idea is to have a secular state it follows inevitable that we cannot afford to recognise minorities based upon religion. This to my mind is the strongest possible argument why reservation of seats for religious groups should be abolished and that immediately. So far as the idea of building up one nation is concerned I do admit that there are certain economically backward groups in every community and for them provision has been made in the directive adopted in December last.

Sir, I intend to place all my cards on the table and to say that personally I have the greatest possible objection to reservation for backward groups in the political sphere. I do admit that they deserve our sympathy and that they require economic safeguards but I do not see any reason why they should demand political safeguards. I do not see why a person belonging to a backward community should feel that his grievances cannot be placed before the legislatures unless he elects somebody in whom he has faith. Such an attitude to my mind shows that he has not as yet, as a member of a minority community, made up his mind to become a part and parcel of the nation. Still I do submit to the wisdom of our leaders and I support the Resolution, only because I hope the House will accept the amendment moved by Pandit Thakur Das Bhargava, to the effect that these reservations should have a definite time limit, that once for all we shall see their end at the end of ten years from the time that the Constitution comes into operation.

Sir, when the constituent Assembly was dissolved in January last, thought I had very urgent business in my own home I intentionally stayed on here, because I wanted to find out the feelings of the country with regard to this question of the abolition of reservation. It was the dream of my life ever since my mother made it clear to me that I had two duties to perform. These two duties I promised to perform after touching her feet. One was to carry on the campaign against drink and drugs so long as there was life in me, and the other was to see the end of the communal business. Though she was not an educated woman in the ordinary sense of the term, she had witnessed the results of the cleavage introduced into the national life by the Minto-Morley Reforms, under which the non-Muslims were separated from our Muslim brethren. She made me promise that if I ever entered public or political life I should devote myself heart and soul to the abolition of this communal electorates business. I am thankful that God has spared my life so that like the Prophet mentioned in the New Testament I can sing:

Nune Dimitis "Lord, now lettest Thy servant depart in peace for my eyes have seen Thy salvation.'

Sir, I tried to find out the views of the country. I may tell the House that it has taken ten years of unremitting hard work on the part of the Nationalist Christians all over India. I sent out a questionnaire and 42 letters were addressed to my people and replies were received from 35 of them. I have consolidated the replies and I find that the enquiries were made, among other sections of the people, by Nationalist Christians who were friendly with Hindus. Muslims, Sikhs and Scheduled Castes. Their replies consolidated show the following results.

So far as the masses are concerned my friends are united in saying that the masses do not want reservations. They say that they are interested in three or four things only. They want food, clothing, a shelter over their heads, medical aid and good roads. These are their demands. When they were specifically asked whether they wanted reservation, the reply in every case was as follows: "We know that we shall never enter the Legislatures; reservations do not concern or interest us." There all sections of the people were at one. Then came queries addressed to the lower middle classes, people who depend upon service to earn their living. Their reaction was that if there was any kind of reservation they would like to have reservation in jobs. This reservation business, Sir, to my mind, comes from the upper middle classes-- people who have political ambitions. Then I sent forward a second set of questions in which I asked what were the motives for this demand for reservation. Two motives were assigned. The first and the foremost, in the view of my friends, was that most people have political ambitions--self-seekers after power, self-seekers after position and in fact the people who want to take advantage of their positions in the different legislatures for their own selfish purposes. Such people, I say, Sir, are not wanted in free India. But at the same time it was admitted that there are certain people who really feel alarmed over the future of their communities. Such people want to come to the Legislatures, because they think that they can safeguard the interests of the groups to which they belong. These are people for whom I have respect. But when we have passed the different Fundamental Rights which guarantee religious, cultural and educational safeguards, safeguards which are justiciable, safeguards which can be decided in a court of law, I feel that the presence of people belonging to certain groups is not necessary. Then again, when I think of the directive principal that justice should be done to the classes which are backward socially and economically, I feel and I have every confidence that justice will be done to them. In my view the Scheduled Casts again do not require representation. But, as I have said, I bow to the wisdom of my leaders and I am, therefore, prepared to support this motion.

Now, the question is: Can the majority community be trusted? The majority community has been very generous to every one of the minority communities. That is my firm belief. I may tell the House, Sir, with your permission that when for about two months I had the honour to occupy the Chair which you are occupying today, I deliberately tested it for myself, whether we could trust the majority community. My Muslim, my Sikh and my Scheduled Caste friends will agree with me when I say that very opportunity was given to them by me so that they might voice forth their feelings and this was done with the permission, with the silent permission of the majority community. I may further tell the House that during these two month almost every day foreign observers came and some of them were free-lance journalists and others were people interested in religious and educational work and everyday they would come to my House and ask me: "Are you perfectly confident that the majority community is going to be fair?" I said, "Well, of course I think so; but I want you to watch for yourself and draw your own conclusions." There was a free-lance American journalist who quoted to me lines from the speech of Mr. Winston Churchill made at Manchester in which he talked about Brahmins mouthing Mill and Bentham and then denying freedom to their Scheduled Caste brethren in India. I told him that every Scheduled Caste member had a chance to voice his grievances. On that particular day Mr. Nagappa and Mr. Kakkan narrated their grievances to the House and there was not a single caste Hindu who denied the existence of certain grievances. At the end of that day's proceedings, two or three Caste Hindus stood up admitting all the charges and promising that every effort should be made to remove these social disabilities.

Sir, these things undoubtedly show that the minorities have nothing to fear from the majority community. I am firmly convinced from my own experience that it is the path of wisdom for the minorities to trust the majority community that if they want to live in peace and honour in this country, they must win its good-will. Our attitude in the past has not been very helpful. I do not want to go into details, but everybody will admit that the attitude of the minorities has not been at all helpful. Let us recollect how many times we used back-door influence in order to sabotage our nationalist movement. I shall not go beyond that. To the majority I say: "Once for all we are placing the responsibility of looking after us fairly and squarely on your shoulders." This is an opportunity which Providence has given to the majority community to prove by actual work, to prove by actual example that the protestations made so far are genuine and personally I have every reason to believe that they will not be found wanting.

Mr. President: I may say that I have again received a number of slips from Members who was wish to speak. But I am not going to use the slips; I shall use my eyes.

Begum Aizaz Rasul (United Provinces: Muslim) : Sir, I come to give my whole-hearted support to the resolution moved by the Honourable Sardar Patel regarding the representation of the minority communities. Sir, I am sorry that I have to oppose the amendment moved by Mr. Ismail from Madras. The basis of his amendment is the retention of separate electorates. For my part I have from the beginning felt that in a secular state separate electorates have no place. Therefore the principal of joint electorates having once been accepted, the reservation of seats for minorities to me seems meaningless and useless. The candidate returned on the joint votes of the Hindus and Muslims in the very nature of things cannot represent the point of view of the Muslims only and therefore this reservation is entirely unsubstantial. To my mind reservation is a self-destructive weapon which separates the minorities from the majority for all time. It gives no chance to the minorities to win the good-will of the majority. It keeps up the spirit of separatism and communalism alive which should be done away once and for all. This reservation was for ten years only and to my mind these first ten years are the most crucial in the life of our country and every effort should be made to bring the communities together.

Sir, this is one ground on which I support the motion of the Honourable Sardar Patel.

The second ground on which I support it is that there is still a feeling of separatism prevalent amongst the communities in India today. That must go. I feel that it is in the interests of the minorities to try to merge themselves into the majority community. It is not going to be harmful to the minorities I can assure them, because in the long run it will be in their interests to win the goodwill of the majority. To my mind it is very necessary that the Muslims living in this country should throw themselves entirely upon the good-will of the majority community, should give up separatist tendencies and throw their full weight in building up a truly secular state.

Sir, I will go into the history of the events of the last two years. It is a very sad history and no one can deny that the Muslims living in this country have been the greatest sufferers as a result of the events that have taken place. Not only have their lives and property been in danger and full of insecurity, but their very honour has been at stake and their loyalties have been questioned. This caused great sense of frustration and mental depression. We want to finish with the past and we want that a new page should be turned over in which all communities living in this country would feel happy and secure. There is some fear in the minds of the Muslims that by doing away with reservations they will not be returned to the legislature according to the members of their population. This fear to my mind is baseless because I feel that when we put the majority community on its honour, it will be up to it to retain its prestige and honour and return members of the minority community not only in numbers to which they are entitled on a population basis but perhaps in greater numbers. I do not visualise any political party in the future putting up candidates for election ignoring the Muslims. The Muslims comprise a large part of the population in this country. I do not think any political party can ever ignore them, much less the Indian National Congress which has stood for the protection of minorities. Sir, I feel that we Muslims should pave the way for not only the introduction but the strengthening of a secular democratic State in this country. The only way in which we can do it is by giving up reservations that are meant for us and by showing to the majority that we have entire confidence in them. Then only I feel that the majority will realise its responsibility.

Sir, I would like my Muslim friends to visualise this position : If reservation of seats for Muslims remains, it would be tantamount to an act of charity on the majority community. They will say : `Let us give them so many seats.' We will get the seats, but there will not be much good-will on the part of the majority in giving that. The idea of separatism will remain-- but if we agree to have no reservation, the honour and prestige of the community as well as of the party that will be contesting the elections will be on test and I do not think that any party can ignore or can afford to ignore the minorities, especially the Muslims. In that event I visualise the Hindus going about not only to the Muslims but to their own brethren asking them to vote for the Muslims and return the Muslim candidate set up in this or that constituency. Which would be better, I would like to know : this reservation of seats which keeps up a division between the two communities or to be returned by the majority of Hindu votes, not because a seat is reserved for us but because our Hindu brethren went about asking the Hindus to return Muslims? I therefore feel that it is in the interests of both the communities that this should happen and this is the only way in which good-will and friendship can be created between the two communities. Trust begets trust and when we place a sacred trust in the hands of the majority- it is sure to realise its responsibility.

Sir, I come from the United Provinces where the Muslims are largest in numbers in any one province in India today. Having worked amongst the Muslim masses, men and women for ten years, I can claim to know something of the working of their minds. Muslims are backward educationally and economically, but as far as political consciousness is concerned they are very much alive today and have been so for sometime. I can say that the Muslims in the United provinces understand the state of affairs very well. They have realised that the changed conditions demand a change in attitude on their part. Therefore I feel that I am not in any way betraying the confidence of my electorate when I say that this attitude that I am taking today is absolutely in their interests and I know that the majority of Muslims of the United Provinces are behind me in this matter.

Sir, a friend remarked to me yesterday that Muslims are realists. I entirely agree. I think that they are a very realistic people. They are not a static people and they have no static ideas. They have always advanced with the times as Muslims history will show. Therefore, if today we demand the abolition of reservation of seats for the Muslim community I feel that we are entirely on the right path and want to proceed according to changed conditions.

Sir, those Muslims who wanted to go to Pakistan have done so. Those who decided to stay here wish to be on friendly and amicable terms with the majority community and realise that they must develop their lives according to the environments and circumstances existing here. I do not say that they have to change except in accordance with the aspirations of the other people living in this country. Sir, we do not want any special privileges accorded to us as Muslims but we also do not want that any discrimination should be made against us as such. That is why I say that as nationals of this great country we share the aspirations and the hopes of the people living here hoping at the same time that we be treated in a manner consistent with honour and justice.

Sir, sometimes the loyalty of the Muslims has been challenged. I am sorry to bring this up here, but I feel that this is the right moment to mention it. I do not understand why loyalty and religion go together. I think that those persons who work against the interests of the State and take part in subversive activities are disloyal, be they Hindus or Muslims or members of any other community. So far as that matter is concerned, I feel that I am a greater loyalist than many Hindus because many of them are indulging in subversive activities, but I have the interest of my country foremost at heart. I think I can say that of all the Muslims who have decided to live here. They only want to avoid struggle and strife, want security, want their mental attitude to develop that way. Sir, it is for the majority to infuse into the minds of the minority communities a feeling of confidence, good-will and security. Then only can loyalty accrue, because it is the condition of people's minds that creates loyalty. It is not the asking for it that makes for it. Therefore I feel, Sir, that in introducing this Resolution Sardar Patel has done the right thing, because he is giving the various communities the chance of getting together.

Another point, Sir. There are some Hindus and some Muslims also who think and are exercised over the fact that some seats may be lost to them by the abolition of reservation for minorities. I am sorry that they should think on those lines. The advantages of this abolition of reservation far outweigh the disadvantages of the loss of a few seats. I do not myself visualise any loss of seats because, as I have said, the parties, out of concern for their honour and prestige, will put up more candidates than are warranted on the population basis in order to ensure that the right number is returned. Today everything is moulded by public opinion, and India with its declared objective of a secular democratic state cannot afford to have any complaints against it on these grounds. Therefore I feel that the minorities, especially the Muslims, do not stand to lose in any way. Our Hindu friends might think that they might lose a few seats on that ground. I feel that they are thinking on the wrong lines. It is true that a much greater responsibility is now thrown upon the majority because now it is up to them to see that the Muslims and the other minorities are returned according to their quota, but the majority must bear this responsibility. I feel that this will work so much towards harmony and good-will between the communities that this risk should be taken. For those Muslims who think that this is going to be harmful to them, I say that it is not going to be harmful because it will create better relationship between the two communities. Even if a few seats are lost to the Muslims, I feel that sacrifice is worth while if we can gain the good-will of the majority in that way.

In spite of the great and able advocacy of Mr. Lari of the principle of proportional representation, I was not impressed by it. He quoted the example of other countries. Those countries are highly advanced, politically and educationally. They are much smaller in area and in numbers, and to compare India with those countries is, to my mind, not a very feasible proposition. In India the principle of proportional representation and single transferable vote is understood by very few people. Even in the legislatures it cannot work properly because there are very few people who know how to work that out. Where there are lakhs and lakhs of voters, the principle of cumulative votes cannot work successfully because the electorate is so big and illiterate that it will be impossible to work that system out. The only solution to my mind is joint electorates without any reservation of seats. I feel that this is the only way in which we can get along together. We must once and for all give up all ideas of separatism and to my mind even this proposition of Mr. Lari keeps up that spirit alive. I feel, Sir, that there are so many evil forces at work in the world and in the world of Asia especially that these small things regarding reservations of seats will be very soon forgotten by us, because after all in the larger context of world affairs today, we have to see how India can retain its position of leadership in Asia as well as save itself from aggression and other subversive forces. We do not went our our country to go the way China has done or the way Burma is threatened. Therefore we have to develop all our resources, material and moral, in order to make India a prosperous and strong country. Therefore to my mind these are matters which should be relegated to the background. We should now harness all our energies in order to make India prosperous and strong.

Syed Muhammad Saadulla (Assam : Muslim) : Mr. President, Sir, I will be giving out no official secret when I say that this vital question whether the Muslims will be benefiting by reservation of seats or by swimming in the general stream of no reservation was discussed informally by many Muslim Members of this House in December last. We could not come to any decision at the time and a suggestion of mine that we should consult our electorates was accepted. I do not know whether my other friends consulted their electorates but, I wrote to all the Muslim members of my party in the Assam legislature and they gave me the unanimous mandate of claiming reservation for the Muslims.

Mr. B. Pocker Sahib : The honourable Member says that all the Muslim Members of this House considered the question in December last. It is not a statement of fact.

Syed Muhammad Saadulla : I cannot help Mr. Pocker Bahadur. Perhaps he was absent from Delhi at the time when we held this meeting. Sir, the sorry spectacle I have witnessed today that even on this vital matter the handful of Muslim members could not come to any decision and that they were giving contradictory opinions on the floor of this House, makes me sad. The Minorities Advisory Committee in its sitting on the 11th May came to a momentous conclusion- I am afraid according to me, on very insufficient material or data. The report which the Honourable President of the Minorities Advisory Committee has submitted to the Constituent Assembly is full of very sound maxims of politics. And I can personally testify,- as I am a member of the Minorities Committee and have attended many of its sittings, although on account of a domestic trouble, I could not attend on the 11th of this month- he has struck the right path and has often declared that as the Constituent Assembly has already decided to give reservation to different minorities in the open session of the House, it is up to the members of those minorities to declare unequivocally if they do not want that reservation. I think, Sir, this is a very correct attitude to take. I remember that on two previous occasions, the Honourable Sardar propounded this dictum. Unfortunately I find, Sir, that on the meeting of 11th May, when there were only four members from the Muslim minority present, only one supported the resolution moved by my honourable Friend, Dr. H.C. Mookherjee by speech another opposed by vote, thus canceling the support of one against the other, while one honourable member of the Cabinet-I refer to the Honourable Maulana Abul Kalam Azad took the very right stand of being neutral; and seeing that one Maulana was neutral the other Maulana, Maulana Hifzur Rahman, another member also remained neutral. Sir, if we are to push the dictum of the venerable Sardar Patel to its logical conclusion, he should have left this matter whether the Muslims wanted reservation or not to the Muslim members only. We are only a handful and as has been already suggested by Mr. Lari, he could very well have asked the few members to meet him and express our opinion. The resolution that was moved in the Advisory Committee is by a non-Muslim. I have got great regard for Dr. H.C. Mookherjee, who has very many sacrifices to his credit. He is a super-patriot and is doing wonderful work for the abolition of alcohol and drugs as he himself has told us. He is also the Honourable Vice-President of this august Assembly, but I never knew him to represent the Muslims, and, therefore, he had no right whatsoever to move in the committee that even a short reservation of ten years that was accorded by the House to Muslims should be taken away, and I am sorry to find that although in the report, Honourable Sardar Patel said :

> "At that meeting I pointed out that if the members of a particular community genuinely felt that their interests were better served by the abolition of reserved seats, their views must naturally be given due weight and the matter allowed to be reopened."

He should have taken the logical course of consulting the Muslim members only, but without waiting to do that, on the solitary support of Begum Aizaz Rasul, he has thought fit to recommend to this House that reservation of seats for the Muslims should go. Personally I am not enamoured of reservation and so far as Assam is concerned, there is no necessity for reservation, but if we take India as a whole, we cannot but concede that the Muslim Minority can legitimately claim and it deserves reservation at least for a limited period. Let us take the population percentages. Orissa has got 1.5 per cent of Muslims; C.P. has got 5 per cent; Madras 7 per cent.; Bihar 11 per cent.; the United Provinces 14 per cent.; Assam 24 per cent. It may be very well said : "What will reservation do in Orissa, where there are 1.5 percent?" For the matter of that reservation in any of the provinces will not jeopardize the majority community to any extent, for, even if all the Muslims combine, they cannot change the will, in the House, of the majority community, but the question of psychology comes in. We know an accomplished fact like the partition of Bengal was unsettled by psychology, by sentiment and persistence. Free India attained freedom very recently and it still needs consolidation. She should try to pacify the distrust and remove the suspicion of every community, great or small. As has been said by very many speakers, we stand on the mercy of the majority community. I am at one with the Honourable Sardar Patel when he said that the majority community must comport themselves in such a way that the minority may feel no necessity for constitutional safeguards. Similarly, I request every Muslim friend of mine, who is now domiciled in the Dominion of India to give his unswerving loyalty and unstinted co-operation in the interests of the nation and the country. We have been nurtured under the system of separate electorate from 1906. For good or evil, we have been accustomed to that system (*Interruption*). There is an interruption from some colleague, who himself is a product of separate electorate. That honourable interrupter forgets that Members of this House have been returned on the system of separate electorate. I was elected to this House by the Muslim members only of the Assam Legislature. Similarly, my honourable friends, my colleagues, the Prime Minister and other Ministers from Assam were all elected by the votes of the Hindu members only. If this is not separate electorate, what else is it? But as has been said, times have changed. We must start give and take. I will request my Madras friends to give up their strong plea of separate electorates. I will request on the other hand, the majority community to rise to the occasion and give reservation to Muslim minority for a limited period. The previous speaker, my honourable Friend Begum Aizaz Rasul, said that reservation will not benefit the community in any way. I quite agree with her that without the help of the majority community's votes, the Muslims will not be able to return any one in whom they have confidence; the candidates must enjoy the confidence of both the Hindus and Muslims, yet reservation will have tremendous psychological effect upon the Muslim community. They at least will feel secure that one of them is in the Legislature to speak on their behalf, to safeguard their interests. Why deny this little bit of charity to the Muslims? Rise up to the occasion and show mercy; as the great English poet said "Mercy is twice blessed."

Sir, the question of reservation is implicit in the report itself. You admit reservation for the Scheduled Castes whose number is twice that of the Muslim minority community of India. You admit at least in two provinces the right of the Indian Christians for Political safeguards or reservation. You admit it for the Anglo-Indian community. The only part where the recent report and the present resolution differs from the previous decision of the House is as regards the Muslims. I appeal to the House that they should not deny this safeguard when it is wanted by the minority concerned. it is said that many members have said that they do not want it, let us take the majority view of the Muslim Members present here. If the Majority of the members say that they do not want it, I will be the first person to bow to the opinion of the majority.

One word more, and I shall finish. We say that we want to build up a strong democratic state. Democracy presupposes that every part of the population of the Dominion must feel that they have got a direct interest in the administration of the country. Administration of the country is divided into two parts. One is the legislature which selects the Cabinet and the other is the executive which consists of the Government servants. Unless you safeguard the interests of the minorities in some way or other, whether by reservation, or as suggested by Mr. Lari by way of multiple constituencies with cumulative votes, or in any other way, democracy will dwindle into oligarchy. That will be a sad day if India is converted into an oligarchy from the start of our existence as a free country.

Honourable Members : Closure, Sir.

Mr.President : We have only twenty minutes to twelve. I have already got a large number of names on slips; but as I have said, I am going to ignore the slips and I am going to use my eyes. Even when I try to use my eyes, I find about a dozen gentlemen standing in their places. One member has expressed his grievance that he does not catch my eye. I think that grievance is shared by many other members and his slip will not in any way influence me. So, I would like to know the wish of the House if they would like to have this discussion continued till tomorrow.

Many Honourable Members : Yes.

Mr. President : It seems that there are many Members who wish the discussion to be continued. The subject is important and I am inclined to agree with them. We can now go on with the discussion. Tomorrow, I think it will not take much time.

Honourable Members : The whole of tomorrow, Sir.

Mr. President : Why is it necessary? We have got other work, and important work too, to get through. Therefore, I think of limiting this discussion to some time, so that we may take up the next motion and after that we may take up the Draft Constitution. However, we shall consider that tomorrow; today, we propose to go on further.

Rev. Jerome D'Souza (Madras : General) : Mr. President, I am sure honourable Members of this House will agree with me that we are face to face with a decision of very grave importance, the ending of an experiment fraught with the gravest consequences to our country.

Sir, in Mr. Lari's very vigorous exposition of his case, one could understand one point clearly and that was that in working out democracy, some method should be found by which the minorities should not be ignored or swamped. It may be that this preoccupation was in the minds of those who introduced the principle of communal representation in our country. It is not for us to enter into their mind and pass judgment on them; but it is absolutely clear now that in trying to save democracy from some of those pit-falls, a very grave and a very serious deviation in political matters was made when political privileges were attached to minorities based on religious distinctions. The consequences of this are written large in the history of India during the last few years. It has ended, in the opinion of most observers in this country, in the division of our land. So, the country as a whole now realise that whatever be the immediate inconveniences or the number of dissentient voices that there may be, it is necessary to turn our path resolutely away from this deviation and set ourselves along lines which will bring no longer into the political life of our country distinctions based merely on religion.

Sir, the nationalists in India have always opposed the principle of separate electorates and I believe it was only in a spirit of compromise that they agreed at a certain stage to allow at least reservation with joint electorates. I am sure, Sir, that if the conditions at the time when this proviso was accepted were the same as they are now, there would have been far greater hesitation and much less unanimity in keeping this little vestige of the old arrangement. But, as many speakers before me have clearly brought out, the evolution of events and opinion in our country makes it necessary that this vestige too should be given up. One aspect of that evolution has been indicated by Dr. Mookherjee and that was the completeness, the generosity, the thoroughness with which individual rights have been safeguarded in the section of our Constitution devoted to Fundamental Rights, the way in which these Fundamental Rights are placed under the power and jurisdiction of the Supreme Judicature and the spirit in which those provisions were passed by this House. That, and the multiple signs of good-will on the part of the majority community which we have introduced have reassured minorities to such an extent that today very substantial majorities are secured for the proposition placed before us by the Honourable Sardar Patel. I do not deny that there are dissentient voices. But we have been in touch with our people up and down the country and I think I can say with certainty that as far as the Christian community is concerned, in the light of letters received and the public expression of opinion which we have heard, India as a whole is behind Dr. Mookherjee in his decision that there should be no reservation of seats.

Sir, I will not enter now into considerations of the evolution of a healthy nationalism in India in support of this proposition. Those are obvious grounds. The tragic developments in our country make it necessary that we should very resolutely turn from the path of communal separatisms. But, even from the practical point of view, there was something illogical and contradictory in this last vestige which we, at an earlier stage, sought to perpetuate. We were asked to secure representation for certain religious minorities and interests by reservation of seats for members professing that faith, but the representatives were to be elected in constituencies where probably the majority of the electorate would not belong to that faith. Now, Sir, either you accept the principle of representation for religious interests of minorities and ask those men to chose their own representatives or you give up the entire principle of representation on the basis of religion and not put us in the equivocal position of sometimes getting the professed representatives of a particular interest chosen by members who do not belong to that interest. That is the contradiction, that is the illogicality at the heart of this reservation which we wish to remove, and which the House is in a position to declare must disappear. This being so, it remains for me to make once again a most earnest appeal to this House to consider henceforth all kinds of special safeguards special reservation, special assistance to be given to backward groups, to be no longer on the basis of religion, but on the basis of individual merit, on consideration of individual deficiencies and need, bearing, no doubt in mind the social background, but essentially on the merits of the individual case. A man is to be assisted because he is poor, because his birth and upbringing have not given him the opportunity to make progress, socially, politically and educationally. Therefore, it should not matter whether he be a Christian, or a Muslim or a Hindu or a Brahmin or non Brahmin, or a Scheduled Caste member. Government like a truly democratic government with a paternal attitude towards all backward classes, will come to his help on the basis of his individual needs, and not on the basis of a communal or religious classification. Along this line, we have every hope that the democracy of new India will evolve in the way that it should evolve; and evolving this, it will give to others who have perhaps not succeeded well in applying the principles of democracy, an example which will be of profit not only to ourselves, but for social and international peace throughout the world.

Sir, I know that in thus giving up what seems to be last vestige of a safeguard on which the Christians and other minorities had counted-safeguards which were promised and which were considered to be certain to fall to their share until recently, I say, in giving up this, it is not we who are taking a risk. I venture to say that the national leaders and the majority community are undertaking a responsibility the gravity of which I hope they fully realise. In very grave and solemn words Sardar Patel has emphasised the responsibility of the majority community. From this day, it is up to them to see that men of all communities, provided they have personal worth, provided they are socially and politically progressive and acceptable to their association or to their organisation, receive a fair chance in the selection of candidates, and are given a fair deal in the course of election. This responsibility now, therefore of getting elected, if I may say so, passes away from the shoulders of the minority and devolves upon the heads and shoulders of the majority. They are willing to accept it, if I can judge from the attitude of this House. We are willing and glad to accept their assurance, that to the best of their ability, they will stand faithful to the spirit of this pledge, and to the spirit of this compromise, so that we and they may join together today in celebrating the end of a political experiment which has meant so much unhappiness for our people and which is, at last, being ended by the free and willing vote of the elected representatives of Indian democracy. *(Cheers).*

I shall not say anything more than this. I hope and pray that the spirit which has inspired the utterance of Sardar Patel and the reactions of this House will continue to animate the political leaders and the majority organisations and the public of our country; and that along the lines of secular democracy, wisely and firmly traced out by our great leaders, this country, without distinction of caste and creed, will bring to the service of the motherland all the treasures of character and strength which each community possesses by virtue of its traditions. In this way Muslims and Christians, Hindus and Parsis and Anglo-Indians, will stand shoulder to shoulder and work out the prosperity and happiness of all our people, and lead the new Democracy of India to the glorious triumphs which Providence assuredly has in store for her.

Shri Jagat Narain Lal (Bihar : General) : Mr. President, Sir, I have come to support the motion and to oppose the amendments moved by Mr. Ismail and Mr. Lari. In fact, after the speeches of so many of the Muslims friends who have themselves opposed the amendments, and of my predecessor who has just spoken, it was not very necessary that I should come forward to oppose it, but I have only come to express one sentiment and that is, that after the bitter experience of the partition of India, there should be left any member in this House or anyone in this country who should think of separate electorates and should come forward and advocate them. It is a feeling of pain and of surprise which I could not help expressing here. After all the assurances of the past and of what is being done in the neighbouring country, that this State is going to be a Secular State, and will guarantee freedom of faith, worship and of thought, and that it is not going to recognise any religious distinctions for the purpose of conferring political rights, it does not seem proper, and it does not seem to be good for any community, for any minority community to come forward and advocate any sort of reservation whatever.

Mr. Lari came forward and talked of cumulative votes. He talked of the Third Series of Constitutional Precedents. But he could have seen from the same Constitutional Presidents-time is short, otherwise I would have read out the portions-how the U.S.S.R. by article 123, Switzerland by article 49, Germany by article 136 Yugoslavia, Finland and so on, have all declared that religion or religious distinction will have nothing to do with political rights whatsoever. Sir, the bitter fruits of separate electorates ever since they were advocated in 1906, all through the subsequent years, during the Round Table Conference, and now ending with the partition are all too well known to be recounted. I therefore humbly beg to oppose the amendments and also to say that after the assurances that have been given, that there is to be a secular State, there should not be any advocacy for reservation whatsoever. So far as the Scheduled Castes are concerned, repeated references have been made and specially by one of the previous speakers who asked, "When they have got it, why not we?" But let me point out once again that the Scheduled Castes have been given reservation not on grounds of religion at all; they from part and parcel of the Hindu Community, and they have given reservation apparently and clearly on grounds of their economic, social educational backwardness.

Therefore, that analogy does not apply here. With these words I beg to oppose the amendments and support the motion.

Mr. President : It is twelve o'clock. The House will adjourn till Eight o'clock tomorrow morning.

The Constituent Assembly then adjourned till Eight of the Clock on Thursday the 26th May, 1949.

APPENDIX A.

CONSTITUENT ASSEMBLY OF INDIA

COUNCIL HOUSE,

New Delhi, the 11th May, 1949.

From

The Hon'ble Sardar VALLABHBHAI PATEL

Chairman, Advisory Committee on Minorities,

Fundamental Rights, etc.

To

The PRESIDENT,

Constituent Assembly of India.

DEAR SIR,

The advisory Committee on Minorities, Fundamental Rights, etc., in their report dated the 8th of August, 1947, had recommended certain political safeguards for Minorities. These were accepted by the Constituent Assembly during the August, 1947 session, and have been embodied in Part XIV of the Draft Constitution. According to these recommendations, all elections to the Central and Provincial Legislatures were to be held on the basis of joint electorates with reservation of seats for certain specified minorities on their population basis. The reservation was to be for a period of ten years at the end of which the position was to be reconsidered. There was to be no weightage, but members of the minority communities for whom seats were reserved were to have the right to contest general seats. The communities for whom seats were to be reserved were Muslims, Scheduled Castes and Indian Christians, the latter only so far as the Central Legislature and the Provincial Legislatures of Madras and Bombay are concerned.

2. I would recall to you mind at this stage that the Committee had observed in their report that minorities were "by no means unanimous as to the necessity, in their own interests of statutory reservation of seats in the legislatures". Nevertheless, the Committee has recommended reservation of seats "in order the minorities may not feel apprehensive about the effect of a system of unrestricted joint electorates on the quantum of their representation in the legislature."

3. When the above recommendations were being considered by the Assembly, events were taking place, following the partition of the country, which made it impossible to consider the question of minority rights in East Punjab, particularly in so far as the Sikhs were concerned. This question of East Punjab was accordingly postponed; and also the question whether the right to contest unreserved seats should be given to minorities in West Bengal.

4. The Advisory Committee in their meeting held on the 24th February, 1948, appointed a special sub-Committee consisting of myself as Chairman and the--

Hon'ble Pandit Jawaharlal Nehru,

Hon'ble Dr. Rajendra Prasad,

Shri K.M. Munshi, and the

Hon'ble Dr. B.R. Ambedkar

as members to report on these minority problems affecting East Punjab and West Bengal. This special sub-committee met on the 23rd November 1948 and presented a report to the advisory Committee. A copy of the report is attached as an Appendix.*

5. This report came up for consideration before the Advisory Committee at their meeting held on the 30th December, 1948. Some members of the Committee felt that, conditions having vastly changed since the Advisory Committee made their recommendations in 1947, it was no longer appropriate in the context of free India and of present conditions that there should be reservation of seats for Muslims, Christian, Sikhs or any other religious minority. Although the abolition of separate electorates had removed much of the poison from the body politic, the reservation of seats for religious communities, it was felt, did lead to a certain degree of separatism and was to that extent contrary to the conception of secular democratic State. Dr. H.C. Mookerjee, Mr. Tajmul Husain, Shri Lakshmi Kanta Maitra and certain other members gave notices of resolutions seeking to recommend to the Constituent Assembly that there should be no reservation of seats in the Legislatures for any community in India. Shri V.I. Muniswami Pillai gave notice of an amendment to the said resolutions seeking to exclude the Scheduled Castes from the purview of the said resolutions. At that meeting I pointed out that if the members of a particular community genuinely felt that their interests were better served by the abolition of reserved seats, their views must naturally be given due weight and the matter allowed to be reopened. At the same time I was anxious that the representatives of the minorities on the Committee should have adequate time both to gauge public opinion among their people and to reflect fully on the amendments that had been proposed, so that a change, if effected, would be one sought voluntarily by the minorities themselves and not imposed on them by the majority community. Accordingly the Committee adjourned without taking any decision and we met again on the 11th of May, 1949. At this meeting, the resolution of Dr. H.C. Mookherjee found wholehearted, support of an over-whelming majority of the members of the Advisory Committee. it was recognised, however, that the peculiar position of the Scheduled Castes would make it necessary to give them reservation for a period of ten years as originally decided. Accordingly the Advisory Committee, with one dissenting voice, passed the said resolution as amended by Shri V.I.Muniswami Pillai in the following form :-

> "That the system of reservation for minorities other than Scheduled Castes in Legislatures be abolished."

It was further decided that nothing contained in the said resolution shall affect the recommendations made by the North East Frontier (Assam) Tribal and Excluded Areas Sub-Committee and Excluded and partially Excluded Areas (other than Assam Sub-committee with regard to representation of tribals in the Legislatures. The Committee also decided that the resolution should not affect the special provision made for the representation of Anglo-Indians in the legislature.

6. The Committee also accepted the unanimous proposal made by the Sikh representatives that the following classes in East Punjab, namely, Mazhabis, Ramdasis, Kabirpanthis and Sikligars, who suffer the same disabilities as other members of the Scheduled Castes, should be included in the list of Scheduled Castes so that would get the benefit of representation given to the Scheduled Castes. Subject to this change and to the above mentioned resolution, the report of the special sub-committee appointed by the Advisory Committee was approved.

---

* Appendix B

7. As a result of the above decisions, the resolutions seeking to do away with rights of minorities to contest general seats in addition to reserved seats in Assam and West Bengal, of which notices had been given by some members of the Committee were withdrawn.

8. The Committee are fully alive to the fact that decisions once reached should not be changed lightly. Conditions have, however, vastly changed since August 1947 and the Committee are satisfied that the minorities themselves feel that in their own interests, no less than in the interests of the country as a whole, the statutory reservation of seats for religious minorities should be a whole, the statutory reservation of seats for religious minorities should be abolished. The Committee accordingly recommend that the provisions of Part XIV of the Draft Constitution should be amended in the light of the decisions now taken.

Yours truly,

VALLABHBHAI PATEL,

Chairman.

APPENDIX B

Report of the Special Sub-Committee referred to in paragraph 4 of the Advisory Committee's Report.

At a meeting held on the 24th February 1948 the Advisory Committee on minorities, Fundamental Rights etc. appointed a Sub-Committee consisting of Sardar Vallabhbhai Patel, as Chairman, and Pandit Jawaharlal Nehru, Dr. Rajendra Prasad, Dr. Ambedkar and Mr. Munshi as Members, to report on certain minority problems affecting East Punjab and West Bengal. We met on the 23rd November and herewith present our report. We much regret that on account of his illness Dr. Rajendra Prasad was unable to be present during our deliberations and to give us the benefit of his counsel, but we understand from him that he is in complete accord with the conclusions which we have reached.

2. The Advisory Committee will recall that at a session held in August 1947 the Constituent Assembly considered the problem of what may broadly be described as political safeguards for minorities and came to the following conclusion :-

(i) That all elections to the Central and Provincial Legislatures will be held on the basis of joint electorates with reservation with reservation of seats for certain specified minorities on their population ratio. This reservation shall be for a period of ten years at the end of which the position is to be reconsidered. There shall be no weightage. But members of the minority communities for whom seats are reserved shall have the right to contest general seats.

(ii) That there shall be no statutory reservation of seats for the minorities in

Cabinets, but a convention on the lines of paragraph VII of the Instrument of Instructions issued to Governors under the Government of India Act, 1935, shall be provided in a Schedule to the Constitution;

(iii) That in the All-India and Provincial Services the claims of minorities shall be kept in view in making appointments to these services consistently with consideration of efficiency of administration; and

(iv) That to ensure protection of minority rights an Officer shall be appointed by the President at the Centre and the Governors in the Provinces to report to the Union and Provincial Legislatures respectively about the working of the safeguards.

These decisions were reached at a time when the effect of the Radcliffe Award on the population structure of the East Punjab and the West Bengal Provinces was not accurately known, and a tragic and immense migration of populations was taking place across the frontiers of the East and West Punjab. The Assembly accordingly decided to postpone consideration of the whole question of minority rights in the political field to be provided in the Constitution for Sikhs and other minorities in the East Punjab. They also agreed, at the suggestion of the representatives of West Bengal, to postpone consideration of the question as to whether minorities in that Province should have the right to contest general seats in addition to having seats reserved for them according to population strength.

3. The most important problem referred to us is the problem of the Sikhs. We have examined carefully the demands put forward on their behalf by different organisations and individuals; these vary from suggestions that no special constitutional safeguards are necessary to the very forthright demands of the Shromani Akali Dal. In main these demands are-

(i) that the Sikhs should have the right to elect representatives to the Legislature through a purely communal electorate;

(ii) that in the Provincial Legislature of East Punjab 50 percent of the seats and the Central Legislature 5 per cent should be reserved for the Sikhs ;

(iii) that seats should be reserved for them in the U.P. and Delhi;

(iv) that Scheduled Caste Sikhs should have the same privilege as other Scheduled Castes; and

(v) that there should be a statutory reservation of a certain proportion of places in the Army.

It will be noticed that these suggestion are a fundamental departure from the decisions taken by the Assembly taken by the Assembly in respect of every other community including the Scheduled Castes.

4. It seems scarcely necessary for us to say that in dealing with this problem we are acutely aware of the tragic sufferings which the Sikh community suffered both before and after the partition of Punjab. The holocaust in West Punjab has deprived them of many valuable lives and great material wealth; moreover, while in these,

respects, the Hindus suffered equally with the Sikhs, the special tragedy of the Sikhs was that they had also to abandon many places particularly sacred to their religion. But while we fully understand the emotional and physical strain to which they have been subjected, we are clear in our minds that the question remitted to us for consideration must be settled on different grounds.

5. The Sikhs are a minority from the point of view of numbers, but they do not suffer from any of the other handicaps which affect the other communities dealt with by the Advisory Committee. They are a highly educated and virile community with great gifts not merely as soldiers but as farmers and artisans, and with a most remarkable spirit of enterprise. There is, in fact, no field of activity in which they need fear comparison with any other community in the country, and we have every confidence that , with the talents they possess, they will soon reach a level of prosperity which will be the envy of other communities. Moreover, while, in the undivided Punjab, they were only 14 per cent of the population, they form nearly 30 per cent of the population in East Punjab, a strength which gives them, in the public life of the Province, a position of considerable authority.

6. We have come to the conclusion that we cannot recommend either communal electorates or weightage in the Legislature which are the main demands of the Shromani Akali Dal. In the first place they are not necessary for the well-being of the Sikhs themselves for the reasons we have stated above. Indeed it seems to us that under a system of joint electorates with reserved seats and with the right to contest additional seats the Sikhs are likely to get greater representation than is strictly warranted on the population basis where as on a system of communal electorates, their representation will be limited. The only way in which this representation could be increased beyond the population basis is to give weightage which means trenching compulsorily on what other communities legitimately regard as their right. In the second place, communal electorates and weightage are definitely retrograde from the point of view of the general interests of the country. The demands of the Dal are, in principle, precisely those which the Muslim League demanded for the Muslims and which led to the tragic consequences with which the country is all too familiar. We feel convinced that if we are to build a strong State which will hold together in times of peace and war, of prosperity and adversity, the Constitution should contain no provision which would have the effect of isolating any section of the people from the main stream of public life. In this connection we would recall the following resolution passed by the Constituent Assembly at its meeting on the 3rd April, 1948 :-

> "Whereas it is essential for the proper functioning of democracy and the growth of national unity and solidarity that communalism should be eliminated from Indian life, this Assembly is of opinion that no communal organisation which by its constitution or by the exercise of discretionary power vested in any of its officers or organs, admits to or excludes from its membership persons on grounds of religion, race and caste, or any of them, should be permitted to engage in any activities other than those essential for the bona fide religious, cultural, social and educational needs of the community, and that all steps, legislative and administrative, necessary to prevent such activities should be taken."

It is not always easy to define communalism, but there could be little doubt that separate electorates are both a cause and an aggravated manifestation of this spirit. The demands of the Dal are thus wholly at variance with the considered judgment of the Assembly.

If the Constitution guaranteed special safeguards such as communal electorates, and weightage to the Sikhs we fear that it would impossible to justify denying the same privilege to certain other communities. The detailed arguments may vary but the main approach will be similar. We would mention in this connection only the Scheduled Castes whose standards of education and material well-being are, even on Indian standards, extremely low and who, moreover, suffer from grievous social disabilities. They have contented themselves with the Provisions approved by the Assembly and referred to in paragraph 2 above. We cannot conceive of any valid argument which would justify the inclusion in the Constitution of safeguards for the Sikhs which are not available to the Scheduled Castes. The case of the scheduled Caste is merely illustrative. We feel convinced that to accede to the demands of the Shromani Akali Dal will lead, by an inevitable extension off similar privileges to other communities, to a disrupting of the whole conception of the Secular State which is to be the basis of our new Constitution.

7. We recommend accordingly that no special provision should be provided for the Sikhs other than the general provisions already by the Assembly for certain minorities and summarized in paragraph 2.

8. The only reason why the Assembly postponed consideration of the question of giving to minorities in West Bengal the right to contest unreserved seats was that it was pointed out by the West Bengal representatives that the population structure of the Province was not known at that time. Although, on account of the recent exodus from East Bengal, any accurate estimate of the numbers of different communities in West Bengal is a matter of some conjecture, the broad picture is known clearly enough and we do not think there are any reasons why the arrangements already approved by the Assembly for other Provinces should not be applied to West Bengal.

VALLABHBHAI PATEL

Friday, the 20th May 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Maulana Hasrat Mohani (United Provinces: Muslim): Mr. President, Sir, I beg to bring to your notice a very serious matter about the suppression of a major portion of the proceedings of this House as published in the Constituent Assembly Debates of the 5th January 1949 (page 1267). The proceedings say that the Honourable Sardar Vallabhbhai Patel moved that the Bill to amend the Government of India Act be taken in to consideration. As a matter of fact, he moved for level to introduce the Bill I wanted to oppose that motion and urged that I had a right to do so at that stage. But the Vice-President did not allow me to speak. He declared that if I wanted to say anything he would put it o the vote; it was rejected. Non of these in the printed Report. Who is responsible for suppressing these things? I want that all these things should be placed in the printed processing, so that people may know that the Vice-President did not wish to hear anybody whom he did not like.

This is a very serious matter and I would invited your attention to it.

Mr. President: I understand the honourable Member's point to be that certain things happened in the last Assembly which do not appear in the printed proceedings, and his complaint is that a correct report should have been given of all that happened there. I am not aware off what happened at that stage and I cannot say anything without looking in to the matter. If the honourable Member has got any complaint he may kindly give it to me in writing so that I may have it investigated.

DRAFT CONSTITUTION-(Contd.)

*

Article 86

Mr. President: Article 86.

(Amendment Nos. 1632 and 1633 were not moved.)

Mr. Z.H. Lari (United Provinces: Muslim): Sir, I moved:

"That in article 86 the words 'and until provision in that respect is so made allowance at such rates and upon such conditions as were immediately before the date of commencement of this Constitution applicable in the cause of members of the legislature of the Dominion of India' be deleted and the following new proviso be inserted:-

'Provided that salary payable to members of the Parliament shall not be less than one-fourth or more than one-third payable to a Cabinet Minister:

And provided further that the Leader of the Opposition shall be entitled to get salary payable to a Minister without Cabinet rank.' "

Sir this amendment consists of three parts, but it is the third part which is the soul of the amendment and I will take it first. It is that a salary be fixed for the Leader of the Opposition. The House knows well, and it may take it from me as gospel truth, that I have not in me the germs of a future Leader of the Opposition. But I move it for four weighty reasons. Firstly, I feel that it is necessary to promote parliamentary opposition which along with the rule of law and a strong press constitutes the bulwark of democracy. Secondly, I want to give statutory recognition to the institution of parliamentary opposition, which unfortunately has come to be regarded in certain circles as tantamount to sedition, and thereby dispel a misconception. Thirdly, I want to create conditions in which a dead chamber may revive into a lively legislature. And lastly, I want to complete the edifice of parliamentary democracy which is being transplanted from the surroundings of England to Indian environments. With your permission, Sir, I will elucidate these four points I have mentioned.

In spite of strenuous efforts made by some Members, this House rejected the conception of Presidential Cabinet that prevails in America. Even the solution of a coalition cabinet that is in vogue in Switzerland did not find favour with the House which has approved the system of party government as obtains in England. This Party government means that the powers of the state for the time being are

vested in a party and through that party in a number of individuals. Every one knows that power corrupts and absolute power corrupts absolutely. It is also a truism to say that every party that comes into power tries to make its hold permanent. The only check on degeneration of party government in to a despotism is the existence of another party which keeps a strict eye on the doings of the cabinet and the party and thereby prevents degenerations in to a party government into a dictatorship. Besides, there cannot be a proper functioning of any party government unless there is constant criticism of the doings of that party. There is always discussion and at least correction of various policies that are pursed by that party. Apart from that I feel that in the absence of an alternative party the very party which is in power begins to disrupt and cliques grow thereunder. If you look, not beyond the seas, but within all the party governments as they obtained in India during the last ten years, in all those legislatures where there was no effective opposition, not only have Cabinet members begun to resent criticism but in the parties themselves there have grown factions which have led to the downfall of one ministry after another. There have been challenges, counter-challenges, and there have been attacks even on the ground of misappropriation of public money and the like. The reasons is that the party government is not brought face to face with a strong opposition to make them feel that they have to face public opinion. And who is to create public opinion? Who is to make the public aware and take interest in the doings of Government, unless there is oppositions in House to bring all the actions of Government in to the lime-light? Everyone knows that in these days the functions of Government have grown and any party which wants to be wide-awake and effective must be a whole time opposition. You can not have a whole-time opposition unless there is a leader who devotes all his time and energy to fostering responsible opposition throughout the country. It is not necessary only to have an opposition in the House, but that opposition must be broad-based; it must have public opinion throughout the country to back it. I therefore feel that you can not have a vigorous and wide-awake opposition working in the legislature and outside unless it has a leader who is a whole-time worker and it paid, as is done in England and other countries.

You know that so long as the conservatives or the other rich people were one party or the other in Opposition in England, there was no necessity of paying the Leader of the Opposition. But, the moment Labour formed the Opposition in England- I dare say that in India is it only either the Socialist or the Communists that can form the opposition-they fixed salaries for the Leader. In India, as I said, you can have Opposition of only middle class people. You can not expect that class to throw up a man who will devote all his time and all his energy to create a party unless he paid. Therefore I feel that in the interest of creating and effective opposition as soon as possible it is necessary that we would have a provision like that which I have placed before you.

But, besides this, as I suggested at the outset, during the last ten years there has not been any effective Opposition at all either in the Dominion Parliament or in the Provincial Assemblies. The result is that there have been utterances from certain responsible persons which have gone to suggest as if the party and the State are same. I know of them, but I do not want to place before the House those utterances and create misunderstandings. But everybody must be aware that there have been utterances by responsible Prime Ministers, not of the Dominion, but of the Provinces, which have given rise to misgivings as if to criticise the Government in power is something like sedition. But the moment you accept the amendment I have placed before you, you give statutory recognition to the existence of the Opposition, this misconception that has grown

in the country, that if you criticise the Government it means you want to create disaffection, will disappear.

There is second reason why I want that this provision should find a place in our Constitution and it is that at the very outset of parliamentary democracy, we must not create a condition in the country wherein one-party Government becomes permanent and a party thinks that it has come into power and it is has to remain in power for all time to come.

It is necessary to create a psychological change. I can not point to so many utterance which have made the public at large feel that the Party and the State are convertible terms, that if you criticise the Party you necessarily try to weaken the foundations of the State. In England that is why the Opposition is called His Majesty's Opposition. Those words are enough to create the impression in the minds of the electorate that the Leader of the Opposition has also a role to play and function to discharge and that therefore when he does anything in his capacity as Leader of the Opposition he is doing nothing but his duty. The same impression I want to create here by having this amendment inserted. IF this is inserted the public at large and everybody will feel that the Constitution itself recognises the existence of the Leader of the Opposition and that when he criticises or attacks the Government and carries on agitation in the countryside and rouses public opinion against the party's misdeeds, really he doing a duty assigned to him by the Constitution. This is my second reason.

My third reason, as I said, is that if there is no effective Opposition we will have dull chambers Opposition we will have dull Chamber; not only dull Chamber but, as is said in some papers, the legislature becomes 'docile' meek and submissive'. Does that not create a bad impression in the public mind that the legislature is a mere sham, that is does not do any work, that members get up to criticise simply for the sake of appearing in print, that the amendments are all withdrawn and that whatever comes from the Treasury Benches is accepted without the change of a comma or a full-stop. It is not an interesting, but a dull Chamber. The result is that the public loses interest in all parliamentary work. Democracy cannot function unless the public evinces interest therein. What is the way to create interest in the public? How is it possible to make the public feel that its destiny is being moulded in the legislature by means of frank and open criticism and after due deliberation? Who is to create that interest? I find that in all the legislatures in the Provinces there is no Opposition has been dwindling. In our own Dominion legislature there is no Opposition whatsoever and the result has been only tall talk somewhere at some places by certain individuals. There has been no well-informed criticism. Neither has there been any effective Opposition.

Therefore the third reasons which I placed before you for consideration is that if you want to avoid becoming a dead Chamber, if you want to avoid loss of all interest by the public in parliamentary activities, and ultimately in democracy itself, it is necessary to have an institution like the one which is there in other countries.

At every stage you say you prefer British Institutions. You say at every stage that everything that is good is to be found in British institutions, in party Government. If that is so,-and I feel there is a great deal of trust in that-then it is necessary democracy so that it may not fail in India. The moment the British people felt that they must pay the Leader of the Opposition so as to keep the Opposition going, they accepted this principle is South Africa. For all these reasons I feel that this amendment deserves considerations at your hands.

I have heard of two criticisms: one is, where is the Opposition party-where is the Leader of the Opposition, whom you are going to pay? My submission is this: you have to create conditions. The dangerous part in India is that we have begun this democracy by having one party and one party alone and that party is determined to keep other out. There is the case in the United Provinces where a man of the stature of Acharya Narendra Deo was not allowed to come in. Therefore I say it is your duty as Constitution-making Body to create conditions in which a party may grow into an Opposition. It you say 'let the party grow and then I will fix the salary," it means that you do not want an Opposition. You have to create conditions so that the public may feel that the Opposition has also a duty and is of service to the country. Unless that feeling is created, you cannot have a proper Opposition.

The second criticism is that, what will happen if there is more than one party, what will happen if there are three parties? Whom are you going to pay? It is a curious criticism. Everybody knows that in parliamentary practice the biggest party constitutes the Opposition. All other parties, if there are more than two, are mere parties. The privilege of the Opposition goes to the largest party after the party occupying the Treasury Benches which is the biggest party. Therefore these two criticisms are absolutely unfounded.

As a said before, this amendment is the soul of all these amendments. But there are two other parts which I will take up now. Article 86 says that the members of Parliament shall receive such salary as may be determined by Parliament from time to time. It goes on to say that until other provisions are made, they will be paid according to the rules previously prevailing. Sir, you are framing a Constitution. Why encumber it with provisions like this? It is not possible for Parliament, the moment it meets, to pass a Salary Bill? When in 1936 responsible legislatures came into existence was there any difficulty in enacting an Act for that purpose? When the Constituent Assembly came into existence was it difficult to decide what will by our remuneration?

The second thing is that in many new Constitutions the pay is laid down in the Constitution itself. It is not desirable to leave it to the Parliament to determine the pay from time to time, but if you are doing this, then you must fix the proportion between the member's salary and the pay of the Ministers. Why? For two reasons. In India unfortunately the gap between the classes is very wide. On the one side you fined multi-millionaires, on the other side you fined the poorest of the poor. The same disparity should not be there between the pay of the Members of the legislature and of the Ministers. I do not want that there should be a great disparity between the pay of the Members of the legislatures and of the Ministers. I do not want that there should be a great disparity between that salary of a Members of Parliament and the Ministers, so that the members of Parliament may feel that he will always have to please the honourable Ministers to get some more remuneration. There must be some relation between the pay of the members of Parliament and the Ministers' salary for another reasons. Once you have determined the pay of the Members of Parliament in relation to the pay of the Ministers, naturally you have to be careful what salary you fix for the Ministers so that the burden on the exchequer may not be very heavy. Therefore this serves two purpose. Firstly, it serves as a check on the great disparity between the salaries of the Members of Parliament and of the Ministers. No doubt it is true that the Minister work for twelve months. Even if you take that into consideration, the proportion comes to the same proportion that I have indicated. It is this proportion which is to be found in Australia and New Zealand. Therefore, what I want is this, that there must be some relation between the pay of the Members of Parliament and Ministers so that no inferiority complex may develop. The first two amendments are of very great significance, but you may or may not accept them. But the third raises a point of vital importance. I hope that the House will, irrespective of party decisions, take into consideration the reasons which I have

placed before the House and consider hoe far it is desirable that they should recognise the principle of party opposition. It is very easy to say that we accept the principle, and say that when the Parliament comes into being, it will fix the salaries of members of Parliament. When you have such a voluminous Constitution running into hundreds of pages and sections, when you are not leaving even minor things to be determined afterwards, why leave such a provision to be determined afterwards, a provision which is really of vital importance, in the interests of democracy and in the interests of the proper functioning of party governments in this country? In India during the last several centuries we had despotism. We are just beginning with democracy. It is necessary that we must create conditions in which democracy may not prove a failure. We must take steps to ensure its success and one of the essential things is that we must ensure that when the new legislatures meet after the enactment of the present Constitution there is a full-fledged and vigorous opposition to make party governments a success.

(Amendment No. 1635 was not moved.)

The Honourable Shri K. Santhanam (Madras: General): Sir, I beg to move:

"That in article 86, for the words "Legislature of the Dominion of India' the words 'Constituent Assembly' be substituted."

Sir, the present words are inappropriate. There is no body existing today which may be called the Legislature of the Dominion of India. Under the adapted Government of India Act as well as under the Parliament Act, the Constituent Assembly functions as the legislature of the Dominion of India for certain purposes. The only body that exits today is the Constituent Assembly, and the new Members of the Parliament of India would prefer to derive their succession from the Constituent Assembly rather than from the nonexisting Legislature of the Dominion of India. At one time there was some difference between the allowances between the members of the Constituent Assembly sitting as a Constitution-making body and the members of the Constituent Assembly in the legislative section, but now all have been brought on the same scale. Therefore there is no practical difficulty whatsoever. I commend the amendment for the acceptance of the House.

Shri L. Krishnaswami Bharathi (Madras: General): Sir, in Mr. Santhanam's amendment the wording should be

"Constituent Assembly of India" and not merely the "Constituent Assembly".

The Honourable Shri K. Santhanam: I have no objection.

Mr. President: Amendment No. 1637 is the same as 1636. All amendment have been moved, and now the amendment and the original proposition are open for discussion.

Shri T.T. Krishnamachari (Madras: General): Mr. President, Sir, the object of my standing before the House is to say a few words on the amendment of Mr. Lari. Mr. Lari's complaint about the omission of any mention of the salaries of members in the constitution and also his suggestion that the Leader of the Opposition should be paid a salary are suggestion which are intrinsically worth considering, but I do not think it is necessary that we should enumerate in the Constitution details such as these so long as there is no embargo in the Constitution on the payment of a salary to the Leader of the Opposition, and salaries to members of Parliament. At the same time I am afraid Mr. Lari used the occasion for riding a hobby horse by projecting into the discussion those matters which perhaps concern him immediately, viz., those relating to the United Provinces politics. I wonder whether in considering the Draft Constitution it is possible for us to devise ways and means of creating an opposition such as he wants by, putting the provision in the Constitution which Mr. Lari desires. After all we are not placing any embargo on any opposition party coming into power. I am afraid, Sir, that for a long time I have been hearing, almost from 1937, ever since the 1935 Act came into operation in the provinces, of the cry made by people who unfortunately are without any chance of coming into office or power that there is no opposition, that the Congress Party is doing is best to see that an opposition does not arise, and that where an opposition exists it does not function. In fact I wonder how Congress Party or any other party that might take its place in the future can create an opposition as such. How can an opposition be created by paying salaries to the members of the opposition party or the Leader of the Opposition? Are you going to insert in the Constitution a Provision by means of which we set apart a particular amount in the budget for the purpose of creating an opposition? I would like members here who be not satisfied with the type of government obtaining in this country to tell us exactly what they want. Do they want that in the Central budget a sum should be set apart in order to create an Opposition? Sir, a cry like, this in a House which is functioning in a business-like manner is something of a diversion and my honourable Friend Mr. Lari has provided such a diversion so that the proceeding of the House need not be considered very dull by people who read the papers. So far Mr. Lari has done a service by his speech but I think somebody has to say that this is hardly the time and the place to make complaints the existence of which cannot be helped by the party who is in power. Nor is it the place to provide anything statutorily because I do not think that an Opposition can be created? Will a Leader of the Opposition who is paid a salary be able to organise a party? Even granting that the Leader of the Opposition is paid the same salary, allowances and emoluments as the Prime Minister of India, does that mean that he would be able to create a party? I think the very eloquent arguments put forward by Mr. Lari are likely to mislead the House into believing that there is something lacking in the state of affairs at present, conditions which are not existing by means of accepting Mr. Lari's amendment, an amendment which ordinarily could have no place in the Constitution.

Reference was made by the honourable Member to the Opposition in the House of Commons, and in regard to British practice. Yes, I have followed the progress of payment of salaries to Members in the British Parliament and also the creation of a status to the Leader of the Opposition and the payment of the salary to the Leader of the Opposition. All these have developed over several decades. I do not think there is anything to prevent the Indian Parliament of the future to provide for a salary for the Leader of the Opposition if it so chooses and if it is thought desirable and wise. I do not see the need to put in a provision like this in the Constitution here in respect of an article which merely is a permissive article; it merely gives permission for Parliament to legislate in future in regard to salaries and allowances of members and, between the time that the Parliament does legislate and the time that it meets, to allow the status quo to continue.

He also objected to the provision for status quo to be prolonged. I do not see what sense there is in objecting to a thing which is very reasonable. After all the Parliament of the future will have such a lot of work to do in the initial months of its existence and the payment of salaries to members or allowances to members will be, in comparison to the other important matters that it will have to face, comparatively unimportance and in fact, I would rather that the House had enable Mr. Ananthasayanam Ayyangar to moved his amendment which gives power to the President enacts a legislation, which would have made the status quo, the position as it is in the Government of India Act as adapted to remain in operation. Sir, I think the charge that Mr. Lari made that a provision for continuance of the status quo is wrong is absolutely baseless, because it would not be possible for Parliament of the future to attend to all and sundry and the hundred and one matters immediately and it might probably take two or three years before it might settle down to do something on

the lines that Mr. Lari wants. I have no doubt the future Parliament and those who are going to be in charge the creation of the destinies of this country would bear in mind the suggestion of Mr. Lari to pay a salary to the Leader of the Opposition, if that would encourage the creation of an Opposition, of a healthy Opposition Party. By all means let it, but to put a provision of the nature that he has suggested in the Constitution, I think is wrong, and the arguments he has seduced in favour of his amendment are far beside the point and completely beyond the knowledge and concern of this particular House. Sir, I oppose Mr. Lari's amendment and support the amendment moved by Mr. Santhanam and the article as it would be amended by that amendment.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, I oppose the amendment of Mr. Lari, not that I am against having a healthy Opposition. The Article, as it stands, is sufficiently wide to make a provision and it makes a provision for giving salaries to members of Parliament and also when providing for a salary for members of the Parliament, it does not say it must be uniform. It may take into note if there is a healthy Opposition and there is a Leader of the Opposition, and make a provision for giving him a special salary or a salary in a higher degree than the salary that is given the other members. As I said the provision is wide, and there is no similar provision in any Act, in any Constitution in any part of the world saying that you must make provision for the Leader of the Opposition in the body of the Constitution itself. Rules and regulations have to be made by Parliament and there is nothing to prevent Parliament from making a law giving a salary to the Leader of the Opposition. Now, let us read the amendment that has been tabled by Mr. Lari. It says:"Provided that salary payable to members of the Parliament shall not be less than one-fourth or more than one-third payable to a Cabinet Minister". His Assessment of the worth of his members is that a Cabinet Minister is equal to three or four members of the House and it will be very wholesome incentive in the hands of the members of the House, for constantly agitating for increasing their allowances, so that the Ministers' allowances also may go on increasing. If the member's allowance must not be less than one-fourth and if it is Rs. 500, the Minister's salary must be four times that is, Rs. 2000 and if they claim Rs. 1000, the Minister's salary must be Rs. 4000 and so on. I do not see why it ought to be not less than one-fourth or more than one third; it becomes to rigid; you can say one-fourth or one-third or one-half, but there is a no meaning in fixing a proportion here, and I do not see three ought to be a definite proportion between a member's salary and the Minister's salary.

The amendment further says: " And provided further that the Leader of the Opposition shall be entitled to get salary payable to minister without Cabinet rank." If Government recommend that we may abolish ministers with cabinet rank, then the amendment of Mr. Lari goes to the wall. The moment our minister are made ministers without cabinet rank, than there is absolutely no provision for what Mr. Lari suggests, in so far as the wording in concerned. As regards the substance, since the 15th August 1947 the Constituent assembly has been functioning as a Legislature to this day for nearly two years, but is there a healthy Opposition? I have noticed some keen opposition was there when a debates took place with respect to Hyderabad. On no other occasion was there an Opposition at all. Is there a policy, is there a programme? if there was an Opposition on communal matters, do we want to perpetuate that? If there is any section strongly opposed to Government which want to make this country an absolutely Socialist State here and now, I can understand it. You have no policy or programme. Are you therefore to go on as the Irishman said when he was ship-wrecked? He landed on an island and the first question he put was " Is there a

Government"? And somebody said that there was and he promptly said that he was in the Opposition. Mr. Lari wants to create an Opposition. May I ask him whether there is an Opposition and what kind of Opposition. Perhaps they are wanting communal factions. Is there a communal party which will go as an Opposition? Are we to pander to communal bickerings and say to those who create them " You can carry on in the manner in which you have been carrying on, vertically, horizontally and diametrically and them I will pay in addition a salary"? I am really surprised to see this day the very protagonist of this healthy Opposition. What is their policy or programme? are they interested in the welfare of the country? Are their action calculated to improve the welfare of the country much better than what the Congress Party has stated in its manifesto? I therefore think that to say in the Constitution itself that there must be an opposition is not necessary. You may leave this matter to the Parliament. If there is a healthy opposition and for want of separate provision for his maintenance the Leader of the opposition is not able to devote all the time and attention that is necessary in the interests of public welfare and democracy, in the interests of parliamentary administration and in the interest of bringing to the notice of the public the defects in the administration, then there is time enough to make such a provision. The article as it does not prevent any such provision being made. But, from now on just to dangle an opportunity or temptation in the way of a number of members is not proper. Four or five members may join and say, " we will have an opposition and an opposition leader, let him be paid a salary of Rs. 4,000 and let us divide it among ourselves". If a healthy opposition grows, certainly, there will be provision made. So long as there is no healthy opposition, a salary ought not to be placed on the Statute Book by way of temptation. I oppose Mr. Lari's amendment both in its from as impracticable and in substance, because there is no opposition and it not intended to create an opposition willy-nilly.

My honourable Friend Mr. T.T. Krishnamachari said that he approved of may amendment. I only wanted to say that during the transitional period, the question of salary may be modified by the President as there is a similar provision in the Government of India act giving power to the Governor-General to modify the rules regarding the allowances from time to time until provision is made by Parliament. Mr. Santhanam think that it is not necessary to cloth the President with such a power. I also agree that the President ought not to override the legislature. But, I think so far as allowances are concerned, nothing prevents Parliament from bringing an enactment to remedy any defect and we need not clothe the President with any extraordinary powers of this kind. I therefore advisedly did not move the amendment.

Mr. Tajamul Husain (Bihar: Muslim): Mr. President, article 86 says that Members shall get salaries fixed by Parliament and that till Parliament meets and fixes the salary, They should be paid the amount as members of the Dominion Legislature or the Constituent Assembly are paid at present. An amendment had been moved by my honourable Friend Mr. Lari to the effect (i) that members should get their salaries which should be one-fourth of what a Minister of Cabinet rank would get, that is, he had fixed that whatever salary is fixed for a Cabinet Minister, one-fourth of that should be the salary of each individual member, and (ii) that there should be a Leader of the Opposition and that Leader of the Opposition should get the same salary as a Minister of State, that is not of Cabinet rank. I have very carefully listened to the speeches of my honourable Friend Mr. Lari and of the two preceding speakers. The argument of Mr. appears to be very sound that a salary has to be fixed. There has to be a leader of the Opposition. But, there will be no communal groups in the future, because, there is not going to be any reservation of seat and even if there is going to be reservation of seats, there are not going to be separate electorates. Everybody feels that there should be a Leader of the Opposition.

On the other hand, there is a flaw in the argument of Mr. Lari and it is this. You will find that wherever there is a Parliament on democratic lines, there are leaders of the opposition and there are members of Parliament and all of them get their salaries. But, their salaries were never fixed by the Constitution. The salary of the leader of the opposition and of the members in every country has been fixed by an act of Parliament. Whether it is the Dominion of South Africa, Canada, Australia or New Zealand or any other Dominion, you will find that this is the case. While this is the case everywhere, why should we create a new thing and include this in our Constitution? After all, in a Constitution, we need not go into the details. We must fix the principle. There is the article which says that salary shall be paid to the members. What that amount will be will be decided by Parliament and not by this House. For this reason, I am not in agreement with the amendment. If you will permit me, Sir, I would make the task of Mr. Lari easy and obviate all difficulties by proposing an oral amendment. I would suggest that instead of putting it as one-fourth of the salary of a Minister, the salary of the members and the Minister should be equal. Then, I think everybody would be happy.

With these words, I oppose the amendment.

Shri Biswanath Das (Orissa: General): Sir, I believe that Mr. Lari has proposed an amendment which is unfair to the country and unfortunate in itself.

Let me first take the provision in article 86 of the Draft Constitution,. It lays down that Parliament shall provide for such allowances as were being given to the members before the operation of the Constitution and afterward that the Parliament will determine, by law, the salary and allowances that are to given to members. If Mr. Lari had wanted to agitate in the way he has proposed to do, the proper course for him was to come before the Assembly when a law was proposed to be enacted after the election in terms of the Constitution that we are going to pass.

Sir, the Constitution provides for salaries and allowances. for myself, I do not believe nor do I go with those who profess to advocate Parliamentary democracy that members should be paid salaries for the work that they have to do in their constituencies or in the Assembly here. I believe, Sir, that allowances, without pay, is the desirable course. However, we have to submit to the joint wisdom of the honourable Members of this House and we agree to the scale of pay and allowances to be fixed hereafter by law by Parliament. That being the position, I for myself and some friends like me feel that no pay is called for under the Circumstances but we have to submit to the joint wisdom of the Members. However, that does not make one feel to say that parliamentary democracy that is going to be installed in this country should give a statutory recognition to the Opposition, not only give recognition to the Opposition, but also provide a scale of pay for the Leader of the Opposition. I plead with Mr. Lari to point me out any Constitution in the world which is in operation today wherein a fixed salary has been provided for in the Constitution for the Leader of the Opposition. True it is that the Leader of Opposition in British Parliament gets his scale of pay and status equal to that of a Minister but that has nothing to do with a specific provision in the Constitution. Sir, parliamentary democracy needs the existence of two parties viz., the majority party in charge of office and the minority party to play the functions of Opposition so as to give it full work. Therefore Opposition is a necessary evil. An Opposition party is also a necessary evil in the operation of Parliamentary democracy. that is however in itself and by itself no justification why a specific provision should be made as it is sought in the amendment in the

Constitution of this country. After all, many things have to be done by precedents for course of events that have to come in the future. I do not find any justification whatsoever for giving a statutory recognition to the Opposition and to the Leader and also to his status and pay.

Having said so much about the Opposition Leader, I come to his proposals regarding the scale of salary he proposes for the members of the House. I feel it is unfair to the country, a country wherein the differences in the earing capacity of the top man and the people who are down trodden is so wide that the scale of pay that he proposes for members merely perpetuates the existing order and is therefore far beyond my conception. The scale of pay that he proposes is to range between one-fourth and one-third of the pay of a Minister. If the existing pay of Ministers is going to be Rs. 3,000 as has been fixed by Statute by the honourable Members of this House, then his one-third and one fourth fixes the scale of pay of members is to range from Rs. 750 to Rs. 1,000/- a month. I put it straight to him whether it is fair to himself and to his country to propose to fix a scale of salary to range between Rs. 750 and Rs. 1,000/- for each member of the House.

Mr. Z.H. Lari : We are getting Rs. 1,300 a month now.

Shri Biswanath Das : He may be getting Rs.1,300 if he is a member of too many committees and if he is a member who attends the Assembly regularly. Even then I would plead with him that his facts are far from being correct. Because no member to my knowledge draw Rs. 1,300 a month as allowance.

I am one of those members who choose to draw only Rs. 30 feeling that Rs. 45 a day is too much for a member and I for myself, an ordinary worker. I do not need Rs. 45. I know there are members in my province who draw their monthly salaries as members of the Assembly and straightaway hand over to the Secretary of their District Congress Committee and receive a scale as fixed by the Congress Committee in preference to the pay that they draw and they go on as whole-time workers. That being the position I think he has been very unfair to his constituents and to his country in bringing a proposal such as this before the House.

Sir, for myself I feel that I can have absolutely no truck with any point covered in his amendment and I feel that it is unnecessary, unfortunate and undesirable. Therefore I support clause 86 as it is, however much I would desire that there should be no scale of salary fixed for the honourable Members of this House who ought to agree to work and serve the country being satisfied with the allowances that the Assembly would fix for themselves.

Kazi Syed Karimuddin (C.P. & Berar: Muslim) : Mr. President, the amendment moved by Mr. Lari is a very important amendment and all those speakers who have spoken in opposition to Mr. Lari have given two grounds: Firstly, that in no Constitution in the world there is such a mention or provision: secondly, that such a salary of the Opposition Leader is based on conventions. I have heard with great interest the speech of Mr. Das who thinks that opposition is a necessary evil. If there were any doubts as to the importance of the amendment, after listening to his speech I am now convinced that in this country there are people who think that it is a necessary evil and it is very necessary that such a thing should be embodied in the Constitution itself. Sir, Mr. krishnamachari said that this is not a question of principle but it is a question of detail. My submission is that in this country when we find that opposition is not tolerated, it is neglected and generally it is punished, it is very necessary that the Constitution should create a Statutory Opposition. There is no democracy in the world which can function efficiently without opposition. The mistakes and failures of the Party have to be pointed out by the Opposition and the party in power has to be vigilant because of the Opposition is not tolerated and is treated with scant courtesy. What is happening in the provinces? even in the

Centre in this Dominion Parliament, the Opposition is not tolerated and is treated with scant courtesy. What is happening in the provinces? Because of the Public Safety Act, because of other measures, the Opposition Leaders or those who are in opposition are threatened, not only threatened but the Opposition parties in the provinces are dwindling. The only reason is that if a Muslim opposes, the Government says that he was a believer in the two-nation theory and that he does not give up his opposition and his opposition is not to be tolerated at all. If a socialist opposes, he is of course a dangerous character. This is the state of affairs that is prevailing in the provinces and in the Dominion Parliament. Therefore this is the greatest occasion to create a Statutory Opposition. Mr. Lari has said that this is a question of principle. This is not a question of salary, he will be able to devote all his time in criticising the Government and in carrying on campaign against Government in power if there are mistake and failures. Therefore, my submission is that this is an occasion when there should be Statutory opposition and by accepting the amendment of Mr. Lari you will be accepting that a healthy opposition in the country is very necessary. Mr. Ayyangar has said that a healthy opposition is to be tolerated. In my opinion, if it is to be left to the party in power to decide what is healthy criticism, and what is unhealthy criticism, then, in my opinion, every criticism of the party in power will be treated as unhealthy, and every opposition against the party in power will be treated with scant courtesy. Therefore, I support Mr. Lari's amendment and I commend it to the House for its acceptance.

Mr. Naziruddin Ahmad (West Bengal: Muslim) : Mr. President, Sir, I beg to support Mr. Lari's amendment so far as the second proviso is concerned. I support the amendment on principle; but I should request the House also to consider the amount of the pay. I support the amendment as it has raised a very important constitutional principle. I should, first of all, ask the House to consider the principle itself. It is not the pay that matters. It is rather a statutory recognition of an opposition. It is rather giving the opposition a recognised place in the Constitution. It is this important principle that is involved in the amendment. The question of pay and other things dwindles into insignificance in the face to this important consideration. I would there, draw the attention of the House to this important aspect of the question.

Three very important and sober Members of the House, namely, Mr. T.T. Krishnamachari, Mr. Ananthasayanam Ayyanagar and Mr. Biswanath Das were at great pains to oppose the amendment. They were labouring under a great difficulty in explaining away this important proposition. Mr. Krishnamachari who is a great economist tried to play the part of a lawyer, in finding out legal arguments against this proposition. Mr. Ayyangar, of course, is a great lawyer, but I am sorry to find that he did not rise above a mere lawyer. Sir, opposition in a democratic House is a great necessity. It is an indispensable condition of all democratic institution. We propose to all ourselves, and we propose to make our country, a "democratic, sovereign republic". If we cannot ensure any opposition, we should rather call the constitution that of an "undemocratic, sovereign republic". It is the essence of democracy that there should be effective opposition. Mr. Krishnamachari has said that pay "does not create" an opposition, and he is of opinion that the opposition must "grow up" and it is something that cannot be "created". But he failed to notice that pay gives the opposition a status and it also recognises the opposition. The difficulties which are felt by Members of the Constituent Assembly sitting in the Legislative side and who want to oppose government measures are very great. For the absence of an effective opposition, I submit, the House gets spoilt. The very tolerance which an effective opposition will engender among the

majority Party, is lost. As soon as some criticism is made, some Members of majority Party get impatient. As soon as arguments are advanced, the so-called prestige of the Government is supposed to be at stake, and therefore those arguments are opposed, resented, and sometimes treated with indifference and contempt. Yesterday I made a motion which was, to my mind, a very logical one, but it was characterised as absolutely illogical and absurd by Dr. Ambedkar. I do not blame him for that. It is the result of a situation of having a hug majority party, in the face of a tiny, microscopic opposition. It is the absence of an effective opposition that creates this situation. It is the result of huge confidence backed by a huge party-it is that which creates this indifference, and also intolerance of opposition. I submit, Sir, that the want of an effective opposition induces the Government to proceed in a careless fashion, regardless of public opinion. And what has been the result? People outside lose all interest in the proceedings. They believe that in the Assembly, the Members have nothing to do beyond crying "ditto" to what is said by the Government. I submit that this is not good or healthy for the growth of a real democracy. There has already been very unhealthy opposition to government in the Provinces. There has been in the Provinces a very unhealthy growth. I should like that the Congress should reign. There is now no alternative Government that I can think of. Therefore, I feel that the Congress should be in power for some time to come. But I would put in this condition, that it should try its very best to create and encourage some amount of opposition. Opposition can thus be and should be created. I would submit that the Leader of the Opposition should not only be given pay, but ample secretariat facilities. Those members who had the unfortunate, and unpalatable duty of opposing the Government felt the difficulty of the absence of secretariat help, and in those circumstances opposition has not grown very much. It is therefore the patriotic duty of every Member of this House to see that an effective opposition grows. If you want to be a stable government if you want to be in the good books of the people, if you are not desirous of creating anti-Congress feeling in the Country which is growing very fast, if you think that you should keep the people from joining the forces of disorder and chaos, it is very necessary to consider this matter very seriously. It is very necessary for you to create an opposition, if necessary by some members volunteering to go to the opposition and making it healthy and strong. It is by such recognition and encouragement that you can create a healthy opposition. Then, Mr. Krishnamachari has said that the provision should find no place in the Constitution. He further says that opposition should grow convention. That has certainly been the case in England where everything has grown by convention. There the Leader of the Opposition gets a pay of sterling 2,000 and secretariat facilities. but so far as our Constitution is concerned, it is a written constitution, and when we have made a special mention about the pay of Ministers and the pay and allowances of members in our Constitution, and when you make no mention of the pay of the Leader of the Opposition, then the acknowledged, rule of interpretation would be that the Constitution does not desire to give the Leader of the Opposition any pay. I should, therefore, think that this should have a special place in the Constitution, though the question of the amount of pay and other things may be open for consideration.

I, therefore, ask this honourable House to consider the important principle first of all and make up their minds as to whether they should agree to the principle of creating and fostering opposition for the safety of the country, and secondly decided what pay should be given to the Leader of the Opposition. If the principle is agreed to, the fixation of pay should be a minor matter.

I submit, Sir, that one of the arguments of

Mr. Ananthasayanam Ayyangar struck me as somewhat surprising. He points out that the amendment links the pay of the Leader of the Opposition with that of a Minister without Cabinet rank and he has posed a question: Suppose we abolish the post of minister without Cabinet rank, what will happen to the Leader of the Opposition? This looks like the quibbling of a lawyer. He overlooked the fact that we may create the post of a Minister without Cabinet rank, though we may not appoint one, or we may even remove him. As I have already said the exact amount of pay, or the exact provision relating thereto is not a matter of great importance. At any rate, I feel that his argument is without foundation.

During the debate the three distinguished honourable Members of the House said nothing about the status of the Leader of the Opposition. I am glad that none of them questioned the need of an organised opposition.

Another argument used by Mr. Ananthasayanam Ayyangar is that the present Opposition has no definite programme. I quite admit, in all humility, that there is now no opposition at all and, therefore, no recognised programme. It is this very situation which this amendment seeks to remedy. I agree that the opposition is not organised; it has no Secretariat; it has no money, it has not enough strength to meet an organised Government like that of the Congress. I say that it is the desire of many members of the opposition to support the Government, when they agree with its policy and oppose it when they feel that the Government is wrong. They support it while they may, and oppose it when they must. Mr. Ayyangar suggested that the only opposition was in regard to the Hyderabad issue. Somehow or other, in one form or another, the communal bogey is raised now and then in this House. I think, Sir, that is a very weak and unsubstantial argument. In fact, the opposition-if there is one-the very feeble opposition which you find in the House has never been confined to the Hyderabad issue. There have been great controversies, of course, carried on by humble individuals in their individual capacity, but that is not confined to the Hyderabad issue. Take the well-known question of the Hindu Code Bill. On this issue the Muslims of India have shown that they are not communal in their outlook. The Muslims have been wholeheartedly supporting the Government in all their constructive measures. So, I submit, that the communal argument should be brushed aside, killed and burried once and for all.

I therefore reiterate that if you want to exist as a Government, respected and loved by the people, you should, for your very existence, create an opposition. Now there is a feeling in the country that the party in power is all too powerful. In fact, there is a feeling even amongst the Members of that Party that the party is all-too powerful and that individual members have no liberty. Even the Press of late has not been very articulate. In fact, the debates in the House which put the Government in an inconvenient light are hardly reported in the Press and it is hinted that this is due to some unofficial pressure on the part of Government.

This, Sir, is not a healthy state of affairs. Where are you leading the country to? China is already engulfed in the Communist menace; Burma is in the grip of Communism; the Communist activities have already reached the gates of Bengal. Would you place the country under the Communists? If you want to save the country from the Communist menace, you should create a healthy opposition, and thereby rally the country in your support. If you have no opposition, the people will lose their confidence in the Government and the country will go to the dogs.

In Bengal-I speak with personal knowledge-there is widespread antipathy against the Congress Government. Allegations of a very serious type are levelled against the Ministry. I believe the country should be saved from chaos and disorder towards which we are heading. We want to strengthen the hands of Government; we do not want to join the forces of disorder, chaos and

the like. It is by creating a healthy opposition that you will be saving the India of the future.

Sir, I have wasted the time of the House for a few minutes longer than Ihad desired to, but I feel the subject is extremely important and deserves more care and attention than it has so far received. Sir, Ibeg to support the principle of the last part of the amendment.

Dr. P. S. Deshmukh (C. P. & Berar: General): Mr. President, Sir, I think this simple article has taken an unreasonably long time to get through the house and Members on both sides-I beg to be excused for saying so-have brought in issues which are, strictly speaking, not at all relevant to this article. Sir, the article is a very simple one. It provides that the future Parliament should decide the salaries and allowances of the Members from time to time by law. By law is meant by a Bill of Parliament. There will be ample opportunity in that Bill to provide for the salary of the Leader of the Opposition-if there is one-as well as to correlate the salaries of the Members of the House with any functionaries of the State if the Parliament so desires. All those things are naturally left for the Parliament of the future to decide. I think the provision in the article is so-appropriate that there should be no quarrel so far as its inclusion in the Constitution is concerned.

Many Members have said that the party in power should create an opposition, as if the creation of an opposition is like the planting of a tree. Nor is it appropriate to bring in the present state of affairs either in the provinces or at the Centre. This is not also I think an opportunity for ventilating individual or group grievances, so far as the present state of affairs is concerned. We are disussing the future Constitution of India. So in this article there is hardly room for controversy. It is open to the next Parliament to have a Leader of the Opposition and pay him if necessary even more than the Prime Minister. The post may be deliberately and substantively created, if that is thought necessary. I do not think this was the proper place to bring in the matters which have been brought up. If the Honourable the mover of the amendment attached such importance to the existence of an opposition and statutory provision for the Leader of the opposition he should have taken up matter independently and in any case on some other occasion where a discussion could have been said to be appropriate. So I feel that the article is thoroughly unobjectionable and should be adopted.

There is one thing I must say and that is that the members' salaries must be adequate. I feel very apprehensive that there should be many members of Parliament who are needy. It is a dangerous thing which will vitiate the proper working of democracy in any country, more so in a poor country like India. So although certain people are nervous about talking of their own allowances, etc., and some people feel patriotic about sacrificing them party or wholly, I should insist there should be no temptation in the way of these members so as to make them deviate from the path of strictest duty and honesty. I am constrained to say this because of the conduct of many members of the legislatures all over India, central and provincial. I would ask any Government to face the bitterest criticism from an understanding public, but pay adequate salaries and allowances to the members so that they may not be tempted to derive any benefit from any other source whatever.

Sir, I oppose the amendment and support the article.

Shri R.K. Sidhva (C.P. & Berar: General): Sir, I am always in favour of opposition but it must be a healthy opposition. But we have heard today that there must be opposition just for the sake of opposition and the supporters of the amendment went to the length of saying that there must be a regular campaign carried on against Government. My Friend Syed Karimuddin said that for opposing the Government you must pay the Leader of the Opposition. I strongly oppose that.

Kazi Syed Karimuddin : On a point of personal

explanation, I said there should be a campaign the mistakes of Government.

Shri R. K. Sidhva: Yes. That is, exactly what I say. You stated there should be a campaign. Sir, healthy opposition to bring Government to their senses is surely commendable, but to say there should be a campaign to discredit government is another thing. My Friend Syed Karimuddin mentioned Communists and Socialists and said whatever they stated we disliked. That is not so. What I object to is the kind of campaign, which is neither healthy nor in public interest. There is a class of people who believe in throwing acid on innocent people, burn tram-cars and buses, throw bombs. Supposing their leader happens to be in the legislature and he advocates this kind of policy, could it be called healthy opposition? I would call that class of people enemies of the country, and surely their leader you expect to be paid from the public exchequer? It is of course true that the Leader of the Opposition in England is paid out of State funds. I do not know the history of that. But there the Leader of the Opposition not only opposes but sometimes also supports the Government. But whatever may be the case in England I am opposed to the principle of paying the Leader of Opposition out of the State funds. Every party has its own funds and if the party desires that he should be a whole-time worker let their party pay him; the State should not pay him for its being attacked in and out of season. It is a very wrong principle and I strongly oppose it.

Shri Ramnarayan Singh (Bihar: General) : Sir, although I do not support Mr. Lari's amendment I think he has raised on important constitutional issue which the House should consider. I am not an admirer of the British constitution. They have got the party system which I think strikes at the very root of democracy. We are told that in that country there is opposition and the Leader of the Opposition is paid. It is a sound principle. In this country we have just got freedom, and our own party i.e., the Congress Party, has got no opposition to it. I have seen how things have been going on here and I feel that there must be a strong opposition to criticise our actions and review them. In the Mahabharata we find Bhishma and Arjuna fighting in opposition to each other and there Bhishma tells Arjuna how to kill Bhishma himself. In the same way I think that Government is good which creates and encourages opposition and which is always ready to retire. A Government which does not like opposition and always wants to be in power is not a patriotic but a traitor Government. In several provinces, in my own province of Bihar, I know what is happening. There is no opposition to the Congress Government and all sorts of scandals are going on. I therefore feel that there should be an opposition to criticise Government and this opposition should be encouraged. This need not be in the constitution itself but we must consider it as soon as the constitution is passed.

The Honourable Dr. B. R. Ambedkar : (Bombay: General): Sir, I am sorry I cannot accept the amendment of my Friend Mr. Lari. I think it unnecessary to give an elaborate reply to the arguments advanced by the mover in view of my complete agreement with what has been said on the other side by Mr. Ananthasayanam Ayyangar and Mr. T. T. Krishnamachari. I do not think it would be desirable to waste the time of the House in adding anything to what they have said. Their reply I find is quite complete.

I however, accept the amendment of Mr. Santhanam for the substitution, of the words, `Constitution Assembly', for the words `Legislature of the Dominion of India.'

Mr. President: I will now put the amendments to vote one by one.

The question is:

"That in article 86 the words 'and until provision in that respect is so made allowances at such rates and upon such conditions as were immediately before the date of commencement of this Constitution applicable in the case of members of the legislature of the Dominion of India' be deleted and the following new proviso be inserted

:-

`Provided that salary payable to member of the Parliament shall not be less than one fourth or more than one-third payable to a Cabinet Minister.

And provided further that the Leader of the Opposition shall be entitled to get salary payable to a Minister without Cabinet rank.'"

The amendment was negatived.

Mr. President: The question is:

"That in article 86, for the words `Legislature of the Dominion of India' the words `Constituent Assembly of India' be substituted."

The amendment was adopted.

Mr. President: The question is:

"The article 86, as amended, stand part of the Constitution."

The motion was adopted.

Article 86, as amended was added to the Constitution.

*

Article 87

Mr. President: The House will take up article 87 for consideration. I find that amendment No. 1638 of Professor Shah is covered by article 98 which comes a little later.

Prof. K. T. Shah (Bihar : General): Sir, the second part is not covered. I shall move the second part only. Sir, I beg to move:

"That the following new clause be inserted before clause (1) of article 87 :-

`Either House of Parliament shall be entitled to receive petitions or representations from the people of India or from the people of any unit forming part of the Union of India.'"

Sir, I consider this a very important right of the people, and a privilege of Parliament, if I may say so, that the people whom the Parliament is supposed to represent should have the right to approach directly the sovereign legislature, and place before it grievances, or cases which require Parliament's attention as the body concerned in any legislation pending before it.

Such petitions may also be in regard to any financial matter or administrative acts. In all such cases, in the ordinary way, unless some privilege of this kind is provided, the people, who theoretically are supposed to be sovereign will have actually no right of presenting their grievances, or views. On any given matter to the sovereign legislature.

It may be-it frequently happens-that given the life of Parliament extending over five years, the House of the People elected four or five years before such an occasion arises, may have ceased to be in real contact, and therefore any real response to the wishes of the people, which in the period during which it has been in session has changed and is changing considerably, may be impossible.

Nor, is there any regular machinery by which Parliament may from time to time be able to test popular opinion, except in so far as the Ministry or Government chooses to place these matters before it. I suggest that the people should have the right of direct access for placing before Parliament on any given subject their views, and getting the parliament's reactions thereon. It is in this country an old privilege of the poorest, that fancying themselves aggrieved, or any individual fancying himself aggrieved, had a direct right of access to the Sovereign, even in the days of the old absolute emperors. In modern times, when we profess so much regard to the people as sovereign, when we are declaring from the house-tops that the ultimate sovereign is the people, and that we are only the servants or representatives of the people as sovereign, when we are declaring from the house-tops that the ultimate sovereign is the people, and that we are only the servants or representatives of the people, I think it is not asking too much at all to suggest that this which forms admittedly the right of the people and the privilege of Parliament in Britain on which our Constitution is modelled, should also be included in our Constitution, namely that the people should have the right of direct access to Parliament and present petitions for that purpose.

I do not quite like the word `petition' myself; but, as it has been used and as it is of popular use, in this matter I have adopted the word in presenting this part of my amendment. Another amendment had been tabled by me, which I have however not moved, in which I was seeking to reverse the process, namely

that Parliament should also, on given issues, ask or try to ascertain the opinion of the people, so to say by a parliamentary referendum, rather than by a Governmental referendum. I felt, however, that given the present tendency, given the accepted traditions, it might sound too novel or too radical to suggest that Parliament should ask the people their opinion, though in the strict theory of our democracy, in my opinion at any rate, it would be nothing unusual if some such procedure had been included. I repeat that particular amendment I have decided not to move. But I think this one, its counter part, is perfectly orthodox, and correct, and there ought to be no objection to it from any quarter, because it is a recognised thing. It is being frequently done, and there is no reason to believe that in this country it would either be unwanted or abused. I commend the motion to the House.

(Amendment Nos. 1639, 1640 and 1641 were not moved.)

Prof. K. T. Shah : Nos. 1642 and 1643 are on a similar subject. May I move them together, Sir? It will save time.

Mr. President: Professor Shah may move amendments Nos. 1642 and 1643 together.

Prof. K. T. Shah : Sir, I beg to move:

"That in clause (5) of article 87, after the words `A Bill which' the words `has been passed by the Council of States and' and after the words `the House of the People' the words 'shall not be deemed to have lapsed on a dissolution of the House of the People but may be taken up by the new House of the People elected after such dissolution from the stage at which the Bill was at the time of the dissolution of the House; and if agreed to in identical form with that passed by the Council of States the Bill shall be deemed to have been duly passed by both Houses of Parliament, and shall be forthwith sent up for the assent of the President.

If any amendments are made in the House of the People in the Bill as passed by the Council of States, such a Bill shall be returned to the Council of States and if the amendments made by the House of the People are accepted and agreed to by the Council of States such a Bill shall not be brought back to the House of the People but shall be deemed to have been passed by both Houses of Parliament and shall forthwith sent up for the assent of the President' be inserted respectively.'

and

"That after clause (5) of article 87, the following new clause be inserted :-

'(6) A Bill which is pending at any stage in the House of the People but not passed at the time of its dissolution shall be deemed to have lapsed on a dissolution of the House of the People.

(7) A Bill which has been passed through all the stages by the House of the People before its dissolution, but not sent to the Council of States at the time of its dissolution, shall be taken up by the Council of States as passed by the House of the People, and if agreed to in identical form within 30 days of the dissolution of the House of the People shall be deemed to have been duly passed by both Houses of Parliament, and shall be sent up to the President for his assent.

(8) A Bill pending in the Council of States at any stage but not considered by the House of the People shall not be deemed to have been passed at the time the House of the people is dissolved, but shall be deemed to have lapsed on dissolution of the House of the People.'"

Sir, these are intended to economise the time of the House, and simplify its procedure in enacting legislative proposals coming before Parliament. It may be that a Bill after it has been duly passed by the Council of States, in all its stages in that House, and before it is sent up to the House of the People, the contingency may arise that the Lower House is dissolved before it takes up the Bill. I suggest that such a Bill should not be deemed to have lapsed altogether; and that if it is agreed to by the new House of the People in the same form in which the Council of States had passed it, it should be deemed to have been passed by both Houses of Parliament, and be sent up to the President for assent. That is to say, it would not be returned a second time to the Council of States after being passed through all stages by the new House of the People as a new Bill brought in for the first time before the House, and then once again go through all the stages in the Upper House.

I think this stands to reason, especially having regard to the fact that both Houses are equally competent to initiate and deal with all Bills except money Bills. It may be in practice that the most important legislative proposals will originate in the Lower House. If not passed in the Lower House before dissolution, then automatically all such legislation pending there at any stage would be deemed to have lapsed, if the House is dissolved. But in the event of the Lower House passing any legislation in all its stages before its dissolution, and having so passed, sending up the proposal to the Upper House before it itself is dissolved, there should no need to regard that Bill as having lapsed, because it has already been duly passed by the House of the People. The Upper House may then take it up and carry it through in all its stages, and if the Upper House agrees to it in the same form in which the Bill was sent up by the House of the People, there ought to be no need to send it back to the new Lower House elected after the dissolution.

I can conceive of a contingency in which this position may be abused; i.e. when controversial legislation may have been hurried through almost in the last days when the House of the People is likely to be dissolved, and the Upper House also being in sympathy with it might pass through all stages such Bills before the new Lower House can take up the matter. Difficulties of this nature might arise, especially if the newly elected House is dominated by a different party from that which preceded it. In that contingency, however there is no need to fear that the will of the people will not prevail, because either the Council of States may not pass the legislation passed by the previous House of the People, or if passed by it, it may not be assented to by the President. There is also nothing to prevent the new Lower House from enacting any other Bill contravening or rejecting the measure passed by its predecessor at the last moment. I think that by this amendment time would be saved, simplification of procedure would be assured, and duplication of work avoided.

Friday, the 20th May 1949

No doubt these are merely procedural matters, which can be regulated primarily by each House or Parliament by rules. But if injunctions of this kind are incorporated in the Constitution itself, my amendment is necessary, as it will help to economise time. I commend it for the acceptance of the House.

Mr. President: I have received notice of certain amendments by Prof. Shibban Lal Saksena.

Prof. Shibban Lal Saksena : (United Provinces: General): There are two amendments. One is to article 87 and the other is to article 88. I am not moving the amendment to article 87.

Mr. President: These are all the amendments that we have got. Now the amendments and the original proposition are open to discussion.

Shri Brajeshwar Prasad (Bihar: General) : Mr. President, Sir, I am opposed to clause (2) of article 87 wherein it is stated that no Bill shall be deemed to have been passed by the House of the Parliament unless it has been agreed to by both Houses. I do not see why in a democratic state, the representatives of the people should be placed on a par with the nominated representatives of the provincial governments. The supremacy of the Lower House must be recognised if democratic institutions are to function efficiently. It has been said that this clause is in conformity with the federal principles which have be agreed to in the beginning. I for one, Sir, do not see why anyone should trot out such in argument now. I do not consider this Draft Constitution to be purely Federal in character. It is partly federal and partly unitary and more unitary than federal in character. When we accepted federation the position prevailing in India was quite different. We did not accept the principle of federalism to accommodate the provinces. The provinces were never in our minds when we accepted the federal principle. We accepted federalism in order to meet the challenge of the Two-Nations theory of the late lamented Mr. Jinnah. We accepted federalism in order to persuade the Indian Princes to surrender a part of their sovereignty. Now the position is entirely changed. This country, Sir, has been unfortunately partitioned. The Princes today have been liquidated. The States today are in a far worse position than the Indian Provinces. Last time when the Constituent Assembly met I had spoken in this House in favour of a unitary State. Sir, I do not know what is in the mind of our Constitutional Pandits. Federation tends towards a unitary form of Government. I do not know of a single instance in history where a unitary form of Government has degenerated into federalism. As far as federalism is concerned, Sir, almost in all federal countries the constitution has tended towards a unitary form of Government. I visualize the role of a second chamber at the Centre merely as an advisory body. It should be a check upon hasty legislation, but to emphasize the federal character of the Constitution will be a retrograde step and those persons who talk and emphasize this aspect of our Constitution do a great disservice to the country. The Provinces were always subordinate to the Government of India and to say now that they have got autonomous and federal powers is really to turn the hands of the clock back. We are reversing, Sir, the process of history: we are emphasizing federalism, which is conservative in character and is full of weakness. Sir, I oppose clause (2) of article 87.

Mr. President: The question is:

"That the following new clause be inserted before clause (1) of article 87 :-

'(1) Either House of Parliament shall be entitled to receive petitions or representations from the people of India or from the people of any unit forming part of the Union of India.'"

The amendment was negatived.

Mr. President: The question is:

"That in clause (5) of article 87, after the words 'A Bill which' the words 'has been passed by the Council of States and'

and after the words 'in the House of the People' the words 'shall not be deemed to have lapsed on a

dissolution of the House of the People; but may be taken up by the new House of the People elected after such dissolution from the stage at which the Bill was at the time of the dissolution of the House; and if agreed to in identical form with that passed by the Council of States, the Bill shall be deemed to have been duly passed by both Houses of Parliament, and shall be forthwith sent up for the assent of the President.

If any, amendments are made in the House of the People in the Bill as passed by the Council of States, such a Bill shall be returned to the Council of States and if the amendments made by the House of the People are accepted and agreed to by the Council of States such a Bill shall not be passed by both Houses of Parliament and shall forthwith sent up for the assent of the President' be inserted respectively.

The amendment was negatived.

Mr. President: The question is:

"That after clause (5) of article 87, the following new clauses be inserted :-

'(6) A Bill which is pending at any stage in the House of the People but not passed at the time of its dissolution shall be 'deemed to have lapsed on a dissolution of the House of the People.

'(7) A Bill which has been passed through all the stages by the House of the People before its dissolution, but not sent to the Council of States at the time of its dissolution, shall be taken up by the Council of States as passed by the House of the People, and if agreed to in identical form within 30 days of the dissolution of the House of the People shall be deemed to have been duly passed by both Houses of Parliament, and shall be sent up to the President for his assent.

(8) A Bill pending in the Council of States at any stage but not considered by the House of the People shall not be deemed to have been passed at the time the House of the People is dissolved, but shall be deemed to have lapsed on dissolution of the House of the People.'"

The amendment was negatived.

Mr. President: The question is:

"That article 87 stand part of the Constitution."

The motion was adopted.

Article 87 was added to the Constitution.

*

Article 88

Mr. President: The motion is:

"That article 88 form part of the Constitution."

(Amendment No. 1644 was not moved.)

Shri H. V. Kamath (C.P. & Berar: General): Mr. President, I move:

"That in clause (1) of article 88, after the words 'If after a Bill' the words 'other than a Money Bill or other financial Bill' be inserted."

Shri M. Ananthasayanam Ayyangar : May I ask the honourable Member to see the proviso to article 88 which says:

"Provided that nothing in this clause shall apply to a Money Bill." What is the advantage in transposing this clause ?

Shri H. V. Kamath : Then the proviso itself must be altered. Sir, it is more or less a formal amendment, but it makes for clarity. I am all for brevity, but not at the expense of clarity and precision. Article 89 and 97 deal with Money Bills and other financial Bills. Therefore, when we refer to a Bill in article 88, it would have been far happier and far clearer if we had laid it down specifically that the Bill referred to in this article was something different from or something other than a Money Bill or other financial Bill. My honourable Friend, Mr. Ananthasayanam Ayyangar, has rightly pointed out, and I am grateful to him for having done so, that there is a proviso here at the foot of clause (1) of this article referring to the exception made in regard to Money Bills. But, Sir, the language used in article 87 reads: "Subject to the provisions of articles 89 and 97 of this Constitution with respect to Money Bills and other financial Bills." So if we want to be consistent in our language and in our phraseology, I think Mr. Ayyangar would agree that even the proviso should have been drafted in consonance with the language used in article 87, Article refers to not merely Money Bills; but Money Bills and other financial Bills, and therefore, I would accept an amendment if moved by Mr. Ayyangar modifying the proviso in the light of my

amendment and including other financial Bills along with the Money Bills referred to in this Proviso.

Mr. President: What will be the effect, supposing your amendment is accepted and the proviso is not deleted ? There is no amendment to delete the proviso.

Shri H. V. Kamath : That is unfortunate, I realize. But unless the proviso is modified suitably a sort of lacuna will remain. If you would permit Mr. Ayyangar or anyone else to move a suitable amendment to the proviso itself including financial Bills with Money Bills referred to in this proviso, then it would meet my objection completely; otherwise, I fear there would be a lacuna which might do violence to the consistency of a language used in the two articles.

Shri Prabhudayal Himatsingka (West Bengal: General): There is amendment No. 1649 to delete to proviso to clause (1) of article 88.

Shri H.V. Kamath: If that is accepted and mine is also accepted, that suits the situation admirably. I therefore move my amendment.

(Amendments Nos. 1646, 1647, 1648 and 1649 were not moved.)

The Honourable Dr. B.R. Ambedkar: Sir, I move:

"That in clause (2) of article 88, for the words 'both House are' the words 'the House referred to in sub-clause (c) of that cause is' be substituted."

Sir, it is just a matter of clarification by referring to the House referred to in sub-clause (c).

Mr. President: Amendment No. 1651. I think that is covered.

(Amendment No. 1652 was not moved.)

The Honourable Dr. B.R. Ambedkar: Sir, I moved:

"That is clause (2) of article 88, before the last word 'days' the word 'consecutive' be inserted."

(Amendment No. 1654 was not moved.)

The Honourable Shri K. Santhanam: Sir, I moved:

"That in clause (4) of article 88, the word 'total number of', be deleted."

Sir, I do not want to press the deletion of the proviso. I want to amend the amendment to that extent.

The Point here is simple. What is intended is that the decision of the joint sittings should be taken by a simple majority. In all such cases, the usual wording is majority of the Members of both the Houses present and voting. The wording, 'total number' is generally used only in connection with absolute majority.

The Honourable Dr. B. R. Ambedkar: I shall be grateful if my honourable Friend would leave this matter to the Drafting Committee to consider and then we can bring it up afterwards?

The Honourable Shri K. Santhanam: I agree, Sir.

Shri H.V. Kamath: Sir, I move:

"That in clause (4) of article 88, the words 'for the purposes of this Constitution' be deleted."

Sir, this, to my mind, is an instance where these words could be omitted without sacrificing precision or clarity of meaning intended by this article. Whatever is drafted here, whatever article comes before the House is for the purpose of this Constitution. We are dealing with the Constitution. Nobody I am sure, would presume to say that anything which is embodied in this Constitution is for purposes other than this Constitution. Therefore, It is to my mind redundant, needless and superfluous to state to any article, or in this article for the matter of that, that the result of the voting shall be deemed to be for the purposes of this Constitution. I therefore move that these words which are to my mind unnecessary may be deleted. I moved my amendment.

Mr President: Amendment No. 1657. I think it is a drafting amendment.

(Amendments Nos. 1658 and 1659 were not moved.)

Shri T.T. Krishnamachari: I am afraid the amendment is of a drafting nature, seeking to omit certain words which are redundant.

Mr. President: Amendment No. 1660 is of a drafting nature.

(Amendment No. 1661 was not moved.)

Mr. President: I have received notice of an amendment from Prof. Shibban Lal Saksena, that for article 88, the following be substituted. I am afraid that is not an amendment to any amendment. To which amendment is this an amendment?

Prof. Shibban Lal Saksena: To any of these.

Mr. President: How will you put it? It is an amendment to the original article and not an amendment to any amendment. You cannot circumvent the rule about time by merely saying that these are amendments to amendments. This is really not an amendment. Notice of this should have been given before.

Prof. Shibban Lal Saksena: It is an amendment to amendment No. 1650.

Mr. President: How will you substitute the whole of article 88 in the place of these words?

Prof. Shibban Lal Saksena: What I am suggesting is that a joint sitting should be avoided.

Mr. President: That is a different matter. I entirely see that point that you want to avoid joint sittings. But you should have given notice of this in due time. You want to bring in this amendment which goes to the root of the whole matter in the shape of an amendment to an amendment, will which it does not fit in at all.

Prof. Shibban Lal Saksena: This procedure has been adopted throughout in bringing such amendments.

Mr. President: I do not think I can allow this kind of amendment which is really not an amendment to an amendment.

Prof. Shibban Lal Saksena: Then, may I speak on the clause, Sir.

Mr. President: Yes, I shall see if all the amendments have been moved.

The article as well as the amendments are now open for discussion.

Prof. Shibban Lal Saksena: Mr. President, Sir, in this article a provision has been made by which in the case of disagreement over Bills between the Lower House and the Upper House, there shall be a joint sitting to solve the dispute. I had given notice of an amendment which you have thought fit to rule out; but I hope that the purpose of that amendment is worth consideration by this House.

Firstly, I do not think that an Upper Chamber is a very good institution. I am opposed to that itself. but as the House has accepted that, I do not want to say anything more about it. What I do want to say is that the Upper House should not have an authority out of all proportion to its importance. We have based our Constitution on the model of the British Parliament. There we have got the House of Lords and the House Commons; but, authority of the House of Lord is very much restricted What I want is that here too, the Upper House should have limited authority and this should not be almost equal in power with the Lower House, as it becomes if there are joint sittings. According to the present draft, a Bill which is passed in the House of the People will go to the Upper House and if rejected there, then there will be a joint session in which the members of both House will sit and decide the matter, by simple majority. Thus the Upper House may succeed in rejecting a Bill passed by the House of the People which will not have sufficient authority to give effect to that legislation by its own simple majority. I think the Upper House, even though it will be elected by the Provincial Legislatures, will not be as representative of the people as the Lower House. The Lower House will be directly elected. The Upper House will be elected by the Lower House and will have also some element which will be nominated by the President. Secondly, it will be a House one third of whose members will be elected every second year so that at least 2/3rds of the members will not represent the new spirit but will be persons who shall have been elected 2 years and 4 years before. I therefore, think that the Upper House will not represent the feelings of the people of the time and to give the members of that House the same status as the members of the Lower House is, I think reactionary. Even if we want to give the Upper House some status, we must give it only that authority which the House of Lords has got in England by the Act of 1911. When the House of Lords does not agree to a Bill passed by the House of Commons it automatically becomes law after the lapse of a particular period. In our Constitution if the Upper House rejects a Bill, there will be a joint sitting and the fate of the Bill will be decided by the Joint Sitting. I think the British model which we have adopted should also be adopted in the present case as well, and if a Bill is rejected by the Council of States, then the will of the House of the People should prevail , and the Bill must become law, irrespective of the fact that the Council of States has rejected it. If the Council of States delays the consideration of the Bill and the delay is longer than a specific period, then the Bill should be taken as passed. The Upper House should not be in a position to stultify a Bill passed by the Lower House. That is a very salutary principle and even in England where the institution of Upper House began they thought it fit to limit the powers of the Upper House and it is not allowed to stultify the voice of the people expressed by the House of Commons. By providing for a Joint session we are giving the Upper House a vital power, the power to act as a check on the progress and the wishes of the people who may like legislation passed at a rapid speed to bring our country abreast of the great nations of the world. In our country when we are so much backward, we shall need to go quickly and we do not need such brakes from the Upper House as the clause provides I, therefore, feel that the practice in Britain should be adopted. The provision of the British Parliament has been copied by other Commonwealth countries as well. In Australia if in six months the Bill is not considered Bill should be passed. In England even that is not required; so the purpose in both places is the same, that the House of Commons should have the final say and its voice should not be stultified by the Upper House. I therefore hope that in considering this clause, members will bear in mind that they are laying down a principle which may act as a brake on our progress. I do not want that this provision should disgrace the Constitution which we are passing for our new Free Independent Democratic Republic. I therefore hope that this provision for a Joint Sitting of both the Houses should not be accepted by the House and I hope that my words will be borne in mind by the House.

Shri Chimanlal Chakubhai Shah: (Saurashtra): Mr. President, Sir, I oppose the amendment moved by Mr. Saksena.

Mr. President: I did not allow him to move the amendment. He spoke opposing the article.

Shri Chimanlal Chakubhai Shah: I speak in support of the article . Under article 87 we have provided that a Bill shall not become an Art unless assented by both the Houses. That is a thing which we are perfectly clear about. Then the question arises as to what to do when there is a difference of opinion between the two Houses. It is possible that we may say that where there is difference of opinion we will leave the matter at that stage and allow the Bill to lapse and not make it and Act. That would be following the American model but there are some who feel that it should not be left at that stage and we should provide some machinery by which the difference of opinion between the two houses can be resolved. There are three or four ways in which that machinery can be provided. One is the British model under which after a certain lapse of time the Bill passed by the Lower House automatically becomes an Act if certified by the Speaker. Then there is the Irish model under which the Lower House should again pass a Resolution accepting the Bill once more on which it will become an Act. But the analogy between these two models and our model has no application at all because both those are unitary constitutions where ours is a federal constitution. In a Federal Constitution, the Upper House is composed of the representatives of the various units or states. It is not like the House of Lords which is hereditary or which by its very character is conservative. Our Upper House is elected by the representatives of the various States and therefore it is as representative as the Lower House itself in a particular manner. The object of providing an Upper House in the Centre is to see that the States voice or the voice of the units is adequately represented. Therefore the third way of providing to resolve the deadlock is by Joint session. Now that is not a very ideal solution no doubt but it is a solution which is as good as possibly can be conceived of. When both the Houses meet together it is possible that either by compromise they resolve their differences or the majority of the Lower House will carry the day. But it is not right to say that the Lower House alone will be the sole judge of a particular Bill and that after a particular lapse of time the Upper House will have no voice, because the Upper House is intended to represent in a Federal Constitution the voice of the Units and they are as much elected representatives of the people as the member of the Lower House. I, therefore, submit that the solution embodied in Section 88, if not ideal, is as good as can be conceived or in a Federal Constitution and to copy the British Model is not proper because the composition of the House of Lords is entirely different from the one which we have conceived of under our constitution and secondly it is a unitary Constitution whose model can have no application to a Federal Constitution. I, therefore, support article 88.

Shri M. Ananthasayanam Ayyangar: Sir, I am only trying to answer the point raised by my Friend, Mr. Kamath, by pointing out to him that there is a proviso under article 88 that-

"Provided that nothing in this clause shall apply to a Money Bill"

But he thinks this is not exhaustive and therefore wants to put in the words "or other financial Bill". With all respect to him, Sir, I submit that these words ought not to be there and I say this for these reasons, In this article a difference has been made between Money Bills and other Financial Bills. Money Bills come under article 90 which says-

"For the purpose of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters....."

It is only in cases where these matters alone are dealt with in a particular Bill that a procedure is prescribed, as distinct from other financial Bills where not finance matters exclusively, but other matters also are incidentally raised. It is only a Bill which relates only to those matters provided in article 90 that can be introduced only in the House of the People. So far as the Upper House is concerned it has no jurisdiction in these matters except in the matter of recommendations which should be sent to the House of the People. The House of the People may or may not accept the recommendation. In either case the Bill will be considered to have been passed by both the Houses. So far as other financial Bills are concerned, another procedure is prescribed; and if any question arises as to whether a Bill is exclusively a Money Bill or not, the decision of the Speaker of the House of the People is to be final. So far as other matters are concerned, they can be introduced in both Houses of Parliament and both houses have jurisdiction to go into them. Under article 88 they have exempted Money Bills alone. With respect to any other financial Bill, other than money Bills, which deals with other matters also, both Houses have got jurisdiction. In the case of Money Bills, they have to be introduced only in the Lower House; the Upper House can only recommend. I would therefore, submit that this amendment is unnecessary and contrary to the scheme of the Act. So Mr. Kamath's amendment is out of order.

Shri S. Nagappa (Madras: General): Mr. President, Sir it was not my intention to speak on this article, but coming as I do from Madras I have been experiencing how the two Chambers have been working, and how the Upper Chamber retards the work of the legislature. So far as the Congress Legislative Party is concerned, it is meeting more or less as a joint sitting, for everything that has to be passed in the Legislature is being discussed there. As is well-known, it is in the Lower House that all Bills originate, but its number happens to be 215 and in a joint sitting with the Upper House, it is not a deciding factor. So the Upper House restrains legislation that is passed by the Lower Chamber. If the Upper

Chamber does not agree with anything, it can suggest amendments, and send back the Bill to the Lower Chamber, and Chamber does not agree and there is a dispute, then there is a suggestion in the clause for joint sittings. If there is a clear division, say of 100 on one side and 150 on the other, then practically the Lower Chamber will become the deciding factors in the joint sitting. But the Upper Chamber does not represent the people directly. The Upper Chambers as constituted today happen to be representatives of the petty bourgeoisie and bureaucrats, and wherever there is any trend towards progressive legislation, they try to delay matters and even to torpedo legislation passed by the Lower Chamber. As a common man, as a layman, that is how I feel about this matter. Whether there should be an Upper Chamber or not was considered by the Provincial Legislature and I was against it for a very long time. But we are now going may be people of experience and also people of little experience. So it is that we may have their experienced politicians nominated in the Upper Chamber so that we may have their experience and guidance. That was the reason which made me support the proposal to have an Upper Chamber. I do not think there was such a provision in the 1935 Act; but after all we did not work that Act fully. We had experience of it only for about a year and a half from 1937 to 1939. Within this period I do not think we ever had occasion to have a joint sitting. But as I said, in the Congress Legislative Party, we members who belongs to both Chambers assemble and discuss and decide, and so we were practically having joint sittings. We also found that progressive legislations brought in by members of the Lower Chamber were more or less retarded or delayed by the Members of the Upper Chamber. But anyhow, the Honourable Dr. Ambedkar has explained that as it is constituted, the Upper Chamber will not act as a check or rather that it will not stand in the way of progressive legislation. The people to be elected to the Upper House will not be elected from the landlords or zamindars, but by the people of the Lower Chambers; so I agree to this. The members of the Lower Chambers will understand what sort of people are to be elected to the Upper House. That does not mean, however, that once elected it will be the will of the people who elected them that will prevail. It is the will of the people who are elected that prevail in the House. That is the point to be considered to see that progressive legislations are not checked. In my opinion, in order to have a kind of check over the hasty legislations of the Lower Chamber, it would be better to have a time-limit during which the Upper Chamber must deal with a particular question. During that period the Upper Chamber must either accept the legislation passed by the Lower Chamber or send it back to the Lower Chamber for rectifying any defects. If the Lower Chamber sticks to its own guns, and says that it will not yield, then by the sheer lapse of time it would become the law. That, I think would have been better than having joint sittings. But anyhow there is provision in this Constitution that after ten years, if the people feel the necessity for it, they can change any clause or article in it, and they say, "practice makes a men perfect." After some time, as in the future legislature there will be the real representatives of the people, they will be in a position to know actually the difficulties they have to face because of this clause, and they may effect the necessary change. Sir, with these words, I conclude.

The Honourable Dr. B. R. Ambedkar: Sir, there is only one amendment moved by my friend Mr. Kamath which calls for some reply. His amendment is No. 1656 by which he seeks the omission of the words "for the purposes of this Constitution". My submission is that those words are very essential and must be retained. The reason why I say this will be found in the provisions contained in clause (2) of article 87 and article 91. According to clause (2) of article 87, the main

provision therein is that the Bill shall be passed independently by each House by its own members in separate sittings. After that has taken place, the constitution requires under article 91 that the Bill shall be presented to the President for his assent. My Friend Mr. Kamath will realise that the provisions contained in clause (2) of article 87. Therefore it is necessary to state that the Bill passed in a joint sitting shall be presented to the President notwithstanding the fact that there is a deviation from the main provisions contained in clause (2) of article 87. That is why I submit that the words "for the purposes of this Constitution" are in my judgment necessary and are in no sense redundant.

With regard to the observations that have been made by several speakers regarding the provisions contained in article 88, all I can say is, there is some amount of justification, for the fear they have expressed, but as other Members have pointed out this is not any sense a novel provision. It is contained in various other constitutions also and therefore my suggestion to them is to allow this article to stand as it and see what happens in course of time. If there fears come true I have no doubt that some honourable Members will come forward hereafter to have the article amended through the procedure we have prescribed for the amendment of the Constitution.

Shri H. V. Kamath: In view of the light shed on my amendment (No. 1645) by Mr. Ananthasayanam Ayyangar, I beg leave of the House to withdraw the amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That in clause (2) of article 88, for the words `both are' the `Houses are' the words `the Houses referred to in sub-clause (c) of that clause is' be substituted."

The motion was adopted.

Mr. President: The question is:

"That in clause (2) of article 898, before the last word `days' the word `consecutive' he inserted."

The motion was adopted.

Shri H. V. Kamath: In view of the clarification made by the Honourable Dr. Ambedkar I beg leave of the House to withdraw my amendment No. 1656.

The amendment was by leave of the Assembly withdrawn.

Mr. President: There have been two amendments which have been adopted to this article 88. I shall now put the amendment article to the House.

The question is:

"That article 88, as amended, stand part of the Constitution."

The motion was adopted.

Article 88, as amended, was added to the Constitution.

*

Article 89

Mr. President: I think amendment No. 1662 is a verbal amendment and it is covered by the other provisions in the Draft Constitution.

Prof. K.T. Shah:It is a much more strong assertion of an undoubted privilege or right of the lower House. I do not see why it should be put negatively.

Mr. President: That is right is there. It is not taken away by the provisions of the constitution.

Shri H.V. Kamath: Sir, at the outset I have to reiterate what I had to point out yesterday that I sent these as two separate amendments but unfortunately they have been lumped up in one. I have no desire to find fault with the office which is working at high pressure. I ask your permission to move the second part of the amendment only.

I move:

"That in clause (1) of article 89, for the words `not be introduced in the Council of States' the words `be introduced in the House of the People's be substituted."

Mr. President: Is not an amendment of a formal nature?

Shri H. V. Kamath: I freely admit Sir that it is an amendment of a formal nature and so I shall leave it to the Drafting Committee for consideration.

(Amendment No. 1664, was not moved.)

Shri T.T. Krishnamachari: Sir, I beg to move:

"That in article 89, for the words `thirty days' wherever they occur the words `twenty one days' be substituted."

The idea is that after a money Bill has been passed by the House of the People it shall be transmitted to the Council of States for its recommendations. In actual practice the period of time involved might not be even more

than a week. Thirty days is intended as an outside limit. At the time some of us framed this amendment, we were a little chary of suggesting a lower time-limit, than twenty-one days but I believe that a fortnight or fourteen would be more than enough to cover all contingencies. If Dr. Ambedkar would agree and the House would give me leave I would like to substitute fourteen days instead of twenty-one days, as the former period would be more than adequate for the purpose. Sir, I move.

Mr. President: There are two amendments in the name of Mr. Naziruddin Ahmad (No 1666 and 1667). They are amendments of a drafting nature.

So there is only one amendment to article by Mr. T.T. Krishnamachari. The article is now open for discussion.

The Honourable Dr. B.R. Ambedkar: Sir, I accept the amendment moved by my Friend Mr. T.T. Krishnamchari. I would also agree to the further reduction of the period to fourteen days. If the House will permit me to make such an amendment I should like to move that the period of twenty-one days as mentioned in the amendment be further reduced to fourteen days. I shall give my reasons for this change. In the British Parliament the House of Lords merely concurs in the financial provisions passed by the House of Commons; it has completely abrogated itself so far as finance is concerned. We are here making a departure from that position and are allowing the upper chamber to have some voice in the formulation of the taxation and financial proposals which have been initiated by the Lower House. As I said, we are conferring a privilege which ordinarily the upper chamber does not possess. At the same time we must bear in mind that the budget is a very urgent matter. Even now, as Members know, we do not give the Lower House more than six or eight days for the Finance Bill. It seems to me that to allow such a long period of thirty or even twenty-one days would result in hanging up such an important matter for a considerable length of time. If the Upper House wants to express an opinion fourteen days is a more than enough period.

Mr. President: The original question was:

"That in article 89 for the words `thirty days' wherever they occur the words `twenty-one days be substituted."

To that a further amendment has been moved that for `twenty-one day' the words `fourteen days' be substituted."

"That in the amendment for the words `twenty-one days' the words `fourteen days' be substituted."

The question is:

"That the amendment to the amendment be adopted."

The amendment was adopted.

Mr. President: The question is:

"That the amendment 89, as amended, be adopted."

The motion was adopted.

Article 89, as amended, was added to the Constitution.

*

Article 90

Mr. President: Article 90.

(Amendment No. 1668 was not moved.)

The Honourable Shri Ghanshyam Singh Gupta (C.P. & Berar: General): Sir, I beg to move:

"That in clause (1) of article 90, the word `only' be deleted."

This article is a prototype of Section 37 of the Government of India Act which says that a Bill or amendment providing for imposing or increasing a tax or borrowing money, etc. shall not be introduced or moved except on the recommendation of the governor-General. This means that the whole Bill need not be a money Bill: it may contain other provisions, but if there is any provision about taxation or borrowing, etc. It will come under this Section 37. and the recommendation of the Governor-General is necessary. Now article 90 says that a Bill shall be deemed to be a money Bill if it contains only provisions dealing with the imposition, regulation, etc., of any tax or the borrowing of money, etc. This can mean that if there is a Bill which has other provisions and also a provision about taxation or borrowing etc., it will not become a money Bill. If that is the intention I have nothing to say; but that if that is not the intention I must say the word "only" is dangerous, because if the Bill does all these things and at the same time does something else also it will not be a money Bill. I

do not know what the intention of the Drafting Committee is but I think this aspect of the article should be borne in mind.

(Amendment Nos. 1670 and 1971 were not moved.)

Prof. K. T. Shah: Sir, I move:

"(a) That at the end of sub-clause (a) of clause (1) of article 90, the words `duty, charge, rate, levy or any other form of revenue, income or receipt by Governments or of expenditure by Government' be inserted; and

(b) That in sub-clause (b) of clause (1) of article 90, after the words `or the amendment of law' the words `or existing contract' be inserted."

This amendment is intended to amplify, in clause (a), the items mentioned as characterising or included in the definition of Money Bill, namely the imposition, abolition, remission, alternation or regulation of any tax, duty, charge, levy, rate, or any other form of revenue, receipt, or any other form of expenditure. This Draft Constitution has not yet included any article giving definition of important terms used in it, and hence this attempt to elucidate a crucial term in this article.

If it is intended that the word `tax', as included in this clause, is to include all those other forms of public revenue or income, which I have particularised and separately included, then I am afraid, in the absence of clear definition clause, this is liable to mislead. It is quite possible that the ingenuity of lawyers may lead to the connotation of the word `tax' to be so narrowed down, as to exclude many of the other items or categories of public revenues I have mentioned; and a Bill which would be substantially a Money Bill, but not include a "tax" by way of imposition, modification alteration, or regulation of "tax", narrowly construed, may not be regarded as a Money Bill. I think that would seriously increase the powers of the Council of States; and so it is of the utmost necessity that these other forms, also, of public revenue, income or receipt should be included, so that there could be no room for dispute in this matter.

After all, any student of Constitutional history would be aware that the struggles for supremacy between the House of Commons and the House of Lords in England almost invariably centered round the definition or scope of a Money Bill. The powers of the House of Lords to deal with money bills have been successively curtailed by including many matters, which, perhaps, previously were not part of the budget. By that means the supreme power of the House of Commons on financial matters has been now made almost unchallengable.

The wording of this article as it is here leaves, according to me, considerable room for apprehension that the powers of the House of the People over matters financial will not be as wide not be as wide and as complete as I had thought ought to be the correct position in representative democracy with responsible ministry.

It is for that purpose that I have inserted all those items which have in the past, in one way or another, cause some difference in other countries, and therefore should be clearly specified.

As regards the second part of my amendment, namely variation of any law or of any contract, that is still more important. The contracts of Government relate very often to borrowed money, and for the interest contracted to be paid on such borrowed money, there may be variations and there have been variations. These variations are one-sided modification of a contract, which a sovereign Legislature is, of course, entitled to make; but that power should be in the House of the People, as part of its sole authority over money Bills and financial administration. For instance, the rate of interest on the Funded Public Debt has been frequently reduced in England. Now that is an act of sovereign authority, which no doubt belongs to the Legislature under the Constitution we are drafting. But it is part of a financial legislation; and, as such, should be within the competence only of the Lower House.

I also remember other instances. About fifteen years ago in the United States, contracts of even private individuals, in which the so-called "Gold Clause" had been inserted, were modified by an Act of the Congress. That is to say if a contract between an American citizen and his customer abroad required payment for goods services to be made in gold, no matter in what currency the contract was expressed, that clause in the contract could be disregarded. It such contracts had remained unaffected, all measures taken by the Administration and the remained and the Congress touching the exchange value to the Dollar would have been of no effect, for no matter what happened to the local currency, the international contract was made in terms to be liquidated only in gold, or currency equivalent to gold, or bullion as the case may be. Now, the American legislature did enact that this kind of clause would be invalid. If it was allowed to stand, it would defeat the legislation that the administration had then got enacted. If you do not permit any such power to be included in the powers to the House of the People as analogous to a Money Bill, then I am afraid, in the age in which we are living you will leave out a very considerable margin of power to legislate to authorise attempt at modification of economic dealings, either between the State and the citizen or between citizen and citizen, which, in my opinion, ought to be included. If the principle is accepted very clearly that the supreme financial authority and control is in the Lower House only, there can be no objection to this suggestion.

It was with that view that I had suggested an earlier amendment, making in categorically clear that a Money Bill can only be introduced in the Lower House. The negative way, in which that clause has been framed, is open to some misconstruction and abuse. However, that amendment has not been moved. I am, therefore, now seeking to make clear what ought to be beyond doubt even in the basic Constitution, and should not be left to be elaborated either by rules of the House or standing orders or precedents. We have no precedents of our own, but have to create precedents. We cannot every time refer to the analogy to British Constitutional History. We need not leave room for legal ingenuity to be exercised at the expense of liberal institutions. On an earlier occasion it was stated in this House that this Constitution will provide a paradise for lawyers. I hope that would not be true. We must not leave our fundamental Constitution vague, uncertain, unclear by any words or phraseology, open to distortion by legal ingenuity. It is for this purpose that I have suggested this amendment, and I hope it will be acceptable to the House.

Shri H. V. Kamath: Sir, I move:

"That in sub-clause (e) of clause (1) of article 90, for the words 'the increasing of the amount of', the words 'varying the amount of, abolishing', be substituted."

It is not necessary for me to expatiate upon the need for an amendment of this nature, because it is common knowledge that when items of expenditure are charged to the revenues of India circumstances may so change that the need for incurring that expenditure may not be felt and the expenditure may cease to be incurred or it may be decreased or even increased. I visualise the possibility of increase. But here this sub-clause visualises only one possibility and that is increase. Why, I ask, was 'decrease or abolition of such expenditure' not visualised? The question will arise, what are the various items expenditure to be charged on the revenues of India? For an answer to that we turn to article 92(3) which lays down that the following shall be expenditure charged on the revenues of India. I shall not read out the whole list. I shall content myself with bringing it on the notice of the House. There are six items, (a) to (f). If you examine them closely you will find that where as the Constitution provides in the case of the salary and emoluments of the President,--let us then to article 48(4) which provides that the emoluments an allowances of the President shall not be diminished during his term of office. Well and

good. But if we turn to the provision for the emoluments and allowances of the Chairman and the Deputy Chairman of the Council of States, or the Speaker or the Deputy Speaker of the House of the People, the relevant article does not state explicitly that the emoluments of the Chairman of the Deputy Chairman, or the Speaker or the Deputy Speaker of the House of the People shall not be diminished during their term of office, as is laid down in the case of President. I do not suppose that they will be diminished, but the Parliament being sovereign can diminish the emoluments of the Speaker or the Deputy Speaker or the Chairman or the Deputy Chairman. Comprehending this possibility, I have suggested the use of the word "vary". The word "vary" connotes to my mind both reduction as well as enhancement, increase as well as decrease. Therefore I appeal to Dr. Ambedkar and the House to accept the word "very" as being more comprehensive and as being able to embrace in its scope both an increase and a decrease.

As regards abolition, that too is not beyond the bounds of possibility. If we turn to clause (3) of article 92 to which I have just referred, we will find that it refers to various items of expenditure which shall be expenditure charged to the revenues of India. Sub-clause (f) of this clause provides that any other expenditure declared by this Constitution or by Parliament by law to be so charged shall be charged to the revenues of India. I need not point out all the various items of expenditure which Parliament might decide to be chargeable to the revenues of India. There may be grants to various institutions, educational, cultural or social or otherwise which Parliament by law may decide to be chargeable to the revenues of India and then it may subsequently decide by law to do away with these. Therefore, Sir, this article as it stands does not include or visualise the possibility of a decrease of abolition of the items of expenditure which are charged to the revenues of India. To rectify this position and to embrace in its various contingencies that may arise, I am moving my amendment, No. 1674, and I commend it for the acceptance of the House.

Mr. President: Amendments No. 1675, 1676, 1677 and 1678 are all verbal. All the amendments to this article having been moved, anyone who wishes to speak on the amendments and the article may do so now.

Shri M. Ananthasayanam Ayyangar: I will confine my remarks to the amendment moved by my Friend, Mr. Kamath. He referred to article 90, clause (1) sub-clause (e) which says" the declaring of any expenditure to be expenditure charged on the revenues of India of the increasing of the amount of any such expenditure. Now, it is only in case an expenditure is increased, then it becomes a Money Bill. He wants the substitution of the word "varying" for the word "increasing". Now I would only ask him to refer to the scheme and then if after understanding what the scheme of the framers is, he still wants this change, that is another matter, but let us understand what the scheme is. If we turn to article 97, it says, "Bill or amendment making provision for any of the matters specified in items (a) to (f) of clause (1) of article 90 of this Constitution shall not be introduced or moved except on the recommendation of the President.....". Even for a Money Bill, for increasing, the recommendation of the President is necessary. The proviso to this article says that "Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction for abolition of any tax". Now it has been the usual procedure even under the existing law that when an amendment is moved to a Money Bill or a financial measure for the reduction or of any tax, the recommendation of the Governor-General is not necessary. Likewise, the same thing is copied here. But the imposition of a tax is a burden imposed upon the community. When you seek to reduce or abolish a tax, no such recommendation is necessary. It is left the House, and the previous enquiry by the

Presiding whether it is in the interests of the community or not is not necessary. That is the scheme. The earlier part of article 97 refer both to a Bill and an amendment, whereas the proviso refers only to an amendment. Therefore a Bill for the purpose of reducing or abolishing a particular tax has to be recommended by the President Otherwise it cannot be introduced. A Bill which seeks to increase an existing tax or increasing the expenditure also requires the sanction of the President, but the difference between a Bill, seeking to increase the amount of expenditure and a Bill seeking to reduce or abolish it is this: In one case where increase is sought, it can be introduced in the lower House only, whereas in the case where a reduction or abolition is sought, it can be introduced in any House, both the House having jurisdiction. In the case of reduction or abolition, the Bill can be initiated in either House, whereas my Friend wants to confine that power to the Lower House only. Increase stands on a different footing because it has to be considered whether India is in a position to bear that. Whether any expenditure should be chargeable to the revenues of India is a matter which requires investigation, since any expenditure chargeable to the revenues of the country is not subject of the vote of the House, even though the House can generally debate on it or discuss it. But it is taken out from the purview of its vote. In that case, should we not restrict the limitation imposed upon the right of the House by confining it only the increase? You want to take away the jurisdiction of the Houses in the matter of decrease as in the case of increase. I would respectfully submit that he has misunderstood the scope of this clause and is trying to restrict unnecessarily the authority of the jurisdiction of both Houses in a matter where only in respect of money matters and in respect of increase only the jurisdiction is confined to the Lower House. I am therefore not in agreement with the amendment moved by Mr. Kamath.

Shri H. V. Kamath: On a point of clarification, may I ask my honourable Friend to point out the article which provides that any Bill which relates to reduction or abolition can be introduced in either House, because proviso to article 97 relates to reduction or abolition of any tax, and not to other items of revenue and expenditure. The whole scheme is not very clear and I do not know how it is clear to Mr. Ayyangar. If he convinces me, I shall certainly reconsider my amendment.

Shri M. Ananthasayanam Ayyangar: So far as the amendment is concerned, an amendment to a Bill can be moved even without the recommendation of the President in so far as it relates to the reduction or abolition of a tax, but if it is a Bill specifically for the purpose of reducing, then the recommendation is necessary, but in the case of increasing, it must be in the form if a Money Bill. Let us refer to article 97. It is not a Money Bill at all.

Shri H. V. Kamath: Where is the provision?

Shri M. Ananthasayanam Ayyangar: It is a Money Bill only when it relates to increase. It is not a Money Bill when it does not relate to increase, and, therefore, it may come under article 97 and then require a recommendation or may not require a recommendation at all. My honourable Friend wants that there should be a recommendation and in addition it must be a Money Bill. As it is, when it is a Money Bill, only one House has got jurisdiction.

Shri H. V. Kamath: May I interrupt? I am sorry, but I want to have it cleared up. May I invite my honourable Friend's attention to the proviso to article 97(1) to which he has referred, which says that no recommendation shall be required where reduction or abolition of the tax is contemplated. What about other expenditure, about reduction and abolition of other items of expenditure. There is nothing in the whole scheme.

Shri M. Ananthasayanam Ayyangar: Then is would not be either a Money Bill or a financial Bill. Money Bill is one which comes under clauses (a) to (f) of sub-section (1) of article

90. Now a Bill relating to increase of the amount of any expenditure alone is a Money Bill or a financial measure; if it does not relate to increase, that is, either reduction or abolition, it is not a Money Bill. That is why we want a recommendation. If this proviso relates only to a tax as I understood it, then tax means not all the matter provided for from (a) to (f). Now I find the word 'tax' has been used separately from the other provisions. Therefore that proviso does not necessarily mean a tax in any Bill or amendment relating to reduction or abolition of any of the expenditure provided in clause (1) (a). It is neither a Money Bill nor even a financial Bill. Therefore, it can be introduced freely in either House and without any recommendation whatsoever. Now the only question, therefore, is whether we should like to make it is also in an exclusive category along with the measure for increasing. I would submit that we ought not

to limit the scope or abolition of any tax. A Bill to increase in given to the Lower House as an exclusive jurisdiction. The other Bills may be introduced freely without any restriction or limitation in either of these House. I am not in favour of this restriction, Sir.

Prof Shibban Lal Saksena: Mr. President, in clause (2) of this article, it is said: "A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties or for the demand or payment of fees for licences or fees for services rendered or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes." Now, Sir, a Bill providing of the imposition, abolition, or alteration of any tax by any local authority would no be a Money Bill. I personally feel, as Mr. Ayyangar just now pointed out, that if a Bill provides for an increase o taxation, or of a new imposition, the Bill will be a Money Bill, but here in this clause it is intended that it shall not be a Money Bill.

Mr. President: I think you are under a misapprehension. It can only provide authority to a local body to impose a tax, not the tax itself, but only gives authority.

Prof. Shibban Lal Saksena: I know that, Sir. I feel when any Bill authorises any body to impose taxes, that should also be a Money Bill. In fact, I think Prof. Shah's amendment which wants to add at the end of sub-clause (a) of clause(1) of article 90 the words, namely: "duty, charge, rate, levy or may other form of revenue, income, or receipt by Governments or of expenditure by Government", would be a much better provision. Sub-clause (a) only says "the imposition, abolition, remission, alteration or regulation of any tax." It has not included "duty, charge, rate, levy or any other form of revenue, income or receipt." I would request the Honourable Law Minister who is in charge of this Bill to see that this sub-clause (a) is suitable amended. I feel that clause (2) takes away some power from the Lower House and makes it obligatory on the Government to place such bills which are properly money Bills before the Upper House. I do not think that in regard to such matter this should be so. I personally feel that many of the local bodies are today starved of revenue. They are partially without any funds today to do the huge work that they have got to do. I myself am in one of the Board of a big district and I feel that unless the local bodies have got more revenue, they cannot carry out their programmes at all. In our Parliament we pass expenditure of crores of rupees in two or three hours time, but these local bodies are not able to raise in the whole year even a few lakhs for their most essential needs such as school buildings which have to be built and village roads which have to be repaired and similar other amenities of every day life. But here is a provision that such Bills which authorise local bodies to impose taxation shall not be Money Bills. They may thus be delayed. I think there should be some amendment to this section so that at least local bodies should not be handicapped by this dilatory process.

The Honourable Dr. B. R. Ambedkar : Sir, while going over this article, I find that it requires further to be considered. I would therefore request you not to put this article to vote today.

Mr. Naziruddin Ahmad: I should also like to suggest that the position of the word" 'only', in connection with amendment No. 1669 should be specially considered. It is a word which is absolutely mis-placed.

Mr. President: There are four amendments moved to this article, and the first amendment is No. 1669 that in clause (1) of article 90, the word 'only ' be deleted. Mr. Naziruddin Ahmad wishes to emphasise the importance of that amendment. That may be taken into consideration by the Drafting Committee. The whole article is going to be reconsidered.

*

Article 91

Mr. President: We shall take up the next article, 91

That motion is:

"That article 91 form of the Constitution.'

(Amendment No. 1679 was not moved.)

Shri Lokanath Misra (Orissa: General): Sir, I move:

"That in article 91, for the words 'either that he assents to the Bill, or that he withholds assent therefrom' the words 'that he assents to the Bill' be substituted, and the following words be added at the end of the proviso to the article:-

'and if the Bill is passed again by the House with or without amendment and presented to the President, the President shall not withhold assent therefrom.'"

Sir, in moving this amendment, I am in the beat of company in so far as the Drafting Committee itself has suggested the same in a subsequent amendment. I beg to submit that when I move this amendment to take away the power-from the President to dissent from any Bills passed by Parliament, I mean nothing more than saying that since our President is analogous to the King in England and as the king has no power of dissenting from any Bill passed by President this amendment is appropriate.

As regards the second amendment, without that amendment the proviso seems to be incomplete. Supposing the President sends back a certain Bill for reconsideration and Parliament comes to a certain decision, without this amendment, the whole action becomes incomplete and inconclusive and since this is also the view taken by the Drafting Committee, this amendment too should be accepted.

(Amendments Nos. 1681, 1682, 1683 and 1684, were not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in the proviso to article 91, for the words 'not later than six weeks' the words 'a soon as possible' be substituted."

Mr. Naziruddin Ahmad: I have an amendment to this amendment, No. 94.

Mr. President: I think that is of a drafting nature.

Mr. Naziruddin Ahmad: There would be a difference in actual practice.

Mr. President: So, you consider it to be substantial?

Mr. Naziruddin Ahmad: Yes, Sir, I beg to move:

"That in amendment No. 1685 of the List of Amendments, in the proviso to article 91, for the proposed word 'possible', the words 'may be' be substituted."

I beg to submit that this amendment will make some substantial change. The Proviso is to the effect that "the President may, as soon as possible, after the presentation of the Bill, return the Bill," and so on. I want to make it "as soon as may be". If we leave it exactly as Dr. Ambedkar would have it, it leaves no margin. As soon as possible' means immediately. Possibility which means physical possibility is the only test. It may leave on breathing time to the President. The words 'may be' give him a reasonable latitude. It would mean, "reasonably practicable". This is the obvious implication. That is the only reason why I have suggested amendment.

(Amendment No. 1686 was not moved.)

Mr. President: Amendment No. 1687, I think, is merely verbal. Amendment No. 1688, I think, is the same as the amendment already moved by Mr. Lokanath Misra.

Shri T. T. Krishnamachari: There is a slight difference in language. I think Dr. Ambedkar's proposal will be the better one.

Mr. President: I shall put this to

the vote. It need not be moved.

Amendment No. 1689: this is also the same as amendment No. 1688 of Dr. Ambedkar, We have taken it as having been moved. Is it necessary to move this? You can move it is there is some slight difference.

Begum Aizaz Rasul (United Provinces: Muslim): Sir, I beg move.

"That in article 91, after the first proviso the following second proviso be added:-

'Provided further that if after the President has declared that he withholds assent from the Bill or has returned the Bill with a request for reconsideration of the Bill or of a specified provision thereof, or of any amendment by him, the Houses of Parliament should, after reconsideration of his recommendations pass the Bill again with or without an amendment and return it to him for his assent, he shall not withhold his assent therefrom.'"

Sir, the present provision in article 91 provides for the action that the President has to take presumably on the first presentation of a Bill. But it does not make it clear what should be the procedure if a Bill is returned to the President without accepting any of the amendments suggested by him. Does it mean that he can again return the Bill to Parliament for reconsideration of his amendments? This will mean unnecessary delay and will mean that the Bill can be returned to Parliament more than once. My object in moving this amendment is to do away with this ambiguity and to make it clear that the President can return the Bill to Parliament with his suggestions once only, but if Parliament does not agree to the amendments that are suggested by him and returns the Bill to him, he should not in that case return the Bill a second time for the re-consideration of Parliament. In the House of Commons automatically becomes law even if the House of Lords disagrees. In the same manner in the U.S.A. a Bill becomes an Act even if the President vetoes it, provided it is passed by two-thirds majority of the Congress. Some such provision should be made here in this article also so that unnecessary delay may not take place. With these words I move my amendment.

(Amendment No. 1690 was not moved.)

Mr. President: Amendment No. 1691 is covered by other amendments already moved Amendment No. 1692.

Mr. Tajamul Husain: Sir, i beg to move:

"That the following new clause be added to article 91;-

'(2) If the Houses do not accept the recommendations of the President, the Bill shall again be presented to the President, and the President shall declare either that he assents to the Bill or that he does not assent to the Bill. If the President does not assent to the Bill, the House of the People shall automatically dissolve itself, and a fresh election shall be held immediately. If the Party that was in power at the time of the dissolution is returned in majority, the President shall vacate office and the Bill becomes an Act of Parliament.'"

Now, Sir, with your permission I will first, before I begin my submissions, read article 91 and the proviso to it. The article reads:

"When a Bill has been President may, not later then six weeks after the presented to the President, and the President, shall declare either that he assents to the Bill, or that he withholds assent therefrom:

Provided that the President may, not later than six weeks after the presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the House with a message requesting that they will reconsider the Bill or any specified provision thereof, and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and the House shall reconsider the Bill accordingly."

Article 91 says that when a Bill is passed, it is presented to the President, and the President's power is that he either assents or does not give his assent. The proviso says that if the President does not give the assent, he return the Bill for reconsideration. Then the House shall reconsider the Bill. My point is suppose the House does not reconsider the Bill or does not accept the

suggestion made by the President, what will happen? no provision has been made in this article as regards this. Therefore I have moved this amendment. My amendment amounts to this. If the House does not reconsider or accept his amendment, then the Bill shall go back to the President. Then the President shall accept what has been sent by the house and if he does not accept, then according to the English Constitution as I understand it, the House should dissolve itself. There should be re-election and if the party that is in power is returned again--according to the English Constitution the King must abdicate-- then I want the President either to accept or he must be considered to have resigned his office and the Bill will become law by itself. This is my amendment. I think I am moving this in accordance with the English Constitution which we have been following in this House to a great extent. I commend to the House that my amendment may be accepted.

Mr. President: All the amendments have been moved. The original article and the amendments are now open for discussion.

Dr. P. S. Deshmukh: Mr. President, Sir, Obviously the article it was worded in the beginning was found to be defective in at least two particulars, as is clear from the fact that Dr. Ambedkar himself has moved one amendment suggesting the substitution of the words 'not later than six weeks' by the words as soon as possible'. The second difficulty which has been visualized and which is tried to be removed is by making a provision in case the President withholds the assent. The Provision intended is that when a Bill is presented for a second time, it shall be incumbent upon him i.e., the President to give his assent and he shall not have the option to withhold the assent. So far as the first amendment of Dr. Ambedkar is concerned, I do not know if it is very necessary that the amendment should be accepted. The question for consideration is whether we should merely say that the President should give his assent as soon as possible or whether we should state any period within which he should do it. I think if the words 'not later than six weeks' are to be left as they are, then it is the duty of the President to indicate his decision as early as possible and in no case later than six weeks. So I am not fully convinced of the propriety of changing the wording as proposed.

So far as the other amendment is concerned, I think it is very necessary that there should be a proper provision in cases where the President withholds his assent. It is to be presumed that the President will always act according to the advice tendered to him by Prime Minister and unless and Bill passed in the House has the support of the Party in power, there is no possibility of any Bill being passed. So that question of withholding assent is not likely to arise unless the President finds himself under circumstances where he actually differs from and disagrees with the recommendations of the party and the Government in power. Under those circumstances, it is correct to presume that there is a conflict between the views taken by the Prime Minister of the Government of the day and the President, and when such a conflict arises there must be some solution of which the present House must think of and must make a clear provision with regard to this question so as to solve the difficulty of disagreement between the President and the Prime Minister. I think that so far as this contingency that is likely to arise, and I therefore, support it.

Shri H. V. Kamath: Mr. President, Sir, I rise to support the amendment moved by my Friend Mr. Misra, No. 1680, and to oppose the amendment moved by my learned Friend Dr. Ambedkar, No. 1685. My friend Dr. Deshmukh has ably supported the amendment of Mr. Misra and I do not propose to dilate further upon that. As regards the amendment moved by my learned Friend Dr. Ambedkar, I venture to state that he has not acted wisely in bringing this amendment before this House, and I am reminded of the saying that even Homer nods. And I think Dr. Ambedkar has tripped on

this occasion. That such an experienced man, not only an experienced public man, but an experienced Minister of the State cannot recognise the distinction between a definite period of time and the word "as soon as possible" rather appears to me strange, to say the least. In human nature, if you will permit me to say so, unless there is a compelling sense of duty of service, there is always a tendency to procrastinate. Our wisemen have recognised this by saying:

Alasyam hi manuyanamsh,

Sharirasyo maharipuh.

This tendency to inertia, this inclination to procrastinate has to be rooted out, by infusing the ideal of duty or service. We cannot be sure that every President of the Union of India will always be guided by this ideal, by this compelling ideal of duty and service. Of course we hope and party that it may be so, but there is no guarantee. Therefore, it is very necessary, to my mind, that the Constitution should provide specifically a time limit for a contingency of this nature. As a minister, Dr. Ambedkar, I am sure, must be aware that in the Secretariat various files are knocking about with tags of labels attached to them, some being "Immediate", some urgent," some "early" and so on. Files marked "Immediate" reach the honourable Minister in a day, those marked "urgent" reach him in a couple of days and those marked "early" have been known to sleep in the Secretariat for two of three months. Further latterly, Government has devised new forms such as "consideration" and 'active consideration". I therefore wish to obviate any difficulty arising from substitution of the words "as soon as possible". Nobody knows what they mean, what "as soon as" means. We know in the Legislative Assembly Ministers are in the habit of answering questions by saying "as soon as possible". When we ask, " When will this thing be lone?" the answer is "As soon as possibly or very soon." But six months later, the same question is put, and the answer is again, "As soon as possible," or "very soon". This phrase is vague, purposeless and meaningless and it should not find a place in the Constitution, especially in an article of this nature where we specify that the President must do a thing within a certain period of time. Why do we do it? We do it in order to see that Bills are not left hanging fire in the President's Secretariat--and I know his secretariat is not going to be different in any way from other secretariats. And so I request Dr. Ambedkar to withdraw his amendment. It serves no purpose whatsoever, and I request that the article which is quite clear as it stands may be passed. I oppose the amendment of Dr. Ambedkar and support that moved by Mr. Misra.

Mr. President: I would now put the amendments to vote. Do you want to say anything, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar : No, Sir. I do not think any reply is necessary.

Mr. President: Amendments Nos. 1680 and 1688, the substance is the same, but the wording of 1688 is slightly better, and I first put No. 1688 to vote.

The question is:

"That to the proviso to article 91, the following be added at the end:-

'and if the Bill is passed again by the House with or without amendment and presented to the President for assent, the President shall not withhold assent therefrom.'"

The amendment was adopted.

Mr. President: I think that blocks amendment No. 1698 which has the same substance and so need not be put.

Then I come to No. 1692, that of Mr. Tajamul Husain.

The question is:

"That the following new clause added to article 91:-

'(2) If the House do not accept the recommendations of the President, the Bill shall again be presented to the President, and the President shall declare either that he assents to the Bill or that he does not assent to the Bill. If the President does not assent to the Bill, the House of the People shall automatically dissolve itself, and a fresh election shall be held immediately. If the party that was in power at the time of the dissolution is again returned in majority, the President shall vacate office and

the Bill becomes an Act of Parliament.'"

The amendment was negatived.

Mr. President: There is one amendment left over, i.e., No. 1685 moved by Dr. Ambedkar. There is an amendment to it, moved by Mr. Naziruddin Ahmad. I would first put Mr. Naziruddin Ahmad's amendment to vote.

The question is:

"That in amendment No. 1685 of the List of Amendments, in the proviso to article 91, for the proposed word 'possible', the words 'may be' be substitution."

The amendment was negatived.

Mr. President: Now I put Amendment No. 1685.

The question is:

"That in the proviso to article 91, for the words 'not later then six weeks' the words 'as soon as possible' be substituted."

The amendment was adopted.

Mr. President: Then I put the article as amended by these two amendments namely, Nos. 1685 and 1688.

The question is:

"That article 91, as amended, stand part of the Constitution."

The motion was adopted.

Article 91, as amended, was added, to the Constitution.

Mr. President: We shall adjourn now, and meet on Monday at 5 P.M.

The Assembly then adjourned till Five P.M. on Monday, the 23rd May, 1949.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS)- VOLUME VIII

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 26th May, 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

REPORT OF ADVISORY COMMITTEE ON MINORITIES--(*Contd.*)

Shri R.K. Sidhva (C.P & Berar: General): Mr. President. What a marvelous outlook and change in the meeting of the Minorities Committee of the 11th May 1949 as compared with the first meeting of the same Committee of in 1947 ! It was asked here yesterday: what has happened since 1947 that has made this Committee revise its decision? I might inform the honourable House that at the first meeting it was not that the large majority of the Members were not opposed to any reservation of seats or that several of them-*minus* very few-were not for complete elimination of separate electorates and of reservation of seats also: but our leaders felt that if, just at the commencement of our freedom, we went the whole hog our position would be misunderstood and it might be said that the majority was going to trample down the rights of the minorities. Therefore, they stated that we have made a very good start by removing separate electorates. Let us work it for some time and give them a chance. Some of us did not share their view and we went into voting- though we were in a minority-for the abolition of the reservation of seats. We had to agree to the other view.

But what has happened since then? It was asked yesterday why a trial is not being given. But before we give trial, what has occurred in the country? Communal incidents have played havoc in this country. I do not want to repeat what has happened. Everyone in this House knows what has happened. Due to that communal havoc, in our Parliament last year, we had to pass a resolution that no communal organization which has as its aims and objects the political rights and privileges of its members shall be recognised by Parliament. It was thirteen months ago that this resolution was passed and in my opinion this resolution should have been revised long ago but our leaders wanted the communal passions to subside. Thank God that somehow this Constitution was prolonged for its completion. Had it not been so, let me tell you that reservation of seats would have been a blot in our Constitution if it had remained. But thank God, Nature has played its part in the prolongation that has occurred and time has shown that reservations must go.

Now, if communal fracas has played such havoc. I do not understand why some want communal safeguards. How can there be any kind of communal safeguard now? It was present in the days when the British were here so that they could play their own game. Now they have gone there would be no cause for safeguard of anybody's rights. It has been our cherished desire for the last fifty years to see that this evil, that has played such havoc and which has been a kind of cancerous and poisonous element in our political life, should be done away with. Today it is a 'red letter' day and when this Constitution comes into law, it will be with pride that our nation will be remembered by the nations of the world that in our Constitution we have kept no room for communalism and that we are in the true sense of the word a secular State.

My Friend, Mr. Muhammad Ismail, while arguing yesterday stated that without separate electorates the Muslims will not get justice and they will not get that representation which they desire. If my Friend, Mr. Muhammad Ismail even at this stage believes in the two-nation theory-communalism-then certainly he will have no place. But there are many persons like Mr. Lari, who told his co-religionists that "even at this stage you are talking of the two-nation theory and separate electorate: please forget all this." Whatever other views Mr. Lari may hold, I can assure him that so long as there are Muslims like him, they will command confidence of the majority: but if there are persons like Mr. Muhammad Ismail they shall not have the support of the majority community and it is not surprising if he does not get it. In the Bombay Municipal elections, where they have joint electorates, with the support of the majority community many Muslims have come in. If the majority community had not supported the Muslim Candidates in Bombay the said candidates set up by the Congress would not have been elected. This is just an illustration. Dr. Mookherjee from his personal experience said that the majority community in the past has been generous. I say that in the case of my community there has not been any instance where we demanded any special political rights or privileges we stand on our own legs and on merits, we did not demand favours, and the major community of its own accord took good care of our work. Mr. Lari while making a beautiful speech stated that the majority community should be generous fair and reasonable and Dr. Mookherjee stated that they had been. I can tell from my own personal experience as a member of the minority community that the majority community have been really generous. I am not exaggerating when I say that sometimes they have been more than generous. There is nothing to fear from the majority community if we are reasonable, if the minorities are reasonable in their demands and I can assure them that there will be no difficulty in getting a large majority of Muslims returned by the votes of the majority community.

Mr. Lari made a plea for the system of proportional representation. He said that that would safeguard the interests and the right of the minorities and quoted some foreign countries like Belgium, Switzerland and even Ireland. I entirely agree him that in a system of proportional representation the interests of the minorities are properly safeguarded. In our Congress Constitution for the purpose of electing the A.I.C.C. members the delegates have to use this system. But it must be remembered that the delegates from each province do not exceed 500. In a small group this system can be exercised. Besides, those who are acquainted with the system know that proportional representation is cumbersome process and it has to be understood by an intelligent person. Mr. Lari wants to introduce this system in an electorate ranging from 50,000 to a lakh of voters. In Belgium and Switzerland there are hardly a few lakhs of population leave aside the small number of voters in their constituencies. In our country there are 40 crores of people and we have constituencies with voters numbering from 50,000 to a lakh. A system of proportional representation cannot work here. From the material supplied by the Constituent Assembly Office I find that in one country they experimented with this system and they had to revert to the majority ballot box system. In a general election this system can never work.

Mr. Ismail and Mr. Pocker who supported the resolution had very strong views regarding separate electorates. I might tell them that the Advisory Committee has constantly changed from time to time. At the first meeting when we passed the resolution Mr. Khaliquzzaman who was a member (he was also President of the Muslim League) supported it. Mr. Chundrigar was also a member of the Advisory Committee but they both have gone away to Pakistan. They were both parties to it, but believing in the two-nation theory they have gone away. How can you blame the majority community by saying that they had changed after making a decision which was acceptable to them? It is rather strange. Let them search their hearts and their conscience as to what they have done after having been a party to the resolution against the wishes of some of us. I was very much averse to reservation but I had to bow before our leaders and our Muslim friends. I said "give it a trial and you will soon give it up." The day has come and it is an auspicious day in the history of our constitution-making when we have to revise the former decision.

Syed Muhamed Saadullah yesterday stated that Dr. Mookherjee should not have made a reference to the Muslim community by saying that they were opposed to it. I wish Mr. Saadullah had said that to Mr. Ismail who in his amendment should not have stated that other minority communities should be given separate electorates. he has said that not only the Muslims but minorities should also be given separate electorates. What business had he to talk of other minorities in his amendment? If Mr. Mookherjee had no business to talk of the Muslims, what business had Mr. Ismail to tell me that I must have separate electorates, whereas my community is absolutely averse to separate electorates?

The proposition before us is of such a nature that every one, whatever community he be may belong to, should welcome it and be proud of it. They should say that this resolution which is reversing the previous resolution which has created havoc in the country is going to play a predominant part in the history of the world by bringing everybody nearer for peace and goodwill. With these words, Sir, I support the resolution.

Prof. Shibbanlal Saksena (United Provinces: General): Sir, I want to oppose the amendments of Mr. Lari and Mr. Ismail. I do not think it is necessary to oppose Mr. Ismail's amendment in any great detail, because it belongs to an age which is past and I do not want to waste the time of the House over it.

Mr. Lari's amendment needs some attention. He made out a plausible case and I have tried to work out the constituencies based on a system of proportional representation as well as on a system with cumulative voting as suggested in Mr. Lari's motion. The Muslim population is the largest in the U.P. and is 14 per cent. How can this system of cumulative voting secure for Mr. Lari and his community proper representation? There is no country in the world where this system prevails. Take for instance Gorakhpur. It has now a population of 24 lakhs and there will be three seats in it for the House of People in the new Parliament. The population of Muslims is 2 lakhs and they can pool their votes together for one candidate according to Mr. Lari's amendment. The two lacs of Muslims in the district will have one lakhs Muslim voters and they can pool 3 lakh votes on one candidate and even then he will not win, because the remaining population of 21 lacs will have 11 lac voters and will be able to pool 33 lakh votes on the three rival candidates. Besides, a man having three votes, and giving them all to one person is an undemocratic principle which is not followed anywhere in the world. Besides, it will not secure the purpose which Mr.Lari has in mind. This system of cumulative voting is undemocratic, unscientific and gives one man the power to pool all his votes for one candidate, and even then cannot secure the purpose Mr. Lari has in view. Mr. Lari also wanted the country to give a trial to the system of Proportional Representation. I myself believe in this System. It gives a fair representation to each group. But if we introduce it in our country just now, many difficulties arise in the way. To work this system properly, the electorate must be well educated, because the voter has to give his preferences and illiterate persons will not be able to understand the significance of the various preferences. They will have to say whom they prefer first, whom second and whom third. Even in small elections by our Constituent Assembly where the system has been adopted, it has been found that most of the members do not understand it. Only skillful experts can understand how it works. In Ireland and Switzerland where the system has been adopted the electorate is highly educated and no constituency exceeds 30,000 in Eire and 22,000 in Switzerland. Supposing we adopt this system in our country, what will happen? In the United Provinces, with a population of 560 lakhs, about ten Muslims should be elected to the House of People on the population basis. If under proportional representation, all Muslim give their first preference in equal numbers to ten selected Muslim Candidates and the whole province be one Single constituency, then alone these men can be elected. But a whole province with 560 lacs of population cannot be one constituency. At the most, the province can be divided into ten constituencies if Mr. Lari's purpose is not to be defeated. But then each of these ten constituencies each with 56 lac population should have an equal Muslim population which is impossible. If we do not increase the number of multi-member constituencies above ten, and all Muslims give their first preference to one particular Muslim Candidate in each constituency, then alone ten Muslim candidates will be returned, provided the Muslim are equally distributed in each constituency which cannot be the case. Mr. Lari's solution is a solution which cannot be realised in practice. Besides, such a delimitation of constituencies will give rise to many other complications, and you simply cannot form constituencies on that basis. Besides, no secrecy of ballot will remain. Illiterate people cannot fill their preferences and somebody must fill for them, thus destroying secrecy of ballot. I therefore think, that the system of proportional representation, however much it may have proved good in other small countries, will not achieve here the desired result, and is altogether impracticable. Mr. Lari comes from my district of Gorakhpur which had before partition a population of 40 lacs and the only 4 lacs of them are Muslims. On this principle of proportional representation, the 2 lakhs of Muslim votes in Gorakhpur, will go to Mr. Lari. But if all Muslims vote for him that way, the others will not vote for him. That will be the natural tendency and communalism will come into play. Mr. Lari will not then be elected. I, therefore, think that this system will not secure what we want. It will give rise to communal feelings which we all want to destroy by the proposed arrangement.

Sir, this is a red letter day in the history of India, and the decision we are taking is a historic one. At last, we have been able to do away with this separate electorate system today after 43 years struggle. I hope here after the whole atmosphere in the country will change. The majority community is in honour bound to give proof of its sincerity by returning large numbers of Muslim Indian patriots at the polls. I am sure even larger numbers of Muslims will be elected if they come forward with public spirit and honestly and loyally serve the people and the country.

Mr. Lari told us yesterday that in the United Provinces the Socialists contested eleven seats and got about 30 per cent of the votes. I think his figure is incorrect. But let us assume it is correct. Under the arrangement proposed by him if all the eleven constituencies were grouped in 4 constituencies and if for each constituency there were assigned four members, then the socialists would have had a chance. In Gorakhpur the population of the constituency was seven lakhs. So if four constituencies formed one multi-member constituency, the population of each would be about 28 lacs. Such huge constituencies would be extremely unwieldy and each would have about 15 lac votes. Only multi-millionaires and plutocrats would be able to contest from such huge constituencies and the common people would never be returned. Besides, the votes obtained by socialist candidates were not all for their socialist programme. Everyone angry with the Congress voted socialist. Under the system of proportional representation this result cannot be achieved.

On this great occasion I congratulate the Honourable Sardar Patel who has added another feather to his cap, by bringing about the abolition of reservations of seats except in one or two cases. His report will change the course of history in our country. Sir, the minority have agreed to this proposed and said that they do not want reservation of seats. I hope in ten years time even the Harijans will be in a position to rise to the occasion and give up this right of reservation. Then everybody will get proper representation without, distinction of caste or religion. At that time service, merit and ability will alone win votes, and all relics of our past slavery will have been buried deep.

Sardar Hukam Singh (East Punjab: Sikh): Sir, I extend my wholehearted support to the Resolution before the House. In doing so I have to make a few observations. The Resolution tries to do away with all reservations for religious minorities. It is agreed that it is the birth-right of every section of the population, numerical or political minority, to have proper representation and a proper voice in the administration of the country. Nobody denies this and much less in a Secular State. But the only dispute is about the method of securing such representation. We have tried one method and that is the method of separate electorates and fixed proportions. We have given it a sufficiently long trial. We might differ as to whether all the catastrophe that we have experiences was due solely to the system of separate electorates or whether certain other factors contributed to it. But this much is common ground that separate electorates did create a cleavage among the various communities. We have given it a trial and now we want to live as one Nation-a harmonious whole. For that it is desirable that we should look to some other method. One such method has been proposed by Mr. Lari-the method of having cumulative votes. That is a wholesome measure. It can give representation to minorities and various interests. There is one difficulty that I feel about it, that in a vast country like ours, where ninety percent of the population are illiterate, it would not be a practical possibility to work for the present. That is the only difficulty that I feel. Otherwise I would have welcomed it. The Minorities Advisory Committee felt that reservation of seats would also promote communalism, would keep the communities separate, and therefore they have advised in their report that every reservation should go. Of course, it was a very good jump, a great jump, from separate electorates to which we were accustomed for so long a time to unadulterated join electorates and therefore it was that the intermediate step was taken that there should be reservation. Now everyone of us feels that we should proceed towards a compact nation, *i.e.*, not divided into different compartments, and that every sign of separatism should go. In my opinion there is no harm if we give a chance to this new experiment that is suggested for ten years. If we find that it works well, if the minorities feel satisfied, that they are secure, there will be no further demand for any safeguards. But if they feel that they have not been treated well, that there has been some discrimination, I am sure the minorities would raise a louder voice for some other substitute and they will have a stronger case then. Therefore I think that we should give a fair chance to this new experiment that reservation for any religious minority should go. Everyone of us feels that we should contribute fully to the development of a compact nation, and the Sikhs-I assure everybody-want to contribute as best as they can towards this goal and therefore they are giving their full support to this Resolution.

I might submit here that by agreeing to this, the minorities are placing the majority to a severe test. A heavy responsibility would be cast on the majority to see that in fact the minorities feel secure. So far as I can make out, the only safety for the minorities lies in a secular State. It pays them to be nationalists in the true sense of the term. Rather it is the minorities who can work against any dilution of nationalism. But what we require is pure nationalism and not any counterfeit of it. The majority community should not boast of their national outlook. It is a privileged position that they have got. It is not their choice that they have that outlook. They should try to place themselves in the position of the minorities and try to appreciate their fears. All demands for safeguards and even the amendments that have been tabled here are the products of those fears that the minorities have in their minds, and I must submit here that the Sikhs have certain fears as regards their language, their script and also about the services. I hope that those fears can be removed easily by the executive government. The government should see that those fears are removed and there is a chance for the culture of every community to develop. Certain matters, so says the report of the Advisory Committee, can be left to conventions. This is correct. There need not be any mention of anything in the Draft Constitution. Personally I am in favour of deleting the whole Chapter on minorities' safeguards and I gave notice of an amendment to that effect long ago. Certain conventions have to grow and it will be the duty of the majority community to see that such wholesome conventions do take root to make the minorities feel secure during the transitional period.

Then, Sir, there is the second part of the resolution about the inclusion of four castes of Sikhs in the list of Scheduled Castes. The Honourable Sardar Vallabhbhai Patel has appealed to the House not to resent or to grudge this concession to the Sikhs. He was pleased further to remark-and he was very frank in saying that- "that religion was being used as a cloak for political purposes", but in spite of it he appealed to the House that they should regard with tenderness the feelings of the Sikhs as they have suffered from various causes. The Sikh community is certainly grateful to the Sardar, to the Minorities Advisory Committee and to the House for all these concessions and for their sympathetic attitude. But I must be failing in my duty if I do not submit that I have a different view-point on this particular question. We were told that the Sikh religion does not acknowledge any discrimination on account of caste and that for securing certain political rights for the section, the Sikhs are sacrificing certain principles of their religion. I am afraid I think otherwise because, when we say that all safeguards for religious minorities should go, it would only be natural corollary to that. If we give concession and certain privilege, certain rights to the Scheduled Castes simply because they are backward socially, economically and political and not because they are a religious minority, then other classes, whaterver their religion, whatever the professions of their religion, who are equally backward socially, economically and politically, must also be included in the list. So my submission is that it ought to have been done long ago that these classes also, because they are backward, were included in the list along with their other brethren of the Scheduled Castes and it should not have been considered as a concession.

Shri B. Das (Orissa: General): Blame Sardar Ujjal Singh for it.

Sardar Hukam Singh: But in spite of it the Sikhs are not less grateful for it. If it is a concession, they are grateful for it. If they are entitled to it, then too they are grateful. They feel that one demand of theirs on which they were very serious has been met. They hope that other small things also would be considered favourably so that could feel satisfied and could walk shoulder to shoulder with other progressive forces to the cherished goal that we have before us.

Mr. Muhammad Ismail Khan (United Provinces: Muslim): Sir, I give my unstinted support to the revised decision of the Advisory Committee which has done away with reservation of seats, which only kept alive communalism and did not constitute an effective safeguard. With the vast superiority of the majority community in the number of voters, they could have had no difficulty in using this device for their own ends by electing men of their own choice and I, therefore, congratulate them that they have not thought fit to take advantage of this device.

Pandit Hirday Nath Kunzru (United Provinces: General): Mr. President, Sir, we cannot hear the honourable Member distinctly. He is not at all distinct.

Mr. Muhammad Ismail Khan: Sir, as I seldom take part in the debates of this Assembly, probably I have not acquired the necessary aptitude of speaking through this microphone and so my voice does not adjust itself readily. I am very glad that this decision has been taken and I welcome it. Why? Because this reservation of seats would only keep alive Communalism and would be ineffectual as a safeguard for the Muslim minorities or for the matter of that for any other minorities. I congratulate the majority community, that they have not taken advantage of their superiority in numbers, by utilising this device for their own purposes. The Muslims have been thinking for some time that this reservation was wholly incompatible with responsible Government and I may say that when Provincial autonomy was introduced in the provinces for the first time the Muslims soon began to realize the separate representation was not going to be an effective safeguard for the protection of their interests. Not only did they realize it but even before that the Muslims were not their convinced of the adequacy of this safeguard. I think it will be recalled that when Mr. Jinnah put forward his famous fourteen points, he contemplated that if certain safeguards demanded were conceded elections in future would be by means of joint electorates. For some time the Muslims have been thinking that with the inauguration of responsible Government separate electorates would be out of place. I would like to point out to my friends from Madras who insist on separate electorates, the circumstances and conditions which gave birth to that system. At that time when separate electorates were claimed, there were no direct elections to the legislatures. The members were elected to the legislatures by the members of the Municipal or District Boards. There were no statutory safeguards in the Constitution. A foreign Government was in power and had an official bloc in the legislatures and the Muslims were able to use the separate electorates for their own purposes, but as I said just now as soon as Provincial autonomy came, they very soon found that separate electorate was no safeguard for their interests and they were doomed to remain in Opposition which led to frustration. My honourable Friend Mr. Muhammad Saadulla has said that this reservation of seats had been given away by the solitary vote of Begum Aizaz Rasul. May I remind him in this connection of a meeting which was held ten or twelve months ago in which many Muslim members of this Constituent Assembly took part in which it was decided that we should take steps to do away with reservation. So

Begum Aizaz Rasul in casting her vote was not casting a solitary vote, but she did so on behalf of those people who had taken part in that meeting. I do not say that Sir Sayed Saadullah agreed with it, but there were ten or twelve members present who agreed that they should take steps to have reservation done away with.

Now I would like to point out to my friends who insist on separate electorates for the purpose of safeguarding their rights that, in the Constitution today, we have justiciable fundamental rights that, in the Constitution. We can vindicate our rights in future not in the legislature, but in the Supreme Court and I say that forum is much better from our point of view. In the legislatures party feelings run high and disinterested consideration is seldom given to such matters, but with the statutory safeguards provided for in the Constitution, we have nothing to fear and our cultural, religious and educational associations should keep a vigilant eye and see that those rights are not infringed or curtailed by appealing to the Supreme Court of judicature. In future I trust the Muslim members will be able to speak on behalf of their constituencies as authoritatively as the other members. That is why I want to do away with Communalism in the shape of separate electorates so that when they come here they can speak with the same authority as any other member and as a representative not only of the Muslims but also of the majority community. There is no half-way house between separate representation and territorial electorates. Reservation was an ineffective method for the protection of communal rights and I therefore give my unstinted support to this decision which does away with it. I wish to point out to my Madras friends that even twenty years back the Muslims were thinking of giving up separate electorates provided certain safeguards were provided and conceded, but in the Constitution that was framed, for instance, in the act of 1935, no safeguards were given. The responsibility for the protection of their rights was entrusted to the Governor of the provinces by Instrument of Instructions, but today the conditions are different. Here we have got statutory safeguards. Why then do we want separate representation? How will it help us? Would it not do always keep us from joining other parties ? After all, with communal electorates, you would have to have a communal organization to put up candidates and frame a programme and policy for their work in the legislatures which means that the present state of affairs would continue and keep alive communalism in this worst form. Would this lead to the establishment of harmonious relations? No. I therefore think that we should give up this system although many of us who have been nurtured in the old traditions find it hard to part with rights which we have so far enjoyed. We are doing all this not for ourselves, but for the future generations of Muslims in this country. The best thing is to trust the majority. Even if we have separate electorates or reservation of seats, how are we going to prevent the majority from imposing its own decisions? Merely making speeches will not save you. You will have to join some party or other if you are not to be isolated and on conditions which that party may impose. Moreover we desire that our State should be non-communal and secular. Here is an opportunity and we should grasp it. Let us not stand in the way of the emergency of a really secular and non-communal State. I support the motion.

Shri Rohini Kumar Chaudhari (Assam: General): Mr. President, Sir, this resolution has my warmest support. The report to which the resolution refers is the result of the supreme efforts made by our honourable, revered and beloved leader Sardar Vallabhbhai Patel. This is one of several achievements, the credit for which must go to him entirely during recent times.

Of course, there are some reasons to complain here and there. I have also a reason of complain. But, the sum total of this resolution is this the moment this resolution is translated into action, we will be paving our way to realise the dream of building a secular State, a composite Indian Nation. These communal troubles which have disfigured the history of India during the last few years will, I am sure, be a thing of the past.

I do not know how far minorities play a part in other parts of the world, so far as politics is concerned. But, in India, the problem of minorities has played a considerable part since the British rule. There are two kinds of minorities, as you all know in India. There is one kind of minority which, on account of the tallness of the stature, of its people the tallness of these figures and of the fact that they can take care of themselves in any part of the world, generally inspires terror in the minds of other minorities and even in the minds of the majority. There is another kind of minority, which inspires pity in our minds who constantly remind us of the folly which we had committed in the past and the treatment which we have accorded to them in the past, for which they have lots of reason to complain. To that minority we have to make amends. I am glad to be able to say that this report has given it s due consideration to the minority which really deserves pity and sympathy and encouragement and has not, for the time being, been given that attention for which the other kind of minority was clamouring for some time.

I wish in this connection to draw the attention of the House to the conditions prevailing in the province of Assam. There, the population figures stand thus. Caste Hindus from 39 per cent of the population ; Muslims form 23.6 per cent of the population; Tribals form 32.4 per cent, of the population. I am only going to ask one question. When the population stands thus, is it necessary to reserve any seat for any community? I ask, when there is no majority community at all, when the difference between the so-called majority community, that is the Caste Hindus, and the Tribal community, as we find from the figures is only six per cent, is this reservation of seats necessary for any community there? I hope the House will consider this. Could you not make an experiment in that province where there is such a small difference between the different communities, of not having any reservation of seats at all? If ultimately it is your intention to do away with reservations, why not start that experiment in a province where the margin of difference between the different communities is so small? That is the point which I would ask the House to consider.

My honourable Friend Mr. Saadulla was complaining, as I could understand, that there was no reservation for Muslims in that province. If there was no necessity for reservation of seats for the Muslims in any province, certainly Assam is one such. Because, there, the percentage of the population of Muslims is as high as 24 per cent, as stated by him. I would, Sir, take this opportunity of denying that the Muslims of our province really demand any reservation of seat. On the other hand, there are several members of his own constituency of Muslims in the Assam Legislative Assembly, who certainly repudiate the suggestion for any reservation of seats. As the majority of Muslim members in this House do not agree to have any reservation of seats, I suppose it is idle for any one to talk of reservation of seats for Muslims in Assam.

I want to draw the attention of the House to a demand made by the Honourable Mr. Lari for multiple member constituencies and cumulative voting. That, Sir, I am afraid, will destroy the very object of this resolution. If the Muslims or any community knows that in the future they can have their own seat if they combine on the ground of religion or community, then, the evil of communalism will still linger. Wherever there is a multi-member constituency, the Muslims will combine themselves and they will secure a seat for themselves. Wherever there are lesser number of Hindus or any other community in any particular area, they will combine amongst themselves and the whole idea of unity will be destroyed by having multi-member constituencies and cumulative voting.

Another point to which I should draw the attention of the House is whether it would be desirable, in view of the population figures which have been given, to allow any community for whom seats have been reserved, to contest for the general seats. Let us examine the position for a moment. The Caste Hindus are only 39.6 per cent the tribals are 32.4 per cent. If, in addition to this, the people of the tribal areas are allowed to contest the general seats, then some of these general seats, at least will go to the tribal people. Is it desirable, I would ask the House to consider, to allow these tribal people to contest general seats? But I must be fair and say here that the figures of tribal people mentioned, i.e., 32.6 per cent, may not be quite correct. I am told that some of the population in the tea-gardens, which is covered or included in this figure are actually in the plains, and will come to the general seats. In that case, I will advocate that this figure ought to be changed, that is to say, if it is correct that a portion of this population of about ten lakhs are really not tribal population but have been wrongly included in the tribal figure, then the whole figure may have to be revised.

Mr. President: May I point out that we are not dealing with the question of tribals. We are concerned only with the others. Therefore the honourable Member should confine himself to the general question of reservation, leaving out the tribes. When the time comes, he may bring up his point, if necessary, but not at this stage. Otherwise I will have to allow others also to speak about the tribals which I do not want to.

Shri Rohini Kumar Chaudhari: I stand corrected, Sir. So I once more express my felicitations about the report and we are particularly very happy that the reserved seats have been kept for the members of the Scheduled Castes. We all hope that in no distant time-we need not wait even for ten years, but even before that- the so-called Scheduled Castes people will be progressing rapidly and that they will be equal to any other community in this country.

With these words, Sir, I support the Resolution.

Mr. Frank Anthony (C.P. & Berar: General): Sir, at the end of para 5 of the Report submitted by Sardar Patel to this house is a sentence which has specified that this Resolution does not affect the provisions granting representation to the Anglo-Indian community; and it is because of this, Sir, that I stand here to express my sense of gratitude to the Advisory Committee, guided by Sardar Patel, for this generous and understanding gesture. I should be shirking the truth if I did not admit that there were many occasions during the sessions of the Minorities Sub-Committee, when I was deeply and even unhappily anxious. I know, Sir, that autobiographical details not only savour of egotism, but they tend to irritate. But I have in representing my community, been inspired by what has been an article of faith, a belief that this community, whatever its past history, has its real home in India, That it can know no other home, that it can only find a home in all its connotations if it is accepted, and accepted cordially, by the peoples of this country. Sir, when discussions on minority rights were on the anvil, there were two questions that I asked myself. Would the leaders of India be able to forget and forgive the past? And the second question was, if the leaders of

India can forget, and forgive the past, will they go further and be prepared to recognise the special needs and difficulties of this small, but not unimportant minority? Sir, today, I am able to say, with a sense of inexpressible gratitude, that the leaders of India have shown that they were not only able to forget and forgive and past, but they were also able to recognise and accept the special, needs and difficulties of the community which I have the privilege of leading. I believe that in making this gesture to this small community, the Advisory Committee has been uniquely generous. When we were discussing these problems, very often I felt that in the minds of the majority of the members of the Committee were questions, not put in so many words, but nevertheless there were questions which animated their attitude towards my request, and these questions took perhaps the uniform form, "Why should you on behalf of the Anglo-Indians ask even for equality of treatment? Can it not be said of your community that not only have you not given a single hostage to the cause of independence, but perhaps have joined with the reactionary forces intended to retard the cause of Indian independence?" Those were questions which were perhaps postulated behind the minds of the majority of the members, and I realised that this was a hurdle. Sometimes I felt that it was an insuperable hurdle. In spite of that, not only did my community receive recognition as one of the Indian minorities, but it was accorded further special treatment, and its special difficulties were recognised and catered for. Sir, in this connection, I wish to place on record my sense of gratitude- I find it impossible to express it adequately- to the attitude of the Chairman of the Advisory Committee, Sardar Patel. From some speeches in this House, the impression might have been gathered that the Advisory Committee was animated by motives of wresting from the minorities what the minorities wanted or thought was necessary. I am here to refute that suggestion. There were many people who argued with unerring logic, who argued with even an implacable sense of reasonableness, that the request put forward by the minorities should not be accepted in the larger interests of the country. When I listened to them, I often felt that the minority's requests would never be accepted, because on the basis of logic, on the basis even of reasonableness, on the basis of national integration, many of the request put forward by the minorities were not tenable. But fortunately, I say fortunately we had a person like the Sardar as the Chairman. I saw him brush aside, sometimes brusquely, arguments which were unanswerable on the basis of logic, arguments which were irrefutable on academic and theoretical grounds and he made it clear over and over again to us in the Advisory Committee that this attitude was inspired not by logic, not by strict reasonableness, not by academic theories, but by an attempt to understand the real feelings and psychology of the minority mind. He made it quite clear that the principle on which he was working was this. It is not necessary so much to measure what we do by the yardstick of theory or of academic perfection, but what is much more important is that whatever the requests of the minorities be, if they are not absolutely fantastic then that request should be met to the maximum extent; because if there is a fear, real or imagined, it is better in the larger interests ultimately of the country to assuage that fear, and to look at it from the point of view of minority psychology. And that is why we have these provisions granted to us, provisions perhaps which we had no right to ask for, on a strictly logical or academic basis.

Sir, as one who understands minority psychology and the difficulties of minorities for a long time, I have sometimes regarded it an impertinence for the representative of one minority to preach to another minority, to attempt to say to that minority "Such and such a thing is good or bad for you". So I will not attempt to say anything which may savour of preaching to my Muslim friends. But I do want to say this, that whatever decisions were reached in the Advisory Committee were reached so far as all the other minorities were concerned as a result of unanimous agreement.

But what could the Advisory Committee do? There was nothing we could do when different Muslim representatives spoke with different voices. Even in this House there have been differences of opinion. The Advisory Committee was, therefore, left with no alternative but, in view of this confusion and medley of Muslim opinions, to come to a decision which was unanimously supported by all the other minorities and which also found support from many of the Muslim representatives. Sir, may I say this about the decisions of the Advisory Committee? They represent no imposed decisions; they represent decisions which have been arrived at as a result of friendly understanding, compromise and unanimous agreement. I believe in bringing these decisions to fruition Sardar Patel has helped-as perhaps none else in the past few years could have done-to bind the minorities with hoops of steel to the cause of national integration and progress.

Sir, some people still feel that no safeguard should have been incorporated in the Constitution even for the interim period. I feel otherwise. I felt that it was a good thing, that it was a salutary thing, that we have prescribed a limited number of years. I tell my friends who are anxious for complete integration immediately: "Ten years represent but a fractional moment in the history of great nation." We have not yet reached the goal of a secular democratic state. It is an ideal-I hope it is not a distant ideal. Our road to that goal may be marked by ups and downs; but if during our march to it we have given some safeguards to the minorities I feel that it is a salutary and a healthy thing in order to tide these minorities over this transition period.

Sir, there is a feeling, particularly among journalists from other countries, that today the minorities in India are being oppressed, that minority representative either do not, in fact, represent the minorities or they are petrified by a sense of fear and regimentation and do not speak of or express that fear which is in their hearts. I have never suffered from any sense of fear. I have never, in the expression of my views, been subjected to any regimentation. May I say this that minority representatives today are not stooges of any particular party? When we say that we genuinely feel that we have been generously treated we mean it and it is not the result of any regimentation or fear. At the same time, we are under no sense of illusion. We do not indulge in flattery. Well, I have heard the representatives of some minority communities say that everything in the Indian garden is not perfect; for the matter of that, what can be perfect in any garden? There are causes for misgivings, yes. Today I see in certain provinces precipitate policies being followed-policies which, I feel, are inspired by ill-concealed communal motives. I see in them the new communalism linguistic and provincial, more dangerous, communalism much more mischievous in their potential than the old dead religious communalism. I see in them communalism raising their many and their hydra-heads. I see those most ardently wedded to this new communalisms flogging the dead horse of religious communalism, stalking behind it while riding their own hobby-horses of linguistic and provincial communalisms. We see, Sir,-I say it without any offence we see members of this great party who technically are members of the Congress, but spiritually are members of the R.S.S. and the Hindu Mahasabha. Unfortunately, I read speeches day in and day out by influential and respected leaders of the congress Party, who say that Indian independence can mean only Hindu Raj, that Indian culture can only mean Hindu culture. These are causes for misgivings, yes. But which great nation in its path to greatness will not have ups and downs? The main point is this-that we have set our goal and are sailing in the right direction. We have set our goal as a secular and democratic State. And may I say this in passing. Let us not once again indulge in shibboleths and make shibboleths do for facts; let us not proclaim loudly that we already a secular democratic State when this is an idea which is yet to achieved. But, as I have already said, we have set our sails in the right direction. As the Prime Minister said at a meeting the other day at which I was present, in accepting the abolition of reservations and limiting it for a period of ten years, the majority community and above all the leaders have expressed faith in themselves, to achieve what they believe. It is an act of faith on their part. It was not inspired by any intention to do away with anything which the minorities wanted. It was an act of faith made by the majority community in agreement with the minority communities. I believe that India can achieve her full stature only as a secular State. Any attempt to go back to the past, any attempt at revivalism must inevitably shrivel the potentialities and stunt the growth of this great country. And may I say this, that in our march towards the goal-it is still a goal-the minorities must be in the vanguard. Any minority which thinks that it can flourish on sectarianism is asking for ruin and death.

And, Sir, may I, before I end, refer in passing to another thing. Some people say, "Oh, Anthony, in spite of your grandiose opinions, of your grandiose sentiments, if you feel so strongly, why don't you drop this prefix `Anglo'?" Well, I say "The word `Anglo-Indian' may be good or bad, but rightly or wrongly it connotes to me many things which I hold dear." But I go further and say to the same friends of mine "I will drop it readily, as soon as you drop your label, the day you drop your label of `Hindu' ." The day you drop the label of "Hindu", the day you forget that you are a Hindu, that day-no, two days before that-I will drop by deed poll, by beat of drum if necessary the prefix "anglo" because , believe me that when me all begin to drop these prefixes or labels, not only by paying lip-service to them, not only by making professions about them, but when we really feel them in our hearts, when we by our actions, not by our professions, equate these to our beliefs in a secular State, that day will be welcome first and foremost to the minorities of India, who by that time will have forgotten that are minorities and that they are Indians first, last and always.

The Honourable Shri Jawaharlal Nehru (United Provinces: General): Sir, there has been such an abundance of goodwill shown towards this motion that it is hardly necessary for me to intervene in support of it. But I have felt the urge to do so because I wish to associate myself with this historic turn in our destiny: for, indeed, it is a historic motion that my colleague, the Deputy Prime Minister has put before this House. It is a motion which means not only discarding something that was evil, but turning back upon it an determining with all our strength that we shall pursue a path which we consider fundamentally good for every part of the nation.

Now, all of us here, I believe, are convinced that this business of separatism, whether it took the shape of separate electorates or other shapes has done a tremendous amount of evil to our country and to our people. We came to the conclusion some time back that we must get rid of separate electorates. That was the major evil. Reluctantly we agreed to carry on with some measure of reservation. Reluctantly we did so for two reasons: Reason No. 1 was that we felt that we could not remove that without the goodwill of the minorities concerned. It was for them to take the lead or to say that they did not want it. For a majority to force that down their throats would not be fair to the various assurances that we had given in the past and otherwise, too, it did not look the right thing to do. Secondly, because in our heart of hearts we were not sure about ourselves nor about our own people as to how they would function when all these reservations were removed, we agreed to that reservation, but always there was this doubt in our minds, namely, whether we had not shown weakness in dealing with a thing that was wrong. So when this matter came up in another context, and it was proposed that we do away with all reservations, except in the case of the Scheduled Castes, for my part I accepted that with alacrity and with a feeling of great relief, because I had been fighting in my own mind and heart against this business of keeping up some measure of separatism in our political domain: and the more I thought of it the more I felt that it was the right thing to do not only from the point of view of pure nationalism, which it is, but also from the separate and individual view-point of each group, if you like, majority or minority.

We call ourselves nationalists, but perhaps in the mind of each, the colour, the texture of nationalism that is present is somewhat different from what it is in the mind of the other. We call ourselves nationalists-and rightly so-and yet few of us are free from those separatist tendencies-whether they are communal, whether they are provincial or other: yet, because we have those tendencies, it does not necessarily follow that we should surrender to them all the time. It does follow that we should not take the cloak of nationalism to cover those bad tendencies.

So I thought about this matter and I came to the conclusion that if at this stage of our nation's history, when we are formulating this Constitution, which may not be a very permanent one because the world changes, nevertheless which we wish to be a fairly solid and lasting one, if at this stage we put things into it which are obviously wrong, and which, and which obviously make people look the way, then it is an evil thing that we are doing to the nation. We decided some time ago in another connection that we should have no truck with communalism or separatism. It was rightly pointed out to us then that if that is so, why do you keep these reservations because this itself will make people think in terms of separate compartments in the political domain.

I would like you to consider this business, whether it is reservation or any other kind of safeguard for the minority, objectively. There is some point in having a safeguard of this type of any other type where there is autocratic rule or foreign rule. As soon as you get something that can be called political democracy, then this kind of reservation, instead of helping the party to be safeguarded and aided, is likely actually to turn against it. But where there is a third party, or where there is a n autocratic monarch, or some other ruler, it is possible that these safeguards may be good. Perhaps the monarch may play one off against the other or the foreign ruler. But where you are up against a full-blooded democracy, if you seek to give safeguards to minority, and a relatively small minority, you isolate it. May be you protect it to a slight extent, but at what cost? At the cost of isolating it and keeping it away from the main current in which the majority is going,-I am talking on the political plane of course-at the cost of forfeiting that inner sympathy and fellow-feeling with the majority. Now, of course, if it is a democracy, in the long run or in the short run, it is the will of the majority that will prevail. Even if you are limited by various articles in the Constitution to protect the individual or the group, nevertheless, in the very nature of things in a democracy the will of the majority will ultimately prevail. It is a bad thing for any small group or minority to make it appear to the world and to the majority that "we wish to keep apart from you, that we do not trust you, that we look to ourselves and that therefore we want safeguards and other things". The result is that they may get one anna in the rupee of protection at the cost of the remaining fifteen annas. That is not good enough looked at from the point of view of the majority either. It is all very well for the majority to feel that they are strong in numbers and in other ways and therefore they can afford to ride rough-shod over the wishes of the minority. If the majority feels that way, it is not only exceedingly mistaken, but it has not learnt any lesson from history, because, however big the majority, if injustice is done to minorities, it rankles and it is a running sore and the majority ultimately suffers from it. So, ultimately the only way to proceed about it-whether from the point of view of the minority or from he point of view of the majority-is to remove every barrier which separates them in the political domain so that they may develop and we may all work together. That does not mean, of course, any kind of regimented working. They may have many ways of thinking; they may form groups; they may form parties, but not on the majority or minority or religious or social plane, but on other planes which will be mixed planes, thus developing the habit of looking at things is mixed groups and not in separate groups. At any time that is obviously a desirable thing to do. In a democracy it becomes an essential thing to do, because if you do not do it, then trouble follows- trouble both for the minority and for the majority, but far more for the minority.

In the present state of affairs, whether you take India or whether you take a larger world group, the one thing we have to develop is to think as much as possible in larger terms; otherwise we get cut off from reality. If we do not appreciate what is happening, the vast and enormous changes happening elsewhere which really are changing the shape of things, and cut off our future almost completely from the past as we found it, if we stick to certain ideas and suspicions of the past, we shall never understand the present, much less the future that is taking shape. Many of our discussions here are inevitably derived from the past. We cannot get rid of them. None of us can, because we are part of the past. But we ought to try to get ourselves disconnected from the past if we are to mould the future gradually. Therefore, form every point of view, whether it is theoretical or ideological or national or whether it is in the interests of the minority or of the majority or whether it is in order to come to grips with the realities of today and of tomorrow which is so different from yesterday, I welcome this proposal.

Frankly I would like this proposal to go further and put an end to such reservations as there still remain. But again, speaking frankly, I realise that in the present state of affairs in India that would not be a desirable thing to do, that is to say, in regard to the Scheduled Castes. I try to look upon the problem not in the sense of religious minority, but rather in the sense of helping backward groups in the country. I do not look at it from the religious point of view or the caste point of view, but from the point of view that a backward group ought to be helped and I am glad that this reservation also will be limited to ten years.

Now I would like you to think for a moment in a particular way just to realise how the present is different from the past. Think of, let us say, five years ago which is not a long time. Think of the problems that you and I and the country had to face then. Make a list of them and then make a list of the various problems that this honourable House has to consider from day to day. If you do this you will see an enormous difference between the lists. The questions that are before us demanding answer, demanding solution show how we have changed for good or for evil. The world is changing; India is changing, not alone politically. The real test of all change is, what are the problems that face us at a particular moment. The problems today are entirely different from the problems that five years ago faced us in any domain, political, economic or in regard to the States. If that is so we have to tackle problems in a different way, no doubt holding on to the basic ideals and the basic ideology that has moved us in the past, but nevertheless remembering that the other appurtenances of those ideologies of the past have perhaps no function today. One of the biggest things in regard to them is this one of separate electorates, reservation of seats and the rest. Therefore, I think that doing away with this reservation business is not only a good thing in itself-good for all concerned, and more especially for the minorities-but psychologically too it is a very good move for the nation and for the world. It shows that we are really sincere about this business of having a secular democracy. Now I use the words `secular democracy' and many others use these words. But sometimes I have the feeling that these words are used today too much and by people who do not understand their significance. It is an ideal to be aimed at and every one of us whether we are Hindus or Muslims, Sikhs or Christians, whatever we are, none of us can say in his heart of hearts that he has no prejudice and no taint of communalism in his mind or heart. None or very few can say that, because we are all products of the past. I do not myself particularly enjoy any one of us trying to deliver sermons and homilies to the other as to how they should behave, or one group telling the other group whether of the majority or of the minority, how they should do this or that in order to earn goodwill. Of course something has to be done to gain goodwill. That is essential. But goodwill and all loyalty and all affection are hardly things which are obtained by sermonising. These develop because of certain circumstances, certain appeals of the minds and heart and a realisation of what is really good for everyone in the long analysis.

So now let me take this decision-a major decision-of this honourable House which is going to affect our future greatly. Let us be clear in our own minds over this question, that in order to proceed further we have, each one of us whether we belong to the majority or to a minority, to try to function in a way to gain the goodwill of the other group or individual. It is a trite saying, still I would like to say it, because this conviction has grown in my mind that whether any individual belongs to this or that group, in national or international dealings, ultimately the thing that counts is the generosity, the goodwill and the affection with which you approach the other party. If that is lacking, then your advice becomes hollow. If there, then it is bound to produce a like reaction on the other side. If there were something of that today in the international field, probably even the great international problems of today would be much easier of solution. If we in India approach our problems in that spirit, I am sure they will be far easier of solution. All of us have a blend of good and evil in us and it is so extremely easy for us to point to the evil in the other party. It is easy to do that, but it is not easy to pick out the evil in ourselves. Why not try this method of the great people, the great once of the earth, who have always tried to lay emphasis on the good of the other and thereby draw it out? How did the Father of the Nation function? How did he draw unto himself every type, every group and every individual and got the best from him? He always laid stress on the good of the man, knowing perhaps the evil too. He laid stress on the good of the individual or group and made him function to the best of his ability. That I think is the only way how to behave. I am quite convinced that ultimately this will be to our good. Nevertheless, as I said on another occasion, I would remind the House that this is an act of faith, an act of faith for all of us, and act of faith above all for the majority community because they will have to show after this that they can behave to others in a generous, fair and just way. Let us live up to that faith.

(Mr.Tajamul Husain came to speak).

Srijut Rohini Kumar Chaudhari: On a point of order, Sir, you called Mr.

Tamizudin Khan and not Mr. Tajamul Husain.

Mr. Tajamul Husain (Bihar: Muslim): Let the honourable Member better change his glasses. The Chair called Mr. Tajamul Husain and I am Mr. Tajamul Husain.

Mr. President, Sir, reservation of seats in any shape or form and for any community or group of people is, in my opinion, absolutely wrong in principle. Therefore I am strongly of opinion that there should be no reservation of seats for anyone and I, as a Muslim, speak for the Muslims. There should be no reservation of seats for the Muslim community. (*Hear, Hear*). I would like to tell you that in no civilised country where there is parliamentary system on democratic lines, there is any reservation of seats. Take the case of England. The House of Commons is the mother of parliaments. There is no reservation of seats for community there. No doubt they had reservation of seats for the universities but even that has been abolished. What is reservation, Sir? Reservation is nothing but a concession, a safeguard a protection for the weak. We, Muslims do not want any concession. Do not want protection, do not want safeguards. We are not weak. This concession would do more harm than good to the Muslims. Reservation is forcing candidates on unwilling electorates. Whether the electorates wants us or not, we thrust ourselves on them. We do not want to thrust ourselves on unwilling electorates. The majority community will naturally think that we are encroaching upon their rights. We do not want them to think that. We must expert ourselves. Separate electorates have been a curse to India, have done incalculable harm to this country. It was invented by the British. Reservation is the offspring of separate electorates. Do not bring in reservation in the place of separate electorates. Separate electorates have barred our progress. Separate electorates have gone for ever. We desire neither reservation nor separate electorates. We want to merge in the nation. We desire to stand on our own legs. We do not want the support of anyone. We are not weak. We are strong. We are Indians first and we are all Indians and will remain Indians. We shall fight for the honour and glory of India and we shall die for it. (*Applause*). We shall stand united. There will be no divisions amongst Indians. United we stand; divided we fall. Therefore we do not want reservation. It means division. I ask the members of the majority community who are present here today:-Will you allow us to stand on our legs? Will you allow us to be a part and parcel of the nation? Will you us to be an equal partner with you? Will you allow us to march shoulder to shoulder with you? Will you allow us to share your sorrows grief and joy? If you do, then for god's sake keep your hands off reservation for the Muslim community. We do not want statutory safeguard. As I said before, we must stand on our own legs. If we do that, we will have no inferiority complex. We are not inferior to you in any way, Do not make us feel inferior by giving us this concession. I say emphatically there is no difference between you and me. Because we worship the same God by different names, in a different way, that is no reason why we should be considered a minority. We are not a minority. The term 'minority' is a British creation. The British created minorities. The British have gone and minorities have gone with them. Remove the term 'minority' from your dictionary. (*Hear, Hear*). There is no minority in India. Only so long as there were separate electorates and reservation of seats there was a majority community and a minority community.

I ask the majority community not to distrust the minorities now. The minorities have adjusted themselves. I will give you a concrete example. You remember the Hyderabad incident; you remember that before you took police action against Hyderabad, what happened. The majority community were afraid that there would be rioting of the Muslims if action was taken against Hyderabad. I was first man to speak about it about a year and half ago in the Central Legislature. I criticised the Government of India. I am sorry Sardar Patel was not present at that time when I was dealing with his portfolio, but my honourable Friend Mr. Gadgil was in charge. I criticised the action of the Government, I told them that they were absolutely mistaken in thinking that the Muslims would rise; they would adjust themselves. I said to them: "You march an army against Hyderabad and within couple of days, you would take the whole of Hyderabad." I made a long speech and after my speech was over, there was a reply by the Honourable Minister in charge, Mr. Gadgil. He never spoke a single word about it and he never replied to my criticism, but I asked him: "You have replied to everybody's criticism. Why not mine? I asked you to march an army against Hyderabad; you would take Hyderabad within a couple of days and there would be no rioting." Mr. Gadgil said: "You are perfectly right and we will do it."

I appeal to all minorities to join the majority in creating a secular State. In the new state of things, I want that every citizen in India should be able to rise to the fullest stature and that is why I say that reservation would be suicidal to the minority. I want the minorities to forget that they are minorities in politics. If they think they are minorities in politics, they will be isolated. If they are isolated, the feeling of frustration will cripple them. I do not want to remain minority. Do the minorities, I ask, expect to form part of the great nation and have a hand in the control of its destinies. Can they achieve that aspiration if they are isolated from the rest of India? The minorities if they are returned as minorities, *i.e.*, by reservation of seats can never have an effective voice in the affairs of the country. They can never form a Government. Disraeli could never have formed a Government and could never have become the Prime Minister of England had there been reservation of seats for the Jews in England. I want the minorities to have an honourable place in the Union of India. National interests must always be placed over group interests. The minorities should look forward to the time when they could take their place not under communal or racial labels, but as part and parcel of the whole Indian community.

Now, Sir, with your permission, I want to say a few words with regard to the speeches made against the motion of Sardar Patel. I take first Mr. Muhammad Ismail of Madras. He wants separate electorate. I appeal to his not to ask the charity. Asking for separate electorates is nothing but asking for charity. I tell him that the consequences will be terrible. The majority community will never trust you then. You will never be able to expert yourself. You will be isolated, you will be treated as an alien and your position will be the same as that of the Scheduled Caste. You are not poor. Like the Scheduled Castes, you are not weak, you are not uneducated; you are not uncultured; you can always support yourself. You have produced brilliant men. So do not ask for protection or safeguard. You must have self-confidence in you. You must expert yourself. You must get into the Assembly by open competition. The times have changed. Adjust yourself. You admitted yesterday in your speech that the atmosphere is better now. I entirely agree with you that the atmosphere is better now. I appeal to you, do not spoil that atmosphere. Improve it, but do not spoil it anf if you insist on separate electorate, you will spoil atmosphere very badly. If you get separate electorates, it will again become as bad as before. Say to yourself, Mr. Ismail, that you are an Indian first and an Indian last. Then you will forget all about separate electorates. You will never think of it again.

I will tell you, Sir, that when I had sent in my amendment to clause 292 that it should be deleted, that there should be no reservation of seats, then several Muslim friends to mine, who were for reservation of seats asked me. "Do you realize that the mentality of the Hindus is such at present that if there were no reservation of seats for the Muslims, the Muslims can never succeed?" That honourable gentleman for whom I have got great esteem told me: "Look at us. We have always been with the Congress; we have been to jail and all that. No doubt we will get a ticket from the Congress; many Muslims will get tickets from Socialists and Communists and from other organisations, but what about the electorates? They will never elect you and they will never elect us. So, if there is no reservation, no Muslims will get in because of the mentality of the Hindus." I told him, Sir, what I am telling you now. I said that I entirely agreed with him that the mentality of the Hindus is such at present. I say to Mr. Ismail also that as long as there is reservation of seats or separate electorate the mentality of the Hindus will never change. You do away with these two things and the mentality will automatically change. I do not want to go into the history of this mentality. I am not going to apportion blame as that will take a long time and you have allotted me a short time and I want to be brief and finish my speech within that time. You all know how the mentality of the Hindus became such, but we have to live in this country, we must change their mentality and it is our duty to change their mentality and the only way the mentality can be changed is to become a part and parcel of the Indian Union. You should say that they are no longer our enemies and then they will be like brothers to us.

Now, Sir, with regard to Mr. Lari, he does not want separate electorates; he does not want reservation of seats; he has condemned both the systems and he says that both the systems are dangerous. He has said that, and I entirely agree with him. He has always opposed separate electorates, reservation of seats and the partition of the country. He is right. But he wants cumulative voting, that is, proportional representation by means of a single transferable vote, or something like that. My honourable Friend, Mr. Saksena has told us that it is a very cumbrous system of mathematical calculations; I am not dealing with that now. The only thing I want to say is that Mr. Lari wants to get into the Assembly by the back door. For example suppose there is a constituency that has to elect four candidates for the House or the People, and there are five candidates. One will be defeated and four will be elected. Out of these five, four are Hindus and one is a Muslim. The votes of the Hindus will be divided among the Hindus and there will get elected. The Muslim will get in on the Muslim votes. Again separate electorates, again reservation of seats. I should like to say to my honourable Friend Mr. Lari if I may say so, that is worse than separate electorate, as the method is not clean. It is not straightforward. I quite understand Mr. Mohamed Ismail's view when he asks for separate electorates. That is a straightforward method. What is this back-door method of Mr. Lari. I do not understand. I am sure the Muslims do not like these crooked methods; they want a straight, honourable fight. In spite of the fact that Mr. Lari has always openly opposed Pakistan, separate electorates and reservation of seats he still feels inferiority complex. I would ask him to shed this inferiority complex. The country will change for the better.

Last of all, I come to the speech of my honourable and esteemed friend, for whom I have very great regard, Sir Saadulla, the Ex-Premier of Assam. He complains before us that the majority of the Muslim members of the Advisory Committee on Minorities Fundamental Rights etc., did not support the resolution that there should be no reservation of seats for the Muslims. I have already told you, Sir, that I have very great esteem and regard for the Ex-premier of Assam, but I am afraid I must differ from him on this point. I sent my resolution to the Committee to the effect that there should be no reservation of seats. My resolution was discussed under the Chairmanship of the Honourable Sardar Patel. I spoke on my resolution. Begum Aizaz

Rasul supported me. Maulana Azad was present there; he did not oppose me. The only person who opposed me was my honourable friend Jafar Imam, from Bihar. There too, I had a majority: Begum Aizaz Rasul. Maulana Azad and myself as against one. The meeting could not be finished and was adjourned *sine die*. Then it was held on the 11th of this month. I wanted to attend that meeting, particularly because my resolution was there I wanted to move it again. But I never received notice of the meeting. The notice was lying in Delhi; it never reached me. If I had got notice of the meeting. I would have attended it. When I came to Delhi, I learnt that there was the meeting that day. I was happy to learn that the substance of my resolution had been accepted though I was absent. I sent a statement to the Press why I could not attend the meeting that day and it was published in all the papers. Sir Saadulla could not attend the meeting; I do not know why. That meeting was attended by four honourable members: Maulana Azad, Maulana Hifizur Rahman, Begum Aizaz Rasul and Mr. Jaffar Imam. Maulana Azad and Maulana Hifizur Rehman did not oppose my resolution that there should be no reservation of seats. Every member of this House does not speak. If he oppose, he opposes. If he does not speak, but says "I vote for it", then he is with it. Maulana Azad was present. If he wanted to oppose, he would have opposed. The two Maulanas did not oppose begum Aizaz Rasul supported my resolution in substance. The resolution was moved by my honourable Friend Dr. Mookherjee. It was the same as my own. Begum Aizaz Rasul supported it. My honourable Friend Mr. Jaffar Imam opposed it. If the Maulana were not with my resolution, they would have sided with Jafar Imam. They said nothing. Votes were taken. There was a clear majority. The Honourable Sardar Patel, I understand, declared that the Muslims were in favour of the motion in spite of the two Maulanas remaining silent. It means that they were with me: three to one voting: there was a majority.

I believe, -I do not remember exactly-there are seven Muslim members on the Committee. Only two are opposed to my resolution; five are with me. The two who are against me are my Hon'ble friends Sir Saadulla and Mr. Jafar Imam. The five who are in favour are , Maulana Azad, Maulana Hifizur Rahman, Begum Aizaz Rasul, Mr. Husseinboy Laljee and myself. Mr. Laljee's views are well known. He opposed Mr. Jinnah. I know his views. In fact,he wrote to me once, "For God's sake do something to remove reservations." Therefore, I had an overwhelming majority. There was another member Syed Ali Zaheer. He is now an Ambassador; I know his views. He is also of the same view as I am.

The next point of my esteemed Friend Sir Saadulla is this. He says, 'let us take the vote of the Muslim Members here.' That is a challenge thrown to us. I accept the challenge. I may remind my honourable Friend Sir Saadulla that when the Muslim members came here to Delhi for the first time there was a meeting of all the Muslim members in Western Court. All of them were present. I was the first man to have got up and said that there should be no reservation of seats. I sent my resolution to the Constituent Assembly when you, Sir, were presiding. I regret to say, except one, not a single member supported me. I found that the Muslims wanted reservation. So, I did not move my resolution. That was the first meeting in which the Muslims were against me. The next meeting was in the house of Nawab Muhammad Ismail, about which he also has told you, in 18, Windsor Place. There my view was accepted by an overwhelming majority. The same Muslim members who were present in the Western Court were present here also, and it was passed by an overwhelming majority that there should be no reservation of seats. See how the time had changed. The only member who opposed it was my honourable Friend Sir Saadulla. He is honestly of that opinion; I respect his view. I hope he will respect my view. He said, 'no there must be reservation of seats'. But, one thing he said: 'personally I am not in favour of reservation, but the Muslims want it'. Most humbly I wish to tell him that he is wrong. The Muslims do not want it. Sir Saadulla was the only opposing member. Then there was the Madras group. They are a group by themselves, Sir, I understand their opinion. They have throughout been saying, " No reservation, but separate electorates; let us have separate electorates." At the Western Court, they said, "let us have separate electorate," at Nawab Ismail Sahib's place also they asked for separate electorates and here also they ask for separate electorates. They are welcome to their opinion. But that there should be no reservation was passed by an overwhelming majority. All of us were present. And after that I sent in my amendment saying that the whole section be deleted or that there should be no reservation for Muslims.

Mr. President: Time is up.

Mr. Tajamul Hussain: I will finish soon. My resolution was for pure and simple joint electorates. Sir Saadulla is of the opinion that, though he personally does not want it, the people want separate electorates. I assure him that he is not correct. The people do not want it.

Mr. President: The Honourable Member will please look at the clock. He has taken much time.

Mr. Tajamul Husain: I have to say all this because the challenge has been thrown. I will finish in a minute. I have here a list of all the members. Briefly it shows that there are 31 members from the Provinces and 2 from the States, making a total of 33 Muslims. Out of these, 4 are from Madras and I must say that many of the members are permanently absent. As they have migrated to Pakistan, especially all the members from the Punjab, they have gone, and out of the 5 from Bengal 3 have migrated. Now, coming to the list, 4 from Madras are for separate electorates. There are only 23 member on the roll of the Constituent Assembly. As I said, 4 are for separate electorates, 4 are reservation of seats,- 2 from Bihar and 2 from Assam, 1 for cumulative votes, and the view of one member is not known *i.e.*, of Mr. Husain Imam. I had discussions with him, but I do not know his views. So we find that out of the 23 members on the roll of the constituent Assembly, 4 are for separate electorates, 4 reservation of seats 1 for cumulative voting, I unknown and 13 entirely for joint electorate, with no reservation of seats. If you add those who are not with me, they will come to only 10 and we are 13, and if I add Mr. Lari who too is not for reservation of seats or separate electorates, our number would be 14. Actually today there are 15 members present. And of them, 4 are for reservation of seats, 3 for separate electorates and the rest 8 are with me. Even then I have a majority.

Sir, I am finishing now. I only want to add this, I would ask the majority community, not to thrust reservation on the Muslims. If you honestly and sincerely believe that it is a wrong thing, for god's sake, do not give us reservation. You knew that separate electorate was a wrong thing for the Muslims and for India, and you never consulted the Muslims. Sir Saadulla did not raise the objection that the Muslims were not consulted, and he accepted it, and why? Because honestly it was believed to be a bad thing for the country. We now say, "do not make us a majority community. Make us your equal partners, then there will be no majority or minority communities in India."

Now, finally I may be permitted to say one thing and that is a very serious thing which I have not spoken yet on the floor of this House. But I feel there are some people strongly and vehemently opposed to me, and therefore I must give a warning. As you know, Sir, among Muslims there are two sections, call them sub-communities if you like, they are Shias and Sunnis. Out of the 31 members from the Provinces, I have the honour to be the sole Shia in this House. Out of the 2 members from the States, it is fifty, fifty, as one comes from one State and he is Shia and the other is a Sunni. And I would like to tell you that throughout the Shias have been opposing separate electorates, and have been opposing reservation of seats. They have always been nationalists. I was president of the Bihar Provincial Shia Conference for ten years, and throughout we have consistently said that we want joint electorate, pure and simple. Recently on 31st December 1948, there was the All India Shia Conference, the 35th session in Muzaffarnagar in U.P. which was presided over by Sir Sultan Ahmed, whom everybody knows. And the resolution was unanimously passed there that there should be no separate electorates and no reservation of seats. I went from her to attend the conference, and I will read out just a portion from the Presidential Address :-

> "The Draft Constitution provides that Reservations of Seats for Minorities will continue for ten years from now, by way of allowing handicap. It has been conceded in a kindly spirit of tolerance and fellow feeling and according to current principle of safeguarding the rights of minorities. From this point of view is it perfectly intelligible. But to my mind it appears that the disease of separation is thereby suffered to be prolonged and the germ will continue to be at work for these ten years, with all its after-effects, however mildly it may operate. This reservation in a sense is a measure of dealing softly with a long standing prejudice and curing a trouble as imperceptibly as possible and avoid creating any impression of lack of sympathy on the part of the majority legislators. Could we however not take courage in both hands and abolish even separation of seats along with its greater evil the separation of electorates. Let no separation linger in any form, however innocent. Let us grow into a full bloom of trustfulness and oneness, allowing no speck of, no suggestion whatever of separatism leaving no visible trace of the ways of alienation that made us unfriendly and uncompromising in the past. We should wake up once for all in the glowing dawn of a great living and the historic atmosphere of a new freedom and fellowship may well be expected to give us the boldness to accept a complete code of co-operative life.
>
> There is another ground why this speck of separatism should not be perpetuated. Other minorities will also be encouraged to demand it. Minority within a minority must be logically entitled to it and thus, far from adding and aiding unity, it will only serve to promote separatism and create sectional strife, leading to untold religious, social and political complications. Reservation carries with it as a corollary the maintenance of a communal political organisation and this must be avoided at all costs."

Mr. President: That will do please.

Mr. Tajamul Hussain: Only one minute more. I have to say something very important.

Mr. President: No.

Shri L.S. Bhatkar (C.P. & Berar: General): *[Mr. President, Sir, on this auspicious occasion I too want to place my views before this Assembly. I wholly accept and welcome the proposal moved in this House by the Honourable Sardar Vallabhbhai Patel yesterday in the form of a report. India is very fortunate in having respectable and dignified leaders like Sardar Patel. They have fully solved to their credit the great problems with which the country was confronted. Some days back everyone would have taken it as an impossibility that the method of communal and general representation would end in India.

Sardar Patel has, however, removed this impossibility and actually brought about the abolition of communal representation and for this all Indians ought to be extremely grateful to him.

This Constituent Assembly has declared time and again that India is a secular State. If in spite of this high ideal the communal representation had continued in the country the Constituent Assembly would not have been able to fulfill its objective. This Constituent Assembly could not have absolved it self of this blame. It is only because of the confidence of Indians enjoyed by Sardar Patel that communal representation has been eradicated from the Constitution and seats have been reserved for ten years for the Scheduled Castes only.

I have no hesitation in saying that if we had removed even this provision from the Constitution, it would have been for the better. But because the Scheduled Castes are poor, uneducated and suffer because of their status in society and because of the prevailing social customs, it would have been unjust not to provide for them some special facility in the Constitution. It has been done because they are not capable of uplifting themselves. I hope that during the coming ten years the Scheduled Castes would be able to make progress with the co-operation of everyone amongst us and then it would be unnecessary to continue the special facilities we have granted them today. But the co-operation of other people is necessary to achieve the object. This proposal of Sardar Patel turns our thoughts to Mahatma Gandhi. The scheme envisaged in this proposal is in fact based upon the Poona Pact evolved by Mahatma Gandhi.

I know that we have very little time today and therefore I do not want to prolong my speech. I wanted to express my views about many things, but I would now say only this much that even now in no province the Scheduled Castes are receiving as much help as the Government of India wants to give them. It is necessary to make arrangements for their free education, for giving them financial aid for education and for providing government service to those who are educated among them. There are at present difficulties in making these arrangements and no heed is paid to them. This creates discontent among the people which in the long run takes a political form to the detriment of the country as a whole. But I am confident that Sardar Patel will soon remove these difficulties also.

In conclusion, I once more thank Sardar Patel and extend my full support to his motion.]

Mr. President: As will be seen by honourable Members I am allowing time to the speakers of minority communities to have their say.

Shri Mahavir Tyagi (United Provinces:General): Sir, what about those persons who have differences with the proposal? They must also have their chance.

Mr. President: I have given chances also to those who wanted to speak against the resolution.

Sardar Sochet Singh (Patiala & East Punjab States Union): Sir, I take this opportunity to extend unqualified support to the motion moved by the Honourable Sardar Vallabhbhai Patel. The inclusion of backward sections among the Sikhs in the category of scheduled classed for all political purposes is a happy decision over which the Minorities Advisory Committee deserves to be congratulated. It is a matter for regret that the Sikh society could not altogether succeed in eradicating class and sectional distinctions which it was meant to wipe out. The deep-rooted and age-long class consciousness prevailing among the sister communities had a great deal to do with the existence and prevalence of this unhappy state of affairs among the Sikhs, but taking things as they are, the Advisory Committee could not do better than to recommend and this House to accept the extension of the same rights and privileges to members of the scheduled classes regardless of whether they profess this religion or that. The recommendation is doubly welcome on account of the removal of discrimination which should not have been allowed to continue particularly on the basis of religion. I maintain that the Advisory Committee could not do otherwise, if an advance consistent with the establishment of a secular State had to be made. The Sikhs are not alien to the conception and experience of a secular State. The State of Maharaja Ranjit Singh, though not a democracy, was secular in concept and practice inasmuch as a large proportion of his ministers and high government functionaries were Hindus and Muslims. The court language too was Persian. Paradoxically enough, the Sikh Raj was not a theocratic Raj and reflected hundred per cent. secularly and cosmopolitanism of the times. The Sikhs are essentially a democratic people and will always feel more at home in a genuinely secular atmosphere.

I am happy that the undemocratic demands regarding special safeguards, reservations, weightages and protection have not been taken into account. The Sikhs are an enterprising energetic and hard-working people who do not dread competition in the open market whether it is in a spheres political, economic or administrative. We can rub shoulders with our countrymen in every walk of life. We do not want to move, in tin shoes and breathe in heated or air conditioned chambers. We who have, by sheer dint of national deeds and services, earned the title of protectors of Indian culture, civilisation and social order against the tyranny of alien rulers of the times should not feel very happy at the prospect of placing ourselves in the position of soliciting protection. Apart from the point of self-respect and prestige which matter a very great deal where Sikhs are concerned, I venture to ask, against whom do we seek protection? Protection against our countrymen who have been our comrades-in-arms in the country's battle against foreign rule? Protection against democracy for which our faith has struggle and fought for centuries? Protection against Hindus for whose sake Guru Teg Bahadur willingly and cheerfully laid down his life in this very in this very capital of India? The Sikh religion and society have fulfilled an important historical role in this country and are sure not only to hold their own but to serve the essential purpose for which these were created by the Gurus in all difficult times which the country may have to face in future. I do not agree with those of my co-religionists who think and feel that after the attainment of independence by our country, the Sikhs have outlived their usefulness and have now to be lodged and preserved in the sanctuary of safeguards, protection, reservation and weightages. I spurn that idea. The undemocratic and outmoded devices which were struck upon by the Britisher to prolong and stabilise his hold on the country should be courageously smashed and buried. Communal outlook and representation are the least suitable for minorities as they are calculated to perpetuate their unfavourable position in relation to the majority. Our religion is not vulnerable in any respect, and it is lack of appreciation and comprehension of its basic virtues and merits to suggest that it is in danger in it is in native land and atmosphere: As long as faith in one God, liberty, equality and brotherhood of man, courage to oppose tyranny and aggression against the poor and down-trodden, and the upholding of moral law at the risk of life are needed in this world, the Sikhs with their ideals of service and self-sacrifice and faith will have an honourable and honoured place in the schme of human affairs. What the sicks wanted was social justice and proper understanding of their legitimate aspirations which happily they have received abundantly at the hands of the architects of India's destiny- I mean the Honourable Pandit Jawaharlal Nehru and the Honourable Sardar Vallabhbhai Patel. It is the statesmanship and large-hearted sympathies of these noble souls which have made it possible for the Sikhs to shed their isolationist and communalistic tendencies and enjoy an equal partnership with other communities in the prosperity of the country. The constitution of the country makes full provision for the equality of treatment that the Sikhs seek and they would therefore be prepared and determined to cast their lot with their countrymen Hindus, Muslims, Christian, Parsees and others. They have got a fair field and no favour that they sought. The question of language and linguistic provinces and re-settlement of refugees will, I believe receive due consideration in the appropriate forums and the competitive system of recruitment to services will give us equal opportunity with our countrymen to attain the attainable on merit and fitness.

The Sikhs must feel rightly proud and happy that the Indian National Congress have been drawing freely upon the history and methods of the Gurus in its struggle against the British Raj. Under the inspiration, superior wisdom and guidance of the Father of the Nation, the Congress religiously observed and followed the principle and practice of non-violence taught and practised by the Sikh Gurus from the first to the ninth, and in the recent past employed the alternative method of "Police action in Hyderabad" and "resistance to aggression in Kashmir" on the lines indicated and pursued by Guru Gobind Singh who enunciated dictum.

Chokar az hamen heelte dar guzasht

Halal ast burdan beh shamsheer dast

meaning thereby that when all peaceful means fail it is legitimate to unsheath the sword. I am sure, with the establishment of more harmonious relationship among the faiths and communities in the new set-up of our country, there will be more and more opportunities to think alike and work together in the service of the country and its people. With these words, I commend the motion for the acceptance of the House.

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, I have come forward today to give my entire support to the motion of Sardar Patel. I am really glad to do so, because recently I have had occasions to differ from him, though very reluctantly.

Sir, I opposed the principle of reservation of seats at a time when the Congress Party was in its favour. At that time the excuse put forward by the Congress Party was this. "We do not like this method of reservation of seats, but we have to show some concessions to the Muslims, and, therefore, we want to retain it for at least ten years." Even then I said-I am reading from the Official Report of the proceedings of the 4th January 1949,-"We refuse to accept any concession. In case the majority party, or the Congress Party, accepts reservation of seats, its claim of creating a secular State and of putting an end to communalism would be falsified."

Now, while giving my entire support to this motion, I come to the amendments proposed by some of my Madras friends. My opposition is based on the fact that they want to revive the Muslim League. The Muslim League is no more. Mr. Mohammad Ismail is proclaiming the existence of the All-India Muslim League. I ask, "Where is that Muslim League?" Let us once and for all decide that we will not have any communal parties among us. If we are to establish a true democratic state, then there is no room for any religious or communal parties. As everybody knows, democracy means majority rule and therefore it follows that minorities will have to submit to the decisions of the majority. Now, sir, what is the reason for minorities submitting themselves to the decisions of the majority? They do so on the supposition that it would be possible for them at some future date, with the change of public opinion in their favour they may occupy the seat of Government and in that case the erstwhile majority will become a minority and the minority will become the majority. So this democratic system can work only with political parties. If we have only communal parties or parties based on religion, the whole object of democracy will remain unfulfilled. If we have Muslim Parties, Christian Parties and Sikh Parties, then what will be the result? How can they expect to become the majority party under a democratic system of Government? When they cannot become the majority party, it is hopelessly absurd to allow the formation of parties on communal or religious basis. Therefore it is no use on the part of my friends from Madras or the Sikhs, Christians or Parsis to form communal parties. Under democratic Government they must form political parties. My advice to my Muslim friends has always been to discard communalism once for all. When there is no reservation of seats, they will be compelled either to form a distinct political party and work in coalition with other political parties or be annihilated. They will have no place in public life. I submit that the Muslims should form a distinct political party called the Independent or the Independent Socialist party. I would prefer to call it the Azadi party allied to the party organised by my Friend Shri Sarat Chandra Bose. They can form a coalition party with that left-wing party. In that case only my Muslim friends can expect to take part in democratic Government. Even if the Nationalist party is in the majority it will be possible for this coalition party to become the majority at some future date. In that case, the Congress or the Nationalist Party will become the minority. Unless and until we do that, there is no hope for any minority which does not want coalition with left-wing parties. No single party, socialist or communist or other if it wants to oppose and come forward and contest elections against the Nationalist Party, can succeed. We have the example of the Socialist Party's defeat in the United Provinces. Therefore it is necessary for political parties other than the Nationalist party to form a coalition if they want to become the majority party and run the administration. In that case, if we form political parties there will be the question of safeguarding the interests of political minorities. It is here I have to support my Friend Mr. Lari. His proposal for creating safeguards is not for any Communal party but for a political party. The political party may be socialist or communist or Forward Bloc. If they do not allow even this concession of proportional representation, even a party like the Socialist Party who got 35 per cent. of votes in the elections in the United Provinces, could not get single seat. My position is quite different from that of Mr. Lari on one point. He seems to suggest that if this concession is granted, if the political parties are allowed proportional representation, he would not have any reservation of seats. If they do not allow even this concession then it seems that he will either change his opposition or become a neutral in this respect. He said so. My position is quite different. I say that even if they do not allow any proportional representation, I do not want reservation of seats for the reason that before long, if there is a coalition among the left-wing parties, the Nationalist party itself will ask for his proportional representation. The Nationalist Party will then cry for proportional representation. In case many of the left-wing parties unite, it will not be possible for the Nationalist Party to beat them at the polls. The coalition left-wing parties will be in a majority, though they may not be in a position to outvote the Nationalist. In that case I say we should not bother about that. But the time is coming when it will not be a coalition of Independent parties, but the Nationalist Party itself will be compelled to come forward and ask for this concession of proportional representation.

I am very much surprised to see Mr. Saadullah, with all his experience as Prime Minister of a Province, saying that the matter should be decided by the votes of the Muslims in the House. I think that this proposition is ridiculously absurd. We have before the House the proposition of Sardar Patel and the House has got the right to vote on it. In the circumstances I am surprised to see Mr. Saadullah making a suggestion of that kind. I know that some of the Muslim Members of this House are for reservation of seats. I say it does not matter. I do not care if the majority is for or against it. But if we allow this question to be decided by the exclusive votes of the Muslims, then it will be on the face of it ridiculously absurd. It will mean that we are not going to make an end of this communalism. It will mean also that we will have to decide the other questions also by separate vote. This is surely absurd. I do not know how a man of his experience has managed the courage to propose such an absurd thing. With these few words I entirely support the motion of Sardar Patel.

Shri Mahavir Tyagi: Sir, I wish to put on record my appreciation of the proposal which has been made by our great leader, Sardar Vallabhbhai Patel, who is known for his firmness and resolve. After completing his work of political consolidation of India, he is now taking up communal consolidation. I think that the proposal put by him before the House today goes a long way to achieve that objective; but I would like Sardar Patel to throw some light on certain points. With that object I requested you, Sir, to give me a few minutes.

The first thing that I want to say before the House is that I am glad that the Mussalman friends here, practically all of them have supported the motion for the withdrawal of reservation, and for representation to be on unadulterated non-communal lines. It is fortunate, Sir, that they are of this opinion today. There is, however, one thing that the Muslims should note and it is this: When we are switching on to representation from communal to national lines, it cannot be absolutely ideal in the first one or two elections. There might be occasions when Muslims might lose seats because they are giving up their reservations. Let the Muslims know that it will be very difficult for them to get any seat as Muslim under the present conditions of the country. There must be set-backs for them, so long as the rest of India does not feel one with them. They will have to justify by their behaviour that they deserve retaining the seats that they now have. It will take time. In the achievement of this objective, even if the Parliament goes temporarily without any representation of Muslims, I would not be sorry for it, because after the next one or two elections, elections will be fought on the basis of merits and services and not of community. Therefore, when Muslims agree to do away with communal representation or reservation of seats, let them be conscious that they are going to suffer immediately and lose for the time being their representation in all the legislatures. It will not be easy for them to come in such numbers as they have been coming so far. I hope the learned members of that community are fully conscious of this fact when they support this motion.

Another point that I want to emphasise is about the Scheduled Castes. Sir, originally when the scheduled castes were given separate representation, Mahatma Gandhi had started his fast in protest. Now we have it seems, accepted the idea; but when it was first introduced, everybody was shocked. Nobody liked it and when Mahatma Gandhi gave his ultimatum of fast unto death the Prime Minister of England addressed a letter to Gandhiji dated September 8, 1933 in which he said:-

> "Under the Government scheme the depressed classed will remain part of the Hindu community and will vote with the Hindu electorate on an equal footing but for the first twenty years, while still remaining electorally part of the Hindu community, they will receive through a limited number of special constituencies the means of

safeguarding their rights and interests that, we are convinced, is necessary under present conditions."

You will see, Sir, that when the idea of giving separate reservation to the scheduled castes was first introduced, the intention was that it should last only for twenty years. After that period they were expected to become absolutely one with the Hindus. It was in the year 1933 and now it is 1949. So it is only a few years less than twenty. According to the old scheme of the British Government reservation for the Scheduled Castes should go in 1952, why are we now giving it a further lease of ten years? Again, Sir, if we look at the list of Scheduled Castes, there are so many included in it. We have had the experience of separate reservation for Scheduled Castes. Facts must be faced as they are. The term "Scheduled Castes" is a fiction. Factually there is no such thing as `Scheduled Castes'. There are some castes who are depressed, some castes who are poor, some who are untouchables, some who are down-trodden. All their names were collected from the various provinces and put into one category "Scheduled Castes". In spite of the category being a fiction it has been there for so many years. Let us look at the way these castes are represented. There are hundreds of castes included in the List, but if you look at their representation in every province you will find that only one or two castes are represented. Those who have got predominance are mostly Chamars, I would say. In the U.P. it is the case. It is the case in the Punjab also. I want to know how the Koris or the Pernas or the Korwas or the Dumnas have benefited by reservation. It is all a fiction, Sir. How is Dr. Ambedkar a member of the Scheduled Castes? Is he illiterate? Is he ill-educated? Is he an untouchable? Is he lacking in anything? He is the finest of the fine intellectuals in India and still he is in the list of scheduled castes. Because he is in the list and because he is a genius, he will perpetually be member and also a Minister, he will always be their representative. Moreover, Sir, he has lately married a Brahmin wife. He is a Brahmin by profession and also because his in-laws are Brahmins. They are others like my Friend, Professor Yashwant Rai. What does he lack? There are thousands of Brahmins and Kshatriyas who are worse off than these friends belonging to the scheduled castes. So by the name of Scheduled Caste, persons who are living a cheerful life, and a selected few of these castes get benefit. This is no real representation. No caste ever gets benefit out of this reservation. It is the individual or the family which gets benefited. So, Sir, while we are doing away with representations and reservations, while we are doing away for good with this caste system, why should we allow it even for ten years? Does not our past experience show that out of the hundred and one scheduled castes only a few get any representation? Then why are so many castes linked with the chariot wheel of the Scheduled Castes? They are simply voters; they do not get any benefit, and even if any member of a caste in India comes up and gets elected how does the Community benefit, I do not understand. I could understand if instead of castes, classes were given reservations. To say that it should be a casteless society, I can understand. Society can be casteless, but society cannot be class-less. So long as the country does not decide to make the society class-less, classes must exist and therefore, classes must have their representation. Sir, to make the whole nation one party, I am afraid, will not be a practical idea. Minorities must exist and must be provided for. There will be no peace so long as minorities are not provided for. I do not believe in the minorities on community basis, but minorities must exist on economic basis, on political basis and on an ideological basis and those minorities must have protection. In this sort of a wholesale decision, the minorities will get little representation. I would suggest that in the place of the Scheduled Caste, the landless labourers, the cobblers or those persons who do similar jobs and who do not get enough to live, should be given special reservations. By allowing caste representations, let us not re-inject the poisonous virus which the Britisher has introduced into our body politic. I would suggest Sir, that instead of the so called Scheduled Caste, minorities be protected, if you like, on class basis. Let cobblers, washermen and similar other classes send their representatives through reservations because they are the ones who do not really get any representation. As a matter of fact even after passing the motion which Sardar Patel has put before us, I am afraid the tiller of the soil will not as the conditions are get any representation. The villager is nowhere in the picture. It is the urban citizen alone who gets the protection. It is not the toilers of the soil but the soilers of toil who are benefited. Persons who irrigate paper with black ink get the representation and not those who irrigate the land. These literate mediocres create fear and do nothing productive, but these tillers of the soil and producers of wealth are mostly those who are illiterate and therefore they are deprived of their due share of representation. Thus the nation is perpetually mis-represented by men of law, literature and letters. The `Pen' rules over the `Plough'. The creators of wealth are those who are without education and those persons will remain as such. They were slaves before and will remain slaves today and even after your passing this Constitution. If you want to help those down-trodden classes, then, Sir, the best thing would be to keep some safeguards for them. We should forge a law which would bring those illiterates into this House. As a matter of fact there is hardly a single Kisan member of the Constituent Assembly of the type of which 80 per cent of Kisans live in India. Unless those very Kisans come here as they are, India will not be properly represented. I therefore, submit, Sir, that the Scheduled Castes should now go and in place of Scheduled Caste, the words "Scheduled classes" be substituted so that we may not inadvertently perpetuate the communal slur on our Parliaments. In fact the Untouchables had only some social disabilities. Now all the Governments have passed enactments removing those social disabilities and among those persons who come here as the representatives, I fear, there is not one who has any social disability about him. The Scheduled Caste man can marry a Brahmin girl and there is no disability. I say, Sir, in the name of Scheduled Castes a few individuals are getting the benefit. Let the House dispassionately consider the situation as it is, take advantage of the experience that we have gained for the last so many years of what the `Scheduled Castes' have actually meant. And then make up our mind as to whether or not we could substitute this communal representation by giving reservations to classes who would mostly be the same voters but with a better title and a healthier outlook.

An Honourable Member: Is the honourable Member moving his amendments?

Shri Mahavir Tyagi: Sir, I am not moving any amendment, because it is not the time to move one. I will move the amendments when the article comes up for consideration. This is only a general discussion. I will come out with my amendments when the occasion arises. This is not the occasion for amendments Sir, and I want to take two opportunities to discuss this issue. Sir, the method of representation as envisaged in this Draft Constitution is very good, because it does away with the communal virus altogether, but at the same time shall we take into account the fact that if the Muslims were not returned, what will be our position?

Pandit Thakur Das Bhargava (East Punjab: General): Why do you assume so?

Shri Mahavir Tyagi: Because I know; I do not live in the air; I am a man of the people and I know the Hindu mind and also the Muslim mind. Let the nation know it. The Muslims already know that they will not be returned for some time to come, so long as they do not rehabilitate themselves among the masses and assure the rest of the people that they are one with them. They have been separate in every matter for a long time past and in a day you can't switch over from Communalism to Nationalism. There is a class of Muslims who always went with power and that class can talk in any manner they like, but for the real Muslims it would take some time to switch their mentality from Communalism to Nationalism. This separation and isolation was of their own earning, they have enjoyed its fruits so long; now they should be ready to face set-backs. So the proposal put forward by Mr. Lari seems to me to warrant our consideration. He suggested that we can have cumulative system of votes in a plural constituency. There is no intricacy about it. As against this, the system of representation by the single transferable vote is extremely intricate. This cumulative vote is a very easy affair. Suppose there is a plural constituency of four seats. I have four votes and a Muslims friend has also four votes. I have the liberty either of distributing these four votes to four persons or give all the four votes to one candidate or three to one and one to another or two to one and two to another. I will either distribute or if I so choose I might give all the four votes to a candidate of my choice; and in that manner the minority can also have some say-not only the Muslim minority but even the socialist and the communist minority.

Suppose there are shopkeepers in an urban constituency and there the consumers decide to send their representative. So if the consumers choose to cast all their four votes to their representative, they can push their candidate up. This is a method which without any communal representation without any consideration of caste or class gives a sense of security to all types of minorities. Yet you still maintain the label-pure nationalism. In this way you can accommodate the minorities of today and the coming minorities of tomorrow. I will suggest that the House might consider whether the cumulative voting system will not do. In that case, we do not need to reserve any seats for any caste and, at the same time, we give them an opportunity to send up their candidates. This has been in practice in many other countries with success too. Therefore, I would commend strongly that this cumulative voting system be considered. Let this also be allowed for ten years. The reservation for the Scheduled Castes may therefore go; the Sikh representation may go; the Muslim representation may also go. We may have representation of all these people without bringing any slur on our Nationalism. This is a most practicable method.

This is all I have to say. Only a word more. I wish to congratulate my honourable friends here, Sikh representatives, Muslim representatives and the Christian representatives, who have readily come forward to accept the withdrawal of reservations. I hope the country will appreciate the great offer, historical offer that they have made. The electorate will always be considerate to the sporting offer that has been made and I am sure the country will feel grateful to the minority who have come forward under the influence of a patriotic spirit to give up their reservations.

With these words, I commend that there should be no reservation of any community or caste and the minority may be given protection by the cumulative vote.

Col. B. H. Zaidi (Rampur-Banares State): Mr. President, I am grateful indeed for the opportunity you have granted me to make my first speech in this House during the course of this historic debate.

Sir, it has given me very great pleasure, and I know that this pleasure would be shared by every section of the House, that representatives of the minorities, and the representatives of the Muslims also, have given proof as never before of a sane, sound, balanced, patriotic outlook. It augurs well for the future. I am sorry, Sir, that perhaps, the only exceptions are a few friends from the South. Old traditions take a long time to die out. For nearly forty years, the Muslims were used to the props and crutches provided to them by the British. We came to love these prop and crutches. Many a patient who has lost the use of his legs and is given crutches will stick to them and would like to lean on them even when some good surgeon has given him back the use of his legs. These generally wish to cling to their crutches. Crutches is not the right word; I should say, stilts because, stilts not only support you, but also give you artificial height. If we throw away these stilts, not only do we need to trust to the strength of our legs but also we are reduced in height. We were given some artificial importance in this country. It was an importance which was nothing more than an illusion. We wish to cling to that illusion, to the mere emptiness of it. I hope that in course of time, not in the distant future but in the very near future, even those friends will come to realise that their truest friend and not their ill wisher was a man like the Honourable Sardar Patel, and other leaders who are shaping the destinies of this country.

I will give the reasons. The best thing that the Sardar could do if he was not a friend of the Muslims would be to allow them to cling to their crutches. It would make them cripples for the rest of their lives. It would lead to degeneration and demoralisation out of which there would be no cure. What is he doing? It is not only for India that a right step has been taken-Even for the minorities, the best thing is being done. We are being given the use of our legs. We are being taught the lesson of self-reliance. Would any person possessing any self-respect, any pride, any manliness in him, cling to artificial safeguards? Is it not against his grain, does it not go against his self-respect to ask for, to plead for, and to cling to artificial crops and safeguards? Are these really safeguards? Do they provide the safety? do they serve the ends we have in view? After all, what would be the surest guarantee for a happy, prosperous and honourable future for the Muslims of this country? In my humble opinion, only two things will spell their salvation. The first and foremost is self-reliance, strength from within, self-respect, faith in themselves in their destiny and their Creator. The Seconod is faith and trust in their own brethren, the majority community. If, Sir, we could be given safeguards which would deprive us of that trust and the confidence of the majority community, if something we ask for is conceded by this Parliament, by the leaders, but the bulk of the majority community are given offence by that, if some suspicion lingers in their minds, if they are not pleased, what safeguards can stand us in good stead? What is the use of paper safeguards? The real safeguard is reliance on our own strength and trusting to the goodwill friendliness brotherly feeling, and justice even generosity, of our own brothers, who are really our own kith and kin.

If there is any suspicion in the minds of the members of my community or members of any minority community in our country in the good faith of the Hindus, it can only be based on two things: either the bitter experience of the present generation or the teachings of Indian history. So far as the present generation is concerned, when did any minority in this country leave their future and their interests in the safe keeping of the majority community? We never trusted ourselves, and never trusted our brothers. We trusted only a third party. Therefore, when was the occasion in the history of the last one hundred years when we can in fairness turn back and point to one single example when our interests have been betrayed by the majority in this country? The occasion never arose. There was no question of their feeling a responsibility for our future and our interests when we were really neither looking to them, nor looking to our own strength, when we were looking to a foreign power, which in its own interests was dividing us and making cripples of us.

Where the experience of the present century is no guide, we may turn to history. If the Hindus in this country have given proof of narrow mindedness, bigotry, persecution of minorities, then, certainly we shall be justified in entertaining some sort of fear about our future. What does a study of history reveal? So far as I know, there has been no occasion in the history of India when the Hindus have persecuted a minority. They have turned themselves from a minority into a majority on one occasion. When Buddhism was reigning supreme in this country, when the Hindus were in a minority, they gradually saw to it that from a minority they converted themselves into a majority. But as against the Buddhists there were the Jains who were a minority. There were the Syrian Christians, the Parsis, and many others. Indeed, India has given asylum and protection to a number of minorities, and the only example I can think of, the only unhappy episode in the history of India was the fate which Buddhism met in the land of its own birth, but it can hardly be called persecution of a minority. The present generation, I suppose is atoning for that, and we are now going back to Buddhist symbols and in our flag, in our national emblems we are giving a place of honour to something from which we ran away, something which we did not sufficiently honour at that time. So, whether in the light of history or in the light of the immediate experience of the present generation, I feel that the minorities have no grounds to fear that they will not get goodwill, friendliness and fair-mindedness on the part of the majority community.

What is our experience in this House? I am not a frequent comer to this House. But whenever I come, I am particularly struck by one thing-the great toleration, good-humour and friendly encouragement to members of every section of opinion and to the members of the minorities. Even in the minority there is a gentleman who is in a minority of one, ever since I have come here. There is my Friend Maulana Hasrat Mohani who is in a minority by himself. But even in his case I have found this House indulgent and full of friendliness and good-humour. So whether it is in this House or whether it is in the actions of the Congress Party, in the leadership of the country, we see no sign of anything except breadth of outlook and toleration and broad-based democratic feeling underlying everything. But even if the majority community did not rise to the occasion, the sofest thing for the majority community is to ask for no safeguards. I would rather wait till the conscience of the majority community was awakened. The only thing which can safeguard the future is reform of the inner spirit. Sir, this is not the only country in which there is the minority problem. In other countries and at other times there have been minorities and minority interests. Even in England, the treatment of the minority was not always what we might imagine it to be. As a student I had occasion to go to the Action Library one day and in the library, I saw a tablet with some words from Lord Morley, the friend of Action. I came to know from the tablet that Lord Action being a Roman Catholic was denied admission to the Cambridge University simply because he was a Roman Catholic, and later on in life, the same University asked Lord Action to do them the honour of accepting professorship of the same University. Things broaden down in course of time. What brought about the safeguarding of the interests of the Roman Catholics? They were not allowed admission to the universities, nor into the civil services. What were the forces which brought about this liberalisation in the British outlook? Certainly not agitation on the part of the Roman Catholics, not safeguards granted to them, but the conscience of England, the British conscience was pricked and they felt sorry that they were not giving a square deal to their own Roman Catholic brethren. In recent history, what brought about the abolition of slavery? Was it agitation on the part of the slaves or any safeguards granted to them by anyone? No, it was the awakened conscience of the various countries where slavery was flourishing. Sir, I will leave the future of the minorities to the goodwill and fair-mindedness of the majority community, in which I fully believe. But even if it were not there, I would wait for the blossoming of this toleration and fair-mindedness. I would wait, whatever the cost, for the growing conscience among my own countrymen, for there can be no future for this country except on the basis of true democracy and fair opportunity for all. My Friend Mr. Tajamul Husain said, "Let there be no minority in this country." Well Sir, there is one minority in this country which has always been, and which is existing in every country, and will go on existing, and that is the minority of the good and the just, of the people who are humane and liberal-minded, and who work for the regeneration of mankind and for the progress of humanity. There is that minority today in this country, and to that minority Sardar Patel and the Prime Minister of India, and you sir, who adorn the Chair, belong, and the Members of this House. I hope. That is the minority which stands for the establishment of unalloyed democracy and justice and a progressive and radical outlook in this country. If the minorities have any fears, let them go and join this glorious and eternal minority of the very best people in our country, who are the salt of the land, and in the hands of these people, not only the destiny of India but the destinies of the minorities are safe. Let us, if we are conscious of our own weakness, and if we are faint-hearted, join this minority and strengthen their hands and our future is assured. (*Cheers*)

The Honourable Shri Satyanarayan Sinha (Bihar:General): Sir, the question may now be put.

Mr. President: The question is:

"That the question be now put."

The motion was adopted.

The Honourable Sardar Vallabhbhai J. Patel (Bombay: General):Sir, when I was first appointed Chairman of the Advisory Committee on Minorities, I was really trembling and I took up the jobs with a heavy heart, because I felt the task was immensely difficult, owing to the history of the past so many years of foreign rule. When I took up that job, I had to undertake it at a time when conditions in the country were extremely difficult and all classes of people were full of suspicion; there was hardly any trust amongst many sections of the people. Yet I can say that the moment power was transferred, a gradual transformation began to take place and it gave me considerable encouragement. I began to sense a feeling of gradual growth of trust and mutual confidence.

Now, Sir, the first time when in the Minorities Committee we came to the decisions giving certain political safeguards by way of reservations and when those proposals were put before the House, I had brought them with a very great degree of consent or concurrence of the minority communities. There was a difference of opinion from some progressive nationalist-minded leaders, such as Dr. Mookherjee who from the beginning opposed any kind of reservation or safeguards. I am sure he will be happy today to find that his ambition is being fulfilled.

Well, when I brought those proposals and place them before this House, there was another group of people who had found it difficult to get out of the mire in which they had gone very deep. Here a proposal was brought forward by one friend from Madras, for reservation and for communal electorates. Now when the separate communal electorate motion was moved, it was supported by the great Muslim leader, who swore loyalty to the Constitution in this House and immediately after packed off to Karachi. He is now carrying on the work of the Muslim League on that side. He has left a legacy here-a residuary legacy perhaps in Madras. Unfortunately, there is still a very large amount of funds belonging to the old Muslim League, which was the All-India Muslim League, which has yet to be settled, and some of our friends still claim that they might get some big chunk of those funds if they still persist in continuing the old League here. Even if the money, or a good portion of it, could be brought here, I doubt if it would do any good to those who get it. Those who claim that in this country there are two nations and that there is nothing common between the two, and "that we must have our homeland where we can breather freely", let them do so. I do not blame them. But those who still have that idea that they have worked for it, that they have got it and therefore they should follow the same path here, to them I respectfully appeal to go and enjoy the fruits of that freedom and to leave us in peace. There is no place here for those who claim separate representation. Separate representation, when it was introduced in this unfortunate country, was introduced not by the demand of those who claim to have made those demands, but as Maulana Muhammad Ali once said, it was a "command performance" that has fulfilled its task and we have all enjoyed the fruits of it. Let us now for the first time have a change of chapter in the history of this country and have a "consent performance". I want the consent of this House and the consent of all the minorities to change the course of history. You have the privilege and the honour to do it. The future generation will record in golden letters the performance that you are doing today I hope and trust that the step that we are taking today is the step which will change the face, the history and the character of our country.

We have the first amendment- the main amendment which was then rejected in the August Session of 1947-moved by the same group. I do not know whether there has been any change in their attitude to bring forward such an amendment even now after all this long reflection and experience of what has happened in this country. But I know this that they have got a mandate from the Muslim League to move this amendment. I feel sorry for them. This is not a place today for acting on mandates. This is a place today to act on your conscience and to act of the good of the country. For a community to think that its interests are different from that of the country in which it lives, is a great mistake. Assuming that we agreed today to the reservation of seats, I would consider myself to be the greatest enemy of the Muslim community, because of the consequences of that step in a secular and democratic State. Assume that you have separate electorates on a communal basis. Will you ever find a place in any of the Ministers in the Provinces or in the Centre? You have a separate interest. Here is a Ministry or a Government based on joint responsibility, where people who do not trust us, or who do not trust the majority cannot obviously come into the Government itself. Accordingly, you will have no share in the Government. You will exclude yourselves and remain perpetually in a minority. Then, what advantage will you gain? You perhaps still think that there will be some third power who will use its influence to put the minority against the majority and compel the majority to take one or two Ministers according to the proportion of the population. It is a wrong idea. That conception in your mind which has worked for many years must be washed off altogether. Here we are a free country: have we are a sovereign State: here we are a sovereign Assemble: here we are moulding our future according to our own free will. Therefore, please forget the past: try to forget it. If it is impossible, then the best place is where your thoughts and ideas suit you. I do not want to harm the poor common masses of Muslim who have suffered much, and whatever may be your claim or credit for having a separate State and a separate homeland-God bless you for what you have got--please do not forget what the Muslims have suffered--the poor Muslims. Leave them in peace to enjoy the fruits of their hard labour and sweat.

I remember that the gentleman who moved the motion here last time, in August 1947, when asking for separate electorates, I believe, said that the Muslims today were a very strong, well-knit and well-organised minority. Very good. A minority that could force the partition of the country is not a minority at all. Why do you think that you are a minority? If you are a strong, well-knit and well-organised minority, why do you want to claim safeguards, why do you want to claim privileges? It was all right when there was a third party: but that is all over. That dream is a mad dream and it should be forgotten altogether. Never think about that, do not imagine that anybody will come here to hold the scales and manipulate them continuously. All that is gone. So the future of a minority, any minority, is to trust the majority. If the majority misbehaves, it will suffer. It will be a misfortune, to this country if the majority does not realise its own responsibility. If I were a member of a minority community, I would forget that I belong to a minority community. Why should not a member of any community be the Prime Minister of this country? Why should not Mr. Nagappa who today challenges the Brahmin be so? I am glad to hear that the ownership of 20 acres of land does not entitle him to be a scheduled casts man. "That is my privilege" he said " because I am born a scheduled caste man. You have first to be born in the scheduled caste". It gladdened my heart immensely that that young man had the courage to come before the House and claim the privilege of being born in the Scheduled Caste. It is not a dishonour: he has an honourable place in this country. I want every scheduled caste man to feel that he is superior to a Brahmin or rather, let us say, I want every scheduled caste man and the Brahmin to forget that he is a scheduled caste man or a Brahmin respectively and that they are all equal and the same.

Now our Friend Mr. Saadulla from Assam claimed that he was not disclosing a secret when he said that they has met in December or in February to consider the question whether reservation were in the interests of a minority of not or whether they were in the interests of the Muslims or not. Now may I ask him: Did I suggest to him to consider the question? Why did they meet to consider the question, of there was not the imperceptible influence of the elimination of foreign rule in this land? How did they begin to think that reservations may or may not be better for them? Spontaneously the thought has been growing, it has been coming on the minds of people who previously were asking for the partition of the country. That is the first fruit of freedom. You have got a free mind to think now and therefore you begin to feel that what you have done in the past may perhaps not be right. And that fact was represented before the Minorities Committee. When Dr. Mookherjee moved his motion, it was Mr. Tajamul Husain from Bihar who stood up and moved an amendment that reservations must go. He was challenged in the Committee whether he had consulted the other members of the Muslim community, and he quoted chapter and verse from the representatives of the provinces whom he had consulted. Yet we did not want a snap vote. I said that I would advise the Advisory Committee to hold over the question and ask all members of the minority communities to consult their constituencies and find out what they really wanted. Nearly four months after that we met and unfortunately Mr. Saadulla was not present or he did not appear and so the opinions that he had gathered remained with him. He did not even communicate them to us. He said that there were only an attendance of four there of whom (I do not know whether he has consulted Maulana Azad or not) he says that Maulana Azad remained neutral. He claims to know Maulana Azad's mind more then I can do. But I can tell him that Maulana Azad is not a cipher: he has a conscience. If he felt that it was against the interests of his community he would have immediately said so and protested. But he did not do so, because he knew and felt that what was being done was right. Therefore if Mr. Saadulla interprets his silence as neutrality he is much mistaken, because Maulana Azad is a man who has stood up against the whole community all throughout his life and even in crises. He has not changed his clothes and I am sure if he has claimed or worked for partition and if he had ever believed that this is a country of two nations, after the Partition he would not have remained here: because he could not stay here if he believed that his nation was separate.

But there are some people who worked for separation, who claimed all throughout their lives that the two nations are different and yet claim to represent here the remaining "nation". I am surprised that Mr. Saadulla claims to represent the vast masses of Muslims in this country now. How can he? I am amazed that he makes the claim. On the other hand. I represent the Muslims better than he ever can. He can never do that by the methods that he has followed all his life. He must change them. He says that he is not enamoured of reservations: Assam dies not want it. Then who wants it? Is It the Muslim of India? Is that the way that this House is to decide this question? He says that if in this House the votes of the minority or the Muslims are against his proposal then he will accept the verdict. Well, he has seen the opinion of the Muslims in this House. Then let him change his opinion.

We are playing with very high stakes and we are changing the course of history. It is a very heavy responsibility that is on us and therefore I appeal to every one of you to think before you vote, to search your conscience and to think what is going to happen in the future of this country. The future shape of this country as a free country is different from the future that was contemplated by those who worked for partition. Therefore I would ask those who have worked for that to note that the times have changed, the circumstances have changed and the world has changed and that therefore they must change if they want salvation. Now I need not waste any time on the question of separate electorates.

Our Friend Mr. Lari has put in another amendment. He says that the Committee's approach was right. I am glad he admits that. There is no point in a committee meeting with a wrong approach. The Committee left the question to the minority. We did not take the initiative. When I first drafted the proposals for reservation of seats for the minorities I tried to take the largest majority opinion of the minorities on the Committee with me. I did not want to disturb the susceptibilities of the minorities. My attempt as representative of this House has continuously been to see that the minority feels at ease. Even if today any concession in made it is with the sole object of easing the suspicions of even the smallest group in this House, because I think that a discontented minority is a burden and a danger and that we must not do anything to injure the feelings of any minority so long as it is not unreasonable. But when Mr. Lari says that we must introduce the system of proportional. I must tell him that it is not anything new. Its origin was in Ireland and it is now in vogue in Switzerland and some other countries. I may point out to Mr. Lari that Ireland is not equal to one district of the United Provinces. Gorakhpur district alone is bigger then Ireland. Ours is a vast country with masses of people. We have introduced adult franchise here where there is so much illiteracy. Therefore even this simple system of direct vote is frightening. That being so, it is not easy to introduce complications of this nature. In this Constitution to introduce such complications is very dangerous. Therefore, if he is satisfied that reservation is bad then let him not try to bring it back by the backdoor.

Leave it as it is. Trust us and see what happens. A month ago at the elections to the Ahmedabad municipality I noticed that all the Muslims contested jointly under the system of joint electorates and, although they were opposed by people financed by the League, everyone of them got in and the Scheduled Castes got one more seat then their quota. Free and unfettered election has proved that any kind of impediment by way of reservation or other things is bad for us. If we leave the thing to be settled by the majority and the minority among themselves they will do so and it will bring credit to all. Why are you afraid? Yesterday you were saying, you are a big minority well organised. Why are you afraid? Make friends with others and create a change in the atmosphere. You will then get more then your quota, if you really feel for the country in the same manner as the other people. New I do not think so far as the Muslim case is concerned, there is any other point remaining to be answered. Most of the able representatives of the Muslim community here have exposed the claims made by the other representatives. I need not therefore say more about this.

Now the other case is that of the Sikhs. I have always held the Sikh community with considerable respect, regard and admiration. I have been their friend even though sometimes they disclaimed me. On this occasion also I did advise them that if they insisted I will give it to them and induce the Committee to agree. But I do feel that this is not in their interests. It is for them to decide. I leave it to them to ask for this concession for the Scheduled Caste Sikhs does not reflect credit on the Sikh community. They quoted Ranjit Singh who gave such help to the Scheduled Castes. What empire did they hold, the Scheduled Castes? They have been the most down-trodden people, absolute dust with the dust. What is their position today in spite of all our tall talk? A few people may be bold and courageous. But 10,000 of them in three days were converted into Christians. Go to Bidar and see? Why, is it a change of religion? No, They were afraid that for their past association with the Razakars in their crimes they will be arrested. They have committed some offenses. They thought that they have the big Mission to protect them from arrest. This time conversions took place among the Scheduled Castes. But, apart from conversions, I ask you, have you ever gone and stayed for an hour in a scavenger's house? Have they any place which they can call their homelands, though Mr. Nagappa said: India is mine?" It is very good. I am proud of it. But the poor people are oppressed continuously and have not been saved yet and given protection. We are trustees. We have given a pledge in Poona under the Poona Pact. Have fulfilled that pledge? We must confess we are guilty. And I may tell you for your information that thousands of them in other parts of the country want to come back, but are not allowed to. They cannot come back and, unfortunately, we are unable to help them. That is what the Scheduled Castes are. They are not people who keep *kirpans*. They are a different lot. But to keep a *kirpan* or a sword and to entertain fear is inconsistent. This may react detrimentally to your cause. I do not grudge this concession to the Sikhs. I will ask the Sikhs to take control of the country and rule. They may be able to rule because they have got the capacity, they have got the resources and they have got the courage. In any field, either in agriculture, in engineering or in the army, in any walk of life you have proved your mettle. Why do you being to think low of yourself? That is why I am asking the Scheduled Caste people also to forget that they are Scheduled Castes. Although it is difficult for them to forget it, it is not difficult for the Sikhs to do so. Therefore, when you acknowledge with gratefulness the concession that we have given, I am grateful to you. In this country we want the atmosphere of peace and harmony now, not of suspicion but of trust. We want to grow. India today is suffering from want of blood. It is completely anaemic. Unless you put blood into its veins, even if we quarrel about concessions of reservations, we will get nothing. We have to build up this country on solid foundations. As I told you, I was trembling on the day I was appointed as

Chairman of this Committee but I felt proud and today also I feel proud-and I hope the House will feel proud--that we are able to bring about almost unanimity in removing the past blots in our Constitution (*hear, hear*) and to lay, with the grace of God and with the blessings of the Almighty, the foundations of a true secular democratic State, where everybody has equal chance. Let God give us the wisdom and the courage to do the right thing to all manner of people. (*Cheers*).

Mr. President: I will now put the amendments one by one to the vote. First, the amendment of Mr. Mohamed Ismail. The question is:

"(a) That sub-paragraph (i) of the second paragraph of the motion be deleted and sub-paragraph (ii) be re-numbered as sub-paragraph (i)

(b) That after sub-paragraph (i) so formed, the following sub-paragraphs be added:-

(ii) that the principle of reservation of seats on the population basis for the Muslims and other minority communities in the Central and Provincial legislatures of the country be confirmed and retained; and

(iii) that notwithstanding any decisions already taken by this Assembly in this behalf, the provisions of Part XIV and any other allied article of the Draft Constitution be so amended as to ensure that the seats reserved in accordance with sub-clause (i) above shall be filled by the members of the respective communities elected by constituencies of voters belonging to the said respective minorities."

The amendment was negatived.

Mr. President: I will now put to vote the amendments of Mr. Lari paragraph by paragraph. The question is:

"That in sub-paragraph (i) of the second paragraph of the Motion, after the words 'the provisions of' the words 'article 67 and' be inserted".

The amendment was negatived.

Mr. President: The question is:

"That in sub-paragraph (i) of the second paragraph of the Motion, after the words 'in the said Report' the words ' with the addition that elections be held under the system of cumulative votes in multi-member constituencies and the modification that no seats be reserved for the Scheduled Castes' be inserted."

The amendment was negatived.

Mr. President: Then there is the amendment which was moved by Pandit Thakur Das Bhargava.

Pandit Balkrishna Sharma (United Provinces: General): I think the mover accepts the amendment.

The Honourable Sardar Vallabhbhai J. Patel: Yes, Sir, I accept the amendment.

Mr. President: The question is;

"That the following be added to the Motion:-

"The provisions for reservation of seats and nominations will last for a period of ten years from the commencement of this Constitution.'"

The amendment was adopted.

Mr. President: The question is:

"That the original Motion as amended by Pandit Thakur Das Bhargava's amendment which has been accepted be adopted."

The motion, as amendment, was adopted.

Mr. President: The House stands adjourned till 8 O'clock, tomorrow morning.

The Constituent Assembly then adjourned till Eight of the Clock on Friday the 27th May, 1949.

----

*[ ] Translation of Hindustani speech.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS)- VOLUME VIII

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 27th May 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Pandit Balkrishna Sharma (United Provinces: General): Mr. President, Sir, may I with your permission draw you attention to one of the important matters in regard to the issue of new coins in our country? Our trouble is that the Indian Parliament as such is not sitting these days and the Constituent Assembly is the only supreme body which is in session. Now, the whole question regarding the issue of new coins is being discussed, I believe, in the Finance Department and I have been informed that certain decisions also have been taken in this regard. The question of the issue of coins is of great importance and I have been informed that not even the Finance Committee so far has been taken into confidence in regard to the design of the new coins. Particularly, I have been informed that the English alphabets find a prominent place in the new coins even though there is one Asoka Stambha and though the effigy of king has been done away with. I would, therefore, request you, Sir, to be pleased to give an opportunity to this House to consider this question, and if necessary, to call in the Honourable the Finance Minister for this purpose.

Mr. President: I am afraid we cannot take up this question in this House. We are here for the purpose of preparing the Constitution and the question which is raised by the honourable Member really belongs to the legislative side of the House and I would suggest that he might take it up there or, as the Assembly is not sitting, he might take it up with the Government.

ADDITION OF PARA. 4-A TO CONSTITUENT ASSEMBLY RULES

(SCHEDULE)

The Honourable Shri N. Gopalaswami Ayyangar: (Madras: General): Mr. President, Sir, I rise to move:

"That after paragraph 4 of the Schedule to the Constituent Assembly Rules, the following paragraph be inserted, namely:-

'4-A. Notwithstanding anything contained in paragraph 4, all the seats in the Assembly allotted to the State of Kashmir may be filled by nomination and the representatives of the State to be chosen to fill such seats may be nominated by the Ruler of Kashmir on the advice of his Prime Minister.' "

Sir, very few words are really needed from me to commend this motion to the House. Kashmir is one of the States which under the rules framed for the composition of this Assembly have to be represented in the House. Rules have been framed as to how this representation could be secured. But though Kashmir acceded to the Indian Dominion so far back as the end of October 1947, this representation has not materialised. Honourable Members will remember that the conditions in Kashmir have been in a fluid state all these months. The accession itself was asked for by the Ruler of Kashmir; it was supported by the largest political party in the State, and the Governor-General accepted the accession. As I said, that acceptance was somewhere about the end of October 1947.

Before I go to the Rules, I must point out that all States which have acceded to the Indian Dominion have been included in the Schedule to the Constituent Assembly Rules. One of these States is Kashmir. Again, in the Draft Constitution that has been placed before the House, in Part III of Scheduled I, honourable Members will find Kashmir as one of the States which would be put into that Schedule. But, so far as representation goes, the procedure has undergone changes from time to time on account of the difficulties that cropped up in respect of implementing the rules that were originally framed for the return of State's representatives to this House. The lost of such rules is contained in Rule 4 of the Constituent Assembly Rules that are now in force. In this rule, the seats allotted to the States have to be filled up, not less than half by the elected members of the legistatures of the States concerned, and the remainder to be nominated by the Ruler himself.

So far as Kashmir is concerned, the number of seats allotted under these rules to this State is four, that is to say, one or every million of the population. If this rule is to be followed, not less than half of this number would have to be elected by the legislature. There is, under the Constitution of Kashmir, a legislative Assembly which is called the Praja Sabha. Elections to this Assembly took place about the months of December 1946 and January 1947 and this Assembly came into existence soon after these elections were over. There was one meeting held within two or three months thereafter, which was convened for the purpose of passing the budget of the State. All this happened before the transfer of power and the change in the status of Indian States that took place after the transfer of power. After the 15th of August 1947, Kashmir stood by itself till, somewhere about the end of October 1947, it acceded to India. There has been no meeting of this Praja Sabha since about April 1947. From October 1947, honourable Members are aware that there was a great deal of disturbance owing to the raids that were made on the western portion of Kashmir State and all that followed. The conditions have been very difficult.

Now, this Assembly has not been in existence since then. It exists perhaps on paper; but it is dead. In October 1947 accession took place. Soon after that took place, the Maharaja set up an emergency administration the head of which was Sheikh Mohammed Abdulla, the leader of the most popular party in Kashmir. In March 1948, he substituted for this emergency administration what he called a popular interim Government, consisting of a Council of Ministers. He called Sheikh Mohammed Abdulla to accept the office of Prime Minister and left it to him to choose his colleagues. This Government was to work on the principle of joint responsibility. In the Proclamation that he issued setting up this new Government, he made no reference to the Praja Sabha, but called upon this new Government, as soon as peace had been restored, to convoke a National Assembly which should proceed to frame a Constitution of the State. At present, the old Praja Sabha is dead; the new National Assembly has not come into existence, because of conditions not having settled down to that level of peace and tranquillity, and also of economic and political equilibrium which alone can justify the convoking of the National Assembly.

In these circumstances, we have to choose a method by which we could get representatives into this Assembly taking the present facts into consideration. I take it honourable Member will concede that it is very important that Kashmir, which is now a part of India, should be represented in this Assembly. I wish that representation had been brought about much earlier then now; but various things have conspired to prevent that, but we are today in a position to bring to this House four persons who could be said to be fairly representatives of the population of Kashmir. The point that I wish to urge is that, while two of these representatives would in any case under the present rules be persons who could be nominated by the Ruler, we are suggesting that all the four persons should be nominated by the Ruler on the advice of his Prime Minister. The Prime Minister happens to represent the largest political party in the State. Apart from that, we have got to remember that the Prime Minister and his Government are not based upon the Praja Sabha which is dead, but based rather upon the fact that they represent the largest political party in the State. Therefore, it is only appropriate that the head of this Party who is also the Prime Minister should have the privilege of advising the Ruler as to who would be the proper representative of Kashmir in the Constituent Assembly. That is why we have made this suggestion. Under the circumstances, that is about the best that could be done. It would produce a certain amount of intimate relationship between this Constituent Assembly and the Government and people of Kashmir. Those representatives would come here and take part in the further proceedings of this House. As honourable Members are aware, most of the articles relating to the provinces and States are yet to come up for consideration and it is only right that Kashmir should have the opportunity to participate in the discussions which will finalise those articles.

I do not wish to say much more now. However, one small point I should like to clear up in view of one of the amendments of which notice has been given. It has been suggested that instead of Kashmir, we should substitute Jammu and Kashmir. Jammu and Kashmir no doubt describes the State better. But the reason why in this particular motion I have used the word Kashmir is that that word has been used in all statutory enactments and rules that have so far been framed in which this particular State has had to be mentioned.

Pandit Lakshmi Kanta Maitra (West Bengal: General): I would like to know Sir, if the word " Kashmir" includes or means both Jammu and Kashmir?

The Honourable Shri, N. Gopalaswami Ayyangar: Kashmir means Jammu and Kashmir. In the Government of India Act, for instance, if you will look at the Schedule giving the names of the States, it will be found that this State is described as Kashmir. in the Draft Constitution, the Schedule mentions the State as Kashmir. In the list that is attached to the Constituent Assembly Rules, it is already described as Kashmir. So I think it would be best in these circumstances to use only the word " Kashmir" and both the amendment and the word that I have used mean exactly the same thing. I would therefore, request honourable Members to let this description of the State as Kashmir stand, because if you change it, we shall have to change other things which are already in our Statues and Rules.

Pandit Lakshmi Kanta Maitra: May I interrupt the honourable Member? The motion contemplates that four seats will be allotted to Kashmir and that they will be returned to this Constituent Assembly. The honourable Member explained just now that the word "Kashmir" means, as in all other Statutes and Acts, Jammu and Kashmir. It is contemplated to have four representatives. I want to know whether it is contemplated to have these representative in such a way that Jammu and Ladakh are also represented by these nominees?

The Honourable Shri N. Gopalaswami Ayyangar: " Kashmir" in this motion means the whole of Jammu and Kashmir, the sovereignty over the whole of which still remains with the Government of that State. The idea is that four persons should be chosen who can be trusted to represent the interests of the whole State, not only Jammu and Ladakh, but I believe a person who can represent the interests of even the Mirpur-Jammu area-- if the Prime Minister chooses to nominate him as being a person who can represent the interests of the State as a whole--it would not bar such a person being recommended by him. So really what we are contemplating to do is this. We do not recognise anything that might have happened as a result of the military operations which have recently been suspended. But what we really want is to bring into the Assembly persons who will represent the State as a whole. And the Prime Minister, the person who represents the Government as also the largest political party, he is in our opinion, the best person to make recommendations the Ruler who will nominate on such recommendation. Sir, at this stage, I do not wish to say anything more. I move.

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, I beg to oppose the motion and for good reasons, if you will allow me.

Mr. President: You can oppose it after the amendments have been moved. There are certain amendments of which notice has been received, and...........

Maulana Hasrat Mohani: Sir, will you allow me to express my opposition here and now? I do not want to wait for the amendments, because my opposition has nothing to do with the amendments.

Mr. President: I think we shall take the amendments to the motion, and then after the amendments have been moved, when the whole question is discussed, the Maulana may take his chance.

Mr. Kamath may move his amendment.

Shri H. V. Kamath (C. P. & Berar: General): My amendment being of a verbal nature, in view of what Mr. Ayyangar has said just now, I do not move the amendment, but I hope you will be so good as to let me catch your eye later on, as I wish to speak on the motion.

Mr. President: I make no promise. Prof. Shah may move his amendment.

Maulana Hasrat Mohani: I have to point out that I want to oppose this motion in the sense that I do not want that you should allow the opportunity to move things at this stage.

Mr. President: You can oppose the motion at that stage. But at this stage, we shall take up the amendments first. They will be moved and after that, you can have your say.

Prof. K. T. Shah (Bihar: General): Mr. President, Sir, I beg to move:

"That in the proposed paragraph 4-A, the word 'all' be deleted."

"That in the proposed paragraph 4-A, before the word 'Kashmir' wherever it occurs, the words 'Jammu and, be inserted,"

"That in the proposed paragraph 4-A, for the words 'may be' where they occur for the first time, the words 'may' pending the holding of a plebiscite, under the auspices of the United Nations' Organisation, and without prejudice to the result of that plebiscite, be substituted."

"That in the proposed paragraph 4-A, for the words 'by nomination' the words 'by election by the Praja Sabha of the State of Jammu and Kashmir' be substituted."

"That in the proposed paragraph 4-A, for the words 'nominated' the word 'elected' be substituted."

"That in the proposed paragraph 4-A, for the words 'by the Ruler of the Kashmir on the advice of his Prime Minister' be deleted."

Mr. President, Sir, I am fully conscious of the seriousness and delicacy of the task I have taken upon myself in.....

Pandit Balkrishna Sharma: May I request the honourable Mover of the amendment to read out to the House how the motion would read, after his amendments?

Prof. K. T. Shah: Yes, it will read thus:

"Notwithstanding anything contained in para. 4, the seats in the Assembly allotted to the State of Jammu and Kashmir may, pending the holding of a plebiscite under the auspices of the United Nations' Organisation, and without prejudice to the results of that plebiscite, be filled by election by the Praja Sabha of Jammu and Kashmir and the representatives of the State to be chosen to fill such seats may be elected."

I was saying Sir, that no one can be more aware of the seriousness and delicacy of the task I have taken upon myself in tabling this amendment, and in advancing arguments that I have to place before this House to convert it to my view-point. Being so aware of the gravity of this task and its delicateness, I assure, you, Sir, that I shall not use a single phrase or expression, nor gesture, nor tone which would, in any way in the least import passion or prejudice in the arguments. I am aware that this subject is coloured very deeply by lone-standing prejudice. I am aware, Sir, that there will be deep feeling on the matter, and therefore, so far as it lies in me, I assure you again, Sir, that I shall not use a single expression, nor one gesture which might give rise to any feeling unbecoming this House and unwarranted by the seriousness of the case.

Before I proceed to develop my arguments, Sir, may I in all humility, place before this House something like my credentials to speak on this subject.

Sir, I have been acquainted with Kashmir State and its governance for now something like fifteen or more years. I have known the principal parties concerned in this matter by first-hand knowledge and working with them. I have helped--in however small a way it may be,--to shape what is called the 'new Kashmir' from the day that it was in draft form, when the present Prime Minister was good enough to come down to Bombay and consult me on the matter for fifteen days. I had also the honour to be invited to be a Planning Adviser to the preceding Government of Kashmir, in connection with which I had to visit Kashmir State, study the situation and know its people, know its administration, from not merely the superficial tourist's stand-point, but from the stand-point of a close student of affairs. A bookworm as I may be. I had some opportunity to know these first hand.

I have, perhaps to my own misfortune, been associated with this matter even after the developments of the last few years; and in the course of this argument, I shall try and place before you, Sir, certain considerations which I trust will show you, that if I say anything on the subject I am not saying it from merely superficial newspaper headline knowledge of the matter, but from some close study, close observation and personal knowledge of the subject with which we are dealing.

Sir, after this preface let me now proceed to the amendments that I have suggested. I have, Sir, in the first place, suggested, that the word "all" be omitted. After all the definite article would remain; and that would include *all*, even without our using that expression. It is, however, not a merely drafting change that I am suggesting. There is, as you will perhaps see when I go on with the further development of my theme, there is some significance attached to the idea that the word "all" at any rate be omitted.

Sir, I have next suggested that the nomenclature be changed, and the State be described more correctly as the "State of Jammu and Kashmir." That is the official title of the State; and in an official document like this I do not see any reason why we should not give the correct description, the proper title of the State. It is once more, I assure you, Sir, not a mere matter of terminology, or nomenclature, or mere verbal emendation. As I shall show you, there is some significance in this matter, which makes it more then ever necessary that you should not omit the other part, and, if one may say so, the first part of the title of that ancient State.

By calling it the State of Kashmir only you are perpetrating or perpetuating an error, which according to the honourable the Mover, has apparently happened in all our documents. May I ask, Sir, if we have made a mistake in the first instance if we have been carried away by the importance of one section of the State, by the importance of the personages connected with that part of the State, is that any reason why we should forget the other and no less important part of the State, and in this formal document continue to perpetuate that mistake, and speak only of " Kashmir", when we really mean "Jammu and Kashmir"?

It is admitted, Sir, it is common knowledge, it is a fact not denied by the honourable the Mover of this resolution, that that is the correct name of the State. And those at any rate who remember the campaign of the present Prime Minister of the State in connection with 'Quit Kashmir' will realise that in the sequence of events that have happened, it is liable, if you describe it in this manner, to be gravely misunderstood wherever such nomenclature is allowed to be used; and our public records will be disfigured to that extent.

Sir, as you will see later on here is a matter which is not, as my honourable Friend Mr. Kamath suggested, merely a matter of verbal change, There is a significance attached to it which I hope this House will realise as we go on. The State of Jammu and Kashmir is correctly described as Jammu and Kashmir because, so to say, there are two States in one Kingdom, just as Scotland and England were two States under the First of the Stuarts. The King was King James the Sixth of Scotland and King James the First of England. There were two Crowns worn by one person. In regard to the State of Jammu and Kashmir until about the communal rising of 1933, it was for all practical administrative purposes actually divided into two provinces more or less distinct, though under the same Ruler.

I trust I have said enough to demonstrate to the House that the matter of nomenclature in not merely a matter of verbal emendation that it has behind it a significance, a significance, in the sequence of events, not confined only to this House or to this country. It has repercussions outside this country, as I will try to show later on; and, therefore, we must be very careful in every word that we use, so that our expression, our nomenclature, our whole wording is in conformity with the situation and the correct facts.

Next, Sir, I come to a very difficult and delicate matter, namely the suggestion that the election be, pending the holding of a plebiscite under the auspices of the United Organisation and without prejudice.........

Dr. B. Pattabhi Sitaramayya (Madras: General): I wish to raise a point of order, Sir, at this stage. The reference to the plebiscite and to the United Nations Organisation has nothing whatever to do with the representation proposed to be given to the Kashmir State in this motion. I think this amendment should be ruled out of order.

Mr. President: What has the honourable Member to say on the point of order?

Prof. K. T. Shah: It has been the declaration of the highest authority in India also that the accession of the State made by the Maharaja, who was the complete constitutional head on the day that that accession was agreed to, was subject to confirmation by the result of the plebiscite.

The Honourable Shri Jawaharlal Nehru (United Provinces: General): That is absolutely incorrect-- cent per cent incorrect. I am amazed, surprised and astounded that such a statement is made by Professor Shah.

Prof. K. T. Shah: If I am wrong I am open to correction. We ourselves have accepted the United Nations decision to hold this plebiscite and an Administrator has been appointed. If I am wrong I am in your hands.

Mr. President: The point is whether the accession was conditional. The accession, so far as I understand from the Prime Minister was unconditional and complete. The result of that accession may be altered as a result of the plebiscite, but the accession as such was complete and final. Therefore the question of the accession does not arise.

Prof. K. T. Shah: I am not for a moment suggesting that the representatives of Jammu and Kashmir should not come here; nothing of the kind.

Pandit Balkrishna Sharma: The point of order that has been raised by Dr. Pattabhi Sitaramayya seems to be very pertinent, inasmuch as this resolution is the Constituent of the act of accession which the Government of India and the Constituent Assembly have accepted; and, therefore it is only in relation to that that we are here making provision for the representatives of Jammu and Kashmir to sit in our Assembly. It has absolutely nothing to do with the plebiscite. As the Prime Minister has pointed out, the accession was complete and without any reservation on the part of the Maharaja. That the result of the accession may probably be upset by plebiscite has nothing whatever to do with the proposition we are considering now.

The Honourable Shri Ghanshyam Singh Gupta (C. P. & Berar: General): I entirely agree that this part of the amendment is out of order. We have to see whether it has any bearing on the proposition. If it has no bearing on the main proposition the amendment must be ruled out of order. From the information that has been given by the Honourable the Prime Minister and from the information that you, Sir, were pleased to convey, it is clear that the accession of Kashmir was unconditional. Now when the accession was unconditional, the question of plebiscite has no bearing. The main proposition says that the seats in the Assembly allotted to the State of Kashmir shall be filled by nomination and the representative of the State to be chosen to fill such seats may be nominated by the Ruler. It places no time-limit; it places no condition. Such a condition cannot be placed because the accession was unconditional as we were just informed. By presuming a thing which is not in existence and which is not warranted by facts now brought to the notice of the House, I humbly submit that this amendment is surely out of order.

Mr. President: I am inclined to agree that the point raised by Dr. Pattabhi Sitaramayya is a solid and valid one. The accession of Kashmir was unconditional and what we are concerned with here is the representation of that State in this Assembly. When the plebiscite will take place and what the result of the plebiscite will be, we are not concerned with here. We are only concerned with the representation of the State in this House. The method suggested has found favour with the Mover. The honourable Member may move his amendment with regard to the method, but he cannot put down any condition with regard to the status of the Member who will be returned to this House. Those members will sit as any other Members without any condition being attached to their status or tenure. So that part of the amendment is ruled out of order.

Prof. K. T. Shah: I bow to your ruling, Sir, and therefore shall confine myself to the other part of the amendment, which naturally would suffer inasmuch as it was an integral part of my argument. I shall nevertheless try and make the argument as much self-contained as I possibly can, notwithstanding the lopping off of a very integral part of my amendment.

The next amendment, Sir, suggests that the representatives be elected by the Praja Sabha of Jammu and Kashmir. Sir, it is an admitted fact that representation of the States is secured, as the honourable the Mover himself was pleased to declare, partly by election and partly by nomination by the Ruler. Moreover we have allowed nineteen months or more to elapse between the date of the accession and the present suggestion that the representatives may be chosen. I am aware, Sir, that there have been circumstances, there have been developments which have made if difficult, if not impossible, to secure the representation of Kashmir in this Assembly.

Wherever there were popular legislatures, they were allowed to elect half the number of representatives, the other half being nominated by the Ruler. Why should that salutary principle be departed from in this case? As the honourable the Mover himself said the Praja Sabha of Kashmir was elected in 1946-47 and, therefore, it is still within its normal life.

Shri R. K. Sidhva (C. P & Berar: General): Does it exit? What is its strength?

Prof. K. T. Shah: It may be that not all the members may be within the jurisdiction where the King's writ runs. That, however, does not upset the technical position that the legislative body of Jammu and Kashmir exists, and that body has a right, according to the precedent which we have followed in these matters in the past, to elect at least half the number of representatives. I do not know why a departure should be made in the case of Kashmir alone.

Now in the original motion, the whole of the representatives of Kashmir are required to be nominated and that too nominated on the advice of the Prime Minister. We have taken it for granted that that Government or that authority represents the majority of the Kashmir population. That would have been of course evident had any new elections taken place. But circumstances have changed and the Nationalist party has come to power. The fact must be remembered by the House that the population of Jammu and Kashmir, put together, is something like 76 per cent Muslims and 24 per cent Hindus, including Dogras and other non-Muslims. It is for the House in its wisdom to decide whether, given this composition of the population given this course of events that have happened in the meanwhile, whether it is possible that the election could take place on a fair basis even while the frontier itself is in danger; and even while, though the "cease-fire" has been declared, truce has not yet been signed and peace has not yet returned to the State. The danger to Kashmir, or rather the danger to India from any untoward happening in Kashmir is left more to the imagination of the House then any words of mine can describe.

While I am unwilling at this moment to complicate the issues in this manner, I should explain to the House the gravity of the consequences that may occur. I am bound to place before this House this question that if we depart from the practice of election, partly of election and partly of nomination by the ruler at his own will and not as is here required wholly by the ruler, on the advice of his Prime Minister, it is a matter for the House to say.

I realise, and I am prepared to say frankly to the House, that my amendment suggests not the same practice as was followed in the past with regard to the other States. I have been driven to suggest that it should be wholly election because of the extraordinary circumstances of the situation. Had the situation been in the State as normal and peaceful as in other cases, had the situation been uncomplicated by any third party intrusion in the matter, I would have certainly followed the same precedent; and required that at least part of the representatives should be representatives of the people chosen by their representatives in a proper form. But as the situation is there today, with all the complications that have arisen, all the representatives of the people must be elected. That is my submission. I am not asking too much when I say that we shall not be departing from democratic principles, or idea or justice, or prudence or wisdom in this matter if we say that the people of Kashmir, and the people of Kashmir alone, shall elect all the representatives to this House. If this party claims to represent the entire or at least a large majority of the people of Kashmir, then there is no reason to fear that they cannot send their representatives according to their wishes. They need not, therefore, shirnk the suggestion I am making of calling upon the representatives to be elected and not nominated.

In this matter I am constrained to point but that the developments all along in the history of Jammu and Kashmir in the last three and a half years should not be overlooked. You must not overlook the agitation that was started in February 1946 whereby a responsible party or the leader or the leader if the responsible party had started a campaign of 'Quit Kashmir' and in consequence thereof events developed and created all the difficulties that have since ensued. I do not like this House to be a party to anything that might look as if it was a surrender to one man's wishes, that nothing can be done until the Maharaja is removed or complete power is handed over to him. Whether or not he holds the complete confidence of all the people of Kashmir has yet to be proved. I am aware that he may have a large following; but at the same time, if you want proof beyond the possibility of doubt, there is no season why you should not send invitation for an election even under the limited franchise that is prevailing. If you have adult franchise that would be better. But even under the limited franchise of 1946, if you hold an election you will get the true representatives of the people.

You must also not forget that the events that have happened have invested the other countries and the sister Dominion and those outside with interest in the matter. That being so they will not take any decision unilaterally made by us, without demur. If you want to have peace restored, if you want to live in peace with your neighbours, you should not give needless occasion for them to say that here you are purchasing a design and committing an act and taking steps whereby your own declarations, and, what is more, whatever interests the others may have, are being jeopardised. If that is going to be a slur on the good name of this country, and its claim to stand always for the people or for those who are oppressed, then I think it is not too much to demand that the representatives in this case should be wholly elected, and should be the true reflex of the people of Kashmir in all that they may be pleased to say in this House as regards the interest of that State whenever that portion of the Constitution is reached.

Mr. President: Your amendment is that there should be a fresh election and that the Sabha should elect the representatives.

Prof. K. T. Shah: I only say that they should be elected.

Mr. President: You also say that the Sabha should send representatives. If so, how does the question of general election arise?

Prof. K. T. Shah: I say that they should be elected by the Sabha.

Mr. President: If it is the rump of the Sabha, what is the change?

Prof. K. T. Shah: I suggest that it would be better if they were elected by adult franchise. But that is not to be. If you want to get the true reflex of the popular opinion in Kashmir, then you should have that through the Praja Sabha which is the legislature of the State though it may be very unpleasant for us to do so.

Sir, in this connection I feel it my duty to place before the House one or two considerations. We only recorded last week the ratification of our closer association with the British Commonwealth. And if we now complete this act, the two events together carry their own significance.

Secondly I would like the people in this House to realise that the position of Kashmir as it is..........

Pandit Balkrishna Sharma: May I know from the honourable Mover of the amendment when the elections to the Sabha took place?

Prof. K. T. Shah: In November or December 1946.

Pandit Balkrishna Sharma: Was there snowfall in Kashmir at that time?

Prof. K. T. Shah: I do not know that. The elections are held in winter.

Pandit Balkrishna Sharma: The present Prime Minister was then in prison.

Prof. K. T. Shah: He was not the Prime Minister then. He was in prison.

Pandit Balkrishna Sharma: Where are the present members of the Sabha?

Prof. K. T. Shah: I do not know that. You must ask the post-office in Kashmir.

Shri R. K. Sidhva: Does the honourable Member know whether the Praja Sabha exists now, where it exists, what its strength is, where the members are?

Prof. K. T. Shah: The Praja Sabha should know the addresses of its members. Whether the members can collect together or not I do not know. The members may be available or may not be available. As least a quorum may be available to constitute a meeting of the Praja Sabha, if you want to consult the Praja Sabha, if you want to know the opinion of the people of Kashmir. If you do not want, then this motion may be passed.

Pandit Balkrishna Sharma: Is the honourable Member aware that some or most of the members of the Praja Sabha have gone over to Pakistan and those that remain are working for Pakistan? Is he aware of it?

Prof. K. T. Shah: I am not aware. Some may have gone.

Mr. President: It will save time if there is no interruption.

Prof. K. T. Shah: I thought I should answer questions put by honourable

Members, but I will ignore questions in future.

Two or three more points I would like to place before the House. First, I would like the House to remember the composition of the population of Kashmir, its geographical position, its connection and the possibilities that may happen there. I think the House is aware that we have spent so far something like one hundred crores on Kashmir. What are we getting in return? We have spent--I do not know--how many lives in Kashmir. We are still not out of the wood to the extent that normal conditions, and perfect peace have been restored and normal constitutional progress may be resumed.

The Honourable Shri Jawaharlal Nehru: I strongly protest against the remarks made by the honourable Member. Here we are not discussing the future of Kashmir.

Mr. President: We are discussing only the resolution. The honourable Member is not justified in making remarks on subjects which are not covered by the resolution.

Prof. K. T. Shah: I submit, Sir, that I would not go into those questions. I will not make even those remarks. I will only conclude by saying that this is a very serious matter. The House must bear in mind....

An Honourable Member: What do you mean by serious?

Prof. K. T. Shah: I cannot tell you what is serious, how it is serious.

Shri Jaspat Roy Kapoor (United Provinces: General): The serious thing is that the honourable Member is so ignorant about Kashmir that he even does not know who and where the members of the Praja Sabha are.

Prof. K. T. Shah: The mater is of sufficient importance for the House to take all the aspects of it into consideration and then come to a decision on it Sir, I move.

Mr. President: Prof. Shibban Lal Saksena.

Prof. Shibban Lal Saksena (United Provinces: General): I am not moving my amendment, Sir.

Mr. President: We may now take up the discussion of the motion and the amendments.

Shri H. V. Kamath: Mr. President, Sir, there can be no two opinions in this House that we are all jubilant that very shortly representatives from what is in the words of our Prime Minister the Lovely land of Kashmir, the beauty of which persists in the midst of much spoliation and desecration, will take their seats in this august House. The importance of the subject that we are discussing today cannot be over-estimated. My Friend, Professor Shah, first moved his amendment seeking to substitute. "Jammu and Kashmir" for "Kashmir". May I point out to him that after what was said about this matter by the Honourable Shri Gopalaswami Ayyangar, the amendment reduces itself to merely one of a drafting character. The Honourable Shri Gopalaswami Ayyangar assured us that though the word "Kashmir" only was used, what was meant was the whole State. If Professor Shah takes the trouble of turning to Part III of the First Schedule of the Draft Constitution, he will find that this State is referred to as merely

Kashmir. After this, there is no scope, there is no justification for the amendment moved by Professor Shah. To my mind, some points arise in connection with the motion moved by the Honourable Shri Gopalaswami Ayyangar and I would request that in his reply he may kindly throw some light on them. Firstly, we have not been told--at any rate I did not hear--how many members or representatives from this State will be nominated by the Ruler on the advice of the Premier to take their seats in this House.

The Honourable Shri N. Gopalaswami Ayyangar: I mentioned four.

Shri H. V. Kamath: I am sorry I did not hear that. The number of members is four. I hope we will stick to the population figures that were returned at the last census. In this connection the point arises whether not merely Jammu and Kashmir but also Ladakh-- I mean the entire territory including Mirpur and Poonch, will be represented. The Honourable Shri Gopalaswami Ayyangar said that till a few months ago the situation in Kashmir was somewhat fluid, but now it is being stabilised. It is very happy news for us, very welcome news. There is every reason for gratification that the situation is getting fast stabilised. There have been divergent rumours and reports in the press about certain areas in Kashmir formerly held by Pakistan and what was wrongly called the Azad Kashmir forces. The resolution of the U.N.C.I.P.........

Pandit Balkrishna Sharma: Sir, may I draw your attention to the fact that this sort of remarks may be considered as out of order. We are not discussing the whole gamut of Kashmir.

Mr. President: I was just going to draw his attention to the fact that this sort of remarks is wholly irrelevant. We are now only concerned with the sending of four representatives of this House from Kashmir.

Shri H. V. Kamath: I bow to your ruling. I will not dilate on that point any further. I will take the next point and that is the composition of the representation from Kashmir to this Assembly. I was never at any time in my life for separate electorates. I never supported at any time separate electorates which have been the basis on which elections in this country and even to this House were held. We are all very well aware that under the Cabinet Mission Scheme members were elected to this House on the basis of separate electorates. I was very unhappy when that took place. I hoped at that time that that situation would come to an end very soon. Only yesterday we completed the task which we began sometime last year or a few months before that, that is to say the work which we began eighteen or twenty-one months ago, by reason of which we did away with separate electorates.

Mr. President: There is no question of separate electorate in this.

Shri H. V. Kamath: I am coming to that point. The point was referred to by Prof. Shah about the population in Kashmir, about how many Hindus are there, how many Muslims and how many Sikhs. From every province they elected members to this House in July 1946, The basis of representation was one member per million of the population, of he province or state, that is to say for a province like C. P. and Berar which had 160 lakhs of non-Muslims and about 10 or 12 lakhs of Muslims there were 16 non-Muslims of Hindus sent to this House and one Muslim. Here the population of this State which will shortly be represented in this House, is, I believe about 10 lakhs or thereabout of Hindus and the rest Muslims. In conformity with the decision which we have adopted only yesterday and during the last few months, I for one, would be happy if for this new nomination we did away with the separate outlook. I would welcome if the whole of Jammu and Kashmir were represented by all Hindus, if necessary, or all Muslims, provided you get the best men available on the spot. I hope that considerations of communal representation will not guide or affect the matter of nomination of these representatives from Kashmir to this House. That would be completely in conformity with the stand that we have taken, the decision we have taken in this House on this matter of separate electorates.

Mr. President: May I point out that so far as the representation of the States in this House is concerned, there has never been any question of representation by communities. So far as the States are concerned, all the members who have come here irrespective of the community to which they belong, unlike the members of the provinces. Therefore, that question does not arise here.

Shri H. V. Kamath: As we were elected under the Cabinet Mission Scheme, I hope there would be one policy, one method adopted for representation of all the States and I hope that in the case of Kashmir, there would not be departure from the method adopted for the States, in contradistinction to the provinces.

Then, Sir, there is one other point, which I would like the honourable Mover of the motion to clarify when the time comes. In the last November--December session of this Assembly, I raised a point when the rules were being amended, as to whether and when all the States that are still unrepresented in this House will be duly and suitably represented. This is the last session, to my mind, of the Constituent Assembly and the most important one for that reason: and we would have been very happy indeed if the whole of India with all the States who have integrated with it or acceded to it, were represented in this Assembly.

Dr. P. K. Sen (Bihar: General): On a point of order, Sir, the honourable Member is again digressing and his remarks do not bear upon the motion at all.

Mr. President: I am inclined to think that reference to other States is unnecessary and irrelevant.

Shri H. V. Kamath: I thought that Kashmir as a State which has acceded to the Indian Union was on a par with other States which have acceded to the Indian Union, and in that light I was going to.....

Mr. President: So far as I am aware all the States which have acceded have already come in except Bhopal and Kashmir. As far as Hyderabad is concerned, I do not know in what stage of accession it is, but so far as the other States, about whose accession there is no doubt, they have all come in except kashmir and Bhopal and steps are being taken today to bring in Kashmir.

Shri H. V. Kamath: As far as Hyderabad is concerned.....

Mr. President: That question does arise now. It is not necessary; I shall inform myself later on.

Shri H. V. Kamath: The Home Minister, Sardar Patel, told us last Budget session about the position as regards Hyderabad, and as Kashmir is naturally on a par with other States that have acceded to the Indian Union. I only hoped--I do not insist--that all the States that have acceded to the Indian Union would be represented in this House.

Shri R. K. Sidhva: The matter of sending representatives to this Assembly is a simple one. Why extraneous matter is brought in by the honourable Member, I fail to understand.

The Honourable Shri Jawaharlal Nehru: The honourable Member is a master of irrelevancy. He does not quite understand what has happened. Nearly all the States which have acceded are represented here except Kashmir.

Shri H. V. Kamath: Mr. President, You yourself said that Bhopal has acceded and still is not represented here. I do not know whether I am irrelevant or somebody is forgetful. Here, Sir, I have got a tabular statement where the total number of members present in this House at present is given.

Mr. President: What is the point?

Shri H. V. Kamath: Sir, I only wanted to say that still there are twenty-one members to take their seats in this House and I hope that steps would be taken early to see that all these 21 members including those from the States of Jammu and Kashmir will take their seats in this House during this very important session. I wonder whether the interruptions were at all necessary. I was not going to dilate any further, and I am sorry if the Prime Minister misunderstood the trend of my argument, and thought fit to interrupt me. There is one last point, Sir, and I have done. I do not know why the Prime Minister is getting impatient.

The Honourable Shri Jawaharlal Nehru: Depressed.

Shri H. V. Kamath: I would try to cheer him before I end my little speech. The last point is this. (*Interruption*). Mr. Balkrishna Sharma will have his chance, I hope.

Mr. President: What is the point?

Shri H. V. Kamath: The last point is this. In yesterday's issue of an important Daily of this city, there was a report that the Maharaja of Kashmir was going on a short holiday and somebody else would act as Regent. I hope, Sir, that this resolution which we are going to pass today will be implemented before such a rumoured change takes place, and the members will be nominated by the Ruler of Kashmir on the advice of his Prime Minister before he leaves the State on a short holiday.

Lastly, I would have been happy if the person referred to as the Prime Minister here has been designated otherwise. There is only one Prime Minister in India. I am told there was a recent circular issued to all provinces--I do not know about the States--that the Chief Ministers there should be designated either as Chief Ministers or as Premiers and that the title Prime Minister should be reserved only for the Prime Minister of the Indian Union. Therefore, I would have been happy if the Honourable Mr. Gopalaswami Ayyangar, who moved this motion, had used the term "Premier" in place of Prime Minister", because I feel that it conflicts with the circular issued by the

Government of India to all the provinces quite lately.

These are the points which I hope the mover of the motion would clarify in his reply to the debate. I hope we will be able to welcome our friends from Kashmir in this House at a very early date.

Maulana Hasrat Mohani: Sir, I am not opposing this motion of Mr. Ayyangar on the ground that it wants the Kashmir representatives to be nominated, nor on the ground that some of my honourable Friends have tabled amendments, some wanting that 50 per cent. should be elected and 50 per cent nominated. I do not care whether cent. per cent. are elected or nominated. But what I object to is this. I do not know, of course; but I do not see any necessity for sending any Kashmir representatives to this Constituent Assembly at this stage. Pandit Nehru got angry because he says that this accession has been complete and there is no doubt about that. He says that Kashmir has acceded to India and therefore they have every right to ask for their representatives to be sent here to this Constituent Assembly. While I need not quarrel on that subject, I have to ask a question from my Friend, Mr. Ayyangar. I accept this contention of the Prime Minister that this accession has been complete although I am doubtful whether he is absolutely right in this. Because, he himself not once or twice, but many time, has said that this accession depends on the final decision of the plebiscite, of the votes of the Kashmir people. Of course, now, he has made up his mind; he has created difficulties and his move is that this plebiscite will never take place and therefore he says that this accession is complete and there is no doubt about it. Even admitting that, I ask Mr. Gopalaswami Ayyangar why he should anticipate the decision of the Government of India and why should he come forward at this stage to propose this thing. I say, why at this stage. Because, generally we find that in all those States which have acceded to India, invariably the Rulers of those States, have been pensioned off and the administration has been taken over by the Indian Government or some provincial Government. I do not know what is in the mind of the Prime Minister or the Government of India, as to what will be that status of the Kashmir Government. After accession, will be also be pensioned off and the administration of Kashmir taken over by the Government of India? Is that so? Then, I say that this thing has not yet been decided and if this has not yet been decided, then, I think that there is no status for the Maharaja of Kashmir for the present and therefore this question of his nominating representatives for the Constituent Assembly does not arise. I say that the whole thing is premature. Unless and until you decide the status of the Kashmir Government and the status of the Maharaja, it is hopelessly absurd to set down any proposal of this kind. It is on this ground that I totally object to this motion. I think he should not be allowed to move such a motion at this stage.

The Honourable Shri Jawaharlal Nehru: Sir, this very simple motion of my honourable colleague has led some members of refer to almost all connected matters, not with this motion, but in regard to Kashmir, and so we have been led to think of this vast and intricate and difficult problem of Kashmir. It is a little difficult in this context to confine oneself to the simple proposition that has been placed before the House. Nevertheless, I do not intend to go beyond that proposition; nor do I think need this House to beyond it although several members may be tempted to do so.

The proposition before the House is a very simple one. Now, may I say that I have a vast admiration for the erudition an learning of Professor Shah. Nevertheless, I have followed with some surprise not only what he has said today, but what he has said and done in regard to Kashmir for a number of years. I have been also connected with

Kashmir in many ways and, in a sense, I belong to Kashmir more particularly than to any part of India. I have been connected with the fight for freedom in Kashmir and I know about the various groups, various people, various individuals from the Maharaja down to humbler folk there. And so, if I venture to say anything in this House, I do so with far greater authority than Prof. Shah can presume to have on the subject. I speak not as the Prime Minister, but as a Kashmiri and an Indian who has been connected with these matter. It amazed me to hear Prof. Shah propose that the so-called Praja Sabha of Kashmir should send representatives to this House. If Prof. Shah knows anything about Kashmir, he should know that there is nothing more bogus than the Praja Sabha in Kashmir. He ought to know that the whole circumstances under which the last elections were held were fantastic and farcical. He ought to know that it was boycotted by all decent people in Kashmir. It was held in the depth of winter, to avoid people going to the polling booths. And winter in Kashmir is something of which probably Members in this House have no conception of. An honourable Member asked me about winter, and whether it was snowing. But when it snows in a cold country, it is called warm weather. In winter it is 20 to 30 degrees below snowing weather. The election was held when the roads were impassable, when the passes could not be crossed; in fact, it was just not possible for the voters to go. But apart from that, when the National Conference of Kashmir, in spite of difficulties, difficulties including that of their leaders being in prison, including Sheikh Abdullah and other, in spite of all that, when they decided to contest these elections, then their candidates were arrested, many of them, and all kinds of obstacles ware put in; and it was quite clear that they would not be allowed to stand. So they decided to boycott it and they did boycott it, with the result that the whole national movement of Kashmir boycotted those elections, just as the national movement in 1920 boycotted elections in India. And it was and amazingly successful boycott. Of course people got in. By boycotting you cannot keep another man out; but the percentage of voting was so very small--I forget the exact fraction--it was almost negligible; and the type of people who got in were the type who had opposed the freedom movement throughout, who had done every injury possible to the idea of the freedom of Kashmir till then. And subsequently some o them, when Kashmir adopted this new status and became much freer than it ever was, they subsequently sought refuge in Pakistan. Now that is the kind of body referred to; it is a bogus body; it is really no body at all. It is a disembodied spirit. It does not meet. It does not do anything and many of its members are not just traceable. And now Prof. Shah calmly, tells that the Praja Sabha can elect Members to this honourable House; it is a monstrous proposition.

I admit that it is not desirable for any Members of this House to come by nomination or be selected by some narrow process; but unfortunately many of us here, from the States I mean, have not come exactly as we should have liked them to come. They have been sent, partly by nomination, partly by election, by election again, by bodies which are not often properly constituted; but we had to take things as they were, and we wanted them here to help us in this work of constitution-making. So though the process suggested for Kashmir is not ideal, yet I do think that it is a process than has been adopted in regard to many States in India. It is a process where you get a popular government with the representative of the popular party at the head of it, recommending to the Ruler that certain names should go. Even from the point of view of democracy, that is not an incorrect process. It is not 100 per cent. correct; but the House should see what better method you can suggest. I can understand Maulana Hasrat Mohani, and I am inclined to agree with him that it would have been--if I heard him correctly--it would have been better and more graceful for us to have had the representatives of Kashmir here much earlier. But we did not do it. It was our fault, may be it was other people's fault; but whatever the reason, we did not do it. But is that a reason why we should continue the error in the future? During the next two or three months, or however long this House meets, when we are going to finalise this Constitution, it is desirable for us to give every opportunity to the representatives of the Kashmir State and of any other State, to come here and participate, even though they have not done so up to this stage. So I submit that the motion moved by Mr. Ayyangar is the only way out of this difficulty.

I would suggest to him and beg of him to accept a small change in the wording of the motion. What he has put down is perfectly correct, he has put down "Kashmir", as it occurs in the various Acts, etc. He has taken it naturally from these enactments. But because there is a slight confusion in people's minds, it would be better to describe it a little more fully as "Kashmir State" and then putting within brackets, the words "otherwise known as the State of Kashmir and Jammu". No doubt, so far as the proposition that people should be entitled to come from Jammu and Kashmir is concerned, I think it is up to us to give them every opportunity to do so. And secondly, so far as the method is concerned, I can think if no other, and no fairer method than what has been proposed in this motion.

Shri T. A. Ramalingam Chettiar (Madras: General): Sir, the question may now be put.

Mr. President: The question is:

"That the question be now put."

I take it that that is the wish of the House.

The motion was adopted.

The Honourable Shri N. Gopalaswami Ayyangar: Sir, I have really little to say. But I think a few words have to be said about one or two observations that were made by my honourable Friend, Maulana Hasrat Mohani. He doubted whether the Prime Minister's description of this accession as being complete is altogether correct. I maintain that it is perfectly correct. The accession was offered by the Maharaja and it was accepted by the Governor General of the time. I have a copy of that document before me. It is an absolutely unconditional offer. But my honourable Friend referred to what has happened since and I know my other honourable Friend Prof. Shah also seemed to imply what the Maulana contended. Now the correct position is this. The accession is complete. No doubt, we have offered to have a plebiscite taken when the conditions are created for the holding of a proper, fair and impartial plebiscite. But that plebiscite is merely for the purpose of giving the people of the State the opportunity of expressing their will, and the expression of their will, will be only in the direction of whether they would ratify the accession that has already taken place--not ratify in the sense that that act of ratification is necessary for the completion of the accession, but if the plebiscite produces a verdict which is against the continuance of accession to India of the Kashmir State, then what we are committed to is simply this, that we shall not stand in the way of Kashmir separating herself away from India. In this connection, I should like to draw the attention of the House to the Provisions of the Indian Independence Act under which, when a State accedes and subsequently wishes to get out of the act of accession, thus separating itself from the main Dominion, it cannot do so except with the consent of the Dominion. Our commitment is simply this, that if and when a plebiscite comes to be taken and if the verdict of that plebiscite is against Indian, then we shall not stand in the way of the wishes of the people of Kashmir being given effect to, if they want to go away from us. That is all that it means. So I maintain that the statement that the accession at present is complete is a perfectly correct description of the existing state of things.

Then he asked why should representatives be brought in at this stage. We are not bringing them into this House for the purpose of placing there seal on the act of accession. We are giving them an opportunity for the exercise of the rights which they have obtained by virtue of the fact that accession has already taken place. We are making a new constitution which affects not merely the Union as a whole but affects the units of the Union and Kashmir, on account of the fact of accession, is at present a unit of that Union. In fashioning the constitution for the whole Union it is only right that representatives of all units should find seats in this Assembly.

I think I need to reply at length to my honourable Friend Prof. Shah's objections. They have been dealt with already by the Honourable the Prime Minister. I would only say this. There has been a delay no doubts. Prof. Shah seemed to suggest that the cease fire took place some months ago and he could not understand why this step was not taken immediately after. A cease fire only suspends military operations and it takes some time before things settle down sufficiently for us to see our way through. I believe I am correct in saying that the first meeting of this Constituent Assembly as a constitution-making body after the cease fire suspended military operations and things began to settle down is the present one. I do not think we can be convicted of delay in bringing this proposition forward at this meeting.

I do not think I need reply to the other points in his speech but there is one amendment of which he has given notice and has pressed which I should deal with. He wants the omission of the Word "all" in paragraph 4-A. The word "all" was put in deliberately, because in the present rules there is provision for a certain proportion of the number of seats being nominated to by the Ruler himself without reference to anybody else. Now what we are suggesting is that not merely a proportion but all the seats should be nominated by the Ruler and in doing so he should be guided by the advice of his Prime Minister. That is the only reason why the word "all" has been put in there. I think there is no harm in retaining the word.

As to the other amendment which he has proposed to the word "Kashmir" the Prime Minister has already suggested that we might perhaps make this clear. I would, with your permission, Sir, be willing to propose an amendment to the effect that after the words "State-of Kashmir" the following words shall be inserted within brackets "otherwise known as the State of Jammu and Kashmir". If that is acceptable to the House my motion may be passed in that amended form.

There is only one other point to which I need make any reference at all and that is the one raised by my honourable Friend Mr. Kamath. He seemed rather perturbed by the use of the expression "Prime Minister" in this connection. He would rather like the word "Premier" to be substituted. Unfortunately here I am unable to comply with his suggestion, because the head of the Council of Ministers in Kashmir is by the Constitutional Statute of the State itself known as Prime Minister and so long as that is there we have got to respect the expression that is used in the Kashmir Constitution.

Perhaps I might also refer to the other point, namely election by the people, which my honourable Friend Prof. Shah suggested. General elections directly by the people are not possible in the present condition of Kashmir. But if his suggestion was that, even on the limited franchise that was in force before, we could do something in this direction, that also would mean a general election of the purpose of getting together a Praja Sabha and such election are not possible today. So, my contention is that there can be no direct election of these representatives of the people under the present conditions of Kashmir and those elections will have to be held even if you have to find a new Praja Sabha. The best course in the circumstances is the one I have suggested.

I hope the House will carry this motion.

Mr. President: The suggestion which has been made by the Honourable Prime Minister has been accepted by the mover, *viz.*, that after the words "State of Kashmir" within brackets the words "otherwise known as the State of Jammu and Kashmir" be inserted in the original proposition. If that is accepted by the House, then I shall take up the other amendments.

The question is:

"That after the words 'State of Kashmir' in the proposed paragraph 4-A, the following words within brackets be inserted, *viz.*, 'otherwise known as the State of Jammu and Kashmir".

The amendment was adopted.

Mr. President: The question is:

"That in the proposed paragraph 4-A, the word 'all' be deleted."

"That in the proposed paragraph 4-A, before the word 'Kashmir' wherever it occurs, the words 'Jammu and' be inserted."

"That in the proposed paragraph 4-A, for the words 'by nomination' the words 'by election by the Praja Sabha of the State of Jammu and Kashmir' be substituted."

"That in the proposed paragraph 4-A, for the word 'nominated' the word 'elected' be substituted."

"That in the proposed paragraph 4-A, the words 'by the Ruler of Kashmir on the advice of his Prime Minister' be deleted."

The amendment were negatived.

Mr. President: The question is:

"That after paragraph 4 of the Schedule to the Constituent Assembly Ruler, the following paragraph be inserted, namely:-

> '4-A, Notwithstanding anything contained in paragraph 4, all the seats in the Assembly allotted to the State of Kashmir (otherwise as the State of Jammu and Kashmir) may be filled by nomination and the representatives of the State to be chosen to fill such seats may be nominated by the Ruler of Kashmir on the advice of his Prime Minister.'"

The motion was adopted.

DRAFT CONSTITUTION--(*Contd.*)

Article 104

The Honourable Dr. B. R. Ambedkar : (Bombay: General): Sir, I would request that article 104 be postponed.

Article 105

Mr. President: Then I shall proceed to article 105.

(Amendment Nos. 1879 and 1880 were not moved.)

Mr. President: The question is:

"That article 105 stand part of the Constitution."

The motion was adopted.

Article 105 was added to the Constitution.

Article 106

Mr. President: Article 106

(Amendment Now. 1881 and 1882 were not moved.)

Mr. President: There is an amendment to this amendment. Since the main amendment is not moved I suppose this amendment drops.

Shri T. T. Krishnamachri (Madras: General): It is covered by amendment No. 1883 to which I shall move my amendment.

Mr. President: So much the better.

Mr.Tajamul Husain (Bihar: Muslim): Sir, may I with your permission move this amendment for Mr. Naziruddin Ahmad?

Mr. President: Yes.

Tajamul Husain: Sir, I move:

> "That in clause (1) of article 106 after the words 'High Court' where they occur for the second time, the words 'duly qualified for appointment as a judge of the Supreme Court be inserted."

If at any time there is no quorum of the Judge of the Supreme Court to hold a Session, the Chief Justice may consult the Chief Justice of the High Court concerned and ask him to attend the sitting of the High Court as an *ad hoc* Judge for such period as may be found necessary for the Judge of the High Court to be nominated by the Chief Justice of India. No argument is necessary. The Judge who sits as an *ad hoc* Judge in the Supreme Court must be duly qualified for appointment as a Judge of the Supreme Court: otherwise he cannot sit.

Shri T. T. Krishnamachari: Sir, I shall with your leave move amendment No. 124 in List VI. Sir, I move:

> "That with reference to amendment No. 1883 of the List of Amendments, in clause (1) of article 106, after the words 'Chief Justice may' the words 'with the previous consent of the President and' be inserted."

The wording of this amendment is fairly simple as the House will understand that article 106 provides for the appointment of *ad hoc* Judges by the Chief Justice; that is, a Judge of any High Court may be requested to cooperate with the Chief Justice of the Supreme Court and sit in any of the Benches constituted by him to decide any particular case. Well, the article as it now stands means that the Chief Justice can do it without any reference to the Government of the day. I think, Sir, that the position is not quite as it ought to be for the reason that while the appointment of any of the Judges of the Supreme Court, including the Chief Justice, is done by the Executive, any addition to the Court should not be made without any reference to the Executive whatever. Of course, there are administrative and financial problems that might arise by the Chief Justice making a request to any of the High Court Judges of any State to co-operate with him in this manner, and even the propriety of the occasion demands that the Chief Justice should not act except in consultation with the head of the Executive. Therefore, Sir, I have moved that the words "with the consent of the President" should be put in. Actually, it will not be a very difficult matter to obtain his consent, as in most cases it will be a formal matter. Also, there is this safeguard, namely, there are occasions when the Supreme Court has decided matters which have a political flavour. The possibility of any political bias being exercised by the Chief Justice in the matter of the selection of an *ad hoc* Judge to help to decide any particular case can also be partly obviated by this safeguard. The history of the Judiciary in America has been almost a history of how politics has influenced the attitude of the judiciary. Any student of the American Constitution would know that politics has influenced to a very large extent the decisions in constitutional cases by the Supreme Court of America. There is undoubtedly need for a safeguard for providing that the Executive shall have some say in a matter like this and if they really feel that the selection of a particular Judge is not proper, it is probable that the attention of the Chief Justice might be invited to that particular aspect of the matter.

It is not merely to provide against a contingency like one I have mentioned but also to conform to the proprieties involved in a matter like this that I have moved this amendment. I hope the House will have no difficulty in accepting it. Sir, I move:

The Honourable Dr. B. R. Ambedkar: I accept the two amendments--No. 124 of

List No. VI and amendment No. 1883.

Mr. President: There have been two amendments moved. Both have been accepted by Dr. Ambedkar. I will now put them to the vote.

Mr. President: The question is:

"That with reference to amendment No. 1883 of the List of Amendments, in clause (1) of article 106, after the words 'Chief Justice may' the words 'with the previous consent of the President and' be inserted."

The amendment was adopted.

Mr. President: The question is:

"That in clause (1) of article 106, after the words 'High Court where they occur for the second time, the words 'duly qualified for appointment as a judge of the Supreme Court' be inserted."

The amendment was adopted.

Mr. President: The question is:

"That article 106, as amended, stand part of the Constitution."

The motion was adopted.

Article 106, as amended, was added to the Constitution.

Article 107

Mr. President: Amendment No. 1884. This is a negative amendment. So I rule it out.

Amendment No. 1885. That question has been decided. So this need not be moved.

Shri Jaspat Roy Kapoor: I am not moving amendment No. 1886 as there is another amendment on the same lines.

Mr. President: Amendment No. 1887 is more or less a verbal amendment. So it need not be moved.

The Honourable Dr. B. R. Ambedkar: Sir, I beg to move:

"That in article 107 the words 'subject to the provisions of this article' be deleted."

Those words are quite unnecessary.

Shri T. T. Krishnamachari: I move:

"That in article 107, in line 3, after the words 'at any time'. the words 'with the previous consent of the President' be inserted.'

Sir, the purpose of this amendment is much the same as that of the amendment moved by me to the earlier article and accepted by the house. This article deals with the attendance of retired judges in the sittings of the Supreme Court. For the reasons mentioned by me earlier it will be necessary for the Chief Justice to obtain the previous consent of the President, before inviting any such person to act as a Judge of the Supreme Court.

(Amendments Nos. 1889 and 1890 were not moved.)

Mr. President: We have now the amendments and the article for discussion.

The Honourable Dr. B. R. Ambedkar: I accept amendment 125 moved by Shri T. T. Krishnamachari.

Mr. President: The question is:

"That in article 107, in line 3, after the words 'at any time', the words 'with the previous consent of the President' be inserted."

The amendment was adopted.

Mr. President: The question is:

"That in article 107 the words 'subject to the provisions of this article' be deleted."

The amendment was adopted.

Mr. President: The question is:

"That article 107, as amendment, stand part of the Constitution."

The motion was adopted.

Article 107, as amended, was added to the Constitution.

Article 108

Mr. President: Article 108 is for the consideration of the House.

Shri H. V. Kamath: Mr. President, I move:

"That for article 108, the following be substituted:-

'108. The Supreme Court shall sit at such place or places as the Chief Justice may, with the approval of the President, from time to time appoint.' "

The article as it stands is in my humble judgment, not happily worded. For the first time since we commenced the article by article consideration of the Constitution we have come across an article which lays down that a particular organ of the State shall meet at a particular place. We have passed already important and articles such as article 69 fixing the venue of meetings of the Houses of Parliament and article 48(4) fixing the official residence of the President. I am sure there are other articles concerning the place where certain bodies or organs of State are supposed to meet. But none of these articles specifies the mane of any particular place where that organ of the State should meet. Why, may I ask Dr, Ambedkar, does he feel it necessary to specify in this article that the Supreme Court shall meet in Delhi? The entire Constitution is silent on the point of India's capital. There is nowhere any mention of the capital of our country in the Constitution. There was even an amendment in this House, which however was not moved, but I am told that my friends are pursuing that matter in another way. There have been frequent references to the necessity of desirability of a change in the capital of India. Anyway, without prejudice to that, notwithstanding any attempt that may be made in this direction, I propose to deal with this question here purely on merit. When the whole Constitution is silent on this point, why should we import this mention of the capital, of Delhi, in this article? Is it not far more desirable or happier to leave the choice of the venue of the Supreme Court to the Chief Justice and the President of the Indian Union? Certainly they are best fitted to judge this matter and I am sure that under the Constitution where we are going to elect a President of the Indian Union and have an eminent legal and juristic authority for the Chief Justiceship, I see no reason why we should specify in the Constitution that the Supreme court should meet at a particular place. There is no valid reason at all for specifying Delhi in this article for that purpose. It may be that the Supreme Court might meet in another place; even if Delhi is to be the capital, they may decide for various reasons that they should meet in another place, I therefore think that the mention of Delhi in this article is unnecessary.

Just another point, Sir, The article as it stands reads as follows: " The Supreme Court shall be a court of record". What the Supreme Court will be and will not be are matters which have been exhaustively dealt with in the preceding and succeeding articles. The term "court of record" is a borrowed phrase and we need not use it here. Therefore my amendment lays down that the Supreme Court, shall sit at such place or places as the Chief Justice may, with the approval of the President, from time to time appoint. Sir, I move my amendment and commend it for the acceptance of the House.

Mr. President: There is an amendment to this article, No. 3 of List No. 1, notice of which has been given by Mr. Gadgil.

(The amendment was not moved.)

The Honourable Dr. B. R. Ambedkar: Mr. President, Sir, I move:

"That for amendment No. 1891 of the List of Amendments, the following be substituted:-

"That for article 108, the following article be substituted:

> '108. The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.
>
> 108-A. The Supreme Court shall sit in Delhi or at such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint.'"

Sir, after the general debate, I will say why the amendment that I am moving is necessary.

(Amendments Nos. 1892, 1893 and 1894 were not moved.)

Shri Jaspat Roy Kapoor: Mr. President, Sir, I beg to move:

"That in amendment No. 126 of List VI which has just been moved by Dr. Ambedkar, in the proposed article 108-A for the words 'shall sit in Delhi or at such other place or places' the words 'shall sit at Delhi and/or such other place or places' be substituted."

Should, however, this amendment not meet with the approval of the House, I would like to move, in the alternative,--

"That in amendment No. 126 of List VI in the proposed article 108-A after the word 'places' the following words be inserted 'or in Delhi and at such other place or places'."

If my first amendment is accepted, the amended article would read thus:

"The Supreme Court shall sit in Delhi and/or at such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time appoint."

Shri T. T. Krishnamachari: Will the honourable Member please make it clear whether there should be a stroke or a hyphen after 'and'.

Shri Jaspat Roy Kapoor: There should be a line between the two. If my second amendment is accepted, the article would read thus:

"The Supreme Court shall sit in Delhi or at such other place *or places in Delhi at such other place or places* as the Chief Justice of India, with the approval of the President, from time to time appoint."

Sir, my reason for moving this amendment is that I believe that the proposed article 108-A does not really convey the meaning which it is intended to convey, and if it does, then I think it is obvious that an anomalous position is created thereby and the capital city of Delhi is being treated in a very unfair manner. The proposed article, as it stands, means that the Supreme Court shall sit in Delhi or at any other place in the alternative, which of course implies that it shall not then sit in Delhi at all. It means further that even if the Supreme Court holds its sittings in half a dozen places in the country, Delhi shall not be one of those places. Delhi and other places would, therefore, be mutually exclusive for the purposes of the sittings of the Supreme Court. I believe it is not the intention of the Honourable Dr. Ambedkar or even of Mr. T. T. Krishnamachari who appears to be the joint author of this amendment, that this article should be capable of this interpretation. Then, Sir, as regards the anomaly that arises out of it, I have to submit that it means that so long as the Supreme Court sits in Delhi, it will not have the right or the privilege to hold a circuit court anywhere else in the country. The Chief Justice may consider it necessary in the interests of his work or in order to give necessary facilities to the litigant public to hold circuit courts in different parts of the country. Even if the Chief Justice thinks that in view of the fact that large number of cases have accumulated, say from Madras or Bombay and in order to dispose of those cases or in order to give necessary facilities to the litigants so that they may not be put to the inconvenience of coming all the way to Delhi, it is necessary to hold circuit courts in Madras or Bombay, it will not be open to the Chief Justice to do so. Of course, if he is so disposed he can resort to a little device but then it will be so inconvenient and even ridiculous. He can shift the Supreme Court to a place very near Delhi, say Shahdara or some other new refugee township if the honourable the Minister for Rehabilitation is so disposed to accommodate the Chief Justice, and after shifting the Supreme Court to place nearby, he can of course hold circuit courts in Bombay, Madras, or Calcutta as necessity may arise. Now, Sir, I submit that this anomalous position should not be allowed to stand. With regard to the injustice to Delhi itself, I submit that the present draft implies that even if the Supreme Court holds its sittings in half a dozen places it shall not be open to the Supreme Court to have even a circuit court in unfortunate Delhi. It means that either Delhi will have the privilege of having the sittings of the Supreme Court exclusively within itself, or it will not have even the facility of having a circuit court there. Either Delhi will be the monarch of all it surveys or it shall be thrown into oblivion. Sir, I cannot understand the logic of it, and, may I say, I cannot understand even the absurdity of this position. If behind this article there is the intention of anybody to remove the seat of Supreme Court from Delhi to some other place, I submit it should be said so in a straightforward and frank manner and that proposal should not be allowed to be brought in this rather back-door manner. But I believe, it is perhaps not the intention of the authors of this amendment, and I should not, therefore dilate on that aspect of it; and since it is perhaps not the intention of the authors, I would submit that it is necessary that this amendment should be amended in the manner in which I have suggested, so that it should be open to the Chief Justice of the Supreme Court to arrange for the holding of the sittings of the court either at Delhi or at some other place or places or both at Delhi and at other place or places. I hope, Sir, that this necessary amendment would be acceptable to the Honourable Dr. Ambedkar and also to the House.

Shri T. T. Krishnamachari: Mr. President, Sir, not being a lawyer, I am rather nervous to contradict my honourable Friend Mr. Jaspat Roy Kapoor, who has moved an amendment to the amendment moved by Dr. Ambedkar. But I think Sir, I do understand this foreign language to the extent that it is possible for a foreigner to understand, and I am afraid that I am unable to appreciate the necessity for making a simple clause, such as 108 happens to be now, into a very complex and difficult clause such as it would be if the amendment of Mr. Jaspat Roy Kapoor is accepted.

Sir, I quite agree with the need for a certain amount of elasticity in regard to the place at which the Supreme Court will have to operate in the future; it may be, it would operate in Delhi or at some other place, or it would operate in Delhi and at some other place, that is precisely what my honourable Friend, Mr. Jaspat Roy Kapoor wants. If the court is to be fixed at Delhi it must also be possible for the Chief Justice to arrange for sittings elsewhere to make it a sort of peripatetic court, if it is necessary and he thinks that if in the event of the headquarters of the court being changed, it must be possible for the Court to sit at Delhi in the same manner as it would sit in some other place, if the headquarters were Delhi itself. I think that is quite covered by the position of the words at the end of article 108-A as it now stands. It reads: "The Supreme Court shall sit in Delhi and at such other place or places." It certainly does not mean that the Supreme Court shall sit at either Delhi or at such other place; it does not preclude the possibility of the Supreme Court sitting at Delhi and at some other place, and so far as the construction of the wording is concerned, I do not think it is much of a legal technicality, but it is really a matter of language and the fears that are expressed by my honourable Friend, Mr. Jaspat Roy Kapoor are, I think, entirely unfounded and all the contingencies that he wants to import into a situation that might arise by a construction of article 108-A is provided for as the clause stands today. Sir, I think there is no point in putting "and/or" with which I am very familiar in any contract form or in a bill of lading or some such document covering a commercial transaction, where the possibility of an alternative being provided is very necessary, but it has no legal sanction whatever and I think, we cannot put in "and" and "or" and we cannot put a stroke in between "and" and "or" as an alternative one for the other and we cannot have both "and" and "or" simultaneously as the language would again be defective. I think the House may rest assured that the framers of this amendment had in view the contingencies which Mr. Jaspat Roy Kapoor has in mind and they felt convinced and they are also assured by persons competent to assure them that the article 108-A as if now stands will cover all possible contingencies. There will be difficulties if the amendment as envisaged by Mr., Jaspat Roy Kapoor is accepted. Sir, I support the amendment moved by Dr. Ambedkar.

Pandit Thakur Das Bhargava (East Punjab: General): Sir, I have listened to the argument of Mr. Jaspat Roy Kapoor as well as the argument of Mr. Krishnamachari. As the words stand, I am of the opinion they are certainly ambiguous and they are not clear. Certainly one could argue that the word "other" qualifies both 'place' and 'places'. This amendment, as it stands can be construed into saying that the Court shall either sit at Delhi and if it sits at any other place except Delhi, then there can be no circuit court at Delhi. If the word "other" qualifies the word "places" then the court can sit at other places except Delhi. I thought that Mr. Krishnamachari would clear away this ambiguity but after hearing him, I am of the opinion that this amendment is certainly ambiguous. I do not think that the authors of this amendment meant to convey that Delhi shall be a place, which in the words of Mr. Jaspat Roy Kapoor, will either be a monarchical or a forbidden place. My humble submission as I understand the position today is the Government has not decided to leave Delhi. Delhi is the Capital and today we should make it sure that Delhi will be the place where the Supreme Court shall sit, I do not know if in any other country the Supreme Court of country sits at any place other than the Capital. As long as Delhi is the Capital, the proper place for a Supreme Court is at Delhi. Moreover, it is a court of record; it is a court which must have some permanent seat and Delhi is the proper place where it can have its permanent seat; there can be no doubt about it, but if at any other time the Capital is going to be changed, there will be no difficulty in amending this part of the Constitution or if it is to be provided, even today then it will be better provided if you adopt this amendment along with the second amendment of Mr. Jaspat Roy Kapoor, because then if will be open to the authorities to see that the place of the capital is changed, and while it is changed, Delhi is not deprived of its right of having a circuit Court, if it is so necessary. I for one do not understand how the Supreme Court will at one and same time sit at Delhi and in any other place or places. In my humble opinion a court can be said to sit at a place where it has got a permanent seat. There is no reason to think that if a Supreme Court sits in a bench or as a circuit at some other place, it can be said that that court is sitting at that place alone. A court should be deemed to have a permanent seat and to sit at the place where it has got a permanent seat. It is necessary to avoid this ambiguity. If Mr. Krishnamachari thinks that the words 'and/or' can only be used in a conveyance or a contract and he has not seen it in a treaty or a legal document, then, the amendment of Mr. Jaspat Roy Kapoor is quite clear, and that amendment should be accepted.

The Honourable Dr. B. R. Ambedkar : Mr. president, the amendment which I have moved covers practically all the points which have been raised both by Mr. Kamath as well as by Mr. Jaspat Roy Kapoor.

Sir, the new article 108 is necessary because we have not made any provision in the Draft Constitution to define the status of the Supreme Court. If the House will turn to article, 192, they will find exactly a similar article with regard to the High Courts in India. It seems therefore necessary that a similar provision should be made in the Constitution in order to define the position of the Supreme Court. I do not wish to take much time of the House in saying what the words 'a court of record' mean. I may briefly say that a court of record is a court the records of which are admitted to be of evidentiary value and they are not to be questioned when they are produced before any court. That is the meaning of the words 'court of record'. Then, the second part of article 108 says that the court shall have the power to punish for contempt of itself. As a matter of fact, once you make a court a court of record by statute, the power to punish for contempt necessarily follows from that position. But, it was felt that in view of the fact that in England this power is largely derived from Common Law and as we have no such thing as Common Law in this Country, we felt it better to state the whole position in the statute itself. That is why article 108 has been introduced.

With regard to article 108-A, Mr. Kamath raised a point as to why the word Delhi should occur. The answer is very simple. A court must have a defined place where it shall sit and the litigants must know where to go and whom to approach. Consequently, it is necessary to state in the statute itself as to where to court should sit and that is why the word Delhi is necessary and is introduced for that purpose. The other words which occur in article 108-A are introduced because it is not yet defined whether the capital of India shall continue to be Delhi. If you do not have the words which follow, "or at such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint" then, what will happen is this. Supposing the capital of India was changed, we would have to amend the Constitution in order to allow the Supreme Court to sit at such other place which Parliament may decide as the capital. Therefore, I think the subsequent words are necessary. With regard to the point raised by my honourable Friend Mr. Kapoor, I think the answer given by my Friend Mr. Krishnamachari is adequate and I do not propose to say any more.

Shri H. V. Kamath: May I ask one question, Sir? In the view just now enunciated by Dr. Ambedkar that the litigants should know the place where the Supreme Court will sit, and that the question of capital has not yet been settled and the court may have to sit in some other place or places, what is the point in specifying Delhi at all?

Mr. President: I think the question was put by the speaker in his first speech and it has been answered. Whether he is satisfied with the answer or not is a different question. The question has been answered.

Shri Jaspat Roy Kapoor: May I seek a small clarification from Dr. Ambedkar? Will it be open to the Supreme Court so long as it is sitting in Delhi, to have a circuit court anywhere else in this country simultaneously?

The Honourable Dr. B. R. Ambedkar : Yes, certainly. A circuit court is only a Bench.

Mr. President: I shall now put the amendments to vote.

Shri Jaspat Roy Kapoor : I beg leave of the House to withdraw my amendment, Sir.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Amendment No. 126.

Shri T. T. Krishnamachari: May I suggest, Sir, that as it relates to two articles, it will be better to put them separately?

Mr. President: Yes. I put the first part of amendment No. 126.

The question is:

"That for article 108, the following article be substituted:

> '108. The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.'"

The amendment was adopted.

Mr. President: I am putting the second part.

The question is:

> "108-A. The Supreme Court shall sit in Delhi or at other place or places, as the Chief Justice of India may, with the approval of the President, from time to time appoint."

The amendment was adopted.

Mr. President: I think that covers the amendment of Mr. Kamath. I need not put that.

Shri T. T. Krishnamachari: That covers the entire proceedings so far as this article is concerned.

Mr. President: So, I shall put the article, as amended by Dr. Ambedkar's amendment.

The question is:

"That article 108, as amended, stand part of the Constitution."

The motion was adopted.

Articles 108 and 108-A were added to the Constitution.

Articles 109 to 114

Mr. President: The motion is:

"That article 109 form part of the Constitution."

The Honourable Dr. B. R. Ambedkar : Sir, I want articles 109 to 114 be held over. The reason why I want these articles to be held over is because these articles while they state general rules, also make certain reservations with regard to the States in Part III of Schedule I. It is understood that the matter as to the position of the States in Part III is being reconsidered, so that the States in Part III will be brought on the same level and footing as the States in Part I. If that happens, then, there will be no necessity to introduce these reservations in these articles 109-114. I suggest these may be held over.

Mr. President: We will pass them over for the present.

Article 115

Mr. President: The motion is:

"That article 115 form part of the Constitution."

The first amendment is No. 1937 of Mr. Kamath. That is negative and it is ruled out as an amendment. Amendment No. 1938. Dr. Bakshi Tek Chand, you have given notice of an amendment to this amendment. You move your amendment first?

Dr. Bakshi Tek Chand (East Punjab: General): Mr. President, Sir, the amendment which I am going to move is an amendment to amendment No. 1938 in the List of Amendment Vol. I. According to that amendment to amendment No. 1938...

Mr. President: You may first move the original amendment and then the amendment to the amendment.

Dr. Bakshi Tek Chand: Very well, Sir, I will first move amendment No. 1938 as printed at page 197:

"That in article 115, before the words 'in the nature of' the words 'including those' be inserted."

To this amendment a verbal alteration is suggested, and that is:

"That in article 115, for the words 'or orders in the nature of the writs' the words 'orders or writs, including writs in the nature' be substituted".

This amendment will bring the phraseology of article 115 in line with article 25 which has already been passed by this House in the last session. Article 115, as drafted by the Drafting Committee, reads as follows:-

"Parliament may, by law, confer on the Supreme Court power to issue directions or orders *in the nature* of the writs of *habeas corpus, mandamus*, prohibition, *quo warranto* and *certiorari,* or any of them for any purposes other than those mentioned in clause (2) of article 25 (which relates to the enforcement of fundamental rights) of this Constitution."

It will be seen that the article as drafted limits the power of Parliament to invest the Supreme Court with power to issue writs in the nature of those specifically mentioned and to none other. The amendment seeks to make the article more comprehensive so as to enable Parliament to enact laws empowering the Supreme Court to issue writs, directions, orders or writs including those mentioned in the drafted article 115. Hereafter it may be considered necessary to empower the Supreme Court to issue writs other than those which are mentioned in the article. The House will agree that it is not desirable to place such restrictions on the power of Parliament. Moreover as I have already said, in article 25, which deals with the power of the Supreme Court to issue writs, with regard to justiciable fundamental rights, this phraseology has already been adopted. Clause (2) of article 25, as passed by this House reads:

"The Supreme Court shall have power to issue directions or orders or writs including writs in the nature of *habeas corpus, mandamus,* prohibition, *quo warranto* and *certiorari,* whichever may be appropriate for the enforcement of any of the rights conferred by this Part."

To bring the phraseology of article 115 in line with that of article 25, I move this amendment, and commend it for the acceptance of the House.

Mr. President: Amendment No. 1939, in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in article 115, the words and brackets '(which relates to the enforcement of fundamental rights)' be deleted."

The words are superfluous.

Mr. President: No. 1940 is the same as the one just now moved and so need not be moved. No. 1941 standing in the name of Mr. Naziruddin Ahmad is also of a drafting nature and need not be moved. No. 1942 is not moved.

I think these are the amendments that we have now.

Does any Member wish to say anything?

We shall now put the amendments.

I will first take Dr. Ambedkar's amendment No. 1939.

The question is:

"That in article 115, the words and brackets '(which relates to the enforcement of fundamental rights)' be deleted."

The amendment was adopted.

Mr. President: Then I put Dr. Bakshi Tek Chand's amendment to amendment No. 1938.

The question is:

"That in article 115, for the words 'or orders in the nature of the writs' the words 'orders or writs, including writs in the nature' be substituted."

The amendment was adopted.

Mr. President: That becomes the original amendment now. I put the amendment as amended to the House.

The amendment, as amended, was adopted.

Mr. President: Then I put the article, as amended by the two amendments one of Dr. Ambedkar, and the other of Dr. Tek Chand to vote.

The question is:

"That article 115, as amended, stand part of the Constitution."

The motion was adopted.

Article 115, as amended, was added to the Constitution.

Article 116

Mr. President: Now, we take up article 116. The first amendment is No. 1943, standing in the name of Mr. Kamath. It is ruled out, being a negative one.

No. 1944 is not even of a drafting nature, being only regarding punctuation.

There is no other amendment to article 116. I shall put the article to the vote of the House.

The question is:

"That article 116 stand part of the Constitution."

The motion was adopted.

Article 116 was added to the Constitution.

Article 117

Mr. President: We then come to article 117.

(Amendment No. 1945, was not moved.)

Shri H. V. Kamath: Mr. President, Sir, I move:

"That in article 117, for the words 'all courts' the words 'all other courts' be substituted."

So if this is accepted, the article will read thus:

"That law declared by the Supreme Court shall be binding on all other courts within the territory of India."

I have no doubt in my own mind that this article does not seek to bind the Supreme Court by its own judgments. What is intended by the article is, I am sure, that other courts subordinate to the Supreme Court in this land shall be bound by the judgments and the law declared by the Supreme Court from time to time. It will be unwise to bind the Supreme Court itself, because in order to ensure elasticity, in order to enable mistakes and errors to be rectified, and to leave room for growth, the Supreme Court will have to be excluded from the purview of this article. The Supreme Court may amend its own judgments, or its own interpretation of the law which it might have made on a previous occasion and rectify the errors it has committed earlier. Therefore I feel that the intention of this article would be correctly and precisely conveyed by saying that the law of the Supreme Court shall be binding on "all other courts" within the territory of India.

Sir, I move.

(Amendments Nos. 1947 and 1948 were not moved).

The Honourable Dr. B. R. Ambedkar : Sir, there is one point which I should like to mention. It is not certainly the intention of the proposed article that the Supreme Court sould be bound by its own decision like the House of Lords. The Supreme Court would be free to change its decision and take a different view from the one which it had taken before. So far as the language is concerned I am quite satisfied that the intention is carried out.

Shri H. V. Kamath: Then why not say "all other courts"?

The Honourable Dr. B. R. Ambedkar : "All courts" means " all other courts."

Mr. President: The question is:

"That in article 117, for the words 'all courts' the words 'all other courts' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That article 117 stand part of the Constitution."

The motion was adopted.

Article 117 was added to the Constitution.

Article 118

Mr. President: Article 118.

(Amendment No. 1949 and 1950 were not moved.)

Mr. President: The question is:

"That article 118 stand part of the Constitution."

The motion was adopted.

Article 118, was added to the Constitution.

Article 119

Mr. President: Amendment No. 1951 is ruled out.

Shri H. V. Kamath: Sir, the point which I wish to raise in my amendment No. 1952 is a simple one. The article contemplates that the Supreme Court should report to the President its opinion or in its discretion it may withhold its opinion. I believe what is meant is that when once the President refers the matters to the Supreme Court for its opinion there is no option for the Supreme Court. If that is not meant then the language is right. But if it is meant that once the President refers a matter to the Supreme Court, it must report its opinion thereon to the President, then the word "shall" must come in. I wanted a clarification on that point.

The Honourable Dr. B. R. Ambedkar : The Supreme Court is not bound.

Shri H. V. Kamath: Then I do not move my amendment.

Mr. President: Amendment No. 1953 is ruled out and 1954 is verbal.

Shri H. V. Kamath: Sir, I move:

"That in clause (2) of article 119, for the word 'decision' the word 'opinion' and for the words 'decide the same and report the fact to the President', the words 'submit its opinion and report to the President' be substituted respectively."

Sir, I originally sent this as two separate amendments but they have been listed as one. If this is accepted by the House the relevant clause of this article would read as follows:-

"The President, may notwithstanding anything contained in clause (i) of the proviso to article 109 of this constitution refer a dispute of the kind mentioned in the said clause to the Supreme Court for opinion, and the Supreme Court shall thereupon, after giving the parties and opportunity of being heard, submit its opinion and report to the President."

If we read carefully clause (i) it will be found that what is referred to is the "opinion of the Supreme Court" on any matter which the President may deem it necessary or fit to refer to that court.......

The Honourable Dr. B. R. Ambedkar : May I request you, Sir, to hold over this article 119, because it has also reference to article 109 to 114 which we have decided to hold over.

Shri H. V. Kamath: Then, Sir, I shall reserve my right to move the amendment later on.

Article 120

(Amendments Nos. 1956 and 1957 were not moved.)

Mr. President: The question is:

"That article 120 stand part of the Constitution."

The motion was adopted.

Article 120 was added to the Constitution.

Article 121

The Honourable Dr. B. R. Ambedkar : I would request Sir, that this article be allowed to stand over.

Article 122

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for the existing article 122, the following be substituted:-

'122 *Officers and servants and the expenses of the Supreme Court*.--(1) Appointments of officers and servants of the Supreme Court shall be made by the chief Justice of India or such other judge or officer of the court as he may direct:

Provided that the President may by rule require that in such cases may be specified in the rule, no person not already attached to the court shall be appointed to any office connected with the court, save after consultation with the Union Public Service Commission.

(2) Subject to the provisions of any law made by Parliament, the conditions of services of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other judge or officer of the court authorised by the Chief Justice of India to make rules for the purpose:

Provided that the salaries, allowances and pensions payable to or in respect of such officers and servants shall be fixed by the Chief Justice of India in constitution with the President.

(3) The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the revenues of India, and any fees or other moneys taken by the court shall form part of those revenues.'"

The object of this redraft is to make a better provision for the independence of the Supreme Court and also to make provision that the administrative expenses of the Supreme Court shall be a charge on the revenues of India.

Sir, there is an amendment to this amendment, which I should like to move at this stage:

"That in amendment No. 1967, for the proviso to clause (2) of the proposed article 122, the following proviso be substituted:-

'Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President."

Mr. President: There is an amendment of Mr. Kapoor to this amendment.

Shri Jaspat Roy Kapoor: It is now covered by the new amendment moved by Dr. Ambedkar. So I consider it unnecessary to move it.

(Amendments Nos. 1968 and 1969 were not moved.)

Mr. President: So there is only the amendment of Dr. Ambedkar. I shall first take the amendment he has moved to his own amendment.

Shri T. T. Krishnamachari: Sir, I would like to say a word. There is one particular point in Dr. Ambedkar's amendment to which I would like to invite the special attention of this House. I refer to clause (3) which makes the administrative expenses of the Supreme Court, including salaries, allowances and pensions payable to or in respect of the officers and servants of the court a charge on the revenues of India. Sir, I want to draw the attention of the House to this particular clause, because it has been the intention of some of us that all items chargeable to the revenues of India should be brought in under one particular article, namely, article 92 if I remember aright. The only reason why this particular clause has been allowed to come in here is the fact that article 92 has been passed over-it has not been considered by the House. So I would like to say that the House might perhaps at the appropriate time, when article 92 is being considered, permit a transposition at that stage of all clauses similar to this one-clause (3)-wherever it occurs, whether here, or in the matter of the Speaker's establishment or in the matter of the Auditor-General's establishment or in the matter of the Public Services Commission, should be brought under one head, so that people will know, at any rate the future legislators will know, what are the items which are sacrosanct and which are a charge on the revenues of India.

The second point is this. While I undoubtedly support the amendment moved by Dr. Ambedkar, I think it should be understood by the Members of this House, and I do hope by those people who will be administering justice and also administering the country in the future that this is a safeguard rather than an operative provision. The only thing about it is that a matter like the employment of staff by the Judges should be placed ordinarily outside the purview of the Executive which would otherwise have to take the initiative to include these items in the budget for the reason that the independence of the Judiciary should be maintained and that the Judiciary should not feel that they are subject to favours that the Executive might grant to them from time to time and which would naturally influence their decision in any matter they have to take where the interests of the Executive of the time being happens to be concerned. At the same time, Sir, I think it should be made clear that it is not the intention of this House or of the framers of this Constitution that they want to crate specially favoured bodies which in themselves becomes *an Imperium in Imperio*, completely independent of the Executive and the legislature and operating as a sort of superior body to the general body politic. If that were so, I think we should be rather chary of introducing a provision of this nature, not merely in regard to the Supreme Court but also in regard to the Auditor-General, in regard to the Union Public Services Commission, in regard to the Speaker and the President of the two House of Parliament and so on, as we will thereby be creating a number of bodies which are placed in such a position that they are bound to come into conflict with the Executive in every attempt they make to display their superiority. In actual practice, it is better for all these bodies to more or less fall in line with the regulations that obtain in matters of recruitment to the public services, conditions of promotion and salaries paid to their staff. My own little experience of what is happening in regard to bodies of a similar nature, though not fortified by a constitutional provision of this kind, is that it does not do any good to have separate compartments in public service. What happens usually in this. If promotions and all matters of the nation are confined within the small area or the small ambit of a particular body, it often happens that the person who comes to the top of the Executive position in that body stays put for all time if that particular post is not brought into the cadre of the general services of the State, whether Central or Provincial; there will be a lot of inconvenience in having a sort of bottleneck into which a particular person who rises to the top of this narrow cadre finds that he will not be able to get out of it except by dismissal or removal; whereas, if the establishment of these particular bodies forms part of the general service and person employed therein who is found unsuitable in any one department can be transferred to another sphere of activity. It would stand to reason that it would be better to make it clear in passing that this article would not really operate as a bar to exercising full freedom by the authorities concerned of the powers given under this section. Nevertheless, it should be made clear that it is not the intention of the framers of the Constitution and this House that these bottlenecks should be created and that these bodies should function irrespective of the needs of the time and irrespective of the conditions that operate in the other services. It might happen that in the general services there may be a reduction of salaries, and if the Chief Justice says 'no' to a request of the Executive to fall in line on the ground that what happens to the executive departments is none of his concern, that so far as his department is concerned he will not permit a reduction of salaries, it will mean that we are helping to keep this body apart from the general services and it will be a source of conflict. So as the Executive and the services are much concerned, I do hope that the mere fact of putting these special officers like the Chief Justice and the Auditor-General in a privileged position will not mean that they will have to exercise their right in entirety but that such a position is a safeguard against a possible misuse of the power that is given to the Executive when there is need for them to expand their services, or in the matter of recruitment and so on. With these remarks, I think the proposition moved by my honourable Friend, Dr. Ambedkar, might go through.

Shri K. M. Munshi (Bombay : General): Mr. President, I heartily support the amendment (No. 1967) moved by my Friend Dr. Ambedkar and take this opportunity once again to emphasise what I said while opposing Professor Shah's amendment the other day, that this Constitution, though it has not accepted the doctrine of the separation of powers, has maintained the independence of the judiciary to the utmost possible extent. Any fear therefore that this independence will not be maintained because we have not accepted the doctrine of separation of powers is an entirely unfounded one. It must be and I hope it will be the duty of the House at all times to maintain the independence of the judiciary.

My friend who spoke last supported the amendment which I also support. But he will forgive me if I do not associate myself with some of the remarks that fell from him. A judiciary is an independent organ of the State. I entirely agree with him that we cannot have kingdoms within kingdoms. The legislature, the executive and the judiciary are all organs of the State which must be maintained in their proper and respective places in a wholesome Constitution and therefore it is necessary, as stated in the clause, that the appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India on such other judge or officer of the court as he may direct. Those officers are doing work in connection with the administration of justice. They are not officers who can be transferred to the executive side or to other Departments and it is essential that the cadre of such officers who are associated with the administration of justice should have its undiluted loyalty to the judiciary which it serves. The qualifications also are likely to be different. In this respect the provision with regard to reference to the Public Services Commission is wholesome. It will mean that there will be no favouritism in the matter of appointments. Once a person is appointed to the staff of the judiciary he must continue to be associated with that department. Therefore clause (1) is very important.

The amendment moved by Shri T. T. Krishnamachari is necessary, because so far as the financial burden is concerned, it can only be decided by the legislature. After all, the Parliament is responsible for the finances of the country and therefore the salaries, allowances and pensions must receive the approval of the President, *viz*., the party in power. But we must safeguard the matter in this respect in a way that the independence of the judiciary will always be maintained.

In this connection I may draw the attention of the House to the comments made in a Memorandum submitted by the Federal Court and the Chief Justices of the provincial

High Courts. What they have stated is this:

> "Thanks to the system of administration of justice established by the British in this country, the judiciary until now has in all matters played an independent role in protecting the rights of individual citizens against encroachment and invasion by the executive power. Unfortunately, however, a tendency has of late been noticeable to detract from the status and dignity of the judiciary and to whittle down their powers, right and authority which, it unchecked, will be most unsatisfactory."

Well, the whole provision in this amendment is intended to prevent any whittling down of the status or dignity and the powers that they posses. It is essential that in a democracy the judiciary must be there to adjust the differences between citizen and citizen, between State and State and even between the Government of India and the State. If that independence is not secured, I am sure we would soon drift towards totalitarianism. I know that the country is passing through a crisis and naturally large powers have to be taken by the executive to preserve our national existence. But, at the same time the line of demarcation between a democratic method of preserving national existence and a totalitarian method should not be lost sight of. In that connection the independence of the judiciary demarcates the line between the democratic method and the totalitarian method. I am sure the provision of this Constitution will sufficiently guarantee the independence of the judiciary. With these words I support the amendment.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. President, after the speeches of my Friends Messrs. Krishnamachari and Munshi which the House heard just now, very few words are necessary to commend both the parts for the acceptance of the House.

There are two principles involved: One is that you must be able to maintain the independence of the judiciary and that unless the judiciary has sufficient control over its own establishment its independence may become illusory. If the establishment looks for preferment or for promotion to other quarters, it is likely to sap the independence of the judiciary. But at the same time, it has to be recognised that the judiciary and its establishment would have to draw their allowances and their salaries from the public exchequer. The ultimate person who will be affected is the taxpayer. Therefore, while on the one hand you must secure the independence of the judiciary, the interests of the taxpayer on the other hand will have to be safeguarded in a democracy. That can only be done by giving sufficient control to the Government of the country which is responsible to the House of the People in the matter of finance. The effect of the present provision is that every time the expenses are not subject to the vote of the House. That is a good thing. It is made a primary charge on the public exchequer. The second effect is that the court concerned will have complete control over its appointments. At the same time this provision safeguards the interests of the public and of the Government in so far as the Government is representative of the public for the purpose of securing the finance of the country. That is, if there is to be an increase in the salary, the Chief Justice or other Judicial authority cannot take a line of his own. The problem actually arose in Madras at the time of the First Congress Ministry. The Chief Justice of the Madras High Court took up the position that the High Court stood on a different footing from the other establishments under the control of the provincial Government. The Cabinet differed from him and decided and he could have complete control over his establishment, but that in regard to the general scale of salaries, etc., he should fall in line with the other. This is a very fundamental principle. Whenever you are dealing with a question of salary or emoluments of a particular functionary you must adjust it to the general financial system of the country.

You cannot secure special privileges for any particular class of government servants or government officers or even sometimes of judges, without considering the general public economy and finances of the country. All the three principles have been secured by the original proposition as well as by the amendment which has been placed before the House. Under those circumstances I submit that both amendments may be accepted by the House as being consistent with the maintenance of the dignity and independence of the judiciary and at the same time securing the interests of the common taxpayer.

Shri M. Ananthasayanam Ayyangar (Madras: General): Mr. President, Sir, it is sometimes said that all the argument were in favour of the plaintiff but the decree has gone against him. That is what I felt when I read the amendments and also heard the arguments of my Friend Mr. Alladi Krishnaswami Ayyar and the others who spoke before him. They want that the Supreme Court should be absolutely independent of the Executive and that the salaries of the judges ought not to be left to the vote of the legislature from time to time. This article 122 gives the jurisdiction to the Chief Justice for fixing of the salaries, allowances and pensions payable to or in respect of the officers and servants of the Supreme Court. This is sought to be modified by this amendment. Here in the clause as it stands, the Chief Justice need not take the approval of the President. It says "in consultation with the President". Therefore the Chief Justice is at liberty, consistent with his own independence and the independence of his officers to fix his their salaries and allowances. The word "consultation" is deliberately used here. Now they have given this amendment to remove the word "consultation" and put in the word "approval", "Approval" is quite different from "consultation". It is now open to the President to block it. But who is the President to do it? Under the Government of India Act the Governor-General need not consult anybody and it was absolutely in his discretion to do anything he liked. Here in this Constitution the President means "in consultation with his Ministers". Therefore what really will happen is the Chief Justice will have to dance to the tune of the Minister for the time being. It may be said that the Cabinet as a whole will advise the President. In the Cabinet the Minister in charge of Law or Law and Order will have the controlling voice. The voice of the minister is normally the voice of his Secretary. Therefore the Chief Justice of the Supreme Court will have to dance to the tune of a mere Secretary in the Home Department or the Law Department. What this amendment means is that he will be at the beck and call of the Ministry and so-called independence of the judiciary will be taken away. Therefore I do not see how this amendment is consistent at all with the principle of the independence of the judiciary and I do not see the wisdom of it. After this clause was originally framed, the framers have changed their opinion and they want to bring this clause into line with the provision in the government of India Act. Section 216 of the Government of India Act as adapted refers to this matter.

> "The administrative expenses of the Federal Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the revenues of the Dominion, and any fees or other moneys taken by the court shall form part of those revenues."

Section 242(4) proviso (b) reads:

> "Rules made under the said provision (2) by a chief justice shall, so far as they relate to salaries,

allowances, leave or pension, require the approval of the Governor-General."

They want to copy that provision. The Governor-General as representing the King, wanted to have absolute jurisdiction over all departments in this country. including judges of the High Courts and the Federal Court. Why should we copy that provision? I am not in favour of this amendment. This amendment is not consistent with the principle of the separation of the judiciary from the executive, to which we are all committed and by which all of us stand.

Then, Sir, as regards clause (2) making the expenses of the Supreme Court including all salaries, etc., chargeable on the revenues of the Union, there was some doubt raised in some quarters whether it should be chargeable only in respect of the salaries of the judges or in respect of the salaries, etc., of other officers and servants also. It was claimed that if this is done, there will be many islands, various autonomous authorities created. The Supreme Court is an autonomous body, regulating its own affairs, including the salaries and pensions of its officers. This is one set. The Auditor-General is the second set. The Public Service Commission is the third set. Therefore some people who wanted that Parliament should have control from time to time wanted to remove this clause also. I do not agree with that view. This clause ought to stand, for this reason that when with the one hand you have allowed the Chief Justice to regulate the salaries and pensions, with the other hand you cannot allow Parliament to interfere with these from time to time. If you do that, the whole thing will become nugatory. Even now, it is not too late and I would urge the honourable the Mover to reconsider this decision. If, however, he thinks that it should stand, I am not opposing this amendment. I am agreeable to this amendment.

Pandit Thakur Das Bhargava: *[Mr. President, Sir, I oppose the amendment regarding the approval by the President.

Every constitution provides for three basic requirements, *viz*., firstly, an independent judiciary; secondly, a legislature, and thirdly an executive. It would be a mistake for one to ask as to which of the three is of greater or lesser importance, because all the three, though independent in their respective spheres are component parts of the body politic of the State. A constitution, wherein a fully independent judiciary is not provided for, can never guarantee individual liberty to the people. However, we should examine the powers we have provided for the judiciary in our constitution and this would enable us to know whether it is proper or not to give such power to it. If you refer to article 109 which has not been taken into consideration as yet, you will find its wording to be rather significant. It confirms the provision that the Government of India will itself appear before the judiciary either as plaintiff or as defendant. Naturally it is clear from the words of that article that the Federal Government and the States would be appearing as parties to suits before the Supreme Court. Besides, if we refer to the other articles in the constitution, if we read the articles 7-20 dealing with Fundamental Rights or go through various other articles, it will be clear to us that the Supreme Court is the foundation stone of our liberty. It would never be right and proper to subordinate to powers of the Supreme Court to an individual entrusted with the powers of an executive nature. The previous article 102 has stated in plain words "The salaries, allowances and pensions payable to or in respect of the officers and servants of the Supreme Court shall be fixed by the Chief Justice of India in consultation with the President." I would respectfully submit Sir, if the words 'approval of the President' are added here, it will destroy the independence of the judiciary. It can never be desirable to do so. The demand for the addition of these words betrays a fear that the judiciary might increase to such an extent the salaries of its employees as may not be acceptable to the Government. But I can say that similar apprehensions may be expressed by the officers of the judiciary with regard to the use of his powers by the President. Again it may be suspected with equal force that the legislature would arbitrarily increase the number of Ministers. To entertain such doubts about the President or the Chief Justice indicates that we do not have complete confidence in them. I beg therefore, to submit that it is not proper to trifle with the powers of the Chief Justice in this way. I appeal Sir, that the judiciary must be given the same status that the Legislature and Executive have got. On their co-ordination depends our future, our liberty and every other thing which we want to develop in our hand. If we trifle with the powers of any of them it may land us in a number of difficulties. The judiciary might negative all our liberty; the legislature might enact laws which might cripple the judiciary and similar apprehensions might arise in respect of the executive. Our welfare, therefore, lies in their co-ordination. There is no cause for suspicion in this respect which can justify the addition of the words 'with the approval of the President'. As regards the provision in Section 242 of the Government of India Act, I would submit that we are not concerned with what the old Government wanted to do. What we are concerned with today is that our judiciary should be entirely independent so that we can rely on it. For that it is essential that it should work independently and the President or the Legislature may not be able to interfere with it. It is, therefore, essential that its rights should not be reduced. As we are providing that the salary of the President would be a charge on the Government revenue, so also the salary of the Chief Justice should be a charge on the revenues of India. Similarly the expenses incurred on all the officers, whose independence is essential for the proper working of this Constitution, should also be charged on the revenues. Once you have provided a sum for them, the Chief Justice should have power to spend it as he likes, and the Legislature and Executive should not be able to interfere in that.

You have just passed the Directive Principles in which you have laid down that you want the separation of judiciary and the executive. I want to ask as to how you can effect it, if you do not allow the Chief Justice and his Department full liberty to spend. Do you want that for every petty post the Chief Justice will have to say it is essential and then send the proposal to the President, who ultimately means the Prime Minister and his Chief Secretary in that ministry and the Secretary etc. will comment as to whether the posts are necessary or not? Will it be proper that the Chief Justice should write for every post like this? There is no reason for you suspect that the one person in whose hands you would place the duty of maintaining the independence of India would not be duly discharging his duties. I respectfully submit that the underlying idea of these amendments is that we are apprehensive that the Chief Justice may spend too much money or contravene the constitution. There is no cause for such suspicion. We have seen in India that even under the British rule when the Judiciary was their own, it did not care for the executive. Do we not know that our Federal Court had invalidated section 26 of the Public Safety Act? If you wish that in this country we should have the same freedom as we have has hitherto, or rather that we should have more independence it is essential that the status of the judiciary should not be lower than that of the Executive or Legislature.

The Members of the Assembly might remember that at the time of discussion on article 15, the question had arisen whether the judiciary would have the right to say, once a law has been enacted by the Legislature, that it is in accordance with justice or not, as is the convention in America where the judiciary can express its opinion whether a law of the Legislature is legal or not so far as the life and personal liberty of an individual is concerned. At that time the question under consideration was whether the judiciary should be given so much power that it can even declare that any law enacted by the Legislature is not proper and valid. As such questions arise before you and as the House was, in a way, in favour of the proposal, I hope that in future too when any question arises, in this connection, the House would support the rights of the judiciary. When we want to give so many rights to the judiciary, I respectfully submit, that we should also not, owing to any fear, provide that for the posts of petty servants, the Chief Justice will have to depend on the Executive. This amendment is not proper and I oppose it.]

Shri Jaspat Roy Kapoor: Mr. President, Sir, I must confess that I do not feel happy either at the phraseology of this article 122, or at the idea underlying it. Sir, I yield to none in my desire that the judiciary of the country should be absolutely independent of the executive, but I think the independence of the judiciary must be confined only in respect of the administration of justice and under the garb of the independence of the judiciary, we should not go on empowering the judiciary to do things which fall ordinarily within the jurisdiction of the Executive or the Parliament. According to article 122, we are going to invest the Supreme Court, the Chief Justice and such of its other judges as may be nominated by the Chief Justice, as also some subordinate officers of the Supreme Court as may be nominated by the Chief Justice, with the right and authority of appointing many important persons, of filling up many important posts in the Supreme Court. I do not think Sir, there is any necessity for investing the Supreme Court with powers in respect of all these appointments. Then, Sir, we are not only going to invest the judiciary with this power, but we are going to give this power in an absolutely unfettered manner. Let us see what clause (1) says: "Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other judges or officer of the court as he may direct." and then it goes on: "Provided that the President may be rule require that in such cases as may be specified in the rule, no person not already attached to the court shall be appointed to any office connected with the court, save after consultation with the Union Public Service Commission."

Now, Sir, it is well and good that this proviso is being incorporated herein, but I feel, that in the place of the word 'may', there should have been the word 'shall'. The proviso should have definitely provided for consultation with the Union Public Service Commission. As I interpret it, it is liable to mean that the President may or may not make rule providing for consulting the Union Public Service Commission. For, it says, 'Provided that the President may be rule require........'. It does not mean that in all cases the Public Service Commission must necessarily be consulted. I would, therefore, have very much wished that it should have been made obligatory that the views of the Public Service Commission shall always be taken into consideration.

Coming to clause (2), we find that in the proviso it is laid down that the salaries, allowances and pensions payable or in respect of such officers, etc., shall be fixed by the Chief Justice of India in consultation with the President. Of course, wisely enough I should say, Sir, the Honourable Dr. Ambedkar has today moved an amendment to the effect that in place of the words "in consultation with", we should have the words 'with the approval of' the President. This after-thought of course is a welcome thing. But, I submit that it would have been much better if all these appointments were originally to be made by the President himself. The proviso, as it stands, means that at the outset it is the Chief Justice or some other person nominated by him, who shall apply his mind to this subject. He will select some persons, fix their salaries and allowances and he shall, thereafter, simply put the whole thing before the President for his approval. Now, Sir, this is placing the President in a rather awkward and embarrassing position. If a proposal comes from such a high dignitary as the Chief Justice, the President will feel great delicacy in not readily accepting those suggestions. Ordinarily therefore, he will think, "why should I come in conflict with the Chief Justice in these matters? Let him have his own way", though, if it were originally left to the President, his decision may have been probably very much different. I think, therefore, that it would have been much better that in this provision we should have had it laid down that all these things shall be decided by the President himself, and not by the Chief Justice with the approval of the President.

Then I come to clause (3) of this article. According to this clause, the rights and privileges of the Parliament are being encroached upon. The clause lays down: "The administrative expenses of the Supreme Court including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the revenues of India and any fees or other moneys taken by the court shall form part of those revenues." I specifically draw the attention of the honourable Members of the House to the words, 'shall be charged upon the revenues of India'. The implication of this clause is very serious, and of a far reaching character. It means that Parliament shall have absolutely no voice in this matter, and whatever the monetary proposals in respect of these appointments they shall not at all come before Parliament, and they shall stand accepted by the Government automatically, and the Parliament shall have absolutely no voice in the matter, and that this will not be subject to the vote of the Parliament at all. I see absolutely no justification why these salaries and allowances, etc., should not be subject to the vote of Parliament. I can quite understand that we should have such a provision with regard to the salaries and allowances of the Judges. That we have already provided when we passed the relevant articles in respect thereto. But, so far as even the ordinary Chaprasi of the Supreme Court is concerned, even so far as the ordinary punka-pullar of the Supreme Court is concerned, his salary shall not be subject to the vote of Parliament. Why? We should not suspect others; but we should trust ourselves too. If we are asked to trust others, let us not be told that we should not trust ourselves. We trust the Judges of the Supreme Court in many important respects; let us trust the Parliament also to do the right thing in the matters of fixing salaries etc. If a power is not necessary to be conferred on the Judges of the Supreme Court, why should we thrust it upon them and divest ourselves of our own rights and privileges? The salaries of its subordinate officers should certainly be subject to the vote of Parliament and should not be out of the jurisdiction of Parliament. Take for instance, the chief Justice of the Supreme Court places before Parliament...........

Mr. President: The honourable Member has taken much time. I do not think it is necessary to prolong the discussion. We are nearing twelve o'clock.

Shri Jaspat Roy Kapoor: I am finishing, Sir, Supporting the Supreme Court places a huge budget extending over a crore of rupees or more. If Clause (3) stands as it is, Parliament shall have absolutely no control over that and the whole amount would have to be granted to the Supreme Court. It is said that we should not expect the Supreme Court to make such absurd proposals. I admit they will not indulge in absurdity. But, there are certain things which are within the special knowledge of Parliament which may not be within the knowledge of the Supreme Court. The financial position of the country is within the special knowledge of the Parliament. The Supreme Court Judges being ignorant of the actual financial position of the country may draw up budgets involving very huge expenses. For these reasons, I submit that this article is not very well conceived, nor properly worded.

Shri Krishna Chandra Sharma: (United Provinces:General): Sir....

Mr. President: I hope the honourable Member will not take more than five minutes. I want to close the discussion of this article today.

Shri Krishna Chandra Sharma: Much has been talked about the independence of the judiciary. I do not quite understand where that question arises. There is nothing to restrict the independence of the judiciary so far as the article of the amendments are concerned. The original article 122 was that the Chief Justice of India will fix the salaries and allowances, etc., in consultation with the President. The amendment seeks only to substitute the word 'approval' for consultation. As my honourable Friend Mr. Jaspat Roy Kapoor said, it is not a question of independence or dignity of the Chief Justice of India. It is simply a question of the finances of the country. The President knows much better about the finances of the country and in accordance with the finances of the country, he will fix the salaries and allowances. There are other people in the administration of the country who would be putting in almost the same amount of labour, with the same capacity and qualification. Necessarily the same type of work with the same capacity, ability and qualification should carry similar salaries, allowances, pensions and other emoluments. So the question of independence of or the question of having any restriction or restraint whatsoever on the independence of the Judiciary does not arise at all. The appointment of the officers of the Court is entirely in the hands of the Supreme Court Judges and that should be so, because they have got to get work from these officers. In certain cases, when the President shall think fit, he is empowered to lay down rules that in certain classes of services, the Public Service Commission would be consulted, and there is no question here also of doing anything derogatory to the dignity and prestige of the Chief Justice. It is a question of State Policy, for the administration of the whole country. And so I commend both the amendments, for the acceptance of the House.

The Honourable Dr. B.R. Ambedkar: Mr. President, Sir, I would just like to make a few observations in order to clear the position. Sir, there is no doubt that the House in general, has agreed that the independence of the Judiciary from the Executive should be made as clear and definite as we could make it by law. At the same time, there is the fear that in the name of the independence of the Judiciary, we might be creating, what my Friend Mr. T. T. Krishnamachari very aptly called an *"Imperium in Imperio"*. We do not want to create an *Imperium in Imperio,* and at the same time we want to give the Judiciary ample independence so that it can act without fear or favour of the Executive. My friends, if they will carefully examine the provisions of the new amendment which I have proposed in place of the original article 122, will find that the new article proposes to steer a middle course. It refuses to create an *Imperium in Imperio,* and I think it gives the Judiciary as much independence as is necessary for the purpose of administering justice without fear or favour. I need not therefore, dilate on all the provisions contained in this new article 122, because I find that even among the speakers, who have taken part in the debate on this article, there is general agreement that certain clauses of the new article 122 are unexceptionable, that is to say, clause (1), clause (3) and even clause (2). The only point of difference seems to be on proviso to clause (2). In the original proviso, the provision was that with regard to salaries, allowances and so on and so on, the Chief Justice shall fix the same, in consultation with the President. The amended proviso provides that the Chief Justice shall do it with the approval of the President, and the question really is whether the original provision that this should be done in consultation with the President or whether it might be done with the approval of the President, which of these two alternatives we have to choose. No doubt, the original draft, "consultation with the President," left or appeared to leave the final decision in the hands of the Chief Justice, while the new proviso with the words "approval of the President" seemed to leave, and in fact does, and is intended to leave the final decision in the hands of the President. Now Sir, in deciding this matter, two considerations may be taken into account. One is, what is the present provision regarding the Federal Court? If honourable Members will refer to Section 216, sub-clause (2) of the unadapted Government of India Act, 1935, they will find that the provisions contained therein leave the matter to the approval-I am sorry it is section 242 sub-clause (4)- leaves the matter to the approval of the Governor-General. From that point of view, we are really continuing the position as it exists now. But it seems to me that there is another consideration which goes to support the proposition that we should retain the phrase "with the approval of the President" and it is this. It is undoubtedly a desirable thing that salaries, allowances and pensions payable to servants of the State should be uniform, and there ought not to be material variations in these matters with regard to the civil service. It is likely to create a great deal of heart-burning and might impose upon the treasury an unnecessary burden. Now, if you leave the matter to the Chief Justice to decide, it is quite conceivable- I do not say that it will happen-but it is quite conceivable that the Chief Justice might fix scales of allowances, pensions and salaries very different from those fixed for civil servants who are working in other department, besides the Judiciary, and I do not think that such a state of things is a desirable thing, and consequently in my judgment, the new draft, the new amendment which I have tabled contains the proper solution of this matter, and I hope the House will be able to accept that in place of the original proviso.

There is one other matter which I might mention, although it has not been provided for in my amendment, nor has it been referred to by Members who have taken part in this debate. No doubt, by clause (3) of my new article 122 we have made provision that the administration charges of the Supreme Court shall be a charge on the revenues of India, but the question is whether this provision contained in clause (3) is enough for the purpose of securing the independence of the judiciary. Now, 'speaking for myself, I do not think that this clause by itself would be sufficient to secure the independence of the Judiciary. After all, what does it mean when we say that a particular charge shall be a charge on the consolidated funds of the State? All that it means is this, that it need not be put to the vote of the House. Beyond that it has no meaning. We have ourselves said that when any particular charge is declared to be a charge on the revenues of India, all that will happen is that it will become a sort of non-votable thing although it will be open to discussion by the Legislature. Therefore, reading clause (3) of article 122, in the light of the provisions that we have made, all that it means is this, that part of the budget relating to the Judiciary will not be required to be voted by the Legislature annually. But I think there is a question which goes to the root of the matter and must take precedence and that is who is to determine what are the requirements of the Supreme Court. We have made no such provision at all. We have left it to the executive to determine how much money may be allotted year after year to the judiciary. It seems to me that that is a very vulnerable position and requires to be rectified. At this stage I only wish to draw the attention of the House to the provisions contained in section 216 of the Government of India Act, 1935, which says that the Governor-General shall exercise his individual judgment as to the amount to be included in respect of the administrative expenses of the Federal Court in any estimates of expenditure laid by him before the Chambers of the Federal legislature. So that if the executive differed from the Chief Justice as to the amount of money that was necessary for running properly the Federal Court, the Governor-General may intervene and decide how much money should be allotted. That provision now of course is incompatible with the pattern of the constitution we are adopting and we must therefore, in my judgment, find some other method of securing for the Chief Justice an adequacy of funds to carry on his administration. I do not wish for the moment to delay the article on that account. I only mention it to the House, so that if it considers desirable some suitable amendment may be brought in at a later stage to cover the point.

Mr. President: I shall first put to the House Dr. Ambedkar's subsequent amendment to his original amendment.

The question is:

"That in amendment No. 1967, for the proviso to clause (2) of the proposed article 122, the following proviso be substituted:-

'Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.'"

The amendment was adopted.

Mr. President: Now I shall put Dr. Ambedkar's amendment No. 1967 as amended.

The question is:

"That for the existing article 122, the following be substituted:-

"122 *Officers and servants and the expenses of the Supreme Court*-(1) Appointments of officers and servants of the Supreme Court shall be made by Chief Justice of India or such other judge or officer of the court as he may direct;

Provided that the President may by rule require that in such cases as may be specified in the rule, no person not already attached to the court shall be appointed to any office connected with the court, save after consultation with the Union Public Commission.

(2) Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other judge or officer of the court authorised by the Chief Justice of India to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave of pension, require the approval of the President.

(3) The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the revenues of India, and any fees or other money taken by the court shall form part of those revenues".

The amendment was adopted.

Mr. President: The question is :

"That article 122, as amended, stand part of the Constitution".

The motion was adopted.

Article 122, as amended, was added to the Constitution.

Article 123

Mr. President: The consideration of article 123 will stand over for the reason for which Article 109 to 114 have been held over.

The Assembly then adjourned till Eight of the Clock on Monday, the 30th May, 1949.

---

*[] Translation of Hindustani speeches.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS)- VOLUME VIII

Monday, the 30th May, 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

INDIA ACT, 1946 (AMENDMENT) BILL

The Honourable Dr. Syama Prasad Mookerjee (West Bengal : General) : Sir, I beg to move :

"That the Bill to amend the India (Central Government of Legislature) Act, 1946, be taken into consideration by the Assembly at once."

Sir, this Bill seeks to amend the India (Central Government and Legislature) Act of 1946 which was passed by the British Parliament on the 26th March 1946. The Object of this amendment is two-fold. First, it seeks to place cotton, (including ginned and raw cotton and cotton seeds) as one of the commodities which may be centrally controlled. In the second place, it seeks to define coal beyond any doubt and to lay down that coal includes coke and other derivatives of coal.

I shall deal with the second point first. Coal has been under Central control for the last few years and also coke and other derivatives of coal. Recently there have been one or two judicial decisions which have laid down that technically, coke does not come within the definition of coal. The matter was referred to the Law Ministry and we have been advised that it will be safer to amend the Act, give it a retrospective interpretation, and provide beyond all doubt that coal includes coke and all derivatives of coal.

So far as cotton is concerned, when the Defence of India Rules were in operation cotton was a Centrally controlled commodity. Later on as the House will recall, all the powers which were vested by the Central Government and the Central Legislature under the Defence of India Rules lapsed. A special amendment of the Government of India Act was made in March 1946, which I am here now asking your permission to amend further, giving certain powers to the Government of India for a limited period to legislate, if necessary, in respect of certain commodities.

Now these commodities normally fall within the provincial sphere. They were put in the Concurrent List. In other words, if the Central Legislature thought it wise that these commodities should be controlled centrally, that could be done for a period not exceeding five years. The list of such controlled commodities as the House will recall includes eight items : foodstuffs, cotton and woollen textiles, paper, petroleum and petroleum products, spare parts of mechanically propelled vehicles, coal, iron and steel and mica. Now at one stage it was thought that raw cotton also was included within the description of cotton and woollen textiles. But later on it was pointed out that cotton and woollen textiles meant cotton textiles and woolen textiles. If it meant cotton and woollen textiles, then cotton textile would go out of the purview of such a definition : which of course would become an absurd thing. Cotton, therefore, as the law at present stands, is a commodity which can be dealt with in the provincial sphere and in that sphere alone. Last year, after textile control had been re-imposed, it was the unanimous opinion of the provinces and other parties involved that cotton also had be controlled. We had no legal power to do it. We therefore drafted a Cotton Control Order and asked the provinces to pass legislative measures in pursuance of such control order. Some provinces did so and some provinces delayed. Then the States also came into the field and it took us quite a considerable time before we could persuade all the States to adopt a similar measure. Later on when it came to giving executive directions for enforcing such control order, a lot of complications arose because the Central Government had not the legal power to pass legislation or to take executive action. The matter was referred to the Provincial Governments and the Provincial Governments now all agree that it will be desirable to put cotton as one of the centrally controlled commodities. Of course, whether cotton will continue to be controlled or not, will depend on various factors which may change from time to time.

My main object today is to ask for an amendment of this Parliamentary Act which this House alone can amend and not the Central Legislature, so that, if the Central Legislature so desires, cotton may become a controlled commodity. After this Bill has been passed into law, then another Bill will have to be passed by the Central Legislature in order to include cotton as one of the commodities in the Essential Supplies Act, which already governs the eight commodities in the Essential Supplies Act, which already governs the eight commodities I have mentioned already. This is a simple and noncontroversial measure which has not evoked any amendment from any Member of the House. I hope the motion will be accepted without discussion.

Mr. President : The question : is

"That the Bill to amend the India (Central Government and Legislature, Act 1946, he taken into consideration by the Assembly at once."

The motion was adopted.

Mr. President : There is no amendment. So I will put the clause to the vote of the House.

The question is :

"That clause 1 to 4 stand part of the Bill."

The motion was adopted.

Clause 1 to 4 were added to the Bill

Mr. President : The question is :

"That the Preamble and the Title stand part of the Bill."

The motion was adopted.

The Preamble and Title were added to the Bill.

The Honourable Dr. Syama Prasad Mookerjee : Sir, I move that the Bill, as settled by the Assembly, be passed.

Mr. President : The question is.

"That the Bill, as settled by the Assembly, be passed."

The motion was adopted.

DRAFT CONSTITUTION-(Contd.)

*

Article 124

Mr. President : The House will now take up the consideration of the Draft Constitution-article 124.

There is an amendment (No. 1947) of Mr. Naziruddin Ahmad to the heading of this Chapter.

As it relates to the heading, we can pass it over.

I see that there is an amendment to add a New Part by Shri Gopal Narain No. 1973.

(The amendment was not moved.)

Now Amendment No. 25 of List I for the Third Week may be moved.

Shri T.T. Krishnamachari (Madras : General) : Mr. President, Sir, I move :

"That with reference to amendment No. 1975 of the List of Amendments, in Chapter V, for the word 'Auditor-General' wherever it occurs, (including the heading) the words "Comptroller and Auditor-General" be substituted."

The reason for this amendment is fairly simple. The function which the Draft Constitution imposes on the Auditor-General is nor merely audit but also control over the expenses of Government. Undoubtedly the term 'Auditor-General' has been all along used in the 1935 Act to include both these functions. But as it is quite possible the we might empower Parliament to enlarge the scope of the work of the Auditor-General, it was thought fit that the nomenclature of the Auditor-General, it was thought fit that the nomenclature of the Auditor-General should be such as to cover all the duties the devolve on him by virtue of the powers conferred on him by the Draft Constitution. The issue is fairly simply. It is merely a matter of a name which covers and duties now carried on by the Auditor-General and will be carried on by him in future. I hope the House will find no difficulty in accepting this amendment.

Mr. President : Then there is amendment No. 130, also of Shri T.T. Krishnamachari.

Shri T.T. Krishnamachari : There is another amendment to 1975.

Mr. President : You have given notice of amendment No. 130

Shri T.T. Krishnamachari : It is merely expanding the scope of amendment No. 1975. Either No. 1975 may be moved now or I will move my more comprehensive amendment.

Mr. President : Mr. B. Das may move amendment No. 1975.

Shri B. Das (Orissa : General) : Sir, I move :

"That in clause (1) of article 124 after the word 'President' the words 'by warrant under his hand and seal' be inserted."

Sir, this amendment I have given because the Auditor-General, like the Chief Justice of the Supreme

Court, is to be appointed by the President and therefore it is essential that the words "by warrant under his hand and seal" should be introduced.

Mr. President : Amendment No. 130 may now be moved.

Shri T.T. Krishnamachari : Mr. President, Sir, I move :

"That with reference to amendment No. 1975 of the List of Amendments, after clause (1) of article 124, the following new clause be inserted :-

`(1-a) Every person appointed to be the Comptroller and Auditor-General of India shall, before he enters upon his office, make and subscribe before the president or some person appointed in that behalf by him an affirmation or oath according to the form set out for the purpose in the Third Schedule.'"

Sir, this is more or less consequential to the amendment moved by my honourable Friend Mr. B.Das. The Office is now being ennobled by the appointment being made by warrant under the hand and seal of the President, As actually this procedure is followed only in the case of such appointments where the officer concerned has also to take an oath, it is felt that the lacuna may be remedied by the addition of the clause now proposed.

Mr. President : Amendment No. 1976 is not moved, as the House has already disposed of the principle underlying this amendment in connection with some other appointments in the Union.

Amendment No. 1977 is disallowed as of a drafting nature.

(Amendment No. 1978 and 1979 were not moved.)

Amendment No. 1980 is covered by another amendment moved by Shri T. T. Krishnamachari.

Then there are the two amendments to clause (4). One is 25-A of List

T.T. Krishnamachari : This is now superseded by No. 131 of List II

Sir, I move :

"That for amendment No 25-A of List 1 of Amendments to Amendments, dated the 28th May 1949, the following be substituted :-

'That with reference to amendment No. 1980 of the List of Amendments, for clause (4) of article 124, the following clause be substituted :-

(4) Subject to the provisions of any law made by Parliament, the conditions of service of members of the staff of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the Comptroller and Auditor-General :

Provided that the rules made under this clause shall, so far as they relate to salaries allowances, leave or pensions, require the approval of the President.'"

Sir, this is in substitution of clause (4) of article 124 and amplifies the idea contained therein. It also provides that the Auditor-General shall not merely consult the President but shall obtain his approval in regard to the fixing of the salaries, allowances and pensions payable to or in respect of members of his staff. All these hinge on the executive discretion of the authorities concerned, as they might affect the principle of parity with the other services under the Government of India. This is non-controversial and is merely an improvement on the present draft. I hope the House will accept it. Sir, I move.

(Amendments Nos. 25-B and 1981 were not moved.)

Shri T.T. Krishnamachari : Mr. President, Sir, I move :

"That with reference to amendment No. 1981 of the List of Amendments, for clause (5) of article 124, the following clause be substituted :-

(5) The administrative expenses of the office of the Comptroller and Auditor-General, including all salaries, allowances and pensions payable to or in respect of the Comptroller and Auditor-General and members of his staff, shall be charged upon the revenues of India.'"

Sir, the principle is exactly the same as in clause (5) of article 124, and the variation merely is that it covers the administrative expenses of the

Note :-Matter is not clear. certain expenses like contingencies, traveling expenses, etc., so that it really makes the picture complete. Nothing new has been put in. Sir, I move.

(Amendment No. 1982 was not moved.)

Mr. President : Now, the original article and the amendments moved are before the House for discussion.

Shri R.K. Sidhva (C.P. & Berar : General) : Mr. President, Sir, I have got only a very

few remarks to make in connection with this article and the amendments moved thereto. The Post of the Auditor-General is so very important that I will give it the first place so far as the financial provisions of this Constitution are concerned. The Auditor-General should be always independent of either the legislature of the executive. He is the watch-dog of our finance his position must be made so strong that he cannot be influences by anyone, howsoever great by may be. From that point of view I am very glad that certain amendments have been moved whereby the position of the Auditor-General has been made very strong. To that extent I welcome the amendments and also the article as duly amended. I also do not want that the Auditor-General should be responsible to the legislature, but I find that the amendment just now moved by my Friend, Mr. Krishnamachari, says :

"(5) The administrative expenses of the official of the Comptroller and Auditor-General, including all salaries, allowances and pensions payable to or in respect of the Comptroller and Auditor-General and members of his staff, shall be charged upon the revenues of India."

I take strong exception to this amendment by which the expenses of the Auditor-General and his office are made chargeable on the revenues of India. The system of charging certain things to revenue existed under the 1935 Act under extraordinary circumstances, when the Secretary of State rules this country. Now, we are ruling our country; we have done always with the British rule. As I said, the Auditor-General should be placed above the influence of anybody, but Parliament should not be deprived of its right to consider the question of his and his office's salaries and allowances. When we have a legislature responsible to the country, I fail to understand why this old system to charging certain items to revenue should continue. This would mean that the House will have no right of voting on these subjects. We shall no doubt have the right of discussing it, but this alone will not do. Under the new Constitution, we should do away with the system of charging anything to revenue. I therefore desire that this part of the article should be deleted. While as I said entirely agree that the Auditor-General should be made absolutely independent, I take very strong objection to this amendment which has been moved by Mr. Krishnamachari.

Shri B.Das : Sir, I do feel happy at the way this article 124 has been amended. I have been a member of the old Parliament for twenty-three years under the foreign rule, when the Secretary of State used to appoint the Auditor-General. Later during the war the Finance Member of the Government of India began to dictate terms to the Auditor-General. He was told that he was not to report against anything which did not agree with the whims and whimsicalities of the Finance Department. The Auditor-General was debarred from reporting any irregularities against the European officials of the time. After twenty-three years of hard suffering which some of us went through, we have thrown out the British rule. Therefore, it is necessary for the maintenance of the integrity of the Government of India and high moral principles of the integrity of the Government of India in public expenditure that the Auditor-General should be placed in the status wherein we have placed the members of the Federal Public Service Commission and also the Chief Justice of the Supreme Court of India. It is a happy day that the Drafting Committee thought fit and changed the draft by these two amendments, which have been moved by my honourable Friend, Mr. T.T. Krishnamachari.

I am surprised that my honourable Friend, Mr. Sidhva, did not agree on the matter of "charged" expenditure. Mr. Sidhva perhaps had forgotten under the British rule by order of the Secretary of State more than 75 per cent, of the revenues of India were non-voted. Under the new dispensation there are certain functions of the Government which must remain "charged". Then he forgot that in the demands for Budget grants which have to be passed in the Parliament the interest on borrowed money is a charged expenditure. There are certain other items which are charged. The expenditure of the Governor-General now and later, of the President, is charged to Governor-General's extravagance or the extravagance of the Auditor-General or the Supreme Court. We have already placed on the charged list especially the Supreme Court. Why should we fight shy in placing the Auditor-General on the charged list, so that he knows the supply sanctioned by Parliament? the amendment which my honourable Friend, Mr. T.T. Krishnamachari has moved says :-

"Provided that the rules made under this clause shall, so fare as they relate to salaries, allowances, leave or pensions, require the approval of the President".

Our chosen Cabinet elected by the very Parliament is there. Then the President who functions as the mouth-piece of the Cabinet will see................

Shri R. K. Sidhva : Then make everything chargeable.

Shri B.Das : You will have to accept the "charged expenditure". There are other items which should not be interfered with by Ministries, because every Ministry today always exceeds its sanctioned expenditure and resists any Budget control and any financial control. Surely, my honourable Friend, Mr. Sidhva knows that 118 crores worth of supplementary estimated came on the 31st of March 1949 for sanction by Parliament. So, if the Auditor-General and he staff are not placed at a certain high level, it will be very difficult for them to discharge the responsibility that the Constitution Act impose on the Auditor-General or, similarly on the Federal Public Service Commission or on the Supreme Court Judges. Therefore, certain items of expenditure should remain "charged", as also the interest charges, so that the executive need not interfere. Of course, Parliament can interfere by raising debates and discussions and nobody will deny that right to my honourable Friend Mr. Sidhva. I have great pleasure in supporting the amended article 124.

Shri Biswanath Das (Orissa General) : Sir, the amendment proposed by my honourable Friend, Mr. T.T. Krishnamachari represent the compromise between two opposite points of view. Before I proceed to justify the amendment moved by my honourable Friend, it is better that I place before honourable Members a picture of the activities of the Auditor-General and the Controller.

It would be wrong to say that any power, prestige or responsibility of the Legislature has been limited or restricted by the proposals brought forth by the amendment proposed by my honourable Friend. We have to realize that it is the Legislature that is competent to pass laws. The interpretation of law is being left to the judiciary. Sir, it is the Assembly that sanctions money to be spent by the executive and the executive is the proper authority to spend monies as are sanctioned by the Legislature. Who is the authority that is to audit whether the money sanctioned by the Legislature has been spent properly? To discharge this onerous responsibility, a new authority has been created under the law by the Legislature and that authority is no other than the Auditor-General. Having thus defined the functions of the executive and the Auditor-General in a definite and specified manner, the question arises as to how is the Auditor-General to function. Sir, I will just now refer to amendment 25-A to article 124 which has been moved just a few minutes ago, which lays down that all appointments to the staff of the Comptroller and Auditor-General shall be made by him or such person as he may direct. This gives power to the Auditor-General to re-appoint the existing staff. Then we come to (4a) which give him power to appoint additional staff that may be required for the purpose. Regarding this, I am again invite the attention of honourable Members to the proviso which specifically restricts the powers of the Auditor-General even by the Head of the executive, namely the President of Indian Republic. I will read it for the benefit of the Members of the House.

"Provided that the rules made under this clause shall so far as they relate to salaries, allowances, leave or pensions, require the approval of the President."

Even, I for myself would have desired to wipe of this proviso because it mars the independent action, and independence to the extent of the Auditor-General by putting him in a position where he has to depend on the executive for getting approved to rules that relate to salaries, allowances or leave. To this extend the Auditor-General, instead of being independent of the executive, is made dependent on the executive. Therefore, my honourable Friend, Mr. Sidhva will please see that the amendment proposed by Mr. T.T. Krishnamachari represent merely a compromise. You have reserved to yourself the approval of the President, the Head of the executive, which means approval of the Cabinet, and which means the authority of the Cabinet, and which means the authority of the Legislature behind the Cabinet to the rules framed regarding salaries, allowances, leave or pensions Therefore, nothing more is called for. The proposed charged amount is some thing different, absolutely different from that which has been provided under the Government of India Act of 1935. The British Parliament have made provisions anticipating that there may be conflict between the legislatures, and the executive with the Governor-General, but here there is absolutely no conflict contemplated. I will again invite the attention of honourable Members to article 125 which reads : "The Auditor-General shall perform such duties and exercise such powers in relation to the accounts to the Government of India and of the Government of any State as are or may be prescribed by or under any law made by Parliament." On the other hand it will be seen that the Auditor-General and Comptroller is absolutely left to the mercy of the legislature Provision for a charged amount has been made only to avoid a clash and deadlock in future in the operation of the responsibilities of the Central Executive and the Auditor-General. Therefore, the provision is a sane one, is a necessary one, is a very desirable one and represent not one view, but merely a compromise view of the two conflicting sets of views.

With these words, I support Mr. Krishnamachari's amendments.

Mr. President : I do not think further comment is necessary on this.

The Honourable Dr. B.R. Ambedkar :(Bombay : General) : Mr. President, I cannot say that I am very happy about the position which the Draft Constitution, including the amendments which have been moved to the articles relating to the Auditor-General in this House, assigns to him. Personally speaking for myself, I am of opinion the this dignitary of officer is probably the most important officer in the Constitution of India. He is the one man who is going to see that the expenses voted by Parliament are not exceeded, or varied from what has been laid down by Parliament in what is called the Appropriation Act. If this functionary is to carry out the cuties-and his duties, I submit, are far more important than the duties even of the judiciary appointment of officers and servants of the Supreme Court. I see both from the -he should have been certainly as independent as the Judiciary. But, comparing the articles about the Supreme Court and the articles relating to the Auditor-General, I cannot help saying that we have not giving him the same independence which we have given to the Judiciary, although I personally, feel that he ought to have far greater independence than the Judiciary itself.

One difference, if I may point out, between the position which we have assigned to the Judiciary and which we propose to assign to the Auditor-General is this. It is only during the course of the last week that I moved an amendment to the original article 122 vesting in the Supreme Court the power of original draft as well as from the amendments that are moved that the Auditor-General is not to have any such power. The absence of such a power means that the staff of the Auditor-General shall be appointed by the

Executive. Being appointed by the Executive, the Staff shall be subject to the Executive for disciplinary action. I have not the slightest doubt in my mind that if an officer does not possess the power of disciplinary control over his immediate subordinates, his administration is going to be thoroughly demoralised. From the point of view, I should have thought that it would have been proper in the interest of the people that such a power should have been give to the Auditor-General. But, sentiment seems to be opposed to investing the Auditor-General with such a power. For the moment, I feel that nothing more can be done than to remain content with the sentiment such as it is today. This is my general view.

Coming to the amendments, I accept the amendments moved by Mr. T.T. Krishnamachari and one amendment moved by Mr. B. Das, No. 1975. These amendments certainly to a large extent improve the position of the Auditor-General which has been assigned to him in the Draft Constitution or in the various amendments. But, I find that even with the article as amended by these amendments. Mr. Sidhwa seems to have a complaint. If I understood him properly, his complaint was that the expenses of the Auditor-General should not be made a charge on the Consolidated Fund, but that they should be treated as ordinary supplies and services which should be voted upon by Parliament. His position was that there is no good reason why Parliament should be deprived of its right to discuss the charges and the administrative expenses of the Auditor-General. I think my honourable Friend Mr. Sidhva has completely misunderstood what is meant by charging certain expenses on the revenues of India. If my honourable Friend Mr. Sidhva will turn to article 93, which deals with this matter, he will find that although certain expenses may be charged upon the revenues of India the mere fact that that has been done does not deprive Parliament of the right to discuss those charges. The right to discuss is there. The only thing is that the right to vote is not given. It is a non-votable item. The reason why it is made non-votable is a very good reason because just as we do not want the Executive to interfere too much in the necessities as determined by the Auditor-General with regard to his own requirements, we do not want a lot of legislators who might have been discontented or some reason or other or because they may have some kind of a fad for economy, to interfere with the good and efficient administration of the Auditor-General. That is why this provision has been made. My Friend Mr. Sidhva will also realise that this provision is not in any way extraordinary. It is really on a par with the provision we have made with regard to the Supreme Court. I therefore think that there is no good ground for accepting the criticism that has been made by Mr. Sidhva on this point.

Sir, I move that the article as amended be adopted. I accept the amendments Nos. 25 in List I, 1975 of Mr. Das, 130 of Mr. T.T. Krishnamachari, 131 of Mr. T.T. Krishnamachari and 25-C of List I also by Mr. Krishnamachari.

Mr. President : I will now put the amendment to vote.

The question is :

"That with reference to amendment No. 1975 of the List of Amendment, in Chapter V, of Part V for the word 'Auditor-General' wherever it occurs, (including the heading) the words

'Comptroller and Auditor-General' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That in clause (1) of article 124 after the word 'President' the words 'by warrant under his hand and seal' be inserted."

The amendment was adopted.

Mr. President : The question is :

"That with reference to amendment No. 1975 of the List of Amendments, after clause (1) of article 124, the following new clause be inserted :-

`(1a) Every person appointed to be the Comptroller and Auditor-General of India shall, before he enters upon his office, make and subscribe before the President or some person appointed in that behalf by him an affirmation or oath according to the form set out for the

purpose in the Third Schedule.'"

The amendment was adopted.

Mr. President : The question is :

"That for amendment No. 25-A of List-I (Third Week) of Amendments to Amendments, dated the 28th May 1949, the following be substituted :-

"That with reference to amendment No. 1980 of the List of Amendments, for clause (4) of article 124, the following clause be substituted :-

`(4) Subject to the provisions of any law made by Parliament, the conditions of service of members of the staff of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the Comptroller and Auditor-General :

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.'"

The amendment was adopted.

Mr. President : The question is :

"That with reference to amendment No. 1981 of the List of Amendments, for clause (5) of article 124, the following clause be substituted :-

`(5) The administrative expenses of the office of the Comptroller and Auditor-General, including all salaries, allowances and pensions payable to or in respect or the Comptroller and Auditor-General and members of his staff, shall be charged upon the revenues of India.'"

The amendment was adopted.

Mr. President : The question is :

"That article 124, as amended, stand part of the Constitution.

The motion was adopted.

Article 124, as amended, was added, to the Constitution.

*

New Article 124-A

Mr. President : Article 124-A notice of which has been given by Professor Shah.

Prof. K.T. Shah (Bihar : General) : Sir, I beg to move :

"That the following new article be added :-

`124-A. The Auditor-General shall be appointed from among persons qualified as Register Accountants or holding any other equivalent qualifications recognised as such, and having not less than ten years' practice as such Auditors.'"

Sir, this is very important because the practice has been all along, ever since the Finance Department has been Department has been organised, to have the Auditor-General appointed from the members of the Civil Service. The members of the Civil Service have a particular type of education, and develop a particular outlook which does not necessarily have specific reference to the duties and functions of an Auditor-General. If we wish the duties of the Auditor-General to be carried out with efficiency and completeness that is necessary for the proper audit of our accounts, I think it is important to lay down qualifications which will provide for practical experience and technical knowledge in the person appointed as Auditor-General. The system of Government accounting is on the basis of actual cash receipts and disbursements closing on a giving date but in view of the large commercial undertakings that the State is beginning to be committed to and in view also of the variety of dealings that the State has to enter with businessmen, contractors and so on, I think it is important that the audit of accounts should be by those who are familiar with the business practices and as such are able to give efficient service. I have laid down qualification of a Registered Accountant as the minimum, though actually according to the latest legislation these will be described as Charted Accountants having certain years' practice. The important point however is that they must have technical qualifications and also practical experience of auditing accounts. The promotion from service of transfer from the ordinary public service, whether called Indian Administrative of Indian Civil Service is I think, not suitable for purposes of this highly specialised appointment. Just as in regard to the judicial appointments we have required special training and experience and not mere membership of the service, so here too I suggest that it would be important if we lay down in the Constitution certain qualifications requiring the necessary technical training and practical qualifications. The actual amendment is in this respect a modes

tone requiring not more than ten years' practical experience but in practice the appointment, if the amendment is accepted, would be from amongst top men. The income from practice of such men is under present conditions very high, perhaps far higher than the State would be able to pay but at the same time the status, dignity, respect and importance that would necessarily be attached to such office would make it attractive even to men of that eminence, just as judicial office is also attracting the legal practitioners with the highest income. I accordingly commend this motion to the House.

Mr. President : Does anyone wish to say anything?

Shri T.T. Krishnamachari : Mr. President, Sir, I must say that Professor Shah's amendment is an original one and quite in conformity with ideas prevalent in the commercial world but I am afraid it is out of tune completely with existing practice in the matter of the appointment of the Auditor-General in this country and elsewhere. Actually the man who is an Auditor-General is not an accountant per se. He has a number of other duties to perform and in so functioning he has got to have a knowledge of the entire administration and I think the present method of appointment of Auditors-General in India is perhaps the best. We had some very good Auditors-General who were administrators and who had been in the Finance Department and who have functioned as Accountants-General in various places and who had held other important responsible positions, so that it is not merely a question of arithmetic or accounting knowledge that is necessary but a comprehensive knowledge of the entire administration. From that point of view I think the House will readily concede that the view taken by Professor Shah, however plausible, is extremely narrow. A person who has got the qualification of only Registered Accountant and nothing else, which will probably be the case if you rule our administrative experience, will not suit as an Auditor-General. Having some experience of Registered Accountants myself I do not think it is a type of work that is impossible for anybody else who has got a comprehensive knowledge of administration and accounting to get to know. All the knowledge of a Registered Accountant is certainly known to a person who holds the position of an Auditor-General in the Government of India or Accountant-General and I see no reason why I should support Mr. Shah's view and ask the

House to accept his amendment which if anything will upset the arrangement that now exists and will make it very difficult for the future Government to choose an appropriate person to function as Auditor-General. Sir, I oppose the amendment.

Shri Lakshmi Narain Sahu (Orissa : General) :* [Mr. President, I support the amendment moved by Prof. K. T. Shah on this ground that if a man working as an Auditor-General does not know the work of auditing how can be appointed as an Auditor-General does not know the work of auditing how can he be appointed as an Auditor-General. We have passed the Charted Accountants Bill. According to it, only that man shall be a registered Accountant who has carried out audit work for at least ten years, otherwise not. And those who have been doing the Government audit work for ten years or more (sie) will perhaps be left out; but those who are G.D.A.'s will have to work for one year to work for one year to become registered accountant. We have placed so many limitations over them only with a view that our audit work may be carried out efficiently. Hence the man, who would be our topmost auditor, must have some degree and standard of auditing. I cannot understand how he can be appointed if he does not possess any degree. I, therefore, support the amendment of Prof. K.T. Shah and feel that it should be accepted.]

Mr. President : I do not think there is anybody else wishing to speak on the motion. I shall now put it to vote.

The question is :

"That the following new article be added :-

'124-A. The Auditor General shall be appointed from among person qualified as Registered

Accountants or holding any other equivalent qualifications recognised as such and having not less than tea years' practice as such Auditors.'"

The amendment was negatived.

*

Article 125

Mr. President : Then we come to article 125, to which there is amendment No, 1984, standing in the name of Pandit Hirday Nath Kunzru.

Pandit Hirday Nath Kunzru (United Provinces : General) : Mr. President, I ask for your permission to omit all reference to local authorities in my amendment. If you permit me to do so, my amendment will read as follows :-

"That in article 125, for the words 'and of the Government of any State', the words 'the Government of any State or any other authority' be substituted."

"That in article 125, for the words 'and of the Government of any State', the words 'the Government of any State or any other authority' be substituted."

The object of my amendment is to provide that Parliament should have the power to confer additional duties on the Comptroller and Auditor-General. We are creating corporations now, and we have already created the Damodar Valley Corporation. We shall, doubtless, create more such corporations in future. So far as I remember, the Damodar Valley Corporation Act, while it allows the Corporation to get its accounts audited by auditors appointed by it, also permits Government to impose any duties on the Auditor-General in that connection that it likes. I want, Sir, that this position should be maintained, particularly as the number of such corporations is going to increase. The Indian Railway Enquiry Committee have recommended the establishment of a Railway Authority for the management of the Railway. If it comes into existence, this Authority will control property worth six or seven hundred crores, and expenditure running into about two hundred crores. Since all the property under the autonomous corporations will belong to the Government, it is necessary that Parliament should have the power, should it so desire, to assure itself of the soundness of the financial position of the authorities created by it, by asking the Auditor-General to perform such duties in connection with the examination of their accountants, as it thinks proper. IT may not be necessary for Parliament to do so. But it should have the power to direct the Auditor-General to examine the accounts of the corporations created by it. The State has invested, or will invest crores upon crores of rupees in these corporations. Now, this does not mean any distrust of these corporations. I do not wish to cast any reflection on the honesty of the members of these corporations or the auditors appointed by them; but as a general principle, I want that the power of the Auditor-General should be capable of expansion so that Parliament may have an independent authority at its disposal in order to satisfy itself of the soundness of the management of the authorities created by it.

---

*[] Translation of Hindustani speech.

I hope, Sir, that this amendment, which is in accordance with what has been done already in connection with the Damodar Valley Corporation Act, will be accepted by the House.

(Amendments No. 25-D And No. 1985 were not moved.)

Mr. President : Amendment No. 1986, by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I move :

"That for the Explanation to article 125, the following Explanation be substituted :-

`Explanation.-In this article, the expression `law made by Parliament' includes any law, ordinance, order, bye-law, rule or regulation' passed or made before the commencement of this Constitution and for the time being in force in the territory of India.'"

The House probably will remember that the functions of the Auditor-General are regulated not by law made by Parliament, but by Ordinance, order, bye-law, rule or regulation, etc., made by the Government-General, under the powers conferred upon him by the Government of India Act, 1935. Consequently, in order to keep alive the ordinances, orders,

by-laws, rules and regulations made by the Governor-General, it is necessary to amplify the explanation so as to include these orders also.

Shri R.K. Sidhva : Mr. President, Sir, this article related to the duties and powers which will be prescribed by Parliament for the Auditor-General. Now, Sir, we have just passed an article conferring independent powers, to a great extent, on the Auditor-General. Now, this article leaves it to Parliament to make laws in connection with many other matters. While I welcome the independence of the Auditor-General-and I entirely agree with what Dr. 'Ambedkar said, and I give him credit for adding the word "Comptroller" to the Auditor-General, so that he may have all the powers as far as audits are concerned,-I fail to understand why for certain other important powers, Parliament has been asked to make laws. To give one illustration. At present, the Auditor-General has no right to pass a bill beyond the Budget grant. There is a law to that effect made by the Executive. Despite that, if a Ministry exceeds the budget grant and the Auditor-General brings it to the notice of the Minister concerned, the latter asks the Auditor-General to pass the bill, because the Minister believes that he enjoys the confidence of the House and if the item is brought as a supplementary grant before the Assembly it would be granted. At present despite the rule the Auditor-General is helpless. He simply puts the rubber stamp of audit objection and at the instance of the Minister concerned passes the bill. So the object of the rule made by the executive is frustrated by the Auditor-General over-riding the rule, because he also feels that the Minister enjoys the confidence of the House and therefore he feels why should he object to the item. Sir, if the Minister feels that because he enjoys the confidence of the House he could make the Auditor-General pass the bill, it would be a mockery of democracy. It will not be a government of the people, for the people and by the people. Because the minister enjoys the confidence of the people it does not mean that he should flout the decision of Parliament. That is a very important point and I want it to be put into the Constitution that the Auditor-General shall not pass any amount which is beyond the budget grant. As I said the other day, from my experience, 130 crores of rupees, not a small amount, was passed as a supplementary grant on the 31st day of March and the House passed it helplessly; though every Member was opposed to it, they did not want to embarrass the Ministry. If such a provision was in the Constitution nobody would have dared, nor the Auditor-General, nor the Minister, nor the House to flout the Constitution Laws may be flouted, rules or regulations may be flouted but the Constitution cannot be flouted. I therefore expect my Friend Dr. Ambedkar to consider the matter and give the Auditor-General the fullest power and not allow anybody to interfere with him. If you allow 130 crores to be passed on the ground of emergency (Rs. 130 crores is one third of the total amount of the budget). it would be very regrettable and undesirable.

I entirely agree with the amendment of my Friend Mr. Kunzru. I would go further and state not only local authorities but local bodies should also be included. From my experience of twenty-seven years I can state that the control over the accounts of local bodies is absolutely a failure. If any local body wants the assistance of the Auditor-General and his staff, it should be allowed. The local bodies are in a rotten state. and the loan of a staff by the Auditor-General, would improve matters.

With these words I hope that Dr. Ambedkar will consider the first point I have suggested.

Dr. P.S. Deshmukh (C.P. & Berar : General) : Sir, the amendment move by Mr. Kunzru wants to provide for the Auditor-General's powers to cover not only the accounts of the Governments but also of several independent corporations and other bodies. So far as the article is concerned there is a provision by way of an explanation which makes it

possible for the parliament to give authority to the Auditor-General over any particular organisation or body and make suitable provisions in the laws of Parliament promulgated from time to time. The Explanation has now been amended by an amendment proposed by Dr. Ambedkar and by this amended explanation not only any existing laws but also ordinances, bye-laws, rules and regulations passed before the commencement and for the time being in force are included.

Besides this we have the following words "as are or may prescribed by or under any law made by Parliament", and they occur in the main body of the article. In view of this I do not think the amendment that has been proposed is necessary. After all the purpose is that not only the Government's accounts but the accounts of all these important bodies that will come into being from time to time shall be under proper audit and that aim will be fulfilled by the

Note :- Matter is not readable. be up to the Parliament to see whether the authority of the Auditor-General is necessary and to make adequate provision for the same. Therefore it is not necessary to include in this article local bodies and all other miscellaneous corporations and organisations. I therefore submit that since the article has adequate provision for this purpose there is no need to accept the amendment moved by Pandit Kunzru.

Mr. Friend Mr. Sidhva drew the attention of the House of the importance of the office of the Auditor-General and wanted a provision that at any times the Auditor-General shall not permit any expenditure over and above budget provisions. I think that provision is also unnecessary. We have had the experience of last year when the budget estimates were not respected to the extent they should be. That was however an exceptional happening and I do not think any democratic parliament will permit its recurrence. In any case the rule that no government or organisation or executive shall exceed the amount of expenditure provided in the budget is a well-understood one and it is not necessary to make provision regarding it in the Constitution. It is a most fundamental rule that the budget provision shall be respected and no expenditure in excess of the budget provision shall be made. I do not think it is necessary to include it in the Constitution. If at any time this salutary and fundamental principle is disregarded or violated by the executive the Parliament should be alert enough to punish it adequately.

The Honourable Dr. B. R. Ambedkar : Sir, with regard to the amendment of my friend Mr. Kunzru I am prepared to accept it provided he is prepared to drop the words "or any local"........

Pandit Hirday Nath Kunzru : I have dropped them.

The Honourable Dr. B. R. Ambedkar : Because local audit is a matter which is within the control of the Provincial Governments. But the addition of the words "other authority" I think may be necessary or even useful. As he has himself said the policy of the Government of

India today is to create a great many corporations to manage undertakings which it is not possible to manage departmentally and consequently it is necessary that the Government of India should make some provision for the audit of these corporations. That being so I think it is desirable to vest the Central Government with power to allow the Auditor-General to audit even the account of all such authorities. Subject to the modification I have suggested I am prepared to accept the amendment.

With regard to the point made by my Friend Mr. Sidhva the many of these rules with regard to the duties of the Auditor-General are made by the executive and therefore, since by the amendment which I have suggested we are continuing to give these powers the same operation which they had before, we are practically investing the Executive with the authority to prescribe the duties of the Auditor-General. Obviously, there is an incongruity in the position, in that an officer who is supposed to control the Executive Government with regard to the administration of the finance should have his

duties prescribed by rules laid by the Executive. Now, the only reply that I can give to my honourable Friend, Mr. Sidhva, is this that these provisions have been taken bodily to a large extent from the provisions contained in section 151 of the present Government of India Act, 1935, which deal with the custody of public money, and section 166 which deals with the rules made by the Governor-General with regard to the duties of the Auditor-General. Under the scheme of the Act the rules were required to be made by the Governor-General in the exercise of what is called his individual judgment, that is to say, he would not be required to take the advice of his Ministry in making these rules. To that extent the rules made by the Governor-General prescribing the duties of the Auditor-General would undoubtedly be independent of the Executive. Today we are not vesting the President with any such power of independent judgment so that if any modification in these rules were to be made by the President he would undoubtedly be acting no the advice of the Ministry of the day, that is to say, the Executive. I admit that to that extent there is a certain amount of anomaly, but I do hope that my honourable Friend, Mr. Sidhva, who, I hope, will continue to function as a Member when the new Parliament is constituted, will take on himself the earliest opportunity of urging Parliament to change the position and to convert the rules into laws made by Parliament.

Mr. President : The question is :

"That in article 125, for the words 'and of the Government of any State', the words 'the Government of any State', the words 'the Government of any State or any other authority' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That for the Explanation to article 125, the following Explanation be substituted :-

'Explanation.-In this article, the expression 'law made by Parliament' includes any law, ordinance, order, by-law, rule or regulation passed or made before the commencement of this Constitution and for the time being in force in the territory of India.'"

The amendment was adopted.

Mr. President : The question is :

"That article 125, as amended, stand part of the Constitution."

The motion was adopted.

Article 125, as amended, was added to the Constitution.

*

Article 126

Mr. President : Article 126.

(Amendment No. 1987 was not moved.)

Mr. President : The question is :

"That article 126 stand part of the Constitution."

The motion was adopted.

Article 126 was added to the Constitution.

*

Article 127

Mr. President : Article 127.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in article 127, for the word 'Parliament' the words 'each House of Parliament' be substituted."

It is only a formal amendment.

Mr. President : The question is :

"That in article 127, for the word 'Parliament' the words 'each House of Parliament' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That article 127, as amended, stand part of the Constitution."

The motion was adopted.

Article 127, as amended, was added to the Constitution.

*

New Article 127-A

Mr. President : Then there is notice of an amendment for adding a new article, article 127-A- that is amendment No. 1989 by Professor Shah.

Prof K. T. Shah : Sir, the principle of this having been rejected by the House earlier, I do not want to move it.

*

Article 128

Mr. President : Article 128.

Mr. Naziruddin Ahmad has given notice of an amendment regarding the heading of the Chapter; that we shall leave out now.

Amendment No. 1991 is a negative one and cannot be moved.

1992 is of a drafting nature, I think.

Shri T. T. Krishnamachari : Sir, the word "State" has been current right through; so the amendment need not be accepted.

(Amendment Nos. 1993 and 1994 were not moved.)

Mr. President : So, there is no amendment to article 128.

The question is :

"That article 128 stand part of the Constitution."

The motion was adopted.

Article 128 was added to the Constitution.

*

Article 129

Mr. President : There are a number of amendments. To begin with, there is an amendment by Mr. Naziruddin Ahmad relating to the heading of the Chapter. We shall leave it over.

(Amendments Nos. 1996 and 1997 were not moved.)

Shri Lakshmi Narain Sahu : *[Mr. President, I move :

"that the following be added at the end of article 129 :-

of whom there shall be a least one from each of the States of Part I of the First Schedules.'"

---

*[] Translation of Hindustani speech.

I mean to say that there should be one Governor from each of the States. It means that, in all the provinces constituted by us, each should have one of its men as Governor. Unless it is done the self-respect of each and every province could not be maintained. Therefore, I would like to introduce that every province should have at least one man as Governor. If the election is held it will take place there, otherwise he would be selected out of the panel. If he is not appointed as a Governor in his own province he can be appointed as such in some other province.

I come from Orissa and I find that in the present Central administration we have no representation, in the service. All provinces are there in foreign service, but we have no share in it as yet. This makes us limited to such an extent that our province cannot make any progress. I, therefore, want that sufficient attention should be paid to this.

Shri R. K. Sidhva : May I know whether the Mover wants that the Governor should be from that very province?

Mr. President : I understand what he means is this. There shall be one Governor from each State, though he may be posted to another province.

The next amendment stands in the name of Pandit Lakshmi Kanta Maitra. He is not moving it. So only one amendment has been moved to this article.

Shri Brajeshwar Prasad (Bihar : General) : Mr. President, I do not know how far it will be permissible for me to express the views I hold dear to my heart. I feel that there is no necessity for a Governor in any province of India. The Commissioner of a Division may be brought under the administrative superintendence, direction and control of the Centre. Vest more powers in the hands of the Divisional Commissioners. I feel that the existence of a legislature, a Ministry, and a Governor is harmful in the interest of all the provinces.

Sir, nobody knows more than you, how Provisional administrations are being run these days. I understand that what I am saying runs counter to the accepted principles of provincial autonomy, federalism and democracy. I plead for a change of attitude. When we accepted provincial autonomy, we were under British rule. We then raised the slogan in order to oust British Power from India. We knew well that the British people were not prepared to give any concession or power at the Centre. The provinces were the weakest link in the chain. Even there they did not vest full autonomy. They had reserved powers in their own hands. Now the times have changed. Provincial autonomy means distrust of the Centre. This distrust was justified at that time because at the Centre there was foreign rule. Now we have got freedom. How is it possible or desirable or necessary now to vest powers in the hands of the Provinces and appoint a Governor who has got practically no power? He is a mere puppet. If so, why should we have these Governors?

One thing more, Sir, before I conclude. Now it is well recognised that the doctrine of separation of power has been exploded. This doctrine has got not only relevance to the question of separation of judiciary from the legislature and the executive, it has got a vital bearing upon the whole question of federalism. It means separation of powers. If the doctrine of separation of powers has been exploded, then the whole federal structure crashes, crumbles and goes down. I feel that by not hurrying through the Constitution since 1946, we have stood to gain. Now it has been

stated that we must hurry up, because we have taken too much time. By taking too much time in passing the Constitution, we have managed to do certain thing which we would have been unable to do if we had passed the Constitution in 1946 or 1947. Firstly, the States have been integrated. This would not have been possible if we had passed the Constitution in 1947. Such Constitutional changes it is not easy to make

The Constituent Assembly has the power to change or make any new law, Sardar Patel has been able to integrate the Indian States, from new States, dissolve certain units and merge the State with different provinces. Secondly, if we had passed the Constitution in 1947, the provision for the reservation of seats for the different minorities in India would have been incorporated in it. By waiting, we have achieved what in 1947 appeared to be impossible.

Sir, I feel that the whole Chapter, Part VI of the Constitution should not be hurried through. We are quite content with the present Government of India Act. We have got the power to amend it to suit our changing needs and conditions. Today within five minutes the Honourable Dr. Mookerjee was able to get a Bill passed here. If it had been in a different House, it would have probably taken a few hours to pass it. I do not see any reason why we are in such a great hurry to pass the Constitution. Probably we look more to international opinion and to the opinion of our Anglo-American friends, to the opinion of the capitalist press and to the opinion of those who have no sympathy with our national aspirations and hopes. I hope more emphasis is laid upon the existing conditions in India. What is today required is that there should be rapid i improvement in the economic condition of the poor people and in the removal of illiteracy. Instead of doing these things we are trying to impose a new Constitution on the people and waste public money on elections. I, Sir, oppose article 129.

Dr. P. S. Deshmukh : Sir, I rise to support the point of view just placed before the House by my honourable Friend. It is known to many Members of the House that it was with this intention that I had given notice of a resolution. In that resolution I wanted that the basis of our Constitution should be altered from semi-unionistic and semi-federalistic to a proper unitary system. It was with that end in view that I had given notice of a resolution by which I wanted that the present condition of world politics made it imperative that India should be a well-knit, homogeneous and powerful nation so that she may play a prominent and decisive part for the maintenance of world peace. I then in my resolution stated the various causes that led me to that conclusion. Some people will say : 'Why was this not pressed when we were drafting the Constitution? Fortunately or unfortunately the present administration has made apparent the pitfalls and the dangers of the present basis of the Constitution far more than anybody could have or did anticipate or imagine. Actual experience has shown that the present Constitution has many dangers ahead and I think it will be for the good of India if we could avoid those dangers and take a somewhat revolutionary decision to do away with the present basis of the Constitution. And where was the present basis of the Constitution laid? It was not laid in Delhi. It was not laid anywhere in India. It was laid in Britain and it was intended to meet a far different situation than the one with which we are faced at the present day. The draft Constitution is a mere reproduction of the Government of India Act of 1935. The ever-increasing demands of Mr. Jinnah, separate electorates, reservations & weight ages, the existence of tiny little States spread over the whole length breadth of India, that was the problem that we were trying to meet and to solve by meeting several times in London in Round Table Conferences and it was for meeting the political exigencies of that situation in India that the framework of the Constitution which we are trying to copy at present was really shaped and hammered. I think that this Constitution and the principles underlying it are entirely foreign to the genius of our people and I have been all along urging that we must search our hearts and find out a political solution for the administration of our country in a way which will be more suited to the genius of people of this country. We do not now have the abstacle of the States in our way. We do not have the intransigence of the Muslim League in our way. Under these circumstances why should we do not take the only logical step and decide upon a unitary type of constitution by which we will have the fullest co-operation of our people, by which we will be able to harness the energies and intelligence of the Indian people as a whole and by which we will be able to build the Indian nation far more quicker and at the expense of much less energy than would be the case if we retain the fundamental of this Constitution?

The main point, Sir, which I have urged in this Resolution is the apparent instability of the Ministries in the States, Unions and in the provinces. We read everyday in the papers, almost every morning, of some conflict or other between the various provinces and of lack of co-operation with the Centre. We have had the instance of the Agricultural Minister complaining bitterly, when we are meeting as the Legislative Assembly, that he was not receiving the co-operation of the provinces in regard to the rehabilitation of the refugees. There are also questions about the systems and methods of provincial taxation. Only this morning's paper told us about the incidence of the sales tax imposed by the various provinces. I am told on reliable authority that whatever article comes to the C.P. is charged sales tax in the province of Bombay because it has necessarily to go through that province, and the same article is again charged with a sales tax in the C.P. also. Apart from this, Sir, there are many financial issues over which we will talk for days and days before we can come to any decision. We get proposals from the provinces which are diametrically opposed one to the other. There is perpetual demands for greater subsidies from the Centre.

Then there is the question of linguistic provinces. We know that the whole country at the present time is agitated over this issue. We have had one or two Committees appointed to go into the question but unfortunately instead of making an improvement in the situation, the situation is worsening to be sorrow of many thinking people. Now, so long as we want provinces to be maintained, we cannot but grant linguistic provinces. We might with difficulty, after using all the influence that our leaders command, be able to stave off or postpone this issue of linguistic provinces for a short time but certainly and surely linguistic provinces will be there and even if my Friend, Mr. Munshi, does not want Bombay to be included in Samyukta Maharashtra, he will never be able to prevent it. So, my solution for all these difficulties,0and the greatest difficulty of them the demand for the creation of linguistic provinces over which people's minds are exercised to such an alarming extend,-is to take away the autonomy of the provinces. When once you do this, all quarrels and jealousies will disappear. The quarrels are there and the jealousies are there only because the provinces are there. When there is only one government at the Centre, there is only one legislature, one Ministry and one law, all these quarrels and jealousies will disappear and it would also be possible then do harmonise all these demands and claims in such a way that no difficulties will remain. So from all these points of view, I would very much request the honourable Members of this House to search their hearts and see if the unitary system is not the only logical, suitable and practicable system of government for this country. After all, federalism is consistent only with the desire of the people to have union and not unity. But in India everybody desires unity, not only union. That being the general feeling of

people, I do not think it will be wise on our part to brush aside my resolution by saying that it is too late to adopt any fundamental change in our Constitution. When once the principle is accepted, the whole Constitution will become very simple. The whole Constitution can be hammered out with complete satisfaction to all within about two or three weeks. Even if we are not able to do so, there will not be any difficulty because so long as the unitary system is there, you will have all the subject with the Centre and there will not be any necessity for discussing what should be concurrent, what should be provincial and what should be Central. I want all honourable Members to think seriously and say whether this is not for the good of India, for India emerging as a strong nation and not having to go through all the dangers and ultimately coming to the same thing. If we do not accept this proposal now, it will come fifteen years hence I have not a shadow of doubt about it. Then it will be rather too late. By that time there will be so much time lost; so many quarrels, enmities and antagonisms may arise in the whole of India that although you will come back to the unitary system but it will be too late. All these fruitless sacrifices and tribulations, will all be saved if you adopt the system now. Therefore I would urge all honourable Members of this House to give more thought to this proposal and see if it is not possible for them to accept it. It is not too late to mend even today.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS)- VOLUME VIII

Monday, the 30th May, 1949

Mr. President : I would ask honourable Members to confine themselves to the article which is under discussion. I have allowed Dr. Deshmukh to express his views on the larger question because I know he has held those views all along very strongly. I have given him an opportunity to express those views but beyond that we should confine ourselves to the article under discussion.

Shri R. K. Sidhva : I am very glad that you have give the ruling because several times I wanted to stand on a point of order but I thought that I should not task the odium. After we have decided on the broad principle of this Constitution, both the speakers previous to me were out of order. That is my humble submission. You have now made the position very clear. Otherwise I would have taken fifteen minutes to refute those arguments. I hope, Sir, no other Member will be allowed to say anything on this matter. Dr. Deshmukh took the opportunity to express his views on his resolution which was ruled out by the Steering Committee.

Now, Sir, coming to Mr. Sahu's amendment, his amendment states that each province should be given an opportunity to send a Governor. I sympathise with the idea that every province should have the opportunity to send Governors to the various provinces. While I entirely agree with the present procedure of appointing Governors not from the same province but from some other province, I do feel that each province should have this right provided they possess persons of merit and qualifications to become Governors. That should not be ignored; otherwise Governors must not be sent from only one or two provinces. While I entirely agree with this argument, I do feel it is not proper to put an amendment in the Constitution and it should be left as it is. The subject will come hereafter when we take up the question of the appointment of Governors and then we might discuss the matter further. Sir, while I agree with the views expressed that each province has got able to men to govern, it should be borne in mind when the appointments are made that the various provinces are not forgotten. Despite my views, I do not like this amendment to go into the Constitution.

Shri Rohini Kumar Chaudhuri(Assam : General) : Mr. President, Sir, I want to make it perfectly clear to the honourable Members to my party as well as to the honourable the Chief Whip that I oppose this amendment which has been moved by Mr. Sidhva.

Mr. President : He has not moved any amendment.

Shri Rohini Kumar Chaudhuri : I am sorry; I refer to Mr. Sahu. Mr. Sidhva's name is in my mind because he made a very astounding proposition today. He goes to the length of saying that every province has able men. If he looks at the facts, he will find that he is completely mistaken. Is there any able man in Assam? If there was any man, he would have found a place either in the Ministry or in the State Ministry or Sub-State Ministry or in any governorship of a province. If there was any able man in the province of Assam, he might have found his way to places outside India, either in an Embassy or in some such post. There are no such able men in Assam. There are eminent judges in India and those judges have decided that there is not a single person in Assam who is able either to act as a Governor or be appointed in the Ministry or in the State Ministry or in an Embassy. Secondly, is there any able man in Orissa? Is there any one in Orissa any man from Orissa who has found a place in any important place either in the Ministry or in an embassy or holding the post of a governor? You must admit that you cannot say. You cannot say that the person who are responsible for choosing people for these appointments are not sound responsible persons or who do not exercise sound judgment; you cannot say that, and therefore, the proposition which is laid down by my honourable Friend, Mr. Sidhva is absolutely incorrect. We must wait. Able men must be born; they must be qualified and they will in due time take places in

these provinces.

Then, Sir, I oppose my honourable Friend, Mr. Sahu, on the ground that his amendment is absolutely premature. If article 131 is accepted by this House, namely, that the Governor in every province shall be elected, in that case you can get your Governor from your own province. If in a province no man of the province is elected as a Governor, then it is the province which has to blame itself. The only possible way, as far as I can see, for getting a man of a province raised to a position of a Governor, will be to allow that post to be an elected one. If an election is held automatically, I suppose ten to one, you will get one of the men of the province elected to that post. Otherwise you will never get that position. I also oppose Mr. Sahu's amendment on the ground that his argument is absolutely wrong, for supposing the post, instead of being elected, is held by person nominated, then what will be the position? I can challenge him that instead of one for each province, if you say three for each province, you will not get it; so long as it remains to be a nominated office, there is very little chance.

Mr. President : May I point out that the question of election or appointment is not before the House yet? This article does not deal with the method of the appointment of the Governor.

Shri Rohini Kumar Chaudhuri : I most respectfully submit that Mr. Sahu's amendment is quite premature for if the post is an elected one, then the question of a man coming from some other province does not ordinarily arise, because, if he is elected, the men of that province will elect a man of the same province ordinarily and therefore, that question does not arise. The amendment of Mr. Sahu would only arise in case it is presumed that this office will not be an elected office; in that case only this arises and in that case we can say that in filling up the post by nomination care should be taken to see that each province gets a share in the position of Governor. So, I say on the ground, I oppose the amendment of Mr. Sahu, which is premature now.

Well, Sir, so long as you lay down that the office will be a nominated one you cannot expect every province to get a share. Let us look at actual facts at the present moment : The Bombay people have three posts as Governor, the U.P. and Delhi have three Governors whereas and important province like Bihar and Bengal have not any governor of their own; and in Bengal there is none at present, even though there was, of course, Mrs. Sarojini Naidu, who was a Bengalee and therefore, I submit that if you give it entirely to nomination, you must leave it to the pleasure of the person who nominates and you cannot lay down a condition that you must nominate from every province; and although I oppose the motion of Mr. Sahu, I am in entire sympathy with him and I think till we settle this policy regarding nomination, the claims of each province will be certainly satisfied.

Shri T. T. Krishnamachari : Sir, the question be now put.

Mr. President : The question is :

"That the question he now put."

The motion was adopted.

Mr. President : I shall put the amendment to vote.

The question is :

"That the following be added at the end of article 129 :-

'and of whom there shall be at least one from each of the States of Part I of the First Schedule.'"

The amendment was negatived.

Mr. President : The question is :

"That article 129 stand part of the Constitution."

The motion was adopted

Article 129 was added to the Constitution.

*

Article 130

Mr. President : Amendment No. 2000 is of a drafting nature.

Prof. K. T. Shah : Sir, I beg to move :

"That in clause (1) of article 130, for the word 'may' the word 'shall' be substituted."

The amendment article would read thus :

"The Executive power of the State shall be vested in the Governor and shall be exercised by him accordance with the Constitution and the law."

There is a considerable force in the substitution suggested by me in this amendment. The Constitution should make it imperative

upon the Governor to use his powers in accordance with the Constitution and the law, that is to say, on the advice of his Ministers, as provided for in the subsequent clauses and in other parts of the Constitution. The Governor has a considerable number of powers, not necessarily those for which Ministers are responsible to the legislature, but other powers as well to be exercised in his discretion, so it is said. I suggest that, under the new system that we are inaugurating, in the democratic regime that we are establishing under this Constitution, it is but right and proper that the Executive head of a State shall use his powers in accordance with the law and the Constitution, that is to say, on the advice of his Ministers where such powers or actions in accordance with those powers are likely to involve any item of ministerial responsibility. It is not merely a verbal change I have suggested; it is an important change in principle and I hope it will commend itself to the House.

Mr. Mohd. Tahir (Bihar Muslim) : Sir, I beg to move :

"That in clause (1) of article 130, after the word 'may' the words on behalf of the people of the State be inserted."

Sir, if the amendment is accepted, the article would run thus :

"The executive power of the State shall be vested in the Governor and may on behalf of the people of the State be exercised by him accordance with the Constitution and the law."

The intention of moving this amendment is quite obvious and simple. I want that the Governor while exercising his powers in the province, must do so on behalf of somebody and that somebody is nobody but the people of the province. Therefore, I think it is necessary that this should be mentioned in the Constitution that the Governor ought to exercise the power on behalf of the people of the State.

With these words, I move.

(Amendment No. 2003 was not moved.)

Mr. President : Amendment No. 2004; is it not of a drafting nature?

Mr. Naziruddin Ahmed (West Bengal : Muslim) : No, Sir.

Mr. President : If you consider it to be substantial, you may move it.

Mr. Naziruddin Ahmed : Sir, I beg to move :

"That in sub-clause (a) of clause (2) of article 130, for the words 'transfer' to the Governor any functions conferred by any thing existing law on the words 'authorise or empower the Governor to exercise any power of perform any functions which by any existing law

Sir, the existing context says,

"Nothing in this article shall-

(a) be deemed to transfer to the Governor any function conferred by any existing law or any other authority;"

My objection is to the expression "transfer to the Governor any functions." I submit that functions really adhere to certain offices and functions are never transferred. All that you can do is to empower certain other persons to exercise certain functions of powers attached to a particular office. 'Function' as has been defined in Murray's Oxford English Dictionary is "a kind of action proper to a person.......being the holder of any office." I think functions really are a part of the powers exercisable by a person in office. I have therefore attempted to suggest that nothing in this article shall authorise or empower a Governor to exercise any power or perform any functions which by any existing law are exercisable or performable by other authorities. The words "transfer of functions" would be improper. I cannot say that the amendment is not at all of a drafting nature; it partakes of an amendment of a drafting nature. But I think the word 'transfer' is not suitable with reference to 'functions' and that is why I have thought it fit to draw the attention of the House to this.

(Amendment No. 2005 was not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, this article is an exact reproduction of article 42 which deals with the executive power of the Union. There is no change made at all. Word for word this article is a reproduction of article 42. I find from the book of amendments that exactly similar amendments were tabled to article 42 and they were debated at great length. I do not think I can usefully add anything to what I said in the course of the debate on article 42 and the amendments thereon. Therefore, I submit that I am not prepared to accept any of the amendments that have been moved here.

Mr. Naziruddin Ahmed : Sir, article 42 is in another context.

Mr. President : The question is :

"That in clause (1) of article 130, for the word 'may' the word 'shall' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in clause (1) of article 130, after the word 'may' the words 'on behalf of the people of the State' be inserted."

The amendment was negatived.

Mr. President : The question is :

"That in sub-clause (a) of clause (2) of article 130, for the words 'transfer to the Governor any functions conferred by any existing law on' the words 'authorise or empower the Governor to exercise any power or perform any function which by any existing law are exercisable or performable by' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That article 130 stand part of the Constitution."

The motion was adopted.

Article 130 was added to the Constitution.

*

Article 131

Mr. President : As regard this honourable Members will see that there are two alternatives suggested by the Drafting Committee. The amendments are relating to either her one or the other alternative. So I think the best way is to take an amendment in favour of one of the alternatives and if than is accepted, then all the other amendments relating to the other alternative drop automatically. We take 2006 and if this is carried, then we go to the second.

The Honourable Shri Ghanshyam Singh Gupta (C. P. & Berar : General) : Sir, I suggest this. The amendments of course may be taken. But first we might from our opinion as to whether we want the first or second alternative so that if we want the first alternative, then the amendments to that alternative only will be considered and the other alternative will go away.

Mr. President : That is exactly what I suggested but it was felt that the best course will be to take the amendments.

The Honourable Shri Ghanshyam Singh Gupta : Supposing we take the other alternative and then the amendments, the first alternative will not be taken at all.

Mr. President : If 2006 is carried, all the amendments to the other alternative will drop.

Shri L. Krishnaswami Bharathi (Madras : General) : There is a third alternative.

Mr. President : That can come in as an amendment to one of the alternatives.

Shri Brajeshwar Prasad : Sir, I refer to 2015 stands in my name.

Mr. President : I shall take that up. That will come as an independent one. We will first dispose of 2006. Mr. Gautam.

An Honourable Member : What about appointment question?

Mr. President : We are taking up the article dealing with election. Then we shall take up the question of appointment. First we want to get rid of the question of election one way or the other.

Shri L. Krishnaswami Bharathi : Both may be negatived.

Mr. President : There are amendments to the second alternative.

Shri L Krishnaswami Bharathi : If the amendment regarding appointment by President is carried, all other amendments will fall to the ground.

Mr. President : It is only a question of the order in which the amendments are taken. I want to dispose of the question of election first.

Shri T. T. Krishnamachari : The choice of the alternative may be left to the move. Dr. Ambedkar may say which be proposes to move. Normally the procedure will be to move a particular article. The Chairman of the Drafting Committee will be the person to make the choice. If you allow it to him, that will solve the problem. He might move one of the alternatives. This procedures is going to come in the way of normal procedure later on. So, I think the best thing is to leave the discretion to the mover. If you recognise Dr. Ambedkar as mover, then he may be asked to move one or other of the alternatives.

Mr. President : Is Dr. Ambedkar

prepared to accept one of the other alternatives?

The Honourable Dr. B. R. Ambedkar : Sir, I want to say a word regarding the procedure to be followed. taking the article 131, as it is, no doubt it is put in an alternative form. The two alternatives have one thing in common viz., that they propose the Governor to be elected. The form of election is for the moment a subsidiary question. As against that, there are three or four amendment here which set out a principle which is completely opposed to the two alternative drafts of 131 and they suggest that the Governor should be nominated. If the amendment which proposes that the Governor should be nominated were to be accepted by the House, then both the alternatives would drop out and it will be unnecessary for the House, then both the alternatives would drop out and it will be unnecessary for the House to consider them. Therefore my suggestion would be that it would be desirable to take up No. 2010 of Mr. Gupta, and then Mr. Kamath's and then No. 2015. If this matter was taken up first and the House came to the conclusion on whether the principle of appointment by the President should be accepted, then obviously there would be no purpose served in discussing article 131 in either of its alternative forms. That would be my suggestion subject to your ruling in the matter.

Mr. President : There are several amendments which support the idea of election or appointment by President. The other amendments are regarding the method of election. First I want to get rid of the question of election so that all amendments relating to method of election will go. Then we can take up the question of appointment and the appointment in that case will be by the president.

Shri Alladi Krishnaswami Ayyar (Madras : General) : If the question of appointment of not is taken up first, that will automatically eliminate the election question. I agree with Dr. Ambedkar's view in the matter.

Mr. President : There is bound to be discussion on this because three seems to be some difference of opinion. So we shall take up the second alternative of Mr. Gupta. Here also he brings in one element of consultation. I think we had better take up No. 2015.

Shri H.V. Kamath (C. P. & Berar : General) : I submit 2011 is substantially the same.

Mr. President : 2007 is also the same. Any of these may be moved and then we shall accept the wording. 2006 we leave out. 2007 will be the same. 2015 may be moved.

Shri K. M. Munshi (Bombay : General) : 2015 is more complete.

Shri H. V. Kamath : What about my amendment?

Mr. President : It is not as complete as 2015.

Shri Brajeshwar Prasad : Sir, I beg to move :

"That for article 131, the following be substituted :-

`131 The Governor of a State shall be appointed by the President by warrant under his Land and seal.'"

The Great merit of this amendment which stands in the name of five or six Members of this House is that it lays down a simpler procedure than that prescribed either in the article or in the alternatives suggested by the Drafting Committee.

I feel, Sir that in the interest of All-India unity, and with a view to encouraging centripetal tendencies, it is necessary that the authority of the Government of India should be maintained intact over the provinces. To say that the President may nominate from a panel of names really means restricting the choice of President. It gives power into the hands of the Legislature. It is necessary, Sir, that the President should be free from the influence or from another province. Personally I feel that the man from a province should not be appointed in the same province, because it gives encouragement of fissiparous tendencies. So I say the choice of the President should be unrestricted and unfettered. Sir, I have nothing more to add. This is a simple proposition and I commend it for the acceptance of the House.

Mr. President : Then there are other amendments relating to election. I shall have them moved, and then we can have general discussion. There is the one by Mr. Naziruddin Ahmad, the other

by Shri Mihir Lal Chattopadhyay. There is the first alternative by Mr. Gupta, and then there is amendment No. 2013 by Pandit L. K. Maitra and others. There are several others which all deal with election. So I shall take one of the. I think No. 2013 seems to be the most comprehensive of these. But which shall we take up? Those who are in favour of election may choose any one of these, and whichever they choose, I shall allow to be moved. Those who favour election may choose any one of these amendments, favouring election.

Mr. Mohd. Tahir : I have got my amendment No. 2019.

Mr. President : That is different, and it comes after election. We are now on the question of election.

Pandit Lakshmi Kanta Maitra (West Bengal : General) : Sir, Amendment No. 2013 is the most comprehensive one, but I am not permitted by the party to move it.

The Honourable Shri Ghanshyam Singh Gupta : If you put the amendment just now moved, then the whole thing will be solved. If it is carried, then there will be no necessary for any other amendment. The discussion can now take place.

Mr. President : I take it there is no other amendment going to be moved.

The Honourable Shri Ghanshyam Singh Gupta : If this amendment is defeated, then the other amendments will come in.

Mr. President : Then let us dispose of this amendment first. Seeing that there is not much difference of opinion, I hope there will not be much discussion.

Shri H. V. Kamath : Mr. President, Sir, I rise to support the amendment-No. 2015-which has just been placed before the House by my honourable Friend Shri Brajeshwar Prasad. The amendment I gave notice of-No. 2011 is substantially the same as the one moved by him, except for the legal or constitutional terminology added to it. There is another point-a very minor one-which I would like to point out before I proceed to the substance of the motion.

Mr. Mohd. Tahir : Sir, on a point of order. During the discussion of this Draft Constitution the House on an earlier occasion unanimously passed that the Governor shall be elected. I would like to know, in view of this, whether any Member can be permitted to move any amendment against this decision of the House. The main principle was discussed and decided upon by this House, and this second alternative is only a creation of the Drafting Committee. So, can any Member be permitted to move any amendment which goes against election of the Governor?

Mr. President : It is open to this House to alter its own decision. This comes in as an alternation of a previous decision. It is open to the House to reject it. So there is no point of order.

Shri H. V. Kamath : The words "of a State" occurring in the amendment are more or less redundant. If we turn to the Chapter dealing with the President, we find that once mention has been made of the President, the subsequent article 43 regarding the election of the President, does not mention or use the words "of India". On that analogy, I thought, the words "of State" here might have been usefully omitted in the interest of brevity. Anyway, I am not particular about it and I support the amendment as it has been brought before the House which is substantially the same as mine.

My friend Mr. Tahir raised an objection and said that the House had on an earlier occasion adopted another method of chosing the Governor of the State. It is quite true. During the August 1947 session of this Assembly-I am reading from the Reports of Committees, Second Series-the Assembly adopted an article to the effect that for each Province there shall be a Governor to be elected directly by the people on the basis of adult suffrage. But, Sir, as you rightly pointed out, this is a sovereign Body which can alter its own decisions, and to my mind there have been sound reasons why the decision should be altered today in the light of the circumstances that have arisen since the passing of that article in August 1947. As the House will recollect, the scheme envisaged in the July-August session, 1947,was more of a federal type than....

Shri

Lakshminarayan Sahu : On a point of order, Sir. Rule 32 of Rules of Procedure says that :

'No question which has once been decided by the Assembly shall be re-opened except with the consent of at least one-forth of the members present and voting."

Mr. President : And I have assumed that more than one-fourth of the Members present are in favour of it. If you want it, I can actually ascertain it. I think more than one-fourth are in favour of it.

Shri Biswanath Das : Sir, is it left for assumption or have you actually taken the sense of the House?

Mr. President : I have not actually taken the sense of the House, because I know it is so. If you want, I can take it now.

Shri T. T. Krishnamachari : A ruling has already been given. It is open to any Member to question it now?

Shri H. V. Kamath : During the August Session of 1947, the House will recollect that we adopted certain articles on the Executive where this State of India has been referred to in more than one place as a Federation. But in the Draft Constitution which we are considering today that word has to my mind deliberately and with sound reasons been deleted, and article I which we passed in the last session of this Assembly reads that India shall be a Union of States. Therefore, the emphasis today is more upon the Union pattern of our State than upon its Federal aspect. My Friend, Dr. Deshmukh, just an hour ago, spoke on his resolution favouring a strong unitary system of government for India. Much can be said in favour of his proposition of this particular junction in our country's affairs. But, Sir, there is one thing to be noted as regards this and it is this : the constitution which we are framing today is not intended merely for the state of transition, but is intended to last for many decades to come, for such periods or times when happily by the Grace of God we have settled down to the tasks of reconstruction. Our people in the provinces have already got used to the system of provincial autonomy. They have had a taste of it during the last ten years of more, and I suppose now it is not wise for us to do away with the system of provincial autonomy or water it down in any measure. If at all, subject to the strength and the stability of the country as a whole, it is essential for us to given in course of time, more powers to the people in every province. But, Sir, the crux of the matter here is this. What type of Government are we going to suggest or prescribe for these provinces, or the States in the new Constitution, which will be the units of administration or governance? If the object of the Constitution is to have a parliamentary or cabinet from of Government in every State, then it is patent, it is obvious that the method of choice by direct election is absolutely inappropriate and unacceptable. It is an admitted fact that one of the essentials of successful cabinet government in a province or in the country as a whole is the existence of a fairly impartial constitutional head, who is more or less a symbol or a constitutional figure-head. If the Governor were to be elected by the direct vote of all voters in a province he is very likely to be a party-man with strong views of his own, and considering that he will be elected by the whole province-by the entire adult population of the province-he will think that he is a far superior man and a far more powerful man that the Chief Minister or Premier of the State who will be returned from one constituency only, but because he happens to be the leader of the majority party, he will be nominated Premier by the Governor. There will be two conflicting authorities within the State : one is the Premier, whom, under this Constitution which we are considering today, we have invested with executive authority so far as the State is concerned, and the other is the Governor, who, though the Constitution does not confer on him very substantial powers and functions, will arrogate much to himself, because he will say that "I have been elected by the people of the whole province and as such I am persona grate with the people and not the Chief Minister". Therefore there will be in the administration of the province at every turn-if not at every turn, then very often-points of conflicts or friction between the elected Governor and the elected Chief Minister. Therefore, I think we have done very wisely in deleting or in doing away with the system of election for the Provincial Governor.

As regards the other system of election from a panel, there are several objections to that as well, so far as the choice of a Governor of a Province or a State is concerned. Suppose the Legislature of the State submits a panel of four or five names to the President for selection and suppose the President- because after all every one is guided ultimately by his own views or conscience or his own judgment in every matter-chooses not the first nominee but the second, or third or fourth or the nth. Then the Legislature of the State will certainly have a grouse against the man chosen by the President because he has been chosen in preference to the first man. Therefore the relations that will ensue from this appointment of one from among the panel,-the relations between the Ministers or Legislature in the State and this new Governor-will not be very cordial and happy.

Another consideration as regards this matter is this : always in an election-whether it is a small electorate or a large one-there are, what I may call, factions coming into being-factions or groups jockeying each other for power. Even if there is a solid, cohesive party within a Legislature, it is very likely that when they know that a panel of names is going up to the

President for the appointment of a Governor, there will be groups within the party, each group favouring one of their own favourities, and the group feelings and passions that would be roused during the election on the panel system are likely to persist during the following years, and will not make the working of the party or the cabinet in the province very happy or conducive to amicable relations between the people and the Ministry in the province.

I will therefore submit, Sir, that on the whole, considering the pros and cons of election vis-a-vis appointment, the latter is far preferable. I do not like the word nomination at all. I think it is a very unpleasant word to use in this regard, because it is really not nomination by the President but it is appointment. There was an amendment to that effect but, I see, it has not been moved and I just referred to it in passing.

Lastly, I would say that it may be argued against the amendment that has been moved by my friend Shri Brajeshwar Prasad, and which I am supporting, that the Governor is not absolutely a figure-head : he is not just a symbol. The objectors will point out to articles 188 and also 187, which have invested the Governor with powers in grave emergencies and with power to promulgate ordinances respectively. As regards the first, article 188, it will be seen that the maximum period during which the Governor will be invested with these extraordinary powers is two weeks. Of course you can work wonders or tyranny even within twenty-four hours. But the House will see that the Governor has to forthwith inform or communicate to the President the action that he has taken. Therefore, really speaking the Governor practically divests himself of responsibility as soon as possible in any situation that may arise in the state on account of the emergency, and the President takes all the powers in his own hands, and the whole country will be governed as under Part XI of the Constitution-article 275 to 278.

The ordinance-making power is distasteful to me and I moved some amendment in connection with these powers of the President a couple of days ago. But Dr. Ambedkar himself argued against the amendments of mine which tried to limit the powers of ordinance-making by the President. He said that it was nothing extraordinary and that is was only a power given to the President at times when the Parliament was not in session, and visualising the possibility of Parliament sitting continuously, almost the whole year, he assured the House that the need for ordinance-making by the President will not arise. I hope the same argument will apply here too. In view of the fact that the legislative business will be very heavy in the States as well as in the Centre, I am sure that the state legislatures as well as the Parliament at the Centre will be almost continually in session, and the need for ordinance promulgation by the Governor in the States just as in the case of the President at the Centre, as pointed, out by Dr. Ambedkar, will not arise. I therefore submit, taking all in all-no system in perfect-considering the constitution as a whole, considering the powers given to the State legislatures, so the State cabinet and the relations between the units and the Centre, I think that the lesser-most evil is this system of opportunities by the President of the Governors in the various States. I, therefore, support the amendment and commend it to the acceptance of the House.

Shri B. A. Mandloi (C. P. & Berar : General) : Sir, I crave your permission to move my amendment No. 2007 as it is more comprehensive, inasmuch it deals with the first alternative also.

Mr. President : Amendment No. 2007 is the same as No. 2015, which has just been moved.

Shri B. A. Mandloi : But the second part is not moved. My amendment deals with both the alternatives. The first alternative is to be deleted and in the second alternative some modification is suggested.

Mr. President : If the second is carried the first alternative goes automatically.

Sardar Hukam Singh (East Punjab Sikh) : Sir, I oppose the amendment moved. I am afraid those of us who have given notice of amendments have been placed somewhat at a disadvantage, because the House is do decide on a question without hearing us and without appreciating what we have to say on our respective amendments. I have also one amendment No. 2006 in my name in my opinion the second alternative suggested was the best course. It steered a middle course. On the side there is the election of a governor of a State. I agree with my honourable Friend Mr. Kamath that it would be expensive as well as troublesome to go to the polls too often. And there is the danger of a conflict between the Governor and the Premier as well. At the same time I think these should not be so much discretion left with a Governor. Also when he has to act on the advice of one party, it might be abused. There might be favouritism. In my opinion the second alternative suggests a course which provided some check against such favouritism. If there was a panel to be provided by the legislature of the State, certainly even then the ultimate power of appointment would lie with the ruling party or the Governor and they can choose whosoever suits them best. In that case the merits of those individuals who have been recommended in the panel would be before the public and if the right man is not chosen certainly the public shall have a right to criticise the selection and that would work as a wholesome check against my favouritism or abuse or power. So in my opinion the second alternative was the best between the two extremes of pure election and pure nomination. Therefore I oppose the present motion.

Shri Alladi Krishnaswami Ayyar : Sir, in view of the decision that was reached some two years ago and in view of the fact that I feel convinced that the only right course, taking all the circumstances into consideration, is to accept the amendment of Mr. Brajeshwar Prasad, I should like to say a few words in support of the amendment. In the consideration of this question, the main points to be remembered are that this Assembly has accepted the introduction of responsible government in the different States, that the Governor is merely a constitutional Head of the province and that the real executive power has been vested in a ministry responsible to the Lower House in the different States. The question for consideration before this House is whether, under these circumstances, there is any point in going

through an expensive and elaborate machinery of election based upon universal suffrage. After giving my best consideration to the various proposals put forward, (1) of a choice of the Governor on the basis of universal suffrage, (2) of election of the Governor by a majority of the Lower House or of both Houses whether on the principle of proportional representation or otherwise, (3) of a selection of a panel by the Lower House in the State from which the choice is to be made by the President of the Union or (4) of appointment by the President in consultation with the Cabinet, I feel that the wisest course to adopt is the last one. If the Governor is properly functioning as the constitutional Head, the expenses involved in going through the process of election is out of all proportion to the powers vested in the Governor under the Constitution. There is also the danger of the Governor who has been elected by the people at large getting into a clash with the Premier and the Cabinet responsible to the Legislature which itself has been elected on the basis of universal suffrage. Again, the election itself under modern conditions will have to be fought out on a party ticket. The fact is that even at or during the elections the party will have to rally round a leader who will presumably be the future Premier of the Province. Is the rallying to be round the Governor's name or the Premier's name? In the normal working of the Government also there is danger of a clash between the Minister and the Governor, whereas the whole basis of the constitutional structure we are erecting depends upon the harmony between the legislature and the executive, and between the executive and the formal head of the Government. There is no correspondence between the Governor of a State in the United State of America and a Governor under our Constitution. In the case of a Governor of a State under the United States Constitution, the real and substantial executive power is vested in the Governor. There is a distinct separation between the executive and the legislature in the United States. A proper analogy has to be sought for in the Constitution of Canada where a responsible Governor obtains. In Canada, the lieutenant-Governor of each of the provinces is appointed by the Governor-General, that is by the Governor-General on the advice of the Cabinet. There are many features of resemblance and similarity between the Canadian Constitution and our Constitution which, by some critics, has been considered to be quasi-federal. The system in the main we have accepted is the principle of responsible Government obtaining in the Dominions or in the different parts of the Commonwealth. Nowhere does the system of election of the Governor exist where the Institution of responsible government is the main feature of the Constitution.

In the normal working of the Constitution I have no doubt that the convention will grow up of the Government of India consulting the provincial Cabinet, in the election of the Governor. If the choice is left to the President and his cabinet, the President may, in conceivable circumstances, with due regard to the conditions of the province, choose a person of undoubted ability and position in public life who at the same time has not been mixed up in provincial party struggle or factions. Such a person is likely to act as a friend and mediator of the Cabinet and help in the smooth working of the cabinet government in the early stages. The central fact to be remembered is that the Governor is to be a constitutional head, a sagacious counselor and adviser to the Ministry one who can throw oil over troubled waters. If that is the position to be occupied by the Governor, the Governor chosen by the Government of India, presumably with the consent of the provincial Government, is likely to discharge his functions better than one who is elected on a party ticket by the province as a whole based upon universal suffrage or by the legislature on some principle of election.

One thing I may mention. The point has been raised in these discussion,

whether it is wise at all to invest so much power in the Prime Minister or in the President of the Union acting on the advice of the Prime Minister or in the President of the Union acting on the advice of the Prime Minister. If you can confide the appointment of the Commander-in-Chief of all the Forces, the Ambassadors in different parts of the world, the Chief Justice and the Judges of the Supreme Court and the appointment of other high offices in a Cabinet responsible to the Legislature, and theoretically in the President, I see no objection to the appointment of the Governor being left to the President of the Union who has necessarily to act on the advice of the Prime Minister and his Cabinet. A convention, as the House is aware, has grown up in the appointment of Governors in Canada. In Australia too, though under a different Constitution, a similar convention has grown up and the Governor of a State is appointed on the advice of the provincial Cabinet.

I owe it to myself to say a few words about the panel, because the Drafting Committee of which I am a member felt the difficulty of an election process being gone through as per the original decision of the House. Tentatively, another suggestion was put forward by the Drafting Committee. On a fuller consideration I feel convinced that the panel system is likely to be fraught with great danger as experience shows in the case of the election of Vice-Chancellors in the several universities. Supposing three or four people are elected by the provincial legislature. What is the President to do? Is he to give his concurrence to the person who has obtained the largest number of votes or, go out of his way and select people who have lesser number of votes? Normally, he must support the candidate who has obtained the largest number of votes. If he goes out of his way and selects anyone of the other three, it is sure to lead to friction and continuous friction between the province and the Centre. That is another difficulty in the matter. In the net result, if the President is to get on smoothly with the province he has merely to say ditto and confirm the appointment of a person who obtained the largest number of votes in the provincial legislature. That would be the effect of that. There is another aspect also which the House might take into consideration. In our Constitution we must try every method by which harmony could be secured between the Centre and the provinces. If you have a person who is not elected by the province or the State but you have a person appointed by the President of the Union with the consent, I take it, of the provincial Cabinet, you will add a close link between the Centre and the provinces and a clash between the provinces and the Centre will be avoided which will otherwise occasionally result.

Then there is another point. It is said that the Governor may occasionally have the use his extraordinary powers. This point is more in favour of nomination rather than in favour of election. If the person who is elected on the basis of universal suffrage is to come into clash with the provincial Cabinet and if he is to set himself above the provincial Cabinet, there will be a greater constitutional danger. Even if circumstances arise when intervention by the Governor is necessary it will be only on extraordinary occasions. Even for that intervention a person who is nominated or appointed by the President with the concurrence of the provincial Cabinet is likely to take far greater care than a person who is elected by the people. On the whole, in the interest of harmony, in the interest of good working, in the interest of sounder relations between the provincial Cabinet and the Governor, it will be much better if we adopt the Canadian model and have the Governors appointed by the President with the convention growing up that the Cabinet at the Centre would also be guided by the advice of the provincial Cabinet. With these words I have great pleasure in supporting the amendment moved by Mr. Brajeshwar Prasad.

Dr. P. S. Deshmukh : Mr. President, Sir, I think that this is one of the article which should be discussed by this House at greater length than usual and for this reason, viz., that we are altering almost the whole idea about of the office of Governor of a State. It is quite right to say, that since we are giving adult franchise, and had provided for an elected Governor there may be innumerable people in this country who will be looking forward to the exercise of their vote for choosing the man will be guiding the destinies of their own province. As I have said already, I am not in favour of the provinces as they exist today and so far as the fundamentals into consideration. Firstly, if we decide that the Governor should be elected by the province on the basis of adult franchise, then it follows logically than he should be a real executive authority. On the other hand if you want him to be mere figurehead, if you want him to have exactly the same position as he has today under the 1935 Act and which is exactly the same position as he has today under the 1935 Act and which is exactly the position which is assigned to him under the Draft Constitution, you cannot but have him appointed by the President. Over this question there are sharp differences of opinion. Some people say that we are committing a breach of faith with the people of India if, after having told them once that the Governors will be elected we go back you it and provide for their appointment by the President. I therefore want, Sir, that the people of India should understand what exactly we are doing and why we are doing it. Therefore I would like all the arguments which are in favour of our choice of appointed Governors should be stated on the floor of this House so that the nation outside will be convinced of the correctness of the decision that we are now taking. So long as the provinces are there and the structure of the Constitution remains as it is, I think we have, although somewhat late, corrected a mistake that otherwise would have been there. Our whole Constitution is based on the 1935 Act which in itself is based on the principles of responsible government. There is responsible government not only at the Centre but also in the provinces. Wherever there is responsible government, it necessarily means that the representatives of the people should have the authority to alter the executive any day or at any time. That being so, the head of the administration must be one who cannot interfere with the day to day administration. Therefore is necessarily follows that even if you have election for Governors, the Governor will have to be a figurehead and not a person who can interfere with the day-to-day administration. That being so, it would not be correct to ask the people to take the trouble of going through a huge election on a gigantic embodied in this amendment is, I believe, a correct decision, because the Governor is merely a figurehead. He is a constitutional head without any authority to interfere a figurehead. He is a constitutional head without any authority to interfere with the actual administration. It is sometimes said that we are depriving people of the exercise of their votes. I do not think that is the case because the people will still have periodically to choose on the basis of adult franchise their own representatives in the provincial assemblies, a majority of whom will from the Provincial Ministry which will rule the Province and exercise all the powers which the Constitution provides for.

The other objection that is taken to the appointment of Governors by the President is that we are clothing the President and the Prime Minister with too much patronage. In a country like this, which is one of the greatest in the world, we will have willy-nilly to give lot of powers to the man who is selected by the people. After all the Prime Minister of India is going to be a popular Prime Minister. He can be there only so long as he has the support of the Parliament elected by the people at large. Therefore there should be no hesitation in giving powers of patronage to the Prime Minister or the President. After all, the representatives of the people will be there to call them to account. So, Sir I do not for a minute accept the argument that the Prime Minister will have too much patronage, that he will appoint the judges of the Supreme Court, he will appoint all ambassadors and then the Governors and so on and therefore, he will be a sort of a Moghul Emperor reigning at Delhi. I do not think these fears of the Prime Minister being clothed with too much patronage are justified.

An Honourable Member : Do you anticipate criticism?

Dr. P. S. Deshmukh : Yes; I am certainly anticipating criticism because criticism is bound to be there since we are taking such a drastic step as to alter a principle which we had agreed upon, and therefore, I am perfectly within my right to anticipate criticism and to say beforehand what is likely to be sated on the other side.

Then, Sir, we have also consider this; supposing we were to elect the Governor by adult franchise the relationship between the provincial Prime Minister and him in all probability would never be cordial, and supposing the exceptional happens, and he and the Prime Minister are completely at on. Since we have provided for a certain amount of autonomy for the provincial Governments; it is not unimaginable, Sir, that circumstances may arise when the Centre may be completely blacked out from that particular province. We must look at the whole thing, not only from the point of view whether the two most important persons in the province will always be able to get on or not, but we have also to consider the consequences, if they agree in everything, for instance, if they agree in defying the Centre altogether, what will be the position and what will be the situation that the Centre will find itself in? will the Centre invade the province if it refuse flatly to carry out whatever suggestion or whatever direction comes from the Centre? So part from the unsuitability of having an elected Governor, with limited powers, an elected Governor is always bound to consider that he is the most liked person in the whole province, and therefore more competent to exercise authority with complete confidence of the people rather than the Premier. It is thus that a conflict between him and the Premier is bound to arise. But apart from the conflict, if there is no conflict and there is perfect agreement, if these two gentlemen set the Centre at naught, what will be the position? That is also a matter which deserves serious consideration. So, Sir, I think so long as the provinces remain and the structure of our constitution is unaltered, there is no go and the wisest thing for us is to give the power of appointment to the President. I would also like, Sir, that at some suitable stage, the appointment should be made only during the pleasure of the President. It was only consistent with an elected Governor that we had provision for impeachment. If this amendment is accepted all that will have to go. I would, therefore, like that the appointment of the Governor should be during the pleasure of the President.

The Honourable Shri B. G. Kher (Bombay : General) : Mr. President, since the House intends to go back on a resolution which it had taken about this matter nearly two years ago, I think, I should say a few words about the very important principle involved in the amendment. I wish to support it wholeheartedly. In the first place, conditions in the country have changed since we took our decision and in other matters than this we have gone back on the decision, which, at that time, we though was proper. Experience also has taught that the system which we have adopted has worked fairly well in practice. The question, Sir, is this : when we are determined to have a governor for the provinces as we have decided to by passing article 129, should he be an elected Governor? Or should he be nominated or appointed by the President? Now it appears from the trend of the debate that election on adult suffrage is not advocated by anybody, because apart from the expense that it will involve, it will put at the head of the province a person who is elected by the whole people of the State and the whole power of the State because of the principle of responsible government, which we have adopted, will be vested in the Premier under the Constitution. It is bound to give rise to certain conflict, which it is desirable to avoid in the interest of smooth administration. Why do we want the Governor? Because, Sir, he represents the State; the Premier is there by virtue of his being the leader of the largest party in the House; he is to be held responsible for whatever happens in the administration. So far as the Governor is concerned, we have give him very few powers. But I do not agree with the comment that he is a mere figurehead; a figurehead is capable neither of good nor of bad. I want to submit to the House, Sir, that a Governor can do a great deal of good if he is a good Governor and he can do a great deal of mischief, if he is a bad Governor, in spite of the very little power given to him under the Constitution we are now framing. The powers that we propose to give him, and the functions that we assign to him are very few such as summoning and dissolving the Assembly, to give assent to the Bills passed by the State Assembly, to act as representative of the State, to nominate the Premier after the general election or the resignation of the ministry, to represent the province on ceremonial occasions and such power as we give to act in an emergency. He is the symbol of the State and we have found in actual practice that if he is an active Governor, a good man, he can, by means of getting into touch with opponents of the party which is in power, reconcile them to a good number of measures, and generally, by tours and other means make the administration run smoothly. Similarly he can do a great deal of mischief. I believe, therefore, to have as a Governor a person who is elected on a wider franchise to have at head of the province a person who is supposed to be more representative than the Premier would be a mistake. If, therefore, the question of election on adult suffrage by the whole people is not to be thought of, then Sardar Hukam Singh referred to the other alternative, namely of having a panel of people elected by the House, and that may be thought of. After the very able argument of Shri Alladi Krishnaswami Ayyar, pointing out the defects of this system also, it is not necessary for me to say more than this, that if more than four or five person are put up and aspire to the place of the Governor, in the course of an election even in the House there is bound to be some kind of canvassing, some kind of party faction, and whoever is appointed, you will have four or five or more disgruntled people in the House, which is not a very desirable state of affairs.

Sir, if, therefore, we wish to avoid the conflict that is bound to arise by adopting this method, what should be the guiding principle in making such an appointment? And the guiding principle is that no member of the executive should ever be elected by the popular vote. People might think it is a matter of going back to Mid-Victorian precedents, but I found, Sir, turning up pages of Mill's Representative Government this very important principle :

"The most important principle of good government in a popular constitution is that no executive functionaries should ever be appointed by popular election, neither by the votes of the people themselves nor by those of their representatives."

That, Sir, I submit is a very sound principle. You want to hold the Leader of the Party in the province responsible; you want to hold the Prime Minister of India responsible. He must have the power to appoint people whether as his colleagues in the Central Cabinet or as a Governor with whatever limited or great powers you want to bestow upon him, in the province, one who will have his confidence and who will be the titular head of the Executive in the Province. The principle of appointing these people by election is very much open to doubt. I do not wish to comment on what is done in America. But, having deliberately chosen the British model of responsible Government and decided to give the Governor the position that we have decided to do, I submit Sir, that the only insurance for smooth government in the provinces is to allow the President of the country to nominate a person who enjoys his confidence, which certainly means, the confidence of his Cabinet as also the cabinet of the province, to be the Governor or the province Any other mode, whether by election on adult suffrage or by election by the representatives of the people in the House will give rise to considerable friction. It is therefore, I submit, that the amendment that has been moved by Mr. Brajeshwar Prasad should be accepted.

Shri Rohini Kumar Chaudhuri : Mr. President, Sir, it is very difficult for us to say which is correct and which is not correct. Two years ago, in the month of June, we had, in the Provincial Constitution Committee, discussed this question for nearly three or four days. The Committee was presided over by no less a person than the Honourable Sardar Patel, and amongst the members, there were Premiers like the Honourable Sardar Patel, and amongst the members, there were Premiers like the Honourable Shri Kher and there was also in that Committee the Honourable Dr. Ambedkar. The members of the Provincial Constitution Committee and the Union Constitution Committee sat together on one day. By a majority of votes this question was decided by coming to the conclusion that the post of Governor will be filled by election. Now, Sir, my honourable Friends who have spoken in support of the amendment of Mr. Kamath and Mr. Brajeshwar Prasad, have said that things have changed since then and there is therefore an alteration in the decision on the part of some of the Members. How have the changes affected the question at all? The fact that we have attained independence in the meantime, that is in August 1947, has the anything to do with the alteration of this decision? Are you to have nominated Governors when we are independent and should have been content with elected Governors when we were not independent? There has been partition of the country in the meantime; there has been bloodshed; there has been untold misery in the country. Is that the reason why we should have nominated Governors instead of elected Governors? The only reason that I can find is that there has been some change in the status of my honourable Friend Dr. Ambedkar. Possibly that is the reason why we are having a change in this decision today; otherwise.........

Mr. President : I would ask the honourable Member not to be personal.

Shri Rohini Kumar Chaudhuri : Not to refer to Dr. Ambedkar?

Mr. President : Not to be personal.

Shri Rohini Kumar Chaudhuri : I am sorry, Sir; I will not refer to Dr. Ambedkar.

I must however say that I fail to see any reason for the change in this decision.

My honourable Friend Mr. Brajeshwar Prasad who had moved the official amendment on this question, has not enlightened us very much in his speech,

The way in which he was supporting his own amendment or moving his amendment showed that his heart was not very much in it and the way in which he ran away from this place to his seat showed that he was rather swallowing a bitter pill than activity appreciating what he had said. Under the present proposal, the appointment will be made by the President. Who is the President proposal, the appointment will be made by the members of the legislatures, Certainly, he will have to be a person who will enjoy the confidence of the majority party. The desire which some honourable Members posses that he will be one who is absolutely detached from politics will not be raised. How will the President nominate the Governor? The President will nominate a Governor according to the advice to the Prime Minister. Who is the Prime Minister? The Prime Minister is very much a political man. He is the leader of some party and he will be guided by his party leanings. He cannot have a detached view altogether. If you are

allowing a person who belongs to a particular party, who is the leader of a party to nominate the Governor, why are you not allowing the people to have a voice in the matter? After all, Sir, what is the pledge which the Governor has to take when he accepts office? He has to take this pledge :

"I.......solemnly affirm (or swear) that I will faithfully execute the office of Governor (or discharge the functions of the Governor) of.............and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of................"

Here, a man, who does not know anything of that province, who does not understand the language of the province, can be nominated and that man will be expected to serve that province much better than a man who can be chosen by the people of that province! Are you going to accept that, Sir? A man who may be nominated may belong to any part of India : South India or North India or the Punjab; he may come from any corner of India and he is supposed to swear-I dare say he will have to forswear-that he will act in the best interest of the people of that province of whom he knows absolutely nothing. That is the position to which we are coming. In appointing him as Governor, the President has not to consult the people even of the province, or the representatives of the people of the province. He is merely nominated at the sweet will of the President or the Prime Minister of India. In selecting the Chief Justice of the Supreme Court, the President has to roam about all over India; he has to consult the Judges of the different High Courts; he has to consult the Chief Justices of the High Courts of the various provinces. But, in selecting the Governor, the people of the province of which he is going to be the Governor need not be consulted. Their opinion even need not be taken. That is a proposition which it is difficult for us to accept. It is said that if you have an elected Governor, there may be friction between the Governor and the Prime Minister and I suppose it is the fear of the present day Premiers of different provinces which is responsible for this decision of nomination of Governor. But I say, supposing (you can quite foresee such a state of things) you have a Prime Minister who is the Leader of a particular Party and you need a Governor in a province which is in the hands of a particular party which is not the same party as the party to which the Prime Minister of India belongs. What happens? The Prime Minister of India sends our a Governor to that Province. Is that Governor going to work harmoniously with the Government run by another party. Can you expect that the Governor who is selected by the Congress Party will act in harmony with the Ministry of the province the for friction? This is quite obvious. Then how can you assume that for all time to come the Congress Party, or a particular party shall remain in power no Premier of which belongs to another party? Will there not be more occasions only at the Centre but also in the different provinces? It is unthinkable. So I submit that under the present arrangement there is greater occasion for friction than if there was an election; and further, if you give him any power- and he will exercise certain very important powers under the present Constitution as the post of Governor is not a sinecure post in all the provinces-there is bound to be friction. In a particular province whether the Premier is all very powerful, he might be able to get things done in his own way but it may not be so in other provinces. For instance, in a province like Assam the Governor of the Province must exercise very important rights and he will have to work hard and if you send a Governor who does not know anything of the tribal people, who does not know their customs, their manners etc. and the miserable conditions in which they live, and he simply goes and looks at them in amazement, there will be terrible consequences. The Premier of a province like ours may not

have anything to do with the tribal people. In order to become a Premier of the province, he need not care for their interest or enquire about them but if the Governor was elected, he would have to be a man who was known to be sympathetic even for the tribal people and the tribal people who have no vote in selecting the Premier will at least know who their Governor would be and will be able to give their votes accordingly. Why deprive these people of the right to have a voice in the appointment of the person who will control their destinies? So it would have been best to have election. Why go according to British precedent in this matter? The British precedent was that they had to have their Governor-General from outside India, and the Governor-General had the right to select Governors and they selected as Governors such persons who would safeguard their interest. Are you going to give powers to the President to select governors in that manner so that he may, contrary to the interests of the province, select a man who will look down upon the interests of the province and consider the question of the whole India? Do you want that you should have a man there who will closely watch the working of the Provincial Ministry so that they may not at any time go against the Centre? Is that the suspicious in the minds of those persons who want the nomination of Provincial Governors? I submit that it should not be the case. So I would have expected even if you do not go to the length of having an election-and I do not know what reasonable objection there can be in that - you must agree to have choice from a panel.

Then an objection has been put forward about additional expenses. If an election takes place on the same day as on the day of general election, there cannot be any question of additional expense. The question of expense does not at all arise. The question of greater efficiency cannot arise. You cannot perpetually go on nominating people from outside provinces and yet try to keep the people of the province contented; but even if you, for any reason, consider the election of a Governor a stupendous task, I suppose it might assuage the feelings to some extent if the province was consulted by some way. The other alternative which has been put forward by the Drafting Committee at least gives a chance to the local legislature to express an opinion, whether the man is from the province or from outside-or gets a chance to mention somebody from that province, and that would be some solace.

Pandit Hirday Nath Kunzru : Mr. President, two years ago I was one of the few unfortunate men in this House who tried in vain to persuade it not to resort to the system of electing Governors on the basis of audit franchise. I am glad to find that opinion in this House has changed and that even my honourable Friend Mr. Kher who was emphatically for the election of Governors two years ago stands now for a different system altogether. We should, however, examine some of the reason that have been advanced in favour of the change. It was possible for the House while rejecting the principle of election to accept the alternative method of choosing Governors recommended by the Drafting Committee; but the method that has been proposed today is that of pure and simple nomination by the President. The mover of the amendment I believe said in the course of his very brief speech that the Governors should be nominated by the President so that the Government of the Provinces might be carried on in conformity with the policies of the Central Executive. My honourable Friend Mr. Kher when speaking on this subject delivered himself of the opinion that it was right that the Governor of a Province should be the nominee of the Prime Minister of India Because the Prime Minister would be responsible for the good government of the Country. I find, Sir, that though Mr. Kher has changed his opinion since 1947, he still wants that the Provincial Ministers who will represent in majorities in the Provincial Legislatures would be controlled by some outside authority. The

question formerly was that they should be controlled by a Governor, but now, Mr. Kher thinks that they should be controlled by a Governor nominated on the recommendation of the Prime Minister of India.

The Honourable Shri B. G. Kher : I did not say that.

Pandit Hirday Nath Kunzru : But it virtually comes to this. My honourable Friend said that as the Prime Minister of India would be responsible for the good government of India, it was desirable in principle that the Provincial Governors should be his nominees. If the Governors are not to be used to control the Ministers, how does their appointment on the recommendation of the Prime Minister of India enable him to fulfil his responsibility for the good government of the country? Nomination can enable him to discharge his duty only if it is understood to give him directly or indirectly the power of controlling the Provincial Governments through the nominated Governors.

Shri T. T. Krishnamachari : Control is no responsibility, whatsoever.

Pandit Hirday Nath Kunzru : My honourable Friend Shri T. T. Krishnamachari should them discuss the matter with my honourable Friend Mr. Kher and see whether the views of the two can be made to reconcile by any manner of means. I full understand that my honourable Friend Mr. T. T. Krishnamachari does not want Provincial Governments to be controlled by the Prime Minister of India. But the opinion expressed by Mr. Kher, if pursued to its logical conclusion would have an effect contrary to that desired by Mr. Krishnamachari. I think that neither the House nor the Central Government should remain under the serious misconception that Mr. Kher is labouring under.

The Honourable Shri B. G. Kher : I am not labouring under any misconception. The honourable Member has not understood me correctly; I can assure him that I do not want to give any such power to the Prime Minister. He should understand there are ways in which things are done. You need not have it in the Constitution. It is always personalities, and not Constitution.

Pandit Hirday Nath Kunzru : I shall take it that my honourable Friend does not now desire that the Prime Minister of India should control Provincial Governments. But he should really then explain to us what he meant by saying that the Prime Minister of India would be able to us what he meant by saying that the Prime Minister of India would be able effectively to discharge his duties for the government of India, only if the Provincial Governors were nominated on his recommendation. However, if my honourable Friend Mr. Kher has changed his opinion in the course of a few minutes, I shall not twit him with it. But the important question raised by him, consciously or unconsciously, still deserves the consideration of the House. The Prime Minister of India and his Cabinet are responsible for the good government of the country, only in respect of certain matters, that is, in respect of matters that are under the control of the Central Parliament, or properly belong to the province of the Central Executive. Our Constitution, though it gives a great deal of power to the Central Legislature and Executive, does not provide for a unitary Constitution. It has not reduced the Provinces to the level of Municipalities and District Boards. They will, notwithstanding deductions made from their authority, still have the power exclusively to control certain subjects. The responsibility of the Prime Minister of India for the good government of the country cannot extend to the sphere the will be exclusively under the control of the Provincial Parliament and Executive. I think, Sir, that this should be clearly realised, least there should be serious conflicts between the Central Government on one side and the Provincial Governments on the other.

We have also to bear another very important consideration in mind. Our Constitution should be such as to permit of the free and full growth of democracy, and to prevent the establishment of a dictatorship in the country in any event. At the present time, it seems to many of us that greater confidence is reposed by the country in the judgment of the Central Executive than in that of the Provincial Executive. But in the first place, this can be no reason for reducing the Provincial Governments to a position of utter subordination to the Central Executive. In the second place, things may not always remain as they are now. It is easy to conceive of a time when the Central Government might not inspire as much confidence as some of the Provincial Governments might. If you entrust the Central Executive with power to exercise control over the Provinces in all important matters, and make them fall in line with the policy of the Centre, there is the serious danger of the country falling under a dictatorship. There are countries in which the federal system of government prevails, and there are differences of opinion there, from time to time, between the Federal and the State Governments. In Canada, a Provincial Government went so far as practically to change the prevailing system of currency. The Centre was able to deal with the situation, because in its opinion this was a matter exclusively under its control. It did not utilise the position of the Governor or any other method of asserting its power for this purpose. Similarly, when conflicts arise between the provinces and the Centre in this country it is very probable that if they are of a serious character they will relate to matters coming within the purview of the Centre and in that case the Centre, will, under the Constitution, have adequate means of dealing with such a situation. But let us divest ourselves completely of the notion that the Governor is to be used in any way in order to carry out the wishes of the Central Executive.

Now, Sir I think it would be pertinent to refer here to articles 175 and 188. Article 175 requires that a Bill passed by the Legislature of a province may be assented to by the Governor or reserved for the consideration of the President. My honourable Friend, Shri Alladi Krishnaswami Ayyar referred to the case of Canada where Lieutenant-Governors of provinces are appointed by the Governor-General of the Dominion. There in the early days of responsible Government the Lieutenant-Governors could reserve Bills for the consideration of the Governor-General, though the Governor-General, as the representative of the Crown, had the right and still has the right to disallow a provincial Bill. In course of time a system has grown up under which Lieutenant-Governors would not be called upon to reserve any Bills for the consideration of the Governor-General, because this is regarded as a deduction from the authority of a fully responsible Government. The Governor-General can, however, disallow a Bill assented to by the Governor within a period prescribed by the Canadian Constitution Act. We in this Constitution, Sir, have given no such power to the President. A Bill can be reserved for his consideration by the Governor, but if the Governor does not do so, the President does not come into the picture at all. Now in this situation, Sir, it is clear that the President will instruct the Governors to reserve for this consideration Bills that the Centre does not approve of.

Shri T. T. Krishnamachari : May I respectfully point out that article 175 is yet to be passed by us and it is more than likely that article will be reshaped in the light of amendment which will be tabled.

Pandit Hirday Nath Kunzru : I am very glad to hear that. This is exactly what I wanted to point out. It will be better if instead of using the Governor as an instrument of the President, the power of disallowing Provincial Bills within a certain period is given to the President. In that case, the responsibility both in form and in reality will be that of the Central Executive. In the other case, there is likely to be friction between the Governor and his Cabinet. The case of Canadian provinces shows that this fear is not imaginary.

Now, I shall come, Sir, to article 188. I do not know whether my honourable Friend Mr. Krishnamachari can tell me with regard to this

article too, that it is proposed to delete it or to modify it in view of the change that has been made in the method of choosing a Governor. When the House resolved two years ago in favour of the election of Governors, the main argument put forward was that a situation of such a character may arise as to require that the Governor should have the power of acting decisively in grave emergencies. It was felt that responsible Ministries dependent upon popular support might not in a crisis be able to act with the strength required by the situation and that it would, therefore, be wise to entrust the elected supreme executive in a province with adequate powers to maintain the peace of the province, should it be confronted with a grave emergency. Opinion in this House on that subject has changed since 1947, as shown by the approval that the amendment of my honourable Friend Mr. Brajeshwar Prasad has received so far. I hope, therefore, Sir, that article 188 will be deleted. The President of the Republic can under another article be enable to take action where the peace of the country is threatened because of anything happening in a province, or where a province is face to face with a situation which if not firmly handled might lead to conflagration. I think, Sir, that this would be a better method of dealing with provincial emergencies than allowing the Provincial Governor to take the administration into his own hands. But though the ultimate power will rest with the President of the Republic, he will probably not take any action without consulting the Governor. The latter can well bring the position in his province to the notice of the President and leave him to decide what action should be taken.

I hope, Sir, in view of this that article 188 should be deleted or amended so that it may be consistent with the establishment of responsible ministries in provinces and may not lead to bitter conflicts between the Governor and his Cabinet. Let such control as has to be exercised in emergencies under the Constitution be exercised by the President of the Republic directly and not through the Governor so that he and his Cabinet may not come into conflict with one another.

The Honourable Shri B. G. Kher : Does the honourable Member support or oppose the amendment?

The Assembly then adjourned till Eight of the Clock on Tuesday, the 31st May, 1949.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS)- VOLUME VIII

Tuesday, the 31st May, 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi at Eight of the Clock Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the Pledge and signed the Register :-

Sardar Ranjit Singh [Patiala and East Punjab States Union.]

Seth Govind Das (C. P. & Berar : General) : *[Mr. President, Sir, I would like to draw you attention to a fact which, in my opinion, is of major importance. You are perhaps aware of the fact that some Members of the House have Hindi numerals on the number plates of their cars. Delhi police recently filed a case against one of the Members for using Hindi numerals on the number-plate of his car and he has been find by the Court. I have come to know that some more similar cases against a few other Members are pending. This is a matter which relates to the privileges of the Members of the Members of the House. Indeed it is very surprising, rather a matter of shame, that even in independent India Members of this House are prosecuted for having numerals in the national language on the plates of their cars. I do not know if this matter was already before you. But at any rate I want to draw your attention to it and request that proper action should be taken in this matter.]

Shri Mohan Lal Gautam (United Provinces : General) : *[Mr. President, I have to convey a minor piece of information to the House. I have Hindi numerals on the number plate of my car registered in U. P. This car has been in Delhi for a long time. Shri Keskar and a few other Members also have Hindi numerals on the plates on their cars. Recently when going from the House in my car, the Delhi police registered a case against me for using Hindi numerals on the plate of my car. The case is yet pending. I do not know what would be the outcome of this case. This is a fact and I have placed it before the House for information.]

Shri R. K. Sidhva (C. P. & Berar : General) : I want to speak, Sir.

Mr. President : About the same matter?

Shri R. K. Sidhva : No.

Mr. President : I shall dispose of this. As this is a matter which requires looking into. I shall ask the Secretary to consider what steps have to be taken.

I understand Pandit Kunzru wants to say something to complete what was said yesterday.

DRAFT CONSTITUTION-(Contd.)

*

Article 131-(Contd.)

Pandit Hirday Nath Kunzru (United Provinces : General) : I am grateful to you. Sir, for permitting me to answer the question Mr. Kher put to me yesterday. He wanted to know whether I was in favour of the amendment proposing nomination of Governors. I made it clear at the outset yesterday that I opposed the principle of election even two years ago. I consider nomination better than election; but I shall regard it as satisfactory only if article 175 is amended as suggested by me yesterday and as regard to apparently by Mr. T. T. Krishnamachari, and article 188 is deleted. I ask for the deletion of article 188 because the Governor who will now be nominated should not be able to exercise the power of setting aside his Cabinet and taking the administration into his own hands which he was to have when he was to be elected. If these two amendments are made, I should consider the principle of nomination to be unobjectionable.

---

*[] Translation of Hindustani speech.

Shri T. T. Krishnamachari (Madras : General) : Pandit Kunzru has referred to some undertaking given by me. I am not in a position to give any undertaking, nor is any understanding given by me of any use, so far as binding this House is concerned.

Pandit Hirday Nath Kunzru : I did not say that Mr. Krishnamachari spoke on behalf of the Drafting Committee or even on behalf of Dr. Ambedkar. I only expressed my pleasure that a careful student of constitutional affairs like my Friend, Mr. T. T. Krishnamachari, agreed to the suggestion

that I made.

Mr. President : Before we start discussing this article, I might tell honourable Members that we should expedite the consideration of the Constitution. I have give great latitude to Members and I expect reciprocation from their side so that we might go through the Constitution as quickly as possible. In some cases I have allowed speeches which were not strictly relevant to the amendment under consideration, because I felt that some view-points were put forward which might deserve consideration if not exactly in connection with that particular article but in connection with some other article which might come at a later stage. Apart from that, I would ask honourable Members to bear in mind that we should not have repetition of arguments and no honourable Member need speak if he thinks that the point does not require any further clarification or that he is going to make any contribution which is not already before the House. With this appeal, I would now start the discussion, and I hope that Members will bear this in mind.

Dr. P.K. Sen (Bihar : General) : Mr. President, Sir, in this matter it is obvious that a great change has come over the honourable Members of this House since the last decision was taken and I must also confess that I am one of those Members who have changed their views. At that particular point of time, when the last decision was taken, I remember very well the consideration that weighed with the Members, was as to the manner in which the Governor should be elected so as to be able to interfere with the government if party factions and cliques threatened to break it up or to paralyse its activities. At that time it was felt that the Governor, in order that he might have the strength so to interfere should be able to feel that he had the backing of the whole province behind him. It was for this reason that a great deal of emphasis was laid upon the form in which he was to be chosen, and it was decided that it should not be by appointment or selection but should be by election,-and not only election but election by adult suffrage. Since then on sober and serious reflection evidently the Members of the House are now persuaded that a general election of that kind whereby the Governor was to be elected by adult suffrage would impose a tremendous strain upon each province and would hardly subserve the purpose for which it was being held. What is the purpose? The upholding of democratic ideas. The question is whether by interfering, the Governor would be upholding the democratic idea or subverting it. It would really be a surrender of democracy. We have decided that the Governor should be a constitutional head. The Premier with his Council of Ministers is really responsible for the good governance of the province. The whole of the executive power is vested in the Premier and his Council of Ministers. That being so, if there is another person who is able to feel that he has got the backing of the whole province behind him and therefore he can come forward and intervene in the governance of the province, it would really amount to a surrender or subversion of *democracy. It would make it impossible for the Premier or his Council of Ministers to initiate measures which would be in the best interest of the province. Only in exceptional cases of emergency should he have the power or the function to step in and interfere with the actual governance of the province for a short time. Of course, the conditions and circumstances must be such as would justify the exercise of emergency powers and those conditions have been indicated elsewhere. Ordinarily, however, his function is not to interfere but to remain detached. Therefore in the best interest of democracy, in the best interest of parliamentary from of government which has been decided upon as the basis of the Draft Constitution, the election of the Governor by adult suffrage is uncalled for and inappropriate.

The next method of election that is suggested is election by the legislature. There too there would be mischief-only in another form-and

a conflict would arise between the Premier and his Council of Ministers on the one hand and the Governor and certain other sections of factions which would be in his support. Therefore I believe that it would, instead of being in the interests of parliamentary government, be a thorn on the side of the Premier and the Council of Ministers and would prevent them from carrying out any measures which are in the best interest of the province. What then? We have now to look out for some other appropriate method. If we are satisfied that both the forms of election which form the substance of article 131-there are the two above-mentioned forms the substance of article 131-there are the two above-mentioned forms given there-would not subserve the purpose of democracy, what is the next alternative? The alternative that is placed before us is that the appointment of the Governor should be in the Prime Minister at the Centre. Now, it has been said by some of the honourable Members who have spoken on the subject that it would not really be in the interests of democracy to vest so much power in the hands of the President. The question then is where lies the balance of advantage. The two forms of election being out of the way, can we or can we not vest this power in the hands of the President who is to act on the advice of the Prime Minister? The President being detached from the province would be able to act in a manner perfectly in conformity with the interests of the province, whether his nominee be of the province or of any other part of the country. There is also a great advantage in having a person who is detached from the province-I do not say that necessarily the selection will be from outside the province-I do not say that necessarily the selection will be from outside the province-but supposing it were it would be an advantage because that person would come to the province with a free mind perfectly detached, perfectly unassociated with the different factions, or different sections of opinion, in the province.

The function that the Governor has to fulfil, as it is now borne is upon the Members of the House, is that of a lubricator, if I may use the expression. He is not to interfere, but he has just to smooth matters. If there are factions, if the different sections of the community are at loggerheads with each other, it is for him to act more of less as a lubricator, a cementing factor. He is to help the machinery of Government which is in the hands of the Prime Minister and the Council of Ministers; he is not to come and interfere and cause confusion or chaos; he would be the person really to lubricate the machinery and to see to it that all the wheels are going well by reason not of his interference, but his friendly intervention. That being the conception of the Governor, as it is, I believe, Sir, that it would be in the interest of good environment, if the House were to come unanimously to the opinion that the only possible method by which the Governor might be chosen by the method of nomination by the President.

Shri Biswanath Das (Orissa : General) : Sir, in discussing article 131 regarding election of the Governor, I realize the difficulties of an election of a general nature in which every adult person in the province is called upon to vote. That is a difficult process and it is bound to create complications. I had therefore given notice of an amendment, that is No 2023, not being satisfied with the alternative that was proposed by the Drafting Committee. Be the amendment what it is, we have to submit to the joint wisdom of honourable Members. Sir, in the course of discussion of this question, Mr. Alladi Krishnaswami Ayyar invited our attention to the British precedents. I request him to cite me a precedent from Britain wherein a British Governor is being nominated. The only precedent I could think of is the Lord Lieutenant of Ireland. The Lord Lieutenant of Ireland was always a non official nominated by the cabinet. If the British precedent has any use for him, it is just the other way. Sir, the Canadian

precedent has been quoted, but I would plead with him and tell him that the process that we propose to adopt will be more akin to the South African system, where you have very little of autonomy for the provinces. Sir, that being the position however great your anxiety may be to hasten the passage of the Constitution, the course of action taken my honourable Members cause delay. Important propositions which were discussed and adopted in this House and being given the go-by; important changes are being proposed in the meanwhile. Therefore, it gives occasion for discussion, and discussion means delay. Therefore, I would plead with you that we on this side of the House have done nothing to earn your advice, or crave for your advice, for we have never desired to crave for consideration or indulgence. Sir, it has been stated that the Governor has very little functions. If he has very little functions under the set up that we have laid down in the new Constitution, then why have him The Governor is getting a decent salary and he is getting allowances and if the functions prescribed for him are not very useful and necessary and not worth the money that we pay, I think it is time that we give the go-by to the Governor. I claim, that the new set-up, unless this House proposes to change the new set-up, invest the Governors with definite and important powers. The powers are the ordinances, powers, of course, in a modified way which you have under the Government of India act of 1935, to return Bills for consideration of the Assembly and dismissal of Ministers and calling for elections. I claim that these are very important powers under the new set-up. Therefore, a change in the Constitution that we have so far accepted means a change in all these items of responsibility that we have at present if these powers continue to operate, I claim that the Governor under the new set-up has an important constitutional role to function. I have my bitter experiences in this regard. I was the Prime Minister of a province and I know how the Governor of my province was out to break my party. I know those days are gone and new days are coming ahead and I will plead with my honourable Friends to look at the future. If I were to have my leaders in office continuously, if I were to have men like Pandit Jawaharlal Nehru and Sardar Vallabhbhai Patel, I have absolutely, if I were to have men like Pandit Jawaharlal Nehru and Sardar Vallabhbhai Patel, I have absolutely no complaint. But I plead with my honourable Friends that human life is temporary, however long and however much we desire; human life is temporary; the existence of parties, emergence of parties have to face elevation-ups and downs of parties are there, and world history has enough examples of such cases. That being the position. I want to plead with the honourable Members to look into the future and see how far the new set-up that they purpose to have, will work and function properly and well.

What is the set-up that you are going to have? You are going to have the party system as the basis of democracy. It has been claimed in the newspapers that the present Constituent Assembly (Legislative) has no opposition and as such the Congress Party is having its own way. I do not at all agree and I join issue with people holding this opinion. However, whatever the criticism may be, the fact remains that democracy to make itself useful to the country and to the State must have a party system well organised and functioning properly. That being the accepted position, there is no knowing which party will be in power. It may be that a party absolutely different from that in the Centre may be functioning in office in a province. What them would be the position? The Governor, who is a Constitutional Governor under the Act has to be appointed on the advice of the Prime Minister of India, leader of another Party. My honourable Friend, Mr. Kher, made a distinct contribution to this discussion. His contribution is this, viz., the Governor is being appointed in consultation with the Cabinet. If that were so,-I

do not know what it is-the selection becomes less objectionable. But reference to the Legislate Assembly discussions shows that the Prime Minister appoints the Governor. The Prime Minister today is one of the tallest of the few men in the world. You may expect justice and you do expect justice in his hands. He has no axes to grind. But there may be a Prime Minister in the Centre who may have his own axes to grind. Is it anything serious to expect that a party functioning with its majority in the province may be interfered with if he proposes to play the role that was just now discussed by my honourable Friend the jurist member, Dr. Sen? Therefore, I feel and join issue with those friends who feel that the set-up that we propose under the new Constitution will be useful. I claim that you cannot have both ways. You cannot have democracy and autocracy functioning together. In the provinces you are going to have democracy from toe to neck and autocracy at the head. Both these are bound to fail; you are inviting friction. I know I will not vote against it because as I have stated I submit to the joint wisdom. But, I must clearly state here and place on record my view and what I see the future of it is going to be. I have experienced myself and I have no hesitation that this experience which I have had in my life will repeat itself. If the Honourable Sardar Patel were here, I would have cited how the Governor, who was an agent of British Imperialism, had all along been attempting to smash my party. What was being done by the Governor under British Imperialism may also be repeated by the party, though I have no hesitation in saying that my leaders would not stoop to or even think in the way in which things were being done.

We are told that this is one of the devices to bring harmony into the provinces. How could you bring harmony? It is impossible. You can never bring harmony by these acts. I could understand my honourable Friend Mr. Brajeshwar Prasad. His has been an undiluted paternal autocracy and he is for scrapping the entire Constitution; he does not have any faith in democracy. I do not agree but I respect his views. You cannot, as I have already stated, have it both ways; you cannot have democracy and autocracy together. My honourable Friend says, if the Prime Minister at the Centre who is responsible to the people of India nominates, it could not be autocracy. It will not be democracy either. It may be a nomination of the President under the advice of the Prime Minister; but it really is a nomination of the Prime Minister and in no event could it be democracy. We are giving powers to the villagers; we organise village panchayats. You authorise the Panchayat to elect its President. Would you in this Constitution deny the same right to the Assembly? My honourable Friend Mr. Ramalingam Chettiar had gone a step forward and he wanted to increase the size of the electorate in the province, by bringing in the District Boards, Municipalities in the arena of election. That is one aspect of the question which we may have to explore; but it was rejected. I am not sorry for its rejection; nor have I been pleading for it. What I say is this : you cannot refuse, nor could you justify this refusal to the Assembly to have its own elected Governor. There may be reasons to say, that an adult suffrage elected Governor and a responsible Premier functioning is nowhere in the world and as such not very desirable. That may be justifiable. In fact, when in the 1947 session this was debated, I pleaded with the Members that this would not be proper; but that was not accepted, and as I have stated I am always prepared to respect and follow the joint wisdom of the party and of this Assembly. In that view of the question, I had accepted it. It looks to me that constant change has been the fame and reputation of the honourable Members of this Assembly. We appointed a Committee; it had as its President a person no less than the Honourable Sardar Patel. The unanimous recommendation of the Committee was embodied in this Draft Constitution. Well,

Sir, this very question was discussed thoroughly in this House and then it was send to the Drafting Committee. Now, we come forward for such an important and basic change in the set up of the Constitution. If this is to go on, I think it is unfair to the Members who have absented themselves feeling probably that changes in the Constitution will not be root and branch.

Mr. President : No Member is entitled to absent himself in the hope that his vote will not be required. Every Member is expected to be in his place. Mr. Biswanath Das was saying that some Members were absent in the expectation that the draft would be accepted as it is and therefore I have said that no Member should take anything for granted and it is his duty to be here when the Assembly is sitting.

Shri Biswanath Das : I am thankful to the Chair and also to the Member who has protested against this but is it wrong to assume or at least far too wrong to assume that there will not be changes root and branch because it was once fully discussed in the Assembly?

Shri L. Krishnaswami Bharathi (Madras : General) : Absolutely wrong.

An Honourable Member : Then why have you come here?

Shri Biswanath Das : Another Friend says 'Why have I come here? I know and he also knows the why. Sir, I do not want to proceed with this interpretation. I feel that it is my duty and my responsibility to place on record how I feel in this matter. Also let me state that I have consulted all the Members of the delegation from Orissa and Orissa States and all of them agree with my feeling that this will not work properly.

Shrimati G. Durga Bai (Madras : General) : Mr. President, Sir, I stand here to support the amendment moved by Friend Shri Brajeshwar Prasadji and supported by my Friend Mr. Kamath. Sir, I must frankly confess that I also for some time held the view that the system of election by direct vote would be a better one compared to every other system. But I should say that I have changed my views in the matter because I am one of those who have given some though to this question and come to the conclusion that the proposal of nomination or appointment as suggested in the amendment is a better one in the circumstances that we have today. Sir, I find that those friends who opposed this proposal of appointment by the President did it mainly or two grounds, that it would be inconsistent with the principle of democracy and also it would be giving too much power to the President. With regard to their fear that the ideal of democracy would suffer a good deal if people were deprived of their right of franchise in favour of Governor and that the ideology behind that-the freedom to exercise their vote-would be defeated if this power is given to the President, I may say that the usefulness or otherwise of any institution should be judged by the results that ultimately the institution would yield. Certain functions are expected to be discharged by the Governor. We wanted to introduce the Governor in our Constitution because we thought that an element of harmony would be there and that institution would bring about some sort of understanding and harmony between the conflicting groups of people, if really the Governor is conscious of his duties and he functions well. It is only for this purpose this is proposed,- the governing idea is to place the Governor above party politics, above factions and not to subject him to the party affairs. Now, we find a section in the draft article 135 wherein it is said that he is not to be a member of either of the Legislatures or, even if he was a member at the time when the choice may fall on him, he is expected to resign before he is appointed or elected as Governor. The idea behind it is that he should be above party politics and party factions. May I ask those friend whether this idea would be realised if we make him dependent upon the mercy of the people and make him subject to party affairs? If he is to depend on the mercy of the people for votes, I am afraid the idea that he would not be realised. Therefore, I feel that the election

system as proposed by some, as against the amendment, is very dangerous. The other point which my Friends who opposed nomination is that it would be giving too much power to the President. May I ask whether the President does not mean his Prime Minister, and the Prime Minister in his turn would not consult his colleagues before making the choice? Those in favour of this system of appointment said yesterday that a happy and healthy convention would grow of consulting the Provincial Prime Ministers. I think already the system has grown and is growing that whenever a Governor is appointed to a province, the Chief Minister of that Province is invariably consulted. Therefore I think the fear of my friend that the President would not discharge his responsibilities well and in the interest of the country is absolutely groundless. Therefore it would be quite safe to leave the entire responsibility to the President and I do not see any danger why we should not leave it if that could be discharged with great caution and I may tell my friends that the person who is to take the responsibility of such a magnitude would not easily take it and would take the responsibility of such a magnitude would not easily take it and would take it after a great hesitation because he knows that he has got to face the criticism of my friend like Shri Rohini Kumar Chaudhuri or Shri Biswanath Das or friends who oppose this idea and who are afraid of giving this power to the President. Therefore, I suggest that there is absolutely no danger and it is always open to those people to go and tell the President that whenever a man is not wanted why he is not wanted and therefore he is to be removed on certain grounds.

Therefore, I feel that there is absolutely no danger in that system of appointment and I urge on my friends to be convinced by this argument that this would be a safer method in the present circumstances. The Drafting Committee itself has changed its view and has put forward an alternative proposal, viz., to appoint one of the four candidates out of a panel of four candidates to be elected by the House. Sir, this is a proposal which has no counterpart or similarity in the whole word and also it is impossible to defend this panel business on its merits. I would say that this will not carry any responsibility but on the other hand carries all the disadvantages of a divided responsibility. It carries no responsibility of either the President of the Cabinet or the Provincial Cabinet because the responsibility here is very much divided. In this panel system there is this danger that if the votes recorded vary, as they are bound to vary, and if the President happens to pick up a man who has secured less number of votes, the person chosen will come into clash with the Provincial Legislature. Therefore he would be naturally unwilling to take up that responsibility. Ultimately, therefore, it would resolve itself into an election by the House itself. An election or appointment which rests on the House, I do not think, carries much importance.

I should also say that the system of proportional representation would not improve matters in any way. That will only produce the effect that it would divide the whole House into warring groups and it will also produce all the disadvantages and defects of the French system. This experiment of panels and appointment from the panel is already tried in some of our universities today and it cannot be said that this has worked well. Every appointment has resulted in a disappointment. Ultimately, the defeated candidate, transforming himself into the opposition, has brought about a lot of trouble to the Vice-Chancellor. Therefore, I do not see any reason why we should not have recourse to the simple and straight procedure of appointment by the President. Sir, with these words, I heartily support the amendment of Shri Brajeshwar Prasad.

Prof. Shibban Lal Saksena (United Provinces : General) : Mr. President Sir, I consider this clause as one of the most important ones in the Constitution. We have modelled our

Constitution on the British model, and in that model there is the King and in ours we have put our President in his place. The King, in the Constitution, has almost no functions, he is a cipher : but the cipher is on the right side of the digits, and it is very well known that the King exerts a Powerful influence on the politics of England. I therefore say that if we are modelling our Constitution on the British model, in England. I feel that this dignity cannot be given to the Governor if he is a nominee of the President. If he is elected by the adult votes of the people, then alone can he get, can he acquire the dignity that the King enjoys in England. He has a dignity which surpasses that of all other persons. If we are trying to shape our Constitution on the British model, then we must not forget the fact that the Governor must not be a mere figure-head but should have the dignity and prestige of the King. At present the Centre has appointed Governors in all the provinces, but they have not the necessary prestige. I know many of them would not have been elected if they were to be chosen by election. I am not happy about the appointment in my own province, and I feel the people of my province would not have elected the Governor who has been appointed there. This practice if continued will defeat the purpose of the Constitution which is modelled on the British model.

Secondly, it has been said that if the Governor is elected, he will have greater prestige than the Premier of the Province, and then there will be clashes. I do not see why it should be so. Both these elected persons will be patriots and will love their province, and the country. They will try to show, when they work, that they can work in the interest of the province. They will show that, when they both occupy these high offices, they can adjust their personal predilections, and work in the interest of the province. I see no reason why there should be any clash. Most probably the Premier and the Governor will be elected by the support of the majority party, and so probably they the Premier and the Governor will be elected by the support of the majority party, and so probably they will both belong to the same party. Even if they are not of the same party as will happen only when parties are very evenly balanced, and if one party gives the Premier and the other the Governor then both the parties will have to co-operate and, this will ensure co-operation of all the voters, and so the province as a whole will have the benefits of the co-operation of both sections of the House. So no clash need be apprehended. These great men whom the people of the whole province will elect will be wise enough to devote all their abilities to the good of the province. They will never quarrel, and they will see that all quarrels are subordinated to the interests of the province.

Then it has been said that there need be no fear that the Centre will have too much power. Already we have invested the President with a lot of power, and it has been said that we do so because he is not a party man. He is to be elected by all the legislatures. Therefore he need not be a party man. But the President will act on the advice of the Prime Minister. So the party in power at the Centre will nominate all the Governors in all the provinces. It will also nominate all the Judges of the Supreme Court and other big officials. That is not a good thing. I cannot subscribe to the view that a single person should have the power to nominate all these high officers. We should remember that absolute power is not a good thing. It corrupts absolutely. If we clothe one single person, the Prime Minister, however good he may be, with all these powers-and all may not have the caliber of the present Prime Minister, and there might be some Prime Ministers who might misuse this power-it will be dangerous and it is not proper to give the President acting on the advice of the Prime Minister the power to nominate the Governors. We are also providing that the Governor will have the power to take over the affair of his

province in the event of an emergency. This he cannot do, unless he enjoys the confidence of the people of the province. He will not have the confidence of the people unless he is a man elected by the people, and they will not let him take over the powers in an emergency. So the Governor must be elected by the people.

It has been said that the Centre should have over-all powers over the province. If the idea is to have a single unitary constitution, I would have welcomed it. But now with the present Constitution as it is, we must leave it to the patriotism of the people of the provinces to try and to act in such a way that the Centre is powerful and that they are working in co-ordination with the Centre. And if the people are left to themselves, they will see that the Governor is such as will co-operate with the Centre and discharge his functions in the interests of the country. We must trust the people and their patriotism.

I has been said that election of the Governor by adult suffrage would be a very difficult task. But we all know that all the members of the Assemblies will be elected by adult suffrage. Along with the election of the members, the Governors can also be elected at the same time. I submit that the powers of the Governor should not be given to a person who does not enjoy the confidence of the whole people. The original suggestion of Dr. Ambedkar should be one that should be accepted.

Shri K. M. Munshi (Bombay: General): Mr. President, Sir, I would not have intervened in this debate at this late stage had it not been for the remarks that fell from my Friend Mr. Biswanath Das. I am afraid the remark are likely to be understood in an unfortunate manner, if the whole position relating to the new amendment was not placed before the House at this stage.

It must be remembered that in 1947 when this question was discussed in the joint sitting of the Union Constitution Committee and the Provincial Constitution Committee there were two diametrically opposed views. That was in the beginning of the career of the Constituent Assembly. One view was that India as a whole should adopt the American model and the other, that it should adopt the British model. At one time the general opinion fluctuated from one to the other. Ultimately, however, so far as the general opinion was concerned, it veered round in favour of the British model both in the Centre and in the Provinces.

There was an intermediate position which some people favoured. It was felt that if at any time it was impossible to form a majority government either in the Centre or in the Provinces and there was fragmentation of political parties, a strong President and Governor elected on adult franchise and backed by the authority of the electorate would give stability to the Government.

When this proposal was mooted, a curious situation arose. With regard to the Centre that opinion was not upheld, it was decided that the President at the Centre should be a constitutional head and should not be directly elected by the adult franchise of the whole country. But the position of the Governor remained as it was in the old scheme. The co-ordinated scheme of both the President and the governors being elected by adult franchise, so that they would have prestige in the country and power to stabilise Government, was thus broken up. After we have adopted the British model, the election of the Governor by adult franchise in the province remained an anomaly, a completely out-of-date and absurd thing. Imagine a Governor being elected by adult franchise of all the citizens in a province. The persons who are at the top of the political life of the province would sooner prefer to be the Prime Minister and Ministers with effective power in their hands. Therefore, the party in power when it goes to the election will put up a person who is not as outstanding as the prospective ministers for that office of Governor, with the result that the best man in the party will not be available for it. The expenditure and energy of a province under election would have been wasted in putting a second rate man in the party at the head of the Government. That would mean that he will be subsidiary in importance to the Prime Minister, as he would be his nominee. If that is going to be the case, there is no reason why the farce of a huge election has to be undergone.

In April last, both the Committees met again, considered this question and ultimately came to the conclusion that as the post of an elected Governor would be completely useless from the point of view of his having any controlling voice in the government, there was no need for going through the process. It was also felt and very rightly felt that if one member of a party was elected by the adult franchise of all the citizens, while the Prime Minister was there as only the leader of the majority party in the Legislative Assembly, in the event of a conflict between them, the position of the Governor may be superior to that of the Prime Minister. With the prestige of a general election by adult franchise he might seek in a given contingency to over-ride the powers of the Prime Minister. That would inevitably lead to a conflict. This possibility has to be obviated. The present scheme is that the Prime Minister who is the leader of the majority party should, like the Prime Minister who is the leader of the majority party should, like the Prime Minister of England, have the controlling voice in the affairs of the province or the government. Having two persons like that in a province might lead to an unfortunate situation in the provinces. It was from that point of view that the Joint Committee ultimately decided that the best way would be to eliminate the election of the Governor.

The danger becomes clear, if you see the old scheme, part of which is given in article 144(6). It says "the functions of the Governor under this article with respect to the appointment and dismissal of ministers shall be exercised by him in his discretion." So discretionary power was given to him to dismiss or appoint ministers. This is a very much wider power than could be exercised by a constitutional head of a province. Therefore this power is going to be removed. If that is so, the government in the province will be more in the nature of responsible government after the British model.

We have to consider the position only in this way. Would it ensure for the better government of the province to have a nominated governor or an elected governor? If there was a nominated governor, his power of dismissing ministers at his discretion naturally would go. He would remain a constitutional head. The Government would be practically run by the Premier and his party so long as the ministry is stable.

My Friend Mr. Alladi Krishnaswami Ayyar drew upon the analogy of Canada. With great respect for his profound learning I beg to differ. I do not think that the Governor that we envisage by this amendment, namely a nominated governor, is on the same lines as the Governor of Canada who is more or less an instrument of the Government of England, though a constitutional head. Here he will be nominated, no doubt, but his power, if the government is stable, will only be confined to what is contained in article 147, that is, he may submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a minister but which has not been considered by the Council. Therefore there is nothing of importance that he has to do except to ask for a reconsideration of certain decisions. Consider this again. Would it not be better to have an independent person bringing a detached frame of mind on this question rather than have more or less a nominee or a follower of the Prime Minister himself, if he has to perform this function? Therefore from that point of view during a stable government it would be much better to have an independent person to advice the ministry.

The other advantage of a nominated Governor is this. Take the case where there is no majority party or the majority party is split into two or more sections and there is a rivalry for premiership. In that event a person who is completely detached from party politics of the province would be much better than a person who is wedded to the party. If for instance, as unfortunately it has happened in some provinces, the Congress party splits up into two groups and each puts up a prospective premier of its own what would be the position of an elected governor who will more or less be a follower of one or the other prospective premiers? It would lead to unnecessary complications in the affairs of the province. It would be much better that this person is nominated and thus cut away from the party politics of the province, so that the competition or the race between the rival groups is conducted in a fair, responsible and constitutional manner. All things considered, it would be better to have a Governor nominated by the Centre, who is free from the passions and jealousies of local party politics.

Then take the contingency under which article 188 comes into operation. That is a case of an emergency when the Governor has to exercise his discretion. He has to report to the President and act under that section for a period of two weeks. In that event also if there is a real emergency in the province, a person who is not connected with the party politics of the province would be able to discharge that duty much better than when he is completely identified with one or the other group.

Article 188 implies that the conditions in the province are such that a stable government cannot possibly be carried on. If that is so, then it is advisable that a person who is connected with this or that party should not occupy this important position for he would, in that event, he responsible for the maintenance of public tranquility in that province.

Take the further stage envisaged in article 188. When the constitution of a province is suspended, a person who has the confidence of the Centre would be of much greater use in restoring the stability of the province than a person who is associated intimately with the politics of that province.

This view ultimately gathered strength from last April. It is not correct to say that this decision was placed before the party at the last minute or that there was no sufficient discussion upon it. A very large number of members have come to the conclusion upon it. A very large number of members have come to the conclusion both from the constitutional point of view as well as from the point of view of the country as a whole that the Governor should be nominated person.

From all these points of view I hope the House will accept the amendment unanimously.

The Honourable Shri Jawaharlal Nehru (United Provinces: General): Sir, this debate has already elicited so many speeches that probably every conceivable argument for and against this proposal has been placed before the House. I do not know what I can add to it. I can well understand a certain amount of hesitation on the part of the House to reconsider something that it has already decided. That is right. Nevertheless it is pertinent to remember the time when we considered this first. It was in July 1947, when my honourable colleague, the Deputy Prime Minister brought this matter before the House and the House then passed it. Nearly two years have passed-two years which have made an enormous difference to the Indian scene. And if we seek to reconsider something that we have passed two years ago, before the 15th August and in view of all that happened after the 15th August 1947, it should not appear to be a strange thing to do, for we have had a great deal of experience, bitter experience during this period. I submit therefore that it is perfectly open to us not only, as of course it is in law, but in reason to reconsider this matter. In fact in the course of the last year on numerous occasion Committees of this House considered this and other matters, not necessarily with a view to changing them but with a view to co-ordinating them. There was the Union Powers Committee: there was the Provincial Model Constitution

Committee of which my colleague the Deputy Prime Minister was the Chairman. After all these considerations and discussions those committees felt that a certain change was desirable. Thus even those like Sardar Patel, who themselves put this forward in this House the other view, felt that a change would be desirable.

Now the reason for this have been stated before the House and I need not go into them, except to say that I myself originally was not very definite, if I may say so, in my mind as to which would be the preferable course. I preferred something but not to the extent of considering it as absolutely necessary. But the more I though about it, the more I conferred with others and discussed with them, the more I felt that from almost every point of view this proposal that is moved of a nominated Governor, in the present context of the Constitution, was not only desirable from the practical point of view but from the democratic point of view too it was desirable and worthwhile.

Now, one of the things that we have been aiming at a great deal has been to avoid my separatist tendencies, the creation of groups, etc. We have decided that we will not encourage communalism: we have abolished separate electorates and reservation of seats, etc. We have yet to deal with many other separating factors. We cannot deal with them by law of course. We have to deal with minds and hearts. Nevertheless a certain convention and practice helps or hinders the growth of separatist tendencies. I feel that If we have an elected Governor that would to some extent encourage that separatist provincial tendency more than otherwise. There will be far fewer common links with the Centre. There would, normally speaking, almost inevitably I imagine, be a Governor from that particular province who stands for the governorship. As has been stated he might be some kind of a rival almost in that particular majority group, which for the moment controls the government of the province. Then there will be these enormous elections on the base of adult suffrage. Apart from the tremendous burden of these elections for the provincial and central legislature, to add another election on this major scale would mean not only spending a tremendous deal of the energy and time of the nation but also the money of the nation had divert it from far more worthwhile projects. Apart from this it would undoubtedly mean, I think, encouraging that rather narrow provincial way of thinking and functioning in each province. Obviously, the provinces have autonomy.

Obviously, the provincial governments will function in a provincial way representing the people. But are you going to help that tendency by also making the provincial Governor much more of a provincial figure than he need be? I think it would be infinitely better if he was not so intimately connected with the local politics of the province, with the factions in the provinces. And, as has been stated by Mr. Munshi, would it not be better to have a more detached figure, obviously a figure that is acceptable to the province, otherwise he could not function there? He must be acceptable to the province, he must be acceptable to the Government of the province and yet he must not be known to be a part of the party machine of that province. He may be sometimes, possibly, a man from that province itself. We do not rule if out. But on the whole it probably would be desirable to have people from outside eminent people, sometimes people who have not taken too great a part in politics. Politicians would probably like a more active domain for their activities but there may be an eminent educationist or person eminent in other walks of life, who would naturally, while co-operating fully with the Government and carrying out the policy of the Government, at any rate helping in every way so that policy might be carried out, he would nevertheless represent before the public someone slightly above the party and thereby, in fact, help that government more than if he was considered as part of the party machine. I do submit that is

really a more democratic procedure than the other procedure in the sense that the latter would not make the democratic machine work smoothly.

After all what is the test of a democracy? Carried to extremes it may be perfectly democratic in the sense of elections everywhere but this may procedure conflicts, with the result that the machine begins to creak. Look round the world today. How many governmental machines are working smoothly: how many are creaking and how many are cracking up all the time for political or economic reasons. There are very few stable democratic machines anywhere. In providing for a stable democratic machine it is very important for us not to take any step which might tend towards loosening the fabric of India or loosening the governmental machinery and thus producing conflicts. We have passed through very grave times and we have survived them with a measure of success. We have still to pass through difficult times and I think we should always view thing from this context of preserving the unity, the stability and the security of India and not produce too many factors in our constitutional machinery which will tend to disrupt that unity by frequent recourse to vast elections which disturb people's minds and at the same time divert a great deal of our resources towards electoral machines rather than towards the reconstruction of the country.

We must base democracy on the electorally process. We have done it. But the point is whether we should duplicate it again and again. That seems to me unnecessary, apart from leading to conflict and waste of energy and money and also leading to a certain disruptive to conflict and waste of energy and money and also leading to a certain disruptive tendency in this big context of an elective governor plus parliamentary system of democracy. Therefore I should like to support fully the amendment proposed that the Governor should be a nominated Governor.

One word, more, Sir. I think that an elective governor is almost invariably not only likely to be of that province, but is likely hardly ever to represent any of the numerous minority groups that exist in the country. Normally, of course, the majority will probably have this for one of its members. But it is obviously desirable that eminent leaders of minorities-I use the word for the sake of simplicity; in future I hope we will not use the words 'majority' and 'minority'-eminent leaders of groups should have a chance. I think they will have a far better change in the process of nomination than in election.

Syed Muhammad Sa'adulla (Assam: Muslim): Mr. President, Sir the intervention of our Prime Minister in this debate has loaded the dice and it is useless for me to speak against him. But yet, for the sake of being consistent in my principles, for the sake of the large population outside this House - I mean the entire population of India - this matter ought to be discussed thoroughly. The amendment which is being debated now goes to the very fundamentals of the frame of the Draft Constitution. The drafters of the Constitution, acting on the mandate that they received from the Constituent Assembly, drew up the principle of election for the governors of the provinces. The present amendment cuts at its very root and wants to lay down that the Governors should be appointed by the President. So this matter needs to be discussed very dispassionately, especially as the amendment wants to set aside the previous judgment of the Constituent Assembly. WE should literally draw up a balance sheet of the advantages and the disadvantages of the principle of election and of the principle of appointment so far as the governors of the provinces are concerned. The supporters of the amendment lay stress of three different points on account of which they believe that "appointment" is the better arrangement. I will enumerate them one by one. Firstly, that an elected governor alongside an elected Premier of a province will go against the smooth working of the province and will be a negation of democracy. Sir, I contest every word of this objection. The country is now divided into different political parties or rather, the country is now governed by one political party.

Shri Mahavir Tyagi: Every country is governed by one party.

Syed Muhammad Sa'adulla: I refuse to be side-tracked by Mr. Tyagi. To continue, I challenge every word of the argument put forward. The country is now being rules by one leading political party. In a province, it is more likely, under the principle of election, that the Governor as well as the Premier will come from the same ruling party. The result will be that the administration of the province will run smoothly,the Premier and the Governor working harmoniously. Moreover, we want that India should be a secular democracy, a republic engendering the idea of the citizens right to have a say in the administration of the country. The elective principle gives that right to the citizen to have a say in the appointment of even the ruler of his province. Again, we have nurtured our people in the expectation that the principle of election adopted two years ago will be left undisturbed. As against that we are told that an appointed governor will lead to democracy and better administration in the province.

Sir, it is said that in the provinces there are party factions and that passions will be roused and therefore the Governor as well as the Premier will be constantly at loggerheads. How can you assume that an appointed governor from another province will help smoothen the administration of a province? We were told yesterday, a leading politician from Western India may be sent by the President as governor of a distant and benighted province like Assam or Orissa. It is said that this political luminary will carry a detached mind. He will be unbiassed. He will not be embroiled in the politics of the province. Therefore he will be able to bring a disinterested mind into consideration of the affairs of the province. I grant all that. But in addition we must look into this one potent factor that this gentleman will carry an empty mind so far as the conditions of the province are concerned. To many of the western politicians, the conditions of a distant province like Assam or Orissa are completely blank. I have talked with many politicians in my time and I am appalled at the ignorance of even the best informed so far as conditions in the east are concerned.

Therefore, Sir, it cannot be said that the mere appointment of a Western India politician to the Governorship will lead to better administration in the province.

The next point that I would place before you is this: How do we assume that the Cabinet in a province will be of the same political party as the Governor who is appointed to that province? Then conditions will be worse and worse confounded. The Governor under instructions from the Centre will try to fun the administration in a certain way, while the Cabinet of a different political party would try to run it in their own way. Ultimately in this tussle, the Cabinet must prevail and for the purpose of good government, the Governor appointed by the President would have to be recalled. I think this is a contingency which is not far in the distant future. I submit, Sir, that good government is better than an ideal government. If good government is accompanied by self-government then it is better than even mere good government. Therefore, the principle of election is far more compatible with the good and efficient governance of a province, plus the right of self-government.

The second objection that was raised against election is the bogey of expenditure. I said bogey, for not a single pice more than will be necessary in a general election in a Province will have to be spent if a Governor is also to be elected. Sir, I have experience of elections from the year 1911, very nearly forty years. From what I have seen, in general elections, the elections for the provincial legislature as well as the Central legislature are held simultaneously. In the polling booths there is one box for the provincial election and another box for the Central election. There is no additional cost. The same Polling Office is there; the same Returing Officer is there and all the polling staff is there. The voter has simply to put in his vote for the provincial legislature in one box and his vote for the Central legislature in another box.

The Honourable Shri Satyanarayan Sinha : (Bihar: General): If there is a bye-election?

Syed Muhammad Sa'adulla: I am talking of a general election, which is the rule. In talking of a bye-election, you are talking of the exception. You cannot condemn a rule because of the exception. I therefore say, Sir, with all the emphasis at my command that in those circumstances there will be no additional expense in the election of a Governor.

Lastly, it has been said, and learned jurists have been brought in to support the idea, that elected Governors are really nowhere to be found; everywhere he is appointed, barring, of course, the U.S.A. We are told that the Canadian system ought to be followed. Well, the Canadian system may be good for conditions prevailing there. One jurist contradicted the other-I refer to my colleagues in the Drafting Committee, Shri Alladi Krishnaswami Ayyar on the one side and my Friend Mr. K. M. Munshi on the other. Mr. Munshi said that the Canadian system cannot be ideal for India. Granting that we followed the Canadian system, we will have to put in a rider, a big proviso, that conventions should be established whereby the provincial Cabinet will have a say in the matter of appointment. This was suggested by Shri Alladi. Here comes the whole question, Sir. According to the Draft Constitution, the Governor has to be appointed first and the Governor would then ask the leader of the largest party in the legislature to form a Ministry in a Province. Now, where is the Ministry to be consulted before the Governor is appointed by the President? Take again the case, as I have already said, where the majority of the members of the provincial legislature is composed of a party different from the party in power at the Centre from which the President is bound to be chosen. Then the nominee of the President cannot but be of his own party, and he and the majority party in the provincial legislature will surely come to loggerheads.

Shri L. Krishnaswami Bharathi: Not necessarily.

Syed Muhammad Sa'adulla: We who have been condemning the British system of appointing Governors from the I. C. S., we who have use every kind of slogan, in order to remove that system of nomination or appointment by an outside body, we who are enamoured of the democracy of the U.S.A., cannot do better than follow the elective principle in the appointment of our Governors. I know that the advocates of the status quo in the Draft Constitution are up against a very strong stone wall. We cannot pit out strength against the on-coming tide. We have been told by speaker after speaker that originally they were all for the elective principle but they have now given deeper thought to this matter and they are now enamoured of the principle of appointment. Well, Sir, they are welcome to this change in their opinion, but those honourable Members have not the monopoly of the ability to concentrate their thoughts or of being better patriots. We too have thought over the matter with as much calmness and with as much consideration of the best interests of the country, and we are convinced that the elected Governor is far more in accord with our nations of democracy than an appointed Governor. Sir, the country is now being ruled by a certain party_I mean the great Congress Party. Although opinion among this great Party is divided and although this is an important fundamental matter in which each individual member ought to have been allowed a free vote, what do we find Sir? A ukase has been issued, the flat has gone forth and a party whip is being distributed to every Member whether he is a member of the Congress Party or not that every Congress member......

Shri L. Krishnaswami Bharathi: On a point of order, Sir, is the honourable Member in order

in bringing in the Party decision and all that?

Syed Muhammad Sa'adulla: The whip has been distributed on the floor of the House and in fact I have also been given a copy.

Mr. President: I am afraid some other honourable Members also have brought in the name of the Party. That way the discussion here becomes very unreal. When one of the members spoke, he said he was opposing the amendment, even though, when the time came for voting, he would vote in its favour. I thought that discussion might come to an end at that stage.

Syed Muhammad Sa'adulla: All I was going to say was about party strength in this Constituent Assembly. This august House has a total of 303 Members at present; if I remember aright, Sir, the Congress party controls 275 votes and if members of the party are to follow the ukase, there is no chance for any other opinion to prevail. I simply take my stand, as I said, in all humility after the speech of the Honourable Pandit Jawaharlal Nehru only to record for future generation the other side of the issue.

Shri T.T. Krishnamachari: Mr. President, Sir, after the frank speech of the Honourable the Prime Minister, I do not think it is necessary to convince anybody of the need for a change or a reversal in the decision of this House in regard to the selection of the Governor of a province. But, Sir, there have been a number of speakers, very erudite lawyers, experienced administrators, and as it often happens when feelings run high, both the supporters of a proposition and those who oppose it over-pitched their arguments that they seek to put forward; and if anything, Sir, those people who have been opposing this amendment haven raised this bogey of concentration of power in the Centre, of deprivation of the powers of the Provincial Government, of stifling the spirit of democracy and so on. On the other hand, those who supported this amendment, have drawn freely from analogies in other countries, analogies which, it must be admitted, have a very limited application to the circumstances of the case as it prevails in this country. Sir, I take it to be my duty only to dispel one or two misconceptions that arise from some of the previous speakers painting the picture rather in a highly coloured manner, and also to answer one or two arguments that have been put forward by my respected Friend, Syed Muhammad Sa'adulla, and which I think, had better be controverted at this stage,- because his arguments looked extremely plausible and extremely reasonable- but which on a careful examination reveal that they are neither plausible nor reasonable. I would like to refer to the arguments used by my respected Friend, Mr. Alladi Krishnaswami Ayyar yesterday, in a very eloquent speech in which he drew freely from the Canadian example, of the appointment of the Lieutenant Governor by the Governor-General of Canada. I will ask the House to examine the whole question for themselves, and he had no intention of asking this House to accept the entire scheme that obtains in Canada in regard to the appointment of the Lieutenant Governor.

Sir, I would like to tell the House that when we borrow from the example of Dominions like Canada and Australia, we forget that what obtains in those countries today is something totally different from what they were in the beginning. For instance, in Australia the appointment of the Governors until the passing of the Statute of Westminster was done in the same way as it is done in any colony. The position of the Governor in an Australian province was that he was directly responsible to the Minister in charge of Commonwealth Relations of whatever it was called at that time in London. He had direct access to Whitehall: he could correspond direct and he often got instructions direct from the British Ministry concerned because it was only after the passing direct from the British Ministry concerned because it was only after the passing of the Statute of Westminster that Australia was recognize an undivided unit and the system of British-Minister directly corresponding with the Governors of the various province, was allowed to pass into desuetude. In regard to Canada where the constitutional position as it was some time back bore some analogy to conditions in this country, there is one particular principle that is in operation on which I would like to lay some emphasis which will have no application to this country at all. It is avowed by every writer on the Canadian constitution that the whole scheme of the appointment of Lieutenant Governors and the control that the Dominion exercise over the provinces is such that the ultimate control is in the hands of the Dominion Government. Actually under the Canadian Constitution the Cabinet of the Dominion issues instructions to the Lieutenant Governors; in fact they have exercised their discretion in removing the Governor. Two instances are know in which the Governors have been removed. The Lieutenant Governor in a Canadian Constitution acts as an agent of the Dominion Governor in a Canadian Constitution acts as an agent of the Dominion Government. I would at once disclaim all ideas, at any rate so far as I am concerned, that we in this House want the future Governor who is to be nominated by the President to be in any sense an agent of the Central Government. I would like the point to be made very clear, because such an idea finds no place in the scheme of Government we envisage for the future. While considering the scheme of the distribution of powers which will ultimately be settled by this House, if it is found necessary that the Centre must have some powers reserved for itself in order to ensure good Government in the provinces, in order to enable it to interfere when the need for such interference arises we can adequately provide for that contingency in the distribution of powers. There is no need for us to adopt an outworn system, a system which has grown, because of historic traditions, because of that figment of imagination which was actually translated into practice by British ministers, namely, the preservation of the prerogative of the Crown in the Dominions. We have no need to use that particular system not to impose the will of the Centre, if it is necessary and if circumstances make it necessary, on the provinces by means of making the Governor the agent for the purpose. Sir, I think much of the objection that has been raised to this idea of nomination would fall to the ground if this point is understood. We do not want either by this particular article or by any other article that will be passed by this House in future to make the Governor of a Province an agent of the Centre at all. The utility of a nominated Governor has been very fully dealt with by the Honourable the Prime Minister and I would like to tell Syed Muhammad Sa'adulla this: Notwithstanding his conviction, notwithstanding the fact of these years of struggle against British Imperialism which people have carried in various ways and which Syed Muhammad Sa'adulla has carried on within the cabinets functioning under the British Governors, we are fully convinced that we do not want to give up the system of election where it is necessary; at the same time we do not want to duplicate the system of elections.

I agree with one point made by my honourable Friend Mr. Sa'adulla that the argument that is being advanced, that the election of a Governor will be an expensive matter, is certainly beside the point. Democracy is an expensive affair. If this House wants a democracy, it has got to go through the expenses of an election, once, twice, thrice, as many times as it is necessary. I quite agree with him that he expenses, annoyance, and the work that has got to be done, that is being quoted as an insurmountable factor against the principle of election, is beside the point.

What is really material, and what, I think, will probably ultimately persuade the House to support the motion before the House is that we are really providing for there being no room for any conflict. This point has been made clear by many speakers, notably by the Prime Minister. Two persons, having more or less equal

authority, one elected more directly with a certainty of tenure-mind you, he has a tenure of five years unless he could be in the mean, time impeached, - and the other person, whose tenure cannot be guaranteed even for half an hour, these two people coming together, there undoubtedly will be conflict. If you want election of the Governor by adult suffrage, there is at least something to recommend it. The question of division of spoils in the case of a party which has got a hold over the province cannot be done to its fullest extent, because there is uncertainty about the election of the Governor and uncertainty about the election of the aspirant for Chief Ministership as the leader of the party. If, on the other hand, we adopt the alternative that the Drafting Committee has recommended, namely election by the legislature of a panel, then, it becomes a matter of mutual adjustment between two powerful persons in the majority party of that particular province, one saying to the other, "you shall be the Governor and I shall be the Chief Minister." I do feel, Sir, that if I am given only these two alternatives, election by adult suffrage and election by the legislature, I would much rather vote for election by adult suffrage. It does not mean that I like the idea, for the reason that we do not want to create here and now the seeds of conflict in a province that we do not want to create here and now the seeds of conflict in a province by duplicating election in regard to the two important offices in the provincial administration.

It has been said by my honourable Friend Mr. Sa'adulla that he fails to appreciate the reason that several Members in this House have given for changing their point of view from what it was two years back to what it is today. (Interruption). My honourable Friend Mr. B. Das. is not audible. I would only say this in explanation. I think the reason that I am adducing are those which are still oppressing my honourable Friend Mr. Sa'adulla. He just now said how we are admires of the United States Constitution. Yes; we are admires of the United States Constitution. But, we have not adopted that Constitution. We have not adopted that Constitution because we believe and I believe very firmly that the genius of the Indian people is most suited to a Parliamentary democracy. If two years back we imported this principle of election for the Governor, it is due to the very fault under which my honourable friend is now labouring that was oppressing most of us. I was not one of them undoubtedly. We were trying to frame a constitution and in doing so tried to introduce various safeguards from various constitutions. Our mind was not very clear whether our future constitution was going to follow an entirely Parliamentary system or was going to be partly Parliamentary and partly Presidential. I think it is really a tribute to the leaders in this House that they kept an open mind right up to the end. They went on examining the question at various stages and finally come to the conclusion that we shall adopt an entirely Parliamentary system of Government completely free from any taint of the President system. Let me tell my honourable Friend Mr. Sa'adulla what the position of the legislature vis-a-vis the Governor is in the United States. The legislature is not summoned for a year in some states. I suppose in certain States the obligation to summon the legislature for passing the budget does not even exist. The meagre information that we have in regard to the working of the State in the United States Constitution, only makes us glean a little from side remarks here and there. I was reading recently a text book by Justice Roy Jackson, on the supremacy of the judiciary in America, wherein I found a categorical statement that in certain States, the legislature is not summoned for two years. The position is, either you make the legislature supreme or you make the Governor supreme. If you adopt the Presidential system, the Governor is supreme. Under the Parliamentary system, the legislature and the leader of the majority party in the legislature will be supreme. The choice is obvious; and that choice is logical. That is why we have come to this choice of a nominated governor.

I would like to go back to the reference made to the Canadian example. Let not this House or the people outside be brought to think that we are borrowing anything from the Canadian example. Our idea is that the Governor will be appointed in the first place on the advice of the Prime Minister, who, in turn, will consult the Chief Minister concerned, which particular person will have a veto,-and I think conventions have already grown in that direction-,and the person so selected will be a person who will hold the scales impartially as between the various factors in the politics of this State. The advantages of having a non-party man, a non-provincial man have been amply made out by the Honourable Prime Minister. I would only say this. My honourable Friend Mr. Sa'adulla was imagining a contingency which might perhaps exist in the initial stages, but which cannot exist for all time: How is the Chief Minister to be consulted? We are going to have new elections; there are already Governors appointed by the President or the Prime Minister of the Central Government. How could it be that the Chief Minister will be consulted in regard to the continuance or otherwise of the Governor. Will there be a re-appointment of the Governor or otherwise of the Governor. Will there be a re-appointment of the Governor after new Chief Minister takes charge? Hard cases do not always make bad law. In the transitory stages, certain incongruities of this nature are bound to occur. He has himself said that just because a particular thing is wrong, you cannot condemn the whole scheme. It is quite possible that the Governor of a Province who now functions would be quite possible that the Governor of a Province who now functions would be quite willing to accept a re-nomination if necessary, or to go out if the provincial Chief Minister who will come into office does not like him. If they would like to have a man of their choice, if they would like to have a man whom they have selected, I have no doubt, that if we have a Prime Minister of the stature and outlook of the Honourable Pandit Nehru, he will be the first person to leave it to the provincial Chief Ministers to have their own way. I think that formidable contingency which was worrying my honourable Friend Mr. Sa'adulla will be met, provided the Prime Minister of India will be a person who understands democratic principles and would always follow them.

One word more, Sir, in regard to some of the remarks of Pandit Hirday Nath Kunzru. I quite agree that the remarks made by him are out of genuine misgivings because, he felt doubts. I would only say this. In regard to the articles as they appear further down in this Draft Constitution, I have no doubt it is the intention of the House to change and shape all those articles to fit in within the changes made earlier on. If he wanted that the provisions of article 175 in regard to reservation of Bills should be specific, let us make it specific. If my honourable Friend wants that the views of the Central Government must be made very clear in regard to those subjects in which the Central Government has got an interest, and the responsibility for reserving the Bills should not be laid on the Governor, thereby creating an atmosphere of odium for him and creating bad blood between him and the Chief Minister, let us make it clear at the appropriate place. Let us say that in such circumstances, in regard to concurrent subjects, the Governor may ask for instructions from the President. We can make it clear beyond doubt.

In regard to article 188, I have a word to say. Article 188 has been viewed as something isolated altogether by itself, without reference to article 278 on which it is entirely based and it is said that that gives special powers to the Governor and makes his Chief Minister a puppet. Article 188 is merely intended to give the man on the spot an initiative for a very short period of

fourteen days. Oftentimes it may happen that it may be seven days or five days. I shall ask my honourable friends in this House to read article 278 and amend it if necessary. Article 278 definitely says that the President who will come into the picture within a fortnight, will have the support of the Parliament. All that it seeks to do anyway is to transfer the responsibility in the case of a province where the administration is bad or where the conditions are such that strong action is needed, from the province to the Centre. In the Centre, we do not envisage having an irresponsible Government. We shall have a President who is controlled by his Prime Minister and the Prime Minister is in his turn controlled by Parliament ultimately. Article 278 clearly lays down that the President cannot act suo motu, of his own accord, and that he will have to take the Parliament into his confidence. If one-man rule or the rule of the Central Government by giving directions to the Governor is to continue, that will be done only by the authority and sanction of Parliament where the provincial representatives who will be in large numbers and will be able to represent the views of the province. I have no doubt that no Prime Minister of India of the future would ever completely disregard the views of the representatives of a particular province when taking such drastic action as is contemplated in article 188 in regard to a particular province.

Sir, I do not want to take up the time of the House further so much has been said on this aspect but I would be failing in my duty if I do not mention a word in regard to the possibility of voting on the motion before the House envisaged by my honourable Friend, Syed Muhammad Sa'adulla. It is unfortunate perhaps that the state of the country has been such that there is only one party that took the lead in the matter of the liberation of this country and the other party which could have co-operated effectively left this country bag and baggage and went away somewhere else, and it is not the fault of the Congress Party which happens to be the only party that fought for the freedom of the country and therefore has a large number of members returned here. But at the same time let me tell my honourable friend that the Congress Party certainly obtains and nothing is done in order to twist the opinions of people into a particular strait-jacket and make it appear as though it is the opinion of the majority party of this House. If my honourable friend happens to be in a minority, am I to be blamed, or is the Prime Minister to be blamed or the Congress Party to be blamed? I can assure him that such of us individuals as are members of the Party always maintain the view that the Party has got a sacred trust to perform by reason of the fact that it is a majority here and the Party never does anything which would run contrary to the views of a large numbers of members in the party even though they may not be in a majority in respect of their views on a particular matter. There is hardly any necessity to import all these matters in a matter of this nature where ultimate issues that are at stake are not very considerable. Let me tell my honourable Friend Syed Muhammad Sa'adulla that the elected Governor is not going to be the champion of liberty of the province, that he is not going to be the champion of the minority interests, as again an elected Chief Minister. If we decide on an elected governor we are only duplicating the process and provide room for conflict. The possibility is that we might not be able to find men who will perhaps fill the role that we want them to fill as Governors adequately by the election method or perhaps even by the alternative method. But at the same time, as I believe it has been said times without number, that a king who is a genius often goes to the scaffold. Oftentimes a Governor who has enormous abilities-intellectual anl otherwise-will perhaps be a very unpopular person and very possibly a steady experienced person like Syed Muhammad Sa'adulla would perhaps make a better

Governor than person with genius who had been hand-picked. The future is not in our hands. All that we can do is to envisage the future with the limited capacity that God has given us. I do believe that wisdom lies in the direction that this amendment indicates and I hope the House will accept this.

Shri V. S. Sarwate (Madhya Bharat): Mr. President, I come from an Indian State. I have listened very carefully to the discussions which have been going on for these two days as to whether the Governors may be appointed by the President or may be elected by the people;

and I was wondering all along whether the House has taken into consideration, or given sufficient attention, to the fact that this Constitution is being framed not only for what I may call non State area but for the whole of India including Indian States as well. I may point out that the Constitution which we are framing will be binding on these States as well, as they would be a part of the future Union of India.

Shri L. Krishnaswami Bharathi: Article 128 specifically mentions that this applies only to what are now called provinces and not to States.

Shri V. S. Sarwate: I may point out that since we are allowed to be here and take part in the discussions it is assumed.........

Shri L. Krishnaswami Bharathi: I did not say that he has no right. I was only making a correction.

Shri V. S. Sarwate: Then he should have waited for a little more time and seen how I proceeded. Now, the States would be bound by the Constitution which we are making. As matters originally stood an option was given to these States either to adopt the Constitution or to reject it; but in view of the recent covenants I believe that option no longer exists. But even assuming that it exists, there is no doubt that all the States would ultimately accept this Constitution. So the position is that the Constitution of the future Union of India which we are at present framing would apply to all areas included in the Indian States. Therefore the House would have to take into consideration the position of that person who in these States would be analogous to the Governor in the provinces. The House may be knowing that in the States which have acceded and which would be ultimately bound by this Constitution, either the States individually or their Unions, have at their head Rajpramukhs, whose position is if not hereditary, at least for their life-time. The Government of India have bound themselves that this position of theirs would continue for their life-time at least. If that be the position, then is it not a little amusing to see that the discussion here is centering round as to whether the appointments of Governors would be by election or not? The argument in favour of the appointment of Governors by the President is this that if there is no such appointment, the Prime Minister would not be able to discharge his responsibility to maintain peace. Now the Indian States form one-third of the whole India. If the one-third is governed by Rajpramukhs who are not the President's nominees and if the Prime Minister would still be able to discharge his duty or responsibility to maintain peace, then it can be very well imagined that he can do the same with the Governors in the rest of India being his non-appointees. In fact here is an incongruity. Either the House would have ultimately to find out and make certain provisions by which these Rajpramukhs would be brought on level with the Governors and their powers made identical with Governor's or the other alternative is this. Two years back there was a Resolution adopted by this House, I am told, that the Governors should be elected. It was then urged that if the Governors be not elected the principle of democracy would be stifled, that the autonomous character of the provinces would be lost. But the House has now veered to the view that Governors if appointed would be better in the interest of the country. If no provision in this Constitution is made to bring the Rajpramukhs on level with the Governors regarding their powers then the other

alternative is to veer still further and when time comes for reconsideration of this constitution, then all the Governors who may be holding office at that time may be made hereditary or at least their tenure may be made to last for their life-time. These are the only two alternative before this House. I urge that the House will have to consider provisions which may be necessary to bring the Rajpramukhs on level with Governors. I sound this note of warning with the object that the House may not lose sight of the important of such provisions. All along I find in the Constitution no provisions are made so far for the States or their Unions. We assume and it must be assumed in the circumstances of the case that the States would form a part of the Union; But in spite of this assumption no provision is being thought of as to how to make the Unions of States or States on level with the provinces.

With this note of warning, I support the proposition that is before the House, namely that the appointment of the Governor be made by the President.

Mr. President: Mr. Sidhva.

I hope this will be the last speech. We have had a very good discussion.

Shri Mahavir Tyagi: Sir, is that your ruling?

Mr. President: I have it in my mind, if you do not mind.

Shri R. K. Sidhva: Mr. President, I am not one of those who are surprised at the attitude of those who voted last time for the election and row the same persons are voting for nomination. When this question was discussed nearly two years ago I held the view that the Governors of the provinces should be nominated by the President. If you refer to my amendment on page 204 there you will find the amendment which I sent in April last year. It reads as follow:-

"The Governor of a State shall be appointed by the President."

Sir, there were some who felt along with me last time that the Governors should be appointed by the President; but my views and the views of friends like me, were a voice in the wilderness. But today the position is changed. My Friend Mr. Rohini Kumar Chaudhari asked yesterday, "What has happened since then that this change has taken place?" May I know, if a change has taken place in the interest of the country, is it a sin or a crime? If those who opposed this system, realised in time that the minority was right, if they now feel that the minority was in the right, it is not honourable for them to change their views? Is that anything wrong? On the contrary, I am grateful to them, that though small men advocated this view, the big men have realised at a later stage that this is the correct view, and therefore, I think they deserve greater credit. Many felt last year, that the Governor's appointment should be by nomination. But it was by a mere fluke last time that this election wave that was in the minds of Members carried the day. Mr. Dass said that in the top there would be democracy and in the provinces autocracy. I fail however to understand how in the provinces there will be autocracy. In the provinces the Members will come to the legislatures through direct voting.

Shri Rohini Kumar Chaudhari (Assam: General): On a point of order, Sir, My honourable Friend is casting a reflection on the House when he says that last time it was by a mere fluke that the thing was carried.

Mr. President: I do not think any reflection is meant. It is only a question of language.

Shri R. K. Sidhva: The President who is elected by the people makes the nomination. Do you call it autocracy? My Friends do not seem to realise the difference between nomination in the British regime and nomination done now. Does my Friend Mr. Das think that nomination by the Viceroy in the legislatures in the past, by the Governors in the provincial legislatures and by Commissioners and Collectors in the municipalities and District Boards, that those nominations are identical with the nomination that is going to be made now? If that is so, I am sorry for his intelligence. Our President will be elected. And we do not want all our offices to become elected. After all the fundamental position is that in the Legislature there will be election. And you do not expect every office to go by election, and create chaos in the country. That is the fundamental point that we have to bear in mind.

I do feel at the same time that the Governor's position is non-entity. He has powers, and status; The Governor is the first citizen of the Province, I admit that. But in the matter of the executive, he is a non-entity, and from that point of view, nomination which does not mean nomination by someone who does not enjoy the confidence of the people....

Shri B. Das (Orissa: General): If we import a few robots from America will that do?

Shri R. K. Sidhva: If that is this argument, Sir, I cannot answer it.

Sir, another point in this policy which is at present adopted which I like is this, and it is a very praiseworthy policy, that a person from that very province should not be taken as the Governor of that Province. It is a very healthy thing, and I fully support that policy, apart from individual case- there may be mistakes in the appointment of individuals. But as a matter of policy, if you adopt the policy of appointing a Governor from the same province, there will be so much bickering that you will bring the Governor into disrepute. I do not want to mention names; but I should be failing in my duty if I did not give one instance.

Mr. President: Please do not mention any names, or any instance which could be easily spotted out.

Shri R. K. Sidhva: There is one whose character is beyond question, whose independence cannot be questioned today, and.......

Shri B. Das: I strongly protest that smaller provinces do not have the character or able men fit to be governors of other provinces. I say they have even better character than men from Bombay and other places.

Mr. President: Mr. Sidhva is entitled to his own opinion.

Shri R. K. Sidhva: A person from a province, whose character cannot be questioned, whose ability and whose integrity cannot be questioned, if he goes to his own province, his name will be brought into disrepute. I do not want to mention any names. If some have understood whom I mean, well and good.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS)- VOLUME VIII

Tuesday, the 31st May, 1949

Mr. Das says that his province has got competent persons to be Governors of province I said yesterday that all provinces have able men and there should be no grouse that a particular province has been ignored, for the purpose of appointing Governors; Mr. Das cheered what I said. But today he seems to have understood something different and he raises points of order every time. I do feel, Sir, that whosoever may be Prime Minister in the future, whosoever may be President, he should see that the question of all the provinces is borne in mind. It is not as if able men exist only in a few provinces. Able men exist today in all the provinces, and in making selections, the President should bear in mind this fact. He should not look with any narrow vision, and he should see that able men in the other provinces also get their chance. The view that a person from his province should not be appointed a Governor, I strongly hold, and I tell you if that policy is adopted we will simply bring the Governor into disrepute. With these words, Sir, I whole-heartedly support the amendment.

The Honourable Shri Satyanarayan Sinha: Sir, I move:

"That the question be now put."

Shri B. Das: Sir, before the closure is moved, I would request that I may be given an opportunity of clarifying certain points, though I am bound to vote for the amendment.

Mr. President: It is any use speaking against the amendment when you are going to vote for the amendment. I cannot allow the kind of thing.

B. Das: We have been tied down................

Mr. President: If you are tied down you have tied down yourself in this House everybody is free to vote as he likes.

The question is:

"That the question be now put."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar :(Bombay: General) : Mr. President, Sir, after such a prolonged debate on the amendment I think it is quite unnecessary for me to take the time of the House in making any prolonged speech. I have risen only to make two things clear: one is to state to the House the exact correlation between the two alternatives that have been placed by the Drafting Committee before the House and amendment No. 2015 which has been debated since yesterday. My second purpose is to state the exact issue before the House, so that the House may be able to know what it is that it is called upon to bear in mind in deciding between the alternatives presented by the Drafting Committee and the new amendment.

Sir, the first alternative that has been put by the Drafting Committee is an alternative which is exactly in terms of the decision made by this House some time ago in accordance with the recommendations of a Committee appointed to decided upon the principles governing the Provincial Constitution. The Drafting Committee had no choice in the matter at all because according to the directions given to the Drafting Committee it was bound to accept the principle which had been sanctioned by the House itself. The question, therefore, arises: why is it that the Drafting Committee thought it fit to present an alternative? Now, the reason why the Draft Committee presented an alternative is this. The Drafting Committee felt, as everybody in this House knows, that the Governor is not to have any kind of functions-to use a familiar phraseology, "no functions which he is required to discharge either in his discretion or in his individual judgment." According to the principles of the new Constitution he is required to follow the advice of his Ministry in all matters. Having regard to this fact it was felt whether it was desirable to impose upon the electorate the obligation to enter upon an electoral process which would cost a lot of time, a lot of trouble and I say a lot of money as well. It was also felt, nobody, knowing full well what powers he is likely to have under the Constitution, would come forth to contest an election. We felt that the powers of the Governor were so limited, so nominal, his position so

ornamental that probably very few would come forward to stand for election. That was the reason why the Drafting Committee thought the another alternative might be suggested.

It has been said in the course of the debate that the argument against election is that there would be a rivalry between the Prime Minister and the Governor, both deriving their mandate from the people at large. Speaking for myself, that was not the argument which influenced we because I do not accept that even under election there would be any kind of rivalry between the Prime Minister and the Governor, for the simple reason that the Prime Minister would be elected on the basis of policy, while the Governor could not be elected on the basis of policy, because he could have no policy, not having any power. So far as I could visualise, the election of the Governor would be on the basis of personality: is he the right sort of person by his status, by his character, by his education, by his position in the public to fill in a post of Governor? In the case of the Prime Minister the position would be : is his programme suitable, is his programme right? There could not therefore be any conflict even if we adopt the principle of election.

Other arguments is, if we are going to have a Governor, who is purely ornamental, is it necessary to have such a functionary elected at so much cost and so much trouble? It was because of this feeling that the Drafting Committee felt that they should suggest a second alternative. Now so far as the course of debate has gone on in this House, the impression has been created in my mind that most speakers feel that there is a very radical and fundamental difference between the second alternative suggested by the Drafting Committee and this particular amendment. In my judgment there is no fundamental distinction between the second alternative and the amendment itself. The second alternative suggested by the Drafting Committee is also a proposal for nomination. The only thing is that there are certain qualifications, namely, that the President should nominate out of a panel elected by the Provincial Legislature. But fundamentally it is a proposal for nomination. In that sense there is no vital and fundamental difference between the second alternative proposed by the Drafting Committee and the amendment which has been tabled by Mr. Brajeshwar Prasad. In other words, the choice before the House, if I may say so, is between the second alternative and the amendment. The amendment says that the nomination should be unqualified. The second alternative says that the nomination should be a qualified nomination subject to certain conditions. From a certain point of view I cannot help saying that the proposal of the Drafting Committee, namely that it should be a qualified nomination is a better thing than simple nomination. At the same time I want to warn the House that the real issue before the House is really non nomination or election-because as I said this functionary is going to be a purely ornamental functionary: how he comes into being, whether by nomination or by some other machinery, is a purely psychological question-what would appeal most to the people-a person nominated or a person in whose nominated the Legislature has in some way participated. Beyond that, it seems to me it has no consequence. Therefore, the thing that I want to tell the House is this: that the real issue before the House is not nomination or election, but what powers you propose to give to your Governor. If the Governor is a purely constitutional Governor with no more powers than what we contemplate expressly to give him in the Act, and has no power to interfere with the internal administration of a Provincial Ministry, I personally do not see any very fundamental objection to the principle of nomination. Therefore my submission is..........

Shri Rohini Kumar Chaudhari: Can he contemplate any situation, where a Governor-whether you call him a mere symbol or not-will not have the power to form the first Ministry? Will he not be competent to call upon any

one, whether he has a big majority or a substantial minority? And that is a very big power of which he cannot be deprived under any circumstances.

The Honourable Dr. B. R. Ambedkar : Well that power an elected or a nominated Governor will have. If he happens to call the wrong person to form a Ministry, he will soon find to his cost that he has made a wrong choice. That is not a thing that could be avoided by having an elected Governor. Such a Governor may have a friend of his choice whom he can call in to form a Ministry and that issue can be settled by the House itself by a motion of no-confidence or confidence. But that is not the aspect of the question which is material. The aspect of the question which is material is: Is the Governor going to have any power of interference in the working of a Ministry which is composed of a majority in the local Legislature? If that Governor has no power of interference in the internal administration of a Ministry which has a majority, then it seems to me that the question whether he is nominated or elected is a wholly immaterial one. That is the way I look at it and I want to tell the House that in coming to their decision they should not bother with the more or less academic question - whether the Governor has to be nominated or to be elected - they should bear in mind this question: What are the powers with which the Governor is going to be endowed? That matter, I submit, is not before us today. We shall take it up at a later stage when we come to the question of articles 175 and 188 and probably by amendment or the addition of some other clause which would give him powers. The House should be careful and watchful of these new sections that will be placed before them at a later stage. But today it seems to me. If the Constitution remains in principle the same as we intend that it should be, that the Governor should be a purely constitutional Governor, with not power of interference in the administration of the province, then it seems to me quite immaterial whether he is nominated or elected.

Shri L. Krishnaswami Bharathi: Is the honourable Member accepting the amendment?

The Honourable Dr. B. R. Ambedkar : I am leaving it to the House.

Mr. President: I shall then put amendment 2015 moved by Shri Brajeshwar Prasad to the vote.

The question is:

"That for article 131, the following be substituted:-

'131, The Governor of a State shall be appointed by the President by warrant under his hand and seal.'"

The amendment was adopted.

Mr. President: I think after this all the other amendments to this article fall to the ground and therefore I shall put the article as amendment to the vote.

Mr. President: The question is:

"That article 131, as amendment, stand part of the Constitution."

The motion was adopted.

Article 131, as amended, was added to the Constitution.

*

Article 132

Mr. President: We have a number of amendments to this article. Now that we have decided in favour of one alternative, all the amendments to this article. Now that we have decided in favour of one alternative, all the amendments favouring the other alternative naturally fall to the ground. So we shall take up only those amendments which are concerned with the article as now amended. The first amendment is No. 2033 in the name of Shri Brajeshwar Prasad.

Shri Brajeshwar Prasad: I am not moving it.

Mr. President: There is an amendment by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That with reference to amendments Nos. 2033 and 2041 of the List of amendments for article 132, the following article be substituted:-

'Term of office of Governor.-132 (1) The Governor shall hold office during the pleasure of the

President.

(2) The Governor may, by writing under his hand addressed to the President; resign his office.

(3) Subject to the foregoing provisions of this article, a Governor shall hold office for a term of five years from teh date on which he enters upon his office:

Provided that a Governor shall, notwithstanding the expiration

of his term, continue to hold office until his successor enters upon his office.'"

Now, Sir, this article.........

Prof Shibban Lal Saksena: On a point of order. Amendment No. 2033 has not been moved. There is another amentment 2014, to which this is an amendment. But even that has not been moved.

Mr. President: But that has nor been moved.

Shri T. T. Krishnamachari: amendment No. 2041, stands in the name of Dr. Ambedkar.

Mr. President: Well, he may formally move it.

The Honourable Dr. B. R. Ambedkar : I have said that I am moving this in place of that amendment.

Mr. President: Dr. Ambedkar is moving No. 2041.

Pandit Thakur Das Bhargava (East Punjab: General): The practice has been that all these amendments are taken as moved and a person is entitled to move any amendment.

Mr. President: We have not been following that practice.

Then you move your own amendment.

Shri Brajeshwar Prasad: Sir, I move:

"That for article 132, the following be substituted:-

'132 The Governor shall hold office during the pleasure of the President.'"

I commend this amendment for acceptance by the House and I have no further comments to make.

Mr. President: If this amendment is carried, all other amendments fall to the ground. Therefore we shall take up this amendment as covering all the other amendments.

The amendment and the article are for discussion.

Prof. K. T. Shah (Bihar : General): Is my amendment No. 2034 not to be moved? It suggests that the governor shall be irremovable and therefore cannot be included under the amendment moved.

Mr. President: If the five-year term is carried, that falls to the ground.

Shri T.T. Krishnamachari: The main point is whether as he is going to hold office during the pleasure of the President he cannot be removed by the President.

Mr. President: If the amendment of Dr. Ambedkar is carried, then 2034 falls to the ground. But Prof. Shah can speak upon it.

Prof Shibban Lal Saksena: Sir, both may be moved and the House may then choose one of the two.

Mr. President: If Professor Shah wants it he may move it now.

Prof. K. T. Shah: I beg to move:

"That in article 132, after the word 'office' where it occurs for the second time, the words 'and shall during the term be irremovable from his office' be inserted."

The amended article would read:

"The Governor shall hold office for a term of five years from the data on which he enters upon his office and shall during that term be irremovable from his office."

This is, as I conceive it, different fundamentally from the appointment during the pleasure of the President. The House, I am aware, has just passed a proposition by which the governor is to be appointed by the President and it would be now impossible for any one to question that proposition. I would like, however, to point out, that having regard to the appointment as against the elective principle, we must not leave the governor to be entirely at the mercy or the pleasure of the President. We should see to be acting in accordance with the advice of his ministers, if we desire to remove any objection that might possibly be there to the principle of nomination, we should see to it that at least while he is acting correctly, in accordance with the Constitution following the advice of his ministers, he should not be at the mercy of the President who is away from the Province and who is a national and not a local authority. This is all the more important pending the evolution of a convention, such as was suggested by one of the previous speakers, that the appointment, even if agreed to, should be on the advice of the local Ministry. I do not know if such a convention can grow up in India, but even if it grows up, and particularly if it grows up, it would be of the utmost importance that no non-provincial authority from the Centre should have the power to say that the governor should be removable by that authority; So long as he acts in accordance with the advice of the constitutional advisers of the province, he should I think be

irremovable during his term of office, that is, five years according to this article.

There is of course a certain provision with regard to resignation voluntarily or other contingencies occurring whereby the Governor may be removed. But, subject to that, and therefore to the entire Constitution, the period should be the whole period and not at the pleasure of the President.

Shri Brajeshwar Prasad: We have passed the provision that he should hold office during the pleasure of the President.

Prof. K. T. Shah: That has not yet been passed. Because you moved it, if it is to be treated as passed, I have no objection.

Mr. President: There is an amendment by Mr. Gupta which has to be moved. I see that he is not moving it. Then there are the amendments of Saiyid Jafar Imam and Mr. Naziruddin Ahmad. They are not moving them.

Professor Shah may now move his amendments Nos. 2048, 2049 and 2051.

Prof. K. T. Shah: Sir, I move:

"That is clause (b) of the proviso to article 132, after the word 'Constitution', in line 21, the words 'or if found guilty of treason, or any offence against the safety, security or integrity of the Union', be inserted."

That would make, Sir, if accepted, the removal of the governor possible by his own resignation or his being proved guilty of certain offences. This is by way of providing for possible contingencies, not that any one expects or even thinks that it is in the normal course likely that persons of that importance 'would be guilty of such offences. I therefore commend this amendment.

I now move my amendment No. 2049:

"That in article 132 after the existing proviso (b) the following new proviso be added:-

'(b-1) A Governor may be removed from office by reason of physical or mental incapacity duly certified, or if found guilty of bribery or corruption, or as provided for in article 137.'"

These, again, are contingencies which may occur and therefore there must be constitutional authority for the removal of the governor. I think it is nothing but rounding off of the occasions where this extraordinary power may have possibly to be exercised, namely the proving of the governor as guilty of bribery or corruption or mental or physical incapacity duly certified, not merely suspected of such incapacity, but properly certified, and in that case automatically the governor should be removable.

Sir, I now move my next amendment:

"That after article 132, the following new article 132-A be added:-

`132 A. The office of the Governor shall fall vacant by his death before completion of the term of office, or by resignation duly offered and accepted, or as provided for other wise by this Constitution. In the event of the office of the Governor falling vacant at any time, the arrangements made for the discharge of the functions of the Governor during such vacancy shall hold good only pending the election of another Governor as provided for in this Constitution.'"

For this purpose, he will have to be not appointed but elected. This again is providing for a contingency, for an interregnum if I may say so, that is to say, the office of the Governor falling vacant by death, resignation or for any other reason specified in the Constitution, and his successor not being available for the time being. Provision must be made for the discharge of the functions belonging to the Governor during this interim period during which there is no Governor whether appointed or otherwise provided for. I trust that these simple provisions would prove acceptable to the House.

Prof. Shibban Lal Saksena: Sir, the amendment moved by Dr. Ambedkar makes a very great change in the provision originally made in article 132. I am sorry he has not given any reason why he has suggested his fundamental change. Just now we have accepted a provision whereby the Governor shall be nominated by the President. Already we feel that here democracy has been abandoned. Now, Sir, comes this provision whereby the Governor shall hold office only at the pleasure of the President. Even in the case of the Supreme Court,

we have provided that once the Judges of the Supreme Court have been appointed, they will be removable only after an address presented by both the Houses of Parliament, and by two-third majority of the members present and voting. In the case of the Governor, you want to make a different provision. It seems to me, Sir, to be an extraordinary procedure and it completely takes away the independence of the Governor. He will be purely a creature of the President, that is so say, the Prime Minister and the party in power at the Centre. When once a Governor has been appointed, I do not see why he should not continue in office for his full term of five years and why you should make him removable by the President at his whim. It only means that he must look to the President for continuing in office and so continue to be subservient to him. He cannot be independent. He will then have no respect. Sir, Dr. Ambedkar has not given any reason why he has made this change. Of course, the election of the Governors has been done away with, but why make him removable by the President at his pleasure? The original article says:-

"A Governor may, for violation of the Constitution, be removed from office by impeachment in the manner provided in article 137 of this Constitution."

It means that a Governor can only be removed by impeachment by both the Houses. Now, he will be there only at the pleasure of the President. Such a Governor will have no independence and my point in that the Centre might try to do some mischief through that man. Even if he is nominated, he can at least be independent if after he is appointed he is irremovable. now, by making him continue in office at the pleasure of the President, you are taking away his independence altogether. This is a serious deviation and I hope the House will consider it very carefully. Unless he is able to give strong reason for making this change, I hope Dr. Ambedkar will withdraw his amendment.

Shri Lokanath Misra (Orissa : General): Mr. President, Sir, after having made the decision that Governors shall be appointed by the President, it naturally follows that the connected provisions in the Draft Constitution should accordingly be amended, and in that view, I accept the amendment that the Governor shall be removable as the President pleases, that is, a

Governor shall hold office during the pleasure of the President and that whenever he incurs the displeasure of the President, he will be out. When the President has appointed a man, in the fitness of things the President must have the right to remove him when he is displeased, but to remove the evil that has now crept in by doing away with election for the office of the Governor, it would have been much better if the State legislature too had been given the power to impeach him not only for violation of the Constitution but also for misbehaviour. I use the word 'misbehaviour' deliberately because, when a Governor who is not necessarily a man of that province is appointed to his office, it is but natural that the people of the province should have at least the power to watch him, to criticise him, through their chosen representatives. If that right had been given, in other words, if the provision for the impeachment of the Governors by the State legislatures had been there, it would have been a safeguard against improper appointment of Governors by the President. One of the main objections to the appointment of the Governor by the President has been that he will be a man who has no roots in the province and no stake, that he will be a man who will have no connection with the people, that he will be a man beyond their reach and therefore can go on merrily so long as he pleases the President, the Prime Minister of the Union and the Premier of the Province. But they are not all. It would have been much better if the Governor's removal had been made dependent not only on the displeasure of the President but on the displeasure of the State legislature also which represents the people and that would have been a safeguard against the evil that

has been caused by the provision for the appointment of Governors by the President.

The Honourable Dr. B.R. Ambedkar: Sir, the position is this: this power of removal is given to the President in general terms. What Professor Shah wants is that certain grounds should be stated in the Constitution itself for the removal of the Governor. It seems to me that when you have given the general power, you also give the power to the President to remove a Governor for corruption, for bribery, for violation of the Constitution or for any other reason which the President no doubt feels is legitimate ground for the removal of the Governor. It seems, therefore, quite unnecessary to the burden the Constitution with all these limitations stated in express terms when it is perfectly possible for the President to act upon the very same ground under the formula that the Governor shall hold office during his pleasure. I, therefore, think that it is unnecessary to categorize the conditions under which the President may undertake the removal of the Governor.

Mr. President: The question is:

"That with reference to amendment Nos. 2033 and 2041 of the List of Amendments, for article 132, the following article be substituted:-

Term of office of Governor.-(1) The Governor shall hold office during the pleasure of the President.

(2) The Governor may, be writing under his hand addressed to the President, resign his office.

(3) Subject to the foregoing provisions of this article, a Governor shall hold office for a term of five years from the date on which he enters upon his office:

Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office'."

The amendment was adopted.

Mr. President: The question is:

" That article 132, as amended, stand part of the Constitution."

The motion was adopted.

Article 132, as amended, was added to the Constitution.

*

Article 133

Mr. President: There are several amendment that this article should be deleted. Those are not amendments to be taken up. They are practically negatives ones, and therefore, I take it that they need not be moved.

Shri T.T. Krishnamachari: I would like to say that are unnecessary in the context of the previous article.

Mr. President: The question is:

"That article 133 stand part of the Constitution."

The motion was negatived.

Article 133 was deleted from the Constitution.

*

Article 134

Mr. President: We have dropped the first alternative, and we have to take the amendments only to the second alternative, and I think amendment No. 164 standing in the name of Dr. Ambedkar would cover.

The Honourable Dr. B.R. Ambedkar: Sir, I move:

"That with reference to amendment No. 2061 of the List of Amendments, for article 134, the following be substituted:-

'Qualification for appointment as Governor-"No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty-five years'."

Sir, may I take it that the amendment is moved?

Shri T.T. Krishnamachari: Mr. President, the Chair and the House can permit the substitution of an amendment.

Mr. President: You need not read the amendment in full.

The Honourable Dr. B.R. Ambedkar: Sir, I moved Amendment No. 2061. Sir, I also move that for amendment No. 2061, the following be substituted:-

'Qualification or appointment as Governor.-"No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty-five years'."

(Amendment Nos. 2062, 2065 to 2071, 2075 to 2082, 2084 to 2087, 2089 and 2090 were not moved.)

Mr. President: The question is:

" That with reference to amendment No. 2061 of the List of Amendment, for article 134, the following be substituted:-

'Qualification for appointment as Governor.-"No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty-five years'."

The amendment was adopted.

Mr. President: The question is:

"That article 134, as amended, stand part of the Constitution."

The motion was adopted.

Article 134, as amended, was added to the Constitution.

Mr. President: We may now go to article 135.

Shri A. Thanu Pillai (Travancore): May I know, Sir whether clause (2) of that article stands, or that also goes?

Mr. President: The whole article has been substituted by the amendment.

Shri A. Thanu Pillai: Sir, the amendment reads thus:

"That with reference to amendment No. 2061 of the list of amendments, for article 134, the following be substituted." The original amendment reads thus: " That for the existing clause (1) of article 134, the following be substituted:-"The ultimate effect seems to be, that only sub-clause (1) has been amended and clause (2) will stand as it is.

Mr. President: The effect of the amendment which has been carried is to substitute the whole of article 134 by the amended article.

We may go to article 135.

*

Article 135

Mr. President: The motion is:

"That article 135 from part of the Constitution."

The Honourable Dr. B.R. Ambedkar: Sir, I moved"

"That in clause (1) of article 135, for the words 'either of Parliament or,' the words of either House of Parliament or of a House' be substituted."

This is a formal amendment.

Sir, I move:

"That in clause (1) of article 135-

(a) for the words 'member of Parliament or' the words 'member of either House of Parliament or of a House' be substituted,

(b) for the words 'in Parliament or such legislature as the case may be' the words in that House' be substituted."

Sir, I moved:

"That in clause (2) of article 135, for the words 'or position of emolument' the words 'of profit' be substituted."

(Amendments Nos. 2092 and 2095 were not moved.)

Shri H.V. Kamath (C.P. & Berar: General): Mr. President, I move:

"That in clause (3) of article 135 the words 'The Governor shall have an official residence, and' be deleted."

Mr. President: "There" also must be deleted.

Shri H.V. Kamath: "There" will remain. "There shall be paid to the Governor such emoluments, etc.,". I wonder why our Constitution should be cumbered with minutiae such as this. This matter about the official residence of the Governor, is, in my estimation, not even a tremendous trifle. Our Constitution would not be less sound if we omitted therein any reference to or mention of the Governor's official residence. Certainly, it stand to reason that the Governor shall have a residence. We do not contemplate that the Governor will be without an official residence. Don't you visualise the Premier in the province having a residence? But have we made mention of such a thing in the Constitution? I do not know whether this was bodily lifted from some of the unimportant constitution of the world. Because, I am sure, the American Constitution makes no mention of the official residence of the President or the State

Governors. I do not know which Constitution has given the inspiration to Dr. Ambedkar and his colleagues of the Drafting Committee.

An Honourable Member: Irish Constitution.

An Honourable Dr. B.R. Ambedkar: We have passed article 48 exactly in the same terms with reference to the President. Here, we are merely following article 48.

Shri H.V. Kamath: I was coming to that point. I do not know why, simply because the President's residence has been mentioned, the Governor's residence should also be mentioned. It is logical, is it rational, or does Dr. Ambedkar think that because we have committed one little mistake-I should not say that-we should repeat it?

This point was raised by me in the course of the discussion on article 48, Dr. Ambedkar, in his reply to the debate could not give my convincing reply. May I, Sir, for his benefit and to refresh his memory, read from what he said on that occasion? Even with regard to the President's residence, his reply was far from convincing. We have now a nominated Governor. The President, of course, is much higher dignitary than the Governor of a

State. It certainly beats me why the Governor's official residence of the President, this is what Dr. Ambedkar said:

"But, the question I would like to ask Mr. Kamath is this. Does he not intend that the President should have an official residence and that Parliament should make provision for it? And is there very much of a wrong if the proposition was stated in the Constitution itself?"

I do not say that it is wrong at all. We are not perpetrating any wrong by mentioning it in the Constitution. But, where is the necessity for this thing to be brought into the Constitution? He went on to say: This is merely a matter of logic". (I wonder what strange logic it was that he had in mind) " I want to know if he does or does not support the proposition that the President should have an official residence." I then interrupted him: "May I know whether the Prime Minister will or will not have an official residence?" He did not give any reply to that, but proceeded: If he accepts that proposition, then it seems to me a matter of small import whether a provision is made in the Constitution itself or whether the matter is left for the future Parliament to decide. The reason why we have introduced this matter in the Constitution is that in the Government of India Act, in the several Orders in Council which have been issued by the Secretary of State under the authority conferred upon him by the Second Schedule of the Government of India Act, official residences, both for the Governor-General and the Governors have been laid down." Simply because the Government of India Act has mentioned that, should we copy it blindly without deliberating at all any further about it? I think that the Constitution is, as I have said already, an elephantine one and it has been encumbered with much unnecessary detail. We are mentioning this here because we are following the Government of India Act, whether logically or illogically. It might have been usefully and reasonably omitted.

One last point. The Governor may have more than one official residence. He may have two residences. Suppose he is to be given two residences; but since the Constitution mentions only one residence, what will happen? I hope Dr. Ambedkar and his wise men will give some thought to this matter. I move, sir

(Amendment Nos. 2097 to 2102 were not moved.)

Mr. President: The amendments and the original article are open for discussion.

Shri B. Das : Mr. President, article 135 deals with Governors' perquisites, honorarium, and housing problem. It is presumed that the Governors should be Congressmen or should have Congress ideals. Although my honourable Friend Dr. Ambedkar did not move his amendment where he wanted to fix the salaries of Governor at Rs. 4,500 p.m. the problem of salaries of Governors, Governor-General or President had been agitating most of us for the last few months. If Governors are to be Congress-minded people, are to follow Congress ideals, the ideals that our worthy leader Rajagopalachari started that every Congressman should live up to Rs. 150 and nothing more-that problem Congressmen in this House at least must face once for all. Why should the Governor-General have at present Rs. 7,500 free of Income-tax? Why should the Drafting Committee or Dr. Ambedkar fix a Salary of Rs. 4, 500 for the Governors? Of course it is presumed income-tax will be deducted from that money.

Prof. Shibban Lal Saksena : On a point of order. Are we passing the schedule also along with this article.

Mr. President: We are not.

Shri B. Das: I am discussing the principle.

Prof. Shibban Lal Saksena : We shall have an opportunity of discussing that later on.

Mr. President: Let him develop the argument and I shall see.

Shri B. Das: The moment we pass this article, we give the privilege to the Legislature to fix the salary and we know what is happening. The Parliament on the other side fixed the salary of the Governor-General of Rs. 7,500 free of Income-Tax.

Mr. President: Are you quite correct Mr. Das, about the figure? I understood it was 5,500.

Shri

B. Das : No, Sir.

Some Honourable Members : It is Rs. 5,500.

Shri B. Das: I am sorry, Sir, I accept that correction. But to me, a Congressman who was fed with the idea of Rs. 150 for every Congress Minister it sound a big sum and we know the Governor-General is drawing a sumptuary allowance of Rs. 63,000.

Mr. President: I think you had better not refer to the Governor-General.

Shri B. Das : The Governor in every province draw sumptuary allowances also. There is something like Rs. 6,000 in poorer provinces and more in rich provinces like Bombay and Madras and it is spent in paraphernalia and in imitation of British pomp and splendour. Is it necessary that this sovereign House would permit or approve the idea that Governors should spend huge sums of money in pomp and splendour and should draw big salaries? Why should a Congressman draw beyond Rs. 3,000 which is maximum limit that my Central Ministers are drawing? I hope Governors are patriots. I know there are certain benighted Knights who have been made Governors. Rs. 3,000 is pretty big sum for them but when everything is new and there is the honour of being called H. E. and being nominated by President, that should I think be sufficient. I am sorry I could not participate in the debate on the previous clauses: but the only thing emerges that these nominated Governors who are actually drones would now apply to the President or the Governor-General that they are candidates for Governors of Provinces: The Drafting Committee and the House has accepted article 133 whereby such nominated creatures will go on all their lives as Governors. The Draft article 133 was that he will hold office only once more.

In another article we discussed about the Supreme Court. We did not want the Judges to accept jobs and hang round in the corridors of Dr. Ambedkar or Sardar Patel. Now we find we create a class of drones in India who will hang round in the corridors of the Governor-General or the Prime Minister of India, and who would like to be perpetual Governors in spite of their being eighty-eight years old or until they fall down. These are things which agitate me most and I hope the House should be very careful in fixing emoluments of the these Governors. The very fact that one is a nominated Governor is enough and if he is a Congressman he will be happy and serve the country and if he is a non-Congressman it is a high honour for him. The emoluments should be fixed either by this House or by the Provincial Legislatures on the Congress standard and I do except the Governors to behave as Congressmen and not as some of the Governors behaved in the past.

Shri Rohini Kumar Chaudhari : Sir, I am glad that this section has been allowed partically to stand as it is. I only do not understand the position taken up by my honourable Friend Mr. Kamath. He was one who has been advocating nomination of the Governor; but it seems that after having nominated him, he wants to throw him away. He wants to leave him to his own resources. He perhaps forgets that this nominated Governor has to go to another Province where he has very few friends. It is different with the Ministers. Ministers in most provinces in India have their residences provided officially. Not only do they have their official quarters, they have also got their furniture, screens, motor-cars, and everything supplied to them.

Shri H. V. Kamath : May I know whether these are mentioned in the Constitution?

Shri Rohini Kumar Chaudhari : They are not in the Constitution, but I am coming to that. That is not in the Constitution because the Ministries are always in the hands of the majority party, and therefore they can have whatever they want. Look at the position of the poor Governor. He is sent out from one province to another province where probably he knows very few persons, where he has probably been foisted upon that province against the will and consent of the Ministry itself. In that case, the least that you can help him is with shelter. If he has a Government Official residence, he can straightaway drive into

that place, at least he will have a shelter, and he can look for his food afterwards. But if this is not provided for, then he has to go to this friend and that friend, and ultimately he may fall into the hands of a commercial magnate who will give him shelter, and we know commercial magnates are known to give shelter to this kind of persons holding high positions. But the Governor will fall under the obligation of some merchant Prince of the place.

Dr. P. S. Deshmukh (C. P. & Berar: General): He may have even to go back to his own province for want of a house. (Laughter)

Shri Rohini Kumar Chaudhari : So I say that official residence will have to be provided for the Governor, otherwise it will be impossible for him to carry on in that Province.

The provision which enables the Provincial Legislature to fix the salary of the Governor is also a very sound proposition, because if the Ministry does not approve of a particular governor, it may reduce his salary to Re. 1 and thus compel him to leave the Province. That is a very strong and good safeguard which has yet been left in this article, because if the majority of the members of the legislature who are bound to reflect the opinion of the province consider that the Governor is not a suitable person for their province, then they can reduce his salary to Rs. 2 or Re. 1 as was done during the days of dyarchy when the Ministers' salaries were reduced to Re. 1 or Rs. 2. This is a mighty weapon in the hands of the Provinces, and I am glad this weapon has been left in the hands of the people of the province.

Secondly, I am interested in the allowances of the Governor. Next to his salary. I like that the Governor should have his allowances. He should have sumptuary allowance. This sumptuary allowance is intended for giving parties, dinner parties, lunch parties and so on to different people. And I should think particularly they should be given and it should be laid down that preference in this matter should be given and it should be laid down that preference in this matter should be given to the members of the legislature. There is no attempt to interface with this sumptuary allowance and therefore, the Governor enjoys this allowance. And if he gets this sumptuary allowance, he must have some official residence. It does not look well that the Governor should give his dinner parties and lunch parties and tea parties in different hotels. He must have a residence for these parties at least. Mr. Kamath is not against this sumptuary allowance, but he does not want the Governor to have a house where he can utilise this sumptuary allowance. What is the Governor to do with the allowance then? The first and foremost duty of a Governor today is to give parties,-dinner-parties, tea-parties and parties of various other kinds. He has got to do it in order to maintain his own popularity, and also to maintain the popularity of the Ministry. If he finds anything wrong anywhere, he has to go out there and deliver some lectures in support of the Ministry. Besides these, there are functions like Prize-distributions, important marriages in high life, - all these things the Governor has got to attend to keep up his popularity. Therefore. I submit that his having an official residence should not be interfered with and this clause should be passed as it stands.

Shri Brajeshwar Prasad : Mr. President, Sir, I think this is the proper place where I can suggest to the House, and to the members of the Drafting Committee in particular, that they should incorporate some provision to the effect, that the same person may be appointed Governor of two or three or more provinces at a time.

Mr. President: You did not move any such amendment.

Shri Brajeshwar Prasad : I am not moving any amendment, but I am only suggesting to the House, to change this article so as to accommodate the suggestion that I am making. I feel that my suggestion will effect a great deal of economy, if one Governor is made responsible as the Constitutional Head for the administration of more than one province.

Formerly the provinces of

Bihar, Bengal, Orissa and Assam were under one Governor. Ultimately these Provinces will become one once again. With this end in view I am suggesting that the same person may be appointed Governor of two or more Provinces at a time.

Dr. P. S. Deshmukh : Sir, on a point of order. This is contrary to the clause we have already passed that each province shall have a Governor. (Hear, Hear).

Mr. President: I am in entire agreement with Dr. Deshmukh. We have already passed an article that every province shall have a Governor.

Shri Brajeshwar Prasad : Then I have nothing more to add.

Prof. Shibban Lal Saksena : Sir, My Friend Mr. B Das raised the question of emoluments of the Governors given in the Schedule mentioned in this article. The question of emoluments attached to our high offices is a very important question. I do not think that under this article we can properly discuss the emoluments given in the Schedule, but as you have ruled that these might be discussed. I would like to say a few words. We as Congressmen are pledged to certain scales and to certain standards of life. But I am sorry to have to say that we have forgotten all that we said before. In Karachi Congress we passed a resolution that the maximum salary of the highest official shall be only Rs. 500 and in view of the present increase in the cost of living it may now be fixed at Rs. 2,000. But here we are providing for a salary of Rs. 4,500 for the Governors. The Governor is merely a cipher, without any function and holding office only during the President's pleasure. I do not think this large amount is necessary for him. In addition to this salary he has his allowances also. When the proper Schedule comes up, I will say more. But here I will only say that by accepting this article, we are not accepting the amounts fixed in the Schedule.

Shri M. Thirumala Rao: Mr. President, Sir, I was under the impression that the Drafting Committee's amendment No. 2100-

"That the following proviso be added to clause (3) of article 135 :-

'Provided that the emoluments of the Governor shall not be less than four thousand and five hundred rupees per month.'

will be moved.

I think, Sir, that there should be a uniform policy adopted in regard to the emoluments and salaries of these Governors which I think now obtains. There is no use leaving the matter to the sweet will of the respective Legislatures, which may be swayed by so many considerations in fixing the salaries of the Governors. If necessary, Governorships may be divided into different categories, e.g., first-rank, second-rank, etc., according to the income of the provinces. But the Governors' emoluments should not be so variable as to depend upon the respective influences of the legislatures. Governors are expected to enjoy a status, though not power, above the Legislatures and the Ministries and they have to uphold certain tradition and prestige in the eyes of the public. Therefore, their salaries should not be made the play-thing of legislative forms where different parties may have their own motives for reducing the emoluments of the Governors. I suggest, Sir, that both for the President as well as for the Governors the Constitution should fix a certain amount of salary as well as sumptuary and other allowances which should not be subject to the influence of the Legislatures. I wish the Drafting Committee will take up this matter and bring in suitable amendments in this behalf.

Shri Brajeshwar Prasad : Sir, I want your ruling as to how my amendment is not pertinent. Article 149 says that there shall be a Governor for each State. If only means that there cannot be a Province without a Governor. The article does not debar the same person from being appointed as Governor of two or more provinces at a time.

Mr. President: No occasion for a ruling arises, because the honourable Member did not move his amendment.

I shall now put the amendment to vote. The first amendment is that moved by Dr. Ambedkar.

The question is:

"That in clause (1) of article 135,

for the words 'either of Parliament or' the words 'of either House of Parliament or of a House' be substituted."

The amendment was adopted.

Mr. President: The question is:

"That in clause (1) of article 135-

(a) for the words 'member of Parliament or' the words member of either House of Parliament or of a House' be substituted.

(b) For the words 'in Parliament or such Legislature as the case may be' the words 'in that House' be substituted."

The amendment was adopted.

Mr. President: The question is:

"That in clause(2) of article 135, for the words 'or position of emolument' the words 'of profit' be substituted."

The amendment was adopted.

Mr. President: The question is:

"That in clause (3) of article 135 the words "The Governor shall have an official residence, and' be deleted."

The amendment was negatived.

Mr. President: The question is:

"That article 135, as amended, stand part of the Constitution."

The motion was adopted.

Article 135, as amended, was added to the Constitution.

Mr. President: There is notice of an amendment by Professor Shah suggesting the addition of a new article 135.

The Honourable Dr. B. R. Ambedkar : Before we go to the next amendment I would like to suggest that in article 135, the word "elected" be dropped.

Mr. President: That is understood.

*

New Article 135-A

Prof. K. T. Shah : Sir I beg to move:

"That after article 135 the following new article 135-A, be added:-

'135-A. Every Governor shall, on completion of his term of office and retirement, be given such pension or allowance during the rest of his life as the State Legislature may by law provide;

'Provided that during the life-time of any such Governor who has retired, the pension or allowance granted to him shall not be varied to his prejudice;'

'Provided further that such pension shall be allowed only on condition that any such Governor in retirement does not hold any other office of profit in the State or under the Government of India.'"

Sir, I want by this amendment to secure to eminent public servants and distinguished sons of India who rise to such offices as the Governor of State a decent retirement allowance, so that they should not be exposed to any want or penury, or to any temptation which might lead them to use their influence acquired in the past by holding such offices in any undesirable manner.

The Constitution, Sir, does not provide any such consideration for people who rise to high offices in the State, except in regard to the Judiciary. In the Judiciary this has been provided by the Constitution. Speaking for myself, I do not see any reason why exalted public servants and officers, who have served the State and the country in such high capacities like that of the President, or the Governor, should not be provided for for the rest of their lives, so that they should be free from any want or temptation to utilise their influence in any undesirable manner.

I have not deliberately indicated the scale of such pension. I have also suggested the condition that the pension is payable only if the person concerned retires. That is to say, he really devotes himself for the rest of his life to the honorary service of the country in whatever way may be open to him free from any want, and that he does not hold any other office of profit in the State in which he has been Governor or under the Government of India. If, of course, he holds any other office which carries its own emoluments, he will have to choose between either the pension or those emoluments,. But subject to this, that he holds no other office, the pension should be available to him for the rest of his life in retirement.

The object of providing such security for the persons who have risen to this high level is the same as that which now secures to every workman in civilized nations an old-age pension, a pension or super-annuation allowance, which would be calculated to suffice to maintain him in the standard of life to which he was accustomed while at work. A pension is deferred pay, not paid to the worker while at work; and the analogy will hold here also. This also is a type of work-perhaps the highest of its kind-which should not go unprovided for altogether by the State for the rest of the period on earth of the Parties who have served so eminently the State.

I take it, Sir, that no one would be appointed or elected Governor, who has not in the past, before being so appointed also rendered service, which has earned him the distinction, the eminence of public position that makes him fit for selection as a Governor. That being so, and his services being of that level culminating in his appointment as Governor should, I think in the fitness of things be recognized and rewarded in some such manner as I am suggesting. As I said before, it is not necessary in this Constitution to provide the actual scale of such allowances or pension. All that is necessary is that the principle should be recognised, and I would leave it to the State Legislature to make the necessary provision, on condition however, that the provision once made by law, shall not be varied to the prejudice of the holder of such pension while he enjoys it in retirement. This is a very simple and in my opinion a very fair proposition, provided the House will accept it.

Dr. P. S. Deshmukh : Sir, my Friend Prof. K. T. Shah wants that pensions should be provided for the Governors. I have considerable sympathy for the point of view that he has placed before the House, because as a rule, except under exceptional circumstances, we shall be appointing men from the public life of India to these offices and in Public life there are not many people who have large balances or considerable property. So I think there is everything to be said in favour of making some provision for a public man who, at the fag end of his life more or less, becomes a Governor and is so appointed by the President under the Constitution we are framing but when after the completion of his term of office he retires, has nothing to fall back on. But in spite of all our sympathies we will have also to admit that if we accept the amendment, there are many difficulties that will arise. First and foremost, what would be defined as his term of office? Suppose a person is appointed in a bye-vacancy and he also completes his term of office, whatever it may be. It might six-months, or one year or two years. Does he, Prof. Shah, propose that even such a person should have proportionate pension or whether he would propose something less? Secondly, I do not think this has been followed at any time anywhere so far and those who have had the good fortune of being appointed Governors I do not think, have claimed it or asked for it. On the whole, I think the advantage will remain in not giving any such pension. Of course my Professor friend has advanced the argument that this would be by way of a reward, and if he accepts any other office, then he should not be entitled to any pension. But I think a public man who offers himself for this appointment, will have to content himself with whatever salary that might be given to him during his tenure of office, and I do not think any one would be right in looking forward to a pension. If we provide pension for such people, we will have next to consider the cases of the Ambassadors and many other persons more or less of similar categories. A whole set of people will then be coming forward for these pensions and probably a very large portion of our revenues will have to be spent on these pensions alone. On principle, also, I do not thing it is a good proposal and I therefore oppose it.

Sardar Hukam Singh (East Punjab: Sikh) : Sir, I come here to oppose this motion. I feel there is no justification for lending this additional lustre to our Governors. We have been told that they are figure-heads only and ornamental heads and that they shall have no authority or powers. Again in the way that we are proceeding, I think we are depriving them in the States and Provinces of every authority that they could have. All powers are being

centralised. The residuary subjects are also with the Centre. Under such circumstances, when the Governors have to do nothing, when they are only constitutional heads, when they are only ornaments, we have given them sufficient luster by the salary of Rs. 4,500, other emoluments, sumptuary allowances, official residences and such other things. On the other hand, the Professor wants to give those Governors even additional things, so that they might live princely lives even after they have retired.

I am opposed to it and I do not see any justification in giving these additional things to these Governors who would be merely titular heads and denuded of all authority in the provinces or States.

Mr. President: The question is:

"That after article 135 the following new article 135-A, be added :-

'135-A. Every Governor shall, on completion of his term of office and retirement, by given such pension or allowance during the rest of his life as the State Legislature may by law Provide;'

'Provided that during the life-time of any such Governor who has retired, the pension or allowance granted to him small not be varied to his prejudice;'

'Provided further that such pension shall be allowed only on condition that any such Governor in retirement does not hold any other office of profit in the State or under the Government of India.'"

The amendment was negatived.

*

Article 136

Mr. President: There is an amendment of which we have received notice, by Dr. Ambedkar. It is No. 2104. There are other amendments which are more or less of a similar nature.

Shri T. T. Krishnamachari : My amendment in List 2-No. 132-follows more or less the wording of article 49 which this House has passed.

Mr. President: Let the amendment be moved first: then we can take up amendment No. 132. Dr. Ambedkar, I take it that you have moved amendment No. 2104?

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in article 136 for the words "in the presence of the members of the Legislature of the State' the words 'in the presence of the Chief Justice or, in his, absence, any other judge of the High Court exercising jurisdiction in relation to the State' be substituted."

Shri T. T. Krishnamachari : Sir, I move:

"That for amendment No. 2106 of the List of amendment, the following be substituted :-

"That in article 136, for the words 'in the presence of the members of the Legislature of the State' the words 'in the presence of the Chief Justice of the High Court exercising jurisdiction in relation to the State or, in his absence the senior most judge of that Court available' be substituted.

This does not need any explanation for the reason that it follows, as I said, the wording of article 49 which the House has adopted. At any rate it would not be proper in view of the different method of selection of the Governor now decided on that he should take the oath before the Legislature. It is only proper that the Chief Justice of the High Court, exercising jurisdiction in relation to the State, should perform the function the function, or in his absence the senior-most judge of the Court.

Sir, I move.

(Amendment Nos. 2105 and 2107 were not moved.)

Shri H. V. Kamath :- Sir, I move:

"That in article 136, for the words I, A.B., do solemnly affirm (or swear) the following "That in article 136, fir the words I, A.B., do solemnly affirm (or swear) the following be substituted :-

swear in the name of God'

"I, A.B, do ----------------------------

solemnly affirm

This follows the amendment which was accepted unanimously by the House about the oath or affirmation to be made by the President under article 49 of the Draft Constitution. You, Sir, were unfortunately not in the Chair on that occasion. You were lying ill at Wardha from which illness happily by the grace of God you recovered rapidly and we are fortunate to have you again in this House to preside over its deliberations.

I do not propose to make any speech, because I have said what I had to say on that occasion. I

would only say this that we would be true to our heritage and true to our spiritual genius if we adopt an amendment of this nature, with regard to the oath or affirmation to be made by the Governor of a State. I commend this amendment for the acceptance of the House.

Mr. President: As amendments Nos. 2107, 2108 and 2109 are not, I understand, being moved, does Dr. Ambedkar wish to make any reply to the amendments moved?

The Honourable Dr. B. R. Ambedkar : Sir, I accept the amendment moved by Shri T. T. Krishnamachari and also the one moved by my Friend Mr. Kamath.

Mr. President: The question is:

"That for amendment No. 2104 of the List of Amendments, the following be substituted :-

"That in article 136, for the words 'in the presence of the members of the Legislature of the State' the words 'in the presence of the Chief Justice of the High Court exercising jurisdiction in relation to the State or, in his absence the senior-most judge of that Court available' be substituted.'"

The amendment was adopted.

Mr. President: The question is:

"That for amendment No. 2106 of the List of Amendments, the following be substituted :-

"That in article 136, for the words 'I, A. B., do solemnly affirm (or swear') the following be substituted :-

swear in the name of God"

'I, A, B, do. --------------------

solemnly affirm

The amendment was adopted.

Pandit Hirday Nath Kungru (United Provinces : General) : How does the oath read? Is it, "I do swear in the name of God, or I do solemnly affirm," or not? The question is this : some people may think that the Governor should take oath in the name of God. There may however be people in this country who are atheists. (Interruptions) (Mr. President read out the oath) I see that there is an alternative. That is what I wanted to know. Nobody should be compelled to swear in the name of God if-he does not want to do so.

Mr. President: No, no. The question is:

"That article 136, as amended, stand part of the Constitution."

The motion was adopted.

Article 136, as amended, was added to the Constitution. The Assembly then adjourned till Eight of the Clock on Wednesday, the 1st June 1949.

GJPD-Lines S-40 C. A. Deb- 9.8.49

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS)- VOLUME VIII

Wednesday, the 1st June 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION-Contd.

Article 137

Mr. President: We begin with article 137 today. There is an amendment to this of which notice has been given by Mr. Brajeshwar Prasad, but that is a negative one.

(Amendment No. 2111 was not moved.)

Shri T. T. Krishnamachari (Madras: General) : This article cannot be moved in view of the decision that has been made earlier.

Shri Brajeshwar Prasad (Bihar: General) : It must be put to the vote of the House.

The Honourable Dr. B. R. Ambedkar : (Bombay: General): It may be put to the vote.

Mr. President: None of the other amendments is going to be moved, I take it.

Now, the question is:

"That article 137 stand part of the Constitution."

The motion was negatived.

Article 137 was deleted from the Constitution.

*

Article 138

Shri T. T. Krishnamachari : Sir, may I suggest that the alternative might be formulated, because the original article has no place in view of the change that has already been made?

Shri Brajeshwar Prasad : Sir, I move:

"That for article 138, the following be substituted :-

"The President may make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for in this Chapter.'"

I move this amendment without making any comments. It does not need any.

(Amendments Nos. 2132, 2134 and No. 169 of List III were not moved.)

Mr. Mohd. Tahir (Bihar: Muslim) : Sir, I move:

"That in article 138, for the word 'Chapter' the word 'Constitution' be substituted."

I think, Sir, that the word "Constitution" is more appropriate and comprehensive. If my friends accept it, it may be used instead of the word "Chapter".

Mr. President: The question is:

"That for article 138, the following be substituted :-

"The President may make such provision as he thinks fit for the discharge of the functions of the Governor of a State in any contingency not provided for it this Chapter.'"

The amendment was adopted.

Mr. President: The question is:

"That in article 138, for the word 'Chapter' the word 'Constitution' be substituted.'

The amendment was negatived.

Mr. President: The question is:

"That article 138, as amended, stand part of the Constitution."

The motion was adopted.

Article 138, as amended, was added to the Constitution.

*

Article 139 and 140

Mr. President: These will have to be dropped as being inconsistent with the decision already taken, but I am told that it is necessary to formally put them to the vote.

The question is:

"That article 139 stand part of the Constitution."

The motion was negatived.

Article 139 was deleted from the Constitution.

Mr. President: The question is:

"That article 140 stand part of the Constitution."

The motion was negatived.

Article 140 was deleted from the Constitution.

*

Article 141

Mr. President: As regards this article, there are one or two amendments. There is amendment No. 2148 and to that there is an amendment No. 170 in List III by Pandit Thakur Das Bhargava.

(Amendments Nos. 2148, No. 170 in List III, and Nos. 2149 to 2152 were not moved.)

Mr. President: The question is:

"That article 141 stand part of the Constitution."

The motion was adopted.

Article 141 was added to the Constitution.

*

Article 142

Shri T. T. Krishnamachari : Sir, I formally move amendment No. 2153 and in substitution of same, I move Amendment No. 184 (Third week-List IV):

"That for article 142 the following be substituted :-

'142, Subject to the provisions of this Constitution, the executive power of each State shall extend to the matters with respect to which the Legislature of the State has power to make laws.'"

Sir, this will simplify the wording of the article as it stands and also eliminate clause

(b) which raises complications, as it refers to certain aspects of this Draft Constitution about which we have not made any decision for the time being, because it refers to States in Part III of the First Schedule and a decision will have to be taken later when the position of States in Part III of this Schedule is precisely defined. Therefore, Sir, this amendment is necessary and I hope the House will accept it.

(Amendment No. 2154 was not moved.)

Mr. President: The question is:

"That for article 142, the following be substituted :-

'142 Subject to the provisions of this Constitution, the executive power of each State shall extend to the matters with respect to which the Legislature of the State has power to make laws.'"

The amendment was adopted.

Mr. President: The question is:

"That article 142, as amended, stand part of the Constitution."

The motion was adopted.

Article 142, as amended, was added to the Constitution."

*

Article 143

(Amendment Nos. 2155 and 2156 were not moved.)

Shri H. V. Kamath (C.P. & Berar: General): Mr. President, Sir, I move:

"That in clause (1) of article 143, the words 'except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion' be deleted."

If this amendment were accepted by the House, this clause of article 143 would read thus :-

"There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the President in the exercise of his functions."

Sir, it appears from a reading of this clause that the Government of India Act of 1935 has been copied more or less blindly without mature consideration. There is no strong or valid reason for giving the Governor more authority either in his discretion or otherwise vis-a-vis his ministers, than has been given to the President in relation to his ministers. If we turn to article 61 (1), we find it reads as follows :-

"There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions."

When you, Sir, raised a very important issue, the other day, Dr. Ambedkar clarified this clause by saying that the President is bound to accept the advice of his ministers in the exercise of all of his functions. But here article 143 vests certain discretionary powers in the Governor, and to me it seems that even as it was, it was bad enough, but now after having amended article 131 regarding election of the Governor and accepted nominated Governors, it would be wrong in principle and contrary to the tenets and principles of constitutional Government, which you are going to build up in this country. It would be wrong I say, to invest a Governor with these additional powers, namely, discretionary powers. I feel that no departure from the principles of constitutional Government should be favoured except for reasons of emergency and these discretionary powers must be done away with. I hope this amendment of mine will commend itself to the House. I move, Sir.

Prof. K. T. Shah (Bihar: General) : Mr. President, I beg to move:

"That in clause (1) of article 143, after the word 'head a comma be placed and the words 'who shall be responsible to the Governor and shall' be inserted and the word to' be deleted."

So, that the amended article would read.

'(1) There shall be a Council of Ministers with the Chief Minister at the head who shall be responsible to the Governor and shall aid and advise the Governor in the exercise of his functions ......etc."

Sir, this is a logical consequence of the general principle of this Draft Constitution, namely, that the Government is to be upon the collective responsibility of the entire Cabinet to the legislature. At the same time, in the Cabinet the Prime Minister or the Chief Minister or by whatever title he is described would be the Principal Adviser and I would like to fix the responsibility definitely by the Constitution on the Chief Minister, the individual Ministers not being in the same position. Whatever may

be the procedure or convention within the Cabinet itself, however the decisions of the Cabinet may be taken, so far as the Governor is concerned, I take it that the responsibility would be of the Chief Minister who will advise also about the appointment of his colleagues or their removal if it should be necessary. It is but in the fitness of things that he should be made directly responsible for any advice tendered to the Constitutional head of the State, namely, the Governor. As it is, in my opinion, a clear corollary from the principles we have so far accepted, I hope there would be no objection to this amendment.

(Amendments Nos. 2159 to 2163 were not moved.)

Mr. President: There is no other amendment. The article and the amendments are open to discussion.

Shri T. T. Krishnamachari : Mr. President, I am afraid I will have to oppose the amendment moved by my honourable Friend Mr. Kamath, only for the reason that he has not understood the scope of the article clearly and his amendment arises out of a misapprehension.

Sir, it is no doubt true, that certain words from this article may be removed, namely, those which refer to the exercise by the Governor of his functions where he has to use his discretion irrespective of the advice tendered by his Ministers. Actually, I think this is more by way of a safeguard, because there are specific provisions in this Draft Constitution which occur subsequently where the Governor is empowered to act in his discretion irrespective of the advice tendered by his Council of Ministers. There are two ways of formulating the idea underlying it. One is to make a mention of this exception in this article 143 and enumerating the specific power of the Governor where he can exercise his discretion in the articles that occur subsequently, or to leave out any mention of this power here and only state it in the appropriate article. The former method has been followed. Here the general proposition is stated that the Governor has normally to act on the advice of his Ministers except in so far as the exercise of his discretions covered by those articles in the Constitution in which he is specifically empowered to act in his discretion. So long as there are articles occurring subsequently in the Constitution where he is asked top act in his discretion, which completely cover all cases of departure from the normal practice to which I see my honourable Friend Mr. Kamath has no objection, I may refer to article 188, I see no harm in the provision in this article being as it is. It happens that this House decides that in all the subsequent articles, the discretionary power should not be there, as it may conceivably do, this particular provision will be of no use and will fall into desuetude. The point that my honourable Friend is trying to make, while he concedes that the discretionary power of the Governor can be given under article 188, seems to be pointless. If it is to be given in article 188, there is no harm in the mention of it remaining here. No harm can arise by specific mention of this exception of article 143. Therefore, the serious objection that Mr. Kamath finds for mention of this exception is pointless. I therefore think that the article had better be passed without any amendment. If it is necessary for the House either to limit the discretionary power of the Governor or completely do away with it, it could be done in the articles that occur subsequently where specific mention is made without which this power that is mentioned here cannot at all be exercised. That is the point I would like to draw the a attention of the House to and I think the article and better be passed as it is.

Dr. P. S. Deshmukh (C. P. & Berar: General): Mr. President, Mr. T. T. Krishnamachari has clarified the position with regard to this exception which has been added to clause (1) of article 143. If the Governor is, in fact, going to have a discretionary power, then it is necessary that this clause which Mr. Kamath seeks to omit must remain.

Sir, Besides this, I do not know if the Drafting

Committee has deliberately emitted or they are going to provide it at a later stage, and I would like to ask Dr. Ambedkar whether it is not necessary to provide for the Governor to preside at the meetings of the Council of Ministers. I do not find any provision here to this effect. Since this article 143 is a mere reproduction of section 50 of the Government of India Act, 1935, where this provision does exist that the Governor in his discretion may preside at the meetings of the Council of Minister, I think this power is very necessary. Otherwise, the Ministers may exclude the Governor from any meetings whatever and this power unless specifically provided for, would not be available to the Governor. I would like to draw the attention of the members of the Drafting Committee to this and to see if it is possible either to accept an amendment to article 143 by leaving it over or by making this provision in some other part. I think this power of the Governor to preside over the meetings of the Cabinet is an essential one and ought to be provided for.

Shri Brajeshwar Prasad: Mr. President, Sir, the article provides--

"That there shall be a Council of Minister with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions".

Sir, I am not a constitutional lawyer but I feel that by the Provisions of this article the Governor is not bound to act according to the advice tendered to him by his Council of Ministers. It only means that the Ministers have the right so tender advice to Governor. The Governor is quite free to accept or to reject the advice so tendered. In another sphere to administration the Governor can act in the exercise of his functions in his discretion. In this sphere the Minister has not got the power to tender any advice. Of course it is left open to the Governor to seed the advice of the Ministers even in this sphere.

I feel that we have not taken into account the present facts of the situation. We have tried to copy and imitate the constitutions of the different countries of the world. The necessity of the hour requires that the Governor should be vested not only with the power to act in his discretion but also with the power to act in his individual judgment. I feel that the Governor should be vested with the power of special responsibilities which the Governor under the British regime were vested in this country. I feel that there is a dearth of leadership in the provinces. Competent men are not available and there are all kinds of things going on in the various provinces. Unless the Governor is vested with large powers it will be difficult to effect any improvement in the Provincial administration. Such a procedure may be undemocratic but such a procedure will be perfectly right in the interest of the country. I feel there is no creative energy left in the middle class intelligentsia of this country. They seem to have become bereft of initiative and enterprise. The masses who ought to be the rulers of this land are down-trodden and exploited in all ways. Under these circumstances there is no way left open but for the Government of India to take the Provincial administrations in its own hands. I feel that we are on the threshold of a revolution in this country. There will be revolution, bloodshed and anarchy in this country. I feel that at this juncture it is necessary that all powers should remain centralised in the hands of the Government of India. In certain provinces the machinery of law and order seems to have completely broken down. Dacoities, arson, loot, murder and inflationary conditions are rampant. I am opposed to this article, because I am convinced that federalism cannot succeed in a country which is passing through a transitory period. The national economy of America is fully developed. It can afford to have a federal from of Government. In a country where there is no room for expansion and for economic development, there is no necessity for a centralised economy. In India when our agriculture, industry, minerals etc. are in an incipient stage of

development, it is necessary that power must be vested in the hands of the Government of India. Federalism was in vogue in the 19th century when the means of communications were undeveloped. The technical knowledge and resources at the disposal of Governments in ancient times were of a very meager character. Today the situation has completely changed. Means of communications have developed rapidly. Technical knowledge and the necessary personal at the disposal of the Government of India are of such a wide character that it can undertake to perform all the functions which a modern Government is expected to perform. There is another reason why I am opposed to this article. In this country there is no scope for federalism. All governments have become more or less unitary in character. If we are to escape political debacles, economic strangulation and military defeats on all fronts, then our leaders and statesmen must learn to think in unorthodox terms: otherwise there is no future for this country.

Pandit Hirday Kunzru: (United Provinces: General): Mr. President, I should lime to ask Dr. Ambedkar whether it is necessary to retain after the words "that the Governor will be aided and advised by his Ministers", the words "except in regard t o certain matter in respect of which he is to exercise his discretion". Supposing these words, which are reminiscent of the old Government of India Act and the old order, are omitted, what harm will be done? The functions of the Ministers legally will be only to aid and advice the Governor. The article in which these words occur does not lay down that the Governor shall be guide by the advice of his Ministers but it is expected that in accordance with the Constitutional prevailing in all countries where responsible Government exists the Governor will in all matters accept the advice of his Ministers. This does not however mean that where the Statute clearly lays down that action in regard to specified matters may be taken by him on his own authority this article 143 will stand in his way.

My Friend Mr. T. T. Krishnamachari said that as article 188 of the Constitution empowered the Governor to disregard the advice of his Ministers and to take the administration of the province into his own hands, it was necessary that these words should be retained, i.c. the, discretionary power of the Governor should be retained. If however, he assured us, section 188 was deleted later, the wording of article 143 could be reconsidered. I fully understand this position and appreciate it, but I should like the words that have been objected to by my Friend Mr. Kamath to be deleted. I do not personally think that any harm will be done if they are not retained and we can then consider not merely article 188 but also article 175 on their merits; but in spite of the assurance of Mr. Krishnamachari the retention of the words objected to does psychologically create the impression that the House is being asked by the Drafting Committee to commit itself in a way to a principle that it might be found undesirable to accept later on. I shall say nothing with regard to the merits of article 188. I have already briefly expressed my own views regarding it and shall have an opportunity of discussing it fully later when that article is considered by the House. But why should we, to being with, use a phraseology that it an unpleasant reminder of the old order and that makes us feel that though it may be possible later to reverse any decision that the House may come to now, it may for all practical purposes be regarded as an accomplished fact? I think Sir, for these reasons that it will be better to accept the amendment of my honourable Friend Mr. Kamath, and then to discuss article 157 and 188 on their merits.

I should like to say one word more before I close. If article 143 is passed in its present form, it may give rise to misapprehensions of the kind that my honourable Friend Dr, Deshmukh seemed to be labouring under when he asked that a provision should be inserted entitling the Governor to preside over the

meetings of the Council of Ministers. The Draft Constitution does not provide for this and I think wisely does not provide for this. It would be contrary to the traditions of responsible government as they have been established in Great British and the British Dominions, that the Governor or the Governor-General should, as a matter of right, preside over the meetings of his cabinet. All that the Draft Constitution does is to lay on the Chief Ministers in regard to administrative matter and the legislative programme of the government. In spite of this, we see that the article 143, as it is worded, has created a misunderstanding in the mind of a member like Dr. Deshmukh who takes pains to follow every article of the Constitution with care. This is an additional reason why the discretionary power of the Governor should not be referred to in article 143. The speech of my friend Mr. Krishnamachari does not hold out the hope that the suggestion that I have made has any chance of being accepted. Nevertheless, I feel it my duty to sat that the course proposed by Mr. Kamath is better than what the Drafting Sub-Committee seem to approve.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. President, Sir, I heard very carefully the speech of my honourable Friend, Mr. krishnamachari, and his arguments for the retention of the words which Mr. Kamath wants to omit. If the Governor were an elected Governor, I could have understood that he should have these discretionary powers. But now we are having nominated Governors who will function during the pleasure of the President, and I do not think such persons should be given powers which are contemplated in section 188.

Then, if article 188 is yet to be discussed--and it may well be rejected--then it is not proper to give these powers in this article beforehand. If article 188 is passed, then we may reconsider this article and add this clause if it is necessary. We must not anticipate that we shall pass article 188, after all that has been said in the House about the powers of the Governor.

These words are a reminder of the humiliating past. I am afraid that if these words are retained, some Governor may try to imitate the Governors of the past and quote them as precedents, that this is how the Governor on such and such an occasion acted in his discretion. I think in our Constitution as we are now framing it, these powers of the Governors are out of place; and no less a person then than the honourable Pandit Govind Ballabh Pant had given notice of the amendment which Mr. Kamath has moved. I think the wisdom of Pandit Pant should be sufficient, guarantee that this amendment be accepted. It is just possible that article 188 may not be passed by this House. if there is an emergency, the Premier of the province himself will come forward to request the Governor that an emergency should be declared, and the aid of the Centre should be obtained to meet the emergency. Why should the Governor declare an emergency over the head of the Premier of the Province? We should see that the Premier and the Governor of a Province are not at logger heads on such an occasion. A situation should not be allowed to arise when he Premier says that he must carry on the Government, and yet the Governor declares an emergency over his head and inspite of his protestations. This will make the Premier absolutely impotent. I think a mischievous Governor may even try to create such a situation if he so decides, or if the President wants him to do so in a province when a party opposite to that in power at the Centre is in power at the Centre is in power. I think article 188, even if it is be retained should be so modified that the emergency should be declared by the Governor on the advice of the Premier of the province. I suggest to Dr. Ambedkar that these words should not find a place in this article, and as a consequential amendment, sub-section (ii) of this article should also be deleted.

Shri Mahavir Tyagi (United Provinces: General): Sir, I beg to differ from my honourable radical Friends Mr. Kamath and

Prof. Shibban Lal Saksena, and I think the more powers are given to the

exercise of those powers. That is my view. We have now given up the Centre, and wee are going to have nominated Governors. Those Governors are not to be there for nothing. After all, we have to see that the policy of the Centre is carried out. We have to keep the State linked together and the Governor in the Agent or rather he is the agency which will press for and guard the Central policy. In fact, our previous conception has now been changed altogether. The whole body politic of a country is affected and influenced by the policy of the Centre. Take for instance subjects like Defence involving questions of peace or war, of relationship with foreign countries; of our commercial relations, exports and imports. All these are subjects which affect the whole body politic, and the provinces cannot remain unaffected, they cannot be left free of the policy of the Centre. The policy which is evoked in the Centre should be followed by all the States, and if the Governors were to be in the hands of the provincial Ministers then there will be various policies in various provinces and the policy of each province shall be as unstable as the ministry. For there would be ministers of various types having different party labels and different programmes to follow. Their policies must differ from one another; it will therefore be all the more necessary that there must be coordination of programmes and policies between the State and the Central Government. The Governor being the agency of the Centre is the only guarantee to integrate the various Provinces or States. The Central Government also expresses itself through the provincial States; along with their own administration, they have also to function on behalf of the Central Government. A Governor shall act as the agency of the Centre and will see that the

Central policy is sincerely carried out. Therefore the Governor's discretionary powers should not be interfered with. Democratic trends are like a wild beast. Say what you will, democracy goes by the whims and fancies of parties and the masses. There must be some such machinery which will keep this wild beast under control. I do not deprecate democracy. Democracy must have its way. But do not let it degenerate into chaos. Moreover the State governments may not be quite consistent in their own policies. Governments may change after months or years; with them will change their policies. The Governors may change too, but the policy and instructions given by the Centre to the Governors will remain practically unchanged. The more the powers given to the States the more vigilant must be the control. The Governor must remain as the guardian of the Central policy on the one side, and the Constitution on the other. His powers therefore should not be interfered with.

Shri B. M. Gupta (Bombay: General): Sir, I think the explanation given by my honourable Friend Mr. T. T. Krishnamachari Should be accepted by the House and the words concerning discretion of the Governor should be allowed to stand till we dispose of articles 175 and 188.

With regard to the suggestion made by the honourable Dr. Deshmukh about the power being given to the Governor to preside over the meetings of the cabinet I have to oppose it. He enquired whether the Drafting Committee intended to make that provision later on. I do not know the intentions of the Drafting Committee for the future but as far as the Draft before us is concerned I think the Drafting Committee has definitely rejected it.

I would invite the attention of the honourable House to article 147 under which the Governor shall be entitled only to information. If we allow him to preside over the meetings of the Cabinet we would be departing from the position we want to give him, namely that of a constitutional head. If he presides over the meeting of the Cabinet be shall have an effective voice in shaping the decisions of the Cabinet in the entire field of administration, even in fields which are not reserved for his discretionary power. if certain powers have to be given to him, our endeavour should be to restrict them as far as possible, so that the Governor's position as a constitutional head may be maintained. Therefore, Sir, I oppose the proposal of Dr. Deshmukh.

Shri Alladi Krishnaswami Ayyar (Madras: General): Sir, there is really no difference between those who oppose and those who approve the amendment. In the first place, the general principle is laid down in article 143 namely, the principle of ministerial responsibility, that the Governor in the various spheres of executive activity should act on the advice of his ministers. Then the article goes on to provide "except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion. So long as there are article in the Constitution which enable the Governor to act in his discretion and in certain circumstances, it may be, to over-ride the cabinet or to refer to the President, this article as it is framed is perfectly in order. If later on the House comes to the conclusion that those articles which enable the Governor to act in his discretion in specific cases should be deleted, it will be open to revise this article. But so long as there are later articles which permit the Governor to act in his discretion and not on ministerial responsibility, the article as drafted is perfectly in order.

The only other question is whether first to make a provision in article 143 that the Governor shall act on ministerial responsibility and then to go on providing "Notwithstanding anything contained in article 143........he can do this" or "Notwithstanding anything contained in article 143 he can act in his discretion." I should think it is a much better method of drafting to provide in article 143 itself that the Governor shall always act on ministerial responsibility excepting in particular or specific cases where he is empowered to act in his discretion. If of course the House comes to the conclusion that in no case shall the Governor act in his discretion, that he shall in every case act only on ministerial responsibility, then there will be a consequential change in this article. That is, after those articles are considered and passed it will be quite open to the House to delete the latter part of article 143 as being consequential on the decision come to by the House on the later articles. But, as it is, this is perfectly, in order and I do not think any change is warranted in the language of article 143. It will be cumbrous to say at the opening of each article "Notwithstanding anything contained in article 143 the Governor can act on his own responsibility".

Shri H. V. Kamath: Sir, on a point of clarification, Sir, I know why it is that though emergency powers have been conferred on the President by the Constitution no less than on Governors, perhaps more so, discretionary power as such have not been vested in the President but only in Governors?

Pandit Thakur Das Bhargava (East Punjab: General): Sir, I beg to oppose the amendment of Mr. Kamath. Under article 143 the Governor shall be aided in the exercise of his functions by a Council of Ministers. It is clear so far. I gave notice of an amendment which appears on the order paper as 142-A which I have not moved. In the amendment I have suggested that the Governor will be bound to accept the advice of his ministers on all matters except those which are under this Constitution required to be exercised by him in his discretion. My submission in that it is wrong to say that the Governor shall be a dummy or an automaton. As a matter of fact according to me the Governor shall exercise very wide powers and very significant powers too. If we look at article 144 it says:

"The Governor's ministers shall be appointed by him and shall hold office during his pleasure."

So he has the power to appoint his ministers. But when the ministers are not in existence who shall advise him in the discharge of his functions? When he dismisses his ministry then also the will exercise his functions

under his own discretion.

Then again. when the Governor calls upon the leader of a party for the choice of ministers, after a previous ministry has been dissolved, in that case there will be no ministry in existence; and who will be there to advise him? Therefore he will be exercising his functions in his discretion. It is wrong to assume that the Governor will not be charged with any functions which he will exercise in his discretion. Article 175 and 188 are the other article which give him certain functions which he has to exercise in his discretion.

Under article 144 (4) there is a mention of the Instrument of Instructions which is given in the Fourth Schedule. The last paragraph of it runs thus:

"The Governor shall do all that in him lies to maintain of good administration, to promote all measures making for moral, social and economic welfare and tending to fit all classes of the population to take their due share in the public life and government of the state, and to secure amongst all classes and creeds co-operation, goodwill and mutual respect for religions beliefs and sentiments."

My submission is that according to me the Governor shall be a guide, philosopher and friend of the Ministry as well as the people in general, so that he will exercise certain functions some of which will be in the nature of unwritten conventions and some will be such as will be expressly conferred by this Constitutions. He will be a man above party and he will look at the Minister and government from a detached standpoint. He will be able to influence the ministers and members of the legislature in such a manner that the administration will run smoothly. In fact to say that a person like him is merely a dummy, an automaton or a dignitary without powers is perfectly wrong. It is quite right that so far as our conception of a constitutional governor goes he will have to accept the advice of his ministers in many matters but there are many other matters in which the advice will neither be available nor will he be bound to accept that advice.

Under article 147 the Governor has power for calling for information and part (c) says: This will be the duty of the Chief Minister.

"If the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council."

This is specifically a matter which is of great importance. The Governor is competent to ask the Chief Minister to place any matter before the Council of Ministers which one minister might have decided. When he calls for information he will be acting in the exercise of his discretion. He may call for any kind of information. With this power he will be able to control and restrain the ministry from doing irresponsible acts. In my opinion taking the Governor as he is conceived to be under the Constitution he will exercise very important functions and therefore it is very necessary to retain the words relating to his discretion in article 143.

Shri H. V. Pataskar (Bombay: General): Sir, article 143 is perfectly clear. With regard to the amendment of my honourable Friend Mr. Kamath various points were raised, whether the Governor is to be merely a figure-head, whether he is to be a constitutional head only or whether he is to have discretionary powers. To my mind the question should be looked at from and entirely different point of view. Article 143 merely relates to the functions of the ministers. It does not primarily relate to the power and functions of a Governor. It only says:

"There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions."

Granting that we stop there, is it likely that any complications will arise or that it will interfere with the discretionary powers which are proposed to be given to the Governor? In my view article 188 is probably necessary and I do not mean to suggest for a moment that the Governor's powers to act in an emergency which powers

are given under article 188, should not be there. My point is this, whether if this Provision, viz., "except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion", is not there, is it going to affect the powers that are going to be given to him to act in his discretion under article 188? I have carefully listened to my honourable Friend and respected constitutional lawyer. Mr. Alladi Krishnaswami Ayyer, but I was not able to follow why a provision like this is necessary. He said that instead later on, while considering article 188, we might have to say "Notwithstanding anything contained in article 143." In the first place to my mind it is not necessary. In the next place, even granting that it becomes necessary at a later stage to make provision on article 188 by saying "notwithstanding anything contained in article 143", it looks so obnoxious to keep these words here and they are likely to enable certain people to create a sort of unnecessary and unwarranted prejudice against certain people. Article 143 primarily relates to the functions of the ministers. Why is it necessary at this stage to remind the ministers of the powers of the Governor and his functions, by telling them that they shall not give any aid or advice in so far as he, the Governor is required to act in his discretion? This is an article which is intended to define the powers and functions of the Chief Minister. At that point to suggest this, looks like lacking in courtesy and politeness. Therefore I think the question should be considered in that way. The question is not whether we are going to give discretionary power to the Governors or not. The question is not whether he is to be merely a figure-head or otherwise. These are question to be debated at their proper time and place. When we are considering article 143 which defines the function of the Chief minister it looks so awkward and unnecessary to say in the same article "except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion." Though I entirely agree that article 188 is absolutely necessary I suggest that in this article 143 these words are entirely unnecessary and should not be there. Looked at from a practical point of view this provision is misplaced and it is not courteous, nor polite, nor justified nor relevant. I therefore suggest that nothing would be lost by deleting these words. I do not know whether my suggestion would be acceptable but I think it is worth being considered from a higher point of view.

Shri Krishna Chandra Sharma (United Provinces: General): Sir, the position is that under article 41 the executive powers of the Union are vested in the President and these may be exercised by him in accordance with the Constitution and the law. Now, the President of the Union is responsible for the maintenance of law and order and for good Government. The Cabinet of the State is responsible to the people through the majority in the Legislature. Now, what is the link between the President and the State? The link is the Governor. Therefore through the Governor alone the President can discharge his functions for the good Government of the country. In abnormal circumstances it is the Governor who can have recourse to the emergency powers under article 188. Therefore the power to act in his discretion under article 143 ipso facto follows and article 188 is necessary and cannot be done away with. Therefore certain emergency powers such as under article 188 are necessary for the Governor to discharge his function of maintaining law and order and to carry on the orderly government of the State.

I wish to say word more with regard to Professor Shah's amendment that the Minister shall be responsible to the Governor. The Minister has a majority in the legislature and as such, through the majority, he is responsible to the people. If he is responsible to the Governor, as distinguished from his responsibility to the Legislature and through the legislature to the

people of the State, then he can be overthrown by the majority in the legislature and he cannot maintain his position. He cannot hold the office. Therefore it is an impossible proposition that a Minister could ever be responsible to the Governor as distinguished from his responsibility to the people through the majority in the legislature. He should therefore be responsible to the Legislature and the people and not to the President. That is the only way in which under the scheme in the Draft Constitution the government of the country can he carried on.

Shri Rohini Kumar Chaudhari: (Assam: General): I rise to speak more in quest of clarification and enlightenment than our of any ambition to make a valuable contribution to this debate.

Sir, one point which largely influenced this House in accepting the article which provided for having nominated Governors was that the Honourable Dr.Ambedkar was pleased to assure us that the Governor would be merely a symbol. I ask the honourable Dr. Ambedkar now, whether any person who has the right to act in his discretion can be said to be a mere symbol. I am told that this provision for nominated governorship was made on the model of the British Constitution. I would like to ask Dr. Ambedkar if His Majesty the king of English acts in his discretions in any matter. I am told--I may perhaps be wrong--that His Majesty has no discretion even in the matter of the selection of his bride. That is always done for hem by the Prime Minister of England.

Sir, I know to my cost and to the cost of my Province what 'acting by the Governor in the exercise of his discretion' means. It was in the year 1942 that a Governor acting in his discretion selected his Ministry from a minority party and that minority was ultimately converted into a majority. I know also, and the House will remember too, that the exercise of his discretion by the Governor of the Province of Sindh led to the dismissal of one of the popular Ministers-- Mr. Allah Bux. Sir, if in spite of this experience of ours we are asked to clothe the Governors with the powers to act in the exercise of their discretion, I am afraid we are still living in the past which we all wanted to forget.

We have always thought that it is better to be governed by the will of the people than to be governed by the will of a single person who nominates the Governor who could act in his discretion. If this Governor is given the power to act in his discretion there is no power on earth to prevent him from doing so. He can he a veritable king Stork. Furthermore, as the article says, whenever the Governor thinks that he is acting in his discretion nowhere can he be questioned. There may be a dispute between the Ministers and the Governor about the competence of the former to advise the Governor; the Governor's voice would prevail and the voice of the Ministers would count for nothing. Should we in this age countenance such a state of affairs? Should we take more then a minute to dismiss the idea of having a Governor acting in the exercise of his discretion? It may be said that this matter may be considered hereafter. But I feel that when once we agree to this provision, it would not take long for us to realise that we have made a mistake. Why should that be so? Is there any room for doubt in this matter? Is there any room for thinking that anyone in this country, not to speak of the members of the legislature, will ever countenance the idea of giving the power or the Governor nominated by a single person to act in the exercise of his discretion? I would submit, Sir, if my premise is correct, we should not waste a single moment in discarding the provisions which empower the Governor to act in his discretion.

I also find in the last clause of this article that the question as to what advice was given by a Minister should not be enquired into in any court. I only want to make myself clear on this point. There are two functions to be discharged by a Governor. In one case he has to act on the advice of the Minister and in the other case he has to act in the

exercise of his discretion. Will the Ministry be competent to advise the Governor in matters where he can exercise his discretion? If I remember a right, in 1937 when there was a controversy over this matter whether Ministers would be competent to advise the Governor in matters where the Governor could use his discretion, it was understood that Ministers would be competent to advise the Governor in the exercise of his discretion also and of the Governor did not accept their advice, the Ministers were at liberty to say what advice they gave. I do not know that is the intention at present. There may be cases where the Ministers ate competent to give advice to the Governor but the Governor does not accept their advice and does something which is unpopular. A Governor who is nominated by the Centre can afford to be unpopular in the province where he is acting as Governor. He may be nervous about public opinion of he serves in his own province but he may not care about the public opinion in a province where he is only acting. Suppose a Governor, instead of acting on the advice of his Minister, acts in a different way. If the Minister are criticised for anything the Governor does on his own, and the Ministers want to prosecute a party for such criticism, would no the Ministers have the right to say that they advised the Governor to act in a certain way but that the Governor acted in a different way? Why should we not allow the Ministers the liberty to prosecute a paper, a scurrilous paper, a misinformed paper, which indulged in such criticism of the Ministers ? Why should not the Ministers be allowed to say before a court what advice they gave to the Governor ? I would say, Sir--and I may be excused for saying so-- that the best that can be said in favour of this article is that it is a close imitation of a similar provision in the Government of India Act, 1935, which many Members of this House said, when is was published, that they would not touch even with a pair of tongs.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I did not think that is would have been necessary for me to speak and take part in this debate after what my Friend, Mr. T. T. Krishnamachari, had said on this amendment of Mr. Kamath, but as my Friend, Pandit Kunzru, pointedly asked me the question and demanded a reply, I thought that out of courtesy I should say a few words. Sir, the main and the crucial question is, should the Governor have discretionary powers? It is that question which is the main and the principal question. After we come to some decision on this question, the other question whether the words used in the last part of clause (1) of article 143 should be retained in that article or should be transferred somewhere else could be usefully considered. The first thing, therefore, that I propose to do so is to devote myself of this question which, as I said, as the crucial question. It has been said in the course of the debate that the retention of discretionary power in the Governor is contrary to responsible government in the provinces. It has also been said that the retention of discretionary power in the Governor smells of the Government of India Act, 1935, which in the main was undemocratic. Now, speaking for myself, I have no doubt in my mind that the retention in or the vesting the Governor with certain discretionary powers is in no sense contrary to or in no sense a negation of responsible government. I do not wish to rake up the point because on this point I can very well satisfy the House by reference to the provisions in the constitution is not a fully responsibly system of government, nor will anybody in this House challenge that the Australian Government is not a responsible form of government. Having said that, I would like to read section 55 of the Canadian Constitution.

"Section 55.--Where a Bill passed by the House of Parliament is presented to the Governor-General for the Queen's assent, he shall, according to his discretion, and subject to the provisions of this Act, either assent thereto in the Queen's name,

or withhold the Queen's assent or reserve the Bill for the signification of the Queen's pleasure."

Pandit Hirday Nath Kunzru: May I ask Dr. Ambedkar when the British North America Act was passed?

The Honourable Dr. B. R. Ambedkar : That does not matter at all. The date of the Act does not matter.

Shri H. V. Kamath: Nearly a century ago.

The Honourable Dr. B. R. Ambedkar : This is my reply. The Canadians and the Australians have not found it necessary to delete this provision even at this stage. They are quite satisfied that the retention of this provision in section 55 of the Canadian Act is fully compatible with responsible government, If they had left that this provision was not compatible with responsible government, they have even today, as Dominions, the fullest right to abrogate this provision. They have not done so. Therefore in reply to Pandit Kunzru I can very well say that the Canadians and the Australians do not think such a provision is an infringement of responsible government.

Shri Lokanath Misra (Orissa : General): On a point of order, Sir, are we going to have the status of Canada or Australia? Or are, we going to have a Republic Constitution?

The Honourable Dr. B. R. Ambedkar : I could not follow what he said. If, as I hope, the House is satisfied that the existence of a provision vesting a certain amount of discretion in the Governor is not incompatible or inconsistent with responsible government, there can be no dispute that the retention of this clause is desirable and, in my judgment, necessary. The only question that arises is..

Pandit Hirday Nath Kunzru : Well, Dr. Ambedkar has missed the point of the criticism altogether. The criticism is not that in article 175 some powers might not be given to the Governor, the criticism is against vesting the Governor with certain discretionary powers of a general nature in the article under discussion.

The Honourable Dr. B. R. Ambedkar: I think he has misread the article. I am sorry I do not have the Draft Constitution with me. "Except in so far as he is by or under this Constitution," those are the words. If the words were "except whenever he thinks that he should exercise this power of discretion against the wishes or against the advice of the ministers", then I think the criticism made by my honourable Friend Pandit Kunzru would have been valid. The clause is a very limited clause; it says: it says: "except in so far as he is by or under this Constitution". Therefore, article 143 will have to be read in conjunction with such other articles which specifically reserve the power to the Governor. It is not a general clause giving the Governor power to disregard the advice of his ministers in any matter in which he finds he ought to disregard. There, I think, lies the fallacy of the argument of my honourable Friend, Pandit Kunzru.

Therefore, as I said, having stated that there is nothing incompatible with the retention of the discretionary power in the Governor in specified cases with the system of responsible Government, the only question that arises is, how should we provide for the mention of this discretionary power? It seems to me that there are three ways by which this could be done. One way is to omit the words from article 143 as my honourable Friend, Pandit Kunzru, and others desire and to add to such articles as 175, or 188 or such other provisions which the House may hereafter introduce, vesting the Governor with the discretionary power, saying notwithstanding article 143, the Governor shall have this or that power. The other way would be to say in article 143, "that except as provided in articles so and so specifically mentioned-article 175, 188, 200 or whatever they are". But the point I am trying to submit to the House is that the House cannot escape from mentioning in some manner that the Governor shall have discretion.

Now the matter which seems to find some kind of favour with my honourable Friend, Pandit Kunzru and those who have spoken in the same way is that the words should be omitted from here and should be transferred somewhere else or that the specific articles should be mentioned in article 143. It seems to me that this is a mere method of drafting. There is no question of substance and no question of principle. I personally myself would be quite willing to amend the last portion of clause (1) of article 143 if I knew at this stage what are the provisions that this Constituent Assembly proposes to make with regard to the vesting of the Governor with discretionary power. My difficulty is that we have not as yet come either to article 175 or 188 nor have we exhausted all the possibilities of other provisions being made, vesting the Governor with discretionary power. If I knew that, I would very readily agree to amend article 143 and to mention the specific article, but that cannot be done now. Therefore, my submission is that no wrong could be done if the words as they stand in article 143 remains as they are. They are certainly not inconsistent.

Shri H. V. Kamath: Is there no material difference between article 61(1) relating to the President vis-a-vis his ministers and this article?

The Honourable Dr. B. R. Ambedkar : Of course there is because we do not want to vest the President with any discretionary power. Because the provincial Governments are required to work in subordination to the Central Government, and therefore, in order to see that they do act in subordination to the Central Government the Governor will reserve certain things in order to give the President the opportunity to see that they do act in subordination to the Central Government the Governor will reserve certain things in order to give the President the opportunity to see that the rules under which the provincial Governments are supposed to act according to the Constitution or in subordination to the Central Government are observed.

Shri H. V. Kamath: Will it not be better to specify certain articles in the Constitution with regard to discretionary power, instead of conferring general discretionary powers like this?

The Honourable Dr. B. R. Ambedkar : I said so, that I would very readily do it. I am prepared to introduce specific articles, if I knew what are the articles which the House is going to incorporate in the Constitution regarding westing of the discretionary powers in the Governor.

Shri H. V. Kamath: Why not hold it over?

The Honourable Dr. B. R. Ambedkar : We can revise. This House is perfectly competent to revise article 143. if after going through the whole of it, the House feels that the better way would be to mention the articles specifically, it can do so. It is purely a logomachy.

Shri H. V. Kamath: Why go backwards and forwards?

Mr. President: The question is:

"That in clause (1) of article 143, the words 'except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion be deleted."

The amendment was negatived.

Mr. President: The question is:

"That in clause (1) of article 143, after the word 'head' a comma be placed and the words 'who shall be responsible to the Governor and shall' be inserted and the word 'to' be deleted."

The amendment was negatived.

Mr. President: The question is:

"That article 143 stand part of the Constitution."

The motion was adopted.

Article 143 was added to the Constitution.

*

Article 144

(Amendments Nos. 2164 and 173 to amendment No. 2164 were not moved.)

Mr. President: Amendment No. 2165 stands in the name of Dr. Ambedkar. There are amendments to the also, but that amendment has to be moved before the amendments to the amendment can be moved.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for clause (1) of article 144, the following be substituted:-

`144.(1) The Chief Minister shall be appointed by the Governor and the other ministers shall be appointed by the Governor on the advice of the Chief Minister and the ministers shall hold office during the pleasure of the Governor;

Provided that in the States of Bihar, Central Provinces and Berar and Orissa there

shall be a minister in charge of tribal welfare who may in addition be in charge of welfare of the Scheduled Castes and backward classes or any other work.

(1a) The Council shall be collectively responsible to the Legislative Assembly of the State.'"

Shri T. T. Krishnamachari: May I suggest that the Honourable Dr. Ambedkar might vary the wording in clause (1a) of article 144 by the addition of the words "Of ministers" to the words "The Council" ?

The Honourable Dr. B. R. Ambedkar : That is all right. It will bring it into line with article 62. I move that amendment.

Shri Mahavir Tyagi: May I know what is the method for the appointment of that particular Minister for Bihar and other places? Whether the minister will be appointed by the Governor on the advice of the Chief Minister-that is clear certainly, because you say, "Provided" and this means that whatever we have said before will not apply in the case of these ministers.

The Honourable Dr. B. R. Ambedkar : What it says is among the ministers appointed under clause(1) which means they are appointed by the Governor on the advice of the Chief Minister, one minister will be in charge of this portfolio.

Mr. President: There are three amendments to this, amendments Nos. 134, 135 and 174.

Shri Jaspat Roy Kapoor (United Province: General): I do not propose to move any one of these two amendments. But, I hope that the Drafting Committee will be pleased to take the suggestions continued in these two amendments into consideration while giving final touches to the Draft Constitution.

(Amendment No. 174 was not moved.)

(Amendments Nos. 2166 to 2169 were not moved.)

Mr. President: Amendment No. 2170.

Shri H. V. Kamath: Sir, I have been forestalled by Dr. Ambedkar. I am not moving the amendment.

(Amendments Nos. 2171, 2172 and 2173 were not moved.)

Mr. Mohd. Tahir: Sir, I beg to move:

"That the clause (1) of article 144 for the word 'appointed' the word 'chosen' be substituted, and the following words be inserted after the words 'his pleasure':-

'and till such time as the Council of Ministers maintains the confidence of the members of the Legislative Assembly.'"

Sir, I have moved this amendment because the stability of the Ministry mainly depends on the confidence of the members only and not in the pleasure of the Governor. In certain cases, it may happen that there may be some sort of a tug of war as between the pleasure of the Governor and the confidence of the members of the Legislative Assembly. It may happen that the members of the Legislative Assembly may not have confidence in the Minister, but at the same time, through long association with the Governor, the ministers may enjoy the pleasure of the Governor quite all right. I want that the land of the Governor should be made stronger so that if he finds that over and above the question of his pleasure, if the Ministers have not got the confidence of the Assembly, the Minister should be dissolved. "In many cases I have seen, for instance in the local bodies, although the members have no confidence in the Chairman of the District Board and pass a vote of non-confidence, the Chairman still continues in office because nowhere in the Constitution is it provided that if a no-confidence motion is passed, the Chairman has to resign his office. As time, passes on, the Chairman tries to win over and convert many of the members who voted against him with the result that the members who have no confidence in the Chairman have got to turn themselves to the side of the Chairman. In this way, it is also possible in the case of the Ministers." Therefore, I submit that if the Governor finds that the Minister do not enjoy the confidence of the House, in that case also, he should ask them to vacate the office and get the Minister dissolved.

Sir with these few, I move.

Mr. Mohammed Ismail Sahib (Madras: Muslim): Mr. President, Sir, before I move the amendment that stands in my name, I want to point out that the word 'long' has been omitted at the beginning between the words 'so' and 'as'

Perhaps, it is due to a printing mistake or something else: but the word 'long' should be there.

I beg to move:

"That in clause (1) of article 144, for the words 'during his pleasure', the words 'so long as they enjoy the confidence of the Legislative Assembly of the State' be substituted".

Sir, the meaning of my amendment is very obvious and I do not think I have to say many words in support of the proposition. There are no two opinions on the question whether the Council of Ministers should be responsible to the legislature or not. The amendment moved by the Honourable Dr. Ambedkar also envisages such a responsibility. It is contained in the new clause (1a) of the amendment moved by the Honourable Dr. Ambedkar. There are also other amendments which indicate that this responsibility of the Ministers to the legislature is an accepted fact. The question is when there is a variance between the pleasure of the Governor and the pleasure of the House, which is to prevail, whether it is the view of the Governor or the view of the legislature, that is the view of the majority of the legislature.

As I have already stated, it is an accepted fact that the Minister must be responsible to the legislature and therefore my amendment proposes that it should be made clear and beyond doubt in this article with the addition of the words that I have proposed. Sir, it may be said that conventions might grow which will enforce such a procedure as is being proposed in my amendment. Conventions are resorted to at a time when we are not clear about any matter or any position and when we want to learn things by experience. But, this responsibility of the Ministers to the representatives of the people has now been accepted as a result of the experience that the world has had, beyond all doubt. Therefore, we need not in this matter wait for conventions to grow. Moreover, it is particularly necessary that the provision suggested by my amendment should be made in this article in view of the fact that the Constituent Assembly has decided that the Governor should be not an elected one, but an appointed one. Perhaps, the article as it stands in the Draft Constitution was drafted by the Drafting Committee when the same Committee envisaged the possibility of the Governor being elected in same form of other. But that position has now changed. The Governor is a nominee of the President. Therefore, I think it is particularly necessary that it should be made clear that the Council of Ministers should hold office only so long as they enjoy the confidence of the Legislative Assembly. This is a very democratic and acceptable procedure and there need be no hesitation about this and we do not want to learn anything by experience. Therefore I think the House will see my meaning which is very obvious and accept the motion.

(The amendments No. 2176 to 2178 were not moved.)

Mr. President: There is an amendment which I left over by mistake and that is 109 of the printed list of amendments to amendments, of which notice was given by Mr. Gupta.

(The amendment was not moved.)

(Amendments Nos. 2179 to 2184 were not moved.)

Mr. President: No. 2185.

Mr. Mohd. Tahir: Sir, I beg to move:

"That for clause (3) of article 144, the following be substituted:-

'(3) A Minister shall, at the time his being chosen as such be a member of the Legislative Assembly or Legislative Council of the State as the case may be.'"

The draft provides that--

"A Minister who, for any period of six consecutive months, is not a member of the Legislature of the State shall at the expiration of that period cases to be a Minister.

This provision appears that is does not fit with the spirit of democracy. This is a provision which was also provided in the Government of India Act of 1935 and of course those days were the days of Imperialism and fortunately those days have gone. This was then provided because if Governor finds his choice in someone to appoint a Minister and fortunately or unfortunately if that man is not elected by the people of the country,

then that man used to be appointed as Minister through the backdoor as has been provided in the Constitution and in 1935 Act. But now the people of the State will elect members of the Legislative Assembly and certainly we should think they will send the best men of the States to be their representative in the Council of Legislative Assembly or the Council, then Sir, why that man is to be appointed as the Minister. I have greater respect to the voice of the people of the State, and in order to maintain that I will submit that this provision should not remain in the Constitution and the Minister should be from among those members of the Assembly who have been elected by the People of the States as they are the true representatives of the States sent by the people of the States. I hope that this amendment will receive due consideration by the honourable Members and will be accepted by the House.

Mr. President: There is as amendment No. 176 to this.

(The amendment was not moved.)

Prof K. T. Shah: I do not want to move either 2186 or 2189 as the principle of these two has been rejected by the House.

Prof. Shibban Lal Saksena: Sir, I beg to move:

"That in clause (3) of article 144, for the words 'Legislature of the State' the 'Legislative Assembly of the State' be substituted'.

Sir, it is not a verbal amendment. I do not know whether it is by an oversight of Dr. Ambedkar that the word "Legislature" is used in the section, but I think it has been deliberately used. It means that any member who is not elected and is unable to get himself elected by adult suffrage can also become a Minister. The article says:-

"a Minister who, for any period of six consecutive months, is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister."

That means that if a person is not a Lower House but is made a Minister, and supposing that the man fails to get elected to the Lower House on the basis of adult suffrage in six months, then under this article we are providing that he can still continue to remain a Minister if he is nominated to the Upper House by the Governor. I think it is undemocratic that our Ministers should be persons who cannot even win an election by adult suffrage. I have therefore suggested that we should say 'Legislative Assembly' instead of Legislature' in this article. In the Assembly nobody is nominated and all Ministers shall therefore have to win an election by adult suffrage within six months of their appointment in order to continue to be ministers. Otherwise persons who are not representatives of the people but are favourites of the Premier may be nominated to the Upper House in the provincial Legislatures and they can continue to remain Minister under this clause (3) of the article. I desire that only members who are able the post of a Minister. Anybody who is not able to get elected by member of the Council of Minister.

Mr. President: Is not the effect of your amendment to exclude a member of the Upper House even if he is an elected member?

Prof. Shibban Lal Saksena: That is the effect, Sir. I want that only members of the Lower House should be there which means that those who are elected by adult suffrage to the Lower House should alone be able to be Ministers. Unless a member can get the confidence of the electorate in an election to the Lower house by adult franchise, he should not be made a Minister. That is the essence of democracy, which means the Government of the people by the people. So I submit, Sir, that in this article, in place of the words "Legislature of the State". the words "Legislative Assembly of the State" should be substituted I hope the Drafting Committee will accept this suggestion.

(Amendments No. 2188 to 2191 were not moved.)

The Honourable Dr. B. R. Ambedkar : Mr. President, I beg to move:

"That in clause (4) of article 144, for the words 'In choosing his ministers and in his relation with them' the words 'In the choice of his ministers and in the exercise of his other functions under the

Constitutions' be substituted."

Sir, this is nothing but a verbal amendment.

Mr. President: Amendment No. 2193.

Mr. Mohd.. Tahir: Sir, I beg to move:

"That in clause (4) of article 144, the words 'but the validity of anything done be the Governor shall not be called in question on the ground that it is was done otherwise than in accordance with such Instruction' be deleted."

I have moved this amendment , Sir, because if the clause is allowed to stand as it is them it will amount to a clear negative of the Instrument of Instructions that has been provided for in the Fourth Schedule. In that Schedule some instructions have been given to the Governor and he is to act according to those instructions. But if the present clause is allowed to remain as it is, then it will mean that in spite of the fact that the Fourth Schedule provides these Instrument of Instruction, the Governor might act otherwise. Thus is amounts to a clear negation of those instructions. Therefore, I think it will be better if the words I have indicated are deleted from this clause.

(Amendment Nos. 2194 to 2197 were not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That clause (6) of article 144 be omitted."

Shri Brajeshwar Prasad: Why?

The Honourable Dr. B. R. Ambedkar : Because we do not want to give more discretionary powers then has been defined in certain article. We are trying to meet you.

Mr. President: There is an amendment to this, by Mr. Kamath.

Shri H. V. Kamath: Mr. President, I move, Sir, amendment No. 177, Third Week, List III. I move:

"That with reference to amendment No. 2198 of the List of Amendments, after clause (6) of article 144, the following new clause be inserted:-

'(7) Every minister including the Chief Minister shall, before be enters upon his office, make a full disclosure to the State Legislature of any interest, right, share, property or title he may have in any enterprise, business, trade or industry, either private or directly owned or controlled by Government, or in any way aided, private or subsidised by Government; and the Legislature may deal with the matter in such manner as it may, in the circumstances, deem necessary or appropriate.

Every minister including the Chief Minister shall make a similar declaration at the time of quitting his office.'"

Sir, the object of my amendment is to ensure a high standard not merely of efficiency but also of purity in the administration of our country. I am sure we are all agreed that the Ministers of a State or of India as a whole, should promote such efficiency and purity in our administration. There is no disputing the view that every Minister in our country should be above suspicion. Unfortunately, Sir, this expectation has not always been fulfilled. Many of our leaders, including you. Sir, have recently pointed out that there has been a certain deterioration in the standards of public life in this land. It is a very disquieting and very disconcerting trend which we have to counteract by every means at our disposal, and this, may I humbly submit, is one of those means by which we can try to promote and uphold a very high standard of purity in our public life and in our administration.

May I Sir, with your leave, reinforce my arguments by mentioning one or two instances which has since merged in the adjoining province, it was openly alleged by an important journal of Bombay that a person who had been convicted of black-marketing, had been included in the Cabinet of that State, This statement went uncontradicted and unchallenged. Recently there has been a very sad instance, a very unfortunate instance of a Minister of one of the integrated States being arrested in the Constitution House on an alleged charge of corruption.

Mr. President: I think that is a matter which is still sub-judice.

Shri H. V. Kamath: That is why I said on an alleged change of corruption.

I therefore seek by means of my amendment to ensure that as far as lies in human power, we shall be able to maintain purity in our administration and in public

life.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS)- VOLUME VIII

Wednesday, the 1st June 1949

May I, Sir, by your leave out to the House what Dr. Ambedkar himself remarked about this matter on a previous occasion? Dr. Ambedkar was all in favour of a similar amendment moved in connection with the Council of Ministers at the Centre. But he wanted it to be more effective, and I have, by expanding my former amendment and submitting a new one, tried to accommodate, Dr. Ambedkar as far as I can.

Dr. Ambedkar on that occasion observed that:

"If at all it is necessary (i.e.a. provision of this type is necessary) it should be with regard to the Prime Minister and other Ministers of the State and not the President, because it is they who are in complete control of the administration."

Expanding his argument further- clarifying his position further-he observed:

"I think all of us are interested in seeing that the administration is maintained at a high level, not only of efficiency, but also of purity."

Continuing, he said:

"If you want to make this provision effective, there must be three provision to it."

This is want he went on to say:

"One is a declaration at the outset (i.e. when he enters upon his office):

"Secondly, a declaration at the time of quitting his office:

"Thirdly, responsibility for explaining how the assets have come to be so abnormal:

and

"Fourthly, declaring that to be an offence followed up by a penalty or a fine."

The second of the provisions that the mentioned at that time I have included in the amendment which I brought forward today. I have included a new clause to the effect that every Minister shall make a similar declaration when he quits his office: and I find that Prop.Shah has gone a step further in an amendment he has suggested and in which he has tried to include the third provision which Dr. Ambedkar suggested to male this clause completely effective.

I have left the matter of dealing with such a declaration by the Minister to the Legislature. It is likely that he may have certain shares, or titles, or interests, but the Legislature may hold that the matter is innocuous; and he may continue to enjoy those right and privileges. I have not stated here what exactly should be the course to be pursued in such a case, as Prof. Shah has sought to do in his amendment. I have left it to the Legislature to deal with it as it likes, and I hope, Sir, that by accepting this amendment, we would be guaranteeing, as far as lies in human power, the purity of our administration and of Government in so far as those in both these are concerned.

Prof. K. T. Shah: Sir, I move:

"That in amendment No. 177 of List III (Third Week) of Amendment to Amendments, dated the 30th May, 1949, in the proposed new clause (7) of article 144--

(a) in the first para,--

(i) in line 1, after the word 'Every' the words 'Governor or' be inserted,

(ii) in line 3, for the word 'disclosure' the word 'declaration' be substituted;

(iii) in line 6, after the words 'controlled by' the words 'Central of State' be inserted;

(iv) for the words 'and the Legislative may deal with the matter in such manner as it may, in the circumstances, deem necessary or appropriate', the following be substituted---

'and either dispose of the said interest, right, title, share or property in open market, or make over the same in Trust for himself to the Reserve Bank of India which shall receive all income, rent, profit, interest or dividend from the same and place all such a months to the credit of the Governor or Minister concerned, and, on vacation of office of such Governor or Minister, all amounts so credited shall be returned to the party concerned, as also the original corpus of the Trust which shall be re-conveyed to the party concerned': and

(b) in the second para,--

(i) in line 1, after the word 'Every' the words 'Governor or' be inserted; and

(ii) at the end the following be added:-

'and in the event of there being any material change in his holdings, right, title, interest, share

or property he hall give such explanation as the Legislature may deem necessary to demand'."

My amended amendment which I shall, with your permission, read to the House is as follows:

"Every Governor or Minister, including the Chief Minister should, before he enters upon his office, make a full declaration to the State Legislature of any interest, right, share, property or title he may have in any enterprise, business, trade, or industry, either private or directly owned or controlled by the Central or State Government or in any way aided, protected, or subsidised by the Central or State Government, and either dispose of the said interest, right, title, share or property in open market, or make over the same in Trust for himself to the Reserve Bank of India, which shall receive all income, rent, profit, interest or dividend from the same and place all such amounts to the credit of the Governor or Minister concerned, and on vacation of office of such Governor or Minister, all money so credited shall be returned to the party concerned, as also the original corpus of the Trust which shall be re-conveyed to the party concerned:

Every Governor or Minister, including the Chief Minister shall make a similar declaration at the time of quitting his office, and in the event of there being any material change in his holding, right, title, interest, share or property, he shall give such explanation as the Legislature may deem necessary to demand."

Shri B. Das (Orissa: general): Would gambling in share bazars come into it?

Prof. K. T. Shah: Well, gambling is a business for many people and also a trade.

As Mr. Kamath has tried to explain the genesis of this motion, may I be permitted to amplify a little bit all the same by pointing out that on a previous occasion, in connection with the President and the Prime Minister of the Union of India, I had tried to bring forward an amendment of this nature, and that amendment was rejected. At the time of rejecting that motion, however, the Chairman of the Drafting Committee was pleased to make certain observations which suggested the unworkability or futility of the amendment as it then stood, and indicated certain condition or improvements whereby it could be made more workable. Mr. Kamath seems of have taken him at his word. I find myself now in that happy position of having to bring out these points also in a more substantial manner, perfectly in accordance with the apostolic observations of Dr. Ambedkar. The point simply is this. We are all interested in maintaining and promoting the efficiency as well as the purity of our administration. The Minister should be above any suspicion, and as such it is suggested here that it they have any change of being tempted, if they have any concern, any interest in any business, trade or profession which is likely to be, or which is being owned or controlled , aided or subsidised in any way by the Central or Provincial, Government , then all that portion must be fully declared to the State Legislature. I have hanged the word "disclosure" to "deceleration" because the word 'disclosure' might suggest some sort of previous concealment which is now to be unconcealed, and a 'declaration' is a simple statement of the holdings that the party concerned may have which are presented to the House.

Sir, it is a wholesome convention that even the Director of a Joint Stock company when he accepts office as a Director has to make a declaration, a disclosure, of his interest in any other company or concern wherein his company might be interested. We have a convention also in such a body like the Bombay Municipal Corporation wherein even a member has to make a declaration if any matter in which he is interested comes up for disposal before the body. If such conventions, if such precedents, are to be found in the ordinary law or practice of public I put it to the House, Sir, that it is of still higher importance that provincial Ministers should be similarly required to make a declaration of their holdings, in any trade or profession, on any

company or enterprise, before they become Ministers.

Sir, a story is known--very well known--of a former Prime Minister of the United Kingdom, Mr. Baldwin, who before he accepted his post as Prime Minister dissociated himself completely with Baldwins Limited, which was a great iron and steel, firm, and when he retired he actually had to declare that he was not worth perhaps as many hundreds as he was worth thousands when he took office. This is a part of sacrifice inherent in the public service of a country like England and the ideal or example set by people of the kind will, I hope, be followed in this country as well. We are trying by this amendment to insert a provision in the Constitution to so it that no opportunity is left for anybody holding such high office in the State as that of Governor, Minister or Prime Minister, to use or abuse his authority, power or position for any purpose of personal aggrandizement. I have, therefore, suggested that not only should there be such a declaration, but that having so declared, the interest, share or title may be either disposed of in the public market in which case there would be nothing more to be said about it, or if that ins not done, the property, might, or share may be held in trust by say, the Reserve Bank of India which may receive all the interest, dividend, profit or rent that may be accruing from such property and credit it to the party concerned, so that when the party concerned leaves office the same may be returned to him This is a requirement which would in no way hurt the individual economically, at the same time safeguarding the purity and excellence of their conduct while in office.

I am aware, Sir, that if people want to abuse and take undue advantage of their position as Minister or Governor, they will always be able to do so. If there is one way of observing a law, there may be hundred ways of evading the law. But at the same time, so far as in us may lie, and so far as we can openly guard against such mischances, I think an amendment of this kind is necessary, particularly in view of the very common and universal complaint of growing corruption and demoralisation that seems to have invaded all branches of public service and it so with that purpose in mind that I am placing this amendment and I trust this House will not reject it.

(Amendment No. 2200, 2201 and 2202 were not moved.)

Mr. President: There is one amendment of which I have just received notice from Mr. Jaipal Singh. It is late, but in view of the fact that it raises an important question which has been left out by sheer oversight, I allow him to move it.

Shri Jaipal Singh (Bihar: General): Sir, I move:

"That in article 144, clause (1), after the words 'States of' the word 'Bombay' be inserted."

Sir, I am very grateful to you for permitting this very late amendment of mine. The province of Assam has already been amply provided for by the directives given in the Schedule, but Bombay has been left out. At the time when the Triba' Sub-Committee met, the question of the merger o States had not been finalised. By the merger of a number of States Bombay province gets an additional population classes. I suggest that Bombay be included in the article so that in that province also there may be a Minister who may, in addition to his other duties, pay particular attention to the tribals and other backward classes.

My honourable Friend Mr. Sidhva wanted to know about Assam. I would refer him to page 185 of the Draft Constitution and therein he will find that Assam has been amply provided for, I need not say much about my amendment. The omission is due to oversight and I do hope that Dr. Ambedkar will accept my amendment.

Dr. P. S. Deshmukh: Mr. President, Sir, there are a large number of amendments that have been moved. Some of them are more or less of a consequential nature to which a mere reply that the proposal which they want to embody in the Constitution specifically would be covered by other provisions in the Constitution or by the way in which the Ministers have functioned so far would probably be sufficient. I would here just like to speak on one or two points.

I would like, first of all, to say that it would be better if this proviso is transposed either as an independent article or is embodied here in article 104 as an independent sub-clause. I refer to the proviso to para (1) of article 144 in regard to the States of Bihar, Central Provinces and Berar and Orissa and to the proposed addition suggested by Mr. Jaipal Singh in his amendment. I think this is a substantive provision which should stand independently and not as a proviso. I am glad to find that there is actually am amendment suggested by Mr. Gupta for the addition of an independent clause. I am in favour of it.

Then I may say a word about the proposal to include Bombay. I have my fullest sympathies with Mr. Jaipal Singh. For the reasons stated by him briefly, I think it would be proper to include Bombay in the list of States which have been mentioned in this article.

Then there is the amendment of Mr. Kamath which seeks to be amended by the one moved by Professor K. T. Shah. There can be no two opinions about our being very punctilious and about our making every effort to see that our public men are as scrupulous as possible. It is with this end in view that the amendment seeks to provide for a declaration of business interests of the Ministers. But the question is whether we should provide for this in the Constitution or whether there are not other means to achieve the desired end. My Friend Mr. Kamath has suggested that there should be declaration of financial and business interests of the Ministers. Professor shah who usually goes into details in such matters wants to provide further that when certain interests are found to exist they should be dealt with in a particular way. In spite of all these exhaustive amendments, I do not think the changes of misbehaviour by public men and public officers have been completely eliminated. Besides business interests there may be a thousand other things which it is equally desirable to discourage or put a stop to extraordinary indulgence in, for instance receiving addresses from the public or in celebrating one's own birthdays or the marriages of one's sons of daughters of other relatives. All these things and a whole host of others will have to be included if we want to see that our Ministers do not derive any benefit other then their legitimate remuneration.

To make out a complete list of these things and to provide for enquiries and adjudications is I think too much of a task to provide for in the Constitution. I have not a shadow of doubt in my mind that we must do everything possible to raise the moral status of our nation. I am not prepared to say that at the present moment it is very high. But the question is whether this is the right place of method to do it. I am sure the consciousness of our independence, of our nationhood, and I for one hope that has devolved on our shoulders is increasing in India, and I for one hope that even in the absence of s provision of this kind the moral standard in our country will rise higher. At the present moment however the situation is disgraceful. There is no shadow of a about, about it. Very few people, cultured people, highly educated people place any value on speaking the truth and there is a craze for deriving vicarious advantage and benefits in different ways. To enumerate all these occasions when men might be unscrupulous enough to transgress the moral code in the Constitution would be an impossible task for the draftsmen. I would therefore prefer to leave this matter entirely outside the Constitution and if necessary include them in the Instructions that may be issued by the President to the Governors to see that from day to the Ministers and the Premiers who get so much power and authority under the scheme of provincial autonomy do not misbehave and to watch and communicate ant such misbehaviour to the President. If those Instructions are followed, much good that we desire will be accomplished. That would be much better then contaminating the whole Constitution by frank admission that our public men are not capable of looking after own morality and do not care for any moral principles.

I next want to refer to my sub-province of Berar. We have mentioned Central Provinces and Berar as a State which will have an additional Minister to look after the interests of Tribals and the Scheduled Classes. It is stated that that Minister could be given other work also. This reminds me of section 52 of the Government of India Act. There was a special responsibility placed on the Governor , so far as Berar was concerned, and this was "to see that a reasonable share of the revenues of the Province was expended in or for the benefit of Berar." I do not wish to take the time of the House by referring to the Constitutional position of Berar. But, so far as exploitation from the financial point of view is concerned, I may say that it has been a long-standing complaint of Berar that the larger revenues that it contributed are swallowed up by the other and poorer areas of the Province and that Berar does not get the benefit that is due to it. Of course it is too late in the day to ask for any direction or for the placing of any special responsibility for Berar on the Governor, I would, however, like the administrators to bear in mind that the needs or Berar still require attention and consideration.

One more point and that is with respect to the 25 lakhs of rupees paid as lease money to the Nizam. I think we can now conclude that the Nizam's nominal sovereignty has, at long last, been completely abolished and terminated with Berar. Therefore the question of paying this sum of Rs. 25 lakhs to the Nizam will not I expect arise hereafter.

Mr. President: We are not concerned with the contribution which is paid by Berar or the separate finances of Berar. We are have concerned only with the question of having Ministers to look after the welfare of the backward tribes in certain provinces.

Dr. P. S. Deshmukh: I only want to say one word more, Sir. I referred to this subject since the old provision of special responsibility is going finally to be abolished. Since the payment of Rs. 25 lakhs is not going to be made to the Nizam, this money should be utilised for the benefit of the territory of Berar for educational and medical purposes. I have already made a representation to the Home Minister in this matter and I hope that since we are not going to repeat the provision existing in 1935 Act, this request of mine to utilise this sum of Rs. 25 lakhs for the people of Berar will be accepted.

Pandit Thakur Das Bhargava: Mr. President, Sir, the article under discussion, article 144, is a very important article and so I venture to take some time of the House in regard to some of the provisions in this article.

In the first place, clause (1) of article 144 is too wide. It says--

"The Governor's ministers shall be appointed by him and shall hold office during his pleasure."

We just discussed article 143 in which the question was whether the Governor must be invested with any discretion at all. Here his discretion is too wide. now, the Governor,it he so chooses, can appoint his Ministers and the Premier may be called upon to form a minister from any party which is not the biggest party in the House. There is no bar against this. I would have liked a provision that the Governor shall only call for the leader of the biggest party in the Assembly to form the Ministry. Moreover, Sir, the words "during his pleasure" have been interpreted in different ways. A convention is to grow that the Governor is only entitled to dismiss a Minister if the Ministry fails to retain the confidence of the Legislative Assembly. In regard to this, two amendments have been moved and I am sorry I cannot support any of them because the words used are "retains the confidence of the Legislative Assembly". My humble submission is that unless the Ministry fails to command the confidence of the majority of members of the Legislative Assembly, the Ministry should not be dismissed. Now, it is true that the sole judge of this is the Governor himself and therefore he will have very great power in this regard. If the provision had been made that as long as the Ministry retains the confidence of the majority of the members of the Lower House, the matter would have been put beyond doubt and the Governor would not be within his right if he dismisses a Ministry which is still in the enjoyment of the confidence of the House.

An amendment was moved by Mr. Saksena in regard to clause (3). He wanted that only members of the Lower should be chosen as Ministers. In regard to this, my submission is that since in the Upper House we are having many members who will be elected by a large body of people, like Municipalities, District Boards, village panchayats, etc, there is no reason why we should restrict Ministership to the members of the Lower House only. My submission is that all those members who have been elected, whether they belong to the Upper House or the Lower

House, should be eligible for Ministership.

In regard to the proviso, I would submit a word. I am very much against this backdoor reservation of ministership. So far as the question of the Scheduled Castes, the backward classes and the tribal people is concerned, we have got very specific provisions in this Constitution which aim at the amelioration of the condition of these classes and it will be the statutory duty of those in power to see that the interests of these classes ore not ignored and there in no need for reservation of a separate minister. The backward classes has been divided under this Constitution into two classes, the Scheduled Castes for whom reservation has been made and backward classes for whom no reservation has been made. If we turn to article 301, we will find that backward classes have been protected under that article, where it has been made the duty of the President to see that the conditions of the backward classes including the Scheduled Castes are bettered and to have an investigation made into the conditions of these classes by a Commission and then after the Commission has reported, action has again to be taken so that they may be brought up to the normal level. In regard to the tribal people, there is a specific provision in article 300 which says--

"The President may at any time shall, on the expiration of ten years after the commencement of this Constitution, by order, appoint a Commission to report on the administration of the scheduled areas and the welfare of the scheduled tribes in the States, etc."

If you just see article 299, you like be pleased to see that special officers are to be appointed both by the President himself and by each State to study how these safeguards work, how these provision work. Therefore, it is the bounded duty of the President and the Union Legislature to whom the report of the Commission so to be presented to see that the condition of the backward classes is improved. I do not see why there should be overlapping of functions by different functionaries and why there should be reservation for them in the Ministries. So far as the report of the Ministers Advisory Committee is concerned, they have not recommended that for the backward classes and the Depressed Classes there should be a separate Minister. In regard to welfare there is no reason why Scheduled Castes should be differentiated or mentioned separately when there is equal responsibility on Government for both. My submission is that this distinction should be eliminated. As a matter of fact, in regard to article 301 there is no distinction. My point is that if the Scheduled classes or the backward classes require any special protection, they require special protection in the whole of India, not only in C. P., Orissa and Bihar. I have to submit, Sir, that the Constitution has already protected them. Untouchability has been made an offence. In the Fundamental Rights there are so many provision by virtue of which they have got equal access to all public places. In view of that, I am opposed to this kind of reservation. I am very much opposed to this provision because it stands for all times and may prove the thin end of the wedge for demanding such reservation in all the provinces. Moreover this provision is not only for the first ten years but for all times. This will be a blot on our Constitution and I therefore submit that this House should throw out this proviso.

The next point was made by Mr. Kamath and subsequently supported by Professor Shah in regard to the property of the Ministers. They said that the Ministers should be asked to disclose what they have at the time they are appointed as Ministers and also when they hand over the administration, that they should be made to disclose what they have amassed, what they have gathered during the time they were Ministers. This is an inquisition. I do not think that in regard to our Ministers we should resort to this kind of inquisition. We have already rejected such proposed provision for other dignitaries.

Shri A. V. Thakkar (Saurashtra): Mr. President, Sir, thought no notice has been given of an amendment by Mr. Jaipal Singh, he has spoken and perhaps he has been allowed by you Sir, to put it as an amendment. I do not know what is the actual state of things. However, since three members of this House have spoken upon it, I wish to express my opinion on the subject. Separate Ministers are recommended in the three provinces of Bihar, Orissa and C. P. to take care and to protect the interests of the tribals, scheduled castes and all other backward classes. It was on the recommendation of the Tribal Sub-Committee of the Minorities Committee that I as the Chairman along with the other members suggested that such a provision may be made in the Draft Constitution to take care of the backward people residing in these three provinces only. It was for this reason that these three provinces were considered at the time when we made recommendations, that they were backward in the matter of giving special treatment to these people or protecting them. Things have moved much since then. All these three provinces of Bihar, C.P. and Orissa have now very well organised departments for giving protection and do all kinds of welfare work for them. We did not include at that time the forward provinces like Bombay, Madras etc., because they were already moving in that matter for the last twenty or even thirty years and, therefore, they were not included. Somebody may say it is a stigma to these three provinces that they are being specially mentioned. However, I do not think that any addition should be made at this moment without any further consideration or without consulting the Bombay Ministry, which has been proposed in this amendment of Mr. Jaipal Singh. However, I have it, Sir, at that.

Shri H.V. Pataskar: Sir, so far as the consideration of this article 144 is concerned, I only object to the manner in which it has been worded and I would make the following suggestion, if that will be acceptable to those who are responsible for this draft: "The Governor's ministers shall be appointed by him and shall hold office during his pleasure." This is pleased by article 143 and in that article a provision has been made that "there shall be a Council of Minister's". Naturally, therefore, we must mention as to who is to appoint this Council of Ministers. I think the better form would have been merely to mention that "the Council of Ministers shall be appointed by the Governor." At the same time to make a further provision that " they shall hold office during his pleasure," is undesirable. My opinion is it is not necessary and is derogatory to the position which we are going to give to the Prime Minister of the State and the Council of Ministers. Probably this provision is a remnant of the old idea that the Ministers hold office during the king's pleasure. Things have changed since then and it is not necessary that we should incorporate the same language, namely, "they shall hold office during his pleasure". I admit that if the Governor is the appointing authority, naturally he should have the

power in certain circumstances for which provision may be should have the power in certain circumstances for which provision may be made in this section that the Council of Ministers may be dissolved or some new ministers shall be appointed, but, Sir, when we are making a provision with regard to the appointment of a Council of Ministers in the year of grace, 1949. we need not say that "they shall hold office during the pleasure of the Governor." That "Governor" we have decided will be nominated by the President and i do not think it will be proper to say that the minister shall hold office during his pleasure. It may be asked, "What would happen if the ministers have to be changed"? The ministers should be changed only if they cease to command the confidence of majority of the members in the House and for that provision could be made in the Instrument of Instructions, but so far as article 144 reads now, I do not think it is proper that we should lay down that in the case of a Governor of the type which we have already decided upon the Council of Ministers shall be appointed by him and they shall hold office during his pleasure. This phraseology may have been taken out from some other constitutional books and as I said it is probably due to the fact that formerly as the powers of the ministers developed, they may have held office during the pleasure of the Crown, but now there is going to be no Crown and the wording of the article is not happy and proper and, therefore, I would appeal that this part of article 144 be taken out of the Constitution.

Shri Krishna Chandra Sharma: Sir, I do not think there is nay necessary for the provision regarding Scheduled class and tribal people in this article. In article 37 we have already provided for the promotion of the educational and economic interests of the weaker sections of the people and in particular of the Scheduled castes and Scheduled tribal, and again in article 301 the President is to appoint a Commission to look to the amelioration of the backward classes and the tribal people. In view of these two provision in the Draft Constitution, a special mention of a portfolio with regard to the tribal areas and Scheduled classes is unnecessary. The whole matter should n left to the State Ministry; they will consider what is necessary and what is wanted with regard to their amelioration and to incorporate details like this is going too far and I do not think this special provision will do anything not envisaged in the two articles. It does no good to a depressed class man to be told that because he is a depressed class man, therefore, such and such facilities are provided for him; it does create an inferiority complex in the man. It is not always the giving of facilities here and there that helps so much to raise a man up. It is more a matter of psychological make-up. If a man think "I am as good as A, B, C, or D", then he raises himself up; their moment you say "You are an inferior being and therefore, such and such a facility is granted to you and we raise you as against the interests of any other member", he goes down. He does not raise himself. Therefore, it is in my opinion ,in the interests of the Scheduled Classes, in the interests of Tribal Classes not to be told again and again that because they are inferior people, because they are weaker people, therefore, such and such facilities are provided for them. It does not do them any good to make a fetish of the thing. It looks such a nasty thing to be told that A has to be given a scholarship because he belongs to the Scheduled Class, that B, a better boy, a more deserving boy from economic considerations, from his talents and personal capacity, is to be denied those facilities because he belongs to the Brahmin Class or the Kshatriya Class or some other class which is different from the Scheduled Classes. How can a State say that a boy simply because he belongs to a certain community or certain class is to be provided with better facilities, though they have better conditions in life than a boy who belongs to another

class, simply because he belongs to a different community? Such a thing would not be in the interests of the community as a whole. Therefore, looking into the two article I just cited and the general scheme in the Draft Constitution, I think that this special provision regarding portfolio for backward classes should be dropped.

Shri R. K. Sidhva (C.P. and Berar: General): Mr. President, Sir, I wish to draw the attention of the House to one point as regards clause (3) or article 144. The clause says: " A Minister who, for any period of six consecutive months, is not a member of the Legislature of the State, shall at the expiration of that period cease to be a Minister". I feel that this is merely a repetition or imitation of a clause which exists in the present Government of India Act of 1935. I do not think is necessary now, because, under the new Constitution, the number of members in the provincial legislatures will be ranging from 300 to 600 and I do not think we will be wanting in people to fill even special posts. I am opposed to an outsider who is not a member of the legislature, however highly qualified he may be, being called upon to hold the very responsible office of a Minister even for six months. From the experience we have gained, we find that in some cases where Ministers have been so appointed, eventually it has led to corruption. After the period of six months, somebody has to vacate a seat and it has so happened in one or two provinces that to make room for this Minister, that gentleman had to be provided with some job for which he was not qualified. Therefore, when we are going to have large Houses in which there will be members with vast experience, and experts in many respects, I feel that it is not proper, and it is not a very good principle to imitate what is existing in the Government of India Act, 1935, and say that if the Chief Minister feels that so and so who is not a member is required for expert advice, he should be taken as a Minister. Sometimes, the Chief Minister would like to favour somebody. In the name of the special qualifications that he may possess, he will be asked to become a Minister, and at the end of six months, he will have to be made a member of the legislature, because he cannot hold the office after six month. As I stated, Sir, some other member who will be asked to vacate will have to be offered something and this will lead to corrupt public life.

As regards the amendment of Mr. Jaipal Singh in which he wants to add Bombay also, I have to say that it is wrong in principle. A committee was appointed by the Advisory, Committee to this House, and they went into the whole question. They went to all the provinces. They recommended that only these provinces should have a Minister for tribal welfare and any other work. It is most improper at this juncture to come and say that Bombay also should be included. As far as Scheduled Castes are concerned, there are large numbers in Madras. When a Committee had gone into the whole question, it will be wrong in principle that a member should come up and throw before, the House a surprise amendment that another province should also be included. From that point of view, I oppose Mr. Jaipal Singh's amendment.

Shri Rohini Kumar Chaudhuri: Mr. President Sir, in most of my speeches in this House, I had made several appeals to the Honourable Dr. Ambedkar to oblige me by clarifying certain question which I had raised. My former attempts in this direction have failed; but I have faith in the example of King Bruce and I hope that this attempt of mine to get clarification from that quarter will receive proper attention.

Shri T. T. Krishnamachari: May we have the pleasure of hearing the honourable Member properly by requesting him to come to the rostrum and address the House?

Shri Rohini Kumar Chaudhuri: (after coming to he Rostrum) I am very much gratified to learn that at least there is one Member in this House who is anxious to hear what I have to say. I cannot be sufficiently grateful to him. All that I can do in

return is to give my fullest attention to what that honourable Member will speak in this House.

I wanted some clarification. I want to know why particularly these provinces have been selected for reservation of Tribal members in the Cabinet. If there are important minorities in these provinces, necessarily, under the provisions of the Constitution, they will find a place in the Cabinet. If there are no important minorities in these provinces, why are these particular provinces selected for the purpose of giving representation to the backward classes and Scheduled Castes in the Cabinet?

Mr. President: There is no question of representation of Scheduled Castes and backward tribes in the Ministry. A Minister has to be appointed to look after them; not that he should belong to that Tribe or backward community.

Shri Rohini Kumar Chaudhuri: Sorry, I have not followed the point.

Mr. President: There is no question in this proviso of a man from the Tribal people or from the backward classes being appointed a Minister, or reservation of a seat in the Ministry for any of these classes. The only point is that a Minister should be appointed who will look after their interests.

Shri Rohini Kumar Chaudhuri: I am much obliged to you, Sir, If this clause then means that nay member, whether he belongs to the Scheduled Castes to Tribal classes or not, may be selected and appointed in charge off tribal welfare, that is to say, this clause only wants that a portfolio should be created for the purpose of looking after tribal affairs, I think this is not necessary. The general understanding of the tribal people is that by virtue of this proviso, the Tribal people or the Scheduled Castes will secure representation in the Cabinet. If it means that this proviso dies not necessarily mean that a member of the Tribal people or the Tribal people, then, I think this clause is a disappointment to them. If that is the interpretation that is to be put on this proviso, that any member Caste Hindu or even a Muslim or even a Christian can be placed in change of the portfolio of looking tribal welfare, and that this does not necessarily mean that a tribal person should be taken in, I would only say that that object will not go half its way.

My point is this. If there is an important minority, automatically that important minority of Scheduled Castes will find representative in the Cabinet. If you do not think that there is nay important minority or if you think that the Tribal people form an insignificant minority, then I do not understand why a particular portfolio should be created for the purpose. For instance, do you mean to say that the Minister in charge of Education, who does not belong to the tribal community, does not properly look after the education of the Tribal people, because he has not placed in charge of tribal welfare? He may not be placed particularly in charge of tribal welfare; nevertheless, he will look after the education of the Tribal people. Any Education Minister would do that. Any Minister in charge of Public Works will look after the proper communications in the tribal areas. What is the use of having a particular portfolio; you have to look after the education of the Tribal people; you have to look after the local-self-government of the Tribal people. What can one Minister do? All the Ministers in the Cabinet will be expected to look after the interests of the Tribal people in every respect. If you have a non-tribal or a Scheduled Casts member in charge of tribal welfare, what does it mean? Is it the intention that he will poke his nose in every thing and say, "you have not made sufficient arrangements for education in my area or you have not given sufficient roads for me or you have not properly looked after the health of the Tribal people?" Is that the object of creating a Minister? For that purpose this not necessary to create a Minister specially because generally every Minister to whatever community he may belong, has to look after the interests of the Tribals so far as his

Department is concerned.

Shri R. K. Sidhva: Just like the Labour Minister looks after the interests of labour, similarly a Tribal Minister can do.

Shri Rohini Kumar Chaudhuri: The interests of labour lie in a particular way but the interests of Tribal people are in every matter. Do you mean to say that this Tribal Minister will be there to look after the interest of tribal affairs only? It is considered the responsibility of all. Therefore I want clarification; as it is we have two Tribal Ministers in the Assam Cabinet now and there have been Tribal Minister since 1937 and there never was a Ministry without a Tribal Minister. This can very easily be left to the Chief Minister who will select his Ministers and he will certainly look after the interests of the Tribal people by selecting a Tribal Minister. Otherwise if you have a Minister only for tribal welfare, there will be frequent interruption in the work and there will be confusion and there will be rivalry and there will be unnecessary interference in the work of the other Ministers.

Shri Jaspat Roy Kapoor: Sir, may I have permission to move amendment No. 134 which stands in my name and with respect to which I said that I did not want to move/ I find it is a necessary amendment and I have consulted a large number of Members who feel that it should be moved.

Mr. President: The amendment is to this effect:-

"That in amendment No. of the List of Amendments, the proviso to the proposed clause (1) of article 144 be deleted, and the substance of it be included in the Instrument of Instructions set out in the Fourth Schedule."

Dr. P. S. Deshmukh; It should not be permitted to be moved at this late stage.

Mr. President: It seems there is some objection to this amendment being moved at this stage and so in that view I would not like to permit it.

Shri Jaspat Roy Kapoor: If any member has any technical objection it is another matter but this is an amendment which is acceptable to Dr. Ambedkar and most other Members whom I have consulted. There seems to be no harm in permission being given to this. If Dr. Deshmukh is opposed to this amendment, of course he will have his say on the merits of it, and he will have an opportunity to convince the House to reject it.

Mr. President: Would that not open up discussion again?

Dr. P. S. Deshmukh: Yes. If Dr. Ambedkar is prepared to accept it, there is another way out of it. The proviso could be separately put and if it is defeated, it will be deleted.

Mr. President: Yes, that is a way out.

The Honourable Dr. B. R. Ambedkar : I am not accepting the omission of the proviso but I am quite prepared to have the proviso transferred from this article to the Instrument of Instructions.

Pandit Thakur Das Bhargava: May I propose that this article be held over?

The Honourable Dr. B. R. Ambedkar: Why, after having debated so long?

Mr. President: The question is whether is should stand here or it should be transferred to the Instrument of Instructions, That seems to be the effect of the amendment which is sought to be proposed. if there is any considerable body of Members who are opposed to the amendment being moved at this stage, I would not allow it but if it is only the technical objection, then I should be inclined to give the House a change to consider this amendment also. i would like to know if there are many Members who are opposed to it.

Dr. P. S. Deshmukh: So far as the transposition is concerned there will be ample opportunity for that. At this stage it does not arise because this is an independent amendment proposed by Mr. Gupta to be embodied as a separate clause.

Mr. President: It this amendment of Dr. Ambedkar is prepared to say that the proviso is retained, what will be the position of Mr. Gupta's new article?

Dr. P. S. Deshmukh: If Dr. Ambedkar is prepared to say that the proviso may not be put now, the purpose of my friend's amendment would be served. Otherwise it will be a negation......

Mr. President: It is not a negation. He wants the thing to be

transferred from the body of the Act to the Schedule and the Instrument of Instructions. So it is not a negation; it is only a question of transposing the thing from one place to the other.

Shri Jaspat Roy Kapoor: May I submit, Sir, as a matter of general policy I think while dealing with the Constitution we should not take our stand too much on technicalities?

Mr. President: I appreciate that.

Shri T. T. Krishnamachari: Any transposition of this proviso will deprive it of the legal status which it would otherwise possess because the Governor is not bound to carry out the instructions that are given under the Instrument of Instructions and nobody can call him into question in any Court or before any other authority for not following it. I believe the basis for this proviso is a certain measure of agreement in the sub-Committee concerned and if we are going to make a change at this stage it might upset the scheme of the Constitution as envisaged to this sub-Committee.

Mr. President: I think there is some objection to it and so I cannot allow it to be moved at this stage. Dr, Ambedkar may reply to the general debate.

Shri Jaspat Roy Kapoor: May I now that the final decision on this clause be held over till tomorrow?

Mr. President: After all this discussion I do not think that will improve matters. Even it if i held over till tomorrow, your amendment will not be moved tomorrow.

Shri Jaspat Roy Kapoor: In view of the long discussion we have had on the article it appears that a little further constitution is necessary. This long discussion suggests that there are different points of view and it is possible..........

Mr. President: That position will not be changed by tomorrow morning. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Mr. President, in the course of this debate on the various amendments moved I have noticed that there are only four points which call for a reply. The first point raised in the debate is that instead of the provision that the Ministers shall hold office during pleasure it is desired that provision should be made that they shall hold office while they have the confidence of the majority of the House. Now, I have no doubt about it that it is the intention of this Constitution that the Ministry shall hold office during such time as it holds the confidence of the majority. It is on that principle that the Constitution will work. The reason why we have not so expressly stated it is because it has not been stated in that fashion or in those terms in any of the Constitution which lay down a parliamentary system of government. 'During pleasure' is always understood to men that the 'pleasure' shall not continue notwithstanding the fact that the Ministry has lost the confidence of the majority. The moment the Ministry has lost the confidence or the majority it is presumed that the President will exercise his 'pleasure' in dismissing the Ministry and therefore it is unnecessary to differ from what I may say the stereotyped phraseology which is used in all responsible governments. The amendment of my Friend Prof. Saksena, substituting the words "Lower House" I am afraid, cannot be accepted because under the provisions of the Constitution, it is open to the Prime Minister not only to select his Ministers from the Lower, but also from the Upper House. It is not the scheme that the Minister shall be taken only from the Lower House and not from the Upper House. Consequently the provision that the Minister shall be appointed for six months, although be is not elected must be so extensive as to cover both cases, and for that reason I am unable to accept his amendment .

The third amendment which has been considerable debated was moved by my Friend Mr. Kamath and Prof. Shah. With minor amendments, they are more or less of the same tenor. I that connection, what I would like to say is this, that the House will recall that amendment No. 1332 to article 62, which is a provision analogous to article 144, was moved by Prof. Shah and was debated at considerable length. On

that occasion I expressed what views I held on the subject, and it seems to me, therefore, quite unnecessary to add anything to what i have said on that occasion.

Shri H. V. Kamath: My honourable Friend Dr. Ambedkar did not accept the amendment on that occasion because in his view it was not comprehensive enough. Now it is more comprehensive.

Mr. President: You have already said all that.

The Honourable Dr. B. R. Ambedkar: The fourth point is the one which has been raised by my Friend Mr. Jaipal Singh, and to some extent by Mr. Rohini Kumar Chaudhuri. The reason why this particular clause came to be introduced in the Draft Constitution is to be found in the recommendation of the sub-committee on tribal people appointed by Minorities Committee of the Constituent Assembly. In the report made by the Committee, it will be noticed that there is an Appendix to it which is called "Statutory Recommendation". The proviso which has been introduced in this article is the verbatim reproduction of the suggestion and the recommendation made by this particular committee. It is said, there, that in the Provinces of Bihar, Central Provinces & Berar and Orissa, there shall be a separate Minister for tribal welfare, provided the Minister may hold charge simultaneously of welfare work pertaining to Scheduled Castes and backward classes or any other work. Therefore, the Drafting Committee had no choice except to introduce this proviso because it was contained in that part of the Report of the Tribal

Committee which was headed "Statutory Recommendation". I was the intention of this Committee that this provision should appear in the Constitution itself, that it should not be relegated to any other part of it. That is why this has come from the Drafting Committee and it merely follows the recommendation of the committee.

With regard the suggestion of my Friend Mr. Jaipal Sing, that Bombay should be included on account of the fact that as a result of the mergers that have taken place into Bombay Presidency, the number of Tribal people has increased I am sorry to say that at this stage, I cannot accept it because this is a matter on which it would be necessary to consult the Ministry of Bombay, and unfortunately my Friend The Honourable Mr. Kher who was present in the Constituent Assembly during the last few days is not here now, and I am therefore not able to accept this amendment.

Shri H. V. Kamath: With reference to my amendment, may I know if Dr. Ambedkar had resiled from the view that he expressed previously--if he has recanted?

Mr. President: I do not think that kind of cross-examination can be allowed. Now I shall take up the amendments.

There are two amendments moved by Mr. Tahir and Mr. Mohd. Ismail, Nos. 2174 and 2175 which relate to this article 144, clause (1).

If Dr. Ambedkar's amendments No. 2165 is carried, probably they will drop automatically. Therefore, I would put Dr. Ambedkar's amendment to vote.

Mr. President: The question is:

"That for clause (1) of article 144, the following be substituted:-

'144. (1) The Chief Minister shall be appointed by the Governor and the other ministers shall be appointed by the Governor on the advice of the Chief Minister and the ministers shall hold office during the pleasure of the Governor;

Provided that in the State of Bihar, Central Provinces and Berar and Orissa there shall be a minister in charge of tribal welfare who may in addition be in charge of welfare of the Scheduled Castes and backward classes or any other work.

(1a) The Council of Ministers, shall be collectively responsible to the Legislative Assembly of the State.'"

The amendment was adopted.

Mr. President: As I have said, the two amendments No. 2174 and No. 2175 do not arise.

Then there is No. 2185 by Mr. Tahir.

The question is:

"That for clause (3) of article 144, the following be substituted:-

'(3) A Minister shall, at the time of his being chosen as such be a member of the Legislative Assembly or Legislative Council of the States as the case may be.'

The amendment was negatived.

Mr. President: Then there is Prof. Saksena's amendment No. 2187.

The question is:

"That in clause (3) of article 144, for the words 'Legislature of the State' the words 'Legislative Assembly of the State' be substituted."

The amendment was negatived.

Mr. President: There is then Dr. Ambedkar's amendment No. 2192.

The question is:

"That in clause (4) of article 144, for the words 'In choosing his ministers and in his relations with them' the words 'In th choice of his ministers and in the exercise of his other functions under the Constitution' be substituted.

The amendment was adopted.

Mr. President: The question is:

"That in clause (4) of article 144, the words 'but the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with such Instructions' be deleted."

The amendment was negatived.

Mr. President: Then we come to the amendment moved by Mr. Kamath to which another amendment was moved by Prof. Shah. I shall put Prof. Shah's amendment first.

Shri T. T. Krishnamachari: There is amendment No. 2198 moved by Dr. Ambedkar.

Mr. President: I will put that last. I will put Prof. Shah's amendment No. 185 to vote now.

The question is:

"That in amendment No. 177 of List III (Third Weed) of Amendment to Amendments, dated the 30th May, 1949, in the proposed new clause (7) of article 144--

(a) in the first para,--

(i) in line 1, after the word 'Every' the words 'Governor or' be inserted;

(ii) in line 3, for the word 'disclosure' the word 'declaration' be substituted;

(iii) in line 6, after the words 'controlled by' the words 'Central or State' be inserted;

(iv) for the words 'and the Legislature may deal with the matter in such manner as it may, in the circumstances, deem necessary or appropriate' the following be substituted:-

'and either dispose of the said interest, right, title, share or property in open market, or make over the same in Trust for himself of the Reserve Bank of India which shall receive all income, rent, profit, interest or dividend from the same and place all such amounts to the credit of the Governor or minister concerned, and, on vacation of office of such Governor or minister, all amounts so credited shall be returned to the party concerned, as also the original corpus of the Trust which shall be re-conveyed to the party concerned'. and

(b) in the second para,--

(i) in line 1, after the word 'Every' the words 'Governor or' be inserted; and

(ii) at the end and following be added:

'and in the event of there being any material change in his holding, right, title, interest, share or property he shall give such explanation as legislature may deem necessary to demand."

The amendment was negatived.

Mr. President: The question is:

"That with reference to amendment No. 2198 of the List of Amendments, after clause (6) of article 144, of following new clause be inserted:-

'(7) Every minister including the Chief Minister shall, before he enters upon his office, make a full disclosure to the State Legislature of any interest, right, share, property or title he may have in any enterprise, business, trade or industry, either private or directly owned or controlled by Government ; and the Legislature may deal with the matter in such manner as in may, in the circumstances, deem necessary or appropriate.

Every minister including the Chief Minister shall make a similar declaration at the time of quitting his office.'"

The amendment was negatived.

Mr. President: The question is :

'That clause (6) of article 144 be deleted."

The amendment was adopted.

Mr. President: The question is:

"That article 144, as amended, stand part of the Constitution.

The amendment was adopted.

Article 144, as amended, was added to the Constitution.

*

New Article 144-A

Mr. President: notice of an amendment has been received from Shri B. M. Gupta that a new article 144-A be put after article 144. It

reads:

"That after article 144, the following new article be

'144-A. In the States of Bihar, Central Provinces and Berar and Orissa, there shall be a minister in charge of tribal welfare, who may in additional be in charge of the welfare of the Scheduled Castes and backward classes or any other work.'"

I think this is already included in the article accepted. Therefore this cannot be moved.

*

Article 145

Mr. P. K. Sen: (Bihar: General): I do not wish to move the amendment No. 2205 but I would like to make a few observation.

Mr. President: When we come to the discussion of the article, you can do that.

(Amendment No. 2204 and 2206 were not moved.)

(Amendment No. 136 and 178 of Lists III and IV were not moved.)

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I move:

"That after Clause (2) of article 145, the following new clause be added:

'(2a) In the performance of his duties the Advocate-General shall have the right of audience in all courts in the State of which he is attached and when appearing for such State, also in all other courts within the territory of India including the Supreme Court.'"

I want to enable the Advocate- General to have the right of audience in all Courts in the State for which he is the Advocate-General, without any special authority, and also when he appears for the State in other States, and also in the Federal Court when he appears in that capacity. My reason is based on the analogy of article 63, clause (3). Article 63 of the Draft Constitution relates to a similar provision the Attorney-General of India, right of audience in all courts in India. Clause (3) of that article runs thus:

"(3) In the performance of his duties, the Attorney-General shall have the right of audience in all courts in the territory of India."

While there is this provision for the Attorney-General, empowering him to appear in all Courts in the territory of India by virtue of his office, there is no corresponding provision empowering or authorising the Advocate-General to appear in Courts of the State to which he is attached and also in courts in other States where the State to which he is attached is a party, and also in the Supreme Court where the State is a party. I submit that it is a necessary provision: otherwise there would be practical difficulties. If we do not insert here a clause similar to clause (3) of article 63, it would be necessary in every case for the State to authorise the Advocate-General in every case where he is required to appear. Without this statutory provision he will have to obtain authority for appearance in every case, and there may be difficulties about enrollment. A lawyer from Bihar may be appointed the Advocate-General of West Bengal. While that lawyer is enrolled in the High Court at Patna, he may not be enrolled in the High Court at Calcutta. There will be this difficulty that although he is the Advocate-General of West Bengal, he will not be entitled to appear in any Court subordinate to the Calcutta High Court because of the enrollment difficulties and it may be that the State for which he is the Advocate-General is a party in a suit or proceeding in another State; there also he should be empowered to appear on behalf of the State to which he belongs without any written authority and also without the difficulty of enrollment.

We have similar provision in the Code of Criminal Procedure as to the Public Prosecutor. In section 493 or that Code, the Public Prosecutor is authorised automatically to appear without any authority in all cases in the district for which he is the Public Prosecutor. There are similar provisions with regard to the Government Pleader or the Crown Lawyer appearing for the Crown in civil cases.

So, I submit that this is a necessary Provision, otherwise which I have suggested, and other ancillary difficulties will arise. It is similar to other provisions with regard to all lawyers appearing for the State and there is no reason why this should not be accepted in principle in the case of

the Advocate-General. If the principle is accepted that the Advocate-General should have a right of audience in all courts where the State is a party without any authority, I think a provision should be made here. If the Drafting is open to any objection, it may be considered by the Drafting Committee and a suitable draft be adopted.

This is the Principle on which this amendment is based.

(Amendment Nos. 179, 2208 and 2209 were not moved.)

Mr. Naziruddin Ahmad: Sir, I would like to move my amendment with a slight verbal alteration to which, I understand, Dr. Ambedkar has no objection, Sir, I beg to move:

"That for the existing clause (3) and (4) of article 145, the following be substituted:-

'(3) The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.'"

Sir, clause (3) as it at present stands, reads as follows:

"(3) The Advocate-General shall retire from office upon the resignation of the Chief Minister in the State, but he may continue office until his successor is appointed or he is re-appointed.

This provision will cause a lot of inconvenience. I submit, that the tenure of the Advocate-General should not be made dependent on the vagaries of party politics. It is quite likely that the Advocate-General may be engaged in the midst of a prolonged case in which the State may be interested. His removal, all of a sudden, will prejudice the interests of the State. It is therefore, better to make his tenure dependent upon the pleasure of the Governor.

I understand that this amendment is exactly on the same lines as the one suggested by Dr. Ambedkar himself and that it is acceptable to him. I hope, therefore, that the House will accept it.

The Honourable Dr. B. R. Ambedkar: Are you not moving amendment No.2211?

Mr. President: He has embodied it in his amendment. It is exactly the same as your amendment which need, not therefore, be moved now.

Shri Jaspat Roy Kapoor: Mr. President, Sir, I have only just one more argument to urge in support of amendment No. 2207 which has been moved by my honourable Friend Mr. Naziruddin Ahmad. According to clause (1) of article 145 the Governor of each State shall appoint a person who is qualified to appointed a judge of a High Court, to be Advocate-General for the State. Now, Sir, one who is an eminent jurist is also eligible for appointment as High Court Judge and as such he is eligible for appointment as Advocate-General also. It is quite likely that an eminent jurist may not be a duly enrolled advocate of a High Court. If an eminent jurist is appointed an Advocate-General and if by chance he is not a duly enrolled member of a High Court or even in a subordinate court. In view of this, Sir, I think it is necessary that the amendment moved by Mr. Naziruddin Ahmad, or at least the substance of it, should be accepted. It may be said that it will be a rare contingency that a jurist not enrolled in any High Court will be appointed as Advocate-General. I admit that it may be so. But then when we are so very particular in laying down every little detail in this Constitution, I do not see any reason why we should let this lacuna remain.

Shri K. M. Munshi (Bombay: General): Mr. President, Sir, I rise to oppose the amendment (No. 2207) moved by my honourable Friend Mr. Naziruddin Ahmad. The amendment appears to have been based on a confusion between the functions of the Advocate-General of India and the Advocate-General of a Province. The Advocate-General of India---whom we have styled "Advocate-General " in this Constitution--is really an Advocate-General functioning throughout of India. He has, therefore, to go to all courts in order to act for the Government of India. For instance, whenever a question of the interpretation of the Constitution is taken up before a court, under the present Civil Procedure Code, notice is given to the Government of India to appear in that matter. The Advocate-General of India, therefore, has to appear in all the provincial

Courts in order to support the interests of the Centre.

As regards the Advocate-General of a province, his position is entirely different. In his own province, naturally being the Advocate-General, he has audience before all the courts in the province. But as regards the other provinces, he has no locus standi as Advocate-General. His locus standi would only be that of an advocate of one High Court and he will, therefore, be governed by the provisions of the Legal Practitioners' Act. He has no position as Advocate-General in the other provinces and, therefore, there is no reason why he should be put on the same footing as the Advocate-General of India. Ordinarily, the Advocate-General of one province goes to another provincial High Court not for purposes of any litigation connected with the State. He only goes there for his private practice and therefore to that extent he can appear only under conditions which are imposed by the High Court in which he is going to appear.

There is reciprocity of appearance between one High Court and another ordinarily. But there have been occasions when one High court for various reasons--valid or invalid. The regulation of appearance of an advocate of another High Court in one particular High Court depends upon the rules and policy of that High Court. Therefore, it is much better that the Advocate-General's appearance in another High Court is regulated by the Legal Practitioner's Act applicable to all the members of the profession. I, therefore, oppose this amendment.

Mr. Naziruddin Ahmad: I do not advocate private practice in the case of the Advocate-General. It is only when he appears for the State in another High Court that the question arises. May I draw attention to the fact that I do not want the Advocate-General to indulge in private practice? It is only when he appears for the State in another High Court that the question arise. There the question of private practice does not arise. What provision has been made for the Advocate-General appearing for his State in the Supreme Court?

Shri K. M. Munshi: No one has found any difficulty in one Advocate-General appearing in another province. There is no reason why there should be a special provision.

Prof. Shibban Lal Saksena: Sir, I wish to draw attention to one fact. We have taken the British practice in these matter as the model in framing our Constitution. In Britain the Advocate-General has the status of a Minister. Dr. Sen had given notice of an amendment to give our Advocate-General the same status, but has not moved it. I would draw attention to the fact that it will be much better if we followed the practice in England. I request Dr. Ambedkar to tell us why he does not follow that model in this respect.

Dr. P. K. Sen: Sir, I quite appreciate that this debate should not be prolonged at least by me, and I am going to finish my observations as quickly as possible.

The point I wish to place before this House is not in support of my amendment, because I am not moving it, but to express my ideas about the fundamental principles which should govern the office of the Advocate-General. The Advocate-General at the present moment is no doubt often a lawyer of eminence in the province, but his sole duty and function seems to be to advise the Government on occasions in regard to certain points that arise in cases either between the Government and a private party or between parties which in some manner or other are connected with Government. For instance, there is a trust property in the hands of the Government and the trust is being disputed by somebody or other. In various matters like this the Advocate-General's opinion is sought. His office is really a bureau or legal advice. So is also the office of the Legal Remembrancer or the Judicial Secretary. But in neither case is the Government obliged to take opinion or adopt it and, in many cases, it is treated with scant courtesy. Supposing that the Minister in charge of Labour or Revenue or Local Self-Government wants to initiate a certain measure. He no

doubt consults the Advocate-General. But he can ride rough-shod over the pinion of the Advocate-General and take the opinion of any other inferior, irresponsible advocate and proceed upon it. This seems to me to be against all principles whatsoever. The Advocate-General's position should be, as I conceive it, much higher. He ought to be of the status of a Minister. The Law Minister can then influence to a very large extent, the spirit of the legislative and administrative structure of the Government. This has to a very large Crown under the Law Minister, the Advocate-General can hardly do anything, even if he were a man of great eminence to influence legislation. His powers are practically nil. As I conceive it, the position of the Advocate-General should be much higher. Unless it is equivalent to that of a Minister, it is impossible for him to discharge his duties properly. In other words, it comes to this that in my humble opinion, the Advocate-General should be charged with the portfolio of law. The question may arise about attendance in courts. Why should he then go about appearing in case? At the present moment the Advocate-General think that it is one of the Privileges of that office to earn fees by appearing in cases on behalf of the Government in the mufassal or even in the High Court. Well, that is a thing which will recede into the background of he is charged with the duties of the office of law Minister. The most preeminent of those duties shall be to establish and maintain a high level in the legislative and executive structure of the Government. He cannot then to and appear for fees in all cases; but in matters affecting high policy he would certainly go as Advocate-General to give an exposition on a high level, before the courts, of the principles and policies that actuated his Government. Now-a-days we are passing through critical times. There are various fissiparous tendencies at work and all manner of discriminatory legislation is being put through which bears the marks of very unwise and unskillful handling. What I submit is that the Advocate-General is one of those few persons who if installed in the office of the Law Minister could take a large share in regulating, shaping and moulding the polish of legislation in all its aspects. The rule of law is, in my humble judgment, the rule that should save the Government from all manner of disruptive tendencies. With the Law Minister, being in charge if these high functions it would be possible for the Government to proceed in the right manner and in the right direction. These are the observations which I humbly place before the House to consider in connection with article 145.

The Honourable Dr. B. R. Ambedkar: O do not think I need add anything to the debate that has taken place. All that I want to say is this: I am prepared to accept the amendment of Mr. Naziruddin Ahmad No. 2210.

Mr. President: I shall now put amendment No. 2207 of Mr. Naziruddin Ahmad to vote.

The question is:

"That after clause (2) of article 145, the following new clause be added:-

'(2a) In the performance of his duties the Advocate-General shall have the right of audience in all courts in the State to which he is attached and when appearing for such State, also in all other courts within the territory of India including the Supreme Court.'"

Shri T. T. Krishnamachari: What is the number of the amendment, Sir?

Mr. President: I shall put the amendment to vote again.

The question is:

"That after clause (2) of article 145, the following new clause be added:-

'(2a) In the performance of his duties the Advocate-General shall have right of audience in all courts in the State to which he is attached and when appearing for such State, also in all other courts within the territory of India including the Supreme Court.'"

The amendment was negatived.

Mr. President: Then I put Amendment No. 2210 which includes within itself 2211 also.

The question is:

"That for clause (3) and (4) of article 145, the following be substituted:-

'(3)

The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.'"

The amendment was adopted.

Mr. President: The question is:

"That article 145, as amended, stand part of the Constitution."

The motion was adopted.

Article 145, as amended; was added to the Constitution.

Mr. President: We shall now adjourn till tomorrow morning, 8 O' clock.

The Constitution Assembly then adjourned till Eight of the Clock on Thursday the 2nd June 1949.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS)- VOLUME VIII

Thursday, the 2nd June 1949

The Constituent Assembly of India met in the Constituent Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

ADJOURNMENT OF THE HOUSE

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I submit that it is difficult for Members to follow the stream of amendments which are coming every day. I do not complain against amendments coming in, but I only wish that we should have some breathing time to consider them carefully and then come prepared and, if necessary, to submit supplementary amendments. We are after all passing a Constitution for India, which should be the best constitution in the world. I find new lists of amendments are coming in in every conceivable number and size and they are of a very radical character. Some are absolutely new amendments to the Constitution itself and not merely amendments to amendments, though they come by way of disguise as being "with reference to" regular amendments or even of amendments to amendments. I do not oppose this tendency. I fact, Members should have the right to change their opinions, if they find it proper and necessary. May I suggest, therefore, that a Committee be appointed by Members who would really take interest in these matters? Let us have an overall picture of the amendments that the Members do submit and then we should have some time to consider them and to submit further amendments if necessary. I find the Drafting committee is put to a very hard test. They have to pass through a large number of amendments daily without notice--and I fully sympathize with them. I, therefore, feel that some time should be given to the Members so that they may make up their minds as to what amendments are really necessary. In framing the Constitution, time should not be much important, and I believe that, at any rate, we cannot pass the Constitution by the 15th of August. May, I, therefore, suggest to the honourable members and to you Sir, that there should be an adjournment of one or two months? In the meantime those who want to send amendments should work hard and send in all their amendments once for all so that we may come prepared. The deletes will in that case be more useful. At present much bewilderment exist amongst the Members on the new amendments and so the debates are more less confined to the general aspect of the subject, which is not particularly useful. I therefore submit that we should be given sufficient time. The heat which has subsided for two or three days is likely to reappear with vengeance and that is another additional factor to be taken into consideration. I ask the House to consider all these matters and to suggest a way out.

Prof. Shibban Lal Saksena (United Provinces: General): I am opposed to any adjournment of the House. I am surprised at the suggestion of Mr. Naziruddin Ahmed for adjournment of the House for a month or two. I think that theses fresh amendments to amendments 2ill continue until the very last day that we discuss the Constitution and there can be no finality about them. If we want to finish the Constitution, we must continue to sit irrespective of the heat. If we adjourn, the passing of the Constitution may have to wait up to the next year. We should continue to sit and finish the Constitution what ever may happen. At the same time I think we must get full time to understand and consider the amendments, but on that score we must not adjourn. We must continue till we finish.

Shri R. K. Sidhva: (S. P. & Berar: General): Mr. President, the first part of Mr. Naziruddin Ahmad's point is really reasonable, that is to say the amendments reach us the previous night, say, at 9 o'clock or 10 o'clock and when amendments to an amendment are to be sent, it is more difficult for us, as we meet at 8 o'clock in the following morning. From that point of view, his argument, that some time should be given, is justified. I did not follow him about the adjournment of the House and I would however suggest that when these amendments come in you should give us one day more, that is to say, the discussion on those important amendments should be taken on the day after and not on the following day, so that if we have to send amendments to amendments, we can do so. That is the only solution and that will enable Members to send amendments in time. I am, however, not in favour of the adjournment of the House; we must continue to sit and finish the Constitution. That is my point, Sir.

Mr. President: As far as possible, I have been trying to accommodate Members with regard to the new amendments which they wish to give. Now, the suggestion is that when a new amendment to an amendment, which is already on the Order Paper, comes in, I should give further time for fresh amendments to this new amendment. I do not know if we go on in that way, we shall ever come to an end of amendments because we have already given time or giving amendments.

Shri R. K. Sidhva: Sir, the new amendments come from the office on the previous night and they come at 9-30 p.m .

Mr. President: We have got more than 4,000 amendments, which originally came in and then amendments to these amendments have been coming and if it is suggested that we should give further time for these amendments to these amendments, as I said, there will be no end to these amendments. If there is any question which requires further consideration and of any amendment raises any point on which Members feel that they are not in a position to express themselves, that will be a ground for postponing the consideration of that particular amendment and of the Members are so inclined, personally I shall not stand in the way of adjourning discussion of any particular article or amendment which requires more consideration, but I do not think the House wants, and certainly I do not want, the adjournment of the house either for any Members to give fresh amendments or on account of the heat. I understand that there was some suggestion or consideration given by Members to the question of getting an adjournment on account of the heat but fortunately for us, as soon as the question of getting the House adjourned on account of heat came, the heat somehow disappeared and so that agitation also I think has now subsided. I hope we shall go along without any thought of adjournment on account of the heat. But adjournment of particular items I shall always be prepared to consider if there is any substantial ground for that.

Pandit Hirday Nath Kunzru (United Provinces: General): Sir, there is one real difficulty that I should request you to consider. The notices of amendments or amendments to amendments are received by members--at least by many Members--at about half-past ten in the night and you can see for yourself that there is not much time left after the receipt of the amendments to study them carefully. If it is possible to circulate these amendments earlier, then the complaint that has been made this morning will I think subside, but so long as we receive amendments as we to at present between half-past ten and eleven, this complaint is bound to continue.

Mr. President: If there is any amendment which requires consideration about which Members want time, I shall be present to consider any suggestion of that sort. The amendments reach Members at ten because the amendments come till five in the afternoon and they cannot very well reach the Members before ten.

Shri R. K. Sidhva: It is neither the fault of the office nor our fault.

Mr. President: But they have to be typed and then circulated.

Shri R. K. Sidhva: We get fresh amendments from office at ten, I mean from the Drafting Committee.

Mr. President: The Drafting Committee is also sitting from day to day and they sit every day after the House rises and they have to consider all that has taken place and in view of other considerations they have to prepare their draft and those draft come till about five in the office and then they have to be typed and circulated. All that taken time. But as I have said, I shall always be prepared to consider adjournment of discussion of any particular item about which members have doubt.

DRAFT CONSTITUTION--(contd.)

*

Article 146

Mr. President: We are now going to deal with a number of article which are more or less for word reproduction of articles which we have passed only during the last dew days and I think there would not be much of discussion with regard to many of these articles. Article 146.

(Amendment No. 2212 was not moved.)

Professor Shah has tabled an amendment 2213. Do you wish to move that?

Prof. K. T. Shah (Bihar: General): Yes, Sir. Sir, I beg to move;

"That in clause (1) of article 146, for the word 'Governor' the words the Government of the Government of the State concerned be substituted."

"That in clause (2) of article 146, for the word 'Governor' where it first occurs the words 'Government of the State' be substituted."

The amendment clause will therefore be:

"All executive action of the Government of a State shall be expressed to be taken in the name of the Government of the State concerned."

and a similar change will follow in the second clause.

The reason why I put forward this amendment is that it is very unusual--not to say improper--for us to attach in our Constitution such a personal importance to the Governor, who is after all a temporary Head of the State, elected only for a few years, to make all executive action of Government being taken in his name. It is all very well for those countries where a hereditary, permanent, life-long King is the Head of the Head of the State, and where consequently action is taken in his name. Even then it is impersonal to the extent that it is spoken of as His Majesty's Government. But in this case the suggestion that all executive action be taken in the come of the Governor seems to me to be utterly incongruous with the democratic republic that we are thinking of establishing. The Governor is a bird of passage. He is there for five years at most, and therefore not having that permanence of headship and perpetuity which a hereditary monarchy would posses. It is improper and unreal, therefore, to suggest that every executive action be in the name of the Governor.

The orders of the Government of India even today have been expressed and all along have been expressed as the orders of the Government of India. An impersonal of that kind is much more suitable and appropriate for the from of Government that we are going to establish, then the personal prominence that this clause seems to suggest to the Governor individually.

I realise that this is only confined to the executive side of the Government. But even so I think the argument I have been advancing should be conclusive that the action of Government should be impersonal, and in the name of the Government of Province A or B or State X or Y as the case may be.

The orders I take it will be signed by the Secretary. If so, it would be still more appropriate to speak in the name of the State as a whole than in the name of the Governor who does not sign.

If on the other hand, it is intended that all executive action will be also signed by the Governor, and would, therefore, be more appropriate to be taken in the name of the Governor, I would enter a more emphatic objection. For in that case, apart from the foregoing argument, it would be almost impossible for the Governor personally, so to say, to look to every order of Government, and as such the machine may become unworkable. I, therefore, suggest, that instead of the Government action being in the name of the Governor, we must have a more appropriate and more impersonal expression-- the Government of the State concerned--and I think there will be no objection to his suggestion.

Shrimati G. Durgabai (Madras: General): Sir, I think the language of this article is exactly the same as was adopted in article 64.

Mr. President: Amendment No. 2214 is of a drafting nature.

The Honourable Dr. B. R. Ambedkar: Sir, I do not accept the amendment. Article 146 is only a

logical consequence of article 130. Article 130 ways that the executive power of the State shall be vested in the Governor. That being so, the only logical conclusion is that all expression of executive action must be in the name of the Governor as is provided for in article 146.

In regard to the observations made by my honourable Friend Prof. K. T. Shah that under the old regime, all executive action was expressed in the name of the Government of India, my reply is that that was due to the fact that under the old system, the civil and military Government of India was vested not in the Governor-General, but in the Governor-General in Council, and consequently, all action had to be expressed in the name of the Government of India. Today, the position has altogether changed so far as article 130 is concerned.

Mr. President: The question is:

"That in clause (1) of article 146, for the word 'Governor' the words 'the Government of the State concerned' be substituted.

That in clause (2) of article 146, for the word 'Governor' where is first occurs the words 'Government of the State' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That article 146 stand part of the Constitution."

The amendment was adopted.

Article 146 was added to the Constitution.

*

Article 147

Mr. President: The motion is:

"That article 147 form part of the Constitution."

Amendment No. 2215, Mr. Kamath.

Shri R. K. Sidhva: It is a negative one, Sir.

Mr. President: There is an alternative also. Mr. Kamath, which part do you like to move?

Shri H. V. Kamath: (C. P. & Berar: General): I would like to move the first part, Sir.

Mr. President: Then, it is a negative one.

Shri H. V. Kamath: I shall not move it; but I shall speak on the article, Sir.

(Amendments Nos. 2217, 2218, 2219 and 2220 were not moved.)

Shri H. V. Kamath:Mr. President, I fail to see any valid reason for the retention of this article. It may be argued that it is on the same lines as an article which we have already adopted with reference to th President. But, now that we have accepted nominated Governors in the State, this article, to my mind, requires to be recast, of not entirely deleted.

There are certain aspects in this article which are wholly incongruous with, at least not in conformity with, the principle of nominated Governors for the States. If the House will carefully consider clause (c) of this article, to take only one instance, the House will see that the nominate Governor has been given power to interfere in what may be called the day-to-day business of the Council of Ministers. I wonder why the Governor should call upon the Chief Minister to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council. I submit that this is entirely a matter for the Council to decide among themselves and the Governor has no locus standi, has no privilege or power of right whatever to step in here. The business of the Council of Ministers, is entirely a matter for them to arrange and discuss among themselves and to arrive at any particular they like. If a matter has been considered by one of the Ministers, but has not been considered by the whole Council, the Governor cannot step in and tell the Chief Minister, 'you must put it before the Council of Ministers'. The Chief Minister and his colleagues are competent enough to decide which matter should go before the Council and which it is not necessary to be put before the Council. This to my mind is in tune with the tenets of constitutional democracy that we propose to set up in the State. My Friend Mr. B. Das asks, where is democracy? I am inclined to agree with him that there is no true democracy any where in the whole world. But we are trying to arrive at an approximation. I hope, if all of us pull our weight together, if we all put our shoulders to the wheel, we may at no distant date arrive at some sort of an approximation to

democracy.

Then, Sir, there is another aspect to clause (b) of this article, which in my humble judgment offends against the new set-up that we have accepted for the States. Under this clause, the Governor can call for any information relating to the administration of the State. This is sort of putting the cart before the horse. I think with nominated Governors in the States, it should be left to the Chief Minister or Premier of the State to decide which matter he would like to put before the Governor and which not. If he and his colleagues in their collective wisdom arrive at the opinion that a particular matter may go to the Governor, certainly they may put it up to the Governor. But the Governor has no right to call any information regarding the administration of the affairs of the State and proposals for legislation. This is another aspect of this article which to may mind violates the principle or constitutional democracy which w are going to set up in the States, and is repugnant to the principle of nomination that we have accepted for State Governorship. I would have been very happy if this article had been deleted. These are all matters of Government business for which I understand, I definitely know, there are manuals in every province and every State dealing with the conduct of Government business. There things could have been easily taken up later on and incorporated in the manual as to the procedure for the conduct of Government business. As it, is, the whole article is out of tune with the new set-up that we have accepted after the adoption of article 131 in the changed form. I would therefore request the Honourable Dr. Ambedkar to hold this article over, of he has not considered it already, for further mature consideration by himself and his team of wise men. If it cannot be deleted, I hope it will be possible to recast it in the light of what has happened in the last few days, and, for that purpose, that it will be possible for us to hold it over for some time.

Dr. P. S. Deshmukh: (C. P. & Berar: General): Mr. President, Sir, I am afraid I am not able to agree with my honourable Friend Mr. Kamath in his suggestion that the article should be omitted. If he were to pay a little more attention to the provision made by article 146, which we have just passed he will. I think, admit the wisdom of incorporating this article in the Constitution. Now under article 146 every order which is issued by the Ministry or the Cabinet or even individual Ministers will be an order which will be published and proclaimed in the name of the Governor. If article 147 is not there, there is nothing which will empower the Governor to know the various actions taken from day to day, and the orders passed and issued in his name. My Friend has said that this would refer even to routine matter. I can tell hem, Sir, that ordinary matters which are unimportant, and which are of a routine nature, I am sure, no Governor in his wisdom would lime to question, of request the Chief Minister that they should go to the Cabinet for reconsideration.

Shri H. V. Kamath: What is the guarantee?

Dr. P. S. Deshmukh: The guarantee is the Governor's wisdom, and the wisdom of the authority that will appoint such a........

Shri H. V. Kamath: What is the guarantee I asked?

Dr. P. S. Deshmukh: The guarantee I said is the Governor's wisdom and the wisdom of the authority that will appoint the Governor.

Sir, this article can never refer to unimportant, routine matters, but it can refer only to orders which the Governor thinks are likely to have larger repercussions, and are of such importance that it will be wise if all the Ministers in the Cabinet were to consider it. And apart from this direction that the question may be considered by the Cabinet, there is nothing. The Governor is not given the authority to over-rule the decision of the Cabinet. The article merely empowers the Governor whenever he considers that an individual Minister's decision should rather be given some more attention, that he would refer it for the

consideration of the whole Cabinet.

My Friend Mr. Kamath has also attacked part (b) of the article. So far as this part is concerned I consider that this also is extremely necessary. For instance, suppose the Cabinet or certain Ministers are not pulling on will with the Governor; then they would be in a position to keep the Governor absolutely in the dark. On the other hand i feel confident that these powers given to the Governor are not likely to be misused at any time, and that it is essential that he should have fullest information regarding the day-to-day administration so that he may be able to prevent pursuit of wrong policies and also communicate to the President and the Government of India the nature and course of the provincial Government. After all the Governor is essentially a link between provincial autonomy and the President and the Government of India, and that function he can discharge adequately only if he has the authority to ask the Cabinet to reconsider certain things and also to keep himself informed from day to day as to what order have been issued and what sort of administration is being carried on.

Then, Sir, my friend also objected to proposals for legislation going up before the Governor; but this too is useful and desirable. The Governor must know beforehand any legislation that is proposed to be placed before the provincial assembly, what is the nature if that legislation and how it bears on the existing situation or compares with legislation in other parts of India. It is his duty also to see how it conforms with the policy of the Government of India. He is the one man who will be on the spot and who could advise the Chief Minister from a wider and a more impartial stand-point. Apart from giving advice, I do not think he is likely to go every much further. In any case this article does not confer upon him any grater powers. But this much authority he should and must have, i.c., of asking the Cabinet to consider the pros and cons of the proposed legislation so that the administration of the province does not suffer either to the detriment of the Ministers of the Province or of the Government of India as a whole.

Shri H. V. Kamath: May, I ask why we should not trust the wisdom of the Chief Minister? Is not the Chief Minister wise enough?

Dr. P. S. Deshmukh: If my learned Friend Mr. Kamath were to consider the whole thing coolly, he will find that in fact, everything is and has been left to the Chief Minister, and the Governor is not likely to interfere. He only claims the right to get the information he may consider necessary. He is not given under. The article provides that all decisions relating to the State should merely communicated to the Governor.

Shri H. V. Kamath: Why should not the Governor ask for it? Why should the Chief Minister be required to do it?

Dr. P. S. Deshmukh: This is, Sir, only a mutual arrangement and I do not find anything objectionable in this arrangement. The article provides that the Chief Minister shall give the Governor certain information and other information the Governor is empowered to ask for. There is no question of dignity or of standing on ceremonies. I therefore strongly support the article, and suggest that it be passed as it stands.

Shri B. Das (Orissa: General): Sir, as we are finishing the article (part IV Chapter II) relating to the Governor's powers and conduct of business, I think it my duty to tell House my reactions. I wish I had the robust optimism of my Friend Dr. Panjab Rao Deshmukh as to believe that the Governor is a useful functionary. What has been the experience in the provinces since Congressmen came into power under Independent India? How has the Governor functioned? It is common knowledge, and it has been repeated by responsible members of this House that the Governor was nothing but a cipher. If that be the case, how is it then that this Governor, this nominated Governor of the Central Government and the

Ministers elected by the State Unions and the Provinces will be able to co-operate? The Governor, according to my

Friend Dr. Deshmukh is full of wisdom. I question that, and I doubt it very much, particularly when the Governor is a nominated Governor, nominated by the President and the Central Government. I wish we ought not be to have a Federal Constitution and a Union Government any more. We have now centralised all power in the hands of the President and the Cabinet, and it is not bad. It will save a lot of expenditure if we abolish all provincial Government, provincial Governors and provincial Ministers.

Mr. President: There is no use discussing that question; we have already passed that.

Shri B. Das: But my Friend Mr. Kamath referred this morning to the nominated Governors and their functions.

The point is, if we are going to centralise all power in the hands of the President and the Governors we should see if they are elected Governors or not. But the Drafting Committee has had no time to examine this point and the clauses if they fit in with nominated Governors. That is the mischief of this whole chapter. We know section of constitutions remain dead letters. Certain sections of the Constitution have gone to the winds. Some of the sections in the Constitution will also go to the winds. If however, there are some who have the illusion that the Governors will exercise their statutory powers against th elected Ministers, let them take note of the present practice under which the Governors know nothing absolutely of what is happening in their respective Province, where the provincial Cabinet is submitting no notes to the Governor as to what is happening.

There is a perpetual clash and perhaps the President and our beloved Premier may have to intervene at various stages to bring about harmony between the Governor and the provincial Cabinet. in spite of that I would make bole to utter a prophecy, viz., that the provincial Cabinets will win and the Governors will remain the ciphers that they have been for the last two years.

Shri B. M. Gupte (Bombay: General): Sir, without going whole-hog with my honourable Friend Mr. Kamath I should like to support hem as far as subclause (c) is concerned. In my opinion there are certain difficulties in the working of this sub-clause. The sub-clause says:

"If the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a minister but which has not been considered by the Council."

I do not understand how the Governor will know what particular decision has been taken by a minister in a particular mater, because according to sub-clause (a) the decision of the cabinet only are to go to him.

According to the working of the system of cabinet there are two sets of decisions. A minister in his own department and on his own responsibility, without the concurrence or even the knowledge of his colleagues, takes certain decisions on various matters that come before him from day to day. But there are other matters of greater importance which a minister is bound to submit for the collective decision of the Cabinet. Only the second set of decisions go to the Governor. As regards the first set of decisions there is no mention made at all in the article itself. I therefore do not understand how he is to know them. I may be told that the Governor might take advantage of sub-clause (b) and ask for information. I can understand that once he gets the information he can ask for more particulars but how is the initially to get the information regarding a certain decision taken by an individual minister? Without such a channel of information he is called upon the to intervene and practically he might even stop the implementation of a decision taken by a minister. The point to be considered is how far this is consistent with his position as a constitutional head. Is it necessary to clothe the Governor with this authority or is it even desirable? I do not mean to suggest that the province should lose the benefit of the sage counsel of a Governor. He might be an elder statesman with ripe experience and wide knowledge.

But the same purpose can be achieved even without giving him the statutory right. He can make private suggestions to the Premier. We have got the example of the Queen Victoria. We have there the evidence of how a sagacious monarch without any statutory or constitutional right could exert a profound influence on the decisions of the Cabinet by making various private suggestions to the Prime Minister. I therefore submit that it is not necessary to clothe the Governor with this statutory right.

It might be said that it may not be necessary but it is desirable. But there is the danger that it might lead to trouble. Suppose a Governor exercises his statutory right and objects to a decision made by a minister. Human nature being what it is, the minister concerned is bound to resent it. He might wonder how the Governor received the information. Is there any watch-dog on him or is there any tale-bearer? In the Government of India Act, 1395, there was the right of the Secretary to Government having direct access to the Governor. When that particular provision was debated in the House of Commons somebody described the secretaries as watch-dogs on the minister. Very rightly the Drafting Committee has rejected this obnoxious right of access to the Governor on the part of the secretaries. In the absence of these watch-dogs the minister might wonder who told the Governor. Is there any tale-nearer? Today one minister might resent such interference and tomorrow another minister might become disgruntled. It is thus likely that bitterness may grow and in my opinion it might ultimately lead to a disturbance of the cordial relations which must submit between the Cabinet and the Governor.

Moreover, if the statutory provision is there, perhaps an ambitious governor like President Milleraeu in France might be tempted to misuse of overuse it. I therefore, submit that it is unnecessary to keep that provision and at least it is worthwhile considering whether it is necessary to put it in the form in which it appears in the Draft Constitution.

Prof. Shibban Lal Saksena: Sir, I could not understand the opposition of my honourable Friend Mr. Kamath to this article on the ground that the Governor are nominated. He was the person who supported the proposition and now he says that because they are nominated therefore they should not have this power. If after the Governor are nominated this section is also removed, it is better to remove the Governors altogether.

According to the scheme which the House has approved, the Governor will be nominated by the President and we have given him power in his discretion. If the Governor as the Head of the State is not aware as to what is happening in the State, or what decisions his ministers have taken, how can he functions as the head of the State at all?

Shri H. V. Kamath: Through the Chief Minister.

Prof. Shibban Lal Saksena: The Chief Minister may not tell him anything. so this section is necessary so that the Governor may at least know what is happening in his State.

under the scheme of things which the Drafting Committee has proposed they contemplate a Governor who shall try to be a liaison officer between the president at the Centre and the provincial Government. He will try to see that the provincial Governments policies fit in with the scheme of the Central Government. He will try to give advice and guidance to the Ministry on account of his superior wisdom and experience. The President, I hope, will nominate only such persons who have ripe administrative experience and wisdom and have the necessary political and intellectual stature to be Governors, so that they can give proper guidance to the provincial Cabinets. The Governor will have to keep himself above party politics and in this way his position will be more important and effective. If, as suggested, he is not even entitled to obtain information from his ministers of know what is going on in the State in his name, I do not think it is worthwhile having him at all.

Mr. Gupte took objection to clause (c). He

felt that the Governor in entitled to get the decision of a minister reversed it might lead to heartburning. Personally I feel the Governor under the new scheme of things will try to get the confidence of the whole Council of Minister. The clause only says that if an individual minister taken some important decision on his own responsibility and it is not considered by the whole ministry then he will desire the matter to be considered by the council. Mr. Gupte complained that the minister might wonder how the Governor came to know about his decision. Under clause (b) he can call for the information from the Prime Minister himself. There is no reason to think that there are some backbiters, or somebody has been going to the Governor behind the back of the ministers. The Governor will also be touring and will come to know many things through his personal experience. under the scheme of things the House has adopted, the Governor will have to be nominated in a manner that he can enjoy the respect of the council of ministers, by his superior intellectual calibre and sound administrative' wisdom and advice. Then the ministers will trust the Governor and will devote themselves to the welfare and the promotion of the real interests of the province.

Mr. President: I think we have had enough discussion on this article and I would like honourable Members to cut short their speeches.

Shri R. K. Sidhva: Sir, we are all clear in our minds as far as one point is concerned, viz., that the Governor who will be appointed will be in his status the first citizen of the province though he will have no executive power as far as good government and th maintenance of law and order are concerned. Since that is a settled fact we must know what is the interpretation of this article. Undoubtedly clause (a), (b) and (c) create some kind of confusion and I am prepared to accept that. Under clause (a) it shall be the duty of the Chief Minister, it is obligatory on the Chief Minister to supply any information that the Governor wants from him. It may be argued that if the Chief Minister feels that the Governor is not entitled to call for information he might refuse to supply it, because he is the executive head of the province. The result will be that there might be some conflict. To avoid that the Chief Minister has the freedom to complain to the President who might intervene.

As regard clause (c) it has been argued by those who are opposed to it that the Governor might require to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a minister, which has not been considered by the Council. Mr. Gupte asked how is the Governor to know what a minister has done. Any file that goes to the Governor contains a full note as to whether the subject-matter has been handled by a minister or by the Council of Ministers.

Shri B. M. Gupte: Individual minister's file would not go to him.

Shri R. K. Sidhva: It is the practice everywhere. Every file goes to the Governor for his signature. The Constitution says that all orders are to be made in the name of the Governor and therefore formally the whole file goes to him--not merely one paper. He has to see the whole file before he puts his signature.

Shri H. V. Kamath: A file should go to him only after the entire Council has decided a matter; not the decision of an individual minister.

Shri Mahavir Tyagi (United Provinces: General): That might be observed in Sind but not in the provinces here.

Shri R. K. Sidhva: If the file does not go to him he can call for it. He might say "I would like to know what I have to say before I put my signature." The head of he department might sign a cheque, which might be a formal one but he has to take the responsibility as far as his signature is concerned. You cannot say that he cannot call for the file and so that point does not arise. Supposing a minister takes a decision on which the Governor feels some doubt that the matter be considered by the whole Cabinet, he would be justified in asking for its reconsideration by the Council of Minister. I know of instances where a Minister has taken a decision, which the Council of Ministers reconsidered at the instance of the Governor and they had to revise it. There is nothing wrong in this. On the other hand the Council might tell him that the minister was perfectly right. Therefore clause (c) is more justified then clauses (a) and (b). Clause (c) is very necessary, for I have seen sometimes a minister in his individual judgment, issues certain orders and sends them to the Governor. It may be a contentious matter on which the Governor may honestly feel that it is in the Council. He would be perfectly justified in doing so. So while there is room for some improvement in language under clause (a) and (b), clause (c) on which greater stress has been laid must be retained.

Shri Biswanath Das (Orissa: General): Sir, I am sorry I have to come here despite your advice to hasten the decision on the article by minimising discussion. If I have come up to speak it was because I thought that a certain aspect of this article has to be clearly and fully realised before honourable Members are called upon to vote. It is better at this stage to know what powers and responsibilities we are going to invest a Governor of a province with. I quite see the difficulties of the Drafting Committee when they were faced with a situation wherein root and branch changes were brought before them at the eleventh hour. If that it is the difficulty they could very well take time to consider.

My Friend Dr. Deshmukh stated that the Governor is to direct and advise. It that is the idea behind the Drafting Committee and also leaders of thought in the Assembly I think not only the powers contained in article 147 but something more is called for.

The question we have to consider in this House in whether the Governor is going to be a constitutional head or a Governor who has to play his role in advising the ministry and directing into proper channel ministerial thought and action. If it is the later, if he has to interfere in shaping the administration and raising the standard, then this power is not unnatural but id necessary. All that I want to know and the Assembly has a right to demand to know is the background behind this article. This article was drafted under different circumstances and conditions keeping in view certain essentials, viz., the Governor is to be elected on the basis off adult suffrage. Now the conditions have changed.

I would just invite the attention of honourable Members to clause (b) which says:

" to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for."

I for myself do not see why a Governor who is wedded to the Constitution and who is to be a constitutional head should dabble in matters regarding administration. The question might be asked as to whether the Governor should not know the proposals for legislation. Here again, I state that provision has been made that the proceedings of the Council of Ministers should be communicated to the Governor. Further, all the legislation, that is approved or passed by the legislature is to be submitted to him for his assent. Therefore there is every opportunity given to the Governor to know what legislation is coming. That being so, clause (b) seems to be wholly unnecessary. But if it is the desire of the House that the Government should have also the Governor's say in matters of administration the provision is justified. While discussing this article it would be unfair on my part if I do not invite attention to the Fourth Schedule wherein Instrument of Instructions has been provided. The Instrument of Instructions to the Governors has no legal force or validity in law. Whatever it is, be it a Sermon on the Mount, or be it something real, it allows scope for certain executive activities by the Governor. I specially refer to Para. 4 which says:

"That Governor shall do all that in him lies to maintain standards of good

administration, to promote all measures making for moral, social and economic welfare and tending to fit all classes of the population of take their due share in the public life and government of the State........."

Is the House, after the change in the modus of selection or election of the Governor, going to invest him with these powers? If so, I could understand the background and would say that clause (b) is fully justified. I therefore feel that those that are responsible for giving a lead to this Assembly to pass the articles have also the responsibility of explaining to honourable Members as to what is there in their minds in regard to the relations that should exist between the Governor and the Government and how they propose to avoid clashes and compose difference between them.

For myself, let me tell you a bit of my experience. I still recollect the days when contentious matters came up; how the Governor always took scrupulous care to be a disinterested person and said that in matters of contentions legislations he had no opinion to offer in the Cabinet because of his power of assent. If this is the case, there is no meaning in intimating to him beforehand what the legislative programme of the leader of the party or the Cabinet is going to be. Especially I visualise, in course of time as the Constitution works, there may be possible scope for the emergence of parties with differing political programmes and ideologies in the Centre and in the State. In such cases the Governor nominated by the Prime Minister at the Centre may not in all cases be acceptable to a Cabinet in the State headed by a different political party. in such circumstances rub can never be avoided if the power to give administrative pin-pricks is vested in the Governor.

Lastly, I wish to place before the House the fact that under the Government of India Act of 1935 ample power were vested in the Governor to interfere and to keep himself informed of things done by the provincial Government. He had in his hands the nose-strings of the bull so to say. But there is nothing in this Constitution to control the Governor once he is appointed by the President on the advice of the Prime Minister of India, till he the Governor himself chooses to resign. Therefore I feel that you are appointing a Governor who is responsible morally to the Prime Minister of India and to the President to the India Republic. There is little now in law limiting him to be a symbol or subject him to the control of the Centre or by the President. Therefore it is a pertinent question for honourable Members to ask, whether you are going to vest powers, of a wider scope in the Governor, capable of creating mischief and at the same time provide no power of control over him vested in President or the Prime Minister of the Republic.

Shri K. M. Munshi (Bombay: General):Mr. President, Sir, I cannot under stand the objection that is raised to the powers of the Governor under article 147. The House has accepted and very rightly accepted, that there should be a Governor in the provinces. That Governor is not necessarily to be a cipher as some Members said, nor need he be only a super-host giving lunched and dinners to persons in society. He has a political function to perform and that political function is to be the Constitution Head.

Some honourable Members who spoke are under the impression that a Constitutional Head has no function at all and that he has to do nothing else than to endorse what the Premier or the Ministers do, without even giving them the benefit of his advice or giving them the impressions of a detached spectator on governmental actions. This I submit is entirely wrong. The Governmental set-up which we have envisaged is on the model of the British Constitution. Article 147 is a repetition of article 65 which we have already accepted with regard to the President in the Centre. The responsibility of Government, if at all, is much more comprehensive ad stronger in the Centre under this Constitution than in the Provinces. In view of this, I cannot understand why these objections are taken again and again in respect of the same powers.

Mr. Friend. Mr. Gupte, referred to sub-clause (c) and asked the question, where is the Governor to get the information from? If you read sub-clause (b) it says--

"It shall be the duty of the Chief Minister of each State to furnish such information relating to the administration of the affairs of the State and people for legislation as the Governor may call for;"

Under this clause it will be open for the Governor to ask the Chief Minister for information with regard important question and if he feels that certain decisions have been taken not by the Cabinet as whole but by an individual Minister which requires reconsideration at the hands of the Cabinet as a whole, clause (c) will give him the power to get that done. What is wrong about it? When a Minister acts behind the back of his colleagues, behind the back of the Chief Minister who is responsible for all the actions of the Minister, why cannot the Governor say, "Here is a particular order. I feel that it is a matter of great importance. I want that by virtue of collective responsibility all the Ministers must meet together and consider it"? If they accept it, he is hound to accept their advice. He has no right to over-rule them. It is merely a matter of caution that a decision, which in the opinion of the Constitutional head, is such as requires the imprimaturs of the whole Cabinet and not of a single Minister, should so receive it. Therefore it is a safeguard which preserves the collective responsibility and the powers of the Prime Minister, and not a power which interferes with the Government. Therefore the fear that it would so interfere is entirely unfounded.

Then as regards my honourable Friend, Mr. Biswanath Das, I am reminded of the claim of the psycho-analyst that when an infant in the beginning of his life gets a certain complex that continues throughout life. My Friend, Mr. Biswanath Das, when he was Prime Minister of Orissa in 1938, had an extraordinarily bad Governor and the complex that-he acquired then about the powers of the Governors continues even after ten years. He forgets that even in those days in 1938 there were several Governors who took up a strictly constitutional attitude, and who out of their experience of parliamentary life in England now and the n asked the Ministers to reconsider certain points of view. This was extremely helpful. I am particularly referring to Sir Roger Lumley, the then Governor or Bombay. We need not import the old complex into the new regime. The new Governor has no power except as a constitutional head. He is going to be nominated by the Centre. He is going to be a detached spectator of what is going on in the province. His function is to maintain the dignity, the stability and the collective responsibility of his government. Now in that limited sphere he can exercise some influence.

That influence he can exercise only if he is given these limited powers. I would mention to the house that since we are copying the British model, we have also at consider what are the duties and functions of the constitutional head there.

Shri Biswanath Das: Let me accept Mr. Munshi's comments on me, for I do not worry about them, but I would request him to reply to the points that I have raised.

Shri K. M. Munshi: I want to make is clear that the position of the Governor must be considered from the point of view of a constitutional head as in England. A constitutional head is not a cipher. i will read for the late of the House the position of the king in England as enunciated by the late Mr. Asquith who could not be considered a weak Prime Minister at any time of his life. This is his definition of the position of the constitutional head in England:-

" We have now a well-established tradition that in the last resort, the occupant of the Throne accept and acts on the advice of his Minister... He is entitled and bound to give his Minister all relevant information which comes to him;"

Therefore it is

not as though he cannot get any information apart from what be gets from his Ministers.

"to point out objections which seem to him valid against the course which they advice; to suggest, if he thinks fit, an alternative policy. Such instructions are always received by Ministers with the utmost respect and considered with more respect and deference than if they proceeded from any other quarter. But, in the end, the Sovereign always act upon the advice which Ministers after (if need be) reconsideration, feel it their duty to offer. They give that advice will knowing that they can, and probably will, be called upon to account for it by Parliament,"

Therefore the constitutional head in England is not a dummy. He is not a cipher. He has got an important role of advising his Ministers.

Shri H. V. Kamath: On a point of information, Sir, may I ask Mr. Munshi whether in any written Constitution or he world any Constitutional head is invested with powers envisaged in article 147?

Shri K. M. Munshi: So far as this Constitution is concerned, as I have said, we have tried to adopt the British model as far as we can, consistently with the conditions in this country, and so the constitutional head to of the province-and the President--must be put on the same level as the constitutional head in England. Sir, there are going to be many minorities in the provinces and it is the duty of the Governor to see that there is a balance in the general policies followed by governments. It may happen in this way. The Prime Minister, being the head of the majority party, has certain policies to put through. He may find that the minorities are not able to accept those policies, but the Governor exercising influence over his, Prime Minister might be able to bring about some harmony among the parties, 'behind the Speaker's chair' as it is said in England. Therefore he must have the right to ask his Ministers to reconsider certain programmes. Of course, ultimately he must accept the advice of his Ministers. If the Prime Minister finally says, "this is my policy, this is my advice," the Governor will have to accept them. But till that stage is reached, he has got considerable scope for influencing decisions.

Shri Biswanath Das: I am sorry for interrupting. Does Mr. Munshi honestly believe that the position of the Governor in a province has any connection with or any resemblance to the executive in England? That is No. 1. No. 2. is, does he not know that the king in England is not even in a position to use the Royal Seal, that it is being used by the Lord Privy Seal?

Therefore how does he compare the position and power of the king of England and the British Cabinet with these of a provincial Governor and his Council of Ministers?

Shri K. M. Munshi: I do not understand this objection which is being raised against this article. He wants to build up democracy in this country. We are going to have a government of a type which is more of less on the British model. That being so, nothing need prevent us from following th successful experiment in England. We are not going to have a new experiment. It the Governor has not even the function of influencing his Ministers or even asking them to reconsider their decisions, the only alternative is the suggestion made two years ago but rejected that the Premier, once elected, should be the constitutional head, the complete master of the government in the province during his tenure of office for five years. There is no harm, but there is great advantage if the Governor exercises his influence over his Cabinet. As I said, we have single parties in the provinces now, but a time might come when there will be many parties, when the Premier might fail to bring about a compromise between the parties and harmonise policies during a crisis. At that time the value of the Governor would be immense and from this point of view I submit that the power that are given here are legitimate powers given to a constitutional head and they are essential for working out a smooth democracy and they

will be most beneficial to the ministers themselves, because them they will be able to get confidential information and advice from a person who has completely identified himself with them and yet is accessible to the other parties. From this point of view these powers, which we have accepted for the Governor, are essential and must be retained.

Shri Rohini Kumar Chaudhuri: (Assam: General): Mr. President, Sir, I consider this article 147 will be a blot on our future Constitution, if it is adopted. Sir, just as a piece of cow-dung may spoil the whole vessel of milk, this particular provision will spoil this whole Constitution of ours. I am speaking from personal experience and I consider that this is a most unwanted provision and this will lead to friction in the provincial administration. The first question that you ought to remember is whether in a province the Chief Minister is the most effective person or the Governor. Can you for a moment deny that the Chief Minister is certainly the person in authority in a province except in certain matters which will be under the Constitution in the discretion of the Governor? Now is it fair to say that it shall be the duty of the Chief Minister to do a certain thing or to furnish certain information to the Governor? Let me take, for instance, the first clause of this article. It says: " It shall be the duty of the Chief Minister to communicate to the Governor all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation." This is a work which can be and is left to the Chief Secretary of the Government. Will the Chief Minister be guilty of branch of duty of for any reason, the Chief Secretary or the Secretary in charge does not forward the copy of the proceedings of the Council of Ministers to the Government? This article should be worded in this way--"That all information relating to the administration of the State so far as it affects the exercise of the right, power and discretion of the Governor shall be communicated to the Governor". As for other things the Governor has absolutely nothing to do; it is only in those matters which may affect the exercise of his discretion information may be sent. The decision of the Council of Ministers may be forwarded to the Governor, but not any other matter and even in that, it should be left to the ordinary office channel for the proceedings to be sent to him. No. Chief Minister should be considered as failing in his duty if for any reason copies of the Proceedings are not sent to the Governor. Then, Sir, clause (b) reads as follows:-

"To furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for;"

What is his business to call for any information? What can he do after getting th information? He has no business to call any information or any file or anything of that kind. Even in th present arrangement there is no such provision. All files go to the Chief Minister. It is no part of his duty to send certain things to the Governor. I think that the whole section is very badly worded and this clause should be worded in this way:-

"The Governor may call for any information relating to the administration of the affairs of the State and such information shall be furnish to him if in the opinion of the Chief Minister such information is necessary for a proper for a exercise of the duties of the Governor."

In all other matters, the Governor has no duty. It is only that information which may help him in the exercise of his duty, which may be sent to him. I am afraid the clause has been unhappily worded. It seems as if to say that the Governor is the same Governor, a representative of the British monarch and as such the Chief Minister is subject to him and must carry out his orders; it is not so under the present Constitution as we are framing it. We are not placing anybody here either as a monarch or as any representative of the monarch. There is no question of

monarchy; it is a question of democracy. The Governor has no business to poke his nose into the affairs of th State which is entirely the consideration of the Ministry. He can only butt in when such information is necessary for the exercise of his discretionary power, and in no other matter can he call upon the Chief Minister not to give him that information which is entirely within his consideration. If the Governor can show some relevancy, then, of course, the information will be given to him and not otherwise.

The third clause, I submit sir, is the most dangerous of all the clause under this article. It says: "If the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a minister but which has not been considered by the Council." There are many things which a particular minister does and if consultation; there are many things which a particular minister does and if he has any doubt he usually consults the Chief Minister. Who is the Governor to ask the Chief Minister to take that matter to the Council of Ministers? Why should he do it? I, as a Minister, have passed a certain order and when I find that I am in doubt, I ask the Chief Minister whether the order is proper or not. If the Chief Minister says it is all right, I pass the order; the order is urgent and action on that order should be taken immediately. What has the governor to do with that? How can the Governor ask the Chief Minister to reconsider this matter? It may not be at all within his province of powers and why should it be reconsidered? Take for Instance, Sir, a Judicial Minister remits a death sentence; he has also consulted the Chief Minister, but his decision is against the advice of the Secretary and what the Secretary does is, he goes to the Governor and says: "Here is a man whose sentence is being remitted and you ought to..........."

Mr. President: Where is the provision in this Constitution which gives power to a Minister to grant pardon ?

Shri Rohini Kumar Chaudhuri: That is true, Sir, but I am only giving an illustration. After all the Minister passes the order.

Mr. President: Not from the Constitution.

Shri Rohini Kumar Chaudhuri: Let me give another instance. Take, for instance, that a settlement has been made by the Ministry of certain shops, excise or something, in contravention of the wishes of the Secretary or of the head of the Department, and they do not agree with that order. Now they approach the Governor for a reconsideration of the matter; the order may have been passed after consultation with the Chief Minister and then the Governor says that this matter ought to be considered by the Council of Ministers and the time passes. Why should the Governor be allowed to interfere in such a matter, that is my question. I am only giving an illustration and there may be other illustrations. But why in those matters where the Governor has nothing to do, where the orders have been passed after consultation with the Chief Minister by a particular minister, what authority has the governor to ask the Chief Minister again to consider this matter by the Council of Minister? Why? That only delays the matter and makes the order infructuous. Under what circumstances can you imagine that he should be able to do it? You may say that the Chief Minister has made a mistake and therefore this is a matter which ought to be considered by the Council of Ministers. But, who is the governor to find out mistakes in a Minister in matters not affecting his special powers? That is the question I would like to ask. Who is the Governor to poke his nose and ask the Chief Minister or the Ministry to reconsider a matter because he does not agree with him or because his officers do not agree with the Ministers? This clause is a very dangerous clause; this is a very bad clause.

Shri R. K. Sidhva: I may say, here, Sir, that in certain provinces, a Minister without consulting the Prime Minister or the Chief Minister sends papers to the Governor and he is allowed to do so.

Shri Rohini Kumar Chaudhuri: That is wrong. Why should the Governor interfere? The Chief Minister is always there and if he finds that a particular Minister is acting contrary to the policy of his Government, he can call for any papers, he can advise the Minister or he can himself pass orders. What business has the Governor to do here? I would request the Honourable Dr. Ambedkar to reconsider the whole position in view of what I have said. I am sure that whatever we may say about the other clause, clause (c) is going to lead to friction and quarrel between the Ministry and the Governor.

The Honourable Dr. B. R. Ambedkar: Mr. President, Sir, I must say that I am considerably surprised at the very excited debate which has taken place on this article 147. I should like, at the very outset, to remind the House that this article 147 is an exact reproduction of article 65 which this House has already passed. Article 65 gives the President the same power as article 147 proposes to give to the Governor. Consequently, I should have thought that all the debate that took place, when article 65 was before the House, should have sufficed for the purpose of article 147.

Shri H. V. Kamath: May I remind the Honourable Dr. Ambedkar that the President is elected and the Governor nominated....(Interruption).

The Honourable Dr. B. R. Ambedkar: As the debate has taken place and as several Members of the House seem to think that there is something behind this article 147 which would put the position of the Ministers and of the Cabinet in the provinces in jeopardy, I propose to offer some explanation.

The first thing I would like the House to bear in mind is this. The Governor under the Constitution has no functions which he can discharge by himself: no functions at all. While he has no functions, he has certain duties to perform and I think the House will do well to bear in mind this distinction. This article certainly, it should be borne in mind, does not confer upon the Governor the power to overrule the Ministry on any particular matter. Even under this article, the Governor is bound to accept the advice of the Ministry.

That, I think, ought not to be forgotten. This article, nowhere, either in clause (a) or clause (b) or clause (c), says that the Governor in any particular circumstances may overrule the Ministry. Therefore the criticism that has been made that this article somehow enables the Governor to interfere or to upset the decision of the Cabinet is entirely beside the point, and completely mistaken.

Shri H. V. Kamath: Won't he be able to delay or obstruct......?

The Honourable Dr. B. R. Ambedkar: My friend will not interrupt while I am going on. At the end, he may ask any question and if I am in a position to answer, I shall answer.

A distinction has been made between the functions of the Governor and the duties which the Governor has to perform. My submission is that although the Governor has no functions still, even the constitutional Governor, that he is, has certain duties to perform. His duties, according to me, may be classified in two parts. One is, that he has to retain the Ministry in office. Because the Ministry is to hold office during his pleasure, he has to see whether and when he should exercise his pleasure against the Ministry. The second duty which the Governor has, and must have, is to advise the Ministry, to warn the Ministry, to suggest to the Ministry an alternative and to ask for a reconsideration. I do not think that anybody in this House will question the fact that the Governor should have this duty cast upon him; otherwise, he would be an absolutely not of a party, he is representative of the people as a whole of the State. It is in the name of the people that he carries on the administration. He must see that the administration is carried on on a level which may be regarded as good, efficient, honest administration. Therefore, having regard to these two duties which the Governor has namely, to see that the administration is kept pure, without corruption,

impartial, and that the proposals enunciated by the Ministry are not contrary to the wishes of the people, and therefore to advise them, warn them and ask them to reconsider-I ask the House, how is the Governor in a position to carry out his duties unless he has before him certain information? I submit that he cannot discharge the constitutional functions of a Governor which I have just referred to unless he is in a position to obtain the information. Suppose, for instance, the Ministers pass a resolution--and I know this has happened in many cases, in many provinces today,--that no paper need be sent to the Governor, how is the Governor to discharge his functions? It is to enable the Governor to discharge his functions in respect of a good and pure administration that we propose to give the Governor the power to call for any information. If I may say so, I

think I might tell the House how the affairs are run at the Centre. So far as my information goes all Cabinet papers are sent to the Governor-General. Similarly, there are what are called weekly summaries which are prepared by every Ministry of the decisions taken in each Ministry on important subjects relating to public affairs. These summaries which come to the Cabinet, also go to the Governor General. If, for instance, the Governor-General, on seeing the weekly summaries sent up by the departments finds that a Minister, without reference to the Cabinet has taken a decision on a particular subject which he thinks is not good, is there any wrong if the Governor-General i empowered to say that this particular decision which has been taken by an individual Minister without consulting the rest of the Ministers should be reconsidered by the Cabinet? I cannot see what harm there can be, I cannot see what sort of interference that would constitute in the administration of the affairs of the Government. I therefore, submit that the criticism,s levelled against this article are based upon either a misreading of this article or upon some misconception which is in the minds of the people that this article is going to give the Governor the power to interfere in the administration. Nothing of the sort is intended and such a result I am sure will not follow from the language of the article 147. All that the article does is to place the Governor in a position to enable him to perform what I say not functions because he has none, but the duties which every good Governor ought to discharge. (Cheers.)

Shri H. V. Kamath: May I ask Dr. Ambedkar some questions?

Mr. President: What is the use of asking questions now? You had your chance.

Shri H. V. Kamath: Dr. Ambedkar said that I could put questions at the end of his speech.

Mr. President: I do not like this practice of putting questions at the end of the discussions. All questions have been answered. I will now put the article to vote as there is no amendment to this.

Mr. President: The question is:

"That article 147 stand part of the Constitution."

The motion was adopted.

Article 147 was added to the Constitution.

*

New Article 147-A

Mr. President: There is another article proposed to be added-147-A by Prof. Shah.

Prof. K. T. Shah: I do not wish to move it.

----

*

Article 150

Mr. President: Articles 148 and 149 have been passed. We go to article 150.

Shri L. Krishnaswami Bharathi (Madras: General): May I suggest that this article be held over?

Mr. President: Is it the wish of the House that the consideration of this article be held over.

Honourable Members: Yes.

----

*

Article 151

Mr. President: We go to 151.

(Amendment Nos. 2298 to 2304 were not moved.)

(No. 2305 was not moved.)

There is an amendment to this-- 181 of Third List by Mr. Gupte but the original amendment is not moved.

Shri Brajeshwar Prasad (Bihar: General): Sir., I will move 2305.

I beg to move:

"That in clause (1) of article 151, The words 'and the expiration of the said period of five years all as a dissolution of the Assembly' be deleted."

Shri B. M. Gupte:

Sir, I move:

"That with reference to amendment No. 2304 of the List of Amendments, after clause (1) of article 151, the following proviso be inserted:

'Provided that the said period may, while a Proclamation f Emergency is in operation, be extended by Parliament for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate."

Prof. Shibban Lal Saksena: On a point of Order. This amendment No. 2304 has not been moved.

Mr. President: I am afraid it is my mistake. This has reference to 2304 and not to 2305.

The Honourable Shri Ghanshyam Singh Gupte (C. P. & Berar: General): I am moving 2304. Sir, I beg to move:

"That in clause (1) of article 151, after the words 'its first meeting' the words 'and no longer' be inserted".

Shri B. M. Gupte: Sir, before I proceed I request permission to rectify a mistake which has occurred owing to inadvertence or oversight. I want to say 'Parliament by law for a period' instead of' Parliament for a period' in my amendment.

Mr. President: Yes, You have permission to do that.

Shri B. M. Gupte: This provision is exactly similar to the one which we have already adopted for the Central Parliament-- article 68. Here it is less objectionable. There the parliament is allowed to extend its own life. Here I have given authority to Parliament t extend the life of the State Legislature. Some persons might argue that in view of article 227 it is not necessary to give this power to parliament because in an emergency the Parliament is given the right to legislate on all State matters and therefore it may not be necessary to extend the life of the State Legislature. But that will not be proper, because an emergency does not necessarily mean that all the machinery of the provincial responsible Governments should be scrapped. On the contrary in order to enlist better co-operation in war effort or in an emergency effort, it is necessary to keep that machinery going; and if this provision is not made and if the time of the State legislature expires during that emergency then our object could not be achieved. Automatically the Legislature would be dissolved and the whole machinery would be suspended. Therefore I submit that there should be this power for the Parliament to extend the period if it so desires and if it is necessary in the public interest at that time. I therefore move this amendment.

Mr. President: Nos. 2306 and 2307 are of a drafting nature. 2308--Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That in clause (2) of article 151, for the words 'third year' the words 'second year' be substituted."

(Amendment no. 2309 was not moved.)

Mr. President: Now the amendments are moved. Does any one want to say anything about this article or the amendments?

Prof. Shibban Lal Saksena: Sir, before I proceed I would like to know whether this article can be taken up before article 150 has been passed, because this article lays down that one-third of the Members shall retire after there years. unless we know the composition of the Council how can we decide whether they should retire after two years or three years?

Mr. President: Whatever the composition of the Council may be, half of the Members will retire at the end the second year, or if it is so decided, one third may retire. That will not in any way depend on the composition of the Council.

Prof. Shibban Lal Saksena: If that is your ruling, Sir, I bow to it.

The Honourable Dr. B. R. Ambedkar: The article has been passed that the Second Chamber shall be there. This article deals only with how the Members will re-elect themselves.

Prof. Shibban Lal Saksena: We have to decide whether particular Council should live for nine years or six years, and that will depend upon the composition of the Council. The composition will determine the period at the end of which one-third of the members should retire.

Mr. President: That does not depend on the composition of the Council. Whatever may

be the life of the House, the composition will be according to the decision we may take on article 150.

Prof. Shibban Lal Saksena: Well Sir, I bow to your ruling.

I have only to say that the amendment of Mr. Gupte, which gives to the Parliament the power to increase the life the Legislature by one year at a time until an emergency is over, is almost wholly undemocratic. The result may be that sometimes the Legislative Assembly in the Provinces may continue for even ten or twelve year. Suppose there is a war and the war lasts long. Then every year, the life of the Assemblies will be extended. I say that Mr. Gupte's amendment which wants to give to the Parliament the power to increase the life of the provincial Legislature by a year at a time is something which is wholly undemocratic. I know we have allowed such a provision in the case of the Parliament, and I opposed it then also. I am sorry the Prime Minister is not here; I wish the were here and he had given us his views upon this subject. So far as I know he is opposed to this provision. It has been said that when a war is on, an election is difficult. But I say it is in war that people's tempers are so altered that there must be an election to know the views of the people. I, therefore think that this power of increasing the life of the provincial Legislature year by year indefinitely is something which besides being wholly undemocratic will be very harmful. In fact we know that in the United States of America, the Presidential election was held at the height of the war and President Roosevelt was re-elected, and I think that raised the prestige of the united State very high. I think it is only proper that the elections to Legislatures should be held after the fixed period of five years, irrespective of the fact whether there is war or no war. The people have the right to demand fresh elections every fifth year. It is a right which should not be taken away from the people on the pretext of any emergency. if this power is given to Parliament, it may be abused and the people may be deprived or the right of removing an unwanted government and of choosing the government of their choice. I am therefore opposed to this amendment of Mr. Gupte.

Then it has been said that one-third of the Council will retire every third year. I am glad Dr.

Ambedkar has now proposed that the period will now be two years, instead of three. That will make the life of the Council only six years which is almost equal to the life of the Assembly. It also ensures greater freshness to the Council. I therefore, support the amendment of Dr. Ambedkar.

Mr. President: Dr. Ambedkar, do you wish to say anything?

The Honourable Dr. B. R. Ambedkar: I accept Mr. Gupte's amendment.

Mr. President: Now I shall put Mr. Gupte's amendment which has been accepted by Dr. Ambedkar, to vote. It because the original amendment.

The question is:

"That with reference to amendment No. 2304 of the List of Amendments, after clause (1) of article 151, the following proviso be inserted:

'Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.'"

The amendment was adopted.

Mr. President: Mr. Brajeshwar Prasad'a amendment.

Shri Brajeshwar Prasad: Sir, I would like to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then I put Dr. Ambedkar's amendment,no. 2308.

The question is:

"That in clause (2) of article 151, for the words 'third year' the words 'second year' be substituted."

The amendment was adopted.

Mr. President: Then I put article 151, as amended by these two amendments to the House.

The question is:

"That article 151, as amended, stand part of the Constitution.

The amendment was adopted.

Article 151, as amended, was added to the Constitution.

*

Article 152

Mr. President: Then

we come to article 152. To this article, there is the amendment of Dr. Ambedkar, No. 2311, to which there are several amendments, one of which is amendment no. 38 of the First List.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for article 152, the following be substituted;-

'152. Qualification for membership of the State Legislature--A person shall not be qualified to be chosen to fill a seat in the legislature of a State unless he-

(a) is a citizen of India;

(b) is, in the case of a seat in a Legislative Assembly, not less than twenty five years of age and, in the case of a seat in the Legislative Council, not less than thirty-five years of age, and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by the Legislature of the State.'"

Mr. President: As I said, there are several amendments to this.

These may be moved now.

(Amendment Nos. 126, 128 and 129, in the Supplementary List were not moved.)

Shrimati Purnima Banerji (United Provinces: General): Sir, I beg to move amendment No. 38 of List I, Third Week, which is:

"That in amendment No. 2311 of the List of Amendment in clause (b) of the proposed article 152, for the word "thirty-five" the word "thirty" be substituted."

This is in conformity with what we have already passed in regard to age qualification for the members of the Upper House in the Parliament, and therefore, there is not much to be said as to why this amendment is being moved here. But before I close I would like to clear a doubt regarding clause (c) of this article which has been proposed by Dr. Ambedkar. It says, the person shall "possess such other qualifications as may be prescribed in that behalf by or under any law made by the Legislature of the State."

Sir, my doubt-the doubt that I have in mind-is this. While we are wedded to the principle of audit franchise and hope that Members of both these Assemblies will be popularly elected persons, who will be entitled not only to send their representatives to sit in this House and also in the Upper House- whether of the Centre or the provincial bodies-my fear is that according to this sub-clause as it stands it is quite possible that a property qualification or any other qualification may be introduced whereby Members may be debarred from offering themselves as candidates for either House of the Legislature.

Sir, in moving the constitution for the Upper House of the provincial Legislature, that is of the State, reference has been made of the constitutions of Canada and South Africa, where there is a property qualification prescribed for those who can be members of the Upper House. If that idea remains in our minds that this sub-clause can at any stage be introduced- and I am not even sure that this sub-clause is retained, members of the Lower House or the Upper House may not have their qualifications restricted, and what you have granted by adult aged 25 or 30 can be member of the Lower or Upper House-and if any other qualifications are prescribed, his right may be thereby taken away. My point is that either we draw our rights from the Constitution laid down in this House or they are drawn from the Parliament which may change those rights from time to time. We have no objection should a Parliament, which would be also a sovereign body, wish to change the constitution. There is a certain prescribed method and only by a certain number of votes can that constitution be changed. But suppose at any given time in a provincial Legislature or in a Parliament a motion is put and the qualification of the members that every adult, or every aged 25 or 30 shall be able to be a member of either House may be nullified. So I hope that Dr. Ambedkar will assure the House that that possibility is not in his mind because as far as disqualifications are concerned, there is a separate article disqualifying a member from appearing as or becoming a member of either of the two House. Here it is specifically mentioned that the qualifications of the members

may be prescribed from time to time. Sir, I move.

(Amendment Nos. 2312 to 2318 were not moved.)

Prof. K. T. Shah: Sir, I move:

"That in article 152, after the word `age' where it occurs for the first time the words `is literate, and is not otherwise disqualified form being elected' : and after the word `age' where it occurs for the second time, the words `is qualified to vote in the constituency from which he seeks election, and is not otherwise disqualified from being elected' be added."

The important point that I would like to make for the consideration of this amendment is the necessity of at least candidates being literate who seek to be elected to the Legislature. We have an appalling volume of ignorance in this country utter illiteracy. And the danger of illiteracy becoming predominant, or rather the danger of illiterate candidates coming into the Legislature, appears to me to be so great that I think we would do well to lay down a positive requirement by or qualification for candidates, seeking election to the Legislature, to be literate at least.

Under the prevailing state of things, it is difficult to demand that electors shall be all literate, as we have some 85 per cent of the population illiterate, and with adult franchise the voters would naturally be largely illiterate. It is, however, a misfortune which we would like to correct at the earliest opportunity, and I trust that within a measurable period of time-perhaps ten years-illiteracy would be completely abolished; and voters will all have this minimum of requirement in democratic citizenship.

But even while it prevails, and while this danger of something like over three-fourths of the population, if not more, being illiterate is before us, I think it is necessary to insert in this Constitution the positive requirement that the candidate will be at least literate; and that anyone who is not literate will be disqualified.

The other items, Sir, in my amendment making disqualifications for candidates, are not so very important; and I do not lay so much stress by them. The amendment moved by the Chairman of the Drafting Committee if carried, would perhaps attend to some of those. But in this matter of literacy of the candidate, I feel very strongly; and I trust the House will agree with me, and lay down this qualification of literacy by the Constitution, and not by an Act of Parliament only.

I commend my amendment to the House.

Mr. President: The amendments have been moved. Any one wishing to speak on the article or any of the amendments may do so now.

Mr. Naziruddin Ahmad: Mr. President, I have some difficulty in accepting amendment No. 68 moved by Shrimati Purnima Banerji. The first difficulty is that I feel that in the Legislative Assembly where a member should be more vigorous, more youthful, and more energetic than the Members of the Legislative Council who would be elderly statesmen, the amendment states that the Members of the Legislative Council at least thirty. I submit that the whole thing should have been the other way round. As in the amendment moved by Dr. Ambedkar, the age-limit of the Lower House...

Mr. President: I think you are under a misapprehension. She wants for the words "thirty-five" the word "thirty". That refers to the Council and not to the Assembly. "In case of a seat in the Legislative Council not less than 35 years"-she wants that to be substituted by "30".

Mr. Naziruddin Ahmad: But, Sir, in the corresponding provision to the Central Legislature-the Parliament-the provision is that for the House of the People-the Lower House-the age limit would be twenty-five and for the Legislative Council not less than thirty-five. But as it is printed and circulated.

Mr. President: It is said that in the case of a seat in the Council of State not less than thirty-five years and in the case of a seat in the House of the People not less than thirty.

Mr. Naziruddin Ahmad: So the age limit is-Upper House 30 and Lower House 25. In that case I have nothing further to say. The speed and rapidity

with which amendments are being showered upon is responsible for slip.

Prof. Shibban Lal Saksena: Mr. President, Sir, the original clause has been substituted by the amendment of Dr. Ambedkar. Sir, in this amendment I object to two things: my first objection is to clause (c). This clause says:

"possess such other qualifications as may be prescribed in this behalf by or under any law made by the Legislature of the State."

It does not even say `Parliament'. I would have wished that these qualifications were laid down in the Constitution itself. One of the main objects of the Constitution is to lay down the qualifications of candidates and unfortunately these have been left to be decided by the Legislature of the State. The result will be that every State will have a different set of qualifications for its candidates. A men who can be a member of the Assembly in Bombay may not be eligible to be so in the United Provinces, because the qualifications in Bombay may be different from those in the United Provinces. This, I think, is a mistake which I hope Dr. Ambedkar will correct.

Again, Sir, as I said, I am totally opposed to even Parliament being given the power of prescribing qualifications; the Constitution itself should lay down what those qualifications shall be. Otherwise, qualifications of candidates will be made a plaything of party politics. For instance, a die-hard Government might come into power and lay it down that only zamindars, or persons paying income-tax of a particular amount would be eligible to seek election. The result will be that ordinary people will go to the wall. I, therefore, think, Sir, that clause (c) should be deleted.

Then, coming to clause (b), it lays down that a person shall not be qualified for election unless he is not less than twenty-five years of age in the case of the Legislative Assembly, and thirty years, in the case of the Legislative Council. As I said the other day, in the case of other constitutions these limits are not generally prescribed. In England any voter can be a member of Parliament. I have known persons who have become members of provincial Assemblies at a much younger age. I, therefore, think, Sir, that at least for the provincial Legislatures which are the training grounds in parliamentary affairs, the age of eligibility for membership should be fixed at twenty-one years.

Mr. President : We had all these arguments when we discussed article 68-A. Is it necessary to repeat the same arguments once again?

The Honourable Dr. B.R. Ambedkar: Sir, I accept the amendment moved by Shrimati Purnima Banerji. With regard to the fear that she expressed about clause (c) that this clause might enable the prescription of property qualifications by Parliament for candidates, I certainly can say that such is not the intention underlying sub-clause (c). What is behind this clause is the provision of such disqualifications as bankruptcy, unsoundness of mind, residence in a particular constituency and things of that sort. Certainly there is no intention that the property qualification should be included as a necessary condition for candidates.

Thursday, the 2nd June 1949

Then, with regard to the amendment of Professor K. T.Shah about literacy, I think that is a matter which might as well be left to the Legislatures. If the Legislatures at the time of prescribing qualifications feel that literacy qualification is a necessary one, I no doubt think that they will do it.

Sir, there is only one point about which I should like to make a specific reference. Sub-clause (c) is in a certain manner related to articles 290 and 291 which deal with electoral matters. We have not passed those articles

If during the course of dealing with articles 290 and 291, the House comes to the conclusion that the provision contained in clause (c) should be prescribed by the law made by Parliament, then I should like to reserve for the Drafting Committee the right to reconsider the last part of sub-clause (c).Subject to that I think the article, as amended, may be passed.

Mr. President: I shall now put the article with the various amendments to vote: first is the amendment of Shrimati Purnima Banerji-No. 38 of List I.

The question is:

"That in amendment No. 2311 of the List of Amendments, in clause (b) of the proposed article 152, for the word `thirty-five' the word `thirty' be substituted."

The amendment was adopted.

Mr. President: The question is:

"That for article 152, the following be substituted:-

`152 Qualification for membership of the State Legislature.- A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he-

(a) is a citizen of India;

(b) is, in the case of a seat in a Legislative Assembly, not less than twenty-five years of age and in the case of a seat in the Legislative Council, not less than thirty years of age, and

(c) possesses such other qualifications as may be prescribed in this behalf by or under any law made by the Legislature of the State.'"

The amendment was adopted.

Mr. President: The question is:

"That in article 152, after the word `age' where it occurs for the first time the words is literate, and is not otherwise disqualified from being elected; and after the word `age' where it occurs for the second time, the words `is qualified to vote in the constituency from which he seeks election, and is not otherwise disqualified from being elected' be added."

The amendment was negatived.

Mr. President: The question is:

"That article 152, as amended, stand part of the Constitution."

The motion was adopted.

Article 152, as amended, was added to the Constitution.

Mr. President: Then we have notice of another article, No. 152-A, which I think is covered by the article which we have just passed; so, that need not be taken up.

Then we go to article 153.

*

Article 153

Mr. President: Article 153 is for the consideration of the House.

With regard to the very first amendment, No. 2321, as we had a similar amendment with regard to article 69 which was discussed at great length the other day, does Professor Shah wish to move it?

Prof. K. T. Shah: If I am in order I would like to move it. But if you rule it out, it cannot be moved.

Mr. President: It is not a question of ruling it out. If it is moved, there will be a repetition of the argument once put forward.

Prof. K. T. Shah: I agree that this is a similar amendment, but not identical.

Mr. President: I have not said it is identical.

Prof. K. T. Shah: All right. I do not move it, Sir.

Mr. President: Amendment Nos. 2322, 2323, 2324, 2325 and 2326 are not moved, as they are verbal amendments.

Prof. K. T. Shah: As my amendment No. 2327 is part of the amendment not moved, I do not move it.

Mr. President: Then amendments Nos. 2328, 2329 and 2330 also go, Amendment No. 2331 is not moved.

Mr. Mohd. Tahir (Bihar: Muslim): Mr. President, I move:

"That at the end of sub-clause (c) of clause (2) of article 153, the words "if the Governor is satisfied that the administration is failing and the ministry has become unstable' be

inserted."

In this clause certain powers have been given to the Governor to summon, prorogue or dissolve the Legislative Assembly. Now I want that some reasons may be enumerated which necessitate the dissolution of a House, I find that to clause (3) of article 153 there is an amendment of Dr. Ambedkar in which he wants to omit the clause which runs thus: "(3) the functions of the Governor under sub-clause (a) and (c) of clause (2) of this article shall be exercised by him in his discretion." I, on the other hand, want that some reasons should be given for the dissolution. Nowhere in the Constitution are we enumerating the conditions and circumstances under which the House can be dissolved. If we do not put any condition, there might be difficulties. Supposing in some province there is a party in power with whose views the some reasons to dissolve the Assembly and make arrangements for fresh elections. If such things happen there will be no justification for a dissolution of the House. Simply because a Governor does not subscribe to the views of the majority party the Assembly should not be dissolved. To avoid such difficulties I think it is necessary that some conditions and circumstances should be enumerated in the Constitution under which alone the Governor can dissolve the House. There should be no other reason for dissolution of the House except maladministration or instability of the Ministry and its unfitness to work. Therefore this matter should be considered and we should provide for certain conditions and circumstances under which the Governor can dissolve the House.

Mr. President: The next amendment, No. 2333, is not moved, Dr. Ambedkar may move amendment No. 2334.

The Honourable Dr.B.R. Ambedkar: Sir, I move:

"That clause (3) of article 153 be omitted."

This clause is apparently inconsistent with the scheme for a Constitutional Governor.

Mr. President: Amendment No. 2335 is the same as the amendment just moved. Amendment No. 2336 is not moved.

Shri H.V. Kamath: Mr. President, Sir, may I have your leave to touch upon the meaning or interpretation of the amendment that has just been moved by my learned Friend, Dr. Ambedkar? If this amendment is accepted by the House it would do away with the discretionary powers given to the Governor. There is, however, sub-clause (b). Am I to understand that so far as proroguing of the House is concerned, the Governor acts in consultation with the Chief Minister or the Cabinet and therefore no reference to it is necessary in clause (3)?

Mr. President: He wants clause (3) to be deleted.

Shri H.V. Kamath: In clause (3) there is references to sub-clauses (a) and (c). I put (a) and (b) on a par with each other. The Governor can summon the Houses or either House to meet at such time and place as he thinks fit. Then I do not know why the act of prorogation should be on a different level.

Mr. President: That is exactly what is not being done now. All the three are being put on a par.

Shri H. V. Kamath: Then I would like to refer to another aspect of this deletion. That is the point which you were good enough to raise in this House the other day, that is to say, that the President of the Union shall have a Council of Ministers to aid and advise him in the exercise of his functions.

The corresponding article here is 143:

"That shall be a Council of Minister with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions......"

Sir, as you pointed out in connection with an article relating to the President vis-a-vis his Council of Ministers, is there any article, is there any provision, in the Constitution which binds the Governor to accept or to follow always the advice tendered to him by his Council of Ministers? Power is being conferred upon him under this article to dissolve the Legislative Assembly. This is a fairly serious matter in all democracies. There have been instances in various democracies, even in our own provinces sometimes, when a Cabinet seeking to gain time against a motion of censure being brought against them, have sought the Governor's aid, in getting the Assembly prorogued. This of course is not so serious as dissolution of the Legislative Assembly. Here the article blandly says, "subject to the provisions of this article." As regards clause (1) of the article, I am glad that our Parliament and our other Legislatures would meet more often and for longer periods. I hope that will be considered and will be given effect to at the appropriate time. Clause (2) of this article is important because it deals with the dissolution of the Assembly by the Governor of a State and in view of the fact that there is no specific provision-of course it may be understood and reading between the lines Dr. Ambedkar might say that the substance of it is there, but we have not yet decided even to do away with the discretionary powers of the Governor to accept the advice tendered to him by his Council of Ministers, there is a lacuna in the Constitution. Notwithstanding this, we are conferring upon him the power to dissolve the Legislative Assembly, without even mentioning that he should consult or be guided by the advice of his Ministers in this regard. I am constrained to say that this power which we are conferring upon the Governor will be out of tune with the new set-up that we are going to create in the country unless we bind the Governor to accept the advice tendered to him by his Minister. I hope that this article will be held over and the Drafting Committee will bring forward another motion later on revising or altering this article in a suitable manner.

Shri Gopal Narain (United Provinces: General): Mr. Present, Sir, before speaking on this article, I wish to lodge a complaint and seek redress from you, I am one of those who have attended all the meetings of this Assembly and sit from beginning to the end, but my patience has been exhausted now. I find that there are a few honourable Members of this House who have monopolised all the debates, who must speak on every article, on every amendment and every amendment to amendment. I know, Sir, that though I see from your face that also feel sometimes bored, but you cannot stop them. I suggest to you, Sir, that some time-limit may be imposed upon some Members. They should not be allowed to speak for more than two or three minutes. So far as this article is concerned, it has already taken fifteen minutes, though there is nothing new in it, and it only provides discretionary powers to the Governor. Still a Member comes and oppose it. I seek redress from you, but if you cannot do this, then you must allow us at least to sleep in our seats or do something else than sit in this House. Sir, I support this article.

Mr. President: I am afraid I am helpless in this matter. I leave it to the good sense of the Members.

Shri Brajeshwar Prasad: (Rose to speak).

Mr. President: Do you wish to speak after this? (Laughter).

The Honourable Dr. B.R. Ambedkar: I do not think I need reply. This matter has been debated quite often.

Mr. President: Then I will put the amendments to vote.

The question is:

"That at the end of sub-clause (c) of clause (2) of article 153, the words `if the Governor is satisfied that the administration is failing and the ministry has become unstable; be inserted."

The amendment was negatived.

Mr. President: The question is:

"That clause (3) of article 153 be omitted."

The amendment was adopted.

Mr. President: The question is:

"That article 153, as amended, stand part of the Constitution."

The motion was adopted.

Article 153, as amended, was added to the Constitution.

*

New Article 153-A

Mr. President: There is notice of a new article by Professor Shah.

Prof. K.T. Shah: I am told that this matter came up before but I am not aware of it. Perhaps the honourable Chairman of the Drafting Committee would inform me. If it has already been decided, then I would not move this, but I do not think it has come up.

Mr. President: (after referring to amendment No. 1483). That has

nothing to do with the right of members.

Prof. K.T. Shah: Sir, I beg to move:

"That after article 153, the following new article 153-A be added:-

`153-A. If at any time when the Assembly is not sitting, it appears necessary to more than half of the total membership of the State Legislative Assembly that a situation has arisen in the State which calls for the Assembly to be sitting and consider the situation, they may in writing signed by them address the Speaker of the Assembly to convene a meeting of the

Assembly for considering the matter specified in the application; and on receipt of such a requisition the Speaker shall convene the meeting within not more than seven clear days after receipt of the Requisitioning members to bear the expenses of such a meeting, unless the Assembly specifically resolves to the contrary and exonerate the members concerned from the charge.'"

Sir, this right of Requisition is, in my opinion an important right which should be given to members of the Assembly provided they are in number more than half the total membership of any State Legislative Assembly. The entire framework of this Constitution, Sir, has been so designed as to vest all powers even in regard to the Legislature in the executive, I mean powers of convening, of dissolving, of proroguing or of adjourning the House. It seems to me therefore that within the safeguard. I have indicated in this amendment the right of Requisitioning and assent of the Speaker by more than half the total membership of the House is not only liable to be abused, but may be of great service.

As the House is aware, it is possible that between two sessions of a State Legislature there may be as much as six months. Within a period of six months, it is not inconceivable that a situation may arise, that could not be dealt with except by deliberation and action of the Legislature itself. There may be factors at work, however, whereby the executive is either unable or unwilling to call such a meeting. It becomes, therefore, important for the rest of the members or rather for the private members, if I may say so, of the Legislature, to request that a meeting be called. And hence my amendment providing for the right to requisition.

I have provided, I think, more than ample safeguards that a right of this kind shall not be abused. It has been laid down in the first instance that not a fraction, but a definite absolute majority of the House so considers necessary to convene a meeting. Secondly that if they do so,they will have to address the presiding authority in writing specifying the special situation which requires a meeting of this kind to be convened; Thirdly that they may have to bear, if the Speaker so thinks proper, the entire expenditure of the meeting being convened unless the Assembly when it meets realizes the gravity of the situation or the wisdom of those people who make such a request, and specifically resolve to exonerate them from the charge and causes the meeting to be convened in the ordinary manner.

Subject to these precautions or safeguards, I think the right of requisitioning is in no way likely to be abused; on the contrary it is possible that thereby a sense of responsibility may be created in the ordinary member; a sense of close interest by the average private member in the doings or happenings in the province may be generated, and as such the real training, if one may say so, of responsible Government may be induced in the Legislature as such.

I know that this demand is somewhat unusual, but I trust the mere "unusualness" of it will not be an argument to damn it. I trust the House will see the force of the arguments I have put forward and accept my motion.

Mr. President: Does any one wish to say anything about this amendment?

The Honourable Dr. B.R. Ambedkar: Sir, I do not accept the amendment.

Mr. President: The question is:

"That after article 153, the following new article 153-A be added :-

`153-A. If at any time when the Assembly is not sitting, it appears necessary to more than

half of the total membership of the State Legislative Assembly that a situation has arisen in the State which calls for the Assembly to be sitting and consider the situation, they may in writing signed by them address the Speaker of the Assembly to convene a meeting of the Assembly for considering the matter specified in the application; and on receipt of such a requisition the Speaker shall convene the meeting within not more than seven clear days after receipt of Requisition; provided that the Speaker may, if he deems proper, call upon such requisitioning members to bear the expenses of such a meeting, unless the Assembly specifically resolves to the contrary and exonerate the members concerned from the charge.'"

The amendment was negatived.

*

Article 154

Mr. President: I find that this article 154 is word for word the same as article 70, which we have already adopted with only this difference that one relates to the States and the other relates to the Union. Is it necessary to have any long discussion about this?

Many Honourable Members: No, Sir.

Mr. President: The question is:

"That article 154 stand part of the Constitution."

The motion was adopted.

Article 154 was added to the Constitution.

*

Article 155

Mr. President: This article also is word for word same as article 71 except that the present article refers to the State and the previous article refers to the Centre. The amendments to this also are of a verbal nature except the one by Mr. Sidhva-Amendment No. 2348.

Shri R. K. Sidhva: I do not wish to move that.

Mr. President: The question is:

"That article 155 stand part of the Constitution."

The motion was adopted.

Article 155 was added to the Constitution.

*

Article 156

Mr. President: This article is also the same as article 72, which we have already accepted. Of course there are some amendments.

(Amendments Nos. 2349 and 2352 were not moved.)

The question is:

"That article 156 stand part of the Constitution."

The motion was adopted.

Article 156 was added to the Constitution.

*

Article 157

Mr. President: There is no amendment, to this article as far as I can see, which is of a very substantial nature. All are verbal amendments. This article is similar to article 76 relating to the Union.

The question is:

"That article 157 stand part of the Constitution."

The motion was adopted.

Article 157 was added to the Constitution.

Mr. President: Then there is notice of another amendment to insert a new article-157-A, given by Prof. Shah.

Prof. K.T. Shah: Sir, this matter has been discussed in the past and it has been rejected. Therefore, I do not wish to move it.

(Amendment No. 2359 was not moved.)

*

Article 158

Mr. President: The motion is:

"That article 158 form part of the Constitution."

Mr. Mohd. Tahir: Mr. President, I beg to move:

"That in article 158, for the words `A member holding office as' the word `The' be substituted and in clause (b) of article 158, for the words `such members' the word `he' and for the words `to the Deputy Speaker' the words `the member of the Legislative Assembly be substituted respectively."

If the amendment is accepted, it will run as follows:

"The Speaker or Deputy Speaker of an Assembly-

(a) shall vacate his office if he ceases to be member of the Assembly;

(b) may at any time by writing under his hand addressed if he is the Speaker to the members of the Legislative Assembly and if he is the Deputy Speaker, to the Speaker, resign his office, and ....."

I will say a few words in this connection. The Speaker of the Assembly must necessarily be a member of the House. He is resigning or vacating the office, not as a member, but as the Speaker of the Assembly. Therefore, the wording, "A member holding office as", I think is redundant and it should be, "Speaker or Deputy Speaker of the Assembly." So far as the addressing Assembly is elected by the members of the House. The Speaker is the highest official in the Assembly. If he resigns he must address to the members of the Assembly and not to the Deputy Speaker. He may hand over the resignation letter to the Deputy Speaker: that is a different matter. So far as the addressing of the application for resignation is concerned, he must address it to the members of the Assembly who have elected his as such. Therefore, I think that this provision should be amended like this. With these few words, I commend this amendment to the House for acceptance.

(Amendment No. 2361 was not moved.)

Mr. President: Amendment No. 2362.

Shri H.V. Kamath: A similar amendment has been lost earlier, Sir, and I am not anxious to see the same fate overtake this amendment as well.

(Amendment Nos. 2363 and 2364 were not moved.)

Mr. Mohd. Tahir: Sir, I beg to move:

"That in clause (c) of article 158, for the words `all the then members of the Assembly' the words `the members of the Assembly present and voting' be substituted."

Clause (c) runs as follows:

"(c) may be removed from his office for incapacity or want of confidence by a resolution of the Assembly passed by a majority of all the then members of the Assembly."

Sir, so far as I can understand the meaning of the wording, "all the then members of the Assembly", it includes all the members of the Assembly. Supposing a House is composed of 300 members then, it will mean all the members of the Assembly, that is 300. Supposing fifty members of the House are not present in the House, then, those members will not have the right to give their votes so far as this question is concerned. Therefore, I think that it would be better that this matter should be considered by only those members who are present in the Assembly and who can vote in the matter. If this phrase "all the then members of the Assembly" means the members who are present in the Assembly, then, I have no objection. If it means all the members of which the House is composed, I think it is not desirable to keep the clause as it stands.

With these few words, I move my amendment.

(Amendment Nos. 2366, 2367 and 2368 were not moved.)

Mr. President: Amendment No. 2369.

Shri T.T.Krishnamachari (Madras: General): May I ask, Sir, if Mr. Jaspat Roy Kapoor is going to move another amendment which stands in his name, article 159-A, which is another version of the amendment which is now before the House. If he is going to move that amendment, I think there is no point in moving this amendment. I think the latter amendment will serve the purpose he has in mind more adequately.

Shri Jaspat Roy Kapoor (United Provinces: General): I may assure my honourable Friend Mr. T.T. Krishnamachari that I will move all the relevant amendments. In order to enable me to move the amendment. I think it is necessary that I should move amendment No. 2369. Otherwise it will be permissible for me to move any other amendment which is an amendment to this amendment.

Mr. President: You may formally move this and then go to the amendments to this amendment.

Shri Jaspat Roy Kapoor: Is it your suggestion, Sir, that I need not read this?

Mr. President: Yes.

Shri Jaspat Roy Kapoor: Mr. President, I beg to move amendment No. 2369 in the printed List of Amendments, Volume I:

"That at the end of article 158, the following new clause be inserted :-

`(2) When a resolution for the removal of the Speaker is under discussion the Deputy Speaker shall preside and when the resolution for removal of the Deputy Speaker is under consideration and the Speaker is absent such other person shall preside as under the rules of procedure of the Assembly is authorised to preside during the absence of the Deputy Speaker.'"

To improve upon this amendment I have given notice of amendments to this amendment. I will first move amendment No. 138 which runs thus :

`That for amendment No. 2369 of the List of Amendment, the following be substituted :-

That after article 158, the following new article be inserted :-

158-A. At any sitting of the Legislative Assembly of a State, while any resolution for the removal of the

Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of clause (2) of the next succeeding article shall apply

in relation to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy, Speaker, is absent.'"

There is yet another amendment to this amendment, No. 195:

"That with reference to amendment No. 2369 of the List of Amendment and No. 138 of List II (Third Week), after article 159, the following new article be inserted :-

`159-A. The Speaker and the Deputy Speaker not to preside at sittings of the Assembly while a resolution for his removal from office is under consideration. At any sitting of the Legislative Assembly of a State, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of clause (2) of the last preceding article as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker, as absent.

Perhaps it is unnecessary to read amendment No. 195. The only change that it seeks to make in amendment No. 138, is that the location of this new article should be after 159 and not after 158.

Sir, the principle and propriety of the procedure suggested in this amendment has already been agreed to by this House on a previous occasion in dealing with the procedure in respect of the two Houses of Parliament. This amendment is on the same lines as article 75-A and 78-A which the House has already adopted. This amendment only seeks to lay down the same procedure as we have laid down in the case of the two Houses of Parliament. Obviously it would be unfair to the Legislative Assembly and it would be embarrassing to the Speaker and the Deputy Speaker to preside over the deliberations in the Assembly when a motion of no-confidence is being moved against him, and I think that, in order to be fair to the House and also to relieve the Speaker or the Deputy Speaker of the embarrassing position in which he would find himself when such a motion of no-confidence against him is being discussed in the House, it is necessary that the Speaker or the Deputy Speaker, as the case may be should not preside over the sitting of the Assembly and somebody else should preside in his place as is provided in this amendment. I need not say anything more on this subject because it has already been discussed on a previous occasion and I simply commend it for the acceptance of the House.

Mr. President: I think this should come after 159. It is moved and we shall reserve voting after article 159 is disposed of.

I will put article 158 to vote. I will first put the amendments of Mr. Tahir to vote.

Mr. President: The question is:

"That in article 158, for the words `A member holding office as' the word `The' be substituted and in clause (b) of article 158, for the words `such member' the word `he' and for the words `to the Deputy Speaker' the words `the member of the Legislative Assembly' be substituted respectively."

The amendment was negatived.

Mr. President: The question is:

"That in clause (c) of article 156, for the words `all the then members of the Assembly' the words `the members of the Assembly present and voting' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That article 158 stand part of the Constitution."

The motion was adopted.

Article 158 was added to the Constitution.

*

Article 159

Mr. President: We take up article 159.

(Amendment Nos. 2370 and 2371 were not moved.)

Mr. President: The question is:

"That article 159 stand part of the Constitution."

The motion was adopted.

Article 159 was added to the

Constitution.

*

New Article 159-A (contd.)

Mr. President: I now take vote on the amendment moved by Mr. Kapoor.

"That with reference to amendment No. 2369 of the List Amendment and No. 138 of List of List II (Third Week), after article 153 the following new article be inserted :-

`159-A. The Speaker and the Deputy Speaker not to preside at sittings of the Assembly while a resolution for his removal from office is under consideration. At any sitting of the Legislative Assembly of a State, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of the clause (2) of the last preceding article shall apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker, is absent.'"

The amendment was adopted.

New Article 159-A was added to the Constitution.

*

Article 160

Mr. President: We take up article 160.

There is no amendment to this either.

Mr. Naziruddin Ahmed: No.2373, Sir. Sir, I beg to move:

"That in article 160 for the word `another' the word `a' be substituted."

I move the second part only. This amendment has been twice last in another connection, but I still venture to submit it for the reconsideration of the House so that the other context may be reconsidered by the Drafting Committee. The article provides that if the Deputy Chairman or the Chairman of the Council loses his seat or so often as the office as the office of the Chairman or Deputy Chairman becomes vacant `another' member shall be elected. The question is about another member. I submit that when the Chairman or the Deputy Chairman loses his then of course for that election that Chairman or Deputy Chairman is not eligible for election because he is not a member, but there is a provision that as many times as the office of the Chairman or Deputy Chairman becomes vacant, another member should be elected. Supposing that a Deputy Chairman loses his seat, there is a first vacancy. For that election the late Deputy Chairman will not be eligible because he would not be member but then if there is a second vacancy and, meanwhile, let us suppose that the Deputy Chairman is re-elected a member of the Council, the question is, would you allow him to contest or not? At the time of the second or subsequent vacancy he may have been re-elected and for all that I know he would be quite eligible; but the effect of the wording would be, if you say `another member,' I beg to ask whether that member if he is otherwise qualified in the meantime, would he be shut out? If it is a desired to shut out, that is a different matter; but I do not think there is a desire to shut him out. On the other hand there is a belief that as soon as a man loses his seat, he cannot possibly be a candidate because he is not a member but the very supposition which is the basis of the amendment is that meanwhile he may be re-elected. The question is whether you will allow him to contest. I submit that on re-consideration possibly the amendment may be accepted. It is not a verbal amendment but a substantial amendment. It gives a right to a member who has been meanwhile re-elected although he has lost his seat before.

Mr. President: Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: I have nothing to say.

Mr. President: The question is:

"For the word `another' the word `a' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That article 160 stand part of the Constitution."

The motion was adopted.

Article 160 was added to the Constitution.

Mr. President: Prof. Shah has given notice of a new Article.

Prof. K. T. Shah: This has already been covered.

*

Article 161

Mr. President: Article 161. Mr. Jaspat Roy Kapoor's amendment No. 196 will come in as a separate article.

Shri T.T. Krishnamachari: Somebody may raise some procedural

objection later on. So, better it is moved now.

Mr. President: Mr. Kapoor may move No. 2381.

Shri Jaspat Roy Kapoor: Sir, I beg to move:

"That after article 161, the following new clause be inserted :-

`(2) When a resolution for the removal of the Speaker is under discussion the Deputy Speaker shall preside and when the resolution for removal of the Deputy Speaker is under consideration and the Speaker is absent such other person shall preside as under the rules of procedure of the Assembly is authorises to preside during the absence of the Deputy Speaker.'"

To this I move another amendment, No. 139 in the List of Amending to Amendments, Third Week. I beg to move:

"That for amendment No. 2381 of the List of Amendments, the following be substituted :-

`That after article 161, the following new article be inserted :-

161-A. At any sitting of the Legislative Council of a State, while any resolution for the removal of the Chairman from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman shall not, though he is present, preside, and the provisions of clause (2) of the next succeeding article shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman, or, as the case may be, `the Deputy Chairman, is absent.'"

To this again. I beg to move another amendment No. 196 in the same List

of Amendment to Amendments. I beg to move:

"That with reference to amendment No. 2381 of the List of Amendment and No. 139 of List II (Third Week) after article 162 the following article be inserted :-

`162-A. The Chairman or the Deputy Chairman not to preside at sittings of the Legislative Council while a resolution for his removal from office is under consideration. At any sitting of the Legislative Council of State, while any resolution for the removal of the Chairman from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of the last preceding article shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman or, as the case may be, the Deputy Chairman is absent.'"

I need hardly say anything in support of this. It is just on the same lines as article 159-A which we have just adopted and we might readily adopt this amendment.

(Amendment Nos. 2376 to 2380 were not moved.)

Mr. President: I put article 161 to vote and put this last amendment 196 separately.

Mr. President: The question is:

"That article 161 stand part of the Constitution."

The motion was adopted.

Article 161 was added to the Constitution.

*

Article 162

Mr. President: Then I take up article 162. Now article 162-A will come later.

(Amendment Nos. 2383, and 2384 and 2385 were not moved.)

Then there is no amendment to article 162.

The question is:

"That article 162 stand part of the Constitution."

The motion was adopted.

Article 162 was added to the Constitution.

*

Article 162-A

Mr. President: Now I put article 162-A which has been moved as amendment No. 196, List VI, by Mr. Kapoor.

The question is:

"That with reference to amendment No. 2381 of the List of Amendment and No. 139 of List II (Third Week) after 162 the following article be inserted :-

`162-A. The Chairman or the Deputy Chairman not to preside at sittings of the Legislative Council while a resolution for his removal from office is under consideration. At any sitting of the Legislative Council of a State, while any resolution for the removal of the Chairman from his office is under consideration, the Chairman from his office is under consideration, the

Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not,though he is

present, preside, and the provisions of clause (2) of the last preceding article shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman or, as the case may be, the Deputy Chairman, is absent.'"

The amendment was adopted.

New Article 162-A was added to the Constitution.

*

Article 163

Mr. President: We go to article 163.

(Amendment Nos. 2386, 2387 and 2388 were not moved.)

There is then no amendment to article 163.

The question is:

"That article 163 stand part of the Constitution."

The motion was adopted.

Article 163 was added to the Constitution.

*

New Article 163-A

Mr. President: There is the new article 163-A which has to be moved. That is amendment No. 39 List I.

The Honourable Dr. B.R. Ambedkar: Sir, it has to be held over.

Shri T.T. Krishnamachari: Sir, quite a similar article-article 79-A has been tabled and it is being held over, and conditions relating to this new article 163-A are more or less the same as those of article 79-A.

Mr. President: Then it is passed over. Article 164.

Shri T. T. Krishnamachari: I suggest that this particular article might be held over for this reason. We have difficulties in regard to making up our minds about joint sittings which also occur in subsequent articles. We have not yet made up our mind really how to fit it in with some of the new ideas that have come into being by the acceptance by the House of certain amendments. I suggest, therefore, that this article may be held over.

Mr. President: Is it the wish of the House this should be held over?

Honourable Members: Yes.

*

Article 165

Mr. President: Article 165; to this there is the amendment No. 2397 by Mr. Tahir.

(Amendment Nos. 2397, 2398 and 2399 were not moved.)

There is then No. 2400, but that is a verbal amendment.

Shri T.T. Krishnamachari: The Chair has on previous occasions permitted Dr. Ambedkar to move such amendments, and I think the same practice may be continued and it may be move formally.

The Honourable Dr. B.R. Ambedkar: Sir, I move:

"That in article 165 for the words `a declaration' the words `an affirmation or oath' be substituted."

Mr. President: The question is:

"That in article 165 for the words `a declaration' the words `an affirmation or oath' be substituted."

The amendment was adopted.

Mr. President: Now article 165, as amended, is before the House.

The question is:

"That article 165, as amended, stand part of the Constitution."

The motion was adopted.

Article 165, as amended, was added to the Constitution.

Shri H. V. Kamath: Sir, how does this article find a place under this Chapter which is headed " Disqualifications of Members"? Article 165 deals not with disqualification but with a declaration.

Mr. President: That is a matter which may be looked into by Dr. Ambedkar.

*

Article 166

(Amendment No. 2401 was not moved.)

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That after clause (1) of article 166, the following new clause be inserted:-

`(1a) No person shall be a member of the Legislature of two or more States and if a person is chosen a member of the Legislatures of two or more States, then at the expiration of such period as may be specified in rules made by the President that person's seat in the Legislature of all the States shall become vacant, unless he has previously resigned his seat in the Legislatures of all but one of the States'."

This is a clause which provides for a case where a person is a member of the Legislatures of two States; the former clause dealt with a person who is a member of the Legislature of a State and of Parliament.

Mr. President: There is the amendment of Mr. Naziruddin Ahmed, No. 2403, but that is covered by the one now moved. No. 2404.

The Honourable Dr. B. R. Ambedkar: I move:

"That clause (2) of article 166 be deleted."

Mr. President: No. 2405 is covered by the previous one, I think.

(Amendment Nos. 2405 and 2406 were not moved.)

Mr. Mohd. Tahir: Sir,

I move:

"That sub-clause (a) of classes (3) of article 166 be deleted."

Sub-clause (a) says that if a member of a House becomes subject to any of the disqualifications mentioned in clause (1) of the next article, that is, article 167, his seat shall become vacant. But if a men is subject to the disqualifications mentioned under clause (1) of article 167, how can he become a member of the Legislature? It is not necessary to retain this clause because a Member cannot be a Member if he is disqualified under clause (1) of article 167.

(Amendment No. 2408 was not moved.)

Shri H.V.Kamath: Sir, I move:

"That in clause (3) of article 166, the following new sub-clause be inserted:

`(c) or is recalled by the electors in his constituency for failure to properly discharge his duties;

(d) or dies.'"

May I just mention one or two points about the second part of the amendment relating to the death of a Member? When I moved a similar amendment on an earlier occasion, my query remained unanswered. The point that

I raised then was whether a vacancy arises or not in the event of the death of a member. If we turn to articles 51 and 55 regarding the vacancy arising in the office of the President or Vice-President, it is explicitly laid down there that a vacancy will arise by reason of death, resignation or otherwise. here clause (a) refers to "otherwise" and (b) of course refers to resignation. here no mention is made about a provision in the event of death by which a seat becomes vacant. I do not see why for the President and the Vice-President such a thing is mentioned and we omit any such mention in the case of a Member of Parliament. We have such a provision in the Rules of Procedure in the Assembly which we adopted two years ago. The relevant portion of Rule 5 of those Rules reads:

"When a vacancy occurs by reason by death, resignation or otherwise."

I do not know whether it is sheer consideration of prestige that stands in the way of the Drafting Committee or Dr. Ambedkar accepting this amendment of mine. Speaking on my previous amendment, Mr. Sidhva said that if a member dies the "office" knows about it. I do not know which office he meant or which office will know it. Therefore, it is better to say in this article that a vacancy will arise also in the event of death of a member of the House.

Shri R. K Sidhva: I said-who will intimate to the office after his death.

Shri H. V. Kamath: That is what the honourable Member said. But which office will know it? where you have definitely stated that a vacancy will arise in the event of the death of the President or the Vice-President and it is also stated in the Rules of our Assembly, I do not understand why an omission should occur with respect to this article.

(Amendment Nos. 2410 to 2414 were not moved.)

Mr. President: I shall put the amendments moved by Dr. Ambedkar, one by one.

Shri H. V. Kamath: Will not Dr. Ambedkar answer the point raised by me?

The Honourable Dr. B. R. Ambedkar: I do not consider it necessary.

Mr. President: The question is:

"That after clause (1) of article 166, the following new clause be inserted :-

`(1a) No person shall be a member of the Legislature of two or more States and if a person is chosen a member of the Legislatures of two or more States, then, at the expiration of such period as may be specified in rules made by the President that person's seat in the Legislatures of all the States shall become vacant, unless he has previously resigned his seat in the Legislatures of all but one of the States.'"

The amendment was adopted.

Mr. President: The question is:

"That clause (2) of article 166 be deleted."

The amendment was adopted.

Mr. President: The question is:

"That sub-clause (a) of clause (3) of article 166 be deleted."

The amendment was negatived.

Mr. President: The question is:

"That in clause (3) of article 166, the following new sub-clauses be inserted:-

`(c) or is recalled by the electors in his constituency for failure to properly discharge

his duties;

(d) of dies.'"

The amendment was negatived.

Mr. President: The question is:

"That article 166, as amended, stand part of the Constitution."

The motion was adopted.

Article 166, as amended, was added to the Constitution.

*

Article 167

Prof. K. T. Shah: Sir, I move:

"That in sub-clause (a) of clause (1) of article 167, after the word `profit' the following be inserted :-

`or contract of building or of supply of any article, or is a shareholder in any joint stock company which has such a contract of building or of supply of any article.'"

The amendment portion would read :

"A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative council of State-

(a) if he holds any office of profit or contract of building or of supply of any article, or is a shareholder in any joint stock company which has such a contract of building or of supply of any article under the Government, etc....."

The old-time disqualification, arising out of the possibility of conflict of interests between one's own private interests and that of public service, had led to the insertion as a disqualification the holding of any office of profit. Under present conditions, however, the mere holding of an office of profit, that is to say, any post carrying some salary or allowance attached to it is scarcely a temptation to at least many likely candidates who have attained prominence in their business or profession, and whose other source of income may be much greater than Government salaries can possibly be.

This, however, does not make holding of a post of profit under Government the less a disqualification. I want, however, to add certain other things, which are, as we notice, far more likely to be sources of temptation to sacrifice public interest to private advantage, than mere holding of an office of profit. Whatever may have been the conditions in the days of Walpole, today a Government office as such hardly suffices to tempt a legislator or a candidate for the Legislature, who has a flourishing private profession, trade or business, wherein much greater prospects of gain can be had by contact with Government or membership of the

House.

One of the most considerable sources of temptation or corruption in these days of great building activity is that of a building contract. The possibility of enormous profits being obtained through large building and development projects, in which the State is interested directly or indirectly-and every day the State becomes more interested in those projects-will be a source of gain to such an extent that those who have it in their power to grant, and those who have such contracts, can afford to subsidise to any extent, if only people can canvass for them sufficiently, or help to obtain such contracts for them on easy terms from Government. The same applies to supply of nother materials on a large scale needed by a modern Government. A Member of the Legislature should, I think, be free any such temptation; and anyone therefore who holds such contracts, or who is interested as a shareholder even in a joint stock Building or Construction or Manufacturing company, or who is interested as a shareholder in a company which is supplying articles on a large scale-articles of building materials or for any other needed by Government, should be disqualified from membership of the Legislature. The number of such interests in very varied and large, and any one so interested ought to be, in my opinion, disqualified.

I am therefore, suggesting that if you wish your Legislators to be free from temptation, if you wish them to serve the public disinterestedly, and solely with an eye on public service, then I think it is necessary that you should accept this suggestion to disqualify any one interested, of the kind I have mentioned. It must be disqualification for candidature to the Legislature of the Centre as well as of a State. Sir, I move:

(Amendment No. 2416 was not moved.)

Mr. Mohd. Tahir:

Mr. President, Sir, I would like to move only the latter part of my amendment. Sir, I move:

"That after the words `Legislature of the State' the words `or any Local Authority of such State' be inserted."

Sir, the intention of my amendment is quite clear and obvious. I do not want to make any speech. If my honourable Friend wants to accept it, he may accept it.

(Amendment No. 2418 was not moved.)

The Honourable Dr. B.R. Ambedkar: Sir, I move:

"That for sub-clause (d) of clause (1) of artless 167, the following be substituted :-

`(d) if he has ceased to be a citizen of India or has voluntarily acquired the citizenship of a foreign State or is under any acknowledgement of allegiance or adherence to a foreign State.'"

Shri Mahavir Tyagi: What will be our position in regard to England, now that we are in the Commonwealth? Will our allegiance to the King be also a disqualification ?

Mr. President: That is a matter of interpretation of the Constitution.

The Honourable Dr. B. R. Ambedkar: That will be dealt with by the Nationality Act.

Shri Mahavir Tyagi: But we must know what it is....

(Amendment Nos. 2420 to 2423 were not moved.)

Shri H. V. Kamath: I think my amendment No. 2424 is a purely verbal amendment and I leave it to the Drafting Committee.

Mr. President: I think it is of a substantial nature.

Shri H. V. Kamath: If that be so, I will move it.

I move:

"That in sub-clause (d) of clause (1) of article 167, after the semi-colon at the end, the word `or' be added."

Sir, in a similar article dealing with disqualifications of members (article 83) the word `and' has been substituted by the word `or'. I think, Sir, the Drafting Committee will follow its own precedent and make a similar change here. That is why I said that it is a drafting amendment. Whether the word `and' is deleted, or in its place `or' is substituted, more or less comes to the same wise men of the Drafting Committee, because I am a mere novice in these matters. I thought `or' would be more appropriate, because if any one of these disqualifications arises-if a person is disqualified for any of these reasons-then the article will apply.

Mr. President: Dr. Ambedkar might consider it.

Shri H. V. Kamath: As I said, I leave the decision to the wise men of the Drafting Committee.

The Honourable Dr. B. R. Ambedkar: I think it is perfectly all right, Sir.

Mr. President: Won't they read cumulatively?

The Honourable Dr. B. R. Ambedkar: No, Sir, they won't read cumulatively.

Mr. President: If `or' is added it will put it beyond all doubt.

The Honourable Dr. B. R. Ambedkar: I do not think it necessary.

(Amendments No. 2425, 2426 and 2427 were not moved.)

Mr. Mohd. Tahir: I beg to move:

"That after sub-clause (e) of clause (1) of article 177, the following new sub-clause be inserted :-

`(f) if he is not registered as voter.'"

Sir, clause (a) to (e) of this article enumerate the disqualifications for being a member. I want that this should be included in this article so that if a man is not a registered voter he cannot become a member of the Assembly. If candidature is not restricted to persons whose names are on the roll, every man could come and file his nomination paper for election. Therefore it is necessary that a clause of this kind should be added.

Mr. President: The Honourable Member may move his other amendments, 2430 and 2432 also now.

Mr. Mohd. Tahir: Sir, in this amendment I move only the latter part. I move:

"That in clause (2) of article 167, after the words `Government of any State', the words for an local or other Authority subject to the control of such State', be inserted."

I am not making any speech.

Sir, as you have suggested I shall move this amendment 2432 also now. I am not moving the first part of it. The second part which I move runs thus:

"That in sub-clause (a) of clause (2) of article 167, after the words 'for any State', the words 'or a Chairman, a Vice-Chairman, a President, or a Vice-President of any Local or other Authority of

such State' be inserted."

I am not moving 2433.

Shri T.T. Krishnamachari: Sir, with reference to amendments Nos. 2419 and 2430 of the List of Amendments, I beg to move:

"That for sub-clause (a) and (b) of clause (2) of article 167, the following be substituted :-

`He is a minister either for India or for any such State.'"

Sir, the wording really follows the wording of a similar sub-clause in article 83 which has been accepted by the House. This is necessary because the reference in sub-clause (2)(b) to Part III of the first Schedule is one we are trying to obliterate, because we do not visualise the contingency of having to make a separate provision of this nature so far as the States in Part III of this Schedule are concerned. Any necessary provision to that effect will be made in a separate Chapter.

There are certain obligations imposed in the wording of sub-clause (b) as it stands which we would like to avoid and we feel that the wording "he is a minister either for India or for any such State" will be adequate for all purposes.

I hope the House will accept the amendment.

Shri Mahavir Tyagi: Sir, I hope you will not mind my saying a few words on this article-we have already passed a number of them today. I would like to ask Dr. Ambedkar to make it expressly clear as to what the expression `allegiance or adherence to a foreign State' occurring in his amendment signifies. Sir, `adherence' is a very wide term. Its meaning is not very exact." I wonder if our adherence to the Commonwealth will disqualify many of us, particularly our Prime Minister who was instrumental in our agreeing to some little adherence to a foreign State like England. We have recognised a foreign king to some extent by becoming a member of the Commonwealth. Now, will not that adherence disqualify a lot of us? If it does, then it is only Dr. Ambedkar who will remain in the House. We would all be disqualified. We have adhere to the Commonwealth and to the King of England who is a foreigner. Since the word `adherence' is extremely ambiguous I think some change in the wording of the amendment should be made or a promise be given by the Drafting Committee that it will not be left so ambiguous. Our relation with the Commonwealth and other Dominions may be interpreted as with a foreign State. This is not a matter of treaty. It is a question of permanent relationship that we have established. A treaty is a contract. Here it is not a treaty. It is actual adherence to foreign dominions. I would like Dr. Ambedkar to throw light on this issue. Either the wording should be changed so as to enable us to remain in the Commonwealth, or an assurance be given that the Commonwealth countries will not be deemed to be foreign States for the purpose of this article.

I am glad that Shri Mohanlal Gautam has not moved his amendment; otherwise many of us who have not passed the matriculation examination would have been disqualified. I would be treated as disqualified if the matriculation qualification were there. My education is hardly equal to the primary school. I only desire that such of our countrymen as are illiterates like me be not disqualified by these provisions.

Prof. Shibban Lal Saksena: Sir, I want to draw attention to two things. Sub-clause (e) says, `if he is so disqualified by or under any law made by the Legislature of the State".

In another article we have laid down that the Legislature of the State is empowered to lay down qualifications and here we empower it to lay down disqualifications. But then Dr. Ambedkar has assured us that Parliament will lay down qualifications and not the Legislature of the State. So I request Dr. Ambedkar to tell us whether this power will also be exercised by the Parliament or not. Here we say that the Legislature of the State can declare the public office the holding of which will not disqualify a person from being a member of the Legislature of the State. I think this thing should also be left to Parliament. The Parliament should lay down the public office such as

parliamentary Secretaries, Deputy Ministry etc., the holding of which will not disqualify the holders of these offices in a State from continuing to be member of the legislature. The laws disqualifying persons from being candidates for the legislature should also be uniform in all the States. Otherwise the result will be that every State will pass different laws and a person who can be a candidate for the membership of the Bombay legislature may not be able to be a candidate for the membership of the legislature in the United Provinces. This lacuna should be removed, and instead of `State legislature' we should empower `Parliament' to make uniform laws for all provinces.

Shri Brajeshwar Prasad: Sir, I am sorry that Mr. Mohanlal Gautam has not moved his amendment. I feel that there should be some educational qualifications for a member of the legislature. The impression has become prevalent that is not necessary to have any educational, administrative or judicial experience for a member of the legislature. A doctor, or an engineer or a lawyer has to undergo certain specific periods of specialised training. I consider that the role of the legislator is far more important that either that of a doctor, a lawyer or an engineer. But in order to become a legislator, it is considered to be enough if he is a demagogue, a loudtongued orator, a professional political dancer, a man with hundred faces and a confirmed scoundrel. I feel, Sir, that if we want to build up a decent system of government, some educational qualifications for legislators must be considered necessary. Sir, I have nothing more to say.

Shri M. Thirumala Rao (Madras: General): May I know,Sir, if the honourable Member used the word `scoundrel'? I should not hear him well. If he has used the word, is the word parliamentary?

Mr. President: That word should not have been used, if it has been used.

Shri T. T. Krishnamachari: It only follows the saying that politics is the last refuge of the scoundrel.

The Honourable Dr. B. R. Ambedkar: i rise only for the sake of my Friend, Mr. Tyagi, as he has asked me one or two pointed questions. As he himself says that he is an illiterate, I can very well understand hid difficulty in understanding the word `adherence'. I would therefore explain to him what the word `adherence' means. When one country is invaded by another country, what happens is this that the local people either out of fear or out of martial law sometimes give obedience to the laws made by the military governor who acts in the name of the invading country. Such a conduct is often excused while the invasion continues and the military occupation continues. It often happens that when there is no real necessity to obey the invader or the military governor, either because there has been a relaxation of control or because the hostility has ceased, certain people still continue to render obedience to the military governor or the invader. Their conduct under law is referred to as `adherence'. It is distinct from acknowledging. It is to protect this kind of case that the word `adherence' has been used.

My Friend, Mr. Tyagi, was also very much agitated over the question of who are to be regarded as foreign countries. I am sure about it that it is not the intention of my Friend, Mr. Tyagi, to involve me in any discussion about Commonwealth relationship which is a matter which has already been discussed and disposed of in the House, but I would like to tell him that I propose to introduce an amendment to article 303, sub-clause (1), to define what would be regarded as foreign country, and if my Friend, Mr. Tyagi has got Volume II of the printed List of Amendment gives power to the President to declare what are not foreign country. For the benefit of my Friend, Mr. Tyagi, I would also like to add one word of explanation. Many people seem to be rather worried that when a country is declared not to be a foreign country under the proposed amendment, or the Commonwealth Agreement, all such people who are inhabitants of those countries would ipso facto

acquire all the rights of citizenship which are being conferred by this Constitution upon the people of this country. I want to tell my friends that no such consequence need follow. The position under Commonwealth relationship would be this; In all the Dominion countries, the residents would be divided into three categories, citizens, aliens and a third category of what may be called Dominion residents residing in a particular country. All that would mean in this, that the citizens of the Dominions residing in India would not be treated as aliens, they would have some rights which aliens would not have, but they would be giving to the people of our country. I hope my Friend, Mr. Tyagi, has got something which will remove the doubts which he has in his mind.

Shri Mahavir Tyagi: I heartily thank you for the interesting speech that you have made.

Mr. President: The question is:

"That in sub-clause (a) of clause (1) of article 167, after the word `profit' the following be inserted :-

`or contract of building or of supply of any article, or is a shareholder in any Joint Stock

Company which has such a contract of building or of supply of any article.'"

The amendment was negatived.

Mr. President: The question is:

"That in sub-clause (a) of clause (1) of article after the words 'Legislature of the State' the words 'or any Local Authority of such State' be inserted."

The amendment was negatived.

Mr. President: The question is:

"That for sub-clause (a) of clause (1) of article 167, the following be substituted:-

`(d) if he has ceased to be a citizen of India or has voluntarily acquired the citizen ship of a foreign State, or is under any acknowledgment of allegiance of adherence to a foreign State.'"

The amendment was adopted.

Mr. President: The question is :

"That in sub-clause (d) of clause (1) of article 167, after the semi-colon at the end, the word 'or' be added."

The amendment was negatived.

Mr. President: The question is:

"That in sub-clause (d) of clause (1) of article 167, the following new sub-clause he inserted :

`(f) if he is not registered as voter.'"

The amendment was negatived.

Mr. President: The question is:

"That in clause (2) of article 167, after the words `Government of any State', the words `or any local or other Authority subject to the control of such State, be inserted."

The amendment was negatived.

Mr. President: The question is

"That for sub-clause (a) and (b) of clause (2) of article 167, the following be substituted :-

`He is a minister either for India or for any such State.'"

The amendment was adopted.

Shri T. T. Krishnamachari: The other two amendments of Mr. Mohd. Tahir fall to the ground because those clause are eliminated by the acceptance of the amendment I had moved.

Mr. President: Yes amendment Nos. 2432 and 2433 fall to the ground.

Mr. President: The amendment moved by Dr. Ambedkar and the other moved by Mr. Krishnamachari have been carried and I would put the article, as amended to vote.

Mr. President: The question is:

"That article 167, as amended, stand part of the Constitution."

The motion was adopted.

Article 167, as amended, was added to the Constitution.

Mr. President: We adjourn till 8 o'clock tomorrow morning.

The Assembly then adjourned till Eight of the Clock on Friday the 3rd June 1949.

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VIII

Friday, the 3rd June 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION-*(Contd.)*

Article 168

Mr. President: We shall take up article 168.

Shri T. T. Krishnamachari (Madras: General): Before taking up article 168, Sir, I would like to draw the Chair's attention to the fact that there is an amendment seeking the introduction of new article 167-A. This arises out of the issue raised by two amendments to article 168, amendments Nos. 2440 and 2441. It is felt that it would be appropriate to have those issues put in a separate article 167-A. I feel, however, the House has not had the time to consider this proposed article and I would therefore suggest with the Chair's permission that this may be held over to a later date, so that the House may have enough time to digest the contents of this new article.

Mr. President: I was thinking of taking it up with amendment No. 2441. If it is to be held over, then it is all right.

Shri T. T. Krishnamachari: The point is, it more of less covers the purpose of amendment No. 2441; but the procedure outlined is different. I think it would be better to give the Members some time to digest it. Therefore, I suggest that it may be held over so that we can take it up on a later occasion.

Mr. President: If the Members have no objection, I shall hold it over.

There is notice of a fresh amendment that a new article should be added, article 167-A, which deals with the question of disqualification of members and suggests that the question whether a Member has incurred a disqualification or not will be dealt with in a particular way. The suggestion is that it should be held over. The notice is in respect of amendment No. 2441 which is to article 168; but it comes more properly here. In any case, the idea is that it should be held over for the present so that the Members may consider it.

We shall take up article 168 now.

The motion is:

"That article 168 form part of the Constitution."

The first three amendments 2434, 2435 and 2436 and 2436 I think, are of a drafting nature.

Mr. Naziruddin Ahmed (West Bengal : Muslim): Yes, they are of a drafting nature.

Mr. President: Amendment 2437 : this is covered by this new article which is proposed, 167-A. We may leave that over.

(Amendment Nos. 2438 and 2439 were not moved.)

Mr. President: Amendments 2440 and 2441: these arise in connection with the new article proposed. We may leave these over.

There is no amendment moved to article 168. Does any one wish to say anything about the article?

Shri Lakshminarayan Sahu (Orissa : General): *[Mr. President, I do not think there is any particular necessity for retaining article 168 in our Constitution. There is already enough provision in the Constitution to deal with such persons as are not members or do not possess the necessary qualifications but enter the House and sit there as members. We can turn them out of the House, or can prosecute them for trespassing and thereby they would be awarded due punishment. Therefore, it does not appear proper to me, Sir, to have an exclusive article for this purpose. I do not think there is any advantage in providing for an additional article like the present one. My submission is that they should be treated as trespassers and punished accordingly.]*

Mr. President: The question is:

"That article 168 stand part of the Constitution."

The motion was adopted.

Article 168 was added to the Constitution.

Article 169

Mr. President: We take up article 169.

(Amendment Nos. 2442, 2443, amendment to amendment, No. 141, and 2444 were not moved.)

No. 2445.

Shri Jaspat Roy Kapoor (United Provinces : General): Sir, I beg to move:

"That in clause (4) of article 169, after the words `a House of the Legislature of a State' the words `or any committee thereof' be inserted."

Sir, after my amendment is incorporated in clause (4) of article 169 it will read thus:

"The provisions of clause (1), (2) and (3) of this article shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise take part in the proceedings of, a House of the Legislature of a State or any Committee thereof as they apply in relation to members of that Legislature."

The object of this amendment is that any person, though not a member of the Legislative Assembly, if he is called upon to appear before or act in a committee set up by the Legislature, he shall have in respect of whatever he says or does there the same privileges as have been extended to members of the Legislature. Without such immunity being extended to persons who are invited to appear before or act on a Committee set up by the Legislature it would be very difficult for such persons to act freely, with absolute freedom and without any reservation. A similar amendment of mine in relation to the privileges of such persons when they were to appear before a Committee set up by the Central Parliament has already been accepted by this House and for the same reasons I would submit that this amendment also should be accepted.

Mr. President: Nos. 2446 and 2447 are not moved. The amendments and the article are open for discussion.

Shri H. V. Kamath (C. P. & Berar: General): Mr. President, I shall, by your leave, say a few words with respect to clause (3) of this article. I do not propose to repeat what I said on an earlier occasion when we were discussing the corresponding clause relating to the privileges of members of the Central Parliament. But I should like to invite the attention of Dr. Ambedkar and also of the House to the reaction among the people as well as in the Press to the clause that we adopted on that occasion. I have no doubt in my own mind that Dr. Ambedkar keeps his eyes and ears open, and cares to read some of the important papers daily or at least has them read to him daily. Soon after this clause relating to the privileges of members of Parliament was adopted in this House, most of the Press was critical of the way in which we had dealt with the matter. Even a Conservative Paper such as the *Hindustan Times* remarked that it was highly undesirable for us, drafting a written Constitution for our country, to legislate or to insert something in our constitution by reference to something in the unwritten constitution of another country. Britain, as the House is aware, has an unwritten Constitution though this particular measure may be written down in some document. I believe that when that clause was adopted, our Constitutional pandits here, our experts, our experts, Dr. Ambedkar, Mr. Alladi and others of their way of thinking laid the flattering unaction to their souls that, the House of Commons being the Mother of Parliaments, we were doing the wisest thing in the world by stating something with reference to that body, the House of Commons, about which however most of us here are blissfully ignorant. Many of the Members here who spoke on that occasion remarked that they did not know what the privileges of the Members of the House of Commons were, and some of the papers and some of the comments on this particular aspect of our work was that the Drafting Committee more or less shirked, "scamped", its work. They could have at least drafted a schedule and incorporated it at the end of the Constitution to show what the privileges of the members of the House of Commons were. That was not done, and simply a clause was inserted that the privileges obtaining there will obtain here as well. Nobody knows what those are, and a *fortiori* nobody knows what privileges we will have. Our Parliament presided over by Mr. Mavalankar has adopted certain rules of business and procedure tentatively, and has also appointment or is shortly going to appoint a Committee of Privileges. I wonder why we could not have very usefully and wisely adopted in our Constitution something to this effect, that whatever privileges we enjoy as members of the Central Parliament will be enjoyed by members of the Legislature in the States. If at all there was a need for reference to any other Constitution, I think it was very unwise on the part of the Drafting Committee to refer to an unwritten Constitution, *viz*., the Constitution of Great Britain. There is the written Constitution of the U.S.A., and some of us are proud of the fact that we have borrowed very much from the American Constitution. May I ask Dr. Ambedkar whether the Privileges of the Members of the House of Commons in the United Kingdom are in any way superior to or better than the privileges of the members of the House of Representatives of the United States? If they are, I should like to have enlightenment on that point. If they are not, I think the reference to an unwritten constitution is not at all desirable. I am of course against any reference to another constitution. If necessary let us put in a schedule to our constitution, and say here in this article that the privileges and rights are as specified in the Schedule at the end. There is probably a desire to simplify matters, but to simplify matters is not always the proper way. If they wanted to simplify it for the sake of brevity, they should have thought of this alternative-a reference to a written constitution of some country in the world. That would not have been absolutely repugnant to me. But I would any day prefer a definite schedule in the Constitution showing what privileges shall be enjoyed by members of the Legislatures and of Parliament. This particular clause, to my mind, should be recast. We have passed one clause on an earlier occasion, but that is no reason why we should perpetrate the same mistake over and over again. I would, therefore beg of Dr. Ambedkar and his wise team of the Drafting Committee and the House to revise this clause, and if necessary, to go back to the other clause, if they are convinced of the wisdom of this course, and revise that also accordingly and proceed in a saner and a wiser manner.

Mr. Naziruddin Ahmed: Mr. President, Sir, I also desire to offer a few remarks on clause (3) of the present article. It was I who tabled an amendment to article 85, clause (3), and that was amendment No. 1624. There is another amendment which was tabled by me to the present article, namely, No. 2443. Each of these clause deals with the privileges of members by reference to those of the House of Commons. But I did not move the earlier amendment, nor this amendment, because I found that it would involve the Drafting Committee in tremendous labour. The greatest objection to these clause is that they attempt to define our privileges to be co-extensive with those of the Members of the House of Commons in the United Kingdom. These clauses has been copied from the Government of India Act, 1935. This clause has been bodily lifted from that Act and there has been no attempt to clarify the situation. As Mr. Kamath pointed out, this shows some amount of indolence on the part of the Drafting Committee. The difficulty is that the privileges of the Members of the House of Commons are nowhere collected in any systematic form. It is therefore, difficult for us, for any Member to be sure of our privileges. And it is also necessary and highly desirable not to postpone the matter any further. My feeling is that honourable Members should suggest the incorporation of a Schedule showing the list of privileges which, as far as they could be found out and decided upon today, may be incorporated in the Schedule, with a slight amendment of this clause, referring to that Schedule. I have a draft ready and I shall submit it for consideration of the House at a suitable stage, if requested. I think it highly desirable that the privileges which we are so anxious to protect, should be clearly known. I think they should be systematised and for the time being incorporated in the Schedule of the Constitution, to be further revised and elaborated by Parliament, if necessary.

Dr. P. S. Deshmukh (C. P. & Berar: General): Sir, on the last occasion too, I had supported Mr. Kamath and I do not want to repeat a single syllable of what I then said. So far as this clause is concerned, I have one concrete suggestion to make. I would be happy if reference to the House of Commons could be omitted. But if that is not possible, there is a second suggestion that I would like to make. Of course, I have not seen much consideration given to suggestions that I make, but still I hope this particular suggestion of mine will not fall on deaf ears. I would much rather that this subject of privileges was dealt with by a reference to article 85 that we have already passed. That would not only save an additional reference to the House of Commons, but it will also do away with a variety of privileges which may come to prevail as a result of this clause. The clause reads like this:

> "In other respects the privileges and immunities of member of a House of the Legislature of a State shall be such as may from time to time be defined by the Legislature by law........"

Instead of leaving it to each State Legislature to define these for itself, I would much rather have the privileges co-extensive of those enjoyed by Parliament, so that so long as the reference to the House of Commons remains, it may exist; but when we define various privileges it should be done only by the Central Parliament and not by each particular State differently, because they are likely to vary. I hope this suggestion of mine will be accepted, by which we will be saved reference in another place to the House of Commons. We will also be basing our Constitution on our own decision, by reference to article 85-so that even if the reference to the House of Commons of the United Kingdom remains there in article 85, the privileges enjoyed by the members of all the legislatures in all the States will be co-terminous and co-extensive and will not vary in any way. I feel this is a very sensible suggestion and I hope it will find favour with the Drafting Committee and the Honourable Dr. Ambedkar.

Pandit Thakur Das Bhargava (East Punjab: General): Sir, in relation to this article 169, I tabled an amendment which is amendment No. 2444, but I have not thought fit to move it. In regard to this section, apart from the general tendency of our Assembly to shelve inconvenient questions, which I deprecate very much, I find this reference to the privileges and immunities enjoyed by the members of Parliament of the House of Commons is undesirable. Not that I am ashamed of a reference to the House of Commons, but in a matter like this, if we do that , it will be again shelving the very important question which is within the scope of the activities of this Constituent Assembly. After all, if we cannot find a solution of this difficult question, may I known when the solution will be found? If today our jurists and our leaders cannot define the privileges of the members of a Legislature, I do not see at what point of time this would be possible. I know that the Members of this House have been enjoying certain privileges. Even if we cannot define them all, let us define such of them as we know. I know that the Members of this House and the Members of provincial legislatures, in some cases, have been enjoying the right of holding arms without licenses. I know the right of freedom of speech has been enjoyed, which is referred to in article 69. The question about liability to arrest was mooted in the

Punjab Assembly at one time, when the question arose as to whether a Member could be arrested while coming to or going from a Session of the Assembly. These and similar things are not written down anywhere, so far as the House of Commons is concerned. They are part of the unwritten constitution, and are among the privileges which cannot perhaps be reduced to writing. Be that as it may, I think still that a reference to the House of Commons is humiliating to an extent. Why should we refer to it? Our Parliament have been in existence for a very long time. There is no reason why we should not attempt to put in writing whatever our privileges are. If they are to be enlarged or restricted subsequently, that could be done, but this reference to the House of Commons to find our immunities and privileges is not justified.

Moreover, I have seen a tendency whenever any inconvenient question crops up, such as for instance the constitution of the Council of States or any such similar body, we want to keep it in abeyance and leave it to the Parliament to decide. When we are framing the Constitution we must take up questions which are of fundamental importance and decide them here and now.

Sir, I think it would be much better if the reference to the House of Commons is deleted. If we are not able to decide the question now we should leave it to our own legislatures. But if that is not possible, Mr. Jaspat Roy Kapoor's amendment must be accepted. He wants that the privileges and immunities enjoyed by the members of the provincial Legislature may be the same as those enjoyed by the members of the Central Legislature, whenever these privileges come to be defined.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, not very long ago this very matter was debated in this House, when we were discussing the privileges of Parliament and I thought that as the House had accepted the article dealing with the privileges and immunities of Parliament no further debate would follow when we were really reproducing the very same provision with regard to the State legislature. But as the debate has been raised and as my Friend Mr. Kamath said that even the press is agitated, I think it is desirable that I should state what exactly is the reason for the course adopted by the Drafting Committee, especially as when the debate took place last time I did not intervene in order to make the position clear.

I do not know how many Members really have a conception of what is meant by privilege. Now the privileges which we think of fall into two different classes. These are, first of all, the privileges belonging to individual members, such as for instance freedom of speech, immunity from arrest while discharging their duty. But that is not the whole thing covered by privilege.

Dr. P. S. Deshmukh: We do not want any enumeration of the privileges nor any lecture on how they are exercised. What we want to know is whether it is not possible to embody them into the Constitution. That is the real question.

Mr. President: He is dealing with the matter.

The Honourable Dr. B. R. Ambedkar : I am mentioning the difficulty. If we were only concerned with these two things, namely freedom of speech and immunity from arrest, these matters could have been very easily mentioned in the article itself and we would have had no occasion to refer to the House of Commons. But the privileges which we speak of in relation to Parliament are much wider than to the two privileges, mentioned and which relate to individual members. The privileges of Parliament extends, for instance, to the rights of Parliament as against the public. Secondly, they also extend to rights as against the individual members. For instance, under the House of Commons' power and privileges it is open to Parliament to convict any citizen for contempt of Parliament and when such privilege is exercised the jurisdiction of the court is ousted. That is an important privilege. Then again, it is open to Parliament to take action against any individual member of Parliament for anything that has been done by him which brings Parliament into disgrace. These are very grave matters-e.g., to commit to prison. The right to lack up a citizen for what parliament regards as contempt of itself is not an easy matter to define. Nor is it easy to say what are the acts and deeds of individual members which bring Parliament into disrepute.

Pandit Thakur Das Bhargava : We are only concerned with the privileges of members and not with the privileges of Parliament.

The Honourable Dr. B. R. Ambedkar: Let me proceed. It is not easy, as I said, to define what are the acts and deeds which may be deemed to bring Parliament into disgrace. That would require a considerable amount of discussion and examination. That is one reason why we did not think of enumerating, these privileges and immunities.

But there is not the slightest doubt in my mind and I am sure also in the mind of the Drafting Committee that Parliament must have certain privileges, when that Parliament would be so much exposed to calumny, to unjustified criticism that the parliamentary institution in this country might be brought down to utter contempt and may lose all the respect which parliamentary institutions should have from the citizens for whose benefit they operate.

I have referred to one difficulty why it has not been possible to categorise. Now I should mention some other difficulties which we have felt.

It seems to me, if the proposition was accepted that the Act itself should enumerate the privileges of Parliament, we would have to follow three courses. One is to adopt them in the Constitution, namely to set out in detail the privileges and immunities of Parliament and its members. I have very carefully gone over May's Parliamentary Practice which is the source book of knowledge with regard to the immunities and privileges of Parliament. I have gone over the index of May's Parliamentary Practice and I have noticed that practically 8 or 9 columns of the index are devoted to the privileges and immunities of Parliament. So that if you were to enact a complete code of the privileges and immunities of Parliament based upon what May has to say on this subject, I have not the least doubt in my mind that we will have to add not less than twenty or twenty-five pages relating to immunities and privileges of Parliament. I do not know whether the Members of this House would like to have such a large categorical statement of privileges and immunities of Parliament extending over twenty or twenty-five pages. That I think is one reason why we did not adopt that course.

The other course is to say, as has been said in many places in the Constitution, That Parliament may make provision with regard to a particular matter and until Parliament makes that provision the existing position would stand. That is the second course which we could have adopted. We could have said that Parliament may define the privileges and immunities of the members and of the body itself, and until that happens the privileges existing on the date on which the Constitution comes into existence shall continue to operate. But unfortunately for us, as honourable Members will know, the 1935 Act conferred no privileges and no immunities on Parliament and its members. All that it provided for was a single provision that there shall be freedom of speech and no member shall be prosecuted for anything said in the debate inside Parliament. Consequently that course was not open, because the existing Parliament or Legislative Assembly possess no privilege and no immunity. Therefore we could not resort to that course.

The third course open to us was the one which we have followed, namely, that the privileges of Parliament shall be the privileges of the House of Commons. It seems to me that except of the sentimental objection to the reference to the House of Commons I cannot see that there is any substance in the argument that has been advance against the course adopted by the Drafting Committee. I therefore suggest that the article has adopted the only possible way of doing it and there is no other alternative way open to us. That being so, I suggest that this article be adopted in the way in which we have drafted it.

Dr. P. S. Deshmukh: The honourable Member has said nothing about my other suggestion.

The Honourable Dr. B. R. Ambedkar: As I said, if you want to categorise and set out in detail all the privileges and immunities it will take not less than twenty-five pages.......

Mr. President: Dr. Deshmukh's suggestion was that in this article which deals with the legislatures of the States we might only say that the members of a State legislature will have the same privileges as Members of our Parliament.

The Honourable Dr. B. R. Ambedkar: That is only a drafting suggestion. For instance, it can be said that most of the articles we are adopting for the State Legislatures are more or less the same article which we have adopted for the Parliament at the Centre. We might as well say that in most of the other cases the same provisions will apply to the State Legislature but as we have not adopted that course, it would be rather odd to adopt it in this particular case.

Mr. President: I shall first put the amendment of Mr. Jaspat Roy Kapoor to the House:

The question is:

"That in clause (4) of article 169 after the words 'a House of the Legislature of a State' the words 'or any committee thereof' be inserted."

The amendment was adopted.

Mr. President: The question is:

"That article 169, as amended, stand part of the Constitution."

The motion was adopted.

Article 169, as amended, was added to the Constitution.

Article 170

Mr. President: To article 170 there are no substantial amendments except Nos. 2450 and 2451.

(Amendment Nos. 2448 and 2449 were not moved.)

Shri L. Krishnaswami Bharathi (Madras: General): Sir, I beg to move:

"That in article 170, after the words 'so made' the words 'salaries and' be inserted."

Sir, this is only to fill in an inadvertant omission in this article. Article 170 relates to salaries and allowances of members of the Assembly and the Legislative Council. This has two parts as the House will see. The first part makes provision for parliament to determine salaries and allowances etc. and then the next part says that till such provision is made the existing conditions shall continue. But in the actual wording it is only said "allowances at such rates" shall be continued. The House will know that in the provinces members of the legislature are receiving salaries at present. Unless this word "salaries" is added the members of the provincial legislatures would get no salary till provision is made in that regard. The article is in similar terms to article 86 which relates to members of Parliament. Members of the Constituent Assembly are not receiving salaries and hence provision is made only for allowances, whereas in the provincial legislatures the members receive salaries. It is therefore necessary that you must have the word 'salary', and I hope the House will accept the amendment.

Mr. President: The other amendment is 2451 in the name of Mr. Z. H. Lari. A similar amendment was discussed and rejected in regard to the Central Parliament. I find that Mr. Lari is also not here and so the amendment is not moved.

The Honourable Dr. B. R. Ambedkar: Sir, I accept Mr. Bharathi's amendment.

Mr. President: The question is:

"That in article 170, after the words 'so made' the words 'salaries and' be inserted."

The amendment was adopted.

Mr. President: The question is:

"That article 170, as amended, stand part of the Constitution."

The motion was adopted.

Article 170, as amended, was added to the Constitution.

Mr. President: There is notice of a new article 170-A in the name of Mr. Bharathi.

Shri L. Krishnaswami Bharathi: Sir, I am not moving it.

Mr. President: There is another in the name of Prof. K. T. Shah.

Article 170-A

Prof. K. T. Shah (Bihar: General): Sir, I beg to move:

'That after article 170, the following new article 170-A, be inserted :-

`170-A. It shall be open to the Legislature of any State to move the Supreme Court to restrain any other State from ill-treating or discriminating against or denying the Fundamental Rights of citizens to the individuals originating from the former State but who are settled or carrying on any trade, profession, occupation or business in the latter on the ground only of their not being original inhabitants of that State.' "

Sir, this is a very difficult matter which is already agitating the minds of many public men; and unless we find a remedy for it in a constitutional manner, it would raise its ugly head to very unpleasant proportions.

Generally speaking sir, I think it is of the same character and fraught with the same consequences as the communal evil which has resulted in the partition of the country. Inter-provincial jealousies and rivalries, which are already showing themselves in variety of ways, would mean a menace to the country's integrity and the maintenance of proper friendly feelings between the various parts of the country which require urgent attention. And if we desire a constitutional solution, if we desire a peaceful amicable settlement of such problems, a provision of the kind I am suggesting is of the utmost importance. The manifestation of this sentiment in some form of discriminating taxation, if not legislation, and in the form of discriminating appointments in services and other advantages in trade, occupation or business to the persons originating from one part of the country and carrying on business trade or profession in another, are already known to us. One solution which is suggested is the reconstitution of several parts of the country on some form of internal homogeneity, like language. But that creates new difficulties. I am afraid the sentiment is such that, unless a harmonious and amicable arrangement is provided within the Constitution itself, these dangers will not be obviated.

It is possible that you have entrusted powers of this kind to the Central Government of Legislature. On that basis, you may have a feeling of some kind of justice being given to the parties complaining. For my part, I am afraid that, by their very nature, the Central Government or the Central Legislature may be suspected of being actuated by political rather than purely judicial motives; and that is why I suggest that the power be vested in the legislature collectively of a State to move the Supreme Court, which will always give, presumably, decisions on purely judicial lines so that any grievance of the kind implied in the amendment may be solved by unimpeachable and unexceptionable judicial authority on lines exclusively of justice.

Sir, such collective grievances no doubt may be difficult to take to a court of law, in as much as they may not manifest themselves in specific injury or specific harm to any particular individual, who would then have a cause of action and would be able to take the matter to a court of law. I am full aware of the difficulty; and so I suggest the remedy that you make a provision of the kind suggested so as to provide a check, on sectional basis which would help to prevent and to a great extent minimise at any rate the grievances that may otherwise crop up.

The possibility of the country completely solidifying and the sense of oneness prevailing and prevading all over the country is not to be undreamt of. But at the same time it will take some time. And before that sense of single homogenous nationality runs through every corner of the country, I think a salutary provision of this kind will be very helpful to avoid difficulties the magnitude of which I for one am afraid to contemplate. Hence my suggestion which I hope will be accepted.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, I only wish to draw the attention of Professor Shah to the fact that under articles 9 to 10 we have already provided that there shall be no discrimination against any citizen on the ground of race, caste, place of birth etc., and that no citizen shall, on grounds only of religion, place of residence or birth etc. be ineligible or discriminated against for any employment or office under the State. As there are these provisions against discrimination on the basis of provincialism there seems to be no necessity to make this provision in a separate article as is here contemplated. My Friend wants that the Legislature of the State should move the Supreme Court. I think it is not proper to overdo the fear of provincial feelings and jealousies. Individuals can get their remedy in civil courts. I think that by making this provision we shall be increasing provincial jealousy rather than diminishing it.

Shri H. V. Kamath: Sir, I feel that there is no valid reason for the insertion of an article of this nature at this stage. Professor Shah has drawn the attention of the House to the increasing inter-provincial or inter-State jealousies based on various considerations such a language, caste, etc. But, as Professor Shibban Lal Saksena has pointed out, the Chapter on Fundamental Rights has guaranteed these rights and their enforcement under article 25 and 13. It may be argued that article 25 confers the right on an individual and not on a corporate body to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by Part III. I do not know how the juristic, legal and constitutional experts will at a later date interpret this article 25. To my mind it confers the right on the individual only and not a corporate body such as a legislature or some other organisation. But the suggestion of Professor Shah is a remedy which in fact may be worse than the disease. He wants to prevent or alleviate as far as lies in human power the rousing of inter-provincial jealousies and rivalries leading to discrimination of various kinds. But to cure that disease, investing the legislature of a State with the right to move the Supreme Court to restrain another State, is not the proper treatment. Such an action on the part of one State is liable to be seriously misunderstood by the other State as an attempt to meddle in the affairs of that State. This would be a fatal consequences. Therefore, if at all there is a remedy, we should follow the provisions of Part III, article 25. If the citizen of any State, who has not originated in that State but has settled there, has a grievance against the Government of that State, Part III has given him the right to move the Supreme Court. That should be adequate. There is no need for insertion of an article of this nature.

Dr. P. S. Deshmukh: Sir, I am not, like my Friends Professor Shibban Lal and Shri Kamath, content merely by saying that there is no need for the addition of a fresh article and that we should be content with the provisions regarding Fundamental Rights.

I wish to oppose very strongly the very suggestion that it should be competent for any State to complain against any other State on a matter like what is embodied in this article. I was really surprised that a man like Professor Shah should come forward and should try to protect the interests of the people for whom I never expected that he will have much sympathy. In making his speech he has referred to communal considerations also. It is of course the fashion to dub anybody as communalist, however much the critic himself is steeped in communalism and does, nothing else but help the people of his community, if not his own relatives only. This is the fashion of the day. Those who sponsor the cause of ninety per cent. of the people are dubbed as communalists, while those who never look beyond the small coterie of their own relatives and caste pose themselves as the most noble-minded and cosmopolitan-spirited persons. I would not have wished to refer to all this but I was really amazed that when there is nothing in this article about communalism, my learned Friend, Professor Shah, thought fit to refer to it. Actually he wants to protect the interests of the businessmen and the traders, the merchants and so on. Here I want to say with all the emphasis at my command that the trading and merchant profession in India has not proved an honest profession at all. It is a profession based essentially on cheating. If you see from day to day the way in which our food articles are sold, you will be amazed to see how they are adulterated, and he will be a bold man who says that he gets his food articles pure and unadulterated with something or the other. Irrespective of the profit they can make by legitimate means, the merchant class is not content with it. If under such circumstances, for instance, a State wants to bring a legislation against this sort of adulteration of foodstuffs on a large scale, my Friend Professor Shah wants that some State which only consists of traders and businessmen should be in a position to move the Supreme Court so that the Supreme Court may take steps against all the States or any State which passes such legislation.

There is another fact which should be taken into consideration and that is the kind of usury which has been going on in India. In times to come, States. *e.g.* the Samyukta Maharashtra when it comes into being, will have to take steps against usurers who have taken possession of thousands and lakhs of acres of land by no other process except by cheating and usury. I am sure that it is the apprehensions and fears of these people that my Friend Professor Shah was talking about. And I would not blame them if they feel apprehensive. But if they have apprehensions and fears, the remedy lies in reforming themselves and behaving justly and fairly with the other members of the society and not to base their existence and their prosperity on cheating others. That would be a better remedy than to empower any State to go to the Supreme Court for their protection so that their nefarious actions could go unchallenged and unnoticed. From that point of view I do not even like the fundamental right by which anybody could go anywhere and acquire any land or property, because the acquisition of property on a large scale itself means that it has not been done by fair means and if any State comes forward to stop these unfair means, it should be entirely free to do so and not be debarred from punishing these enemies of society.

Sir, for all these reasons I think that an article like this would give a charter to dishonesty, a charter to all sorts of anti-social activities that some of our people are accustomed to. I hope, Sir, this sort of thing will not be permitted. Again, Sir, the word 'minorities' is mis-interpreted. We understood minority and majority as between Muslims and Hindus. Later on the Sikhs came in and the Schedule Castes also were considered a minority. Now the term is sought to be applied to even small castes and communities amongst the Hindus themselves. The Hindu community as a whole is exploited from day to day by some of these minor Hindu castes and if there is a strong feeling against these castes, it is not based on communal feelings at all. It is based on the dislike of the exploitation of the masses which that caste has been carrying on. It is this exploitation that a State may well want to put a stop to, and provision like this should not be allowed to come in the way of any State acting in this direction.

Prof. K. T. Shah: In view of the arguments advanced, I would request the House to give me permission to withdraw the amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then we come to article 171.

Shri T. T. Krishnamachari: Since the provisions following the Chapter which begins with article 171 are more or less similar to the provisions which earlier the House has not yet decided relating to financial matters as well as the Supreme Court, we can not go back to those provisions and take up 109 again. Once we pass the financial provisions and the Supreme Court provisions, the provisions following the chapter which begins with article 171 will be easy to deal with as *mutatis mutandis* they are much the same.

Mr. Naziruddin Ahmed: We have not had notice that article 109 will be taken up today.

The Honourable Dr. B. R. Ambedkar: What does it matter:

Mr. President: Article 171 and 172 relate only to procedure.

Shri T. T. Krishnamachari: Article 172 relates to joint sittings and unless the composition of the upper House is decided, we will not be able to decide on the question of joint sittings. The articles following article 172 are much the same as those we have held over. But it is entirely left to the Chair to do what the Chair thinks fit.

Mr. President: There is notice, Mr. Naziruddin Ahmed, if you look at the Orders of the Day. Item No. 2 there refers to the remaining articles of Chapters II and IV of Part V, and Part VI. So there is notice that article 109 may be taken up today. Shall we go back to article 109?

Honourable Members: yes.

Mr. President: We shall take up article 109.

Article 109

The Honourable Dr. B. R. Ambedkar: Mr. President, Sir, I move:

"That in article 109, for the words `if in so far as' the words `if and in so far as' be substituted."

(Amendment Nos. 1896 and 1897 were not moved.)

Shri T. T. Krishnamachari: Mr. President, Sir, I move amendment No. 1898 standing in my name, and in amendment thereof, I move amendment No. 147 of List III, Third Week, which reads as follows:

"That with reference to amendment No. 1898 of the List of Amendments for the proviso of article 109, the following be substituted :-

`Provided that the said jurisdiction shall not extend to a dispute to which any state is a party, if the dispute arises our of any provision of treaty, agreement, engagement, sanad or other similar instrument which provides that the said jurisdiction shall not extend to such dispute.'"

Sir, amendment No. 1898 and the amendment that I have now moved are more or less the same except that the amendment that I have moved states the whole proviso as it would stand if proviso (i) is deleted. The reason why proviso (i) is to be deleted is, for one thing, it refers to disputes in which the State for the time being specified in Part III of the First Schedule is a party which opens out a vista of agreements and disputes which are to be prohibited from coming within the scope of this article by this particular proviso. The House will remember that right through our deliberations we have been trying to avoid a specific reference to States in Part III of the First Schedule. As I have stated before-and it has also been stated by Mr. K. M. Munshi and Dr. Ambedkar-where it is necessary to provide specifically for these States, if the need still exists at such time as we come to the end of the discussions of the articles in the Draft Constitution, it will be provided for in a separate chapter, and, therefore, this proviso No (i) is entirely unnecessary, and it is only to avoid this particular provision, which will put these States on a different footing from other States which now form the provinces of India, that I have moved this amendment. Sir, it does not present any complications as it is merely an elimination of proviso (i). I hope the House will accept it.

(Amendment Nos. 1899, 1900 and 1901 were not moved.)

Shri Brajeshwar Prasad: (Bihar: General): Mr. President, Sir, I rise to oppose article 109. I am never tired of repeating the same argument because I feel that repetition may have some effect and may bring about a change in favour of a unitary system of Government. I am not in favour of vesting the power that has been vested under this article into the hands of the Supreme court. The Government of India has always enjoyed the power of adjudicating in a dispute between two States. I fully understand the role of the Supreme Court in federalism, but I am opposed to both federalism and the Supreme Court. I feel that if there is a conflict between two States, the Government of India and a State, the decision of the Government of India should be final. The provincial Governments are subordinate Governments. I have nothing more to add.

Shri A. Thanu Pillai (Travancore State): Mr. President, Sir, I am very happy to accord my full support to the amendment moved by Mr. T. T. Krishnamachari. We find that in the Draft a distinction was sought to be made between States in Part III of the First Schedule and States in Part I, evidently on the ground of the difference in the political relations between the States in Part III and the Centre and between the States in Part I and the Centre. Sir, after this Draft was prepared, a good many changes have taken place. We find that in this Draft nineteen States are mentioned by name in Part III and the others were not mentioned because they were expected to be merged in large units. Now all the minor States have disappeared. Even of the nineteen units which were probably expected to remain, we now find only four or five and they are also fast coming into line with the other States, namely those that are known as the provinces. If there is any benefit that the people of the States in Part III should receive from the new Constitution that is to come into being, in my view it is right of approach to the Supreme Court. In these States till now, we have had no right of appeal to the Privy Council. Our courts are supreme. The High Court of Travancore exercises the same extensive powers in respect of that State as the Privy Council in relation to the provinces of India. Now conditions are changing and they must change. Mr. T. T. Krishnamachari said that provisions will now be made on the basis that the Supreme Court will have the same Jurisdiction over the States in Part I and in Part III : but that if the necessary agreement of the States in Part III be not secured in time, they will be excluded from the operation of these provisions. I fully hope, Sir, that such a contingency will not arise. Everybody concerned in this matter including those that are responsible for running the Government of India and those that have a right to speak on behalf of the States in Part III will I hope appreciate that the people of these States should have the right to approach the Supreme Court in the same way as the people of the provinces. There should be absolutely no distinction in regard to this right. With that hope I fully support the amendment moved by Mr. T. T. Krishnamacahari. I wish to refer to another point in this connection. Constitution-making in the States in Part III has now been held up by an order or direction from the Central Government. The Government of India are preparing a model constitution for the States. I do not know at what stage that work is now. The question is has to be decided, and that promptly, whether the Constitution for the States should be framed here in this Constituent Assembly or in the States themselves by their respective Constituent Assemblies. In any case, delay should be avoided and this Constitution that we pass here will not be capable of being put into force fully until the Constitution of the States in Part III is also framed and passed. Therefore, no time should be lost and necessary steps should be immediately taken in that regard. I do not think this Constituent Assembly will be out of order in seeing to it that the Constitution-making in the States in Part III is taken up soon and completed because this Constitution will not be capable of being put into force until that Constitution is also passed. I hope that that matter would also receive the earnest consideration of this House and the Government of India.

(Amendment Nos. 1899 to 1901 were not moved.)

The Honourable Dr. B. R. Ambedkar: I do not think it is necessary to say anything. I accept Mr. T. T. Krishnamachari's amendment.

Mr. President: The question is:

"That for the proviso to article 109, the following be substituted :-

'Provided that the said jurisdiction shall not extend to a dispute to which any State is a party, if the dispute arises out of any provision of a treaty agreement, engagement, sanad of other similar instrument which provides that the said jurisdiction shall not extend to such dispute.' "

The amendment was adopted.

Mr. President : The question is:

"That in article 109 for the words 'if in so far as' the words 'if and in so far as' be substituted."

The amendment was adopted.

Mr. President: The question is:

"That article 109, as amended, stand part of the Constitution."

The motion was adopted.

Article 109, as amended, was added to the Constitution.

Mr. President : We may go to article 110.

Pandit Thakur Das Bhargava: Sir, I have given notice of amendments Nos. 182 and 183 to add a new article 109-A. I would request you, Sir, kindly to allow them to stand over.

Mr. President: They may stand over. But, if as a result of any other articles being accepted, these amendments become infructuous, then you take that risk.

Shri T. T. Krishnamachari: may I clarify the position, Sir? The position is that this article 109-A stands on its own. It is entirely unrelated to any article that comes thereafter. Therefore, the danger that the Chair visualises will not happen and it will not become infructuous by reason of later articles being passed; the subject covered is a new subject. If the Chair wishes, it may be allowed to stand over.

Mr. President: If it does not become infructuous, it will be taken up later. These two amendments will remain for the present.

Article 110

Mr. President: The motion is:

"That article 110 form part of the Constitution."

Shri Raj Bahadur (United States of Matsya) : Mr. President, Sir, I beg to move:

"That in clause (1) of article 110, for the words 'a State' the word 'the territory of India' be substituted."

There are two principal reason for which I wish to move this amendment. The term 'a State' is definitely one which restricts and limits the interpretation and meaning of this article. We can very easily contemplate the possibility of acquiring by conquest or otherwise new territories for India. So far as the definition of "the territories of India" is concerned, at present article 1 clause (3) says:

"The territory of India shall comparise-

(a) the territories of the States;

(b) the territories for the time being specified in Part IV of the First Schedule; and

(c) such other territories as may be acquired."

If we retain the term 'a State' in article 110, territories that may be acquired hereafter, or that may of their own free will come to be included in the territory of India will not fall within the purview of this article and as such, it is necessary, in my humble opinion, that this change should be made.

Again, if we turn to article 111, it would be found that the term used there is not 'a State, but 'territory of India.' Article III, for instance, runs as follows:

"An appeal shall lie to the Supreme Court from a judgment, decree or final order in a civil proceeding of a High Court in the territory of India............"

Again in article 112, the same words "territory of India" are used. It is therefore necessary that in article 110 also, the same term 'territory of India' should be used and not 'a state'. For these reasons, I commend this amendment for the acceptance of the House.

(Amendment No. 1903 was not moved.)

Mr. Naziruddin Ahmad: Sir, with your permission, I shall move amendments 1904 and 1907 together, as they are related.

Sir, I beg to move:

"That in clause (1) of article 110, the words 'as to the interpretation of this Constitution' be omitted."

I also move:

"That in clause (3) of article 110, the words 'as to the interpretation of this Constitution' be omitted."

I think these are consequential amendments, consequential upon certain enactments that we have already passed in the Legislative Assembly. I submit, Sir, that these two amendments have a great constitutional importance.

In clause (1) of article, 110, it is provided:

> "An appeal shall lie to the Supreme Court from any judgment, decree of final order of a High Court in a State, whether in a civil, criminal or other proceeding, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Constitution."

I want to delete the last few words '*as to the interpretation of the constitution*'. The effect of this deletion would be that an appeal shall lie to the Supreme Court from a judgment, decree or final order of a High Court in civil or criminal or other proceedings if the High Court certifies that the case involves a substantial question of law. If we keep the words objected to, the result would be to confine the power to grant certificate to errors as to the interpretation of the Constitution, and it will therefore automatically prevent the High Court from granting certificate if there is an error of law which does not involve the interpretation of the Constitution. The effect would be the grossest violations of law laid down in the Criminal Procedure Code, Evidence Act, the Indian Penal Code etc., will go unchallenged. Even if there is the grossest error in the decision of a High Court, then the High Court will have no power to grant certificate in order to enable party affected to come to the Supreme Court.

The second amendment relates to clause (2). It provided that where the High Court has refused to give such a certificate the Supreme Court may, if it is satisfied that the case involves a substantial question of law *as to the interpretation of the Constitution*, grant special leave from such judgment. We are therefore reduced to this that the High Court can grant certificate for appeal if there is an error affecting the interpretation of constitution and under clause (2) the Supreme Court will grant leave if there is a substantial question of law as to the interpretation of the Constitution. I submit that this Draft was made at a time when the Privy Council was functioning. In the meantime we have passed a law in the Legislative Assembly empowering the Federal Court to deal with matters which were pending before the Privy Council relating to civil matters. At that time these two clause were fully justified. There was a division of labour between the Federal Court and the Privy Council. The Federal Court had jurisdiction to entertain appeals on other matters which involved interpretation of the Constitution- the Government of India Act. So far as the Privy Council was concerned it entertained direct appeals involving question of law but which did not involve a question of interpretation of the Constitution. If any interpretation of the Constitution was involved, there was an appeal from the Federal court to the Privy Council. Now that power of the Privy Council is gone. The powers of the Privy Council and the Federal Court are to be united in the Supreme Court. The powers to restrict the right of the High Court to grant a certificate for an appeal to the Supreme Court only when the interpretation of the Constitution is involved is now obsolete, and the Federal Court has been partly enjoying and the Supreme Court will enjoy of powers of the Privy Council also. In these circumstances the powers of the Privy Council and the powers of the Federal Court as hitherto enjoyed should be combined and should be given to the Supreme Court. In fact whether the question relates to interpretation of Constitution or otherwise, the High Court should be enabled to grant a certificate, and the Supreme Court should be enabled to grant special leave, irrespective of the question whether there is a question of interpretation of Constitution or not. There may be grave errors of law affecting numerous Acts other than the constitution, and obviously appeal should be allowed on certificate by High Court on those grounds too. Then there is article 112 which tries to save the situation to a certain extent "that the Supreme Court may in its discretion grant special leave to appeal from any judgment, decree or final order in any cause or matter, passed or made by any court or tribunal in the territory of India except the States for the time being specified in Part III of the

First Schedule, in cases where the provisions of article 110 or article 111 of this Constitution do not apply." Therefore wherever the High Court did not grant leave or could not grant under clause (1) of article 110 or wherever the Supreme Court could not grant special leave under clause (2) of that article, then the Supreme Court has a residuary power to grant special leave. The result would be that if there is a grave failure of law in the decision of a case not involving an interpretation of Constitution, the High Court would be precluded from granting any certificate. But under article 112 the Supreme Court alone would be enabled to grant any special leave . In fact a grave error of law will not empower the High Court to grant any certificate but it would enable the Supreme Court to grant special leave. To this extent there is a clash between clause (2) of 110 empowering the Federal Court to grant leave where the question of law involves the interpretation of the Constitution and article 112 allowing the Supreme Court to grant special leave in other cases. So by combining clause (2) of article 110 and article 112 the Supreme Court has been given power to grant special leave in any case involving a question of law. While this power is given to Supreme Court the High Court's power to grant a certificate is confined only to error of law affecting the interpretation of the Constitution. If an error of law is considered to be a serious matter which requires correction by Supreme Court, then the High Court should be enabled to grant certificate in order to make an appeal possible in the Supreme Court. Of course the Supreme Court is authorised to grant special leave but this would be highly inconvenient and expensive. A party may more easily apply to the High Court for a certificate, and a special leave matter before the Supreme Court will involve delay and expenditure which many persons may not be able to avail of. In these circumstances the net effect of the amendment suggested would be to allow the High Court to give a certificate of appeal to Supreme Court in case there is a substantial question of law.

Dr. Bakshi Tek Chand (East Punjab: General): In ordinary cases?

Mr. Naziruddin Ahmed: Yes.

Dr. Bakshi Tek Chand: That is covered by article 111 (1) (a) (b) and (c).

Mr. Naziruddin Ahmed: The difficulty is that these were drafted in conditions existing before we passed the Act depriving the Privy Council of its jurisdiction of appeal. Articles 110, 111 and 112 should be combined and redrafted. In fact there is plenty of duplication as well as of gaps. The simple thing is to say that where there is a question of law the High Court should be enabled to grant certificate and also the Supreme Court should be enabled to grant leave involving question of law.

Mr. President: Does No. 111 cover cases of criminal nature also?

Mr. Naziruddin Ahmad: No.

The Honourable Dr. B. R. Ambedkar: We are making provision for that by a separate article.

Mr. Naziruddin Ahmad: I am very grateful to you, Sir, for pointing out that article 111 does not make any provision for criminal cases. In fact this is one of the difficulties felt, and it is an anomaly that while we are enabled to go to the Federal Court for ordinary civil appeals, for criminal cases involving the life and property of a citizen we have to go direct to the Supreme Court. I suggest that a simple test would be instead of making a distinction between a question involving the interpretation of Constitution and other question of law, the test should be a question involving a substantial question of law, whether of interpretation of Constitution or otherwise. The distinction between the question of law involving interpretation of Constitution and other questions of law was justified under old conditions where there was a division of jurisdiction between the Federal Court and Privy Council and the question turned upon the law involving interpretation of constitution or other questions of law. Now, as the functions of the Privy Council and the functions of the Supreme Court will unite, this nice distinction which was very much justified in old circumstances is no longer necessary. Therefore this distinction should be entirely wiped out.

Sir, as you have pointed out, there is a lacuna so far as criminal cases are concerned and article 111 does not deal with them, and we are told that something else is coming up. We would like to know when this kind of a new infiltration of important provisions will stop. In fact, for poor Members like us, it is impossible to keep pace with the great amount of laxity with which serious amendments are showered upon the Members. It is difficult for us, without sufficient time to take count of all the implications of these sections. The Members should have an overall and complete picture of the whole thing. Now criminal matters are omitted, and we are informed that another provision is to be made. I respectfully suggest that articles 110, 111 and 112 should be reconsidered. Article 112, according to me, would be absolutely unnecessary. If we give power to the High Court to give certificates in questions of law, and when we give special leave to the Supreme Court where the High Court refuses to give it, then the entire matter would be covered. Instead of making a distinction between interpretation of the Constitution and other questions of law, instead of making a distinction between civil and criminal cases, the sole question will be a substantial question of law-one provision for the High Court and another provision for special leave to the Supreme Court. I think matters would be greatly simplified in the way I suggest and I think a fresh draft would be necessary.

Mr. President: There are certain other amendments to this article.

(Amendments Nos. 1905 and 1906 were not moved.)

Mr. President: There are two amendments arising out of amendment No. 1906, but I think they are covered by the amendment just now moved by Mr. Naziruddin Ahmed. It is in the same words, practically. Nos. 148 and 149.

Pandit Thakur Das Bhargava: I do not propose to move it.

Mr. President: Then No. 149 also goes.

(Amendment No. 1908 was not moved.)

Mr. President: No. 1909 in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: I move:

"That in clause (3) of article 110, for the words 'not only on the ground that any such question as aforesaid has been wrongly decided, but also,' the words 'on the ground that any such question as aforesaid has been wrongly decided and with the leave of the Supreme Court' be substituted."

The existing language is somewhat awkward and that is the reason why we are putting it in a different way so that it may read without any difficulty. The clause now will read as follows :-

> "Where such a certificate is given, or such leave is granted, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided, and with the leave of the Supreme Court, on any other ground."

(Amendment No. 1910 was not moved.)

Mr. President: These are all the amendments to this article. If anyone wants to speak, he may do so now.

Shri Alladi Krishnaswami Ayyar: (Madras: General): Mr. President, Sir, I would like to make a few remarks in regard to certain observations made by Mr. Naziruddin Ahmed. the scheme of the different article is as follows. So far as article 110 is concerned, irrespective of any value, if a substantial question as to the interpretation of the constitution arises, an appeal lies o the Supreme Court. That has no relation to the value of the subject-matter. It has relation only to the nature of the question raised. The question may be raised in any proceeding; it may be raised in a criminal proceeding, it may be raised in a civil proceeding. It may be raised in an action in which the amount or value of the subject-matter is lakhs of rupees or a few hundred rupees. Though it has no bearing directly on article 110, it is necessary to bear in mind the scheme of the different articles. Article 111 deals with the general right of appeal to the Supreme Court. But if in the course of a general appeal to the Supreme Court in which civil rights are involved between two parties, it will be open to a litigant to raise a constitutional question, though he has not availed himself of the remedy under article 110, because the theory is that when the whole appeal is before the Supreme Court, it will be open for the aggrieved litigant to raise a constitution question as incidental to the determination of the whole case. Now, the point has been raised that in every case of a wrong interpretation of law, irrespective of the valuation of the subject-matter, there must be a right of appeal to the Supreme Court. I believe that was the main substance of the argument raised by Mr. Naziruddin Ahmad. Now, such cases are provided for article 111 (c). These are Acts and Acts, regulations, orders and so on. Some immaterial point may be raised in the different courts in this great continent. It does not mean that every case, irrespective of the nature of the subject-matter must come up before the Supreme Court. Though the valuation may be a small one, still the point may be so important, may affect other cases, and may affect other litigants that it is as well that the Supreme Court is invested with jurisdiction to entertain an appeal. That is why in article 111, clause (c) the general provision is made "That the case is a fit one for appeal to the Supreme Court". It has no relation to the value. It may be of any value. But if it is a matter affecting the general community, or if it is of such special importance, the litigant will have the right to appeal to the Supreme Court, if the High Court certifies that the case is a fit one for appeal to the Supreme Court, if the High Court certifies that the case is a fit one for appeal to the Supreme Court. Even apart from article 111, you have article 112, which gives the Supreme Court the right to grant special leave "to appeal from any judgment, decree, or final order in any cause or matter passed or made by any court or tribunal in the territory of India." That gives a very wide power to the Supreme Court. There again it will to some extent depend upon the discretion that is exercised by the Supreme Court. It may be a civil case, a criminal case, a small subject-matter or a large subject-matter. But still under article 112, the litigant will have the right to appeal to the Supreme Court. There is absolutely no reason why the Supreme Court should not grant special leave if the case is of sufficient importance. Besides this, the Court has original jurisdiction in all cases involving fundamental rights. What other safeguard is necessary? Unless the courts are to be the sporting field of litigants there is absolutely no point in multiplying the right of appeal. You have a right of appeal, a right to seek the intervention of the Supreme Court when fundamental rights are involved. You have the right to seek intervention by way of special leave. Later on, I believe there will be an amendment even in regard to criminal cases to enable Parliament to invest the Supreme Court with criminal jurisdiction. I submit, Sir, that this much may be said of the Supreme Court. It has wider jurisdiction than any superior court in any part of the world, if only you survey the Constitution of other countries. Therefore under those circumstances, all the cases which do not involve constitutional questions, can come up before the Supreme Court and the litigant can have his wrong redressed before the Supreme Court.

So far as article 110 is concerned, it deals only with constitutional questions. It must raise a substantial question of law as to the interpretation of the Constitution. That is all that is necessary for the particular purpose: and if and when the appeal is lodged on a constitutional question, it will be open to the Court, not merely to deal with the constitutional question, but to go into the whole appeal and re-hear, so to speak, the whole case on merits, if the interests of justice demand it: and as a matter of fact, from my experience of the Federal Court, I can say that in several cases where an appeal has been lodged on a purely constitutional question, the Court has gone into the merits of the case and decided really on other points. Sometimes the constitutional point is like a peg on which the litigant wants to hang his own appeal. He merely starts a constitutional question. The High Court grants the leave. The matter comes up before the Supreme Court. Then the Counsel feels that there is not much force in the constitutional point and then he practically concentrates his attention on the other points in the case. That is good enough. But we need not go further and say that in every case in which a question of law arises in the whole of India in any court an appeal must lie to the Federal Court. It will certainly be in interest of lawyers and it may be in the interest of rich litigants but certainly, it will not be in larger interest of this country.

Shri Rohini Kumar Chaudhuri (Assam: General): Sir, I hope I am not rushing in where angels fear to tread ! But confusion was created in my mind by the speech of my honourable Friend. Mr. Naziruddin Ahmed. That was further enhanced by an amendment which was moved by my honourable Friend Dr. Ambedkar.

The plain question which I want to ask is whether, as in the past, a man convicted in a criminal case will have a right of appeal or of revision or anything of that kind to the Supreme Court or not. I think the lawyer Members of this House remember very well that Privy Council judgments were passed in at least two important cases where the persons accused had been ultimately saved from the gallows. I want to know whether the provisions which have been laid down in articles 110, 111, 112 and so forth have left any room for such a remedy being sought in the Supreme Court or not. We find. Sir, that we can get a certificate only if we infringe the Constitution. But if otherwise a serious case of miscarriage of justice arises there is no room for getting a certificate from the High Court or leave from the Supreme Court. It is only when it has been proved that this Constitution has been infringed that you can file an appeal and then you can raise other points if you infringed that you can file an appeal and then you can raise other points if you are allowed. As the article originally stood, once you can show that the Constitution has been infringed, and once you get a certificate on that ground either from the High Court or the Supreme Court, then you are entitled to appeal or raise other points not relating to the infringement of the Constitution at all.

New the gate is closed in the very first instance. It is very difficult to find out cases where the Constitution has been infringed. It is only when some legislation or some ordinance is passed in direct contravention of the Constitution do we find that there has been an infringement of the Constitution. But in most cases there will be no such instances of complain of. Would it, then, in those circumstances be possible for any person, who is convicted and sentenced to death, or has received any other sentence, to go to the Supreme Court by any pretext or not?

I do not understand why we say here that the moment the Constitution is infringed you can raise any point before the tribunal. It may be that the Constitution has been only slightly infringed. As a matter of fact the ordinary law has been violated. Even in those cases the Supreme Court is competent to give you relief. But if you cannot show that the Constitution has been infringed, no matter how serious the injustice might have been, you are not entitled to go to the Supreme Court at all. I find, Sir, that article 111 allows you to move the Supreme Court even in civil matters. After all, the loss of property and the loss of money cannot be as important as the loss of life and liberty ! You have given ample scope to those who are aggrieved by the judgment of a Civil Court to go the Supreme Court. But you have left no door open for persons convicted or punished for loss of liberty or life by a Criminal Court. That, I think, is taking away the rights which we today possess in going to the Privy Council.

Thirdly, I find that there is a reference in article 112 where it is stated that the Supreme Court may interfere or allow an appeal on other grounds if they are affected by any judgment. Article 112 says:

> "The Supreme Court may, in its discretion grant special leave to appeal from any judgment, decree or final order in any cause or matter passed or made by any court or tribunal in the territory of India.............."

I want to know whether the word 'judgment' here covers also 'judgment' in criminal cases.

Here in article 110 you specifically mention 'criminal court'. You say here that an appeal shall lie to the Supreme Court, from a judgment, decree or ordinary order of the High Court of a State, whether in civil, criminal or other proceedings. In article 111 you mention only about civil courts; you do not mention criminal courts at all. In article 112 you mention about judgment and you do not say whether it is a judgment in a civil court or a criminal court. In article 113 you clearly state that if there is any doubt about interpretation of any law or any proceeding in a High Court then a reference will be made to the Supreme Court. There also you expressly state about civil, criminal or other proceedings. So that, one can interpret, from a reading of these articles, that you expressly bar the Supreme Court from exercising jurisdiction in a decision of a criminal court, unless the party aggrieved can show that the matter relates to the interpretation of the Constitution. You put no such restriction with regard to article 111; you put no such restriction with regard to article 113. Therefore, Sir, the question I would ask is a very simple one. As at present, the Privy Council can interfere in criminal cases where mandatory provisions of the law are violated. We have no such provision in these articles and I shall be glad if a similar provision is made.

Further more, Sir, I have a grievance, so far as the amendment moved by the Honourable Dr. Ambedkar is concerned. Clause (3) of article 110 as it stood reads, as follows:

> "(3) where such a certificate is given, or such leave is granted, any party in the case may appeal to the Supreme Court not only on the ground that any question as aforesaid has been wrongly decided, but also on any other ground."

I submit, Sir, that the clause as it stands is much more liberal than the amendment which has been moved to this clause by Dr. Ambedkar.

Pandit Thakur Das Bhargava: Sir, I join the complaint of Mr. Naziruddin Ahmed that the provisions relating to the Supreme Court are so complex that they pass the understanding of an ordinary person like myself. The amendment that are coming in are not so clear as to give us an over-all, a clear picture of what the persons who are in charge of making the Constitution really mean.

Now, Sir, my honourable Friend, Mr. Naziruddin Ahmad has moved that the words relating to the interpretation of the Constitution appearing in clause (1) and (2) of article 110 may be deleted. Exception has been taken on the ground that if these words are deleted, the door will be left very much wide open that there will be such a flood of litigation that the courts will not be able to cope with it. Sir, my humble complaint in this respect is that we have been proclaiming day in and day out that we want to give equality of status and opportunity to all people, that in the eyes of law all people would be equal. Now, Sir, I beg to point out that in cases where the amount of property involved is Rs. 20,000 and above, there will be direct appeal to the Supreme Court and in cases which are fit once in which substantial questions of law arise in regard to civil matters, even then, if the High Court, certifies, there will be appeal to the Supreme Court. What about the poor people who do not possess so much valuable property? Why should not a man, say possessing in all property worth Rs. 5,000 which is involved in litigation have the right of appeal? The words relating to the interpretation of the Constitution, in my humble opinion, will so narrow down the beneficient effect of article 110, that in very few cases will appeals be allowed.

Then, so far as the criminal jurisdiction is concerned, my humble complaint is that it so appears that this Assembly is full of civil lawyers and they do not care about the criminal aspect of the jurisdiction of the Supreme Court. In article 110 the word "criminal" does occur, but there will not be many cases in which the question of interpretation of the Constitution will be involved so far as criminal jurisdiction is concerned. Substantial questions of law affecting the personal liberty and lives of individuals may arise, but those cases will be outside the purview of article 110, unless and they relate to the interpretation of the Constitution. similarly, article 111 also confines itself to civil cases. It will be pointed out, and it has been pointed that article 112 to a certain extent concerns itself with the criminal jurisdiction of the Supreme Court and further we have an amendment by Dr. Ambedkar that Parliament may frame laws in regard to the criminal jurisdiction of the Supreme Court. My fear is that it may take years and years to do so. What is then to happen between now when we are taking away the powers of the Privy Council and the time by when the law will be passed by Parliament? Many persons who would want to appeal to the Supreme Court will not be able to avail themselves of that opportunity. I want that any person who loses his life or loses his liberty should have an absolute right of appeal and not seek special leave to appeal. We know that the Privy Council does not interfere in ordinary cases, but there are many cases on record in which as soon as the conscience of the

Judges of the Privy Council was touched, they transformed ordinary questions into questions of law.

My contention, Sir, is that when we are making a New Constitution for this country we should liberalise the jurisdiction, we should see that in all cases, in all fit and proper cases, the ordinary man gets full justice. It may be that there may be special leave to appeal. But such leave may or may not be granted. It is a matter of discretion. I want that in such cases when a person has been sentenced to death, or there is conviction by the High Court after acquittal order is set aside on Government appeal, there should be an absolute provision for every person to have the right of appeal.

It has been stated by Shri Alladi Krishnaswami Ayyar that if the scope of article 110 is widened many cases will arise in respect of wrong interpretation of law and that there will be a flood of litigation. But may I submit that the words are 'substantial question of law'? May I ask why should the Supreme Court be given these powers at all, unless the intention is to secure uniformity in the territories of India with regard to law as the declaration of law by way of judgments and decisions will have the effect of law itself? Therefore my submission is that when a question of law is concerned, it is not that you are opening the flood-gates of litigation; on the contrary if such a question is decided once for all you will be closing the gates of litigation.

It has been said also that in the case of a death sentence if such opportunity is allowed, the amount of appeal work would be so large that you will require many judges. It may be so. I do not want to deny that the amount of work will be very great. But it does not matter to the country at large if A holds Rs. 20,000 worth property or B does it, if the High Court decides once for all as to who is to hold it. This is enough for protection of civil rights. But the question of life and personal liberty is different. Those persons who are condemned to death cannot be recalled to life it the wrong sentence is carried out. Life is much more important than any amount of civil rights. Therefore, I submit that whereas you provide two or three appeals in civil suits involving Rs. 20,000 or so, in these cases of sentence of death you provide only one appeal. It is a long-standing complaint, and all legal practitioners know it, that in many cases in courts injustice is done. If we look at the number of appeals accepted as compared with the convictions, it will be apparent in large number of cases appeals are accepted. It is quite true that a person does not get justice in the original court. I am not complaining of district courts. In very many cases of riots in which more than five persons are involved, a number of innocent persons are implicated. I can speak with authority on this point. I am a legal practitioner and have been having criminal practice for a large number of years. If we want to do justice to the people, we must make it a rule that in all questions of death an appeal as of right should be given to persons sentenced to death. When we proceed to consider the other articles we shall have to remember that if this article is not changed such appeals as I have mentioned will never come under its purview.

Shri Krishna Chandra Sharma (United Provinces: General): Sir, I rise to oppose the amendment of Mr. Naziruddin Ahmed. The whole scheme of this article has been taken from section 205 of the Government of India Act. The language used there is: 'if the High court certifies that the case, involves a substantial question of law as to the interpretation of this Act'. Here in this article we have substituted the word 'Act' by the word 'Constitution.' Article 111 is a reproduction of section 206 of of the Government of India Act. The cases mentioned by Mr. Naziruddin Ahmed are covered by article

111(c) 'that the case is a fit one for appeal to the Supreme Court'.

Then I may point out that criminal cases are covered by article 112. Those cases that are fit to go to the Supreme Court will be taken up by the Supreme Court for its final judgment. I submit that it is in impossible proposition that every case of murder or capital sentence should be sent to the Supreme Court, because in that event no less than a hundred judges would be required in the Supreme Court. Our judicial system has been modelled on that of the British. In England, before 1908, there was no appeal in criminal cases. It was only in 1908 that a provision for appeal was made. The argument against the appeal was that a jury and a judge decided the cases, the jury gave the verdict and the judge confirmed it; therefore, there is hardly any room for doubt as to the correctness or the validity of the judgment concerned. In India instead of the jury, in murder cases, there are the assessors and there is the judge. they decide the cases. There is a provision for the confirmation of death sentences by the High Court and an appeal lies to the High Court. I do not think that any further remedy in every case is necessary. As I said before under the circumstances, taking the facts as they are, it is impossible for the Supreme Court to deal with so many appeals coming from the different High Courts. Therefore, the provisions made in the Constitution are ample to meet the ends of justice and no further provision is necessary.

Prof. Shibban Lal Saksena: I wish to oppose this article, not from the point of view of a lawyer but from the point of view of person who values the civil liberties of the people. My Friends, Messrs. Naziruddin Ahmed and Bhargava, have made out a strong case for the deletion of the words 'as to the interpretation of the Constitution'. It is difficult to disagree with Sir Alladi when he warned us just now against too much litigation. One should always wish that the habit of litigation should be given up. I fervently hope that the present system of justice will be soon changed, so that justice pure and simple should be guaranteed to the people, cheaply and quickly. I have carefully studied the provisions regarding the powers of the Supreme Court and listened to the speeches made here. I am not able to find any provision which guarantees to the citizen who has been condemned to death or whose civil liberty has been taken away that he shall have an inherent right of going in appeal to the highest tribunal-the Supreme Court. I have seen many cases where people were condemned to death. I had the misfortune during the 1942 movement to live in a condemned cell for about twenty-six months and about thirty-seven men were hanged in my presence. There were eight cells for condemned prisoners in one block and I occupied one of them. So I was privileged to be with the condemned prisoners, to meet them and to talk and to live with them. Out of the thirty-seven men, seven were acquitted, ten had their sentences reduced to transportation for life and the rest twenty were hanged. I am sure Sir, that many who were acquitted were real murderers many who were sentenced to transportation for life were real murderers and many who were hanged were innocent. At least I was convinced in the case of seven persons that they were perfectly innocent. Still they were hanged. I do not say that the Supreme Court will always know by some divine inspiration what is true. That is why I stand for our abolition of Capital punishment altogether. But so long as we do not abolish the death penalty, I feel that the man who is condemned to death must have the right of appeal to the highest Tribunal. This must be an inherent right and not limited by any conditions. I am fully prepared to accept the advice of Shri Alladi on other subjects. I am prepared to limit the functions of the Supreme Court in hearing appeals in Civil Cases, but I do wish that the men who are condemned to death should have the inherent right of appeal to the Supreme Court and no man should be hanged unless the Supreme Court has confirmed the death sentence. The other day I was hearing at another place my learned Friend, Dr. Bakshi Tek Chand, when he told us that when he was a judge of the Lahore High Court about three hundred cases of murder went to him in appeal every year. Probably the combined Punjab was very turbulent, considering the number of murders there, but the East Punjab and the other provinces are not so violent. I do not think that in the whole of India, the number of murder appeals will exceed seven or eight hundred. I do feel that the people who are condemned to death should have the inherent right of appeal to the Supreme Court and must have the inherent right of appeal to the Supreme Court and must have the satisfaction that their cases have been heard by the highest tribunal in the country. I have seen people who are very poor not being able to appeal as they cannot afford to pay the counsel. I see that article 112 says that the Supreme Court may grant special leave to appeal from any judgment, but it will be open only to people who have no money and who are poor will not be able to avail themselves of the benefits of this section. Therefore in the name of those persons who were condemned to death and who though innocent were hanged in my presence, I appeal to the House that either in this article or in any subsequent article there must be made a provision that those who are condemned to death shall have an inherent right of appeal to the Supreme Court.

Mr. Frank Anthony : (C. P. & Berar : General): Sir, I had no intention to participate in this debate until I heard my colleague, Pandit Thakur Das Bhargava, place his point of view before the House. I think that his point of view is an unexceptionable one and one which we, If we are earnest about these provisions, are bound to accept. I have just looked at the provisions of articles 110 to 112 and I found that ample security has been given to the civil litigants. I cannot help feeling that the people outside are bound to say that these provisions have been conceived in the spirit of civil litigation, conceived by those who are interested as civil lawyers in continuing litigation, conceived by those who are interested as civil lawyers in continuing litigation. We have made no restrictions in the matter of civil appeals. Article 111 gives an absolute and automatic right of appeal to the Supreme Court in all suits involving twenty thousand rupees or more. I think this is an absolutely absurd limit. If we set the limit at one lakh or two lakhs, where is the hardship involved to the civil litigant? I confess I cannot understand why the Law Minister and those who think like him feel that this kind of justice must be done to the civil litigant in cases involving property of twenty thousand rupees and more, while on the other hand they say that where a man has been sentenced to death or has been given transportation for life it does not involve a denial of liberty or justice sufficient to give him an automatic right of appeal. My friends may say that article 112 gives a certain amount of discretion to the Supreme Court to allow any appeals in respect of criminal matters, but it is a matter of discretion and it is also qualified by the condition that it must involve a substantial question of law. I feel, Sir, as one who has had a lot to do with criminal cases and murder cases that we cannot give overdue or more than ample guarantees in criminal cases, particularly where a sentence of death or a sentence involving transportation for life has been imposed. As my Friend, Pandit Thakurdas Bhargava, has pointed out, any person who has handled criminal cases, particularly murder cases, will be able to testify from his personal knowledge to serious miscarriages of justice on account of misinterpretation of facts, tremendous diversity of conflict in the matter of legal interpretation. In India, in one High Court, in the case of two people where one inflicts a fatal injury while the other holds the deceased, both might be sentenced to death, while in another High Court, one might be sentenced for murder while the other may only be fined for having committed simple hurt. And yet my Friend says that where we have this diversity of judicial decisions, when a man has been sentenced to death or transportation for life, it does not involve sufficient reason or sufficient justification to give him an absolute right of appeal. The argument is made that if we give an absolute right of appeal in each case where a sentence of death has been passed, we will have to have scores of judges. This, Sir, is a tenuous and untenable argument. It is axiomatic that the volume of civil litigation in this country is probably ten to fifteen times the volume of criminal cases. Yet there is an absolute right of appeal in civil cases involving twenty thousand rupees or more. They have set greater sanctity on property than on human life. If we really want to restrict the number of judges, if we really want to restrict the volume of cases going to the Supreme Court, we must restrict the property value in the case of civil appeals. What real hardship will it cause to a bloated capitalist, to blackmarketeers if for cases involving less than three lakhs or four lakhs they are not given any kind of right of appeal to the Supreme Court? Can it be said that there is anything more than the merest justice in providing that a man who has been sentenced to death should have the absolute and unqualified right of appeal to the Supreme Court irrespective of whether the case involves a substantial question of law or not? Any other decision by this House, to my mind, will involve a perversion of what should be a fundamental juristic principle. My honourable Friends sitting on the back benches say that other countries of the world do not recognise an absolute right of appeal when a death sentence has been passed. Are we to be guided by precedents from other countries? If conditions in our own country are such as Pandit Thakur Das Bhargava pointed out, what criminal lawyer is not able to testify that in nine out of ten riot cases, two, three, four, five or six innocent people, as a matter of course, are involved? Innocent people have very often been sentenced to death after having been falsely involved in riot cases read with murder. I cannot understand the argument of my honourable Friends who say that article 112 which gives discretion to the Supreme Court to call a case before it when any substantial question of law is involved, gives more than ample protection to people whose liberty may be taken away from them, and I also concur in the fear expressed by my honourable Friend, Pandit Thakur Das Bhargava when he says that to leave it within the discretion of Parliament is to practise escapism of the worst type. It is more likely that the effect of such a clause will be still-born especially with persons exercising a powerful influence such as the Law Minister. Parliament may do nothing in order to ensure that persons who have been sentenced or have been deprived of their liberty will get any substantial rights of appeal to the Supreme Court. For this reason, Sir, I feel that this is a vital matter, and it is a matter on which I would request the Law Minister should defer consideration, if necessary, so that the matter can be reconsidered more fully by the House at a later stage.

Dr. P. K. Sen : (Bihar: General): Sir, the intention seems to be clear that article 110 provides for a special set of cases where an interpretation on of the Constitution is called for. Article 111 again provides for all civil cases which have not this special characteristic. I have no quarrel whatsoever with the wording or the spirit of either of these two sections. What I am concerned with is to place a few humble observations before this House in respect of article 112. I have very great sympathy with the point of view which has been expressed in this House by my honourable Friend, Pandit Thakur Das Bhargava. Although there is some provision with regard to special leave in article 112, it hardly give that particular emphasis to the question of appeals against death sentence that it should. I do not know nor do I suggest in what manner it should be done. It may be that it will rest with the Parliament to make provisions with regard to the acceptance of appeals in regard to cases that involve death sentence only or acceptance of appeals in regard to not only death sentence matters but also other important criminal matters. But one thing I am perfectly clear about in my mind and that is this, that in this question we should not by any means follow the British convention as a model one. In matters of punishment, in matters of penal legislation, Great Britain has been the most backward and the most conservative of all countries.

Whereas we find that in most countries of the West and in several big States, at any rate, the death sentence has been abolished, Great Britain is still talking about it and the greatest of efforts has not succeeded in persuading public opinion that there should be some other way of dealing with criminals of that kind than by death sentence; it may be by incapacitation; it may be by segregation from ordinary society, so that they may no longer indulge in their anti-social acts; it may be anything, but it should not be met by capital sentence. That is the view which has been taken by most countries. Now, I am not here, Sir, to ventilate those views, but what I am referring to is the tardy recognition by Great Britain that many of the offences should be excluded from the list of capital offences. This tardiness has been most apparent from the time of Henary VIII, when there were 263 cases of crime to be met by capital sentence. When we come to 1797, even then there were 160 offences which used to be capitally punished. Then in 1833, there was a more for removing certain offences from the list of Capital offences. Take for instance, shop-lifting, petty cases of theft, etc. The offenders used to be sentenced to death-there is a recorded case of a boy sixteen who had not been able to resist the temptation to lift a little doll from the shop-window and he was hanged for it. British opinion was so obdurate that it refused to recognise that in these cases there was any other way possible-either punishment or correction or segregation. In 1833, when this question again arose of removing certain of these offences from the capital sentence list, Lord Ellenborough in the House of Lords gave a solemn warning : "Your Lordships", said he, "will pause before giving assent to a Bill of this character which will endanger private property for all time". I am only citing these instances to show why up to this time the Privy Council has been so chary in admitting criminal appeals against decisions by the High Court. Only in a very few cases where 'natural justice' was being violated-an expression which it is very difficult to define or explain, the Privy Council was prepared to entertain appeals. I submit that under the new set-up in India, surely, we should not follow that as a model precedent. On the contrary, we should give all consideration to the appeal which has been made today, to include cases of death sentences in the list of those cases which should go up in appeal before the Supreme Court. I do not suggest here and now in what manner it should be provided. Before you put it in the Constitution, it will call for careful thought and deliberation and it would rest with Parliament, perhaps to provide for details of procedure. But I do wish that some provision be made in the Constitution which would lead the Parliament to attach to it the importance that it deserves.

A point has been raised about funds. A number of judges would be needed in a vast country like India, if such appeals are allowed.......

Pandit Lakshmi Kanta Maitra (West Bengal: General): We have absolutely no statistics of such cases from the different High Courts. We cannot say whether the number will be enormously large.

Mr. Frank Anthony : A small fraction of your civil litigation.

Pandit Lakshmi Kanta Maitra : We have not got any statistics of murder cases that come before the High Courts.

Dr. P. K. Sen : That is a very easy matter; it could be a ascertained with very little difficulty. What I submit is this. The sanctity of human life is being recognised more and more in recent times. There is no question that in the past there was no such sanctity attached to human life. Really the world was in a state of war and during war who cares whether lives are lost or not? But, now, there is no question whatever that in the West as well as in the East there is a great deal of sanctity attached to each individual human life. Are we not to recognise that in the new Constitution of India? Indeed, we have recognised that in the chapter on Fundamental Rights in several aspects. But, here, when it comes to a question of an appeal to the Supreme Court against death sentences, we say, "No money, we cannot afford to have so many judges"! Are we to be guided by these utilitarian considerations? Are we not to be guided by the extreme moral necessity of the case? Having been impressed with that moral necessity, we have got to find out ways and means in order that moral necessity may be met.

I have already submitted, Sir, that I am not moving any amendment or supporting any amendment. But, in the general discussion of this matter, I am expressing my individual views and I believe in those views intensely, with all the conviction that I can command. Therefore, I have no hesitation whatsoever in asking this House to lend its serious consideration to this matter, and not to shove it aside as a matter which is of no consequence whatsoever. I am not at all broaching the question now as to whether death sentence is right or wrong. That question requires careful reflection and deliberation. We cannot possibly go into that matter now, at any rate. But I do submit that we ought to provide in a handsome manner in the Constitution itself for a right of appeal to the Supreme Court in all cases of death sentence.

I thank you, Sir, for the opportunity you have given me to express my views.

Dr. P. S. Deshmukh : Sir, I had no intention of taking part in this debate. But, there is one aspect of this question which seems not to have been emphasised sufficiently and that is my excuse for intervening in this debate.

The point of view propounded by my honourable Friend Pandit Thakur Das Bhargava has been very ably supported by my honourable Friend Mr. Anthony as well as by Dr. P. K. Sen. I lend that proposition my wholehearted support not only from the joint of view of important criminal cases, but also from the point of view of personal liberty in India. There is of course a provision....

Shri B. Das : It is also a source of gain to the lawyer profession.

Dr. P. S. Deshmukh : If my honourable Friend feels concerned merely because of the gains to the lawyer's profession, and if that is his only grievance, it may be laid down that in certain categories of cases, lawyers shall not be permitted to appear. If he thinks that we are interesting ourselves simply for that reason and possibility of increased income to lawyers is the only reason why we want to support this, I am prepared for my part to say that in some of these cases, lawyers may not be permitted to appear, as in the case of the Gram Panchyat courts, where lawyers are prohibited from appearing.

We have in India at the present time the spectacle of personal liberties being very largely encroached upon in various places. If we take for instance the way in which provincial Governments are governing, the number of places where section 144 Cr.P.C. is promulgated, the length of time for which it is in existence, we shall be aghast; if we were to compare these figures with any other period even in the British regime the result would be staggering. So far at least as the Bombay province is concerned, I have received many complaints where the Bombay Government have taken to wholesale externment of persons from one district to another. This is a very good way of avoiding or stopping a person from applying under the *habeas corpus*. It is not thus inconceivable that even apart from any encroachment on the constitutional provisions, there can be an encroachment on the civil liberties of the people in cases which cannot be covered by the Fundamental Rights or where the assistance of the Fundamental Rights could not be invoked. The ingenuity of the law Minister of the future Indian States being unlimited, I feel that there is every necessity to protect the liberties of the people by providing for reference to the Supreme Court in cases other than those involving interpretation of the Constitution or a violation of the Fundamental Rights. Even from this point of view, therefore, the suggestion that there should be equal facility of approach to the Supreme Court in criminal cases as we have provided for in civil cases should also be considered. I hope this point of view will be appreciated and adequate provision made.

Pandit Lakshmi Kanta Maitra : Mr. President, Sir, this part of the Constitution raises certain very important issues which the House would do well very carefully to consider.

Article 110 and 111 are there and in them we have provided for appeals in civil matters. The question is, what are we going to do with regard to criminal matters. As a member of the legal profession, I think I would be failing in my duty if I were not to tell the House that there is a considerable volume of opinion in the profession itself that whereas in civil matters, we have given the benefit of appeal as of right, in criminal matters, the accused has no real right of appeal as such. The question is whether or not in the body of the Constitution itself we should provide for it. It has been suggested in an amendment to add article 112-B, that Parliament should be invested with power to legislate in this matter,-to confer on the Supreme Court power to entertain and hear appeals from any judgment or sentence of a High Court in the territory of India in the exercise of its criminal jurisdiction subject to such conditions and limitations as may be specified in such law. I maintain. Sir, that this article really raises a first-class issue whether or not we are going to place human life much below the value of property. If for property you would give a constitutional right of appeal, would you deny that in cases where death sentence is imposed? Such cases arise in one of two ways; either the Judge, agreeing with the Jury or Assessors whatever it may be, passes a death sentence; or a man has been acquitted by the Sessions Court, but an appeal is taken out by the Government against the order of acquittal and eventually the High Court reverses the judgment of the lower court and sentences him to capital punishment.

When the letter contingency arises-this conviction after acquittal, where is the forum where he can find redress against the judgment? There is no provision here. Perhaps that can be done under exceptional circumstances under special leave but there is no right as such. Perhaps it would be argued that if the volume of opinion in the country is strong, Parliament will take notice of that and will make the necessary law. I will join straight issue with those who hold that view, for what is going to happen in the interval? The Parliament may not be taking any action in this respect in the next five or six or even ten years. We do not know the future composition of the Parliament. Hence we want that this right should be embodied in the body of the Constitution itself. I would therefore suggest that article 112-B should be held over for the present. We should make another effort to get round our friends to the view that sanctity of human lives should be recognized. It has been argued and it will be argued always from the executive point of view that if capital sentences were allowed to be appealed against as a matter of course or as a matter of right, then what would happen is that we will have to employ a large number of judges for disposing of cases of Capital sentences. I do not know the real position-I do not know and I have no statistics before me, neither has the Drafting Committee any with them to show province by province the number of murder cases culminating in death sentences which have had to be disposed of by the High Courts. No figure is there. We have only been given a vague indefinite idea that in all the High Courts of India so many number of cases would come and that a large number of judges would have to be appointed. It that is so,-I would assume for the moment that argument is correct that there would be larger volume of work, I would say that would be justified in view of the dangers involved in it. Sir, we have been nurtured in the British Criminal Law of Jurisprudence. We have been reared up in its spirit, which had always taught us that a dozen scoundrels may go scot-free but one innocent man must not be sacrificed.

Shri Mahavir Tyagi (United Provinces: General) : Sir, 'Scoundrel is unparliamentary.

Pandit Lakshmi Kanta Maitra : My Friend must know that these words by themselves are not unparliamentary but when they are used in relation to a Member, they are unparliamentary. The whole conception of the law of benefit of doubt is based on that. When the circumstances are evenly balanced, and the case for and against the accused is evenly balanced, then we give him the benefit of doubt. When the scales of justice hang anything like even, they should be titled in favour of accused; the Judge should throw a few grains of mercy. That has been the cardinal principle of Criminal Jurisprudence which has held the field for one hundred years in the country. Who knows how many judicial murders we have not been committing by not giving the accused the final right of appeal on judgments which condemned them to death? Is this such a matter which should be lightly disposed of, simply because it might necessitate a few more Judges? We have provided for all manners of things in this Constitution but on this vital matter should we shirk our responsibility? Are the Constitution-makers going to shirk their responsibility, scared away by the prospect of having to employ more Judges? I do not think that is a consideration which should weight with them. Let me respectfully submit to them and I would respectfully suggest to my honourable Friend Dr. Ambedkar to hold his hands for a day or two more. Let us again meet and let us finally see if we can get something done for those classes of people who will be condemned to death and who will go practically at the final stage unheard. This is a very important matter; and personally speaking, I am definitely of the opinion that the right of appeal should be embodied in the body of the Constitution itself and not left to Parliament. With this point of view I agree entirely because that has been the view of the vast body of men in the legal profession. I have not known yet one single criminal lawyer of repute who does not hold the view that in this respect State legislation has been defective in as much as the State attaches more importance to property than to human life. I do not think this is a kind of argument which can be lightly brushed aside. I appeal to the House to consider this aspect.

Shri K. M. Munshi (Bombay: General): Mr. President, Sir, my honourable friend Mr. Anthony told the House that this section was moved in the interest of those who have been practising on the civil side. I cannot be guilty of being is interested because both criminal and civil litigants have treated me with complete impartiality. We have to consider this question from not only abstract theoretical principles but from the practical point of view. Now, if the House is pleased to turn to article 112 whereby appeals can be entertained by the Supreme Court by special leave, the House will see that the present jurisdiction of the Privy Council, to intervene where there is miscarriage of justice in criminal matters, has been retained to the fullest extent. So far as that approach is concerned, it is there.

The next question is whether there should be criminal appeals and if so, under what conditions. For that purpose there is an amendment of the Drafting Committee which is going to be moved by my Friend Dr. Ambedkar- Amendment No. 154-New Section 112-B. It runs thus-

> "Parliament may by law confer on the Supreme Court power to entertain and hear appeals from any judgment or sentence of a High Court in the territory of India in the exercise of its criminal jurisdiction subject to such conditions and limitations as may be specified in such law.

A further amendment is also going to be moved to this clause saying that there can be a criminal appeal even from final orders. So the scope of this amendment is going to be widened. The question therefore is whether we should put a provision of this kind in the Constitution or we should leave it to Parliament to enact a law which would consider the whole thing from all points of view. Conceding a right of criminal appeal to the Supreme Court would mean not less than one hundred judges of the Supreme Court. Even if it is a question of death sentences, it would require a very large number.

Pandit Lakshmi Kanta Maitra : Have you statistics?

Shri K. M. Munshi : Yes, we have. At least in one province it could not be less than 100 or 150 and we will have something like fifteen provinces in the future. It must mean that in cases of death sentences there would not be less than a thousand appeals per year. The further question is whether the appeals are to be first appeals or on questions of law, whether they are from death sentence or from sentence of any particular rigour. The other question has also to be considered whether there should be appeals in cases where conviction has been one secured in the High Court in appeals by the Government from acquittal. These cases have to be considered in their fulness. Not only that, we have also to consider the conditions under which such appeals should be allowed. All these require a number of well-considered provisions of law which can only be enacted by Parliament. No member so far as I could see is opposed to criminal appeals in appropriate cases. What is necessary is that the appeal should be entertained under certain restrictions and conditions, and it would be better to lay them down by provisions of an Act than by the Constitution.

I may point out one defect. It is only in cases of miscarriage of justice, on matters relating to the nature of evidence or procedure that the Privy Council gives special leave. Article 112 embodies this jurisdiction. On question of law in criminal matters however, there is no right of appeal. But the matter is sure to be considered by Parliament. If an appeal lie in civil matters from a substantial question of law, or where the case is considered a fit one for appeal, why should not there be an appeal on such grounds in criminal matters? All these considerations, I think, should be left to Parliament to consider, rather than to impose a liability on the Supreme Court to hear all criminal appeals irrespective of limitations or restrictions.

I further submit that this matter does not fall within article 110 or 111, and the discussion at this stage is premature. The proper time is when amendment to 112-B is considered. Article 110 relates purely to constitutional matters, and article 111 to civil matters. when we come to 112 then the question may be considered whether it is to be modified in some manner or whether it should go through as has been put forward by the Drafting Committee. I therefore, submit that this matter should not be debated in a hurry. That is my submission.

Shri Jaspat Roy Kapoor: Mr. President, Sir, I want to associate myself with what has been said by many a previous speaker, with regard to conferring of the right of hearing criminal appeals on the Supreme Court. A very strong, convincing and unrebuttable case has been made out by so many honourable Members of this House. It should convince everybody, excepting those who are bent upon not being convinced. I submit, Sir, that articles 110, 111 and 112 must, therefore, be amended suitably so as to cover the point of view urged so very ably by so many eminent lawyers who are Members of this House.

The one main ground which has been urged by the opponents of this view is that it will create a very large amount of work for the Supreme Court and a very large number of judges will be required to deal with those cases. I do not know whether we have in our possession any definite or even any approximate figures on the basis of which it could be said that the volume of work would increase to such an extent, even if the right of appeal is restricted to cases involving sentences of death. Sir, even if there be force in this contention of the opponents of this view that the volume of work would be very large, I submit that let them meet it, meet this point of view in a restricted manner at least. I would submit that let this right of appeal be limited only to cases which involve sentences of death. It may be said that even then, the number of cases would be very large. One very good suggestion has been thrown out by my honourable Friend Mr. Anthony that if you are afraid of the volume of work, that it would be too large, then some device should be adopted to reduce the number of civil appeals; and there seems to be no reason why, if we cannot afford too many judges, why we should not further limit the value of the civil cases which come up for appeal. We may increase it to Rs. 50,000 or a lakh of rupees. We hear so much about inflation of currency in these days and the value of money having gone down; I see no reason why the value of appealable civil case should not be increased to at least fifty thousand rupees or a lakh of rupees. Certainly the liberty of a person, the life of a person is much more valuable than Rs. 20,000 or Rs. 50,000 or even a lakh of rupees. In fact, the life of a person cannot be estimated in terms of money at all.

Apart from this, there is one very fundamental question involved here, and it is this. Should or should not a person convicted of an offence have at least one single right of appeal? I speak not of two or three, as we are prepared to give in the case of civil cases. The question is, should or should not a convicted person have at least one single right of appeal. I submit, Sir, this is a fundamental right for which provision must be made in the Constitution and the matter should not be left in the hands of Parliament. We know there are cases in which the accused secures an acquittal from the Subordinate Court, and some of the these cases go up in appeal before, the High Court-the local Government putting in an appeal against either the order of acquittal from the Subordinate Court, and some of these cases go up in appeal before the High Court-the local Government putting in an appeal against either the order of acquittal or against an order according to which a light punishment has been inflicted upon the accused-the question to be considered is, when such cases go up in appeal before the High Court and the High Court for the first time convicts an acquitted person and sets aside the order of acquittal of the lower court, and convicts the person to a sentence of death, the question is, should or should not such a person who has been convicted and sentenced to death for the first time, should he or should not he have the right of appeal? Must he not be heard even once against the order of the High Court sentencing him to death? It is a very fundamental question, and my submission is that even if you cannot accommodate our point of view in entirely, at least you must make some provision to the effect that in cases where a sentence of death has been inflicted for the first time by the High Court, on appeal against the order of acquittal of a subordinate court, in such cases at least an appeal shall lie to the Supreme Court. This is my submission. I think at least this much must be provided for in the Constitution.

Sir, I have nothing more to add, because so many eminent lawyers who are well competent to speak on the subject, so many lawyers who have had personal experience of conducting criminal cases extending over a period of thirty to forty years have almost unanimously urged that such a provision must be made in the Constitution itself. When so many experts are of this view. I see no reason why my honourable Friend Dr. Ambedkar should be so adamant on this question and not be prepared to yield even to this limited extent. Sir, he has always been very reasonable and has been trying to accommodate important points of view, but I am surprised to find that on this occasion, he is so adamant. I hope he does not want us to realise that he can be an exception to his own self on some occasions. I hope, Sir, that he will be prepared to consider this point of view, and I would suggest that he might hold a sort of conference with other eminent lawyers who are Members of this House and try to evolve a formula which would be acceptable to all.

Dr. Bakshi Tek Chand : After this lengthy debate. I have only a few words to say for the consideration of the House. There are three different aspects of the question which, if I may say, with respect, should have been kept distinct and considered separately and at the proper time.

Article 110, to which Mr. Naziruddin Ahmad has moved his amendment, is not concerned with several matters, which have been discussed by the previous speakers. That article seeks to replace section 205 of the present Government of India Act, which deals with appeals in cases in which questions of the interpretation of the Constitution are involved. In such a case, an unrestricted right of appeal is given, whether the case is of civil or criminal nature, or arises in other proceedings and regardless of the value of the subject-matter. This is a very valuable right which, I submit, must be preserved in the Constitution, subject, of course, to the conditions that the High Court certifies that the question of law involved is a substantial one. I would, therefore, ask the House to pass article 110, with the verbal alterations which have been suggested by Dr. Ambedkar. I do not think there can be any two opinions on that point. If honourable Members want to consider whether in ordinary civil cases the right of appeal to the Supreme Court should be cut down, or in ordinary criminal cases (where no appeal lies at present except by special leave), appeals should in certain cases, be allowed as of right, the proper time for discussion on these matters will be allowed as of right, the proper time for discussion on these matters will be when the House will be considering articles 111 and the new article 112-B. It is curious that so far as article 110 is concerned, no criticism has been offered in any of the speeches that have been delivered. Without being disrespectful, I may say, that Pandit Thakur Dass Bhargava and Mr. Naziruddin Ahmad want to bring in questions relating to articles 111 and 112-B, as if through a back-door. I, therefore, ask the consideration of article 110 be not confused by mixing it up with the other questions. I wish to repeat that article 110 confers a very valuable right as the experience of the last twelve years has shown. Honourable Members are aware of the cases involving the validity of Ordinances promulgated by the Governor-General or Governors of provinces or of laws passed by the Central Government or the provincial Governments since 1937, when the Government of India Act, 1935, came into force. In each case the matter was taken in appeal to the Federal Court which gave its decision on the questions whether such legislation was or was not *ultra vires* and set at rest very important and substantial questions. These questions arose in civil suits of which the value was much below Rs. 1,000. Similarly, in some criminal matters, the sentences were for imprisonment for small periods. But the constitutional questions involved were of very great importance. I submit, therefore, that this unrestricted right of appeal in cases involving substantial constitutional questions which is now available, should be kept intact in the future Constitution of free India. This is one aspect of the matter, which I will ask the House to keep in view and so far as article 110 is concerned, I would say that Mr. Ahmad's amendment be rejected and the article passed as it is.

Now we come to the second aspect, which relates to ordinary civil cases, for which provision is made in article 111. Mr. Anthony and some other honourable Members have observed that the framers of this Constitution were civil lawyers and that they have, in the interest of civil litigation, enlarged or maintained the jurisdiction of the Supreme Court with regard to civil matters. Fortunately for me, I am not one of the framers of this Constitution and that charge cannot be leveled at me. I may, however, draw the attention of Mr. Anthony and some other speakers, that in ordinary civil matters, the right of appeal to the Supreme Court has been reduced very considerably. The valuation limit under the present Civil Procedure Code is Rs. 10,000, but in the Draft Constitution it has been raised to Rs. 20,000. If you study the figures, you will find that in three-fourths of the cases, appeals in which go to the Privy Council, the value is between Rs. 10,000 and Rs. 20,000 and it is only in 25 per cent cases, the value is over Rs. 20,000. Therefore, article 111, as drafted has reduced appeals in civil cases to the Supreme Court by about 75 per cent. The charge which has been brought against Dr. Ambedkar and his colleagues is not at all correct. On the other hand judging from the amendments of which notice has been given and which have not yet been moved, many honourable Members seem to feel that the limit of Rs. 10,000 should not be raised to Rs. 20,000. Some others have given notice that the limit be fixed at Rs. 15,000. It cannot be said that the Constitution is conceived with a view to increase civil litigation or even to maintain the present volume of civil cases that go to the Privy Council. I submit, therefore, that Mr. Anthony's observation, besides being wholly irrelevant to article 110, which alone is at present before the House, is, if I may say so without any disrespect, completely misconceived.

Article 111 is except for this change in valuation, a mere repetition of section 110 and section 109 of the Civil Procedure Code which have stood on the Statute Book since at least 1861. Some of their provisions you will find even in the Charter (or Rules framed thereunder) of the Supreme Court of Calcutta, which was promulgated by the King in 1773. You will find similar provisions in Charters of the Supreme Courts of Madras and Bombay, which were promulgated in the early part of the 19th Century. But with regard to all the High Courts, when the High Court Act was passed in 1861 and the Letters Patent of the High Courts of Calcutta, Madras, Bombay and Allahabad were issued, you will find similar provisions and they have been incorporated in the Civil Procedure Code from that year up to now. Thus, so far as the type of cases in which the right of appeal in civil cases is concerned, article 111 keeps intact all those rights. But it raises the value and therefore, it indirectly cuts down the volume of civil litigation by 60, 70 or 75 per cent. The percentage was 75 seven or eight years ago when I studied the figures and I do not think the difference is very much today. In fact, in some cases in smaller provinces like East Punjab, Orissa and the Central

Provinces, there will be very few civil cases now coming up to the Supreme Court. In rich provinces like Bombay and West Bengal and Madras there may be more. In the U.P., which supplied a very large volume of civil litigation before the Privy Council, and also in Bihar, as there were big taluqdaris or zamindaris-the value of many cases was over Rs. 20,000. But now that taluqdaris and zamindaris will now be extinct, the number of cases from these provinces will also decrease. Therefore, there is no danger of civil litigation increasing to a large extent.

Now with regard to criminal matters. I will just place before you the present position in regard to appeals to the Privy Council in criminal matters. Under the law, as it stands today, there is no appeal to the Privy Council as of right in any case, whether the sentence is that of death or transportation for life or for a short period, or whether the question of law involved is very substantial. No High Courts has the power to certify any case as a fit one for appeal to the Privy Council.

It is only by special leave of the Privy Council that an appeal in a criminal case can lie. Such leave is not usually granted, even if there is a substantial question of law or there has been miscarriage of justice. But if there is a case in which the principles of natural justice have been violated, then the Privy Council might interfere. What those principles of natural justice are, has not been defined anywhere; they have not been explained with precision even in judgments of the Privy Council. If you examine the various cases which have been decided on appeal by special leave, you will not find- (I am speaking with very great respect)-any consistency; you cannot extract any rule as to when the Privy Council will grant leave and when it will not. I do not wish to take the time of the House of referring to cases in which a particular question was raised but the Privy Council refused leave; but several years later when the identical question was raised again, leave was granted on the ground that principles of natural justice had been violated. The whole thing is very indefinite. I do not know if the Supreme Court will follow the practice of the Privy Council; or lay down a different convention in granting special leave under article 112.

Pandit Thakur Das Bhargava : Does this article 112 of the Constitution give to the Supreme Court the same opportunity of doing justice, according to the principles of natural justice, as the Privy Council had, or are the rights taken away.

Dr. Bakshi Tek Chand : Article 112 says:

> "The Supreme Court, may, in its discretion, grant special leave to appeal from any judgment, decree or final order in any cause or matte, etc., etc."

This leaves the matter to the discretion of the Supreme Court and we cannot say what tradition the Supreme Court will build up in this matter. If they are going to follow the practice of the Privy Council- which they generally do at present in many civil matters-then the same old case *(Dillet)* will be followed, leaving the whole thing undefined. Ninety-nine per cent of petitions for special appeals will be rejected, resulting in so much waste of time and waste of money.

Sir, I will make one or two observations with regard to Mr. Naziruddin Ahmad's amendment. If this amendment is accepted, the result will be that so far as civil matters are concerned, it will come into conflict with article 111. In every civil case, regardless of value, a litigant can go to the Supreme Court, even if he cannot get a certificate from the High Court. I do not think, Mr. Naziruddin Ahmad wants it, or any of the other honourable Members, who have supported his amendment, wants it.

In view of the various amendments which have been moved, the Drafting Committee has thought it advisable that Dr. Ambedkar should move an amendment that Parliament may, by law, confer on the Supreme Court power to entertain and hear appeals from any judgment, or sentence of the High Court in the territory of India in the exercise of its criminal jurisdiction, subject to such conditions and limitations as may be specified in such law. I do not think that this will be sufficient. I think some provisions should be made in the Constitution, giving a limited right of appeal in certain specified circumstances. If you leave the whole matter to Parliament we cannot say when such laws will be passed, and in what form they will be. The result will be that for three years-or may be more-no provision for appeal to the Supreme Court in such cases will exist at all. That is an aspect of the matter which has caused much concern among honourable Members and some of them have suggested that provision for appeal in certain class of criminal cases, should be made in the Constitution itself. I submit that the proper place to discuss this matter is not when article 110 is being considered, but it will be appropriate when article 112-B is moved.

There is a great deal in what many honourable Members have said in regard to cases in which the High Court have reversed orders of acquittal and condemned accused persons to death. There are two other points. One is whether there should be an unrestricted right of appeal in every case when the accused has been convicted of murder, whether the sentence is death or transportation for life as Pandit Thakur Dass Bhargava and some other honourable Members want, or will the right of appeal be limited to cases when a sentences of death is passed or which involves a substantial question of law. Secondly, there might be other cases in which the sentence is a nominal one, but there is a question of law of very great importance and universal application. Again, there may be a third class of cases in which there is difference of opinion in the High Court as to the interpretation of certain provisions of the law e.g., some sections of the Evidence Act or the Criminal Procedure Code. Take, for instance, section 27 of the Evidence Act on the interpretation of which Full Benches of various High Courts have given conflicting decisions. Though the Evidence Act has been in force since 1872, for more than 75 years the matter is unsettled. It is in the public interest that such points should be finally settled by the Supreme Court. Article 112 will not cover such a case. At present, the Privy Council considers that where this does not involve violation of principles of natural justice, they will not grant special leave. There are obvious reasons, that in such cases, an appeal should be allowed, if the High Court certifies that it is a fit case for appeal. I do not think there is difference of opinion as to the desirability of allowing appeal in such cases. The only question is, whether this should be done in the Constitution or left for legislation by Parliament. The appropriate time to discuss this would be when article 112-B is being considered and, as that is not likely today, my suggestion is that the Drafting Committee may consider the whole matter again and bring it up later.

Article 110 does not deal with this matter and I submit that that article should be passed with the verbal amendment moved by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Sir, I cannot help saying that the debate has really gone off the track and the Members have really wandered far away from the immediate point raised by my Friend Mr. Naziruddin Ahmad, in his amendments Nos. 1904 and 1907. All that is before us is amendment No. 1904. According to that amendment what my Friend Mr. Naziruddin Ahmad wants to do is to suggest that the last few words of sub-clause (1) of article 110, namely the words 'as to the interpretation of this Constitution' should be deleted. I am sorry I was not able to hear exactly the grounds which he urged for the deletion of the phrase 'as to the interpretation of this Constitution'. Although I tried hard to catch his very words, all that I could hear him say as the reason for moving amendment No. 1904 was that he felt that those words were words of limitation, and that if those words remained there would be no provision for an appeal to the Supreme Court in cases where a question of constitutional law did not arise.

Mr. Naziruddin Ahmad : I believe I am right.

The Honourable Dr. B. R. Ambedkar: No question of certificate arises.

Mr. Naziruddin Ahmad : You wanted to delete that yesterday.

The Honourable Dr. B. R. Ambedkar: I think my honourable Friend Mr. Naziruddin Ahmad has probably not grasped the scheme of the articles which deal with the Supreme Court.

Mr. Naziruddin Ahmad : That is your stock argument.

The Honourable Dr. B. R. Ambedkar: We have in this Draft Constitution made separate provision for appeal in cases where question of Constitutional law arise, and cases where no such question arises. Appeals where constitutional points arise are provided for in article 110. Questions where constitutional law are not involved are provided for in article 111. The reason why this separation is made between the two sorts of appeals is also probably not realised by my Friend Mr. Naziruddin Ahmad. I should therefore like to make that point clear. There is going to come an amendment to article 121 which deals with the rules to be made by the Supreme Court. I have tabled an amendment to clause (2) of article 121 which says that wherever an appeal comes before the Supreme Court and it involves questions of constitutional law, the minimum number of judges, which would sit to hear such a case shall be five, while in other cases of appeals where no question of Constitutional law arises, we have left the matter to the Supreme Court to constitute the Bench and define the number of judges who would be required to sit on it by rules made thereunder. Now, that is an important distinction, namely, that a Constitutional matter coming before the Supreme Court will be decided by a number of judges not less than five, while other cases of appeals may be decided by such number of judges as may be prescribed by rule. My friend therefore will understand that the existence of the words 'as to the interpretation of this Constitution' does not in anyway debar appeals other than those in which constitutional law is involved, and he will also understand why we propose to put these two types of appeals in two separate articles, the number of judges being different in the two cases.

Now I come to the other point which has been debated at great length, namely, whether the Supreme Court should have criminal jurisdiction or not. As I said, so far as article 110 is concerned and the amendment moved by my Friend Mr. Naziruddin Ahmad is concerned, all this debate is absolutely irrelevant and beside the point and really ought not to influence our decision so far as article 110 is concerned. But inasmuch as a great deal of debate has taken place, I would like to say a few words. Members will find that there is provision in article 110 for a criminal matter coming before the Supreme Court if that matter involves a question of constitutional law.

Therefore that is one of the ways by which criminal matters may come up and the criminal matters that may come up under article 110 may be very small matters.

Again, there is article 112 where the jurisdiction of the Privy Council has been vested in the Supreme Court. For the moment I would like to draw the attention of honourable Members to the words ' decree or final order in any case or matter whether civil or criminal' so that the Supreme Court may, by special leave, draw to itself even a criminal' so that the Supreme Court may, by special leave, draw to itself even a criminal matter under the provisions of article 112. I have noticed that there is considerable feeling among criminal lawyers that there ought to be a provision......

Pandit Lakshmi Kanta Maitra : Practising criminal law.

The Honourable Dr. B. R. Ambedkar: I am sorry, 'practising criminal law', that just as article 111 confers upon the Supreme Court powers of hearing civil appeals, civil only, there ought to be a conferment of power upon the Supreme Court to hear criminal appeals, if not all appeals, at least appeals of a limited character such as involving death sentences. Now, I do not want to say that there is no force in the argument that has been used in support of this plea that the Supreme Court should have criminal jurisdiction but the question is how is it to be done? Should we do it by a specific clause in the Constitution itself that in the following matter there shall be a right to appeal to the Supreme Court, or should we permit Parliament to confer criminal jurisdiction of an appellate sort upon the Supreme Court? I am of the opinion for the moment-I do not wish to dogmatise nor do I wish to say anything positive at this stage; I have an open mind although, if I may say so, it is not an empty mind-that it might be enough at this stage to confer upon Parliament the power to vest the Supreme Court with jurisdiction in matters of criminal appeals. Parliament may then, after due consideration, after investigation, after finding out how much work there will be for the Supreme Court if it is conferred jurisdiction in criminal matters and how much work it will be possible for the Supreme Court to handle, having regard to the number of judges that the finances of this country could provide to cope with that work- I think it would be much better to leave it to Parliament because this is a matter which would certainly require some kind of statistical investigation. My other view is that rather than have a provision for conferring appellate power upon the Supreme Court to whom appeals in cases of death sentence can be made, I would much rather support the abolition of the death sentence itself. (*Hear, hear.*) That, I think, is the proper course to follow, so that it will end this controversy. After all, this country by and large believe in the principle of non-violence. It has been its ancient tradition, and although people may not be following it in actual practice, they certainly adhere to the principle of non-violence as a moral mandate which they ought to observe as far as they possibly can and I think that having regard to this fact, the proper thing for this country to do is to abolish the death sentence altogether.

Pandit Lakshmi Kanta Maitra : All the criminal courts also.

The Honourable Dr. B. R. Ambedkar: I think we ought to confine ourselves to the amendment moved to article 110 and the amendments moved by my Friend, Mr. Naziruddin Ahmad.

Mr. President: I shall now put the amendments to the vote.

The question is:

"That in clause (1) of article 110, for the word 'State' the words 'the territory of India' be substituted".

The amendment was adopted.

Mr. President: The question is:

"That in clause (1) of article 110, the words 'as to the interpretation of this Constitution' be omitted."

The amendment was negatived.

Mr. President: The question is:

"That in clause (2) of article 110, the words 'as to the interpretation of this Constitution' be omitted."

The amendment was negatived.

Mr. President: The question is:

"That in clause (3) of article 110, for the words 'not only on the ground that any such question as aforesaid has been wrongly decided, but also, the words 'on the ground that any such question as aforesaid has been wrongly decided and with the leave of the Supreme Court' be substituted."

The amendment was adopted.

Mr. President: The question is:

"That article 110, as amended, stand part of the Constitution."

The motion was adopted.

Article 110, as amended, was added to the Constitution.

Article 111

Mr. President: The first amendment is No. 1911 by Shrimati Durgabai.

Shrimati G. Durgabai (Madras: General): As the point involved has been covered by Dr. Ambedkar, I do not wish to move it.

Shri Raj Bahadur : Mr. President, Sir, I beg to move:

"That in clause (1) of article 111 the words 'except the States for the time being specified in Part III of the First Schedule' be deleted."

While moving this amendment, I may submit, Sir, That the articles relating to the powers and jurisdiction of the Supreme Court were drafted at a time when the process of integration and democratisation of the Indian States had only commenced and the final shape of things as they have finally emerged was not before the country and before the Drafting Committee. As such we find that the Supreme Court which is the ultimate court of appeal in the land was not vested with jurisdiction in certain cases. Article 109 vests the Supreme Court with jurisdiction in certain matters which relate to disputes between the States *inter se*. But this jurisdiction is limited and restricted to some extent in cases relating to the States mentioned in Part III of the First Schedule. In article 111 a distinction and discrimination has been made between the case of judgments, decrees or final orders in civil proceedings arising from the High Courts in the provinces of India and those arising from the High Courts in Indian States. Similarly a discrimination has again been made against the people living in the Indian States under article 112. It is obvious that the Supreme Court being the final court of appeal should have equal jurisdiction or authority over the entire territory of India. It is only proper that the Indian States where the system of judiciary has not been so well developed and well organised as obtains in the Indian provinces, should be given an opportunity for reorganisation and development of their judiciary under the supervision of the Supreme Court. It is very well known that the administration of justice that the Indian States people have so far been receiving from their judiciaries has yet to come to the level and standard of that available to the people in the Indian provinces. Similarly it is also well-known that we the people of the Indian States have been eagerly looking forward to the day when the Federal Court or the Supreme Court will be empowered to entertain and hear appeals from cases arising from the High Courts situated in the Indian States. When this is the general desire of the people of the Indian States, it is only proper that in articles 111, 112 or for the matter of that in 109, there should be no discrimination against the Indian States. May I submit, Sir, that the inclusion of the words "except the States for the time being specified in Part III of the First Schedule" detracts not only from the jurisdiction and authority of the Supreme Court over the entire territory of India, but also detracts from the fulness of the unity of our country and from the democratic freedom of the Indian States people. To a certain extent it detracts also from the sovereignty of the Sovereign Parliament of the Indian Nation *over* the Indian States. It appears to me that in case we retain these words in the articles concerned, we shall still be keeping alive a sort of lingering and intolerable vestige of the old order in our Constitution. The House and the Government of India stand committed to the principle of fully democratizing the Indian States. We also stand committed to bring the States on a par with the provinces. As such it is only desirable that all distinctions, discriminations and differences should be obliterated. We want no purple patches on the map of India. We want that the process of the integration and unification of our country should be accomplished at as early a date as possible. I may submit further that the Indian States people require greater protection for the vindication of their elementary fundamental rights than the people living in other parts of the country. It is well-known that feudalism and other forces which react against the fulness of freedom of the States People are still not fully put down in the Indian States and an outlet or opportunity should be there for the people of the Indian States to approach the Supreme Court, if need be, for the vindication of their rights and liberties. I may further mention that "the States specified in Part III of the First Schedule", if we retain the said words, would be invested with a sort of a better or different status, distinct or contrasted from the status given to the rest of the States in the Indian Union. It would place them on a level different from the Indian provinces. The High Court in the Indian States, and not the Supreme Court of the country, would become the final court of appeal for the people of such States. But this position should not be allowed to continue. I commend, therefore, this amendment for the acceptance of the House, in view of the fact that we have accepted the principle of unity and unification of the country, and hence there should be no distinction or discrimination between one part of the country and the other.

(Amendments Nos. 1913 to 1916 were not moved.)

Dr. Bakshi Tek Chand : Sir, I move:

"That in sub-clause (1) of clause (1) of article 111, after the words: 'not less than twenty-thousand rupees' the words' or such amount as may be fixed by law by Parliament' be inserted."

The object of this amendment is very simple. In the article as drafted the value of the cases covered by article 111 (1) (a) and (b), instead of Rs. 10,000 as it is at present for appeals to the Privy Council, is fixed at Rs. 20,000. If the article is passed as it is, and incorporated in the Constitution, this figure will remain as a rigid limit until the Constitution is amended. Conditions in the country may however change and it may be found that this limit is either too high or that it is too low and that it should be raised or reduced. In that case it will not be possible to make any change unless there is an amendment of the Constitution. That, of course, would be a long and cumbersome process. The limit is being raised, as the value of property has gone up greatly; what was worth Rs. 10,000 twenty years ago is now worth Rs. 20,000. Circumstances may, however, change. The value may go down again due to various causes and the limit may have to be reduced. Or, the value may rise higher still and it may be necessary to raise the limit from Rs. 20,000 to Rs. 30,000, Rs. 40,000 or more. To meet such a situation power should be given to Parliament by law to make the necessary change in the article. The amendment therefore seeks to introduce in the article the words "or such amount as may be fixed by law by Parliament."

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That with reference to amendments Nos. 1916 to 1919 of the List of Amendments, in sub-clause (a) of clause (1) of article 111, after the words 'twenty thousand rupees', the words 'or such other sum as may be specified in this behalf by 'Parliament by law' be inserted."

(Amendment No. 1918 was not moved.)

Mr. Naziruddin Ahmad : Mr. President, Sir, I beg to move:

"That in sub-clause (a) of clause (1) of article 111, for the words "twenty thousand', the words 'fifteen thousand' be substituted."

Sir, the present pecuniary limit is rupees ten thousand, but the Draft Constitution proposes rupees twenty thousand. Mine is a *via media* of rupees fifteen thousand. I want to raise it as the money has become cheap. I submit that the standard of appealability must not be very much. That is a very arbitrary standard of justice and that makes a distinction between the rich and the poor. If you have any distinction at all, I should think that the ordinary valuation should be slightly raised. There is a discretion in the Supreme Court which may in proper cases grant special leave; but I totally disagree with the amendment moved by Dr. Bakshi Tek Chand and Dr. Ambedkar leaving the matter in the hands of Parliament. I submit that as we are framing a Constitution and we are introducing a large number of small details- I would not say that they are irrelevant matters as Dr. Ambedkar is accustomed to say-a large number of small details, making the Constitution almost into departmental manual. In a vital matter like this which gives or takes away the right of appeal we must not shirk our responsibility and leave it to Parliament. The difficulty would be that valuation would fluctuate from day to day according to the temper of the House and according to the Constitution of the House. We cannot assume that the present House or the present strength of the various parties will remain the same for ever. Therefore, instead of allowing the limit to fluctuate with the temper of the moment, it should far better be fixed in the Constitution. You may make it ten thousand, fifteen thousand or twenty thousand; but it should be something fixed in the Constitution so that it may not be changed very frequently except by an amendment of the Constitution itself. This should be put on a more permanent basis. This is my reason for moving this amendment.

(Amendments Nos. 1920 and 1921 were not moved.)

The Honourable Dr. B. R. Ambedkar: Sir, I beg to move:

"That to clause (1) of article 111 the following proviso be added :-

"Provided that no appeal shall lie to the Supreme Court from the judgment, decree or order of one Judge of a High Court or of one Judge of a Division Court thereof, or of two or more Judges of a High Court, or of a Division Court constituted by two or more Judges of a High Court, where such Judges are equally divided in opinion and do not amount in number to a majority of the whole of the Judges of the High Court at the time being.' "

Mr. President: To this, there is an amendment by Pandit Thakur Dass Bhargava No. 151. Are you moving that?

Pandit Thakur Dass Bhargava : Not moving Sir.

Mr. President: We shall stop there and adjourn to Eight of the clock on Monday.

The Assembly then adjourned till Eight of the Clock on Monday the 6th June 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VIII

Monday, the 6th June, 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION - *(Condt.)*

Article 111-*(Contd.)*

Mr. President: We have to proceed with the discussion of article 111. We have got a number of amendments which purport of come under this article but which really do not belong to this article. On Friday last, I allowed a long discussion in connection with article 110 which was not quite germane to the article but that was with a view to shortening discussion later on in connection with the other articles which followed. In connection with 111 which deals with appeals in civil cases to the Supreme Court, I should like that this question should not be made complicated by bringing in amendments relating to appeals in criminal cases. If we dispose of 111 as it is with such amendments relating to appeals in criminal cases. If we dispose of 111 as it is with such amendments as may be acceptable to the House in regard to that article without bringing in appeals in criminal cases, I would allow all the amendments relating to criminal appeals to be moved at a later stage without reference to this article. That I think would lessen discussion and concentrate the attention of the House on the amendments which deal with criminal appeals.

Prof. Shibban Lal Saksena : (United Provinces : General): Sir, I have an amendment to 1912.

Mr. President: I have a number of other amendments.

Prof. Shibban Lal Saksena : You have finished them all, Sir.

Mr. President: But you can move that if you want to.

Prof. Shibban Lal Saksena : Sir, I beg to move:

> "That with reference to amendment No. 1912 of the List of Amendments, in clause (1) of article 111 before the words 'an appeal' the words 'subject to any law made by Parliament' be inserted."

This article 111 gives an absolute right of appeal to the Supreme Court in civil cases provided the case is a fit one for appeal to Supreme Court. Yesterday we saw that a similar right was not given in criminal cases even when death sentence was passed. I only want that the Supreme Court should not be flooded with civil cases and I want that the Parliament should from time to time review the working of the right of appeal to Supreme Court in civil cases.

Shrimati G. Durgabai (Madras: General) : What is the amendment?

Mr. President: It is with reference to amendment 1912 of the List of Amendments, namely,

"That in clause (1), before the words 'An appeal' the words 'Subject to any law made by Parliament' be added."

Prof. Shibban Lal Saksena : Sir, I only want that the Supreme Court should not be flooded with appeals against High Court judgments in civil cases.

Mr. President: The amendment is the same as the one which Shrimati Durgabai had given notice of-No. 1911. She did not move it. He is moving it is an amendment to another amendment.

Prof. Shibban Lal Saksena : Sir, I want that the Supreme Court should have the liberty to permit appeals to the Supreme Court only in those cases which Parliament by law decides. This will restrict the number of appeals in civil cases. Suppose today Parliament feels that appeals in civil cases should be allowed, it is quite possible that after some time the Parliament may feel that it is not necessary. So Parliament has the initiative and it has the power to take this right away after sometime. If Parliament has not that power, then the Constitution will have to be changed to permit any alteration in the civil jurisdiction of the Supreme Court.

I have said that if even appeals in small cases of civil law can go to the Supreme Court, why should appeals in cases of murder not go there. I therefore think that in these cases at least there is no reason why rich persons should be able to go to the Supreme Court and utilise it for civil litigation whereas in cases where small people are concerned, they should not be able to go there even to appeal against sentences of death. Therefore, if Parliament is given the power to regulate the right of civil appeals to the Supreme Court it will be a much better situation than what is contemplated by this article. This article will be misused and the Constitution will become a battle-ground for lawyers. They will take all civil appeals to the Supreme Court. And the High Courts, when big Counsels appear to argue cases of rich parties, will give them permission to go to the Supreme Court for appeal and the Supreme Court will be flooded with these appeals. The other day it was argued that if appeals of persons sentenced to death are also to go there, we shall be required to have about twenty to thirty judges in the Supreme Court. If this article remains as it is, and all appeals in civil cases are permitted to go to the Supreme Court, then in that case we will require very many more judges than even 20 or 30.

Therefore, this is a very simple amendment which asks for powers to be given to Parliament which may from time to time change the requirements for appeal in civil cases to the Supreme Court.

Shri M. Thirumala Rao (Madras: General) : How does this conform with the amendment to 1911?

Mr. President: Anyway that is the notice.

We have three other amendments which have no reference to criminal appeals in connection with this article.

(Amendments Nos. 1924 and 1925 were not moved.)

The Honourable Dr. B. R. Ambedkar: (Bombay: General): Sir, I move:

"That in clause (2) of article 111, for the words 'the case involves a substantial question of law as to the interpretation of this Constitution which has been wrongly decided', the words 'a substantial question of law as to the interpretation of this Constitution has been wrongly decided' be substituted."

Mr. President: Does anyone now wish to speak either on the article or on the amendments?

Shri S. Nagappa (Madras: General): When is the last minute when an amendment to an amendment can be moved? Prof. Saksena has moved an amendment at the eleventh hour !

Mr. President: Before the sitting for the day commences. But it is not an amendment to an amendment. It is only an amendment to amendment !

There is one other amendment in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That with reference to amendments Nos. 1916 to 1919 of the List of Amendments, in sub-clause (a) of clause (1) of article 111, after the words 'twenty thousand rupees' the words 'or such other sum as may be specified in this behalf by Parliament by law' be inserted."

Shri M. Thirumala Rao : The discussion on this clause has taken place on the last day of the sitting of this Assembly and it was a lawyer's day. We thought that the provisions of the Federal Court may be restricted to lawyers. When one reads the newspapers about the report of the discussion that has taken place here, unless he comes either as a litigant in a civil suit or an accused or a criminal in a criminal case, he has not got much place in the discussions that have recently taken place. But as a layman and taxpayer who has got some interest in the administration of law, I stand before you and offer a few remarks.

I am a bit surprised how the stolid and sedate Dr. Ambedkar, who is both an eminent lawyer and a jurist, has been jockeyed into accepting so many details in the Constitution about the powers of the Federal Court. Perhaps it is on the advice of eminent civil lawyers like Shri Alladi Krishnaswami Ayyar and also like another eminent lawyer, my Friend, Mr. Munshi, who on his own admission, is half civil and half criminal. But nevertheless it passes the comprehension of a layman why you should burden this Constitution with so many details in regard to the powers of the Federal Court. Sir, it was a learned discussion that took place of experts the other day about the provisions that should be incorporated in this Constitution and they have gone into such details as to fix the limit of appeals with regard to the civil suits that should go before the Supreme Court and a very interesting discussion has developed round the amendment moved by Mr. Thakur Das Bhargava that every criminal appeal also should go to the Federal Court. It is difficult to understand why we have to get away from the moorings of our country. We have evolved a constitution that is a hybrid of the several constitutions of the world that are obtaining today. Nobody seems to have got a proper conception of what our Constitution, and what our judiciary should be to suit the genius of our country.

Justice during the last century when the British ruled in our country has been so inordinately delayed that justice delayed is justice denied. Only the richest in the country could purchase justice. The poor man had to go to the wall in obtaining justice. The village panchayat has been given the go-by Justice that has to be dealt with on the spot has been long forgotten and a chain of courts have been evolved where the richest man has the greatest opportunity of fighting the poor man and succeeding.

We have seen in our experience interesting cases that have gone before the Madras High Court. A zamindar's birth was dispute from the sixth year of his life and the man has gone about from court to court, from the lowest court in the land of the Privy Council without the question of his birth being decided, namely, whether he was the real and legal-born son of his father or not. For fifty years the zamindar has gone on indulging in litigation to get a decision whether he is the son of his father or not, yet the question was left open and the court relied on the will of the "father" who gave away his whole property to the zamindar. Fortunately the Congress Government has come to his rescue by abolishing the zamindari system. There are families where litigation has extended over three generations. The father started the litigation, the son continued it and the grandson is still carrying on the litigation. The family has been reduced to impoverishment. That is the system of law which our legal pandits are discussing on the platform of this House. They are discussing what shape our Constitution should take......

Mr. President: The honourable Member is delivering a very interesting speech but it has nothing to do with the article before us.

Shri M. Thirumala Rao : If I have got the right of opposing the article, though I do not want to exercise it, I take the opportunity of expressing my dissatisfaction at the way things are done in regard to this Constitution, incorporating every detail into this Constitution. We have seen several Constitutions of the world. The Iris Constitution is a short one and it does not contain so many provisions in regard to the system of justice and administration......

Mr. President: I am afraid we cannot at this stage go into the whole question whether the Constitution should be in the form in which it has been drafted.

Shri M. Thirumala Rao : My submission, is that we should not overburden the Constitution with so many details. Details as regards the Constitution such as the powers of the Federal Court and other courts should be left to the legislature of the country to be worked out. That is the point.

Mr. President: There is no amendment to that effect.

Shri M. Thirumala Rao : The amendment proposed by Dr. Ambedkar says that the powers of the Federal Court should be determined by law and not by the

Constitution. That is the point I want to support.

I do not want to take up much time of the House but I want to draw the attention of the House to that fact that there is also an expressed silent opinion not only in the House but outside in the country also that the Constitution of our country should be as simple as possible, that the administration of justice should not be encumbered with too many technicalities which will ultimately result in the denial of justice to the poor. I urge that this House should not enter into legalistic details but should leave them to be decided by the legislature.

Shri Alladi Krishnaswami Ayyar : (Madras: General) : Sir, my sympathy is in support of the amendment proposed by Shrimati Durgabai, which she has not, however, brought under discussion, but which was later taken up by Mr. Shibban Lal Saksena.

Under article 111, if it stands alone without reference to any legislation by Parliament, the conditions of appeal will be crystallised and any change in the appeal procedure or in the right of appeal can only be by a constitutional amendment, which is not desirable. It ought to be an elastic provision. While the existing conditions of things may be perpetuated until Parliament intervenes, there is absolutely no reason why all the conditions of appeal must be stereotyped and moulded into a rigid pattern in the constitutional framework of India. In that respect article 111 is a retrograde step. If you take into account the history of legislative powers in India from the time the Letters Patent were issued, the jurisdiction of the several High Courts in India was subject, even before popular element was introduced, to the general legislative jurisdiction of the Governor-General in Council: and today even an appeal to the Privy Council, under the provisions of the Civil Procedure Code, is subject to the jurisdiction of the central legislature in India. Under section 109 it is subject to any Order in Council that might be passed by His Majesty's Government. I am referring the days before the Dominion Act. Even an Order in Council by His Majesty's Government is a flexible provision and it is capable of change without parliamentary intervention, because it is under the general jurisdiction conferred upon the Privy Council that the Order in Council is issued.

Now, the amendment of Dr. Ambedkar is a move in the right direction, though I feel that it does not go far enough. It at least takes away one defect, *viz.,* the amount or value of the subject-matter becomes a matter of constitutional provision under article 111 as it stands. It take away that defect in that article. But I feel that the whole of that article should continue to be under the general jurisdiction of the future Parliament of India and there is no reason why you should fetter the discretion of Parliament in regard to the class of appealable cases. That is my feeling in the matter but I feel however that half a loaf is better than no bread. Therefore inasmuch as Dr. Ambedkar is willing to yield so far as clause (a) is concerned that is good enough, though I wish he had gone further and made all the provisions subject to the intervention of the future Parliament of India. Much as we owe to the British system of administration of justice, I am one of those who feel that there is considerable room for improvement by making it more elastic and flexible to suit the economic conditions of India. Gradation of appeals no doubt is a normal feature of English jurisprudence in England which is a very rich country with a population of forty millions and which has greater wealth than this poor country of three hundred millions. While, justice must be guaranteed to every individual, while every individual, while every individual must get a fair and proper trial, the gradation of appeals is not a necessary *sine qua non* for the proper administration of justice. If there is miscarriage of justice, if there is anyserious procedural flaw and if there is anything radically wrong, by all means let the highest court in the land interfere. But there is no reason why, for example, in the provinces of India collegiate courts should not be established and, the intervention of the High Court diminished and the Supreme Court made merely a court of ultimate appeal in these matters to see that errors are set right. But I do not want all that reform to be introduced immediately. What I would desire is that while perpetuating the existing provisions for appeal they may be made subject to the intervention of Parliament, so that if a special committee is appointed and goes into the whole question of the system of administration of justice, all necessary reform may be introduced into the legal system in this country.

Then my honourable Friend Shri Thirumala Rao had a jibe against the lawyers. It was entirely unwarranted for the reason that there are lawyers who think in a larger terms of society and there are laymen who are more legalistic than lawyers. I notice on the other hand that there is a tendency among the lay elements to rely upon legalism rather than in the lawyer who thinks in larger terms of society and advanced thought in the world. Therefore that speech was unnecessary. The reason why unfortunately we had to mention article 111 is this: A simple reference could have been made to the jurisdiction of the Federal Court or the jurisdiction exercised by the Privy Council without mentioning the details as to the condition of appeal and then that might be made subject to the intervention of parliament. But the House knows the sort of discussion that cropped up when reference was made to parliamentary privileges. If you refer to the jurisdiction the Privy Council was exercising up till now under the various Statues, both Indian and English, there may be a feeling that this is derogatory to the dignity of the House. There has been a serious controversy in the press and on the platform as to whether it is at all justifiable to refer to the jurisdiction and powers and privileges of Parliament when enacting our Indian Constitution. That might be a good reason. But I do not see for a moment how these could be made simpler. Reference may be made in article 111 to the existing state of things and provision may be made that that state of things might be modified, remedied or changed by the intervention of Parliament. These are the reasons which induced me to accept the amendment of Dr. Ambedkar though I wish he was able to go further and state that all these provisions shall be subject to the intervention of Parliament.

Shri B. Das (Orissa: General) : Sir, during the last three days while the House has been discussing the Chapter on Federal Judicature, I have been placed in an atmosphere of depression. My reaction was to oppose the amendment of Shrimati Durgabai, but when I heard my esteemed Friend Shri Alladi Krishnaswami Ayyar I felt much more confused and depressed. Sir, our foreign rulers have left us little. They bled us white and they left us with a number of lawyers here and outside who interpret the law for the maintenance of justice. In my boyhood days I used to pass through Calcutta and watch the Scales of Justice in the Writers' Building, the old Government Offices there. That Scale of Justice is the thing they have left behind and not real justice. Why my lawyer friends are so much enamoured of the interpretation of justice under the British system I do not know. I thought it unfortunate that during the transition stage we cannot suddenly think in terms of the Indian conception of justice. My conception of justice would be that justice should be based on truth. Whether in the Supreme Court or in the High Courts of Judicature, what is done is the interpretation of the laws left behind to us as heritage by our former British masters. So, Sir, I feel very much depressed. I wish that we had in this Chapter only three or four articles in which my honourable Friend, Dr. Ambedkar could put things in such a way that justice shall be rendered to everybody. But what we have are provisions for interminable and intermingling appeals from court to court finally ending in the Supreme Court. Now my honourable Friend Dr. Ambedkar is bringing out one or two more articles which, Sir, provide for criminal appeals being brought before the Supreme Court. In these circumstances, how will people get justice? Will it be justice or mere transfer of money from one pocket to another? This is all unproductive money. If my money passes to Shri Alladi Krishnaswami Ayyar's pocket or to Dr. Ambedkar's pocket, that will not be productive wealth. That will be unproductive wealth. Families have been destroyed in the past by these appeals to the Privy Council and their properties passing to the pockets of the lawyers who defended their contentions in the Privy Council.

I hope my honourable Friend Dr. Ambedkar and the legal luminaries in this House will conceive justice without expense. The moment you abolish the need for lawyers to defend litigants, litigation will come down. But I do not think that anybody would work for that end. Lawyer-ridden as we are, we are grateful to the lawyer classes because they are the first line of patriots who showed us how to agitate for our freedom. We are grateful to them. They are thinkers. They are scholars. But today I do appeal to them that they should suggest ways of reducing the cost of litigation. This Constitution provides nowhere that the cost of litigation should be brought down. The way discussion started the other day and responsible members suggested that hundreds of Supreme Court Judges would be necessary to hear every criminal appeal was disquieting to me. If there is justice based on truth it must be had in the first court or in the next appellate court. Why should we go on providing for appeals again and again doubting the judgment of the High Courts? We may soon have women judges in our High Courts too. I am very much disturbed. As a common man, I feel that justice is not justice, which bring out a new class which is a parasite on the people of India *i.e.,* the lawyer's class. Sometimes must be done. The Father of the Nation is no more. If the lawyer's class are true to the Father of the Nation, they should help to bring about justice in a way which will entail the least amount of expenditure.

I feel that Parliament should not interfere with the Supreme Court. Once we have decided to have a Supreme Court-though I protest against the expensive habit of having a Supreme Court, I am for it-we should help in its maintaining the highest standard of justice, and not allow Parliament to interfere with it. What do I know of the administration of justice? Why should I legislate and control the Supreme Court? Why should I lay down the rules of procedure for the High Court and Supreme Court Judges? We are not laying down the rules of procedure for the Federal Public Service Commission. We are not laying down the rules stipulating how the Auditor-General should control the expenditure that the Parliament of India will sanction. My point is that Parliament should not be too meticulous and should not exercise any power over the Judges of the High Courts or the Judges of the Supreme Court.

Shri V. S. Sarwate (Madhya Bharat) : Mr. President, Sir, I rise to support amendment No. 1912....

Shri L. Krishnaswami Bharathi (Madras: General) : That amendment has not been moved.

Mr. President: It was moved on Friday.

Shri V. S. Sarwate : Which proposes the deletion of the words 'except the States for the time being specified in Part III of the First Schedule". I wish to restrict my observations to that amendment only. With that clause, the article limits the operation to the High Courts of provinces only. If this clause is omitted, that limitation will be taken away, but I would like to point out that this would not be sufficient for the purpose. It would like to point out that this would not be sufficient for the purpose. It would not *ipso facto* invest the Supreme Court with power to hear appeals against the decision of the High Courts in Indian States. To make my meaning clear, I would, in short, describe the present situation in the Indian States. Sometimes it is said that the States are in a backward condition. There are practically primitive conditions in the Indian States. There is no judicial service, etc. This sweeping generalisation is entirely wrong and gives a misleading conception of the states of the things in the Indian States. In most of the States enumerated in part III of the First Schedule, there is well constituted High Court and efficient judicial service, but according to the constitution of the Indian States there is no appeal to the Privy Council from the judgments of the High Courts in these States. In most of the States a Judicial Committee had been appointed which heard appeals from the High Courts. In the minor States it is true that there is no judicial service of the kind which prevails in the provisions and there no High Courts, but the common people could have ready access to the Rulers. That acted as a check against the executive, and the Ruler in most cases gives them rough and ready justice. This me the requirements of the situation. In fact, in some cases with the limited area in which these Rulers exercised their jurisdiction, this did give better justice, for justice delayed is justice denied. In the provinces especially in civil cases the justice which is at present administered is so dilatory and so intricate that there is a saying in Hindi-

Jo diwani men jata hai woh diwana ho jata hai;

which gives a better idea of the state of things than the saying that justice delayed is justice denied. However, since the Unions were established in these States, things have changed. The minor States have been wiped off and they ought to have been, but the fact also remains that the masses of the people who had ready justice before have now been denied any effective substitute. In the States, where there were Judicial Committees, in most of the cases these Judicial Committees have disappeared. The result is that there is no appeal to the Privy Council and there is no appeal against the judgments of the High Courts. So there is this lacuna. Therefore in most of the Unions thinking people desire that their High Courts should be brought into line with the High Courts in the provinces and an appeal provided against the judgments of their High Courts. Recently a Pleaders' Conference was held in one of those Unions and a resolution was passed which recommended that an appeal should be provided against the judgments of the High Courts and also that the High Courts should be made entirely independent of the executive. Now, what I would point out is this: that, when this clause is taken away, there would lie an appeal from the judgments of the High Courts by virtue of this article, in the case of the provinces, but this is not the case with the High Courts in the acceding States. To my mind a further provision would be necessary which would make the judgments of the High Courts in these States appealable to the Supreme Court, and this provision could be made in three ways. In most of the Union States, there is a clause in the clause in the Covenant which provides that a Constituent Assembly be constituted in the Union. This Constituent Assembly could provide in its Constitution that an appeal from the High Courts in their territory shall lie to the Supreme Court. This is one way. Another way would be that according to the new Covenant which has been entered into by these unions, this Parliament has been given powers to make laws, which would be binding on the States regarding subjects mentioned in List 1. This list contains one item which gives power to this Parliament to make laws regarding the powers of judicial courts.

So under this Covenant the Parliament may pass a law by which the appeals of the High Courts in the acceding States will be appealable. The third would be to make a provision to that effect in this Constitutional itself. Now, the Part VI which deals with the constitution of the Provincial High Courts does not apply to the States. That is the difficulty. So the beginning of this Part, *viz.,* article 128 which reads:-"In this part, unless the context otherwise requires, the expression 'State' means a State for the time being specified in Part I of the First Schedule" needs to be amended appropriately: So that this part be made applicable to the High Courts in the acceding States: in the alternative a fresh part would have to be inserted by which similar provision could be made.

I would further point out that as a necessary corollary of this amendment No. 1912, article 113 would have to be dropped, because this clause provides for a reference to the Supreme Court against the judgment of the High Court in the acceding States and that would be no more necessary. Further in article 112 there is a similar provision "except the States for the time being specified etc." which may have to be dropped. My specific suggestions are that a provision would have to be made by which the judgments of the High Courts in acceding States would be appealable inasmuch as only taking away this clause from article 112 will not be sufficient and would not *ipso facto* invest the Supreme Court with that appellate power and further, article 113 would have to be omitted and a similar amendment would have to be made in article 112.

Shrimati G. Durgabai : Mr. President, Sir, while accepting and supporting the amendment moved by Dr. Ambedkar, I wish to offer a few remarks on this subject under consideration. I will say that I am in the main in agreement with the principle of the amendment moved by Prof. Shibban Lal Saksena. Though there was an amendment similar to that given notice of by me, I did not move it; but as I have already stated, I am very much in sympathy with the principle underlying that amendment. Sir, the article under consideration lays down, I am sure the House is aware, the conditions in detail for the appeals to the Supreme Court. These conditions are treated in sub-clauses (a), (b) and (C) of article 11. The effect of this article is to make the conditions of appeal as part of the Constitution, and I am sure that it would be agreed that there should be an element of elasticity to the conditions of appeal, and it we have made these conditions as a part of the Constitution as we find sub-clauses (a), (b) and (c), that would introduce an element of rigidity and also the conditions will be stereotyped. So the object of my amendment, which I did not move, or the object of the amendment moved by Prof. Shibban Lal Saksena is to introduce that kind of elasticity and leave these conditions to the future Parliament to lay down if it finds absolutely necessary and essential. Now if there is to be a change and if we have made these conditions as part of the Constitution, the change could be brought about only by a constitutional revision. Therefore, I am sure that the House has realised the difficulty and the amendment given that there should be an elasticity by leaving this matter absolutely to the future Parliament is to, remove that rigidity and see that the conditions are not stereotyped.

Sir, in the law as it stood prior to the passing of the Federal Court Enlargement of Jurisdiction Act, the condition of appeal were regulated by the Civil Procedure Code or by Order in Council made by His Majesty. This Civil Procedure Code was liable to be amended by Parliament. So, in answer to my friends who have just said that there should be no intervention of the Parliament, now I would say that this is not a new condition and the intervention of Parliament was not newly introduced because the

Parliament could always intervene in the law as it existed today, that it could amend the Civil Procedure Code which would in the main regulate the conditions of appeal by bringing about a legislative change. So, Sir, it would have been very much better if a similar course could have been adopted and also I am sure that the House has noted this fact that the conditions obtaining today are not the conditions as existed some time back. They are radically different today, because we find that a large number of States are being brought under the Indian Administration and also the question is whether the Supreme Court should not be constituted as a Court of appeal from all over India and the idea also is to expand the jurisdiction and extend the jurisdiction to States also. This position has been made clear by an amendment moved by my honourable Friend, Shri Raj Bahadur, which I am sure will be accepted. The effect of that amendment is to remove those restrictions with regard to the jurisdiction of the Supreme Court in relation to the States. Therefore the idea is to expand the jurisdiction and leave the conditions to the Parliament to lay down. Anyhow, I am very glad to support the amendment moved by Dr. Ambedkar, because it has accepted the major part of my amendment namely conditions (a) and (b) accepted, but condition (c) alone is now made rigid by having found a place in this Constitution. Even this matter could have been left to the future Parliament; it would have been open to the Parliament to say under what conditions an appeal should be considered as a fit one to come to the Supreme Court. Anyhow, Dr. Ambedkar has not considered it desirable, but while accepting the two, he has left this matter absolutely beyond the purview of Parliament. As Mr. Alladi Krishnaswami Ayyar stated, half a loaf is better than no loaf at all, and I also would agree with that view and support the amendment moved by Dr. Ambedkar.

Shri Yudhisthir Misra (Orissa States): Mr. President, Sir, I support the amendment moved by the honourable Member, Mr. Raj Bahadur for the deletion of the provision relating to the exclusion of the States specified in Part III of the First Schedule from the operation of article 111 of the Draft Constitution.

I endorse the arguments put forward in favour of the amendment. Besides that I want to submit another point for the consideration of this House. The provision as it stands excluding the Indian States from approaching the Supreme Court will create anomalous position for those States which have integrated, namely, the States of Bombay, Madras, C.P., and Orissa. These States have been integrated with the neighbouring provinces and are administered as parts of the provinces. They are under the jurisdiction of the provincial High Courts. In the Draft Constitution, they have been put in Part III of the First Schedule although in the Draft Constitution it has been provided that they will be administered as if they are parts of the provinces; a positive provision of this kind in article 111 would exclude them from approaching the Supreme Court, or at least create confusion in the minds of the States people. To remove this, Sir, it is necessary that the provision in article 111 excluding the States in Part III of the First Schedule from the operation of this article should be omitted. I therefore, support the amendment moved by my honourable Friend, Mr. Raj Bahadur.

Shri Rohini Kumar Chaudhuri (Assam: General): Mr. President, Sir, a great deal has been said in this House by some of my esteemed Friends against the lawyers as a class.

Mr. President: No reply to that part of the remarks is required. You had better leave those remarks alone. Please confine yourself to the article and the amendments.

Shri Rohini Kumar Chaudhuri : All right, Sir. What I wanted to say is this: that the responsibility for framing this Constitution is not on the lawyers, but is on the layman, on the Members of the Constituent Assembly, the majority of whom are non-lawyers. It is the strong commonsense of the Members of this House which will decide the several points of the Constitution. The lawyers are there to advice us. Just as in a trial by jury, you cannot lay the responsibility on the Judge and lawyers, but the case has to be decided according to the commonsense of the jurors themselves, similarly, in this House, the responsibility of framing the Constitution is entirely on the Members of this House, the majority of whom are not members of the legal profession. Therefore, I would invite the House to look at this question from a layman's point of view as well.

If you look at this question from the layman's point of view what do you find? A great restriction has been imposed in article 111, and that restriction is that a certificate has to be granted by the High Court. You are not going to file an appeal directly from any other Court; you cannot file an appeal from the District Judges' or Sub-judges' courts. The matter has got to go up to the High Court and the High Court has to grant a certificate in order to enable you to file an appeal. Can any man, whether he be a layman or a lawyer suppose for a moment that a High Court against whose decision an appeal is going to be filled, will promiscuously or without any sense of responsibility grant a certificate ? That is a very big restriction. I should have thought that no other restriction was necessary after that. Even then, in this article you have laid down under what circumstances the certificate could be granted, and you have bound down the High Court to those circumstances. Therefore, the first restriction is that you cannot file an appeal without a Certificate from the High Court; the second restriction is that the High Court cannot grant the certificate in each and every matter and you have laid down that the matter should fall under certain categories in which alone a certificate could be granted. After this, I would ask, is it reasonable to lay down a further condition and say that it should be subject to any law which may be passed by Parliament?

I am rather diffident in making a strong appeal in this matter because no less a person than Shrimati Durgabai has sponsored the original idea and Shri Alladi Krishnaswami Ayyar has said that it has his fullest sympathy. Even then, I would venture to bring the matter to the special consideration of the House, the majority of whom are non-lawyers. Taking this question from the commonsense point of view, is it likely that ordinarily a court against whose decision a party is going to file an appeal, that court will inadvertently, recklessly grant a certificate? If you want that everything should be left to Parliament, why spend so much time over articles 110, 111, and 112? Just say that Parliament may by law lay down the procedure and the circumstances under which an appeal could be filed to the Supreme Court. That would finish the whole thing. Why go through all these articles 110, 111, 112, 113 and so on? Simply have one article that Parliament may by law prescribe the circumstances under which an appeal could be filed to the Supreme Court. You might mention there about the certificate just as it is mentioned in the Civil Procedure Code today. There is also mention about the valuation of Rs. 10,000 and about a question of principle being involved. But, having spent all the time in considering articles 110, 111 and so on, I should have thought that the House might consider whether it is necessary to adopt the amendment which has been put forward.

Mr. President : I think we have had enough discussion on this simple article 111 about which there seems to be no serious difference of opinion on the merits.

Whatever may be said with regard to the people who have framed it, nothing has been heard against the provisions of the article. I would therefore request Members not to take more time over this when there is really no difference of opinion on the merits.

Dr. Bakhshi Tek Chand (East Punjab: General) : Sir, I will not detain the House for more than two or three minutes over this question. The amendment which Professor Shibban Lal Saksena has moved and which has been supported by Shri Alladi Krishnaswami Ayyar and Shrimati Durgabai is not as innocent as it appears to be. It is really of a very revolutionary character. If the amendment is carried, it will be open to Parliament at any time to take away entirely the jurisdiction of the Supreme Court in all civil matters. It was with a view to avert such a contingency that the Drafting Committee thought fit to include article 111 in the Constitution. If you add the words 'subject to any law made by Parliament' in the beginning of article 111, as is suggested in the amendment, Parliament may, at any time, if it so chooses, take away the jurisdiction of the Privy Council to deal with any civil matter falling *either* under clause (a) or (b) or (c) or in all of them taken together. That, I submit, will be a very serious matter. The provisions of article 111 as drafted and placed before the House are practically the same as those contained in the Civil Procedure Code. Indeed similar provisions have existed for more than a century, ever since the Judiciary Act of 1833 was passed and the Privy Council began to function as the Court of Appeal from decisions passed by the Supreme Courts of Calcutta, Bombay and Madras and later, from the various High Courts established under Letters Patent or the Indian High Court Act, 1861. The only difference in article 111 as originally drafted, and the provisions of sections 109 and 110 of the C.P.C. as they stand on the Statute Book today is that in clause (a) the valuation limit has been raised from Rs. 10,000 to Rs. 20,000. Dr. Ambedkar's amendment is that '20,000 or *such other value as* the Parliament may fix by law'. It gives the power to Parliament to raise or lower this pecuniary limit. But Parliament cannot take away the right of appeal in such cases, which is provided for in the Constitution Act, and which invests the Supreme Court with the power that has hitherto vested in the Privy Council. I submit that it will be improper to give Parliament power to take away that jurisdiction. This is a very important jurisdiction, and as has been pointed out by Mr. Rohini Kumar Chaudhuri, it must be maintained under the new Constitution. Honourable Members will see that it is not an unrestricted right of appeal in every civil matter which a litigant is given to go up to the Supreme Court. It is hedged in with several restrictions. Firstly, there must be a certificate from the High Court in every case. Where the value is Rs. 20,000 or such other value as Parliament may fix, and the High Court and the Court of first instance have differed, in that case an appeal will lie as of right. Then clause (b) provides that if the judgment is one of affirmance, the appeal will not lie as of right but only if the High Court certifies that the case involves a *substantial* question of law. This does not involve questions of law which may arise collaterally or incidentally! In those cases no appeal will lie. Then I do not see why any opposition is being offered to clause (c) being included in the Statute. This covers only those cases in which the question is of such general importance that the decision will affect a very large number of cases or is one in which a point of law is involved on which there is a difference of opinion between the various High Courts and it is necessary to have an authoritative pronouncement by the Supreme Court to resolve the conflict. Further, in such a case the particular High Court which has decided the case must certify that the case is a fit one for appeal. In that case only will an appeal lie. That will cover a very limited number of cases. So far as I know, at present not more than eight or ten appeals from all the High Courts of India go to the Privy Council under clause (c). It is a very very salutary provision, and must be retained. This article as drafted, with the modification suggested in Dr. Ambedkar's amendment should, I submit, be accepted and the amendment of Professor Saksena rejected.

Dr. P. K. Sen (Bihar: General) : Sir, may I offer a few remarks?

Mr. President: Is it necessary?

Dr. P. K. Sen : very important, Sir.

Mr. President: I bow to the judgment of a Judge in this matter. He considers it important.

Dr. P. K. Sen: Sir I shall be very brief and I shall just touch upon the few points which I really consider to be very important. I rise to oppose the amendment of my honourable Friend Shri Shibban Lal Saksena. It has been supported by Shrimati Durgabai and some other honourable Members as also by no less an authority than Shri Alladi Krishnaswami Ayyar. The point on which they have laid stress is that article 111 should be made elastic, but the manner in which, according to them, elasticity is to be introduced would change the whole aspect of the article. Even elastic substances, Sir, if pulled violently give way and snap. Here, in this particular matter, elasticity is sought to be introduced in such a manner as to bring the article to the breaking point. Article 111 proposes to give power to the Supreme Court to hear appeals in certain specific classes of cases. The introduction of those words 'subject to such provisions of law as the Parliament may lay down' at the beginning of the article, which the amendment proposes, changes the whole aspect of the article. It really gives power to Parliament at any time to make a clean sweep of the article. Now if this article was worded in very extravagant terms, it would have been different but it really incorporates in it just the provisions which have been up to now in force in the Civil Procedure Code, and a very long course of years has proved that they are very salutary and satisfactory. The only question that might be raised was as to the minimum figure of valuation and even that point has been relaxed by my honourable Friend Dr. Ambedkar who suggests that it should be 20,000 or such other valuation as may be fixed by Parliament later on. In that view it does seem to me that although as you have said, Sir, that it is a simple matter, it is not an unimportant matter at all. It really comes to this-shall we have the power vested now under the Constitution in the Supreme Court or shall we leave it *in vacuo,* as it were, to be done by Parliament at any further time? If we allow the amendment today, the power that is given in those introductory words will really enable the Parliament at any time to make drastic changes. Therefore, I submit, the House should give a very careful consideration to this question before supporting the amendment. The amendment should in my opinion be vigorously opposed by everybody who is interested in the welfare of this country and its highest tribunal.

The Honourable Dr. B. R. Ambedkar: Sir, I would begin by reminding the House as to exactly the point which the House is required to consider and decide upon. The point is involved between two amendments: one is the amendment moved by my Friend Prof. Shibban Lal Saksena, which is in a sense an exudation of amendment 1911 and my own amendment, which is amendment No. 25 in List No. 1 of the Fourth Week. Before I actually deal with the point that is raised by these two amendments. I should like to make one or two general observations.

The first observation that I propose to make is this. Article 111 is an exact reproduction of sections 109 and 110 of the Civil Procedure Code. There is, except for the amendments which I am suggesting, no difference whatsoever between article 111 and the two sections in the Civil Procedure Code. The House will therefore remember that so far as article 111 is concerned, it does not in any material or radical sense alter the position with regard to appeals from the High Court. The position is exactly as it is stated in the two sections of the Civil Procedure Code.

The second observation that I would like to make is this. Sections 109 and 110 of the Civil Procedure Code are again a reproduction of the powers conferred by paragraph 39 of the Letters Patent by which the different High Courts in the Presidency Towns were constituted by the King. There again, Section 109 and 110 are a mere reproduction of what is contained in paragraph 39.

The third point that I should like to make it this: that these Letters Patent were instituted or issued in the year 1862. These Letters Patent also contain a power for the Legislature to alter the powers given by the Letters Patent. But although this power existed right from the very beginning when the Letters Patent were issued in the year 1865, the Central Legislature, or the provincial Legislatures, have not thought fit in any way to alter the powers of appeal from the decree, final order or judgment of the High Court. Therefore, the House will realize that these sections which deal with the right of appeal from the final order, decree and judgment of the High Court have a history extending over practically 75 to 80 years. They have remained absolutely undisturbed. Consequently in my judgment, it would require a very powerful argument in support of a plea that we should now, while enacting a provision for the constitution of the Supreme Court disturb a position which has stood the test of time for such a long period.

It seems to me that not very long ago, this House sitting in another capacity as a Legislative Assembly, had been insisting that these powers which under the Government of India Act were exercised by the Privy Council, should forthwith, immediately, without any kind of dimunition or denudation be conferred upon the Federal Court. It therefore seems to me somewhat odd that when we have constituted a Supreme Court, which is to take the place of the Federal Court, and when we have an opportunity of transferring powers of the Privy Council to the Supreme Court, a position should have been taken that these provisions should not be reproduced in the form in which they exist today. As I say, that seems to me somewhat odd. Therefore, my first point is this that there is no substantial, no material, change at all. We are merely reproducing the position as between the High Court and the Privy Council and establishing them as between the High Court and the Supreme Court.

Now, Sir, I will come to the exact amendments of which I made mention in the opening of my speech namely, Prof. Shibban Lal Saksena's amendment and my amendment No. 25. If my amendment went through, the result would be this: that the Supreme Court would continue to be a Court of Appeal and Parliament would not be able to reduce its position as a Court of Appeal, although it may have the power to reduce the number of appeals, or the nature of appeals that may go to the Supreme Court. In any case, sub-clause (c) of article 111 would remain intact and beyond the power of Parliament. My view is that although we may leave it to Parliament to decide the monetary value of cases which may go the Privy Council, the last part of clause (1) of article 111, which is (c), ought to remain as it is and Parliament should not have power to dabble with it because it really is a matter not so much of law as a matter of inherent jurisdiction. If the High Court, for reasons which are patent to any lawyer does certify that notwithstanding that the cause of the matter involved in any particular case does not fall within (a) and (b) by reason of the fact that the property qualification is less than what is prescribed there, nonetheless it is a cause or a matter which ought to go to the Supreme Court by reason of the fact that the point involved in it does not merely affect the particular litigants who appear before the Supreme Court, but as a matter which affects the generality of the public, I think it is a jurisdiction which ought to be inherent in the High Court itself and I therefore think that clause (c) should not be placed within the purview of the power of Parliament.

On the other hand if the amendment moved by my Friend Prof. Saksena were to go through, two things will happen. One thing that will happen has already been referred to by my Friend Bakshi Tek Chand that Parliament may altogether take away the Appellate jurisdiction of the Supreme Court in civil matters. It seems to me that that would be a disastrous consequence. To establish a Supreme Court in this country and to allow any authority in Parliament to denude and to take away completely all the powers of appeal from the Supreme Court would be to my mind a very mendacious thing. We might ourselves take courage in our own hands and say that the Supreme Court shall not function as a court of appeal in Civil matters and confine it to the same position which has been given to the Federal Court.

The other thing will be that Parliament would be in a position to take away sub-clause (c) which, as I said, ought to remain there permanently, because it is really a matter of inherent jurisdiction. Therefore it seems to me that the plea that the appellate power of the Supreme Court should be made elastic is completely satisfied by my amendment No. 25, because under my amendment it would be open to Parliament to regulate the provisions contained in (a) and (b) without in any way taking away the appellate jurisdiction of the Supreme Court completely or without affecting the provisions contained in (c). Sir, I therefore oppose Mr. Saksena's amendment.

Mr. President: I shall now put Prof. Shibban Lal Saksena's amendment.

The question is:

"That in clause (1) of article 111 before the words 'An appeal' the words 'Subject to any law made by Parliament' be inserted."

The amendment was negatived.

Mr. President: The question is:

"That in clause (1) of article 111 the words 'except the States for the time being specified in Part III of the First Schedule' be deleted."

The amendment was adopted.

Mr. President: The question is:

"That with reference to amendments Nos. 1916 to 1919 of the List of Amendments, in sub-clause (a) of clause (1) of article 111, after the words 'twenty thousand rupees' the words 'or such other sum as may be specified in this behalf by Parliament by law' be inserted."

The amendment was adopted.

Mr. President : This disposes of amendments No. 1917 moved by Dr. Bakshi Tek Chand and also 1919 by Mr. Naziruddin Ahmad.

The question is:

"That to clause (1) of article 111 the following proviso be added :-

> 'Provided that no appeal shall lie to the Supreme Court from the judgment decree or order of one judge of a High Court or of one judge of a Division Court thereof, or of two or more judges of a High Court or of a Division Court constituted by two or more judges of a High Court, where such judges are equally divided in opinion and do not amount in number to a majority of the whole of the judges of the High Court at the time being'."

The amendment was adopted.

Mr. President : The question is:

"That in clause (2) of article 111, for the words 'the case involves a substantial question of law as to the interpretation of this Constitution which has been wrongly decided', the words 'a substantial question of law as to the interpretation of this Constitution has been wrongly decided' be substituted."

The amendment was adopted.

Mr. President: The question is:

"That article 111, as amended, stand part of the Constitution."

The motion was adopted.

Article 111, as amended, was added to the Constitution.

Mr. President : As regards amendments relating to criminal appeals the best thing would be for Pandit Bhargava to move amendment No. 27 to which the other amendments may be taken up as amendments.

Pandit Thakur Das Bhargava (East Punjab : General) : Sir, in regard to amendments Nos. 27 and 28 notice was received last night of an amendment by Dr. Ambedkar, No. 190. This amendment now included both 112-A and B. Similarly there is a large number of other amendments bearing on the question of appeal. These can be taken up together so that ultimately the point may be decided. If Dr. Ambedkar wishes to take up this matter subsequently it may be allowed to be held over and I have no objection. You may, Sir, consider this matter, so that all may be decided at one time.....

Mr. President : That was exactly the procedure which I wanted to follow. Your amendment has to be moved to enable the other amendments to be moved.

Pandit Thakur Das Bhargava : I do not know whether Dr. Ambedkar wants it to be held over so that a consolidated amendment may come before the House. I have gone through all the amendments and I understand that the basic idea behind all the amendments is one of compromise. If you are pleased to hold them over one consolidated amendment shall come before the House.

Mr. President : I have no objection to that. But amendment No. 23 is a somewhat different matter.

Pandit Thakur Das Bhargava : Yes, Sir. It is absolutely different but that will remain as you have already ordered that it may stand over.

Shri T. T. Krishnamachari (Madras : General) : Sir, these provisions being a departure from the existing scheme in the Draft Constitution the House may be given some time to digest these new provisions.

Mr. President : I have no objection: it can stand over.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Amendment No. 37 also relates to that.

Mr. President : That will also stand over. All the amendments relating to appeals from decision in criminal cases will stand over.

Article 112

Mr. President : Can we take up article 112 now? I find that in regard to this also there are several amendments in regard to appeals. Perhaps this also may stand over, and the consideration of the article other than the portions concerned with criminal appeals may be taken up.

Shri Ram Sahai (Madhya Bharat) : *[Mr. President, I move my amendment which runs :-

> "That in article 112, the words 'except the States for the time being specified in Part III of the First Schedule, in cases where the provisions of article 110 or article 111 of this Constitution do not apply' be deleted.

My amendment consists of two parts. It is one of those amendments which I have moved in order to remove the distinction maintained between the Provinces and the States' Unions. This amendment has two parts.

One part deals with the exclusion of Unions of States and States from the jurisdiction of the Supreme Court. I have moved this amendment against this exclusion. The second part deals with limitations of the rights of the Supreme Court in articles 110 and 111. I understand that the second part of my amendment is covered by amendment No. 1932 moved by Dr. Ambedkar on behalf of the Drafting Committee. Hence I think that this part of my amendment will find no objection with him and he will accept it. As I understand that the House agrees with me that it would not be proper to apply such limitations on the rights of the Supreme Court, I think that the House will accept my amendment. I have particularly to place my views before the House regarding the amendment to the first part. The State and the Union of States have been kept entirely separate in the Draft Constitution and they have not been considered as provinces. When Dr. Ambedkar had moved the motion regarding the Draft Constitution in November last, he had expressed the view that there should be no difference between the Provinces and the Unions of States. He had rather declared that it would be better if the Constituent Assemblies going to be established in the States or the Unions of the States were abandoned. At that time I had made an appeal that this House, as it is constituted, can made a Constitution for the States and the Union of States, as it is doing for the provisions. There is no person why we people assembled here cannot make the rules, laws or constitution or other things therein for the States as we like.

As regards this amendment, some difficulty may arise from the Instrument of Accession and the guarantee given by the Government of India thereby. But as far as I think there can be no difficulty in these things. Hence, so far as the question of bringing the provinces, States and the Unions of the States in line is concerned, there is no difficulty on account of the Instrument of Accession; particularly in regard to the jurisdiction of the Supreme Court. In the Instruments of Accession executed by the States and the Unions of States, all the subjects except taxation have been handed over to the Centre. When such a situation has developed, I do not understand what purpose can be served by keeping the High Courts of the States and the Unions of States outside the Jurisdiction of the Supreme Court.

I had submitted formerly that the States have such High Courts as posses very able persons who can do the same quality and amount of work as their counterparts in the provinces. There seems to be no reason why appeals from them should not go to the Supreme Court. I, therefore, submit that there should not be any difference on the question of appeals from the High Courts of the States and the Unions of the States to lie in the Supreme Court. It would be very much in the interest of the people of the States. In this way the Supreme Court will exercise a control over the High Courts of the States. This will also end the question of depriving the people of the States of the justice of the Privy Council. As I have already submitted, Dr. Ambedkar had stated that there is no need for Constitution Assemblies there. I submit that a convention of the members of the States Constituent Assembly was held in November last under my Chairmanship. That Convention has issued a statement that there should be no difference between the Provinces, States and the Unions of States. In this connection they had also made a request to the States Ministry who later on appointed a committee to draw up a model Constitution for the States. I was also a member of the same. That Committee has drawn up a constitution for the States and Unions of States similar to the drawn up for the provinces. There is nothing in that to separate the States from the provinces. I would also submit that there is article 63 which is similar to article 111 here.

As article 111 makes a provision for appeal similarly a provision has been made for appeal to the Supreme Court from the decisions of the High Courts of the States and the Unions of the States. Here the President has been empowered to appoint Governors, but it has not been done there. There the Rajpramukh will be recognised by the President. I think there is no difference in that. I think there can be no two opinions about this. The representatives of the States in this House have been elected on the same basis on which the representatives of almost all the provinces have been elected. Then, why do they not frame laws in this House for the States and for the

Unions of States? I mean to say, as Dr. Ambedkar has already suggested, that the Constituent Assemblies formed for the States are meaningless. I feel that this is really a waste of the time of the public as also of its money and energy. When we have assembled here to frame a constitution, we are competent to frame constitutions for the States and for the Unions of States also. I do not think that our framing of constitution will in any way prejudicially effect the Instrument of Accession. We see that our Rajpramukhs are working in such a way that our progress or the country's progress may not be hampered. They want to work strictly according to the advice of the States Ministry. If the States Ministry suggests to them that it would be futile to form any Constituent Assembly whatsoever in the States, they would fully to its suggestion and would gladly accept it. The people there have of course been always eager for it and will be so. There appears to be neither any reason nor any necessity for forming separate Constituent Assemblies for States, particularly when the States Ministry is going to adopt the draft of a model constitution for the States and the Unions of States prepared by experts and the representatives of States similar to that for the provinces. The proposition before the House is that the provision in article 112 for excluding the States and the Unions of States and the provisions in articles 110 and 111 to limit the powers of the Supreme Court should be deleted and the remaining portion should be adopted.

Without taking more time of the House, I only submit that both parts of my amendment are worth accepting and I hope that the House will accept the whole amendment.]*

(Amendments Nos. 1929 to 1932 were not moved.)

Prof. Shibban Lal Saksena : What about 31?

Mr. President : But the decision has already been taken.

Prof. Shibban Lal Saksena : This is separate. This is No. 31 of List I, Fourth Week.

Mr. President : But that is dependent on 1931 which was not moved. 1932 also was not moved. But you can speak on the article in the general discussion.

Prof. Shibban Lal Saksena : Mr. President, Sir, this article is a very important article in the Constitution. If there is a Supreme Court, it will have to have supreme powers. "This Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree or final order in any cause or matter, passed or made by any court or tribunal in the territory of India." By this article, the Supreme Court can entertain any appeal against any judgment. I would only wish that this power was extended. At Present, although it can entertain any appeal, it will have to decide that appeal according to the law of the land. It cannot go beyond those laws. But what I wish is that in cases where natural justice is under consideration the Supreme Court should be enabled to give judgments which may not be within the letter of the law. It should be permitted to give any judgment to satisfy the requirements of the cases. Even now, the Privy Council entertains appeals of this kind. Where natural justice is involved, they take appeals and give decisions which are not bound by the law of the land. I therefore wish that under article 112 where we give power to the Supreme Court to entertains any appeal, we should also enable it to decide those appeals on the principles of jurisprudence and considerations of natural justice. I therefore gave notice of my amendment, but I cannot now move it. But I hope that this point also will be taken into consideration. I would also like to say that my amendment to 111 was from the point of view that the Supreme Court should have power to entertain any appeal, whether it is civil or criminal. If this right is given under 112, there is no need for 111(1) (c), since the Supreme Court has discretion to entertain appeals. I hope that Dr. Ambedkar will try to extend the scope of the powers of the Supreme Court to enable the Supreme Court to go beyond the letter of the law where natural justice is involved.

Kaka Bhagwant Roy (Patiala and East Punjab States Union) : *[Mr. President, Sir, I have come to support the amendment moved by my honourable Friend, Shri Ram Sahai. Now that the petty States have been merged into large unions, they have been raised to the status of provinces and thereby the subjects of the States have got rid of the personal rule of the princes.

Now when the Constitution of free India is taking shape, the distressed people of the States are looking up to this august Assembly so that there will be no discrimination between the general public of India and the States people.

I think that great injustice has been done to the people of the State by not allowing them the right to make an appeal in the Supreme Court. The people of the States should be given this right in view of the fact that it is being given to all the provinces.

I think that India as a whole cannot become strong unless the newly formed units of the States which form an integral part of India also become strong. Therefore, in order to make India strong, the States people should be given the same rights which are being given to the general public of other provinces.

So, I think that you who are making the Constitution of free India should not insert in it such a clause which would give a different status to the States people.

The People of the States are looking up to this august Assembly with great expectations that the people of the unions of States and the provinces would enjoy equal rights and that there will be no discrimination as such.

I hope that you will accept this amendment.]*

Shri Krishna Chandra Sharma (United Provinces : General): Mr. President, Sir, the provision of this article 112 are very important and very comprehensive. It lays down one important principle of Constitution, namely, that while in the scheme of the Government of India Act, the executive was all powerful and both the legislature and the judiciary were subordinate to it, this article, a provision of which type has not found a place in the Government of India Act of 1935, has given a status to the judiciary, equivalent and in no way subordinate to the executive and legislature. Therefore, Sir, this comprehensive as well as necessary provision in the scheme of the Draft Constitution does a great deal of good to the people and gives them the right to go to the highest tribunal against the action of the executive and has an appeal from the High Courts. Sir, I support the provisions of this article and I would further add that this article gives ample power to do justice in the hands of the Supreme Court and with these provisions in the Draft Constitution, I do not find any justification or any necessity whatsoever of making any provision with regard to the criminal appeal to the Supreme Court. Much has been said about the power of the Supreme Court with regard to the appeals in the case of death sentences. I would submit respectfully that one fundamental principle has been ignored all through the discussion, that is, to appeal with regard to death sentence and in the matter of criminal justice it is not only the question of the liberty of the person or the liberty of the accused that is in question, but there is a further question and that is the stability of the State and the peace in the land. You cannot go on prolonging the decision with regard to the crime done by a man against the State for a very long time. It would be detrimental to the State and it is a pernicious principle to hold that the life of a person or his liberty is sacred as such without any regard to the stability of the State or the peace of the land. They are contingent; everything in the State, whether it is the life of the individual, whether it is the liberty of the individual has to be considered, to be card for, if it is not dangerous or detrimental to the stability of the state, to the peace of the land; and in taking these two fundamental question, if the criminal law is administered in accordance with these two fundamental principles, liberty of the accused and the stability of the State, I submit, Sir, this article provides ample safeguard. There is enough safeguard with regard to the justice being done to the individual whether in a civil case or in any order, or in a criminal case. Sir, I support the article.

Pandit Thakur Das Bhargava : Sir, in regard to article 112, I want to make one or two observations. This article 112 is exceptionally wide. The words are "in any cause or matter" and I understand this a departure from the established law of the land also. Now perhaps in all the provinces the revenue jurisdiction is quite exclusive and the Privy Council had got nothing to do with such jurisdiction, but our Supreme Court shall be fully omnipotent as far as a human court could be and it shall have all kinds of cases and I think that so far as the other courts of other jurisdictions are concerned, for instance, if there is an Industrial tribunal, if there is an Income-tax tribunal, if there is railway tribunal, all kinds of cases will come before the Supreme Court and it becomes, therefore necessary as to what ought to be the range of the jurisdiction. What does the Supreme Court do in cases of this kind? My humble submission is that article 112 is the remnant of the most accursed political right of the divine right of kings. At the same time the jurisdiction of the article is almost divine in its nature, because I understand that this Supreme Court will be able to deliver any judgment which does complete justice between States and between the persons before it. If you refer to article 118, you will find that it says:- "The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament". So far so good: but my humble submission is that the Privy Council also, which as a matter of fact belonged to Great Britain and which was a sign of our judicial domination by the British, even that had very wide powers and proceeded to dispense justice according to the principles of natural justice. What is this natural justice? This natural justice in the words of the Privy Council is above law, and I should like to think that our Supreme Court, will also be above law, and I should like to think that our Supreme Court will also be above law in this matter, in this sense that it shall have full right to pass any order which it considers just; and in this light. I beg to submit before the House that this is a very important section and gives almost unlimited powers and as we have got political swaraj, we have judicial swaraj certainly. The right of appeal is absolute in articles 110 and 111, but so far as the special appeal Supreme Court jurisdiction is concerned, it is of a special nature and it is above law. Even if there is no right of appeal, the Supreme Court can interfere in any matter where dictates of justice require it to do so. I should therefore think that the Supreme Court shall exercise these powers and will not be deterred from doing justice by the provision of any rule or law, executive practice or executive circular or regulation etc. Thus the Supreme Court will be in this sense above law. I want that this jurisdiction which has been enjoyed by the Privy Council may be enjoyed and enlarged by our Court and not restricted by any canon or any provision of law.

Shri Alladi Krishnaswami Ayyar : Mr. President, it is necessary to realise the comprehensive nature and the Plenitude of the jurisdiction conferred by this article. The jurisdiction of the Supreme Court extends over every order in any cause or matter passed by any court or tribunal in the territory of India. Secondly, the Supreme Court is free to develop its own rules and conventions in the exercise of its jurisdiction. Sometimes we are labouring under a disadvantage, when we borrow the language of another enactment, and of importing into the construction of the article all the self-imposed fetters by the Judicial Committee for various historical reasons.

There is nothing to prevent the Supreme Court from developing its own rules, its own conventions and exercising its jurisdiction in an unfettered manner so far as this country is concerned. The self-imposed restrictions of the Judicial Committee are traceable to the doctrine that the King is the fountain-head of all justice and it is not in the larger interests, as it was conceived, to extend his hand in every criminal case. No such fetter need be imposed on the exercise of that jurisdiction under article 112. For example, there is nothing to prevent the Supreme Court from interfering even in a criminal case where there is miscarriage of justice, where a court has misdirected itself or where there is a serious error of law. Purposely, the framers of the Constitution took care not to import into article 112 any limitation on the exercise of criminal jurisdiction. This discussion I hope will have a material bearing when we deal with the question whether any special criminal jurisdiction is to be vested in the Supreme Court or not. If only we realise the plenitude of the jurisdiction under article 112, if only, as I have no doubt, the Supreme Court is able to develop its own jurisprudence according to its own light, suited to the conditions of the country, there is nothing preventing the Supreme Court from developing its own jurisprudence in such a way that it could do complete justice in every kind of cause or matter.

With these words, I support article 112 as it stands.

Shri H. V. Pataskar (Bombay: General): Sir, article 112 has been specially incorporated for the purpose of giving special jurisdiction to the Supreme Court. I was a little surprised to find my honourable Friend Pandit Thakur Das Bhargava complaining that it was rather too wide. The article says: "The Supreme Court may, in its discretion grant special leave to appeal from any judgment decree or final order in any cause or matter....." No doubt the words 'any cause or matter' are such as to include any matter whether civil, criminal or revenue or otherwise. By special reference to revenue, it seems to me that Pandit Thakur Das Bhargava thought that it was not necessary that the Supreme Court should be in a position in special cases to interfere in matters which are decided on the revenue side. If you look at the history of the administration of certain Acts passed by the former Government in respect of revenue, and which are even continued in the present days, and the cases in which so much injustice has been done, you will find that it is necessary, when we are establishing a Court like the Supreme Court we should make provision in the Constitution that that Court should have the power in special cases of injustice, to grant special leave to appeal even in revenue matters. In our own province, there is the Revenue Jurisdiction Act against which for years there has been agitation on the platform and in public, because that Act was intended to put out the jurisdiction of the Court by the Executive. Certainly I appreciate that when we are establishing a Supreme Court for our country, it should have this special jurisdiction to grant leave to appeal in all matters whether they are civil, criminal, revenue or otherwise. Because, the Supreme Court is intended in this country to serve the functions of the King in some other countries where he is the fountain-head of all justice. Here, there is no King, and naturally therefore we must have some independent body which must be the guardian of administration of justice and which must see that justice is done between man and man in all matters whether civil, criminal or revenue. From that point of view, Sir, I think that having made a provision for a Supreme Court, it is necessary that special powers should be given to that Court as in this article 112.

There is another reason also. The Supreme Court is not likely to grant special leave in any matter whatsoever unless it finds that it involves a serious breach of some principle in the administration of justice, or breach of certain principles which strike at the very root of administration of justice as between man and man. I think article 112 as it stands is a very right one and should be there.

The Honourable Dr. B. R. Ambedkar : I do not think there is anything for me to say.

Mr. President: The question is:

"That in article 112, the words 'except the States for the time being specified, in Part III of the First Schedule, in cases where the provisions of article 110 or article 111 of this Constitution do not apply' be deleted."

The amendment was adopted.

Mr. President : The question is:

"That article 112, as amended, stand part of the Constitution."

The motion was adopted.

Article 112, as amended, was added to the Constitution.

New Article 112-A

Mr. President : There is notice of a new article to be moved by Dr. Ambedkar, amendment No. 191.

The Honourable Dr. B. R. Ambedkar: Sir, I beg to move:

"That with reference to amendment No. 1932 of the List of Amendments, after article 112, the following new article be inserted :-

'112-A. Subject to the provisions of any law made by Parliament or any rule made under article 121 of Review of judgments or this Constitution, the Supreme Court shall have power to review any judgment orders passed by the pronounced or order passed by it.' "   Supreme Court.

Sir, the Draft Constitution, as it stands now,............

Prof. Shibban Lal saksena : On a point of order, Sir, amendment No. 1932 has not been moved............

Mr. President : That has not been moved : I am taking this as a fresh article.

Shri T. T. Krishnamachari : May I mention, Sir, that amendment No. 1932 is exactly the same as amendment No. 1928? Actually, if amendment 1928 is moved, amendment 1932 cannot be moved.

Mr. President : I have already said that I have taken it as a fresh article.

The Honourable Dr. B. R. Ambedkar : The Draft Constitution contains no provision for review of its judgments. It was felt that that was a great lacuna and this new article proposes to confer that power upon the Supreme Court.

The Honourable Shri K. Santhanam (Madras : General) : Sir, I am afraid that the drafting of this is not quite as happy as it should be. For one thing, I do not think it is right to put an article in the Constitution giving a power to the Supreme Court and say that that power shall be limited by rules made by the Supreme Court. I think it is bad law. If you give a power to the Supreme Court, it must be real power; you cannot say that that power could be limited by the Court itself. Again, the article says that the Supreme Court's power to review its judgment shall be regulated by law made by Parliament. I thing this is altogether contrary to the article 112 which we have adopted, where you have given the Supreme Court the power to review any judgment or any order coming from anywhere. Parliament has no right to interfere even with its ordinary power of review.

Mr. President : This refers to its own decisions.

The Honourable Shri K. Santhanam : I am coming to that. I think there is a greater reason why the Supreme Court should be left unfettered to review its own judgment. When it is allowed an unfettered freedom even in matters which are ordinarily dealt with by Parliament and State legislatures, why should the Supreme Court be fettered by law made by Parliament about the review of its own judgment? In these two respects, the thing is rather defective. I would suggest to Dr. Ambedkar to see if it should go in this form or whether the form should not be reconsidered.

The Honourable Dr. B. R. Ambedkar : I think my Friend Mr. Santhanam is completely mistaken in the observations that he has made. First of all, we are not conferring any power to the Supreme Court to make any rules. That power is being delegated by article 121. If he refers to that article he will see that it reads thus :-

> "Subject to the provisions of any law made by Parliament the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including, etc., etc."

Therefore it is not correct to say that we are giving power to the Supreme Court. The power is with the Supreme Court is to be exercised with the approval of President.

Another thing which has misled Mr. Santhanam is that he has not adverted to the fact that I proposed by amendment 42 in List I to add one more clause to article 121 which is (bb) and which deals with the rules to be made with regard to review. Therefore, having regard to these two circumstances, it is necessary that the review power of the Supreme Court must be made subject both to article 121 and also the amendment contained in No. 42.

Mr. President : The question is:

"That new article 112-A do stand part of the constitution."

The motion was adopted.

Article 112-A was added to the Constitution.

Article 113

Mr. President : No. 113.

Shri T. T. Krishnamachari : The House has expressly excluded reference to State in Part III of the First Schedule all along and therefore this article may not be necessary. You can formally put it to the House so that the House can negative it.

The Honourable Dr. B. R. Ambedkar : That is so.

Mr. President : The question is:

"That article 113 stand part of the Constitution."

The motion was negatived.

Article 113 was deleted from the Constitution.

Article 114

Mr. President : Article 114. There is one amendment by Mr. Gupte.

(The amendment was not moved.)

Does anyone wish to speak?

The Honourable Dr. B. R. Ambedkar : My attention has been drawn by my Friend Shri Alladi Krishnaswami Ayyar that the articles of this Draft Constitution dealing with powers of the Supreme Court do not expressly provide for appeals in income-tax cases. I wish to say that I am considering the matter and if on examination it is found that none of the articles could be used for the purpose of conferring such an authority upon the Supreme Court, I propose adding a special article dealing with that matter specifically. But this article may go in.

Mr. President : The question is:

"That article 114 stand part of the Constitution."

The motion was adopted.

Article 114 was added to the Constitution.

Mr. President : We have already dealt with 115, and 116 to 120.

Article 119

Shri T. T. Krishnamachari : We have not dealt with 119.

Mr. President : Yes, 119. There is an amendment of which notice has been given by Mr. Kamath in 1952.

(Amendments 1952 to 1955 were not moved.)

There is another amendment No. 41.

Shri T. T. Krishnamachari : May I point out that 41 is substantially the same as 1953 and if nobody moves 1953, and if Mr. Kamath moves 1955, then 41 can be moved.

Mr. President : Neither 1953 has been moved nor is Mr. Kamath in a position to move 1955. He is busy otherwise. I understand it was moved on the 27th May. So we can take up 41.

Shri T. T. Krishnamachari : Sir, I move:

"That with reference to amendment No. 1955 of the List of Amendments, clause (2) of article 119 be deleted."

Mr. President : The question is:

"That with reference to amendment No. 1955 of the List of Amendment, clause (2) of article 119 be deleted."

The amendment was adopted.

Mr. President : The question is:

"That article 119, as amendment, stand part of the Constitution."

The motion was adopted.

Article 119, as amended, was added to the constitution.

Article 121

Mr. President : 120, we have passed 121. There are several amendments to this. No. 1958.

Mr. Z. H. Lari (United Provinces : Muslim) : Sir, I move:

"That in clause (1) of article 121, the words 'with the approval of the President' be deleted."

This article deals with certain provisions which are necessary to be made by the Supreme Court in the discharge of its duties and functions. If you look to the article, the main purpose of the article is that there must be such rules as shall govern persons practising before the Court, and the number of judges which shall hear particular kinds of cases, and rules as to granting of bail and the and the like. All these are such as should be left to the entire discretion of the Supreme Court. The necessity of having the approval of the President is in a way interference by the Executive with the Judiciary. I think that in all these matters, which really relate to internal arrangement by the Supreme Court, there should be no hand of the President therein, and as such, I think that these words are entirely superfluous. The Supreme court shall be competent enough to frame all the necessary rules and there is no necessity of securing the previous approval of the President.

I hope that this House will accept this amendment which is really intended to make the Supreme Court entirely immune from the influence of the Executive.

(Amendment Nos. 1959 to 1961 were not moved.)

Shri T. T. Krishnamachari : Sir, Dr. Ambedkar has gone out for the amendment 1962 standing in the name of the Honourable Dr. Ambedkar:

"That in sub-clause (b) of clause (1) of article 121, the words 'and the time to be allowed to advocate appearing before the Court to make their submissions in respect thereof' be deleted."

Mr. President : There is another amendment with reference to this amendment. It is No. 42.

Shri T. T. Krishnamachari : Sir, I move:

"That with reference to amendment Nos. 1959, 1960 and 1962 of the List of Amendments, after sub-clause (b) of clause (1) of article 121, the following new sub-clause be inserted :-

> '(bb) rules as to the procedure for the review of any judgment pronounced or order passed by the Court including the time within which applications to the Court for such review are to be entered;' "

This amendment is necessary in view of the fact that the House has already accepted a new clause moved by Dr. Ambedkar in respect of conferring powers on the Supreme Court to make rules for the purpose of reviewing its own decisions. This is a corollary to that amendment which the House has accepted.

(Amendment No. 1963 was not moved.)

This amendment (No. 1964) has to be moved formally in order to enable the other amendments to be moved of which notice has been, namely, 42 and 43.

Sir, I formally move:

"That for the proviso to clause (2) of article 121, the following be substituted:

> 'Provided that it shall be the duty of every judge to sit for the said purpose unless owing to illness he is unable to do so, or owing to personal interest or other sufficient cause he considers that he ought not to do so.' "

Shri Alladi Krishnaswami Ayyar : Sir, I move:

"That with reference to amendment No. 1964 of the List of Amendments, for clause (2) of article 121, the following clause be substituted :-

> '(2) Subject to the provisions of the next succeeding clause, rules made under this article may fix the minimum number of judges who are to sit for any purpose, and may provide for the powers of single judges and Division Courts.
>
> (2a) The minimum number of judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution, or for the purpose of hearing any reference under article 119 of this Constitution shall be five:
>
> Provided that where the Court hearing an appeal under article 111 of this Constitution consists of less than five judges and in the course of the hearing of the appeal the court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal such court shall refer the question to a court constituted under this clause for opinion and shall on receipt of the opinion dispose of the appeal in conformity with such opinion.' "

I do not think there is any need for comment on sub-clause (2), and (2a) which speak for themselves. The only clause which requires some elucidation is the proviso. The main point of the proviso is that judicial time need not be unnecessarily wasted. A constitutional point may be raised by a party in the course of a general appeal in which other questions are raised. A court hears the appeal; it comes to the conclusion that really the constitutional point that is raised is not necessary for the disposal of the appeal, and that the case can be easily disposed of on the other point that has been raised. Under those circumstances it will be sheer waste of judicial time that a Bench of five Judges should hear this case, if otherwise a Bench of three Judges can under the rules of the Court dispose of the appeal. Therefore the provision is made-if the Bench that is hearing the case is satisfied that a real question of constitutional law has arisen, for the proper disposal of the case, the matter is referred to a full Bench of five Judges. They hear the constitutional question and the matter comes back before the three Judges who hear the original appeal and the other points of law that have been raised and that Bench disposes of the case. This is the normal procedure followed in cases where any point is referred to a full Bench for consideration by the High Courts in India. The idea is to assimilate this procedure to the procedure that is being followed for full Bench references to the High Court.

There is another point that I should like to mention so that the House may not think that I have brought it at a later stage and I have no doubt that Dr. Ambedkar will agree with it, namely, the express reference to article 111 of the Constitution in the proviso. Now there are various amendments tabled with a view to expand the jurisdiction of the Supreme Court and which have been left over. A constitutional question may be raised in the course of a criminal appeal if the Supreme Court is to be invested with criminal jurisdiction. Therefore possibly the expression "an appeal under article 111 of the Constitution" might have to be omitted. Or a constitutional point might arise even in the course of a special appeal and if the court is satisfied that a constitutional question arises then it may be referred to a court constituted under this clause. I am mentioning it so that it may not be thought that we are trying to bring in new amendments at every stage.

With these words, Sir, I move the amendment that is tabled in the name of Dr. Ambedkar and myself.

Shri T. T. Krishnamachari : Sir, amendment No. 44 is no longer necessary, if as I suppose Mr. Alladi Krishnaswami Ayyar's amendment is to be accepted.'

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for clause (3) of article 121, the following be substituted :-

> '(3) No judgment shall be delivered by the Supreme Court save in open court, and no report shall be made under article 119 of this Constitution save in accordance with an opinion also delivered in open court.'"

Sir, I shall move also amendment No. 1966:

"That for clause (4) of article 121, the following he substituted :-

> '(4) No judgment and no such opinion shall be delivered by the Supreme Court, save with the concurrence of a majority of the judges present at the hearing of the case but nothing in this clause shall be deemed to prevent a judge who does not concur from delivering a dissenting judgment or opinion.'"

Dr. P. S. Deshmukh (C. P. & Berar : General) : Sir, article 121 has undergone considerable change as a result of several amendments moved, some of them by or on behalf of Dr. Ambedkar and some others by Mr. Alladi Krishnaswami Ayyar. In view of that, the necessity for the retention of the words; "with the approval of the President" has further diminished. I therefore feel considerable sympathy with the amendment that has been moved by Mr. Z. H. Lari, notice of which was given by Mr. Shanker Rao Deo and others. In view of the changes that have been now effected there is no need for any reference to the President, because in most matters the whole position has been particularized and specifically stated. We have laid down the number of judges that should be there to hear particular classes of cases. We have also provided for cases falling under article 109. We have by the fresh amendments accepted that the judgment shall be in open court. The only powers that are retained with the Supreme Court under the article are those by which they can frame rules on matters more of day to day procedure which are not of such vital importance or significance as must be laid before the President before they can be made operative. The position is not very different from the powers of the High Courts in the provinces. The High Court has got wide powers of making rules in almost every matter as enumerated in this article and they are not required under any rule or procedure to refer them to the Governor or obtain his consent. I therefore feel that a reference to the President is unnecessary and it would be good if the House accepts the amendment moved.

Shri B. Das : Sir, I would like Dr. Ambedkar to clarify the words "No report shall be made under article 119 of the Constitution save in accordance with an opinion delivered in open court." This affects the liberties of the press. Suppose the press gets hold of some opinion which the Supreme Court has given to the President and if it is published, is the Government going to prosecute the paper which has published that secret information which the Supreme Court has tendered to the President? Newspapers have their sleuths. There are sometimes intelligent newspaper men who are able to anticipate the advice of High Court judges or Supreme Court judges. Is it contemplated that the Constitution will empower the Parliament under the present law that the liberty of the press will be affected? That is the question involved whether the liberties of the press will be affected and pressmen will be prosecuted.

Dr. Bakhshi Tek Chand : Sir, I support the amendment moved by Mr. Lari (No. 1958), that in clause (1) the words "with the approval of the President" be deleted. Article 121 gives the Supreme Court the power to frame rules, relating firstly, as to persons practising before the Court; secondly, rules regulating the procedure for hearing appeals and for determining what class of cases are to be heard in single Bench or in Divisional Courts or by Benches consisting of a larger number of judges. It also empowers the court to frame rules relating to costs and other incidental matters, rules for granting bail, stay of proceedings, providing for summary determination of any appeal which appears to the court to be frivolous, vexatious or for purposes of delay. Now, Sir, these all are matters which ought to be solely within the jurisdiction of the Chief Justice and the judges of the Supreme Court and there is no reason why they should be subject to approval of the President. If you see the constitution of the High Courts, as they have functioned in the country for the last eighty years or more and also the provisions of the Government of India Acts of 1915 and 1935 relating to these matters, you will find that it is purely within the jurisdiction of the Chief Justice and the judges of the High Court to frame rules in such matters, as the admission of advocates, attorneys, etc. and the constitution of Benches. Sanctions of approval of the Governor-General or Governor is not obtained for promulgating these rules. In this connection, I would draw the attention of the House to clauses 9 and 10 of the Letters patent of all the other High Courts, *i.e.*, the presidency High Courts, as well as the High Courts of Allahabad, Patna, Nagpur and of the East Punjab Orissa and Assam which have been established recently.

Clause 9 reads :

> "And we do hereby authorise and empower the said High Court of Judicature at Fort William in Bengal to approve, admit, and enrol such and so many Advocates, Vakeels, and Attorneys as to the said High Court shall seem meet; and such Advocates, Vakeels and Attorneys shall be and are hereby authorised to appear......"

Then clause 10 says:

> "And we do hereby ordain that the said High Court of Judicature at Fort William in Bengal shall have power to make rules for the qualification and admission of proper persons to be Advocates, Vakeels and Attorney-at-Law of

the said High Court, and shall be empowered to remove or to suspend from practice, on reasonable cause......"

Then clause 10 says:

These provisions are not subject to the approval of the Governor or the Governor-General, though in several other matters such as the creation of new courts, the fixation of salaries of the staff and so on, rules framed by the High Courts, are subject to the approval of the Governor-General in the case of Calcutta and provincial Governments in the case of the other provinces. But so far as the admission of advocates, vakeels, etc. are concerned, the framing of the rules is purely a matter within the jurisdiction of the Chief Justice and the other judges of the High Courts, and no approval of the Governor-General or the Governor is necessary.

With regard to the constitution of Division Benches, the provision in section 108 of the Government of India Act, 1915 was as follows :-

> "Each High Court may by its own rules provide as it thinks fit for the exercise by one or more judges or by division courts constituted by two or more judges of the High Court of the original and appellate jurisdiction vested in the court.
>
> (2) The Chief Justice of each High Court shall determine what judge in each case is to sit alone, and what judges of the court, whether with or without the Chief Justice are to constitute the several division courts."

This provision was re-enacted with slight verbal alterations in section 223 of the Government of India Act, 1935. If this is the position relating to the High Courts, why should a different rule be adopted in regard to the Supreme Court which will be the highest court in the country? Why should the previous approval of the President be necessary? In practice this will mean the approval of the Prime Minister. I submit this is a wholly unnecessary interference with matters which relate to the internal administration of the Supreme Court.

I have mentioned these two clauses relating to the admission, etc. of the advocates, pleaders and attorneys and with regard to the constitution of Benches. The other matters referred to in article 121 are matters of very small import; they relate to costs and other incidental matters. Obviously, the Supreme Court is the proper body to decide these matters.

Then there is the question of the granting of bail. Why should rules relating to this matter, which is purely a judicial matter, be referred to the executive? They should be left to the Chief Justice and the other Judges. Similarly rules as to stay of proceedings. When the Courts stay proceedings in a pending suit or appeal, generally security has to be taken for the due execution of the order which may ultimately be passed. Whether that security is to be certified before the Registrar of the Supreme Court or before the High Court are matters of detail which should be settled by rules framed by the Court.

This aspect of the matter seems to have escaped the attention of the Drafting Committee and there is no reason why the words "subject to approval of the President" should be imported, in the article. Sir, I support the amendment moved by Mr. Lari.

Prof. Shibban Lal Saksena : Sir, with regard to the amendment moved by my honourable Friend, Mr. Lari, there is a general feeling in the House, that Constitution allows too much interference with the work of the Supreme Court. We have given enough powers to the President, that is the Prime Minister, over the Supreme Court. If even in small matters like the framing of rules in regard to the powers vested in the High Courts, etc., we say that these should be subject to approval by the President, it is objectionable. We should make our Supreme Court etc. completely independent of the influence of the nominated the Judges there should be no further interference. They will frame rules which are contemplated in the section according to the canons of jurisprudence and in the best interests of the country. Sir, I support the amendment of Mr. Lari.

Shri T. T. Krishnamachari : On a point of information, Sir, may I ask the speaker whether he has changed his mind in regard to what he said with regard to article 111 where he wanted its provisions to be subject to the law made by Parliament?

Prof. Shibban Lal Saksena : Sir, I have not heard the question.

Mr. President : Mr. Krishnamachari has put a question which you do not understand and therefore need not answer.

Mr. Naziruddin Ahmad : Sir, I rise to support the amendment of Mr. Lari. As has been clearly explained by Dr. Tek Chand, with all the authority of his unique judicial experience, matters relating to rules under article 121 relate entirely to the procedure to be observed in Courts. In fact rules relating to practising lawyers and other things are matters of internal administration of the Courts. Such being the case, it will be extraordinary for the Court to send its proposals to the President for his approval. I could well understand and appreciate a provision which requires consultation with the President. That would have been something acceptable. I have no doubt whatsoever that if we delete these words the Supreme Court will always consult the Government.

But to make it a condition of the validity of the rules is somewhat extraordinary. I submit that the President, for all practical purposes, will mean the Ministry or the Government of the day. That is more objectionable. That the Supreme Court with whom vests the supreme authority of the judiciary and which should be absolutely independent of the executive should be required to take the approval of the executive in regard to internal matters of administration of the Court in its judicial functions, would be highly objectionable. With regard to rules for the grant of bails, whether bail should be granted or not is a matter for the legislature but the exact regulation of rules for the grant of bails, whether bail should be granted or not is a matter for the legislature but the exact regulation of rules relating to the granting of bails, whether an application is to be made, whether a surety is to be taken, and so on and so forth, are matters for the internal administration of the Supreme Court. As regards stay of proceedings, it is a matter entirely in the discretion of the Court and it is impossible to provide in advance any definite rule as to stay of proceedings. They are matters entirely discretionary and change with the circumstance of each case. Nothing could be determined in advance. Rules should, therefore, be left to the discretion of the Court and somewhat general and elastic for easy application to individual cases. Again, matters which are incidental to the proceedings and matters for summary determination are all purely judicial matters. I do not wish to go into the details which have been so ably explained by Dr. Bakhshi Tek Chand. I submit that there should not only be no interference with the independence of the judiciary, but there should be no appearance of it even. For these reasons, these words are obnoxious and should be struck out. I have no doubt, as I have submitted, that the Supreme Court will always consult the Government and that should be enough. The matter should be left rather to convention than to legislation. With these few words, I support the amendment of Mr. Lari.

The Honourable Shri K. Santhanam : Sir, I am rather surprised at this support for the removing of the words "with the approval of the President." The consequence of this will not be the independence of the Supreme Court from the Executive; it will only give the right to the Executive to limit the rule making power by law. So long as the first portion of the article is there, "Subject to the provisions of any law made by Parliament", the words "with the approval of the President" form the safety valve for the Supreme Court. Because, it will be open to Parliament to make a law taking away the rule making power altogether from the Supreme Court and Parliament may prescribe every one of these things by law. Therefore, it is always better to have the things done with the approval of the President, if you want to vest the ultimate power in Parliament.

Then it is a matter of public policy also. Take for instance rules as to the person practising before the Court. Should it be open to the Supreme Court to say that they shall recognise the Degrees of a particular University and not of any other University? The whole question of legal education and inter provincial matter also arise. This is a matter probably in which the Supreme Court will not have sufficient materials for coming to a judgment and it will have to consult the Executive, not only the Executive in the Centre, but also the Executive in the provinces. The Education Department in the Central Ministry will be the authority to say which law college is conferring proper Degrees. Otherwise, the Supreme Court will have to appoint a Commission to go into the standard of education of every University to see whether a particular Degree should be recognised. I do not think this should be left to the absolute power of the Supreme Court. Similarly, in matters relating to costs and fees, it is also a matter of public policy. It is but right that the Supreme Court should also have the co-operation of the Executive. This idea that the Supreme Court has to be somebody which is absolutely separate from every other institution set up by the Constitution is a wholly wrong and mischievous idea. The Supreme Court has to be one of our safeguards. But, If it is to be put in a position of hostility to the Executive or Parliament, then, the power of the Supreme Court will vanish, because, after all, it has to depend upon the goodwill both of Parliament and the Executive. I would suggest therefore that this idea of independence of the Supreme Court should not be done to death as many Members are attempting to do.

There is only one other small point which I would like to point out. In the new clause which has been moved by my honourable Friend Mr. T. T. Krishnamachari by amendment No. 42, it is stated, rules as to the procedure for the review of any judgment pronounced or order passed by the Court including the time within which applications to the Court for such review are to be entered". I would suggest that this is not wholly consistent with the new article 112-A as has been adopted. There, it is said, not only the procedure, but the power of review itself, or the conditions of review will be limited by rules. I personally objected to that provision. But, having passed that, I think the subsequent amendment should be consistent with the provision already adopted. I would suggest that the words "the procedure for" may be left out. "Rules as to the review of any judgment" will be sufficiently comprehensive, If you want that the word "procedure" must stand in the clause, the words "rules as to the conditions of and procedure for' may be adopted to be consistent with the provision which we have already adopted.

The Honourable Dr. B. R. Ambedkar : Mr. President, I regret very much that I cannot accept the amendment moved by my honourable Friend Mr. Lari. It seems to me that he has completely misunderstood what is involved in his amendment.

The reason why it is necessary to make the rule-making power of the Supreme Court subject to the approval of the President is because the rules may, if they were left entirely to the Supreme Court, impose a considerable burden upon the revenues of the country. For instance, supposing a rule was made that a certain matter should be heard by two Judges. That may be a simple rule made by the Supreme Court. But undoubtedly, it would involve a burden on public revenues. There are similar provisions in the rules, for instance, regarding the regulation of fees. It is again a matter of public revenue. It could not be left to the Supreme Court. Therefore, my submission is that the provisions contained in article 121 that the rules should be subject to the approval of the President is the proper procedure to follow, Because, a matter like this which imposes a burden upon the public revenues and which burden must be financed by the legislature and the Executive by the imposition of taxation could not be taken away out of the purview of the Executive.

I may also point out that the provisions contained in article 121 are the same as the provisions contained in article 214 of the Government of India Act, 1935 relating to the Federal Court and article 224 relating to the High Courts. Therefore, there is really no departure from the position as it exists today. With regard to the comments made by my honourable Friend, Mr. Santhanam relating to amendment No.42 move by honourable Friend, Mr. T. T. Krishnamachari, I am afraid, I have not been able to grasp exactly the point that he was making. All that, therefore, I can say is this, that this matter will be looked into by the Drafting Committee when it sits to revise the Constitution, and if any new phraseology is suggested, which is consistent with the provisions in the article which we have passed conferring power of review by the Supreme Court, no doubt it will be considered.

There is one other point to which I would like to refer and that is amendment No. 43. In amendment No. 43, which has been moved by my honourable Friend, Shri Alladi Krishnaswami Ayyar, and to which I accord my whole hearted support, there is a proviso which says that if a question about the interpretation of the Constitution arises in a matter other than the one provided in article 110, the appeal shall be referred to a Bench of five judges and if the question is disposed of it will be referred back again to the original Bench. In the proviso as enacted, a reference is made to article 111, but I quite see that if the House at a later stage decides to confer jurisdiction to entertain criminal appeals, this proviso will have to be extended so as to permit the Supreme Court to entertain an appeal of this sort even in a matter arising in a criminal case. I, therefore, submit that this proviso also will have to be extended in case the House follows the suggestion that has been made in various quarters that the Supreme Court should have criminal jurisdiction.

Mr. President : The question is:

"That in clause (1) of article 121, the words 'with the approval of the President' be deleted.

The amendment was negatived.

Mr. President : The question is:

"That with reference to amendments Nos. 1959, 1960 and 1962 of the List of Amendments after sub-clause (b) of clause (1) of article 121, the following new sub-clause be inserted :-

> '(bb) rules as to the procedure for the review of any judgment pronounced or order passed by the Court including the time within which applications to the Court for such review are to be entered;'"

The amendment was adopted.

Mr. President : The question is:

"That in sub-clause (b) of clause (1) of article 121, the words 'and the time to be allowed to advocates appearing before the Court to make their submissions in respect thereof' be deleted."

The amendment was adopted.

Mr. President : The question is:

"That with reference to amendment No. 1964 of the List of Amendments, for clause (2) of article 121, the following clauses be substituted :-

> '(2) Subject to the provisions of the next succeeding clause, rules made under this article may fix the minimum number of judges who are to sit for any purpose, and may provide for the powers of single judges and Division Courts.
>
> '(2a) The minimum number of judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution, or for the purpose of hearing any reference under article 119 of this Constitution shall be five :
>
> Provided that where the Court hearing an appeal under article 111 of this Constitution consists of less than five judges and in the course of the hearing of the appeal the court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such court shall refer the question to a court constituted under this clause for opinion and shall on receipt of the opinion dispose of the appeal in conformity with such opinion.' "

The amendment was adopted.

Mr. President : The question is:

"That for clause (3) of article 121, the following be substituted :-

> '(3) No judgment shall be delivered by the Supreme Court save in open court, and no report shall be made under article 119 of this Constitution save in accordance with an opinion also delivered in open court.' "

The amendment was adopted.

Mr. President : The question is:

"That for clause (4) of article 121, the following be substituted :-

> '(4) No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the judges present at the hearing of the case but nothing in this clause shall be deemed to prevent a judge who does not concur from delivering a dissenting judgment or opinion.'"

The amendment was adopted.

Mr. President : The question is:

"That article 121, as amended, stand part of the Constitution."

The motion was adopted.

Article 121, as amended, was added to the Constitution.

New Article 122-A

Dr. Bakshi Tek Chand : Sir I move:

"That with reference to amendments Nos. 1909 and 1926 of the List of Amendments, after article 122 the following new article be inserted :-

Interpretation.

> '122-A. In this Chapter, references to any substantial question of law to the interpretation of this Constitution shall be construed as including references to any substantial question of law as to the interpretation of the Government of India Act, 1935, or of any Order in Council or order made thereunder or of the Indian Independence Act, 1947, or of any order made thereunder.'"

Sir, the necessity for adding this new article has arisen because in several sections of this chapter which relates to the powers of the Supreme Court, the expression used is "as to the interpretation of this Constitution". For instance, in article 110 which takes the place of section 205 of the Government of India Act, power is given to a party to a party to prefer an appeal to the Supreme Court in any matter, whether in civil, criminal or other proceedings, if the High Court certifies that the case involves a substantial question of law "as to the interpretation of this Constitution." "This Constitution" would meat the Constitution which is being passed by, this Constituent Assembly now. There may be other cases, however, in which the question of the interpretation of the Government of India, Act of 1935 or of an Order in Council by His Majesty or an order of the Governor-General issued under the powers conferred on them by the Government of India is involved; similarly, questions relating to the interpretation of the Indian Independence Act of 1947 may arise. No provision for appeals in such cases is made in the article as drafted. Such questions may have arisen in such cases which are pending before the High Court or before subordinate Courts on the day the new Constitution comes into operation. What will happen to them? Unless we enlarge the meaning of this expression "this Constitution" in the manner in which it is suggested in this amendment, there will be no appeal at all from the decisions of the High Court in those matters. Those matters may be of very vital importance, and may arise in connection with legislation which has been enacted by the provincial or Central legislatures or in Ordinances promulgated by the Governor or the Governor-General. If these question arose in cases which had been decided by the High Court and are pending before the Privy Council on the date on which the New Constitution comes into force, they will be automatically transferred to the Supreme Court under the transitional provision, made in article 308(2) which will be placed before this House at the proper time. But there is no provision with regard to cases in which similar questions are involved. but which have not yet been decided either by the subordinate court or by the High Courts in India or which may arise in suits to be instituted hereafter. Under the existing law, appeals from such cases lie to the Federal Court; but the Federal Court will cease to exist on the date when the new Constitution comes into force. In order that appeals in such cases may under articles 110 and 111 or other articles, lie to the Supreme Court, provision must be made in the Constitution Act. Therefore, it has been found necessary to insert this interpretation clause, instead of repeating these words in article 110, or article 111 clause (2) or article 116, and in one or two other articles.

The effect of this will be that the words "this Constitution" wherever they occur in this chapter will mean questions relating to interpretation of the Constitution which is now being passed, but also include questions relating to the interpretation of the Government of India Act 1935 or any Order in Council or order made thereunder, of the Indian Independence Act or orders made thereunder.

The Honourable Shri K. Santhanam : Sir, I wish to raise a rather delicate point. From the date this Constitution comes into force, the Government of India Act, 1935 and all orders made thereunder, and the Indian Independence Act of 1947 and all orders made thereunder lapse altogether. They cease to have any kind of legal validity and if any laws made under them continue, it will only be in virtue of some provision inserted in this Constitution saying that all laws which are in force at the commencement provided they are not repugnant to this Constitution, shall continue. Their legal validity will depend upon the provisions of this Constitution and therefore question will arise only under this Constitution. I think this is a sort of juridical- I would not call it absurdity-impropriety, It is altogether meaningless. We can not ask our Supreme Court to go into the interpretation of constitution which have become absolutely dead and which have no kind of legal validity. It is possible that anybody can sue in a court of law under the Government of India Act, 1935, after this Constitution comes into force? There may be arguments based on some interpretation. Is it right that the Supreme Court should sit to consider and say that this is the interpretation of section 211 of the Government of India Act of 1935, because at that time the Government of India Act would have lapsed altogether, or can the Supreme Court interpret some articles of the Indian Independence Act of 1947? This Indian Independence Act was an Act made by the British Parliament. How can the Supreme Court of India say that this is the interpretation of a particular section made by the Government of Britain? They can only say how far the laws made under the Government of India Act, 1935 are consistent with this Constitution or have been continued by this Constitution. All questions of interpretation of the Constitution can arise before the Supreme Court only as interpretation of this Constitution. In interpreting this Constitution, they may refer to the Government of India Act or the law made by Parliament. I may also say that after discussion with Mr. Alladi Krishnaswami Ayyar, he thinks this point of view must be considered. I think this is a matter which requires proper consideration by lawyers who are better versed in law than myself.

Shri T. T. Krishnamachari : Mr. President, I am afraid my honourable Friend Mr. Santhanam has been rather hasty in opposing this amendment and holding it as ridiculous.

As a proposition in the abstract what he says may be correct; but there are certain contingencies which might happen and which will not be provided for by this Constitution coming into force without a saving clause of this nature. Because, certain things may be done under the old Constitution and the new Constitution may contain provisions that are not only different but also the opposite of what were contained in the constitution Acts which it supersedes. While some acts of State may be *ultra vires* of the old Constitution, it may be *intra vires* of the new Constitution. What will happen to such a contingency if it occurs? For example, supposing in the old Constitution, a provincial Government is not permitted to levy a tax on the betterment value of property or a capital gains tax and we in the new Constitution put a provision in the appropriate Schedule that that particular subject shall be within the competence of the provincial Government, what is to happen in respect of an action which may be initiated, provided it is not barred by limitation, by a person aggrieved by the action of the provincial Government in imposing a tax which was *ultra vires* at the time when it was imposed because the old Constitution did not permit it? It is rather a delicate problem; it is not a conundrum; it is a fact which may well come into being because there may be provisions in the new Constitution which will ease the strain that is being felt in regard to the distribution of powers between the Centre and the provinces under the Government of India Act. What is contemplated by this new clause is this. Cases where a change has been made in the new Constitution will be covered and the interests of affected parties will be protected. I do not think it is quite so easy as saying that merely because we pass the new Constitution, that Constitution applies to all that has happened in the past. There is undoubtedly room for considerable difference of opinion. Parties may be seriously injured by a provision of this nature not being put in the constitution. The matter has been discussed at some length in the Drafting Committee and the proposition before the House is a result of it. Notwithstanding the fact that I should be chary of criticising any view expressed by my esteemed Friend Mr. Alladi Krishnaswami Ayyar.......

Shri Alladi Krishnaswami Ayyar : I have not given any opinion in the matter.

Shri T. T. Krishnamachari : He may have expressed the opinion if he felt strongly on the point and there is no harm in it.

What I say is, this provides for meeting a lacuna which exists or which is likely to come into being when the interest of parties may be affected by the absence of a provision of this nature in the Constitution. While I would not like to say anything to detract from the value of what my honourable Friend Mr. Santhanam has said, I think on reflection he will find that this new article is not absurd. On the other hand, it is dictated by principles of wisdom and careful thought rather than with the intention of introducing an additional conundrum into the Draft Constitution.

I support the motion moved by Dr. Bakhshi Tek Chand.

Mr. Naziruddin Ahmad : Mr. President, Sir, I think there is a tempest in a tea pot. The article provides for a very likely and a very ordinary contingency which is likely to happen in Court from day to day. The Draft Constitution will come into operation on a certain date, but before the Draft Constitution comes into operation actions will be taken, Bills will be passed and other things done under the Government of India Act, 1935, and the Independence of India Act which now operates. All these acts will not necessarily be questioned or challenged during the pendency of those Acts and before actions taken and orders passed under the existing Constitution may be questioned after the commencement of this Act or even ten or twenty years later. Legality of deeds and grants made by the Mughal Emperors and the East India Company still now come into question. So this is a very important provision. If we do not pass it, there will be a lacuna and questions or cases will arise any time relating to past transactions. It is for this reason that I think that this really supplies and fills up a lacuna and it must be passed.

Prof Shibban Lal Saksena : Sir, I would have wished to support Mr. Santhanam's view but I feel that if what he has said in necessary, this can be put in a Parliamentary Act. Why should it be in this Constitution? Why should it be for ever said that the interpretation of the Government of India Act and orders passed thereunder shall be interpreted by the Supreme Court? If, say, for a particular period or so, while these orders are in force or cases are pending under the Government of India Act, we require this provision, we can pass an Act of Parliament or we can pass an Ordinance on the very day this Constitution comes into force to meet this need, but why burden our Constitution with this? Therefore, I think that Dr. Ambedkar should remove this provision from our Constitution and either leave the Parliament to make such a provision to enable pending cases to be decided under that law or by an Ordinance until the Act is passed.

Dr. P.S. Deshmukh : Sir, my Friend Mr. T.T. Krishnamachari has explained the purpose of this new article that is before the House and the purpose is said to be that if we do not have this article, then the cases arising out of these various Acts and Statutes will probably not fall within the purview of the Supreme Court. My interpretation of the whole position is slightly different. In may view all that the new article wishes to provide for is to give cases arising out of the interpretation of the Government of India Act as well as the Indian Independence Act the dignity which is provided especially for interpretation of the Constitution in the various articles that have been incorporated in the Constitution. I do not think that this clause can be regarded as providing for the first time and only in this particular place a provision to save those cases which arise prior to coming into operation of the Constitution but arise out of the various enactments which have been mentioned in this article. The main purpose as it appears to me is to give the interpretation of the Government of India Act and the Indian Independence Act the same status as is given to the cases involving interpretations of the Constitution. I do not think however that the way in which the article has been worded is quite satisfactory. First of all, it puts the whole thing upside down. Instead of saying that the questions or interpretations of the Government of India Act and the Independence Act shall be interpreted as if they are question of interpretation of the Constitution, it puts the whole thing absolutely in the reverse; and secondly, if there is any provision necessary for saving those cases which arise out of Indian Independence Act, etc., I do not think the article as it stands provides for that. These are the observations I would like to make for the consideration of the Honourable Dr. Ambedkar. There are if I may repeat for the sake of clarity, two things: firstly that the wording of the article is not satisfactory, secondly, if the intention is that excepting for the article the cases arising out of the Government of India Act or the Independence Act will not be within the purview of the Supreme Court, then according to my view, the article does not seem to make adequate and proper provision for it.

Shri L. Krishnaswami Bharathi : May we have the benefit of Mr. Alladi's views?

Shri Alladi Krishnaswami Ayyar : I do not want to say anything.

The Honourable Dr. B. R. Ambedkar : Sir, I accept the amendment moved by my Friend Mr. Tek Chand. The point is a very simple one. We are undoubtedly repealing the Government of India Act, 1935, and the Indian Independence Act and the orders made thereunder from the date of the passing of this Constitution; but it has to be realised that while we are putting these Statutes, so to say, out of action, we are not putting an end to the rights and obligations which might have accrued under the Government of India Act. Consequently if there are parties who have obtained certain rights under the provisions of the Government of India Act and whose rights have now been extinguished by any rule regarding limitations, it is obvious that some forum must be provided for the adjudication of those rights. It is to meet this contingency *viz.*, of persons who have their rights accrued under the existing Government of India Act and which have not come before a court of law, it is for such contingency that this article is necessary. This matter could have been provided for, I agree, in two different ways, first of all, by amending the language of the article 110 where we have used the word "This Constitution', if we had merely said 'any law regarding the Constitution relating to the Constitution of the country' that probably might have sufficed but the point is that we would have been obliged to repeat this formula in three or four places. Instead of doing that, It was decided that the best way is to put in an omnibus clause to define what this Constitution means. I think this provision is very necessary and ought to remain part of the Constitution.

Mr. President : The question is:

"That with reference to amendment Nos. 1909 and 1926 of the List of Amendments after article 122, the following new article be inserted.

Interpretation

'112A. In this Chapter, references to any substantial question of law as to the interpretation of this Constitution shall be construed as including references to any substantial question of law as to the interpretation of the Government of India Act, 1935, or of any Order in Council or order made thereunder, or of the Indian Independence Act, 1947, or of any order made thereunder.'"

The motion was adopted.

Article 122-A was added to the Constitution.

Article 123

Mr. President : Article 123.

Shri T. T. Krishnamachari : 123 refers to those portions which were specifically omitted all along. Therefore it might be put to the House and possibly the House might negative it because it is unnecessary.

Mr. President : Yes. The Question is:

'That article 123 stand part of the Constitution."

The motion was negatived.

Article 123 was deleted from the Constitution.

Mr. President : After this we have to go back to the articles dealing with the States. We did up to 170. The subsequent articles deal with the procedure in the provincial Legislatures.

Article 191

Shri T. T. Krishnamachari : May I suggest that we might take up article 191 and the articles that occur thereafter. This and subsequent articles deal with the question of High Courts in the States and it would be easy for the House to deal with them because we have just now dealt with analogous articles relating to the Supreme Court.

Mr. President : If so, I am prepared to take up article 191 and subsequent article because they deal with High Courts, and as we have been dealing with the provisions regarding the Supreme Court and the provisions for the High Courts are more or less similar, Members may not find it difficult to carry on with the discussion of these articles. So I take up article 191.

(Amendments Nos. 2563, 2564, 2565 and 2566 were not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, I formally move.

"That in sub-clause (a) of clause (1) of article 191, for the words 'the High Court of East Punjab, and the Chief Court in Oudh' the words 'and the High Courts of East Punjab, Assam and Orissa' be substituted."

Sir, I moved:

"That with reference to amendment Nos. 2567 and 2570 of the List of Amendments, for article 191, the following article be substituted:-

'191. (1) There shall be a High Court for each State.

High courts of States.

(2) For the purposes of this Constitution the High court existing in any Province immediately before the commencement of this Constitution shall be deemed to be the High Court for the corresponding State.

(3) The provisions of this Chapter shall apply to every High Court referred to in this article.' "

Shri T. T. Krishnamachari : We might take up the discussion of this amendment first because if this is accepted by the House all the other amendments will be unnecessary. This alters the entire contour of the article while, it also simplifies it.

Mr. President : There are some amendments of which I have got notice. I shall run over them and see.

(Amendments Nos. 2568 to 2577 were not moved.)

Mr. President : There is therefore no other amendment except the one moved by Dr. Ambedkar. Does anyone wish to say anything about the amendment or the article?

The question is:

"That with reference to amendment Nos. 2567 and 2570 of the List of Amendments, for article 191, the following article be substituted:-

'191. (1) There shall be a High Court for each State.

High courts of States.

(2) For the purpose of this Constitution the High court existing in any Province immediately before the commencement of this Constitution shall be deemed to be the High Court for the corresponding State.

(3) The provisions of this Chapter shall apply to every High Court referred to in this article.' "

The amendment was adopted.

Mr. President : The question is:

"That article 191, as amended, stand part of to the Constitution."

The motion was adopted.

Article 191, as amended, was added to the Constitution.

Mr. President : I have left out one thing. There is a proposal by Prof. Shah- amendment 2562- that a new article, 190-A be added. I do not know if it will come at this stage. Does Prof. Shah wish to move it?

Prof. K. T. Shah (Bihar: General): Yes, Sir.

Mr. President : Have we not discussed this question in relation to the Supreme Court?

Prof. K. T. Shah : It has been discussed, I know.

Mr. President : It is any use going over the same ground?

Prof. K. T. Shah : In that case I shall not move it.

(Amendment 2562 was not moved.)

Article 192

(Amendments 2578 to 2580 were not moved.)

Mr. President : Amendment No. 2581 is in Dr. Ambedkar's name. This has to be formally moved.

The Honourable Dr. B. R. Ambedkar : Sir, I formally move:

"That in the proviso to article 192, the words beginning with 'together with any' and ending with 'of this Chapter' be deleted, and after the words 'Six' the words 'from time to time' be inserted."

Sir, I move:

"That with reference to amendment No. 2581, of the List of Amendments, for article 192, the following new articles be substituted:-

'192. Every High Court shall be a court of record and shall have all the powers of such a
court including High Courts to be courts the power to punish for contempt of itself. of
Record

'192-A. Every High Court shall consist of a Chief Justice and such other judges as the
President may from time to time deem it necessary to appoint:
Constitution of high Courts

'Provided that the judges so appointed shall at no time exceed in number such maximum as the President may, from time to time, by order fix in relation to that to that Court.' "

(Amendment No. 2582 was not moved.)

Prof. Shibban Lal Saksena : Sir, I only wish to draw attention to one fact. Article 192 says:

"Every High Court shall be court of record and shall consist of a Chief Justice and such other judges as the

President may from time to time deem it necessary to appoint."

and in the proviso it was said:

"Provided that the judges so appointed together with any additional judges appointed by the President in accordance with the following provisions of this Chapter shall at no time exceed in number such maximum as the President may by order fix in relation to that court."

My only objection to the use of the word "President" in this clause is that this is the function of the Supreme Court. If the court feels that justice cannot be dispensed unless a certain number of judges are in the court. It is their province to recommend this. I therefore think that the President should fix the number on the advice of the Supreme Court Chief Justice or in consultation with him, so that the Supreme Court may have the initiative in advising the President as to what is the number of judges required for each High Court, That should I think be provided for.

Mr. President : The question is:

"That with reference to amendment No. 2581, of the List of Amendments, for article 192, the following new articles be substituted:-

192. Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

High Court to be courts.

'192A. Every High Court shall consist of a Chief Justice and such other judges as the President may from time to time deem it necessary to appoint:

Provided that the judges so appointed shall at no time exceed in number such maximum as the President may, from time to time, by order fix in relation to that Court.'"

The amendment was adopted.

Mr. President : The question is:

"That article 192, as amended, stand part of the Constitution."

The motion was adopted.

Article 192, as amended, and 192-A were added to the Constitution.

Mr. President : Hon. Shri G. S. Gupta's amendment relates to the language question which we shall not take up now.

Article 193

(Amendment No. 2584 was not moved.)

Mr. B. Pocker Sahib (Madras: Muslim): Sir, I beg to moved:

"That for clause (1) of article 193, the following be substituted:-

> '(1) Every Judge of a High Court shall be appointed by the President by a warrant under his hand and seal on the recommendation of the Chief Justice of the High Court concerned after consultation with the Governor of the State concerned and with the concurrence of the Chief Justice of India and shall hold office until he attains the age of sixty-three years.' "

There are two points involved in this amendment. Even in connection with the articles dealing with the appointment of Supreme Court judges I have made a reference to the recommendations in the memorandum of the Federal Court and the Chief Justices of the provincial High Courts. There fore I do not propose to deal with those points to which I had already referred. I would request the Members of this House to consider the points mentioned in the memorandum of the Federal Court and the Chief Justices of all the High Court in India. It is very valuable document and therefore proper weight should be attached to that by the House. I do not want to repeat those arguments to which I have referred on the previous occasion.

The important difference between my amendment and the article as it stands is that the amendment requires that the main recommendation must be from the Chief Justice of the High Court concerned after consultation with the Governor of the Province and the concurrence of the Chief Justice of India is insisted on. It is very necessary that the recommendation should be that of the Chief Justice of the High Court concerned and the Governor is only to be consulted. The concurrence of the Chief Justice of India is insisted on in my amendment which is an important thing. I do not want to repeat the arguments which I mentioned in connection with the appointment of the judges of the Supreme Court. The reason for the amendment is that in the matter of appointments to the High Courts there should be only consultation with the Governor and the Ministry should not have any real part in these appointments and they should be above political considerations.

Another point involved in the amendment is as regards the age. On this matter I would draw the attention of the House to the recommendation of the Federal Court and the Chief Justices of the High Courts in India. They state:

> "It is essential that a difference of three to five years should be maintained between the retiring age of the High Court judge and that of the Supreme Court judge. The age limit for retirement should be raised to 65 for High Court judges and to 68 years for Supreme Court judges."

They go to the extent of recommending that the age should be fixed for retirement at 65. We know cases in which retired High Court judges are very energetic and have held very responsible positions in life after retirement. When that is so, I do not see any reason why they should be compelled to retire at an earlier age. Therefore, I would request honourable Members to pay sufficient consideration to the recommendations made by the Federal Court and the Chief Justices of the various High Courts who put the age limit as high as 65, while my amendment only raises it to

63. I do not want to add anything more to what I have said.

The Assembly then adjourned till Eight of the Clock on Tuesday, the 7th June 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME VIII

Tuesday, the 7th June, 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION-*(Contd.)*

Article 193-*(Contd.)*

Mr. President : We were dealing with article 193 yesterday. We shall now resume consideration of that article. One amendment was moved but there are several other amendments. We shall take them up now. Amendments Nos. 2586, 2587, 2588 and 2589 are of a similar nature. The only difference is with regard to the age of retirement of the Judges in these amendments. There is another amendment No. 2592 which is in the name of Dr. Ambedkar which, I think , will cover all these amendments except about the question of age. So I think that if Dr. Ambedkar moves his amendment first, probably it may not be necessary to take up these other amendments with regard to matters other than the age. With regard to the age, we may take up that question separately.

The Honourable Dr. B.R. Ambedkar (Bombay: General): I am not moving that amendment.

Mr. President : Then we shall have to take up the other amendments. Mr. K. C. Sharma, amendment No. 2586.

Shri Krishna Chandra Sharma (United Provinces: General): Sir, I moved:

> "That for clause (1) of article 193, the following be substituted:
>
>> '(1) Every Judge of a High Court shall be appointed by the President by a warrant under his hand and seal after consultation with the Chief Justice of India, and in the case of appointment of a judge other than a Chief Justice, the Chief Justice of the High Court of the State, and shall hold office until he attains the age of sixty years.'"

Sir, in that article there is the additional precaution of consultation with the Governor. I respectfully submit that in the case of the other Judges of a High Court in a State, consultation with the Chief Justice is quite sufficient. The Governor in no way comes in and consultation with him would be undesirable. Sir, I move.

(Amendments Nos. 2587,2588 and 2589 were not moved.)

Prof. Shibban Lal Saksena (United Provinces: General): Sir, with your permission, I would like to move the amendment to this amendment No. 2590, of which I have given notice. Sir, I moved:

"That for amendment No. 2590 of the List of Amendments, the following be substituted:-

(i) 'that in clause (1) of article 193, for the words occurring after the words 'Chief Justice if India' to the end of the clause, the following be substituted:-

> 'and such of the judges of the Supreme Court and of the High Court of the State concerned as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty years:
>
> Provided that in the case of appointment of a judge, other than the Chief Justice, the Chief Justice of the High Court of the State shall always be consulted.' "

(ii) that after sub-clause (b) of clause (2) of article 193, the following new sub-clause be added:-

'(e) is a distinguished jurist.'"

Sir, I have tried to put this clause in line with the clause we have already passed for the Supreme Court. I have used the same language which has been used there. The only thing is that I have omitted reference to the Governor of the State. I feel that in case of appointment of a Judge of a High Court, consultation with the Chief Justice of the High Court is enough. Consultation with the Governor of the State will, I think, not be proper. I also feel that the Judges of the Supreme Court Should be consulted. I do not see why the language should be different here from the language used in article 103 for the Supreme Court.

I have also made provision for the appointment of a distinguished jurist. When we have made this provision in the case of the Supreme Court, I do not see why we should not provide that a distinguished jurist should be appointed as a Judge of the High Court also. I think, Sir that in view of the fact that the principle has already been accepted, this amendment will prove acceptable to the House.

(Amendments Nos. 2591, 2593, 2594 and 2595 were not moved.)

Prof. K. T. Shah (Bihar: General): Amendment No. 2596. This matter has been already discussed. It was rejected then. May I move It now?

Mr. President : I do not think any useful purpose will be served by repeating the same arguments once again.

(Amendments No. 2597, 2598, 86, 2599, 2600, 2601 and 2602 were not moved.)

Shri T. T. Krishnamachari (Madras: General): sir, I formally move amendment No. 2603 and I move amendment No. 194 of List II, which reads as follows:-

"That with reference to amendment No. 2603 of the List of Amendments, In clause (1) of article 193 the words 'or such higher age not exceeding sixty-five years as may be fixed in this behalf by law of the Legislature of the State' be omitted."

Sir, the two amendments are more or less the same in substance except that the amendment which I have moved expressly states the words that are to be eliminated. By the elimination of these words, what will happen is that every judge of a High Court shall hold office only until the age of sixty and the object of this amendment is merely to crystallise the *status quo.* Sir, I do not think it is necessary for me to adduce any arguments, particularly when the amendment is one that seeks to confirm the existing practice. But there are undoubtedly many and weighty arguments against the provision which my amendment has sought to delete, namely, " or such higher age not exceeding sixty-five years as may fixed by law of the Legislature of the State"; and whether it is the Legislature of the State or Parliament that has to make a law varying the age of retirement of judges, it is an unwholesome and unhealthy provision in a Constitution. Many Members of this House will undoubtedly agree with me that it is best to fix a particular age, no matter what it is and not leave it to canvassing by interested parties, so that either a private members will introduce a Bill or pressure will be brought to bear on the Government of the day, asking them to make a change in the retiring age of the judges, because the people who are interested in raising the age limit have some influence in the quarters, who might perhaps conceivably make the Government move in that direction. The advantage, therefore, lies in the direction of fixing a particular age and not allowing any room for any private canvassing or private endeavour, so that people will know definitely that this cannot be changed except by an amendment of the Constitution. Sir, on the merits of the problem, I think is much to be said in favour of the age of sixty. It is undoubtedly true that in this country the age of expectation has risen considerably during the last twenty years. We do find in public life and amongst lawyers people who have passed the age of superannuation, fixed by this provision that I am moving, in full possession of their faculties, able to control the destinies of the country and very adequately at that; but Sir, these people are only exceptions to the rule and the rule happens to be in a country like ours probably in about 30 per cent of the cases perhaps, people who attain the age of sixty become unfit for active work. It is in my view safer to provide against even a fraction of the Judges of the High Court being incapable of doing their work rather than depend upon what happens outside the court and in public life where people who are well past the age of sixty are functioning very well and serving the country extraordinarily well. Sir, I feel that no further arguments are necessary in order to make the proposition which crystallises the *status quo* acceptable to the House; and if ten or fifteen years hence conditions of living in this country vary and medical science improves considerably so that senility can be avoided more or less in the generality of cases of people above the age of sixty, well probably that will be time enough for the Constitution to raise the age. I think for the time being the age of sixty is adequate and safe. for the same reasons I hope the House will accept my amendment.

(Amendment Nos. 2604 and 2605 were not moved.)

Prof. Shibban Lal Saksena : Mr. President, Sir, in clause (1) (a) it is said that "a judge may, by writing under his hand addressed to the Governor, resign his office". I want that he may resign his office only by addressing to the President or to the Chief Justice of India. I therefore move:

"That in sub-clause (a) of the proviso to clause (1) of article 193, for the word 'Governor' the words 'Chief Justice of Bharat' be substituted."

It is the President who appoints the judges of the High Court and they can be dismissed only by two-thirds of the majority of both House of Parliament. Therefore, Sir, if he wants to resign his office, he must address either to the President who appointed him or two the Chief Justice of India who is the highest judicial authority the land and there is no sense in his addressing his resignation to the Governor, and I do not know how the Governor can come in this matter. It should be either the President or the Chief Justice of India and I hope, Sir, that it will be corrected. Besides, if the word 'Governor' is put in here. I think it will not only be improper but will also be derogatory to the independence of the judiciary.

(Amendment No. 2607 was not moved.)

Shri H. V. Kamath (C. P. & Berar: General): Mr. President, Sir, I moved:

"That in clause (b) of the proviso to clause (1) of article 193 after the words 'Supreme Court' the words 'the State Legislature being substituted for Parliament in that article' be inserted."

Through this amendment I seek that the State Legislature might play an important role in the removal of a Judge of the High Court of that State. This clause as it stands provides that a Judge of a State High Court may be removed by the President in the same manner as is provided for the removal of a Judge of the Supreme Court. That is to say, the President after an address presented to him by both House of Parliament, supported by not less than two-third of the members present and voting in Parliament may remove the Judge concerned. If the sub-clause were passed as it stands here I feel that the legislature of the State will have no voice at all in such removal.

The crux of the matter is this. Should Parliament be the sole authority in the removal of the Judge or should we give power to the State legislature in this matter? It may be argued against this procedure suggested by me that Parliament is a superior authority and therefore more competent. Is that really so? to my mind, both Parliament and the State legislature are elected, the Lower House being entirely elected and the Upper House partly nominated, but the Lower House in either case is elected on the basis of adult suffrage. If we put trust in Parliament, can we not put trust in the State legislature as well? Ultimately, if is a question of putting trust in the people. Shall we trust the people and their elected representatives or not, whether in the Centre on in the State? Moreover, where a Judge of the High Court is concerned, it is quite likely that Parliament being far removed from the scene may not be quite able to seize it self of the various matters pertinent to or germane to the issue, and the State legislature being on the spot may be better able to deal with the matter. At this time of day when we have plumped for adult franchise, we should trust the State legislatures as much as we trust our Parliament at the Centre. After all, if the House reads article 193, clause (1), it will see that so far as the appointment of a Judge of a High Court is concerned, it is not merely the authorities in the Centre that come into the picture, but also some authorities in the Centre that come into the picture, but also some authorities in the State as well, the authorities concerned being those referred to in clause (1) of article 193. The Governor of the State-he is a provincial authority-is consulted-he is a provincial authority. Therefore, if for the appointment of a Judge not merely the authorities in the Centre but also the authorities in the provinces are concerned, the question arises so far as removal is concerned, why should we not trust, or rather entrust the State legislature with conducting the investigation or impeachment or enquiry? It Parliament at the Centre is competent to present an address to the President for the removal of a Judge of the Supreme Court, to my mind it is quite logical and obvious that so far as a Judge of the High Court of a state is concerned, the legislature of the State ought to be competent, ought to be given powers to present an address in this regard to the President for the removal of a Judge of the High Court. It may be that the amendment of mine may have to be recast. I only seek here the acceptance of the principle that I am trying to embody in this amendment of mine. The amendment that I have suggested seeks to substitute the State legislature for Parliament in article 193. Once this principle is accepted that so far as the removal of a Judge of a High Court is concerned, the State legislature must deal with the matter and present an address to the President, then I am willing or amenable to the recasting of the amendment in any form that the Drafting committee may please. I move.

Mr. President : Amendment No. 2609: that does not arise.

Shri T. T. Krishnamachari : Sir, I would like formally to move amendment No. 2610 in order to enable Dr. Ambedkar to move amendment No. 195.

Sir, I moved:

"That in para (c) of the proviso to clause (1) of article 193, after the words 'Supreme Court of' the words 'the Chief Justice' be inserted."

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I move:

"That with reference to amendment No. 2610 of the List of Amendment in clause (c) of the Proviso to clause (1) of article 193, after the words 'High Court' the words 'in any State for the time being specified in the First Schedule' be inserted."

Sir, the object of this amendment is two remove all distinctions between provinces and Indian State so that there may be complete interchangeability between the incumbents of the different High Courts.

Sir, I formally move amendment No. 2614 in the List of Amendments.

"That in sub-clause (a) of clause (2) of article 193 for the word 'State' the words 'State for the time being specified in the First Schedule' be substituted."

Sir, I move:

"That with reference to amendment No. 2614 of the List of Amendments, in sub-clause (a) of clause (2) of article 193, for the words 'in any State in or for which there is a High Court' the words 'in the territory of India' be substituted."

"That with reference to amendment No. 2614 of the List of Amendments, in sub-clause (b) of clause (2) of article 193, for the words 'High Court' the words 'in any State for the time being specified in the First Schedule' be inserted."

"That with reference to amendment No. 2614 of the List of Amendments, in sub-clause (b) of Explanation I to clause (2) of article 193, for the words 'in a State for the time being specified in Part I or Part II of the First Schedule' the words 'in the territory of India' be substituted."

"That with reference to amendment No. 2614 of the List of Amendments, in sub-clause (b) of Explanation I to clause (2) of article 193 for the words 'British India' the word 'India' be substituted."

"That with reference to amendment No. 2622. . . . "

Mr. President : Before moving that, you may formally move amendment No. 2622.

The Honourable Dr. B. R. Ambedkar : Sir, I formally move:

"That for Explanation II to clause (2) of article 193, the following be substituted:-

> 'Explanation II.-In sub-clauses (a) and (b) of this clause, the expression 'high Court' with reference to a State for the time being specified in part III of the First Schedule means a Court which the President has under article 123 declared to be a High Court for the purposes of articles 103 and 106 of this Constitution.'"

Sir, I move:

"That with reference to amendment No. 2622 of the List of Amendments, Explanation II to clause (2) of article 193 be omitted."

The object of all these amendments 196 to 200 is to remove all distinctions between British India and the Indian States. Some of the amendments particularly amendments 199 and 200 are merely consequential upon the main amendment.

(Amendments Nos. 2611, 2612, 2613, 2615 and 2616 were not moved.)

Mr. President : No. 2617 does not arise. 2618.

Mr. Mohd. Tahir (Bihar: Muslim): Sir, I beg to move-

"That in sub-clause (b) of clause (2) of article 193, after the words 'in succession' the words 'or has been a pleader practising for at least twelve years' be inserted."

I beg to move:

"That in sub-clause (a) Explanation I of clause (2) of article 193, after the words 'High Court' the words 'or has practised as a poleader' be inserted, and for the words 'which a person' the words 'which such person' be substituted and the words 'or a pleader' added at the end."

I beg to move:

"That in sub-clause (b) of Explanation I of clause (2) of article 193, after the words 'First Schedule or' the Words 'has' be inserted, and after the word 'Court' wherever it occurs the words 'or a pleader' be inserted."

Sir I had moved similar amendments as regards the appointment of the Judges of the Supreme Court. I want to give the same position to the Pleader lawyers as we are going to give to advocates, because I am of opinion that so far as qualification is concerned, they hold the same qualification and in the third amendment if it is accepted it will read thus-

"In computing the period during which a person has held judicial office in a State for the time being specified in

Part I or Part II of the schedule or has been advocate of a High Court or a pleader, there shall be included any period before the commencement of this Constitution, etc., etc."

In explanation I clause (a) will read as follows:-

'In computing the period which a person has been an advocate of a High Court or has practised as a Pleader there shall be included any period during which such person held judicial office after he became an advocate."

With these few words, I move these amendments.

(Amendment Nos. 2619 and 2623 were not moved.)

Mr. President : All amendments have been moved and the article and amendments are open for discussion.

Dr. P.S. Deshmukh (C.P. & Berar: General): Sir, the appointment of the Judges of the High Court has been left to the President and only consultation with the Chief Justice of India and the Governor of the State has been provided for. I quite agree that for the independence of our judiciary the authorities appointing the Judges should be as high as possible but I would personally have preferred if the appointment was made by the President on the advice of the Premier and the Governor together. That however is not possible now, but next to that I would like some distinction to be made between Judges of the Supreme Court and the High Court so far as removal is concerned and thus I come to the amendment moved by my Friend Mr. Kamath which I strongly support. According to the provision that has been proposed the removal would be as difficult of a Judge of a High Court as that of a Supreme Court and it is only by reference to Parliament, the highest legislature body in the whole of the Republic, that a removal could be discussed and could be effected. Thus if this provision is retained, then the Legislature of the State will have absolutely no function to perform so far as the High Court and Judges are concerned except the fixation of the maximum age at any age between the age of sixty and sixty-five and determining their salaries and some such insignificant matters. I do not think the Legislatures of the State should either be distrusted to this extent as to have no say in the matter of the removal of High Court Judges or it should be imagined that they would be trying to removed Judges on frivolous grounds. Secondly, the object of making it difficult for the Legislatures to remove Judges could be achieved by providing that the final order would be passed by the President himself but it should at any rate be competent for the State Legislature to present an address through the Governor to the President for the removal of any of the Judges of the High Court. I think this would be a salutary provision which would work for efficiency as well as better relationship between the Judicature and the State Legislature as well as the Executive in the State. We may further provide that a removal of a judge could take place on a limited and restricted grounds and we might not leave it to their discretion. The ground may be the same as have been stated in the previous 1935 Act, Section 220, where it has been provided that a judge may be removed from his office by His Majesty by warrant under the Royal Sign Manual on the ground of misbehavior or of infirmity of mind or body if the Judicial Committee of the Privy Council, on reference being made to them by His Majesty, report that the judge ought on any such ground to be removed. So these grounds may be taken from this section, and on these grounds appropriately modified it should be competent for the Legislature of a State to present an address to the President so that a judge may be removed. I do not think there is any other means excepting the Governor to know the capacity and the efficiency, character etc. of a Judge of the High Court. It is the Provincial Governor and the Provincial Legislatures who are more competent to know all these things and if they are convinced that a certain judge ought to be removed, I think it should be given the necessary powers for such removal.

So far as the amendment of Mr. Tahir is concerned, the principle has not been accepted that the pleaders should also be competent to be appointed as High Court or Supreme Court Judges and I think that is quite sound; because any pleader who has any practice and who has any competence generally gets himself enrolled as an Advocate-and there is not much difficulty in getting onself enrolled as an Advocate-and after a few years when he acquires the necessary standing he would be considered eligible to be appointed as a High Court or Supreme Court Judge. So I do not think there is any substance in that amendment.

Dr. Bakshi Tek Chand (East Punjab: General): Sir, I have a few words to say on the amendment which Mr. Kamath has moved and which has been supported by Dr. Deshmukh. In the article as drafted the procedure for the removal of a Judge of a High Court and the authority by which he can be removed are the same as those provided in article 103 clause (4) for the removal of a Judge of the Supreme Court, *viz.,* that an address will have to be presented by Both Houses of Parliament to the President and it should be supported by a majority of the total number of members of either House and also by a majority of two -thirds of the members present and voting at the meeting when the matter is discussed and voted. The amendment seeks to substitute the Provincial Legislature in place of Parliament when the matter concerns a Judge of a High Court. This is the point that the house has to consider. My submission is that the provision contained in the Draft Constitution is the proper one. It is a very important matter-the removal of a Judge of a High Court-and the enquiry should be conducted in a very impartial manner by persons who are not swayed by local prejudices and who take a detached view of the matter. In the provinces-especially in those where the number of members is very small or where there is a sharp division of parties-the members may be swayed by local prejudices and other considerations. It is for this reason therefore, that the Drafting Committee has proposed in clause (b) of the Proviso that this matter should be left to the vote of the two Houses of Parliament. It is said that Members of the Parliament will be for away from the scene and will not be fully cognizant of all local matters. Well, that is the very reason why this matter should not be left to the vote of the Provincial Legislature. In Provinces like Orissa, Assam, East Punjab, Central Provinces where the number of Members of the Legislature is small and in some of them there will be only one House-the vote of a few members only might decide so important a motions. If there is a Judge whom the leader of the party in power does not like, or who has by his judicial decisions or otherwise incurred the displeasure of that party, there is a chance of local prejudices coming in. In such a case the independence of the judiciary will to a very large extent be impaired. It is for this reason that the Draft Constitution provides that this matter should be left to Parliament. Formerly, under the Government of India Act, 1935, a Judge of a High Court could be removed if the Judicial Committee of the Privy Council, on reference by his Majesty, reported that he is unfit to hold office on the ground of misbehavior or of infirmity of mind or body. Under the Draft Constitution, It will be on the address of both Houses of Parliament at the Centre that the President will act. This is very salutary provision indeed. I would ask the House not to disturb the provision in clause (b) of the Proviso and to reject the amendment which Mr. Kamath has moved.

Shri Prabhudayal Himatsingka (West Bengal: General): Mr. President, Sir, I beg to oppose the amendment moved by Shri H. V. Kamath in as much as he wants to make the removal of a High Court Judge easier than what has been provided for in the Draft Constitution. It will be a dangerous thing to do so and to empower the Provincial Legislature to be able to remove a High Court Judge. If for removal of a Judge of the Supreme Court provision has been laid down in article 103, clause (4), I do not see any reason why we should make it easier for removal of a Judge of a provincial High Court.

As has been stated by the previous speaker, Dr. Bakshi Tek Chand, the Provincial Legislature can be very easily swayed by political considerations and by local influence when a Judge of the High Court gives certain decisions which are not acceptable or which may not be palatable to the party in power or to the majority party in the Legislature. Therefore it should not be made easy for a High Court Judge to be removed. After all, a lot depends on the integrity and the stability of a High Court Judge, and it his position be made so unstable that he can be removed by the vote of the Provincial Legislature it will be a dangerous thing, and that will affect the independence of the High Court Judges. Therefore I oppose the amendment moved by Mr. Kamath. I support the amendments moved by the Honourable Dr. Ambedkar inasmuch as the provisions are brought in line for all the High Courts, whether in the States or in the Provinces.

Dr. P. K. Sen (Bihar: General): Mr. President, Sir, I am thankful for this opportunity to enter into the general discussion of the provisions of article 193. There are several amendments which I had tabled with regard to other articles allied in character, but I am not moving them. I feel that a great many factors enter into the consideration of the provisions of article 193. These factors are scattered about in other articles like 196, 197 and so on. Unless and until we consider these other factors, or have them in view while deciding the shape of article 193, I apprehend that we shall not be able to come to the right decision.

Let us take these factors one by one. The essential point in article 193 is the retiring age of the Judge of the High Court-whether it should be sixty or sixty five. It is left in some quarters-and I do not say there is no ground whatsoever for that feeling-that at the age of sixty a man becomes incapable of working actively and making his contribution to the service of the country, that on the bench he finds it difficult to command that concentration of mind which is necessary and that therefore sixty should be the proper age for retirement. On the other hand it is felt-and there is very good ground for that feeling too-that the retiring age should be higher at the present moment, because people are often found to be very actively engaged in public life much after sixty. We have many instances of people who can devote a great deal of energy and who can command a great deal of concentration in very important kinds of work on behalf of the State. That being so, there is no reason why in judicial work one should be unfit and incompetent after the age of sixty. So far as I am concerned I make no secret that I am strongly in favour of making it higher than sixty-at least sixty two-for the High Court Judge. Now, the question that we have to consider is how the age-limit is affected by other considerations. Take it from the point of view of the Judge. The man who is going to be appointed and who has to make his choice as to whether he should accept the office when it is offered to him or decline it-what are the matters that will enter into his consideration? The question of salary comes in, the question of pension comes in, and also a very important thing-the question as to whether or not after having held the office for a particular period of time, he will be allowed to practise in other Courts, if not in the same High Court, or in the courts subordinate to its jurisdiction. Now the man who is going to appointed, we must assume, is one of the men pre-eminently fitted for the work in the province. The choice would naturally fall upon the man who is most distinguished in the province for legal acumen and ability. He has to make his choice: if he finds that there are only about five years to run, that there will be no pension at all after he attains the age of sixty, that he will have to be thrown back upon his own resources, or that the pension would be rather a small pittance and not that liberal pension which is awarded to the Judges of the High Court in Great Britain, for instance, which is 75 percent of their salary; and when he finds also that there is no other way in which he can earn an income: that he cannot possibly go even to another High Court or to the Courts under the jurisdiction of another High Court and take up engagements in important cases; if he is debarred from practising altogether, then what is he to do? The only conclusion which he can come to is that although it is post of very high dignity and prestige, he is reluctantly obliged to decline it. That will be the result. I submit that it will be a loss because the State will fail to command the services of men who really count, and instead of those men the second-rate or third-rate men will have to be selected for the office of the High court Judge. I submit therefore that it is a very serious matter. It is not at all a trivial matter-this question of age. It really acts and reacts upon other considerations. If he has to retire at sixty, well and good. But has he got a good pension? Can he make a living from the practice of law not in the High Court where he held office but in some other Court, in some other High Court, or in one of the Courts subordinate to that other High Court?

Sir, I had tabled another amendment which I submit-Although I am not moving the amendment formally-has a great bearing upon this question. Suppose a man at the age of fifty-eight is obliged on account of ill-health to retire. It is to be presumed that a man in that high office will not continue if for reasons of health he feels that he cannot possibly do justice to the work which has been entrusted to him. He will naturally say, "I am sorry I cannot go on any longer. I wish to retire". Now in that case, I submit, there should be some provision about his being allowed full pension in spite of the fact that he has not been able to work till the age of sixty. It may involve a little expense, but that expense will be more than compensated for by the amount of efficiency secured by substituting in his place a person who is in full enjoyment of health. Thus it will be seen that the question not only of pension in the ordinary cases but pension in those cases where a person is obliged to retire on account of ill-health has to be taken into consideration.

Now we do not know as yet-because the relevant articles have not come up before us for discussion-whether there would be temporary judges or whether there would be additional judges appointed or not. There are certain articles relating to there appointment provided in the Draft Constitution. What will happen to those articles-whether the House will accept them or not-is a matter which one does not know. But assuming that temporary judges are to be appointed, or additional judges are to be appointed, the additional judges to hold office for not more than two years. After being two years in office as High Court Judge, would the additional judge be then able to practise? Well if he is not able to practise after two years of office as High Court Judge, the result will be that very few people will be prepared to accept the office of Additional Judge. It may be said that it will not be necessary to appoint additional Judges because if you have a full complement of judges, such as would be able to cover the work satisfactorily without any appointment of temporary or additional judges, then the question does not arise. But if it should be the desire of the House to provide for additional judges or temporary judges, then I submit that the right to practise or restriction in that behalf should be considered in there cases also.

I am pointing out these things. Sir, because I believe that without consideration of these points one will not be in a position to accept office if he is offered such a post when he is fifty-four or fifty-five because he will never be able to earn the full pension. Therefore, these are just the factor that will enter into his consideration in the decision which he has to arrive at.

I submit that these points should be kept in view in discussing the question as to the retiring age limit and that the question of age limit should not be considered as if it were utterly unconnected with these other factors which appear in several different sections of this chapter of the Draft Constitution.

Shri K. M. Munshi (Bombay: General): Sir, the age at which a High Court Judge is to retire has caused considerable differ of opinion and this age of sixty has been fixed after exhaustive enquiry and scrutiny at the hands of those responsible for this decision. I submit, sir, that the decision to which the Drafting Committee has come, together with the amendments which are going to be moved and accepted, is the best one under the circumstances.

In the first instance, we must consider the point of view not of individual judges but of the judiciary as a whole and of its independence which we are so anxious to maintain and preserve. Firstly, the age limit of the judges of the High Court is kept at sixty. The provision as to higher age, not exceeding sixty-five, which finds a place in the existing article, has to be deleted. This is so because it would be cardinally wrong that a judge of the High Court should be in a position to canvass for the extension of the period, or that the retirement of judges at sixty-two or sixty-five should depend on the wish of the Legislature-central or provincial. Once a person is appointed a judge, there must be fixity of tenure during his good behaviour and no extension or dimunition of his term. In this view that clause has to go. Then the other amendment which will, I hope, be moved and accepted is for the elimination of the temporary judges and additional judges. It has been found that the appointment of temporary judges and additional judges is not a very satisfactory procedure in India as it leads to departure from that strict impartiality and independence which is necessary in a High Court Judge.

Then comes the other article to which my Friend Dr. Sen referred article 196 is a bar against a High Court judge practising in any court in India. Naturally therefore the question whether it would be possible to draw to the High Court Bench such talent as is necessary for the due administration of justice requires to be examined. We are accustomed to the present system. But we must see as to what kind of judiciary we are setting up by this Constitution. In the first instance, it is admitted on all hands that at the age of sixty most of the judges of the High Court- I do not say all- become unfit for further continuance on the Bench. If that is so, any further age limit prescribed by the Constitution would be a danger. The judges are not allowed to practise after retirement; otherwise during the last years of his tenure there may be temptation to so behave as to attract practice after retirement.

The question of pension has been referred to. I know that the pension given to judges is not adequate; but that is matter that has to be considered by the legislature. The question therefore is restricted to talent which at 60 is sufficiently vigorous and whose services may be required for the country. The Constitution provides two avenues for judges who retire at sixty. The age of retirement of a Supreme Court Judge is sixty-five. The brilliant or the sound judges who are physically fit may have the opportunity to be appointed to the Supreme Court. There is also the provision of *ad hoc* judges in the High Court under article 200. Such of the judges who are physically and mentally fit after retirement can always be invited to administer justice under that article. Avenues therefore are open to those judges who are able to do their work after retirement. The difficulty, however, has been that, as experience has shown, in quite a large number of cases most of the judges becomes even before the age of sixty, not fit for their work. In the last year or two or their tenure on the Bench they are more of a handicap to the administration of justice than otherwise. Therefore it is that the definite limit has been fixed at sixty. The scheme as a whole which has been adopted departs from the existing practice. Ultimately its success will depend upon whether the distinction and prestige of a High Court Judge is such as to attract talented people. Unfortunately in this country the tradition which prevails in England does not hold good. There, even for the ablest of practitioners with a very large amount of income, to be invited to the Bench is an honour and if the honour is twice offered by convention it could not be rejected. Even a lawyer like Justice Greene with one of the largest practices in the English Bar, when invited to be a judge, accepted the position. If we invest the high court judges with the prestige which they enjoy in England, I am sure talent will be drawn to this office whether retirement is at sixty or sixty-five and whether the pension is meagre or adequate.

Shri Brajeshwar Prasad (Bihar : General): Sir, I am opposed to the fixation of any age limit for the High Court judge. I feel that to say that after the age sixty a judge becomes an imbecile and therefore he must retire is arbitrary. It should be left to the discretion of the President on the advice of the Governor and the Chief Justice to ask a judge to retire from the Bench. It is quite possible that even at the age of fifty he may not be in a position to discharge his functions efficiently and properly.

Sir, I feel that clause 2(a) which lays down the qualification for a high court judge also ought to be omitted. It should be left to the discretion of the President to choose anybody he likes to be a judge of the High Court. This distrust of the President, the Governor and of the Chief Justice is not warranted by facts and experience. It is obvious that no judge will be appointed who is not a man experience, who has not put in a practice of at least ten years in any court or who has not been in any judicial capacity as an officer for at least ten years. But there are cases of brilliant men who have not all these qualifications. After all, the creative period in a man's life centres round about the ages of 30-35. I do not see any reason why a young man should not become a judge of the high court.

I have another point to make. I oppose the amendment moved by Mr. Kamath. He wants that a judge should be removable on an address presented by the Lower House of the Provincial Legislature. I feel that when the provincial legislatures are reconstituted under adult franchise it will not be safe to vest such a power in the hands of the provincial legislature. Already passions and prejudices run very high in the provinces. Communalism and provincialism are rampant. Where there is political immaturity, a judgment passed by a judge is likely to be misconstrued and misinterpreted by political parties. Therefore, Sir, in the interests of efficiency, I feel that all power should be vested in the President and in the Parliament.

Mr. Naziruddin Ahmad (West Bengal : Muslim): Mr. President, Sir, I have a few comments to offer. With regard to the amendment moved by Prof. Shibban Lal

Saksena, I think there are some very good points in it. His amendment says that in appointing a Judge of a High Court in the States, the President shall consult the Chief Justice of India and such of the other Judges of the Supreme Court and of the High Court of the States concerned as the President may deem necessary for the purpose, and shall hold office until he attains the age of sixty. His proviso runs to this effect: Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court of the State shall always be consulted. Sir, I find that this amendment is amendment is exactly on a per with article 103 which we have passed. Clause (2) of that article provides that every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years. This Principle of consultation with the other Judges of the Supreme Court as well as with those Judges of the High Court as the President may deem necessary has already been accepted. This amendment is similar to clause (2) of article 103. In fact, this amendment is just an attempt to reconcile this article with the principle which we have already accepted. From a drafting point of view and also from the point of view of the necessity of consulting the other Judges of the High Courts, this amendment should be quite acceptable.

The second part of his amendment is that a distinguished jurist also can be appointed as a Judge of the High Court. In fact, we have adopted this in connection with article 103 which I have just mentioned. In sub-clause (c) of clause (3) of article 103 we have provided that a distinguished jurist can be appointed as a Judge of the Supreme Court. So that principles underlying the present amendment of Professor Saksena have already been accepted by the House.

With regard to the provision for compulsory retirement at sixty, I think this will not be a very good thing. I think longevity and effective age would increase in our country. Judges of the High Courts are not ordinary men. They are selected from the best legal talents and they have to keep in touch with legal literature. I do not think that a Judge would have spent his useful life at sixty. It is provided that he will retire at sixty unless he is appointed a Judge of the Supreme Court in which case he will retire at sixty five. He will not be able to plead before any court or before any authority after his retirement under article 196. The effect of fixing the age limit at sixty and article 196 would not be wholesome. In England there is of course a provision that a High Court Judge is not entitled to practise in any Court there. But there the age limit is seventy-two and than even after seventy two distinguished Judges are appointed as Law Lords and they hold office as Member of the Judicial Committee of the House of Lords, as Lords in Appeal, etc., and they hold office for life. So they have a large span of useful life both as a Judge and later on as Law Lords. But after seventy-two they are working in an honorary capacity. There are these prospects before an English Judge but there is no prospect before an Indian Judge. After a Judge retires at sixty, he will be incapable of practising in any Court, practically incapable of holding any office under the Government because that would be wrong in principle. He will thus be a political untouchable of the worst type. I submit, Sir, that the age limit should be considered at a suitable opportunity whenever it comes. With these few words, I support the article with the amendments proposed by Professor Shibban Lal Saksena.

Shri H. V. Pataskar (Bombay : General): Sir, I wish to offer a few remarks only with respect to fixing the age limit for the retirement of a High Court Judge. In article

193, as it was drafted, it was fixed at sixty but there was a further provision that a Judge may hold office at such higher age not exceeding sixty-five years as may be fixed in this behalf by law of the Legislature of the State. Now, the general trend seems to be that this latter portion should be deleted from this article, and opinion seems to have gathered round the fact that we should fix the age limit at sixty. Under the Act of 1935 the age limit was fixed at sixty, and there was no provision for extension. Because there was no provision for extension the Drafting Committee has said in their note below this article on page 87 of the Draft Constitution that in view of the different conditions prevailing in different States, the Committee has added the underlined words in article 193 so as to enable the Legislature of each State to fix any age limit not exceeding sixty five years. At the time when this Draft was prepared, probably the Drafting Committee was of the opinion that some provision should by made by which the age limit might be increased to sixty-five and they made it possible by adding the words "or such higher age not exceeding sixty-five years age may be fixed in this behalf by law of the Legislature of the State". Subsequent to that, Sir, the Home Ministry made its own recommendations with respect to several provisions in the Draft Constitution. In there memorandum in this connection they said they were of the view that the normal age for retirement should be sixty for High Court Judges but that in exceptional circumstances the appointing authority may extend the service of an individual Judge of the High Court to a period not beyond the age of sixty-three and in the case of a judge of the Supreme Court not beyond the age of sixty eight. They also say that experience has shown that most High Court Judges are well past the peak of their usefulness by the time they attain the age of sixty and an automatic extension of the age limit would not be in the public interest. Therefore they suggested that the President may extend the service of a High Court Judge for a maximum period of there years. That was their proposal. Now, Sir, the view seems to be that there should be no extension. My honourable Friend Mr. Munshi, who is also a member of the Drafting Committee, has said that towards the last years or two of their career most of the Judges are not able to work efficiently. Now sir, this article is again connected with another article, *i.e.*, article 200. The original idea of the Drafting Committee was that the Legislature should extend this period; the Home Ministry stated that is must be left to the President in individual cases and now there is a provision in article 200 which says "Notwithstanding anything contained in this Chapter, the Chief Justice of a High Court may at any time, subject to the provisions of this article, request any person who had held the office of a judge of that court to sit and act as a judge of the court etc. etc." When a High Court Judge is to be made to retire at the age of sixty, I cannot understand the propriety of the Chief Justice of a High Court requesting a retired judge to come and fulfil the functions of a High Court Judge; and further if he comes, he can go on working as a High Court Judge with all the privileges, etc for an indefinite period. It really means that while we are laying down in article 193 that he must retire at the age of sixty without any question of extensions of an individuals career either by the President or by the Legislature, we are also laying down that the chief Justice may call upon any person the view of the Home Ministry is that this right should be exercised by the President in individual cases. This is to my mind rather anomalous. Probably we have been landed in this difficulty by our hostility to the appointment of additional temporary judges, to which reference was made by my honourable Friend, Mr. K.M. Munshi. No doubt there have been cases in which people who have been appointed as temporary judges might have taken advantage of the fact that they happened to sit on the bench, but there are equally good instances of eminent people who have only worked as temporary Judges but who have subsequently taken no advantage of the fact that they happened to sit on the bench, but of pecuniary and financial loss. I know of some persons who have worked as temporary judges and in their case, it cannot be said by any person whatsoever that they took advantage of their positions. All the same the present trend appears to be that there is a disinclination to the appointment of temporary judges for reasons which may be justifiable, but that has necessitated that fact that some arrangement must be made for clearing of arrears of work. Because judicial work might increase in any High Court and for various reasons we are against the appointment of temporary or additional judges, we have found it necessary to incorporate article 200. It seems to be intended that in such a case some retired judge may be called upon by the Chief Justice to attend to the arrears of old work or the disposal of new work. So far as the age limit of judges is concerned, while we are going to accept the recommendation of the House Ministry that the President as the appointing authority should be authorised to extend the period of the High Court Judge, while we are also not giving power to Legislature for such extension, we re going to enable the Chief Justice to call upon any retired judge to come and work as a judge; it may be for two or three years. The result has been that while we provide in one article that he shall retire at the age of sixty, there in another article (200) by which any Chief Justice can call upon a retired judge to come and do the work of a High Court Judge. Thereby we are practically going to leave this question of extension of the work of a High Court Judge in the hands of the Chief Justice and as we know the Chief Justice may appoint a particular judge because he has been working for so many years and there may be so many reasons for which people will go on getting extension under this article 200. Therefore, I think that the whole question of the period of sixty years has been more confused than what it was before we took it up and it has undergone so many changes. The drafting Committee at one time thought that in individual cases there should be provision for extension of this period beyond sixty and they wanted it to be left to the Legislature. The Home Ministry had stated that it should be left to the President to decide in individual cases and in the final disposal of the matter it appears that we are all determined that he must retire at the age of sixty. But by a kind of certain other reasoning and because we do not want any temporary or additional judges, we are not again providing for this extension. Practically it will be easy for the High Court Judge to induce his Chief to say that there are a lot of arrears of work to be done and that he should be continued and there is no period even fixed for such extension. This is an anomaly which should be carefully attended to.

Mr. President : Dr. Ambedkar, do you wish to speak on this?

The Honourable Dr. B. R. Ambedkar : No, Sir. I do not think that any reply is called for.

Mr. President : The question is:

"That for clause (1) of article 193, the following be substituted:-

> '(1) Every Judge of a High Court shall be appointed by the President by a warrants under his hand and seal on the recommendation of the Chief Justice of the High Court concerned after consultation with the Governor of the State concerned and with the concurrence of the Chief Justice of India and shall hold office until he attains the age of sixty-three Years.' "

The amendment was negatived.

Mr. President : The question is:

"That for clause (1) of article 193, the following be substituted:-

> (1) 'Every Judge of a High Court shall be appointed by the President by a warrants under his hand seal after consultation with the Chief Justice of India, and in the case of appointment of a judge other than a Chief Justice, the Chief Justice of the High Court of the State, and shall hold office until he attains the age of sixty years.' "

The amendment was negatived

Mr. President : The question is:

"That for amendments Nos. 2590, 2619, 2620 or 2621 of the List of Amendments, the following be substituted:-

(i) 'That in clause (1) of article 193, for the words occurring after the words 'Chief Justice of India' to the end of the clause, the following be substituted:-

> 'and such of the judges of the Supreme Court and of the High Court of the State concerned as the President may deem necessary for the purpose and shall hold office until he attains age of sixty years:

Provided that in the case of appointment of a judge, other than the Chief Justice, the Chief Justice of the High Court of the State shall always be consulted.'

(ii) 'That after sub-clause (b) of clause (2) of article 193, the following new sub-clause be added:-

'(c) is a distinguished jurist.' "

The amendment was negatived.

Mr. President : The question is:

> 'That with reference to amendment No. 2603 of the List of Amendment, in clause (1) of article 193 the words 'or such higher age not exceeding sixty-five years as may be fixed in this behalf by law of the Legislature of the State' be omitted."

The amendment was adopted.

Mr. President : The question is:

"That in sub-clause (a) of the proviso to clause (1) of article 193, for word Governor' the words 'Chief Justice of Bharat' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in clause (b) of proviso to clause (1) of article 193 after the words 'Supreme Court' the words 'the State Legislature being substituted for Parliament in that article' be inserted."

The amendment was negatived.

Mr. President : The question is:

"That in clause (c) of the proviso to clause (1) of article 193, after the words 'High Court' the words 'in any State for the time being specified in the First Schedule' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That in sub-clause (a) of clause (2) of article 193, for the words 'in any State in or for which there is High Court' the words 'in the territory of India' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That in sub-clause (b) of clause (2) of article 193, after the words 'High Court' the words 'in any State for the time being specified in the First Schedule' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That in clause (b) of Explanation I to clause (2) of article 193, for the words 'in a State for the time being specified in Part I or Part II of the First Schedule' the words 'in the territory of India' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That in clause (b) of Explanation I to clause (2) of article 193, for the words 'British India' the word 'India' be substituted.' "

The amendment was adopted.

Mr. President : The question is:

"That in sub-clause (b) of clause (2) of article 193, after the words 'in succession' the words 'or has been a pleader practising for at least twelve years' be inserted."

The amendment was negatived.

Mr. President : The question is:

"That in sub-clause (a) of Explanation I of clause (2) of article 193, after the words 'High Court' the words 'or has practised as a Pleader' be inserted, and for the words 'which a person' the words ' which such person' be substituted and the words 'or a pleader' be added at the end."

The amendment was negatived.

Mr. President : The question is:

"That in sub-clause (b) of Explanation I of clause (2) of article 193, after the words First Schedule or' the word 'has', be inserted, and after the word 'Court' wherever it occurs the words 'or a pleader' be inserted."

The amendment was negatived.

Mr. President : The question is:

"That Explanation II to clause (2) of article 193 be omitted."

The amendment was adopted.

Mr. President : The question is:

"That article 193, as amended, stand part of the Constitution."

The motion was adopted.

Article 193. as amended, was added to the Constitution.

Mr. President : There is notice of an amendment that a new article, article 193-A be introduced, by professor K. T. Shah, amendment No. 2624.

Prof. K. T. Shah : Mr. President, Sir I beg to move:

"That the following new article 193-A article be added:-

> '193-A. No one who has been a Judge of the Supreme Court, or of the Federal Court or of any High Court for a period of 5 years continuously shall be appointed to any executive office under the Government of India of the Government of any State in the Union, including the office of an Ambassador, Minister, Plenipotentiary, High Commissioner, Trade Commissioner, consul, as well as of a Minister in the Government of India or under the Government of any State in the Union.' "

Sir, this is part of the principle which I have been trying to advocate, namely the complete separation and independence of the judiciary from the executive. One way by which the executive has tried in the past to tempt the highest judicial officers is by holding out the prospect of more dazzling place on the executive side which would be offered to those who were more convenient or amenable to their suggestions.

In this connection may I refer to the practice of the preceding Government. The then Government of India had a practice or convention by which, so far, at any rate, as the civilian Judges were concerned, at a very early stage in a civilian's career, he was required to choose the executive or the judiciary side. Once the choice was made, generally speaking bifurcation remained complete. In those days the Executive and Judiciary were not as separate as we desire now; but even so this convention was in force. The transition, if any took place only at a higher level of High Court Judge and so on. The opportunities that that Government could offer being limited, the scope for this kind of influence upon the judiciary by the executive was also limited. In the new dispensation with full sovereign authority with us, the opportunities, the occasions, the number of offices which can be held out as a temptation to useful or convenient judicial officers of the highest level are very much greater, and therefore, the suggestion given in this amendment that it is should be prohibited at least for people who have held any such high judicial office for not less than five years continuously. The Possibility of establishing conventions or precedents which may serve in the place of a constitutional provision is also very difficult, especially in the years of transition through which we are just passing. For, any precedent now made or convention established may be regarded as an extraordinary thing under extraordinary circumstances and may not be binding. The provision is therefore suggested by this amendment that the Constitution itself should provide a power against any transition of judicial officers from a judicial post to an executive post of the kind mentioned in this amendment. The matter I take it is so-simple and the principle underlying it is so clear that there could be no difference of opinion unless you desire your judiciary to be subservient or in any way influencible by the executive. I therefore commend the matter to the House.

Shri H. V. Kamath : Mr. President, I rise to support the amendment that has just been brought before the House by my Friend Professor Shah. The amendment seeks to subserve the cause of judicial independence and integrity. I believe Prof. Shah does not wish to debar retired Judges from aspiring to any office like that contemplated in this amendment, but this intention is that Judges in office, who are on the Supreme Court Bench or on other High Court Benches must be debarred from employment in the executive of the Government in any capacity whatsoever.

Dr. Bakshi Tek Chand : That is not the wording.

Shri H. V. Kamath : Yes, for five years. A judge can serve up to 65 years. Here the amendment seeks to lay down that a judge who has served for 5 years continuously should not be employed in any specified in this amendment. This is in my judgment a very healthy maxim. It has happened in many countries that a judge who has served for a term of 5 years or more has been shunted off to some executive job when his vies or independence of mind and judgment became a little too hot for the Executive. I think it was President Roosevelt in the U.S.A.-I do not recollect the occasion when be tried this method but it was in the thirties of this century when he found that the views of some Judges of the Supreme Court were unpalatable, he tried to get over that by appointing more Judges, so that he might get the required majority for that particular measure that he wanted to push through. This is one of the methods-to increase the number of Judges who might favour a particular view. Because you will remember that the Supreme Court in our country will have to arbitrate and adjudicate upon disputes-constitutional disputes between the Centre and the Units as well as between unit and unit. The Executive is interested in many of these questions and it is very likely-more often than not-that a particular matter which is coming up before the Supreme Court may be such vital importance and interest to the President or the Executive that they might like the Supreme Court to give a particular decision upon that matter. They may find to their chagrin, to their discomfiture that the Supreme Court is not inclined that way and one of the methods may be to see that the inconvenient judges are shunted off to some less inconvenient positions. A Judge is after all human, and temptations such as Ambassadorships.

Pandit Thakur Das Bhargava (East Punjab: General): We are only discussing the High Court Judges under this Chapter.

Shri H. V. Kamath : I am sorry Pandit Bhargava has not read the amendment moved by Professor Shah. It relates to Supreme Court as well and as it has been moved in that form, I am entitled-I hope by your leave, Sir,-to speak with regard to judges mentioned in this particular amendment. If a judge aspires to or is made to feel that he can look forward to a job as an Ambassador, High Commissioner, Minister and things like that-he is human and after all we have our own weaknesses and it is human enough to suppose that he will not be above temptation that may be placed in his way by the Executive-that may, I submit, affect his judicial independence and integrity and I am sure none of us in this House desires that such a consequence should ensue. Our judges wherever they might be-in the States or in the Centre-must be models of Judicial independence, fearless in their judgments and action without fear or favour of the State authorities or the Central authorities. If about Judges in harness or in office a condition like this is not laid down, then it is likely that we may not find them as strong, as true, as we would like then to be. I hope, however this bar will not apply to retired Judges. If they are competent for a particular job such as Ambassador, certainly they should be employed but for judges in harness I think it is very salutary that this House should lay down a principle of this nature-that so long as they are in service they should not aspire to any office in the Executive. I support the amendment moved by Professor Shah.

Prof. Shibban Lal Saksena : Sir, I also think that the amendment which Prof. Shah has moved deserves our careful attention. Some people might say that talent in this country at present is limited and if we lay down this provision, probably there might be dearth for appointments to these higher posts. But here we are framing a Constitution for the future of this country and it will not be only for a limited period but will last for a very long time and therefore a provision like this deserves our consideration. We have already laid down that Judges of the High Court shall not be allowed to practise after retirement at the bar in any Court. That of course is a very salutary provision and is very good but if the temptation of being appointed to other high positions after retirement is not removed, it will also be liable to be abused by the Executive or by any party in power and they may hold out such temptations which might affect the independence of the judiciary. I personally feel that the amendment is very salutary and healthy. Even though the language may leave to be different I hope that somewhere in our Constitution the principle enunciated here will be embodied so that the judiciary may be above temptation and nobody may be able to influence it.

Mr. President : Dr. Ambedkar, do you wish to say anything about Prof. Shah's motion?

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I regret that I cannot accept this amendment by Prof. Shah. If I understood Prof. Shah correctly, he said that the underlying object of his amendment was to secure or rather give effect to the theory of separation between the judiciary and the executive. I do not think there is any dispute that there should be separation between the Executive and the Judiciary and in fact all the articles relating to the High Court as well as the Supreme Court have prominently kept that object in mind. But the question that arises in this: how is this going to bring about a separation of the judiciary and the executive. So far as I understand the doctrine of the separation of the judiciary from the executive, it means that while a person is holding a judicial office he must not hold any post which involves executive power; similarly, while a person is holding an executive office he must not simultaneously hold a judicial office. But this amendment deals with quite a different proposition so far as I am able to see it. It lays down what office a person who has been a member of the judiciary shall hold after he has put in a certain number of years in the service of the judiciary. That raises quite a different problem in my judgment. It raises the same problem which we might consider in regard to the Public Service Commission as to whether a Member of the Public Service Commission after having served his term of office should be entitled to any office thereafter or not. It seems to me that the position of the members of the judiciary stands on a different footing from that of the Members of the Public Service Commission. The Members of the Public Service Commission are, as I said on an earlier occasion, intimately connected with the executive with regard to appointments to Administrative Services. The judiciary to a very large extent is not concerned with the executive: it is concerned with the adjudication of the right of the people and to some extend of the rights of the Government of India and the Units as such. To a large extent it would be concerned in my judgment with the rights of the people themselves in which the government of the day can hardly have any interest at all. Consequently the opportunity for the executive to influence the judiciary is very small and it seems to me that purely for a theoretical reason to disqualify people from holding other offices is to carry the thing too far. We must remember that the provisions that we are making for our judiciary are not, from the point of view of the persons holding the office, of a very satisfactory character. We are asking them to quit office at sixty while in England a person now can hold office up to seventy years. It must also be remembered that in the United States practically an office in the Supreme Court is a life tenure, so that the question of a person seeking another office after retirement can very seldom arise either in the United States or in Great Britain.

Similarly, in the United States, so far as pension is concerned, the pension of a Supreme Court Judge is the same as his salary: there is no distinction whatsoever between the two. In England also pension, so far as I understand, is something like seventy or eighty per cent. of the salary which the Judges get. Our rules, as I said, regarding retirement impose a burden upon a man inasmuch as they require him to retire at sixty. Our rules of pension are again so stringent that we provide practically a very meagre pension. Having regard to these circumstances I think the amendment proposed by Prof. K. T. Shah is both unnecessary for the purpose he has in mind, namely of securing separation of the judiciary from the executive, and also from the point of view that it places too many burdens on the members who accept a post in the judiciary.

Shri H. V. Kamath : May I say that this amendment applies not to retired Judges but to Judges serving on the bench at the moment?

The Honourable Dr. B. R. Ambedkar : If I may say so, the amendment seems to be very confused. It says that it shall apply to a person who has served "for a period of five years continuously". That means if the President appointed a Judge for less than five years he would not be subject to this, which would defeat the very purpose that Prof. K. T. Shah has in mind. It would perfectly be open to the President in any particular case to appoint a Judge for a short period of less than five years and reward him by any post such as that of Ambassador or Consul or Trade Commissioner, etc. The whole thing seems to me quite ill-conceived.

Mr. President : The question is:

"That the following new article 193-A after article 193 added:

'193-A. No one who has been a Judge of the Supreme Court, or of the

> Federal Court or of any High Court for a period of 5 years continuously shall be appointed to any executive office under the Government of India or the Government of any State in the Union, including the office of an Ambassador, Minister, Plenipotentiary, High Commissioner, Trade Commissioner, Consul, as well as of a Minister in the Government of India or under the Government of any State in the Union.'"

The amendment was negatived.

Article 194

Mr. President : The question is:

"That article 194 stand part of the Constitution."

The motion was adopted.

Article 194 was added to the Constitution.

Article 195

The Honourable Dr. B. R. Ambedkar : I move:

"That in article 195 for the words 'a declaration' the words 'an affirmation or oath' be substituted."

It is a very formal amendment.

Mr. President : The question is:

"That in article 195 for the words 'a declaration' the words 'an affirmation or oath' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That in article 195, as amended, stand part of the Constitution."

The motion was adopted.

Article 195, as amended, was added to the Constitution.

Article 196

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for article 196, the following article be substituted:-

Prohibition of practising in courts or before any authority by a person who held office as a judge of a High Court.	'196. No person who has held office as a judge of a High Court after the commencement of this Constitution shall plead or act in any court or before any authority within the territory of India.' "

It is simply a rewording of the same.

(Amendment Nos. 87 and 2627 to 2631 were not moved.)

Shri Prabhu Dayal Himatsingka : In view of the amendment moved by Dr. Ambedkar now, my amendment (No. 2632) is not necessary.

(Amendments Nos. 2633 to 2637 were not moved.)

Sardar Hukam Singh : (East Punjab : Sikh): Sir, I beg to move:

"That in article 196, for the words 'within the territory of India' the words within the jurisdiction of that High Court' be substituted."

It is not necessary for me, Sir, to make a speech as the amendment is self explanatory.

Shri H. V. Kamath : Sir, article 196 has now been brought in an amended form before the House by the Chairman of the Drafting Committee. To my mind even the amended article imposes too sweeping a restriction on persons who have held office as judges of high courts. We had visualised that a person could be appointed as a high court judge either for a long tenure or a very short tenure too. I suppose the amendment that has been moved by Dr. Ambedkar does not do away with the possibility of a person acting or holding office as a high court judge for a few months. Suppose a person has held office as a high court judge for a few months, six or nine months, do we seek to impose a restriction upon him, a man who has acted as a temporary judge for a short time? Do we seek to debar him from pleading or practising not merely in any court but even before any authority within the territory of India? It passes my comprehension why a person who has sat on the high court bench for a short while should not be allowed to appear before any court or authority within the territory of India? It passes my comprehension why a person who has sat on on the high court bench for a short while should not be allowed to appear before any court or authority within the whole of India. There would have been some meaning, as my Friend Sardar Hukam Singh has suggested, if the judge was precluded from appearing either in that High Court where he held office or within the jurisdiction or within that territory of the Indian Union, where the High Court held sway and jurisdiction,-what I mean to say is, in that high court or in courts or authorities subordinate to that High Court in which he held office as a judge. But to my mind this sweeping constitutional prohibition is unwarranted and, may I say, undemocratic. I am inclined to support the amendment of my Friend Sardar Hukam Singh and I hope that it will receive some serious consideration at the hands of the House, and the article amended accordingly.

Prof. Shibban Lal Saksena : Sir, I am very much surprised at the speech of my honourable Friend Mr. Kamath on this article. This article deserves whole hearted support. In fact I should have thought that the words "after the commencement of this Constitution" should be deleted. I do not see why it should remain there. Everybody who has been a judge should be debarred from practising. The prohibition which you want to impose now has a very salutary reason behind it. In fact in Britain nobody who has been on the bench can practise at the Bar. It is a very well known principle. It is also well known that once when Lord Birkenhead and some others wanted to revert to the Bar, public opinion was so vehemently against it that they did not dare to carry out their resolve and practise. You may ask why should it be so. First of all, the dignity of the High Court demands that an ex-judge should not come back to the Bar. A High Court Judge may not have much money but his dignity is far greater than that of anyone else. So if he comes back to the Bar he would bring down the dignity of his office. It is for that reason that a man who has been a High Court Judge should not revert to his practice at the Bar. I would go even further. I would even say that those who have been ministers of justice should not be allowed to practice at the Bar. I have seen some advocates who have been ministers of justice going back to the Bar thus bringing down the dignity of their office. Probably during office they cultivated especial relations with the Chief Justice and other judges as they know they might have to revert to the Bar. This should not be permitted.

It has been said that temporary judges should not be debarred from practice. I hope that article 198 and 199 would be so amended that there will no more be any temporary judges in our high courts and everybody who is on the bench will be there, once he is appointed, for the period the constitution allows him to be there. So the question of temporary judges not being debarred from practice does not arise. It is therefore a very salutary provision that a man who has once been on the bench should not come back to the Bar. I may be asked what are the practical reason against it. First of all, a man who has been on the Bench and wants to come back to the Bar would always be thinking of the possibility of getting more clients. The clients will be attracted towards such a man and that will be unfair to his colleagues at the Bar. He may also try to develop contacts. It will not be very healthy when back to the Bar he may influence clients by saying that the Chief Justice is his friend. For these reasons I think a retired High Court Judge should not be permitted to resume practice. He should not even be permitted to practice in other High Courts. I agree that he should be given full pension, a sum almost equal to his salary so that he may maintain the dignity of the office which he once held. To enable a man to maintain his dignity and independence it is necessary that we must provide him full pension, seeing that we are not permitting him to revert to the Bar or seek other appointments which will interfere with his dignity and independence.

I am thankful to Dr. Ambedkar for the amendment he has moved. I only wish to remove the words 'after the commencement of the Constitution.' My object is that even those who have been judges before the commencement of the Constitution should not be allowed to revert to practice at the Bar.

Shri Mahavir Tyagi (United Provinces : General) : Mr. President, I may be pardoned for venturing to give expression to my views on this issue. I am a layman and as such it may seem somewhat presumptuous that I should talk on academic matters concerning law. At another occasion, Dr. Ambedkar had objected to my saying that my feelings were such and such. He insisted that I should express my opinions and not feelings. It seems with literary men opinions and not feelings. It seems with literary men opinions vary with their feelings. To me feelings and opinion mean the same thing. I submit that in the case of judges of the High Court of the Supreme Court, the seats that they occupy are the seats of God. It is so said in the villages. The villagers say: 'The seat of Justice is the seat of God'. The highest ambition of a man in any country therefore is to occupy the seat which is attributed to God. It has a great sanctity about it. Justice, in fact, does not depend on law. It is very strange that the British have created in the minds of people a sort of misgiving about justice. People have been made to think that a true interpretation of law is real justice. It is not so. In fact justice is an eternal truth; it is much to above law. At present what the lawyers do is to shackle the free flow of godly justice. Sir, the language used in the previous article in such that there is a possibility of laymen having godly qualities being appointed as justices. Why should we always have lawyers as judges? I do not know. Why should we presuppose that in future lawyers only will occupy the seats of judges? The provision for the appointment of judges says that the President, in consultation with the Chief Justice will appoint them. Why should we take it that a judge shall always be a graduate in law? I think there is a good possibility of persons, who are otherwise fully qualified to administer justice, occupying the posts of judges and attain the highest ambition of their life. It is wrong to think that the moment a non-lawyer is appointed a judge the dignity attributed to that post will be gone. My belief is that laymen would not only add to the dignity of this seat, but they would also make it more sacrosanct. If after retirement from this high office, its occupants were allowed to aspire for wordly wealth after doing the work of God, after imparting justice, they would stultify both the office and themselves. Sir, let me confess, I am opposed to the very profession of lawyers. They do not create any values or wealth. They attain knowledge of law and put their talents to auction or hire. Sir, if lawyers were appointed as judges and after retirement they were also permitted to carry on their legal practice in courts, the result would be that they would stultify the great office of 'Justice'; they would use these offices as spring boards or ladders to build much more lucrative practice after retirement. I therefore submit that lawyers should not be permitted to have any practice in a court of law when they revert from the Bench. Sir, I am anxious that I should put in my views about the present manner of imparting Justice. I am afraid I am going slightly off the track. But I may be given this concession.

Mr. President : I am glad that the honourable Member has realised that he is going off the track.

Shri Mahavir Tyagi : You are also a lawyer and Sir, you will pardon me when I say that they stultify real justice, because they want to make God's justice flow through the artificial channels of law made by man. That is all what the lawyers do. Real justice is not bound by any shackles of law or argument. According to the practice of British jurisprudence justice is given only to the man who can engage a clever lawyer, because the realities are not taken into account. A judge is unfit to try a case if he has a personal knowledge about the incident. Unless he comes forward and gives evidence as a witness and is cross-examined, his knowledge of the facts of a case counts for nothing. The present conception of justice does not appeal to me. The law courts at the present time are the nucleus and the fountain spring of all corruption, dishonesty and lies, and therefore the seats of judges are no more the seats of God in India. In our future set-up we should see to it that our courts achieve their old past glory and be not enslaved and dominated by "Law". Justice is a fact and Law a mere fiction. Justice is a reality and Law is only a mode of its expression. Let the man who is once appointed a judge, live a life of truthful glory. Once a judge, always a Judge. He must be content with his pension after retirement. If lawyers are ever appointed as judges they should not revert to practice because it is certain that if they do so they will use their posts as ladders for more practice.

I support the original proposition.

Shri B. M. Gupte (Bombay : General): Sir, I concur with my Friend Mr. Kamath in that this proviso is far too wide and drastic for our acceptance. According to the present situation the retired High Court judges are not allowed to practise in that High Court and in the courts subordinate to it. There is no further prohibition than that. I want to ask, what is our experience? Why do you want this change? Has this provision disclosed any defects? Has it brought forward any evil? If it has not, I do not see why there should be a change at all. Is the Bar flooded by retired judges? No, nothing of the sort has happened and can happen because success at the Bar is not so easy a thing that anybody can try his hand at it. The question of dignity may perhaps arise. I can understand that a man who has occupied the Bench should not in that very court set up practice. But apart from that, is it a fact that today no decent-minded person is prepared to accept the position of a High Court Judge because the proposed prohibition is not there? On the contrary the prestige of the post is so high that very able lawyers are prepared to accept it and aspire for it. I therefore submit that the answer to this question is again an emphatic 'No'. Then the point may arise that perhaps the retired Judge may exercise undue influence in the court. To that extent I concede that the ban should extend to all the subordinate courts throughout the territory. But that does not mean that he should be prevented from coming to the Supreme Court. Supreme Court is in no way subordinate to any High Court. He should also not be prevented from practising in other High Court. Therefore I submit there is no reason why we should make a departure from the existing practice.

I may be told the practice in England warrants the introduction of the innovation now being made. But, I ask, why go to England or America or Russia when we have got our own experience to work upon? I submit that the change is not warranted by the experience that we have already got. I am not saying that this change is merely unnecessary; it is undesirable. We have already been informed by the Drafting Committee in their foot-note to article 193 that: 'The result is that the best men from the Bar often refuse appointments on the Bench because under the existing age-limit of sixty years they would not have time to earn a full pension'. So, because of that age-limit, the best men are not coming. That is admitted by the Drafting Committee. Then the Committee has proposed that the salaries and pensions may be reduced. I quite understand Shri Mahavir Tyagi when he says that if pensions are sufficient as in England, the question does not arise. But there is a definite proposal by the Drafting Committee itself to reduce salaries. I am not prepared to say that it should be accepted. But there is that proposal for reduction of salaries and on top of that comes this prohibition that they shall not practise anywhere. What would be the cumulative effect of all theses things? I submit the result will be that the best of men in the High Court Bar or mufassal Bar would not be prepared to accept the appointment. I am not urging this in the interests of the top men. They can take care of themselves. They need no sympathy or pity from us. They would have their flourishing practice. But what would be the result of the whole thing on the independence of our judiciary? That is the problem. In the absence of top men, we shall have to choose men of lower calibre and men who have failed at the Bar will be raised to the Bench. Or otherwise practically the entire High Court will be manned by District Judges and Subordinate

Judges. I put it to you whether it is a desirable position. We have all along been clamouring for the independence of the judiciary, but that cannot be achieved by merely laying down that a Judge shall not be removed from office except after an address by the Houses of the Legislature or by providing that their salaries and allowances are chargeable to the revenues of the State. The independence of the judiciary can be achieved only by making their conditions of employment such that men of really independent spirit would be attracted to those posts. I do submit that independent rising men would not be attracted if we make the prohibition so sweeping. I may be told that Sir Tej Bahadur Sapru was in favour of this provision. It may be. Sapru's is an honoured name and his views are entitled to our respectful consideration; but it does not mean that we should follow his views blindly irrespective of the merits of the case. To do that would be to bestow on him posthumously the position of a dictator, which he himself would have detested.

Mr. President : No Member who has supported this proposition has brought in the name of Sir Tej Bahadur Sapru. The honourable Member brings in his name and starts criticising his supposed opinion. I think it is not right.

Shri B. M. Gupte : Sir, I am anticipating an argument. Any way I would only submit, Sir, that we should consider all the relevant arguments in favour of this proposal. And if we do that, the conclusion would be that the proposed provision is not such as would attract the proper men at the top to these very important position. I therefore submit that it is worth considering whether we should retain it in the form in which it has been put.

An Honourable Member : The question be now put.

Mr. President : I notice that about half a dozen Members still want to speak on this. I have noticed that in discussing the articles relating to the Supreme Court and the High Courts there is a tendency to prolong the discussion even where discussion is not required. I would ask Members not to have discussion for discussion's sake, as I feel in some cases we are having. I think we had better proceed with the voting on this article. Both points of view have been placed before the House.

The question is:

"That the question be now put."

The motion was adopted.

Shri Prabhu Dayal Himatsingka : I want to draw the attention of the honourable the mover to amendment No. 2627 which says that no person who has held office as a Judge of a High Court shall be entitled to practice before any court. There are a number of temporary Judges in many High Courts at the present moment. As soon as this Constitution comes into being....

Mr. President : I am going to take the vote and you start speaking.

(Some honourable Members rose to speak.)

Mr. President : I will put the closure motion again.

The question is:

"That the question be now put."

The motion was adopted.

Mr. President : Dr. Ambedkar do you wish to say anything ?

The Honourable Dr. B. R. Ambedkar : I do not think anything is necessary.

Mr. President : I will first put Sardar Hukam Singh's amendment to the vote. If that is accepted, Dr. Ambedkar's amendment will stand amended by this.

The question is:

"That in article 196, for the words 'within the territory of India' the words 'within the jurisdiction of that High Court' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That for article 196, the following article be substituted :-

Prohibition of practising in courts or before any authority by a person who held office as a judge of a High Court.	"196.No person who has held office as a judge of a High Court after the commencement of this Constitution shall plead or act in any court or before any authority within the territory of India."

The amendment was adopted.

Mr. President : The question is:

"Article 196, as amended, stand part of the Constitution."

The motion was adopted.

Article 196, as amended, was added to the Constitution.

Article 196-A

(Amendment No. 2639 was not moved.)

Mr. President : A similar amendment, No. 1870 was moved and discussed at great length and it was held over.

The Honourable Dr. B. R. Ambedkar : I suggest that article 196-A may be held over. A similar article, (No. 103-A) was held over.

Mr. President : I agree. This article will then stand over.

Article 197

The Honourable Dr. B. R. Ambedkar : Article 197 also may be held over.

Mr. President : I agree, this article also is held over.

Article 198

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for article 198, the following article be substituted :-

Temporary appointment of Acting Chief Justice.

'198. When the office of Chief Justice of a High Court is vacant or when any such Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office the duties of the office shall be performed by such one of the other judges of the court, as the President, may appoint for the purpose.'
"

(Amendment No. 2649 was not moved.)

Shri T. T. Krishnamachari : Sir, amendment No. 2650 is covered by the amendment moved by Dr. Ambedkar because it relates to clause (2). Dr. Ambedkar's amendment is substantially the same; it deletes clause (2) and only retains clause (1).

Dr. P. K. Sen : I do not want to move that amendment.

(Amendments Nos. 2651, 2652 and 2653 were not moved.)

Mr. President : The question is:

"That for article 198, the following article be substituted:-

Temporary appointment of Acting Chief Justice.

'198. When the office of Chief Justice of a High Court is vacant or when any such Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office the duties of the office shall be performed by such one of the other judges of the court as the President, may appoint for the purpose.'
"

The motion was adopted.

Mr. President : The question is:

"That article 198, as amended, stand part of the Constitution."

The motion was adopted.

Article 198, as amended was added to the Constitution.

Article 199

Mr. President : There are some amendments which want the article to be deleted. I do not take them as amendments. Amendment No. 2656 is one of a drafting nature.

Mr. President : The question is:

"That article 199 stand part of the Constitution."

The motion was negatived.

Article 199 was deleted from the Constitution.

Article 200

(Amendment No. 2657 was not moved.)

Shri Jaspat Roy Kapoor (United Provinces : General) : Mr. President, Sir, I beg to move:

"That in article 200, for the words " The Chief Justice of a High Court' the words 'The President' be substituted."

To this amendment, Sir, I beg to move another amendment and that is this :-

"That in article 200 after the words 'at any time', the words 'with the previous consent of the President' be inserted."

The article, when amended would read thus:-

"Notwithstanding anything contained in this Chapter the Chief Justice of a High Court may at any time, with the previous consent of the President request any person who has held the office of a Judge of that court to sit and act as a judge of the court and every such person so requested shall, while so sitting and acting, have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a judge of that court."

Prof. Shibban Lal Saksena : Do you drop the proviso?

Shri Jaspat Roy Kapoor : I have not come to that yet. It is not necessary for me to read it. I only want to deal with amendments for the time being to the first para of article 200. I will come to the question of deletion of the proviso later on.

Sir, under this article a retired Judge of the High Court is liable to be called back to sit on the Bench of the High Court if the Chief Justice thinks that it is necessary for him to call such a judge back. Now recalling a retired judge to sit again on the Bench of the High Court virtually amounts to a new appointment, though it may be only for the time being and since the President is the appointing authority, I think it is only proper and advisable that before such a request is made by the Chief Justice to any retired High Court Judge, the previous consent of the President must be obtained. The words that appear in this article, as it stands at present, are :

"That the Chief Justice of a High Court may at any time request any person......"

without of course, any reference to the President. That does not seem to be proper. I think, therefore, Sir, that my amendment needs being accepted so that no retired judge may be called back without the express consent of the President taken in advance. Now, Sir, there is another amendment of which I have given notice and it reads thus :-

"That with reference to amendments Nos. 2658 and 2659 of the List of Amendments, in article 200, the proviso be deleted."

"The proviso is: Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a judge of that court unless he consents so to do."

I do not desire to formally move this amendment, but I do certainly wish Dr. Ambedkar to consider as to whether it is really necessary that this proviso should be retained at all. To me it appears, Sir, that his proviso is not only redundant, but it also does not appear to be a dignified one. It is redundant in this way. It seems to presume that the Chief Justice of a High Court would request a retired High Court Judge to come back and serve on the Bench without having previously consulted the retired Judge that is going to be requested. We should presume that the Chief Justice would be acting as a prudent man of ordinary common sense and he would certainly not make a request to a person only to get a 'no' from him. He would certainly take the retired Judge into confidence, ask him whether he is prepared to come back to the Bench and perform certain duties, and then alone he would approach the President to obtain his consent. In this view, Sir, I think this proviso is absolutely unnecessary. It does not look dignified to have this proviso here because it means that a request would be made by the Chief Justice and thereafter it would be open to the retired Judge to say, 'no'. Of course, it is always open to a retired Judge to express his inability to accede to the request. Once a request having been made to him and thereafter to ask whether he is prepared to accede to the request or not looks like putting the cart before the horse. Therefore, this proviso is both unnecessary and gives a rather undignified appearance to this article.

Again, I have given notice of an amendment which is No. 212 in List III which runs thus :-

"The term 'privileges' shall not include the right to draw salary."

I am not moving this amendment even formally. But I would very much like the Honourable Dr. Ambedkar to make it plain on the floor of this House whether the term privileges' does or does not include the right to draw salary. I believe, Sir, It is not the intention of the Drafting Committee that a retired Judge of the High Court when called back to serve on the Bench of the High Court should be given again the salary which a permanent judge of the High Court is entitled to. I believe, it is not their intention. But I certainly wish that no ambiguity in regard to this matter should be left and it should not be open to interpret this term later on as meaning that salary also is due to the Judges who are called back after retirement. If the term were to include the right to draw salary, it only nullifies one of the previous articles which we have just passed laying down that a Judge shall retire at the age of sixty, because under this article, even after retirement at the age of sixty, a Judge can be called back even though he may be sixty-one, sixty-two, or seventy-five; if the Chief Justice or a the President so like, they can call back a retired Judge even after the age of sixty and enable him to continue to sit on the Bench of the High Court for any number of years and give him even the full salary that a permanent Judge of the High Court is entitled to. That would be a position that we should not be prepared to accept. If it be said that the President and the Chief Justice should be relied upon and that they would never like to circumvent a previous article which we have just passed, I would say, when we are framing a Constitution and when we are framing it in such an elaborate and detailed manner, we should not leave these things merely to the good sense of the Chief Justice or the President, but make a definite provision for everything. My purpose, of course, would be amply served it the Honourable Dr. Ambedkar makes it plain today that the word 'privileges' does not include the right to draw salary.

Mr. President : There is amendment No. 201 of which notice has been given by Dr. Ambedkar which is exactly the same as the amendment moved by Mr. Jaspat Roy Kapoor. That amendment need not be moved.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in article 200, the words 'subject to the provisions of this article' be omitted."

Mr. President : Two amendments have been moved. Does anybody wish to speak?

Mr. Tajamul Husain (Bihar: Muslim): Mr. President, Sir, article 200 lays down the manner in which a retired High Court Judge can be asked to come back and perform the duties of a Judge temporarily. It says that it is the Chief Justice of that High Court who would request him to come and sit on the Bench. If he agrees, then, of course, he will be appointed for the time being. There is an amendment by my honourable Friend Mr. Jaspat Roy Kapoor which says that instead of the Chief Justice of that Court calling him, the President of the Union should do it. I think there is very little difference between the two, whether it is the Chief Justice or the President who should make the request. But I personally think in a matter like this where a retired Judge, who was appointed when he was appointed by the President of the Union and who is a man known to the Chief Justice, is being called back, there is no reason why in a matter of day-to-day administration, we should ask the President to perform this task. The Chief Justice knows every retired judge, the merits of each of the judges. I submit that this amendment of Mr. Jaspat Roy Kapoor is not right and therefore I oppose it. I think the article as it stands may be accepted and it is the Chief Justice who should make the request and not the President.

Shri Rohini Kumar Chaudhari (Assam: General) : Mr. President, Sir, I welcome this article as amended by my honourable Friend Mr. Jaspat Roy Kapoor. I fully endorse the remarks which have been made by him so far as the deletion of the proviso is concerned. I consider this proviso is absolutely meaningless and redundant. A request from the Chief Justice does not stand in the place of any command from a Sovereign and a request when it is made by the Chief Justice should not be treated as such. Everybody knows it. After all a request is a request. That is to say, when a Chief Justice makes a request to one of his ex-colleagues that request does not have the force of a command, and nobody would consider it disloyal if he does not comply with that request. I am inclined to think there will be hardly any occasion when such a request will be disregarded. If the *ex*-Judge is not prevented by illness or some other serious reason, he is bound to accept that position with alacrity. We have seen how District Magistrates after retirement have scrambled for the position of honorary magistrates. Therefore, it is not very easy to imagine a position when an *ex*-Judge would refuse to hold the position temporarily or where he would be unwilling to accept that position without very strong reason.

I consider that article 200 as it stands amended by my honourable Friend Mr. Jaspat Roy Kapoor helps us a good deal. That helps us to get out of the hole which the amendment of my honourable Friend Dr. Ambedkar has put us in today. According to the amendment of Dr. Ambedkar, anyone who has held office as a Judge even for a single day will be disqualified from practising in any court in India; that is to say he will absolutely find himself out of employment, unless the Government is pleased to appoint him as an Ambassador or as a Minister Plenipotentiary or the finds his way through election and becomes a Minister of some State, because the amendment which was moved by Prof. Shah has not been accepted by this House. The Chief Justice or a Judge of any Court even after retirement can look forward to the position of an Ambassador or High Commissioner or Minister or any other similar executive office. I do not understand why a Judge who has been sitting as Judge for five years and who has-so to speak-acquired the judicial habit-how can he be called upon to accept the position of a High Commissioner or that of an Ambassador is more than I can grasp.

Mr. President : The honourable Member is now discussing a proposition which we have already disposed of.

Shri Rohini Kumar Chaudhari : I am only talking of the position which has been created after the rejection of the amendment of Professor Shah and after the acceptance of the Honourable Dr. Ambedkar. The only solution which can relieve us of that position is the present article 200 which enables us to make provision for employment of *ex*-Judges, who have left the service at a fairly good age. He is fit to hold the responsible position of Minister or High Commissioner or Ambassador and still he is not in a position to practice in any Court in India, and the only help you can render to that man who had fortunately or unfortunately been selected as High Court Judge and held that position for one year or so is that his plight should be borne in mind by the Chief Justices of the different High Courts that whenever any opportunity occurs of providing any employment for such *ex*-Judges, they should be remembered and they should be requested to render service. Therefore I welcome this provision because in this method there is no limit of age; if only the Chief Justices of different

High Courts in India will only bear in mind their *ex*-colleagues and try to provide for them in every opportunity, then the question of finding employment for *ex*-Judges gets solved to some extent at least.

I also wanted to mention another fact which require clarification, *viz.*, whether these *ex*-Judges who will be requested to sit as Judge will get any emolument. The article says that they will be given privileges of a High Court Judge. Whether the word 'privileges' includes also salaries or emoluments or remuneration, I want to know whether they will be honourary Judges or whether they will be stipendiary Judges. whether they will be merely content with the privileges of a High Court Judge which are of different variety or whether they will also be in the same status as the other Judges of the same Bench and whether they will get any salary or not, and whether there can be any limit of the term of their office or whether they can be requested to hold the office for any term exceeding two years, because in one of the articles I find that it was intended that in no case a temporary Judge should be appointed in this manner for more than two years. This is a point which requires clarification. I also want to know designation they will have, whether they will be called Judge of the High Court or not for the term in which they are working, but the article says they will not be deemed to be Judge of that Court for any other purpose excepting for sitting as a Judge. What will be their designation, will they form the personnel of the Judges of that High Court or they will have no designation and be merely requested to work for seven or eight days temporarily? I hope Dr. Ambedkar will clarify these two points, *viz.*, what will be their designation, what will be their salary, if any, and what would be the term of their office.

Dr. Bakshi Tek Chand : Mr. President, Sir, I had no intention of taking part in the debate on this article, if it had not been for the speeches which have been made by Shri Jaspat Roy Kapoor and Shri Rohini Kumar Chaudhari. It seems to me that the whole purpose and object of introducing article 200 in the Constitution has been misunderstood. It has been thought that this article is intended to nullify the article which has been passed already by the House that the Judges of the High Courts shall retire compulsorily at the age of 60. It is supposed that a Chief Justice of a High Court, acting under the powers given to him in article 200, may ask a retired Judge who is his friend or favourite to come and join the Court and may keep him there for any length of time. Mr. Chaudhari's suspicions are that this period may be two years or longer, that is to say, a Judge who has retired at the age of 60 may two years later, when he is 62, be recalled and may be asked to work again for a year or two or a longer period. Surely, if that is the underlying idea, there is a great deal in what the honourable Members have said. But if I may say so with great respect, that is not the intention of this article and that could not have been the intention of the Drafting Committee.

Pandit Thakur Das Bhargava : The question is whether this article is susceptible of this interpretation or not.

Dr. Bakshi Tek Chand : This article has been introduced in order to make it possible for the Chief Justice to introduce here the practice which has been in vague in England and U.S.A. for a very long time. There, retired Judges are not invited to come back and become regular members of the Court even for 6 months or 8 months. It is only for decision of a particular case, or a group of cases of difficulty and importance, where it is thought that the ripe experience and expert knowledge of persons who had retired but who are still available in the realm will be very helpful, that their services may be requisitioned by the Chief Justice for assistance. In England a retired Judge when he is asked to do so, receives no salary at all. He gets only a small allowance, which used to be 2 guineas a day *plus* conveyance expenses-something like the Rs. 45 a day which the Members of this House receive when they sit in the House. It is considered derogatory to the position of a retired Judge to be re-employed as a regular member of the Court for six months or for a longer period and it will be very improper-indeed, it is inconceivable-that the Chief Justice of the Court will resort to this method of having his own "favourites" back on the Bench in order to get a particular decision in a case when he finds that his other colleagues do not take the particular view that he takes. Such a thing is unthinkable. Certainly, that could not be the object of enacting article 20. In England, eminent Judges- *e.g.* Lord Darling to asked at the age of 82 to come and sit for a particular case or group of cases, in which difficult questions of law had arisen and it was thought necessary to have the benefit of his talent and expert knowledge in that branch of law. After deciding the particular case or cases the Judges go back to their retirement. They come to London, stay there for a short time, receive this meagre allowance to meet hotel charges. About ten years ago they used to get two guineas a day *plus* taxi expenses, which used to come to twelve shillings a day that is Rs. 30 to Rs. 40 a day and no more.

It is considered a compliment by the Judge also, that the Chief Justice thinks that though he is retired, his talent will be of assistance in deciding cases. He therefore ungrudgingly placed his services at the disposal of the court. It is the Lord Chancellor who invites Members to sit in the Judicial Committee and it is the Chief Justice who asks the assistance of retired Judges in the High Court. I take it that that is the intention and all suspicions and fears, which have been expressed, are unfounded. Similarly it will be undesirable that when arrears pile up the Chief Justice should invite a retired judge at the age of 63, or 65, or 67 or more to come back to clear off these arrears. This would be very derogatory to the retired Judge and very improper for the Chief Justice to do so. If such a Judge is not to receive an allowance, then it will be introducing a system of having 'Honorary' Judges of the High Court, something like glorified Honorary Magistrates with all the attendant evils, of the system. That is not the intention. It could never have been the object of introducing this article in the constitution. The idea is to introduce in India the time-honoured practice which has been in vogue in England and U.S.A. for many many years and which is resorted to very rarely-once or twice a year for a period of a few weeks or so to decide a particular case or set of cases of every great difficulty and importance. That is what the article contemplates. I therefore submit that the article, as drafted, should be passed without any amendments and Members should have no apprehensions of the kind that have been expressed.

Shri H. V. Kamath : Mr. President, I desire to sound a note of caution. I am afraid that this article, if we adopt it in its present form incorporating the amendment of Dr. Ambedkar, or my Friend Mr. Kapoor, might entail unpalatable consequences at some time, consequences to my mind other than those which the wise men assembled here have intended. I am not aware from which written constitution of the world this article has been borrowed. In this article, neither the circumstances under which certain judges can act, nor the time during which they should sit has been mentioned. My learned Friend Dr. Bakshi Tek Chand, has stated that a judge will not be employed merely to dispose of accumulated arrears. I agree with him that it would be derogatory to the dignity of a High Court Judge to be called upon to dispose of some arrears. If that be not the case, then for what purpose will his talents be utilised? Obviously to my mind there is only one other category of cases, and that might be important cases involving issues of vital constitutional importance-issues that might arise between the Centre and the units, or between different units. Here as I stated earlier, it may be that the Executive may like to have a decision in a particular fashion and we have already decided here in this Assembly that the Judiciary shall not be completely separate from the Executive. We might take steps some time or other, but.

Dr. P. S. Deshmukh : May I point out that this section refers to the High Court and not to the Supreme Court?

Shri H. V. Kamath : We have laid down that the Judiciary will not be independent of the Executive and so long as that is so, there is no obviating the possibility or no guarantee against the judiciary being the handmaid of the executive: or if that is too strong a word, the judiciary kowtowing to the executive, not on all occasions but on some occasions, now that the House has not accepted Prof. Shah's suggestion that the plums of executive office should not be open to judges in office. So there is no guarantee that the judiciary will be actuated by a sense of the completest integrity and independence.

Dr. Ambedkar has moved another amendment seeking that the power of appointing the High Court Judge or the acting Judge of the High Court should be divided between the Chief Justice and the President. The Chief Justice shall consult the President. It may be making assurance doubly sure that the right man will be called in. But we are not always sure-in fact none of us here can be sure-about the calibre of the men who will be filling these exalted offices and becoming the high dignitaries of our State in future. So long as the constitution does not ensure the separation of the judiciary from the executive, nor its independence, if the President is inclined to meddle in the judiciary, or is included to see that the judiciary kowtows to Ko his will, or his subservient to his will, or is the handmaid of the executive, then the President will on certain issues dictate to the Chief Justice. But it is also quite likely that in effect the President will tell the Chief Justice to do such and such.....

Mr. President : Article 107, which we have already adopted relating to similar judges being invited to the Supreme Court is in exactly the same wording as this article, and all this argument now seems to me to be beside the point.

Shri H. V. Kamath : Have we incorporated this amendment about the President?

Mr. President : Yes.

Shri H. V. Kamath : I thought it was not there. I thought this was a new amendment, inserting the President in connexion with the appointment of acting Judges to the High Court. I should therefore submit so far as the High Court is concerned, if it is not merely to dispose of accumulated arrears then it must be to deal with certain cases which may involve technical or constitutional issues. In that event, I feel that the Chief Justice, so far as the acting Judges are concerned, is the competent authority and he need not consult the President at all. So far as the acting period is concerned, Dr. Bakshi Tek Chand has mentioned four, five or six weeks, and he has mentioned the case of Justice Darling. There was another great Judge, Justice Haldane. But such judges are rare and I hope that this system of appointing acting judges will not occur in our country.

Mr. President : The word "appointment" does not occur in the article at all. It is not an appointment but a request for particular occasions.

Shri H. V. Kamath : The article says that he acts as a Judge of the High court. It may not be technically an appointment.

Dr. Bakshi Tek Chand : He has to "act" because he has to decide cases.

An Honourable Member : He is not an acting judge.

Shri H. V. Kamath : He is an acting judge certainly. He acts as a judge of the High Court, and is certainly an acting Judge of the High Court. Let us not do hair-splitting here.

To my mind when it is a case of a small period of ten days or a fortnight, as Dr. Bakshi Tek Chand told us, I do not see why the President should come into the picture at all. The Chief Justice is competent enough to ask any judge to dispose of any cases for the time being. The President, to my mind, need not come in, and the Chief Justice should be entrusted with the task of requesting a retired judge to act as a judge on any particular occasion.

Lastly, Sir, the proviso is absolutely meaningless, purposeless, redundant and superfluous. I do not know why the wise men of the Drafting Committee thought fit to incorporate the proviso here. It must have been in a fit of, may I say, adding a little verbiage to the constitution. No person can be compelled to do this work, unless you are going to enforce a system of *begar* in the country. We have done away with *begar* and I suppose, so far as the judges are concerned too, we shall not enforce *begar*. If the judge agrees to work he will comply with the request of the Chief Justice. The proviso is therefore absolutely meaningless and pointless, and I hope the wise men of the Drafting Committee will see their way to delete the proviso.

Prof. Shibban Lal Saksena : It has been said in the note to this clause that the employment of retired judges follows the practice in the U. K. and the U.S.A. That has been said in defence of retaining the section. In the U.S.A., as has been pointed out by the Chairman of the Drafting Committee himself the judges get a pension almost equal to their salary and in England they get a pension equal to 80 per cent of the salary which they drew as judges. If after retirement they are called to the Bench, it is not a matter of monetary gain to them, it is only a matter of distinction and of duty done for the state. I give my conditional support to this clause. If we also lay down that the retired judges of the High Court shall get as pension the full salary which they were getting when in office or at least 80 per cent of it as they do in England, then judges will not try to seek the favour of the Chief Justice so that they may be called back by him to the Bench. My Friend, Bakshi Tek Chand, said that this is only for particular occasions and for particular periods but the wording of the article does not warrant this. Under article 189 we should not have any additional or temporary judges. It is quite possible that there may be arrears and this may be a device to be adopted by the Chief Judges to recall retired judges and ask them to dispose of the arrears. The article does not say that the men requested shall not continue to act for two or three years. In fact I feel that this is calling back judges by the back door. I should have personally preferred a higher age of retirement for judges, sixty-six for High Courts and seventy for the Supreme Court. We could then have said that these judges will not have to be recalled. You retire them at sixty and then call them back. It only means that you are throwing open possibilities of nepotism and favouritism. The judges will be inclined to see that they do not get on the wrong side of the Chief Justice with the result that they will have no chance of recall. My suggestion is firstly, that the pension of the judges should be almost equal or 80 per cent. of their salary when in office and secondly, that they shall be called only in particular cases and for a stated period. They shall not be acting judges brought in by the back door.

The Honourable Dr. B. R. Ambedkar : Sir, I did not think that this article would give rise to such a prolonged debate, in view of the fact that a similar article has been passed with regard to the Supreme Court. However, as the debate has taken place and certain Members have asked have asked me certain definite questions, I am here to reply to him.

My friend Mr. Kamath said that he did not know whether there was any precedent in any other country for article 200. I am sure he has not read the Draft Constitution, because the footnote itself says that a similar provision exists in America and in Great Britain. (Inaudible interruption by Mr. Kamath). In fact, if I may say so, article 200 is word for word taken from section 8 of the Supreme Court of Judicature Act in England. There is no difference in language at all. That is my answer, so far as precedent is concerned.

But, Sir, apart from precedent, I think there is every ground for the provision of an article like article 200. As the House will recall we have now eliminated altogether any provision for the appointment of temporary or additional judges, and those clauses which referred to temporary or additional judges have been eliminated from Constitution. All judges of the High Court shall have been eliminated from the Constitution. All judges of the High Court shall have to be permanent. It seems to me that if you are not going to have any temporary or additional judges you must make some kind of provision for the disposal of certain business, for which it may not be feasible to appoint a temporary judge in time to discharge the duties of a High Court Judge with respect to such matters. And therefore the only other provision which would be compatible with article 196 (which requires that no judge after retirement shall practise) is the provision which is contained in article 200. As my Friend Dr. Tek Chand said, there seems to be a lot of misgiving or misunderstanding with regard to the purpose or the intention of the article. It is certainly not the intention of the article to import by the back door for any length of time persons who have retired from the High Courts. Therefore nobody need have any misgiving with regard to this.

The other question that has been asked of me is with regard to the proviso. Many people who have spoken on the proviso have said that it appeared to them to be purposeless and meaningless. I do not agree with them. I do think that the proviso is absolutely necessary. If the proviso is not there it would be quite open for the authorities concerned to impose a sort of penalty upon a judge who refuses to accept the invitation. It may also happen that a person who refuses to accept the invitation may be held up for contempt of court. We do not want such penalties to be created against a retired High Court Judges who either for the reason that he is ill, incapacitated or because he is otherwise engaged in his private business does not think it possible to accept the invitation extended to him by the Chief Justice. That is the justification for the proviso. The other question that has been asked is whether the word 'privilege' in article 200 will entitle a retired judge to demand the full salary which a judge of the High Court would be entitled to get. My reply to that is that this is a matter which will be governed by rules with regard to pension. The existing rule is that when a retired person is invited to accept any particular job under Government he gets the salary of the post minus the pension. I believe that is the general rule. I may be mistaken. Anyhow, that is a matter which is governed by the pension rules. Similarly this matter may be left to be governed by the rules regarding pension and we need not specifically say anything about it with regard to this matter in the article itself. This is all I have to say with regard to the points of criticism that have been raised in the course of the debate.

Shri H. V. Kamath : Is there such a provision in the Constitution of the United States?

The Honourable Dr. B. R. Ambedkar : I have not got the text before me. In the United States the question does not arise because the salary and pension are more or less the same.

I am prepared to accept amendment No. 89 of Mr. Kapoor, because some people have the feeling that article 200 is likely to be abused by the Chief Justice inviting more than once a friend of his who is a retired judge. I therefore am prepared to accept the proposal of Mr. Kapoor that the invitation should be extended only after the concurrence of the President has been asked for.

Shri Jaspat Roy Kapoor : May I know whether it is the intention that the interpretation of the term 'privileges' should be left to the Parliament?

The Honourable Dr. B. R. Ambedkar : It may have to be defined. There is no doubt about it that Parliament will have to pass what may be called a Judiciary Act governing both the Supreme Court and the High Courts and in that the word 'privilege' may be determined and defined.

Shri Jaspat Roy Kapoor : But the privileges will be the same in the case of a judge who has been called back and that of the permanent judges. That is what article 200 lays down.

The Honourable Dr. B. R. Ambedkar : Yes, but privilege does not mean full salary.

Mr. President : Amendment No. 89 moved by Mr. Jaspat Roy Kapoor has been accepted by Dr. Ambedkar. I will now put it to vote.

The question is:

"That in article 200 after the words 'at any time', the words 'with the previous consent of the President' be inserted."

The amendment was adopted.

Mr. President : I will not put to the House amendment No. 2659.

The question is:

"That in article 200, the words 'subject to the provisions of this article' be omitted."

The amendment was adopted.

Mr. President : Now the question is:

"That article 200, as amended, stand part of the Constitution."

The motion was adopted.

Article 200, as amended, was added to the Constitution.

Article 201

Mr. President : There are no amendments to article 201. If nobody wants to speak on it, I will put it to vote.

The question is:

"That article 201 stand part of the Constitution."

The motion was adopted.

Article 201 was added to the Constitution.

Article 202

Mr. President : Article 202 is now for discussion.

Shri H. V. Kamath : Mr. President, I move:

"That in clause (1) of article 202, for the words 'to issue directions or orders in the nature of the writs of *habeas corpus, mandamus, prohibition, quo warrants and certiorari'* the words 'to issue such directions or orders as it may consider necessary or appropriate', and for the words 'and for any other purpose' the words 'or for any other purpose' be substituted respectively."

If amendment No. 2660 were accepted, clause (1) of article 202 will read as follows :-

"Notwithstanding anything contained in article 25 of this Constitution, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue such directions or orders as it may consider necessary or appropriate, for the enforcement of any of the rights conferred by Part III of this Constitution or for any other purpose."

The second part is purely verbal but I think this change is necessary. The clause as it stands relates both to the enforcement of the rights conferred by Part III and for any other purpose. If the word 'or' is substituted for the word 'and', it would make the meaning quite clear, that is to say, that the High Court has power to issue orders not merely when both are affected but on either ground. I think there should be no difficulty in the way of the House accepting this second part of the amendment. I sent in two separate amendments and that is why I am speaking about them separately.

As regards the first part of the amendment, I believe that in the interests of brevity, not however, at the expense of precision or clarity, we can omit the mention of the various writs. The courts should be competent to issue whatever orders or writs that may be necessary for the enforcement of any of the rights enumerated in Part III, i.e. Fundamental Rights. By omitting the mention of these writs, the meaning of the clause would not be affected adversely in any manner. We have already stated in Part III, article 25, the writs that can be issued for the enforcement of the various fundamental rights. I remember that there was an amendment accepted by Dr. Ambedkar and the House on that occasion which slightly modified it by saying that the Supreme Court shall have powers to issue orders or writs including writs in the nature of *habeas corpus,* etc., or something to that effect; but in any case I believe that this clause, as its stands, is loaded with unnecessary and useless verbiage. The High court Judges know what particular writs or orders or directions should be issued in particular cases. We need not lay down in the Constitution what particular writs or orders may be appropriate on particular occasions. The passage of time and the evolution of case law may bring to birth decrees or writs of some other nature. Why should we bind the High Courts to these particular writs mentioned in this clause? The verbal amendment substituting the word 'or' for the word 'and' will make the meaning clearer. Sir, I move.

Dr. Bakshi Tek Chand : Mr. President, Sir, I formally move:

"That in clause (1) of article 202, before the words 'in the nature of' the words 'including those' be inserted."

There is another amendment which I would like to move with your permission as an amendment to this amendment, which is of a verbal character and will clarify the position. This amendment to amendment reads as follows:-

"That with reference to amendment No. 2661 of the List of Amendments, in clause (1) of article 202, for the words 'or orders in the nature of the writs' the words 'orders or writs including writs in the nature' be substituted."

This amendment to amendment brings the phraseology of this article in line with that of article 115 which we have already passed in regard to the Supreme Court, and also of article 25, where similar powers are given to the Supreme Court in respect of the Fundamental Rights. This amendment is, therefore, purely of a verbal character and I would ask the House to accept it. In doing so, I may make one or two observations with regard to the remarks made by my Friend, Mr. Kamath. He suggests that it is not necessary to enumerate or specifically mention in the article the writs of *habeas corpus, mandamus, prohibition quo warranto* and *certiorari*. With great respect, I entirely differ with my honourable Friend. It is, in my opinion, very necessary that these writs should be mentioned by name. We have done so with regard to the Fundamental Rights in article 25 and we have also mentioned them in connection with the Supreme Court in article 115; and for the reasons for which these writs were specifically mentioned in these articles, they should be mentioned here also. These are the writs which, I may remind the House, have been among the greatest safeguards that the British judicial system has provided for upholding the rights and liberties of the people, and it is very necessary that they should be incorporated in our Constitution. At present High Courts which are not Presidency High Courts, *viz.,* the High Courts of Allahabad, East Punjab, Patna, Nagpur, Orissa, Assam, etc. have not got any of these powers. The writ of *certiorari* cannot be issued by any of these High Courts. Even in the provinces of Bengal, Bombay and Madras, this particular writ can be issued only within the limits of their respective ordinary original jurisdiction. For instance, in the province of Madras, if a particular proceeding is pending in the court of Trichinopoly or Madura, the High Court in Madras has got on jurisdiction to issue a writ. It is only in regard to cases coming from the city of Madras and a few miles around that the High Court has got this power. Outside these limits, it had got this power only with regard to European subjects. The reason for this was that the jurisdiction of these High Courts was supposed to be derived from the Charters of the Supreme Courts which had been established in these provinces during the time of the East India Company by characters issued by the King of England, and it was said that their jurisdiction was limited only to the Presidency towns or to subjects of British extraction where they are found. In the new Constitution it is intended to give the power to issue these writs to every High Court, and will be exercised throughout the territories within its jurisdiction, and in order to put matters beyond doubt, it is necessary that these writs be specifically mentioned. Sir, we all know that the writ of *habeas corpus* is, the most important of these writs. With regard to this writ, until section 491 was added to the Code of Criminal Procedure, there was no power to issue this writ in the High Courts of Allahabad, Patna, Lahore and Nagpur. Section 491 gave this power to these High Courts only partially. Recently, before the East Punjab High Court the question arose whether the powers and procedures of the High Court under section 491 were co-extensive with the powers and procedure of the High Courts of England in this matter. As you know, Sir, if a writ is refused by one Judge, the party can move a second Judge, and in succession, a third Judge or a fourth Judge and so on, until he has exhausted all the Judges. In the East Punjab High Court the question was raised some six or eight months ago whether a party had a similar right to go to each Judge in succession, and it was held that this cannot be done, because they have not got the same powers as the High Courts of England to issue writs of *habeas corpus*. The power of non-Presidency High Court in India is derived from section 491 and under it you can apply for a writ only once. This will illustrate as to why it is very necessary that these writs should be mentioned by name so that there be left no ambiguity that the power and the procedure prevailing in England is to be followed here. I hope the amendment which I have moved will be accepted by Dr. Ambedkar and that the article, as amended, will be passed by the House.

Mr. President : Dr. Ambedkar, do you wish to move amendment No. 2663?

The Honourable Dr. B. R. Ambedkar : No. Sir, I accept Bakshi Tek Chand's amendment. I do not think that any reply is necessary.

Shri H. V. Kamath : There has been an amendment to substitute "or" for "and".

The Honourable Dr. B. R. Ambedkar : There is no difference as to the substance of the article.

Shri H. V. Kamath : It makes a difference as to the meaning.

Mr. President : The question is:

"That in clause (1) of article 202, for the words "to issue directions or orders in the nature of the writs of *habeas corpus, mandamus*, prohibition, *quo warranto* and *certiorari*' the words 'to issue such directions or orders as it may consider necessary or appropriate', be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in clause (1) of article 202, for the words 'and for any other purpose', the words 'or for any other purpose' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That with reference to amendment No. 2661 of the List of Amendments, in clause (1) of article 202, for the words 'or orders in the nature of the writs' the words 'orders or writs including writs in the nature' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That article 202, as amended, stand part of the Constitution."

The motion was adopted.

Article 202, as amended, was added to the Constitution.

Article 203

The Honourable Dr. B. R. Ambedkar : Sir, I wish that article 203 be held over.

Mr. President : Article 203 is held over.

Article 203-A

(Amendment No. 2673 was not moved.)

Article 204

Prof. K. T. Shah : Mr. President, Sir, I beg to move:

"That in article 204, for the word 'shall' the word 'may' be substituted."

The amended article would read thus:

"If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution, it may withdraw the case to itself dispose of the same.

Explanation.-In this article, 'High Court' includes a court of final jurisdiction in a State for the time being specified in Part III of the First Schedule with regard to the case so pending.

Mr. President : It may withdraw the case to itself.

Prof. K. T. Shah : I do not wish that the withdrawal of the case must be compulsory or mandatory, but some discretion must be left, and the case may be withdrawn if the judge so decides, but not necessarily, as this article requires him to do as clear compulsion on the judge to ask the case to be withdrawn.

There may be points of law, or even other issues involved; and in the absence of specific reasons or grounds on which you make it mandatory for him to withdraw the case, I think it would as well to make it permissive, and allow the case to be withdrawn if the judge so chooses, but not as a matter of necessary obligation. Had there been grounds stated, *viz.*, in the following events or in the case of any political or other factor being involved, then it would be compulsory to so withdraw, I would not have objected to the article as it stands. The substitution of "may" for "shall" will really help the courts of justice rather than hinder them. I therefore commend my amendment for the acceptance of the House.

Mr. Mohd. Tahir : Sir, I beg to move:

"That in article 204, after the words 'it shall' the words 'after taking the opinion of such court in writing' be inserted."

If the amendment is accepted, the clause will read thus :

"If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution, it shall after taking the opinion of such court in writing, withdraw the case to itself and dispose of the same.

I have moved this amendment, Sir, because if any question of interpretation of this Constitution arises in any subordinate court, there can be no objection to such a matter being disposed of by the High Court after the case is withdrawn if such questions to arise in subordinate courts. I think it is better that the opinion of such court in writing should be obtained so far as the interpretation of such matter is involved in that court, because in many cases we find that the High Courts do agree with the judgments of the subordinate courts. Therefore, Sir, it does not mean that the subordinate courts are not in a position to give their opinion so far as the constitutional matter is concerned, because they are not given this power to dispose of such matter the case has to be withdrawn by the High Court and when they are going to withdraw such matters, it is not only desirable but reasonable that the opinion of such subordinate courts where the questions of interpretation of constitution do arise should be taken before it is disposed of by the High Courts. With these few words, Sir, I move my amendment.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That the explanation to article 204 be omitted."

Sir, it is unnecessary.

Dr. Bakshi Tek Chand : Sir, I wish to say a few words in opposing the amendments which have been moved by Prof. Shah and Mr. Mohd. Tahir. The amendment of Prof. Shah is to the effect that the word "may" be substituted for the word "shall" in the first part of article 204. If this amendment is accepted, then the whole of this article 204 will become unnecessary, as both under Section 24 of the Civil Procedure Code, and 526 of the Criminal Procedure Code the High Court has the power to withdraw in its discretion, any civil or criminal cases pending in any court subordinate to itself. The reason for inserting the word "shall" in article 204 is to make it obligatory on the High Court to withdraw the case, provided it is satisfied that the case pending in the Subordinate court involves a substantial question of law as to the interpretation of this Constitution. If the High Court is satisfied that such a question is involved, it shall withdraw the case to itself and dispose of the same. It is very necessary that all questions relating to the interpretation of the Constitution should be decided as early as possible. A case in a subordinate court may last for a year or two or more. Then, there may be an appeal to the District Judge and the case may come in the first or second appeal to the High Court after a very long time. In the meantime, the important question of constitutional law will remain unsettled. This will be very undesirable, indeed.

The second reason in this. There should be an authoritative decision on these questions by the highest court in the province at the earliest possible date. Otherwise, a particular point may be involved in a case pending in one district; the same point may be involved in three or four other cases pending in other districts and there may be contradictory decisions by these various subordinate courts, and this will result in great confusion. In order to ensure a speedy decision of important constitutional questions, and at the same time to see that an authoritative decision is given on those points by the highest court in the province, it is necessary that the word 'shall' should remain. It was with this object that this special provision is sought to be incorporated in the Constitution Questions relating to the interpretation of the Constitution are likely to arise soon after the Constitution comes into force. For that reason alone it is necessary that speedy and authoritative decisions should be given. From such a decision of the High Court, an appeal may, if necessary, be taken to the Supreme Court and the matter finally decided for the whole country. It is therefore, desirable to make a provision with regard to this in the Constitution.

The other amendment moved by Mr. Tahir, is that the opinion of the court in which the case is pending should be taken in writing. I do not know what useful purpose will be served by taking the opinion of the subordinate court on these points. It should be borne in mind that the article does not lay down that every case in which a question of law as to the interpretation of the Constitution is involved will automatically be transferred to the High Court. There are two very important conditions which must be fulfilled. One is that the question involved must be a substantial question of law as to the interpretation of this Constitution, and not every question involving such interpretation, even if it arises incidentally or collaterally. It should be a question of importance which goes to the very root of the case. Even then, it is not necessary that the case will be transferred to the High Court. The words of the article are that "the High Court is satisfied." The High Court shall examine the matter when it comes to its notice. If the Judges are satisfied that the question involved is a substantial question of law as to the interpretation of this Constitution, only in that case, will the case be withdrawn to the file of the High Court. Why is it necessary in such a case to obtain the opinion of the Subordinate Judge before coming to the High Court? This amendment will have the effect of delaying the decision of the point and of holding up the proceedings unnecessarily. I submit, therefore, that the article as drafted should be accepted with the amendment moved by Dr. Ambedkar, that the Explanation be deleted. That amendment is necessitated because, the explanation originally made this article applicable only to the provincial High Courts. Now, as in the new setup, the High Courts of the Indian States are being brought in line with the provincial High Courts, the Explanation has become unnecessary. The article, without the Explanation, contains a very important and salutary provision and should be accepted.

Shri L. Krishnaswami Bharathi : (Madras: General): Mr. President, Sir, I have only a small suggestion to make to Dr. Ambedkar. This article is very necessary. When a High Court is satisfied that a substantial question of law as to the interpretation of this Constitution is involved, it should certainly withdraw that case and decide it. But as the article reads, the High Court shall withdraw the case to itself and dispose of the same. It is for the Drafting Committee to consider whether it is necessary to withdraw the whole case and dispose the same. There may be many cases in the Munsiff's courts where this question may be raised. In my view, it is not quite necessary for the High Court to withdraw the whole case and try the case itself. It is quite enough that it may decide this question relating to the interpretation of the Constitution and then refer it back to the particular court to dispose of the case in conformity with the decision given regarding the interpretation of the Constitution. We have made a similar provision with reference to the Supreme Court. The Supreme Court is not bound, whenever there is mention of a question of interpretation of the Constitution, to refer it to a Full Bench of five Judges. If they are satisfied that it is a substantial question, they may refer it to a Fuller Court, get their opinion and thereafter the original court will decide the case in conformity with the opinion so given. Therefore, I think it may quite suffice if we say, it shall withdraw the question to itself. The High Court need not to be bound to dispose of the case. It may be very difficult for the High Court to be disposing of all manner cases. For instance, in an injunction suit, the question may arise. It is not necessary for the High Court to try the whole case. I would therefore wish that the High Court may only withdraw the question relating to the interpretation of the Constitution and then refer it back to the original court to dispose of the case in conformity with the opinion so given. I leave it to Dr. Ambedkar to decide this matter.

Mr. Tajamul Husain : Mr. President, Sir, the High Court has got an inherent power to call for the record of any case and dispose of it. Article 204 says that the High Court shall, if there is any substantial question of law as to the interpretation of this Constitution involved in the case, call for record of the case and dispose of the case. My honourable Friend, Prof. Shah, wants that instead of the word 'shall' it should be 'may'. If you want to have the word 'may', the inherent power is already there and according to the inherent power, if there is a substantial question of law, or no point of law at all, it can call for the record and dispose of the case. Therefore, the word 'may' does not help us at all. This point has been dealt with very thoroughly by my honourable Friend Dr. Bakshi Tek Chand and I do not wish to repeat the arguments. The only thing that I wish to say is this. Suppose a substantial question of law is involved, according to Professor Shah, the High Court may call for the record or it may not. It is not incumbent on the High Court to call for the record. Suppose, the High Court does not call for the record, look at the waste of time. By the time a case is decided in the subordinate court and goes to the High Court, it may take three or four years. Also look at the amount of expenses that will be incurred in the lower court as well as in the appellate court. Apart from that, a very important point of law will be pending and nobody will know what the decision is going to be. The sooner a substantial question of law is decided by the High Court, the better it is. Therefore, I oppose the amendment moved by Professor Shah.

As regards the amendment moved by Mr. Mohd. Tahir, he says that the opinion of the subordinate court should be taken. It always happens that in every case that the High Court calls for record, it takes the opinion of the lower court. It is absolutely unnecessary and redundant to have these words here. With these words, I oppose this amendment also.

The amendment moved by Dr. Ambedkar is perfectly correct. I support that amendment.

Mr. President : I want to dispose of this article before we rise. It is already twelve.

The Honourable Dr. B. R. Ambedkar : I am afraid I have to go to a Cabinet Meeting at 12 o'clock.

Mr. President : Then I do not think there is much to be said either against or for the amendment. All that could be said has been said. No more speeches.

The Honourable Dr. B. R. Ambedkar : With regard to the observations made by my Friend Mr. Bharathi...

Shri H. V. Kamath : Sir, you have called upon me to speak, I shall not take more than 2 or 3 minutes. Shall I speak now to tomorrow?

Mr. President : Tomorrow.

The House now stands adjourned till 8 o'clock tomorrow morning.

The Assembly then adjourned till Eight of the Clock on Wednesday the 8th June 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VIII

Wednesday, the 8th June 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION-*(Contd.)*

Shri B. Das (Orissa : General) : Sir, may I know whether the House is sitting tomorrow or not?

Mr. President : I understand it is a public holiday.

Shri B. Das : Republican as I am I do not like a holiday on the English King's birth day.

Mr. President : You are free not to attend any functions.

Shri T. T. Krishnamachari (Madras : General) : Are we working on Saturday as a compensation for tomorrow's holiday?

Mr. President : I have no objection if the House has none.

Shri R. K. Sidhwa (C. P. & Berar : General) : We have some other Committee meetings on Saturday.

The Honourable Shri Satyanarayan Sinha (Bihar : General) : We have already fixed so many other engagements for Saturday.

Mr. President : It seems the Members are not willing to sit on Saturday.

Shri T. T. Krishnamachari : It has to be remembered that the taxpayer has to pay Rs. 45 to each Member for every day spent here.

Shri Mahavir Tyagi (United Provinces : General) : If we sit on Saturday the King will feel that he is hoodwinked by us !

Article 204 *(Contd.)*

Mr. President : We shall not take up the discussion of article 204.

The Honourable Dr. B. R. Ambedkar : (Bombay : General) : Sir, I would like to move an amendment to article 204. I mentioned that I would have to consider the position; I have since considered it and I would like to move the amendment. Sir, with your permission I move :

"That with reference to amendment No. 2674 of the List of Amendments, for article 204 the following article be substituted :

Transfer of certain cases to High Court.

'204. If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may-

(a) either dispose of the case itself, or

[The Honourable Dr. B. R. Ambedkar]

(b) determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.' "

That is the amendment. If you like, Sir, I will speak something about it now. But I would rather reserve my remarks to the end to save time instead of speaking twice.

Mr. President : Just as you please.

Shri H. V. Kamath (C. P. Berar : General) Mr. President, at the outset let me say that this article comes at the fag end of a long series of articles dealing with various procedural matters. In the first place, I am at a loss to understand why our Constitution has to be cumbered with so many rules of procedure. I have gone through various constitution of the world and I find that no constitutional precedent supplied by our secretariat contains so many rules of procedure relating to High Courts or the Supreme Court. Yesterday also I raised his point as to why Article 200 should find a place in the Constitution. But Dr. Ambedkar twitted me with a facile gibe that I had not read the Draft Constitution. I gladly concede this to him, if it is a debating point that gives him pleasure, and I will freely admit that I have not perhaps read the Draft Constitution with the same care that he has done. But may I point out to him that the point I raised was quite different? As is sometimes usual with him he, however, evaded my question and gave a different answer. I had definitely and explicitly asked him whether articles of this nature had been incorporated in any written constitution of any of the countries of the world. Dr. Ambedkar pointed out to the foot-note and twitted me by saying that I had not read the Draft Constitution. I have read it with some care though not with the same care as he has done. When I went home last evening took up the various constitutions of the world and went through all of them. I found to my surprise that so many rules of procedure as we have tried to provide here..........

Mr. President : Are you replaying to yesterday's debate?

Shri H. V. Kamath : I am trying to show that this article need not be incorporated in the Constitution itself like so many other articles.

Mr. President : Then you may confine yourself to this point and not reply to something that happened yesterday.

Shri H. V. Kamath : I am more or less in a quandary. The other day you were good enough to tell us that you would not encourage the practice of asking questions of Dr. Ambedkar when he was speaking; and if you would not let us clarify our position at a later in connection with another article we are in a fix.

Now I will come to article 204. Because it is on a par with the articles that we have adopted already, dealing with procedural matters, I thought I could say something germane to the article in question by reference to the previous articles.

Dr. Bakshi Tek Chand yesterday expounded saying that it shall be obligatory on the High Court to dispose of cases involving substantial question of law. So, now, I suppose, there is no dispute so far as this matter is concerned : that is to say, that wherever cases involving substantial question of law are pending in a subordinate court, the High Court shall withdraw such cases.

Mr. President : Relating to the interpretation of the Constitution and not merely a question of law.

Shri H. V. Kamath : Yes, Sir, that is so. The High Court shall be bound to withdraw such cases it itself. The amendment which was moved by Prof. Shah, and which stands in may name as well, sought to make it discretionary with the High Court. My Friend, Mr. Bharathi, raised a very pertinent point, which I thought my amendment would more or less indicate, if not completely cover. Mr. Bharathi cogently argued that if the High Court were to *dispose* of all these cases that come up before a subordinate court, involving substantial questions of law as to the interpretation of the Constitution, the High Court might become burdened with hundreds and thousands of cases and it would become perhaps more a court of original jurisdiction than appellate jurisdiction. To take only one instance, we have a whole chapter on Fundamental Rights-the third chapter-and when that was being discussed in the House, the criticism was frequently voiced here that we were creating more or less a paradise for lawyers with every article containing provisos restricting the freedoms and rights conferred by the article containing provisos restricting the freedoms and rights conferred by the article-the article conferring a right or freedom with one hand and the proviso taking it away with the other. I am afraid that when courts are moved for enforcement of these rights, substantial questions of law as to the interpretation of the Constitution are very likely to arise, because three are so many loopholes and so many provisos provided that ingenious lawyers are bound to take advantage of them-I do not say unfair advantage but fair advantage-and try to raise questions of law as to the interpretation of these articles in the Constitution. Therefore, I suggested though my amendment seeking to substitute the world "may" for the word "shall", that the High Court being a very competent body-we do not differ on that point-must be left to decide which question should be considered to be a substantial question of law as to the interpretation of the Constitution, and if it thinks it necessary to dispose of it itself, it should withdraw the case and dispose of it accordingly. Otherwise, the High Court can send it back to the subordinate court and ask it to dispose of that case and if the parties are aggrieved by the decision of the subordinate court there is the avenue of appeal and the High Court will sit as an appellate authority on that question.

With regard to the amendment of Dr. Ambedkar, I find that the first of the amendment is to the effect that the High Court, if it feels that a question of law is involved as to the interpretation of the Constitution, the High Court may dispose of the case itself. So I think, with a view to avoiding needless verbiage and wordy padding, the word "may" should be substituted leaving it to the High Court entirely to deal with the matter as it likes. I therefore feel that the amendment seeking to substitute the word "may" for the word "shall" will serve the purpose in most cases.

One last point. This article is silent on the point as to whether the reference to the High Court as regards a case involving substantial questions of law as to the interpretation of the Constitution should be made by the subordinate court itself or by the parties concerned. If the parties make the reference and invite the attention of the High Court, there is no difficulty. But if we intend that the subordinate court itself, when it entertains a case of this nature involving a substantial question of law, must invite the attention of the High Court and send the case to the High Court a case pending before it, involving a substantial question of law as to the interpretation of this Constitution. But if we leave it to the parties, then this question does not arise. I hope Dr. Ambedkar or Mr. Munshi will throw some light on this point when either of them answers the debate. I personally feel that the simple word "may" for "shall" should meet the requirements of the article.

Prof. Shibban Lal Saksena (United Provinces : General) : The criticism which my Friend, Mr. Kamath made that this article is an article of detail and should not have found a place in this Constitution applies to most part of this Constitution. We have framed a Constitution which is a detailed Constitution, and therefore to complain now at this stage and try to chop off some portions of it will interfere with the whole scheme of things. That is something that we cannot help now.

The question raised in this article is an important one. We have provided in article 110 that all questions as to the interpretation of the Constitution shall be referred to the Supreme Court and the Supreme Court shall decide them. Therefore, if some case involves such a question of law, it is only proper that the question regarding the Constitution should be settled first by the High Court and if the parties want to go in appeal against the order of the High Court, by the Supreme Court. Otherwise, the whole case will have to be gone through in the Lower Court, the appellate court and the Supreme Court and the expenditure will be very heavy. It is much better that when a case involves a question of the interpretation of the Constitution, this should be resolved first by the High Court and if an appeal is preferred, then by the Supreme Court. After that it remains as to who will decide the case.

The amendment moved by Dr. Ambedkar provides that the High Court may either withdraw the case to its own file or it may refer it back to the Lower Court to resolve it. I think this is a good compromise. Personally, I feel that it would be much better if such a case was originally filed in the High Court. This will mean that the litigants will not be first put to the expense of filling the case in the Lower Court and then in the High Court. I think the original case should be filed in the High Court and the High

Court could, after resolving the constitutional point, send the case to the Lower Court. If there is a big case-and there have been such cases in the past, such as the Taiji case of Poona-I feel that it should be disposed of not by the High Court but by the original court. Such a case should be originally filed in the High Court and it should first decide the question of constitutional law and then decide whether it should take the case on its own file or send it to the original court. This will be fair to the litigants and the people at large.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Sir, I wish to say a few words on this article. I feel that article 204 will lead to many practical difficulties. In fact it may be mentioned that a question of interpretation of the Constitution may be raised in a petty case in a Munsif's or a Magistrate's Court. The provision is that as soon as it is known to the High Court that a question of the interpretation of the Constitution is raised, it must withdraw the case to itself and decide the question of such interpretation. The matter is not so simple as that. The question of interpretation of Constitution might depend upon the determination of facts in a particular case. It may be that a question is raised in the written statement which on the examination of witnesses and a decision on facts may no longer arise. So it may be premature for the High Court to interfere and give a decision on the interpretation of the Constitution. The question may arise in an appeal or a motion or even in the midst of a jury trial in a Session case. The hearing must stop and the High Court must decide the question and the case must be adjourned. After decision by the High Court, a new jury will have to be called. Endless complications will arise.

Then again, supposing the High Court withdraws the case for the interpretation of the Constitution and after its decision it goes back for determination of facts. The trial is resumed and the Court gives its finding on the facts. I would ask what would happen to a man who is dissatisfied with the preliminary judgment of the High Court? Will he go to the Supreme Court on appeal or will he wait till the facts are decided by the original court? These are complications which the article will give rise to.

Then again, as soon as the Court or the jury, after the preliminary decision by the High Court, tries the case, is his decision open to appeal? Also, may I know whether the decision given by the High Court on the interpretation of the Constitution is subject to appeal? Will the decision of the High Court be deemed to be a decision by the trial Court or deemed to be a decision by the High Court? In the meantime the trail Court will be in a great difficulty as to what to do. The question of transfer must not depend upon a mere interpretation of the Constitution. There is no charm in a law involving interpretation of the Constitution. The vast majority of questions of law do not involve interpretation of the Constitution. The article does not say that only difficult or intricate questions of interpretation of the Constitution will be the criterion of transfer. I submit that at least it should be so limited to difficult and important questions. It may be that the question of interpretation of the Constitution that is raised is easy or extremely frivolous or unimportant. If every case must be taken up by the High Court merely because there is a connection that an interpretation of the Constitution is involved some way, it will be flooded with all sorts of petty cases. It will again paralyse the administration of justice in the *mofussil*. I submit therefore that the best thing to do would be to delete the clause altogether. The clause will lead to endless complications. I may also mention that the High Court has already got unfettered power to transfer to itself or to any other Court any case pending in a subordinate Court under section 24 of the Civil Procedure Code and also under section 528 of the Criminal Procedure Code. Of course the question of interpretation of the

Constitution may sometimes be important and may concern the interests of the territory of India as a whole. In such cases the High Court may in its discretion transfer the case to itself or to any other Court without difficulty. As all questions of law are ordinarily interpreted by the lower Courts the question of interpretation of the Constitution in ordinary cases may likewise be left to be dealt with by them. This sort of artificial division of labour will otherwise lead to difficulties. There is a section in the existing Government of India Act 1935, from which I think this idea has been taken. But many important features of that section have been departed from and I think it would be better to refer to that section now. That is section 225 of that Act. That section says :

> "225. (1) If on an application made in accordance with the provisions of this section High Court is satisfied that a case pending in an inferior Court, being a case which the High Court has power to transfer to itself for trial, involves or is likely to involve the question of the validity of any Federal or Provincial Act, it shall exercise that power.
>
> (2) An application for the purposes of this section shall not be made except in relation to Federal Act, by the Advocate-General for the Federation and, in relation to a Provincial Act, by the Advocate-General for the Federation or the Advocate-General for the Province."

One can understand a provision of this kind, namely, a decision which involves the declaration of the validity of an Act. Such questions would involve questions of general importance affecting the public at large. In such circumstances the High Court must transfer the case to itself on the application of the Advocate-General of India or the Advocate-General of a province. That is a thing which is necessary and desirable. The application of the Advocate-General of India or of a province is a guarantee of its importance. Such cases would be rare. But the present clause gives the High Court no discretion whatever. It is bound to withdraw the case. It is going too far to say that even petty cases involving the pettiest interpretation of the Constitution should be transferred to, and decided by, the High Court. I need not go into these matters in greater detail. I submit that the clause should be withdrawn and if any provision is found necessary it should be made on the lines of section, 225, of the Government of India Act, 1935. That is something which can be accepted. Even if we have this clause in this amended from complications will arise. It may be that in some cases the parties may be poor and if the High Court withdraws such cases to itself, it may have to give a decision *ex parte.* It will be extremely unfair, even in cases of interpretation of the Constitution, that decision should be given *ex parte* and the party put in an embarrassing position. As I have submitted, an application of a law or its interpretation may depend on questions of fact. If it is a question of fact, first of all the decision on facts should be given before taking up the question of the interpretation of the Constitution. Otherwise it will be like putting the cart before the horse. I submit that in these circumstances the clause should be withdrawn.

Pandit Thakur Das Bhargava (East Punjab : General) : Sir, I have given notice of two amendments, one of which was in respect of the substitution of the word 'may' for the word 'shall' and the other was about the deletion of the clause. Now, Sir, I am convinced that this clause ought not to be passed at all, and knowing as I do the merits of the amendment which has been moved, I still stick to the opinion that it will not be fair to pass the article. The clause, reads :

> "If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case......."

In fact, the Supreme Court is the final authority in matters like these. Logically therefore if the interpretation of the Constitution is the sole monopoly of any court, it is that of the Supreme Court. The High Court does not come in at all. In my humble submission, so far as the administration of law in this country for the last one hundred years or more is concerned, all courts have possessed the right of interpreting the Constitution and I do not think that there is any question of principle involved in withdrawing this jurisdiction from the ordinary courts. On the contrary I think that our entire Constitution is based upon the idea that every court is competent to decide this question. I know that in certain countries, there are different courts for dealing with the constitution, for dealing with the administration etc. In France, for example, there are *droit* administrative courts which are competent to decide each and every question. In fact, my complaint is that we are seeking to depart from the fundamental principles of the administration of justice as it has been and will be vogue till this proposed amendment will come into force. I deprecate the principle of pecuniary jurisdiction and special jurisdiction courts. How can one justify the wrong principle that if the dispute involves greater amounts, then the court dealing with it should have greater jurisdiction and should be more competent? I think this is a very pernicious principle. We have guaranteed equal opportunities and equality before the law to every person in this country and it is but meet that we should see that every litigant in this country gets full justice in the most competent court. It is said that the subordinate courts are not competent to interpret this Constitution, but we have started with the guarantee, with the postulate, that every court should be competent, and we have guaranteed that every person should have the fullest opportunity, of getting justice. When such is the case, it is unfair to say that the High Court and the High Court alone is the appropriate place where this Constitution should be interpreted. Now, Sir, apart from this, this question of interpretation will arise in two classes of cases. One class is between Government and Government, where both parties to the dispute can engage the best of counsels and incur any amount of expenses and the case may be decided by the High Court or by the Supreme Court. The second class of cases is between private parties. If it is a small case involving hundred rupees or less, the parties will go to the court little knowing what the Constitution is, little knowing what a substantial question of law is. A party to the dispute may be met by the other party with the plea that the case involves an interpretation of the Constitution, involves a substantial question of law. In that case, the court will have no option but to refer the case to the High Court. Supposing the other party does not raise this question, then the Court itself may raise this question and send it on to the High Court, even though both the parties to the dispute may not desire to take the case to the High Court. In that case they shall have to go to the High Court which will involve them in more expenses by way of engaging counsels, etc., than in ordinary courts. Looking at the question from all these points I consider that this compulsory reference to the High Court is certainly not calculated to bring about the administration of justice in a less expensive manner to the ordinary litigant.

Apart from this, Sir, I think that cases may involves many points. First of all, two questions have to be decided, substantial question of law and the question of interpretation of the Constitution. Now, Sir, I do not think that these questions are of such a nature that they can be divorced from facts. After all, the question of law will not ordinary be such that it can be determined without reference to facts. Facts have to be gone into. Absolute question of law will never arise. Then again, even if it is a question of law, it is not sufficient; it must be a substantial question of law. This will be another difficulty. In section 225 of the Government of India Act 1935, the words used are "involves or is likely to involve the question of the validity of any Dominion or Provincial Act". Here, the words used are "the interpretation of this Constitution" which have got very extensive meaning as compared with the words "validity of any Dominion or Provincial Act". Apart from this, Sir, even today the High Court are competent to withdraw any case, to transfer any case they choose. When there are, say, five hundred cases involving interpretation of any statue, I can understand the High Court withdrawing all these cases and then deciding on them. But in individual cases, one or two cases, there is no occasion for calling up these cases. I cannot repress my feeling and I cannot desist from expressing it that those who are at the helm, who want this Constitution enacted in this form, they are not fully conversant with the difficulties of the poor man. I feel that they are putting an obstacle in the way of the poor man getting justice. Why, Sir, may I ask, this question of interpretation of the Constitution is so sacrosanct that an ordinary court cannot be entrusted with it? When those ordinary court can give justice in regard to civil claims, I cannot see any reason why they cannot decide the question of interpretation of the Constitution? Why compel the poor man, the villager, to go to the expense of going to the High Court? We are taking away from the dignity of the ordinary courts which is a characteristic of Anglo-Saxon institutions. Sir we are making a very dangerous experiment and tampering with the prestige and utility of subordinate courts and making the dispensation of justice more dilatory, onerous and expensive.

Shri Alladi Krishnaswami Ayyar (Madras : General) : Sir, I should like to make a few observations on the article as is now proposed. I feel considerable misgiving as to the utility and the appropriateness of the article and as to the advisability of departing from the existing provision. If a case raise a clear constitutional issue, which is sufficient to dispose of the case there is no difficulty. The case can be withdrawn to the High Court and from any decision of the High Court there will be an appeal to the Supreme Court as is already provided in the article relating to appeals to the Supreme Court. The real difficulty arises in cases where the constitutional issue that is raised, though a material point, is one of several issues that are raised in the case. In such cases, if the case is to be withdrawn to the High Court, though the power to send it back to the subordinate court for the taking of evidence and for the disposal of the other points in the case is there, the question arises : is an appeal to be provided for the Supreme Court at this stage, though it may turn out that in spite of the decision on the constitutional question one way or the other, the ultimate decision in the case may not be affected at all and the party who loses on the constitutional question in the final court may ultimately win on other facts and other evidence in the case? Supposing you provide for an appeal on the constitutional question to the Supreme Curt, is the case to be hung up in the meantime until you have the decision on the constitutional question one way of the other? The jurisdiction of the Supreme Court in respect of constitutional matters is very wide under our Constitution; it may raise the question of the Constitution; it may relate to the distribution of powers between the Centre and the units. Therefore, all and sundry constitutional questions might be raised in the court in the first instance; they may ultimately turn out to be material or not material for the disposal of the case. Even if material, the party who loses the case on the constitutional question may ultimately win in that case. Is the High Court to be a battle-ground for the fighting of lawyers on constitutional questions? That is the point which the House will have to take into consideration and decide.

Again a constitutional question may arise in a civil case may arise in a criminal case. The decision on the constitutional question may be in favour of the accused or may be in favour of the Crown. What is to be happen in regard to those criminal cases? There is also the further point to be considered. It is not as if every constitutional question can be considered in vacuum without reference to the facts of a particular case. That is one of the reason, for example, the Supreme Court of the

United States never entertains what is called "consultative jurisdiction" though we have departed from that principle to some extent. In effect, this amendment practically resolves into enlarging the consultative jurisdiction on a point of law, which is one of the several points that may arise in the case. Withdrawal of the case for the decision of a particular point is a very novel procedure. In the Australian Constitution, for example, there is a provision that if a question arise as to the *inter se* powers between the Commonwealth and the States, the case itself may be withdrawn to the High Court of Australia. Therefore, it is not the withdrawal of any particular point or the decision on a particular point that is contemplated; it is the withdrawal of the whole case. Therefore, I should think it is much better that there is a general provision that the High Court can withdraw a case if on a perusal of the pleadings and material records in the case it is of the opinion that a substantial question of constitutional law arises which is enough to dispose of the case. The Court will not then direct a withdrawal of a case if it is satisfied that the constitutional question is one of the several questions that arise in the case, even if it be a material question. I ask the House, whether in the larger interests of the litigant public, leaving alone any other consideration, and in the interests of even sound constitutional jurisprudence and securing as far as possible, this kind of procedure is calculated to further the ends of justice. I have considerable doubts in regard to the new proposal and I place before the House my ideas for what they are worth, for your careful consideration : "I am not wedded to any particular theory; I am not against the disposal of constitutional question as early as possible, but there must be a finality. If the constitutional question will ultimately determine the case, by all means, have a decision as early as possible. If, on the other hand, it hinges on other facts or other considerations, if it is one of the several issues in the case, the whole case must be taken up by the High Court. If the constitutional question alone is to be decided, is there to be an appeal or is there not to be an appeal? If there is to be an appeal, the case will be hung up. As it is, I am quite clear that there can be no appeal at all because we have already provided an order is a final order only when, if it is decide in one way, it completely disposes of the case". That is that definition which we have given to the words "final order" in the chapter on Supreme Court.

With these words, Sir, I trust that Dr. Ambedkar will take these facts into consideration and after a fuller consideration will place the necessary amendment before the House. I may at once state that I am not wedded to any particular theory; I am quite open to conviction, but I do feel that this is calculated to delay proceedings, prolong litigation, and lead to unnecessary expenditure. I might mention similar things have happened already, that is in regard to cases where there was no definition of 'final order'. Every case was brought up before the Federal Court and the Federal Court decided at this stage "it is no use deciding this; we must have further facts before deciding the case". I trust that these considerations will be borne in mind by my honourable Friend, Dr. Ambedkar and other friends of the House before this clause is proceeded with.

Shri Rohini Kumar Chaudhuri (Assam : General) : *Mr. President, Sir, my honourable Friend, Mr. Alladi Krishnaswami Ayyar has asked us to consider this article taking into account the larger interests of the litigant public, and I have no hesitation in saying that if you take into account the larger interests of the litigant public, there should be no doubt that this article must be dropped. This is one of the few articles which have not been taken from the Government of India Act. There is no such provision in the previous law and I would most earnestly request the authors of this article to explain to the House the utility of this article, the circumstances which have led to the framing of this article, what were the difficulties before and what are those difficulties which this article is going to remove.

Sir, as matters stand at present, any one who is affected by the Constitution may bring a suit in the lowest court which has jurisdiction to try that suit. Sometimes, the parties may compromise in the very initial stages and the case may not at all go to the High Court. A lot of expenses will be saved. A large number of cases are disposed of in the lower court by compromise and settlement. Every one is afraid of going to the High Court because of the expenses which it involves and the delay which it involves. Suppose a party has got some grievance arising out of the interpretation of the Constitution, he files a suit against a particular party from whom he claims damage. If the matter is settled then and there in the *moufussil* court, why should you drag him to the High Court at all? There is no necessity for him to go to the High Court. After all, what is the object of filing a suit? If the quarrel involved is settled without going to the High Court, why should we have a provision which would compel the party to go to the High Court? That is the first question which strikes me.

Again, even now if an erroneous decision is giving by the Munsiff or the subordinate Judge, the party affected may always go to the High Court and there have the matter settled. Under the present arrangement every case shall necessarily go to the High Court. As far as I can foresee, the State will be one of the parties to suits of this nature. When this provision is there, the Government who has not got to fear either for the expenses or the delay-, in almost all such cases, the Government will be the defendant-will at once take the case to the High Court. If that is the position that in every case the party must, by virtue of this article 204, necessarily go to the High Court, I say, why not give to the High Court the exclusive jurisdiction to entertain the suit it self? In that case, you at least avoid filling a suit in the lower court first and after some time to take it to the High Court. That is to say, such cases, if at all, must first be instituted in the High Court. The High Court can dispose of the case if it likes or it can send back the case to the lower court in order to assess the damage, or in order to find out the relief to be granted. I ask why have this lengthy procedure of filling a suit in the lower court? Every plaintiff must know that it is a case which will involve an interpretation of the Constitution. Even if he does not know, every case of this nature in which the Government will be a party will be taken to the High Court. In order to avoid double expenses to the litigant, it should be laid down in the Constitution, if you want this article at all, that the High Court shall have exclusive jurisdiction in such cases. Personally speaking, I do not see any utility of this article. No one has suffered by the absence of this article for so many years in the Government of India Act. I have not found any complaint in the press or in the platform that on account of the absence of such an article, injustice has been done or that parties have been seriously affected. After all, everybody knows that the number of such cases will be limited. If such cases are limited, why not give the High Court exclusive jurisdiction to entertain such suits? After deciding the question of interpretation of the Constitution, the High Court may either dispose of the case or send it back to the lower court for the purpose of adjudication of damage or to find out what is the relief that should be granted. I particularly request my honourable Friend to take this aspect of the matter into consideration. I tried to place this aspect of this matter before him outside the House; but I failed. I am at my wit's end to get clarification from that quarter, but I have always been ignored and sometimes ignored with contempt. I believe in a small piece of poetry which I read in my school days :

"Once or twice though we may fail,

Try, try, try again."

In my case, I have tried several times and failed. I always say, "try, try again" and this is one of my attempts. I shall also make future attempts.

Shri K. M. Munshi (Bombay : General) : Mr. President, Sir, no doubt this question is fraught with difficulties and the House has to consider as to the best method of solving the difficulties.

I find that three points are raised against either this particular article or the wording of the amendment as moved by my honourable Friend Dr. Ambedkar. The first is that there should be no such section. The second is that if there is to be such a power in the High Court, the whole case should be disposed of by it and not merely the point of constitutional law. The last position is that if a constitutional issue is a preliminary issue, it may be referred to or with drawn to the High Court; but where it is a mixed question of law and fact, it would not be proper to do so. These are the three positions that have been taken up in the debate so far.

In this connection, it is necessary to remember the position of a constitutional issue. A law is passed affecting, say the liberty of a citizen, which contravenes the Fundamental Rights. In that case, he has the constitutional right straightaway to go either to the Supreme Court or to the High Court. Therefore, in most criminal cases, the citizen has a right to go to either of the two courts with a view to have a constitutional question determined. That is the first position.

The second position is that by articles 110 and 112, the Supreme Court is invested with the jurisdiction of deciding constitutional questions from any judgment or decree or final order from any court or tribunal by way of appeal, or where special leave is granted. Therefore, in all matters relating to constitutional questions there is a final resort to the Supreme Court.

There are certain classes of cases which do not fall within the one category or the other, and the question is whether a special method should be devised by which the constitutional question is decided before going into other unrelated questions of fact or law in a case or whether it should be left to be decided in the ordinary course till after a first and second appeal, the case reaches the High Court. We have to consider two sets of difficulties. One difficulty has been placed before the House by my honourable Friend Shri Alladi Krishnaswami Ayyar and other honourable Members of this House. But the more important set of difficulties which we have to consider is this. A constitutional issue goes to the root of the matter and if that is not taken up and decided at the earliest stage, there will be considerable doubt as to the position in law. Take, for instance, the question whether a particular law falls within the ambit of the legislative power of a State of the Centre. That question may be so important that if not decided as early as possible, it would lead to transfer of interests; to extinction of rights or to divesting vested rights. After all this is done for a number of years, say four or five years, the Supreme Court or the High Court declares the legislation to be *ultra vires.* It is not much better there fore that the constitutional provision should be construed at the earliest possible opportunity to avoid such difficulties?

This article is intended to provide against such difficulties. What has happened in the past is this. One subordinate judge decides a question of law in one way; in other district another view is taken; and this diversity persists till the matter is decided by the High Court. It is desirable that this kind of diversity of judicial interpretation should prevail as regards a constitutional point? If not, a method has to be devised which would enable a litigant, if he so desires, to have such a point decided as early as possible.

This is nothing new. The House will remember that even under the C. P. C. Order 46 there is a power in the subordinate courts to refer a question of law to the High Court on reference if the question of law becomes important. Again as already mentioned to the House by my honourable Friend Mr. Naziruddin Ahmad, under Section 225 of the Government of India Act, it is competent to the High Court or rather it is incumbent on it to transfer to itself all cases in which a constitutional point has been raised. There is already precedent for deciding certain issues of law or constitutional issues by the High Court by taking it out of the hands of the subordinate courts. The amendment which is now moved, therefore, makes a provision that if in a subordinate court a question dealing with constitutional propriety is raised, one or the other party could go to the High Court and satisfy the High Courts as to two things : first, that there is a substantial question of law as to the interpretation of this Constitution; and secondly it is necessary for the disposal of the case, not any issue which has no bearing on the disposal of the case. If these two conditions are fulfilled, then only will the High Court withdraw the case. In withdrawing it, the High Court will do exactly what it can under Section 225 of the Government of India Act, but without the limitation that the High Court must dispose of the whole case. We have two alternatives in this article, one is that the High Court can dispose of the case itself or if it thinks proper, it shall determine the question of law only. In the latter case it will decide the particular question of law and send the case back to the subordinate court for the decision of further issues. In mixed questions of law and fact the High Court will consider the question whether it is possible to isolate the constitutional question and of course if it is not possible to do so, it will dispose of the case itself as it could do under the present Section 225 or ask the first court to determine the question of fact necessary for the determination of the legal issue. There is no clear-cut way out of the inconvenience involved but on a balance of convenience it is much better that there should be uniformity in the consideration of the constitutional provisions rather than it should be left to the subordinate courts to take divergent views.

I am surprised at the opposition to this article for this reason that vast powers of issuing constitutional writs which the House has vested in the Supreme Court are such that a very large number of cases relating to constitutional propriety will be determined by the Supreme Court or the High Court before anything else is done in a case. My Friend Pandit Bhargava raised two objections, one of the cost of litigation and the other of delay. If the whole position is analysed neither of these arguments will be found to be valid. As regards cost, is it not much cheaper that a constitutional issue which goes more or less to the very foundation of the case should be decided at an early stage rather than evidence which will be useless is led in the case before the party comes in appeal to have the constitutional issue decided? The latter course is bound to be more costly. Most cases would practically be decided one way or the other by the decision of the constitutional issues. Then as regards the delay, it is common knowledge than in subordinate courts it takes a long time before a case is disposed of and the party which wants to raise a constitutional issue is sure to go to High Court at an earlier stage of the case and there will no additional delay so far as the progress of the case in the lower court is concerned. Long before a case ordinarily reaches the hearing stage in the subordinate court such an issue would have been decided by the

High Court.

The next point is this that such a decision at an early stage would be of an all India application. Clause (b) of the new amendment says :

> "(2) determine the said question of law and return the case to the Court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment."

The word used is 'Judgment'-the same as in article 110. Therefore on this question of law if necessary parties can straightaway go to the Supreme Court in appeal so that three may be uniformity of decision throughout the country. It is in the nature of consultative jurisdiction-though not quite-but the way in which the Constitution has set up the Judiciary as the arbiter of constitutional propriety it is absolutely essential that at the earliest possibility there should be one decision, one definite binding decision throughout the province if not throughout the whole country of constitutional provisions. The whole machinery devised in articles 25, 120, 112 is to facilitate such uniformity and this article only adds to the scope of this constitutional forum. I therefore submit that this is the best way out of the difficulties and I hope the House will accept it.

Shri T. T. Krishnamachari : Mr. President, Sir, as a layman who has been listing to the dissertations on law by the lawyer Members of this House for a number of days past, I feel that the time has come when a word of warning has to be uttered against the manner in which amendments are moved, changes are made, jurisdiction is being extended to cover cases which are purely based on conjectures and on hypothesis with all the uncertainty that goes with such procedure as one hypothesis is as good as another. Today we have heard a number of lawyers one contradicting the other, one visualizing instances where contingencies which we seek to incorporate in an article, are not likely to occur or are likely to be controverted. In fairness to all these speakers it is perhaps safe to assume that everybody is right up to a point. After all if the whole thing is going to be based on hypothesis there is certainly nothing sacrosanct about what occurs to Mr. Munshi as against what occurs to Mr. Alladi Krishnaswami Ayyar.

Sir, I have no desire to controvert the utility or otherwise of the article before the House and the amendment proposed by my honourable Friend Dr. Ambedkar. But I would like to say this that in matters like this it is best to leave it to Parliament to make laws or allow the matter to be regulated by rules that might be made by the Supreme Court or by the Supreme Court in conjunction with the High Court, which will have the approval of Parliament, if necessary. The whole point really is, are we have in a position to visualise all possible contingencies that are likely to arise? I do not think it is possible. Much as I respect the legal wisdom of those concerned with the drafting of this amendment or the amendments that have been agreed to and approved by the House in regard to the previous articles, I feel a certain amount of hesitancy in controverting the allegation made by some Members of this House that this will tend to increase the possibilities of litigation in the country.

Attempts have been made right through the discussions in regard to the judicial provisions to extend the scope of the work of the Supreme Court. It has been said that that is the only way in which we could guarantee the liberties of the individual. On a subsequent occasion probably an opportunity will occur, when I would like to deal with the point whether liberties can best be defended by a multiplication of appeals. In the present instance regarding this particular amendment in regard to article 204 and those that preceded it, Mr. Munshi says that we want one binding decision which will cover all possible cases in future. Is it possible? If one decision were binding would there be so much case law in the world? Mr. Munshi is undoubtedly familiar with the history of judicial procedure in America, where the country has suffered a grant deal of uncertainty by the constitutional provisions being terse instead of being elongated to fit into it all manner of contingencies that are likely to arise which the human brain can visualise in the manner in which we are considering the article before the House.

At the same time, I feel that there is no particular magic attached to Mr. Munshi's interpretation as against Mr. Alladi Krishnaswami Ayyar's interpretation. A friend has asked me what happens if article 110 operates and the question involves a matter of interpretation of the Constitution. Does it go to the Supreme Court? We do not know, but there is no use Mr. Munshi saying "this and this will happen and every thing will ultimately be all right". Every thing cannot be all right. We are dealing not merely with all contingencies such as we think are likely to arise but we are also dealing with the human material. One judge may hold one opinion and give a decision in a particular manner and another might give another decision. The decision of one set of Judges cannot be binding on those that decide similar questions later on. There is always the possibility of one decision being over-ruled by another.

While this amendment might go through for the time being I do feel that right in this Constitution there must be some provision by which most of these lacunae can be covered by parliamentary legislation. I am not one of those who believe that we must defend the country, the litigant the lawyer and everybody else as against the vagaries of Parliament. I would rather trust five hundred people with less than even mediocre abilities than four or five people with perhaps some claim for superior abilities but at the same time having their own personal prejudices. And in this matter I am undoubtedly right in view of what is happening in the United States, where the judges are influenced by political considerations and a whole series of judgments given by them until 1936 had been changed after 1936 as in some instances even the same Judges have been interpreting the provisions of the Constitution in a different way. Therefore it seems to me that somewhere in this Constitution there must be a provision so that most of these difficulties can be removed by Parliamentary legislation, even though it might mean that you are allowing Parliament to arrogate to itself a certain amount of jurisdiction over the Courts as a relative quantum of jurisdiction will thereby be taken away from the Supreme Court and the High Courts. That seems to be the only way in which we can prevent increase of litigation in the Courts.

I would like before I resume my seat to tell the House that all that we are doing today is we are running right counter to popular opinion, which does not want multiplication of litigation, and we are merely providing opportunities for more and more litigation. I do not want to claim any particular type of wisdom for having uttered on a previous occasion that this Constitution might well prove a paradise for lawyers. Whether I was right then or not, I do feel that I am more than right today in view of the provisions that we have introduced both in regard to the Supreme Court and the High Court. We are multiplying the possibilities of litigation increasing tremendously. My honourable Friend Mr. Munshi said in a different context that the opportunities for employment of High Court judges will increase tremendously. If that were to be so litigation must increase. Who will pay for it? It will be an unnecessary waste of the wealth of the people, who in most cases cannot afford to pay. Ultimately when two litigants begin to quarrel it ends up like the proverbial fight between the Kilkenny cats; what is left is only the tails. This might profit the lawyers, the might profit the judges and also provide revenue for the State. But the people of the country will suffer. I therefore feel that unless the House or those who are responsible are guided by considerations purely of the immediacies of the situation or whether a particular case they have in mind can be covered or not, they should provide, in the interest of the country, a saving clause somewhere by which most of these matters will be dealt with either by Parliamentary legislation or by rules made by the Courts with the approval of the Parliament, so that possibilities of any phenomenal increase in litigation might be avoided.

I do not know anything about the present amendment except that it looks simpler than other amendments that have been suggested, since the House adjourned yesterday, which were longer and therefore more difficult to understand. Therefore, perhaps, there is something in this amendment to commend itself to the consideration of the House. I would only submit that this should not be treated as the last word on the subject and the House must empower the Drafting Committee or those responsible to go through the whole series of articles passed in this connection and provide some kind of safety valve, by which parliamentary interference can avoid an increase in litigation.

With these reservations, Sir, I support the amendment moved by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I do not think any very long discussion is necessary to come to a decision on the amendment I have moved. The House will remember when we were dealing yesterday with article 204 my Friend Mr. Bharathi raised a question which related to the last sentence in article 204, *viz.*, that the High Court shall withdraw the case to itself and dispose of the same. The question which Mr. Bharathi put, which I thought was a very relevant one, was this. Why should the High Court be required to withdraw the whole case and dispose of it, when all that the main part of article 204 required was that it should deal with a substantial question of law as to the interpretation of the Constitution? His position was that in a suit many questions might be involved. One of them might be a question involving a substantial question of law as to be interpretation of this Constitution. The other question may be questions as to the interpretation of ordinary law made by Parliament. If there was a case of this sort which was a mixed case, containing an issue relating to the interpretation of the Constitution and other issues relating to the interpretation of the ordinary law while it may be right for the High Court to possess the power to decide and pronounce upon the question relating to the interpretation of law, why should the High Court be required to withdraw the whole case and decide not merely on the issue relating to the interpretation of the Constitution but also upon other issue relating to the interpretation of ordinary law? As I said, that was a very pertinent question the force of which I did feel when I heard his argument and I therefore asked your permission to allow this article to be kept back.

Now, if I may say so, a similar question was raised by my Friend Shri Alladi Krishnaswami Ayyar when we were dealing with article 121, which also dealt with appeals to the Supreme Court in cases which were of a mixed type, namely, cases where there was a question of constitutional law along with questions of the interpretation of ordinary law made by Parliament. According to the original draft it was provided that in all cases where there was an issue relating to the interpretation of the constitutional law, such an appeal should be decided by a Bench of five Judges.

The question that was raised by Shri Alladi Krishnaswami Ayyar was that a party may, quite wickedly so to say-for the purpose of getting the benefit of a Bench of five-raise in his grounds of appeal a question relating to the interpretation of constitutional law which ultimately might be found to be a bogus one having no substance in it. Why should five Judges of the Supreme Court waste their time in dealing with an appeal where as a matter of fact there was no question of the interpretation of constitutional law? The House will remember that his argument was accepted and accordingly, if the House has got papers containing the Fourth Week's Amendment, List No. I, Amendment 43, they will find that we then introduced. proviso which said that in a case of this sort where an appeal comes from a High Court involving not necessarily the question of the interpretation of law but involving other questions, the appeal should go to an ordinary Bench constituted under the rules made by the Supreme Court which may, I do not know, be a Bench of either two Judges or three Judges. If after hearing the appeal that particular Bench certifies that there is as a matter of fact a substantial question of the interpretation of the Constitution, then and then alone the appeal may be referred to a Bench of five Judges. Even then Bench of the five Judges to which such an appeal would be referred would decide only the constitutional issue and not the other issues. After deciding constitutional issues the Judges would direct that the case be sent back to the original Bench of the Supreme Court consisting either of two or three Judges to dispose of the same.

My first submission is this, that in making this amendment to article 204 which I have moved this morning we are doing no more than carrying out the substance of the proviso to clause (2a) of article 121 contained in amendment No. 42. Here also what we say is this : that the High Court, if satisfied, may take the case to itself, decide the issue on constitutional law and send back the case to the subordinate Judge for the disposal of other issues involving the interpretation of ordinary law made by Parliament. I do not think we are making anything new, novel, strange or extraordinary as compared to what we have done with regard to the Supreme Court. Therefore my submission is this that if we accept, as we have accepted, the proviso to clause (2a) of article 121, the House cannot be making any very grave mistake or any very grave departure...

Shri Alladi Krishnaswami Ayyar : On a point of explanation, Sir, I shall feel obliged if it is your view that there is no distinction between a point arising in the appellate stage and a point arising when the case is pending in the court of first instance.

The Honourable Dr. B. R. Ambedkar : I am only dealing with the general framework of the amendment. My submission is that the amendment. I have moved is exactly on a par with the proviso that we have added to clause (2a) of article 121. Therefore my submission is that there is no very grave departure from what we have already done.

Then two questions have been raised. One is with regard to the use of the word 'judgment'. It has been said that the word 'judgment' has been differently interpreted and that the party whose case has been withdrawn by the High Court for the purpose of determining the constitutional issue may not be in a position to approach the Supreme Court, because under article 110 we have said that an appeal to the Supreme Court shall lie only from the judgment or the final order of the High Court. The contention is that the judgment may not be regarded as a judgment within the meaning of articles 110 or may not be regarded as a final order. Well, having used the word 'judgment' in article 110 in that particular sense, namely a decision from which an appeal would lie to the Supreme Court, I do not personally understood why the use of the word 'judgment' in this amendment should not be capable of the same interpretation. But if the contention is correct I think the matter could be easily rectified by using the word 'decision' instead of 'judgment' and adding an explanation such as this that "the decision shall be regarded as a final order for the purpose of article 110". I do not think that that difficulty is insuperable.

With regard to the question of appeal it would certainly be open to the party whose case has been withdrawn to do what it likes. Once the judgment has been delivered by the High Court, in a case which has been withdrawn for the purpose of decision of the issue regarding the interpretation of the Constitution, it may straightaway go to the Supreme Court and have that question finally decided, or it may wait until all issues have been decided by the subordinate Judge, an appeal has gone through the High Court on findings of fact with regard to those particular issues and thereafter take the matter to the Supreme Court. We do not bind the party to any of the procedure if the issue regarding the interpretation of the Constitution is on the same footing as what we may call a preliminary issue so that when a decision is taken it will be a decision of the whole case. I have no doubt about it that the party affected will, rather than proceed with the rest of the case before the subordinate judge, go immediately to the Supreme Court and have an interpretation of the Constitution. I see no difficulty at all in this.

Now, the other question that was raised was this : my Friend Shri Alladi Krishnaswami Ayyar said something sitting there. I could not hear him. But in private conversation he mentioned that it may be very difficult for a High Court to make a severance between an issue relating to the interpretation of the Constitution and the other issues and it may be that for the interpretation of the other issues and for the interpretation of the issue relating to the interpretation of the Constitution the High Court may have to consider other issues as well. It was also suggested that supposing the case was really a small one, but did involve the question of interpretation of law, why should the High Court be not permitted to dispose of such a small case rather than have it sent back to the subordinate court? Well, in order to meet both these contingencies, the amendment gives the power to the High Court to dispose of the case itself. I do not think that that would not be found sufficient for the difficulties which have been pointed out. I therefore submit that the amendment does carry out the intentions we have, namely, that the High Court should not be encumbered with a decision of all the issue when it considers the whole case; it may be left free to decide a particular issue with regard to the specific question of the interpretation of the Constitution.

May I say one more thing? There is no doubt a power under the Civil Procedure Code contained in section 24 permitting the High Court to withdraw any case to itself and determine it. But the difficulty with section 24 is that if the High Court decides upon withdrawal it shall have to withdraw the whole case. It has no power of partial withdrawal, while our object is that the High Court should be permitted to withdraw that part of the case which refers to the interpretation of the Constitution. My submission, therefore, is that unless you provide specifically as we are doing now under article 204, the High Court will have to withdraw the whole case to itself if it wants to decide the question of the interpretation of this Constitution.

I would like to say one thing more. You will remember that there was no time between yesterday and this morning to apply all that close attention to the wording of this particular amendment which I have moved. I am there fore moving this amendment because I think it is very wrong to keep on holding up article after article because of certain minor defects or discrepancies. I should like to say that while I move this amendment I would like to have an opportunity given to the Drafting Committee to make such changes as it may deem necessary in order to remove the defects that have been mentioned if there are any, and bring it into line with the other articles which the Assembly has passed.

Mr. President : I will now put the amendment of Professor Shah No. 2674 to vote.

Mr. H. V. Kamath : I thought Dr. Ambedkar's amendment superseded this amendment.

The Honourable Dr. B. R. Ambedkar : I am substituting the entire article. You may withdraw amendment No. 2674.

Mr. President : Your amendment is for substituting the whole article. I will then put your amendment to vote.

The question is :

"That for article 204 the following article be substituted :-

Transfer of certain cases to High Courts

'204. If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may-

(a) either dispose of the case itself, or

(b) determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.' "

The amendment was adopted.

Mr. President : Now this becomes the original article. It disposes of all the amendments moved.

The question is :

"That article 204, as amended, stand part of the Constitution."

The motion was adopted.

Article 204, as amended, was added to the Constitution.

Article 205

Mr. President : The House will now consider article 205. There is an amendment to this by Dr. Ambedkar, No. 2676.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for article 205, the following be substituted :-

> '205. (1) Appointments of officers and servants of a High Court shall be made by the Chief Justice Offices and servants of the Court or such other Judge or officer of the Court as he may direct and the expenses of High Courts.
>
> Provided that the Governor of the State in which the High Court has its principal seat may by rule require that in such cases as may be specified in the rule, no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.
>
> (2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other judge or officer of the Court authorised by the Chief Justice to make rules for the purpose :
>
> Provided that the salaries, allowances and pensions payable to or in respect of such officers and servants shall be fixed by the Chief Justice of the Court in consultations with the Governor of the State in which the High Court has its principal seat.
>
> (3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court and the salaries and allowances of the judges of the Court, shall be charged upon the revenues of the State, and any fees or other moneys taken by the Court shall form part of those revenues.'"

Mr. President : There is an amendment by Mr. Kapoor.

The Honourable Dr. B. R. Ambedkar : Sir, I have an amendment to this amendment. If you will allow me I will move it. It is on page 3 of List II.

Mr. President : You can move it.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That with reference to amendment No. 2676 of the List of Amendments, for the proviso to clause (2) of the proposed article 205, the following proviso be substituted :-

> 'Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State in which the High Court has its principal seat."

Sir, these provisions are exactly the same as the provisions for the Supreme Court.

Mr. President : That cover your amendment, Mr. Kapoor.

Shri Jaspat Roy Kapoor (United Provinces : General) : Yes, Sir it obviates the necessity for moving my amendment.

Mr. President : There are two amendments by Mr. Mahboob Ali Baig to this article. No. 141 and No. 142 in the printed List of Amendment to amendments.

(The amendments were not moved.)

Now the article is for general discussion.

Shri Brajeshwar Prasad (Bihar : General) Mr. President, Sir, I am not in favour of any whittling down of the powers of the High Courts. I feel, Sir, that in matters of salary, leave, pensions, etc. consultation with the Governor is necessary, if the word 'governor' here does not mean governor in consultation with the cabinet-with the Prime Minister. It is not clearly mentioned-it would have been better if it had been-that the Governor in his discretion should be consulted so far as the salaries, allowances and pensions of the Judges and other servants of the High Courts are concerned. Sir, there is another Provision that the conditions of service should be prescribed by the Chief Justice subject to any law made by the State Legislature. I do not want that either the Governor or the State Legislature should have anything to do with the provincial High Courts. There should be an integrated judiciary in this country. All the High Courts should form an integral part of the Supreme Court. I am against the provincialisation of the High Courts. I am against the interference of the executive authorities, the Governor and the Legislature, because of my well-known feeling against provincial governments. If these authorities are allowed to have any say in the administration of the High Courts, then there will be no independence for the provincial High Courts. Already the feeling is rampant, charges have been made, that three have been cases of interference with the administration of justice. I am definitely of opinion, Sir, that instead of the State Legislature and the Governor, we shall have to make a provision that Parliament and the President should be consulted. I know that the administrative expenses of these High Courts shall be charged upon the provincial revenues, but I think this difficulty can be obviated by charging this expenditure upon the Central revenues. Of course, this suggestion will entail an adjustment of the sources of the Central and provincial revenues. But in the interests of efficient administration, in the interests of one judiciary in the country, whatever difficulty there may be in the way must be overcome, and all questions of pensions, salaries, leave, etc. of the Judges and other servants of the High Courts should be placed in the hands of the Parliament and the President in consultation with the Chief Justice of the Supreme Court.

Mr. President : Do you wish to say anything, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar : No, Sir.

Sardar Hukam Singh (East Punjab : Sikh) : Mr. President, Sir, I should like to oppose this amendment moved by the Honourable Dr. Ambedkar. Apparently it looks to be very innocent, but I am afraid this might have far-reaching repercussions so far as the independence of the Judiciary is concerned. If we look at the different stages through which our Draft has been developing, I am constrained to conclude that we have been receding from democratic principles and centralising all powers in the executive or the legislature; rather I might say that we are proceeding towards the evolution of a police State. The history of this article is only one instance of so many and posterity would judge whether we are growing wiser everyday or whether we are going against democratic principles recognised all over and trying to centralise most of the powers in the legislature. If we just have a look at the original Draft, we will find that article 205 as drafted in February 1948 only provided that the salaries, allowances, pensions, etc. payable to or in respect of the officers and servants of a High Court shall be fixed by the Chief Justice of the High Court in consultation with the Governor of the State in which the High Court has its principal seat. But when in November this List of Amendment was published, there was some change and then it was laid down in the proviso to this article :

> "Provided that the salaries, pensions, etc., payable to or in respect of such officers and servants shall be fixed by the Chief Justice of High Court in consultation with the Governor of the State in which the High Court has its principal seat."

I think that so far there was no harm done, if we confine ourselves to this consultation. But now the present amendment says :

> "Provided that the rules made under this clause shall, so far as they relate to salaries; allowances, leave or pensions, require the approval of the Governor of the State in which the High Court has its principal seat."

This substitution seems to me to be a very serious one, though it looks to be a small matter on the face of it. The judiciary is the only safeguard against any infringement of public liberties and any encroachment however small on its independence, so far as I can make out, should be carefully watched and jealously guarded against. The judiciary itself, it is admitted, is too feeble to defend itself against the encroachment by the executive and the legislature and any dependence of it or inter-linking it with the legislature or the executive would jeopardise its independence. There is always a danger of its being overpowered by the execute or the legislature. As I have said already, I find this change towards vesting of more and more powers in the legislature and impairing the independence of our courts. In my opinion such a change as this amendment provides may turn out to be a source of friction between the judiciary and the executive by creating pinpricks. When you ask the Chief Justice to have the approval of the Governor, I think, it would humiliate him and bring him to a subordinate position. Psychologically at least such a procedure would have that effect. The very fact that the Chief Justice has to consult the Governor would be a sufficient guarantee that the rules would be framed in a spirit of accommodation. Can't he be trusted that he would not unnecessarily burden the exchequer by extravagant expenditure? No doubt the Governor is the keeper of the purse, but at the same time the judiciary is the guardian of the civil liberties and nothing should be done to jeopardize the independence of the latter. Consultation would be sufficient and I think this amendment now moved is a dangerous one and I oppose it.

Mr. President : The question is :

"That for article 205, the following be substituted :-

Offices and servants and the expenses of High Courts.

'205. (1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other judge or officer of the Court as he may direct :

Provided that the Governor of the State in which the High Court has its principal seat may by rule require that in such cases as may be specified in the rule, no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other judges or officer of the Court authorised by the Chief Justice to make rules for the purpose :

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State in which the High Court has its principal seat.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court and the salaries and allowances of the judges of the Court, shall be charged upon the revenues of the State. And any fees or other moneys taken by the Court shall from part of those revenues.'"

The amendment was adopted.

Mr. President : The question is :

"That article 205, as amended, stand part of the Constitution."

The motion was adopted.

Article 205, as amended, was added to the Constitution.

Article 206

The Honourable Dr. B. R. Ambedkar : Sir, I move that this article be deleted.

Mr. President : The question is :

"That article 206 form part of the Constitution."

The motion was negatived.

Article 206 was deleted from the Constitution.

Article 90-*(Contd.)*

The Honourable Dr. B. R. Ambedkar : Sir, I would request you now to take the financial article. We may go back to article 90 which was under discussion.

Mr. President : We had a number of amendments to this article which were moved that day before we adjourned discussion. They are amendments Nos. 3,4, and 6 standing in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for sub-clauses (c) and (d) of clause (1) of article 90, the following sub-clauses be substituted :

> '(c) the custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such fund;
>
> (d) the appropriation of moneys out of the Consolidated Fund of India;'"

Sir, Amendment No. 4 is covered by amendment No. 3 and so I am not moving it.

Sir, I also move :

"That in sub-clause (e) and (f) of clause (1) of article 90, for the words 'revenues of India', the words 'Consolidated Fund of India' be substituted."

Sir, Amendment No. 5 standing in the name of Pandit Kunzru is also covered and therefore, it is necessary.

Sir, with your permission, I would like at this stage to make a short introductory speech in order to give the House an idea of some of the changes which are not covered by the specific amendments which I have moved just now, but which relate to the changes that have been made in the financial procedure to be observed with regard to financial matters.

The changes that we have made by the various amendments that I have proposed to move in connection with this matter are these. The first change that has been made is that there shall be no taxation without law. If any levy is to be made upon the people, the sanction must be that of law. That is provided for in article 248 which will come at a later stage. In order to give the House a complete idea of what we are doing, I mention the matter now. There was no such provision in the existing Draft Constitution. The second thing which is proposed to be done is to introduce the idea of what is called a Consolidated Fund. That will be done by the new article 248-A which will come at a later stage. We also wish to provide for the establishment of a Contingency Fund which Parliament may want to establish. That will be done by the new article 248-B.

I do not think that any explanation is necessary for the first provision, namely, that there should be no tax except by law. It is a very salutary provision and the executive should not have any power of levy upon the people unless they obtain the sanction of Parliament. With regard to the Consolidated Fund, it is really in a sense not a new idea at all; it is merely a new wording. The existing wording is "Public Account of the Governor-General of India." If honourable Members will refer to a volume called the Compilation of Treasury Rules, Volume I, they will find that the Public Account is also referred to as the Consolidated Fund. I shall read the definition. "Public Account of the Central Government means the Consolidated Fund into which moneys received on account of the revenues of the Governor-General as defined in section 136 of Act are paid and credited and from which all disbursements by or on behalf of Government are made."

Therefore, the use of the word "Consolidated Fund" is merely a change in nomenclature because that word is already used as an equivalent of the Public Account of the Central Government.

There is also an important idea behind this notion of a Consolidated Fund. This notion of a Consolidated Fund, as Members might know, arose in England some time about 1777. The object why the Consolidated Fund was created in England was this. Originally Parliament voted taxes to the King, leaving the King to collect and spend it on such purposes as he liked. Often times, the King spent the money for purposes quite different from the purpose for which he had asked it. Parliament could have no control after having voted the taxes. At a later stage, Parliament followed another procedure, namely, to levy a tax and to appropriate the proceeds of that tax for a certain purpose, with the result that when they came to passing the budget, there was practically no money left, all the taxes having been appropriated to specific purposes. Nothing was left for the general purposes of the budget. In order to avoid this squandering of money, so to say, by appropriation of individual taxes for particular purposes, it was necessary to see that all revenues raised by taxes or received in other ways were, without being appropriated to any particular purpose, collected together into the one fund so that Parliament when it comes to decide upon the budget has with it a fund which it could disburse. In other words, a Consolidated Fund is a necessary thing in order to prevent the proceeds of taxes being frittered away by laws made by Parliament in individual purposes without regard to the general necessity of the people at all. I therefore submit that the House will have no difficulty in accepting the provision for a Consolidated Fund because it is a very necessary thing. If I may say so, there is no Constitution which does not provide for a Consolidated Fund. If you compare the Constitution which does not provide for a Consolidated Fund. If you compare the Constitution of Australia, Canada, South Africa or Ireland, or any Constitution, you will find that they all have a provision which says that all funds raised by taxes or otherwise shall be peopled together in a Consolidated Fund. We are therefore not making any departure at all.

Then, the other provision which we seek to make is to provide for an Appropriation Act in the place of a certified Schedule by the President. Honourable Members, if they refer to article 94 of the Draft Constitution, will see what the present procedure is. First of all, what happens is this : the President, that is to say, the Government of the day is required by article 92 to present a Financial Statement to Parliament in a certain form, which form is laid down in sub-clause (2) of article 94 dividing the expenditure into two categories, one category containing the expenditure charged upon the revenues of India and the other category of expenditure not charged upon the revenues of India, that is to say, upon the Consolidated Fund. After that is presented, then comes the next stage which is provided for in article 93. Under article 93 what happens is this : Parliament proceeds to discuss the Financial Statement submitted to it, head by head, sub-head by sub-head, item by item and either agrees with the provisions made as to the amount by the executive or reduces it. This thing is done by resolutions passed by the House on any cut motion. After that is done, under the present procedure, the provisions of article 94 apply, namely, that the President then certifies what the Assembly has done in the matter of making provision for the various heads of expenditure placed before it by Parliament. The new provision is that the procedure regarding certification by the President should be replaced by a proper

Appropriation Act, passed by the legislature.

The argument in favour of substituting the procedure for an Appropriation Bill for the previous contained in article 94 of the Draft Constitution is this. The legislature votes the supplies. It is, therefore, proper that the legislature should pass what it has done in the form of an Act. Why should the work done by the legislature in the matter of voting supplies be left to the President to be certified by an executive act, so to say? That is the principal point that we have to consider. In the matter of Finance, Parliament is supreme, because, no expenditure can be incurred unless it has been sanctioned by Parliament under the provisions of article 93. If Parliament has sanctioned any particular expenditure on any particular head is the Parliament and not the President. Therefore, the procedure of an Appropriation Act is substituted for the procedure contained in article 94 of this Draft Constitution.

I may also mention that article 94 was appropriate under the Government of India Act of 1935 for the simple reason that the Governor-General had a right to certify what expenditure was necessary for him for discharging his functions which were in this discretion and in his individual judgment. The expenditure which the Governor-General wanted to incur in respect of functions which were in his discretion and in his judgment were outside the purview and outside the power of Parliament. He was entitled to change the amount, to alter that, to add to them. It was consequently necessary that the Governor-General should be the ultimate authority for certification because he had independent power of making such budget provision as he wanted to make in order to discharge his special functions. Under the new Constitution the President has no functions at all either in his discretion or in his individual judgment. He has therefore no part to play in the assignment of sums for expenditure for certain services. That being so, the certification procedure is entirely out of place under the new Constitution. I might also say that the appropriation procedure is a procedure which is employed in all Parliamentary Government in Canada, Australia, South Africa and in Great Britain. I might also mention that, when this matter was discussed in 1935 when the Government of India Act was on the anvil, the proposal was made by the Secretary of State himself that the authentication of the expenditure sanctioned by the Assembly would be done by an Appropriation Act and not by certification, but the Government of India of the day did not like the idea of an Appropriation Bill for the reason that the Governor-General had power to fix certain amounts in the budget in order to provide for the discharge of his own functions. Otherwise the Secretary of State himself, as I said, was in favour of this proposal but his proposal was turned down by the Government of India in 1935. But my submission is this, that there is no necessity now for retaining this function which really gives the executive the authority to fix the amount and also to spend the money. I think it would be desirable to bring our procedure in line with the procedure that is prevailing in all countries where Parliament is supreme in the matter of sanctioning money for expenditure.

The other provision which is new which we have inserted is what is called vote on account. Now, it is necessary perhaps to explain why we have introduced it. For that purpose I should again like the House to refer to article 93 as it stands. Under article 93 no money can be issued or spent for any services unless the whole of the detailed budget is passed by Parliament. If you read article 93, that is the effect of it. The budget has to be presented under heads, sub-heads and items. Parliament has to pass the budget with regard to heads, sub-heads and items. That is what is called passing the budget. Now, as you all know the budget is an enormous thing involving expenditure of something like 250 crores distributed on various items. If the provision of article 93 is to remain intact *viz.*, no money is to be spent unless all the details are passed by Parliament and if you also have the provision that the budget must be passed before the end of the official year is over, then you must have a very limited time fixed for the discussion of the budget because under the provisions of article 93 you cannot spend any money unless the budget had been passed in all its details. Either, as I said, you give up your right to discuss the budget in full or you make a change in article 93 or you may make another provision making an exception to article 93. The vote on account procedure which we propose to introduce by an amendment provides for Parliament allowing a lump sum grant to the executive to be spent upon the services of the year for say about two months or so, so that the two months time will be available to Parliament to discuss in a much greater length-I don't say fully-the budget provisions and the financial provisions of the Government. Unless, therefore, you have a provision for a vote on account *i.e.*, lump sum grant given to executive to cover an expenditure for about two or three months, that may be decided by some agreement between the Government and the Leader of the Opposition-unless you make a provision for a vote on account you will not get time to discuss the budget at any greater length than what you have now. The House will remember that the last time there was a great deal of feeling in the House that the Budget was rushed through, people had not more than seven or eight days given to them for the discussion of the different items and that the guillotine was applied. If the House therefore desires that it should have more time to discuss the details of the budget to discuss the details of the financial provision, then some provision has got to be made in the Constitution whereby it will be open to the House to allow the executive to have a lump sum out of the Consolidated Fund, covering an expenditure of two months if the House wants two months for discussion. Since the provisions of article 93 are very stringent in the sense that no money can be spent unless the whole of the budget in all its details is passed we have got to make an exception to the provisions contained in article 93. Those exceptions are made by a provision which is called 'Provision for Votes on account'. These are, if I may say so, the three main changes that we have made in the Draft Constitution. Sir, with these words I move the amendments I have tabled.

Mr. President : Does anyone wish to speak now?

Dr. P. S. Deshmukh (C. P. & Berar : General) : Sir, the speech that has just been made, explains in some details the new nomenclatures we are going to adopt as well as make certain provisions which were not thought of up to this moment. Sir, the whole structure which was embodied in the Draft articles as we have before us was really based wholly on what is provided for in the Act of 1935. Now the Honourable Dr. Ambedkar wants certain alterations and modifications so that the procedure in financial matters approximates greatly to the procedure which obtains not only in the British Parliament but which has been copied by the various Dominions. Therefore, we are required to have phraseologies and terms which are altogether unfamiliar to the House. The learned Doctor has undoubtedly given a very brief and exquisite commentary on the various proposals he has to make and if many Members of this House find it difficult to comprehend all that they signify, I do not think the intelligence of any Member can be blamed for it. (*Laughter*). For the first time we are having-instead of the well-understood and well-explained familiar terminology of the revenues of India (that was one phrase which was used, probably for various purposes and a phrase which is well understood by all of us)-what is termed as the Consolidated Fund. It is impossible, Sir, from the speech that has been made to understand exactly why it is necessary to change the name. The purpose has been explained but I do not feel convinced. I do not see why it is not possible to continue to call it "the revenues of

India" and then make provision for the solution of certain difficulties which have been encountered in our financial procedure. And for this purpose I am not absolutely certain that the nomenclature need be changed. Undoubtedly, one difficulty which the Honourable Dr. Ambedkar wants to overcome is that there should not be any restriction on passing the budget by a certain date. There should be some amount of elasticity about it. The Parliament of India could go on discussing the budget and the expenditure for months if they like, even after the first of April, by which time, according to the present procedure the budget must be approved. But if that is the only difficulty which it is sought to overcome, I do not think the whole structure of all these articles need be altered. The provision for allowing the executive to carry on the day to day administration, irrespective of the fact whether the whole budget has been discussed and passed or not, does not, I think, make the alteration of so many articles necessary. But if our anxiety is to bring ourselves into line with the British House of Commons and the various Dominions, then of course the changes that have been suggested ought to be accepted.

In the change of nomenclature and the introduction of the words 'the Consolidated Fund of India', a common man's interpretation would be that this would be a certain fund which is over and above or something different from the revenues of India : otherwise there would be no sense in substituting or incorporating this new phraseology called the Consolidated Fund of India. Then the various new terms such as "Vote on Account", "Vote on Credit" etc.-the Honourable Dr. Ambedkar will have to incorporate sooner or later because these are the things which follow in the wake of the whole structure of the financial business and financial transactions of a State. I am referring to the procedure in the House of Commons where besides the Consolidated Fund, there are a variety of things, and I am sure that sooner or later all will have to be incorporated. The Honourable Dr. Ambedkar has explained that Vote on Account is a grant in advance for the estimated departmental expenditure for the year before complete and detailed sanction has been given to that expenditure. Then there will be Votes on Credit, of which we have not heard so far but probably at a later stage it will have to come in. It has been defined by the British Parliament as "an unexpected demand upon the resources of the United Kingdom for example for the defence of the Empire or for a military service". It is on account of the magnitude or in definite character of the service that the demand cannot be stated with the details given as in an ordinary estimate to be laid before Parliament on an application based on the demand of the total sum required etc."

Then, Sir, we will be incorporating more or less the whole procedure that is current in the British Parliament. I am so far not fully convinced that we should alter the structure of our financial transactions that has stood the test of time, and excepting the difficulty of finishing discussions by the 1st April, no other grave difficulty has arisen so far. But if the learned Doctor can say that unless we alter this we alter this we will have insurmountable difficulties and for an independent Parliament of India it would not be possible or feasible to work, then of course we will have to accede to his request and accept the motion that he has made. I feel, Sir, not at all convinced that without having the Consolidated Fund, without providing for a Vote on Credit, without providing for a Vote on Account, it is not possible to manage the finances of India. The terms which are current are very well-known pharseologies and the procedure is well established here and I would much rather keep to the old phraseology and other provisions rather than embark upon a whole set of altogether new terms and phrases. My ground for saying so is that in spite of my carefully listening to the speech, I have not been able to follow that it is absolutely necessary to alter the whole structure of these provisions. I have already said that excepting one practical difficulty, no other difficulty is such as, under the existing of the Draft provisions which are before us, cannot be solved. So, Sir, I for one feel that if it is possible to keep to the well-understood terminology and procedure, it would be far better. After all the whole thing is not very complicated. The main fundamental principle is that there should be no appropriation of any revenues of a State unless Parliament's sanction is there. With regard to this provision my Friend Mr. Sidhva also stressed that even the Auditor-General must not pass a single transaction unless it finds a specific place and has been approved by Parliament. All these things, namely, that without the sanction of Parliament no expenditure shall be voted, no expenditure shall be incurred, is a thing which is not jeopardized by the provisions as we have, and therefore I suggest that if it is possible we should not have these new phrases, which probably are very appropriate for the Parliament of England but for which we have no very specific use. Even under the foreign Government we have managed our finances fairly well. There has never been an instance like the one the Independent Parliament of India had to face of the appropriation of crores of rupees without their ever having been mentioned in Parliament or having been specified at any time. That is a contingency which did not arise even under the British regime and these were the exact provisions under which the whole financial administration of the country was going on. Therefore, I feel that if it is possible to keep to the old phraseology and restrict ourselves to it, it would be far better than incorporating provisions which are not familiar to us. The explanations and interpretations by the various lawyers in the Parliament will also involve us in a considerable amount of trouble and that is my fear. If there is no other difficulty except the one I have mentioned I am not convinced that this alteration of the whole structure is necessary.

Shri R. K. Sidhva : Sir, With my parliamentary experience of three decades I can safely say without exaggeration that the present procedure and system of discussion of money Bills and budgets in the various legislature is nothing but a farce and a waste of public time. I am yet to know any legislature where a budget is discussed, where the members had any occasion to curtail or reduce the amount of expenditure under any head. The entire power under the 1935 Act or even before was vested in the executive as far as the finances of the State were concerned. It was merely to show to the world that the demands and income were brought before the legislature and after a few days' discussion the legislature had to accept all the items both on the expenditure and income side.

After independence we have adopted the same procedure in regard to the two budget that came before our Parliament. Barring the fact that a few more days were allowed during the last session, after a great deal of complaint, for the discussion, we were able to do not more substantial work or contribute any suggestion towards the expenditure or income side of the budget. I therefore welcome now the amendment moved by Dr. Ambedkar. It is a very healthy amendment and I am rather surprised to hear my friend Dr. Deshmukh saying that there is no necessity to change the present system or nomenclature. Crores or rupees could be raised and crores spent without the legislature in the true sense having any voice in it. Even under the article as originally drafted I can safely say that the members would have had no opportunity to judge the money Bills or the budget. Therefore, this amendment has come at the right moment.

It was argued by Dr. Deshmukh that it should be left to the Parliament. Matters like this should not be left to the Parliament but should be embodied in the Constitution. After Dr. Ambedkar's amendment a minister had to state openly that the present procedure is perfect and there is no necessity, as Dr. Deshmukh stated, to make any amendment. I know ministers will object to any latitude or privileges given to members, because I know from my experience of two sessions that so far as the ministers are concerned they feel the sooner the budget discussion closes the better it is for them, because they come under criticism. If it is left to Parliament I am positive that the ministers will combine or the government of the day will combine and will not allow any kind of law to be passed for such a purpose. Therefore it is in the fitness of things that such a provision should be made in the Constitution. There should be no loophole left for any future government as far as the State's finances are concerned.

What happens during the budget discussion? Only five or ten minutes are allowed to a member to discuss an important financial item. He could not place properly and explicitly his viewpoint before the House. A number of members have to speak and within the seven days allotted for the Demands nothing material ultimately turns out. After the clamour of the members during the last session, three more days were allowed but I must say straight away that even those extra three days were merely given to the members to ventilate their views and nothing substantial was done. We want that the members should have a stronghold on each item spent by the executive. Unfortunately few members take interest in the budget. Perhaps they do not understand it. Finance is a complicated item and obviously members are at sea at times. The executive, under Contingencies and other headings, provide lakhs of rupees without any details and the House has to pass them. Do you want to give that kind of power to the executive still? How are we going to influence the Government unless the until sufficient time is given to the members to place their views before the House? It is one of the fundamental duties of a member to voice his views and those of his electorate, otherwise he is not worth being returned by the people to this House. Our people want to know what kind of taxes are being imposed, what is the necessity for them and how the Government propose to spend the money. If members have no opportunity to ventilate their views and those of the people who returned them, there will be no value in their being members of the legislature. Today we are ourselves the masters and yet Dr. Deshmukh has the audacity the effrontery to come and say "I do not want this. The present procedure is very good and there is no necessity to change the nomenclature. Parliament will do its duty." It was very surprising. I thought every member of the House would welcome the proposal of exercising his rights properly. I am sorry for the opposing to this. I wholeheartedly welcome the proposition and I repeat that if you leave it to Parliament, the Ministers will combine and never allow you to go into the details of the Budget. Therefore, the provision in the Constitution suggested by Dr. Ambedkar is very necessary. I am sure the House will give credit to the Drafting Committee that, even at this late stage, from our experience of the last two Sessions of Parliament, they have come to the right decision what while the Auditor-General alone should be a watch-dog, members also should be watch-dogs of finances of the State. We could give on credit certain amount for salaries of the staff etc. before 31st March. The House can then have ample time to go item by item and reduce or increase the demand. The executive will then have no alternative but to accept it.

Dr. P. S. Deshmukh : Is that your object?

Shri R. K. Sidhva : I have much more in view than this but all could not be incorporated in the Constitution. Fundamentally you are opposed to this provision. From your speech, I felt that you wanted the *status quo* to remain I object strongly to it.

Dr. P. S. Deshmukh : That was not my idea.

Shri R. K. Sidhva : If you cannot express your mind clearly I cannot help it. If that was not your idea, I am glad.

This is the part of the important question which was held over last time. The House should unanimously pass the amendment moved by Dr. Ambedkar. I welcome the amendment.

Prof. K. T. Shah (Bihar :General) : Mr. President, the amendment proposed by Dr. Ambedkar makes certain innovations in the practice and procedure in dealing with the Budget, to which we have been accustomed all these years. This is what I may call the mechanics of getting the Budget passed through Parliament; and as such a matter of procedure rather than of principle.

Before I speak on the specific changes made, may I draw the attention of the House to certain basic principles of the Constitution, which are implied in this amendment, and which seen to be liable to misunderstanding if they are not properly clarified?

I think it is a perfectly sound principle to urge that there shall be no taxation without a law imposing it. The Constitution should lay down an equally sound proposition that there should be no tax levied except with the authority of the legislature. It is one of the basic principles of our Constitution. It is a very sound principle to incorporate in the Constitution.

Secondly, there shall be no expenditure without also the authority of Parliament by an Act and not merely by resolution of the Legislature. That is no say, there would be two Acts, a Finance Act, and an Appropriation Act, both separately, one sanctioning and authorising the raising of revenues for the year, and the other permitting expenditure by authority of an Act of the Legislature.

These are sound principles implicit in this amendment. The other parts of the motion, that is to say, the introduction of Votes on Account and Votes on Credit appear to me to be matters, more of procedure, or practical detail, or parliamentary time-table, to get the Budget passed through Parliament in due time. This may, I think, be more conveniently left to Parliament to look to, and not included as intrinsic parts of the Constitution itself.

I am afraid there is a tendency, inconvenient at times, to burden the Constitution with too many details, which, in a changing world and under changing conditions, may become very difficult always strictly to apply.

The question moreover that the Vote on Account or Vote on Credit or Estimates may be introduced as and when and where may be convenient is in no way undermining the sovereignty of Parliament as a watch-dog of the financial administration of the country. That all of us accept. But the actual experience has been that members more often talk rather than watch.

There is no provision except for talking. To scrutinise or watch the finances of the country is, under the present time-table, almost impossible to provide. The

Constitution, however, which is an act of the sovereign people, in the exercise of their absolute sovereignty need not, in my opinion, go into the details of the various votes and procedures by which the several items may be provided for.

An Act of Parliament, however, the Legislature's authority given in the most solemn form of an Act, is indespensable and absolutely necessary. But in may also be provided for by the rules made by Parliament, so that the various stages of the Budget, and the various results of the Budget, presented to the House, in the shape of the Finance Act or Appropriation Act can be regulated so as to keep pace with the requirements of the country and also maintain the supremacy of Parliament in enacting such legislation.

I am afraid some members seem to have misunderstood the nature and purpose of this amendment when they declared that, by such provision as we are now considering the power of the executive would be reduced and the power of the legislature would be increased. There is no such suggestion in this amendment. The executive power will not be increased or diminished whether or not you accept this proposition. Parliament's power to superintend, to scrutinise, regulate and determine the financial administration as indicated in this amendment must be an essential safeguard for the sound administration of the national finances. But I repeat that it is not necessary to burden the Constitution with these things. And that too from a somewhat different angle than is customary in the British model from which we seem to be copying these things as pointed out by Dr. Ambedkar. But even the copying also is not complete and exhaustive, inasmuch as the "Votes on Credit" and Estimates for instance have been omitted. They may become necessary not only in hour of emergency, but even in any ordinary commercial or economic crisis-and consequently the practice of presenting the Estimates in order to allow the House to consider the policy of the various spending departments is also not mentioned in this mechanical stage of Budget passing through the legislature hereafter.

The nature, moreover, of the two funds mentioned specifically in the amendment-Consolidated Fund and Contingency Fund-leaves, in my opinion, some room for clarification and proper understanding. A Consolidated Fund has become necessary from the standpoint of certain items or expenditure, which are not open to annual voting by the express desire of Parliament itself, such as the Civil List, the judges' salaries, interest on the National Debt, and so on. Now, the idea that the Consolidated Fund is, as suggested in this amendment, a mere collection of the revenues collected may be all well in its place; but the origin and nature of the Consolidated Fund must also not be lost sight of.

As regards Contingency Fund, I am afraid I must plead ignorance of that Fund. I do not remember if in the British practice there is any corresponding Fund. Even if it is, I feel it is liable very much to be abused under circumstances that we can all imagine. I see therefore no reason why we should make provision for such a Fund in the Constitution itself. If and when it becomes necessary for Parliament, in the event of there being special requirements or special emergency to establish such a Fund. I take it that Parliament is supreme and sovereign enough in these matters to be able to do so. There is no necessity for us to provide a constitutional authority in the basic law of the land, to enable Parliament to do so, because Parliament would have supreme financial authority. All the various, necessary stages of the procedure and the time table would and should be regulated by Parliament whether it is the necessity for a Contingency Fund or any special provision that any emergency may require for the moment. I do not think it, would be wise to tie down the future Parliament by constitutional provisions, even if they were to have the appearance of a special facility. I am afraid this is likely to be abused and so I feel inclined to propose it.

On the whole, therefore, the changes made, while improving the procedural side, appear to me to burden the Constitution too much with details, which are liable to detract attention from the basic principles that are perfectly sound that liable also to create occasions for future abuse against which we cannot be warned too much.

Shri Jagat Narain Lal (Bihar : General) : Sir, I have been trying to follow the arguments of Dr. Ambedkar in support of the amendment and also the vehement eloquence spent upon it by Mr. Sidhva. I feel that Dr. Ambedkar has given us the history and the origin of the Consolidated Fund as it came into existence in the United Kingdom. I do not know if that history has any relevancy to the method of expenditure, the budget expenditure, which is followed in our country and which has been followed for years past. I do not think there has been felt any such difficulty or inconvenience which was felt in the United Kingdom when that Consolidated Fund was brought into existence and he has given the reason for the origin of that fund, *viz.*, the misuse by the Crown and so on. I was surprised to hear Mr. Sidhva arguing so eloquently in favour of this change on the ground that it would create watch-dogs for the budget. If he were really to understand what a Consolidated Fund or a Contingency Fund is, I think he will be arguing just in the reverse way. I will read from a House of Commons publication called "Manual of Procedure for the Public Business", page 164 :

> "The object of a consolidated fund is to empower the Treasury to receive out of the Consolidated Fund for the service of the Departments for whose use money has been granted such sums as may be required in anticipation of the final sanction given by the Appropriation Act."

This is just the reverse of what he thinks. What the amendment seeks to do is only to substitute the words "Consolidated Fund or the Contingency Fund" for the words "revenues of India" in clause (1) of article 90. Instead of the revenues of India out of which expenditure could be met only according to the sanctioned budget, a Consolidated Fund or a Contingency Fund would be created, and the purpose is that the Government could go on spending out of the Consolidated Fund or the Contingency Fund without any difficulty. I wonder and I would like Dr. Ambedkar to think over it, whether it is at all necessary. Firstly, as Dr. Deshmukh has said, the term "Consolidated Fund" will be very much misunderstood. The term "revenues of India" is very simple and has certain implication. The budget procedure as followed in the Central Legislature and in the Provincial Legislatures has been understood by all. The term "Consolidated Fund" is apt to be misunderstood, and especially when this construction is going to be put on it that out of this you will have the right to spend as you like even when the Appropriation Act has not been passed, it is liable to be misinterpreted and will lead to a good deal of hostile criticism. I would therefore like Dr. Ambedkar to consider whether it is at all necessary to have it here and whether we could not retain the article as it stands. I do not like to say much more on this amendment, and I think that what I have said will be taken into consideration.

Prof. Shibban Lal Saksena : Mr. President, Sir, I have been surprised to hear the speeches of the two friends who have raised some doubts about the proposal of Dr. Ambedkar. I have very carefully read all the amendments of which he has given notice and also studied the practice which obtains in the British Parliament. Sir, I have been in the U. P. Provincial Assembly for about ten years and in this Assembly for the last three years and I have seen so many budgets passed, but I do not remember one single item of any "single estimate" in the budget proposals either in the provinces or in the Centre ever changed. What actually happens is that the Finance Ministry brings out a printed book containing all the detailed estimates. When the budget is presented before the Provincial Legislature or the Central Legislature, copies of the printed estimates are distributed to the members and we are allowed only to ventilate our grievances, to say something about each item and then to pass the whole budget by a certain fixed date. I ask the House whether we, who are send here by the country to act as the watch-dogs of their money, are merely here to put our seal of approval on what the Finance Ministry puts in that booklet known as the "estimates"? I feel, Sir, that Dr. Ambedkar has done a very great service by bringing in even at this late stage these amendments which will put the procedure in our Parliament on a par with the position in Great Britain. Probably we have been so much accustomed to the procedure adopted here that we have almost fallen in love with it. We still cannot get out of the habits of slavery of the past so many years and we think what has happened is what should continue to happen. If only we tried to review how the British Parliament is enabled to examine each single item in the estimates, then I think we shall realize that Dr. Ambedkar's amendments are very sound and the House must give him wholehearted approval. Sir, after the King's speech in the British Parliament at the commencement of the year, the House of Commons fixes a date for resolving itself into a Committee of Supply and so consider the estimates which are presented to it. The estimates are presented in our parts, the estimates for the Navy, estimates for the Army, estimates for the Air and Civil estimates, so that the House can examine them separately. The procedure they follow is this. The House resolves itself into a Committee of Supply and a motion is made : "Mr. Speaker do now leave the Chair". On that motion a general debate follows on each estimate for one or two days and then all the estimates are discussed in a general manner by the House. After that when that motion is carried the whole House resolves itself into a Committee of Supply.

Dr. P. S. Deshmukh : Has may honourable Friend seen any such amendments in the proposed amendments?

Prof. Shibban Lal Saksena : I will tell you that this Constitution need only provide those amendments which are necessary to enable the Parliament to adopt the British Parliamentary practice. It is not necessary that every single thing which is done in Britain should be brought into the Constitution. These procedural matters will be provided for under the rules of Parliament, but those portions of the procedure which are necessary to be incorporated in the Act of the Constitution are being provided for in these amendments. Therefore, Sir, this amendment is essential if we want to adopt the system which prevails in Great Britain.

Then in the Committee of Supply the period for consideration is fixed as 20 days, and the estimates are closely examined and discussed. In the Committee stage every member has got the right to speak as many times as he deems necessary. At present while the Budget is presented, we cannot speak more than once and if we really want to change the estimates, we must be able to speak a number of times. Thus, when the House resolves into the Committee of Supply, the whole thing is discussed threadbare. It must be remembered the House of Commons meets for about nine or ten hours a day and for twenty days in all, so that almost every single estimate is closely scrutinised and examined and thereafter on the twentieth day, the whole thing is passed and then a report is submitted to the Speaker and the House again meets to consider the report and there may again be a debate. Thus for each estimate there is a debate for one or two days at the beginning, then there is the detailed consideration of the estimates by the Committee and there may again be a debate at the report stage, so that in this manner the whole thing is discussed threadbare and thus the necessary changes are brought about in the estimates. The members of Parliament do not accept everything that the Treasury place before them, but they alter them according to the needs of the country. After the Committee of Supply, there is the Committee of ways and means. The Committee of supply votes the expenditure and the Committee of Ways and Means discovers the methods to provide for that expenditure by changing the Income-tax laws, etc.; that also has got a limited time of ten days and in that time the proposals for new taxation are examined carefully and after the Committee of Supply has reported, the Committee of Ways and Means meets and they also pass those estimates. Thus, Sir, the whole thing is properly scrutinised and then passed. As I said there are four estimates and there are thus about twelve debates in all in the open House, besides detailed scrutiny in the Committee of Supply and the Committee of Ways and Means, so that you can understand that the Parliament does not spend a single pie which has not been carefully considered and voted upon by the Members of Parliament. Every one knows that here in India at present we finish the whole general discussion and the discussion of cut motions in seven days and the entire budget is then passed finally and we never have again an opportunity to go through the estimates and ultimately the guillotine is applied and the whole thing is passed. This really means that the Assembly does not get the opportunity to perform its duties and whatever the Ministry of Finance says is carried. I am therefore extremely grateful to Dr. Ambedkar and I hope posterity will be grateful to him for these amendments through which he has provided in the Constitution for real power to the Parliament over the Exchequer. The Parliament will henceforth be able to scrutinize the estimates and even to alter them by their votes. Now, Sir, this elaborate procedure takes time and therefore, there must be a Vote on Account, so that during the time that Parliament scrutinizes the expenditure, Government may carry on its work. For that the Vote on Account is passed. I do not think that the Vote on Account should be rigid and this is provided for in the amendment which Dr. Ambedkar has moved. It is an important thing and it is essential to the Constitution, and I do not agree with Prof. Shah that it is one of detail. Therefore I fully support that portion of the amendment.

Then, Sir, when the House of Commons meets there are also supplementary estimates for the previous year which are discussed along with the Votes on Account. By the 31st of March, the House of Commons passes the Consolidated Fund Act, with the result that this Act gives the Government authority to carry on the Government until the Appropriation Act is passed. It must be remembered that at present we are only about a hundred and fifty members in the Parliament, I mean those who attend it. In the new House of the People there will be five hundred members and if only seven or eight days are allowed for discussion of the budget in Parliament, nobody will be able to say anything about it. I therefore think that by adopting the provisions we are here making, we shall bring our procedure exactly in line with that of the British Parliament and in that way we shall be able to examine every portion of the Budget in detail and then give our consent.

Then, Sir, as I have said, there is the Consolidated Fund Act, and then there is the Appropriation Act. The Appropriation Act, in fact, is the document in which the amounts to be spent from the Consolidated Fund are included, so that the Appropriation Act is really the authority of the Parliament under which Government can spend any money.

That is the scheme of things which, as I understand it, Dr. Ambedkar has placed before the House. I hope the House will be grateful to him for the labour which he has taken over the matter and for the wonderful manner in which he has incorporated this Scheme into our Constitution. Although we were copying our democracy from the British model. we had so far left out the kernel of than system, for the perfect control of popular representatives over the finances is the essential feature of British democracy. This scheme of Dr. Ambedkar will now enable us to model our Parliamentary procedure on the British lines.

In this connection I wish to mention that in Britain the financial year commences in April. I wish to state that the months of May and June are very hot here. We may also change the financial year from the 1st of November to 31st October, so that we can finish our Appropriation Act by the beginning of March or April and we can have more time to discuss all matters in detail. I therefore propose to bring this suggestion before the House when the proper times comes, by an amendment. I think in our country it has been the practice from times immemorial to commence the financial year from the Dipawali which falls about the first of November.

I heartily support the proposals of Dr. Ambedkar and I hope the House would be grateful to him for these proposals.

Shri B. Das : Mr. President, Sir, I join in the plethora of congratulations which have been showered on Dr. Ambedkar. Sir, the House is indebted and we are all indebted to Dr. Ambedkar, my honourable Friend Mr. T. T. Krishnamachari and other members of the Drafting Committee for evolving a new draft to suit the tempo of Parliament during the last two years. We were very unhappy at the way in which budgets were introduced and passed. We were very unhappy at the close imitation of former budgets that were being presented by alien rulers to the former Assembly. I am grateful to Dr. Ambedkar for nothing how 118 crores of Rupees were passed as supplementary estimates on the last day of the year 1948-49.

That there should be a certain amount of money "charged" to the Consolidated Fund of India is essential to maintain the credit of India and soundness of our India national finances. The several items have been detailed in article 92 and there is no use the Parliament trying to vote down. Parliament ought not to reduce those charged items that will be placed by the President or the Finance Minister before it. Some of those charged items have been bequeathed to us by those alien rulers. They did commit us to an enormous debt and we are paying the interest charges on that debt. The Parliament will be justified in condemning the past Rulers for their extravagance and for their large public debt. But, as those debts are now national debts, interest charges on those must be paid. Similarly, the establishment charges of the President, the Supreme Court, the High Courts, the Auditor-General, and one or two other items should be charged to the Consolidated Fund. The future Parliament will be justified in criticising any extravagance in any of the charged heads of expenditure; but it will be improper for us to reduce them, or to treat them as voted items of expenditure. Therefore, I think, in the present juncture of our national finance, such a system of financial control should operate.

I could not follow why my honourable Friends Professor Shah or Shri Jagat Narain Lal fought shy over the word Consolidated Fund or the Contingency Fund. In the past we were committed to large capital expenditure. Money is voted; but the money is never spent during the year. If there is a system of creating this Contingency Fund of India, the moneys voted on these particular items of capitals expenditure, whether they are multi-purpose projects or heavy industries, may be consolidated and spent it the next year or years to come. I believe that is the idea of creating this Contingency Fund, which is a carry forward fund apart from the Consolidated Fund for the year under review before Parliament.

Sir, we have to evolve our own traditions. If I have revolted previously against the mention of British Parliament or Canadian Parliament or any Dominion Parliament on the floor of this House, I do not fight shy today to follow the British system of financial control in India. We have followed, and we were forced to follow it, under the foreign rulers. Today, we are just trying to modify it to suit our new status and at the same time to exercise full financial control. Dr. Ambedkar has already referred to the point that Parliament is given power to extend the time for discussion of the budget. Mr. Sidhva also criticised on the point. But, it is not the discussion in the Parliament, talking about small things, forgetting that we are discussing the financial estimates presented by the Finance Minister, the important part of the Parliament's duty. It is better that when a Budget is introduced in Parliament, the House resolves itself into an Estimates Committee to which my honourable Friend Prof. Shibban Lal Saksena has already referred. In the Estimates Committee, without discussing the principles of finance and expenditure, we may go into the items of expenditure of every Ministry so that we may control their extravagance of budgeting or their Utopian ideas of planning over which large sums have been spent in the past. I hope in the future no expenditure on Utopian planning will be allowed to the various Ministries. In the Estimates Committee, where the whole House has resolved itself into a Committee-I again apologise if I quote the British practice-the President will have to retire and a Chairman like my honourable Friend Pandit Thakur Das Bhargava will have to preside. In that Committee we may discuss every item of expenditure and not leave it to the Departments to appropriate or reappropriate as they have been doing in the past. If that Estimates Committee comes into functioning soon after the declaration of the Republic of India early next year, much money will be saved. It is not a surprise, but I wish to repeat today that the Government is a bankrupt Government which borrows money, some 26 to 28 crores of Rupees to run its normal expenditure for the year 1949-50. That means every year a crore of Rupees is being added to the interest charges which under this article are going to be a charge on the Consolidated Fund of India. The House will be chary to permit its future Finance Minister or the present Finance Minister who will be naturally functioning in the next year to incur loans to meet the normal expenditure. We know in the last two years the budgetary affairs of the Government of India are running at a loss of 150 to 200 crores if we include the capital expenditure also. If capital expenditure is properly designed, it will pay its own way. But today there is a huge staff under the Government and extravagant ideas of expenditure in the various Ministries and they function not as one Government but each Ministry is functioning as an autonomous Ministry defying the Finance Ministry or the Auditor-General. I am glad that the Auditor-General's position has been assured by the Constitution, but it is for the cabinet of the Government of India to see that the Finance Ministries. It is not done today properly and therefore every year the unproductive debt of India is going up by 20 or 30 crores-it was 288 crores in 1938-39 and it is 900 crores today-and it is disgraceful to us if we borrow money and live on it and show our grandeur of administration under independent India throughout the world or inside the country. Sir, I again feel happy being always interested in the national finances and in proper financial control of expenditure of the Government of India-I again feel happy that these articles, as now going to be amended, will be fool-proof and the Ministers will not play truant and will not be extravagant in expenditure. I again congratulate Dr. Ambedkar over it.

The Honourable Rev. J. J. M. Nichols-Roy (Assam: General): Sir, before I speak, I would like to ask Dr. Ambedkar some clarification of certain points. Does this amendment force the Government of India to have a fund which is to be called a Consolidated Fund? Or is it an enabling amendment?

The Honourable Dr. B. R. Ambedkar : It is already there. It is only a change of name.

The Honourable Rev. J. J. M. Nichols-Roy : Then there must be an Appropriation Act passed in a Legislature and that must be passed in the same session?

The Honourable Dr. B. R. Ambedkar : Yes.

The Honourable Rev. J. J. M. Nichols-Roy : That will take time no doubt. Sir, in view of this I would make a few remarks. There has been a good deal of criticism regarding the expenditure of money and waste of money by the Ministries of the Government of India or it might be by the Governments of the provinces. I suppose the principles in this article 90 will apply to the provincial Governments also-the same principles are in article 174.

The Honourable Dr. B. R. Ambedkar : Yes.

The Honourable Rev. J. J. M. Nichols-Roy : A complaint has been made here in this House that in the Legislatures no time has been allowed for the discussion of the cut motions or the demands for grants. That may be a very just complaint but that may also be avoided by giving more time to the Legislature. Why can't the Legislatures have more time for discussion of cut motions? The rules of legislatures can be changed in order to allow more time for discussions *re.* cut motions and demands. Why should there be any other method different from what we have had all these years in this country in order to give more time to members to discuss demands for grants? The Appropriation Act to be passed will take some time and it may be inconvenient for provincial legislatures to do that. Some provinces will find it very difficult to pass the Act in the same session, but it is provided by the Votes on Account that a lump sum amount may be provided by the Legislature for meeting the expenditure for some time. But that also will be inconvenient to some provinces. In Assam sometimes we have had to shorten the days fixed for the budget session. Many members wanted to go back to their work. In our last budget session we had to curtail a few days by the agreement of the members of legislature.

Shri L. Krishnaswami Bharathi (Madras: General): If they are unwilling, they have no business to be members of the House.

The Honourable Rev. J. J. M. Nichols-Roy : In Assam we have had some times to curtail the days which have been provided for the work of legislatures. There are different conditions in different provinces. Therefore to say that there must be another method of allowing the legislature to extend to days for discussion of the cut motions and demands for grants-seems to be unnecessary. This should not be a reason for any change at all. Then there has been also some criticism about the waste of money by the Ministries. I do not believe that such an accusation is based on facts. This accusation cannot be made of the Ministry of our province at least, and I believe of other provinces also. There is a demand from the Legislature to spend more money for the good of the people of the province and we are not able even to meet the demands of the Legislature on account of the lack of money in the province, and to say that the Ministry is wasting money is rather unreasonable; and to base any action of ours here on that supposition is, to my mind, wrong altogether. I think that this system which we have had so far for the Governor of a province of the President to certify will not in any way affect badly the administration of revenues of the country, but if this Appropriation Act is not forced upon a province but it is only an enabling Act in order to allow a province if it wants to pass such an Act or if it wants to continue the present condition, to do so, then there would be no objection at all. I want to ask Dr. Ambedkar whether that is the position or whether every province will be forced to pass an Appropriation Act in order to appropriate money for expenditure.

The Honourable Dr. B. R. Ambedkar : The Appropriation Act will be compulsory, but the Vote on Account is optional for each Ministry. If any Ministry wants money on Vote on Account it may ask the Legislature.

The Honourable Rev. J. J. M. Nichols-Roy : Suppose the Ministry in Assam or in any province wants to follow the same procedure that we are having now, with the certificate of the Governor, will it be open to it to do so?

The Honourable Dr. B. R. Ambedkar : There is no certificate at all of the Governor now.

Shri L. Krishnaswami Bharathi : There will be no difference in the procedure.

The Honourable Rev. J. J. M. Nichols-Roy : There will be difference inasmuch as it means so much time. In my opinion I think this will not be necessary at all. It will mean time and will be a waste of public money for the Legislature to continue when it is not necessary for it to continue. It may be necessary at the Centre but I do not think it will be necessary in all the provinces to have this. For the provinces there must be permission to continue the present system or to adopt the system which you have proposed for the Centre.

Shri T. T. Krishnamachari : Mr. President, Sir, I am glad that the House has taken a cue from Dr. Ambedkar, and taking advantage of his lucid explanation of the changes that the Drafting Committee have made in the financial provisions both at the Centre and in the provinces they have discussed the whole scheme threadbare. Though we have not yet reached the provisions in which the major changes have been made, I take it that when discussion of the various clause take place these arguments will not be repeated since the House has fully discussed the whole scheme in all its aspects. I am also happy to see that this new scheme, if it could be called, has had the enthusiastic support of my honourable Friend Mr. Sidhva and my hourable friend Prof. Shibban Lal Saksena I do feel that they have understood the scope of these new amendments correctly and they find in them the essentials of those elements which can be developed if Parliament so wills so as to provide effective control by the representatives of the people over expenditure by the executive. I would at once say that that was the intention of the Drafting Committee in making these changes.

I also listened with considerable respect and attention to the speeches made by my honourable Friend Dr. Deshmukh as also the short speech made by Pandit Jagat Narain Lal. So far as Dr. Deshmukh's criticism is concerned it seems no revolve rather on an affection for the *status quo* than on a positive objection to the new provisions that have now been suggested by Dr. Ambedkar. He sees no harm in the *status quo* continuing and the revenues of the Government of India being called the public revenues of India; and he sees no particular in the new provisions. On the other had he see a lot of trouble in the introduction of the words 'Consolidated fund' and 'Contingency Fund'. I am afraid if he holds those views even after the explanation given by Dr. Ambedkar, I will have to leave it at that rather than attempt to convert him. If he had understood Dr. Ambedkar aright he would have realised that the introduction of the words Consolidated Fund is merely a change in name but is nevertheless a change that is appropriate at a time when we are framing a Constitution for ourselves. Dr. Ambedkar has very rightly called the attention of the House to an analogous provision in other constitutions, to the Canadian Constitution where article 102 refers to the Consolidated Revenue Fund, as it is so called there, and to article 81 of the Australian Constitution where a similar reference is to be found to a Consolidated Revenue Fund. There is also a similar reference, though in a different way, in the South African Constitution. But if anybody goes into the history of the Consolidated Revenue Fund as it began in England I would at once say that we have no idea of following the implications of that history because the Consolidated Fund of Great Britain came into being some time in 1787 and the only change it made was a departure from the practice obtaining before that time, namely, that particular taxes were appropriated to particular heads of expenditure. At that time the whole of the public account was brought under one scheme under the head the Consolidated Fund and it was decided that particular taxes should not be appointed to particular heads of expenditure but that the whole expenditure should come of out of the Consolidated Fund and be appropriated to different heads, of expenditure. Therefore, it has a historical background which has no validity so far as we are concerned.

Dr. Ambedkar has very rightly pointed out that there have been occasions when our rulers in the past had thought of making a change in the accounting procedure and also in the financial provisions so far as the Legislature was concerned, and it was met by serious opposition from the executive of the day. I have gone through the discussions at various stages before the passing of the 1935 Act and at every time when a change in the procedure was suggested it was merely met by an argument similar to that put forward by my honourable Friend Dr. Deshmukh, namely, that the existing provisions were all right in practice and no change need be made. But I would at once say this with my experience both of the Central budgeting and also Provincial budgeting: I have always felt that the procedure followed was one of the most lax in the world. In fact, so far as the Centre is concerned, the demands are passed by the Legislature-at any rate some of them are discussed and so far as the others are concerned the guillotine is applied-and a consolidation of those Demands is done by means of the Authenticated Schedule presented to the House under the signature of the Governor-General. As Dr. Ambedkar has very rightly pointed out, in the New Constitution the responsibility will be taken over by the Parliament itself by providing for an Appropriation Bill in which Parliament will give its *imprimatur* to a summary or a consolidation of its decisions while passing the various Demands. In the Province also there is a similar procedure of placing before the Legislature an Authenticated Schedule. But while at the Centre some discussion on the financial administration and on the general administration is made during the time of the discussion of the Finance Bill, because we have provision for an annual Finance Bill for the reason that the Income-tax proposals should necessarily be brought up every year and the Schedule of rates must be sanctioned by the Legislature every year-we have no such provision in the provincial Legislatures. In this connection I was happy to see a Provincial Minister taking interest in these new proposals. So far as the Provinces are concerned there is no provision for discussion of the general policy of the Government similar to what takes place in the Finance Bill discussion at the Centre. There might be a taxation legislation if a new tax is to be levied-often times there is. But it is not a consolidated statement of providing the ways and means for a particular year for the provincial administration, and therefore it does not provide for a general discussion of the financial set-up or the financial administration of the Province concerned. If, as Mr. Nichols-Roy wants, these provisions should, if necessary, apply only to the Centre and not to the Provinces, then the lacuna which I think is more serious in the Provinces will continue to exists, which is very undesirable. What is now sought to be done, as Dr. Ambedkar has explained, is that we shall have an Appropriation Bill. We have not made provision for a Finance Bill in the Provinces-it all depends on the Province to make an appropriate change if it so desires.

But in regard to one particular objection made Mr. Jagat Narain Lal wherein he objected to a difference in the wording of the amendments-No. 5 in List No. 1 in the name of Pandit Kunzru and the amendment moved by Dr. Ambedkar - I would ask him to study the amendment in its context. Though we have discussed the entire scheme that is now sought to be introduced, the field covered by the scheme that is that subject of discussion is very limited. It is in regard to terms of sub-clause 1(c) and 1(d) of article 90 where there is an enlargement of the definition of a money Bill and in defining a money Bill it is perfectly right to say that it includes the custody of the expenditure out of the Consolidated Fund of the Contingency Fund, because various other items are also enumerated and certainly the word "or" is perfectly correct in the context and there is no place for the word "and".

There is only one point which I would like to stress at this stage and it is this. There is no compulsion in this scheme, excepting in two matters; one is in the change of the name of the public revenues of India-if it is made in the Centre it has to be made in the provinces as well so far as the public revenues are concerned. The second thing is that instead of the authenticated schedule presented to the Legislature by either the Governor-General or the President, or by the Governor in a province we shall have an Appropriation Bill which will be passed by Parliament or the appropriate legislature as the case may be. So far as the other provisions are concerned, they are purely optional. If it is the intention of a particular Provincial Government to maintain the target date of 31st March for the passing of their budget provisions which has the concurrence of the legislature concerned there is nothing in this particular series of amendments to prevent a province from doing so. If Mr. Nichols-Roy wants his province to stick to the present system, they may do so. There is absolutely no obligation for them to change the system. If they find that the Legislature is tractable enough to say that they will not take advantage of these enabling provisions that they will discuss the entire budget scheme but the 31st March and expect the Government of the day to put in an Appropriation Bill which will also be passed on the 31st March, there is nothing to prevent them. But what we have sought to do by the amendment in article 95 by introducing the Vote on Account is merely that the inexorable necessity of passing a budget on a particular day will not be there if the Parliament or the legislature of a State so wills it.

The House might ask for how many days do you want to extend the budget discussions. That is a point that might be raised. But we wish to leave it entirely to

Parliament or the legislature concerned to fix the number of days that the budget discussions can go on after the beginning of the financial year; and for the purpose we have sought to introduce an enabling provision in 98(A) of which Dr. Ambedkar had already made mention, which provides that the Parliament can make any law relating to the financial procedure and it may be that the Parliament will follow the same system as in England by fixing a day in August by which the budget must be passed, or it may be that Parliament might consider one month's extension adequate. It is left to the Parliament of the future, either to make that change or to make no change, and leave it entirely as it is. The same thing applies to the provinces. Therefore this provision of a Vote on Account is an enabling provision and it is not a compelling provision. It gives Parliament room for escaping the rigidity of a target date. Members of this House might have been aware that a similar rigidity exists in regard to budget procedure in the French Parliament, and last year owing to the political difficulties which they had, made them stop the clock in Parliament House just before it reached the dead line. The clock was stopped just a few minutes before 12 o'clock at midnight on the last day of the year though it does look absurd that merely for the reason that the clock stopped it can be taken for granted that movement in the whole world had stopped! Such devices will not be necessary and the new scheme will be flexible enough for Parliament to make suitable arrangements. The procedure to be followed for a Vote on Account will be very much the same as for an Appropriation Bill. Parliament might make the necessary legislation undertaking that such and such shall be the procedure to be followed in such matters. It can lay down that the executive must present the demand for a Vote on Account, or call it a Consolidated Bill No. 1, to cover expenditure for two months. All the heads represented in the budget demand must be represented there and the demand must be *pro rata* for the period covered. It might say that no new expenditure must be incurred during this period. All these conditions can be imposed by Parliament, or the Parliament might decide that it does not propose to take advantage of the new scheme but would prefer to follow the existing practice. At any rate the next Parliament may not and the budget discussion will go on as it is at present.

With regard to the other objections, I would say at once that most of us responsible for this new scheme were chary of making any change which was a change having far-reaching consequences. We feel therefore that we have not made any serious departure. At any rate there will be no obligation for the Parliament at the Centre or the Legislatures in the Provinces to make any serious departure and they could continue the existing scheme, if they wish to do so. If Parliament wants to exercise full control, as it ought to-and so should the State Legislatures-there is room for them to take advantage of the powers given to both the State Legislatures and Parliament by means of these amendments to exercise that type of control which goes along with any decent democratic system of government. I think that the various points raised by the speakers I have tried to meet, at any rate in part, and the rest will be probably met by Dr. Ambedkar in his final reply. After that there should be no need of further discussion so far as the general principles of the scheme are concerned. Sir, I support the amendment of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : I do not think I can add anything usefully to what Mr. T. T. Krishnamachari has said. I should reserve my observations for the various amendments which will come up as I have no doubt the same arguments will be put forth.

Mr. President : The question is:

"That in clause (1) of article 90, the word 'only' be deleted."

The amendment was negatived.

Mr. President : The question is:

"That at the end of sub-clause (a) of clause (1) of article 90, the words 'duty, charge rate, levy or any other form of revenue, income, or receipt by Governments or of expenditure by Government' be inserted."

The amendment was negatived.

Mr. President : The question is:

"That in sub-clause (e) of clause 1 of article 90, for the words 'the increasing of the amount', the words 'varying the amount of, or abolishing' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That for sub-clause (c) and (d) of clause (1) of article 90, the following sub-clauses be substituted:-

> '(c) the custody of the Consolidated Fund of the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such fund;
>
> (d) the appropriation of moneys out of the Consolidated Fund of India;'"

The amendment was adopted.

Mr. President : Now I put amendment No. 6 to vote.

The question is:

"That in sub-clauses (e) and (f) of clause (1) of article 90, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

The amendment was adopted.

Mr. President : Now I will put article 90, as amended, to vote.

The question is:

"That article 90, as amended, stand part of the Constitution."

The amendment was adopted.

Article 90, as amended, was added to the Constitution.

Mr. President : Article 91 was passed the other day.

Therefore the House will take article 92 into consideration.

Article 92

Prof. K. T. Shah : Sir, I move:

"That in clause (1) of article 92, after the word "President', the following be added:-

> 'or the Finance Minister acting under the authority of the President, specifically given for the purpose'; and for the words 'both the Houses' the words 'the People's House' be substituted and after the words 'estimated receipts' the following be inserted:-
>
> 'On revenue account as well as from borrowed moneys, or transfer of sums from other accounts to Revenue Account.' "

Sir, there are two points in this amendment which I would like to place before the House. In the first place the clause as it stands makes the Budget Presented by the President only, as it were, or caused to be presented to Parliament by the President. The House has accepted the principle that all executive action of the Government of India shall be always in the name of the President. Accepting that, it does not still seem to be appropriate that, in this matter, the President should be made to figure as the authority for getting the Budget presented to Parliament. The obvious person who could and should act in relation to this would be naturally the Minister in charge of the finances of the country. He is in the House and is in direct touch with it and with the financial administration of the country. The room that this article provides for any alternative or other Minister for the matter, to come before Parliament seems to me improper and ought not to be permitted.

Retaining the sense of the principle previously accepted in the article whereby the Government of the country is to be carried on in the name of the President, I have nevertheless tried to improve it by making the Finance Minister specially, though acting with authority given for that purpose to be in charge of the Budget. Speaking for myself I would have liked the President to be wholly excluded from acts of this kind. Complete and exclusive supremacy and authority of Parliament over matters financial should be left unquestioned. As it is, however, I would try to meet the principle of the previous article or the sense of it by requiring that the Finance Minister should, for this purpose, have specific authority from the President, and therewith do the needful in the Houses of the People.

This may seem a mere matter of procedure, or a matter of nomenclature. I hold, however, that it involves a great principle of Parliamentary democracy and responsible government inasmuch as it excludes the executive head from taking part even by implication in matters of this kind.

The second principle that is involved in my amendment which is of greater importance is the association with the Budget.....

Shri L. Krishnaswami Bharathi : On a point of order, Sir. Is this amendment in order, because the executive function of the Union is to run in the name of the President? The Finance Minister as such does not come into the picture. The amendment is that the Finance Minister shall lay the Statement before Parliament. It runs counter to the very scheme of the Constitution under which all things are done in the name of the President. There is no point in the amendment that the Finance Minister should come into the picture. Article 42 says that the Executive Head of the State shall be the President.

Mr. President : He started by saying that he was aware of that principle, but in spite of it, he thinks that the Finance Minister should also come in.

Prof. K. T. Shah : The second point is much more important, inasmuch as the financial supremacy of the People's House should, in my opinion, be asserted categorically, and no room left for any sense of equality between the two Chambers so far as matters of finance are concerned. As the article stands, it suggest a position of equality between the two Houses of Parliament in financial matters, which I think is fundamentally opposed to the basic idea of the Constitution as we have provided it so far. Hence it is that I, by this amendment, suggest that this matter of finance must be left entirely to the House of the People; and, if necessary, as a mere matter of information, the other House may be informed only, just as the public and the various Departments of the administration are informed and supplied with copies of the Budget. As a matter of constitutional right and constitutional requirement or policy, I think it would be but correct and proper that the only body interested in and concerned with finance should be the People's House. If you desire the supremacy of the popular representatives of the people to be unquestioned in matters financial, then I think this amendment, which provides for the Budget to be presented only to the People's House, should be unopposed. The other House may have joint and equal association in ordinary legislation, and may even be entitled to suggest some modification, if they so like, in matters financial. But theirs cannot be the last word. The pre-eminence of the House of the People, the primary interested and concerned authority of the People's representatives in matters financial, should be left utterly undoubted.

I therefore make this amendment affecting not merely the revenues, but all items of expenditure whether from borrowed funds, or transferred from other funds, which are to be utilised for the service of the country.

I suggest that the amendment I am proposing here is in full accord with the basic principles of the Constitution as we have been developing them and as such would be acceptable to the House.

Mr. President : Will you move the other amendments also? 1694 is already included.

Prof. K. T. Shah : Sir, I move:

> "That in clause (1) of article 92, after the word 'expenditure' the words 'whether charged upon the revenues of India or on other account' be added."

Sir, this is in tune with the general line of argument I am advancing. There shall be no discrimination, from the standpoint of presenting to the House of People all items to be spent on account of the country's services whether they are charged upon the revenues or on the Consolidated Fund or on the ordinary Revenue Account. I hope the amendment will be accepted.

Mr. President : There are two other amendments in your name-Nos. 1697 and 1698

Prof K. T. Shah : I would like to move them.

Mr. President : You can move them on Friday.

The House stands adjourned till 8 o'clock on Friday.

The Assembly then adjourned till Eight of the Clock on Friday the 10th June, 1949.

----

*[Translation of Hindustani speech

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VIII

Friday, the 10th June 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr President (The Honourable Dr. Rajendra Prasad) in the Chair.

HINDI NUMERALS ON CAR NUMBER PLATES

Seth Govind Das (C. P. & Berar: General): *[Mr. President, before you proceed to take up the business of the House fixed for today; I would like to draw your attention to a newsitem appearing in the *Hindustan Times* dated 9th instant which relates to the explanation submitted by the Delhi Police to the Home Department regarding the question of number plates on motor cars which had been raised by me here. It is stated therein that:

> "It is understood that the attention of the Home Ministry has been drawn to the Indian Motor Vehicles Act of 1949, according to which the number plates must bear the number of the vehicle in English letters and numerals. The letter further points out that the Indian Motor Vehicles Act applies to the whole country and the Delhi administration have no power to amend it."

I would like to say that the same law is followed in United Provinces as well as in the province of Central Provinces to which I belong. In spite of that the number plates on cars, even those, which belong to Ministers, are in Hindi. Sir, you are aware of this fact too that according to the rules of the Parliament speeches may be delivered there in English, but the Speaker of our Parliament Shri Mavalankar has declared it again and again that under the changed circumstances of today there can be no justification for enforcing this rule. Speeches are continually being made in the Parliament in Hindi. I would like to submit it to you that the argument advanced by the Delhi Police administration is devoid of common sense and is in contradiction to the existing circumstances. It is a most absurd argument. I request you to kindly do something in this matter so that an untoward situation may nor arise.]

Shri L. Krishnaswami Bharathi (Madras: General): Sir, ordinary there must be some motion on which we being speaking and I want to know now Seth Govind Das is in order in springing on us something which is not before the House. If there is any grievance, it is much better he goes and meets the Honourable the President and not mention all these matters here. There must be a motion for any Member to speak on; and what is the motion, may I know, on which he is speaking? Is there any motion before the House, Sir?

Mr. President : There is no motion before the House. The honourable Member the other day drew my attention to the fact that one honourable Member had been interfered with because the number plate of his car was in Hindi. As I said, I would look into the matter. The honourable Member has drawn my attention to something which has appeared in the *Hindustan Times* relating to the same matter. That is what he was reading out.

Shri L. Krishnaswami Bharathi : Sir, the usual practice is for him to contact you in your chamber and I think he should not bring all these matters before the House. It may not be a good precedent, Sir.

Pandit Balkrishna Sharma (United Province: General): It is a question of the privilege of the Members.

Shri L. Krishnaswami Bharathi : I do not minimise the importance of the subject.

Pandit Balkrishna Sharma : I want to submit for your kind consideration that my honourable Friend seems to be a little ticklish about the whole thing for the simple reason that it concerns the privilege of the Members and he seems to attach little importance to it. An honourable Member has every right to bring the matter before the House with or without notice. The point of order raised by my honourable Friend is that there was no motion. There have been so many instance and I myself was in such a position and you were kind enough to permit me to raise the question regarding the coins that are in contemplation to be issued, and naturally, we being the Parliament, we have got to raise the subject here even though there may not be any notice.

Mr. President : I have looked into the matter because it was raised the other day and I would not give a ruling about the question of privilege and I would refer the matter to the Government.

Pandit Balkrishna Sharma : I am also one of those who have suffered at the hands of the Delhi Administration in this respect. My car was *challaned* from the 1st of April and I did not rush to the Press. I wrote to the Deputy Commissioner, and if I am not betraying a confidence-I hope I am not-I had the pleasure of meeting the Deputy Commissioner in the At Home which the Honourable the Prime Minister gave the other day and brought to his notice the matter of the number plates being in Hindi language and the Deputy Commissioner said that the Motor Vehicles Act contains a clause under which all the cars should bear the number plates in English characters. He further said that in view of the Act as it stands today, he cannot instruct the Delhi 'Administration otherwise and that the Delhi Administration takes notice of such of the cars as do not bear number plates in English characters. My submission to him has always been that Delhi as a Province as surrounded on all sides by provinces which have declared Hindi as their Government language and Devanagari as the Government script.

Mr. President : Order, order. I have got the information which you wanted to give me. As I said, honourable Members will not insist upon my giving a ruling on the question of privilege. It may not be in their interest. As I have said, the matter will be taken up with the Government.

The Honourable Dr. B. R. Ambedkar : (Bombay: General): There is no privilege to break the law.

FLYING OF UNION JACK OVER COUNCIL HOUSE

Shri B. Das (Orissa: General): Sir, I wish to draw your attention to the fact that Union Jacks were flying aloft in this Council House building yesterday, though not, over this august sovereign Chamber. I wish you will order that as long as the Constituent Assembly sits in this place no Union Jack is to be unfurled in this Council building.

Mr. President : The honourable Member may not like it, but there is no help, at any rate, at present.

Maulana Hasrat Mohani (United Provinces: Muslim): May I bring to your notice as well as to this Assembly a very serious matter? The Indian Government is taking a sort of police action inside the Sikkim State; it has not acceded to the Indian Union and the Government appear now to be compelling them to accede.

Mr. President : Order, order. I am afraid I cannot take notice of such things. These are not matters for the Constituent Assembly, but for the Legislative Assembly when it sits.

Honourable Members : Hear, Hear.

DRAFT CONSTITUTION- *(contd.)*

Article 92-*(contd.)*

Mr. President : We shall proceed with article 92.

Prof K. T. Shah (Bihar: General): Sir, I beg to move:

"That at the end of clause (1), the following proviso be added:-

> 'Provided that once the annual financial statement has been laid before Parliament, and Parliament has become seized of the statement, it shall not be competent for the President, or any Minister acting in his name, or any other person, to alter or modify any item in any particular, or withdraw the entire statement; and that the House of the People shall alone be competent to alter or amend or modify, accept or reject, in part or wholly, the financial statement thus placed before it; provided further that only the People's House or Parliament shall be competent to make any modifications, addition or alternation in the financial statement or to accept or reject it, in part or *in toto.*' "

This, Sir, is intended to establish the principle of the supremacy of the House of the People in matters financial. Once the financial statement has been prepared and presented to Parliament, Parliament should be the sole authority for disposing of it; and no other person or authority can do so except, of course, by a vote of the House of the People.

By this amendment, I desire that the supremacy of Parliament, and in that the House of the People, in matters relating to Public Finance should be made absolutely clear beyond doubt. Hence the provision should be made that once the financial statement has been placed before the House, and the House has become seized of the matter, neither the President nor any Minister acting under his authority or in his name, would be competent to alter, or modify, or even withdraw any item in the statement in any way. If any change has to be made, that change can be made only by the House of the People by a definite vote of that body; and not by even Parliament in both Chambers.

This matter is so self-evident in any parliamentary democracy which wants that the Lower House should be the sole custodian, watch-dog of matters financial, that it seems to me that this proposition should be unchallengeable. It is in no way departing from the spirit or accepted convention of the model Constitution which we have been following in this Draft, I mean the British practice. There it is very clear by convention, because there is no written constitution in Britain, that the House of Commons is the sole supreme authority in matters of Public Finance. Those of us who follow that model, and provide a written Constitution, would be doing nothing more than giving effect to a well-known convention whereby the Parliament or the House of the People alone would be competent to make any alternations in such financial provisions, whether they relate to expenditure or revenue, or whether they relate to otherwise disposing of or altering the financial provisions for a given year. Only the vote of the House of the People should be supreme and final in these matters and no other authority should have a say in it. Once the Financial Statement is placed before the House of the People, no other authority should have or can have anything to do with it. I therefore commend this to the House.

May I move the next amendment also, Sir?

Mr. President : Yes.

Prof. K. T. Shah : Sir, the next amendment is:

"That after clause (1) of article 92, the following new clause be added:-

> '(1a) At the time the annual financial statement is presented to the People's House of Parliament, the President may invite the members of the Council of State to be present in the People's House of Parliament.' "

Sir, this is a practice which follows as a corollary from the principle I have just suggested: that the House of the People alone is competent to deal with, and has unchallenged supreme authority in regard to matters financial. The other House, whatever its powers and authority may be in regard to other legislation, should, in matter financial, be kept out altogether.

To give effect to this, not only would I suggest that the financial statement can be laid only before the House of the People, I would go further and say that, if any information is to be conveyed to the other House in this regard, it may be conveyed by inviting the other House to be present on the occasion of the presentation of the Budget. The formal presentment and dealing with the budget or financial statement should be and must be only by the House of the People.

This amendment is only making clear the general principle which I have been enunciating all this while, that the Council of State should have no say in matters financial.

I commend these amendments to the House.

(Amendments Nos. 1699 and 1700 were not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in sub-clause (b) of clause (3) of article 92, for the words 'emoluments' the words 'salaries' be substituted."

That is the usual wording we are using .

SHRI H. V. Kamath (C.P. & Berar : General) : Sir, I move :

"That after sub-clause (b) of clause (3) of article 92, the following new sub-clause be added:-

'(bb) the salaries and allowances of Ministers and Members of Parliament.' "

Sir, I do not wish to speak on this amendment at all. I would only like to know, when the emoluments of the President, the Chairman and Deputy Chairman of the Council of States, the Speaker and Deputy Speaker of the House of the People have been regarded as expenditure charged to the revenues of India, why the salaries and allowances of the Ministers and members of Parliament should not be so treated.

Mr. President : The salaries of the Ministers come for the vote of the House because the Ministers are responsible.

Shri H. V. Kamath : The Chairman and Deputy Chairman of the Council of State, the Speaker and Deputy Speaker.....

Mr. President : They are not responsible in the sense in which the Ministers are.

Shri H. V. Kamath : There is one difficulty, Sir. No article in this Constitution says that the salaries and allowances of the Chairman and Deputy Chairman of the Council of States and the Speaker and Deputy Speaker of the House of the People shall not be reduced during their term of office. But, there is such a provision with regard to the salaries and allowances of the President. So it appears that Parliament may alter the former.

Mr. President : I am afraid your amendment cuts across the whole principle of responsible Ministers.

Shri H. V. Kamath : Sir, I formally move the amendment.

(Amendments Nos. 1703, 1704 and 1705 were not moved.)

Prof. K. T. Shah : Mr. President, Sir, I beg to move:

"That is sub-clause (f) of clause (3) of article 92, the words 'or by Parliament by law' be deleted."

The amended proposition would then read :

> "any other expenditure declared by this Constitution to be so charged."

Here I think is a matter of very basic importance in regard to the financial administration of the country, and its public economy at large. Under this article a number of items are specifically laid down by this Constitution as charged on the revenues of India,-now as being in the Consolidated Fund, and as such not likely to be voted upon in every year. The various items do not, in my opinion, all stand on a par. It the intention is to keep some of these items out of the vicissitudes of party politics, if the intention is to keep them fixed and unchangeable at least for some given period, such as for instance the salary and allowance of the President during the term of his office, or the salary and allowance of the presiding authorities in the two Chambers of the Legislature, or the salaries, pensions and allowances of the Supreme Court Judges, then it is but right that we should keep these items as limited or as few in number and as small in volume as we possibly can.

There should be in my opinion no room left for increasing the amounts, and widening the nature of the items that can be so kept out of the annual vote of the House. There are items actually mentioned here, which appear to me to be utterly unnecessary, and even unwise, to be so included in the charged list or the Consolidated Fund. Take for instance item (c) which relates to debt charge for which the Government of India is liable. That includes interest and sinking fund charges, redemption charges, other expenditure relating to the raising of loans, and the service of the debt, *i.e.* paying interest, registering transfers etc. Now here is an item the justice of which being included in the items charged on the revenues of India, or those put in the Consolidated Fund, may be open to question. I quite realise that, in the interest of the national credit and its stability, it is but proper that the ordinary debt charges may be not open to annual vote. At the same time is must be known to every student of Public Finance that frequently countries obliged again and again, the most highly credit-worthy countries have had recourse to altering or reducing the rate of interest on their permanent debt. All Conversion schemes that have been adopted in the past, and are being applied even today have changed the rate or interest and varied the contract unilaterally. If those items are left outside the voting power, then I am afraid the possibility of effecting economies and of adjusting our obligations to our resources from time to time might be very substantially curtailed.

I have, however, in view of the transition through which we are going, in view also of domestic as well as foreign complications that may arise in connection with this question of using our national credit and borrowing abroad, not given notice of any amendment regard to that particular item, though I confess that I feel very reluctant to see it included in this article.

Even if the interest and sinking fund charges are kept outside the annual vote, I do not see why the incidental charges, like brokerage or the management charges paid to Reserve Bank on the administration of the debt service should be included in this manner. I think it is really inappropriate to do so. But for the reason I just mentioned-that somewhat delicate financial situation of the present moment-I would have ventured to offer an amendment even on these matters.

But when you come to such a promiscuous on an omnibus provision as is included in sub-clause (f) which permit Parliament hereafter to add any other item of expenditure as being in the non-votable list, then I am afraid the Constitution leaves the door very wide open to the withdrawal of the powers-to the curtailment of the financial authority of the Lower House, which I think is highly inexpedient and unacceptable. If you trust to our people, and believe that the future Parliament is for all these purposes sovereign, it would be unnecessary for us to lay down in this article here, in the manner in which it has been done, the power of Parliament to make any alternation in the items that cannot be voted upon every year. You give no power to increase the votable list; why then do you give power to increase the non-votable list?

On the other hand, if you mean this Constitution to be a king of restrictive instrument, if you design this Constitution to lay down specifically those items which and which alone can be excluded from the vote of the Parliament, as my amendment provides, then I suggest that the best course is to keep them as few in number, and as small in amount as possible. But by an omnibus provision of this kind that you are making, you propose to make parliamentary authority function ineffectively and restrictively in matter financial. For, once an expenditure is withdrawn from the annual vote, any amount of abuse may occur. Parliament, at least in a given year or until the Constitution is revised, may not be able to alter.

I suggest, therefore, that here is a matter of very grave consequence to which attention should be paid by those responsible for this Constitution. The amendment I have attempted to bring in does not affect any necessary safeguard for maintaining public credit. The article gives power to include in the Consolidated Fund or as charges upon the revenue, certain items necessary and proper to be kept outside the annual vote. It only prevents the future Parliament legislating, and thereby withdrawing, so to say, from the competence of its own successors, the right of voting upon certain other items in the financial statement. Remember it would be curtailing the power of a sovereign body, its successor, which no Parliament should really have as against its own successor by such device as this clause contains. It would only open the door to frequent alternations, and to party influences or other transitory factors of that kind, which is, -to say the least-most undesirable. I therefore commend this amendment to the House.

Mr. President : Dr. Ambedkar. No. 7 of the First List.

The Honourable Dr. B. R. Ambedkar : Sir, I beg to move:

"That in sub-clauses (a) and (b) of clause (2) of article 92, for the words 'revenues of India' the word 'Consolidated Fund of India' be substituted."

"That in clause (3) of article 92, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

"That after sub-clause (d) of clause (3) of article 92, the following sub-clause be inserted:-

> '(dd) the salary, allowances and pension payable to or in respect of the Comptroller and Auditor-General of India.' "

With regard to 9, all I need say is that the House has already passed article 124, clause (5) which contains the present amendment. It is therefore here because it was felt that all items which are declared to be charges on the Consolidated Fund of India had better be brought in together, rather than be scattered in different parts of the

Constitution.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, my honourable Friend Mr. Kamath has moved an interesting amendment which says that the words "salaries and allowances of Ministers and Members of Parliament" should be added to the sub-clause so that they will be a charge on the revenues of India. It means that they will not be votable with the result that the executive will become an irremovable one. I am rather perplexed at this. The charges which will be charged on the revenues of India are the salaries of the President, the Speaker, the Judges of the Supreme Court and now the Auditor-General. They will become non-votable under article 93. I do not know whether the sovereign parliament of the nation should be denied the opportunity to vote upon the salaries of even these high dignitaries. Probably Mr. Kamath wants to reduce the provisions of this article to an absurdity; otherwise there is no meaning in his amendment. I agree that we are bringing in a dangerous thing in the Constitution by these provisions. I wholeheartedly support the amendment of Prof. Shah for deleting the last clause, which says that parliament can declare any expenditure to be non-votable. This, I think, is unprecedented in any constitution of the world and I would like Dr. Ambedkar to enlighten us how sub-clause (f) of article 93 is in consonance with democratic procedure. I feel that the sovereign parliament of the nation should have the right vote on every item of expenditure. I can see some argument for making the salaries of the Judges of the Supreme Court, the Auditor-General and the Speaker to be charged to the revenues of the State. It is possible that a party in power by a majority might vote down the salaries of the judges of the Supreme Court so that the judges will try to humour the party in power and that will detract from their independence. But this is far-fetched and no party dare vote down salaries of Supreme Court Judges, etc. That the salaries of the other people should also be permitted to become non-votable is not fair. Clause (f) must go.

Mr. President : I shall put the amendment of Prof. Shah (1693) each item separately to the House.

The question is:

"That in clause (1) of article 92, after the word 'President' the following be added :-

> 'or the Finance Minister acting under the authority of the President, specifically given for the purpose.' "

The amendment was negatived.

Mr. President : The question is :

"That in clause (1) of article 92 for the words 'both the Houses' the words 'the People's House' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in clause (1) of article 92 for the words 'estimated receipts' the following be inserted :-

> 'on revenue account as well as from borrowed moneys, or transfer of sums

from other accounts to Revenue Account.' "

The amendment was negatived.

Mr. President : The question is:

"That in clause (1) of article 92, after the word 'expenditure' the words 'whether charged upon the revenues of India or on other account' be added."

The amendment was negatived.

The President : The question is :

"That at the end of clause (1) the following proviso be added :-

'Provided that once the annual financial statement has been laid before Parliament, and Parliament has become seized of the statement, it shall not be competent for the President, or any Minister acting in this name, or any other person, to alter or modify any item in any particular, or withdraw the entire statement; and that the House of the People shall alone be competent to alter or amend or modify, accept or reject, in part or wholly, the financial statement thus placed before; provided further that only the People's House or Parliament shall be competent to make any modifications, addition or alteration in the financial statement or to accept or reject it, in part or in *toto.*'"

The amendment was negatived.

Mr. President : The question is:

"That after clause (1) of article 92, the following new clause be added :-

'(a) At the time the annual financial statement is presented to the People's House of Parliament, the President may invite the members of the Council of States to be present in the People's House of Parliament.' "

The amendment was negatived.

Mr. President : The question is :

"That in sub-clause (b) of clause (3) of article 92, for the words 'emoluments' the word 'salaries' be substituted."

The amendment was adopted.

Shri H. V. Kamath : Sir, may I ask for leave of the House to withdraw my amendment No. 1702?

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

"That in sub-clauses (f) of clause (3) of article 92, the words 'or by Parliament by law' be deleted.

The amendment was negatived.

Mr. President : The question is:

"That in sub-clauses (a) and (b) of clause (2) of article 92, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That in clause (3) of article 92, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That after sub-clause (d) of clause (3) of article 92, the following sub-clause be inserted :-

> '(dd) the salary, allowances and pension payable to or in respect of the Comptroller and Auditor-General of India.' "

The amendment was adopted.

Mr. President : The question is :

That Article 92, as amended, stand part of the Constitution.

The motion was adopted.

Article 92, as amended, was added to the Constitution.

Article 93

(Amendment No. 1707 was not moved.)

Prof. K. T. Shah : Sir, I move:

"That in clause (1) of article 93, after the word 'Parliament' the words 'unless Parliament has by law previously passed in any year for that purpose enacted that any expenditure under article 92(3) shall be deemed not to be charged on the revenues of India' be added."

Here again I attempt to bring out the governing principle of the supremacy of Parliament, and particularly the House of the people, in matters financial. While the entire system of grouping of public expenditure is considerable chunks in the Consolidated Fund, and making it outside the vote of Parliament is in itself, at least to me, objectionable, as reducing the extent of parliamentary control over expenditure, even granting that these amounts necessary to be in the Consolidated Fund, as under the peculiar circumstances of today such practice may be necessary, I would not like Parliament to be utterly deprived of any right under the Constitution to withdraw from these non-votable items anything that it by law desires should not be so included.

I would therefore, like power to be left to Parliament hereafter to legislate-such legislation must be in the previous year-and say that, in the subsequent year, a given item shall not be deemed to be charged upon the revenues of India, or to be in the Consolidated Fund from that time onwards, so that it would be open to the vote of the House. What under the peculiar circumstances of India may be included in the Consolidated Fund, should be open to Parliament to withdraw from that Fund by a law.

This practice of distinguishing between votable and non-votable items, or those open to the annual vote of Parliament and those withdrawn from that vote, but permitted to be discussed, is a legacy of the preceding regime, which, I think, was open, and is today still more open, to strong objection. For that regime, no doubt, it can be understood that there were many items of expenditure which it did not care, would not dare, to bring before the representatives of the Indian people. For instance, its huge defence expenditure, or its Home charges, and so on, if open to Parliamentary vote, would never allow the Budget to be passed. But that cannot be an excuse which the authorities of today could hold out for following the same practice. The present Parliament, or the Parliament under this Constitution, would be the supreme financial authority. It would be a sovereign legislative body which *ipso facto,* should have the right to discuss every item of expenditure and also to vote upon it. In this case, the present article provides that discussion may be allowed; but that on certain items described in the preceding article, which are said to be charged upon the revenues, or are in the Consolidated Fund, there shall be no voting.

In my opinion this is adding insult to injury. You say to the Legislature: "you are entitled to discuss, but you have no right to vote upon such items". What is the use of a discussion of this futile character, which is self-frustrating, and which, if anything, can only result in irresponsible, destructive negative criticism which our leaders seem so utterly to dislike?

I, therefore, do not see any justification for this article, except in the plea, commonly urged now-a-days, of extraordinary circumstances, or the delicate position today of our credit and finance. Hence, even if you may be persuaded to accept what in my opinion is fundamentally objectionable, for special extra-ordinary reasons of today, I think for the future of any rate room must be left for Parliament to legislate,-and by legislation-that is to say, after a solemn discussion of the principle as well as the provision of that particular law-that any item be withdrawn from the charged list, or the non-votable list, and made open for the vote of the House.

It may quite possibly be, that for instance, in the item of public debt, which is charged upon the revenue, or in the charge of the service of that debt which also may amount to a considerable figure, there may be room hereafter for Parliament to demand scrutiny and voting instead of being merely content with discussion of it. In a case like this, while I am not suggesting that the basic Constitution should be varied by Parliament, the national Legislature should, under the Constitution, have the right to make its own law in any previous year, and say that in a subsequent year, it would be entitled to discuss as well as vote upon specified items previously in the charged or non-voted list.

In asking this, therefore, I am not making any really fundamental variation from the scheme of this article. I am only suggesting that the power of parliament should not for ever be mortgaged to the executive, as this Constitution tends to do; and that it should be left open to it by legislation to withdraw any item, now charged upon the revenues, from such charged list, and make it open to the vote of the House. I commend the proposal to the House.

(Amendments Nos. 1709 and 1710 were not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in clause (1) of article 93, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

Mr. President : The question is:

"That in clause (1) of article 93, after the word 'Parliament' the words 'unless Parliament has by law previously passed in any year for that purpose enacted that any expenditure under article 92(3) shall be deemed not to be charged on the revenues of India' be added."

The amendment was negatived.

Mr. President : The question is:

"That in clause (1) of article 93, for the words ' revenues of India' the words 'Consolidated Fund of India' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That article 93, as amended, stand part of the Constitution."

The motion was adopted.

Article 93, as amended, was added to the Constitution

Article 94

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for article 94, the following article be substituted :-

Appropriation Bills

'94. (1) As soon as may be after the grants under the last preceding article have been made by the House of the People there shall be introduced a bill to provide for the appropriation out of the Consolidated Fund of India all moneys required to meet-

(a) The grants so made by the House of the people; and

(b) the expenditure charged on the Consolidated Fund of India but not exceeding in any case the amount shown in the statement previously laid before Parliament.

(2) No amendment shall be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of India, and the decision of the person presiding as to the amendments which are admissible under this clause shall be final.

(3) Subject to the provisions of the next two succeeding articles no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this article'."

As I explained yesterday the object of this new article 94 is to replace the provisions contained in the old article relating to the certification of a Schedule by the Governor-General.

(Amendment Nos. 1711 to 1716 were not moved.)

Mr. President : Does any Member wish to say anything on the new article moved?

The Honourable Shri K. Santhanam (Madras: General): Sir, while there may be no material objection to the substitution of the original article by this new article, I cannot help feeling that this is a wholly unnecessary formality inflicted on our procedure. Dr. Ambedkar no doubt explained that we are trying to adapt our procedure to the procedure of the House of Commons, but there is one material difference which he has not touched upon. In the House of Commons, votes on estimates are taken in committee, the whole House going into committee. The votes taken there have no legal validity. Therefore they have to put in a special Appropriation Act to give legal validity to the votes taken. But our procedure is that the votes on demands for grants are taken in the full House with the Speaker in the Chair. Therefore the votes are as valid as the Appropriation Act itself. When once votes are taken in the House it is not possible for anyone to change them. Therefore I do not see why we should again have the procedure of a Bill and a vote taken. After all it is provided that you cannot make any change whatsoever in the Bill. When the House has legally done something I do not see any particular purpose in again bringing it as a Bill and providing for further speeches wasting two or three days of the time of the Legislature.

Dr. Ambedkar said that it was constitutionally objectionable to invest the president with the power of authenticate. If that is the objection, I submit that the Speaker may be asked to authenticate whatever is passed. Thus the entire formality could be avoided.

My purpose in coming to the forum is not so much to speak about it as about clause (3)-I want to draw the attention of the House to clause (3) of this article. I want them to vote on it knowing fully the implications. It says: "Subject to the provisions of the next two succeeding articles, no money shall be drawn from out of the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this article." Article 95 provides for supplementary or excess grants. Therefore clause (3) means that for the purpose of supplementary and excess grants money can be drawn without the vote of Parliament. Is that the purpose? I can understand expenditure being incurred by the Government at their own risk, but payment should be deferred till vote is given by Parliament. But as the clause stands payments can be made by someone or other out of the Consolidated Fund without a vote of Parliament. I think that more or less nullifies the entire effort to see that no money is paid without a vote. Therefore I suggest that clause (3) must go and necessary provision should be made in article 95. I suggest that this is essential to make the law effective.

I agree that Parliament's power over the finances should be effective. I am as emphatic as Mr. Sidhva himself that this should be effective. But let us not pretend to be effective and nullify it by a provision which makes it ineffective. If clause (3) stands, a hundred crores of rupees can be spent as supplementary or excess grants and then the whole thing will come before Parliament for mere ratification. Therefore clause (3) of the new article must go.

Shri R. K. Sidhva (C. P. & Berar: General): Mr. President, Sir, my Friend Mr. Santhanam has suggested the deletion of clause (3) from the amendment moved by Dr. Ambedkar.

The Honourable Shri K. santhanam : Not the whole of clause (3). I want the deletion of the words "Subject to the provisions of the next two succeeding articles". It must be article 95. I object only to the "two succeeding article". I do not object to article 96 being their in this clause (3).

Shri R. K. Sidhva : I have followed you correctly. You know very well how the House applauded article 92 for the new provisions inserted therein so as to make the question of money Bills more liable to scrutiny. My Friend Mr. Santhanam also desires it. He too wants to make it more effective. But his argument is, why do you bring in another Bill and waste the time of the House giving it the opportunity to repeat the arguments and making speeches for two or three days more? His feeling is that the time of the House will be taken by such an unnecessary procedure being followed. I do not share his views in this matter. On the contrary this provision provides for a second check upon what has been done on an earlier occasion. Therefore there is nothing wrong. Under article 92 which we have passed we want that our whole financial procedure should be effective. As that is so, this clause is absolutely necessary. As I said the other day, question of time is no consideration in matters like finance. Only a provision of this kind will enable a complete and thorough check being made upon the expenditure that will be made from time to time by the executive. If you delete this I feel that the very object on which we have concentrated our attention will be frustrated. I therefore feel that the amendment as it stands should be accepted. If you take away anything from it, it will detract from the importance we attach to it. I do not think that Mr. Santhanam has made out a case for his proposition. I am sure he would have supported this article if he were not a Minister. He now feels that the discussions on the Budget and Money Bills should be disposed of as early as possible. I have noticed that feeling of his. I ask him, however, to have consideration for the feelings of Members who have also some things to discharge. He should not stand in the way of Members desiring to keep a check upon what is being done by the executive who are responsible to the Ministers. The actions of the Ministers can only be questioned in Parliament by the Members. Therefore this amendment which has been moved after mature consideration to satisfy the desire of the House should be adopted.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I do not desire to say anything on the merits of this amendment. Experienced experts have differed from certain provisions of this amendment. I however desire to draw the attention of the House to a growing and alarming tendency to introduce new amendments to the Constitution itself.

You have already ruled that amendments to amendments may be given but new amendments of the Constitution itself should not be submitted. Amendment No. 11 on the First List totally replaces article 94; amendment No. 12 replaces article 95 and amendment No. 13 replaces article 96. These amendments are new and are amendments to the Constitution itself. I am not raising a mere technical objection, but these embody very serious changes. I have no doubt whatsoever that the way we are proceeding with the consideration of the Draft Constitution, the way we are proceeding backwards and forwards, considering one article here and then switching over to another article there, I think this is certain to lead to anomalies and inconsistencies which cannot be detected on the spur of the moment. It is for this reason that I had suggested that we should have a final production from the Drafting Committee. The House should have a complete picture of what is really intended. Instead of this, we are showered daily with absolutely new amendments, new ideas and new thoughts. This, to say the least, is extremely difficult and inconvenient, if not utterly confusing. I submit, Sir, that the suggestion that I made a few days ago that there should be a little adjournment was made so that the Drafting Committee may have time to give us final picture of their own mind to enable us to come thoroughly prepared. Unfortunately that suggestion of mine was taken to be a dilatory move. I had nothing like that whatsoever in my mind. I have already defected serious inconsistencies in the Draft Constitution as we have accepted and I do not know how many more inconsistencies are lurking behind these innocent looking new amendments. I ask you, Sir, to consider whether it would be easy or convenient for the Members to consider these new amendments to the Constitution itself if they are sent in from they to day. I do not, I confess, possess the mental dexterity of some of the Members. I am a little slow to understand these things and therefore desire that things should proceed in such a way that the slowest Member like myself may be able easily to follow them. I suggest that something should be done to relieve this difficult situation. At present what happens is that when Honourable Dr. Ambedkar gets up, and proposes a new clause, it has a paralysing effect on the House. The majority are not in a position to understand it, and it is passed as a matter of course. Sometimes after general discussions has begun, Dr. Ambedkar has proposed an amendment and even that has been accepted. If it is the desire that the Members should only hear what he says and must agree as a matter of courtesy, then it is all right. But I contend that every Member has a duty to follow what is happening.

Mr. President : I am afraid this complaint of the honourable Member is not justified. Notice of this particular amendment was given as long ago as the 28th May which is nearly a fortnight ago, and this has been taken up after the pretty long discussion which we had day before yesterday about the nature of these amendments. I do not think any Member has been taken by surprise particularly with regard to these articles where there is a fundamental change of procedure suggested.

Mr. Naziruddin Ahmad : I cited these articles by way of illustration only. We are given every day absolutely new ideas. We are faced with amendments which are nothing other than new ideas. I protest against this tendency, which is not a little confusing and inconvenient to Members. It is not easy for all the Members to follow these changes. This is not by way of complaining against these present amendments only, but everyday new ideas are given and they are changed from day to day, and at the last minute something is proposed and we have automatically to agree to it. I contend that what I say is not to delay matters but to facilitate matters. These are inconveniences felt by some Members and I have ventured to come here and place them before you.

Mr. President : When we are considering the Constitution, we cannot altogether rule out new ideas. Changes are bound to occur from time to time and whenever they do occur, we have to take note of them. Therefore the Chair has reserved to itself the right to allow amendments even at a later stage, if it thinks that an amendment is such that it requires consideration. If there is any complaint from any Member that time should be allowed to consider any particular amendment, it shall always be considered. So far as these particular amendments are concerned, I think we have had enough time to consider them.

Mr. Naziruddin Ahmad : I simply submit that something should be done to stop this tendency or as least to allow Members time to follow them. This is only by way of a general complaint. There is now-a-days a tendency to submit new amendments which are in the nature of changing the Constitution itself. This tendency is rather confusing and very inconvenient to Members. I never suggested anything about your ruling. That is a recognition of the need for changes, but I am really feeling myself hopeless about the way these amendments are coming in. If they were one or two isolated cases, it would have been different, but new amendments to the Constitution itself has because the rule.

Shri T. T. Krishnamachari (Madras: General): Mr. President, Sir, this amendments to substitute a new article for article 94 has been fully dealt with by Dr. Ambedkar in his speech day before yesterday while outlining the nature and scope of the changes that the Drafting Committee have sought to make in the scheme of financial control. He made it every plain that this suggestion of an Appropriation Bill is to substitute the authentication of the President, a practice which has been followed all along for reasons totally different from what we have in mind about the new set up of the Constitution of this country. Sir, it must also be understood that there has been no vital change in the procedure. Dr. Ambedkar was at great pains to explain to the House that the changes made are such that they are only enabling provisions, to give power, to the Parliament if it so desires, to make changes in the scheme of financial control and in the discussion of the budget and the procedure to be followed thereon, and very rightly he has drawn attention to the new article that is proposed, *viz.,* 98-A, whereby Parliament would have the complete right and freedom to do what it likes in regard to the laying down of any procedure if it so wishes. The article before the House involves merely a change in the nomenclature rather than one of substance. Instead of the President authenticating the decisions arrived at when the voting on demands is carried on in the House, the House will take upon itself the duty by making the executive present the whole set up of decisions in a concrete form which it will then approve, and the rules with regard to the discussion on such an Appropriation Bill will be made by Parliament of by the Speaker of the House until Parliament itself makes the rules. Sir, I fail to appreciate the basis, the validity of the complaint made by my honorable Friend, Mr. Santhanam, who, as the other speakers before him have stated, is one of the most well-informed critics of the Constitution as well as of procedure in the House and who had been taking a lot of interest in the budget activities in the Parliament before his elevation to the Ministry. His objection apparently was not fundamental, though he failed to see the necessity for an amendment of this nature. He did not raise any fundamental objection to the changes sought to be made by the Drafting Committee. Sir, the objection that he raised to clause (3) of article 94, which enables the operation of articles 95 and 96 that follow hereafter arises, in my view, from an imperfect understanding of the scheme.

Article 95, Sir, if the House will permit me to explain briefly and anticipate Dr. Ambedkar when he moves his amendment thereon, combines two functions allowed to the executive, one of which the Parliament would approve of later, that is, after the event. Actually, either in approving of supplementary or in approving of excess grants made, the Parliament or any Legislature always dealt with a situation after the fact. It was definitely an *ex-post facto* decision. My honourable Friend, Mr. Santhanam says: "you want to tighten up the procedure. Why do you allow the executive to incur expenditure and then come to the Parliament for approval, to make a deviation in the estimates, in the demands passed and the estimates approved of by the House and then come to the Parliament for approval thereafter?"

The Honourable Shri K Santhanam : I was not objecting to expenditure, but to the demand cut of the Consolidated Fund.

Shri. T. T. Krishnamachari : I am coming to that point. In fact it is an extremely pedantic way of looking at a simple fact. The sanction of the expenditure, the entering into a commitment and the payment of money in discharge of the commitment are all one and the same action. You cannot ask the Government to enter into a commitment and say, well, the Parliament will not pay, after the Government had entered into a commitment. It means a Government which cannot persuade a Parliament to honour a commitment that they had made by paying the moneys due under that commitment will have to go out of office as it has thereby ceased to command the confidence of Parliament. I am rather surprised that a Minister of Government who will be a daily faced perhaps when he rises to a position of greater responsibility than the one that he now occupies and would find himself in a peculiar position when he makes a commitment for an expenditure which the Parliament may or may not permit him to fulfill, should say that he should not be permitted to incur the expenditure until Parliament approves of the Scheme and thereafter allows him to put out the money for the purpose. It really means that a commitment made by a member of Government is absolutely worthless and if the Parliament really refuses to pay, it means, he ceases to have the confidence of the Parliament. But apart from that, the idea really in this new scheme is not to make a radical alteration from the existing scheme that Dr. Ambedkar already made mention of and I repeated it the day before yesterday. We do not want to put the Government into a straitjacket; we have assured the House more than once that the idea is not to make a serious departure from what obtains now and thereby embarrass the Government, but at the same time make enough provision so that if the Parliament of the future wants to exercise greater control, they can do so. There is one aspect in regard to the new articles, both 95 and 96 that are to be moved by Dr. Ambedkar hereafter, which is covered by clause (3), and that is a certain amount of initiative is to be left to the executive in this matter. That initiative might however, be curtailed by frequent meetings of Parliament, by the executive realising their responsibility and placing demand for large amounts of expenditure, if they have the reason to incur it, before the Parliament in the form of a supplementary budget. Sir, the Members of this House spoke of supplementary demands covering a large amount of over Rs. 100 crores having been passed by this House acting in the other Chamber during the last Budget session. I quite agree that it is something which is not correct. In proportion to our total Governmental expenditure, Rs. 100 crores is something very big. The only way in which the House could have made the Government come before them before the bulk of the expenditure was incurred was by compelling Government to present a supplementary budget,--if things had happened in a way that it had exceeded the best anticipations of Government in regard to expenditure. Even here, the procedure outlined in article 96, namely a Vote of Credit might partially serve as a means of obtaining approval of Parliament in the future. If the Government feel that they have to incur expenditure of a character which they did not anticipate, a new war or an increased expenditure in a war they are carrying on, they might always go to the House and ask for a Vote of Credit. That is the procedure that has been made possible by the new set of amendments that are to be moved and that is the only type of control that the Parliament can exercise. The provision envisaged by clause (3), namely article 95 and 96, is put in any scheme of Financial provisions if the intention is that the Government is to carry on the Government of the day and the control that the Parliament might ultimately exercise is only by an understanding with the executive that the executive limits its expenditure up to a particular amount and for increased expenditure the convention has to be established that the Government will go before Parliament with a supplementary budget. If clause (3) is taken away, then article 95 becomes inoperative and I would at once point out be my honourable Friend Mr. Santhanam that it would make it impossible for the Government to be carried on without the Parliament sitting practically every day, so that Government can go to Parliament as and when occasion arises and say; "We have made this excess expenditure; this is unforeseen expenditure, please grant it, or else we will go out of office." The Honourable Mr. Santhanam's objection might be due to his dislike of the corollary to this scheme, namely, that Parliament will have to sit for a longer duration, probably three or four or six months, which he does not like. I am afraid, Sir, that thought it is not my intention to disprove the validity of anything that Mr. Santhanam has said, I think it is my duty being *particeps criminis* in making the suggestions that have been put before the House in regard to the changes in the financial structure that this House.........

The Honourable Shri K Santhanam : On a point of personal explanation; I made no such speech.

Shri T. T. Krishnamachari : And the public at large will have to be assured that the idea of these amendments is not to embarrass the Government, the idea is not to make the Government impossible, but merely to allow Parliament both by convention and rules of procedure to tighten up their control on expenditure generally. Sir, I trust there will be no need for any further explanation and the House will pass the amendment of Dr. Ambedkar without further discussion.

Prof. Shibban Lal Saksena : Mr. President, Sir, I only wish to draw the attention of the House to clause (2) of the new article 94 and I would request Dr. Ambedkar to explain the need of this clause in this article. This clause (2) says: No. amendment shall be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of India, and the decision of the person presiding as to the amendments which are admissible under this clause shall be final." Such a clause does not find a place in the constitution of England; of course, their constitution is unwritten. I feel that this could have been left to the conventions of the House or to the rules to be made by Parliament for itself.

But, if it is put in the Constitution, it puts a limitation on the sovereignty of Parliament. Although what is contemplated is that the Estimates will be scrutinised in the Committee of Supplies and the Committee of Ways and Means and an Appropriation Bill will be framed on the decisions of the Committee of Supplies and Committee of Ways and Means, actually, there will not be any necessity for varying the items in the Appropriation Bill. But, suppose some Government does not frame the Appropriation Bill in accordance with the recommendations of the committee of Supplies and the Committee of Ways and Means, then, there is no provision left for the members of the House to bring forward amendments to bring it in conformity with the decisions of these committees. I therefore think that this should not be a provision in the Constitution, but should be left to the rules or the conventions of the House so that on such occasions, the House may bring to the notice of the Government that they have not carried out the proposals agreed upon by the Committee of Supplies and the Committee of Ways and Means. That, I hope, would be much healthier. I would request Dr. Ambedkar to explain what is the real need of putting this clause in the Constitution.

Mr. Mahboob Ali Baig Sahib : (Madras: Muslim): Sir, I will confine myself to article 94 and the amendment moved by Dr. Ambedkar, to the new article.

The difference between the proposed amendment and the original article is this: whereas in the original article the grants made by the House of the People will have to be authenticated by the President, according to this amendment, an Appropriation Bill will be moved before the House of the People and passed. That is the only difference that I find. In his introductory speech, Dr. Ambedkar said that in the past the Governor-General used to authenticate the expenditure granted by the Assembly for several reasons. He had to act in his discretion and in his individual judgment and therefore it was necessary that this table of expenditure approved by the Assembly should go before him so that he may make any changes it he pleases. These circumstances do not exist now; although the President is there as the executive head, it is more appropriate and more democratic that the House of the People should approve the table of expenditure which it has granted. That is the argument advanced by him. I entirely agree with him that the President or any executive head should not authenticate the expenditure, but it is the House of the People only that should do it. The question is whether an Appropriation Bill is necessary and what is the purpose of this Appropriation Bill. If it is merely to authenticate the several grants that have been made by the House of the People, why should there be an Appropriation Bill? As stated in clause (2) of this amendment, no amendment shall be proposed to the Bill, and no changes could be proposed in the matter of the expenditure charged on the Consolidated Fund. What is the purpose, then, I ask, of having an Appropriation Bill brought before the House of the People? If you want that after the grants have been made by the House, a table of the grants should be placed before the House, I agree. This Schedule of expenditure will be approved by the House automatically. It is a mere formality. Whereas in the case of the Governor-General, he had the right to interfere in his discretion and in his individual judgment, now there is no scope for that at all. It is merely a formality to place the Schedule of grants that are made by the House from day to day, and get it sanctioned. The House passes that Schedule automatically. Therefore, I do not see any reason why this Appropriation Bill should be brought before the House at all. If you want to call it an Appropriation Bill, because some other Governments have called it an Appropriation Bill, it is just an unnecessary thing. That can be done by stating that instead of the President, the House of the People will authenticate the schedule of expenditure granted by a certain date; that would be enough. Therefore, Sir, my submission is that it serves no useful purpose at all, as Mr.

Santhanam put it. It will serve no useful purpose because, when this Appropriation Bill is brought before the House the House cannot move any amendment to that and cannot change the expenditure charged to the Consolidated Fund. Therefore, I say, why go through this process of placing an Appropriation Bill before the House? It is just enough to say that the Schedule of expenditure granted by the House of the People will be laid before the House of the People, which must be considered to have been authenticated. If necessary, the signature of the Speaker of the House of the People authenticating that these items have been passed by the House of the People is enough. Therefore, my submission is that the manner in which the article has been re-drafted is unnecessary and that appropriate changes should be made with regard to this matter and that it is quite enough to say that thy schedule of expenditure granted by the House should be placed before the House of the People and it should be deemed to have been authenticated. Sir, I am not now referring to any matters that are going to be moved under article 95 and 96. I reserve may remarks thereon.

Shri L. Krishnaswami Bharathi : Mr. President, Sir, my Friend Mr. Santhanam's point, in my opinion, certainly requires clarification. Clause (3) reads :-

> "Subject to the provisions of the next two succeeding articles no money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this article."

Article 96 relates to three categories of votes, votes on account, votes on credit and exceptional grants. In these three cases Parliament authorises such expenditure; and therefore so far article 96 goes, I think we can have no objection to that being mentioned in this. As for article 95, it allows for what are known as supplementary grant and excess grants. The whole point of his contention and the whole matter is that we do not want to give the executive power to spend money over and above what Parliament has granted. Clause (a) of 95 says :-

> "if at any later time the executive finds that a sum granted is found to be insufficient- that is No. 1-and also if there is any new service not contemplated at the time of the passing of the Budget-then in such a contingency the President shall cause to be laid before both the Houses of Parliament another statement showing the estimated amount of that expenditure, etc."

The words 'estimated expenditure' show that the expenditure may not be actually incurred but they are able to foresee the possibility of an expenditure and it is likely that they will come forward to Parliament and say "The amount granted by you is not sufficient and we want a little or more or there is a new service which was not contemplated at the time of passing the Budget and therefore we want more money". That is a supplementary grant which may be allowed. It is clause (b) of No. 95 which Mr. Santhanam takes exception to *viz.,* if money has been spent on any services during the financial year in excess of the amount granted for that service and for that year. In fact last year there was a great argument in the Legislative Assembly that a sum of the over 100 crores without any authorisation had been spent. I want to ask Dr. Ambedkar if it is not possible for the executive to spend any amount as they did last year without any specific grant by Parliament and therefore is it not giving a free latitude to the executive to spend any money in that year in excess of the grant made by Parliament during that year? Is it not against the democratic principles to allow the executive such a power? I understand in England that is not the procedure followed. Whenever the executive wants to spend an amount over and above, the officer-in-charge of disbursements informs the executive. "Well you are nearing the end of your grant and you must make provision." They are not allowed to spend a pie more than what Parliament has authorised. I see no reason why we should have any departure. It is just possible Parliament may not meet and they may have to incur the expenditure. It is equally possible they may spend crores--hundred of crores--and therefore it seems to me rather going against the fundamental principles that every amount spent must have the sanction of Parliament; and we seem to be going against that principle in allowing clause (b) of No. 95 as it stands at present. Therefore so far as 96 goes, Parliament exercises its judgment and mind and is to vote on grant but this is something in which the executive has unbridled power and I would like Dr. Ambedkar to explain this aspect of the matter.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I thought that the observations made by my Friend Mr. T. T. Krishnamachari would have been regarded as sufficient to meet the objections raised by my Friend Mr. Santhanam, but since my Friend Mr. Bharathi by his speech has indicated that at any rate his doubts have not been cleared, I find it necessary to rise and to make a few observations. My Friend Mr. Santhanam said that we were unnecessarily borrowing the procedure of an Appropriation Bill and that the existing procedure of an authenticated schedule should have been sufficient for our purposes. His argument if I understood him correctly was this: that an Appropriation Bill is necessary in the House of Commons because the supply estimates are dealt with by a committee of the whole House and not by the House itself. Consequently the Appropriation Bill is, in his opinion, A necessary concomitant of a procedure of estimates being dealt with by a sort of Committee of the House. Personally, I think there is no connection between the Committee procedure of the House Commons and the necessity an Appropriation Bill . I might tell the House as to how this procedure of the House of Commons going into a Committee of Supply to deal with the estimates came into being. The House will remember that there was a time in English political history when the King and the House of Commons were at loggerheads. There was not such pleasant feeling of trust and confidence which exists now today between the House of Commons and the King. The King was regarded as a tyrant, as an oppressor, as a person interested in levying taxes and spending them in the way in which he wanted. It was also regarded that the Speaker of the House of Commons instead of being a person chosen by the House of Commons enjoying the confidence of the House of Commons was regarded as a spy of the King. Consequently, the members of the House of Commons always feared that if the whole House discussed the estimates the Speaker who had a right to preside when the House as a whole met in session would in all probability, to secure the favour of the King, report the names of the members of the House to the King who criticised the King's conduct, his wastefulness, his acts of tyranny. In order therefore to get rid of the Speaker who was, as I said in the beginning, regarded as a spy of the King carrying tales of what happened in the House of Commons to the King, they devised this procedure of going into a committee; because when the House met in Committee the Speaker had no right to preside. That was the main object why the House of Commons met in Committee of Supply. As I said, even if the House did not meet in Committee of Supply, it would have been necessary for the House to pass an Appropriation Bill. As my friend--at least the lawyer friends-will remember, there was a time when the House of Commons merely passed resolutions in committee of Ways and Means to determine the taxes that may be levied, and consequently the taxes were levied for a long time--I think up to 1913-- on the basis of mere resolutions passed by the House of Commons Committee of Ways and Means. In 1913 this question was taken to a Court of law whether taxes could be levied merely on the basis of resolutions passed by the House of Commons in the Committee of Ways and Means, and the High Court declared that the House of Commons had no right to levy taxes on the basis of mere resolutions. Parliament must pass a law in order to enable Parliament to levy taxes. Consequently, the British Parliament passed what is called a Provincial Collection of Taxes Act. I have no doubt about it that if the expenditure was voted in Committee of Supply and the resolutions of the House of Commons were to be treated as final authority, they would have also been condemned by Courts of law, because it is an established proposition that what operates is law and not resolution. Therefore my first submission is this: that the point made by my Friend Mr. Santhanam, that the Appropriation Bill procedure is somehow an integral part of the Committee procedure of the House of Commons has no foundation whatsoever. I have already submitted why the procedure of an authenticated schedule by the Governor-General is both uncalled for, having regard to the altered provision of the President who has no function in his discretion or in his individual judgment, and how in matters of finance the authority of Parliament should be supreme, and not the authority of the executive as represented by the President. I therefore need say nothing more no this point.

Then my Friend, Mr. Santhanam, said, if I understood him correctly, that article 95--I do not know whether he referred to article 96: but he certainly referred to article 95--would nullify clause (3) of the new article 94. Clause '(3) stated that no money could be spent except under an appropriation made by law. He seemed to be under the impression that supplementary, additional or excess grants which are mentioned in new article 95, and votes on account, or votes on credit or exceptional grants mentioned in the new article 96 would be voted without an Appropriation law. I think he has not completely read the article. If he were to read sub-clause (2) of the new article 95 as well as the last part of new article 96 and also a further article which will be moved at a later stage--which is article 248A--he will see that there is a provision made that no moneys can be drawn, whether for supplementary or additional grants or for votes on account or for may purpose, without a provision made by law for drawing moneys on Consolidated Fund. I can quite understand the confusion which probably has arisen in the minds of many Members by reason of the fact that in some place we speak of a Consolidated Fund Act while in another place we speak of an Appropriation Act. The point is this: fundamentally, there is no difference between a Consolidated Fund Act and an Appropriation Act. Both have the same purpose, namely, the purpose of authorising an authority duly constituted to draw money from the Consolidated Fund. The difference between a Consolidated Fund Act and the Appropriation Act is just this. In the Consolidated Fund Act a lump sum is mentioned while in the Appropriation Act what is mentioned is all the details--the main head, the sub-heads and the items. Obviously, the procedure of an Appropriation Bill cannot be brought into operation at the stage of a Consolidated Fund Bill because Parliament has not gone through the whole process of appropriating money for heads, for sub-heads and for items included under the sub-heads. Consequently when money is voted under a Consolidated Fund Act, in means that the executive may draw so much lump sum out of the Consolidated Fund which will at a subsequent stage be shown in what is called the final Appropriation Act. If honourable Friends will remember that there is no authority given to the executive to draw money except under a Consolidated Fund Act or under an Appropriation Act, they will realize that so far as possible an attempt is made to make these provisions as fool-proof and knave-proof a one can possible do.

Mr. President : The question is:

"That for article 94, the following article be substituted:

'94.(1) As soon as may be after the grants under the last preceding article have been made by the House

Appropriation Bills

of the People there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of India all moneys required to meet--

(a) the grants so made by the House of the People: and

(b) the expenditure charged on the Consolidated Fund of India but not exceeding in any case the amount shown in the statement previously laid before Parliament.

(2) No amendment shall be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of India, and the decision of the person presiding as to the amendments which are admissible under this clause shall be final.

(3) Subject to the provisions of the next two succeeding articles on money shall be withdrawn from the Consolidated Fund of India except under appropriation made by law passed in accordance with the provisions of this article.' "

The amendment was adopted.

Mr. President : The question is:

"That article 94, as amended, stand part of the Constitution."

The motion was adopted.

Article 94, as amended, was added to the Constitution.

Article 95

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for article 95, the following article be substituted:

Supplementary, additional or excess grants. '95. (1) The President shall-

(a) if the amount authorised by any law made in accordance with the provisions of article 94 of this Constitution to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual statement for that year; or

(b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year,

cause to be laid before both the Houses of Parliament another statement showing the estimated amount of that expenditure or cause to be presented to the House of the People a demand for such excess, as the case may be.

> (2) The provisions of the last three preceding articles shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorization of Appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or grant'."

Shri R. K. Sidhva : Sir, I move:

"That in amendment No. 12 of List I (Fourth Week), in clause (1) of the proposed article 95--

> (i) in sub-clause (a), the word 'or', occurring at the end, be deleted;
>
> (ii) sub-clause (b) be deleted; and
>
> (iii) at the end of clause (1), the following words be added:
>
> 'and until both the Houses of Parliament pass such demand, the expenditure shall not be incurred, and if incurred payment shall not be made'."

Sir, the amendment moved by Dr. Ambedkar is in consequence of the previous articles passed. I welcome the amendment but I feel there is a flaw which requires to be remedied. The amended article would then read:

"The President shall.......... cause to be laid before both the House of Parliament another statement showing the estimated amount of that expenditure or cause to be presented to the House of the People a demand for such excess, as the case my be and until both the Houses of Parliament pass such a demand, the expenditure shall not be incurred, and if incurred payment shall not be made."

We are all unanimous on the point that under the new set-up a new system should be introduced, so that as regards the finances there should be a thorough check by the Parliament . At present the procedure in the Parliament is most objectionable inasmuch as supplementary grants exceeding 100 crores are brought in, which are equal to one-third of the budget amount. It is most extraordinary and because of that power which the executive have got they have been most reckless in preparing the budget.

I will give you an illustration. In the last budget estimates of income the estimates of income increased by nearly fifty crores over the estimated amount and the expenditure increased by eighty crores. All that sixty crores over and above the estimated budget amount was spent by the executive and yet there was a deficit and new taxation was proposed. This is nothing short of hoodwinking the House by presenting misleading budget statements. I am sorry I cannot use less strong language. These inflationary budgets are intentionally brought before the House so as to show lesser revenue so that when the actuals are prepared they would show a deficit and if the budget is not balanced, they might propose new taxation. As I said sixty crores more were derived from revenue last year, yet eighty crores were spent over it and the budget was deficit and new taxes were proposed. There is no check on it. The executive feels that they a long rope, and that they can do what they like. Even today the Auditor-General has no right to pass a single item more than what the House has sanctioned in the budget. Yet when excess expenditure is incurred the Auditor-General goes before the Minister who tells him to pass the items and the Auditor-General puts his rubber stamp "No objection" and payments are made. This is very objectionable. There is no respect shown to the House by the executive. Is it fair? The budget has no sanctity. The budget statement is brought before the House, the House scrutinises it and tells the executive that they shall not spend more then what the House has sanctioned and yet the executive disregard the decision of the House and go on spending money.......

Mr. President : The honourable Member seems to think that he is delivering a speech before the Legislative Assembly when the budget is under discussion. He is on the amendment and I would like him to confine himself to it, that is to the principle underlying the amendment and not to expatiate on something that happened at the time of the last budget discussion.

Shri R. K. Sidhva : I am giving only an illustration....

Mr. President : The same illustration has been given by the honourable Member more then once.

Shri R. K. Sidhva : This amendment is so important that unless our responsibility is realised I can assure you, Sir, that our whole object will be frustrated by the Constitution we are framing.

The President : If the amendment is incorporated in the Constitution that will be a sufficient safeguard and the honourable Member's speech will not be remembered.

Shri R. K. Sidhva : I was making a case as to the justification for this amendment being incorporated in the Constitution. If the matter is left to the executive there is no chance of any likely improvement.

I was referring to the constitution of the free city of Danzig. There I found almost similar provisions. No supplementary amount is to be spent unless the House authorises it. It may be argued that in the event of an emergency what would happen? I want the executive to take stock of the whole year. The emergency does not happen for the purpose of spending money to the tune of hundreds of crores. It may involve a few lakhs but I object strongly to supplementary demands to the tune of hundreds of crores. Unless my amendment is accepted the very good object with which we are providing this article will be to that extent frustrated. These articles have been healthy and sound and they will be there for our future guidance. But as regards supplementary demands unless an amendment like the one proposed by me is incorporated in the Constitution the flaw will remain there and I can assure you (I repeat it again knowing the mind of the executive) there is not going to be any improvement as far as supplementary demands are concerned.

Prof. Shibban Lal Saksena : Sir, I beg to move:

"That in amendment No. 12 of List I (Fourth Week), after clause (2) of the new article 95, the following new clause be added;

> '(3) After the first Parliament elected under this Constitution comes into being, the financial year, shall commence on the first November and end with the 31st of October.'"

Sir, the new procedure which is contemplated by this new amendment intends to give Parliament more time for the scrutiny of the estimates on the model of the British Parliament . In the British Parliament an Appropriation Act must be passed by the end of August. That means, five months after 31st March. In England the months of April, May, June, July and August are some of the best months of the year. If our Parliament is to sit always during the there months of May, June, and July in Delhi, it will be very difficult. I therefore want that the consideration of the Budget should be taken up in the best months of the year in our country. Just as five months are allowed, after 31st March, for the Parliament to pass the Appropriation Act, I want that after the commencement of the financial year we should also get at least five months for passing the Appropriation Act. That means November, December, January, February and March. This will bring our procedure exactly in line with the procedure in British Parliament, Sir, in our country also, the financial year generally begins with Deepavali about the beginning of November, so that the fixing of the new financial year will be in consonance with our ancient traditions. I think therefore that in order that the purpose laying behind the amendment, which is to give the House more time and full facility to scrutinise all the estimates, may be achieved, it is necessary that the Budget should be discussed form the Deepavali to Holi, *i.e.,* from November 1st to March 31st. I think that if these days are fixed, we shall have best portion of the year for the discussion of the Budget and passing the Appropriation Act. I hope Dr. Ambedkar will accept the amendment and spare the members of the new Parliament from having to sit in Delhi during the months of May and June as we are new doing.

Shri B. M. Gupte (Bombay: General): Sir, even after listening to the explanation given by Dr. Ambedkar I am inclined to oppose the provision in this article as far as the excess grants are concerned. I do not see how an occasion can arise for such a grant after the innovations we have made in the preceding article. It seems to me rather anomalous that after laying down a mandatory provision in one article we should provide in the next article for the regularisation of the breach of that mandatory provision. That is want it amounts to here. Perhaps the Mover of this amendment has overlooked the circumstances that have changed. I understand that this provision for excess grant was made on the recommendation of the Expert Committee that was appointed to consider the financial provisions. It has been said so in the footnote. So it is the Expert Committee that has proposed that such a provisions should be made. I submit that the entire basis of the recommendation of the Expert Committee has been changed now by the proposals we have already adopted. I will invite attention to paragraph 79 of the report.

> "It is usual in democratic constitutions to provide that no money can be drawn from the Treasury except on the authority of the legislature by an Act of Appropriation, but in this country the particle has been to authorise expenditure by resolutions of Government after the payments have been made and not by law. As the existing practice has been working well in this country appropriation by law does not appear to be necessary."

So they definitely rejected the idea of an Appropriation Act which we have now adopted. That is one fundamental change that we have made. Formerly the Auditor-General could withdraw the amount in spite of the fact that it was not sanctioned by Parliament , because it was the executive that authenticated the Schedule. Now we have made a stringent provision by saying that it shall be done by an Act of Parliament. So, what the Auditor-General will now have to do is to defy an act of Parliament.

Another fundamental change we have made is this. The Expert Committee contemplated that the old system will continue. They took it for granted that the wording that is in the Government of India Act will also be maintained. I shall invite the attention of the House to the corresponding provision in the Government of India Act, 1935, as adopted. Section 35 says:

> "Provided that, subject to the next succeeding section, no expenditure the revenues of the Dominion shall be deemed to be duly authorised unless it is specified in the schedule so authenticated."

So the present wording is that only that expenditure shall not be considered as authorised--not that 'no money shall be withdrawn'. We have made the wording especially stringent in article 94. So, under the Government of India Act as long as the Auditor-General was confident that the executive would get the sanction of Parliament later on, there was no objection for him to withdraw the amount. But here under article 94 (3) he will have no power to do this unless he infringes the Appropriation Act of Parliament. I submit that it is not only that this provision about excess grant is inconsistent with clause (3) of article 94, but that it is hostile to the spirit of stricter control by Parliament of the finances of the country. I therefore submit that the point may be reconsidered whether the excess grant provision should be retained.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I find that the financial provision which are placed this House have given considerable worry to the Members. I can appreciate that, for I remember that when, Mr. Churchill's father became the Lard Chancellor, a budget was placed before him showing figures in decimals and dots thereon. Evidently he was not a student of mathematics and could not understand what the figures meant with a dot in it. So he wrote on the file, "What do these damned dots mean? "asking for an explanation from the Secretary of the Finance Department. Having regard to such difficulty of understanding from persons so highly placed as Mr. Churchill's father. I am not at all surprised of the Members of this House also find similar difficulty in understanding these provisions. I should therefore like to go somewhat into elementary propositions in order to place the House in a right frame of mind.

Sir, I should like to tell the House the effect of the Provisions contained an article 92, article 93 (2) and article 94. Article 92 places upon the President the obligation to day before Parliament a financial statement for the year--I would like to emphasize the words " for the year" showing the expenditure in certain categories, those charged on the revenues of India and those not charged on the revenues of India. After that is done, then comes into operation article 93 (2), which states how the estimates are to be dealt with. It says that the estimates shall be presented to the House in the form of demands and shall be voted upon by the House of the People. After that work is done, article 94 comes into operation, the new article 94 which says that all these grants made by the House of the People shall be put and regularised in the form of an Appropriation Act. Now, I would like to ask the Members to consider what the effect is of articles, 92, 93 (2) and 94. Suppose we did not enact any other article, what would be the effect? The effect of the provisions contained in article, 92, 93 (2) and 94 in my judgment would be that the President would not be in a position constitutionally to present before Parliament any other estimates during the course of the year. Those are the only estimates which the President could present according to law. That would mean that there would be no provision for submitting supplementary grants, supplementary demands, excess grants or the other grants which have been referred to such as votes on credit and things of that sort. if no provision was made for the presentation of supplementary grants and the other grants to which I have referred, the whole business of the executive would be held up. Therefore, while enacting the general provision that the President shall be bound to present the estimates of expenditure for that particular year before parliament, he is also authorised by law to submit other estimates if the necessity for those estimates arises. Unless therefore we make an express provision in the Constitution for the presentation of supplementary and excess grants, article 92, 93 (2) and 94 would debar any such presentation. The House will now understand why it is necessary to make that provision for the presentation of these supplementary demands.

The question has been raised as to excess grants. The difficultly, I think, is natural. Members have said that when it is stated that no moneys can be spent by the executive beyond the limits fixed by the Appropriation Act, how is it that a case for excess grants can arise? That, I think, is the point. The reply to that is this: We are making provisions in the terms of an amendment moved by my Friend, Pandit Kunzru, which is new article 248-B on page 27 of List I, where there is a provision for the establishment of a Contingency Fund out of the Consolidated Fund of India. Personally myself, I do not think that such a provision is necessary because this question had arisen in Australia, in a litigation between the State of New South Wales and the Commonwealth of Australia, and the question there was whether the Commonwealth was entitled to establish a Contingency Fund when the law stated that all the revenues should be collected together into a Consolidated Fund, and the answer given by the Australian commonwealth High Court was that the establishment of a Consolidated Fund would not prevent the legislature of the Parliament from establishing out of the Consolidated Fund any other Fund, although that particular fund may not be spent during that year, because it is merely an appropriation although in a different form. However, to leave no doubt on this point that it would be open to parliament, notwithstanding the provision of a Consolidated Fund to create a Contingency Fund, I am going to accept the amendment of my Friend, pandit Kunzru, for the incorporation of a new article 248-B. It is, therefore, possible that apart from the fund that is issued on the basis of an Appropriation Act to the executive, the executive would still be in possession of the Consolidated Fund and such other fund as may be created by law from time to time. It would be perfectly possible for the executive without actually having any intention to break the Appropriation Act to incur expenditure in excess of what is voted by Parliament and draw upon the contingency Fund or the other fund. Therefore a breach of the Act has been committed and it is possible to commit such an act because the executive in an emergency thinks it ought to be done and there is provision of fund for them to do so. The question, therefore, is this: when an act like this is done, are you not going to make a provision for the regularisation of that act? In fact, if I may say so, that passing of an excess grant is nothing else but an indemnity Act passed by Parliament to exonerate certain officers of Government who have in good faith done something which is contrary to the law for the time being. There is nothing else in the ides of an excess grant and I would like to read to the Members of the House paragraph 230 from the House of Commons--Manual of Procedure for the Public business. This is what paragraph 230 says:-

> "An excess grant is needed when a department has by means of advances from the Civil Contingencies Fund or the Treasury Chest Fund or out of funds derived from extra receipts or otherwise spent the money on any service during any financial year in excess of the amount granted for that service and for that year."

Therefore, there is nothing very strange about it. The only thing is that when there is a supplementary estimate the sanction is obtained without excess expenditure being incurred. In the case of excess grant the excess expenditure has already been incurred and the executive comes before Parliament for sanctioning what has already been spent. Therefore, I think there is no difficulty; not only there is no difficulty but there is a necessity, unless you go to the length of providing that when any executive officer spends any money beyond what is sanctioned by the Appropriation Act, he shall be deemed to be a criminal and prosecuted, you shall have to adopt this procedure of excess grant.

The Honourable Shri K Santhanam : May I ask if under the provisions of the law as stated in the new article 95 (2) the three preceding article will have effect? Does it mean that every supplementary demand should be followed by a supplementary Appropriation Act?

The Honourable Dr. B. R. Ambedkar : Yes; that would be the intention.

The Honourable Shri K. Santhanam : The appropriation will not be for the whole year?

The Honourable Dr. B. R. Ambedkar : There may be supplementary appropriation. That always happens in the House of Commons.

Prof. Shibban Lal Saksena : What about my amendment, Sir?

The Honourable Dr. B. R. Ambedkar : I am very sorry. Prof. Shibban Lal Saksena says that the financial year should be changed. Well, I have nothing to say except that I suspect that his motives are not very pure. He perhaps wants a winter session so that he can spin as long as he wants. If he wants longer session, he must sit during summer months as we are now doing.

Prof. Shibban Lal Saksena : You will then long for a holiday in the hills, not I. Summar will not influence my speeches at all.

Mr. President : The question is:

"That in amendment No. 12 of List I (Fourth Week), in clause (1) of the proposed article 95--

(i) in sub-clause (a), the word 'or' occurring at the end, be deleted

(ii) sub-clause (b) be deleted; and

(iii) at the end of clause (1), the following words be added:

'and until both the House of Parliament pass such a demand, the expenditure shall not be incurred, and if incurred payment shall not be made.' "

The amendment was negatived.

Mr. President : The question is:

"That for article 95, the following article be substituted:-

Supplementary additional or excess grants. '95. (1) The President shall--

(a) if the amount authorised by any law made in accordance with the

> provisions of article 94 of this Constitution to be expended for a particular service for the current financial year is found to be insufficient for the purpose of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or
>
> (b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year, cause to be laid before both the Houses of Parliament another statement showing the estimated amount of that expenditure or cause to be presented to the House of the People a demand for such excess, as the case may be.
>
> (2) The provisions of the last three preceding articles shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorization of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure or grant.' "

The amendment was adopted.

Mr. President : The question is:

"That in amendment No. 12 of List I (Fourth Week), after clause (2) of the proposed now article 95, the following new clause be added:-

> '(3) After the first Parliament elected under this Constitution comes into being, the financial year, shall commence on the first November and end with the 31st of October.' "

The amendment was negatived.

Mr. President : The question is:

"That article 95, as amended, stand part of the Constitution."

The amendment was adopted.

Article 95, as amended, was added to the Constitution.

Article 96

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for article 96, the following article be substituted:-

'96. (1) Notwithstanding anything contained in the foregoing provisions of this Chapter, the House of

the People shall have power--

Votes on account votes on

credit and exceptional grants.

> (a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 93 of this Constitution for the voting of such grant and the passing of the law in accordance with the provisions of article 94 of this Constitution in relation to that expenditure:
>
> (b) to make a grant for meeting an unexpected demand upon the resources of India when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement;
>
> (c) to make an exceptional grant which forms no part of the current service of any financial year; and to authorise by law the withdrawal of moneys from the Consolidated Fund of India for the purpose for which the said grants are made.
>
> (2) The provisions of articles 93 of this Constitution shall have effect in relation to the making of any grant under clause (1) of this article and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure.' "

(Amendment No. 1720 was not moved.)

The Honourable Shri K. Santhanam : Sir, I do not want to reopen the general principle which has been accepted; but I wish to say that the drafting of this article is rather defective.

For instance, in clause (1) it says, " the House of the People shall have power", and this is followed by, after sub-clause (c), "and to authorise by law....." I think according to the Constitution, the House of the People cannot authorise by law.

The Honourable Dr. B. R. Ambedkar : I should say, Sir, that the Drafting Committee reserves to itself the liberty to re-draft the last three lines following sub-clause (c).

The Honourable Shri K. Santhanam : Sir, I am unable to understand this. In the House here we pass something which is obviously wrong and unconstitutional and then leave it to the Drafting Committee. I do not think we can leave it to the Drafting committee to temper with the provisions we are making unless there in some lacuna or a mistake. We do not want to be faced with a new Constitution altogether and subjected to the trouble of looking at it article by article again. I do not think it is right for this House to pass a clause which is obviously wrong. Either he must say Parliament shall have power......

The Honourable Dr. B. R. Ambedkar : I am prepared to accept the amendment right now. You may suggest it. "Parliament shall have power to authorise by law......."

The Honourable Shri K. Santhanam : Sir, the amendment may be, "and Parliament shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of India for the purposes for which the said grants are made."

Coming to clause (2), it says "that the provisions of article 93 and 94 of this Constitution shall have effect in relation to the making of any grant......" I want to know if this means that there will have to be an Appropriation Act for this and that Appropriation Act will also show all the divisions, charged and non-charged, votable and non-votable as stated in the previous articles. If that is the implication.................

The Honourable Dr. B. R. Ambedkar : That cannot be.

The Honourable Shri K. Santhanam : Article 93 says.........

Shri T. T. Krishnamachari : If it will help honourable Member, we can say, there will be a Consolidated Fund Bill No. I before an Appropriation Act. which will give the main skeleton.

The Honourable Shri K. Santhanam : What I want to know is whether the Consolidated Fund Bill No. I will also consist of the charged and non-charged amount and voted and non-voted amounts, or will give only the votable portion.

The Honourable Dr. B. R. Ambedkar : The charged portion occurs only in the final Appropriation Act. This voting account gives what in the technical language of the House of Commons are called Supply services as distinct from services charged on the revenues.

The Honourable Shri K. Santhanam : This article says that the provisions of article 93 and 94 will have to be compiled with.

The Honourable Dr. B. R. Ambedkar : Articles 93 and 94 mean the voting of Appropriation Act.

The Honourable Shri K. Santhanam : Article 93, first part, says that the charged portion would be shown and the second part says that such portion as is votable shall be presented to the vote. I want to know whether both these portions will be applicable to the voting account.

The Honourable Dr. B. R. Ambedkar : Article 93 says that the vote of the House is not necessary for services charged on the revenues of India.

The Honourable Shri K. Santhanam : But, they will have to be shown in the Appropriation Act.

The Honourable Dr. B. R. Ambedkar : When passed. This is what is called Consolidated Fund Act I.

The Honourable Shri K. Santhanam : Article 94 does not deal with Consolidated Fund Act.

The Honourable Dr. B. R. Ambedkar : That is also the Appropriation Act. As I stated before, there is no distinction. The Appropriation Act shows the details while the Consolidated Fund Act does not show details.

The Honourable Shri K. Santhanam : I do not think Dr. Ambedkar's explanations can override the precise provisions of an article. As the article stands, all the provisions of articles 93 and 94 will apply to this Consolidated Fund as to the other. Therefore, the entire budget procedure will have to be duplicated.

The Honourable Dr. B. R. Ambedkar : It the honourable Member will read carefully sub-clause (2), he will see what sub-clause it deals with. It says, "The Provisions of articles 93 and 94 of this Constitution shall have effect in relation to the making of any grant under clause (1).

The Honourable Shri K. Santhanam : Please read on.

The Honourable Dr. B. R. Ambedkar : As I stated, there is no question of grant will regard to service charged on the revenues.

The Honourable Shri K. Santhanam : ...."and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure............"Therefore the Consolidated Fund Act I will be a duplicate--of course it may be of smaller dimensions--of the Final Consolidated Fund Act. It must contain the charged and non-charged, the voted and non-voted and everything. That to my mind, is what we are going in for if we adopt the provision as it is.

Shri T. T. Krishnamacharin : Mr. President, Sir I quite realise that the wording has given room for some misconception, but I may assure my honourable Friend Mr. Santhanam that the whole budget procedure would have to be gone through though in a very cursory manner. For instance, the convention so far as the Consolidated Fund Bill No. I in Parliament is concerned is that the executive does not demand payment for supply service which is in considerable variance with what was obtained in the previous year. After all, that is only for a period of three or four months that Parliament makes the grant. Undoubtedly, if there is going to be a Bill, there must be a Schedule and the Schedule must give the details probably in the same set-up as the Schedule that will be attached to the Appropriation Bill. If my honourable Friend reads article 94 again which the House has accepted, he will find that reference to payment out of the Consolidated Fund is there and he will be able to realise better the explanation given by Dr. Ambedkar that after all, the Appropriation Bill is the same thing as the Consolidated Fund Bill. The initial Bill will be the Consolidated Fund Bill No. I and the Schedule attached to the main Bill will comprise all that was contained in the Consolidated Fund Bill No. I. The validity of the initial Bill will cease the moment the main Bill is passed. The exact procedure that has got to be followed will depend on the temper of the Parliament and the nature of the demand made. If they would accept a token Schedule giving the various heads and giving roughly the total amount needed, as being sufficient, the labour involved would be negligible. But, if they want all the items that are now enumerated in the Book of Demands, even that possibly could be done, because it would only be *pro rata* of the total estimates placed before Parliament but there may be a certain amount of clerical work necessary; it all depends upon the demands made by Parliament. The matter is one of procedure and as my honourable Friend has accepted the principle, I do not think there need be any further difficulty about accepting this suggested procedure. The mere fact that mention is made of article 93 and 94 that procedure having to be followed therein does not raise, in my view at any rate, insuperable difficulties. I may assure my honourable friend Mr. Santhanam that what we have aimed at right through is to avoid creating a procedure which would be difficult for Parliament to follow, and at the same time avoid creating a situation which will alter the present state of things all of a sudden. Parliament might change these things as it wants later on. Perhaps, Sir, it may be necessary in the first budget session after this Constitution has been passed when the provisional Parliament will be sitting, we may have to allow Parliament a certain amount of elasticity in either following or varying the rigid provisions mentioned in these articles which are now being discussed. Every care will be taken in regard to making the transitory period easy. This is a mere matter of procedure and I see no difficulty in meeting the wishes of Parliament as may be indicated by them from time to time.

The Honourable Dr. B. R. Ambedkar : Sir, I do not think there is any necessity to say anything more. I am only moving an amendment:

"That after sub-clause (c), of clause (1), the following words be added after 'and' and before 'to':-

'Parliament shall have power.' "

Mr. President : The question is:

"That for article 96, the following article be substituted:-

'96. (1) Notwithstanding anything contained in the foregoing provisions of this Chapter, the House of the People shall have power--

Votes on account, votes on credit and

exceptional grants.

(a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 93 of this Constitution for the voting of such grant and the passing of the law in accordance with the provisions of article 94 of this Constitution in relation to that expenditure;

(b) to make a grant for meeting an unexpected demand upon the resources of India when on account of the magnitude of the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement;

(c) to make an exceptional grant which forms no part of current service of any financial year; and Parliament shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of India for the purposes for which the said grants are made.

(2) The provisions of article 93 and 94 of this Constitution shall have effect in relation to the making of any grant under clause (1) of this article and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet such expenditure.' "

The amendment was adopted.

Mr. President : The question is:

"That article 96, as amended, stand part of the Constitution."

The motion was adopted.

Article 96, as amended, was added to the Constitution.

Mr. President : There is notice of amendment by Professor Shah to add a new article 96-A. No. 1721.

Prof. K. T. Shah : After the vote on Mr. Saksena's amendment of the same kind, I do not know that it would be proper to move this. But if you will permit me I will make one submission *apropos* the remarks made by Dr. Ambedkar in reply thereto ascribing motives by saying that such amendments as this were inspired by people who wanted longer sessions. I have expressed that view twenty-five years ago in my books, and if Dr. Ambedkar says it is a bad motive, I think it most unfair.

Mr. President : I think he did not mean it seriously. We go to article 97. Mr. Kamath--1722.

Article 97

Shri H. V. Kamath : Sir, I move:

"That in clause (1) of article 97, the words 'and a Bill making such provision shall not be introduced in the Council of States:' be deleted."

This clause is another instance among several other of tautology or mere repetitious performance. If the House will turn to articles 89 and 90 and read them together, the House will see that there is no need for a clause like this here. Article 89 clause (1) provides that a Money Bill shall not be introduced in the Council of States. Article 90 defines what a Money Bill is for the purpose of this Chapter. Putting these two articles together it is clear and it needs no repetition whatever. There is absolutely no valid reason whatever for repeating this provision in this article. Sir, I move.

Prof. Shibban Lal Saksena : Then no Bill can be moved even in the House of People without President's permission.

Shri H. V. Kamath : I do not think that that interpretation can be put on my amendment.

Mr. President : No. 1723.

Prof. K. T. Shah : Sir, I beg to move:

"That in clause (3) of article 97, after the word 'India' the words 'outside the frontiers of India in war-like operations' and; before the word 'passed' the words 'considered or' be inserted; and the following proviso be added at the end of the clause :-

> 'Provided that whenever the President makes any such recommendations he shall give his reasons for the same in writing.' "

The amendment clause would read:

> "A bill which, if enacted and brought into operation, would involve expenditure from the revenues of India outside the frontiers of India in war-like operations shall not be considered or passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill."

Sir, I have been induced to move this amendment in view of our past experience under British rule. The greatest waste of Indian money used to occur in connection with the war-like operations of the preceding Government, and those operations outside the frontiers of India, in support of the imperialist or aggressive wars of Britain. There had been a provision in the previous Government of India Act 1915, which precluded the then Government from spending a single pie in war-like operations outside the frontiers, without the authority of Parliament which was then the trustee so to say, or had made itself the trustee, of the welfare of the Indian people. Not that it ever objected of Indian money being spent in this way; but still it was a healthy check.

In the present provision I would like to insert a corresponding safeguard against similar misuse or excessive use of Indian revenues in war-like operations outside the frontiers of India. This article relates to excess grants; and if such money is used outside the frontiers of India, then I would like to provide a safeguard of some kind. I do not mean that such funds shall not be used, nor that India will not be able to engage in defensive or even offensive wars outside the frontier of India, and spend money in connection therewith but that, if that necessity arises, then the President must bring the matter before the House, and give his reasons in writing. The House of the People will then have an opportunity to consider whether the expenditure now required is justified in the interest of India, and then, knowing the full position give its authority for the same.

I repeat that it is not my intention by this amendment to handicap in any way the executive in their necessary action on matters of national defence.

But it is necessary in my opinion-in view of past experience that some such safeguard be inserted, lest the tendency we all have to spend money freely be utilised to our own disadvantage. Sir, I move.

Mr. President : Mr. Shibban Lal Saksena, No. 231 of the List of Amendments to Amendments.

Prof. Shibban Lal Saksena : Sir, I move only the last part of my amendment No. 231:

> "That in article 97, clause (3) be deleted."

Mr. President : You are not moving the other amendment?

Prof. Shibban Lal Saksena : No, Sir.

Sir, I have not seen the necessity of this clause in this article. It is already said that money Bills have to go through a particular procedure. After that I do not see the necessity for this clause. In fact if it is strictly interpreted, there is no Bill which any House may pass or Parliament may pass which will not involve the Government in some expenditure. Even if it is an ordinary Bill, there too if enforced and brought into operation, it will involve an expenditure from the revenues of India unless of course it is intended to mean that any such expenditure will be an expenditure which is non-votable as contemplated in article 92. Then of course it is a different matter but as it stands at present, I think it will mean that any Bill which involves any expenditure may not be moved in any House. Sir, I move.

Mr. President : All amendments have been moved and the clause and the amendments are open for discussion.

Shri T. T. Krishnamachari : I have only one word to say in regard to the last amendment moved by Professor Saksena. He wants to cut out the initiative of the executive which has been preserved right through in these articles dealing with the financial provisions so far as expenditure and taxation are concerned. Actually it is a tradition which we have been following in this country within the limited powers that have been afforded to the Legislatures and which we have also incorporated in this Draft Constitution from the British model which has all through the centuries made it a matter of pure executive responsibility to initiate motions which involve taxation or expenditure. If it happens that a private member of Parliament can initiate Bills which will involve taxation and expenditure then the responsibility of the executive will be blurred for one thing and then it will be difficult for them to devise the ways and means to cover the expenditure. It is a principle well accepted in all constitutions that this initiative must rest with the executive. Of course I see that Professor Shibban Lal Saksena has not moved his other amendments wherein he wanted to give power to the Legislature to move amendments which would have had the effect of permitting Parliament to raise the rates of taxes in Bills seeking to impose fresh taxation or alter the existing tax structure. Apparently he has seen the unreasonableness of an amendment of that nature and he has given it up. But I do feel that if he follows the same line of thought he will find that a provision of this nature which he seeks to amend is already in the Government of India Act today and is to be other Legislature following this method of parliamentary system of Government, that the initiative must be kept absolutely without any dilution in hands of the executive. Therefore there has been no attempt in any of the Dominion Legislatures to take away this particular power that has been given to the executive. I think the amendment of Professor Shibban Lal Saksena cannot therefore be accepted and the clause must remain as it is.

So, far as Professor Shah's amendment is concerned I do not know If I need anticipate Dr. Ambedkar. The reasons that he has adduced are fairly clear, namely, that he does not want to give the President or the executive any powers for initiating any Bill which will involve expenditure to be incurred outside India for the reason that he does not want the future Government of India to participate in any Imperial wars. It is quite possible that a future Government of India may have to take some steps to safeguard the frontiers of India the operations in respect of which might take it just a little beyond the frontiers, and the very purpose of his wanting to preserve the integrity of this Government in the future will be defeated if Professor Shah's amendment is accepted and the hands of the executive are tied by a provision of his nature. It might be very reasonable from a point of view which considers that all ware are Imperialistic. Sometime countries have got to participate in wars for purely defensive purposes and even that purpose will be jeopardized by accepting the amendment moved by Prof. Shah. I therefore suggest to the House that these two amendments have no validity so for as the particular article is concerned and they have to be rejected.

The Honourable Dr. B. R. Ambedkar : I do not think any reply is called for, but I would like, Sir, with your permission to move one amendment myself. I move:

"That with reference to amendment No. 1723 of the List of Amendments, in clause (3) of article 97, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

Shri H. V. Kamath : The words at the end of the clause have been needlessly repeated.

The Honourable Dr. B. R. Ambedkar : I do not think so.

Mr. President : The question is:

"That in clause (1) of article 97, the words 'and a Bill making such provision shall not be introduced in the Council of State:' be deleted."

The amendment was negatived.

Mr. President : The question is:

"That for amendments Nos. 1722 or 1723 of the List of Amendments, the following be substituted:-

"That in article 97, clause (3) be deleted.' "

The amendment was negatived.

Mr. President : I shall put Prof. Shah's amendment which is in three parts. The question is:

"That in clause (3) of article 97, after the word 'India' the words 'outside the frontiers of India in war-like operations' be inserted.".

The amendment was negatived.

Mr. President : The question is:

"That in clause (3) of article 97, before the word 'passed' the words 'considered or be inserted."

The amendment was negatived.

Mr. President : The question is:

"That the following proviso be added at the end of clause (3) of article 97:-

> 'Provided that whenever the President makes any such recommendation he shall give his reasons for the same in writing'."

The amendment was negatived.

Mr. President : I shall now put Dr. Ambedkar's amendment.

The question is:

"That with reference to amendment No. 1723 of the List of Amendments, in clause (3) of article 97 for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That article 97, as amended, stand part of the Constitution."

The motion was adopted.

Article 97, as amended, was added to the Constitution.

Article 98

Shri H. V. Kamath : Mr. President, Sir, I move:

"That in clause (1) of article 98, for the words 'Each House of Parliament may make rules for regulating, subject to the provisions of this Constitution' the words 'Subject to the provisions of this Constitution, either House of Parliament may make rules for regulating' be substituted."

There are two separate amendments in this: one is the transposition of a phrase in one clause and other is substitution of the word 'each' by the word 'either'. These are amendments of a drafting nature but in my humble judgment I believe that this is better English and it conforms more to the rules of syntax. I do not think there will be any objection or difficulty in the way of accepting this amendment and I hope the House will endorse my suggestion. Sir, I moved.

(Amendments Nos. 1725 and 1726 were not moved).

Mr. Naziruddin Ahmad : Sir, I have to move my amendment No. 1727 not because I want to move it but because on this hangs the amendment of another honourable Member. I move it to accommodate the honourable Members. I beg to move:

"That clause (4) of article 98 be omitted."

Shri Jaspat Roy Kapoor (United Provinces: General): Before moving my amendment, I would like to thank my Honourable Friend, Mr. Naziruddin Ahmad, for having moved his amendment No. 1727, for that enables me to move my amendment to this amendment.

Sir, I am not moving amendment No. 14. I am moving amendment No. 15 only.

I move:

"That with reference to amendment No. 1727 of the List of Amendments, in clause (4) of article 98, after the words 'absence' the words 'the Chairman of the Council of State, or in the absence of both' be inserted."

Thereafter clause (4) would read:

"At a sitting of two House the Speaker of the People, or in his absence the Chairman of the Council of States or in the absence of both such person as may be determined by rules of procedure made under clause (3) of this article, shall preside."

The Drafting Committee has appended a not to this clause (4) at the bottom of page 44, saying that the committee is of opinion that the Speaker of Parliament, as the House of the People is the more numerous body. That of the House of the People should preside at a joint sitting of the two House is good so far as goes but when the speaker of the house of the People is absent I think the appropriate procedure would be to permit the Chairman of the Council of State to preside. The Chairman of the Council of State is an elected person, elected by both House of Parliament, and I see no reason, Sir, when the Speaker of the House of the People is not present, why in his absence the Chairman of the Council of State should not be authorised to preside. Clause (4) as it stands says: That in the absence of the Speaker of the house of the People such other person shall preside as may be determined by rules of procedure made under clause (3) of this article."

Now this practically shuts out the chairman of the Council of States from presiding, for I think it will not be seriously contended that the Chairman of the Council of State may be permitted to preside over the joint sitting in accordance with rules that may be framed under clause (3). The President, when framing such rule in consultation with the Chairman of the Council of States, I am sure, will not have before him the proposal emanating from the Chairman of the Council of States himself that he should be authorised to preside in the absence of the Speaker of the House of the People, because he must be a very presumptuous Chairman of the Council State, a person who has absolutely no delicacies, who would be so audacious as to put forward such a suggestion to the President that he should be authorised to preside in such a contingency. I think it is necessary, therefore, that we should provide in clause (4) that when the Speaker of the House of the People is absent, the Chairman of the Council of the State should preside.

Sir, I beg to move.

(Amendment nos. 1728 and 1729 were not moved.)

Mr. President : So all the amendments have been moved of which we have received notice. does any one now like to speak?

Shri T. T. Krishnamachari : Sir, while I quite admit the logic of the amendment moved by Mr. Kapoor-I do not know what Dr. Ambedkar will do in the matter, but my own feeling is that the clause as it is had better stand rather than be amended by the suggestion of Mr. Jaspat Roy Kapoor for this reasons: The proper arrangement will be that either the Chairman of the Council of State should preside, and in his absence the Speaker should preside; or the arrangement should stand as it is, because the Chairman of the Council of States happens to be the Vice-President of India, and has a unique position, second only to that of the President, and perhaps the Premier or somebody like that. To put him in a position below the Speaker would mean a very invidious distinction-making a person who is likely to succeed the President or take over his duties under certain circumstances to be put below the Speaker of the House of the People.

Again there might be some objection to put the speaker below the Chairman of the council because that might involve a question of rivalry between the two House as to which House takes the first place. It is a very delicate and difficult position, and I think the Drafting Committee has solved the position by eliminating the Chairman of the Council of State who is the view-President from the picture altogether, and it is best from all points of view that once the two House sit together, the Vice-President who is Chairman of the Council goes out completely from the picture and the Speaker presides. The acceptance of the suggestion of Mr. Jaspat Roy Kapoor though is might look logical, is, I think, likely to create a delicate situation which had better be avoided by the article being allowed to remain as it is.

Shri K. M. Munshi (Bombay : General): sir, I think it would be best to leave the article as it is, without incorporating the Chairman of the Upper House. The reason is very simple. The Chairman of the Upper House is also the Vice-President and if we put the Speaker in the first instance it would not be right to put the Chairman next after him; and it may be that it would not be advisable to have a person who would be acting as a President in some temporary capacity or the other as the Speaker or the Chairman of this Joint sitting. It is from that point of view that it would be very improper, and I think it must be left to the rules to decide whether he should preside or not: But putting him expressly in this manner would be stultifying his position as Vice-President of the Union and it is very advisable to keep it as it is.

The Honourable Dr. B. R. Ambedkar : All that I can say is that I cannot accept Mr. Jaspat Roy Kapoor's amendment. It is much better that the matter be left elastic to be provided for by rules. With regard to Mr. Kamath's amendment, I certainly feel drawn to it. But for the moment I cannot commit myself, but I can assure him that this matter will be considered by the Drafting Committee.

Mr. President : Then I do not put Mr. Kamath's amendment to the vote. I treat it as a drafting amendment which the Drafting Committee will consider.

With regard to Mr. Jaspat Roy Kapoor's amendment No. 15, I would like to draw Dr. Ambedkar's attention to one point. In clause (2) of article 98 we have the words:

> "With respect to the Legislature of the Dominion of India."

In another place we have used the expression "Constituent Assembly of India". I suppose Dr. Ambedkar would like to have the same expression here also?

The Honourable Dr. B. R. Ambedkar : Yes.

Mr. President : I was pointing out that here in this clause (2) the expression "Legislature of the Dominion of India" occurs. Perhaps, the expression 'Constituent Assembly of India' will be better?

The Honourable Dr. B. R. Ambedkar : We have now got two Assemblies so to say, the Constituent Assembly sitting as Constituent Assembly and the Constituent Assembly sitting as legislature. We have rules on both sides. I think therefore it would be desirable to retain the words 'Dominion of India', so that we could adopt the rules which are prevalent on the other side.

Shri Jaspat Roy Kapoor : My submission is that for the words 'Legislature of the Dominion of India' we may have the words 'Constituent Assembly of India' and the word 'Legislative' within brackets. That is how we have describing our Constituent Assembly when it functions as Legislature.

The Honourable Dr. B. R. Ambedkar : We have to use the language of the Indian Independence Act. We have to restrict ourselves to the terminology of that Act.

Mr. President : If it will not create any difficulty, I do not mind it.

I will put the amendment moved by Shri Jaspat Roy Kapoor to vote.

Shri Jaspat Roy Kapoor : Sir, I seek leave of the House to withdraw it. I do not want it to have the fate of a defeated amendment.

Mr. President : If the House grants him leave to withdraw his amendment, it may be withdrawn.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is:

"That article 98 stand part of the Constitution."

The motion was adopted.

Article 98 was added to the Constitution.

New Article 98-A

Mr. President : We have notice of an amendment to insert a new article by Dr. Ambedkar.

The Honourable Dr. B.R. Ambedkar : I moved:

"That after article 98, the following new article be inserted:-

'98-A. parliament may. for the purpose of the timely completion of the financial business, regulate by law

Regulation by law of procedure in Parliament in relation to financial business.

the procedure of and the conduct of business in, each house of Parliament in relation to any financial matter or to any Bill for appropriation of moneys out of the Consolidated Fund of India, and if and in so far as the provision of any law so made is inconsistent with any rule made by a House Parliament under the last preceding article or with any rule or standing order having effect in relation to Parliament under clause (2) of that article, such provision shall prevail.' "

Mr. President : As no Member desires to speak on this amendment, I shall put the motion to vote.

The question is:

"That after article 98, the following new article be inserted:

Regulation by law of procedure in Parliament in relation to financial business.

98-A. Parliament may, for the purpose of the timely completion of the financial business, regulate by law the procedure of and the conduct of business in, each house of Parliament in relation to any financial matter or to any Bill for appropriation of moneys out of the Consolidated Fund of India, and if and in so far as the provision of any law so made is inconsistent with any rule made by a House Parliament under the last preceding article or with any rule or standing order having effect in relation to Parliament under clause (2) of that article, such provision shall prevail.' "

The motion was adopted.

Article 98-A was added to the Constitution.

Article 173

Shri T. T. Krishnamachari : May I suggest that, in continuation of these financial provisions relating to the Union which the House has considered, we may take up the consideration of the appropriate provision relating to the States? If that is done continuity can be maintained.

Mr. President : I was myself going to make that suggestion. We may not take up the Financial Article in the States Part of the Constitution.

The House will now take up article 173 for discussion.

Amendment Nos. 2461 and 2462 are not moved. Dr. Ambedkar may move the next amendment, No. 2464.

The Honourable Dr. B. R. Ambedkar : Sir, I moved:

"That in clause (4) of article 173, after the words 'deemed to have been passed' the words 'by both Houses in the form in which it was passed' be inserted."

Shri T. T. Krishnamachari : Sir, I formally move:

"That in clause (2) of article 173, for the word 'thirty' the word 'twenty-one' be substituted."

Shri B. M. Gupte : I beg to moved:

"That with reference to amendment No. 2463 of the List of Amendments in article 173, for the words 'thirty days' wherever they occur, the words ' fourteen days' be substituted."

This provision we have already adopted for the Central Legislature. In order to bring the State in line with that, this amendment may be accepted.

Mr. President : The question is:

"That with reference to amendment No. 2463 of the List of Amendments, in article 173, for the words 'thirty days' wherever they occur, the words 'fourteen days' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That in clause (4) of article 173, after the words 'deemed to have been passed' the words 'by both Houses in the form in which it was passed' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That article 173, as amended, stand part of the Constitution."

The motion was adopted.

Article 173, as amended, was added to the Constitution.

Article 174

(Amendment No. 2465 was not moved.)

Mr. President : Dr. Ambedkar, there are two amendments in your name, Nos. 69 and 70 of List I. These are only to bring this article into line with the provision which we have already adopted.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for sub-clauses (c) and (d) of clause (1) of article 174, the following be substituted:

> '(c) the custody of the Consolidated Fund or the Contingency Fund of the State, the payment of moneys into or withdrawal of moneys from any such fund;

'(d) the appropriation of moneys out of the Consolidated Fund of the State.' "

and also-

"That in sub-clauses (e) and (f) 'clause (1) of article 174, for the words Revenues of the State' the words 'Consolidated Fund of the State' be substituted."

H. V. Kamath : Mr. President, Sir, there are two amendments in my name, Nos. 2466 and 2467. As regards 2467 I only formally move it, as it is only of a drafting nature. As regards amendment No. 2466, I move:

"That in sub-clause (e) of clause (1) of article 174, for the words 'the increasing of the amount of' the words 'varying amount of' or abolishing' be substituted."

I raised a similar point when discussing the corresponding article for the Union Parliament, and I think, and I still hold the view that that point was not satisfactorily answered. The House will see that article 177 provides for various items that shall be charged upon the Consolidated Fund of the State, among these various items being the emoluments and allowances of the Speaker and the Deputy speaker of the Legislative Assembly and in the case of a State having a Council, of the Chairman and the Deputy Chairman of the Legislative Council. There is no provision at all in this Constitution to the effect that the emoluments and allowances of these would not be diminished during their terms of office, as we have got in the case of the Governor of the State. Therefore it is likely that the legislature may at any time by law diminish the emoluments of the Speaker, the deputy Speaker, Chairman and the Deputy Chairman.

Shri B. Das : But these are all charged expenditure under article 177.

Shri H. V. Kamath : But there is no provision that they shall not be diminished during their term of office, and if a proposal arises for the diminution of such allowances and emoluments, should we allow the Council to have power to move such a Bill? Mr. Ananthasayanam Ayyangar replying to this on the last occasion said that so far increasing the amount is concerned, that will come within the scope of a money Bill, and therefore such money Bills should be introduced only in the Lower House, but the point that I want to raise is this: Suppose the legislature wishes to diminish the emoluments and allowances of the Speaker, the Deputy Speaker, the Chairman and the Deputy Chairman, should we not regard that also as a Bill coming within the scope of money Bills for purposes of article 174? Should we allow the Upper House the power to move a motion with regard to that matter? Should we not consider that also as falling within the scope of this article 174 and allow the Lower House the exclusive power to make such a motion?

Then, Sir, as regards abolition. There is one omnibus clause, a comprehensive clause in article 177, clause (f) which lays down that any other expenditure declared by this Constitution or by the Legislature of the State to be so charged shall also be charged to the Consolidated Fund of the State. Here also I do not know whether any occasion will arise at any time during the tenure of the legislature when it might consider that an expenditure which was previously declared as an expenditure chargeable to the State. In that case also, the point is whether the Upper House should be given the power to make such a motion, or the Lower House alone should have that power. Sir, I move.

As regard 2467, I only formally move it but would leave the matter to the wisdom of the Drafting Committee.

Mr. President : There are no other amendments to this article. I shall now put it to vote.

Shri H. V. Kamath : Does not Dr. Ambedkar want to say anything in the matter?

The Honourable Dr. B. R. Ambedkar : All I can say is that I shall look into the matter when we take up the revision of the Constitution.

Mr. President : The question is:

"That for sub-clauses (c) and (d) of clause (1) of article 174, the following be substituted:

> (c) the custody of the Consolidated Fund or the Contingency Fund of the State, the payment of moneys into or the withdrawal of money from any such fund;
>
> (d) the appropriation of moneys out of the Consolidated Fund of the State;"

The amendment was adopted.

Mr. President : The Question is:

"That in sub-clauses (e) and (f) of clause (1) of article 174, for the words 'revenues of the State' the words 'Consolidated Fund of the State' be substituted."

The amendment was adopted.

Shri H. V. Kamath : As Dr. Ambedkar has promised to look into that matter, I will leave it to his wisdom. He might exercise it at a later stage.

Mr. President : Both the amendments?

The Honourable Dr. B. R. Ambedkar : There is only one amendment.

Shri H. V. Kamath : May I ask which one he promised to look into? Perhaps he will make it clear.

Honourable Dr. B. R. Ambedkar : Amendment No. 2466.

Mr. President : Very well, than, I will not put them to vote.

The question is:

"That article 174, as amended, stand part of the Constitution."

The motion was adopted.

Article 174, as amended, was added to the Constitution.

Shri Honourable Dr. B. R. Ambedkar : I want article 175 to be held over.

Shri T. T. Krishnamachari : I suggest articles 175 and 176 may be held over as they affect some problems which the Drafting Committee are still considering. Article 177 may be taken.

Mr. President : Then we shall take up article 177.

Article 177

The Honourable Dr. B. R. Ambedkar : Sir, I moved:

"That in sub-clauses (a) and (b) of clause (2) of article 177, for the words 'revenues of the State', the words 'Consolidated Fund of the state' be substituted."

I move:

"That in clause (3) of article 177, for the words 'revenues of each State', the words 'Consolidated Fund of each State' be substituted."

Sir, I also move:

"That in sub-clause (b) of clause (3) of article 177, for the word 'emoluments' the word 'salaries' be substituted."

(Amendments Nos. 2486, 2487 and 2489 were not moved.)

Mr. President : The question is:

"That in sub-clauses (a) and (b) of clause (2) of article 177, for the words 'revenues of the State' the words 'Consolidated Fund of the State', be substituted."

The amendment was adopted.

Mr. President : The question is:

"That in clause (3) of article 177, for the word 'revenues of each state', the words 'Consolidated Fund of each State' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That in sub-clause (b) of clause (3) of article 177, for the word 'emoluments' the word 'salaries' be substituted."

The motion was adopted.

Mr. President : The question is:

"That article 177, as amended, stand part of the Constitution."

The motion was adopted.

Article 177, as amended, was added to the Constitution.

Article 178

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in clause (1) of article 178, for the words 'revenues of a State', the words 'Consolidated Fund of a State' be substituted."

(Amendment No. 2490 was not moved.)

Mr. President : The question is:

"That in clause (1) of article 178, for the words 'revenues of a State', the words 'Consolidated Fund of a State' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That article 178, as amended, stand part of the Constitution." The motion was adopted.

Article 178, as amended, was added to the Constitution.

Article 179

The Honourable Dr. B. R. Ambedkar : Sir, I moved:

"That for article 179, the following be substituted:-

Appropriation Bills.

'179. (1) As soon as may be after the grant under the last preceding article have been made by the Assembly there shall be introduced a Bill to provided for the appropriation out of the Consolidated Fund of the State all moneys required to meet-

(a) the grants so made by the Assembly; and

(b) the expenditure charged on the consolidated Fund of the State but not exceeding in any case the amount shown in the statement previously laid before the House or Houses.

(2) No amendment shall be proposed to any such bill in the House or either House of the Legislature of the State which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated fund of the State, and the decision of the person presiding as to the amendments which are admissible under this clause shall be final.

(3) Subject to the provisions of the next two succeeding articles no money shall be withdrawn from the Consolidated Fund of the State except under appropriation made by law passed in accordance with the provisions of this article.' "

Mr. President : There is no other amendment to this article.

The question is:

"That for article 179, the following be substituted:-

'179. (1) As soon as may be after the grants under the last preceding article have been made by the

Appropriation Bills.

Assembly there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of the State all moneys required to meet-

(a) the grant so made by the Assembly; and

(b) the expenditure charged on the Consolidated Fund of the State but not exceeding in any case the amount shown in the statement previously laid before the House or Houses.

(2) No amendment shall be proposed to any such Bill in the House or either House of the Legislature of the State which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of the State, and the decision of the person presiding as to the amendments which are admissible under this clause shall be final.

(3) Subject to the provisions of the next two succeeding articles no money shall be withdrawn from the Consolidated Fund of the State except under appropriation made by law passed in accordance with the provisions of this article.' "

The amendment was adopted.

Mr. President : The question is:

"That article 179, as amended, stand part of the Constitution."

The motion was adopted.

Article 179, as amended, was added to the Constitution.

Article 180

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for article 180, the following article be substituted :-

'180. (1) The Governor shall-

(a) if the amount authorised by any law made in accordance with the provisions of article 179

Supplementary, additional or excess grants.

of this Constitution to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or

(b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year, cause to be laid before the House or the Houses of the Legislature of the State another statement showing the estimated amount of that expenditure or cause to be presented to the Legislative Assembly of the State a demand for such excess, as the case may be.

(2) The provisions of the last three preceding articles shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of State to meet such expenditure or grant.' "

Mr. President : The question is:

"That article 18C, the following article be substituted :-

"180. (1) The Governor shall-

(a) if the amount authorised by any law made in accordance with the provisions of article

Supplementary additional or excess grants.

179 of this Constitution to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or

(b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year, cause to be laid before the House or the Houses of the Legislature of the State another statement showing the estimated amount of that expenditure or cause to be presented to the Legislative Assembly of the State a demand for such excess, as the case may be.

(2) The provisions of the last three preceding articles shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or grant.' "

The amendment was adopted.

Mr. President : The question is:

"That article 180, as amended, stand part of the Constitution."

The motion was adopted.

Article 180, as amended, was added to the Constitution.

Article 181

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for article 181, the following article be substituted :

'181. (1) Notwithstanding anything contained in the foregoing provisions of this Chapter, the Legislative

Votes on account, Votes on credit and exceptional grants.

Assembly of a State shall have credit power

(a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 178 of this Constitution for the voting of such grant and the passing of the law in accordance with provisions of article 179 of this Constitution in relation to that expenditure;

(b) to make a grant for a meeting an unexpected demand upon the resources of the State when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement;

(c) to make an exceptional grant which forms no part of the current service of any financial year; and the Legislature of the State shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of the State for the purposes for which the said grants are made.

(2). The provisions of articles 178 and 179 of this Constitution shall have effect in relation to the making of any grant under clause (1) of this article and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure.' "

Mr. President : The question is :

"That for article 181, the following article be substituted :

'181. (1) Notwithstanding anything contained in the foregoing provisions of this Chapter, the Legislative

Votes on account, votes on Credit and exceptional grants

Assembly of a State shall have power-

(a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 178 of this Constitution for the voting of such grant and the passing of the law in accordance with the provisions of article 179 of this Constitution in relation to that expenditure;

(b) to make a grant for meeting an unexpected demand upon the resources of the State when on account of the magnitude or the indefinite character of the service the demand cannot be stated with the details ordinarily given in an annual financial statement;

(c) to make an exceptional grant which forms no part of the current service of any financial year;

and the Legislature of the State shall have Power to authorise by law the withdrawal of moneys from the Consolidated Fund of the State for the purposes for which the said grants are made.

(2) The provisions of articles 178 and 179 of this Constitution shall have effect in relation to the making of any grant under clause (1) of this article and to any law to be made under that clause as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the state to meet such expenditure.' "

The amendment was adopted.

Mr. President : The question is:

"That article 181, as amended, stand part of the Constitution."

The motion was adopted.

Article 181, as amended, was added to the Constitution.

Article 182

Mr. President : The question is:

"That article 182 form part of the Constitution."

The Honourable Dr. B. R. Ambedkar : With your permission, Sir, I seek to move a small amendment.

"That in article 182, for the words 'revenues of the State', the words 'Consolidated Fund of the State' be substituted."

Mr. President : There is no other amendment.

The question is:

"That in article 182, for the words 'revenues of the State', the words 'Consolidated Fund of the State' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That article 182 as amended stand part of the Constitution."

The motion was adopted.

Article 182, as amended, was added to the Constitution.

Article 183

Mr. President : The question is:

"That article 183 form part of the Constitution."

There are some amendments to this article.

(Amendment No. 2496 was not moved.)

Shri R. K. Sidhva : Sir, I move:

"That in clause (1) of article 183, the word 'shall' be substituted for the word 'may and the following be added at the end :-

'within 6 months from the date of the first session of the Assembly'."

Sir, my amendment says that the legislature of the State shall make rules for regulating, subject to the provisions of this Constitution, its procedure and conduct of business within six months of the first session of the Assembly. In this article it is stated that until the rules are made-which is left to the choice of the Speaker of the House- the rules of procedure and standing orders in force immediately before the commencement of this Constitution shall prevail. I feel, Sir, that there should be a specific period fixed and the Speaker should be required to see that the rules are made within six months. Six months is a very long period. In view of the new set up and the new Constitution, it is just possible that the old rules may not properly fit in. We do not want to give any kind of latitude to the Speaker to see that the rules are not framed framed for an indefinite period. I have seen, Sir, that in some provinces, rules are not made for nearly eighteen months. I think this is a very reasonable amendment. Sir, I move.

(Amendments Nos. 2498 and 2499 were not moved.)

Mr. President : There is no other amendment.

Shri H. V. Kamath : Mr. President, Sir, I rise to support the amendment that has been brought before the House by my honourable Friend Mr. Sidhva.

It is very necessary, Sir, as Mr. Sidhva has stated, that the rules of procedure and conduct of business should be framed as expeditiously as possible. This House is aware that in this very House sitting as legislature we have not yet finally adopted even today the rules of procedure and conduct of business so far as that House is concerned. We have only tentatively adopted and I do not think it is desirable state of affairs that such an inordinate delay should occur for framing the rules of procedure. There should not be any difficulty whatsoever in having this specific time-limit of six months-it is a fairly generous time limit and any legislature which means business and which proceed to business in a really expeditious manner should be able to have the rules ready within six months. I would put it at even three months but as the amendment specifically mentions six months, I would support the amendment as it is and I hope it will commend itself to Dr. Ambedkar and the House.

There is one other observation which I would like to make and that is with regard to clause (1). I hope Dr. Ambedkar will bear in mind what he promised to do with regard to a similar amendment which I moved for the Union Parliament, and clause (1) as it appears here might be reconstructed in the light of the amendment I moved earlier.

Mr. President : Does anyone else wish to say anything?

The Honourable Dr. B. R. Ambedkar : I do not accept the amendment.

Mr. President : The question is:

"That in clause (1) of article 183, the word 'shall' be substituted for the word 'may' and the following be added at the end :-

'within 6 months from the date of the first session of the Assembly.' "

The amendment was negatived.

Mr. President : The question is:

"That article 183 stand part of the Constitution."

The motion was adopted.

Article 183 was added to the Constitution.

New Article 183-A

Mr. President : There is a new article 183-A proposed by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I beg to move:

"That after article 183, the following new article be inserted :-

Regulation by law of procedure in the Legislature of the state in relation to financial business.

183-A. The Legislature of a State may, for the purpose of the timely completion of the financial business, regulate by law the procedure of, and the conduct of business in, the House or Houses of the Legislature of the State in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of the State, and, if in so far as the provision of any law so made is inconsistent with any rule made by the House or either House of the Legislature of the State under the last preceding article or with any rule or standing order having effect in relation to the Legislature of the State under clause (2) of that article, such provision shall prevail.' "

Mr. President : Does anyone wish to say anything? The question is:

"That new article 183-A be added to the Constitution."

The motion was adopted.

Article 183-A was added to the Constitution.

Article 184

Mr. President : We go to article 184.

Shri T. T. Krishnamachari : Sir, we have not discussed article 99 which is analogous. This may be held over. Article 185 and 186 have not got many amendments and they might be taken up.

Article 185

Mr. President : We pass over article 184. We go to article 185.

(Amendments Nos. 2518 and 2519 were not moved.)

Does anyone wish to speak?

Shri B. Das : Sir, I feel that the provincial Legislature should have the right to question the conduct of the High Court Judges. Regarding the Supreme Court, the Parliament is there which will be very alert and if they find the Supreme Court Judges are misbehaving, the Parliament will find its own way to correct them and to bring the Government, the President and the Cabinet under censure so that they control properly the Supreme Court Judges. I am not happy with 185 (1). I do not think and appeal to Dr. Ambedkar-the Drafting Committee has been very fair and if they have been fair, why do they want to stifle discussion about the High Court Judges in the provincial Legislatures? That is all I want to say.

Mr. President : A similar provision has been passed with regard to Supreme Court and High Court in article 100. Does anyone else wish to speak?

Shri T. T. Krishnamachari : Mr. President, if the Chair will permit me and the House agrees, I would like to move-

"That clause (2) of this article may be omitted."

The reason is that right through in the States Chapter we have been omitting specific reference to States in Part III of the First Schedule and it would only be following the same practice which we have hitherto followed. I hope the House will agree to this and omit clause (2). Sir, I move.

Shri R. K. Sidhva : Mr. President, I know, as you have rightly pointed out, that in the previous clauses as far as the Supreme Court is concerned, we have passed a similar article. But I do not understand why the Judge of a High Court should be above criticism as far as his conduct is concerned. Sometimes he misbehaves, he is not a super-man, his conduct also should be subject to question somewhere and if you do not allow the House to discuss his conduct, you know sometimes what happens. We know what happened in a recent case. While I say that his judgment should not be under discussion of the House, his conduct should be certainly subject to discussion. There is nothing wrong and it does not in any way derogate from his position. If you have some kind of restriction upon a judge, I think it will be a very healthy procedure.

Shri T. T. Krishnamachari : May I point out that we have accepted 101 which is practically the same so far as Parliament is concerned and we are applying the same provision with regard to Legislatures of the States?

Mr. President: The question is:

"That clause (2) of article 185 be deleted."

The amendment was adopted.

Mr. President: The question is:

"That article 185, as amended, stand part of the Constitution."

The motion was adopted.

Article 185, as amended, was added to the Constitution.

Article 186

Mr. President: We go to No. 186.

(Amendment No. 2520 was not moved.)

Mr. President: The question is:

"That article 186 stand part of the Constitution."

The motion was adopted.

Article 186, was added to the Constitution.

The Assembly then adjourned till Eight of the Clock on Monday, the 13th June, 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME VIII

Monday, the 13th June 1949.

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION --*(contd.)*

Article 216

Mr. President : We finished article 186 the other day. I am told we should begin with article 216 today.

(Amendments Nos. 2739 and 2740 were not moved.)

The question is:

"That article 216 stand part of the Constitution."

The motion was adopted.

Article 216 was added to the Constitution.

Article 217

(Amendments Nos. 2741 and 2742 were not moved.)

Mr. Naziruddin Ahmad (West Bengal : Muslim). Sir, I beg to move:

"That in clause (2) of article 217, for the words 'next succeeding clause', the words, figure and brackets 'clause (3)' and for the words 'preceding clause', the word. figure and brackets 'clause (1)' be substituted respectively."

The only reason for moving this is that upon this a very important amendment depends. That is why I have given the initiative.

Shri T. T. Krishnamachari (Madras: General): May I move amendment Nos. 87-B and 87-C? They are only formal. I move:

"That in clause (2) of article 217, after the word and figure 'Part I' the words and figures 'or Part III' be inserted."

and

"That in clause (3) of article 217, after the word and figure 'Part I' the words and figures 'or Part III' be inserted."

Prof. Shibban Lal Saksena (United Provinces: General): I have also given notice of an amendment.

Mr. President : I have not seen any amendment.

Prof. Shibban Lal Saksena : I gave notice of it this morning. I beg to move.....

The Honourable Dr. B. R. Ambedkar : (Bombay: General) We have not got copies of his amendment.

Shri L. Krishnaswami Bharathi (Madras: General): We cannot follow what he is moving.

Mr. President : He gave notice of this amendment a few minutes before we actually sat. But I am told it is more or less word for word the same as No. 2741.

The Honourable Shri K. Santhanam (Madras: General): Sir, in a matter of importance like this I do not think anyone should be allowed to move amendments without proper notice. We do not propose to move amendment No. 2741 at all and I do not think any other Member has got the right to move our amendment.

Shri L. Krishnaswami Bharathi : If you give the right to Members to move amendments like this it will go on interminably and it will be sheer waste of time.

Shri K. M. Munshi (Bombay: General) : The amendment the Member wants to move is the same as the one which is not being moved by Members who have given notice of it. He wants to move what they have not moved.

Shri R. K. Sidhva (C. P. & Berar: General): Sir, I do not object to what you may decide. But I want to draw attention to an amendment which I gave notice last week, but which you disallowed. I do not see why an exception should be made in this case.

Prof. Shibban Lal Saksena : Under the rules we are allowed to move amendments to amendments if we give notice before the session commences. This amendment only incorporates the idea contained in the note of dissent by Shri Alladi Krishnaswami Ayyar given at the end of the Draft Constitution. As this is an important matter I do think that if the Members who have given notice of similar amendments are not moving them, the article should not be allowed to be passed without discussion and without attempt at its amendment.

Mr. President : Why did you not give notice of it in time?

Prof. Shibban Lal Saksena : Sir, I gave notice in time, *i.e.,* "before the session commences". Further, it is only a reproduction of amendment No. 2741, and is proposed to be moved as an amendment to 2743.

Mr. President : Yes. I got notice of this before the session commenced. It took the office a little time to get it copied. So I could not disallow it.

Prof. Shibban Lal Saksena : Sir, I feel that articles of this fundamental importance should not go unnoticed in this House merely because certain amendments are not moved by Members who gave notice of them.

The Honourable Dr. B. R. Ambedkar : I would like to raise one or two points about this. This seems to be a rather important matter. The first thing I want to know is whether this is an amendment or an amendment to an amendment. If it is an amendment to an amendment, it cannot be moved unless the main amendment is moved.

Mr. President : It is an amendment to amendment No. 2743 which has been moved by Mr. Naziruddin Ahmad. The honourable Member in his notice says that his amendment is an amendment to Nos. 2741, 2742, 2743, 2744 or 2745.

The Honourable Dr. B. R. Ambedkar : If it is to be taken as an amendment to No. 2743, then obviously, as this goes far beyond the scope of 2743, it cannot be moved unless the Member satisfies you that he is not substantially changing the original amendment. As it is, it is a pure reproduction of the amendment which stands in the names of Messrs. Santhanam, Ananthasayanam Ayyangar and others.

Shri Jaspat Roy Kapoor (United Provinces : General): Sir, may I submit that Dr. Ambedkar is taking in this matter a very narrow view. The Position is this article 217 is under discussion. One Member wants it to be amended in a particular manner. Mr. Naziruddin Ahmad wants the article to be amended in another manner and confines himself to clause (2) of it. All the same the amendment is to article 217. My Friends Prof. Shibban Lal would be in order if he says that rather than amending it in the manner suggested by Mr. Naziruddin Ahmad it should be done in the way he wants. That is obviously an amendment to the amendment of Mr. Naziruddin Ahmad. If a too narrow view is taken off these things by Dr. Ambedkar, I am afraid he himself would find it very difficult to move many of his amendments. He has done so in the past and he will find it necessary to do so also hereafter.

Mr. President : I treat this as an amendment to amendment No. 2743. I rule that this is in order.

Shri B. Das (Orissa: General): I do not follow you, Sir.

Mr. President : If Mr. Das will turn to page 285 of the Printed List, he will find amendment No. 2741. This is more or less a word for word a copy of that. There is no difficulty, you can follow it.

Prof. Shibban Lal Saksena : Sir, I beg to move:

> "That for article 217, the following be substituted :-
>
> > '217. (1) The Legislature of the States in Part I, Schedule I, shall have exclusive power to make laws for the States or for any part thereof in relation to matters falling within the classes of subjects specified in List I (corresponding to Provincial Legislative List).

> (2) The Legislature of any State in Part I, Schedule I, shall in addition to the powers under clause (1) have power to make laws for the State or any part thereof in relation to matters falling within the classes of subjects specified in List II, provided however, that the Union Parliament shall also have power to make laws in relation to the same matters within the entire area of the Union or any part thereof and an Act of the Legislature of the State shall have effect in and for the State as long as and as only as it is not repugnant to any Act of the Union Parliament.
>
> (3) In addition to the powers conferred by the previous sub-section, the Union Parliament may make laws for the peace, or order and good government of the Union or any part thereof in relation to all matters not falling within the classes of subjects enumerated in List I and in particular and without prejudice to the generality of the foregoing, the Union Parliament shall have the exclusive power to make laws in relation to all matters falling within the classes of subjects enumerated in List III.
>
> (4) (a) The Union Parliament shall have power to make laws for the peace, order and good government of the States in Part II, Schedule I.
>
> (b) Subject to the general powers of Parliament under sub-section (a), the legislature of the States in Part II, Schedule I, shall have the powers to make laws in relation to matters coming within the following classes of subjects:
>
> Provided however that any law passed by that Unit shall have effect in and for that Unit so long and as far only as it is not repugnant to any law of the Union Parliament.
>
> (5) The power to legislate either of the Union Parliament or the Legislature of any State shall extend to all matters essential to the effective of the legislative authority vested in the particular legislature.
>
> (6) When a law of a State is inconsistent with a law of the Union Parliament or to any existing law with respect to any of the matters enumerated in List I or (List II), the law of the Parliament or as the case may be, the existing law shall prevail and the law of the State shall to the extent or repugnancy be void.' "

Sir, I am very sorry that an attempt was made to get this amendment disallowed. I would like only to point out that this amendment is word for word what Shri Alladi Krishnaswami Ayyar has suggested in the Appendix to the Draft Constitution on Pages 212-213.

In fact in the Appendix Shri Alladi has stated that he differed from the majority of the Drafting Committee and he has stated that in his opinion the new scheme of division of powers between Parliament and the Legislatures of the states should be as is given in this amendment. The amendment of which notice was given by the Honourable Mr. K. Santhanam was on the lines of the suggestion made by Shri Alladi in the Appendix. I suggest that the matter is of vital importance, on which one of the most eminent jurists of the country has differed from the Drafting Committee, and the article should not be allowed to be passed by the House without due consideration. I therefore thought it my duty to move this amendment. I would have preferred if Mr. Santhanam had himself moved it. I do feel that the House is entitled to know why the suggestion made by Shri Alladi could not be followed. The suggestion made by Shri Alladi is a very important one. In fact the Draft Constitution only reproduces word for word Section 100 of the Government of India Act, 1935. In the Appendix, Shri Alladi has given arguments to show why the change he has suggested is necessary. He has stated that at the time the Government of India Act was passed, it was not decided as to where the residuary powers should vest, whether they should be with the provinces or with the Centre. Therefore it was necessary to frame the Section in the form in which it was framed. He has also pointed out that much litigation has been carried on on the meaning of the word "Notwithstanding", in the Federal Court. He has also stated as it has been decided finally that the residuary powers shall belong to the Centre, the article should be redrafted in a different manner, in the manner he has suggested and as is given in my amendment. Firstly, we should not copy word for word, the Government of India Act, 1935, which was a deed of our slavery. Now that we are now framing a new Constitution, we should not merely incorporate everything word for word from the old Constitution. One advantage of this is that we will not be reminded of our past slavery as we would be by copying, word for word, Section 100 of the Government of India Act, 1935. Secondly, Sir, this is a more logical form to say that the various States shall have exclusive power to make laws in relation to matters falling within the classes of subjects specified in List I, and that List II shall contain subjects in which both the States and the Union shall have concurrent power to make laws, and then to say that whatever remains shall belong to the Union. List I at present gives the powers of the Union Parliament. Shri Alladi has suggested that whatever is contained in the Union List should be by way of illustration only and that whatever remains should belong to the Centre. The more logical form will be to say that such and such powers will belong to the States, such and such powers will belong both to the States and the Union and then to say that whatever remains shall belong to the Union. This kind of division given by Shri Alladi is a more logical division and a much better division in every way. The suggestion made by him is a very important one and the House should take note of the reasons why he prefers this arrangement to the Draft which only copies Section 100 of the Government of India Act. The Drafting Committee itself says on page 100 of the Draft Constitution-

> "Shri Alladi Krishnaswami Ayyar was of opinion that instead of following the old plan of legislative distribution this clause might, in view of the fact that the residuary power is to be in Parliament begin with the legislative power of the States, then deal with the concurrent powers and then with the legislative powers of Parliament. As the question was merely one of form, the majority of the members preferred not to disturb the existing arrangement."

I cannot understand why the Drafting Committee does not feel this is a more logical form. The mere fact that the Government of India Act had it in that form is no arrangement to have it in that form. I therefore suggest that the form suggested by Shri Alladi is an improved form and is less open to litigation and far more clear.

Then, Sir clause (5) says :-

> "The power to legislate either of the Union Parliament or the Legislature of any State shall extend to all matters essential to the effective exercise of the legislative authority vested in the particular legislature."

Shri Alladi has pointed out that this clause follows the Australian and American Constitutions. He has stated that in the Draft Constitution there is no provision to the effect that the power of legislation carries with it the power to make any provisions essential to the effective exercise of the legislative authority. This clause (5) gives that power. This makes the article complete and brings it in conformity with the provisions of the Australian and American Constitutions. The form suggested by Shri Alladi is superior in form as well as in content and also fills a lacuna in the draft article. Sir, I move my amendment and commend it for the acceptance of the House.

(Amendments Nos. 2744 and 2745 were not moved.)

Mr. President : Does anyone wish to say anything?

Shri L. Krishnaswami Bharathi : Nobody, Sir.

Shri M. Ananthasayanam Ayyangar (Madras : General): We do not want the amendment to be moved.

Mr. President : I will put the amendment of Prof. Shibban Lal Saksena to the vote.

The question is:

"That for article 217, the following be substituted :-

> "217. (1) The Legislature of the States in Part I, Schedule I, shall have exclusive power to make laws for the State or for any part thereof in relation to matters falling within the classes of subjects specified in List I (corresponding to Provincial Legislative List).
>
> (2) The Legislature of any of the States in Part I, Schedule I, shall in addition to the powers under clause (1) have power to make laws for the State or any part thereof in relation to matters falling within the classes of subjects specified in List II, provided, however, that the Union Parliament shall also have power to make laws in relation to the same matters within the entire area of the Union or any part thereof and an Act of the Legislature of the State shall have effect in and for the State as long as and as and as far only as it is not repugnant to any Act of the Union Parliament.
>
> (3) In addition to the powers conferred by the previous sub-section, the Union Parliament may make laws for the peace, order and good government of the Union or any part thereof in relation to all matters not falling within the classes of subject enumerated in List I and in particular and without prejudice to the generality of the foregoing, the Union Parliament shall have exclusive power to make laws in relation to all matters falling within the classes of subjects enumerated in List III.
>
> (4) (a) The Union Parliament shall have power to make laws for the peace, order and good government of the states in Part II, Schedule I.
>
> (b) Subject to the general powers of Parliament under sub-section (a), the legislature of the States in Part II, Schedule I, shall have the powers to make laws in relation to matters coming within the following classes of subjects :-
>
> Provided however that any passed by that Unit shall have effect in and for that Unit so long and as far only as it is not repugnant to any law of the Union Parliament.
>
> (5) The power to legislate either of the Union Parliament or the Legislature of any State shall extend to all matters essential to the effective exercise of the legislative authority vested in the particular legislature.
>
> (6) Where a law of a State is inconsistent with a law of the Union Parliament or to any existing or to any existing law with respect to any of the matters enumerated in List I or (List II), the law of the Parliament or as the case may be, the existing law shall prevail and the law of the State shall to the extent of repugnancy be void'."

The amendment was negatived.

Mr. President : The question is:

"That in clause (2) of article 217, for the words 'next succeeding clause', the word, figure and brackets 'clause (3)' and for the words 'preceding clause', the word, figure and brackets 'clause (1)' be substituted respectively."

The amendment was negatived.

Mr. President : The question is:

"That in clause (2) of article 217, after the word and figure 'Part I' the words and figures 'or Part III' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That in clause (3) of article 217, after the word and figure 'Part I' the words and figure 'or Part III' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That article 217, as amended, stand part of the Constitution."

The motion was adopted.

Article 217, as amended, was added to the Constitution.

Article 218

Shri T. T. Krishnamachari : Sir, this article is not considered necessary in the light of subsequent revision by the Drafting Committee. Therefore, the article may be put to the House, so that it can be negatived, if the House desires.

Mr. President : The question is:

"That article 218 stand part of the Constitution."

The motion was negatived.

Article 218 was deleted from the Constitution.

Article 219

Mr. President : We shall take up article 219.

(Amendment No. 2749 was not moved.)

The question is:

"That article 219 stand part of the Constitution."

The motion was adopted.

Article 219 was added to the Constitution.

Article 220

Shri T. T. Krishnamachari : May I suggest that articles 220, 221 and 222 may be put together because the Drafting Committee does not consider these articles as necessary?

Mr. President : I will put them separately.

(Amendments Nos. 2751 and 2752 were not moved.)

The question is:

"That article 220 stand part of the Constitution."

The motion was negatived.

Article 220 was deleted from the Constitution.

Article 221

Mr. President : There is no amendment to this article.

The question is:

"That article 221 stand part of the Constitution."

Article 222

Mr. President : There is no amendment to this article also.

The question is:

"That article 222 stand part of the Constitution."

The motion was negatived.

Article 222 was deleted from the Constitution.

Article 223

Mr. President : There are several amendments to this article.

(Amendments Nos. 2754 to 2759 were not moved.)

The question is:

"That article 223 stand part of the Constitution."

The motion was adopted.

Article 223 was added to the Constitution.

Article 224

The Honourable Dr. B. R. Ambedkar : I wish that article 224 and 225 be held over.

Mr. President : Articles 224 and 225 are held over.

Article 226

The Honourable Dr. B. R. Ambedkar : I formally move amendment No. 2775.

Then I move an amendment to this.

Sir, I move:

"That for amendment No. 2775 of the List of Amendments, the following be substituted :-

"That article 226 be renumbered as clause (1) of article 226, and

(a) at the end of the said clause as so renumbered the words 'while the resolution remains in force' be added; and

(b) after clause (1) of article 226, as so renumbered, the following clauses be added :-

'(2) A resolution passed under clause (1) of this article shall remain in force for such period not exceeding one year as may be specified therein :

Provided that if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1) of this article, such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force.

(3) A law made by Parliament which Parliament would not but for the passing of a resolution under clause (1) of this article have been competent to make shall to the extent of the incompetency cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period'."

(Amendment No. 2776 was not moved.)

Prof. Shibban Lal Saksena : Mr. President, Sir, this is a very contentious article and Dr. Ambedkar has tried to carry away some portion of its sting by his amendment, but I only want to say, Sir, that the amendment has made the article almost useless for the purpose for which it is intended. It was intended by this article that if a large number of provinces desired that in some matter there should be co-ordination among them and because they have not got singly the power to frame any such law for co-ordinating the efforts of those provinces, they may ask their representatives in the Council of States to pass a resolution by two-thirds majority giving the power to the Parliament to legislate on that subject also. For instance let us suppose that there is an emergency about food in four or five provinces. Unless there is some law relating to the control and distribution of food in all these provinces, it will be of no use for a single province to pass any law to meet the emergency, for food as such may be a provincial subject, and the Centre will then have no right to frame any legislation about it. Therefore, this article only gives power to the Upper House to pass a resolution by two-thirds majority to ask the Parliament to pass some law which might tide over the emergency and help those four or five provinces.

Now, Sir, this article as originally intended was to give this power without any limit of time and that means that until the emergency lasted, it could remain. But some people have seen in this article a limitation of the powers of Provincial autonomy, and therefore they resented the old article and the amendment of Dr. Ambedkar is to meet that view-point. By reducing the period to one year, I do not see how any emergency can really be met. So every year there shall have to be a vote of the Council of States and only if the Council agrees to extend the period by another year, the legislation undertaken by the Parliament in the Preceding year will continue. On the off-chance of having that vote, I do not think any major schemes can be undertaken. I think therefore it is much better, instead of saying that every year a new resolution will have to be passed to state that at least in the first instance, the resolution of the Council of States will confer power for the three years and after that, it could be extended year by year, until the emergency is over. Therefore, I think that if the purpose for which this article is put in is to be achieved, then, the period of one year should be changed t three years in the first instance and then one year afterwards. That would give Parliament power to make laws for three years in the first instance and their life may be extended year by year by two-thirds majority of the Upper House. There can be no comprehensive planning for one year. It is quite possible that in the next year there may be a new election of one-third of the members' and they may not pass that law, and it may so happen that the whole of the money spent in the first year may become a waste. This fixing of the period of one year may work as a serious handicap. I would therefore request Dr. Ambedkar himself to amendment by saying three years in the first instance, which period will be extended from year to year if required. In fact in, America where Parliament has got no power to legislate on subjects which are within the jurisdiction of the States, it has been felt that there is very great difficulty in meeting such an emergency and they are able to carry on their schemes which require the concurrence of the States by a sort of allurement to finance the schemes. This article was intended to overcome that difficulty. I therefore request the House that even at this late stage the period may be fixed as three years, as the article as it stands at present is meaningless.

Shri H. V. Pataskar (Bombay: General): Mr. President, Sir, this is a very important article and I think it deserves more attention so far as the question of the powers of the States are concerned.

With reference to the provisions which we have already passed, we have three lists. (i) the Union List which contains the subjects which are entirely within the jurisdiction of Parliament to pass laws regulating them; (ii) the Concurrent List regarding which both the States as well as the Parliament can legislate, and in that connection, legislation of Parliament will certainly prevail as against the legislation passed by the States: (iii) the States List, that is, one regarding which the States alone will have jurisdiction to pass legislation. I would also like to draw the attention of the House to the fact that with respect to what remains outside the purview of any of these lists, these matters are being handed over to the Union Parliament, that is, all the residuary powers are with the Union Parliament. Therefore, the only power that will be left with the States will be those that will be included in what will be later on determined as the States list.

It would be open to the House looking to the condition in the country to reduce the number of subjects that will be included in the States List. This may have to be done for various reasons. There is the acute problem of food which is not only confronting us, but also many other countries of the world. It may become necessary that the matter should be taken over by the Union Parliament. Similarly, there may be other subjects, like those necessary for the peace and security of the country. It may become necessary that some of the subjects which were originally included in the States List will have to be included in the Union List. Under these circumstances it is a matter for serious consideration whether we should now enact this article 226.

It may be argued that there are cases in which the State can legislate only in respect of the area which is included in its jurisdiction and a problem may arise which requires that there should be legislation applicable to more than one State and in that case certainly it becomes necessary that the Union Parliament shall pass that legislation as the State will have no power to pass such legislation. But for that, we are making provisions in article 229, that if the State Assembly and the Council, if one is there, together so decide, the Union Parliament will be given power to legislate even in respect of State subjects. That also, to my mind, is necessary. But it has to be considered seriously whether power under article 226 is necessary, and what is its implication. Articles 226 says: "Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less then two-thirds of the members, present and voting that it is necessary or expedient in the national interest that Parliament should make laws.........." The main ground on which this power is proposed to be given is that in the national interests the Parliament should laws for the States. If it is really a matter of national interest I do not understand why the State itself will not either pass the legislation itself or be willing to consent to legislation be Parliament. Why should we presume that the State will assume such an anti-national attitude ? There are other provisions in the Constitution under which on the ground of national interest emergency, etc., Parliament can interfere. Particularly the wording in article 226, "in the national interests, Parliament should make laws" is something which implies that that the Centre requires legislation by Parliament in a matter of national importance, which the State is not prepared to pass. In respect of the meagre subjects which are left for legislation by the States, I think such cases are likely to be very rare. I do not think that article 226 is at all necessary. Of course, as I said, this deserves to be discussed before we come to a particular conclusion. I do not say that I am opposed to it; I would be prepared to accept it; for after all, one may come to a different conclusion. After considering the other side's views, I only wish to point out that to allow this article to be passed without considering all the aspects will not be happy from any point of view.

Shri O. V. Alagesan (Madras: General): Mr. President, Sir, I see great mischief in this article. It is contended on the other side that this is only an extended and indirect version of article 229 that is to follow. If it is so innocent as that, my feeling is that it is redundant. This article provides for interference in matters contained in the States List by the Central Government through the agency of the Council of States. The saving feature is, it is said, that in the Council of States the representatives of the various States are going to sit and they are not likely to overlook the interests of the States concerned and to reinforce this, matters like food are brought into the picture. In matters like food it will be in the interest of the States concerned if the Centre steps in and comes to their rescue. In such cases the States will certainly avail themselves of the provision made in article 229. They will have the food sense to request the Centre to step in and legislate in such matters which will be beyond their power or capacity to deal with. Now, I should like to put a pointed question to Dr. Ambedkar. For instance, now there is a situation prevailing in the State of Hyderabad and in Madras Presidency. In some of the border areas in these two States there is disturbance of public peace. Now I would like to ask whether it will be proper, under similar circumstances, for the Centre to intervene and take over the entire portfolio of law and order from the two States concerned and step in. Sir, I am sure that it will be a mockery of provincial autonomy if such a thing happens. So, my point is that this article, if it is only an extended version of article 229, is superfluous but if there is something behind it, if it is intended that the Centre should go beyond what is contained in article 229, then it is surely mischievous and need not find a place here. Dr. Ambedkar's original amendment has provided for three years. I should like to know from my friends who have contended that it is necessary that this provision of three years should be there, whether an emergency can be called an emergency if it is going to last for three years and more. Then it will cease to be an emergency and become permanent feature. So the present amendment has tried to modify the vigour of this section which has great potentiality for mischief to interfere with provincial autonomy. I would request Dr. Ambedkar even at this late stage, if it would be possible for him, to withdraw this article and assure that there will be no interference with provincial autonomy.

Shri T. T. Krishnamachari : Mr. President, Sir, the amendment moved by Dr. Ambedkar to article 226 undoubtedly requires some explanation. I heard with attention the remarks of my honourable Friend Mr. Pataskar and also of my Friend Mr. Alagesan. The House will realise that the article as amended by Dr. Ambedkar's amendment seems totally different to the article as it originally stood in the Draft, and the article as it originally stood in the Draft was intended to cover any lacuna that might exist in the distribution of powers wherein it is necessary that the Centre should co-ordinate the activities of the provinces quickly without going through the process indicated by Article 229 and also to cover cases where there is a certain amount of overlapping. The article as it stood originally had also this disadvantage *viz.,* that it sought to put the power over the particular subject which the Centre was attracting, to itself by means of a resolution passed by the Council of States and, so to say, placing it permanently, for ever, in the Concurrent List; that was its main defect. When a particular action was taken and the field of provincial autonomy was encroached upon; very necessarily perhaps there must be time limit for the continuance in force of such action. It is no use putting that subject permanently in the Concurrent List. I have no doubt that it is this aspect of the matter that made Dr. Ambedkar give notice of a previous amendment *viz.,* limiting the scope of action that might be taken by Parliament by the authorisation provided in the manner indicated in 226 to a period of three years. There would according to that scheme be no objection to renewing it for a further period of three years and also to renew it thereafter provided a certain amount of time is allowed to lapse between lapsing of that particular resolution and a fresh resolution to be moved on the same lines. I do see the force of the arguments of my honourable Friend Mr. Pataskar and the previous speaker in the objections raised by them to the scheme of this article. I am one of those who believes and believes very firmly that wherever we assign to the provinces a certain field in which they could act, we must leave the provinces entirely in sole charge of that field, not because of any rigid adherence to theoretical reasons that the federalism adopted by us should bw pure and we should not have a mixed kind of federalism such as exists in Canada, but merely because I feel that the responsibilities of Provincial Ministers must be laid squarely on them and there should be no opportunity provided for them to take shelter under the plea of divided responsibility between the Centre and the Provinces. Sir, on this particular point I hold strong views and I do feel that when we consider this whole chapter of distribution of powers we must have that particular fact in view all the time. It does not matter if the power that are given to provinces do not cover a very wide range. It may be necessary for the Centre to have a larger amount of powers. That does not really interfere with the provinces working smoothly so long as within the scheme of powers allotted to provinces there is no interference from the Centre. Looked at from that point of view, 226 as it originally stood was undoubtedly objectionable that notwithstanding the fact that the Centre is empowered by the Council of States in which the component States are adequately represented and that act of empowering the Parliament is by a two-third majority which implied that the States agree to the Centre attracting to itself that provincial power. I do feel that it might conceivably be the thin end of the wedge of the encouragement of the Centre attracting to itself greater powers from the provinces, so that in this process of integration of powers at the Centre for the purpose of uniformity of action in avowedly important matters the general idea that the Centre must have larger powers would come to be accepted. Looked at from the other point of view *viz.,* from the economic objectives to which we are wedded, economic intervention of the Centre become more than a formal necessity-all these facts will undoubtedly work for larger aggregation powers in the Centre at the expense of the States and it is also true that in the other Federations or quasi-Federations as they exist today like U. S. A., Australia and Canada, we find the process of the Centre attracting to itself powers to a greater degree as time goes on is going on rapidly whether constitutionally or by reason of Judicial pronouncements or by the exigencies of time, so much so that we have found a check to this movement of attracting powers to Centre by the adverse vote on the referendum passed by the people of Australia in respect of a demand made by the Federal Ministry for greater powers to Centre for the purpose of executive their post-war plans. There is a lesson to be learnt for us from what has happened in Australia even while the referendum has been backed not by one party but by both parties. Both parties wanted greater power to the Centre but the referendum has unfortunately been negativated. Therefore it seems to me that in this scheme of distribution of powers which will be supplemented by the financial powers following in a later Chapter, then ultimately by the scheme in the three parts of Schedule VII, we should be very careful to leave to the provinces or as it is now called to the States, certain amount of power intact. I would at the appropriate time suggest that where it is necessary for the Centre to have powers to co-ordinate action by the various units for vital reasons, it is better to put that subject in the Concurrent List rather than leave it in the States List and at the same time make in roads into field by various other devices. Not merely by the device envisaged in this article but there are other devices as well and there will be time enough for me to deal with those devices at the appropriate time and suggest safeguards against these being used. Therefore while I do hold that article 226 as it originally stood was objectionable and -if I may borrow a word from the previous speaker-even mischievous, and one that sought to detract from the States the full quantum of responsibility that ought to be with them, I feel that the amendment takes away the substance of this objection against article 226. Again, I can see the argument of my Friend Mr. Paraskar who perhaps might appreciate the necessity for a provision like article 226 but fails to see the necessity for a provision similar to the one that the amendment envisages, particularly in view of there being a subsequent article 229. I am afraid, Sir, that Mr. Pataskar has not appreciated the scope of article 229 which, as will be realised, is a reproduction of a similar section, *i.e.,* section 103, of the Government of India Act. And it is worthwhile, even at this stage, as a comparison has been made between 226 and 229, to find out on how many occasions the provisions of similar section of the Government of India Act have been used. I do recollect that some time in 1939 Resolutions were moved in the various provinces empowering the Centre to undertake legislation in respect of drug control. I also remember, two years back before the Centre embarked on the Damodar Valley Corporation enactment, two Governments-Bihar and Bengal-had to pass legislation under the powers vested in them under section 103. So article 229 provides for co-ordinate action in matters in which the provinces are primarily interested, and more often than not, it will happen that only two provinces are interested and an enabling provision is provided so that there may be co-ordinating legislation by the Centre. And it has to be remembered that this process also takes a lot of time. To get a province to move, you want the co-ordinating of the executive, you want the co-operation of the members of the legislature; and it takes a lot of time. And if it did happen that the Centre wanted some powers in respect of an urgent matter where the provisions of the emergency sections need not and could not be involved, naturally there should be some method by which the Centre could act. It may be that some lawyer here might say that since residuary powers are left to the Centre of precedent created by the judgment of the Canadian case-Attorney-General of Ontario *versus* Canada Temperance Association-might probably be utilised because of the fact that the residuary powers are left to the Centre in this Constitution like the Canadian constitution. But again there is this difficulty, as Prof. K. C. Wheare, an authority on federalism, has pointed out, the very idea of precisely delineating powers that has been undertaken in Schedule 7 of the Government of India Act which we have followed closely and further improved upon in Schedule 7 of the Draft Constitution would not permit room for taking advantage of an interpretation of the residuary powers as meaning that the Centre can interfere in a matter which is avowedly within the province of the State and where the Centre has really no business, except in the public interest, to interfere. So I do believe that there is some utility in article 226 as amended by the amendment moved Dr. Ambedkar which takes away all the sting that might have been attached to the original article or as the article would have been as altered by Dr. Ambedkar's original amendment. The position as it would be if the article is accepted in its present from is that the matter will have to be brought before the Council of States every year; by way of a resolution so as to keep the Parliamentary enactment made under the authority of the resolution alive. And we have not put a time limit. There is no question of the whole thing lapsing at the end of three years or six years. If the emergency continues one can take it that the Council of States will be responsive enough to realise the need for keeping alive legislation enacted under cover of this Resolution and go on extending the life of such enactment by a fresh Resolution year after year. We have had experience on the other side of the House of certain enactments which have economic implications being extended year after year a resolution of the House; and I do not suppose that except for asking questions there has been any serious opposition to giving Government these powers, provided Government convinces the House of the necessity of retaining those powers. At the same time it preserves a certain amount of freedom of action on the part of the States. If after the first year perhaps a snatch vote or something like that enables the centre to undertake legislation which infringes ostensibly and avowedly into the field of provincial autonomy, there is enough scope for the provinces or states to tell their representatives in the council of the states that when it came up for renewal next year they should not renew it. And if at all there is any mischief, it would be only for one year. But it is vary unlikely, when the powers are so restricted and are conceded for a year and are to be renewed year by year by a Resolution of the Council of States, that Parliament or the central executive will embark on any action under article 226 without fully satisfying themselves of the need for emergent action, and also at the same time providing against treading on the corns of the Members of the State Legislatures and the executive Government of the States. I feel,Sir, that the balance of advantage seems to be in retaining a provision of this nature as amended by Dr. Ambedkar's amendment No. 194. The mischief, if at all there is any, is restricted to a very limited period; and the very fact that it is limited to a very short period itself offers no temptation for the Centre using it as a means of augmenting its own power; and if it is used at all, it will be used for a valid and definitely useful purpose to which by and large the component States are not likely to object. I felt, Sir, that even though I was taking the time of the House in a matter which did not seem to provoke very much of a controversy at this moment, it is very necessary, in order to dispel mistaken ideas that might exist in the States, that this Draft Constitution has been so framed that it tends to help in attracting all the powers to the Centre, that the field of provincial autonomy left was very restricted. It is to counter this idea that this particular article has been carefully considered, the *pros and cons* have been fully canvassed and this amendment has been introduced as being such as provides for minimum interference with provincial autonomy and only in cases where the emergency is very great and the safeguards against any mischief are contained in the provisions of the amendment itself. I do hope that the House will accept Dr. Ambedkar's amendment and the people of the country at large, will be convinced of the *bonafides* of us in this House whose intentions are to preserve provincial autonomy as far as possible, and to the extent that we have conferred provincial autonomy on the States, to keep those powers intact without undue interference. Sir, I support the amendment.

Shri Brajeshwar Prasad (Bihar: General): Sir, I rise to support the article as it stands for two or three reasons. I do not regard this article as designed to cover any period of emergency; there are other emergency provisions in the Constitution for that purpose. It is clear that when a subject has assumed the proportions of national importance the Central Government should interfere. A provincial subject can become a central subject if it has assumed the proportions of national importance. when our national economy is in the incipient stage of development, we cannot make a water-tight or rigid distinction between central and provincial subjects. There are no central and provincial subjects. All subjects must remain integrated. I think that, whatever the intentions of the members of the Drafting Committee may be, this article may utilised for the purpose of constitutional amendment.

When the people at the Centre realize that it is no longer feasible and proper to keep a subject under the Provincial List they can make it a Central subject without undergoing the cumbersome procedure of a Constitutional amendment. The procedure laid down is that the Council of States by a two-thirds majority can recommend to the Government to take the administration of that subject into its own hands. I do not think that this procedure is proper. I feel that the duty of determining which subject has assumed the proportion of national importance should be left to the leaders at the Centre and not in the hands of the members of the Council of States. They are in far better position to take a detached view of things. There is a world of difference between a provincial capital and Delhi. The People at Delhi can know whether a subject has assumed the proportions of national importance or not. People living the Provinces are engrossed with provincial problems; their outlook is narrow and circumscribed. Therefore, to leave it to the representatives of the Provincial Legislatures sitting in the Council of States to move such a resolution is really nullifying the good that can accrue to the Centre if the power to move such a resolution is vested in the House of the people.

I feel that the period which has been prescribed in the amendment, namely such a step can be taken only for one year is not proper. How can a subject which has assumed the proportions of national importance become a provincial subject again after a period of one year? Today it is a subject of national importance, but tomorrow it becomes a subject of provincial importance I think people have no vision of what they are going to do. In a developing economy I am quite sure that most of the subject that have been placed in the Provincial List will become Central subjects. It is no use frustrating and creating obstacles in the way of the Central Government. Let us not emphasize centrifugal tendencies.

Shri B. M. Gupte (Bombay: General): Sir, I am inclined to oppose both the original Draft and the amendment moved by Dr. Ambedkar. I certainly concede that the amendment moved by Dr. Ambedkar takes away some of the rigour of the original proposition. But in my opinion it yet remains objectionable.

My first objection is that it is not proper to allow only one House, namely the Upper House to amend the Constitution which has got a sanctity of its own. There is the article 304 which lays down particular provisions with some definite kind of majority, for amendment of the Constitution. Of course it is desirable to have some elasticity. Therefore, I would not have minded if the continuance of the resolution had been secured by a vote of the State Legislatures concerned. As it is, borrowing the phraseology used in another context, I might say that if the resolution really reflects the opinion of the State legislatures it is useless. But if it does not reflect the opinion of the State legislatures it is mischievous. If it reflected the opinion of the State Legislature there was no difficulty at all in getting the item passed in the various State

Legislatures. If, on the other hand, it did not reflect their opinion then of course we were going counter to the wishes of those who were responsible according to the Constitution for these subjects. I do admit that there might be a time when such a power to the Centre is required. Then, provided for a definite emergency like that. But in the absence of any emergency, to amend the Constitution by such a resolution is not proper. The Council of States' resolution stands for one year. Why not make it renewable on this definite condition that before the expiry of that period a majority of the State Legislature should pass resolutions asking for the continuance of that resolution say for two years or three year? Thereafter, if the amendment is to continue, then it should be done by the usual manner laid down by article 304. In view of these fundamental objections of allowing only the Upper House without Parliament having any say and without the Legislature of the State having any say in the matter, I suggest it is worthwhile considering whether the article should he maintained in this form.

Shri Mahavir Tyagi : (United Provinces: General): Sir, I think the original article was much better worded and was more useful than the amendment proposed. Although the amendment does not substantially change the meaning or the motive, the original artical was quite sufficient for the purposes for which we are providing. There is a tendency in the country as well as in this House and people still feel that the Provinces will enjoy autonomy, that the States will be autonomous States or something like that. They have enjoyed this feeling for sometime past. Although the whole country has now become independent and autonomous they do not feel the pleasure of enjoying this all-India autonomy and of merging their own entity into this all-India autonomy. So there is a sort of orthodox feeling of clinging to some powers as if the Provinces can do better.

The States are analogous to various parts of the human body. Each part cannot go absolutely separate and become autonomous; it is a connected whole. The manner in which we have been making our Constitution so far also proves that we agree to the idea of constituting our States as one whole and constituting these various Provinces and States as limbs of that one body. The very fact that Parliament will enact laws whenever and with regard to whichever province it is necessary to get laws enacted from the Centre shows that this exception to the routine shall be taken only when there is some necessity and that too when the Council of States themselves by two-thirds majority decide in its favour. Suppose there is some financial crisis of a very dangerous or severe type in one province. Suppose the resolution requested Parliament to enact a law in this respect for six months. According to the amendment of Dr. Ambedkar, after six months the law will lose its force. So after six months the Council of States has again to sit and extend the period so as to enable Parliament to extend the law. This is a cumbersome process.

What is the harm, why should we suspect the motive even if the period, six months or one year, is not mentioned at all? A body which can enact a law can also de-act it. Especially when particular care is taken to see that there is no encroachment on the rights of the subjects, there is no reason to think that there will be occasion for interference. If a neighbouring State feels that the situation in the adjoining State is adversely affecting its administration it should move the Centre to intervene, by such legislation as will improve the peace and prosperity of the whole of India. I submit that the original clause seems to be much better than the amendment moved by Dr. Ambedkar. The amendment of Dr. Ambedkar does not improve the meaning of the article or the intent of the Constituent Assembly. If the period is to be first six and then another six months it will needlessly lead to extra expenditure and delay matters.

Sir, there is a feeling in some big provinces which are financially well off that they must have full autonomy and that there should be no interference by the Centre. There are certain provinces in which a certain class of people are in a majority: they desire to be independent of the Centre. This is but the same old conception of the Muslim League days. A certain community which was in the majority in a certain province wanted to have full autonomy so that nobody could interfere with it, even though that interference might be in the interests of India as a whole. That was the old tendency. I do not want to criticise them. But it is a fact that some provinces, that have enough revenues at their disposal, resent interference by the Centre even though it is necessary in the interests of the whole of India. In Russia too the Centre has such powers of interference even though the villages there have autonomous powers even in matters judicial. But then all that power is dependent on the Central Government approving the exercise of those powers. The direction of the supreme policy is vested in the Centre. Our Union can be strong only when the Centre is fully empowered to make laws uniformly applicable to the whole of India. With these words I support the original article.

Shri V. S. Sarwate (Madhya Bharat): Mr. President, I think that the article as it stands encroached upon the powers of the Provinces. However, it would have been in the fitness of things if, in cases of emergency, the Centre has the power to legislate for the whole of India. But the wording, as it is used, seems to be much wider than is required for emergencies. It says: 'When it is necessary or expedient in the national interests.' The national interest give much wider scope than emergencies. As this is so, the arguments in favour of the Centre legislating for emergencies do not apply. It seems to me the power given here is wider than is necessary.

The Honourable Shri K. Santhanam: The 'emergency' is dealt with in the next article.

Shri V. S. Sarwate : If that is the case then this is unnecessary here. I would further submit that the idea behind empowering the Council of States to pass a resolution seems to be this. Supposing a case arises when it is necessary that the Centre should legislate. If this provision be not there, the alternative would be for all the Provinces and States to pass a resolution that the Centre should legislate in that particular emergency. To avoid that cumbrous process the Council of States which is mostly composed of representatives of the States has been empowered to pass a resolution. On the first occasion it may be proper for the Centre to take appropriate action, based on that resolution.

But on the second occasion, i.e. when an occasion arises for repeating the resolution, it could have been better left to the provinces to pass a resolution it should be left to the provinces to decide whether an emergency exists or not. If the provinces are satisfied that an emergency exists, they will pass a resolution that the Centre should legislate for the whole of India. So, in my judgment, it seems that to empower the Council of States to pass such a resolution again and again is unjustified. In the first instance, it may be justified. It may in such cases be proper. But if the same state of things continues, it should be left to the provinces to judge of the circumstances and to pass the necessary resolution. What I mean to say is this: The Council of States should have power to pass a resolution only once. It should not have the power to pass a resolution again. In that case it should be left to the provinces to pass a resolution. With this observation, I support the amendment.

Shri S. V. Krishnamoorthy Rao (Mysore State): Mr. President, Sir, I support article 226. Article 223 gives residuary powers to the Parliament. Article 227 gives powers to the Parliament in cases of national emergencies, when an Emergency Proclamation is in force, and article 229 gives powers to the provinces to pass a resolution in their legislature asking the Centre to take action. Article 226, when a question assumes national importance or becomes a matter of national interest gives a speedier procedure than what is contained in article 229. Much of the mischief that was originally contained in the original article has been taken away by the recent amendment moved by Dr. Ambedkar and Mr. T. T. Krishnamachari. If a resolution is passed year after year by Parliament, where is the harm? After all, who are the members of the Council of States? They are representatives elected by the Lower House of the provinces. If really such a resolution were to be against the interests of the States, the States legislatures can represent to the Centre that such a resolution is against the interest of the States. In fact, there is no question of encroachment of the provincial powers at all here. It is only in cases of real national emergency, when a question has assumed national importance, a speedier remedy is provided under 226. If a resolution passed by the Council of States is against the interests of any State, that State can be expected to pull up their members and to make sure that such a resolution is not passed at the next session after one year. A resolution passed under 226 normally continues only for one year and only when a national emergency continues to persist year after year, a further resolution for one year can be passed. Giving such power to the Council of States is very necessary under the circumstances and I heartily support this article, Sir.

Shri M. Ananthasayanam Ayyangar : The question may now be put.

Mr. President : The question is:

"That the question be now put."

The motion was adopted.

Mr. President : Before I put the amendment to the vote, do you wish to say anything, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar : Much has already been said. Unless you desire me to speak, I would rather not say anything.

Mr. President : That is your choice.

The question is:

"That for amendment No. 2775 of the List of Amendment, the following be substituted :-

"That article 226 be re-numbered as clause (1) of article 226, and,

(a) at the end of the said clause as so re-numbered the words 'while the resolution remains in force' be added; and

(b) after clause (1) of article 226, as so re-numbered the following clauses be added :-

'(2) A resolution passed under clause (1) of this article shall remain in force for such period not exceeding one year as may be specified therein :

Provided that if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1) of this article, such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force.

(3) A law made by Parliament which would not but for the passing of a resolution under clause (1) of this article have been competent to made shall to the extent of the incompetency cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period."

The amendment was adopted.

Mr. President : There is no amendment to this article.

"That article 226, as amended, stand part of the Constitution."

The motion was adopted.

Article 226, as amended, was added to the Constitution.

Article 227

Mr. President : There is no amendment to this article.

The question is:

"That article 227 stand part of the Constitution."

The motion was adopted.

Article 227 was added to the Constitution.

Article 228

Mr. President : There is one amendment of which notice has been given by several Members, No. 2779.

Shri T. T. Krishnamachari : It is not necessary to move it, Sir.

Mr. President : The question is:

"That article 228 stand part of the Constitution."

The motion was adopted.

Article 228 was added to the Constitution.

Article 229

(Amendment Nos. 2781 and 2782 were not moved.)

Mr. Tajamul Husain (Bihar: Muslim): Mr. President, Sir, I move:

"That in clause (2) of article 229, for the words 'but shall not' the words 'and may also' be substituted."

Article 229, clause (1), lays down that if it appears to any provincial legislature that any matter over which Parliament has power to make laws for that province should be regulated in that province by Parliament by law and a resolution to that effect is passed by the provincial legislature, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly and that Act shall apply to the province concerned. Clause (2) of article 229 lays down that an Act passed by Parliament as mentioned in Clause (1) can be amended or repealed by an Act of Parliament but shall not be amended or repealed by an Act of the provincial legislature. My amendment seeks that any Act so passed by Parliament may be amended or repealed by Parliament and may also be amended or repealed by the provincial legislature concerned. Section 103 of the Government of India Act of 1935 lays down that the Provincial legislature concerned can amend or repeal the Act made by Parliament concerning that province. My amendment is entirely based on section 103 of the Government of India Act. Previously what used to happen was that Government of India accordingly made an Act concerning that province and that Act or law could be amended or repealed under section 103 of the Government of India Act by the province concerned. But now according to this article 229 (2), it cannot amend. I submit, Sir, it is a great hardship. I would submit in the alternative if this House is not prepared to agree with my amendment-although I believe my amendment is very reasonable-I would request this House to amend this article in such a way that in those provisions which were passed by the Central Legislature at the request of the Provincial Legislature, the provinces should have power to amend that Act. I may be able to appreciate this point that in future this House wants that if any Act is passed concerning a province at the request of that province, that Act cannot be amended by that province and that it can only be amended by the Centre. I may appreciate, although I do not appreciate, but I would request Sir, that in regard to those Acts which were passed previously by the Central Assembly and the Council of State at the request of a particular province concerned, there should be some provision-I thought of it just now-that the provinces concerned may be allowed to amend or repeal that Act. I hope my honourable Friend, Dr. Ambedkar has listened to me and he will appreciate what I have said.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That with reference to amendments Nos. 2781 and 2783 of the List of Amendments, for clause (1) of article

229, the following clause be substituted:-

> '(1) If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in article 226 and 227 of this Constitution should be regulated in such States by Parliament by law, and resolutions to that effect are passed by the House or, where there are two Houses, by both the Houses of the Legislature of each of the States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.' "

I would like to explain this amendment in a few brief sentences. The original article as it stood said: "if it appears to the Legislature or Legislatures of one or more States to be desirable, etc." The new amendment said "if it appears to the Legislatures of two or more States to be desirable etc." Under the new amendment it would be open to invoke the aid of Parliament to make a law only if two or more States join, and send a resolution. The other changes in sub-clause (1) of article 229 are merely consequential to this principal amendment, namely, that the power can be invoked only if two or more State desire, but not by a single State.

Prof. Shibban Lal Saksena : I am very glad that this clause is put in the Constitution. I would give an example of sugar legislation in the two province of United Provinces and Bihar. These two provinces have got about 80 per cent. of the factories in the whole country and it was felt in 1937 when the industry was on the verge of collapse that unless the two provinces acted in co-ordination the industry might be ruined in both the places. What did they do? There was no such power in the Constitution by which the Centre could made laws for only two provinces and so what they did was that each province passed the same law and by mutual agreement and conventions they began to act together and they formed a joint sugar Control Board and all that. But I think under this clause in the Constitution it is possible for several states to come together and act jointly. Similarly take another example, the Damodar Valley Authority. Parliament has made a law which is really applicable to the whole country but actually in this case the Provinces of Bihar and Bengal are concerned. There may be cases where three or four provinces are involved and if they pass resolutions, then the Parliament can pass that law. I think this article in the Constitution makes a very healthy provision by which several States can co-operate and carry out schemes which are for the benefit of all the provinces jointly and the Parliament is empowered to legislate according to the recommendations of the legislatures of those States. Sir, I support this wholeheartedly.

The Honourable Shri K. Santhanam : Sir, I merely wish to draw the attention of the House to clause (2) of this article. It makes an important variation from the original article in the Government of India Act. Section 103 in the Government of India Act, as adapted, in the later part, reads: "that the State Legislature or the Provincial Legislature shall be able to repeal or amend the Act passed according to clause (1)." Now the provision of clause (2) is: "any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adapted in like manner, but shall not as respects any State to which it applies be amended or repealed by an Act of the Legislature of the State." This variation has been adopted deliberately, because when the rights and responsibilities have been incurred by two or more States in pursuance of any law made by one, it should obviously not be possible on the part of a single State to withdraw from such obligations and responsibilities. At the same time, I am afraid that the existence of clause (2) may prevent of discourage all States from making use of this section. I wish it had been possible to put it that if all the States concerned wanted the law to be amended or repealed, Parliament should do so accordingly. As things stand, the whole clause may become inoperative because no State would like to get into a noose from which it cannot get out at all. As things stand, they can hand over the power to Parliament; but once the Act is passed, then the State becomes practically powerless even though the matter is one with respect to which it has power. This is rather unsatisfactory. I think some opportunity must be taken to reconsider the implications of clause (2) as it stands.

The Honourable Dr. B. R. Ambedkar : Sir, I quite appreciate the point raised by my honourable Friend Mr. Santhanam; but I think he has not carefully read sub-clause (2). The important words are: 'in like manner, so that if the State legislatures in whose interests this legislation is passed is like manner, that is to say by resolution, agree that such legislation be amended or repealed, Parliament would be bound to do so.

The Honourable Shri K. Santhanam : "May be amended".

The Honourable Dr. B. R. Ambedkar : 'May' means shall. There is no difficulty at all.

Mr. President : The question is:

"That with reference to amendments Nos. 2781 and 2783 of the List of Amendments, for clause (1) of article 229, the following clause be substituted :-

> '(1) If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in article 226 and 227 of this Constitution should be regulated in such States by Parliament by law, and resolutions to that effect are passed by the House or, where there are two Houses, by both the Houses of the Legislatures of each of the States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the House of the Legislature of that State.' "

The amendment was adopted.

Mr. President : The question is:

"That article 229, as amended, stand part of the Constitution."

The motion was adopted.

Article 229, as amended, was added to the Constitution.

Article 230

Mr. President : The motion is:

"That article 230 form part of the Constitution."

(Amendment No. 2784 was not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in article 230, for the words 'for any State or part thereof', the words 'for the whole or any part of the territory of India' be substituted."

(Amendments Nos. 2786 and 2787 were not moved.)

Mr. President : The question is:

"That in article 230, for the words 'for any State or part thereof' the words 'for the whole or any part of the territory of India' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That article 230, as amended, stand part of the Constitution."

The motion was adopted.

Article 230, as amended, was added to the Constitution.

Article 234

Mr. President : The motion is:

"That article 231 form part of the Constitution."

(Amendments Nos. 2789 and 2790 were not moved.)

Mr. President : There is another amendment No. 196.

Shri T. T. Krishnamachari : Sir, I formally move amendment No. 2788:

"That clause (2) of article 231 be deleted."

Sir, this more or less on the lines of the amendment which we have already adopted.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That with reference to amendment No. 2788 of the List of Amendment, in clause (2) of article 231, after the word and figure 'Part I' the words and figures 'or Part III' be inserted."

Shri A. Thanu Pillai (Travancore State): Mr. President, Sir, when the Draft was originally prepared, there was no intention of placing the States in Part III on the same footing as the States in Part I of the first Schedule. In fact, it is a quite recent idea that the States in Part III should be brought into line with the States in Part I in regard to the power of Parliament to legislate and necessary amendments are being incorporated in the various articles that we are dealing with. When we came to article 225, that article was held over. That relates to the general right of Parliament to legislate for the States in Part III and consideration is held over because evidently the relations between the Centre or Parliament and the States in Part III have not been fully settled. That is all right; but what I wish to point out is this. In regard to law making, till now, the right of the Central legislature did not extend to States in Part III. The laws in States like Travancore and Mysore have all along been made by the local legislature. I wish to bring to the notice of this House the fact that there is a lot of difference between the laws in the States and in the rest of India. For instance, I may say that in Travancore, we have abolished the death penalty for murder. Now, that subject would come in the Concurrent List; so also various other matter. How are you going to reconcile that fact with the provisions in article 231, namely, that all existing laws, not only laws to be enacted by Parliament in future, but also existing laws enacted by the Central legislature till now, will prevail whenever there is conflict between the laws of the States and the Central laws? It would be a tremendous task to bring into line these two sets of laws and to reconcile them. Until that is done, the enforcement of article 231 in respect of the State in Part III will be nigh impossible. I do not find any provision regarding the way in which the difficulty is proposed to be met. I only wanted to bring this to the notice of the House so that this serious difficulty may be got over and suitable provisions made in the Constitution. A lot of work will have to be done in bringing about uniformity. Generally Indians laws will have to be adopted in the States. But in some cases, the law in the States will have to be introduced in the whole of the country. For instance in regard to the death penalty, Travancore cannot be asked to go back to the old order of things and re-impose death penalty for murder. Wherever we find more progressive legislation existing in the States than in the provinces, that legislation will have to be accepted by the Indian parliament and uniformity will have to be brought about. I wish to know from Dr. Ambedkar how the difficulty is proposed to be got over. I hope that uniformity will be brought about and that those that are now striving for it will succeed in inducing those that are responsible for administration and legislation in the State to agree to have uniform legislation in regard to matters affecting the whole country. If we pass article 231 without realising the magnitude of the difficulties that face us in regard to this matter, it would be wrong step. I wish to bring this matter to the notice of the House and particularly of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I agree that Mr. Thanu Pillai's point requires explanation. Now the explanation is this. I am sure he will agree that the rule regarding repugnancy which is mentioned in article 231 must be observed so far as future laws made by Parliament are concerned. He will see that the wording in article 231 is 'whether passed before or after'. Surely with regard to laws made by Parliament after the commencement of this Constitution, the rule of repugnancy must have universal application with regard to laws made both by the States in part I and by the States mentioned in Part III. With regard to the question of repugnancy as to the laws made before the passing of this Constitution, the position is this. As I have said so often in this House, it is our desire and I am sure the desire of the House that all articles in the Constitution should be made generally applicable to all States without making any specific differentiation between States in Part I and Part III. It is no good that whenever you pass an article you should have added to that article a proviso making some kind of saving in favour of Stetes in part III, although there is no doubt about it that some savings will have to be made with regard to laws made by States in Part III. That is proposed to be done, as I said, in a new Part or a new Schedule where the reservation in respect of States in Part III will be enacted, so that so far as laws made before the Constitution comes into existence are concerned, they would be saved by some provision enacted in that special form or special Schedule. I should like to add to that one more point *viz.,* that while it is proposed to make reservations in that special part in favour of Part III States, nonetheless that reservation could not be absolute because the reservations made therein, at any rate some provisions in that special part, will be governed by article 307 which gives the President the power to make adaptations. Now that adaptation will apply both to States in Part I as well as to States in Part III. Therefore so far as regards laws made by Parliament or the Legislatures of States in Part III before the commencement, they will be in the first instance be saved from the operation of article 231 but they will also be subject to the provisions of article 307 dealing with adaptation.

Mr. President : The question is:

"That with reference to amendment No. 2788 of the List of Amendments, in clause (2) of article 231, after the word and figure 'Part I' the words and figures 'or Part III' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That article 231, as amended, stand part of the Constitution."

The motion was adopted.

Article 231, as amended, was added to the Constitution.

Article 232

Mr. President : We take up article 232.

The Honourable Dr. B. R. Ambedkar : Sir, I beg to move:

"That the heading to article 232 'Restriction on Legislative Powers' be omitted."

With your permission I move my new amendment:

"(i) That after the word and figure 'Part I' the words and figures `or Part III' be inserted; and

(ii) after clause (a) of article 232, the following clause be inserted :

'(aa) where the recommendation required was that of the Ruler, either by the

Ruler or by the President'."

Now Sir, I have come to understand that there is some sentimental objection to the use of the word 'ruler'. I am prepared to yield to that sentiment and what I therefore propose is that the House should accept this amendment for the moment and leave the matter to the Drafting Committee to find a better word to replace the word 'ruler'. Otherwise the whole of the article would have to be unnecessarily held over for no other reason except that we cannot find at the moment a better word to substitute for the word 'ruler'.

Mr. President : The question is:

"That the heading to article 232 'Restriction on Legislative Powers' be omitted."

The amendment was adopted.

Mr. President : The question is:

"That in article 232-

(i) after the word an figure 'Part I' the words and figures 'or Part III' be inserted; and

(ii) after clause (a) of article 232, the following clause be inserted :-

'(aa) where the recommendation required was that of the ruler, either by the Ruler or by the President.' "

The amendment was adopted.

Mr. President : The question is:

"That article 232, as amended, stand part of the Constitution."

The motion was adopted.

Article 232, as amended, was added to the Constitution.

Article 233

Mr. President : We take up No. 233.

(Amendment Nos. 2794, 2795 and 89 of List I of 5th Week were not moved.)

Mr. President : The question is:

"That article 233 stand part of the Constitution."

The motion was adopted.

Article 233 was added to the Constitution.

Article 234

Mr. President : We take up No. 234.

(Amendment Nos. 2796, 2797 and 2798 were not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That the following new clause be added to article 234 :-

> '(3) Where by virtue of any direction given to a State as to the construction or maintenance of any means of communication under the last preceding clause of his article costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed or in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India in respect of the extra costs so incurred by the State.' "

Mr. President : The question is:

"That the following new clause be added to article 234 :-

> '(3) Where by virtue of any direction given to a State as to the construction or maintenance of any means of communication under the last preceding clause of his article costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India in respect of the extra costs so incurred by the State.' "

The amendment was adopted.

Mr. President : The question is:

"That article 234, as amended, stand part of the Constitution."

The motion was adopted.

Article 234, as amended, was added to the Constitution.

Article 235

(Amendments Nos. 2800 and 2801 were not moved.)

Mr. President : The question is:

"That article 235 stand part of the Constitution."

The motion was adopted.

Article 235 was added to the Constitution.

Mr. President : Articles 236 and 237 are held over.

Article 238

(Amendments Nos. 2805 and 2806 were not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, I formally move No. 2807:

"That in the proviso to article 238, for the words 'under the terms of any agreement entered into in that behalf by such State with the Union' the words `under the terms of any instrument or agreement entered into in that behalf by such State with the Government of the Dominion of India or the Government of India or of any law made by Parliament under article 2 of the Constitution' be substituted."

I move further:

"(1) That with reference to amendment No. 2807 of the List of Amendments, in clause (2) of article 238, after the word `by law' the words 'made by Parliament' be added.

(2) That with reference to amendment No. 2807 of the List of Amendments, the proviso to article 238 be deleted."

Mr. President : The question is:

"(1) That with reference to amendment No. 2807 of the List of Amendments, in clause (2) of article 238, after the words 'by law' the words 'made by Parliament' be added.

(2) That with reference to amendment No. 2807 of the List of Amendments, the proviso to article 238 be deleted."

The amendment was adopted.

Mr. President : The question is:

"That article 238, as amended, stand part of the Constitution."

The motion was adopted.

Article 238, as amended, was added to the Constitution.

Article 239

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in article 239, before the word 'State' where it occurs for the second time in line 29, the word 'other' be inserted."

(Amendment No. 2810 was not moved.)

Mr. President : The question is:

"That in article 239, before the word 'State' where it occurs for the second time in line 29, the word 'other' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That article 239, as amended, stand part of the Constitution."

The motion was adopted.

Article 239, as amended, was added to the Constitution.

Article 240

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for clause (1) of article 240, the following new clauses be substituted :-

> '(1) if the President receives such a complaint as aforesaid, he shall, unless he is of opinion that the issues involved are not sufficient importance to warrant such action, appoint a Commission to investigate in accordance with such instructions as he may give to them, and to report to him on the matter to which the complaint relates, or that of these matters as he may refer to them.
>
> (1a) The Commission shall consist of such persons having special knowledge and experience in irrigation, engineering, administration, finance or law as the President may dream necessary for the purpose of such investigation.' "

(Amendments Nos. 2812 to 2815 were not moved.)

Mr. President : The question is:

'That for clause (1) of article 240, the following new clauses be substituted:

> '(1) If the President receives such a complaint as aforesaid, he shall, unless

> he is of opinion that the issues involved are not of sufficient importance to warrant such action ,appoint a commission to investigate in accordance with such instructions as he may give to them, and to report to him on the matters to which the complaint relates, or that of those matters as he may refer to them.
>
> (1a) The Commission shall consist of such persons having special knowledge and experience in irrigation, engineering, administration, finance or law as the President may deem necessary for the purposes of such investigation.' "

The amendment was adopted.

Mr. President : The question is:

"That article 240, as amended, stand part of the Constitution."

The motion was adopted.

Article 240, as amended, was added to the Constitution.

Article 241

The Honourable Shri K. Santhanam : I move:

"That in article 241, for the words "in any State" the words 'in any other State' be substituted."

I think it is necessary for the same reason as the amendment which was moved by Dr. Ambedkar to the previous article. I want to give him an opportunity to consider whether it is not necessary. If it is not considered necessary I am not going to press the amendment.

(After some consultation) Sir, it does not seem to be necessary and I request permission to withdraw the amendment.

Mr. President : Has the honourable Member the leave of the House to withdraw his amendment?

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is.

"That article 241 stand part of the Constitution."

The motion was adopted.

Article 241 was added to the Constitution.

Article 242

Mr. President : The question is:

"That article 242 stand part of the Constitution."

The motion was adopted

Article 242 was added to the constitution.

Article 243 to 245

Mr. President : Then we come to article 243.

Shri T. T. Krishnamachari : In any event article 244 will have to be held over because we have not considered the chapter containing the provisions governing financial relations between the Centre and the States. I am told by Shri Alladi Krishnaswami Ayyar that the language of article 243 would also require some revision so we might hold over article 243, 244 and 245.

Shri M. Ananthasayanam Ayyangar : Article 245 need not be held over.

Mr. President : It refers to article 243 and 244.

Shri M. Ananthasayanam Ayyangar : In whatever manner the other two articles are amended, we might take up article 245.

Shri T. T. Krishnamachari : Perhaps we might even choose to drop article 245. When we have not decided on article 243 and 244 this might also be held over.

Mr. President : I think it is better to hold it over.

There is notice of an amendment that a new article should be added after article 243. It is by shri Prabhudayal Himatsingka. We shall hold that also over.

Article 246

(Amendment Nos. 2828, 2829 and 2830 were not moved.)

Mr. President : The question is:

"That article 246 stand part of the Constitution."

The motion was adopted.

Article 246 was added to the Constitution.

Mr. President : Now we come to another Part. Shall we take it up?

Shri Mahavir Tyagi : We have gone at a fast peace-much faster than we expected. I do not think people have studied the provisions-I at least have not prepared myself for this.

Mr. President : Then let us go back and repeat some of the past lessons.

Shri T. T. Krishnamachari : we can take up the provisions which we have left over in the Chapter relating to High Courts.

Mr. President : Shall we take up the question of Appeals in criminal cases to the Supreme Court which we left over-112-B? There is a forest of amendments there. The other day we held it over in the hope that probably some agreed solution would be found and that there would be only one amendment. But I find that day to day the amendments are growing in number. Shall we take it up?

Pandit Thakur Das Bhargava (East Punjab: General): Provisions relating to High Court-from article 207 may be taken.

Mr. President : My fear is that some more amendments will come in because I have been receiving amendments up to this moment.

New Article 111-A and 111-B

Mr. President : Mr. Bhargava may move amendment No. 12 of which notice has been given in the First List of the Fifth Week.

Pandit Thakur Das Bhargava : Sir, before moving this amendment I would made a brief reference to its past history. When I gave notice of amendment No. 1927 in the Printed List for the addition of a new clause after clause (2) of article 111, the position was different. Thereafter, when article 110 was under discussion............

Shri Mahavir Tyagi : Please read out the amendment you are referring to.

Pandit Thakur Das Bhargava : The amendment which Mr. Tyagi wishes me to read runs thus:

"That after clause (2) of article 111, the following new clause be inserted :-

> '(3) An appeal shall lie to the Supreme Court against the judgments of the High Courts in the territory of India in the exercise of its criminal jurisdiction in the following cases :-
>
> (a) convicting accused persons as a result of acceptance of appeals against

> their acquittal.
>
> (b) sentencing to or confirming the sentence of death or transportation for life.
>
> (c) in respect of other matter when the High Court grants a certificate that the case is a fit one for appeal to the Supreme Court.' "

That was the original amendment on the basis of which there was prolonged discussion under article 110 when the question was whether the words "as to the interpretation of this Constitution" should be deleted or not. Then it was pointed out in this House that if this amendment was accepted and appeal in respect of sentence of death provided it would entail very large amount of work on the Supreme Court. Thereafter amendments began to pour in taking away the right of appeal as regards sentence of death and then the pendulum swung to the other side and the scope of the amendment was narrowed down considerably. Ultimately new amendments seeking to narrow down scope to about 50 or 60 cases a year were sent in. Now the feeling in the House is that the appeals in such cases where the High Court have passed sentence of death for the first time under their appellate or original jurisdiction should at least be provided in the Constitution.

Prof. Shibban Lal Saksena : which is the amendment you are moving?

Pandit Thakur Das. Bhargava : Amendment No. 15 in List I of Fifth Week.

Mr. Naziruddin Ahmad : May I suggest that, there are a large number of amendments relating to the same matter, all amendments may be first formally moved and then general discussion may begin. It would be more convenient to do so.

Pandit Thakur Das Bhargava : I would like that all the amendments before the House-14 to 41 were placed at once before the House.

Mr. President : The other day we postponed discussion of this to enable members to come to some understanding. But unfortunately that has not come about so far. Therefore the only course left is to take all the amendments together and take a vote on them. The result may well be that it will be something not wanted by anybody.

Shri L. Krishnaswami Bharathi : Sir, Dr. Ambedkar's amendment may be moved and then the other amendments may be moved. If that is done we may be able to concentrate on amendment No. 24 of Dr. Ambedkar.

Mr. President : The other amendments will have to be moved all the same unless the Members express their desire not to move them.

Shri L. Krishnaswami Bharthi : They may make speeches on Dr. Ambedkar's amendment, so that attention may be concentrated on that, instead of every Member speaking on his own amendment only. They need not be prevented from speaking. All the amendments may be moved and they may all speak.

Shri Alladi Krishnaswami Ayyar (Madras: General): may I say that if we adopt the suggestion made by Mr. Krishnaswami Bharathi it will be convenient? That will enable the general question of the criminal jurisdiction being discussed. At the same time, if in any particular case a Member wants that even now criminal jurisdiction may now be provided, that can be discussed later and that would not prejudice the amendment of Dr. Ambedkar that Parliament is to be entrusted with the power of conferring criminal jurisdiction to the Supreme Court. The question may be discussed in the abstract whether parliament is to be entrusted with this power in future or not. If here and now we want certain specific powers, it may be dealt with later on as distinct from the general question of Dr. Ambedkar's amendment.

Mr. President : Then I will ask that all the amendments may be moved and then general discussion may follow. Pandit Bhargava may move formally all his amendments.

Pandit Thakur Das Bhargava : They are too many and they deal with different aspects of the question. Anyhow I move.

"That for amendment No. 1927 of the List of Amendments, the following be substituted:

"That the following be inserted as new article 112-B :

> 112-B. An appeal shall lie in the following cases to the Supreme Court in the exercise of its criminal jurisdiction:
>
> (a) convicting accused persons as a result of acceptance of appeals against their acquittal.
>
> (b) sentencing to or confirming the sentence of death or transportation for life.
>
> (c) in respect of other matters when the High Court grants a certificate that the case is a fit one for appeal to the Supreme Court.' "

"That with reference to amendments Nos. 1927 and 1923, after article 111, the following new article be inserted :

> '111-A. An appeal shall lie to the Supreme Court from the judgment of a High Court in the territory of India in the exercise of its criminal jurisdiction in the following cases:
>
> (a) When the High Court certifies that the case is a fit one for appeal to the Supreme Court.
>
> (b) When the High Court convicts any person as a result of acceptance of appeal by the Government against his acquittal and sentence him to more than five years' imprisonment or ten thousand rupees fine, or when the High Court enhances the sentence awarded by the lower Court by more than five years' imprisonment or ten thousand rupees fine.
>
> (c) When the High Court sentences to or confirms the sentence of death and the judges of the High Court are not unanimous in their findings of fact or law.' "

"That in amendment No. 16 above (Fourth Week), for the proposed new article 111-A, the following be substituted :

> '111-A. (1) An appeal shall lie to the Supreme Court from the judgment of a

> High Court in the territory of India in the exercise of its criminal jurisdiction-
>
> (a) if the High Court certifies that the case is a fit one for appeal;
>
> (b) if the High Court sentences and person to death on appeal from an order of acquittal or in its revisional powers of enhancement or in the exercise of its original jurisdiction;
>
> (2) The Parliament may by law confer on the Supreme Court further powers to entertain and hear appeals from any judgment or sentence or final order of a High Court in the territory of India in the exercise of its criminal jurisdiction subject to such conditions and limitations as may be specified in such law.' "

"That in amendment No. 16 above, in clause (b) of the proposed new article 11-A, the words 'and sentences him to more than five years' imprisonment or ten thousand rupees fine' be deleted, and for the words 'by more than five year' imprisonment or ten thousand rupees fine' the words 'and sentences the person so convicted or whose sentence is so enhanced to death' be substituted."

"That with reference to amendments Nos. 1927 and 1923, after 111, the following new article be inserted :

> '111-A. An appeal shall lie to the Supreme Court from the judgment of a Court in the territory of India in the exercise of its criminal jurisdiction in the following cases:
>
> (a) When the High Court certifies that the case is a fit one for appeal to the Supreme Court.
>
> (b) When the High Court convicts any person as a result of acceptance of appeal by the Government against his acquittal and sentences him to more than five years' imprisonment or ten thousand rupees fine, or when the High Court enhances the sentence awarded by the lower court by more than five years' imprisonment or ten thousand rupees fine.' "

"That in amendment No. 19 above, the following be inserted as clause (c):

> '(c) When the High Court sentences to or confirms the sentence of death.' "

"That in amendment No. 20, above, the following be added at the end of the proposed clause (c):

> 'or transportation for life.' "

"That in amendment No. 23 above, in sub-clause (b) of clause (1) of the proposed new article 111-A-

> (i) after the word 'acquittal' the words `or enhancement' ; and
>
> (ii) after the word 'original' the words `appellate or revisional' be inserted."

"That in amendment, No. 23 above, after sub-clause (b) of clause (1) of the proposed new article 111-A, the following new sub-clause be inserted:

> '(c) if the High Court certifies that the case is a fit one for appeal to the Supreme Court.' "

"That in amendment No. 24 above, for the proposed new article 112-B the following be substituted :

> '112-B. (1) An appeal shall lie to the Supreme Court from the judgment of a High court in the

territory of India in the exercise of its criminal jurisdiction in the following cases:

(a) when the High Court certifies that the case is a fit one for appeal to the Supreme Court.

(b) When the High Court convicts any person as a result of acceptance of appeal by the Government against his acquittal or when the High Court enhances the sentence awarded by the lower court.

(c) When the High Court sentences to or confirms the sentence of death and the judges of the High Court are not unanimous in their findings of fact or law.

(2) Parliament may by Law confer on the Supreme Court further powers to entertain and hear appeals from any judgment or sentence or final order of High Court in the territory of India in the exercise of its criminal jurisdiction subject to such conditions and limitations as may be specified in such law.' "

"That in amendment No. 34 above, in sub-clause (b) of clause (1) of the proposed new article 112-B, after the word 'acquittal' the words 'and sentences him to a period of more than 5 year' imprisonment or to a fine of more than Rs. 10,000' be inserted."

"That in amendment No. 34 above at the end of sub-clause (b) of clause (1) of the proposed new article 112-B, the following words be added:

'by more than 5 years' imprisonment or Rs. 10,000 fine.' "

Then Sir, I have given notice of another amendment some fifteen minutes ago.

Mr. President : Which is that?

Pandit Thakur Das Bhargava : I move:

"That with reference to amendments Nos. 14 to 41 of List I (Fifth Week), the following be substituted as 111-A

'111-A. (1) An appeal shall lie to the Supreme Court from a judgment or final order in a criminal proceeding of High Court in the territory of India if the High Court certifies that the case is a fit one for appeal :

(2) The Supreme Court shall have appellate criminal jurisdiction to hear appeals from any judgment, sentence or final order of a High Court or such other court as may be prescribed by law the Parliament subject to such condition and limitations as may be prescribed by such law.' "

Therefore, Sir, I would submit that these amendments range from providing appeals even in cases in which punishment was originally given for five years or more to the last amendment which I have just moved that only in cases where the High Court certifies that the case is a fit one for appeal, an appeal shall lie to the Supreme Court, in addition to other cases in which Parliament may be law confer jurisdiction to entertain or hear appeals on the Supreme Court. Now, Sir, I beg to submit that according to the theory of Law as I understand it, it could be argued that the entire scope of the Supreme Court's jurisdiction was restricted. I maintain that so far as the High Courts are concerned, they are the final word so far as the properties and lives of the people of the particular States are concerned. I can understand that.

Mr. President : You can speak on the general discussion.

Shri Jaspat Roy Kapoor : Sir, I beg to move :

"That in amendments Nos. 16 and above, for the proposed new article 111-A, the following be substituted :

> '111-A. An appeal shall lie to the Supreme Court from a final order of a High Court in the territory of India made in the exercise of its criminal jurisdiction-
>
> (a) if by such final order any person has been sentenced to death for the first time in the case; or
>
> (b) if the High Court certifies that the case is a fit one for appeal to the Supreme Court.' "

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for amendment No. 23, the following amendment be substituted :-

> "That after the new article 112-A, the following article be inserted :-
>
> 112-B. Parliament may by law confer on the Supreme Court power to entertain and hear appeals from any judgment, final order or sentence of High Court in the territory of India in the exercise of its criminal jurisdiction subject to such conditions and limitations as may be specified in such law.' "
>
> Conference on the Supreme Court of Appellate jurisdiction with regard to criminal matters.

Mr. President : Is there any article 112-A?

Shri T. T. Krishnamachari : 112-A has already been passed by the House.

Shri H. V. Pataskar : Sir, I move:

"That for amendment No. 23 above, the following amendment be substituted :

> "That after article 112-A; the following new article be inserted:
>
> 112-B. The Supreme Court shall with such exceptions and subject to such regulations as may be prescribed by law of the Parliament have appellate jurisdiction to hear appeals from any judgment, final order or sentence of a High Court or such other court as may be prescribed by law of the Parliament in the territory of India in the exercise of its criminal jurisdiction.' "

Dr. Bakhshi Tek Chand (East Punjab: General): There are three amendments standing in my name. The first is No. 26, the second is No. 27 and the third is an amendment to amendment of which I gave notice to the Secretary only this morning. With your permission, I will move all the three.

Sir, I move:

"That in amendment No. 23 above, for clause (1) of ht proposed new article 111-A, the following be substituted:

> '(1) An appeal shall lie to the Supreme Court from a judgment or final order in a criminal

proceeding of a High Court in the territory of India-

(a) if the High Court has, on appeal or revision, reversed the acquittal of an accused person and sentenced him to death; or

(b) if the High Court certifies that the case involved a substantial question of law or is otherwise a fit one for appeal to the Supreme Court."

The next amendment is No. 27 of which notice has been given by Dr. P. K. Sen, Dr. P. S. Deshmukh, Mr. K. M. Munshi and myself, and is as follows :-

"That in amendment No. 23 above, for clause (1) of the proposed new article 111-A, the following be substituted:

'(1) An appeal shall lie to the Supreme Court from a judgment or final order in a criminal proceeding of a High Court in the territory of India :-

(a) if the High Court has, on appeal or revision reversed the Order of acquittal of an accused person and sentenced him to death, or has in any other case enhanced the sentence passed on an accused person and sentenced him to death; or

(b) if the High Court certifies that the case involves a substantial question of law or is otherwise a fit one for appeal to the Supreme Court.' "

Then there is the third amendment of which I gave notice this morning. It is a more modest one.

Sir, I move :

"That in amendment No. 23 of List I (Fifth Week) for the proposed new article 111-A, the following be substituted :-

'An appeal shall lie to the Supreme Court from a judgment or an order in a criminal proceeding of a High Court in the territory of India :

(a) if the High Court has, on appeal, reversed the order of acquittal of an accused person and has sentenced him to death; or

(b) if the High Court certifies that the case is a fit one for appeal to the Supreme Court.' "

Sir, I do not think I need speak in support of the last amendment at this stage but will reserve my remarks to a later stage when the general discussion takes place.

Shri Jaspat Roy Kapoor : Sir, I move :

"That in amendment No. 23 above, for clause (j) of the proposed new article 111-A, the following be substituted :-

'(1) An appeal shall lie to the Supreme Court from an order of a High Court in the territory of India made in the exercise of its criminal jurisdiction-

(a) if such order involves a sentence of death on any person and such order has been passed against him for the first time in the case of the High Court either in appeal or revision from any order passed by the High Court to any other Court; or

(b) if the High Court certifies that the case is a fit one for appeal to the Supreme Court.' "

Mr. President : You do not move the alternative?

Shri Jaspat Roy Kapoor : I move the alternative, Sir, but I need not read it. It may be taken as having been read.

"(1) An appeal shall lie to the Supreme Court from an order of a High Court in the territory of India made in the exercise of its criminal jurisdiction-

(a) if the High Court either on appeal reversing the order of a High Court in revision enhancing the sentence, or in a trial by itself under Chapter 44 of Criminal procedure Code (Act V of 1898) has sentenced any person to death;

(b) or if the High Court certifies that the case is a fit one for appeal to the Supreme Court.' "

Kazi Syed Karimuddin (C. P. & Berar : Muslim) : Is it necessary to read my amendment No. 29, as amendment Nos. 28 and 29 are the same?

Mr. President : It is not necessary.

Kazi Syed Karimuddin : I will formally move it. I move :

"That in amendment No. 23 above, for clause (1) of the proposed new article 111-A, the following be substituted :-

'(1) An appeal shall lie to the Supreme Court from an order of a High Court in the territory of India made in the exercise of its criminal jurisdiction-

(a) if such order involves a sentence of death on any person and such order has been passed against him for the first time in the case by the High Court either in appeal or revision from any order passed by the High Court to any other court; or

(b) if the High Court certifies that the case is a fit one for appeal to the Supreme Court.' "

(Amendment No. 32 was not moved.)

Mr. Naziruddin Ahmed : Sir, I beg to move :

"That with reference to amendment No. 23 above, after article 111, the following new article 111-A be inserted :

'111-A. (1) An appeal shall lie to the Supreme Court from a judgment or final order in any criminal proceeding in a High Court in the territory of India or in any criminal proceeding in any tribunal in the said territory from which no appeal, revision or other proceeding lies to the High Court-

(a) against any sentence of death passed or confirmed by the High Court in appeal or revision, or passed by such tribunal; or

> (b) if the High Court or the tribunal certifies that the case involves a substantial question of law or that it is otherwise a fit case for appeal to the Supreme Court.

(2) Parliament may by law confer on the Supreme Court any further power to entertain and hear appeals from any judgment or final order of a High Court or other tribunal in the exercise of its criminal jurisdiction subject to such conditions and limitations as may be specified in such conditions and limitations as may be specified in such law.'"

Shri Jaspat Roy Kapoor : Sir, in place of amendment No. 37, I would like to move another amendment of which I have given notice this mornings. That seeks to substitute amendment No. 37 and it runs as follows :-

"That in amendment No. 24 above in the proposed new article 112-B, for the words 'Parliament may' the words 'Parliament shall within a year of the commencement of this Constitution' be substituted."

Mr. President : Amendment No. 38 is also in your name.

Shri Jaspat Roy Kapoor : I am not moving it, Sir.

I beg to move :

"That in amendment No. 24. above in the proposed new article 112-B, the following new proviso be added :

> 'Provided, however, that an appeal shall lie to the Supreme Court from a *final order* of a High Court in the territory of India made in the exercise of its criminal jurisdiction-
>
> (a) if *by such final order* any person has been sentenced to death for the first time in the case; or
>
> (b) if the High Court certifies that the case is a fit one for appeal to the Supreme Court.' "

Then, Sir, follow three alternatives :

"Provided, however, that an appeal shall lie to the Supreme Court from a *final order* of a High Court in the territory of India made in the exercise of its criminal jurisdiction, if by *such final order* any person has been sentenced to death for the first time in the case."

or, alternatively,

"Provided, however, that an appeal shall lie to the Supreme Court from a *final order* of a High Court in the territory of India made in the exercise of its criminal jurisdiction, if *by such final order* any person has been sentenced to death in reversal of the order of acquittal."

or, alternatively,

"Provided, however, that an appeal shall lie to the Supreme Court for a *final order* of a High Court in the territory of India made in the exercise of its criminal jurisdiction, if the High Court certifies that the case is a fit one for appeal to the Supreme Court."

Kazi Syed Karimuddin : Sir, I move :

"That in amendment No. 24 above, the following proviso be added to the proposed new article 112-B :

> 'Provided however that an appeal shall lie to the Supreme Court from a final order of a High Court in the territory of India made in the exercise of its criminal jurisdiction-
>
> (a) if by such final order any person has been sentenced to death for the first time in the case; or
>
> (b) if the High Court certifies that the case is a fit one for appeal to the Supreme Court.'"

Mr. Naziruddin Ahmed : With your permission, Sir, I would like to move amendment No. 41 in the First List introducing article No. 112-A as article No. 111-A. I think that instead of after article 112, it should be inserted after article 111. The change is only in a matter of detail. I beg to move :

"That with reference to amendment No. 1932 of the List of Amendments, after article 111, the following new article be inserted :

> '111-A. Any person against whom any judgment, sentence or order has been passed by a High Court in the territory of India in any criminal proceeding or any proceeding relating to contempt of Court, or from any judgment, sentence or order of any other tribunal exercising criminal jurisdiction which judgment, sentence or order is not liable to be set aside or modified in appeal or revision by any such High Court, shall have a right of appeal in the following cases, namely;-
>
> (a) against any sentence of death;
>
> (b) against any other judgment, sentence or order of such High Court or tribunal as the case may be, where the judgment, sentence or order involves a substantial question of law; or
>
> (c) in any order case where the High Court or the tribunal as the case may be, certifies that it is a fit case for appeal.' "

Mr. President : There is an amendment of which I have received notice from Prof. Shibban Lal Saksena.

Prof. Shibban Lal Saksena : Which, Sir?

Mr. President : You have given notice of this amendment :

"The following be substituted as 111-A :-

An appeal shall lie to the Supreme Court from a judgment or final order in a criminal proceeding of a High Court in the territory of India if the High Court certifies that the case is a fit one for appeal...."

Prof Shibban Lal Saksena : This is the one which with your permission, I have already moved.

Pandit Thakur Das Bhargava : It has been moved already.

Mr. President : Then, I think these are all the amendments. There are certain amendments to various articles and I suppose they are all covered by the amendments which have been moved and I do not take any of the amendments in the printed list. Now all the amendments have been moved and the whole question is open to discussion. I hope we shall be able to get something out of all this forest of amendments.

Mr. Z. H. Lari (United Province : Muslim) : Mr. President, the point before the House is rather an important one. It is necessary that the House should give very close consideration to the various amendments that have been moved. The question is whether there shall be a right of appeal to the Supreme Court in criminal cases, and if so, in what circumstances.

I think there is a consensus of opinion that the Supreme Court shall have the power of appeal in certain cases. Even Dr. Ambedkar has moved an amendment, No. 24, which says that Parliament may make provisions for appeals in criminal cases. The other amendments which have been moved go a little farther and say that in certain specified cases, even the Constitution should provide for appeals and that is the real question before us, whether the matter should be left entirely to Parliament or whether the Constitution itself should provide for appeals in certain cases. That is the first question before the House.

The second question is : if the House accepts the principle that even this Constitution should provide for appeal in criminal cases, what are those cases in which an appeal shall lie? If we analyse the various amendments, we find that all the amendments suggest, firstly, that in cases where the High Court itself fuls satisfied that an appeal should lie, an appeal shall lie. When the provisions about the civil cases were being discussed before this House, Dr. Ambedkar said, and very rightly, that it is an inherent right of the High Court to say whether a case is a fit one for appeal or not, and if there is a certificate to that effect, then, a civil appeal shall be allowed. My submission is that the same principle with equal force applies to criminal appeals. If there is an appeal decided by a High Court and the High Court itself considers that the case is a fit one for appeal, there is no reason why such an appeal should not be allowed. On that matter, I think there cannot be any two opinions that the Constitution itself should provide for appeals on such cases, namely, in cases where the High Court itself certifies that the case is a fit one for appeal. This is one of the provisions which is sought to be inserted by some of the amendments. I am personally of opinion that such a provision must exist.

The second suggestion is that an appeal shall lie as a matter of right if the case involves a substantial question of law. *Prima facie*, there is great force in this suggestion also. But, it may be said at this stage that we do now know what will be the effect of such a provision as to the number of appeals that are likely to come forward. Therefore, I think, personally, that we may leave this question to Parliament.

The third suggestion is that three should be a right of appeal as a matter of right where a sentence of death is passed by the High Court for the first time. I think this is a very reasonable suggestion. In civil cases we have provided for many appeals; it is but natural that there should be at least one appeal here. If one court acquits the accused and the High Court in appeal reverses the finding and sentences him to death, I think prudence requires that the accused should be given an opportunity to appeal to the Supreme Court. At least one court has found him not guilty. There is a possibility or error or judgment on the part of two Judges. I can give you many instances where a Government files an appeal and two Honourable Judges have come to the conclusion that really the man is guilty. In such cases, there is always a likelihood of error of judgment and this error of judgment can be remedied only if an appeal is allowed. This is a second case in which I think a provision for appeal should be made as a matter of right.

The amendments lastly that we should give the right of appeal even in those case where the sentence imposed on the accused for the first time exceeds five years. Much can be said in favour of this amendment as well. But, I personally feel that if the order clause stands, namely, that Parliament can make provision for other appeals, this thing can wait.

Therefore, I feel that this Constitution should provide for three things : firstly, there must be an appeal as a matter of right in cases where the High Court deciding the case certifies that the case is a fit one for appeal; secondly, there must be a provision where in appeal or revision a sentence of death is passed by the High Court for the first time, there shall be a right of appeal as a matter of course; thirdly, Parliament shall have power to make provisions for appeal in other cases. If Dr. Ambedkar's amendment No. 24 along with the amendments moved by Mr. Jaspat Roy Kapoor, No. 39, and similar amendments moved by Mr. Karimuddin, amendment No. 40, and the last amendment moved by Dr. Bakhshi Tek Chand, are accepted, I think the public will be satisfied and the Constitution would have made enough provision for criminal appeals. I personally feel that in these two cases, namely, where a sentence of death is passed for the first time by the High Court, and where the High Court certifies that the case is a fit one for appeal, there cannot be any doubt that an appeal shall be allowed. The argument of those who want to leave it to Parliament to make provision for criminal appeals is this, that the matter requires to be discussed in detail and that this House is not in a position to enumerate exhaustively those cases in which an appeal may lie to the Supreme Court. There is some substance in this, but not entire substance. Because, if there are cases wherein there cannot be any doubt as to the necessity or even the desirability for appeal, there is no reason why such cases should be left to Parliament to pass an enactment subsequently. My submission would be that in so far as these two cases are concerned, where a death sentence is passed for the first time by the High Court, and where a case is certified as a fit one by the High Court, there cannot by any doubt that an appeal shall be allowed in such cases, and there is no reason why in such cases the Constitution should remain silent while it has made provisions in regard to civil cases. My submission is that this House should accept amendment No. 24 and the three amendments moved by my honourable Friends Messrs. Karimuddin, Jaspat Roy Kapoor and Dr. Bakhshi Tek Chand.

Mr. Tajamul Husain : Mr. President, Sir, I feel that I must support the amendment moved by my honourable Friend, Bakhshi Tek Chand. He wants two things to be done. He says in the first place that if the High Court certifies that it is a fit case to be hears by the Supreme Court, the case must be sent there. I agree entirely. When the High Court itself passes an order and is of opinion that that order may be changed and there is a Supreme Court which can very that order, that should go up to the Supreme Court. There cannot be two opinions on this. The next thing is if the High Court upsets and order, *viz.,* if acquittal has been passed by a Sessions Court and the High Court on appeal from Government has passed an order of death sentence or rather upsets the previous order of the Sessions Judge and finds the accused guilty, in that case an appeal should be allowed to go to the Supreme Court. I would go a step further. I say that in any case where there has been an order of acquittal by Lower Court and that order has been upset by the High Court then appeal can lie to the Supreme Court. My reason is that you have got two decisions before you, one of a Sessions Judge who is trying a case with the help of a Jury. The Jury is of opinion that it is a fit case for acquittal and if the Judge agrees with the Jury the matter ends. There can be no appeal against acquittal. That is the general law but if there has to be an appeal it must be preferred by Government itself not by private individuals. It is only an Advocate General acting on behalf of Government who can do it. When that appeal goes up, surely one set of people-the Jury and the Judge have said in the one hand that this person is not guilty. The High Court says that that person is guilty. In my opinion when there are two opinions before you there must be a third and final opinion. Therefore all cases, where an acquittal has been upset must be allowed to go to Supreme Court. Now there is a principle of law that once a person has been acquitted, he should not be tried for the same charge. In England you will find very rarely there is an appeal against acquittal. Therefore I submit that I want in all murder cases where both points of law and fact are involved, appeals from the High Court should go to the Supreme Court. Murder cases are very important cases and these should finally be decided by the Supreme Court if there is an appeal.

My third point is that all cases, which involves important questions of law or the country needs a decision on an important question of law, must go to Supreme Court, and my last point is when a sentence has been passed by the Session Judge and it goes to High Court and the High Court enhances it, it must be allowed to go in appeal up to the Supreme Court. It has happened and my experience is in one case there were four accused who were sentenced to two years R. I. each. Three appealed and one did not appeal. The High Court asked them to show cause why the sentence should not be enhanced and actually it was enhanced. The High Court asked the one accused who did not appeal also to show cause why his sentence should not be enhanced and finally all the sentences were enhanced to transportation for life. A matter like this where a sentence has been passed by the Sessions Judge and it comes up to the High Court which increases the sentences, an appeal to the third court-the Supreme Court of India-should be allowed to the accused. With these words, I support the amendment and I want to add these things also and these may be taken into consideration by Dr. Ambedkar.

Shri Jaspat Roy Kapoor : Mr. President, Sir, I have moved several amendments but I would like to confine my remarks particularly to amendment No. 39 which runs thus :-

"That in amendments, No. 24 moved by Dr. Ambedkar, in the proposed new article 112-B, the following new proviso be added :-

> 'Provided, however, that an appeal shall lie to the Supreme Court from a final order of a High Court in the territory of Indian made in the exercise of its criminal jurisdiction-
>
> (a) if by such final order any person has been sentenced to death for the first time in the case; or
>
> (b) if the High Court certifies that the case is a fit one for appeal to the Supreme Court.'"

Sir, the other day while dealing with article 110 there was a long and elaborate discussion on the subject as to whether the Supreme Court should have the right of hearing appeals in criminal cases or not. That discussion was not very relevant to the discussion of article 110, but no objection was raised to that and you also were pleased not to object to that discussion. The reason obviously was that everyone of us realised that a discussion on that question was very necessary and that we should have a preliminary discussion on that subject before article 112-B which has now been moved today by Dr. Ambedkar should come up for discussion so that a solution could be found which might cover the various view-points that were raised that day. That discussion served the useful purpose for which it has been initiated and we found that when we came up to 112-B on the following day, Dr. Ambedkar suggested that its consideration might be held over and on the following day we found to our satisfaction that Dr. Ambedkar had given notice of an amendment which now appears as amendment No. 23. Not only that, but on the following day we were still more happy to find that even Mr. Munshi had given notice of another amendment which now appears as No. 27 according to which the scope of amendment No. 23 standing in the name of Dr. Ambedkar's amendment No. 23 conceded the right of appeal only in such cases in which sentence of death had been passed by the High Court in appeal against acquittal, Mr. Munshi's amendment further extended the scope to also those cases in which death sentence was passed by the High Court even in revision.

Secondly, Mr. Munshi's amendment also laid down that if the High Court certifies that the case involves a substantial question of law or is otherwise a fit one for appeal to the Supreme Court an appeal shall lie.

But all of a sudden we find that Dr. Ambedkar wants to give up the position he wanted to take up in amendment No. 23 and has now gone back to the original position he took that no appeal shall lie to the Supreme Court except in accordance with legislation that might be passed by Parliament. Sir, Dr. Ambedkar while replying to the debate the other day on article 110 said that he had an open but not a vacant mind. I am prepared to concede that he had not only an open but a receptive mind : I only wish his mind had been retentive also. For although he received various suggestions in the course of the debate and they remained in his mind for a day or two, which induced him to give notice of amendment No. 23, all these suggestion vanished from his mind after the couple of days; so that his mind was not only open but too wide open and could certain things for any length of time.

Now it is suggested in the proposed amendment No. 24 that Parliament may by law confer criminal appellate powers on the Supreme Court. It is not conceded that Parliament must necessarily confer on the Supreme Court the right of hearing appeals in criminal cases, for the word used is "may" and not "shall". It is, therefore, intended that it should be left open to Parliament to pass legislation or not conferring on the Supreme Court the right to hear criminal appeals. The implication of this amendment also is that once this right is conferred on the Supreme Court by legislation, the Parliament may on a subsequent date, if it so chooses, amend, annual or revoke such legislation. That means that so long as Parliament finds that the Supreme Court is passing judgments in appeal which finds favour with Parliament, which means the party in power, which again means the Cabinet for the time being, the Supreme Court shall continue to exercise that right. But when the judgments of the Court are not liked by Parliament the right will be withdrawn. This is a dangerous proposition; it means that the Supreme Court in order to retain that right must act in a a manner so as not to displease Parliament. We have been crying for the independence of the judiciary and Dr. Ambedkar has been a stout champion of this independence. But when we come to frame legislation relating to the powers of the Supreme Court which is the highest judiciary in the land we are trying to lay down provision which will virtually strike at the root of the independence not only of the judiciary but of the supreme judicial tribunal in the land. I submit we should not be a party to this. The independence of the Supreme Court in civil cases is not of much consequence; its independence in criminal matters is of vital importance. It matters little if a case involving a paltry sum of Rs. 20.000 is decided this way or that; but if in deciding a criminal case, which sometimes may be of an important political nature, the Supreme Court has to act in accordance with the linkings of Parliament in order to retain the power to hear appeals, that is a serious encroachment on the independence of the Supreme Court. In view of all this I submit that we should legislate here and now that the Supreme Court will have power to hear appeals; we should not leave it to the sweet will of Parliament to legislate or not to legislate to that effect. We are in this Constitution providing for a Supreme Court, for the seat of the Court and the salary of the judges and other things in detail. But on the important questions of the right to hear criminal appeals we are leaving it to Parliament to decide as it likes. And which Parliament is going to deal with this? It is the present Parliament or the one which will come hereafter after the new Constitution comes into force? If it is the latter it means another couple of years. If it is intended that the present Parliament should pass this provision, why should we not do it here and now? The present Parliament consists of members who are present here today. Or, I may say that by the convention we have established it consists not even of the members present here now and who are entitled to take part in these deliberations. Therefore, I think this Constituent Assembly, as the constitution making body, is more representative than the present day Parliament and such an important question should be decided by this body rather than be left to a body which functions as the Parliament. If one likes to be uncharitable an inference may be drawn-though I hope it is not a fact-that some members who are members of this body but under the convention do not attend the Parliament are thought to be so inconvenient that this legislation should be taken up in Parliament where they are not present. We have established a convention that members of the provincial legislatures will not attend this Parliament. Now we wish to tell them that they should agree not to have a say in this matter and should agree to let this matter be decided by Parliament in their absence.

But if it is intended that not this Parliament but the Parliament which will come into being after the new elections should deal with the legislation, it means that the whole thing will be kept in abeyance for at least two years. Even when that Parliament comes into existence, it will have many legislations of immediate importance to deal with and its time will be occupied with enacting those more important pieces of legislation. That means that for three or four years to come this whole thing will remain in abeyance. The question arises as to what will be the fate of those unfortunate persons who are condemned to death for the first time by final order or the High Court. My honourable Friend Dr. Ambedkar and others of his way of thinking might perhaps say that we need not bother about the fate of those few unfortunate persons. They might say so callously if they are so inclined. But I hope that Dr. Ambedkar and his other friends who are partners in this business of depriving the Supreme Court of its right of hearing criminal appeals- I mean Mr. T. T. Krishnamachari and Mr. Munshi-none of them would be so callously inclined as to suggest that. I know that Dr. Ambedkar, though he some times presents a rough exterior has a very soft and, if I may say so, a loving heart too. As for Mr. Krishnamachari he is all sweetness. And of course Mr. Munshi is all softness. I am sure, therefore, that not one of them would ask us to deal with human life and liberty in such a light-hearted manner. I, therefore, submit that we should make a definite provision here and now in the Constitution conferring on the Supreme Court the right to hear criminal appeals.

But then I must concede that there is considerable substance in the arguments of Dr. Ambedkar and Mr. Munshi as they put them forward on a previous occasion, namely, that if there is an unrestricted right of appeal vested in the Supreme Court the case work would be a very huge one. True. I do not wish to suggest, nor have I suggested in my amendment, nor perhaps has anybody else suggested in his amendment, that there should be an unrestricted right of appeal to the Supreme Court. All that we want is that it should be confined to a few specific cases the number of which would not be vary large-perhaps the number would not go beyond sixity or seventy or at the outside hundred in the year in the whole country. Let the right of appeal be confined firstly to those cases in which the sentence of death has been passed by the High Court for the first time by its final order which only means this and nothing more that if a person has been condemned to death for the first time he should have one little right of appeal. That is what my amendment implies and nothing more. In such cases where the man has either been acquitted by the lower court, or by the first order of the High Court or Sessions Court he has been sentenced not to death but a lower sentence has been inflicted on him, the accused has the advantage of one judgment in his favour either of acquitted or of a sentence lower than death; and that judgment in his have been passed in the first case by the Session Judge who may be duly qualified to be a Judge of the High Court and who, if luck favours him, may on the day following his pronouncing the judgment be promoted to the High Court. In the other case an order of acquittal may have been passed by a Judge of the High Court himself--a Judge very competent, learned, very reliable and trustworthy. The question is when an accused has a first judgment in his favour, should or should he not have even one right of appeal against the sentence of death passed in him for the first time by the High Court? I submit everybody will agree that an accused person must have much a right and the Supreme Court must have the right to hear an appeal from such an order.

The other part of my amendment is that if the High Court certifies that the case is a fit one for appeal it should to in appeal to the Supreme Court.

You may not trust anybody but at least do trust your High Court Judges and do not think that they will lightly grant such a certificate. If the Judges of the High Court are inclined to give such a certificate, then what reason on earth could you have for saying that even in such cases there shall be no right of appeal to the Supreme Court? I submit that in view of these considerations it is necessary and desirable that such a power should be conferred on the Supreme Court.

In none of these suggestions of mine are acceptable, at least one suggestion must be acceptable and that is the suggestion contained in my amendment No. 37 as amended by another amendment which says :

> "That in amendment No. 24 above, in the proposed new article 112-B, for the words 'Parliament may' the words 'Parliament shall' within one year of the Commencement of this Constitution' b substituted."

Either it is our intention that Parliament shall enact such legislation or it is our intention that it may not enact such legislation. If we are in doubt about it today it is another matter. But if our solemn intention is not to shut out criminal appeals and the intention is merely that these things may be dealt with by Parliament then make it obligatory on Parliament to enact such legislation, that such legislation must be enacted at the outset, within a year of the enforcement of this Constitution. For, otherwise, as I have already submitted if you let the word "may" remain here, it will be open to Parliament to enact or not to enact such legislation and even after having enacted such legislation to repeal or amend it, with the result that this sword will always sword will always continue to be hanging on the Supreme Court, warnings them that they must behave in a manner which may be to the liking of Parliament. Sanctity of life and liberty is of the essence of democracy and it should not be ignored by depriving it of the protection of Supreme Court.

Mr. Naziruddin Ahmed : Sir, all the amendment which have been moved centre round one important question, that is, whether or to what extent and appeal shall be allowed to the highest Court in the land in criminal cases. I submit that the matter is one of great constitutional importance. We are enacting a Constitution for a Sovereign Democratic Republic. We are erecting one of the finest democracies in the world. But the implication of democracy must be squarely faced. Democracy means a rule of law as opposed to a rule of force. In autocracies and in Totalitarian States the law is not supreme. But democracy means supremacy of the law where no one, be he the highest individual, is above the law. We should therefore all respect law and should be law-abiding citizens in order to inculcate that sense of law-abidingness wherein lies the safety of democracy. We should ourselves follow democratic principles, democratic methods and respect the law. The other day, when this matter was discussed in connection with article 110,111 and 112, I pointed out that there was a lacuna so far as criminals appeals to the Supreme Court were concerned. It was this disclosure that prompted the House to discuss the matter regarding the rights for criminal appeal to the Supreme Court. You were pleased to allow that discussion. It would therefore in my humble opinion be utterly wrong to characterise that discussion as irrelevant. In fact that discussion has brought to light some of the weaknesses of the Draft Constitution necessitating so many amendments.

Sir, in the welter of amendments moved in the House there are some common points which are of fundamental importance. We have allowed under article 111, appeals in civil cases where substantial question of law is involved, subject to a pecuniary limitation. The question is whether we would be right in putting any limitation on people's life and liberty. Can we distinguish the life and liberty of the meanest individual in the State from those of a rich man? In criminal law in a civilised State no distinction can exist between the rich and the poor, between the great and the small. In civil cases there is not much harm done to society if wrong decisions are passed in individual cases. But if you have one innocent man robbed of his liberty, untold mischief will follow. In fact it is only by allowing recourse to the highest Court of law that the supremacy of law can be fully established. The safety of a State lies in the people's faith in the rule of law. The Court of the last resort should be the ultimate tribunal which would decide questions of legal rights in criminal cases. The points that arise in this connection are, (1) whether any right of appeal should be allowed and, (2) if so under what conditions and with that safeguards. The further question is whether the provision should be inserted in the Constitution itself. I submit that the matter is of great constitutional importance. If a man's life and liberty are not matters of concern for this Assembly I think nothing would be worth considering at all. As the question which have been raised by these amendments are of fundamental importance, I think, rights of final appeal, whatever they are, should be embodied in the Constitution itself. There will be no justification for this Honourable House for shirking its responsibility in defining rights of appeal in criminal cases when it has with such meticulous care defined rights of appeal in civil cases. I think that the matter should not be left to the Parliament. In fact that means the next Parliament, not this Assembly sitting in another place as Legislative Assembly, but the next Parliament after the next general elections or even a subsequent Parliament. There is no justification for this House suspend its activities and leave a void to be filled in by a future Parliament of unknown composition and disposition. We have no right to refuse to define the law and thereby to ensure substantial justice in criminal cases. We should therefore define the law in the Constitution itself. We have entered in the Constitution so many comparatively unimportant matters and we should not hesitate to include this important provision therein.

The first question is whether you would allow any right of appeal in criminal cases to the highest court. I would draw the attention of the House of the existing state of the law. In fact there is a right of appeal to His Majesty in Council in criminal cases on a substantial question of law or in cases where grave injustice has otherwise been shown to have been done. In these circumstances I submit that, if we do not grant any right of appeal under similar terms in criminal cases to our Supreme Court, we would be taking away a right which now exists in criminal cases. Sir, a study of the criminal appeals before the Privy Council for the last forty years will show that this right of appeal is a great necessity as many cases of undeniably wrong convictions have been set aside. Especially in murder cases it often happens that a man is convicted on account of local prejudices and suspicions as a substitute for evidence. In this way sometimes innocent men are even hanged. The decisions of our Courts are sometimes guided or clouded by extraneous considerations. If such decisions are taken in appeal to the highest Court they take a dispassionate view of things and decide them on their merits and on proper consideration of evidence. I submit therefore that the right of appeal should be given in criminal cases on suitable grounds. Now what are those suitable cases? I submit that the suitable cases would be cases involving substantial questions of law. In fact we are establishing a rule of law or democracy. Therefore if any man has been convicted on a substantial error of law, I think that should be a good ground for allowing an appeal. Substantial questions of law have always been held to be sufficient ground for interference by the Privy council and we should not at least take away or indefinitely suspend that right which has been so much valued and in existence for over a century. I submit, therefore, that substantial question of law should be a good ground. There is some fear in certain sections of the House that if we allow appeals on substantial question of law, the authority of the government, the authority of the executive, will be weakened. In fact I have heard it whispered that there should be many convictions so that thereby the authority of the executive may be upheld, that if we allow too many appeals, the authority of the executive would be undermined and the safety of the State will be endangered. But I feel just the other way. If we allow the supremacy of the law to be maintained by an independent tribunal, that would be the basis of the safety of the State. The contentment of the people, their faith in the administration of justice, would be a paramount factor in making the State safe. If the ultimate jurisdiction of our highest Court in criminal cases is taken away, the dissatisfaction created thereby will go underground and will be a menace to the State. It is quite possible that sometimes the executive too would be disregarded by the Court of law, but that is why the Court of law exist, *viz.,* to administer justice irrespective of political considerations. If the executive feels that in a particular class of cases, political or otherwise, there should be no appeal, or there should be some sort of curtailed procedure, or there should be special rules of evidence, the executive can always apply to the legislature. It is for the legislature to say what law should be passed. The independence of the legislature is also to be guaranteed and an independent legislature may prescribe the laws of evidence, laws of penalty and laws of procedure applicable to criminal cases in a particular manner. There should however be nothing to prevent appeal to be highest Court. If we allow right of appeal to the Supreme Court on substantial question of law, that will be a guarantee of the independence of the legislature in framing any law it pleases. If the legislature passes any law which would practically prevent the right of appeal on grounds of law, it is for the legislature to so. The executive, by virtue of having a majority, can always approach the legislature with their point of view, and in this way the supremacy or the independence of the executive can maintained, but within the limited of law that the legislature lays down, the Supreme Court should always have the power to give substantial justice according to its best lights. It is for this reason that I say that the right of appeal should be allowed on substantial question of law. There can be no logical escape from this proposition. I submit, therefore, that we should not leave the matter to the next Parliament. Supposing a man is ordered to be hanged by the High Court for the first time and suppose that the decision of the High Court is wrong. It often happens that local prejudices have forced a verdict of death being passed on the unfortunate man. May I ask what should this man do? Should we ask him to wait in patience till a suitable law is passed by the next Parliament? Is he to hang in the meantime? Is he to hang in the expectation of a proper law being passed by the next Parliament? I think that the consequences would be too serious and too revolting to allow of this procrastination. I submit, therefore, that the right of appeal should there and now be given to an accused person in criminal cases to the Supreme Court on substantial questions of law. A cases was recently taken to the Privy Council on a very small matter. A man was convicted by a Deputy Magistrate for a petty offence. He was acquitted in appeal by the Session Judge. The Government preferred an appeal to the High Court which convicted him. The accused appealed to the Privy Council. The Privy Council with rare clarity pointed out substantial infirmity in the evidence and acquitted him. It was argued that this was a petty case and so should not be worthy of interference by the Privy Council. Their Lordships, however pointed out that it was a case of improper conviction and he must be acquitted. So if we do not allow appeals on substantial questions of law the result will be shirking our responsibility. There will be no justification for allowing people to rot in jail or to hang pending legislation later on. Therefore we should here and now introduce an article which would prevent men being convicted wrongly.

Then, Sir, there is another kind of safety in allowing appeals in criminal cases on substantial questions of law to the Supreme Court. At present there are in the High Court differences of opinion of matters of law. That is inevitable because legislation deals with general principles and its application to concrete cases leaves room for difference of opinion amongst the different High Court. My submission is that is different High Court are likely to hold conflicting views on points of law, that would be a ground for allowing appeals to go to the Supreme Court, for in that way alone the law can be made uniform and harmonious. It has many times happened that in the Privy Council accused persons have obtained special leave on the ground of conflicting opinions among the High Court which must be settled in the right way. Their Lordships have in such cases granted special leave, although they were not *prima facie* fully sure that on the facts of that particular case any prejudice had actually resulted, but they gave the benefit of the doubt and granted special leave pending a more detailed consideration. Ultimately the decisions of the Privy Council in those cases have thrown new light on important principles of law criminal cases. A perusal of the Privy Council judgments in criminal cases during the lat thirty or forty years will show many cases which have settled many difficult and complex questions of law and have made by law uniform. If the law is made uniform the result would be contraction in the number of criminal appeals in the Sessions Courts and the High Court and there would be economy in the long run. In these circumstances, I submit that the question of law should be regarded with some amount of veneration, and at least on substantial question of law we ought to allow a man to invoke the intervention of the highest Court. What would be the Supreme Court worth, if it is not supreme in matters of criminal law? I think the supremacy of the law must be really guaranteed by making the Supreme Court really supreme in these matters. I submit, Sir, that we have already accepted article 112. That empowers the Supreme Court to grant special leave in all cases included.

An Honourable Member : The time is up.

Mr. President : Will you take long?

Mr. Naziruddin Ahmad : I shall take some more time.

Mr. President : Then the House adjourns till 8 o'clock tomorrow morning.

The Assembly then adjourned till Eight of the Clock on Tuesday the 14th June 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VIII

Tuesday, the 14th June, 1949

The Constituent Assembly of India met in the Constituent Hall, New Delhi at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION-*(Contd.)*

Article 111-A-(Contd.)

Mr. Naziruddin Ahmed (West Bengal : Muslim) : Mr. President, Sir, yesterday, I drew the attention of the House to article 112 which we have already accepted. I submit that the acceptance of that article has involved us into a commitment to a policy.

Article 112 enables the Supreme Court to permit an appeal in a criminal case by special leave. This involves the acceptance of the formula that appeals in criminal cases should also lie on a certificate given by the High Court. The House will be pleased to consider the situation. At present appeals to the Privy Council in criminal matters lie first of all on a certificate given by the High Court concerned. If that is refused, then, the Privy Council may allow an appeal by special leave. Special leave is a residuary provision to guard against the High Court improperly refusing to grant the requisite certificate. I submit that article 112 has committed us to the acceptance of the principle that appeals must lie also on a certificate by the High Court concerned in criminal cases. In fact, it is highly convenient as a preliminary step to allow the High Court to grant or refuse a certificate. The convenience is obvious. The High Court has, where it is asked to give a certificate, already considered the matter more or less fully in an appellate or revisional capacity, since it is against a judgment or order of the High Court that an appeal is sought to the Supreme Court. The High Court is thus already in possession of the facts relating or relevant to an appeal to the Supreme Court. There are many High Courts already in the provinces and there will be many more in the integrated States. There will be more than a dozen High Courts in the territory of India. It would be very convenient for these High Courts to be in a position to grant or refuse the certificate in the first instance. Therefore, this obvious and convenient course should be adopted. In case the certificate is refused, it can be taken for granted in most cases that it has been properly refused. If thereafter any application for special leave is made to the Supreme Court, in nine cases out of ten, that application will be refused because the question of law, or the suitability, otherwise, for purposes of appeal has already been fully considered by the High Court in refusing the certificate. In such a case, it will reduce the number of application to the Supreme Court for special leave as it has already reduced the number of applications for special leave to the Privy Council. I therefore, submit that the provision for a certificate by the High Court is not only a very logical measure, but at the same time, a convenient one and it will prove in the long run to be economical. It sometimes happens, however, that the High Court refuses to grant the certificate even in a suitable case. In those limited cases, it should be the privilege of the highest Court to grant special leave. The question of possible congestion of work in the Supreme Court has included many honourable Members to oppose the provisions of these amendments. It is said that we do not know how many appeals in criminal cases there would be in the Supreme Court. The fear of creating a serious congestion in that Court and also the fear that we will have to employ more Judges to deal with those cases is behind this opposition. I submit, however, that this fear is unjustified. So far as the question of law is concerned, it is only a 'substantial question of law' which will enable a party successfully to obtain a certificate or special leave. A substantial question of law must be clearly appreciated. In fact in it is not any question of law but a substantial question of law and I submit that a substantial question of law is very restricted in its scope. It is a very high standard of error or irregularity in law and it is already well established that an error as to the procedural law such as, error in framing a charge or similar other matters prescribed by the Code or Criminal Procedure or other procedural law relating to criminal matters, and a violation of these laws does not as a matter of law create a sufficient grievance in law even in the High Court or other Appellate Courts and will not be ground for the Supreme Court, for under section 537 of Criminal Procedure Code, any error of procedure would not be a material ground for interference in a criminal case unless it has in fact also resulted in prejudice to the party. So a substantial question of law is reduced to a very short compass that if it is an error of procedural law, it must be sufficiently serious in its consequences upon the case which must have caused real and substantial prejudice to the party. Therefore the condition as to a "substantial question of law" will eliminate all question of errors of procedure which do not go to the root of the mater, which really do not affect the merits of the case, and therefore, there is no fear of congestion of cases on this ground. Then there are other procedural errors, namely, in a Session trial there may be misdirections to the Jury. It has also been held that this is not a sufficient ground to interfere unless it has on facts led to failure of justice. Therefore the fear that there would be congestion of cases if we allow substantial question of law to justify appeals to the Supreme Court is unjustified. Then with regard to references by Session Judges under section 307 of the Code of Criminal Procedure against the verdict of a Jury, in the latest Privy Council case of Ram Anugrah Singh, it was held in 1946 that unless the verdict of the Jury is clearly unreasonable so that no reasonable body of men could come to that conclusion, unless this ground is made out, even serious misdirection of even mis-reception of material evidence, contrary to Evidence Act, will not be a sufficient ground even for High Court to interfere, and I submit would also be no ground for interference before the Supreme Court. I therefore submit that the condition of substantial question of law is a sufficient safeguard against frivolous appeals being taken to Supreme Court. It is only when very substantial injustice has resulted from any errors of procedure or any mis-reception even of material evidence there would be an appeal and there would be a certificate or special leave. But any question relating to composition of the crime is really a serious matter. We have recently a case decided by the Privy Council in 1945 saying that under section 34 of the Penal Code which was supposed to be applicable to all cases where several persons acted or purported to have acted with similar intention does not constitute an offence. In fact a clarification of this matter in this case has ruled out a large number of offences centering round section 34 of the Penal Code. Another important principle has been decide by Privy Council in 1947 in Srinivas Mall's case, that criminal intention and knowledge is a necessary condition although it may not be mentioned in the penal law concerned. Unless criminal knowledge or criminal intention, commonly called *mens rea* is clearly or necessarily rules out by the penal law, it is a necessary ingredient of the offence. It must be proved that the accused had some criminal knowledge or intention. On these matters the Privy Council has laid stress on the real elements of crime and the materials that go to constitute the crime. This is highly important, and substantial grounds of law will mostly centre round errors as to the elements of a crime or serious errors as to the law of procedure or evidence. I therefore submit that there is no fear of any serious congestion of cases. The Privy Council has always summarily rejected applications for special leave which did not raise very substantial errors or actual prejudice. It is only two or three cases in the year-at any rate not more than half-a-dozen cases in a year, that they have interfered. I have no doubt that in granting a certificate the High Court will exercise the greatest caution and will confine itself to granting certificate in cases only where the penal laws have been misinterpreted or that there has been any gross violation of the rules of procedure or evidence to the prejudice of a party that a certificate will be given and I have no doubt whatsoever that under article 112 the Supreme Court will also exercise a restraining influence on indiscriminate appeals. Then there is a condition that Advocates appearing in the High Court and also before the Privy Council are required to certify that there are substantial grounds for the appeal and in case any frivolous application is made for a certificate or special leave, that is always a matter for serious comment and that will again act as a restraining influence on frivolous application. This wholesome practice will no doubt also be observed in the Supreme Court but these matters must be left to the Supreme Court to deal with. The Federal Court has already shown that they do not like appeals made without sufficient or without at least arguable grounds. Considering the matter from this point of view, the fear of congestion of criminal cases in Supreme Court is to my mind merely conjectural. I do not think more than a few dozens of cases will come to Supreme Court and that should not terrorise us into complete inactivity and taking no decision whatsoever on this matter. Considering the matter from every conceivable point of view, we must allow appeals in serious cases where injustice has as a matter of fact been done by the High Court and by other Courts, and appeals should only be allowed on substantial questions of law which is a very difficult condition-it is not a frivolous appeal that has any chance of success and we must allow appeals to the Supreme Court on substantial grounds of law. I have however in my amendment stressed two other matters which require consideration. I have said that appeals must also lie from the final decision of any tribunal other than High Court from which no appeals for revision lies to High Court. It is open to the Legislature to set up a special tribunal and it is quite competent to so provide that its decision will be inviolate and no appeal will lie to High Court or any other Court. In such cases, appeal should also lie on the certificate of the tribunal on the usual grounds. In such a case the High Court will have no power to grant certificate because we are ensuring a certificate from High Court from its own decision. It is therefore also necessary to provide for appeals from the decisions of tribunals from which no appeal or motion lies to the High Court. In such cases a certificate for appeal from such tribunal would be needed; and the residuary article 112 is already there. So, such tribunals from which no appeal or motion lies to the High Court in criminal cases, may also be authorised. Otherwise there will be a lacuna.

Then there are matters which are neither civil nor criminal. Civil matters are provided for in article 111, and we want to provide for appeals in criminal cases in article 111-A. But there are anomalous cases which neither civil nor criminal, *e.g.,* contempt of court cases, when a party or witness or advocate or any one else brings the Court into contempt or disrepute. In such cases the High Court has summary power to deal with the recalcitrant party by fine or even imprisonment. In such cases there should be an appeal in important cases where a substantial question of law is involved. In two recent contempt of court cases that went up to the Privy Council-one from the colonies and one from the Allahabad High Court-it was found that parties had been wrongly punished on a misconception of law. And Lord Atkins delivering the judgment of the Privy Council pointed out gross inaccuracies in the conception of contempt of court. Important questions of law and principle arise in these cases and provision should be made for an appeal, provided a substantial question of law is involved or the matter is a fit one for appeal. So these two classes of cases-that is, appeals from tribunals from which no motion or appeal lies to the High Court, and contempt of Court cases-should be included to prevent any lacuna. We are framing the Constitution for a long time and should leave no loopholes which will call for early amendments. In civil cases we have limited the valuation to Rs. 20,000; but in criminal cases we cannot limit the value of a man's life and liberty. We cannot hang or imprison an innocent man without giving him a right of appeal. Even if one innocent man dies or is imprisoned, the sighs of his widow or orphan children will cry for justice. The House, I submit, should rise to the occasion and give justice to a poor man whose life may be considered by cynics to be below Rs. 20,000.

Mr. President : Dr. Ambedkar will now move his amendment.

The Honourable Dr. B. R. Ambedkar : (Bombay :General) : Sir, I move :

"That with reference to amendments Nos. 23 and 24 of List I (Fifth Week) for the new article 111-A, the following be substituted :-

Appellate jurisdiction of Supreme Court with regard to criminal matters.

111-A. The Supreme Court shall have power to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India-

(a) if the High Court has on appeal reversed the order of acquittal of an accused person and sentenced him to death; or

(b) if the High Court has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or

(c) if the High Court certifies that the case is a fit one for appeal to the Supreme Court :

Provided that an appeal under sub-clause (c) of this clause shall lie subject to such rules as may from time to time be made by the Supreme Court and to such conditions as the High Court may establish or require.

(2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law."

I do not wish to say anything at this stage but I shall reserve my remarks towards the end after hearing the course of debate on my new amendment.

Pandit Thakur Das Bhargava (East Punjab : General) : Mr. President, Sir, the amendment which has been moved by Dr. Ambedkar just now is one which I hope will find acceptance from all Members of this House. This amendment is in effect the same of which I gave notice (No. 17) except in regard to revisional powers of enhancement. In regard to all other matters it is substantially the same and I have no hesitation in congratulating Dr. Ambedkar and those who have brought about this compromise on this issue.

Coming to the merits of the question I beg to submit the amendment, though satisfactory from the practical point of view, is certainly neither logical nor theoretically right. In the first instance, if it be accepted as an axiom in criminal jurisprudence that at least one appeal should be provided to every person who has been convinced in a court of law, this amendment fails to achieve the object. Under part (a) of this amendment the only occasion where an appeal is allowed in respect of an order against the order of acquittal is when a person has been sentenced to death. May I humbly ask if, for a person who after he has been acquitted and in the appeal against him has been sentenced to transportation for life, or even to five years or a single day or even fine, is there occasion for appeal for him in the High Court or any other Court? Are we to understand that person who are sentenced to death are the only persons who are aggrieved and who require the right of appeal? In my humble judgment every person who after acquittal has been sentenced in appeal should possess the inherent right to appeal. I agree that if there are thousands of such appeals our Supreme Court will be flooded with cases and in practice there will be great difficulty. All the same, I must submit to this House that it must take care to see that some provision is made somewhere-either in the High Courts or in the Supreme Court-that every such convicted person has got a chance to appeal.

This new article 111-A here is practically on a par with article 111 on the civil side. I complained last time when I was speaking on article 110 that as a matter of fact the provision of article 111 also are not satisfactory in so far that they proceed on a basis which is not acceptable to me or which should not be acceptable to the House. We passed the Objectives Resolution. We passed the Fundamental Rights in article 8, and under article 15, that there shall be equality before law and equal opportunity for every person. Now, the provisions contained in article 111 and those proposed in article 111-A go against the very grain of our Objectives Resolution as well as the Fundamental Rights, because in the matter of justice, in the matter of securing equality of treatment we cannot differentiate between a person who has been convicted to death and a person who has been fined or given one day's imprisonment-as we cannot distinguish between a person who is rich enough and can afford to have a dispute with regard to Rs. 20,000 and a person who is very poor and has a dispute only for Rs. 200. There is absolutely no difference in principle between the two. I must submit that this is not be right way of looking at things. In so far as equality of treatment and opportunities is concerned, our law must be based upon an ideal in which every person has got an equal right to go before the law and have his case decided. As I submitted, this is not logical and not theoretically right.

The proviso with regard to (c) is a thing which should not have been put in here. In regard to article 111 on the civil side the only requirement is that the High Court has to certify that the case is a fit one for appeal to the Supreme Court. But in regard to the criminal side these restrictions-unnecessary restrictions in my opinion-have been placed in regard to part (c) which say that the Supreme Court shall make certain rules and the High Court shall attach certain conditions. On the civil side there are no such restrictions and it passes my understanding why there should be these restrictions on the criminal side. When the High Court itself certifies that the case is a fit case for appeal, it is an absolute case for appeal. Who are we do say anything further? Can we not trust our own High Court, instead of restricting it by certain rules made by the Supreme Court and certain conditions attached by the High Court itself? It is not a question of giving the right to the private citizen. I can understand the logic of those who say that a private person as such should not be given the right to go to the Supreme Court. I can understand that the High Court, so far as provincial autonomy is concerned, must be the last word in regard to the liberties as well as the properties of a citizen. And if a person wants to go to the Supreme Court, it must be in the fewest of cases. I can understand that ideal. All the same, when in regard to civil appeals we are giving certain rights it is but natural that in regard to criminal side also you must give equal rights, if not more. After all we are not interested in seeing that provision is made for a large number of appeals, but in seeing that justice is done and justice is rightly administered.

I have one word more to say and that is in regard to the powers of the Supreme Court. As we have seen, article 109, 110, 111, 111-A and 112 are the five articles under which the machinery is provided by which appeals can go to the Supreme Court. We have seen under article 25 of the Constitution that every citizen has been guaranteed Fundamental Rights and the Supreme Court has been made the custodian of those rights. But I do not find any provision in our Constitution which lays down in what manner and under what method the Supreme Court shall exercise those powers and secure those rights to the citizens. Much has been said about article 112 and I will not dilate on it because we have already passed it. All the same I must submit one aspect of the case and that too very humbly and in my own way. If the Supreme Court has jurisdiction and if people can go to it and their rights are to be secured through it we have to arm the Supreme Court with full powers. I am not talking of powers to the citizen but of giving powers to the Supreme Court itself so that it may do justice. In article 118 we have stated that the Supreme Court shall be able to pass orders necessary for doing complete justice. But all the same I know that in regard to procedural matters even now the Supreme Court is not really supreme. It is true that the Supreme Court has been given jurisdiction over some cases where the supreme penalty of law is provided. But in many cases the procedure is so defective that a person sentenced to transportation for life *e.g.,* by conviction in High Court when appeal against acquittal has been accepted, has not got any right of appeal.

If you refer to article 15 which we have already passed you will see that so far as the question of procedure is concerned it is still within the purview of the Legislature to make this or that procedure and the Supreme Court has no hand whatsoever in checking that procedure. Unless and until we make it clear that so far as the ultimate destiny of a person is concerned, so far as the ultimate arbitrament of the rights of a citizen is concerned the Supreme Court has got powers even over the Legislature we will not secure the rights to the citizen. So far as the liberty of a citizen is concerned it should be secured even against the Legislature.

I have been given notice of amendments to article 109-A, 113-A and 114-A also and they must also be considered in this connection because ultimately on the powers that we give to the Supreme Court depend the rights of the people. When the Privy Council has so far been enjoying these powers under section 112 under the principles of natural justice, the same powers may be given to our Supreme Court in regard to natural justice so that it can do complete justice, not according to a particular law or a particular provision or a particular regulation but according to those principles which are known, which are established and which are fundamental in their importance. We will be securing our full rights only if the House agrees to see that the powers of the Supreme Court are enlarged to the fullest possible extent. So far as the present amendment goes I have nothing more to submit except to say that I am very glad that the efforts of all of us have succeeded in producing a compromise acceptable to all.

Prof. Shibban Lal Saksena : (United Provisions : General) : Mr. President, the amendment moved by Dr. Ambedkar really makes criminal appeals to be on a par with civil appeals. I argues the other day that every man who is sentenced to death should have the right to have his case reviewed by the Supreme Court before the sentence is carried out. I remember the difficulties of the poor men under sentence of death. I have lived in cells with condemned men and I know their feelings. Hardly one among a score of such people could afford to take their appeal to the Privy Council. It is stated here that if the High Court certifies that the case is a fit one for appeal to the Supreme Court, the Supreme Court shall have power to hear it. It will not go to the Supreme Court automatically. I feel that a man who is condemned to death but who may not have the means to file an appeal or to get the necessary certificate should also have his appeal heard by the Supreme Court as of right. Nobody should be hanged unless his case is reviewed by the Supreme Court. According to the present amendment of Dr. Ambedkar, only about 100 out of 1000 murder appeals, *i.e.* about 10 per cent. will have the right to be heard by the Supreme Court if all the accused are able to bear the expenses thereof. so the richest men alone will get the right of appeal to the Supreme Court and poor men will be hanged without any hearing by the Supreme Court. Poor men cannot thus get justice even after this amendment is passed. I therefore think that althought the amendment is a compromise, the poor condemned prisoners will not get justice even under it.

The second part of the amendment provides : "Parliament may by law confer on the Supreme Court any further powers," I hope the working of this article will soon convince the Parliament that everybody who is under sentence of death should have a right to go to the Supreme Court in appeal automatically without any expense. Unless the Supreme Court has finally rejected his appeal, he should not be hanged. I have nothing more to say on this question.

Pandit Lakshmi Kanta Maitra (West Bengal : General) : Sir, at long last we now see the prostest of termination of the very long-drawn debate that has gone on the question of investing the Supreme Court with powers of appeal in criminal matters. You were pleased to point out that the matter had been debated at sufficient length and that no further time should be spent in repetition of the arguments already advanced. I will keep that observation in view in the few remarks that I propose to make in connection with the amendment which has been moved by Dr. Ambedkar.

The House will realise that a considerable section of it is greatly exercised over the question as to whether or not the right of appeal in criminal cases should be embodied in the Constitution itself. There are two clear-cut sets of differences of opinion with regard to this. It has been held by one section that this right need not be conferred by the Constitution itself, but that Parliament should be left in future to legislate and confer such powers as it may think necessary in criminal matters. But Members like us are firmly of the view that, whereas provision was being made in the Constitution itself for appeals in civil matters, there was absolutely no justification for not embodying the same right of appeal in criminal matters. We feel that we should not give the country the impression that we allow to property more sanctity than to human life.

Now, after all these discussions, I think what has been crystallised it to be found in the amendment moved by Dr. Ambedkar. The main demand of a considerable section of the House was that in cases involving capital punishment there should be a right of appeal provided in the Constitution itself. I firmly held that view, but the objection was that there would be such a plethora of criminal cases involving death sentences that a very large number of judges would have to be appointed to decide them. I particularly drew attention to two categories of cases in which death sentence was imposed; a person is acquitted by the Sessions Court of a charge of murder, the Government prefers an appeal against the acquittal and the High Court reverses the judgment of the Lower Court and sentences the man of death. Such a man should have the right of appeal, where the judgment of the High Court reversing the judgment of the lower court may be contested.

I am very glad that in the amendment moved by Dr. Ambedkar to this article this has been specifically provided. I would particularly ask my friends to scan the expressions used in this connection which if properly understood will eliminate all chances of further debate on this article. New article 111-A proposed, says :

> "(1) The Supreme Court shall have power to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India-
>
> (a) if the High Court has on appeal reversed the order of acquittal of an accused person and sentenced him do death...."

"That covers that category of cases on which we laid great stress. Clause (1) (b) covers another class of cases where the High Court has got inherent power to withdraw to its own file and try any case pending in Lower Court. This is inherent in the High Court; the High Court, as a court of record, has got this power. In such a trial, if the accused is sentenced to death, that virtually becomes the first sentence and rightly therefore an appeal has been provided for such a contingency. The third paragraph deals with criminal matters provided that the cases which come up are amenable to the rules made by the Supreme Court or by the High Court. If these rules are complied with, then these will be fit cases for intervention by or for appeal to the Supreme Court. Now, this generally disposes of the matters which require to be embodied. Again, clause (2) provides for additional powers to the Supreme Court, that is to say, the future Parliament of this country may by law confer upon the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court, subject to such conditions and limitations as may be specified in such law. This is expected to cover cases for instance, of revisional jurisdiction just as is exercised by the High Courts now. I therefore am inclined to think that this is a comprehensive amendment, and I am satisfied that this brings about a compromise between the opposing views, and the legal profession to which I have the honour to belong will be grateful to Dr. Ambedkar for his spirit of accommodation shown in this respect. I think, Sir, that the form in which this amendment has ultimately emerged meets the requirements of our case and deserves the fullest support of this House.

Shri Krishna Chandra Sharma (United Provinces : General) : Mr. President, Sir, as I said the other day, in view of the provisions *viz.* articles 110 and 112 already passed by the House, I do not see the necessity for further provisions for appeals from the High Court to the Supreme Court. Sir, much has been said about the life and liberty of the person. I think there is a misunderstanding with regard to the procedure in criminal cases as against the procedure in civil cases. In a criminal case the serious cases come first before the committing Magistrate. The committing Magistrate takes evidence: the defence can take the statements of the witnesses in the Police diaries and can get the witnesses confronted with the statements before the Police. That is one stage in which the prosecuting witnesses are cross-examined, their veracity tested, their *bona fides* questioned, and there is a good chance for the defence to plead that the case is a bogus case, without any foundation, is based on something which is not truth and there being no *prima facie* case, plead for discharge. And then, Sir, from the committing Magistrate the case goes to the Sessions Judge. Again the defence has got the right to cross-examine witnesses. The defence can again call for the witnesses' statement made before the Police and also the statements made before the committing Magistrate, and then confront the prosecuting witnesses with those statements and produce defence. The fullest opportunity is given to the defence to place its case. The trial is by jury, or with the aid of assessors.

Mr. President : The honourable Member's argument comes to this that there should be no appeal. As there is no amendment that there should be no appeal, I do not think this argument will help the House at all.

Shri Krishna Chandra Sharma : My submission is that I do not support sub-clause (a) and (b), though I support sub-clause (c) and clause (2) of the amendment. What I beg to submit is that there is enough chance, enough opportunity, for the accused to cross-examine and to test the evidence and then to put the whole case before the Session Court, and after the Sessions Court, he has got the right of appeal to the High Court. Sub clause (a) says that if the High Court has on appeal reversed the order of acquittal of an accused, the accused should have at least one right of appeal. My submission is that it is not the accused alone who is the aggrieved party. In the case of a child murdered in the street, the mother of the child is also an aggrieved party. If the accused has a right of appeal on conviction, the mother of the child murdered in the street has equal right to go before the Court and say, "the man has murdered my child. I have a grievance against the fellow. The stability of the State demands, the cause of prevention of crime demands that the man must be hanged." It is wrong to say that the accused alone is an aggrieved party and as such on conviction must have the right of appeal. With equal force, with equal reason it can be pleaded that the aggrieved party is the women whose child has been murdered and as such she has got as much right to go to the superior court and say that the accused must be changed.

Pandit Lakshmi Kanta Maitra : That right is exercised by the High Court when there is an acquittal.

Shri Krishna Chandra Sharma : The right of the deceased's mother to approach the State for appeal is equally sound as the right of appeal of the accused to the High Court against his conviction. So it is not right to hold that the accused must have at least one right of appeal on conviction, and if convicted for the first time for murder, under sub-clause (a) he must have the right of appeal to the Supreme Court. I see no soundness in this argument. Another thing I would submit and that is this : There is a lot of talk about the life and liberty of the person. When the question of the Parliament conferring jurisdiction on the Supreme Court was discussed, Mr. Lari said, "Parliament is a question of the party; it is a question of the Cabinet and it is a question of the Prime Minister." I beg to submit that it does not look very nice to talk of finer things in a country where women are raped on the road or a child is murdered for a two rupee worth necklace, or a *mochi* is killed in the street of a city because he refuses to accept six pies instead of his demand of one anna or murder is usual in a quarrel over water in the field. You have to take notice of facts as they are. After all justice is related to conditions of life. Justice is only the will of the people, and the will of the people is represented by the Parliament. I beg again to submit that the people who are too wise and the people who are actually too foolish would never make a stable society. It is the people who talk of these finer things who never care for the stability of the society, for the stability of the State. Take for instance the case of Austria. There are too many scientists; there have been too many lawyers, too many philosophers, too many men of letters, men of genius and they will all differ and would never agree. The net result was that Australia was one country in the whole history of human organization which never got a stabilised State, which never got peace and order, despite the fact that some of the persons born in Australia were the greatest men in the world, in the field of science, in the field of philosophy; and there is the case of the other people who are too foolish to understand the urgency of the situation.

Mr. President : I am afraid the honourable Member is going much beyond his point.

Shri Krishna Chandra Sharma : So my submission is that the question of justice, the question of personal liberty, the question of life is a question related to facts, related to conditions and you cannot run away from the conditions as they prevail in the development of society.

As regards clause (b) in most of the cases a case is withdrawn from the subordinate court on the application of the accused. And in rare instances, it is withdrawn at the instance of the prosecution. It is always pleaded that there is a reasonable apprehension that justice would not be done in the case at the place where the case is being tried. The case is withdrawn from the subordinate court to the High Court; it is withdrawn with the condition prevailing in that area or the conditions in the court are such that there is reasonable apprehension that justice would not be done there. So, Sir, for the better condition and the sense of confidence, the High Court takes up the case. I say that if the reason underlying is to create a sense of security, a sense of confidence and the High Court judge looks into every aspect of the question, discusses the fact-the evidence has already been discussed, cross-examined and tested I-do not see any reason that there is any cause to reopen the case again before the Supreme Court. For, after all, what would the Supreme Court do? The Supreme Court would discuss the abstract questions of justice. As I already said, life is too much a living thing and differs from the abstract principle and justice need not only be done to the accused, but justice must needs be done to the aggrieved party, to the State, because the State wants stability, the aggrieved party wants revenge and society wants the prevention of crime. All these factors are important and have to be considered and taking all these factors in conjunction with the state of society such as is in this country, I beg to submit that we need not go any further than the High Court and the High Court should be the final forum in criminal cases.

I would support sub-clause (c) and if in any case it is so important, there are any legal points and from the point of view of justice it covers so many other questions, so many other cases or it is a general question of law that there should be uniformity on the principle of law or interpretation thereof, I would submit that sub-clause (c) of the amendment has a case, and may be supported and so also clause (2). I am fortified by a provision in the American Constitution with regard to the Supreme Court. The provision runs :

> "*Sub-section* (2) *of article* 3.-In all cases affecting ambassadors, other public ministers and consuls and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction both as to law and fact with such exception under such application as the courts shall make."

Sir. in the American Constitution, it is said that the judiciary is supreme and it dominates, as against the English Constitution where the Parliament is supreme or against the present Indian Constitution where the executive dominate. So if in America where the judiciary dominates, there is a provision that the power of the Supreme Court would be conditioned or subject to the law of Parliament, I see reason why we should go further than the American Constitution. As to what sort of appellate jurisdiction exists in America at present, I beg to read from a book on American Constitution by Prof. Zink :

> "At different periods in the history of the United States the exact extent of appellate jurisdiction has varied, but there has been a general trend in the direction of cutting it down. When W. H. Taft become Chief Justice, he found that the Supreme Court was distinctly behind in its docket and devised means for a more prompt disposal of its work. Acting on such recommendations Congress further limited the cases that could be appealed to the court as a matter of right, much to the consternation of many lawyers who felt that almost every case of mare than routine consequence ought to be permitted a hearing in the highest court of the land. At present only two varieties of cases may be carried as a matter of right beyond the highest state court or the circuit court of appeals in the federal system (1) where it is asserted that a right or provision of the national Constitution, treaties, or statutes has been denied or ignored, and (2) where a state law or a provision of a State constitution is alleged to conflict with the national Constitution, treaties made under the authority thereof, or laws passed in pursuance thereof."

This is the position of the American Supreme Court. As I submitted before, it is accepted that in the American Constitution the judiciary is supreme. Where the judiciary is supreme, the state of affairs are as I quoted from the book. So, Sir, in our country where conditions prevail which require speedy justice and prevention of crime, I do not see any reason for the power being given to the appellate court as in sub-clauses (a) and (b); I would, of course, gladly support the provision in sub-clause (c) and the provision in clause (2).

Shri Alladi Krishnaswami Ayyar (Madras : General) : Sir, amongst the chorus of praise which this amendment has received from all sections of the House, I am extremely reluctant to make any observations which may sound a note of dissent. It must be taken on the whole that the speeches indicate that the amendment proposed by Dr. Ambedkar has the general support of the House, but at the same time I feel it my duty to refer to one or two points as it may serve to indicate what exactly is the scope of this article 111-A.

The latter part of it, the proviso, is a reproduction of section 411-A of the Criminal Procedure Code relating to appeal from the sentences of the High Court. Under this clause, an appeal shall lie subject to such rules as may from time to time be made by the Supreme Court and to such conditions as the High Court may establish or require. Under clause (c) it is open to the Supreme Court to lay down any restrictions, any conditions as to the right of appeal. Similarly, the High Court may also lay down any conditions as it choose in regard to the right of appeal. I feel some difficulty, Sir, in finding how this clause takes us further than article 112 of the constitution. Under article 112 the Supreme Court has an unfettered discretion to grant special leave in any criminal case. The terms of article 112 are in no way restricted or conditioned by any such clauses. Supposing for example, in the exercise of its power, the Supreme Court lays down certain conditions, and certain restrictions for the exercise of the power of certification by the High Court, is it intended so far as the High Court is concerned, it will be subject to such conditions as may be laid down by the Supreme Court? Though the conditions themselves will be laid down by the Supreme Court, it is the High Court that is invested with the power to grant a certificate. We will take it that the Supreme Court lays down a rule that a High Court can certify only cases where there is a particular kind of miscarriage of justice, misdirection to the jury or admission of inadmissible evidence or some other thing. Are we to take it that in the exercise of its jurisdiction under article 112. The Supreme Court is not fettered by these rules which are laid down for the benefit of the High Court under clause (c)? That is a point on which I have no doubt Dr. Ambedkar will enlighten the House : that is, sub-clause (c) taken along with article 112 of the Constitution. If the distinction is between certification by the High Court and grant to leave by the Supreme Court, I should think it is meaningless. It is inconceivable that the Supreme Court should say that so far as the High Court is concerned, it may not certify unless certain conditions are satisfied, but so far as the Supreme Court is concerned, it continues to have an unfettered discretion under article 112. That is the point on which I feel some difficulty.

Then, again, with regard to sub-clause (a) and (b), the position is this. Sub-Clause (a) says : "if the High Court has on appeal reversed the order of acquittal of an accused person and sentenced him to death". That clause will apply to a case where a Full Bench of the High Court has reversed the judgment of the Session Court in a jury trial. An exactly similar case arose recently in Madras wherein a Full Bench of the Madras High Court refused to interfere, and the Privy Council reversed the decision, and the case came back to the High Court and ultimately, the party was acquitted. That is a case where conceivably there has already been an appeal provided within the precincts of the High Court. So far as sub-clause (b) is concerned, that is a case which the High Court has withdrawn for trial before itself from any court subordinate to itself. So far as cases covered by clause (b) are concerned, an appeal will lie directly to the Supreme Court from a decision of a single judge, whereas in the other case, presumably, an appeal will have to be tried in the High Court before an appeal is launched in the Supreme Court.

These are some of the consideration which have included me in leaning more in favour of, and supporting the amendment which was tabled by Dr. Ambedkar yesterday. It is not that I am hard upon the criminals or that I do not sympathise with the lot of people who may be convicted for murder. Whereas all these considerations can be dealt with in a general revision of criminal law by Parliament they cannot be adequately dealt with in a single article of the Constitution. That is the only reason for which I contended some time ago in connection with the discussion under another article that the matter may conceivably be taken by Parliament. Anyhow, I do not want to sound a note of dissent from what is conceived to be in the larger interests of the criminals of this country. We have also no data exactly as to in how many cases the High Court has interfered with cases of acquittal by the court of first instance. These are the considerations which could be legitimately taken into account in Parliament in making a general legislation. I would have very much preferred Parliament legislating; anyhow, I wanted to place these observations before the House for what they are worth.

Shri Raj Bahadur (United State of Matsya) : Mr. President, I am afraid I may perhaps surprise and disappoint some of my Friends by giving expression to certain doubts and misgivings, about the desirability and wisdom of incorporating this provision in our Constitution at the present juncture and in the present state of our society.

I know that there is ample justification for the view what an accused person must be given the fullest opportunity for defence in a court of law. His right of appeal must not be impaired or restricted in any shape or form. I also recognise the soundness of the healthy principle that the innocence of an accused person must be taken for granted as a presumption unless it is rebutted by solid evidence. Nevertheless, there is another side of the case also. Viewed from the side of the complaint, from the side of the family which has been deprived of one of its near and dear ones by the foul hand of a murderer, is it not simply shocking that under the grab of an appeal, an accused person is provided with an opportunity to postpone or procrastinate the hand of justice? It is very well known what the feeling of the common man in the country is, about the delay in the trial of the Gandhi murder case. Without offering any remarks on the merits of the case which is still *sub-judice,* I am simply voicing the feeling of the man in the street when I say that in a case where the murder took place in broad day light, in the presence of hundreds of persons, the trial has been hanging fire for over a year. We have got to see that justice is not only done, but it appears also to be done, and done speedily.

I may submit that the object of criminal justice is three-fold : it is punitive, preventive, and reformative. I submit that so far as the right of appeal is concerned there is a view-point that this right of appeal also constitutes the right to delay justice. It is a sort of thing which is very much like the right of "filibustering" enjoyed by the Parliamentarians. I may point out that while this right of appeal may not detract ultimately from the punitive aspect of justice but it may, in a certain measure, detract from its preventive preventive and reformative purposes. It is therefore only meet and proper that this aspect of the case must not be lost sight of by us. We know that the system of administration of justice that we have inherited was foisted on the country by the British, and although much can be said in favour or against it, it cannot be denied that it suffers essentially from three fundamental defects, namely, it is very expensive, it involves a lot of delay and at the same time it gives scope for perjury and fabrication of evidence. So the basic question, and the fundamental issue that is before us is not merely giving the right of appeal to a person convicted and sentenced to death here or there before the Supreme Court, but that at some stage-whether the stage has come now or will come in the future is itself another debatable question-we have to take in hand the question and grapple with the problem of the reform of our laws and the entire system of administration of justice. It is a crucial question. Now if we analyse the official amendment-as I would like to call it-we may see that clauses (a) and (b) of the new article give a very limited scope for appeals we know that it is only once in a blue-moon that an order or acquittal is reversed by the High Court, and that it is also very rare that a High Court takes over a case and decides it itself. So the only right of appeal which may be granted in a substantial number of cases would be the one falling under the purview of sub-clause (c). The very application of this article would, thus, depend upon the rules which have to be made under the proviso attached to the said sub-clause. So everything depends upon the rules; but there is another point also. My honourable and learned Friend Pandit Thakur Das Bhargava happened to observe during the course of his speech to-day that there is justification not only for appeals in cases of sentences of death but in other cases also and that we should take that question also in hand. With all respect to the erudition and experience of my learned Friend Pandit Bhargava I submit that this is bound to involve the same problem, the problem of-to use the rather state phrase- "Justice delayed is Justice denied". Obviously also if every criminal case is allowed to go in appeal to the Supreme Court it is bound to result in a considerable amount of delay in the disposal of cases. This would not inspire much confidence in the system of administration of justice. Law's delays have been proverbial ever since Shakespeare wrote Hamlet. We have to make some such provision in our laws that at least in our country we find out or evolve some method by which we may eliminate those delays. I submit that we should also not lose sight of the fact that recently there has been an appreciable rise in the incidence of crime in our country. Everybody we have reports from provinces and we read reports of crimes in the newspapers. We see that there is almost a sort of crime wave in some parts of the country at least-we cannot lose sight of the happenings that are taking place on our Eastern and Western borders. We cannot lose sight of these facts as also of the incidents that are taking place in Calcutta and around it. We have to take into account the fact that there is bloodshed and turmoil in out neighbouring countries. Only this morning papers showed that while there were wars and battles raging already in the countries on our eastern borders, there has been bombing in a neighbouring country on our western side also. At such a critical juncture it is only proper that we must see that three are no inordinate delays in the disposal of cases and in the administration of justice in our country. I submit that, as the guardians of the freedom and liberty that we have won for the country, we must see that this is not lost in a chaos of crime and lawlessness. I would request that in my humble opinion the question of right of appeals in these cases may better be left over to the Parliament to deal with.

Dr. Bakhshi Tek Chand (East Punjab : General) : Mr. President, Sir I have only a few words to say on article 111-A in the form in which it has now emerged in the last amendment which Dr. Ambedkar has moved this morning. This amendment, if I may say with respect, is substantially the same which I had moved yesterday in supersession of the other amendments Nos. 26 and 27 of which notice had been given by me earlier. The only difference between my amendment and the present amendment of Dr. Ambedkar is that clause (b) has been added to meet a certain type of cases-very rare, indeed-which was not covered by my amendment, *viz.,* when a High Court has withdrawn a case from a subordinate Court for trial by itself and at the conclusion of the trial has convicted the accused and sentenced him to death. I think cases of this kind will not be more than two or three in the whole of India in the course of a year. Still this was an omission in the amendment which I had moved and, I agree that the proposed clause (b) be incorporated in the article.

On the amended article, different viewpoints have been presented to the House today by honourable Members who have taken part in the debate. On the one hand some Members have said that the right of appeal, given by this amendment, is very limited and it should be enlarged so as to include all cases in which the High Court has on reversal of the order of acquittal passed a sentence on the accused person whether of transportation for life or a lesser sentence. This is the view which Pandit Bhargava strongly urged the other day and has also repeated today. With great respect, I submit that this would be enlarging the scope of the article to unreasonable limits. It will be admitted that it is not desirable to convert the Supreme Court into a Court of criminal appeal for all cases. If that were so, then having regard to the volume of criminal litigation in this country, even in cases of murder or other serious crimes, the Supreme Court will be flooded with criminal appeals. It has been said that expense and enlargement of personnel of the Supreme Court should be not stand in the way of giving relief to persons convicted in criminal matters, as life and liberty of human beings is more important than property, with regard to which Civil appeals have been provided for in article 111. But that is hardly a correct view of the case. Life and liberty is certainly more important than property but an unrestricted right of appeal either in civil or criminal matters will no incalculable harm to society. Take an ordinary murder case. In the Presidency towns the trial is held in the High Court sessions assisted by a jury, and the mofussil and in provinces where the High Court has not original jurisdiction, the accused is tried by a Sessions Judge with the aid of a jury or assessors. In most cases the decision turns on a pure question of fact, and the Session Judge after hearing the evidence has convicted the accused and passed a sentence which may be one of death. An appeal is allowed to the High Court as of right; even if three is no appeal by the accused the sentence of death passed by the Sessions Judge has to be confirmed by the High Court. In either case the High Court goes through the whole evidence over again and if it finds that the man has been rightly convicted on the evidence, there are concurrent findings on facts. In such a case it will be undesirable to allow a second appeal to the Supreme Court. It is not permitted in any country in the world. After all, there must be some limit to appeals and further appeals. It would be wrong in cases where the High Court has agreed with the trial court on questions of fact even if the case is of murder, and the sentence is of death, to allow a further appeal as of right to the Supreme Court. The number of such cases in India including the States under the jurisdiction of the Supreme Court will certainly exceed one thousand a year. And it would be dangerous to allow unrestricted appeals in every such case. It will be remembered that in civil cases the Privy Council has made it a rule of practice not to disturb concurrent findings on facts. If the same rule is applied to criminal cases, in most cases it will be sheer waste of time and money to allow further appeals. The Supreme Court is not likely to differ on pure questions of fact, where on an examination of the evidence, both the trial court and the High Court have concurred. Appeals should be allowed in exceptional cases only and that is what the amendment of Dr. Ambedkar contemplates. Sub-clause (a) confers an important right and remedies an existing lacuna in the law. This relates to cases where a man acquitted by the Sessions Court in the mofussil or at the High Court Sessions in the Presidency towns is, on appeal against such acquittal by the provincial Government, convicted by the Appellate Bench. Here in the first place there is the initial presumption of law that every person is presumed to be innocent until he is proved to be guilty. This presumption is further strengthened by the fact that the trial judge has found him innocent. If against this double presumption, the Appellate Bench finds him guilty and sentences him to death, it is certainly a matter which requires further investigation and the amendment seeks to give a right of appeal to the Supreme Court in such cases. It really is analogous to article 111 dealing with appeals in civil cases where the value of property is Rs. 20,000 or more and the judgment of the Appellate Court is one of reversal of that of the trial court.

Sub-clause (b) relates as I have said already, to a more limited class of cases and really is a corollary to sub-clause (a).

With regard to sub-clause (c) certain apprehensions have been expressed by honourable Members. Shri Alladi Krishnaswami Ayyar thinks that it will come in conflict with article 112, which gives the Supreme Court power to grant special leave to appeal in criminal cases. With great respect I fail to see any conflict between the two. The power of the Supreme Court to grant special leave to appeal is of a peculiar nature. This is at present done in exercise of the Royal prerogative which His Majesty the King exercises through the Judicial Committee of the Privy Council. In the Constitution, the Supreme Court will be invested with the same power by article 112. As I submitted the other day in regard to article 112, it is very much restricted in its scope. The Supreme Court has discretion, which it may exercise in any way it likes and in any kind of case, civil, criminal or any other proceeding decided by any court subordinate to it. At present the Privy Council grants leave only in rare cases, where it is of opinion that some principles of natural justice have been departed from,--a phrase which is vague and undefined. It does not cover substantial and serious errors of law or even miscarriage of justice. It is, therefore necessary to provide appeals in such cases in which the High Court certifies that the case is a fit one for appeal to the Supreme Court. This is sought to be done in clause (c) and its proviso which have been taken verbatim from sub-section (iv) of section 411-A, which was introduced in the Criminal Procedure Code by Act XXVI of 1943. That sub-section however, is limited to cases in which a person has been tried in the original side of a Presidency High Court and has been convicted. Before 1943 there was no right of appeal in such cases, unless the Advocate-General certified that it was a fit case for further appeal; and the matter ended there. It was felt in many cases that thought there had been gross miscarriage of justice, yet there was not even one appeal. In 1943 by the amending Act an appeal was allowed to a convicted person on questions of law, or even on questions of fact it the trial judge certified that the case was a fit one for appeal or it the Appellate Bench found that the case was one requiring further consideration even on facts.

Then there is the further provision in sub-section (iv) that it the Appellate Bench is satisfied that the case is a fit one for further appeal to the Privy Council, it may give the certificate and the appeal will lie to the Privy Council. This provision, however, is limited only to those cases in which the trial has been on the original side of the High Court. Take for instance the province of Madras. If the crime has been committed within the limits of the presidency town of Madras then the section 411-A applies. But if the crime is committed, say, ten miles beyond or in another place like Trichinopoly or Tanjore, then there is no right of appeal at all to the Appellate Bench nor can the case go to the Privy Council even on certificate by the High Court. What clause (c) of the proposed article 111-A seeks to do is to extend the same provision and the same privilege to persons outside the Presidency towns, that is to say, to the mofussil, in the there Presidencies of Bengal, Bombay and Madras, as well as to other provinces. I submit that is a provision to which no reasonable objection can be taken.

My learned Friend Mr. Raj Bahadur thinks that this article will open the flood-gates of litigation and that every case, regardless of the nature of the crime or of the sentence passed, would be open to appeal to the Supreme Court. With great respect I submit that that is not so. It is only in a very limited class of cases that the High Court is likely to certify that the case is a fit one for appeal. Judges who have themselves decided a particular case are not likely to grant a certificate lightly. They will do in so very very rare cases only. So far as I am aware, after 1943 when section 411-A was enacted, there have not been more than three or four cases in which appeals have gone to the Privy Council. I do not think, that there will be more than eight or ten such cases throughout the year from the whole country. It will only be in a few cases, in which the question involved is of such great and general importance that the High Court will ask the Supreme Court to pronounce an authoritative judgment upon it. I submit, that these provisions are very very salutary and they should be incorporated in the Constitution.

I have only one word to say as regards what my Friend Mr. Naziruddin Ahmad said about contempt of court cases. He thought an appeal should be allowed in those cases as of right. Much as one would like cases in which a person has been convicted for contempt of court to be further reviewed, I am afraid, to allow an appeal to the Supreme Court in every such cases would be going too far. If there is an important question involved in a case, resort can be had to sub-clause (c) of article 111-A.

The provisions of the article in the form in which it has been moved by Dr. Ambedkar in amendment No. 198 meet all the requirements of the case and I would ask the honourable Members to accept it. The apprehensions of those who think that it will encourage crime, I submit, are wholly groundless. Equally groundless are the apprehensions of those who think that it is unduly limited in scope. It is a well-balanced and salutary provision which should find a place in the Constitution.

Shri L. Krishnaswami Bharathi (Madras: General): Sir, the question may now be put.

Mr. President : The question is:

"That the question be now put."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I rise to make just a few observations in order to give the House the correct idea of what is proposed to be done by the introduction of this new article 111-A. The first thing which I should make clear is that it is not the intention of article 111-A to confer general criminal appellate jurisdiction upon the Supreme Court. The jurisdiction sought to be conferred is of a very limited character.

In showing the necessary why it is desirable in my judgment to confer appellate criminal jurisdiction upon the Supreme Court as specified in the sub-clause of article 111-A. I proposed to separate sub-clause (a) and (b) from sub-clause (c) because they stand on a different footing. As the House knows, (a) and (b) confine the appellate jurisdiction of the Supreme Court only to those cases where there has been a sentence of death: in no other case the Supreme Court is to have criminal appellate jurisdiction. That is the first point that has to be borne in mind.

I shall state briefly why it is necessary to confer upon the Supreme Court this limited appellate jurisdiction in cases where there has been a sentence of death passed upon an accused person. The House should note that so far as our criminal jurisprudence, as it is enshrined in the Criminal Procedure Code, is concerned, there is one general principle which has been accepted without question and that principle is this that where a man has been condemned to death he should have at least one right of appeal, if not more.

Mr. President : May I just point out one thing? Your amendment does not cover the case of a person whose sentence has been enhanced to a sentence of death.

The Honourable Dr. B. R. Ambedkar : We do not propose to give such a thing. That is the point. With regard to enhancement of the sentence we do not propose to confer criminal jurisdiction of an appellate nature on the Supreme Court. We do it with open eyes and I think everybody ought to know it. That is not the intention. It must be generally accepted that where a man has been condemned to death he should have at least one right of appeal. Starting with that premise and examining the provisions of the Criminal Procedure Code it will be found that there are three cases where this principle is, so to say, violated or not carried into effect. The first case in the case where, for instance, the District Judge acting as a Sessions Judge acquits an accused, person; the Government which has been invested with a right of appeal against the acquittal appeals to the High Court , and the High Court in its appellate jurisdiction condemns the man to death. In a case like this no appeal is provided. That is one exception to the premise.

The second case is the case of the Sessions Judge in the High Courts of Bombay, Calcutta and Madras, where sitting in a sessions court he acquits a criminal; then the

Government takes an appeal to the High Court on its appellate side and the appellate side on hearing the appeal condemns the man to death. There again there is no appeal. Then there is the third case, which is worse, namely, that under section 526 of the Criminal Procedure Code a High Court, in exercising the powers conferred upon it by that section, withdraws a case to itself and passes a sentence of death. There again there is no appeal.

Mr. Naziruddin Ahmad : There is a right of appeal in such cases.

The Honourable Dr. B. R. Ambedkar : No. No appeal from the High Court.

Mr. Naziruddin Ahmad : Under section 411-A of the Criminal Procedure Code.

The Honourable Dr. B. R. Ambedkar : Section 411-A applies only to the High Court of Calcutta, Bombay and Madras. Even there it does not apply to all cases or to cases where such High Court have acted under section 506. Section 411-A is confined to appeals from the judgment of High Court sitting on the original side, in sessions. Therefore, Sir....

Pandit Lakshmi Kanta Maitra : Section 526 generally refers to transfer of cases.

The Honourable Dr. B. R. Ambedkar : When a case is transferred and tried by the High Court, is no right of appeal. It has extraordinary jurisdiction. Therefore these are three flagrant cases where the general principle that a man who has been condemned to death ought to have at least one appeal is not observed. I think, having regard to the enlightened conscience of the modern world and of the Indian people, such a provision ought to be made. The object of sub-clause (a) and (b) therefore is to provide a right of appeal to a person who has been acquitted in the first instance and has been condemned to death finally by the high Court. I do not think that on grounds of conscience or of humanity there would be anybody who would raise objection to the provisions contained in sub-clause (a) and (b).

Now I come to sub-clause (c). With regard to this the House will remember that it has today an operative force under the Criminal Procedure Code, section 411, so, far as the High Courts of Calcutta, Madras and Bombay are concerned. This right of appeal to the Privy Council on a certificate from the High Court that it is a fit case was conferred by the Legislative Assembly in the year 1943, and very deliberately. We have therefore before us two questions with regard to the provision contained in section 411 of the Criminal Procedure Code. There are two courses upon to this House: either to take away this provision altogether or to extend this provision to all the High Courts. It seems to me that if you take away the provisions contained in section 411 which permit an appeal on a certificate from the High Court, you will be deliberately taking away an existing right which has been exercised and enjoyed by people, at any rate, in three different provinces. That seems to me an unnatural proceeding--to take away a judicial right which has already become, so to say, a vested right. The only alternative course therefore is to enlarge the provisions in such a manner that it will apple to all the High Court. And the course that has been adopted in my amendment is the second course, namely, to extend it to all the High Court. My Friends who are agitated that this might open the flood-gates of criminal appeals to the Supreme Court have, I think, forgotten two important considerations. One important consideration is that the power of hearing appeals which is proposed to be conferred on the Supreme Court under sub-clauses (a) and (b) of clause (1) of the new article may vanish any moment that the legislature abolishes the death penalty. There will be no such necessity left for appeals to the Supreme Court if the legislature, thinking of what is being said in other parts of the world with regard to death penalty, and taking into consideration the traditions of this country, abolishes the death penalty: in that case sub-clauses (a) and (b) would ultimately fall into desuetude and the work of the Supreme Court so far as criminal side is concerned will diminish if not vanish.

With regard to sub-clause (c) it will be noticed that it has been confined in very rigid limits by the proviso which goes along with it, namely 'Provided that an appeal under sub-clause (c) of this clause shall lie subject to such rules as may from time to time be made by the Supreme Court and to such conditions as the High Court may establish or require." Therefore, the certificate is not going to be an open process available merely for the asking. It will be subject at both ends to the conditions and limitations laid down by the High Court and the rules made by the Supreme Court. Therefore it will be realised that sub-clause (c) is a very rigid provision. It is not flexible and not as wide as people may think.

Pandit Lakshmi Kanta Maitra : Modified by the proviso.

The Honourable Dr. B. R. Ambedkar : Yes, as modified by the proviso.

Now, I come to clause (2) of my amendment. There you have got the general power given to Parliament to enlarge the criminal jurisdiction of the Supreme Court beyond the three cases laid down in my amendment. There was a point of view that the three cases mentioned in clause (1) of my amendment ought to be enough and that there ought not to be a door kept open for Parliament for enlarging the criminal jurisdiction of the Supreme Court and that sub-clause (a), (b) and (c) ought to be the final limit of criminal jurisdiction of the High Court. Well, the only answer I could give is this: It is difficult to imagine what circumstances may arise in future. I think it would be better to believe it if a man said that there would be no circumstances arising at all requiring Parliament to confer some kind of criminal appellate jurisdiction upon the Supreme Court. Supposing such a contingency did arise and if the provisions of clause (2) of my new article were not there, what would be the position? The position would be that the Constitution would have to be amended by the procedure we are proposing to lay down in a subsequent part of this Constitution. The question therefore is this: should we make it as hard as that, that the Parliament should also not have the power unless the Constitution is amended, or should we leave the position flexible by enabling Parliament to enact such law, leave the time, the circumstances and the choice to the Parliament of the day?

The Honourable Shri K. Santhanam (Madras: General): May I point out that under article 114 Parliament will still have the power to invest the Supreme Court with jurisdiction.

The Honourable Dr. B. R. Ambedkar : I am afraid 114 does not deal with that matter. I have not got the copy with me; otherwise I would have replied. It is only with regard to the Union List.

The Honourable Shri K. Santhanam : It deals with the jurisdiction of the Supreme Court in relation to matters contained in the Union List.

The Honourable Dr. B. R. Ambedkar : Yes, but supposing they want to enlarge the jurisdiction with regard, for instance, to the Concurrent List, List III, they cannot use article 114.

Now, Sir, I come to some of the observations which were made by my Friend, Mr. Alladi Krishnaswami Ayyar. His observations related mostly to sub-clause (c). His first question was, what is the use of having sub-clause (c) if the provisions of sub-clause (3) are hedged round by the provisions contained in the proviso which goes with it, *viz.,* rules to be made by the Supreme Court.

Pandit Lakshmi Kanta Maitra : It is sub-clause (c) and not sub-clause (3).

The Honourable Dr. B. R. Ambedkar : I am sorry, it is sub-clause (c). His point is that there is no use of having sub-clause (c) as it is by the provisions laid down in the proviso. The first thing I would like to remind my Friend, Mr. Alladi Krishnaswami Ayyar is this, that the proviso which is attached to sub-clause (c) is word for word the proviso attached to Section 411 of the Criminal Procedure Code and word for word the proviso contained in article 109 of the Civil Procedure Code. My. Friend, Mr. Alladi Krishnaswami Ayyar, will remember that we have introduced in the appellate civil jurisdiction of the Supreme Court a clause which is absolutely word for word the same as sub-clause (c) of clause (1) of article 111-A. Now, I should have thought that if there was some residue of good in sub-clause (c) of clause (1) or article 111, hedged as it is with all the limitations as to the rules to be made by the Supreme Court, as a man of commonsense. I should think that there must be some residue of good left in sub-clause (c) here, not withstanding the limitations contained in the provision. My Friend also stated that there is a provision contained in article 112 which confers upon the Supreme Court the right to admit an appeal by special leave, which article is not limited to civil appeal but is a general article which speaks of any cause or matter. His point was that if that is there, why have sub-clause (c)? My answer to him is again the same. If 112 defines the jurisdiction which the Supreme Court has over the High Courts, if that is there in civil matters, why have sub-clause (c) in clause (1) of Article 111-A? My answer to him is this: If we can have sub-clause (c) in civil matters, notwithstanding the fact that we have 112, what objection can there be to have sub-clause (c), thought we have 112? The point to be borne in mind is this that with regard to 112 we have left the Supreme Court with perfect freedom to lay down the conditions on which they will admit appeals. The law does not circumscribe their jurisdiction in the matter.

Shri Alladi Krishnaswami Ayyar : There is a condition in the case of civil appeals.

The Honourable Dr. B. R. Ambedkar : It is true. Now, I do not know how this article 112 will be interpreted by the Supreme Court. We have left it to them to interpret it. They may interpret it in the way in which the Privy Council has interpreted it or they may interpret it in any manner they choose; either they may put a limited interpretation or they may put a wider interpretation. In case they put a limited interpretation, then I have no doubt shout it that sub-clause (c) will have some value. I therefore submit, Sir, that my amendment is such that it meets the exigencies of the cases, satisfies the conscience of some people who object to people being hanged without having any right of appeal. I think it is so worded that the Supreme Court will not administratively or otherwise be overburdened with criminal appeals. I hope my

Friend will now withdraw their amendments and accept mine.

Shri C. Subramaniam (Madras: General): On a point of clarification, as to the implication of the difference of language...

The Honourable Dr. B. R. Ambedkar : It is too late now.

Mr. President : The Honourable Doctor has not shown n this reply why he makes a distinction between cases in which sentence has been passed for the first time by the High Court in revision by way of enhancement of sentence and cases in which death sentence is passed in reversal of a judgment of acquittal.

The Honourable Dr. B. R. Ambedkar : The case of an appeal against enhancement of sentence differs from a case of an appeal against acquittal in two respects. When the High Court enhances the sentence against an accused person it is not convicting him for the first time. The accused already stands convicted. In the case of an appeal against acquittal the High Court is reversing the finding of the trial court and convicting the accused. The second point of difference is that in the case of enhancement the proceedings are converted into regular appeal so that in the case of enhancement proceedings the accused gets a statutory right of appeal under the Criminal Procedure Code to show that not only enhancement of sentence is not warranted but even his conviction is not justified by the facts of the case. In enhancement cases there is already one appeal. That being so, no further appeal is necessary. Thirdly, the amendment recognizes conviction or acquittal as the basis for a right of appeal to the Supreme Court. It does not recognize the nature of sentence or the type of punishment as the basis for a right of appeal.

Mr. President : Supposing in a case the trial court holds that it is a case of grievous hurt, although it has resulted in death and passes a sentence of imprisonment and supposing there is an appeal to the High Court which by way of revision holds that it is a case of murder and not grievous hurt and gives a sentence of death. For the first time, the conviction is for murder by the High Court and the sentence of death is also passed for the first time.

The Honourable Dr. B. R. Ambedkar : For the moment I am not prepared to go beyond the proposition as set out in my amendment. If Parliament later on thinks that such a case ought to be provided, it has perfect liberty under a clause (2).

Mr. President : It is a different matter and is for the House to decide. For myself, I have not been able to find the distinction.

Shri H. V. Pataskar (Bombay: General): I have moved amendment No. 25 to the original amendment No. 24 of the Honourable Dr. Ambedkar. Now there is a new amendment which has come today, namely No. 198 and the wording there is: "Parliament may by law confer on the Supreme Court any further powers to entertain etc." My amendment was also on principle the same with respect to the Supreme Court being enabled to hear certain appeals, but with respect to the wording, it is liable to be interpreted differently and to my mind is in conflict with article 112 as it stands, because under article 112, there is already jurisdiction to the Supreme Court.

Mr. President : There is no time for that. I think you are too late now. We cannot allow it at this stage.

I have to put the various amendments now and those honourable Members who think that their amendments are covered by the new amendment or Dr. Ambedkar. I hope, would withdraw them.

The question is:

"That with reference to amendments Nos. 23 and 24 of List I (Fifth Week) for the new article 111-A the following be substituted:-

111-A. (1) The Supreme Court shall have power to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India--

Appellate jurisdiction of Supreme Court with regard to Criminal matters.

(a) if the High Court has on appeal reversed the order of acquittal of an accused person and sentenced him to death; or

(b) if the High Court has withdrawn for trial before itself any case any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or

(c) if the High Court certifies that the case is a fit one for appeal to the Supreme Court:

Provided that an appeal under sub-clause (c) of this clause shall lie subject to such rules as may from time to time be made by the Supreme Court and to such conditions as the High Court may establish or require.

(2) Parliament may be law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject of such conditions and limitations as may be specified in such law.' "

The amendment was adopted.

Mr. President : I shall take the order amendments, and I shall see how far the other amendments are covered by this. There are several amendments moved, and so I shall take each one of them and see how far that amendment is covered by the amendment which has been carried and to the extent it is not covered, I shall have to put that to vote.

Pandit Thakur Das Bhargava : I beg to withdraw all my amendments.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President : That simplifies the matter. Threr are so many of them.

Shri Jaspat Roy Kapoor (United Provinces : General): The whole of my amendment (No. 22) is not covered by Dr. Ambedkar's new amendment. It does not include the case to which you have drawn his attention, namely, the case of death penalty being imposed in revision. However, I withdraw my amendment.

The amendment was, by leave of the Assembly, withdraw.

Shri H. V. Pataskar : I would like to withdraw amendment No. 25 standing in my name.

The amendment was, by leave of the Assembly, withdraw.

Mr. Naziruddin Ahmad : Sir. I would ask leave to withdraw amendment No. 33.

The amendment was, by leave of the Assembly, withdraw.

Mr. Naziruddin Ahmad : I have amendment No. 41 which is not fully covered by Dr. Ambedkar's amendment. There are three points which are not covered.

Mr. President : Then you do not withdraw it?

Mr. Naziruddin Ahmad : I do not, Sir.

Mr. President : Then, I will put amendment No. 41 which is not covered by Dr. Ambedkar's amendment, to vote.

Mr. President : The question is:

"That with reference to amendment No. 1932 of the List of Amendment, after article 111. the following new article be inserted:-

'111-A. Any person against whom any judgment, sentence or order has been passed by a High Court in the territory of India except the States for the time being specified in Part III of the First Schedule, in any criminal proceeding or any proceeding relating to contempt of Court, or from any judgment, sentence or order of any other tribunal exercising criminal jurisdiction which judgment, sentence or order is not liable to be set aside or modified in appeal or revision by any such High Court, shall have a right of appeal in the following cases, namely:-

(a) against any sentence of death:

(b) against any other judgment, sentence or order of such High Court or tribunal, as the case may be, that the judgment, sentence or order involves a substantial question of law; or

(c) in any other case where the High Court or the tribunal, as the case may be certifies that it is a fit case for appeal'."

The amendment was negatived.

Mr. President : The question is:

"That article 111-A, as amended, stand part of the Constitution."

The motion was adopted.

Article 111-A, as amended, was added to the Constitution.

New Article 103-A

Mr. President : This is a new article sought to be added by Dr. P. K. Sen by his amendment No. 1870 which is printed at page 190 of the first volume of amendment. The honourable Member though he is not here now had moved this amendment and therefore, it has to be put to vote or discussed, if any one wishes to say anything. (No Member rose)

I shall put it to vote.

The question is:

"That after article 103, the following new article be inserted:--

'103-A. A person who is holding or has held the office of Judge of the Supreme Court shall not be eligible for appointment to any office of emolument under the Government of India or a State, other then that of the Chief Justice of India or the Chief Justice of a High Court:

Provided that the President may, with the consent of the Chief Justice of India. depute a judge of the Supreme Court temporarily on other duties:

Provided further that this article shall not apply in relation to any appointment made and continuing while a Proclamation of Emergency is in force, if such appointment is certified by the President to be necessary in the national interest'."

The amendment was negatived.

Article 164

Shrimati Purnima Banerji (United Provinces : General): Mr. President, I have a suggestion to make with regard or this article. This article refers to the method of voting in the House of the Legislature Assembly of a State and the Legislative Council of States and its right to function notwithstanding vacancies in there Houses. In article 164 there is also a passing reference to a joint sitting of both the House. I suggest, Sir, that article 172 where the question or "joint sitting" is taken up in greater detail, and which involves certain principles in which we are all interested should be taken up first. I therefore suggest that article 172 should be taken before this article is taken because once we pass this article dealing with the question of joint sitting we shall be committed to the principle of joint sitting and all the aspects of the problem will not be placed before the House.

Mr. President : Therefore, you suggest that this should not be taken now?

Shrimati Purnima Banerji : Yes, Sir.

An Honourable member : It should be taken after article 172.

Shri T. T. Krishnamachari : (Madras : General): While I appreciate Shrimati

Purnima Banerji's suggestion, the words relating to a "joint sitting" here come only by the way, and if we decide to alter the appropriate articles in a different way, the Drafting Committee might just delete the words occurring here that relate to a joint sitting. If there is no reference to a joint sitting in the appropriate article, this will automatically go. There is no substance attached so far as the reference to "joint sitting" is concerned in this particular article. It is left to the Chair. It you permit the Drafting Committee to make the changes at the appropriate time in the article this article might be discussed.

Mr. President : I think it does not really touch the question whether we should have a joint sitting or not. If the other parts of the Constitution do not provide for a joint Session, then, this article will not operate at all, so far as joint sitting are concerned, and the particular expression may even be dropped later on. There is no reason for holding it up. We may take it up and dispose of it.

Dr. Ambedkar, you may move amendment 2389, though it is a formal one.

Shri Mohan Lal Gautam (United Provinces : General): I take it, Sir, that your ruling is that even if we pass this article, it will have no prejudicial effect so far as article 172 is concerned.

Mr. President : Yes; That is what I have said.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in clause (1) of article 164 for the words 'Save as provided' the words 'Save as otherwise provided" be substituted".

(Amendments Nos. 2390 to 2396 were not moved.)

Shri Jaspat Roy Kapoor : Sir, I beg to move:

"That with reference to amendment No. 2389 of the List of Amendments, in clause (1) of article 164, for the words 'in a House' the words 'at any sitting of a House' be substituted."

To this there is another amendment;

Sir, I move:

"That with reference to amendment No. 61 above, in clause (1) of article 164 for the words 'in a House or a' the words 'at any sitting of a House' be substituted."

The object of this amendment is obviously to make a necessary improvement in the drafting of this article and I hope it will be appreciated by Dr. Ambedkar and that he will readily accept it.

Mr. President : The question is:

"That in clause (1) of article 164 for the words 'Save as provided' the words 'Save as otherwise provided' be substituted."

The amendment was adopted.

Mr. President : Then, I shall put amendment 62 which will cover the other amendment also.

The question is:

"That in clause (1) of article 164, for the words 'in a House or a' the words 'at any sitting of a House or' be substituted".

The amendment was adopted.

Mr. President : The question is:

"That article 164, as amended, stand part of the Constitution."

The motion was adopted.

Article 164, as amended, was added to the Constitution.

New Article 167-A

Mr. President : We now take article 167-A, amendment No. 65. This arises out of amendment No. 2441 and this is for the addition o another article after article 167.

Shri B. A. Mandloi (C. P. & Berar : General): Mr. President, I beg to move amendment No. 2441 on page 247 of Volume I.--

"That after article 168, the following new article 168-A be inserted:--

'168-A. On a question being raised or having arisen whether a member has incurred the penalty for the breach or breaches mentioned in article 168, the Chairman of the Legislative Council or the Speaker of the Legislative Assembly, as the case may be, shall refer the matter to the Committee of Privileges or to a sub-committee appointed by him for its report. The Chairman or the Speaker shall give his decision after the report has been discussed in the House-Council and the decision of the Chairman or Speaker, shall be final'."

Sir, the House has passed article 167 and 168 regarding the disqualification for membership, and the penalty for sitting and voting before making the declaration prescribed in article 165 or when not qualified, or when disqualified. Having accepted these article, naturally, the question arises as to who is the person to decide the question whether a particular member has incurred a disqualification or not. Therefore, the necessity to incorporate a new article to empower a particular person or authority to give decision on these question arises.

Now, if we agree to this course, two important things have to be borne in mind: that the decision of the person of authority so empowered should be final, *viz.,* the decision of the person or authority duty empowered should not be challenged in a court of law, which would necessarily prolong the litigation and defeat the very object of the articles. Therefore, whatever authority is empowered to give a decision, its decision should be final. The other important thing to be borne in mind is that the matter should be decided as early as possibly, because, under article 168, there is a penalty of Rs. 500 a day for a member who is under a disqualification and who sits or takes part in the proceedings, or votes on a particular motion. As soon as the question is raised that a particular member is under a disability, that particular member would naturally like the decision to be given as early as possible. Where he takes part in the proceedings and ultimately the decision goes against him, then, he would be liable to a penalty and if, as a prudent man, he does not take part in the proceedings and ultimately the decision goes against him, then, he loses his valuable right of participating in the deliberations. Therefore two important factors have to be borne in mind, viz., that the decision should be final and that it should be given as early as possible. My submission is that the Speaker or the Chairman of the Assembly or the Legislative Council are quite competent persons who should be empowered to give decision on such question. We know, Sir, that the Chairman and the Speaker are required to give important rulings on questions raised in the House on the spur of the moment, and they are very competent persons to give the decision whether a particular person has incurred the disability or not. I have in my amendment suggested that the matter should be referred to a Sub-Committee or to a Committee or Privileges and as soon as the matter is sifted by that Committee, the report would be placed before the House when it will be discussed and ultimately the Speaker or Chairman would be in a position to give its decision on such matters and therefore I submit that this amendment of mine should be accepted by the House.

Mr. President : You may move your amendment No. 65 also.

Shri B. A. Mandloi : I have moved my original amendment No. 2441. Amendment No. 65 is an amendment to my amendment. I am not moving amendment No. 65. My honourable Friend Shri T. T. Krishnamachari may move amendment No. 65.

Shri T. T. Krishnamachari : If he is not moving, I shall move No. 65. Sir I beg to move:

"That in place of No. 2441, the following new article be inserted:-

167-A. (2) If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualification mentioned in clause (1) of the last preceding article the question shall be referred for the decision of the Governor and his decision shall be final.

Decisions on question as to disqualification of members.

(2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion.' "

Sir, I would ask the House to accept this amendment version of the amendment moved by the Honourable Mr. Mandloi for this reason, that there are certain difficulties in the matter of practical application if amendment No. 2441 is accepted, *viz.,* that there will undoubtedly be a time, even if we are to endow the speaker of a House with all the powers to put into operation the disqualification under 167, when the Speaker will not have been elected and for another even the member who is elected as Speaker might be subject to some of the disqualifications and, as the scheme now stands, the permanent Head of the State will be the person who can take action. The doubt can be raised that once the Speaker is elected, his powers should not be infringed upon. I do believe on a previous occasion also in connection with the article relating to Parliament this difficulty was felt but we got over it by the provision that in regard to all that has to be done in a House, if the President has powers, they will be delegated to the appropriate authority who might happen to be the Speaker. It is not likely that is this instance the Governor will act in this entirely unilaterally; he will act on the advice of his Ministers and naturally they will not do anything without consulting the Speaker. The second clause presupposes the bringing into being of an Election Commission which finds mention here for the first time and it relates to the Chapter on Election article 289 onwards, and the Drafting Committee have proposed by appropriate amendment to bring into being an Election Commission which will have the final say in all election matters. Therefore in order to prevent the Governor from acting himself or even acting on the advice of his Ministers from motives which might not be proper, the second clause lays the responsibility on the Governor and his advises to obtain the opinion of the Election Commissioner or whoever decides the matter on behalf on the Election Commissioner. I believe this amendment covers the lacuna which my honourable Friend Mr. Mandloi wanted to fill in by his amendment No. 2441. The prestige of the Speaker is not involved in this because we are not taking away any power from the Speaker but we are only contemplating what is to happen when the Speaker may not have come into being. I do hope the House will accept this amended version of Mr. Mandloi's amendment No. 2441.

Kazi Syed Karimuddin (C.P. & Berar. Muslim): Sir, I would like to move No. 66 which stands also in my name. Mr. President, I beg to move:

> "That in amendment No. 65 above, in the proposed new article 167-A.-
>
> (i) in clause (1), for the words 'Governor and his' the words 'Election Commission and its ' be substituted; and
>
> (ii) clause (2) and the figure '(1)' occurring at the beginning of clause (1) be deleted."

Sir, I have heard Mr. Mandloi. According to him the Speaker will be the proper authority and on the report of the Committee to be appointed by him this decision should be finally made by the Speaker. I have two objections to his amendment, first that the point about the disqualifications of a member is very important and it has to be enquired into in great detail. Of course the members of the Committee that would be appointed must belong to a political party and the decision in regard to disqualification of members should not be entrusted to members of a political party. Therefore, it is better that this matter is entrusted to the Election Commission. But in the amendment moved by Mr. T. T. Krishnamachari it is said in clause (2) that before giving any decision on any such question the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion. According to this sub-clause (2) the Governor becomes only the post Office, because when once it is said that the opinion of the Governor shall be final and the same breath it is stated that he will be bound by the opinion of the Election Commissioner, then why not accept the decision of the Election Commission and say its decision will be final and it will be pronounced by the Election Commissioner? Therefore I have moved this amendment and I commend it to the House.

Shri R. K. Sidhva (C. P. & Berar: General): Sir, I find Mr. Mandloi's amendment quite specific and distinct from the one moved by Mr. Krishnamachari. Mr. Mandloi's amendment relates only to article 168, and he wants the subject matter of breaches of the article to be decided by the Chairman or the Speaker, whereas Mr. Krishnamachari's amendment is a general one relating to disqualifications. Election malpractices or corruption should certainly go to an Election Commission. Article 168 reads:

> "If a person sits or votes.......before he has complied with the requirements of article 165 act."

Article 165 relates to oath of a member, and if he refuses to take the oath it would not be proper to send it to an Election Commission. In the past the Speaker has refused to allow such a member to speak and Mr. Mandloi wants to give the Speaker this right, while Mr. Krishnamachari's amendment is a general one relating to disqualification.

Mr. President : It does not relate to article 165 only; in the subsequent portion it relates to other things also.

Shri R. K. Sidhva : My point is about refusal to take oath. Then there are also matters like insanity. If a member is insane it is for the Speaker to decide.

Mr. President : What if he take an office of profit after election or becomes insolvent? There are covered by article 167.

Shri R. K. Sidhva : These cases should go for inquiry. But if he does not take the oath would you allow him to sit in the Assembly? I submit the thing is confused and should be made clear.

Prof. Shibban Lal Saksena : Sir, I agree with Mr. Sidhva that there is some confusion in the amendment moved by my Friend Mr. Krishnamachari. Mr. Mandloi pointed out a lacuna in article 168 he said the Speaker should decide whether a person has incurred the prescribed penalty or not. There are two things involved in this matter; (i) whether the person is disqualified to sit in the chamber or not, (ii) whether he has incurred a penalty or not. The conditions of becoming disqualified are contained in article 167, on the basis of which it should be decided whether a disqualification has been incurred or not. This obviously the Election Commission alone can decide properly. As regards not taking the oath, etc., the Speaker should be the person to decide straightaway. So there should be two new clauses, 167-a and 168-A. It should be mentioned in 167-A that question whether a member has become subject to any of the disqualifications should go to the Election Commission; and in 168-A it should be mentioned that the Speaker should decide whether a member has incurred the penalty or not. Bringing the Governor will nor improve matters and he should have nothing to do with it. The Election Commission will say whether there is a disqualification or not and the Speaker will decide whether the penalty has been incurred or note. There is some inconsistency and it should therefore be divided into two parts as I have suggested, *viz.,* 167-A and 168-A, relating to disqualification, to be decided by the Election Commission, and penalty, to be decided by the Speaker.

The Honourable Shri K. Santhanam : Sir, I think the objection to asking the Governor to decide is mistaken because the whole new clause refers to disqualifications mentioned in 167(1). Not taking the oath of office is not a disqualification. Until the person takes the oath he is not entitled to act and after some time his seat will become vacant automatically. It is no disqualification and my honourable Friend Mr. Sidhva may be assured that in this matter the Election

Commissioner or the Governor does not come into the picture. But many of the disqualifications will require detailed investigations. *e.g.,* whether a person owns allegiance to a foreign power, etc. Here records and evidence will have to be called for and surely the Speaker should not be made a judicial officer for this purpose and correspond with officials, etc. Another fundamental principle is that the Speaker should not come into a position of conflict with a member. No one knows what the result of the investigation is going to be, but during the process of investigation, if the Speaker conducts it, the relations between him and the member are bound to be strained. It is not therefore right to invest the Speaker with any such functions. In some Parliaments the Parliament itself sets up a Credential Committee or some such machinery to investigate such matters and pronounce judgment. We can certainly adopt such a procedure, but having set up an Election Commission which will be competent to deal with such matters it is not necessary to devise such a procedure. So far as the Governor is concerned, he is brought is merely because he is the executive head and the convenient instrumentality by which the thing can be done. He himself has no discretion in the matter and his decision will be bound by the opinion of the Election Commission. One amendment suggests why not bring in the Election Commission direct? It is simply because the matter has to go though the executive head of the State. It is only on an understanding of the correct procedure that it has been put in. As a matter of fact it is the Election Commission which will be invested with jurisdiction to go into all these matters and pronounce whether a Member is qualified or disqualified.

Another point has been raised that under article 168 when a decision on disqualification of membership is pending for a long time a member who attends the House may be put to very heavy penalties. It is quite true. But there is nothing which compels a Member who is charged with disqualification to attend the House. He attends at his own risk. If he is absolutely certain that he is not disqualified he is certainly entitled to take the risk and attend. But if he does attend while a charge of disqualification is pending and if finally it is proved that he is actually disqualified, then he has taken a deliberate and calculated risk and he must pay the penalty. I do not think he deserves so much sympathy. I think the clause as it has been moved by my honourable Friend Mr. T. T. Krishnamachari ought to be supported.

Mr. Tajamul Husain (Bihar: Muslim): Sir, a person cannot be a member of a provincial legislature if he is a government servant or is of unsound mind or is an undischarged insolvent or is a foreigner or is disqualified by law. This is a very sound principle. The question now before us is who is to declare the member disqualified. We have got amendments here. One amendment says that the Speaker should refer the matter to the Committee of Privileges-the Speaker of the Legislative Assembly or the Chairman of the Legislative Council-the matter will be discussed by the Committee and then the Speaker or Chairman will decide it. The other amendment suggests that the Governor should decide it after consulting the Election Commission.

There is one flaw as regards the former amendment and it is this. Suppose there is no Committee of Privileges. So far we have not got any Committee of Privileges in the Draft Constitution. Then what are we to do? Another point is that the House may not be sitting. When the House is called and the matter is discussed it will mean considerable delay. There should be a quick decision and for this the Governor is the best person. The only objection in leaving it to the Governor is that he will be guided by the Cabinet by the Prime Minister. But in this matter the Prime Minister will have nothing to do and the Governor will not consult the Prime Minister. He will consult the

Election Commission which is the sole authority. And whatever the Election Commission report, that will be final and binding on the Governor. Therefore, out of these two amendments I think the second amendment seems more reasonable and it should be accepted.

Pandit Thakur Das Bhargava : Sir, a perusal of amendments Nos. 65 and 2441 leaves no doubt in my mind that they envisage different sets of facts. Amendment No. 65 is clear that so far as the question relates to part (1) of article 167 it is a matter within the jurisdiction of the Election Commission and on the advice of the Election Commission the Governor shall decide the question. In regard to article 168, an amendment has been moved that the Speaker should be given power. May I humbly submit that so far as article 168 is concerned it describes the offence, which will be governed by the law of the land. Let us examine what the offence is. The offence lies in this, that a member who is fully cognizant of the fact that he is committing a crime yet persists in attending the House. A member who has not taken the oath has no right to attend the House. He knows he has not taken the oath, yet he persists in sitting in the House. Similarly when he knows that he is not qualified or disqualified.........

Mr. President : Can he sit in the House at all if he has not taken the oath?

Shri R. K. Sidhva : He can sit in the House but cannot participate in the debate unless he takes the oath. He cannot vote.

Mr. President : But does he become a member before he takes the oath?

Shri R. K. Sidhva : Yes, that has been held by previous Speakers.

Mr. President : I find article 165 is clear. It says:

> "Every member ...... shall, before taking his seat, make and subscribe before the Governor......a declaration according to the form set out for the purpose in the Third Schedule."

So he has to take the oath before he sits.

Pandit Thakur Das Bhargava : So a person who has not taken the oath fully knows that he is committing a crime and therefore he is a person who should be dealt with under the ordinary law of the land and the Speaker does not come in at all. We are here considering the case of a person who is to his own knowledge committing an offence. He should be dealt with under the ordinary law of the land and he will be fined and the fine will be recovered as a debt due to the State. I do not therefore think that the House should accept the amendment moved by Mr. Mandloi. I support the amendment moved by Mr. T. T. Krishnamachari.

The Honourable Dr. B. R. Ambedkar : Sir, various points have been raised in the course of this debate and I should like to deal with them only one by one. If I heard my Friend Mr. Sidhva correctly he referred to article 165 dealing with the question of the taking of the oath or making the affirmation. The point about article 165 is this that if the provisions of article 165 are not complied with it does not cause a vacancy-the seat does not become vacant. All that 165 says is that no person can take part in the voting or in the proceedings of the House unless he has taken the oath. That is all. Therefore I do not see any difficulty about it at all.

Shri R. K. Sidhva : Why should it go to the Election Commission?

The Honourable Dr. B. R. Ambedkar : I am coming to that. So far as 165 is concerned I think he will understand the fundamental distinction between that article and article 167. In the case of 165, there is no vacancy caused: there is no disability of taking part in the proceedings of the House.

Now I come to the main amendment moved by my honourable Friend Mr. T. T. Krishnamachari and that is article 167-A. Except for one point to which I shall refer immediately I think the amendment is well founded. The reason why the decision is left with the Governor is because the general rule is that the determination of disqualification involving a vacancy of a seat is left with that particular authority which has got the power to call upon the constituency to elect a representative to fill that seat. Although it is not expressly stated it is well understood that the question whether a seat is vacant or not by reason of any disqualification such as those mentioned in article 167 must lie with that authority which has got the power to call upon the constituency to elect a representative to fill that seat. There is no doubt about it that in the new Constitution it is the Governor who has been given the power to call upon a constituency to choose a representative. That being so, the power to declare a seat vacant by reason of disqualification must as a consequence rest with the Governor. For this reason so far as clause (1) of article 167-A is concerned. I find no difficulty in accepting it.

Now I come to clause (2). This is rather widely worded. It says that any question regarding disqualification shall be decided by the Governor provided he obtains the opinion of the Election Commission and that he is bound to act in accordance with such opinion. If Members will turn to article 167, they will find that, so far as the disqualifications mentioned in (a) to (d) are concerned, the Commission is really not in a position to advise the Governor at all, because they are matters outside the purview of Election Commission. For instance, whether any particular person holds an office of profit or whether a person is of unsound mind and has been declared by a competent court to be so, or whether he is an undischarged insolvent or whether he is under any acknowledgement or adherence to a foreign power are matters which are entirely outside the purview of the Election Commission. They therefore could not be the proper body to advise the Governor. But when you come to sub-clause (e) I think it is a matter which is within the purview of the Election Commission, because under (e) disqualifications might arise by reason of any corruption or any un-professional practice that a candidate may have engaged himself in and which may have been made a matter of disqualification by the Electoral Law.

Shri L. Krishnaswami Bharathi : Cannot the Election Commission make the necessary enquiries?

The Honourable Dr. B. R. Ambedkar : There is no question of making any enquiry here. To ascertain whether a man is an undischarged insolvent no enquiry is necessary. Therefore my submission is that while clause (2) of article 167-A is right, it ought to be confined to circumstances falling within sub-clause (e) of article 167. I would therefore with your permission propose to amend clause (2) thus: "Before giving any decision on any question relating to disqualification arising under sub-clause (e) of clause (1) of the last preceding article, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion."

Mr. President : As I read the amendment proposed by Shri T. T. Krishnamachari, it seems to me that it does not contemplate a case which has happened before the election or during the election. It contemplates cases arising after the election where a man after becoming a member of the legislature incurs certain disqualifications. These will be dealt with by the Election Commission.

The Honourable Dr. B. R. Ambedkar: What happens is that, after filing a petition, the Commission may find candidate guilty of certain offences during the Course of the election, after the election has taken place and the member has taken his seat.

Mr. President: Is not the election Commission entitled to deal with such cases?

The Honourable Dr. B. R. Ambedkar: Yes, but what happens is that a man as soon as he is elected is entitled to take his seat on taking the oath or making the affirmation. He does so and subsequently his rival files an election petition and he is dislodged on the finding of court that he has committed offences under the Election Act. That would also come under (e) After a man has taken his seat.......

Mr. President: It seems to me that there are two kinds of disqualifications. A Member may have incurred certain disqualifications before he became a member or during the course of the election. The election tribunal will be entitled to deal with such cases.

The Honourable Dr. B. R. Ambedkar: That would depend upon what sort of procedure we lay down at a later stage.

Mr. President: But a man may become subject to a disqualification after taking his seat in the House.

The Honourable Dr. B. R. Ambedkar: That is what (e) provides for.

Mr. President: Then other disqualifications may also come in. He might become unsound in mind and might be declared as such or he might become an undischarged insolvent.

Mr. The Honourable Dr. B. R. Ambedkar: Those are dealt with here. They are all about sitting members.

Shri L. Krishnaswami Bharathi: Please read the amendment.

The Honourable Dr. B. R. Ambedkar: There are two sorts of disqualification: disqualifications which are attached to the candidature as such, namely, that such and such persons who are disqualified shall not stand for election. Then, after they are choosen, certain persons shall not sit in the House if they incur the disqualifications in 167. Let us not confuse the two things.

The Honourable Shri K. Santhanam: Both are covered by 167-A.

The Honourable Dr. B. R. Ambedkar: That may be so. Let me explain. It all depends on what kind of procedure we adopt. If we adopt the procedure that whether a candidate is qualified for election or not shall be treated as a preliminary issue, that will not be a disqualification under article 167. If on the other hand we have the procedure, which we now have, that every question relating to election, including the question whether a candidate is a qualified candidate or not, can be taken up, then article 167 will apply. My intention as well as the intention of the Drafting Committee is to make a provisions permitting the Election Commission to dispose of certain preliminary questions so that the election issue may be fought only on the question whether the election was properly conducted or not. Today we have the things lumped together.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, there are now different disqualifications set out against becoming a member and against continuing to be a member. Both are covered by article 167 (1). To make it clearer it is necessary to say that a person shall be disqualified for being chosen as, or for continuing to be a member of the legislature. If it is necessary to make it clearer we may do so.

Pandit Hirday Nath Kunzru (United Provinces: General): A closure motion was moved and you accepted it. I should have thought therefore that Dr. Ambedkar's reply to the debate would put an end to the discussion on the subject.

Mr. President: I am sorry I missed the point.

Shri M. Ananthasayanam Ayyangar: May I make one submission to you. I am not going to speak. I bow to your ruling. Dr. Ambedkar has tried to move an amendment in his final reply. Otherwise if the motion moved by Mr. T. T. Krishnamachari is put to the vote, I have no objection. I have come here to suggest that Dr. Ambedkar should withdraw his amendment which he tried to move in his reply.

Mr. President: You have now done that. I am sorry I had forgotten that closure has been adopted.

Shri R. K. Sidhva: What about Dr. Ambedkar's amendment? We cannot accept it as an amendment at this stage.

Mr. President: If it had been accepted by the mover, it could have been a different matter. The question is:

"That in amendment No. 65 of List I in the proposed new article 167-A-

> (i) in clause (1), for the words 'Governor and his' the words 'Election Commission and its' be substituted; and
>
> (ii) clause (2) and the brackets and figure '(1)' occurring at the beginning of the article be deleted."

The amendment was negatived.

Mr. President: Then Mr. T. T. Krishnamachari's amendment.

Some Honourable Members: With or without Dr. Ambedkar's amendment?

Mr. President: Without. The question is:

"That for amendment No. 2441 of the List of Amendments, the following be substituted:-

"That after article 167, the following new article be inserted:-

Decision on questions as to disqualification of members.	167-A. (1) (1) If any question arises as to whether a member of a house of the Legislature of a State hasbecome subject to any of the disqualifications mentioned in clause (1) of last preceding article, the question shall be referred for the decision of the Governor and his decision shall be final.

(2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion.'"

The amendment was adopted.

Mr. President: Since this amendment is passed, Mr. Mandloi's amendment falls through. The question is:

"That new article 167-A stand part of the Constitution."

The motion was adopted.

New article 167-A was added to the Constitution.

Article 171

Mr. President: There is only one amendment to this article, No. 67.

Shri Satish Chandra (United Provinces: General): I do not wish to move the amendment, but I would like to have clarification that the ruling you have given just now in respect of article 164 will also apply to this article, and if the principle on, all the consequential amendments to this article will be made by the Drafting Committee.

Mr. President: Yes, I think it will apply to this also.

The question is:

"That article 171 stand part of the Constitution."

The motion was adopted.

Article 171 was added to the Constitution.

Article 175

Mr. President: There are certain amendments to this.

There is one by Sardar Bhopinder Singh Man.

Shri T. T. Krishnamachari: Article 175 and 176 may be held over.

Shri M. Ananthasayanam Ayyangar: What about 172?

Mr. President: It is being held over. It is not being taken up today.

Article 187

(Amendment no. 2524 to 2529 were not moved)

Pandit Hirday Nath Kunzru: Mr. President, Sir, I beg to move:

"That in sub-clause (a) of clause (2) of article 187, for the words 'six weeks from the reassembly of the Legislature' the words 'two weeks from the promulgation of any Ordinance' be substituted."

With your permission, sir, I should like to move another amendment which is consequential to the amendment that I have moved. I moved:

"That the Explanation to clause (2) of article 187 be deleted."

Sir, a similar question came up for discussion the other day with regard to the duration of the Ordinances issued by the Governor-General. May position today on this question is generally what it was the other day, but I feel that where the members of the Legislature live in a compact area, an area which is much smaller than that from which the members of the Central Legislature are drawn, it should be comparatively speaking much easier for them to meet. The period of fourteen days during which I should like an ordinance issued by the Governor to be placed before the Legislature should therefore be employed for the purpose.

The article as it is, Sir, provides an Ordinance issued by the Governor shall remain in force as long as the Legislature of his province does not meet. Even when the legislature meets it will remain in force for six weeks from the re-assembly of the Legislature "unless before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or as the case may be on the resolution being agreed to by the Council." This means that as there may be an interval of more than five months between two sessions of the legislatures, it is obvious that an Ordinance issued by a Governor may remain in force for as long as five months or any period less than than six months and six weeks more.

The explanation to clause (2) says that when there are two Houses of the

Legislature to a State and they re-assemble on different dates the period of six weeks shall be reckoned from the later of those dates for the purpose of this clause. Suppose that the Second House meets a month later than the Assembly. This will mean that the Ordinance will remain in force for some period less than six months *plus* the period of one month during which the Second House does not meet *plus* six weeks, unless before the expiry of six weeks a resolution disapproving of it is passed by the Legislative Assembly and is agreed to by the Legislative Council. Now it seems to me to be wholly unnecessary that an Ordinance which is an executive act should remain in force for so long a period. If an emergency arises requiring the promulgation of an Ordinance, requiring the executive to act without securing the permission of the Legislature, it is necessary that the Legislature should be summoned without unnecessary delay. I think therefore that the period during which it may remain in force should be reduced considerably.

The question then arises what should be the period that might be allowed to elapse before the Legislature meets to consider the Ordinance? I think that even in the biggest province two weeks will be ample for the meeting of the Legislature. It is clear, Sir, that if the Legislature were sitting when the emergency arose, then, however great and serious the emergency might be and however necessary it might be in the opinion of the executive to take immediate action, the executive would not be able to act without having a law passed by the Legislature. When the Legislature is not sitting, it is reasonable that the executive should be allowed to promulgate a measure that would have the same effect as an Act of the Legislature, but whatever the nature of the emergency may be, it can not justify the continuance of the Ordnance even for a day longer than is necessary to summon the Legislature and place the whole matter before it. The existence of a crisis, Sir, does not justify the executive in proceeding in such a way that an Ordinance passed by it may remain in force for as long as possible under the provisions of this article. The point of view of the executive should be not to delay the meeting of the legislature so that the Ordinance may remain in force as long as is possible legally, but to summon the legislature and place the matter before it as early as possible. It is only if it acts in this manner that its action will be in consonance with the spirit of the Constitution and the powers of the legislature in regard to all matters needing legislative sanction. I think, therefore, Sir, that my amendment is thoroughly reasonable. It will give the executive the power to act in at emergency and it will also enable the representative of the people to see that the ordinance does not remain in force unnecessary, or, if it goes beyond the needs of the case, is modified in accordance with the judgment of the legislature.

As I pointed out the other day, the objection to a procedure of the kind lid down in this article is not merely that it unnecessarily prolongs the duration of an Ordinance, but that it prevents the legislature from considering whether the terms of the Ordinance are justified by the emergency. The legislature when it meets, may either disapprove of the Ordinance or if it agrees with the executive in thinking that a special situation calling for special action exists, may feel that the Ordinance confers excessive powers on the executive and may modify it in such a way as to safeguard the liberties of the ordinary man in so far as this is consistent with the existence of an emergency. When a crisis occurs, it does not mean that the rights of the people are to be suspended altogether. A situation may arise where this has to be done; but such a situation will obviously be of an exceptional character. In other situations requiring special action to be taken, the ordinary rights of the citizen should be protected as far as possible. It is necessary, therefore, that any Ordinance that is passed by the executive should be submitted to the scrutiny of the representatives of the people as early as possible.

(Amendments 2531, 2533 and 2534 were not moved.)

Prof. Shibban Lal Saksena: Sir, I beg to move:

"That for amendments Nos. 2523, 2525, 2526, 2527, 1529, 2530 or 2532 to 2534 of the Last of Amendments, the following be substituted:-

> (i) That in clause (1) of article 187, for the words 'for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require' the words that immediate action be taken, he shall report the matter to the President who may then promulgate such Ordinances as the circumstances appear to him to require' be substituted, and the proviso to the clause be deleted.
>
> (ii) That in clause (2) of article 137, for the words 'assented to by the Governor' the words 'which has been reserved for the consideration of the President and assented to by him' to substituted.
>
> (iii) That in sub-clause (b) of clause (2) of article 187 for the word 'Governor' the word 'President' be substituted.
>
> (iv) That in clause (3) of article 187, after the words 'assented to by the Governor' the words 'or by the President' be inserted and the proviso to the clause be deleted."

Sir, after these amendments, the article will read as follow:

"187. (1) If at any time, except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both House of the Legislature are in session, the Governor is satisfied that circumstances exist which render it necessary that immediate action be taken, he shall report the matter to the President who may then promulgate such ordinances as the circumstance appear to him to require.

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of the Legislature of the State which has been reserved for the consideration of the President and assented to by him, but every such Ordinance-

> (a) shall be laid before the Legislative Assembly of the State, or where there is a Legislative Council in the State, before both the Houses, and shall cease to operate at the expiration of six weeks from the re-assembly of the legislature, or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution, or, as the case may be, on the resolution being agreed to by the Council; and
>
> (b) may be withdrawn at any time by the President.

Explanation- Where the House of the Legislature of a State having a Legislative Council are summoned to re-assemble on different dates, the period of six weeks shall be reckoned from the later of those dates for purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which would not be valid if enacted in an Act of the Legislature of the State assented to by the Governor or by the President, it shall be void."

Sir, I did not wish that our Constitution should be disfigured by any power of making Ordinances by the President or by anybody else. But, now the House has already accepted that the President shall have the power of making Ordinances on certain occasions. I only want that if Ordinance making power is to be provided for, then this power should be confined only to the President and should not be conferred on each and every Governor. There may about thirty Governors in the Country. I want that this power, which is an extraordinary one, should be confined only to the President who may then promulgate such Ordinances as may appear to him to be necessary. Of course, the Governor will have to justify to the President that it is necessary that such an extraordinary measure should be taken. The President and the Prime Minister will consider and take proper steps. An Ordinance in effect means the taking away of the entire power of the legislature and therefore, it should not be freely resorted to. In the Constitution for Free India which we are framing, we are still thinking in terms of the period of slavery through which we have just passed. I hope very soon the times will change and people will insist that no Ordinance should be passed and that everything should be done by the legislature by the peoples' representatives, and them, we shall resent any governor issuing any Ordinance. I therefore think that this power of making Ordinances should not be conferred on every Governor, but should be conferred on the President only, if at all. When any particular province wants an Ordinance, that Governor should report the matter to the President and shall then consider whether an Ordinance should be promulgated or not. That would also keep the Center informed of the situation in the provinces and would ensure that the Ordinances that are passed are passed after careful consideration.

The rest of my amendments are only consequential so that the main amendment is that the power of making Ordinances should be reserved to the President and should not be given to anybody else. I hope this amendment will commend itself to the House and will be accepted.

Shri Jaspat Roy Kapoor: Sir, my amendment No. 74 being more in the nature of a drafting amendment, I will simply wish that the Drafting Committee may take it into consideration while giving final touches to the Draft.

Pandit Thakur Das Bhargava: I submit the same thing with regard to amendment no. 75, Sir.

Mr. President: The article and the amendments are open for discussion.

(No. Member rose)

The question is:

"That for amendments Nos. 2523, 2525, 2526, 2527, 2529, 2530, or 2532 to 2534 of the List or Amendments, the following be substituted:-

> (i) That in clause (1) of article 187, for the words 'for to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require' the words that immediate action be taken, he shall report the matter to the President who may then promulgate such Ordinances as the circumstances appear to him to require' be substituted.
>
> (ii) That in clause (2) of article 187, for the words 'assented to by the Governor' the words 'which has been reserved for the consideration of the President and assented to by him' be substituted.
>
> (iii) That in sub-clause (b) of clause (2) of article 187 for the words

> 'Governor' the word 'President' be substituted.
>
> (iv) that in clause (3) of article 187, after the words 'assented to by the Governor' the words 'or by the President' be inserted and the proviso to the clause be deleted."

The amendment was negatived.

Mr. President: The question is:

"That in sub-clause (a) of clause (2) of article 187 for the words 'six weeks from the re-assembly of the Legislature' the words 'two weeks from the promulgation of any Ordinance' be substituted."" and

"That the Explanation to clause (2) of article 187 be deleted."

The amendments were negatived.

Mr. President: The question is:

"That article 187 stand part of the Constitution."

The motion was adopted.

Article 187 was added to the Constitution.

New Article 196-A

Mr. President: We take 196-A. This is an amendment No. 2639, of which Dr. P. K. Sen has given notice. A similar amendment relating to Supreme Court was moved by Dr. Sen, but was negatived today.

(Amendment No. 2639 was not moved.)

So it is dropped.

Article 203

President: We take up 203.

The Honourable Dr. B. R. Ambedkar: It is to be held over.

Shri T. T. Karishnamachari: 203 (2) (b)-there is the question of whether the particular sub-clause should be retained or modified. We require some time and might be ready with it tomorrow.

Article 208

Mr. President: We take up 208. There is no amendment to that.

That question is:

"That article 208 added part of the "Constitution."

The motion was adopted.

Article 208 was added to the Constitution.

Article 209

Mr. President: Article 209. There is no amendment to this either.

The question is

"That article 209 stand part of the Constitution."

The motion was adopted.

Article 209 was added to the Constitution.

New Article 209-A

Mr. President: There are certain new article proposed No. 209-A.

The Honourable Dr. B. R. Ambedkar: 209-A is to be held over.

Mr. President: Mr. Shibban Lal Saksena has given notice of one.

Prof Shibban Lal Saksena: That also may be held over.

Pandit Hirday Nath Kunzru: Sir, I suggest in view of the Kangaroo procedure that is being adopted in regard to the discussion of the Constitution that all the articles should be postponed today and that we should be told definitely which articles will be discussed tomorrow. The procedure that is being adopted-for no fault of yours-is very inconvenient.

Mr. President: So far as today's Order Paper is concerned, that particular article which have been taken up are mentioned in it.

Pandit Hirday Nath Kunzru: What you have said is perfectly true but suppose it is put down on the Order Paper that the Constitution will be discussed this does not mean that any Member of the House can come prepared to deal with all the articles in the Draft Constitution on one and the same day.

Mr. President: So, far as today's Order Paper is concerned, the particular article which have been taken up are mentioned and I have taken their up in the order in which they are mentioned on the Order Paper. There was a complaint made the other day and so I suggested that the particular article should be mentioned.

I think we had better adjourn till 8 A.M. tomorrow.

The Assembly then adjourned till Eight of the Clock on Wednesday the 15th June 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VIII

Wednesday, the 15th June 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Article 203

The Honourable Dr. B. R. Ambedkar : (Bombay: General): Mr. President, Sir, I move:

> "That in article 203, for the marginal heading, the following be substituted :-
>
> 'Power of superintendence over all courts by the High Court.' "

I also move:

> "That in clause (2) of article 203, before the words "The High Court may', the words 'without prejudice to the generality of the foregoing provisions', be inserted."

I further move:

> "That with reference to amendment No. 2664 of the List of Amendments-
>
> (i) in clause (1) of article 203, after the words 'all courts' the words 'and tribunals' be inserted;
>
> (ii) in clause (2) of article 203, sub-clause (b) be omitted."

(Amendment No. 2665 was not moved.)

Shri H. V. Kamath (C. P. & Berar : General): Mr. President, I move:

> "That in clause (2) of article 203, before the words 'Every High Court' the words 'In particular' be inserted."

If the House reads the article with all the clauses together it will see that clause (1) specifies certain general powers with which every High Court is sought to be invested under this article. To my mind therefore it appears that so far as clause (2) of this article is concerned, which provides for certain specific powers or invests the High Court with powers in certain cases, it is necessary that this clause should particularise these specific provisions. Clause (1) has certain general provisions. Clause (2) which follows clause (1) and which specifies certain particular things must provide that the High Court may in particular do this and do that.

As regards amendment No. 2664 moved by Dr. Ambedkar which relates to the marginal heading of this article, a point was raised in this very House the other day with regard to marginal headings and Dr. Ambedkar himself told the House that marginal headings are by some deemed part and by others not deemed part of the Constitution. I do not know therefore whether a formal amendment in this connection is necessary. Apart from that, I am not quite sure whether the amendment moved by him in this regard in quite happily worded. The amendment reads "Power of superintendence over all courts by the High Court". What the article provides is certain powers of superintendence and cognate matters". I do not think it is quite necessary to insert the words "over all courts". The article provides for powers of superintendence. Even if the phrase "over all courts" is not included in the marginal heading it will be quite clear that powers of superintendence are meant to be included in this article. It is enough to say "Powers of superintendence by the High Court" and the article will mention "over all courts" and such other matters. What is intended by the article is to provide the High Court with powers of superintendence. As to over what courts, can following in the article itself. The marginal heading originally read, "Administrative functions of High Courts". Following the spirit of that marginal heading I think the words "Powers of superintendence by the High Court" are enough and we may leave out the words "over all courts". Sir I move.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. President, Sir, with respect to the amendment moved by my honourable Friend Mr. Kamath think it has now become superfluous after amendment No. 2666 which says "Without prejudice to the generality of the foregoing provisions the High Court may." This is better than the wording contained in Mr. Kamath's amendment, namely "In particular etc." Therefore I think Mr. Kamath will not press his amendment.

I am very happy at the amendment moved by Dr. Ambedkar-No. 209-by which he has stated that "every High Court shall have superintendence over all courts and tribunals". I wanted to draw the attention of the Honourable Doctor to labour tribunals. Every day labour tribunals are getting more and more important. Our experience of these tribunals is very bad. They yet have to copy the traditions of the judicial courts. I hope now, when the High Court has powers over them, they will also be brought under its supervision and control so that we can have better justice in labour tribunals and also the right procedure.

I am also glad that sub-clause (b) of clause (2) has been omitted. In this way its power has been widened. Originally it had power only to withdraw suits and appeals confined to civil cases. Now it can call any cases that it may like. I therefore support the amendment strongly.

Mr. President : The question is:

"That in article 203, for the marginal heading, the following be substituted :-

'Power of superintendence over all courts by the High Court'."

The amendment was adopted.

Mr. President : The question is:

"That in clause (2) of article 203, before the words "The High Court may' the words 'without prejudice to the generality of the forgoing provision' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That in clause (2) of article 203, before the words 'Every High Court' the words 'In particular' be inserted."

The amendment was negatived.

Mr. President : The question is:

"That with reference to amendment No. 2664 of the List of Amendments-

(i) in clause (1) of article 203, after the words 'all courts' the words 'and tribunals' be inserted;

(ii) in clause (2) of article 203, sub-clause (b) be omitted."

The amendment was adopted.

Mr. President : The question is:

"That article 203, as amended, stand part of the Constitution."

The motion was adopted.

Article 203, as amended, was added to the Constitution.

Shri T. T. Krishnamachari (Madras : General): Sir, article 209-A, 209-B, 209-C, 210 and 211 may be held over. We are still not ready with our alternative drafts.

Honourable Members : yes, they may be held over.

Article 270

Mr. President : Then we go to article 270.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I beg to move:

"That in article 270, the words 'the Dominion of' be deleted."

The word 'Dominion' is applicable to India as it is constituted today. In the new set-up of things which is being drawn by this Consititution the word 'Dominion' or the idea of any Dominion would be repugnant to our Constitution. That is why I have sought the deletion of this. If the deletion is accepted the passage will run thus namely "the Government of India" and not "the Government of the Dominion of

India".

(Amendment No. 2976 was not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That with reference to amendments Nos. 2975 and 2976 of the List of Amendments, in article 270, for the words 'assets and liabilities' the words 'assets, liabilities and obligations' be substituted."

Now, as regards the amendment moved by Mr. Naziruddin Ahmad, may I say that he has evidently forgotten that we are using the words "Government of India" to indicate the Government that will come into existence under the new Constitution, while the "Government of the Dominion of India" is a term which is being used to indicate the Government at the present moment? Consequently, if his amendment is accepted is accepted it would mean that the Government of India is succeeding to the liabilities, obligations and assets of the Government of India. It would make absurd reading. Therefore the words as they are there are very appropriate and ought to be retained.

The Honourable Shri K. Santhanam (Madras: General): I am afraid we are passing this article in a hurry. As it has been our attempt to bring the Indian States into line with the provinces, we are here simply providing that the old provinces will be continued while no such provision is made for the States.

The Honourable Dr. B. R. Ambedkar : What is your amendment?

The Honourable Shri K. Santhanam : I am not moving any amendment. I am only commenting on the article as it is. I think that both articles 270 and 271 are subject to the same disabilities as the other articles which are concerned only with the Propvinces and not with the States and therefore probably it will be better for the future Constitution if these two are brought in line and the article made more comprehensive so as to include the States also. Wherever the states are continued as States they should be deemed to be the successors of the old States and where they have been amalgamated or merged into the provinces they should also be mentioned appropriately. For instance, Baroda has been merged with Bombay. If you pass article 270 as if is, it will mean that the old Bombay province, without Baroda, will be a State as given in the Schedule. I think proper provison should be made. Now it simply says "...shall respectively be the successors of the Government of India or the provinces." Under the Government of India Act, Bombay was a province without the Baroda State. Today it is a province with the Baroda State included. So, I would like to know what is the implication of passing article 270, as it is. Also, in the future Bombay may be construed not to include Baroda or Kolhapur. All these things have to be considered. I think it is desirable that consideration of article 270 also may be postponed so that it may be brought into line with the other provisions which may be made.

Shri H. V. Kamath : This article raises a number of issues. My Friend Mr. Santhanam has just observed that this article ought not to be passed in a hurry. I agree with him for the following reasons: Firstly, as Mr. Santhnam said, the provinces specified in Part I of the First Scheduel have undergone vast changes and are perhaps still undergoing considerable changes. We cannot at the present stage say what exactly the position will be when the Constitution commences. The example of the Bombay province has been cited. This article itself mentions at the tail-end of it West

Bengal and East Punjab. It takes cognizance of the creation of these new provinces. Does it not stand to reason therefore that we should take notice of the various States that have merged into what were known as Governors' Provinces? Not merely Bombay, but Madras, Central Provinces and I believe Bihar have all undergone changes. There have been tacked on to these provinces several States. Because of these mergers, etc. there have been substantial changes made requiring changes to be made in Part I of Schedule I and in Part III of the First Schedule. Several States mentioned in part III have disappeared from the Indian scene. For instance if you take Part III of the First Schedule you will find that Baroda is not in the picture. It has merged with Bombay. Kolhapur too has gone out of the picture and joined Bombay. So, unless the Schedule itself is recast and Part I and III re-adjusted, I do not think it will be wise on our part to mention here the assests, liabilities and obligations obtaining at the time of the commencement of the Constitution. We must be clear in our own minds what the provinces specified in Part I and the States specified in Part III of the First Schedule were and what they are today.

Mr. President : Has the Schedule been adopted?

Shri H. V. Kamath : Not yet. That is why I say that this article may be held over till we adopt the Schedule.

Secondly, I am not quite sure in my own mind whether it would be adequate to say "the Government of India" in line 2 of this article, because further on in the same article we say "the Government of the Dominion of India". In order to draw a clear distinction between this and that, I suggest that we might as well as say, "the Government of the Indian Republic" in line 2 of this article or "the Government of the Union of India." As the House will recollect, article 1 of the Constitution is to the effect that India shall be a Union of States.

To make a distinction between the Dominion of India and the future Government of India, we must either say the Government of the Republic of India or the Government of the Union of India. Merely to say "Government of India" will not do.

As regards the use of the phrase "the Dominion of India", I am not quite sure in my own mind what exactly the constitutional position is. If I remember aright, at the opening of this session, the Honourable Shri Jawaharlal Nehru moved a resolution before this House on our future relations with the Common-wealth. The resolution as drafted originally said the Dominion Prime Ministers' Conference in London, etc. etc. but later the Honourable Shri Jawaharlal Nehru himself changed it to "the Commonwealth Prime Ministers' Conference." Press reports which emanated at that time said that the Conference had decided to drop the words "Dominion". I do not know when exactly this change will take effect. This will perhaps continue till we proclaim ourselves a Republic. Then the question does not arise. But after what transpired at the Commonwealth Prime Ministers' Conference in London last April, we can even today, if we will, drop the word 'Dominion'. As regards the title of the Commonwealth, there are different opinions. Mr. Attlee said, "you can call it what you will," and Mr. Chiefley, the Prime Minister of Australia, the other day speaking in the House of Representatives in Australia said that he would continue to call it the British Commonwealth, would prefer the prefix "British". It is up to us in India to call ourselves what we like, and if the British Government and the Commonwealth do not insist on calling ourselves the Dominion of India, certainly I do not see any reason why we should not drop the word 'Dominion' at once. Mr. Attlee said at the Conference that the Commonwealth Countries can call themselves what they like. I therefore think that it is left to us to call our country what we will. I think that even today we can stop calling ourselves a Dominion and call ourselves the Union of India or whatever we may decide about it. After all there is no constitutional obligation to call ourselves a Dominion and if I have understood correctly the proceedings of the Commonwealth Prime Ministers' Conference and also what was told by our own Prime Minister in this House. I therefore think, Sir, that this article could be amended very usefully, very wisely, with a view to precision, constitutional or otherwise. It should be amended in the light of the proceedings of the Commonwealth Conference. We can even today call ourselves either India or some other term that the House may decide. Therefore considering all the various aspects of the matter, I feel that this article bristles with difficulties and I think it will be wise for this House to hold it over for a more suitable day when we can deliberate over this in greater detail. I therefore move, Sir, that the amendment as well as the article may be held over for a later date.

Prof. Shibban Lal Saksena : Mr. President, Sir, I am unable to understand whether this article is essential for our Constitution. It says that the new Government of India and the Governments of the States shall be the successors of the Government of the Dominion of India. Sir, in the Preamble we say that we, the people of India, are giving ourselves this Constitution. that being the case, I do not see why it is necessary to say that we are the successors of the Government of the Dominion of India. I do not think that this article is necessary in the Constitution. Besides this, as my Friends pointed out, the wording of the article needs to be changed and the article needs to be reconsidered. As Mr. Santhanam has pointed out, the provinces have changed a lot and there must be some provision to take into account the changes that have taken place. I am also not able to understand the purpose of the last five lines of this article "subject to any adjustment made or to be made, etc." I do not know whether this confers any extra legal right. I want Dr. Ambedkar to tell us what will happen if this clause is deleted. Will that mean that the new Government under this Constitution will have no property and will not be the successor of the present Government of the Dominion of India? I want that the purpose of this article should be properly explained. I feel personally that it is not necessary and need not be incorporated.

Shri R. K. Sidhva (C. P. & Berar : General): Mr. President, Sir, I would like to understand the objections raised to this article by my Friends Mr. Kamath and Professor Shibban Lal Saksena, but I cannot follow exactly what they meant, when they objected to the enactment of this article. The article is very clear, that is to say, it says that the coming Government of India will be the successor of the present Government of the Dominion of India. My Friend, Mr. Kamath, does not want the word "Dominion" to be used and instead the word "Commonwealth" to be introduced.

Shri H. V. Kamath : I wanted to say " the Government of the Republic or Union of India." My Friend, Mr. Sidhva, has not heard me correctly.

Shri R. K. Sidhva : But you were talking of the Commonwealth all along and of what Pandit Jawaharlal Nehru said in his speech on the Commonwealth resolution. Whatever may happen later on, today we are the Dominion of India. That cannot be denied. Therefore the article says that whatever property is there of the present Government will automatically go to the new Government. It is necessary that that should be mentioned; otherwise technical objections may arise. Similarly with regard to the last few lines. The matter has been made very clear. Whether it is necessary to have such an article or not is a different matter. I personally feel that to strengthen our hands it is necessary that such an article should be embodied. I therefore support this article.

Shri Mahavir Tyagi (United Provinces: General) :Sir, we have agreed to remain in the Commonwealth and I do not see there should be any reason to object to the word "Dominion". My honourable Friend, Mr. Kamath, wants to behave like a woman who has married a man and still insists on calling herself a maiden. Once you are in the Commonwealth, what is the good of your getting away from the name "Dominion" I think, I would under these circumstances prefer to be a Dominion in right earnest. That would have been a better decision. Anyway now, whatever decision we have adopted, once we are in the Commonwealth, we should not fight shy of calling ourselves a Dominion. It would be much better for us to call ourselves a Dominion than neither to remain a Dominion nor to remain independent. So, I think the wording should not be objected to.

Shri Alladi Krishnaswami Ayyar (Madras: General) : Mr. President, in principle there can be no objection either to article 270 or to the amendment that has been proposed. All the liabilities of the previous Government will have to be taken over by the successor Government but I just want to point out that it may be when what are referred to as the merged States are incorporated with each province or unit-state, then certain modifications may be necessary in regard to article 270 in the mutual adjustments of rights and obligations, because in the case of a unit the successor Government will not be merely the old province *plus* the merged State. Therefore, in regard to previous, obligations, necessary adjustments may have to be made later on. There can be no exception to the general principle enunciated in article 270 though article 270 may require certain modifications when that scheme materialises or when we are able to come to a definite conclusion as to the position of the merged States *Vis-a-Vis* the units. With these words, I support the article 270 with the amendment.

Shri S. V. Krishnamoorthy Rao (Mysore : State): Mr. President, Sir, I see, no reason to hold up this article on the ground that the position of the State is not yet clarified. In fact the provision is "for the time being specified in Part I of the First Schedule' and the House has not accepted the First Schedule and at the time of accepting the First Schedule, it could be clarified as to what each particular State means and as Shri Alladi Krishnaswami Ayyar put it, there is no justification for holding up this article on that one ground and therefore, I support this article.

Shri T. T. Krishnamachari : Mr. President, Sir, I have listened with attention to the objections raised to passing this article at this stage and in the manner it has emerged, by honourable Friends in this House. I am afraid, Sir, though their objections were logical. I feel we cannot give in to those objections and postpone the consideration of this article reason that the provisions which they want to bring into this articles, namely, that the succession with regard to assets, debts, right and liabilities of what are now called Indian states which have already merged or which are likely to be merged hereafter in the provinces and states which are likely to accede or come into the scheme of Federation in the same manner as the provinces, as the whole position is so nebulous at the moment. It may be that on examination it would not be worthwhile undertaking the assets and liabilities of some states that are coming in as units of the Federation. It also may be that the position of Governments of the states which have got merged into the province are such that we would not like to take over their liabilities, because who do not know what they are; we cannot take over the assets and liabilities of an administration, which is not carried on approved lines, in which we do not know exactly where we stand. So the whole position will have to be reviewed at the time when we bring in the Indian states in to the picture. Also, Sir, it is possible that between now and the time when this constitution is to be promulgated, there might be more states merging into what are now called provinces. In the present states of thing as they are in India, there is no point in saying that we shall not proceed to act in matters where we have definite information, where we can prescribe certain methods by which we can complete this taking over of the administration of the past along with the assets and liabilities, merely because in the case of certain other states, we have not got full information. I would at the same time like to tell honourable Member of this House that the problem of the states is one of the headaches that we have to face today as constitution-makers. It may be that we will have to leave a chapter relating to states in part III of the schedule without being filled in until the last week or last fortnight before finalising the constitution when we will incorporate in that chapter the states of things as they are at that time, make regulations for state which have come into the federation on the same line as the provinces, make arrangements for states which have merged in the provinces and all the the incidental and consequential provisions that have to be found in a constitution of this this nature, and even then it may be that some states might have to be left out. There is no point in my trying to explain at length difficulties that we have to face, because the difficulties will be apparent to anybody who look into the various covenants and the exact position of the states from the documents issued from time to time by the state ministry; but I do not think that it is any justification for postponing idefinitely consideration of articles which are in themselves complete in so far as the territories they deal with. Any further changes---changes are occurring day after day and there may be quit a lot of changes before the constitution is complete---can only be brought in by special provisions and in a special chapter . I have no doubt that Dr. Ambedkar is very grateful to the honourable Members who have just now pointed out to him the lacuna in this articles which I have no doubt he has also got in mind. The position will be adequately met before the constitution is finalised and I think, Sir, in the meantime, the article may be passed as it is.

Mr. Mahboob Ali Baig Sahib (Madras: Muslim) : Mr. President, the central question is whether this article will entitle the future Government of India and the provinces to the assets and liabilities not only of British India under the old Constitution, that is the 1935 Constitution, but also to become successors of the States, the Native States as they were called.

Sir, the wording here is that the future Government of India and the Government of the States shall be the successors of the Dominion of India and of the Governors' provinces as mentioned in the Government of India Act of 1935. Under the Government of India Act, 1935, the States were kept apart and the Dominion of India or the Governors' Provinces did not include the Native States at all. Therefore, if you are confining this article 270 and say that the future Government of India and of the States shall be the successors of the Dominion of India and of the Governors' provinces, clearly, the future Government of India and of the States will not at all be the successors of the States that have merged or that are going to be merged. That is the clear interpretation that could be put upon this article 270. Therefore, you must introduce in this article 270 some other sentences or phrases in order to enable the future Government of India and of the States to be the successors not only of British India of the past, under the 1935 Act, but also of the State or States that may be merged. Otherwise, the Government of India and the future provinces will not be the successors of the States. Therefore, a suitable amendment is necessary and unless that is made, I think it would be a great defect.

Shri B. Das (Orissa: General) : Sir, we are dealing with the chapter which deals with property, contracts, liabilities and suits of the former Government of India, the present Government of India and the future Government of India that this Constitution is creating. Therefore I felt a little nettled when my honourable Friend Mr. Kamath brought in the word 'Commonwealth'. As far as I am concerned, Sir, I do not like the Commonwealth, it does not exist, it does not own any property, it has no secretariat; it has an imaginary, vague head, the king of the United Kingdom. Therefore, the question of the Commonwealth does not arise.

Under the Independence Act, the present Government is the Dominion Government of India and naturally it has inherited all the properties from the old British Government and the Governor-General has been given certain discretionary powers over the properties and assets. But, one thing I do not find here mentioned, that is our relations with the United Kingdom Government. The United Kingdom Government has not yet fully handed over the properties to the Dominion Government of India. It may be said that a Committee is sitting and trying to separate the assets belonging to the old India Office; but the financial aspect of the contract is not there. Will India Office building be handed over to India? The United Kingdom through the Bank of England owes 600 millions sterling to India. It may be said that we may get it any day. But, I am not so sure. If we want to get the full value of the 600 million sterling that England owes us, I do not see why this Constitution does not make any mention of it. There are strong views expressed in the United States of America and even in England that sterling will be devalued. If the sterling gets devalued, we will lose part of our money. Why should we not introduce an article in the Constitution regarding the assets that England owes to India? Is there any contract between the United Kingdom and India over these moneys which England has almost forcibly taken and which the United Kingdom wants to misappropriate by some means? Somehow, the world situation does not permit the United Kingdom to declare a moratorium. This is a lacuna which the Drafting Committee should examine. I do not see why they should fight shy of the United Kingdom because the so-called His Majesty's Government ruled over India some time in the past and because accidentally we happen to be a Dominion till the next January. I think somehow that aspect of the question regarding the 600 million sterling that the United Kingdom owes us, should be defined in Rupees and should be introduced in the Constitution. If the sterling is devalued by 20 per cent., we will lose 120 million sterling. Therefore, I say whatever England owes to us should be mentioned somewhere in this Constitution, not necessarily in article 270 to 274. We need not fight shy, nor need we fear the United Kingdom because of its aggressiveness in the past and in future.

Shri V. S. Sarwate (Madhya Bharat): Mr. President, it seems to me that the difficulty regarding the States which have merged in the Provinces does not exist. The wording in this: "As from the commencement of this Constitution." Suppose for instance, the Constitution comes into existence on the 26th January, 1950, then, the provinces will be constituted on that date as the Governors' provinces *plus* the Indian States which have merged. The succeeding provinces would be the successors of the provinces as they stood on 26th January, 1950: in the case of Bombay, it would be Bombay *plus* Baroda. Therefore, there would be no difficulty as regards the States which have merged before the date of the commencement of the Constitution.

To my mind, there seems to be another difficulty. This article gives legalistic expression to a *de facto* thing. As soon as India was declared independent, it did succeed to the properties, assets and liabilities of the previous Government. That was a fact. My question is whether it is necessary to give legalistic expression to that fact? Why I raise this question is because the wording is, it would succeed to all liabilities and also assets. Supposing the previous, Government has given some pension or some reward in the form of grant of land to a person who served them in the disturbances of 1942, and the succeeding Government thinks that that grant was not proper or was against the national interests and therefore does not want to continue that grant by virtue of this section? I want to know whether the succeeding Governments would be bound by having this clause to continue all those things which were against our national interests. That is the difficulty which I would like the Mover of this clause to explain to the House. There may be many things which on a closer scrutiny would not deserve to be continued because they would be found to be against the national interests. So I would like to know whether this specific enumeration of this liability will bind the succeeding Government in a more particular manner. Supposing this article is omitted, what would be the effect? I think there would be no detraction from the present position of the Government except in the minds of legal persons; otherwise the fact is there that the present government has succeeded the previous government. The other sections stand in a different position. Supposing a property becomes an Estate. It is not necessary that the *de facto* circumstance that the Government has succeeded the previous Government must be stated in the Constitution itself.

The other point of view which I wish to bring before the House is that the Constitution is to include all the principles underlying the Constitution. This is something which is more in the form of a legal technicality. Is it necessary to include it in the Constitution itself? By a separate law which Parliament may pass, it may say that it takes upon itself the liabilities of the previous Government. I wish further to be made clear on this point-what is the difference between liability and obligations? to a layman it appears that liabilities do include obligations also. So where is the propriety of having the word 'obligation' therein? These are some of the points which I wish to bring to the notice of the House for clarification.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I did not think that this article would raise so much debate as it has in fact done, and I therefore feel it necessary to say a few words in order to remove any misapprehension or doubts and difficulties to which reference has been made.

The first question that is asked is, why is it necessary to have article 270 at all in the Constitution? The reply to that is a very simple one. Honourable Members will remember that before the Act of 1935 the assets and liabilities and the properties belonging to the Government of India were vested in a Corporation called the Secretary of State-in-Council. It was the Secretary of State-in-Council which held all the revenues of India, the properties of India and was liable to all the obligations that were contracted on behalf of the Government of India. The Government of India before 1935 was a unitary Government. There was no such thing as properties belonging to the Government of India and properties belonging to the provinces. They were all held by that single Corporation which was called the Secretary of State-in-Council which was liable to be used and had the right to sue. The Government of India Act, 1935 made a very significant change, *viz.,* it divided the assets and liabilities held by the Secretary of State-in-Council on behalf of the Government of India into two parts-assets and liabilities, which were apportioned and set apart for the Government of India and the assets and liabilities and properties which were set apart for the provinces. It is true that as the Secretary of State had not completely relinquished his control over the Government of India, the properties so divided between the Government of India on the one hand and the different provinces on the other were said in the Government of India Act, Section 172 which is the relevant section, that they shall be held by His Majesty for the Government of India and they shall also be held by His Majesty for the different provinces. But apart from that the fact is this, that the liabilities, assets and properties were divided and assigned to the different units and to the Government of India at the Centre. Now let us understand what we are doing by the passing of thus Constitution. What we are doing by the passing of this Constitution is to abrogate and repeal the Government of India Act, 1935. As you will see in the Schedule of Acts repealed, the Government of India Act, 1935 is mentioned, Obviously when you are repealing the Government of India Act which makes a provision with regard to assets and liabilities and properties, you must say somewhere in this Constitution that notwithstanding the repeal of the Government of India Act such assets as belong to the different Provinces do belong notwithstanding the repeal of the Government of India Act to those Provinces. Otherwise what would happen is this, that there would be no provision at all with regard to the assets and liabilities once the Government of India Act 1935 is repealed. In fact we are doing no more than what we commonly do when we repeal an Act that notwithstanding the repeal of certain Acts, the acts done will remain therein. It is the same sort of thing. What this article 270 practically says in that notwithstanding the repeal of the Government of India Act, 1935, the assets and liabilities of the different units and the Central Government will continue as before. In other words they will be the successor of the former Government of India and the former Provinces as existed and constituted by the Act, 1935. I hope the House will now understand why it is necessary to have this clause.

Now I come to the other question which has been raised that this article 270 does not make any reference to the liabilities and assets and properties of the Indian States. Now, there are two matters to be distinguished. First, we must distinguish the case of Indian States which are going to be incorporated into the Constitution as integral entities without any kind of modification with regard to their territory or any other matter. For instance, take Mysore, which is an independent State today and will come into the Constitution as integral State without perhaps and kind of modifications. The other case relates to State which have been merged together with neighbouring India Provinces; and the third case relates to those States that are united together to form a larger union but have not been merged in any of the Indian Provinces. Now in regard to a State like Mysore there is no doubt that the Constitution of Mysore will contain a similar provision with regard to article 270 that the assets and liabilities and properties of the existing Government of Mysore shall continue to be the properties, assets and liabilities of the new Government. Therefore it is not necessary to make any provision for a case of this kind in article 270. Similarly about States which have been united together and integrated, their Covenant will undoubtedly provide for a case which is contemplated in article 270. Their covenant may well state that the assets and liabilities of the various States which have joined together to form a new State will continue to be the assets and liabilities of the new integrated State which has come into being by the joining together of the various States.

Then we come to the last case of States which have been merged with the Provinces. With regard to that I see no difficulty whatever about article 270. Take a concrete case. If a State has been merged in an Indian province obviously there must have been some agreement between that State which has been merged in the neighbouring Province and that neighbouring province as to how the assets and liabilities of that merged State are to be carried over- whether they are to vanish, whether the merged State is to take its own obligations, or whether the obligations are to be taken by the Indian Provinces in which the State is merged. In any case what the article says in that from the commencement of this Constitution-these words are important and I will for the moment take it that it will commence on 26th January-any agreement arrived at before that date between the Indian Province and the State that has merged into it will be the liability of the Province at the commencement of the Constitution. If, for instance, no agreement has been reached before the commencement of the Constitution, then the Central Government as well as the Provincial Governments would be perfectly free to create any new obligations upon themselves as between them and the unit or merged State or any other unit that you may conceive of. Therefore, with regard to any transaction that is to take place after the commencement of the Constitution it will be regulated by the agreement which the Provinces will be perfectly free under the Constitution to make, and we need therefore make no provision at all. With regard to the other class of States, as I said, in a case like Mysore it will be independent to make its own arrangement. When that arrangement is made we shall undoubtedly incorporate that in the special part which we propose to enact dealing with the special provisions relating to States in Part III. Therefore so far as article 270 is concerned, I think there can be no difficulty in regard to it and I think it should be passed as it stands.

Shri Mahavir Tyagi : May I know if the agreement mentioned here relates only to financial agreement or does it relate to territorial agreement also?

The Honourable Dr. B. R. Ambedkar : It speaks of assets and liabilities and obligations. If, for instance, a Provision has admitted a certain State and has undertaken an obligation to pay the Ruler a certain pension that will be an obligation within the meaning of article 270. The transfer of territory will be governed by other provisions.

Shri H. V. Kamath : May I know why the word "rights" mentioned in the marginal sub-head is omitted in the article?

The Honourable Dr. B. R. Ambedkar : The Drafting Committee will look into it.

Shri B. Das : With regard to properties possessed by India in foreign countries, specially in the U.K. may I know why those are not included among properties in article 270?

The Honourable Dr. B. R. Ambedkar : I think that property is subject to partition between India and Pakistan, *e.g.* the India Office Library, etc., I understand that is being discussed.

Shri B. Das : What about the Sterling Balances?

The Honourable Dr. B. R. Ambedkar : My honourable Friend knows more about it than I do.

Mr. President : The question is:

"That with reference to amendments Nos. 2975 and 2976 of the List of Amendments in article 270, for the words 'assets and liabilities' the words 'assets, liabilities and obligations be substituted".

The amendment was adopted.

Mr. President : The question is:

"That article 270, as amended, stand part of the Constitution."

The motion was adopted.

Article 270, as amended, was added to the Constitution.

Article 271

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in article 271-

(i) the words 'for the purposes of the Government of that State', in the two places where they occur, be omitted;

(ii) the words 'for the purposes of the Government of India', in the two places where they occur, be omitted."

Shri H. V. Kamath : Sir, I wish to raise what may be thought a minor point but I hope Dr. Ambedkar and his team of wise men will give some consideration to it when it comes to final drafting. The article with the present amendment refers to properties in the territory of India except the States for the time being specified in Part III of the First Schedule. The point I raised earlier applies to this article as well; that is why I suggest that they may be held over till we have debated the First Schedule. It is no use adopting these articles and then making changes in the Schedule later on. In the First Schedule we see what States are comprised in Part III of that Schedule. Many of the States, as I said before, have disappeared from the Indian horizon and are no longer integral entities within the territory of India. Baroda, Kolhapur and Mayurbhanj are no longer comprised in Part II of the First Schedule. Now if we pass the article today, as it is, about the various States mentioned in the Schedule without saying "subject to any modifications in the Schedule", etc. What will happen to property that belongs to States like Baroda, Kolhapur and Mayurbhanj which are merged in the provinces? I therefore suggest that the article should be held over until the First Schedule together with the various amendments comes before us for consideration.

Prof. Shibban Lal Saksena : Sir, I do not agree with the point of view put forward by Mr. Kamath. We are passing these articles in the hope that in the Schedules we shall put only those things to which we want these articles to apply. These Schedules can be framed according to our choice and they will contain only those matters which we want to be subject to these articles we are passing. I therefore think that after we have accepted article 270 as an essential part of the Constitution, this article is also important. Formerly the country was divided into a number of States and now in this Constitution every portion will come into the new Government. Therefore I do not think this article should be held over merely because there is to be a change in the Schedule.

Mr. President : The question is:

"That in article 271-

(i) the words 'for the purposes of the Government of that State', in the two places where they occur, be omitted;

(ii) the words 'for the purposes of the Government of India', in the two places where they occur, be omitted.'"

The amendment was adopted.

Mr. President : The question is:

"That article 271, as amended, stand part of the Constitution."

The motion was adopted.

Article 271, as amended, was added to the Constitution.

New Article 271-A

The Honourable Dr. B. R. Ambedkar : Sir, I beg to move:

"That the following new article be added after article 271-

All lands, minerals and other things of value lying within territorial waters vest in the Union.

271-A. All lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union and be held for the purposes of the Union."

This is very important article. We are going to have integrated into the territory of Indian several States which are for the time being maritime States and it may be quite possible for such States to raise the issue that anything underlying the ocean within the territorial waters of such States will vest in them. In order to negative any such contention being raised hereafter it is necessary to incorporate this article.

Shri H. V. Kamath : Sir, I wish my honourable Friend had clarified this article a little further and explained its significance and import. The construction of the article, to my untrained mind at least is not very clear. It speaks of "lands, minerals, and other things of value", etc. The point is whether besides minerals, what are referred to as things of value underlying the ocean are all things within Indian territorial waters included?

Mr. President : This has reference only to whatever is found on land within territorial waters.

Shri H. V. Kamath : The reference is to lands, minerals and other things of value. The point arises, what these 'other things of value' are ? What these 'things of value are' has to be defined. Was this expression borrowed from some other Constitution or has it been newly incorporated in our Constitution without bestowing much thought on it? If it is left vague, the matter would have to be decided by the Supreme Court. What one considers as a thing of value, another may not consider as of value. Does the expression mean precious stones or minerals or whatever is found under the surface such as fish, etc.? Some may consider even fish as of value, whereas vegetarians may not consider fish as a thing of value. The article may be re-drafted clearly indicating what the 'things of value' are, which, when found in the Indian territorial waters, shall vest in the Union. If you leave the article as it is at present worded, you will be providing a happy hunting ground for lawyers again.

Then again, the article says "All lands, minerals and other things of value underlying the ocean within the territorial waters of India". In Schedule-I we have defined the States and the territories of India. But nowhere in this Constitution have we defined what the 'Indian territorial waters' are. The Constitution is silent on this point.

Mr. President : It is a well-understood expression in International Law.

The Honourable Dr. B. R. Ambedkar : It is unnecessary to define it separately.

Shri H. V. Kamath : When you think it necessary to define in the Schedule the territories of India, why should you not define in the Constitution what our territorial waters are? Under International Law, some three miles of sea from a nation's coastline is considered to be territorial waters. As stated in the four parts of the Schedule our territory comprises certain areas. There will be a demarcation of the territorial waters on the east coast and again a limit of the waters on the west. Some three miles beyond our coast will not be territorial waters. If you take the Andamans and the Nicobars as the territories of India, the waters to a distance of 3 to 5 miles from those islands will be our territorial waters. It will be wise on our part to specifically define in the Constitution what our territorial waters will be. In these days new lands are being discovered in different parts of the globe. As such discoveries might lead to complications we must define our territorial waters.

As I stated earlier, nobody knows what "other things of value are". It is better now to put down clearly what they are. Otherwise everything underlying the ocean will be claimed as vested in the Union. It will be wiser and straighter and more honest to say 'everything that is found in the bed of the ocean'.

Pandit Thakur Das Bhargava (East Punjab : General) : All other things are there.

Shri H. V. Kamath : What is of value to one may not be of value to another. I do not attach any value even to precious stones. I submit that this thing may be clarified.

Lastly, I would ask Dr. Ambedkar and his wise men whether the phrase 'underlying the ocean' connotes whatever underlies the surface of the ocean or ocean-bed or whatever is discovered beneath the bed of the ocean. Probably the existing expression is clear to lawyers. As I am not a lawyer I plead guilty to ignorance of what 'underlying the ocean' means. I hope Dr. Ambedkar will clarify the position before the House proceeds to vote on this article.

Shri A. Thanu Pillai (Travancore State) : Mr. President, Sir, I wish to say a word about this article. It says : "All lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union." I can understand that a certain amount of control in respect of territorial waters should vest in the Union, but beyond that why should all property and things of value within the territorial waters vest in the Union? Why should the respective States be divested of the right to minerals etc. in territorial waters I fail to see. The States now enjoy rights over these waters and derive some revenue. For instance my State of Travancore collects Shank (shank) from the sea. There are minerals there to which the State is entitled. Why should that right be taken away, I cannot understand. This matter requires fuller consideration and I hope Dr. Ambedkar will enlighten the House as to the necessity for this provision in the form in which it is worded.

Then again there are the words 'other things of value'.

The Honourable Dr. B. R. Ambedkar : May I ask what exactly I have to explain?

Shri A. Thanu Pillai : Fish is a thing of value. "All lands, minerals and other things of value' is the expression used in the article. Travancore as a maritime State gets good catches of fish. If fish is a thing of value underlying the ocean within the territorial waters of India, this article will deprive the State of the right to catch fish. On the whole this requires better consideration. I hope that the States will in no way be deprived of their existing rights except to the extent necessary for the safety of the Union so far as territorial waters are concerned.

Prof. Shibban Lal Saksena : Mr. President, Sir, when we were discussing article 31 clause (ii) ran as follows :-

> "(ii) that the ownership and control of the material resources of the community are so distributed as to best subserve the common good,"

My Friend, Professor K. T. Shah, had then moved an amendment saying that the control and ownership of the natural resources of the country in the shape of mines and mineral wealth, forests, rivers and flowing waters as well as in the shape of the seas along the coast of the country shall be vested and belong to the country collectively etc. At that time it was not accepted. I am glad therefore that Dr. Ambedkar has though fit to provide in the Constitution that all lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union and be held for the purpose of the Union. But I would like to know from Dr. Ambedkar whether it is not necessary to mention about the skies. Now in international communications the sky also in important, *e.g.,* who shall fly over our skies, etc. I would like to know from Dr. Ambedkar whether it is not also necessary to mention about the skies in the Constitution.

Shri Alladi Krishnaswami Ayyar : Mr. President, Sir, I think that article 271-A is a very important article and Dr. Ambedkar deserves our congratulations for putting in this article. There are two points to be noticed : One is the criticism that there is no definition as to the extent of territorial waters. In fact, that is the merit, I should think, of the article, because it is one of the moot points of international law what exactly is the extent of territorial waters. The extent will depend not merely on the assertion of a particular State but upon the principle being accepted by the comity of nations. Even today, while England and America take one view, the other nations of the world take a different view as to the extent of territorial waters. Therefore it is a good thing that the extent of the territorial waters is not mentioned in article 271-A.

The second point is whether in general terms it is right to vest territorial waters in the Union. Even in America, the Supreme Court of the United States, when the question came up with regard to the State of California, held that even though the State originally exercised rights in the territorial waters, the correct view is that the territorial waters vested in the Federal Government. Therefore this article, in so far as it provides for the territorial waters vesting in the Union, is in consonance with advanced thought in the most federal of Constitutions, namely the American Constitution. The question as to the extent of jurisdiction by the States and the courts in the States may have to be separately dealt with.

The next point to be considered is the expression "shall be held for the purposes of the Union." The apprehension has been expressed that it might mean that every kind of advantage that will accrue from it will go to the Union and therefore the coastal States might suffer. I should think that the expression "be held for the purposes of the Union" is more elastic than the first part which says "shall vest in the Union". The expression "shall be held for the purposes of the Union" does not necessarily mean the Union Government as such. "For purposes of the Union" is a wider term than the expression "shall vest in the Union". Recently in Australia the question arose and it has been held that the expression "for purposes of the Commonwealth" is a wider expression than the expression"Commonwealth" itself. Therefore I should think that the expression "for purposes of the Union" does not militate against some of the benefits being allotted to coastal States and should allay their apprehension that their present existing rights might be invaded.

Lastly, the words "all lands, mineral and other things of value underlying the ocean" are very important. One of the moot points in international law is as to whether there is any difference between what may be called surface rights and mineral rights and soil rights, and I am glad that this assertion is made here that all lands, minerals and other things of value underlying the ocean shall vest in the Union.

On all these grounds I support the amendment incorporating article 271-A.

Shri V. S. Sarwate : Mr. President, Sir, as the previous speaker has expressed, this new article raises a very fundamental question. It raises the question of the relation of the Union Government and the States which have acceded and which are coastal. Before the House accepts this article, the Covenants which these States have entered into with the Government of India will have to be examined. It will entirely depend upon the rights which have been given by virtue of the Covenant with the Government of India. I do not know whether these Covenants have been examined and then as a result of that scrutiny this article has been added. A curious position will arise if, by virtue of the Covenant, these rights have not been given to the Government of India. Assuming for the moment that such a right is not given by the Covenant, the question is whether by virtue of this article in the Constitution, that right, would be created. I am afraid that the mere incorporation of this article would not create that right if that right does not already exist. To my mind it appears that the inclusion of this clause would only have this effect that if the right is already there, it has been expressed and specifically mentioned in this Constitution. If the right is not there, it would not be so vested or created in favour of the Government of India. So I submit that unless and until the Covenants have been closely examined and it had been found that the right has been vested in the Government of India, this article should not be accepted.

Shri A. Karunakara Menon (Madras: General) : Mr. President, Sir, my object in speaking on this new article 271-A is just to point out the difference that exists between the wording that is found in the marginal note and the wording that is found in the article itself. The wording in the marginal note is : "all lands, minerals and other things of value lying within territorial waters vest in the Union". This implies that all things of value lying within territorial waters belong to the Union. So, every thing of value, suspended even if it were within the territorial waters, are properties of the Union according to the marginal note; but what do we find in the article? There the wording is different. It says : "all lands, minerals and other things of value underlying the ocean within the territorial waters of India shall vest in the Union." My understanding of the words "underlying the ocean within the territorial waters" connotes altogether a different meaning from "things of value lying within territorial waters." Things of value underlying the ocean mean things left underneath the earth of the ocean and so the meaning is restricted. The things of value are restricted by the use of the words "underlying the ocean" whereas it is more wide when we say "things of value lying within territorial waters." I want to bring the words of the marginal note quite in agreement with the words that are found in the article; otherwise it might lead to complication in the future.

Shri M. Ananthasayanam Ayyanagar (Madras: General) : Sir, I desire only to make a small suggestion. What about the territorial waters themselves? Under this new article 271-A all lands, minerals and other things underlying the ocean within the territorial waters belong to the Union. All territorial waters shall belong to the Union. You say "all lands, minerals and other things." So far as territorial waters are concerned, apart from the question as to whether any particular country has got only jurisdiction over the territorial waters or the territorial waters belong to that particular country by way of ownership, and apart from the internal question whether it belongs to a province which abuts the territorial waters or to the Union, we must make it clear. Therefore, I think it is necessary to add that the territorial waters themselves belong or shall vest in the Union and be held for the purpose of the Union. I think other things of value underlying the ocean will cover fish and other things. If they do not, it must also be made clear by saying "all the produce inside the ocean, apart from minerals and the land underlying the ocean besides these two other things also vest in the Union." This must be made clear to avoid a conflict between the provincial claim for territorial waters and the Union, and also to make sure that we lay a claim for territorial waters in our own country, whatever the International Law may be. There is a difference of opinion in the International Law regarding that matter. To give a quietus to such doubts, we must lay down a definite article that the territorial waters including all the produce available in any shape or form which might be there shall vest in the Union and be held for the purposes of the Union.

Shri A. Thanu Pillai : What about the water itself?

Shri M. Ananthasayanam Ayyangar : The territorial waters themselves must belong to the Union. We must have the waters, the right to water itself, ownership of the water itself and also the fish and other things.

Shri A. Thanu Pillai : What has my honourable Friend to say about the manufacture of salt by the States?

Shri M. Ananthasayanam Ayyangar : The water itself must belong to the Union. The ownership of territorial waters must be claimed by us.

Shri Mahavir Tyagi : Why not make the "water" also a part of this article?

Shri M. Ananthasayanam Ayyangar : I would say "all lands, minerals and other things of value underlying the ocean within the territorial waters and the territorial waters of India shall vest in the Union and be held for the purposes of the Union."

An Honourable Member : What about the air?

Another Honourable Member : What about the heavens?

The Honourable Dr. B. R. Ambedkar : Sir, I gave in my speech when I moved the amendment the reasons why we thought such an article was necessary. There seems to be some doubt raised by my honourable Friend Mr. Pillai that this might also include the right to fisheries. Now I should like to draw his attention to the fact that fisheries are included List II-entry No. 29.

Shri A. Thanu Pillai : My objection related to other matters as well.

The Honourable Dr. B. R. Ambedkar : I will come to that. I am just dealing with this for the moment. Therefore this entry of fisheries being included expressly in List No. II means that whatever jurisdiction of the Central Government would get over the territorial waters would be subject to Entry 29 in List No. II. Therefore, fisheries would continue to be a provincial subject even within the territorial waters of India. That I think must be quite clear to my honourable Friend, Mr. Pillai, now.

With regard to the first question, the position is this. In the United States, as my honourable Friend, Shri Alladi Krishnaswami Ayyar said, there has been a question as to whether the territorial waters belong to the United States Government or whether they belong to several States, because you know under the American Constitution, the Central Government gets only such powers as have been expressly given to them. Therefore, in the United States it is a moot question as yet, I think, whether the territorial waters belong to the States or they belong to the Centre. We thought that this is such an important matter that we ought not to leave it either to speculation or to future litigation or to future claims, that we ought right now to settle this question, and therefore this article is introduced. Ordinarily it is always understood that the territorial limits of a State are not confined to the actual physical territory but extent beyond that for three miles in the sea. That is a general proposition which has been accepted by international law. Now the fear is-I do not want to hide this fact-that if certain maritime State such as, for instance, Cochin, Travancore or Cutch came into the Indian Union, unless there was a specific provision in the Constitution such as the one we are trying to introduce, it would be still open to them to say : "Our accession gives jurisdiction to the Central Government over the physical territory of the original States; but our territory which includes territorial waters is free from the jurisdiction not only on the physical territory, but also on the territorial waters, which according to the International Law and according to our original status before accession belong to us." We therefore want to state expressly in the Constitution that when any Maritime

States join the Indian Union, the territorial waters of that Maritime State will go to the Central Government. That kind of question shall never be subject to any kind of dispute or adjudication. That is the reason why we want to make this provision in article 271-A.

Shri M. Ananthasayanam Ayyangar : What about the ownership of the waters themselves?

The Honourable Dr. B. R. Ambedkar : What do you want to own water for? You may then want to own the sky above.

Shri M. Ananthasayanam Ayyangar : For the manufacture of salt, etc.

The Honourable Dr. B. R. Ambedkar : Your laws will prevail over that area. Whatever law you make will have its operation over the area of three miles from the physical territory. That is what is wanted and that you get by this.

Shri Mahavir Tyagi : Waters have not been included.

The Honourable Dr. B. R. Ambedkar : According to the International Law, the territory of a State not only includes its physical territory, but also three miles beyond. Any law that you make will operate over that area.

Shri Mahavir Tyagi : What about the rest of the waters?

The Honourable Dr. B. R. Ambedkar : Anything below the air you get.

Shri Mahavir Tyagi : What about waters beyond three miles?

Shri M. Ananthasayanam Ayyangar : May I ask Dr. Ambedkar if he is not aware that water is as much a property as anything else, if not better property, and dispute over water have arisen in plenty? To avoid dispute between a Province and the Union, is it not desirable to include waters also in the property of the Indian Union?

Mr. President : He has answered that; he thinks it is not necessary to say that.

The Honourable Dr. B. R. Ambedkar : Anything above the land goes with the land. If there is a tree above the land, the tree goes with the land. Water is above the land and it goes with the land.

An honourable Member : Sir. . . . . .

Mr. President : I think we have sufficiently discussed and Dr. Ambedkar has replied to the debate. We need have no further discussion. I will put the article to vote.

Shri K. Hanumanthaiya (Mysore State): I want one clarification, Sir. As Dr. Ambedkar says if territorial waters that is, land three miles beyond the coast-line, belongs to the Union, where is the necessity for this section at all?

President, Sir, if my honourable Friend Mr. Kamath had considered the article fully, he would have found that the rights of the Parliament are fully protected. All the transactions which are mentioned there, grant, sale, disposal or mortgage are not legislative acts but executive act and therefore appropriately vested in the Executive; they are subject to any Act of the appropriate legislature. Therefore the Parliament or the legislature of the State will pass laws and thereby the manner in which these transactions are to be entered into, the authority which is vested with the power to enter into these transactions, will be properly defined. It would bring down the whole Government if Parliament or Legislature is invested with executive power mentioned here. For instance, take the question of sale of a property. A screw in a distant military Cantonment belongs to the Government and some official wants to dispose it off; should the matter go to Parliament for this purpose? The whole idea of having two organs of State Executive and Legislature is that all executive action has to be done by the executive but under the qualifications, the authority and the manner prescribed by Legislature. So Parliament cannot have any executive power over these transactions and I think the clause as it is which has been really reproduced from the Government of India Act is a well-advised article and should be maintained.

Mr. President : Would you like to speak, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar : I think Mr. Munshi has clearly explained and I do not like to add anything to it.

Mr. President : The question is:

"That in article 272, after the word and figure `Part I' in the two places where they occur, the words and figures `or Part III, be inserted."

The amendment was adopted.

Mr. President : The question is:

"That article 272, as amended, stand part of the Constitution."

The motion was adopted.

Article 272, as amended, was added to the Constitution.

Article 273

Mr. President : We take up 273. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I beg to move:

"That in clause (1) of article 273, after the word and figure `Part I' the words and figures `or Part III' be inserted.

That with reference to amendment No. 201 above, in clause (1) of article 273, after the word 'Governor' in the two places where it occurs, the words `or the Ruler' be inserted.

That with reference to amendment No. 201 above, in clause (2) of article 273, for the word `the governor of a State' the words `the Governor nor the Ruler' be substituted."

Shri Mahavir Tyagi : Sir, reading the whole article as it is, one is at a loss to understand as to who will ultimately be responsible for the wrong transactions if there are any. The article reads:

"All contracts made in the exercise of the executive power of the Union or of a State for the time being specified in Part I of the First Schedule shall be expressed to be made by the President, or by the Governor of the State as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise."

From the words "shall be executed on behalf etc." I understand that the emphasis is not on the word 'executed' but on the use of the name of the Governor-General. I want to make it sure that in future it may not be construed that the meaning of the article is that whatever has been agreed upon by the Governor or the persons above shall essentially be executed. I can understand that it shall be executed in the name of the Governor but the question is; is it also the meaning that whatever has been agreed upon by the Governor or those who do it in the name of the Governor, whether it is in our interest or not, shall at all costs be executed? For instance there may be occasions just as only lately the Ministers of the Dominion of India or Cabinet just issued a statement and announced that with regard to Kashmir they will have a referendum and that referendum will decide. . . . .

Mr. President : This is the case of the contract and it has nothing to do with a political act like that.

Shri Mahavir Tyagi : Yes in contracts also, suppose the assets of the Government are contracted away by the men at the helm of affairs, will there be no check? Will the Parliament's ratification be necessary or they will be executed only because the commitments have been made by a person at the helm? Will the Parliament have a hand in confirming it or not? Political commitments also have their repercussions financially. I do not want to mention Kashmir but then there are so many other transactions-I do not want to quote instances of the previous or present Government-I am just inventing instanced. There may be occasions when some big financial deals are made which go against the interests of the country but this article says:

> "All contracts and assurances of property made in the exercise of that power shall be executed on behalf of the President."

If the meaning is only this that the execution will always be on behalf of the President, I do not mind. But if it means that it shall have be executed at all costs I object to that.

Shri T. T. Krishnamachari : The liability is there.

Shri Mahavir Tyagi : Are you going to have the liability without defining the nature of the liability? If it were only a case of your defining that the liability shall always be executed in the name of the Governor or such other persons I can understand, because he is the head of the State and all executive action has to be taken in his name. But in clause (2) you say "Neither the President nor the Governor of a State-nor the Ruler now-shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution. This also I can understand in the case of the Governor whose name has been used only formally but I cannot pardon the officers or the Ministers who do wrong things in his name. Such an officer shall be personally and even morally responsible for his wrong action. A carte-blanche is sought to be given here that whatever is done, no personal liability will rest either on the man in whose name it is done, or on the person who does it. Unless a liability has been ratifies by Parliament, somebody must be responsible for it. So I want a clarification of this issue, for, there may be big commitments made of a nature with which the nation might not agree. The commitments are to be executed and then nobody is to be a liable for it. I think in matters of State everybody who works must be liable and responsible-even personally for all what he does. I deprecate the notion given to us by foreign rule here that a man who in the exercise of his official duties does wrong will not be responsible for that personally-as if an officer can do no wrong just as the king can do no wrong. This is a notion to which I do not agree. I feel that if a man commits an error or plays wrong with the finances of the State or does anything which injures the cause of the nation he must always know that the liability lies on his head and that he will be responsible to answer for it and also have to pay the liability. After all the liability must be located somewhere. Otherwise the officers will be free from all liabilities, and contracts and agreements and commitments will be made generally freely without having any regard to their propriety. If the Governor are not responsible, those who have committed themselves on his behalf or committed the nation must be responsible. It is only a question I have put to Dr. Ambedkar and I hope he will clarify the position.

Shri H. V. Kamath : Mr. President, I do not think that my Friend Mr. Tyagi's objection is valid. If he would take the trouble of turning to article 64(1) and also the corresponding article for the Governors in the relevant part he will find that all executive action of the Government of India or of a State shall be expressed to be taken in the name of the President or of the Governor. Here also this article follows article 64 very closely. This article lays down that all contracts made in the exercise of the executive powers of the Union shall be expressed to be made- the words used are "expressed to be made"-by the President etc. Neither the President nor the Governor in the light of the new amendment, the Ruler of the State actually makes the contract. Whatever contract is entered into or made by the Union or the State is expressed as having been made in the name of the President or the Governor or the Ruler.

Shri Mahavir Tyagi : Who actually does it?

Shri H. V. Kamath : The Union or the State does it.

Shri Mahavir Tyagi : It is the people.

Shri H. V. Kamath : If my Friend thinks the sovereign authority is vested in the people then the people are responsible for everything that happens in the Union or the State. That depends upon the connotation that my Friend wants to give to the vesting of the authority of the Union or the State. If it vests in the people then the people are responsible. Everything is done in the name of the people because it is a democratic Constitution, and everything done in the Union or the State is done for the people or by the people. But certainly whatever is done is expressed as having been done by the President or the Governor or the Ruler, whatever the case may be. It is only a constitutional or a legal formula for enabling certain contracts to be made effective or to be given effect to. Otherwise, if every contract is signed by the people of the Union or the papal of the State then I suppose in constitutional law, before the High Court or the Supreme Court it will make no meaning whatsoever. Somebody will have to sign it. For instance, treaties are signed by the Foreign Minister or the Prime Minister here.

Shri Mahavir Tyagi : I do not object to the name of the Governor being used but to the immunity given to those persons who execute those undertakings and commit the country.

Shri H. V. Kamath : I am coming to that. Clause (2) lays down that "neither the President not the Governor etc. shall be *personally* liable." Certainly it stands to reason, to logic and to the sense of law which I am sure the House possesses in abundant measure, that for anything that the President or the Governor or the Ruler does not actually do but that is expressed to be done in his name-the Cabinet at the Centre or the State will make the contract and the titular head of the Union or the State will sign the contract-he cannot be made personally liable. That is all that is meant by the article.

There is, however, another point which I would like Dr. Ambedkar to clarify in his reply, if at all he replies. That relates to the language of this article. I suppose this has been lifted bodily from the Government of India Act, as has been done in the case of various other article. The article begins with "all contracts made in the exercise of the executive power of the Union or the State", but proceeding further the article refers to "all such contracts and all assurances of property". Suddenly these words "assurances of property" are pitchforked into the article. What exactly in constitutional terminology or legal parlance it means I do not know, because I am not a lawyer. "Contracts" I know; I am fairly well aware of its connotation. But what exactly is meant by "assurance of property" I do not know. What are the assurances, verbal or written, and what sort of assurance will be given with regard to property I do not know. Since the article starts with "contracts" is it not enough to say "contracts" later on too? I think it will be wiser to stick to that. I think this will create confusion and will not lead to any clear understanding of this article. Then the amendment of Dr. Ambedkar refers to the word "ruler". I do not know whether we are in future going to be saddled or burdened with a distinction between Governors and rulers. Today we have this distinction of course and that is why I suggested postponement of the consideration of these articles. We have been assured by Sardar Patel and the Prime Minister that they are trying-and I dare say they will succeed- to bring the States into line with the States mentioned in Part I of the First Schedule that is to say, Governors' provinces. I do not think that when this Constitution comes into force there will still be this distinction between Parts I and III; I think there will be only one category, and the distinction between ruler and Governor will vanish. With regard to terminology I think the ruler is not referred to as ruler but as Raja, Rajparamukh etc.

Mr. President : The question was raised yesterday and Dr. Ambedkar said that he would consider any other expression which might be more suitable.

Shri H. V. Kamath : I am sorry; I was not here yesterday. It therefore struck me that the expression "ruler of a State" would not be quite appropriate for the executive head of the State. I hope they will all be called Governor and the word "ruler" will not be used any longer. I hope these points will be clarified by Dr. Ambedkar.

Prof. Shibban Lal Saksena : Sir, I think the point raised by my honourable Friend Shri Mahavir Tyagi is due to his not having read article 272 carefully. The power to make contracts has been given there and it will be subject to Acts of the legislatures. He cited the case of Pakistan and contracts with them about property, etc. I am sure whatever has been done was done with the consent of Parliament. So all contracts made under this article will be in accordance with the laws of the legislature, and no one can make any contract in contravention of those laws.

I however do not see the necessity of the second clause of article 273. It is well known that the President or Governor acts in the name of Governor and is not personally liable. So why make this provision specifically?

Shri Mahavir Tyagi : I would point out that in article 272 the "grant, sale, disposition or mortgage of any property" is mentioned; article 273 is different and refers to "contracts and assurances" etc.

Prof. Shibban Lal Saksena : The article says that contracts can only be made subject to laws made by the legislature. But I do not see the purpose of the exemption made in article 273(2). If the President or Governor contravenes the laws he may be impeached and any other officer doing so will be punished. I should like to know the reason for the special exemption made in this sub-section.

The Honourable Dr. B. R. Ambedkar : Sir, my honourable Friend Mr. Kamath had something to say about the use of the word "assurance", and I think his argument was that we were using the word "contracts" in one place and "assurances" in another. "Assurance" is a very old word in English conveyancing; it was used and is being used to cover all kinds of transfers and therefore the word "assurance" includes the word "contract". So there is no difficulty if both these words are used because assurance as a transfer of property has the significance of a contract.

Shri H. V. Kamath : My difficulty was about the language. The article starts with "all contracts" and then we have "all such contracts and all assurances of property", etc.

The Honourable Dr. B. R. Ambedkar : If there is any difficulty about the language it will be looked into by the Drafting Committee; I was explaining the technical difference between assurance and contract.

Then, Mr. Tyagi asked why a person should be freed on liability if he signs a contract. I think much of the objection raised by Mr. Tyagi would fully disappear if he were made a member of the Cabinet; I should like him to answer the question whether any contract that he has made on behalf of the Government of India should impose a personal liability on him. I am sure he knows the ordinary commercial procedure. A principal appoints an agent to do certain things on his behalf. Unless the agent has acted outside the scope of the authority conferred upon him by the principal, the agent has no personal liability in regard to any contract that he has made for the benefit of the principal. It is the same principle here. My honourable Friend Mr. Tyagi does not know that there is a well established system in the Government of India whereby it is laid down that it is only a document or letter issued by an officer of a certain status that binds the Government of India; a document or letter issued by any other officer does not bind the Government of India. We have therefore by rule specifically to say whether it is the Under-Secretary who would have the power to bind the Government of India, or the Joint Secretary or the Additional Secretary or the Secretary alone. Therefore I do not see why the person who is acting merely on behalf of the Government of India as a signing agency should be fastened upon for personal liability, because he is acting on the authority of the Government of India or within the authority of the Government of India. If the Government of India approves of any particular transaction to which the legislature raises any objection as being unnecessary, unprofitable or outside the scope of the legislative authority conferred by Parliament upon the executive Government, it is a matter between the Government and the Parliament. Parliament may either remove the Government or repudiate the contract or do anything it likes. But I do not understand how a personal liability can be fixed upon a men who is merely appointed as an agent to assure the other party that he is signing in the name of the Government of India. There is no substance in the objection raised by my Friend Mr. Tyagi.

Mr. President : I will now put the various amendments to vote.

The question is:

"That in clause (1) of article 273, after the word and figure `Part I' the words and figures `or Part III' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That with reference to amendment No. 201 above, in clause (1) of article 273, after the word `Governor' in the two places where it occurs, the words `or the Ruler' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That with reference to amendment No. 201 above, clause (2) of article 273, for the words `the Governor of a State' the words `the Governor nor the Ruler' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That article 273, as amended, stand part of the Constitution."

The motion was adopted.

Article 237, as amended, was added to the Constitution.

Article 274

Mr. President : Article 274 is now for the discussion.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in clause (1) of article 274, for the words `Government of India', in the second place where they occur, the words `Union of India' be substituted."

Sir, with your permission I will also move my other amendments to this article now.

I move:

"That in sub-clause (a) of clause (2) of article 274, for the words `Government of India' the words `Union of India' be substituted."

I move:

"That with reference to amendment No. 2980 of the List of Amendment, in clause (1) of article 274, after the word and figure `Part I' the words and figures `or Part III' be inserted."

I move:

"That with reference to amendment Nos. 2980 and 2981 of the List of Amendments, in clause (1) of article 274, for the words `by the Legislature' the words 'of the Legislature' be substituted."

I move:

"That with reference to amendment No. 204 above, in clause (1) of article 274, after the words `corresponding Provinces' the words 'or the corresponding India States' be inserted."

I move:

"That with reference to amendment No. 206 above, in sub-clause (2) of article 274-

(i) after the words 'a Province', the words 'or an Indian State' be inserted; and

(ii) after the words 'the Province' the words 'or the Indian State' be inserted."

Shri Jaspat Roy Kapoor (United Provinces : General) : I am not moving my amendments Nos. 2981 and 2984. They may well be referred to the Drafting Committee for consideration.

(Amendment No. 2982 was not moved.)

Mr. President : Does any one wish to speak on this article?

Shri H. V. Kamath : Mr. President, amendment No. 2980 seeks to substitute the words 'Union of India' for the words "Government of India" so far a s suing or being sued is concerned. I do not know exactly what is the change that is sought to be effected by the substitution. Article 270 refer to the Government of India as being the successor Government to the Dominion of India. When I suggested that this might be changed to either "Union of India" or "Republic of India", that was not accepted by the

House. So under article 270 we recognise the Government of India as succeeding the Dominion of India so far as assets, liabilities and obligations are concerned. But when we come to article 274 we are told that for the purpose of suing or being sued it will not be the Government of India but the Union of India. So long as the Government of India Act was in force, whenever the India Government was sued or had to sue it was the Secretary of State for India that came into the picture. I do not know exactly why a suit may be filed against the Union and not against the Goverment of India. After all, what is the Union of India? Article 2 tells us that India shall be a Union of State. In law what is sued or may be sued is the whole body, the whole corporate body of the Union Government. The Union as such in law is not a corporation which may sure or be sued. It is only the Union Government that may sue or be sued. In the light of article 1, if we want to precise and exact so far as law is concerned, we should state in this article "the Government of the Indian Union". As it is, however the sense is quite clear and therefore it will be wise to retain the phrase "the Government of India" instead of "the Union of India" as suggested in amendment No. 2980.

As regards the other amendments moved by Dr. Ambedkar, there are certain points which are obscure. If Dr. Ambedkar will turn to article 270 he will see that it refers to Governors' provinces. In this article we refer to provinces. I think this is rather incorrect. So far as legal terminology is concerned, I think the provinces must be referred to as Governors' provinces, not merely as provinces. If we turn to the First Schedule, Part I, the provinces are referred to as Governor's provinces.

Then, sir, about clause (2) of this article. The amendment in relation to this clause is No. 207. We do not know exactly what picture will emerge before us at the time of the Commencement of this Constitution. Sub-clause (b) of clause (2) refers to Governors' provinces and, by reason of this amendment of Dr. Ambedkar, to Indian States as well. It is purely a hypothetical case, but if for instance as regards an Indian State which is an integral part of the Indian Union at the time this Constitution comes into being, some legal proceedings are pending to which this Indian State is a party. Suppose subsequently Parliament by law, under article 3 or by some other means, provides for the merger of this State with some province. According to sub-clause (b) the effect will be that the corresponding Indian State shall be substituted, but what will happen if that State disappears, if it is merged into an adjoining province? There is no such corresponding State at all left.

All these things are obscure at this stage and that why I feel that the consideration of this Chapter, when there are so many obscure points of which we have not got a clear picture, may very wisely be held over till the entire picture comes before our eyes and the relationship and the relationship between the various States and the Union is clarified. But some articles have already been moved and adopted by this House. I submit that this article has got some obscure points and I hope Dr. Ambedkar or any of his colleagues will come before the House to clarify these points before we adopt this article.

The Honourable Shri K. Santhanam : Sir, I have just a single point to make. In 274 (1) the words "enacted by virtue of the powers conferred by this Constitution" are wholly superfluous and the meaningless because neither the Parliament nor the Legislature of any State can act except by virtue of the powers conferred by this Constitution. Therefore I suggest that these words may be dropped.

The Honourable Dr. B. R. Ambedkar : Sir, perhaps it might be desirable be desirable if I read to the House how the article would stand if the various amendments which I have moved were incorporated in the article. The article would read thus:

> "The Government of India may sue or be sued in the name of the Union of India, and the Government of a State for the time being specified in Part I or Part III of the First Schedule may sue or be sued in the name of the State and may, subject to any provisions which may be made by Act of Parliament or by the Legislature of such State, enacted by virtue of the powers conferred by this Constitution, sue or be sued in relation to their respective spheres in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.
>
> (2) If at the date of commencement of this Constitution-
>
> (a) any legal proceedings are pending to which the Dominion of India is a party, the Union of India-"

that is the new thing-

> "shall be deemed to be substituted for the Dominion in those Proceedings; and
>
> (b) any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the province or the Indian State in those proceedings."

Now, this article, as it will be seen, merely prescribes the way in which suits and proceedings shall be started. This has no other significance at all. The original wording was that it shall be sued in the name of the Government of India. Obviously the Government of India, that is to say, the executive government, is a fleeting body, being there at one time and then disappearing and some other people coming in and taking charge of the executive.

Shri H. V. Kamath : The Government is not fleeting; the personnel of the government may be fleeting.

The Honourable Dr. B. R. Ambedkar : There is a difference between the Government of India and the Union of India. The Government of India is not a legal entity; the Union of India is not a legal entity, a sovereign body which possesses rights and obligations and therefore it is only right that any suit brought by or against the Central Government should be in the name of the Union or against the Union.

Now, with regard to the term "corresponding States" some difficulty was expressed. It may no doubt be quite difficult to say which State corresponds to the old State. In order to meet this difficulty, provision has been made in article 303 (1) (g) , which you will find on page 145 of the Draft Constitution, where it has been provided that a corresponding Province or corresponding State means in cases of doubt such Province or State as may be determined by the President to be the corresponding Province or, as the case may be, the corresponding State for the particular purpose in question. Therefore this difficulty- since the exact equivalent of an Old Province or State is difficult to judge as there are bound to be some variations as to territory and so on-can be solved only by giving power to the President to determine which new particular State corresponds to which particular Old State. So that provision has been made.

Sub-clause (2) deals with pending proceedings and all that Sub-clause (2) suggests is this: that when any proceedings are pending, where the entities to sue or to be sued are different from what we are providing in sub-clause (1) , the Union of India or the corresponding State shall be inserted in the old proceedings, so that the States may be sued in accordance with 274 (1) . With regard to the objection taken by my honourable Friend, Mr. Santhanam that the words "enacted by virtue of powers conferred by this Constitution" as being superfluous, all I can say is I disagree with him and I think these are very necessary.

Mr. President : The question is:

"That in clause (1) of article 274, for the words 'Government of India', in the second place where they occur, the words 'Union of India' be substituted. "

The amendment was adopted.

Mr. President : The question is:

"That in sub-clause (a) of clause (2) of article 274, for the words 'Government of India' the words 'Union of India' be substituted. "

The amendment was adopted.

Mr. President : The question is:

"That with reference to amendment No. 2980 of the List of Amendments, in clause (1) of article 274, after the word and figure 'Part I', the words and figures 'or Part III' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That with reference to amendments Nos. 2980 and 2981 of the List of Amendments, in clause (1) of article 274, for the words 'by the Legislature' the words 'of the Legislature' be substituted."

The amendment was adopted.

Mr. President: The question is:

"That with reference to amendment No. 204 above, in clause (1) of article 274, after the words 'corresponding provinces' the words 'or the corresponding Indian States' be inserted. "

The amendment was adopted.

Mr. President : The question is:

"That with reference to amendment No. 206 above, in sub-clause (b) of clause (2) of article 274-

(i) after the words 'a Province' the words ' or an Indian State' be inserted;
and

(ii) after the words 'the Province' the words 'or the Indian State' be inserted."

The amendment was adopted.

Mr. President : the question is:

"That article 274, as amended, stand part of the Constitution."

The motion was adopted.

Article 274, as amended, was added to the Constitution.

New Article 274-A

The Honourable Dr. B. R. Ambedkar : Sir, I would like this article to be held over.

Mr. President : Then there is a long amendment, a new part to be added by Mr. Sidhva.

Shri T. T. Krishnamachari : May I suggest that the House may take up Part XIII-the election chapter, article 289 and onwards as put in the Order Paper?

Shri R. K. Sidhva : Sir, this new article which I seek to move relates to the delimitation in local areas, urban and rural of the entire territory of India.

The Honourable Dr. B. R. Ambedkar : This is to be held over.

Shri R. K. Sidhva : Therefore, Sir, with your permission, I shall move it when that article comes in.

Article 289

Mr. President : We shall now take up Part XIII-article 289.

Shri T. T. Krishnamachari : May I suggest that amendment No. 99 may be taken up as it substantially replaces the whole article? all the other amendments may be discussed thereafter.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I move:

"That for article 289, the following article be substituted :-

289. (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the
superintendence, directions and control of conduct of, all elections to Parliament and to

elections to be vested in an election commission.

the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution, including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and to the Legislatures of States shall be vested in a Commission (referred to in his Constitution as the election Commission) to be appointed by the President.

(2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may, from time to time appoint, and when any other Election Commissioner is so appointed, the Chief Election Commissioner shall act as the Chairman of the Commission.

(3) Before each general election to the House of the People and to the Legislative Assembly of each State and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President shall also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the election Commission in the performance of the functions conferred on it by clause (1) of this article.

(4) The conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine:

Provided that the Chief Election Commissioner shall not be removed from the office except in like manner and on the like grounds as a judge of the Supreme Court and the conditions of the service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment:

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

(5) The President or the Governor or Ruler of a State shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1) of this article."

Mr. President : I have notice of a number of amendments, some in substitution of the articles 289, 290 and 291 and some amendments to the amendments which are going to be moved. I think I had better take the amendments which are in the nature of substitution of these articles. Dr. Ambedkar has moved one. There is another amendment in the name of Pandit Thakur Das Bhargava.

Pandit Hirday Nath Kunzru (United Provinces: General) : May I ask, Sir, whether Dr. Ambedkar is not going to say anything in support of the proposition that he has moved? It concerns a very important matter. Is it not desirable that Dr. Ambedkar who has put forward an amendment to article 289 should say something in support of his amendment. I think he would be proceeding on sound lines if he took the trouble of explaining to the House the reasons for asking it to replace the old article 289 by a new article. The matter is of the greatest importance and it is great pity that Dr. Ambedkar has not considered it worth his while to make a few remarks on this proposition.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I did not make any observation in support of the motion for two reasons. One reason was that if a debate took place on this article,-it is quite likely that a debate would undoubtedly take place-there would be certain points that will be raised in the debate, which it would be profitable for me to reply to at the close so as to avoid a duplication of any speech on my part. That is one reason.

The second reason was that I thought that everybody must have read my amendment; it is so simple that they must have understood what it meant. Evidently, my honourable Friend Pandit Kunzru in a hurry has not read my new Draft.

Pandit Hirday Nath Kunzru : I have read every line of it; I only want that honourable Member should treat the House with some respect.

The Honourable Dr. B. R. Ambedkar : The House will remember that in a very early stage in the proceedings of the Constituent assembly, a Committee was appointed to deal with what are called Fundamental Rights. That Committee made a report that it should be recognised that the independence of the elections and the avoidance of any interference by the executive in the elections to the Legislature should be regarded as a fundamental right and provided for in the chapter dealing with Fundamental Rights. When the mater came up before the House, it was the wish of the House that while there was no objection to regard this matter as of fundamental importance, it should be provided for in some other part of the Constitution and not in the Chapter dealing with Fundamental Rights. But the House affirmed without any kind of dissent that in the interest of purity and freedom of elections to the legislative bodies, it was of the utmost importance that they should be freed from any kind of interference from the executive of the day. In pursuance of the decision of the House, the Drafting Committee removed this question from the category of Fundamental Rights and put it in a separate part containing article 289, 290 and so on. Therefore, so far as the fundamental question is concerned that the election machinery should be outside the control of the executive Government, there has been no dispute. What article 289 does is to carry out that part of the decision of the Constituent Assembly. It transfers the superintendence, direction and control of the preparation of the electoral rolls and of all elections to Parliament and the Legislatures of States to a body outside the executive to be called the Election Commission. That is the provision contained in sub-clause (1) .

Sub-clause (2) says that there shall be a Chief Election Commissioner and such other Election Commissioners as the President may, from time to time appoint. There were two alternatives before the Drafting Committee, namely, either to have a permanent body consisting of four or five members of the Election Commission who would continue in office throughout without any break, or to permit the President to have *ad hoc* body appointed at the time when there is an election on the anvil. The Committee, has steered a middle course. What the Drafting Committee proposes by sub-clause (2) is to have permanently in office one man called the Chief Election Commissioner, so that the skeleton machinery would always be available. Election no doubt will generally take place at the end of five years; but there is this question, namely that a bye-election may take place at any time. The Assembly may be dissolved before its period of five years has expired. Consequently, the electoral rolls will have to be kept up to date all the time so that the new election may take place without any difficulty. It was therefore felt that having regard to these exigencies, it would be sufficient if there was permanently in session one officer to be called the Chief Election Commissioner, while when the elections are coming up, the President may further add to the machinery by appointing other members to the Election Commission.

Now, Sir, the original proposal under article 289 was that there should be one Commission to deal with the elections to the Central Legislature, both the Upper and the Lower House, and that there should be a separate Election Commission for each province and each State, to be appointed by the Governor or the Ruler of the State. Comparing that with the present article 289, there is undoubtedly, a radical change. This article proposes to centralize the election machinery in the hands of a single Commission to be assisted by regional Commissioners, not working under the provincial Government, but working under the superintendence and control of the Central Election Commission. As I said, this is undoubtedly a radical change. But, this change has become necessary because today we find that in some of the provinces of India, the population is a mixture. There are what may be called original inhabitants, so to say, the native people of a particular province. Along with them, there are other people residing there, who are either racially, linguistically or culturally different from the dominant people who are the occupants of that particular Province. It has been brought to the notice both of the Drafting Committee as well as of the Central Government that in these provinces the executive Government is instructing or managing things in such a manner that those people who do not belong to them either racially, culturally or linguistically, are being excluded from being brought on the electoral rolls. The House will realise that franchise is a most fundamental things in a democracy. No person who is entitled to be brought into the electoral rolls on the grounds which we have already mentioned in our Constitution, namely, an adult of 21 years of age, should be excluded merely as a result of the prejudice of a local Government, or the whim of an officer. That would cut at the every root of democratic Government. In order, therefore, to prevent injustice being done by provincial Governments to people other than those who belong to the province racially, linguistically and culturally, it is felt desirable to depart from the original proposal of having a separate Election Commission for each province under the guidance of the Governor and the local Government. Therefore, this new change has been brought about, namely, that the whole of the election machinery should be in the hands of a Central Election Commission which alone would be entitled to issue directives to returning officers, polling officers and others engaged in the preparation and revision of electoral rolls so that no injustice may be done to any citizen in India, who under this Constitution is entitled to be brought on the electoral rolls. That alone is, if I may say so, a radical and fundamental departure from the existing provisions of the Draft Constitution.

So far as clause (4) is concerned, we have left the matter to the President to determine the conditions of service and the tenure of office of the members of the Election Commission, subject to one or two conditions, that the Chief Election Commission, shall not be liable to be removed except in the same manner as a Judge of the Supreme Court. If the object of this House is that all matter relating to Elections should be outside the control of the Executive Government of the day, it is absolutely necessary that the new machinery which we are setting up, namely, the Election Commission should be irremovable by the executive by a mere *fiat*. We have therefore given the Chief Election Commissioner the same status so far as removability is concerned as wee have given to the Judge of he Supreme Court. We, of course, do not propose to give the same status to the other members of the Election. We have left the matter to the President as to the circumstances under which he would deem fit to remove any other member of the Election Commissioner, subject to one condition that the Chief Election Commissioner must recommend that the removal is just and proper.

Then the question was whether the Electoral Commission should have authority to have an independent staff of its own to carry on the work which has been entrusted to it. It was felt that to allow the Election Commission to have an independent machinery to carry on all the work of the preparation of the electoral roll, the revision of the roll, the conduct of the elections and so on would be really duplicating the machinery and creating unnecessary administrative expense which could be easily avoided for the simple reason, as I have stated, that the work of the Electoral Commission may be at times heavy and at other it may have no work. Therefore we have provided in clause (5) that it should be open for the Commission to borrow from the provincial Governments such clerical and ministerial agency as may be necessary for the purposes of carrying out the functions with which the Commission has been entrusted. When the work is over, that ministerial staff will return to the provincial Government. During the time that it is working under the Electoral Commission no doubt administratively it would be responsible to the Commission and not to the Executive Government. These are the provisions of this article and I hope the House will now realise what it means and in what respects it constitutes a departure from the original article of the Draft Constitution.

Mr. President : Pandit Thakur Das Bhargava--do you wish to move your three amendments?

Pandit Thakur Das Bhargava : No, Sir.

Mr. President : Mr. Kapoor is not moving his amendment. The article is open for discussion.

Prof. Shibban Lal Saksena : Sir, I have given notice of an amendment to an amendment to article 289.

Sir, I beg to move:

"That in Amendment No. 99 of List I (Fifth Week) , the following amendments be incorporated:-

(1) At the end of Clause (1) add the following words:-

'Subject to confirmation by 2/3rd majority in a joint session of both the House of Parliament.'

(2) After the word appoint in clause (2) , the following words be inserted:-

'Subject to confirmation by 2/3rd majority in a joint session of both the Houses of Parliament.'

(3) In clause (3) , for the words 'after consultation with' the words 'in concurrence with' be substituted.

(4) In clause (4) for the words 'President may be rule determine' the words 'Parliament may by law determine' be substituted.

(5) In proviso (1) to clause (4) substitute 'Election Commissioners' for the words 'Chief Election Commissioner' in both places.

(6) In proviso (2) to clause (4) omit 'any other Election Commissioner or.' "

Mr. President, Sir, I must congratulate Dr. Ambedkar on moving his amendment. As he has said, his amendment really carries out the recommendations of the Fundamental Right Committee and in fact the matter was so important that it was thought at one time that it should be included in the Fundamental Rights. The real purpose is that the fundamental right of adult franchise should not only be guaranteed in practice. He has explained to us that he was tried to make the Election Commission wholly independent of the Executive and he therefore hopes that by this method the fundamental right to franchise of all the individuals shall not only be guaranteed but that it shall also be exercised in a proper manner so that the elected People will represent the true will of the people of the country. After a careful study of his amendment I have suggested my above amendments to carry out the real purpose of Dr. Ambedkar's amendment in full.

What is desired by my amendment is that the Election Commission shall be completely independent of the Executive. Of course it shall be completely independent of the provincial Executive but if the President is to appoint this Commission, naturally it means that the Prime Minister appoint this Commission. He will appoint the other Election Commissioners on his recommendations. Now this does not ensure their independence. Of course once he is appointed he shall not be removable except by 2/3rd majority of both the Houses. That is certainly something which can instil independence in him, but it is quite possible that some party in power who wants to win the next election may appoint a staunch party-man as the chief Election Commissioner. He is removable only by 2/3rd majority of both Houses on grave charges, which means that he is almost irremovable. So what I want is this that even the person who is appointed originally should be such that he should be enjoying the confidence of all parties-his appointment should be confirmed not only by majority but by two-thirds majority of both the Houses. If it is only a bare majority then the party in power could vote confidence in him but when I want2/3rd majority then it means that the other parties must also concur in the appointment so that in order that real independence of the commission may be guaranteed, in order that everyone even in Opposition may not have anything to say against the Commission, the appointments of the Commissioners and the chef Election Commissioner must be by the President but the names proposed by him should be such as command the confidence of two-thirds majority of both the Houses of Legislatures. Then no person can come in who is a staunch party-man. He will necessarily have to be a man who will enjoy the confidence of not only one party but also of the majority of the members of the Legislature. Then alone he can get a 2/3rd majority in support of his appointments. I therefore, think that if the real purpose of the recommendations of the Fundamental Rights Committee is to be carried out, as Dr. Ambedkar proposes to do this by amendment, then he must provide that the appointment shall not be by the president subject to confirmation by a two-thirds majority of both the Houses of Parliament sitting and voting in a joint session.

Shri Mahavir Tyagi : Don't you think that the party will issue whips to elect a certain man ? He will be a party -man.

Prof. Shibban Lal Saksena : What I have said in this. He will not be a Member of Parliament. He can be anybody else, but whosoever is chosen must be a person who enjoy the confidence of at least two-thirds majority of both the Houses of Parliament so that one single party in power cannot impose its own man on the country.

Shri Mahavir Tyagi : The majority party will put up its own candidate for the job and issue whips that all should vote for that candidate. Whether he is a Member or outsider he will be a party nominee.

Prof. Shibban Lal Saksena : Majority means only 51 per sent., but I want a two-thirds majority.

Shri Mahavir Tyagi : You are having more than two-thirds majority already.

Prof. Shibban Lal Saksena : At this time nothing will help in this matter. Whosoever you put forward will be elected. But we are making a Constitution for ever and not only for today. Today of course whosoever is appointed by the president on the recommendation of the Cabinet will be approved. We are lucky in having as our Prime Minister a man of independence and impartiality and he will see that a proper person is appointed. But we can not sure that the Prime Minister will always be such a personality. I want that in future, no Prime Minister may abuse this right, and for this I want to provide that there should be two-thirds majority which should approve the nomination by the President. Of course there is danger where one party is in huge majority. As I said just now it is quite possible that if our Prime Minister wants, he can have a man of his own party, but I am sure he will not do it. Still if he does appoint a party-man and the appointment comes up for confirmation in a joint session, even a small opposition or even a few independent members can down the Prime Minister before the bar of public opinion in the world. Because we are in a majority we can have any thing passed only theoretically. So the need for confirmation will invariably ensure a proper choice. Therefore, I hope this majority will not be used in a manner which is against the interests of the nation or which goes against the impartiality and independence of the Election Commission. I want that there should be provision in the constitution so that even in the future if some Prime Minister tends to partial, he should not be able to be so. Therefore, I want to provide that whenever such appointment is made, the person appointed should not be a nominee of the President but should enjoy the confidence of two-thirds majority of both the Houses of Parliament.

The second point made by Dr. Ambedkar was that this commission may not have permanent work and therefore only the Chief Election Commissioner should be appointed permanently and the others should be appointed when necessary on his recommendations. Our Constitution does not provide for a fixed four years cycle like the one in the United States of America. The elections will probably be almost always going on in some province or the other. We shall have about thirty provinces after the states have been integrated. Our Constitution provides for the dissolution of the Legislature when a non confidence is passed. So it is quite possible that the elections to, the various Legislatures in the province and the Centre will not be all concurrent . Every time some election or other will be taking place somewhere. It may not be so in the very beginning or in very five or ten years. But after ten or twelve years, at every moment some elections in some province will be going on. Therefore, it will be far more economical and useful if a permanent Election Commission is appointed-not only the chief Election Commissioner but three or five members of the commission who should be permanent and who should conduct the elections. I do not think that there will be lack of work because as I said in our constitution all the elections will not synchronize but they will be at varying times in accordance with the vote of no-confidence passed in various Legislatures and the consequent dissolution of the Legislatures. Therefore, I think that there will be no dearth of work. This commission should be a permanent commission and all the commissioners should be appointed in the same manner as the Chief Election Commissioner. They should all be appointed by a two-thirds majority of Legislatures and be removable in the same manner.

In clause (3) it has been said that the President may appoint Regional Commissioners after consultation with the Election commission, that means the chief Election Commissioner. Mere consultation means the President can have his way even disregarding the view of the chief Election Commissioner. Therefore, I want "in concurrence with" so that if anyone disagrees,- if the Election Commission or the President disagree about a person-then he cannot be appointed.

Clause (4) says "the conditions of service and tenure of office of the Election Commissioners shall be such as the President may be rule determine". This I think is not proper. The conditions of service and tenure of office etc., of the Election Commissioners should not be in the power of the President to determine. Otherwise he can use his influence in a manner prejudicial to their independence. Therefore I want that these things should be determined by Parliament by law and they should be permanent so that nobody will be able to change them and no election Commissioner will then look to the President for favours.

These are my suggestions so that the Election Commission may be really an independent Commission and the real fundamental right, the right of adult franchise, may be exercised in a proper manner. I agree with all that Dr. Ambedkar has said I only want to suggest that what he has suggested will not be sufficient to carry and what he wishes.

Shri H. V. Pataskar (Bombay: General) : Mr. President, Sir, I have carefully gone through the new amendment No. 99 moved by my respected Friend Dr. Ambedkar and I have also very carefully listened to the arguments that he advanced. While I agree with him entirely, that the election in any democratic from of government must be free from any sort of executive interference I still do not understand and realise the necessity of making it wholly centralised always. That is the only point. I am going to discuss the difference between the original article 289 as it stood in the Draft Constitution and the new article which has been suggested in its place by amendment No. 99, and particularly clause (3) of the same. I would now like to give a brief history of this article. There was first the report of the Union constitution Committee dated the 4th July 1947 and so on page 55 there was this paragraph:

> "The superintendence, direction and control of all election, whether federal or provincial held under this Constitution, including the appointment of election tribunals for decision of doubts and disputes arising out of or in connection with such elections shall be vested in a Commission to be appointed by the President."

This clause (24) therefore laid it down that whether it is federal or provincial, the superintendence, direction and control of elections should vest in one single Commission. Then the matter came before this House on 29th June 1947 and I brought forward an amendment confining it to federal elections only. The idea was that there should be similarly constituted independent tribunals for provinces also. The underlying reason even then was that elections should be free; the only question was that there should be separate independent Commissions for the provinces or States. The idea was that it would be difficult for one Commission sitting here in Delhi or somewhere else to supervise election all over India. That amendment was accepted by then mover of the clause, Honourable Mr. Gopalaswamy Ayyangar. The idea of every one, including Dr. Ambedkar, then was that elections should be kept free from executive interference. The only point was that there should be different Commission as one Commission could not carry out the functions entrusted to it. Then on 29th August the Drafting Committee was appointed which considered the decision of the House in framing article 289 (1) and (2) . The Draft Report says:

> "The Committee has not thought it necessary to incorporate in the Constitution electoral details including delimitation of constituencies, etc."

They left it to be provided by auxiliary legislation. So they considered the decision of this House of the 29th July and the original article 289 is in conformity with that. And the House will consider whether clauses (1) and (2) of article 289 are not enough for the purpose. Granting that election are the basis of democracy and should be free from executive interference, let us see whether article 289 (1) and (2) are or are not enough. So far as federal elections are concerned the provisions of the present amended or substituted article and clause (1) of article 289 are the same. Supposing we have to provide for the appointment of a federal Commission, it cannot be done by the Central Government which is an Executive Authority. It has to be done by the President. Then with regard to clause (2) the Drafting Committee thought that with respect to appointment of a Commission for the province it will be equally independent if that appointment was made not by the Government of the day but by the Governor of the State. At the time of the Draft the idea was that there should be an elected Governor. Now at present we have no elected Governor but now we have provided for a Governor who will be nominated by the President. So virtually the appointment of the Commission to be made by the nominated Governor will be in the hands of the President himself. The Commission appointed by the President for the purpose of elections to the federal legislature can be independent. But I do not see why in the provinces the Commission appointed by the Governor should not be equally independent. His official existence depends entirely on the President. In that respect, if it was thought necessary, the power could be given to the President himself to make the appointment of a Provincial Commissioner. But is it necessary that we should go back and have one Central Commission only with all the inconveniences that it is likely to cause? Then clause (3) removes the regional Commission altogether. There is only one Central Commission and the regional commissioners are to assist that election commission. Is it desirable that one Commission sitting in one corner of India should be entrusted to do this work, and the regional commissioners are merely to assist? I see absolutely no reason why this should be done. Then I find that after the Constitution was presented to us, a note was given to us toward the middle of May 1949 which indicates to us the reasons for changing what we decided on 29th July 1947. Let us analyse the reasons given. The first reason is that this is a matter which requires careful consideration and that it has been hinted in a section of the press that in some provinces the Governments are helping the registration of their own supporters. This is a point which was adverted to by Dr. Ambedkar also. Sir, there will be no one in this House who will not condemn such practices aimed at the denying the people the franchise which this Constitution gives them. But then what is the remedy for it? The Proper remedy would be to take action against people who resort to such practices. The Central Government has full power and authority to see that nothing of the kind is done. This is in the interests of democracy. Then we are told that it is hinted in a certain section of the press that certain provincial Governments are taking certain irregular actions. Sir, if it is merely a hint why should we be upset? Perhaps Dr. Ambedkar knows better how things are happening in the provinces. He may have information in the Cabinet. If this is so, it is better to take action against people who trifle with democracy on linguistic, racial or other consideration.

Another reason given is that inn the bye-election to the provincial assemblies it has been alleged by members of the losing party that provincial Governments take undue advantage of their position. That is bad. But I fail to understand how a change in the procedure as contemplated is going to bring about better state of affairs. If there are such people in Government they are unfit to be there in any democratic Government. If one or two instances of this kind have come to the notice the remedy is not to put down something in the Constitution which is not found anywhere else. These two reasons given in the report do not appeal to me.

Then it is said that the idea occurred of the Drafting Committee to change their draft of article 289 by a reference to what has been done in the Canadian Election Act of 1920. Sir, I find that Act refers only to the appointment of a Chief Commissioner for the purpose of election to the Dominion Parliament. At page 380 of his latest book on the Canadian Government, Dr. Dawson says that the appointment of a Chief Commissioner or Chief Electoral Officer was made to provided for an independent official to supervise the Dominion Election. It is only for the Federal election that the Chief Officer functions. For that there is no objection here also. There is already article 289(a) . It is rather strange that even for provincial elections such an appointment should be considered necessary by the Central Authority.

To my mind the reason for all these changes is to be found in the fact that we are now trying gradually to move away from the idea of federation. On account of certain happenings in the provinces, on account of certain internal situations and external factors which are threatening us we are trying more and more to reverse the process of having a federations with which we started our business here. The first resolution of this Assembly knows as the famous Objectives Resolution which we passed was to form a Union of autonomous units together with residuary powers. We are moving away from that from that position. We started with the idea of a Union or Federation of autonomous units It may or may not be necessary now, to have such autonomous units. We have changed the name of a provinces into States. Then came the great tragedy of partition which gave a swing in favour of the unitary type of Government. It is due to this sort of thing that we are now trying to make everything, as we think safe. We are clinging to the form of federation but we are changing it from within in substance. It is this process which has resulted in the amendment now under consideration. The land-marks in this process are that we changed from the elected Governors into nominated Governors and we are wanting to have for the Centre power to legislate in respect of subjects given to the provinces. Now we have this proposal that in matters of election, even to provincial legislatures, the Centre alone should have power. In fact, this amendment No. 99 means that we are abolishing all provincial commissioners for elections, for what reason I do not know. If a Commission is appointed by the President for the Centre, why should not the same President appoint also election commissioners for the different provinces? Always why should we interfere with the provincial election and thwart the process of democracy? I submit that this means that we are creating more and more points of difference between the Provinces and the Centre. After all, is this necessary? If you do not trust your Governor as he likely to be influenced by the provincial Government, let the President appoint provincial commissioners or regional commissioners for elections. Why do you suppose that in the provinces there will be no purity of administration and that democratic practices will not be followed? It is not proper. I think a provision like this will only mean that we are getting away from the principles of federation and our distrust of even the nominated Governors is there. We are going to have adult franchise and for the transition period certain exceptional provision may be necessary. But that need not lead us into framing a provision of this nature. After all in elections on the basis of adult franchise, whether for the Centre or for the province, the same type of people are likely to be returned and so I do not understand why there should be this distinction between the two. This can only result in creating a spirit of hostility which cannot and should not exist. Sir, I admit that the present conditions justify that there shall be a strong Central Government, but what is the idea of the Central Government being strong? Is it the idea that the Central Government should be so strong that the provinces will be deprived of their legitimate powers? It has become the fashion these days to say that if anybody talks of the provinces, it is something anti-national. This is entirely wrong.

Mr. President : Are you likely to take much time?

Shri H. V. Pataskar : Yes, Sir.

Mr. President : Then you can continue tomorrow.

Mr. Tajamul Husain (Bihar : Muslim) : Before you adjourn the Assembly, since we have been reading in the papers that the Assembly. ....

Mr. President : If the honourable Members had waited, I was myself going to make a statement before adjourning.

We shall continue the discussion of this article tomorrow. Before we adjourn today, I desire to make one statement with regard to the programme of work. We have already dealt with nearly three-fourth of the Constitution. The are certain articles and certain Parts which have not yet been dealt with, but with regard to which we are not in a position today to take up the discussion. For example, the position of the Indian State in some cases is not quite clear yet. Then, there is the question of the distribution of revenues between the Union and the Units. This requires consultation between the Central Government and the provincial Governments. We are not in a position to have that Conference immediately for various reasons, one of which is that the Finance Minister has to be away from India for some time in connection with urgent national work. It has therefore become necessary to adjourn discussion of the remaining article of the Constitution for some time so that within the time available these consultations may be held and the articles may be taken up for consideration at a time when everybody is ready to deal with them finally. It has therefore been proposed that we adjourn discussion of the other articles of the Constitution after tomorrow and we meet again, say, about five weeks later, and then we pass the remaining articles of the Constitution in the second reading. When that will be finished, some time will be taken up in putting the various articles in their proper places, looking into the various articles from the drafting point of view and also considering whether any lacuna has been left or whether any changes are required when the whole picture is before the Drafting Committee. That will take some time and when that has been done, we shall meet for the third reading which, I hope, will be a short session because the whole thing will have been thrashed out in the second reading state and we shall be able to get through the third reading pretty rapidly. That is the programme as I envisage it, and therefore I desire Members to note that we shall be adjourning after tomorrow for about five weeks. I shall announce the exact date of the meeting later on.

Shri R. K. Sidhva : Any idea of the date?

Mr. President : As I said, I shall announce the exact date later on.

Mr. Tajamul Husain : Under the rules, the President has no power to adjourn the House for more than three days.

Shri L. Krishnaswami Bharathi (Madras: General) : A formal resolution can be moved tomorrow before we adjourn.

Mr. President : When we adjourn, we shall adjourn in accordance with the rules.

We adjourn now till Eight O'clock tomorrow morning.

The Assembly then adjourned till Eight of the Clock on Thursday, the 16th June 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME VIII

Thursday, the 16th June 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Members took the pledge and signed the Register:-

(1) Sheikh Mohd. Abdullah.	[Kashmir]
(2) Mirza Mohd. Afzal Beg.	
(3) Maulana Mohd. Syeed Masoodi.	
(4) Shri Moti Ram Bagda.	

Mr. President : I am sure the House will join me in extending a cordial welcome to Sheikh Mohd. Abdullah and the three other Members, Who have joined the Assembly today and are going to take their seats for the first time. This brings to the Assembly now the full complement of representative from all State that have acceded to India.

Shri H. V. Kamath (C. P. & Berar : General) : Bhopal and Hyderabad?

Mr. President : Their presence, I am sure is going to be of great help in framing the Constitution which is intended to cover the whole country and which, I am sure, will receive full support from all its constituent members. They have been somewhat late in coming, but it is not their fault, nor do I think it is our fault. Circumstances have been such that they have been delayed, but I am sure they have come in time to make very useful contributions to our Constitution.

DRAFT CONSTITUTION-*contd.*

Article 289

Mr. President : We shall now proceed with the discussion of article 289. Mr. Pataskar.

Shri H. V. Pataskar (Bombay : General) : Sir, I am now going to look at this question from a constitutional point of view. So far as I am aware there is no other

Constitution where such elaborate provision with respect to the elections and its details are made. Even the Canadian Election Act on the basis of which the present amendment and the subsequent amendments which are to follow are drafted, is an Act of the Canadian Legislature, and that too, as I said yesterday, as far as I can find out from the records available to me, applicable only to the Dominion Parliament in Canada. In spite of all efforts, I could not get a copy of it either in the Legislative Library or this library. All the same, from the documents available, I am convinced. My point is whether really it is necessary or desirable that all these elaborate details about the method of election, about the Election Commission, etc., are necessary to be included in the Constitution. While, as we could find, there is some justification probably from what must have come to the notice of the Drafting Committee and in view of the work which is now proceeding for the preparation for the elections, that they want some provision of this kind to be made, the best remedy would be not to include them in the Constitution here, but to get an Act passed by the legislative section of the Constituent Assembly. I am told it is likely to meet in September next and it would not have mattered if an Act on the lines of the Canadian Election Act was passed by the Central Legislature. It is not desirable that it should be provided for in the Constitution which is for all time to come. We do not know what conditions may prevail after ten or twenty years. From what is happening in some parts of the country, it is not desirable that our constitution should be burdened with all these details. I would therefore still appeal-probably it may be without much effect-that all these thing and the subsequent provisions which are to follow could have more appropriately found a place in the Act to be passed by the Central Legislature. We have our own legislature even now and that could have been used.

Sir, I do not think it is desirable in matters of such consequence we should try to depart from time to time from what we decided earlier, unless there were some very cogent reasons as to why that decision should be reversed after a few months' time. As I said, so far as I can see, article 289 (2) is quite enough for the purpose. Even under article 289 (2) we can appoint not merely some official of the Government as Election Commissioners, but people of the position of High Court Judges; we can make them permanent; we can make them as independent as we are trying to make them permanent; we can make them as independent as we are trying to make them in the case of the Central Commission. Even under the Government of India Act, 1935, which certainly did not contemplate so much of a Federal Government as a type of Government which was to some extent more unitary than otherwise, provision for election was contained in section 291. It says: "In so far as provision with respect to the matters hereinafter mentioned is not made by this act, His Majesty in Council may from time to time make provision with respect to those matters or any of them.........the conduct of elections under this Act and the methods of voting thereat etc. " Even then, practically it was left to the provincial Governments. I do not see any reason why we should make provision for all these thing in the constitution itself and as far as I have been able to ascertain, no other constitution contains a provision of this nature.

I have therefore to make one or two concrete suggestions. We may keep article 289 as it is. We may supplement it by an Act of the Central Legislature for making provision with respect to all other matters which are now tried to put in this Constitution, as to what should be the status of these Regional and other Commissioners when they are appointed, whether they should be independent men of the position of High Court Judges, how they should be removed and all these things. I agree that they should be free from influence of the executive. All that we can easily entrust at least to the present Central Legislature.

Finally, I have to make an appeal that it is not yet too late in the day when we should really seriously consider whether article 289 (2) is not enough. As I have already stated, the amendment takes away to my mind not only the last vestige of provincial autonomy, but actually displays a distrust of our people in provinces, down from the Governor nominated by the President to the smallest local authority. I do not think there is any justification for an attitude of this type. Therefore, I suggest that we should not try to incorporate all these things in the Constitution itself.

Shri R. K. Sidhva (C. P. & Berar : General) : Mr. President, Sir, I consider this article in the Constitution as one of the important articles as far as elections are concerned. I do not think that there are two opinions either in this House or outside the House that elections should be fair, pure, honest and impartial. If that is the view, I am sure it could be achieved only by an impartial agency as has been contemplated in this article. We want the elections to above-board. Any machinery that is to be set up should be quite independent, free from any influence from any agency, executive or anybody. Therefore, Sir, I whole-heartedly welcome the article that has been proposed by my honourable Fiend Dr. Ambedkar.

Sir, I do feel that even this article does not go as far as is necessary in the matter of perfection of elections is concerned. I will show you presently that there is some defect in this article also. With all that, I feel that every effort has been made in this article to achieve the object which we all are anxious to achieve.

It has been stated, why do you encroach upon the rights of the provinces by entrusting this work to a Special Commission? Now, Sir, I fail to understand how the question of encroaching upon the right of the provinces arises at all. This Commission will not run the elections for the provincial legislatures only, but it will run the elections for the elections for the provincial legislatures only, but it will run the elections for the Central Legislature also. If, it encroaches on the rights of the provinces, it encroaches on the rights of the centre also, and therefore it is unfair to say that it encroaches upon the rights of the provinces.

Under this article, a machinery has been set up for the election purposes. While it has been made independent of the executive for purposes of administration, clause (5) says that the staff required for election work may be borrowed from provinces. Herein lies the defect, which I said makes the scheme imperfect. If you want to make the scheme perfect, you should not borrow any staff from the provinces. Though during the period of election, the staff would be under control of the Commission, It will be only for a temporary period. They will be permanent people responsible to the executive and if the executive wants to play mischief, it can issue secret instructions to that staff to act according to their behests. The staff may feel that their permanent duty lay with the executive, that the work with the Commission was for a short period and they would thus carry out the fiat or behest of the permanent officials. Therefore, Sir, I would have preferred all the staff to be also recruited from outside but I considered myself as to what will be the effect of it. It will require an army of men. Those persons who have seen the elections being run and those who are interested in it know that do run the elections of the whole country they will have to recruit a number of men, a large army of men. It will be very expensive; therefore, although to that extent it is imperfect, I accept it for the reason that it is nearer to perfection. If we have to recruit a new staff it will be prohibitive as far as expenditure is concerned and it will be a new untrained staff and probably it will not be administratively as effective as we would expect it to be. Another provision is as regards the permanency of the Commission. It has been suggested why you incur so much expenditure in providing for a permanent Commissions. I have some experience of elections of the Karachi Municipal corporation both as the Mayor and Chairman of the Standing Committee. There is a provision in Karachi Municipal Act that there shall be a permanent staff and in accordance with that since ten years we have introduced this permanently and the elections have been fair and perfect although compared with Karachi the number of voters there being negligible but the impersonation and the false votes have been completely removed by that method which we have introduced. I am positive that with the permanent Commission that we are going to establish, we are going to remove all these defects and it is incorrect to state that this Commission will not have any work after the general election is over. We shall have now about 4,000 members in all the provinces and there will be bye-elections. Surely every month there will be two or three elections-some will die, some will be promoted to high offices-some will go here and there. In this Constituent Assembly during the short period we have had a number of bye-elections although we had nothing to do with them, but in the places from which they have come there have been a number of elections. There for, apart from the necessity and fairness, this Commission will have ample work. Apart from that if the Commission is permanent, what will it do? Periodically it will examine the electoral rolls and from the statistics of those provinces those who are dead they will remove those names and will bring the electoral rolls up to date as far as possible. An electoral rolls are prepared, 50 per cent. of them are defective. Some are dead and their names are intentionally put in by a particular party who wants to run the elections and wants to put in names of their own choice; I have heard people living in the cities trying to influence by mixing up with the executive. I can tell you that from my own personal experience and I feel that if we were to have a perfect electoral roll- and electoral roll is the principal thing in an election-I am sire we must have an independent Commission and if we establish a Permanent Commission we shall certainly have a permanent roll and a very good electoral roll. I have no doubt in my mind about that and therefore though you say that it will be an expensive thing and it is not a necessity, I strongly say from my experience that this Commission is very necessary under the circumstances that I have mentioned.

Now coming to the tribunal, it will be necessary for the election petitions or those who have to make any application for the election, to have a Tribunal. I have also certain experience of tribunals. Tribunals have been appointed by the Governors in the past and they have appointed tribunals, at the instance of the Executive, of the favourites and they have never acted impartially. I therefore suggest that the tribunal should consist of judges of superior courts to whom the election petitions of the election should go. I am opposed to such cases being entrusted to any kind of tribunals. It will mar the very purpose and the very object for which we are striving-to have our elections pure and fair-it will frustrate that very object, if in the tribunal that will be appointed, some kind of mischief is made. In England also-I might state- the Constitutional law of the British Commonwealth provides for entrusting this work to superior courts. I therefore suggest that although nothing could be provided in this Constitution, I do not desire that the Constitution should be burdened with all this-but in the Act that will be made-the Election Act-wherein many things are required to be put, e.g., the secret ballot boxes etc.-I suggest to Dr. Ambedkar to bear that in mind that when the Parliament Act is made it must be made cleat that the tribunal's appointment should not be left to the President or anybody-I do not want hereafter any kind of trickery that was played in the past should be played hereafter. With all that, I feel that the permanent superior judiciary alone can fairly and impartially adjudicate in such disputes and they will command the confidence of the public. Those who will be appointed from the public men or some lawyers may be best lawyers but they will be temporary men and would be liable to influence. If the tribunal does not consist of responsible permanent men I am sure these tribunal will be of no effect. My Friend Mr. Pataskar desired tat why burden the Constitution with scheme, the rules may be made; but I can surely and safely tell him that if we have not such an article in our Constitution our very purpose of making our elections pure will be frustrated; it is, therefore, necessary that it should be provided here. I do not want this to go into the Election Act. I really wish even some of the other provisions e.g. the secret ballot-box could also be provided in the Constitution which is very essential for an election. The whole thing depends upon the election for the future constituencies and if we do not make this provision in the Constitution and leave it to Parliament to be made, it will be running a great risk. Under these circumstances I whole-heartedly welcome this article and strongly support it.

Shri Kuladhar Chaliha (Assam: General) : Mr. President, I have heard with great attention the arguments advanced by Dr. Ambedkar who is the Constitutional maneuver and whose industry and diligence is a wonder to all of us. Yet, his arguments have not brought that conviction which ordinarily they bring. His main objection is-he first argued that he wanted it to be inserted in the Fundamental Rights but as it was said that he wanted separate provision for this, so this article has been added in order to safeguard the interest of the electorate-he thought that a body outside the Executive should be there to conduct the elections; but what is that body outside the Executive? It is the President who will select the Chief Election Commissioner and he is a party-man whatever it may be and will have the same prejudices and same bias towards his own party-man as anyone else and therefore that argument does not hold very good. Secondly, he says and he admits that it is a radical change I do not see any reason why this radical change is brought forward. Has he been able to give us examples of corruption and nepotism in case of election tribunals in the provinces? No instance has been given of abuse of power by the election tribunals appointed by the Governors in the provinces. In spite of that he wants a radical change. Of course radical illness requires a radical remedy, but Dr. Ambedkar has not been able to give one single instance of corruption or abuse or powers by these election tribunals. On the contrary we know that, as a result of the findings of an election tribunal in Sing, Pir Ilahi Bux was removed by his own party men, which shows that our people have the capacity to be impartial. I see no reason why this radical change should be necessary.

Then it said that there are minorities in the provinces who require protection. But should we keep them in haughty isolation and not pave the way for harmonious relations with the general population? By doing this you will be creating big problems for these provinces. It is said that they are racially and linguistically different. But will you prepetuate these differences or should you try to remove them? I submit that no justification has been offered for this radical change. Dr. Ambedkar has brought this forward on the analogy of the Canadian Act of 1920. But there they have a small population as against our 340 millions, and one Election Commission would hardly do for this country. In spite of there being Regional Commissioners this Election Commission would not be able to realise the feelings of the people of different parts of the country. They would not know what a man in Madras would do and what a man in Assam would do. I submit that this thing should not be taken out of the provinces. If you suspect the provinces and take greater power for the centre it will only lead to undesirable results. If you cannot trust men like Messrs. Pant, Kher and Shukla and the men working under them you will hardly make a success of democracy. You are doing something which will have a disintegrating effect and will accentuate differences instead of solving them. If you take too much power for the Centre the provinces will try to break away from you. How can a man in Madras understand the feelings the sentiments of a man in Assam or Bengal? You seem to think that all the best qualities are possessed by people here in the Centre. But the provinces charge you with taking too much power and reducing them to a municipal body without any initiative left in them. You think you posses better qualities than the men in the provinces, but I know there are people there who are much better than you are. If you cannot trust the honesty of your own individuals you can never make a success of democracy. You are always suspicious and think that the provinces will be unjust to the minorities. But if they are kept aloof and always under the protection of the President or the central executive, they will never be able to develop their own virtues, and you will only be encouraging disturbance and rebellions. It has been suggested that the Scheduled class people are suspicious about the impartiality of the provinces. But they are our own people and they can be just as fair and impartial as men in the Centre. Why should you think that you have developed the virtue of impartiality which no one else possesses? Sir, I fail to see why this provision should be sought to be embodied in the Constitution.

Sir, the Governor is appointed by the Centre and he will form election tribunals, as has been done in the past. In spite of Mr. Sidhva's assertion I must say that no case of partiality has been proved against any of these tribunals. In a case in which I was interested I know that even when the Congress was in the bad books of Government, the tribunal decided in favour of the Congress, although the candidate was opposed by Rai Bahadurs and other big men. That shows that they can be impartial. Why should you condemn you own men as partial, unjust and incapable of being honest? If we cannot trust our own people we are not worthy of our independence, Sir, an injustice is sought to be done to the provinces and they are needlessly suspected, and I therefore oppose this proposal.

Pandit Hirday Nath Kunzru (United Provinces: General) : Sir, my honourable Friend Dr. Ambedkar moved a new article yesterday in place of article 289 as contained in the Draft Constitution. The article deals with a very important matter and departs radically from the corresponding article in the important matter and departs radically from the corresponding article in the Draft Constitution. Nevertheless he contented himself with moving his amendment without explaining in the smallest measures the reasons why the new Draft had been proposed. When I pointed out it was not fair to the House that an article dealing with a very important matter should be placed before the House without a full explanation of its provisions he felt the need for defending himself. But finding that he was in a very difficult position he became reckless and said I had asked for an explanation only because I had not read the amendment. It was obvious that this irresponsible statement of his did not satisfy the House and he was therefore compelled to explain the differences between the new Draft and the old Draft.

Sir, several points arise in connection with this question. The most important question is one of principle. Is it right that in a matter of this kind the provincial Governments which are being given full responsible government should be deprived of all power? I shall not dilate on this subject because it has been dealt with very ably and fully by our honourable Friend Mr. Pataskar. Dr. Ambedkar defended the new procedure which makes the Central Government responsible for superintendence, control and guidance in all matters relating to the preparation of the electoral rolls and the conduct of the elections on the ground that complaints had been received from some provinces that members belonging to racial, linguistic, or cultural minorities were being excluded, under ministerial instructions from the lists of voters. I do not know to what extent the complaints received by him or by the Government of India have been investigated and found to be correct. Supposing that they have been found to be correct, one has to ask oneself why this elaborate Constitution is being framed. If we cannot expect common honesty from persons occupying the highest positions in the discharge if their duties, the foundation for responsible government is wanting, and the outlook for the future is indeed gloomy. I do not know of any federal Constitution in which the Centre is charged with the duty of getting the electoral rolls prepared and the elections held fairly and without prejudice to any minority-there may be some constitution in which such a provision exists, but I am not aware of it. In all the Probability ours will be only federal or quasi-federal constitution in which the provinces will be excluded from all share in the preparation of the electoral rolls and other ancillary matters except in the preparation of the electoral rolls and other ancillary matters except in so far as their help is needed by the Election Commissioners appointed by the President.

Even granting however, Sir, that there is need for taking the control of elections out of the hands of the provincial Governments we have to see whether the new Draft contains the necessary safeguards. It may be right to curtail the political power of the Provinces; but is there no danger, if the article is left as it is, that the political prejudice of the Central Government may prevail where otherwise the political prejudices of the provincial Government might have prevailed? Everything in the new Draft is left to the President; the appointment of the Election Commission will be made by the President; he will appoint the Chief Election Commissioner and decide how many Election Commissioners should be appointed; he will decide the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners that might have to be appointed. Again, while it is provided that the Chief Election Commissioner should not be removed except in the same manner as a Judge of the Supreme Court, the removal of the other Election Commissioners is left in the hands of the President. He can remove any Commissioner he likes in consultation with the Chief Election Commissioner. Clause (4) of the article which deals with this matter is so important that I think it is desirable that I should read it out to the House. It says.

"The conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine :

> Provided that the Chief Election Commissioner shall not be removed from office except in like manner and on the like grounds as a judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment.
>
> Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner. "

I find, Sir, that I made a mistake when I said that the other Election Commissioners and the Regional Commissioners could be removed in consultation with the Chief Election Commissioner. They can be removed only on the recommendation of the Chief Election Commissioner. Here two things are noticeable: the first is that it is only the Chief Election Commissioner that can feel that he can discharge his duties without the slightest fear of incurring the displeasure of the executive, and the second is that the removal of the other Election Commissioners will depend on the recommendations of one man only, namely the Chief Election Commissioner. However responsible he may be, it seems to me very undesirable that the removal of his colleagues who will occupy positions as responsible as those of judges of the Supreme Court should depend on the opinion of the man. We are anxious, Sir, that the preparation of the electoral rolls and the conduct of elections should be entrusted to people who are free from political bias and whose impartially can be relied upon in all circumstances. But, by leaving a great deal of power in the hands of the President we have given room for the exercise of political influence in the appointment of the Chief Election Commissioner and the other Election Commissioners and officers by the Central Government. The Chief Election Commissioners will have to be appointed on the advice of the Prime Minister, and, if the Prime Minister suggests the appointment of a party-man the President will have no option but to accept the Prime Minister's nominee, however unsuitable he may be on public grounds. (*Interruption*) . Somebody asked me why it should be so. As full responsible Government will prevail at the Centre, the President cannot be expected to act in any matter at his discretion. He can only act on the advice of the Ministry and, when, in matters of patronage, he receives the recommendations of the Prime Minister, he cannot, if he wants to act as a constitutional Head of the Republic, refuse to accept them. I think, Sir, therefore, that the Draft placed before us by Dr. Ambedkar has to be modified in several respects, so that the Election Commissioners may in reality, consist of impartial persons and the Election Commissioners may be able to discharge their responsible duties fearlessly.

My remedy for the defects that I have pointed out is that Parliament should be authorised to make provision for these matters by law. Again, Sir, this article does not lay down the qualifications of persons who are chosen as Chief Election Commissioners or as Election Commissioners. And, as I have already pointed out, in the matter of removal, the Election Commissioners are not on the same footing as the Chief Election Commissioner. I feel, Sir, that the opinion that I have places before the House, was at one time or other the opinion of Dr. Ambedkar too. We have in the List of Amendments, amendment No. 103 which has not been moved by Dr. Ambedkar, but has been given notice of by him. Honourable Members who have read this amendment will have noticed that clause (2) provides that a 'member of the Commission shall only be removed from office in like manner and on the like grounds as a judge of the Supreme Court, and the conditions of service of a member of the Commission shall not be varied to his disadvantage after his appointment'. It will be clear therefore that the suggestion that I have made is in accord with the better judgment of Dr. Ambedkar which, unfortunately, has not been allowed to prevail.

I know, Sir, that Dr. Ambedkar told us yesterday that it might be unnecessary to have permanent Election Commissioners and that all that might be required might be to appoint Election Commissioners when there is work enough for them to do. In such case obviously the procedure relating to the removal of judges of the Supreme Court cannot be applied in the case of Election Commissioners. This is true, but then there is no reason why the whole matter should be left in the hands of the President, and why the conditions and tenure of service of the Election Commissioners should be determined by rule by him. These, too, should be determined by law made by Parliament.

Again, Sir, we have to consider the position of Regional Commissioners who may have to be appointed in the provinces in order to help the Election Commission in carrying out its duties honestly and efficiently. It is obvious that so long as these officers are holding their offices they will be carrying out highly responsible duties. It will depend on them primarily whether the preparation of the electoral rolls and all matters connected with the conduct of the elections gives satisfaction to the public or not. Now, in the Draft which was not placed by him before the House Dr. Ambedkar provided with regard to the Regional Commissioners and the Returning Officers, etc., that no such authority or officer would be removed except by order of the President. As I have already pointed out a change has been made now and their removal has been made to depend on the recommendation of the Chief Election Commissioner. This has been done presumably because the Election Commissioners would be permanent officers and if there is only one permanent officer, the law cannot obviously require that the removal of the Regional Commissioners and the Returning Officers should depend on the decision of the Commissioners, as a whole. But for this very reason, Sir, the matter ought not to be left to the sweet will of the President, in reality the Prime Minister of the day, but should be determined by law.

My honourable Friend, Professor Shibban Lal Saksena, moved a number of amendment yesterday, Sir, with regard to the new Draft placed before the House by Dr. Ambedkar. It may not be practicable to accept some of them, but I think that he has done a public service by drawing the attention of the House to the glaring defects in the Draft that we are considering. I think it is the duty of my honourable friend, Dr. Ambedkar, to consider the matter carefully and to provide such safeguards as will give general satisfaction by ensuring that our electoral machinery will be free not merely from provincial political influences but also from Central political influences. We are going in for democracy based on adult franchise. It is necessary therefore that every possible step should be taken to ensure the fair working of the electoral machinery. If the electoral machinery is defective or is not efficient or is worked by people whose integrity cannot be depended upon, democracy will be poisoned at the source; nay, people, instead of learning from elections how they should exercise their, vote how by a judicious use of their vote they can bring about changes in the Constitution and reforms in the administration, will learn only how parties based on intrigues can be formed and what unfair methods they can adopt to secure what they want.

Mr. President : I think that Members understand that we will have to finish the agenda today. Otherwise we may have to sit tomorrow.

Mr. Naziruddin Ahmad (West Bengal: Muslim) : Mr. President, Sir, I have come here to support this article. At the beginning when I came to this Assembly for the first time, I thought that the Provinces should be made strong and the Centre to that extent must yield. But after a considerable amount of experience and on prolonged consideration of what is happening in the Provinces and in the State, I am now of the opinion that for many years to come the Centre must take charge of all important matters affecting the general well-being of the country and encroach on the Provincial field. Election is a most important item in a democratic set up and it is very necessary that it should be controlled and supervised by a very competent, independent and impartial body. The way in which some of the Provinces are proceeding shows that the Provinces are rent by party factions and it will always be the desire of the party, or the faction in power for the time being, to appoint election tribunals and officers of their own choice with a view to control or manipulate the elections. The result will be that election tribunals and officers will not be free from corruption and partiality. It is for this reason that I welcome the move by the Centre to control elections, so that thereby the impartiality and efficiency of the election machine could be ensured. We have had the experience of West Bengal and other Provinces. West Bengal is rent by party faction. Even in the Congress ranks in Calcutta and in the districts there are several groups and factions accusing one another of habitual corruption and the like. They are fighting against one another in a most unseemly fashion to the detriment of the general well-being of the country. This is also happening in some of the State. We have the unseemly quarrel in the Greater Rajasthan State and also in some other States. If we do not want the Provinces and the States to descend into chaos and disorder, the first thing that we should do is to control the election, not to interfere with the policies and activities of the different parties, but just to ensure impartiality and efficiency in the conduct of elections. The most important duty of the Commission would be to appoint Election officers upon whose efficiency, integrity and independence much will depend, and I believe that the Central control of the these elections will be welcome in serious quarters. The secrecy of the ballot box, as has been pointed out by one of the speakers and is well-known, is a very important matter in an election as fostering freedom of the vote, and this secrecy must be thoroughly and effectively guarded. We hear allegations and counter allegations that in the recent South-Calcutta election, the secrecy of the ballot box and the integrity of the ballot papers were violated. I do not know what truth there may be in these allegations, but they have a had odour in themselves. I believe that if these matters are controlled by the Centre, these tendencies to make allegations and counter-allegations of this type would be removed. The officers who are to be appointed to conduct these elections should be above all suspicion and should be selected just to avoid provincial cliques and parties. Sir, I do not wish to take up further time of the House. I accord my humble and whole-hearted support to this article.

Shri K. M. Munshi (Bombay : General) : Mr. President, Sir, I rise to support the amendment No. 99 moved by my honourable Friend, Dr. Ambedkar. This amendment has been subjected to two files, one by my honourable Friend, Pandit Kunzru, on the ground that the amendment does not go far enough, that it does not make the Election Commission sufficiently independent, that the Central Government could influence it in a manner prejudicial to fair elections. That is one ground. The other ground, of which the exponents have been my honourable Friend Mr. Pataskar and Kuladhar Chaliha from Assam, put forward, is that this is a trespass on trespass on provincial autonomy, to put it shortly. I will deal with these two points separately.

Sir, the amendment which has finally emerged from the Drafting Committee makers it clear that neither the Central Government nor the provincial Governments will have anything to do with the election. The Chief Election Commissioner, as the House will find, is practically independent. No doubt he is appointed by the President, that is, the Central Government. There can be no other authority, no higher authority in India than the President for appointing this Tribunal. you cannot omit this important thing.

The next argument against the amendment is that this amendment departs from the old amendment No. 103 which was to be moved on behalf of the Drafting Committee, under which the Commissioners other than the Chief Election commissioners were not removable except in the manner in which a High Court Judge can be removed. Perfectly right. But the change has been made for a very good reason. Between two election, normally there would be a period of five years. We cannot have an Election Commission sitting all the time during those five years doing nothing. The Chief Election Commissioner will continue to be a whole-time officer performing the duties of his office and looking after the work from day to day, but when major elections take place in the country, either Provincial or Central, the

Commission must be enlarged to cope with the work. More members therefore have to be added to the Commission. They are no doubt to be appointed by the President, but as the House will find, they are to be appointed from time to time. Once they are appointed for a particular period they are not removable at the will of the President. Therefore, to that extent their independence is ensured. So there is no reason to believe that these temporary Election Commissioners will not have the necessary measure of independence. Any way the Chief Election Commissioner an independent officer, will be the Chairman and being a permanent officer will have naturally directing and supervising power over the whole Commission. Therefore, it is not correct to say that independence of the Commission is taken away to any extent.

We must remember one thing, that after all an election department is not like a judiciary, a quasi-independent organ of Government. It is the duty and the function of the Government of the day to hold the elections. The huge electorates which we are putting up now, the voting list which will run into several crores-all these must necessarily require a large army of election officers, of clerks, of persons to control the booths and all the rest of them. Now all this army cannot be set up as a machinery independent of Government. It can only be provided by the Central Government, by the Provincial Government or by the local authorities as now. It is not possible nor advisable to have a kingdom within a kingdom, so that the election matters could be left to an entirely independent organ of the Government. A machinery, so independent, cannot be allowed to sit as a kind of Super-Government to decide which Government shall come into power. There will be great political danger if the Election Tribunal becomes such a political power in the country. Not only it should preserve its independence, but it must retain impartiality. Therefore, the Election Commission must remain to a large extent an ally of the Government; not only that, but it must, to a considerable extent, be subsidiary to Government except in regard to the discharge of the functions allotted to it by law.

Some reference has been made that the powers of the Parliament have not been preserved. I may point out that amendment No. 123 which is also going to be moved by Dr. Ambedkar gives to the Parliament power to make provisions with respect to elections to legislatures, subject, of course to the Provisions of this Constitution. Similarly Sir, you find amendment No. 128 which gives to a State Legislature the power to make provisions with respect to elections to such Legislatures. Therefore, the Parliament as well as the State Legislatures are free to make all provisions with regard to election, subject, of course, to this particular amendment, namely, the superintendence, direction and control of the Election Tribunal. Today, for instance, the elections are controlled by officers appointed either by the Center or the Provinces as the case may be. What is now intended is that they should not be subjected to the day-to-day influence of the Government nor should they be completely independent of Government, and therefore a sort of compromise has been made between the two positions; but I agree with my honourable Friend, Pandit Kunzru that for the sake of clarity, at any rate, to allay any doubts clause (2) requires a little amendment. At the beginning of clause (2) the following words may be added; " subject to the provisions of law made in this behalf by Parliament. " Similarly in clause (4) also where the conditions of service and tenure of office of the Election Commissioners and Regional Commissioners are prescribed, it will be proper to have words to this effect; " subject to the provisions made by Parliament in that behalf. " That, of course, would follow from amendment No. 123, but we do not want any doubt to be on this point, and therefore, it would be better if these words are added to give Parliamentary control over the terms of service and the tenure.

Shri H. V. Kamath : How will you insert those words in the amendment?

Shri K. M. Munshi : I have no doubt in my mind that Dr. Ambedkar will accept my suggestion and move these amendments.

The question was raised with regard to the qualification of the Regional Commissioners. The same could easily be provided by parliamentary legislation either under article 123 or under the new phrase with I submit should be added to clauses (2) and (4) . So in this way the Parliament's power over these details would be secured. This amendment, therefore, maintains impartiality and independence of the Election Commission so far as it is necessary in the circumstances and also supremacy of the Parliament over the details.

Now I come to the other part of criticism. And, that is the argument that this provision whittles down or takes away what is called provincial autonomy. This argument has the knack of appearing again and again in respect of almost every article, and I think it is high time that those honourable Members of the House who put it forward reconcile themselves to the position that the House has taken the line more suited to the country rather then the doctrinaire views of theoretical writers on federalism. Dr. Ambedkar in the opening speech has made it clear that the idea an Election Commission was accepted as far back as January or February 1947, when even the question of the partition of the country had not become a settled fact. The Fundamental Rights Committee put forward this suggestion. It was unanimously accepted by the Advisory Committee and again it was accepted unanimously by the House. Therefore, it must be treated as the opinion of the House, and the country as a whole that matters of election must be taken out of the purview of the Centre and the provinces with a view to meet the realities of the situation. That being so, the only other question is as to how this should be done.

With regard to the precedent, reference has already been made to section 19 of the Dominion Elections Act of Canada. This Act lays down that for the whole of Canada, a Chief Electoral Officer, not a Commission as we have envisaged, will superintend, control and direct all elections. His tenure of office is exactly the same as we have adopted here for the Chief Election Commissioner.

Another argument put forward in the course of this debate was that this is undemocratic. I fail to understand how democracy is affected by this provision. Let us analyse the position. This Constituent Assemble, if it lays down a Constitution for the country, is nothing else but an instrument of the sovereign people of India, not the different people of the provinces meeting together in a confederation for the purpose of evolving Constitution. Let us not forget this main fact. It is open to the House to look at the conditions in the country, to look at the realities of the situation and to give some power to the Centre, to give other power to the provinces, to transfer power from one to the other. That does not take away from either the representative character of the Constituent Assembly or the democratic power of he sovereign Indian people. The House cannot be tied down by any theoretical considerations in this matter. In the debate on article 226 also, I found the same kind of argument advanced. But we must realise once for all that it is the Constituent Assembly as the instrument of the sovereign people of India which is one unit that is going to decide what are going to be the functions of the Centre and the provisions in view of the actual condition that exist in this country. Now, Sir, if that is so, the sovereign people, and the Constituent Assembly as their agent, is bound to maintain the purity of elections in a practical manner. That can only be done by the establishment of the machinery envisaged in this amendment. To say that it is undemocratic is entirely baseless. If there is going to be democracy, the sovereign people of India must be in a position to elect their own representatives in a manner which is above suspicion, above partiality. Corrupt practices do not necessarily apply to the candidates. There may be corrupt practices by a government of the day. Therefore, it is necessary that we should not consider this question from the point of view of any theoretical provincial autonomy, a point which is being trotted out again and again in this House.

My Honourable Friend Mr. Kuladhar Chaliha coming Assam said that this affects the power of the provincial Governments. He further put forward the point of view that in point of efficiency and integrity the Centre is no better then the provinces. He said if I heard aright that the provinces were better in this respect than the Centre. If that be so, I wish the sooner we wound up our democratic business the better. My friend coming from Assam ought to know that complaints after complaints have been received from Assam that ingenious devices are found to shut out people who have settled in Assam from the electoral rolls. The complaints may be wrong; I am not here judging them. But the complaints are there..........

Shri Kuladhar Chaliha: I question that.

Shri K. M. Munshi : The complaints are known to every department that is concerned with them. The fact that such complaints come is the reason why provincial Governments cannot be trusted, in the condition in which we are, to be as impartial in the elections as they should be.

Shri Kuladhar Chaliha : I seriously protest against this remark.

Mr. President : There is no need introduce heat in the discussion. We are only discussing a purely constitutional question.

Shri K. M. Munshi : I am not introducing heat. My honourable Friend said that the provinces are much superior to the Centre or this Constituent Assembly. I reminded him that coming as a leader from Assam, it was a surprising remark. It may come from some other province; that is a different matter.

As my honourable Friend Mr. Sidhva said, in the past several Election Tribunals were appointed by Governments of the provinces. They were not Congress Governments; they were appointed by other Governments. They were appointed to secure a particular object. As honourable Members know, one leading Member of this House, who was the head of the Congress organisation of his province, was victimised in the past regime and debarred from being a Member of the legislatures. It is very easy for a Premier to manipulate an Election Tribunal and thus remove a strong rival for five or seven years from the scene. It is therefore necessary that these matters should be placed beyond the reach of temporary passions in the provinces.

Sir, one thing more. We must realise-and this is general answer that I propose to give to my honourable Friends, Mr. Pataskar and Mr. Chaliha-we can only consider the problems before us from the conditions as they exist today. We cannot forget the fact that some ten or eleven of the Indian States which are not accustomed even to the little measure of democratic life which is enjoyed by the provinces are coming into the Union on equal terms. We cannot ignore the fact that there are corners in India where provincial autonomy requires to be placed on a better footing. In these conditions, it is but natural, apart from world conditions, that the Centre should have a larger measure of control over the affairs which affect the national existence as a whole. Even in America in which it was not a question of the Centre decentralising itself, but thirteen, independent States coming together first in a sort of confederacy, and then in a federation, what do we find? After the depression of 1929, agriculture, education, industry, unemployment, insecurity, all passed gradually by various means under the control or influence of the Centre. There, the Constitution is water-tight and they had to go round and round in order to achieve this result. There cannot be smaller units than a nation today; even a nation is a small unit in the light of the international situation. This idea that provincial autonomy is the inherent right of the Provinces, is illusory. Charles Merriam one of the leading political thinkers in America in his book called "The Need for Constitutional Reform", with reference to the States of U.S.A., says, " Most State do not now correspond to economic and social unities and their position as units of organisation and representation may be and has been seriously challenged." In our country the situation is different. From the Councils Act of 1833 till the Government of India Act of 1935, there has been central control over the provinces and it has proved wholesome. The strength, the power and the unity of public life which India has developed during the last one hundred years is mainly due to centralised administration of the country. I would warn the Members how are still harping on the same subject to remember one supreme fact in Indian history that the glorious days of India were only the days, whether under the Mauryas or the Moghuls, when there was a strong central authority in the country, and the most tragic days were those when the central authority was dismembered by the provinces trying to resist it. We do not want to repeat that fatal mistake. We want that the provincial sphere should be kept intact, that they should enjoy a large measure of autonomy but only subject to national power. When national danger, comes, we must realise that the Centre alone can step in and safeguard against the chaos which would otherwise follow. I therefore submit that this argument about Provincial Autonomy has no a *priori* theoretical validity. We have to judge every subject or matter from the point of view of what the existing conditions are and how best we can adjust the controls, either Central or Provincial, to secure maximum national efficiency. From that point of view I submit the amendment moved by my Friend Dr. Ambedkar is a good one, a very good one and a very wholesome one for the whole country.

The Honourable Shri Satyanarayan Sinha (Bihar: General): Sir, the question be now put.

Mr. President: There is a closure motion. I would like to take the sense of the House.

The question is :

"That the question may now be put."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar : (Bombay: General): Mr. President, Sir, this amendment of mine has been subjected to criticism from various points of view. But in my reply I do not propose to spread myself over all the points that have been raised in the course of the debate. I propose to confine myself to the points raised by my Friend Professor Shibban Lal Saksena and emphasized by my Friend Pandit Hirday Nath Kunzru. According to the amendment moved by my Friend Professor Saksena there are really two points which require our consideration. The one point is with regard to the appointment of the Commissioner to this Election Commission and the second relates to the removal of the Election Commissioner. So far as the question of removal is concerned, I personally do not think that any change is necessary in the amendment which I have proposed, a the House will see that so far as the removal of the members of the Election Commission is concerned the Chief Commissioner is placed on the same footings as the Judges of the Supreme Court. And I do not know that there exist any measure of greater security in any other constitution which is better than the one we have provided for in the proviso at clause (4).

With regard to the other Commissioners the Provision is that, while the power is left the President to remove them, that power is subjected to a very important limitation, *viz.*, than in the matter of removal of the other Commissioners, the President can only act on the recommendation of the Chief Election Commissioner. My contention therefore is, so far as the question of removal is concerned, the provision which are incorporated in my amendment are adequate and nothing more is necessary for that purpose.

Now with regard to the question of appointment I must confess that there is a great deal of force in what my Friend Professor Saksena said that there is no use making the tenure of the Election Commissioner a fixed and secure tenure if there is no provision in the Constitution to prevent either a fool or a knave or a person who is likely to be under the thumb of the Executive. My Provision---I must admit--does not contain anything to provide against nomination of an unfit person to the post of the Chief Election Commissioner or the other Election Commissioner. I do want to confess that this is a very important question and it has given me a great deal of headache and I have no doubt about it that it is going to give this House a great deal of headache. In the U.S.A. they have solved this question by the provision contained in article 2 Section (2) of their Constitution whereby certain appointments which are specified in Section (2) of article 2 cannot be made by the President without the concurrence of the Senate; so that so far as the power of appointment is concerned, although it is vested in the President it is subject to a check by the Senate so that the Senate may, at the time when any particular name is proposed, make enquiries and satisfy itself that the person proposed is a proper person. But it must also be realised that that is a very dilatory process, a very difficult process. Parliament may not be meeting at the time when the appointment is made and the appointment must be made at once without waiting. Secondly, the American practice is likely and in fact does introduce political considerations in the making of appointments. Consequently, while I think that the provisions contained in the American Constitution is a very salutary check upon the extravagance of the President in making his appointments, it is likely to create administrative difficulties and I am therefore hesitating whether I should at a later stage recommend the adoption of the American provisions in our Constitution. The Drafting Committee had paid considerable attention to this question because as I said it is going, to be one of our greatest headaches and as a *via media* it was thought that if this Assembly would give or enact what is called an Instrument of Instructions to the President and provide therein some machinery which it would be obligatory on the President to consult before making any appointment, I think the difficulties which are felt as resulting from the American Constitution may be obviated and the advantage which is contained therein may be secured. At this stage it is impossible for me to see or anticipate what attitude this House will take when the particular draft Instructions come before the House. If the House rejects the proposal of the Drafting Committee that there should be an Instrument of Instructions to the President which might include, among other things, a provision with regard to the making of appointments this problem would then be solved by that method. But, as I said, it is quite difficult for me to anticipate what may happen. Therefore in order to meet the criticism of my honourable Friend Professor Saksena, supported by the criticism of my honourable Friend Pandit Kunzru, I am prepared to make certain amendments in amendment No. 99. I am sorry I did not have time to circulate these amendments, but when I read them the House will know what I am proposing.

My first amendment is:

"That the words 'to be appointed by the President' at the end of clause (1) be deleted."

"In clause (2) in line 4, for the word 'appoint' substitute the word 'fix' after which insert the following:--

> "The appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the Provisions of any law made in this behalf by Parliament, be made by the President.'"

"The rest of the clause from the words 'when any other Election Commissioner is so appointed' etc., should be numbered clause (2a)."

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, on a point of order, new matter is being introduced which ought not to be allowed at this stage. Otherwise there will have to be another debate.

The Honourable Dr. B. R. Ambedkar : I hope the Chair will allow other Members to offer their views.

Mr. President: In that case I think the best course would be to postpone consideration of this article.

The Honourable Dr. B. R. Ambedkar : There amendments are quite inoffensive; they merely say that anything done should be subject to laws made by Parliament.

Shri T. T. Krishnamachari (Madras : General): I suggest that these amendments may be cyclostyled and circulated, and they may be taken up later on.

The Honourable Shri K. Santhanam (Madras : General): I suggest that these may be considered by the Drafting Committee. Even if they are merely technical we must have an opportunity of considering them.

The Honourable Dr. B. R. Ambedkar : These amendments have been brought after consultation with the Drafting Committee.

Shri T. T. Krishnamachari : The amendments merely say that the President's powers are subject to parliament legislation. They do not detract from the contents of the article and we need not be too finicky about the procedure at this stage.

Pandit Hirday Nath Kunzru : Even if there is to be further discussion, I think we should know how Dr. Ambedkar proposes to meet the difficulties that have been pointed out. He should therefore be allowed to put forward his suggestions.

Mr. President : That is why I allowed him to move these amendments. After they are moved we shall decide whether to discuss them now or at a later date.

Shri K. M. Munshi: The amendments only say that acts, done should be subject to the laws of Parliament. That is already covered by amendment 123.

Mr. President: Let the amendments be moved.

The Honourable Dr. B. R. Ambedkar : My next amendment is:

"That in the beginning of clause (4) the following words should be inserted:-

'subject to the provisions of any law made in this behalf by Parliament'."

The Honourable Shri K. Santhanam : Sir, this is a material amendment because the President's discretion may be fettered by parliamentary law.

Mr. President: I do not think any further discussion is necessary; let these be moved:

The Honourable Dr. B. R. Ambedkar : You cannot deal with a constitution on technical points. To many technicalities will destroy constitution-making.

Shri H. V. Kamath : Sir, you ruled some days ago that substantial amendments would be postponed.

Mr. President : If these are considered to be substantial amendments they will be held over. As there seems to be a large body of opinion in the House in favour of postponement, the discussion will be held over.

New Article 289-A

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That with reference to amendment No. 110 of List I (Fifth Week), for the proposed new article 289-A, the following article be substituted:-

No person to be ineligible for inclusion in, or to claim to be excluded from the electoral roll on grounds of religion, race, caste or sex.

289-A. There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House of the Legislature of a State and no person shall be ineligible for inclusion in, or claim to be excluded from, any such roll on grounds only of religion race, caste, sex or any of them."

Sir, the object of this is merely to give effect to the decision of the House that there shall hereafter be no separate electorates at all. As a matter of fact this clause in unnecessary because by later amendments we shall be deleting the provisions contained in the Draft Constitution which make provision for representations of Muslims, Sikhs, Anglo-Indians and so on. Consequently this is unnecessary. But it is the feeling that since we have taken a very important decision which practically nullifies the past it is better that the Constitution should in express terms state it. That is the reason why I have brought forward this amendment.

Mr. President : Do I take it that only for the purpose of discussion you have brought it up and that you do not want it to be passed?

The Honourable Dr. B. R. Ambedkar : No, Sir, not like that. I have moved the amendment. I was only giving the reasons why I have brought it up.

I shall move the other amendment also for inserting new article 289-B. I move:

"That for amendment No. 3087 of the List of Amendments, the following be substituted;-

"That after article 289-A, the following new article be inserted:-

Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.

289-B. The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that it to say, every citizen, who is not less than twenty-one years of age on such date as may be fixed in this behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.'"

Shri Brajeshwar Prasad (Bihar: General): Mr. President, Sir, I rise to oppose article 289-B. I am opposed to adult franchise on grounds both theoretical and practical. I am opposed to adult franchise because it is a gross violation of the tenets of democracy. Adult franchise presupposes that the electorate is enlightened. Where the electorate is not enlightened there cannot be parliamentary democracy.

Mr. President : Is that open to objection now? We have already passed article 149 in which it is expressly stated that the election shall be on the basis of adult suffrage. It was passed in the winter session.

Shri Brajeshwar Prasad: Sir, I will submit to your ruling. I was not present when that article was passed.

Mr. President : Then you cannot oppose it at this stage.

Shri T. T. Krishnamachari : This new article is actually redundant. It may be that the Drafting Committee will subsequently have to take it away.

Mr. President : That is what he has also said. When the time comes for rearranging the section it may not be necessary to have this section in this form. But it has been moved.

Shri T. T. Krishnamachari : The principle is one which has been accepted by the House.

Mr. President: That is what I say. The principle has already been accepted.

The question is:

"That with reference to amendment No. 110 of List I (Fifth Week), for the proposed new article 289-A, the following article be substituted:-

289-A. There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in, or claim to be excluded from, any such roll on grounds only on religion, race, caste, sex or any of them'."

No person to be ineligible for inclusion in, so to claim to be excluded form, the electoral roll on grounds of religion, race, caste or sex.

The amendment was adopted.

Mr. President : The question is:

"That article 298-A, as amended, stand part of the Constitution."

The motion was adopted.

Article 289-A, as amended. was added to the Constitution.

Mr. President : The question is:

"That for amendment no. 3087 of the List of Amendments, the following be substituted:-

"That after article 289-A, the following new article be inserted:-

289-B. The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every citizen, who is not less than twenty-one years of age on such date as may be fixed in this behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election."

Elections to the House of the People and to the Legislative Assemblies of states to be on the basis of adult suffrage.

The amendment was adopted.

Mr. President : The question is:

"That article 289-B, stand part of the Constitution."

The motion was adopted.

Article 289-B, was added to the Constitution.

(New article 289-C was not moved.)

Article 290

The Honourable Dr. B. R. Ambedkar : Sir, I moved:

"That for article 290, the following article be substituted:-

Power of Parliament to make provisions with respect to elections to Legislatures.

290. Subject to the provisions of this Constitution, Parliament may from time to time by law make provisions with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including matters necessary for securing the due constitution of such House or House and the delimitation of constituencies."

Sir, with your permission I would also like to move the other amendment which amends this. I move:

"That with reference to amendment No. 123 of List I (Fifth Week) in the new article 290, after the word 'including' the words 'the preparation of electoral rolls and all other' be inserted."

Pandit Thakur Das Bhargava (East Punjab: General): Sir, I gave notice of amendment No. 100 and amendment 127 and 129 with the idea that the entire responsibility and jurisdiction for making laws in regard to elections should be left to the Central Legislature and that the Central Legislature alone should have been given this power to enact laws in regard to matters pertaining to elections. Even now when amendment No. 99 was being discussed I felt that it would not be necessary to have these new amendments if my amendments Nos. 100, 127 and 129 were accepted, because, according to me, it is not fair to give the power to the executive to appoint such highly placed officers in whom all the rights in whom all the rights and powers in regard to elections are concentrated. Parliament should have the ultimate power. Similarly with regard to my amendment No. 127 which I did not move when I found that the wording of amendment No. 123 was "Subject to the provisions of this Constitution, Parliament may from time to time by law make provisions with respect to all matters relating to, or in connection with, elections..........." When Parliament has been given this power, I do not know what power is left to be exercised under this article by the provinces. If we want uniformity in the conduct of elections we should see that Parliament alone has this power.

Under article 289 many arguments were advanced for giving these powers to the Central Government instead of to the provinces. If those arguments are valid, it does not behove us to say that any power which is left may be exercised by the provincial legislatures. Amendment No. 123 is all embracing and therefore there is no need for amendment No. 128.

Shri M. Ananthasayanam Ayyangar: Sir, I support the retention of amendment No. 128 moved to article 291. I do not agree with my Friend Mr. Bhargava. We have taken away the elections from the provincial legislatures and the Governors. Practically we have centralised the appointment of the Election Commission. This is a deviation with respect to which there have been complaints that the provincial governments have been made ciphers. To avoid corrupt practices we wanted the entire power to be vested in Parliament. Amendment 128 only says that for matters for which the Parliament does not make a provision the provincial legislatures shall have power. My Friend Mr. Bhargava does not want even this. According to him, either Parliament makes the law or there should be no authority to make law. There may be certain matters where for the sake of uniformity Parliament may make law and the State legislature may make the rest of the laws. That is what is provided in amendment No. 128. I do not know why even to this limited extent power should not be give to the State legislatures. Why are we so suspicious of the State legislatures that we want to take away everything form them? I support amendment no. 128.

Mr. President : I find that there is notice of an amendment by Prof. Shibban Lal Saksena to article 290. He was not here at the time the amendments were moved. Anyhow it is not an amendment of substantial character.

If Dr. Ambedkar does not want to say anything in reply I shall put the amendment to vote.

The Honourable Dr. B. R. Ambedkar : I have nothing to say, Sir.

Mr. President : The question is:

"That for article 290, the following article be substituted:-

290. Subject to the provisions of this Constitution, Parliament may from time to time by law make provisions with respect to all matters relating to, or in connection with, elections to either House of Parliament, or to the House or either House of the Legislature of a State including the preparation of electoral rolls and all other matters necessary for securing the due constitution of such House or Houses and the delimitation of constituencies."

Power of Parliament to make provisions with respect to elections to Legislatures.

The amendment was adopted.

Mr. President : The question is:

"That article 290, as amended, stand part of the Constitution."

The motion was adopted.

Article 290, as amended, was added to the Constitution.

Article 291

The Honourable Dr. B. R. Ambedkar : I move:

"That for article 291, the following article be substituted:-

Power of Legislature of a state to make provisions with respect to election to such Legislature.

291. Subject to the provisions of this Constitution and in so far as provision in that behalf is not made by Parliament, the Legislature of a State may from time to time by law make provisions with respect to all matters relating to, or in connection with, the elections to the House or either House of the Legislature of the State including matters necessary for securing the due constitution of such House or House."

Sir, with your permission I move also amendment No. 211 of List I VI. Fifth week.

The amendment runs thus:

> "That with reference to amendment No. 128 of List I (Fifth Week), in the new article 291, after the word 'including' the words 'the preparation of electoral rolls and all other' be inserted."

Mr. President : There are also other amendments. Amendment No. 129 is a negative one and so cannot be moved. Amendments Nos. 130 and 131 are not moved.

Does any Member wish to say anything on the amendment or the article?

Shri H. V. Kamath : Mr. President, this article 291, following as it does article 290 already adopted, is a corollary to it. Article 291 follows very closely article 290 except with regard to the last matter contained in article 290 relating to the delimitation of constituencies. The question here arises as to the powers which will be vested in Parliament and in the State Legislature. In article 290 it is stated that Parliament may from time to time by law make provisions with respect to all matters-the phrase used is "with respect to all matters"-relating to or in connection with elections, etc. Here again the same words are used, that is to say, article 291 lays down that the State Legislature may from time to time by law make provisions with respect to all matters relating to or in connection with elections, etc. That is to say, all matters relating to elections to either House of the State Legislature come within the purview of Parliament as well as the State Legislature. Are we going to define the limits of or demarcate the powers to be conferred on the Parliament and on the State Legislature? Are we going to have another Schedule? That is my question. Are we going to have a new Schedule to this Draft Constitution wherein we will define the powers of Parliament and the powers of the State Legislature to legislate with regard to matters relating to elections in the States? If we do not define, definitely allocate the functions, I am afraid it might lead to some sort of friction or tension between the Parliament and the State Legislature at some time or other. No doubt the saving clause is there in 291 "in so far as provision in that behalf is not made by Parliament". Sir, if the Parliament exhausts all matters relating to elections in the States-the power to do is there under 290; the Central Parliament has full power to make laws with respect to all matters relating to elections in the States including delimitation of constituencies which is taken away from the State-I do not quarrel with that-what will be left for the States? In regard to various other matters relating to elections, I do not think it wise to deprive the State Legislature of any jurisdiction in this regard. To my mind, it will be better and wiser to leave them some powers so as to promote greater harmony. We are here, I am afraid, aiming at over-centralisation of functions. Over-centralisation to my mind is not conducive to harmony between the Union and the Units. We certainly want strength, but strength along with harmony. Strength without harmony, without good-will between the Union and the Units, is no strength at all. It is mere rigidity. Therefore, Sir, I would personally prefer to be dealt with by the State Legislature itself and Parliament should not be given entire authority to make, laws with respect to all matters relating to elections to either House of the State Legislature. Some definite powers to my mind should be given to the Legislature of the State also.

The Honourable Dr. B. R. Ambedkar : I think Mr. Kamath has not properly read or has not properly understood the two articles 290 and 291. While 290 gives power to Parliament, 291 says that if there is any matter which is not provided for by Parliament, then it shall be open to the State Legislature to provide for it. This is a sort of residue which Parliament may leave to the State Legislature. This is a residuary article. Beyond that, there is nothing.

Shri A. Thanu Pillai (Travancore : State): When steps have to be taken according to the time schedule, is the local Legislature to wait and see what the Central Parliament does?

The Honourable Dr. B. R. Ambedkar : Primarily it shall be duty of the Parliament to make provision under 290. The obligation is squarely placed upon Parliament. It shall be the duty and the obligation of the Parliament to make provision by law for matters that are included in 290. In making provisions for matters which are specified in 290, if any matter has not been specifically and expressly provided for by Parliament, then 291 says that the State Legislature shall no be excluded from making any provision which Parliament has failed to make with regard to any matter included in 290.

Shri A. Thanu Pillai : May I know from Dr. Ambedkar whether it would not be better for either the Central Legislature or the Local Legislature to be charged with full responsibility in the matter so that elections may go on according to the time schedule?

The Honourable Dr. B. R. Ambedkar : I do not agree. There are matters which are essential and which Parliament might think should be provided for by itself. There are other matters which Parliament may think are of such local character and liable to variations from province to province that it would be better for Parliament to leave them to the Local Legislature. That is the reason for the distinction between 290 and 291.

Mr. President : The question is:

"That with reference to amendment No. 128 of List I, (Fifth Week), in the new article 291, after the word 'including the words 'the preparation of electoral rolls and all other' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That for article 291, the following article be substituted:-

291. Subject to the provisions of this Constitution and in so far as provision in that behalf is not made by Parliament, the Legislature of a State may from time to time by law make provisions with respect to all matters relating to, or in connection with, the elections to the House or either House of the Legislature of the State including the preparation of electoral rolls and all other matters necessary for securing the due constitution of such House or Houses."

The motion was adopted.

Mr. President : The question is:

"That article 291, as amended, stand part of the Constitution."

The motion was adopted.

Article 291, as amended, was added to the Constitution."

Article 291-A

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That after article 291, the following new article be inserted:-

Bar to jurisdiction of courts in electoral matters.	291-A. Notwithstanding anything contained in the Constitution-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 290 or article 291 of this Constitution shall not be called in question in any court:

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature:

(c) provision may be made by or under any law made by the appropriate Legislature for the finality of proceeding relating to or in connection with any such election at any stage of such election."

Sir, I also move:

"That with reference to amendment No. 132 of List I (Fifth Week) in the new article 291-A, clause (c) be omitted.

Mr. President : The question is:

"That with reference to amendment No. 132 of list I (Fifth Week) in the new article 291-A, clause (c) omitted."

The amendment was adopted.

Mr. President : The question is :

"That after article 291, the following new article be inserted:-

Bar to jurisdiction of courts in electoral matters.

291-A. Notwithstanding anything contained in the Constitution-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of state to such constituencies, made or purporting to be made under article 290 or article 291 of this Constitution shall not be called in question in any court;

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election for by or under any law made by the appropriate Legislature;"

The amendment was adopted.

Mr. President : The question is:

"That article 291-A, as amended, stand part of the Constitution."

The motion was adopted.

Article 291-A, as amended, was added to the Constitution.

Mr. President : Then we go to the other article 296.

Shri T. T. Krishnamachari : As articles 292 to 295 form part of a whole scheme and article 296 also goes along with them, we might take up article 297 and leave 296 over for the present.

Mr. President : Is that the idea that we should postpone discussion of article 296 also? Then we shall take up article 297.

Article 297

(Amendment No. 3169 was not moved.)

Shri H. V. Kamath : Mr. President, Sir, I move:

"That in clause (2) of article 297, for the words 'if such members are found qualified for appointment on merit as compared with the members of other communities', the words 'provided that such appointment is made on ground only of merit as compared with the members of other communities' be substituted."

I think, Sir, that this is an amendment more or less a drafting nature and I leave it to the cumulative wisdom of the Drafting Committee to consider it at the appropriate stage.

The Honourable Dr. B. R. Ambedkar : I do not see that it is of a drafting nature. However, we shall consider it later on.

Mr. President : The question is:

"That article 297 stand part of the Constitution."

The motion was adopted.

Article 297 was added to the Constitution.

Article 298

(Amendment No. 3172 was not moved.)

Mr. President : There is no amendment to this article No. 298 also.

Mr. Frank Anthony (C. P. & Berar: General) :Sir, I do not intend to make a speech. I had given notice of an amendment to article 298 seeking to make it applicable to the Mysore State, but after I had discussed my amendment with Dr. Ambedkar and Mr. Munshi, it was pointed out to me that even if they were prepared to accept my amendment, they were unable to do it at this stage because it has not yet been decided as to whether this Constituent Assembly is going to legislate for the Mysore State and because of that, Sir, I do not propose to ask for admission of this amendment at this stage. If and when the Assembly does legislate with regard to Mysore, then I feel that I may be given permission at that stage to reiterate this amendment. In this connection, I only wish to say a few words and to thank all those Members, who in spite of the fact that they have given notice of several amendments, have once more shown their generosity by withdrawing those amendments *en masse.*

Pandit Thakur Das Bhargava : Sir, when I gave notice of certain amendments to articles 297 and 298, I did not do so in any spirit of niggardliness or disregard for honouring the words of our leaders who had given some sort of assurance to the Anglo-Indian community, but I must state in fairness to myself that, as a matter of fact, it was a different standpoint from which I gave these notices of amendments. When these concessions were given to the Anglo-Indian community, it was in 1947 and ten years' time was regarded as sufficient. Ordinarily these ten years would have been finished by 1957. Now the Constitution will commence in 1950. So I thought that the concessions should have been given only for ten years. I do not grudge any sort of concessions to this community or that community but we must realise that the basis of concessions given to the suppressed classes and depressed classes is of a different nature. We want that these concessions may be implemented. Apart from reservation of seats which is only for ten years, other concessions like educational facilities etc., to be provided under article 301 may have to be given for more than ten years. But here in this case this community is not a suppressed community. This community has to a certain extent been given this concession because its standard of life was different from the rest of the Indian community and it was higher. So I gave amendments in the view that when Mr. Anthony said on the last occasion when he spoke on the question of minorities that the Committee had shown unique generosity I thought that his community would respond by showing unique fairness in saying that they would only want these concessions for ten years because I know that for every boy of the Anglo-Indian community to whom this concession is granted, we have to grant these very concessions to the upper classes also because in these schools to which these grants are made, 40 per cent or so are Anglo-Indian boys and the remaining 60 per cent. belong to the upper classes. So if we grant these concessions, we should grant them not only to the Anglo-Indians but also to the upper classes. After all our means are limited, and we cannot make one rupee into seventeen annas and if you grant these concessions for very long periods to people whose standard of life is better and who are more affluent, you would have to deny even ordinary rights to the rest of the people. So that, for educating these persons, you starve the boys of other communities. I think my honourable Friend Mr. Anthony will not misunderstand me for giving notice of this amendment. I gave notice of these amendments in the hope that in his patriotism, in his recognition of the principle of fair treatment to all, he will agree that only ten years will be available of and not more.

Prof. Shibban Lal Saksena : Mr. President, Sir, these two articles 297 and 298, one of which we have already passed, give certain concessions to the Anglo-Indian community. I may say at the very outset that I am not opposed to any concession which these people may want. I may also say that I would wish them to make the best use of the concessions. But, I would like to utter a word or warning. I feel that these concessions are based on a principle which has not been followed anywhere else in the constitutions. We have given separate representation to people who are backward. But, in this case the position is different. The Anglo-Indian community has up till now lived a different kind of life from the rest of the people. They probably feel some difficulty in accommodating themselves to the new change and therefore they want these concessions. I only want the representatives of the community who are present here who are very distinguished members and who are my very good friends, to consider coolly whether these concessions will really benefit the community. My feeling is that during the last so many years, this community has been kept aloof from the rest of the population and the British people who kept us under subjection tried to make them also completely isolated. They gave them a different kind of education, different habits etc. I am only surprised that they still want to keep to their old methods of education. I only hope that although these concessions are given, the boys of that community will try to take advantage of the common education given to all Indian boys, and that they shall not continue any further their separation which was imposed by the British people for their own purposes. I have known these friends through my contacts with labour on railways and in the posts and telegraphs and in other places. They are very active people; they form a virile element in the nation and I know they do not need any crutches. Like the Pars, they will get more than their due even in the general electorate and in the normal course of general competition. I therefore think that these two articles are based on the apprehension that they may not get their legitimate share in the circumstances. I wish to give this friendly advice, if it is of any worth. I do wish this community to become one with the rest of the people and to remove all those barriers of separation which the British Rulers had raised between this community and the rest of the people, so that when the time comes, at least after ten years, there is no need for them to demand all these concessions, I hope they will realise that it is better that they merge themselves in the general population. We all wish to feel that they are one with us. I also know that they realise that the British had made up pawns in their game. I hope that they will very soon give up those old habits and traditions. I hope that these articles which we all approve unanimously will not be supposed to be something intended to perpetuate the old separation, but intended to help them to assimilate themselves with the rest of the population.

Shri Mahavir Tyagi : (United Provinces: General) : Mr. President, Sir, I rise to oppose the article as it is. I know I will incur the displeasure of my very great Friend Mr. Anthony. He is so charming that nobody in the House would like to annoy him: but then, I want to give him an advice.

He has seen many minorities claiming special rights in India; he has also seen their fate. Suppose we agree to this article. I do not know whether Mr. Anthony agrees to it. If he is a party to this article, I am afraid he is doing a disservice to his community. As it is mentioned in this article, we cannot give more grants than we are giving them today. I do not know how we can agree to this. After all, it is a progressive community; it is a privileged community. It has the affection of both India and England. They are a bright community; wherever they are, they fare very well; they are the least communal. They are a very intelligent and bright people. In India they need have no fear; they have to thrive. I ask why should they not deserve more grants or more help from the State if they really deserve it. The article says during the first three years after the commencement of this Constitution, the same grants if any, shall be made by the Union and by each State. I ask, why not more grants? If their students deserve more grants, why should we make the same grants? I do not know whether you call it sympathy; it is a wrong-placed sympathy. I do not know how my honourable and intelligent Friend Mr. Anthony would agree to the same grants. The prices may go on rising, but the boys in the school will get the same grants. Why not more? This is neither help nor any protection. I do not want to waste the time of the House by reading the article further which says that every third year there will be a reduction of ten per cent. Why should we envisage a reduction at all? My view is this. Such a small community if you go on identifying it as a community, as a minority, I assure you that community will ultimately lose. Let them merge their identity into the whole nation and belong to the nation without any distinction whatsoever. Their distinction of beauty and colour is enough to distinguish them from us; that is a good distinction. Let them stand on their own colour and on their beauty and on their intelligence. Why should they take to the adjective 'minorities' and all that. That is a slur on that community. That is a community which can stand on its own legs and stand boldly. From the friendly manner in which the members of this community are behaving, I think it is an insult to their attitude to say that these people at all need any protection.

They need nothing. Their attitude is their own protection. I think it is better we leave them to their natural protection God has given them. Then again when we have one decided that we do not encourage any minorities or communities, then, in the face of that, should only one small community be recognised? Well, they will become the target of jealousy from all the rest of the communities. It is only a little money that is being guaranteed, but for this little privilege why should they become the target of hatred, jealousy and envy of all other small communities? I think they will not fare well if they get this too small a privilege, the losses entailed with it being much greater. And if communities are to be considered I would suggest consideration of that community which is only newly created-it is the community of displaced persons. Why do you not protect these refugees who are homeless? Let us guarantee that for 10 years they will get such and such privileges and they are the real minority community deserving the help. In the provinces today nobody has ever thought of giving them special privileges or help because they are Hindus but inspite of their being Hindus or belonging to a religious majority community, they are a deplorable small minority today in India. It is pity that it is now a year gone and little has been done for them; and now the time has come when their protection should have been our first thought and we should have protected their rights of education, their accommodation and other things. If communities are to be considered here in this Constitution, the most miserable community that should be considered first is that of the refugees, but the refugees are not considered even as a community. And why should we always take communities be religious distinctions or by distinctions of their blood? Communities are a group of people being affected in one common manner either adversely or in better circumstances. Whatever the conditions, those who are affected together similarly in similar circumstance become a community; and as such, if there is any community which requires safeguards and protection, it is that of the refugees. But they have never come forward for any special grant before us. I would suggest that we do not allow this article to remain in this Constitution. It will contain the germs of communalism. Why not purge the whole Constitution of this disease altogether and why keep germ? They might develop and again we might have to face another big problem of communalism and the same old history of the Muslim League days might repeat itself. I would suggest with emphasis that either the consideration of this article be also postponed or, if the House or you are not pleased to postpone it for further consideration, I would appeal to the House to reject the article here and now, and not care for your private decisions of groups. Let us take liberty of our groups and say that it being a dangerous article, if we allow it to remain, we shall allow this body politic to remain diseased for ever. With these words I oppose the article.

Shri K. M. Munshi : Mr. President, Sir, I am sure that on a matter of this importance we should appreciate all that happened in the past and not reopen the discussion which has passed through several stages. The two sections which are under discussion are the result of very long discussions and suggested by a Special Committee appointed for this purpose, accepted by the Advisory Committee and ultimately accepted by the House. Now after all that has been said and done, it serves no useful purpose to repeat the arguments that were advanced by certain sections of the House at different stages. The House has always accepted that the Minorities Commission's decisions as more or less conclusive. We must realise the importance of the two points dealt with by my Friend Mr. Tyagi. When this decision was arrived at by the House, the one point which it had to consider was that this small community had been under the protecting wings of the old Government in such a manner that it was impossible for it to stand on its legs unless it were spoon-few by some kind of concession for a small period of time. Over 60 per cent. of its adults are in certain services. We need not go into the various causes of this situation, but a sudden change would throw this community immediately on the streets. The second point was that certain special grants were given to their educational institutions. Those educational institutions as now being attested to by our own educational authorities in various provinces have attained a high standard of educational school and now that the schools take students from other, communities the policy of some provincial Governments is that that standard should be maintained for all schools. In Bombay, for instance in the Anglo-Indian schools,70 per cent. of the students are not Anglo-Indians but members belonging to other communities. Therefore these articles have been considered from every point of view. They are only for a limited period of time. My appeal therefore to the House is that a decision which has been come to after considerable deliberation should not be disturbed, apart from a vote, even by a discussion, which may not create a right impression in the country. I hope Members will realise that any discussion or criticism would perhaps take away from the generous gesture which the majority community made to this small minority community.

Shri Krishna Chandra Sharma (United Provinces: General): Mr. President, I very much appreciate the spirit of compromise and reconciliation and would not grudge any help to any section of the people whatsoever, but my only trouble is that article 9 in the Fundamental Rights says that the States Shall not discriminate against any citizen on grounds only of religion, race, caste or sex, etc. Now the State Funds are meant for education for all citizens. Because A belongs to Muslim Community, B belongs to Hindu community and C belongs to Parsee or Anglo-Indian community, therefore *per capita* they will have different sums of money for their education and training, one differing from the other simply because their religion or community differs, I beg to submit, is against the spirit of this article. My second point is that the grant is meant to be given to the institution. This money can be given on the ground that the institution has a better standard of education, it is more expensive or situated at a place where ordinary grants would not suffice, etc. That may be the basis for greater grants to an institution like the Muslim University at Aligarh or an Anglo-Indian institution at Naini Tal. I do not grudge the grant but there should be a rational basis.

A further objection is that these are minute details which should be left to the Education Department and the University, and not laid down by Parliament in the Constitution. I do not find this in any other constitution in the world and I do not think it would be advisable to do it here.

Honourable Members : The question may now be put.

Mr. President : I may point out that these article have been brought in pursuance of decisions arrived at by the Advisory Committee on Minorities and by some sort of agreement between the parties. So I do not think there is any occasion to reopen what was then decided. It was also placed before a previous session of the Assembly and accepted. So I do not think the question need be reopened.

The question is:

"That the question be now put."

The motion was adopted.

Mr. President: The question is:

"That article 298 stand part of the Constitution."

The motion was adopted.

Article 298 was added to the Constitution.

Mr. President : Article 299 is held over.

Article 300

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That with reference to amendment No. 3186 of the List of Amendments in clause (1) of article 300 after the word figure 'Part I' the words and figures 'and Part III' be inserted."

Shri A. V. Thakkar (Saurashtra) : Sir, I am very glad that this amendment extends the benefits of welfare work for the tribal people of all the States where they live at present. These tribal people come into the picture for the first time now in this Constitution. It would have been a half measure if it had been confined to tribal people in provinces only but not extended to those in Indian States. But as now amended it is in the interest of all backward tribal people. The same benefit to all backward people applies to article 301 and therefore there is greater reason that the same extension is given in article 300.

Prof. Shibban Lal Saksena : Sir, I support this article whole-heartedly. I shall draw attention to the problem confronting us in the tribal areas. They are some of the most backward people in the country. The British Government tried to keep them secluded and attempts were sometimes made by missionaries to convert them. I have visited many of these people and can say that they live a kind of sub-human and miserable existence. This article is intended to devise ways and means for bringing them to the normal level. But we should not rest on our oars by merely passing this provision but should do our utmost to bring them up to the normal level. The consciousness about them came first in 1931 when the British Government tried to give them separate representation. Reforming bodies and people like our revered Shri Thakkar Bapa have worked among them but much still remains to be done and we should see that these people are made to take their rightful place in society.

Shri Mahavir Tyagi : Sir, this article is very halting from the point of view of helping the scheduled areas. It only says that a Commission may be appointed from time to time or whenever the President so likes to enquire into and report on the conditions of these areas, and "the executive power of the Union shall extend to the giving of directions to such a State as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the scheduled tribes in the State". I wonder whether there is anything constitutional about it. Why should we encumber a Constitution with the mention of scheduled areas? They are backward and not much of improvement has been effected in those areas. Half of my constituency is partially excluded area, known as the Jaunsar Bawer. I know the conditions that obtain in that area. Years ago when Committees had been appointed they looked into the conditions. But looking into the conditions is not much of a job. Real job is to improve the conditions. This article does not go far in improving their conditions. It does not even give a ray of hope as to what will be done. To know what the conditions are a Commission will be appointed. That is not enough. It would be better if the article had been taken away from the Constitution because it does not help the scheduled areas at all. There is nothing positive about the article. Commissions can be appointed even without the Union being authorised to appoint the Commissions. What is there to prevent it from appointing Commissions or Committees or from making enquiries? So I think the article is not at all positive. If there be anything important or if any hope is hidden within these words or lines, I would like the Chairman of the Drafting Committee to expose it to air so that the people residing in those areas might also know what good future lies for them in between these lines. I do not see any hope for them. It is with this view, just to provoke Dr. Ambedkar or anyone on his behalf to give us an idea as to what is the meaning of bringing in the scheduled areas here and what hope it offers, that I have raised this point. If there is nothing and if only their mention is meant, then I would rather prefer that the article is taken away.

Mr. President : Dr. Ambedkar, do you wish to say anything?

The Honourable Dr. B. R. Ambedkar : No, Sir.

Mr. President : The question is:

"That with reference to amendment No. 3186 of the List of Amendments, in clause (1) of article 300, after the word and figure 'Part I' the words and figures 'and Part III' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That article 300, as amended, stand part of the Constitution."

The motion was adopted.

Article 300, as amended, was added to the Constitution.

Article 301

(Amendments Nos. 3189 and 3190 were not moved.)

Shri H. V. Kamath : Mr. President, Sir, I move amendments Nos. 3191, 3195, 3196, 3197, 3198 and 3200 standing in my name.

I move:

"That in clause (1) of article 301, the words 'consisting of such persons as he thinks fit be deleted."

In my judgment these words are wholly superfluous. I may even go to the length of saying that they cast a reflection upon the wisdom of the President. The President when he appoints certain persons, certainly appoints such persons as he thinks fit for the job with the commission of which those persons are charged. It is absolutely pointless and purposeless to say here that he may "appoint a Commission consisting of such persons as he thinks fit." It may stop after "appoint a Commission". This adequately and sufficiently conveys the meaning intended in this portion of the article.

Then I move:

> "That in clause (1) of article 301, for the word 'difficulties' the word 'disabilities' be substituted."

Bearing in mind what we have already adopted in this House I think the word "disabilities" conveys the idea far better than the word "difficulties". If we turn to the Chapter on Fundamental Rights we find that the second part of article 9 refers to "any disability, liability, restriction, condition" etc. The word "difficulty" nowhere occurs in that very important article which seeks to abolish discrimination on grounds of religion, race, caste or sex. We have passed that article. The word "difficulty" is to my mind hardly a constitutional term. I have read several constitutions of the world, but I find that it finds no place in constitutional terminology or parlance. The word 'disability' is a far more appropriate word than the word "difficulty". I am sure Dr. Ambedkar, steeped as he is in constitutional lore and constitutional learning will have no difficulty in accepting this amendment.

I move my next amendment.

> "That in clause (1) of article 301, for the words 'grants should be given' the words 'grants should be made' be substituted."

This is purely verbal amendment. I do not wish to press it home, but I leave it to the collective wisdom of the Drafting Committee which I am sure will come into play at the appropriate time.

Then I move:

> "That in clause (1) of article 301, for the word 'and' (in line 10) the words 'as well as' be substituted."

That portion of the article reads thus as it has been moved before the House:

> "The President may by order appoint a Commission ..... to remove such difficulties and to improve their condition and as to the grants that should be given for the purpose by the Union or any State and the conditions subject to which such grants should be given..."

I think the meaning would be more exactly expressed by the phrase "as well as" than by the single word 'and' here. That also I leave to the wisdom of the team of wisemen which this House has appointed to draft the Constitution.

I next move amendment No. 3198-

> "That in clause (2) of article 301, for the words 'a report setting out the facts as found by them and' the words 'a report thereon' be

substituted."

The clause as it stands reads thus :

"A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper."

If my amendment is accepted by the House the clause will read as follows :

"A Commission so appointed shall investigate the matters referred to them and present to the President a report thereon making such recommendations as they think proper."

This is only with a view to avoid cumbersome language and style and secure brevity and precision, but not at the sacrifice of any substantial meaning.

Lastly, I move my amendment No. 3200 which runs thus :

"That in clause (3) of article 301, the words 'together with a memorandum explaining the action taken thereon' be deleted and the following words be added at the end:-

'for such further action as may be necessary.' "

"This clause of the article as it now stands runs thus:

"The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before Parliament."

My amendment seeks to modify it in this regard and if it is accepted by the House, the clause will read as follows :

"The President shall cause a copy of the report so presented to be laid before Parliament for such further action as may be necessary."

This is a drafting amendment, plus an amendment of substance. There are two parts to it. The first relates to the manner in which the President shall cause a copy of this report to be laid before both the Houses of Parliament. The clause, as it is now, makes it incumbent upon the President to affix a memorandum to the copy of the report to be laid before Parliament. It does not seem to be wise to lay down the manner in which the report should be presented to Parliament by the President. If the President deems it necessary to submit a memorandum along with the report he will certainly do so. The President will be a wise man. I am sure we will not have as President a man who is not wise or who is incompetent to do this duties in the interests of the nation. If the President thinks it necessary to affix a memorandum to the report he will do so. Why should we lay down in the Constitution things in such minute detail? It is just a tremendous trifle to say that he must add a memorandum to the report. That is the first aspect of my amendment.

The second part of my amendment relates to the sequel to the submission to Parliament by the President of this report by the Commission. I think, Sir, that the House is agreed on this point that Parliament, our sovereign Parliament of Free India, shall have a definite say, a substantial voice in whatever policy is going to be adopted or action taken with regard to the welfare of the socially and educationally backward classes in our country. This article has relation to the conditions of socially and educationally backward classes in the Indian Union. Parliament, I am sure, will be entitled to ask that any action taken with regard to the welfare of its backward people must be in conformity with the policy that will be formulated by it. Therefore I am anxious that with a view to having this implemented, when the report comes before Parliament, further action should be taken by Parliament and not by the President. The President will if need be, communicate to Parliament his own reactions to the report, but should not be the final authority to take action thereon. Parliament must have the last word on the action to be taken on that report. Therefore, this last amendment of mine seeks to make that quite clear, absolutely fool-proof and knave-proof, as Dr. Ambedkar might say, and make it impossible for the President to divest Parliament of this inherent right to take action on the report of the Commission submitted by the President to Parliament. Therefore I have suggested the addition of the words "for such further action as may be necessary". It may be that within the next ten years there may be no socially or educationally backward classes in our country. I look forward to that day even before the expiry of ten years. We have the example of Soviet Russia before us. Russia abolished illiteracy and brought even the lowest state of the population to a fairly decent level in ten or fifteen years. Can we not, with our ancient heritage and our background of cultural and spiritual genius aspire to something better and to bring all these backward classes within less than ten years to a socially and educationally higher level? I hope, Sir, that within ten years we will have advanced a good deal towards redeeming these fallen and so-called backward people and we shall have no occasion to appoint a Commission for the submission of a report. I shall be very happy if that day comes in less than ten years. But, as it is, the Constitution provides for the appointment of a Commission. Then let Parliament consider and deliberate on the report submitted by the Commission to the President and let Parliament take such action as it deems fit or necessary in this matter, so that within the ten-year period, when a Commission has been appointed and its report comes before Parliament, Parliament may chalk but a programme for the uplift and redemption of these educationally backward classes, and carry it out. I trust that after the first ten-year period has expired, there will be no need for the President again to appoint a Commission of this nature to enquire into the conditions of the backward classes in our country. Sir, I move these various amendments and commend them for the acceptance of the House.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in clause (3) of article 301, for the word 'Parliament' the words 'each House of Parliament' be substituted."

Mr. President : There are two amendments of which notice has been given by

Pandit Thakur Das Bhargava, Nos. 180 and 181 of the First List.

Pandit Thakur Das Bhargava : I do not wish to move the amendments but I wish to speak on the article.

(Amendments Nos. 3192, 3193, 3194, 3199 and No. 181 of the First List were not moved.)

Mr. President : The article and the amendments are now open to discussion.

Pandit Thakur Das Bhargava : Sir, I consider that article 301 is one of the most important articles of this Constitution. Left to myself, I would call it the soul of the Constitution. So far as the Depressed Classes are concerned, we have only reserved some seats for them. The rest we have not done, and this article 301 seeks to complete the process of bringing them up to normal standards. This article places upon the entire nation the obligation of seeing that all the disabilities and difficulties of the Depressed Classes are removed and therefore it is really a charter of the liberties of the backward classes and in a sense this is an oath taken by the House, an oath to see that within the coming years we will provide all the facilities which can be provided by the nation for expiating our past sins. Now, Sir, in this country there are backward classes some of whom have had reservation given to them so far as representation is concerned, but the other classes have not been given such reservations but they are equally backward. I would therefore have liked a register to be made of all the backward classes including the present Depressed Classes, and after the Commission had found out what their diffciculties and disabilities were and a programme chalked providing facilities to every member of these backward classes. If a particular class was economically very backward, provision could be made that with regard to their houses in the villages, they were given not only the residential rights but rights of disposal of their properties. If we chalk out a programme after the Commission has investigated their disabilities, we will be taking a great step towards the removal of those disabilities. There are many disabilities pertaining to them which the House fully knows and I need not go into them at this stage. What I want to say is that so far as these classes are concerned, we should see to it that these classes do not continue in the category of backward classes after they have come up to normal standards so that their backwardness is not crystallized or perpetuated. After they have reached normal standards, they should be taken away from this category. If any community continues in backwardness, socially, culturally or educationally, then it should not be a question of ten years or fifteen years but up to the time they are brought up to normal standards, facilities should be given and continued for them.

My next submission is that the article says "The President may be order appoint, etc." I have given notice of an amendment in this regard for substituting the word 'shall' for 'may' and even if the word 'may' is used in the article, I think it should be the obligation of the President to appoint such a Commission. Even though the word 'may' has been used, it must be construed as 'shall'. Therefore I have no doubt that the President shall appoint such a Commission and the Commission after making investigation into the conditions of these classes, shall have to suggest in what particular manner the steps suggested should be implemented. The article here simply says that he shall cause a copy of the Report to be placed before Parliament. The obligations of the Parliament are not given in article 301. I understand there is provision for them in 299 which has been held over. I do not want to speak now on that article, but what I want to submit is this : Now the safeguards for minorities have been taken away, for instance for the Muslims and the Sikhs. The only responsibility of the Parliament are the Scheduled Castes and the backward classes. In regard to these classes, special officers are to be appointed to see whether the fundamental rights which have been given to them under this Constitution and the special facilities which are sought to be provided for them after the investigation of the Commission are enjoyed by these people or not. These classes are not only the responsibility of the Central Parliament but of the State Legislature as well. But I submit they are the special obligation of the Central Legislature. This article 301 is only the material form of the Objectives Resolution. This article only gives the mechanism by which the Objectives Resolution is carried out. We should provide in this article that it shall apply not only to the communities for whom reservation has been made but also to those for whom no reservation has been made but who are all the same backward.

Sir, I feel great happiness in supporting article 301.

Prof. Shibban Lal Saksena : Mr. President, Sir, I whole-heartedly support this article. I only wish to point out two things in this regard. The first thing is according to the scheme of the Constitution, this Commission will be appointed at the very outset of the commencement of the Constitution. That means that as soon as our Constitution comes into existence, the President shall appoint the Commission to investigate into the conditions of the socially, educationally and culturally backward classes and then make its report on how to remove their backwardness. We are using the expression 'the backward classes' in several places in the Constitution, but we have not defined them anywhere in the whole Constitution. I hope this Commission which will specially investigate the conditions of the backward classes all over the country will be able to tell us what is meant by the term "backward classes". When the Commission reports to the Parliament, I hope they will define the terms "backward classes" and "depressed classes" in their report.

I also support the amendment of Mr. Kamath for the addition of the words "for such further action as may be necessary". That means that when the report is made, the House must consider the ways and means of removing the backwardness of these people. I think therefore that this amendment is necessary.

The Honourable Shri Satyanarayan Sinha : Sir, the question be now put.

Mr. President : The question is:

"That the question be now put."

The motion was adopted.

Mr. President : I have to put the various amendments to vote now.

The Honourable Shri Satyanarayan Sinha : If there is no other work then the House should be adjourned.

Mr. President : The question is:

"That in clause (1) of article 301, the words 'consisting of such persons as he thinks fit be deleted."

The amendment was negatived.

Mr. President : The question is:

"That in clause (1) of article 301, for the word 'difficulties' the word 'disabilities' be substituted."

The amendment was negatived.

Mr. President : Amendments Nos. 3196 and 3197, I think, are of a drafting nature. We had better leave them. The question is:

"That in clause (2) of article 301, for the words 'a report setting out the facts as found by them and' the words 'a report thereon' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in clause (3) of article 301, the words 'together with a memorandum explaining the action taken thereon' be deleted and the following words be added at the end:-

'for such further action as may be necessary.'"

The amendment was negatived.

Mr. President : The question is:

"That in clause (3) of article 301, for the word 'Parliament' the words 'each House of Parliament' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That article 301, as amended, stand part of the Constitution."

The motion was adopted.

Article 301, as amended, was added to the Constitution.

Mr. President : This brings us to the end of these articles which we have set down for consideration today. One article which we passed over, article 289, remains to be considered. There were certain amendments and certain Members said that they were taken by surprise and that they would like to have time to consider it. If the House so desires, we might have an afternoon session, so that we may not have to sit tomorrow.

An Honourable Member : We are prepared to discuss it now.

Mr. President : At 6 o'clock.

Shri K. M. Munshi : The sittings should not be fixed for tomorrows as many Members, I know, have booked their accommodation.

Mr. President : It is therefore why I am suggesting six o'clock.

The Honourable Shri Satyanarayan Sinha : Either we can hold it over or you have a meeting in the evening and finish it.

Mr. President : I think some Members feel that they would like to have time to consider the amendments and therefore it is much better to give them time, and if you all agree, I would like to have an afternoon session in the evening, say at six o'clock.

Honourable Members : 6 p.m.

Mr. President : So the House stands adjourned till six o'clock this evening.

The Assembly then adjourned till Six of the Clock in the afternoon.

The Constituent Assembly re-assembled at Six of the Clock in the afternoon, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION -*(Contd.)*

Article 289-*(Contd.)*

Mr. President: We shall take up the amendment moved by Dr. Ambedkar in the morning. I think that is the only amendment now to the original article which was moved by Dr. Ambedkar.f

I have just received notice of amendments from two Members, Shri Mahavir Tyagi and Mr. Jaspat Roy Kapoor. I do not know how these amendments come in at this stage. They cannot be amendments to amendments; they can only be amendments to amendments to amendment. I am not inclined to allow any amendments to amendments to amendments.

Shri Jaspat Roy Kapoor (United Provinces : General) : May I then be permitted, Sir, to put forth my view-point as contained in this amendment, of course during general discussion?

Mr. President : The article and the amendment will be open to discussion. Any

Member may say whatever he likes. It is for him to vote according to what he says or otherwise.

Shri Mahavir Tyagi : May I submit, Sir, if at any stage some serious discrepancy is found and it is pointed out, I hope it must be taken notice of.

Mr. President : I do not think your amendment comes under that. In your case, the amendment of which you have given notice does not deal with the matter which has just been discovered.

Shri Mahavir Tyagi : I could not follow, Sir.

Mr. President : Your amendment is this: that in clause (1) of the proposed article 289, the words "and Vice-President" be deleted. That is to say, you want to keep the election of the Vice-President out of the purview of the Election Commission.

Shri Mahavir Tyagi : Yes, Sir.

Mr. President : It is not a case in which something has been discovered as a result of discussion which creates difficulty and this amendment becomes necessary. This should have been foreseen and if you wanted to give notice of an amendment, you should have given it before. I cannot allow this now.

Shri H. V. Kamath : May I request, Sir...........

Mr. President : I have given a ruling on Mr. Tyagi's amendment. I am now dealing with the other amendment.

Shri H. V. Kamath : For the future at least, may I know Sir, what is the position with regard to amendment to amendments to amendments?

Mr. President : I am not going to make any promise about the future. I will deal with every case as it comes up.

Shri H. V. Kamath : I want to know what is the rule, Sir.

Mr. President : The Member may rest assured, I will follow the rules.

Shri H. V. Kamath : I am not questioning that. As the rules are silent on the point, I want to know what the position is with regard to amendments to amendments to amendments.

Mr. President : As I have said, I shall decide each case as it comes up.

As regards the amendment of Mr. Jaspat Roy Kapoor, he may speak on it. The article and the amendment are open to discussion.

Shri R. K. Sidhva (C. P. & Berar: General): May I know, Sir, whether the discussion will be only on the amendment or on the article also?

Mr. President : The whole thing.

Shri Jaspat Roy Kapoor : Mr. President, Sir, if I rise to speak on amendment No. 99 relating to article 289, it is not because I am fond of speaking too often. While coming to the rostrum, Sir, it was suggested to me by my honourable Friend Dr. Ambedkar that the galleries today were empty and that I need not be very particular about speaking on this article. I may assure my honourable Friend Dr. Ambedkar that I never speak to the galleries or with the object of finding any prominent place in the Press. I speak only when I feel it is absolutely necessary to speak and on this occasion, Sir, such is my feeling and hence I have come before you to address on article 289.

I must confess, Sir, that on the last day of this session, article 289 has proved to be rather an inconvenient one. It has been debated at length yesterday and today and I find that the more it is being debated the more defective it appears to be and I find that the more we scrutinise it the more defects of it come to light. On a closer scrutiny of this article I find that it is necessary to recast it altogether. A few amendments here and there, a few alterations or changes here and there in this article would not do: it needs being recast altogether. I do not suggest that it needs being recast in order to meet the view-point of those who question the propriety of the Centre being invested with the authority to conduct all elections. I take it that everyone of us, or at least the overwhelming majority of us, is inclined to the view, is definitely of the view that elections must be run under the control, direction and supervision of an authority appointed by the Central Government, the President I mean of course, subject to any law which may be enacted by the Parliament. But, Sir, I think it is necessary to recast this in order to make the procedure laid down in this article 289 as a really effective and workable one so that there may be no conflict between the authority which is to be appointed by the President-I mean the Election Commission-and the other bodies in the Centre or in the provinces. As it is, however, I think that article 289 if allowed to remain in its present form would lead to conflict between the Election Commission and the presiding officers of the various legislatures. Let us see how it stands.

"The superintendence direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature etc. by the President."

Now these are the various functions that are going to be entrusted to this Election Commission. Superintendence, direction and control of what things, firstly, of the preparation of the electoral rolls for all elections to Parliament to State Legislatures and for all elections to the offices of President and the Vice-President. The electoral rolls for these elections are to be under the supervision, direction and control of this Election Commission. Secondly, its function is the conduct of all these elections. These are the two functions that are going to be entrusted to the Election Commission. Now let us see how the election of the President is going to be, how the election of the Vice-President is going to be, how the election of members of the Council of States is going to be and lastly how the election of members to the Legislative Councils of the States is going to be. Under article 43 which we have already passed the President will be elected by the elected members of both Houses of Parliament and by the elected members of the Legislative Assemblies of the various States. Now the question is what will be the electoral roll of all these members? Is it the intention of Dr. Ambedkar that the question as to who are to be the electors who will form these electoral colleges is to be decided by this Commission? Now the electors will be members who will have been already duly elected to the House of the People, Council of States and the various Legislative Assemblies. They will be already duly elected members. So the question of preparing an electoral roll of these members simply does not arise at all. It should not be open-I think it will be readily admitted-to the Election Commission to decide as to which of those particular members are unqualified. A person once having been duly elected can of course become disqualified from remaining as a member; and so far as the Legislative Assembly of the various States are concerned, we have only the other day enacted article 167-A which lays down that if any such question arises, it will be decided by the Governor and the order or decision of the Governor shall be final. Now that decision and order or the Governor being final what function remains for the Election Commission to perform in the matter of determining the question as to which particular members are entitled or not entitled to participate in the election of the President? So far as the preparation of electoral roll is concerned, the Election Commission has not function to perform. The second is the stage of conducting the election itself. Now the question arises that the members of the House of the People will be called upon to elect by President and also members of the Council of States, and so also elected members of the Legislative Assemblies of the various States. These person will cast their votes as members of the various Legislatures and as such they must perform that function of casting their votes under the supervision, direction and control of the presiding officers of the respective legislatures. Is it the intention to divest the presiding officers of these various legislatures of their ordinary and inherent right of conducting these elections? I suppose not. So that so far as the election of the President is concerned, both in the matter of the preparation of the electoral roll as also in the matter of the conduct of election, the Election Commission shall have absolutely no function to perform or it has, obviously it will come in conflict with the presiding officers of these various legislative bodies. Now let us come to the question of the election of the Vice-President. There the matter is more complicated still. The election of a Vice-President it was pointed out to us-the credit of which must go to my honourable Friend Mr. Tyagi-it was pointed out by him outside the House that under article 55 we have it "That the Vice-President shall be elected by members of both House of Parliament assembled at a joint *meeting* in accordance with the system etc." Here also we find that the question as to who shall vote for the election of Vice-President is already definitely determined by article 55, and the Election Commission will have nothing to do about this. The manner of conducting the election is also laid down in article 55. All the members will sit together in a joint *meeting* which will be presided over, as has been provided, by the Speaker of the House of the People. Where does the Election Commission come in as regards the election of Vice-President? Thirdly comes the question of election of members of the Council of States. Under article 67 they are to be elected by the elected members of the legislative assemblies of the various States. There too the members who will participate in the election are well-known; there is no question of preparation of electoral roll there. Then as to the conduct of elections and casting of votes, that will be done, as in the past, under the direction and control of the Speakers of the various legislatures; and interference by the Election Commission will lead to conflict with the Speakers. The same objection will apply in the case of elections of these members to the legislative Councils of the States who are to be elected by the members of the legislative assemblies in the various States. Therefore, while the underlying intention of article 289 is a laudable one and while we must provide for elections to be conducted under the supervision and control of a central authority appointed by the Central Government, we must so frame the article as to obviate any chances of conflict between the Election Commissions and the presiding officers of the various States, by taking away those things which may give rise to such conflicts. We should also take note of article 55 in which we have provided for the election of Vice-President.

Therefore I submit that it is necessary to recast this article so as to make it applicable to direct elections only to House of People and legislative assemblies. Today we can commit ourselves definitely to the principle that all elections shall be conducted under the supervision, direction and control of a central authority, subject of course to such variations as appear obviously necessary in the light of article 55 and in the light of what I have already submitted. That is what I have to submit and the amendment of which I had given notice was only in regard to these points that I have raised. If the difficulties and apprehensions that I have raised are in any way removable by some interpretation of article 289 that Dr. Ambedkar may give, that is another thing.

Mr. President : I may point out that no explanation need be given. You are assuming that in all these elections members will give votes while sitting in Parliament. But they will not be sitting in Parliament; they will vote as voters of that particular constituency.

Shri Mahavir Tyagi : What will happen as regards disputes, and the filing of nomination papers before the Speaker?

Mr. President : It will be for the Election Commission to decide who the returning officer for this election will be. The whole argument is based on the assumption that when members of the legislatures who are entitled to vote for the election of the President sit, they sit in a session of the Assembly. They are not going to do that. They will be members of an electoral college and they will vote in that capacity.

Shri Mahavir Tyagi : In the case of the election to Vice-President, the names are to be proposed in the House by honourable Members, then it will be seconded and nomination papers are to be filed, etc.

Mr. President : You are again assuming that it will be a session of the House.

Shri Jaspat Roy Kapoor : My submissions were based on that assumption surely, but I do not know if there can be any other assumption. We find everywhere that members shall be electing the President, Vice-President and members of the Council of States as members of the legislature and in no other capacity. For instance, we find in article 55 that the Vice-President will be elected by members of both Houses of Parliament in a *meeting.*

The Honourable Dr. B. R. Ambedkar : The wording is "at a joins meeting" and not "sitting".

Shri Jaspat Roy Kapoor : It will be all right if that point is authoritatively stated on the Floor of the House so as to avoid the possibility of this article being interpreted differently, for in articles 80(3) and 164(3) the word 'meeting' has obviously been used in the sense of a sitting of the legislature and not in the sense of merely a congregation of the members. The same word cannot be interpreted differently in different article unless definitely specified therein. There is all I have to submit.

Sardar Hukam Singh (East Punjab: Sikh): Sir, article 289 as has been lately amended is surely a very important provision for the safeguarding of-as the Mover said, cultural, racial or linguistic minorities. It is conceived with the very laudable idea that it will give protection to them against any provincial prejudices or whims of officials. But there is one thing that I am afraid of. Whereas sufficient protection has been given against injustice to racial, cultural of linguistic minorities so far as provincial prejudices are concerned, it has been assumed that the Centre will not be liable to corruption at any time. We are perhaps obsessed with the feeling that our present leaders, who are noble and responsible people and are at the helm of affairs now, will continue for ever or that their successors will be as responsible as they are. My fear is that in future that may not be so and with a little prejudice or unsympathetic attitude at that time the minorities may be in great danger. I am certainly against centralisation of powers and I feel that in this Constitution we are reducing the provincial Governments to the position of District Boards by centralising all power here. But I am not opposing the present amendment because we have been assured that it is to safeguard the interest of these minorities. I rather welcome it. But I want to make one observation about that and that is that this Commission will have very important to perform and one of them would be delimitation of constituencies. Of course this business would be the soul of all elections. If delimitation of constituencies is made with full sympathy to the minorities it might restore their confidence and they might never feel sorry for what they have done-I mean this voluntary giving up of all safeguards of reservation of seats. So far as the majority is concerned it has nothing to fear. So far as the Scheduled Castes are concerned they are quite safe because they have got that reservation of seats. So far as the Anglo-Indians are concerned they will be nominated if they are not adequately represented. But for other minorities such as Muslims and Sikhs I feel that if they are not properly represented they might lose confidence in that majority. This Commission shall have a very responsible task to perform in that respect when it is carving out those constituencies. If the Commission, as our object is, feels that responsibility and does its job with full responsibility then I am sure the minorities shall have nothing to fear. But with a little apathy and some ill-adjustment in the delimitation this Commission can certainly work much havoc and those minorities may not even get what they ordinarily would have got according to their population. So my object in making this observation is that in the beginning at least the Government should take care that this Commission is so constituted that every interest is represented on that Commission, and this the Government can do very easily. By this they would restore all confidence in the minorities. This would go a long way in achieving the object which we have in view, namely, that we should have one nation, all people welded together. If the Government were simply to give an assurance that it would give sympathetic consideration to this request of mine, that for the beginning at least this Commission shall be representing all interests, my object would be achieved and the minorities also would not feel apprehensive of their future fate. With these remarks I welcome this article as now proposed in this House.

Shrimati Annie Mascarene (Travancore State): Mr. President, Sir, after hearing Dr. Ambedkar's explanation two days back I thought I would abide by this article. But after listening to Mr. Munshi's speech this morning I am provoked to speak again on the subject and resume my old position. Sir, I am a believer in the right of the people of the province to elect their representatives independent of any control, supervision and direction of any power on earth. I believe that to be democracy. If the Centre is to think that expediency demands that they should supervise and control the election, as one sitting in the Provincial Legislature I can see in the Centre as many delinquencies as they see in us. From this article it looks as if the Centre is assuming to be the custodian of justice. Well, justice is not in the custody of anybody but of those who are lovers of truth. Mr. Munshi this morning spoke that article 289 is calculated to defend the rights of the people in the provinces in view of expediency and reality. May I remind him of the expediency and reality of nations in days long gone by-of the Parliament of Rome, of the Long Parliament of England? Cromwell thought that it was expedient to run the administration by a unicameral legislature. The Napoleonic heroes thought that it was expedient to run the administration by a unicameral legislature. But time has proved the effect of those expediencies. What is reality and expediency today is not reality and expediency tomorrow. We are here laying down principles-rudimentary principles-of democracy, not for the coming election but for days to come, for generations, for the nation. Therefore principles of ethics are more suitable to be considered now than principles of expediency. I am a believer in politics as nothing but ethics writ large. I am not a believer in politics as a computative principle of addition, subtraction and multiplication. If this section is to be accepted we are to believe that thereafter the provincial election will be under the perpetual tutelage of the Centre. That means, Sir, that the integrity of the provincial people is questioned. I wish to turn the tables on the Centre itself. Sir, should we, at this psychological moment when the people of India are demanding their rudimentary right of electing their representatives without being interfered with by any authority on earth, impose any restriction? If democratic principles are to be accepted, this article should be deleted from the Constitution.

Then I come to the latest amendment, giving the legality of Parliament to a section which was hitherto blooming as autocratic. Well, Sir, Whatever may be the amendment added on to it, it cannot lose its old shade or colour and it stands there as the ancient Roman tutelage under the patriarchal system. If the provincial or the States people are to be guided, let them be guided by experience. If we have erred, we will err only for a time or a period. They say that this is a deviation from the democratic principle. Well, I ask where is the necessity to deviate from the experience of nations and ages? Have you any *prima facie* case to show that we have erred in our democratic principles? In that case I am willing to accept this clause. But, as it is, we have not tried the experiment. We are only in the making of it. If in the experimental stage we fail, well, there is provision in the Constitution to amend it when time and circumstances demand. But let us not sully the fair name of the nation by believing in the first instance that the provincial people will not be guided by principles of truth and justice and will not keep up the democratic principles of fairness by electing by fair means. Centralisation of power is good enough for stable administration, but centralisation of power should be a development at later stages and not from the very inception of democracy. At the very inception of democracy, centralisation would look more autocratic than democratic. We are living in an age when democratic experiments are being tried by many a nation. Dr. Ambedkar quoted from the Canadian Act of 1920. How is it that he did not travel down to the United States from Canada? Why would he not look at the Australian Commonwealth? If Canada has adopted a measure, is it necessary that India, with twenty-five times the population of Canada and half the size of Europe, should adopt those very principles in her Constitution and take it as a salutary example for experiment in democracy? If democracy could succeed in the United States, if it can succeed in England, why should it not succeed in India without this clause? Well, Sir, I hope this House will give consideration to this article and be guided by principles of democracy rather than by principles of expediency.

Shri H. V. Kamath : Mr. President, article 289 of our Draft Constitution dealing as it does with elections and electoral matters has naturally evoked intense interest in this House and I am sure it has evoked or is bound to evoke equally keen interest outside the House as well. If we compare article 289 as it was originally drafted by the Drafting Committee and the article as it has come before the House today, we cannot fail to notice some salient differences, the main difference being that the superintendence, direction and control of all elections to State legislatures have been radically modified in the draft article as it was moved by Dr. Ambedkar yesterday and amended by him today. The footnote to this article on page 138 of the Draft Constitution reads thus:

> "The Committee is of opinion that the Election Commission to superintend, direct and control elections to the Legislature of a State in Part I of the First Schedule should be appointed by the Governor of the State."

This was apparently the Drafting Committee's original view. But later on the view underwent some transformation and, in so far as the Election Commission for a State a concerned, the Governor has disappeared from the picture. I fail to see why the Governor, now that he is going to be nominated by the President, should not have any voice in the matter of the Election Commission to superintend, direct and control the elections to the State legislature. If honourable Members will turn to article 193(1) they will find that even where appointments of High Court Judges in a State are concerned, the Governor of that particular State has been invested with some authority in the matter. That relevant clause reads as follows:

> "Every judge of a High Court shall be appointed by the President by a warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State..."

I cannot understand why the Governor of the State should have no voice whatsoever in the appointment of the Regional Election Commissioner or the Election Commissioners of that State. The article as it has been modified by Dr. Ambedkar confers power on the Governor of the State in so far as supplies are concerned, such as staff, furniture and I do not know what else. As far as these are concerned, the Ruler of the State or the Governor of the State shall, when requested, by the Election Commissioner make available in the Election commissioners or the Regional commissioner, such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1) of this article. That, Sir, to my mind is a sort of anti-climax to the whole scheme of the article. In my humble judgment there is no valid reason whatsoever why the Governor should be deprived of the right of even exercising his voice or giving the benefit of his opinion in so far as the appointment of Election Commissioners for the State is concerned. The executive head of the Union is the President and the executive head of the State is the Governor. May I ask the House why, if we seek to invest the President who is the constitutional head of the Union with such vast powers in the appointment of Election Commissioners for the whole of India, we should not give the Governor the right to give his opinion, his judgment in the appointment of Election Commissioners for his State? I fail to see any reason whatsoever for not giving the Governors any powers exception in so far as providing the staff is concerned, how many clerks, how many superintendents and how many assistants are required for the Election Commissioners. A sort of *Bada Babu* the Governor has become so far as the Election Commission is concerned. You are making him nothing more. I submit that this is utterly derogatory to the dignity of the Governor of a State. I cannot understand why the Governor is being asked to supply the staff when he has no voice in the appointment of the Election Commissioner. I strongly object to this denudation of the Governor's authority, so far as the office of the Election Commission is concerned. Again, I personally feel that clause (5) is absolutely unnecessary. We are burdening the Constitution with redundant details, with purposeless and meaningless details. Certainly every office will have to have necessary staff. But why put it down in the Constitution? The President of the Indian Union and the Governors of the States will certainly require staff for their offices, but we have not mentioned that in the Constitution. Why mention then that the Election Commissioners at the Centre of the Regional Commissioners in the provinces shall be provided with necessary staff. What I ask is this. Is it conducive to the dignity of our Constitution if we burden it with such unnecessary details, such minutiae?

Next I pass on to the amendment which has been moved by Dr. Ambedkar today after listening to the debate in the House yesterday and today. I feel that the amendment which has been placed before the House today is a sort of half-hearted concession to the viewpoints that have been put forward in this House. We are dealing with elections and electoral matters. Parliament is the supreme elected body in the Indian Union and so Parliament must have greater voice in the matter of superintendence, direction and control of elections. With a view to serving this purpose, my Friend Prof. Shibban Lal Saksena moved certain amendments yesterday. The amendment that has been moved by Dr. Ambedkar today meets of those amendments, some of those viewpoints half way. I personally think-I may be wrong in the assertion-but I believe that Dr. Ambedkar individually is inclined to go the whole hog. I shall not venture to make a statement on that point, and I have to take the amendment as it has been placed before the House. Clause (4) of the article moved by Dr. Ambedkar yesterday says that the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine. Today the amendment placed before the House says, "subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine." There are two things, the Parliament's law and the President's rule. Why, may I ask, in fairness to this House and the future Parliament of the Indian Union, should we not say that the conditions of service and tenure of office shall be such as Parliament may by law determine? Why also say "as the President may by rule determine"? The President in the executive head of the Union, while Parliament is the supreme elected body. Why then leave it to the President to frame rules in this regard?

The next point is, why the Chief Election Commissioner's conditions of service and tenure of office are made so very secure he is almost irremovable-except on a vote of two-thirds majority of both the House of Parliament. Why has he been made almost irremovable, while his colleagues at Election Commissioners are, according to this article, removable at the sweet will and pleasure of the Chief Election Commissioner? Is this the way that this House is going to treat the colleagues of the Chief Election Commissioner? Even a clerk in a District office or in the Secretariat has got far better conditions of service and security of tenure than what is envisaged for the Election Commissioners in this article. I feel, Sir, that with the article left as it is, most of the time of the Election Commissioners will be utilised in doing what I may call *khushamat,* to keep the Chief Election Commissioner in good humour, because it will be only natural, human nature being what it is, lest the Chief Election Commissioner should give a bad chit. So this is what we are trying to provide by means of this article. I personally know that a superior officer often gives a bad chit, not because his subordinate is bad at his work but because he is of independent views, is of strong mind or does not humour his boss. This sort of thing should not be encouraged, but I am afraid that is what this article might do.

Pandit Lakshmi Kanta Maitra (West Bengal: General): How can Members be sacked by the Election Commissioner, I cannot understand.

Shri H. V. Kamath : Not members but Election Commissioners. You are not listening properly. I think you honourable Friend is in a hurry to go home.

Pandit Lakshmi Kanta Maitra : I am listening to you, but I am getting more and more confused as you proceed.

Shri H. V. Kamath : The second proviso to clause (4) to this article moved yesterday by Dr. Ambedkar is to the effect that "provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner." Is it clear now? I want the Election Commissioners to be placed on a par with the Chief Election Commissioner. We have adopted the article with regard to the removal of Supreme Court Judges and High Court Judges, placing them on a par with one another. There is no distinction between the Chief Justice and his colleagues. I ask, therefore, Sir, why this distinction between the Chief Election Commissioner and the Election Commissioners?

Pandit Lakshmi Kanta Maitra : That has been provided in the case of the Chief Commissioner. They would be done on the recommendation of the Chief Commissioner.

Shri H. V. Kamath : Perhaps the language of the article is not clear. If of course, the article means that the Chief Commissioner and his colleagues the Election Commissioners and the Regional Commissioners, all these can be removed only in a like manner and on like grounds as a Judge of the Supreme Court, then it is all right. The removal, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners have been made so tenuous that with these conditions before them, men of real merit, men of ability and competence may not like to serve on the Election Commission (Interruption). There is the President to pull me up if necessary. I hope there is only one President in the House. I will bow to his ruling and to none other's. The President's command I will obey.

Then, Sir, there are one or two more points which I would like to stress before the House. I feel that so far as the Regional Commissioners are concerned, that is, the Commissioners for a particular State are concerned, I have already stated that the Governor of the State should be consulted by the President before he appoints Election Commissioners for that State. As it is, we are watering down provincial autonomy to a considerable extent in this Constitution, but certainly there is no harm if in appointing the Election Commissioners for the particular State the Governor of the State is consulted. After all the Governor is not going to be elected now. He is going to be nominated by the President; he is the President's nominee and more or less a creature of the President. The President will have full confidence in the Governor of the State; he is not going to be an elected Governor at all but a nominated Governor. If the President cannot trust even his own nominee. I do not know whom else he can trust. So, I suppose some sort of a suitable alteration will be made in this regard providing for consultation with the Governor by the President, especially in view of the fact that even as regards the appointment of a High Court Judge in a State, we have provided that the President shall consult the Governor of the State. I fail to see why the Governor should not be invested with a similar power in regard to the appointment of Regional Commissioner.

Next, so far as the removal of Regional Commissioners is concerned, it should not be left so very delightfully easy as it is now in this article. I feel that there must be more secure conditions of tenure and of service. It Parliament can have no voice-Parliament at the Centre and the Legislature in the State can have no voice-in the removal of Regional Commissioners I at least feel that they should be removed only by the whole Election Commission and not simply by the Chief Election Commissioner and his colleagues. The one-man show must cease. It is all a one-man show at present. Now, of course we are going to adopt an amendment to the effect that "subject to any law made by Parliament", but so far as the removal is concerned, according to the article it is a one-man show,-the removal of the Election Commissioners or Regional Commissioners. This should not be. The removal must be made more difficult: otherwise, I warm the House that no men of proved merit, ability or competence will come to serve on the Election Commission when the conditions of service are so very insecure.

Then, Sir, there is one point made by my honourable Friend, Prof. Shibban Lal Saksena and that the Regional Commissioners must be appointed by the President not merely in consultation with, but in concurrence with the Election Commission. I think that is a safe rule to adopt, that the President should not have the only word, but he must be guided by the opinion of the Chief Commissioner with whom he must concur in the matter of appointment of his colleagues. After all when the President has appointed then Chief Commissioner, I see no reason why the President cannot get suitable men about whom both are in agreement. Certainly India is a vast country, and she can produce men for every place and for every office that the future may have in store; and I am sure for this job of Election Commissioner there will certainly be men available about whom the President and the Election Commission can agree, and both in agreement with each other can appoint the Regional Commissioners. These are the lacunae and pitfalls in the article and the amendments that have been moved by the Honourable Dr. Ambedkar before the House. I have serious misgivings about the working of this article. I have doubts about the way in which it will work, unless it is further amended suitably. Unless it is so amended, I am sure the Election Commission at the Centre and in the State will not function as well as we all want it should, and it is, I dare say, the unanimous desire of the whole House that with elections looming on the horizon, the first general elections should be conducted in an able, impartial, efficient manner. There can be no two opinions on that point. I, however, fear that that object may not be achieved by this article. This is a possibility which I for one do not like to envisage. I desire that a suitable method should be devised to have more competent, more impartial and more efficient Election Commissions in the States as well as at the Centre to conduct elections. What I fear is that this article moved by Dr. Ambedkar may not serve that purpose. I hope that Dr. Ambedkar and his wise men of the Drafting Committee will take into consideration this matter, if not now, at a later stage perhaps, and try to make further suitable amendments in this article. The House, I am sure, will consider this matter more carefully because it is not a matter to be lightly treated, for members to laugh at and smile. They might live to weep another day. If we are in a hurry to go home, I wish that this article may be held over. It is not a laughable matter at all and if Members are tempted to laugh, I wish them joy of it. Sir, I trust that the article will be suitably modified in the light of my observations.

Some Honourable Members : The question be now put.

Mr. President : Closure has been moved. The question is:

"That the question be now put."

The motion was adopted.

Mr. President : I will first put the amendment which Ambedkar has moved last.

The question is:

"That in amendment No. 99 of List I in the proposed article 289-

> (i) in clause (1) the words 'to be appointed by the President' occurring at the end be deleted.
>
> (ii) for the clause (2), the following clauses be substituted:-
>
> '(2) The Election Commission shall consist to the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in this behalf by Parliament, be made by the President.'
>
> '(2a) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Commission.'
>
> (iii) in clause (4), before the words 'The conditions of service' the words 'subject to the provisions of any law made by Parliament' be inserted."

The amendment was adopted.

Mr. President : I will put Prof. Shibban Lal Saksena's amendment. I think there will be a little change because of the new arrangement.

Dr. President : The question is:

"That at the end of clause (1) the following words be added:-

> 'Subject to confirmation by two-thirds majority in a joint session of both the Houses of Parliament'."

The amendment was negatived.

Mr. President : The question is:

"That after the word 'appoint' in clause (2) the following be inserted:-

> 'Subject to confirmation by two-thirds majority in a joint session of both the Houses of Parliament.'"

The amendment was negatived.

Mr. President : The question is:

"That in clause (3) for the words 'after consultation with', the words 'in concurrence with' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in clause (4) for the words 'President may by rule determine', the words 'Parliament may by law determine' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in proviso (1) to clause (4) for the words 'Chief Election Commissioner' the words 'Election Commissioners' be substituted, in both places."

The amendment was negatived.

Mr. President : The question is:

"That in proviso (2) to clause (4), the words 'any other Election

Commissioner or' be omitted."

The amendment was negatived.

Mr. President : The question is:

"That for article 289, the following article be substituted:-

289. (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of election to the offices of President and Vice-President held under this Constitution, including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with election of Parliament and to the Legislatures of States shall be vested in a Commission (referred to in this Constitution as the Election Commission).

Superintendence, direction and control of elections to be vested in an Election Commission.

(2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election commissioner and other Election Commissioners shall, subject to the provision of any law made in this behalf by Parliament, be made by the President.

(2a) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Commission.

(3) Before each general election to the House of the People and to the Legislative Assembly of each State and before the first general election and thereafter before each biennial election to the Legislative council of each State having such Council, the President shall also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on it by

clause (1) of this article.

(4) Subject to the provisions of any law made by Parliament the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine:

> Provided that the Chief Election Commissioner shall not be removed from office except in like manner and on the like grounds as a judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment:
>
> Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

(5) The President or the Governor or Ruler of a State shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1) of this article."

The amendment was adopted.

Mr. President : The question is:

"That article 289, as amended stand part of the Constitution."

The motion was adopted.

Article 289, as amended, was added to the Constitution.

ADJOURNMENT OF THE HOUSE

The Honourable Shri Satyanarayan Sinha : Mr. President, Sir, in the rules of procedure of this House, rule 19, there is a proviso that the House cannot be adjourned for more than three days by the President unless the House authorises him to do so. Therefore I move this formal motion:

"Resolved that the House do adjourn until such date in July 1949 as the President may fix."

No date is specified; the President will fix the date.

An Honourable Member : Why put down the month?

The Honourable Shri Satyanarayan Sinha : The month is fixed; the President shall fix the date.

The Honourable Shri Ghanshyam Singh Gupta : (C. P. & Berar: General): That means that the President shall have no choice in regard to the month.

Shri Honourable Shri Satyanarayan Sinha : The motion is simply that the House to adjourn until such date in July 1949 as the President may fix. He cannot alter the month; he can fix a date.

Mr. President : Before I put this motion to the House, I desire to explain the situation and the programme as I envisage it. May own idea is that we should be able to finish the second reading by the 15th of August. Thereafter, we shall have to adjourn for some time to enable the Drafting Committee to prepare the Constitution in its final form for the third reading. That might take some weeks. Therefore, we shall have to meet from time in September. That should also be subject to this that we are able to pass the third reading by the second of October. That is my wish. If the House generally agrees to this tentative programme, I shall fix the dates in consultation with the Drafting Committee and perhaps with the members of Government who are principally concerned in this.

Shri Mahavir Tyagi : Could you also give an idea as to how long you may require us to sit in the month of July?

Mr. President : I could give you an idea. The Assembly cannot meet before the 15th of July, because, as I said the other day, the adjournment has been necessitated by the fact that there are certain provisions which have to be considered consultation with the Provincial Ministers and the Finance Minister has also to be present at these consultations. The Finance Minister is going to England in connection with the Sterling Balance negotiations, and he will be coming back some time early in July. We cannot expect that this Conference of Provincial Ministers may take place before the 15th of July. Therefore, the House cannot meet before the 15th of July. The question is as to on what exact date after the 15th of July we should be able to meet. I shall try to adjust that in consultation, as I have said, with the Drafting Committee and with the Government.

Shri Mahavir Tyagi : I want to know the length of period for which we will have to sit.

Mr. President : As I have said, from the day we begin up to the 15th or August; that is as I envisage.

Shri Mahavir Tyagi : Fifteenth is the probable date on which you might summon the session. What I want to know is how long will that session last.

Mr. President : I have answered that question. I have said, the session will last from the day it commences up to the 15th of August, if my provisional programme stands.

The Honourable Shri Ghanshyam Singh Gupta : May I also remind you, Sir, that it will be difficult for us to say on what particular date we will finish. That will depend on the work and how much time we take.

Mr. President : As I have said, this is a provisional suggestion of mine. That is a good date and therefore I want to have it finish by the date. If the Members want to prolong it, they can do it, of course.

Shri R. K. Sidhva : My point is, we have held over a number of clauses and unless we meet a little earlier, *viz.,* by the 20th, we will not be able to finish the subject matters held over as contentious by the 15th August 1949.

Mr. President : I shall bear that in mind.

The Honourable Shri Satyanarayan Sinha : Sir, let us adjourn now.

Mr. President : Do I take it that the House accepts the motion moved by Mr. Sinha?

Honourable Members : Yes.

Mr. President : The question is:

"Resolved that the House do adjourn until such date in July 1949 as the President may fix."

The motion was adopted.

The Assembly then adjourned until a Date in July 1949 to be fixed by the President.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME IX

Saturday, the 30th July 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eight of the Clock Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the Pledge and signed the Register:-

Maulana Mohd. Hifzur Rahman (United Provinces: Muslim).

Seth Govind Das (C.P. & Berar: General) : *[Mr. President, before we proceed with our business, I would like to draw your attention to one matter. Since the day of our arrival here we have been hearing various rumours about our National Language. It is said that the question of National Language would now be left for Parliament to decide. Sir, you have said here repeatedly that not only would the question of our National Language be decided by us here, but that our Constitution too would be adopted in our National Language. Now we are holding the final session, and I have learnt that the Translation Committee appointed by you for preparing the Hindi translation of the Draft Constitution has already translated the articles so far adopted by this Assembly. I would like you, Sir, to contradict these rumours and make a definite announcement that the question of the National Language would not be left to the Parliament but that it would be decided by the Constituent Assembly. Unless it is so done, in my opinion, our Constitution would remain incomplete. I would also like you, Sir, to fix the dates when questions of National Language, National Anthem and the name of the country would be taken up here so that the people, may come to know of the dates when these questions would be decided.]*

Dr. B. Pattabhi Sitaramyya (Madras: General) : I thought it had been understood that whenever any Member wanted to raise a point which was not on the agenda, he should speak to the President in the Chamber. May I know whether such a procedure has been gone through in this case.

Mr. President: No.

Dr. B. Pattabhi Sitaramyya: To spring such a subject upon the, audience all of a sudden and to make a long speech is against all order and procedure.

The Honourable Shri Jawaharlal Nehru (United Provinces: General): Hear,

hear.

Mr. President: The question as to whether the question of language should be left for the Parliament depends entirely upon the decision of this House. It is for this House to consider that question and come to any decision that it likes. I do not think any further question arises and when that article is reached and a decision is taken, we shall act accordingly.

Seth Govind Das *[Mr. President, my second point that a date should be fixed remains yet unanswered.]*

Shri T. T. Krishnamachari (Madras : General) : Mr. President, may I draw your attention to an irregular act on the part of the Assembly Staff. I would like to know, Sir, whether you have given any member of the staff disciplinary jurisdiction over the Members of the Constituent Assembly so that they can punish them for what they think is non-compliance with their request. A member of the staff has written to me to say that I would not get petrol coupons for a particular week because of something that I have not done in the past. I do not know whether he is entitled to do so and if you have authorized him to do so, and I think the whole action is perfectly irregular.

Mr. President: It is evident I could not have given any authority like that to any member of the staff; however, I shall look into the matter.

We shall now take up article 79-A.

DRAFT CONSTITUTION-*(Contd.)*

New Article 79-A

The Honourable Dr. B. R. Ambedkar (Bombay: General) : Sir, I move:

"That in amendment No. 1 of List I (First Week) of Amendments to Amendments for the provisions of any law made under the said clause."

Secretariat of Parliament "79-A. (1) Each House of Parliament shall have a separate Secretarial Staff:

Provided that nothing in this clause shall be construed as preventing the creation of posts common to both Houses of Parliament.

(2)Parliament may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of either House of Parliament.

(3)Until provision is made by Parliament under clause (2) of this article, the President may. after consultation with the Speaker of the House of the People or the Chairman of the Council of States, as the case may be, make rules regulating the recruitment and the conditions of service of persons appointed to the secretarial staff of the House of the People or the Council of States, and any rules so made shall have effect subject to the provisions of any law made under the said clause."

The House will see that this is a new article which is sought to be introduced in the Constitution. The reason why the Drafting Committee felt the necessity of introducing an article like this lies in the recent Conference that was held by the Speakers of the various Provinces in which it was said that such a provision ought to be made in the Constitution.

It was, as every one most probably in this House knows, a matter of contention between the Executive Government and the President ever since the late Mr. Vithalbhai Patel was called upon to occupy the President's Chair in the Assembly. A dispute was going on between the Executive Government and the President of the Assembly. The President had contended that the Secretariat of the Assembly should be independent of the Executive Government. The Executive Government of the day, on the other hand, contended that the Executive had the right to nominate, irrespective of the wishes and the control of the President the personnel and the staff required to serve the purposes of the Legislative Assembly. Ultimately, the Executive Government in 1928 or 1929 gave in and accepted the contention of the then President and created an independent secretariat for the Assembly. So far, therefore, as the Central Assembly is concerned, there is really no change effected by this new article 79-A, because what is provided in clause (1) of article 79-A is already a fact in existence.

But, it was pointed out that this procedure which has been adopted in the Central Legislature as far back as 1928 or 1929 has not been followed by the various provincial legislatures. In some provinces, the practice still continues of some officer who is subject to the disciplinary jurisdiction of the Legislative Department being appointed to act as the Secretary of the Legislative Assembly with the result that that officer is under a sort of a dual control, control exercised by the department of which he is an officer and the control by the President under whom for the time being he is serving. it is contended that this is derogatory to the dignity of the Speaker and the independence of the Legislative Assembly.

The Conference of the Speakers passed various resolutions insisting that besides making this provision in the Constitution, several other provisions should also be, made in the Constitution so as to regulate the strength, appointment, conditions of service, and so on and so on. The Drafting Committee was not prepared to accept the other contentions raised by the Speakers' Conference. They thought that it would be quite enough if the Constitution contained a simple clause stating that Parliament should have a separate secretarial staff and the rest of the matter is left to be regulated by Parliament. Clause (3) provides that, until any provision is made by Parliament, the President may, in consultation with the Speaker of the House of the People or the Chairman of the Council of States, make rules for the recruitment and the conditions of service. When Parliament enacts a law, that law will override the rules made pro-tempore by the President in consultation with the Speaker of the House, of the People. I think that the provision that we have made is sufficient to meet the main difficulty which was pointed out by the Speakers' Conference. I hope the House will find no difficulty in accepting this new article.

[Amendments 43 and 44 of List II (First Week) were not moved.]

Shri L. V. Kamath (C.P. & Berar: General): Sir, May I move all the amendments standing in my name or am I to take my chance after Prof. Shibban Lal Saksena ?

Mr. President: All at once.

Shri H. V. Kamath: Mr. President, I move:

"That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in the proviso to clause (1) of the proposed new article 79-A, for the words 'shall be, construed as preventing' the words 'shall prevent' be substituted.

That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in clause (2) of the proposed new article 79-A, for the words 'recruitment, and the conditions of service of persons appointed, to' the words 'recruitment to, the salaries and allowances and the conditions of service of' be substituted.

That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 79-A, for the word 'or' occurring in line 4. the word 'and' be substituted

That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 79-A, the words 'as the case may be' be deleted.

That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 79-A, for the words 'recruitment and the conditions of service of persons appointed to' the words 'recruitment to, the salaries and allowances, and the conditions of service of' be substituted.

That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 79-A, for the words 'the House of the People or the Council of States' the words 'each House of Parliament' be substituted.

That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 79-A, all the words after the words 'Council of States' where they occur for the second time, be deleted."

Mr. President: Are not all these amendments more or less of a verbal nature ?

Shri H. V. Kamath : No, Sir. I shall however speak on the more substantial ones. If you deem fit you may kindly say which are verbal and I shall abide by your ruling, Sir.

Mr. President: No. 72 is verbal.

Shri H. V. Kamath: Nos. 72 and 73 go together. Coming to amendment No. 69, the object of this amendment is to eliminate unnecessary verbiage. We in this proviso to clause (1) I do not find any parallel in any other proviso which provisos have been moved and adopted. I have closely examined various provisos of articles that this House has adopted in the past, and for the words occurring in this proviso to clause (1) I do not find any parallel in any other proviso which we have adopted earlier. I shall refer to two or three articles that we have already passed. I shall invite your attention to article 22. The proviso to clause (1) says:

"Provided that nothing in this clause shall apply to an educational institution etc."

It does not say :

"Provided that nothing in this clause shall be construed as applying etc."

This is unnecessarily cumbering the Constitution with needless, redundant, superfluous verbiage.

I therefore feel that the meaning of this proviso could be adequately conveyed by merely stating that nothing in this clause shall prevent the creation of posts common to both Houses of Parliament. If the House is desirous of referring to other articles of similar nature, I shall invite its attention to article 42 clause (3) sub-clause (b). There again it says :

> "Nothing in this article shall prevent Parliament from conferring by law functions on authorities other than the President."

The proposed article, article 79-A, has a very clumsy construction, in my judgment, and no useful purpose would be served by the addition of the words "shall be construed as preventing"

I therefore submit that our object will be adequately served by merely stating that:

> "Nothing in this clause shall prevent the creation of posts common to both Houses of Parliament."

Then I come to amendment No. 71 which relates to recruitment and conditions of service of persons appointed to these posts-the secretarial staff or others of either Parliament.

Mr. President: Would you not leave the wording to the Drafting Committee ? I am sure the Drafting Committee will consider these.

Shri H. V. Kamath: It is in my judgment more or less substantial and I would crave your indulgence to let me speak.

Mr. President: If it is put to the House it may be lost.

Shri H. V. Kamath : That will be after my speech. I leave it entirely to the judgment of the House which I do not wish to fetter. I only wish to place my views before the House and it is open to the House to either accept or reject them. I submit that should not affect the moving of my amendments at this stage.

Amendment No. 71. This clause (2) if this new article refers to recruitment and conditions of service. Now for any staff, secretarial or otherwise or anybody of public servants, various questions arise. Recruitment is the first, without which there is no body of public servants. Then conditions of service arise. But to my mind the conditions of service do not include the salaries, emoluments and other allowances that will be paid to those servants. I remember covenants that used to be signed by members of the all-India services. Various conditions of service were laid down in those covenants that used to be executed between officers of all-India services and the Secretary of State. Notably, I remember personally the Indian Civil Service. There various conditions of service were laid down, but there was no reference at all to salaries and emoluments of the servants of that category. I am sure in every other Department, in every other field of service, Government or otherwise, a similar rule will hold, and that is salaries and emoluments are matters apart from conditions of service. I have no doubt on that point and I do not know whether the House will hold the same view, but from my experience in this line salaries and emoluments are something quite apart from the conditions of service; but I am sure so far as this new article is concerned this House will desire that Parliament should regulate not merely questions of recruitment and conditions of service but also the other question of emoluments, that would be paid to the Secretarial staff of our future Parliament.

Therefore, in my judgment, it is very necessary that this article should make it clear that Parliament shall regulate not merely the recruitment, the cadre or strength of the staff and conditions of service, but also the other cognate matter of salaries and allowances that may be paid to the members of the staff. Already we have passed several articles, notably the articles pertaining to the Speaker, Deputy Speaker and similar other articles where we have definitely and explicitly, referred to the salaries and allowances that will be paid to these various dignitaries of Parliament. Therefore, it is necessary, in my judgment, that these words should also be included in this article so as to make it quite clear that salaries and allowances also should be regulated by Parliament.

Coming to my next amendments Nos. 72 and 73, I have to say only one word about them. We have already had it stated in the article moved by Dr. Ambedkar where the proviso states "nothing in this clause shall be construed. As preventing the creation of posts common to both Houses of Parliament." Therefore, it is conceivable and also likely that there will be certain posts common to the House of the People and the Council of States. If that be so, then the possibility, nay, the desirability of creating certain posts common to both Houses of Parliament will certainly arise. The contingency will be inevitable that the President will have to consult not merely one or the other, the Speaker or the Chairman, but he must consult both of them. He will have to consult the Chairman of the Council of States as well as the Speaker of the House of the People, before creating posts common to both, and obtain the views of the Chairman and the Speaker as to whether it is necessary to make the posts common to both Houses or leave them otherwise. If we adopt the proviso, then the contingency which I have referred to will arise of the President having to consult both the Speaker and the Chairman.

Once the House accepts this amendment of mine, then the subsequent few words-"as the case may be" drop out automatically, because when you say "Chairman and the Speaker" then there is no valid reason for retaining the words "as the case may be." Therefore, amendments Nos. 72 and 73 go together.

Amendment No. 74 is identical with No. 71 and I have already stated the reasons for moving amendment No. 71 and so I do not propose to speak on amendment No. 74.

Coming to amendment No. 75, it refers to clause (3), *i.e.* with a view to bringing this into conformity with or in line with clause (1) of the proposed new article. Clause (1) refers to each House of Parliament. I desire that the article should end on a note Similar to its beginning, that it should conclude in the same manner as it has begun. It begins with a reference to "Each House of Parliament" and there is no reason why, without detracting from the meaning of the article or this particular clause, we should not merely say "each House of Parliament" at the end also, instead of repeating the words "House of the People or the Council of States." I have already said in amendments 72 and 73 that the President will consult both Houses of Parliament and not merely the Chairman or the Speaker. Therefore it follows *ipso facto* and quite logically enough, that it will suffice if we merely state "each House of Parliament" and not repeat the words "House of the People or the, Council of States."

Then there remains the last amendment, *i.e.* No. 76. Here it is slightly more than verbal, and the point of substance in it is this. It touches on the authority and power of Parliament, *vis-a-vis* the rule-making power of the President. The article lays down that "any rules so made shall have effect subject to the provisions of any law made under the said clause." Now if this clause is studied carefully, it will be realised that this power is given to the President only until Parliament meets to deliberate thereon, and only so long as provisions in this regard are not made by Parliament. That is to say, they do not overlap. There is to be no overlapping of the authorities of the Parliament and the President, at any point. Until the new Parliament meets and deliberates on these matters, it is obvious that no rules, no provisions in this regard can be made by Parliament. So, for that interim period, for the interregnum, power is given to the President to make rules in this respect. Once Parliament sits and deliberates and makes provisions in this regard on these various matters, the President's authority vanishes. The rules made by him have no power or force afterwards, once Parliament has made provisions in this regard. Therefore, in my judgment, to say that any rules made shall have effect, subject to provisions made under the said clause is wholly futile and fatuous, and I do not know how such a clause, such a provision could have at all found a place in this article. I wonder why this slip has been committed by Members and otherwise round them. To my mind this article makes it clear that Parliament shall make provisions, and until it does so, the President shall make rules. Then, what is the point in saying that these rules will be subject to any law made under the clause. Once Parliament has made provision in this regard, then the other rules have no authority; they die thereafter, and these rules will not govern in any manner the secretarial staff's recruitment, conditions of service and other matters connected with the staff of Parliament. But between now and the session of Parliament, for that period, the President will be empowered to make certain rules, but once Parliament meets and makes provisions, then the President, according to me, has no *locus standi* at all in this mater. Therefore it is absolutely pointless and purposeless and even derogatory to Parliament's dignity and authority to say that even after Parliament has met, the provisions in this regard made by the President will have effect subject to, etc., etc.

Clause (2), if it is read with and studied closely with clause (3), will make it quite clear to honourable Member that the last portion of clause (3)..."and any rules so made shall have effect subject to the provisions of any law made under the said clause" must be deleted.

Shri Mahavir Tyagi (United Provinces : General): We are now more than convinced by the honourable Member's arguments that these words are not necessary.

Shri H. V. Kamath : If my friend Mr. Tyagi is convinced, I am very happy. I am not so sure that my other colleagues are equally convinced, but I am certainly very glad to know from Mr. Tyagi that he has been convinced by my arguments, and I am glad that at least one Member of the House is with me, if not any others.

I therefore move these various amendments and commend them for consideration of the House.

Prof. Sibban Lal Saksena (United Provinces : General) : Sir, I move:

"That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in the clauses (2) and (3) of the proposed new article 79-A, before the word 'recruitment' the word 'strength' be inserted."

I have added the word "strength" because the present article does not specify this. If you add this word, it will remove a lacuna. As far as the article itself is concerned, I believe that at one time our revered leader, the late Mr. Vithalbhai Patel, had to fight the battle of independence for the secretariat of the then Central Legislative Assembly with the then bureaucracy and it is a happy day today that we are incorporating this principle to ensure the independence of the secretariat staffs of our Parliament in the Constitution.

I support this amendment of Dr. Ambedkar and I hope by including the word "strength" you will remove the lacuna, which I think is present there.

Mr. President : All the amendments have now been moved. Does any Member wish to speak?

Shri R. K. Sidhva (C.P. & Berar : General) : Sir, I welcome this article. The Speaker's secretariat ought to be quite separate from the executive. It is a recognised fact everywhere. But I have noticed, Sir, that when men, with the best of intentions, come into power, they do not want to part with the power which is not due to them. Therefore, many persons had to fight for this right in the past. I can give you illustrations, Sir, that in the Municipal Corporations also the secretariat branch is mixed even now with the executive. When I was the Mayor of Karachi I had to fight very hard with the secretariat department and the secretariat executive department did not like to budge an inch and part with any power. Ultimately, they had to yield and today, in pursuance of the resolutions passed by the All India, Burma and Ceylon Mayors Conference, at Bombay, Calcutta and Madras there are separate secretariats for the Mayors. Therefore, it is in the fitness of things that the Speakers of all the provinces who met the other day under the chairmanship of the Speaker of the Parliament, decided that they must have a separate secretariat. I can cite you an illustration, Sir, that when the Speaker's secretariat wanted pencils for the Members the executive refused to give them. I know of a province where at the instance of the House, Members complained that stenographers did not take down the proceedings properly, and therefore it was necessary that an additional stenographer should be added, but the executive refused to grant the additional stenographer even with the consent of the House. These conditions prevail even today and I am so glad that this article has been brought and has been put into the Constitution. If our executives, I mean the Ministers, had been reasonable, this article would not have been put into the Constitution and Parliament would surely have taken not of it. But when it is seen that even popular Ministers are not prepared to part with that power, there is no other alternative but to put such an article into the Constitution.

Coming to the service staff, the language is quite different from the original article in the List at page 11, as proposed at that time by the Honourable Dr. Ambedkar. He has made a certain improvement which I like. But I wish to make it clear that the staff of the secretariat should be quite, different from the staff of the executive. The staff of the Speaker, I mean the Legislature, should be chosen from persons who are amiable, social, kind, useful and helpful o the Members, and not that kind of staff which exists in the Secretariat. I know that in our Parliament today we have got a staff who are helpful, kind and always ready to help the Members in matters like the preparation of Bills, resolutions and questions. This is the kind of attitude that prevails also in the House of Commons. But if you go to the Central Secretariat, you will find quite a different type of staff. The practice in the House of Commons is that no staff shall be allowed to be, recruited unless the Clerk of the House-whose post is equivalent to the

Secretary of our Parliament-certifies that he is fit to be sent to the Public Service Commission. Then he will be allowed to sit for an examination by the Public Services Commission. That Clerk of the House keeps that man who aspires for a post in the secretariat, gives him a trial for a couple of months and sees whether he fulfills all the qualifications which I have mentioned. I can tell you from first hand knowledge that the Clerk of the House of Commons is very careful to see that though an Additional Secretary, or an Assistant Secretary or an assistant clerk may be very good in the English language or in other matters, if he is not helpful, and kind and of an amiable nature, he is ruled out. Therefore he has no direct approach to the Public Services Commission either through the Ministries or the various departments until the Clerk of the House certifies that this man should proceed for the examination of the Public Services Commission. I would have preferred the original article which was moved by Dr. Ambedkar in that connection. In modification I had moved an amendment. I shall be pleased to have this clause put into the Constitution before the next Parliament comes in as I do not want the staff to be tampered with by anyone.

In the House of Commons the entire staff of its secretariat is appointed by the Clerk of the House and not even by the Speaker. Only as a matter of courtesy the Clerk of the House of Commons informs the Speaker that he is appointing so and so and the Speaker says it is all right. That is the practice. In May's Parliamentary Practice you will see that it distinctly lays down that the Clerk makes the appointment of the entire staff of the House of Commons. I therefore hope that a similar provision will be made by Parliament to that effect. I want to make it clear that, while we do not want the executive to interfere with the appointment of the staff of the Legislatures, it should not be understood that that power should go to the Parliament. It would be negativing the very object of this amendment if Parliament takes upon itself to make appointments. Once a fit Secretary is appointed in the interest of discipline we must see that he makes all other appointments subject of course to the approval of the Speaker. The Speaker should have a voice because we are in the initial stage and I therefore desire, unlike in the House of Commons, that the Speaker should have voice in the initial stage in the appointment of the staff. I do maintain, as I have already stated, that unless we have the proper type of staff of the kind I have mentioned we shall not be doing justice to Parliament and it will not serve the purpose of the article that we are providing in the Constitution. With these words I heartily support the amendment moved.

Shri Brajeshwar Prasad (Bihar : General) : Sir, I rise to support the new article 79-A moved by the Chairman of the Drafting Committee. I recognise the necessity of a separate staff for the Parliament, but there is one thing which is proposed to be done which I do not like. Questions relating to appointment, promotions and other conditions of service have been left to be determined by Parliament. The amendment which I wanted to move, but did not, suggested that it should be clearly laid down in the Constitution that all questions relating to appointment, in fact all appointments, must be made by the Federal Public Service Commission and not by the Speaker or the Chairman of the upper House. Having due regard to the facts of our political life, when there is hardly a ministry in the provinces which is not being condemned for patronage, for undue favour, for provincialism, it is not safe to vest this power or leave it in a nebulous state or to ask the Parliament to regulate these things. The Parliament's power must be circumscribed in this sphere; and if we want that the position of the Speaker should be above suspicion it is necessary that no patronage should be vested in his hands. We want a separate staff not just for the sake of dignity; simply because other Ministers have got their separate secretariat, therefore the Speaker must also have a secretariat so that his position and dignity may be in line with that of the other Ministers. We want this because it is necessity; but there is no reason why the power of appointment, promotion and disciplinary matters relating to the series should be let in the hands of the Parliament, which will vest these powers in the hands of the Speaker. Sir, I have nothing more to say.

The Honourable Dr. B. R. Ambedkar : Sir, nothing that has been said, in my judgment, calls for a reply.

Mr. President : The question is :

"That in amendment No. 42 of List II (First Week) of Amendments to Amendments, in the proviso to clause (1) of the proposed new article 79-A, for the words shall be construed as preventing' the words 'shall prevent' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in Amendment No. 42 of List II, in clauses (2) and (3) of the proposed new article 79-A, before the word 'recruitment' the word 'strength' be inserted."

The amendment was negatived.

Mr. President : The question is :

"That in clause (2) of the proposed new article 79-A, for the words 'recruitment, and the conditions of service of persons appointed, to' the words 'recruitment to, the salaries and allowances and the conditions of service of' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in clause (3) of the proposed new article 79-A, for the word 'or' occurring in line 4, the word 'and' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in clause (3) of the proposed new article 79-A, the words 'as the case may be' be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in clause (3) of the proposed new article 79-A, for the words 'recruitment and the conditions of service of persons appointed to', the words 'recruitment to, the salaries and allowances and the conditions of service of' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in clause (3) of the proposed new article 79-A, for the words 'The House of the People or the Council of States' the words 'each House of Parliament' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in clause (3) of the proposed new article 79-A, all the words after the words 'Council of States' where they occur for the second time, be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 1 of List 1 (First Week) of Amendments to Amendments for the proposed new article 79-A, the following be substituted :-

Secretariat of Parliament. "79-A. (1) Each House of Parliament shall have a separate secretarial staff :

> Provided that nothing in this clause shall be construed as preventing the creation of posts common to both Houses of Parliament.

(2) Parliament may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of either House of Parliament.

(3) Until provision is made by Parliament under clause (2) of this article, the President may, after consultation with the Speaker of the House of the People or the Chairman of the Council of States, as the case may be, make rules regulating the recruitment and the conditions of service of persons appointed to the secretarial staff of the House of the People or the Council of States, and any rules so made shall have effect subject to the provisions of any law made under the said clause."

The motion was adopted.

New article 79-A was added to the Constitution.

Article 104

The Honourable Dr. B. R. Ambedkar : Sir, I move :

That for article 104, the following article is substituted :-

Salaries etc., of Judges

"104. (1) There shall be paid to the judges of the Supreme Court such salaries as are specified in the Second Schedule.

(2) Every judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pensions as may from time to time be determined by or under law made by Parliament, and until so determined, to such privileges, allowances and rights as are specified in the Second Schedule:

Provided that that neither the privileges nor the allowances of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment."

Sir, all that I need say is that the present article is the same as the original article except that the word "privileges" has been introduced which did not occur in the original text. What those privileges are I would not stop to discuss now. We will discuss them when we come to the second schedule where some of them might be specifically mentioned.

Shri Brajeshwar Prasad : Sir, I do not want to move any of the three amendments standing in my name.

Mr. President : As regards Mr. Sidhva's amendment No. 79 this was with reference to No. 2 but since Dr. Ambedkar has moved amendment No. 77 from which the words which Mr. Sidhva wanted to omit have been omitted, his amendment does not arise now.

[Amendment No. 80 of List III (First Week) was not moved.]

Pandit Hirday Nath Kunzru (United Provinces : General) : Sir, I beg to move :

"That in amendment No. 2 of List I (First Week) of Amendments to Amendments, after clause (2) of the proposed article 104, the following new proviso be added :

'Provided that no law made under this article by Parliament shall provide that the pension allowable to a judge of the Supreme Court under that law shall be less than that which would have been admissible to him if he had been governed by the provisions which immediately before the commencement of this Constitution were applicable to the judges of the Federal Court'."

Sir, the amendment moved by Dr. Ambedkar provides that the rights of a judge in respect of pension shall not be varied to his disadvantage after his appointment. I should therefore like to explain why I have thought it necessary to move my amendment. It is true that so far as existing incumbents are concerned, no change will be made in their pensions if article 104 is passed in the form proposed by Dr. Ambedkar. But we have to provide for the future too. Dr. Ambedkar proposes that the question of leave of absence and allowances and pensions should be dealt with by Parliament by law after the passing of this Constitution by the Assembly. There are so many matters to be dealt with in this connection that it is not possible to provide for all of them in the Constitution; they can be provided for either in the appropriate Schedule or in a parliamentary statute. Now Dr. Ambedkar himself has proposed that the salaries of the judges should not be left to be determined by Parliament and that they should be fixed by the Constitution. The salary provided for them in one of the Schedules will be lower than it is at present, and this has been done because judges of the Supreme Court have been given under article 308 the option of resigning should the salary and conditions of service suggested in the Schedule not be acceptable to them. I shall discuss this matter when the Schedule is placed before the House. I may, however, say that I personally think that the salaries provided for the judges of the Supreme Court are lower than they should be. Our effort should be to attract the best legal talent in our highest courts of justice and the conditions of service therefore should be such as to induce men with the best qualifications and with the highest reputation at the bar to accept judgeships of the Supreme Court. That, however, is not a mater that I can go into in any detail at present; but my amendment proposes that whatever changes may be made in future they should not affect the pensions that the judges are now entitled to get. The last proviso in Dr. Ambedkar's amendment protects only the judges now holding office. But, so far as the future is concerned, Parliament will have the power to reduce the pension. Considering the present economic situation and also the fact that judges of the Supreme Court will not be allowed to plead or act in any court in the country. I think that, the least that we can do, is to provide that they should not be given a smaller pension than what they are entitled to now. It may be desirable in theory to leave everything in this respect to Parliament, but I think the question of pension is as important as that of salary. If you are not going to allow a judge of the Supreme Court after retirement to practice in any court in India, I think it is only fair that the present pension should not be reduced. It is not very high even at present; it is not very attractive to persons at the bar who enjoy a good practice. But if it is lowered further, there is a danger of making the judgeships unattractive to the best legal talent in the country.

This, Sir, is the justification for the amendment that I have moved. If it is accepted the effect will be to protect the Pensions not merely of the existing but also the future judges of the Supreme Court in the same manner as their salaries will be protected.

(At this stage Mr. President vacated the chair, which was then occupied by Mr. Vice-President, Shri T. T. Krishnamachari.)

Shri R. K. Sidhva *:* Mr. Vice-President, my attention was drawn by the Honourable the President that my amendment has been accepted by my honourable Friend, Dr. Ambedkar as per his amendment No. 77 which he moved against his original amendment in List I No. 2. So far it is all right; but I find from clause (2) that the question of every judge's allowance, privileges, and rights are referred to the Parliament. Now I want this matter to be made very clear whether Parliament will have the right to give a furnished house to the Chief Justice if this House is not in favour as is indicated from the acceptance of my amendment by the honourable the Mover. May I know whether in contravention of this House's decision when we refer the other matters of allowances to Parliament, would they be in order to pass any kind of law whereby the Chief Justice of the Supreme Court is allowed a furnished house? Again if you refer to Part IV of Schedule 2, clause (11) relating to provisions as to the Judges of the Supreme Court and of the High Courts, it states :

> "The Chief Justice or any other judge of the Supreme Court or a Chief Justice or any other judges of a High Court within the territory of India except the States for the time being specified in Part III of the First Schedule shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty etc. etc."

Unless you amend the language of this Schedule in view o the amended resolution, I think, Sir, this article will be rather in a confused state. I want to know what are the implications after the amendment of this article moved by Dr. Ambedkar. I find that he has not made any reference to the Schedule and I do not know whether he is going to make any reference to the Schedule hereafter, because that complicates the issue, and the purpose will be defeated if the matter is left to Parliament, who can against the wishes of the House pass orders that the Chief Justice can be given a furnished house.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I am sorry I cannot accept the amendment moved by my honourable Friend, Pandit Kunzru, and I think there are two valid objections which could be presented to the House for rejecting his amendment. In the first place, as regards the principle for which he is fighting, namely, that the rights of a judge to his salary and pension once he is appointed have accrued to him and shall not be liable to be changed by Parliament by any law that Parliament may like to make with regard to that particular matter, I think, so far as my new article is concerned, I have placed that matter outside the jurisdiction of Parliament. Parliament, no doubt, has been given the power from time to time to make laws for changing allowances, pensions etc., but it has been provided in the article that that shall apply only to new judges and shall not affect the old judges if that is adverse to the rights that have already accrued. Therefore, so far as the principle is concerned for which he is fighting, that principle has already been embodied in this article.

From another point of view his amendment seems to be quite objectionable and the reason for this is as follows. As everybody knows pensions have a definite relation to salary and the number of years that a judge has served. To say, as my honourable Friend, Pandit Kunzru suggests, that the Supreme Court judges should get a pension not less than the pension to which each one of them would be entitled. In pursuance of the rules that were applicable to judges of the Federal Court, seems to presume that the Federal Court Judge if he, is appointed a judge of the Supreme Court shall continue to get the same salary that he is getting. Otherwise that would be a breach of the principle that pensions are regulated by the salary and the number of years that a man has put in. We have not yet come to any conclusion as to whether the Federal Court Judges should continue to get the same salary that they are getting when they are appointed to the Supreme Court. That matter, as I said, has not been decided and I doubt very much (I may say in anticipation) whether it will be possible for the Drafting Committee to advocate any such distinction as to salary between existing judges and new judges. The amendment, therefore, is premature. If the House accepts the proposition for which my Friend Pandit Kunzru is contending that the Federal Court Judges should continue to get the same salary, then probably there might be some reason in suggesting this sort of amendment that he has moved. At the present moment, I submit it is quite unnecessary and it is impossible to accept it because it seeks to establish a pension on the basis that the existing salary will be continued which is a proposition not yet accepted by the House.

Shri R. K. Sidhva : The Honourable Dr. Ambedkar has not answered my point as to how the Parliament is competent to give a furnished house to the Chief Justice.

The Honourable Dr. B. R. Ambedkar : We are not rejecting it. Nothing is said about the furnished house. We shall discuss that.

Mr. Vice-President (Shri T . T. Krishnamachari) : The question is :

"That in amendment No. 2 of List I (First Week) of Amendments to Amendments, after clause (2) of the proposed article 104, the following new proviso be added :

'Provided that no law made under this article by Parliament shall provide that the pension allowable to a judge of Supreme Court under that law shall be less than that which would have been admissible to him if he had been governed by the provisions which immediately before the commencement of this Constitution were applicable to the Judges of the Federal Court'."

The amendment was negatived.

Mr. Vice-President : The question is.

That for article 104, the following article be substituted :-

Salaries etc. of Judges

"(1) There shall be paid to the judges of the Supreme Court such salaries as are specified in the Second Schedule.

(2) Every judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to tome be determined by or under law made by Parliament, and until so determined to such privileges, allowances and rights as are specified in the Second Schedule :

Provided that neither the privileges nor the allowances of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment."

The motion was adopted.

Article 104, as amended, was added to the Constitution

New Article 148-A

The Honourable Dr. B. R. Ambedkar : Sir, I move :

That after article 148, the following new article be inserted :-

Abolition or creation of Legislative councils in states.

"148A.(1) Notwithstanding anything contained in article 148 of this Constitution, Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting.

(2) Any law referred to in clause (1) of this article shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the provisions of the law and may also contain such incidental and consequential provisions as Parliament may deem necessary.

(3) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purpose of article 304 thereof."

As honourable Members will see, this new article 148-A provides for two contingencies : (i) for the abolition of the Second Chamber in those provinces which will have a Second Chamber at the commencement of the Constitution; and (ii) for the creation of a Legislative Council in a province which at the commencement of the

Constitution has decided not to have a Legislative Council, but may subsequently decide to have one.

The provisions of this article follow very closely the provisions contained in the Government of India Act, section 60, for the creation of the Legislative Council and section 308 which provides for the abolition. The procedure adopted here for the creation and abolition is that the matter is really left with the Lower Chamber, which by a resolution may recommend either of the two courses that it may decide upon. In order to facilitate any change made either in the abolition of the Second Chamber or in the creation of a Second Chamber, provision is made that such a law shall not be deemed to be an amendment of the Constitution, in order to obviate the difficult procedure which has been provided in the Draft Constitution for the amendment of the Constitution.

I commend this article to the House.

Prof. Shibban Lal Saksena : Sir, I beg to move :

"That in amendment No. 4 of List I (First Week) of Amendments to Amendments in clause (1) of the proposed new article 148-A--

(i) the words "Notwithstanding anything contained in article 148 of this Constitution' be deleted;

(ii) to clause (1), the following proviso be added :-

'Provided that no such resolution shall be considered by the Legislative Assembly in any State nor a corresponding Bill shall be, discussed in Parliament unless at least 14 days' notice of the same has been given'."

Sir, I was one of those who was opposed to the formation of Upper Chambers altogether. But, the principle has been accepted by this House when it passed article 148 and we have provided for Second Chambers in some provinces - Madras, West Bengal, etc. Therefore, I welcome this provision which enables the Assemblies to abolish those Chambers. In my amendment, I have only provided that once a resolution under this article is brought before the Assemblies, due notice of it must be given. I have therefore said that no such resolution shall be considered by the Legislative Assembly in any State, nor any corresponding Bill shall be discussed in Parliament unless at least fourteen days' notice of the same has been given. It is quite possible that a resolution may be passed without adequate notice. It may be within the knowledge of Members that some times in Parliament, the order papers are received only a day in advance and it is quite possible that unless a fortnight's notice of such a vital amendment is given, some Members may be absent during its consideration for want of notice. I therefore think that it would be better if this principle is accepted; no harm would be done thereby. In fact, I would have wished that we had not made any provision at all for Second Chambers and left it entirely to the Assemblies to decide whether they wanted to have one. What we have done is, we have provided for Second Chambers and also for their abolition.

I commend my amendment for acceptance by the House.

Shri H. V. Kamath : Mr. Vice-President, I beg to move :

"That in amendment No. 4 of List I (First Week) of Amendments to Amendments in clause (1) of the proposed new article 148-A, the words 'or for the creation of such a Council in a State having no such Council' be deleted."

Sir, the new article which by way of an amendment has been just not brought before the House by Dr. Ambedkar, deals with the vexed question of second chambers. It provides that the future Parliaments may by law provide for the abolition of the Council in a State which has such a Council or provide for the creation of the Second Chamber where there is none.

The House will recollect, that we have adopted article 148, I believe some time during last year in the November or January session of the Assembly, and after the adoption of this article by the House, the representatives of various provinces were called upon to meet separately and decide for themselves whether their province will have a second chamber or not. I now stand before the House as a representative of a province which happily, voted against a Second Chamber.

(At this stage, Mr. President resumed the chair)

I believe, that of all the provinces in our country, only three, namely, Central Provinces and Berar, Assam and Orissa have voted against the creation of a second chamber in their provinces. The other provinces, I think, have asked for a second chamber. Now, this article which has been brought before us by Dr. Ambedkar seeks to provide for the creation of a second chamber where there is none, of course, if the Assembly of that State decided upon such a course. I personally feel that to this extent this is a reactionary, a retrograde proposal. To provide for the creation of a second chamber where there is none already seems to me to be by no means a progressive measure. We are proud of asserting that ours is a democratic progressive State. We are now living in the twentieth century when powers of second chambers have been drastically curtailed, where they have not been completely abolished. Even in Great Britain, from whose Constitution we have borrowed so much, the wings of the House of Lords have been clipped to a considerable degree, and the House of Lords today is not what it was twenty or thirty years ago. Here, Dr. Ambedkar wants this House to pass this article which provides that the future Parliament may provide for the creation of a second chamber where there is none. I agree with him in so far as Parliament is empowered to abolish the second chamber where there is already one; but I cannot subscribe to this proposal of his that where there is no second chamber, you might as well create one.

What after all are the arguments for the creation of second chambers? There are three or four main reasons adduced by the protoganists of second chambers. Firstly, there is the force of tradition in some countries. Happily for our country we have no such tradition. The British, for their own convenience perhaps, introduced this system of second chambers and I hope with the quittal of the British this system also will leave our shores. There is no tradition so far as our country is concerned. There is another reason given *i.e.* for the adequate representation of interests no sufficiently represented in the Lower House. In this Constitution we have already dispensed with any special representation in the Lower House which obtained in the Government of India Act and earlier enactments. We have provided for a uniform mode of representation and from this new standpoint there is no reason whatever for the creation of second chambers. Another reason given is that it is a check on hasty legislation. Do we really want checks now a days at all ? After all we are well aware that Legislation in the modern world is a very cumbrous and elaborate affair-in a democratic world I mean-and a very dilatory process at times. Every Bill has got to pass through various stages, the introductory stage, select committee stage, second reading, third reading, etc. and so many months lapse. We have already experience in this House sitting as Parliament that some Bills have taken as much as more than a year for their enactment and during this period which is prolonged to one year or so, the public at large-not only the House-have got adequate time at their disposal to reflect on the Bill. So there is no necessity for any check on hasty legislation because in a democracy legislation is always well thought out and deliberated upon and has to pass through many stages before a Bill becomes law. Then there is also a fourth argument *viz.* it is a sort of protective armour for the vested interests. We certainly are no going to allow vested interests to influence our economy and to that extent I feel the creation of second chambers is a retrograde proposal. In short, I feel that the second chamber is either superfluous or pernicious as the French politician-philosopher Abbe Sieyes once observed : he said that "if the second chamber agrees with the first chamber it is superfluous and if it disagrees with the Lower House, then it is pernicious." In either case to my mind there is no case whatever for the creation of second chambers and therefore, I plead with this House that this part of the proposed article 148-A which provides for the creation of second chamber in a State where there is none may be deleted and the article without that portion be adopted. I move therefore Amendment No. 86 of List III (First Week) and I hope that the House will see its way to accepting the same.

Shri R. K. Sidhva : Mr. President, the amendment in my name reads thus :

> "That in amendment No. 4 of List I (First Week) of Amendments to Amendments, in clause (1) of the proposed new article 148-A, the words 'of the total membership of the Assembly and by a majority of not less than two-thirds' be deleted."

The object of this amendment is to delete the words in the original article as proposed by Dr. Ambedkar to the effect "of the total membership of the Assembly and by a majority of not less than two-thirds". My amendment seeks to say that if a bare majority states that there shall not be a second chamber it shall be accepted. When we passed this article 148 the decision was taken in a rather peculiar manner. It was left to the group or each province to decide.The House as a whole did not decidefor each province; but whatever that may be the decision has been taken and I am glad therefore that the new article has been added with the object that if the Parliament decides that a second chamber is not wanted, they need not operate upon article 148 which we have passed.

In the country it is the opinion that in the provinces there should not be second chamber and I am very glad that the Drafting Committee has taken note of it, but I am also sorry that they have not got courage to scrap article 148. If they had done so, it would have met the wishes of every one. The second chamber is again a great addition to our finances and it is not in the interests of the country at the present stage to add to our finances which are in a peculiar - I do not use any other word-condition today. Therefore while welcoming this amendment I do not want to fetter the Parliament by two-thirds of the members of the Assembly present and voting or by majority of the total membership. If the members present in the House even by a majority are against the second chamber it will be nullified by the total number of members of the House. I therefore contend that if it is the desire-and it is very clear from this additional article that has been brought by the Drafting Committee that then own views are changed because they are also flabbergasted as to what should be the composition of the second chamber and they could not come to any decision and so they felt 'Throw it to Parliament and let it decide what it likes. All right, that is the lesser of the two evils. I am prepared to accept it because the House has accepted 148 and we do not want to change the article already passed by the House. It will be a bad precedent. But I do not want them to fetter the Parliament. If the House takes interest, six hundred members will be present; let them decide. Why insist upon two-thirds majority of the total members? It is very clear that you are not now as strong as you were before for the second chamber. I can understand second chamber for the Centre. It is very useful and needed. I am in favour of it because all-India Bills will be passed and a second chamber is needed; but in the provinces it is an old anachronism and I feel that it should not exist and therefore my amendment seeks that by a bare majority if the House desires that the second chamber should be there, it should not be there, and it should not be two-thirds majority of the total number of members. With these words I move the amendment.

Sardar Hukam Singh (East Punjab : Sikh) : Mr. President, Sir I beg to move :

"That in amendment No. 4 of List I (First Week) of Amendments to Amendments, for clause (3) of the proposed new article 148-A, be deleted."

Sir, I could not understand why this clause was being added. The explanation that has been given now, that it is to facilitate the procedure that might be required for abolishing or creating Second Chambers, has not convinced me of the utility of this clause. Already provision was made in clause (2) of article 304 that :

"Notwithstanding anything in the last preceding clause, an amendment of the Constitution seeking to make any change in the provisions of this Constitution relating to the method of choosing a Governor or the number of Houses of the Legislature in any State for the time being specified in Part I of the First Schedule may be initiated by the introduction of a Bill for the purpose."

and so on.

In the first instance, I do not see that there is much difference between this provision in clause (2) of article 304 and the one the one proposed, except that in article 304, a Bill was to be initiated by the Legislature of the State, and then a majority of total membership was required, and then ratification by Parliament by a majority of total membership was needed. What is desired now is that a resolution instead of a Bill has to be passed by the State Legislature and it should have the majority of total membership, and then again, "law of Parliament" by a bare majority instead of "ratification by a majority of total membership". That is the difference which is now sought to be introduced.

Now, with this clause, we are, I must say, opening out large discretion for the Parliament or for the party is power to use this procedure capriciously, and at any time that it likes. Why should this be left to the whims and caprices of the party that whenever it sees that the Legislative Assembly is suitable to it, it might eliminate or abolish the Second Chamber, and whenever it sees that it is not desired, or when it sees that the Legislative Assembly is not prepared to co-operate with it, then it might create a second chamber so easily as is sought to be done now by a bare majority? Even if the procedure now laid down in the fresh article 148-A be taken up, that the Bill should be passed by a bare majority, even then, could be a substitute for clause (2) of article 304, and there is no need for putting this clause (3) that it shall not be considered as an amendment of the Constitution. In my opinion, we should not allow these changes to be made so easily. Once a second chamber is created, it should not be easily abolished. Therefore, my amendment before the House is that clause (3) of this article be omitted, that it should not be left to the discretion or caprice of Parliament to create or abolish it at any time that it likes, this part of the Constitution.

Dr. P. S Deshmukh (C.P. & Berar : General) : Mr. President, Sir, I support the point of view that has been urged by several Members before me, that the provision for second chambers in the States is completely out of date and an anachronism. However, we have to take notice of the fact that certain States have already been given second chambers. Now the question is whether we should legislate and have an article in the Constitution for either the abolition or the creation or introduction of second chambers in the remaining States also. As has been pointed out by Sardar Hukam Singh just now, there was already contemplated a provision in the Draft-article 304 clause (2), by which it was possible to consider this question at a later stage, both by the Legislative Assemblies of the States and then after it was considered by them, a recommendation was to come before Parliament. Now, in addition to the various reasons that have already been advanced by my Friend Mr. Kamath, Mr. Sidhva and Sardar Hukam Singh, I would only like to say that there are a few additional reasons why this article should not be incorporated in the present Constitution, and one of the principle reasons which I want to advance is that after all, the provision of second chambers was intended for the safeguarding of vested interests. But while this Constitution is being fashioned here, we are not sitting still. We are as a Government pursuing policies and giving effect to our intentions in various ways. The rulers of Indian States have been removed, zamindaries and jagirdaries are on their way to dissolution, and other vested interests are also rapidly being put into the melting pot. The second chambers were intended for some such so-called stable elements in society-some vested interests-which it was considered would work as a salutary check against radical changes in the Government or the policies of the State which would be more harmful and less beneficial to the State as a whole. But my contention is that there is no such person now who will adequately represent this orthodox or so-called stable elements in the society, these vested interests, which would contribute to the stability of the State. That being so, it is not surprising that when we discussed who should compose the second chamber, who should sit as representatives in these second chambers, we were really at our wist end, and all that we could think of were representatives elected by the various local bodies and Assemblies to be given seats in the second chambers. The municipalities, Local Boards, Gram Panchayats, etc., it was proposed should elect on their own behalf, certain representatives and they it was thought, will be proper members to sit in the second chambers. As a matter of fact, we have not, we will progressively have, none of those special interests to sit in the second chambers, as could be deemed proper and desirable. That being so, I think the proposed provisions in this respect in the present Constitution and the policy that we are pursuing should be considered a little more carefully, and I feel that that consideration will lead the House to the conclusion that there is no room anywhere for second chambers. If this is not acceptable, then I would make a second suggestion and that is that let the evil, be allowed to rest where it is, and it should not be allowed to spread and enlarge, and from that point of view, I support the amendment moved by Mr. Kamath, that there should be no provision for the creation of a second chamber where it does not at present exist. Let there be a provision for the abolition of second chambers, but there should not be any provision for their creation. I hope this point of view would be acceptable because otherwise we would probably be accused of taking away by one hand the powers that we are anxious to give to the masses by the other. It may be argued that the second chambers have not proved detrimental to the cause of the progress of the people so far and since we have had some experience of the second chamber existing in the last twelve years nobody has very seriously complained against them. But I do not think that would be the situation when we work the new Constitution. I am sure every time they will be used for various purposes that will impede the progress of the nation. The one fact which will make this difference is that we are introducing adult franchise. The composition of our lower House hereafter is going to be totally and radically different from what we have at the present day and the policy that would be pursued by these representatives sitting in the Legislative Assembly will be considered harmful by a certain set of people. If this set of people happen to be in the second chambers there will be a lot of impediment, lot of harm to the interests of the masses as a whole. I hope therefore that in any case the evil will not be permitted to enlarge itself and that the provision should be confined only to the abolition of those second chambers which have already been provided for.

Shri Jaspat Roy Kapoor (United Provinces : General) : Mr. President, Sir, I would like to accord my support to the adoption of article 148-A. I thought the adoption of this article would have gone a long way to satisfy those of us who were opposed to the introduction of Upper Houses in the provincial Legislatures. But I am surprised to find today that such friends of ours are now opposed to the adoption of this article. We have already adopted article 148 laying down that in the provinces which are mentioned therein there shall be a second chamber. Article 148-A gives even to such provinces the liberty at any subsequent date to abolish those chambers I they consider it necessary and desirable in the light of the experience which they may gain in course of time. This article should, therefore, have been welcome to those friends of ours who were opposed to the introduction of Upper Houses in those provinces which have been mentioned in article 148 as providing them another opportunity to move for their abolition in the Legislative Assembly concerned. This article is good and useful even for those provinces who have not so far decided to have an upper chamber. If subsequently, in the light of the experience gained, they consider it necessary and advisable to have for their provinces Upper Houses this article will enable them to have an upper chamber too and come in line with the other provinces which have decided to have an upper chamber. Therefore, from every point of view the incorporation of this article is a useful one. But I do wish that it were possible for the Honourable Dr. Ambedkar to accept at least one part of the amendment which has been moved by my Friend Prof. Shibban Lal Saksena. In part 2 of his amendment (No. 85) he desires that a proviso be added to this article which runs thus :

> "Provided that no such resolution shall be considered by the Legislative Assembly in any State nor a corresponding Bill shall be discussed in Parliament unless at least 14 days' notice of the same has been given."

What Mr. Shibban Lal Saksena suggests is nothing very novel. We have already, while dealing with several previous articles, accepted the procedures suggested in this part of his amendment. The resolution relating to the abolition or creation of an Upper House in a particular State is obviously in the nature of an extraordinary resolution and as such it is necessary that such a resolution before being made in the Legislature must be given due notice of. In this connection I would like to draw the attention of my honourable Friend Dr. Ambedkar to article 50 which we have adopted and which deals with the impeachment of the President. With regard to that, we have laid it down that a resolution whereby the President is to be impeached must be given notice of at least fourteen days before the date on which such a resolution can be discussed in Parliament. Article 50 (2) says :

> "No such charge shall be preferred unless the proposal to prefer such charge is contained in a resolution which has been moved after at least 14 days' notice in writing etc."

Similarly, in article 74 we have laid down a similar condition with regard to the moving of a resolution relating to the removal of the Deputy Chairman of the Council of States. Yet again, under article 77 which deals with the removal of the Speaker or the Deputy Speaker of the House of the People it has been laid down that at a resolution demanding the removal of the Speaker or the Deputy Speaker must be given notice of at least fourteen days in advance of the day on which the resolution would be discussed. There are other similar provisions in the Constitution which we have already adopted wherein we have adopted the procedure contained in part (2) of Mr. Shibban Lal Saksena's amendment (No. 85). It may be said that it is not necessary to provide such a safeguard in this article because even if a resolution to this effect is passed by the Legislature of a State it will have absolutely no effect unless and until legislation to that effect is enacted by Parliament. True, it is so. But then why should we leave a loophole like this? If by giving only two or three days' notice as an ordinary resolution under the ordinary procedure governing the business of the Assembly of any State such a resolution dealing with this subject on which opinion is considerably divided is brought up and passed by a snatch vote at a time when the House is thinly attended, will it not lead to great squabbles between members of that Legislature? The only remedy open to the losing party will be to approach the Parliament and represent that the recommendation of the Assembly should not be accepted and that no Bill to that effect should be proceeded with in Parliament. Well, Sir, we should not leave such a loophole. We should not fail to make a provision like the one which has been suggested by Shri Shibban Lal Saksena lest we throw open a ground for squabbles and quarrels between the members of any particular Legislative Assembly.

There is no point of principle involved herein, to which my honourable Friend Dr. Ambedkar, should object. I consider that it is necessary and desirable that the suggestion contained in part 2 of Shri Shibban Lal Saksena's amendment should be accepted.

Shri Brajeshwar Prasad : Mr. President, Sir, I rise to support the new article 148-A as moved by Dr. Ambedkar. But I am not in favour of the provision that Parliament may by law provide for the abolition of the Legislative Council where it has such a Council. It is all right to vest it with the power to create a Council in a State where there is no such Council. I do not think that the establishment of a second chamber is necessarily a retrograde step. It all depends on what kind of power you are going to vest in this body. It also all depends on what kind of members you are going to bring into the Legislative Council. Personally, I feel Sir, that having due regard to the political facts of our life, realizing fully well that for the first time in our political history we are going to have an adult franchise which is a leap in the dark, and which I consider to be a complete subversion of all that is good and noble in Indian life, and which I consider to be dangerous to the stability of the State. I consider the establishment of a second chamber as desirable and useful for all purposes.

Sir, it is utter simplification of politics to say that if the second chamber agrees with the Lower House, it is superfluous : if it disagrees then it is pernicious. These two words "superfluous" and "pernicious" do not exhaust the entire universe of discourse in politics. There are other shades which must be kept in view.

Sir, I shall speak more when I come to article 150.

The Honourable Dr. B. R. Ambedkar : I do not think any reply is called for.

Mr. President : I shall now put the amendments to the vote. I shall take up Prof. Saksena's amendment first and I shall put I in two parts.

The question is :

"That in amendment No. 4 of List I (First Week) of Amendments to Amendments in clause (1) of the proposed new article 148-A---

(i) the words 'Notwithstanding anything contained in article 148 of this Constitution be deleted."

The amendment was negatived.

Mr. President : The question is :

"To clause (1), the following proviso be added :-

'Provided that no such resolution shall be considered by the Legislative Assembly in any State nor a corresponding Bill shall be discussed in Parliament unless at least 14 days' notice of the same has been given'."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 4 of List I (First Week) of Amendments to Amendments, in clause (1) of the proposed new article 148-A the words 'or for the creation of such a Council in a State having no such Council' be deleted."

The amendment was negatived.

Shri R. K. Sidhva : Sir, I beg leave to withdraw my amendment :

(The amendment was, by leave of the Assembly, Withdrawn)

Mr. President : The question is :

"That in amendment No. 4 of List I (First Week) of Amendments to Amendments clause (3) of the proposed new article 148-A be deleted."

The amendment was negatived.

Mr. President : The question is :

"That new article 148-A be adopted."

The motion was adopted.

New Article 148-A was added to the Constitution

Article 150

The Honourable Dr. B. R. Ambedkar : Sir, I move :

That for article 150, the following be substituted :-

"Composition of the Legislative Councils"

"150. (1) The total number of members in the Legislative Council of a State having such a Council shall not exceed twenty-five percent of the total number of members in the Assembly of that State:

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) The allocation of seats in the Legislative Council of a State, the manner of choosing persons to fill those seats, the qualifications to be possessed for being so chosen and the qualifications entitling persons to vote in the choice of any such persons shall be such as Parliament may by law prescribe."

The original article was modeled in part on article 60 of the first Draft of the Drafting Committee. Now, the House will remember that that article 60 of the original Draft related to the composition of the Upper Chamber at the Centre. For reasons, into which I need not, go at the present stage, the House did not accept the principle embodied in the old article 60. That being so, the Drafting Committee felt that it would not be consistent to retain a principle which has already been abandoned in the composition of the upper chamber for the Provinces. That having been the resulting position, the Drafting Committee was presented with a problem to suggest an alternative. Now, I must confess, that the Drafting Committee could not come to any definite conclusion as to the composition of the upper chamber. Consequently they decided -you might say that they merely decided to postpone the difficulty-to leave the matter to Parliament. At the present moment I do not think that the Drafting Committee could suggest any definite proposal for the adoption of the House, and therefore they have adopted what might be called the line of least resistance in proposing sub-clause (2) of article 150. That, as I said, also creates an anomaly, namely, that the Constitution prescribes that certain provinces shall have a second chamber, as is done in article 148-A, but leaves the matter of determining the composition of the second chamber to Parliament.

These are, of course, anomalies. For the moment there is no method of resolving those anomalies, and I therefore request the House to accept, for the present, the proposals of the Drafting Committee as embodied in article 150 which I have moved.

[Amendment No. 90 of List III (First Week) was not moved]

Shri H. V. Kamath : Sir, I move :

"That in amendment No. 5 of List I (First Week) of Amendments to Amendments, in clause (2) of the proposed article 150, for the words 'the qualifications to be possessed for being chosen' the words 'qualifications and disqualifications for membership of the Council' be substituted."

The House will see that on a previous occasion with regard to the election of members to the legislature of a State they adopted various articles in the relevant parts. I would invite the attention of the House to article 167, for instance, which lays down the disqualifications for membership of the State Assembly in addition to the qualifications which have gone before. In providing for representation in the upper chamber and election of members to this Council I do not see why this House should not with equal validity, equal reason and equal force lay down not merely the qualifications of members to be chosen to the upper chamber but also what the disqualifications should be. Article 167 lays down how under various circumstances a member is to be disqualified for being chosen as or being a member of the Assembly or the Council of a State. Therefore, I do not see any reason why the same thing should not be explicitly stated in article 150 moved by Dr. Ambedkar.

There is one other point about the article and that is this. The new amendment lays down that the strength of the Council shall not exceed one-fourth or 25 per cent of the total number of members in the Lower House. It also lays down further in a proviso "Provided that the total number of members in a Legislative Council of a State shall in no case be less than forty." How these two can be reconciled in particular cases passes my understanding. For instance we have adopted article 148..........

The Honourable Dr. B. R. Ambedkar: I would ask the honourable Member to read article 167, again.

Shri H. V. Kamath : I am talking of the next point.

The Honourable Dr. B. R. Ambedkar : What about the first point. Do you favour it?

Shri H. V. Kamath: I do not favour it. Dr. Ambedkar says that article 167 lays down the disqualifications........

The Honourable Dr. B. R. Ambedkar: Both for the Asselmbly and the Council of States.

Shri H. V. Kamath : In this particular article which Dr. Ambedkar has brought forward today he has thought fit to refer to the qualifications only. Why repeat this and not the other ? I am not convinced of the logic of the argument at all. If Dr. Ambedkar agrees that this article lays down only the qualifications why not then refer to the disqualifications as well ? That disposes of the point which I raised earlier.

On the second point I would only say that this provision regarding one-fourth of the members and not less than 40, might create difficulties in particular cases. We have passed today article 148 which provides that in certain provinces and States which have no second chamber they can have a second chamber if the Assembly of that State is desirous of having a council for the State. Assam and Orissa are provinces which have a population of less than ten millions and therefore the lower chamber will consist of less than a hundred members. According to this article which has been brought forward by Dr. Ambedkar the total number of members in the upper house should not be more than one-fourth and not less than 40. I wonder how these two will be reconciled by the wise men of the Drafting Committee. Article 150 as it stood in the original Draft was much better. It merely said that it shall not exceed one-fourth or 25 per cent of the total number of members in the Assembly of that State without stating what the minimum should be. For as I have already said there are provinces like Assam and Orissa and States like Mysore and others which hive acceded to the Union and become a part of India with a total population of less than ten million. The Assembly of those States would contain less than a hundred members. If you want to have a second chamber of not more than 25 per cent. of the lower House and not less than 40 I cannot understand this arithmetic. It is not the arithmetic which I learnt in school or college; we are devising a new kind of arithmetic-lower or higher mathematics. I hope this difficulty when it arises will be met squarely by the Drafting Committee and a suitable way would be devised for getting out of the difficulty. If it means-I do not know what it means-that irrespective of the strength of the lower House it will not be less than 40, whether it be more or less than one-fourth of the total strength of the lower House, then it will make sense. In that case, I would like to plead that in Orissa, Assam or Mysore which has a Lower House of less than one hundred (perhaps eighty or ninety) I do not think that an upper House is called for. The lower House itself is seventy or eighty and I do not think we should have an upper House of 40 members. Therefore in my judgment this article is not necessary and particle 150 as it stood in the original Draft was a much wiser provision and I move that the original article 150 be considered and the new article rejected by the House.

Mr. President: We had a number of amendments to the original article 150. Does any Member wish to move those amendments which are printed in this additional list ?

Prof. Shibban Lal Saksena: Mr. President, I was surprised to hear the speech of Dr. Ambedkar when he confessed that there was an anomaly in his having to move this amendment. We have provided for second Chambers in the States and yet we are leaving the composition of those Chambers to be divided by the Parliament. I first of all object to the very principle that Parliament should make any part of the Constitution. In fact when we are making the Constitution, we must complete every portion of it. We have laid down that only by two-thirds majority can it be changed. If the Parliament makes some law it will be changeable always by the majority and there will be no finality to it. I therefore think that leaving anything about the Constitution to Parliament is a very wrong procedure. Then there is no reason why we cannot come to some agreement on this question of the Upper Chamber. Once we leave accepted this retrograde step. Let us provide in the Constitution provisions for making these chambers really revising chambers where they can review the working of the lower chambers and where they may be able to point out what mistakes the Lower House has made: I think that the original article 150 should be amended in part (2) only. I agree with my honourable Friend, Mr. Kamath, that the number of members in the Upper House must not exceed 25 per cent. of the strength of the lower House. To have 40 members in an Upper House where the number of members in the Lower House is only 60 or 80, is, I think, a very wrong principle. Clause (1) of article 150 says

"The total number of members in the Legislative Council of a State having such a Council shall not exceed twenty-five per cent. of the total number of members in the Legislative Assembly of that State."

I think this should remain and the fixation of the minimum limit at 40 or 50 will be a further retrograde step. For clause (2) of article 150, I want my amendment No. 133 to be substituted, which runs as follows :-

That with reference to amendments Nos. 2268, 2270, 2271. 2272 and 2273 of the List of Amendments, for clauses (2), (3), (4) and (5) of article 150. the following be substituted :-

"(2) of the total number of members in the Legislative Council of a State-

(a) 15 per cent. shall be elected by an electoral college comprising all the

> members of the District Boards in the State;
>
> (b) 15 per cent. shall be elected by an electoral college consisting of all the members of the learned professions and specialists in any branch of earning;
>
> (c) 10 per cent. shall be elected by an electoral college consisting of all the persons holding the Bachelor's degree of any university in the State or holding a degree recognised by the Government of the State to be equivalent thereto;
>
> (d) 5 per cent shall be elected by an electoral college consisting if all the members of the Senates or the Courts of the various universities in the State;
>
> (e) 5 per cent. shall be elected by an electoral college consisting of all the member of the Municipal Boards in the State;
>
> (f) 5 per cent. shall be elected by an electoral college consisting of all the members of the trade Unions in the State registered with the Government;
>
> (g) 5 per cent. shall be elected by an electoral college consisting of all the members of the various Chambers of Commerce recognised by the Government of the State;
>
> (h) 30 per cent. shall be elected by the members of the Legislative Assembly of the State; and
>
> (i) the remainder 10 per cent. shall be nominated by the Governor.
>
> (3) All elections in clause (2) of this article shall be in accordance with the system of proportional representation by means of the single transferable vote..
>
> (4) the qualifications of voters and other details necessary for the formation of the electoral colleges for the elections mentioned in clause (2) of this article shall be defined by an Act of Parliament."

I want to submit to this House that now that we have accepted the principle of second chambers, the only proper function of the Chambers can be to revise what the Lower Chambers have done and to give them expert advice on problems on which they legislate. Therefore, I think Sir, that the Upper Chamber must he composed of the intelligentsia of the provinces. Of course, the representatives of the intelligentsia must also be popularly elected. Therefore, I have provided in my amendment for the election of 15 per cent. of the members by an electoral College comprising of members of the District Boards in the State. Every district Sir, has got a District Board which will now be elected by adult suffrage and in these District Board we shall have the, intelligentsia in the rural parts of our districts, and if they allowed to elect 15 per cent. of' the members, they will take more interest in their work and they will also also properly represented in the Legislatures. In fact local bodies have to play a big part in the future Swaraj Government and I therefore think that all these local bodies should be allowed to have a say in the legislation which will govern the provinces. I therefore think that representation for the District Boards is very important and should be provided. Then Sir, come the learned professions and the specialists in any branches of learning, and for these there is 15 per cent. representation in my amendment, this means the professors, doctors, engineers, lawyers, and other professions containing learned men who can think how a particular measure will affect the interests of the State will be adequately represented in the upper House. These learned men will be able to contribute their expert and learned advice which will be of help in revising the legislation passed by the Lower House. Then,. Sir, the graduates of universities are given 10 per cent. I think we all realize that today many of the intellectuals in the country are dissatisfied in that the representatives in the legislatures do not generally come from that class and it is important that we should not lose their co-operation.. Therefore, Sir, I think that at least in the Upper Chambers, they should be provided for, so, that they can help us with their learning in revising the Acts passed by the Lower House. Then, Sir, the senates and courts are also given 5 per cent. We do want that universities should make a contribution to our future, legislation and therefore they have been provided for. Then, Sir, the municipal Boards in the States have been given 5 per cent. The Municipalities of the provinces wilt thus have a voice in the State Legislatures and they can put forth their demands and their needs. Then, Sir, 5 per cent. is given to Trade Unions. Here, Sir, I will point out that in our Constitution we have not given any special representation to labour. We know in India they cannot have popular representation in this manner because the numbers of Trade Unions are not concentrated in any particular areas in any of the States. We are therefore not giving any representation to the members of Trade Unions in the Lower House. Probably, except in Bombay, Calcutta, and some such big centres, labour will not have any big influence in the elections. I therefore think that labour should have some representation in the Upper Chamber. I have given the same representation-to the Chambers of Commerce also, so that nobody may complain that we have been partial and they have not been represented. The Assemblies of the States have been given 30 per cent. representation under my Amendment and the remaining ten, per cent, of the members of the Council will be nominated by the Governor so that people who are, specially fitted to help the Council in revising the legislation passed in a hurry in the lower House and revision may Sometimes, legislation is passed, in a hurry in, the Lower House and revision may be necessary. If the people in the Upper House are drawn from all the sections of the State who form the intelligentsia, they will be in a position to discharge their duties satisfactorily, Therefore I suggest that instead of leaving this lacuna of not providing the Constitution of the upper chambers in the Constitution the existence of, which Dr. Ambedkar himself has, admitted, these provisions, may be made in the Constitution regarding the composition of the, Upper Houses. I hope this amendment will be acceptable to the House.

Mr. President: Do you wish to move any other amendment standing in your name ?

Prof. Shibban, Lal Saksena : No, Sir.

Mr. President : I take it that no other amendment is being moved. The amendments and the article are now open to discussion.

Shri Mahavir Tyagi : Sir, I have to make a very small comment on article 150. I have been noticing a tendency which is slightly unfortunate. He have been seen whenever opinions have sharply varied between Members, the tendency of the House is to leave things to the responsibility of the Parliament. My feeling is that the Constituent Assembly, by passing this clause as it is now proposed by Dr. Ambedkar, will really shove the responsibility which was really our own.

Now, a Constitution without defining the shape of the Upper House of the States will be extremely incomplete. If we cannot finally decide the issue as to how the Upper Houses in the States will be composed, and from what elements, from what groups, and from which classes of people members would be drawn and by what method. I am afraid, we shall be failing in the task allotted to us. There are so many other important things which we have postponed. The tendency has been to postpone decision on all such points which require wisdom or consideration. Whatever is controversial has finally to be decided by this August House; otherwise, the Constituent Assembly would have no meaning. A Constituency Assembly means that on matters controversial it takes final decisions for good, and that ends all controversy. The more controversial a matter is, the more we are warranted to come to a decision. Constituent Assembly cannot sit every year. I am afraid that by shoving this responsibility on Parliament we are shirking our responsibility and also neglecting our duty. As it is, the article says : "The allocation of seats in the Legislative Council of a State, the manner of choosing persons to fill those seats, the qualifications to be possessed for being so chosen and the qualifications entitling persons to vote in the choice of any such persons shall be such as Parliament may by law prescribe." Parliament could prescribe for everything. Every controversial point could be safely entrusted by the nation to its Parliament. After all, Parliament will also be a quite responsible elected body. But still they have left it to the Constituent Assembly to do the job. We have gone into very minor and frivolous details, about pay and allowances, houses and many other sundry details, which no other Constitution provides for- indeed ours is a unique Constitution which has all the details as if we were enacting some penal code or a civil code. On this basic point of the Constitution, however, namely, the manner in which the Upper House in the States shall be constituted, we are shrinking a decision. This would I am afraid, give an impression that the Constituent Assembly had a vacant mind. After all, having prescribed for the existence of the Upper House, is it not for us to explain the genesis of it ? We should have given to the nation an idea, an argument, as to why we sanctioned the constitution of an Upper House in the States. We should have stated that the members of the Upper House will come from such and such classes and we should have thereby given an idea that the Constituent Assembly was of the view when they passed the Act that such and such classes and we should have thereby given an idea that the Constitution Assembly was of the view when they passed the Act that such and such classes of people should be represented in these Houses so that full benefit could be had from their representation in the Upper House. In the absence of these details I do not know why an Upper House has been suggested at all. I could understand the original Draft; it was on the lines of the Irish Constitution. It had some meaning. Some, classes were given there from the panels of which the Upper House would be elected. We could say that we created the Upper House in various States just to bring in such persons as would otherwise not enter the arena of political fight. For, sometimes political parties and factions degenerate themselves to such a pass that gentlemen mostly learned, those who are men of opinion, do not like to enter into the dirty pool of politics. If we had chosen to prescribe details about the composition of the Upper Houses, we could say that they were meant to rope in such elements of the Society as the real intelligentsia men of opinion, who would otherwise not contest the elections. We should have a way of bringing them in and taking advantage of their learning, their experience and their opinion. I can understand the creation of an Upper House to bring in such elements, and have the benefit of their advice, while the future States made their legislation. But, we have failed to give any hint to the future generation, as to what our motive is in creating the Upper House in the various States. I would therefore request Dr. Ambedkar to kindly throw some light as to why he has left it ambiguous and why he has shirked this. Dr. Ambedkar is the bravest among us; he faces, all controversies; he is a man of controversy, and a successful man too. Why should he shirk this small matter ? I want him to come out with what he has really at the back of his mind in shirking this responsibility, and why the whole composition of the Upper House has been left to the various States.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Sir, I desire to oppose the proviso, to clause (1) of the proposed article 150. This is a most anomalous proviso and almost contradicts the body of clause (1). It is a strange survival of a most anomalous situation arising out of the history of development of this article. This article as it stood in the original Draft Constitution was good, but the Drafting Committee wanted to make it better and then for six months they kept on the agenda an amendment which was to say the least the height of mathematical absurdity. Even up to yesterday the amendment as it stood was highly absurd. It was only sometime during yesterday that the Drafting Committee or some vigilant draftsman was suddenly awakened from a deep slumber of six months and then found there was a serious anomaly and then there was a last minute attempt to repair the mistake and the present article is the result which is, even now, shorn of its mathematical absurdity, highly anomalous. In the draft amendment as it stood yesterday clause (1) was like this :

> "The total number of members in the Legislative Council of a State having such Council shall in no case be more than 25 per cent. of the total number of the members of the Assembly of that State or less than 40."

This clause looked very simple and inoffensive and the effect was that the number of members of the Legislative Council shall not be more than 25 per cent.

The Honorable Dr. B. R. Ambedkar : Sir, I rise on a point of Order. My Friend is criticising a draft which is not before the House.

Mr. Naziruddin Ahmad : I was trying to show how this unsatisfactory state, of affairs in today's amendment arose.

The Honorable Dr. B. R. Ambedkar : It is not before the Members.

Mr. Naziruddin Ahmad : The draft provided that the number of members of the Legislative Council shall never be more than 25 per cent and never less than 40. The anomaly was this that in article 149 which we have already passed, in proviso to clause (3) we have provided that the number of members in the Legislative Assembly of a State shall never be more than 500 and never less than 60. Take the minimum 60. If the minimum number in a State is 60, the 25 per cent rule would mean that not more than 15 members shall be the number of members of the Council but then the later portion of clause (1) of the amendment in question was that it should be never more than 25 per cent, *i.e.*, it would never be more than 45 and never less than 40. The maximum was 15 but the minimum was to be 40. In fact up to yesterday the clause stood like this that the minimum far exceeded the maximum.

Mr. President : Is it any use considering a clause which existed yesterday and which does not exist today ?

Mr. Naziruddin Ahamad : Sir, I am coming to my point at once. There has been a last minute attempt to repair the blunder and I ask the House to kindly consider how the matter stands. In clause (1) as it stands today, normally, the number of members of the Council shall not be more than 25 per cent. Confining our attention to an Assembly of 60, according to present clause the number should not exceed 25 per cent. *viz.,* 15. Then the proviso says that it shall never be less than 40. The minimum in the proviso is about three times the maximum in the body of the clause. I ask the House to consider the anomaly. Though the mathematical absurdity has been attempted to be repaired, still the practical absurdity remains. What happens is that in a State where the Legislative Assembly consists of 60 members, by virtue of this proviso the number of members of the council shall be at least 40. The strength of the lower House is 60 but that of the Upper House would be 40. So there would be an utter disproportion between the number of members of the Legislative Assembly and that of the Council. In fact the great purpose of clause (1) of the present article 150 is to reduce the number of the members of the Council. The great point in reducing the number was that an Upper House must be a small House to be an effectiveing revising House but in comparing, the case of a State having a membership of 60 in the Assembly, the minimum number of members in the Council would be too large. It will be 60 in the Assembly and 40 in the Council. I ask the House to consider the effect of this disproportion in a joint sitting. If there is a joint sitting of the two Houses the Upper House could easily turn down the opinion of the Assembly. I therefore submit that either the minimum number in the proviso should be reduced or it should bear some kind of proportion to the number of members of the Legislative Assembly. As at present it is a survival of an illogical past. 40 is rather too much in many cases and only when the Lower House consists of 160 members the 25 per cent. and the minimum 40 will agree, but if it is less than 160 then the minimum stated in the proviso would be too large. That is why I was trying to trace the history of this anomaly. I submit either the minimum number should be reduced or abolished altogether.

Shri V. I. Muniswamy Pillay (Madras : General) : Mr. President, while I generally agree with the amendment that has been brought before this sovereign body by the Expert Committee, I would like to draw the attention of the makers of this amendment in regard to certain representation of the minorities. The original draft that was presented to us contained abundant provision for such of the communities that may not find a place through the general election and moreover the Governor himself has been given the power of nomination. With the adult franchise and the reservation that have been accepted by this House, a certain proportion of the Scheduled Castes will naturally came to the Assembly and, providing the system of proportional representation by means of the single transferable vote; it was possible for the Scheduled Castes to get a certain percentage of representation in the Council of States. But in this amendment, I may point out, the power of choice and also the fixation of qualifications entirely go to the Parliament the composition of which of course we know and as far as the Scheduled Caste representation in the Council is concerned it is nebulous. So I would like to know from the members of the Expert Committee or rather I would wish to have an assurance from that body that the interests of the Scheduled Castes will not suffer by the acceptance of this amendment, because my only fear is that the reservation that has been fundamentally approved by this House as far as Scheduled Castes are concerned must be given a chance, that these classes should be given a chance to serve in the Councils of the States. I am sure that Honorable Dr. Ambedkar will make this point clear and also assure me that the representation of the Scheduled Caste in the future Councils of the States will be well protected.

Pandit Lakshmi Kanta Maitra (West Bengal : General) : Mr. President, Sir, I find it difficult to congratulate the Drafting Committee or its Chairman on its latest performance with regard to the provision of second chambers. The House is aware that on this specific subject, different provinces were called upon to take a decision as to whether they were going to have second chambers in their respective provinces. Each province met separately. The Members of the Constituent Assembly hailing from each province met separately and came to certain decisions. I think six out of nine provinces came to the decision that there should be a second House, -Bengal, Bihar, United Provinces, Madras, Bombay and East Punjab. That was then decided. But the whole trouble arose over the composition of of the second chambers which were proposed to be installed in these Provinces. Sir, it is a very sorry tale that on this matter no decision had been reached in spite of attempts being made more than once, here and elsewhere. On slight points of difference the whole thing was jettisoned. And today what do we find ? The Drafting Committee with all its ingenuity has found a way out of this impasse, and that is, they are asking or rather they are authorising the Parliament of the country to settle the composition of these Chambers. Am I correct, Dr. Ambedkar ?

(The Honorable Dr. Ambedkar indicated assent.) Sir, I fail to understand this position. The Drafting Committee say they have chosen the line of least resistance. Yes, they have. But do not forget that you are providing the Constitution of the country, and I have, yet to know a constitution in which the composition of the Council or a Chamber of the Legislature does not find a place. Our Draft Constitution is becoming a bulky volume and containing all manner of provisions, provisions regarding the Secretarial, the Auditor-General, the salaries of High Court Judges and things which should not normally find a place in the Constitution, in my humble opinion. All manner of extraneous matters have been put into this Constitution, but in the matter of composition of legislature which is the back-bone of any constitution-in fact the Government of the country has got to function through the legislature-even when certain provinces have decided that they are going to have second chambers, cannot find it possible to provide a solution. That is really amazing. If we cannot make any provision for it now, what is your prospect of doing it within the next three months in the parliament ? For, before the Constitution comes into effect, you have to decide one way or the other, whether you are going to give any composition to these Councils or not. If the House was minded not to have second chambers, it should have boldly and fairly faced that situation, and said, "No Second Chambers". One could at least understand that position. When the majority of the provinces of India had decided on second chambers why should you find it so difficult to decide on the composition, and in desperation abandon the idea of making a provision for its composition, in the Constitution? This I cannot understand. I do not at all feel happy over this article. You are only going to postpone the evil day. That is all the advantage you are going to have for the present. But mind you, before the Constitution comes into effect, you have got to take a decision on this; but certainly this Constituent Assembly would have been the best authority to decide on the composition of the Legislature and not parliament. I therefore, say that this has not been a happy performance. The Drafting Committee should have found a way out as it is not only a question of anomaly, but it has created a lacuna; in any case, it is an unjustifiable and undignified performance.

Prof. N. G. Ranga (Madras : General) : Mr. President, Sir, I am sorry to say that I cannot agree with the stand taken by my Friend Mr. L. K. Maitra. I think on the whole, the Drafting Committee has made a wise suggestion, that we should not here and now go into all these details, as to who should be represented within this quota of 25 per cent. in the Upper Chamber and to what extent and so on. Sir, I may say that I am not in favour of second chambers at all. But now that the House has decided to have second chambers, and also, in favour of giving special representation to certain classes of people or groups of people or categories of people in our society in these second chambers, it is much better to leave these details, and the detailed settlement of this question, to parliament where we have quite a leisurely procedure, so that it would be possible for the Members to make their suggestions and get due considerations of their suggestions by parliament.

Secondly, Sir, it is very easy for people to say that such and such groups of intellectuals or urban classes should be represented in the Upper Chamber and it is also equally easy for them to quote a number of precedents from various other country. But it is very necessary to see that no one class of people comes to be given too much weightage in the second chamber. Already it is a notorious fact that all over the world second chambers have acted more as a reactionary influence and have prevented the passage of progressive legislation in due time. Therefore, we cannot be too careful to see that the second chambers are not loaded, specially with those people who are interested in the *status quo* or who are interested in preventing any kind of progressive legislation of progressive administration being developed and established. Therefore, we were in favour of the Statement on page 4 of List III where certain categories of our society have been enumerated.

I think in another place and on another occasion we had a more or less detailed discussion of this particular matter and a number of us had agreed on this proposition that (a) literature, arts, science, medicine, (b) agriculture, fisheries, cooperative cottage industries and allied subjects, (c) engineering, architecture and building (d) social services and journalism, all these should be given this kind of special representation in the upper chamber. But on second thoughts we came to the conclusion that it is better to leave it to be decided by Parliament at a later stage. My honorable Friend, Pandit Maitra, is rather apprehensive that if we leave it to Parliament it might delay the coming into existence of these second chambers. I do not think there need be any such delay at all. Between now and the general elections that are to come next, and also even after the formation of the lower chambers in all the provinces there is plenty of time within which it may be possible for parliament, to take up this matter seriously and settle all these details, although they are, not such details, as could be disposed of in this House in such a summary fashion as can be done at this sitting. That is why I appeal to my honorable Friend, Pandit Maitra, not to be very particular about his own objections and to be generous enough to agree with us in accepting Dr. Ambedkar's amendment.

Shri T. T. Krishnamachari : Sir, I am afraid the debate over this particular article on the amendment moved by Dr. Ambedkar has taken the form of a criticism against the Drafting Committee for not having provided a ready-made solution for this problem of representation in the upper House of the provinces but leaving it to Parliament to decide this issue. I feel here that there is no need for the Drafting Committee to apologist for not having placed a complete solution other than the one that is contained in the amended article that is placed before the House. In fact it may be that in a case like this second thoughts are the best, and the Drafting Committee, after having taken into account the opinion of the Members of this House as indicated by the innumerable amendments that have been tabled to the original article 150, thought that they should review the position that they had taken up in the original draft. In fact one of the basic plans in the scheme envisaged in the original draft was the question of selection of candidates for the Upper House by means of panels, a system which was borrowed from the Irish example. But we were led to understand subsequently both from the first-hand experience our Constitutional Adviser who visited Ireland and also from the literature that was made available to us that the Irish system of electing panels and selected members there from; to represent the country in the upper house has not as successful as it was originally thought it would. Sir, I would ask members of this House to go through the various amendments to article

150 that are given in the various lists of amendments. Is there any indication therein of any unanimity of opinion in the manner in which the members of this House want candidates to be chosen or they want the electorate to be created ? I think the very baffling nature of the very suggestions made and the fact that no particular suggestion made by any one member has any particular merit as against any other suggestion made by any other member of this House has made us think whether without further and deep investigation it would be worth while asking this House to accept a proposition which has been cursorily decided on and which might in effect defeat the purpose of the creation of an upper House for the various States enumerated in the previous article.

Pandit Lakshmi Kanta Maitra : But how can you solve the question of the Council of States?

Shri T. T. Krishnamachari : I have the greatest respect for the judgment of my honorable Friend Pandit Maitra with whom I have had the pleasure and privilege of working in the legislature for a number of years. But I must say that in this instance he has allowed his temper to outrun his usual discretion. Let me here explain that the Upper House of parliament has to be elected on the basis of representation of States, the Lower House has to be elected on the basis of adult suffrage. The Lower Houses of the provincial legislatures are to be elected on the basis of adult suffrage. This decision does not want any investigation and any great thought; except a decision on the principle all that it want further is how to delimit the constituencies.

Pandit Lakshmi Maitra : You could have done that if you had applied your kind; you did not do that.

Shri T. T. Krishnamachari : We had, applied our mind to the end that we only wanted to provide representation for the States; it is the type of representation which is provided for the Upper House in all federal constitutions.

Pandit Lakhmi Kanta Maitra : Your practice has been that whenever there has been any difficulty you pass it on to the future Parliament; you offer no solution.

Shri T. T. Krishnamachari : I do not plead guilty to that charge because I think the honorable Member has not taken into account the difficulties of the Drafting Committee, particularly when the inquiry into the data available was insufficient or that data before us was inadequate to make up our minds. Let me take my honorable Friend who objects to this method of deciding this issue to what happened before the 1935 Act was passed. There was a Franchise Committee, I believe it was the Lothian Committee and subsequently there was the Hammond Committee, both of which, visited the whole country. They went to every province and in the latter case co-opted members, there; it made detailed inquiries only because even for the lower House the franchise had to be decided on and for the upper House also it had to be decided likewise. In the particular instance before us owing to various circumstances for which neither the leaders who guided us non the Drafting Committee were responsible, we had to depend on our own limited resources to frame proposals for an electorate for the Upper House of the States. And this is a very important matter. I think the generally accepted idea is to have an Upper House which will act only as a revising body, help the Lower House to make up its mind in difficult matters, which will provide that limited amount of delay which is necessary for people to make up their minds or to revise any mater where they have made up their minds already. If the intention is to have a proper type of Legislative Council it could only be created after proper inquiry into facts; and I can say without any sense of guilty or an attempt at an apology that the Drafting Committee or those concerned in the framing of this constitution have not had before them the full data that is necessary for providing a suitable electorate for an Upper House and to meet the different circumstances existing in the various provinces. It may be that in the United Provinces some representation for the local bodies, the universities and perhaps the Chambers of Commerce would be thought necessary, whereas similar conditions perhaps do not exist in a province like Madras where the position of the local bodies is undergoing a change and we do not know in what shape or form they will ultimately remain. It may also be that if we provide particular constituencies for electing members to the Upper House the strength of those constituencies will not be the same a few years hence. So it is very necessary that we should not bind down the mechanism for ever by making a provision in the Constitution but must provide for the changes that might be necessary from time to time in the matter of either the electorate for the Upper House or in the matter of qualifications of candidates to be made without the elaborate process of an amendment of the Constitution but rather leave it to Parliament to vary the terms, if and when it is found necessary, by a Parliamentary Act. It has been asked, if that be done, how can the elections for these Upper Houses be held? I think it is a perfectly easy thing to visualise that there will be a time-lag between the promulgation of this Constitution and the elections taking place. The time-lag may be a few months or a year. Within that period the Parliament, which will be this House or its successor will certainly be seized of the fact of providing a proper type of constituency for the Upper Houses, the qualifications of the electors and those to be elected and all that is envisaged in the amendment of Dr. Ambedkar. And an Act of Parliament will certainly satisfy my honorable Friend Pandit Maitra far more than any gerrymandered device that we might place before him at the present moment. That is why we are not placing entire scheme before him today.

I think there is therefore no need for apology. Parliament will in due course ask provincial Governments to submit their own proposals. Prior to the Draft Bill coming up before Parliament the Government of the day will perhaps appoint a committee to scrutinise the suggestion of the Provinces. I think the draftsman who has to draft the Bill will have the resources and the initiative to vary if necessary the terms and conditions of representation provided for each of the provinces that want an Upper House. All this can be done at leisure and after an exhaustive enquiry with more care and attention that we can give to it now. The proposal put up by Dr. Ambedkar is the only proper, reasonable and just proposal that can be placed before the House now without making this House commit itself to do something which will not be proper or which has been decided in haste in a haphazard manner.

And what is the amendment of Mr. Shibban Lal Saksena about the claims of which he urged the House to consider ? Five per cent for this group of persons, five per cent for something else and so on. It looks as though he is trying to make up the total of one hundred per cent by bits here bits there and bits somewhere else. Even granting that the scheme suggested by him is adequate so far as United Provinces is concerned, it seems to me that it is completely inadequate and out of place with regard to provinces about which I have some knowledge. Therefore, without any apology I ask this House to accept the amendment moved by Dr. Ambedkar, which I think is the only proper course to adopt in the circumstances.

The question of having an Upper House or not does not come into the picture at this stage. We are already committed to that proposition. We have provided solutions against difficulties arising from the acceptance of this proposition, namely that the various Legislatures of provinces can do away with the Upper House if they choose, and the resolution of conflicts between the two Houses and so on. Having provided parliament with the power of accepting a resolution of the Lower House in a State to create an Upper House where it did not exist I think it is only fair that we should give Parliament entire power in regard to varying the composition, and determining the composition of the House in the initial stage. Sir, I support the amendment.

Shrimati Purnima Banerji (United Provinces : General) : Mr. President, Sir, I do confess that dealing with these articles regarding the Upper House, not knowing as to what is going to be the composition of the Upper House does put us in some difficulty. We passed article 148 as many of the provinces did agree to the creation of an Upper House mainly depending on the kind and nature of the House and we did it on the assumption that it would be something of the kind based upon the Irish model, a model which was supplied to us by the secretariat of the Constituent Assembly. We were always of the opinion that an Upper House could perform the very good and useful function of being a revising body, and that, while its views may count but not its votes, it should not be a House of vested interests. It was felt that those who could not enter into the rough and tumble of active politics could by their good offices advise the Lower House. Such people could get an opportunity to revise or amend legislations of the Lower House and would thus be performing a useful function. But, now by these articles, when we leave the entire composition to the future Parliament and yet vote for an Upper House we are actually groping in the dark. I do not agree with my Friend Mr. Brajeshwar Prasad that it is because we are afraid of adult franchise which we consider a leap in the dark that we want to provide for Upper Houses. It was our experience in the Legislative Assemblies that it was useful to have associated in our governmental activities and in our legislative activities such useful people as were doing useful work for the country, people doing social service, service among Harijans or backward classes, some representatives of labour who were not organised or were not to be found in such large numbers as to form a constituency by themselves or members of a co-operative association, men of letters or some such people whose advice would count, who would not be actuated by any motive to with hold any legislation which is good for the nation but whose voice may have a good effect upon us-it was for such an Upper House we voted and not for an Upper House whose nature and composition we do not know. For the moment we know that the present Upper Houses in the various Legislatures are Houses of vested interest as it is people having a certain amount of property qualification and people with large bank balances who are elected to the Upper Houses. Now, when we have left the entire qualifications to the future parliament, we do find some difficulty when this Constitution-making body is yet required to vote these articles. I do not know if Dr. Ambedkar can give an assurance, -for what his assurance will count-that it will not be a House of vested interests or of people with large properties who would stay any legislation which is necessary in the interests of the country. With these words, I hope that our views expressed in this House will be taken into account in the future Parliament and that an Upper House which will be only of a revising nature, which would be neither pernicious nor useless would be brought into being and that the possession of large properties by persons will not be considered a qualification entitling them to membership of the Upper Houses.

Shri Brajeshwar Prasad : Mr. President, Sir, I am thoroughly opposed to the article moved by Dr. Ambedkar. Professor Ranga characterised this proposal of Dr. Ambedkar as a very wise one. It would have been far better to entrust the entire task of making the future Constitution of India to the future Parliament of India. That would have been the wisest thing on earth. I hope everybody will realise that this is the proper place as it has been convened to frame, a Constitution for India. To ask a Legislature to frame the constitution of an important organ of the State is a mistake.

I am coming to the proposal embodied in amendment No. 89. It says :

> "The total number of members of the Legislative Council of a State having such a Council shall not exceed twenty-five per cent of the total number of members in the Assembly of that State."

I do not see any reason why the number of members of the Legislative Council should be reduced. I feel that the total number of members should be equal to that of the number in the Lower House. If the future Parliament is going to be entrusted with the task of allocation of seats, the manner of choosing persons and, the qualifications to be possessed, why not also entrust it to Parliament to determine the total number of members as well ? Why fetter the discretion of Parliament in this matter? Personally I am of opinion that the membership should be equal to that of the Lower House, that the Legislative Council should be a nominated body, nominated by the President or the Governor in his discretion. I do not want this matter to be left in the hands of provincial Ministers. I agree with my sister, Shrimati Purnima Banerji, when she says that it should not be a House consisting of vested interests. I do not want that the members should come from the capitalist classes or the landlords or the satellites of the Ministers. I feel that it should be a body consisting of the wise men of the province. The dominant theme of Indian history has been that we have been ruled by wise men. Our law-givers were not legislators, Parliamentarians or democrats. They were wise men. Under the present circumstances it is difficult to find men of the type that have been envisaged in Plato's Republic. But we can approximate to that idea. We can lay it down clearly in the Constitution that only those persons who are graduates can become members of this Council and the number of members shall be determined by the President or the Governor in his discretion. They shall be nominated for life. It shall not be a body which would undergo radical changes in composition after every three or five years. I feel, Sir, that having due regard to the political facts of our life, knowing fully well the dangers that confront the State and the elements of instability that are growing up in this country, we have done well in chalking out a line of defence in the measure that we have adopted, namely, that the Governor shall be a nominated person by the President. I feel, Sir, that the Legislative Council should be also a nominated body. This should be a second line of defence. I feel, Sir, that the consideration of this article should be postponed for some time, and before we adjourn, a proper constitution for the Upper Chamber should be determined and decided in this House.

Dr. P.S. Deshmukh : A number of Honorable Members of this House have already advanced the plea that it is not proper that such an important item, as the constitution of the second chambers in the States, should be left to Parliament. I also rise to support this point of view. Since our Constitution is a written Constitution, it should be complete in itself and it should not be necessary to have recourse to partial legislation from time to time which will be a sort of supplement to the Constitution that we are passing. I am also apprehensive of the facts that more and more recourse is being had to this device. Wherever we find there is no unanimity or where certain complications arise, we try to throw the burden on Parliament, and this Parliament has then to pass legislation on the particular item which we do not want to tackle here. I feel, Sir, that it would be neither in the interests of the dignity nor respect which this Constitution should have and evoke in the minds of the people, to leave such important matters for future legislation.

So far as this item is concerned, it is bound, after all, to come before this very set of honorable Members sitting as legislators, because unless the constitution of the second chambers is complete I do not think the Constitution can come into force or be really put into practice. That being so, we are merely playing for time in order to consider and finally approve of an arrangement by which these second chambers would be constituted. There is only going to be a difference of a few months if we make a provision of this kind for Parliament to decide about membership, composition, the qualifications of the various Members etc. I think, Sir, this should not be permitted. I feel I must express my dissatisfaction with the way in which we are trying to really undermine the dignity and the position of the Constitution we have been sitting here to frame. As a matter of fact, Mr. T. T. Krishnamachari gave away his whole case when he said that he was not sure as to how the second chambers should be composed : and if that is the state of mind of the members of the Drafting Committee, the more honest method would have been to scrap the second chambers altogether. If the members of the Drafting Committee themselves do not know which interests should be represented in these Houses, and if in spite of two and a half years of deliberation they have not yet made up their minds as to which are the interests which require protection, which are the representatives which are likely to stabilize our Governments in the future Constitution, then it is time that the whole idea of second chambers was given up.

I therefore submit that this is not a very satisfactory state of affairs-that we should talk of having second chambers and yet not know what they should be composed of. On the other hand, we hope somewhat vaguely that after a lapse of two months we shall come across some brain-waves by which we should know what should be done with regard to qualifications for members sitting in second chambers. I do not think this is in keeping with the dignity of the House nor of the Constitution that we are framing.

The Honorable Dr. B. R. Ambedkar : Sir, there are only two points of comment, which I think call for a reply. The one point of comment, that was made both by Mr. Kamath as well as by my Friend, Mr. Naziruddin Ahmad, was that according to the proposal now placed before the House, there is a certain amount of disproportion between the membership of the Upper House and the membership of the Lower House in certain provinces. He cited the instance. I believe if I heard him correctly, that in the province of Orissa, the members of the Lower House, on the principles which we have laid down in article 149 of the Constitution, would be near about 60. Consequently, if the minimum for an Upper House was 40, in Orissa the Upper House would be disproportionate to the Lower House in strength. Now, I think my Friend, Mr. Naziruddin Ahmad, has not taken into consideration the circumstances which have intervened during the interval. He has for instance completely forgotten that Orissa is now a much bigger province on account of the merger of the several States, which were at one time independent of Orissa, and I understand that taking the area of the States and the population which will be included in the boundaries of Orissa, the Lower House is likely to be 150. Consequently, the possibility of any such disparity, as he pointed out, no longer exists. I may also at this stage say that if the House passes what is proposed as article 172 which regulates the question of difference of opinion between the Upper House and the Lower House, this question of disparity of principles between the Lower House and the Upper House loses all its importance, because under article 172 we no longer propose to adopt the same procedure that was adopted with regard to the two Chambers at the Centre, namely a joint session. What we propose to do is to permit the view of the Lower House to prevail over the view of the Upper House in certain circumstances. Consequently, the Upper House by reason of this different political complexion has no possibility of overturning the decision of a majority or a large majority, of the Lower House. That I think, completely disposes of the first point of comment raised by my honorable Friend, Mr. Naziruddin Ahmad.

I come to the second question which was very strongly raised by my honorable Friend, Pandit Lakshmi Kanta Maitra. His argument was : Why should you leave it to Parliament ? How can it be left to Parliament? I think the answer that I can give to him, at any rate, so far as I am concerned, is quite satisfactory. I should like to point to him in the first instance that it is not to be presumed that the Drafting Committee did not at any stage make a constructive proposal for the composition of the Upper House in the Constitution itself. If my honorable Friend will remember there stood in the name of myself and my Friend, Mr. T. T. Krishnamachari an amendment which is No. 139 in this consolidated list of amendments to amendments which has been circulated and there he will find that we have made a constructive suggestion for the composition of the Upper House. Unfortunately that was not accepted in another place and consequently, we did not think it advisable to continue to press that particular amendment. He will therefore see that the Drafting Committee must be exonerated from all blame that might be attached to it by reason of not having made any effort to solve this difficulty; they did try, but they did not succeed. My honorable Friend will also realize that the Drafting Committee was presented with altogether 28 amendments on this subject. They range here in this list from 123 to 148. If he were to read the amendments carefully in all their details, he will notice the bewildering multiplicity of the suggestions, the conflicting points of view and the unwillingness of the movers of the various amendments to resile from their position to come to some kind of a common conclusion. It was because of this difficult situation the Drafting Committee thought that rather than put forth a suggestion which was not likely to be accepted by the majority of the House, it would leave it to Parliament.

Shri H. V. Kamath : Is Dr. Ambedkar sure that parliament will be presented with less multiplicity.

The Honorable Dr. B. R. Ambedkar : If my honorable Friend will give me time, I will reply to that part also.

My honorable Friend Pandit Maitra, said : How is it conceivable that a part of the Constitution of so important an institution as the Upper Chambers could be left to be decided by Parliament and not be provided in the Constitution? I think my honorable Friend, Pandit Maitra, will realize and I should like to point out to him quite definitely what we are doing with regard to the Lower House both in the Provinces or the States as well as at the Centres. If he will refer to article 149, which we have already passed, what we have done is we have merely stated that there shall be certain principles to govern the delimitation of constituencies, that a constituency is not to have less than so many and more than so many, but the actual work of delimiting the constituencies is left to Parliament itself and unless Parliament passes a law delimiting the various constituencies for the Lower House at the Centre, it will not be possible to constitute the Lower House.

Pandit Lakshmi Kanta Maitra : That is inevitable.

The Honorable Dr. B. R. Ambedkar : Again take another illustration, namely, the allocation of seats. The actual allocation will have to be done by law by Parliament. Therefore, if such important matters of detail could be left to Parliament to determine by law, I do not see what grave objection could there be for a matter regarding the composition of the Upper Chamber being also left to Parliament. I cannot see any objection at all. Secondly, I feel personally that having regard to the conflicting view-points that have been presented in the 28 amendments that are before the House, I thought it would be much better for Parliament to take up the responsibility because Parliament will certainly have more time at its disposal than the Drafting Committee had and Parliament would have more information to weigh this proposal, because Parliament then would be in a position to correspond with the various provincial Governments, to find out their difficulties, to find out their points of view and their proposals and to arrive at some common *via, media* which might be put into law. Therefore, in putting forth this proposal I think we are not making any very serious departure from the principles we have already adopted and as my honorable Friend, Mr. T. T. Krishnamachri said, taking all these into consideration, there is nothing for the Drafting Committee to apologize but to recommend the proposal to the House.

Mr. President : I confess to a sense of disappointment at the Drafting Committee not being able to find a solution for this question. (Some honorable Members : Hear, hear). It is an important matter in the Constitution that the composition of the Chambers of the legislature should be laid down definitely and I should have thought that it would be possible to come to some conclusions which would be acceptable to the House as a whole, but unfortunately that has not happened. I do not blame the Drafting Committee for it. As Dr. Ambedkar has pointed out, there has been such a jumble of amendments suggested so many view-points put forward, that they find it impossible to reconcile all these and they take the line of least resistance of putting it off till the Legislative Assembly meets and decided the question. If it is at all possible, I would at this late stage suggest that the question might be referred back to the Drafting Committee. (Many honorable Members : Hear, hear). The Drafting Committee could make another attempt to solve this question and bring before this House a resolution of this problem; but it is, of course for the House to decide. I leave it to the House to decide.

Pandit Govind Malaviya (United Provinces : General) : I move, Sir, that the consideration of this article be held over.

Shri Brajeshwar Prasad : I beg to second this proposal.

The Honorable Dr. B.R. Ambedkar : I have no objection. We can have another go at it.

Mr. President : Then I take it that Members are agreed that this article should be held over.

Honorable Members : Yes.

New Article 163-A

The Honorable Dr. B. R. Ambedkar : Sir, I beg to move :

"That in amendment No. 12 of List I (First Week) of Amendments to Amendments for the proposed new article 163-A, the following be substituted :-

'163-A. (1) The House or each House of the Legislature of a State shall have a secretarial staff of State Legislatures separate secretarial staff :

Provided that nothing in this clause shall, in the case of the Legislature of a State having a Legislative Council, be construed as preventing the creation of posts common to both House of such Legislature.

(2) The Legislature of a State may by law regulate the recruitment and the conditions of service of persons appointed to the secretarial staff of the House or House of the Legislature of the State.

(3) Until provision is made by the Legislature of the State under clause (2) of this article, the Governor may after consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be, make rules. regulating the recruitment and the conditions of service of persons appointed to the secretarial staff of the Assembly or the Council, and any rules so made shall have effect subject to the provisions of any law made under the said clause'."

This article is merely a counterpart of article 79-A which we considered this morning.

Shri Brajeshwar Prasad : I am not in a position to move any of the amendments standing in my name.

Shri H. V. Kamath : Mr. President, Sir, I do not propose to speak on the amendments which I am formally moving before this House. I would only like to remark in passing that I have noticed today an unfortunate tendency on the part of Dr. Ambedkar not to reply to points of substance raised in the course of the debate. Of course, he is free to act as he likes. I would only request him, in fairness to Members who raise points of substance, that he might at least attempt to answer them. Whether he would answer them satisfactorily or convincingly is another matter; but the House is entitled to this much from him. Honorable Members who raise points of substance must at least know the point of view of the Drafting Committee. In articles 79-A and 148-A, points of substance were made out by various amendments by my honorable Friend, Prof. Shibban Lal Saksena and myself. But when his turn came, Dr. Ambedkar was good enough, wise enough just to say that he did not wish to say anything.

The Honorable Dr. B. R. Ambedkar : I said no reply was called for.

Shri. H. V. Kamath : That is left to his judgment. But, when certain substantial points are raised, they call for some sort of reply. Of course, he is buttressed, fortified by the fore- knowledge of the fact that when he says, 'yes', he will carry the House with him. It is of course up to him to decide what he will reply to and what he will not. But, the House is entitled to hear his view. If he is too tired, too fatigued, he may ask one of his wise colleagues.........

The Honorable Dr. B. R. Ambedkar : Who is to determine whether the points are points of substance? If the President gave a ruling that the point is one of substance, I should certainly reply, I cannot leave the matter to be determined by Mr.

Kamath himself.

Shri H. V. Kamath : You, Sir, are following the wise ruling laid down by you that the amendments which did not raise points of substance would not be allowed by you.

Mr. President : Are you moving the amendments? What are you discussing now ?

Shri H. V. Kamath : I am moving them. Before doing so, I would like to say that when an amendment is allowed to be moved by you, it means under the rules we have made recently, that it has a point of substance. Any way, I move amendments numbers 92,94,96,98,99 and 100 of List III (First Week). I do not think I should take the time of the House in reading the amendments. If you want, I shall read them.

Mr. President : Not necessary.

Shri H. V. Kamath : They are more or less on a par with the amendments that I moved earlier today. I formally move these amendments and commend them for the careful consideration for the House.

I move.

"That in amendment No. 48 of List II (First Week) of Amendments to Amendments in the proviso to clause (1) of the proposed new article 163 A, for the words 'be construed as preventing' the word 'prevent' be substituted.

That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (2) of the proposed new article 163-A, for the words 'recruitment and the conditions of service of persons appointed to' the words 'recruitment to the salaries and allowances, and the conditions of service of' be substituted.

That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 163-A for the word 'or' occurring in the line, 4 thereof, the words 'and, where necessary,' be substituted.

That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 163-A, the words 'as the case may be' be deleted.

That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 163-A, for the words 'recruitment and the conditions of service of persons appointed to' the words 'recruitment to the salaries and allowances and the conditions of service of' be substituted.

That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 163-A, for the words 'the Assembly or the Council' the words 'the House or each House of the Legislature of the State' be substituted.

That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 163-A, all the words occurring after the words 'or the Council' be deleted."

Shir Lakshminarayan sahu : (Orissa : General) : *[Mr. President , sir I move :]*

"That in amendment No. 149 of the Printed Consolidated List of Amendments to Amendments dated 10- 7-1949, the following proviso be added to clause (2) of the proposed new article 163- A :-

'Provided that the governor may , in consultation with the Speaker or the Chairman, as the case as may be, by rule require that in such cases as may be specified in the rule no person not already attached to the House of the Legislature shall be or to either House appointed to any office connected with the House or any of the Houses of

Legislature, save after consultation with the State Public Service Commission.' "

Mr. President : How does this amendment fit in with the article as it has been now moved?

Shri Lakshminarayan Sahu : I want the following proviso to be added to clause (2) of the proposed article 163-A. Clause (2) says : "The legislature of a State may by law regulate the recruitment and the conditions of service of persons appointed to the Secretarial staff of the House or Houses of the Legislature of the State."

*[I wish the following proviso to be added :-

"Provided that the Governor may, in consultation with the, Speaker or the Chairman as the case may be, by rule require that in such cases as may be specified in the rule, no person not already attached to the House or to either House of the Legislature shall be appointed to any office connected with the House or any of the House of Legislature save after consultation with the State Public Service Commission."

In this connection I want to say that we have made a provision for the Public Service Commission in order that fairness may be observed in regard to the services. We should ask for advice of the Public Service Commission in the matters relating to all the services. It would not be proper to entrust other people with this work. The Public Service Commission has not yet gained in our country the same status as it has in other countries, where there are democratic institutions. In the Dominion Parliament we do not accept suggestions of the Public Service Commission as much as we ought to. It only recommends whether we can employ a candidate or not. But in countries like Canada and South Africa, where the democratic form of government is prevalent, the Public Service Commission has great powers. Therefore I want that whatever action is taken in this respect, it should be on the recommendation of the Public Service Commission. Appointments should be made after consulting them. So long as we do not do this in a clean way, there will always be the doubt that there has been something wrong with the appointments. It is heard from all quarters that the recommendations of the Public Service Commission are turned down and different appointments are made. Therefore I think that this healthy proviso will help to improve matters. I have nothing more to add in this connection but I would like to point out that I seek to insert this proviso in this place while it is given as No. 149 in the printed List of Amendments.]*

Mr. President. Does any Member wish to say anything ?

(No Member rose to speak.)

Would Dr. Ambedkar like to say anything ?

The Honorable Dr. B. R. Ambedkar : No.

Mr. President : I will then put the amendments to vote. The question is :

"That in amendment No. 48 of List II (First Week) of Amendments to Amendments in the proviso to clause (1) of the proposed new article 163-A, for the words 'be construed as preventing' the words 'prevent' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (2) of the proposed new article 163-A, for the words 'recruitment and conditions of service of persons appointed to' the words 'recruitment to, the salaries and allowances, and the conditions of service of' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 149 of the Printed Consolidated List of Amendments to Amendments dated 10.7.1947, the following proviso be added to clause (2) of the proposed new article 163-A :-

'Provided that the Governor may, in consultation with the speaker or the Chairman, as the case may be, by rule that in such cases as may be specified in the rule, no person not already attached to the House or to either House of the Legislature shall be appointed to any office connected with the House or any of the House of Legislature, save after consultation with the State Public Service Commission."

The amendment was negatived.

Mr. president : The question is :

"That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 163-A, for the word 'or' occurring in line 4 thereof, the words 'and where necessary,' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 163-A, the words 'as the case, may be' be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 163-A, for the words 'recruitment and the conditions of service of persons appointed to' the words 'recruitment to, the salaries and allowances, and the conditions of service of' be substituted."

The amendment was negatived.

Mr. president : The question is :

"That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 163-A, for the words 'the Assembly or the Council' the words 'the House or each House of the Legislature of the State' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 48 of List II (First Week) of Amendments to Amendments, in clause (3) of the proposed new article 163-A, all the words occurring after the words 'or the Council' be deleted."

The Amendment was negatived.

Mr. President : I put the article 163-A as moved by Dr. Ambedkar to vote.

The question is :

"That New Article 163-A, do form part of the Constitution."

The motion was adopted.

New Article 163-A was added to the Constitution.

Article 175

Mr. President : Shall we take up 172 now ?

The Honorable Dr. B. R. Amebedkar : We shall keep it back for the moment.

Mr. President : Shall we take up No. 175 ?

The Honorable Dr. B. R. Ambedkar : Yes.

Shri H. V. Kamath : What about 127-A ?

Mr. President : That will come up along with 210.

Let us take up now 175. There are some amendments to it.

(Amendments Nos. 16 and 17 were not moved.)

The Honorable Dr. B. R. Ambedkar : Mr. President, Sir, I beg to move : that :

"That for the proviso to article 175 the following proviso be substituted :-

'Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom'."

Sir, this is in substitution of the old proviso. The old proviso contained three important provisions. The first was that it conferred power on the Governor to return a Bill before assent to the Legislature and recommend certain specific points for consideration. The proviso as it stood left the matter of returning the Bill to the discretion of himself. Secondly, the right to return the Bill with the recommendation was applicable to all Bills including money Bills. Thirdly, the right was given to the Governor to return the Bill only in those cases where the Legislature of a province was unicameral. It was felt then that in a responsible government there can be no room for the Governor acting on discretion. Therefore the new proviso deletes the word 'In his discretion.' Similarly it is felt that this right to return the Bill should not be extended to a money Bill and consequently the words 'if it is not a money Bill' are introduced. It is also felt that this right of a Governor to return the Bill to the Legislature need not necessarily be confined to cases where the Legislature of the province is unicameral. It is a salutary provision and may be made use of in all case even where the Legislature of a province is bicameral.

It is to make provision for these three changes that the new proviso is sought to be substituted for the old one and I hope the House will accept it.

Mr. President : I have notice of some amendments which are printed in the Supplementary List. Does any Member with to move any of the amendments ? They are in the names of Shri Satish Chandra, Shri B. M. Gupta and Prof. Shibban Lal Saksena.

(The amendments were not moved.)

Does any Member wish to speak on this ?

Honorable Members : Yes.

Shri Satish Chandra (United Provinces : General) : Sir, whether I move my amendment to this article or not, depends on the shape in which article 172 emerges from the House. But article 172 has been for the present held over. There is no amendment to first paragraph of this article, and only one to the proviso has been moved by Dr. Ambedkar. So I may have to move my amendment to bring the language of this article in line with article 172, or the Drafting Committee may consider this point.

Mr. president. We shall consider that matter on Monday next. The House now stands adjourned till 9 O'clock on Monday. From Monday we propose to sit from 9 a.m. to 1 p.m. instead of from 8 a.m. to 12 noon.

The Assembly then adjourned till Nine of the clock on Monday the 1st August, 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME IX

Monday, the 1st August 1949

The Constituent Assembly of India met in the Constituent Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION *(Contd.)*

Article-175.-*(contd.)*

Mr. President : We were dealing with article 175 day before yesterday before we rose. We shall now continue discussion on article 175. The question was raised by Shri Satish Chandra that he had an amendment to article 172 and that unless it became clear what the shape of article 172 would be, he did not know whether to move or not to move the amendment, of which he had given notice, to article 175. I would like to know if he would press that point.

Shri T. T. Krishnamachari (Madras: General) : Sir, may I submit that that article has very little to do with article 172. Article 172 seeks to resolve a conflict between the two Houses, whereas article 175 deals with the Governor's assent to Bills passed by the legislatures and when he can send a Bill back to the legislature for reconsideration. Anyway, the shape of the amendment to article 175 completely clears the position of all ambiguities. Therefore, I suggest that article 175 be considered apart from 172.

Mr. President: Would it not be better if we were to dispose of 172 first?

Shri T. T. Krishnamachari : That is entirely to be decided at your discretion. We may take up 172 first and then have the vote on 175.

Mr. President : Do you have any objection?

The Honourable Dr. B. R. Ambedkar (Bombay: General) : I have no objection, Sir, I am entirely in your hands.

Mr. President : Then we shall dispose of 172 first and then go to 175.

Article 172

The Honourable Dr. B. R. Ambedkar: Mr. President, Sir, I move:

"That for article 172, the following article be substituted:-

Restriction of powers of Legislative Council as to Bills other than Money Bills.

'172. (1) If after a Bill has been passed by the Legislative Assembly of a State having a Legislative Council and transmitted to the Legislative Council-

(a) the Bill is rejected by the Council; or

(b) more than two months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it; or

(c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree,

the Legislative Assembly may again pass the Bill in the same or in any subsequent session with or without any amendments which have been made suggested or agreed to by the Legislative Council and then transmit the Bill as so passed to the Legislative Council.

(2)If after a Bill has been so passed for the second time by the Legislative Assembly and transmitted to the Legislative Council-

(a) the Bill is rejected by the Council; or

(b) more than one mouth elapses from the date on which the Bill is laid before the Council without the Bill being passed by it; or

(c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree,

the Bill shall be deemed to have been passed by the Houses of the Legislature of the State in the form in which it was passed by the Legislative Assembly with such amendments if any, as have been agreed to by the Legislative Assembly.

(3) Nothing in this article shall apply to a Money Bill'."

The House will remember that when we discussed the question of the resolution of the differences between, the Council of States and the House of the People, we discussed the different methods by which such differences would be resolved, and we came to the conclusion that having regard to the Federal character of the Central Legislature it was proper that the differences between the two Houses should be resolved by a joint session of both the Houses called by the President for that purpose. It was at that time suggested that instead of adopting the procedure of a joint session we should adopt the procedure contained in the Parliament Act of 1911 under which the decision of the House of Commons with regard to any particular Bill, other than a Money Bill, prevails in the final analysis when the House of Lords has failed to agree, or refused to agree, to the amendment suggested by the House of Commons after a certain period has elapsed. On a consideration of this matter, it was felt that the procedure laid down in the Parliament Act for the resolution of the differences between the two Houses of the Legislature was more appropriate for the resolution of differences between the two Houses set up in the Provinces. Consequently we have made a departure from the original article and introduced this new article embodying in it the proposal that the decision of the more popular House representing the people as a whole ought to prevail in case of a difference of opinion which the two Houses have not been able to reconcile by mutual agreement.

Sir, I move.

Shri T. T. Krishnamachari: Mr. President, Sir, I move:

> "That with reference to amendment No. 9 of List I (Second Week) of Amendment to Amendments, in sub-clause (b) of clause (1) of the proposed article 172, for the words 'two months' the words 'three months' be substituted."

I would like to explain why this has been necessary. The amendment moved by Dr. Ambedkar to article 172 is a variation of the amendment in List I, No. 10. If honourable Members will scrutinise No. 10 they will find that in sub-clause (b) of clause (1) and sub-clause (b) of clause (2), the period that is allowed to lapse after the Bill had returned to the Legislative Assembly is mentioned as three months and one month respectively, but it is to commence from the date of reception of the Bill in the Upper House, and clause (3) of article 172 in amendment No. 10 prescribes how these three months are to be calculated and it also says that if there is any prorogation of the Upper House, the period of prorogation will not be counted to make up these three months. In actual fact, this particular amendment, as Dr. Ambedkar mentioned, closely follows the wording of the Parliament Act of 1911. But there is this difference between what happens in the British Parliament and what is likely to be in our case that while it is proper to stipulate that the total time taken including the time of prorogation shall be a particular period in case of the British Parliament we cannot do the same thing in regard to the Upper House, for this reason that while the British Parliament sits practically day to day for the bulk of the year, the Upper Houses in our provincial legislatures will sit only for a few days at a time and the aggregate period of their sessions may not even come to two months in the whole year. So it was represented to us by a very prominent Premier of one of the major provinces that this would, in effect, mean that the delay would be inordinate. It may extend to over a year or more, because at no time will the Upper House sit for a period of three months continuously even in one year. The amendment moved by Dr. Ambedkar was a result of these representations and clause (3) in No. 10 has been left out. But at the same time another variation has been made that the time to be calculated is to be from the date of the laying of the Bill before the Upper House, so that the reception date does not come into operation; and it was then felt that two months would be adequate. But on further reflection, since we have cut out clause (3), that is, that we shall not be taking into account the period of the prorogation of the House in the total time that might elapse, we felt that two months was inadequate and three months would be more reasonable. After all, the over-all time that is to be taken for a Bill to be returned to the Lower House will be three months from the date on which it is laid before the Upper House which in my view and in the view of my colleagues in the Drafting is reasonable. That is why I have moved this amendment. It merely extends the period by one month and does not materially alter the scope of the amendment moved by Dr. Ambedkar. I commend the amendment to the House.

[Amendments Nos. 11 and 12 of List I (Second Week) were not moved.]

Mr. President: Now the article and the amendments are open for discussion. I know that the latter is Provided by (c), but still, it is better to make it clear article as it stood originally and they do not arise now.

The Honourable Shri K. Santhanam (Madras : General) : I just want to draw

Dr. Ambedkar's attention to one or two minor mistakes in drafting. In clause (b) it should be :

> "more than two months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it in the same form in which it was passed in the Assembly,"

because a thing may be passed either in the same form or with amendments. I know that the latter is provided by (c), but still, it is better to make it clear that (b) also refers to such case.

Secondly, in clause (c) it says : "the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree" - now this is a later process, because when the Council passes a Bill, it does not know whether the Assembly will agree or not. Whenever the Council passes an amendment, it is in the hope that the Assembly will accept it. When the latter does not accept, the resulting position is covered. Therefore, (c) must read "the Bill is passed by the Council with amendments" and the other words should be omitted.

Shri Brajeshwar Prasad (Bihar: General): Mr. President, Sir, I am opposed to article 172 as moved by Dr. Ambedkar. The provision for a joint sitting in the old draft was a very salutary one. I see no reason why it should be deleted at this stage. We must be clear in our minds whether we want an Upper Chamber or not. If we want an Upper Chamber, it must be vested with certain powers. It has got a part to play. With the inauguration of the new Constitution on the basis of adult franchise, it is risky to vest all powers in the hands of the Lower House. I have no belief in the sovereignty of the Lower House. I believe that power must be vested in the hands of those who are literate; not only literate but wise too. I believe that power must be vested in the hands of those who are not only wise but who have got a sense of justice. I have no faith that the Lower House, constituted on the basis of adult franchise, will be able to do justice to anybody. People in India are not only illiterate, but narrow-minded, steeped in fanaticism and superstition. Therefore, I support the old provision of the article which lays down that there shall be a joint session. Personally, having due regard to the facts of our political life, I was in favour of vesting the Upper Chamber with co-equal powers, but as a compromise I thought that the best solution was the provision for a joint session. But now, at this hour, at the fag end of the session, a new article has been placed before us. I thoroughly oppose the article.

Secondly, the Upper House must be vested with the power of delaying legislation. That is a well-established principle. The provision in the old article prescribed a period of six months. Now it has been reduced to a period of one month, two months or three months-I do not know which is going to be accepted by the House. Personally, I am in favour of one year being given. This period will provide an opportunity for close introspection, so that the Bill passed in the heat of the moment, under the stress of some dominant prejudices, may be reviewed and passions may wear off and with the lapse of time people may be in a position to take a sober view of things. This mad craze for democracy and parliamentarism and vesting of all powers in the lower House will lead to disaster. Sir, I feel that all those people who were killed in the Mahabharata war have been reborn as Congressmen. They have not only divided the country but they are now going to jeopardise the interests of even that portion of the country which is entrusted to their care. In the name of parliamentarism and democracy everything will go to the dogs.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, this is a very important article and I congratulate the Drafting Committee on the revised amendment which they have framed. I was not prepared for the opposition of my Friend Shri Brajeshwar Prasad who doubts the responsibility of the Lower Chamber which is based on adult suffrage, and he feels that an real power should go to the Upper House. I do not remember whether he opposed the provision about adult suffrage when it was passed. But I myself think that if there is one thing in this Constitution which is of paramount, importance, it is the provision about adult franchise under which every single adult in the country will be able to exercise his vote and decide the fate of the country. That is a thing for which we have been fighting from the very beginning and I am surprised that any one should come forward and say that the Lower House is an irresponsible body which cannot be trusted. This article has been very well drafted, I think, and it follows the practice in England. Everywhere the Upper Chamber is intended to be a revising chamber whenever there is any point of doubt or things have been done hastily; the Lower Chamber can consider the suggestion of the Upper Chamber and rectify a mistake. It is never intended that all power should vest in the Upper Chamber. I therefore support the amendment moved by Dr. Ambedkar as a very salutary one. But I will point out one thing. Article 172 does not provide for the calling of the Council and it is possible that the Council may not be called for two months. Some one should have the duty laid upon him to call the Council so that the matter may be decided in two months. I think on mature consideration my Friend Shri Brajeshwar Prasad will withdraw his objection and shed his fears about the Lower Chamber.

Mr. Tajamul Husain (Bihar : Muslim) : Sir, the amendment moved by Dr. Ambedkar amounts to this that if a Bill is passed by the Lower House in a State and goes up to the Upper House and the latter reject it or amend it or do nothing for two months, the Lower House may again pass it, with or without amendments. It goes again to the Upper House; if the Council again reject it or amend it or do nothing for two months, the Bill will automatically become law and will go to the Governor for his consent. My honourable Friend Shri Brajeshwar Prasad objects to this. I think the most important chamber in a State will be the Lower House as it will represent all the people. Similar procedure and practice are prevailing in England; of course it does not apply to Money Bills. The most important point to consider is, what is an Upper House? It consists of nominated people who represent certain limited interests, while the Lower House represents the people. If this power were not given to the Lower House as contemplated, it would amount to a veto exercised by a few people only over the rest of the people of the State. Democracy means the will of the people which is only represented in the Lower House. Sir, I support the amendment of Dr. Ambedkar.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Sir, I rise to oppose the amendment moved by Dr. Ambedkar. I do not blame him personally for the amendment but he has to conform to outside opinion. I submit that this amendment will frustrate the very object of having a Second Chamber. The avowed object of a Second Chamber is revision and delay. This is often very necessary in a popular House consisting of a large number of members. Especially when the House has no experience, it ought to have the benefit of Bills getting a second thought and consideration at the hands of the Upper House. The function of the Upper House is to give Bills a sober second thought. After proper consideration it suggest amendments which are often acceptable to the Lower House. I have had some experience of the working of the Upper House. I have found there is initially some understandable impatience on the part of the Lower House about the Second Chamber. They think that the Upper House is an interloper and that its object is to frustrate the object of the Lower House. It is not so. Speaking from my experience in Bengal, I think that a Second Chamber has proved to be necessary and its utility has been appreciated by a critical Lower House in the long run. Sir, if the Upper House is to function, it must be given sufficient opportunities to discharge its duties. Sub-clause (b) of clause (1) provides that if a Bill passed by the Lower House is not passed by the Upper House within two months from the date it is laid before the Council, then it comes back to the Lower House for further consideration. I submit that if we put down a strict and rigid limit of two months, then it may be that the Upper House in many cases will not be able to exercise its functions at all. I will cite an example. I, or instance, a Bill is passed by the Lower House and is laid before the Upper House towards the end of a session, and then there is a long adjournment; the House does not meet for two months. In these circumstances, the Upper House will not be able to get a chance to consider the matter, and the Upper House with its membership and staff will remain idle without having anything to do. If the Upper House is to function, it should get sufficient time so as to enable it to give Bills due consideration and thought. I submit therefore that the two months' limit, rigid as it is, will frustrate the very object of the Second Chamber and it may be that the expense, trouble and bother will come to nothing.

Then again in clause (2) of the amendment, it is provided that if the Upper House fails to pass a Bill within two months, the result would be that the Lower House will again consider it and pass it with or without any amendment and then it is placed again before the Upper House. It is provided in this clause that if a Bill comes up before the Upper House and if it is not passed within one month of its being laid before the Council, then the Bill as it was passed by the Lower House will be deemed to have been passed by both Houses. I submit, Sir, that in the example I have cited, on the first occasion the Upper House has no chance to consider the Bill and on the second occasion the Upper House will not be able to give it sufficient thought; it cannot discharge its functions within one month and may not in a similar contingency have any opportunity to consider it at all. First of all; the Bill may be complicated; the Bill may be difficult; it may be controversial. It may be necessary to send it to a Select Committee or to send it for circulation. In fact, we cannot foresee the varieties of situations that may arise. let us suppose that the Lower House and the Upper House both function honestly as I have no doubt they will. The Upper House may decide that the bill should be considered by a Select Committee or it must be examined by experts. On the second occasion, we put a limit of one month. I submit that these rigid limits would frustrate the very object of the Second Chamber. I therefore submit that the article as it originally was in the Draft Constitution was good. Somehow or other, the Drafting Committee, burdened as it is with heavy work, has got despaired and is ready to accept any compromise or suggestion whatsoever. I submit these are important matters, and require careful consideration. Artificial limits of two months and one month are too rigid and would prove impracticable in actual working. The matter should be left to mutual goodwill. I submit this is a fundamental objection, would frustrate the object of the Upper House and would reduce the Upper House to nullity and insignificance. With these few words, I oppose the amendment.

Sardar Hukam Singh (East Punjab : Sikh) : Mr. President, Sir, I had an amendment in the List that could not be moved on account of a technical objection.

My submission is that the article as it is finally proposed is not very clear. The procedure laid down would be so difficult that ordinary legislation might be delayed extraordinarily. I want one or two things to be made clear. So far as sub-clause (b) is concerned, it lays down that more than two months should not elapse before a Bill is passed by the Upper House, from the date on which the Bill was laid before it. Again sub-clause (c) of clause (1) says "the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree". This is very ambiguous. When a Bill has been passed by the Council with amendments, then we send it back to the Legislative Assembly. It shows that, whether the Assembly does or does not agree, that will require a second sitting and second passage by the Assembly. Then again under clause (2)(c) if the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree, then it shall have to be considered by the Assembly for the third time, because otherwise it cannot be known whether the Assembly does or does not agree to any amendments proposed by the Legislative Council. So, consideration thrice by the Legislative Assembly and twice by the Legislative Council would delay legislation that might be required to be passed with some speed. The object of the Council is to check hasty legislation but there should be some reasonable limit and the legislation might not be delayed or defeated at all. This would give unnecessary powers to the Council. My honourable Friend Mr. Brajeshwar Prasad does not believe in this democracy and has said.......

Shri Brajeshwar Prasad :I entirely believe in democracy, but I do not believe in Parliamentarism. there is a world of distinction between the two.

Sardar Hukam Singh :I said "in this democracy" as laid down here in this provision. Perhaps he missed this word "this". He says that extraordinary powers should not be given to the Lower House. If we are going to try this venture, I beg to submit that we should do it wholeheartedly and with no reservations and therefore ample powers should be given to the representatives of the people so that when they consider necessary they may pass any legislation in the interests of the people. If only unnecessary haste is to be checked. Then there are sufficient checks provided, for once the Legislative Council rejects it or returns it with certain amendments the Legislative Assembly has to re-consider it. Then again, even when both Houses have passed it, it has to, come to the Governor for assent and under the proviso the Governor can send it back for reconsideration with suggestions and with amendments. My proposal was that after the Legislative Assembly has passed the Bill for the second time, there is no need to send it again to the Council. The procedure would be cumbersome and expensive and would delay legislation and I consider it unnecessary. Then, after sub-clause (c) it is laid down "that the Legislative Assembly may again pass the Bill in the same or in any subsequent session with or without any amendments which have been made, suggested or agreed to by the Legislative Council.....". I fail to understand whether "Legislative Council" is competent to make these amendments, to suggest them or agree to them. It is certainly an advisory body; it can make suggestions and send that back with those amendments and I do not know whether these three different words convey different meanings or they are put down simply to put force in the same thing. I request the Honourable Dr. Ambedkar to make this clear also.

With these words, Sir, I oppose this draft as it stands now.

Dr. P. S. Deshmukh (C.P. & Berar : General) : Mr. President, Sir, it is becoming more and more clear that the provision of the Second Chamber in the States is proceeding more and more because of the distrust of adult franchise and nobody has made it clearer than Mr. Brajeshwar Prasad who thinks that the country is likely to go to dogs if there is no provision for the Second Chamber with more powers. My justification for intervention at this stage is only this, that the provision that we are now considering discloses that the only functions that the Second Chamber is going to perform is merely to delay legislation. Mr. Brajeshwar Prasad is quite correct when he said that we have not left any effective powers in its hands to that extent, but the question arises whether, for the sake of merely delaying legislation all this paraphernalia of a Second Chamber with all the difficulties it has met with and the difficulties also about giving proper representation and not finding sufficient and proper interests which should be represented on this Second Chamber, it is worthwhile to have the Second Chamber at all. The delay also has been minimised by the provisions that are now embodied in article 172. The delay would be at the most of about six months. The Second Chamber has no power of initiating Money Bills and the only function, therefore, that it is going to perform is to delay a Bill that is passed by the Legislative Assembly and with which it does not agree. I think, Sir, that the expenditure of money as well as energy that this will involve is not at all commensurate with the insignificance of the functions that are being allotted to it. Since we have not even decided about the composition, about the nature of representation as well as even the membership, even at this late stage, I would like to appeal, if it is possible, that the Second Chambers in all the States may be dropped altogether.

Shri M. Ananthasayanam Ayyangar (Madras : General) : Sir, I beg to support this amendment for the reasons that we have noticed that there has been a large body of opinion against a Second Chamber in the provinces. They do not want Second Chambers at all an therefore, it has been left to the provinces themselves to have Second chambers or not. Even as regards those who may start a Second Chamber, it is open to them after a period to resolve that there will be no Second Chamber. It is also open to any province which did not start with a Second Chamber to have a Second Chamber. When there is so much divided opinion in regard to this matter and the Second Chamber is intended only for delaying and to avoid certain mistakes, is it desirable that the Second Chamber should come within the ambit of legislation? If it is an advisory body, there is every chance of all the provinces also having a Second Chamber, so that whatever mistakes or incongruities might have crept in the Lower House might be corrected by the Upper House. On the other hand the Upper House will have a dominant voice and in a case where there are sharp difference of opinion the Upper House in a State will consist of not more than 25 per cent of the number of members in the Lower House, and it is the Upper House that will decide as to which way it ought to go. A joint sitting means that it will be decided by a few persons in the Upper House and we have not as yet decided what the composition of the Upper House ought to be. I am sure the composition, whether it is incorporated in the Constitution or is brought about by an Act of Legislature, will include certain representatives who are nominated by the President or the Governor and there will be representatives for Art, Education etc. Then it may so happen that these very nominated members will ultimately decide the fate of any particular social or other piece of legislation. Therefore, even from the start a number of provinces and States might set their faces against having a Second Chamber if we clothe the Second Chamber with enormous power. The only way in which it can be avoided is to leave this matter to the provinces to decide after a period of time. And whatever has been decided by the Lower Chamber ought to become law. This article has been copied from the practice in the House of Commons. We do not know what the composition is with respect to the USA or with respect to the various provinces in

Australia. We have got only the models of both the Federal Constitution of Australia and the Federal Constitution in the U.S.A.

A joint sitting is provided for in Australia. So far as the Centre is concerned, it is a different affair. We have provided for a joint sitting, in the case of the Centre, to resolve the difficulties arising out of difference of opinion between the Lower House and the Upper House, on the lines of the Australian Constitution. So far as the provinces are concerned, we have not got the Constitution of those States. Thinking independently of any of these Constitutions, I agree with this amendment that we ought not to impose an obligation to create a new right in the Council, which is an unwanted council. Almost every province is against having a separate council. In these circumstances, let up not impose a Council with enormous powers, a Council sitting on the fence and deciding one way or the other, making the considered opinion of the Lower House a nullity. Honourable Members will also consider another aspect. The Lower House to which the Ministry is responsible, is fully in charge of Money Bills; so far as Money Bills are concerned, the Upper House is not concerned except for discussing here and there. With respect to other Bills; it may be a matter of substance, and it may mean a vote of no-confidence so far as the Ministry is concerned, and the Ministry may have to go out of office. It will create a number of complications. In these circumstances, the only proper method is to see that, after a period of one or two sessions, if the Lower House persists in having its Bill pushed through and the Upper House does not consent, the Bill as passed by the Lower House automatically becomes law. That would avoid all conflicts with the Lower House and also encourage all States to have an Upper House and take their advice.

I support this amendment and I request honourable Members not to press their amendments to this amendment asking for a joint sitting.

Pandit Hirday Nath Kunzru (United Provinces : General) : Mr. President, I could not hear my honourable Friend Dr. Ambedkar clearly. I cannot therefore say whether he explained the need for the latest amendment proposed by him to article 172.

It is quite open to the House to decide whether there should be a Second Chamber or not. The other day, there were differences of opinion amongst honourable Members whether the constitution of the Legislative Councils should be laid down in the constitution or should be left to be provided for by Parliament. I think, Sir, that however the Legislative Councils may be constituted, they are likely to be creatures of the Government and the Lower House. They will seldom be in a position to express any independent opinion. As a rule, I think they will reflect the opinion of the majority in the Lower House. It seems to me that in these circumstances, there is not much use in having an Upper Chamber. But, if the House desires that there should be an Upper Chamber, then, I suggest that its powers should not be curtailed to such an extent as to make it unable even to consider carefully the measures that might be sent up to it by the Lower House.

The Draft Constitution proposed that :

> "If after a Bill has been passed by the Legislative Assembly of a State having a Legislative Council and transmitted to the Legislative Council, more than six months elapse from the date of the reception of the Bill by the Council without the Bill being passed by both Houses, the Governor may, unless the Bill has lapsed by reason of a dissolution of the Legislative Assembly, summon the Houses to meet in a joint sitting for the purposes of deliberating and voting on the Bill."

It was made clear that this did not apply to Money bills. Further, clause (2) of the article that I have read out provided that:

> "In reckoning any such period of six months as is referred to in clause (1) of this article, no account shall be taken of any time during which both Houses are prorogued or adjourned for more than four days."

There are two points in article 172 as included in the Draft Constitution that are open to objection. One was that the mere refusal of a Legislative Council to consider a measure passed by the Lower House should make the Governor think of convening a joint session of both Houses in order to decide whether the measure in question has the approval of the legislature or not. Another point that was open to objection was that if the period of six months was to be reckoned in the manner laid down in the above-mentioned clause, it might be a year or more before the fate of a Bill passed by the Lower House could be definitely known. The Drafting Committee proposed two or three days ago an amendment to this that reduced the period from six months to three months, but otherwise made no important change in the provisions of article 172 as included in the Draft Constitution. The latest amendment of the Drafting Committee reduces the period to two months, and also alters the provision relating to the manner in which the period of two months should be reckoned. My honourable Friend Mr. T. T. Krishnamachari, who is a member of the Drafting committee has now proposed that the period allowed to a legislative Council to consider a Bill should be not two months, but three months. It is obvious from this that the opinions of the Drafting Committee on this subject are not fixed.

The opinions even of the ablest members of the committee are fluctuating. The House is therefore entitled to know clearly why changes are being suggested from time to time on which the Drafting Committee itself has so long been unable to make up its mind.

Sir, I do not regret the omission of the provision relating to the manner in which the period that I have referred to repeatedly should be reckoned, but if there is to be a Second Chamber, we should consider what should be the reasonable period allowed to it to consider measures that it receives from the Lower House. Is the period of six months laid down in the Draft constitution excessive or have the present Legislative Councils in the provinces shown any tendency to hold up unreasonably the consideration measures in order to delay their passage or to make their consideration impossible? so far as I remember, there have been no such instances. In the United Provinces to which I belong, very contentious measures have been considered by the Upper House but so far as I am aware no complaint has been made that it has used its position to defer unreasonably the consideration of important measures in order to prevent the representatives of the people from passing laws that are in the best interests of the people. I doubt whether more contentious measures can be introduced in any legislature than have been introduced in the United Provinces Legislature and if in practice it has not been found that the present procedure has been abused, then the responsibility for showing that a change in the period suggested in the Draft is necessary lies on the Drafting committee. I think considering the changes that have been made by the Drafting Committee itself from time to time there is no principle on which it is proceeding. My honourable Friend Dr. Ambedkar says there is a very good principle.

The Honourable Dr. B. R. Ambedkar :I say there is no principle.

Pandit Hirday Nath Kunzru :I am glad my honourable Friend admits, that there is no principle underlying the amendment that he has suggested to the House.

The Honourable Dr. B. R. Ambedkar : It is a matter of expediency and practicality.

Pandit Hirday Nath Kunzru : He admits it is a question of expediency and practicality. I ask the House to consider whether in case there is a Second Chamber, it should not be allowed more than two or three months in order to consider a measure, however important and however lengthy it may be. If this provision is passed, then if the Upper House receives a Bill containing three hundred clauses it will be its duty to pass it within three months.

Prof. Shibban Lal Saksena : It is only on the second occasion.

Pandit Hirday Nath Kunzru : My honourable Friend should read the amendment more carefully.

Shri M. Ananthasayanam Ayyangar: While the proceedings of the Lower House are going on, the Upper House is sleeping !

Pandit Hirday Nath Kunzru :My honourable Friend himself seems to be in a sleepy condition. The Upper House will not be sleeping while the Lower House is leisurely considering what measures should be sent up to the Upper House. It will probably not be sitting. After notice of the passage of a Bill has been received by the Upper House, I take it that three weeks at least will pass before the House meets. It will therefore have not more than two months for the consideration of a measure. Considering the question in all its aspects, considering the reason for the existence of any Upper Chamber, I suggest that if it pleases the House to vote in favour of its establishment it should be given adequate time to consider measures passed by the Lower House carefully. If even this measure of grace is not extended to the Upper House, there will be absolutely no reason for its existence. I personally, as I have said, considering the circumstances in which we are proceeding, do not think that Upper Chambers are needed or, if established, will be able to serve any useful purpose, will be able to exercise their independent judgment in any matter; but if the House chooses to allow Second Chambers to be established, then I suggest that the period allowed to them for the careful consideration of measures should not be reduced to such an extent as to make them look ridiculous.

Shri V. I. Muniswamy Pillay (Madras : General) : Mr. President, Sir, by adopting the second portion of the amendment of my honourable Friend Dr. Ambedkar, I it confirms my view that the existence or bringing into existence of Second chambers in the provinces will be superfluous. This amendment has been brought to see that hasty legislation in the assemblies are carefully watched by the Upper House and then they give their verdict; and there is also the view that joint deliberation of both Houses is taken away from this amendment. So it goes to show that the interests of certain classes and also of communities and interests are at stake if we accept the second portion of the amendment. After passing a certain enactment in the Legislative Assembly the public opinion may be against such as enactment. The only protection and safeguard will be in the hands of the Council. Now if a Bill is rejected by the Council for the second time, that shows that there is some defect, and some interest is not protected. So, it becomes necessary that the

Council must have a voice in the passing of the Bills. It is in our knowledge that after the attainment of independence in this country many of the provinces have brought forward in the assemblies many Bills and they have the consent of the Councils concerned. Now when the final constitution is passed, it will be more, so that many Bills of interest and safeguards for communities and other interests will come before the provincial Assemblies. If measures are to be summarily rejected because of this amendment, I feel that the interests of many communities and interests will greatly suffer. So, I feel that something must be done, to see that even if the Second Chamber rejects a measure the interests of communities that I have referred to are safeguarded. I hope the expert Committee will see to it that these interests are not jeopardised.

Prof. N. G. Ranga (Madras : General) :Mr. President, Sir, I have come here to support the amendment moved by the Drafting committee, and that too for very good reasons. I am not able to agree with my Friend Pandit Kunzru when he says. "Either you should have no Second Chamber at all, or if you must have one, you should make it very powerful." As I said the other day, I am not in favour of Second Chambers at all. I wish the House had been in favour of having only single chambers in the provinces. But it so happens that the House has decided in favour of having Second Chambers in certain provinces. Now, if we are to have Second Chambers at all, then the question is, what sort of chambers are they to be? Are they to be empowered to such an extent as to be able effectively not only to delay but to frustrate the legislative effort and achievements of the Lower Chamber? Now, I am sure the House is unanimous on this point that the Upper Chamber can only be expected to play the part of a counselling chamber, as a moderating chamber, as a delaying chamber, and nothing more. Now, that itself is bad enough, according to us. But even if we agree to this concession, surely it will be wrong to give so much power to the Upper Chamber as to make the legislative effort of the Lower Chamber more or less nugatory and useless. Why do you want six months? If you are to have any time, why should you not be satisfied with three months? My honourable Friend Pandit Kunzru, says that in three months it would not be possible for the Upper Chamber to give serious consideration and attention to the issues involved, and to the various clauses of any given Bill. Very well. What is the real position? The Lower Chamber has already given serious consideration to the particular measure and passed it on to the Second Chamber. It has passed it section by section, every bit of it, after careful consideration. The principle involved has been accepted by the Lower Chamber. And it is the Lower Chamber which is really responsible to the people as a whole, and so it must be expected to be the final authority so far as the principle is concerned. it is only with regard to the detailed manner in which the principle is to be embodied in legislative form that the Upper Chamber can be expected to come in. Under these circumstances, why should it be necessary to give the Upper Chamber more than three months? Surely even as a practical proposition one ought to be willing to agree to give not more than three months. And we should realise that even to give three months to delay is sometimes very dangerous indeed. We are passing through times when – and in times to come it is likely to be much more so – it will be necessary to pass legislation expeditiously in order to stave off more dangerous social upheavals, and in order to prevent people from unnecessarily agitating themselves at the instigation of certain interested people, people who are interested in upsetting the social order and social organisation in any country. Therefore, Sir, I plead with the House to give support to the Drafting Committee in its suggestion that the period should not be more than three months.

Then there is the other suggestion made by several friends, including my Friend, Mr. Muniswamy Pillay, that there should be joint sessions of the two chambers, or joint sittings.But why should there be joint sittings? They say joint sitting is necessary because it is likely to display grater wisdom.

Shri V. I. Muniswamy Pillay : I did not want it.

Prof. N. G. Ranga : A joint sitting would be ridiculous for this reason that one-third or one-fourth of the second chamber is likely to be nominated.

Pandit Lakshmi Kanta Maitra (West Bengal : General) : How do you know it? we have not yet decided that matter.

Prof. N. G. Ranga : We have already said so; we are going to decide it that way. I suppose we are going to decide that an element of nomination should be introduced, and in that case, you will be giving, these people to much power to sit in judgment and delay legislation that may be passed by the Lower Chamber. Secondly, two-third; or three-fourths of this Upper Chamber is to be elected by the Lower Chamber itself. Therefore, the position will be, that the Lower Chamber will be prevented from doing its work as expeditiously as it should, by the very people it has elected.

Pandit Lakshmi Kanta Maitra : But why do you presume that the Upper Chamber will always be holding up the business of the Lower House ?

Prof. N. G. Ranga : My Friend seems to have forgotten the very reasons for which second chambers are sought to be created by our friends in this House. Most of the people who spoke in favour of the .....

Pandit Lakshmi Kanta Maitra : Forget that it will be the second chamber of old days, of the Government of India Act, 1935.

Prof. N. G. Ranga : My Friends who have spoken here and elsewhere were keen that the second chamber should be a moderating chamber, that it should be a delaying chamber. That is one thing. The next thing is, even if we take it that second chambers of the future are likely to be differently constituted from second chambers of the past, we should remember that second chambers all over the world have been delaying factors. They have been centres of reaction. What is more even in this country it is intended that these second chambers should be citadels of reaction, of orthodoxy and Sanatanism. I am opposed to this orthodoxy, to this reaction or to this Sanatanism; and I do not want these second chambers at all. But as a compromise, I am prepared to have the period put down as three months and not one day longer than that.

Shri Syamanandan Sahaya (Bihar : General) : Mr. President, Sir, I have read and re-read the amendment moved by Dr. Ambedkar, but have failed to find out what purpose or whose purpose his amendment is going to serve. We have just heard him say that in this amendment there is no question of principle involved, but that it is a question of expediency and of practical work. I do not see what is the expediency about it. We are at present framing the Constitution; it is a sacred task, and therefore there is no use making provisions for having more than one chamber, if ultimately on account of the powers that we give Second Chamber, we find that it can or will serve no useful purpose because, to that extent, its mere existence without any useful activity would mean so much drain on public revenues. Sir, the whole case, as far as I have been able to make out, of the supporters of the amendment is based on an apprehension, and that apprehension is that these Upper Chambers will really be delaying chambers. Perhaps there might have been some room for this apprehension in days gone by, but considering the constitution of the Upper Chamber that has been laid down in this Draft that we are considering, I see no cause for any apprehension not for the feeling that the Upper Chambers will have nothing more to do than to delay all legislation. As a matter of fact, from the experience that we had in our own Province. I can say without any fear of contradiction that the Upper chamber has served a very useful purpose. I do not think I will be wrong if I stated that almost all the amendments adopted by the Legislative Council in Bihar were ultimately accepted by the Legislative Assembly in Bihar. That shows that the Upper Chamber has its usefulness and it can become useful if it strives to that end.

If we refer to page 67 of this Draft, we will find that the constitution of the Upper Chamber has been laid down, and if we go through it we should have no difficulty in agreeing to the proposition that the Upper chambers will really not be composed of such people as will have reactionary tendencies. It will be seen that out of the number of members, one-half shall be chosen from panels of candidates constituted under clause (3) of the article.

Mr. President : May I point out that that article has not yet been accepted?

Shri Syamanandan Sahaya : Quite true, Sir, but we have to proceed today on the assumption that this is the proposal of Dr. Ambedkar – the House may turn it down. Today we are considering the amendment moved by Dr. Ambedkar, therefore I am proceeding on the assumption that if his proposal about the constitution of the Upper Chamber will be accepted, his present amendment will become wholly unnecessary. That is what I am trying to show.

Well, Sir, if we look at the constitution of the Upper Chamber, you will find that the panels are composed of persons having special knowledge or practical experience in –

(a) literature, are and science;

(b) agriculture, fisheries and allied subjects;

(c) engineering and architecture;

(d) public administration and social services.

There is no room for any Zamindar to come in. The second group, that is one-third the number, shall be elected by the members of the Legislative Assembly itself, and the remainder shall be nominated by the Governor.

Mr. President : The honourable Member has no reason to think that a Zamindar is the only person who can be a reactionary.

Shri Syamanandan Sahaya : Well, Sir, somehow or other that is the impression that has gone round , but I too say that it is wrong.

So, looking at the constitution of the Upper Chamber as it is in the Draft – subject to any amendments that the House may like to make – we find that there is no cause for any apprehension from a body constituted in the manner I have just explained. But apart from any other thing, I certainly like the declaration, for instance, from Prof. Ranga who says he does not believe in a Second Chamber. That is perfectly clear but I cannot understand our agreeing to a Second Chamber but giving it practically no powers whatsoever. According to the amendment, in three months' time or two months' time a Bill is either to be passed or not passed by the Second chamber. What is the use of having a Second chamber like this? The constitution of the Legislative Assembly, in number, shall be very much bigger than that of the legislative Council; so even with a joint sitting there is no apprehension of the Lower House's views not prevailing; but actually it gives an opportunity to people with experience of administration and other things to give to the Legislative Assembly their advice and explain to the House their viewpoint of the matter. Administration in democracy is administration by persuasion and reasoning. That is all that the original draft laid down when it said that there shall be a joint sitting. I therefore feel that the wording in the Draft Constitution which has been placed before us is definitely better than the amendment which has been proposed and I would, therefore, suggest to the House that the amendment should be rejected.

Mr. President : Shrimati Renuka Ray.

The Honourable Shri Satyanarayan Sinha (Bihar : General) : sir, the question be now put.

Mr. President : I have already called a Member. After she speaks, we shall consider the motion for closure.

Shrimati Renuka Ray (West Bengal: General) : Mr. President, Sir, I rise to support this amendment which I think is an extremely wholesome one. I was one of those who believed that a Second Chamber was not a necessity and that in fact in many of the smaller Provinces it will be a very expensive luxury. All the same, it has been incorporated in the constitution with the avowed object that the Second Chamber was necessary as a revising chamber. It was pointed out that inadvertently or otherwise it may be possible for the Lower House to pass legislation which it would find difficult to rectify later and the Second Chamber might serve the purpose of revision. This was the object put forward for which a Second Chamber was acceptable to the majority. But now we find that there are some who would like to have it in the form of a chamber with dilatory functions. For if we are going to allow six months, if joint sessions are going to be allowed it would mean that the Second chamber would not only be just for the sake of revising a Bill which has some defects, and which the Legislative Assembly itself would like to revise, but it would also be tantamount to acting as a dilatory chamber, which would be extremely retrograde. Because we have agreed to having Second Chambers in some of the Provinces, it does not mean that we should give it more powers and have a chamber with dilatory functions imposed in the Constitution. I myself am of the opinion that the purpose for which a revising chamber has been sought to be put in was also not necessary because the President or Governor has the power always to send back a piece of legislation to the Assembly and any mistakes could be rectified through this procedure. However, if the majority felt otherwise and put the Second Chamber in the constitution, there is no reason whatsoever to give it more power and thus hold up legislation, which may be very pressing and necessary. The dilatory powers would be injurious for the country and a very retrograde provision in the Constitution. I do feel that it seems to be the object of some of those who have spoken to bring in the type of Second Chamber that we have in the past. We talk of the composition being quite different; even if it is quite different, it is quite true that people, even if they were scientists or doctors, who go through the process of political life into Upper Chambers – or Lower Chambers for the matters of that – have to enter the arena of politics and Party Politics. Somebody said that Second Chamber would be for men like Rabindranath Tagore. But the best scientists and men of literature are not likely to enter Party Politics and come into the Second Chamber at any price. If their opinion has to be sought, it has to be sought from outside the Legislature in any case. Therefore, I would appeal that, although this House has agreed to a Second Chamber, it will not in any case agree to extending its powers, but accept this amendment which will give it only the functions of a revising nature.

Mr. President : Closure has been moved. The question is :

The motion was adopted.

The Honourable Dr. B. R. Ambedkar : Mr. President, as I listened to the debate, I find that there are some very specific questions which have been raised by the various speakers who have taken part in the debate. The first point was raised by my Friend Mr. Santhanam and I would like to dispose of that before I turn to the other points. Mr. Santhanam said that a provision ought to be made in clause (1) of the article to provide for a case where the Upper House has not passed the Bill in the form in which it was passed by the Assembly. I think that on further consideration, he will find that his suggestion is actually embodied in sub-clause (c), although that clause has been differently worded. We have as a matter of fact provided for three cases on the occurrence of which the Lower House will take jurisdiction to act on its own authority. The three cases are : firstly, when the Bill is considered but rejected completely; secondly, when the Upper House is either sitting tight and taking no action or has taken action but has delayed beyond the time which is permitted to it for consideration of the Bill; and thirdly, when they do not agree to pass the Bill in the same form in which it has been passed by the Assembly, which practically means what my Friend Mr. Santhanam is suggesting. I therefore do not think there is any necessity to revise this part of the article. I might say incidentally that in devising the three categories or conditions on the occurrence of which the Lower House would have the power to act on its own authority, the words have more or less been taken closely from article 57 of the Australian Constitution.

Now, I come to the general points that have been raised. It seems to me in discussion this matter, there are three different questions that arise for consideration. The first question is how many journeys the Bill should undertake before the will of the Lower House becomes paramount. Should it be one journey, two journeys or more than two journeys? That is one question. The second question is, what should be the period that should be allotted to the Upper House for each journey, both going and coming back? The third question is, how is the period within which the Council is to act to be reckoned? To use the phraseology which is familiar to those who know the law of limitation, what is to be the starting point? so far as the present amendment is concerned, it is proposed that the Bill should have two journeys. It goes in the first instance, it comes back and it goes again. It may be possible to argue that more journeys than two are to be permitted. As I said, this is a question of practical politics. We must see some end, or dead end, at which we must allow the authority of the Lower House to become paramount, and the Drafting Committee thought that two journeys were enough for the purpose to allow the Upper House to act as a revising Chamber.

Now, with regard to the time to be permitted, to the Upper House during these journeys to consider the Bill, the proposal of the Drafting Committee is two months. Now, it may be three months, in the first case, as I am accepting the amendment moved by my Friend, Mr. T. T. Krishnamachari, and in the second case it would be one month.

My Friend Pandit Kunzru said that the Drafting Committee had no fixed mind, that it was changing from moment to moment, that it was fickle, and he referred to the original Draft set out in the Draft Constitution laying down six months. Here again, I should like to point out to him that the period to be allowed to each House is not a matter of principle at all. It is a matter only of practical politics and the Drafting Committee came to the conclusion that six months was too long a period. In fact, it felt that even three months was too long a period. But it is quite conceivable that a Bill like the Zamindari Bill, which has a large number of clauses, may emerge from the Lower House and may be sent to the Upper House for consideration. But for such exceptional cases, I think my Friend will agree that other measures would not, be of the same magnitude or the same substance. Consequently, we thought that three months was a reasonable period to allow to the Upper House in the case when the Bill goes on its first journey, because after all what is the Upper House going to do? The Upper House in acting upon a Bill which has been sent to it by the Lower Chamber is not going to re-draft the whole thing; it is not going to alter every clause. It is only certain clauses which it may feel of public importance that it would like to deal with, and I should have thought that for a limited legislative activity of that sort, three months in the first instance was a large enough period to allow to the Upper House, and would not certainly curtail the legitimate activity of a Second Chamber. In the second case, we felt that when the Lower House had more or less indicated to the Upper House what are the limits to which they can go in accepting the amendments suggested by the Upper House, one month for the second journey was also quite enough. Therefore, as I said, there being no question of principle here but merely a question of practical politics, we thought that three months and one month were sufficient.

Now, I come to the last question, namely, what is to be the starting point of calculating the three months or the one month. I think Mr. Kunzru will forgive me for saying that he has failed to appreciate the importance of the changes made by the Drafting Committee. If this provision had not been there in draft article 172 as it stands, I have o doubt – and the Drafting committee had no doubt – that the powers of the Upper Chamber would have been completely negatived and nullified. Let me explain that; but before I do so, let me state the possibilities of determining what I call the starting point of limitation. First of all, it would have been possible to say that the Bill must be passed by the Upper House within a stated period from the passing of the Bill by the Lower House. Secondly, it would have been possible to say that the Upper House should pass the Bill in the stated period from the time of the reception of the Bill by that House. Now supposing we had adopted either of these two possibilities, the consequences would have been very disastrous to the Upper House. Once you remember that the summoning of the Upper House is entirely in the hands of the executive – which may summon when it likes and not summon when it does not like – it would have been quite possible for a dishonest executive to take advantage of this clause by not calling the Upper House in session at all. Or supposing we had taken the reception as the starting point, they could have also cheated the Upper House by not putting the Bill on the agenda and not thereby giving the Upper House an opportunity to consider it. We thought that this sort of procedure was wrong; it would result in penalising the Upper House for no fault of that House. If the House is not called certainly it cannot consider the Bill, and such a Bill could not be deemed to have been considered by the Upper House. Therefore in order to protect the Upper House the Drafting committee rejected both these possibilities of determining the starting point, namely, the passing of the Bill and the reception of the Bill, a proposal which was embodied by them in the draft article as it stands. And they deliberately adopted the provisions contained in the new article as is now proposed, namely, when the Bill has been tabled for consideration if the Upper House does not finish its consideration within the particular time fixed by this clause, then obviously the right of the Upper House to deal with the matter goes by its own default, and no one can complain; certainly the Upper House cannot complain. My honourable Friend Pandit Kunzru will therefore see that rather than whittle down the rights of the Upper House the new proposal has given the Upper House rights which the executive could not take away.

Pandit Hirday Nath Kunzru : Does this childish explanation satisfy the honourable Member himself?

The Honourable Dr. B.R. Ambedkar : If my honourable Friend chooses to call it childish he may do so, but I have no doubt that the new clause is a greater improvement than the clause as it stood. I am sorry if Pandit Kunzru is not satisfied, but he did not raise any point to which I have not given an explanation.

Mr. President : The question is :

"That is sub-clause (b) of clause (1) of the proposed article 172, for the words 'two months' the words 'three months' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That proposed article 172, as amended, stand part of the constitution."

The motion was adopted.

Article 172, as proposed and amended, was added to the constitution.

Article 175 – *(Contd.)*

Shri Brajeshwar Prasad : Sir, I am not whole-heartedly in favour of article 175. Under this article the Governor has no power to veto a Bill in his own discretion or initiative but can do so only if he is so advised by his Ministry. I am not in favour of this provision. Then, he cannot veto a Bill that has been twice passed by the Legislative Assembly; even that is not acceptable to me. He has not got power in his discretion to veto a Bill or to reserve a Bill for the consideration of the President. There are two classes of cases in which a Bill can be reserved for the consideration of the President. It can be so reserved under certain article of this Constitution, and also if the Governor is advised by his Ministry to do so. I want that the Governor should have power in his discretion to veto a Bill passed by the legislature, whether passed once or twice by it. Secondly, I am in favour of the President having power to reserve a Bill for his consideration, on his own initiative and authority. He should have power to issue an order to the Governor directing that a Bill passed by the legislature should be reserved for his consideration, or that a Bill should be disallowed whether the Governor reserves it or not. I know that this proposition will not be in consonance with what is supposed to be the democratic tendencies of the age. People think they are living in a democratic age. But I feel that we are living in a totalitarian age. I want power to be vested in the hands of the Governor of vetoing unjust and unsound legislation. This provision occurs in the Canadian federation and I want this power in our Constitution having due regard to the facts of our political life. I feel further that if the governor has power to veto a Bill and the President has power to disallow a Bill, it will act as a potential check on disruptive legislative tendencies.

The fear of disruptive legislation is real in this country. One who has closely scrutinised the provisions of the legislative acts that have been passed by the provincial legislatures will agree with me that this fear is not imaginary, that this fear is very real. Sir, the proposal which I have placed before the House is in consonance, is in accord with the traditions of the Centralised system of Government that has existed in this country up till now. It is in consonance with the implications of Paramountcy that the British Government exercised over the native States. Sir, I am in favour of veto power in the hands of the Governor and the President because I feel that this new experiment of Parliamentarism requires to be moderated, and regulated. I think it will be in accord with the facts of our life. I want, Sir, that this power of veto should be frequently exercised by the governor in his discretion. To refer every Bill to the President will not be in consonance with the dignity of the Head of a State. I want that provincial legislation should be delayed by the Governor in his own discretion. I have no confidence in provincial Ministers.

Prof. Shibban Lal Sakesena : Mr. President, Sir, I am very sorry I cannot agree with the amendment proposed by Dr. Ambedkar. The original proviso to article 175 said --

> "Provided that where there is only one House of the Legislature and the Bill has been passed by that House, the governor may, in his discretion, return the Bill together with a message requesting that the House will reconsider the Bill or any specified provisions thereof and, in particular, will reconsider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House shall reconsider it accordingly and if the Bill is passed again by the House with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom."

So, in the proviso as it originally stood, the Governor could send a Bill back with a message only when there was one House of the Legislature, but here in the new proviso even if there are, two Houses, the Assembly and the Council in a State, even then the Governor is given the power to return a Bill with his message. We have just now had a long discussion over the powers of the Legislative Council. The whole thing under the new proviso will come to this. Suppose a Bill is passed by the Assembly. It will go to the Upper House. It takes some time to be sent to the Upper House and then about two months in the Upper House. The Bill may be amended there. Thereafter the amended Bill comes back to the Assembly. The Assembly will then discuss it. A month may be taken over this. Then again it is sent back to the Council and there it will be considered again for about a month, so that on the whole it will be considered again for about a month, so that on the whole it will take about six months after it first becomes law. Now, power is given to the Governor to return the Bill with a message. No time limit is given; how long he will take to return the Bill is not mentioned. So, if this proviso is accepted, what it will mean is this: that any contentious legislation will again go to Assembly and then to Council and it may take another six months in all that and so the legislation may be held back, if the Governor is not inclined to help. I think that the original proviso is much better. In those provinces where there is only one House, where the safeguard of a Second chamber is not there. We may give the governor the power to return a Bill, but where there is already a Council where the Bill has been again discussed threadbare when every aspect of it has been examined thoroughly, the Governor should not have the power to send back a Bill. I think this is very reactionary and no quick legislation will be possible under this proviso. I therefore think that the original proviso to article 175 is much better than the one which has now been moved. I completely disagree with my Friend, M. Brajeshwar Prasad, who seems to favour everything which gives power to the Governor and the Council. He wants that the Governor should have power to hold up any legislation.

Shri Brajeshwar Prasad : I think it is wrong. The governor is not an outsider. He is the representative of the Government of India. His views should prevail either over the Lower House or over any other authority in the province.

Prof. Shibban Lal Saksena : I know he is the nominee of the President, but it is quite possible that the party in power in the province may not be the same as the party in power in the Centre and the President may not be *persona grata* with that party. I therefore think that it will introduce a very wrong principle to give the Governor this power to go against the express wish of the Assembly and even of the council. I think that the original proviso should remain and the Governor should have power to send back a Bill only where there is no Second Chamber.

Shri T. T. Krishnamachari : Mr. President, Sir, I thought that after the discussion on amendment No. 17 in List I the other day, there will be no need for further explanation for amending the proviso to this article. I am afraid my Friend. Mr. Shibban Lal Saksena, has entirely misconstrued the position. If he construes that this amendment is worse than the proviso in the draft article and that it makes for further dilatoriness in the proceedings of the legislatures in the provinces or the States as the case may be, I would ask him to remember one particular point to which Dr. Ambedkar drew pointed attention, *viz.*, that the Governor will not be exercising his discretion in the matter of referring a Bill back to the House with a message. That provision has gone out of the picture. The governor is no longer vested with any discretion. If it happens that as per amendment No.17 the Governor sends a Bill back for further consideration, he does so expressly on the advice of his Council of Ministers. The provision has merely been made to be used if an occasion arises when the formalities envisaged in article 172 which has already been passed, do not perhaps go through, but there is some point of the Bill which has been accepted by the Upper House which the Ministry thereafter finds has to be modified. Then they will use this procedure; they will use the governor to hold up the further proceedings of the Bill and remit it back to the Lower House with his message.

If my honourable Friend understands that the Governor cannot act on his own, he can only at on the advice of the Ministry, then the whole picture will fall clearly in its proper place before him. It may happen that the whole procedure envisaged in article 172 also goes through and then again something might have to be done in the manner laid down by this particular proviso but it is perhaps unlikely. It is a saving clause and vests power in the hands of the Ministry to remedy a hasty action that they might have undertaken or enable them to take an action which they feel they ought to in order to meet popular opinion which is reflected outside the House in some form or another and for this purpose only this new proviso has been put in. It does not abridge the power of the responsible Ministry in any way and therefore, it does not detract from the power of the Lower House to which the Ministry is undoubtedly responsible; it does not confer any more power on the Governor. On the other hand it curtails the power of the Governor for the position envisaged in the original proviso which it seeks to supplant. I think with this explanation the House will agree to the amendments without any further discussion.

Mr. President : The question is :

"That for the proviso to article 175 the following proviso be substituted:-

'Provided that the Governor may, as son as possible after the presentation to the Bill for assent, return the Bill if it is not a Money Bill together with a passage requesting that the House or Houses will reconsider the Bill or any specified provisions, thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and when a Bill is so returned the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom'."

The amendment was adopted.

Mr. President : the question is :

"That article 175, as amended, stand part of the Constitution".

The motion was adopted.

Article 175, as amended, was added to the Constitution.

Article 176

Mr. President : Then we go to article 176

The Honourable Dr. B. R. Ambedkar : I suggest that it would be better if we take up 83-A and dispose it of.

Mr. President : I do not think there is much in article 176. We can take it up now. There is hardly any amendment. I find there are some amendments of which notice has been given printed at page 251 of the First volume. Does any member wish to move any of those amendments?

(Amendments Nos. 2482 to 2485 were not moved.)

There is another amendment to that in the Supplementary List, but that will not arise because it is an amendment to an amendment.

Now there is no amendment to this article 176.

Mr. President : The question is :

"That article 176 stand part of the constitution."

The motion was adopted.

Article 176 was added to the Constitution.

Article 83-A

Mr. President : Shall we go back now to article 83?

The Honourable Dr. B. R. Ambedkar : Mr. Prsident, Sir, I move:

"That after article 3 the following new article be inserted:-

Decision on question as to disqualifications of members.

'83-A. (1) If any question arises as to whether a member of either House of parliament has been subject to any of the disqualifications mentioned in clause (1) of the last preceding article, the question shall be referred for the decision of the President and his decision shall be final.

(2)Before giving any decision on any such question. The President shall obtain the opinion of the Election Commission and shall act according to such opinion'."

This article is a replica, so to say, of article 167-A which we passed the other day which applies to similar cases in the provinces and I do not therefore think that any more explanation will be necessary.

Mr. President : The question is :

"That after article 83 the following new article be inserted: -

Decision on questions as to disqualifications of members.

'83-A. (1) If any question arises as to whether a member of either House of Parliament has been subject to any of the disqualifications mentioned in clause (1) of the last, preceding article, the question shall be referred for the decision of the President and his decision shall be final.

(2)Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion'."

The motion was adopted.

New Article 83-A was added to the Constitution.

Article 127-A

Mr. President : I think we had better take up articles 210 and 211. Thereafter we shall come to article 127-A.

Shri T. T. Krishnamachari : Either way it does not matter because if this is accepted then articles 210 and 211 get automatically dropped.

The HonourableDr. B. R. Ambedkar : Mr. President, Sir, I move.

"That after article 127, the following new article be inserted: -

Audit reports relating to accounts of a State.

'127-A. The reports of the Comptroller and Auditor-General of India relating to the accounts of a State shall be submitted to the Governor or Ruler of the State, who shall cause them to be laid before the Legislature of the State'."

The House will remember it has now adopted articles whereby the auditing and accounting will become one single institution, so to say, under the authority of the Comptroller and Auditor-General. It is, therefore, necessary that we should make some provision that the reports relating to the audit and accounts of a particular State shall be submitted to the Legislature by the Governor or the Ruler for its consideration and that is what this article provides for.

Mr. President : Does any one wish to say anything about this article?

Honourable Members: No.

Mr. President : The question is :

"That after article 127, the following new article be inserted:-

Audit reports relating to accounts of a State.

'127-A. The reports of the Comptroller and Auditor-General of India relating to the accounts of a State shall be submitted to the Governor or Ruler of the State, who shall cause them to be laid before the Legislature of the State'."

The motion was adopted.

New article 127-A was added to the Constitution.

Article 210 and 211

Mr. President : We may then take up articles 210 and 211. The proposal is that article 210 be deleted. Does one wish to say anything about it?

(None rose to speak.)

I put this proposition to vote that article 210 be deleted.

The question is :

"That article 210 be deleted."

The motion was adopted.

Article 210 was deleted from the constitution.

Mr. President : Similarly article 211. The question is :

"That article 211 be deleted."

The motion was adopted.

Article 211 was deleted from the Constitution.

Article 197

Mr. President : Shall we take up article 212?

Shri T. T. Krishnamachari : Article 188 may be taken up; it has got to be deleted.

The Honourable Dr. B. R. Ambedkar : I was suggesting that articles 188 and 278 may be taken together. It would be better if the whole thing is explained.

Mr. President : Then, we shall take up article 197.

The Honourable Dr. B. R. Ambedkar : Sir, I move.

"That for article 197, the following article be substituted: -

Salaries, etc. of Judges.

'197. (1) There shall be paid to the Judges of each High Court such salaries as are specified in the Second Schedule.

(2) Every Judge shall be entitled to such allowances and to such rights in respect of leave of absence and pensions as may from time to time be determined by or under law made by Parliament, and until so determined, to such allowances and rights as are specified in the Second Schedule:

Provided that neither the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment'."

This section corresponds to the other article which related to the Supreme Court Judges.

Mr. President : There is an amendment by Pandit Kunzru.

[Amendments 20, 21 and 22 of List I (Second Week) were not moved.]

Mr. President : There is no amendment moved to this. I shall put to vote the article as moved by Dr. Ambedkar today.

The question is :

"That for article 197, the following article be substituted:-

Salaries, etc. of Judges.	'197. (1) There shall be paid to the Judges of each High Court such salaries as are specified in the Second Schedule.

(2) Every Judge shall be entitled to such allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament, and until so determined, to such allowances and rights as are specified in the Second Schedule:

Provided that neither the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment'."

The amendment was adopted.

Article 197, as amended, was added to the Constitution.

Articles 212 to 214

Mr. President : Shall we take up article 212?

The Honourable Dr. B. R. Ambedkar : Sir, I would like articles 212 to 214 to be held over. I think article 275 may be taken up.

Shri L. Krishnaswami Bharathi (Madras : General) : Sir, articles 212 to 214 are sought to be held over. I think the House would like to have an explanation as to why they are being held over.

The Honourable Dr. B. R. Ambedkar : The explanation is this : that we are having the prospect of some of the Settlements coming over to India like Chandernagore and other places. We have to make some provision for them, and this might be the appropriate place where provision for them might be made. It has been just suggested that it is felt that it might be more properly incorporated and so on. consequently, we want some time to consider that question. Perhaps, we might be in a position to take up these articles even today.

Mr. President : Then, we may take up article 188, and in that connection the other emergency provisions.

The Honourable Dr. B.R. Ambedkar : We might also take up article 275 which is also an emergency provision.

Mr. President : Let us take up article 275.

Mr. Naziruddin Ahmad : May I rise on a point or order, Sir?

It is very inconvenient for some members to follow the procedure which is being adopted in the House. We have in the agenda paper today some articles which are set down seriatim. It was understood on the last occasion that articles will be taken up in the order laid down in the Order Paper. I do not wish to raise any technical objection; but the difficulty is that Members have got to come prepared to intelligently take part in the debate. Instead of following a regular procedure even after the recess we had, the House is expected to jump from one article to another backwards and forwards. I submit this is causing some amount of inconvenience and I submit that the House should be asked to proceed in some regular order. Otherwise, there would be no intelligent debate.

Mr. President :I am inclined to agree with Mr. Naziruddin Ahmad that it is inconvenient to Members to jump from article 211 to 275.

The Honourable Dr. B. R. Ambedkar : I am prepared to take up article 212 and go on.

Mr. President : I think that is much better. If anything happens, we can provide for that later on regarding Chandernagore. Let us take up article 212.

The Honourable Dr. B. R. Ambedkar :Sir, I move:

"That with reference to amendment No. 2713 of the List of Amendments, clause (2) of article 212 be omitted."

The reason why this amendment is being moved is because all provisions with regard to the States specified in Part III are being made separately in a separate Schedule. Consequently it is unnecessary to retain clause (2) here.

I also move :

"That in clause (1) and the proviso to clause (1) of article 212, for the words 'Governor or Ruler', wherever they occur, the expression 'Government' be substituted."

Mr. President : We have quite a number of amendments to this article of which notice has been given. I shall take them one by one.

(Amendments Nos. 2709 to 2711 were not moved.)

Shri T. T. Krishnamachari : May I request for your permission to move 2712?

Mr. President : Yes.

Shri T. T. Krishnamachari : I now move 2712 in Volume II of the Printed List of amendments which stands in the name of the Honourable Sardar Vallabhbhai Patel:

"That in clause (b) of the proviso to clause (1) of article 212, for the word 'wishes' the word 'views' be substituted and at the end the following new clause (3) be added :-

'(3) In this article reference to a State shall include reference to a part of a State'."

I do not think there is any need for me to add anything as the words contained in the amendment are self-explanatory.

Mr. President : Dr. Ambedkar, 2713.

[Amendments Nos. 2713, 2715, 2716, 2717, 2718, 190 of the printed Supplementary List, 27, 28 to 33 of List I (Second Week) were not moved.]

Prof. Shibban Lal Saksena : Mr. President, Sir, in this article we are providing for the Government of States contained in Part II of the First Schedule and in that Schedule are mentioned Delhi, Ajmer-Merwara, including Panth-Piploda and Coorg. From what Dr. Ambedkar said, it will include probably Chandernagore and other places also so that provision is being made for those placed to be governed as Centrally Administered areas. I do not know whether the passing of this article will also mean that we also approve the Schedule, but I wish to point out that this problem of the government of these places has to be dealt with in a more careful manner. I personally feel that this should be held over. The present condition of the administration in these places is not what we desire.We have all realised that States like Coorg, Ajmer-Merwara and Panth-Piploda must become parts of bigger areas, the adjoining provinces or Unions of States and I do not think it will be proper to frame a law unless we decided what we want to do with Ajmer-Merwara and Coorg. I have a feeling that the people in these places feel that they have no voice in the administration because Parliament hardly gets time to discuss these things and Government in their own States is entirely in the hands of District Magistrates or Commissioners. Delhi of course is a problem by itself but about Coorg, the other day I learnt from my Friend Mr. Poonacha that the council there is a unique thing and the District Magistrate is the President of the Council and the Judge is the Minister of Justice etc. So we should not perpetuate this administration in Coorg. Besides in this article we are providing for Governments of Chief Commissioners' provinces without knowing for what provinces we want to legislate. I am told Coorg will be amalgamated with either Mysore or Madras. Similarly Ajmer-Merwara might joint the Rajasthan Union so that only Delhi will be left. I think for Delhi this article will not suit and I feel that a separate clause for Delhi is necessary and I feel that for Chandernagore and other places like Pondicherry which have been brought up under the French we might have this article for the present. So, I feel that the original proposal of Dr. Ambedkar to hold these articles over was much better because just now if we pass this article without knowing for what areas we are providing this article, it will be improper. so, this thing needs careful consideration. As for the problem of Delhi, I will discuss it afterwards. I personally feel that it will be proper to hold back the article till we have a better picture of the new areas which we are going to have. It will not be proper to pass the article without knowing what parts of India will have this Constitution.

Shri Bajeshwar Prasad : Mr. President, Sir, I am in whole-hearted accord with the provisions of Part VII of the Constitution. This Part deals with the future pattern of the Government of India. Sooner or later, all the States will have to be put in Part VII of the Constitution. I feel that as we have not yet decided which of the States should be put in Part VII of the Constitution, it is open to me to suggest that some of the bigger provinces should be put in Part VII of the Constitution. It is not in accord with the majesty and dignity of the State that the Government of India should be put in charge of small bits of territories like Delhi, Coorg, Ajmer-Merwara and Panth-Piploda. If the Government of India should administer directly some areas in this country, then some of the bigger provinces should be brought directly under the administration of the government of India. There is yet another reason why I make this suggestion, I feel that border States, *i.e.*, those provinces which are on the border of foreign States, on grounds of military strategy, should not be left in the hands of provincial Ministers. Provinces like East Punjab, Bengal, or Bihar which is bordering Eastern Pakistan, or Assam, should not be left to be governed by Provincial Ministers, because the situation in India has become critical.

Mr. President : The honourable Member is going much beyond the scope of the article under consideration.

Shri Brajeshwar Prasad : Sir, I said it is not decided till now which States should be put in Part VII of this Constitution. So is it or is it not open to me to suggest that such and such a State should be put in, and such and such a State should not be put in?

Mr. President : You can do so, when we consider the Schedule.

Shri Brajeshwar Prasad : Probably it will be too late then. But if I will be allowed to speak on it when we are considering the Schedule, then certainly I will have no objection.

Mr. President : At the time of the consideration of the Schedule you can say anything you like, but not at this stage, because this article relates to particular States which are mentioned.

Shri Brajeshwar Prasad : Sir, I will proceed on. I feel that the system of administration that exists in the Chief Commissioners' Provinces is a very sound one, and that there should be no change in the *Status quo*. It is ridiculous to talk of provincial autonomy in Chief Commissioners' provinces like Panth-Piploda or Delhi. It is hardly half the size, and contains hardly half the population of a district or sub-division of a Governor's province. The charge has been made that efficiency of administration has gone down in these areas. I would like those who make this charge to go on a tour in the Governor's provinces and see whether administrative efficiency has or has not deteriorated there also. Sir, it has been urged that people must have autonomy. Is it desirable, or fair that when there is autonomy throughout the length and breadth of this country, the people living in the Chief Commissioners' provinces should be deprived of this right? But I do not see any substance in this argument, because I feel that people are not keen about autonomy. People are not interested in politics. The present question that confronts us is the problem of food. That is the problem that we have to face and solve. People are not interested in the food problem. They are interested in getting medical facilities. Peoples are interested in their sons and daughters getting free education. They want food. They want shelter. The average man is not interested in political questions. He is absorbed with the question of how to make both ends meet. Moreover provincial autonomy has failed everywhere. If it is so, why then commit the same mistakes again in the Chief Commissioners' Provinces? If provincial autonomy has failed, then no provincial autonomy should be conferred on any Chief Commissioners' Provinces. Therefore, Sir, whichever way I turn I feel there is no reason why any change should be made in the constitutional status of these provinces which are directly governed by the Centre. I feel that in India there is place only for one Government and therefore, to create more governments will be a retrograde step. I am not in favour of even the existing Provincial Governments, and to seek to create more provinces will be a suicidal step and inimical to the interests of the people of this country.

Dr. P.S. Deshmukh : Mr. President, Sir, last time when we objected to the passing of the provision in regard to the Second Chamber, you came to the rescue of the House and persuaded the members of the Drafting Committee to hold back the article and to come again with some positive scheme before the House. May I take this opportunity of appealing to you, Sir, again, that this is one of the Parts which should also be considered more carefully before we pass it? Here we are making a very curious provision. If the device of leaving legislation to Parliament was necessary in any place, I think this was the one place where it should have been resorted to. The governance of these three areas could easily have been left for an Act to be passed by Parliament at such time as it may please. There would have been no inconvenience to anybody. We would have had more time to consider the whole thing. There would have been the wishes of the people inhabiting the various areas before us, and it would have been possible for us to consider their demands, whatever they be. But what we are doing here is something totally out of conformity with the provisions which we are embodying in the rest of the Constitution. Everywhere we are giving adult franchise to the people. We are providing not only one, but sometimes two Houses as legislatures. But in this particular case, we are legislating for not even a definite advisory council, so far as we can see. If the article as it has been framed is passed, to my mind, it may be within the sweet will of the president to have something of that sort. But there is no concrete provision in the constitution itself as to how and how far the people of these areas would be consulted. So we are making them into a sort of "excluded areas" similar to those inhabited by hill-tribes, in the Act of 1935, where they had no representation, no votes. So the residents of Delhi, the residents of Coorg and Ajmer-Merwara are likely to be treated as hill-tribes and aboriginals, even after the solemn Constitution of the whole of India has been fashioned, framed and put into operation. so on that score, sir, I think it is not proper that the administration of any area whatsoever should be left to the sweet will of the President, and he also is not to act on his own but through a Governor of another neighbouring province, who has to act through the Lieut-Governor. This is a subject which, if we leave as it is, I do not think it would do much credit to us. I would therefore like that the whole question and the drafts of these articles should be reconsidered.

There is one more point which I would like to urge, *viz.* whether it is not possible to join these areas to some other areas, so that they may share the same responsibility and have similar democratic arrangements as other adjoining areas.

We have the spectacle of huge areas being tagged to the rest: State after State merged together and formed into Unions, and such large States as Baroda having a population of thirty lakhs, equal to the population of a national like Ireland being merged into a province within a twinkling of an eve. Here are a few lakhs of people who are not anxious to remain solitary because so far as Ajmer-Merwara is concerned, I am told there is a strong feeling for them to join Rajasthan. But in spite of the wishes expressed to the contrary, we are trying to have small islands of territories administered in a fashion which is absolutely unlike what is being done in other parts by the Constitution. I submit that this is not proper nor fair to the people of those areas, nor does it conform with the scheme of things which we are trying to evolve. We are trying to eliminate small islands in our Constitution, and for that purpose we have removed the Rulers and we have destroyed boundaries so far as the formation of Unions and provinces are concerned. Why could we not have considered that scheme as applicable to the small territories of Coorg and Ajmer-Merwara? "These are very tiny territories and they should not be kept aloof. And if they are to be kept aloof, and must remain separate, then the people inhabiting those areas must at least be given the same democratic institutions which other parts enjoy. There is no scheme behind these provisions as they are proposed here and I hope you will, Sir, persuade the Members of the Drafting Committee to refrain from pushing this through in this House, at this stage and in this manner.

Shri Biswanath Das : (Orissa : General) : It is within the knowledge of honourable Members that we appointed a Committee to go into the question of the Minor Administrations. The Committee was presided over by our esteemed and revered Friend, Dr. Shri Pattabhi Sitaramayya, the Congress President. Unfortunately, the report of the committee was not available to the honourable Members of this House, and as such could not be discussed in this House. In the result, the Drafting Committee assumed authority to embody what provisions have been made for Minor Administrations in the Constitution. You will please therefore allow the Members of this House a certain amount of latitude while discussing this question because the House had no opportunity to have its say on the report itself, therefore, I take it, Sir, that along with the consideration of the articles – I mean articles 212, 213 and 214, it is also necessary that we discuss the ....

Mr. President :May I point out that the report of that Sub-Committee was distributed to the Members but it was not considered by this House?

Shri Biswanath Das : That is exactly what I say. I have not said anything more.

Mr. President : I thought you complained that the report was not made available to the Members.

Shri Biswanath Das : I said – and I repeat – that the Assembly had not the opportunity to discuss this question. That is what I said and I stand by it.

Sir, the report, I am glad, is not unanimous and I am further glad that the honourable Shri Mukut Bihar Lal Bhargava, representing these areas – I mean Ajmer and Merwara province of these areas – has recorded his voice of dissent, and I will read the last sentence from his Minute of Dissent. He says:

"Accordingly, I may impress on the Constituent Assembly the urgency of incorporating a suitable provision in this chapter of the Constitution so as to make it possible for each of these area to join as a contiguous union."

Having stated the views of the representative of this area, in this House, I cannot very much congratulate the Committee for the performance they have shown in the report. What is the performance? The performance is that the Committee recommends responsible Government in the Minor Administered States in the provinces under the lines of the old antiquated Act of 1935, in which instead of the Governor they propose to have a Lieut-Governor and a Council not on the basis of the Constitution that you have framed, but on a separate basis altogether as given at page 3 of the Report. The basis represented is 5,000 persons subject to a maximum of 33 persons for Coorg, and 15,000 subject to a maximum of 40 persons for Ajmer-Merwara. That is the basis on which you will have, according to their proposals, a council or any Assembly which will have its Prime Minister, Ministers and all the paraphernalia attached to the Act of 1935.

I am thankful further to the Members of the Committee for having used the very mischievous expressions from the Act of 1935. I have to record my strong note of dissent in this House against this report because it does least to the people of these Minor Administered Areas in bringing them under a discredited Act. The reasons are these:

First, the administrative set-up that they propose in this report is absolutely different from the administrative set-up that we have adumbrated for the provinces in this Constitution. Need I say that it is very and hopelessly reactionary, looked upon from the point of view of Free India.

The second objection to this report is that they want and propose to perpetuate in this Constitution a system of administration which has been rejected by all shades of public opinion in this country.

Thirdly, they bring to bear upon the administration and unnecessary and costly machinery and the snare of having the possibility of perpetuating Minor Administrations in the garb of provinces. If this is the view, why on earth should you do away with the smaller States who were out to confer responsible government? It really surpasses my comprehension.

Therefore, looked at from any point of view, the report of the Committee's set-up is not, and in no sense can be, acceptable to the honourable Members of this House n this year of 1949.

In this connection let me also refer to the report of the Simon commission which went thoroughly into the question. They recommended that the time had come when these minor administrations should be made to merge in the neighbouring provinces and they justified it on two grounds. The first was economy and the second was efficiency in administration. They laid more stress on the efficiency of the administration because they said that the government of India officials who were in charge of these minor administrations had no experience in provincial sphere and therefore necessarily the administration suffered in efficiency. Is it for these purposes that you are going to invest more money and perpetuate an administration which has been condemned outright not only by public opinion in India but also by a most reactionary body like the Simon Commission? This is out-Heroding Herod. Under these circumstances I cannot congratulate the Committee on its performance.

Why do you have a province like Coorg? It is a province of 1,600 and odd square miles, which is adjacent to Madras and equally adjacent to Mysore. Madras is a province of our own and Mysore is a State which has also responsible government that is practically on a par with Madras. Added to it, the Kanarese people on the basis of linguistic distribution of provinces lay claim to the same area. It may be very soon in the day that you may have linguistic provinces and a separate province of Kanara. If that becomes possible Coorg merges itself automatically into it. Is it, therefore, fair to perpetuate the existing conditions and add to our financial difficulties and that at the expense of efficiency? I submit that it is doing least justice to the country and to the honourable Members of this House.

Again, with regard to Ajmer-Merwara the honourable Member representing the area has had his say and I have nothing more to say except to commend what the honourable Mr. Mukut Biharilal Bhargava has stated in this connection.

Then you have Panth-Piploda, comprising of ten and a half villages, which you can as well put in any other place.

You have thereafter the province of Delhi. Why on earth have a province under Delhi administration? You can add it to the East Punjab or the United Provinces.

We have then only two other areas, namely, the City of Delhi and the Islands of Nicobars and Andamans. As regards the City of Delhi you can have it on the lines of the British Constitution and have a corporation for the Metropolis of Delhi on the lines of London or on American lines according as is desirable and necessary. Under the circumstances I fail to understand why you should add to Delhi a small area merely to call it a province, having a machinery and a legislative assembly, with a Premier and minister and all the other paraphernalia. Under the circumstances I do not agree with my honourable friends of the Committee.

The only other area which remains is the Andamans. It is a strategic area..........

Shri Brajeshwar Prasad: Andamans is not in Part VII of this Constitution.

Shri Biswanath Das: You may have it under the Home or Defence Ministry. Therefore why should you burden the Constitution with these provisions? I feel that part (1) of article 212, and articles 213 and 214 are unnecessary, useless and undesirable, and the set-up is expensive. Under the circumstances, I strongly oppose the inclusion of these provisions and I see no utility in them excepting adding to the bulk of the Constitution for which we have earned a reputation and adding to our financial commitments. We are going through very hard times. Our civil administration today has multiplied three to four times its pre-war level. Why then add more commitments and pile up to the expenses that we are already incurring? Therefore no option is left to me but to oppose these articles, especially 212.

You, Sir, took a very bold step on Saturday by requesting the House to reconsider certain articles. Need I appeal to you that the provisions under reference do need reconsideration and revision of the decision already taken?

Chaudhri Ranbir Singh (East Punjab : General) : *[Mr. President, Sir, I have come forward to support this article. But in supporting it I cannot but say that it is not in the interest of the country to retain these small territories in the form of separate provinces. I think that with the exception of New Delhi, Pondicherry and Chandernagore, it will be detrimental to the interest of the country to retain these small territories in the form of provinces. Take for instance the case of Delhi. There is no doubt that New Delhi presents a different problem. We will have to retain it as a separate province because it is the seat of the Central Government. But to retain Old Delhi and the villages of Delhi, which hardly number 300, as a separate province and to maintain top-heavy administration, is not in the interest of the country.

A few days back a Bill for adjusting the financial relations of Ajmer and Delhi administrations was presented for the consideration of the Standing committee of this House. The scales of pay of the Officers proposed in that Bill were the same as those in big provinces. The same is the case in regard to other departments although there are hardly three hundred villages in Delhi and it is not even as big as a Tehsil of a Province. If we make it a separate province, we would be compelled to maintain a top-heavy administration. Therefore, I support this proposal and hope that, except New Delhi, the rest of the city of Delhi and its villages should be integrated with the Punjab.

Shri Mahabir Tyagi (United Provinces : General) : Why should it not be integrated with the United Provinces?

Chaudhri Ranbir Singh : My Friend, Shri Tyagi, says that it should be integrated with the United Provinces. For integrating Delhi with the United Provinces, a natural boundary, *i.e.*, the Jamuna will have to be overlooked. It is integrated with the Punjab, it would form the natural boundary.

Import of gram from Punjab into Delhi is not permitted these days even though no natural barrier like that of the Jamuna separates Delhi from Punjab. Besides, many villagers have fields in the Punjab as well as in Delhi. In this way we are confronted with a great problem. But if New Delhi is set aside and the rest of the area of Delhi is integrated with the Punjab, there would be great facility. The idea of integrating it with the United Provinces is wrong on other considerations too. The United Provinces is a big province. It is so extensive that it is not an easy task to manage it as a unit. The Punjab, which is a small province, would in this way add to itself a populating of about ten lakhs. Besides, it would have a proper boundary too. In supporting this proposal I want to emphasise that the rural area of old Delhi and New Delhi should be integrated with the Punjab and the Constituent Assembly itself should come to a decision in this respect.]*

Shri R. K. Sidhva (C.P. & Berar : General) : Mr. President, Sir, I have no quarrel with persons like my Friend Mr. Brajeshwar Prasad who hold the view that all the provinces in India should be governed by dictators and not by Ministers. But I really cannot understand the arguments now advanced by Friends who have all along been advocating that there should be people's government everywhere but who want to deny that right to the people of Delhi and Ajmer-Merwara. Here are these two provinces – you may call them such. I am purposely omitting Coorg because it is so small that it cannot be given a legislative body. At the same time I do not want Coorg also to be administered in the manner it is being administered today. It should be merged with some adjoining province. Therefore, there remain only two big provinces, Delhi and Ajmer-Merwara, both having a population of nearly twenty five lakhs of people. You cannot ignore the right of this large number of people to govern themselves. I fail to understand why, when we have given the right to the most backward classes of people to govern themselves under out Constitution, this intelligent class of people in these two provinces should be told that they cannot have a popular government. If it is felt that Ajmer-Merwara should be merged into some adjoining province I have no quarrel, but I would prefer that Delhi and Ajmer-Merwara should be combined and given a proper legislative body as in the case of other provinces.

It is argued that in a capital city we cannot have any provincial government. It may be a mere matter of sentiment and I do not see any really substantial arguments in that. Did we not have two governments in Calcutta having a Lieutenant-Governor and the seat of India at Calcutta? Did we not have two governments in Calcutta exactly on the lines I want to advocate? And what was wrong? If at all it is felt that from the point of view of status or sentiment the capital should not be in Delhi, let the capital be in Ajmer. I have no objection. But to deny its right to these people is a most unheard of attempt when we are preparing a Constitution for the entire population of this country. I therefore feel very strongly that the Constitution should not be passed without mentioning distinctly and clearly as to what is going to be the fate of Delhi and Ajmer-Merwara as far as their administration is concerned.

Imagine the position of Delhi today so far as the local self-governing organisation is concerned. There are four Municipalities in the City of Delhi. At a distance of every three miles there is a small Municipality. Not even the word 'Municipality' is there. It is a 'Municipal Committee', a third-rate name that is given for the local self-governing body at the Capital, and still from the sentimental point of view you say that Delhi should remain under the Chief Commissioner. Old Delhi has got the name Municipal Committee. New Delhi, at a distance of three miles has another Municipal Committee. In the Civil Lines there is a Notified Area Committee, again at a distance of three miles. At Shahadara there is a similar Committee. I have never heard of any city having within a distance of about eight miles more than one Municipality. Go to Bombay. Bombay has a circumference of 18 miles and there are so many suburban towns, but it is not that there are small local bodies within a city. I desire that there should be a Municipal Corporation for Delhi. I was really very glad to learn when the Interim government came into power that a Committee was appointed to go into the question of having a Corporation for Delhi, combining the small municipalities into one. The Committee has given a very fine report, advocating that there should be a Municipal Corporation for the whole of Delhi and that the small municipalities should be merged into it. That report, I think, has been shelved. It is now two years since they presented their report. You are not prepared to give local self-government to the people of Delhi – I do not know for what reasons. Why should there not be a Municipal Corporation for Delhi instead of four small municipalities at a distance of three miles each? You are not prepared to give them the right from the civic point of view also. I therefore desire that in the fair name of this Capital you must immediately take steps to see that these powers are vested in the people of these two provinces.

Shrimati G. Durgabai (Madras : General) : Sir, the question may now be put.

Mr. President : The question is :

"That the question be now put."

The motion was adopted.

Mr. President : The question is :

"That in clause (1) and the proviso to clause (1) of article 212, for the words 'Governor or Ruler', wherever they occur, the expression 'Government' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That in clause (b) of the proviso to clause (1) of article 212, for the word 'wishes' the word 'views' be substituted and at the end the following new clause (3) be added:-

'(3) In this article reference to a State shall include reference to a part of a State.' "

The amendment was adopted.

Mr. President : The question is :

"That with reference to amendment No.2713 of the List of Amendments, clause (2) of article 212 be omitted'."

The amendment was adopted.

Mr. President : The question is :

"That article 212, as amended, stand part of the Constitution."

The motion was adopted.

Article 212, as amended, was added to the Constitution.

Article 213

The Honourable Dr. B. R. Ambedkar : Sir, I move.

"That with reference to amendment No.2722 of the List of Amendments, for article 213, the following article be substituted:-

Creation or continuance of local Legislatures or Council of Advisers or Ministers.

'213 (1) Notwithstanding anything contained in this Constitution Parliament may by law create or continue for any State for the time being specified in Part II of the First Schedule and administered through a Chief Commissioner or Lieutenant Governor --

(a) a body, whether nominated, elected or partly nominated and partly elected, to function as a Legislature for the State; or

(b) a council of advisers or ministers or both with such constitution, powers and functions, in each case, as may be specified in the law

(2) Any law referred to in clause (1) of this article shall not be deemed to be an amendment of this Constitution for the purposes of article 304 thereof notwithstanding that it contains any provision which amends or has the effect of amending the Constitution'."

Sir, the principal change sought to be effected by this amendment is this. In the original Draft the power of creating a body, whether nominated or elected, for purpose of representation and a Council of Advisers or Ministers was a matter which was left to the President. The new Draft gives the power to Parliament and not to the President. That is the only substantial change which has been effected by this new article. Otherwise the provision remains the same.

Shri Brajeshwar Prasad : I am not moving my amendment No. 47 in List I of First Week

Prof. Shibban lal Sakesena : Sir, I move.

"That in amendment No. 45 above, in clause (1) of the proposed article 213, the words Notwithstanding anything contained in this Constitution be deleted."

I personally feel that the article, as it is, is complete and that there is no need therein for the words "Notwithstanding anything contained in this Constitution".

Sir, this article is in fact giving a Constitution for the States in Part II of Schedule I which includes Delhi, Coorg and Ajmer-Merwara. I agree that Coorg and Ajmer-Merwara should be attached to their contiguous provinces as per recommendation of my friends Messrs. Poonacha and Pandit M. B. L. Bhargava. I also think that for Delhi there should be a separate Constitution. I think this article should apply only to Chandernagore, etc. For Delhi there should be a separate provision other than that under article 213 which says that there shall be a body, whether nominated, elected or partly nominated and partly elected, to function as a Legislature for the State or a council of advisers or ministers. I think that for Delhi we should have a special provision which should not be of the pattern for the Centrally administered areas. Delhi should be a province by itself and provision for that should be made separately. I therefore suggest that this article should not apply to Delhi.

We have recently seen a note circulated by Shri K. M. Munshi in which he has pointed out that Delhi is something like the city of Bombay in respect of its growing population and is the capital of India. To satisfy the needs of the capital its citizens may have autonomy like that of Bombay. I feel that if a new article is added for this purpose it would be better.

I am opposed to giving the right to Parliament to adopt a constitution for Delhi. This should be done in a separate article incorporating the provisions contained in the note of Shri K. M. Munshi. I therefore suggest that this article should not apply to Delhi. As this is the only occasion on which I could speak about Delhi, I suggest that New Delhi may of course be under the control of the Central Government, but the rest of the area must be given full autonomy with a separate legislature and so on. In fact the report which was submitted by the Committee has recommended full autonomy to the province of Delhi. I only exclude New Delhi from it. There 80 per cent of the buildings are owned by the government and therefore, New Delhi may remain under the control of the Central Government; but the reminder must be given full autonomy. But the question may be investigated whether the remainder cannot form part either of East Punjab or the United Provinces. If it thus forms part of an existing province it might be very helpful, because Delhi by itself may not have the resources needed for a major province. I personally feel that as Delhi is the natural centre of East Punjab, it may form part of the province of East Punjab. It will then become the Centre of East Punjab, as Calcutta is of West Bengal. I therefore think that there should be a separate provision for Delhi. If we are of the opinion that it should form part of East Punjab we must make a suitable provision for it. But I am opposed to giving the future Parliament the function of drawing up a Constitution for it. As the new Constitution is to come into force on 26th January 1950, we will probably finish constitution-making by the end of November or so. There will thus be hardly time for framing a Constitution for Delhi at all. The thing will have to be rushed through. I feel that this question must be decided here. We may now decide whether Delhi should form part of any other province or be given full autonomy. This article, may apply to Chandernagore, Pondicherry or other areas which may be added to India. Those territories have been under the French influence for long. Only after a time they will be able to come up to our level. For that reason they may be administered by the Centre for sometime. Ultimately we should not have any area directly controlled by the Centre. Every place should become or be attached to an autonomous province.

Shri Deshbandhu Gupta (Delhi) : Sir, there is an amendment in my name to articles 212 and 213 which is based on the unanimous recommendations of the *ad hoc* Committee which was appointed by this House. Although do not propose to move it, I must frankly say that I do not feel happy about the amendment that has been moved by my Friend Dr. Ambedkar to article 213. In fact, the whole population of Delhi is very much disappointed and is bound to feel that the decisions that were taken earlier are being given a go-by.

There is a strong feeling amongst the people of Delhi and other Centrally governed areas that they have been given step-motherly treatment. From the very beginning this has been evident that they are being ignored. Firstly, when the House appointed committees to settle the principles of the constitutions for the provinces and the Centre, no such committee was appointed to consider the question of the Centrally Administered Areas.

The Draft Constitution first published, although it left it to the President to effect changes in the constitution of Delhi and of the Centrally administered areas, a provision for a local legislature was also made therein. But the new amendment has done away with that provision. It was only after a good deal of effort was made by the representatives of the Centrally administered areas and it was pointed out by them that when we are deciding the Constitution of the whole country, there was no reason why the Centrally administered areas which had been denied autonomy so far should continue to be ignored, that a Committee was appointed to go into the question of the future Constitution. That Committee was presided over by Dr. Pattabhi Sitaramayya and besides others no less an eminent person than Shri Gopalaswami Ayyangar served on that Committee. The Committee recommended unanimously a definite plan for the future Constitution of Delhi and other Centrally governed areas.

Mr. President : Will you please read out your amendment?

Shri Desbandbu Gupta : The amendment which stands in my name and to which I have made reference is No. 2706 which reads:-

"That for the existing articles 212 and 213 the following be substituted:

'212 (1) The territories immediately before the commencement of the Constitution known as the Chief Commissioner's Province of Delhi shall be administered by a Lieutenant-Governor with a Council of Ministers and a Legislature of the State.

(2) The Lieutenant Governor shall be appointed by the President by warrant under his hand and seal and the legislature of the State shall consist of the Lieutenant Governor and one House to be known as the Legislative Assembly................"

Mr. President : You are reading amendment No. 2706. Are you moving that amendment?

Shri Deshbandhu Gupta : I was only referring to the amendment.

Mr. President : Read out the amendment which you wish to move.

Shri Deshbandhu Gupta : The amendment that I wish to move runs thus:

"That in amendment No. 45 of List I (Second Week) of Amendments to Amendments, after clause (1) of the proposed article 213, the following new clause be inserted:-

Shri Brajeshwar Prasad : We have not got a copy of the amendment.

Shri Deshbandhu Gupta :

"(1a) Any law as aforesaid may contain directions as to the representation of such State in the House of the People on a scale different from that provided in clause (5) of article 67 of this Constitution and may also vary the allocation of seats to representatives of such State in the Council of States as provided in Schedule III-B."

This is the amendment, Sir, which I proposed to move now to the amendment moved by Dr. Ambedkar and I have no doubt that the House will accept it. The reason is very simple. We have denied autonomy to the Centrally governed areas including Delhi which stands on a slightly different footing in as much as besides being the Capital of India it has got a population of about twenty lakhs today which may go up to thirty lakhs in a few years' time. We have already passed article 67, and in spite of the fact that we have not given any definite democratic Constitution to the Centrally governed areas, we have not considered the desirability of even providing some additional representation for these areas in the Central Legislature. Up till now, the Central Legislature has been acting as the Parliament for these areas. All legislation affecting these areas have to be passed by this House. It was therefore only fair that provision should have been made for giving some additional representation to Delhi and the other areas which are Centrally governed. I think it does not require much argument to convince the House that such a provision is necessary and feel that the House will pass my amendment and not oppose the idea of a few extra seats.

In this connection I wish to point out that Delhi and other Centrally governed areas have not been receiving a fair deal either from the House or from those who are in authority today. The attitude of the Drafting Committee and others responsible for their draft proposals about the Centrally governed areas, particularly Delhi, has been rather disappointing. Whenever a demand was made by us to liberalise the provisions with a view to give them some measure of autonomy, and we went to the Drafting Committee with such a request, fresh restrictions were introduced in the Draft. To give an illustration : In the original Draft, article 213 provided specifically a local legislature for Delhi and other Centrally governed areas but the amendment which Dr. Ambedkar has now moved uses a new phraseology and says that it will be a body wholly or partly nominated which may act as the legislature. There are so many other qualifying words which have been introduced in the amendment for the first time. To give another examples : Dr. Ambedkar had on an earlier occasion given notice of amendment No. 2722, which specifically provided:

> "a Council of Advisers or Ministers to aid and advise the Chief Commissioner or the Lieutenant Governor in the administration of the State."

I do not know why the Drafting Committee now seeks to remove even this provision which they themselves had drafted at an earlier stage. The only one merit that one can claim and is being claimed for Dr. Ambedkar's amendment is that it is a comprehensive amendment that it is equally applicable both to Panth-Piploda and to Delhi. My contention, Sir, is that it is really very unfair to treat Delhi and Panth-Piploda alike. The right course for the Drafting committee would have been to treat Delhi as a separate unit while drafting its Constitution. Whereas all other Centrally governed areas are likely to be amalgamated with the adjoining provinces sooner or later, Delhi stands on a different footing altogether, as the position of Delhi is not going to be altered in future except that its population may go up and is bound to go up. Otherwise there is not even a suggestion that Delhi is going to be amalgamated with either of the neighbouring provinces. In the case of Ajmer-Merwara, Coorg, Panth-Piploda and the other Centrally governed areas which have come into existence recently, there is a clear indication – and it goes without saying – that these areas sooner or later will be merged with the neighbouring provinces. The Drafting committee should have therefore drafted the Constitution of Delhi on the lines suggested by the *ad hoc* Committee. Delhi has already got a population of about twenty lakhs and this is bound to go up further in a few years' time. Thus it makes a very good unit to be treated independently, but my friends of the Drafting Committee in their wisdom have thought it fit to treat Panth-Piploda and Delhi alike and include both of them in the same clause. There was bound to be some difficulty, therefore, and I agree that if a comprehensive clause was to be drafted which could cover all these areas, the Drafting Committee perhaps could not have done otherwise. But I hold that it was wrong to do so and would request the House to bear with me and judge whether so far as Delhi is concerned, it does or does not require a different treatment. Delhi is the capital of India and it is being contended that it cannot be given any measure of self-government because Washington has not got it and because Canberra has not got it; but I submit Sir, that it would be unfair to compare Delhi either with Washington or with Canberra. The reason is very simple, Delhi is a town which has got a history of its own, a civilization of its own. It is a commercial as well as an industrial town, whereas Washington has been built as a capital. There the people had the choice to settle or not settle in that town and whosoever wanted to be a citizen of Washington, he migrated to that place. But here the capital has migrated to Delhi and not that Deli has been built as a capital originally. How can you then ignore the legitimate aspirations and demands of the people of Delhi? On this basis, I claim that Delhi should be treated differently. The analogy of Washington might apply to New Delhi in some degree but I hold that even to New Delhi it cannot apply as New Delhi is no longer a separate city from Old Delhi. The population of both the cities is intermingled. Transport, electricity, water supply and all other essential services are common to both and even the population is common. Many people have got their business in Old Delhi but they are living in New Delhi. Some have their business in New Delhi and are living in Old Delhi. To say that New Delhi and Old Delhi are two separate entities and to compare New Delhi with Washington or Canberra is therefore not fair. I would not like to elaborate this point further.

No less a person than our respected leader, Pandit Jawaharlal Nehru has publicly told the people of Delhi that he is in sympathy with their demands and that a Bill shall soon be introduced in the Parliament providing for a constitution for Delhi which will give the people of Delhi as large a measure of responsibility as possible. I have no doubt, sir, that this assurance will be carried out and before other parts of India are governed under the new Constitution, Delhi also will have its own constitution passed by the Parliament.

Sir, I have heard some people say that Delhi is much too small a place and that the demand for autonomy is being made merely to satisfy the aspirations of some local political leaders. This is a very cheap jibe, if I may say so and cannot be taken seriously. Such an argument could be equally applicable to our demand for self-government or independence in a wider sphere. I can assure the House that it is not as a matter of luxury that the people of Delhi have demanded autonomy or a measure of self-government or a voice in their administration. Their difficulties are real. Few of the Members of this House probably are aware of the difficulties from which the people of Delhi are suffering. To mention a few may I point out that till recently even the premier Municipality of Old Delhi used to have an official president; and it still has about one-third of its members as nominated ones. The New Delhi Municipal Committee is a wholly nominated body and its Chairman is still an official. This is how Delhi is treated in the sphere of local self-government. Then, several Ad Hoc bodies have been appointed like the Improvement Trust, the Joint Water and Sewage Board, the Delhi Central Electric Power Authority which have got official majorities and no effective representation of the people of Delhi. They plan and take big decisions about Delhi, but the people of Delhi have no effective voice in the administration of these bodies.

Then, Sir, more than all this, what is most deplorable is that Delhi has been tagged on to the East Punjab. We get all our services from there, the magistracy, the Police and so on and so forth, but we have no voice in their selection. Even the High court is that of East Punjab. The Delhi people have been making a demand for the last so many years that there should be a Circuit High Court in Delhi, but to no avail. I am told (and I have good reason to believe that the figures are correct) that the value of the civil appeals dealt with by the East Punjab High Court which go from Delhi is about 65 per cent and the percentage of the civil cases which go from Delhi is 35 per cent of all the cases dealt with by the High Court. In spite of this the modest demand persistently made by the citizens of Delhi for the last three years that there should be a Circuit Court in Delhi, has not been listened to. Whatever demand is made by the people of Delhi, is treated with indifference by the East Punjab Government and no one pays any heed to the difficulties and to grievances to the people of Delhi.

As regards the services, few people realize that although Delhi has got a population of about 20 lakhs, there is no scope for its young men in Government services. Take for instance the Provincial Civil Services; they have no place in either United Provinces or East Punjab and Delhi has no cadre of its own. They only know that they have to be governed by officials brought from either United Provinces or from East Punjab. Are not these difficulties real? Some people believe that Delhi has benefited from the location of India's Capital here. Let us examine this. It is the right of every big municipality to own control and run the essential utility services like electricity, transport, water-works, etc. and they form a big source of their income. Do you know that they have never been entrusted to the Municipality of Delhi? The fact is that Old Delhi has been made to serve as a maid to New Delhi, which has been built as a Capital. I can say that Old Delhi has not benefited to the extent people are made to believe by New Delhi having been made the capital. There is pressure on its roads and its sanitation is so bad, that today really speaking, the whole of Old Delhi has become a big slum and still nobody cares for the poor people of Old Delhi. A suggestion has been made by some kind friends in the course of their speeches that Delhi should be joined with East Punjab. I am afraid, Sir, the way in which East Punjab Government has behaved in the past and is behaving now towards Delhi is so bad that it cannot encourage the people of Delhi to entertain any such suggestion. To give one just illustration of its callousness, may I point out that there are more than 300 villages attached to Delhi situated on the border of East Punjab and U. P. and if you go today to these border villages you will find that while gram is selling at Rs.7 per maund in the East Punjab villages just within one mile from the border, the people living in Delhi and its villages have to pay Rs.9to 12 per maund. the same is the case with Chara (fodder). While Rs. 4 per maund is the rate of fodder in Gurgaon and Rohtak, in Delhi it is Rs.9 per maund. To remove this anomaly and hardship there has been a persistent demand that Delhi should be included in the East Punjab for the purposes of rationing but no one listens to it. They want to include Delhi in East Punjab for the purposes of High court, but they would not like to share the advantages of East Punjab in this respect with Delhi. There has always been an opposition to that from their side. Then again, Sir, nobody will deny that Delhi was the biggest centre for cloth trade in Northern India, but during the last four or five years this trade of Delhi has been ruined. While the old Government had made allowance for this fact and while allotting cloth quotas for the Delhi province, they had taken into account the fact that Delhi was the distributing centre for Western United Provinces and Eastern Punjab, under the new regime, I am sorry to say, even that advantage has been taken away. The quota now allotted to Delhi is just enough for the population living in Delhi, with the result that Delhi has ceased to be a distributing centre for cloth and all its trade has thus been ruined. Not one, I can give you instances after instances to show as to how the people of Delhi have been made to suffer during all these years. They have suffered quietly and patiently in the past in the hope that after the attainment of freedom it would be all right. Nobody can say that Delhi lagged behind in making sacrifices which the nation was called upon to make in the struggle for freedom. Delhi is proud to think of persons like the late Hakim Ajmal Khan, Dr. Ansari, Swami Shradhanand who were closely associated with its political life. It has produced men of the caliber of Lala Hardayal who have contributed so much to the freedom movement of India. Delhi, I claim, has been second to none in the whole of India so far as its contribution to the fight for freedom is concerned. In view of all this why should one apprehend that if autonomy is given to Delhi, its people will misbehave and that might create difficulties for the Centre? I submit that not one Delhi, but hundreds of Delhis can be sacrificed in the larger interests of the country and I as representative of Delhi can give an assurance to the House that if it is considered by the House that any measure of autonomy given to Delhi will prejudice the best interests of the country, I will be the first person to say "well, keep back autonomy; we shall be content to be governed as heretofore". But I can say that there is no reason to entertain such a fear. If the Central Government cannot look after a tiny province like Delhi, and feel that they can carry the people of the Capital with them, I am afraid it will lose its title to rule over the whole country.

Under these circumstances, I would urge upon this House that although I am not moving my original amendment, I hope this promise given in the amendment proposed by Dr. Ambedkar will not prove to be just an eye-wash. Dr. Ambedkar's amendment can be interpreted in any way; it is a comprehensive one; under its terms Delhi can get a legislature; it may get responsible Government or may get nothing. This is how it is worded. I rely therefore, Sir, more on the assurance given by Panditji recently in the Political Conference which was held in Delhi that the people of Delhi will get a measure of autonomy.

I do not wish to take this occasion to criticise the administration of Delhi. Otherwise, I can quote many illustrations to show as to how the administration of Delhi has deteriorated and how much it has added to the difficulties of the people of Delhi. Delhi is perhaps the only city which has received our refugee brethren with open arms. My friends from the United Provinces, who are always claiming new territories, and making new conquests, when the question of receiving refugees came, raised all sorts of obstacles in their way of settling down in the United Provinces. Other provinces also raised the hue and cry that there should be a fixed quota. But, so far as Delhi is concerned, the population of the city has almost doubled. The number of refugees today in Delhi is not less than five lakhs. During the last two years, nobody can say that at any time, the citizens of Delhi have raised any cry of refugees versus Delhiwallas. It is an important point to note that the people of Delhi, in spite of the fact that their economic interests have suffered very largely, have been keeping quiet. In these circumstances, and in view of this conduct of the citizens of Delhi, I would say that they do deserve better consideration.

I have already dealt with the suggestions made that Delhi can be added to East Punjab. I repeat that I am definitely opposed to that idea. There was a time, Sir, in 1927 when a scheme was adopted by the people of Delhi which provided for the enlargement of the Delhi province by the inclusion of Meerut and Agra Divisions from the United Provinces and Ambala from East Punjab. That was taken up at the Round Table Conference as well and if I may say so, had received the blessings of Mahatmaji and others. But, unfortunately, that scheme did not go through. Even today I feel that if that scheme had been accepted at that time, perhaps the country would have been spared the agony of the partition of India. But, that was not listened to at that time. I have no doubt that the people of Delhi would be content with the measure of responsible government which the House and the Leaders may safely give to them. I assure them that there need be no such apprehension that Delhi being the Capital of the country there would be difficulties in the way.

There is another aspect of the question. These five lakhs of refugees living in Delhi have come here from an autonomous area. Is it suggested that these people who had no choice but to come to a place like Delhi, should be deprived of their right of having a voice in the administration? if there is not going to be a responsible Government in Delhi, then it means we would be virtually depriving all these people also of their right of having a voice in the administration. Some people say "why do these Delhiwallas cry? They have already been given an Advisory Council." I wish to point out, Sir, that if you look into the record of the work done by the Advisory council during the last two years you will be sorely disappointed. This Advisory council is the biggest hoax that has been played upon Delhi. I may tell you, Sir, that I have a feeling that the resolutions passed by the Council are not been read by the ministries concerned; no attention is paid to them. Even the budget is not referred to this Council in time, for opinion. Any time spent in the Council is really a waste of the time of the members of the Advisory council: the resolutions they pass never receive any attention. We have today absolutely no voice in the day-to-day administration of the province. If our leaders wanted to give some measure of autonomy they should have at least laid down a convention that in the day-to-day administration, the representatives of the Advisory Council would be consulted; their advice is not sought even on important occasions. I am sorry to say that in all such matters, the Advisory Council has been studiously ignored. Under these circumstances, the people of Delhi can justifiably entertain the fear that those in authority do not understand or appreciate their difficulties and do not wish to give them that measure of self-government which is their legitimate due. I hope that this fear is not justified and as the Honourable the Prime Minister has said on more than one occasion early steps will be taken to give Delhi a constitution which it deserves.

Before concluding, I would like to quote the Honourable the Prime Minister. On an earlier occasion he had said:-

> "A constitution, if it is out of touch with the peoples' life, aims and aspirations it becomes rather empty; if it falls behind their aims, it drags the people down."

This is what our Prime Minister had said in this House during the last session speaking in another connection. I hope that this will be borne in mind and whatever pattern of responsible Government will be given to the people of Delhi, it will not be a mere toy or an eye-wash.

Before concluding I would like to point out one thing more; I am strongly of opinion that whatever constitution may be given to the people of Delhi, Delhi deserves some special representation in the Parliament and in the Upper House, for the simple reason that even if it is given some restricted autonomy, most of its legislation will be passed by the House of the Peoples. Today, there is just one representative of Delhi in the Central Assembly representing a population of about twenty lakhs. Under the new Constitution according to article 67 Delhi will probably have three; my contention is that Delhi has got a special claim and it should be given more representation in the Central Legislature both in the Council of States and House of the People. The amendment which I have moved makes it possible for the Parliament to provide for such additional representation and I do hope that it will not be opposed by anyone in the House. I do not wish to take more time of the House. I hope that the recommendations of the *Ad Hoc* Committee, although they have been ignored by the Drafting Committee, will be borne in mind by the Parliament when a Bill is drafted providing for the future constitution of Delhi. In this connection I may make it clear that if the Act of 1935 does not provide for amending the Constitution of Delhi, I hope the legal pandits will find some solution of the difficulty and it will be made possible to give Delhi whatever constitution is decided upon, simultaneously with other parts of the country. I hope it will not be difficult for the constitutional lawyers to make to make some provision in the Constitution so that the Parliament can take up the Bill in the next session of the Parliament.

Before concluding, I assure once again the Prime Minister and other friends that so far as the people of Delhi are concerned, you need have no apprehensions about them. They have behaved in the past and they will behave also in the future under all circumstances, whether you give them autonomy or not. Sir, with these words I conclude.

The Honourable Shri Jawaharlal Nehru (United Provinces : General) : Sir, may I indicate in a few sentences the attitude of Government in regard to this important matter? Obviously the question of Delhi is an important point for this House to consider. It was for this reason that over two years ago this House appointed a Committee for the purpose and, normally speaking, the recommendations of the Committee appointed by this House would naturally carry great weight and would possibly be given effect to. But ever since that Committee was appointed, the world has changed; India has changed and Delhi has changed vitally. Therefore to take up the recommendations of that Committee regardless of these mighty changes that have taken place in Delhi would be to consider this question completely divorced from reality. But the fact remains that this question has got to be considered and all of us or nearly all of us here sympathise very greatly with those citizens of Delhi and representatives of Delhi who feel that this great and ancient city of Delhi should not be left out of the picture when this Constitution comes into effect. Therefore we have to give thought to it. Now giving thought to it, the first thing that comes up for consideration is this that the situation in Delhi is not a static situation; it is a changing situation and if we put down any clauses in the Constitution, we rather petrify that situation. It is far better to deal with it in a way which is capable of future change, i.e., by Act of Parliament rather than by fixed provisions in the Constitution.

Again, these provisions do not deal with Delhi only but with other areas which are called Centrally administered areas or the like. It may be that still further areas may come into our ken. Therefore, anything that we may put down in the Constitution must be something which applies to all. That is a difficult thing to do because those areas are completely different. These areas, 'Whether it is Coorg or Ajmer-Merwara or Panth-Piploda or Delhi, they are completely different and it is frightfully difficult to find a common formula for them. For all these reasons it seems inadvisable to put in the Constitution any precise form of approach to this question except to indicate that something should be done and leave it open to Parliament to do it.

Now Mr. Deshbandhu Gupta has brought forward two amendments. I do not know if he has moved them formally or not; anyhow he spoke about them. One was rather a general disapproval of the present amendment – not on any precise ground – but because he thought that 'it rather led away from the previous Draft. Now, I have little to say about it except I think that the amendment moved by Dr. Ambedkar seems to cover the entire ground fairly well. It is up to this House to apply it in any way it likes to Delhi but please do not try to change that amendment simply thinking in terms of Delhi and thereby put difficulties in your way if you have to apply that to some other areas. That is point one.

The second point is in regard to a clause that he wishes to add to this present amendment of Dr. Ambedkar. So far as the principle of that clause is concerned, I have absolutely no objection. My only difficulty is that I should not like to put in something in a hurry without careful consideration of the drafting of it. But so far as I am concerned – and I think I speak for most of the members of the Drafting Committee – they accept the principle and they intend to bring that in somewhere in the Constitution at some later stage. That is to say, the principle of some kind of representation in the Central Legislature of these areas – that principle is accepted and will be provided for somewhere or other in the Constitution.

Now, finally, I should like to say that it is our intention, that is, the Government's intention to bring forward some kind of a Bill to deal with Delhi in the course of this year. We cannot do so, so far as I understand the Constitution, we cannot do so till this constitution itself is passed or till this House enables us to do so. Therefore in any event we have to wait – till whether October or November I do not know – but we hope to proceed with this matter. Meanwhile we shall think about it and will bring it up later dealing with Delhi.

Mr. President : Pandit thakur Das Bhargava : Are you likely to take long?

Pandit Thakur Das Bhargava (East Punjab : General) : Not very long, about twenty minutes.

Mr. President : I think we had better take it up tomorrow. The House now stands adjourned to nine o'clock, tomorrow morning.

The Assembly then adjourned till Nine of the Clock on Tuesday, the 2nd august, 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)- VOLUME IX

Tuesday, the 2nd August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the Pledge and signed the Register

Shri Shantilal H. Shah (Bombay: General).

DRAFT CONSTITUTION - *(Contd.)*

Article 213-*(Contd.)*

Mr. President : We shall now take up the discussion of the article that we were discussing yesterday. Pandit Thakur Das Bhargava.

Pandit Thakur Das Bhargava (East Punjab: General): *[Mr. President, Sir, article 213 in the form it is at present before the House is quite different from what it was in the Draft Constitution. It can be said about the present form of this article which is before the House that it is even more retrograde and reactionary than in its previous form. It is no doubt true that some, authority was conferred on the President under the previous proposal as well, but if the President exercised his authority under article 213, he had the right to establish a local legislature or a Council of Advisors or both. But he had no option not to establish a local legislature while acting under article 213. He had no right to constitute a body which though termed a legislature was in fact not a legislature in the correct sense of the term. Now-a-days a legislature implies that it should consist of Ministers, should have enough tights and should consist mostly of elected members. But the amendment now moved says that this right will belong to the Parliament. So far as this amendment goes, it is quite proper and I think it is good that the authority is being given to the Parliament. But I do doubt the wording of the latter portion of this proposal which says that "A body, whether nominated, elected or partly nominated and partly elected, to function as a legislature for the State". And the other thing that has been suggested is the Council of Advisors and Ministers. In this connection I would submit to the House that it should not accept this change that there should be such a body instead of a legislature. In these days we wish that all the blessings of Swaraj should be uniformly shared by every part of India.

It should not be that a region is provided with such a body and where the inhabitants do not consequently acquire any right as regards their administration or get any opportunity to manage their affairs. We do not want such a body. The fact is that this article includes even regions which are underdeveloped. This makes such a provision for them by which I understand that the Constitution wants to decide that the right to settle the Constitution of Delhi, Coorg, Ajmer-Merwara should be given to the Parliament. In the circumstances obtaining at present, this is proper to a certain extent. I do not know what else the Constituent Assembly can do in the circumstances. Today the fate of small regions like Ajmer-Merwara is still undecided. About Ajmer Merwara it is suggested that it should be made a part of Rajasthan; about Coorg it is suggested that it should be merged in Mysore or in Madras; and similar suggestions are made in respect of Panth-Piploda. The position of territories like Cutch and Himachal Pradesh is still uncertain. In those circumstances it is difficult for the Constituent Assembly to take a decision in respect of every territory. It will not be proper to create such a solid or concrete scheme till the conditions permit. Therefore this proposal is, in a way, quite proper and in accordance with the spirit of the times; but I do not like that there should be any such territory which has no local legislature of its own and in which the people do not possess the right to manage their own affairs. The article provides for a body "whether nominated, elected or partly nominated, and partly elected". If the whole body is nominated, I fail to see for which territory it would be suitable, for I do not think that there is any territory so backward as to deserve such a body. Coorg has already got an Assembly. That Assembly sits for six days in a year. The Chief Commissioner is the President of that Assembly. The District Magistrate is the Home Member and the District Judge is Law Member. In these days when even the smallest Provinces can boast of legislatures such a provision ceases to have any meaning whatever. I submit that this matter should be decided according to the circumstances of each region. So far as the Himachal Pradesh is concerned it is a unit newly created. It consists of some new portions and some old portions of the East Punjab. It would have been better if the whole of it had been merged with the East Punjab. Time will show to what extent this policy of the Government of creating small provinces and constituting territories into Centrally administered areas is proper. Centrally administered area is defined as one where the local people do not manage it and the Central Government manages it. If you adopt article 213, you will be adding new powers to those already existing which, I think, will not be a proper thing to do. According to this article any area which is not well managed will be made a Centrally administered area.

As Shri Deshbandhu Gupta said, this can be made applicable to Delhi also and I support his suggestion. Perhaps at present the administration in Delhi is not as good as the provincial administrations are said to be. In 1911 Delhi was separated from East Punjab and formed into a separate province. During 1946-47 I asked certain questions in the Parliament regarding Delhi. Through them I pointed out that there was a less number of hospitals and schools in Delhi than in East Punjab and that there were so many difficulties there. When the Capital was shifted from Calcutta to Delhi, it was said that if a city was the Capital of two provinces there were bound to be difficulties in its administration. In regard to Delhi it was said that it was being made the Capital of India because it was not the Capital of any province and it would be free from every influence. I cannot say how far this is correct. There are many capitals in the world which are the capitals of the provinces as well as those of Central Governments. Besides this, the issue that is raised in regard to Delhi by today's amendment, has two aspects. One of them is that if Delhi is retained in its present form what rights it would enjoy, and the other is whether the same treatment should be meted out to it as is meted out to small territories.

With your permission, I want to speak on these two points and I seek the indulgence of the Honourable President and of the House. The people of Hariyana Province are very much interested in this matter. This is a small province consisting of 353 villages. This has for centuries been a part of Hariyana Province. The three battles of Panipat were fought for the occupation of this Hariyana Province.

During the Mutiny too, when the people rose in revolt, this territory was a part of Delhi. Because the people of this area had mutinied against the British in 1857, this territory of Delhi i.e., Hariyana Province, which includes the four or five districts of Hissar, Rohtak, Gurgaon and Karnal, was integrated with the Punjab as a measure of punishment. The result was that our territory became the Cindrella of the Punjab and we began to be treated as depressed classes. No rights were granted to the people of our area. Canals were constructed in the Western part only. We were deprived of all facilities. We were not granted irrigation or educational facilities and were subjected to a high-handedness which has its own history. I want to submit that the people of this area have been expecting for a long time that on the advent of self-government, all their difficulties would be removed.

In 1909 we started a movement in which we put forward the demand that our territory should be separated from Punjab. In 1919 and 1928, this movement gained great strength. His Excellency Mr. Asaf Ali and Lala Deshbandhu Gupta who has come over to Delhi from East Punjab, were the leaders of this movement. We, the workers, sided them in this movement and struggled hard for the cause of this territory. In 1928 both Mahatma Gandhi and Mr. Jinnah accepted that Ambala Division should form a part of Agra and Meerut Division. A scheme was also formulated to-this effect by Mr. Corbett known as the Corbett Scheme. But, at that time our demand was not conceded and the Round Table Conference gave its decision against our demand. If this demand had been conceded at that time, the history of our country would have been altogether different.

After this, the Cabinet Mission arrived, and we raised our voice at that time too. The Cabinet Mission wanted to include this territory of ours in the area of Pakistan. We raised our voice against this proposal as strongly as we could. We did not want that this territory of ours, which had suffered for a very long time, should be integrated with an area from which it could never separate itself and from the iron clutches of which its people could never free themselves. By the grace of God our national leaders arrived at a correct decision and partition was accepted in such a form that East Punjab could remain free from its clutches.

We have been striving for a long time to join together the province of Delhi, some districts of East Punjab, which were previously the districts of Delhi itself, and some districts of United Provinces to form a small province. They could be formed into a province as the ways of life and the language of these territories are the same. This could not be done at that time, and now it is no more practical politics to do so. I never want that our country should be split into small parts so as not to be able to shoulder the responsibility of our newly achieved freedom and that we should be always engaged in these trifling things. I want to submit that if anything is detrimental to the freedom of India, it is provincialism. I want that this demon of provincialism should be exercised completely out of our country. If it is not exercised, it will disrupt us and there will be a sort of civil war in India.

I suggest that the solution of the problem of Delhi and New Delhi is that New Delhi should be separated from Delhi and whatever administration is thought to be best for it, may be established. But so far as Delhi is, concerned, the correct solution of its problem is that old Delhi and 353 villages of Delhi, i.e. Hariyana should be integrated with East Punjab. Himachal Pradesh should also be included in East Punjab. We shall establish good relations with all those who are integrated with us and we shall together solve our difficulties. The people of Hariyana Province, of which Delhi is a part, want that Delhi should be integrated with East Punjab.

Besides, I want to submit that the United Provinces is a big province and it has a population of more than five crores. As Shri Gupta said yesterday, it would be better if a part of it is integrated with Delhi province. But with all respect to my friends from United Provinces, I want to say this. They tell us that we should not come near them. The Division of Meerut is an adjoining area of Hissar and there is no difference in the ways of life and the language of the people of these areas. It would be proper if one crore people of Agra and Meerut Divisions are integrated with East Punjab, which includes PEPSU, Himachal Pradesh and Delhi. Small provinces have no future and they can have no relations with or influence on the Centre or the Federation. Therefore we should all-integrate.

Shri Gupta said yesterday that the people of East Punjab wanted to sever their connection from the Delhi people. Whether he thinks this is right or wrong, I want to tell him that he is mistaken. You might be knowing that only yesterday a Congress of the businessmen of East Punjab was convened in Delhi in which the demand was placed that in regard to food grains Delhi and East Punjab should be taken to be one area, and as a matter of fact for purposes of food, Delhi should be integrated with East Punjab. If we entertained that sort of idea we would not have placed such a demand in that Congress yesterday. I emphatically say that whatever Shri Gupta has remarked is altogether wrong. I told the Honourable Prime Minister in 1947 that Delhi should be made the capital of East Punjab and that New Delhi may be separated from it and reconstructed in whatever way they liked. It may be converted into another Washington. We would have no objection to it. A complaint has been made that the High Court is situated at a great distance. I want to humbly ask whether the people of Meerut in United Provinces do not have to travel a distance of three hundred miles to reach Allahabad. Do not the people of Hissar and Rohtak have to go to Simla ? If a High Court is to be established it should be established in Delhi. The reason for it is that if Delhi would be the capital of East Punjab, the High Court too should be situated there.]*

Shri Deshbandhu Gupta (Delhi): *[Then according to your scheme everybody will have to learn Gurmukhi.]*

Pandit Thakur Das Bhargava: *[My humble submission is that you will have certainly to learn the language of the State to which you belong. The question is whether important decisions should be taken on petty matters as these. If there is any solution of the problem of Delhi, it is that New Delhi should be separated from Delhi and it should be administered as best as it is thought proper. But the rest of Delhi should be integrated with East Punjab. I have already stated that it is not our wish that our country should be split into small territories and that they should be formed into separate Provinces. There would be great disorder in the country because of this, and we would not be able to retain our freedom. So far as the solution of this problem is concerned we have before us only one solution and it is that the 353 villages of Delhi should be integrated with East Punjab. If you do not want this, the Government is competent to take a different decision. But I am saying all this not on my behalf but on behalf of the people of the area whom I represent and who share this view. I have come in contact with those people and am placing before you their views I ask Shri Deshbandhu not to have in his view Connaught Place and Government House only but the real interest of the province of Delhi as a whole.

But if the Government holds that the people of Delhi should get greater representation than is laid down in Section 67, it may grant it. But if it is decided that Delhi should have a legislature with some rights, I submit it should have only those rights as are enjoyed by other Centrally administered areas. Delhi and other like provinces should however be granted greater representation. This would be the most proper scheme. I want humbly to submit that the present population of Delhi is about twenty lakhs. The refugees number five lakhs and the remaining population of ten to fifteen lakhs consists of those who belong to a part of Hariyana Province.

The people of Delhi are in no way different from the people of Hariyana. The population of Delhi is in fact an admixture of all sorts of people living in the Punjab. I have brotherly affection for Shri Deshbandhu for having welcomed the refugees. The backward people of Punjab came here and he gave them a place. I submit that whether the people of Delhi join the Punjab or do not join it, they are entitled to have the same rights under the Central administration as are enjoyed by the people of other provinces. It is our duty to give them the same rights under the Central administration as are enjoyed by the people of other provinces, whether they belong to Panth-Piploda or to any other place. If freedom has been achieved for the whole of the country, they should be given full rights in the legislature by decentralising the Central administration so that they might fulfill their rightful aspirations.]*

Shri Mahavir Tyagi (United Provinces : General) : Sir, I agree with most of what my honourable Friend Mr. Deshbandhu Gupta said yesterday. I think it will not be quite fair for this august House to leave these small islands of slavery as they have been in the past. Swaraj has come and every province has got some representation, but isn't it a pity that these small areas in the country shall remain governed by the service men mostly ? I refuse to believe that any Minister in the Centre could look into the details of the local administration. I have seen the Government of the Centre run for about two years now. It is not possible for any Minister to look into the smallest little detail of administration; even in respect of their own little business, I find them unable to cope up. They are too busy. I therefore submit that so long as these small areas ate kept attached to the Centre under the administration of the Central Government these people will never get their political rights and Swaraj will remain denied to these small areas. I do not think there is any logic behind the argument advanced by Pandit Nehru that almost the whole of New Delhi being the property of the Government of India, no separate Government need be set up for Delhi. What is this? I cannot understand it. If Delhi is to be treated as London or New York you can do it. I can understand that. But even in London there are local authorities and people have their voice in the administration, whereas in Delhi people have none. Instead of keeping these small areas as Lieutenant Governor's province or Chief Commissioner's States, I would really prefer their being amalgamated with neighbouring States. Coorg could go into its neighbouring State. If we are not going to decide this because it is controversial, then what are we going to decide? This is a matter for the Constituent

Assembly to decide. After all the decision of the Legislative Assembly or Parliament will not command the same respect as that of the Constituent Assembly, because decisions of Parliament are as a rule party decisions. The cannot have the same force as decisions of this august All-party House, for every Parliament goes by the vote of the majority party. There is a majority party, a leader of the majority party and there is a Whip of the majority party. Even today if I were to sit in Parliament I shall not be able to exercise my vote as freely as I can do here for I can flout the decisions of the party in the Constituent Assembly. The Congress Party in the Constituent Assembly is only a party of convenience-it is just to facilitate matters and to help us arriving at decisions. I do not take its Whip as a mandatory whip and I do not obey it, unless I am myself convinced of it. In the Constituent Assembly no party can have a bigger voice than the voice of the individual for everybody represents the whole nation here speaks in the interests of the nation as a whole. But in the Parliament, Members have to go by their party whips, and therefore a decision of a Parliament is always necessarily a decision of the majority party. That decision cannot therefore have the same dignity or the sanctity attached to it as the decision of the Constituent Assembly.

Here the question is of giving political rights to the people residing in these small areas. They have been very unfortunate really in that they have had no representation in the past. Now Swaraj is there, but still they are denied that right of representation. How will one or two representatives in Parliament make their influence felt? There was an amendment to consider giving more representation, to these small areas. But even if you give them ten members they cannot influence the day-to-day administration as we do in our respective provinces. I know how people have a voice in the Provincial Governments. If and so long as the citizens living in Delhi, Coorg and Ajmer-Merwara were guaranteed the same voice in their day-to-day administration, I would not mind the name or nature of the constitution you provide for them. If we guarantee them their rights at least in the provincial field in the future set-up of things and grant them due representation in local administration, we will be satisfied. If you do not do that I submit we shall be unfair to these small areas. As regards Delhi, her case is analogous to Droupadi of Mahabharat. Let us not be unfair to it, only because the bigger brother has gambled her out. I want to appeal to honourable Members that they should decide the question of Delhi fairly and squarely. Delhi has made sacrifices. It has been the centre of so many political activities. Let Delhi not suffer. Let us consider the question of Delhi anew and let us attach the small centrally-governed areas to the neighbouring States. In the case of Delhi I will give up my claim to it the right of my province (United Provinces) to have Delhi. Let it be attached to Punjab. Delhi belongs to Punjab naturally. The civilization of Delhi is Punjabi, its civilization is now that of the Punjab, East as well as West. People of West Punjab have come to Delhi and therefore Delhi is theirs. They will be happier with the Punjab Government and will again make friends with the Ministers there. Therefore let Delhi go to its own family. It belongs to those people who have occupied it afresh. Let us decide it If we cannot decide about Delhi and Coorg, how can Parliament decide this question? Parliament has no voice in deciding such matters. It is we who have to decide this question, Why should we delegate our power to the Parliament If my friends Shri Deshbandhu Gupta and others agree, instead of leaving this question to be decided by Parliament, we may decide to band over Delhi to Punjab and Coorg and Ajmer-Merwara to their neighbouring States. This will result in some savings also. That is my proposal.

Shri Jainarain Vyas (Jodhpur State): Does he want also New Delhi to go to the Punjab ?

Shri Mahabir Tyagi: Let it go to heavens.

Shri Mohan Lal Gautam (United Provinces: General): *[Mr. President, the issue regarding Delhi deserves a serious consideration. I do not think that there is any one in this Constituent Assembly who would like to confer less rights on one part of the country and more on another. It is plain, therefore, that no one here would wish to retain Chief Commissionership in any place Retention of Chief Commissioner's rule in any part of the country would in effect mean a diminution of the rights of the people of that territory. We are, therefore, in complete agreement that the office of Chief Commissioner should not be retained anywhere. I have no doubt that the several Chief Commissioner's provinces that are in existence at present will be merged one by one with some territory or the other. But Delhi and more particularly New Delhi do not fall in this category for the circumstances governing a decision in their case are somewhat different. I therefore, request the House that while considering the question relating to Delhi it should treat New Delhi and the countryside of Delhi as distinct entities by themselves. There can be no difference of opinion on the question that New Delhi, where three-fourth of the property belongs to the Government of India, where the Foreign Embassies are situated, Which is the seat of the Government of India, should not be included in a petty province of some Lieutenant-Governor. At any rate I would not approve of any such proposal. Therefore you should, while considering this question, exclude New Delhi from your calculations. Once this is done the issue would be considerably simplified. I am therefore of the opinion that New Delhi should be separated and put under the direct administration of the Government of India, without any body having the right to interfere.

We can now take into consideration the question as to what is to be done with the rest ? If your object be to develop the remaining territory suitably, do you think that a Lieutenant-Governor's Province would be sufficiently big for doing so? Would it be in a position to secure the same rights to its people as are enjoyed by the people of the Governors' provinces? When the administration is under a Lieutenant-Governor or the authority is divided between the Government of India and the Members of this House, the public will not have the same rights as are enjoyed by the adjoining provinces of the Punjab or the United Provinces.

The next question for consideration is whether 200 or 300 villages and a small city will be able to bear the financial burden of a Lieutenant-Governor. It can be said emphatically that it cannot do so. The administration of this region would not therefore run efficiently. It is clear that the administration of such a small unit would not be able to function efficiently. It is thus plain that such a small unit cannot support its existence. The next solution that naturally occurs to the mind is its merger with a neighbouring province. So far as the United Provinces is concerned, Shri Deshbandhu has referred to the imperialism of the United Provinces and stated that it goes on absorbing territory after territory. I would like to state it plainly that United Provinces has no desire to absorb any territory within itself. If three small States have been merged with it, it is because they could not be merged with any other province. They were three islands in the United Provinces. When the question of Dholpur and Bharatpur arose, the President of our Provincial Congress Committee clearly stated that they should join Rajasthan. So the United Provinces can only consider such a case when there is no other solution. When no other Doctor can provide a cure, the United Provinces has to come to the rescue. The United Provinces is not prepared to consider the case prior to that. So you must leave aside the question of the United Provinces. It will be better if Shri Desbbandhu keeps apart the issue of Imperialism. Our Province does not want to impose any imperialism. The question we have at present to consider relates only to the part left after the separation of New Delhi. The other Province with which it can be merged is the Punjab. Pandit Thakur Das Bhargava has advanced so many historical and sentimental arguments to prove that from the historical and psychological point of view Delhi should be merged in Hariyana of the East Punjab. But my arguments are somewhat different from his. I put this to you, have we or have we not to rehabilitate the East Punjab which has suffered most and which has not yet been rehabilitated so far in the last two years. It is your frontier province. We have to strengthen it. If that remains weak, our whole country will be weak. What is needed to rehabilitate her ? First of all you give her a capital, give her a place where her Government can be established, which can become the seat of her Government. Today the condition is such that Simla is the Capital of the Government of the Punjab, the ministers live in Jullundur, the University is at Ambala and the College is at Ludhiana. How long will such conditions continue in the Punjab.? If you want to rehabilitate the Punjab, her first need is a Capital; if you cannot provide her with a capital, you cannot rehabilitate her, and that will mean more delay and delay will mean that the whole Union will continue to have weak defences. Hence the first requirement is that the East Punjab should have a Capital, where her ministers can live, where it may have its own administration where it may have a university, where there may be a centre of all her institutions. Formerly that centre was in Lahore and that has been cut off from her. Now there is no developed city in the Punjab, where they could build another Capital. If such a thing had happened in the United Provinces, it would have been a different thing, for the political life of the U. P. is not centred in one city. There is Kanpur along with Lucknow, and Benaras along with Allahabad. If one city is cut off from her she can transfer her capital to the other. But this was not the case with the Punjab. There the whole of the political life was centred at Lahore. So Punjab has been a sufferer due to the cutting off of Lahore. So I propose that excluding New Delhi, the Delhi and the Civil Lines and all the villages should be merged with the East Punjab and the other proposal is that Punjab's Capital should shift to Delhi. I am suggesting this, for perhaps Shri Deshbandhu may like to merge the East Punjab in Delhi. You may merge the East Punjab in Delhi, and its capital should be located in the Civil Lines of Delhi, where the old Secretariat, the old Governor General's Lodge are situated, and you can provide a number of buildings there for the purpose. If Delhi becomes the capital, I think the rehabilitation of the East Punjab would have begun.]*

Shri Deshbandhu Gupta: *[Why not combine the United Provinces, Delhi and the Punjab into one unit?]*

Shri Mohanlal Gautam : *[I have no objection to that course if Mr. Deshbandhu would agree to adopt it and others also approve of it. But I am afraid that even Mr. Deshbandhu himself may not like to entertain this proposal for in the firm that I am proposing he would be the senior-most partner; but if the United Provinces is combined with Delhi, he would have to remain satisfied with being a junior partner therein, a prospect which I am afraid he would not welcome. But if he really likes the proposal, I cannot have any objection to it. If the interest of the country demands that Delhi be combined with the United Provinces and you also desire to accept this proposal I would most gladly accept it ?

There is another cause for this. The main reason why I wish to suggest that Delhi should be capital of the Punjab, is that all the people who hid to flee from Lahore have come to Delhi only. If there is any leadership anywhere in East Punjab, whether you view that from the standpoint of education or industry, banking or any other field, it is in Delhi at present. You would not find anywhere in East Punjab the like of what obtains in Delhi. All the big banks have moved to Delhi and they do not want to establish their branches in the East Punjab. All the big businessmen have shifted to Delhi and they do not want to leave this city. If Delhi is separated from the East Punjab, the latter would be deprived of its leadership.I am therefore of the opinion that this issue should not be left to the Parliament, but should be settled here. The portion called New Delhi should be entirely separated and the rest should be amalgamated with the East Punjab and Delhi should become the Capital of the East Punjab.]*

Chaudhri Ranbir Singh (East Punjab : General) : *[Mr. President, it is, in my opinion, no use leaving this for the Union Parliament to decide. If a decision is taken about the future Constitutional set-up for Delhi, and if it be decided that old Delhi and its rural areas as also the Himachal Pradesh be merged with the Punjab, and a decision is also taken by Constituent Assembly about similar other small regions, I think it would facilitate the Drafting of a Constitution for the Centrally administered areas, and it would not be necessary in my opinion to leave this question for the Union Parliament to decide. We too had in view the same objective, which Mr. Gupta is aiming to realise. Our leader will see that it is fulfilled some day. We do wish that Delhi should be constituted as an autonomous province, but the fact is that the conditions obtaining at present do not admit of this course being adopted. I would request Mr. Gupta to wait patiently for some time more, just as he has waited so far Patiently, for the materialization of his dream and I am sure his dream would be fulfilled one day.

In this connection I may point out that the United Provinces is a very big province. I think the people there cannot run the administration of such a big province with efficiency. Some day they will have to divide the province into two units. If that happens the neighbouring regions are sure to be joined with us. The Punjab also, in future, may be divided into two parts and I hope that when this happens its Hindi speaking areas will be joined to the divided part of United Province to form a unit. Thus two units would come into existence, that is, one Punjabi-speaking unit and a Hindi-speaking unit. In this way the demand that Mr. Gupta put forth here yesterday may be satisfied and his dream may materialise. But if Mr. Gupta does not accept my advice and persists in his demand for the formation of an autonomous province of Delhi, he may rest assured that his dream will ever remain a dream only. If his demand is conceded we the Hindi speaking people in Punjab will remain a perpetual minority there. I would, therefore, advise my Friend Mr. Gupta that for securing his objective he should demand that old Delhi and its rural areas should be merged with the Punjab. Once he takes the decision to follow this course he can urge his ideas through his daily journal, and I am confident that in that way he would be able to achieve complete success in his mission.

The second point that Mr. Gupta made here and which I do not want to repeat is that it is an undeniable fact that almost all the administrative Services of Delhi were manned by personnel loaned from the Punjab, and in particular this has ever been the case in regard to the Civil and Executive services of Delhi. Judicial appeals from Delhi Court go up even today to the Punjab High Court, The people of Delhi have to go to Simla for this purpose. But this is an inconvenience which we also have to put up with. But if the High Court were located at some other town, it is quite probable that the people of the distant districts, will be put to as great an inconvenience as we suffer from.

Mr. Gupta referred here to one other point yesterday, which I would like to challenge. If on this matter the opinion of the people of Delhi, of course excluding New Delhi, is taken, I claim that more than 60 to 70 per cent. of the people, I even hope that 80 to 90 per cent. of the people, will vote for Delhi being joined to East Punjab. About the rural areas of Delhi I can Most emphatically say that the people of these areas would like their areas to be joined to the Districts of Rohtak, Gurgaon and Karnal. There is no doubt that at least 99 per cent. of the people of the rural areas of Delhi would support such a proposal. So far as the question of Delhi proper is concerned, a conference of the people of Delhi was held yesterday under the presidentship of Shri Thakur Das Bhargava and a resolution specially demanding the merger of Delhi into Punjab, at least for the purpose of ration, was adopted. I also attended this Conference and there too I put forward the demand that the regions of Hariyana and Delhi should be constituted into one unit. If for some reasons this cannot be done, then we demand that both the regions-Hariyana and Delhi should go to Punjab.

So far as the rural areas of Delhi are concerned I can most emphatically say that 99 per cent. of the people of these areas would favour the demand made be me.

Without taking any more time of the House I would conclude with the remark that the question of Delhi should be solved here. We need not leave this issue for the Parliament to decide, because it is certain that so far as Delhi proper is concerned it would be retained as a Centrally administered area. The question should, therefore, be decided here and should not be left over to the Parliament for decision. If the question of New Delhi is not brought in to complicate the matter it would be easy to take a decision, for then all cause for hesitation and indecision would have disappeared and decisions could be take without any difficulty and according to the popular will. We need not there fore bold over this question for long. I think within these remaining eight of ten days of the current session of the Assembly we can take a decision on the matter. I agree with Mr. Gupta that it is better this question is decided by the Constituent Assembly.]*

Mohd. Hifzur Rahman (United Provinces: Muslim); *[Mr. President, Dr.Ambedkar's amendment regarding Delhi is worthy of our deep consideration. After listening to the speeches so far made in the House, I realise its importance far more.

Delhi is the unfortunate province, which even after the achievement of freedom, has been denied democracy and the application of republican principle. Today, after the country has become independent, we are not going any more to put up with that misfortune. Therefore, I think that Delhi, owing to historical and political position, deserves to be made a separate province on permanent footing. The difficulties that are said to lie in its way are not much importance to me. Both Mr. Bhargava and Mr. Gautam, have repeated pleaded for the inclusion of Delhi into the Punjab on historical grounds, I fail to understand what are those historical grounds on which Delhi is regard as a part of the Punjab. Hariyana was regarded a part of the Delhi Province but in the History of the Punjab Province Delhi has never been regarded its part. I think that in its history Delhi has its own permanent place, a even today it occupies a high position. This is not a question of carving out small provinces; Delhi is unlike Ajmer-Merwara or Coorg. Their position is quite different, so far as population and importance is concerned Delhi's position is quite different from that of the other Chief Commissioner provinces. It is intolerable for Delhi to continue any more as a Chief Commissioner's province. Our experience of the Chief Commissioner's Advise Council has been that it is no better than a farce or a plaything. But it does not mean that whenever the question of giving an independent status to Delhi province is raised, it should be put off by saying in so many beauty words that not Delhi, but East Punjab would be merged in Delhi, and that East Punjab would be regarded as a part of Delhi province. That would not change the real issue.

Sir, I would like to say that realising Delhi's importance East Punjab is trying to make Delhi its Capital, and to get Delhi merged with it. The United Provinces people say that they are not prepared for that. This refusal in itself is an admission that they are agreeable to that. This argument of theirs also shows that Delhi should be given the status of a province. Accordingly, I would tell you that Delhi had got the distinction and also capacity to give refuge to the emigrants of Lahore and the West Punjab, and it is also sheltering the trouble-stricken people of the United Provinces. Delhi's history shows that it has absorbed the influences of these two provinces of the Indian Union. But it does not mean that Delhi is a part of the Punjab or of the United Provinces. Delhi has got its permanent status like any other province. So far as I could understand, everyone is of opinion that Delhi should be made a separate province and it may not be made part of any other province.

The statement made by Honourable the Prime Minister the other day was reassuring to a great extent. But I do not think that Delhi need be separated from New Delhi. Delhi has got its own history, and we understand its difficulties as a Capital city, and I do not say that no safeguards may be provided to surmount those difficulties. I say that you may provide safeguards but New Delhi and Delhi, with its 200 or 300 villages, should be formed into a province - a separate province. Delhi must get the same rights and privileges, which are enjoyed by other provinces.

With regard to the question of leadership, that all the big leaders of the East Punjab are present at Delhi, I would say that not only of the Punjab but leaders from all over India are at Delhi now-a-days, and all of them gather together here. If the leaders of the Punjab reside here then it does not mean that Delhi should be made capital of the Punjab. Delhi has got its own history and nothing can be said against that. Take the example of Washington; although it is the capital of U.S.A. even then it has got all the privileges which are enjoyed by any other town. If it not be the case in Washington, there is the example of other European Capital cities, which enjoy the status of a separate province. Delhi also clamours for the same status; it does not want to be under an advisory Committee. It cannot accept the present system of election. Delhi should also get the same right of vote, which other provinces have got. It should also get the same freedom which is enjoyed by other provinces.

Delhi should get the same freedom and a High Court, as U. P. or Punjab have got. Delhi should get equal freedom and equal democratic privileges with other provinces. This can no more be tolerated that Delhi is a part of U. P. or Punjab. As I have said earlier, Delhi has got its own position, and it should get the same privileges which have been given to other provinces. It is not right to say that Delhi should be merged with the East Punjab, and therefore I would say that the position of Delhi should be cleared here and now.

Whatever Lala Deshbandhu Saheb has said, he has said in the capacity of a representative. He is the representative of Delhi. And whatever he said yesterday was on behalf of the whole public of Delhi. That is the voice of Delhi - the opinion of the entire citizens of Delhi. Therefore, I would like to submit that this question which is being raised is not a proper one. And I want to say that in view of the conditions prevailing in Delhi, in view of the history of Delhi and in view of the opinion of the people of Delhi, you ought to give Delhi the status of an independent province and let it enjoy all the privileges of democracy. Do not consider it a part of the East Punjab. And do not keep it under the Advisory Committee. Decide this matter here and now. The special committee which was formed has decided with unanimity that Delhi should be given the status of an independent province and it should be given the same Independence which is given to other provinces. I fail to understand why this thing has been overlooked, and why the Drafting Committee did not take notice of it. If you still want that the decision of this Special Committee should materialise, it is not too late; I should say, better late than never.

If this matter is to be put up before the Parliament, it should be done and some decision should be Sought. This matter should be clarified. A plan should be chalked out, in which it should be mentioned what type of independence would be given to Delhi. In connection with this discussion about Delhi, it is to my mind a useless thing to say that somebody is anxious to get a ministership. In these days of democracy every province, be it small or big, wants its independence and is always trying to attain it. To say about any one who wants his independence that he is doing this for his ministership is not proper and it cannot be tolerated. And if any one takes interest in such matters it does not at all mean that he is desirous of ministership. If any one was tied down in this manner during the British regime and his independence transferred to the Central Government, it cannot be tolerated in Free India these days. You ought to Prepare a plan for it, and if necessary it should be discussed in the Parliament. But I would submit that this problem should be solved here. And it should not be forgotten that Delhi is neither a part of the East Punjab nor of U. P. I shall once more say that Delhi has got its own history and it possesses an independent entity. It should get back its independence. Delhi should get back its right which has been in abeyance since the days of Rajas and Kings. By doing so you can keep your present democracy firm. In the same way as other Provinces, namely the Punjab, U. P. and Madras are today in possession of complete independence and are not like toys in the hands of Chief Commissioners, Delhi should also get its right.

In so far as civil service is concerned you know it has been divided in two parts. One half of the personnel is taken from the Punjab and the other half from the U. P. If it is a Capital, this should not be done. Personnel should be recruited from various civil services, so that they could carry on their administration. At present you recruit one half from the Punjab and the other half from the U.P. Does it mean that men from Delhi cannot carry on the administration ? If you maintain this division for the reason that men only from these Provinces can perform the best services, then this means that with the exception of the Punjab and the U. P. men of other provinces, cannot do this job. I say Delhi cannot tolerate this. Therefore I would like to submit that like other Provinces Delhi also should be a separate Province and given such rights which are enjoyed by other provinces. Delhi consists of at least three hundred villages and both New and Old Delhi are included in it. So I would like to request you to make Delhi an entirely separate and independent Province.]*

Mr. President: Babu Ram Narayan Singh.

Mr. Tajamul Husain (Bihar : Muslim) : Sir, I move that the question be now put. We have had enough discussion.

Mr. President: I have already called one honourable Member.

Shri Ram Narayan Singh (Bihar : General) : Mr. President, My Friend Mr. Tajamul Husain says that I have no concern with Delhi and that I should not speak about Delhi. The fact is that Delhi is the Capital of the country and representatives from all over India have come here. We may not be deriving any monetary benefit from Delhi, and it may be that we may not be living on the cereal produce of Delhi, but there cannot be any doubt that we at least drink the water and breath the air of Delhi. In view of this it is the duty of the Members here to see that if they cannot secure anything better for-Delhi they must at least see that justice is done to her. Besides, Delhi being the Capital of India people from all parts of the country continue coming into or going out of Delhi. Therefore, we should establish here an administrative set-up that may produce a salutary effect on the whole of the county. In view of this it is our duty to set up, after giving careful consideration to the matter, such an administration in Delhi that may serve as a model for India and the world. The representatives from East Punjab claim that Delhi should go to them and those from the U. P. demand that it should be merged with their province. I am pained to hear such things here. The Central Government, however, holds that Delhi should be a 'centrally administered area'. I fail to understand whether all this is said with regard to the land and bricks of Delhi, or with regard to its people. When we talk of justice and democracy it would lot be proper for us to merge Delhi into the Punjab or the U. P., because the people of these provinces demand this. But at the same time it should not also remain under the direct administration of the Central Government. How can the idea of keeping Delhi a subject region be entertained or supported at all? The question involved is one of self-government. Naturally, therefore, we should find out what the people of Delhi really desire, Mr. Deshbandhu Gupta is representing the people of Delhi here, and we can learn from him what the People of Delhi really demand. But if you are not prepared to accept that he correctly represents Delhi in this House, I can understand it. But then you must ascertain the wishes of the people of Delhi by holding a public meeting or a plebiscite, and you must proceed to make the constitutional arrangement for Delhi in accordance with the opinion of the people, an opinion, ascertained in the manner just now stated by me.

I would like to add one thing more in this connection. It is that nothing in this connection should be done on the basis of the opinion of some big or small personalities of some big Organisation. Justice demands that democratic government should be established in Delhi in accordance with the desire of its people.

Mr. President : The question is

"That the question be now put."

The motion was negatived.

Mr. President: Mr. B. Das.

Shri K. M. Munshi (Bombay: General): Sir, I am afraid the House did not understand what the question was. Many Members on this side say that the did not hear the question.

Mr. President: You may move again.

Shri B. Das (Orissa: General): Sir, I support the amendment moved by Dr. Ambedkar and I oppose the amendment sponsored by Shri Deshbandbu Gupta and Pandit Thakurdas Bhargava. I support Dr. Ambedkar's amendment on principle only but I do not accept at present what will be the provinces that should be administered by the Centre. Let this House decide it at a subsequent stage. I am surprised that astute lawyers like Pandit Bhargava and Deshbandhu Gupta sponsored such an amendment and they want safeguards, special privileges reserved for small petty areas like Delhi, Ajmer-Merwara, and Panth-Piploda in the Council of State or in the, Central Parliament. That is not democracy and that is not expected of Pandit Bhargava.

However, if I can give out my views as to which should be Centrally administered areas, I consider only the Andaman and Nicobar Islands should have to be maintained as a Centrally administered area for purposes of security of India and because it is going to be a place where the East Bengal emigrants will settle down. Delhi, Ajmer-Merwara, Coorg etc., were anachronisms created by the foreign rules to maintain their rule and grandeur in India. I remember Delhi for the last thirty-two years and I am very familiar with Old Delhi.

Shri Deshbandhu Gupta: You have forgotten it.

Shri B. Das: You were not in Delhi then. Old Delhi was maintained to give honours and respects and parties to the foreign rulers that lived in New Delhi and also in Old Delhi. Does my friend want to perpetuate that sort of slavery to the official dom? Why should Delhi be created a province ? It is part of the United Provinces. In culture, in ideology etc., it is either Allahabad or Lucknow. It should not become part of a Hariana province. Why should Delhi be claimed by East Punjab? The Delhi culture is the culture of U. P.

Shri Deshbandhu Gupta: U. P. culture is the culture of Delhi.

Shri B. Das: Then go to U. P. I was pleased to read the following lines last evening in the "Evening News" in which Right Angle writes:-

> "New Delhi may still be saved from the onrush of advancing slums. The Prime Minister has valiantly decided to rescue it by declaring that New Delhi should be purely under the Central Government.

Then it says further-

> "Municipal councillors with Chandni Chowk standards will not be allowed to meddle with its affairs even if one of them is allowed to flaunt himself as a Lieuf. Governor and some others as Advisers, if not diminutive Ministers."

It is the standard of municipal administration under subservience to authorities that I have seen for the last thirty-two years and I have been always ashamed that Delhi is so subservient. My view is that it must be separated from New Delhi and merged in U. P.

East Punjab must build up its own culture and its own tradition. They are afraid and they want something for nothing. They do not sit down and build their High Court and Capital town and their Ministers remain away in Simla. Why should they not come down and build their own standards of life and civilization at Chandigarh? They cannot expect that Delhi should be given to them so that they get something for nothing without any effort. Two years have passed and East Punjab people have made no efforts to build up their Capital for which I condemn the people of East Punjab and their Ministry.

As for Ajmer-Merwara it was maintained to over-awe the mighty monarchs of Rajasthan. The moment the union of Rajasthan was decided, Ajmer Merwara including Panth-Piploda ought to have been merged with Rajasthan and it should be the whole-time or part-time capital of Rajasthan. Instead, the anachronism is going on.

As for Coorg, its 40,000 people rule the administrations of India and Mysore and they occupy highest posts in the Madras Government too. Coorg provides most of our Army generals-the Cariappas, the Thimmaiyas and most of army officers. Coorg was maintained for European planters. Is this House of democracy going to perpetuate it? Coorg must go to Mysore State as it is part of Mysore in culture and in ethnical relations. It is high time Coorg is merged with Mysore.

One thing I must say in defence of Coorg. Coorg does not receive any charity from Centre. Delhi Which had a population of 6 lakhs in 1936 though Lala Deshbandhu Gupta said yesterday it is now twenty lakhs being uprooted people from Frontier province, West Punjab and East Punjab-includes only 700 villages and receives a subsidy of 1 1/2 crores, annually from the Centre. We are not concerned with the transitory population. My Friend Lala Deshbandhu Gupta will admit that Rs. 1 1/2 crores grants-in-aid does not include the subsidies that are given to numerous refugee camps. Further, Delhi received 3 1/2 crores in capital grant. Why should the Centre finance Delhi with these abnormal grants when none else get it and how can even twenty lakhs of people demand a province ? Let them go with the United Provinces, it they want their culture. Their representative Lala Deshbandhu Gupta is a Punjabi by birth and perhaps he likes to have his Hariana province. I knew Hariana cows but I only heard of Hariana province in the days of Round Table Conference when some veterans of Punjab wanted to separate from West Punjab and have a Hariana province by taking one or two divisions from U.P. That question has now been settled by act of God-by Partition. Now there is no question of Hariana province. Culturally I maintain Delhi must go to U.P. Yesterday our Premier made a statement and reminded the House and my Friend Sjt. Gupta that changes have occurred. Then what is the special reason adduced by Sit. Gupta to create a separate Lieut-Governor's province for Delhi ? You have done away with all reservations and special privileges.

Shri Deshbandhu Gupta : Because you are denying the ordinary privileges to the people of Delhi.

Shri B. Das: No, those privileges were denied to them by their former masters. The question today is that all of us should enjoy equal privileges, and the right thing for you is to merge in the United Provinces. Sir, this is not a mere question of supporting the amendment of Dr. Ambedkar. This House is getting committed to financial subventions and Centrally administered areas will have to be maintained at a decent level of administration. But as I have, said before, the only Centrally administered area will be the Andaman and Nicobar Islands, and their representative in both Houses of Parliament will be the Home Minister under whom that Centrally administered area will............

Shri Brajeshwar Prasad (Bihar: General): On a point of order, Sir, we are discussing Part VII of the Constitution and not dealing with the Islands of Andaman and Nicobar.

Mr. President: The honourable Member is not really discussing the Andaman and Nicobar Islands but Delhi, Ajmer-Merwara and other provinces.

Shri B. Das: My Friend Sjt. Brajeshwar Prasad will find that in one year's time there will be no other Centrally administered area than those two groups of islands that I have mentioned. We are discussing the constitutional position of Centrally administered areas, and I hope the House will have the wisdom to see that there remains no other Centrally administered area except the Andaman and Nicobar Islands.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, this small question has raised practically a storm in the House. We must, however, consider the matter from the practical point of view. There are two opposite suggestions placed before the House. One is that Delhi should be taken away and amalgamated with East Punjab. The contrary suggestion is that East Punjab should be amalgamated with Delhi. I submit that the question really is the same, and so much controversy should not have arisen. It is just like posing the question as to whether the husband should marry the wife or the wife should the husband. I think, Sir, that the question should be left at that.

I submit that the question should be looked at from a practical point of view. Delhi, Old and New, have associations. of thousands of years and it is the seat of the Government of India. Here are located a large number of Ambassadors and foreign representatives. Here the Dominion Legislature and the Houses of Parliament will sit and a large number of members will stay; and if these two cities, Old and New Delhi, are amalgamated with some neighbouring province, it may be that the seat of that Government will be removed and the difficulty would be that the Central Government and the high foreign and local officials and members of Parliament will find it highly embarrassing to look for everything to a Provincial Authority away from the Centre. My suggestion, therefore, would be this : Delhl Province should be divided into three parts. The villages to the east of Jumna should be made over to the U. P. That would be geographically a very sound thing. And then the Provincial boundary will be the river Jumna--a very natural boundary. So far as the other villages are concerned, near about Delhi, they should be amalgamated with East Punjab. But so far as the two cities are concerned, they should be combined into a Union City, run by a Corporation. There may be small units of municipal bodies here and there, but on the whole, there should be a Corporation. In fact, Old and New Delhi should be treated entirely separately and not as a part of a Provincial area.

Shri T. T. Krishnamachari (Madras: General) : Sir, the question may now be put.

Mr. President: The question is

"That the question be now put."

The motion, was adopted.

Mr. President : I will now put the amendments to vote. The first one is No. 46, moved by Professor Saksena.

The question is

"That in amendment No. 45 above, in clause (1) of the proposed article 213, the words 'Notwithstanding anything contained in this Constitution' be deleted."

Shri Deshbandhu Gupta : Sir, before the amendments are put to vote, I would request you to allow Dr. Ambedkar to give his reply to the debate.

Mr. President : I am sorry I forgot to ask Dr. Ambedkar to reply to the debate. If Dr. Ambedkar wishes to say anything, he is welcome to do so. I will put the amendment to vote, once again.

Shri T. T. Krishnsmachari: In fact the Prime Minister has practically replied to the debate, yesterday.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Mr. President, Sir with regard to the amendment moved by my Friend Lala Deshbandhu Gupta, I am quite certain that this is not the place where the amendment properly come in. The. amendment also raises a question of principle, namely, that it provides for a weightage in representation to certain areas. Now, the House will remember that at one stage, this question of weightage in representation was debated at considerable length and the House accepted the principle that weightage should not be allowed. However, I might say that by reason of article 67 where certain principles of representation are laid down, it might be possible that if some territories of India are unable to obtain even a single representative by reason of the rule, we will have to make some special provision. We cannot allow by reason of a mathematical rule to deprive any territory of representation in the State. In that connection, this matter may have to be considered, and I can say at this stage that when such areas are brought into existence, and the Drafting Committee is called upon to make some provisions with regard to their representation, then the whole matter might be examined and a fresh article, something after article 67,say article 67-A, might be incorporated. Beyond that, I cannot at this stage, say anything more.

Mr. President : I will put the amendment to vote now. As I said, I will put Professor Shibban Lal Saksena's amendment to vote again.

The question is:

"That in amendment No. 45 above, in clause (1) of the proposed article 213, the words 'Notwithstanding anything contained in this Constitution' be deleted."

I think the Noes have it.

Shri Mahavir Tyagi : Sir, there seems to be some misunderstanding. The question may again be put.

Mr. President : Yes, there seems to be some misunderstanding. I shall put the question once more :

The question is:

"That in amendment No. 45 above, in clause (1) of the proposed article 213, the words 'Notwithstanding anything contained in this Constitution' be deleted."

I think the Ayes have it.

The amendment was adopted.

Mr. President: Then I will put Mr. Deshbandhu Gupta's amendment to vote.

Shri Deshbandhu Gupta: In view of the statement made by the Honourable the Prime Minister yesterday and by Dr. Ambedkar today, I do not press my amendment at this stage. I hope necessary provision will be made at the proper time when article 67 is revised.

Mr. President: Has the honourable Member the leave of the House to withdraw his amendment ?

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then I will put article 213 as amended by Mr. Shibban Lal Saksena's amendment, to vote.

The question is:

"That article 213, as amended, stand part of the Constitution."

The motion was adopted.

Article 213, as amended, was added to the Constitution.

Article 213-A

Mr. President : Then we go to article 213-A.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That after article 213, the following new article be inserted:-

High Courts for Stages in Part II of the First Schedule	'213 (1) Parliament may by law constitute a High Court for a State for the time being specified in Part II of the First Schedule or declare any Court in any such State to be a High Court for the purposes of this Constitution.

> (2)The provisions of Chapter VII of Part VI of this Constitution shall apply in relation to every High Court referred to in clause (1) of this article as they apply in relation to a High Court referred to in article 191 of this Constitution subject to such modifications or exceptions as Parliament may by law provide.
>
> (3)Subject to the provisions of this Constitution and to any provisions of any law of the appropriate Legislature made by virtue of the powers conferred on that Legislature by or under this Constitution, every High Court exercising jurisdiction immediately before the commencement of this Constitution in relation to any State for the time being specified in Part II of the First Schedule or any area included therein shall continue to exercise such jurisdiction in relation to that State or area after such commencement.
>
> (4)Nothing in this article derogates from the power of Parliament to extend or exclude the jurisdiction of a High Court in any State for the time being specified in Part I or Part III of the First Schedule to, or from, any State for the time being specified in Part II of that Schedule or any area included within that State."

Sir, it will be remembered that when the House discussed the constitution of States in Part I, it was decided that every State should have a High Court. States in Part II are also States; consequently the provision which applies to States in Part I, namely, that each State should have an independent High Court, must also apply to States in Part II. Unfortunately, this provision had not been made in the Draft as it stands now. Consequently it has become necessary to introduce this article 213-A in order to provide that even in States included in Part II there shall be a High Court, or if there is a High Court that High Court shall be treated as a High Court. Provision is also made in clause (3) of this article that if there is no High Court and if it is not possible to create a High Court exclusively for any particular area included in States in Part II, it will be open for Parliament to declare that a certain other Court situated in any adjacent area may be treated as a High Court for purposes of that particular area. That is the purpose of this article.

Mr. President: There is no amendment to this article. Does anyone wish to say anything on it ? Then I shall put it to vote.

The question is :

"That new article 213-A stand part of the Constitution."

The motion was adopted.

Article 213-A, was added to the Constitution.

Article 214

Mr. President : Article 214. There is an amendment by Shri Brajeshwar Prasad.

Shri Brajeshwar Prasad : Sir, I am not moving my amendments.

Mr. President: Then we will take up amendment No. 52 standing in the name of

Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That with reference to amendment No. 2728 of the List of Amendments, for article 214 the following article be substituted:-

> '214. (1) Until Parliament by law otherwise provides, the constitution, powers and functions of the Coorg Legislative Council shall be the same as they were immediately before the commencement of this Constitution.
>
> (2) The arrangements with respect to revenues collected in Coorg and expenses in respect of Coorg shall, until other provision is made in this behalf by the President by order continue unchanged."'

There is nothing new in this article except that the two parts in this are separate while they were lumped together in the original article.

Mr. President: Then amendment No. 142 standing in the name of Shri Brajeshwar Prasad.

Shri Brajeshwar Prasad: Sir, I am not moving it.

Mr. President: Then there are amendments Nos. 181 and 190 standing in the name of Prof. Shibban Lal Saksena. He is not present in the House.

There are no other amendments to article 214. Does anybody wish to say anything about this article ?

I will put the article to vote. The question is:

"That proposed article 214 stand part of the Constitution."

The motion was adopted.

Article 214, was added to the Constitution.

Article 275

Mr. President: Then we go to article 275. Amendment No. 111, Dr, Ambedkar.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for article 275, the following article be substituted :-

5. Proclamation of Emergency.

(1) if the president is satisfied that a grave emergency exists whereby the security of India or of any Part of the territory is threatened, whether by war or external aggression or internal disturbance, he may, by proclamation, make a declaration to that

effect.

> (2) A Proclamation issued under clause (1) of this article (in this Constitution referred to as 'a Proclamation of Emergency')-
>
> (a) may be revoked by a subsequent Proclamation;
>
> (b) shall be laid before each House of Parliament;
>
> (c) shall cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses, of Parliament;
>
> Provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or if the dissolution of the House of the People takes place during the period of two months referred to in sub-clause (c) of this clause and the Proclamation has not been approved by a resolution passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the Proclamation have been passed by both Houses of Parliament.
>
> (3)A Proclamation of Emergency declaring that the security of India or of any part of the territory thereof is threatened by war or by external aggression or by internal disturbance may be made before the actual occurrence of war or of any such aggression or disturbance if the President is satisfied that there is imminent danger thereof.' "

This article is virtually the old article 275 as it stands in the Draft Constitution. The changes which are made by this amendment are very few. The first change that is made is in clause (1). The original words were "war or domestic violence". The present clause as amended would read as "war or external aggression, or internal disturbance." It was thought that it was much better to use these words rather than the word "domestic violence" because it may exclude external aggression, which is not actually war, or less than war.

The second change that is introduced is in sub-clause (c) of clause (2). Originally it was provided that the Proclamation shall cease to operate at the expiration of six months. It is now proposed that it should cease to operate at the expiration of two months. Six months was felt to be too long a period.

The proviso is also a new one and it provides for a case where the Proclamation is issued when the House of the People is dissolved or the Proclamation is issued during the dissolution. The provision contained in the new proviso is that if the Proclamation is issued when the House has been dissolved, or between the dissolution of the old House and the election of the new House, then the new House may ratify it within thirty days.

The last clause is self-explanatory and it merely provides what I think is the intention of clause (1) that even though there is not the actual occurrence, if the President thinks that there is an imminent danger of it, he can act under the provisions of this article.

Shri Brajeshwar Prasad : I do not wish to move any of the amendments standing in my name.

Shri H. V. Kamath (C. P. & Berar: General): Sir, may I move the amendments standing in my name all at once, because there are some in the printed list as well ?

Mr. President: But is it necessary to move them now?

Shri H. V. Kamath : The new article, except for certain portions, is the same as the old one, with the result that some of the amendments in the Printed List are relevant.

Mr. President: No. 2989 is only a verbal one; so also No. 2990; No. 2991 does not arise.

Shri H. V. Kamath : I do not propose to move 2994 and 2995.

Sir, I move :

"That in sub-clause (a) of clause (2) of article 275, after the words 'may be revoked' the words 'or varied' be inserted."

Then I come to List II, Second Week.

I move, Sir :

"That in amendment No. 111 of List I (Second Week) of Amendments to Amendments, in clause (1) of the proposed article 275, after the word 'President' the words 'acting upon the advise of his Council of Ministers' be inserted."

Sir, I move :

"That in amendment No. 111 of List I (Second Week) of Amendments to Amendments, in clause (3) of the proposed article 275, the words 'by war or by external aggression or' ; be deleted."

Sir, I move:

"That in amendment No. 111 of List I (Second Week) of Amendment to Amendments, in clause (3) of the proposed article 275, for the words 'occurrence of war or of any such aggression or disturbance' the words 'occurrence of such disturbance' be substituted."

Before proceeding with these amendments, Sir, you will kindly permit me to make a few general observations on this very important article 275. I have ransacked most of the constitutions of democratic countries of the world-monarchic or republican-and I find no parallel to this Chapter of emergency provisions in any of the other constitutions of democratic countries in the world.

The closest approximation, to my mind, is reached in the Weimar Constitution of the Third Reich which was destroyed by Hitler taking advantage of the very same provisions contained in that constitution. That Weimar Constitution of the Third Republic exists no longer and has been replaced by the Bonn Constitution. But those emergency provisions pale, into insignificance when compared with the emergency provisions in this chapter of our Constitution. I urge therefore that this House should bestow its earnest consideration and mature judgment and all its wisdom on a consideration of this chapter. The chapter as it proceeds to its grand finale annuls to a very large extent even the fundamental rights conferred by part III of the Constitution. I shall deal with it anon when that article is reached; for the present we are concerned with this article 275.

As Dr. Ambedkar remarked, there have been two or three changes made in the Draft now before the House. The first is that besides "war" the words "external aggression" also have been inserted. It is possible in these days, when guns go off even without a formal declaration of war, that there may be external aggression without actual declaration of war. The second world war began in that fashion. Hitler did not declare war on Poland, but subsequently however Chamberlain declared war on Germany. The war in China waged by Japan since 1931 was also an undeclared war. Therefore this proposed change is very necessary and the trends of the modern world perhaps justify it, because war today can be distinct from external aggression. So it is, to my mind, necessary.

The second change refers to time-limit. Whereas the original article 275 restricted the operation of this proclamation of emergency to six months, it has now been reduced to two months. In the light of that I have not moved my amendment which sought to restrict it to six weeks.

The other changes are of a minor nature; for instance, "domestic violence" is replaced by "internal disturbances".

Coming to the provisions of this new Draft I shall take up my amendments seriatim, one by one. My first amendment seeks a change in sub-clause (a) of clause (2) of this article, which refers only to the revocation of the Proclamation. It is conceivable that circumstances may so change that a Proclamation may not completely be revoked but may be varied in a certain measure. Therefore to my mind it will be more comprehensive to include a contingency of variation along will one of revocation.

My next amendment (No. 147) deals with a very important point to which I wish to draw the earnest attention of the House. The draft article lays down that if the President is satisfied he might issue a Proclamation of emergency. Sir, when this House was discussing article 102 which deals with the Ordinance making power of the President, you, Sir, raised a very vital issue as to whether under this Constitution the President would be bound by the advice of his Council of Ministers. The Constitution provides for the President a Council of Ministers to aid and advise him in the exercise of his functions, but there is no injunction laid upon him to accept their advice. In reply to that Dr. Ambedkar observed that that matter would be gone into by the Drafting Committee and suitable changes would be made, but up till now, so far as I know, no changes in that direction have been brought before the House. Therefore that lacuna still exists. Today this new article invests the President with an extraordinary power which, as I said before, finds no parallel to the powers exercised by the executive head--nominal, figure-head, titular or otherwise--of any other democratic State in the world, monarchic or republican. Therefore this safeguard is to my mind absolutely necessary. The President must not act on his own but must consult his Council of Ministers and act upon their advice. If they advise him that such a grave emergency has arisen, then only should he be empowered by the Constitution to issue a Proclamation to that effect. He must not be invested with the sole and absolute right to issue a Proclamation by merely stating that he is satisfied. etc. This is not a mere academic point. This is a moot point. It is conceivable-God forbid that such a thing should arise-that the President and the Council of Ministers may not be seeing eye to eye with each other on various matters; there may be friction between them and the President may act on his own in the event of an emergency, without consulting his Council of Ministers. If that should happen, I shudder to think of what might befall our country. If the President goes ahead setting at naught the Council of Ministers, then the way will be paved for, firstly, a dictatorship and then perhaps to revolts and revolutions and things of that kind. It has been recognised by students of politics that the very provisions in the Weimar Constitution of the Third Republic of Germany giving extensive powers to the executive, coupled with the use made of the Power of dissolution, contributed to the rise of Herr Hitler and paved the way to his dictatorship resulting in what we all know. Compared to that article 48, of the Weimar Constitution, the provisions we are making under Chapter XI are far more drastic. I therefore earnestly appeal that this Chapter should not be passed in a hurry. It should be amended in such a way that not merely the liberty of the individual. But also the freedom and powers of the constituent units are not unduly suppressed. We should alter and revise the Chapter so as to see that the liberties guaranteed in this Constitution are real.

Then, Sir, in passing, I would like to make one observation. In this Constitution we have already provided for the ordinance-making power of the President. When Parliament is not in session the President has been empowered to issue ordinances if he is satisfied that the circumstances so require. Now I want to show how such powers can be abused. We, in good faith, pass certain articles giving certain powers hoping that they will he rightly used; but in connection with this ordinance-making power, a couple of days ago, a certain thing happened which, from my meagre knowledge of the provisions in the Government of India Act as adapted. is an abuse of the power vested in the Governor-General. Now I am not speaking of the merits of the particular Ordinance. The Ordinance for the Recovery of Abducted Persons was re-promulgated on Sunday last, two days ago. Here I would invite your attention to the Government of India Act as adapted by the India Order of 1947. The relevant section concerning ordinance-making does not provide for the re-promulgation of an Ordinance before the date of its expiry. The Ordinance expired last Sunday; but the day before, that is, Saturday, a Press Note was issued to the effect that the Ordinance will be extended from Sunday itself and that too when the Assembly was in session. So far as the Constituent Assembly is concerned, the India Act makes no difference whether it functions as a Constitution-making body or as a legislature. Therefore it would have been in the fitness of things if that Ordinance had been brought before this Assembly sitting as the legislature for a day for the purpose of considering that Ordinance. If that had been done it would have been far better than this re-promulgation. This, Sir, is one of those instances which show how powers conferred can be misused, have been misused and will be misused. We must, as far as possible provide for safeguards against the abuse of power by Governments or organisations.

Then I come to the next amendment of mine, viz., 154 of List II of Second Week. It relates to clause 3 of the proposed article 275, amendment No. 111 moved by Dr. Ambedkar. This amendment must be read with amendment 156. They go together. If these two are accepted, this clause (3) would read as follows :-

> "A Proclamation of Emergency declaring that the security of India or of any part of the territory thereof is threatened by internal disturbance may be made before the actual occurrence of such disturbance if the President is satisfied that there is imminent danger thereof."

The object of these two amendments 154 and 156 is to make a distinction between war and external aggression on one hand and internal disturbances on the other. If the article with clause (3) as moved by Dr. Ambedkar were to remain, will it not be competent for the President, even acting within the four walls of the Constitution, to proclaim an emergency when there is no war actually and there is only preparation for war and rumours of war? Modern wars in this century have been replete with such preparations for war. Even today you can say that war is imminent. Who dare say that war cannot break out any moment ? If we look at the way things are developing in Europe and in America, the danger of war seems to increase pari pasu with the years. Supposing then, a President has been installed in office who has got a lust for power and he wants to exercise it without regard for the interests of the State or the people ? We have not, as it is, provided any safeguard that he shall be bound to accept the advice of his Council of Ministers. Though there will be a Cabinet to aid him, nowhere have we laid down that he must accept the advice of the Council of Ministers. If that safeguard goes, the President may take it into his head "I have got this power. Who can stand in my way" ? There will not be any check on him. Today even if a man in the street says that war will perhaps break out shortly , nobody can say 'No' to it. Therefore if this article is passed as it is today, the President car very well take advantage, unfair advantage, or abuse of the power vested in him and proclaim an emergency when there is no actual war, just because he wants to abrogate to set at naught, to nullify, to destroy the Constitution of the State. Are we, sitting in this House as representatives of a democratic country, prepared to face a situation like that where the President might be in a position to subvert the Constitution ? We are all talking of subversive elements. Let us remember that a Constitution can be subverted not merely by agitators, rebels and revolutionaries, but also by people in office by people in Power. Therefore, Sir, these amendments of mine deserve support. They are Nos. 147, 154 and 156. The first seeks to make it obligatory on the President to act on the advice of his Cabinet, and the other two amendments do not vest this power of issuing a proclamation of emergency when there is no actual war or aggression. The President cannot say, "There is a prospect of war breaking out in the Far East or in Europe or America. Therefore I feel that a state of emergency exists. Somebody is making preparations for war not far from our borders". It is true we have no enemies but other States may regard us as their enemies. As we pass into the second half of the twentieth century, the world situation may worsen, may aggravate so far as war is concerned. We are making a Constitution which will be promulgated in the last year of the first half of this century, and we will enter upon our life as a Republic in the second half of this century, a period to my mind pregnant with possibilities, pregnant with dangers, but pregnant also with great hope and good faith. Sir, let us beware of the dangers and pitfalls in our path. Let us see to it that the Constitution that we are framing today is honoured, is observed and not subverted, not merely by agitators, rebels and revolutionaries but also by those in office or in power.

One word, more Sir, with regard to the last two amendments. Nos. 154 and 156. It is, as I said, difficult for the President, a human President, who is guided by human intellect, to judge solo, for himself, as to whether there is imminence of internal disturbance that would warrant the issue of a proclamation. Have we not vested enough power in the States, so as to avert any danger to the States by internal disturbance ? We have got adequate police forces. We have always proclaimed from the house-tops that the military will not ordinarily be called in to quell any internal disorder. The army is there to fulfil its natural function of fighting external aggression. We have got police forces in all States to put down internal disorder. If that be so, why then, when there is an imminence of any disturbance which is referred to in clause (3) of this article, should the President be empowered to issue a proclamation merely because he is satisfied that disturbance is imminent ? After a disturbance breaks out, and the conflagration spreads out, then I can appreciate that the security, peace and tranquility of India might be jeopardised. But a riot may break out somewhere in a small State. Why should the President take upon himself the responsibility of issuing a proclamation of emergency when the Constitution does not lay down that he will be guided by the advice of his Cabinet ? I think that in these matters the power vested in the Governors, in the Cabinets of the constituent units, is sufficient. I therefore feel that clause (3) as a whole is a very unwise provision and I shall be happy if this clause is deleted. If not, I would be grateful to the House if after mature consideration they agree with me that the President must be invested with this power only when there is imminent danger of internal disturbance, and-not when there is an imminence or fear of an outbreak of war or external aggression, because that is a contingency which nobody can assess, which human ingenuity cannot foresee with any degree of finality. Preparation for war may be there but there may not be any imminent danger of War. There may be thunder and lightning, but rain does not necessarily follow every thunderclap that we may hear. There is a sloka in Sanskrit which brings out this idea beautifully.

Umbodha Bahavo Fasanti Gagane Sarve pi Naitadrishah.,

Kechid Vrishtibhir ardrayanti Dharaneem. Garjanti Kechid Vritha.

You may bear speeches made by statesmen or others, speeches of warmongering, sabreratling, but that is not out-break of war. In those, circumstances, it is unwise, it is contrary to the spirit of out Constitution to invest the President with such wide, sweeping powers to which, in my judgment, there is no parallel in any other democratic constitution of the world. I commend my various amendments for the serious consideration of the House.

Mr. President: There are certain other amendments to this article No. 2996 by Pandit Hirday Nath Kunzru.

Pandit Hirday Nath Kunzru (United Provinces: General): In view of the revised Draft, I do not wish to move that amendment.

(Amendments Nos. 2997, 3000 and 3001 were not moved.)

Mr. President : All the amendments have been moved. Now the article and the amendments are open to discussion.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. President, I have very carefully listened to the speech of my honourable Friend, Mr. Kamath, on this important article about the emergency powers of the President. In fact this section seems to be frightful and it seems as if the President becomes an autocrat under this article; but after reading articles 276 and 277, I do not find there is any real apprehension for such a fear. Article 276 only provides that in this emergency the Union executive shall have power to give directives to the executives of the States and that the Union Parliament shall have powers of legislation over those subjects which are the close preserve of the provinces or the States. Article 277 only gives rights to the President and the executive to take powers in regard to financial matters provided for in articles 249 to 259. If this article had said, as article 276 has said that the operation of all the provisions of the Constitution shall be suspended and the powers of the executive of the State shall be vested in the President, of course, then there would have been some reason to oppose this article. I think our own experience in the last war has been that the war could not have been prosecuted unless the Centre had the power to make the provinces fall into line with it. There was a big famine in Bengal because the Centre had not enough powers to interfere in food arrangements in the province.I therefore think that, particularly today when our democracy is a nascent democracy, we should vest the Centre at least with these limited powers in an emergency. I personally feel that already the article is fairly moderate, the powers of the Union executive as well as Parliament are only concurrent with those of the State legislatures and if there is a war or any internal insurrection or something like that, then these powers will be the minimum that the Centre must have. We have been always fighting for a strong Centre. I think this article gives you what we have wanted so far. We will have a strong Centre and in an emergency we shall be able to make a declaration of emergercy for the welfare and the defence of the State. I do not think any person who takes the present position of the country into account can oppose this article. I, have my doubts about article 278 and the powers taken therein; but about articles 275, 276 and 277, I am sure nobody can have any objection, because they have been very carefully drafted and no change is necessary. My honourable Friend, Mr. Kamath quoted the Constitution of Germany, the Third Reich, but probably that he could have said about article 278 and not about this article. This does not give the Centre that power which the Weimar Constitution gave to the Centre in that Constitution. Here we have got only the essential power required to carry on the administration when there is a war on or where there is an internal insurrection. I do not think any Central Government can carry on and can defend the country if it is not armed at least with these powers. I therefore think it will not be proper to compare it with the Weimar Constitution. Even in America we know that during the Great War from Which we have just emerged they did not take away the powers of those States, but we must remember that in America the President is the chief of the Executive, and he himself has got powers which no other person in the world has and our President will not have those powers. I was surprised to hear Mr. Kamath telling us that in the issue of proclamations the President should be guided by his Council of Ministers. That, of course, will always be. It may not be laid down in words in the Constitution, but I think many things will have to be done by conventions. I do not think that any President will be able to do anything against the advice of his ministers and in no case, I am sure, he will be able to make a proclamation if his ministry is not with him. I feel that this article is very necessary. Now the period in the article has been reduced from six to two months and that is a great improvement, and that is the minimum in which any Act can be passed by the two Houses of Parliament.

Clause (3) says :-- "A Proclamation of Emergency declaring that the security of India or of any part of the territory thereof is threatened by war or by external aggression or by internal disturbance may be made before the actual occurrence of war or of any such aggression or disturbance if the President is satisfied that there is imminent danger thereof." I do not think that this clause is superfluous or goes too far. If we have to face, a war which we foresee and if we do not prepare beforehand, I do not think we shall be wise. In fact America entered into the war fairly long afterwards but by its lendlease policies bad become prepared for war. It was fully ready when Japan made that attack. So the question arises that if India becomes involved in a world War I think it is only proper that the President should have the power to declare an emergency and to give the Central Government power to send directives to the executive and also to enable Parliament to make laws on subjects which are at present within the jurisdiction of the States. I think this article is very necessary and there is not any portion which can be objected to. I do hope this article will meet with the acceptance of the House.

Shri Brajeshwar Prasad : Mr. President, Sir, I am in entire agreement with the principles involved in the provisions of this article. I consider this article to be very, very necessary in the interests of the people of this country, but I feel that the provisions are too inadequate, halting and insufficient to meet the needs of the hour. As far as clause (1) of the article is concerned, I feel that it requires amendment. The House should change this Clause (1) in a way that may be in accord with the necessities of the hour. I feel, Sir, that after the words, "threatened whether by war or external aggression or internal disturbance" some other words ought to be inserted. I am in favour of inserting the words "economic crisis or subversive movement". If these words are incorporated, then, there can be some facility for the President to act, and a wider sphere will be available to him. I feel, Sir, that if these two words are not acceptable to the House, then one word at least should be added and that would meet the requirements of the situation. I feel the words "or otherwise" should be inserted after the words "or internal disturbance." That would be sufficient to meet the exigencies of the moment.

Mr. President: The honourable Member has not moved any amendment.

Shri Brajeswar Prasad: I am only suggesting to the House......

Mr. President: How can the House accept that unless there is an amendment ?

Shri Brajeshwar Prasad: It can be done in one way, i.e., by asking for reconsideration of clause (1). That is a method left open to the House. There is a third way of amending this clause (1). I feel, Sir, that these words "whether by war or external aggression or internal disturbance" are redundant and these words ought to be deleted altogether. Then, this clause will read thus: "If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened? he may by proclamation make a declaration to that effect." After all, the vital thing is security of India. We do not know how that security of India is going to be threatened. Is it our intention that the security of India should not be protected if it is threatened by means other than what has been prescribed here ? I do not consider that these words "war or external aggression or internal disturbance" exhaust the entire universe of thought. There are other possibilities too by which 'the security of India can be threatened. The argument will be raised that if the security of India is threatened by any other method, the result must be internal disturbance, and therefore the words 'internal disturbance' are comprehensive. I do not accept this view of things. It only means that the President must remain a silent spectator of a rapidly deteriorating situation in the country and he has not to act unless it has resulted in internal disturbance on a large scale and magnitude. The power must be vested in the President without any restriction, the power to act if he feels that there is an emergency in this country. Internal disturbance is the climax of the drama. Is it our intention that the security of India should not be safeguarded unless the danger has reached its zenith ? I want the President to act if he feels that the growth of subversive movements has reached the proportions of an emergency even though there be no danger of internal disturbances. The mischief should be nipped in the bud. It is bad politics to wait and act only when the evil has become widespread; then it may be too late to mend matters. Let us look at China. What is happening in China should be an eye-opener to all of us. I feel we are actually passing through a period of emergency. What is happening in Bengal ? What is happening in Bengal is more or less true of the other provinces in India as well. Therefore, I am in favour of these words being deleted. I feel, Sir, that these words ought to have been added. These words were placed before the Drafting Committee in the form of an amendment in the printed list by some other Members. Probably, the reason is that those people who stand for State rights feel that if these words are incorporated, then the whole concept of provincial autonomy will become illusory and unreal, because, in the name of economic crisis or with a view to ward off subversive movements, the President can do anything he likes. But, I feel, Sir, that the security of India is a matter of far greater importance than provincial 'autonomy'.

Coming to clause (2), the provision is : "A Proclamation issued under clause (1) of this article shall be laid before each House of Parliament." I want to know why. Why should it be laid before Parliament ? Is it because of the fact that we have got a lurking fear in our mind that the President may become a dictator ? Is it because of the fear of dictatorship that we have made this provision in the Constitution ? If you say so, then I say that this safeguard is not real. It is not by making any constitutional provisions that we can ward off the danger of dictatorship in this country. On the other hand, I feel that by hedging in the powers of the President, by circumscribing his sphere, of activity, we are weakening the hands of the executive and thereby paving the way for the establishment of dictatorship in this country.

Sir, I am also opposed to Parliament having any say on this question, because I fear that a House elected on the basis of adult suffrage will consist mostly of persons who are illiterate, and raw. Is it desirable that the question of security of India should be determined by such a House ? I want to know this from the Members of the House who are opposed to me on this question. Suppose Parliament says there is no danger to the security of India, then, should the security of India be jeopardised because the members of Parliament do not consider that there is an emergency ? I think the President is in a better position to judge. He is a better judge of the situation.

There is one other point which I would like to mention. I was hesitating in my mind whether to say this or not, but I feel that it is far better I express myself very clearly. I am opposed to Parliament because I feel that I cannot trust the members of Parliament. Look at France; look at history. Nazis penetrated into all organs of the State. Ministers, legislators, army officials, all categories of servants of the States were infected with the virus of Nazism and they brought about the collapse of the State. How can Parliament elected on adult franchise be a judge of the question of security of India ? They may become fifth columnist; they may become agents of a foreign power. The growth of subversive movements is a very real one. I have more faith in the Executive than in the legislators. Therefore, I support this article with this suggestion that the words that I have suggested should be incorporated and the question of placing the Proclamation before the Houses of Parliament should not find a place in the article.

Mr. President: I did not like to interfere with the honourable Member's speech. He was speaking on an amendment of which he had given notice but which he deliberately refused to move.

Shri Brajeshwar Prasad : I would like clarification of this point.

Mr. President: No clarification is required. We all understand it. You had given notice of an amendment which wanted inclusion expressly of those words which you mentioned should be included in the article; you deliberately refused to move that amendment. And then you came forward and delivered a speech asking that the Drafting Committee should incorporate these words. I do not think it is right.

Prof. K. T. Shah (Bihar: General): Mr. President, I have been viewing the tendency, noticeable throughout this Draft Constitution, of arming the Central Executive Government with excessive authority, with deep misgivings. In this particular clause there seems to be incorporated even stronger authority and worse features of centralised authority than was found in the original article to which this is an amendment.

There are several points on which I think this amendment not only breaks new ground, but seeks to invest the President with authority and power that cannot be consistent with democratic, responsible Government as we have been taught to believe.

In the first place, Sir, the substitution of the term 'internal disturbance' for the original expression 'violence' fills me with deep concern and misgiving. These are terms not only very difficult to define; but the contrast, whatever may be the implication, seems to me to suggest unjustifiable invasion of democratic freedom. The slightest disturbance, slightest fear of disturbance in the internal management of the State, so to say, or any part of it, may entitle the President to declare a State of Emergency, and issue a proclamation on that account.

This, I think, is more serious and is brought out more prominently when we see the third part of the amendment, where it is not even the actual occurrence that is sought to be guarded against, but even a possible danger of it. The mere apprehension of it in the minds of the executive is made good ground for a proclamation of this kind to be issued. Now I feel that this is utterly indistinguishable from the series of Ordinances which were issued in 1942, wherein not only the occurrence of commission of an act was made punishable but even the likelihood of such an act being committed was made liable to action under the Ordinance. If this Government that we are constituting now, if the State that we are setting up under this Constitution, is not to be distinguishable for liberalism, for tolerance, for freedom of thought and expression to the citizen, in any way from the preceding Government, except that the complexion of the rulers would be different,--then I am afraid we are not being true to the pledges that have been given to the people of this country, viz., that Swaraj would be really Ram Raj on this earth.

I feel, Sir, that the same tendency is noticeable in another part of this amendment where a Proclamation of Emergency is said to be possible to extend or uphold if by Resolution the two Houses of Parliament approve of it. There is, however, no provision, so far as I can see, for the Houses being able to disapprove or reject the Proclamation, to declare that there was no occasion for such a Proclamation, and that as such it should be null and discontinued. It is quite possible that, at a given moment, the President, who by the way is not always obliged to accept the advice of his Ministers, acts on his own and declares a state of emergency. This may happen particularly, when a Parliament is on the eve of dissolution, and when party passions run high, and when, there is a possibility of other Ministers or Party coming into power expressly intending to discontinue the programme of the Party preceding in power, including the Proclamation of Emergency. If at that time advantage is taken of a provision like this, and acting on the apprehension that there may be "disturbance" internally in any part of India, the President should act upon his own, or even upon the advice of an aggressive Minister, to declare a state of emergency, what would happen. The new House may not like to continue, such a state of emergency. The House may want to disregard or disapprove of the proclamation. Under those circumstances, this Constitution, with all its supposed loyalty to the Lower House, makes no provision that an Emergency declared by the President can be disapproved by the Legislature. Nor is the Lower House entitled to say that there is no ground for such apprehension, and, therefore, there should be no such proclamation.

I consider this a very serious omission, even accepting the *bona fides*-and I do not doubt it-of the draftsmen in making this provision. I think the omission of the contrary provision that the Houses would be entitled to reject or disown a Presidential Proclamation leaves very serious ground to fear that all the power is to be Centralised in the Executive and the Parliament is to be reduced to be only a sort of Registration office which has to say ditto to whatever the Executive has done. I do not think this is consistent with the ideals and ambitions on which we would be inaugurating a government in the country on a democratic basis. It is indistinguishable from the series of Ordinances under which we had to live before; and under which we are liable perhaps still to continue if a provision of this kind goes unnoticed.

The danger of substituting such a thing as 'internal disturbance' for 'violence' is very serious, because disturbance can be defined according to the mood of the moment, especially if any General Election is impending, and feelings are running very high, and public sentiment is strained to very high pitch. At such a moment disturbance may occur anywhere. Such disturbances ought not to be regarded under any free constitution as a source of Emergency in which the Chief Executive would be entitled to issue a Proclamation and suspend the Constitution. Considering it also in the light of subsequent articles, and the effect of such a Proclamation, it would perhaps amount to denial of freedom to the individual or to whole units of their right to self-Government. This therefore, is a provision to which I think too strong exception cannot be taken; and I hope the House will be inclined to reconsider this position, and see that some at least of the points I am putting forward--such, for instance, as the right of the House to disapprove of any Proclamation-are included, and the security of the State should not be made an excuse--as it appears to me to be the case here-for excessive authority being vested in the Chief Executive.

Dr. P. S. Deshmukh (C. P. & Berar: General): Mr. President, after listening to the debate on this article I am very much inclined to support the amendment moved by my Friend Mr. Kamath so far as consultation of the Council of Ministers has been urged by him. This is one of the most important articles in the whole Constitution. We are clothing one particular individual with enormous powers and the powers of emergency can be utilised in his own individual discretion. There is nothing in the Draft article which has been placed before the House to show that it would be necessary for him to consult anybody or to lay down any criteria of emergency before he acts. It is a matter of complete individual discretion, and as we know individual discretion and judgements can err very often. It is for that reason that I think it is very necessary to provide that before an emergency is declared, the advice of the Council of Ministers should be sought.

Pandit Thakur Das Bhargava : It is implicit.

Dr. P. S. Deshmukh : I had already thought of that. I know it would be argued that it is unthinkable that the President would act independently without consulting his Council of Ministers. But all the same, the actual provision as it stands is such that a not very punctilious President may exercise taking the word of the Constitution and declare an emergency even when the Council of Ministers may differ from him. If such a contingency arises, I do not know what exactly would happen. The reason why I urge that explicit provision for consulting the Council of Ministers is necessary is-as Professor Shah pointed out-that we are providing for a responsible Government. Our appropriate parallel would be England and not America. And although it may be unthinkable that any President would be so irresponsible as to act without the advice of the Cabinet Ministers, it is not inconceivable, that in a given set of circumstances, he may definitely come to the conclusion, irrespective of the concurrence of the Council of Ministers, that an emergency does exist. Even if he obtains the advice of the Council of Ministers, the situation can be bad enough. It is possible, as has been pointed out by Prof. Shah, that the Ministers themselves might utilise the powers vested in the President for electioneering purposes and declare an emergency just on the eve of the elections and thus choke off the other party, and utilise the powers which are in the hands of the President for party ends. But if the President acts, irrespective of, the advice of the Council of Ministers, what will be the situation in the country ? I, have nothing to say if honourable Members are convinced that there is sufficient guarantee that the President will consult the Council of Ministers every time, and that every time the Council of Ministers will be with him; but I cannot and I am not able to follow that. If they merely rely upon the goodsense of the President, I do not agree with them, that in an important Provision like this we should trust to luck, or to chance, in a thing that is likely to affect the future destiny of India. So I would very much urge that such a thing ought not to be left to the individual judgement of a person. After all mentalities differ. An individual President may be a nervous person and just because one particular meeting does not disperse at the order of the Magistrate or solitary incidents of violence take Place he may think that there is sufficient reason to declare an emergency. There are, as we know, such nervous temperaments. And there are people who are brave enough to face the worst of calamities. So it is not proper that we should take any risk and depend upon individual temperaments and not specifically lay down something here in the Constitution, specially because it is a responsible government that we are providing for, that the President shall act only on the advice of the Council of Ministers in this respect also. My Friend Shri Brajeshwar Prasad said that the President must have the power to act and that he must have also discretion. But suppose he differs from the Council of Ministers and declares an emergency. What are his powers and how is he to act ? If the Council of Ministers differ from him, what will be the situation. There would probably be chaos, probably mutiny in the army and probably civil war in the country. God alone knows where such a thing will lead us so I do not think it is in any way undesirable to provide in the Constitution that before he declares a state of emergency, the President shall, consult the Council of Ministers. There is nothing derogatory in this. After all, even after the declaration of emergency, if the President wants to control the emergency, he must seek the assistance and aid of the executive and the Council of Ministers. There is no fun in leaving it all to individual discretion or to rely on good luck. I very strongly urge that the amendment proposed should find a I ace in the article.

Kazi Syed Karimuddin (C. P. & Berar: Muslim): Mr. President, Sir, I think the amendment moved by Dr. Ambedkar is of too sweeping a character, At least I do not find in any constitution in the world a provision parallel to the one now proposed to be enacted. In the American and English Constitutions there is absolutely no provision regarding any emergency law. However, I think, Dr. Ambedkar is probably, nervous about the West Bengal situation. We are enacting the provision at a stage in the country when we feel that a situation might arise in a province which may not be acceptable to the Centre. Mr. Brajeshwar Prasad goes to the extent of saying that he could not trust the Members of Parliament and that the matter should not be laid before Parliament. It is a very unique idea which may not be accepted by many, and I think it is not in keeping with principles of democracy. The executive that would be formed after the elections to the first Parliament or any other Parliament would be formed in keeping with the opinion of the House and any executive that does not command the confidence of the House will be thrown out. Sir, clause (3) of the amendment moved by Dr. Ambedkar lays it down that the President can suspend the Constitution of a province if there is danger of internal disturbance terrorism, subversive movements, and crimes of violence. I think these are very filmsy grounds which have been mentioned in clause (3). Internal disturbance may be between two parties. There may be quarrels in a province at the time of the election. As Prof. Shah said, passions may be roused and people might fight and quarrel. This will be internal disturbance, but surely internal disturbance should not be a ground for suspending the Constitution. Then comes "crimes of violence." Even dacoities may be crimes of violence. We have to define as to which are the sufficient grounds for setting aside the Constitution. Merely saying that crimes of violence will be one of the grounds to suspend the Constitution is quite insufficient. In every constitution in the world in which such provisions are enacted, the words, "war or rebellion or threat of war or rebellion" are mentioned. So the grounds which are now mentioned, according to me, Sir, are not sufficient for suspending the Constitution of a province. It is really very unfortunate that there is no provision in this amendment for consulting the members of the Cabinet or the provincial executive. If this amendment is accepted, then provincial autonomy is only a sham institution. Suppose, for instance, in West Bengal, the party which is in opposition to the Centre is elected; then even though the Government of West Bengal may feel that the internal disturbance in West Bengal is not sufficient for suspending the Constitution, still the will of the Centre will be imposed and the ideologies of the Centre will be imposed on that State. In other words, this who mean that no party which is in opposition to the Centre will be allowed to rule in a Province. That situation is bound to arise. For instance in West Bengal there is internal disturbance. There are subversive activities and crimes of violence. But the Constitution has not been superseded because there is a Congress Goverment which is in keeping with the views of the Central Government. But suppose for instance any other party were in power in West Bengal or in any other Province. The result will be that immediately when there is any disagreement and there is internal disturbance, the President who will be a person elected by the majority party at the Centre will declare an emergency situation in that Province. Such a situation will mean the negation of democracy, and so the suspension of the Constitution on the grounds mentioned in cluase (3) will not be justifiable. This would mean that by enacting clause (3), we are laying down no principle of democracy. There is a nervousness in our mind that if any province goes against the Centre, then this provision is so arbitrary, so unprecedented that no party can be allowed to rule in a province, but that on the slightest pretext of crimes of violence or subversive activities, the whole provincial constitution may be superseded. Therefore, my submission is that we should not enact any such provision in a state of nervousness and the amendment moved by Mr. Kamath is I think, justifiable and I support it.

Mr. Naziruddin Ahmad : Mr. President, Sir, I think clause (1) of article 275 as it is moved in the present amended form is a most important provision in the whole Constitution. Many honourable Members have expressed the fear that this might be used for suppressing the legitimate aspirations of the people and suppressing democratic institutions. But I submit that this gives merely the power to issue a Proclamation of Emergency. It does not compel or induce the President to act without much serious thought. The parallel of other countries has been cited. But I submit that democratic institutions in many other countries are well established and the people are highly law-abiding and there is very little danger of internal disorder as there is likelihood in India. I submit that we must take not a theoretical view of the affair but rather a practical view. I submit that there are real dangers threatening the internal peace of the country, apart from the fear of external aggression. The fear of war is not a mere speculation today. War may break out in any part of the globe on the slightest pretext and a little explosion in any part of the world might lead to a world-wide conflagration in which India would necessarily be involved much against her win. I, therefore, submit that so far as war and external aggressions are concerned, a power like this is absolutely necessary. Then the question of internal disorder requires to be very carefully considered. There are many dangers lurking in the way of the establishment and maintenance of democracy in this country. In India the proposed Constitution is a new experiment in democracy. There are forces of disintegration and disorder already visible everywhere. There is corruption, nepotism, favouritism and inefficiency in many parts of India today. These may lead to small disorders and gradually to misgovernment and grave general disorder, and it is necessary to guard ourselves against general disorders of that Kind. The instance of Calcutta has been cited by one honourable Member, but the fact that the emergency has not been declared so far as Calcutta is concerned is due simply to the fact that the disorders that are taking place there can be quelled by the Provincial Government. If the disorder grows wider, becomes too much to be controlled by the local authorities or even by the employment of the military, I think a Proclamation of Emergency may be necessary, although the Congress Government is in power. Forces of disorder are visible everywhere in the land. I am told by some honourable Members who have knowledge, that life is very insecure in many parts of East Punjab. On open highways, there are dacoits and robbers who are plying their trade with impunity. It is only the other day that in Agra, a small boy of about 6, the son of a rich man, was kidnapped at night. Some time later it was discovered that the boy had vanished. A number of men, including the police, set out in search parties in different directions but The boy was not to be found. Information then came to the father that the boy was in the hands of a band of dacoits safely entrenched in a dense jungle and they would give up the boy on the payment of Rs. 60,000. There were negotiations in which the police also took part and they arrived at a compromise of Rs. 30,000. With the consent of the police the amount was paid through a confederate who had been asked to approach the dacoits alone and the boy was recovered. This is not certainly an instance upon which Proclamation of Emergency should be issued, but these are instances, pointers, to show that these may develop into a general breakdown and then a Proclamation of Emergency may be necessary. During the infancy of our democracy, such a power is theoretically necessary. I wish, as other honourable Members in the House wish, that the Proclamation of Emergency would never be declared and issued, but the necessity for such powers cannot be denied. I submit that the power should remain.

Then a question has been raised as to whether the action of the President should be preceded compulsorily by the advice of the, Ministers. I submit this condition is more or less academic. So far as the issue of Ordinance is concerned, the matter is not urgent; perhaps the advice of Ministers would be necessary, but in this case, a

Proclamation of Emergency may have to be issued at very short notice. It may be that the President is on tour and he is advised that a grave emergency arises and he has to act on the spur of the moment and he should have the power even without the advice of the Ministers to issue the proclamation. But I hardly fancy that such a situation would arise. I think that when the President gets a drastic power, he would in every case and in all conscience act on the advice of the Ministers to strengthen his own hands. There is no doubt that he would consult his Ministers, but I think it is not necessary to make it a condition precedent and I should leave the matter at that.

Then there are questions of revocation. It is provided specifically that an emergency proclamation may be revoked by the President. Mr. Kamath has pointed out that the power to vary the proclamation is not specifically given, but I think it it not absolutely necessary. In fact, there is nothing preventing the President from revoking the proclamation and issuing it in an altered form. That would provide for variation and I therefore submit that the article impliedly provides for variation of the proclamation.

Then there is the condition that it should be laid before the legislature for ratification. I submit that there is no occasion of questioning the prestige of the President by enacting this provision. This is very necessary because I think that if there is a Proclamation of Emergency and if it is placed before the House the House in all probability, if there is any seriousness about the situation would support the Proclamation of Emergency. It is to ensure the support of the members, who have the authority of the people that is behind this provision. Then, if the legislature does not support it, the Proclamation of Emergency dies a natural death within thirty days from the time when the House first sits. In these circum stances, I submit that the article is well conceived. There is no defect anywhere and as a theoretical power, this should be accepted in the form in which it is prosecuted.

Mr. Tajamul Husain: Sir, this matter to my mind is very important and serious. There cannot be the least doubt that the President must have wide powers in case or an emergency-that is when the country at large or a particular part of the country is in danger. But, Sir, I submit that while I agree that wide Powers must be conferred on the President to protect the country, there must be some safeguards for the people at the same time. I have read the amendment moved by my honourable Friend, Mr. Kamath, in which he wants that unless there is actual war or an actual internal disturbance, the proclamation by the President should not issue. I quite appreciate his contention because there is a danger in issuing a proclamation when there is an apprehension that the country is in danger. For instance, even now, Sir, I tell you that the country may be considered to be in danger. It may be invaded by some foreign power. We hear that the country is internally in danger. But simply because the country appears to be in danger and the President is satisfied that the country is likely to be in danger this is not sufficient reason for him to issue a proclamation. Therefore, I suggest that some safeguards should be inserted in this article and I do think that this article should be reconsidered very carefully. As it stands, I am afraid, the people's liberty may not be safe in the hands of the President. I therefore support the amendment moved by my honourable Friend, Mr. Kamath-amendment No. 154. I am so much in favour of giving the President this extraordinary power, that I am prepared to say that even if the Legislature is sitting, he should have this power. Supposing the country is actually invaded by a foreign power and the Legislature is sitting. In that case the Legislature is bound to take some time before it passes a Bill into an Act. But for the President to issue a proclamation will take no time. So even if the Legislature be in session, the President should have that power. I think this is the only course open to us in case of actual danger. There is no other course. Something has to be done; otherwise if there is no such power there may be chaos. But if the Assembly is in session and the Proclamation is issued, it should immediately see whether it agrees with the proclamation or not. But if the Legislature is not sitting, then I submit that it should be summoned at once. There should be no delay. I do not want this Proclamation to last two, three or four months.

Shri Brajeshwar Prasad: On a point of information, I would like to know this : suppose the unfortunate condition occurs that the capital of the country has been occupied by a foreign power. How and where will the Legislature be summoned ?

Mr. Tajamul Husain : If this capital is unfortunately occupied by a foreign power, perhaps there will not be a President : why talk of the Legislature !

Shri Brajeshwar Prasad: The President will go to some other place and carry on. This happened in some countries in the second World War.

Mr. Tajamul Husain : I am very glad that the President can run away, as it did happen in the second Great World War when capitals of Russia shifted from Moscow and of France from Paris. Similarly I say to my honourable Friend, that the whole Legislature can go where the President goes. If the President can run, we too can run after him. We are not going to leave him alone. After all, it is the House of the People and if the people want the country to go to the dogs well let it go. So the people are, after all in all.

I hope I have satisfied my friend that it is absolutely essential in the interests of the people that the Legislature must be summoned immediately after the proclamation has been issued.

Now, Sir, there is another amendment moved by my Friend, Mr. Kamath-which is amendment No. 147--which says that this proclamation must be issued on the advice of the Council of Ministers. I suppose that the President will always act on the advice of the Ministers and will not go against it. But I do think it should be explicitly mentioned in the Constitution that the President is compelled to act on the advice of his Ministers. After all, the President is the nominee of the people, but the real nominees are the Council of Ministers. If they advice him to do a particular thing, he is bound to act upon that advice. Therefore, I think in a matter like this-which I consider very serious and very important--it should be inserted in the book of the Constitution that the Prime Minister and his Cabinet must be consulted by the President before the issue of a Proclamation.

Now, Sir, as regards a disturbance, internal or external, in a unit. What is to happen ? I have always been in favour that the Centre must be very strong and the Centre must control the Unit. If there is a disturbance in a particular unit, that unit is bound to take help from the Centre. Now the President will issue a Proclamation as regards the unit concerned. I agree that, as has just now been argued by Mr. Karimuddin, there is a slight danger as regards issuing a proclamation in connection with a unit which may be in danger. He has mentioned the case of Bengal. I may also mention the case of Bengal or any other units. At the moment, you will find that in all the provinces in India the party that is in power is the same as the party at the Centre. Now there are other parties trying to come to the fore, such as the Communist

Party and the Socialist Party. It does not matter which party is in power. A time will come when the Communists will be in power. The Congress cannot last for ever. No political party can last for ever. It will go as happened in England where we have had the Conservatives, Labour and the Liberals. Suppose the Communists are in power all over India and the Congress want to come back to power. But they have no power in any of the units. Now the Communists want to crush the opposition. They can very well tell the President that there is a great danger in their unit that he must help. So there must be a safeguard. This is the only danger. See what is happening in Bengal now. Whichever party it may be you must give full freedom, at the time of the next general elections, both to their agents and others to talk about things and criticise the Congress administration as much as they like. Unless this is done, this is not a free country. I admit, as I have said before, that the President must have power, but I want my honourable Friend Dr. Ambedkar to reconsider the matter in the light of what I have suggested and see that the interests of the people are safeguarded. He will see that the proclamation is not issued to crush a party which wants to come into power.

Shri Mahavir Tyagi: Sir, I rise to support the amendment moved by Dr. Ambedkar. My support is slightly weak, because the amendment itself, in my opinion, is weak. I want that the Centre should be strong by all means. It is only this clause which will maintain a permanent relationship between the Centre and the units. The only other way is the taxes that we collect or grants that we give them. There is no other formal contract or agreement between the Centre and the Units. After all, our conception of democracy is quite different from the conception in the West. No one mould of democracy can fit us here. Just as Mr. Attlee's that will not fit our Prime Minister here nor the latter's Gandhi cap fit Mr. Attlee's head. Democracy is a conception which cannot be brought and implanted here as it is found in other countries. It has to adjust itself or adapt itself according to our geography, history and our psychology. Our country; our people, our economics, our military and our strategic position and other similar considerations are all to be taken into account and democracy has to adjust itself accordingly. The only cardinal point in democracy is that the administration must be carried on according to the wishes of the people as a whole. The will of the people must prevail and so long as that is guaranteed democracy is not disturbed at all. In this case if disturbances were to go on and the Centre has no right to interfere, there will be a tendency towards disintegration. If there is a party wedded to violence and there is a revolt in a unit against the Centre this emergency power will be of use. Even if there is peace and no war and the government of a unit revolts from the Centre, I think we must have provision to meet even such cases of revolts against the Centre. If a State government does not want to have any connection with the Centre and wants to go out of the union or acts in conjunction with a neighbouring province or a foreign country the emergency has to be resorted to, and I am sorry that Dr. Ambedkar for fear either of my radical friends here or some of his colleagues in the Cabinet has made the provision slightly halting from this point of view.

Even in these words there seems to be one legal point and I hope eminent lawyers like Pandit Pant will look into it and see if there is any chance therein of accommodating my wishes also. The wording of the article is :

> "If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance he may, by Proclamation, make a declaration to that effect."

Whether by war or external aggression or internal disturbance are only three instances given by way of explanation, but it does not limit these categories. There may be other variety of emergencies too when the article could be resorted to. The main condition of the clause is that the President should be satisfied that a grave emergency exists and at once this article shall be made use of. These three categories mentioned in the article are, not exhaustive, and if it were so Dr. Ambedkar should say that only in these three emergencies the article would be made use of. There may be other emergencies, say for instance a revolt by a State. I hope in this very article there is a chance of other emergencies also being included. This should be made clear and I would like Dr. Ambedkar to make it clear. I want him to make it clear that these three emergencies are not the only ones and that there may be many others. Why cannot other emergencies also be accommodated. There should be no objection to this article, because the democratic rights of the people are guaranteed rather than usurped. The people are not disturbed at all. It is for the protection of the State that the President takes the action. A State is but a composition of the democratic rights of the people and it is for that purpose that States exist. When the very existence of a State is in danger it is for the Centre to see that the State, which is the symbol of the social guarantee of the democratic rights of each citizen under it, is protected and it is for the protection of these rights of the individual that the Central Government jumps in.

Then again, the President is elected by the whole of India. He is the sole custodian of the rights and freedom of the people. He is the person in whom the whole of India vests its confidence. So it is he who is the biggest symbol of democracy who will declare an emergency. How then will democracy be in danger ? I do not understand. Wherever the President is mentioned it means the Government at the Centre. The word President includes consultation of the opinion of the Government at the Centre. So it is the Central Government which takes over and proclaims this emergency. Again, these administrative powers are not vested in a dictator of the old days, like the Governor-General, Governor or the Secretary of State for India or any other authority nominated by him. The President's office is an elected office. The highest democratic dignity and honour are vested in the President and it is the President along with the Cabinet who announces the emergency. So, if we do not agree to arm the Centre with this emergency power, I am afraid our country, whose prestige is not yet very high and whose power is not yet big and whose neighbours on either side are enemies, will soon come to grief. We have to see that the whole of India faces her problems as one unit. This is the only article that unites all units and this is in fact a sanction behind the Union. After all there is no contractual agreement between the units and the Union. This clause is the only thing that binds the units together and prevents the people of one unit acting in a manner prejudicial to the interests of the country as a whole. Even the tendency to act in such a manner has to be curbed. Under democracy we have to act and live together. If one finger is cut off the whole body will get the pain. The Union is such a body, I conceive India as one unit and so if there is trouble in one part of the Union, the whole Union will suffer. Therefore it is for the Centre to see that there is absolute peace in all India, and to take prompt action when that peace is threatened. Sir, clause (3) which has been opposed by some friends is again very important. It is no use issuing orders after a disorder has actually started. The emergency powers must be resorted to before the emergency actually arises. So clause (3) is the most important clause as it enables action to be taken in advance. I therefore lend my whole-hearted support to it. Although my friends think that this is a reactionary provision, I do not agree with them. We must all support it. I only want that some more categories must be added to the three categories mentioned in the article. There may be other emergencies besides the three provided for. I support the amendment.

Shri Jagat Narain Lal (Bihar: General): Sir, I have come to give my wholehearted support to the amendment moved by Dr. Ambedkar. I think there will be general agreement that this emergency power is very necessary. Those who are watching the situation in the country, especially at the present time, after we have achieved independence, will agree that there is greater need in our country for emergency powers now than at any other time.

There are friends who have compared this article to Section 93 of the Government of India Act. There can be no comparison between that section which was calculated by a foreign Government to snatch away the little power that was given to us and the present provision giving the power to the President to preserve our national independence. The preservation of the independence which we have achieved is very important. My Friend, Mr. Tyagi, who supported the amendment, drew the attention of the Mover to the fact that the three categories mentioned in the clause were not exhaustive enough. May I say that they are exhaustive enough and point out that war is one actual contingency, external aggression is another which exhausts every contingency and internal disturbances also cover every contingency which can be imagined to arise within a State. I therefore see no reason for adding further categories to it. The Drafting Committee.......

Shri Brajeshwar Prasad: Why not delete it ?

Shri Jagat Narain Lal : Deletion will make the clause much wider in scope. I do not like to give more powers. The Drafting Committee have improved the original draft article. They have, instead of retaining emergency powers for six months reduced them to two months. They have also added a provision to the effect that when the legislature is dissolved, within one month after. It meets if it does not approve of it, the Ordinance would automatically cease to operate I think these provisions are enough. If, within these provisos, we are not prepared to grant emergency powers to the President, we need not grant any emergency powers at all. As a previous speaker already stated, the Ordinance is likely to have approval of the Central Cabinet. In a situation like this, I would even go further and say that, if the Central Cabinet also does not realise that an emergency has risen and fails to rise to the occasion, the President in whom the entire nation reposes its confidence should possess this power.

I do not want to add much more to what has already beer said. I accord my wholehearted support to the amendment moved by Dr. Ambedkar I hope the House will adopt it unanimously.

Shri T. T. Krishnamachari: Mr. President, my excuse in intervening in the debate at this late stage is that I do not like the public in this country to get the impression that we are putting into this Constitution something which is wholly unconstitutional or something which is going to be the means of subverting the Constitution or something which is going to nullify all the rights and privileges given to our citizens under this Constitution and concentrate in the hands of the executive of the Centre enormous powers which will ultimately make them virtual dictators in this country.

Sir, I am one of those who believe that it would be well if we could frame a Constitution without providing therein powers to the executive to abridge at any time the liberty of the citizens or do anything which is either unconstitutional or extra constitutional. I heard with attention the speech of my Friend Mr. Kamath, a very eloquent speech in which he took objection to the entire part 9 and asked whether there is any constitution in the world in which similar provisions had been embodied. He did very wisely make an exception in regard to the Weimar Constitution in which article 48 contained some provisions of this sort. Surely, the framers of any Constitution at the present day would be failing in their duty if they do not take note, in times like this, of the difficulties that abound around every country. Not merely are there threats of wars and undeclared wars and internecine disturbances, but there are also other calamities which are likely to arise partly because of economic conditions that exist within the countries and economic maladjustments which demand immediate settlement and partly because, there are forces in the world that wish to make the economic maldistribution the basis for subversive political action and in the result making these worse than what they actually are. Therefore if the Constitution framers do not provide safeguards for protecting the Constitution in times of emergencies that might arise, I feel that the framers of that Constitution would be guilty of a grave dereliction of duty. Sir, I feel that that is the excuse for our putting in this Constitution this Part IX entitled Emergency Provisions. It is not that the Drafting Committee has merely borrowed the wording of Section 102 and Section 126-A of the Government of India Act 1935. They have bestowed great thought and care to see that the Government has adequate powers to face an emergency to face an emergency which may very well threaten this Constitution, which may practically make this country come under a rule which is entirely unconstitutional They have at the same time provided enough safeguards to see that the popular voice would be heard, that the popular will will dominate whatever might be the conditions under which we will have to function under these emergency provisions.

There is another aspect of this matter which those who are critics of this Constitution should note, viz. that this, as a written Constitution, has got therefore all the defects, incidental to it. If we do not envisage the possibility of there being some disturbance in the future which will upset the Constitution and provide against that contingency, it may be that the powers that be, whoever may happen to be in power at the time would find themselves unable to act because there are no powers given to them to deal with the emergency. I would ask my friends, both Mr. Kamath and Professor Shah, to read the history of the American Constitution and to spend some time and thought over that portion of the Constitution which gives the President the powers of the Commander-in-Chief and also go into the history of that country during the years 1861 and thereafter when the whole country and the Constitution which in very many respects served as a model Constitution for us were made safe only because of a very wide interpretation of the duties, obligations and powers that the President had by virtue of the fact that be was also the Commander-in-Chief. The literature on that particular clause, the clause which gave powers to the President as the Commander-in-Chief to maintain law and order, to fight aggression and also to lead the country in times of war, is enormous. In fact, on a subsequent occasion when America came into the First World War, it was by virtue of these powers, though exercised in a different manner and though the methods followed were totally different, that President Wilson was able to get the entire economy of the country geared up to war effort. Yet, why should we, with all that experience before us, omit to put in explicit terms such safeguards in the Constitution that will protect the Constitution in times of grave danger ? Is it wise for us to come here and indulge in heroics and say "Here is something which is being sought to be done which would result in unconstitutional action being made constitutional, which will put so much power in the hands of the President and in the Central executive that will make them completely autocratic." What is the pleasure, may I ask, for those who are drafting this Constitution, in empowering somebody who is to come later on some years or perhaps some decades hence, with whom they might probably have no connection whatever, in clothing them with such extraordinary powers unless it be that their only consideration is that the Constitution that we are framing here today must be safeguarded in all circumstances ? To use a phrase which has come into vogue, it may be that the President and the executive would be exercising a form of constitutional dictatorship, acting under the provisions of Part 9. But as I said before such dictatorship would be very necessary in order to safeguard the constitution and it is a grim fact from which we cannot escape so long as the world is what it is today with the threat of war, aggression and internal strife, arising out of various causes, mainly economic, as I understand it that are ever-present. I would ask my friends who criticise these provisions, Who would like, the people outside to know that they are the champions of the liberty of the people by telling them that those who have drafted this Constitution want to encircle this country by a Constitution which gives the executive so much power that a dictatorship would result, I would ask them to consider why in several Constitutions, particularly in the French Constitution between the years 1813 and 1853, provisions have been made for the declaration of what was called a state of seige, which perhaps was the counterpart of the constitutional' dictatorship envisaged in article 48 of the Weimar Constitution. Not even a country like England is completely free from the possible exercise of such emergency powers. After the First World War England passed the Emergency Act of 1920 wherein they gave full powers to the Executive to deal with the situation as they liked and to issue proclamations of emergency subject only to Parliamentary approval and subject to a limited duration. In fact, that particular Emergency Act was not brought into being for the purpose of meeting a foreign enemy, it was not brought into being for the purpose of meeting any force which would threaten or upset the Constitution as such but in order to meet the grave economic consequences that would arise if the Government were not acting. That was the justification for a country like England framing an Act like the Emergency Act of 1920 which perhaps surpasses in its scope and comprehension any of the Acts that have been passed by the British Government in India when they were in power. I would ask my friends who criticise us for inserting this provision to look at history. Do they really want us not to provide the means by which this Constitution would he saved ? This emergency provision is merely intended to meet one purpose namely that all our efforts all these years spent in Constitution making may not go in vain and those people who will be in power in the future would be adequately empowered to save the Constitution. I would ask the House to consider this chapter as a sort of safety valve, which is intended to save the Constitution. Sir, with regard to the wording of the article that is before us it happens to be the central provision governing not merely provisions contained in articles 276, 277, 279 and 280 but of another set of provisions as well. Care has been taken in framing these articles that as soon as it would be physically possible the Parliament should be summoned and its ratification should be obtained and even the exercise of the powers under article 276, 277, 279 and 280 cannot be done without Parliament giving some kind of *imprimatur* to the action initiated by the executive. After all we are not suspending by means of these provisions sittings of Parliament. We are not suspending Parliament's powers over the Constitution and Parliament has always the right to call the executive to order; and if they find that the executive had exceeded their powers in regard to the operation of any of the provisions enacted under the emergency laws, they can always pull them up; they can dismiss the Ministry and replace them, so that it would appear on examination that we have taken very great care to see that Parliament's powers shall be kept intact and Parliament shall be summoned with the least possible delay. In fact, it may be a question of argument amongst the members of the House whether the two months that is allowed before Parliament can be summoned and their approval can be obtained which is the maximum that is allowed to the executive, is not erring on the liberal side. In a country of distances there is no point when we are enacting a statutory prohibition against the continuance of a proclamation beyond a specified period to put it under a very strait jacket, when it might be well high impossible for the Parliament to be summoned in time which is perhaps ordinarily less than a month and Parliament might need a month to discuss the various provisions that will arise as a consequence of the emergency being declared. So long as we have safeguards that the ultimate control of Parliament will remain intact these provisions really fall into their proper perspective, and there is nothing very seriously objectionable in them.

One point was raised by Mr. Kamath which has been answered by other Members, and that is that we should put in a provision somewhere here that the President cannot act except on the advice of his ministers. The whole scheme of this Constitution has been envisaged on the basis that the President is a Constitutional head even though we have not put it in so many words within the Constitution about which you rightly asked some time back. The fact still remains that the President is only a Constitutional head and nothing more. The President can only exercise on the power on the advice of his ministers and if we were put in a provision which explicitly says so then by implication it would mean that in reference to other provisions in this Constitution the President can act on his own, merely because of the fact we have put in here a specific provision that the President should act on the advice of his ministers. Unless we do it right through, it would be wrong to put in a provision of that nature here, and the purpose that we want to be served is not going to be adequately met because there is an explicit mention in one particular place. Actually the President cannot do anything excepting by consulting the ministers; and if he does so, if he assumes to himself the dictatorial powers then the provision of article 50 and the subsequent articles could be brought into operation and the President might be impeached and thrown out of office.

The other section of this part will be discussed later on because the emergency provisions fall into two parts; one is, when a grave emergency threatens the whole country the President has to take action in order to protect the Constitution; and the second is, another part which ought to be perhaps part (b) of this particular part that relates to a contingency where a President will have to interfere in the matters confined to the limits of a State. An amendment in regard to this aspect of this matter will be moved by my honourable Friend, Dr. Ambedkar in due course and there might be an opportunity of speaking thereon, but so far as this particular article 275 is concerned, we are not envisaging here what we would like to put in in the other part, namely, in regard to the powers of the Constitution to deal with an emergency or some situation that might arise in one part of the country only covered by a State. That is a totally different matter altogether and as I said, all along even in that part the Drafting Committee has taken care to see that the powers of the Parliament are not in any manner abridged. If some people criticise here that inroads have been made into the Fundamental Rights, that the citizen's privileges are curtailed, what will the representatives of the citizen in Parliament be doing at that time ? Why should my honourable Friend, Mr. Tajamul Husain take serious objection to any temporary curtailment of the free exercise of civil liberty, as it is called-God knows what it really means,-so long as there are 750 people in the Centre who have to exercise a watchful control to see that that is not unnecessarily abridged ? I have no doubt that Mr. Tajamul Husain himself will agree that there must be a necessity for civil liberty to be abridged in certain contingencies. Take, for instance, rationing. It is undoubtedly a curtailment of the civil liberty. I cannot go and get a maund of rice or wheat. We tolerate that and we should probably have to do something more than that in order to help the State through an emergency and to safeguard the Constitution; and if the civil liberties of the people are unduly restricted, I say the responsibility will be that of the ultimate rulers of the people, not that of the executive and if the executive does not obey the call of the representatives of the people who are watchful, that executive will have to go provided the peoples' representatives assert themselves. Therefore, I feel that this cry that these provisions will unduly abridge the civil liberties of the people is not right so long as; we have not abridged the powers of Parliament to see that the Government of the day does allow people that amount of civil liberty consistent with the safety of the realm and safety of the Constitution. Therefore, I say that most of the points that have been raised against these provisions are pointless because the powers of the Parliament are preserved and all that I wanted to convey by intervening in the debate was to say that nobody will be happy that he has to put the provision in this Constitution, but at the same time we would be failing in our duty if we do no put provisions in the Constitution which will enable those people who have the control of the destinies of the country in future times to safeguard the Constitution, so that people here in this House and elsewhere will understand that these emergency provisions have got to be tolerated as a necessary evil, and without those provisions it is well nigh possible that all our efforts to frame a Constitution may ultimately be jeopardized and the Constitution might be in danger unless adequate powers are given to the executive to safeguard the Constitution. Sir, I support the amendment moved by the Honourable Dr. Ambedkar.

Shri H. V. Kamath : May I tell my honourable Friend, Mr. T. T. Krishnamachari that the point I made out with reference to article 48 of the Weimar Constitution is that Hitler used those very provisions to establish his dictatorship.

Mr. President : Dr. Ambedkar may like to speak.

The Honourable Dr. B. R. Ambedkar: I do not know; so much time has been taken up in the debate. If the Members who have taken part in the debate desire that I should say something, I should be glad to do so and even then it can only be done tomorrow.

Mr. President: I think that Mr. T. T. Krishnamachari has dealt with all points that have been raised and it may not be necessary for you to reply to the points which have been raised by the Members.

Pandit Thakur Das Bhargava : We do not require any other reply.

Mr. President : I do not think it shows any disrespect to the Members who have expressed their views if you do not reply, but if you want to reply, I can not certainly prevent you from doing so. Would you take much time to reply ?

The Honourable Dr. B. R. Ambedkar: I would take some time. I thought that no reply was necessary because Mr. T. T. Krishnamachari has replied to the points already.

Prof. Shibban Lal Saksena : Let us hear him tomorrow. In any case we want to hear him.

Mr. President: I am only thinking of the time. I do not think any reply is particularly called for. I will put the amendments to vote now.

The question is :

"That in sub-clause (a) of clause (2) of article 275, after the words 'may be revoked' the words 'or varied' be inserted."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 111 of List I (Second Week) of Amendments to Amendments, in clause (1) of the proposed article 275, after the word 'President' the words 'acting upon the advice of his Council of Ministers' be inserted."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 111 of List I (Second Week) of Amendments to Amendments, in clause (3) of the proposed article 275, the words 'by war or by external aggression or' be deleted."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 111 of List I (Second Week) of Amendment to Amendments, in clause (3) of the proposed article 275, for the words 'occurrence of war or of any such aggression or disturbance' the words 'occurrence of such disturbance' be substituted."

The amendment was negatived.

President: I shall put the article as moved by Dr. Ambedkar.

The question is :

"That for article 275,the following article be substituted:-

Proclamation of Emergency.	'275. (1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance, he may, by Proclamation, make a declaration to that effect.

(2) A Proclamation issued under clause (1) of this article (in this Constitution referred to as "a Proclamation of Emergency")-

(a) may be revoked by a subsequent Proclamation;

(b) shall be laid before each House of Parliament;

(c) shall cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolution of both Houses of Parliament;

provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or if the dissolution of the House of the People takes place during the period of two months referred to in sub-clause (c) of this clause and the Proclamation has not been approved by a resolution passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the Proclamation have been passed by both Houses of Parliament.

(3) A Proclamation of Emergency declaring that the security of India or of any part of the territory thereof is threatened by war or by external aggression or by internal disturbance may be made before the actual occurrence of war or of any such aggression or disturbance if the President is satisfied that there is imminent danger thereof."'

The amendment was adopted.

Mr. President : The question is :

"That article 275 as amended, stand part of the constitution"

The motion was adopted.

Article 275, as amended, was added to the Constitution.

The Assembly then adjourned till 9 of the Clock on Wednesday, the 3rd August 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS)-VOLUME IX

Wednesday, the 3rd August 1949

The Constituent Assembly of India met in the Constitution Hall New Delhi, at Nine-of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION-(Contd.)

Article 276

Mr. President: We shall now take up article 276. There are certain amendments of which notice has been given which are in Part II of the Printed List.

(Amendment No. 3002 was not moved.)

Mr. Naziruddin Ahmad (West Bengal: Muslim) : May I point out that 3003 is a drafting amendment? It merely transposes a few words from one place to another.

The Honourable Dr. B. R. Ambedkar (Bombay: General): If that is so, I agree.

(Amendments Nos. 3004 and 3005 were not moved.)

Mr. President: No. 3006 is not exactly of a drafting nature. 3006 is consequential to 3003. So, better move both.

The Honourable Dr. B. R. Ambedkar: Sir, I beg to move:

> "That in article 276, the words 'notwithstanding anything contained in this Constitution' after the word 'then' be deleted and the words 'notwithstanding anything contained in this Constitution' be inserted at the beginning of clause (a) of the same article."

I also move :

> "That in clause (b) of article 276, the words 'notwithstanding that it is one which is not enumerated in the Union List' be added at the end".

(Amendment No. 119 of Supplementary List was not moved.)

Mr. President: There is no other amendment. Does anyone wish to speak?

Mr. Naziruddin Ahmad: Mr. President, Sir amendment 3006 for addition of some words at the end of clause (b), I submit, is already covered by the earlier part of the article. The words proposed to be added are :

"notwithstanding that it is one which is not enumerated in the Union List".

Some power are being given to the President arising out of a Proclamation of Emergency notwithstanding the fact that the subject dealt with is one not enumerated in the Union List. It gives power to the President to act on subjects in the Provincial List. But this safeguard is already there at the beginning of the article 276. Dr. Ambedkar proposes to transpose these words to the beginning of clause (a). But the sense remains the same. because the article begins with the words "Notwithstanding anything contained in this Constitution", which includes the condition "notwithstanding that it is one which is not enumerated in the Union List." So there is no need to repeat them at the end. They are already implied by the general condition "notwithstanding anything contained in this Constitution" appearing at the beginning. If we are to mention special things like this in spite of the general words, then they will have to be exhaustive, but nobody can be sure whether there will be other exceptions needing special mention. This amendment is unnecessary.

Shri T. T. Krishnamachari (Madras: General): Mr. President, Sir, I am afraid if my Friend Mr. Naziruddin Ahmad will look at section 126A of the Government of India Act, he will find why Dr. Ambedkar's amendment is necessary, because 276(b) gives executive power to the Union in times of emergency, when an emergency is declared, and these words are necessary in order to make the meaning perfectly clear. The thing has been clarified, in terms of the language used in the Government of India Act, section 126A. If he win read the section once again, be will find that there is no objection to the inclusion of these words in this article.

Mr. President: You do not wish to say anything. Dr. Ambedkar ?

The Honourable Dr. B. R. Ambedkar: No Sir. It is not necessary for me to say anything.

Mr. President: Then I will put the amendments to vote now.

The question is :

"That in article 276, the words 'notwithstanding anything contained in this Constitution' after the word 'then' be deleted and the words 'notwithstanding anything contained in this Constitution' be inserted at the beginning of clause (a) of the same article."

The amendment was adopted.

Mr. President: The question is:

'That in clause (b) of article 276 the words 'notwithstanding that it is one which Is not enumerated in the Union List' be added at the end".

The amendment was adopted.

Mr. President: Then I put the article as amended.

The question is :

'That article 276, as amended, stand part of the Constitution."

The motion was adopted.

Article 276, as amended, was added to the Constitution.

Articles 188, 277-A, 278 and 278-A

Mr. President: Then we come to article 277.

The Honourable Dr. B. R. Ambedkar: I would like to hold article 277 back, for the present.

Mr. President : Shall we then take up article 277-A ? Article 277 is held back for the present and we take up article 277-A now.

The Honourable Dr. B. R. Ambedkar: Sir, I think it would be better if three amendments were taken together, namely, amendment to drop article 188, introduction of a new article 277-A and the substitution of the old article 278 by the two new articles 278 and 278-A because they are cognate matters. They might be put separately for voting, purposes. But for discussion, I think, might be taken together.

Mr. President : Articles 188, 278 and 278-A may be taken together because they deal with cognate matters and it would be better if the discussion of all the articles is taken up together, although we may put them to vote separately.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That article 188 be deleted."

Sir, I move :

"That after article 277, the following new article be inserted:-

Duty of the Union to protect States against external aggression and internal disturbance.

'277-A. It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution'."

And then, Sir, I move amendment No. 160 of List II, which reads as follows :

"That for article 278, the following articles be substituted:-

Provisions in the case of Failure of Constitutional machinery in States.

278. (1) If the President, on receipt of a report from the Governor or Ruler of a State or otherwise, is satisfied that the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation-

(a) assume to himself all or any of the functions of the Government of the

State and all or any of the powers vested in or exercisable by the Governor or Ruler as the case may be, or any body or authority in the State other than the Legislature of the State;

(b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;

(c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court or to suspend in whole or in part the operation of any provisions of this Constitution relating to High Courts.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) Every Proclamation under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolution of both Houses of Parliament:

Provided that if any such Proclamation is issued at a time when the House of the People is dissolved or if the dissolution of the House of the People takes place during the period of two months referred to in this clause and the Proclamation has not been approved by a resolution passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the Proclamation have been passed by both Houses of Parliament.

(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the Proclamation under clause (3) of this article :

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years :

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has not been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the Proclamation have been passed by both Houses of Parliament.

"278-A. (1) Where by a Proclamation issued under clause (1) of article 278 of this Constitution it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent-

(a) for Parliament to delegate the power to make laws for the State to the President or any other authority specified by him in that behalf;

(b) for Parliament or for the President or other authority to whom the power to make laws is delegated under sub-clause (a) of this clause to make laws conferring powers and imposing duties or authorising the conferring of powers and the imposition of duties upon the Government of India or officers and authorities of the Government of India;

(c) for the President to authorise when the House of the People is not in session expenditure from the Consolidated Fund of the State pending the

> sanction of such expenditure by Parliament;
>
> (d) for the President to promulgate Ordinances under article 102 of this Constitution except when both Houses of Parliament are in session.

(2) Any law made by or under the authority of Parliament which Parliament or the President or other authority referred to in sub-clause (a) of clause (1) of this article would not, but for the issue of a Proclamation under article 278 of this Constitution, have been competent to make shall to the extent of the in competency cease to have effect on the expiration of a period of one year after the Proclamation has ceased to operate except as respects things done or omitted to be done before the expiration of the said period unless the provisions which shall so cease to have effect are sooner repealed or re-enacted with or without modification by an Act of the Legislature of the State."

Shri H. V. Kamath : (C. P. and Berar: General): Article 188 also?

The Honourable Dr. B. R. Ambedkar: I have said that 188 will be deleted. It is not really necessary to move the amendment, but to give the House an idea of the whole picture I have said that we propose to delete article 188.

Sir, I anticipate that there will be probably a full-dress debate on this article and I may at some stage be called upon to offer explanation of the points of criticism that might be raised so that I think it would be right if I did not enter upon a very exhaustive treatment of the various points that arise out of the new scheme. I propose at the outset merely to give an outline of the pattern of things which we provide by the dropping of article 188, by the addition of article 277-A and by the substitution of two new articles 278 and 278-A for the old article 278.

I think I can well begin by reminding the House that it has been agreed by the House, when we were considering the general principles of the Constitution, that the Constitution should provide some machinery for the breakdown of the Constitution. In other words, some provision should be introduced in the Constitution which would be somewhat analogous to the provisions contained in section 93 of the Government of India Act, 1935. At the stage when this principle was accepted by the House, it was proposed that if the Governor of the provinces feels that the machinery set up by this Constitution for the administration of the affairs of the Province breaks down, the Governor should have the power by Proclamation to take over the administration of the Province himself for a fortnight and thereafter communicate the matter to the President of the Union that the machinery has failed, that he has issued a Proclamation and taken over the administration to himself, and on the report made by the Governor under the original article 188 the President could act under article 278. That was the original scheme.

It is now felt that no useful purpose could be served, if there is a real emergency by which 'the President is required to act, by allowing the Governor, in the first instance, the power to suspend the Constitution merely for a fortnight. If the President is ultimately to take the responsibility of entering into the Provincial field in order to sustain the constitution embodied in this Constitution, then it is much better that the President should come into the field right at the very beginning. On the basis that that is the correct approach to the situation, namely that if the responsibility is of the President then the President from the very beginning should come into the field, it is obvious that article 188 is a futility and is not required at all. That is the reason why I have proposed that article 188 be deleted."

Now I come to article 277-A. Some people might think that article 277-A is merely a pious declaration, that it ought not to be there. The Drafting Committee has taken a different view and therefore like to explain why it is that the Drafting Committee feels that article 277-A ought to be there. I think it is agreed that our Constitution, notwithstanding the many provisions which are contained in it whereby the Centre has been given powers to override the Provinces, nonetheless is a Federal Constitution and when we say that the Constitution is a Federal Constitution it means this, that the Provinces are as sovereign in their field which is left to them by the Constitution as the Centre is in the field which is assigned to it. In other words, barring the provisions which permit the Centre to override any legislation that may be passed by the Provinces, the Provinces have a plenary authority to make any law for the peace, order and good government of that Province. Now, when once the Constitution makes the provinces sovereign and gives them Plenary powers to make any law for the peace, order and good government of the province, really speaking, the intervention of the Centre or any other authority must be deemed to be barred, because that would be an invasion of the sovereign authority of the province. That is a fundamental proposition which, I think, we must accept by reason of the fact that we have a Federal Constitution. That being so, if the Centre is to interfere in the administration of provincial affairs, as we propose to authorise the Centre by virtue of articles 278 and 278-A, it must be by and under some obligation which the Constitution imposes upon the Centre. The invasion must not be an invasion which is wanton, arbitrary and unauthorised by law. Therefore, in order to make it quite clear that articles 278 and 278-A are not to be deemed as a wanton invasion by the Centre upon the authority of the province, we, propose to introduce article 277-A. As Members will see, article 277-A says that it shall be the duty of the Union to protect every unit, and also to maintain the Constitution. So far as such obligation is concerned, it will be found that it is not our Constitution alone which is going to create this duty and this obligation. Similar clauses appear in the American Constitution. They also occur in the Australian Constitution, where the constitution, in express terms, provides that it shall be the duty of the Central Government to protect the units or the States from external aggression or internal commotion. All that we propose to do is to add one more clause to the principle enunciated in the American and Australian Constitutions, namely, that it shall also be the duty of the Union to maintain the Constitution in the provinces as enacted by this law. There is nothing new in this and as I said, in view of the fact that we are endowing the provinces with plenary powers and making them sovereign within their own field, it is necessary to provide that if any invasion of the provincial field is done by the Centre it is in virtue of this obligation. It win be an act in fulfillment of the duty and the obligation and it cannot be treated, so far as the Constitution is concerned, as a wanton, arbitrary, unauthorised act. That is the reason why we have introduced article 277-A.

With regard to articles 278 and 278-A although they appear as two separate clauses, they are merely divisions of the original article 278. 278 has something like seven clauses. The first four clauses are embodied in the new article 278. Clauses (4) onwards are put in article 278-A. The reason for making this partition, so to say, is because otherwise the whole article 278 would have been such a mouthful that probably it would have been difficult for Members to follow the various provisions contained therein. It is to break the ice, so to say, that this division has been made.

With regard to article 278, the first change that is to be noted is that the President is to act on a report from the Governor or otherwise. The original article 188 merely provided that the President should act on the report made by the Governor. The word "otherwise" was not there. Now it is felt that in view of the fact that article 277-A, which precedes article 278, imposes a duty and an obligation upon the Centre, it would not be proper to restrict and confine the action of the President, which undoubtedly will be taken in fulfilment of the duty, to the report made by the Governor of the province. It may be that the Governor does not make a report. None-the-less, the facts are such that the President feels that big intervention is necessary and imminent. I think as a necessary consequence to the introduction of article 277-A, we must also give liberty to the President to act even when there is no report by the Governor and when the President has got certain facts within his knowledge on which he thinks, he ought to act in the fulfillment of his duty.

The second change which article 278 makes is this : that originally the authority and powers of the legislature were, exercisable only by Parliament. It is now provided that this authority may be exercisable by anybody to whom Parliament may delegate its authority. It may be too much of a burden on Parliament to take factual and de facto possession of legislative powers of the provincial legislatures which may be suspended because Parliament may have already so much work that it may not be possible for it to deal with the legislation necessary for the provinces whose legislature has been suspended under the Proclamation In order, therefore, to facilitate legislation, it is now provided that Parliament may do it itself or Parliament may authorise, under certain conditions and terms and restraints, some other authority to carry on the legislation.

Another very important change that is made is that the Proclamation will cease to be in operation at the expiration of two months, unless before the expiration of that period Parliament by resolution approves its further continuance. Originally, the provision was that it will continue in operation for six months, unless extended by Parliament. In the present draft, the period is restricted to only two months. After that, if the Proclamation is to be continued, it has to be ratified by Parliament by a Resolution.

The second change that is made is this, that in the original article, if Parliament had once ratified the Proclamation, that Proclamation could run automatically without further ratification for twelve months. That position again has been altered; The twelve months is now divided into two periods of six months each and after the first ratification, the Proclamation could run for six months and then it shall have to be ratified by Parliament again. After Parliament has ratified, it will again run for six months only. There will be further ratification by Parliament so that six months is the period which is permitted for a Proclamation after it has been ratified by Parliament. Further continuance would require further ratification and we have put an outside limit of three years. At the end of three years, neither Parliament nor the President can continue the state of affairs in existence in the province under which this Proclamation has taken effect.

Then I come to article 278-A. Sub-clause (a) which provides for Parliament to delegate power to make laws for the State to the President or any other authority specified by him in that behalf is a new one.

Sub-clause (b) of the article is merely a consequential change, consequential upon sub-clause (a) of clause (1) of article 278-A. It says that authority may be conferred upon anybody, either upon the officers of the Government of India or officers of even Provincial Governments to carry into effect any law that may be made by Parliament or by any agency appointed by Parliament in this behalf.

Sub-clause (c) of clause (1) of article 278-A is a new clause. It provides for the sanctioning of the budget. In the original draft article 278 no provision was made as to how to sanction and prepare the Budget of a province whose legislature has been suspended. That matter is now made clear by the introduction of sub-clause (c) of clause (1) to article 278-A which expressly provides that the President may authorise, when the House of the People is not in session, expenditure from the Consolidated Fund of the State, pending the sanction of such expenditure by Parliament.

Sub-clause (d) makes it quite clear-which probably was already implicit in the article-that the President also can exercise his powers conferred upon him by article 102 to issue Ordinances with regard to the running of the administration of any particular province which has been taken over when both the Houses are not in session. The original article 102 was confined to Ordinances to be issued with regard to the Central Government. We now make it clear by sub-clause (d) that this power will also be exercised by the President with regard to any Ordinance that may be necessary to be passed for the conduct of the administration of a province which has been taken up.

Shri Brajeshwar Prasad (Bihar: General): Sir, I am not moving amendments Nos. 158 and 159 (List II : Second Week).

Pandit Thakur Das Bhargava (East Punjab: General): I am not moving amendment No. 202.

Shri H. V. Kamath (C. P. & Berar: General): Mr. President, may I, at the outset request you to tell the House what method or system you would like us to adopt---whether we should move the amendments to each article separately, or whether we shall move the amendments to all the four articles at once ?

Mr. President : I would like to have the amendments to all the articles moved together.

Shri H. V. Kamath: I do not, Sir, propose to move amendments No. 161 and 162 to article 278 (List II, Second Week). I shall first take up article 277-A and move the amendments that are relevant thereto. I invite the attention of the House to List IV, Second Week, amendments Nos. 220, 221 and 222.

Sir, I move :

"That in amendment No. 121 of List I (Second Week) of Amendments to Amendments in the proposed new article 277-A, for the word 'Union' the words 'Union Government' be substituted."

"That In amendment No. 121 of List I (Second Week) of Amendments to Amendments in the proposed new article 277-A, for the word 'and' where it occurs for the first time the word 'or' be substituted."

"That in amendment No. 121 of List I (Second Week) of Amendments to Amendments in the proposed new article 277-A, for the words 'internal disturbance' the words 'internal insurrection or chaos' be substituted."

Turning, Sir, to article 278 in the same list, I move, by your leave, the following amendments :-

"That in amendment No. 160 of List II (Second Week) of Amendments to Amendments, in clause (1) of the proposed article 278, the words 'or otherwise' be deleted".

'That in amendment No. 160 of List II (Second Week) of Amendments to Amendments in clause (1) of the proposed article 278, after the words 'is satisfied that' the words 'a grave emergency has arisen which threatens the peace and tranquility of the State and that' be added."

Will you permit, me, Sir, to clarify the importance of these amendments by reading out to the House how the article would read in case the amendments are accepted by the House ? Article 277-A would read, in case my amendments are accepted by the House, as follows :

"277-A. It shall be the duty of the Union Government to protect every State against external aggression or internal insurrection or chaos and to ensure that the Government of every State is carried on in accordance with the provision of this Constitution."

Article 278 (1) would read, in case my amendments are accepted by the House, as follows :-

"278. (1) If the President, on receipt of a report from the Governor or Ruler of a State, is satisfied that a grave emergency has arisen which threatens the peace and tranquility of the State and that Government of the State cannot be carried on in accordance with the provisions of this Constitution, he may, etc., etc."

So much for the formal reading of the amendments.

There are before the House today, four articles.

Mr. Naziruddin Ahmed: May I suggest that all the amendments to this article may first be moved and then general discussion held later on ?

Mr. President: Very well. Prof. Shibban Lal Saksena may move his amendments at this stage. Mr. Kamath may speak afterwards.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, I move:

That in amendment No. 160 of List II (Second Week) of Amendments to Amendments, in clause (1) of the proposed article 278, for the word 'Ruler' the words the 'Rajpramukh' be substituted."

I move:

"That in amendment No. 160 of List II (Second Week) of Amendments to Amendments, for the first proviso to clause (4) of the proposed article 278, the following be substituted :-

Provided that the President may if he so thinks fit order at any time during this period a dissolution of the State legislature followed by a fresh general election, and the Proclamation shall cease to have effect from the day on which the newly elected legislature meets in session."

Shri Brajeshwar Prasad: Mr. President, I am not moving my amendment Nos. 122, 123, 124 and 125 to this article.

Shri H. V. Kamath : I am not moving my amendments Nos. 161 and 162.

Mr. President : These are all the amendments of which there is notice. Mr.

Kamath may speak now.

Shri H. V. Kamath : I am deeply grateful to you, Sir, for giving me this opportunity of speaking on the matter brought before the House today by Dr. Ambedkar. These articles have a threefold object, though the various objects are inter-connected. Article 188 is firstly sought to be deleted and two new articles are sought to be inserted viz., 277-A and 278-A, and the old draft of article 278 is proposed to be modified in certain respects.

Taking up the motion for the deletion of article 188, may I invite the attention of Dr. Ambedkar and the House to certain observations made in the course of the debate on article 143 relating to the deletion of the provision concerning the Governor's discretionary powers ? Replying to the debate on that occasion on behalf of the Drafting Committee, Dr. Ambedkar said that the amendment in principle was welcome to him, but that there were certain difficulties with regard to the incorporation of the amendment in the Constitution. He said then that so long as articles 188 and 175 were not finalised, it would be difficult for him or the House to make up their minds finally about the amendments moved by me seeking to divest the Governor of discretionary powers conferred upon him by the Draft Constitution. May I remind him of what he said on that occasion? I am quoting from the official records of the Assembly. He said that article 143 will have to be read in conjunction with such other articles which specifically reserve the power to the Governor. Proceeding, he said:

> "It seems to me there are thee ways by which this matter of discretionary powers could be settled. One way is to omit the words suggested by Pandit Kunzru and others from article 143 and add such articles as 188 or 175 or such other provisions which the House may hereafter introduce vesting the Governor with discretionary powers, saying, notwithstanding article 143 the Governor shall have this or that power........

"The other way," Dr. Ambedkar said, "would be to say in article 143 that, except as provided in articles so and so, specifically mention articles 175 and 188. I would be quite willing to amend the last portion of article 143 if I knew at this stage what other provisions the Constituent Assembly proposes to make with regard to vesting the Governor with discretionary powers. My difficulty is, that we have not yet com to articles 278 and 188 nor have we exhausted all possibilities of other provisions vesting the Governor with discretionary powers". "If I knew that", he said, "I would agree to amend article 143, but that cannot be done now."

The point of reference on an earlier occasion was this : That point was raised by me in an amendment which was hotly debated in this House and Dr. Ambedkar promised to reconsider the matter after articles 175 and 188 had been disposed of by this House. The time has come now for him to reconsider the matter. We have disposed of article 175(2) which divest the Governor of discretionary powers in regard to legislation and we are seeking to delete article 188 which seeks to specifically confer discretionary powers on the Governor. It is high time now for the House to revert to what both Dr. Ambedkar and Shri T. T Krishnamachari said on that occasion. They said that after we disposed of this article we could come back and amend article 143 suitably.

Therefore, Sir, this consequential amendment is necessary to article 143 and I hope Dr. Ambedkar will bear in mind this fact and amend the article, suitably when the time comes for him to do so. That disposes of the amendment moved by Dr. Ambedkar for the deletion of article 188. I support it with the proviso that article 143 be amended suitably.

Now coming to article 277-A, we have laid according to this article certain duties upon the Union Government. Firstly, it should defend every constituent unit against any external aggression. Secondly, it should protect the State against internal disturbance, or I suppose Dr. Ambedkar and the Drafting Committee mean that the Union Government should prevent any internal disturbance from occuring in the State. Lastly, the duty is laid upon the Union Government to see that the Government of every State is carried on in accordance with the provisions of this Constitution. As regards the last, I am wholeheartedly in agreement with that provision that the Union Government should make it a point to see that every State honours and observes the Constitution in letter as well as in spirit. Also I have no quarrel with the provision regarding the defence of every constituent unit against external aggression. In my humble judgment, however, there is likely to be a difference of opinion as regards the middle provision of protecting the State against internal disturbance.

(At this stage Mr. President vacated the Chair which was then occupied by Mr. Vice-President, Shri T . T. Krishnamachari.)

The crucial point to my mind in this connection is, what is internal disturbance and what is not. Will any petty riot or a general *melee* or imbroglio in any State necessitate the President's or the Union Government's intervention in the internal affairs of that State. If honourable Members turn to List II of the Seventh Schedule, they will find that item I lays the responsibility for public order (but not including the use of naval, military or air forces in aid of the civil power) squarely on the shoulders of the State. That will be within the jurisdiction of the State. It is not in the Concurrent List either Public order has been made expressly a responsibility of the State Government. Now the crux of the matter is this : You say that the State must maintain public order. But through a new article 277-A you say that the Union Government shall protect every State against internal disturbance. Let us be honest about what we are going to do. It is no use having mental reservations on this important point. If we are going to whittle down provincial autonomy, let us say so in the Constitution. Let us make no bones about it. It is dishonest on our part to say in one article that public order shall be the responsibility of the State and then in another article to confer powers upon the Union Government to intervene in the internal affairs of the State on the slightest pretext of any internal disturbance. Therefore, with a view to removing this difficulty, I have moved my amendment, No. 222 of List IV (Second Week). It seeks to substitute "internal insurrection or chaos" for "internal disturbance". "Disturbance" is a very wide and elastic term. A disturbance of the human organism may range from a little pain in the finger up to hyperpyrexia or coma. So also a disturbance within a State may range from two people coming to blows to a full-fledged insurrection leading perhaps to chaotic conditions. What are we, aiming at? Do we want to confer powers upon the Union Government to see that peace, order and tranquility in the State are not jeopardised, or are we going to confer powers upon the Union Government to intervene in the internal affairs of the State? I do not think that the latter is our objective. The Preamble says that we are going to constitute India into a sovereign democratic Republic. Dr. Ambedkar just now stated that the federal scheme envisages the sovereignty of every State within the field which is allotted to it. List II of the Seventh Schedule allots public order to the State. Now, this article seeks to divest, in howsoever small or large a measure, the State Government of powers conferred upon it by the Seventh Schedule. If this article 277-A is adopted without much consideration by this House, I foresee the destruction of provincial autonomy, the subversion of provincial autonomy by the Union Government, on the pretext of averting or quelling internal disturbance. If that is our objective, let us say so, and then let us pass this article. If we are not going to do it, if it is our aim to promote provincial autonomy-no doubt the, inevitability of gradualness comes in here let us be straight about it and let us provide as an interim measure, as a provision during the *interregnum,* during the transition we are passing through during the dangerous and critical times that we are living in, let us amend this article by saying that only in the event of an insurrection or chaos shall Union Government be empowered to intervene in the internal affairs of the State, and not for any disturbance that might arise in the State. For that the State has ample powers at its disposal, the police force, the Raksha Dal and all sorts of other subsidiary forces. Can we not trust the State Government to look after its own public peace and order, to maintain tranquility within the borders of its own domains? Certainly I think that is the spirit of the Constitution which we are considering in the House and with that spirit in mind, let us not confer more powers upon the President and the Union Government than are warranted by the facts or the contingencies or the possibilities of any situation that might arise in future.

I have with regard to this matter moved three amendments; namely, 220, 221 and 222. The first is merely verbal. I thought that instead of the word "Union" the words "Union Government" would be more appropriate, because article 1 has defined the Union. Article 1 says that India shall be a Union of States. If we just say "Union" it may vague and it may mean also the various authorities in the Union. Are they required to intervene and to meddle in the affairs of the State in case of internal disturbance or external aggression or to see that the Government of the State is carried on in accordance with the provisions of the Constitution ? If Dr. Ambedkar's wisdom can appreciate this amendment of mine, I would request him to change this word "Union" to "Union Government". It is almost a verbal amendment and I leave it to their cumulative wisdom, which I am sure, is superior to mine.

The next, amendment is 221 and this also though verbal has got some sub-stance in it. The article as it has been brought forward by Dr. Ambedkar before the House today provides that the Union Government shall protect every State against external aggression and internal disturbance. According to legal terminology or constitutional parlance, I think this is rather inaccurate. This might mean that when both these things happen then only the Union can intervene. My lawyer friends will appreciate the distinction between the words "and" and "or" and it will mean that article 277-A as it stands today will mean that unless there is both external aggression and internal disturbance the Union cannot intervene in the affairs of the State. But if you say "or it Will mean that in any of the these contingencies, either external aggression or internal insurrection or chaos, the Union Government is competent to intervene.

With regard to amendment No. 222, I have already made a few observations as to why it is necessary, and with a view to be honest about what you mean about the scheme envisaged in the Constitution, the scheme of a sovereign democratic republic, seeking to promote not merely provincial autonomy, but seeking to develop *Gram Panchayats* as well right from the village *panchayats* up to the apex of Provincial autonomy. Thus the provision to confer upon the President, or the Union Government powers to intervene in any internal disturbance will be contrary to the spirit of the whole Constitution. Only in the event of an insurrection or chaos should the President of the Union be empowered to intervene in the affairs of the State.

Now coming to article 278, I would appeal to the House to listen closely and carefully if they are so minded. This article 278 is a lineal descendent of the articles that have gone before in Part XI and of the articles that have been moved by Dr. Ambedkar today. They have got to be considered together, as Dr. Ambedkar remarked in the course of moving the amendments before the House just a little while ago. There have been certain changes embodied in the new draft brought before the House today, changes in relation to article 278 as it stood in the Draft Constitution, This article 278 now before the House seeks to confer more powers upon the President than were envisaged in article 278 of the Draft Constitution. Firstly, the President is empowered to act under article 278 not merely if he gets a report from the Governor or the Ruler of the State but also otherwise. What that "otherwise" is, God only knows. Reading all these articles since yesterday and the amendments moved today, it seems to me that we are not going about the business in an honest fashion. We here representatives of a democracy, just liberated from foreign slavery, sitting in solemnity and dignity to frame the Constitution of our motherland, we are adopting subterfuges to nullify and set at naught, certain articles of certain provisions which we have already adopted. To my mind, this is not the way to go about business. It may be all right if we said that "if the President receives a report from the Governor or the Ruler of a State", well and good. After all we have already decided that the Governor shall be the nominee of the President. If that be so, cannot the President have confidence in his own nominees ? If he can not have this trust and confidence in his own nominees, let us wind up our Government and go home; let us wind up this Assembly and go home. This is not the place for us; let us go to the market-place and, let us go into the streets; let us go wherever we like, but not here in this Assembly. In that case Government should be wound up and it will have no right to function. I am using strong words, hard words, but I believe no occasions. Such as this, hard words are very necessary. Sometimes it is very necessary to be cruel, to be kind, and if I am hard today the House will pardon me. I have therefore, Sir moved amendment number 224 seeking to delete the words "or otherwise". I want that the President should be empowered to act only in case the Governor or the Ruler of a State informs him that a situation has arisen or that an emergency has arisen etc. etc. but not otherwise. What is this 'otherwise' ? Do you mean to say that the President, even granting that he is to act upon the advice of the Council of his Ministers, can intervene solely on the strength of his own judgement, perhaps butteressed or reinforced by the advice of his Council of Ministers at the Centre but without a report from the State Governor or Ruler? No, I shall not be a party to this transaction. This is a foul transaction, setting at naught the scheme of even the limited provincial autonomy which we have provided for in this Constitution, and I shall pray to God 'that He may grant sufficient wisdom to this House to see the folly, the stupidity, the criminal nature of this transaction.

Shri L. Krishnaswami Bharathi (Madras: General): Criminal? What is the crime ?

Shri H. V. Kamath : It is a constitutional crime to empower the President to interfere not merely on the report of the Governor or Ruler of a State, but otherwise. 'Otherwise' is a mischievous word. it is a diabolical word in this context and I pray to God that this will be deleted from this article. If God does not intervene today, I am sure at no distant date. He will intervene when things will take a more serious turn and the eyes of every one of us will be more awake than they are today.

I was saying that the President should be empowered to act only on the receipt of a report from the Governor or Ruler of a State. I would say here that we have deliberately altered the language as it stood in relation to article 188 and made it. far more elastic. The original draft article 278 stated that on receipt of a Proclamation, issued by the Governor of a State under article 188, if the President is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution etc., etc.... Let us turn to article 188 and see whit it stated. It is now sought to be deleted and I hope it will be deleted; there is no quarrel about that. If the House will have the patience to turn to article 188, that article stated that the Governor of a State must be satisfied that a grave emergency has arisen which threatens the peace and tranquility of the State and that it is not possible to carry on the government of the State in accordance with the provisions of this Constitution. That was the scheme visualised in article 188 and article 278 was a sequel to article 188. Today, article 278 does not, to my mind, to my untrained legal or constitutional mind, bear the full impress of article 188. In the proposed new article, it is sought to be laid down, "if the President is satisfied on receipt of a report from the Governor or Ruler of a State or otherwise that the government of the State cannot be carried on in accordance with the provisions of this Constitution." There is no reference to the peace and tranquility of the State being jeopardised. Therefore, in this connection, I have got my amendment No. 225 of List IV (Second Week), which seeks to includes these words that the President must be satisfied that a grave emergency has arisen which threatens the peace and tranquility of the State, and that-not 'or that' -the government of the State cannot be carried on in accordance with the provisions of this Constitution. There are grave dangers lurking in the article brought before us today. The dangers are that on the pretext of resolving a ministerial crises or on the pretext of purifying or reforming maladministration obtaining in a particular State, the President may have recourse to this article 278. I am sure this article is not intended for resolving any ministerial crisis that might arise in a particular State. For that the remedy lies elsewhere; the remedy lies in the dissolution of the legislature by the Governor and a reference to the electorate. The Governor is empowered by article 153 to dissolve the legislature and order fresh elections. A mere crisis or a vote of no-confidence in the Ministry by the legislature, even a repeated vote does not, cannot empower the President of the Union Government to intervene and proclaim an emergency. Nowhere in this world has this been done. If you are going to set up a new precedent, you are welcome to do it; but let us be ware of the catastrophes that have followed in the wake of arming the executive with unnecessary, uncalled for, tyrannical, dictatorial powers. What has been the experience of the countries where the Executive have been armed with such powers ? Yesterday, my honourable Friend Mr. T. T. Krishnamachari observed that these emergency provisions bear some resemblance to the Weimar Constitution, article 48; but he missed the point that I made. I had sought to show that the very article 48 of the Weimar Constitution of the Third Reich of Germany, was used by Herr Hitler to destroy democracy in Germany and to establish his dictatorship. All right; if we are aiming at that objective, if we in this country want dictatorship, I have no quarrel with them. Have it by all means; but say so; be honest; be straight; do not adopt subterfuges do not be crooked about your business. It does not behove us, it does not conform to our dignity to say one thing in one article and say quite a different thing, and seek to annul it by another article. I therefore think that this clause (1) of article 278 should not stand as it is. I hope the House will bestow earnest consideration very serious thought, bring to bear its mature judgement upon the provisions of this clause (1) of article 278 and amend it suitably. Otherwise, we are in for serious trouble in the future. We are laying ourselves open to snares and traps in our path wherein we shall be caught beyond any rescue. This whole Constitution will be in danger not so much from those who are agitating in the streets as from those who are in power, in case these articles are adopted as they are. If the House wants such a thing to happen, let it say so. Let us not say in the Preamble that we shall have a democratic republic. We are here seeking to destroy the foundations of democracy. About 278-A I have no amendment as such but I would only say that Proclamation under article 278 is issued only on rare occasions, i.e., when the President is satisfied on receipt of report from Governor or ruler of a State. "Or otherwise" should go. Otherwise the Ruler or Governor will be a mere sham and a mockery. Secondly, the report must satisfy the President not merely that the Government of the State cannot be carried on in accordance with the provisions of this Constitution, but also it should satisfy him that there is grave danger to the peace and tranquility of the State. Only in that eventuality should the President be clothed with this power to intervene in the affairs of a constituent State and not otherwise.

Article 278-A is an enabling article in respect of various matters that follow in the event of Proclamation by the President under article 278, and therefore if the conditions I have laid down are satisfied, I have not much to quarrel with 278-A which merely seeks to clarify and further expand the provisions of article 278.

Summing up, regarding article 143 the discretionary power of the Governor must go, now that we have disposed of articles 175 and 188. Perhaps the House has forgotten that Dr. Ambedkar gave an assurance that after articles 175 and 188 this matter will be taken up. We have already passed 159 for deletion of discretionary power to summon, or dissolve the Assembly. The only other articles that remained were 175 and 188. 188 we have deleted and as for 175 we have there divested the Governor of discretionary power. So 143 must be amended. I moved at that time an amendment which has now full force, which now comes into play, and I hope that that amendment will be suitably incorporated by the Drafting Committee finally.

Regarding 277-A and 278 the House is faced with a grave situation. I appeal to the House to deliberate coolly, earnestly, seriously, deeply and dispassionately upon the provisions of articles 277-A and 278 and amend them in such a manner that the Constitution that we are framing will do us credit and will not detract from the high principles enunciated in our Charter of Freedom which Pandit Nehru moved in December 1946, and will not deviate from the nobility of those ideals, from the integrity of the high canons which were laid down in the Charter of Freedom; and above all that this Constitution which we are ushering in in the last year of the first half of this century, next year, will be the crown and glory of the labours and sufferings of millions of our compatriats, and will be the foundation of a real democracy that will set an example to other countries of the World.

Prof. Shibban Lal Saksena: Mr. President, we are considering three articles together, 188, 277-A and 278 and I think these articles are of the utmost importance in this Constitution. I personally feel happy that article 188 is being deleted. 'In fact, I had given an amendment which is No. 160 in the printed list suggesting that the Governor should not be given the power to issue Proclamation and that it should be only the President who should have the authority. So I agree with the deletion, but with this deletion article 278 has been made more sweeping. In fact, article 188 had said that if at any time the Governor of a State is satisfied that a grave emergency has arisen which threatens the peace and tranquility of a State, then alone he was empowered to issue a Proclamation and article 278 was only to conform to that declaration. But the new draft does not take this fact into consideration. It says that if "the President on receipt of a report from the Governor or otherwise is satisfied", he can take action under this article. This gives very sweeping powers to the President.

There need not be any grave emergency. If only the President is satisfied that the Government cannot be carried on in accordance with this Constitution, then he can issue a Proclamation under article 278. Article 277-A puts upon Parliament the responsibility of protecting every unit of the Union against external aggression and internal disturbance so that here also it is only external aggression and internal disturbance, and internal disturbance is too wide a term. The article does not say chaos or even grave emergency. Personally I feel that the powers given in article 278 are far too sweeping. I am glad that the ultimate authority lies with the Parliament, and therefore, we cannot say that these articles nullify the entire autonomy of the State. That of course, is a very important safeguard, because,' after all has been done, ultimately the Indian Parliament remains a sovereign body and the final authority responsible for the administration of the province. The President also cannot do anything without putting the matter before Parliament, although he has two months time in which he can have his own way. I therefore think that I cannot condemn the article as strongly as my Friend Mr. Kamath has done. But I feet that by these articles we are reducing the autonomy of the States to a farce. These articles will reduce the State Governments to great subservience to the Central Government. They cannot have any independence whatsoever. I do not want the State to pull in one direction and the Centre in another, still there must be some autonomy for the States and I say articles 277-A and 278 take away this autonomy. I feel that even if these articles are omitted, there are articles 275 and 276 and these two articles give the executive all the powers necessary to deal with an emergency. If there is an emergency, you can issue a Proclamation under article 275, and by 276 you can legislate on matters relating to the Provinces. So articles 275 and 276 are quite sufficient. The introduction of articles 277-A and 278 is not desirable and these articles, in fact, lay us open to the charge that we are reducing provincial autonomy to a farce. In fact, what does article 278 say? If you see the Government of India Act, 1935, you will find that this article is almost a word for word reproduction of section 93 of that Act; only for the Parliament of England, you have substituted the Houses of Parliament in India and for the period of six months, you have put down two months in this article. The rest is all identical. And what is more interesting is that in the Government of India Act, 1935 as amended, and which is now in force in this country, this particular article is omitted. So in a way the present Government of India Act under which we are now being governed, is more progressive than the article which we are now going to pass, because in this present Government of India Act, there is no section 93, and we are re-introducing it in our new Constitution. I surely think that this is a retrograde step. I should have been much happier if these particular articles were not there. Even if you must put in these two articles I would strongly plead that at least the word "otherwise" be taken away. There is no justification for the President to interfere with a State until at least the Governor who is his own nominee has reported to him. But here he has power to interfere of his own volition even though the Governor may not be of that opinion, and the Provincial Ministers may disagree with him.

Shri Brajeshwar Prasad: Sir, I would like to have elucidation on one point. If the Governor of a Province is forcibly arrested by some people, then how can he ever inform the Centre ?

An Honourable Member: A Governor cannot be arrested.

Shri Brajeshwar Prasad: Sir, I am sorry for the word "arrested". He may be kidnapped, and what happens then ?

Prof Shibban Lal Sakesena: If such a situation arises, then article 275 is there under which the Proclamation can be issued. But here, there is not even consultation with the Governor. You do not proceed on his report, but the President proceeds on his own whims. I feel also that even if you put these two articles on the Statute Book, no President will dare to act upon them, because it will create chaos. The people will rise and ask him, "Why should you interfere, even when the Governor himself does not think that it is necessary?" so he cannot take action under this article. So I appeal to the Drafting Committee that the word "otherwise" should be removed. The President should proceed on the report of the Governor, who is his own nominee. The Governor is not put by the Legislature. He is the President's own nominee. If the President wants, he may remove the Governor and post another. At least, let there be some semblance of autonomy and democracy. If a Governor becomes hostile, remove him and put another in his place; but let him make a report before you proceed to proclaim an emergency. The President must be able to say that he had proceeded on the report of the Governor. So the word "otherwise" should go, and that will at least give the Governor some excuse for interference.

Then, Sir, I find that this article scraps the State Legislature and the Council of Ministers as well as the Governor, and the President and Parliament become the rulers of the Province. I would not have minded, if you had frankly said, "We are framing a unitary constitution." That would have been better. You could have had 250 counties in the country and one single Central Parliament.

Shri Brajeshwar Prasad: Hear, hear.

Prof. Shibban Lal Saksena: But now we have rejected such a formula and we have adopted this federal constitution with autonomous States. Therefore you must at least treat the States with some respect. I would, therefore, suggest that you must modify this article 278. Under this, you have given the power that Parliament can confirm the Proclamation after every six months and thus for three years the Proclamation could be continued. What happens during these three years ? Take for instance my own province of the United Provinces. Suppose the President decided-I do not know on what grounds, may be on information from the C. I. D.-suppose the President decided to proclaim a state 'of emergency, divested the Ministry and the Governor and the Legislature of all power and took all powers to himself and to the Parliament, then he might put some nominee of his own to rule that province. Now, for three years he can go on in this manner and after every six months he can get the Proclamation passed. But what happens after three years ? After three years, when his powers are exhausted, will that same legislature and the same ministry come in ? Suppose you commenced this process after six months of the commencement of the legislature, and you carry on for three years. So three and a half years are over. Then one and a half years remain and afterwards the same Governor will come in and the same Ministry will come in. After having been divested of power for three years, do they become abler and wiser then ? I think there is a very grave lacuna in this Constitution. We are just seeing the trouble in West Bengal; we are hoping that new elections will be held there and a new Ministry formed. Therefore I want that the President should be authorised to dissolve the legislature, to have new elections held and to have a new Ministry formed there, so that after eight months at least that Province might have a better and new Ministry. The same legislature, the same Ministry, which was supposed to be incompetent for three years, whose powers have been taken over by the President, will it be able to govern the Province for a single day ? If it is not, where is the power to dissolve the legislature or put in another

Ministry ? There is no such power. There is a grave omission in this article and it should be rectified. I therefore suggest an amendment by adding a proviso to clause (4) which says :-

> "Provided that the President may if he so thinks fit order at any time during this period a dissolution of the State legislature followed by a fresh general election, and the Proclamation shall cease to have effect from the day on which the newly elected legislature meets in session."

What happens is this. The President has taken over authority to himself because either he has found a grave emergency in the State or some disturbance which the Ministry is not able to quell and therefore his intervention is necessary. If that Ministry was competent, he then restores it after the emergency; but if he feels that it is not competent then what he does is that he orders dissolution of the legislature and holds a new election. That is probably what we are doing in West Bengal. I think we should take a lesson from that. I therefore think that even if we take these powers, we must give the provinces some democracy. So, for God's sake remove this proviso to clause which gives powers to the President to deprive that province of autonomy for three years continuously without making any provision as to what will happen afterwards. The Drafting Committee should carefully consider this question. I am not the only person, nor my Friend Mr. Kamath is, but even many of our leaders in this House are of this opinion. I find that no less a person than Pandit Govind Ballabh Pant had tabled an amendment to this article. So had Dr. H. N. Kunzru. Such men too were for deletion of this article. I hope they have not changed their minds since and will support me in this matter.

Col. B. H. Zaidi (Rampur- Banares States): Mr. President, Sir, I am not here to enter into any detailed controversy regarding the provisions of these articles. There is only one thing which I should like to say briefly and it is this. On the occasion of a very tragic event in the history of the world, George Bernard Shaw was reported to have said that it is a dangerous thing to be too good. Now to be good is not a bad thing but in Shaw's opinion it is a dangerous thing to be too good. I feel that similarly it may be a very dangerous thing for our country to be too democratic. Let us have a little, realism about our discussions and about our Constitution-making. We go on dissecting, analysing things purely from the point of view of a lawyer or an advocate. There is much too much of this hair-splitting as it is in our temperament, but this hair-splitting and this tendency to be too legalistic may be divorced from the realities of administration and the handling of political crisis. What has been the trouble in our country in the past ? Have we or have we not suffered from fissiparous tendencies? Have the various units not tried to break away from the Centre again and again ? The greatest danger, as I dimly look into the future, may be, not that the Centre will interfere too much, but that the units may resent the guidance of the Centre. Of the two things, I do not believe that the President, will be inclined to depose Governors, but that Provinces may have mal-administration over a long period and may come to grief over it unchecked by the Centre. The last speaker said, "suppose the President, on the basis of a report he receives from the C. I. D., decides that law and order has broken down and there is a grave, emergency in a certain Province. He can then proceed to take the Government of that Province into his own hands and be the absolute ruler of that Province." Well, Sir, if that can happen in my country, then we are not fit for democracy. Let there be a perfect human body with all the limbs intact, with everything looking perfectly all right, but if the spirit has departed, that body is no good, the hands cannot work, the feet cannot walk, the tongue cannot speak because the spirit has departed. If we have the finest constitution in the world but if the democratic spirit is not in the country, then that Constitution is bound to break down. What do we mean by saying that the President may take the powers into his own hands and may become an absolute dictator ? And will the 'thirty-two crores of Indians sit quietly and knuckle under ? If they would, then they would do that anyhow, no matter what Constitution you frame. We seem to think that our political salvation lies purely in laws, not in a, public opinion, which is wide awake, well-informed and vigilant. I feel that if we are going to pin our faith only on the written Constitution without bringing about the education of our new masters-the masses and the people, of India then we are going the wrong way about it. No Constitution which exists only on paper can mean the salvation of a country. What we must work for is the proper democratic spirit, the realization that everyone of us is responsible to see that the country is governed properly along enlightened, progressive, democratic lines. If that spirit and that vigilant watching of the Government of our country is not there, then no Constitution on God's earth, even if framed by Archangel Gabriel, is going to succeed. So I feel that instead of being too critical and putting the most unwarranted suspicions at the door of our would-be Presidents of the future, we should take the historical tendencies of our country into consideration and see what is likely to happen in the future and then in a realistic way, in a way which means political sagacity and wisdom and balance, we should proceed to the task of framing the Constitution. Take England, Sir. Does England put its trust wholly and solely in the written Constitution ? Much more than the written Constitution, they make use of conventions. But we seem to forget that there is anything like conventions or public opinion and we go the legalistic extreme of conjuring up most weird and fantastic visions of the future and trying to provide for everything that we can possibly think of. I think, Sir that the provision is sound, healthy and necessary in the light of our historic past and in the light of the tendencies that are staring us in the face and the fears expressed this morning are unwarranted and unjustified.

Dr. P. S. Deshmukh (C. P. & Berar: General): Mr. President, Sir, I am glad the Honourable Dr. Ambedkar expected the House to have a full-dress debate on this important provision. As the House has already seen, there has been a very important change from the first draft to the present proposals and the main and fundamental change is that we have left no powers with the Governor of a province to act in an emergency. We have concentrated all emergency powers in the hands of the President and the Parliament of India and have made the Governor merely a reporting authority so far as emergency and its Proclamation are concerned, Now this, I have no hesitation in saying, is a very radical change and a change which is neither in conformity with federation nor is likely to be administratively beneficial or even practicable. There are at least two arguments which have been suggested by the Honourable Dr. Ambedkar himself in his speech which support my contention. The one is that the spirit of this change is against the idea of federation, and secondly we would be over-burdened in the Parliament with responsibilities which naturally should be delegated to another authority. Some of my friends will probably say that when I am in favour of a unitary government, why do I not like the President or the Parliament having larger and larger powers. My answer to that is that this is neither fish nor fowl; it is neither a unitary government nor a federal government. If you wish to retain the least possible vestige of a Federation, you must not deprive the head of the unit or the state of all authority in such matters. As has been already pointed out by two previous speakers, you are going not only to override the discretion or the power of the Governor who is your own nominee, but you are going to set at naught the Ministers, the Cabinet in the State as well as the State legislatures.

Shri Mahavir Tyagi (United Provinces : General): But, does my honourable Friend realise that the Governor is not an elected officer ? He will be a nominated one.

Dr. P. S. Deshmukh: That is all the more reason why there should be more confidence in the Governor by the President as well as the Parliament, because he is not elected on the vagaries of the electorate of the province but is a person considered to be fit and competent and qualified by the President in his discretion, and that being so, it is all the more reason why before his tact and ability are exhausted, the President should not act. Even if the powers that were originally supposed to be exercised by the Governor were to last only for a fortnight, even that was necessary because that would mean giving chance to the man on the spot for doing his best to improve the situation, of which he has a far more intimate knowledge than the President or the Parliament is likely to have.

Then, Sir, coming to the practical nature of the suggestion, we find there are likely to be insurmountable difficulties in the way of the proper administration of the province. If the Governor is not clothed with this emergency power all that he will do is that he will report to the President that an emergency his arisen and a Proclamation should be issued. After that, the responsibility falls not merely on the President but the Parliament also and as soon as a body like the Parliament, consisting of hundreds of members, comes into play, one can imagine the state of affairs that is likely to result. So I think it is hopelessly unwise. My Friend Mr. Kamath, has used vehement language, but his speech, although it was very, slow in delivery, did contain cogent reasons and I hope that neither the vehemence of his language nor the exuberance of his gestures would detract from the weight of his speech. I have much sympathy with what he has said and I agree with a substantial portion of his speech. I think it is not fair either to the Governor or to the provincial governments or to the Ministers, for the President to jump in all at once without exhausting the talent and the ability that is possessed in the province either by the Governor or his advisers.

Then I would like to come to article 277-A. Article 277-A proposes that 'it shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution'. It is a very intriguing provision. We are dealing with emergency powers. I cannot see what place this article can have logically in the discussion that we are having. But it is necessary simply because we have an amended draft which is article 278 where in part (b) of clause (1) it has been stated "declare that the powers of the legislature or the State shall be exercisable by or under the authority of Parliament' and then further in sub-clause (c)-"make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to, the objects of the proclamation *including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in that State".* This pious provision of 277-A has no connection whatsoever with any emergency. It is merely a pious expression on the part of the Union Government that they are going to try their best to uphold the Constitution and not interfere unduly in the Constitution which has been laid down in this Act. I not think this sort of assurance was necessary at all, if we had not provided that the President will have the power even of setting at naught the Constitution by which the existence and the continuance of the unit or the State have been guaranteed.

So, Sir, this article 278 comes in only because we ,ire clothing the President with powers for overriding at his own sweet will the provisions of the Constitution itself. If it was not necessary to give these powers to the President, and if we were content with retaining the powers which the Governor has been enjoying in virtue of section 93 of the Act of 1935 and on which really the original article 188 was based-there would have been no necessity to make this change and to bring in article 278. I, therefore, suggest that it is far better that we retain the powers of the Governor and give him such powers as we consider necessary and as were given by section 93 of Government of India Act, 1935, although this section has now been deleted from the adaptation which governs us. I think that it absolutely essential that we should not impose this burden on the President and the Parliament and make it difficult for them to manage the affairs. Supposing more than one State is in this condition, supposing more than half a dozen States in India are in this, condition, what will the President and the Parliament do ? will they be doing their normal duties, or dealing with these States? I do not think that it is practical politics; nor does it show any appreciation of the realities of the situation. As my Friend Mr. Zaidi said, let us be more realistic and not imagine situations which may not arise at all. After all, Sir, section 93 has worked well for the last so many years and it has not been found necessary for either the Central Government or the Governor-General to intervene, in spite of the fact that we have gone through a war of colossal dimensions. If we have survived on the strength of section 93 and passed through such critical times as we have done during the last decade, I do not think an emergency is likely to arise where it would be necessary for the Parliament to interfere. On the whole, therefore, I think it would be far better to reconsider the whole matter and to leave the whole power of acting in an emergency in the first instance to the Governor. In case the situation deteriorates still further and there is no alternative left for the Parliament and the President but to interfere, then alone should the Centre intervene. Nobody could have any objection to that.

My learned Friend, Dr. Ambedkar, has quoted the American and Australian Constitutions in support of artilce 278. Fortunately or unfortunately, there is no mention of any emergency either in the Australian or American constitution. He quoted them probably to show that there will be no encroachment from the Centre so far as the units are concerned. That assurance exists in the Constitution itself. Every section of the Constitution is framed in such a way as to respect the autonomy of the units. If we mean this Constitution to work, the Centre will have to respect the autonomy of the provinces whether we specifically say so or not. If we at the Centre do not respect the provisions of the Constitution how could any one else be expected to do so? There was therefore hardly any point in the Honourable Doctor trying to derive support from foreign constitution. It would have been some consolation if he could have cited an appropriate parallel to the whole scheme now unfolded for the first time. That he could not do. Here we are taking away all the powers of the Provincial Governors and the Provincial Administrations; I do not think, Sir, this is wise or likely either to work well or be in the interest of sound and beneficial administration.

Shri Raj Bahadur (United State of Matsya): Mr. President, Sir, my only justification for encroaching upon a little of the valuable time of this august House is the provocation given by certain remarks that have dropped from the lips of my honourable Friend Mr. Kamath. He has waxed eloquent in certain pet phrases of his-I think the stock-in-trade-that he carries about. I shall begin by analysing the amendments that he has proposed to article 277-.A. He wants us, in the first instance, to add the word "Governor' after the word "Union". As a matter of fact, even a cursory reading of article 277-A would reveal that it simply incorporates a principle, whereas article 278-A provides for the machinery to implement that principle. I suppose, Sir, that it is the function of the entire Union, and the entire nation and not only the Government to protect every State against external aggression or against internal disturbance. So the word "Government" would be superfluous.

Secondly, he says that for the word "and" in the second line of the proposed article 277-A the word "or" should be substituted. I may assume him that it is not a question paper in which a choice may be given to an examinee to attempt one question or the other. As a matter of fact in both emergencies, whether it is external aggression or internal disturbance, it is the duty and function of the Union and the nation to protect every-State.

Lastly he wants us to replace the word 'disturbance' by the words 'insurrection and chaos'. I do not think it is easily possible to draw a line - a film line of discrimination - between 'disturbance' and 'insurrection and chaos'. Insurrection and chaos are only the culmination of a disturbance. As matter of fact, whenever there is a danger we should take adequate and early steps then and there......

Shri. H. V. Kamath : Will my friend prescribe a surgical operation for a mere cold or catarrh?

Shri Raj Bahadur : I would have been glad if Mr. Kamath had made some constructive suggestion. I think there is none in the House who will deny the wisdom of incorporating in the Constitution certain safeguards to be used in case of an emergency. We can easily contemplate the possibility of a break-down not only on account of a disturbance or chaos, but also on; account of other reasons. Consider for a moment the state of affairs obtaining in France, where there is a change of Government almost every other day. In such situations it will be profitable to ask the President to come in and take power in his hands until the elections are held. Similarly we can also contemplate the Possibility of a financial break-down in a Province or State. The example of the then dominion of New Found land is before us. New Found land found it difficult to carry on on account of a financial break-down with the result that she had to petition to the British Parliament to come to her aid and enable her to stand on her feet. The Parliament intervened and the ultimate result has been that on her own choice Newfoundland has now become a province of Canada. Such contingencies may arise in our country as well. Again I see no reason why we should distrust our President, who has not yet even come into being. After all who shall be the President? The President shall be our own countryman. He shall be elected by us; he will be the keeper of our democratic conscience. He shall be the guardian angel of our liberty and freedom. He shall be the first citizen of the country. I fail to understand Why Mr. Kamath should be so much suspicious about him. The time has come when we should break through the cyst of our suspicious and superstitions. Obviously enough we are living in the pre-1947 era. We talk of revolutionary spirit and revolutionary ideas. But it appears that we have not yet reconciled ourselves to the change that has taken place in the country. Why should we forget that we are the masters of our own house now? The President is to be elected by us and we should not distrust him. Cannot we put our trust in him for a brief two months in the case of an emergency? Without giving any reasons for the view held by him, my friend went on saying 'that this article is merely a "subterfuge to nullify the democratic freedom." I say it is just the opposite and the antithesis of what he has said. It is to protect and safeguard democracy and freedom that such a provision has been made to meet certain emergencies. He has taken exception to the use of the word "otherwise" in the proposed article 278. The proposed article runs:

> "If the President, on receipt of a report from the Governor or ruler of a State or otherwise, is satisfied .... he

may be proclamation. . . ."

I would like to know from Mr. Kamath whether he wants to restrict the powers of the President under this article only to the case where he receives a report from the Governor and to no other contingency. There may be other contingencies also. The President should be empowered to act under this article in those cases also where he receives information from other sources. Surely he must be allowed to act on the advice of his Cabinet or Government. I do not think that by seeking to eliminate the words "or otherwise" he would be making an apt amendment in this provision.

Mr. Kamath, in the course of his speech invoked God's mercy to give this House the wisdom to see, what he has been pleased to call, "the stupidity the folly, the crime" in vesting the President with the powers under this article. On my part I would say, let God grant us wisdom to see all this in the proper light. Let Him also grant us common sense and balance enough not to criticise merely for the sake of criticism. We should see that we make certain provisions in the Constitution which may stand us in good stead when unseemly or awkward situations arise in our land. My honourable Friend seems to think that we can ran the administration of our country and defend our freedom and democracy merely by indulging in pious platitudes and flimsy fulminations. The House knows that one cannot do that and therefore I would request honourable Members to see that the amendments proposed by my friend are rejected, Sir, I conclude.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. President, I would like to say a few words in support of the motion moved by Dr. Ambedkar in regard, to both the articles.

In the first place, I would explain the reason why the article has been put in making it the duty of the Union "to maintain the Constitution." The primary thing concerning the nation and the Union Government is 'to maintain the Constitution'. If the import of that expression is fully realised, it will be noticed that there cannot be any, intention to interfere with the provincial constitution, because the provincial constitution is a part of the Constitution of the Union Therefore, it is the duty of the Union Government to protect against external aggression, internal disturbance and domestic chaos and to see that the Constitution is worked in a proper manner both in the State and in the Union. If the Constitution is worked in a proper manner in the provinces or in the States, that is, if responsible government as contemplated by the Constitution functions properly, the Union will not and cannot interfere. The protagonists of provincial or State autonomy will realise that, apart from being an impediment to the growth of healthy provincial or State autonomy, this provision is a bulkwark in favour of provincial or State autonomy, because the primary obligation is cast upon the Union to see that the Constitution is maintained. Such a provision is by no means a novel provision. Even in the typical federal constitution of the United States where, State sovereignty is recognised more than in any other federation, you will find a provision therein to the effect that it is the duty of Union or the Central Government to see that the State is protected both as against domestic violence and external aggression. In putting in that article, we are merely following the example of the classical or model federation of America. Then again, there is a similar provision in section 60 of the Australian Commonwealth Constitution to the effect that it is the duty of the executive government to maintain the Constitution. These observations are with reference to the first article which has been introduced by my Friend Dr.

Ambedkar.

Then I come to the consequential provision casting upon the Union Government the primary duty to see that the Constitution in the different parts of India is made to work and properly observed. If there is in any unit any difficulty with regard to the proper working of the Constitution, it would be the obvious duty of the Union Government to intervene and set matters right. It is only when there is a failure or breakdown of the constitutional machinery that the Union Government will interfere.

The salient features of the provision are that immediately the proclamation is made, the executive functions are assumed by the President. What exactly does this mean ? As Members need not be repeatedly remind on this point the President means the Central Cabinet responsible to the whole Parliament in which are represented representatives from the various Units which form the component parts of the Federal Government. Therefore, the provincial machinery having failed, the Central Cabinet assumes the responsibility instead of the provincial cabinet. That is the first point.

Then, so far as the executive government is concerned, it will be responsible to the Union Parliament for the proper working of the Government in the province. That will be the effect of the first part of the article.

The next point is, how is legislation to be carried on. The primary authority, in regard to legislative matters is vested in Parliament. But, at the same time, having regard to the multifarious work in which Parliament is engaged, and the exigencies of Indian conditions, it will be impossible for Parliament to carry on the daily work of legislation, though the ultimate responsibility will be that of Parliament. Therefore the provision enables Parliament to discharge its primary duty of legislation by delegation of any or all of its powers.

This power to delegate is incidental to the plenary power of sovereignty vested in Parliament. But, in view of some doubt that has been cast in a recent decision of the Federal Court, it has been found necessary to make it quite clear that the Parliament can delegate its function to other body or bodies having regard to the exigencies of the situation. Immediately the Proclamation is made, the duty is cast on the President to place it on the table of the House. It is to last only for a temporary period. Thereafter the Parliament is in a position to judge the situation in the particular part of the country. Parliament can exercise its control and supervision over the Cabinet which has undertaken the responsibility of the executive functions of the State. In the Parliament itself all the various Units are represented. There is no correspondence whatever between the old section 93 and this except in regard to the language in some parts, Under 93 the ultimate responsibility for the working of section 93 was the Parliament of Great Britain which was not certainly representative of the people of India, whereas under the present article the responsibility is that of the Parliament of India which is elected on the basis of universal franchise, and I have no doubt that not merely the conscience of the representatives of the State concerned but also the conscience of the representatives of the other Units will be quickened and they will see to it that the provision is properly worked. Under those circumstances, except on the sentimental objection that it is just a repetition of the old section 93, there is no necessity, for taking exception to the main principle underlying this article. We are in grave and difficult times. The units are of different dimensions and responsible government has not been at work, in some of the Units at any rate, for a very long time. Even suffrage is unknown in certain States, and we have introduced responsible government into the States not all of which are like the advanced Units of what might be called the old British Indian provinces. Under those circumstances, in the interest of the sound and healthy functioning of the Constitution itself, it is necessary that there should be some check from the Centre so that people might realise their responsibility and work responsible government properly. Under those circumstances there is absolutely no reason why any exception should be taken to the principle underlying the present article. It is well thought out and my friend has taken all an aspects of the matter into consideration. He has even differentiated between executive and legislative functions. On the legislative side, plenary power is vested in Parliament. At the same time it makes room for administrative convenience. There is nothing to prevent Parliament from taking the Ministry to task if they misbehave in the matter of taking over the administration of any particular Unit or State. I have great pleasure in supporting the amendment moved by my Friend, Dr. Ambedkar.

Shri B. M. Gupte (Bombay: General): Mr. President, Sir, I support the deletion of article 188. With regard to article 278, I sympathise with the amendment of Mr. Kamath, No. 225. Also I would have supported the amendment of Professor Shibban Lal Saksena if it were necessary. But in my opinion, Professor Shibban Lal Saksena's amendment is not necessary at all, for if the President is so minded, there is no bar to order a general election and in that event the President himself would cancel the Proclamation. In fact I expect that opportunity would be given to the electorate to set matters right before drastic action under this article is taken, and therefore in my opinion Professor Saksena's amendment is not necessary.

As far as Mr. Kamath's amendment is concerned, though I sympathise with it, I will explain later on why under the present circumstances it cannot be pressed.

Now, with regard to my support to the deletion of article 188; it might appear strange to those who remember that I was the author of the amendment which constitutes article 188, but I am sure it will not surprise those, who also remember my speech made at the time when I moved the amendment. My argument at that time was that there was a grave emergency in the State which threatened the peace and tranquility of the State, and at such a time there was on the spot a man who was elected on the widest possible franchise and who therefore, enjoyed the fullest confidence of the people. I therefore asked why such a man should not be entrusted with the emergency powers till the Centre was seized of the situation. That was my plea and that was accepted by the House at the time. Now, elected Governor has been substituted by a nominated Governor, and therefore the foundation of my argument is taken away. I have therefore no hesitation in supporting the deletion of article 188.

Though I support the deletion of article 188, I am not very happy about the new article 278. I am not happy because the scope of the new article is far wider. Article 188 came into operation only when the peace and tranquility of the State was threatened, while this article 278 comes into operation even though there is no law and order emergency but there is mere failure of the constitutional machinery. I can understand drastic power being given when the very existence of the State is threatened. But I do not like extraordinary power being given for a mere constitutional failure or a constitutional evil. This is a very much less serious and non-urgent matter and in such matters I do not like that extraordinary power should be given. Of course, critics might say and it has been said that we are merely reproducing the hated section 93, but I do not agree with that criticism, because there is a very great difference between the two. Yesterday one of the honourable Members said that article

275 was a reproduction of section 93. I see no connection between the two because article 275 and 188 refer to peace and tranquility. While section 93 referred to constitutional failure. Article 278 comes closer to old section 93, even though there, is still great difference. The obvious difference is that in the place of the irresponsible Governor and the Governor-General, the elected responsible government is substituted. But in my opinion, the more important point is that the sovereign popular legislature will be ineffective control of the situation. Parliament must be consulted in two months and thereafter it will be the Parliament that will govern the situation. This is the great difference between section 93 and the present article 278. But in spite of this defence, I cannot help observe that if it were possible, we should not disfigure our Constitution with such a provision. That was our desire, but we cannot have it our own way. Unfortunately the circumstances in the country are such; we are living in times which may perhaps prove critical to our infant democracy. In France sometimes three Governments fall in two days; in a mature and old democracy they can go in for that luxury, but ours is an infant democracy; and though we do not like it, we shall have to tolerate thing, which in normal times we may have rejected. Though, of course I have given support to this article, I only hope that it may remain a dead letter and no occassions will arise for the exercise of these extraordinary powers.

The Honourable Shri K. Santhanam (Madras: General): Mr. President, Sir, article 278 and 278-A are in some respects the most important articles of this Constitution. There is no doubt that at first sight they look rather unpleasant as they appear to be a re-entry of the old and hated section 93. My honourable Friends, Messrs. Alladi Krishnaswami Ayyar and Gupte have explained that whatever the appearance may be, in substance they are vitally different from section 93 (a). Sir, I shall not repeat their arguments, but I would like to point out that the essence of section 93 was three-fold. Firstly, the powers are to the exercised by the Governor in his discretion. Secondly, when the Governor is acting in his discretion, he was not responsible to any authority, any party or any representative from the province in question. Thirdly, he was nor responsible or accountable to any authority in India at all. Therefore if we are to confuse this with section 93, we must examine it in the light of these three tests. Is there any authority which has the right to supersede a provincial Constitution in its discretion ? In the old draft of article 188 for two weeks the Governor was given the power to supersede it in his discretion. I think it was a very wrong provision and it is very fortunate that the old article 188 is being deleted. Otherwise, an erratic Governor who is reckless of consequences may upset the Constitution before either the people of the province or the Parliament of India can come to their rescue. There are bad people in the country and it is not impossible that one, such might get into the gubernatorial *gaddi* and make havoc. Mr. Alladi Krishnaswami Ayyar has already pointed out that the word "President" is used in the constitutional sense. The President cannot act under this article at his discretion. He has to be guided by the Central Cabinet. Therefore neither in article 278 nor in article 278-A is there any super session of democracy as such. Whether the power is exercised by a local legislature or by Parliament is a matter of convenience and the actual essence or principles of democracy are not involved. In this case, while ordinarily certain powers and functions are exercised by the provincial legislature, when the State Constitution breaks down these powers and functions come back to the Central executive and Central Legislature, which are as popular and as democratic as the State Governments and legislatures. It must also not be forgotten that in the Central Parliament the representatives of the State whose Government is to be superseded, will be here. After two months every Proclamation will become null and void, unless it has been approved by resolution of both Houses of Parliament. The Upper House consists of delegates elected by the local legislatures and the Lower

House includes representatives from the constituencies of the States concerned, elected on adult franchise. Therefore, the government of the State is not taken away even from the representatives of the State concerned. Only the representatives of the State concerned have to govern the State in co-operation with the representatives of other parts of India. That is the only limitation which is being placed and this limitation is necessary because the Constitution has broken down in a particular State. Therefore, it is not as an infringement of the principles of democracy that these articles can be objected to. It is rather from the scope of the article that they have to be properly scrutinised because articles 278 and 278-A come into operation when the government of the State cannot be carried on in accordance with the provisions of the Constitution.

Now, let us broadly analyse the circumstances in which these articles can come into operation. There may be a physical breakdown of the Government in the State, as for instance, when there is widespread internal disturbance or external aggression or for some reason or other, law and order cannot be maintained. In that case, it is obvious that there is no provincial authority which can function and the only authority which can function is the Central Government, and in that contingency these articles are not only unobjectionable but absolutely essential and without it the whole thing will be in chaos. Then there may be political breakdown. This is a point which requires careful analysis. A political breakdown can happen when no ministry can be formed or the ministries that can be formed are so unstable that the Government actually breaks down. Normally according to the Constitution when there is great instability of a Ministry, the proper procedure will be to dissolve the Lower House and reconstitute it. If after a dissolution also, the same factions are reproduced in the local legislatures and they make a ministry impossible, it will then be inevitable for the Centre to step in according to the provisions of 278 and 278-A. In this it is necessary to evolve proper conventions. For instance, it is necessary to evolve the convention that before these article are resorted to on account of political breakdown, there should intervene a dissolution of the Lower House of the State Legislature. Without a dissolution the Centre should not step in and that should be one of the conventions which we shall have to evolve; but it is not wise to put it in the article itself, because there may be extraordinary circumstances in which even the local elections may have to be conducted by the Centre and temporarily the Centre may have to take charge.

Then there is the third contingency of economic breakdown. Suppose for instance in a State the Ministry is all right, but it wants to make itself popular by reducing or cancelling all taxes and running its administration on a bankrupt basis. Suppose the Government servants are not paid and the obligations are not met and the State goes on accumulating its deficits. Of course this also is a difficult case. The Centre will have to be very careful and indulgent; it will have to give the longest possible rope but at some time or other in the case of economic breakdown also the Centre will have to step in, because ultimately it is responsible for the financial solvency of the whole country and if a big province like the United Provinces goes into bankruptcy it will mean the bankruptcy of the whole country. Therefore this contingency also will have to be dealt with under articles 278 and 278-A and in this matter also we shall have to evolve proper conventions as to what will be the proper amount of deficit which each State may be allowed to incur without invoking these articles, 278 and 278-A. Therefore, the objection to articles 278 and 278-A relates really to the possibility of proper conventions not being evolved. In themselves, they are unobjectionable and they are essential. But, of course, if the Centre acts upon the strict letter of the law, anything may be deemed to constitute a breakdown of the Constitution, and it is possible that interference of the Centre may be frequent and objectionable. After all, when we are constituting the Parliament on the basis on which it is being constituted, we may trust to the Popular House elected on adult franchise and the Second Chamber based on delegation from the legislatures to see that the State autonomy is not interfered with. Of course, a difficult case may happen when some States are governed by political parties which are different from the political party which is governing at the Centre and the majority of the other States. Then, it is possible through political prejudice some unnecessary or intolerant action may be taken under articles 278 and 278-A. The only remedy is through the growth of healthy conventions. If there is peace and democracy is allowed to grow in this country, I have no doubt whatsoever that these conventions will grow and all these articles will be utilised for the legitimate purposes for which they are intended.

Pandit Hirday Nath Kunzru (United Provinces: General): Mr. President, I am really very glad that the framers of the Constitution have at last accepted the view that article 188 should not find a place in our Constitution. That article was inconsistent with the establishment of responsible Government in the provinces and the new position of the Governor. It is satisfactory that this has at last been recognised and that the Governor is not going to be invested with the power that article 188 proposed to confer on him. It is, however, now proposed to achieve the purpose of article 188 and the old article 278 by a revision of article 278. We have today to direct our attention not merely to articles 278 and 278-A, but also to article 277-A. This article lays down that it will be the duty of the Union to ensure that the government of every State is carried on in accordance with the provisions of this Constitution. It does not merely authorise the Central Government to protect the State against external aggression or internal Commotion; it goes much further and casts on it the duty of seeing that the Government of a province is carried on in accordance with the provision of this Constitution. What exactly do these words mean? This should be clearly explained since the power to ensure that the provincial constitutions are being worked in a proper way makes a considerable addition to the powers that the Central Government will enjoy to protect a State against external aggression or internal disturbance. I think, Sir, that it will be desirable in this connection to consider articles 275 and 276, for their provisions have vital bearing on the articles that have been placed before us. Article 275 says that, when the President is satisfied that a grave emergency exists threatening the security of India or of any part of India, then he may make a declaration to that effect. Such a declaration will cease to operate at the end of two months, unless before the expiry of this period, it has been approved by resolutions passed by both Houses of Parliament. If it is so approved, then, the declaration of emergency may remain in force indefinitely, that is, so long as the Executive desires it to remain in force, or so long as Parliament allows it to remain in force. So long as the Proclamation operates, under article 276, the Central Government will be empowered to issue directions to the government of any province as regards the manner in which its executive authority should be exercised and the Central Parliament will be empowered to make laws with regard to any matter even though it may not be included in the Union List. It will thus have the power of passing laws on subjects included in the State List. Further, the Central Legislature will be able to confer powers and impose duties on the officers and authorities of the Government of India in regard to any matter in respect of which it is competent to pass legislation. Now the effect of these two articles is to enable the Central Government to intervene when owing to external or internal causes the peace and tranquility of India or any part of it is threatened. Further, if misgovernment in a province creates so much dissatisfaction as to endanger the public peace, the Government of India will have sufficient power, under these articles to deal with the situation. What more is needed then in order to enable the Central Government to see that the government of a province is carried on in a proper manner. It is obvious that the framers of the Constitution are thinking not of the peace and tranquility of the country, of the maintenance of law and order but of good government in provinces. They will intervene not merely to protect provinces against external aggression and internal disturbances but also to ensure good Government within their limits. In other words, the Central Government will have the power to intervene to protect the electors against themselves. If there is mismanagement or inefficiency or corruption in a province, I take it that under articles 277, 278 and 278-A taken together the Central Government will have the power- I do not use the word 'President' because he will be guided by the advice of his Ministers-to take the Government of that province into its own hands. My honourable Friend, Mr. Santhanam gave some instances in order to show how a breakdown might occur in a province even when there was no external aggression, no war and no internal disturbance. He gave one very unfortunate illustration to explain his point. He asked us to suppose that a number of factions existed in a province which prevented the government of that province from being carried on in accordance with the provisions of this Act i.e., I suppose efficiently. He placed before us his view that in such a case a dissolution of the provincial legislature should take place so that it might be found out whether the electors were capable of applying a proper remedy to the situation. If, however, in the new legislature the old factions-I suppose by factions he meant parties-re-appeared, then the Central Government in his opinion would be justified in taking over the administration of the province. Sir, if there is a multiplicity of parties in any province we may not welcome it, but is that fact by itself sufficient to warrant the Central Government's Interference in provincial administration ? There are many parties in some countries making ministries unstable. Yet the Governments of those countries are carried on without any danger to their security or existence. It may be a matter of regret if too many parties exist in a province and they are not able to work together or arrive at an agreement on important matters in the interests of their province; but however regrettable this may be, it will not justify in my opinion, the Central Government in intervening and making itself jointly with Parliament responsible for the Government of the province concerned. As I have already said, if mismanagement in a province takes place to such an extent as to create a grave situation in India or in any part of it, then the Central Government will have the right to intervene under articles 275 and 276. Is it right to go further than this? We hear serious complaints against the Governments of many provinces at present, but it has not been suggested so far that it will be in the ultimate interests of the country and the provinces concerned that the Central Government should set aside the provincial governments and practically administer the provinces concerned, as if they were Centrally administered area. It may be said, Sir, that the provincial Governments at present have the right to intervene when a municipality or District Board is guilty of gross and persistent maladministration, but a municipality or a District Board is too small to be compared for a moment in any respect with a province. The very size of a province and the number of electors in it place it on a footing of its own. If responsible Government is to be maintained, then the electors must be made to feel that the power to apply the proper remedy when misgovernment occurs rests with them. They should know that it depends upon them to choose new representatives who will be more capable of acting in accordance, with their best interests. If the Central Government and Parliament are given the power that articles 277, 278 and 278-A read together propose to confer on them, there is a serious danger that whenever there is dissatisfaction in a province with its Government, appeals will be made to the Central Government to come to its rescue. The provincial electors will be able to throw their responsibility on the shoulders of the Central Government. Is it right that such a tendency should be encouraged? Responsible Government is the most difficult form of government. It requires patience, and it requires the courage to take risks. If we have neither the patience nor the courage that is needed, our Constitution will virtually be still-born. I think, therefore, Sir, that the articles that we are discussing are not needed. Articles 275 and 276 give the Central Executive and Parliament all the power that can reasonably be conferred on them in order to enable them to see that law and order do not break down in the country, or that misgovernment in any part of India is not carried to such lengths as to jeopardise the maintenance of law and order. It is not necessary to go any further. The excessive caution that the framers of the Constitution seem to be desirous of exercising will, in my opinion, be inconsistent with the spirit of the Constitution, and be detrimental, gravely detrimental, to the growth of a sense of responsibility among the provincial electors.

Before concluding, Sir, I should like to draw the attention of the House to the Government of India Act, 1935 as adapted by the India (Provisional Constitution) Order, 1947. Section 93 which formed an important part of this Act as originally passed, has been omitted from the Act as adapted in 1947, and I suppose it was omitted because it was thought to be inconsistent with the new order of things. My honourable Friend Mr. Santhanam said that in the Government of India Act, 1935, the Governor who was allowed to act in his discretion would not have been responsible to any authority. That, I think, is a mistake I may point out that the Governor, in respect of all powers that he could exercise in his discretion, was subject to the authority of the Governor-General and through him and the Secretary of State for India, to the British Parliament. The only difference now is that our executive, instead of being responsible to an electorate 5,000 miles away, will be responsible to the Indian electors. This is an important fact that must be clearly recognise, but I do not think that the lapse of two years since the adapted Government of India Act, 1935, came into force, warrants the acceptance of the articles now before us. The purpose of section 93 was political. Its object was to see that the Constitution was not used in such away as to compel the British Government to part with more power than it was prepared to give to the people of India. No such antagonism between the people and the Government of India can exist in future. Whatever differences there may be, will arise in regard to administrative or financial or economic questions. Suppose a province in respect of economic problems, takes a more radical line than the Government of India would approve. I think this will be no reason for the interference of the Government of India.

Shri T. T. Krishnamachari (Madras: General): What happens if the provincial government deliberately refuses to obey the provisions of the Constitution and impedes the Central Government taking action tinder articles 275 and 276 ?

Pandit Hirday Nath Kunzru: No province can do it. It cannot because it would be totally illegal. But if such a situation arises the Central Government will have sufficient power under article 275 and 276 to intervene at once. It will have adequate power to take any action that it likes. It can ask its own officers to take certain duties on themselves and if those officers are impeded in the discharge, of their duties, or, if force is used against them-to take an extreme case-the Central Government will be able to meet such a challenge effectively, without our accepting the articles now before us. I should like the House to consider the point raised by my honourable Friend Mr. Krishnamachari. very carefully. I have thought over such a situation in my own mind, over and over again, and every time I have come to the conclusion that articles 275 and 276 will enable the Government of India to meet effectively such a manifestation of recalcitrance, such a rebellious attitude as that supposed by Mr.

Krishnamachari. In such a grave situation, the Government of India will have the power to take effective action under articles 275 and 276. What need is there then for the articles that have been placed before us ?

Sir, one of the speakers said that we should not be legalistic. Nobody has discussed the articles moved by Dr. Ambedkar in a legalistic spirit. I certainly have not discussed it in a narrow, legal way. I am considering the question from a broad political point of view from the point of view of the best interests of the country and the realization by provincial electors of the important fact that they and they alone are responsible for the government of their province. They must understand that it rests with them to decide how it should be carried on.

Sir, even if the framers of the Constitution are not satisfied with the arguments that I have put forward and want that the Central Government should have more power than that given to it by articles 275 and 276, I should ask them to pause and consider whether there was not a better way of approaching this question for the time being. In view of the discussions that have taken place in this House and outside, it seems to me that there is a respectable body of opinion in favour of not making the Constitution rigid, that is, there, are may people who desire that for some time to come amendments to the Constitution should be allowed to be made in the same way as those of ordinary laws are. I think that the Prime Minister in a speech that he made here some months ago expressed the same view. If this idea is accepted by the House, if say for five years the Constitution can be amended in the same way as an ordinary law, then we shall have sufficient time to see how the Provinces develop and how their government is carried on. If experience shows that the position is so unfortunate as to require that the Central Government should make itself responsible not merely for the safety of every Province but also for its good government, then you can come forward with every justification for an amendment of the Constitution. But I do not see that there is any reason why the House should agree to the articles placed before us today by Dr. Ambedkar.

Sir, I oppose these articles.

Shri L. Krishnaswami Bharathi (Madras : General): Sir, I felt impelled by a sense of duty to place a certain point of view before the House, or else I would not have come before the mike. I feel the need for a brief speech. I accord my wholehearted support to the new articles moved by Dr. Ambedkar, but I am not at all convinced of the wisdom of the Drafting Committee in deleting article 188. It is this point of view which I want to emphasise.

Sir, that article has a history behind it. There was a full-dress debate on it for two days when eminent Premiers participated in it. We must understand what article 188 is for. It is not for normal conditions. It is in a state of grave emergency that a Governor was, under this article, invested with some powers. I may remind the House of the debate where it was Mr. Munshi's amendment which ultimately formed part of article 188. In moving the amendment Dr. Ambedkar said that no useful purpose would be served by allowing the Governor to suspend the Constitution and that the President must come into the picture even earlier. Article 188 provides for such a possibility. It merely says that when the Governor is satisfied that there is such a grave menace to peace and tranquility, he can suspend the Constitution. It is totally wrong to imagine that he was given the power to suspend the Constitution for a duration of two weeks. Clause (3) provides that it is his duty to forthwith communicate his Proclamation to the President and the President will become seized of the matter under article 188. That is an important point which seems lost sight of. The Governor has to immediately communicate his Proclamation. The article was necessitated because it was convincingly put forward by certain Premiers. There may be a possibility that it is not at all possible to contact the President. Do you rule out the possibility of a state of inability to contact the Central Government? Time is of the essence of the matter. By the time you contact and get the permission, many things would have happened and the delay would have defeated the very Purpose before us. The, honourable Mr. Kher said that it is not necessary to keep this article because we have all sorts of communications available. In Bombay I know of instances where we have not been able to contact the Governor for not less than twenty-four hours! What is the provision under article 278? The Governor of Madras says there is a danger to peace and tranquility. Assuming for a moment that the communications are all right, the President cannot act. He has to convene the Cabinet; the members of the Cabinet may not be readily available; and by the time he convenes the Cabinet and gets their consent the purpose of the article would be defeated. Therefore, it was only with a view to see in such a contingency where the Governor finds, that delay will defeat the very objective, that article 188 was provided for. I see no reason why the Drafting Committee in their wisdom ruled out such a possibility. It is no, doubt true that the article was framed two years ago, but since those two years many things have happened that show that there is urgent need for the man on the spot to decide and act quickly so that a catastrophe may be prevented. Today there is an open defiance of authority everywhere and that defiance is well organised. Before the act, they cut off the telephone wires, as they did in the Calcutta Exchange. That is what is happening in many parts of the country. Therefore, when there is a *coup d'etat* it is just possible they will cut off communications and difficulties may arise. It is only to provide for this possibility that the Governor is given these powers. I do not think there will be any fool of a Governor who will, if there is time, fail to inform the President. I would like to have an explanation as to why this fool-proof arrangement has been changed and why we have become suspicious that the Governor will act in a wrong manner. According to the provision, he has to forthwith communicate to the President and the President may say, "Well, I am not convinced; cancel it." You must take into consideration that the Governor will be responsible, acting wisely and in order to save the country from disaster. The President comes into the picture directly, because the Governor has to communicate the matter forthwith according to clause (3) of article 188. As Mr. President said, it is sheer common sense that the man on the spot should be given the powers to deal with the situation, so that it may not deteriorate. I am not at all convinced of the wisdom of the change. The provision as now proposed is not as fool-proof as it ought to be.

Besides, I would like to have an explanation as to why the Drafting Committee goes out of the way to delete the provision which was considered and accepted by the House previously. In my view it is improper, because the House had decided it. If we appoint a Drafting Committee, we direct them to draft on the basis of the decisions taken by us. Is this the way in which they should draft ? Their duty was to scrutinise the decisions already arrived at and then draft on that basis. Therefore, I would like to have an explanation-a convincing explanation-as to what happened within these two years which has made the members of the Drafting Committee delete this wholesome, healthy and useful provision.

Mr. Naziruddin Ahmad: Mr. President, Sir, I think that the amendments moved by Dr. Ambedkar constitute startling and revolutionary changes in the Constitution. I submit a radical departure has been made from our own decisions. We took important decisions in this House as to the principles of the Constitution and we adopted certain definite principles and Resolutions and the Draft Constitution was prepared in accordance with them. Now, everything has to be given up. Not only the Draft Constitution has been given up, but the official amendments which were submitted by Members of the House within the prescribed period which are printed in the official blue book have also been given up. During the last recess some additional amendments to those amendments were printed and circulated. Those have also been given up. I beg to point out that all the amendments and amendments to amendments which have been moved today are to be found for the first time only on the amendment lists for this week which have been circulated only within a day or two from today. So serious and radical changes should not have been introduced at the last minute when there is not sufficient time for slow people like us to see what is happening and whether these changes really fit in with our original decisions and with other parts of the Constitution as a whole. I submit that the Drafting Committee has been drifting from our original decisions, from the Draft Constitution and from our original amendments. It would perhaps be more fitting to call the Drafting Committee ",the Drifting Committee". I submit that the deletion of article 188 is a very important and serious departure from principles which the House solemnly accepted before. Some honourable Members who usually take the business of the House seriously have attempted to support these changes on the ground that some emergency powers are highly necessary. I agree with them that emergency powers are necessary and I also agree that serious forces of disorder are working in a systematic manner in the country and drastic powers are necessary. But what I fail to appreciate is the attempt to take away the normal power of the Governor or the Ruler of a State to intervene and pass emergency orders. It is that which is the most serious change. In fact, originally the Governor was to be elected on adult suffrage of the province, but now we have made a serious departure that the Governor is now to be appointed by the President. This is the first blow to Provincial Autonomy. Again, we have deprived the Upper Houses in the States of real powers; not merely have we taken away all effective powers from Upper Houses in the Provinces, but also made it impossible for them to function properly and effectively. We are now going to take away the right of the Ministers of a State and the Members of the Legislatures and especially the people at large from solving their own problems. As soon as we deprive the Governor or a Ruler of his right to interfere in grave emergencies, at once we deprive the elected representatives and the Ministers from having any say in the matter. As soon as the right to initiate emergency measures is vested exclusively in the President, from that moment you absolve the Ministers and Members of the local legislatures entirely from any responsibility. The effect of this would we that their moral strength and moral responsibility will be seriously undermined. It is the aspect of the problem to which I wish to draw the attention of the House.

This aspect or the matter, I submit, has not received sufficient or adequate consideration in this House. If there is trouble in a State, the initial responsibility for quelling it must rest with the Ministers. If they fail, then the right to initiate emergency measures must lie initially with the Governor or the Ruler. If you do not allow this, the result would be that the local legislature and the Ministers would have responsibility of maintaining law and order without any powers. That would easily and inevitably develop a kind of irresponsibility. Any outside interference with the right of a State to give and ensure their own good Government will not only receive no sympathy from the Ministers and the members, but the action of the President will be jeered at, tabooed and boycotted by the people of the State, the Members of the Legislature and the Ministers themselves.

This was exactly what happened in India some time back. During period of dyarchy in 1921-1937, responsibility was given to the Ministers in the Provinces without any power. The power was kept by the British Government and responsibility was given to popularly elected Ministers on transferred subjects. The result was that they became irresponsible. This is the verdict of competent British thinkers. The happenings of Calcutta have been brought forward as an argument for tightening the hands of the Centre. I suppose I can claim to know a little more about Calcutta than any outsider can possibly do. In Calcutta the situation is not exactly what it is supposed to be. There is no desire on the part of the citizens at large to support illegalities or law-breaking on an organised scale. The defeat of the Congress candidate, to speak very frankly, was due to the unpopularity of the Government. Besides that a variety of other minor reasons and circumstances contributed to the result, which it is not here necessary for me to go into. The majority of the people of West Bengal desire that the Government must be strong and efficient. I find that the decision of the Congress High Command to hold fresh elections has been extremely popular and is the only possible and sensible decision that could be taken. This has thrown the entire responsibility for bringing about conditions to ensure the maintenance of law and order in the Province at once upon the shoulders of the electors themselves. If the Ministers were wrong the people will get an opportunity of having an effective say in the matter. I have every reason to believe that, provided the Congress sets up competent candidates, their success is assured. In fact, there is nothing against the Congress Government, but people want men of ability and experience, and at the same time men who can exercise authority. So, the happenings of Calcutta or East Punjab, or those in Southern India should offer no justification for departing from the normal and salutary principle that the responsibility for law and order must normally and initially be that of the Provincial, and States Ministries and that Ministries in order to function effectively should have sufficient power and responsibility in their hands. The conferment of full responsibility for law and order without giving full powers to the States will work havoc and will create considerable amount of dissatisfaction in the States and I submit this House will play into the hands of the Communists and other law-breakers if they adopt this course. I do not deny that the President should have overriding powers, but he should not have the exclusive power to initiate and incur much unnecessary unpopularity and blame in the process. While the Centre should necessarily have the power to intervene in times of emergency, it should not take the initiative in the matter. The Governor acting in consultation with the Ministers will be in a better position to make the declaration. This declaration may be ratified or changed in any way the President thinks fit. It does not derogate from the overriding power of the President. On the other hand, by placing the responsibility on the local administration the matter will be brought to a head. The evil will produce its own remedy. If they fail to discharge their functions properly it will be a good reason for dissolving the Assembly and ordering fresh elections.

Pandit Thakur Das Bhargava : I think the constitutional machinery cannot be regarded ordinarily to have failed unless the dissolution powers are exercised by the Governor under section 153.

Mr. Naziruddin Ahmad : I can quite appreciate my honourable Friend's apprehension. I am not happy about the drafting. It is impossible in three or four days to go through all these anomalies. I am not satisfied that the President should proceed exclusively on a Proclamation of Emergency by the Governor. That is due to faulty and hasty drafting. I submit, therefore, that article 188 should not be deleted altogether. The power of the Governor to initiate any emergency measures should remain and that will make the Ministers and the Legislature responsible and at the same time the responsibility being there, will produce its own remedy. If we interfere with the ultimate right of States to deal with emergencies it will reduce Provincial Autonomy to a farce. I think there has been enough enroachment on Provincial rights. In fact in the provincial list a great deal of encroachment has already been made. I think we are drifting, perhaps unconsciously, towards a dictatorship. Democracy will flourish only in a democratic atmosphere and under democratic conditions. Let people commit mistakes and learn by experience. Experience is a great tutor. The arguments to the contrary which we have heard today were the old discarded arguments of the British bureaucracy. The British said that they must have overriding powers, that we cannot manage our affairs and that they only knew how to manage our affairs. They said also that if we mismanaged things they will supersede the constitution and do what they thought fit. What has been our reply to this ? It was that "Unless you make us responsible for our acts, we can never learn the business of government. If we mismanage the great constitutional machinery, we must be made responsible for our acts. We must be given the opportunity to remedy the defects". This argument of ours is being forgotten. The old British argument that they must intervene in petty Provincial matters is again being revived and adopted by the very opponents of that argument. In fact, very respected Members of this House are adopting almost unconsciously the old argument of the British Government. I submit that even the hated British did not go so far as we do. I submit our reply to that will be the same as our respected leaders gave to the British Government. I submit, therefore, that too much interference by the Centre will create unpleasant reactions in the States. If you abolish provincial autonomy altogether that would be logical. But to make them responsible while making them powerless would be not a proper thing to do.

Then, Sir. article 277-A has been described by the honourable Dr. Ambedkar as a thing which is not a pious wish. I think Dr. Ambedkar was repelling the suggestion which naturally arose in his own mind. I believe that article 277-A is a record of pious wishes. At least it lacks clarity. It says practically nothing. It says almost everything. It enables the Centre to interfere on the slighest pretexts and it may enable the Centre to refuse to interfere on the gravest occasion. So carefully guarded is its vagueness, so elusive is its draftsmanship that we cannot but admire the Drafting Committee for its vagueness and evasions. The article says :

> "It shall be the duty of the Union to protect every State against external aggression."

Of course it is so. But it is expressed in a pious form. It says : "It shall be the duty. . . . . . " Instead of that we should have expected some machinery provided and the occasions clearly stated on which that machinery should come into operation. Then again, they say in the article, "and to ensure that the Government of the State is carried on in accordance with the provisions of this Constitution". This is also equally vague. I think if an article is inserted to the effect that "the Union Government will have the power to interfere with the day-to-day administration of the Provinces to see that they are carried on properly" it would have been better. I think if an article was enacted to the effect that the Union Government should have the power to see that domestic economy of each family is carried on in accordance with certain principles it would have been equally good. This article 277-A is of the vaguest description and I submit there is want of clarity or probably deliberate avoidance of clarity in order to get an excuse for interference in Provincial and States matters. This again will create bitterness and dissatisfaction and the popularity of the Union Government which has been built up with long sacrifices and suffering, will considerably suffer. I therefore, submit that excuses should not be deliberately provided through vagueness of language to interfere with the domestic management of the Provinces. In fact, if it is the desire to interfere on certain grounds, the grounds should be stated precisely and the occasion for the exercise of those powers should be clearly defined and laid down and not kept vague. As I understand it, this will be used by the enemies of the Central Government as propaganda against the Central Government. This article should have been introduced to the detriment of the Central Government at the instance of their enemies, the Communists. That would have been more appropriate. For the Central Government to resort to this vagueness of language where precision is possible is highly dangerous. Then I come to article 278. Here the word 'otherwise' has been objected to. My Friend Pandit Thakur Das Bhargava rightly pointed out the difficulty of acting on anything like the provision in 278(1) where It is said that the President may act on a report or otherwise. I submit the whole thing is wrong. He should act not only on information but also on Proclamation of Emergency. I think this wording in the article should not be taken advantage of just to corner a speaker who objects to it. I object to the wording, and the conception of the article. I submit that the word 'otherwise' in the context would make it extremely vague. The least excuse will be taken to make the act of the Union Government unpopular. If that is the intention, it may be justified. But the article will be rightly objected to on account of the phraseology in which the Idea is embedded-

Then I come to the proviso to clause (1) of article 278. It safeguards against the rights of the High Court in dealing with matters within their special jurisdiction. A Proclamation of emergency will not deprive the High Court of its jurisdiction. That is the effect of this proviso. But it conveniently forgets the existence of the Supreme Court. While it takes care to guarantee the rights of the High Courts against the Proclamation, the rights of the Supreme Court are not guaranteed. I only express the hope that the absence of any mention of the Supreme Court in the proviso will not affect the powers of that Court.

Shri T. T. Krisnamachari: It is not necessary because the Central Government is subject to the jurisdiction of the Supreme Court under all conditions.

Mr. Naziruddin Ahmad: As the honourable Member himself has on a previous occasion said, this Constitution would be the lawyers' heaven. Speaking from experience, I think that this proviso will lead to much legal battle, and lawyers alone will be benefited by this. I wish that the interpretation put forward by Mr. T. T. Krishnamachari is right, but it is not apparent to me. When we come to clause (2) of article 278, in this clause it is stated that any such proclamation may be revoked or varied by a subsequent proclamation.

An Honourable Member : It is already one o'clock.

Mr. President: How many minutes more are you likely to take?

Mr. Naziruddin Ahmad: About ten minutes more.

Mr. President : The honourable Member may continue his speech tomorrow. The House stands adjourned till nine o'clock tomorrow morning.

The Assembly then adjourned till Nine of the Clock on Thursday, the 4th August

1949:

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS)- VOLUME IX

Thursday, the 4th August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION- *contd.*

Articles 188, 277-A and 278-*contd.*

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Mr. President, Sir, I was dealing with clause (2) of the proposed-article 278. There the wording is "Any such Proclamation may be revoked or *varied* by a subsequent Proclamation." The words "or varied" were proposed to be inserted in a similar context by an amendment by Mr. Kamath. But that was rejected. In the new article 275, clause 2(a), the wording is : "may be revoked by a subsequent Proclamation." Mr. Kamath by his amendment No. 111 of List No. 1 of this week, wanted to amend it by inserting the words "may be revoked or *varied* by subsequent Proclamation." The same words have been officially accepted in the present, article namely, "may be revoked or *varied* by a subsequent Proclamation." I think this want of uniformity is due to the haste and rapidity with which the Drafting Committee has to keep pace with varying directions.

Then coming to proposed article 278-A sub-clause (a) and (b) of clause (1) are new. Clause (a) is new and (b) is consequential. The new point which has been introduced is also revolutionary. Instead of allowing the Provincial Legislatures to have their say on the emergency legislation and thereby giving the Provincial Assemblies an opportunity to assess the guilt or innocence of the Ministers or other person or to give a verdict, the responsibility is thrown on the Parliament. That would again, as I submitted yesterday, go to make the Central Government and the Parliament unpopular in the State concerned. It may happen that Provincial Ministers and others are guilty of mismanagement and misgovernment; but if we, do not allow the Provincial Assemblies to sit in judgment over them, the result would be that guilty or innocent persons, lawbreakers and law-abiding persons, good or bad people in the State should all be combined. The result would be that those for whose misdeeds the Emergency Powers would be necessary, would be made so many heroes; they would be lionised, and the. object of teaching them a lesson would be frustrated. The Centre would be unpopular on the ground that it is poking its nose unnecessarily and mischievously into their domestic affairs.

Then, Sir, in sub-clause (c) of clause (1) of this article 278-A, the President is expected to authorize and sanction the Budget as the head of the Parliament. This would be an encroachment on the domestic budget of the Provinces and the States. That would be regarded with a great deal of disfavour. It would have been better to allow the Governor or the Ruler to function and allow their own budget to be managed in their own way. Subventions may be granted but that expenditure should not be directly managed by the President.

Coming to clause (d) there is an exception in favour of Ordinances under article 102 to the effect that "the President may issue Ordinances except when the Houses of Parliament are in session". The sub-clause is misplaced in the present article. There is an appropriate place where Ordinances are dealt with. Sub-clause (d) should find a place among the group of articles dealing with Ordinances and not here. This is again the result of hasty drafting.

These are some of the difficulties that have been created. It is not here necessary to deal with them in detail. The most important consequence of this encroachment on the States sphere would be that we would be helping the communist techniques. Their technique is that by creating trouble in a Province or a State, they would partially paralyse the administration and thereby force the Emergency Powers. Then, they will try to make those drastic powers unpopular. What is more,. they will make the guilty Ministers and guilty officers heroes. The legislature of the State would, as I have submitted, be deprived of the right of discussion. If the President takes upon himself the responsibility of emergency powers, then his action, I suppose, cannot be discussed in the States legislatures. The only way of ventilating Provincial and States grievances is to allow the Provinces and the States to find out the guilty persons and hold them up to ridicule and contempt and that would be entirely lost. This would have the effect of bringing all sorts of people, good and bad, law-breaking And law-abiding persons into one congregation. The Centre will be unpopular and the guilty States would be regarded as so many martyrs and the Centre would be flouted and would be forced to use more and more Emergency Powers and would be caught in a vicious circle. Then, the States will gradually get dissatisfied and they will show centrifugal tendencies and this will be reflected in the general elections to the House of the People at the Centre. The result would be that very soon these very drastic powers calculated to strengthen the hands of the Centre will be rather a source of weakness in no distant time. I have a fear which is not based without sufficient consideration and thought that we are gradually, but perhaps unconsciously, drifting towards dictatorship. It is a strange thing that though dictators have always been unpopular and destroyed in the long run, yet, it is a strange phenomenon of modern times that dictatorships do grow up. They arise honestly out of good working democracy; they arise out of the desire to deal with lawlessness honestly by constitutional short cuts. The fear of the Communists is at the back of these emergency powers being centralised. This was the very reason which led Hitler to establish his dictatorship. In fact, his object was to get rid of the Communists in Germany. Having successfully suppressed the legislature and successfully suppressed expression of public opinion, Hitler produced a big fighting machine and then he felt the desire to have territorial expansion which led to the last war which led to his downfall. Mussolini also built a dictatorship by similar process, and both of them had to share the same fate. I only hope that we are not drifting towards that end. I have, however, a suspicion that the very steps which the various modern dictators have taken, perhaps unconsciously taken, with the *bona fide* belief of doing good to the country, we are unconsciously following the same road to lead to a dictatorship. There is a feeling in the House, especially among the younger sections that dictatorship of some kind is a great necessity in India., I submit that though that is a very natural feeling, dictatorships have only one end and that is failure. In fact, they get into a vicious circle; they create opposition by dictatorship; that opposition is checked by further acts of dictatorship; the opposition secretly grows and ultimately is enough to set aside the very power which created it. On the other hand, the best thing is to allow the natural democratic forces to work. As everyone knows, even here, newspapers are not free and there is a feeling amongst the newspapers that they cannot freely publish facts if they go against the Government or in any way put the Government in an unfavourable light. I think these are bad signs. This series of articles will accentuate an unhealthy opposition without any doubt. I hope that every law-abiding, citizen, every man who has faith in the Constitution and in democratic method should rise and oppose this tendency. In fact, this is a Symptom of a deep-seated disease, namely, to acquire power and to concentrate power in the hands of the Centre. As I have submitted. this will react on the very persons who want dictatorship. The best thing is to allow free scope for public opinion. This result has unfortunately been hastened by the fact that throughout the country, in the States and in the Provinces and in the Centre, there is no regular, organised opposition. There is irregular, disorganised, unorganised opposition in the country which in the absence of legitimate vent, expresses itself. in general dissatisfaction and law-breaking tendency on a large scale. In fact,. the habitual law-breakers and honest citizens are brought together on the same platform on account of repressive measures. I hope that my warnings would prove false; nobody would be more glad than myself to find in the long run that I am wrong. But, I have a fear that we are marching. towards a dictatorship and we might go the same way as the two latest dictatorships went.

Mr. President : Pandit Thakur Das Bhargava.

I hope Members w ill have an eye on the clock. We have been on this article for four hours and twenty minutes now.

Pandit Thakur Das Bhargava (East Punjab : General) : Sir, the provisions of the Constitution relating to emergency powers are really very important and my apology for coming before this House and taking its time is that I feel that the Drafting Committee has to be congratulated in tackling the question in a very able and a very adroit manner. Sir, it is very easy to criticise any proposal which comes from the Drafting Committee. If the Drafting Committee had kept article 188 intact, I have no doubt that the very Members who have now criticised would have come forward in no less strong language to criticise the keeping intact of 188 also. What we have to see is whether on a balance of advantages and disadvantages the present position is better or not. From this point of view my humble submission is that the retention of 188 would have been a great mistake. I After all this taking away of 188 and substitution thereof by articles 278 and 277-A predicate that the Governor will have no emergency powers, and, instead of the Governor acting in his own discretion, a single individual deciding the fate of the entire State, we have substituted the whole Cabinet and now there is no danger that emergency powers will be resorted to by way of panic or personal animosity with any Cabinet, etc. On the contrary we are quite sure that the President aided and advised by the whole Cabinet, will decide the most difficult of questions.

Secondly, I am very glad that article 277-A is being enacted. This was a great lacuna in the whole Constitution. I cannot understand how the provincial autonomy unrelated to the powers of the Centre can be regarded as an abstract thing by itself. Now we have already Provided fundamental rights and we have provided the Powers of the Supreme Court. We know that the army and navy are all under the Centre. How can Provincial autonomy remain totally unrelated and the State can have absolute rights ? Supposing the Constitution fails, how can a State guarantee to the people the exercise and the use of fundamental rights? It would be impossible. It is a contradiction in terms. How can a province by itself be able to meet the situation when the use of army and other forces are required by the State ? It is, therefore, but proper that in regard to provincial autonomy also we must realise that the Centre has got a duty to discharge and a very great duty to discharge. My only complaint is that when we enact 277-A we only enacted a pious wish. I wanted and I put in an amendment that to be more logical we should have also enacted a further provision that for discharge of the duties by 277-A, it was the duty of the Central Government to take such measures as they require to ensure the discharge of the proper functions. In a given situation when there was no breakdown of the Constitution but there was a danger of its breaking down, even then the Centre has a duty to discharge and the Centre should have been given powers to discharge it. It is not enough to say that it is the duty of the Centre to see that the Constitution is worked. Therefore, when there is a duty for the Centre there should be means enough to see that the Centre comes forward and does its duty under a given set of circumstances. Therefore. I wanted to see that the Centre was given powers even when there was no breakdown of the Constitution.

Now I must admit that in regard to 278 and 277-A some criticism has been made. The first criticism that I wish to dispose is about the word 'otherwise'. There was a complaint to start with when the Governors' post was declared to be non-elected and he must be appointed by the, Centre. Then there was a complaint that this was a retrograde measure. Now those who oppose this article say that the report of the Governor is the sole thing which ought to be considered. If the Governor is not independent and is only an agent of the Central Government, what is the use of his report. When you confess that the Governor is an individual person and he does not represent the people of the province, how can you rely on his report ? The words 'on report or otherwise' do denote a state of things in which the Governor may not be doing his duties, or may give a wrong report. Suppose there is a conflict between the Governor and the Ministers, and the Ministers and the Houses pass a resolution to the effect that the Centre 'should intervene, and there is conspiracy and the whole State is seething with strife and this state is not reported by the Governor, what would happen ? Under these circumstances it is fair that the words 'or otherwise' should be there. They provide for such contingencies. After all, the Centre or the President has to save the situation and see that, in case of failure of Constitution, conditions do not deteriorate into chaos. If that premise is correct, in whatever manner the President may come to know or the Centre may come to know, it is the duty of the Centre to interfere. Therefore these words 'or otherwise' do not mean, as one of my friends suggested, that report of the C.I.D. would be enough. It is a more serious thing. How could the President or the whole Cabinet act in such an irresponsible and rash manner? I understand the fear of those who think that these words now given in article 278 are too wide. They are too wide. There is no doubt that an irresponsible Cabinet or a President can certainly act rashly. Now what is the failure of machinery is the question of questions. Supposing the constitutional machinery does not work welt-it works 2 per cent. well and 98 per cent. wrong or it works 98 per cent. well and 2 percent. wrong the question of questions is if there is a deadlock in a very small particular, can it be said that the Constitution is not carried on as it ought to be? But I do not think that any person will contend that on an occasion like this the Centre will take up the responsibility which is a responsibility very hard to discharge. After all, no Central Government would like that there should be conflict between the Centre and the State. Why should we assume that the Cabinet will act rashly or wrongly? I do not know of any provision in which some defect cannot be found. Only when this Constitution is not honestly worked in the right spirit, it is capable of creating mischief. Otherwise there is no provision in any constitution which cannot be abused. Why should we assume that this will be abused? After all, what is the difference? Even if action is taken by the Centre how would the Centre proceed. Does it mean that the whole thing will become topsy turvy ? It is not likely to work that way. Even if the Centre takes into its hands the administration of the province, the State provincial machinery Will, not go to dogs. The Centre will not send thousands of persons to administer. the State and function differently from before. We can imagine what will take place in such a situation. In India there are many provinces which have been working democracy for a very long time. There are many States in which these democratic institutions are being planted to day. For centuries they have been under a feudal system. Therefore, my submission is that unless you make provision like this, the Centre will not be doing its duty. It is the duty of the Centre to see that the Constitution is worked rightly and well.

I know the criticism has been expressed that articles 277-A and 278 take away the powers of the State and they will therefore reduce them to subservience. Some critics have in fact, said that provincial autonomy will be a mere farce, and that the proper action which under those circumstances ought to have been undertaken by the Provincial Governor would not be taken by tile Central Government. But this is not the case. These critics seem to have failed to see that no Constitution can be said to have failed to work unless and until all the provisions of the Constitution relating to the State are exhausted. In my humble opinion as soon as such a situation arises, the first duty that the Governor will perform will be to dissolve the House. Unless and until every attempt has been made, and unless he finds that even the ordinary liberties cannot be enjoyed by the people, lie will not come to the conclusion that the Constitution has failed. I cannot conceive of a situation in which the Governor, first of all, shall not exercise the powers given to him by law, to arrange in such a way that the Constitution is worked. When the entire thing has failed, then there is nothing but confusion and chaos. At that time what is the choice ? Mr. Nizamuddin Ahmad said that in that case, the Centre takes up the whole administration in its own hands, and so there will be confusion. But I say that it is just to avoid such confusion and chaos that the Centre takes on the administration. Are we to continue that confusion and chaos which have resulted from the failure of the constitutional machinery ? of the two, I am sure every one will admit the better thing is for the Centre to interfere and take ever the administration.

Dr. P. S. Deshmukh (C.P. & Berar : General) : On a point of information, Sir, may I ask the honourable Member to tell us where is the provision in the sections that we have agreed to for the dissolution of the House by the Governor, in an emergency

Pandit Thakur Das Bhargava : May I put a counter question to my honourable Friend and ask him where is the provision to say that the Governor shall not act, under article 153 ? I also understand that the Constitution requires that the Governor shall act in this respect, in his discretion, and so as soon as he finds that the situation is such that. the dissolution of the House is necessary, then it is his duty to act in such a manner. The Central Government also will look into the matter, and will not take up the administration of the State lightly, because it is a very hard task. Why do you think that the Governor will not act? That is the question which my Friend has to answer before he puts the question to me.

Now, let us anticipate the situation. If there is failure of the constitutional machinery of the State, only for two months the Cabinet is entitled to take the entire administration in its own hands. And for those two months, how will the Centre be benefited ? Parliament will decide whether the action of the Cabinet was correct or not, and if Parliament agrees, then it means that the representatives of the particular State are there, the representatives of all the other States also are there, and if they approve of the action of the Cabinet, I do not see what possible objection can be taken. Moreover, there are all these safeguards. There is the question of two months, then there is question of the Cabinet deciding the question, and then the provision of six months period. All these are, no doubt, very good safeguards, and I do not see how the critics are justified in calling this article "dishonest, criminal" and use all the other epithets in their vocabulary. My humble submission is that, in the growing conditions of India when we see so many fissiparous tendencies working in the country it was very right for the Drafting Committee to have brought forward a provision like this. It is only a cementing measure. It gives responsibility to the 'Centre to see that the provinces proceed with their administration in a business-like and constitutional manner.

It has been argued that article 275 is there and that is quite sufficient and that there is no need for enacting a measure like article 278. And it is further said that in article 278, no question of peace and tranquillity and internal commotion arises. May I point out that the situation is one in which the entire machinery has failed, and ordinary people do not enjoy the common liberties? Internal disturbance to peace and tranquillity are all covered by this. There may not be internal disturbance, but there may be imminent danger to peace: and tranquillity being broken by the people at large. In those circumstances, I do not think the State is justified in saying that there is no insurrection, and no internal disturbance. It is much better to have a preventive measure than a cure after the insurrection takes peace. From all these points, I think, the enactment of article 277-A and article 278 are perfectly justified. I only wish that the logical conclusion of 277-A should have been enacted and the Centre should have been given more power to see that before the constitutional machinery fails the Centre discharges its duty in seeing that it does not fail.

Shri Brajeshwar Prasad (Bihar : General) : Mr. President, Sir, I rise to support the article 278 as moved by Dr. Ambedkar. But there are certain provisions in this article to which I would like to raise some objections. I am not in favour of the provision that the President can exercise legislative powers on behalf of the State only if Parliament so agrees. I am not in favour of this, because of two reasons. Firstly, it will mean delay. If the President wants a particular legislation to be passed at once, under this provision, he will be handicapped, because it will take time for the measure to go through Parliament. But time is of the very essence of the situation. In an emergency the President must be in a position to act swiftly and rapidly. If his legislative power is handicapped in this fashion then there will be difficulty. Secondly, I am opposed to this because of another reason. Suppose Parliament refuses to give its' sanction. Suppose Parliament refuses to pass a law which the President considers to be necessary to meet the exigencies of the hour. In that situation, what will happen ? There will be difficulty. Therefore, I am in favour of the President having all legislative powers. If there is a grave emergency, and if the machinery of law and order has broken down in any province, then the President should be vested with all legislative powers. He has already been vested with executive powers. I see no harm, no irreparable damage will-be done, no wrong done to the people of the country or to the Constitution, if for a shod time, for a limited period, the legislative powers as well are vested in the bands of the President.

Sir, I am opposed to another provision in this article, that the powers and functions of the High Court will not be abrogated during a period of emergency. I would like to know why. Do you disturst your President ? Do you think he will go out of his way to indulge in acts of personal tyranny in order to feed fat his grudge against some political opponents ? In a period of emergency all the energies of the President, all the attention of Government and of the Council of Ministers would be diverted towards one goal, i.e., how to maintain law and order and bring about peace in an afflicted part of the country. Sir, a few months ago there was a hot debate in the house on the question as to whether the words "due process of law" should be incorporated in this constitution. We felt that if these words were there, the hands of the executive would be fettered and so we dropped those words., The danger of a grave" emergency arising in this country is not merely theoretical; it is very real. And I should like to know whether it is possible for the President to function and meet a crisis without abrogating, if he feel:; necessary to do so, some of the fundamental rights of the citizen. After all, it is for a temporary period for which we are asking these powers for the President; it is not a permanent provision which would remain in operation for all time. Therefore I feet that the powers of the. High Court should be abrogated, if the President so thinks. I am not saying that as soon as article 278 comes into operation all powers of the High Court should be abrogated at once. I only want that if the President feels that he cannot meet the emergency without abrogating some of the fundamental rights of the citizen he must be empowered to do so. And there ate reasons behind it. I feel that if there is a conflict between the security of the State and the personal liberty of the individual I will choose the former and lay stress on the security of the State. For the first time in the chequered history of India we have got an independent State of our own; are we going to barter it away in the name of some new-fangled notions which have been discredited in their own homelands ? The best thing of course is to have both security of the State and personal liberty of the individual. But the ideal thing is not Always possible, and when there is a conflict between these two, my friends will have to make a choice; I would choose the security of the State.

There is an implication in article 278 which is something like saying, that you must overcome evil by good and meet lawlessness with law. The President has no powers to meet undemocratic forces in the country except in a democratic manner. It is like saying that the forces of evil must be overcome by the forces of non-violence and good. Practical statesmen and law-makers wig not accept this proposition easily.

I am also not in favour of the provisions that the period of emergency shall not last beyond a period of three years. This is like King Canute telling the tides not to touch his royal feet. How can you lay down in advance that the period of emergency shall not extend beyond three years? The forces of disorder and lawlessness are increasing and spreading fast in this country; and we do not want this article to be used as a cloak for other activities. I ask my honourable Friends to calmly consider the dangers and the threat to which our attention has been drawn by Mr. Kamath,-the danger of dictatorship arising in this country. I will say that the question of success of democracy in this country does not depend on the sort of Constitution that we make here; it is vitally related to our economic set-up and our social institutions. A mere democratic Constitution will not save us unless we reform our social and economic institutions.

Sir, we have been told that the Weimar Constitution came, to an end of some provision in the constitution. I do not accept this. It is a matter of surprise that a person of the intellectual eminence of Mr. Kamath should have advanced such a shallow argument. It was not because of any article that Hitlerism came into power. It would have come in any case, whether that article was there or not. Hitlerism came because of the defeat of Germany in the first war. I am doubtful whether democracy can succeed in Germany. The Prussian traditions of war and conquest are so much imbedded in the German soil that it is not possible for a democratic constitution to succeed in Germany.

Sir, a charge has been brought against me that I lack a sense of constitutional propriety. As a humble student of political science I had the privilege of reading almost all the constitutions of the world under some of the ablest Professors of this land; but I have come to the conclusion that there are no fundamental laws in politics, no eternal truths which are applicable to all people for all time. A provision that is found suitable for Canada may be thoroughly disastrous for us because the course of evolution is not similar in any two countries. What is happening in Canada or has happened there may not happen in our country. Therefore I see no sense in saying that merely for the sake of constitutional propriety we must create a number of institutions, one opposed to the other.

I will say one more thing. It is not a pleasure for me to say things which do not find favour with the gods. But I have a duty to perform. I love this country and am not prepared to sacrifice its interests at the altar of any ideology. I am prepared to accept communism or socialism, or any other kind of ism, provided I am convinced that it would strengthen the foundations of our State. if I do not feel like that I will not support it merely because it is fashionable to applaud democracy. I am a democrat to the core of my being, but I feel that unrestricted and unregulated democracy at this moment will bring about disaster. I have nothing to say against any one; Members are free to express their opinions; I run a personal risk in talking in the way I have done.

Shri Algu Rai Sastri (United Provinces : General) : *[Mr. President, I beg to submit that the articles under discussion at present, I mean article 188 embodied in the fourth part of the Draft Constitutions and article 275 embodied in the 11th part, should be retained as they are in the Draft Constitution. No change whatever need be made in them. Article 188 provides for grave emergency when the Governor of a State will have the power to declare the existence of emergency and to take the administration of the State in his own hand. For illustration I may make mention of the difficult situation existing in Bengal and Madras today. If the situation deteriorates and the difficulties assume very serious proportions, the Governors of these Provinces may, under this article, by Proclamation, take the constitutional machinery of the province in their own hands.

Article 275 relates to the emergency power vested in the President of Indian Union. The situations in which a Governor and the President may exercise the emergency powers vested in them may be quite different. There may arise a situation like the one that arose during the last Great War when, as a result of the German invasion of Poland, the whole world was plunged into war. When the last world war broke out, the then Government of India found it necessary to proclaim an emergency. Such situation or emergency is caused by a problem that concerns the whole world. On account of such a situation the whole country may be threatened with disaster. In the circumstances the President of the Indian Union has to exercise his own discretion and declare an emergency. But the State Governors may be faced with a situation that concerns only their State; and under such circumstances, they will have to exercise their own discretion and issue a Proclamation of Emergency. We, therefore, must vest them with emergency powers. The powers that were vested in the Central Government under the provisions of Section 93 of the Government of India Act, 1935 are now being tried to be retained under different articles of the Draft Constitution. The British have, no doubt, left the country, but their mentality of distrust is still lingering here. Whatever they gave us with one hand, they tried to snatch away with the other. The British rulers used to run the Government from Delhi. Forced by the growing agitation and compelled by circumstances, they gave some power to the people with the sole object of appeasing them. Even after granting Provincial not sure that the provinces would cooperate with them sincerely if a situation arose which required their co-operation, and it was only out of this distrust that they wanted to make some provisions to enable them to take up the Government of the province in their own hands in times of emergency. They did not want sincerely to band over the provincial Governments to us. In 1939 after the world war broke out, we protested against the emergency powers of the Governors and the Provincial Governments passed resolutions in their Legislatures against these powers being exercised by Governors. The fact is that we were not one with the Government that was then ruling over us against our wishes. It wanted our country and our people to participate in the war but people were against this; Mahatma Gandhi also advised the nation that it was immoral on our part to participate in the war. There were two trends then working in the country. The Central Government was forcing us to join the war while the different organisations that were fighting for freedom and had the independence of the country at heart were opposed to this, and they wanted to defeat the Government on that issue. They asked the Government to state the cause that warranted their participation in the war and for this purpose a meeting of the All India Congress Committee was also held. There ensued a grave struggle on account of this and the movement of 1942 was started. All this was the result of the second great war. It is, therefore, not proper for us to follow the Government of India Act, 1935, or take it as a Bible. But we find today that it is now actually being followed as a Bible. There is a saying in Sanskrit

"Shrutya Eka Vakyatwat Anarthakyam Ththarthanam"

It means, what is consistent with Shruti should be taken as right. Our Drafting Committee is also practically working on this assumption that whatever is consistent with the Act of 1935 is right and thus they are going on retaining in the Draft Constitution the various provisions embodied in the Act of 1935. The alien Government that was functioning here under the Government of India Act, 1935, embodied, in the said Act Section 299 which lays down that no property shall be acquired without making due compensation for it. This provision was made only for safeguarding the English companies operating in India. They had apprehensions that in Free India they would be dispossed of their properties. Today we are actually following in their footstep in providing article 24 in the Draft Constitution. Section 93 has now been put before us in this form. We are happy with article 93 as contained in the Draft Constitution. Articles 188, 275, 276 and 278 of the Draft Constitution are exactly on the lines of Section 93 of the Government of India Act 1935. They are essential and imperative. Keeping in view the fact that the Provincial Governments may have to face internal disturbances Governors of the States are vested with emergency powers under article 188 and no doubt it is a proper provision.

Freedom brings in its wake various problems and difficulties which have to be faced by a nation. Anti-social elements are very active in Bengal today. They want to uproot the Government of the Province. The same thing is happening in Madras. Hyderabad too has been the scene of these activities. All these disturbances that we are witnessing today are no doubt local in character but they may create a grave situation necessitating immediate intervention. Now the question arises as to who should intervene immediately. Naturally the man on the spot must be trusted as was observed by the late Lala Lajpath Rai. Distrust begets distrust and trust begets trust. We must trust the authority on the spot. We have provided for a Governor for each province. We are going to pay him a very high salary and provide him with all material comforts; we are going to give him a supreme status in the Constitutional structure of the States, but despite all this, if we do not vest in him the emergency powers are in reality making him only a nominal figure-head. In that case we should not call him a Governor; rather make a little chance in his designation and put it as G0BAR NAR-a dummy. Bharat had installed the wooden sandal of Ram on the throne and ruled the kingdom on behalf of the sandal. He used to Offer worship to it daily But our Governors whom we are going to instal in an exalted office will not be Governors in the real sense of the. term; they are going to be only show-boys. What is the sense, after all, in having a nominal figure head ? Why then pay him such a huge salary ? Well, it would be better not to appoint them at ill. It is better if the huge amount to be incurred on account of their salary and other allowances is saved and utilised for the benefit of the poor people. You are going to appoint him as Governor and ruler of a province, but you are not prepared to vest in him the power of exercising his own discretion at a time when a grave situation has arisen. Under article 188 as contained in the Draft Constitution a Governor can, if he is satisfied that grave emergency has arisen, make a declaration to that effect. When he has made such a declaration, he has, as is laid down in the article, to forthwith communicate the Proclamation to the President of the Union. Now, it is for the President to study and consider over the situation. He may consult the Parliament and revoke the Proclamation if he so deems necessary or may extend it for a further period. Article 278 empowers him to take any of these courses which he deems proper.

Dr. Ambedkar thinks that the Drafting Committee is being charged with not being firm in its ideas. We have great respect for Dr. Ambedkar. We all praise the wisdom of the Drafting Committee. These articles have been drafted by the Drafting Committee. We have had no band in preparing these articles. We beg to request him to retain articles 188 and 275 as contained in the Draft Constitution and submit that they are complete and would amply serve the purpose. Article 277-A is intended to point out to the Union Government their responsibility in respect of maintaining the governmental machinery in the States. Their responsibility in this respect is self-evident; it is implicit. Under article 188 the Governor of a State may declare that a grave emergency has arisen. After issuing such a declaration he is bound, under the article, to communicate the declaration to the Union Government. This information is given so that the necessary action consequential to the information may be taken. Steps may be taken to maintain regional tranquillity and order. After this, the duty of the Centre regarding regional order under article 278 read with article 188 is over. Articles 277-A and 278-A are redundant, are unnecessary. I would submit that if fresh amendments received daily are tabled after considerable consideration, the amendments tabled by Shri Kamath and Prof. Shibban Lal Saksena would become unnecessary, and we can pass this Draft easily and devote ourselves to other important business.

I would also like to mention another matter. The previous British regime had issued various Ordinances after 1939. An ordinary constable was authorised to detain anybody in prison for fifteen days. Later on the period could be extended to six months. So a constable was authorised to detain for fifteen days. We are not prepared to give this right to even the Governor. In this manner the mania of centralisation, i.e., the notion, that everything should be done by the Centre itself and that the regional administration should not continue to be free, is creating distrust. In this way the creation of distrust will beget more distrust and this will grow in the posterity and in the future generation. Besides this, local initiative will be suppressed. The capacity to work on one's own initiative will be destroyed.

I would congratulate Dr. Ambedkar for his imagining a contingency when the whole of the Cabinet and the Governor of our border province of East Punjab may form a clique and possibly line tip with Pakistan or possibly some other country. Assam may join Burma and in this way strange things may happen. A ruler must be suspicious, for it is written that a ruler should be suspicious even of his wife and son. On the basis of that principle, this Idea of strengthening the Centre can arise and from this point of view the new amendments being moved now may have their significance. But we should also see the other side of the case. These Governors are also the strong pillars of the Centre. It is improper to distrust them. I would therefore say that though I have not come forward to oppose strongly these amendments, for I do nut think that I am wiser than Dr. Ambedkar and the Drafting Committee, yet I would humbly submit that Dr. Ambedkar and the Drafting Committee should seriously consider whether our original Draft cannot serve the purpose, so that you may withdraw your fresh amendments and the other Members may also do likewise. With these words I make the above submission.

Mr. President : I find that there are many other speakers and the House has already taken five hours over this debate. I think we should now close the discussion and I do not think that any fresh arguments will be advanced. If honourable Members have not made up their minds after hearing the arguments so far advanced, they are not likely to do so after hearing a few more speeches. I would like to know whether the House would like to close the discussion.

Several Honourable Members : The question be put, the question be put.

Mr. President : Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, although these articles have given rise to a debate which has lasted for nearly five hours I do not think that there is anything which has emerged from this debate which requires me to modify my attitude towards the principles that are embodied in these articles. I will therefore not detain the House much longer with a detailed reply of any kind.

I would first of all like to touch for a minute on the amendment suggested by my Friend Mr. Kamath in article 277-A. His amendment was that the word "and" should be substituted by the word "or". I do not think that that is necessary, because the word "and" in the context in which it is placed is both conjunctive as well as disjunctive, which can be read in both ways, "and" or "or", as the occasion may require. I, therefore, do not think that it is necessary for me to accept that amendment, although I appreciate his intention in making the amendment.

The second amendment to which I should like to refer is that moved by my Friend Prof. Saksena, in which he has proposed that one of the things which the President may do under the Proclamation is to dissolve the legislature. I think that is his amendment in substance. I entirely agree that that is one of the things which should be provided for, because the people of the province ought to be given an opportunity to set matters right by reference to the legislature. But I find that that is already covered by sub-clause (a) of clause (1) of article 278, because sub-clause (a) proposes that the President may assume to himself the powers exercisable by the Governor or the ruler. One of the powers which is vested and which is exercisable by the Governor is to dissolve the House. Consequently, when the President issues a Proclamation and assumes these powers under sub-clause (a), that power of dissolving the legislature and holding a now election will be automatically transferred to the President which powers no doubt the President will exercise on the advice of his Ministers. Consequently my submission is that the proposition enunciated by my Friend Prof. Saksena is already covered by sub-clause (a), it is implicit in it and there is therefore no necessity for making any express provision of that character.

Now I come to the remarks made by my Friend Pandit Kunzru. The first point, if I remember correctly, which was raised by him was that the power to take over the administration when the constitutional machinery fails is a new thing, which is not to be found in any constitution. I beg to differ from him and I would like to draw his attention to the article contained in the American Constitution, where the duty of the United States is definitely expressed to be to maintain the Republican form of the Constitution. When we say that the Constitution must be maintained in accordance with the provisions contained is this Constitution we practically mean what the American Constitution means, namely that the form of the constitution prescribed in this Constitution must be maintained. Therefore, so far as that point is concerned we do not think that the Drafting Committee has made any departure from an established principle.

The other point of criticism was that articles 278 and 278-A were unnecessary in view of the fact that there are already in the Constitution articles 275 and 276. With all respect I must submit that he (Pandit Kunzru) has altogether misunderstood the purposes and intentions which underlie article 275 and the present article 278. His argument was that after all what you want is the right to legislate on provincial subjects. That right you get by the terms of article 276, because under that article the Centre gets the power, once the Proclamation is issued, to legislate on all subjects mentioned in List II. I think that is a very limited understanding of the provisions contained either in articles 275 and 276 or in articles 278 and 278-A.

I should like first of all to draw the attention of the House to the fact that the occasions on which the two sets of articles will come into operation are quite different. Article 275 limits the intervention of the Centre to a state of affairs when there is war or aggression, internal or external. Article 278 refers to the failure of the machinery by reasons other than war or aggression. Consequently the operative clauses, as I said, are quite different. For instance, when a proclamation of war has been issued under article 275, you get no authority to suspend the provincial constitution. The provincial constitution would continue in operation. The legislature will continue to function and possess the powers which the constitution gives it; the executive will retain its executive power and continue to administer the province in accordance with the law of the province. All that happens under article 276 is that the Centre also gets concurrent power of legislation and concurrent power of administration. That is what happens under article 276. But when article 278 comes into operation, the situation would be totally different. There will be no legislature in the province, because the legislature would have been suspended. There will be practically no executive authority in the province unless any is left by the proclamation by the President or by Parliament or by the Governor. The two situations are quite different. I think it is essential that we ought to keep the demarcation which we have made by component words of article 275 and article 278. I think mixing the two things up would cause a great deal of confusion.

Pandit Hirday Nath Kunzru (United Provinces : General) : May I ask my honourable Friend to make one point clear? Is it the purpose of articles 278 and 278-A to enable the Central Government to intervene in provincial affairs for the sake of good government of the provinces ?

The Honourable Dr. B. R. Ambedkar : No, no. The Centre is not given that authority.

Pandit Hirday Nath Kunzru : Or only when there is such misgovernment in the province as to endanger the public peace ?

The Honourable Dr. B. R. Ambedkar: Only when the government is not carried on in consonance with the provisions laid down for the constitutional government of the provinces. Whether there is good government or not in the province is for the Centre to determine. I am quite clear on the point.

Pandit Hirday Nath Kunzru : What is the meaning exactly of "the provisions, of the Constitution" taken as a whole? The House is entitled to know from the honourable Member what is his idea of the meaning of the phrase 'in accordance with the provisions of the Constitution'.

The Honorable Dr. B. R. Ambedkar : It would take me very long now to go into a detailed examination of the whole thing and, referring to each articles, say, this is the principle which is established in it and say, if any Government or any legislature of a province does not act in accordance with it, that would act as a failure of machinery. The expression "failure of machinery" I find has been used in the Government of India Act, 1935. Everybody must be quite familiar therefore with its *de facto* and *de jure* meaning. I do not think any further explanation is necessary.

Shri H. V. Kamath (C.P. & Berar : General) : What about the other amendments moved by Professor Saksena and myself ? Is not Dr. Ambedkar replying to them?

The Honourable Dr. B. R. Ambedkar : I do not accept them. I was only replying or referring to those amendments which I thought had any substance in them. I cannot go on discussing every amendment moved.

Shri H. V. Kamath: Dr. Ambedkar is answering only verbal amendments moved. Should he not reply to all the amendments moved ?

Mr. President : I cannot force Dr. Ambedkar to reply in any particular way. He is entitled to give his reply in his own way.

The Honourable Dr. B. R. Ambedkar : In regard to the general debate which has taken place in which it has been suggested that these articles are liable to be abused, I may say that I do not altogether deny that there is a possibility of these articles being abused or employed for political purposes. But that objection applies to every part of the Constitution which gives power to the Centre to override the Provinces. In fact I share the sentiments expressed by my honourable Friend Mr. Gupte yesterday that the proper thing we ought to expect is that such articles will never be called into operation and that they would remain a dead letter. If at all they are brought into operation, I hope the President, who is endowed with these powers, will take proper precautions before actually suspending the administration of the provinces. I hope the first thing he will do would be to issue a mere warning to a province that has erred, that things were not happening, in the way in which they were intended to happen in the Constitution. If that warning fails, the second thing for him to do will be to order an election allowing the people of the province to settle matters by themselves. It is only when these two remedies fail that he would resort to this article. It is only in those circumstances he would resort to this article. I do not think we could then say that these articles were imported in vain or that the President had acted wantonly.

Shri H. V. Kamath : Is Dr. Ambedkar in a position to assure the House that article 143 will now be suitably amended ?

The Honourable Dr. B. R. Ambedkar : I have said so and I say now that when the Drafting Committee meets after the Second Reading, it will look into the provisions as a whole and article 143 will be suitably amended if necessary.

Mr. President: I will now put the amendment to vote one after another.

The question is :

"That article 188 be deleted."

The motion was adopted.

Article 188 was deleted from the Constitution.

Mr. President : Then I will take up article 277-A.

The question is :

"That in amendment No. 121 of List I (Second Week) of Amendments to Amendments, in the proposed new article 277-A, for the word 'Union' the words 'Union Government' be substituted."

The amendment was negatived.

Mr. President : Now I will put amendment No. 221.

The question is :

"That in amendment No. 121 of List I (Second Week) of Amendments to Amendments, in the proposed new article 277-A, for the word 'and' where it occurs for the first time, the word 'or' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in Amendment No. 121 of List I (Second Week) of Amendments to Amendments, for the words 'internal disturbance' the words 'internal insurrection or chaos' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That after article 277 the following new article be inserted:-

Duty of the Union to protect States against external aggression and internal disturbance.

'277-A It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution.' "

The motion was adopted,

Mr. President : The question is :

"That article 277-A stand part of the Constitution."

The motion was adopted.

Article 277-A was added to the Constitution.

Mr. President : The question is:

"That in amendment No. 160 of List II. (Second Week), of Amendments to Amendments, in clause (1) of the proposed article 278, for the word 'Ruler' the words the Rajpramukh' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 160 of List II (Second Week), of Amendments to Amendments, in clause (1) of the proposed article 278, the words 'or otherwise' be deleted."

The amendment was negatived.

Mr. President : The question, is :

"That in amendment No. 160 of List II (Second Week) of Amendments to Amendments, in clause (1) of the proposed article 278, after the words 'is satisfied that' the words 'a grave emergency has arisen which threatens the peace and tranquillity of the State and that' be added."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 160 of List II (Second Week) of Amendments to Amendments for the first proviso to clause (4) of the proposed article 278, the following be substituted:-

'Provided that the President may if he so thinks fit order at any time, during this period a dissolution of the State legislature followed by a fresh general election, and the Proclamation shall cease to have effect from the day on which the newly elected legislature meets in session'."

The amendment was negatived.

Mr. President : The question is :

"That for article 278, the following articles be substituted :-

Provision in case of failure of constitutional machinery in States.

278. (1) If the President, on receipt of a report from the Governor or Ruler of a State or otherwise, is satisfied that the government of the State cannot be carried on in accordance with the provisions of the Constitution, the President may be Proclamation-

(a) assume to himself all or any of the functions of the Government of the State and all or any, of the powers vested in or exercisable by the Governor or Ruler, as the case may be, or any body or authority in the State other than the Legislature of the State;

(b) declare that the powers-of the Legislature of the State shall be exercisable by or under the authority of Parliament;

(c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the Slate :

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court or to suspend in whole or in part the operation of any provisions of this Constitution relating to High Courts.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) Every Proclamation under this article shall be laid before each House of Parliament and shall, except where it it a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament :

Provided that if any such Proclamation is issued at a time when the House of the People is dissolved or if the dissolution of the House of the People takes place during the period of two months referred to in this clause and the Proclamation has not been approved by a resolution passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the; People first sits after' its reconstitution unless before the expiration of that period resolutions approving the Proclamation have been passed by both Houses of Parliament.

(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of six, months form the date of the passing of the second of the resolutions approving the Proclamation under clause (3) of this article :

Provided that if and so often as a, resolution approving the continuance in force of such a proclamation is passed by both' Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of' six months from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years:

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has not been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the, People first sits after its reconstitution unless before' the expiration of that period resolutions approving the Proclamation have been passed by both Houses of Parliament

Exercise of legislative powers under proclamation issued under article 278

278-A. (1) Where by, a Proclamation issued under clause (1) of article 278 of this Constitution it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent-

(a) for Parliament to delegate the power to make laws for the State to the President or any other authority specified by him in that behalf;

(b) for Parliament or for the President or other authority to whom the power to make laws is delegated under sun-clause (a) of this clause to make laws conferring powers and imposing duties or authorising the conferring of powers and the imposition of duties upon the Government of India or officers and authorities of the Government of India.

(c) for the President to authorise when the House of the People is not in session expenditure, from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament;

(d) for the President to promulgate Ordinances under article 102 of this Constitution except when both Houses of Parliament are in session.

(2) Any law made by or under the authority of Parliament which Parliament or the President or other authority referred to in sub-clause (a) of clause (1) of this article would not, but for the issue of a Proclamation under article 278 of this Constitution, have been competent to make shall to the extent of the incompetency cease to have effect on the expiration of a period of one year after the Proclamation has ceased to operate except as respects things done or omitted to be done before the expiration of the said period unless the provisions which shall so cease to have effect are sooner repealed or re-enacted with or without modification by an Act of the Legislature of the State."

The amendment was adopted.

Mr. President : The question is:

"That the proposed article 278 stand part of the Constitution."

The motion was adopted.

Article 278 was added to the Constitution.

Mr. President : The question is

"That proposed article 278-A stand part of the Constitution."

The motion was adopted.

Article 278-A was added to the Constitution.

Article 279

(Amendments Nos. 3026 and 3027 were not moved)

Prof. Shibban Lal Saksena (United Provinces: General) : Mr. President, Sir, this article takes away the Fundamental Rights contained in article 13 in an emergency., If it is the desire that these rights should be abrogated, it should be done by Parliament by law during that period and it should not be left merely to the executive authority to do so. It is quite conceivable that a war may break out and may last for a fairly long time. The last war lasted for six years and I cannot conceive that for six years the

Fundamental Rights granted under article 13 should remain suspended all over the country. It is a most extraordinary state of affairs and I do not know of any Constitution in the world where the fundamental rights would remain suspended for six years. I therefore move the following amendments :-

> "That with reference to amendment No. 3027 of the List of Amendments, in article 279, for the words 'the State as defined in that Part' the word 'Parliament' be substituted."

> "That with reference to amendment No. 3027 of the List of Amendments, in article 279. or the word 'State' where it occurs for the second time, the word 'Parliament' he substituted."

> "That with reference to amendment No. 3027 of the List of Amendments, in article 279, words 'or to take any executive action' and the words 'or to take' occurring at the end he deleted."

The article will read as follows after that:-

> "While a Proclamation of Emergency is in operation, nothing in article 13 of Part III of this Constitution shall restrict the power of the Parliament to make any law which the Parliament would otherwise be competent to make."

My amendments come to this, that during an emergency the Parliament alone will have the power to suspend the Fundamental Rights given under article 13. Otherwise, if the rights become automatically suspended and the executive authority can do what it likes in this regard, it would be an extraordinary state of affairs. This is a matter of fundamental importance and I would like honourable Members to ponder over this question. The rights that we propose to give under article 13-are they such rights The results of which will threaten the security of the State in an emergency ? I do not agree. Article 13 itself has taken care to see that in an emergency these rights should be exercised only in such a manner as will not endanger the security of the State. I would like honourable Members to read article 13. There are seven fundamental rights guaranteed under this article. The first is that all citizens shall have the right to freedom of speech and expression. Now, this fundamental right is not absolute. We have clause (2) where it is stated-

> "Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to libel, slander, defamation or any matter which offends against decency or morality or which undermines the security of or tends to overthrow the State."

So, that freedom of speech and expression can be exercised only subject to this last clause. This means that the State can make any law to restrict freedom of speech and expression to prevent the undermining and overthrow of the State. The Fundamental Right itself prescribes the limitation to that right in an emergency. I do not see the necessity for article 279 to suspend the provisions of article 13. In an emergency, of course, the State has the right to restrict freedom of speech and expression because the right says that nothing shall prevent the State from making a law in case the situation is such that the security of the State is liable to be undermined. I therefore do not see any reason why this fundamental right of freedom of speech and expression should remain suspended for an indefinite period, during a war, when the right itself says that it shall give the State authority to restrict that freedom if it is so necessary for the security of the State. The second right is that the citizens shall have the right to assemble peaceably and without arms. Then this right is not absolute. It is said in clause (3) "Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing in the interests of public order restrictions on the exercise of the right conferred by the said sub-clause." So in the inherent of public order nothing can restrain the State from making any law. When, therefore, Sir, there is an emergency, nothing will stop the State from making a law because it is necessary to maintain the safety of the State. I, therefore, think that this right to assemble peaceably and without arms should not be denied for an indefinite period or the war merely because there is an emergency. I think the right itself is limited and the State can make any law if it is necessary in the interests of public order. Therefore, Sir, I think the right should be guaranteed and should not be abrogated and suspended during the war.

Then the third freedom is the freedom to form associations or unions. That is limited by proviso (4) which says : "Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing, in the interests of the general public, restrictions on the exercise of the right conferred by the said sub-clause." Here also in the interest of public order reasonable restrictions can be imposed on the right to form associations or Unions. Why then for long years, six or seven or eight years during which a war lasts, should this right remain suspended ? Again, Sir, there are the rights (d), (e) and (f) to move freely throughout the territory of India, to reside and settle in any part of the territory of India and to acquire, hold and dispose of property and all these three rights are again qualified by clause (5) which says "nothing in sub-clause (d), (e) and (f) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any aboriginal tribe." Here also in the public interest, the State earn make any law which goes a against these rights. I therefore think, Sir, that the Fundamental Rights are sufficient in themselves and it is not necessary to abrogate them during in emergency. If this article is passed, what will happen is this : The fundamental rights of the people will be suspended. There is no limit to the period of war and it may last five or six or ten years and throughout that period people all over the country shall be deprived of the fundamental rights. I apprehend there is danger and I would invite the attention of Dr. Ambedkar to consider this clause properly and calmly. If you cannot delete this clause, then at least accept my amendment. I only want that this power should be given to the Parliament for exercise if it is found necessary. If the limitations imposed upon fundamental rights are not sufficient, then let the Parliament declare by law that in the interests of emergency they shall increase these reactions. There should be no objection whatsoever to my amendment which provides for the emergency and at the same time retains to the people the liberties which have been guaranteed by the Constitution. Otherwise, people will laugh at our Constitution and they will say "on the one hand you give them liberty in the fundamental rights and on the other you take them a way". Do we not trust our own Parliament ? If Parliament is not trusted in an emergency, whom , else shall we trust? I therefore think that we must amend this article if we cannot delete it altogether. The power to interfere with fundamental rights should be vested in the Parliament and not in any other authority.

Shri H. V. Kamath : Mr. President, while according general support and wholehearted support to the amendment just now moved by my honourable Friend, Prof. Shibban Lal Saksena to the effect that the power in the event of a Proclamation of Emergency to suspend the fundamental rights guaranteed by article 13 of the Constitution should be vested in Parliament and not in the President, I would go a step further and would like to plead with the House that in view of the new draft of article 280 which will shortly come before the House, there is no need whatsoever to retain article 279 as well. If the House will with patience compare the original draft of article 280, and the present draft of article 280, they will find that the new draft refers to the suspension of all the rights conferred by part III of the Constitution. Article 13 is only one of the articles comprised in Part III of the Draft Constitution. Therefore, I see no reason whatever, no reason *d' etre* for the retention of article 279, and in my humble judgment there is no need now for this article 279 in this Constitution in view of article 280 which follows.

As regards the point made out by my honourable Friend, Mr. Saksena, that the Proclamation of Emergency once issued, the President under articles 275 or 278 as assumes to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or Ruler so far as the constituent State is concerned; and also he is empowered to declare in so far as that State is concerned, that the powers of the legislature of the State shall be exercisable by or under the authority of Parliament. Therefore, it is very necessary to make a distinction here and to be clear in our minds, in case article 279 is going to be adopted by the House as it is; as to what the "State" as specified in that article actually means. Article 279 as moved by Dr. Ambedkar provides that while a Proclamation of Emergency is in operation nothing in article 13 of Part III of this Constitution shall restrict the power of the State as defined in that Part to make any law or to take etc., etc.......... We shall now turn to Part III and find out how 'State' has been defined in that Part. The opening article of Part III defines the State as follows : "State includes the Government and Parliament of India and the Government and legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India." I need not labour the obvious. We have already adopted articles which provide that once an Emergency Proclamation is issued, the State legislatures and the Governor or Ruler of the State become, More or less *funotus officio*. The President may assume to himself all powers. To my mind the Ruler or Governor of the State or the State legislature will not be competent to take such action as may be required to further restrict or annual the rights conferred by article 13. Parliament alone, or the President alone can do it. I would prefer if action in this regard is taken by Parliament; that would be a much wiser provision. If we are wise, we will do so; if we are otherwise, we may not do it. In any case, I think, considering that 'State' is defined in article 7 in Part III so as to include all local or other authorities within the territory of India or under the control of the Government of India, I think it is much wiser to define here exactly what is meant by 'State' to obviate all doubts and difficulties and I think it would be much wiser to provide that not the President, but Parliament alone can legislate in this regard.

One other point, and it is this. Is there really any need for this article specifically relating to article 13 of Part III? I urge my honourable colleagues here to study carefully article 13. Article 13 is already laden with five provisos. Everyone of these provisos provides that in no event, in no contingency, in no emergency, in no case shall the security of the State, or public order or public interest be jeopardised. This article, as was remarked in the course of the debate thereon in this House, as a matter of fact, confers rights, and then abridges them, if not abrogates them, at one and the same time. In view of this consideration that the article as it stands, as we have adopted it, has got safeguards in the interests of the safety of the State, in the interests of public order, safeguards against the exercise of the fundamental rights comprised in, the sub-clauses (a) to (g) of clause (I), I feel that there is absolutely no necessity whatever for incorporating article 279 here. Because, article 279 has got relation to the situation where the security of the State, the security of the country or any part thereof is endangered and we have already made provision for that through the provisos (2) to (6) suffixed to article 13. All these provisos have one meaning; though they may be couched in different language they all beat the same significance, that is, in the exercise of the fundamental rights guaranteed by this article, public order, public peace and the safety of the State shall not be jeopardised. If that stands in danger, this article lays down specifically that nothing shall affect the operation of any existing law in so far as it relates to, or,-this is important, in view of the article that we are now considering-prevent the State from making any law, so on and so forth with regard to the different rights comprised in the article. What do we find here in article 279 ? "Nothing shall restrict the power of the State as defined in that Part to make any law or to take any executive action which the State would otherwise be competent to make or to take." This is already provided for in article 13 and this would be merely an overlapping, if not a cumbersome repetition of what we have already adopted in article 13.

I say, firstly, that this article 279 should be deleted; not that I do not want such a provision, but it is unnecessary because of article 13, adopted by the House already. If that does not find acceptance, I would welcome the acceptance of the amendment of my honourable Friend Prof. Shibban Lal Saksena to the effect that Parliament and not the President may be empowered in this regard.

Dr. P. S. Deshmukh : Mr. President. Sir, I think the provision of article 279 is unnecessary from many points of view. I would like to urge that we ought not to make any provisions which detract from the fundamental nature of our fundamental rights. Even if in an emergency it was necessary to suspend any fundamental rights, there is ample provision already existing in the clause that we have passed so as to make it unnecessary to have an article like this, where we specifically say that laws will be promulgated irrespective of the fact that they nullify or abrogate fundamental rights provided in article 13 Part III. I would like to refer to article 13 and point out what a number of important rights are likely to be affected by the passing of the present article 279. It is not merely prevention of association of people, or prevention of people from inciting other people to violence and utilising the right of speech and expression. It also refers lo free movement throughout the territory of India, refers to the residence and settling down in any part of the territory of India, to acquisition of land and disposal of property, to the practising of any profession or carrying on of any occupation, trade or business. So, to infringe in any way these rights is to declare martial law, and even that is unnecessary because both by the second sub-clause in article 13 there is provision which will give sufficient power both to President as well as Parliament to intervene. This has been pointed out by Mr. Kamath. It has been laid down for instance in article 13 (2) :

"Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the. State *from making any law,* relating to libel, slander, defamation, sedition or any other matter which offends against decency or morality or *undermines the authority or foundation of the State."*

There is therefore sufficient provision recourse to which could be had in an emergency of the type which has been described under article 279. Then, if we refer to the new article which we have just passed viz., article 278, as I pointed Out yesterday-there is also another wide provision for setting aside the pro-visions of the Constitution and I do not think there is anything to suggest that the article referring to the Fundamental Rights are excluded from the operation of those sub-clauses. It has been stated in article 278 (1)(c)-

"make such incidental and consequential provisions as appear to the President to be necessary or desirable etc. etc. in the State".

In view of these provisions, I do not think there is any necessity to have this article 279 and I therefore urge reconsideration of the position and if possible withdrawal of this article altogether.

Shri R. K. Sidhva (C. P. & Berar : General): Mr. President, Sir, this is a very simple article that has been provided under the emergency causes. It is true that under article 13 provisions have been made to enact Acts as stated by my friends just now but I do feel that when the emergency arises it should not be understood that the whole administration would be at a standstill, and therefore this article particularly defines that despite the emergency the State shall not be prevented from making any law under article 13. It is helpful and it is neither superfluous nor redundant. In my opinion the Drafting Committee has taken precaution to state that even in the, event of emergency the States will function, if they so desire, by administering laws as defined in article 13 and nothing would prevent the state from making any laws. It is a very helpful provision lest generally in a state of emergency people feel that emergency is there and therefore all ordinary laws should come to a standstill and no more laws would be enacted. Here we have been told that despite the emergency the State can function if it so desires under article 13. Under these circumstances I feel it is a very happy and necessary article which is desirable under an emergency which may prevail in the States. Under these circumstances, I support this article.

Shri Brajeshwar Prasad : Mr. President, I bad no inclination to take part in this debate but my Friend Mr. Sidhva has not, if I may be excused for saving so under stood the implications of this article. It means suspension of provisions of article 13 during emergency. There is no meaning in saving that the article vest the State with powers, in conformity with article 13. It means there may be suspension of freedoms of speech and association. If this article 13 would not have been present in the Constitution. the States could have taken powers in their own hands and restrict the freedoms of speech and other freedoms. So irrespective of the presence of article 13, the State Legislature can do anything restricting the liberty of the individuals. That is the meaning of article 279.

Shri R. K. Sidhva : No.

Shri Brajeshwar Prasad : I do not know. Let the Drafting Committee explain the provisions of article 279, but I am quite clear in my mind that, article 279 means that the State Legislature can make laws during an emergency restricting freedom of speech irrespective of article 13. This is my interpretation. I do not know if it is correct. If we do any act in politics, it results in either of two ways. Either we expand man's liberty or restrict it. There is no third possibility. I feel that during a period of emergency the executive and the legislature should have the power to restrict man's liberty.

The Honourable Dr. B. R. Ambedkar : Mr. President, I think there are only two points which have been raised which require a reply. The amendment which has been moved by my Friend Professor Saksena was to the effect that any change in the Fundamental Right should be made by Parliament and not by the State during emergency. Now if my friend were to refer to the provisions of article 13, he himself will find that we have permitted both the Centre and the Provinces to make any changes which may affect the Fundamental Rights provided the changes made by them are reasonable. Therefore under normal circumstances, the authority to make laws affecting Fundamental Rights is vested in both and there is no reason why, for instance, this normal right which the State possesses should be taken away during emergency.

Prof. Shibban Lal Saksena : But they will be suspended during emergency.

The Honourable Dr. B. R. Ambedkar : Suspension comes in another article. This article merely says that power may be exercised by the State-meaning both Parliament as well as the provinces-notwithstanding whatever is said in article 13.

Prof. Shibban Lal Saksena : During emergency?

The Honourable Dr. B. R. Ambedkar : Yes. Because that is a normal power even in other cases. When there is no emergency both have got power to legislate on the subject. I see therefore no reason why that power should be taken away during emergency. On the other hand I should have thought that emergency was one of the reasons why such a power should be given to the State.

Then with regard to my Friend Mr. Kamath's criticism that the next article, 280, was enough for the purpose, I think that is a misunderstanding of the whole situation, because unless power is given to modify, the suspension has no consequence at all. Therefore article 280 deals with quite a separate matter and has nothing to do with this article. This article should be accepted in the form in which it is proposed.

Mr. President : I will put the amendments to vote.

Amendment No. 235, moved by Prof. Saksena.

The question is :

"That with reference to amendment No. 3027 of the List of Amendments, in article 279, for the words 'the State as defined in that Part' the word 'Parliament' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That. with reference to amendment No. 3027 of the List of Amendments, in article 279, for the word 'State' where it occur for the second time, the word 'Parliament' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That with reference to amendment No. 3027 of the List of Amendments, in article 279, the words 'or to take any executive action' and the words 'or to take' occurring at end be deleted."

The amendment was negatived.

Mr. President : Then I put article 279 to vote.

The question is :

"That article 279 stand part of the Constitution."

The motion was adopted.

Article 279 was added to the Constitution.

Article 280

Mr. President : Then we take up article 280.

Amendment No. 3028-Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for the existing article 280, the following article be substituted:-

'280. Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of the rights conferred by Part III of, this Constitution and all proceedings pending in any court for the enforcement of any right so conferred shall remain suspended for the period during which the Proclamation is in operation or for such shorter period as may be specified in the order."

The House will see that this article 280 is really an improvement on the original article 280. The original article 280 provided that the order of the President suspending the operation of article 25 should continue for a period of six months after the Proclamation has ceased to be in operation. That is to say, that the guarantee such as *habeas corpus,* writs and so on, would continue to be suspended even though the necessity for suspension had expired. It has been felt that there is no reason why this suspension of the guarantee should continue beyond the necessities of the case. In fact the situation may so improve that the guarantees may become operative even though the Proclamation has not ceased to be in operation. In order, therefore, to Permit that the suspension order shall not continue beyond the Proclamation, and may even come to an end much before the time the Proclamation has ceased to be in force, this new draft has been presented to this Assembly, and I hope the Assembly will have no difficulty in accepting this.

Mr. President : Mr. Kamath, do you wish to move amendment No. 3030 ?

Shri H.V.Kamath : Sir I shall move the alternative in No. 3030. I move:

"That in article 280, after the words 'by order' the words 'and subject to the approval of a majority of the total membership of each House of Parliament' be inserted."

Shall I move my other amendments now and speak on them later? Prof. Saksena has an amendment also.

Mr. President : You may move your amendments.

Shri H. V. Kamath : I also move Sir, by your leave, the three other amendments. The first one reads as follows :

"That in amendment No. 3028 of the List of Amendments proposed to article 280 for the words 'enforcement of the rights conferred by Part III of this Constitution' the words 'enforcement of such of the rights conferred by Part III of this Constitution as may be specified in that Order' be substituted."

The next one is-

"That in 3028 of the List of Amendments in the proposal article 280, for the words 'any right' the words 'any such right' be substituted."

And lastly,

"That in 3028 of the List of Amendments in the proposed article 280, for the words 'the order' occurring at the end, the words 'that order' be substituted."

Sir, if these amendments were accepted by the House, the proposed article, would read as follows:-

"Where a Proclamation of Emergency is in operation, the President may, by order and subject to the approval of a majority of the total membership of each House of Parliament, declare that the right to move any Court for the enforcement of such of the rights conferred by Part III of the Constitution as may be specified in the order, and all proceedings pending in any court for the enforcement of any such right so conferred shall remain suspended for the period during which the Proclamation is in operation or for such shorter period as may be specified in that order."

Sir, shall I take my turn to speak after Prof. Saksena has moved his amendment ?

Mr. President : You may speak now. Prof. Saksena has only one amendment. You may finish your speech first.

Shri H. V. Kamath : All right Sir, thank you very much. While considering this article, the House has to view it from more than one angle. The fundamental question, the question which goes to the root of the matter, is the suspension of all the Fundamental Rights guaranteed under Part III of this constitution. What are Fundamental Rights as envisaged in this Part III ? They are, as far as I have understood them rights of the subject or individual as against another individual, and also the rights of the individual as against the State. And we wholly justified in suspending the exercise of these fundamental rights during the period when the Proclamation of Emergency is in operation ? I have studied tile major constitutions of the world though not as carefully as Dr. Ambedkar might have done, but to my regret I have not come across any such wide and sweeping provision in any of the other constitutions. Turning to the U.K.-there is no need to harp on it overmuch, as it is an unwritten constitution-the other day Dr. Ambedkar or Mr. Krishnamachari referred to DORA (Defence of the Realm Act) which was passed by the British Parliament in 1919 or 1920. It is true that under that Act some of the rights of personal liberty and so on were suspended, but there was a very wholesome provision made in that Act against the abuse of power conferred on the executive. The Emergency Powers Bill of 1920 was condemned in England as the, first coercion Bill since the days of Castlereagh. But even that black Bill-as it was then called contained many safeguard which toned down the harshness and tyranny that might have resulted from the operation of that Act. I shall read some of these safeguards :

"Where a proclamation of emergency has been made by His Majesty the occasion thereof shall forthwith be communicated to Parliament and if Parliament is then separated by such adjournment or prorogation as do not expire within five days a proclamation shall be issued for the meeting of Parliament within, five days; and Parliament shall accordingly meet and sit upon a day appointed by that proclamation and shall continue to sit and act in like manner as if it had stood adjourned or prorogued that day.

* * *

Any regulations so made shall be laid before Parliament as soon as may be, after they are made and shall not continue in force after the expiration of seven days from the time when they are so laid unless a resolution is passed by both Houses providing for the continuance thereof."

That is so far as England is concerned. In the U.S.A., from which we are product to have borrowed much-there is, provision for the suspension of only one fundamental Right though it is of the highest importance, namely, right to the writ of *habeas corpus*. The U.S.A. constitution provides that this right shall not be suspended unless in cases of rebellion or invasion, when the public safety may require it. But there are adequate safeguards in that regard, namely, the suspension can be authorised only by Congress, i.e., by the Senate and the House of Representatives combined. But it is for the Supreme Court to say whether conditions existed which would justify the suspension of that right. In the well known Milligan case the Supreme Court stated that martial law cannot arise from a threatened invasion; the necessity must be actual and present and the invasion real. The point I sought to make out yesterday was that there should not merely be an imminent danger of external aggression or internal rebellion. The U.S A. Constitution provides that. Further, the Supreme Court observed that what is true of invasion is true of rebellion also. It said that in order to meet the constitutional requirements the privilege of the writ of *habeas corpus* shall not be suspended unless in cases of rebellion or invasion the safety of the State requires it actually-and not simply a constructive necessity, made by a declaration of the legislature,-and the court will be the judge. I am sorry to say that though Dr. Ambedkar and others of his way of thinking proudly claim that they have borrowed so much from the U.K. and the U.S.A. some of the safeguards, obtaining there have not been incorporated in our Constitution. Even now if it is not too late I would appeal to Dr. Ambedkar and his team of wise men to look this matter closely and see whether some safeguards could not be provided against the abuse of the power vested in the executive by virtue of this article 280.

Then, Sir, coming to details, the article refers to fundamental rights guaranteed by article 13. The House will see in Part III that the fundamental rights are of various kinds; they are not of a uniform character. They are different in nature and in conception and they comprise various matters which are not interconnected with each other. Article 11 for instance............

Mr. President : Does the honourable Member propose to go through the whole part, section by section, and sub-clause by sub-clause?

Shri H. V. Kamath : No, no : in so far only as they are relevant to any argument.

Mr. President : I think the Members are familiar with the fundamental rights and any general remarks the honourable Member may wish to make he may do so without going into details of each such fundamental right.

Shri H V. Kamath : I shall abide by your ruling. I am referring to such articles as are relevant to my amendments. The amendment moved today is amendment No. 1, the new one where I have said that the enforcement "of the rights" should be substituted by "such of the rights conferred by Part III of the Constitution as may be specified in that order."

The point of my amendment is that there are certain rights guaranteed by article 13 which cannot be abrogated in any eventuality, not even in case of the gravest emergency. There are some rights given by article 13 which cannot be abridged, abrogated or annulled. *e.g.*, article 11 abolishing untouchability. It is a very vital right. Do you mean to say that when there is an emergency we can permit the observance of these taboos and will not take any action those who enforce untouchability in any form on anyone else? Then there are the cultural rights and educational rights, but as I have just remarked, I do not wish to transgress your ruling and go into details. I shall only refer to untouchability, educational and cultural rights. If the House will study them closely and Dr. Ambedkar will give thought to the matter, he will find that there are certain rights which cannot be suspended in any case, however grave the state of emergency may be. Therefore, I have sought to amend this article in this fashion-that the order must specify those rights which are sought to be annulled or abridged or curtailed or suspended.

The other two amendments are merely verbal and I do not wish to speak on them. I leave them to the, wisdom of the Drafting Committee to which mine is no match at all.

Amendment No. 3030 of the printed List of Amendments is a vital amendment, which is to the effect that the President's order declaring that the fundamental rights or any of them shall remain suspended-that order shall be subject to the approval of Parliament. We have already provided for that in articles 275 and 278. In 278 it is laid down that any proclamation made shall be laid before Parliament for its approval. In article 275, clause (2) (b) and (c), it is specifically laid down that the proclamation shall be laid before Parliament for its approval. Does this mean that once this proclamation is approved by Parliament the President is free to do by order as he likes? If that be so, it is a pernicious article. The suspension of fundamental rights is not an ordinary matter. It is a very grave matter. I will go so far as to say that it is even graver than the gravest emergency with which the State may be confronted. Do we in that eventuality empower the President to declare by order that these fundamental rights, conferred by article 13 shall be suspended? I hope that will not be done. I hope that is not the intention of this House. In whatever form this article may have been brought before the House today. I hope that the House will not adopt this in a hurry : on the contrary, that it will give it mature consideration. I trust that the House will consider this matter in greater detail and will amend it suitably so as to provide more safeguards. I only wish through my amendment to see that any order made by the President in this regard-namely with regard to the suspension of, fundamental rights shall, similarly to an emergency Proclamation, be laid before Parliament and if Parliament approves, well and good: if Parliament rejects it, then that order should not have any force. As I have stated, though we hope and pray that the President may be a wise man, there is no guarantee in the Constitution that a philosopher-king-whom my honourable Friend Mr. Brajeshwar Prasad wants to be in the highest office of the State-will be elected. Human failings and human imperfections there will be. If the President decrees that all the fundamental rights are suspended, there is under the proposed article no provision for Parliament considering the matter. My Friend, Prof. Saksena, has tabled a little more radical amendment. I for my part, will be satisfied that, if the President passes an order before Parliament is convened, that order is laid soon before Parliament for it to debate on and approve or reject it. We are pleading, Sir, in season and out of season, that we are passing through a crisis. I am sure that the Italian Constituent Assembly, when it met two years ago soon after World War II was over, was faced with no less grave a crisis. There was danger of upheaval within the State and Communist were rising against the State. Italy was a border State between the Russian bloc and the Western bloc and it was wedged in between the two, and it, was thus subjected to various stresses and strains. Even then, the Italian Constituent Assembly which adopted the Constitution in 1947 did not go so far as we are going today. What did they do? They were faced with a very grave crisis, the Communist near-insurrection within the State : and as we all read in the papers the other day, there were free fights within the Chamber of Deputies in the Italian Assembly when the Atlantic Pact was ratified. The Constituent Assembly adopted, however, an article, with a view to meeting the grave crisis confronting the State, but they provided adequate safeguards, and the relevant article in their Constitution reads thus:

> "When in extraordinary cases of necessity and urgency, the Government oil its own responsibility adopts provisional measures having the force of law, it must on the same day" (in the U.K. the Act provides that Parliament must be summoned in five days) "present it for conversion into law by the Chamber which, if dissolved, should be convoked for the purpose and assemble within five days. The decrees lose effect as on the date of issue if not converted into law within-60 days of their publication. The Chambers may, nevertheless, regulate by law political relationships arising from decrees not converted into law."

Again the power is left to the Chamber.

I have placed before the House the constitutions of U.K., U.S.A. and Italy. I would like to place other constitutions also before the House but I do not propose to do so. I do not find in any constitution a similar provision of such sweeping character, as the provision in this chapter.

There is one more point and it is this. We have already provided in article 278 that even otherwise than on the receipt of a report from the Governor a proclamation can be issued by the President. I suppose under article 275 if India as a whole or even any part thereof is threatened by invasion, external aggression or internal disturbances, the President is empowered to proclaim a state of emergency. If the President issues a Proclamation of Emergency without receiving a report from the Governor and takes action subsequent thereto, annulling the fundamental rights, there is one grave danger. The Governor or the ruler of a State or other authorities within the State will feel that they have been bypassed or ignored and a very serious conflict may arise. The authorities within the State-the ruler, Governor, his ministers or other administrative apparatus in the State--God forbid they should,-may refuse to co-operate with the Central Government or President and refuse to execute or conform to the decrees issued by him as a sequel to or in pursuance of the Proclamation of Emergency. This is an eventuality or situation which, I am sure none of us desires to bring about. Therefore, bearing all these considerations in mind, and taking serious notice of these possibilities and dangers, I feel that article 280, moved as amendment 3028 of the List of Amendments, (which has been couched in rather unfortunate language) is to my mind fraught with grave consequences not merely to the liberties of the individual but also to the powers of the constituent units. I once again urge, in all humlity and with all the emphasis at my command, that this House should deliberate very coolly upon this article and provide safeguards against the abuse of power by the executive which is very likely,-nay, I am certain will result-from the operation of the article if it is passed as brought before the House today.

Prof Shibban Lai Saksena : Sir, I beg to move:

> "That in amendment No. 3028 of the List of Amendments, in the proposed article 280 for the words 'the President may by order declare' the words 'The Parliament may by law provide' and for the words 'the order', occurring at the end, the words 'that law' be substituted."

My amendment if accepted will read as follows :

> "Where a Proclamation of Emergency is in operation, the Parliament may by law provide that the right to move any court for the enforcement of the rights conferred by Part III of this Constitution and all proceedings pending in any court for the enforcement of any right so conferred shall remain suspended for the period during which the proclamation is in operation or for such shorter period as may be specified in that law."

I would have very much wished that this article was completely deleted. It is even more far-reaching than the preceding article to which I voiced my opposition. That article has not taken away the liberties guaranteed under article 13, but this is of much greater import. In fact it nullifies the subject's right of constitutional liberties, which have been provided in the Constitution. I would Invite the attention of the House to article 25 which says :

> "The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed."

The Supreme Court can always be approached whenever any of these rights is infringed. The second clause is even more important. It says :

"The Supreme Court shall have power to issue directions or orders in the nature of the writs of *habeas corpus, mandamus, prohibition, quo warranto* and *certiorari* whichever may be appropriate for the enforcement of any of the rights conferred by this Part."

Clause (3) says :

> "Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2) of this article."

Clause (4) says :

"The rights guaranteed by this article shall not be suspended except as otherwise provided for by the Constitution."

Here we are invading the powers of the Supreme Court in regard to the liberties of the subject, not only the liberties guaranteed under article 13 but all the rights plus the right of the subject to obtain a writ of *habeas corpus*. When I read this article I was transported back to the glorious revolution of 1942, when India waged her war of independence and we were thrown into dungeons on charges which were fantastic such as waging war against the King, etc. Even then the British Government did not suspend the power of the High Courts to issue writs of *habeas corpus* which is guaranteed by Section 491 of Criminal Procedure Code. I remember numerous detenus sent applications under the *habeas corpus* section and they had to go to a High Court and were heard there. But in this free India we are providing for the suspension of this most fundamental article and section 491 of the Criminal Procedure Code will not have any effect if the article is adopted Supposing a war lasts for 'ten years; is nobody to have the right to approach the Supreme Court with an application for a writ of *habeas corpus* during that whole period? This gives the bureaucracy the right to arrest any person without any cause whatsoever. One cannot even go to the Supreme Court for redress. I do not think that in any emergency this right of the Supreme Court to do justice should be taken away. After all, the Supreme Court which will be created under this Constitution will be presided over by a Chief Justice who will be nominated by the President on the advice of the executive and the other judges also will be eminent men appointed more or less in the same way. Cannot such gentlemen be trusted in an emergency ? I cannot conceive how we can trust the executive which can ride rough-shod over the liberty of the citizens. I can understand the provision of safeguards for an emergency, but not the complete suppression of the liberty of the citizen. I do not know of any parallel for this anywhere in the constitutions of the world. I, therefore, suggest strongly that this article should be removed from the Constitution; but if that be not possible, I would suggest that my amendment which gives power to the Parliament to make any law which it considers necessary for an emergency may be accepted. The President may order the issue of a proclamation and the executive will be supported by Parliament. I do not see what harm is there in giving the Parliament the right to pass laws for emergencies. Why should the President alone have the power which in effect means power for the executive behind him ? The Parliament must have the right to say what sort of action should be, taken in an emergency. I do not think that this article is at all necessary. But if it is considered necessary, my amendment must be accepted and Parliament should be empowered to safeguard our freedom even in emergencies. Let, it not be said that we distrusted our sovereign Parliament and gave power to one single individual.

My Friend Mr. Kamath quoted many articles to show how foolish it is to suspend the entire Chapter XIII. I am surprised to see that the Drafting Committee considered this necessary. There are some articles in this Chapter that have nothing to do with an emergency. Why should they be suspended ? If this article comes into operation, discrimination can also be practised. And that would go against the spirit of the Fundamental Rights we have conferred on the citizens, such as non-discrimination between citizen and citizen, untouchability and other things. I do not think that this article has been drafted with proper care and with a proper understanding of the situation. I do not know what defence Dr. Ambedkar can have for this provision. In replying to my amendment in the previous article, he said that power had been given to all the States legislatures also to make laws in violation of article 13. That is something which can be understood. I wanted that Parliament should have this power and be said that the States also should have this power. But here the President only is given this power to issue orders and the question of States does not arise. I only want that Parliament by law should do this. Why do you want the President to be an autocrat ? If my simple amendment is not accepted and the fundamental rights of the people safeguarded, people will not have much respect for this Constituent Assembly; for the Constitution made by it, because this article cuts at the root of our freedom and should not be in the Constitution. It should at least be amended as I have suggested.

Mr. President : Pandit Kunzru has given notice of an amendment to article 280.That is No. 211 in the printed Supplementary List.

Mr. Tajamul Hussain (Bihar: Muslim): What about my amendment, Sir?

Mr. President : What is it?

Mr. Tajamul Husain : It is for deletion.

Mr. President : That is only negative. You can vote against the motion.

Shri H. V. Kamath : Yesterday, Sir, a motion for the deletion of an article was allowed by you.

Mr. President : Because it was moved by the Drafting Committee itself.

Shri H. V. Kamath : I suppose the rules must be the same for all.

Mr. President : The Drafting Committee has the right to ask for a deletion. In the case of Members, such a motion will not come in as an amendment.

Do you wish to move your amendment, Dr. Kunzru ?

Pandit Hirday Nath Kunzru: Yes, Sir. I move:

"That in amendment No. 3028 of the List of Amendments, for the proposed article 280 the following be substituted :-

Suspension of the enforcement of certain fundamental rights during Emergencies.

'280. Where a Proclamation of Emergency is in operation, the President may, by order, declare that the right to move any court for the enforcement of any of the rights conferred by articles13, 14, 15, 16 and 24 of this Constitution and all proceedings pending in any court for the enforcement of any such rights shall remain suspended for the period during which the Proclamation is in operation or for such period as may be specified in the order.' "

The object of this amendment is a very simple one. The amendment that Dr. Ambedkar has moved covers all the fundamental rights. What I want is to limit the operation of article 280 to certain rights only. It is not necessary that, when a Proclamation of Emergency has been issued by the President, all the fundamental rights should be suspended. Take for instance, the right of a man, to whatever caste he belongs, to stay in a hotel or go to a restaurant or draw water from a public well. Is this right too to be suspended while a Proclamation of Emergency is in force ? All that is desired is that, so far as the right to free speech or the right to form associations or the right to assemble peaceably are concerned, it should not be enforceable through the courts of the land while a Proclamation of Emergency is in force. I am not entirely of the same opinion as Dr. Ambedkar in this matter, I share the opinion of his critics; but I can understand his desire that in times of serious trouble, the State should not be tampered by any formalities in the formidable task of restoring law and order. It is however not necessary for the purpose of quelling internal disturbance or meeting external aggression that we should deprive the people of all their fundamental rights. Ail that is necessary is that notwithstanding the rights conferred by this Constitution on the people, such of them is, if allowed to be exercised in an unrestricted manner, will create difficulties in the way of re-establishing peace, may not be legally enforced. I think this limited purpose will be gained if the amendment that I have moved is accepted. It does not seem to me to be at an necessary or desirable that the scope of the article should be wider than this. However serious the situation may be, the State will be armed with ample powers to bring it fully under control if my amendment is accepted. The entire suspension of the fundamental rights is neither necessary in any case nor desirable. Indeed, it would be deplorable. I hope therefore, that my amendment which gives the executive all the powers that it need possess in troubled times, will be acceptable to the House.

Shri Mahabir Tyagi (United Provinces : General) : Sir, in view of the fact that the House has already passed article 279 as desired by the Drafting Committee, I think, the passing of 280 is rather too serious. The House has already permitted the future governments to override important fundamental rights in the case of an emergency. Now, to go further and to allow the State to go beyond the powers of the Supreme Court is, in my opinion, too much. I agree with my Friends, Mr. Shibban Lal and Mr. Kamath, in their protests against this power being given to the future governments. An emergency has to be declared when there is danger to the peace or tranquillity of the country or to the existence of the government. But let us also understand that a Government is always poised as against the people it governs. So, while giving a Constitution to our country, we must not lose sight of the fact that the rights and privileges of the people being poised against the authority of the State, it is for us to see that the stress is not lop-sided. While assigning political rights, we should strike a balance between the governed and the governors. No doubt, in a democratic State, the government is necessarily formed in accordance with the will of the people, but even then, once a State is organised, the role of the people becomes passive. It is the people who are acted upon by the State. Now, for instance take our own case. It is the Members of the Constituent Assembly today who compose the State. In fact, all the State authority of India is in the hands of the Constituent Assembly (Legislative). We are wielding power. On whom are we wielding it ? We are wielding it on the people whom we claim to represent. Have our electors any hand in the administration ? Have they any say ? No. Let us not be under the impression that we would last for ever. It is always the case that when one occupies an office of responsiblity, one thinks that that office to be effective should be armed with more and more powers, because one is too self-confident and therefore one honestly feels that one will not misuse the powers given to one's office, but the one must not also forget that that office is not for the one to occupy for ever. Another may occupy it tomorrow and misuse the power. So, while giving more powers to the State, we as the representatives of the people and also as the judges of the rights of the people, must bear in mind the fact that the state might also change bands. And that the future governments might not be so considerate towards the rights of the people, and that they might also misuse these powers. The only guarantee that the people have against the high-handedness of their State is the Court. And so if in our enthusiasm we empower the State to go beyond the judiciary and override it, there will remain nothing but the law of the jungle. There will be nothing to control either the government or the people. Sir, my experience is only from India, while many of my honourable Friends, who have read books on foreign countries, and seen their politics too, have a different picture of democracy in their minds. I value their experience and knowledge, but to me it seems that their opinions are mostly borrowed. I would appeal to them to study the march of democracy in India Are they satisfied with the manner in which we are running our democracy ? Sir, my opinion is based on what I have seen with my own eyes. The present Government here and the governments in various provinces can claim to be known as the peoples' governments. Such people's governments are spread over the whole of India today; and also in such territories as used to be Princes' States, the government is no doubt of the people but even then the fact remains that in practice the Government stands in opposition to its people. I do not think by votes a government becomes the people's government, and it may be right to prove by logic that since the people had voted for the government, the government shall have to be the people's government, and it may claim that the people themselves carry on the government. It is not so in fact. They had exercised their votes once. But as the election were over, they got out of politics, now they have no control. Till the next elections or till such time as they have another chance to exercise their choice, they must remain like sleeping partners of democracy. We have not got the right to recall the Government. People after once voting for the Government have no right of recall or to censure it unless there is a fresh election. So whatever rights we give to the State or the Government those rights are not necessarily to be used in the interest of the people. For the present type of democracy in India, people do not count at all. Their only privilege is that they have a free access to the Judiciary. People, who feel that their privileges or their rights, fundamental or otherwise are violated, can have resort to a court of law, and that is the only guarantee, that is the only safety under which the people may remain contented. If the people were to be told that the State is supreme in India, and that the Supreme Court is liable to be over-ridden, they will lose confidence of their security and existence. With an Independent judiciary, it is not only the people who draw a sense of security, against the tyranny of the State, but even an individual feels confident about himself, whenever his rights and privileges come in clash with the vagaries of society. If the society is hard on an individual, even that single individual must have the guarantee, must have the security to stand alone and to live alone and he must have the guarantee that no wrong will come on him and that be will not be dealt with unfairly. That guarantee is there, only because he is confident the Court is Supreme. Even if the whole State pounces on him he has one guarantee, as a citizen of the land, to approach the Supreme Court for protection and relief. Therefore, Sir, I submit that this article will have an alarming reaction. It will shake an individual's faith that law will be justly exercised. It is through this faith that individuals cling to society. Devoid of this sense of security the society will diffuse and disperse like particles of sand. I submit, Sir, that the principle involved in the article under discussion is very pernicious. I for one cannot vote for it. Even if the whole House agrees to arm the Government with such powers even in the case of an emergency, I for one wish to bring it on record that I am opposed to this, now and ever. (Hear, hear). I think the rights of an individual to move the judiciary should not be taken away in any circumstances. And if we were to agree to the draft that has come before us then,-Sir, I do not know, my logic may be wrong, it is for the lawyers to say,-but I feel that no fundamental rights can remain protected and there would be no security of life or property or even of political rights and liberty. And having in view the poor training of political parties in their practise of democracy, I am inclined to profess that we should not be surprised if individuals are ordered to be hanged for flimsy reasons of their not seeing eye to eye with the powers that be. All this will be done in the name of emergency. May be that Shri Alladi Krishnaswami Ayyar might find a way for the condemned to smuggle him into the court, but I do not see there shall remain a chance, because all fundamental rights or rights of *habeas corpus* shall stand suspended altogether. After seeing the people's government run for the past two years I am afraid it will take a long time, yet, for our representatives to know how to run the administration in the interest of the people. It is, indeed, wrong to say that even our government, however popular it may be, is really the people's government. Neither people have a voice in it nor are we able to interpret their wishes into action. We were elected long ago to fight with the British, and now by indirect election we have come here; people have not given us their sanction to make a Constitution for them. It is the British who gave us that sanction, and with that borrowed sanction of the foreigners we are constituting for the people. And this Constitution is going to be inflicted on the people without their expressed consent or legal sanction. Therefore to legislate or to constitute in a manner whereby the people's rights are disregarded, will be rather unfair and bad in law and in constitution. I therefore submit, Sir, that the Drafting Committee might please review their opinions and see if they could still bring some change to the effect that the supremacy of the judiciary is not interfered within the manner in which it is proposed in this article. Sir, people's government will still take time to come and it is not by vote that we can make the people's government really so. It is by our aptitude and method of administration and behaviour that the Government may become really people's government. It is not that the ministers belong to the people, but the government belongs to the people. It is the policy of the Government that should belong to the people, that that Government will be the people's government. I submit, Sir, the people have not yet received any power. And so long as the people are not rich enough in their rights to enforce their policies on the Government, the Government howsoever popular it be, can never be the people's government, and I am afraid if things go on at this pace, the tendency of the government, being towards arrogance, it will soon become tyrannous for people, and time would come when people will make their own government, because after all it is a democracy. People's voice cannot be subdued for long and people will exercise their free voice at last. But the day they choose to exercise their rights and act freely, they will at once have their own government and when their own government comes and they begin to act there must crop up a party in opposition. But as I have seen we are not yet trained in democracy. Any opposition here even in this House is not seen, is not considered or treated with that much of generosity as in foreign countries opposite parties are treated. I submit that in India the generosity, the intellectual honesty and the strength of conviction has still to come, and so long as we are not trained to treat our opponents with respect and honour and so long as party bitterness exists in the politics of the country, I am afraid many rich and precious lives, the lives of many a learned and the patriots will be in danger if this pernicious article is allowed to creep into this Constitution; because as soon as there is war, the parties in power will try to exterminate their opponents. We must also remember the present century is a century of emergencies; there will be emergency at home, and emergency abroad all over the world; and these emergencies will be intermittent; they may repeat themselves very often; the future governments of most of the countries are going to be governments ruling under the emergency declarations. If times are really so 'disturby', if times are so unstable, then our country will have emergency proclamations for most of the time; with too much of power and with little fear of re-election, the government must tend to become tyrannous and beastly. The opposite party will have no safety. For God's sake, therefore, let not the individuals, let not your opponents be deprived of their basic right of approaching the Supreme Court for the protection of their life, honour and liberty. I there, fore submit, Sir, that this article may not be accepted and the Drafting Committee might be pleased to reconsider, and in the interests of democracy, in the interests of our future freedom, they will please revise it and amend it in such a manner that the future Governments might not be able to misuse it in a manner.

With these words, I oppose this article.

Prof. K. T. Shah (Bihar : General): Mr. President, coming to this grand finale and the crowning glory of this chapter of reaction and retrogression, I fear one cannot but notice two distinct currents of thought underlying and influencing throughout the provisions of this chapter. On the one hand, there is a desire, it seems to me, to arm the executive, arm the Centre. arm the Government against the legislature against the units, and even against the people on the score of possible threat to internal peace, a possible danger of war or external aggression, or even any local disturbance. Looking at all the provisions of this Chapter particularly, and scrutinising the powers that have been given in almost every article, it seems to me, Sir, that the name only of Liberty or Democracy will remain under this Constitution. Every one of these articles,-and ultimately this particular article,-suspending even the fundamental rights and the right of approach to the Supreme Court for the enforcement of those rights, merely on the ground that there is an emergency declared by the Head of the State, is, to my mind, a denial of any right of freedom or civil liberty of any kind that has been conferred in a previous chapter.

It seems to me, incidentally, that this article is inconsistent in spirit, if not in letter, with the articles previously passed, which require that while all other powers and functions may be arrogated to himself by the President, or may be, delegated to some other authority named by him, the powers and authority of the High Courts will not be interfered with. In this article, though directly the powers of the High Courts or of the Supreme Court or any court are not interfered with, inasmuch as the right of the individual to move the Supreme Court as guaranteed in article 25 will remain in suspension, if this article is accepted it would follow that even the powers of the High Court, the Supreme Court or any court would be suspended. For, the courts cannot go to the individual aggrieved by such acts of the Executive, and say, "bring your troubles to us and we shall redress them". The Courts must wait till any individual aggrieved comes to them, or raises the question of the Fundamental Rights under this Constitution. If that is not permitted, as this article seeks to do, then, I am afraid, the right of position of the court itself is put under suspension.

That, surely, should not have been the intention, and that should not be the purpose of a provision like this in the Constitution. The moment you introduce a provision like this in our Constitution, the moment you provide that the right to move the Supreme Court which has been guaranteed by a previous article shall be suspended by an order of the President, by an order of the Executive that moment you declare that your entire Constitution is of no effect.

Dr. Ambedkar takes credit, and I think he is fully entitled to it, that he ha changed six into half a dozen; that is to say, instead of saying that the suspension shall remain operative during the period of the Proclamation and some time after, he now provides that the suspension shall remain in operation during the period of Proclamation, or for a shorter period. To that extent, I repeat his amendment deserves congratulation. But the essence remains; that is to say, the suspension of the right to move the Courts of justice for an aggrieved citizen the only right guaranteed by the Constitution, who is denied his Fundamental Rights as conferred by the Constitution itself, remains untouched, even if the period of its duration may be shortened in the manner that Dr. Am has done.

So long, therefore, as this provision remains in the manner in which it has now been put forward, so long as it is the power of the Executive only to make such an order, and suspend the fundamental rights in effect, so long, I think, this provision would be and must be objectionable.

As an amendment here has suggested, if you really feel that some extraordinary measures are necessary, when an emergency is so grave that you cannot wait for the ordinary individual's rights to be enforceable, and the legal technicality of procedure to take effect, by all means act; but in such acting take the Legislature into your confidence, and make the Legislature enact the necessary law. Why should you assume that the Legislature should be so unresponsive, so callous, so indifferent and unaware of the real situation of the country, that it will not agree to such legislation as may be necessary for preserving peace and tranquillity inside the country, and guarding the country against any danger of external aggression ? After all, you have the example of Britain during the last two World wars that she has fought in this century. Then under the socalled Reference of the Realm Acts, again and again, certain rights what we call Fundamental Rights had to be suspended or denied; and nobody protested against any such legislation being passed. Why do you assume that the Parliament will be so unaware of the situation, or unwilling to pass the necessary legislation, that you must arm the Executive, the President on his own authority so to say, to pass such an Act by Executive Order, and go to the extent of stopping or suspending even the one guaranteed Fundamental Right of justice in the courts of law?

I think this is an excess of power being given to the President, I think it is an excess, shall I say, of reaction against which the Draftsmen cannot be warned too strongly, cannot be warned too often. I would, therefore, suggest that if at all such a clause is necessary-for my part, I do not think it is necessary-it should be included as part of the powers of the Legislature. If at all you think that it is not possible to rely upon Parliament or upon the people's good sense, let the Executive take action face the consequences without an express provision in the Constitution to that effect. But it would be better if you make at least the legislature to pass a law giving these powers by a special provision in such an Act.

The difference between an executive order of the kind contemplated in this amendment and an Act of Parliament is quite obvious. Whereas in an executive order the President alone will act, or perhaps one or two of his Ministers will advise him and he will act on that advice without any further discussion, in an Act of Parliament, it would be unavoidable that the fullest searchlight will be thrown upon every provision and every word of the provisions. Not only the necessity for such special provisions would be laid bare, but also the limitations and restrictions that may be deemed necessary by Parliament to impose, before executive action of this kind can be allowed to take effect, and the conditions under which it takes effect. I, therefore suggest that instead of concentrating all effective power and authority and influence in the hands of the Executive, It would be better if at least the Central Parliament-I am not suggesting the local Legislature-of the country as a whole should have the right to discuss these matters, and pass the necessary legislation. If you have confidence if you really believe in the collective wisdom of the representatives of the people greater than your own wisdom as the Executive, then, I think there is no alternative but to accept the amendment which suggests that this power should be given by an Act of Parliament and not by Executive Order the President.

The Honourable Dr. B. R. Ambedkar : May I say a word? In view of the point that has been made as to whether the suspension of the proceedings should take place by the order of the President which of course means on the advice of the Executive, which of course also means that the Executive has the confidence of the Legislature, there is no doubt a difference of opinion as to whether suspension should take place by an act of the Executive or by law made by Parliament. I should like therefore that this article may be held over to provide the Drafting Committee opportunity to consider the matter. We might take up the, other articles.

Mr. President : This article may be held over.

Then we shall go to article 247.

Article 247

The Honourable Dr. B. R. Ambedkar : Sir, I move that-

"That for the heading to the articles commencing with article 247, the following heading be substituted:-

'General"

Mr. President : I do not suppose any discussion of that is required.

The question is :

"That for the heading to the articles commencing with article 247, the following heading be substituted :--

'General'

The motion was adopted.

Mr. President : Amendment No. 2832.

Mr. Naziruddin Ahmaad : Sir, I beg to move:

"That in article 247, the words 'unless the context otherwise requires.' be deleted."

I submit that these words are not only unnecessary but somewhat misleading. In article 247 there are certain important clauses. Clause (a) defines "Finance Commission." I submit that Finance Commission is a precise expression. It has only one meaning and it has been used throughout the Constitution in that specific clear meaning. In clause (b) 'State' has been clearly defined that it does not include a State for the time being specified in Part II of the First Schedule. 'State' has been clearly defined in the appropriate places and a State as specified in Part II has also been specifically defined without the possibility of any misunderstanding. So State here is clearly understood. In clause (c) it is said that "references to States for the time being specified in Part II of the First Schedule shall include references to any territory specified in Part IV of the First Schedule and any other territory comprised within the territory of India but not specified in that Schedule." I submit part II of the First Schedule and Part IV are clear and therefore these explanations in clauses (a), (b) and (c) are absolutely precise and incapable of being misunderstood even with reference to any context. Therefore the words unless the context otherwise requires' are absolutely unnecessary. I shall ask the honourable Member to point out any place where the context can possibly 'otherwise require'. In the Penal Code the definitions are very precise and therefore the misleading condition 'unless the context otherwise requires' is entirely absurd. The addition of these words will make the reader or Constitutionalist thinkseveral times before giving these words the meaning which is here definitely given. Therefore in order to remove any uncertainty or doubt in the minds of a reader, these words should be omitted. That is the purpose of my amendment.

(Amendments Nos. 2833 to 2836 were not moved.)

Mr. President : Does anyone wish to speak ?

The honourable Dr. B. R. Ambedkar : All that I need say is that those words are included by way of 'abundant caution'. It may be they may be unnecessary, but it may be they may be found necessary. We want to retain those words.

Mr. President : The question is :

"That in article 247, the words 'unless the context otherwise requires,' be deleted."

The amendment was negatived.

Mr. President : The question is:

"That article 247 stand part of the Constitution."

The motion was adopted.

Article 247 was added to the, Constitution.

Article 248

Mr. President : Then we take up article 248.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

Taxes not to be imposed save by authority of Law.

"That for article 248, the following article be substituted:-

"248. No tax shall be levied or collected except by authority of law.

Consolidated Fund

'248. (1) Subject to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues or public moneys raised or received by the Government of India shall form one Consolidated fund to be entitled "the Consolidated Fund of India", and all revenues or public moneys raised or received by the Government of a State shall from one Consolidated Fund to be entitled "the Consolidated Fund of the State".' "

(2) No moneys out of the Consolidated Fund of India or of a State shall be appropriated except in accordance with, law and for the purposes and in the manner provided In this Constitution."

These amendments are only consequential to what we have already accepted previously.

Mr. President : Amendment No. 196 ?

Shri T. T. Krishnamachari (Madras : General): Pandit Kunzru who gave notice of amendment No. 196 is not in the Chamber at present. There is another amendment, No. 198, which the Drafting Committee feel may be accepted and in order that it may be accepted, this amendment No. 196 has to be moved and accepted. If I am permitted to move it. I will do so.

Mr.President : Yes,

Shri T. T. Krishnamachari : Mr. President, Sir, I move amendment No. 196 in the printed Supplementary List, standing in the name of Pandit Hirday Nath Kunzru :

> "That in amendment No. 195 above, in clause (1) of the proposed new article 248-A alter the words 'Subject to the provisions of' the words, figures and letter 'article 248-B of this Constitution and to the provisions of' be inserted."

I have already explained, Sir, that there is another amendment standing in the name of Pandit Kunzru which the Drafting Committee felt it would be wise to accept, and that is also a matter about which I will explain subsequently. And therefore in order to enable that amendment to be accepted, this amendment is necessary.

Mr. President : Amendment No. 197 standing in the name of Prof. Saksena.

Prof. Shibban Lal Saksena : Mr. President, Sir, I beg to move:

> "That in amendment No. 195 above, in clause (1) of the proposed new article 248-A the words 'Subject to the provisions of this Chapter with respect to the assignment of whole or part of the net proceeds of certain taxes and duties to States.' be deleted."

Sir, at an early stage I gave my wholehearted approval to the new scheme of financial provisions, where Consolidated Funds and other such things have been introduced. But in this amendment of mine, I have only suggested that in the article 248-A as proposed by Dr. Ambedkar, the words, "subject to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States" may be removed. What will be the effect ? At present, what is contemplated is that several taxes should be allotted directly to the States, even though they may be collected under the laws framed by the Government of India. But what I want is that every tax or duty or whatever money is realised from the people of the country under laws framed by the Government of India they should first come to the treasury of the Government of India and thereafter any assignment should be made and money transferred. It should not be lawful for any State to appropriate to itself any revenue collected on the authority of the laws passed by the Government of India. Money should not go to the States treasury without first coming to the Central Government. I want that all the money should be pooled together and then from there it should be distributed. That gives the Centre some idea of the total collection, and also how it has been distributed. Otherwise they will probably not know how much money has come under a particular tax. My amendment is a simple one, though it involves a change in procedure. But I think all will agree that all finance should first come to the Central pool and then get distributed. I hope this simple amendment will be accepted by the House.

Mr. President : Does any one wish to say anything about the amendments or the original article moved by Dr. Ambedkar ?

(No Member rose.)

Then I will put the amendment first to vote. The first amendment is the one standing in the name of Pandit Kunzru.

The question is :

"That in amendment No. 195 above, in clause (1) of the proposed new article 248-A, alter the words 'Subject to the provisions of' the words figures and letter 'article 248-B of this Constitution and to the provisions of be inserted."

The amendment was adopted.

Mr. President : The question is :

"That in amendment No. 195 above, in clause (1) of the proposed new article 248-A, the words Subject to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States,' be deleted."

The amendment was negatived.

Mr. President : Then I put the amendment moved by Dr. Ambedkar.

The question is

Taxes not to be imposed save by authority of law.

"That for article 248. the following articles be substituted:-
"248. No tax shall be levied or collected except by authority of law.

Fund

248-A. (1) Subject to the provisions of article 248-B of this Constitution and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues or public moneys raised or received by the Government of India shall form one consolidated Fund to be entitled "the Consolidated Fund of India." and all revenues or public moneys raised or received by the Government of a State shall form one Consolidated Fund to be entitled "the Consolidated Fund of the States."

(2) No moneys out of the Consolidated Fund of India or of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution."

I put this article, as amended by amendment No. 196, to vote.

The motion was adopted.

Articles 248 and 248-A, as amended, were added to the Constitution.

Article 248-B

Mr. President : Then we come to article 248-B, amendment No. 198, in the name of Pandit Kunzru.

Pandit Hirday Nath Kunzru : Sir, I move:

"That after the proposed new article 248-A the following new article 248-B be added :-

Contingency Fund

'248-B. (1) Parliament may be law establish a Contingency Fund in the nature of an imprest to be entitled "The Contingency Fund of India" into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the President to be advanced by him for the purpose of meeting unforeseen expenditure which has not been authorised by Parliament pending authorisation of such expenditure by Parliament by law under article 95 or article 96 of the Constitution.

(2) The legislature of a State may be law establish a Contingency Fund in the nature of an imprest to be entitled the Contingency Fund of the State into which shall be paid from time to time which sums as may be determined by such law and the said Fund shall be placed at the disposal of the Governor to be advanced by him for the purpose of meeting unforeseen expenditure which has not been authorised by the legislature of the State pending authorisation of such expenditure by the legislature of a State under article 180 or article 181 of this Constitution."

Article 248-A requires that all moneys received for the Government of India shall be paid into a fund called the Consolidated Fund of India, and that no amount shall be taken out of this Consolidated Fund without express parliamentary authority. Now it has been found from time to time that the expenditure voted by Parliament for a department is not enough; it has to be exceeded for some reason or other. If the expenditure is incurred without parliamentary authorisation it will be illegal. But if the executive awaits the sanction of the legislature before incurring the expenditure the department concerned may be put to great inconvenience. Besides, the expenditure may be urgently required and the inability of Government to make provision for it may be detrimental to the public interest. It is therefore necessary that some means should be found of enabling Government to meet unforeseen expenditure not authorised by Parliament. I have proposed that for this purpose a Contingency Fund to be called the "Contingency Fund of India" should be established. Parliament may fix the size of the Contingency Fund, but when money has been put into this Fund, the executive can legally draw upon it to meet such expenditure is has not been authorised by Parliament but is necessary. Of course this Contingency Fund will not absolve the executive of the duty of bringing all excess expenditure to the notice of the House for its sanction. But in any case it will be a limited fund and if it is exhausted the executive will have to come to the legislature for sanction to replenish it. In either case, therefore, there will be full parliamentary control over expenditure, a control that does not exist at the present time. We know that in the year 1948-49 expenditure amounting to several crores was incurred without any authority from the legislature. We came to know of the large amount that had been spent in addition to that voted by the legislature long after die expenditure had been incurred. The expenditure was of such a magnitude as to attract the attention of the House and compel some members to draw the pointed attention of the executive and the legislature to this matter. In order that such irregularities may not occur in future, it is necessary to establish a fund of the kind that I have proposed. Such a fund exists in Great Britain and we shall be wise in following that example in order to provide for unforeseen expenditure. The object of article 248-A and 248-B taken together is that not a pie should be spent without the sanction of Parliament. I hope my proposal will be acceptable to the House.

Prof. Shibban Lal Saksena : Sir, I move

"That in the proposed new article 248-B for the words 'such law' and the words 'advanced by him' wherever they occur, the word law and the words 'used by him for advancing money' be substituted respectively."

The words 'such sums as may be determined by such law' do not make any meaning and we should say 'by law'. I further suggest that for the words 'to be advanced by him' it is better to say 'to be used by him for advancing money'.

Then Sir, in clause (2) it is said:

"The Legislature of a State may be law establish a Contingency Fund in the nature of an imprest to be entitled 'the Contingency Fund of the State' into which shall be paid from time to time such sums as may be determined by such law (it should be 'law' and not 'such law' and the said fund shall be placed at the disposal of the Governor to be advanced by him (I say, these words are not generally used in Constitutions. I would suggest 'by the Governor, to be used by him for advancing money') for the purposes of meeting unforeseen expenditure which has not been authorised by the Legislature of the State pending authorisation of such expenditure by the Legislature of a State under article 180 or article 181 of this Constitution."

The amendments though verbal are, I think, important in a clause dealing with the finances of the country. So far as the, points made by the amendment are concerned, I agree with them. I think a Contingency Fund is necessary and without it our provisions in regard to finances of the country will not be complete. Therefore, this article should be passed and amended by my amendment. I hope the Drafting Committee will look into it and try to see that it is corrected.

Shri T. T. Krishnamachari : The Drafting Committee is accepting it.

Mr. President : There is an amendment by Prof. Saksena.

Shri T. T. Krishnamachari : We are accepting the clause as put forward by Pandit Kunzru.

Mr. President: I shall then put Prof. Saksena's amendment first.

Mr. President : The question is :

"That in amendment No. 198 above, in the proposed new article 248-B, for the words 'such law' and the words 'advanced by him'. wherever they occur, the word 'law' and the words 'used by him for advancing money' be substituted respectively."

The amendment was negatived.

Mr. president : The question is:

"That proposed article 248-B stand part of the Constitution."

The motion was adopted.

New article 248-B was added to the Constitution.

Article 249

Mr. President : We now come to article 249.

But before that, there is an amendment No. 200--regarding the heading, by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That above article 249, the following sub-heading be inserted :-

'Distribution of Revenues between the Union and the States'."

Mr. President : Does any one wish to say anything about it ?

Shri Brajeshwar Prasad : About what ?

Mr. President : About amendment No. 200 *viz*.,

"That the above article 249, the following sub-heading be inserted:-

'Distribution of Revenues between the Union and the States.' "

Shri Brajeshwar Prasad : I would like to speak on article 249.

Mr. President : We are not taking up the article-only the heading. I take it that it is accepted. The question is :

"That above article 249, the following sub-heading be inserted :-

"Distribution of Revenues between the Union and the States'."

The motion was adopted.

Mr. President : Now we take up article 249. There are some amendments of which notice has been given. They may be found at page 296 of the second volume of amendments.

(Amendments Nos. 2837 to 2840 were not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in clause (2) of article 249, the words 'in that year' be deleted."

May I also move Nos. 69 and 70?

Mr. President : Yes.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in clause (1) of article 249, after the words 'such stamp duties' the words 'as are imposed under any law made by Parliament' be inserted."

Sir, I also move :

"That in clause (2) of article 249, for the words 'Revenues of India' the words 'Consolidated Fund of India' be substituted."

(Amendment No. 68 was not moved.)

Mr. President : The article and amendments are now open to discussion.

Pandit Hirday Nath Kunzru : Is the discussion on this article to proceed now ?

Mr. President : Yes, in five Minutes more we shall have at least one speech today.

Shri Brajeshwar Prasad : Sir, I am opposed to the general principles of article 249. I am not in favour of the existing or the proposed system of distribution of revenues between the Union and the States. I am in favour of two propositions, which I want to lay down before the House. The first proposition is, that all duties and taxes should be levied, collected and appropriated by the Government of India. The provinces should have no power of levying taxes, or collecting it, or of appropriating it. There should be no financial autonomy in this sphere because of a very valid political reason, which I shall mention afterwards.

The second principle which I want to lay down is that there should be an independent authority at the Centre to allocate funds between the different units in accordance with the needs of each province. That independent authority, Sir, may either be the President or the Parliament or a Finance Commission. I am not in favour of the existing system because, Sir, it is opposed to the basic concept of nationalism. The meaning of nationalism, Sir, is that every inch of the territory is as much mine as it is yours.

The second meaning of nationalism is that the total wealth of the country belongs to each and every citizen in an equal measure. The present system of distribution of revenue leads to inequality between man and man, between one province and another. Therefore, I am opposed to the present system of distribution of revenue. I am in favour of scrapping the whole thing.

Having due regard to the facts of our political life, I would suggest that the President should allocate funds. I want to see that day when the question of allocation of funds would not arise as there would be no Provinces left. Financial autonomy is dangerous, because it will pave the way for the establishment of independent States. This is the last straw on the camel's back. Already ample, powers have. been vested in the provinces and this is the only method by which we can keep the provinces under the subordination, direction and control of the Government of India. If a big province like Bombay or Madras (I am sorry to say this) is vested with financial autonomy, what will be the result ? Tomorrow under the stress of some political movement these two provinces might declare their independence. Therefore, I want that provincial ministers should come over here before the Government of India and place their case for allocation of funds, so that they may remain under the control of the Government of India.

Mr. President : A suggestion has been made that we might not sit on Monday next on account of Sarvan Purnima. We cannot afford to lose one day. I therefore suggest that we sit on that day from 3 P.m. to 7 P.m. that afternoon.

The Assembly then adjourned till Nine of the Clock on Friday the 5th August 1949.

---

*[Translation of Hindustani Speech]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME IX

Friday the 5th August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION-(*contd.*)

Article 249-(*contd.*)

Mr. President : We shall take up the discussion of the article which we were dealing with yesterday.

Shri B. Das (Orissa: General): Sir, the House is discussing Chapter 1, Part X which deals with "the distribution of revenues between the Union and the States". Article 249 and the subsequent articles up to article 260 deal with the collection and assignment of taxes between the Centre and the Provinces. Article 255 deals with grants-in-aid from the Union to the States and article 260 deals with the appointment of a Financial Commission to enable the making of independent grants to the Provinces without interference by the Finance Department of the Central Government.

Sir, this House had no opportunity to discuss this subject which concerns the social well-being of the entire population of India. In July 1947, Pandit Jawaharlal Nehru, the President of the Union Constitution Committee, reported and gave a small Chapter (Part VII) on Finances and Borrowing Powers. It was discussed later in the House and was incorporated in the report in the Second Series. In the July-August 1947 discussions, the question was left hazy. But, Sir, you at least appointed an Expert Committee to go into this question of the financial provisions of the Union Constitution. That Expert Committee reported sometime early in 1948. This sovereign House never discussed that report of the Expert Committee. The Drafting Committee must have taken into account the report of the Expert Committee and modified the articles under discussion. But, Sir, I must say that these articles remind me of similar articles in the Government of India Act, 1935. They do not show any tendency of the Finance Department of the Government of India to part with the resources arbitrarily commandeered, so that the Provinces can live happily and prosperously and do their duty by the people under their charge. Sir, the Expert Committee in paras 27 and 28 have spoken about the needs of the provinces and the Centre. They say :

> "The needs of the provinces are in contrast, almost unlimited, particularly in relation to welfare services and general development. If these services, on which the improvement of human well-being and increase of the country's productive capacity so much depend, are to be properly planned and executed, it is necessary to place at the disposal of Provincial Governments adequate resources of their own, without their having to depend on the variable munificence or affluence of the Centre."

Sir, I have watched the Finance Department of the Government of India from 1925. It has always maintained its mood that it will give some charity to the provinces. They think that their primary responsibility is the defence of India, and not bringing about social and economic justice to the teeming millions of India after we have attained independence. Sir, this Expert Committee was appointed by you in accordance with the wishes of this House, so that their recommendations could be given effect to. But what is the attitude of the present Finance. Department ? It goes on merrily with its colonial pattern expenditure, without realising its primary obligation to the people of India and without giving a share of the revenues -of India to the provinces so that they can develop the social and economic well-being of the people of India. Sir, I would have been happy if articles 249 to 260 had incorporated at least some of the recommendations of the Expert Committee Report. Sir, the attitude of the Finance Department has been the same since 1925. Why is it that the Finance Department of the, Government of India is so heartless ? We may be thinking that we are an independent nation now, but the Finance Department of the Government of India still lives in the days of 1925 and 1935. Perhaps it has become more authoritative than it was under the alien rulers, and does not think of the responsibility it has to discharge to the millions of this country. Here in this Constitution we are, going to say in the Preamble that we will secure social and economic justice to tile people of India. The House has heard thousands of speeches about political justice to the people, but when has the House heard during the last two and a half years anything about economic justice to the teeming millions of this country that are living in the provinces? Sir, the House appointed the Expert Committee, but why is it that the Government of India have not brought forward any proposals so that the provinces 'could get a share of the revenues of the country and spend it for the development of the undeveloped conditions of the people and for the social well being of the people ? The Expert Committee on pages 13 & 14 of their Report recommended the division of the proceeds of revenue between provinces, but the principle governing the award of Sir Otto Niemeyer is sought to be. continued. Sir Otto Niemeyer came here to see that British rule was perpetuated in India. It was not his duty, it was not necessary for him to see that the provinces developed, to see that the people were happy and contented. The Government of India now seeks to perpetuate the award of Sir Otto Niemeyer even two years after independence was achieved I would have been pleased if paragraphs 50-58 of the Expert Committee report with slight modifications had been incorporated in the Constitution. I do not find the Finance Minister here. I believe my honourable Friend, Dr. John Matthai, is a Member of this House. It is his responsibility, it is his obligatory duty to come here and explain why his Government has not come forward with assistance to the provinces in the last two years. He is not present here, but I hope some member of the Government who is a Member of this House will come forward with an explanation of this dilly-dallying and shilly-shallying policy of the Finance Department of the Government of India. Sir, the recommendations of the Expert Committee, which was appointed by you, made their recommendations as a whole. They are one piece of recommendation. The Government of India have accepted nothing, nor has their spokesman here explained why they are so inattentive to the recommendations of the Expert Committee appointed by you with the concurrence of this House. In Paragraph 71 of the report, it is stated:

> "We would further recommended. in order to save time, that the Finance Commission may be set up in advance of the coming into effect of the Constitution, and its status regularised after the Constitution comes into effect."

In article 260, it is stated that-

> "The President shall at the expiration of five years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such other time as the President considers necessary, by order constitute a Finance Commission. . . ."

What is the use of this Commission and what is the use of this Constitution when the Finance Department of the Government of India maintains its autocratic independence and spends most of the revenues of India on the so-called defence of India, spends it on the inflated staff of the Government of India. The staff of the Government of India can be retrenched by half or more than half and considerable savings can be made. What is the condition of the finances of the Government of India ? It is already running at a loss. Its revenues do not cover its normal expenditure, and yet the Finance Department goes on merrily spending as it likes, without caring for the primary responsibility imposed on it by the Constitution that it should render social and economic justice to the people Sir, this is a charge against the Government of India, and the Government of India must justify their position by explaining on the floor of this House why it has rendered no social an economic justice to the people of India during the last two years of out independent existence. It is no use saying that the Constitution will be promulgated on The 26th January 1950. and thereafter the Finance Department will formulate proposals with this end in view and put them before this House. That is not the real attitude of the Finance Department. The Finance Department has become too powerful. From six or seven departments, the Government has come to consist of nineteen Ministries, each Ministry as an autonomous body, each Ministry functioning and spending as it likes. Who are these finance officers ? They are the traditional careerists who worked under Sir Basil Blackett in 1925, who Worked under Sir James Grigg in 1936 and 1937. Such are the men who are guiding the financial affairs of the Government of India and they are, arch-bureaucrats and arch autocrats, and if any of them has any democratic spirit, I will bow to him. I know none of them have that; otherwise they would have shown it by their action in the last two years and I will say this, Sir. they have defied the Constitution. They have not understood the spirit of the independent Constitution that we are framing in this House and they will carry on in their autocratic way until we collapse.

Mr. President : I do not like to interfere with the honourable Member's Speech, but here we are discussing a particular article of the Constitution.

Shri B Das : Yes, Sir.

Mr. President : It deals with duties levied by the Union but collected and appropriated by the States. I do not think that criticism of the policy of the Government comes at all under this article. I will therefore suggest to him to confine himself to the merits of the article as it is and not to criticise the general policy of the Government of India for which he has got another platform and another place, where he can give expression to his views. Shri B. Das : Sir, I bow to your ruling. This Constitution has three main aspects, namely, the political aspect, the social and economic aspects. The bed-rock of economic justice is based on the distribution of finances between the Centre and the provinces. I wish we had initiated a debate yesterday as soon as ,article 247 was taken into consideration. Sir, I did not like to talk on article 247 because it dealt with the interpretation of the term "Finance Commission" and ,others. I bow to your ruling but at the same time I suggest article

249 and the subsequent articles deal with the assignment of the revenues and taxes between the Centre and provinces. Although article 249 deals only with one aspect of duties levied by the Government of the Union but collected and appropriated by the States. It deals with one ambit of the recommendations but the Committee recommended that there should be an immediate division and allocation of resources between the Centre and the provinces. Is it not legitimate on my part to question why they have not been incorporated in the Constitution and why a representative of the Government has not come forward and opened the debate and told us if the portions of the recommendations I have referred have been accepted by them and what relief the Government of India contemplate to give to the provinces ? If I was a little harsh on the Finance Ministry of the Government of India, it is because I know worst things of the financial structure of India,

Sir, I do hope the provinces will not be treated as charity boys of the North Block of the Secretariat. Somehow it has happened that people have to come with begging bowls. Whether it is in regard to the Food Commission or the Bengal food problem of 1943, nobody wants charity. We put forth the just demands of the people of India and the Centre which was an autocratic Government intended to maintain the British Raj in the past should give up that mentality and should part with the legitimate resources to the provinces. I do not ask any further and I do not at present ask anything more. The Expert Committee has put forward its recommendations. Let the spokesman of the Government of India stand up here and say : "We have accepted in too or with certain modifications the recommendations of the Expert Committee." That will give certain relief to the provinces. We can look forward to the development of the provinces and towards giving better public Health standards to the people. I read in papers that our Public Health Minister has been approached and she wants to build *fabricated* hospitals in Delhi while the provinces have not got even a lakh of rupees to build their hospitals; while undeveloped provinces like Orissa, Assam-I will include even Bihar-have very few beds in their hospitals, the Centre goes merrily and talks of prefabricated: hospitals at Delhi costing crores and crores of rupees. Is that the way to develop the provinces ?

I will again join in the discussion when the jute duty in article 254 comes up for discussion and when article 260 is taken up where the Finance Commission will have to be appointed five years after the Constitution. It is a very heartless and insincere draft. Is it the spirit of democracy working in the Finance Ministry of the Government of India that it will obstruct at every stage in order to maintain its hold on the finances and to spend it in the best way it likes ? I am giving out no secret when I say that in 1946 the Government of India decided that the Army expenditure should be reduced to one hundred crores. We know today it is one hundred and fifty-eight crores and that too after the partition. I cannot see why the Government of India should grab the wealth of the provinces and dispense it in the way they like. This sovereign House framing this sovereign Constitution is not going to allow the Finance Ministry of the Government of India to play ducks and drakes with the resources of India according to its fancy and whimsicality and thus let the provinces starve. Sir, on behalf of the provinces, particularly the undeveloped provinces of Bengal, Bihar, Orissa and Assam, I plead before this August House for justice for the undeveloped I provinces; I plead that the pose of the Finance Ministry that no steps should be taken With speed and haste should be condemned and this House must accept the recommendations of the Expert Committee which had on it such expert financiers, namely, Sir Nalini Ranjan Sarkar, Mr. V. S. Sundaram, Mr. M. V. Rangachari (who was member Secretary). This officer is still a Deputy Secretary in the Finance Department of the Government of India. Why has the Finance Department overruled the decisions of this Committee? I plead before the House that justice should be rendered to the teeming millions of India and to the helpless provinces by giving them what is their due.

Mr. President : Any one, else who wishes to speak? (No Member rose. Dr. Ambedkar, do you wish to say anything ?

The Honourable Dr. B. R. Ambedkar (Bombay: General): There is nothing to be said.

President : I shall now put the amendments to vote.

The question is :

"That in clause (2) of article 249, the words 'in that year' be deleted."

The amendment was adopted.

Mr. President : The question is :

"That in clause (1) of article 249, after the words 'such stamp duties the words 'as are imposed under any law made by Parliament' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That in clause (2) of article 249, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That article 249, as amended, stand part of the Constitution."

The motion was adopted.

Article 249, as amended, was added to the Constitution.

Article 250

Mr. President : The motion is:

"That article 250, form part of the Constitution."

(Amendments Nos. 2842 to 2850 were not moved.)

Shri R. K. Sidhva (C. P. & Berar: General): Mr. President, I move:

"That at the end of article 250, the following be added :-

'The net proceeds of said distribution shall be assigned by the States to the local authorities in the jurisdiction."'

I have got another amendment to this amendment, No. 201. Shall I move that also, Sir ?

Mr. President : That has also the same effect.

Shri R. K. Sidhva : I want to move the second part.

"That with reference to amendment No. 2851 of the List of Amendments, in article 250, the following proviso be added at the end :-

'Provided that the proceeds collected by the Government of India under clause (c) shall be assigned to local authorities in the jurisdiction of the States."'

Sir, this article has been more or less borrowed from the Government of India Act, Section 137. This article refers to the collection of four kinds of taxes : One is in respect of succession to property; the other is estate duty; the third is terminal taxes and the fourth is taxes on railway fares and freights. My amendment is to the effect that the taxes collected under clause (c) by the Government of India should be assigned to the local authorities in the jurisdiction of the States.

My object in moving this amendment is this. Tolls, octroi and terminal taxes are the major sources of revenue of the local bodies. Before the Government of India Act of 1935, these terminal taxes were a provincial subject; but under the Government of India Act, 1935, this has been put down in the Central List. Unless the Centre agrees to levy a terminal tax, no provincial Government can increase or put an additional item for terminal tax, which has created a great deal of difficulty to the local bodies. There have been a great many references on this matter to the Government of India.

The Honourable Dr. B. R. Ambedkar : I am very sorry, Sir, I should have requested you at the very outset to allow this article to stand over.

Mr. President : It is suggested that this article be held over.

Shri R. K. Sidhva : I would request, Sir, that my amendment also may be held over.

Mr. President : If the article is held over, your amendment also will be held over.

Shri R. K. Sidhva : All right, Sir.

Article 251

Mr. President : Then we take up article 251.

(Amendments Nos. 2852 to 2857 were not moved.)

Shri Upendra Nath Barman (West Bengal: General) : Sir, I beg to move:

"That in clause (2) of article 251. after the words 'such percentage' the words 'not being less than sixty per cent,' be inserted and the words 'or the taxes payable in respect of Union emoluments' be deleted : and the following proviso be added to clause (2) of article 251 :-

'Provided that for a period of five years from the commencement of this Constitution, of the net proceeds assigned to the States, thirty-three and one-third per cent., shall be distributed among the States on the basis of population, fifty-eight and one-third per cent. on the basis of collection and the remaining eight and one-third per cent. shall be distributed in such manner as may be prescribed."'

Mr. President, Sir, my amendment resolves itself primarily into three proposals, firstly, that the Central emolument should not be excluded in computation of the tax on income for distribution to provinces. The Centre will have a large amount out of income-tax and it is only proper that the Central emolument as described in clause (4) sub-clause (c) should also be computed in that allocation.

The next proposal is that some minimum percentage should be fixed here and now. It is a fact that after five years a Commission will be appointed which will go into all the factors under which a province is to work the Constitution *viz*., its requirements, commitments and its future advancement, but during this interim period it is not provided in the Constitution as to how this allocation is going to be made. I understand the Finance Department is going to appoint a Committee in order to make some interim arrangement but this Committee also will find the same difficulty as the ultimate Commission which is going to be appointed after five years is going to face then. This is a very controversial matter and the subcommittee to be appointed now will be troubled with various considerations and claims from different provinces. It will be extremely difficult for them to adjust different claims of different provinces. During the period before which the Finance Commission makes its recommendations of the principles on which allocation is to be made, the various provinces are to do several things, and they have to undertake several development measures. If they are in the dark as to what would be their income from this allocation, it will be very difficult for them to adjust their budget from year to year. If certain minimum of this distributable tax be fixed here and now, then the provinces will know how much they are going to get out of this tax, because every province from past experience knows what is the collection every year in their province and also what is going to be the collection in the year under question. So they shall know, at least roughly what amount they are going to get out of this Central distribution of income-tax. If that is not fixed and it is left to the Committee's recommendation, it will be very difficult for them to launch upon any permanent development scheme. It is for that reason that a certain minimum should be fixed. My proposal is that at least 60 per cent. should go to provinces and States and my main argument is that some minimum should be fixed.

Then in their allocation I have indicated that there should be some settlement about the different claims of the different provinces for the interim period because the committee will be nonplused by the different claims of different provinces. Some provinces having large population ask that this allocation should be on population basis whereas other provinces want on collection basis. Other provinces that are backward say that this should be not on population basis or collection basis but on some other basis. Now the Committee will be confronted from different provinces and so if we can set this controversy at rest by fixing some percentage here and now and leave something for general allocation to the Committee, then the Committee will find it much easier. I submit that the provinces must be given a fixed minimum percentage so that they will be able to adjust their budget and launch upon any development schemes which shall continue for a number of years.

The Centre of course needs revenue in a much greater degree, but my submission is that the Centre has got several sources which can bring them a large amount; but the scope of the provinces is very limited and those scopes are very closely connected with the interests of the masses. As we find from List II of Seventh Schedule, the taxes which are given to provinces are of such a nature that they shall always be resisted by the people of the States. Those taxes are un- popular and their scope is very much limited. So at least this income-tax which will be substantial a certain minimum percentage should be fixed here and now so that the provinces may adjust their budgets in that light. That is my submission.

(Amendments 2859 to 2878 of Vol. II and 75 of the Supplementary List were not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, I beg to move,

"That in clause (2) of article 251, for the words revenues of India the words 'Consolidated Fund of India' be substituted."

(Amendments Nos. 75, 77 and 78 were not moved.)

Mr. President : No. 244.

Prof. Shibban Lal Saksena (United Provinces : General) : Sir, I beg to move :

"That for amendment No. 2875 of the List of Amendments, the following be substituted:-

'That in sub-paras. (i) and (ii) of sub-clause (b) of clause (4) of article 251, for the words 'by the President by order' the words 'by Parliament by law' be substituted."'

Sir, in this sub-clause (b) (i) it is said .

"'Prescribed' means-until a Finance Commission has been constituted, prescribed by the President by Order,"

and in sub-clause (ii) it is said-

> "after a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission."

Sir, this article deals with the allocation of income-tax collected by the Central Government in the various provinces and it is said that "such percentage, as may be prescribed, 'of the net proceeds in any financial year of any such tax, etc. etc. shall be distributed among those states in such manner as may be prescribed." Now "prescribed" means, before the Financial Commission has been constituted, "prescribed by President by order and after the report also "prescribed by the Order of President, after considering the recommendations of the Commission." Now I want to substitute this, that instead of 'President by Order', we should substitute Parliament by law'. Sir, this is very important article by which Income-tax is to be distributed to the various states. Just now Mr. Barman moved his amendment that the percentage should be 60 per cent. and he suggested how it should be distributed. He suggested all the three methods according to which it should be distributed, some percentage to the provinces from which it was collected, again on population basis and so on. So this is a contentious subject and in fact if we study the report of the Expert Committee on the Financial Provisions of the Union Constitution which you appointed, you will find that they have given the history of the tax and have pointed out as follows :-

> "On the question of apportionment of income-tax among Provinces also, the provinces differ widely in their views. Bombay and West Bengal support the basis of collection or residence, the United Provinces that of population and Bihar a combined basis of population and origin (place of accrual); Orissa and Assam want weightage for backwardness. East Punjab, while sugggesting no basis, rents her deficit of Rs. 3 crores somehow to be met.

So we find there are different basis on which the apportionment is desired and we know that income-tax is one of the most important sources of Central Revenues. The whole thing in this article is how this adjustment between the claims of provinces and Centre is to be made, and it has been said that such percentage as are prescribed shall be distributed by order of President. I think such an important matter as distribution of revenues between Centre and States should not be in the discretion of the President alone. Of course it will be by the executive. But I want that it should be done by Parliament by law. Before the Finance Commission has reported, the Government must bring forward a Bill showing how they wish to allocate the proceeds of income-tax and it shall be for the Parliament to approve of it. Similarly, after the recommendations of the Commission, the Government must bring forward a Bill and must say which recommendation they accept and how the allocation should be made. When that Bill is brought then the Parliament should be able to decide how the allocation is to be made. I do not think that such wide powers of distribution of hundreds of crores of rupees between the provinces and the Centre should be vested in the President. This must be within the province of the Parliament. The Parliament must not be deprived of its right to allocate the finance between the Center and the provinces. This is a very important question and I wonder how the Drafting Committee missed this point. I do not know why they want to centralise all powers in the President. At least the sovereign Parliament of the nation should have a say in the matter. If it comes before the Parliament the needs of the provinces will be known ,and we shall know what adjustment is justified. My amendments are very simple and I do not know would not accept them.

But they are the very essence of democracy. If the President can by order allocate crores of rupees I do not know what the Parliament is for. If Parliament is not to distribute the Income-tax to the provinces, what are its functions. It is something extraordinary. When the Finance Commission makes a report on principles. Parliament should after discussing those principles bring forward a Bill suggesting how it wants them to be implemented and it must be able to allocate the proper shares to the various provinces. It is a very important matter and I do think that these provisions giving the President, by order, the power to allocate these crores of rupees should not remain.

In fact, the remaining portion of the article deals with the way the amount is to be calculated. It has been said that taxes on Union emoluments should be excluded. There is a view that they should not be. Even the Expert Committee has said that they should not be. Anyway, even if I do not object to that. I do object to the other thing about allocation. It should be done by Parliament by law and not by the President by order.

Shri T. T. Krishnamachari (Madras : General): Mr. President, Sir, I have to move a formal amendment and it follows the scheme that the House has adopted all along, namely, substitution of the words "Consolidated Fund of India" for the words "revenues of India." I find there is an omission in subclause (c) of clause (4) of this article where the words "revenues of India" have been used. With your permission, therefore, I move :

"That in sub-clause (c) of clause (4) of article 251, for the words 'revenues of India .he words 'Consolidated Fund of India be substituted."

Shri Biswanath Das (Orissa: General) : Sir, the, consideration of this article takes me to the consideration of the recommendations of the Sarker Committee appointed by you to recommend the financial relationship between the Centre and the provinces. Due to certain difficulties the report of the Committee could not be discussed in this Assembly. Necessarily therefore along with this article you will please allow us to discuss fully and frankly the contents of the Sarker Committee Report.

I expected that the terms of the Sarker Committee would be wide enough to include more things than have been undertaken for investigation. I plead with you and with the honourable Members of this House that the time has come when attempts should be made to find out means for evolution of a proper system of finance both for the Provinces and the Centre. Our finances have been allowed to develop without taking care to develop them properly and in a scientific manner. In the result, they have grown in their own way without any consideration of the scientific evolution of such an important question as this. The Sarker Committee Report has nothing in it to face the problem squarely and well. All that it has done is to recommend to this House in what manner certain items of revenue have to be distributed both between the Centre and the provinces as also among the provinces themselves. The limited scope of recommendations therefore makes me confine myself to the recommendations themselves. Considering this article I cannot go beyond the terms of this article, namely, the allocation of the proceeds of the Income-tax. The Sarker Committee proposes that 60 per cent. of the proceeds should go to the provinces while 40 per cent. should go to the Centre. I had expected that sufficient explanation should have been given why the Centre should have 40 per cent. In this connection let me refer to the report of Professor Adarkar and Mr. Nehru wherein they have shown that in Australia the Commonwealth retains to itself only 25 per cent. of the Income-tax. Why should you have 15 per cent. more than what Australia keeps for herself is a matter on which the Committee ought to have given us an explanation. True it is that the Centre requires more money under the present circumstances. But the present difficult circumstances are not to be perpetuated. I have little complaint with any one who pleads for some more expenditure for the Centre in the first three or five or ten years of its existence, but to have a permanent allocation of 40 per cent. out of Income-tax seems to me not very justifiable.

Having stated so far regarding the allocation of the proceeds between the provinces and the Centre, I come to the principle of distribution among the provinces themselves. On this question again I must join issue with the recommendations of the Sarker Committee. Till 1935, Income-tax was not a provincial source. Under the Government of India Act, 1935, Income-tax was kept with the Centre. Though its levy, assessment and distribution is kept in the Centre, yet it was clearly laid down that 50 per cent. of the net proceeds will be distributed among the provinces. Sir Otto Niemeyer's Award stood till 15th August 1947. Unreasonable as the principles of distribution are, it has crippled the smaller provinces. I must in this connection state that provinces under the British. Government have had their peculiar existence. The British started, not to develop India in a distinct and defined manner, but wanted to have their own conveniences and set up administration and trade centres with a view to help British trade, with the result that the three presidencies have been propped up with a certain amount of prestige and convenience, all attached to the British administration and attached to the then conveniences of British trade. That being the position, all the business houses had been concentrated in the three presidency towns, and if they are in any other province it is in a few fortunate provinces like the United Provinces. That being the position, the proceeds of Income-tax have unfortunately been allowed by Sir Otto Niemeyer to be distributed mainly an the basis of collection, which is a very unfair and artificial method, for Income-tax or tax on income accrues out of consumption and utilisation of goods by the generality of the masses. Therefore, in whatever manner trade-foreign or internal-may proceed from certain definite and established trade centres, it is unfair to say that the provinces having in their areas the business firms as the centrally distributing agencies or manufacturing centres should alone earn the profits. And therein lay the unfairness and unscientific method of the basis of distribution.

As I have already said, the British never attempted to evolve a national system of finance. The business view and the business propensities of the Britisher necessarily told him to took at it from the point of view of collection of taxes because in their country the various local areas have been uniformly developed. If one area has developed its trade the other area is developed in agriculture. So both the areas get the benefits in their due proportions and in due course. In our country unfortunately this is not the case. Therefore, the point of view taken up by Sir Otto Niemeyer cannot be regarded as justifiable. The failure of it can be seen from the recommendations of another Committee. I am referring to the expert enquiry, the Federal Finance Committee that submitted its report in 1933 as a result of the Round Table Conference. Therein you find a decision has been taken that the principal basis ought to be population. Of course it was only an expert enquiry.

In this connection I again refer you to the recommendations of Professor Adarkar and Mr. Nehru wherein they have laid down three principal basis, namely, the basis of population, the basis of area, as also the basis of collection. They have given the last place to the basis of collection and rightly so because collection is after all an artificial process. True it is that centres like Calcutta, Bombay and Madras need attention. Let them have something. But it is unfair to claim the major share from the distribution of Income-tax, Friends from the three presidencies will excuse me if they feel that I am hard on them. It is nothing of the kind. I want a uniform process of development-I do not want any province to be inconvenienced. In fact, I always feel as an Indian and speak primarily from the point of view of an Indian. While thinking of the three developed and advanced provinces I also want them to see that their brothers and sisters in other provinces also follow them. Let them be behind them but let them follow them. Otherwise they will be left singularly alone to themselves. Therefore I do not agree with the principle of distribution on the basis of collection.

The Sarker Committee committed the same blunder-mainly though not exactly as the blunder committed by Sir Otto Niemeyer. The Sarker Committee has taken a step forward by recommending 60 per cent. for the provinces and 40 per cent. for the Centre. I claim that they should have given more to the provinces who are in charge practically of all the nation-building activities of the country.

Severe condemnation of the report comes on another count also, and that is on the recommendation regarding the distribution of the proceeds on the basis of collection to the extent of 35 per cent. out of the 60 per cent. That means practically about 60 per cent. of the proceeds to be distributed on the basis of collections. This to me is very unfair. As I have already stated, I repeat that the Income-tax or tax on income accrues from the incomes of the people and that is measured in terms of consumption or production. The agricultural provinces produce raw materials. The industrial provinces undertake the process of industrialisation and produce the finished goods. There again there is a round-about process. There again those industrial goods are taken and the proceeds are distributed to the same fortunate provinces with the result that the business houses are all located in those three provinces and the agricultural provinces are being deprived of the benefits of the Income-tax, though they have - rightly earned the Income-tax. Under these circumstances I do not agree that the basis of 35 per cent. out of the 60 per cent. is fair to the smaller provinces.

I further request the honourable Members of this House to think of a certain reserve fund. When I speak of a reserve fund I have before me certain precedents. You have got the Petrol Cess Fund, commonly known as the Road Cess Fund. That has been distributed on a certain specified basis. About 15 per cent. of it or 9'0 is kept with the Centre to develop the undeveloped areas. Therefore, let the Centre keep something to itself and distribute it properly and equitably, keeping in view the interests of the whole of India. With these words, I request the House to give due consideration to the aspects that I have raised in my speech.

Pandit Hirday Nath Kunzru (United Provinces: General): Mr. President, the issue raised by Mr. Upendra Nath Barman's amendment is of a vital character and requires the careful consideration of the House. In order to understand what the effect of this amendment will be it is necessary to go back to the past and consider the relations that exist between the Government of India and the provinces in regard to the distribution of the net proceeds of the Income-tax. Under the Government of India Act an Order-in-Council was passed in 1936 fixing 50 per cent. as the share of the provinces in the net proceeds of the Income-tax, excluding the proceeds attributable to Chief Commissioners' province and the tax on Federal emoluments.

Till the war broke out or rather till three or four years after the break of the war, the Government of India was unable to make over to the provinces their maximum share as fixed by the Order-in-Council. The Order-in-Council laid down that during the first of the two periods referred to in that Order, the Government of India might retain such an amount from the share of the provinces as, taken together with the contribution of the Railways to the Central revenues, would raise the total to Rs. 13 crores. During the war, when the railway surpluses increased considerably, it was not necessary for the Government of India to take any amount out of the provincial share in order to make up the total of Rs. 13 crores that I have just referred to. I do not know exactly what the share of the provinces at the present time is, but I believe that they are getting 50 per cent. of the net proceeds of the income-tax calculated in the manner explained by me. We have to see whether the position of the Central Government has improved so much since, say, the termination of the war as to enable it to give a larger share of the net proceeds of the income-tax to the provinces. Anyone that is familiar with the Budgets of the Government of India for the years 1947-48 and 1948-49 knows how parlous the position of the Central finances is. Some of us ventured to draw attention to the very unsatisfactory financial condition of the Centre during the last Budget debate. The Finance Member thought that the arguments that had been advanced on their point were puerile but I trust that even he is now convinced that our position is far more serious than even the most pessimistic amongst us had imagined three or four months ago. Can we, when we appear to be faced with a huge deficit, when our credit has fallen so low that we cannot accept to raise large loans, say that it would be advisable to accept the amendment moved by Shri Upendranath Barman ? His proposed is based on the recommendations of the Expert Committee which was presided over by Mr. N. R. Sarker. He has not gone as far in claiming a share in the income-tax for the provinces as the Expert Committee had recommended, but so far as the proportion of the net proceeds of income-tax to be assigned to the provinces goes, he follows the recommendation of the Expert Committee. The Expert Committee has pointed out in its report that if its recommendations were accepted, the Central revenues would lose about Rs. 30 crores less 40 per cent. of the net proceeds of the Estate and Succession duties. Even granting that Shri Upendranath Barman's proposal is more moderate than that of the Expert Committee, it is obvious that the House should not accept the principles laid down by a Committee that thought that the Centre could without difficulty make over nearly Rs. 30 crores to the provinces. Our financial position at present is as serious as it can well be. I do not therefore think that it will lie in the interests of India as a whole to accept Mr. Upendranath Barman's proposals. It may benefit the provinces, but the financial and administrative stability of the provinces depends to no small extent on the position of the Centre. It would be short-sighted of the provinces to demand a larger share from the Centre, regardless of the effect that their claims would have on the position of the Central Government. I repeat therefore that, in my opinion, the state of our finances at the present time does not allow us to accept a proposal like that placed before us by Mr. Barman.

Pandit Lakshmi Kanta Maitra (West Bengal: General): I am sorry to interrupt my honourable Friend, but I would like to ask one question : What is the data in possession of the honourable Member ? Paragraph 59 on page 4 of the Sarker Committee report says that it will not be beyond the capacity of the Centre to part with these Rs. 30 crores. So what data has my ho-nourable Friend to contradict the finding of this Committee except saying, of course, that the finances have gone down ?

Pandit Hirday Nath Kunzru : Well, that is a very important consideration to be taken into account. This Expert Committee reported in December 1947. Is the position the same as it seemed to be then or has it deteriorated to such an extent as to be alarming ? My honourable Friend took part in Budget debate....

Pandit Lakshmi Kanta Maitra: But it is only a temporary phase.

Pandit Hirday Nath Kunzru : Well, he was no more optimistic about the financial position of the Government of India than any other Member. But today he comes forward with the argument that the position of the Central Government will not always be as unsatisfactory as it is now.

If it improves, then the financial relations between the Centre and the Provinces can be reconsidered. That is one of the purposes of the Government in recommending the appointment of a Finance Commission. My honourable Friend, I am sure, has read the Draft Constitution carefully and knows that provision has been made for the appointment of a Finance Commission, in order that the provinces may not be starved of the funds required for the development of the social services. But when he or any other Member of the House says that we should imagine that the position of the Central Government has already improved, I part company with him. If this is not my honourable Friend's point, then I cannot understand the purpose of the question that he put to me. All that I was saying before he put his question was that, even admitting that the provinces would be responsible in the main for the development of the social and other services on which the welfare of the people depended, we could not at the present time agree that the Centre was in a position to make over 30 crores or even 20 or 15 crores to the provinces.

Sir, Mr. Upendra Nath Barman's amendment does not merely propose that the share of the provinces in the net proceeds of the income-tax should be greater than what it is today. It also suggests a method of distribution of the provincial share between the provinces. The criteria laid down by him are those recommended by the Expert Committee. These criteria are population, place of collection and certain other factors. He suggests, following the recommendations of the Expert Committee, that 58 and one-third per cent. of the provincial share should be distributed on the basis of collection. With all respect to the Expert Committee, I do not think that the basis of collection can in an circumstance be accepted as a sound basis for the calculation of the share of any province. The Government of India sent out a committee to Australia to consider how the Commonwealth Government assisted the State Governments in maintaining their solvency and in developing the social services; That committee which consisted of Mr. B. K. Nehru and Mr. Adarkar, has in its recommendations expressly ruled out the basis recommended by the Expert Committee and accepted by Mr. Barman. The test proposed by that committee for distribution are, population, area, and *per capita* income. According to the last test a more prosperous province should receive proportionately less financial assistance from the Centre than a province living from hand to mouth. These are the tests that the Commonwealth Grants Commission in Australia has worked out on the basis of the experience that it has gained. The reasons for trying these tests are perfectly simple. A province may have reached a large degree of industrial development and a large amount of income-tax may therefore be collected in that province. But the goods produced in that province are not all consumed there. The industries in that province can be in a flourishing condition only when their products are taken by people living largely in the rest of India. There is no reason therefore why the place of production or the place of collection of the income-tax should be taken as a test for the distribution of the provincial share. It is as unsatisfactory as any test can be.

Apart from this, if federation means anything, it means that there should be a transfer of wealth from the richer to the poorer provinces; just as the very concept Of social welfare implies that there should be a transfer of wealth from the richer to the poorer people, so the concept of federation, the concept of national solidarity implies that the richer provinces, should part with a portion of what may in strict theory be due to them, for the benefit of the poorer provinces. Otherwise it will not be possible to raise the less developed provinces to the level of the more, fortunate provinces It will not even be possible to guarantee that the social services in the less developed provinces will reach a minimum standard.

For the reasons that I have given, I think that it would go against the very principles underlying the establishment of a federation if Shri Upendra Nath Barman's proposals were accepted. It is true that the Expert Committee recommended it. But, even before the Government of India rejected the proposals of the, Expert Committee, I personally found myself in I complete disagreement with it. I was amazed to find that any committee of experts could propose such a basis for the distribution of the provincial share. I think that it is a matter for satisfaction that the Government of India have rejected the recommendations of the Expert Committee which would have placed them in a dangerous position.

Now, Sir, I should like to say a few words about what fell from my honourable Friend Prof. Shibban Lal Saksena. He suggested that the division of the financial resources of the country between the Centre and the provinces should be made by Parliament by law.

I do not think that the suggestion made by him is a very happy one. In Australia, the Commonwealth Grants Commission does not owe its existence, to any Parliamentary statute. It is the result of an agreement between the Commonwealth Government and the States. Its recommendations have not to be placed prior to their acceptance before Parliament. If we divide the financial resources between the Centre and the provinces on a statutory basis, it would introduce a very undesirable element of rigidity in the financial relations between the Central and the Provincial Governments. I believe that my honourable Friend, Mr. Saksena, has recommended that any recommendations that the Finance Commission might make should also be given effect to by Parliament by law. I do not at all see why this should be necessary. If the Finance Commission inspires general confidence, if the provinces and the Centre feel that its members do not allow themselves to be influenced by the opinions of any authority, I have no doubt that a convention will grow up in this country as it has in Australia that the recommendations of the Commission should broadly speaking be accepted by the Central Government. I say broadly speaking because in times of stress, it may not be possible for the Government of India to accept the Finance Commission's view of its position, but barring emergencies, I should think that in course of time both the Central Government and the provincial Governments would come to place confidence in the judgment of the Finance Commission and accept its proposals. Sir, the method of distribution of the financial resources of the country between the Centre and the Provinces as proposed in the Draft Constitution seems to me to be more elastic, based on a better principle and in every respect preferable to the amendment moved by Shri Upendra Nath Barman I personally think that the powers given to the Finance Commission are wider than they should be but that is a different matter and I do not propose to deal with it at this stage.

Sir, my only purpose in taking part in this debate was to make it clear to the House how undesirable it would be not merely from the point of view of the Centre but also from that of the provinces, if Mr. Upendra Nath Barman's proposals were accepted. Provinces like Assam, Orissa and the C. P. which are starved for want of funds and whose condition is such as to extort the sympathy of all fair-minded people, would remain for ever in the backward condition that they occupy now. Their only chance of getting more funds for their development and for raising their standard of social services is that the basis of collection should not be the basis of the distribution of proceeds of the income-tax. I hope therefore that the House will unhesitatingly reject Mr. Upendra Nath Barman's amendment.

Shri M. Ananthasayanam Ayyangar (Madras : General) : The question may not be put.

Mr. President : There has been only one speech so far on the subject.

Shri B. Das : Mr. President, Sir, I am very grateful to my Friend, Pandit Hirday Nath Kunzru, for emphasising the distress of the provinces of Orissa and Assam. The income-tax collected is frittered away in useless expenditure by the straps of the Finance Department. The Expert Committee recommended that 60 per cent. of the income-tax including all sources of income-taxes-super tax, corporation tax and everything, should go to the provinces. The Premier of the United Provinces in his memorandum to the Expert Committee laid emphasis that not only personal income-tax but all kinds of income-tax should be distributed to the provinces. Sir, there is a legitimate demand by the Premiers of the various provinces that sixty per cent.-somebody demanded fifty per cent., but I claim sixty per cent. as has been recommended by the Expert Committee-should go to the provinces. The question arises as to the basis of distribution. Should it be on collection basis or should it be on population basis or should it be on some other basis ? Bombay naturally collects the largest amount of income-tax because most of the companies have their headquarters in Bombay. My honourable Friend, Pandit Kunzru, just now stated that Bombay is not a consumers' province. Yet Bombay very much likes to get something for nothing, to get some percentage on a collection basis. Mr. N. R. Sarker, who today happens to be the Premier of West Bengal, knowing that Calcutta has the headquarters of many Companies, recommended that thirty five per cent. should be on the basis of collection and twenty per cent. on a population basis. This is a very wrong system of allocation and we protest against it and I am glad this has been supported by my honourable Friend, Pandit Kunzru. We undeveloped provinces such as Orissa, Assam particularly and Bihar, we do not accept that some people will get something for nothing because the foreign rulers concentrated trade and commercial activities in Calcutta and Bombay. We do not subscribe to this method of allocation. I do claim that 60 per cent. of the income-tax and not personal income-tax as it is now done at present, should go to the provinces. Ten per cent. may be kept in the hands of the Central Government to meet the special needs of the State. The other 50 per cent. should be distributed on population basis. Sir, I have. to point out that my province which bad 9 lakhs of population before the merging of so many states has now got a population of I crore and 40 lakhs. These States have very primitive forms of administration, primitive sources of taxation, and they have been merged into -the Orissa Province and have been incorporated to a standard of administration as is prevalent in the provinces, and the Government of Orissa have ensured that these merged States should have similar standard of administration as exists in Orissa Province, and yet the income that accrues from the States is very little. The allocation of income-tax, which the Otto Niemeyer Award 'gave about which I have said on a previous occasion this morning, was arbitrary. It awarded two per cent. out of this allocation of income-tax, and later the Government of India,-not this Government of India-changed into three points and Orissa got 3 per cent of the income-tax allocated to the provinces.

I am surprised that the Government of India is a party to the draft article 251. Under the changed conditions this sovereign House has altered the position of many States. Why do not the Members of the Government of India who also Members of this

House advise the Drafting Committee to change the system of allocation of income-tax, so that provinces like Orissa, which is more than doubly handicapped by the merging of the States, get an equitable share of income-tax. The only equitable share is allocation on population basis.

I am grateful to Pandit Kunzru and my honourable Friend, Mr. Biswanath Das, for referring to the Adarkar-Nehru Report of 1947. The report was printed some time ago but it saw the light of day in March 1949. I had only a chance to glimpse through it. Why is it that the Government should pick holes with such weighty opinions, such weighty views and shelve it? Why should it not raise discussion in the country or even on the floor of this House ? I think that as long as the Government of India remains blank on the subject and it follows a policy of grab and hold; nothing can be done. The Adarkar-Nehru Report provides a solution to develop the provinces. Provinces which are undeveloped, which are backward must get weightage by special grants as in Australia. Based on *per capita* income, undeveloped provinces should receive financial grants. Is it not the function and duty of the spokesmen of the Government of India hero to take the House into confidence and to tell what they have in mind ? Is their mind blank or have they been thinking and thinking these two years and cannot decide to part with resources ?

Sir, I went through the memorandum that the Government of India submitted to the Sarker Committee. It is a heartless, colourless memoranda. It deals with its own difficulties; it never assume that the Finance Ministry of the Central Government has sovereign responsibilities to India and to the provinces at large. Nowhere in that long memorandum is there any mention that the provinces must develop, or the provinces must get more resources, more share of the income-tax so that they can develop. I had never seen a more cruel document drafted by the foreign rulers that ruled us up to August 1947. I have seen the memorandum in 1936-37. I have seen the notes of the financial satraps and bureaucratic rulers in 1924 and 1925 and I never read such a heartless document and Sir, that was, the considered views of our Finance Department, the Department of the independent Government of India-which now plays ducks and drakes with the resources of the provinces and overawes the provincial financial ministers. It is a shameless Government. It is a shameless Government I again say, and poor provinces, poor Premiers of the provinces have to plead their own case, they have to plead their poverty, their backward conditions Of course, Bombay need not plead. Why should Bombay plead with a *per capita* revenue of Rs. 25 ? Why should Madras plead with a *per capita* income of Rs. 19 ? Why should U. P. plead with income of Rs. 21 ? But Orissa, poor as we are with a per capita revenue of Rs. 4 or 5, should ask for something nearer a basic level. Assam spends much less after the partition of Assam; and is it not the sovereign duty of this House to ensure adequate and minimum basic expenditure for the development of these provinces ? That can only be ensured if 60 per cent of all sources of income-tax goes to the provinces, based by allocation on population basis and on no other basis.

Mr. President : Before Dr. Ambedkar speaks on this article, there is one which has struck me as requiring a little clarification and I would like you to consider that. In sub-clause (2) of this article 251 we find:

> "Such percentage, may be prescribed, of the net proceeds in any financial year of any such tax, except in so far as these proceeds represent proceeds attributable to States for the time being specified in Part II of the First Schedule or the tax payable in respect of Union emoluments, shall not form part of the revenues of India, but shall be assigned to the States within which that tax is leviable in that year, and shall be distributed among those States

in such manner and from such time as may be prescribed."

It is not clear to me what the significance of the expression "within which that tax is leviable in that year" is. Does it mean the States where the taxes resides or does it mean the States where the income on which the tax is levied is earned, or does it mean anything else ?

Shri B. Das : Sir, when these financial matters are being discussed, it is necessary that the Finance Minister must be present on the floor of the House in view of the fact that he is a Member of this House. We are not discussing academic issues here when the Finance Minister need not be present here.

Mr. President : I trust some one will communicate the desire of the Member to the Finance Minister.

Shri T. T. Krishnamachari : May I mention, Sir, that the wording has borrowed practically word for word from section 138 of the Government of India Act, 1935 ? I can only say at this moment that it is sought to deal with that portion of the tax that would be collected from such Part III States as have a special arrangement with the Union Government.

Shri Biswanath Das : May I request you, Sir, to convey to the Honourable the Finance Minister who is also a Member of the House not to be present as the Finance Minister of the Government of India, but to be present as a Member of this House so that we will have the benefit of his wise counsel and advice.

Mr. President : That is why I said that the wishes of the Members might be communicated to him.

The Honourable Dr. B. R. Ambedkar : Sir, I can explain the thing now. I do that, I will take up the other amendments.

There is an amendment by Mr. Barman and there is another amendment by Prof. Saksena. I am sorry to say that I cannot accept either of the amendments.

This question whether the percentage of revenue collected by way of Income-tax should be prescribed in the Constitution itself either as sixty per cent. or any other percentage or should be left to the President to decide is a matter over which considerable thought has been bestowed both by the Central Government as well as by the provincial Governments in the Conference which took place the other day to discuss this matter. It was agreed that the best thing would be to leave the matter to be prescribed by the President and that no proportion should be fixed in the Constitution itself.

With regard to the other question raised by Prof. Saksena, that instead of the word "prescribed", the wording should be "prescribed by Parliament", again I am sorry to say that I cannot accept the amendment. Our scheme is to allow the President to prescribe the proportion in the first instance by himself and in the second instance after a consideration of the recommendations of the Finance Commission. We do not propose to bring the Parliament in. Because, in that case, there would be a great deal of wrangle between the representatives of the different provinces and great injustice may be done by reason of the fact that certain provinces, may have a very large majority in the Parliament and certain other provinces may have a small representation. Consequently, to leave the matter to Parliament practically means leaving it to the voice of those provinces who happen to have a larger representation at the Centre, and that I think would cut at the root of the justice which you want to be done to the various provinces.

Now, Sir, coming to the difficulty that you have raised, the words "States within which that tax is leviable in that year" are necessary. They occur in the Government of India Act, 1935. The reason why these words were then introduced was because Income-tax was not to be levied in the Indian States which were to come within the Indian Union. In lieu of the Income-tax, the Indian States were required to make certain contributions. Therefore, if the tax was not to be levied in that State would not be entitled to obtain a share. We do not know what is going to be the procedure under the present Constitution. This matter is being examined by a Committee which has been appointed to investigate into the finances of the Indian States. If the recommendation of that Committee is that Income-tax should be leviable in all the States whether they originally constituted Indian Provinces or Indian States, then naturally these words would have to be altered. While moving this article, I retain liberty to the Drafting Committee to suggest to some amendment in that respect when the report of that Committee to suggest to before us. That is the reason why these words are here.

Mr. President : Just one thing more. May I take it that it is not intended to cover cases within what used to be British India?

The Honourable Dr. B. R. Ambedkar : No, no; States in Part III.

Shri B. Das : Dr. Ambedkar has referred to decisions of a Conference of Prime Ministers of Provinces and the Drafting Committee. This House has no knowledge of what passed between them and what the result of their discussions is. Unless a Minute of those discussions is laid on the table of the House in the form of a Note or otherwise, we are not in a position to come to any conclusion as to the action of the Drafting Committee.

Mr. President : I take it, if there had been any question raised by any of the Premiers of the Provinces, they would be hear to raise them if they did not agree with the draft. Therefore I take the draft as now placed before the House has the concurrence or the consent of the Premiers.

Shri B. Das : The House is not bound by what the Premiers and Finance Ministers did outside this House. If any decision was taken, it is the privilege and prerogative of this House to have copies of those documents.

Mr. President : No one is bound here by any decision taken by the Premiers and the Drafting Committee. The House is free to cast its vote in any way it likes.

Pandit Lakshmi Kanta Maitra : I would like to ask for clarification from Dr. Ambedkar on one point. The point is this. This article provides that the revenue shall be distributed among the States in such a manner and from such time as may be prescribed. Now, the word "Prescribed" has been defined in clause (4) sub-clause (b) and means, "Until a Finance Commission has been constituted, prescribed by the President by order, and after a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission." This Finance Commission comes at a later stage. As has been settled so far, this Finance Commission, mentioned in sub-clause (b) (ii) of clause (4), is going to be appointed within a period of two years from the late of the commencement of the Constitution. Prior to that immediately with the commencement of the Constitution, what is going to be the criterion by which this allocation is to be guided ? We have been told recently by the Honourable the Prime Minister that apart from this Commission, another Commission-call it a Commission or a Committee or whatever it may be something like an *ad hoc* committee is going to be appointed. How does that fit in with this ? This word 'prescribed' in sub-clause (b) does not mean that the President will be acting on the recommendation of the *ad hoc* committee which will he appointed within three or four months time. Will the interim allocation be decided on the recommendations of the Finance Committee ? It is not clear as to what is going to happen with regard to the period immediately following the coming into operation of the Constitution, and before the appointment of the Commission envisaged in a subsequent period.

The Honourable Dr. B. R. Ambedkar : Sir, the explanation is very simple. If we wanted that there should be no interim enquiry before the President made an order of allocation, we would have merely said that such allocation as existed before the commencement of the Constitution shall continue until they are redetermined by the President on the recommendation of the Commission. We have not said that, and we have not said that deliberately, because we want that an enquiry should be made and on the basis of the enquiry the President may prescribe by order. That is the reason for the difference in language.

Pandit Lakshmi Kanta Maitra : That is to say, the interim Commission will be appointed straightaway now and on the recommendation of that Commission the President will prescribe by order ?

The Honourable Dr. B. R. Ambedkar : Yes. Otherwise we would have merely said that the existing allocation will continue until the President issued the new order ?

Mr. President : I will now put the various amendments to vote. I will first put amendment No. 2858, moved by Shri Upendra Nath Barman.

Shri Upendra Nath Barman : Sir, in view of the statement of Dr. B. R. Ambedkar, I wish to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : Then I put amendment No. 76, moved by Dr. Ambedkar. That is a verbal amendment.

The question is:

"That in clause (2) of article 251, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

The amendment was adopted.

Mr. President : Then there is the amendment of shri T. T Krishnamachari. The question is:

"That in sub-clause (c) of clause (4) of article 251, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

The amendment was adopted.

Mr. President : Then there is Professor Saksena's amendment.

The question is :

"That for amendment No. 2875 of the List of Amendments, the following be substituted:

'That in sub-para (i) and (ii) of sub-clause (b) of clause (4) of article 251, for the words 'by the President by order', the words 'by Parliament by law' be substituted."

The amendment was negatived.

Mr. President : Then I put article 251 as amended.

The question is :

"That article 251, as amended, stand part of the Constitution."

The motion was adopted.

Article 251, as amended, was added to the Constitution.

Article 252

Mr. President : Then we take up article 252. But there are two new articles proposed, 251-A and 251-B. Do you wish to move them, Mr. Krishnamachari ?

Shri T. T. Krishnamachari : No.

Mr. President : Then we come to article 252 and to it there is amendment No. 2881 standing in the name of Shri Santhanam.

(Amendments Nos. 2881 and 2882 were not moved.)

Mr. President : Then there is amendment No. 79 in the name of Dr Ambedkar.

Shri T. T. Krishnamachari : Sir, it is also in my name, and I may be allowed to move it. I move:

"That in article 252, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

Mr. President : Does any one wish to say anything about this article (*No Member rose*). Then I will put amendment No. 79 to vote.

The question is :

"That in article 252, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

The amendment was adopted.

Mr. President : Then I put the article as amended, to vote.

The question is :

"That article 252, as amended, stand part of the Constitution."

The motion was adopted.

Article 252, is amended, was added to the Constitution.

Article 253

Mr. President : Then we take up article 253.

(Amendments Nos. 2883 and 2884 were not moved.)

Mr. President : What about amendment No. 2885 ? Do you wish to move it, Dr. Ambedkar ?

The Honourable Dr. B. R. Ambedkar : No; Mr. Tyagi will move his amendment.

(Amendments Nos. 2886 to 2896 were not moved.)

Mr. President : Do you move your amendment No. 2897, Mr. Bardoloi ?

The Honourable Shri Gopinath Bardoloi (Assam: General): I do not want to move the amendment, but I would like to speak on the article.

(Amendments Nos. 2898 to 2902 were not moved.)

Shri Mahavir Tyagi (United Provinces : General): Sir, I had an amendment.

Mr. President : I have not finished all the amendments. I am taking them in order and will come to your amendment later. Amendment No. 81.

The Honourable Dr. B. R. Ambedksr : Sir, I move:

"That in clause (2) of article 253, for the words 'revenues of India' the words 'Consolidated Fund of India' be

substituted."

Mr. President : Then amendment No. 214, in the name of Shri Mahavir Tyagi.

Shri Mahavir Tyagi : Sir, I move:

"That with reference to amendment No. 2886 of the List of Amendments, clause (1) of article 253 be deleted."

Sir, clause (1) of -article 253 runs as follows :-

"No duties on salt shall be levied by the Union."

Sir I am one of those who had participated in that great movement of salt *satyagraha,* and I appreciated then, as I do appreciate today the argument that since the salt tax tells on the pockets of the poor it should not be levied. I still stick to that old opinion of mine. I also confess that it is on account of that conviction that most of the Members of this August House have preferred to bring in through this clause, the prohibition of any duties on salt. But, Sir, to levy a duty, or not to levy it is the business of the State and the Parliament. We are sitting as the Constituent Assembly. I object to this clause being here, not because I am in favour of salt duties being levied, but because I do not want to tie down the hands of future generations for ever. Once we put it down in the Constitution there shall be no salt duties for centuries to come; and so long as there does not come into being another Constituent Assembly, the government's hands shall remain tied, and even if they want to levy any salt duty and even if circumstances are so changed that salt duty is warranted, they will not be able to levy it. That is the kind of thing we should always avoid. That is the only reason why I wish to commend this amendment to the House.

Sir, at present, after the division of India, we are having most of our salt supply from foreign countries. From Pakistan, in the year 1948-49, we imported about 40,000 tons of salt, from Egypt about 25,000 tons and from other countries, about 34,000 tons. This foreign supply of salt-ordinary crude salt and not the table one-was about 300,000 tons. There are agreements between one country or the other. Sometimes, while discussing our import-export problems with Pakistan our future Government may feel the necessity of levying a duty on salt imported from Pakistan. It may also be necessary to levy an import duty on foreign salt in order to protect our own indigenous industries of salt against competition. There are so many other advantages of the duty. Sir, this is a very simple case, and I do not want to dilate on it and waste the time of the House in pressing tile issue. I only want that the hands of the future Generations and of future Parliaments should be free to act. If to-day the Parliament were to decide the issue about levying the salt duty, like many of my Friends I will put up a strong opposition. We have only lately, and deliberately, given up this income. The income from this source was not less than one to ten crores. For the sake of the principle we have already sacrificed nine crores. If ever the Government feel that instead of resorting to other direct taxes, it is convenient to have some income from salt, must be free to take advantage of and tap this source of revenue. With only these words, I commend this amendment and I hope I shall not be misunderstood. Although this amendment obviously seems to be unpopular, but I want to make it clear that by this amendment, I do not mean to ask the Government to levy any salt duty. Here it is not a question of levying or not levying the duty. It is a simple question of not shutting the door for future governments to exercise their discretion. That is the only question. I hope the House will rise above sentiments and exercise a free vote. Let the future Governments be as free in the matter as we are today.

Mr. President : Amendment No. 215, do you move it, Mr. Bardoloi ?

The Honourable Shri Gopinath Bardoloi : I do not propose to move the amendment, but as I said, I would like to speak on the article.

Mr. President : Yes, let me first get through the List. Amendment No. 216 ?

The Honourable Rev. J. J. M. Nichols Roy (Assam : General) : I do not propose to move it, but I should like to speak.

Mr. President : Amendment No. 217 ?

The Honourable Shri Gopinath Bardoloi : That forms part of the same thing.

Mr. President : These are all the amendments. Mr. Bardoloi can speak now.

The Honourable Shri Gopinath Bardoloi : Mr. President, Sir, it is with considerable hesitation that I am proposing to make certain observations in regard to article 253, of the Drift. I must take this opportunity of conveying my thanks to the Chairman and the Members of the Drafting Committee for having given be Premiers an opportunity to discuss this and other questions, and also forgiving me an individual interview for the purpose of explaining0 the special difficulties of the Province of Assam. I must say, however, that while I am not satisfied with what they have proposed, I am surely grateful for their courtesy, I also want to mention in this connection, Sir, the courtesy which I received from the honourable Member for Finance of the Government of India in respect of reply to certain questions which I had raised in connection with these financial arrangements, deserves grateful acknowledgement.

Now, I think I will not be doing my duty to myself, I will not be doing my duty to my people, if I did not place before this House the real financial situation of the province. To put it, in a word it is facing a financial crisis and unless the Government of India by a short-term measure and the Constitution by a long-term measure did something for pulling this Province up, the situation as it appears to me is very dark in the future. I want to lay special stress on this on account of the special difficulties of the Province, on account of its being now a border Province of India, on account of it being a sort of a guardian of the eastern gates of India.

Sir, talking about the history of the financial arrangements from which this Province is suffering, I do not propose to take the time of the House; but I would like to observe that even from 1919 this Province has been suffering from grossly unfair treatment in the matter of financial arrangement. In 1919, although the Province had not even anything which would go by the name of social service-not even educational institutions enough for giving education to students, when even 10 per cent. of the school-going students had not the opportunity of going to primary schools-even then this Province was put under the obligation of contributing Rs. 15 lakhs to the Centre under the Meston Award. The result was. that the finances of the Province broke down and within seven or eight years the whole thing had to be revised. I think in 1927 or 1928 , Sir Alexander Muddiman revised this scheme and exonerated Assam from the payment of this contribution. Soon after that there was a proposal for the revision of the financial arrangements but things went on like that till the picture of the new Constitution under the Government of India Act of 1935 loomed large before the country. At that time, the Percy Committee thought that the arrangement under which Assam was suffering must be removed and a fair deal must be meted out to the Province. I do not propose to repeat the various stages through which the final award given by Sir, Otto Niemeyer had to be accepted, but all that the Otto Niemeyer award gave us was only Rs. 30 lakhs of subvention. The result was that the situation which existed in the Province in 1919 continued; no social service whatsoever could be possible with the finances available and no educational institution worth the name. I do not think the Government of the time was very anxious for that either. It was a planters' *raj.* It cannot be the object of an alien Government to educate the people; and when things could run so smoothly possibly without education and other social service to pay, they thought that things would go on like that.

This was the position of Assam before partition. The period of deficit continued in the budget of the Province excepting perhaps in those two years of war when some revenue was obtained on account of sales-tax on petrol etc., and which brought in an amount Of about a crore or more each year. But all these years the provincial budget had to run at a deficit although as I said just now the social services were *nil*, and there were no educational institutions where you could educate your children, and although in every sphere of development we were held up. This was the pre-partition position. With partition, is thrown a responsibility which I hope we have all been able to realise. We are cut off from India, and though most of the linking work is being done under the provision of Central grants, a lot of provincial expenditure had also to be incurred in order that from the link up to the areas within the Province some kind of communication is possible. But the most important fact in regard to communications is this. All the four hundred miles of border area verges on Pakistan, China or Burma and the border with Pakistan runs through hills. The entire economy of this Hills area was disturbed and these poor people in the border areas, particularly the hill people, have to depend entirely upon supplies from the Province of Assam instead of Sylhet or Mymensingh as it formerly used to do. The necessity therefore of linking these areas with road communications has become very imperative and the Government had to undertake the work. Some money was provided in the post-war grant for that purpose; but I regret to say that on account of the curtailment of the post-war budget, these activities had, most unfortunately, to be curtailed.

Then, on account of the creation of the border, and I must add, the difficulties created by the communists, we had to increase the number of the provincial police force to an extent which bears no proportion whatsoever to the provincial revenue and expenditure. We had to increase our expenditure on police by more than 120 per cent. Those frontier areas which were formerly looked after by the Centre through the Assam Rifles which were entirely paid by the Government of India, had also to have provincial police force. The result was that about five districts had to be immediately posted with police forces, on account of which, formerly, the Province did not have to pay anything.

Sir, I want specially to stress the mischief from which the Province is suffering and is likely to suffer from the communist activities in that part of the country. You know that an attempt is being made by this party to connect themselves with people of the same profession in Burma and China. Already a recrudescence of violent actions has taken place;-and if you go through the newspapers you will see that the tactics they have adopted at Dibrugarh are the same as they adopted in Calcutta, namely trying to occupy places of Government by violent means like acid-throwing, bombing, hand-grenading, pistol-firing etc. Now, the police might show you one way of putting down some of these activities; but my point of view is-and I hope this view is shared by all of us-that if we want to root out the evils of communism it can ever be done with the police force alone. We have to take recourse to ameliorative measures to raise the standard of the people and give them training in a -sort of self-government which I suppose is being preached by these communists also. That can be done only by having a very much more *per capita* expenditure on the people than the Province is able to give today from its finances.

What I want to point out, Sir, is that these circumstances have made the financial position of the Province very difficult. Its original revenue was Rs. $3^1/_2$ crores just before partition. It is almost the same today. Today we have time over 5 crores with the Government of India grants. But we cannot definitely manage with that income of Rs. 5 crores and over. Already the budget is suffering a deficit of Rs. 70 lakhs; I understand Rs. 30 lakhs will come in as a supplementary demand in the coming session. So it is absolutely necessary that there should be an increase in the provincial revenues by Rs. $1^1/_2$ crores if the Province is to run in the most normal level, according to the prepartition standard. In the meanwhile, through the kindness of the Finance Ministry, we, as all other Provinces, have got some development grant. It has been calculated' that that grant will throw a recurring expenditure of about Rs. $2^1/_2$ crores a year on the Provincial finance. In other words for the immediate requirements of the Province we shall require Rs. 4 crores $1^1/_2$ crores immediately and $2^1/_2$ crores in the course of the next four or five years.

The point therefore is, how to meet this demand. I have tried to examine the benevolent provisions that have been put in the Draft, one of which we accepted just now-article 251. According to the present distribution, on the basis of which money is given to Assam, we will get only 3 per cent. of that revenue and it does not come to more than $1^1/_4$ crores. There is of course, the subvention of Rs. 30 lakhs. I do not know what will be proposed in the future by the Financial Commission. We have also been given about Rs. 40 lakhs on jute duty. But when I am speaking about the deficit of the Province, I want to say that all this income has been taken into consideration and the deficit is there in spite of them. The fact, therefore, is how are you going to get the money? I am prepared to believe that the Financial Commission would be very charitable to the Province and will be able to find some more money, but will that be enough to meet the requirements of the Province even to the minimum ? That is the reason why I think, Sir, that a share of the excise duties, particularly on products which are produced in the Province, might very well be allocated to us and that was the reason why I had proposed two amendments. The existing, provision is to the effect that "if only Parliament passes the law, the duty will be distributable". I wanted that that clause should be substituted by a positive clause by which the duty would be distributable as a matter of fact without any reservation as to legislation by Parliament. In that connection I want to say that for the last twelve years the same provision has been there in the constitution, but no Province has got any benefit out of it because the Parliament in the meantime did not pass any law. What, therefore, I want in order that the Province might get a little benefit is that the excise duty on tea which is produced in Assam-and the total produce of Assam is two-thirds that of India,-petroleum which I suppose is produced only in Assam and kerosene, should be distributable immediately after the House passes this provision.

The second point was that I wanted that of this duty 50 per cent. should be allotted to the Province. I should like to point out in this connection that the Government of India gets on petroleum and kerosene about Rs. 2 crores of revenue from the produce of Assam. I want you also to consider that the mineral Wealth of this Province is being depleted every day by the extraction of petroleum and when it is exhausted the Province will have to suffer a big loss of revenue, even on crude petrol, and ground rent. If at least a fair portion of the duty is given to us it would not only be helpful but equitable. Then as regards tea, two thirds of tea that is produced in India comes from Assam. The Government of Assam gave a special concession to the tea planters in the matter of land revenue and many other things for bringing this industry into existence. Now that sphere has been taken by the Centre and the Province has suffered a lot and should be entitled to obtain compensation on account of that. I thought therefore that I was making only a fair proposition when I was putting these facts before the House. When the Centre was getting Rs. 8 crores I could see no reason why 50 per cent. of the duty could not be allotted to the Province so that it might be saved from the difficulties which it is facing today. Against that argument, it may possibly be advanced that the overriding needs of the Centre should overweigh the considerations of a particular Province. I am no less an appreciator of the overriding needs of the Centre; mine is a frontier Province and I should realist it more than any other man. But after all Assam is India also, it is a very important part of India today on account of the frontier; and therefore if you wanted that it should function as a province it should have a level of administration which should at least be able to stand in such a manner as you could keep the people contended, you could have a little development and be able to do away with those evil forces which are out to destroy society today. I was therefore not claiming anything extraordinary. I again plead that I am not asking for anything extraordinary, but only for a fair deal.

Then, Sir, I would like you to consider the expenditure which provincial revenues have been able to incur per head of the population. In that connection, if I want to compare with a province like Bombay, I should not be mistaken. I wish well to any other province, but it does us good to have that comparison. The poor province of Orissa has been able to spend only Rs. 3 per head of the population for their social service including Government expenditure also. Assam is able now to spend only Rs. 5. But Bombay spends, I think, Rs. 22 per head of the population and that does not include, I am sure,, the food grains concessions that the Government of India make to keep up supply to the deficit areas. If all that is taken into account, I am sure the expenditure per head will come to Rs. 30 in the case of Bombay. I do not want to cast any reflection on anybody. When passing the Objectives Resolution, we had high hopes of the future of India. When passing the clauses on Fundamental Rights, we thought that poverty, distress, disease and ignorance will be dispelled from the face of India. Now, I want to ask : How are you going to do it ? Well. I am personally not saying that my amendments are sacrosanct. All that I plead to you is that unless you look at the whole thing from that standpoint, India is not going to be the India of the Objectives Resolution or according to the Fundamental Rights that we have passed. I further want to point out to you that Bombay possibly imposes a sort of taxation for all exports of textiles that go out of Bombay. On the other hand, look at Assam with Rs. 5 per head. Its sources of revenues from petroleum and tea are depleted in every way and it is not able to give the necessary social services that the State ought to give to the people who are so backward and lowly; I want to put it to you whether this not a case of :

To him that hath, more shall be given, and

From him that hath not, even the little that he hath shall be taken away.

I believe that this state of things will not be allowed by this House to be continued and that if they are not able to accept my amendment, then at least they will look at the questions of provinces like Orissa and Assam with sympathy for adequate grants.

Shri B. Das : Sir, the heart-rending speech of the Premier of Assam revealed in what way the finances of India are being allocated or are being thought of being allocated. Central Excise should mainly belong to the provinces. The Sarker Committee report in para. 18 remarks :

> "During the war, all provinces except Bengal and Assam, had surplus Budgets."

We have heard from the Premier of Assam in what distressful condition Assam is at present, and that distress has been enhanced by the advent of Communists, both from the East and from the West-from Burma and from East Bengal : both foreign governments. Therefore, Assam's needs deserve very careful consideration by this sovereign House. If the Government of India is careless, if it has no idea of helping the Provincial Units or observing the fundamental duty of the State, if the Finance Department of the Government of India is adamant and bureaucratic then this House must compel the Government of India to function as a democratic government. In para. 40, page 9, the Sarker Committee has discussed the Central Excise duties and it has reached the conclusion that at least 50 per cent. of the Central Excise duties collected by the Centre must go to the provinces. My honourable Friend Mr. Bardoloi has said that he would like Assam to get 75 per cent. of the Petroleum and Kerosene excise duties. I think on the ground that he has advanced, he is justified in claiming that percentage Of Central Excise duty.

I am very grateful to him for referring to Orissa. Talking of Orissa. we are entitled to the share of the excise duty on tobacco. Government or India is at present adamant. It does not accept N. R. Sarker's report where it says on page 10:

> "We accordingly, recommend that 50 per cent of the net proceeds of the excise duty, in tobacco should not form part of the revenues of the Federation but should be distributed to the provinces."

Sir, the Government of India enjoys a superior position. It does not think it has any responsibility to explain its conduct, or its attitude towards financial disbursement to this sovereign House. A moment ago, we heard Dr Ambedkar saying that a Special Officer or a Special Committee is going to be appointed to examine bow resources can be re-allocated to provinces. That came out incidentally in the course of his reply. Why was it that the spokesman of the Government of India on the floor of this House did not feel it his responsibility to take this House into confidence ? I wish to criticise again the conduct of the Finance Ministry of the Government of India, that it is not observing democratic principles. Excise duties are produced by the sweat and toil of the citizens of the provinces. If my honourable Friend Mr. Bardoloi referred to Communists threatening Assam, I may say that the, Central Excise duty ought to be used for fighting them, as the very method of collection of the Central Excise duties in the Provinces is strengthening communist activities. The excise duty which is being collected in every province, in the United Provinces, in Madras, in Orissa, etc., is done by an undemocratic method and this is seized by the communists in their propaganda.

We all know what is happening in the north Madras districts in Nalgonda and in Chittoor. One of the items in the agitation of the Communists among the peasants is : "You grow your tobacco and the Government of India comes and charges duty". The Government of India are so silly that they stick to this method of collection. They do not collect this revenue through the officers of the provinces. They have not their own staff for the collection of the excise duty from tobacco from the villagers. Who are the Central Excise officers? They are all urban people. Talking of my own province, most of them come from Calcutta. Speaking their Calcutta language, they adopt a highbrow attitude towards the villagers in Orissa. They do not know how to talk as brothers to brothers. They irritate the poor peasants who have grown the tobacco from which the Government of India collect so much excise duty. Sir, this House has had no opportunity to discuss the proper method of taxation and allocation of the taxes. If we had such an opportunity we would have advised the Government not to follow the British methods which they have, inherited. The provincial officers know and are in constant touch with the local people and they are alive to the needs of the public and handle problems with human sympathy. Let them collect the tobacco duty. Incidentally I may say that the Government of India in the Finance Department must mend its manners.

Sir, I support on principle my Friend Mr. Bardoloi's demand that 75 per cent or a higher percentage of the duty on petroleum and kerosene should go to Assam in view of its great need and lack of expanding resources. I support also wholeheartedly the recommendations of the Sarker Committee that 50 per cent. of the Central Excise duty should go to the provinces.

I also hope that the point which I have raised, namely that the Central Excise duty should be collected by provincial agencies and not through the alien agency of the Central Government who have very little sympathy for the villagers who produce the article on which this duty is charged, be immediately given effect to.

Next I come to article 253 (1) which says : "No duties on salt shall be levied by the Union". This is a sentimental provision. Already in another place during the last session my Friend Mr. Thirumala Rao advocated that salt duty should be reimposed. The removal of the salt duty has benefited nobody. it has made the black-marketeers and the salt manufacturers raise the price of salt. When the salt duty existed we' used to buy salt at one anna per seer, today I think we have to pay five or six annas per seer. So, the provision contained in article 253(1) is a mere sentimental provision. I do not say anything more about it.

As regards sub-clause (2), the draftsmen including Shri T. T. Krishnamachari may take pride, saying that they have included such a provision in the Constitution. But what is the Constitution worth if it does not give the the benefit of its provisions to the masses ? Therefore, although I did not move any amendment to this sub-clause, I may say now that my intention was to compel the Government of India to bring legislation before Parliament within six months from the date of the commencement of the Constitution over such redistribution. The subclause says that *by law* so much of the excise duty shall be distributed. But who will compel Parliament to pass such a law ? This Draft Constitution is so worded that it does not compel the Government of India Finance Department to do anything or to part with the monopolised sources of revenue. We are slowly giving all the powers to the Central Government and taking away the little freedom and the little power that the provinces now possess. In this matter of the Central Excise duty which is to be collected by the Union I why this pious language here, 'such duties as are mentioned in the Union List'? We have not yet settled the Union List. If it wants, the Finance Department of the Government of India will direct the Drafting Committee to omit from or include in the Provincial List such items as they want. That is why the sub-clause says: 'if Parliament by law provides .... in accordance with such principles of distribution as may be formulated by such law.' I think this goes against our principles. This august House has every right to demand from the spokesmen of the Government of India what will be the principles of such law-the principles of distribution. We see everywhere a lukewarm sympathy. I find that no Government of India spokesman is present here. Always the Draft is accepted; that is bow we are carrying on. How does it benefit the masses ? It is no-use our passing a Constitution which cannot be implemented automatically and the Government of India is not compelled to let go its hold on the finances of India. This is a point on which I am shouting too much. I do ask you, Sir, with all respect, to examine whether the Draft articles on the financial distribution are fair to the mosses and whether they automatically provide for the Government of India Finance Department disbursing the resources which the British Government financiers from 1924 have commandeered from the provinces. I hope in due course you will direct the Drafting Committee to examine the aspects which have been brought to your notice.

Mr. Tajamul Husain (Bihar: Muslim): Mr. President, I had sent in an amendment that clause (1) of article 253 be omitted. I was not present in the House at the time of the consideration of that article and therefore somebody else moved the amendment. Sir, I do not think it is right to incorporate in the Constitution that no duty on salt shall be levied by the Union. I think this is an important matter and should be left to the Parliament to decide. Parliament can make any law it likes. It is the duty of the Parliament to tax or not to tax and so far Parliament has been doing it, i.e., levying tax on salt. Why prevent Parliament from making laws ? After all, Parliament is the representative of the people and if at any time the Parliament feels that this tax should be levied, it should be free to do so. If this provision remains in the Constitution, Parliament will be helpless and the people will be helpless. You are binding the people by this article. If the representatives of the people feel that in the interests of India this tax should be levied, they should be at liberty to do so. It should be left to the discretion of the Parliament. Now, Sir, the question is, who will benefit by it ? If there is no duty on salt, none will benefit. If foreign salt is imported into India, are we then to lose money and not tax the salt which is imported ? Who will be the loser in that case ? It will be the people only. No doubt we have pot to respect the wishes of Mahatma Gandhi. He was at one time of the opinion that there should be no duty on salt, but the time has changed. In those days we were a subject people and we used to do many things in order to turn out the British from this country. The British are no longer here; we are now completely independent and it is for us to increase our income without detriment to the country at large. I hope that the honourable the Law Minister will consider the position and accept the amendment that has been moved.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I wish to confine my remarks to the deletion of clause (1) of article 253, to the effect that no duties on salt shall be levied by the Union. The amendment of Mr. Mahavir Tyagi seeks to delete it and I desire to support his amendment. I may inform the House-as they will find from the printed blue book of amendments -that my honourable Friend, Sardar Hukam Singh, Mr. Tajamul Husain, I and some others gave notice of this very amendment long before. We did not move the amendment so that Mr. Mahavir Tyagi who has suffered in the last noncooperation movement, especially in connection with salt, may have the honour of moving it.

Sir, I shall discuss the amendment purely on a statistical basis. Speaking, of pre-partition figures, the salt tax brought to the Central Government nine crores of rupees per annum. That amounted, on a pre-partition basis, to a tax of three annas per head per year, *i.e.* three pies per month per head, which actually works out at one tenth of a pie per head per day. The amount per head is so infinitesimal that if this tax is remitted, it is impracticable to pass on this small exemption to the poor consumer, and the result has been that the poor consumer for whose benefit this remission was intended, could not be benefited. The result of this remission has been that some middlemen in the salt trade got the entire benefit. It was practically a gift from the Government to some big salt dealers and therefore the pious purpose for which this salt tax was remitted has been entirely frustrated, and there is practically no means of giving effect to this laudable object. I therefore suggest that the tax should not be abolished by an article in the Constitution. It should be left to the legislature to deal with this subject in the way best suited for the benefit of the poor. I would suggest that this tax should be imposed and the amount collected should be reserved for the benefit of the poor who are the real object of Mahatma Gandhi's solicitude. Sir, there is no point in retaining clause (1) in the Constitution. We have violated the sacred principles of Mahatma Gandhi so often in this Constitution that the deletion of clause (1) should not be objectionable on that account. One of the principles of Mahatma Gandhi was that there should be decentralisation, that power should be taken away from the Centre and made over to the Provinces and States. Instead of that, we find that so long as Mahatma Gandhi was alive, there was some amount of sympathy for that view, but after his death, the idea of decentralisation has been given up and excessive centralisation is our object today. I think Mr. Mahavir Tyagi's amendment should be accepted by tile House.

Shri Raj Bahadur (United State of Matsya): Mr. President, Sir, I regret I do not find myself in agreement with the amendment which has been moved by my honourable Friend, Mr. Mahavir Tyagi. He has urged only three or four points in support of his amendment, He says that we should not tie down the hands of the future generations in this respect, and he goes on to say that we have been importing huge quantities of salt from Egypt, Pakistan and other foreign countries to the tune of one hundred thousand tons annually. The last thing he said was that the deletion of the salt duty has resulted in a loss of rupees nine crores to the revenues 'of India. These are mainly his arguments.

I think, Sir, that on a closer scrutiny these arguments would be found to hold no water. It is true that human memory is proverbially short. But I would still remind my friend, that the glorious salt satyagraha under the leadership of the Father of the Nation constitutes a glorious chapter in the history of our nation, which can hardly be forgotten or ignored on the mere question of tying down the hands of the future generations. On the other hand, we should embalm the memory of this heroic struggle in our Constitution itself so that it may serve as a source of inspiration for the coming generations. It is a short-lived consideration to say that loss has resulted to the revenues of India. Objection has also been taken by certain other friends that the abolition of salt duty came as a free gift to the black marketeers in the country. I say that black market does not prevail in the salt market alone; it prevails elsewhere also. The, remedy is not to deny the principles, to deny the heroic struggle by which we stood during the course of the struggle for Independence; the remedy lies elsewhere. We should abolish the black market entirely not only from the salt market but from other commodities also. It is obvious that after food grains and cloth, salt constitutes the third most important commodity for human consumption and is required by human beings to the greatest extent. As such the effect of abolition or retention of salt duty would fall on the masses in general. I would submit that I stand for the retention of this clause not on purely sentimental grounds, and yet I say that I do not, in any way, intend to minimise the importance of sentimental grounds. National sentiments, I think, every Member of this House must covet and for them every member of the nation must lay down his life. This provision should therefore, be enshrined in the Constitution in memory of the glorious salt satyagraha under the leadership of the Father of the Nation. How can we forget the famous Dandi march ? If not for anything else let it remain at least as a tribute of the nation, a homage of the country, to the memory of that heroic struggle and to the memory of the Father of the Nation. We must preserve something in our Constitution which may reflect the tone and temper of our struggle, which may serve as a proud reminder of the glorious struggle against foreign domination. As I said earlier it is not a question, merely of national sentiments alone. I oppose it on ground of national economy also. As I said, if in the past the abolition of salt duty constituted a gift to-the black marketeer, then that black market may properly and effectively dealt with elsewhere. But somehow this question brings to the forefront of the present discussion another problem. The problem of how our salt industry was suppressed by the British and what we should do to revive it. Coming, as I do, from one of the Indian States which have suffered heavily on account of the suppression of this industry, I have got a special feeling in this respect. In my own province. Rajasthan and in my own state, the Bharatpur State, several lakh mounds of salt were manufactured annually by way of a well-developed cottage industry, but in the year 1879 the British suppressed that industry for their own purposes and for their own ends. The result was that the population of that State dwindled and the people migrated to other places. It resulted in the loss of employment to hundreds and thousands of people. Have we not to rehabilitate that industry once again ? While we may lose by the abolition of salt duty a few crores of rupees as revenue to the Union, we shall be providing employment to hundreds and thousands of people if we try to establish the industry once again. At the same time we shall become self-sufficient so far as the salt supply for our country is concerned. It is a shame that even at the present day We have got to important as much as one lakh of tons of salt from other countries. If we take certain steps so that our industry is revived and if it flourishes, we can eliminate these imports of salt entirely. Meanwhile we can impose added customs tariff for such imports. We can devise means and ways by which the industry may thrive once again and in that case what little we may lose by way of revenue, we shall gain in other ways.

The third point which also is as material as the previous ones is the psychological factor which the deletion of this clause involves. Supposing we delete this clause. People rightly or wrongly already accuse some of us that although we profess loudly from the house tops the principles by which Mahatma Gandhi stood, the principles which he preached to the nation, not only preached but practised himself, we have abjured all those principles. In case we delete this ,clause from the article the charge will come : It is hardly two years that Mahatma Gandhi is not amidst us and we have denied ourselves even the remembrane of his great deeds. We have refused the retention of a clause in our Constitution, which could have made immortal the cause for which he once sacrificed so much and on the basis of which he aroused millions of our countrymen. I would submit therefore that the psychological effect on the masses would be very bitter in case we remove the clause and we would come in for criticism at every doorstep and at every street corner. It is therefore proper that at this state of our nation's existence, we must see that we do not do anything which may result in bitterness amongst the masses. Salt is a thing which comes in for daily use by everybody, particularly the Kisans of our country require salt for their cattle and for their own selves. It may be true that the duty on salt may be very little *per capita* but the psychological effect would be great and as such it is necessary that this clause must be retained.

While giving my opinion for the retention of this clause, I would submit that it requires certain amendments. We cannot use the word "salt" alone here, because from Calcium Chloride to Platinum. Chloride there are a thousand and one salts and it would be better if the word "common salt" is used. Similarly it would have been better if we use the words "produced in India" after the word "salt". If these amendments are incorporated the clause would have nothing to be desired I think. With these remarks, I submit Sir, that this clause must be retained in our Constitution.

The Honourable Rev. J. J. M. Nichols Roy : Mr. President, though I have not moved the amendment which stood in my name, yet the feeling is that there must be certain adjustments regarding the excise duty between the Union and the Provinces or the States, so that the States might have enough money to carry on their own administration. I realize that there is an opinion that the excise duty belongs to the Centre and must not be considered as a duty which should be as a vested interest to a province or a State. But at the same time, Sir, we must also realize that the States which produce the commodities from which these duties are realized feel that they have a right simply because these commodities are produced from their areas. For example, petroleum is produced in Assam as the Honourable the Premier of Assam has already stated, and the Centre realizes about two crores, of rupees from that petroleum and kerosene as the Central Revenue. Moreover, Sir, this House and the country know that two-thirds of tea produced in India is produced in Assam and the Central Government gets excise duty *plus* export duty on tea, about which I shall have occasion to speak afterwards, of about more than 6 crores of rupees. We in Assam do not get anything from that. We surely feel that we have a right to got something, at least some percentage and our claim is not less than 50 percent. of the amount of duty that has been realised from the commodities produced in Assam. That feeling is there, it has been there for many years from the very beginning when petroleum was produced in Assam. Now, Sit, we have got our own Government and we realise that it is no use fighting against the ideas of the Central Government which is also sympathetic to all the States and especially to our backward Frontier Province of Assam. We expect that some kind of adjustment will be made and aid given to the States so that the States may be able to run their own administration.

The reason why we are so much troubled on this question is this. As the Honourable the Premier of Assam has stated, we are in a very bad financial condition. We have a revenue of three and a half crores. We get from the Central Government one crore and twenty lakhs by way of Income-tax. We also get from the Central Government as share of jute duty about forty lakhs and a subvention of thirty lakhs. In spite of all that we are now in deficit and the deficit runs to about one crore. This will be more when our institutions which we have just started will be carried on and maintained by the provincial Government. We have calculated that that deficit would come to about two and a half crores, may be about three crores. This is the position in a province which is a frontier province and not well developed. We need, as the Honourable the Premier of Assam has stated, four crores just now in order to balance. our budget and also to carry on those institutions which we have started. We hope that immediatly a Finance Commission will be set up and that the President will give us at least four crores. If four crores are given, we shall be getting about what we demand, that is fifty per cent. of the excise and export duties. For this reason, we believe that immediately the Finance Commission must be set up which must give relief to the provinces of Assam, Orissa and other provinces which are running in a deficit.

Sir, I want to speak on one point more, that is, clause (1) of article 253. I, myself have always considered that the fight against the old regime was strengthened by this great weapon of abolishing the salt duty, and stirring up the masses of India against the then ruling Government. That seemed to me to be the cause of the abolition of the salt duty and the sentiment in India against the salt duty. But, I see no reason why we should bind the future generation by putting it in the Constitution at all that there shall be no salt duty realised in the Union of India. The word "Duties" in this clause will include also import duty. Parliament can make law if they want regarding this. But, once we put it in the, Constitution it becomes almost a permanent fixture. Therefore, I should say that we should not bind the power of Parliament to make laws regarding this. Parliament may easily help a place like Rajasthan as my honourable Friend Mr. Raj Bahadur has stated and encourage the people in that State and give them some financial help in order to bring up the salt industry, and I wish that Parliament would do something of the kind. Therefore, I consider that it is unwise for this House to put this in the Constitution itself. It may be the sentiment of many people on account of our great respect and admiration for Mahatma Gandhiji; but the cause that produced the sentiment that stirred us at that time against the old regime is now different altogether. Now, we must have a sentiment for helping the poor to get as much money as possible in order to raise the condition of the poor people. We should not tie up the hands of the Government and tie up the hands of Parliament to impose a duty on this commodity if it is necessary to do so. I believe members of Parliament will be able to decide whether to impose a tax or not impose a tax according to the conditions that exist at the time. Therefore, Sir, I would like, to leave out altogether clause (1) of article 253.

Finally, I would also request that this House will realise the position of the deficit States and render them help as far as possible and strengthen the hands of Government also to help these deficit States like Assam, Orissa, and others. With these words, I resume my seat.

Sardar Hukam Singh (East Punjab: Sikh) : Mr. President, Sir, I have come here to support the amendment moved by my honourable Friend Mr. Tyagi. I congratulate him on moving this amendment because I feel that such a strong congressman, a staunch supporter and believer, in Mahatma Gandhi should take a realistic and practical view of the whole thing. Even after hearing, my honourable Friend Mr. Raj Bahadur I have not been convinced of the utility of this clause and I do not find any reason except sentimental ground, for keeping this clause. I had myself sent in this amendment and if I am permitted, I might say that this amendment to amendment is only a repetition of the old amendment itself. As it has been moved now, I heartily support it.

As I was saying, I do not find any grounds other than sentimental ones on which this clause can be supported by anybody. It has been said that it would be a fitting memory to our revered Mahatma Gandhi if we were too retain this clause. My submission is that in other places and other respects, we have disregarded many desires of our great leader. If we really want a memorial to Mahatma Gandhi we have other ample opportunities and I would remind my honourable Friends that there are amendments proposed to article (1) where some honourable Member of this House wants to propose that the great name should be introduced in our Constitution itself. I agree that that would be a proper place for a fitting memorial.

So far as I can make out, I think it would not have looked nice to keep, a provision here in the Constitution itself binding an future Parliaments not to levy a particular tax. In my humble opinion it is not justified on any grounds whatsoever. This has been urged here by me of my Friends that it would have a psychological effect. I fail to understand what that effect would be. It is already remitted, we are not levying that; but I do not see any psychological effect. Rather we have suffered a heavy loss in our revenues and I do not feet any justification for such a loss under the present circumstances when our finances are so scanty and we are rather in an awkward position at this moment. Besides this heavy loss, I do not find any appreciable relief to the poor which was our real intention. My Friend Mr. Naziruddin Ahmad has referred to this aspect of the question that 9 crores of rupees distributed over our population-though I do not agree that he worked out the calculation rightly that means 4 annas per individual per month, which will come to 2 pies per man per day. This reduction has not produced any psychological effect but it has lost us a great amount of revenue; and then the prices have even gone higher and so the effect has been rather reverse of what we desired. Then again there is a third thing that I wish to impress *i.e.*, this refugee problem is causing a very great headache to our Government and so far it has baffled any solution. In the last meeting that was convened where the officials And non-officials all assembled, it was discussed that the refugees could be given bonds for the present and payments could be made by instalments or even if they could be paid interest on those bonds they would be satisfied. I now find a solution of the whole refugee problem in this. If we were to levy this duty and to earmark this for rehabilitation purposed we could liquidate the bonds given to our refugee brethren and then there would be no additional burden on the State revenue as well. So in my estimate there is no justification on any ground in retaining this clause and I support wholeheartedly the amendment moved by my honourable Friend Mr. Tyagi.

Prof. Shibban Lal Saksena : Mr. President, Sir, that is another very important clause in the Draft Constitution. The first part deals with salt duty. My Friend Mr. Tyagi has moved an amendment for its deletion. I humbly beg to oppose his amendment. I do not appreciate why this clause should have been kept in the Draft and should now be sought to be deleted. Was it when Mahatma Gandhi was alive that this clause was put in and after him we want to remove it? In fact I notice that the Drafting, Committee did not move the amendment, but got it moved by Mr. Tyagi, It has been said by Mr. Tyagi and other friends that the removal of the clause does not mean that we want to impose duty on salt, and what we want to see is only that we should not bind the future Parliament. They say it is only sentimental. I personally feel even sentiment has a great value in life. Salt has a history in our freedom movement and I think we shall not be doing anything harmful if we keep this clause as a memento to the great part which salt played in our freedom movement in the Constitution. I am therefore deadly opposed to the removal of this clause about salt. There is no sense, in saying that because it is there that all future Parliaments will be bound by it. If there is an occasion when it is necessary to do it, then they can change the Constitution also; but why do you want to first remove it from here and then say in Parliament "we want revenue and so we must impose salt duty." It is not only on sentimental reasons that I object to its removal, in fact the reasons are mainly economic. It is even the poorest of the poor who have to pay duty on salt and therefore Mahatma Gandhi wanted that the poor man's salt must not be taxed. That was the principle on which that great movement of salt satyagraha was launched. I think by removing this clause we are denying all the arguments which we advanced at that time, for which we suffered and fought. I am therefore deadly opposed to the removal of this clause from this article. Removal of the clause would be really an outrage on the sentiments of the people and on the history of our freedom movement.

Coming to the second part, about excise duties, I think a very strong case has been made out by our Friends Mr. Bardoloi and Rev. Nichols Roy. They have shown that the present distribution of finances is wholly lop-sided. In fact I was surprised to learn that Assam contributes about 6 crores in excise on tea and 4 crores in export duty. Similarly we have 2 crores on excise on petroleum so that from these two products only Centre gets about 12 crores and yet we pay only thirty lakhs subsidy to Assam. I think a frontier province whose needs should be paramount should not be so badly treated. There must be some amendment of the present system of distribution of finances and at least Assam must get some share of the huge revenue that we get from Assam products. He has demanded $1^1/_2$ crores for meeting his normal budget deficit and $2^1/_2$ crores for development purposes. I endorse his demands and I think we must be able to help Assam financially so that it may become fully competent to be our Eastern Frontier.

Then I want to raise another question of principle in this connection. This question is distribution of excise duty not only for Assam but to other provinces also. United Provinces contributed about 6 crores on sugar excise. There should be some system by which the provinces should get a share out of their contributions. I realise that the principle of allotment out of these duties is not very fair.

The Next clause deals with jute export duty. We have to pay several crores as share to some provinces. I therefore think that all these clauses must be reconsidered. There must be some rational method of allocation of finances of the country. I suggest that all the collections from income-tax or excise etc. must be pooled and whatever the Centre requires must be set apart, but out of the remainder there must be an equitable distribution based on many things, on the needs of the provinces, secondly, on their backwardness, thirdly, on population, fourthly, on sources of origin of the revenue and all these facts must be taken into consideration and an equitable distribution made on an examination of these things.

Only then can our provinces be run properly. At present the financial award of Sir Otto Niemeyer has been condemned by everybody, and yet it has continued and will continue. Of course there will be the report of the proposed Finance Commission and then a revision of the present arrangement, will take place but for two or three years just now, which are most crucial in the history of the nation, we shall have to continue under the same arrangement. I feel this question is a most urgent one and must not be delayed. The Centre also must be strong, financially. We have listened to the remarks of Pandit Kunzru about the burdens that the Centre has to bear. All these things have to be considered and so from the very commencement of the new Constitution, we should have, a proper system. To say that when the Commission reports, we shall revise the arrangement, will not do. This part of the Constitution should be reconsidered and we must have a proper system of distribution of finances between the Centre and the provinces.

Shri T. T. Krishnamchari : The question be put.

Shri R. K. Sidhva : There has pot been any discussion on the amendment moved by Mr. Tyagi.

Mr. President : There has been discussion on that amendment. About four or five Members have spoken on that clause.

The question is :

"That the question be now put."

The motion was adopted.

Mr. President : Dr. Ambedkar, do you wish to say anything?

The Honoumble Dr. B. R. Ambedkar : Sir, I am prepared to accept the amendment moved by Mr. Tyagi, and I think it is necessary that I should offer some explanation on behalf of the Drafting Committee as to why it has proposed to accept this amendment.

Before I begin with the main points, which justify the acceptance of the amendment, I should like to meet the point of criticism which has been levelled against the Drafting Committee by my Friend Professor Saksena.

Professor Saksena said that it was not proper for the Drafting Committee to have originally put clause (1) in the article, and now be ready to accept the amendment moved by Mr. Tyagi. I should like to state that clause (1), which the Drafting Committee put, does not have its origin in the deliberations of the Drafting Committee itself. That clause was suggested, if I remember correctly, in the report of the Union Powers Committee where a decision was taken that there should be no imposition of any salt duty. As the Drafting Committee was bound by the directions and the principles contained in the Report of the Union Powers Committee, they had no option except to incorporate that suggestion in the article which deals with this matter. Therefore, there is really no question of vacillation, so to say, on the part of the Drafting Committee.

I now come to the practical difficulties that are likely to arise if that clause was retained. It will be recalled that in List I, we have two entries, entry 86 which permits the levy of excise by the Central Government, we have also entry 85 which permits the levy of a duty of customs. Now, if sub-clause (1) of article 253 remained as part of the Constitution, it is obvious that the Central Government would not be entitled to employ either entry 86 or entry 85 for the, purpose of levying an excise or custom on salt. That is quite clear, because clause (1) takes away legislative power with respect to salt duty which was other wise levied by entry 86, or entry 85. Now, it was represented that while the non-employment of the powers given under entry 86 to levy excise may not cause much difficulty to the country, the embargo, if I may say so, on the utilisation of the power, given under entry 85 to levy a customs duty may cause a great deal of difficulty, because that would permit the importation of foreign to be brought into India without the Government of India being in a position to apply any kind of legislative remedy to stop such influx of salt which may practically destroy the Indian salt industry. It was, therefore, felt that the better thing would be to remove the embargo and to leave the matter to the future Parliament, to act in accordance with circumstances that might arise at any particular moment. That is the reason why the Drafting Committee is prepared to accept the amendment of my Friend Mr. Tyagi.

Shri R. K. Sidhva : May I know why the item of prohibition was entered in the directive policy? If clause (1) of this article is to be deleted, may I know why the item regarding prohibition was inserted in tie Directive Principles of the Government, and may I also know why the wearing of Kirpans was also put in the Fundamental Rights ?

The Honourable Dr. B. R. Ambedkar : Oh, Kirpans stand on quite a different footing.

Mr. President : Before I put the amendments to vote, I desire to say a few words about the amendment moved by Shri Mahavir Tyagi. I was considerably surprised by the attitude which has been adopted by the Drafting Committee in regard to this amendment. It was not without reason that salt was selected by Mahatma Gandhi as the one tax out of so many taxes which the poor people of this country paid, for disobedience, when he started this movement of disobedience. It was because he felt that even the poorest beggar, when he took his morsel of food, perhaps once in a day, he had to pay a share of this tax, that he selected this particular tax, and it was for this reason that when he made his appeal it caught everybody throughout the country. There were people then who felt that this civil disobedience would not be a success because he had selected a tax which after all, was such a small tax, and which had such small incidence. But we saw the result. Within three weeks, from one end of the country to the other there was hardly a village, there was hardly a place where the law was not disobeyed.

I say that even today if you are, going to reimpose this tax you will leave the same kind of movement which convulsed the whole country from one, end to the other. I would therefore suggest to the House to consider carefully whether it should not have this clause in the Constitution as a memento of that glorious struggle which we had. My advice- and deliberate advice-to this House is to reject the amendment of Mr. Mahavir Tyagi. But that is left to the Members of the House.

Shri Brajeshwar Prasad (Bihar: General): I formally move that the consideration of this article should be held over.

Mr. President : I think I had better put it to the House to vote.

Shri Mahavir Tyagi : Sir, if you will kindly permit my putting a question Honorable Members : (No questions) do you think the deletion of this clause (1) will mean that the salt tax will be levied ?

Mr. President : It opens the door for it, and in our present financial difficulties I am not sure that it would be taken advantage of.

The Honourable Shri K. Santhanam (Madras : General): It refers not only to the excise duties on salt but also duties on salt coming from abroad. That is why we wanted the deletion of this clause. Otherwise the will mean the Government of India cannot impose any duties...

Several Honourable Members : No speeches now.

Mr. President : Let, there be no speeches. If the Members so desire, I may allow the article, to be held over for further consideration.

The Honourable Shri K. Santhanam : The article may be held over.

The Honourable Dr. B. R. Ambedkar : The article may be held over.

Shri Mahavir Tyagi : The article may be held over.

Mr. President : This article will stand over. The House stands adjourned till 3 P.M. on Monday.

The Assembly then adjourned till Three of the Clock on Monday, the 8th August 1949.

[Translation of Hindustani speech]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME IX

Monday, the 8th August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Three of the Clock in the Afternoon, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION-*(Contd.)*

Article 253 - *(contd.)*

Mr. President : We shall take up consideration of article 254, to begin with.

The Honourable Dr. D. R. Ambedkar (Bombay: General): Sir, before we begin discussion of article 254, I would request you to allow consideration of Mr. Tyagi's amendment to article 253, because the Prime Minister wishes to sneak on it. Although the debate is closed, I would request you to allow the Prune Minister to make a speech before you put the amendment to vote.

Mr. President : Yes. Honourable Pandit Jawaharlal Nehru.

The Honarable Shri Jawaharlal Nehru (United Provinces : General): Sir, I am grateful to you for your indulgence in permitting me to say a few words in regard to this matter. There is hardly anyone in this House who does not feel rather strongly on this question of salt. Quite apart from the economic implications involved in this matter, salt, at one time in our national history, in the history of our struggle for freedom, became the word of power which moved large masses of human beings and brought about a strange, revolution in the country in the courses of a few months. Therefore, whenever this question comes up, naturally, we are moved not only by the immediate exigencies, of the situation but also by its past history. So, I suppose it is because of this that at one time the Drafting Committee, or some committee, put in this article in our Constitution. As I said all of us must necessarily feel a great deal of sympathy for their outlook. Nevertheless, when we gave thought to this matter, careful thought-because we are building something for the future and it would be wrong to do something which might come in the way of the national good of the future-we felt that, if we put this clause in as it was it would certainly come in our way. For instance, as it is drafted, it would obviously prevent us even from dealing with foreign salt which may be dumped into this country.

Now it may be suggested that we might leave out foreign salt and deal with indigenous salt. Even then unless you go carefully into this matter and unless you provide for all kinds of possible anomalies, difficulties would arise. That kind of thing might well be done by way of legislation when you can go into all its details and clarify matters. But it is very difficult to deal with that in a constitution, clarifying conflicting situations which might involve many uncertain factors. Therefore, it seemed to us that it would not be desirable to include this article as originally put in the Constitution. Therefore, I stand to support the amendment that Mr. Tyagi has moved for the deletion of this article.

May I say just two things in this connection? One is this : let no Member of this House and let no member of the public outside this House imagine for an instant that this Government and, I imagine, any successor Government, will think in terms of taxing salt. That is quite clear. The second is this. If this House so desires, we can go into the question in a separate law which can be dealt with by Parliament in detail, providing for all possible contingencies. To put it in the Constitution may tie our hands up and create difficulties in future. Therefore,' I trust that this House will accept Mr. Tyagi's amendment.

Mr. President : I will now put the amendments to vote. The question is:

"That with reference to amendment No. 2886 of the List of Amendments, clause (1) of article 253 be deleted."

The amendment was adopted.

Mr. President : The question is :

"That in clause (2) of article 253, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

The amendment was adopted.

Mr. President : The, question is:

"That article 253, as amended, stand part of the Constitution."

The motion was adopted.

Article 253, as amended, was added to the Constitution.

Article 254

The Honarable Dr. B. R. Ambedkar : Mr. President, Sir, I move:

"That for article 254, the following be substituted :-

Grants in lieu of export duty on jute and jute products.	254. (1) There shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of the States of Bengal, Bihar, Assam and Orissa in lieu of assignment of any share of the net proceeds in each year of export duty on jute and jute products to these States such sums as may be prescribed by the Presidcent.

(2) The sums so prescribed shall continue to be charged on the Consolidated Fund of India so long as export duty on jute or jute-products continues to be levied by the Government of India or until the expiration of ten years,

whichever is earlier.

(3) In this article, the expression 'prescribed' has the same meaning as in article 251 of this Constitution."

Sir, this amendment makes an important change in the existing system of sharing the export duty on jute and jute-products. Under the Government of India Act, it was provided that certain provinces which are mentioned in this article should be en-titled to a certain share in the proceeds of the export duty on jute and jute-products for the reason that jute forms a very important commodity in the economy of the provinces mentioned in this article. The proposal in the amended article is to do away with this right of certain provinces to claim a share in the export duty on jute and jute-products. The reason, if I may say so, is a very simple one. Ordinarily all export and import duties belong to the Central Government and no province has any right to a share in the export duty levied on any particular commodity which, as I said, happens to form an important commodity in the economy of that particular province. In view of the fact, however, that the finances of Bengal, particularly, could not be balanced without a share in the export duty, an exception was made in the Government of Act, 1935, whereby the Bengal Government and the other Governments were given vested rights, so to say, to claim a share in the export duty which, as I said, was contrary to the general principle that the export and import duties belong to the Central Government. It is now felt that this exception which was made in the Government of India Act, 1935, should not be allowed to be continued hereafter. The reason why it is felt that this vicious principle should be stopped right now is that it is perfectly possible to imagine that other provinces also who have certain commodities grown in their area and exported outside on which the Government of India collects an export duty may also lay claim to a share in the export duty on those products. If that tendency develops it would be a very difficult position for the Government of India. Consequently it has been decided that that principle should now definitely be abrogated. But it is equally clear that if that principle of sharing in the export duty was withdrawn suddenly it might create a difficulty in balancing the budgets of the several provinces which were up to now dependent upon a share in the export duty. Therefore a provision is made that instead of giving specifically a share in the export duty an equivalent sum, or such other amount as the President might determine may be made over or assigned to those provinces for the period the export duty continues to be levied or until the expiration of ten years, whichever is earlier. The latter is introduced in order to enable those provinces to get sufficient time to develop their resources so that after the period mentioned in this article they would be in a position to balance their budgets.

I hope, Sir, the salutary principle which is now embodied in this amended article 254 will be acceptable to the House.

Prof. Shibban Lal Saksena (United Provinces : General) Sir, I beg to move :

"That in clause (1) of the proposed article 254, for the words 'by the President' the words 'by Parliament by law' be substituted."

I agree with the principle enunciated by Dr. Ambedkar that the export duty should be pooled together and then divided, if necessary, according to the needs of the provinces. But I feel that these allocations should only be made by Parliament by law. I am opposed to the principle adopted by the Drafting Committee of empowering the President, to allot funds. Such allotments be included in the Finance Bill at the time of the presentation of the budget and should be properly discussed in Parliament. To give this power to the President is, I think, undemocratic and I see, no justification for it. Otherwise the President might do something which might not be liked by Parliament and still the Parliament would not be able to interfere. By giving this power to Parliament we will make our Constitution more democratic. Parliament which is charged with the allocation of finances of the whole country will certainly see that funds are allocated in the proper way. 1, therefore. think my amendment should be accented.

(No other amendment was moved.)

The Honourable Rev. J. J. M. Nichols Roy (Assam : General): Sir, I gave. notice of an amendment-which, however, I am not moving.

The amendment reads as follows :

> "That on the export duty levied by the Government of India on jute or jute-products and tea, such sums of at least fifty per cent. or any higher percentage as may be prescribed shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of the States which are the producing units of these commodities."

I find that the Drafting Committee have changed their former draft and a modified draft has been moved by Dr. Ambedkar this afternoon. In this new amendment the principle of giving a share of the export duty on jute and jute-products to the States has been conceded. "Such sums as may be prescribed by the President", will be given to the States mentioned in the amendment, but no percentage whatever is mentioned in this new amendment. The Drafting Committee has also indicated the idea that the grants-in-aid to the States of Bengal, Bihar, Assam and Orissa, which are the producing units of jute and jute-products, will be given until the expiration of ten years or so long as export duty on jute or jute-products continues, whichever is earlier. There is no certainty, however, how much each producing unit will get. This article as amended by the Drafting Committee deals only with the export duty on jute and jute-products. It does not deal with any other export duty. We in Assam feel that it should have dealt with the export duty on tea also. At least two-thirds of the tea produced in India is produced in Assam. About 395 million pounds of tea is produced in Assam. From the export duty on tea produced in Assam, the Government of India realised in that he last five years about 19 (nineteen) crores and 90 (ninety) lakhs of rupees. Now, from the year 1947-48, the Government of India have been realising annually about six crores of rupees from export duty on tea produced in Assam. We fell that Assam should get a share from this export duty and we have not been paid anything from the Central Government out of this export duty. Assam has got only a subvention of about 30 lakhs. This is nothing compared with the amount of money which the Centre is taking from the export duty on tea.

Sir, when we calculate all the export duty on jute and tea produced in Assam, we find that the Centre is getting from the duties on Assam products about eight crores of rupees annually. In all, we find that the excise duty as well as the export duty on tea and jute produced from Assam and the Income-tax realised in Assam bring in to the coffers of the Central Government about ten crores of rupees, whereas we are given by them only 120 lakhs in the shape of Income-tax and forty lakhs in the shape of jute duty and thirty lakhs of subvention, totalling 190 lakhs.

Now, surely we feel that there has not been a just treatment of the province of Assam by the Centre up to the present time. We hope somehow or other the present

Government which is our own Government will consider all these points and give Assam at least a good subvention, if not a share from the tea duty. As the Centre is taking away about ten crores of rupees in the shape of income-tax and also in the shape of export duties and excise duties, we are entitled from the standpoint of justice to get at least half of that amount from them.

It appears that the attitude of this House and of the Government of India is that no share should be given to any province from the export duty, with the exception of jute export duty. I cannot understand why this exception was made. Dr. Ambedkar stated that at the time when this was given, Bengal was in great financial difficulty, and the Government at that time departed from the general principle of giving no share of the export duty or other duties to the provinces. But, Sir, that principle might be extended a little bit further to help Assam province that is now in reality in a state of bankruptcy. We have already stated that Assam has a deficit of one crore of rupees. From the official report sent to the Government of India by Assam and the other provincial Governments and submitted to the Expert Committee on financial provisions of the Union Constitution, which has been published in a book form it will be found that when all the schemes and institutions taken up now under the post war grant of the Government of India are completed and also that if prohibition of alcoholic liquor is taken on hand by Assam as advocated by the Congress Party in India, Assam will have an overall deficit of about ten crores of rupees in future years.

Sir, in view of this I would request that this matter may be considered and that something may be done for the province of Assam. If this is not to be done from the duty on tea, it should be done by means of a subvention. But I see no hope of that when I look at the article dealing with Financial relationship between the Centre and the State. Look at article 253. This altogether prevents the Government of India from giving any help to the provinces unless it is done by Parliament. Also article 255 will not give any power to the Government of India unless it is done by Parliament to give some grants-in-aid to those provinces which are in deficit.

Often it is difficult for a small province to get its desires carried out through any Parliament. Those provinces which have a large number of members in Parliament are able to pull the strings and get what they want. Small provinces sometimes go without being taken care of. I hope that such may not be the case in these matters. But if the House will consider these points I believe the Drafting Committee would reconsider the provisions under reference and treat the case of Assam as a special case in the matter of the tea duty as the former Government did in the case of the province of Bengal in the matter of the jute duty.

Sir, I am sorry I am not able to press my amendment before this House for reasons which are known to honourable Members. But I would request that this matter may be considered carefully by this House whose members are also members of Parliament and by the present Government of India. With these words I hope that these conditions of Assam will be considered by the present Government and that, when the time comes for considering the grant of subventions that will be given to the different province, Assam's case will be carefully considered and that a subvention will be given to Assam which will help her to carry on her administration and raise her standard to the level of the administration in other parts of India.

Pandit Lakshmi Kanta Maitra (West Bengal : General): Mr. President, Sir, as a member hailing from one of the important jute-producing units of the Indian Union, I feel myself called upon to put in a few observations in connection with this article.

I generally agree in the view expressed as a piece of political and economic theory that all-duties, import or export or otherwise, belong to the State and as such belong to the Government of India. As a piece of theory, it is unimpeachable, but I am afraid the Drafting Committee in the later stages of its confabulations lost its gear and brought about a proposition, which, though apparently innocent, is a -rave menace to the whole taxation structure of the province now known as West Bengal. It will also affect to some extent the finances of other jute-growing units such as Bihar, Assam and Orissa, but in the case of Bengal, it will be a serious menace. Let me at once tell the House that when I make these observations on this particular duty, I do not at all stand before the Drafting Committee with folded bands. I am on very strong ground. In the first place. I would like to tell the House that there is a long history behind this jute duty. It is not as simple as Dr. Ambedkar sought to make it out. The jute duty was imposed first as a war measure in the year 1916, and from that year onwards up to the year 1936 the proceeds of the duty were of the order of four crores of rupees a year. When this tax was first imposed, it was generally believed that it was imposed, to raise finances for the effective prosecution of the First World War but that it would be discontinued at he the earliest possible moment after the termination of the war. Sir, as every one, knows Government is a particular type of institution which once it imposes a tax, does not let go its hold on it easily. This jute duty came in for elaborate examination at the Third Round Table Conference and there it was very clearly made out that this was not an ordinary type of tax at all. According to the Taxation Inquiry Committee, export duly could not be imposed if the commodity on which the duty was sought to be imposed was a monopoly one in the first place and secondly if the levy was on a small. These were the criteria laid down by the Taxation Inquiry Committee. Now, till 1936 jute was practically a monopoly of the province of Bengal. Therefore, the Government of India had some justification in accordance with the Taxation Inquiry Committee's report, to levy tax on jute in Bengal. But it was pointed out at the Third Round Table Conference, and the point was discussed at very considerable length, as to whether or not the export duty on jute was justified at all Sir, I do not want to go to great details but I would refer to one or two questions that were raised at the Third Round Table Conference. The question was raised by the Honourable Sir Nripendra Nath Sircar, the late Law Member of the Government of India, who interrogated Sir, Edward Benthall, Chairman of the Chamber of Commerce, Calcutta. Sir, Edward Benthall was also Leader of the House in the Central Legislature in the year 1946. In the course of this question and answer, it was established beyond doubt that it was a discriminatory tax-I ask the House to bear that in mind a discriminatory tax, because this was a tax on the agricultural produce of a particular province; and as you know. agriculture is a provincial subject, and therefore the jute tax was a discriminatory tax not only from the point of view that it taxed an agricultural commodity, an agricultural product of a particular province but also from the point of view that it taxed only a few provinces as against others. Sir, I would read one or two passages. In reply to question No. 6257 by the late Sir N. N. Sircar at the Third Round Table Conference:--

"What effect does this tax have on the land revenue and the ryot?"

Sir Edward Benthall replied :

"It is a direct tax on an agricultural product and it therefore has the same incidence as land revenue. It undoubtedly falls on the producer."

> "When it was first imposed in 1916, it was imposed as a war measure and with the high prices obtaining then, it probably fell on the consumer, but today it undoubtedly falls on the producer, and mainly on the ryots of Bengal, and this incidence is actually in the neighbourhood of eighteen per cent."

Then on another question replied to by Sir Joseph Null (No. 6259), the matter was further clarified. On the point raised by Sir Abdur Rahim--the reply was:-

> "It is a tax on agricultural income and it is a tax of a discriminatory nature on certain provinces only."

Sir, there was a long series of questions put on this jute duty, but I do not want to weary the House with all those details, but it was established beyond any dispute that this was a peculiar tax in as much as it infringed even in those days the constitutional provisions of the limited reforms. Therefore, I am submitting to you that Dr. Ambedkar will not at all be right if he feels that it is only out of generosity that the Centre grants a portion of the proceeds of this tax to the provinces concerned. It was as a result of these discussions at the Third Round Table Conference and on incontrovertible proof given on behalf of the province of Bengal by men like Sir Edward Benthall that the Government of Great Britain made a substantive provision in the Government of India Act, 1935, in Section 142, that fifty per cent of the net proceeds of the jute duty should go to that province. Thereafter Sir Otto Niemeyer who was to fix the allocation of revenues between the provinces and the Centre, went into the whole question and raised this allocation of net proceeds of jute duties to Bengal to $62^1/_2$ per cent. This will appear on page 10 of Sri Otto Niemeyer's Award.

> "Therefore I recommend that the percentage should be increased under section 140(2) of the Act to $62^1/_2$ per cent."

The jute tax is such that the Government of Great Britain had to give a statutory recognition to the claim of the principal jute growing province of Bengal to this tax to the extent of 50 per cent. in the Act, but Sir, Otto Niemever went further in his Award and allocated $62^1/_2$ per cent. Now, when the Constituent Assembly had been meeting in the earlier stages the Honourable the dent appointed a Committee known as the "Expert Committee of the financial provisions of the Union Constitution." This Experts Committee which has been referred to by several honourable Members in this House as the Sarker Committee, made certain specific recommendations on this. I have seen views held on this Expert Committee Report in this House in the course of the last two or three days. I have seen some Members swearing by it, quoting some of its recommendations very earnestly in support of any contention that the wanted to be accepted by the House. I have seen it condemned outright by Members for whose judgment we always have a high value. I want to know of these honourable Members why they go on changing their views from day-to-day. It seems to me that the Constituent Assembly has been seized by the philosophy of Heraclitus-a policy of perpetual flux; I-find constant change not only in the views of the Drafting Committee, but also in the opinion of the Members of the House. Before the ink of the report of this Committee is dry we find it almost scrapped. But let me quote one relevant passage from report bearing on this particular question

> "It is necessary, however, to compensate the provinces concerned for the loss of revenue, and we recommend that, for a period of ten years or till the export duties on jute and jute-products are abolished, whichever may be earlier fixed sums as set out below be paid to these Governments as

compensation every year."

Provinces	Amount Rs.
West Bengal	100 lakhs.
Assam	15 lakhs.
Bihar	17 lakhs.
Orissa	3 lakhs.

I am rather at a loss to understanding what led the Drafting Committee to depart from the previous position and make such a radical change in the original draft on this particular subject. The original article, namely article 254, read thus :-

> "Notwithstanding anything in article 253 of this Constitution, such proportion. as Parliament may law determine, of the net proceeds in each year of any export duty on jute or jute-products shall not form part of the revenue of India, but shall be assigned to the States in which jute is grown in accordance with such principles of distribution as may be formulated by such law."

Suddenly a surprise has been sprung on us by a new draft today. I want to know what led the Drafting Committee to make this radical change negativing the original proposition altogether. It is a very serious matter. Today the Province, of West Bengal has got to shoulder the entire debt of the undivided province of Bengal. In these days it has become the, fashion to describe the Province of Bengal as the "Problem Province". Have you stopped to consider how much of that problem is your own creation ? Have you ever thought how you can best solve the problems of this Problem Province ? Have you ever applied your mind to that question ? I ask, what it going to happen at the end of ten years or if this whole jute duty is abolished earlier ? What would be the fate of the Finances of Bengal ? From the Income-tax divisible pool Bengal used to get 20 per cent, but the men in authority have now cut it down to 12 per cent on the ground that two-thirds of Bengal have gone out. They do not know the actual position. It is true that two-thirds of Bengal have gone out to Pakistan but 79/80th out of the total income-tax revenue is collected in West Bengal. Is this not known to the authorities ? Two-thirds of the jute producing areas have gone to East Pakistan and do they realize that every single ounce of jute that is produced have got to be processed in West Bengal ? This fact is not adequately recognized. You should view these economic problems against the background of realism. I emphatically maintain, Mr. President that this fact is not given due consideration by the Government when making allocation of funds to my Province. I may tell the House that today West Bengal happens to be the home of jute industry in India. Do you know how much dollar it earns for you every year? In 1948-49 it earned a huge amount of dollars worth 76 crores. Can you point to any other item of export in the whole of the Indian Dominion, which earns for you much in foreign exchange ? Now what is the actual position of jute growing in the Provinces ? The Bengal jute mills industry requires 71,00,000 bales of jute every year. Immediately after the partition *i.e.,* 1947-48, the Indian Union could produce seventeen lakhs of bales. The next year Assam, Bihar and Orissa also increased its cultivation and the production rose to 21 lakhs and this year it is going to be in the neighbourhood of 30 lakhs of bales. If proper incentive is given by the Centre the percentage will increase still more. The most important consideration at the present moment is its bearing on foreign exchange. Now I ask in all seriousness if this commodity earns for the Government of India the much needed foreign exchange and dollar in such substantial measure, are not the Provinces which grow and process jute entitled statutorily to some *quid pro quo.* Today Dr. Ambedkar comes forward and says, "Oh no, no; this is a most vicious principle; I want to leave it to the President." To rob the province of this share, is it a virtue ? I am sorry I have to speak a bit strongly. When I feel that the whole House is being misled by a proposition which is apparently innocent, but which has very serious, very grave implications for the provinces, I cannot but raise my voice of protest against it. I wish that my honorable Friend had not brought this in at all, or dropped this article altogether. The way in which he has put it makes it more dangerous. If be had been absolutely silent on salt, and also silent on this particular item, jute, probably the danger would not have been so great. But, having once provided in the Draft for exclusion of the proceeds of jute duty from the revenues of India. suddenly, after the lapse of a month and a half, he provides that the Consolidated Fund of India will be charged certain grants-in-aid to these provinces, which will be prescribed by the President. I find "Prescribed" here means 'prescribed by the Finance Commission' and until the Finance Commission has been constituted, prescribed by the President by order, and after the Finance Commission had been constituted "Prescribed by the President by order after considering the recommendations of the Finance Commission." The other day, I had an occasion to ask the honourable Member a question *viz*., immediately after the commencement of the Constitution what is going to be the position with regard to the allocation of jute duty to these provinces, Bengal, Bihar, Assam and Orissa.

Sir, the Honourable the Prime Minister who has just left, made a statement to us that be would be shortly appointing a Committee. I do not know how many Commissions would be there. There is already provision for a Finance Commission under article 251. Probably it will be something in the nature of an *ad hoc* Committee. That is bow I understood him and how Dr. Ambedkar interpreted it for us. What is important to know is, if for any reason this *ad hoc* committee could not come to any decision or were late in coming to any decision, shall we have to wait till the regular Finance Commission as contemplated in article 251 clause (3), or pending any decision, as I find in subclause (b) (ii) or clause (4) of article 251, the President himself would make the grants-in-aid? Neither arrangement is satisfactory or suitable. If you can not do anything the *status quo* should be maintained. As to whether or not you will abolish the tax we will see, the future Parliament will see. But try to visualise what is going to happen at the very beginning of the enforcement of the Constitution. I am apprehensive, frankly speaking, because I know when the Montagu-Chelmsford reforms were introduced, the scheme foundered on the rock of finance. The Meston Award was responsible for this. Even the Otto Niemeyer Award could not rectify the errors of the previous Government. It will interest my honourable Friend Dr. Ambedkar to know that of the total revenues collected in Bengal, 70 per cent. goes to the Centre. This is a fact not known to many people. You get all these figures in Sir Walter Layton's report to the Simon Commission. It is no mercy, therefore, that we ask for when we want a substantial measure of the proceeds of the jute duty from file Centre. It is for this unfair and iniquitous allocation of finances throughout the past that my province has suffered and a problem has in consequence been created for you. If you do not solve this problem in a statesman-like spirit, the problem will multiply and these problems will ultimately devour you, all of you.

Shri Biswanath Das (Orissa: General): Sir, I stand to oppose the amendment.

In moving the motion, the honourable the Law Minister......

Pandit Hirday Nath Kunzru (United Province: General): Which amendment is the honourable Member opposing ?

Shri Biswanath Das : I am referring to his amendment regarding jute duty.

Pandit Hirday Nath Kunzru : Is he referring to Dr. Ambedkar's amendment or Prof. Shibban Lal Saksena's amendment ?

Shri Biswanath Das : I said the Honourable the Law Minister, it could not be Prof. Shibban Lal Saksena.

The Honourable the Law Minister as the Chairman of the Drafting Committee characterised this system of distribution as vicious. I agree with him that it is a vicious system because it ought to be and it is a Central source, No stretch of imagination could bring it or ought to bring it under the purview of the provinces. As such; the system is vicious. A conviction such as this ought to have led my friend and the Government which he represents to,, undertake a full-fledged financial enquiry, a Taxation. Enquiry and find out the taxable capacity and the taxation that is levied and collected from the various provinces and they should have come forward with a proposal acceptable to the House.

Sir, the British system of taxation which has been continued today is certainly vicious. It has not been undertaken with a view to evolve a scientific national system of taxation. The Britishers levied taxation as it suited them, just to meet the exigencies of the situation. That system prevailed for a time and the men with the loudest voice got most. From 1919, they professed to change he system and we got the Meston Award. That was found unsuitable and the result was an enquiry. Financial Enquiry undertaken by the Round Table Conference. To their utter surprise, they found that Bengal, Assam, Bihar and Orissa were very hard hit. They also had advised the Government, which, if accepted, would have taken India a step forward, to allow a share of Income-tax to the provinces, and that on the basis of population. Unfortunately, as I have already stated, the British had their curious way of meeting the situation and arriving at decisions. In the result, we got the Niemyer Award.

So awards after awards were, thrust on India with the result that you do not have today a sound financial system which you could call national or desirable or essential. Therefore, I accept and agree with my honourable Friend that the system today of allocating the share of the jute duty to provinces is certainly vicious, looked at from this point of view; but my complaint against him is that he has done nothing, taken. no steps as yet to undo the mischief as it shows. Sir, you were, good enough to appoint an Enquiry Commission but I must frankly state, as I have already stated, that the scope of that enquiry was so very limited that the provinces hard hit cannot get the justice that they ought to have. I claim that a thorough enquiry into our system of taxation, allocation and the rest should be undertaken in the future so as to devise a scientific and national system of finance in this country to keep pace with the needs of social justice. Until then necessarily these disparities will be continued.

My Friend Mr. Saksena comes forward with his amendment. His amendment-he will pardon me so characterising--it is the position of those who have. You damn, you condemn the system as vicious and do nothing to wipe off the miseries that accrue out of the past sins committed by an alien rule. Therefore, it will be unfair if you claim and have the benefits and advantages of the system to continue and thus have it both ways. You cannot have if both ways. Sir, this levy of jute duty and the allocation of it to the provinces has a history of its own. I have already stated that the enquiry of the Federal Finance Committee found that Bengal, Bihar, Orissa and Assam were very hard hit and no action was taken to relieve the distress. Just before Sir Otto Niemeyer was coming to India to conduct his enquiry, the then Provincial Governor of Bengal in his famous speech he delivered at the St. Andrew's Day Dinner stated that he spoke this on behalf of himself and his Ministry and he made a claim that he cannot run the provincial administration of Bengal unless he gets two crores of rupees. Curious it is that a Noble Lord, such as be, hurled a criticism on the British Imperialism stating that the Province of Bengal cannot be held responsible for the sins or commissions and commissions done by the Centre viz., the system of land lordism that was devised for Bengal. He stated that the Permanent Settlement has deprived Bengal from an annual revenue of four to five crores. Having done that it is for the British Government to make good the deficits of Bengal. Therefore, he, among other things, claimed two crores as the minimum necessary for his own province. Other provinces also placed their own demands. The result was, as I have stated, other provinces got a good share of jute duty along, with Bengal.

You are going to limit it to ten years. Many provinces have undertaken long-range annual commitments on the basis of allocation of this revenue. What are they going, to do ? Is it your idea that they should close this chapter of taking up national activities, constructive work.in the sphere of nation-building activities and forego this revenue ? If that is so, I cannot praise very much either the source from which this amendment is sponsored or the honourable Members of this House if they accept this motion. Sir, think of provinces like Bengal. If they are to be deprived annually of a crore, how are they -going to meet their demands ? Are you going to stop the educational and health activities of Bengal and Assam ? A province like Orissa, may not mind very much if it is deprived of Rs. 3 lakhs; still Rs. 3 lakhs; a year is not an ordinary sum to be left aside. Under these circumstances, I do not agree with those who claim that it should be confined only to ten years. If my honourable Friend had stated that in the course of these ten years he would undertake thorough enquiry into the taxation system and structure of this country and devise ways and means, I should have no objection. Sir, the Government of India in 1946 had deputed two officials--I believe Prof. Adarkar and Mr. Nehru-to study the financial system of Australia. Their report should have been utilised by the Constituent Assembly as also by the Drafting Committee. They have reported not only regarding the financial system of Australia but also the conditions under which the Australian system could be applied to India. They have clearly stated now allocation of grants were made on the basis of population and area and how the permanent commission that they have established is authorised to receive applications from needy provinces. The Commission looks into the provincial budgets and grants are made to such needy provinces. If that were the position there would not be any objection. Nothing of the kind is provided either in the provisions that have been passed in this Constitution or from any announcements made by Government in the Parliament or in the Constituent Assembly. Under these circumstances I must frankly confess that the motion moved by my honourable Friend the Law Minister is not very helpful to the cause of progress of national activities of these provinces.

Sir, one word more and I shall have done. You have bared and bolted the gates. You have laid down that no other provinces except the existing provinces will have the benefits of jute duty even if they undertake extensive jute cultivation in their provinces. If the news published in the papers is true, Travancore has undertaken the cultivation of jute in about a lakh of acres. What is the inducement that you are going to offer ? The inducement is nothing. You give them nothing for the trouble they undertake in the Province of Madras or the United States of Cochin and Travancore.

Sir, whom are you helping ? Are you helping yourselves or are you helping Pakistan ? Pakistan, it has to be sadly admitted, holds the key. It has the raw jute and you have got the machinery for the finishing processes. Therefore Pakistan dictates its own terms, and you are anxious to accommodate Pakistan because you are anxious to get dollars. Under these circumstances it is the duty of the Central Government to spare no pains to undertake the expansion of jute cultivation in India. The motion moved by my friend gives me little hope in this direction, because it is confined only to those provinces that are at present getting the benefits of jute duty and it is again confined only to ten years.

I do not know the basis on which this money is to be allocated. If it is to be on the basis of past allocations there is no inducement at present or in the future for the provinces to extend cultivation. Sir, speaking of my own province, I must frankly confess that this comes to me as a great disappointment, because Orissa is undertaking a huge, extensive programme of jute cultivation. Added to it, the States of Orissa, which have been merged, were having lot of cultivation of jute. Are you going to deprive them of the benefits of this allocation ? I do not know whether the provisions will benefit the Government of India or Pakistan. I leave it to honourable Members to think it out for themselves. My honourable Friend says that this is a very vicious principle and I agree with him. If any one thinks that this is an undesirable course of action, they why have article 249 at all. This article apportions the excise duty on certain manufactures, such as medicinal and toilet Preparations, and the duties collected from these sources are to be assigned to the very provinces from which they are realised. If it is such a vicious Principle. why again embody the same in the Constitution? Sir, "consistency is the hobgoblin of little minds."

It is now time when you should have a judicious and national system of finance or you give the provinces a certain degree of freedom to have their own taxation arrangements. While discussing this question I may refer the honourable Members of this House to certain acts done by the Government of Sind in 1942. In 1942, 43 and 44, the Government of Sind levied a duty on export of rice from that province and the result was that they could get a big sum which was enough to clear off her Barrage debts. We in Orissa could have done the same thing. But we refused to play into the hands of our friends in this game and we refused to have such benefits while our sister provinces were suffering. But is that the reason why the discrimination that is now proposed is to be perpetuated ? As I have already stated, I plead with you that there should be a full-ledged enquiry carried out now. The taxation enquiry of India of 1924-25 is now out of date. So is the economic enquiry that was then conducted. I plead that the time has come when such an enquiry is a necessity and it should be undertaken.

Dr. B. Pattabhai Sitaramayya (Madras: General): May I know whether Shri Biswanath Babu considers that the wording of the article as it is, prevented the participation in jute duties, if Madras or Travancore were to grow jute in the future ?

Shri Bishwanath Das: I am sorry I do not carry the amendment with me. But that is my reading and I should be glad if it is not. I shall be glad if it is not so, but my conviction is that it is.

Shri Rohini Kumar Chaudhuri (Assam: General): Mr. President, Sir, my beloved amendment, which circumstances have compelled me to forsake at the present moment, runs as follows :-

"That for article 254, the following be substituted:-

'254. Notwithstanding anything in article 253 of this Constitution-

> (a) sixty-two and a half per cent., or such higher percentage as may be prescribed of the net proceeds in each year of any export duty on jute or jute-products, and
>
> (b) seventy-five per cent. or such higher percentage as may be prescribed of the net proceeds in each year of any export duty on tea, shall not form part of the revenues of India but shall be assigned to the States in which jute or tea, as the case may be, is grown in proportion to the respective amounts of jute or tea grown therein.'"

Sir, my honourable Friend Dr. Ambedkar has proposed an amendment No. 72- which deals only with jute. So far as jute is concerned, I have nothing much to say, except that the grant which is now being made to the Government of Assam should not be reduced. I say this because in the new proposal it will be quite possible, on account of pressure, of circumstances or on account of more weighty demands from more important provinces, the province of Assam may find itself neglected, and it may not get what it should that is to say, the increased share in the jute duty may be subjected to further diminution. I would only wish that this amendment which the Honourable Dr. Ambedkar has proposed might not have a tendency to reduce the amount of jute duty which the province is already getting. I would like to draw the attention of this house to this matter that all provinces, including Assam which produces tea, should get a share of the tea export duty which is now exclusively appropriated by the Government of India.

To the forceful and illuminating speech which my honourable Friend Gopinath Bardoloi delivered in presenting the other day a doleful picture of the province of Assam, I have very little to add. Mr. Nichols Roy also followed suit and completely proved to the House that unless something is done to improve the finances of the province of Assam, the crash may come at any moment. The amount which is said to be in deficit is, I am prepared to say, far more than what we, expect after a close examination. My Honourable Friends in this House, will be, I hope, pleased to remember that Assam is a province of India. having an area of nearly fifty thousand square miles and with a population of 74 or 75 lakhs. The revenue of the province is only Rs. $3^1/_2$crores and with the assistance they get from the Government of India, the total income at the present moment is Rs. 5 crores. I will ask the honourable Members of this House to consider that under the present circumstances, when the price of everything is on the rise, is it possible with this fund to run an administration of such a vast area and with such a mixed population of all kinds ? Is it possible to carry on the administration and to improve it on such a slender income as we now obtain from the province ? I would ask the honourable Members of the House, as I have asked the people of my province to consider for a moment, whether it would be of any use to carry on the province as a part of the Government of India? I ask the other people in other provinces to consider whether they should carry this rotten limb of India or, whether they should not-if they have any sympathy for that province-forego a little of their own income and to give that province a larger share of the income which the Government of India derives, and repair the rotten limb ? If they are unwilling to do it, it is better that the limb is amputated so that that limb may not affect the rest of the provinces of India. That is for this House to consider.

It has been said already-and I do not wish to repeat it-with much greater effect than I can possibly say that you have to make up your mind. Are you going to have Assam with you or not? If you are going to have Assam with you, are you prepared to spend something from your own revenues Are you prepared to do it and make Assam as it should be-a prosperous province, a forward province, a province which has strong men there, which has educated men there, a Province which is full of people who can resist communism, because that is the place from which communism is spreading to the rest of India ? Assam is the gateway through which communism is spreading. Are you going to allow this province to develop on such unsocial elements and movements ? Or, are you going to put this province, in such a position that it may develop on the right lines, that they may be able to keep the people contented, that they may be able to make then educated as the rest of India and progressive as tile rest of India, so that those people themselves may rise against communism and take part in protecting that border of India, that frontier of India ? That is a question which has to be considered by the honourable Members of the House. If they are not prepared to give them a share of the duty but the Centre of India must appropriate it and if they do not care what happens to Assam then they can leave the matter as it is and things will drift in such a way that it will be difficult to retain Assam. It will either form part of the Pakistan province or it will be taken over by some other Communist power of Asia. That is a thing which I can foresee. I only wonder why cleverer people in the rest of India cannot foresee this. Things are coming to such a pass, that unless the rest of India sacrifices something and gives a helping hand to the province, then that province must go out of India. There is no help for it.

I can quite realize the volume of feeling which the people of Assam sometimes display against the people who come from outside the province. To some extent I am ashamed to say that some people of the province have gone to the length of showing a want of sympathy to people who go from outside the province to take shelter there. The reason for this malady is that the people feel that the people from the rest of India and the Government of India do not feel as much as they should for that province, and therefore they should reciprocate by showing some amount of unsympathy for the rest' of India. That is the feeling of some. I am not justifying it. At the same time I cannot justify the callous attitude of the rest of India so far as that province is concerned. That is what I have to say.

If you want to retain Assam, if you want to have a peaceful India, if you want to protect the frontiers of India, then you must bestow more care and thought on that province and improve that province. After all, a large proportion of the people of that province are tribal people who for so long under British rule were never allowed to mix with the people of their own kith and kin : they were not allowed to mix with the indigenous people of the plains. Therefore, those people cannot have any sympathy for the rest of India because they were never allowed to mix with the rest of India. All sorts of restrictions were imposed and some still linger. You have now to convert those tribal people and educate them in the new nationalism of India. They are in India but they have not been able to feel that they are Indians and they have not been able to feel that we have any connection with that pan of India in the hills which they inhabit and that they have no connection with the which we see in Delhi, Bombay, Madras and other centres. What steps, then are you going to take to let them feel it ? If you are going to take any steps then you must give more finance. What is the way of getting more finance? That province cannot tax itself any more. They have gone to the limit. Long before any province had an agricultural tax that province had it. In fact every form of taxation has been resorted to in order to follow in the path which was laid down, They have taxed all luxuries as far as possible. They have taxed land to the highest pitch. No more is possible. No more money can be collected within that province. India must give up a part of the loot of petrol and other excise duties. Even the British people living in Assam had considered that to be a loot. The kerosene duty has also been dubbed as a loot not only by the people of the province but also by Englishmen residing in that province. Speeches have been delivered in that way but the previous Government was impervious to this criticism, but under the present Government today we have to see that the needy are helped and not the rich and not the more educated, nor those who are clever enough to take care of themselves. The people who have to be benefited are those who have exhausted all their resources. They ought to get some kind of legitimate treatment from the Government of India. It is legitimate to expect a share of the export duty on tea which is taken entirely by the Government of India. Why could not Assam get a part of the tea duty ? Tea is grown in the province. Whenever you think of taking tea, you ask your hotel-keeper or your house-keeper whether it is Assam tea or some other tea which you are getting and you taste it and if you find it is Assam tea you -smack your lips and say, here is a real cup of tea, which is a solace to life. You say all that and yet after that you take away the entire excise duty. Do you for a moment consider how much Assam has to pay for this production of tea ?

Vast acres of land in Assam are under a monopoly of European planters. Where only a few hundred acres of land are under tea, about thousand acres are in their possession for future expansion. This is a permanent arrangement which has been made by the then Government. Unfortunately, the unutilised land cannot be put to use by the other people either.

The majority of the labourers in these plantations come from outside the province of Assam on very low wages, as the local people are not prepared to work on those wages. Labourers from other parts of India are indentured to serve on these plantations. That means the people of Assam get no share in the considerable sums of money that are distributed to the workers on these plantations by way of wages.

Nor does the Government of Assam profit by these plantations. Vast tracts of land have been allotted to European Planters for a nominal rent under the original settlement.

Prof. Shibban Lal Saksena : Cannot that be enhanced now?

Shri Rohini Kumar Chaudhuri : That is part of a contract. Some legislation will have to be enacted to change that.

What I say is this. My land is occupied; my labourers do not get a chance of working on these plantations. Even for the tea I take I have to pay the same price. I am told that outside India tea is sold cheaper than here. If you are getting so much money out of us, after having put me to so much sacrifice, after having prevented me from using the land which I could otherwise have utilised for better purposes, after having doneall that, why should you not give me a share in the profits ? I do not mind my neighbouring provinces getting a share of it. Unfortunately, the new amendment which has been put before this House by Dr. Ambedkar does not take any notice of this question of tea. That is my grievance. 1, therefore, suggest that tea should be put on an equal footing with jute and that you give us a share of the export duties. The Government of India have so long proved a greedy Government and have taken the entire export duty of the province. I hope I am still not too late in asking the honourable Members of this House to insist that justice is done to the province of Assam. If the benefit of the production of jute can be obtained by the provinces of Bihar, Bengal, Assam and Orissa, why should not the benefit of the production of tea be obtained by Assam ? In pleading for Assam I am pleading for all these provinces as well.

With these words, I appeal to the honourable Members of this House to take more interest in the province of Assam, if they want to retain it in the Indian Dominion. After all you are our elder brothers. You are more progressive than us--that is what the world says, though I am not prepared to admit it fully. At any rate you have a major voice in the administration of Government. Even in your own self-interest, even for your protection, you should think of us.

Pandit Hirday Nath Kunzru : Mr. President, Dr. Ambedkar's amendment raises two questions, namely, the propriety of distributing the proceeds of export duty on jute between the Government of India and the provinces and giving adequate grants to those provinces that stand in need of them. These are two distinct questions and they should not be mixed up.

So far as the first question goes, the Expert Committee on which a good many of the various speakers have relied, does not support the case for the distribution of export duties between the Centre and the provinces. I do not know what Mr. Rohini Kumar Chaudhuri said on this but I believe all the other speakers agreed with the Expert Committee on this point. They recognised that no province had any right to the proceeds on an export duty. Some of the Members have come forward with a demand that the export duty on tea should, like the export duty on jute, be shared by the Centre with certain provinces. But if the principle that the proceeds of an export duty should be retained by the Centre is accepted as sound, there can be no basis for that demand. I agree with Dr. Ambedkar that export duties like customs duties should be purely central and that the entire proceeds should be retained by the Centre. This does not, however, mean that needy provinces should get no assistance. My honourable Friend Pandit Lakshmi Kanta Maitra pleaded hard for Bengal and pointed out that it would be impossible for Bengal, without the assistance that it was getting from the Centre, to make both ends meet. He quoted from the report of the Expert Committee, but forgot to read out one sentence which is of great importance to provinces like Bengal, Bihar, Assam and Orissa; and that sentence is this :

> "If at the end of ten years, which we think should be sufficient to enable the provinces to develop their resources adequately, the provinces still need assistance in order to make up for this loss of revenue."

i.e., the loss due to the retention of the entire jute export duty by the Centre-

> "It would no doubt be open to them to seek grants-in-aid from the Centre which would be considered on their merits in the usual course by the Finance Commission."

I have read out this sentence in order to satisfy the representatives of provinces like Bengal and Assam who have pleaded for generous treatment for their provinces. There is no doubt that these provinces need help from the Centre; but it is not necessary, in order to get this help, to to claim a share in the export duty on jute or of the proceeds of any other export duty. The Centre can retain the proceeds of all these duties and yet be morally bound to help the provinces that are unable to balance their budgets without substantial central grants. These provinces will doubtless be able to place their demands before the Central Government and the Finance Commission when it is appointed. The Finance Commission, I suppose, will scrutinise the provincial budgets, will see to what extent the provinces have tried to help themselves. It may further want to assure itself that the provinces are taking proper steps to exploit their resources fully in order to add to their revenues; and if after an examination of these points it is satisfied, that any of the provinces that have applied for Central Grants should receive help from the Centre, it will no doubt make a recommendation to that effect. There need, therefore, be no fear that if the export duties are made wholly Central the provinces that are benefiting now by receiving a share of the proceeds of jute export duty will be left in the lunch. I do not think that this can happen. My honourable Friend Pandit Lakshmi Kanta Maitra asked Dr. Ambedkar what would happen if the Finance Commission was not immediately appointed.' Clause (2) of Dr. Ambedkar's amendment says that the word "prescribed" in article 254 has the same meaning as in article 251. Pandit Lakshmi Kanta Maitra asked in connection with this whether Bengal and the three other provinces that are receiving a share of the jute export duty will be left to their own resources if the Finance Commission was not immediately appointed. If he or any other Member who is interested in this question turns, to the definition of "prescribed" in article 251 be will find that it means:

> "Until the Finance Commission has been appointed, prescribed by the President by order, and after a Finance Commission has been constituted, prescribed by the President by order after Considering the recommendations of the Finance Commission."

It is therefore clear that whether a Finance Commission it appointed or not the four provinces concerned will be given define sums out of the proceeds of the jute export duty or to speak more accurately they will get out of the Consolidated Fund of India sums as may be prescribed by the President by order; nothing depends on the appointed of the Finance Commission.

Pandit Lakshmi Kanta Maitra : On what principle would the allocation be made by the President?

Pandit Hirday Nath Kunzra : The Government of India cannot dictate to the Finance Commission what it should do. I suppose my honourable Friend Dr. Ambedkar has proposed that the word "prescribed" should have the same meaning as in article 251 so that the Central Government should not be accused of arriving at a one-sided decision in its, own favour. The matter has been left entirely to the Finance Commission for its decision. The Government of cannot decide for the Finance Commission on what principles it should proceed. If the Government of India were to do that, the provinces concerned would undoubtedly accuse it of gross unfairness.

Pandit Lakshmi Kanta Maitra : I did not say that. I said, on what print then will the President make the allocations in the absence of the report of the Finance Commission ?

Pandit Hirday Nath Kunzru : That I cannot say, but obviously the President will have to consider the needs of the province concerned. I cannot: say too strongly and too clearly that, in my opinion whether any province acts any portion of an export duty or not, if it is unable to balance its budget without assistance from the Centre, the Centre will be morally bound to give it.

Pandit Lakshmi Kanta Maitra : If the Government gives such an assurance, it will be all right.

Pandit Hirday Nath Kunzru : The Government may or may not give such an assurance. But I am quite certain that the Central Legislature will not allow the Central Government to ignore the needs of the provinces. My honourable Friend is a member of the Central Legislature. Is he going to keep quiet on this subject if the Central Government arrives at an arbitrary decision which is manifestly and grossly unfair to his province ? And, if the decision of the Central Government is grossly unfair, I have no doubt that he will not be the only person to stand up for Bengal; every fair-minded Member of the House will stand up for it and try to get for it -the financial assistance that it needs.

Pandit Lakshmi Kanta Maitra : Thank you very much.

Pandit Hirday Nath Kunzru : Sir, I wish that clause (3) of the amendment proposed by Dr. Ambedkar which has created this misunderstanding had been left out. No harm could have been done had the word "prescribed" in this article not been defined in the same manner that it has been defined in article 251. I still suggest to my honourable Friend Dr. Ambedkar that clause (3) of the amendment proposed by him should be dropped. But this is not the only reason on which I make this suggestion. I have one other reason for asking him to omit the definition of the word "prescribed" from the amendment that he has proposed. It is right that the Finance Commission, when appointed, should consider the needs of the provinces. it should consider how much money they need as grants-in-aid in order to meet their ordinary expenditure. It is further right that it should consider how much money they should spend on nation-building services, for instance the development of education, public health and agriculture. It is equally right that it should consider any plans prepared by them for their industrial development and, after considering all these things, recommend to the Centre what should be the grant given on each count and also lay down how much money should be raised by loan either by the Centre or by the Provinces or by both. But I do not consider it desirable that the Commission should be able to say to the Centre that it should part with a particular source of revenue or that it should share it with the provinces It will be within its province in examining the needs of the provinces and making such recommendations on the subject as it considers fit. The Central Government will take recommendations into account and, as I said the other day, I hope that a convention will grow up that Government should normally, that is, except in emergencies, accept the recommendations of the Commission. But if the Commission is allowed to make recommendations with regard to the distribution of the proceeds of certain sources of revenue between the Centre and the provinces, a difficult position may arise. It may not be possible for the Government of India to accept such a recommendation of the Commission and in that case, the growth of the convention that I should like to come into existence will be retarded. Besides, no Commission can weightfully the responsibility of the Central Government. The Central Government is responsible for many things, the most important of which is the security of India. It Should therefore rest with it to decide whether certain sources of revenue should be shared between it and the provinces or not. If the grants to be given to the provinces are large, and if they have to be given grants year after year, if in other words the provinces have to be assisted by the Centre to meet lap recurring expenditure, then it will probably be found to be desirable that the central Government, instead of giving lump sum grants, should sham a certain source of revenue with the provinces. But, otherwise, I do not think that it will be desirable for the Government of India to do so. On these grounds, Sir, I am of the opinion that clause (2) of the amendment proposed by Dr. Ambedkar to article 254 should be omitted.

Mr. President : I think you mean clause (3) ?

Pandit Hirday Nath Kunzru : Yes, Sir, it is clause (3). It is clause (3) of the amendment moved by Dr. Ambedkar to article 254 that should be dropped. No harm will be done thereby. If the President in any case desires to have the help of the Commission, he can refer the matter to it under sub-clause (d) of clause (3) of article 260. Under that article, even if clause (3) of article 254 proposed by Dr. Ambedkar is dropped, the President will have the power to ask the Commission whether a particular head of revenue should be shared between the Centre and the provinces, but I think it is desirable from every point of view that the question of allocation of such sources of revenue as are meant to be wholly Central immediately or in the near future should not be considered by the Commission unless the President asks for its views on the subject. It is a matter that ought to be settled between the Central Government and the provinces. For these reasons, Sir, I propose that clause (3) should be dropped. If you will allow me to do so. I will move an amendment to that effect. But if it is too late now to move an amendment, however formal it may be, then I shall support the amendment moved by Mr. Shibban Lal Saksena asking that the matter should be determined by Parliament by law. If that is accepted clause (3) will be automatically ruled out.

Shri T. T. Krishnamachari (Madras: General): I move that the question be now put.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, this is a very important matter and discussion should not be closed now.

Mr. President : I am entirely in the hands of the House. The question is:

"That the question be now put."

The motion was adopted.

Mr. Naziruddin Ahmed : Sir, I had a point of order to make.

Mr. President : A point of order at this stage ?

Mr. Naziruddin Ahmad : I was waiting all the time.

Mr. President : You ought to have raised your point of order at an earlier stage. It is too late now to raise any point of order.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Mr. President, Sir, in my reply to the debate, I do not propose to go over the many tales of woe that have been sung in this House by Members from different provinces who feel that they have been badly treated in the distribution of revenues that has been ordered under the Government of India Act, 1935. I just propose to take the few more concrete points to reply to.

First of all, I propose to say a word with regard to the amendment moved by my Friend, Professor Shibban Lal Saksena. He wants that the grants, instead of being fixed by the President, should be fixed by Parliament. Now, in the course of the debate on other financial articles that took place last time, I sad that it was not the intention to bring Parliament in in the matter of the distribution, because we do not want that the distribution of revenue should become a subject matter either of log-rolling between different provinces or wrangling between the representatives of different provinces. We want this matter to be decided by the President or by the President on the advice of the Finance Commission. That is the reason why I am not prepared to accept Professor Saksena's amendment.

Then I come to the point raised by my Friend, Mr. Maitra. His first argument was that he saw no reason why the Drafting Committee should now bring forth an amendment so as to change the original article. I am sure he forgot to refer to the recommendations of the Expert Committee on Finance. If he will refer to that, I think that he will agree with me that it was the Expert Committee who recommended that the system of allocation of the jute duty and the duty on jute-products should be altered. It was therefore not a matter of any volition or wish on the part of the Drafting Committee to effect a change in the original article.

Pandit Lakshmi Kanta Maitra : They referred to compensation also.

The Honourable Dr. B. R. Ambedkar : I will come to that. The only thing which the Drafting Committee did not accept was the allocation suggested by the Expert Committee on Finance, to be given to the different provinces which would be losing their share in the export duty on jute. It was felt by the Drafting Committee that probably the figures suggested by the Expert Committee required further examination. Having regard to the very short lime that was at the disposal of the Expert Committee, the Drafting Committee did not feel sure that the figures suggested by the Expert Committee could be accepted by them without further examination. It was because of that fear that the Drafting Committee, instead of adopting the figures suggested by the Expert Committee, adopted their own formula which now finds a place in the new article, *viz*. that the grants-in-aid in lieu of compensation for the loss of the jute duty shall be prescribed by the President. There is therefore no desire on the part of the Drafting Committee either to take away a legitimate source of revenue from the four provinces which have been mentioned in this particular article, in which, so to say, they have a vested right, nor has the Drafting Committee attempted to make any fundamental alterations in the figures suggested by the Expert Committee. All that they have done is to, leave the matter to the President.

Now, my Friend, Pandit Hirday Nath Kunzru, pointed out that the Drafting Committee was wrong in inserting a definition of the word "prescribe" in the article now before the House. He went further to say that even in the last article which we passed, which is 260, the word "prescribed" ought not to be there. Now, it seems to me somewhat difficult, whatever may be the merits of the proposition that he has urged, to avoid the definition of the word "prescrib ed." We have said in the main part of article 254 that the grants-in-aid shall be such as may be prescribed. Now, any lawyer would want to know what the word "prescribed" means. Either we would have to have a special definition of the word "prescribed" which would be confined to or circumscribed by the provisions of article 254 or we would have to alter the provisions contained in article 260 where the word "prescribed" has been defined.

Mr. President : Probably you refer to 251.

The Honourable Dr. B. R. Ambedkar : I am sorry. I stand corrected. It is 251. It seems to me that so far as prescription of allocation is concerned, the Drafting Committee has suggested two different definitions of the word "Prescribed." One definition of "prescribed" means prescribed by the President when there is no report before him of the Finance Commission and the second definition of "prescribed" is prescribed when the President has got before him the recommendations of the Finance Commission. The reason why the Drafting Committee has been required to give two different definitions or interpretations of the word "prescribed" is this. It is quite clear that the Provinces want that the existing allocation not merely of the jute duty but the allocation of other sources of revenue provided under other articles of the Constitution must not be the same as are now existing, because their complaint is that the amounts now given to them are neither adequate nor just and that some revision of the allocation is necessary. Obviously if the allocation is to take place immediately so that the new allocation would commence on the commencement of the Constitution, it is obvious that such allocation can be made only by the President without waiting for the recommendations of the Finance Commission because it is inconceivable that no matter what amount of hurry the Central Government was prepared for, it will not be possible to appoint a Commission to have its report before the Constitution commences. Consequently, we had to devise this double definition of the word "prescribed". In the first place the prescription will be by the President without the recommendation of the Finance Commission. That, of course, does not mean that the President will act arbitrarily. That does not mean that the President would act merely on the advice of his Cabinet, which might be interested in safeguarding and securing the position of the Centre *viv-a-vis* the Provinces. It is, I think, in the contemplation of the central Government and I should like to make that matter quite clear that the Central Government does propose to appoint some Committee, which will be an Expert Committee or some expert officer, which would of course not be a Commission within the meaning of this Constitution, for going into the question and finding out whether the existing allocation, not merely of the jute duty and duty on jute-products, but other allocations of other sources of revenue required to be so revised as to do justice between province and province and between the Centre and the provinces. Consequently, when the first order of the President would be issued, it would not be issued, as I said, arbitrarily by the President or merely on the advice of the Executive at the Centre, but he would have some independent, some expert opinion by which he would be guided. After that when the further question arises of revising the orders, the question that will arise is this, whether the President should act on the advice of Parliament or whether he should act on his own advice or whether he should act on the advice and recommendation of the Finance Commission which is to be appointed under the Constitution. As I said, there are three different alternatives which we could adopt. I know my honourable Friend, Pandit Kunzru with the best of motives, suggests that the President should act independently and not be guided, by the recommendations. of the Finance Commission. There is a section of opinion represented by my honourable Friend, Professor Saksena, that no allocation should be made by the President even upon the recommendation of the Finance Commission unless Parliament gives sanction to it. As I have said there are defects in both these positions I do not think that it is right for the President after having appointed a Commission to recommend the allocation, that he should altogether disregard the recommendations of that Commission, pursue his own point of view and make the allocation. That I think would be showing disrespect to the Commission. As I have said, the third alternative of leaving the matter to Parliament seems to me to be full of danger, involving provincial controversies, and provincial jealousies. Therefore, the Drafting Committee has adopted, if I may say so, the middle way, namely, that although the matter may be debated in Parliament, in the action taken by the President, he should be guided by the recommendations made by the Fiscal Commission and should not act arbitrarily. I hope the House will accept this. This Is, the most reasonable compromise of the three methods and it is the best way of dealing with this matter.

Mr. President : The question a is:

"That in amendment No. 72 above, in clause (1) of the proposed article 254 for the words 'by the President, the words 'by Parliament law' be substituted."

The amendment was negatived.

Mr. President : The question is:

That for article 254, the following be substituted :-

"254 (1) There shall be charged on the Consolidated Fund of India in each - as grants-in-aid of the

Grants in lieu of export duty on jute and jute-products.

revenues of the States of Bengal, Bihar, Assam and Orissa in lieu of assignment of any share of the net proceeds in each year of export duty on jute and jute products to there States such sum as may be prescribed by the President."

(2) The sums so prescribed shall continue to be charged on the Consolidated-Fund of India so long as export duty on into or jute-products continue to be levied by the Government of India or until the expiration of ten years, whichever is earlier.

(3) In this article, the expression 'prescribed' has the same meaning as in article 251 of this Constitution."

The amendment was adopted.

Mr. President : The question is :

"That the proposed article, 254 stand part of the Constitution."

The motion was adopted.

Article 254 was added to the Constitution.

New Article 254-A

Mr. President : Then we shall take up 254-A.

Mr. Naziruddin Ahmad : I have a point of order. Sir, the point of order is that amendment No. 82 seeking to introduce a new article 254-A is entirely a new matter. We have already decided in the House that amendments to the Constitution should be presented by a certain date. We have presented our amendments. No further amendments to the Constitution could be allowed according to the rules. The only amendments which are admissible today would be amendments to the original amendments as well as amendments to regular amendments I submit that the present amendment is not related to any amendment at all. I have carefully gone through the Amendment List original Printed List as well as the others, and this has no relation to any amendment at all. Further the amendment itself is so worded that it is not related to any other amendment but it is an independent proposition altogether. It says that "after article 254 the following article be substituted." There is here no attempt or even a pretence of it being with reference to or related to or being in connection with any amendment. I submit, Sir, that this article cannot be inserted in this way.

The Honourable Dr. B. R. Ambedkar : No doubt the point raised by my honourable Friend is quite valid, but I submit that you have infinite discretion in this matter to allow any amendment if it is an amendment of importance.

Mr. President : I think on previous occasions also we have allowed now articles to be inserted and this is a new article which is sought to be inserted after article 254.

Shri T. T. Krishnamachari : When you have allowed the Drafting Committee to function, it will be its duty continually to examine the Draft Constitution and if they find that here is a lacuna, because of the fact that the Committee is in existence, it has got to take steps to fill in this lacuna. The present amendment arises out of that necessity.

Mr. President : On previous occasions I have allowed fresh articles to be introduced, and this is a new article which is sought to be introduced after article 254 and so I allow this Dr. Ambedkar, you may move the amendment.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That after article 254 the following article be inserted :-

Prior recommendation of President required to Bills affecting taxation n which States are interested.

254A. (1) No Bill or amendment which imposes or varies any tax or duty in which states are interested, or which vanes the meaning of the expression 'agricultural income' as defined for the purposes of the enactments relating to Indian Income-tax or which affects the principles on which under any of the foregoing provisions of this Chapter moneys are or may be distributable to States, or which imposes any such surcharge for the purposes of the Union as is mentioned in the. foregoing provision of this Chapter, shall be introduced or moved in either House of Parliament except on the recommendation of the President.

(2) In this article the expression 'tax or duty in which States are interested' means-

> (a) a tax or duty the whole or part of the net proceeds whereof are assigned to any State; or
>
> (b) a tax or duty by reference to the net proceeds whereof sums are for the time being payable out of the Consolidated Fund of India to any State."

Sir, I might mention one or two reasons why we felt that at the fag end, so to say, this new article be inserted in the Constitution. A similar provision exists in the Government of India Act. The Drafting Committee considered the matter. They did not think it necessary to incorporate and transfer that article, into the new Constitution. However when a Conference of Premiers was held, it was suggested that such an article would be useful and perhaps necessary, because, once an allocation has been made by Parliament between the provinces and the States, such an allocation should not be liable to be disturbed by any attempt made by any private member to bring in a Bill to make alteration in matters in which the provinces become interested by reason of the allocation, It is because of this that the Drafting Committee has now brought forth this amendment in order to give an assurance to the Provinces that no change will be made in the system of allocation unless a Bill to that effect is recommended by the President.

Mr. President : There is no amendment to this article. If any Member wishes to speak, he may do so now.

Mr. Naziruddin Ahmad : Mr. President, apart from the technical objection which I took, I have another objection, namely, that it is again another instance of an insidious attempt to encroach upon the provincial field. I shall point out only one such instance in this article. This article indirectly gives power to the Parliament to vary the definition of the expression 'agricultural income.' I suppose it is well known that agriculture and agricultural income is a Provincial subject. It has been a Provincial subject for a long time since the Act of 1935 came into force. It is also the scheme of the present Draft Constitution that agricultural income and agricultural subjects should be Provincial subjects. Again, coming to article 303 clause (1), sub-clause (a), "agricultural income means agricultural income as defined for the purposes of the enactments relating to India Income-tax." This was the definition which was accepted also in the Government of India Act of 1935. That the definition of agricultural income as given in the Income-tax Act was taken as the basis showed the limit of the Centre and the provnices. The Government of India Act actually adopted this definition in the Indian Income-tax Act and crystallised it for ever so far as that Constitution was concerned as to what agricultural income meant. If we now try to vary the meaning of agricultural income, the result would be that agricultural income which is a provincial matter, and which is a provincial subject will be seriously encroached upon. Parliament may easily encroach upon the definition and might easily say "agricultural income is an income which does not arise from agriculture." There is nothing to prevent Parliament from doing so. Parliament would have been prevented under the existing state of things as in the Draft Constitution. This new article tries to improve upon this and make a change. Agricultural income might now mean anything or nothing. It will mean exactly what Parliament might desire. This is another way, another-instance of however encroaching upon the Provisionces. I have already dealt with the disastrous consequences of this attempt. We have already in the last article seen a tendency and we have encroached upon the allocation of jute and other taxes. In fact, jute under the original Draft article was to be given over to the provinces, where they were grown in proportion. But, now the whole conception has been changed; this is also another change. I submit, Sir, if we pass this article as it is, including an inherent right to Parliament to change and modify the meaning of the expression 'agricultural income,' we will be forced to secure your permission to change the definition of agricultural income. If you begin in a non-scientific manner in an aggressive manner to collect all powers in the hands of the Centre, there will be no limit to this attempt. I find this insidious attempt everywhere visible in all these articles.

I know that the result of my arguments will be absolutely nil; I therefore simply enter my humble protest.

Prof. Shibban Lal Saksena : Sir, this article demands the prior sanction of the President for moving Bills in Parliament relating to taxation in which the States are interested.

I do not want to attack this provision on the grounds on which the honourable Member preceding me has attacked it. But, I want to challenge the principle. on which this is based. In fact, there is article 97 which we have passed in which powers of Members of Parliament are restricted about Bills or amendments to money Bills. I do not see why this article should further restrict the powers of Members of Parliament from bringing forward Bills relating to taxation in which the States are interested.

The fact that Members of Parliament may not be permitted to bring Bills on their own account which may affect taxation in which a State is interested is an infringement of the inherent right of the Members of Parliament. Why should they not be allowed to bring forward Bills in which their States are interested ? If the majority in the Parliament is opposed to it, it shall be thrown out but why should a Member be restricted from bringing forward such a Bill ? But if any Member feels that a particular taxation affects his province or is not fair or proper, he should be entitled fully to bring that point of view before the Parliament. He may belong to a Party which is in Opposition and Government may not bring forward that Bill. Why should he be precluded from bringing a Bill ? I therefore think that this article is an infringement of the inherent rights of Members of Parliament and I do not see any reason for it. If this is passed, it will mean that no member can bring forward any legislation in the form of a Bill for the benefit of his province. If there is a tax in existence which hits his province very hard he cannot get that repealed. He will have to submit it to the President and that means that it will be the pleasure of the Executive to allow him to bring it forward or not. It is a big limitation on the rights of Members of Parliament and it should not be accepted.

Mr. President : Do you wish to speak, Dr. Ambedkar ?

The Honourable Dr. B. R. Ambedkar : I do not think any reply is necessary.

Mr. President : The question is

"That New article 254-A stand part of the Constitution."

The motion was adopted.

Article 254-A was added to the Constitution.

Article 255

Mr. President : We go to article 255.

(Amendment No. 83 was not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, I beg to move :

"That in article 255, for the words 'revenues of India', wherever they occur, the words 'Consolidated Fund of India' be substituted.

"That in the first proviso to article 255, the words and figures 'for the time being specified in Part I of the First Schedule' be omitted.

"That in clause (a) of the second proviso to article 255, for the words 'three years' the words 'two years' be substituted.

The first two amendments are just formal......

Mr. Naziruddin Ahmad : On a point of Order. No. 86 is entirely new and not related to anything. It is not a formal matter. It is a serious matter.

The Honourable Dr. B. R. Ambedker : That is what I am trying to explain.

Mr. Naziruddin Ahmad : It is not an amendment to an amendment it is amendment to the Constitution.

The Honourable Dr. B. R. Ambedkar : I move it with the permission of the Chair.

Mr. Naziruddin Ahmad : I wanted Dr.. Ambedkar to be forced to take the permission of the Chair to move it.

The Honourable Dr. B. R. Ambedkar : I have taken his permission. President can give his permission before or after moving it.

This matter refers to grants and the provision in the original article itself is that an average of three years should be paid to Assam. It was represented to us that if the average of three years is taken the Assam Government will get very little because in the first year they did not spend anything but if we took the average of two years, they would get more. It is to meet this difficulty that the Drafting Committee has introduced the words two years instead of three years.

(Amendment No. 87 was not moved.)

Syed Muhammad Sa'adulla (Assam: Muslim): Mr. President, Sir, the passing of the previous articles of the Draft Constitution so far as financial provisions are concerned, has passed the death sentence upon all hopes and aspirations of the provinces, not merely of the backward and poor provinces but also of all the richer provinces. I say this after going through the memoranda that were submitted to the Expert Financial Committee presided over by Mr. N. R. Sarkar, the present acting Premier of Bengal. If anybody had cared to go through this volume which was supplied by the Assembly Office, they must have noticed that everyone of the provinces, whether their income was three crores or fifty crores, wanted a revision of the divisible pool of Income-tax. They wanted that Corporation Tax should be included in the divisible pool of Income-tax. They recommended that all excise duties on commodities produced in a particular province and all export duties should also be brought on the divisible pool. The "tale of woe"-in the phrase of Dr. Ambedkar-which the representatives from Assam have been placing before the House is nothing new as I will show by giving references from these memoranda that even the richest province in the Dominion of India-I mean Madras-wanted all these things which Assam representatives wanted the Centre to give.

Sir, I am speaking not as a member of the Drafting Committee but as a representative from the very benighted province of Assam. On-behalf of Assam I express our heartfelt gratitude to those honourable Members who spoke on Friday last *viz.*, Pandit Hirday Nath Kunzru, Mr. B. Das, and Professor Saksena who were kind enough to extend their support for Assam's claim for a fairer deal from the Centre. If my honourable Friends will listen to what I have got to say-and whatever I will say I will quote from documents that have been supplied by the Constituent Assembly-I am perfectly sure that they will show us the same sympathy and support. By a happy coincidence, the Constituent Assembly, yesterday supplied each Member with two pamphlets which have been issued by the External Affairs Department giving a detailed description of the Excluded and Partially Excluded areas of Assam and the North-eastern Frontier Tribal and Excluded areas. As the time is so short, I do not think honourable Members had either the time or, shall I say, the inclination to go through these pamphlets. Therefore, I have to give you a word-picture of the conditions of Assam, not merely its topography and geography, but its economic, political and financial conditions.

The topography of Assam, I always describe as that of a poor man's hut. It is just like a ridge on the top with two sloping roofs on either side. From our western boundary, namely the district of Mymensing in Eastern Pakistan runs eastward a range of high hills through Assam right up to a point which is die tri-junction of Tibet, China and Burma. This range of hills has divided the province into two valleys which have been described in this pamphlet as the Brahmaputra Valley. on the northern side and the Surma valley on the southern side. Since the partition of the district of Sylhet, portions of which have now gone into Eastern Pakistan, that valley should be called the Barak Valley because the river that bisects this area is called Barak. Now, the division of the valley by the mighty Brahmaputra on the one side and the smaller Barak on the other, has created problems for the province of Assam and has added to her increased expenditure and misery. If we are to have some utility services, say a trunk road on the southern bank of the Brahmaputra, there must necessarily be a trunk road on the northern side for the convenience of the inhabitants on the northern bank. Similarly with the conditions in the other valley. Then again, it will be news to many of you, including my friends the representatives from Assam who stated that after the partition, Assam has got only 50,000 sq. miles in area, but I say that-the very first sentence of this pamphlet issued under the aegis of the External Affairs

Department runs as follows--"Assam and territories associated with it, have an area of roughly 100,000 sq. miles." When you think of this vast area, with its population of only 73 lakhs, you will know that for every administrative purpose, from a magisterial court down to a police-station, our administration cannot but be very very costly, compared with densely populated provinces. I can place before you one fact, on the authority of the Finance Minister of Assam who while moving his budget estimates in March last before the Assam Assembly had to say that 72 per cent. of our total revenues goes to pay our salary bill. If as much as very nearly three-fourths of the provincial revenue goes towards the payment of salaries of its public servants, no wonder very little is left for any development or for any social service. No wonder, Sir, that Assam is so backward, in providing all the amenities that go with an efficient and full-fledged autonomous government. Assam now is the poorest province in the Dominion of India, poor not in resources, but poor in numbers, poor in its financial position and poor in the economic condition of her population. But this poverty has been forced upon her by man-made laws and the inequity of Central Governments. During the Minto-Morley Reforms of 1911, the financial conditions of India was that the Central Government functioned as a unitary government and appropriated all the revenues of India. The Provinces got only whatever they required from the Government of India. That was somehow tolerable, although the weak Assam could never impress upon the then Government to give her a little more to increase her social amenities and services. Then in the next period of the Montague-Chelmsford Reforms, the greatest injustice was done- to the poor province. of Assam. Everyone remembers that in that Reform, the financial arrangement was that certain heads of revenue were allocated to the Provinces and certain others to the Centre; and lord Meston, by a curious calculation, either through want of proper appreciation of the condition of Assam or through negligence of Assam's representatives in placing their case before him, calculated that Assam was not merely solvent but will have such a surplus that it will be able to give the Centre a contribution of fifteen lakhs per year. But all these calculations were found to be entirely wrong divorced from facts. Assam was a deficit province, to the tune of Rs. 25 lakhs every year, and in spite of that, Assam had to pay this Rs. 16 lakhs contribution, increasing her deficit every year, till the year 1927, when through agitation in the Assam Council, this imposition was withdrawn from Assam.

Then I come to the Simon. Reforms when Assam prepared and placed her memorandum--I myself drafted it because I was then the France Member of the Government of Assam- before the Commission. We were prepared to prove by irrefutable figures that Assam cannot be put on a footing which will make her run as a Major Province-not to speak of the question of adding institutions which every self-governing province must have. The Federal Finance Committee that sat along with the Simon Commission, presided over by Lord Eustace Percy, were compelled to admit in their report that Assam must have a subvention of Rs. 65 lakhs to balance her budget. This document was considered during the time of the Joint Parliamentary Committee and the Round Table Conference by another Committee in England, presided over by Lord Peel. Even that Committee had to admit that certain Provinces-and they used the words "notably Assam and Orissa"-cannot function as a major province unless substantial help is given to them for some time. In spite of those recommendations from unimpeachable quarters, by what freaks of accounting I cannot say, Sir Otto Niemeyer came to the conclusion that Assam ought to be quite satisfied to get a subvention of Rs. 30 lakhs. This is the cruellest joke at could be perpetrated upon a poor province like Assam, for you will be surprised to hear that Assam is contributing to the Central coffers to the tune of Rs. 10 crores every year whereas we get the small pittance of Rs. 30 lakhs as annual subvention.

I will give the figures just now. If the Members representing Assam had to dilate on a tale of woe it is on account of these man-made laws which have left Assam in the poorest of condition, with the barest of institutions that go for a self government. But Assam is not poor in her natural resources. If Assam was allowed to run her own course she would be in the fore-front of all the Indian provinces. In spite of the poverty of its exchequer Assam stands fourth in the matter of literacy throughout India. That shows that we have been spending, proportionately, a higher percentage on education than the comparatively richer provinces. Similarly we stand third in the matter of road communication. One can motor throughout the year, in spite of very heavy rain-fall, from one corner of Assam to the other. Very few provinces have that.

Shri Brajeshwar Prasad (Bihar: General): Is the system of communications developed in the frontier tracts ?

Syed Muhammad Sa'adulla : Yes, there are, not *pucca* roads, but winter tracks right into the interior in the frontier. I myself have travelled from Sadiya which is our eastern frontier to a distance of twenty-five miles by motor car to a place called Nizamghat which is right into the interior, and on the other side there is a sub-division fifty miles away called Pasighat to which you can motor.

If we could utilise the resources that we have, then we could have brought Assam to the fore-front of India's provinces. at are the resources ? Take Petroleum and kerosene. Assam is the only province which produces that very valuable commodity in the dominion of India. We get only a paltry sum of Rs. 5 lakhs of royalty of the crores of rupees worth of crude oil that is pumped out the bowels of mother earth, whereas the Central Government by way of excise duty on the manufactured articles is enjoying for the past twenty years or more a sum of very nearly Rs. 2 crores of rupees annualy. We tried our level best to get a share of it. But all our petitions, all our threats, went in vain The Central Government was adamant and we did not get a single pice out of that excise duty, although if I remember aright-I dealt with the subject in 1929 and it is full twenty years ago-there is a Privy Council case from the Dominion of Australia where this very question arose and the Privy Council decided that the proceeds of such excise duty ought to go to the State, and for very good reasons. The more you produce petrol from the crude oil the more you are depleting the natural resources and the natural wealth of the province. This excise duty is in the nature of tax on capital.

Secondly, this industry has been the target of Communist agitation from a very long time. Some honourable Members may still remember that the Assam Government had to use force in 1938 and firing had to be resorted to at Digboi, the headquarters of the Petrol Industry, when some people were killed. There was such an agitation about that episode that the then government--a Congress government, not my government-had to requisition the services of no less a person than the late Sir Manmathanath Mukerjee, retired Chief Justice of the Bengal High Court to sift the evidence to find out if the firing was Justified. Production of petroleum, which is such a dire necessity in these days of civilisation and which brings such a big revenue to the Central coffers, had to be protected at very heavy cost and no wonder as you heard from the Honourable the Premier of Assam on Friday last that they had to double the police force in the province since they came to office in 1946. Where would the Central Government be if the Assam Government did not sacrifice her meagre and exiguous revenues for the protection of that oil-field ? If for nothing else, at least for this reason that we are protecting the source of revenue which is being enjoyed by the Centre, Assam could legitimately claim her share in this excise duty.

Next I come to jute. Sir, through the efforts of the representatives of Bengal in the Joint Parliamentary Committee, the then Government was forced to adopt the principle of giving a part of the export duty on jute to the growing provinces. In that year,-it was first given in 1934,-Assam was supposed to produce 5 per cent. of the total jute grown throughout the world and on that basis she was getting on an average 14 lakhs of rupees per annum. But since the declaration of independence, when the largest jute-growing area of Bengal fell to the lot of East Pakistan, the position of Assam has gone very high as one of the jute-producers of the world. Assam, which had a vast area of waste land was increasing her jute acreage every year. And, if I remember aright, now Assam stands next to Bihar, among the highest jute-growing area of the Dominion of India. This adjustment of percentage has its necessary--repercussion in the amount of the jute export duty that fell to Assam's lot.

We were told by the Prime Minister of Assam on Friday that recently (that is in 1947-48) from the, meagre 14 lakhs, Assam's share had gone up to 40 lakhs. But there is a Bengalee saying that even if the "Data", the donor, wants to give the "bidhata" steps in and stops it. Similarly. at the time when we had a morsel of food close to our mouth, it was snatched away by the present National Government of India. Whereas previously during the British regime the percentage allotted to the provinces stood at $62^1/_2$ per cent. 'it has been reduced last year by a stroke of the pen to 20 per cent. by the present Government. Now, it was asserted by the honourable representative from Bengal that jute was one of the commodities that was earning the much-required dollar exchange for India. Now what incentive will there be for the provinces to increase their jute area, or to produce more bales of jute, if they get nothing from this ? Article 254 which we have passed just now is merely a soap. It says that for ten years or even earlier if the Government thinks it wise to abolish jute export duty, these four provinces will get a pittance. I say, Sir, if the provinces had been left alone, they could have very well realised something from jute producers. Assam has been very patriotic in the past and when there was no tea export duty or tea excise duty levied, the Assam Government requested the tea industry to submit to a voluntary taxation and the industry without the least demur voluntarily paid a cess of eight annas per acre of planted area to raise a road fund and that continued from 1927 to 1937.

Now I come to tea. People who have got no idea of the tea industry cannot conceive what great sacrifice Assam has made in the past, which sacrifice is continuing even now. The tea industry in Assam is more than a hundred years old and in order to attract foreign capital and to clear the wild-animal infested malarious jungles, the then Assam Government had to offer very easy terms of land settlement. The earlier grants were all fee-simple, which meant that they paid no land revenue to the Government of Assam. Next there are 99 years' leases, for which Government levied the ludicrously low land revenue of about $4^1/_2$ annas per acre, whereas the ordinary cultivator has to pay about Rs. 4 per acre. So, in order to establish the tea industry on a very stable and firm footing in Assam, the Assam Government scarified an incalculable amount of money in the shape of land revenue. And now when the Central Government has stepped in and has started levying an excise duty of 3 annas per pound on teas that are sold for internal consumption in India and an export duty of 4 annas per pound on teas that are exported out of India, Assam is denied even an anna of the sum which goes to the Central Government. On an average Assam produces 350 million pounds of tea per annum. Three-fourths of this, under the Indian Tea Control Act, is sold to outside, which brings in a four anna per pound duty to the Central coffers. The rest one-fourth is sold in the internal market and that brings in three annas per pound. Now out of this 350 million pounds which is very nearly the requirements of Great Britain per annum, about 300 million pounds go from Assam alone. This is earning for the Central Government their much-needed sterling capital. Now on an average each tea garden has a labour force of one thousand to two thousand men. The communist agents are at work to seduce them from their legitimate duties and to force them to go up in revolt. Supposing the Assam Government think that as they are getting nothing they would give up the idea of preventing communists from tampering with the labour forces, where will the tea industry be and where will be the sterling capital of the Central Government ? But even then the man-made laws have denied Assam anything out of these tea export and excise duties. Then again the sacrifice which Assam is making for this tea industry can be gauged from this fact alone that the largest amount of revenue that Assam gets is from land revenue; it is very nearly $1^1/_2$ crores but the share of the tea gardens in this land revenue is only 17 lakhs. If concession rates had not been given in those early years perhaps the tea garden people would have to pay at least 75 lakhs as land revenue. But there is yet another doleful and gruesome aspect about the tea industry. The Central Government has a most unjust, iniquitous and pernicious scheme of allocating the shares of different provinces from the income-tax pool. By what calculation, Sir Otto Niemeyer placed Assam's share of this pool at 2 pet cent. only. I fail togather, while Bengal and Bombay was given 20 per cent. and Madras and U.P. 15 per cent. and so on. Out of roughly one thousand tea estates in Assam as many as 750 have got their managing agencies outside Assam --some 600 of them in Calcutta and 150 in London, as these are all sterling companies, and income-tax on Assam produced tea is paid either in Calcutta or in London. The amount which is paid in Calcutta goes to the credit of Bengal and that is why they are getting 20 per cent. of the total divisible pool. If that point had been given due consideration the division of that pool should have been on the basis of, first, source of revenue and secondly, necessity of the area which grows that tea. I am again constrained to quote the Bengali proverb of "pouring oil on the oily head" or the Biblical saying, "To him that hath more shall be given." While poor Assam and Orissa have been crying hoarse over getting some substantial help, even when a large percentage in the pool was released after the division of India, Madras which has 50 crores of revenue got 10 per cent. or an increase of 3 per cent. more and Bombay got 22 per cent. but poor Orissa and Assam got an increase of I per cent. only. Even when there was a chance justice would not be meted out to these poor provinces. The same trouble is with Bihar. Bihar would have got a much higher percentage than 10 per cent. if the income derived from the Tata Iron Works at Jamshedpur were credited to the province of Bihar. But their headquarters being in Bombay the benefit of the huge income-tax that is paid by Tata Iron Works goes to Bombay and not to Bihar.

Sir, I have tried to show from these facts and figures that Assam had and still has a very great claim on a share of the proceeds of the export and excise duties on tea and the export duty on jute as also the excise duty on petrol. And, as I said in the beginning, Assam is not the only province which was claiming this. I find on page 9 of this volume of Memoranda placed before the Expert Financial Committee that Madras recommended that all export and excise duties levied by the Centre should be shared with the provinces, that Bombay wants corporation-tax to be included with income-tax and divided among the provinces. She is not satisfied with 20 per cent. of the divisible pool of income-tax but claims 33 and one-third per cent. Then the U.P. -the largest province in India so far as population is concerned-says :

> "That first essential is to enlarge the divisible pool of taxes at the Centre and make available to the provinces at least half of the surcharge on income-tax; corporation-tax and all allied taxes should be included in the divisible pool like half of income-tax. Similarly all excise and export duties levied by the Centre should be included in the pool."

On page 18 of this Memorandum I find that Bengal made a similar claim. So it will be apparent that it was not merely a poor province like Assam which was crying hoarse for a share of these excise and export duties but the richer provinces also claimed it.

Now you should consider this problem of Assam from another point of view. Assam, though a part of India, is by force of circumstances practically cut off from the rest of India. Those of us who have to come to this Assembly have to travel through 180 miles of Pakistan territory before we reach the borders of the Indian dominion at a place called Ranaghat. The Central Government is therefore trying to have an approach toad and a rail link through Indian territory to Assam by the northern foothills. I do not know how many crores of rupees will be spent and when it will be ready; but some action was taken by them to connect Assam with the rest of India through a small tract on the northern part of Bengal near Jalpaiguri which is Indian territory. But you will be surprised to know that this rail link takes us not to Bengal or Calcutta first but to Bihar; and if one has to come to Calcutta he will have an extra 200 miles of railway travel. What that will cost in freights and fares I need not say; the House can imagine it. But who will use this railway? I am perfectly sure that no trader or travellers will use it willingly. Then, Assam is now the frontier province. In the last war the vulnerability of India through the East was proved. Through the cast, the Japanese were actually on Indian soil when they surrounded the Manipur State in Assam and captured three-fourth of the headquarters of the Naga Hills. The fact that Assam is now a frontier province of the Dominion of India makes Assam a question of all--India concern. For, if Assam is invaded by her neighbours and reinforcements were not promptly rushed there from the rest of India, she will very soon cease to be a part of India. Can you envisage such a contingency with complaisance ?

As I told you, at the time of the Niemeyer Award Assam was an undivided province with no high court of its own. Though it was a major province the people of Assam had to come to the Calcutta High Court which had appellate powers over Assam. Assam had no university and no technical or professional colleges. And yet she was given only, Rs. 30 lakhs under the Award, whereas the Award gave the North-West Frontier Province Rs. 100 lakhs on the ground that it was an undeveloped province. Sind too got a sum of Rs. 110 lakhs under that Award. Though Assam was the most undeveloped of the major provinces of India with no amenities of civil or civilized administration and though she bad practically no social service the Award gave her only a paltry sum of Rs. 30 lakhs.

Sir, I started by saying that the allocation of revenues between the Centre and the provinces has been made on a very unscientific principle. One of the arguments that I want to advance is that in making financial adjustments of this kind you should take into due account not only the needs of the backward units, but also considerations of equity. The consideration that Assam is contributing a very large share of federal revenues should not be given the go-by in the present set-up of things. Then again, due note must be taken of the special position of the frontier regions. This is a question of definite all-India national interest. It is in the interest of the Centre that efficient and good government obtains in Assam.

Assam has, in spite of her poverty, tried her utmost to help herself by such taxation as can be levied. As stated by Srijut Rohini Kumar Chaudhuri, Assam imposed taxes on agricultural income in 1938, tax on betting and amusements and heavier tax on motor vehicles, motor spirit and lubricants and levied tax on professions and trades and on the sale of goods. In spite of this she has not been able to get her budget balanced. As stated by our Prime Minister the other day, we are faced with a deficit of a crore of rupees in the current budget. I make bold to say that the one crore deficit is an under-estimate. For, during the general discussion of the budget in the Assam legislature I quoted facts and figures from the Budget estimates and the memorandum to prove that the deficit was in the neighbourhood of $2^1/_2$ crores. The Finance Minister in his reply to the general discussion of the Budget did not dispute my statement.

Sir, Assam has a revenue of five crores including the thirty lakhs of subvention, the fourteen lakhs from jute duty and the forty lakhs from her share of the income-tax. She is going to have a deficit of two crores, if not two and a half crores. The present administration of Assam, hoping that the Government of India will implement their promises of continuing the grants from the Development Fund for about ten years, started building many necessary institutions such as a High Court, a medical college, a forest school and an agricultural school. Grants from this Development Fund are about to stop and, Assam is in addition faced with the miserable prospect of a deficit of three or four crores in a total income of five crores through the burden of recurring expenses of the new institutions. I request the honourable Members of the Constituent Assembly to lend their whole-hearted support to this request--I would not use the word 'claim'-of Assam or getting a fairer deal in the new set-up of things.

Shri Brajeshwar Prasad : I would like to know whether the demand is for larger grants for raising the level of the tribal people or whether it is for improving the amenities of the people of Assam and for having technical or vocational schools.

Syed Muhammad Sa'adulla: I am glad that my friend interrupted me. I had lost the trend of my argument I intended to advance about the tribal areas. The interpretation he wants to put on article 255 is wrong. It starts thus : "Such sums as Parliament may by law provide shall be charged on the revenues of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States". The words are "for providing grants-in-aid to the States".

I have given a general picture of the topography and geography and the financial conditions of Assam. I think nowhere in India have we got the same different categories of political institutions or political areas inside the same province, as in Assam. First, we have got the administered area or rather what we call the "included" area, *i.e.* that area which comes within the jurisdiction of the Legislative Assembly of the Province. Then we have got another area called the "partially excluded" area, three hill districts which have been given the right to send representatives to the local legislature, but the ordinary legislation of that legislature will not apply to them, unless the Governor assents to that. Then comes the third category, the "totally excluded" area. These excluded areas have no right of representation in the local legislature; yet the-province of Assam has to bear the burden of these areas, whereas there is practically no income from them. Take for example the Naga Hills, an area of four thousand square miles, whose population in the administered area is about two lakhs and about one and a half lakhs in the non-administered area. From this area we have got about two lakhs of revenue because there is a British firm operating a coal mine in that area. This represents the entire income from the royalty of be coal mines. These hill people do not pay any land revenue. They say, "This land is ours". Not even their Chief has got any right to tax them. If you want to impose any land revenue, they will rise in revolt. Although the income from the area is only two lakhs, it costs the provincial exchequer about thirteen lakhs for administering the Naga Hills.

Shri Brajeshwar Prasad : How much?

Syed Muhammad Sa'adulla: About thirteen lakhs.

Shri Brajeshwar Prasad : What about their forest wealth?

Syed Muhammad Sa'adulla: There are hardly any communications there.

Shri Brajeshwar Prasad: Potato is also grown in that area.

Syed Muhammad Sa'adulla: No potato in that area but in Khasi Hills. That shows the amount of money we have to spend on these excluded areas. Then the last category of areas in Assam formerly used to be called "Frontier tracts" but now called the "North-eastern frontier agency areas". These areas are being administered by the Governor as an agent of the Governor-General of India. Only recently they have undertaken to bear the entire costs........

Shri M. Ananthasayanam Ayyangar (Madras: General): May I know if the honourable Member is supporting or opposing the amendment. We are unable to follow his arguments from here.

Syed Muhammad Sa'adulla : I have got to place all these facts before the House. Our income is only five crores of rupees whereas our area is one hundred thousand square miles. With this income we are unable to have good administration in this frontier Province on account of the conditions that I have given.

Shri M. Ananthasayanam Ayyamgar : What are his concrete suggestions?

Syed Muhammad Sa'adulla : The position I have already explained. There fore we cannot but come to the inevitable conclusion that the Centre must come to our aid by way of grants-in-aid and this section 255 speaks of such an aid. But even the little ray of hope that I had, in cursorily reading this article, has been shattered by the fact that the whole thing has been left to the Parliament to decide. Now we have beard twice on the floor of this House from the Chairman of the Drafting Committee that if we leave the question or the percentage of the jute export duty to be given to the provinces, to the Parliament, there will be such a wrangling among the different provinces that it is better, to leave it to the President. Unfortunately the amendment which was sent in by my Friend, the Rev. Nichols Roy from Assam only this morning has not been allowed by the President, because it came too late. Now, friends like Mr. Ananthasayanam Ayyangar say "help yourselves before you come, to the Centre with the begging bowl." I have already shown that the Assamese people have already taxed themselves to the farthest extent possible, but even then that does not convey the real situation in the province. I have already stated that the total population of the province at present is 73 lakhs, out of which ten lakhs are labour population on the tea estates, people who have got no vested interest or any land in the province. They do not contribute a copper to the provincial exchequer, except for the fact that they go to the country liquor shops now and then, but these people are in the habit of brewing their own rice beer at home. Then fill recently, we had two districts which were permanently settled zamindari areas. Only in the last session of the local Legislative Assembly, we passed an Act abolishing zamindari in Assam, but for my purpose it will be sufficient to say that these two districts contain a population of fifteen lakhs. These people do not contribute directly to the provincial exchequer. Therefore all the taxation that we impose falls upon five or six districts of the province and the total population of these six districts is less than fifty lakhs, a heavy burden on them indeed.

Sir, it has been stated that there will be a Financial Commission which will go into all these matters and we should not be despondent or pessimistic of not getting a just decision from that authority. But our previous experience makes me very doubtful whether the special position of Assam will be understood or appreciated by any such body unless some one connected or intimately acquainted with the conditions of Assam is in that Committee or Commission. I will give one little examples Two years ago in order to balance the Central Budget some bright officer of the Finance Department of the Central Government thought of taxing betel-nut and the decision was uniform throughout India; and without knowing the conditions poor Assam was taxed to the ture of 5 lakhs of rupees. Whereas throughout India dry betel-nut or "supari" is eaten and sold in the market, in Assam only, the supari is eaten in its *cutcha* form. It is sold in its shell, the thick covering outside and within the kernel inside is juicy and heavy. The tax levied was by the seer and while the dry supari per seer contained up to 115 to 120 nuts, the *kutcha* Assam supari called "tambul" weighed 20 to the seer. The result was that the poor Assam cultivators who grow for their home consumption, a few trees of betel nut had to pay this tax at a rate which is three times, if not four times higher than the rest of India. Such will be the fate, of Assam again unless some one acquainted with Assam conditions or fully appreciating the position of Assam be included in the Financial Commission."

Shri Brajeshwar Prasad : You have not said how much grant you want. What are your substantial proposals ?

Syed Muhammad Sa'adulla : In fact even the Drafting Committee cannot give you the percentage. An I can say is that I have placed the facts before you for your very sympathetic and just consideration and reasonable recommendation to the Central Government.

Mr. President : I just came to know from the speech of Mr. Sa'adulla that Mr. Nichols Roy had given notice of an amendment. It was received just' when we were starting the proceedings and therefore it could not be copied and cirulated. If Mr. Nichols Roy wants to move his amendment, I would give him permission at this stage to move it.

The Honourable Rev. J. J. M. Nichols Roy: Mr. President, Sir, as I studied the different articles regarding the financial provisions I felt that it is very important that I should move this amendment to article 255 :

That with reference to amendment No. 2917 of the List of Amendments, in article 255, after the words "Parliament may by law provide", the words "or until Parliament thus provides, as may be prescribed by the

President" be inserted; and the following explanation be added at the end :-

"Explanation-The word "prescribed" has the same meaning as in article 251 (4) (b)."

The article as amended by me will read thus:-

"Such sums, as Parliament may by law provide or until Parliament thus provides, as may be prescribed by the President, shall be charged on the revenues of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States:"

The reasons for moving this amendment are very clear. According to this article 255 all the distributions to the provinces as grants-in-aid will have to pass through Parliament and Dr. Ambedkar himself has stated in this House that when such sums are placed before Parliament, it will take a long time and cause wrangling among Provinces for each Province will try to pull the strings as hard as possible to get as much share as possible for itself. I am sure it will take some time before the small provinces will be rendered immediate help, that is necessary to be rendered; and the provinces of Assam, Bihar and Orissa, I should say, require immediate help, and it will be impossible for the President or the Government of India to render such help now unless the power is given to the President to do this. Therefore, I have introduced the following words : "or, until Parliament thus provides, as may be prescribed by the President". The President, therefore shall have power by order to prescribe certain, sums to be given to the provinces that are in need and also act on the recommendation of the Financial Commission. I think, Sir, this amendment is very necessary. I felt that this should be considered by the House and I think that unless it is left to the President, provinces like Assam will be in a great turmoil, a financial crisis will surely come about and we cannot go on in this way. It is sure, if there is turmoil in the Province of Assam, that the whole of India will be involved and that has been stressed by my honourable friend Syed Muhammad Sa'adulla and also by my honourable Friend Mr. Rohini Kumar Chaudhuri and by the Premier of Assam on Friday last and has been pressed by each and every speaker from Assam. It is very necessary that financial help should be immediately rendered to the Province of Assam and that cannot be done under Article 255 as it stands today. Therefore, the power must be given to the President to render immediate help to those provinces that are in need. This amendment is very, very necessary and I do not see how this House can pass the article 255 as it is now without considering this proposition. I hope, Sir, that this House will not commit suicide by allowing Assam to be in a turmoil and thus the whole of India will be involved and I hope this matter will be home in mind when considering the amendment, which I have moved today.

Mr. President : The House will now stand adjourned till 9 A.M. tomorrow.

The Assembly then adjourned till Nine of the Clock on Tuesday, the 9th August 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Tuesday, the 9th August 1949

The Constituent Assembly of India met in the Constitution Hall, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad)in the Chair.

The Honourable Rev. J. J. M. Nichols-Roy (Assam : General) :Mr. President, yesterday I spoke a little on my amendment. I have given now a version of my amendment. That would make the thing clear. May I speak on it, Sir ?

Mr. President: I will take this in the place of the one that you moved yesterday.

We shall continue discussion of the article which - we were discussing last night.

The Honourable Rev. J. J. M. Nichols-Roy: May I read it, Sir?

Mr. President : I shall read it out at the time of voting. Mr. B. Das.

Shri B. Das (Orissa: General) : Sir, we are discussing article 255 which deals with grants-in-aid to provinces generally, and also in certain reserved fields such as development of Scheduled and Tribal areas and helping the development of Scheduled tribes in some of the provinces.

Sir, I join my feeble voice to the "tales of woe", however disliked it may be by the richer provinces and by that great humanitarian, Dr. Ambedkar. Sir, if I am feeble, it is because my province has remained undeveloped throughout one hundred and fifty years of British rule. The colonial pattern of government that the Englishman introduced wanted complete centralised control and waited expansion of the British rule not only in India but throughout Asia. That did not allow the Centre under the former British Raj to part with any finances for the development of those undeveloped provinces of which we heard so much yesterday. Sir, everything is not happy in the Drafting Committee. Yesterday my honourable Friend Dr. Ambedkar told us that the Drafting Committee came to the conclusion that it would adhere to the old system of financial redistribution. I had an idea that the Drafting Committee was there to draft the principles that are laid down by Expert Committees of this House or that are the intentions of this House. I congratulate my Friend Syed Muhammad Sa'adulla Saheb on that excellent speech which he delivered yesterday pleading for that benighted province of Assam. That reveals there was no unanimity of opinion in the Drafting Committee on that Issue. Yet in the name of the Drafting Committee we are told that we have no alternative but to accept articles 254 or 255 or the subsequent articles that we will discuss today and tomorrow. I thought Dr. Ambedkar always felt for the under-dog as he had the spirit of humanity. This Constitution will remain a scrap of paper if the Centre -follows the tradition of its foreign predecessors-the British Government-and monopolise all the sources of taxation and does not assist the Drafting Committee and this House to arrive at an equitable basis of distribution of resources so that the provinces stand on an even keel. Even Lord Meston thought that to stand on an even keel Bihar, Orissa and Assam needed help. Even the Otto Niemeyer Award admitted at the time that certain provinces are undeveloped and they need resources but under the circumstances it excluded the grant of more money. But today we heard from the spokesman of the Government of India in Dr. Ambedkar, that the Government of India had no concrete scheme, no definite scheme to raise the basic standard of expenditure of those undeveloped provinces of Bihar, Orissa and Assam and, to which list West Bengal, by act of God and man having been partitioned, has been added.

Sir, I referred the other day to that bureaucratic document that the Government of India in Finance Department placed before the Sarker Expert Committee. The Government of India attained by then independence though it was only five months old. The Finance Department produced an autocratic, bureaucratic document which is colourless and heartless and without any conception of the sovereign -duties that developed on the Finance Ministry, because it has conserved all sources of revenue in its own hands-not by its own efforts but

through the system of centralised rule that it inherited from the former British Raj. My idea of independence is over and I do not dream of independence. I do not breathe in the atmosphere of independence today. Sir, accidentally, circumstantially we have become part of a Commonwealth and one is ashamed to open daily papers-whether Indian or British papers--India is part of that Commonwealth Empire and India must follow the doctrine of the United Kingdom by handing over all its economic resources. Today our resources are subordinated to British economic policy and we do not find the spokesman of the Finance Ministry present here to explain his functions or to explain the attitude of the Government of India. Sir, the document I referred to is the memorandum which the Finance Department produced before the Sarker Committee and it gives an analysis of revenues and expenditures for ten years on page 4. It says that the revenues of the Government of India were 1968 crores, civil expenditure 1731 crores, defence expenditure 1887 crores. We know how the huge defence expenditure was met. It was met from the borrowings and it has added up to the unproductive size of the public debt but in para. 8 on page 3 they say, I mean the Finance Department--I will not say the Finance Ministry as it did not understand the functions of Finance Ministry then or even now-that in these ten years it helped the provinces to the extent of 196.7 crores, and it says in spite of its own heavy commitments the Centre released nearly 200 crores of rupees to the provinces during this period. It shows the bureaucratic mentality and spirit of the Finance Department and we see no change in it after one and a half years when that document was written; and yet let me analyse it. In 1937-38 the annual revenue of the Centre was 86 crores; in 1946-47 it was 336 crores; and in 1949-50 it is 325 crores. These revenues the Government of India did not manufacture themselves. They get it from the people of India and yet it grudges the 200 crores which means out of 1968 crores it is only 10 per cent. It gave 10 per cent of the revenues collected during these ten years to the provinces and it grudges it.

Here under article 255 we are discussing grants-in-aid to the provinces. Who made the Government of India, Finance Department, into a charitable institution that it gives occasional charities to undeveloped areas like Assam, Orissa, Bihar or Bengal ? We stand on justice and equity, we stand here on our rights that every province must have social justice, must have a basic standard of income or revenue. If I am condemned to four or five rupees Per capita income, if Assam is condemned almost to the same level, it is not my fault. It is a legacy that foreign rulers have left. Today the spokesman of the Government of India stands up and talks glibly that they do not want to accept any change in the basic standard of revenue that must be allocated to the provinces. Sir, I said on Friday last that you will be pleased to examine, after these articles regarding re-distribution of finances between the Provinces and Centre, are considered, whether the Centre has discharged its powers and duties so as to give a minimum standard of development, and to raise the standard of administration in those areas where better public health, better standard of education,, better mode of living should come into being simultaneously with this Constitution. I do not claim that the Centre should so allocate the revenues as to give Rs. 25 per capita revenue expenditure to Orissa or Assam. I do not say that. But this august House, this sovereign House will nullify itself, will stultify itself if it does not determine before this Draft Constitution becomes an Act, what will be the basic standard of revenue placed at the disposal of the Provinces so that the Provinces might. start on an even keel. Sir, article 255 talks of grants-in-aid of the revenues, of such States "as Parliament may determine to be in need of assistance." My honourable Friend Rev. Nichols-Roy had tabled an amendment whereby he wants

the introduction of the idea that what minimum assistance the provinces are getting, let them not be deprived of, till the so-called ad hoc committee or the Finance Commission comes into existence. : There is a very deliberate suspicion on the part of my friends from the undeveloped provinces that the Government of India in the Finance Department may become more autocratic and may deprive the -provinces of the small grants. in-aid that are now prevailing. My honourable Friend Dr. Ambedkar talked and waxed eloquent on the provision of article 256 over the development of Assam. and over the development of other tribal areas-he quoted article 255 proviso (a) that the average expenditure of revenues during the three years immediately, preceding the commencement of this Constitution should be granted to these provinces. I must say, Sir, this is very bad logic on the part of that great humanitarian leader Dr. Ambedkar. Undeveloped provinces like Assam and Orissa had no resources to develop these tribal areas, these excluded areas, although the Government of India Act, 1935, of which my honourable Friend Dr. Ambedkar is so fond, from which he quotes so often as if it is the Magna Charta on which all constitutions could be based-that Act provided that it was the duty of the Central Government to help the development of these tribal areas. But, Sir, it remained a dead letter.- The 1935 Act was never promulgated at the Centre. It was a mistake, and I recognise that it was a mistake on our part, not to have accepted the 1935 Act the-Federal Constitution at the Centre. If we did, today we would have been much better of. What happened? Did the Central Government help in the development of the tribal areas in these undeveloped provinces? No. Sometimes it gave doles in charities, but it did not really help in the development of the tribal areas; the Nagas, the Khasis and other tribes in Assam remained where they stood. What it did, it did for the defence of the British Empire, on the eastern frontier, and we know in the last war, where the enemy came. The enemy came through those hills, on to the Kohima battle-fields. So today to talk here. blithely that the undeveloped provinces will get the average of the last three years expenditure before the Constitution commences, shows the incapacity of the Government of India's Finance Department, to face the situation to solve those problems. It has not faced the situation. Sir, I am a man of principles too--I agree with my honourable Friends Pandit Kunzru and Dr. Ambedkar that there should be principles, financial principles which should guide the governance of India and the provinces. But what sire the financial principles that must be laid down. My Friend Dr. Ambedkar, coming from the Rs. 25 per capita standard of Bombay presidency, does not like the export duty to be distributed iniquitously to certain provinces. He quoted from the Export Committee's Report, and it was a pleasant surprise to find that the Government of India and Dr. Ambedkar have accepted at least one moiety of the recommendations of that Committee. My friend quoted from 'that report, but he forgot to quote the consequential lines, regarding the allocation of jute duty. Sir, though we are not discussing specially the share of jute duty, we are still considering the grants-in-aid; and on page 9 of the Report, in para. 36, where the Sarker Committee allocates money for a period of ten years, they qualify it by saying... "If at the end of ten years, which we think should be sufficient to enable the Provinces to develop their resources adequately, the Provinces still need assistance in order to make up for this loss of revenue, it should no doubt be open to them to seek grants-in-aid from the Centre, which would be considered on their merits in the usual course by the Finance Commission". Dr. Ambedkar did not qualify the Draft article which this House accepted yesterday-254-with this part of the recommendation, that the grants-in-aid must be given till provincial resources reach the right -standard. Here the Centre denies us,

the undeveloped provinces, a basic standard of expenditure. Then in one stroke, by article 254, they still keep these poor provinces on tenterhooks. Orissa gets only 3 lakhs. I am not very much pleading here the cause of Orissa. I am pleading the cause of justice and equity, that there should have been a proviso somewhere so that the wrong done so arbitrarily by the Centre in the Draft Constitution, by article 254, may be set right automatically. That is why I plead before you, you as the guardian of this sovereign Constituent Assembly. You will see that there is some definite binding on the Government of India to give up its autocratic and bureaucratic codes and to pass round its resources to enable the Provinces to develop and not to be at the mercy of the Finance Commission or the Finance Minister of the time assisted and guided as he will always be by bureaucratic officials who continue in their set careering from 1924 onwards without any appreciation of new responsibilities devolved on them.

Sir, the Nalini Sarker Committee's recommendation must be taken as a whole, not in part, because it conceived the idea of a Finance Commission immediately appointed. We know it was postponed. The amendment tabled by Dr. Ambedkar refers to means that in ten years consideration of Bengal's for some four years from time in and time out of and millions are deprived cannot develop? If the appointment of a Finance Commission. That Bengal will be deprived of 100 lakhs whereas the possible deficits or deficiencies will not be taken up today. Is that justice ? Is that fair ? We talk here justiciable rights. What is justiciable, when millions of their basic standard of administration so that they richer Provinces like Madras, Bombay, and the U.P. are silent here today, if they think they have no obligatory duties to. see that economic justice is rendered to the undeveloped Provinces. I think they are living in an Utopian paradise. If they think that their prosperity will add to the prosperity of India, they are entirely mistaken. If so many Provinces in the east of India starve, if they go on in utter poverty, if the standard of people is not developed, how can India be prosperous and how can Madras laugh at our demand of raising our basic standard of administration by securing a minimum basic standard of resources? The Government of India has not faced it, they are not facing, it because it is a bankrupt Government. That is not the concern of this sovereign House. Let the spokesmen of the Finance Ministry come here and tell us their plans over redistribution of resources; they do not tell us their reactions-they want us to continue in that same sorry way as we (lid tinder the foreign administrators for years and years.

I plead before this august House that these financial provisions of the Draft Constitution are, if I may use the word, mere bunkum. They do not create a democratic sense in the Provinces. They do not help the provinces to live with hope and to reconstruct life with hope under this Constitution: My Friend Dr. Ambedkar spoke yesterday and acknowledged the existence of the Nalini Sarker Report and said he was prepared to accept a moiety of it. Sir, it lies in your hands to appoint a Committee of this House to examine the Nalini Sarker Report so that we incorporate such beneficent recommendations that are there for the uplift of those underdeveloped Provinces. It is not to the advantage of the Centre, handicapped as it is today, to part with its resources. It may be the Parliament that will make the law, but the Parliament may not make any law. What was the attitude of the Finance Department in the Parliament in the last two years ? I do not blame Dr. Matthai alone, I blame Dr. Matthai and his predecessor Sji Shanmukham Chetty, the two independent Ministers, I blame strongly the policy dictated by (he Finance Department. Dr. Matthai may fancy he has the law today and he can give a moiety here and there when justice demands other rights-fuller distribution of resources to Provinces

Sir, we heard the appointment of the

Fiscal Commission. we know it has been appointed with our distinguished Friend Mr. V. T. Krishnamachari as the President. How many years will they take to assess the fiscal policy of India ? Mr. Shanmukham Chetty, in the Parliament, announced that there will be a Taxation Inquiry Committee, that the Taxation Inquiry Committee will see what taxes should be levied, then the House and the country will determine what resources should go to the Provinces. But, Sir, a year afterwards Dr. Matthai stated in the House the unless we know the per capita basis of income, unless we know the national income of India, we are not going to appoint a Taxation Inquiry Committee.

Mr. President.: May I point out to the honourable Member that we are not discussing the Government of India ? We are discussing the Constitution and any remarks which he wishes to make should be confined to the Draft Constitution and the provisions contained therein.

Shri B. Das : Thank you, Sir, that is what I am trying to do. I am sorry I have to bring in the Government of India-it has become like King Charles' head in my speeches

Mr. President : Yes, it seems to be so.

Shri B. Das : Yes, Sir, but how can the resources come to Provinces, how can the grants-in-aid come to Provinces unless the basic system of distribution of resources is set down in this Draft Constitution ? That is the objective with which I speak, and I was illustrating and I still wish to illustrate that the Government of India are deliberately postponing this evil day when they will stop their extravagance and Dass on the equitable share of the resources to the Provinces. That is all that I am aiming at. If I am wandering about in my speech. I am not as brilliant a speaker as Dr. Ambedkar, so I have to go in a round-about way.

Mr. President : I have not interfered with the speakers when they have been discussing these financial provisions because I felt that any Grievances which Members might feel might be mentioned here. But very often these speeches have gone much farther than the particular article under consideration, and the speeches become pointless when no amendments have be-en moved which would enable the House to decide in a way different from that proposed by the Drafting Committee. I would therefore suggest to Members that now that the grievances have been ventilated they should 'confine themselves to the articles and if there are any amendments they might speak on the amendments. But general discussion of the policy of the Government of India becomes pointless here because we are not here discussing the Government of India, nor have we got anyone here as representative of the Government of India present in this House. This is the Constituent Assembly charged with a particular duty, namely, the framing of the Constitution, and we are -not concerned with what the Government of--India has been doing or is doing at the present moment we are concerned with what the Constitution should be. So, if Members have any -grievances they may ventilate those grievances elsewhere and they should confine their Speeches here to the articles and to any amendments which they wish to move. It was open to Members to move amendments; I find they have not moved them and still speeches are being made which go against the Draft Constitution as proposed by the Drafting Committee.

Shri B. Das: Sir, I am aware of my shortcomings. Even Dr. Ambedkar yesterday admitted the shortcomings of the Drafting Committee. He could not face squarely and fairly the recommendations of the Drafting Committee It we had not moved any amendments it was because the Drafting Committee itself is confused and I find my Friend Janab Sa'adulla Saheb speaking quite differently in such a passionate manner. I do not know whether I am to tend my support, to Dr. Ambedkar. I am not going to make any further speeches on this or on article 260. If the recommendations of a Committee of this House appointed by you is not given effect to, what hopes can provinces have? And the Finance Commission may come about five or six years

-hence. It is a well-known practice of British statesmen who have since left this country, that when they could not solve a problem they would appoint a committee. And if they could not solve it to appoint further sub-committees. The tradition of the Government of India or of the other House is not to remedy these difficulties ....

Mr. President :- It was open to the honourable Member to have moved amendments to every particular article that has been placed before the House and to every single sentence therein but he has not done so.

Shri B. Das : I feel guilty, but in one place I suggested that the Government of India within six months of this Constitution should announce in the House the basis of allocation of these resources. Somehow that could not be moved, because we have not a sympathetic atmosphere in the House. I therefore appeal to you. I have full confidence in you. I would request you to ask your experts to examine the Drafting Committee's report along with the Government of India Act, 1935, the provisions of which never came 'into operation. If that is the economic justice which we are going to do to the provinces, woe betide me, woe betide this House and woe betide this country. Every province will remain in an extremely backward condition, because the Government of India in the Finance Ministry will carry on its merry career. The caravan will move on even as it did in the days of Sir Basil Blackett and Sir James Grigg and thereafter. That is my sorrow and my misfortune.

Shri Brajeshwar Prasad (Bihar : General) : Sir, I rise to offer a few comments on article 255. I am opposed to the provision made in the article that Parliament should determine the amount. of the grants to deficit provinces. I do not see any reason why any difference should be made between the procedure adopted in articles 254 and 255. Under article 254 it was proposed that the President and not the Parliament be empowered because the prospect of the Members wrangling on the floor of the House was not considered to be proper and in consonance with the spirit of nationalism. Therefore the President was empowered and not Parliament. I do not see any reason why another procedure has been adopted in article 255 where Parliament has been empowered. If wrangling is not good under article 254, it is also not good under article 255. 'Therefore I am in favour of the procedure laid down in ankle 254.

Sir, I want to speak very frankly and without any reservation. There is another reason why I am in favour of the President and not the Parliament. The reason is that there is apprehension in our minds that the majority of the members belonging to one particular province may tilt the balance against the interests of the minority provinces or deficit provinces without paying any regard or having any consideration of the interests and the needs of the deficit provinces. Therefore I am in favour of the proposal that article 255 should be amended on the lines suggested by my honourable Friend, Rev. Nichols-Roy.There has been much wrangling on the floor of the House that such and such province has been exploited and that proper attention has not been paid to the needs of the weaker provinces. I do not want to enter into any controversy on this point. I claim myself to be a nationalist and -as belonging to the whole of India and as such I would not support on the floor of the House any measure in favour of one province and against the interests of another province I feel that as long as men like your august self, Sir, are at the helm of affairs in the Government of India, as long as men like Rajaji, Sardar Patel, Pandit Nehru and Maulana Abul Kalam Azad are there, the interests of the provinces, which mean the interests of the people of India, are perfectly safe. Therefore, I entirely support the proposition laid down in article 255 that grants shall be made in accordance with the needs of the provinces to be determined not by Parliament but by the President.

There is another point to which I would like to draw the attention of the House. This

article 255 ought to have come before the House after we had decided the constitution of the Government of the tribal areas. The implication of this article is that the tribal areas shall remain tagged on to the provinces and I am strongly opposed to this idea. I am in favour of the proposition that all tribal areas should form one centrally-administered area. I would like to refer here to the views of the Assam Government. On page 12 of the pamphlet that has been distributed to us the view of the Assam Government has -been that : "The present artificial union should be ended. The backward tracts should be excluded from the province of Assam and administered by the Governor- in Council as agent of the Governor-General-in-Council and at the cost of the central revenues. The time may so-on come when that frontier will become no less, if not more, important for the defence of India than the North-West Frontier.'

Coming to the views of the Simon Commission, they had expressed the view that "The typical backward tract is a deficit area and no provincial legislature is likely to possess either the will or the means to devote special attention to its particular requirements."

I am in favour of the idea that all tribal areas should be taken away from the boundaries of the different provinces. I do not know how far this is the proper time when I should go into the question of the constitution of the tribal areas but if you would permit me, Sir, I will give my reasons for the suggestions that I have made.

Reason No. 1 is that I am in favour of the separation of the tribal areas from the different provinces because the economic position of the provinces is deplorable. They will not be able to devote any money towards the development of the tribal people. The plight of Assam, its heart-breaking tale of woe and suffering to which our attention was drawn in such a brilliant way by our honourable Friend Mr. Sa'adulla, has impressed me, and other Members who have listened to his speeches. It is a deficit province. It has not been able to raise the standard of living of the non-tribal section of the people. How can you expect it to pay attention to people coming from the Mongoloid races ?

Sir, it is not only in relation to the tribal areas of Assam but in relation to the other tribal areas as well that my remarks are equally applicable. I fed that there has been exploitation on a mass scale, we must hang down our heads in shame. The tribal people have been made a pawn on the chessboard of provincial politics, and humanity demands--I approach the problem purely From a humanist point of view--that these people must be taken away from the provinces and placed under a Commissioner General. I feel that there should be an independent and I autonomous authority at the Centre, -under the superintendence, direction and control of a man like Thakkar Bapa who will be able to pay proper regard and attention to it and do his level best for theuplift of these people. I do not want that the Central Government itself should interfere in the affairs of the tribal areas. The problems are too delicate and we need the advice and help of experts, of anthropologists, of doctors and of scientists; politicians and legislators have no part to play as far as the development of tribal areas is concerned. I feel that if you separate these tribal tracts and integrate them into one whole it will give a sense of oneness to these tribal people, a demand which has been made from time immemorial. They are the ancient sons of the soil; they must now find a place in the Government of India after the advent of Swaraj. Sir, I am quite clear in my own mind that if proper steps are not taken to bring about an improvement in the condition of this exploited mass of humanity, there will be an unheaval. There is already unrest. It is dangerous to be a prophet in politics but I am sure that the next general elections will reveal the nature of the problems that controls us. Let there be no complacence on that point. Sir, the proposal I have placed before the House is in

perfect accord with the principles of self-determination ....

Dr. P. S. Deshmukh (C.P. & Berar : General) : Sir, may I point out that this proposal is not before the House ?

Shri Brajeshwar Prasad : I asked the permission of the Chair to speak on this and I thought the silence of the Chair amounted to permission.

Mr. President : Only to this extent that the speech is confined to the financial provisions.

Shri Brajeshwar, Prasad : This question is vitally linked up with the proviso that has been made. We are giving power to the provincial Governments but we have not yet decided the constitution of the tribal areas. If we pass this article we will be out of court in suggesting that the tribal areas should be separated from the provinces. I have already said that this article should have come after we decided the constitution of the tribal areas; but since this ha come first I think this is the proper place where I can place my views regarding the tribal arms. Sir, the proposal I have placed before the House that all the tribal areas should be integrated into one whole and placed under an autonomous body under the Central Government is in perfect accord with the principles of Self determination.

Mr. President : We can consider that when we consider the Schedule.

Shri Brajeshwar Prasad :Very well, Sir.

An Honourable Member: I move that the question be now put.

Several Honourable Members: No. no.

Mr. Naziruddin Ahmad(West Bengal : Muslim) : Sir, I strongly protest against untimely demands being made for closure of the debate. We are now faced with extremely difficult problems which have to be solved now, which we had been postponing from time to time.

Shri Brajeshwar Prasad : Sir, I have also felt the injustice of demanding closure on vital question.

Mr. President :I have not accepted any motion for closure that is not proper.

Mr. Naziruddin Ahmed : When there is a general desire for continuing a debate it should not be thought that Members desire to waste the time of the House. Some Members may be more fortunate than others in knowing the mind of the Drafting Committee which again appears to be a mouthpiece of some powerful body behind them. But we are not ,so fortunately placed.We find that the House is frequently being faced with radical amendments absolutely unawares.. And although we feel the justice of your remark that debates are sometimes pointless, I will submit that new ideas are often thrown out for the first time and Members have no time to consider and study them and send in amendments. The absence of amendments, therefore, does not mean that there are no objections. That is why Members are forced to some extent to air their their grievances in a general manner and that inevitably leads to some pointless debate. The remedy is that Members should be given ample time in advance. to consider new proposals and suggest amendments if they think proper.

My honourable Friend Shri Brajeshwar Prasad has raised a very important point, that articles which are related to one another logically should be Put before the House in one lot. Instead of that we are being given things in a piecemeal fashion. The Drafting Committee treats us as if they are magicians and we are the spectators; they give one show at a time and keep other connected things up their sleeve. They thus commit the House to a certain view and then proceed to other things. This practice of doing things piecemeal is very inconvenient. Even the Government of India Act which was passed by experts in the British Houses of Parliament was not dealt with in this manner. I think it is better that the Drafting Committee should give us a complete picture of what they want. We can then suggest proper amendments and the debate would then be more to the point. Otherwise the- Members feel helpless and stray away from the point under debate.

Sir, I submit that article 255 is connected with various other things of which one is the problem of the Tribal Areas. You cannot take a partial view of it; you have to take an over-all picture and

then decide things. I think this article is a wholesome one but I desire that the hands of the President should be strengthened. I have given my view that the Centre is taking too much' power to itself, but if they do take any power I should like it to be exercised by the President rather than by the Parliament which would be a body with fluctuating opinions. I agree with

Dr. Ambedkar's remark yesterday that leaving the distribution of revenue among the. provinces in the hands of the Parliament would be a dangerous thing. Parliament acts according to the mood of the moment and is likely to arrive at combinations between the different, Provinces to the detriment of a needy Province which may not have adequate representation in the House. I therefore agree with the amendment of Rev. Nichols-Roy that, until Parliament makes any law, the President should have the power to give the necessary orders. I think there was a lacuna in article 225 which is sought to be removed by this amendment of Rev. Nichols-Ray. In fact there would be a gap between the Passing of this Constitution and the enactment to be made by parliament. There is bound to be a long interval; and Parliament again will take sufficient time to consider it, and there is also the Upper House. If there is difference of opinion between the two Houses there will be further delay. Parliament may quite reasonably take time to come to a decision on intricate matters of law and may not pass any law at all. I therefore submit that until Parliament enacts a law the President should be given power to intervene and act as he thinks just and proper. I would rather submit that the President should be allowed to act in his discretion and if his acts are satisfactory Parliament may pass the necessary law and empower the president to discharge his functions. So I submit that Rev. Nichols-Roy's amendment is extremely timely and proper and should be accepted by the House.

But how do we consider these things? Dr. Ambedkar,who is the mouth piece of the Drafting Committee, which is again the mouthpiece of the powerful section of the House, is now and then absent. He is absent in body now., Even when he is bodily present in the House. he is absent in mind. In these circumstances this debate looks like ......Mr. President : The honourable Member is not just in complaining about Dr. Ambedkar's absence. I think Dr. Ambedkar is present. here most of the, time. Even now I believe he is somewhere in the House.

Mr. Naziruddin Ahmad: Sir, he is absent in mind, at any rate. I say go with great respect. I quite sympathise with Dr. Ambedkar. He is a powerful man. He works very hard. But the pressure put upon him seems to be much. He is now present in body but absent in mind, being engaged in conversation. It is this misfortune of ours that I was referring to.

The point is this. Unless he replies to the debate, which he does not usually do, the result will be, as it has been, that any refusal on his part to consider the amendment will be accepted by the House and amendment will be lost. So, in order to make the debate effective, I think Dr. Ambedkar should listen to it. There is of course no power in the House to compel him to do so. But some attention is due to our discussions.

Shri A. V. Thakkar (Saurashtra) : Sir, I had no intention to take part in this debate, had it not been for the remarks made by the honourable Member from Bihar, Mr. Brajeshwar Prasad. The article as it stands with the modification suggested by Dr. Ambedkar is very good in its own way. Enough provision has been made in the article for supplying funds to the provinces which have, large tribal populations and scheduled areas. Some provinces are rich enough and prosperous enough to take care of such groups of people and of their backward areas, while others are not. It is for this reason that the necessary provision has been made in the article. As far as 'it goes, it is very good. I am thankful to the House and to the Constitution-makers for making provision, in the Constitution itself for that.

Now, speaking

of the present welfare work. of course, it does not fall within the Constitution-making body's jurisdiction, but I may just drop a hint, as it is connected with this question, this vital question. In expectation of the provisions that are being mad in the Constitution, people are expectation of the provisions But the poor provinces which are in need of money and which are starving for money do expect something from the Central Govemment. Those poor provinces are Assam and Orissa. The question of Assam is a bit complicated. There are friends who have spoken on that and will yet speak on that subject. With regard to Orissa, our Friend, Shri B. Das, has spoken. But the real point about it is this : The tribal people of these areas form a very large proportion of the total population of the provinces. In Orissa they form 30 to 3 per cent of the population or I am sorry, 35 lakhs, while in Assam their population is about 24 lakhs. These provinces cannot provide any funds for the-welfare of their backward people. Ile Constitution- promises to look after their welfare. But the fulfilment of the promise will take not less than three, years. I am not exaggerat ing the time that will be taken. For the whole thing to come. into force not less than three years will be -needed. Therefore, it is time that The Prime Minister and the Cabinet considered this question anxiously and very carefully and immediately provide some funds, if not-for all the tribal areas in the different provinces.. at least in Assam and Orissa. My honourable Friend from Bihar proposed that all the tribal areas in India should be formed into a separate group of areas.-I do not know whether it is possible to form them into one single, area-and placed under the Government of India. To that. proposition I may say that that is the best way of doing a disservice to these tribal people. Do you want to assimilate them or to dissimilate them ? Do you want to keep them apart from the general -population: or do you want them to become a part of the nation ? I am afraid my Friend Mr, Brajeshwar Prasad has not done, the right thing in putting forth this Proposition. Sir it is our business to assimilate the tribal people.' At present we have themseparated from us and residing on hill-tops and in valleys which are heavily malarial. Do you want to put them still further away from us ? That is not the way for doing them a service, excuse me. The best way to serve them would be to provide enough funds for them from the Centre. Shri Brajeshwar Prasad: May I interrupt the honourable Member to explain my view by means oil in illustration ? I am of opinion that the line of action that should be taken in the future should be left to their future leaders. They hould be free to decide whether or not to keep these people as a separate entity.

Shri A. V. Thakkar : There is no question of separation or amalgamation. The areas are there and they will remain there. Therefore, I would request the Government of India to provide funds for (he welfare of these people before this Constitution comes into force and not simply make a promise on paper in the Constitution Book.

Dr. P. S. Deshmukh: Sir, before I speak on the article, I would like to say that I endorse the remarks made by my Friend Mr. Naziruddin Ahmad so far as the consideration of the suggestions made by various Members are concerned. It is a fact which I hope it will be possible for you to take notice that very often the amendments moved andthe remarks and observations made, which are not absolutely in keeping withthe ideas and suggestions of the Drafting Committee, are very rarely attended to. I think he has rightly complained about the absence of Dr. Ambedkar from the House and his lack of attention to suggestions made for his consideration. We do not object to his absence, but there should be at least some arrangement........

Shri Brajeshwar Prasad: He is now present and not absent.

Mr. President :Dr. Ambedkar has not been absent for any length of time. He has been present most of the time.

Dr. P. S. Deshmukh : I

accept that, Sir. My suggestion was that if he is to be absent or occupied with certain other matters, there should be someone to pay some attention to what is urged by honourable Members of the House.

I think that the members of the Drafting Committee and the Chairman himself are so obsessed with the correctness of their own ideas that they as a rule do not think that there is anything useful in the suggestions made by the honourable Members of this House. I do not think this attitude is correct, and I can quote instances where sensible suggestions made by the honourable Members of this House and amendments urged by them have simply been brushed aside without being considered. I hope it will be possible to rectify this position because I think there are many Members of this House who wish to take this Constitution more seriously than probably many others.

Coming to the article, Sir, I support the amendment that has been moved by the honourable Rev. Nichols-Roy. Sir, my reasons for supporting this amendment are however entirely different from those advanced by many of the honourable Members who have spoken before me. Mr. Brajeshwar Prasad is going from bad to worse in expressing his lack of -confidence in the future Parliament and Assemblies elected on adult franchise. (Laughter). He has also become increasingly autobiographical. I do not object to that, Sir. We are fortunate in having an opportunity to listen to the ideas that he holds and holds so strongly. But I support the amendment on different grounds altogether. In fact, on principle I am totally opposed to the powers, so far as the finances of the State are concerned, being given to the President individually. I agree fully with Prof. Shibban Lal Saksena in this that there should be no encroachment on the autonomy of the Parliament in all possible matters, and that was the reasonwhy I contested even the embodiment of the Fundamental Rights because they take away to that extent the supremacy of the Parliament. Whenever any expenditure is charged on the revenues of India, there is an encroachment on the supremacy of the Parliament. - Article 254 has been altered from what it was. If we look at the original draft of this article, we will find that the power which is now given to the President was intended to be given to the Parliament. This was how the article was intended to stand.

"Notwithstanding anything in 253 of Constitution, such proportion, as Parliament may by law determine, of the net proceeds in each year of any export duty on jute or jute-products shall not form part of the revenues of India, etc."

Now, if Dr. Ambedkar found it necessary to alter this article and give the powers to the President, he should have logically taken care to bring about the same change so far as article 255 was concerned. I am certain, Sir, that this is merely due to lack of attention and lack of care. And what was the reason that was given by the honourable Dr. Ambedkar so far as this change in article 254 was concerned ? I was not at all satisfied with it. He seems to have for the. moment, any way, the prejudice which Mr. Brajeshwar Prasad is never tired of expressing viz., lack of faith in the future Parliament. The only reason he gave was that he did not think it wise to leave it to the Parliament to decide these financial issues. I do not feel convinced by this only argument advanced by him.

Shri Brajeshwar Prasad: I gave two reasons. Probably my friend did not follow me.

Dr. P. S. Deshmukh: I do not propose to answer Mr. Brajeshwar Prasad to the extent he expects because that is unnecessary for my purpose. I am a* referring to points which I think are relevant and should be answered. Just as I do not like the President being given any powers so far as the revenues of the State and their distribution is concerned, I also do not like any items to be charged on the revenues of India. This is a special and somewhat exceptional provision which should not be resorted to in such liberal manner, because there is a very special provision so far as charging of the

revenues of India is, concerned. That is governed by article 93 which we have already passed. That article lays down-

"So much of the estimates as relates to expenditure charged upon the Consolidated Fund of India shall not be submitted to the vote of Parliament."

Whenever we have a provision whereby any expenditure is charged upon the Consolidated Fund, to that extent Parliament is deprived of any effective voice in it, and -1 do not think it is in the interests of the dignity or the supreme nature of the position of the Parliament to increase the items where expenditure is charged on the Consolidated Fund of India. In spite of all that, Sir, this is a provision which relates to the welfare and the proper governance of those areas where the unfortunate tribal people live. The areas are so big and the population so large that it is only right that the powers of any expenditure that we provide for in that regard should be given to the President. Even is the Act of 1935 the excluded areas and the welfare of the tribal people were in the discretion and were the special responsibility of the Governors and the Governor-General. If we agree that the condition of the tribal areas is such that they require some special assistance. then it is only proper that Dr. Ambedkar should change the provision-, of article 255 so as to bring, them in conformity with the provisions of article 254. He is yet to get up and say whether he accepts this amendment or not. I hope he will be in a position to say that he agrees with the contention that has been advanced. My interest in this provision for Assam is because Assam forms an important frontier of India and it has been suffering financially for a very large number of Years. I am somewhat personally interested in the matter and this is because of the fact that inmy own province of the Central Provinces and. Berar, we have also got tribal areas and a large tribal population, Their population in our province is 44,39,000 out of the total population of 1,96,00,000 or roughly 22.6 per cent. Sir, besides this I have always taken the utmost interest in the welfare of the backward and suppressed and oppressed communities, in India and from that point of view also, I sincerely urge that the utmost possible help should be rendered to the province of Assam. I hope, therefore that this sensible amendment which appears to have convinced the honourable Doctor long ago so far as article 254 is concerned will appeal to him now and the amendment would be accepted.

Shri Prabhu Dayal Himatsingka :(West Bengal : General): Mr. President Sir, I beg to support the amendment moved by my honourable Friend the honourable Rev. Nichols-Roy. That amendment, if accepted, will make this article a little more flexible. At the present moment, until Parliament by law provides no amount can be given as grants-in-aid to any of the provinces. If the amendment suggested by him is accepted' if the Parliament does not by law provide the President may prescribe by Order and then- the provinces may be given such -sums as they may be in need of. You will find,. Sir, from the scheme of the provisions of this Chapter that except for income-tax. all the other collections made by the Centre are to the retained by them until 'under article 260 the Finance Commission makes a report and then the President can take action : but so long as that is not done, it is necessary that the President should be enabled to make some provisions for the provinces which are in need of such an aid The other provision in this section is quite necessary and useful and in spite of the difficulties imagined by my Friend, Mr. Brajeshwar Prasad I do not see how even if any other provision is made for the tribal areas as suggested by him, the provision in this article can stand in the way. The two provisos make provision that if any amounts is spent by any of the Provinces for schemes of development that will be undertaken both in consultation or with the PPROVI of the Government of India, such sums will be paid by the Government of India and similarly

Assam will be paid out of the revenues of India as grants-in-aid such sums, capital and recurring, which they will be spending in excess of what they had spent in the last two years. Therefore, Sir, I do not see how these provisions here can in any way stand against or militate against any of the provisions that we may make hereafter. Therefore,- I would appeal to the Drafting Committee to accept the amendment moved by the honourable Rev. Nichols-Roy as that will not in any way interfere with the scheme and at the same time will make this provision more flexible.

Shri Biswanath Das (Orissa: General) : Sir, a point has just now been made that the provisions made herein interfere with the powers of the, Parliament. I join issue with my honourable Friend in this Statement. I do not see how the provision at all interferes with it, namely, with the powers of the Parliament. In the first place, an enquiry is being provided statutorily under the Constitution. The President undertakes an enquiry. In the second place, under article 255 a Bill is placed before the Parliament and the Parliament passes the Bill. Again Parliament under the statute Places a self-denying ordinance upon its own self that such and such a State will be given such and-such an amount. Therefore the assignment comes under the sanction accorded by the Parliament itself; and thirdly, it has also been laid down that that is for a period or term of years. All the necessary safeguards have been provided by the Drafting Committee. I therefore, plead with my Honourable Friends who hold that the provision regarding grants in this article at all interferes with the powers of the Parliament. In fact I hold that the aid flows from the powers vested in Parliament and emanate with its own sanction. Therefore, there is little- reason in attacking the article on that score.Sir, I have another complaint against this article against the use of the expressions "scheduled tribes" and "scheduled areas". Sir, special expressions have been coined and used for denoting and connoting certain ideas and certain difficulties. But experience has shown that with more connotations used, the difficulties increase. Sir, regarding the Depressed Classes, we have substituted a word "Harijan" and that has not solved either our or their difficulties. We have to move with the times. In the Draft Constitution, we have proclaimed and provided equality for all, and provisions have been made in more than one place to give effect to these declarations. That being the position, I do not see why these expressions "scheduled tribes, scheduled areas" and the rest be kept and perpetuated in the Constitution. Sir, in this connection, it may not be out of place to recall that the Imperialist Britain very cleverly put in the idea of separate electorate in 1898. Eleven years hardly passed and you find an insistence in the Minto-Morley Reforms for implementing this in the statute and hardly thirty seven years after that you get the partition of India. With this experience, I plead with my honourable Friends not to play with fire and go on coming expressions "scheduled tribes and scheduled areas". Why should we ? They are an backward classes; we have got many backward classes and a special provision is being made and protection has been given in articles 28 to 40 and they are quite enough. As if these are not ample, you have made special provisions; but why not vest these powers in Parliament, and give confidence to the Parliament? People have devoted their life-long services-this country has given birth to persons like Thakkars and a galaxy of such workers who have made it a life-long devotion of theirs to serve these backward people. Why not have confidence In the good sense of the country, in the protection afforded in the Constitution and why perpetuate these expressions which I believe, Sir, lead into something deplorable as is our experience with regard to separate electorate ? Having stated so far about backward tribes and areas, I come to another portion of article 255.

I specially refer to the first

clause in the proviso, which reads

"The average excess of expenditure over the revenues during the three years immediately preceding the commencement of this Constitution in respect of the administration of the tribal areas specified in Part I of the table appended to paragraph 19 of the Sixth Schedule;"

Sir, grants will have to be made on the basis of the excess expenditure incurred during the past three years. How and why ? Where are the unfortunate Governments of Assam and Orissa to find excess money to be spent in these undeveloped areas ? They are themselves running into deficits and their incapacity and the colossal want of these areas have been stressed by no less a person than Thakkar Bapa himself, who has devoted all his life and pleasure to this great problem. Why should you rely on the past expenses when these administrations have to run without any surplus balance to be invested in these undeveloped areas ? Sir, this portion of the provision seems to be unnecessary especially after provisions contained in sub-clause (b) of the proviso, namely, "the costs of such schemes of development as may be undertaken by that State with the approval of the Government of India for the purpose etc." Clear it is that nothing could be done without prior sanction.

Sir, I am thankful to the honourable House as also to the Drafting Committee and the Government for making, special provision for these undeveloped areas, in this article. But, when are these benefits to commence? These benefits could accrue after five years. I understand certain amendments are coming limiting the period further down, which I welcome. They may come a ROD earlier. As has been stressed by the honourable and revered Thakkar Bapa,their wants are urgent and immediate and the resources of the provinces are few and far between. Under- these circumstances, I plead that certain specific provisions be made or a declaration be forthcoming from the powers-that-be that immediate provision in this regard is made.

With these words, Sir, I support the amendment of my honourable Friend.. Rev. Nichols Roy because it eases the situation so far as it goes.

Shri P. S. Nataraja Pillai (Travancore State) : Sir, my only excuse for tervening in this debate at this late stage is that coming as I do from a Schedule III State, there are certain facts which I would like to place before this House.

Sir, perhaps the articles bearing on the distribution of revenues between the units and the Centre are the most important ones, perhaps the vital ones, in any Federal Constitution. As the Draft Constitution now stands, the distinction between States in Schedule I and the States in Schedule III has been done away with and we have accepted articles placing the Schedule III States on a par with the Schedule I States. So far, even on the question of financial distribution between the provinces and the Centre there have been complaints and though there have been awards, even their bickerings and friction still continue. I do quite well realise the onerous responsibility of the Centre and without adding to its financial resources the Centre will not be able to discharge it. But, at the same time, Sir, for the material and moral welfare of the people, the States have also to discharge their duties. Unless this question of division of finances is equitably settled and justice done, we cannot expect the peaceful progress of our people.

Sir, these new Unions of States created by the merger of Indian States have for a long time enjoyed a kind of right to tax the central sources of revenue, as income, excise and customs. Their financial system and their administrative structure have been developed on these sources of income. Now if ail of a sudden, the central sphere is marked out, taken away and if the States are left with only the resources they can take along with other provinces, then the future of these States will be black indeed. For example, in the State from which I -come, Travancore, forty per cent. of the' revenue is derived from the central sources of revenue.

Immediately this Constitution comes into force, that source of revenue will be lost to this unit. The administrative system of this State was developed during the course of the last one century and more, and the administration itself was modelled with these resources at their command. Now unless some provision is made for a transitional period to develop other sources of revenue to meet the exigencies of their ad-ministration, the lot of these States will be hard indeed.

This fact is not new to this House, as is evident from the Report of the Union Powers Committee, in paragraph 2 of their report dated 17th April 1947. where they say: "Some of the above taxes are now regulated by agreement between the Government of India and the States. We therefore think that it may not be possible to impose a uniform standard of taxation throughout the Union all at once. We therefore recommend that uniformity of taxation throughout the Union may, for an agreed period of years after the establishment of the Union, not extending 15, be kept in abeyance and the incidence. levy and realisation and apportionment of-the above taxes in the State units shall be subject to agreement between them and the Union Government. Provision should accordingly be made in the Constitution for implementing the above recommendation..

In pursuance of this recommendation, provision has been made in the Draft Constitution. But I feel, Sir, by the changes that have been effected and by the articles that we have adopted before, the revised Draft may not contain article 258 as drafted in the original Draft. As it is today, the States inSchedule III and Schedule I stand on a par. Unless some sources of revenue are set apart or some adjustments made-for the transitional period, for ten years or so, to make the States capable of meeting their demands from their own resources, these States cannot function. Some provision must be made in 'the Constitution to give them adequate financial help. That help may be in the form of subventions or in the form of grants. If the Constitution is to take effect on a particular date, from that date onwards, these States will lose the right which they had been enjoying for a long time past.

I may, in this connection, beg leave to place before the House that in certain States, the administration has been steadily progressive and they have been catering to the growing needs of the people. In some States, for, example, Travancore the State from which I come, compulsory education has been introduced prohibition has been enforced, and even land tax which is considered to be the principal source of taxation for provinces, a basic tax on land has been fixed and prohibitory assessment and taxation abolished. Unless some provision is made, the future of these States will be pitiable indeed. In a highly literate and politically conscious country, unless the State is able to provide for the natural and progressive development of the people and to satisfy their aspirations, there will be serious trouble, and that will not help the progress and prosperity of the whole of India. For, I feel that the strength of the chain will depend upon the strength of the links. Discontent and trouble in any area, will not be in the interests of the people of India. I earnestly submit to the House that this aspect of the question may also be considered.

Shri Rohini Kumar Chaudhuri (Assam: General) : Mr. President, Sir, honourable and responsible persons who were entrusted with the framing of the new Constitution should take into consideration the past experience so that the past defects may be remedied in the present Constitution. It is with this end in view that several Members of any province as well as from elsewhere spoke at length on the inequity and the injustice which was done under the past Constitution so far as provinces like Assam and Orissa were concerned; but Sir. I need not repeat or allude to those things in my present speech. I would only ask honourable Members of this House to remember that the justice which we had expected by an

amendment of article 253 or 254-that expectation has gone in vain, and now we are left to this article 255. If 255 were worded in a different way, it might help provinces like Assam and Orissa. As it stands it even now rests with the Parliament 'whether any money would be allocated to any province in need of such money or not. Of course this article enables the Parliament to give sufficient grant to the provinces which are in need of it but it does not make it compulsory on the part of Parliament to make such grant. The Parliament is composed of members of different provinces, and each member is under some obligation or has given some sort of assurance that the concern of his province will be his first concern; and now therefore if in a tussle between different provinces the Parliament is not persuaded to give a grant to any particular province, or in an emergence the Parliament decides not to make any grant to any particular province and it confines the grants to richer provinces, what will be the fate of Bihar, Orissa and Assam that stand in absolute need of grant from the Centre ? I would therefore ask honourable Members who are in charge of the framing of this Constitution to give special attention to this aspect of the question whether the provinces who are admittedly in need of grants can expect or would be entitled to expect that some grant should always be made to them in order to meet their needs. Under the old article 142 of the Government of India Act the Government at the Centre has always been giving some grant to the Provinces, and so if it is treated as a matter of convention and if the words in 255 really mean 'shall', then I have nothing to say. But if thisarticle leaves the option to Parliament even not to grant a province which maybe in need of that grant, then I would most respectfully protest against the present phraseology of this article.

I would also like to draw the attention of the House to the first proviso of article 225. This is the only silver lining in the whole chapter of finance in our Constitution. -It compels the Government of India to finance certain grants for development and raising the level of administration of scheduled areas in a particular State. To that extent it is all right but when you say that it should be raised only to the level of the rest of the areas of that State, I think it practically means that you are giving nothing. In the poor state of finances in a provance like Assam where there is a large tribal area, if you only wish that it should be raised to the level of the rest of the areas of the province, it means you will do nothing because time is coming shortly, unless you do something in the matter, when the whole administration of the province of Assam shall have to collapse for want of finance and the condition in that province win deteriorate from day to day and by the time you have this article in force it will be very bad. If your ambition is only to raise the tribal areas in the province of Assam to the rest of the province, it means that your ambition is very small indeed and that you do not want to do anything. Therefore I would suggest that the ambition which you ought to have in this matter is that the areas-tribal areas-should be administered in such a way that it can be brought up not merely to the level of the rest of the province of 'Assam but also to the level of the areas of the Union itself. Therefore I have suggested in my amendment that these words 'of the areas of that State' should be converted to "areas of the Union". Although that amendment is not there, there is nothing to prevent us from working in that direction. Another point to which I would draw the attention of the House is as regards the sub-clause (a) of the second proviso which says :

"The average excess of expenditure over the revenues during the two years immediately preceding the commencement of this Constitution, etc."

I submit that the Word 'average' should not be there. When the period is reduced from three to two years I think the question of average did not arise. The

word 'average' might be dropped and we might say 'excess expenditure should be provided for'. The expenditure is rising every year and even the expenditure of one year will have no proportion to expenditure of next preceding year. Therefore in the interest of tribal areas, the word 'average' should have been dropped and 'any excess of expenditure found At the time this Constitution comes into force' should be substituted. If these two considerations are borne in mind i.e., consideration of raising the level of the tribal areas to the ordinary level of the rest of the Union; and -secondly, excess of expenditure found at the time of the Constitution coming into force, then something,, substantial, I am sure, will have been done in the cause of improvement of tribal areas.

Pandit Thakur Das, Bhargava (East Punjab : General) : Sir, this article 255 is really one of the symbols of the solidarity of India. Those poor provinces who cannot meet their expenses and raise their level of administration to, the level of the administration of other province,,; stand in need of financing by the Centre, and whatever may have been the policy in the past, the policy of the present Constitution is to bring about a change in that policy and now the rule is confirmed by article 255 that these provinces will be helped by the Centre. It says :

"Such sums, as Parliament may by law provide, shall be charged on the revenues of India in each year as grants-in-aid of the revenues of such States as Parliament may -determine to be in need of assistance, and different sums may be fixed for different States :"Unfortunately, I find there are three 'mays' in this article and only one 'shall'. This article does not, as a matter of fact give any right to any province in need to insist and to get its rights declared by Parliament. It is in the discretion of (he Parliament and the article is so worded that it leaves full discretion to Parliament to give such assistance or not.

I should have been more happy if a duty had been enjoined upon Parliament to give assistance to such of the Provinces as stood in need of it. In this connection I cannot but mention to you the case of East Punjab. The provisos to this -article speak of the administration of scheduled tribes, etc., etc. But unfortunately there are some provinces, specially East Punjab, whose finances have been devastated and whose better income-,earning parts have been given over to Pakistan, and where, therefore, the income has now become comparatively much lower than before. In regard to such provinces, it is absolutely clear that unless the Centre goes to their aid, it will be difficult for them to arrange for an administration which will be on a level with those in other provinces. In regard to such provinces it is necessary that the President should be authorised to give such aid as the Cabinet thinks justifiable. To this end, and probably for other purposes also, the Rev. Nichols Roy has brought in his amendment and I support that amendment. Before such laws are made by Parliament, there is no reason why the President should not be empowered to do the right thing when the occasion demands it. I therefore, support this amendment, and request that it may be passed by the House.

Prof. Shibban Lal Saksena (United Provinces : General) : Mr. President, Sir, first of all, I want to draw the attention of Dr. Ambedkar to one fact connected with this article. In this article, he has said ". Such sums, as Parliament may by law provide, shall be charged on the revenues of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States". But, Sir, I had moved a similar amendment, in connection with articles 251 and 254 in which I had only desired that the allotment should be made by Parliament by law. But the argument raised against it was that there will be unnecessary wrangles in Parliament for allotments to the provinces. But I find that in the present case, he has stated "that

Parliament may by law provide. . . . etc." May I know whether there will not be wrangles in Parliament for bigger allotments to the provinces ? Either he is illogical, or he has other purposes Which he wants to hide. Or it may be that he made a mistake then in connection with my amendment, when he objected to the words "Parliament by law may." Anyway, I am glad be has agreed to these words in the present article.

Sir, I support the amendment moved by the Rev. Nichols Roy, and I am thankful to Mr. Sa'adulla for his long and illuminating speech in which he gave us a very lucid idea of things in Assam. I personally also feel that this Home has not shown its concerns for Assam to the extent that it deserves. Assam is our frontier province, and the last war has shown its importance. But we are literally starving it. Assam gives us at least Rs. 12 crores by way of export duty on tea and Petroleum alone, leaving aside all the other things, and we take every pie of it and give them only 30 lakhs. And yet we expect that Assam, our eastern frontier should be the bulwark of our defence. I think that the case made out by our Assam friends is a steel case and it must be considered by the House. This amendment, in fact, only enables the President that this relief to Assam should be given immediately. Otherwise "Parliament by law" will take some time, and they want that as soon as this Constitution is passed, the President, can by order allot to them some share by which they will be able to meet the recurring deficits andalso carry out some of their development schemes. I have been to Assam on many occasions, in connection with labour Organisation of railway workers, of coalmines and petrol workers there, and I know how important this area is. It is a vast expanse of probably 50,000 sq. miles with a population of only 75 lakhs. The tribal people form a third of the population,. Here we have provided special sums for their- development. But I feel that we must have a five-year plan to bring these tribal areas into line with the rest of the population. They have been neglected -for many generations. Thakkar Bapa who has spent his whole life in serving these people drew our attention to the plight of these people, both in Orissa and in Assam, and he is happy that we are providing in Constitution special sums for them. I hope we shall not wait for law to be made by Parliament in this respect.

Allotments should be made from the funds of the Union for development of these areas and these tribal people so that they may take their proper place in our free country and be a bulwark of our freedom and the guardians of the eastern frontiers of India.

The Honourable Dr. B. R. Ambedkar (Bombay: General) : Mr. President, Sir, I can at once say that I am prepared to accept the amendment moved by my Friend Mr. Nichols Roy. The draft of this article does seem to give the impression that until Parliament determines each year what the grants are to be, the President will have no power to do so. That certainly is not the intention of the Drafting Committee. The Drifting Committee would like the President to exercise -his -powers of making grants under article 255 even before Parliament has made any determination of this matter. And in order to make this position quite clear, I am, as I said before, prepared to accept the amendment moved by Mr. Nichols Roy. I would, however, at this stage, like to say that I have not yet had sufficient time to examine the exact language he has put in his amendment; and therefore, subject to the reservation that the Drafting Committee would have the liberty to change the language in order to suit the text as it stands in article 255, I am prepared to accept his amendment.

Mr. President: I will now put the amendments to vote. The first is amendment No. 84 of Dr. Ambedkar.

The question is :

"That in article 255, for the words 'revenues of India, wherever they occur, the words Consolidated Fund of India' be substituted."

The amendment was adopted.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Tuesday, the 9th August 1949

Mr. President: Then comes amendment No. 85, also of Dr. Ambedkar. The question is:

"That in the first Proviso to article 255, the words and figures 'for the time being specified in Part I of the First Schedule' be omitted." The amendment was adopted. Mr. President : Then I put amendment No. 86.

The question is:

"That in clause (a) of the second Proviso to article 255, for the words 'three years the words - two years be substituted.- The amendment was adopted.

Mr. President: And then I put Rev. Nichols Roy's amendment.The question is:

"That in article 255,-

(a) after the words 'Parliament may by law provide the words 'or until Parliament thus provides, as may be prescribed by the President' be inserted;

(b) after the words 'Parliament may determine' the words 'or until Parliament determines as the President may -determine' be inserted; and

(c) the following Explanation be added at the end of the article:- "Explanation--The word "prescribed' has the same meaning as in article 251 (4) (b)

The amendment was adopted.

Mr. President : Then I put the article, as amended.

The question is:

"That article 255, as amended, stand part of the Constitution."

The motion was adopted. Article 255, as amended, was added to the Constitution.

Article 256

Mr President. We now take up article 256. Amendment No. 2925 by Dr. Ambedkar, in Vol. II, of the printed list.

The Honourable Dr. B. R. Ambedkar: Sir , I move:

"That for clause (1) of article 256 the following clause be substituted:-

'(1) Notwithstanding anything in article 217 of this Constitution. no law of the legislature of a State relating to taxes for the benefit of the State or of a municipality, district board. local board or other local authority therein, in -respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income."'

Sir, it is proposed in a: subsequent article to permit local authorities to levy certain taxes on professions, trades callings and employments upto a certain limit. -It is feared that such a tax, if levied by the State, might be called in question on the ground that it amounts to a tax on income and being within the exclusive authority of the Centre. It is to prevent any such challenge to any law made for the purposes mentioned in sub-clause (1) that this provision has been deemed by the Drafting Committee to be very necessary, and accordingly I move this amendment.

Mr. President :There is an amendment to this amendment of which notice, has been given by Mr. Sidhva.

Shri R. K.'Sidhva (C.P. & Berar : General) : I do not wish to move it.

Mr. President : Then there are amendments Nos. 2926 and 2927 an the Printed List, of Giani Gurmukh Singh Musafir. I see he is not moving them. Then No. 2928 standing in the name of Sardar Bhopinder Singh Man.

Sardar Bhopinder Singh Man (East Punjab: Sikh): I am not moving ft.

Mr. President : Then amendment No. 203, Mr. Sidhva.

Shri R. K. Sidhva: I do not wish to move it.

Mr. President : Then Nos. 89 and 90 in the name of Mr. P. D. Himatsingka. He is not moving them. No. 91 in the name. of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Sir, I do not wish to move it.,

Mr.President : Amendment No. 92, Mr. Shibban Lal Saksena.Prof. Shibban Lal Saksena: Sir, I beg to move:

"That in clause (2) of article 256, for the words -two hundred and fifty rupees' in the two places where they occur, the words 'one per cent. of their annual income' or 'one thousand rupees' be substituted."

If that is done, the clause will run as follows

'(2) The total amount payable in respect of any one Person to the State or to any one municipality, district board; local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed one per cent. of their annual income or one thousand rupees per annum :

Provided that, if in the financial year immediately preceding the

commencement of this Constitution there was in force in any State or any such municipality, board or authority, a tax on professions, trades, callings or employments, the rate or the maximum rate of which exceeded one per cent. of their annual income or one thousand rupees per annum, such tax may continue to be levied until provision to the contrary is made by Parliament by law. and any law so made by Parliament may be made either generally or in relation to any specified States, municipalities, boards or authorities.'

Sir, I only want an increase in the amount. In fact, the amendment. which Dr. Ambedkar has moved makes it legal for local boards, district boards and municipalities to levy taxes on the income of the inhabitants in their areas. In fact I would have very much wished that this clause (2) had been deleted. Ibis was an amendment which no, less a person than the Premier of my Province, the Honourable Pandit Govind Ballabh Pant had also given notice of. What his amendment intended and what I also want to impress upon the House is that our local bodies are practically starved of finances. We have provided for finances for the Central Government, we are trying to allocate taxes between the Provinces and the Centre, but the municipalities, the local boards and all these local bodies have practically no finances. I come from the District of Gorakhpur which has recently been divided into two parts but still it has a population of about 22 lakhs. The annual income of the District Board there is only Rs. 11 lakhs which means about eight annas per individual of the population. Do you expect that any district board with such an income can do anything for the welfare of that mass of population ? I can quite understand the Centre being strong and having finances, the Provinces being strong and having finances, but ultimately all nation building tasks will have to be done by local authorities. You may say you can lay out railways and roads, you can also provide Universities, but ultimately it is the municipalities and local boards which have to look to the sanitation of the areas, to the primary education in their areas and to roads. Do you imagine that with a sum of Rs. 11 lakhs the District Board of Gorakhpur can meet the needs of that big District ? What has been my experience in my district must also be the experience of all of you in your districts. I therefore think that if you this source of income of taxation only up to a limit of Rs. 250, then you really close one important avenue to the District Board., In my district there are sugar mills, and they pay huge dividends-in fact Rs. 30-crores was the annual profit of the sugar factories in United Provinces and Bihar that year. Cannot the District Board legitimately ask them to pay a few thousand rupees I But by this you make it impossible for the District Board to levy any tax on the sugar mills although the sugar mills use their roads and the Board have to spend money on those roads. Yet we cannot tax these factories beyond Rs. 250. I have only demanded one per cent. of their income or Rs. 1,000. I have taken care to put both the things because it is quite possible that in the case of individuals it would not be possible to find out their income. We would not have all the powers of the income-tax authorities to go and find out the incomes of individuals. In the case of factories and corporations like sugar mills, they publish their balance sheets and we can know their income and tax them to the extent of one per cent. In other cases, you can limit the amount to Rs. 1,000. This will increase the revenues ofthe local bodies substantially. In fact at present because we cannot tax the rich properly we are forced to tax the poor people heavily. Even the man with a betel shop is taxed Rs. 5 or 10, which he cannot afford to pay. If we can tax. the sugar mills and other factories as also other millowners to the extent of at least 1 per cent of their annual income, I am sure these poor people will be spared that tax, which is now very heavy on them. I therefore think that

this limit of Rs. 250 is a proposition which should not be laid down in the Constitution. If necessary, it can be left to the Parliament, to which we have left many other things. Here you want to fix in the. Constitution that no local board shall levy a tax over Rs. 250 on income. I would therefore request the Drafting Committee to alter it as I have suggested or omit it altogether, so that the local boards may be free to tax on incomes according to the needs of their areas. While we, are spending crores of rupees under the central budget, local boards are starved for very small sums. They are the bodies who really want the money so that they can give proper attention to the people in their areas, give them better roads and schools and other amenities which they very much need. All our schemes are ultimately calculated to provide amenities to the villagers but if we deny the revenue to the district and local boards who are responsible for satisfying the needs of these areas, the people of those areas will suffer. I think that the sources of revenue of the district boards, municipalities and local boards must not be, limited in this manner in the Constitution. This is a very retrograde provision in the Constitution and must be amended.

Shri B. M Gupte (Bombay: General) : Sir, I support this article as amended by the proposed amendment of Dr. Ambedkar and I congratulate the Drafting Committee on having redressed a legitimate grievance of the local bodies Government of India imposed a limit of a maximum of Rs. 50 only for profession tax and that practically rendered the source valueless. In the rural this source of revenue was not fruitful, as there agriculture; is the predominant occupation and there are hardly any professions which can be taxed. The municipalities could have usefully imposed this tax but this maximum of Rs. 50 practically did not make it worthwhile for them to go into the expenses of collecting such petty sums. Naturally therefore, this source was practically rendered useless for them and I therefore congratulate the Drafting Committee for having redressed this grievance of the local bodies. The financial condition of the local bodies is already very parlous. Their financial resources are far too inadequate compared to the services that expected from them. Their sources of taxation are already being encroached upon by the Central Government and the provincial Governments. In a democratic State the efficiency of the local bodies which cater to the day to day needs of the ordinary citizen is a matter of very great importance. Therefore anything calculated to improve the financial resources and hence the efficiency of the local bodies is certainly to be commended. I sympathise with Prof. Shibban Lal Saksena's amendment but we cannot go so far. We must maintain a balance between the needs of the Centre and the local bodies and in that light I think Rs. 250 is a substantial increase over Rs. 50 and Rs. 1,000 would be quite disproportionate. Though anything calculated to improve the efficiency and financial resources of local bodies is commendable, still I think that Rs. 1,000 would be a very high limit.' Therefore I support the article as amended by Dr. Ambedkar.

Shri R.K. Sidhva : Sir, I am reluctantly obliged to accept this article, although it is an improvement upon the previous one as suggested by the Drafting Committee. Why I say that I am reluctantly compelled to accept the article isbecause I do feel that local bodies in this country have not been given which is due to them in the Constitution. The local bodies are an epitome of the national government and in this Constitution we have tried to build it from the top leaving the bottom to take care of itself. That attitude, I can assure you, will not bring happiness and prosperity to the masses of this country. Local bodies have till now been left at the mercy of the provinces and although in this clause and some others hereafter mention has been made about the finances of the local bodies, their relation and their adjustment are entirely to be left

to the provincial governments, with the result that the local bodies are suffering immensely financially and the consequence is that the villages, small towns and even the big cities - suffer today. These are the places where we really should begin if we really want to bring in any kind of amenities and prosperity to the people to whom we have pledged to better their position. But in this Constitution I am sorry to say that kind of provision has not been made.

Under the 1935 Act a good deal of injustice was done by the British government to the local bodies and I am glad that this limit of Rs. 50 has been raised to Rs. 250. I would have preferred that this limit had been graded and brought up to Rs. 2,500. That would have brought revenue to the local bodies from persons who can afford, to pay and would have gone for the benefit of the needy and poor people. In October last year there was a conference called by the Health Ministry of all provincial- Ministers of Local Self Government, They unanimously stated that the local bodies were suffering for wan$ of funds and their finances should be improved if they are to do any good to the people. They appointed a Committee called the Local Finances Committee which met last month in Delhi and sent their interim recommendations to the Drafting Committee so that their case may not go by default. The Committee considers this limit of Rs. 250 as being very low and they would -like to raise It to a thousand rupees per annum. I do not know what consideration was given to this recommendation. This was a unanimous decision of the Ministers of the provincial Governments but it is not considered at all, and the Drafting Committee imposes their own decision which will benefit no one. The U.P. Government also had a committee, called the Local Bodies Graft-in-Aid, Committee who also sent an interim report to the Drafting Committee in which they say: "Clause (ii) mentions a special tax on trades and callings as compared with. clause (iii) which is a general tax. In regard to the latter, the powers of our municipal boards were further curtailed by the Professions Tax Limitation Act, 1941, which provides that notwithstanding the provisions of any law for the time being in force, any taxes payable in respect of any one person to a province or any local authority by way of tax on' professions, trades, callings or employment shall from and after April 1, 1942, cease to be levied to the extent to which such tans, exceed fifty rupees per annum. * * * Thus its exclusion from the restrictions of the Professions Tax Limitation Act has been of little practical utility. or benefit The tax under section 128(1) (iii) of the Municipalities Act was really a profitable source of income, and therefore its limitation to a low maximum of Rs. 50 per annum is not only objectionable in principle, as it violates against one of the chief canons of taxation requiring assessment on each individual in proportion to his ability to pay to ensure an equitable distribution between rich and mm. but has 'also affected adversely the financial position of several municipalities."

I, therefore, contend that this provision of the Drafting Committee will not meet the requirements of the local bodies. in the Calcutta Corporation they are levying a licence fee of Rs. 500 for certain professions which they are allowed to do under the Government of India Act, 1935. Under this provision they will be deprived of that income. The' Administrative Officer of the, Calcutta Corporation cites the instance of Joint Stock Companies which as managing agents control more than half a dozen large industrial concerns and may not yet be taxed more than Rs. 500 while the burden of' taxation falls more heavily on the poorer sections of professional and business people. TheCorporation wants the upper limit to be raised to Rs. 2,500 while the West Bengal Municipal Association suggests Rs. 1,500. I therefore feel that while the Drafting Committee has made, very little improvement on their previous draft they were not correct in rejecting a graded

scale so that local bodies get a large amount which can be used for constructive work. From my own experience I may say that they should not be treated in this way because the provincial Governments are always stingy in the matter of granting funds for these bodies and unless we in this Constitution make better provision for them the lot of people living in those areas will not improve. I do not know why the Drafting Committee were so stingy when the provincial Governments who have to administer these local bodies thought a larger amount was necessary.

Sir, I support this article subject to above remarks.

Shri Prabhudayal Himatsingka: Sir, I oppose the amendment of Prof. Saksena. I had an amendment myself but I did not move it as it was not discussed in the party. This article is an exception to the general, rule that taxes on income are to be imposed by the Centre only. It is an exception for the benefit of the local bodies. But if you see the article you will find that taxes can be imposed on professions, trades, callings and employment for the benefit of the State or a municipality, district board, local board, etc. So that provincial Governments can impose this tax and local bodies can also do it. Whether a man has an income or not from some trade, profession or calling; he may be made to pay Rs. 250 to the State and also taxed by the local body in whose jurisdiction the trade or profession is carried on. The man who has an income which is small or has no income at all should not be made to pay any tax. In the Government of India Act there was a limitation that the tax should not exceed Rs. 50 and the provincial Governments have passed Acts levying Rs. 30 on all persons making an income by any profession, trade or calling. The result is that a person who has to pay Rs. 30 as income-tax has to pay a like sum to the provincial Government. On the basis of this article he can be made to pay Rs. 250 to the municipality and Rs. 250 to the provincial Government apart from what he has to pay to the Centre in the shape of income-tax. Here, wherever any person is carrying on any trade or profession, whether he is making an income or not, he can be compelled to pay tax. Therefore the salutary provision of limiting it to Rs. 50 was very good. The present suggestion that it can be made I per cent. of the income or Rs. 1,000 is such that it cannot be supported under any circumstances. My friend forgets that simply because a man carries on a profession he may not be in a position to pay even Rs. 50 not to speak of Rs. 1,000. Therefore I wish that the Drafting Committee which had amendment No. 91 in its name had moved it limiting it to Rs. 100. But as they have not moved it, they should agree to Rs. 250.

Chaudhari Ranbir Singh (East Punjab: General): *[M. President, I am reluctant to support this article because I hold that the amendment moved by my Friend Mr. Shibban Lal Saksena to this article is based on a principle and its rejection would mean injustice to the, general public. These days generally the people of meagre income have to pay. Profession Tax. While the poor Harijans have to pay twenty to twenty-four rupees on account of Profession Tax, though their capacity does no permit them to pay even two or three rupees, the rich industrialists and factory owners, who are capable of paving far more than the Harijans, do not pay their full share. The maximum limit of Profession Tax prescribed under this article is Rs. 250. It would operate inequitably against the poor people. As an agriculturist I would like to state before the House that apart from the Land Revenue, the other taxes that are realised from us in the Punjab by District Boards and other Local bodies come to six pies in the rupee. Now attempts are being made there to raise this rate further. Well, the income of rupees two thousand 'a year goes tax free but not even a bigha of land is exempt from Land Revenue. I am utterly unable to understand the logic behind this proposition. Certainly this operates very disadvantageously against the farmers. Irrespective of the fact whether they have economic holding or not, land revenue is charged from them, and in addition to that the Profession Tax at the rate of six pies a rupee is also realised from them. I fail to understand why this principle of additional taxation is not applied, in respect of rich people. Limiting of Profession Tax to an amount of Rs. 250 a year would cause a considerable loss to the income of District Boards and other Local bodies and in that case they have either to impose further taxes on the poor section of the population or they have to curtail the undertakings, beneficial to the poor. If we mean to do good to the poor and to establish hospitals and other institutions for their benefit we have to tax the rich people. You will be in a position to do so only when you accept the amendment moved by Prof. Shibban Lal Saksena. As compared to the taxes that agriculturists have to pay, this maximum limit of Profession Tax is not, much. I may again add that keeping in view the principles on which the land revenue is charged, the limit for the Profession Tax is very negligible because the agriculturists have to pay far more than one per cent. on their incomes. I would, therefore submit that the amendment to this article moved by Mr. Shibban Lal Saksena should be adopted.]

---

*[ ]Translation of Hindustani speech.

Babu Ramnarayan Singh (Bihar: General) : Mr. President, I partly agree with you when you object to the speeches made in criticism of Government. But, Sir, it is very difficult to forget the experience specially when it is a bitter one. Sir, we are making the Constitution. I was under the impression that all the powers of the country will be directly transferred to the people in the villages. Now, what do I find ? All the powers are concentrated in the Centre and some powers are allowed to trickle down to the provinces. Now we have to see what the provinces have done and will do. Some amendments have been given notice of by Prof. Saksena. I do not understand why this limitation of Rs. 250 is unposed on the levy that can be made by a local body. There is no limitation on the taxes that may be levied by the Central and provincial Governments. They may levy lakhs and lakhs. This is most objectionable.

Sir, when I said that all the power should be given to the people in the villages I did not mean that there ought to be no provincial or Central Government. Let there be Central and provincial Governments. But let them not govern the people. Let them help and organise the people and advise the people. Why should even in matters of taxation the people in the villages and districts are not to have a hand ? If you go to the mofussil you will see the governmental activities there. If there is a very well-kept road it is a P.W.D. road of the Centre or of the Province. All roads constructed by local bodies are in a very bad condition, This is so because all the money is in the hands of the Central or provincial Government. It is all going the wrong way. All the money should belong to the local bodies. As it is they are getting some funds by way of mercy from the local Government which in turn gets something from the Central Government. I do not think this is right. This process should be reversed. Everything should belong to the villagers. The provincial Government should get contributions from the local bodies and the Central Government should get contribution from the provincial Governments. Sir, I am not going to say much on the subject. I would only say that the amendment of my Friend', Mr. Saksena, is a very reasonable one. With these words I strongly support and I appeal to the House to accept his amendment.Shrimati Purnima Banerji (United Provinces : General) : Mr. President, Sir, I am sure all of us agree with the amendment moved by Dr. Ambedkar to empower local bodies to levy taxes on professions. We also agree with the other amendment moved by Prof. Shibban Lal Saksena saying that the upper limit of the Lax Collected should not be fixed at Rs.

250 but should relate to the income of the person concerned. As you know, in our province of the U.P., we have by a recent Act established about twenty-two thousand Panchayats all over the province. To these Panchayats such rights and functions have been given which, if properly exercised, would really bring Swaraj to the people. As you know, our country is big and wide and medical amenities and educational facilities are all very sadly lacking. If these Panchayats or local bodies are to function properly, they must have adequate finances at their command. We have given them enough powers and we hope that, as time passes on, they will lay down roads and will foster such industries as will add to the prosperity of the villages and the localities. We fear that all these nation-building activities which are now allotted to them will not be able to reach their fruition unless we have enough finances. Therefore we agree with the amendment now placed before the House that the finances of the local bodies should draw some profit from the trades and professions in the area concerned and this incorme should bear some proportion to the income of the persons paying the tax. As I said, we hope that these Panchayats and local bodies will lay down roads and will pay their fullest attention to the development of such industries as WM add to the general prosperity of the villages. With these words, I support the amendment moved by Dr. Ambedkar and also the amendment moved by my Friend, Mr. Shibban Lal Saksena, saying that the limit of Rs. 250 should not be fixed but rather it should be stated in this way that it should be at least one per cent. of the income of the person taxed.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, those friends who want to increase the maximum limit from Rs. 250 to one per cent. of the income, I am afraid, have entirely misunderstood the needs of the Centre and the manner in which whatever the Centre collects by way of income-tax is.distributed to the provinces. Let us first of all see what the Centre gets and what proportion is given away to the provinces. A large proportion of the income-Lax is distributed to the provinces. Only a fraction is retained by the Centre. Another source of revenue to the Centre is excise and even there the Centre is only a collecting agency for purposes of uniformity. As in the case of incometax a large proportion of it is to be given away to the provinces on principles hereafter to be laid down by the Finance Commission. The only thing that the Centre collects and retains for itself is the customs revenue. Therefore the Centre will be completely starved if we go on allocating various sources of revenues to the provinces. That is what our friends are attempting to do. The article which has now been moved by my honourable Friend, Dr. Ambedkar is a concession. Income-tax is a source of revenue to the Centre. The Profession Tax is an invasion of the income-tax field. There is already a provision in the present Government of India Act of 1935; Section 142-A fixes the maximum limit at fifty rupees. This profession tax is an invasion into a source of revenue for the Centre. From its collection of income-tax, the Centre gives grants-in-aid to the provinces and the provinces in turn give grants-in-aid to the municipalites, corporations and various other local bodies. This is not as if this profesional tax is the only source of, revenue to the local bodies and village panchayats. In the villages there is no professional tax. Agriculture is the only profession there. There is no justification for increasing the maximum from Rs. 250 to one per cent. of the income especially considering the rise in the cost of living index, which is now nearly three time the time the pre-war figure. The suggestion of my Friend, Mr. Shibbal Lal Saksena, is that the maximum, instead of being Rs. 250. should be one per cent, If Rs. 250 is the maximum, then the income on the basis ofone per cent should be Rs. 25,000. Is there a chance of any one having an income of more than Rs. 25,000 in an ordinary

village ? Therefore this suggestion is not going to be useful so the villages are concerned. So far as the municipalities are concerned, it is only from the provinces that money could flow into the municipalities as it would flow from the Centre to the provinces. This could only be from the allocations made from the, income-tax collected by the Centre. Under these circumstances, Rs. 250 which is now the, upper limit is sufficient and anything more than that would seriously interfere with the collection of income-tax by the Centre. I am therefore constrained to oppose the amendment of my Friend, Mr. Shibban Lal Saksena, and support the article as moved.

The Honourable Dr. B. R. Ambedkar: Sir, I do not think that any very, detailed reply is called for. The position is simply this, that in every Constitution the taxing resources of a State are generally distributed between the Centre and the States. The question of distributing the resources between the States and' the local authorities is left to be done by law made by the State, because the local authority is purely a creation of the State. It has no plenary jurisdiction; it is created for certain purposes; it can be wound up by the State if those purposes are not properly carried out. This article, which I am provision in a Constitution dealing with the financial resources of what are called local authorities which are subordinate to the State. But having regard to the fact that there are at present certain local authorities and their administration is dependent upon certain taxes which they have been levying and although those taxes have been contrary to the spirit of the Income-tax law, the Drafting Committee, having taken into consideration the existing circumstances, is prepared to allow the existing state of affairs to continue. In fact exception was taken to the limit fixed by the Expert Committee which was Rs. 250. The proposal was that it ought to be brought down to Rs. 150. The Drafting Committee on reconsideration decided that that need not be done and under the present state of affairs may be continued up to the limit and within the scope that it occupies today. I therefore say that this is a pure exception, and on principle I am definitely opposed to it and I am therefore. not prepared to accept any amendment that may have been moved by any honourable Friend.

Mr. President : The question is :

"That for clause (1) of article 256, the following clause be substituted:-

"That in clause (2) of article 256, for the words `two hundred and fifty rupees' in the two places where they occur the words one per cent. of their annual income or ` one thousand rupees' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That for clause (1) of article 256, the following clause be substituted:-

`Notwithstanding anything in article 217 of this Constitution, law of the legislature of a State relating to taxes for the benefit of the State or of a municipality, district Board, local board or other local authority therein, in respect of professions, trades callings or employments shall be invalid on the ground that is relates to a tax on income."

The amendment was adopted.

Mr. President: The question is :

"That article 256, as amended, stand part of the Constitution."

The motion was adopted.

Article 256 as amended, was added to the Constitutions.

Article 257

(Amendment No. 2929 was not moved)

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That the words 'by law' be added at the end of article 257."

It is a little inadvertent omission.

Mr. President: There are two other amendments which do not arise after the amendment of Dr. Ambedkar.

The question is :

"That the words 'by law' be added at the end of article 257."

The amendment was adopted.

Mr. President : The question is: "That article 257, as amended, stand part of the Constitution.'

The motion was adopted. Article 257 as amended, was added to the Constitution.

New Article 258-A

Mr. President: We will leave out 258 for the

present and we shall take up article 259. There is one new article 258-A of which notice has been given by Shri Himatsingka, Patil and Barman. Is it to be moved?

Shri Prabhu Dayal Himatsingka : No, Sir. (Amendments Nos. 2938 and 2939 were not moved.)

Article 259

(Amendment No. 2940 was not moved.) Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in clause (1) of article 259, for the word 'Auditor-General' the words 'Comptroller and Auditor-General, be substituted."

This is done in order to bring the same nomenclature in article 259 which has been given to this officer in the previous article this Assembly has passed,

Mr. President: The question is:

"That in clause (1) of article 259, for the word 'Auditor-General' the words 'Comptroller and Auditor-General be substituted." The amendment was adopted.

Mr. President: The question is :

"That article 259, as amended, stand part of the Constitution." The motion was adopted:

Article 259, as amended, was added to the Constitution,

Article 260

Mr. President : Then we go to article 260.

The Honourable Dr. B. R. Ambedkar: Sir, I move.

"That for amendment No. 2943 of the List of Amendments, the following be substituted:-

That for clause (1) of article 260, the following clause be substituted :-

'(1) The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary, by order, constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President."'

Sir, the point of this amendment is this. Originally, as the article stood, it stated that the Commission shall be appointed at the end of five years. It is felt that it is necessary to permit the President to appoint the Commission much earlier and consequently we are now providing that it should be appointed within two years from the commencement of the Constitution.

Mr. President: You may move amendment No. 96 also.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That in sub-clause (b) of clause (3) of article 260, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

This is a formal one.

Mr. President: There are amendments to this article, which have been printed in the Book.

(Amendments Nos. 2941, 2942, 2944, 2945, 2946, 2947, 2948, 204, 205, 97 and 98 were not moved.)

Mr. President: Amendment No. 115. Pandit Kunzru. (Pandit Hirday Nath Kunzru was not in the House.)

He told me that he would like to move this amendment. I would allow any other Member if he wishes to move it.

(At this stage Pandit Hirday Nath Kunzru came in.)

Pandit Hirday Nath Kunzru: (United Provisions: General): Mr. President I beg to move :

'That with reference to amendment No. 95 of List I (Third Week) of Amendments to Amendments, for sub-clause (a) of clause (3) of article 260, the following sub-clauses be substituted :

'(a) the distribution between the Union and the States of the net proceeds of taxes on income which are to be divided initially between them under this Chapter;

(aa) the allocation between the States of the respective shares of the net proceeds of taxes which are to be, or may be, divided between the Union and the States under this Chapter;"'

Sir, the sub-clause to which I have moved the amendment runs as follows: "(a) the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them under this Chapter and the allocation between the $tales of the -respective shares of such proceeds;".

This sub-clause which is sub-clause (a) of clause (3) of article 260 provides that it will be the duty of the Finance Commission not merely to distribute that part of the taxes divisible between the Central Government and the provinces which belongs to the provinces among the provinces themselves, but also that the Commission should lay down how these proceeds are to be distributed, that is -the

proceeds of what I may call the divisible taxes, between the Centre and the provinces. My amendment, if accepted, will leave the position as it is so far asthe taxes on income are concerned; but it will change the Position with regard to the other divisible taxes which, I suppose, will be excise duties. I nave left the position with regard to taxes on come as it is because article 251 lays down that after the Finance Commission has been appointed, the President will prescribe the percentage of the net proceeds of the taxes on income to be assigned to the provinces after consultation with the Finance Commission when it is appointed. I confess that I did not fully realise when this article was under .discussion what the effect of the definition of the word `prescribed' laid down there would be on article 260. I discovered this only when I drafted with the help of the Draftsman and Joint Secretary of the Constituent Assembly the amendment that I have just moved. I have however sought to impose one limi_ tation even in that respect, and that limitation is this. While the President may consult the Finance Commission initially with regard to the respective shares of the net proceeds of the taxes on income calculated in the manner laid down in article 25 1, to be assigned to the Centre and the provinces, the Commission should not have the power to review these percentages later on its own initiative. If we leave sub-clause (3) of article 260 as it is, then it will be the duty of the Cornmission to make recommendations to the President as regards the distribution of the proceeds of the divisible taxes between the Centre and the provinces and it will be able to review any percentages that may be initially fixed. The purpose of say amendment is to limit the power of the Finance Commission in this respect to the initial fixation of the percentage. Once the shares of the Centre and the provinces have been fixed, I suggest that the Finance, Commission should have nothing more to do with that matter unless the matter is referred to it by the President. Should the provinces stand in need of more money later on, should their recurring expenditure increase to such an extent as to need, on prudent financial and economic grounds, not large grants but a definite share in the pro-. ceeds of certain taxes, ther the matter ought to be considered by the Government of India in consultation with the provinces. I shall not discuss this question at length because I dealt with the principle underlying this yesterday; but I venture to -repeat that my opinion on this subject has not been altered-in the slightest degree by the observations made by Dr. Ambedkar yesterday.

Now I come to the second part of my amendment. If sub-clause (a) of clause (3) of article 260 is left as it is, then the Finance Commission will be able to say how much of the net proceeds of the Union duties of exercise should be kept by the Government of India and how much should be assigned to the, provinces. Now the article that relates to the imposition of Union duties of excise and the distribution of their proceeds between the Centre and the provinces is article 253. There is nothing in the language of that article to compel the President to consult the Finance Commission before coming to a decision oil this subject. If the second part of my amendment is accepted, then the power of the President to consult the Commission in this respect will remain absolutely untrammelled-. Honourable Members will thus see that if my amendment is accepted, while the provinces will, lose nothing, the Centre which will have to bear the ultimate responsibility for the protection of the highest interests of the country and for its defence will be in a Position to discharge those responsibilities adequately even in emergencies' The framers of the Constitution realised that the position as contemplated here might be found to be unsatisfactory later on when the Central Government was confronted with an exceptional situation and for this reason, I suppose, 'included Particle 277 in the Draft

Constitution which empowers the Government of India in,an emergency to suspend all or any of the provisions of articles 249 and 259 -of -this Constitution. This is obviously a verys sweeping provision. The representation of -the provinces will easlly see how dangerous this article is. They will be completely at the mercy of the Government of Indiawhen, say, a war breaks out. This article show that the Constitution feel that under the provisions of article........

The Honourable Dr. B. R. Ambedkar: It has not been passed yet.

Pandit Hirday Nath Kunzru: That is why I am referring to it now otherwise there would have been no point in referring to it.

The Honourable Dr. B. R. Ambedkar: I have a right to withdraw it.

Pandit Hirday Nath Kunzru: Dr. Ambedkar says he has a right to withdraw I hope he will be wise enough to withdraw it.

The Honourable Dr. B. R. Ambedkar: No, it might be modified.

Pandit Hirday Nath Kunzru: But I understand that its purpose is to enable the Central Government to resume the whole or a part of that portion of the money that might generously have been made over to the provinces. Now the Government of India Act, 1935, also envisaged a position when the Central Government might be unable to make over to the provinces the prescribed share of the taxes on income and authorised the Governor-General to delay the process of transferring to the provinces their share of the net proceeds of these taxes. But this article 277 goes far beyond that. I suggest, that in order to remove the possibility in view Of which article 277 has been inserted in the Constitution, the Finance Commission should have nothing to do with the allocation of the shares of the Central Government and the Provincial Governments in the proceeds of any tax. This is a matter that should be decided by the Central Government, Its I have already said, in consultation with the provinces. If this is done I am owe that the Central Government will be able to discharge their supreme responsibility and also to justify their position to the provinces. No situation will in that case arise which will compel the Central Government practically to the provisions of all the financial articles that we have so far discussed.

Sir, them Is a Finance Commission in Australia. It has been functioning for sixteen years, but its duty is to examine the demands of the provinces and scrutinise, their budgets and then recommend how much money should be given to them either in order to make up for their deficits or for any other purpose. It has, so far as I know. not been authorised to say to the Commonwealth Government that it should give, a certain proportion of the proceeds of a certain tax to the States. In Canada,very recently an attempt was made to induce the provinces -to agree to an argument like that prevailing, in Australia. During the war the Central' Government persuaded the provinces to vacate the income-tax field aid occasioned , its completely itself. Under the Canadian Constitution the provinces can levy taxes on income for purely provincial purposes. But the Dominion Government has levied such high taxes that there is hardly any possibility of the provincial Governments re-entering the field of income-tax.- The Dominion Government suggested that the Provinces should agree to the appointment of a Finance Commission which would recommend periodical grants to the Provinces. in consideration of their needs. But it was never suggested during the course of the discussion, either by the Dominion Government or by the Provinces that the proposed Finance Commission should have' the power to say to the Dominion Government that a certain proportion of the net proceeds of the income tax should be made over to the Provinces. All that was suggested was that the Finance Commission should, after considering what the legitimate needs of The Provinces were. make such recommendation as would satisfy their requirements. In Canada no agreement was arrived at, let me add. between the Centre and the Provinces.. But this does not In any way After the argument that I

have been using.Sir, I do not think that I need dwell any further on this subject. I think that I have said enough to show that it is not desirable that apart from the income-tax in respect of which we are committed under article 25 1, we should go further and allow the Finance Commission to decide how the proceeds of the Union Excise Duties should be divided between the Centre and the Provinces. Nor is it desirable, in my opinion, that the Finance Commission, after initially laying down what percentage of the net proceeds of the tax on income should be retained by the Centre-, and assigned to the Provinces, should have the power to review this percentage later. he needs of the provinces can be adequately met in -other and sounder ways.

Shri B. Das: Sir, very reluctantly I accept the amendment moved by my Friend Dr. Ambedkar. Sir, there is a Sanskrit adage:

Sarvanashe Samapanne ardluani tyajati panditah. Mr. Kamath will correct my Sanskrit, if it is wrong, but it means that "wise men part with half of their just demands when there is prospect of annihilation". The Government of India, in their mad career from 1924 onwards up to now, In their self-centred financial policy. have annihilated the growth and development of the provinces. It is now said that within two years of the coming into effect of the Constitution, the Finance Commission should function. But this is also a departure from the recommendation of the Sarker Committee's Report where they recommend that the Finance Commission should be appointed immediately. Of course, Dr. Ambedkar has told us that an ad hoc committee, or some special officer is going to review the position of the Provinces and the Centre, as regards the resources and may, allocate something to the undeveloped provinces for their immediate development. Sir, apart from incidental expressions on the floor of the House, no declaration on this ad hoc committee has bee made. 1, therefore, hope that before we close the debate on these dealings with the distribution of finance between the Centre and (he Provinces, some sort of definite declaration would be made.

Sir, I wholeheartedly support the amendment moved by my Friend Pandit Kunzru, to the amendment of Dr. Ambedkar. Sir, this morning I observed Pandit Hirday Nath Kunzru is a man of princinles. He has pointed out the existences of a lacuna. These principles have to be put into practice. His speech definitely pointed out how the lacuna exists, and also how those principles must be given effect to. Of course something is better than nothing. Pandit Kunzru wants clause (3) (a) to be subdivided into (a) and (aa), and I hope the House will accept this in the interest of those undeveloped provinces about which the House has heard so much the other day and today.

What we have been trying to assert incidentally places before the House the fact that there is no initial distribution of the resources. We may have failed to emphaise and to convince others that an initial division of income-tax and other resources is necessary, for the development of the undeveloped provinces, such as Orissa, Assam, Bihar and to a certain exent Bengal. And I suppose Pandit Thakur Das Bhargava wants that East Punjab also should be included in the list of provinces of low resources, which want initial all(-,cation of resources for development. Sir,, I do very respectfully differ from my respected Friend Pandit Kunzru, that the President or the Cabinet or the Government of India in the Finance Department should hot think of apportioning initially all resources simultaneously with the. promulgation of this Constitution. In other aspects, such asExicise Duties and other duties, they have been recommended in the Sarker ReportI have occasionally differed from the recommendations of that Committee., especially that the distribution of income-tax should be on the collection basis. My objection still stands and I hope Pandit Kunzru has already advocated my stand, that the distribution of Income-taxes should be on a population basis.

My honourable Friend Pandit Hirday

Nath Kunzru referred to the system envisaged by the Grants Commission in Australia. We have, got some inkling of it in the Nehru-Adarkar Report. The tiling is that though Australia was not a sovereign Government, and it had a dominion system of Government, it could utilise its resources for the uplift of the undeveloped provinces.' Unfortunately in India for 150 years, up to 1947, we were a subordinate Government run under the colonial pattern of British system, whereby all the resources were concentrated at the Centre and were spent at the behest of the British Finance Member for good of Britain and not of India. Today we want to hear something to soothe our heart that the Finance Department of the Government of India is not following that colonial pattern of finance -administration in India. That is the crux of the situation. I do not mind my honourable Friend Dr. Ambedkar postponing the appointment of a Grants Commission or the Finance Commission for another two and a half years-perhaps it will be three years because if on 26th January, 1950 we accept this Constitution, in another place we will compel the Cabinet and the President to appoint the Finance Commission within two years of that date which means it will be four years after the Nalini Sarker Committee reported.

But, Sir, how are we to determine the principles of the distribution of revenoues ? I plead guilty I have given no amendment because we were left in a haze. The House at no stage; discussed the principles of finance allocation and today we authorise the President to appoint a Finance Commission and to lay down certain principles.

Sir, I am grateful to Pandit Hirday Nath Kunzru who referred to article 277. That the President of India should interfere in provincial resources in time of emergency shows a mentality which the Britishers had in 1937. Knowing that the war was coming, in 1937 they amended Section 126 of the Government of India Act in the House of Commons and called it Section 126-A, whereby all resources were placed in the hands of the Central Government. Not only all our leaders were placed in jail, but provinces worked under Section 93 to serve U.K. What happened was that India was bled white during the 2nd War, nearly Rs. 4,000 to 5,000 crores were mulcted out of us by the Allied Powers. in which the U.S.A. equally benefited along with the U.K. Everything was purchased at controlled prices, at pre-war level of prices, and if there is inflation today, if there are financial difficulties, poverty and starvation, inflation and high prices, it is due to that Section 126-A. I would have thought, Sir, a national Government, a democratic Government framing an independent Constitution would not think of acquiring financial powers under article 277 in time of emergency. is an evolution of mind of those of us who fought for the freedom of India. I cannot fathom why this power should be handed over to the President.

Whenever I examine any article of these financial provisions, I feel baffled. Sir, we have postponed article 258, but what does it aim at ? It aims at centralization of all sales tax so that there will be uniformity of basis in collection of sales tax. Sales-tax today is on a lower trend because our Finance Minister has agreed to spend less dollars and less sterling during his recent London visit. If we accept lower expenditure, how can Provinces like Madras who live on luxurious goods of foreign import, live when there is less sales-tax. There willperhaps be another debate on article 258 but I am looking at the picture as a whole. The Finance Commission would be faced with bigger problems than was originally visualised by the Drafting Committee.

Mr. President : Article 258 does not refer to sales-tax ?

Shri B. Das : Yes, Sir. it will refer to sales-tax.

Mr. President : It refers to agreement with States.

Shri B. Das : Yes, Sir, and there the Government of India comes in........

Mr. President : It has nothing to do with sales-tax.

Shri B. Das: Let me then give the information to the House that the Government of

India is in close correspondence with the Provincial Finance Ministers and others. They want uniformity of sales-tax in all the provinces and yet they are decided on reducing the volume of trade in the Provinces whereby the revenue, of the provinces will be reduced. I am not an advocate of the use of foreign goods, I do not use them if I can help it, but everywhere the Centre is using its arbitrary power to reduce the income of the provinces and yet it does not settle the fundamental issue that the initial basis of distribution of resources should be revised. I do not wish to harp on points on which I have spoken on so many occasions during the last three or four days, but I am baffled at the trend of events as regards the distribution of finances between the Centre and Provinces. I am not very happy that three years hence a Finance Commission will be appointed, but I see a ray of hope, I see a streak of light. If the principle advocated in Pandit Hirday Rath Kunzru's amendment is accepted wisdom may dawn on those who are in control of the Government of India today that the initial basis of allocation of resources should be revised. I do hope that Pandit Kunzru will not object if undeveloped provinces like Orissa, Assam and Bihar get a little more money than they would otherwise be given by the Finance Commission later.

Prof. Shibban Lal Saksena: Sir, this is a very important article in the Constitution. I am glad that Dr. Ambedkar has provided that a Finance Commission shall be appointed within the first two years of the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary. Dr. Kunzru has given notice of two amendments to clause 3(a) of this article. I personally feel that the amendments will make the position worse. In fact he proceeds on certain assumptions. I feel that this Commission shall be only a body to recommend to the President and not a body whose decision is binding. He wants a convention that whatever this Commission recommends should be binding on the President. He says that the President of course has the power but he should not exercise it : that he should impose on himself a sort of voluntary self-denying ordinance. We have recently had the report of the Experts Committee on. Finance and the other day Dr. Kunzru himself told us that it was wise that the report was not accepted. He must realise that there can be a Finance Commission which can make reports similar to the one which was made by the Sarker Committee and which the Central Government and the Drafting Committee thought fit to scrap. 1. therefore, say that the Finance Commission shall be a body of experts who shall examine the position of the Republic so far as finance is concerned and shall make their recommendations. They shall adduce their reasons for their viewpoint. 'but I do not think it could be a body which can take away the admitted responsibility of the Parliament to make final decisions in regard to finance. I am therefore opposed to any conventions being established that the Finance Commission's report shall be accepted.In the previous article I opposed the powers of the President to make allocations on the ground that I wanted the Parliament to do it by law. If Dr. Kunzru's assertion were accepted that there shall be a convention by which the recommendations of this Commission shall be accepted, I personally feel that this convention would be very unhealthy and harmful. It will detract from the authority of the Parliament to make allocations. In fact this Commission has been given power to make recommendations about distribution of the proceeds of the taxes, about grants-in-aid, about the continuance or modification of the terms of any agreement, etc., in fact on anything which is referred to it'. so that if the Commission's recommendations have to be accepted by convention it becomes more powerful than the Cabinet itself. The Cabinet will not be able to touch any of the recommendations of the Commission. I do not want to take away these

powers of the Parliament and give them over to the Finance Commission, howsoever wise a body it may be. Dr. Kunzru's objection to the Parliament interfering with the recommendations of the Commission is this. Suppose the Finance Commission makes a recommendation giving a larger proportion of the taxes to a particular State and the President or the Parliament reduces the amount to be given to that particular State or province, then the province will accuse the Centre of depriving it of the sum which the Finance Commission thought fit to allot to it. I personally feel that the Parliament will be a parliament of the whole nation and every. State will be represented on it. If Parliament after consideration of all the pros and cons of every proposal and after taking into consideration all the arguments of the Finance Commission, thinks in its supreme wisdom that a State should have a particular allocation, I think Parliament will be within its rights and nobody will make any accusation against it, because the members representing the particular State will also be there to give their opinion about the allocation. I therefore think that it will be a very dangerous principle to give authority to any outside body like the Finance Commission to dictate to the Parliament and to the Government that "this shall be the distribution of the finances of the country." I therefore feel that the fundamental assumption on which the two amendments of Dr. Kunzru are based is wrong. This Finance Commission as has been defined in the Constitution will be a Commission which will recommend to the President Is to how the distribution of the finances will take place between the Centre and the States. That should be its function. It should not have the authority to have the last word on the distribution. Dr. Kunzru gave the example of Australia where he said such a convention was prevalent. I think except for Australia no such convention exists anywhere else. I am not fully familiar with conditions in Australia to be able to say why they have adopted this convention. But so far as my own country is concerned I feet that Parliament should be the ultimate authority and nobody shall have the right to criticize Parliament in its allocations, since every part of the country sends its representatives to it. I therefore think that the recommendations of the Commission shall be only recommendatory as contemplated by this Constitution and according to the clause as framed by Dr. Ambedkar. If that goes, these two amendments become superfluous. Dr. Kunzru wants the distribution between the Union and the States of the net proceeds of the taxes on income which should be divided initially between them and that this allocation should be the function of the Finance, Commission. Article 251 says .

"Such percentage, as may be prescribed, of the net proceeds in any financial year of any such tax...... shall be distributed."

Further it says that the word "prescribed" means "until it Finance Commission has been constituted prescribed by the President by order and after a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations -of the Finance Commission." Dr. Kunzru wantsthat this Finance Commission should not have the power to make a recommendation about the distribution of income-tax proceeds on each occasion on which the matter is referred to it but only wants that initially on the first occasion it should -be permitted to do so. It may be that according to conditions today the proceeds of income-tax may be distributed in a certain manner; but tomorrow the finances,of the Centre may get worse and they may not be able to spare those allocations, while the finances of provinces may be better and they may not need that amount. So if the amendment is accepted, the Finance Commission cannot change the allocation. I think it is better that,the Commission should be able to report to the President every time how the taxes should be divided, according to conditions then existing. Laying down a fixed percentage for

all time will defeat the very purpose of this Commission. I therefore do not think the first amendment of Dr. Kunzru is at all proper. He wants that the power of the Government and the President should not be taken away by this Commission so far as any change in the distribution of percentage is concerned. He wants that the recommendation of the Commission should be sacrosanct, but I want them to be recommendatory They should not be binding and on every occasion the Finance Commission's advice should be sought as to the distribution between the provinces and the Centre. If the recommendations are not to be treated as binding on the President, the first clause becomes meaningless and the amendment therefore has no significance.

The second clause of the amendment refers to allocation between the States, but article 260 refers to distribution between the Union and the States. Therefore this amendment would deny to the Commission the power to say that so much of the proceeds of an excise duty should go to the Union and so much to the States; he wants the President to be the final authority to determine the allocation between the States and the Centre. That is to say, the President will say that 20 per cent. will go to the provinces and then the Finance Commiswon will say how it will be distributed. This means that the Finance Commission will be useless, if it has no power to determine the percentage of allocation as between the Union and the States. Therefore I think this second amendment is even more. dangerous. What I am really afraid of is the devolution of responsibility from Parliament to an outside authority, whether it be the President or the Finance Commission. I want Parliament to be the ultimate authority, in which case these amendments are out of place. Parliament must know the financial state of the country. The Finance Commission must have full authority to so into every aspect of every duty and the condition of provinces as weil as the Centre, so'that its report may enlighten Parliament. The second amendment is more dangerous because it makes the Finance Commission a useless body. In fact during discussions on articles 253 and 254, each province wanted a share of the duties that are raised in that particular province. So the President here should not be given the power to make allocations; Parliament must be the authority to allocate the shares. But this amendment of Dr. Ambedkar really wants that the allocation shall not be made by the Commission or by Parliament but by the President in his discretion, who will decide the percentage to 'be distributed and the Commission will report as to the manner of distribution. I think these two amendments are based on the supposition that the recommendations of the Finance Commission are to be binding. 'I do not think these recommendations should be sacrosanct. In the next article I will move an amendment that whatever decision is taken will have to be approved by Parliament which will decide whether the clarifications made by the President are proper. Ile ultimate authority must be the Parliament which will decide according to the state of the country. Sir I hope my points will be borne in mind and considered.The Honourable Dr. B. R. Ambedkar: Sir, the House must have realised that my honourable Friend Dr. Kunzru's amendment referred to clause (3) of article 260 where the functions of-the Finance Commission are laid down. But, in order to understand the exact significance of the amendments he has moved, I personally feel that it is desirable to know the method of allocation of revenues already provided for in the two articles we have already passed, namely, 251 and 253. It will be realised that the Draft Constitution separates the distribution and allocation of the income-tax from the distribution and allocation of central duties of excise. With regard to income-tax the distribution and allocation of the proceeds is a matter which is left to the President to decide. That will follow from reading article 251(2) with clause (4) (b) (i) and (ii). On the other hand with

regard to the distribution and allocation of the proceeds of the central duties of excise the matter is left entirely to be determined by law made by Parliament, which you will find set out clearly in article 253.

As it is one o'clock I will continue my speech tomorrow.

The Assembly then adjourned till 9 of the clock on Wednesday, the 10th August, 1949.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Wednesday, the 10th August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Mr.President: Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay: General): At the close of yesterday's sitting, Sir, I was dealing with the argument advanced by my Friend Pandit Kunzru in support of his amendment. I began by saying that it was desirable to remind the House of the provision contained in article 251(2) and article 253 as a sort of background to enable Honourable Members to follow what exactly Pandit Kunzru wanted by his amendment.

Now I would briefly summarise what I said yesterday. The position is that so far as income-tax is concerned, the distribution and allocation of the are left to the President to determine, while the distribution and allocation of the Central duties of excise are left to be determined by law made by Parliament.

The next point to bear In mind are the provisions contained in article 260 which deals with the Finance Commission. -Under clause (3) of article 260, it is provided that the Finance Commission is to advise and make recommendations with regard to the distribution and allocation, not merely of the taxes which are made distributable by law made Parliament, but also with regard to the distribution and allocation of the income-tax. Now, what my Friend, Pandit Kunzru, wants to do, if I have understood him correctly, is that he wants to take out the collection, allocation and distribution of income-tax from the purview, so to say of the Finance Commission. His point was this that while the President may well take the advice of the Finance. Commission in making the allocations of Central duties of excise, he should be, so to say, made independent of the Finance Commission with regard to the income-tax. The only qualification that he wants to urge is this that so far as the initial distribution of the income-tax is concerned, the President may well consult the Finance Commission and act in accordance with or after taking into consideration the recommendations made by the Finance Commission, but. any subsequent variation of the income-tax allocation may be left to be done by the President independently of any recommendations that may be made by the Finance Commission. I think I am right in interpreting what he intends to do by his own amendment. The question, therefore, is a very simple and small one. Should the President be left altogether independent of any recommendations of the- Finance Commission in varying the distribution of the income-tax between the provinces and the Centre and the allocation of the proceeds of the income-tax so set apart between the different provinces? The draft amendment as I have moved provide, that the President shall take into consideration the recommendation, of the Finance Commission in making any variations that he may want to do with regard to the distribution and allocation of the income-tax. I quite appreciate his point of view that, if this was left to be decided by the President on the recommendations of the Finance Commission, the hands of the President may be so tied that he may have to yield. to the recommendations of the Finance Commission or to the glamour that may be made by the provinces with the result that he may be forced to do injury to the Central finances. I share his feelings that the Centre should be made as independent as one can make it so far as finance is concerned, because in my mind there can be no doubt that we must not do anything in the Constitution which would jeopardise either the political or the financial existence of the Central Government, but there is also the other side to the matter, viz., supposing there was a clamour made by all the provinces, which is, perfectly possible to imagine because it is their common interest, urging the President to allocate more revenue to the provinces, would it not be placing the President at the mercy of the provinces? If, on the other hand, there was a report of the Commission containing recommendations that the Centre should not give more revenue under the income-tax to the provinces, it would, in my judgment, strengthen the hands of the President in refusing to accede to such a clamour from the provinces. If I may use the language with which we are now familiar under the Government of India Act, the difference between the draft article as it stands, now and the amendment proposed is that according to Pandit Kunzru, the President should be free to act in his discretion, while the draft as proposed by me says that he should act in his individual judgment which means............

Pandit Hirday Nath Kunzru (United Provinces: General): Will the honourable Member permit me to make my point clear, because I feel that he has probably not completely understood what I said? May I make clear what I said in one or two sentences. Under clause (3) of article 260 the President may refer any matter he likes to the Finance Commission for its opinion. I do not, therefore, want to debar the President from consulting the Commission in any matter that he likes. 'All that I am objecting to is that the Finance Commission without any reference from the President, should have the power to say that the allocation of the net proceeds of the income-tax between the Centre and the provinces is not what it should be and that new percentages recommended by it should be fixed. This is all that I said yesterday.

The Honorable Dr. B. R. Ambedkar: That rather makes the situation far more complicated because I cannot see how the Finance Commission can make any recommendation unless the point has been specifically referred to it or included in the terms of reference.

Pandit Hirday Nath Kunzru: Under sub-clause (a) of clause (3) of article 260 the Commission may on its own initiative make recommendations on that subject. Let my Friend read the sub-clause to understand the meaning.

The Honourable Dr. B. R. Ambedkar: any other matter referred to the Commission by the President in the interest of sound finance.'

Pandit Hirday Nath Kunzru : That is (d). Will the honourable Member refer to article 260, the article which we are discussing, with particular reference to the clause that I dealt with yesterday? Sub-clause (a) of clause (3) of article 260 says-

"It shall be the duty of the Commission to make recommendations to the President as to the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them........

That is the thing that I am objecting to. The power of the President under sub-clause (d) of clause (3) to refer any other matter that he likes to the Finance Commission will not be disturbed if my amendment is accepted. The Honourable Dr. B. R. Ambedkar: I do not know. The position is quite clear whether the President is to be left in his complete discretion to make any allocation he likes with regard to the income-tax or whether he should be guided by the recommendations made by the Commission. It seems to me that the position of the President will be considerably strengthened if he could refer as a justifying cause to the recommendations made by the Finance Commission. It seems to me that the Finance Commission will be acting as a bumper between the President and the provinces which may be clamouring, for more revenue from income-tax. I therefore do not think there is any reason for accepting the amendment moved by my Friend, Mr. Kunzru.

Mr. President: I have now to put the two amendments to the vote. First, amendment No. 95 moved by Dr. Ambedkar. The question is

"That for clause (1) of article 260. the following clause be substituted:-

(1)The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary, by order, constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President." The amendment was

adopted. Mr. President: The question is:

"That with reference to amendment No. 95 of List I (Third Week) of Amendments to Amendments, for sub-clause (a) of clause (3) of article 260, the. following sub-clause be substituted :-

'

(a) the distribution between the Union and the States of the net-proceeds of taxes on income which are to be divided initially between them under this Chapter :

(aa) the allocation between the States of the respective shares of the net proceeds of taxes which are to be, or may be, divided between the Union and the States under this Chapter-,"

The amendment was negatived.

Mr. President : The question is:

"That in sub-clause (b) of clause (3) of article 260, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

The amendment -was adopted.

Mr. President: The question is:

That article 260, as amended, stand part of the Constitution.

The motion was adopted.

Article 260, as amended, was added to the Constitution.

Article 261

(Amendment No. 2949 was not moved.)

The Honourable Dr. B. R. Ambedkar: Sir, I move

"That in article 261, for the word 'Parliament the words 'each House of parliament' be substituted."

[Amendment No. 99 (List 1, Third Week) was not moved.]Shri H. V. Kamath (C.P. & Berar : General): Sir, I move:

"that with reference to amendment No. 2950 of the List of Amendments, in article 261, for the words 'together with an explanatory memorandum as to the action taken thereon' the words 'together with such explanatory memorandum as he may think fit' be substituted."

I move also, Sir, by your leave the next amendment that stands in my name, namely amendment No. 139 of List IV, Third Week, to the effect:-

"That in amendment No. 2950 of the List of Amendments, for the words 'each House of Parliament' proposed to be substituted, the words 'each House of Parliament for such action thereon as Parliament may deem necessary' be-substituted."

"This amendment No. 139 incorporates the amendment proposed by Dr. Ambedkar, amendment No. 2950 in our List of Amendments, so that if these two amendments of mine were accepted by the House, the article will read as follows

"The President shall cause every recommendation made by the Finance Commission under the foregoing provisions of this Chapter together with such explanatory memorandum as he may think fit to be laid before each House of Parliament for such action thereon as Parliament may deem necessary.'

To my mind, Sir, this article 261 coming as it does after article 260 and relating as it does to an important Commission, namely the Finance Commission, presents an unfortunate anomaly. This article is one of those numerous articles in our Draft Constitution which seek to centralize more and more power in the President, that is to say, the Executive; the President, of course acting upon the advice of his Council of Ministers as we have been repeatedly told here. I see no reason why the action to be taken on the recommendations of the Finance Commission should be left to the judgment solely of the President said his Cabinet. In article 260 which has been already adopted by the House. we have clothed Parliament with certain powers regarding this Finance Commission; Clauses (2) and (4) of article 260 vest in Parliament powers regarding the determination of qualifications for membership of the Commission and determination of the powers of the Commission. The Finance Commission, as has been made clear by Dr. Ambedkar and also by Pandit Kunzru is going to be a very important piece of machinery of the State. We have 'Clothed the Finance Commission with vital powers. Though of course in law and in the Constitution, it is merely advisory and recommendatory, yet I have no doubt in my own mind that this Commission win play a vital part in the decision that the President or his Cabinet or Parliament might arrive at so far as financial matters are concerned. Sub-clause (d) of clause (3) gives powers with respect to general matters, that is to say, matters relating to

federal finance in general. Besides this, the Commission has been invested with advisory powers regarding allocation of revenues between the Centre and the units and also as between the various units of our Union. Considering all these various aspects of this vital matter, I feel that we shall be failing in our duty if we do not provide in the Constitution that the last word as-to the action to be taken on the recommendations of the Finance Commission shall rest with Parliament and not with the President.

I said a similar point in connection with another Commission. the article regarding which has already been adopted by the House, namely article 301, the Commission to investigate the conditions of backward classes. I then raised the issue that Parliament and not the President or the Executive should be clothed with powers regarding the action to be taken on the recommendations of that Commission. My Friend, Prof. Shibban Lal Saksena, I am glad to find, has now got a similar amendment to mine. I hope, Sir, that this matter, important as it is, will receive the earnest and serious consideration of this House and that we shall see to it that where it is derogatory to the dignity of our Constitution and the sovereignty of our Parliament, the Executive is not clothed with these powers which are absolutely uncalled for, Parliament passes the law laying down the qualifications of the Commissioners; Parliament gives them certain powers; however, it has not the power to take, action, but the President has been clothed with the power to take action on the recommendations of the Commission. Parliament will be presented, unfortunately, with a fait accompli.

Shri Brajeshwar Prasad (Bihar: General): For purposes of elucidation, Sir, I would like to know from Mr. Kamath whether the position and powers of Parliament under the Draft is that of a sovereign body or it has got only limited powers.

Shri H. V. Kamath: I am glad my honourable Friend Mr. Brajeshwar Prasad has thought fit to raise this question by way of an interruption. If he scans the article carefully, he will find that memorandum referred to in this article is a memorandum as to the action taken thereon. That is to say, it does not say "proposed to be taken thereon". The President will take action on the recommendation and then it will be laid before Parliament.

Shri Brajeshwar Prasad: You said that Parliament is a sovereign, body; I say Parliament is not a sovereign body.

Shri H. V. Kamath : If Parliament is not going to be, sovereign, if my Friend wants to make the President sovereign in relation to Parliament, I have no quarrel with him.

Shri Brajeshwar Prasad: Read the Draft and say whether it is a sovereign Parliament or a limited Parliament.

Shri R. V. Kamath: I do not want to enter into any academic discussion. I am concerned only with the particular article before the House. The article deals with the powers of the President vis-a-vis Parliament as regards the Finance Commission's recommendations. If we turn to articles 275 and others, there at least we have got this provision that Parliament should approve of a certain action taken by the President; otherwise, that action ceases to have validity. Here, there is no such provision at all. The President will submit a memorandum to Parliament describing the action taken on the recommendations of the Commission and it will be laid before Parliament. For what purpose, God alone knows. For what purpose this would be laid before Parliament, for approval, disapproval rejection or consideration, nothing is stated.

Pandit Thakur Das Bhargava (East Punjab: General), Merely for information.

Shri H. V. Kamath: Pandit Thakur Das Bhargava says, merely for information. If that is the intention of the article, it is a most pernicious measure., Parliament will be treated with scant regard and with, I may even say, contempt, if this article is passed as it is. We must certainly provide whether Parliament will have power to reject, or what powers will be given to it, with regard, to the action taken by the

President on the recommendations of the Finance Commission. If Parliament is going to have no powers at all in this matter, not last word in this matter, I am constrained to say that we are clothing the President with more and more powers which are absolutely uncalled for, absolutely unnecessary in this respect. The Finance Commission being a very important body. I would once more plead, before I conclude, it must be subordinate to Parliament which is going to be a sovereign legislature. It is no use the President presenting Parliament with a fait accompli telling them "this is the action I have taken". I think this will be a very humiliating position for the sovereign Parliament and derogatory to its dignity. I hope Dr. Ambedkar an this wise team win look into the matter very closely and just as the other day, after a full dress debate, upon article 280, we find a new amendment will shortly be moved by Dr. Ambedkar, seeking to give some authority to Parliament with regard to the suspension of fundamental rights,-that has been included in the agenda,-so also I hope Dr. Ambedkar, the Drafting Committee and the House look into the matter very closely and see to it that Parliament retains. ultimate control over the action to be taken on the recommendations of the Finance Commission and not leave it to the sweet will and pleasure of the President and the executive. Sir, I move amendments 138 and 139, of List IV, Third Week, and commend them for the earnest consideration of the House.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, I beg to move

"That with reference to amendment No. 2950 of the List of Amendments, in article 261, for the words 'action taken thereon to be laid before Parliament', the following words be substituted :- containing his proposals for action that should be taken thereon to be laid before each House of Parliament. The House of the People shall have the right, to amend the proposals made by the President by a resolution passed by the House of the People. The proposals of the President in their original form or in the form in which they emerge after they are, amended by the House of the People shall thereafter become law."'

After the amendment is adopted, the article will read as follows:

"The President shall cause every recommendation made by the Finance Commission under the foregoing provisions of this Chapter to-ether with an explanatory memorandum containing his proposals for action that should be taken thereon to be laid etc.law."

As I said while discussing the last article, I feel that in this Chapter the Ultimate authority of Parliament in regard to financial matters has been made secondary to the authority of the President. I regard this to be against the principles of democracy. Here we are appointing a Finance Commission which shall be charged with powers to make recommendations for allotments between the Union and the various States, for making grants-in-aid to various States, for even modifying terms of any agreement entered into by the Union. and in respect to any other matter which -may be referred to it by the President. Such are the wide powers which have been given to this Commission. Now this Commission will make a report after touring the country, after investigating the entire financial position and will submit its report to the President. I want to know whether the Parliament is the final authority to accept or reject any of the recommendations made by the Commission or the President is the final authority. I feel that it is a matter of deep consequence and cuts at the root of - democracy if Parliament does not have the final say on this important question. I have therefore in this amendment suggested that after the report of the Commission is received the President shall lay a memorandum containing his advice to the legislature as to how far these recommendations should be accepted but the ultimate authority for accepting those proposals or rejecting them must be vested in the House of People. Mr. Kamath said that both the Houses of Parliament should vote upon. such a Bill. Any Bill containing recommendations of the Finance Commission will be a financial Bill which can only be subject to the vote of the House of the People and not to the vote of the Upper House. Therefore I have here omitted the Upper House. I have said that the House of the People shall have the right to amend the proposals made by the President by a Resolution passed by the House of the people. It is the House of the-People that will determine whether the recommendations made by the Finance Commission on the proposals made by the President should be amended in some form or not. Normally when there is Parliamentary Democracy the Prime Minister will have a majority in the House of the People, and therefore whatever proposals the President will submit will surely be on the advice of the Prime Minister and therefore they will have the support of the majority of the House. There should therefore be no difficulty in getting them through, but the discussion in the Parliament will give the Opposition an opportunity to examine the proposals, to suggest amendments, to bring to the notice of Government another point of view which probably the Government may accept. If we deny the Opposition the right to bring forward amendments or criticise, the proposals, I do not think we are carrying on the form of democracy which we have accepted. I do not see how Dr. Ambedkar can get this article passed as it is. He is trying to give the power to the President, all along of course with two or three exceptions which make him all the more inconsistent. I have said that the authority of Parliament should be supreme in financial matters because on the proper control of finances depends the prosperity of the country. I therefore think that my amendment is a simple one and I hope the House will accept it.

Dr. P. S. Deshmukh (C.P. & Berar: General): Mr. President, I regret to say that both my Friends Mr. Kamath and Professor Saksena are labouring under certain misconceptions. The first thing about this article 261 is that it does not give any additional power to President. There is no clause in this which seeks to give any additional power to President than what has already been decided by this House and is embodied in articles 254 and 255. Prof. Saksena was not also correct when he said that the Finance Commission has wide powers. Its powers are defined in 260 clause (3) and as would he quite clear, the powers are merely to make recommendations to the President. They have no final power to take any action whatsoever unless they act under clause (4), but those powers can be only those that are delegated to them by Parliament. Since it is only recommendations that they are competent to make, I do not think it is correct to say that the Finance Commission has wide powers. Nor can this article be ,aid to enlarge the powers of President in any way. Whatever damage was to be done to the authority of the Parliament as the supreme body has already been done by articles 254 and 255 and no amendment whatever to 261' can rectify that position. I would however like to point out that it would have been better had the words 'by him' would have been added after the words 'thereon' so as to make it clear that the Parliament will have placed before it the President's action on the recommendations that have been made by the Commission and the recommendations themselves. Otherwise the article is quite satisfactory because when these papers are laid before Parliament, the Parliament would be competent to pass on it such resolutions or turn down any recommendations or to set aside any action taken so long as it has powers to do so. Those powers that have been expressly taken away from it by articles 254 and 255 cannot be exercised by Parliament even if we accept the amendments proposed by Prof. Saksena and Mr. Kamath. The Parliament will be incompetent to interfere with them. But the rest of the powers which it enjoys, as long, as they have not been specified as taken away from Parliament. it cannot be said to be not able to exercise. So I think the

amendments suggested are not at all necessary, but the wording of the article as it stand is not as satisfactory as I would wish. It should have been made clear that excepting these cases governed by 254 the Parliament would be competent to take such action as it pleased on the recommendations of the Commission which are not specifically excluded from it, purview. Otherwise I do not think there is likely to be any difficulty in retaining this clause as it stands.

The recommendations as well as the action of the President, I believe are intended to be placed before Parliament and even after debate such distribution of finances which is within the discretion of the President and such charges on the consolidated funds of India which have been provided for under article 255, Parliament will not be in a position to interfere. So I think there is not much point in saying that Parliament will exercise those powers which are already there and which are not taken away. I therefore do agree that there is any need to amend this article.

Pandit Thakur Das Bhargava: Sir, I support the principle of the amendment of Mr. Kamath and the amendment of Mr. Saksena. in regard to article 261, it is said the explanatory memorandum shall be, laid before Parliament and if you kindly pursue the wording of the article, you will see that the explanatory memorandum does not contain the proposal of the Finance Commission, but it refers to the action taken thereon. Action taken thereon can only mean that the President shall be the final judge of those proposals and he alone has, the discretion to accept or reject any of the recommendations made by the Finance Commission. This is very unsatisfactory. As a matter of fact, article 261 is the hope of all the provinces. At present, when we refer to article 255, as we discussed it yesterday, the need of the poor provinces will be looked into by Parliament, and in regard to article 254, it is a transitory provision. All these matters will be placed before the Finance Commission which will be appointed within two years, in the first instance, and subsequently after every five years. The proposals which the Finance Commission win make will be not of the nature of day to day affairs, but considered proposals regarding the fate of the provinces. All the progress in the provinces will depend upon the recommendations of the Finance Commission. The provinces do hope that the Finance Commission will be above board and will take their needs into consideration, so much so that we have intended under 262 (2) that Parliament shall determine the qualifications of those five members too. Therefore, my submission is that the report of the Finance Commission shall be a historic record and shall furnish the basis for those proposals which will affect the provinces vitally. The provinces, therefore, should have the say in the matter, through their representatives in Parliament. If the Cabinet or the President be the sole judges of such recommendations as the Finance Commission will make, I do not think it will inspire the confidence of the provinces. It is therefore, necessary that a matter of this importance, the Finance Commission which will come into being and which will make enquiries after every five or six years-because one year may be taken by the Commission to report-that a matter of this importance be placed before Parliament and Parliament should have the last word on it.

In regard to Parliament, I understand that. the principle contained in the amendment of Professor Saksena is a very salutary one. According to the other provisions of this Constitution, it is the House of the People which has got the final voice in all matters relating to finance, and it is but meet that both Houses of Parliament be able: to discuss the proposals of the Finance Commission, but the House of the People should have the final say in regard to financial matters. Therefore it is necessary that the proposals are laid before the House of Parliament and then discussed and any proposals that emerge out of these discussions should

'ultimately be recommended by the House of the -People, and the law emerging therefrom should have the effect of Money Bills. All provisions that we have so far enacted in regard to Money Bill should apply to these also.I am not impressed by the arguments of Dr. Deshmukh who thinks that in article 261no power has been taken away from Parliament. My humble opinion is that in regard to 261, if the President has the power to take action, then the only purpose of the memorandum win give information to the Members. It is clear that the powers of Parliament as such are taken away. My Friend is of the view that after the action has been taken, then after it is placed before Parliament, the House will then be in a position to take action. This evidently cannot be correct. Even if it is correct, I think if the proposals are not in the first instance put before the House of the People, 'then a great deal of harm will be done. It will be difficult to reject or do away with the, recommendations already made. it is but fair that the report of the Finance Commission and the entire matter should be within the purview of the House of the People to debate upon and take action. My own apprehension is that after action has been taken by the President, this memorandum will only be placed for information and not for the purpose of taking action. I feel that this provision takes away the inherent power of Parliament to deal with financial matters, and therefore, I would like that the amendments of Mr. Kamath and Professor Saksena be accepted.Prof K. T. Shah (Bihar: General): Mr. President, Sir, I also support the amendments moved by Messrs. Kamath and Saksena. I confess I am not very happy over this entire chapter relating to the appointment, powers, and activities of the Finance Commission. The Finance Commission is so much more additional patronage in the hands of the executive, and will act, in so far as it is empowered under this article to act, against the inherent rights of a sovereign Parliament. It is impossible to agree that by this provision no power that normally vests in a sovereign Parliament is taken away, because, even according to article 261, the right to consider the memorandum, or the right to submit the memorandum to Parliament, will result only in a kind of postmortem examination of the action taken, which, if I may say so, will encourage only fruitless discussion, where the opposition may for opposition's sake, only find fault and where constructive suggestions would not be in order, because it will be only a debate on action - actually taken, which cannot be remedied and which, therefore, can give occasion only to venting, as it were some past spite.

I do not think a provision of this kind will help either the requirements of economy, or, what is still more important, the requirements of popular sovereignty, as embodied in the Power of the Purse, as it is called, under the model we are copying--I mean the British Constitution. If, as these amendments propose,' there is some chance given to Parliament to say the last word on the action to be taken, then there may be some hope that the rights of Parliament over matters financial will be kept intact. But if Parliament is only to review the action taken, and indicate its general dissatisfaction with the action taken, I do not think that it would be at all worthwhile making even such a submission. The Commissioners are presumably experts, well versed in their lines. It may, therefore, well be presumed that the recommendations they make are based on very strong considerations, and will not be lightly disregarded by the President or any other power. To that extent, therefore, the Commissioners may be said to be taking away the powers of Parliament. It is only to make it quite clear, as these amendments try to do, that the last word will rest with Parliament that I support these amendments. The sovereignty of the House of the People in matters financial ought to be left in no doubt. I therefore support these amendments.

Mr. President : May I just say one word ? I did not

like to mention it, but I think I should. I find there are too many conferences going on inside theHouse with the result that even those Members who are desirous of listening to the speeches find it difficult to follow them. There is a tendency I find to gravitate, against the law of gravity, from the benches in the front to benches in the back, and I find that benches on the back afford opportunities of discussion which probably has nothing to do with the discussion that is going on in the House. I would therefore suggest to the Members that if any other question has to be discussed than that which is -being actually discussed in the House, that might be discussed elsewhere.

Shri Mahavir Tyagi (United Provinces: General): Sir, will you also kindly ask the speakers to bring their points in such a way as to attract attention ?

Mr. President: That is beyond me.

Shri Biswanath Dan (Orissa: General): Sir, I stand to record my protest it the aspersions made by so scholarly a gentleman as Profes or Shah. He finds unfortunately ghosts where there are none. He has made reference to Patronage. I would request him to show anything in the article wherein comes patronage. The appointment of a Finance Commission -is a necessity. It is not peculiar to India. It is a necessity and has been accepted and adopted in India to suit the peculiar conditions of a federal structure that has been devised for her on the lines of similar other States. An that the Constitution has done is to lay down specific powers for Parliament to make laws by which a Finance Commission is to be appointed. And it has gone a little, further. It has laid down also the conditions and qualifications of persons to be appointed. May I refer you to article 260(2) in this connection, which lays down that "Parliament by law shall determine the qualifications etc. of the Finance Commission". I would request Professor Shah not to proceed with unjustifiable suspicion. if by the appointment of any Member of any Commission you mean patronage will come in, certainly you have to stop all State activities. That will be something like burning a house in a fight against flies. I hope therefore that Professor Shah will not play the role of an unnecessary opposition in a case where there is no scope for opposition.

Having stated so much about the unnecessary allegation made by our learned Professor, let me come to - the vital issue that faces us in the discussion. I am sorry I have to differ from my esteemed colleagues Professor Saksena and Mr. Kamath. Both of them, I am sure, have erred grievously. They feel that powers of the Parliament are interfered with and that no discussion of a full and frank nature is possible under the circumstances. These two allegations seem to he the basis of their opposition.

Let me take the first, namely, that there will be no possibility of discussion. Parliament is to enact a law by which a Finance Commission is to be appointed. The impartiality of the Finance Commission is a matter beyond doubt, because the whole thing is left to Parliament itself. They have to devise the law, they have to lay down qualifications, and the choice of the personnel depends upon the Cabinet, I believe, in the name of the Governor-General. They represent the people. Under these circumstances I have no hesitation in believing that there will be an impartial Tribunal. The Finance Commission is thus a baby of the Parliament-it is an institution created by the Parliament under its own statute.

On appointment, the Commission makes a thorough, deep and searching enquiry, also if required sit in examination over the budgets and administration of provinces, and submit a report to the executive. Whose executive? The executive of the Parliament. Thereupon the Cabinet in the name of theGovernor-General take decisions and they practically accept the recommendations of the Finance-Commission, just as in the case of the findings of the Election Tribunal where the Governor or the Governor-General has the power to interfere. But can you point out a case wherein a

Governor or Governor--General has ever interfered ? No, never. Therefore, precedents have been created and have been in existence wherein the recommendations of statutory bodies-judicial or quasi-judicial bodies-are accepted in toto.

Then the other stage comes in, namely, of their being placed before both Houses of Parliament. That again gives an occasion for discussion. Any member of the House, under its Rules of Procedure, can raise a debate. Political parties may also move Parliament for a debate and discussion. Therefore there is scope for discussion immediately after the sitting of Parliament.

The grant again comes before Parliament in the shape of a Money Bill. Then again Parliament has got the power to discuss the whole question on its merits. Is it possible for a responsible Ministry and a Cabinet to go beyond the wishes of the Parliament? It is impossible unless we visualise that we are not to have a parliamentary system of democracy having a Cabinet which is absolutely representative of the wishes, aims and aspirations of this honourable House.

One question more remains for me to discuss here and that is about the charged items. Charged items in our country are many. They have become a part of the Constitution. Charged items are inevitable and charged items are the creations of the Legislative Assemblies themselves, because they pass legislation and they agree to charge their own items of revenue and expenditure as a charged amount in their budget. Therefore it is one of their own creation. It is only a question whether you should have a prior sanction or a post-sanction. That is all the-difference. Therefore in this regard I do not agree with my honourable Friends that any injustice or wrong, serious. great or constitutional, has been done in this regard. Sir, it will not be conducive to the advantage of the nation if a fraternal duel is undertaken in this House by politicians from provinces and States. Each member is anxious to see that his provinces gets more. True it is that when a member is elected, he represents, after the election, India and not his province. That is true, but the fact re.mains that we are men and we are average men, not rising so high as few people have done, like our leaders Sardar Patel or Pandit Jawarharlal Nehru. So within these limitations, I claim that a decision, after a judicial and thorough enquiry of a non-Political Body, of the nature required to be undertaken by the Finance Commission in regard to the aids to be given to provinces, is necessary. The power is also vested under the statute in the Governor-General to revise these grants whenever be likes after a certain period Of years. With these words', I strongly support the article and oppose the amendment.

Shri B. N. Munavalli (Bombay States): Mr. President, Sir, article 261 as it stands now empowers, as I understand, the President to place the recommendations of the Finance Commission together with the action taken thereon before the Parliament. This clearly shows that the Parliament will not be in a position to discuss the various recommendations that are going to be approved by the Executive and upon which action has already been taken. The amendments moved by my Friends Messrs. Kamath and Shibban Lal Saksena, as I understand them, require that the Finance Commission's recommendations should be placed before the House of Parliament before any action is taken, so that the House of Parliament may approve or disapprove or reject some of the recommendations made by the Finance Commission.Some of my Friends, for example, my honourable Friend Dr. P. S. Deshmukh, said that this article does not clothe the President with any more powers. That is true, but the Parliament will lose the opportunity of discussing and approving the recommendations if they were placed by the President after action has been taken by the executive. The whole difference between the article as it is and the amendments now put forth is that the power of discussion of the

Parliament over the recommendations, before any action is taken, should not be

removed. If the recommendations together with the action taken thereon by the executive are placed, the Parliament will be only in a position to approve and not to disapprove. Under these circumstances, I think that if these amendments are not accepted, the House of Parliament will lose much of its power. I therefore support the amendments and I commend that they be accepted by the House.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, neither the amendment of Mr. Kamath nor that of Mr. Shibban Lal Saksena for substitution is good. I am requesting them to consider how substitution is not proper. These may be in addition to the power given under article 261. It is admitted, and there is no dispute regarding the fact, that the Finance Commission's recommendations are only recommendatory and not obligatory. Some person, whether the President or the Parliament, should take action on them. With respect to certain matters, the President can take action. Under article 251 which we have already passed, so far as income-tax is concerned, it is collected by the Centre. A percentage of the income-tax is divisible among the provinces or States. The allocation is also to be recommended by the Finance Commission. Now, until the Finance Commission goes into the matter as to what percentage ought to be shared and how that income-tax is to be distributed among the States according to their needs, the President has the exclusive power to prescribe the percentage. The Parliament does not interfere as far as income-tax is concerned. "Prescribed" means until the Finance Commission has been constituted, "prescribed by the President by order", and after the Finance Commission has been constituted, "prescribed by the President by order after considering the recommendations of the Finance Commission. Nowhere in this article does the Parliament come in. Before the appointment of a Finance Commission, the President by order can direct that such and such a percentage of the income-tax has to be distributed among the provinces and States and in what percentage. After the Commission is appointed, the President may, after looking into the Commission's recommendations, take action. He may change the allocation and the percentage. As article 261 now stands, he has to report to the Parliament what action he has taken regarding those recommendations where action has already been taken, Therefore, there is no good deleting that portion relating to the action. Therefore, instead of substitution, I would suggest the addition of the following words in article 261:

"With an explanatory memorandum of the action taken or to be taken thereon to be laid before the Parliament."

I will give my reasons as to why there cannot be substitution but addition. The principle of the amendments suggested has also to be accepted, because it is not in every case that the President takes action. There are certain matters where it is the Parliament that has to take action. Take excise duties in article 253. Under article 253, excise duties in the first instance have to be levied and collected by the Centre. The portion of the excise duties that may he distributed among the provinces and the principles have to be laid down by Parliament. Now, with respect to those excise duties also, whatever duties are collected by the Centre which can be shared by the States, with respect to them also the Finance Commission has jurisdiction to recommend theallocation under article 261. Article 260 clause (3), sub--clause (a) relates to distribution between -the Union and the States of the net proceeds of taxes which may be levied. Taxes are general. Taxes include not only income-tax, but also other taxes collected by the Centre, as for instance, the excise. But unlike income-tax which can be distributed by the President himself by order, excise duties have to be distributed by law made by Parliament. Parliament will do so, make allocations, after looking into the recommendations of the Finance Commission. Therefore, there are two aspects-one, the action taken by President, the

-.other, the action taken by Parliament. Therefore, if article 261, as it stands at present, refers only to action taken by the President, it does not include action to be taken by Parliament. Under these circumstances, my respectful suggestion is, that instead of these amendments as the stand, these principles may be incorporated, and to effectuate this I would suggest after the words "action taken" the words "and-to be taken" may be included.

Sir, I have not tabled an amendment. After these amendments have come in and after this discussion, I find these amendments ought not to be in substitution, but in addition. I find that there is a lacuna and if you have no objection. and if honourable Friend the Chairman of the Committee also agrees, I can move an amendment in the following terms :

"As to the action taken or to be taken thereon to be laid before Parliament."

I shall move this amendment if it is acceptable to the House and the Drafting Committee.

Mr. President: I am not taking that amendment at this stage, unless the Drafting Committee is prepared to accept it,

Shri T. T.. Krishnamachari (Madras : General): Mr. President, Sir, I do not want to appear to be very wise, but I do feel that there has been considerable misapprehension in this House in regard to the scope of the work of the Finance Commission and I feel that the discussion that has taken place both on article 260, which the House has passed, and on this article arises out of that misapprehension.

I would ask the Members of this House to consider the origin of the scheme envisaged by this particular clause. There is an expedient that is being followed in Australia for the purpose of distribution of amounts, set apart by the Centre either statutorily or otherwise to the States. The machinery in Australia, called the Australian Grants Commission, is the result of an Act passed by the Australian Federal Parliament in 1933. It is only a piece of administrative machinery similar to the ad hoc machinery that has been devised by the Government of India on various occasions, namely, Conference of Premiers of various States, Conference of Finance Ministers, Conference of Finance Secretaries, and so on. The creation of a body of this nature though it is put in the Constitution as an assurance to the States that an impartial machinery will be created for the purpose of distribution of grants, has no more sanctity about it than it would have under a Parliamentary Act. I would also ask the Members of this House to realise this particular fact. Parliament undoubtedly can make legislation in regard to what portion of the Central finances, subject to the provisions contained in this chapter, could be distributed to the provinces. My honourable Friend Mr. Shibban Lal Saksena twitted the Drafting Committee yesterday that, while they have given the President powers to determine the allocation in certain articles, in one article they failed to do so and, therefore, he suggested acceptance of the amendment moved by my honourable Friend Mr. Nichols Roy to that end. The explanation is that it would not, be proper that a mere matter of administrative detail should be discussed at length by Parliament and decided on.The idea of the Finance Commission is a very restrictive one. If the idea of the Finance Commission is something like what I had at one time envisaged and tabled amendment which I did not move, namely, that in the first instance it ought to be a sort of Tax Investigating Commission, then I quite agree to all the propositions contained in the amendment moved by my honourable Friend Mr. Saksena. If it is going to be a matter in which the Finance Commission is going to be entrusted with reviewing the tax structure of this country and proposing amendments thereon, certainly Parliament must consider the report and Parliament must decide what steps the Central Government should take to implement its recommendations and how it can be incorporated either in the Constitution, or by means of a statute which will be applicable to the Central Government and also to the States. But that is not the position before us today. The position envisaged is a every limited one. In order to assure the States that they will have a fair deal the Drafting Committee has put in the body of the Constitution a provision which is not so wholly necessary to be put in the Constitution for the-purpose of execution of that idea, namely, the creation of a Finance Commission. That is a limited objective. That objective I think the House will forgive my repeating it would be equally well-served by a Parliamentary Act. This article therefore has no more sanction than a Parliamentary act will have. That being so, Parliament must leave it to the executive to undertake the very onerous duty of distributing between the various provinces, on certain principles to be laid down by Parliament, the proceeds of certain taxes levied and collected by the Centre. I want the House to refer to article 253, clause (2), which says that Parliament will determine whether the whole or part of the duty will be distributed to the States, the principles on which they should be distributed, the actual quantum, etc. The application of the principle of distribution is not a matter for Parliament; it is a matter for the executive. If the executive misbehaves in any manner, it is' then the obvious duty of Parliament to call the executive to order. But the House will have to recognise that while the Australian Grants Commission is a piece of administrative machinery, our

Finance Commission will also only be an aid to the administrative machinery even though created by an article in the Constitution and their recommendations must be decided on by the executive, in consultation with the various Ministers of the States. Naturally the Commission is to be a permanent body or a semipermanent body. But if Parliament is going to take upon itself the duty of adjudicating the claims of the various provinces, then instead of having a Finance Commission we may well have a sort of conference of the finance and other ministers of the States which will report to Parliament and Parliament can discuss the report and take necessary action thereon. But what will be the result ? I will ask the House to remember what happened here yesterday and the day before when individual claims of provinces, absolutely without any reference to the claims of other provinces were pressed and pressed hard for any length of time. Individual members spoke for about 75 mininutes on the subject. And to what purpose ? The speeches had no relation to the total amount of revenue that is likely to be distributable or to the claims of provinces other than their own. It is in order to prevent Members of Parliament making claims on an individual or provincial basis and each group insisting on the rights of particular provinces that we have proposed to leave the thing in the hands of an administrative machinery. an arbitral body to decide. The executive can accept their recommendations if they are feasible and desirable.

I think my honourable Friend Mr. Saksena, himself a very diligent student of public finance. will realise that he is really throwing an apple of discord into the midst of members of Parliament when he wants Parliament to undertake this onerous responsibility. The father we remove this responsibility fromParliament and entrust it to an independent body like the Finance Commission, the better it will be for the future of this country. I think the point that has been made by members who spoke in support of the amendment is without any substantial merit.

In reegard to the particular amendment suggested by Shri M. Ananthasayanam Ayyangar, I do see that it has a point. But the words here "as to the action taken thereon to be laid before Parliament" also mean that if anything is left over, a discussion may be raised in Parliament and what has been done or has not done will all be explained by those who are in charge of the finances of the country. Such a discussion will probably be useful for the purpose of future guidance rather than for determining what was to be

done at the moment. I therefore think that the House will do well to reject the amendment, not because it is pointless, but because it arises from a total lack of understanding of the very limited field envisaged by articles 260 and 261.

Shri Brajeshwar Prasad : Mr. President, Sir, I rise to support the article moved by Dr. Ambedkar. I differ those who oppose this article on the ground that it is not in consonance with the sovereignty of Parliament. It is. only in unitary States like England that Parliament is a sovereign body. There is no legal sovereign in a federal constitution. Political sovereignty rests with the people. We have distributed powers between the Centre and the provinces. Even in those spheres that have been left to the' Union Governmnent, powers have been divided between three organs of the State, the Judiciary in the form of the Supreme Court, the Parliament and the President. Sometime last year I had occasion to raise the question at a different place that the President under the Constitution has got absolute powers and that his powers are not circumscribed by ministerial advice. Sir, having due regard to the fact that there is no legal sovereign in our Constitution, all, talk of sovereignty of this House is entirely misplaced.

Shri Rohini Kumar Chaudhuri (Assam: General): Mr. President, Sir, I have come here to protest very strongly against the two amendments which have been moved by my Friends Mr. Kamath and Mr. Saksena. I submit, Sir, that the amended article 260 is being hailed by people who suffer under a sense of injustice being done to them in the past and who hail this amended article 260 because it has reduced the period from five years to two years and also in the subsequent stages to a period shorter than five years. Sir, it follows therefore that if you have really a desire to do justice to the more unfortunate provinces, you should do so as early as possible and as quickly as possible. Therefore the provision in article 260 which enables the President to deal with the recommendations made by the Finance Commission is a very welcome one. If you leave it to-be decided by Parliament it will necessarily mean that both Houses of Parliament would have to consider it. If the amendment which has been put forward by Mr. Saksena is accepted, then it will be enough if the Lower House puts its seal to it; but then it would mean delay and it would mean also that if the matter entirely rests on the vote of the House of Parliament, then the question of each province fighting for its own share or more than its own share will arise, and those provinces that have a more potent voice will get more than they deserve in some and will deprive other provinces which deserve more. Therefore, both on the ground of quick meting out of justice and also on the ground of having better justice. I think it is -certainly very welcome that a decision will be made by the President as early as possible and communicate the some to the Legislature. I do not mind if the decision is accompanied, as my Friend Mr. Kamath desires, by an explanatory note or not. But, since it is the desire of Mr. Kamath that an explanatory note may be, given so that he may find. scope for criticism, that note may be furnished. That will not harm us in any way. But what I would like to say on behalfof the poorer provinces that are labouring under a sense of injustice so far as finances are concerned-that injustice was not done by the present regime, but by the previous' one-is that we all welcome article 261 remaining as it is.

Shrimati G. Durgabai (Madras: General): I move that the question be now put.

Shri Jagat Narain Lal (Bihar: -General): Sir, the question before us is not entirely free from difficulty. It is true that the Finance Commission is an expert body consisting or a. few select experts to judge as to what should be assigned to the different provinces. If the Parliament is to be made a cock-pit by the different provinces combining to get things done as they like, it will be very difficult for the Central Government. On the

other hand the difficulty of the poorer provinces is there. The Finance Commission will be a small body. In case the Finance Commission does not see its way to do justice to some of the provinces which cannot carry on without, a proper allocation, the position will be difficult indeed. I would have liked to support the amendment which makes the decision appealable from the decision of the Finance Commission in certain cases. The article as it stands does not make the decision appealable. If, however, some provision could be- made whereby the recommendations of the Finance Commission could be reviewed in special cases by somebody, by the Cabinet or the Parliament, I would like to welcome such an amendment or such a provision. These are the difficulties and I would, instead of supporting the amendment which says that the Lower House should sit in judgment in, every case, urge that some provision may be made whereby the recommendations of the Finance Commission in special cases, if any province wants it, may be reviewed by somebody who might sit in judgment on them. These are the few suggestions that I wanted to make.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, I am sorry I cannot accept the amendments moved- to this article. It seems to me that -the amendment are based upon a complete misunderstanding of the provisions contained in article 261, and I feel that no amendment is necessary at all. In order to understand exactly what article 261 means, you have to go back to the previous articles which deal with the distribution of the income-tax and the distribution of the net proceeds of the Centrally collected excise duties. Obviously, with regard to the distribution of the income-tax, the article which we have passed so -far leave the matter entirely with the President acting on the recommendation of the Finance Commission. That being so, it would not now be possible to say by an amendment that so far as the recommendations with regard to the distribution of the income-tax are concerned, the matter may be left to Parliament. My mission is that that issue is now closed we having passed an article leaving to the President the allocation and the distribution of the income-tax either in the initial stage or in the sub"

Now the other matter which is, covered by article 261 relates to the distribution of the revenue collected from Centrally levied excise duties. It is also clear from the article that we have passed that this matter shall be governed by the law made Parliament. The President cannot do it himself. There fore the words shall put before Parliament -a memorandum stating the action that has been taken" merely means this that the President shall say, as he is bound to say, that a Bill shall be introduced before Parliament to regularise or sanction the proceeds of -the excise duties and the manner in. which they are to be allocated. Consequently, if my friend, Prof. Shibban Lal Saksena, will read article 261 in relation to the other articles that we have passed, hewill realise that so far as the distribution of the excise duties is concerned, he result will be the same as what he proposes to bring about by his amendment. Therefore I think that his amendment is quite unnecessary.

Mr. President: I will now put the amendments to the vote. The question is :

"That with reference to amendment No. 2950 of the List of Amendments, in article 261. for the words 'together with an explanatory memorandum as to the action taken thereon', the words 'together with such explanatory memorandum as he may think fit' be substituted."

The amendment was negatived,

Mr. President: The question is:

"That in amendment No. 2950 of the List of Amendments. for the words 'each House -of Parliament' proposed to be substituted, the words 'each House of Parliament for such action thereon as Parliament may deem necessary' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That with reference to amendment No. 2950 of the List of Amendments, in article 261, for the words 'action taken

thereon to be laid before Parliament' the following words be substituted:- 'containing his proposals for action that should be taken thereon to be laid before each House of Parliament. The House of the People shall have the right to amend the proposals made by the President by a resolution passed by the House of the People., The proposals of the President in their original form or in the form in which they emerge after they are amended by the House of the People shall thereafter become law."'

The amendment was negatived.

Mr. President: The question is:

"That in article 261, for the word 'Parliament'-.the words 'each House of Parliament' be substituted."

The amendment was adopted.

Mr. President: The question is :

"That article 261, as amended, stand part of the Constitution.."

The motion was adopted. Article 261, as amended, was added to the Constitution.

Article 262

Mr. President: Amendment No. 141 is verbal. I take it that we should not have these formal amendments moved in every case.

Shri H. V. Kamth: This amendment relates to amendment No. 2951. If that amendment is not moved, this will not arise.

Mr. President : I am suggesting that verbal amendments like the substitution of "Consolidated Fund of India" for "the revenues of India" should be left to the Drafting Committee. Whenever such phrases occur, the Drafting Committee will put them a right.

Shri H. V. Kamath: Amendment No. 2951 seeks the substitution of the words "the revenues of India" by the words "Indian revenues". If that amendment is not moved, my amendment will not arise.Mr. President : That was given notice of, before we accepted the term "Consolidated Fund of India".

Does anyone wish to say anything on this article? The question is :

"That article 262 stand part of the Constitution."

The motion was adopted. Article 262 was added to the Constitution.

Article 263

Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for article 263 the following be substituted :-

`263 The Custody of Consolidated Funds, the payment of moneys in to and withdrawal of moneys from such funds. (1) The custody of the Consolidated Fund of India, the payments of moneys into such Fund, the withdrawal of moneys therefrom and all other matters connected with or ancillary to the matters aforesaid shall be regulated by law made by Parliament, and until provision in that behalf is so made by Parliament, shall be regulated by rules made by the President.

(2) The custody of the Consolidated Fund of a State, the payments of moneys into such Fund and the withdrawal of moneys therefrom, and all other matters connected with or ancillary to the matters aforesaid shall be regulated by law made by the Legislature of the State, and, until provision in that behalf is so made by the Legislature of the State,. shall be regulated by rules made by the Governor of the State."'

I do not think any explanation is necessary.

Pandit Hirday Nath Kunzru: Mr. President, I move:

'That in the amendment just moved by Dr. Ambedkar, after the words 'Consolidated Fund', wherever they occur, the words 'and the Contingency Fund' be inserted; and for the words 'such Fund', wherever they occur, the words 'such Funds' be constituted."

The House has already agreed to the establishment of a Contingency Fund. It is therefore necessary to provide for the manner in which money may be put into the Contingency Fund and may be withdrawn from it. This is a purely formal amendment and I trust that the House will accept it.

Mr. President: I take it that Dr. Ambedkar will accept Pandit Kunzru's amendment.

The Honourable Dr. B. R. Ambedkar: I accept the amendment.

Mr. President : The question is :

"That in amendment No. 206 above in the proposed article 263, after the words 'Consolidated Fund', wherever they occur, the words 'and the Contingency Fund' be inserted; and for the words 'such Fund', wherever they occur, the words, 'such Funds' be substituted."

The amendment was adopted.

Mr. President: The question is:

"That proposed article 263, as

amended, stand part of the Constitution."

The motion was adopted. Article 263, as amended, was added to the Constitution.

Article 263-A

Mr. President : There is an additional article to be moved by Dr. Ambedkar.

Shri T. T. Krishnamachari : May I suggest that it should be held over?

Mr. president: Very well. Then we go to article 267. Articles 246, 265 and 266 are not on today's list.

Article 267

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That in article 267-

(i) after the words 'Crown in India' the words 'or after such commencement in connection With the affairs of the Union or of a State' be inserted;

(ii) for the words 'revenues of India' wherever they occur, the words 'Consolidated Fund of India' be substituted;

(iii) for the words 'revenues of a State' wherever they occur, the words 'Consolidated Fund of the State' be substituted;

(iv) the words and figure 'for the time being specified in Part I of the First Schedule' be omitted; and

(v) for the words 'revenues of the State, the words 'Consolidated Fund of the State' be substituted."

It is just consequential.

Prof. Sibban Lal Saksene : Sir, I beg to move:

"That for part (i) of amendment No. 102 above, the following be substituted:- '(i) for the words "Crown in India", the words "Government of India prior to 15th August 1947 or after such commencement in connection with the affairs of the Union or the Government of a State" be substituted;"'

Sir, I have suggested this amendment, because I do not want the words "Crown in India" to appear in our Constitution and to be a reminder of the period of our slavery for ever in future. I do not think that the word is so essential and it can be very easily avoided by converting it into "Government of India prior to 15th August 1947". I think this is a very simple amendment and the sentiment of the House, I am sure, will be in favour of it. The other portion of the amendment is merely the incorporation of Dr. Ambedkar's amendment and that I think will be acceptable to him. I therefore think that these words "Crown in India" should be changed into "Government of India prior to 15th August 1947".

Shri H. V. Kamath: Mr. President, I move, Sir, amendments 142, 143, 144, and 145 of List IV, Third week. Amendment No. 142 runs thus :

"That in part (i) of amendment No. 102 of List I (Third Week) of Amendments to Amendments, in article 267, for the words 'in connection with the affairs of the Union or of a State' (in the words proposed to be inserted), the words 'under the Government of the Union or of a State' be substituted."

The next amendment, 143, reads as follows

"That with reference to amendment No. 102 of List I '(Third Week) of Amendments to Amendments, in clause (a) of article 267, for the words 'in connection with the affairs of such a State' the words 'under the Government of such a State' be substituted."

Amendment No. 144 reads to the following effect :-

"That with reference to amendment No. 102 of List I (Third Week) of Amendments to Amendments in clause (b) of article 267, for the words 'in connection with the affairs of the Union or another such State' the words 'under the Government of the Union or another such State' be substituted."

The last amendment, Sir, of mine, No. 145 of the same List, is to the following effect :-

"That with reference to amendment No. 102, of List I (Third Week) of Amendments to Amendments, in article 267, for the words 'an arbitrator' the words 'a tribunal' be substituted."

All these amendments are germane to the amendment just now moved by Dr. Ambedkar before the House, number 102 of list I (Third Week). These four amendment of mine fall into two categories. The first three are similar in nature and the last one is in another class. The first three seek to substitute certain expressions used in this article and thereby eliminate what I consider unnecessary and cumbrous verbiage. I do not know exactly whether in usingexpression "affairs of the Union or of a State", the Drafting Committee has got -

something else in

mind than service rendered by a person under the Government of the Union or of a State. The article refers to pensions payable to or in respect of a person who has served in connection with the affairs of the Union or of a State. Naturally, if a person is entitled to some pension in connection with services rendered by him, I believe it must be under the aegis of the Government of the Union or of a State which is liable to pay the pension to him. Therefore, I feel that it is somewhat vague to use this expression "affairs of the Union". What kind of affairs ? The Union or a State may have all kinds of affairs. I suppose the article contemplates governmental affairs, and- not any other affairs that may arise in connection with the Union or as between the Union and the constituent units. Therefore, this article must be clear; that is to say, it must specify, clarify and make it absolutely crystal clear that. the services rendered by a person on account of which he will get a pension will be in relation to the Government of the Union or under the Government of a particular State.

If, of course, this expression in the proposed draft means the very same thing, then mine will be a formal or verbal amendment; by plea will be, that it is far less cumbrous, and far more clear. English is a notoriously cumbrous language. Some of us tend to make it more so. I am reminded of one of Bernard Shaw's witticisms. Bernard Shaw once said that the Engilsh Ian very cumbrous instrument of expression and when we want to say, we cannot do a particular thing, we go on elaborating -and say, "I am very sorry, I regret very much I cannot do this." The Chairman says, "no can", And expresses himself as clearly and effectively. I do not want the Drafting Committee or this House to-be, like the Chinaman, so brief, terse or concise as to sacrifice the meaning of the article. Therefore, the first point that I want to make out is that this expression 'in connection with the affairs of the Union' must be clarified so as to mean, and to say what it means, that the services rendered by a person under the Government of the Union and the Government of the State and no other affairs of any kind are contemplated 142, 143 and 144 that under this article. That disposes of, three I have just now moved before the House.

Coming to amendment No. 145, which seeks to substitute a tribunal for an arbitrator, I must at the very outset confess my partial if not total ignorance of civil law and ancillary legislation. Whether in constitutional law or in civil law there is an essential distinction between an arbitrator and a tribunal, I am not competent to have the last word on. But, from the meagre tit-bits that I have gathered during my experience in several. fields, I feel that a tribunal has got a greater constitutional importance or sanctity than an ad hoc arbitrator that may be appointed for a particular case. According to this article, if adopted as moved-before the House by Dr. Ambedkar, it is conceivable that it is very likely that several cases may arise where under the visions of this article there may not be agreement between the parties concerned. There may not be just one or two cases; it is very probable that we may be inundated with scores if not hundreds of cases, because not merely the Union is involved, but various other States are also involved. Do we, by adopting this article, contemplate the appointment of an ad hoc arbitrator whenever a case arises ? That will mean that we will have several arbitrators appointed on several occasions. Or is it, our intention that to dispose of all cases of, this type, where agreement is not secured, to have a body of men, competent men, experts in their own line, to examine and decide all these cases and when they may arise ? If that be our intention, then in my humble judgment, not an arbitrator, but a tribunal is called for. The wording of thisarticle also, I believe is not quite happy. It is said here that there will be an arbitrator........ that means to say one; I am sure we do not want to quarrel on the point

that 'an' means one; I am happy that the Chief Justice ,of India has been empowered in this regard. But to say that he will appoint 'an arbitrator' and no more or no less I am sorry, no less cannot arise be,cause less than one is zero--no more than one, is to fetter the judgment of the Chief Justice unduly. He may think that a particular case before him is either so complicated or the cases are so numerous or so varied that one, man cannot dispose of all these cases, and he might think that a tribunal will be more competent to decide these cases than arbitrator. I believe, so far as an arbitrator is concerned, both the parties have to signify beforehand their agreement to abide by the decision of the arbitrator. But -if a tribunal is appointed and if we provide in the Constitution that the decisions of the tribunal will not be subject to any appeal and they will be final, we - will be following a far wiser course than approving of this provision for a mere arbitrator. When this Constitution comes into force and this article comes into effect several cases of this type may arise and one arbitrator win not then be able to dispose of the cases with promptitude and alacrity.; and I make bold to say, with sufficient impartiality and justice. A tribunal or a high ,order is called for to dispose of these matters and so I move that instead of `arbitrator' proposed in this article the Chief Justice of India should be vested with powers to appoint a full-fledged tribunal to dispose of these cases as and when they arise. I therefore move Nos. 142, 143, 144 and 145 and commend them for the consideration of the House.

Dr. P. S. Deshmukh: Mr. President, this a very simple article and I do not think the House need take long to pass it. It refers only to adjustments in respect of certain expenses and pensions. Mr. Kamath has moved an amendment to substitute 'arbitrator' by 'tribunal'. I would suggest to him that it is wholly unnecessary to transform a mere arbitrator into a tribunal with all the expenditure that it will involve. These are likely to be small cases and one person appointed by the Chief Justice to give an award so as to 'adjust the expenditure between the Union and the States would be quite enough. They are not likely to be very complicated cases nor is there like to be great feeling on either -side in fighting these cases. But I would ask one question from Dr. Ambedkar, viz., whether there would not be cases between the Union and more than one State on the one hand, and on the other hand between one and more than one State so as to require adjustment and arbitration, In 267 there is a provision for arbitration between Union and one State only. Nowhere the word State has been used in plural and there is no provision Also for adjudication as between two States. I do not think it is possible to interpret this article so as to mean that the singular includes the plural and I therefore think it is either deliberately or has been inattentively omitted. I would like myself to be satisfied whether it is impossible that cases are likely to arise of distribution of expenditure between two individual States. I cannot conceive that it is unimaginable because they refer to a variety of cases. In this first para, it is stated as follows

"Where under the provisions of this Constitution the expenses of any court or commisSion, or pensions payable to or in respect of a person who has served before the, commencement of this Constitution under the Crown in India, are charged on the revenues of India or the revenues of a State etc."

I can say that this can very well refer to more than one State, and if that is the position whether it is not intended that such cases should be referred to an arbitrator? If that is so, the article would have to be suitable amended. Perhaps we have to say the word 'States' should be substituted for 'State' wherever the word occurs. But I merely ask this for clarification and, if Dr. Ambedkar is convinced that there is no likelihood of such cases arisingbetween two individual States or the Union and two

other States, then of course my point would not arise. But if it is conceivable that they will arise then a proviso will also be equally necessary.

The Honourable Dr. B. R. Ambedkar: Sir, I do not accept any amendment.

Mr. President: I put the amendments to vote.

The question is : "That for part (i) of amendment No. 102 the following be substituted:--

(i) for the words 'Crown in India the words Government of India prior to 15th August 1949 or after such commencement in connection with the affairs of the Union or the Government of a State' be substituted."'

The amendment was negatived.

Mr. President: The question is :

"That in part (i) of amendment No. 102 of List I (Third Week) of amendments to Amendments in article 267, for the words 'in connection with affairs of the Union or of a State' (in the words proposed to be inserted) the words 'under the Government of the Union or of a State' be substituted."'

The amendment was negatived.

Mr. President: The question is :

"That with reference to amendment No 102 of List I (Third Week) of Amendments to Amendments, in clause (a) of article 267, for the words 'in connection with the affairs of such a State' the words 'under the Government of such a State' be substituted.

The amendment was negatived. Mr. President: The question is:

"That with reference to amendment No. 102 of List I (Third Week) of Amendments to Amendments, in clause (b) of article 267, for the words 'in connection with the affairs of the Union or another such State' the words 'under the Government of the Union or another State' be substituted."

The amendment was negatived.

Mr. President : The question is

"That with reference to amendment No. 102 of List I (Third Week) of Amendments to Amendments, in article 267, for the words 'an arbitrator' the words 'a tribunal be substituted."

The amendment was negatived.

Mr. President: The question is :

"That in article 267.-

(i) after the words 'Crown in India' the words 'or after such commencement in connection with the affairs of the Union or of a State' be inserted;

(ii) for the words 'revenues of India wherever they occur, the words 'Consolidated Fund of India' be substituted;

(iii) for the word- 'revenue- of a State' wherever they occur the words 'Consolidated Fund of a State' be substituted:

(iv) the words; and figure 'for the time being specified in Part I of the First Schedule be omitted; and

(v) for the words 'revenues of the State', the words 'Consolidated Fund of the State' be substituted." The amendment was adoptedMr. President : The question is :

"That article 267, as amended, stand part of the Constitution." The motion was adopted. Article 267, as amended, was added to the Constitution.

Article 268

Mr. President: We go to article 268. There is a formal amendment in the name of Dr. Ambedkar. I take it I the House accepts it.

The amendment is :

"That in article 268, for the words 'revenues of India' the words 'Consolidated Fund of India be substituted."

Shri M. Ananthasayanam Ayyangar : Mr. President, I wish to draw the attention of the, House to what an important matter this Chapter relates--borrowing. Though the entire borrowing both of the Centre -as well as of, the provinces and loans may be granted by the Union Government to States are put compendiously in two articles 268 and 269, they are more important and- require greater scrutiny than the powers to impose taxation, with respect to which and for the -distribution of which-the revenues of both the Union and the States-we have devoted a long Chapter. My intention in speaking on this matter is to draw the attention of the House now, and later on to make sure that the Parliament will devote greater attention to this matter. We have been seeing from time to time that' the revenues are being collected for the year by Finance Bills. So far as borrowing is concerned--they may be short or long-term, imposing heavy obligations upon not only the present generation but future generation also-sufficient attention is not being

given to the manner in which borrowing can take place. Many of the loans which have been raised recently by provincial Governments have not been fully subscribed, some had to be withdrawn, and even we have been very chary of borrowing in the open market. I would suggest that a Commission of the kind ,of Finance Commission might be constituted for all time.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Wednesday, the 10th August 1949

We do not want any other Commission. The Reserve Bank in the State. Bank and it is competent to give us advice as to what ought or ought not to be done in this -matter. Development schemes generally are to be undertaken by borrowings. They ought not to be legitimately borne on. the current ,revenues because the benefits of these schemes will be shared not only by the existing people, by the mass of the people now present, but also all the succeeding generations. From our recent budgets, it will be clear that the borrowing programmes are as wide as are the programmes for the revenues of the year. Under these circumstances, the matter of borrowing, the question of what loans are to be floated, is not being placed before Parliament. There is a similar provision in the existing Government of India Act. It is open to the Dominion Parliament to give directions as to the methods of borrowing, the amount of borrowing and so on. But all the same, all these matters have not been placed before us except as an appendix, as the tail-end of the budget, indicating what the capital outlay will be, and how in very brief outline, that money is to be made up. Parliament, when it makes provisions, should be very chary in granting permission to all and sundry loans being floated, irrespective of the capacity of the people to subscribe, etc. These and the purposes for which 'the borrowings take place will all be regulated by Parliament under article 268.

I find that both in articles 268 and 269, as regards loans that have to be borrowed by provinces, the consent of the Central Government is necessary in certain cases. In the present Government of India Act, there is a clausethat this consent ought not to be delayed or unreasonably delayed. There is no such provision in this. article, because it is thought such a provision is not necessary. Under the Government of India Act, it was thought there will be a different agency who will not be, a national of this country, in charge of the administration. But now with national governments in the provinces and a national government at the Centre, it is felt that such a provision is not necessary. I hope articles 268 and 269 will meet the situation. They will be taken full advantage of and will help to keep even a closer scrutiny upon the revenues of the Union and of the Provinces. I support the articles as they stand. But in the matter of working, the matter Will be placed before Parliament and the Executive will not take the entire responsibility on itself, of raising loans before coming to Parliament, in the future.

Prof. Shibban Lal Sakesna : Mr. President, Sir, in this article I again want to voice my feeling against arming the executive with powers to borrow upon the security of the revenues of India etc. Of course, the limits are to be prescribed Parliament by law. But beyond that, Parliament does nothing. Sir, I think in such important matters where the entire security of the State may be pawned, there must be some voice for Parliament. It must not merely be that Parliament shall fix the limit, but that in other matters the Executive shall have all the power. At least, after taking a decision, the executive must take the Parliament into confidence. After all the Ministry will have always the majority in the Legislature and. whatever they may do, they will be able to carry through the House. That being so, I do not know why they should feel shy to bring these things to Parliament. I therefore, think that such sweeping powers as are proposed in this article, should not be given to the Executive. Sir, this is my only objection and I hope the House will consider it. I am sorry I did not give notice of any amendment.

Shri H. V. Kamath: Mr. President, I earnestly hope that the House Will. bestow very serious consideration upon this chapter, Chapter II, which refers to borrowing by the Union, or giving guarantees to loans made by other units of the union. Borrowings can easily be one of those rocks upon which the ship of State may founder; and in modem times, and in the modem world, when economics has assumed such tremendous importance, and when loans are floated and subscribed very frequently by every State, by every country in the world, I feel that the executive of the Indian Union to be, should not be vested with the power to decide upon borrowing, within the limits, of course, fixed by Parliament, no matter what the purpose of the borrowing may be. I feel that the purpose for which the loan is raised, under this article must be laid before

Parliament and the, approval of Parliament must be sought and obtained for the purpose of that loan' But under this article 268, Parliament is empowered merely to fix the limits--I suppose it means the pecuniary limits, the monetary limits, within the limits of so many crores, and that sort of thing. Also the second part of the article relates to similar safeguards--not very important, in my estimation-regarding monetary limits of the guarantees to be given by the Union for loans. Nowhere does the article envisage the purpose for which the loan is raised or borrowed or guarantee given. In recent months, as the House is very well aware, various proposals have been made for loans from the World Bank or loans from America or from some other country as is willing to finance and promote our economic and industrial development. The House will also recollect that this House sitting as Parliament, during the last budget session and even in earlier sessions, pointedly asked the Prime Minister and perhaps the Finance Minister too whether loans borrowed from foreign countries, from America, or may be from U.S.S.R. if Government will consider such a proposal, win be subject to any political economic or military strings. After all, I am sure that Parliamentwill ultimately decide our international relations. It is neither the executive nor the' President but Parliament which will have the final word on what out foreign. relations are going to be, what our international policy is going to be. But the executive may be at variance with Parliament in certain matters and if the executive takes it into its head to pursue a foreign policy which Parliament later on may not approve or which be quite in consonance with the decisions of Parliament in this regard, a very unfortunate situation pregnant with dire consequences may arise when a commitment will have been made by the government of the -day-by the President and the executive-with regard to borrowing or the raising of loans from foreign countries. Of course they will not transgress the limits prescribed by Parliament. They will not borrow more than one, ten or twenty crores whatever the limit may be. But the real purpose of that loan may be kept a guarded secret, and the purpose of the loan -is an essential matter which will ultimately help or hinder us, and save or destroy us. I hope the House will consider this aspect of the matter which is far more vital in my judgment than the financial limits to be fixed by Parliament. The purpose of the loan goes to the root of the matter. If the President or the executive borrows a loan from America and either in a secret pact or in some :secret terms of the agreement there is some military commitment or a political commitment, to be effective in future if there be war,--that we will assist it against certain other countries,--do we wish to face such a dangerous situation as that? I therefore want that this article should be so amended as to enable Parliament not merely to fix the limits of borrowing and the giving of guarantees but also to see on every occasion that the purpose of the loan or the purpose of giving a guarantee is justified by circumstances and that it is in absolute and complete consonance with the policy adopted by Parliament in our internal as well as international relations--the more so in our foreign and international relations. If the executive raises a loan on terms contrary to the policy which has been approved of by Parliament or which may be subsequently enunciated by Parliament, a

conflict may arise between Parliament and the executive and it will be too late in the day to undo the disastrous effect of a loan that might have been borrowed by the executive with certain commitments made without reference to Parliament. We must be on our guard against this situation arising in future. I plead, with the House that this is no small matter at all, to be dismissed with just a flippant consideration or just because Dr. Ambedkar or the Drafting Committee is not going to consider the matter. I plead in the name of the future of India, of the peace, liberty and progress that we all have at heart--of the peace of India as well as of the world-that this article, and this Chapter as a whole, should receive more consideration than most articles usually do at the hands of this House. I hope that not merely the financial Emits but also the purpose of every loan will come before Parliament for its approval, and action is taken by the President in accordance with the policy laid down by Parliament with particular regard to our international relations or our internal policies.

Prof. K. T. Shah: Mr. President, Sir, I agree that every act of borrowing is an executive act. But the power to borrow need not necessarily be regarded as an Executive power exclusively, subject to such limits, if any, as Parliament may from time to time place. From this point of view I would like to suggest that the borrowing power, or the use of the national credit, is a very delicate matter. Under the Conditions under which we are now living, it cannot be treated too scrupulously or too cerefully if we would bear in mind the interests Pot only of the present generation, but of generations to come. As we know, the security of the revenues of India-as the clause speaks here-is, at the present time any rate, and judged strictly from purely economic considerations, a very thin security. That is to say, we have been, in the last ten years orso, habitually living in a deficit economy, and that deficit, considered in its budget aspect as well as in the aspect of the aggregate national economy, shows so far no sip of abatement. The various projects we have, undertaken promise to remedy these deficits within ten or fifteen years. At the present moment, at any rate, and for some years to come it seems to me that our economy being a deficit economy, borrowing would be a necessity for years to come, and, as such, we cannot too carefully regulate, limit or restrict this power.

Taking this view I think that if the Constitution categorically assigns this power to the Executive, the Constitution would be doing injustice, not only to the Legislature, but also to the interests of, as I said before, generations to come. And for this reason. Parliament should not only regulate the borrowing by the Executive in the sense of fixing limits up to which borrowing can take place or lay down conditions for offering securities or guarantee, but Parliament should in my opinion say every year, in what may be called the Ways and Means Act, or the Finance Act, how much, shall be borrowed, so that from time to time-from year to year-the Parliament is aware of the state of the national credit and husbands it accordingly. The question is still more fearful as I conceive it, because it is very likely that borrowing within the home market may not suffice and that you may have to resort to borrowing outside the limits of the country. At that point, the danger would be -much more acute than perhaps we are inclined to envisage it today. It has been the unfortunate experience of many countries which have been chronically indebted that the lender has time and again exercised influence, demanded security or guarantee, which is beyond the capacity of the country to afford. I will not quote, any remote examples, but even that country which was once regarded as the banker of the world--I mean Britain-whose credit is now being questioned is in a similar position, and the principal lender today is suggesting or inclined to interfere even in its domestic affairs. It is being alleged that

the course which the present Government in England is following of all-round nationalisation bit by bit, makes the lender very nervous about the stability or security of that country. Suggestions, therefore, are' not wanting that the accord between England and America may suffer.

I mention this illustration just to point out the danger inherent in a provision like this, wherein the power to borrow is left almost unconditionally to the executive, the only condition being that Parliament may impose limits as to the amount and nature of guarantees from time to time that may be given. The wording of the article suggests that even the imposition of such limits is a very doubtful proposition. The limits, "if any that means limits may not be there at all, and the Executive may be entitled to borrow without limit, either of the charge it may create upon the consolidated fund which will be then outside the annual votes of Parliament, or which may be so excessive that the country's entire future may be mortgaged to the lender.

Now, that is a consideration which fills me, for one, with great apprehension for the future. I am not prepared to say that there should be an utterly unconditional or unlimited power even under the Constitution to the executive to borrow up to what limits and in what manner it likes whether at home or abroad. As you know, in the past I leave pleaded for more power to the Parliament as against the executive. In is instance, I am even prepared to go so far as to say that, by express provision of the Constitution, even the power of the Parliament should be restricted in the matter of the use of the national credit. Not only should the power of the executive be restricted: the executive should only confine itself to administering the law the Act,under which borrowing should be authorised every year, so that every yearParliament is in a position to take stock. I go further and say that even the power of Parliament should be restricted in the nature of assurances and guarantees that it is in a position to give. Parliament should not, for instance, I suggest-be able to guarantee or mortgage the primary productive resources, nor mineral wealth nor rivers nor any of the primary sources of production on which the future happiness of the country may depend. And if such a thing as this can be done the people as a whole, I would suggest, should be in a position to know it, and a revision of the Constitution may be necessary before even Parliament could mortgage the resources of the country.

As I have said before, while I have always suggested that the supreme power should be vested in Parliament here is an instance in which, by the Constitution, I would limit the power even of Parliament to allow any borrowing within and much more so outside the country. This article, therefore, cannot be viewed too seriously, and I would appeal to the Draftsman to reconsider this matter if he takes into account as I hope lie will take, the seriousness of the stakes involved in this article.

The Honourable Dr. B. R. Ambedkar: Sir, except for the last oration of my Friend Prof. K. T. Shah in which he suggested that we should introduce a clause putting limitation upon the authority of Parliament to sanction loans, I was really quite unable to understand the dissent which has been expressed by other speakers with regard to the provision contained in article 268. It is admitted that it is the executive alone which can pledge the credit of the country for borrowing purposes, for borrowing is an executive act in one aspect of the case, but in this article it is not proposed that the power of the executive to borrow is to be unfettered by any law that is to be made by Parliament. This article specifically says that the borrowing power of the executive shall be subject to such limitations as Parliament may by law prescribe. If Parliament does not make a law, it is certainly the fault of Parliament and I should 'have thought it very difficult to imagine any future Parliament which will not pay sufficient or serious attention to this

matter and enact a law. Under the article 268, I even concede that there might be an Annual Debt Act made by Parliament prescribing or limiting the power of the executive as to how much they can borrow within that year. I therefore do not see what more is wanted by those who expressed their dissent from the provisions of article 268. It is of course a different matter for consideration whether we should have a further provision limiting the power of the Parliament to pledge the credit of the country. It seems to me that even that matter may be left to Parliament because it will be free for Parliament to say that borrowing shall not be done on the pledging of certain resources of the country. I do not see how this article prevents Parliament from putting upon itself the limitations with regard to the guarantees that may be given by Parliament for the ensurement of these loans or borrowings. I therefore think that from all points of view this article 268 as it stands is sufficient to cover all contingencies and I have no doubt about it that, as my friend Mr. Ananthasayanam Ayyangar said, we hope that Parliament will take this matter seriously and keep on enacting laws so as to limit the borrowing authority of the Union,-I go further and say that I not only hope but I expect that Parliament will discharge its duties under this article.

Shri H. V. Kamath : Would not Dr. Ambedkar agree to the deletion of the words "if any" ?

The Honourable Dr. B. R. Ambedkar: I have been considering that, but do not think that will improve matters, because the words are "as may from time to time",Mr. President : I take it the amendment to substitute the words "Consolidated Fund of India" is accepted.

The question is :

"That in article 268. for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."The amendment was adopted. Mr. President : The question is :

"That article 268, as amended, stand part of the Constitution."

The motion was adopted.

Article 268, as amended, was added to the Constitution

Article 269

Mr. President: There are some amendments which are printed in the II Volume of the printed amendments on page 313.

(Amendments Nos. 2971 and 2972 were not moved.)

Then we shall take up amendment No. 107 by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That in clause (1) of article 269, the Words and figures 'for the time being specified in Part I of the First Schedule, be omitted."

"That in clause (1) of article 269, for the words 'revenues of the State? the words 'Consolidated Fund of the State, be substituted."

That with reference to amendment No. 2972 of the List of Amendments for clause (2) of article 269, the following clause be substituted :-

(2) The Government of India may, subject to such conditions as may be laid down by or under any law made by Parliament, make loans to any State or,.so long as any limits fixed under article 268 of this Constitution are not exceeded, give guarantees in respect of loans raised by any State, and any sums required for the purpose of making such loans shall be charged on the Consolidated Fund Of India."'

The important change by my amendment No. 107 is that originally the Government of India was given a free hand in this matter; now the action of the Government of India is subject to such conditions as may be laid down by or under any law made by Parliament.

Sir, I move :

"That in clause (3) of article 269, The words and figures 'for the time being specified in Part I or Part III of the First Schedule' be omitted."

Shri Brajeshwar Prasad: I am not moving amendment No. 108.

Shri H. V. Kamath: No. 146, I believe, is a verbal amendment and I leave it to the wisdom of the Drafting Committee.

Shri B. Das: (Orissa: General) : Sir, article 268 empowers, Parliament to fix by law the amount that could be borrowed by Provincial Governments. Article 269 was originally drafted differently. Now, the amendments that have been moved by Dr. Ambedkar shows that article 269, as sought to be amended by him,

imposes further burden on the Minister of Union Government. It also imposes additional burden on the Auditor-General of the Government of India without whose advice the Parliament will not be able to decide.

Today the Union Government is charged with additional responsibility of the borrowings of the States. Of course, it is qualified that such loans, such borrowings will be within the territory of India and also will be upon thesecurity of the revenues of the State. Sir, if we examine the finances of the various Provincial Governments we will find that except a few crores of loans that were raised when the Congress assumed responsibility for the administration of provinces in 1936, all loans have been borrowed on the credit of the Government of India, which task in future devolves on the Union Government. We have recently heard a controversy that certain provinces thought that they have the power to borrow any money. Certain provinces revolted and they thought that they can float any loans and issue any bonds or securities whether negotiable. or non-negotiable. Those of us who think that all borrowings should be done through the Union Government felt at that time at the national credit of the Union Government would suffer if provinces were given the freedom in the matter of borrowing. I do not understand what is the security of the revenues of the Provincial Governments. Who is to fix them ? Will the Auditor-General fix at the time of the promulgation of this Constitution that such and such States and such and such provinces will have so much power of borrowing ?

Unfortunately, I do not like the wording of article 268. How will Parliament fix by law the amount of borrowing every year for the Union and for the different provinces. Sir, as my memory goes over the past twenty-five years, I do not remember a single occasion when the alien Government which ruled over us, consulted Parliament over their borrowing policy. It always came in through the backdoor of explanatory memorandum. Never has the Government of India introduced the practice of raising a debate on their borrowing policy. The borrowing is sanctioned when the Budget is passed, Then we have article 269 under which the finance ministers of the States can claim sums of money for the development of their States. Whatever 'money they claim, article 269 is going to provide. It will be a charge on the revenues of the State. But who will be the judge as to whether a certain province has got the paying capacity? Already the Government of India is committed to large development schemes on behalf of the provinces. We have the Bhakra Dam in East Punjab, the Hirakund Dam in

Orissa, the Damodor Valley Corporation in Bengal and the Kosi Dam in Bihar about which my friends from Bihar are so very anxious. Who is to judge that these development projects will stand the national credit of the particular provinces for which the money is borrowed? I wish there is someone to do this. I think, Sir, whatever be enacted in articles 268 and 269, we must not throw this responsibility on Parliament alone. Parliament, as I know it for the last twenty-five years, pays very little attention to the question of borrowing. If I remember a right, there have been only half a dozen debates in all during the last twenty-five years on the policy of borrowing. Will we improve our financial knowledge, in the next few years when we will be discussing the national credit of the Union and of the provinces and who, will say boldly that such and such provinces will only have so many crores of loan and nothing more? Unfortunately when provincial feelings come into play in the discussion over such matters, members simply fight for the benefit of their own provinces. I think articles 268 and 269 envisage giving more powers to the Auditor-General. The Auditor-General must review and submit the papers to the Members of parliament every year about the credit of each province, part from the Union Government. The Auditor-General is not now doing that. I am discussing the handicaps that surrounds us in

considering questions of this kind. Unfortunately the Finance Department of the Government of India is still following the old tradition and treating the Auditor--General as a mere auditor of a company, where the directors tell him to overlook certain errors and malpractice. But if the House accepts article 269 as it is, the House should somehow incorporate some provision whereby the Auditor--General must report to Parliament the credit conditions of the Provinces. Most of us are laymen and politicians. Very few members of Parliament will be financiers. Financiers do not belong to the class of democracy from which wecome. The future legislatures will not contain businessmen or men who understand stock exchanges or the financial credit of our country. Therefore, there is a double duty imposed by article 269 and I would ask my honourable Friend Dr. Ambedkar to explain how he thinks that Parliament will understand and appreciate the national credit of each of the States and of the Union and how it will limit the amount of borrowing of the Union Government and the States. The Parliament is empowered under article 268 and is going to be. further empowered by article 269 to maintain the national credit of India. But then how will the national credit of India be maintained ? I view with grave concern article 269. If any province rebels against the Centre and against the unification of the national economy of India, the national credit will not be a settled fact. Some other method must be thought of.

The Honourable Shri K. Santhanam (Madras: General): Sir, I wish to say a few Words with reference to one point which struck me when Prof. Shah was speaking on article 268. Prof. Shah suggested that the Government of India and even Parliament should not be entitled to pledge the primary resources of the country in order to borrow. I entirely agree. But., according to my reading of articles 268 and 269, there is no question of either the Government of India or any State pledging any particular resources for any particular borrowing. They give power to borrow only on the security of the Consolidated Fund of India or of the States. It will not be open to the Government of India to say that they pledge the railways for a particular loan, say -from America. Only the entire Consolidated Fund of India will be the security. It means that it will only be a general security of the credit of the people of India. There can be no question of particular general resources or the railways being pledged for any loan either from abroad or internally. The same will be the case with every State. Therefore there should be no apprehensions on the point. I think the plain meaning of articles 268 and 269 makes it certain in this respect. I would, however, Eke to suggest to Dr. Ambedkar that, if there, is the slightest doubt in the wording, the Drafting Committee should look into it and remove the doubt. It should be made clear that the only security should be the general credit of the whole of India or of a State and not particular resources.

The Honourable Dr. B. R. Ambedkar : I do not think, Sir, any reply is called for.

Mr. President: I will now put the amendments to the vote.

The question is :

"That in clause (3) of article 269, the words and figures 'for the time being specified in Part I of the First Schedule' be omitted."

The amendment was adopted.

Mr. President: The question is:

"That in clause (1) of article 269, for the words 'revenues of the State' the words Consolidated Fund of the State' be substituted."

The amendment was adopted.

Mr. President: The question is :

"That with reference to amendment No. 2972 of the List of Amendments, for clause (2) of article269, the following clause be substituted : -

(2) The Government of India may, subject to such conditions as may be laid down by or under any law made by Parliament, make loans to any State or so long as any limits fixed under article 268 of this Constitution are not exceeded, give guarantees in respect of loans raised by any State, and any sums required for the

purpose of making such loans shall be charged on the Consolidated Fund of India."'

The amendment was adopted.Mr. President: The question is:

"That in clause (3) of article 269, the words and figures 'for the time being specified in Part I or Part III of the First Schedule' be omitted."

The amendment was adopted.

Mr. President: The question is:

"That article 269, as amended, stand part of the Constitution."

The motion was adopted. Article 269, as amended, was added to the Constitution.Articles 5 and 6 Mr. President: We have now to take up articles 5 and 6 of the original draft. I find there is a veritable jungle, of amendments, something like 130 or 140 amendments, to these two articles. I suggest that the best course Will be for Dr. Ambedkar to move the articles in the form in which he has finally framed them and I shall then take up the amendments to this amended draft. Both 5 and 6 go together I think. Dr. Ambedkar.

Prof. K. T. Shah : May I know what happens to the amendments in the Printed List? They have all been tabled as amendments to the original draft. I do not quite understand your suggestion as to the process in which the amendments would now be taken up.

Mr. President: If there is any amendment which is of a substantial nature, which touches any of the amended drafts as proposed by the Drafting Committee, I shall certainly take it up, but I leave it to the Members to point out to me which particular amendment they wish to move.

Dr. P. S. Deshmukh : If the original draft is not moved, all the amendments tabled to that draft go by the wind.

Mr. President: We do not move the original draft, but it win be taken as moved and then the other amendments come in.

Members will find that Dr. Ambedkar has given notice of certain amendments which have been circulated to Members. The first is No. 1 in List I.

The Honourable Dr. B. R. Ambedkar: Sir, May I give the references? The amendments of which notice has been given about the citizenship clause are spread over various lists, and I propose to give in the beginning to Members the references to the various lists. The first amendment is No. 1 of List 1. Then come amendments Nos. 128, 129, 130, 131, 132 and 133 of List IV. These are the various proposals of the Drafting Committee with regard to this article. I feel that the House may not be in a position to get a clear and complete idea if these amendments were moved bit by bit, separately. Therefore what I propose to do is this that I will move a consolidated amendment, so to say, which I have prepared, consisting of amendments Nos. 1, 128, 129, 130 and 133. My Friend, Mr. T. T. Krishnamachari, will subsequently move the other two amendments which are Nos. 131 and 132 in List TV. In amendment No. 129, it should read "of the proposed article 5A" instead of "of the proposed article 5". It is a printing error. With these preliminary observations, so to say, I move my am endment:

"That for articles 5 and 6, the following articles be substituted:---

"5.citizenship at the date of Commencement of this Constitution. At the date of commencement of this Constitution, every person who has his domicile in the territory in India and-

(a) who was born in the territory of India : or

(b) either of whose parents was born in the territory of India; or

(c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding the date of such commencement,shall be a citizen Of India, provided that he has not voluntarily acquired the citizenship of any foreign State.

5-A.Rights of citizenship of certain persons who have migrated to India from Pakistan. Notwithstanding anything contained in article 5 of this Constitution, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the date of commencement of this Constitution if-

(a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally

enacted); and

(b) (i) in the case where such person has so migrated before the nineteenth day of July 1948, he has ordinarily resided within the territory of India since the date of his migration; and

(ii) in the case where such person has so migrated on or after the nineteenth day of July 1948 he has been registered as a citizen of India by an officer appointed in this behalf by the Government of the Dominion of India on an application made by him therefore to such officer before the date of com mencement of this Constitution in the form prescribed for the purpose by that Government:

Provided that no such registration shall be made unless the person making the application has resided in the territory of India for at least six months before the date of his application.

5-AA. Rights of citizenship of certain migrants to Pakistan. Notwithstanding anything contained in articles 5 and 5-A of this Constitution a person who has after the first day of March 1947, migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India :

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of article 5-A of this Constitution be deemed to have migrated to the territory of India after the nineteenth day of July 1948.

Shri Jaspat Roy Kapoor (United Provinces : General): Ibis, you, had said, would be moved by Mr. T. T. Krishnamachari.

The Honourable Dr. B. R. Ambedker: I have been considering that, but I ted article as I am proposing to accept the amendment which will be moved by him.

5-B.Right of citizenship of certain persons of India origin residing outside India. Notwithstanding anything contained in article 5 and 5-A of this Constitution, any person who or either of whose parents or any of whose grandparents was born in India as defined in the Government of India Act, 1935 (as originally enacted) and who is ordinarily residing In any territory outside India as so defined shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form prescribed for the purpose by the Government of the Dominion of India or the Government of India.

5-C. Continuance of the rights of citizenship. Every person who is a citizen of India under any of the foregoing provisions of this Part shall. subject to the provisions of any law that may be made by Parliament, continue to be such citizen.

6.Parliament to regulate the right of citizenship by law. Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship." Sir, I would reserve my remarks after the amendments to my draft are moved by Mr. T. T. Krishnamachari and that will complete the thing.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, the amendment that has been moved is a last-minute consolidated amendment taken from severalamendments in the printed amendments. Though in the profession of law for a very long time, I find it a bit confusing to follow how the scattered amendments have been consolidated and whether any departure has been made in the process. In trying to consolidate a large number of amendments and redrafting them, unconscious departures often happen. It is again extremely difficult for us to consider our own amendments as to whether they are accepted or whether they are rejected in the consolidated draft of if they are to be moved, if they are to be moved in an altered form

just as a consequential measure.

I submit that substantially in amendment No. 1 in List I and in some other amendments in other Lists which are now consolidated there has been a great deal of departure from the Draft Constitution and the point that I took the other day is more applicable today than at any other time. There are absolutely new clauses, which purport to be amendments of articles 5 and 6, for instance proposed new articles 5A, 5B, 5C; then there are other articles like 5AA; then there is a new proviso in amendment No. 131 and amendment No. 130 is entirely new. Then in amendment No. 133 there is a new redraft of article 6. I submit, Sir, these amendments or this consolidated amendment amounts -largely to an amendment in the Constitution itself or rather a large number of new amendments to the Constitution itself. As I submitted the other day there was a time fixed by you for submitting regular amendments and then it was ruled by you, and it was applied in many cases, that amendments to amendments alone would be submitted; but then this present amendment or a consolidated amendment, consisting of a large number of amendments, consists of amendments of the Constitution itself and that is creating a considerable amount of difficulty. We are departing from the Draft ;Constitution every day and today the departure is still more complete. I hope that there will be some limit to this migration from the original Draft Constitution. I ask you, Sir, to consider whether' these amendments introducing absolutely new clauses which amount to amending of the Constitution itself should be allowed at this stage, and if they are to be allowed whether it would not be proper to give us a consolidated amended draft which could be considered by the Members in order to see whether their own amendments really fit in into it or they require readjustment or fresh' amendments. Sir, I ask you to consider the practical difficulties of the procedure. Clause 5 has been before the House for some time and amendments to amendments alone would now be regular, but every day new amendments and new ideas are coming in. Articles 5A, 5B and 5C are new. Article 5AA has been brought today and its proviso has come in by a different amendment. The explanation to article 5 is deleted today. These have been all put together in out ex tempore amendment. I do wish that the Constitution should be finished as quickly as possible; otherwise this taste for new changes would go on unabated. I ask you, Sir, to give us a ruling and to suggest a convenient method by which we can deal with the situation.

Mr. president: I have considerable sympathy with the honourable Member's objection that in this amendment new ideas have been brought in, but Members will remember that when this Constitution was taken up for discussion during the winter Session, these articles were over for further consideration and I suppose it was accepted that fresh amendments would be brought in. All those articles and those which were reached but not considered were held over to enable the Drafting Committee to reconsider the original draft and propose new drafts where necessary.

In that view, the Drafting Committee has considered that draft and has proposed new drafts, and they have suggested certain amendments to theirown draft. What Dr. Ambedkar has done is to put together all the amendments which they have proposed and he has read out a consolidated amendment. But I can fully appreciate the difficulties of Members when these various amendments are spread over a number of pages and a number of lists, and I would ask the Office to circulate to Members the consolidated amendment .is proposed by Dr. Ambedkar. We can take up the discussion of the consolidated amendment which has been moved by Dr. Ambedkar tomorrow morning, and the Members will have time by then to study the amendments in the consolidated form. In the meantime, I do not like to waste even the half hour that we have, and if Members have any other amendments to move, they might move them today so that we might take up the

consideration of the amendments as well as the draft as moved by Dr. Ambedkar tomorrow morning.

Prof. Shibban Lal Saksena: May we have Dr. Ambedkar's speech today?

Mr. President: Yes, I would ask Dr. Ambedkar to explain his amendment.

Mr. Naziruddin Ahmad: Amendments Nos. 130 and 131 have been circulated only this morning and we have had no opportunity of considering them. Then if we are to get the consolidated amendment today, there will be no time to suggest amendments which will be in time before the House.

Mr. President: If there is any reasonable grievance on that account, I win take that into consideration.

Shri T. T. Krishnamachari : I move amendment No. 131 of List IV. I move :

"That in amendment No. 130 above, to the proposed article 5-AA the following proviso be added:-

'Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of law and every such person shall for the purposes of clause (b) of article 5-A of this constitution be deemed to have migrated to the territory of India after the nineteenth day of July 1948."'

There is one other formal amendment which I have to move. It is No. 132.

I move :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in the proposed article 5-B, the words 'and subject to the provisions of any law made by Parliament' be omitted."

Sir, I shall not explain these amendments. If necessary, Dr. Ambedkar will explain them.

Shri Jaspat Roy Kapoor : May I suggest that all the amendments which are on the list may also be formally moved today.

Mr. President: First, let Dr. Ambedkar explain his viewpoint and then the other amendments may be moved.

Shri Jaspat Roy Kapoor: I venture to make that suggestion because if all the other amendments are also moved, Dr. Ambedkar will have an Opportunity of saying something with reference to those amendments also. The other amendments may simply be moved but no speeches may be made on them, so that the House may be in possession of all the amendments.

Mr. President: If we take up all the other amendments, I think there will not be any end to them. First, let Dr. Ambedkar explain his proposition and then the other amendments may be moved.The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, except one other' article in the Draft Constitution, I do not think that any other article has. given the Drafting Committee such a headache as this particular article. I do not know how many drafts were prepared and how many were destroyed as being inadequate to, cover all the cases which it was thought necessary and desirable to cover. I think it is a piece of good fortune for the Drafting Committee to have ultimately agreed upon the draft which I have moved, because. 1. feel that this is the draft which satisfies most people, if not all.

An Honourable Member: Question.

The Honourable Dr. B. R. Ambedkar: Now, Sir, this article refers to, citizenship not in any general sense but to citizenship on the date of the' commencement of this Constitution. It is not the object of this particular article to lay down a permanent law of citizenship for this country. The business of laying down a permanent law of citizenship has been left to Parliament, and as Members will see from the wording of article 6 as I have moved the entire matter regarding citizenship has been left to Parliament to determine by any law that it may deem fit. The article reads-

"Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship."

The effect of article 6 is this, that Parliament may not only take away citizenship from those who are declared to be citizens on the date Of the commencement of this Constitution by the provisions of article 5 and those that

follow, but Parliament may make altogether a new law embodying now principles. That is the first proposition that has to be borne in mind by' who will participate in the debate on these articles. They must not understand that the provisions that we are making for citizenship on the date of the commencement of this Constitution are going to be permanent or unalterable. All that we are doing is to decide ad hoc for the time being.

Having said that, I would like to draw the attention of the Members to the fact that in conferring citizenship on the date of the commencement of this Constitution, the Drafting Committee has provided for five different classes of people who can, provided they satisfy the terms and conditions which are laid down in this article, become citizens on the date on which the Constitution commences.

These five categories arc

(1) Persons domiciled in India and born in India : In other words, who form. the bulk of the population of India as defined by this Constitution; (2) Persons who are domiciled in India but who are not born in India but who have resided in India. For instance persons who are the subjects of the Portuguese Settlements in India or the French Settlements in India like Chandernagore, Pondicherry, or the Iranians for the matter of that who have come from Persia and although they are not born here, they have resided for a long time and undoubtedly have the intention of becoming the citizens of India.

The three other categories of people whom the Drafting Committee to bring within the ambit of this article are :

(3) Persons who are residents in India but who have migrated to Pakistan; (4) Persons resident in Pakistan and who have migrated to India: and (5) Persons who or whose parents are born in India but are residing outside India.

These are the five categories of people who are covered by the provisions of this article. Now the first category of people viz., persons who are domiciled in the territory of India and who are born in the territory of India or whose parents were barn in the territory of India are dealt with in article, 5 Clauses (a) and (b). They will be citizens under those provisions it they satisfy the conditions laid down there.The second class of people to whom I referred, viz., persons who have resided in India but who are not born in India are covered by clause (c) of article 5, who have been ordinarily resident in the territory of India for not less than five years immediately preceding the date of such commencement. The condition that it imposes is this that he must be a resident of India for five years. All these classes are subject to a general limitation, viz., that they have not voluntary acquired the citizenship of any foreign State.

With regard to the last class, viz., persons who are residing abroad but who or whose parents were born in India, they are covered by my article 5-B which refers to persons who or whose parents or whose grand-parents were born in India as defined in the Government of India Act, 1935, who are ordinarily residing in any territory outside India-they are called Indians abroad. The only limitation that has been imposed upon them. is that they shall make an application if they want to be citizens of India before the commencement of the Constitution to the Consular Officer or to the Diplomatic Representative of the Government of India in the form which is prescribed for the purpose by the Government of India and they must be registered as citizens. Two conditions are laid down for them--one is an application and secondly, registration of such an applicant by the Consular or the Diplomatic representative of India in the country in which he is staying. These -are as I said very simple matters.

We now come to the two categories of persons who were residents in India who have migrated to Pakistan and those who were resident in Pakistan but have migrated to India. The case of those who have migrated to India from Pakistan is dealt with in my article 5-A. The provisions of article 5-A are these-

Those persons who have

come to India from Pakistan are divided into two categories--

(a) those who have come before the 19th day of July 1948, and (b) those who have come from Pakistan to India after the 19th July 1948.

Those who have come before 19th July 1948, will automatically become the citizens of India.

With regard to those who have come after the, 19th July 1948, they will also be entitled to citizenship on the date of the commencement of the Constitution, provided a certain procedure is followed, viz., lie again will be required to make an application to an Officer appointed by the Government of the Dominion of India and if that person is registered by that Officer on an application so made.

The persons coming from Pakistan to India in the matter of their aquisition of citizenship on the date commencement of the Constitution are put into two categories-those who have come before 19th July 1948, and those who have come afterwards. In the case of those who have come before the 19th July 1948. citizenship is automatic. No conditions, no procedure is laid down with regard to them. With regard to those who have come thereafter, certain procedural conditions are laid down and when those conditions are satisfied, they also will become entitled to citizenship under the article we now propose.

Then I come to those who have migrated to Pakistan but who have returned to India after going to Pakistan. There the position is this. I am not as fully versed in this matter as probably the Ministers dealing with the matter are, but the proposal that we have put forth is this if a person who has migrated to Pakistan and, after having gone there, has returned to India on the basis of a permit which was given to him by the Government ofIndia not merely to enter India but a permit which will entitle him to resettlement or permanent return, it is only such person who will be entitled to .become a citizen of India on the commencement of this Constitution. This provision had to be introduced because the Government of India, in dealing with persons who left for Pakistan and who subsequently returned from Pakistan to India, allowed them to come and settle permanently under a system which is called the 'Permit system'. This permit system was introduced from the 19th July 1948. Therefore the provision contained in article 5-B deals with the citizenship of persons who after coming from Pakistan went to Pakistan and returned to India. Provision is made that if a person has come on the basis of a permit issued to him for resettling or permanent return, he alone would be entitled to become a citizen on the date of the commencement of the Constitution.

I may say, Sir, that it is not possible to cover every kind of case for a limited purpose, namely, the purpose of conferring citizenship on the date of the commencement of the Constitution. If there is any category of people who are left out by the provisions contained in this amendment, we have given power to Parliament subsequently to make provision for them. I suggest to the House that the amendments which I have proposed are sufficient for the purpose and for the moment and J hope the House will be able to accept these amendments.

Shri B. M. Gupte (Bombay: General): Was the permit system brought in on 19th July 1948 ?

The Honourable Dr. B. R. Ambedkar: Yes, on the 19th July '48 there was an ordinance passed that no person shall come in unless he has a permit, and' certain rules were framed by the Government of India under that, on 19th July 1948, whereby they said a permit may be issued to any person coming from Pakistan to India specifically saying that he is entitled to come in. There are three kinds of permits, Temporary Permit, Permanent Permit and permit for resettlement or permanent return. It is only the last category of persons who have been permitted to come back with the express object of resettlement and permanent return, it is only those persons who are proposed to be included in this article, and no other.Mr. President: I think we shall take up the amendments tomorrow. But before I

adjourn, there is one thing about which I would like to take the sense of the House. In the next week, Monday which happens to be the 15th of August, is a holiday, and then Wednesday the 17th is also a holiday on account of Janamashthmi. It has been suggested to me that we might not meet on Tuesday so that Members might have a continuous four or five days from Saturday to Wednesday, and we might meet on Thursday; and instead of Tuesday, we might meet on the following Saturday. If that meets the wishes of the House, we can arrange our programme like that.

Honourable Members: Yes.

Mr. Naziruddin Ahmad: A long adjournment might make us forget everything.

Mr. President : I think you will get time again to study. So, we shall sit up to Friday next, and then adjourn till 9 O'clock on Thursday, and we shall sit on the following Saturday also.

Now the House stands adjourned till 9 O'clock tomorrow morning.

The Assembly then adjourned till Nine of the Clock on Thursday, the 11th August 1949.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Thursday, the 11th August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, :at Nine of the Clock. Mr. President '(The Honourable Dr. Rajendra Prasad) in the Chair.

Mr. President: We shall now take up consideration of articles 5 and 6. I have been looking into the amendments of which notice has been given. A large number of the amendments relate to the original Draft, but quite a good number relate to the present Draft also. I think the consolidated form in which the proposition is now placed before the House meets the point of view of many of the amendments of which notice has been given. There are some which touch the details. I would ask honourable Members to confine their attention to only such of the amendments as are of substance and leave -out the others.

With regard to the amendments relating to the original Draft I find there are some amendments which deal with matters altogether outside the Draft. For example, there is an amendment dealing with the status of women after marriage--whether they become citizens or not. There are others also which deal with the position of persons who are not born Indians or born of parents or grand-parents who were Indians. I think all these matters under the present Draft are left to be dealt with by Parliament in due course. I would, therefore suggest that amendments of this nature might also be left over to be dealt with -by Parliament at a later stage and we might confine ourselves to the limited question of laying down the qualifications for citizenship on the day the Constitution comes into force.

Dr. Ambedkar drew the attention of the House to two important limitations. The first was that this Draft dealt with the limited question of citizenship on the day the Constitution comes into force. And the other point was that all other matters, including those which are dealt with by the present Draft, are left to be dealt with by Parliament as it considers fit. With these limitations in mind I think the discussion of these two articles can be curtailed to a considerable extent and the matter might be disposed of quickly.

I would suggest to Members to bear these considerations in mind when moving their amendments. We shall now take up the amendments of which I have received notice and I will take them up in the order in which they are on the list of the current session. Dr Deshmukh.

Dr. P. S. Deshmukh (C. P. & Berar: General) : May I also refer to the other amendments of which I have given notice?

Mr. President: Yes, you may take them together.

Dr. P. S. Deshmukh: Sir, this article on the question of citizenship has been the most ill-fated article in the whole Constitution. This is the third time we are debating it. The first time it was you, Sir, who held the view which was upheld by the House that the definition was very unsatisfactory. It was then referred to a group of lawyers and I am sorry to say that they produced a definition by which all those, persons who are in existence at the present time could not be included as Citizens of India. That had therefore to go back again and we have now a fresh definition which I may say at the very outset, is as unsatisfactory as the one which the House rejected and I will give very cogent reasons for that view of mine. But if it is necessary that I should move my amendment before I do so, I am prepared to do it. I would, therefore, like to move amendment 164 which is the same as amendment 2 in List III of Second Week. Sir, I move:

"That in amendment No. 1 of List I (Second Week) of Amendments to Amendments, for the proposed article 5, the following be substituted

'5. (i) Every person residing in India-- (a) who is born of Indian parents; or (b) who is naturalized under the law of naturalization; and (ii) every person who is a Hindu or a Sikh by religion and is not a citizen of any other State, wherever he resides shall be entitled to be a citizen of India."'

There are also, Sir, standing in my name other amendments which refer to the draft article that is before the House. By these amendments I have suggested the alteration of the article as proposed by the Honourable Dr. Ambedkar. The first of these amendments is No. 116 in List III of the Third Week. It reads as follows:

That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in the proposed article 5, the words 'at the date of commencement of this Constitution be deleted."

Mr. President: They are all consolidated in List I of the Third Week.

Dr. P. S. Deshmukh: Yes, Sir. But I have taken them from previous lists. I have suggested the omission of the words : "At the date of commencement of this Constitution".

I do not propose to move No. 117. I would like however to move 118 in List III of the Third Week.. I move :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, for clause (a) of the proposed article 5, the following be substituted :-

'(a) who was born of Indian parents in the territory of India."'

'Thirdly, I would like to move amendment No. 119 in List III of the Third Week. I move :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in clause (c) of the proposed article 5, for the word 'five', the word 'twelve' be substituted."

This is the number of years for which residence is required for any person

I would also like to move amendment 120 in List III of Third Week, which I believe is going to be accepted because a similar amendment has been moved by Shri Gopalaswami Ayyangar: Sir, I move:

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, the Explanation to the proposed article 5 be deleted."

I would next like to move amendment 172 in List III of Second Week Sir, I move :

"That in amendment No. 1 of List I (Second Week) of Amendments to Amendments, in the proposed new article 5-A, after the words 'territory of India' the words 'of Indian parents' be inserted. "The last amendment is No. 183 in List III of Second Week. I move.: "That in amendment No. 1 of list I .(Second Week) of Amendments to Amendments after the proposed new article 5-A, the following new article be inserted

5-B. Every citizen shall-

(a) enjoy the protection of the Indian State in foreign countries;

(b) be bound to obey the laws of India, serve the interests of the Indian communities, defend his country and pay all taxes.'" These are all the amendments that I would like to move. The rest May be treated as not moved.

Mr. Naziruddin Ahmad (West Bengal: Muslim) : May I suggest that all the amendments be moved first and then there can be a general discussion? Members could then have an overall picture of the proposals.

Mr. President: If that is the wish of the House, I have no particular objection.

Dr. P. S. Deshmukh: As the number of amendments is very large it would create confusion to let members only move the amendments and then call them to speak.

Mr. President: It seems that Members find it more convenient to speak when they are moving their amendments.

Dr. Deshmukh, you may proceed.

Pandit Hirday Nath Kunzru (United Provinces: General): Can you kindly tell us which amendments have been moved ?

Mr. President: I will give you the numbers in this week's list: they art Nos. 3, 17 and 29.

Then from List III of the Third Week: amendments Nos. 116, 118, 119 and 120.

Dr. P. S. Deshmukh: The Honourable Dr. Ambedkar admitted that this was a sort of a provisional definition and detailed legislation was going to be left to Parliament. I quite agree with the objective, but I am afraid that the definition and the article that he has suggested would make Indian citizen. ship the cheapest on earth. I would like to proceed with an analysis of the article that be has proposed. I do not see any reason why it is necessary to say "at the date of commencement of this Constitution". The whole Constitution is going to be promulgated on a specific day. Whatever provisions there are will come-into force and be applicable from that day alone. So, I submit that the words "at the date of the commencement of this Constitution" are entirely superfluous, so far as this article is concerned. It is sufficient to. say that every person, wherever domiciled in this territory of India .... shall entitled to be called a citizen of India.

Secondly, all these sub-clauses of this article will make Indian citizenship very cheap. I am sure neither the Members of this House nor the people outside -would like this to happen. The first requirement according to this article is domicile. After that, all that is necessary according to (a) is that lie should be born in the territory of India. This has no relationship whatsoever to the parentage. A couple may be travelling in an aeroplane which halts at the port of Bombay for a couple of hours and if the lady happens to deliver a child there, irrespective of the nationality of the parents, the child would be entitled to be a citizen of India. I am sure this is not what at least many people would like to accept and provide for. Indian citizenship ought lot to be- made so very easy and cheap. Then sub-clause (b) says "either of whose parents are born in the territory of India". This is still more strange. It is not necessary that the boy or the girl should be born on the Indian soil. it is sufficient not only if both the father and the mother have been born in India but if even one of them, happens to be born on the Indian soil as accidentally as. I have already pointed out, viz., a lady delivering a child in the course of an air-journey through India. Under the proposed sub-clause (a) the child would be entitled to claim Indian citizenship and under (b) even the son of that child (which happened to be born so accidentally) can claim the same important privilege without any restriction and without any additional qualification whatsoever. Nothing more is necessary except that they should acquire a domicile.'

According to sub-clause (c) Indian citizenship is obtainable by any person 'who has been ordinarily resident in the territory of India for not less than five years". This has also no reference to parentage, it has no reference to the nationality or the country to which they belong, it has no reference to the purpose for which the person chose to reside in this country for five years. For aught I know he might be a fifth columnist: he might have come here with the' intention of sabotaging Indian independence; but the Drafting Committee provides that so long as he lives in this country for five years, he is entitled So be a citizen of India.

The whole House and the whole country is aware of the way. in which Indian nationals are treated all over the world. They are aware of the kind of colour prejudice that used to be there in England, the kind of persecution through which Indian citizens are going even now in South Africa, how they are persecuted in Malaya and Burma, how they are looked down upon everywhere else in spite of the fact that India is an independent country. The House is aware how it is not possible except for the merest handful to obtain citizenship in America, although they have spent their whole lives there. I have known of, people who have been there in America and holding various offices for fifteen, twenty and twenty-five years and vet their application number for citizenship is probably 10,50,000th. There is -no hope of such a person getting his citizenship until the 10,49,999th application is sanctioned. In America Indians can obtain citizenship at the rate of 116 or 118 per annum. That is the way in which other countries are safeguarding their own interests and restricting their citizenship. I can well understand, if India was a small country like Ireland or Canada (which are held out as models for our Constitution) that we want more people, no matter what their character is or what the country's interests are. But we are already troubled by our own overwhelming population. Under the circumstances how is it that we are making Indian citizenship so ridiculously cheap ? There is no other word for it.

As I have already pointed out one of the sub-clauses says anybody who has chosen to stay in India for five years shall be a citizen of India. I had asked the Honourable Commerce Minister (when Mr. C. H. Bhabha was in charge) a question, when sitting in the other Chamber, as to whether there was any register of foreigners coming to India. He said "No". I asked if there were any rules and regulations governing the entry into the country of people from foreign countries and he said there were none. I have no doubt the situation continues very much the' same today. Such is the administration that we have. Is it then wise that we should throw open our citizenship so indiscriminately ? I do not side any ground whatsoever that we should-do it, unless it is the specious, oft-repeated and nauseating principle of secularity of the State. I think that we are going too far in this business of secularity. Does it mean that we must wipe out our own people, that we must wipe them out in order to prove our secularity, that we must wipe out Hindus and Sikhs under the name of secularity, that we must undermine everything that is sacred and dear to the Indians' to prove that we are secular? I do not think that that is the meaning of secularity and if that is the meaning which people. want to attach to that word "a secular state". I am sure the popularity of those who take that view will not last long in India. I submit therefore that this discarded as we did the previous article, because there is nothing that is right in it. If really we want a tentative definition we can have it from other people, who are probably wiser than us and that should be quite, enough for us. That is one of the definitions that I have proposed in, my amendment No. 164, viz.,

"Every person residing in India-

(a) who is born of Indian parents; or

(b) who is naturalised under the law of naturalisation.

I do not mind if it is left to Parliament to debate the whole question of the citizenship of India. But for the present this very short and brief definition may be absolutely sufficient and that is my contention. and my submission to the House. It must be made clear that citizenship shall be primarily obtainable by a person who is a born of Indian parents and I do not exclude even those who had been in India previously, provided the requirement of domicile is satisfied. If they are resident here in this country, or if they have not claimed citizenship of any other country or if they are born of Indian parents they shall be entitled to citizenship of India. So far as other persons are concerned, there will be the law of naturalisation which would -make detailed provisions. We can lay down the business, the purposes for which or the way in which a person who-claims Indian citizenship chooses to live in India. There would be ample time for the Parliament to debate this question and to lay down the principles. But if you are going to have this definition at this Moment you are going to tie your hands, you are going to tie the hands of Parliament from interfering later. Will you then have the courage to deprive them of citizenship, the hundreds and thousands of them who have bad it under the Constitution ? It is impossible, it is quite improbable and no Parliament in India is going to take such a drastic step as to correct the foolishness that we are complacently committing today. I do not think any Parliament will be able to do it. Therefore I do not like citizenship to be made so cheap ,or so easily obtainable, because once you do it in this Constitution it will be very difficult for you to go back on it.

And then, this is not a definition in an Act of Parliament that is easily changeable. So, if by the Constitution you are going to give this right of citizenship in the way proposed in this article, you cannot change it later on and this will go against the interests of the Indian nation. So I have proposed that the circumstances and conditions of naturalisation should be left to be decided later on. Nothing need be done on this question by the Constituent Assembly at this stage.

Every condition and every circumstance, which we are convinced should be laid down and satisfied for the conferment of citizenship right on an individual, should come into play when we pass the Naturalisation Act in Parliament. We should not lay down some conditions here in the Constitution and some conditions elsewhere for the grant of citizenship Tights. The fact that a person is born in India should not be sufficient ground for the grant of citizenship, nor should five years' residence be sufficient. I say that we should leave all these things for the Parliament to lay down. We should merely say here that every person residing in India who is naturalised under the Law of Naturalisation will be a citizen of India.

In the second sub-clause I have proposed, I want to make a provision that every person who is a Hindu or a Sikh and is not a citizen of any other State shall be entitled to be a citizen of India. We have seen the formation and establishment of Pakistan. Why was it established? It was established because the Muslims claimed that they must have a home of their own and a country of their own. Here we are an entire nation with a history of thousands of years and we are going to discard it, in spite of the fact that neither the Hindu nor the Sikh has any other place in the wide world to go to. by the mere fact that he is a Hindu or a Sikh, he should get Indian citizenship because it is this one circumstance that makes him disliked by others. But we are a secular State and do not want to recognise the fact that every Hindu or Sikh in any part of the world should have a home of his own. If the Muslims want an exclusive place for themselves called Pakistan, why should not Hindus and Sikhs have India as their home? We are not debarring others from getting citizenship here. We merely say that we have no other country to look to for acquiring citizenship rights and therefore we the Hindus and the Sikhs, so long as we follow the respective religions, should have the right of citizenship in India and should be entitled to retain such citizenship so long as we acquire no other. I do not thing this claim is in any way non-secular or secretarian or communal. If anybody says so, he is, to say the least, mistaken. I think my description (amendment) covers every possible case. The only thing we are agitated about is that our people, thinking that Pakistan would be a happy country, went there and came back. Why should we recognise them by means of this or that provision in the Constitution? Because, nothing of the sort is necessary. So long as they are resident in India when the Constitution is promulgated and they are born of Indian parents, they should be entitled to citizenship rights without any fresh registration or evidence. That is what is contemplated in my definition. I hope the House will accept it.

Prof. Shibban Lal Saksena (United Provinces : General): You say, 'being born of Indian parents'. How do you define 'Indian parents'?

Dr. P.S. Deshmukh: I think it should refer to all those persons who are resident in India. It would be quite easy to define it. If the Professor thinks a definition is necessary, it would be quite easy to frame one.

Prof. Shibban Lal Saksena: Then give a definition?

Dr. P.S. Deshmukh: Yes. I thought that an Indian is a very easily recognisable person. When combined with domicile, it is easier to define it. But if the Professor thinks that an Indian cannot be recognised and that it is necessary to lay down who is an Indian, what is his colour and complexion and so on, I would leave it to him to suggest a suitable definition. I think the existing definition is capable of being understood without any difficulty. I do not think that a definition is necessary for every expression used. If you examine the Constitutions of other countries, the Constitution of Poland for instance, you will find that all that they provided is that any person who is born of Polish parents is a citizen of Poland. They know who is a Pole, just as we know who is an Indian. I do not think therefore that any definition is necessary in this connection. If we want a tentative definition, an article which will serve as a transitory provision, my article should be quite enough.

I now come to my remaining amendments. I case my definition and the article, the substance of which I have given, are not accepted, I have suggested that, in the article proposed by the learned Doctor, the words "at the date of the commencement of this Constitution", should be omitted. Then, in (a), after the words 'who was born in the territory of India', the words, 'born of Indian parents' should be added, and in (c) the words 'at least' should be added before the words 'five years'. I would like the word 'five' to be altered to 'twelve',so as to make it necessary for anybody to obtain citizenship by residence in India for that period.

So far as the Explanation is concerned, I think the Doctor himself is convinced that it is not necessary to retain it and for very good reasons. It says: "For the purposes of this article, a person shall not be deemed to be a citizen of India if he has after the first day of April 1947 migrated to the territory now included in Pakistan". I see no reason why Pakistan should be singled out. The word 'migrated' has a definite meaning. It means going out of the country with the intention of settling permanently in some other country and not remaining in the country from which he has migrated. If the meaning of the word 'migrate' is clear, then nobody who leaves the Indian shoes and goes out - it does not matter whether he goes to Pakistan or Honolulu or the North or the South Pole, he will not be entitled to the citizenship of India. Therefore the explanation is meaningless.

In addition to this I have proposed that there should be some responsibility which ought to be shared by every one who claims to be a citizen of India and for that purpose. I have proposed amendment No. 29 that 'Every citizen of India shall enjoy the protection of the Indian State in foreign countries; and (b) be bound to obey the laws of India, serve the interests of the Indian communities, defend his country and pay all taxes". I would not like to press this very much because even this must be possible to include in the Naturalisation Act, when we pass it.You have also suggested, Sir, that all these might be left to Parliament. In view of that I would not mind withdrawing this amendment. But I would like to move my other amendments. If, however, my whole article is accepted, then there would be no need to move the other amendments which deal with the wording of the article as proposed. Otherwise it will be necessary that those words to which I have objected ought to be omitted.

Mr. Naziruddin Ahmad: Mr. President, Sir, I have a few amendments to move. Before I do so, may I request your ruling as to whether I am to speak on my own amendments or to speak generally on the article. I think it would be inconvenient if I have to speak on the article generally. This should actually be at the end, because I do not know what further amendments would be moved. I however would like to say that there would be no repetition. Sir, may I have your ruling as to whether I should only move and speak on my amendments or generally on the article.

Mr. President: I think it would be much better if you make only one speech.

Mr. Naziruddin Ahmad: There is no doubt about it, but it will be inconvenient to speak generally on the article unless we get all the amendments before us. That is the difficulty. Further, I find that in spite of your kind help to inform the Members as to what amendments are to be moved, there is yet some amount of confusion among some Members as they still do not know what amendments have been moved. The difficulty has been caused by last-minute changes, and the number of amendments is due to the fact that there have been constant changes.

Mr. President: I think the difficulty has arisen because Members have been offering to lists of previous weeks.The system that has been followed by the Office is to consolidate all the amendments at the end of the week and to put them into the first list of the next week, so that all the amendments that remained by the end of the second week are consolidated in the first list of the third week, and any further amendments that come in the third week are put, down in the subsequent lists, II, III etc. Dr. Deshmukh referred to the previous week's lists but I have mentioned the corresponding numbers in the existing week's lists. So, if the Members refer to the lists of the current week, they will find all the amendments according to their number. If the Member so desires, I will mention the numbers once again.

Mr. Naziruddin Ahmad: I do not know whether all Members have got the correct numbers by this time, but so far as I am concerned, I know what amendments I shall move. I shall move from List I amendments Nos. 4, 18, 22, and 30 and from List V amendments Nos. 148, 149, 151, 153, 154, 155 and 156. There may be one or two others, but I hurriedly noted down only these numbers.

Sir, I move amendment No. 4 in List I -

"That in amendment No. 1 above, in the proposed article 5, for the words ' At the date of commencement of this Constitution every person who' the words 'Every person who at the date of the commencement of this Constitution' be substituted."

Sir, I will omit the word "date", and so my amendment will substitute the words "Every person at the commencement of this Constitution" for the words "At the date of commencement of this Constitution every person who". I shall explain the necessity for this amendment at once. The expression "date of commencement of this Constitution" is not proper. We have throughout this Constitution always referred to the "commencement of this Constitution" That clearly and distinctly refers to the "date" of commencement. Commencement only refers to the date. So, the "date" of the commencement of this Constitution" is unnecessary. Therefore I have sought to remove the words "date of". It is unnecessary and in other contexts it does not appear. The rest of this amendment is merely a rearrangement of the article to give more emphasis t the words "every person". That is my firstamendment.

Then I come to amendment No. 18 in the First List. Sir I move:

"That in amendment No. 1 above, in the proposed new article 5-A, for the words 'now included in Pakistan' the words 'which at the commencement of this Constitution is situated within the Dominion of Pakistan' be substituted."

I submit, Sir, that in the context of article 5-A as proposed by Dr. Ambedkar, the word "now" is extremely ambiguous. It is at any rate unprecise. if the words "territory now included in Pakistan" are used, we do not know to what period of time the word "now" refers. Does it refer to this date, the date on which this amendment is accepted? Does it refer to the 11th August 1949 or does it refer to the date when any lawyer to jurist reads the article? In fact, the word "now" is very unprecise. It has never been used in any part of this Constitution. Therefore for the word "now" I would like to substitute the words "commencement of this Constitution". The rest is merely verbal. The word "now" is highly objectionable, it is vague and it may lead to some difference of opinion.

The next amendment which I would like to move is amendment No. 22 in the First List. Sir I move:

"That in amendment No. 1 above, in sub-clause (ii) of clause (b) of the proposed new article 5-A, the words 'date of' be deleted."

I have already explained the reason for removing these words. If we remove these words, it will read "the commencement of the Constitution". It certainly means the date of commencement of the Constitution.

Sir, I move:

"That in amendment No. 1 above in the proposed new article 5-B, for the words 'made by Parliament' the words 'made in this behalf by Parliament' be substituted."

This is merely verbal and I suggested this by way of improvement. This may be considered by the Drafting Committee. That concludes List No. 1 of Third Week. Then I come to List V, Third Week.

Sir, I move:

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments in the proposed article 5, in line 1, the words 'date of' be deleted."

Sir, I move:

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in clause (c) of the proposed article 5, the words 'the date of' be deleted."

I have already explained the need. Then I move amendment No. 151.

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in the proposed new article 5-A, for the words 'a person' the words 'any person' be substituted."

In proposed article 5-A the text of the article runs thus: "Notwithstanding anything contained in article 5 of this Constitution a person who has migrated to the territory of India" and the word "any person" would be better. The word "any person" has been used in a similar context in proposed article 5-B. "A person" is rather vague and "any person", though meaning the same thing, is more precise and besides this amendment, if accepted, would make the drafting of this clause and clause 5-B the same. It is a drafting amendment and may be left over for consideration by the Drafting Committee.

I then move amendment No. 153:

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments. in sub-clause (ii) of clause (b) of the proposed new article 5-A, the words 'date of' be deleted."

It occurs in connection with the date of the commencement of the Constitution. These words, as I have already explained are unnecessary.

Then I move amendment No. 154:

"That in amendment No. 130 of List IV (Third Week) of Amendments to Amendments, in the proposed new article 5-AA, for the words ' a person' the words 'any person' be substituted."

I have already explained the necessity for this amendment.

I also move amendment No. 155:

"That with reference to amendments Nos. 130 and 131 of List IV (Third Week) of Amendments to Amendments, in theproposed new article 5-AA, for the words 'now included in Pakistan' in the two places where they occur, the words 'which at thecommencement of this Constitution is included in the Dominion of Pakistan be substituted."

The main purpose of this amendment is to remove the word "now" and to put in its place a more precise expression, namely, "at the commencement of" in the context of the article. The rest of this amendment is merely verbal.

Then I also move my amendment No. 156:

"That in amendment No. 133 of List IV (Third Week) of Amendments to Amendments, for the proposed article 6, the following be substituted:-

'6. Notwithstanding anything contained in the foregoing provisions of this Part, Parliament may by law make further provisions with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

Provided that the making of any law by Parliament referred to in this article shall not be deemed to be an amendment of this Constitution within the meaning of article 304 of this Constitution."

With regard to this amendment, the first part, the body of the proposed article 6 is more or less verbal, but the proviso is new and I have suggested it simply to obviate the difficulties which would attend to the amendment of the Constitution itself. We are providing some rules of citizenship in the Constitution. By article 6 we authorise the Parliament to make further laws, lest it be said later on if the Parliament does so, it would have the effect of amending the Constitution itself, because it is quite conceivable that Parliament may make laws which will undo or at least modify clauses which are under consideration. That would involve the amendment of the Constitution itself. We have in a similar context taken care to provide that these amendments which are merely of a mechanical nature and not likely to go into the root of the Constitution may be done by Parliament and we have provided in those cases as a matter of caution that these amendments made by Parliament shall not be deemed to be amendments of this Constitution within article 304. So any possible controversy that the amendments are amendments of the Constitution itself would lead to almost an impasse by setting in motion the entire apparatus of amending the Constitution which would be highly inconvenient. On a small matter like this the matter should be left entirely to Parliament without it being considered to be an amendment of the Constitution itself. These are my amendments.

With regard to the entire set of articles proposed by Dr. Ambedkar, his amendments are needlessly cumbersome and as Dr. Deshmukh has pointed out, will lead to the introduction of "cheap" citizenship in India. I should suggest that it would introduce something more. Continuing the example cited by Dr. Deshmukh that a foreign lady, while passing through India on an aeroplane journey, gives birth to a child in Bombay, the child at once acquires the citizenship of India. Dr. Deshmukh things that this would be too flimsy a ground to give the child the status of an Indian citizen. I should submit it would lead to other serious consequences. The mother of the child in the example is a foreigner. It is conceivable, and it is easy to take it that the law of the country of her domicile will claim the child as her own citizen. In fact, citizenship follows parentage. The father's domicile would also be the child's domicile. So, the father's or the mother's domicile will compete with the child's citizenship of India. On the one hand, India will claim the child to be a the citizen of India and the mother of the child will claim the child to be a citizen of her domicile. It is conceivable that the father has another nationality and he claims the child to belong to that nationality. All the three countries will compete with one another and claim the child to belong to his or her own nationality. Carrying the illustration a little further, there are the grand parents; the four grand parents father and mother of the mother and father and mother of the father. There are thus again four sets of claimants whose nationality will decide the citizenship of the grand-child. The four different countries may claim the child to belong to them. What is more, the child is in a particularly favourable or unfavourable position of claiming or dis-claiming the nationality of India or the nationality of the mother or the father and those of the four grandparents. It will mean a confused state of affairs. The manner in which these articles have come into being and have been presented to the House and the way in which amendments have been coming in from day to day, to say the least and to quote Dr. Deshmukh, is very unfortunate. I think a subject of this difficulty and complexity should not have been dealt with in this fashion and I should have thought it much better to have postponed the consideration of these articles and allow the Members to have an over-all picture of the entire subject together with the suggested amendments. I find that I am not the only member of this House who finds it difficult to follow even there-print of the entire Draft because we have to consider the amendments and place them in their context and consider this effect. To do so accurately is not an easy job. As I have already submitted, there are many slow

Members like me in this House who find it also equally difficult not only to follow the intricacies of this proposed

new clause, but also the amendments to be proposed. It is this state of affairs which almost forces many Members to be inattentive and we appreciate the very just remarks which you made yesterday that many Members are interested in discussions having nothing to do with the amendment or the subject under consideration. The real reason is that the amendment and the new ideas come in too late to the Members for real consideration. The subject of these series of articles will inevitably lead to inattention because it is a little bit difficult to follow them without mistake. As these are difficult matters and as there are anomalies. I feel, that if we postpone the discussion of these articles for further consideration, more complications will follow. Therefore, the best course would be to adopt these articles and to provide for any correction or supplementation if there is necessity through the excuse of article 6. That would to a certain extent avoid any complications which may unconsciously be created by further amendments. That would afford an excuse to Members for going more deeply into the matter; we relegate our thoughts and our labours to the future Parliament which may cure defects if there are any in these drafts. It will be very difficult to follow them and it will lead to confusion of nationalities landing us in difficulties, not merely granting cheap citizenship. These are the few words that I have to submit before the House.

Shri Jaspat Roy Kapoor: (United Provinces : General): Mr. President, Sir, the first amendment that stands in my name is amendment No. 5 in the First List, Third Week which relates to the definition of citizenship subsequent to the date of the commencement of this Constitution. In view of the explanation which Dr. Ambedkar gave yesterday that his intention was to confine the definition of citizenship only at the date of the commencement of this Constitution and more particularly in view of your advice that we should confine our remarks only to this aspect of the question, I should not venture to move this amendment. But, Sir, I find that the Draft which has been moved by Dr. Ambedkar is not a provisional Draft, but it is of such a limited nature that it does not make any provision for the acquisition of the right of citizenship subsequent to the date of the commencement of this Constitution even up to the period that Parliament may make any law in this respect. I, therefore, suggest to Dr. Ambedkar to seriously consider whether it would not be advisable to accept the suggestion contained in this amendment. The suggestion reads like this:

"That in amendment No. 1 above, in the proposed article 5 -

after the words 'at the commencement of this Constitution' the words 'and thereafter' be inserted; and

In clause (a) after the word 'was' the words 'or is' be inserted;

or alternatively, that with reference to amendment No. 1 the following new article be inserted as 5-D:-

'After the date of the commencement of this Constitution, every person who possesses the qualifications mentioned in article 5 of this Constitution shall, subject to the provisions of any law that may be made by Parliament be a citizen of India, provided that he has not voluntarily acquired the citizenship of any foreign State."

Mr. President: You drop 'continue to be'.

Shri Jaspat Roy Kapoor: This is a mis-print. It will only read as "shall be a citizen of India.... I hope Dr. Ambedkar will give serious consideration to this suggestion and find it acceptable.

The next amendment that stands in my name is No. 13, but in view of the fact that the substance of this amendment is covered by amendment No. 130 which has already been moved by Dr. Ambedkar, I do not propose to move it. I am not moving Nos. 8 and 9 either. Then I pass on to No. 31 which I beg to move:

"That in amendment No. 1 above, in the proposed new article 5-B, the words 'deemed to be' be deleted."

There is another amendment No. 19 in my name as well as in Mr. Sidhva's name but I leave it to be moved by Mr. Sidhva because he is my senior partner in this amendment.

The next amendment which I would like to move is amendment No. 124 which runs thus:

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, in the proposed new article 5-A, after the word 'who' a comma and the words 'on account of civil disturbances or the fear of such disturbances,' be inserted."

There are some other amendments also standing in my name but I do not propose to move anyone of them.

Sir, this article 5 which relates to the definition of citizenship has had rather a chequered history. The Drafting Committee has placed before us for our consideration various drafts from time to time, each draft being supposed to be an improvement on the previous one, but every time that it came before us for scrutiny and consideration, it was found to be defective and not comprehensive enough, and, therefore, it had to be sent back to the Drafting Committee for being recast and improved upon. Even during this Session one amendment after another has been pouring in from the Drafting Committee until we have before us the Draft as has been moved by Dr. Ambedkar yesterday. Let us see whether even this Draft is satisfactory enough. I am afraid even this is not satisfactory and is not comprehensiv enough. First of all, we find that it confines itself to defining Citizenship at the date of commencement of this Constitution and makes no provision for the acquisition of the right of citizenshi subsequent to that date. Of course under article 5(s) the right acquired on the citizens even thereafter, but with all that it makes no provision for acquisition of the right of citizenship subsequent to that date. It has been conveniently left over to be dealt with by Parliament. Now, the date of commencement of the Constitution is going to be under the schedule which has been thought of at present as 26th January, 1950. So it means that 26th January 1950 is going to be the deadline by which the right of citizenship should be acquired and no provision has been made for the acquiring of this right rather a very unsatisfactory state of affairs. I can quite appreciate the view that it may not be very easy today to make an exhaustive definition of citizenship. It may not be possible to envisage at this stage as to what possible qualifications should be provided for the acquisition of the right of citizenship, and it should be left to Parliament to make a very comprehensive definition of citizenship; but I see no reason why we should not make an attempt, when it is easy enough - according to me - to provide for acquisition of this right during the period intervening between the date of commencement of this Constitution and the date on which the Parliament may enact any new Law on the subject. Is it not very unsatisfactory that we should make no provision for all those persons who may be born after midnight of 26th January 1950, and should we not make any provision for acquisition of the right by those who may have been domiciled in this country and some time after January 1950 may be completing the period of five years of residence? That seems to be an obvious lacuna. Lacs of persons would continue to be considered as non-citizens of this country between the date of commencement of this Constitution and the date when the new law will be made Parliament, and the brunt of this difficulty will be felt even by several members of this House who have been recently married including even Honourable Ministers who may have children born immediately after 26th January 1950 and who will find themselves in the very unhappy and uncomfortable position of being parents of children who are not citizens of this country. The anomaly of the position becomes more funny when we find this in article 5-B - the relevant portion runs thus:

"He shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution."

I particularly wish to draw attention to the word 'after' which means that whereas article 5-A confines itself to defining citizenship only at the date of commencement of this Constitution, according to 5-B, in respect of persons who are not born or residing here but who have been born in a foreign country or residing there, even on a date subsequent to commencement of this Constitution, if an application for registration is made to our embassy there, they shall be registered as citizens. So obviously persons born in this country are going to be placed at a disadvantage as compared to persons born in a foreign country - of course of Indian parents. It may be said thatsuch persons would not necessarily become automatically citizens because they will have to be registered and it may be said that certain rules may be framed by our Government laying down the conditions under which onlythey could be registered, or that a subsequent law may be made - a comprehensive law - on the subject which would take note of all these contingencies. According to article 5-B, a citizen of Pakistan whom we are trying to eliminate from our definition of citizenship, if he goes over to a foreign country and presents an application to our embassy, he can be registered as a citizen of India. In this article 5-B the condition that he should not have acquired the right of citizenship of any foreign State which we find in article 5-A does not find place. It may be said that we shall not allow such an anomalous position to stand and we shall make necessary legislation on the subject. True, but then what I find is that this very safeguard which there was originally in the original article 5-B incorporated as follows: "and subject to the provision of any law made by Parliament" is proposed to be deleted.
Originally it stood like this : "Notwithstanding anything contained in articles 5 and 5-A of this Constitution and subject to the provisions of any law made by Parliament etc." If the saving clause be there, of course any defect that may have appeared to us in the provisions of 5-B could be removed. Now Mr. T.T. Krishnamachari yesterday moved an amendment which has been very generously and gladly accepted even before it was moved, by Dr. Ambedkar. I do not see with what object Mr. Krishnamachari suggests that these words should be deleted. If his contention be that this is redundant because under article 6 Parliament shall have the right to frame any new law laying down what qualifications there shall be for the right of acquisition of citizenship, I submit.......

Shri T.T. Krishnamachari (Madras : General) : May I point out that if he reads article 6 as amended, he will find the explanation for my amendment.

Shri Jaspat Roy Kapoor: I did rightly anticipate the argument that would be placed before us by Mr. Krishnamachari in reply to my objection, but if article 6 as amended covers such case and makes these words redundant may I ask where is the necessity for these very words being inserted in article 5-

C? Article 5-C says "Every person who is a citizen of India under any of the foregoing Provisions of this Part shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen." We have these words in article 5C. But in article 5B these words, which were originally there, are now proposed to be dropped. If they are redundant and are covered by the newly drafted article 6, they must go from both these articles. If they are necessary in article 5C, they are still more necessary in article 5B.

I submit that I consider that it is necessary to retain these words in article 5B. I do not think it will be open to Parliament to enact any law by virtue of the powers conferred on it by article 6, which is in contravention of the provisions of article 5B. 5B is a definite article laying down the qualifications for citizenship in respect of persons mentioned therein. A definite article conferring the right of citizenship under the Constitution cannot, I think, be tampered with by any subsequent law made by Parliament. Be that as it may, to avoid the possibility of any ambiguity it is necessary either to have these words both in article 5C may lead to the presumption that 5C only is subject to the provisions of any subsequent law on the subject and article 5B is not subject to any such subsequent law.

My submission with regard to the point that I had raised originally is that we should amend article 5 in such a manner as to cover the cases also of those persons who are newly born of Indian parents on Indian soil after the 26th January 1950. I see absolutely no difficulty in my suggestion being immediately accepted. Even if it is accepted article 5 would not become an absolutely permanent definition of citizenship : that can be amended, varied or altered under article 6, as has just been pointed out by Mr. T.T. Krishnamachari. I only want that the lacuna that is there must be filled in. Let it not be said that the period immediately following auspicious day of 26th January 1950 was so inauspicious that persons born in this country after that date and before the enactment of a new law was so unlucky that children born therein were not citizens of this land by birth. I therefore, suggest very seriously and respectfully that article 5 be amended in the way I have suggested. This can be done merely by incorporating the two words "and thereafter" after the words "At the date of commencement of this Constitution".

The other point that I would like to refer to is regarding article 5A. This article relates to those persons who have migrated to India after the partition. They are to be "deemed to be citizens of India." I particularly object to the retention in this article of the words "deemed to be". The article reads like this:

"Notwithstanding anything contained in article 5 of this Constitution, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the date of commencement of this Constitution."

I do not know with what particular object these words "deemed to be" have been incorporated herein.

This article relates to the acquisition of the right of citizenship by persons who have migrated into India. I do not see any reason why they should not be considered after having migrated into India as citizens of India as of rights, and why it should be suggested that we are conferring on them this right by way of grace, as it were. It seems to me that it is likely to be felt very seriously and bitterly by those of our brethren who took all the trouble and who underwent all that misery and agony by migrating from Pakistan to this dear and sacred land of theirs. All the while that they were on their way to this land, they were thinking of this beloved country of theirs, pining and praying to reach our borders, and immediately on reaching those borders, with a great sense of relief they cried out "Jai Hind", a cry which touched every one of us. They had such tremendous loyalty and affection for this country. They were so eager to rush to this country, to offer their loyalty to it, and yet we say that we are conferring on them this right of citizenship more by way of grace than by way of right. I do not see any reason for it, Sir. On the contrary, I see very great reason that these words must be deleted and satisfaction given to our refugee brethren. In matters like this, it is always best to act gracefully and go give a psychological satisfaction to our refugee brethren. I would, therefore, respectfully and earnestly suggest that these words might be deleted, for nothing is to be lost by the deletion of these words, and much is to be gained.

Similarly, Sir, in article 5-B these words 'deemed to be' may be deleted, though it is more necessary to delete these words in article 5-A than in article 5-B.

Then I turn to amendment No. 124 which I have already read out. It says that in the proposed new article 5A, after the word "who" a comma and, the words 'on account of civil disturbances or the fear of such disturbances,' be inserted. So after the incorporation of these words, article 5A would read thus:

"Notwithstanding anything contained in article 5 of this Constitution, a person who, on account of civil disturbances or fear of such disturbances, has migrated to the territory of India....."

Now, Sir, the object of this amendment of mine is to bring it in line with certain other legislation already in force:

I mean the legislation relating to the evacuee property. We have, Sir, not only at the Centre but also in several of the province in the country - almost every other province, excepting West Bengal, Assam and probably Madras too - an Evacuee Property Ordinance in force. According to that ordinance, an evacuee has been defined as one who has left a territory because of civil disturbances or because of fear of such disturbances. It appears to me very rational and reasonable, Sir, that in a provision like article 5A, we must say what are the particular reasons which are guiding us for making a provision like this. We must make it known definitely here that it was not our intention to confer the right of citizenship on anybody who wanted to migrate to this country; but we want to confer this right on such persons because of certain reasons, the particular reason being that such persons found it difficult to stay in the place of their original domicile. We must lay it down definitely what are the reasons which are guiding us in making a provision as is contained in article 5A. I therefore think that the inclusion of the words which I have suggested is very necessary to make our intention very clear.

Then, Sir, I have one thing more to say with regard to another amendment which has been moved by Shri T.T. Krishnamachari - that is amendment No. 131. This amendment stands in the name only of Shri T.T.
Krishnamachari. I do not know what particular reason there was for Dr. Ambedkar to dissociate himself from thisamendment, though of course, while moving his amendment as a whole, he has accepted it. I do not like the idea of himself being associated with it.

The Honourable Dr. B.R. Ambedkar (Bombay : General) But he has not even moved it! Oh, that proviso - yes, I have accepted it.

Shri T.T. Krishnamachari : It is not in Dr. Ambedkar's name but in Shri Gopalaswami Ayyangar's and mine.

Shri Jaspat Roy Kapoor: That is exactly what I was submitting. Therefore, I was perfectly correct. I am glad to find that it has come to Dr. Ambedkar as a surprise. I have said that this amendment has been accepted by him. He was under the impression that it had not been moved at all, and if he has accepted it in an unguarded moment, or under any misapprehension, I hope he will immediately correct himself and make it clear to us that it is not his intention to accept this amendment.

Shri T.T. Krishnamachari: May I interrupt my honourable Friend and tell him that he knows very well why that amendment has been moved.

Shri Jaspat Roy Kapoor: Yes, I know very well why this amendment has been moved:

I know also very well why this amendment is a very obnoxious one, and why it should not be accepted. I say it is obnoxious even to this extent that 'Dr. Ambedkar did not originally consider it necessary and advisable and proper to associate himself with this amendment.

Why is it, Sir, that I consider it obnoxious? It says that those persons who migrated from India to Pakistan if, after 19th July 1948 they came back to India after obtaining a valid permit from our Embassy or High Commissioner, it should be open to them to get themselves registered as citizens of this country. It is a serious matter of principle. Once a person has migrated to Pakistan and transferred his loyalty from India to Pakistan, his migration is complete. He has definitely made up his mind at that time to kick this country and let it go to its own fate, and he went away to the newly created Pakistan, where he would put in his best efforts to make it a free progressive and prosperous state. We have no grudge against them...

Shri Brajeshwar Prasad (Bihar : General) : May I ask my honourable Friend whether it is true that all those persons who fled over to Pakistan did so with the intention of permanently settling down there and owing allegiance to that State? Is it not a fact that they fled in panic?

Shri Jaspat Roy Kapoor : My honourable Friend Mr. Brajeshwar Prasad even today, on the 11th August 1949, doubts as to what was really the intention of those persons who migrated to Pakistan. I do not want to refer to this unpleasant subject, because the sooner we forget the bitterness of the past the better. But do we not know that Muslim Leaguers wanted division of the country and exchange of population, and that the number of persons belonging to the Muslim League was tremendously large? To our misfortune, only a handful of nationalist Muslims were opposed to the idea of Pakistan. The vast majority of the Muslims and most certainly those of them who went away to Pakistan immediately after Partition had certainly the intention of permanently residing in Pakistan. May be that some of them or quite a good number of them went to Pakistan at that particular time because of the disturbances here : but has my honourable, Friend any doubt that even if there were no disturbances, many of them, almost all of them, would have gone away to Pakistan, because they were themselves demanding that ther should be a transfer of population? ..... (Interruption by Shri Brajeshwar Prasad.)

Mr. President : The honourable Member is entitled to his own views and it is no use cross-examining any Member across the floor of the House. If Mr. Brajeshwar Prasad has his views, let him have them and let Mr. Kapoor express his own views.

Shri Jaspat Roy Kapoor : I know that my honourable Friend Mr. Brajeshwar Prasad does not agree with any sensible view or proposition that is advanced in this House, and it is no surprise to me that he is not agreeing with me on this occasion as well. What I was submitting is that those persons who went away to Pakistan went definitely with the intention of settling down there permanently. They gave up their loyalty to this country and they gave their allegiance to the new country of Pakistan. Their migration was therefore complete and absolute and, therefore, the right of citizenship which they had before their migration is eliminated altogether. There have been cases of a large number of government employees, both in the higher and lower posts and particularly in the railways, who had opted of their own free will for Pakistan, even before Partition had taken place; and quite a large number of them, particularly railway employees, after going over to Pakistan came back to India finding tha they had no scope for a decent existence in Pakistan, after obtaining valid permits. Could it be said in their case, as Mr. Brajeshwar Prasad is contending, that they had left this territory because of fear of disturbances? They had definitely said even before there was any sign of disturbance that they would like to go and settle down permanently in Pakistan and serve the Pakistan Government. There should, therefore, be no doubt in the mind of anyone of us that such persons definitely went away with the idea of settling there permanently. Now if they want to come back to India to settle down here permanently, we may welcome them as we would welcome any other foreigner. Once they became foreigners to our land they must be treated on the same footing as any other foreigner. If any permit is given to them to come over and settle down permanently, it only means that we are showing consideration to them and telling them. "You can come back again and settle permanently here if you like; but please do not think it is for the reason that you kicked this country once. We do not wish to put a premium on this conduct and grant any concession therefor. But we are prepared to give you the same facility for re-acquiring, the right of citizenship of India as we are prepared to give to any foreigner." It means let them come back by permit and settle here for five years, and thereafter perhaps the may be permitted to acquire the right of citizenship as any other foreigner may be permitted to any subsequent law made by Parliament. Therefore it is a matter of principle and we should not throw away this principle for any reason, without any valid reason.

Also it has certain financial implications which we should not forget to realise at this stage. The question will arise as to whether in regard to the property which such persons had left at the time of migration they will be entitled to get them back along with their citizenship after they have been promulgated an attempt has been made to vest in the Custodian of Evacuee Property the right of management of all the property which has been left over by evacuees. Now such persons, even though they have come back after the 19th July 1949 under a valid permit continue to be evacuees under the definition of the various Ordinances. There will be an anomalous position then.While on the one hand we confer on them the right of citizenship, the property which they had left behind at the time of migration will continue to be evacuee property. You will perhaps treat the question with fairness and generosity, and I agree that it must be treated with fairness and generosity, because every great nation must always adopt that attitude. With that attitude of fairness and generosity, I am afraid it will be well nigh impossible for you to say to them that "Though we adopt you as citizens of this country, yet we would treat your property."
That may not be possible and, therefore, property worth crores of rupees will be going out of your hands. I need not elaborate this point because the implications of this are very clear to every one of us and more particularly to those who are responsible for sponsoring this amendment.

I would only say one word. While it is good to be generous, generosity loses much of its virtue when it is at the cost of others, because this generosity will be at the cost of nobody else but ultimately perhaps at the cost of our refugee brethren. Eventually it may or may not be so we do not know, but we will very much regret it, if thatbecomes the position. It is the refugees who are going to benefit from all such property and if we are going to make a free gift of all this property to those who migrated but have come back it is the refugees who are going to suffer and none else. I would, therefore, beg of Mr. T.T. Krishnamachari and also Mr. Gopalaswami Ayyangar not to press this amendment and let this article 5A remain as it is in the draft without the proviso.

I have done, Sir. I will only repeat the appeal I have already made, that this particular amendment at least of
Shri T.T. Krishnamachari should not be accepted.

Mr. President: Professor Shah may now move amendment No. 6 (List I - Third Week).

Prof. K.T. Shah (Bihar : General) Sir, I have some amendments in the Printed List. Vol. I which have not been covered by the revised Draft. I would like to move them with your permission.

Mr. President: I had one such amendment of yours in mind when I made certain remarks in the beginning.

Prof. K.T. Shah : That is a new article. That comes later. I am speaking just now of amendments 203 and 208 which relate to the restriction of parents on the paternal side. That has not been moved.

Mr. President: You may move amendment No. 203.

Prof. K.T. Shah : With your permission, Sir, I would move all my amendments and then speak on them
collectively.

The first amendment I would like to move is :

"That in clause (a) of article 5, after the words 'grand-parents' the words 'on the paternal side' be added."

The numbering of the clauses will have to be altered. As the same idea is repeated in amendment No. 208 I am repeating it. The next amendment of mine in the Printed List is No. 227. As it is included in the new amendment I have given notice of, I do not read it just now. My next amendment is No. 231. As it relates to a new article, I do not propose also to read it just now. Then I move :

"That in amendment No. 1 above, in the proposed article 5 -

(i) after the figure '5' the brackets and figure '(1)' be inserted;

(ii) before the Explanation, the following proviso be added:-

'Provided further that the nationality by birth of any citizen of India shall not be affected in any other country whose Municipal Law permits the local citizenship of that country being acquired without prejudice to the nationality by birth of any of the citizens; and Provided that where under the Municipal Law no citizen is compelled either to renounce his nationality by birth before acquiring the citizenship of that country, or where under the Municipal Law nationality by birth of any citizen does not cease automatically on the acquisition of the citizenship of that country.';

(iii) after the Explanation, the following new clause be added:-

'(2) Subject to this Constitution, Parliament shall regulate by law the grant or acquirement of the citizenship of India.' "

I also move:

"That in amendment No. 6 above, after the proposed new clause (2) of article 5, the following proviso be added:-

'Provided that Parliament shall not accord equal rights of citizenship to the nationals of any country which denies equal treatment to the nationals of India settled there and desirous of acquiring the local citizenship.' "

Then there is my amendment No. 152 in today's list (List V of Third Week).

Mr. President: But, then, are you not moving amendment No. 20 (List I of Third

Week)?

Prof. K.T. Shah : I am moving it.

I move:

"That in amendment No. 1 above, in the proposed new articles 5-A and 5-B for the word "Dominion', wherever it occurs, the word 'Republic' be substituted."

The next amendment that I move is No. 152 in List V of Third Week. I move:

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, at the end of sub-clause (i) of clause (b) of the proposed new article 5-A, but before the word 'and', the following proviso be added:-

'Provided that any person who has so migrated to the areas now included in Pakistan but has returned from that area to the territory of India since the nineteenth day of July, 1948, shall produce such evidence, documentary or otherwise, as may be deemed necessary to prove his intention to be domiciled in India and reside permanently there.' "

There are all the amendments which I move in this connection at the present time. While commending these amendments to the House, may I offer my sincere congratulations to the draftsman for the great erudition and mastery of a very complicated subject that he has shown and also, in the midst of very serious difficulties, tried to keep a balanced judgement on an admittedly very difficult subject where feelings run high? It is not customary for me to throw many bouquets at the learned draftsman of this Constitution. I therefore trust that as I do such a thing so rarely, let me for once offer this bouquet of roses which I trust he will appreciate, even though there are some thorns in the bouquet.

Sir, I have been obliged to move these amendments, spread over a number of items, and dealing with a number of aspects, because I think a number of vital principles are involved. Would you permit me to simplify the entire series of amendment by formulating in general terms by idea why they have become necessary in the face of this Draft, which I consider to be of importance, and why, if they are included, the Draft would be very much improved in my opinion?

Sir, to put the matter briefly and succinctly citizenship of a State is had or acquired in a variety of ways. Therefore the first proposition that may be laid down is that anyone born in a country is automatically a citizen of that country, unless by his own act, when he attains maturity, he or she renounces that privilege. This is a simple proposition to which there ought to be no exception. It goes further and makes citizenship not only a birthright, but also an inheritance. That is to say any one whose father or mother according to my amendment and according to this Draft whose grand-parents, or whose grandfathers on the paternal side according to my amendment were born in this country, would also acquire automatically the privilege of being a citizen of this country, unless it is specifically renounced by any act of the person concerned.

Sir, it has been said by previous speakers, and I would like t endorse it, that the privilege of citizenship of India should not be regarded as something very commonplace affair, cheap and easy. It is, I submit - and it promises to be still more, - a great privilege, of which not only those of us who are now citizens may be proud, but even those who may hereafter become citizens of India should also be proud. It was the proud privilege in the days of the Roman Republic for any Roman citizen simply because of that citizenship to regard himself as equal to any King. The last word in status and importance was said when he proudly asserted : "civis Romanum sum=I am a Roman citizen". I hope the time is coming when the same proud boast may justly be made by Indians, when the citizenship of India will not be merely regarded as a burden of our 'nativity'-for we were used to be called 'natives' in the dead and buried past - but it would be regarded as something to which the rest of the world will look up with respect.

Holding this opinion, Sir, as I do regarding the great privilege of being a citizen of India, I entirely agree with those who think that we should not make it too cheap and easy. Nor should we be unduly niggardly about any reasonable demand or reasonable claim by birth or inheritance to that citizenship.

Sir, I think now that the subject of citizenship has become complicated, we would be landing ourselves into great difficulties if we continue this right of inheritance almost ad infinitem. For, though you take it only up to the grand-parents on both sides, - that is to say, the inheritance by descent from the mother and father of the mother and father of the person claiming citizenship, - it is a very difficult matter to prove and establish. It has been said, Sir, that whereas maternity is a fact, paternity is an assumption. It is difficult to prove paternity beyond the shadow of a doubt, though there may be unimpeachable evidence in support of maternity. Nevertheless, for centuries, if not millenia past, we have been accustomed to reckon descent only on the paternal side. And hence my amendments. Under these circumstances, and especially in view of our country's very poor registration system, where the evidence of birth and death is not easy to obtain, I am afraid that the extension in this manner to inheritance of citizenship is bound to create difficulties especially in view of the circumstances that led to the partition of this country, and the aftermath of terror and migration that has followed that partition. I would, therefore, willingly accept for my part the suggestion of Dr. Deshmukh, which would restrict the privilege of citizenship by birth only to the second degree, which can be more easily established or proved. If you go further, if you want to be more liberal and generous, you may take it up to the third generation. But there I would stop and try to keep the right of inheritance of citizenship only on the paternal side.

I say this with no desire to suggest, even by implication, that I have any lack of belief in the equality of men and women so far as citizenship rights are concerned. I say it because of the many complexities and difficulties involved in this tracing of inheritance from the maternal side, not the least of which is the problem of proof. I would, therefore, suggest, either and preferably, that the definition suggested in this regard by Dr. Ambedkar be accepted in preference to my own suggestion ; or at any rate, if you wish to be generous in this regard, you might keep it to the male grand-parent of the person claiming to be citizen by inheritance.

Sir, inheritance is a thing that can be acquired; and it can also be renounced; and, therefore, in the case of those who have voluntarily or, as some honourable Member has suggested, in panic, gone out of this country, and have indicated by every act in their power that they would have nothing to do with this country, that they belong to a different nation, that they are difference in race, language, culture and religion, or whatever the reason that inspired them, we would be justified in presuming that they have renounced their birthright. They having renounced their birthright, we are justified in saying that they would not be entitled to the right of inheritance.

If they want to return and desire to become once again the citizens of India, in such cases, also, I hope the House will agree with me that we would be entitled to see to it that there would be no Quislings amidst us. It is but fair, therefore, that such persons be required to produce sufficient evidence, documentary or otherwise, not only to their right by descent, but also to show their intention to permanently reside in this country, and be its loyal citizens. For that purpose, Sir, the amendment that I have suggested would, I think, be much more adequate, much more appropriate, and much more necessary than the Draft before us. I, therefore, commend that item to the honourable Draftsman.

Coming next, Sir, to the case of those who happen to be away, who by settlement in other lands for business connection or by a formal act of acquisition of another citizenship, under the Naturalisation laws of that country, become citizens of that country, we would be right in providing that, if they desire to acquire the citizenship of India, their path should be simplified. Subject however to the condition that I have already indicated, viz., that there must be some concrete evidence that they really intend to reside in that country, be part and parcel of that country, would share all the duties and obligations of that country's citizenship, and would not be traitors to their country of adoption.

If citizenship is given as a matter of course to those who by settlement, by business connection, or otherwise, claim the right of being citizens of this country, and demand all the advantages and accrue from it, I think we must have reasonable evidence, we must demand reasonable proof that they intend permanently to live here, and be part of this land, loyal and devoted to her; and not merely for taking advantage of our generosity or liberalism in this regard.

I am thinking, Sir, in this connection much more of those foreign capitalists or businessmen who had been with us, and who had claimed in the past that there should be no discrimination against them. The Government of India Act, 1935, is disgraced by a whole chapter of many discriminatory provisions, - the discrimination being always against Indians and in favour of those outsiders. With that experience before us, and with the possible development of our future fiscal policy in such a manner that Indian citizenship in business, in industry or any other enterprise may receive special protection, may receive special benefit, we must take good care against foreign capitalists who might come and settle here, merely to enjoy those benefits of our fiscal or industrial policy, without their heart being in this country. I, therefore, suggest that whether in the Constitution, or in any legislation that Parliament may make in this regard, we should see to it that such citizens by self-interest furnish evidence, sufficient evidence of their intention to make India their permanent home, and not merely being mere birds of passage, exploiting the country, and only taking advantage of any fiscal legislation or financial advantage, and then quitting the country after their purpose is served.

Sir, here is a point, which, may I say with all respect, does not seem to me to be sufficiently borne in mind by the Drafting Committee; and perhaps the amendment of the kind that I have suggested, or some other amendment in that sense may be necessary to cover that position. I frankly confess, with the views that have been expressed from the highest quarters about the need for foreign capital, and about the necessity for offering all kinds of advantageous terms to these foreign investors, we are not going to end exploitation of this country, if we permit the citizenship of India and its attendant privileges to be lightly acquired. Unless the Constitution contains some provisions which entitled Parliament to make discrimination, - I have no hesitation in using that word, - so that indigenous talent and enterprise will be sufficiently protected and safeguarded against their foreign competitors, unless there is some such provision and authority in the Constitution itself, Parliament itself may be unable to protect adequately our own enterprise as against those people whose only purpose in acquiring Indian citizenship is to take advantage of our fiscal policy, or any other cognate advantage, and not make any adequate return to the country that gives them that advantage. I, therefore, trust, Sir, that my reasoning in this regard will at least commend itself to the Honourable the Drafting Committee Chairman even if the actual wording may not, I would trust to his erudition, to his understanding, to his patriotism to see to it that some such provision as I have asked for would be incorporated in the Constitution in any form which he thinks most appropriate. So far as the actual technical drafting is concerned, I have not the slightest hesitation in admitting that the Chairman of the Drafting Committee is a far greater master than I could ever pretend to be; and that, therefore, I would leave it entirely to him, if he accepts the reasoning I have put forward, to put up such an amendment as he may think necessary in his own words.

I now come, Sir, to the next amendment, I mean, that which relates to those countries, our near neighbours in Asia, where large numbers of Indians have settled; and where, under the new up-surge of local nationalism, their treatment is not all that can be desired. There is a feeling that in Burma, in Ceylon, or in Malaya, for instance, our citizens are not meeting with all the equality of treatment of reciprocity that we may desire. Hence it is that by two of the amendments in amendment No. 6, I am trying to suggest that wherever the local legislation permits an Indian to acquire all the rights and advantages of citizenship, without prejudice to his own nationality by birth, we should give the same treatment. We should also preserve the nationality of that person of Indian birth who has settled, and who owes allegiance to the Government of another country, though that country's legislation permits him to do so.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Thursday, the 11th August 1949

Permit me to add, Sir, that in this demand it is not that I am becoming selfcontradictory, because just a moment before I said that a person who has settled in India should 'be guarded against as much as we can by our Constitution, lest the privilege of such acquired citizenship be used to our prejudice.. I am 'not-debarred from making the suggestion. I am now putting forward. I repeat, I am not becoming inconsistent, because, according to the information I have received, there are- 8 lakhs of Indians -in the Federated Malay States. Under the-new Constitution of -the Federated Malay States, they permit such Indians settled there, to: acquire the fullest rights of local citizenship, without losing their Indian nationality by birth. On the other hand, in Ceylon and Burma, according to the information I have, the position of Indians is very much more invidious. Burma for example, I have been informed by people who should know provides that an Indian can acquire Burmese citizenship according to certain formalities prescribed by the Burmese, legislation. But before a certificate of naturalisation can be delivered to him, be will have to make, an express declaration that he renounces his Indian citizenship. Speaking 'for myself, I -would say that this is not fair. But even if it be taken as fair dealing with good neighbours we can make an exception in the case of those Indian citizens, who leave to live their lives there, and who cannot remain Indians under the Municipal law, if they wish to remain in that country where their own life work lies. In that case, I would make an exception and not insist on Indian nationality being retained by one who has had to renounce it. But there is another case, that of Ceylon. Again I am speaking from the information that I have gathered--in Ceylon the local legislation for acquiring Ceylonese citizenship automatically denies or destroys the citizenship of the previous origin by birth or otherwise if once a person acquires by naturalization the citizenship of Ceylon. The obligations of citizenship are plenty,--and none would be more aware of them than I am of such obligations,--and would require allegiance to one's country of adoption, without however there being any necessity automatically to forego the nationality by birth. That I think is asking a little too much. But even so, I recognise that Cevlon is an independent dominion., and is entitled, to make its own laws, On that basis,we must allow those Indians, who are settled there, to follow the local legislation without any objection on our side as to their retaining their nationality by birth, even after acquiring Sinhalese citizenship. We need not insist that they shall continue to remain Indian nationals.

The case that I now come to is the reverse of these, and provokes much more strong sentiment than these three other cases, which are or were also British Dominions or Protectorates, until recently. I am now thinking of those other Dominions, countries like Australia, New Zealand, or Africa, where Indian do not receive equal treatment. I need not weary this House with a tale of woe of Indians in Africa. They are all fresh to us. We are all full of resentment against such legislation as is being perpetrated now in that country. With that our experience, I see no reason why we should not reserve in our fundamental Constitution express power that Parliament shall not grant rights of equal citizenship, or equal treatment to those who deny our nationals,--law abiding, peaceful, enterprising, carrying on business and adding to the prosperity of that country,-the same treatment that they accord to other classes within their jurisdiction.

Africa is perhaps the most glaring, the most poignant case of invidious discrimination against Indians; and as such I should say, it is not enough to tell me as this Draft says, that Parliament is free to pass legislation for regulating the acquisition or termination of citizenship; and that under that power such cases will be dealt with. I would add a provision, making it incumbent upon Parliament also not to grant equal treatment to the nationals of those countries who discriminate in this manner against Indians settled there, working there for all their lives, and adding by their labour, by their enterprise, by their skill, to the wealth of that country, remaining peaceful, loyal, law-abiding citizens of that country.

Sir, it is an unfortunate fact that, for whatever reasons, we are still members of the so-called Commonwealth of Nations dominated by Britain our former exploiter. In the Commonwealth of Nations, even though theoretically we are supposed to be equal members, equality is shown more in exclusiveness by some, and maintaining their superiority of the old imperialist days by others, than in the real spirit of true brotherhood that might make that Commonwealth more honest and attractive. I for one have never been an admirer of the Commonwealth. Nor have I been converted by the recent utterances of high authority and the latest developments.

Accepting that as a fact, we must nevertheless preserve our right, as we have done in other cases, of retaliation, may I use the word, against those Dominions, against those countries, which do not give equal rights to our people. Even in the case of Australia, while it may not be so clear, so pointed, so invidious as in the case of South Africa, there is the policy of "White Australia" which is being proclaimed from the house-tops, and which is spoken of with pride by the present Prime Minister of that country; he has even asserted that the highest authorities in this country have also agreed to his ideal. I do not know how far that is true. Whether it is so or not, with this insistence of the Policy of "White Australia", I do not see why we cannot discriminate, in our own Constitution, against these people, who without regard for good neighbourliness, without regard to the many proofs of friendliness that we have given in the past and we, are still giving, would insist upon their narrow, restricted, geographical nationalism. That does not suit a new country of that type, which has yet to develop all its resources, and where its own population is hardly adequate to the climatic and other conditions prevailing in that country. It does not become such a country to say that they would insist on the superiority of the heaven-born white race, and that that race alone could settle and the citizens there, and all others, whatever their claim may be have no chance of becoming full citizens.This applies even to that country which now claims to be the leader of all civilised, 'progressive, western nations, I mean America. The United States of America is very rich in high professions about equality of human rights. But when it comes to implementation of those rights in their own land, I am afraid, the U.S.A. has not given in the past, and is not giving today, any concrete indication that there is a complete unanimity between the tongue and the heart. In fact there is a large gulf between the two. In the United States, until recently, Indians could not acquire full citizenship rights. Even today, so far as my memory goes,--I am open to correction by the superior knowledge of the Drafting Committee,--Only about one hundred Indians every ear can immigrate into that country and become eligible for full citizenship Of that country a country which professes to have advanced views on liberalism, a country which speaks of equality of human rights, a country which professes to be the pioneer and promoter of the famous four freedoms in the world, but which every lay violates the "freedom'. That is not quite compatible with -their own professions of equality all round in the world, and to whom anybody who wants dollars should go with bended knees, with the beggar's bowl, ready to submit to any condition that the masters of the mighty Dollar are prepared to lay down.

This country need not be very much afraid of them, because we may have industries to develop and our resources are undeveloped. We are told by some that we have not our own capital resources adequate to do so. I am not one -of those who believe that. We need not show any apprehension; we need not be so hesitant about ourselves that we should not lay down, quite clearly and categorically, that those who do not treat us equally shall not be treated equally in this country. Whatever may be the consequences, I am not afraid. I do not see why this country, though only two years old as an independent sovereign State, should show, in its Constitution in the fundamental law of its being and working, that it is going to be afraid of any people lest that people be displeased, and lest they should regard us as out-castes. If they do so, it will be to their own prejudice, and it will not be -to our loss. The sooner the day comes when we learn by bitter experience to stand on our own logs, and fight with our own arms, the better for us. So long as we want to be protected, supported, assisted from outside, we shall not be able to call our soul our own.

Hence it is that without any ambiguity, without any circumlocution, I would lay down this point in the constitution itself regarding citizenship Whatever that may be, hereafter Parliament shall not be free to accord equal rights to those who deny 'such equal treatment to us. We are prepared to accord full reciprocity to all, be they Pakistan, America, Australia, Africa or Britain; we are prepared to grant equality, if equality is given to us. We are not prepared to take merely the word of these great white gentlemen if their acts do not correspond to their words. We are not prepared to accept merely their verbal professions of equality, like the spider's proverbial saying to the fly "come into my parlour." I do not compare ourselves to a fly-but we need not go to be devoured in a Battering manner by the spider, be the web in New York, or London or Brisbane, or Canberra. -It does not matter two hoots where they are, and what they are, so long as their words do not correspond to their deeds. We cannot take our stand too strongly and guard ourselves against being humbugged against being deceived betrayed and sold, too effectively. I, therefore, suggest that Parliament itself should be restricted by the Constitution against granting, as we have unfortunately granted and agreed to grant to the members of the Commonwealth, equal treatment to those that do not give us the same treatment.We have recently undertaken many international obligations. I call to mind only one of these just flow, that of the so-called Havana Agreement or the Havana Trade Agreement--I forget the exact words-one is so bewildered by this plague of initials that one cannot remember the original Christian name of these organisations. I take it that the House is aware that we are undertaking these international obligations. But these international obligations should not act, and I hope they are not acting, against us only. When it did not suit Britain for example to act up to the spirit of the Havana Charter, she was quite free to and has entered into trade agreements with Argentina, which I am told has seriously displeased the New York money market. That may be so, but Britain has not hesitated to seek her own interest. If an occasion like this should arise, we also ought to have this power with us to deal with the people and to deal with these circumstances when they arise without fear or favour. So, I say that by the amendments I have suggested, - I repeat I am not insisting upon the letter of the amendments - by the spirit of the suggestion, we would be able to guard against any such mischance. I hope nobody will consider me to be a narrow nationalist, though I am not ashamed to be called so. But this is essential to all those who would like to stand on their own legs, who would like to fight with their own arms, who would not care for any men on earth as to what they think or what they feel, provided we believe that we are right. On a famous occasion, when the timorous Generals of the civil war came to President Lincoln on the eve of a great battle and said, "We hope, Sir, that God is with us, "President Lincoln replied, " It does not matter if God is with us; it matters a great deal if we are with God." I am quite sure that we are with God and I am perfectly certain that if we accept the spirit of the amendments that I am suggesting, we shall have nothing to regret.

Shri Krishna Chandra Sharma (United Provinces : General): Sir, I beg to move.

"That in amendment No. above, at the end of clause (c) of the proposed article 5, the 'words' and is subject to the jurisdiction thereof' be inserted."

The meaning is this that without these words that provision will come in conflict with international law, *i.e.*, the children of the embassy station here are not subject to the law of this land. For instance, you can not haul them for conscription and it is an elementary law that a man would not enjoy the right of citizenship unless he takes up the obligation thereof. Therefore, you cannot bestow citizenship on a person from whom you cannot expect or you cannot call him to take up the obligation and therefore it is just to be in consistency with international practice and would bring the provisions in accord with the international law. This is necessary and I hope the Honourable Dr. Ambedkar will accept this.

Prof. Shibban Lal Saksena: Sir, I beg to move:

"(a) That in amendment No. above -

(i) in the proposed article 5 -
for the words 'has not voluntarily acquired the citizenship' the words 'is not already the citizens' be substituted;

(ii) in the Explanation for the word 'has' the word 'had' be substituted; the word 'now' be deleted; and the following be added at the end :-
'at the commencement of this Constitution.'

(b) in the proposed new article 5-A, for the words 'now included in Pakistan' the words 'included in Pakistan at the commencement of this Constitution' be substituted."

I have another amendment in common with Sardar Bhopinder Singh Man and I leave it to the Sardar Sahib to move it.

Sir, this is one of the most difficult articles in our Constitution, and as the speeches so far made have shown, and even Dr. Ambedkar has himself confessed that though this Draft has been put forward after the most careful consideration, still friends have come forward to point out its defects. I want to say, first of all, that my Friend Dr. Deshmukh has moved a very important amendment to the first clause of article 5. His contention is that we are making this 'Citizenship of India' very cheap whereas it is a very difficult thing to acquire in other countries. I concur fully with him and think that the article as it stands needs to be altered in some form. Let us see what would happen otherwise. The article says :

"At the date of commencement of the Constitution every person who has his domicile in the territory of India and was born in the territory of India or either of whose parents were born in the territory of India shall be a citizen ......".

This clause will give citizenship to a class of persons to whom probably we would not like to give it. Mr. Amery. was also born in India in my District of Gorakhpur where his father was a Forest Conservator and his son John Amery. will get our citizenship if he only stays here for some time before 26th January 1950, and we shall not be entitled to stop him from acquiring that. In clause (c), five years residence is sufficient to give citizenship to anybody. I think we are making our citizenship very cheap. We have said' if he has not voluntarily acquired the citizenship of any Foreign State'. I think it should be 'unless he is already a Citizen of any Foreign State'. This clause has to be amended accordingly. Dr. Deshmukh suggested ' that he should be born of Indian parents'. Now 'Indian parents' will have to be defined because we are defining 'Indian' in this clause and I suggest that by Indian should be meant' whosoever may be called a citizen of India under the 1935 Act, and if a man is born of such parents, he shall certainly be called a citizen of India.' Dr. Deshmukh's amendment is quite correct, for the Hindus and Sikhs have no other home but India and I do not see how we can include everyone in this category unless we say it bluntly in this form. We should not be ashamed in saying that every person who is a Hindu or a Sikh by religion and is not a citizen of another State shall be entitled to citizenship of India. That will cover every class whom we want to cover and will be comprehensive. The phrase 'Secular' should not frighten us in saying what is a fact and reality must be faced. I therefore think that Dr. Deshmukh has given a very good suggestion. The present Draft is too wide and gives citizenship to almost everybody. In fact some friends from Nepal met me and asked me whether the Nepalese living in this country shall be called citizens of India and I was really at a loss to give an answer. But clause (c) gives an answer. If they have been here for five years, they will be citizens. Dr. Deshmukh's amendment would give them citizenship here if they wanted. So, this article needs to be amended. We must not make our citizenship very cheap; but for those who owe allegiance to this State, whosoever they may be, they must be allowed to have the citizenship of India and we must say so in our Constitution. The word "voluntarily" should go. Anybody who has acquired the citizenship of any foreign State should not be entitled to citizenship of India. If you say " voluntarily acquired " he may say ' I did not voluntarily acquire it' that it was something involuntary and all that sort of thing. I therefore think that my amendment to this article should be accepted.

In regard to article 5-A I agree with Mr. Jaspat Roy Kapoor that the words "deemed to be " should not be there. Those who have come to India from Pakistan are citizens of India. Why say "deemed to be "? These words do not add any luster to the article. We should give dignity to our friends who have come over here. They are citizens of India and there is no question of their being " deemed to be " citizens of India.

Then the words "now included in Pakistan" are ambiguous particularly the world 'now'. This Constitution is made for a long time to come. Whenever it is read, the words "now in Pakistan" will not convey the proper meaning, as the word 'now' will have changing meanings. For instance, today some areas are in Pakistan, tomorrow they may not be there. Or, today some areas are not in Pakistan, but later on they may be acquired by it. Then it will mean that everybody who is a citizen of Pakistan at that time shall, if he had migrated, be a citizen of India. I therefore suggest that instead of saying, "now in Pakistan" we might say ' in Pakistan at the commencement of this Constitution ". We must limit what Pakistan means. As I said, "now" will be a word with a changing meaning according to the area of Pakistan. I therefore suggest that the word "now" should be deleted and the words "at the commencement of the Constitution" be added at the end of the Explanation. This is my amendment. I hope Dr. Ambedkar will carefully see whether the words "now in Pakistan " may not be differently interpreted at a later period of time.

In my amendment No. 163 of List VI, which my Friend Sardar Bhopinder Singh Man will move, I have desired the deletion of the proposed proviso to the proposed new article 5AA. My friend Mr. Jaspat Roy Kapoor was very frank in giving his opinion in this respect. Apart from his reasons I will say one thing. This will allow the executive authority to give anybody a permit and he shall become a citizen of India, so that it will be something changing and it may have repercussions which we do not like. We must definitely say what we have said in clauses 5-A and 5AA, that person who has migrated from India will be treated as a foreigner and when he comes back he will have to acquire citizenship by residence of five years and so on. I do not think the proviso is necessary and I therefore think amendment No. 163 seeking to delete the proviso should be accepted. I would request the Honourable Mr. Gopalaswami Ayyangar and Mr. T. T. Krishnamachari to withdraw the amendment which they have moved, or the House should reject it. This proviso should not nullify what is contained in the other portions of the article.

In clause 5-B, my Friend Mr. Jaspat Roy Kapoor suggested that the omission of the words subject to the provisions of any law that may be made by Parliament " was incorrect and Mr. T.T.Krishnamachari pointed out that as article 6 is there it is not necessary. I do not agree with Mr. T.T.Krishnamachari, because it will again become a question of interpretation. I do not want it to be a matter of litigation. Parliament must have full authority to put limitations on the rights of diplomatic and consular representatives to enrol men as citizens of India. Otherwise it will be very easy for anybody to acquire citizenship of India. I think these words should remain in this very article 5B. Article 6 is of course an overall clause, but unless the thing is mentioned in the other articles also, Parliament's power will be limited. Article 5B is absolute and therefore it should not be limited by the omission of these words. These words are not superfluous there. The words were there in the original Draft and I do not know why they were omitted. They should remain there so that the intention may be clearer than what it is.

Our learned Professor Shah has just now told us how keenly we feel the discrimination against Indians in other countries. In amendment No.7 he says that "Parliament shall not accord equal rights of citizenship to the nationals of any country which denies equal treatment to the nationals of India settled there and desirous of acquiring the local citizenship". I think our self-respect demands that this proviso should be there. Otherwise it is hopeless that when we are discriminated against by any country, still to the nationals of such country when they come here we accord equal rights of citizenship. I personally feel, and the people also feel, that if they kick us they shall also be kicked. This amendment No.(7) is a very important amendment and should be accepted.

His suggestion about foreign capitalists coming here and trying to take advantage of this article is also worthy of consideration and I hope the learned Doctor will give it the weight it deserves.

There is another word "Dominion" here. The word "Dominion will on the ears of people after India has obtained freedom and has ceased to be a Dominion. I therefore think that in article 5-B, the words of "Dominion of India" should be changed to some other language. In fact in connection with another article of the Constitution we felt that the word "Dominion" in the Constitution should not be a reminder of the days of slavery, which we have passed. This should also be changed and the amendment contained in Professor Shah's amendment No.20 should be accepted.

The whole article is a difficult one and Dr. Ambedkar has said that this contains the greatest common measure of agreement. The article still leaves much room for improvement. There are still many lacunae in the article which will affect millions of countrymen and also the future. The article must therefore be properly considered and amended as required.

Pandit Thakur Das Bhargava (East Punjab : General) Sir, I beg to move:

" That in amendment No. of List I (Third Week) of Amendments to Amendments, in clause (c) of the proposed article 5, for the words 'five years' the words 'ten years' be substituted."

I further beg to move:

" That in amendment No. of List I (Third Week) of Amendments to Amendments in the proposed new article 5-A for the words beginning with 'Notwithstanding anything' and ending 'at the date of commencement of this Constitution if', the following words be substituted:-

'Notwithstanding anything contained in article 5 of this Constitution a person who on account of Civil disturbances or the fear of such disturbances-

(a) having the domicile of India, as defined in the Government of India Act, 1935 and being resident of India before the partition, has decided to reside permanently in India; or

(b) has migrated to the territory of 'India from the territory now included in Pakistan;

shall be deemed to be a citizen of India at the date of the commencement of this Constitution if."

I further beg to move:

"That in amendment No. of List I (Third Week) of Amendments to Amendments, at the end of the proposed new article 5-A, the following words be added:-
'or if he has before the date of commencement of this Constitution unequivocally declared his intention of acquiring the domicile of India by permanent residence in the territory of India or otherwise and established such intention to the satisfaction of the authority before whom the question of his citizenship arises ".

I further beg to move:

"That in amendment No. 131 of List IV (Third Week) of Amendments to Amendments, in the proposed proviso to the proposed new article AAA-

(i) the words ' nothing in this article shall apply to' be deleted;

(ii) the words 'or permanent return' be deleted; and

(iii) for the words beginning with ' and every such person shall' and ending 'nineteenth day of July 1948' the following words be substituted:-

'shall be entitled to count his period of residence after the nineteenth day of July 1948, in the territory of India in the period required for qualification for naturalization or acquisition of citizenship under any law made by Parliament".

Sir, I move :

"That in amendment No. 131 of List IV (Third Week) of Amendments to Amendments in the proposed proviso to the proposed new article 5-A-

(i) The words 'nothing in this article shall apply to' be deleted;

(ii) for the words beginning with' and every such person shall' and ending 'nineteenth day of July 1948' the following words be substituted:-

"shall be eligible for citizenship by naturalization if he fulfils the condition laid down by law and his permit shall be liable to be cancelled on the grounds on which under the law relating to the certificate of naturalization can be cancelled."

Further, Sir, I move:

"That in amendment No.1 of List I (Third Week) of Amendments to Amendments in the proposed new article 5B, after the words ' any person' the words ' having his domicile in the territory of India' be inserted."

Further, Sir, I move:

"That in amendment No. of List I (Third Week) of Amendments to Amendments, in the proposed new article 5B, the words ' or the Government of India' occurring at the end of the article be deleted".

With your permission, Sir, I would further move:

"That in amendment No. above, at the end of the proposed new article 5B, the following proviso be added :-

"Provided he has not abandoned his domicile by migrating to Pakistan after the 1st April 1947 or acquired after leaving India the citizenship of any other State".

Mr. President: Am I right if I say that the following amendments have been moved:

List VI/3rd Week: Nos.160,161,162,164,165,167,168 and 169.

List I/3rd Week : No.32?

Pandit Thakur Das Bhargava: Yes. A perusal of articles 5, 5A, 5AA, 5B, and 5C will show that it is established that birth, domicile stay for five years, migration plus birth, or registration by the officers appointed by the Government of India, or some sort of registration in any country with the Embassy have been regarded as giving qualifications for citizenship.

So far as the question of birth is concerned, I for one fail to understand how the birth of a grand mother or the birth of a grand-parent in India or any other country can be regarded to give qualification to any person for citizenship. If you at least consider these articles separately, one by one, it would appear that there is no account taken even of birth because under 5C, if there is a foreigner and he settles in India for five years, he is also entitled to become a citizen provided he has got the domicile of India.

Similarly, with regard to domicile, this is not a condition *sine qua non*, because in 5-B, if a person was born in the territory defined in the Government of India Act, 1935 as India and is then staying in any foreign country, these two are enough for his acquiring the right of citizenship, provided he applies to the Embassy and registration is allowed. Even the domicile is not required. I do not know, Sir, what is there in this citizenship which is absolutely necessary for a person to be acquired before he becomes a citizen. To my mind, Sir, domicile is a very important factor and I should think that domicile is one of the indispensable conditions of citizenship. Whatever else may or may not be, as I understand the laws of naturalization in all civilized countries of the world, any foreigner can acquire the right of citizenship by naturalization if he satisfied the conditions laid down by the law of the land. But so far as domicile is concerned, unless this is present, in my humble opinion no person can say that he has got this citizenship of a particular country if he has not got the domicile. After all, the rights of citizenship, the obligations of citizenship, the status of being a citizen is not an ordinary matter. It is not a nebulous thing, it must be definite. I understand that a person gets certain rights by becoming a citizen of a State, and he also takes upon himself the liability to discharge certain obligations if he belongs to or is a citizen of that State. What I find is that in our desire to spread out our net too wide, we have not cared to see whether we can impose any sort of obligations on those to whom we are giving the right to citizenship: nor have we cared to see that after all, if we make a person a citizen of India we undertake a very large responsibility so far as that person is concerned. Who does not know in this House that when Miss Elise was captured by the tribal people in North-West Frontier, the whole of Great Britain was convulsed, because she was a citizen of England? Now, Sir, do we not find that today those who are regarded as our people, and who may or may not be our citizens, are insulted in different lands and we are helpless? Do we not know that even our ladies are yet in Pakistan and we can not recover them? I do not know, Sir, if a country is so poor and so weak as not even to be able to protect the ladies or citizens of this country, what right it has got to extend its net so wide. If our country is resources and if we cannot find solace and comfort for and rehabilitate our refugees, what right have we got to call others from Pakistan and make them our citizens? What right have we to call South Africans our citizens, if we have no resources in this country even to see that those who live here are properly fed and housed ?

My humble submission is that I do not want that we should make our citizenship so cheap because the State has certain obligations, and the obligations of the State are shared by the rest of the citizens: and if a citizen is insulted in any part of the country, it is the duty of the State and of the citizens of this country to see that the insult is avenged and amends are made. If we are not able to deliver the goods, what is the use of taking so many people who may or may not like to be citizens and asking them to call themselves our own citizens?

In this connection I do not want to take much time of the House, as already some of the Members have spoken in this vein on the subject. I would rather like, Sir, to give you my own views on the matter in regard to the present question. When we are making almost a provincial law I am desirous that not a single person who has come from Pakistan as a refugee should have any trouble in being a citizen of India. I am anxious that no obstacle should be placed in the way of those refugees who have come from Pakistan on account of disturbances and who have left their hearths and homes and come to this country. My second desire is that those who were desirous to become the citizens of Pakistan on the 15th August 1947 or who left this country to become citizens of Pakistan with open eyes and with the song on their lips :

" Hanske lie Pakistan
Lade ledge Hindustan".

should not be made the citizens of India. Those persons have now forfeited their right to become citizens of this country. Sir, I submit that so far as these refugees are concerned they were the nationals of India. By the mere fact of partition they have not ceased to be citizens of India, provided they have come here and want to settle permanently in this country. They have every right to citizenship and any obstacle in their way I regard as unjustifiable and wrong.

With this view I have tabled my amendments. I would, with your permission, Sir, just state what further corrections or amendments I want to be made in these articles to achieve the two objects I have mentioned.

First of all I come to article 5. Before coming to the cases of those refugees and those who want to re-enter India from Pakistan, I would first refer to the case of those who come under article 5. Under this article according to the definition of the clause, there can be persons who may have never seen India. He should be a person born in India or any one of his parents should be born in India or possesses a domicile. This domicile is merely a mental attitude or conception that he may ultimately have a permanent home in India if a person desires to be a citizen of India. I do not know how this country will be able to impose any obligations on such a person. However, that is about those who were born in India or whose parents were born in India or who had the domicile of India. In regard to foreigners who desire to acquire rights of citizenship there is the Naturalization Act VII of 1926. This Act with the necessary modifications must be accepted as the law of India. In other countries also there are similar laws regarding naturalization and if any foreigner wants to become a citizen of this country the law requires not only that he should have lived for five years in the country but insists that he must be a man of good character and further that he must take the oath of allegiance to this country. With your permission, Sir, in this connection I would refer you to section 5 of the Naturalization Act VII of 1926 which gives the conditions under which a person acquires the rights of naturalization. Among other conditions like possessing a good character, etc., which are given in section 3 a further provision is made in section 6:

"Every person to whom a certificate of naturalization has been granted shall, within thirty days from the date of the grant thereof take and subscribe the following oath, namely:-
'I, A.B. of do hereby swear (or affirm) that I will be faithful and bear true allegiance to..........."

In the case of persons who have been living here in this country, the mere fact of their stay for five years in this country should not be enough, if other conditions relating to citizenship by naturalization are waived in their favour. My humble submission is that if you study the law of naturalization you will come to the conclusion that a person who even acquires the right of citizenship by naturalization has a liability to fulfil certain conditions. He has to perform certain obligations, and be a man of good character. All those conditions are being waived and he is regarded as being a citizen of this country. It is therefore only fair that we should provide for a residence of at least ten years to show that as a matter of fact a person means to stay in India. Otherwise there are many persons who have been in the service of the Crown and have stayed here for a good time. They might now prefer to stay here for reasons best known to themselves. The difficulty in my way is that I do not, believe, that those who come from Pakistan and other countries propose to stay here only for the love of the country. If they stay for that purpose, I have no objection that they become citizens of this country. But I know very well that there are a good many people who have not come to this country, or are not staying in this country with this object. In their case, I would like to provide ten years instead of five years which should be regarded as indispensable in the interests of caution.

The second amendment which I have moved is No. 161. In regard to this amendment it would appear that this seeks to make certain changes in the Preamble of article 5A. I have provided for a case in which a person born or domiciled in India as defined in the Government of India Act, 1935, if he came to India three years before Partition and has not been living here for five years. Such a man is not provided for in this article. To safeguard the rights of persons like these about whom I am told there are many in Assam I have tabled this amendment. I want that every person who had come to India before Partition and has been staying for less than five years and has decided to stay here, because he does not want to go back on account of conditions in East or West Pakistan, such a person should be allowed to be a citizen of India. If you do not provide for this class of persons many will be left without citizenship who would like to be citizens of India. This is wrong. This article 5A provides for such people whom everybody will consider to be fit citizens of India.

There is another difficulty and I do not want to conceal this fact. I have been told by a reliable authority, by some honourable Members of this House, that after partition as many as three times the Hindu refugees from East Bengal, Muslims have migrated to Assam. If a Muslim comes to India and bears allegiance to India and loves India as we love her, I have nothing but love for that man. But even after the partition for reasons best known to themselves many Mussalmans have come to Assam with a view to make a Muslim majority in that province for election purposes and not to live in Assam as citizens of India. My humble submission is that those persons have come here for a purpose which is certainly not very justifiable. Those who have come here on account of disturbances in Pakistan or fear of disturbances there, certainly they must get an asylum in India. If any nationalist Mussalman who is afraid of the Muslims of East Pakistan or West Pakistan comes to India he certainly should be welcomed. It is our duty to see that he is protected. We will treat him as our brother and a *bona fide* national of India. In regard to those others who have not come here on account of disturbances, we should not allow them to become citizens of India, if we can help it. Therefore, I have added these words:

"Notwithstanding anything contained in article 5 of this Constitution a person who on account of civil disturbances or the fear of such disturbances ...."

I would rather insist that that man should not come here and become a citizen just to bolster up a Muslim majority in one of the provinces of India. Therefore, the first condition of migration would be that he comes here on account of disturbances. For those who want to stay here on account of disturbances the doors of India would be open. But to those who come from sinister motives, from motives of occupying lands and usurping the rightful owners by terrorising them and becoming a majority in this country, it is up to us to say that no asylum would be offered here. They are not migrating with a view to live permanently here. Their object is only to create trouble here. But to achieve our object I would request everyone to agree with me that this innovation should be made in article 5A.

Then I proceed to consider the next amendment (162). In regard to this my own fear is that when article 5A was drafted the possibility of many refugees not being covered by it was not envisaged. I am thankful to the Drafting Committee for accepting my suggestion and for being pleased to waive the condition that all the refugees should file declarations about citizenship. But, in regard to those who have come after 19th July 1948 - there will be some ignorant people, ignorant of the condition that the door will be closed on 26th January 1950 - I do not know what will happen to them. Perhaps a new law may provide something for them, that after five years' residence they will be regarded as citizens. In regard to such people I believe we are bound to make a provision that if they come to India and settle permanently, that will give them right to citizenship without any further qualifications. For that, I have provided that, if a person before the commencement of this Constitution unequivocally declares not before any officer, but by his own conduct - of permanent residence in the territory of India, he shall be a citizen of India. This question may not crop up now. But sometime it may crop up in some civil or criminal case. So, whenever a question arises whether a person is a citizen of India or not, he should be allowed to say that he came to India before the commencement of the Constitution and by permanent residence unequivocally declared his intention to be a citizen of India. I have included this provision on behalf of those who will not be registered before the commencement of this Constitution. Unless this is included you will be shutting the door against many people who, on account of ignorance or illiteracy, have not been able to take advantage of the new provision. After all, this provision has not been promulgated in the country so far and no officer has been appointed so far. We do not know what steps will be taken to get every refugee registered. When lakhs of people are involved, I think it will be difficult to inform every person to get himself registered. Therefore, no person who came to this country for permanent settlement on account of the troubles in Pakistan should say that no provision has been made by this Government for him. It is only to provide against that contingency that I want amendment No.162 to be accepted.

Coming now to article 5AA and the provisos thereto, I must submit that I approach this subject with a certain amount of feeling. I am glad that the Drafting Committee accepted the principle suggested by me, that a person who has once migrated from this country has migrated for all time. The legal maxim is that any person who has abandoned his domicile has abandoned it for all time. There is no question of partial abandonment. The Explanation to article 5 which originally did not appear and was subsequently added there is now included in 5AA. That Explanation says that a person who migrated from the territory of India to Pakistan will not be deemed to be a citizen of India. That is good so far as it goes. But so far as the question of persons who have come to this country subsequently, after having migrated to Pakistan is concerned, a new proviso is sought to be added. I have no quarrel with that proviso except in a certain particular. If the Government of India in their or Eastern Pakistan and allowed them permits for re-settlement, they are themselves responsible for it. Perhaps you are not conscious as to what difficult questions of property and propriety are agitating the minds of the refugees in this connection. Now we all know that Pakistan has refused to give compensation for the properties which it originally agreed to give so far as movable property is concerned. With regard to other properties we know the attitude of Pakistan and how it is behaving. The properties of persons who are living in Pakistan have been declared evacuee property and taken possession of. I do not know how the return of these thousands of Muslims to India will affect the rights of evacuee property here. Now a new Ordinance has been passed by our Government and perhaps another is under contemplation. If a person who comes for resettlement and becomes a citizen and then after that his property is confiscated or seized. I do not know how the provisions of article 24 relating to compensate will affect him. He may in a court of law get a declaration that he has a right to the property taken possession of by the Custodian or apply for restoration. Therefore many difficult question are likely to arise. These questions are agitating the minds of every evacuee. Though *bona fide* refugees have not yet been rehabilitated, the houses in Delhi etc., were reserved for those who had yet to arrive from Pakistan and many of such returned people have got their houses back. There is a good deal of confusion and uncertainty in he minds of the refugees that they do not understand the position of the Government of India. At a Conference recently held some responsible persons stated that some people came here with temporary permits obtained from the High Commissioner of Deputy High Commissioner in Pakistan and were taken by Muslim dignitaries and ministers of our high placed ministers and leaders and recommended for permanent permits. This may or may not be so. But even if there was a single instance of this nature, this must give rise to agitation in minds of refugees who are driven from pillar to post and not rehabilitated properly. Therefore, I say that, apart from rights to property which may run to crores, I for one do not understand how, according to law and equity, we can hold to a proposition that if any person gets a permit for resettlement in India, *proprio vigore* he becomes a citizen of India. It means that the High Commissioner at Karachi has got the power of making any person he likes a citizen of India. It virtually comes to that. By saying this, I may be doing some sort of injustice to that dignitary. I should say in fairness that he never knew that any person to whom a permit has been given was proposed to be made a citizen of India. Therefore my humble submission is that if he knows that his permit will have this effect, he will consider twice before issuing a permit. May I know, Sir, how any person can justify that position because the permits have been begun to be given after the 19th July 1948? Those persons who will come after the 26th July 1949 will not have completed six months before they apply for registration. Therefore, I beg to point out that permits issued between he 19th July 1948 and 26th July 1949 will only come under the provisions of this rule. After all, what is the difference between the two persons ? How can anybody justify different treatment in their cases ? All such persons could be considered under article 6.

Then again, Sir, when a permit for entry has been given, it means that the person concerned wants to come in and rehabilitate himself, and the provisions of the Naturalization Act which I have read out require that this man should be of good character. I will not say that all the persons who want to come in for resettlement are coming with sinister motives, with a view to making money, with a view to dispose of their property and for other purposes. After all, Sir, there are many here who have got sons there, wives there and just a son or wife here, and they get all the advantages here and all the advantages there. Now, Sir, those specially in Western Pakistan have got much more facilities, much more comfort than we enjoy in East Punjab. There is no reason why they should come here at all. My submission is that they are coming not with the idea of remaining here. Of course, they have got permits, but we all know how permits can be obtained. Sir, those people do not take any oath of allegiance to this country. We are not sure that these people are of good character. All the provisions of sections 6 and 8 of the Naturalization Act should apply to them. With your permission, I would just read out section 8 under which a foreigner from any other country would be subjected to certain liabilities, and there is no reason why people coming from Pakistan and thereafter choosing to remain here for a year or two and then going back should be treated in a different manner. The relevant portion of section 8 says

Where the Central Government is satisfied that a certificate of naturalization granted under this Act, or the Indian Naturalisation Act 1852, was obtained by false representation of fraud or by concealment of material circumstances or that the person to whom the certificate has been granted has shown himself by act or speech to be disaffected or disloyal to His Majesty, the Central Government shall, by order in writing, revoke the certificate."

In the case of a man who comes to this country by obtaining a permit, where is the guarantee that he will stay here? Even if we see under the Naturalisation Act that he behaves well, where is the guarantee that he will not go back after he has disposed of his property? My submission is that there is no reason why the Government of India or we should have a soft corner for these people, who come in in order to take advantage of our weakness or leniency towards them. I do not say that they should not have the right to be repatriated according to law when we have passed a Naturalisation Act under article 6 or any other article. I only want that they may be given their proper rights and to that end. I have proposed amendment No.164 which says such persons -

"shall be entitled to count his period of residence after nineteenth day of July 1948, in the territory of India in the period required for qualification for naturalisation or acquisition of citizenship under any law made by Parliament".

I do not disqualify him for all time. I have only sought to give him his due.

"He shall be eligible for citizenship by naturalisation if he fulfils the condition laid down by the law and his permit shall be liable to be cancelled on the grounds on which under the law relating to naturalisation the certificate of naturalisation be cancelled".

Now, Sir, one of the conditions is that if during the first five years, a man goes to jail for committing any crime, then his certificate will be revoked. Now, I do not see why this condition should not apply to those gentlemen who come here after obtaining permits. Now, Sir, with raged to 5AA, I do not want to take the time of the House any further.

I would now proceed to 5B. In regard to 5B, I have already submitted that it is no use by giving rights of citizenship to any person whose parents or grandparents were born in India as defined in the 1935 Act and who is now residing outside India. He has to apply before an Embassy and this can be done before the commencement of the Constitution and even after that. My submission is that in 5A, 5AA and 5C the words used are " before the commencement of this Constitution." It is only article 5B in which it is contemplated that even after the commencement of the Constitution a person can become a citizen. Now, has such a person got any sort of connection with India? His grand-parents might have been born in some far-off corner of India, but I do not see what possible connection can there be between him and India. My submission is that unless and until he can prove and show that he possesses at least a remote idea of returning to India, that person has no right to become a citizen of India. To be consistent, I propose that the words "whether before or after" should be replaced by the word "before" because after the commencement of the Constitution we propose to enact a law which will provide for these contingencies. In connection with 5B and 5C the words used are "subject to any law made by Parliament" and I welcome these, because after all even we are passing today rather hastily these provisions which are not justifiable after the commencement of the Constitution Parliament will have the right to rectify them. In article 5B as well as in 5C I welcome these words and I want that those words should be retained. I oppose the amendment which says that these words should not be there. After all, Parliament should be armed with powers to rectify these if it thinks them unjust. My submission is that these words " of the Government of India" should to also find a place there, because before the commencement of the Constitution ours is the Dominion Government of India. My submission is that all these three amendments should be accepted.

As regards amendment No.32, as I have already submitted, if a person has acquired the citizenship of any other country, he can not become a citizen of this country. These words do not find a place in 5B. If they are good for 5, I submit these words are good for 5B also. Therefore they should find a place in 5B also.

Now, Sir, I have come to the end of all my amendments. I have one more word to submit for your consideration. When the Act relating to these permits was placed in the House, we did not know that they would acquire this force. Now, since we find that attempts are being made to make citizens of people who have got these permits, I would beg and humbly beg the Ministry concerned not to issue any further permits. What is the meaning of taking people from Pakistan and foisting them on us when our own people are suffering? My submission is that any further issue of these permits would not be just and would not be conducive to the solidarity of this country.

Shri R. K. Sidhwa (C. P. & Berar :General): Mr. President, Sir, I beg to move:

"That in amendment No.1 above, in the proposed new article 5A, the words 'deemed to be deleted".

Before giving the reasons as to why I move this amendment, I would like to make few observations on the main article. Sir, the Honourable Dr. Ambedkar has rightly stated that it has given them a headache for framing this article. Originally in the Draft Constitution it comprised only one main clause and three sub-clauses. In the new article there are 6 main clauses and 6 sub-clauses. In the old article the clauses were so vague and conflicting with each other that the Drafting Committee I am very glad - had to reconsider the whole question de novo and submit to this House a very comprehensive article, which in my opinion covers all the points. I have gone through it very carefully and from the experience that they have gained for eighteen months, they have come to the right conclusion and of including even future events that are likely to occur. I therefore congratulate and compliment the Drafting Committee, not only myself, but I think the whole House will compliment them for the trouble they have taken in framing this article. It is true that there are many amendments, but I do feel that in proposing these amendments, Members do not wish to belittle the work of the Drafting Committee and the pains that they have taken to bring about such a comprehensive article; but what these amendments mean is that if there are some loopholes or there are some points and difficulties, they would like to point them out to the Drafting Committee, so that they may consider and accept them wherever possible.

Now, Sir, coming to article 5A, my honourable Friend, Mr. Kapoor has suggested an amendment that after the words "At the commencement of this Constitution" the words "and thereafter" be inserted. Reading English as it is, it appears there is some vagueness in it that at the date of the commencement only those persons will be called as citizens of India, but I understand that under birth - right clause a person wherever he is born, he is supposed to be a citizen of that country. I am not very clear in my mind on that but if that is not so. I would really like to know whether this expression "at the date of commencement" would mean that even after the date of commencement, that is to say when a person is born after 27th of January 1950 and when he becomes a major, will be entitled to be a citizen of this country. English as it is, I take it that at the date of commencement means at that time only and not 'afterwards'. As far as my memory goes, there is an Act which says that the birth-right of a person is born in that country is supposed ipso facto to be a citizen of that country. This matter, therefore requires looking into.

Then my honourable friend, Dr. Deshmukh has suggested an amendment to this very article wherein he wants that the Sikhs and Hindus wherever they are born and whenever they desire shall be entitled to become citizens of India. When he has mentioned names of communities, I would like to point out to you, Sir, and the Members of this House, that there are nearly 16,000 Parsis who are professing the faith of Zoroastrian outside India; there are about 12000 in Iran and those persons who are in Iran are professing the same faith as the Parsis are professing in India and I know that article 5B covers the point which my honourable friend Dr. Deshmukh desires wherein it is laid down that even the grand-fathers and their grand-fathers if they are born in other countries, if they desire to become citizens of India, can so become. Dr. Deshmukh's amendment causes a wider privilege and right. Although I am not keen on this amendment if the Drafting Committee is going to consider this, I would like them to bear in mind that there are other communities and merely to mention the Sikhs and Hindus would not I think be proper. That is the only point that I wanted to bring to the notice of the Drafting Committee. There are 12,000 Parsis who are professing the same faith as we here, but their grand-fathers are born in Iran and several of them come to Bombay and to other parts of India; they would like sometimes to make India their home. It is a far-fetched point that I am making, but if at all it is going to be considered, then my point is this that we need not mention necessarily 'any community'; if we do so it would look as if we are ignoring other communities which do require attention and therefore, I place this view point before the House, if they at all want to take this amendment into consideration.

Then, Sir, I am coming to my own amendment which has a bearing on article 5A wherein it states, "notwithstanding anything contained in article 5 of this Constitution, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the date of commencement of this Constitution". I want that the words "deemed to be " should be deleted. Sir, we are all very glad that the Drafting Committee has made no distinction between the citizens (original) of India and citizens who unfortunately on account of the division of India have come from Pakistan into India.; So far so good: you are giving them equality of right. But why do you call them "deemed to be" and why do you give them a lower status ? In the first paragraph, it is stated " he shall be a citizen of India." Why these refugees shall be "deemed to be " citizens of India and why a lower status, I rather fail to understand . Probably it has escaped the notice of the Drafting Committee and I would request them to bear this in mind seriously. We know that the refugees who have come to this country, wherever they are placed, they say that they are not wanted by the citizens either by a province or by a Government or by the people, and they always make a grievance that they are sometimes not wanted and wherever they are wanted, they are not rehabilitated and some are treated very badly. I do not share that view. I totally disagree with that view; I know that wherever they have gone, with open arms the citizens of that province have welcomed them: they are trying to rehabilitate them to the best of their ability and to give them all shelter and provide for them houses wherever is possible. But there are many refugees who take the view as mentioned by me. Why do you say in the constitution "your status will be second, your status will not be first" ? It is a very minor thing but we should remove that kind of sentiment in this Constitution. You have given them equality of right, but why do you say "deemed to be"? I therefore appeal to the Drafting Committee that they will kindly see that the words "deemed to be" are deleted. Mr. Kapoor has also explained this view-point elaborately but at the conclusion of his speech he said, "The Drafting Committee might consider this." I say "The Drafting Committee must consider this." Sir, why should they "might consider" this point on which you have agreed and you want to give equal right? But why do you want to say "You might consider"? I would request them to "do kindly consider" and remove these words. I desire that they must remove them and if they do not want to remove, it is their choice; we cannot force them. When they by this clause want to treat them as equals, I submit, we should not give them the slightest chance to feel we treat them on a lower status. The refugees are having wrong notions in their minds; you do not give them a cause for complaint by putting these words in the Constitution and say that "you will have a second status in this matter of citizenship".

Then, Sir, coming to the so-called obnoxious clause, I welcome this clause, both the main clause and the proviso. Those honourable Members who have referred to this proviso are also justified in their complaint; I do not want to belittle their arguments. I want to state that this proviso is necessary. It is not a question of Mussalmans; there are hundreds of thousands of Parsis and Christians today in Pakistan who may like to come back - why should you close the door against them? They were born in India; they have everything to do with India; for certain reasons they are there. If at any time they want to come, this proviso gives them this right. I do want that right to be taken away.

But, there is one danger which my honourable Friends Messrs. Jaspat Roy Kapoor and Thakur Das Bhargava rightly stated about evacuee property. Their grievance is a legitimate one. What they stated is this. Recently, the Government of India has issued an Ordinance on the question of evacuee property. This question was the subject of inter-dominion conferences for a number of months and they came to a certain settlement in the month of January this year. The whole thing has come to a fiasco only two months ago. Pakistan broke that agreement. Properties worth crores of rupees were left in the lunch. Our Government all along wanted to take up a persuasive attitude and hope to bring them round. They made all efforts; but they failed. The point is that under this clause there are many grounds for apprehension. Parliament can make a law that a permit shall be necessary before a man comes here. After the promulgation of the Ordinance, there has been a stir in that community and the Secretariat Office of the Bombay Government is being flooded by that class of people on he ground that these properties were left only temporarily, and that they want to come back. I also know of cases where a property was declared evacuee property by the Custodian, and after some influence, and not even compliance of the provisions of the Transfer of Property Act which was passed by this Constituent Assembly (Legislative) last April, that proclamation has been negatived to be evacuee property. This has created doubt and sensation. I do not say that there is any place in the law. The law is quite clear. The action of an official has created doubts in the minds of the people. Therefore, my friends say that these people, if they come, they may settle for three years, and after selling their property, they may go back to Pakistan. There should be caution against this. I feel, Sir, that in the proviso, this caution is there, permits are provided. parliament will take note of this and see that the object is not fulfilled. I do not in the least deprecate the apprehension in the mind of my Friends, Thakur Das Bhargava and Jaspat Roy Kapoor, they have their genuine danger. But I do not want from this point of view, that this proviso should be deleted. The reasons I have already explained, Sir. This proviso must remain for future eventualities. It may be in our own interests, it may be in the interests of those persons who are anxious honestly to come back to India.

This proviso also shows that the Drafting Committee is vigilant. Provision has also been made in article 5B for the persons who are now in foreign countries and who may feel at any time to come back. You know, recently there has been an agitation in Malaya. In the past, many Indians went to these colonies as indentured labour, or for betterment of their future, or from the business point of view. There are lakhs of our brethren there. After attainment of freedom, it some people in these countries want to come back to India, thinking that India is free and their position and privileges would be better off in India, they should be welcomed. But, I do not share the arguments of my honourable Friend Pandit Thakur Das Bhargava, when he states that even his grand-parent was born there why should he be allowed to come here and acquire the Indian citizenship You will have to remember the circumstances under which they went there. They are our countrymen. They are our own brethren. They had to go to foreign countries from the economic point of view. When India is free, they would like to come back. Why do you want to deny that right to them. I therefore, say, not only the grand-father, but if the great grand-father was born in India, and if they want to come back, let them come here. They should be welcome. They will be a great asset to us. After their experience in those countries, they will be very useful to us; they will be industrialists, businessmen and ardent labourers who will certainly be an asset to this country. I welcome this article also. We have Indians in South Africa and Ceylon where the new laws of citizenship, have made our Indians feel that they are being discriminated. In that even if they want to establish in India they must be permitted.

As I told you, Sir, such an eventually may not happen. But if it does, we have to make a provision. There are 10,000 Parsis in Iran. When they were ruling until the last Kingdom of Medezand Shariar they were happy. Subsequently, under the Muslim rule, they were driven away. They came to India. Remote as the case may be, in such an eventuality in future, if these people are driven away, why should you close the door against them? Their grand parents were born in Iran, but by virtue of their being driven away, they may desire to come to India. Why should we close the door against them? Therefore, I contend that article 5B is a very helpful one. I think the Drafting Committee in framing this article has taken into consideration the recent agitation in Malaya, South Africa and probably the case of Indians in Iran has not come to their notice. Our nationals have spread all throughout the world. If their parents and grand-parents went thereunder extraordinary circumstances and became citizens of that country, and subsequently and particularly after the attainment of freedom in India if they choose to settle in this country they should not be denied the entry. I feel such *bona fide* citizens should not be denied the right of coming and establishing themselves for the betterment of themselves and for the betterment of this country.

With these words, I support the amendment that I have moved.

Shri B. P. Jhunjhunwala (Bihar:General) Mr. President there are two amendments in my name Nos. 123 and 150 . Regarding 123, a similar amendments has been moved here and sufficient has been said on this point and I would not take the time of the House much but I would only say few words after reading it.

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments in the proposed new article 5A for the words beginning with "Notwithstanding anything" and ending 'at the date of commencement of this Constitution if, the following words be substituted:-

"Notwithstanding anything contained in article 5 of this Constitution a person who on account of civil disturbances or the fear of such disturbances -

(a) having the domicile of India as defined in the Government of India Act, 1935, and being resident in India before the partition, has decided to reside permanently in India, or

(b) has migrated to the territory of India from the territory now included in Pakistan, shall be deemed to be a citizen of India at the date of commencement of this Constitution if".

The object of moving this amendment of mine is that article 5 contemplates the general principle of citizenship and we have given some concession in article 5A to persons who have come from Pakistan. Article 5 says:

'(a) Any person who was born in the territory of India; or

(b) either of whose parents was born in the territory of India; or

(c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding the date of such commencement, shall be a citizen of India, provided that he has not voluntarily acquired the citizenship of any foreign State'.

I want by my amendment to confine the right of acquiring citizenship just after residing for six months, at the date of commencement of this Constitution, only to displaced persons, and others who come under article 5A can very well acquire the right of citizenship after remaining in India for five years. I do not really understand the object of article 5A when it extends the right to persons other than those who have been refugees or who have been displaced or have come from Pakistan on account of civil disturbance or the fear of such disturbances. I do not understand where is the hurry about it. If the right of six months be confined only to such persons, then there is absolutely no difficulty, because after all we hare not taking away the right of acquiring citizenship from any persons who come from Pakistan. The only thing we want to know is the real intention of the persons who has come to India and is residing here, and we shall know it better during the period of five years, I have been told that from Eastern Pakistan people are infiltrating into Assam for some sinister motive *i.e.* to increase their population. It is not my first hand knowledge, but responsible reliable persons have told me like thing. This has led me to move this amendment. They are going to Assam, not because they are inconvenienced in Pakistan, but simply with a view to remain in Assam and increase their population there. It is to avoid giving right to such persons that I am moving this amendment.

The other amendment I have proposed is No. 150 and similar amendment has been moved by my Friend Professor Shah and he has spoken a lot over it and I share his views. The amendment reads :

"That in amendment No.6 of List I (Third Week) of Amendments to Amendments, after the proposed new clause (2) of article 5, the following proviso be added :-

"Provided that Parliament shall not accord equal rights of citizenship to the nationals of any country which denies equal right of citizenship to the national of India settled there and desirous of acquiring the local citizenship".

Shri S. Nagappa (Madras : General): Sir, I beg to move :

"That in amendment No. 1 above, in sub-clause (ii) of clause (b) of the proposed new article 5A, for the words ' on an application made' the words ' on a statement or an application made' be substituted".

I also move:

"That in amendment No. 1 above, in the proviso to the proposed new article 5A, for the words " the application" the words ' the statement or application' be substituted".

Sir, in moving this my intention is that the word "application" means it should be only a written one. In our country, literacy is very low and so the majority of the people who seek citizenship may not be educated and may not be in a position to make an application in writing. So, I suggest that a man who is not in a position to make an application can merely make a statement. The statement should be given as much importance as is given to an application. I hope the Honourable Dr. Ambedkar and the House will concede this request.

Sardar Bhopinder Singh Man (East Punjab: Sikh): Since the time is limited, I request that I may be permitted to move my amendment formally and make my observations tomorrow or I may be permitted to move it tomorrow.

Mr. President : You may move it now and speak tomorrow.

"That in amendment No.131 of List IV (Third Week) of Amendments to Amendments, the proposed proviso to the proposed new article 5AA be deleted".

This proviso which has now been incorporated by Dr. Ambedkar reads as follows:

"Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of article 5A of this Constitution be deemed to have migrated to the territory of India after the nineteenth day of July 1948".

Sir, I feel that this Proviso (and we are agreed on it) is absolutely obnoxious and does injustice to the Hindu and Sikh refugees who have come here and are awaiting resettlement.

Mr. President: The Honourable Members may continue his speech tomorrow.

The Assembly then adjourned till Nine of the Clock on Friday, the 12th August 1949.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Friday, the 12th August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, 'at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) In the Chair.

Sardar Bhopinder Singh Man (East Punjab: Sikh) : Sir, in the definition of citizenship' which covers- fairly extensive ground the view-point of Hindu and Sikh refugees has been met to some extent by the Drafting Committee whom I congratulate on that account. But, as usual, a weak sort of secularism has crept in and an unfair partiality has been shown to, those who least deserve it. I was saying that the Hindu and Sikh refugees view-point has been met to some extent, but not wholly. I do not understand why the 19th July 1948 has been prescribed for the purpose of citizenship. These unfortunate refugees could not have foreseen this date; otherwise they would have invited Pakistan knife, earlier so that they might have come here earlier and acquired citizenship rights It will be very cruel to shut our borders to those who are victimised after the 19th July 1948. They are as much sons of the soil as anyone else. This political mishap was not of their own seeking and now it will be very cruel to place these political impediments in their way and debar them from coming over to Bharat Mata. Our demand is that any person, who because of communal riots in Pakistan has come over to India and stays here at the commencement of this Constitution, should automatically be considered as a citizen of India and should on no account be made to go to a registering authority and plead before him and establish a qualification of six months domicile to claim rights of citizenship. There may be victims of communal frenzy in our neighbouring State hereafter; it is not only a possibility but a great probability in the present circumstances. Any failure of the evacuee property talks may lead to a flare-up against Hindus and Sikhs in Pakistan, and we must have a clause that these people will in no case be debarred from coming over and becoming citizens of this Union.

Article 5-AA lays down in the beginning.

"Notwithstanding anything contained in 5 and 5-A, a person who has after 1st of March 1947 migrated from the territory of India to the territory now included Pakistan shall not be deemed to be a citizen of India."

The purpose of this clause will be completely nullified, because we who are refugees, due to this exchange of population which necessarily involves exchange of property. will be put to serious trouble. 'This securing of permit from the Deputy High Commissioner's office, I can assure you, is a cheap affair in its actual working. Besides these permits when they were issued, they were issued for various other purposes commercial trade, visiting, purposes etc. and never at any rate for citizenship. We should not give citizenship merely on the ground that a person is in a position to produce this permit, which he can secure from the Deputy High Commissioner's office somehow or other. I feel that if at all the permit system was intended to confer benefits of citizenship, then a particular authority specifically constituted for that purpose should have been there and that authority should have realized at the time of giving the permit the implication that this is not simply a permit to enable a person to visit India for trade or Commerce but, that it will entail along with it citizenship rights also. Apart from that, let us see how this will adversely affect evacuee property. Very recently an Ordinance has been promulgated throughout India that the property of a person who has migrated to Pakistan after March 1947 win accrue to the Custodian-General of India and that property will be, to that extent, for the benefit of the rehabilitation of refugees. The Indian Government is already short of property as it is and it is unable to solve the rehabilitation problem. The difference of property left by Indian nationals in Pakistan and the one left behind by Muslims, in India-this difference of property cannot be bridged. Pakistan has not given you a satisfactory answer how it is going to re-pay that difference. Naturally, our policy should have been to narrow down this difference of property. This clause, instead of narrowing down that difference, will widen it. Thus, while on the one hand we are unable to help refugees, on the other hand we are showing concession after concession to those people who least deserve it. I am told that these permits will be granted only in very rare cases. I am told that only 3,000 of them have been granted. Now, I do not know how much property will be restored back to those people who will come under this permit system-may be a crore or may be much less-a few lakhs. My point is this : that this property which will eventually go to these permit-holders will go out of the evacuee property and out of the hands of the Custodian-General and the very purpose of the Ordinance which you recently promulgated will be defeated.

The securing of a chance permit from the Deputy High Commissioner's office or any other authority should not carry with it such a prize thing as citizenship of India, or that the holders be considered to be sons of Bharat Mata. I will cite one instance. Meos from Gurgaon, Bharatpur and Alwar not very long time ago, on the instigation of the Muslim League, demanded Meostan and they were involved in very serious rioting against the Hindus-their neighbours at the time of freedom. Right in 1947 a serious riot was going on by these Meos against their Hindu neighbours. These Meos, under this very lax permit system, are returning and demanding their property. On the one hand, we are short of' property and on the other hand, concessions are being given to them. This is secularism no doubt, but a very one-sided and undesirable type of secularism which goes invariably against and to the prejudice of Sikh and Hindu refugees. I do not want to give rights of citizenship to those who so flagrantly dishonoured the integrity of India not so long ago. Yesterday, Mr. Sidhva gave an argument that this proviso will not only cover Muslims who had gone to Pakistan and will return later on, but also other nationals, *e.g.*, Christians. But may I inform him that there is not a single Christian living in India who has gone over to Pakistan and who will come back later on?

It is only certain Christians now finding themselves living in a theocratic State and finding things were uncomfortable that will come in. It is not the case of those Christians who are gone over and then will come back, whereas this proviso relates to those people who were once nationals of India but at the inauguration of Pakistan went over to Pakistan for the love of it

I certainly grudge this right and concession being given to those people who had flagrantly violated and dishonoured the integrity of India, but, however, if Mr. T.T. Krishnamachari, or the Chairman of the Drafting Committee, or better still, Mr. Ayyangar who daily carries on such protracted, patient and fruitless negotiations with Pakistan, can promise to us a certain strip of Pakistan territory to India in lieu of this increase of population and release of property, I will certainly not press my amendment.

Mr. Mahboob Ali Baig Sahib (Madras : Muslim) : Mr. President, Sir, there are three amendments which stand in my name, amendments Nos. 120, 125 and 126. The purpose of my amendment No. 125 is to deal with cases of displaced persons who have come from Pakistan to India and who may file their applications after the commencement of this Constitution. The definition, as it has been placed before us, does not deal with the question of grant of citizenship to persons after the commencement of this Constitution except in the case of persons who are living overseas. But it has been stated by Dr. Ambedkar that this will be left to the Parliament. As has been pointed out by my honourable Friend Mr. Kapoor in between the date of the passing of this Constitution and the enactment by Parliament which might take five or ten years, there may be cases cropping up for decision whether a certain person is a citizen of India or not. The purpose of my amendment No. 125 also is similar. It is to give an opportunity to persons to file petitions for enrolment as citizens even after the passing of this Constitution.

Amendment No. 126 reads as follows :--

That in amendment No. 1 of List 1 (Third Week) of Amendments to Amendments for the proposed new article 5-C, the following be substituted:-

"Subject to the provisions of any law that may be passed by the Parliament in this behalf, the qualifications for citizens mentioned in the foregoing provisions, shall apply *mutatis mutandis* to persons entitled to citizenship after the commencement of this Constitution."

Article 5-C deals with the question of continuation of the citizenship acquired on the date of the passing of this Constitution. I submit that 5-C is unnecessary. A man once declared a citizen on the date of passing of the Constitution will continue to be so unless Parliament disqualifies him. Therefore, 5-C to my mind is unnecessary. On the other hand, what is necessary is to say who would be entitled to citizenship after the passing of this Constitution. That is more important, that is necessary. For that purpose, I have suggested amendment No. 126, in order to give a complete picture of citizenship not only on the date of the passing of this Constitution but even afterwards, until such time as the Parliament may pass a legislation abrogating it or varying it or doing whatever it wanted to do. I submit that this amendment is necessary in order that you might determine who will be the citizens even after the passing of this Constitution.

So, amendments Nos. 125 and 126 are meant to fill the lacuna which I find in this article. It is stated by Dr. Ambedkar that we are not legislating now for the future, that is why, we are not laying down any qualifications to deal with cases of persons who might become citizens after the passing of this Constitution. My submission is that many persons who might, under the qualification laid down in this definition, become citizens or be entitled to citizenship, will be left out and we will not be in a position to help them until the Parliament passed an enactment.

Sir, with regard to amendment No. 120 I have suggested that the explanation to the proposed article 5 be deleted. The explanation reads :--

"For the purposes of this article, a person shall not be deemed to be a citizen of India if he has after the first day of April 1947 migrated to the territory now included in Pakistan."

The explanation is found in the amendment given notice of on 6-8-49. When subsequently Dr. Ambedkar moved a revised amendment to articles 5 and 6, although this explanation was deleted its place was taken by article 5-AA which is in effect the same thing as the explanation. Now, Sir, I wish that this explanation or this 5-AA is deleted altogether. I do not want that our dealing with the subject of displaced persons must be undignified. It is enough if we have stated what qualifications persons should have, who have been displaced. That has been dealt with in 5-A. That is enough. I do not see any reason why, we should make mention of displaced persons from India to Pakistan who might return. The other qualifications are there. In this respect, I submit that it must be noted that persons who migrated from one Dominion to another whether it is from Pakistan to India or India to Pakistan did so under very peculiar and tragic circumstances. If persons migrated from Pakistan to India, as has been suggested in many amendments, they did so on account of disturbances, civil disturbances or fear of disturbances. What applies to them might equally apply to persons who migrated from India to Pakistan. I do not see any reason why we should make such an invidious distinction.

Sir, now I would like to refer to two or three points discussed yesterday. Yesterday, the discussion centered round two topics. The first was that the definition of citizenship was too easy and cheap, and Dr. Deshmukh even said that it was ridiculously cheap. Another Member remarked that it was commonplace and easy. Those were the remarks made by some honourable Members. It was Dr. Deshmukh who said if a foreign lady visiting India gives birth to a child say, in Bombay, her child will be eligible for citizenship of India. Such an interpretation, making the provision look ridiculous, is correct. The condition of domicile is very important. Domicile in the Indian territory is a pre-requisite for citizenship. The other conditions are that the claimant or his parents should have been born in India and been here for five years. Therefore, the interpretation put upon the provision by Dr. Deshmukh is not at all correct. In support of his observations he quoted the instances of the United States of America, Australia and South Africa. He said, "Look at those countries. They do not give citizenship rights to Indians even when they have been in those countries for thirty or thirtyfive years." May I put him the question whether we should follow their examples? Can we with any reason or pretence tell these persons : "Look here, you have not given citizenship right to Indians living in your countries for decades?" Can we complain against them if we are going to deny them citizenship rights here? Let us not follow those bad examples. There are persons in India owning dual citizenship. We in India are having dual citizenship. Whether it is possible or not, shall we now follow these retrograde countries like Australia in the matter of conferring citizenship rights and say that citizenship will not be available except on very very strict conditions? It is very strange that Dr. Deshmukh should contemplate giving citizenship rights only to persons who are Hindus or Sikhs by religion. He characterised the provision in the article granting citizenship rights as ridiculously cheap. I would say on the other hand that his conception is ridiculous. Therefore, let us not follow the example of those countries which we are condemning everywhere, not only here but also in the United Nations and complaining that although Indians have been living in those countries they have not been granted citizenship rights there.

Now, Sir, my view is that I should congratulate the Drafting Committee for having brought out this article in this form. My criticism with regard to it is that it is not complete. In the first place, it does not deal with cases of persons who might claim citizenship after the passing of this Constitution till such time as Parliament decides the question.

My second point with regard to this is that in articles 5-A and 5-AA there are two defects. Article 5-A says that any person who has come to India from Pakistan must have a certificate. I ask, why? Why do you want a certificate. You have stated that if a person is born in India as defined in the 1935 Act he is a citizen of India. Why do you want a certificate from him when he returns to India?

Shri M. Ananthasayanam Ayyangar (Madras : General) : Why did he go to Pakistan?

Mr. Mahboob Ali Baig Sahib : He did not go there. He was there. I am speaking of a person who was in Pakistan and is returning.

Shri M. Ananthasayanam Ayyangar : When did he return?

Mr. Mahboob Ali Baig Sahib : He was a citizen of India when Pakistan was included in India under the 1935 Act. I am speaking of a person who has been living in Pakistan which formed part of India and wants to return. Why do you want a certificate from him? Why do you want that he should reside here for six months? Why do you expect him to file a petition and be here for six months? He is an Indian and comes down here, not voluntarily, but under very tragic circumstances. He comes over to India because he could not live there on account of civil disturbances or for fear of civil disturbances. I do not want that any certificate should be produced by a person who comes from Pakistan to India.

The Honourable Shri K. Santhanam (Madras : General) : It is only from those who would return after 19th July 1948 that a certificate would be needed.

Mr. Mahboob Ali Baig Sahib: I know that. It does not make any difference at all. The question of a person who migrates from Pakistan to India is a very touchy question. People have become excited over it and also sentimental and aggressive. It is all unnecessary for us. Let us calmly consider this matter. What is the difference between a person who has gone away to Pakistan under the same and similar circumstances as those which compelled persons remaining in Pakistan to migrate to India? I can understand the cases where people went away to Pakistan or came back to India in order that they might live in Pakistan or Hindustan. There may be instances where for reasons of service, persons who are employed in the provinces of Pakistan coming back to India. There are cases of that kind. Sir, it is correct that when partition took place, when the June 3rd Agreement was entered into by both parties, it was expected that the minorities would remain where they were in the two Dominions and safeguards would be given to them. That was the honest expectation, that was the honest undertaking, but what happened was that after the transfer of power there was a holocaust, there were disturbances, there were tragedies which compelled persons to migrate. Now, Sir, when these were the circumstances, is there any justification for us to draw any distinction-I would go to the length of saying any discrimination-between those persons who migrated to India and those who migrated to Pakistan under the same circumstances? Let us not forget what during his life-time Mahatma Gandhi was preaching. What did he say? He invited the persons who had gone to Pakistan to return to their homeland. So, Sir, let us look at this matter calmly. I know there are many persons who are affected in this Assembly, who have lost their houses, who have lost their property, who have lost their professions, their status, everything. I know they are really affected. They are really touchy about this matter, but let us calmly think over these matters. Let it not be said that because certain Members of this Assembly were hard hit on account of the Partition and were in a very bad mood, in their bad mood they have passed this article 5-AA. So far as it goes, it is tolerable, as, if a person wants to resettle, he can made a citizen; but the real point is about those people who come back -I do not know whether people are coming back. I am very much surprised to hear that such persons who are coming back may be traitors. The arm of the law should be so strong that it must be able to get at any man who becomes a traitor. What would you do if one of your men becomes a traitor, a Communist and tries to overthrow the Government? So, to say those people coming to India might become traitors and therefore, they should not be allowed to come back, that is no reason at all. With this temperament you will never become strong. That kind of psychology should be shunned, must be got rid of. Moreover, we are only legislating for the present. Parliament may in its discretion, if it thinks it to be necessary, deprive any person of his citizenship and expel him. Parliament is supreme in this matter. Therefore, I do not see any reason why you should make a distinction between persons who go from here to Pakistan and persons who come from Pakistan.This is based on pure sentiment and does not inspire confidence not only among those persons but also amongst others. I would conclude by saying, let us consider this matter calmly and if we think that Mahatma Gandhi's teachings were correct, let us not go against his teachings and legislate like this, making a distinction between these two sets of people.

Mr. President : There are one or two amendments. Notice of one of them was given rather late yesterday by Mr. Krishna Chandra Sharma, but I would permit Mr. Sharma to move it. There is another amendment, notice of which was given today by Mr. Jai Sukh Lal Hathi. I do not think I can allow it. It has come too late. Mr. Krishna Chandra Sharma.

Shri Krishna Chandra Sharma (United Provinces : General) : Sir, I do not propose to move it.

The Honourable Shri Jawaharlal Nehru (United Provinces : General) : Sir, I wish to support the proposals made by Dr. Ambedkar as well as the amendment which Mr. Gopalaswami Ayyangar has proposed. All these articles relating to citizenship have probably received far more thought and consideration during the last few months than any other article contained in this Constitution.

Now, these difficulties have arisen from two factors. One was of course the partition of the country. The other was the presence of a large number of Indians abroad, and it was difficult to decide about these Indians whether they should be considered as our citizens or not, and ultimately these articles were drafted with a view to providing for these two difficulties. Personally, I think that the provision made has been on the whole very satisfactory. Inevitably no provision could be made, which provided for every possibility and provided for every case with justice and without any error being committed. We have millions of people in foreign parts and other countries. Some of those may be taken to be foreign nationals, although they are Indians in origin. Others still consider themselves to some extent as Indians and yet they have also got some kind of local nationality too, like for instance, in Malaya, Singapore, Fiji and Mauritius. If you deprive them of their local nationality, they become aliens there. So, all these difficulties arise and you will see that in this resolution we have tried to provide for them for the time being, leaving the choice to them and also leaving it to our Consul Generals there to register their names. It is not automatic. Our representatives can, if they know the applicants to be qualified for Indian citizenship, register their names.

Now I find that most of the arguments have taken place in regard to people who are the victims in some way or other of partition. I do not think it is possible for you to draft anything, whatever meticulous care you might exercise which could fit in with a very difficult and complicated situation that has arisen, namely, the partition. One has inevitably to do something which involves the greatest amount of justice to our people and which is the most practical solution of the problem. You cannot in any such provision lay down more or less whom you like and whom you dislike; you have to lay down certain principles, but any principles that you may lay down is likely not to fit in with a number of cases. It cannot be helped in any event. Therefore, you see that the principle fixed fits with a vast majority of cases, even though a very small number does not wholly fit in, and there may be some kind of difficulty in dealing with them. I think the drafters of these proposals have succeeded in a remarkable measure in producing something which really deals with 99.9 per cent of cases with justice and practical commonsense; may be some people may not come in. As a matter of fact even in dealing with naturalization proceedings, it is very difficult to be dead sure about each individual and you may or you may not be taking all of them. But the chief objection, so far as I can see, has been to the amendment that Mr. Gopalaswami Ayyangar has moved to the effect that people who have returned here permanently and in possession of permanent permits shall be deemed to be citizens of India. They are rejected and presumably their presence is objected to because it is thought that they might take possession of some evacuee property which is thus far being considered as an evacuee property and thereby lessen the share of our refugees or displaced persons, who would otherwise take possession of it.

Now, I think there is a great deal of misunderstanding about this matter. Our general rule as you will see in regard to these partition consequences, is that we accept practically without demur or enquiry that great wave of migration which came from Pakistan to India. We accept them as citizens up to some time in July 1948. It is possible, of course, that in the course of that year many wrong persons came over, whom we might not accept as citizens if we examine each one of them; but it is impossible to examine hundreds of thousands of such cases and we accept the whole lot. After July 1948, that is about a year ago, we put in some kind of enquiry and a magistrate who normally has *prima facie* evidence will register them; otherwise he will enquire further and ultimately not register or he will reject. Now, all these rules naturally apply to Hindus, Muslims and Sikhs or Christians or anybody else. You cannot have rules for Hindus, for Muslims or for Christians only. It is absurd on the face of it; but in effect we say that we allow the first year's migration and obviously that huge migration was as a migration of Hindus and Sikhs from Pakistan. The others hardly come into the picture at all. It is possible that later, because of this permit system, some non-Hindus and non-Sikhs came in. How did they come in? How many came in? There are three types of permits, I am told. One is purely a temporary permit for a month or two, and whatever the period may be, a man comes and he has got to go back during that period. This does not come into the picture. The other type is a permit, not permanent but something like a permanent permit, which does not entitle a man to settle here, but entitles him to come here repeatedly on business. He comes and goes and he has a continuing permit. I may say; that, of course, does not come into the picture. The third type of permit is a permit given to a person to come here for permanent stay, that is return to Indian and settle down here.

Now, in the case of all these permits a great deal of care has been taken in the past before issuing them. In the case of those permits which are meant for permanent return to India and settling here again, a very great deal of care has been taken. The local officials of the place where the man came from and where he wants to go back are addressed; the local government is addressed, and it is only when sufficient reason is found by the local officials and the local Government that our High Commissioner in Karachi or Lahore, as the case may be, issues that kind of permit.

Shri Gopikrishna Vijayavargiya (Madhya Bharat) : What is the number of such permits?

The Honourable Shri Jawaharlal Nehru : I have not got the numbers with me but just before I came here, I asked Mr. Gopalaswami Ayyangar; he did not know the exact figures and very roughly it may be 2,000 or 3,000.

Now, normally speaking, these permits are issued to two types of persons. Of course, there may be others but generally the types of persons to whom these are given are these. One is usually when a family has been split up, when a part of the family has always remained here, a bit of it has gone away, the husband has remained here but has sent his wife and children away because of trouble etc.; he thought it safer or whatever the reason, he continued to stay here while his wife and children want to come back, we have allowed them to come back where it is established that they will remain here throughout. Normally, it is applied to cases of families being split up when we felt assured that the family has been here and have no intention of going away and owing to some extraordinary circumstances, a bit of that family went away and has wanted to come back. It is more or less such general principles which have been examined and the local government and the local officials have recommended that this should be done and it has been done. That is the main ease. Then there are a number of cases of those people whom you might call the Nationalist Muslims, those people who had absolutely no desire to go away but who were simply pushed out by circumstances, who were driven out by circumstances and who having gone to the other side saw that they had no place there at all, because the other side did not like them at all; they considered them as opponents and enemies and made their lives miserable for them and right through from the beginning they expressed a desire to come back and some of them have come back. My point is that the number of cases involved considering everything, is an insignificant number, a small number. Each individual case, each single case has been examined by the local officials of the place where that man hails from; the local government, having examined, have come to a certain decision and allowed that permit to be given. Now, it just does not very much matter whether you pass this clause or not. Government having come to a decision, any person after he has returned, he is here; and having come here, he gets such rights and privileges, and all these naturally flow as a consequence of that Government's decision. It is merely clarifying matters. It does not make any rule. Suppose a question arose in regard to a very little or an insignificant property is concerned, not only because of the principles involved; but also because a certain family or a part of a family was split up but otherwise here held on to the property, so that the family that came back came to the property which is being held by the other members of the family and no new property is involved. No new property in involved and if some new property is involved, it is infinitesimal. It makes no great difference to anybody. From a person coming here after full enquiry and permission by the Government, after getting a permit, etc., certain consequences flow even in regard to property. If these consequences flow, if he is entitled to certain property, it is because he is a citizen of India and the local Government has decided, whether it is the East Punjab Government or the Delhi Government or the U.P. Government. You do not stop them by not having this amendment or by having it. You can stop them, of course, by passing a law as a sovereign assembly. It is open to you to do that; but it does not follow from this. I would beg of you to consider how in a case like this, where after due enquiry Government consider that justice demands, that the rules and conventions demand that certain steps should be taken in regard to an individual,-- I do not myself see how-without upsetting every cannon of justice and equity, you can go behind that. You may, of course, challenge a particular case, go into it and show that the decision is wrong and upset it, but you cannot attack it on some kind of principle.

One word has been thrown about a lot. I should like to register my strong protest against that word. I want the House to examine the word carefully and it is that this Government goes in for a policy of appeasement, appeasement of Pakistan, appeasement of Muslims, appeasement of this and that. I want to know clearly what that word means. Do the honourable Members who talk of appeasement think that some kind of rule should be applied when dealing with these people which has nothing to do with justice or equity? I want a clear answer to that. If so, I would only plead for appeasement. This Government will not go by a hair's breadth to the right or to left from what they consider to be the right way of dealing with the situation, justice to the individual or the group.

Another word is thrown up a good deal, this secular State business. May I beg with all humility those gentlemen who use this word often to consult some dictionary before they use it? It is brought in at every conceivable step and at every conceivable stage. I just do not understand it. It has a great deal of importance, no doubt. But, it is brought in in all contexts, as if by saying that we are a secular State we have done something amazingly generous, given something out of our pocket to the rest of the world, something which we ought not to have done, so on and so forth. We have only done something which every country does except a very few misguided and backward countries in the world. Let us not refer to that word in the sense that we have done something very mighty.

I do not just understand how anybody possibly argue against the amendment that Mr. Gopalaswami Ayyangar has brought forward. To argue against that amendment is to argue definitely for injustice, definitely for discrimination, for not doing something which after full enquiry has been found to be rightly done, and for doing something which from the practical point of view of numbers or property, has no consequence. It is just dust in the pan. In order to satisfy yourself about that little thing, because your sense of property is so keen, because your vested interest is so keen that you do not wish one-millionth part of certain aggression of property to go outside the pool, or because of some other reason, you wish to upset the rule which we have tried to base on certain principles, on a certain sense of equity and justice. It will not be a good thing. I appeal to the House to consider that whether you pass this amendment of Mr. Gopalaswami Ayyangar or not, the fact remains that this policy of the Government has to be pursued and there is no way out without upsetting every assurance and every obligation on the part of the Government, every permit that has been issued after due enquiry. Again, so far as this matter is concerned, please remember that the whole permit system was started some time in July 1948, that is to say after large-scale migration was over completely. To that period, from July 1948 up till now, this amendment refers to in a particular way, that is to say, it refers to them in the sense that each such person will have to go to a District Magistrate or some like official and register himself. He cannot automatically become a citizen. He has to go there and produce some kind of *prima facie* proof, etc., so that there is a further sitting. He has to pass through another sieve. If he passes, well and good; if not, he can be rejected even at this stage. The proposals put forward before the House in Mr. Gopalaswami Ayyangar's amendment are eminently just and right and meet a very complicated situation in as practical a way as possible.

Shri Alladi Krishnaswami Ayyar (Madras : General) : Mr. President, after the lucid exposition of the subject by Dr. Ambedkar in his introductory remarks and the very clear statement of policy and principles by the Prime Minister, I do not propose to take the time of the House with a long speech. I may explain briefly what I consider to be the main principles of the articles that have been placed before the House.

The object of these articles is not to place before the House anything like a code of nationality law. That has never been done in any State at the ushering in of a Constitution. A few principles have no doubt been laid down in the United States Constitution: but there is hardly any Constitution in the world in which a detailed attempt has been made in regard to the nationality law in the Constitution. But, as we have come to the conclusion that our Constitution is to be a republican constitution and provision is made throughout the Constitution for election to the Houses of Parliament and to the various assemblies in the units, and for rights being exercised by citizens, it is necessary to have some provision as to citizenship at the commencement of the Constitution. Otherwise, there will be difficulties connected with the holding of particular offices, and even in the starting of representative institutions in the country under the republican constitution. The articles dealing with citizenship are, therefore, subject to any future nationality or citizenship law that may be passed by Parliament. Parliament has absolutely a free hand in enacting any law as to nationality or citizenship suited to the conditions of our country. It is not to be imagined that in a Constitution dealing with several subjects it is possible to deal with all the complicated problems that arise out of citizenship. The question has been raised regarding what is to be the status of married women, what is to be the status of infants or in regard to double nationality and so on. It is impossible in the very nature of things to provide for all those contingencies in the Constitution as made by us.

Then one other point will have to be remembered regarding citizenship. Citizenship carries with it rights as well as obligations. There are obligations also upon the Government of India in regard to their citizens abroad.

Another point that will have to be remembered in this connection is this. While any law as to nationality or citizenship may carry with it certain international consequences, it is not easy to provide against what may be called double citizenship. The various International Conferences found it very difficult to formulate any principle which can remove altogether the principle of double citizenship. It arises out of the fact that primarily it is for each Nation to determine its nationality law and its law of citizenship. At the same time it has its international consequences, *e.g.*, the Continental law as to citizenship is not the same as the English law and on account of that certain conflicts have arisen.

Therefore, there is no use of our attempting in any Constitution and much less in the present Constitution which is now making a tentative proposal in regard to citizenship to deal with the problem of double citizenship or double nationality. All these considerations have been kept in view in these articles that have been placed before the House. I shall just briefly refer to the principles underlying each one of these articles.

As against article 5 (1) a point has been made by some of the speakers that it concedes the right of citizenship to every person who is born in the territory of India and that is rather an anomalous principle. I am afraid the critics have not taken into account that our article is much stricter, for example, then the Constitution of the United States. Under the Constitution of the United States if any person is born in the United States he would be treated as a citizen of the United States irrespective of colour or of race. Difficulty has arisen only with regard to naturalisation law. We have added a further qualification *viz.*, that the person must have his permanent home in India. I am paraphrasing the word 'domicile' into 'permanent home' as a convenient phrase.

Then clause (c) of article 5 takes notes of the peculiar position of this country. There are outlying tracts in India like Goa, French Settlements and other places from where people have come to India and have settled down in this country, regarding India as a permanent home, and they have contributed to the richness of the life in this country. They have assisted commerce and they have regarded themselves as citizens of India. Therefore, to provide for those classes of cases it is stated in clause (c) that if a person is continuously resident for a period of five years and he has also his domicile under the opening part of article 5, he would be treated as a citizen of this country. Then towards the end it is stated that 'he shall not have voluntarily acquired the citizenship of any foreign State. If a citizenship is cast upon a person irrespective of his volition or his will, he is not to lose the rights of citizenship in this country but if on the other hand he has voluntarily acquired the citizenship of another State, then he cannot claim the right of citizenship in this country. That is the object of the latter part of article 5.

Article 5A is intended to provide for all cases of mass migration-if I may use that expression-from Pakistan into India and to provide for that class of persons who have made the present India as their home. Now they are in our country and want to make this their home. We do not in that article make any distinction between one community and another, between one sect and another. We make a general provision that if they migrated to this country and they were born in India as defined in the earlier Constitution, then they will be entitled to the benefits of Citizenship. That is the import of article 5A, clause (a). Clause (b) provides for registration of migrated people. Certain safeguards are provided for in clause (2) so as to make it quite clear that the authorities accept the migrated people as *bona fide* citizens of this country. That is the object of this clause. There is also a provision to the effect that no registration shall be made unless the person making the application has resided in the territory of India for at least 6 months. Therefore, there are two safeguards, (1) there will be registration and (2) no registration shall be made unless the applicant has resided in the territory of India for at least six months before the date of application. If article 5-A stood by itself it would mean that even if persons went to Pakistan with the deliberate intention of making Pakistan their permanent home, and re-migrated to India they might be entitled to the benefit of 5A. In order to provide against that contingency 5AA is proposed which reads as follows :--

"Notwithstanding anything contained in articles 5 and 5A of this Constitution, a person who has, after the first day of March, 1947 migrated from the territory of India to the territory now included in Pakistan shall not be deemed to be a citizen of India."

There is no use dealing with this in the abstract. If a person has deliberately and intentionally chosen to be the citizen of another country, after the question had arisen, after Pakistan had been declared territory independent from India, then there is no point in conceding citizenship right to such a person. But this proviso takes note of this important fact that the Government of India have permitted a certain number of people to come and settle down here after being satisfied that they want to take their abode here and in no other country, and that they look upon this country as their own. Having given that assurance, it would be the grossest injustice on the part of the Government of India now to say that they are not entitled to the rights of citizenship of India. The proviso safeguards the dignity, the honour and the plighted word of the Government of India by saying that such a person will be entitled to the benefits of citizenship. This is an exception to the general rule, under article 5AA, namely, that if a person deliberately, voluntarily and intentionally migrated to Pakistan, he shall not be entitled to claim the right of citizenship of our country. It is our duty to respect the plighted word of the Government of India. That is the object of the proviso.

There is some confusion in the minds of some people as if the rights to property were in some way related to citizenship. There is no connection whatsoever, either in international law or in municipal law between the rights of citizenship and the rights to property. A person has no particular rights to property, because he belongs to a particular country. Many of our nationals have property in the United States, in Germany, in England and in several other countries, but these do not depend upon their being the nationals of those countries. Nationality or citizenship has nothing to do with the law of property. At the same time, the exigencies of a situation may require property to be controlled. For instance, during a war, the conditions may require the State to exercise some control over enemy property or the property of foreigners. That is not to say that the property of the foreigners or the enemy has been confiscated. No principle of international law, no principle of comity of nations recognizes this principle.

In article 5-B, we have made provision for those of our nationals who are outside India, in the Strait Settlements and in other places. They are anxious to retain their connection with the mother-country. They may or may not have acquired some rights to qualify them for citizenship in those States but in those cases in which they are born in this country or if they are the children or grandchildren or persons born in his country, they are to be given the right of citizenship. They had left this country long ago and gone to another country, because we were not able to provide them the necessary means of livelihood-at least not under the British regime. (Let us hope that our record would be better). But they are anxious still to retain the links with the motherland, they have sentimental attachment to this country and are anxious to continue as citizens of our country. They also will be entitled to citizenship. That is the object of article 5-B.

As has been pointed out by the Prime Minister on more than one occasion, we have arrived at the present draft after a number of meetings, and a number of conferences at which different view-points were sought to be met. Of course, it is not possible to satisfy everyone, and it is not possible to arrive at a formula which will satisfy everyone affected.

We are plighted to the principles of a secular State. We may make a distinction between people who have voluntarily and deliberately chosen another country as their home and those who want to retain their connection with this country. But we cannot on any racial or religious or other grounds make a distinction between one kind of persons and another, or one sect of persons and another sect of persons, having regard to our commitments and the formulation of our policy on various occasions.

With these words, I support the articles as placed by Dr. Ambedkar and also the amendments moved by my Friends Shri Gopalaswami Ayyangar and Shri T.T. Krishnamachari.

Shri Brajeshwar Prasad (Bihar : General) : Mr. President, Sir, I rise to support the articles moved by Dr. Ambedkar; and I want especially to accord my hearty approval to the proviso moved by Shri T.T. Krishnamachari and accepted by Dr. Ambedkar now and which has been incorporated in the articles moved by Dr. Ambedkar. This article and especially that proviso is a tribute to the memory of the great Mahatma who worked for the establishment of good relations between Hindus and Muslims. Sir, the proviso invites all the Muslims who left this country, to come back and settle in this country, except those who are agent provocateurs, spies, fifth columnists and adventurers. I wish, the proviso had been more wide. I wish all the people of Pakistan should be invited to come and stay in this country, if they so like. And why do I say so? I am not an idealist. I say this because we are wedded to this principle, to this doctrine, to this ideal. Long before Mahatma Gandhi came into politics, centuries before recorded history. Hindus and Muslims in this country were one. We were talking, during the time of Mahatma Gandhi that we are blood-brothers. May I know if after partition, these blood-brothers have become strangers and aliens? Sir, it has been an artificial partition. I think that the mischief of partition should not be allowed to spread beyond the legal fact of partition. I stand for common citizenship of all the peoples of Asia, and as a preliminary step, I want that the establishment of a common citizenship between India and Pakistan is of vital importance for the peace and progress of Asia as a whole.

Sir, the proviso has been attacked by Shri Jaspat Roy Kapoor on the ground that it will provide an opportunity for spies and adventurers to come to this country. But my view is that Muslims of this country are as loyal to the State as Hindus. On the other hand, I agree with the statement made by the Prime Minister at a different place that the security of India today is menaced not by Muslims but by Hindus.

Another point that was raised by my Friend Shri Jaspat Roy Kapoor was that we must have proper regard for the economic consequences of the proviso. I wish this argument had not been raised. We are not a nation of shopkeepers; we cannot dethrone God and worship Mammon. Whatever the economic consequences may be we want to stand on certain principles. It is only by a strict adherence to certain moral principles that nations progress. The material development of life is no index to progress and civilization. I do not think it is politics or statesmanship to subordinate sound political principles to cheap economics. I see no reason why a Muslim who is a citizen of this country should be deprived of his citizenship at the commencement of this Constitution, specially when we are inviting Hindus who have come to India from Pakistan to become citizens of this country. People who have never been in India but have always lived in the Punjab and on the frontier have come and become citizens of this State; why cannot a Muhammadan of the frontier be so when we have always said that we are one?

It has also been asserted that it was the fact of partition that was responsible for mass migration. I do not agree with that proposition. The late lamented Mr. Jinnah stood for the principle of exchange of population. We disagreed. The implication of our rejection of that demand was that the fact of partition would have no bearing on the question of loyalty of Muslims of this country. Partition or no partition, the Mohammedan will remain loyal to this country. That was the meaning of the rejection of the demand of Mr. Jinnah. And how can we say that the fact of partition was responsible for mass migration? It must be realised that it was the riots and the disturbances in certain parts of the country which were responsible for mass migration. Even now the relations between the two Governments have not become stabilised ; and it is only with the establishment of good relations between the two States that there can be security and people who belonged to this country and were citizens of this country would come back and settle in this country.

Maulana Mohd. Hifzur Rehaman (United Provinces : Muslim) : *[Mr. President Sir, article 5 as amended by Dr. Ambedkar is before us in its present form. So far as I have seen and examined it I understand that sufficient efforts have been made to explain at considerable length the rights of citizenship which are due to a person in the capacity of a citizen. Two things have been kept in view. On one hand provision has been made that a citizen should be entitled to those rights which are due to him as a citizen. On the other hand the other thing has also been kept in view and it has been considered that in case any person tries to become a citizen by unlawful means, necessary safeguards must be provided against that. I think this step is praiseworthy and to me it appears desirable. In this connection the principle and policy which have been laid out by honourable the Prime Minister and honourable Shri Gopalaswami Ayyangar gives us great satisfaction. In spite of this I feel the absence of two things and I desire to draw the attention of the House towards these.

Of course details are not available regarding those people who have come with permanent permits. But it has also been explained now that those people who have come with permanent permits will be regarded as citizen in a certain way. The other thing which deserves our attention is that perhaps in the date which has been mentioned here no notice has been taken of the notification of the Government of India in which from time to time the government offered facilities to those coming from Pakistan. In article 5 three or four clauses have been made which do not impose restrictions and conditions, and these have been accepted and these four classes will be considered as citizens in this way. Further in 5A where it has been laid down as to who else will be considered as citizen, it has been said that those people who have come before 19th July, 1948, will be regarded as citizens. But those who have come later on have got to get themselves registered by applying. The condition of registration has been made necessary here. I want to say that the date which is mentioned in the notification issued by the Government of India is 10th September. It is made clear therein that they should also be regarded as citizens, provided the local authorities declare their permits as valid and recognize them. I would also say that, as regards those who have come with permanent permits or in any other capacity, this should have also been included in this amendment, if the Government of India in their notification have given this facility that those coming upto 10th of September shall be regarded as the citizens of India.

> In the first amendment, instead of 1st August, 1948, 19th July , 1948, should not have been included. It would have been more just if 11th September should have replaced 19th July so that everybody should have availed of the utmost time for securing the right of citizenship. This would have meant that according to the date referred in the notification, issued by the Government of India, those people who would have come till 11th September should be regarded citizens without any condition.

The next question is this, that those who have come with permanent permits shall have to fulfill the condition of registration for their recognition as citizens. In this connection I submit that it has been made clear that the enquiries will be made about those people who have come here from the 19th July to the 11th September and after that they will be considered to be the citizens of India. In my opinion the restriction that has been imposed on them is quite unjust and that it goes against justice and fairplay. We know very well and the House also is aware of the fact, that those who are given permanent permits can be recognized citizens only when the bona-fides of the permit holders are enquired into and that conspirators and cheats or those who have come to consolidate their business are not among them. First of all, the local authorities enquire into their details and then given them permits.

In other words the local authorities give a permit only when they are completely satisfied and in no way before it. If over and above all this, the restriction of registration is imposed on them I will say that it is far from just. Therefore, I say that it has not been made clear whether, to acquire the right to citizenship, such a person has only to apply for registration: or is this also essential, that after the submission of such application, the local officials should make inquiries about it, and get him registered only if they are completely satisfied, otherwise they would have the right to reject his application? You know well that thousands of men have come back to Indian Union by now. A large number of them had come back soon after the disturbances. Of course there are people also who came back rather late, because they had difficulties in getting their permits. They were obliged to come late, for the simple reason that they could not get their permits in time. We have had experience that those persons who after coming back from Pakistan applied to the local officials for their permanent residence in Indian Union, and cancellation of their permit under the notification of the Government of India, were not made permanent residents and their permits were not cancelled within the fixed period.

It is our experience that the administration often creates such difficulties. Such people were assured in various ways by the District Magistrates concerned that their cases were under inquiry and that their applications were with the police for investigation and after receiving the report they would be informed about the acceptance or rejection of their applications. But what came out was this, that even after the lapse of three or four months they did not receive any reply. And when the Government of India issued another notification then the District Magistrates of various Provinces, without informing such persons about the acceptance or rejection of their applications, asked them to go back in view of the said notification. In this way the applications of those persons were rejected, who had come here with one, two or three months permit for the purpose of acquiring permanent citizenship : and instead of granting or rejecting their request, they were asked to go back at once. By doing so, not hundreds but thousands of people were put to difficulties and these people were not given even ten or fifteen days time. The result of this was that many persons in U.P., East Punjab and other Provinces were arrested on the ground that they were going back after the expiry of the fixed period. In fact no action was taken on the applications of those persons who had come here to acquire the right of citizenship and had stayed here for two or three months.

At last Government of India issued another notification. And after that these applicants were referred to this notification and were asked to go back. They requested for ten or fifteen days time, but they were not given even that much time. And any one who over stayed with a view to repeat the request was sent to jail. Some persons are still locked up in jails. In regard to those persons who have come here with permanent permits and registration is required only for the recognition of their citizenship, it seems reasonable to some extent if they are required to make any application only for their registration. But this thing should be clarified here, that they would be required only to apply for registration and thereupon they would be registered as citizens. This Constitution which you are framing here ought to be such that it should not create any difficulty for anybody.

If we do not clarify this point here and now, there may be injustice. Is it fair that after the submission of an application a second enquiry should be made and at the expiry of the enquiry the applicant should be informed as to whether he would be registered or not? I consider it against justice and I think that it would create good many difficulties for thousands of *bona fide* citizens.

By giving them permanent permits you have allowed them to come and live here. But in this Constitution which you are framing here, you are forcing them to apply for registration. On these applications local officials would make enquiry and after that they would tell them whether they are fit to be registered as citizens or not. Do you, know that thousands of Meos who had left their houses on account of the disturbances have come back? If they are treated like that, would it be fair? For this reason it ought to be clarified in 5-AA, and the condition for registration should be so fixed that local officials may not have the power to cancel it. After this article has been promulgated and this principle has been accepted a declaration, in most clear terms, should be made, and a notification issued to the effect that no registration would be cancelled. This formality would have to be undergone only for the sake of compliance with the rules. They should get them registered as they have come afterwords, but it, in that, a loop-hole for making an enquiry about them is left, then I am totally against it. Surely, it needs to be amended and revised to afford an opportunity to those people, who were residing here but due to disturbed conditions had gone away and have now returned back not to dispose of their property etc., but to settle down here again. All sorts of facilities in this respect should be given to the poor, to the Meos, and to those, who were residing in different parts of India. These will include not only Muslims, but non-Muslims also---like Christians. If that is not done, then they would have to face many difficulties, they will have to suffer at the hands of local officials. Hence, I want that it should contain these two amendments to the article 5A which should be so amended that the last date fixed by the Government notification, *i.e.,* 19th July, should be changed to September 11, 1948. Though this change makes a difference of only a month or a month and a half yet that would enable thousands of people to acquire the rights of citizenship, which they ought to get.]

My second amendment is :---

Mr. President : *[Maulana Sahib, no such amendment has been tabled.]

Maulana Mohd. Hifzur Rehaman : *[That is so. I did not put any such amendment, but I had drawn the attention of some Members of the Drafting Committee---Dr. Ambedkar and Shree Gopalaswami Ayyangar---towards that. As a result of my talk with them the present amended article regarding the permanent permit holders has been put forth in place of the previous one. I feel that lacuna in it, but now no other course is left open to me except this that I give vent to my feelings here and draw the attention of the Drafting Committee to it. If any legal course is yet left open they they ought to reconsider it.

However, about the other thing I would particularly say this much that if you have included these people in this article then they are citizens of India though they had gone away during the time of disturbances. The local government and local officials, after enquiry have accepted these men as Indian citizens according to their rules. Now, these men should not be bound by these conditions, *i.e.*, unless they get themselves registered they cannot become Indian citizens and they would lose their citizenship rights if they fail to get themselves registered within six months. What I want to emphasise is this that there are too many people, who are unaware of all these things. Surely, it is not incumbent upon everyone to be aware of all these things, yet here no opportunity has been given to such people to easily acquire citizenship rights.]

Pandit Thakur Das Bhargava (East Punjab : General) : *[Will Maulana Sahib say in what sense men, to whom permits have been given, are to be regarded as citizens?]

Maulana Mohd. Hifzur Rehaman : *[Under the prevalent laws.]

Pandit Thakur Das Bhargava : *[No. Never in that.]

Maulana Mohd. Hifzur Rehaman : [Surely, they have been accepted as such, and the District Magistrates have taken them to be Indian citizens.]

Pandit Thakur Das Bhargava : *[They are not residents.]

Maulana Mohd. Hifzur Rehaman : *[No. They are. I have got legal proofs with me, wherein, it has been stated in writing that they are the citizens of the Indian Union, and that they have been accepted as such in accordance with the Government of India notification. District Magistrate have stated this in writing on the permits.

Therefore, I want you to see the difficulties which they have to face as Indian citizens.

So far the residents of India are concerned, you have not fixed any condition as binding on them. However, if they are likely to migrate from here, there is a separate law for them. Otherwise ways have been provided for the cancellation of their citizenship rights. But local officials should in no case be vested with powers to cancel the citizenship rights of those, who through these permits have been accepted as citizens of India. I would regard that as against all canons of justice. I want these two rights should be given to these men.]

Pandit Hirday Nath Kunzru (United Provinces : General) : Mr. President, the question of citizenship has been before the Assembly since 1947. When the question was discussed in that year the tests laid down for the determination of citizenship were criticised by the Fundamental Rights Committee on two grounds, namely, that they were either too narrow or too wide. The draft before us is much fuller than that which the Fundamental Rights Committee could lay before us in 1947, yet we find that it has been subjected to criticism on the same old grounds. Dr. Ambedkar very lucidly explained yesterday the provisions of the final Draft laid before us. So far as I can judge from the discussion that has taken place, very little criticism has been urged against article 5. Similarly, with the exception of Prof. K.T. Shah, no speaker, or hardly any speaker has criticised the provisions of article 5B **.** Criticism has been concentrated on article 5A.

I shall briefly deal with the criticisms urged against articles 5 and 5B before dealing with the position of those who regard article 5A as making it too easy for people to be regarded as citizens of India. The first thing that I should like to say in this connection is that the Draft only lays down who shall be regarded as citizens of India at the commencement of this Constitution. There is nothing permanent about the qualifications laid down in the articles 5 to 5C. Article 6 makes it absolutely clear that notwithstanding the provisions of these articles, Parliament will have power to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship. Any defects that experience may disclose can therefore be easily rectified.

With this preface, I should like to refer very briefly to what was said in criticism of clause (a) of the proposed article 5. One of the speakers, I believe Dr. Deshmukh, said that if the article was retained as it was then the son of a person born while his mother was passing through India would become an Indian citizen. This is a complete misreading of this article. The very first condition laid down in the opening words of this article is that the subsequent provisions apply only to people who have their domicile in the territory of India. Consequently the son born to a traveller from abroad, who is passing through India cannot *ipso facto* become a citizen, cannot by virtue of his birth in India become a citizen of India. Can a man, by reason of his birth here, be supposed to have acquired the domicile of this country?

Dr. P.S. Deshmukh (C.P. & Berar : General) : Nobody said that.

Pandit Hirday Nath Kunzru : Well, one of the speakers said that.

Dr. P.S. Deshmukh : I never said that.

Pandit Hirday Nath Kunzru : Well, if Dr. Deshmukh is clear on that point or has modified his opinion on that point, I gladly concur in the view that he now holds on this point.

Dr. P.S. Deshmukh : I do not think my Friend listened to my speech with any care.

Pandit Hirday Nath Kunzru : I was in the House when the honourable Member spoke, but I may have misunderstood him, I may not have heard him correctly. In any case it seems from what Dr. Deshmukh has stated that there is nobody in this House that has anything to say against article 5.

Now I come to article 5C. Prof. K.T. Shah was probably thinking of the Indians in Malaya when he gave notice of the amendment that if the municipal law of any country did not require that a man should renounce the citizenship of the country to which his ancestors belonged before acquiring the rights of citizenship in that country, there was no reason why our law should prevent him from claiming Indian citizenship. I have taken a great deal of interest in the position of the Indians residing abroad since we got a copy of the Draft Constitution. It has been my endeavour since then to enable Indians living abroad living at least in certain places, to be regarded as Indian citizens without fulfilling difficult conditions. I can say with perfect confidence that article 5C has been so drafted as to take into account the rights of the people whom probably prof. K.T. Shah had in mind when he sent in the amendment that I have just referred to. Obviously we cannot allow a man whose ancestors settled down in another country two hundred years ago, to be still regarded as an Indian citizen. There must be some limit to the time during which the descendants of people who were Indians could be regarded as Indians even though they were living outside India. Article 5C lays down that "any person who, or either of whose parents or any of whose grand parents, was born in India as defined in the Government of India Act, 1935, as originally enacted, and who is ordinarily residing in any territory outside India as so defined, shall be deemed to be a citizen of India" if he has fulfilled certain conditions. Now, the condition laid down is that he should get himself registered as a citizen of India by the diplomatic or Consular representative of India in the country where he is living. It thus seems to me that article 5C takes full account of the just rights of Indians living not merely in Malaya, but also in other countries where some doubt has been cast on the position of Indians who have been resident there for a long time. If there are among them any persons who still regard themselves as Indian citizens, they will have an opportunity of claiming Indian citizenship under article 5C. If anyone does not take advantage of the provisions of article 5C to get himself registered as an Indian citizen, then that ought to be a proof in the eyes of the authorities of the country where he is living that he is not an Indian citizen but a citizen of the country of his adoption.

---

*Translation of Hindustani Speech

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Friday, the 12th August 1949

I shall now come to article 5A. It is this article that has been occupying the attention of the Members since yesterday. It has been criticised on the ground that its provisions are Undesirably wide and that it throws open the door of citizenship to people who have no moral right to be regarded as Indian citizens.I do.not personally.-agree with the critics of this article. Let us consider calmly what article 5A lays down and the circumstances that require that such an article should form part of our Constitution. Article 5A and article 5AA contain extraordinary provisions arising out of the present extra-ordinary circumstances, - sing out of the extraordinary situation created by the partition of India. Youwill find no counterpart to them in the Constitution of any other country. We have to define clearly the position of those persons who had to leave Pakistan for some reason or other after the partition of India or about that time. There is such a large number of such persons here that their position had to be taken fully into consideration. The representatives of these people have made every effort to get these people recognised as citizens of India from the very start, without being required to fulfil any conditions. The Draft Constitution provided that people coming from outside India should get themselves registered as Indian ,citizens and that, in order to prove their domicile, they should show that they had been resident in India for a month before their registration. But these conditions were not acceptable to the, representatives of the refugees. They wanted that these people should unconditionally be regarded as Indian citizens. Consequently, it has been laid down in article 5C that all those people who migrated to India permanently leaving their homes in Pakistan up to the 19th July 1948 will, without complying with any condition, be citizens of India, if they have been residing here since their migration.

Then, the next category of persons that article 5A takes account of is persons who have migrated to India since the 19th July 1948. Now, if we had listened to those who wanted that all the people, who had come from Pakistan up to the present time or up to the date of the coming into force of this Constitution, should, without any enquiry and without fulfilling any condition, regarded as citizens of India, I am sure this article would have been subjected to much severer criticism. It would then have been justly pointed out that it provided an opportunity for the acquisition of Indian citizenship by those who had no claim to it.

Sir, it has been said that we should consider whether as desired in an amendment of Pandit Thakur Das Bhargava, that the provisions of this article should not be made more restrictive, so that it may apply only to persons who had left their homes on account of civil disturbances or the fear of such disturbances It will be very strange if such a condition is laid down. How will it be possible for a person to prove that he left his home on account of the particular cause referred to above? And how would the registering officers be in a position to decide whether the claim was valid or not? There is an even more serious ,objection to Pandit Thakur Das Bhargava's amendment. He says that the citizenship of India should be open to persons who have not merely migrated to India on account of civil disturbances or fear of such disturbances, but also to persons who having the domicile of India as defined in the Government of India Act 1935 and being resident in India before the partition, have decided,to reside permanently in India, or have migrated to the territory of India from the territory now included in Pakistan. Now, the first thing that requires attention in connection with his amendment is the words "having the domicile of India." We know that these words have created difficulties. We know what was said in this connection when the article- relating to the establishment of an Election Commission were

placed before the House.

Pandit Thakur Das Bhargava : Sir, may I point out in article 5 also the same words occur "having the domicile of India". These are exactly the same words.

Pandit Hirday Nath Kunzru : This is true but a,; my honourable Friend knows, difficulties have cropped up in this connection. But there are other objections too to his amendment. Take the persons who did not leave Pakistan because of civil disturbances or the fear of such disturbances. Take the people who lived in Sylhet ....Pandit Thakur Das Bhargava : Those persons mentioned in (,a) are not to be registered as citizens, because they never migrated.

Pandit Hirday Nath Kunzru : "Migrated" means, as I understand it, that they have left their previous homes permanently and have now come to live in India. Suppose people who were living in Sylhet after the Radcliffe Award shifted to Assam or Bengal. What will their position be if Pandit Thakur Das Bhargava's amendment is accepted ? Again, take the people who, say, entered a province after 1943, say in 1944 or 1945. They have not had the time to get naturalised in this country, and them will be a large number of such people. What will their position be if Pandit Thakur Das Bhargava's amendment is accepted ? The amendment that he has proposed will raise many difficulties that he has not thought of. It will probably raise difficulties with regard to the position of the people who have migrated from East Bengal to West Bengal. It will be very difficult for these people to prove that they have left their homes in Eastern Pakistan because of civil 'disturbances or fear of such disturbances. There are millions of non-Muslims still living in Eastern Pakistan. How will these people then be able to prove that there was any justification for their fears that civil disturbances might break out. The House will thus see that Pandit 'Thakur Das Bhargava's amendment, instead of removing any real difficulty, will create many more difficulties of a more serious character. I do not think, therefore, that it can be accepted.

Sir, there is one other criticism brought against the Draft placed before us that requires consideration. Article 5AA has been criticised by persons holding opposite points of view. There are one or two Members who feel that people who had migrated from India to Pakistan should not be allowed to return to India and claim Indian citizenship except under stringent conditions. There are others who hold a different view and who think that all those persons who left this country after the partition should without any question be allowed to return to their former homes. As, regards the people holding the first point of view, I should like to point out that advantage can be taken of article 5AA only by persons who have returned to India under a permit for resettlement or permanent return issued to them under any law. Such permit holders who return to India will be regarded as persons who had migrated to the territory of India after the 19th July 1948. Ibis means that only the permit holders who return to India by the 25th July 1949 will be able to claim citizenship at the date of the commencement of this Constitution. The permit holders returning to India after the 25th July 1949 will not be able to show that they had been living in this country for six months since their return. Now, the permit holders, that is the people who have returned with a permit allowing them to resettle or reside permanently in India, are entitled to be regarded as citizens of India. They were in India and our Government, taking all things into 'account, taking into account all the fears "Pressed by Pandit Thakur Das Bhargava and others of his point of view, have allowed them to come back.

Can we in accordance with any canon of justice refuse to regard them as Indian citizens ? It was open to the Government of India not to allow these people to return. and it was also open to the Government of India not to allow them to settle permanently in this country; but permission having been given to them to return and

settle down here by our Government, I do not think it will be honourable on our part now to go behind this Permission and say that these people should be treated as strangers now. Beside,; their number is limited. There need therefore be no fear that their return will be detrimental to our interests. As regards the future, Parliament will by law decide the conditions under which a man can acquire and renounce Indian citizenship. I do not think, therefore, that however apprehensive anybody may be of the possible conse-quences of article 5AA, it can be regarded as dangerous to the peace and security of India. I think the conditions that I have referred to are of such a character as to take full account of the essential interests of this country.

Sir, the point of view of those who hold a different opinion from that just discussed by me is that people who migrated from India to Pakistan should be. allowed to come back unconditionally if after living for sometime in Pakistan, they found that the conditions there would not suit them. I have listened very attentively to the appeal made by these persons, but I do not think that their claim is justified. We all know the circumstances in which certain or to be more explicit, a certain number of Muslims, left I Pakistan and not all of them left India because of civil a good many left India in order to settle down in Pakistan because they had supported the idea of the establishment of Pakistan when it was put forward and because they thought that they would be able to lead a fuller fife in a Muslim country. Can we justifiably be asked to allow these people to come back without complying with any conditions? When they were in India they were against the maintenance of the integrity of India and they left India at the earliest opportunity that they could get in order to live in the country of their choice. They have no moral right in these circumstances to demand that they should be allowed lb return unconditionally to this country. There are, however, Muslim, who wanted to live in India even after the Partition but they had to leave it under compulsion. Any one that remembers the conditions that prevailed, say, in Delhi, in September 1947 can easily visualize the state of mind of 'the members of the Muslim Community. If at that time thousands of Muslims left Delhi for Pakistan should we be justified in refusing to them the right of re-entry or the right of citizenship after a careful scrutiny of their antecedents ? I do not think, Sir, that in the case of these people whom we by our conduct drove out of India we can object ' to their retention of the right of citizenship under the safeguards that I have mentioned. Fairness and morality require that their right to Indian citizenship should be fully recognised and article 5-AA does nothing more than this' I hope Sir, that I have shown that the objections urged against article 5-A and 5-AA are founded either on a misapprehension of the provisions contained in them or on an imperfect realization of the consequences that the amendments would lead to. If my argument is sound, it shows that the draft before us has pursued a middle course; it recognised the just rights of all people without losing sight of the essential condition that only those persons should-be regarded as citizens of India who in their heart of hearts owe allegiance to it.

Mr. President: I may inform Members that I propose to close the discussion of these articles at a quarter past twelve, when I would call upon Dr. Ambedkar to reply and then the amendments win be put to vote.

Shri Rohini Kumar Chauduri (Assam: Gneral) : Mr. President, Sir. it is rather unfortunate for me that I should have come to speak at a moment when the debate has been raised to a very high level by my honourable Friends, Shri Brajeshwar Prasad and Pandit Hirday Nath Kunzru. They were speaking in terms of Hindu-Muslim unity. Indo--Pakistan unity and all the rest of it. But, I am here to state some plain facts without any fear, and without any desire for favour. I would ask the honourable

Members of this House to judge for themselves after hearing (he facts whether we have to support the amendment of Pandit Thakur Das Bhargava or not. The same amendment was also tabled by my honourable Friend Mr. Jhunjhunwala, (he spoke on it 'yesterday) and was tabled by me who is supposed to represent the Assamese Hindus, by my Honourable Friend Mr. Basu Matari who represents the tribal people in Assam and by my Friend Mr. Laskar, who represents the Bengal Scheduled Castes ofAssam. These are the three different groups of persons who have supported Pandit Bhargava. I would, therefore, once more request the House to consider carefully the actual facts, not merely suppositions, not merely theories or, wish as to how certain things ought to be done and to decide for themselves whether to support this amendment or the amendment of Dr. Ambedkar.

By this amendment, I want citizenship rights for those persons--I am particularly concerned with Assam--who had come from East Bengal because they found things impossible for them there. It may be argued in a narrow way that .very one who has come from East Bengal was not really actuated by fear or disturbance or actually living in a place where disturbance had taken place'. Can any one imagine for a moment that there is, no fear of disturbance in the winds of these East Bengal people who had come over to West Bengal orAssam? Was there any sense of security in their minds? Ha.-, that sense of Security,now after a period of two years, been enhanced by the fact that Pakistan has been converted into a theocratic State ? I should say in answer to the criticism of Pandit.Kunzru, that you need not insist in. such cases that the man should be actuated by fear of disturbance or that disturbance should have taken place. The fear is latent in the mind of everybody. The moment any Hindu or a person of any minority community raises a protest against any action which is taken there, disturbances-would immediately follow, Is there any doubt about that ?

Therefore, Sir, in answer to Pandit Kunzru's criticism, I would say that this condition of fear. of disturbance should not at all be insisted in the case of a person coming from Pakistan over to West Bengal or Assam or any other place in India.

Secondly..............

Pandit Hirday Nath Kunzru: You can easily have a permit system there and control the influx of outsiders.

Pandit Thakur Das Bhargava: So far, it has not been done. (Interruption.)Shri Rohini Kumar Chaudhuri: Secondly, I want citizenship........

Shri Raj Bahadur (United State of Matsya) : Why not divide East Bengal ?

Shri Rohini Kumar Chaudhuri: I want citizenship rights to this class of people, who have originally belonged to Sylhet in ' the province of Assam, who, long before the partition, have come to the Assam Valley as a citizen 'of that province and are staying in the present province of Assam. I ask, have they got citizenship or not ? These people belonged to the, province of Assam, Sylhet. They had come to Assam on some business or other; they had come as government servants or as employees of business-men. They had not migrated; no question of migration arose at that time.

They had come on business; they are now in Assam; they want to be in Assam. Have they got citizenship rights or not? I want citizenship rights for them.

I want to make it perfectly clear that I want citizenship-rights for those people of East Bengal who had gone over to West Bengal or Assam out of fear of disturbance in the future or from a sense of insecurity and- also for thosepeople who have come over from Sylhet, who at the time of coming had no fear of disturbance or anything of that kind, but who, on account of fear of disturbances now have decided to live here.

At the same time, I also have the temerity,to say in this House that I would exclude those persons who came only three years ago, who set up the civil disobedience movement forcibly occupied land which was not meant for them, and forced the benevolent and benign Government to have recourse to the military to keep peace

in the province I should be the last person to say, and I hope every one has Honestly acknowledged that, that class of persons should be any mean be granted citizenship rights in the province. I also make it quite plain that. I desire to exclude those persons who surreptitiously introduced themselves into my province and who now having mixed themselves with their own brethren, now desire to have citizenship rights, not out of any sense of insecurity on their part, in their own provinces but with a desire to exploit more from that province of Assam. I desire to exclude these people because they had not, long ago set up the struggle for Pakistan, they had not long before taken an active Dart in _compelling the politicians of India to agree for Partition; they have their own property and are living peacefully on their own property; not only that, they have brought about such a state of things that they have been able to purchase.property for mere nothing, property which belongs to the minority who had come out of fear,,

Shri Mahavir Tyagi (United Provinces : General): What is their number, please?

Shri Robini Kumar Chandhuri : I do not know. , I would ask then honourable Member to listen to me. I am making things 'quite plain for myself. 'There need not be any doubt or interruption of my speech.

I want make it quite clear that I do not want citizenship rights to.be granted to those people who are not property of the minority who their own property, but enjoying the come away, in some places paying nothing and in other cases paying only a nominal price. I do not want these persons to get citizenship right a at all.

I do not know how you have framed this amendment; how defective is the amendment of Pandit Thakur Das Bhargava or how beautiful is the amendment of Dr. Ambedkar. I do not want to waste the time of the House by an interpretation of that. I only want that those classes of persons whom I have mentioned should be included and should get citizenship rights and those classes,of persons whom I want to exclude should not get rights of citizenship. If you adjust them in the light of the facts that I have mentioned, let me see after going through them whether these conditions are satisfied or not. It all depends upon the definition of the word 'migration'. Migration has been defined just now by my Friend who had preceded me. He said, migration means that a person leaves a particular place, having disposed of or having abandoned property which he has and has come and lived in some other place With a view to live there. If that definition is , correct, as I am constrained to think that it is correct, if you read Dr. Ambedkar's amendment, you will find exactly that what I want shall not take place And what somebody else,.wants will take place.

Now if you define the word migration, according to Dictionary it means mere moving from one place to the other or in the case of birds it is 'moving times of season from one place to the other. But to,my mind the definition which has been given by Mr. Kunzru is the most reasonable definition. If you act upon that you will find the people from not when it was in the province of Assam and those who came to Assam either as Government servant or businessmen they had not migrated in the sense the word is understood. Therefore they will not fall under the definition of Dr. Ambedkar. They will be fore they will not fall under the definition of Dr. Ambedkar. they will beautomatically excluded. It is for this reason that Pandit Bhargava has given this amendment that those people who were domiciled in India under the Government of India Act 1935 would automatically be included as citizens if they are prevented from going back now for fear. Those people who went to Assam for service or business long before Partition, they cannot be said to have migrated. Now they are unable to go back to their own homes for fear of disturbance. If they remain they will not get the citizenship rights under Dr. Ambedkar's amendments. Even as things stand at present they do not get admission for their

children in the colleges as they do not fulfil certain conditions re domicile of the Province. In order to be domiciled in a province they have to live there for ten years and have their own house and land. What will be their condition now? If under this definition they would not get citizenship either, what will be their position ?

Unless Dr. Ambedkar assures us on the authority of his knowledge of English words and English legal phraseology that the 'migration' will include also such persons, then I Submit that this amendment of Pandit Bhargava will have to be accepted. Many persons belonging to Pakistan are coming who have no insecurity there and who can have their vocation and service. I am stating only facts. What is the position of minorities in East Bengal ? They cannot get any Government Service. No person of minority community holds 'even a junior post there. Go to Assam and you will find high positions like the Secretary of Finance. Education etc. are held by minorities. Take the case of business organisations and insurance companies in East Bengal. Many insurance companies have closed their branches there and come away to India, and so where is the vocation for these minorities ? Even doctors have been denied patronage. Even permits by which the majority of business is done are not given to the members of minority community in East Bengal. Then, what is the reason why the people of that majority community in East Bengal who have all these advantages should come to Assam ? The reason is to exploit and get some advantages. Are you going to encourage this ? You will be surprised to learn that the Government of Assam have requested the Government of India to give them the authority to issue permits to restrict such entries, but they have been denied. I stand corrected if my information is wrong. Honourable Friend Pandit Kunzru and other honourable Members of this House must have read in newspapers that in a meeting of the Muslim League at Dacca it was said with some, regret-I hope it was with some real regret that about three lakhs of Muslims had migrated from East Bengal on account of some economic. difficulty. Now, you imagine, if three lacs is the figure which is given by the Muslim League in East Bengal, what must have been the real figure of people who have been infiltrating like this. Every province would like to be prosperous but it should not be at the cost of other persons. If you wish to govern a province properly, you should always try to see that the balance of the population is not so much disturbed and you, should see that you do not give citizenship to persons whose presence in that province would be undesirable and prejudicial to the interests of the Dominion of India. That is the test I would apply to these cases. The main condition which ought to be accepted to draw up an article of this kind is absolutely wasted if you are going to give citizenship right to each and everybody irrespective of the fact whether they are likely to be good citizens or not.

Sir, I have said things quite frankly, and I know some honourable Members will be dissatisfied with me. But I have no doubt at all in my mind that the people of all communities in my province, including Muslims who belong to Assam, will absolutely agree with me. Muslims who have made Assam their home will agree with me. But people who have newly come there, expectingto be in a position to create a barrier to the proper and smooth administration of that province, I know, will resent the remarks which I have made. I quite see that I am subjected to a lot of misunderstanding. Some people have interpreted the amendment which I have tabled as an amendment which aims against the entry of Bengalee Hindus into Assam. That is the interpretation which some friends of mine have unfortunately put on the amendment. I may also remind you that in my own province a number of no-confidence resolutions have been passed against me, because as the adviser of the refugees I had advocated the cause of East Bengal Hindu refugees. And it will be of interest ,to note

that most of these people who have no-confidence in me belong to ladies' associations. Of course my honourable Friend Dr. Ambedkar will say that I should not worry, because women will always be woman : and I also console myself with that thought. I have never been a persona grata with the women of this country or with the women of any country; and at this age I can very easily endure the ordeal of being not a persona grata with the ladies section of the people of this country. But leaving aside the ladies organisations, I only wish that the reasonable men should consider this question in proper perspection. That is my purpose. I will be satisfied if reasonable men support me. If they support Pandit Thakur Das Bhargava, not only will the welfare. of my province be safeguarded, not only will the interest of East Bengal refugees be safeguarded but also ultimately it will be to the general welfare of India. You will have a province which will be absolutely loyal, which will be absolutely faithful to the government of the Province and which will be unanimously faithful to the Dominion of India. If you do not accept Pandit Thakur Das Bhargava's amendment, and if you do not bring in any other amendment to the same effect, you will expose your frontier, you will expose that province and that province will become a source of great danger to you. Already I have been to Cachar and I have seen in that district, from which crossing the Barak river you come into India, there is trouble; and if this amendment of Dr. Ambedkar is accepted, this district of Cachar will be entirely one district of Pakistan, and who will be responsible for giving one district which should have been kept in our province and which was retained after a good deal of fight but which will be sent to Pakistan ? It will be this amendment moved by Dr. Ambedkar.

The Honourable Shri N. Gopalaswami Ayyangar (Madras : General) : Sir, I do not think I would make a speech covering all the draft articles on this question of citizenship. They have been dealt with. very fully by various speakers already. I would confine myself, only to two particular questions that have been the subject of much discussion in the course of this debate.

The first thing that I would take up is. the question of persons who migrated from India to Pakistan and subsequently changed their mind and applied for coming back to India, to their own old homes and lands,-whether in cases of that description, they should be treated on the same, footing as persons who have merely migrated from Pakistan to India. The general class of people who migrated from Pakistan to India, particularly in or about the time of the Partition were people who had their permanent homes originally in Pakistan and were squeezed out of their homes and had to find their permanent homes in India. With reference to that class, the draft article 5A provides that, if their migration from Pakistan to India took place before the 19th July, 1948, provided they had resided continuously from the time at which they migrated to India, in India,, then they will automatically be regarded as citizens of India. In the case of such persons who migrated from Pakistan to India after the enactment of the Ordinance relating to the issue of permits for influx from Pakistan to India, in the case of those persons, we have restricted the acquisition of citizenship only to a small category which would come under the description that they applied for and obtained from the authorities of the Government of India permits enabling them permanently to return to India and resettle there. In the case of these,persons, they will not be automatically registered as citizens. They have to make applications to authorities who will be designated for the purpose, and those authorities will take the full history of each of these persons into consideration before they grant a recognition of citizenship.

Shri Mahavir Tyagi: Could you tell us what will be the approximate number of such persons ?

The Honourable Shri N. Gopalaswami Ayyangar: Some time back, the

number that was given to me was about 2,000, say, about two months back. It could not now exceed 3,000; that is my present estimate-may be a few persons ever this limit or under this limit.

Sardar Hukam Singh (East Punjab: Sikh) : What will be the value of their property ?

The Honourable Shri N. Gopaiaswami Ayyangar: I am afraid I am not in a position to estimate the value of the property belonging to these persons. On this question of property, I want to make the position clear. People who migrated from India to Pakistan, even if they remained permanently in Pakistan, retain their title to properties which they have left behind. When subsequently they obtain permits for permanent return and resettlement in India they come back; and in addition to the ownership title in most cases, if they have been allowed to resettle, they regain possession of those properties. That being so, I do not see how in justice we can refuse recognition of their rights to apply for and obtain citizenship. Citizenship may be refused by the officer who has the right to grant that application on grounds other than these; but so far as property goes I do not see how we can go behind it. But there is of course the legal point which my honourable Friend Shri Alladi Krishnaswamy lyer made that there is really no necessary connection between citizenship and property. It will be for us to decide what we shall do with the property,--whether having lost possession of their property we should allow them to get back to their property. As a matter of fact the grant of these permits for permanent return and resettlement implies their being allowed to resettle on their property But there have been cases where this has not been found possible and some people who have returned on these permits have been settled on other property That is a matter of detail which we can settle independently of the question of citizenship. Now so far as this matter is concerned it is a matter of the solemn word of the Government of India, as more than one speaker has pointed out. Having allowed these people to return on the authority of inquiries made by our own officers and documents issued by authorities who were specially empowered for this purpose it would not be in keeping with honesty on the part of any Government to say, "We shall not give the recognition that is due to persons who possess these documents."

I do not wish to go further into this matter, but there were one or two points which were raised by one speaker. The first point was that people who comer back on permits of this description should automatically get back their citizenship and should not be compelled to apply to an officer and await a grant by him of 'the right of citizenship to them. The point for us to consider is whether in the case of these people it is at all wise or necessary for us to put them on a higher level than people who owned property in Pakistan and have had to give up that property and come here after the 19th July 1948. Though their intention for permanently settling in this country is clear they have to apply to an officer for the purpose of obtaining rights of citizenship. I do not think that people who deliberately migrated from India to Pakistan' should be put on a higher level ban those people who were squeezed out of Pakistan out oftheir properties and had to come here after the 19th July. That is one point which I would like (he House to consider. They say that there were cases of a considerable number of people who, on account of statements made by certain persons or supposed notifications issued by people under some authority or other, have returned to this country without obtaining permits and they should not be prejudiced by the fact that they had not obtained these permits. I think, Sir, that so far as people who migrated to Pakistan from India are concerned, there is this definite fact that their first act was one of giving up their allegiance to India and owning their allegiance to a different 'State. Before we take them back into India and give them rights of citizenship we must have some definite method by which their intention to return to India is unequivocally expressed. Also we must have definite evidence of the fact that they come back to this country which the imprimatur of the Government of this country. And that is why in this article 5AA we have restricted this eligibility for citizenship to persons who have come back to India on permits issued tinder the authority of a law issued by us and by our own officers.

If we travel out of this category of persons-we shall have to consider the cases of a large number of persons whose title to anything like citizenship in this country is of the flimsiest possible description. It is possible that sonic people who have come back to India have made India again their permanent home and want to be citizens of India and do not want to go back to Pakistan. Their cases must be left to be decided by laws which will be made by Parliament hereafter. Their cases are not so clear that we must include them in the Constitution itself. Therefore it is that I would earnestly beg the House to accept the position that we have translated into words in this article 5AA. It States the general proposition that a person who has migrated from India to Pakistan shall not be deemed to be a citizen of India. It has one proviso which gives the right to such a person to claim to be a citizen again of India if he applies for and obtains a permit from our own authorities which permits him to come and resettle in India permanently in his own home and on his own lands.

The other point I wish to refer to is one which has been raised by my honourable Friends from Assam. I must say that I have not been able clearly to follow the particular position that they take in regard to the matter which worries them. It is no doubt a fact that a substantial number of Muslims do go from East Bengal to Assam. But this kind of migration-from what little study I have made of things happening between East Bengal and Assam in the past-is nothing new. The numbers vary a bit perhaps; but the question that is put to us is that under this particular provision in the draft we shall open the door for a very large number of Muslims who will come over to India from Pakistan and who will apply for registration and get registered, much to the detriment of the economy of Assam Now, let us analyse the position. It is said, for instance, that Assam wanted a permit system to be applied as between East Bengal and Assam. The Assam Government and the Government of India have discussed the matter between themselves. They have held more than one conference for the purpose of arriving at a solution of this trouble. And I shall not be revealing a secret if I say that at the last conference we had on this, subject, the general consensus of opinion amongst both representatives of the Government of India and the representatives of Assam was that it was not wise to introduce anything like a permit system between East Bengal and Assam on the same lines a obtain between West Pakistan and India. There are complications which perhaps it is unnecessary for me to go into in detail. One very big, complication is the repercussion it will have as regards the movement of persons between East and West Bengal. Now, by permitting the extension of the, Permit system as it works between West Pakistan and India to the area between East Bengal and Assam, we shall be inviting Pakistan to introduce such a systemas between East and West Bengal and I only mention this to people who are acquainted with both West Bengal and Assam for them to realize all the enormous complications, on the economy of West Bengal which it will entail. The last conference merely came to the conclusion that we should seek and apply ,other methods for preventing or mitigating the influx of a large number of Muslims from East Bengal to Assam, and this matter is being investigated and, for my own part, I think it will be possible to devise some kind of legislation which will enable Assam to stem the tide very substantially. I would not like that we

should adopt any methods which would complicate the situation in the eastern borders of the country. I could realize what, for the time being, it does mean to Assam--a number of Muslims coming in who are not wanted there--but we should not altogether ignore the possibility that conditions being what they are in Assam, this kind of thing might be applied by over-zealous officials of the Assam Government so as to be prejudicial to, say, the Bengalis who have migrated from East Bengal to Assam and perhaps even from West Bengal to Assam. We have got to take into consideration all these things. Now, I would earnestly request the House that we should not complicate the solution of this problem of citizenship by bringing in this particular trouble between East Bengal and Assam for which we are devising other measures of solution.

Sardar Hukam Singh (East Punjab: Sikh) : Sir, we have been told that the Muslims, who left their property here and have come back, retain their titles to the property that was left here, and when they come back, it is simple justice to return them that property. Government cannot do anything else. Ibis is very good. I want to know from the honourable Mover whether according to his logic, we, who have come from Pakistan and left our properties there, also retain our titles to those properties. Can he suggest us some court or tribunal before whom we can go and place those title deeds to get justice that is being accorded to these people here by this proviso?

The Honourable Shri N. Gopalaswami Ayyangar: Sir, there is a slight inaccuracy in the honourable Member's statement of the position I took in, regard lo properties left behind in India by the Muslims who have migrated to Pakistan and returned permanently to reside in our own country. My position was that the migration itself did not extinguish their title to property in India' That title continues until a final settlement takes place between the two governments for the extinguishment of titles in both countries. Till then, the title of each person continues with him. The property might have vested in the Custodian, he may be managing it, he may be recovering rents from it, but when a particular person comes back and is allowed to resettle on his own land, the thing that ought to occur and for which, I believe, provision exists in our evacuee property law, is that when he gets the right to resume possession of his land and satisfies every authority here concerned that he has come back for permanently settling in this country, then what was treated as evacuee property could be restored to him. Similar law exists on the other side also. People who have left Pakistan and come to India retain their titles, but if they go back on anything like a permit, of the description that I have given, issued by the Pakistan Government, they will be entitled to the same kind of treatment as we contemplate in the case of Muslims who have returned to India.

Now, I do not want the House to go further and ask me whether this thing actually takes place. I am talking of the law on the subject. There is nothing which prevents us from going back and claiming the land or the property, whatever it may be. As a matter of fact, while we have had about three thousand Persons who have obtained these permits and probably a very much larger number who have applied for them and not got them yet, I am afraid we shall be able tocount non-Muslims who have come over frown Pakistan to India and wishing to go back to Pakistan on our fingers' ends. There is no doubt of the fact that there is no desire, anything like a substantial desire, on the part of our own people who have come over as refugees to go back and resume possession of their lands, while it is a fact that a considerable number of Muslims who have, gone over to the other side want to come back.

Dr. P. S. Deshmukh: What is the explanation ?

Shri Mahavir Tyagi: We are prepared to go back in case the Military also accompanies us.

The Honourable Shri N. Gopalaswami Ayyangar: Yes, that is true, but you have got to

recognise the fact that the Muslims are coming back here without insisting upon the military.

Shri Bikramlal Sondhi (East Punjab : General) : Because it is one-way traffic.

The Honourable Shri N. Gopalaswami Ayyangar: Well, the legal position is, I do not think, different in the two countries.

As for the other question which the honourable Member asked me as to which tribunal we can go to for the purpose of having this right to go back and resume possession of our properties on other side enforced, my only answer is that the legal jurisdiction are different. There is no Court of law to which you can go on this question. The only thing you can do is to worry our own Government to see that similar rights are conceded to our people on the other side, and that, as you know, is being done incessantly, constantly by this Government.

Shri Algu Rai Shastri (United Provinces : General) *[I beg to submit Sir, that the articles relating to citizenship which are under consideration at present are very important, ones, and the nature of discussion so far held indicates that they require some further discussion. If we adopt them in a hurry, we may perhaps have to repent for it later on. Before we take any decision regarding these articles, we shall have to decide many important questions relating to them. In my opinion it would be better, Sir, that we consider them again in the next sitting of the Assembly. I beg to submit that if we adopt these articles in a hurry, it would be a grave injustice to such Members as want to express their opinion on it and have not so far got any opportunity to do so. It is necessary to consider the several other questions that are connected with this matter. I would, therefore, request that these important articles relating to citizenship should not be rushed through.]

Mr. President: *[We have already devoted more than nine hours to a discussion of this question.]

Dr. P. S. Deshmukh : May I ask a question? The real question which my Friend intended to ask was, to what extent there is reciprocity so far as admission of non-Muslims in the Pakistan areas was concerned, and I do not think any satisfactory answer was given to that question. What we want to know is to what extent has the Honourable Minister found the Pakistan Government reciprocating to the ideas and ideals that we hold, and propagate and the policies that we adopt ?

The Honourable Shri N. Gopalaswami Ayyangar: I must confess in practice the response has not been as satisfactory as I should wish.

Shri Mahavir Tyagi: Let us not discuss the failure of our Government. Let us look into the Constitution.

The Honourable Shri N. Gopalaswami Ayyangar: That is true. The question is that two Governments meet together for settling a proposition. If there is no agreement there is a failure. But whether the failure, attaches to one side or to both sides is a question.

Shri Phool Singh (United Provinces : General) : *[Mr. President, what is your decision about concluding the discussion on these articles today?]

Mr. President : [I am just putting the question.] I had thought that we had discussed these articles sufficiently during the nine hours 'that we had spent on them, and I would personally like to put the matter now to vote. As a desire has been expressed by some Members that they would like to speak and further discuss it, I would put it to the House.

The question is:

"That the question be now put."

The Assembly divided by show of hands.

Ayes-59 Noes-35

The motion was adopted.

Shri Algu Rai Shastri : Sir, although the number of votes for closure is greater, considering also the big number who want the discussion to go on, I crave your indulgence to allow more discussion on this point.

Mr. President: I do not think any useful purpose will be served by further speeches. The amendments are all there before the Members; they are free to vote in favour of any amendment they like.

---

*[] Translation of Hindustani speech.

The Honourable

Dr. 'R. R. Ambedkar (Bombay: General) : Mr. President, Sir, it has not been possible for me to note down every point that has been made by those who have criticised the draft articles which I have moved. I do not think it is necessary to pursue every line of criticism. It is enough if I take the more substantial points and meet them.

My Friend, Dr. Deshmukh said that by the draft articles we had made that any man who, as a result of the disturbances went to Pakistan with the intention of residing permanently there, loses his right of citizenship in India. It is to provide for these two things that we converted this natural assumption into a rule of law and laid down that anyone who has gone to Pakistan after 1st March shall not be entitled to say that he still has a domicile in India. According to Article 5 where domicile is an essential ingredient in citizenship, those persons having gone to Pakistan lost their domicile and their citizenship.

Now I come to an exception. There are people who, having left India for Pakistan, have subsequently returned to India. Well, there again our rule is that anyone who returns to India is not to be deemed a citizen unless he satisfies certain special circumstances. Going to Pakistan and returning to India does not make any alteration in the general rule we have laid down, namely that such a person shall not be a citizen. The exception is this: as my honourable friend Shri N. Gopalaswami Ayyangar said, in the course of the negotiations between the two Governments, the Government of India and the Government of Pakistan, they came to some arrangement whereby the Government of India agreed to permit certain persons who went from India to Pakistan to return to India and allowed them to return not merely as temporary travellers or as merchants or for some other purpose of a temporary character to visit a sick relation, but expressly permitted them to return to India and to settle permanently and to remain in India permanently. We have got such persons in India now. The question therefore is whether the rule which I have said we have enunciated in this article, not to permit anyone who has gone from India to Pakistan after the Ist March, 1947, should have an exception or not. It was felt, and speaking for myself I submit very rightly felt that when a Government has given an undertaking to a person to permit him to return to his old domicile and to settle there permanently, it would not be right to take away from that person the eligibility to become a citizen. As my friend, Mr. Gopalaswami Ayyangar has said, the class of people covered by this category, having regard to the very large population both of Hindus and Muslims we have, is very small, something between two to three thousand. It would, in my judgement look very invidious, it would in my judgement look a breach of faith if we now said that we should not allow these people whom our own Government whether rightly or wrongly, allowed to come away from Pakistan for the purpose of permanent residents here, to have this privilege. It would be quite open to this House to bring in a Bill to prevent the Government of India from continuing the permit system hereafter. That is within the privilege and power of this House, but I do not think that the House will be acting rightly or in accordance with what I call public conscience if it says that these people who, as I said, are so small, who have come on the assurance of our own Govt. to make their home here, should be denied the right of citizenship. Sir, I do not think therefore that there is any substance in the criticism that has been levelled against these articles and I hope the House will accept them as they are.

Mr. President: Now I will have to put the various amendments to the vote. It is somewhat difficult to decide the order in which these amendments should be taken up.

The Honourable Dr. B.R. Ambedkar: Let all of them be withdrawn.

Mr. President: I will put the amendments to the vote in the order in which they were moved by the various speakers and if any honourable Member wishes to withdraw any amendment, he may express his desire to that effect. I will first take up the amendments moved by Dr. Deshmukh.

The question is:

"That in amendment No. 1 above, for the proposed article 5, the following be substituted:-

5 (i) Every person residing in India—

a. who is born of Indian parents; or
b. who is naturalized under the law of naturalization; and
i. every person who is a Hindu or a Sikh by religion and is not a citizen of any other State, wherever he resides shall be entitled to be a citizen of India".

The amendment was negatived.

Dr. P.S. Deshmukh: I beg leave to withdraw amendments Nos. 29, 116, 118 and 119.

Amendments Nos. 29, 116, 118 and 119 were, by leave of the Assembly, withdrawn.

Mr. President: Then I will take up Amendment No. 120.

Shri T.T. Krishnamachari (Madras:General): If amendment No. 130 is accepted this does not arise.

Mr. President: No. 120 goes out. Then the amendments moved by Mr. Naziruddin Ahmad. They are all of a verbal nature. No. 4.

Mr. Naziruddin Ahmad (West Bengal: Muslim): No reply has been given to this, but I do not press it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then amendment No. 18. These are all of a verbal nature and they might be left to the Drafting Committee for its consideration.

Mr. Naziruddin Ahmad: All my amendments may be considered by the Drafting Committee.

Mr. President: Mr. Naziruddin Ahmad leaves all his amendments to the Drafting Committee to consider. So, they are not to be put to the vote. Does the House permit him to withdraw his amendments in that sense?

All the amendments of Mr. Naziruddin Ahmad were, by leave of the Assembly, withdrawn.

Mr. President: Then we come to the amendments moved by Mr. Jaspat Roy Kapoor. Amendment No. 5.

Shri Jaspat Roy Kapoor (United Provinces: General): I want to spare my amendments the fate of being defeated. Therefore I would like to withdraw them.

All the amendments of Mr. Jaspat Roy Kapoor were, by leave of the Assembly, withdrawn.

Mr. President: Then amendment No. 203 by Professor Shah.

The question is:

"That in clause (a) of article 5 after the words 'grand-parents' the words 'on the paternal-side' be added".

The amendment was negatived.

Mr. President: The question is:

"that in clause (b) of article 5, after the words 'grand-parents' the words on the paternal-side' be added".

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 1 above, in the proposed article –

i. after the figure "5" the brackets and figure "(1)" be inserted;

ii. before the Explanation, the following proviso be added:-

'Provided further that the nationality by birth of any citizen of India shall not be affected in any other country whose Municipal Law permits the local citizenship of that country being acquired without prejudice to the nationality by birth of any of the citizens; and

Provided that where under the Municipal Law no citizen is compelled either to renounce his nationality by birth before acquiring the citizenship of that country, or where under the Municipal Law nationality by birth of any citizen does not cease automatically on the acquisition of the citizenship of that country'.;

iii. after the Explanation, the following new clause be added:-

(2) Subject to this Constitution, parliament shall regulate by law the grant or acquirement of the citizenship of India".

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 6 above, after the proposed new clause (2) of article 5, the following proviso be added:-

'Provided that Parliament shall not accord equal rights of citizenship to the nationals of any country which denies equal treatment to the nationals of India settled there and desirous of acquiring the local citizenship".

The amendment was negatived.

Mr. President: Then we come to amendment No. 20 by Prof. K.T. Shah. I think this is more or less of a drafting nature. Could it be left to the Drafting Committee?

An Honourable Member: Yes.

Mr. President: I had better leave it to the Drafting Committee to consider this amendment.

Amendment No. 152. The question is:

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments, at the end of sub-clause (I) of clause (b) of the proposed new article –A. But before the word "and", the following proviso be added:-

"provided that any person who has so migrated to the areas now included in Pakistan, but has returned from the area to the territory of India since the nineteenth day of July, 1948, shall produce such evidence, documentary or otherwise, as may be deemed necessary to prove his intention to be domiciled in India and reside permanently there".

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 1 above, at the end of clause (c) of the proposed article 55, the words 'and subject to the jurisdiction 'thereof' be inserted".

The amendment was negatived.

Mr. President: Then there is amendment No. 12 by Prof. Shibban Lal Saksena.

Prof. Shibban Lal Sakesena (United Provinces: General): I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

"that in amendment No. 1 of List 1 (Third Week) of Amendments to Amendments in clause (C) of the proposed article 5, for the words five years the words ten years be substituted."

The amendment was negatied.

Mr. President : The question is :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments in the proposed new article 5-A, for the words beginning with Notwithstanding anything and ending at the date of commencement of this Constitution, of the following words be substituted :-

Notwithstanding anything contained in article 5 of this Constitution a person who on account of civil disturbances or the fear of such disturbances :-

a. having the domicile of India, as defined in the Government of India Act, 1935 and being resident in India before the partition has decided to reside permanently in India ; or

b. has migrated to the territory of India from the territory now included in Pakistan; shall be deemed to be a citizen of India at the date of the commencement of this Constitution if'."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments at the end of the proposed new article 5-A the following words be added:-

"Or if he has before the date of commencement of this Constitution unequivocally declared his intention of acquiring the domicile of India by permanent resident in the territory of India or otherwise and established such intention to the satisfaction of the authority before whom the question of his citizenship arises."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 131 of List IV (Third Week) of Amendments to Amendments in the proposed proviso to the proposed new article 5-AA—

i. the words `nothing in this article shall apply to' be deleted;

ii. the words `or permanent return' be deleted; and

iii. for the words beginning with ` and every such person shall' and ending `nineteenth day of July, 1948' the following words be substituted:-

`shall be entitled to count his period of residence after the nineteenth day of July, 1948, in the territory of India in the period required for qualification for naturalization or acquisition of citizenship under any law made by Parliament'".

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 131 of List IV (Third Week) of Amendments to Amendments, in the proposed proviso to the proposed new article 5-AA-

i. the words `nothing in this article shall apply to' be deleted;

ii. for the words beginning with `and very such person shall' and ending nineteenth day of July, 1948' the following words be substituted :-

   `shall be eligible for citizenship by naturalization if he fulfills the condition laid down by law and his permit shall be liable to be cancelled on the grounds on which under the law relating to naturalization the certificate of naturalization can be cancelled."

The amendment was negatived

Mr. President : The question is :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments in the proposed new article 5-B, after the words any person the words having his domicile in the territory of India be inserted."

The amendment was negatived

Mr. President : The question is :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments in the proposed new article 5-B, the words or the Government of India occurring at the end of the article be deleted."

The amendment was negatived;

Mr. President : The question is :

"That in amendment No. 1 above, at the end of the proposed new article 5-B, the following proviso be added:-

`Provided he has not abandoned his domicile by migrating to Pakistan after 1-4-1947 or acquired after leaving India the citizenship of any other State'".

The amendment was negatived.

Mr. President : The question is :

1"That in Amendment No.1 above, in the proposed new article 5-A the words deemed to be deleted.

The amendment was negatived.

Mr. President : Then there is amendment No. 123.

Shri B.P. Jhunjhunwala (Bihar : General): Sir, I beg leave to withdraw my amendment.

Mr. President : Amendment No. 150 also is in your name.

Shri B.P. Jhunjhunwala: I withdraw that also.

The Amendments were, by leave of the Assembly, withdrawn.

Mr. President : Then we come to amendment No. 21 by Shri S. Nagappa.

Shri S. Nagappa (Madras : General) : Dr. Ambedkar has expressed his willingness to accept this amendment, Sir.

The Honourable Dr. B.R. Ambedkar: We shall consider it when we go over the whole thing is the language is appropriate.

Mr. President : It is a question of drafting more than anything else. So then it is left to the Drafting Committee.

The question is :

"That is amendment No. 131 of List IV (Third Week) of Amendments to Amendments the proposed proviso to the proposed new article 5-AA be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments in sub-clause (ii) of clause (b) of the proposed new article 5-A, after the word before the words or after be inserted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 1 of List I (Third Week) of Amendments to Amendments for the proposed new article 5-C the following be substituted:-

"Subject to the provisions of any law that may be passed by the Parliament in this behalf, the qualification for citizenship mentioned in the foregoing provisions shall apply mutatis mutandis to persons entitled to citizenship after commencement of this Constitution."

The amendment was negatived.

Mr. President : I think this disposes of all the amendments. I shall now put the original proposition as moved by Dr. Ambedkar. Is it necessary to read it?

Several Honourable Members : No. Not necessary.

Shri Jaspat Roy Kapoor : Mr. President, may I submit, Sir, that there are other amendments standing in the name of Dr. Ambedkar and Mr. T.T. Krishnamachari, and they might also be taken up as amendments.

Mr. President : I am putting the consolidated proposition incorporating all the amendments.

Shri Jaspat Roy Kapoor : With regard to that, I have to make one submission. With regard to amendment No. 132 moved by Mr. T.T. Krishnamachari, I would request Mr. Krishnamachari to consider the advisability of withdrawing it here and referring it to the Drafting Committee. It may be dropped here and referred to the Drafting Committee which might consider the advisability or otherwise of allowing these words to be omitted.

Mr. President : Mr. T.T. Krishnamachari will say whether he has any doubt about the wisdom of the amendment.

Shri T.T. Krishnamachari : I may explain, Sir, that my amendment was necessitated by the amendment to the wording of article 6. If necessary this matter will no doubt be examined further. I simply said I shall put Mr. Jaspat Roy Kapoor's views before the Drafting Committee. That does not mean that I have any doubts in the matter. We have provided for this contingency in article 6. Speaking for myself I am examine practically every word of the entire set of articles 5, 5-A, 5-AA, 5-B, 5-C and 6 independently.

Mr. President : I now put the consolidated amendment as moved by Dr. Ambedkar, articles 5 and 6 which includes article 5-A, 5-AA, 5-B, and 5-C,

The question is :

"That for articles 45 and 6, the following articles be substituted :-

5. At the date of commencement of this Constitution, every

Citizens at the date of person who has his domicile in the territory of India and-

commencement of this

Constitution.

a. who was born in the territory of India; or

b. either of whose parents was born in the territory of India; or

(c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding the date of such commencement, shall be a citizen of India, provided that he has not voluntarily acquired the citizenship of any foreign State.

5-A.. Notwithstanding anything contained in article 5 of this Constitution

Rights of citizenship a person who has migrated to the territory of India from the

of certain persons now included in Pakistan shall be deemed to be a citizen who

have migrated of India at the date of commencement of this Constitution

to India from if –

Pakistan.

(a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and

(b) (i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has ordinarily resided within the territory of India since the date of his migration, and

(ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948 , he has been registered as a citizen of India by an officer appointed in this behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the date of commencement of this Constitution in the form prescribed for the purpose by that Government:

Provided that no such registration shall be made unless the person making the application has resided in the territory of India for at least six months before the date of his application.

5-A.A. Notwithstanding anything contained in articles 5 and 5-A of this

Rights of citizenship Constitution a person who has after the first day of March 1947,

of certain migrated from the territory of India to the territory now included

migrants to in Pakistan shall not be deemed to be a citizen of India:

Pakistan.

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan has returned to the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clauses (b) of article 5-A of this Constitution be deemed to have migrated to the territory of India after the nineteenth day of July, 1948.

5-B. Notwithstanding anything contained in articles 5 and 5-A of this Constitution,

Rights of any person who or either of whose parents or any of whose grand-parents was

citizenship born in India as defined in the Government of India Act, 1935 (as originally

of certain enacted) and who is ordinarily residing in any territory outside India s so defined

persons of shall be deemed to be a citizen of India if he has been registered as a citizen

Indian origin of India by the diplomatic or consular representative of India in the country

residing where he is for the time being residing on an application made by him therefor to

outside India. such diplomatic consular representative, whether before or after the commencement of this constitution, in the form prescribed for the purpose by the Government of the Dominion of India or the Government of India

5-C. Every person who is a citizen of India under any of the foregoing provisions of this Part shall,

Continuance subject to the provisions of any law that may be made by Parliament continue

of the rights , to be such citizen.

of citizenship.

6. Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament Parliament make any provision with respect to the acquisition and termination of citizenship and to regulate all other matters the right of relating to citizenship."

citizenship by law.

The amendment was adopted.

Mr. President: The question is :

"That articles 5, 5-A, 5-AA, 5-B, 5-C and 6, as amended, stand part of the Constitution."

The motion was adopted.

Articles 5, 5-A, 5-AA, 5-B, 5-C and 6, as amended, were added to the Constitution.

Mr. President : We are now adjourning till Thursday next. Under the rules, the consent of the House has to be given if there is to be an adjournment for more than three days. As this happens to be an adjournment for five days, I take it that the House gives the leave.

Honourable Members: Yes.

Mr. President : We adjourn now till nine of the clock on Thursday next.

Shri Syamanandan Sahaya (Bihar : General) : May I suggest, Sir, that on the 18th we may assemble in the afternoon, in view of the fact that some trains come late ?

Mr. President : I have personally no objection if the Members so wish. Is that the general wish of the House ?

Honourable Members: Yes.

Mr. President : We adjourn to Three P.M. on Thursday next.

The Assembly then adjourned till Three of the Clock in the afternoon on Thursday, the 18th August, 1949.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Thursday, the 18th August 1949.

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Three of the Clock in the afternoon, Mr. "vice-President (Shri V.T. Krishnamachari) in the Chair.

Mr.Vice-President (Shri V.T. Krishnamachari: : I have been asked by the Honourable the President to say how sorry he is that he is unable to attend the Assembly today as he hag been advised medically to take complete rest. He hopes to be back on Sunday and attend the, Assembly from Monday onwards. He trusts that the Members will excuse his absence. I am sure that all of us wish him a speedy recovery. (Cheers).

I call upon Shri N. Gopalaswami Ayyangar to move his Bill.

GOVERNMENT OF INDIA ACT, 1935 (AMENDMENT) BILL

Shri H. V. Kamath:(C.P. & Berar: General) : On a point of Order, Sir, That point of Order is three-fold. Firstly, I would invite the attention of the House to Rule 38-A of the Constituent Assembly Rules of Procedure and Standing Orders as amended up to 31st May 1949. That rule refers to "any member desiring to propose any amendment to the Indian Independence Act, 1947, or any order Rule or other instrument made thereunder or. to the Government of India Act 1935 as adapted under the said Act etc. etc." I would appeal to the House to read closely the language and the wording of this rule. It refers to 'the Government of India Act, 1935, as adapted under the Independence Act, 1947'. Now the Bill before us which you just a few, minutes ago called upon the Honourable N. Gopala swamy Ayyangar to move before the House refers to sub-section (1A) of Section 8 of the Government of India Act, 1935. I have secured from the library a copy of the, Government of India Act, 1935, as adapted under the Indian Independence Act, 1947.

Shri B.Das (Orissa: General): We have the precedence of Dr. Syama Prasad Mookherjees Bill which was introduced and passed in this House the same day.

Shri H. V. Kamath : Mr. B. Das may support or oppose me when he is called upon to speak. I have tried to find out what sub-section (1-A) of Section 8..........

Shri S. Nagappa (Madras: General) : Mr. Vice-President, Sir, on a point of Order. As the Honourable Mr. Gopalaswami Ayyangar has not moved the Bill yet the point of Order cannot be raised before the Bill is moved.

Shri B. V. Kamath: My point of Order arose because you called upon him to move it.

Mr.Vice-President : Will Members resume their seats and let the Member proceed ?

Shri H. V. Kamath: I am raising the point of Order with regard to the introduction of a Bill in the House.The Honourable Dr. B. R. Ambedkar (Bombay : General) : Surely there is no motion before 'the House.

Mr. Vice-President: Let Mr. Ayyangar move the motion.

Shri H. V. Kamath : I am objecting to the introduction itself.

The Honourable Shri N. Gopalaswami Ayyangar (Madras: General) : Mr. Vice-President, my motion is a very brief one and I do not want my honourable Friend Mr. Kamath to wait longer at the rostrum than may be necessary. My motion is

That I beg to move for leave to introduce a Bill for further amending the Government of India Act 1935. as adapted."

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, I beg to oppose...

Mr. Vice-President: Mr. Kamath.

Shri H. V. Kamath : I thank you very much for having given me this opportunity of clarifying the point of Order that I have raised. The first point was that reference to sub-section (1-A) of Section 8 of the Government of India Act, 1935 is not at all clear. I have got a copy of the Act as adapted and I find there is no sub-section.................

The Honourable Shri N. Gopalaswami Ayyangar: May I ask the Member whether his contention is that there is no sub-section (1-A) ?

Shri H. V. Kamath : Yes.

The Honourable Shri N. Gopalaswami Ayyangar: May I supply him with an up to date copy of the Act ?

Shri H. V. Kamath: Mr. Ayyangar may supply me a copy, and I shall be grateful to him. I got this from the library.

Mr. Vice-President : Apparently Mr.

Kamath's copy is not up to date.

Shri T. T. Krishnamachari (Madras: General) : This is a formal motion and it is customary according to Parliamentary practice not to oppose the motion.

Shri H. V. Kamath : I was not opposing. This is a point of Order. I hope there is only one Chairman in this House. I hope I shall not be interrupted or called to order by any other honourable Member.

The second part of the point of order is this, that rule 38(a), sub-rule(ii) lays down that the period of notice of a motion for leave to introduce a Bill under this rule shall be fifteen days, unless the President allows the motion to be made at shorter notice. But there is nothing in the Order Paper or in the foot-note thereto to show that the President has waived that rule and has allowed this motion to be made at shorter notice than fifteen days. I have got the Order Papers here and there is nothing' in them or in the foot-note to say that the President has waived this rule.

Mr. Vice-President: I have allowed this motion to be made at shorter notice.

Shri H. V. Kamath : Then it is all right.

The third part of the point of Order is this. This Bill which Mr. Ayyangar has sought leave to introduce in the House comprises two entirely different matters. One relates to Section 8 (a) and the other to Section 291 (a) evacuee property-and something about provincial legislatures respectively. I think this is one Bill relating to two diametrically opposite matters, and so it should not be introduced as a single Bill in the House. Two separate Bills may be introduced and not one Bill comprising both these matters.Shri T. T. Krishnamachari: Why, why?

Shri H. V. Kamath : Why ? It is for Mr. Krishnamachari to say how it can be when he speaks later on. Well, Sir, this is the third part of my point of order. I have raised this three-fold point of order with regard to the motion for leave to introduce the Bill.

Shri R. K. Sidhva (C.P. & Berar : General) : I want to reply to the point of order.

Mr. Vice-President: I am asking Mr. Gopalaswami Ayyangar to do so.

The Honourable Shri N. Gopalaswami Ayyangar : The Honourable Mr. Kamath raised three objections. Two of them have been disposed of already. He was mistaken in thinking that there was no sub-section (1-A) of Section 8 of the Government of India Act, 1935, and I myself made him drop that objection like a hot potato.

With regard to the second objection, that has been met by your saying that you have given permission for this motion even though fifteen days' notice has not been given; and you have got the right to give that permission, under the rules as they stand. So these two objections have been disposed of.

The third objection is familiar to those who have got to deal with courts, particularly criminal courts-misjoinder of charges. Unfortunately we are not now before a court of law where we can say the charges against the person are not properly made, or have been joined in a wrong way. The only thing that I have got to say is.........

Shri H.V. Kamath: On a point of order Sir, Mr. Gopalaswami Ayyangar is very far from correct.

The Honourable Shri N. Gopalaswami Ayyangar : I am afraid I did not quite catch what the honourable Member said just now, but that of course does not matter. I need only point out that the Bill is a Bill for amending one Act, and that is, the Government of India Act. Even if I had to amend one hundred Sections of that one Act, I am entitled to bring in one single Bill.

Mr. Vice President: I rule out the point of order raised by Mr. Kamath.

The motion for leave to introduce the Bill is now before the House.

Maulana Hasrat Mohani: Sir, I have to oppose this motion.

Mr. Vice-President: The Member is not allowed to make a speech.

Maulana Hasrat Mohani: I request you to give me an opportunity to oppose this motion of giving leave to introduce the Bill.

Mr. Vice-President: The member can say, "I oppose" and sit down. The question is:

"That leave be granted to introduce a Bill further to amend the Government of India Act,1935."

Maulana Hasrat Mohani: I oppose that he should not be allowed to......

Mr. Vice-President: I have already put the question.

Maulana Hasrat Mohani: Am I only to vote and not allowed to speak, and say what is my purpose in opposing it?

Mr. Vice President: You will get an opportunity later.

Maulana Hasrat Mohani: I do not want it to come to the stage of consideration. I want to oppose it now. I do not want leave to be given to him. This thing must be decided first.

Mr. Vice President: The House will decide it. I want to put the motion to the House. The question is:

"That leave be granted to introduce a Bill further to amend the Government of India Act,1935."

The motion was adopted.

Mr. Vice-President: Leave is granted. I now call upon Mr. Gopalaswami Ayyangar.

The Honourable Shri N. Gopalaswami Ayyangar: Introduce the Bill.

Mr. Vice-President: The Bill is introduced.

I hereby direct that the publication of the Bill in the *Gazette of India* as required by Rule 38(c) be dispensed with.

The Honourable Shri N. Gopalaswami Ayyangar: Sir, I beg to move that the bill which has been introduced be taken into consideration.

The Bill is a simple one. It deals with two matters, broadly speaking. The first matter relates to evacuee property and the relief and rehabilitation of displaced persons. The second part relates to the taking of power to the Governor-General to issue orders, for regulating any general elections in a province that may be decided on before this Act, namely, the Government of India Act,1935, gets repealed.

Now, with regard to the first subject, honourable Members must have been following the negotiations that have been taking place between India and Pakistan as regards the custody, management and disposal of property left by displaced persons in the Dominion in which they were residing originally and from which Dominion they have passed on to the other Dominion for permanently settling there.

Now, so far as evacuee property is concerned, the present law is that the legislation should be provincial. We have an Ordinance in force in the Centrally Administered Areas issued by the Central Government. In each province and in each of some of the States there are Ordinances or laws which have been enacted by the appropriate authority for dealing with this matter within their respective jurisdictions.

Now, this multiplicity of law-making authorities for dealing with a subject which requires uniformity of legislation is an inconvenience which this Bill seeks to rectify. We have hitherto had laws or Ordinances issued by the respective legislative authorities in order to get over the difficulty in the existing Government of India Act. We have addressed Provincial and State Governments to clothe the Central Government with authority by a resolution passed in accordance with Section 103 of the Government of India Act to enact legislation that may be necessary for dealing with this matter. Some of them have sent up resolutions from the appropriate legislature. Others have not. Some of them have issued ordinances; others have passed Acts of Legislature. But we have not got a uniform law applying throughout the country so far as evacuee property is concerned. Evacuee property is to be found almost everywhere in the country because it is really property belonging to persons who on account of the setting up of the two Dominions have made up their minds to leave India to go to Pakistan and settle down there.

There is also another aspect of the matter to be taken into consideration. Negotiations are carried on between the two Dominion Governments and it is desirable that the Dominion Government should be able legislatively to deal with this matter fully. As a matter of fact, Pakistan enacts all its legislation with regard to evacuee property at the Dominion level, and as honourable Members must have noticed Ordinances and orders under Ordinances have been issued in fairly quick succession in Pakistan during the last few weeks. It is necessary that one authority like the Dominion Government here should be in a position to deal with the situation created by such legislation on the other side with promptitude and with the assurance that that legislation will be implemented throughout India. Those are really the reasons why we wish to vest this power in the Dominion Government for the purpose of enacting the appropriate legislation.

We, however, recognise that, in regard to certain details of the administration of evacuee properties, it is desirable that provinces and States should have the discretion to enact legislation or issue orders which would supplement or fill lacunae in the legislation that may be enacted by the Centre. So it has been decided that this Bill to legislate in regard to the custody, management and disposal of evacuee property should be a subject for legislation which should be included in the Concurrent List of subjects and that you will find is provided for in clause 5 (b) of this Bill-the last of the five clauses. It seeks to add to the concurrent List the following two subjects:

"31B. Custody, management and disposal of property (including agricultural land) declared by law to be evacuee property.

31C. Relief and rehabilitation of persons displaced from their original place of residence by reason of the setting up of the Dominions of India and Pakistan."

There is one other matter in connection with this particular part of the Bill to which I should like to draw the attention of the House. You will find that clause 3 of the Bill seeks to add two clauses to sub-section (I A) of Section 8 of the Government of India Act. It practically repeats what is contained in clause 5 (b). The reason why we have to put these two items in sub-section (I A) of Section 8 is that in the legislation that we may decide to enact on this question we should be at liberty to provide for the exercise of Central executive authority in relation to these subjects. If we entered these items in the Concurrent List alone, this executive authority will not be attracted to the Centre and, as you will remember, because this House itself passed the necessary amendments to Section 8 which enabled the Central Government to take power of this kind in regard to other subjects, it is necessary that we should include it in Section 8 in order to be able to provide for the exercise of central executive power even in the provinces in relation to these subjects. As honourable Members are aware we want uniformity even in the implementation of the law that we may enact. We want also the authority to exercise executive authority in regard to the implementation of schemes of relief and rehabilitation which my honourable Colleague, the Minister for Rehabilitation, wishes to see implemented in the various provinces and which are really financed from the Centre.

So much, as regards evacuee property and relief and rehabilitation.

The other part of the Bill refers to the substitution of a new section for Section 291 of the Government of India Act. As honourable Members are aware, the present Section 291 provides that, in case no other provision exists in the Government of India Act or has been made under the provisions of that Act, the Provincial Legislature is given the discretion to enact legislation in regard to a number of matters which are mentioned in existing Section 291. Now what we are attempting to do is this. I wish to make it clear at this stage that the introduction of this Bill and the inclusion of this particular clause that the Bill does not amount to the announcement of any decision as regards to holding of general elections in any province. We have got another four or five months more before we shall bring the new Constitution into force. But during this interval situations might develop in a province or in more than one province for which an appropriate remedy might be the ordering of a general election even under the existing Government of India Act. In case such a contingency should arise, we wish to be in a position to hold those elections with the appropriate modifications as regards composition of the legislature, franchise, delimitation of constituencies, methods of voting and so on. We wish to take the power to enact these things by orders issued by the Governor-General, and that is why we are putting in this clause 4. If you compare this clause with Section 291 of the existing Act you will find that there are two differences, those being contained in item (a) relating to composition of the Chamber or Chambers of the Legislature, which I believe does not exist in Section 291, and in item (j) which relates to matters ancillary to any such matter as aforesaid. All the rest of the items is a repetition of what is contained in the existing Section 291.

I have already stated, and I have said in the Statement of Objects and Reasons, that no final decision has been taken in regard to the holding of general elections in any province up to now; but it is quite possible that such a decision might be taken or might in fact be forced on those who are responsible for looking after these things between now and for instance the 26th January 1950. If such a contingency should arise we wish to be in a position to make the necessary amendments in the existing rules and regulations, even it may be in the existing provisions of the Government of India Act itself, so that we might bring those elections into conformity with the state of things as it exists today.

If, for instance, we decide to hold general elections in West Bengal or East Punjab, it would be impossible for us to ignore the claims of people who have migrated from West Pakistan into East Punjab or from East bengal into West Bengal for being included in the electoral rolls and for being considered for election to the legislature that might have to be constituted as a result of the general elections. It may also be necessary for us to carry out modifications in the delimitation of constituencies. As honourable Members are aware, we have constituencies based upon separate electorates in these provinces and it would not be right for us, after all the decisions we have taken on the Draft Constitution, to hold general elections even under the Government of India Act,1935, on the basis of separate electorates. It may be necessary for us so to read just the electorates as to make them conform to the general principles we have agreed to already; and I wish to warn honourable Members that what is said in the

Statement of Objects and Reasons about joint electorates with reservation of seats has only been said by way of illustration. There is no decision that joint electorates should be combined with reservation of seats; it will be a matter for consideration when the Governor-General comes to issue his amendments, rules and regulations, in what way the general principle of joint electorates could be given effect to without involving an amount of chaos and confusion that might result otherwise. So I wish honourable Members to take it from me that that particular reference to reservation of seats does not represent any decision of Government and it does not mean that when the Governor-General comes to issue his amendments, rules and regulations, this reservation of seats will be provided for. The greater likelihood is that every attempt will be made to give effect to the decision which has been taken by this Constituent Assembly as regards the new Constitution.

So with that explanation I think I have given sufficient indication as to why this legislation has become necessary. Both the matters provided for in this legislation are matters which cannot afford to wait; they have got to be implemented under the provisions of the present Government of India Act, 1935. They cannot brook delay, and therefore it is that I am troubling this Constituent Assembly, this particular session of which will perhaps be the only one at which an amendment of this sort could be moved, before we find it necessary to give effect to what is contained in this legislation. It is for that reason that I am asking the House to take this Bill into consideration.

Dr. P.S. Deshmukh (C.P. & Berar : General): Mr. Vice-President, I amy say at the very outset that I do not wish to enter into any controversy so far as the provisions in the proposed clause 3 of this Bill are concerned. My remarks and observations are going to be confined to the proposed change in Section 291 of the Government of India Act. In spite of the fact that I changed my seat for the sake of hearing Shri Gopalaswami Ayyangar carefully-(I hope I have heard him at least to the extent of 75 per cent and I hope also that I have been able to listen to most of what he had to say)-yet I do not feel convinced that it is necessary to take the House by surprise in the way the Bill seeks to do and to place such extensive and unheard-of powers in the hands of the Governor-General.

Here the proposal is to change Section 291 of the Government of India Act and to substitute it with the one that has been embodied in this Draft Bill. I do not know whether the persons who drafted this Bill were conscious of the existence of another section in the Act of 1935, *viz*., Section 61. In the whole of the speech that was delivered by my honourable Friend I did not find any mention of what was going to be done to Section 61, which refers to the composition of the various chambers in the provinces. There is no suggestion in this Bill whether that section will go : there is no suggestion in the Bill whether this section is going to be altered in any way. This section is a very important section inasmuch as it not only refers to the composition of all the chambers in the provinces but it has as many as three extensive schedules which are governed by this particular section.

The first schedule that is governed by this section is Schedule1. Schedule 5 is exclusively governed by section 61 and Schedule 6 which is based on and result of schedule 5 to 9 are very important provisions proceeding from Section 61. I do not know if it is the intention of this Bill to do away with every thing that exists in Section 61 as well as the schedules referred to by one and to give the Governor-General a blank cheque not only so far as elections are concerned-I am not at all concerned about the elections to which repeated reference was made by my friend : I do not mind if the decision with regard to West Bengal has not been taken. It would not worry me if it has. What matters to me and should matter to the House is what is the exact position so far as these schedules are concerned : whether they are considered to be wiped out : whether the Governor-General after the passing of this Bill will or will not have the authority to alter the composition of any of the existing legislatures including both the chambers wherever they exist ; whether he can without any further reference to the Parliament issue an order so as to alter anything that forms part and parcel of the schedule. That is one question which I would like to ask my honourable Friend. I would also like to tell him that the structure of Section 291 has been so completely altered from the one that existed before and still exists up to this moment as part of the Government of India Act, 1935, and I would ask him whether it excepts and renders nugatory all the provisions so far as Section 61 is concerned.

In this particular Bill which is before the House the beginning sentence of Section 4 reads :

"The Governor-General may at any time by order make such amendments as he considers necessary, whether by way of addition, modification, or repeal, in the provisions of this Act or of any Order made thereunder in relation to any Provincial Legislature with respect to any of the following matters.........."

Then the various categories are mentioned. The beginning portion of Section 291 as it stands reads :

"In so far as provision with respect to the matters hereinafter mentioned is not made by this Act."

That is to say the original Section 291 gives residuary power to His Majesty in Council for supplying those omissions and making such orders so as to fulfil the other purposes of the Act. As against this, the section is going to be altered in such a way as to make the existence of Section 61 absolutely meaningless and if the section goes the schedules also cannot remain. Therefore I want to ask what is the contingency, what is the crisis or emergency that has arisen on account of which the Governor-General is going to be empowered to interfere with the composition or the very existence of the chambers in the provinces and all the various matters that have been mentioned here. I would like to ask my honourable Friend this question, because he has made no mention of Section 61. He has not mentioned why it is necessary to clothe the Governor -General with all these powers. My submission to the House is that the dignity of the House and the esteem in which it has been held by people is already suffering a great deal. We are passing all manner of legislation and making and passing many amendments to Acts or moving Bills with much less consideration than the public think they deserve. It will be in the fitness of things if I respectfully ask the honourable Members of this House to see that we do not give more powers to the Governor -General than are absolutely necessary unless the honourable Member will convince us that unless this Bill is passed some great calamity is likely to befall. So far as the elections are concerned, even supposing we are faced with a crisis in West Bengal and elections are necessary, I do not think there will be any difficulty in holding the elections. But is it necessary for that only purpose to threaten even the composition or the very existence of the provincial legislative chambers and leave them to the sweet -will and good intentions of the Governor-General himself?

What is the crisis or emergency that is making us do this? I do not think that there is such a crisis or emergency that it is necessary that Section 61 should not be there, that the schedules should be replaced by anything that the Executive Government of the country will propose at any time. Instead of this, why not examine the whole position and frame the new schedules and then place them before the Members of this House? I believe the honourable Members of this House are entitled to be taken into greater confidence than has been the case in this matter. Mr. Gopalaswami Ayyangar merely said that no decision has been taken regarding the elections. That makes us ask all the more as to what then is your intention in placing all these powers in the hands of the Governor-General. If you are going to interfere with the schedules, with all the electioneering rules that are in existence today, why not say so and give some indication to the House and to the country as to the exact change you propose? Why keep us and the country in the dark and give us a surprise and take to yourself your possible power? The constitution and composition of the chambers of the provincial legislature are not small matters. They are matters over which years were spent. It is down on record that the Round Table Conference was not prepared to leave it to the sweet-will of the members of the Parliament. They wanted those schedules to be drafted before them. They were not prepared to leave it to His Majesty's Orders in Council. The schedules were drafted in collaboration, in the Round Table Conference in the select committees and other committees. Those schedules were not prepared by one single individual. They took months and years; and here you are by one stroke of the pen wanting to take the authority to alter them in any manner whatever. Even the composition of the chambers is not sacred to you.

I am prepared to give another instance as to why my apprehensions are thoroughly justified. This Government, Sir, is being carried on in the most arbitrary manner possible. We have had hasty legislation brought in and rushed through because we have a majority in the House and we, humble Members, could not withstand the majority opinion.

There are also so many other things that are being done. I have been searching for the last three days to find if there has been any Bill or other measure brought before this Assembly by which dozens of nominated members from the Indian States can be made members of the respective Provincial Legislatures. As many as 37 per cent of the Members of the Bombay Legislative Assembly are not to be nominated members.

Mr. Vice-President : Will the honourable Member confine his remarks to the motion on the Paper?

Dr. P.S. Deshmukh: Yes Sir. But if I may point out respectively I am speaking strictly on the motion. I am submitting that the wide powers are absolutely unnecessary. The nominations that have been made on behalf of the Deccan States and Baroda are not based either on the popularity or the character, qualifications or the position of those people in society. Even though no regular election was held for selecting members to represent the merged States like the Chattisgarh States in C.P. on this Constituent Assembly, an electoral college consisting of the members of the municipalities, the local boards or Janapadas was formed. In this case there was at least a show of election for the purpose of representation of those areas on this Assembly. Even this system is not being made use of for the selection of members of the Legislative Assembly from the Central Provinces and Berar. Neither such a show of elections is being made so far as Kolhapur, Baroda etc. are concerned. Under what section of the Government of India Act these arbitrary powers of un-fettered nominations are being exercised nobody knows. An item of news appeared in the papers recently to the effect that 27 members have been already nominated on behalf of Baroda. If that is the way things are done without any provision therefor, I looked in vain in the Constituent Assembly Act, 1 of 1949, for a provision -how can we agree to give the Governor-General or other authority power to nominate members to the full-fledged Legislatures of Provinces? My submission therefore is that after the way in which we are acting and utilising the powers conferred or not conferred, I think we are entitled to look with apprehension at a Bill of this nature trying to take every possible power so far as election, franchise, qualification of candidates etc., are concerned. Even the Orders-in-Council, promulgated by his Majesty the King not in his individual judgement but after careful consideration and in conformity with the recommendations of the Joint Select Committee of Parliament of Great Britain, may be replaced in any way that the Governor-General likes. Please see the Orders issued under Section 291 of the Act of 1935, as it stood. I do not agree that by one Act we should take away the entire power conferred by the Government of India Act and leave it all in the hands of the Governor-General. I do not think the country is faced with any grave situation in this respect necessitating an Act of this kind. We have not been told about the urgency of this measure or even about its necessity. If my honourable Friend convinces me that such an emergency has arisen, that all these rules must be thrown into the melting pot and the Governor-General must be made the sole repository of all power, I would consent to this measure.

Sir, I do not propose to move my motion. But if honourable Members think that without moving my motion I should not have offered my views on this measure, which after all may not be accepted by the honourable Member in charge, I would move my motion.

Mr. Vice-President : The honourable Member may move his motion.

Dr. P.S. Deshmukh : Then I move :

"That the Bill further to amend the Government of India Act, 1935 be referred to a Select Committee consisting of:

The Hon'ble Dr. B.R. Ambedkar.

The Hon'ble Shri N. Gopalaswami Ayyangar.

Shri K.M. Munshi.

Pandit Hirday Nath Kunzru

Pandit Thakur Das Bhargava

Shri M. Ananthasayanam Ayyangar

Shri B.M. Gupte.

Pandit Lakshmi Kanta Maitra.

Shri H.V. Kamath.

The Hon'ble Shri Mohan Lal Saksena.

Shri Rohini Kumar Chaudhury.

Shri Jagat Narain Lal.

Shri K. Hanumanthaiya.

Dr. Bakhshi Tek Chand.

Dr. P.K. Sen.

Shri B. Das and
the Mover."

I would also like to suggest that the Committee may be directed to report on or before the 22nd August,1949. I would be glad if this motion is accepted. The Bill deals with many fundamental points which ought to be considered more carefully. I will be happy if this motion is agreed to.

Mr. Vice-President : Shri B. Das may move his motion. I see that the honourable Member is not in the House. The motion is not therefore moved.

The next motion stands in the name of Mr. B. Pocker.

Kazi Syed Karimuddin (C.P. & Berar : Muslim) My amendment is there, Sir.

Mr. Vice-President : The amendment of Syed Karimuddin is a dilatory motion. It is therefore out of order.

Mr. Pocker may move his alternative amendment. His main amendment is out of order because there is no provision in the Constituent Assembly Rules for circulating Bills for eliciting public opinion. He may therefore move his alternative amendment.

Mr. B. Pocker Sahib (Madras : Muslim) Sir, of course I have to bow to your ruling whether the motion is out of order or not. But I submit.......

Mr. Vice-President : Your motion is out of order under rule 38-D. Will you please move your alternative amendment?

Mr. Pocker Sahib : I am just submitting, Sir, that these rules of the Constituent Assembly are not exhaustive. Therefore on the ground that the rules do not provide for circulating Bills for eliciting public opinion, this motion of mine cannot be said to be of order. Sir, in the absence of any express provision it is the fundamental principles which governs parliamentary procedure that you have to apply and allow me to move that amendment and not rule it out of order on the ground merely that the rules do not make any express provision for it. The rules, as I said, are not exhaustive, and you know, Sir, that the Constituent Assembly has been constituted for passing the Constitution and that the provision in the rules thereof for moving of Bills and such other matters are not so exhaustive as are generally provided for by rules of procedure in Parliament. Therefore, in so far as the rules are not exhaustive, general principles should govern this case. I would appeal to you to reconsider the matter and allow me to move the first part of my amendment also.

Mr. Vice-President : I am afraid I cannot reconsider the matter. The rules are quite clear.

Mr. B. Pocker Sahib : If that is so, I bow to your ruling. I have only to make a few remarks so far as the Bill is concerned, before formally moving the motion for referring it to a Select Committee. I am rather surprised why Government should have taken to this course of springing on this august body a Bill which practically provides for an Interim Constitution before the Constitution is framed. In my opinion, Sir, the Bill is uncalled for and unnecessary and it is an autocratic measure which ought not to be passed by this House. I ask, what is the justification for bringing in a Bill of this nature at such short notice and without giving any opportunity for the people of the country to know what is going to be done here with reference to this matter?

The Bill consists of two parts; the first portion is intended to make a uniform law as regards the management and disposal of evacuee property, but the more important portion of the Bill is Section 4 which practically imposes an interim Constitution of a very autocratic nature on the country behind the back of the people, without their knowing what is going to be done here and without making any provision for giving an opportunity to the public to express their views on a matter which vitally affects them. The provision is that Section 291 of the Government of India Act should be substituted by this new section and this new section has the effect of transferring all the powers which Section 291 gave to the provincial legislatures, to the Governor-General. In fact, it seeks to make the Governor-General the Czar of India in the interim Period before the Constitution is passed. There is nothing which he cannot do with this power vested in him. I submit that no occasion has arisen for giving such autocratic powers to the Governor-General and depriving the legislature of the power which was given to it by the Government of India Act. Now, what I ask is what are the reasons which have prompted the Government in bringing a measure of this autocratic nature. The objects and reasons are laconic; nor was the speech of the Honourable Mr. Gopalaswami Ayyangar, who is generally very lucid, very convincing to justify the passing of this autocratic measure. Why should all the legislative powers which vest in the provincial legislatures be vested in the Governor-General at present? He has not stated any reason which justifies such a measure. He made a passing reference to West Bengal. We are all aware of the state of affairs in West Bengal and we do hope that the Government will with an iron hand put down such tendencies and retrieve all this havoc which is being done by the Communist Party there. If the Government manage things properly, they can control the situation and I do hope that they will control the situation in West Bengal and in any other part of India where it might arise, but no such crisis has arisen in any other part of the country. Now, the question is why should a measure like this be passed? Well, there is a saying in Malayalam which says_____

"*Elikku vendi Illum chuduka*"

which means "Burn the house in order to destroy the rat". The rat is doing mischief and therefore burn the house so that the rat also my be burnt. This is not wise and it is unbecoming of this Government to resort to a measure like this. What I would ask is, has the Government considered the public opinion in this matter which purports to substitute an interim Constitution before the new Constitution is passed by this House, by making not merely any modification in the powers of the legislature but transferring the whole power from the legislature to the Governor-General, that is the executive. Is this justifiable? Has the Government taken any steps to find out what the public opinion is on this matter? Is this a matter in which the Government will be justified in acting in this autocratic manner? As has already been pointed out by the previous speaker, it is not merely the powers mentioned in Section 291 that are conferred on the Governor-General but also the very constitution of the legislative chambers, as to whether it should be one or two, or how it should be constituted. Everything rests with the Governor-General. This is a step which the Government will not be justified in taking particularly without taking any steps to elicit public opinion. It is for that purpose that I gave the first part of my motion but you have ruled it out of order and I bow to your ruling. All the same I cannot but say that the Government is not in the least justified in bringing a measure like this without giving an opportunity to the public to express their opinion, and that too in a sudden manner like this.

Of late I have noticed a particular attitude on the part of the Government. They forget that they are there to govern the people on democratic basis. They have thrown to the winds all democratic principles and they think that they can do as they like because for the present they have got the backing of a majority in the legislatures. This is a false idea that the Government is entertaining. The Government ought not to forget that they have to respect democratic principles and they should not behave in a manner which throws to the winds all democratic principles. They should take the public into their confidence and they should take the members of the legislature into their confidence before resorting to a measure like this. Therefore, Sir, I submit that there is no necessity, no justification for passing a measure like this, by which the powers of the provincial legislatures are bodily transferred to the Governor-General. This is absolutely uncalled for and autocratic.

As regards the second part of the motion, you know that a motion to that effect has already been made and therefore I do not wish to propose further names. I support that motion.

Shri H.V. Kamath : Mr. Vice-President, Sir, I have no hesitation whatever in saying that clauses 4 and 5 (a) of the Bill before the House are a constitutional monstrosity. I repeat, Sir, bearing in mind all that is happening around us today and in spite of what is happening in the country today, that this part of the Bill is nothing short of a constitutional monstrosity. I would like to sound a note of warning, a note of caution to this Sovereign Assembly. It is with deep regret that I have to say so, and the House will pardon me when I tell them and remind them that this sovereign body is being treated with scant regard by those in power. It is not at all pleasant for me to say so. I have noticed during the last few months the manner in which our Constitution, our Draft Constitution has been sought to be dealt with, sought to be revised and altered and in some placed retrogressed. This Bill before the House today bears the very same impress, the impress of the man in power caring little or nothing at all for those that legislate, not merely legislate, for those that are called the founding fathers of a country. It is, Sir, a very poignant and regrettable day for me today to resist with all the power at my command, to resist with all the resources that I am capable of, the last two sections of the Bill, namely Sections 4 and 5 (a) of the Bill moved by my honourable Friend, Mr. Gopalaswami Ayyangar.

The House will bear with me when I remind them when I bring to their notice in what ways and in what manner this part of the Bill strikes a retrograde note, a reactionary note, even as compared with that piece of legislation___the Government of India Act,1935-- which was at that time and even later on, condemned, not merely by those leaders of ours today but by many others too in our country. My honourable Friend, Dr. Deshmukh has laid his finger on Sections 61 and 291 of this Act. Even this reactionary Government of India Act-- it was dubbed reactionary by most progressive thinkers, by most progressive leaders in our country-- and even this Section 291 of this Act does not divest the Provincial Legislatures of any power with respect to those matters specified in that section.

Now Section 291 is sought to be amended by clause 4 of the Bill moved by Mr. Ayyangar. Clause 4 includes besides the matters mentioned in Section 291 the composition of the chambers of a legislature, and the crux of the matter is this. The vital point which honourable Members should note is that the men in power have no regard for the dignity of this House, they have no regard for the sovereignty of this House. I would invite them to look closely on this aspect of the measure before us : not merely have the Provincial Legislatures been divested of any right with regard to those matters mentioned in Section 291, not merely has this Constituent Assembly been divested of all power with regard to the above matters concerned in Section 291 of the Government of India Act, not merely that, we are going not one step backward, but perhaps one hundred steps backward and our men in power do not realise that they are going backward and that is what pains me. Mr. Ayyangar's speech was cold and lifeless.

The Honourable Shri N. Gopalaswami Ayyangar : I thought the honourable Member did not hear it.

Shri H.V. Kamath: The reason for it is that only the vibrations of a warmer body could have reached me. The cold vibrations were not powerful enough or were not long enough to reach me. I wish to state that I am labouring under a handicap because many of the precious things that he said were unheard by me, at any rate. Heard melodies are sweet, but what was unheard was perhaps sweeter than what was heard, and the speech that he made in while moving this Bill was absolutely unconvincing. There was not even a note of apology for what the Government of the day decide to do today, not even trying to excuse themselves on the score either of an emergency or lack of time, and not even trying to excuse themselves for good or for ill-- I believe more for ill than for good, they are trying to go back and trying to enact a retrograde measure. Perhaps Mr. Ayyangar, who is in charge of the Bill is not aware in his heart, may be he is aware in his head, of the fierce movement that raged in this country against the Government of India Act; and it does not occur to him, to his heart, to at least sound a note of apology, to come before this House and say : "There is such and such a thing. We have no other go; I am sorry for this". I however do not expect that, because he was one of those persons who was not immediately affected by the movements for freedom in this country.

Now let us peruse the Statement of Objects and Reasons. The paragraphs are unnumbered and therefore I cannot quote the number of the paragraph : it is perhaps just an omission or slip or an over-sight; I shall only refer to the paragraph which deals with this part of the Bill before us. The House will see that it speaks of a hypothetical case. From first to last, it is a hypothetical case laid before us. If you pursue the language of this paragraph which as I have already said is hypothetical, you will see that these clauses are an insult to this House, are an insult to the sovereignty and dignity of this House. I do not want to mince my words; the language of even the Statement of Objects and Reasons is absolutely derogatory to the dignity and sovereignty of this Assembly. "Should it become necessary", it may be perhaps, probably, etc. etc.....Hardly, Sir, have I come across not merely in this country, but in other countries which have professed to be democratic, a Bill of this nature, a vital Bill of a fundamental character being rushed through the legislature in this fashion. It is a day of sadness for me, when we in this House are being trifled with in this fashion by the men in power. I hope better counsel will dawn upon the men in power and I hope wisdom will dawn even upon the wise men. I hope even now the so-called wise men will see better sense and mend their ways.

Coming to the other aspects of this Bill, I would only like to say that the men in power seek to convert or rather treat this House as a legislature whenever it suits their convenience; and whenever it is not needed for their purposes, they go in their own way. The other day, I had occasion to point out that an Ordinance which lapsed after six months, might have been easily brought before this House which was then sitting and enacted into law, and should not have been renewed. With great regret, I have to say, on many occasions the British observed better standards. I am sorry to say that we, Sir, with all our professions of democracy-- and this touches my heart most-- profess to treat the Legislature as a sovereign Body and when it does not suit us, it is nothing at all. That is the worst part of it. That Ordinance was renewed without reference to us. The House was sitting then; it could have been converted into a legislature and we could have been asked to consider that and pass a law; it could have been done within an hour or so. But today, because there is some other purpose they have come before us with this Bill. It is a sad episode. I do not know how other Members feel about it; but I, Sir, feel very said indeed.

Then, I think, Dr. Deshmukh has referred to the power being vested in the Governor-General, with regard to the altering of the composition of the Chamber or Chambers of any provincial legislature. Mr. Gopalaswami Ayyangar, if I heard him aright when he moved the Bill, referred to West Bengal, and to the things that are happening in West Bengal. The Statement of Objects and Reasons refers not merely to West Bengal, but to any other province. It is disgusting that such a language of a purely hypothetical or casual nature should be used in a Bill of this nature, in the Statement of Objects and Reasons. Are we not entitled to more regard from these men in power? If they do not want to give better regard and respect, I personally would like the Assembly to be wound up and the men in power take all the power into their own hands, the Governor-General or his Cabinet, whoever it is. I do not want this body to be mocked at. The men in power make a mockery of this body; this is what pains, angers us. But what avails anger? What can we do? The men in power are callous, impervious to our protest, to our indignation; there seems to be no way out. I am sorry that I have used strong language; but my heart has been deeply stirred and I cannot but use the language that I am using. The composition of the Chamber or Chambers which even Sir Samuel Hoare did not include in Section 291 and which was included in separate sections, Section 61 and the 5th schedule,-- all that has been included in this jumble of powers that is sought to be vested in the Governor-General. I hope there is no ulterior motive behind it. I hope that the Governor-General or the Government is not seeking to pack or unpack the provincial legislatures to suit their own ends and their own requirements.

Then, Sir, I would have liked very much that every one of the matters that is referred to in this Section 291 might have been brought before the House for its approval. But that was not to be. Right from the franchise, the qualifications for election as a member, up to the apex, the composition of the Chamber or Chambers, powers are vested in the Governor-General. Government's intention may be very good in bringing this Bill before the House. I do not question the intention of Mr. Ayyangar. But, as the adage goes, the way to Hell is paved with good intentions : intention may be good, but if the intentions are not implemented in the proper spirit, I for one, cannot foresee what is in store for our country. Slowly we are going down the slippery slope, whether to perdition, or perhaps disaster, or the sabotage of democracy, I cannot say. But, the way in which we are going stirs me deeply and I hope we in this House will be awake to the realities of the situation and stop the rot before it is too late. I would plead with Mr. Ayyangar and the men in power,--though of course in this House they are not Ministers and every one is a member in this House,--and the men in power.....

An Honourable Member : Today.

Shri H.V. Kamath : Yes, today they are men in power here-- to revise the Bill, to refer it to a Select Committee and to see that at least the powers vested in the Governor-General are not arbitrarily exercised, or at least as a safeguard that any changes made in the Government of India Act, be brought before this House for its approval. That at least would preserve the façade of democracy-- that is I suppose the aim of our Government. The spirit, the kernel of democracy is being discarded leaving the empty shell behind, and I hope that Government will not continue in their ways and will be wise-- they are today wise in their own conceit,-- but I hope they will be wise before tragedy overtakes us and they will treat this House with greater dignity, regard and with due consideration for its sovereignty.

There is another point. The Governor-General has been invested with the power in regard to the delimitation of territorial constituencies for the purpose of election under this Act. The Parliament or this Assembly will have no control over whatever the Governor-General might do in this regard. I am very much concerned over these matters included in clause 4. It may be that today in a particular province you have some trouble and you have some difficulty, but what is happening today is not the only thing which a Constitution does contemplate. The constitution lays down that the President may proclaim, before assuming extraordinary powers, an emergency. Now without a Proclamation of Emergency the Governor-General is assuming today various powers to himself which were not envisaged by the framers of the Government of India Act. There is no indication in the Bill that even the major alterations that might be made regarding these matters will be brought before this House for approval. If that were done it would have been something, because otherwise the suspicion is natural in the minds of many if this were passed as it is, that Government might so alter the composition of the Chambers and so gerrymander the constituencies as to suit their own purpose. I for one look upon this with great anxiety, and the House will be seriously mistaken and will be failing in its duty if at least they do not register their protest at the passing of such a constitutional monstrosity. I refer only to clauses 4 and 5 (a) of the Bill.

One last point and I have done. I hope that this House has got an eye on the welfare of our country. I hope we are acting or moving in this Assembly in that spirit, that we are representatives of the whole nation and considerations of party will not weigh so much with us. I do not know how other honourable Members feel about this, but at least I hope, and pray to God that we may be enabled to act in this spirit, that we stand for the nation and not for a party, and I hope the House will so move in this matter that the world outside-- our own compatriots outside will say of us that none here was for a party but all were for the nation. I therefore appeal to the House, and to Mr. Ayyangar who is piloting this Bill to bestow more consideration on this measure, to have greater regard for the House and enact such legislation that we, who are framing the Constitution for a Sovereign Democratic Republic will not be falsified or will not go out with a lie in our soul and we may not be exposed to the contempt and mockery of our fellow-men.

I would only say in the end that the Preamble to the Constitution tells us definitely that the Constitution is for a Sovereign Democratic Republic, but the way I see things being done lately tells me that there is something wrong, somewhere, something rotting somewhere. Either we stick to the one or to the other. If we try to continue our profession of building a Sovereign Democratic India and also try to go in the way we are going today, I think that all will not be well with us, and our nation will not attain that prosperity, that dignity in the comity of nations which all of us here have at heart. I appeal finally to the House not to pass this measure in such a hasty manner and-- if it is sought to be rushed-- at least to register its protest against clauses 4 and 5 (a) of the Bill.

Kazi Syed Karimuddin : Mr. Vice-President, the Bill is presented by Mr. Gopalaswami Ayyangar for whom I have the greatest respect, who is known for mathematical accuracy, sincerity of purpose and fairness. But in this Bill I find everything is indefinite, everything is vague and we do not know where we are going and for what purpose we are enacting the Bill. It is very surprising that this Bill has been presented by a man who is known for mathematical accuracy as I have said. In the statement of Objects and Reasons it is stated that--

"Should it become necessary that a general election under the Government of India Act,1935 in West Bengal or any other province has to be ordered at any time. Special provision may have to be made for the extension of the franchise to those displaced persons from Pakistan who have settled or intend to settle permanently in India. It may be that these elections would have to be held on the basis of joint electorates with with reservation of seats."

On the preliminary speech made at the time of moving this motion and at the time of consideration of this motion the honourable Member did not state at all why there is an occasion for holding election in West Bengal or where is the occasion for joint electorates with reservation of seats when this Assembly has already decided that there will be no reservation of seats except in the case of Scheduled Castes. I do not know why, if the Government thinks that this principle of reservation of seats is a pernicious principle, it wants to introduce this principle, especially when this Constituent Assembly has already decided that there shall not be any reservations for any community, except the Scheduled Castes. Further it is stated that no decision has been taken about an election in West Bengal. I know that crimes of violence and........

The Honourable Shri N. Gopalaswami Ayyangar : May I draw the attention of the honourable Member to what I said in the course of my speech, so far as that particular matter is concerned? I think it is too late in the day for him to say that the Government or myself have blessed this idea of joint electorates with reservations.

Kazi Syed Karimuddin : But in the Statement of Objects and Reasons, there is the mention. I will read it again .....

The Honourable Shri N. Gopalaswami Ayyangar : May I say that there is no need to read it? I read it out and explained why it was put in there.

Kazi Syed Karimuddin : It is there said-- "Should it be necessary to hold elections in West Bengal......" I know crimes of violence and dastardly attacks are rampant in West Bengal. But is that the only reason for holding the election? Is it because of these crimes that the elections are to be held? Mr. Gopalaswami Ayyangar has not stated before us where is the occasion for investing these powers regarding elections, and for what purpose are the elections to be held. Now it should be stated on the floor of the House as to whether the Government of West Bengal is bungling and the elections are to be held for placing a new government in place of the present government, or whether the Government of India wants to test popular opinion there, to see whether it is faithful to the Congress Party and the Congress Government or to any other party. If the first proposition is correct, that it is only because of the crimes of violence and dastardly attacks which are being made on the peaceful citizens of Bengal, then the remedy is not the holding of elections, but to put down the anarchy that is prevailing. If, on the other hand the holding of elections is to test popular opinion in West Bengal, whether it has faith in the present system of government or not, then you have to introduce election based on adult franchise, and not.........

The Honourable Shri N. Gopalaswami Ayyangar : May I rise to a point of order, Sir? I do not think a debate on this Bill should be converted into a debate on the West Bengal political situation. After all, what is contained here is simply to take power for it, in case it became at any time necessary to hold general elections. I have clearly explained the position and it is premature for us to discuss that situation here.

Kazi Syed Karimuddin : There is a reference made in the Statement of Objects and Reasons, and it is very necessary to see if such powers should be invested in the Governor-General or not. So, my submission is that the taking of powers to hold elections in West Bengal is premature, unless the reasons are placed before this sovereign body. If you want to test popular opinion, why make hurry and hold the election on a limited basis, when the Government of India has assured us that general elections will take place in 1950? Holding the elections now is only to defeat the popular cry, and there can be no other possible reason why elections are to be rushed; unless, of course, it is admitted that the present government is bungling and it has to be removed, in Bengal.

The Honourable Shri N. Gopalaswami Ayyanger: I have never said that elections are to be held.

Kazi Syed Karimuddin : You say. "In case........."

Now, the second thing is this. Section 291 gives such absolute powers to the Governor-General that even the emergency powers that you have given to the President are nothing compared to these. Under the Government of India Act, the Governor-General is only a constitutional head. It has been stated that there is no emergency, there is no crisis and there is no urgency. Then why, instead of enacting laws under Section 93 and the enactments regarding elections why all these powers are being given to the Governor-General, it is difficult to understand. The power to amend, to repeal, and modify and provision of this Act or any order passed under this Act is to be given to the Governor-General. I say such a provision is most undemocratic. Any Act of the Parliament will always be amendable by the Governor-General and any order passed in this House can be repealed, modified or amended by the Governor-General. In other words, it will mean that the Governor-General can over-ride any order and he can make any amendment. Therefore, my submission is that before clause 4 is accepted by this House, we should know why all these powers are assigned to the Governor-General.

Regarding clause 3 of this Bill, I have nothing to say. Displaced persons who have come from Pakistan have suffered terribly, and those who have left India cannot have it both ways, of living there and also deriving the benefits from the property left in India. But one defect of investing the executive Government with powers is exhibited in the recent Ordinance in the United Provinces. In twelve districts in the U.P. property of all Muslims is inalienable. There is a ban on the alienation of the property of those who have made India their home. This is one of the defects of authorising the executive to the extreme, and this is my main objection. When you authorise the executive to amend or repeal the laws made by Parliament, then what happens is seen in the U.P. Whatever laws you pass, whatever orders you make, whatever restrictions you lay on the property of those who have left India-- and I hold no brief for them--, but for those who have made India their home, are such laws to be passed as have been passed by the executive in the U.P.? Can it be said that with regard to the attitude of Pakistan and in view of the property left by Muslims here, will you treat the Muslims here as a guarantee for the property left over there? The powers you want to invest the Governor-General which are of a very sweeping character, are unprecedented and undemocratic. Such powers should not be given and I am entirely opposed to this Bill, and I oppose it.

Mr. Vice-President : Mr. Biswanath Das.

Dr. P.S. Deshmukh : May I move my other amendment before Mr. Biswanath Das speaks?

Mr. Vice-President : That will come up when the individual clauses are taken up.

Shri Biswanath Das (Orissa : General) : Sir, I am amazed and upset at the speeches and the way in which the discussion is being carried on, over this Bill. Sir, we have been told that the Bill is vague. I do not know how it is so.

The Bill proposes to make provisions under two heads. The first relates to evacuee property, and the second to any anticipated election in West Bengal. On these questions, the provisions are clear, distinct and are quite normal. I do not see any abnormality in any of these provisions that are set out and that are sought to be amended, in the Government of India, Act,1935, as adapted. Sir, it specially pains me to hear from my honourable Friend Dr. Deshmukh that we are functioning as a single party. True it is mainly so. But is it a sin? Is it a sin, after all to have a House mostly of one party? That is the natural course of things in democracy and democratic institutions. The very fact that we ourselves are running the Government and playing the role of opposition goes to prove the highest democratic traditions maintained by the Congress. Sir, even a casual look into the proceedings of the Constituent Assembly, either in framing the Constitution, or on the parliamentary side, will prove beyond doubt the highest traditions of such democracy maintained by the Congress Party. The very fact that my honourable Friends Mr. Kamath and Dr. Deshmukh always raise their voice of protest, though Congress members, without being interfered or hindered by the party goes to prove the highest traditions of democracy maintained by the Congress and its official section who today run the Government. Under these circumstances, I do not see how my honourable Friends would be justified in speaking of one-party rule. At least this aspect of the criticisms comes with the least fairness to themselves and to the party to which they have the honour to belong.

Sir, my honourable Friend Mr. Kamath, for whom I have always have affection, speaks of the monstrosity of the provisions of the Bill. I pause to hear from him wherein lies the monstrosity of the proposals.

Shri H.V. Kamath : Clause 4; nothing else.

Shri Biswanath Das : I am thankful to him, if it is his view that the teeming millions of evacuees who have been uprooted and migrated from Pakistan should have no representation or franchise; if that is so, certainly it is a monstrosity! But I think the opposite holds true in this case.

I recollect what has been done in Pakistan. This change has already been done in Pakistan both in the Centre as well as in the West Punjab. Therefore, there is nothing to call it a monstrosity of the Constitution. I hope my honourable Friends will not hereafter use similar expression, because the very fact that we have declared, that our leaders have thought of declaring themselves to abide by the wishes of the popular verdict goes to confirm the opinion, namely, that the Congress is the greatest democratic body and the greatest democratic institution that you have in the world.

Sir, much has been said about the elections in West Bengal. I do not agree with my honourable Friends' declaration that they would dissolve the Bengal Ministry and have fresh elections. I do not see any basis, much less any justification for the same. One single bye-election is not a test of the confidence or non-confidence of the people. If the confidence of the people in the Congress organisation is the test, I think we have amply demonstrated it. In my own province we have, soon after the election in Bengal shown to the world that even today we carry the confidence of the rural masses, the millions and crores of rural masses who constitute the people of India. Sir, not only in the Assembly bye-election......

Dr. P.S. Deshmukh : Nobody ever questioned it.

Shri Biswanath Das : The general election in one district and bye-election in several district boards have demonstrated beyond any semblance of doubt that the Congress still carries the confidence of the masses.

Mr. Vice-President : I do not think these remarks are relevant in view of what the honourable Member has said-- that no decision has been taken on that point.

Shri Biswanath Das : I am glad if no decision has been taken regarding Bengal bye-election, but the statement issued by the Honourable the Prime Minister soon after his visit to Calcutta goes to show that they are at least thinking loudly in terms of dissolving the Assembly and ordering elections. That is why it is a relevant point. I shall, however, be brief in my remarks in regard to that matter. Furthermore, the recent district board elections in Madras have proved to the hilt that even in the province of Madras Congressmen have not at all agree with our leaders and I am very glad to be assured that that decision is not final.

Sir, much has been said about democracy. I do not know wherein anything has been done in the course of the Bill to affect the democratic notions of the people, or the democratic notions as they are realised and understood by Congressmen. If composition of differences and leaving everything to the will of the people means democracy, both these are being satisfied in full within the four corners of the Bill.

Sir, regarding evacuee property the Government have been negotiating with the Pakistan Government. Sub-clause (1) of paragraph 1 reads : "Property has been left behind in either Dominion by those who have migrated to the other. This is being called evacuee property. It has to be taken over, managed and disposed of according to any agreement reached between the two Dominions". They propose to have further negotiations in this regard. There cannot, therefore, be any objection in this regard from any quarter. I for myself feel that strong measures in this regard are necessary to ensure rehabilitation of evacuees who have migrated from Pakistan. To me it seems that the Bill is a necessity and that it should be passed without much discussion, and the sooner you do it the better for all.

Mr. Naziruddin Ahmad (West bengal : Muslim) : Mr. Vice-President, Sir, this House has been treated to a number of shocks, but this is the rudest shock that I have so far experienced. This Bill has raised all this controversy because it has mixed up two independent points-- one good and the other thoroughly bad. So far as evacuee property clauses are concerned, nothing need be said. So clause 3 and the second part of clause 5 may be accepted.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Thursday, the 18th August 1949.

Now we come to clause 4 and the consequential part of clause 5. Clause 4 seeks to give extraordinary powers to the Governor-General, in support of which unusual reasons were given by the honourable Member in Charge. Ithought urgency alone would call for haphazard and vacant clause like this. But we are now told that there is no urgency and there is no election in contemplation. If so, clause 4 and the consequential provision in clause 5 can wait. The Honourable the Prime Minister went to West Bengal and later made a declaration that there will be an election in West Bengal, a declaration which was accepted with mixed feelings in different parts of the country. The Ministers in Bengal thought they would have a chance of rehabilitating themselves, but I hear there is an attempt in West Bengal to postpone the election by hook or by crook. I submit that the passing of 'this clause here in this undigested and incomplete form will lead to considerable speculation and suspicion about the motives of Government. Admittedly there is no urgency and hence no immediate need for this clause 4. As pointed out by Dr. Deshmukh this clause which seeks to replace Section 291 of the Government of India Act goes directly against Section 61 of that Act under which 'the constituencies in the various Provinces should be as laid down in the Sixth Schedule whereas under the new proposed Section 291 the entire structure may be broken up. I do not know why on the threshold of democracy it should be thought necessary to arm the Governor-General with these extraordinary powers when there is no urgency. The best thing would be for Government to find out what is needed in West Bengal or elsewhere as regards delimitation of constituencies, preparation of voters' lists, adult franchise, etc. These should be clearly ascertained and concrete proposals placed before the House.

As it is, the House is asked to sign a blank cheque on the understanding that the Governor-General will do the needful. If we could utilise the Governor-General like this the Legislatures and the Constituent Assembly would be useless. I submit that the name of the Governor-General should not be introduced like this to lend weight to an absurdity. The House has the greatest respect for the intellectual and moral qualities of the Governor General. 'But he will act on the decision and advice of his Ministry which may ultimately mean the advice of a Departmental Secretary. When we consider the tremendous constitutional implications of the drastic powers which are sought to be conferred on the Governor-General we should shudder at giving these powers to him. I think he will have to enact a new Government of India Act for interim elections-: in fact he will have to think of a new definition of citizenship,-whether refugees are citizens and should be given votes, etc. All this would take time, and in the meantime mischief-makers will be inclined to argue that this is one way of shelving the election which was announced by the Prime Minister after so much deliberation.

If there is to be election in West Bengal I think it should be held without delay. This is not a general election but an interim one. If the Ministry has lost public confidence the. best' thing is to let them go to the electorate and stay or quit according to the result. As this would be, an emergency election, it should be carried on with the existing voters' lists in the usual manner. if any changes are thought necessary or desirable the House should be told in what way they are necessary and should be given an indication about electoral rolls, joint or separate electorates, reservation of seats, whether there should be fresh voters' lists, etc. There is no harm in allowing this matter to wait till the House is given something concrete so as to enable it to come to a proper and correct decision in the matter.

The powers asked for are of a very revolutionary character. I do not wish any more to take up the time of the House over this but I should think that this procedure of asking for powers without any necessity would create a very bad impression and would supply some amount of justification for adverse criticism of the government. The best way to establish democracy is to allow people to make mistakes and to learn from experience.In those circumstances, as is now admitted there is no urgency about clause 4. This clause-the most debated one-should be withdrawn. It has received Opposition from different sections of the House and I believe even those honourable Members who are not taking part in the debate are mentally not satisfied with the justice or propriety of this clause. In view of the fact, that there is no urgency, I believe no action is contemplated. Everything is in the air and this clause also should be left in the air. I submit that there is plenty of feeling outside the House that all is not well in the

House and therefore in order to allay their fears, which may not be fully justified, we should be allowed to proceed in a systematic and constitutional manner and not be asked to say ditto.

The Honourable Shri Satyanarayan Sinha (Bihar: General) : Sir, the question may now be put.

Dr. P. S. Deshmukh : Sir, on a point of order, may I point out that the amendments have not yet been moved.

Mr. Vice-President: The amendments are for the clauses. The question is

"That the question be now put."

The motion was adopted. The Honourable Shri N. Gopalaswami Ayyangar: Sir, during the debate on this motion several honourable Members have concentrated their attention on clauses 4 and 5 of the Bill, and even in respect of clause 5 the brunt of their opposition is to item (a) of that clause. The main charge levelled against the provisions contained in these clauses is that an ostensibly democratic government has adopted the most undemocratic method for trying to get legislation through this House, which really confers autocratic powers on some individual. That is not the way in which this particular Bill should be viewed. These clauses provide for a state of things which may emerge and which may justify the dissolution of an existing provincial legislature and the ordering of a fresh elect-ion to get new members into that legislature to take the place of those that are now there. Now what will be the justification for the dissolution of that particular legislature ?

Honourable Members have so often referred to West Bengal in the course of their speeches that I would only refer to one particular circumstances which perhaps more than any other might justify the dissolution of that provincial legislature, and that is that that legislature is not functioning in an honest democratic way, perhaps. This is only the kind of thing that could be said by those who are in favour of the dissolution. That democratic legislature is broken into groups which are warning with each other and the administration of the province has been endangered by the fact that it is not functioning in the proper democratic way. Let us suppose that dissolution is ordered. The motive for that dissolution can only be that in the place of a legislature, which is not functioning in a proper democratic way, we want to get together a legislature which will be less undemocratic or perhaps more democratic than the present one. The only way in which such a new democratic legislature can be constituted is to base it on the votes of the electors. This electorate has undergone several changes after the Government of India Act, 1935, as adapted, came into operation. If we are going to hold a general election it is necessary that certain changes will have to be made in particular matters connected with the holding of elections, Such matters may even relate to the composition of the legislature. Let me draw the attention of the House to the fact that after the Government of India Act, 1935, was enacted, and elections were held and legislatures came into being, we have changed the composition for instance, of the West Bengal Legislature. That was done by the power that was vested in the

Governor-General of the time for adapting the Government of IndiaAct, 1935. That was the first attempt at changing what was put into the constitution in a Schedule. Now after having made that change power was given to the Governor-General to make modifications or amendments even in what was put into the adapted Act.

Let me also refer to the fact that before the Act was adapted there was a provision in the original Act of 1935 which vested power in His Majesty by orders in Council to make modifications in these various schedules relating to the composition, franchise, holding of elections, etc., in the schedules' to the Act what are we doing now ? We have got now a legislature which has got to function until, say, the 26th January next, and you will remember that in the Draft Constitution there is a provision that the provincial legislature in being at the time of the commencement of the new Constitution will continue to function as the provincial legislature during the transitory period between the coming into force of the Constitution and the holding of regular elections under the new Constitution. We must have a legislature if we want to act in a democratic way in the coming year, even in West Bengal, by the, time we, for instance, bring the new Constitution into force. That has got to be done somewhere between the date on which the dissolution is ordered and 26th January next.

If changes have to be made in the Schedule for the purpose of holding the elections, there ought to be power in the bands of somebody to make the changes. We are vesting the power in the hands of the Governor-General. This is not a new thing. Under the Government of India Act this sort of thing is being done. It is only following what we put into the Act when it was adapted and what we have been acquiescing in all these months. What is there after all wrong in putting these powers into the hands of the Governor-General ? The Governor-General has to act on advice. All Members are aware of that fact. If that advice has to be given, it is preferable in the circumstances which exist in West Bengal or which may come to exist in other provinces that that advice is given to the Governor-General by the Centre and not by the provincial Ministers to their Governor, the legislature which has got to be dissolved. Therefore it is, I think, justifiable that these powers should be vested in the Governor-General rather than in anybody else.

I was rather struck by the strong language which MY honourable Friend Mr. Kamath allowed himself to use I can understand the strength of that language. But I am afraid he was rather inclined to look at the thing from a level which had no relation to existing facts or facts as they will exist between now and the 26th January. I would be at once with him if we were going to make this the normal feature of the Constitution. It will be a very wicked thing to do so. But we have got to recognise the fact that, if elections have to be held, these changes have to be made and it is 'not easy to convoke the Assembly again in its constitution-making aspect for the purpose of making These amendments in time to allow of electoral rolls being prepared on the basis of these amendments and elections being held.

Shri H. V. Kamath: May I know, Sir, what is the difficulty in bringing such amendments before the Assembly for the consideration of the Governor-General ? We can sit for some time longer to consider them.

The Honourable Shri N. Gopalaswami Ayyanger : The honourable Member is perhaps not aware as to how things are done. We cannot put amendments before the House unless we consult responsible people in West Bengal as to what should be done. That is the democratic way of doing things.

Shri H.V. Kamath : You may take your own time.

The Honourable Shri N. Gopalaswami Ayyanger : It the honourable Member wishes me to put a series of amendments before him out of my own brain, that will not be democratic.

Shri H. V. Kamath : I am sorry I have been misunderstood. I did not mean that. I wanted to ask him what difficulty there
is in the way of bringing up this measure for consideration of the House at a later date when the matter has been finalized.

The Honourable Shri N. Gopalaswami Ayyanger : The only difficulty as that this House is a constitution-making body. If the programme we have all in view is carried out, we will cease functioning for constitution-making, purposes practically finally within the next fortnight and we shall be meeting again only for the purpose of passing the third reading. I cannot say whether this will be in October or even in January. We cannot afford to take the risk of its not meeting for the purpose of holding an election which may, on political grounds, be absolutely necessary to hold in time for the purpose of creating a legislature which will be in existence on 26th January. That is the reason why we have come to this meeting for the purpose of getting the power to do so. That is the real answer to Mr. Naziruddin Ahmad.

There were points which Dr. Deshmukh made for which I have the greatest respect Ms main point was that there is a fundamental proposition embodied in Section 61 of the Government of India Act and that under this Bin. we are taking power to do something which might enable the Governor General to over-ride the provision of that section. Now let me point this out : Section 61, when it was enacted in 1935, referred to the composition of each provincial legislature, in Schedule V. That composition had to be changed when Partition took place. The method that was then adopted was That the Governor-General adapted Schedule V. This involved very substantial changes and the altered Schedule came to be identified with the provisions of Section 61. There was a change in Section 61 as originally enacted in the then

Constitution. Now what are we proposing to do ? It may be that it will become necessary for us to change that composition once again. We are giving power to the Governor-General to make such, changes as may be necessary in the Constitution by an amendment of Section 61 and Schedule V if he is advised that that is the proper course to take. There is nothing in it which can justify its being characterised as a constitutional monstrosity-language which my honourable Friend Mr. Kamath too often indulges in. There is nothing unconstitutional about it. We want a change. We adopt the best method, the proper method, the method in the circumstances which would be fully justified if we vest this power in the Governor-General.

Now, the other point that he mentioned was : What is to become of the Schedules ?'When the Governor-General issues these orders he will take the provisions of the existing section 61 and of the Schedules into consideration and see what changes are necessary in them. Those changes could be brought about merely by amending them. If they are to be brought about by repealing them or portions of them, we will repeal them and substitute other things. It is only a question of how the thing will be drafted in order to make the changes that may be necessary.

The other point he made was that in certain cases where the composition of this Assembly has to be changed, power has been taken to nominate persons instead of providing for elections. I suppose he also meant that this kind of thing has been done in regard to the Bombay legislature also. 'Nat may be so. The point for consideration so far as we are concerned is this We give power to the Governor-General to amend. the rules and regulationsrelating to elections, to constituencies, to the method of election, to the franchise and so on. There is nothing, which dictates to the Governor General that he should not do this or that. If you have any confidence in your own Government then you ought to see to it that they do not adopt methods which are not acceptable to you. If they do adopt such methods you must adopt such measures as will make them do what you really want them to do in such circumstances.

That is no argument against vesting these powers in the Governor-General. There is no direction that he should nominate persons to Abe

legislature. There is no direction either way. As a matter of fact, nomination is not mentioned in this clause. It refers mostly to elections. The only thing it does is it puts it in the power of the Governor-General to determine the composition of the legislature.

Now, I think I have answered the main points, but there is one thing which, I am afraid, honourable Members are a little touchy about and it is this : they do not want the Governor-General, advised by the Executive, to do this without reference to the legislature at all, and I think I agree with them that whatever is done under the powers that are now being taken should be placed before the legislature so that it may have an opportunity of seeing whether these powers have been properly exercised, and from this point of view I am willing to accept Dr. Deshmukh's other amendment, if it is slightly modified in this form:

"Every Order made under sub-section (1) of this section shall, as soon as may be after it is made, be laid before the Dominion Legislature."

If this is acceptable to Dr. Deshmukh, I am prepared, if be moves it, to accept it. I :think that in the circumstances the House will not insist on this Bill-which is a simple Bill-being sent to a Select Committee and more time of this Honourable House being unnecessarily spent on this, time which could probably be better devoted to our dealing with the main Constitution.

Dr. P. S. Deshmakh: I would beg leave to withdraw my motion.

The motion was, by leave of the Assembly, withdrawn.

Mr. Vice-President: The question is

"That the Bill further to amend the Government of India Act, 1935, be taken into consideration by the Assembly at once."

The motion was adopted.

Mr. Vice-President: Now we will consider the Bill clause by clause.

The question is :

"That clause 1 stand part of the Bill."

The motion was adopted.

Clause I was added to the Bill.

Mr. Vice-President : The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Mr. Vice-President: The question is

"That clause 3 and part of the Bill."

Prof. Shibban Lal Seksena (United Provinces General) I want to on clause 3An. Honourable Member : The question has already been put. He cannot speak now.

Pandit Hirday Nath Kunzru (United Provinces: General): It is only fair that you should allow Mr. Shibban Lal Saksena to speak. He got up in his seat before the question was put.

Mr. Vice-President : I am sorry, I did not notice the Member. I shall be very glad to permit him to speak.

Prof. Shibban Lal Seksena : I thank you very much for having given me an opportunity to speak on this clause. Sir, this clause makes provision......

Shri S. Nagappa: How can the honourable Member speak when you have put the question and the motion has been adopted by the House ? If he wants, he can speak at the third reading stage.

Mr. Vice-President: I gave him permission to speak.

Prof. Shibban Lal Saksena: This clause makes an amendment to the Government of India Act to provide for the solution of the Refugee problem which is a consequence of the Partition. Everyone knows that the most explosive problem, before the country, is the relief and rehabilitation of the refugees and the restoration of or compensation for the property left by them in Pakistan which is known as evacuee property there. I am glad that this amendment has come even at this late hour. In fact it ought to have come at the very beginning after the Partition was effected. Still, I am glad that the amendment has come. I wish to point out, Sir, that so far as the problem of the refugees is concerned, the problem is still unsolved and is practically where it was. Although crores of rupees have been spent and are still being spent for its solution, anybody who goes out in this city or anywhere in the country will be sorry to see that the problem of the refugees has not been tackled properly. I do not mean that any one particular person is responsible for it. The problem is a huge one. I only want to say that we have not succeeded in solving it. These two new amendments will in fact bring the problem into the Concurrent list. Last. year we impressed upon the Ministry for Relief and Rehabilitation the need for empowering the Central Government to carry out their schemes according to their plans. They 'always complained that whatever plans they made they were not able to carry out because the provinces were unwilling to carry out their suggestions. The provinces tried to put a limit on the numbers of refugees they would take and so on and so forth, with the result that this most explosive problem is still not on the way to solution.

I therefore think, Sir, that now that we have taken powers for the Central Government in this regard and have put it in the Concurrent List, the Centre Will evolve some plans by which they can tackle this problem, so that this will very soon become a problem of the past. The, refugees have no shelter; nor have they employment. Eighty lakhs of people uprooted from their homes and coming to this land of hope and promise have raised a big problem. It requires effort which is commensurate with it. I only hope that this problem will now be tackled with a determination to solve it in the shortest possible time. Let us make a plan according to which this problem will be solved in six months or nine months. I think that this provision in the Bill is a very welcome provision. I do hope that no provincial government will stand in the way and that this problem will very soon become a problem of the past.

Then, Sir, I come to clause 3 of the Bill dealing with the Evacuee property. This is a most difficult problem and a problem also of great delicacy. I wish our Government had taken a stronger attitude in the matter. I do not want to repeat all that has appeared in the Press' about what is calledthe weakness of our Government in this matter, but I wish to voice the sentiments of the million s of people in this country and they are not satisfied with the manner in which the problem is being tackled. According to availabel figures, while about two hundred crores worth of property has been left by people who have gone to Pakistan, about fourteen hundred crores worth of property has been left by our nationals on the other side in Pakistan and yet we do not know how we are going to get back that property. I am glad that this item is going to be included in the Concurrent List which I treat as an assurance that Government will make some plans by which it will be possible for us to get back the property. But that inclusion is not sufficient. I hope when the Parliament meets, we shall see some Bill which shall be in fulfilment of the promise and hope which this amendment in the Constitution raises among the minds of the people. I hope that his will only be a reduce to the solution of the problem. I have always held the view that we have been trying to appease Pakistan a little too much and we have even sacrificed the interests of our people who have come from there and we have not done what we ought to have done for them up to now. I know that our refugee friends have become destitute in these two years and they have spent the last penny which they had brought with them and if we do not go about trying to settle this question of the property left by them in Pakistan seriously, it will become a problem which will become almost insoluble. I hope these amendment s in the Constitution which are already very late in coming, will fulfil the hopes raised in teh public mind. I only hope of that the honourable Minister who is in-charge of this Bill with the help of the honourable Member in-charge of this Department will see to it that this big problem is solved without further avoidable delay.

(Shri Mahavir Tyagi rose to speak.)

Prof. N. G. Ranga: (Madras: General): How long is this to be prolonged?

Shri Mahavir Tyagi (United Provinces: General): I will not take long mr. Ranga need not be afraid of me. I agree with the main clauses of the Bill. Sir, I only want to emphasise that while these subjects are being centralised and powers are now being taken by the Centre, it was time that the Honourable Minister had thrown some light as to what the scheme was. In fact I only want to bring on record that there is a feeling in the country, which I think is quite justified, that all those persons who have come from Pakistan, they have not come of their own choice or of their own free-will,. They are here because as a result of freedom and partition and were subjected to all sorts of hardships. The politicians here on this side of the country had agreed for liability moral and legal of the people residing here in this part of the country, that they must make good the losses of those who had to come from Pakistan. Now it is no use taking to the Centre the work of rehabilitation or relief unless you come out with some plans of rehabilitation, and any whether you are going to give them only the loafer's bread or give them daily do or give them a fair compensation. If the Centre fails to realize the values of the property left in Pakistan, it is a failure of the Government and not of the individual. I would suggest, even though in the present financial circumstances of the Government the suggestion may look ridiculous -but oftentimes truth looks ridiculous, but all the same it remains a truth--I feel that even if 50 per cent, of the losses were made good by the Government, if they take the liability upon themselves to make good the losses of the refugees or displaced persons who have come here, the Government would have done their duty. In cases of war, Governments have undergone heavier debts. Why should this Government not bear this debt both moral, human and legal' This debt is the price of freedom; and should the refugees or the displaced persons be made to pay the price of India's freedom, or should India pay the price ? The refugees have dearly paid the price of India's freedom in the shape of their property. In the beginning the leaders raised slogans in this very House and appealed to the displaced hordes : "Do not kill. Do not create a riot. Do not create disturbances; let the matter be decided on the higher level, the ministerial level, on Governmental level; we, promise to take up the issue for you". But, now when peace has been established all promises seem to be going into a drift. No result has come so far. I do not accuse the Central Government for that. May be that the Pakistan Government did not keep its word or there are other reasons which we do not know. Pakistan obviously does not intend to fulfil any promise and even if they make further promises, they will not fulfil them. It is their plan and policy; then, why should we subject ourselves to their policy ? I therefore wish to bring on record the demand of the people that the properties of those refugees or displaced persons who have come to India must be estimated and the Government must give their word or the Constituent Assembly must give its verdict that the Nation will shoulder the liability to make good the losses. If not to the fullest extent at least to the extent of 50 per cent. of their losses immediate payment should be made either In cash or in bonds. This is the demand of the people who are displaced and I think morally it is a right demand and absolutely a justified demand. Whatever the financial condition of the Government may be, as the subjects relating to evacuee properties and rehabilitation are now being centralized. let the Centre give, an assurance that they intend to make good all the assets left in Pakistan. It is for this Government to realise the value of these assets from Pakistan, and settle the accounts with them. The Pakistan could take from us as heavy a sum as fifty-five crores of rupees even during their fight with us in Kashmere. In the same manner we must shoulder this liability which is ours and ours alone. I think this is very justified and when the Centre is taking over the subject, they must, finally decide 'as to whether they are prepared to take over the liability. We cannot depend on the promises made by Pakistan.

My honourable Friend Mr. Gopalaswami Ayyangar is universally respected for his sincerity and his truthfulness here in this House though I know that he is a diplomat of the biggest diplomats and he would never give full expression to what he feels or what he is really doing, but we have full trust in his negotiations. He could never let us down. What could he do? The other party is cleverer still. I do not want to attribute any motive to Mr. Ayyangar. The Government have probably done their best; but no rents are forthcoming. We, from this side, have been sending rents on the properties, even of their Premier every month or year. We did it because we want to show off to the world that we are honest and that we will keep our promises. It is all quite right. But, even then, in spite of all our profession and practice the world knows us to be dishonest, because Pakistan's propaganda has dominated, and our truth has been over shadowed by their untruth. This is the position today.

That apart, Sir, I wish to once again repeat and emphasize that the Government must come forward and fulfil their moral duty by these displaced persons, must share their losses and must make them good either in cash or in bonds to these people who have left their properties in Pakistan, and must realise from Pakistan either through force of negotiations, or throughforce of sword or bullet. If the neighbour goes dishonest, it is not for us to look blank and say; "you are dishonest". Our Flag could be pulled down by them; they might commit any kind of excesses or any breaches of faith with us, we are always behaving like international gentlemen. We do not want to be international gentlemen; we are better as ordinary men at home. My submission is having all these things in view, we must now make it clear. The whole situation will be eased if the Honourable Minister for Relief and Rehabilitation row says that the Government takes all property, over, and it will later on make it good from Pakistan when their trade balance is adjusted. If that is the position, I wholeheartedly support Mr. Ayyangar.

Mr. Vice-President: The question is:

"That clause 3 stand pat of the Bill."

The motion was adopted.

Clause 3 was added to the Mill.

Mr. Vice-President : The motion is

"That clause 4 form part of the Bill."

Amendment No. 1 of Mr. K. Hanumanthaiya is ruled out as a negative amendment. I call amendment No. 2 by Mr. S. V. Krishnamurthy Rao,

(Amendment No. 2 was not moved.)

Kazi Karimuddin : Mr. Vice-President, I move:

"That in clause 4, in the proposed Section 291, after the words 'any of the following matters' the words 'subject to confirmation by the Parliament within two months of the date of addition. modification or reveal referred to above' be inserted."

Sir, I have no desire to repeat the arguments which I had advanced at the time of the consideration of the Bill. I have only to say that the arguments advanced by the Honourable the Minister Mr. Gopalaswami Ayyangar in regard to investing the powers on the Viceroy, are not very convincing. After these powers are given to His Excellency the Governor-General, is there anything in the Bill by virtue of which he is responsible to the legislature or to the people ? Clause 4 does not lay down, if he uses these powers rightly or wrongly or in case any abuse, is made, what is the remedy upon to Parliament or to anybody. By this amendment, I have to submit, the Governor-General has to report for confirmation to Parliament when Parliament meets after these powers are used. Therefore, I submit, Sir, that this amendment be accepted.

Dr. P. S. Deshmukh: Mr. Vice-President, Sir, I do not propose to move amendment No. 4; but I will move amendment No. 5. The amendment of which I had given notice stands as follows :

"That in clause 4, in the proposed Section 291, the following be added at the end:-

'All orders issued by the Governor-General under this Section shall be placed before the Constituent Assembly of India (Legislative) in due course."

I would beg your permission,

Sir, to Filter it so as to read as follows it is only a verbal alteration and I hope you will kindly permit it........

"That in clause 4, the proposed Section 291 be regarded as sub-section (1.) of section 291, and after sub-section (1) as so re-numbered, the following be added :-

(2) Every order made under sub-section (1) of this section shall as soon as may so after it is made, be laid before the Donminion Legislature.'"I am very glad that the Honourable Mr. Gopalaswami Ayyangar has at least been pleased to accept this amendment. This will at least give an opportunity to the legislature to review it and to express its views on whatever orders are passed by the Governor-General in respect of the matters that have been mentioned in Section 291 as now proposed. The criticism, as he (Shri Gopalaswami Ayyangar) has admitted, is quite relevant and correct that the powers are certainly most extensive. It may be that there is no intention probably of utilising them. But, it is quite possible for instance, for the Governor-General to say on any fine morning that all the provincial legislatures shall hereafter be composed of only nominated members. There is nothing to stop him from issuing an order like this which will have the effect of abolishing all the chambers of legislature in the provinces, and of removing all the elected members from their seats and from their positions and substituting in their places any people that the Governor-General, or anybody to whom he

may delegate these powers, may choose. The Deputy Commissioner of a District may be asked to nominate the representatives who will sit as members, of the legislature. Anything could be done. The power is so wide; it is tantamount to saying that all the powers under the Government of India Act are handed over to the Governor-General so that there will be no necessity for any debate to take place, or for any legislature to exist. If some Members of this House are angry about it, I think that _anger is not absolutely unjustifiable. I do not want to take the time of the House on this any longer as the whole position is clear to every Member of the House. I move this amendment and since I have already been given an assurance by the Honourable Mr. Ayyangar, that he approves of it, I hope the House will also accept it.

Prof. Shibban Lal Saksena: Mr. Vice-President, Sir, I am glad that the Honourable Mr. Ayyangar has agreed to accept the amendment of Dr. Deshmukh. But, I do not think that it satisfies all the objections that have been raised in this House.

First of all, I am not quite clear as to what is the meaning of laying before the Parliament. Will the Parliament be able to discuss those orders, amend them or to revise them in any manner ? That is the main problem. Secondly, what will happen if they disapprove of them ?

Then, Sir, in his reply to the objection raised, by my honourable Friend, Mr. Kamath, and others why he could not bring forward a Bill at a later stage, after having a conference with the Ministers of West Bengal and other province, incorporating only those amendments to the Constitution as are necessary, he said that this Assembly will finish the second reading of the Constitution in September, and it may not meet till January for the third reading. Even if that be so, I am sure the Assembly will meet as Parliament sometime in November and theme is no reason why it cannot be converted for a day in the beginning, or in the middle of the session, into the Constituent Assembly to amend the Government of India Act. My only objection is this. I know the Government can get through this House any Bill that they bring forward; but, that would at least remove the criticism against them that it has not been discussed by the House.

By giving the Governor-General these powers which are almost dictatorial, he can alter the composition of the chambers, he can delimit the constituencies, be can disqualify persons and alter election rules in some manner. Such powers should not be given to any individual as a matter of principle even bough it may be expedient at the present moment. This will be a bad precedent. Besides, we as Members of the Constituent Assembly are thereby depriving ourselves of the fundamental powers which the nation has reposed inus. I know there might not be any great difference between the Governor General's actions and ours, but it creates a bad precedent. I have never heard such a Bill being presented before any House, and I therefore think that this is something which must be resisted. Still if the honourable Minister tells us that Dr. Deshmukh's amendment,means that this House will be empowered to discuss, to vary and amend the, orders passed by the Governor-General as they are laid before the House, then I think that will be something at least to take the sting out of it; but if even that is note done, then I think I must oppose this clause and I would wish that this does not form part of the Constitution.

Prof. K. T. Shah (Bihar: General) : Mr. Vice-President, Sir, I feel it necessary to raise my voice in strong protest against this clause. The honourable the Mover has taken exception to the description of this clause as a 'constitutional monstrosity." I bow to his great mastery of the mysteries of English etymology, and therefore accept what he has said may be justified in his own knowledge. Speaking for myself Sir, I would like to characterise this clause as a constitutional absurdity an intellectual dishonesty, and a moral inequity.For. every word of this clause, and every item and sub-items enumerated below amount only to this : that the constitutional rights and authority of the Legislature are to be destroyed, and in their place the authority of the Governor General who, as I said, is only a facade is to be put up. The Governor-General is only for, the sake of the name. There would be somebody else,-perhaps his Advises,-presumably the Prime Minister, or the colleagues of the Prime Minister, or perhaps some secretary of any of these exalted gentlemen, who will draft the actual Order, even if the policy underlying it be that of the Government. The Governor-General according to this section will take the place of the entire Legislative body in reference to the items mentioned in this article. He may at any time pass any such order. I do not know what is meant by the term 'at any time'. If by 'at any time is meant the intervening period between now and the date when this Constitution comes into operation-and I would be charitable and assume that there is no intention of denying the operation of the Constitution, or precluding its coming into operation-why is it not stated explicitly? I want to know what is meant by the term 'at any time. If you wish to restrict it to the interval or the transition period under which we are at present and the date when this Constitution will formally come into operation, why do you not state so in this article a clear limitation of the. time during which only such an order can take place ?

Because you have omitted to give any clear limitation, I feel it necessary to give the characterisation I have given of this article. There seems to be a certain mental reservation about the operation of this article, which cannot but be regarded as lacking in intellectual honesty.

The Honourable Shri N. Gopalaswami Ayyangar : May I say one word? I think as the honourable Member has thrown doubts on the intellectual honesty of the persons responsible for this measure, it is necessary that I should say a word of personal explanation. That is the only way in which I can intervene so that this thing might be scotched immediately. What is the mental reservation that anybody could have about the use of the words 'at any time. Mr. K. T. Shah knows as well as I do that the Government of India Act, 1935, will be repealed by the new Constitution, and if that new Constitution is going to come into force on the 26th January next or it may be earlier or a few days later, the fact will remain that this 1935 Act could not continue in force after the new Constitution comes into force unless the House by a vote, keeps it in force-that is a different matter. But the Government cannot keep it inforce. So for the words "at any time" in this particular Bill, the outside limit for it is the 26th January next or some date on which the 'new Constitution comes into force. What mental reservation could there be and how dare he attack the intellectual honesty of the authors ?

Shri Jaspat Roy Kapoor (United Provinces : General) : Professor Shah never sees the, obvious I

Prof. K. T. Shah: Yes, Mr. Shah is physically short-sighted, but he is able to see meanings which are not visible to others.

I accept the explanation the honourable Mover has given with regard to the date. But I still maintain that in that case it would have been much more clear is it had been stated pending the coming into operation of this Constitution'; and to that extent then we would be quite aware that this is only for the transitional period, and would be judged by its transitional character. That not being stated I feel it necessary to point out an omission that there is something improper. The Constitution itself has said in more than one place either on the date this Constitution comes into force', or some. such phrase which makes the time-factor perfectly clear. We would then be fully aware of the time as to when that particular provision will come into operation.

I now go on further to give illustration of my argument, of my general. thesis in connection with this article, and show how the article is likely to operate-perhaps unintentionally and inadvertantly--in a manner that may not have been intended by the authors and sponsors of this proposition.

The first item on which the Governor-General may make any order in relation to any legislature of any province seems to me to suggest, for instance, that all that we are trying to do by this Constitution to evolve a common pattern of the Constitution may be broken. Let it be even for the transitional period; but even so the uniformity, the unity even of the constitutional Organisation of this country may be impeded and interrupted. If it is for the transitional period the evil will be during that period but it will be still evil all the same.

Then it goes on to say that the order may relate to the "composition of the chamber or chambers of the legislatures." I do not understand what is meant by the composition of the chambers. Do you mean by composition, the various representative capacity of the members of the Chambers ?

An Honourable Member: Their strength.

Prof. K. T. Shah : Well, if it is the strength, then I am afraid it would go much farther than may be intended by the authors of this clause. If "everything" is to be included in composition, even strength of the legislature, it may even amount to the denying of the representative fullness of the population of that province, or of those provinces to which the order may relate. And if that be the intention, then I urge in all humility that it cannot be constitutionally proper.

Then supposing that it relates only to the, various ways in which the present provincial legislatures have been constituted, the various interests that are represented therein, the various sections of the population which are almost cross-represented there, if these are to be meant, and if any order is to relate to the altering of that composition, then, I am afraid some fundamental alteration will be made by order of the Government, and not by the legislature. This in itself is objectionable to me. This fundamental change may be, for instance, that the composition may become class composition and not popular composition. The basic principle as I have understood it, of the present Constitution that we are drafting in this body is that there should be as far aspossible, one vote for one man and that there should be uniform popular representation, at least in the lower chamber. If that is the principle, and if this order can go to the extent of altering that position, so that the entire body can be made only representative of certain interests and certain elements and not all the population, then I think it would be taking away the very basic idea of the new Constitution we are drafting, and even if that is confined only to the transitional period-though that is not clear in this legislation-even then it would be, at the time the Constitution is being completed, almost on the eve of the Constitution coming into operation, it may deny the very basic idea of the Constitution, and to that extent, it seems to me that it is an absurd proposition to put forward at this meeting in this House. It seems to me constitutionally highly absurd to make any such change at this time of the day.

It may also affect the qualifications of the voters and of the candidates. What action is meant therein, I fail to understand. Is it proposed that even the existing very limited franchise should be altered by the order of the Governor-General ? Is it intended that the ten or twenty per cent. that are at present enfranchised amongst the adult population to vote would be denied the right to vote, by a simple executive order of the Governor-General, an order which is neither considered by the Legislature nor approved by it, and certainly not with the authority of the people behind it ? I consider the language of this sub-clause to be much too sweeping, I consider the implications of this sub-clause much too widespread and too far-reaching for us to pass it light-heartedly, as if it means nothing more than a change in qualification of residence or location or something of that kind. Unless this sub-clause, is clarified by an explanatory, paragraph being added to it, there seems to be the possibility of mischief which I trust the authors of this clause will seek in time to avoid.

It has been said, Sir, that the new Constitution we are drafting is likely to prove a paradise for lawyers. Here is another illustration of it. Even in the transitional period to which alone we are assured on such high authority it relates, even during this period, there are going to be provisions which Will provide ample occupation and fortune to lawyers. I hope it is not the intention of the Drafting Committee to put in language which may be twisted and changed and made to mean something which they themselves did not mean at the time that they drafted the clause.

There is also suggestion that the order may relate to the qualifications of the candidates. What is meant by that, I do not know. This again is very wide and very general and as such I hesitate to accept it. I very strongly apprehend that any order of this character even during the transitional period may quite possibly go far beyond the intentions of the Draftsmen. I know that one need not reduce it to such absurdities as to suggest that by laying down qualifications of the candidates, the Governor-General by order may refuse permission or a candidate to stand. I take it is not the intention to enable orders to be passed imposing new restrictions, new conditions and qualifications which are not in accordance with the basic idea of the Constitution we are now drafting. I trust it is not also the intention of the authors to make provisions even for the transitional period which may run fundamentally counter to the basic ideals of this new Constitution; for the basic ideal of this Constitution is the ideal of equality and that the new governmental machinery and the various constitutional organs will be founded on what is called adult franchise. If that is so, then any attempt by the back-door so to speak, by the order of the Governor-General or the Governor even during the transitional period to restrict the qualifications or in any way touch the qualifications of the voters and of the candidates is not proper. If you wish to indicate anyparticular qualifications, if you wish, for instance to abolish the separate communal electorates, why not say so quite openly? Why not make it perfectly clear, that what is intended is not anything that would reduce the scope of representation, not to put any limitation on the voting public, but to remove a particular evil which has caused so much misery and which has cost so dearly to this country, that it shall be eliminated even during the transitional period by order of this character. I repeat that the expression used should be such as would convey the intentions quite clearly.

Amendments have been suggested, that the, order should be placed before Parliament for approval or for some kind of postmortem examination. I do not feel satisfied with such attempts at bringing in Parliament. It is the basic and inherent right of Parliament to pass legislation and Parliament should never abdicate this right in favour of the Governor-General or anybody else. I do not think a fundamental provision of this character should, at this day when we are all sitting to draft a liberal Constitution be accepted, because it denies the authority of the legislature and makes the executive sacrosanct and gives it powers which may even touch the life of the legislature. I mention this point particularly because although we are assured on very high authority that this is only for the transitional period, still it may be quite possible that the very life of the new legislature in any province might also come under restriction of this order. Provisions of this character empowering the executive will be an abdication of the authority of the legislature of the country. As I said the whole plan of uniformity, the pattern of standardisation and unity of the country may be imperilled by legislation of this kind and our apprehensions cannot be removed by the plea that it is only a temporary measure. The whole idea, to my mind, is inimical to the fundamental ideals and concept of the Constitution.

I know these are remarks which may not be very palatable; these are points I know which have been made, from one angle or another, time and again in this House and have not met with the approval of this House. Therefore, even if it is a cry in the wilderness, I think it my duty to raise my voice of protest against this Bill.

The Honourable Dr. B.R. Ambedkar : Mr. Vice-President, Sir, I find from the speeches to which I have listened so far that there is a great deal of misunderstanding as to what this particular Bill, particularly clause 4 of it, proposes to do. I think it is desirable at the outset to tell the House what exactly is intended to be done by Clause 4.

In order to put the House in a proper frame of mind-if I may say so without meaning any offence-I should like to draw the attention of the House to the wording of Section 291 of the Government of India Act as it was in operation before it was adapted after the Independence Act. Now I shall read just a few lines of that Section 291.

"In so far as provision with respect to matters hereinafter mentioned is not made by this Act. His Majesty in Council (and I want to emphasise these words. His Majesty in Council) may from time to time make provision with respect to those matters or any of them. etc.....etc."

The first thing that I would like to draw the attention of the House is this that in clause 4 of this Bill the matters which are enumerated from (b) to (i) are exactly the matters which are enumerated in the old Section 291. Therefore, it has to be understood at the outset that this clause, clause 4, is not making any fundamental change in the provisions contained in the original Section 291. The matters for which the Governor-General is going to be given powers by the provisions of the new Section 291, as embodied in this Bill, are the same which were given by the original Section 291 to His Majesty in Council. (An Honourable Member : No.) I hope that this will be now clear to everybody and I do not think there can be any doubt on it, for anyone who compares the different clauses in this Bill and in the original Section 291 will have all his doubts removed.

The question, therefore, may be asked as to why is it that we are now, giving the power to the Governor-General. The difficulty, if I may say so, is this. Somehow when the Government of India Act, 1935, came to be adapted after the Independence Act, there was, in my judgement, at any rate, a slip that took place and that slip was this, that this power which originally vested in His Majesty in Council, logically speaking, ought to have been transferred to the Governor-General, because the Governor-General under the Dominion law stepped into the shoes of His Majesty in Council. But, unfortunately, as I said, what happened was this that in adapting this Section 291, the power which we are now giving to the Governor-General was given to the local Legislature, I will read that adapted Section 291. I ask my friends who have been agitating over this to read the section as adapted. This is how it reads :

"In so far as provision with respect to matters herein mentioned is not made in this Act in relation to any Provincial Legislature, provision may be made by Act of that Legislature in respect to those matters or any of them, etc....etc."

It has now been discovered that that was an error, that really speaking, when the section was adapted at that stage, the Governor-General should have been endowed with those powers, because those power under the provisions of Section 291 were vested in His Majesty in Council and not in any local legislature. What we are doing by this Bill is merely to restore the old position as it existed under the unadapted Section 291. I, therefore, want to submit that any criticism which has been levelled by any Members of the Assembly that political motives is absolutely unwarranted. All that we are trying to do is to correct a slip that had taken place then.

I come to the next point, namely, the addition of the words "the composition of the Chamber or Chambers of the legislature." I quite agree.................

Dr. P.S. Deshmukh : May I ask one question, Sir ? Does not the alteration of the words "in so far as provision with respect to matters hereinafter mentioned is not made by this Act", the omission of these words and making of these provisions applicable to ....

The Honourable Dr. B. R. Ambedkar : That is what exactly I am explaining. As I said, the only difference that will now be found between the original article 291 as unadapted and the proposed new clause is this that it is proposed by this new article to give power to the Governor-General to alter the provisions with regard to the composition of the Legislature. I admit that that is a change.

Dr. P.S. Deshmukh : Oh, yes; that is quite true. I admit without any kind of reservation that that is a change which is being made. Now the question is why should we make that change. The reason why we have to make the change in order to give the Governor-General the power even to alter the composition is to be found in the situation in which we find ourselves. Honourable Members will remember that there has been a considerable shifting of the population on account of partition. The population of East Punjab is surely not in any stereotyped condition. Refugees are coming and going. On the 1st April the population numbered so much, six months thereafter it may number something quite different from what it was then. Similarly with regard to West Bengal and many other provinces where refugees have been taken by the Government of India under their scheme of rehabilitation or the refugees themselves have voluntarily travelled from one area to another. Obviously you cannot allow the provisions contained in the Fifth and Sixth Schedules with regard to the numbers in the legislature to remain what they were when we know as a matter of fact that the population has lost all relation to the numbers then prescribed in the Schedules. It is, therefore, in order to take into account the shifting of the population that power is given to the Governor-General to alter even the Schedules which deal with the composition of the legislature.

I hope my honourable Friends will now understand that in giving this additional power of making an order with regard to the composition of the Chamber or Chambers the intention is to permit the Governor-General to make an order which will bring the strength of the different legislatures in the provinces affected to suit the numbers in those provinces. There is no nefarious purpose.

Dr. P.S. Deshmukh : You had two full years to rectify this position.

The Honourable Dr. B. R. Ambedkar : That is a different matter. I am only explaining why these provisions are being introduced by this new clause.

I have said that the other provisions are merely reproductions of what is contained in the original Section 291. This power is not being taken for a wanton or an unnecessary purpose nor is it intended to be used for anything other than a bona fide purpose. Therefore, having regard to these circumstances my submission is that clause 4 is a perfectly justifiable proposal, both from the point of view of conferring these powers, which originally vested in His Majesty in Council, to be vested in the Governor-General who is his successor and to give him additional power to alter the composition, because the pattern of the numbers in the different provinces have changed from the 15th August 1947. I quite realise that there has been an error in the Statement of Objects and Reasons where unfortunately a particular reference has been made to West Bengal. I should like to assert that this clause has been intended as a general provision which may be used by the Governor-General for rectifying any of the matters with regard to any province, not particularly West Bengal; and I think that was again somehow a slip which ought not to have taken place. Members of the House have picked up that particular wording of that particular clause where a point reference has been made to West Bengal in order to charge the Government with malafide, with having some kind of a bad motive towards the legislature in West Bengal. As I said, it is nothing of the kind. These clauses are general; they may be used if a situation arises which calls for their use in West Bengal. They may be used for my province of Bombay where probably today, at any rate, no such circumstance appear. Therefore, from that unfortunate statement-if I may say so- no conclusion ought to be drawn that there is any kind of underhand dealing so far as this clause is concerned.

Shri Suresh Chandra Majumdar (West Bengal : General) : Is it not possible to drop the words "West Bengal" ?

The Honourable Dr. B. R. Ambedkar : I have been telling my honourable Friends that the Statement of Objects and Reasons is not a part of the Act and therefore, there can be no amendment moved to the deletion of any word or clause or sentence in the Statement of Objects and Reasons. As soon as this Bill becomes an Act, that Statement of Objects and Reasons will be thrown into the dustbin. It is different from a Preamble and I want Members of the House to concentrate on the Preamble where there is no such reference to West Bengal. Therefore, my submission is that there is really nothing to quarrel with in this particular clause. In the first place it restores the original provision as it existed in the government of India Act, 1935 in its unadapted condition, and secondly it proposes to give power which it has become necessary to give because of the altered position in the provinces.

An Honourable Member : Sir, I move that the question be now put.

Shri H. V. Kamath : Sir, on a point of order, Dr. Ambedkar has raised fresh points which we wish to discuss, and under rule 33 of our Rules you may hold that there has not been sufficient debate, and so refuse to accept this motion for closure.

Dr. P. S. Deshmukh : But Dr. Ambedkar is not the Minister in charge.

Mr. Vice-President : Yes, that is so; and the Honourable Member Mr. Kamath has had ample opportunity to speak on this clause. I therefore accept the motion for closure.

The question is :

"That the question be now put."

The motion was adopted.

The Honourable Shri N. Gopalaswami Ayyangar : Sir, I do not think I need make any elaborate reply to the debate on this particular clause. Dr. Ambedkar has very fully explained the wording of this particular clause vis-a-vis the terms of Section 291 of the government of India Act, 1935, as unadapted, as well as with the terms of Section 291 of the Act as adapted. So far as that particular matter is concerned, if we look at the old Government of India Act, His Majesty in Council under Section 308 was also given the power to make amendments of the same nature as are contemplated in this new Section 291. It is unnecessary for me at this late stage to elaborate this particular point. The fact that remains is that an unduly excited view has been taken of the danger to democratic principles that this particular clause is supposed to involve. I am afraid that all the fears that have been expressed are absolutely and unduly exaggerated.

As for the mention of West Bengal I quite agree that we might have omitted the reference to West Bengal. But if West Bengal has been referred to in the Statement of Objects and Reasons it is only by way of illustration. I think in one place it is said "Should an election be ordered in West Bengal Legislature or any other province" and in another place it is said that if something is done in connection with, for example, West Bengal and so forth. But is perfectly clear even from the Statement of Objects and Reasons, apart from the terms of the Bill itself that the Bill does not apply to West Bengal in particular. It is a Bill which, both by the Statement of Objects and Reasons and the terms of the Bill itself, refers to provinces in general. Wherever in any province conditions develop which require the holding of general elections these powers will come into play and I do not see why the conditions of West Bengal, whether today or as they may develop in the near future, should be taken as being specifically referred to by this particular Bill and that this Bill is intended to apply to West Bengal and no other province.

So far as the amendment of Dr. Deshmukh is concerned, that very order made under this particular clause should be laid before the legislature, I have already accepted it in the altered terms in which he has moved it.

I only wish to say one word as regards another edition of this amendment which was moved by my Friend Kazi Karimuddin. He said that any order passed under this section should get the affirmative approval of the legislature within two months before it can become operative. If we accept that amendment we might as well give up this Bill, because what is intended is a provision for a period which is not likely to exceed five or five and a half months and if we are going to place an order which the Governor-General may pass two months hence and wait for another two months to get the affirmative approval of the legislature before it becomes operative, then practically there will be no time either for the preparation of electoral rolls, much less for the holding of any election before the new Constitution comes into force. Sir, I would ask my honourable Friend who moved that amendment not to press it. I think the purpose is served by my acceptance of Dr. Deshmukh's amendment.

As to how the legislature can make its own views known or effective the only thing that I can say in reply is that when an order of that kind is placed before the legislature it is open to any member of the legislature to make a motion or move a resolution as regards the content of that order and the House is at liberty to express whatever it considers its views to be. That the only thing that could be done in the circumstances of the present situation. We may take it that after an order is passed by the Governor-General, say in September or October, if it ever comes to be passed at all, then it will be placed before the legislature during the November session and if it happens to be passed later, it would come before the January session. I think that is the utmost that could be done for the purpose of satisfying that particular principle.

Shri Mahavir Tyagi : Sir, may I put one question ? How do they intend to apply the law to one province or another ? How does Bengal come in ? What fault has it committed so as to have been brought into this Bill ?

The Honourable Shri N. Gopalaswami Ayyangar : Bengal is not mentioned in the Bill at all.

Mr. Vice-President : The question is :

"That in clause 4, in the proposed Section 291, after the words 'any of the following matters' the words 'subject to confirmation by the Parliament within two months of the date of addition, modification or repeal referred to above' be inserted."

The amendment was negatived.

Mr. Vice-President : The question is :

"That in clause 4, the proposed Section 291 be re-numbered as sub-section (1) of Section 291, and after sub-section (1) as so renumbered, the following be added :-

"Every order made under sub-section (1) of this section shall, as soon as may be after it is made, be laid before the Dominion Legislature."

The amendment was adopted.

Mr. Vice-President : The question is :

"That clause 4, as amended, stand part of the Bill."

The motion was adopted.

Clause 4, as amended, was added to the Bill. Clause 5, was added to the Bill.

The Title and Preamble were added to the Bill.

The Honourable Shri N. Gopalaswami Ayyangar : Sir, I move :

"That the Bill, as amended, be passed."

Shri H.V. Kamath : Sir, on a point of Order, I invite your attention and that of the House to rule 38 (S) Sub-rule (2) of the Constituent Assembly Rules as amended on the 31st May 1949. That sub-rule provides that if any amendment to the Bill is made any Member may object to any motion being made on the same day "that the Bill be passed." Under this rule I object to the motion (interruption) unless the President of course allows the motion to be moved.

Mr. Vice-President : The amendment adopted is a very formal one. I allow the motion to be placed before the House as made by the Mover.

Shri H.V. Kamath : Sir, the speech of my honourable Friend Mr. Gopalaswami Ayyangar in reply to the debate has left me completely unrepentant and unconvinced. The amendment that has been adopted by the House mellows, to a very infinitesimal extent, the monstrosity of this part of the measure, namely Section 4 of the Bill before the House. Dr. Ambedkar has come to the rescue of his colleague Mr. Ayyangar as, I am sure, he is in honour and duty bound to do. After all our Government is a united team. One Minister must help another in weal or woe, and in joy or sorrow. But Dr. Ambedkar's defence of the measure has raised fresh difficulties and doubts in my mind. Referring to Section 291, the unamended 291, he pleaded before us that we have merely restored the status quo ante of this provision. That is to say, instead of His Majesty's Government which obtained before the adaptation of the Government of India Act, we have now got the Governor-General, with of course the Cabinet or the executive. But I wonder whether Dr. Ambedkar with his eye for details and nuances overlooked a certain portion of Section 291. We have been told that it was a slip. With the reputed efficiency of the Law Department it has taken two years for them to detect this slip, and only when the West Bengal problem came to the force and they were worried slip another slip and still another slip; and I am confirmed in my view that we are standing on a slippery slope.

Now coming to this, Section 291 I would invite Dr. Ambedkar's vigilant attention to its wording as it stood before the adaptation and to Section 4 which we have adopted today.

Shri M. Ananthasayanam Ayyangar (Madras : General) : Sir, on a point of order, may I know if it is open at the third reading to go into the merits of a particular section ? And the honourable Member is repeating what he said at the second reading.

Shri H. V. Kamath : I am sorry Mr. Ayyangar did not listen to me when I was speaking on the second reading. Otherwise I dare say he would not have said that I am repeating my arguments.

Shri M. Ananthasayanam Ayyangar : He ought not to repeat the arguments of others also.

Shri H. V. Kamath : I would only tell Mr. Ayyangar, 'Physician, heal thyself'. Dr. Ambedkar mentioned that this is on a par with the adapted Section 291. But Section 291 specifically stated : 'In so far as with respect to .... So the provision there is, 'so far as provision is not made..................His Majesty can by order in Council do............." But this new clause gives unfettered power to the Governor-General. "The Governor-General may at any time by order make such amendments as he considers necessary by or under the provisions of this Act." There is nothing in it which says "In so far as provision is not made.............." This is a very serious omission. I do not know how one can defend that slip. The other slip was with reference to West Bengal in the Statement of Objects and Reasons. I am sure the Bill, before it came before the House, must have been scrutinized by the Law Ministry. I wonder whether Dr. Ambedkar scrutinized it or some Under Secretary did so. Anyway the responsibility is that of the Law Minister. The argument adopted by him with regard to Section 291 and with regard to the Statement of Objects and Reasons, has no meaning. It is not an argument which should weigh with the House. He has put that argument forward to give succour to his colleague. Government does not seem to be working as a team. Somebody drafts a Bill and when it comes before the House, but not earlier, Dr. Ambedkar puts forward a laboured defence. This is not the way a Cabinet should function. They must work like a team. Otherwise they will have no face to show to the world. I hope in future they will put up a better show in this House so that the world may think better of them.

The last thing I would like to say is that the amendment moved by Dr. Deshmukh and accepted by the House provides that the Orders made by the Governor-General shall be laid before the Legislature as soon as may be. Mr. Ayyangar in his reply to the debate said that the difficulty is because we cannot get the Assembly to meet often or long enough to consider the orders of the Governor-General. That is a very lame argument. The other day, when a particular article relating to the summoning of the Assembly in the future set-up was being discussed, Dr. Ambedkar gave the assurance, when we raised the objection regarding the interval of not more than six months that should elapse between the sessions-- that six months was too long an interval and then the maximum laid down might become the minimum,___Dr. Ambedkar gave the assurance that the Assembly in future would meet more often. If that could be done I see no reason why, soon after the second reading, we cannot convert ourselves into a legislature and by that time the Law Department could get busy with the Governor-General's orders, etc. Unless there is some sort of cussedness or refractory attitude on the part of some people towards the House, this could easily be arranged.

Lastly, I urge that whatever comes before the Dominion legislature under this Act in due course, I hope the Assembly will have the power not merely to say Okay to a fait accompli but also to consider and approve and amend or reject whatever orders have made by the Governor-General. If this Parliament is going to be divested of that power, I for one will not be a party to such a wicked transaction. I hope this will be borne in mind. The amendment is silent on that point. It says : The amendment will be placed before Parliament. For what purpose, God alone knows. I hope parliament will have full power to consider the whole matter at every stage and accept or reject it as it likes. I feel that this Bill has been rushed through, and Section 4 adopted after only a sight modification. It mellows the monstrosity somewhat but it does not remove the odious nature of the provision. I hope that, when the matter comes up before the House in a month or two, this Assembly will have full power to scrutinise all the Orders made by the Governor-General under this Act, and amend or reject them.

Shri T.T. Krishnamachari : I move that the question be put.

Mr. Vice-President : Does Mr. Gopalaswami Ayyangar wish to say anything ?

The Honourable Shri N. Gopalaswami Ayyangar : I do not think I have anything to say.

Mr. Vice-President : The question is :

"That the Bill further to amend the Government of India act, 1935, as settled by the Assembly, be passed."

The motion was adopted.

The Bill, as settled by the Assembly, was passed.

Mr. Vice-President : The House will now adjourn till 9 o'clock tomorrow morning.

The Constituent Assembly then adjourned till Nine of the Clock on Friday the 19th August 1949.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Friday, the 19th August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock. Mr. Vice-President (Shri V. T. Krishnamachari) in the Chair.

Mr. Vice-President (Shri V. T. Krishnamachari): Today we begin ,with article 150. The House will remember that there was a debate on this article as it originally stood and after three amendments were moved, the article was recommitted to the Drafting Committee. Dr. Ambedkar has now given notice of a new article. I request him to move that article, amendment No. 1 of list I (Fourth Week).

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I have a point of Order. Shall I move it just now or after the amendment is moved?

Mr. Vice-President: You may move it just now.

Mr. Naziruddin Ahmad: Mr. Vice-President, Sir, as I have been observing for some time that the Drafting Committee has been springing surprise after surprise on the Members. I do not blame the eminent members of the Drafting Committee for this attitude. I know that their hands are tied. I speak with deep respect for the Drafting Committee and when I offer any comments about them, it is because we have to look to the Drafting Committee for the praise or blame that must attach to the amendments. Every day new amendments of a sweeping character are being sent in by the Drafting Committee. They come in all of a sudden like Air Raids.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Where is the point of order?

Mr. Vice-President: May I remind the honourable Member that this amendment has been brought before the House by Dr. Ambedkar and the Drafting Committee in response to the desire universally expressed in the House. For this reason, I rule out this point of Order. I now ask Dr. Ambedkar to move his amendment.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, I move:

"That for article 150, the following be substituted :-

'150.Composition of the Legislative Councils. (1) The total number of members in the Legislative Council of a State having such a Council shall not exceed one-fourth of the total number of members in the Assembly of that State

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) Until Parliament may by law otherwise provide, the composition of the Legislative Council of a State shall be as provided in clause (3) of this article.

(3) Of the total number of members in the Legislative Council of a State.

(a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities as Parliament may by law specify;

(b) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years graduates of any university in the State and persons possessing for at least three years qualifications prescribed by or under any law made by parliament as equivalent to that of a graduate of any such university;

(c) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institution within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;

(d) as nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;

(e) the remainder shall be nominated by the Governor in the manner provided in clause (5) of this article.

(4) The members to be elected under sub-clauses (a), (b) and (c) of clause (3) of this article shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, and the elections under the said sub-clauses and under sub-clause (d) of the said clause shall be in accordance with the system of proportional representation by means of the single transferable vote.

(5) The members to be nominated by the Governor under sub-clause (e) of clause (3) of this article shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely :-

Literature, science, art, co-operative movement and social services."

As you have said, Sir, this article in a different form was before the House last time. The article as it then stood, merely said that the composition of the Upper Chamber shall be as may be prescribed by law made my Parliament. The House thought that that was not the proper way of dealing with an important part of the constitutional structure of a provincial legislature, and that there shall be something concrete and specific in the matter of the constitution of the Upper Chamber. The President of the Constituent Assembly said that he shared the feelings of those Members of the House who took that view, and suggested that the matter may be further considered by the Drafting Committee with a view to presenting a draft which might be more acceptable to those Members who had taken that line of criticism. As honourable Members will see, the draft presented here is a compromise between the two points of view. This draft sets out in concrete terms the composition of the Upper Chamber in the different provinces. The only thing it does is that it also provides that Parliament may by law alter at any time the composition laid down in this new article 150. I hope that this compromise will be acceptable to the House and that the House will be in a position to accept this amendment.

Mr. Vice-President : Amendment No. 3. Mr. Kamath.

Shri H.V. Kamath (C.P. & Berar: General): I have moved it already.

Mr. Vice-President : Amendment No. 66, List II (Fourth Week).

Shri H.V. Kamath : What about the amendments in the Printed List of Amendments, Vol. I, Sir ?

Mr. Vice-President : After finishing these, those in Vol. I will be taken up.

(Amendments Nos. 66, 67 and 68 were not moved)

Dr. Monomohon Das (West Bengal : General) : Mr. Vice-President, Sir, I move :

"That in amendment No. 1 of List I (Fourth Week) of Amendments to Amendments, in sub-clause (b) of clause (3) of the proposed article 150, the words 'for at least three years' wherever they occur, be deleted."

Sir, in clause 3 (b) of the proposed article 150 as moved by our Honourable Dr. Ambedkar, it has been suggested that for the election of one-twelfth of the total members of the Upper Chamber, the electorate will consist of persons who have been for at least three years graduates of any university in the State and persons possessing for at least three years qualifications prescribed by or under any law made by parliament as equivalent to that of a graduate of any such university. For registration as a voter under this clause, two conditions have been imposed : one, educational qualification of the standard of a graduate, and second, this educational qualification should be at least of three years standing. If the sponsors of this article intend that for being registered in the voters' list, the minimum educational qualification of a graduateship should be there, I do not find any reason for imposing another condition that the graduateship should be at least of three years standing. I fail to understand what difference there will be between a graduate who has taken a degree yesterday or a few days back and a graduate of three years standing. If the sponsors of this article think that for maturity of the educational qualifications, an experience of at least three years should be there, I think three years experience will be insufficient and inadequate. There should be at least five years experience for the maturity of the qualification of graduateship. My amendment suggests that this imposition of three years standing for being registered in the voters' list under this clause 3 (b) should be deleted. I think the House will accept the amendment and revise the clause accordingly.

Shri V.I. Muniswamy Pillay (Madras : General) : Mr. Vice-Presidnet, Sir, I beg to move the amendment that I have given notice of :

"That in amendment No. 1 of List I (Fourth Week) of Amendments to Amendments, in sub-clause (d) of clause (3) of the proposed article 150, after the word, 'one-thrid' the words 'including seats reserved for Scheduled Castes as may be prescribed' be inserted."

Sir, the object of my moving this amendment is to get representation for the Scheduled Castes in the Upper Chamber. This House has been good enough to reserve seats for the Scheduled Castes in all the legislatures; but I fail to see any mention of representation for Scheduled Castes in the amendment so ably moved by the Honourable Dr. Ambedkar. It is true that members of the Scheduled Castes that are sent to the Lower Chamber, in the popular House, will have a chance of voting for representatives to come to the Upper Chamber. But, unless seats are reserved in the Upper House, I fail to see how it will be possible for the members of the Scheduled Castes in the Lower House to get a number of seats or adequate representation in the Upper House. Moreover, it has been said on account of the system of proportional representation by means of the single transferable vote, it will be possible for the minority community, especially the Scheduled Castes to get adequate representation in the Upper Chamber. I feel, Sir, it must be statutorily made possible, and whatever representation has been accepted by this August Assembly must be provided in the amendment so that the fear of the Scheduled Castes may not be there. This is the chief object with which I move this amendment and I hope the Honourable Dr. Ambedkar will accept it.

Mr. Vice-president : Amendment 71 is not moved. There are amendments in the printed lists. I do not know whether any Member would like to move any of those amendments.

Shri R.K. Sidhva (C.P. & Berar : General) : Those were disposed of last time.

Mr. Vice-President : They relate to the article as it stood and it is likely, some of the Members may like to move amendments standing in their names. The best thing is for me to read them out one by one.

(Amendments Nos. 2265 to 2268 were not moved.)

2269-Professor Shah.

Prof. K.T. Shah (Bihar : General) : Sir, there are several amendments in my name which I would like to seek your guidance on. Under the new scheme suggested by Dr. Ambedkar, all these amendments would seen to be irrelevant. Thus the entire scheme being different, my amendments have been laid down according to the original scheme.

Mr. Vice-President : As a matter of fact all the amendments beginning from 2274 relate to the panels as proposed in the original draft, and they have no application -generally speaking - to the new draft.

Prof. K.T. Shah : I feel it would create confusion in the House if one went on speaking on them.

Mr. Vice-President : It would be very good if Members who have got amendments to propose to the panel i.e., the deletion of any of the-classes mentioned in clause (5) or the insertion of new categories in clause (5) moved those heads for inclusion in or deletion from clause (5) in other words as amendments to the new clause (5).

Prof. K.T. Shah : I submit that my earlier amendments relate to the proportions e.g., one-fifth instead of one-thrid. These proportions are different under the compromise new draft. It would be better both from the point of saving the time of the House, as well as for clarifying issues if at the time of general discussion on the article these points are brought out, and not by amendments because if the amendments are moved there will be confusion.

Mr. Vice-President : Certainly. The amendments do not fit in with the new article.

Prof. K.T. Shah : In that case I would beg your leave not to move these, and reserve my points for the general discussion.

Mr. Vice-President : Certainly. That applies to all these amendments in the Printed List ?

Prof. K.T. Shah : Yes, as far as I am concerned.

Mr. Vice-President : Does any other Member wish to move any of the amendments in the Printed List ?

Shri H.V. Kamath : Sir, I have given notice of amendments to the amendment of Dr. Ambedkar.

Mr. Vice-President : I am prepared to permit you to move the amendments you have just handed in to me. In that case I presume you are not going to move any of the amendments on the Printed List.

Shri H. V. Kamath : No, Sir.

Mr. Naziruddin Ahmad : I have to move 2284 and 2287.

Mr. Vice-President : You may move them. You will move them for insertion in clause (5) of the article.

Mr. Naziruddin Ahmad : Yes. These should be taken as amendments to clause (5) of the new draft. I beg to move :

"That in sub-clause (a) of clause (3) of article 150, after the word 'art' the word 'medicine' be inserted."

I also beg to move :

"That in sub-clause (c) of clause (3) of article 150, before the word 'engineering 'the word 'Commerce' be added."

Mr. Vice-President : Unfortunately there is no 'engineering' in clause (5). Would you like to move that "engineering and commerce" be inserted ? Please move that as amendment to clause (5).

Mr. Naziruddin Ahmad : Sir, I beg to move :

"That 'medicine, engineering and commerce' be inserted in clause (5)."

Shri S. Nagappa (Madras : General) : I want to move amendments 66 to 68 to article 150.

Mr. Vice-President : You were not in your place when these amendments called. Provided you move them quickly without taking up much time of the House, you may move them.

Shri S. Nagappa : I beg to move :

"That in amendment No. 1 of List I (Fourth Week) of Amendments to Amendments, in the proviso to clause (1) of the proposed article 150, for the word 'forty' the word 'forty-five' be substituted.

That in amendment No. 1 of List I (fourth Week) of Amendments to Amendments, in sub-clauses (b) and (c) of clause (3) of the proposed article 150, for the word 'one-twelfth', wherever it occurs, the word 'one-fifteenth' be substituted.

That in amendment No. 1 of List I (Fourth Week of Amendments to Amendments, in sub-clauses (a), (b), (c) and (d) of clause (3) of the proposed article 150, the words 'as nearly as may be', whenever they occur, be deleted."

Sir, my intention in moving these amendments is that in clause (1) it has been stated that :

"Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty."

Now, by dividing, how will the representation be given to each section of the electorate ? You cannot divide 40 by 12. Because 4 will remain. If you make it 45 and if you enhance this twelve to fifteen, forty-five will be easily divisible by fifteen. That will be very easy mathematically. One-third of fifteen will be five, and in place of one-twelfth, I want that we should substitute one-fifteenth. If there are forty seats to be divided, and if you mean to take only one-twelfth, then four still remain. On the other hand, and if you mean to take only one-twelfth, then four still remain. On the other hand, if the number is to be forty-five and the proposition is to be one-fifteenth, then it will mean that three members will be selected.

I am glad that you have now given representation to the teachers. Teachers of our land have been the silent sufferers all these years. They are, I think, the lowest paid. The teachers of our country are the lowest paid in the whole world, and I am glad that at last you have recognised their right to be represented in the legislative council.

You have also been good enough to give representation to local bodies like the district boards and municipalities. In this, I feel you have gone a long way in the direction of progress. But this progress will not be complete unless and until you give sufficient representation to labour. Sir, labour is one of the most important sections of our society and it also forms the bulk of our population. They are responsible for increasing the production in our country and for the well-being of our country. If the rights of labour are not recognised in this connection, I am afraid you are ignoring the bulk of our population.

71. "That in amendment No. 1 of List I (Fourth Week) of Amendments to Amendments after sub-clause (d) of clause (3) of the proposed article 150, the following new sub-clause be inserted :-

"(dd) one-fifteenth shall be elected by Agriculture labour from amongst the labour classes."

Mr. Vice-President : Are you moving your amendment No. 71 now ?

Shri S. Nagappa : Yes, Sir. They are all connected.

Mr. Vice-President : Have you finished ?

Shri S. Nagappa : Not yet. In order to facilitate the giving of one-third to the local boards, one-third to the graduates and one-fifteenth to labour, you must have the number as 45. The rights of labour should be recognised. Without the co-operation of labour the country cannot progress one inch. It is their right to be represented in the Upper Chamber. They have been ignored and so I have had to bring in these amendments, so that you may not disturb your distribution of the seats or the quotas to the various sections. If you accept my amendments, the problem of distribution is automatically solved, from the view-point of labour, of the teachers the graduates and the local bodies. It is also in line with your wish that each section of the population of this country should be given representation. I hope the Honourable Dr. Ambedkar will not hesitate to accept my amendments as they are so reasonable and equitable. I would also request honourable Members to see the point in my amendments and also appreciate the importance of labour in our country. You should give encouragement to labour so that it may produce more and more so that the country may progress further and further. I hope the honourable Members will accept these simple amendments without any hesitation. I thank you very much.

Mr. Vice-President : I now call on Mr. Kamath. He has given notice of some amendments which I have permitted him to move.

Shri H.V. Kamath : Mr. Vice-President, at the outset I crave the pardon of the House for having given notice of my amendments only this morning, as a consequence of which, honourable Members have not been supplied with copies of my amendments. This was partly due to the fact that the Drafting Committee's draft article 150 did not reach me- I do not know whether that was the case with all- the draft did not reach me till late on Wednesday night, and so there was hardly any time to set out my amendments before this morning. I shall, however, read the amendments of which I have given notice.

I have given notice of four amendments which I will read out one by one.

The first is :

"That in amendment 1 of List I, Fourth Week, (that is to say, the amendment now under consideration moved by Dr. Ambedkar), the proviso to clause (1) of the proposed article 150, be deleted."

That is the proviso which says :

"Provided that the total number of members for the legislative council of a state shall in no case be less than forty."

The second amendment is :

"That in amendment 1 of List I of Fourth Week, in clause (2) of the proposed, 150, the words 'Unless Parliament by law otherwise provides' be deleted." (That say, the first portion of clause (2) be deleted.)

My Third amendment is :

"That in amendment 1, List I (Fourth Week), in clause (5) of the proposed article 150, the words (They are in the last clause of the proposed article) co-operative movement' be deleted."

And the last amendment of mine is to the effect :

"That in amendment 1 of List I (Fourth Week), in clause (5) of the proposed article 150, before the word ' literature', the words 'religion, philosophy' be inserted."

That is to say, the list would read :

"religion, philosophy, literature, science, art and social services."

I hope, Sir, that I have read out the amendments very audibly and clearly to the House so that they have an idea of the scope of my amendments. I propose now to take these amendments, one by one. May I speak now, Sir ?

Mr. Vice-President : Yes.

Shri H.V. Kamath : I take up, Sir, the first amendment, that is to say the one relating to the proviso to the proposed article 150. The proviso lays down that the total number of members in the Upper Chamber of a State shall in no event be less than forty. During the discussion of this article, on the last occasion, some days ago, I had the opportunity of pointing out to the House that there are several States in the India Union whose population is perhaps not very much more than six or seven million. If that be so, the Lower Chamber in such States will consist of sixty to seventy members, and in a State where the Lower Chamber has not more than sixty to seventy members, it would be most undesirable to have an Upper Chamber consisting of forty members. the original draft of article 150 in the Draft Constitution had no such proviso and it fixed only the upper limit which was to the effect that it should not exceed one-fourth of the total strength of the Lower Chamber. I submit that that would be adequate to our needs. If in any State the Lower Chamber consists of only 40, 50 or 60 members, you may have, if the State wants it, an Upper Chamber, but I do hope such States will not in practice desire the luxury of a Second Chamber. But if they do opt or vote for twenty to twenty-five or thereabouts. Today, I know that in Coorg the council consists of twenty members. I feel and I urge upon this House that we should not countenance the setting up, in tiny States of less than ten million population of a Second Chamber with a strength of forty members. If will not only be a luxury but an unnecessary drag upon the Lower House, and if we once provide in this article that the minimum shall be forty, then every tiny State in our Indian Union will be encouraged, and instigated if I may use the word, to ask for a Second Chamber. If we lay down definitely that we shall not have more than one-fourth of the Lower Chamber in the Upper Chamber, then many tiny States will not vote for a Second Chamber in their States. Besides, we have already passed an article in this House that parliament may be law provide for the setting up of a Second Chamber in a State where there is none if the Legislature of that State asks for one; and this proviso under reference will act as an encouragement to tiny States of five million and six million population to ask for a Second Chamber, because they will be guaranteed a strength of forty in the Upper Chamber. I think this situation should not be countenanced and we should delete the proviso because in bigger States which have more than fifteen and sixteen million population, it will be forty ipso facto as the Lower Chamber will consist of more than 150 members; but tiny States should not be encouraged to have a Second Chamber in their own States.

The second amendment is with regard to clause (2) of the proposed article. I seek deletion of the first part of this clause which vests in the future Parliament power to alter the composition of the Upper Chambers in the States. I feel that so far as the composition of Upper Chamber-or Lower Chambers for the matter of that-is concerned, it should be more or less sacrosanct and open to change only by means of an amendment to the Constitution and not by a law of Parliament.

In clause (3) we have vested power in Parliament as regards certain matters relating to the determination of Local Authorities which might vote in this connection and the qualification for graduates. All that I am content to leave to Parliament. But the composition of the Upper Chamber or both Chambers, should be alterable only by an amendment to the Constitution and not by a simple majority in Parliament. Yesterday, I remember that Dr. Deshmukh pointed out to Section 61 of the Government of India Act, which puts the composition of the Chambers of the Legislatures on a different footing form subjects connected with franchise and other cognate matters. Even the Government of India Act. which we regarded as reactionary, gave a separate and more important and sacrosanct place in the Act to the composition of the Chambers.

So, I feel that so far as the composition is concerned, we should lay down specifically that that can be altered only by an amendment to the Constitution and not bay a law, made by parliament. With regard to the other matters mentioned in clause (3), there is no harm if they are left to determination by parliament by law, but in my judgement, the composition of the Chambers is so important that parliament should have no hand in changing it except by an amendment to the Constitution.

Next, I come to amendment 3. I might however take amendments 3 and 4 together. Clause (5) Provides that the nominees of the Governor in the Upper Chamber shall be persons having special knowledge or practical experience in respect of literature, science, art, co-operative movement and social services. Through my amendment, I seek a change in these various categories. I wish to provide that the nominees of the Governor shall be persons who will have special knowledge in the fields of religion, philosophy, literature, science, art and social services. It passes my comprehension why the category of "co-operative movement" has been included specifically in this clause and why so much importance has been attached thereto. I am all for co-operation-- everywhere, in the House and outside the House. Without co-operation we will get nowhere. No nation can get anywhere without co-operation. But to specify the co-operative movement in this clause seems to me to be wholly unnecessary, and if at all it is necessary-and if the wise men of the Drafting Committee feel that they must find a place for men and women eminent in the co-operative movement in the Upper Chambers-there is the category of social services. I suppose the term 'social service' if understood in a wider sense does include the co-operative movement. It is not a political service or educational service : the co-operative movement is a social service. And when social service is provided for, I do not see why we should specifically provide for the cooperative movement. I do not know who has suggested this particular category to be included. It is, if at all, a sub-category and it should find no place as such in this clause.

Coming to the suggestion of two new categories, that is to say, religion and philosophy, I should like to plead with the House that in spite of repeated admonitions to us that ours is and will remain a secular State, I am convinced that the secularity of the State cannot act as a bar to men of religion or philosophy. After all the only argument that may be advanced against my amendment is that a secular State does not necessitate the presence of men and women of religion or philosophy in our legislature. That to my mind is a wholly erroneous conception. The conception of a secular State is in my humble judgement not a State which has discarded religion or philosophy in the highest sense but a State which is in the highest degree spiritual, and in the light of that highest spirituality or highest religion, regards all religions as one and makes no distinction between one religion and another. Is it necessary, I ask, to plead with my honourable colleagues here that the presence of men and women who have devoted or dedicated their lives to the cause of the highest religion and the highest philosophy-spirituality-will lend colour and dignity to the house ? Have we not felt on many occasions the presence of my friends, who today are not here, Dr. Radhakrishnan and Rev. Father D'Souza, through eloquent speeches here having contributed to the weight of our debate ? Have we gone so far in our interpretation of a secular State that we consider that there is no place in our legislatures for men of philosophy and religion. ? I for one will shudder to think if we lay down a constitutional bar to the admission or the entrance of men of philosophy and religion in our legislatures. After all, we in India have always stood for certain fundamental spiritual values. Even if other legislatures have not provided for and not given a place to such men of religion and philosophy-I think I am not quite right in saying that, because in the British parliament we have the Lords Temporal and the Lords Spiritual; some other countries too have similarly provided, I suppose the Irish parliament and other countries-but even if they have not, it does not act as a precedent to me. We, framing the Constitution for our country, should not give the go-by to the finest traditions of our race, country and nation. We should not in any way make the world feel that the men of religion and philosophy have no place in our legislatures. It was only a few months ago that this Assembly accepted an amendment of mine providing for an invocation of God in the oaths to be administered to the President and to the Governors. I say it will be wholly in conformity with the spirit in which this House accepted that amendment invoking the name of god. Almighty, if we provide that in the Upper Chambers-this clause only deals with that-we give an honoured place to Hindu, Muslim, Parsi, Sikh and other divines. I would welcome the divines of every religion in the Upper Chamber so that it will conduce not merely to the dignity of the Chamber and to the raising of its level, but also conduce to harmony in the House.

As regards the amendment moved by my Friend Mr. Naziruddin Ahmad that medicine should be given a place I feel that medicine is comprised in science and so there is no need for a special amendment as regards medicine. It may be argued against this amendment of mine that literature or art or science, or altogether, may comprise philosophy. Science of course in the highest science-according to the Greek *scio* meaning 'to know,' that is, knowledge-does connote the highest knowledge-- *paravidya* and *aparavidya*-- but science as it is currently known and as it is in vogue today does not connote philosophy and religion. As a matter of fact all the eminent scientists today are agreed on this point that where science ends, religion begins. I agree that the day may come when the thin partition between science and philosophy may vanish and the highest science and the highest philosophy may be used into one whole. But that is not so now and we are legislating for this particular period when there is science and art on the one hand and religion and philosophy on the other. I, therefore, urge that the representatives of philosophy and religion. And I hope that in the future Parliament of this country the Upper Chamber will include men who have dedicated their whole lives not merely to literature, science and art but also the highest philosophy and the highest religion.

I move, Sir, my various amendments and commend them to the acceptance of the House.

Mr. Vice-President : I should like to remind Members that we have had a long discussion on this article on a previous occasion. I hope they will confine themselves to new points and make them briefly.

Shri Brajeshwar Prasad (Bihar : General) : Sir, I rise to oppose article 150 as moved by Dr. Ambedkar. In clause (1) it is mentioned that the total number of Members in the Legislative Council of a State having such a Council shall not exceed one-fourth of the total number of Members of the Assembly of that State. I do not see why the membership should be limited to one-fourth of the total. Secondly, in clause (2), the words, "as parliament by law prescribe" still find a place. I had hopes that after our discussion of this article last time this nasty business of parliament interfering with the composition of the Legislative Council will be averted. It is my impression-I am open to correction, I hope that my suspicions are unfounded, but this is my impression-that the Members of the Drafting Committee have now changed their minds, they have now come to the conclusion that it is not desirable to have a second Chamber in the Provinces, therefore they are now resorting to these methods so that it may not be possible to have second Chambers at all in the Provinces. In the article it is not mentioned when the parliament should decide the composition of the Legislative Council; the whole question may be left undecided. The Government of India on the plea of want of time may not come before the House to decide the question of the composition of the Legislative Councils. The result will be that on the commencement of the Constitution there will be no Legislative Councils in the Provinces.

Sir, I am a keen supporter of second Chambers in the Provinces. I feel that we are taking a grant leap in the dark. Adult franchise will release forces of violence and of disorder on a scale of which probably we have got no idea at present. Therefore, I feel that there should be some organisation in the country which may act as a brake on the vagaries of adult franchise. Secondly, in all the sub-clauses of clause (3) parliament comes in. It is for the Constituent Assembly to decide and not for Parliament, as to what should be the other local authorities over and above the Municipalities and the District Boards which should form the electorate of the Legislative Councils. Again in sub-clause (b) it has been left for Parliament to prescribe the qualifications which shall be equivalent to that of a graduate. Again, in sub-clause (c) it has been left for Parliament to decide the electorate and in clause (4) it has been mentioned that the Members to be elected under sub-clauses (a) to (c) of clause (3) of this article shall be chosen in ;such a manner, in such territorial constituencies as may be prescribed by or under any law made by Parliament.

So, I am definitely of the opinion that there has been a fundamental change; in article 150. The article which finds its place in the Draft Constitution is of an entirely different character where Parliament has not been empowered to interfere with the composition of the House. But somehow or other, for reasons best known to the Members of the Drafting Committee-probably they may not be responsible, they may not be free agents in this matter-somehow or other this thing has been foisted. I do not see how the future Parliament of India shall be in a better position to come to a decision on the question of the composition of the Legislative Councils. We have been sitting here since the last thirty-three months. If we are not in a position to decide the composition of the Legislative Councils. I do not see any reason why the future parliament of India will be in a better position to decide this question. It is no use postponing the evil day. It is far better that we sit here and decide the composition of the Legislative Councils, or let us frankly say that there is no need for Legislative Council in the States. Probably most of the Members will agree and abide by the decision on higher bodies and authorities.

I would like to reiterate once again my stand on this question of the Legislative Councils. I want that these bodies should be nominated bodies. A Legislative Council should be nominated by the governor in his discretion, or by the President. The Members should be nominated for life and all the Members must have some educational qualifications. It is no use sending a Member who does not know how to sign his own name. I have no objection if a Member is elected by a municipality or a district board, let the municipal commissioner go to the Legislative Council but such a municipal commissioner must be a graduate. I have no objection to a school teacher going to the Legislative Council, but such a school teacher must be a graduate. I have no objection to a Member of the Provincial Assembly going to the Legislative Council, but such a Member must be a graduate. I have no objection to the Governor nominating persons to the Legislative Councils but I want that he should nominate only graduate Members. There is no use sending illiterate persons to the Legislative Councils.

Shrimati Purnima Banerji (United Provinces : General) : Mr. President, Sir, article 150 had come up for discussion before this House on a previous occasion, and the question of who should form the Upper House was discussed at that stage. As the amendment now proposed as to who should elect these Members-municipal boards or the Provincial Assemblies-the electorate was mentioned but not the qualifications of those who are eligible for membership of the Upper House.

If we look into the reason why an Upper House is constituted, we all feel that the necessity of such an Upper House was that it should be a revising body, it should give the Assemblies an opportunity to include any small amendments or useful amendments and also that the Lower House should have the benefit of such Members of the society who could not stand for election in the adult franchise electorate-such useful members of society should be associated in the work of legislation and government at some stage or the other. Therefore, Sir, I feel that, keeping this object in view, a certain kind of qualification for Members should have been laid down even for those two categories, that is those who are to be elected by municipalities and district boards and those who are to be elected by Provincial Assemblies.

There is another point. I am glad that the teaching profession has also been associated. I would only emphasise that not only teachers of schools but also voluntary teachers, should be included. In the new set up, if education is to make any great advancement, I am sure we shall need the help of able and qualified persons who will act as voluntary teachers. I would therefore, suggest that in the teaching profession one should include voluntary teachers also. From time to time our Ministers have been appealing to the public to come and help in this great work. I, therefore, feel that their association should be sought.

Thirdly, where you have asked for nomination of Members by Governors, the words used are "social services". In this connection, I had given notice an amendment to the effect that "social service" should include "voluntary social service". The object with which I tabled that amendment was that by social services as we all know, or as the House is now passing the article, I am sure they have in mind voluntary social service or social service done by such useful bodies as the Harijan Sevak Sangh, the Kasturba Memorial or any other similar organisations where the workers are paid undoubtedly but it is hardly a payment but more or less a stipend, and they give most of their time to this work. I emphasise the words 'voluntary social service', because lately provincial and other Governments have opened branches of studies in the subject and are giving diplomas for attending the social service camps which are organised. For women workers who wish to do such social service the provinces have not provided opportunities for opening such camps. Facilities are lacking for opening such social service institutions. Therefore, when I say that voluntary social service should be included I mean that women's organisations which are in the field and whose members are eligible for such nominations should not be left out by a narrow interpretation of the words 'social service'.

Another suggestion that I want to make is that a certain form of labour which is unorganised and which is not formed into a constituency may, as labour is allowed representation in the Lower House, be allowed representation also in the Upper House and the co-operation of those useful members of society secured.

Shri V.S. Sarvate (Madhya Bharat) : Sir, in the proposed article 150, it may be noted that clause (3) gives representation to university graduates. The wording of the clause as it is, raises some difficulty. The expression "consisting of persons who have been for at least three years graduates of any university in the State" means that for graduates to be electors two conditions are necessary : that must be in the State. It may be seen that this would cause much difficulty. For instance in Central India there is no university located. Therefore any university graduate in Central India may not be able to vote under this clause. The other difficulty is that before 1904 there was no University Act prescribing territorial jurisdiction to the universities. Therefore any person who was desirous to appear outside his province. For instance, a Bombay student was allowed to appear for the examination held by the Calcutta University. So there may be now in Bombay many persons who are graduates of the Calcutta University. It may also happen that persons who were first residents of Calcutta and have become Calcutta graduates may have migrated to other provinces and become residents there. Such persons, being graduates of a university located outside the State I.e., the province may not be able to vote in that province or State. To avoid this difficulty, I beg permission to move two amendments which bring out the intention of the Mover in a more consistent way. I hope Dr. Ambedkar would accept them. The first amendment that I propose is this : In clause (b) in the second line, after the word 'persons' add the words "who are habitually residing in the State and".

My second amendment is that, for the words "in the State" which occur after the words "any University", substitute the words "in the territory of India". So the clause as amended would run thus : "as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who are habitually residing in the State and who are graduates of any university in the territory of India". I trust these amendments will bring out the intention more clearly and will be acceptable to the honourable Mover.

Dr. P.S. Deshmukh (C.P. & Berar : General) : Mr. Vice-President, Sir it was at the instance of the Honourable the President that we have here in outline of the composition of the Second Chambers in the Provinces being determined in this Constitution and not being left to parliament as was suggested earlier. I say it is an outline, because, as honourable Members will be pleased to see, in almost every clause there is something that will have to be decided by parliament. Every clause contains the words 'as Parliament may by law specify, or as may be prescribed by law'. This shows that the whole structure of the Second Chambers is presented here in a bare outline specifying merely the numbers which will approximately represent the various interests mentioned herein.

Now, in spite of the fact that we have his outline before us, I think it is yet correct to say that there is no need as a matter of fact for Second Chambers at all because even now we are not certain as to what particular interests deserve protection and representation in those House. We are going by resorting to this amended article to give representation in the Second Chambers in certain provinces to ;such categories of persons and people as are hardly worthy of it in a stricter sense. If we examine the article from this point of view, we will have to accept the contention that the composition of the Second Chambers is not going to be anything radically different from the composition of the Legislative Assemblies, i.e., the lower Chambers. As many as one-third are going to be chosen by the members of the Legislative Assembly themselves. It is improbable that they would choose anybody unlike themselves. They are likely to choose men of the same qualifications and social status as themselves. probably economically also those thus selected will be more or less on the same footing as those who have been selected by adult franchise to the Provincial Assemblies. Then, if we look at the other categories such as persons who may be chosen by graduates and teachers, there is no likelihood that any of the best elements in society will be chosen. They are again likely to be of the same nature as members of the Legislative Assembly. This article also bears the imprint that it has been very hurriedly drafted. There are so many unsatisfactory expressions used in it and so many errors one of which was pointed out by Mr. Sarwate. There is also an element of chance so far as the making of the whole Constitution is concerned. This is borne out by this particular article. I do not think honourable Members will point out that on any occasion at any discussion a secondary school teacher was intended to be a voter for election of members to the Second Chambers. I had never heard of it. I hear for the first time this important privilege being given to the secondary school teacher in the amendment proposed by Dr. Ambedkar. We have graduates of universities. One can understand representation being given to them. I do not see why a secondary school teacher has been brought in for this privilege. And if a secondary school teacher is lucky enough to find a place why not include the primary school teacher also for the grant of this privilege ? I think this is very unfair to the primary school teachers. Secondly, when we are considering a graduate as a qualified person to elect persons to the Second Chambers, and also a secondary schcool teacher, how will it be possible to keep these people away from politics ? Sir, I do not think that the Drafting Committee has paid very careful attention to this side of the question. There is going to be a very large number of persons in the Government services and those persons are likely to be mostly graduates even if the views propounded from time to time by my honourable Friend Mr. Brajeshwar Prasad are not acceptable to this House. Wherever we go, we shall meet with graduates and already thanks to the British Government's attaching disproportionate value to university education and the fetish they made of university degrees with which I completely disagree, we will be having a very large proportion of our graduates in the Government services. On the one hand you will have to deny them the franchise or on the other if we give the franchise, you will have to drag them into and permit them to dabble in the day to day politics. I would like the Honourable Dr. Ambedkar to imagine what will be the condition of the services. Would it be wise to permit the permanent services to take part in politics and to enter elections not probably-at any rate I hope not-as candidates but as voters ? And what will be the effect of all this on the whole politics of the country. I leave it to the honourable Members of the Drafting Committee to judge. I have got an instance in point which will show the kind kind of things the permanent services are capable of doing. A graduate of a particular standing in the Nagpur University can select a certain number of representatives on the Nagpur University Court i.e., lower body in the University and it has been our experience that more than half of these people were permanent Government servants because they had the required influence and the required power to influence by canvassing in direct and indirect ways; they could, sometimes against the wishes of the voter, collect the voting papers from the voters, get their signatures beforehand and post all the voting papers in one bundle to the University so that even before the result was declared the required first preferences having been already securely secured their election was guaranteed and a certainty. Here also we are going to have the same system of proportional presentation for which some members show great admiration and with which they are fascinated. I for one think that this aspect of the question in regard to the franchise we are proposing for representation on the Upper Chamber should be considered with greater care so far to see whether it will be wise to allow the permanent services who are bound to be graduates to interfere in the elections and to take part in politics.

Another point which I would like to emphasise is that the Drafting of this Constitution appears to me to be a veritable lottery. At least two categories of persons who could have never dreamt of getting any representation in the Second Chamber appear to have got the merest chance. I refer to the inclusion of the words "co-operative movement" as selected for nomination by Governor. This has been rightly criticised by my honourable Friend, Mr. Kamath. It was really suggested that all persons who are members of primary co-operative societies should be given votes along with the members of the local boards, municipalities, etc., so that they may take part in the election and be included in sub-clause (i). I cannot understand what particular competence, what special expert knowledge, what special qualification the co-operative movement itself is presumed to possess so that the Governor must chose somebody from that movement. This is an absolutely funny proposal and I do not know what milder words to use. I think this is really something that has just crept into the article without anybody's strong volition. I am at any rate not aware of any demand from any quarter in this regard. The wording is absolutely understandable to me except as a pure accident unless we intend that Rao Sahibs and Rai Bahadurs who have prospered under it should be helped and promoted. They never contributed a single pie, borrowed anything, they merely took the money from the Government or some one else and gave it to the agriculturists. It is such person who are supposed to be the great and celebrated co-operators. If it is intended to make a law so that the Governor could nominate such nonentities, such people who have exploited both the agriculturists as well as the Government and give them representation on the Second Chamber, then alone the provision is understandable; otherwise, I am absolutely at a loss to understand how the co-operative movement should get a place in this sub-clause (5). I am really very much surprised. The other instance of persons who got representation on the Upper Chamber are the school teachers. On the whole, we find that the totality of the representation we are going to have on the Second Chamber is not going to be very much different from the composition which we are going to have so far as the Provincial Assemblies are concerned and that being so, there is no use wasting our energies spending so much time and money on the composition of this House, since it is not going be anything much different. I feel like foretelling that this House will probably be more reactionary than even the Provincial Assembly. The only justification for a Second Chamber is that a State should ;have for the purposes of stability and as a check on hasty and harmful legislation a Chamber consisting of such persons who are not likely to take part in the day to day politics and to fight elections and spend the money that elections need. Their experience, ;their mature judgement and their position in the society and country are such that they do not, want to take the trouble of going through an ordinary election. But at the same time they constitute the more sober elements in the society and it is a national loss if their experience cannot be availed of or placed at the service of the State. It is for these purposes that Second Chambers are provided for. Is there any room except the nomination by the Governor for such persons to come to the Second Chamber ? There is none. Almost every one else is going to be of the same position as the members of the Provincial Assembly and therefore the whole paraphernalia is going to be completely unnecessary and burdensome and it is not likely to serve the purpose which is intended by the Drafting Committee. I think this House will be committing an error in accepting this article as it stands and to have a Chamber like this which will be absolutely useless and will not serve any purpose which such chambers are calculated to serve. I would therefore like to suggest, Sir, that the whole structure of the Second Chamber should be completely modified or that the whole thing ought to be dropped.

Shri T.T. Krishnamachari (Madra : General) : The question be now put.

Mr. Vice-President : Closure has been move. I am going to place..............

Prof. K.T. Shah : I already said I will reserve my remarks for a general discussion.

Mr. Vice-President : Prof. shah may now speak. After he speaks, I will put the closure.

Prof. K.T. Shah : At the time when this amendment came to be discussed, the amendments which we originally tabled became overlapping, or mutually inconsistent : and in the desire to save the time of the House, as well as to maintain the clarity of the issues to be discussed, I offered to withhold those amendments. I am afraid, however, that the compromise draft that the Honourable the Chairman of the Drafting Committee has placed before the House, is not even not satisfactory to the sections of the House interested in such matters; it makes matters worse than even the original article to which this amendment has been presented. I would, however, confine my remarks to the new article proposed by Dr. Ambedkar, and would like to point out that in almost every respect the new draft does not make any improvement over the original article.

On the previous occasion when we had a discussion on the subject Dr. Ambedkar himself reminded the House of the classic remark of Abbe Sieyes who said that if the Second Chamber agreed with the first House-the lower House, it was superfluous; and if it disagreed, it was dangerous. I am afraid that, true to his own learning, he has made a presentation of a Second Chamber which is going to be both superfluous and dangerous and which would not make it at all suitable for the carrying out of the real function that the Second Chamber may usefully or harmlessly discharge ?

In this case, as it has already been pointed out, the limitation on the total strength may become incongruous, in view of the strength of the population in the different States; and the actual strength of a Second Chamber in a State may be such as to be perhaps incompatible with or unworkable along with the Lower Chamber.

But, leaving that matter aside as a mere matter of detail, I would invite attention to another point which relates to the elective principle and the nominating principle that are both attempted to be combined in this Draft. Certain elements of the Second Chamber as here-proposed are to be elected; and the constituencies or electorates are to be framed in accordance with the laws made by parliament : I take it, that it means the Central legislature, the central law-making body. That is to say, the local legislatures or the local authorities would not have any initial say in the composition of that body, so far at any rate as these electorates are concerned.

At the same time, in a later clause of this article, nomination is brought in by the governor, who is primarily, exclusively a local authority. The combination of these two authorities plus the election by the local legislature, the local Lower Chamber, makes a hotch-potch, I think, of the various interests or authorities entitled under this amendment to send their nominees or representatives to the Second Chamber.

The purpose of the Second Chamber, as has been laid down in the different parts of the Constitution, would be to join in the legislation, have a sort of watch or supervision over the administration though not equal authority over the finances and sometimes to delay what might be called hasty legislation. If that is to be the purpose or function of the Second Chamber as conceived in this Constitution, the provisions here made for its constitution would, I am afraid, not at all serve that purpose.

In the first place, its total strength is too small, it will not be more than one-fourth of the First Chamber, and consequently will not ever be in a position effectively to influence opinion as formed by the majority of the Lower Chamber, unless, of course, that majority is a very chancy or a slight majority.

Secondly, there are to be in the Second Chamber elements representing to the extent of one-third plus one-sixth, that is, five-sixths, that would be really in one way or another nominees of the Lower Chamber. The Governor nominates about 2/6ths. He will act presumably on the advice of the party in power. Therefore, these would be up to at least five-sixths creatures of the Lower House or of the Governor acting on the advice of the party in power in the Lower House. As such, it will only be a duplicating or complicating machinery without making it more useful. A suggestion has been thrown out, not as an amendment, but as a remark in the course of the debate, which would make some elements in this House or a section of the House as life appointees. Being myself against the Second Chambers on principle altogether, I do not look upon it as an improvement to make a life tenure for some of the members. In any case, the composition, whether by nomination or election by the Lower House and nomination by the Governor, would be, to some extent, confusing, I think, with the general electoral principle as determined by central legislation enacted by Parliament.

Then, again with regard to the various elements which are sought to be brought into the Second Chamber such as representatives of graduates and teachers. I really do not see what purpose they would be peculiarly qualified to serve, that the members elected by the local bodies or elected by the lower Chamber will not be able to serve. It seems to me that these other bodies, particularly, the graduates and teachers, one-twelfth each, will be really helping, if at all, to confuse the issues so as to make the discussion more difficult and bewildering and progress more hampered rather than serve any useful purpose. Dr. Deshmukh and other speakers have pointed out the way in which graduates, for instance have been acting in their own nearer interests of the University elections. I may quote my own experience of the working of the graduates electorate. However, strong a believer I may be in their right to be represented in the University bodies. I am afraid to make of them a special electorate for the Second Chamber in a State. And the three years standing appears to me to lack any reason or principle.

Whatever may be the convenience of securing them as elements to be represented in the Second Chamber, I fail to understand what principle there could be in just selecting graduates and teachers against any other section or professions in the State. The teachers, moreover, would be a part of the social services. I take it social service is such a wide and comprehensive term that it can easily include the teachers, health workers, public welfare visitors to jails or factories and so on, so that if we really want to have Social Service as such, as a category to be represented by itself, to select a fraction of it like the teachers separately is again an over-doing or rather duplicating the machinery.

The classification in the last instance or certain elements to be nominated by the Governor, such as science, literature, art, co-operative movement and social services, seems to me again to suffer from the same defect of there being absolutely no principle whatsoever by which these items have been chosen and others, which could be put equally on a par with them, are left out.

My Friend Mr. Kamath mentioned, for example, that he would like to add religion. This is the one subject on which I am afraid I have never been able to agree with Mr. Kamath. Representation of religion in a body of this kind seems to me to be utterly uncalled for and out of place. However, it is also a category that might have been suggested, though in what way that category would function I cannot quite imagine, myself. Would you choose the Ministers of religion ? Or would you choose those who profess or speak loudest in its praise ? Or those who follow silently whose number is unknown ? These are categories which if included in the Second Chamber appear to me to be only giving so much more power to the Governor or his Advisers to put for ornament's sake or for the sake of honouring those particular persons who are supposed to represent art, literature, science, co-operative movement and social services. Of all these perhaps the co-operative movement is the only one which may be said to have some definite organisation. If selection were to be made out of such elements, here is the only one illustration where selection could be made according to some reasonable understandable principles. For the rest, eminence in science, art, literature or social service would be judged more by a person's occupying certain chairs or posts, and having a certain reputation as a publicist; or indications of this character rather than representation of the whole element of such which is not organised, unless, again, it may be the intention to select such people from the Universities for example which are said to represent or embody the faculty of art, faculty of science and so on.

For all these reasons, it is evident that this compromise draft will not really serve any purpose, let alone the purpose of making the Second chamber useless in itself and dangerous in its possibilities, and will not make the Second Chamber a part of the machinery that would add weight to our Constitution, to the dignity of the deliberations in the legislative bodies and to the sound working of a democratic system.

Mr. Vice-President : I will now put the closure motion to the House.

The question :

"That the question be now put."

Mr. Vice-President : Closure is accepted.

Some Honourable Members : The Noes were more vociferous.

Mr. Vice-President : May I call again ?

The question is :

"That the question be now put."

The Motion was adopted.

The Honourable Dr. B.R. Ambedkar : Mr. Vice-President, Sir, out of the amendments that have been moved, I am prepared to accept the amendments moved by Mr. Sarwate. I think he has spotted a real difficulty in the draft as it stands. The draft says- 'University in the State'. It is quite obvious that there are many States with at present no university. All the same there are graduates from other Universities who are residing in that State. It is certainly not the intention to take away the right of a graduate residing in a State to participate in the elections to the Upper Chamber merely because he does not happen to be a graduate of a University in that particular State. In order therefore to make the way clear for graduates residing in the particular State, I think this amendment is necessary and I propose to accept it. I would only say that the word 'habitually' is perhaps not necessary because residence as a qualification will be defined under the provisions of article 149 where we have the power to describe qualifications and disqualifications.

With regard to the other points of criticisms, I do not know that those who have indulged in high-flown phraseology in denouncing this particular article have done any service either to themselves or to the House. This is a matter which has been debated more than one. Whether there should be a Second Chamber in the province or not was a matter which was debated and the proposition has been accepted that those provinces who want Second Chambers should be permitted to have them. I do not know that any good purpose is served by repeating the same arguments which were urged by those Members at the time when that matter was discussed.

With regard to the merits of the proposition which has been tabled before the House, I have not seen any single constructive suggestion on the part of any Members who has taken part in this debate as to what should be the alternative constitution of the Second Chamber. Here and there bits have been taken and denunciations have been indulged in to point out either that that is a useful provision or a dangerous provision. Well, I am prepared to say that this is a matter where there can be two opinions and I am not prepared to say that the opinion I hold or the opinion of the Drafting Committee is the only correct one in this matter. We have to provide some kind of constitution and I am prepared to say that the constitution provided is as reasonable and as practicable as can be thought of in the present circumstances.

Then there were two points that were made, one of them by my Friend Mr. Nagappa. He wanted that a provision should be made for the representation of agricultural labour. I do not know that any such provision is necessary for the representation of agricultural labour in the Upper Chamber, because the Lower Chamber will be in my judgement having a very large representation of agricultural labour in view of the fact that the suffrage on which the Lower Chamber would be elected would be adult suffrage and I do not know.....................

Shri S. Nagappa : If that is the case, all other sections also to whom you are giving will also get representation in the Lower Chamber.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Friday, the 19th August 1949

Honourable Dr. B. R. Ambedkar: They are provided for very different reasons agricultural labour would be amply provide in the lower Chamber.My Friend Shri Muniswami Pillai by an amendment raised the question that there should be special representation for the Scheduled Castes in the Upper Chamber. Now, I should like to point out to him that so far as the Drafting Committee is concerned, it is governed by the report of the Advisory Committee which dealt with this matter. In the report of the Advisory Committee which was placed before the House during August 1947 the following provision finds a place :-

"(c) There shall be reservation of seats for the Muslims in the Lower House of the Central and Provincial Legislatures on the basis of their population.'

"3. (a) The section of Hindu community referred to as scheduled Caste and defined in scheduled I to the Government of India Act 1935 shall have the same rights and benefits which are herein provided for etc., etc."

which means that the, representation to be guaranteed to the Scheduled Castes shall be guaranteed only in the Lower Houses of the Central and Provincial Legislatures. That being the decision of the Constituent Assembly, I do not think it is competent for the Drafting Committee to adopt any proposition which would be in contradiction to the decision of the House. I might say, although I do not want to injure anybody's feeling. that if any one was vociferously in favour of this decision, it was my Friend Mr. Muniswamy Pillai and I think he ought to be content with what he agreed to abide by then.

Mr. Vice-President : Dr. Ambedkar you have to formally withdraw went No. 2.

The Honourable Dr. B. R. Ambedkar : Yes, I have to withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Shri H. V.Kamath: I beg leave of the House to withdraw amendment No. 3

The amendment was, by leave of the Assembly, withdrawn.

Shri S. Nagappa : In view of the explanation given by Dr. Ambedkar, I beg leave to withdraw amendments Nos. 66, 67, 68, 70 and 71.

The amendments were, by leave of the Assembly, withdrawn.

Dr. Manmohan Das: I beg to withdraw amendment No. 69.

The amendment was, by leave of the Assembly, withdrawn.

Shri V. I. Muniswamy Pillai : I beg leave of the House. to withdraw my amendment, and I do not agree with the observations of the Honourable Ambedkar.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President The question is:

"That in amendment 1 (List I Fourth Week), the proviso to clause I of the propossed article 150 be deleted.-

The amendment was negatived.

Mr. Vice-President : The question is:

"That in amendment 1 (List I Fourth Week), in clause of the proposed article 150. the words 'Unless Parliament by law otherwise provides' be deleted."

The amendment was negatived,.

Mr. Vice-President : The third amendment is for the deletion of the words "co-operative movement' in clause (5).

The question is:

"That in amendment 1 (List I Fourth Week), in clause 5 of the Proposed article 150 the words 'co-operative movement be deleted.'

The amendment was negatived.

Mr. Vice-President: The question is:

"That in amendment 1 (List I. Fourth Week). in clause 5 of the proposed article 150, before the word 'literature, the words 'religion, philosophy' be inserted.'

The amendment was negatived.

Mr. Vice-President: I now put Mr. Sarwate's amendment to the House.

The question is

"That in sub-clause (b) of clause (3) of the proposed article 150. after Words 'consisting of persons the words 'resident in the State be added, and for the words In the the words 'in the territory of India' be substituted."

The, amendment was adopted.

Mr. Vice-President: I now put amendment No. 2284 of the Printed List. Volume 1, that the word "medicine" be inserted in clause (5).

The question is:

"That in clause (5) of article 150, after the word 'art' the word 'medicine be inserted".

The amendment was

negatived.

Mr. Vice-President: I now put the amendment No. 2287 in the printed volume 1, for the addition of the words "engineering and commerce" in clause (5).

The question is

"That in clause (5) of article 150, before the word 'engineering the word 'commerce be added."

The amendment was negatived.

Mr. Vice-President:Now I place before the House article 150, as amended.

The question is:

"That article 150, as amended, stand part of the Constitution"

The motion was adopted.

Article 150, as amended, was added to the Constitution.

PART VII-A

Article - 215-A

The Honourable Dr. B. R.Ambedkar: Sir, I move my amendment No. 6, List 1, Fourth Week.

"That after Part VIII, the following new Part be

"PART VIII-A

THE SCHEDULED AND TRIBAL AREAS

215A. In this Constitution--

(a) the expression 'scheduled areas' means the areas specified in pars I to VII of definitions the Table appended to paragraph 18 of the Fifth Schedule in relations to the states to which those Parts respectively relate subject to any order made under sub-paragraph (2) of that paragraph;

(b) the expression 'tribal areas' means the areas specified in Parts I and II of the Table appended to paragraph 19 of the Sixth Schedule subject to any order made under sub-paragraph (3) of paragraph I or clause (by of subparagraph (I-) of paragraph 17-of-that Schedule.

215B. Administration of Schedule and tribal areas. (1) The provisions of the Fifth Schedule shall apply to the administration and control of the scheduled areas and scheduled tribes in any State for the time being specified in Part I or Part III of the First Schedule other than the State of Assam.

(2) The provisions of the Sixth Schedule shall apply to the administration of the tribunal is in the State of Assam."

Sir, my amendment merely replaces the original articles 189 and 190. The only thing we are doing is that we are transferring the provisions contained ilk articles 189 and 190 to another and a separate part. It is because of the transposition that it has become necessary to re-number them in order to secure the necessary logical sequence of the new part. Barring minor changes, there are no changes of substance at all, in the new articles proposed by me-article 215A and article 215B.

Mr. Vice-President: There is an amendment at page 253 of the printed volume I No. 2553, by Mr. Naziruddin Ahmad. Does he propose to move it?

Mr. Naziruddin Ahmad: The whole basis of that amendment is taken away come new amendments moved, making the whole thing impracticable.

Mr. Vice-President: Then you do not move it. The same remarks apply to amendments Nos. 2554 and 2557. 1 presume amendment No. 2555 is not Does any Member wish to speak on the motion ?

Shri Brajeshwar Prasad: Sir, I rise to support the articles 215A and 215B moved by Dr. Ambedkar. But I would like to add the following words Until Parliament by law otherwise provides It is not safe, it is not proper to define and lay down the constitution and the government of the tribal areas which cannot be changed without an amendment of the Constitution. Everything in the tribal areas is in a flux. Therefore it will be wise on the part of the Drafting Committee to add these words in articles 215A and 215B.

Shri Yudhisthir Mishra (Orissa: General): Mr. Vice-President, Sir. The Committee which was set up under clause 20 of the Cabinet Mission" Statement of 16th May, 1946 was required to report to the Constituent Assembly upon the scheme for the administration of the tribal and excluded areas, and to advise whether these rights should be incorporated in he Constitution : and I think, in accordance with the Cabinet Mission's plan, the Tribal Advisory Committee was set up to report about the administration of the tribal areas and the provisions to be incorporated in the Draft Constitution. 'The Advisory Committee has submitted its report and the present provisions have been incorporated in the Draft Constitution according to that report. Now, Sir, the Tribal Advisory Committee did not then enquire into the conditions of the tribal people in the Indian States as it was not within its scope. In the meantime, however, a large number of Indian States have been integrated into the neighbouring provinces and they will now be administered as parts, of those provinces. It is therefore meet and proper that the tribal people of these small States should also get the benefit of the present provisions. In the original draft, the States were excluded from the operation of these provisions regarding the scheduled tribes but they have been included in the amendment just moved by Dr. Ambedkar. When the backward tribal people of the provinces will have the benefit of the provisions of the Fifth Schedule, there is no reason why the aboriginal tribes of the States under the same administration should be excluded. There is a large aboriginal population in Saraikella and Khirswan in Bihar and Orissa and the C.P. States. inOrissa they form one-third of the population in the States. But I regret to say that none of the tribal areas in these States have been specified as Scheduled areas in parts V to VII of the table appended to paragraph 18 of the Fifth Schedule of the Draft Constitution. The reason probably for omitting the tribal areas from the category of Scheduled areas is that the Advisory Committee on Tribes has not been able to go into the whole question, as it was not within its scope. I would request the Drafting Committee to specify the scheduled areas from the States in the Fifth Schedule, when that particular Schedule is taken into consideration in this House. The President of the Indian Republic under the new Constitution will, of course., have sufficient authority to specify any new area in any State a.,; a Scheduled area under sub-para. (2) of paragraph 18 of the Fifth Schedule. If it is not possible for the Drafting Committee at this stage to specify the scheduled areas from the States in the Constitution, I would submit that as soon as the Constitution is passed, the President of the Indian Republic should set up a Commission to enquire into the conditions of the tribal people of these States and to report whether any of the areas would be specified as scheduled areas. I cannot but strongly press for the protection of these tribal people of Orissa and the C.P. States by bringing the tribal areas under the scope of the Fifth Schedule as has been done in the case of the provinces.

The tribal. areas according to the proposed Constitution will no longer be treated like excluded or partially excluded areas in the present Constitution, and as they have been done in the 1935 Act. The scheduled areas specified in the Fifth Schedule will not be excluded from the jurisdiction of the Legislature or executive but according to the provisions of the Draft Constitution, the Tribal Advisory Committee as has been provided for in the Fifth Schedule, will only work is a sort of check on the executive power of the provinces as far as tribal matters are concerned. I submit that the tribal people of these States are as backward as, their kinsmen in the provinces. 'Therefore, whilst supporting the amendment of' Dr. Ambedkar, I request him to take steps to incorporate the scheduled areas of Orissa and the C.P. States in the Fifth Schedule when that question comes up for consideration before this House.

Shri H. V. Kamath : Sir, I rise to support the suggestion made by my honourable Friend, Shri Brajeshwar Prasad, with regard to the future administration of these tribal areas. It will be agreed on all hands that we do not contemplate the continuance of these various tribal scheduled areas in the same condition as they are today. I am sure that all of us visualise the day when they will be brought up to the level of the adjoining neighbouring provinces and will be integrated with the Provinces and States that lie contiguous to them. We do not contemplate a permanently different type of administration for them, from what is obtaining or might obtain or will obtain in the rest of India. In the light of these considerations the suggestion made by my Friend, Shri Brajeshwar Prasad is quite sound and I suggest that we should adopt the article as proposed by Dr. Ambedkar today, subject to the condition "until Parliament by law otherwise provides". We have just now adopted an article where we have vested power in Parliament to alter such.a fundamental thing as the composition of the Second Chamber. I do not see any reason why, as regards the constitution of these tribal councils ', and in general the administration of the tribal areas, Parliament should not be vested with the power to alter, at any subsequent date, this Constitution by an ordinary vote of Parliament.

Pandit Thakur Das Bhargava (East Punjab: General): According to, Mr. Brajeshwar Prasad the whole thing is in a state of flux. Therefore it is a good ground that Parliament should be given the power.Shri Brajeshwar Prasad: That is exactly what he is saying

Pandit Thakur Das Bhargva: The very ground given by Mr. Brajeshwar Prasad constitutes a good reason why Parliament should be empowered and the proposed provision is justifiable.

Shri H. V. Kamath: On the contrary, Parliament should also have the power to declare other than otherwise, later on. It can change later on. I do not know what Pandit Bhargava has in his mind. I hope he will make it clear later on. But it is clear to me that it should not be left to an amendment of the Constitution: as it is, it will be so rigid that the Constitution will have to be amended if we wish to change the constitution and administration of the tribal areas. But if we leave it to Parliament to change it, it will be easier: otherwise it will involve an amendment of the Constitution, which I do not like in this particular context. I therefore suggest that Parliament should be invested with the power to make any suitable alterations in this regard and therefore the suggestion made by Shri Brajeshwar Prasad may be embodied suitably in the final draft of the article before it is brought before the House.

The Honorable Dr. B.R. Ambedkar: I do not think there is any necessity to offer any remarks in reply.

Mr. Vice-President: The question is:

"That after Part VIII, the following new Part be inserted:-

PART VIII-A

THE SCHEDULED AND TRIBAL AREAS

215A In this Constitution-

(a) the expression 'scheduled areas' means the areas specified in Parts I to VII of Table Definition appended to paragraph 18 of the Fifth Schedule in relation to the States to which those Parts respectively relate subject to any order made under sub- paragraph (2) of that paragraph;

(b) the expression 'tribal areas' means the areas specified in Parts I and II of the Table appended to paragraph 19 of the Sixth Schedule subject to any order made under sub-paragraph (3) of paragraph 1 or clause (b) of sub-paragraph (1) of paragraph 17 of that Schedule.

215B. (1) The provisions of the Fifth Schedule shall apply to the administration Administration and control of the scheduled areas and scheduled tribes in any of scheduled State for the time being specified in Part I or Part III of the First and tribal areas Schedule other than the State of Assam.

(2) The Provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam."

The motion was adopted.

Part VIIIA and articles 215A and 215B were added to the Constitution.

Mr. Vice-President: The question is:

"That article 189 be deleted."

The motion was adopted.
Article 189 was deleted from the Constitution.

Mr. Vice-President: The question is:

"That article 190 be deleted".

The motion was adopted.
Article 190 was deleted from the Constitution.

Article 250--(Contd.)

Mr. Vice-President: We now take up article 250. When the article was last under consideration Mr. Sidhva was speaking on his amendment No.12 of List I-Fourth Week.

Shri R.K. Sidhva: Mr. Vice President, Sir, as you rightly stated, last time when I was moving my amendment No.12 the Honourable Dr. Ambedkar intervened and stated that this article should be held over. My amendment in the printed list (page 27) reads:

"That with reference to Amendment No. 2851 of the List of Amendments, in article 250, the following proviso be added at the end:-

'Provided that the proceeds collected by the Government of India under clause (c) shall be assigned to local authorities in the jurisdiction of the States'.

If you refer to clause (c) of the article you will find that it relates to "terminal taxes on goods or passengers carried by railway or air". My amendment, if accepted, would mean that, while (a) (b) and (d) would remain, (c) would go. I will give you my reasons as to why I desire that clause (c) should be deleted from this article.

The Octroi, terminal tax and toll tax are more or less allied taxes and at the same time they form the major revenue of the local bodies. Prior to the Government of India Act, 1935, the terminal tax was a provincial subject. In the 1935 Act this terminal tax has been put as a Central subject. The Drafting Committee haw more or less borrowed the section from the Government of India Act with minor changes in the language. They have not taken care to see why the terminal tax was changed in the 1935 Act from a provincial subject to a Central subject. If they had taken pains in the matter I am confident that they would have accepted my amendment.

This octroi tax which is levied by the local bodies is a pernicious tax. It creates so many complications. The tax is levied on the weighment of goods and in the matter of *ad valorem* also on the weighment of articles carried by rail, which has created a kind of harassment to the trade. Not only that. It has also lead to corruption with the result that the Government of India appointed a Committee to investigate into the matter. They unanimously resolved that the octroi should be abolished and instead terminal tax should be substituted.

Terminal Tax is a very substantial tax which is recovered by various local bodies, and on the recommendation of that Committee in many local bodies this octroi has now been abolished although it has proceeded with a slow pace. Today nearly 80 per cent of the local bodies still levy the octroi and the Provincial Governments are permitting them without taking any notice of the recommendations of the Committee.

The terminal tax is levied by municipalities and also by the Sanitary Committees and local boards Committees. The object of this alternation in the Government of India Act, 1935, is quite evident. This terminal tax brings a substantial big amount on one single item which is imported, namely, petroleum. The kerosene and petrol which is imported from foreign countries is subject to a tax, and although the terminal tax is only one pice per gallon it brings in a revenue of nearly Rs. 1,10,000 for only one tanker which arrives at either of the ports of Karachi, Bombay, Madras or Calcutta. This affected the Britishers who hold the sole monopoly of the import of these articles. Therefore, for the interest of their own nationals, the Britishers at that time thought that under the provisions of the Government of India Act, 1935, which confers autonomy to provinces, if the terminal tax is allowed to be retained by the province, the province might further increase the terminal tax. Therefore, they conveniently omitted this from the provincial list and tagged it on to the Central list.

You will be pleased to see that I had moved another amendment in this matter which I am glad the Drafting Committee has accepted. That amendment was that after the word "railway" there should be a comma and the word "sea" should be added. In the original clause you will find that the word "sea" is omitted. The Drafting Committee without considering its implications merely copied the words from the Government of India Act. I brought to their notice that the omission of the word "sea" was deliberate on the part of the framers of the Government of India Act, 1935, their object being not to allow the terminal tax to be levied on petroleum goods which arrived by sea, and they therefore intentionally omitted the word "sea". I am not quite sure that the Drafting Committee actually realized the reason for accepting my amendment-I do not know whether they merely felt that 'air' and 'railways' are mentioned here but 'sea' is omitted and therefore 'sea' should be included, without realizing the implications of my amendment. My amendment, if not accepted, would have deprived the local bodies of a large revenue on terminal tax. Therefore, from that point of view I congratulate the Drafting Committee for having accepted my amendment. I can assure that if this amendment was not accepted, in all it would have brought a loss of a crore of rupees to the local bodies by way of this terminal tax.

I come to the other part in which it is stated in the article that this tax shall be collected by the Government of India but will be handed over to the States. So far so good. In the Government of India Act, 1935, there is a proviso that no fresh or additional terminal tax shall be imposed unless the permission of the Central Government is obtained. That is a most objectionable feature in that Act which has been copied by the Drafting Committee. You are preventing the local bodies from expanding their revenue by increasing the terminal tax on certain articles. I see no reason why the Provincial Government should not be allowed to increase it on the recommendation of the local bodies in regard to items on which they desire an increment in the terminal tax. The Calcutta Corporation wanted to increase certain items of tax on goods imported by rail, but when the matter was referred to the Government the increment was not allowed on the ground that it is a corollary of the toll-tax. The Kanpur Municipality had a question of similar nature which was referred to the U.P. Government which in turn referred it to the Central Government who did not give permission to accept any additional items. These are the impediment which stand in the way of betterment of the local bodies. I am sorry to state that the Drafting Committee have not taken this matter into consideration at all. At a Conference held last year of the Provincial Local self-government Ministers presided over by the health Minister, this question of Finances in relation to the Provinces and the local bodies was considered and a unanimous resolution was passed which was forwarded to the Drafting Committee. I fail to understand how when the Provincial Ministers are agreed unanimously on the point, the Drafting Committee negatived it. The resolution said:_

"The Committee was of the opinion that while terminal tax may be governed by Central Legislature, it should be made clear that such taxes are for the benefit of local bodies. With this end in view, it suggested that in the Draft article 250, the words 'and shall be payable to local bodies' be inserted after the words 'shall be assigned to the States in clause (1) of the Draft article'."

I fail to understand why they have discarded the suggestion unanimously put forward. I may also draw your attention to the amendment proposed by the Honourable Pandit Govind Ballabh Pant. He is one of the Ministers who takes great interest in the welfare of local bodies. He has stated that in clause (1) of article 250, sub-clause (c) be deleted and sub-clause (d) be re-numbered as sub-clause (c). I wish he was present here today; had he been present he would have supported me very strongly and I am sure if he had supported this, Dr. Ambedkar would have had no other alternative but to accept it. On a previous occasion when the question of the increment of the taxes on profession came up, my amendment suggested Rs. 250 *plus* a certain percentage but the Drafting Committee did not accept it. My friend Pandit Pant was very keen on it and he pressed for Rs. 250 and the Drafting Committee accepted it. It is very strange that the Drafting Committee ignores the recommendations from Members like us but when similar recommendations are moved by a man of position they accept them. What does it show? It shows that they have not understood the matter themselves thoroughly and only when - according to them - a responsible Member puts it forward they accept it. They consider us as irresponsible. I deprecate that idea. While I have the highest respect for the legal knowledge that the Drafting Committee have, I in return expect the same kind of respect from the Drafting Committee to those Members who have studied and have vast experience of the working of local bodies. I am very sorry that that spirit does not exist, otherwise there would be no dispute over the present question. Why should the terminal tax be removed from the Provincial to the Central List? It was done in 1935 for other reasons; the Britishers did not want a particular type of tax to be imposed on articles that they imported. The Provinces were autonomous in those days and they could have increased the terminal tax. It made no difference to the consumers, the tax being insignificant, but the collective amount that was brought in was beneficial to the local bodies. Sir, I feel very strongly on this question. It is not my view-point but I am telling you that as the President of the All-India Local Authorities Union they have unanimously supported my standpoint; all the Local Self-Government Ministers have supported it and because the Finance Minister of the Central Government is opposed to it, for reasons best known to him, the Drafting Committee has rejected these unanimous proposals. When my friend Dr. Ambedkar last time got up and intervened to say that this subject should be held over, I thought he would take a very reasonable view of this matter but I was surprised to find that he has made no change in his attitude and has allowed this article to remain as it was. It is not going to improve the financial conditions of the local bodies; the Provincial Governments will be put to a great amount of strain. It is up to this House to see that sufficient provision is made in the Constitution for the betterment of the local bodies. How else are you going to improve the lot of the common man and make him happy? The common man, the masses live in the villages; *gaon panchayats*, notified and sanitary committees and municipal committees all govern their respective villages and towns. Somehow it seems to be the notion of the Drafting Committee that they will have nothing to do with the local bodies, that it is the function of the Provincial Governments. I ask what business have you to take away the terminal tax to the Centre? Why should you take away the taxes for which a Province is legitimately entitled and which the local bodies have all along been collecting? The Centre has nothing to do with this tax. I want to hear one single instance where the terminal tax has been collected at any time by the Centre. It has been a Provincial subject and always recovered by the local bodies. Even the Provincial Governments have not kept a single pie of it to themselves but given it all to local bodies. This impediment of not allowing the terminal tax to be increased but having to come to the Centre for permission has brought about the result that the finances of the local bodies have suffered gravely.

Sir, I have sufficiently elaborated my points on this question. This being a technical issue many Members do not probably care to understand it, but I would request the honourable House to bear in mind one factor that if you really want the local bodies to live, if you want your common man to be happy, you cannot do it without giving them adequate money. You merely give them certain powers but you deny them the money which is entirely due to them. Today, the entertainment tax, the electricity tax and similar taxes which are rally the local boards' share, are taken away by the Provinces. In the County Councils of Europe and, I can tell you, in many States of America, these taxes are collected by the local bodies and not by the Government. Tramways, buses and taxis are run by local bodies in the other countries and all the gains' go to them. The terminal tax which the local bodies were enjoying upto 1935 were taken away from them in that year. I am very sorry that particular provision of the Government of India Act has been bodily put in the Draft Constitution. I expected the Government to bear in mind the difficulties of the local bodies. I hope the Drafting Committee would now at least see that this clause is omitted especially when an amendment to this effect has been sponsored by no less a person than Pandit Govind Ballabh Pant, at the instance I think of the Conference of Ministers of Local Self-Government who unanimously demanded this financial provision for the good working of the local bodies. It is only the Finance Ministry who are against this demand. They want to grab everything. This is unfair. From this point of view I move the amendment and I expect that even at this late stage the Drafting Committee will consider the necessity, the urgency and the importance of this tax being left to be levied by the Provinces for the benefit of the local bodies. I have here before me a report of the United Provinces Grants-in-aid Committee. I wish the Drafting Committee had read this report. They have made out a very strong case for the purpose of the terminal tax which they say, should be allowed to be levied by the local bodies. They also say that the local bodies should be given freedom to increase the number of items for the levy of this tax and to increase the tax. If you bring in an impediment to this, you will be doing a great disservice to the administration of the local bodies, while the Provincial governments are doing their best by enacting the Panchayat Act. United Provinces have passed this Act, though it is too early to say how it will work; the Central Provinces Government also have enacted a similar measure. If you do not give them sufficient funds or financial resources, how will the local bodies be able to do any good to the small man for whom everyone today is showing lip sympathy? With these words I move my amendment which I hope the Drafting Committee will accept.

Shri Brajeshwar Prasad: Mr. Vice-President, I am not moving my amendment 7 and 11.

Mr. Vice-President: Amendment No. 8 is also not moved, as Pandit Govind Ballabh Pant is not present.

The Honourable Dr. B.R. Ambedkar: Sir, I move:-

"That in sub-clause (c) of clause (1) of article 250, after the word 'railway' a comma and the word 'sea' be inserted."

Sir, I move my next amendment also.

"That in clause (2) of article 250, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted."

Mr. Naziruddin Ahmad: Mr. Vice-President, Sir, I beg to move:

"That in sub-clause (b) of clause (1) of article 250, after the word 'estate', the words 'or succession' be inserted."

I submit this is a purely formal amendment. Clause (b) says 'Estate duty in respect of property ......' To that I want to add "or succession duty". There is a difference between estate duty and succession duty. Estate duty is leviable on the death of a man owning an estate and succession duty is calculated from the point of view of the successor. If we put down Rs. one lakh as the taxable value of the property, estate duty will have to be paid by all who get the property. But if there are more heirs than one, the share of each would be less than the one lakh and no one pays the succession duty. At present there is a Bill before the Legislature for charging estate duty. Here we are legislating for a long time. Therefore, we should have both estate or succession duty.

The Honourable Dr. B.R. Ambedkar: Succession duty is covered by (a) which says 'Duties in respect of succession to property'. Why repeat that in (b)/

Mr. Naziruddin Ahmad: The two might have been..............(??)

Mr. President: At the last meetings, the amendments on pages 297 and 298 of the Printed List, Vol. II were called and no Member moved them. Does any Member now propose to move any of them? If no one wants to move them, does any Member wish to speak on the article?

Prof. Shibban Lal Saksena (United Provinces: General): Mr. Vice-President, Sir, I have stood up to support the amendment moved by my honourable friend, Mr. Sidhva. He has in a very lucid speech explained to the House the purpose of his amendment and also pointed out the importance of it. He has also said that no less a person than the Premier of my Province, the Honourable Pandit Govind Ballabh Pant, had given notice of a similar amendment. Sir, it is the second occasion when the cause of local bodies has been brought before this House. The first occasion was when we discussed article 256, when I moved an amendment for increasing the limit up to which local bodies could tax the people in their areas, *i.e.*, up to one per cent of their annual income or up to Rs. 1,000. That was opposed on the ground that income-tax would be affected and that the men are already taxed by the Centre on their income. Here again, my honourable Friend, Mr. Sidhva, has suggested that clause (3) should be deleted from article 250 and the appropriation of revenue from this head should not be made by the Central Government but the local bodies should be entitled to appropriate the sums coming from this revenue. I am therefore very much surprised that in spite of all the arguments put forward by my honourable Friend, Mr. Sidhva, and his assertion before this House that all the local self-government Ministers of all the provinces in the country had suggested that this clause should go and in spite of the fact that a person like Pandit Pant has also suggested that this clause should be deleted, still the Drafting Committee will not accept the amendment because the Finance Ministry wants that this money should go to them.

Sir, a very fundamental question is raised by this amendment. We probably think that only the Centre and provinces should be provided with funds. We forget that the local bodies have also got vital functions to perform. I was surprised to learn from one of the members of the

Drafting Committee that these bodies were useless bodies and it was so much money wasted if it was given to them. As one who has experience of these bodies I personally feel that ultimately you have to take care of the people in the villages and in the cities and you can really reach them only through these local bodies. I know that in my own district there are about a thousand primary schools and the conditions of the schools are such that it should be a shame to any Government, and if one were to go about repairing them it would cost several lakhs of rupees but the total income of my District Board is hardly Rs. 10 lakhs; it cannot afford the repairs. Here you pass schemes worth crores of rupees for education, for universities and all these things but when it comes to the question of giving money to the local bodies which really finance the schools for the children of the village people, then we say we should not remove this clause from this article and we should not raise the limit of taxability of persons for local bodies to Rs. one thousand. I therefore say that by this stubbornness and refusal to help local bodies, you are really defeating the very purpose of the Constitution which is intended to benefit the defeating the very purpose of the Constitution which is intended to benefit the masses. I say the masses are benefited best when the local bodies are given the power to cater for them. They must be supplied with sources of revenue which are expanding and the terminal tax that is levied on pilgrim traffic should be given to them because they have to spend a lot to cope with that traffic and if you deny them this terminal tax, they would not be able to serve the pilgrims properly. Everybody wants to grab money and there is no source of revenue left to be exploited by the local boards, and with the little that the local bodies get they cannot make even both ends meet. I therefore strongly support the amendment moved by Mr. Sidhva; he has shown that it is not his own opinion but the unanimous opinion of all the Ministers of local self-government of the various provinces in the country; he also said that it is the legitimate right of local bodies to get this tax, and still I do not know of any reason why his amendment should not have been accepted. Last time this article was held over for further consideration and therefore I ask the House to support the amendment of Mr. Sidhva and see that this clause does not remain in this Constitution.

Shri V.S. Sarwate: Mr. Vice-President, Sir, I am in full sympathy with the claim which my honourable Friend, Mr. Sidhva has put forward regarding the local bodies, but as I interpret the article, I see no necessity for the amendment which he has proposed. As the article at present stands, the House may have noted that it is a reproduction of Section 137 of the Government of India Act except one item namely the stamp duty which has been transferred to article 249. Now admitting that the local bodies are very important bodies and as such require all the assistance and encouragement from the provincial Governments as put forward by Mr. Sidhva, till the article as it stands gives full discretion to the Provincial Governments to make allotments as they please, out of the proceeds which they receive from the Centre. There are many nation building activities in every province. There are village panchayats, there are local bodies, there is medicine and other subjects, for instance, education, and it may be that in one province the village Panchayats or local bodies may be important and may require comparatively more attention. Then in other parts of the country, Education may require more attention and in a third Province probably hygiene and medicine. So when the proceeds are received by the Governments of these various provinces, the Governments would have full discretion to allot the proceeds according to the special requirements of that province. If we accept the amendment, the effect would be that the discretion of the Provincial Governments will be circumscribed and would be restricted, so that all the proceeds must necessarily be given to the local bodies; whereas at present there is discretion to allot to the local bodies or to other nation-building departments. Therefore I think that the article as it stands gives more discretion, has more elasticity and serves better the purpose which the honourable Mover of the amendment has in mind. If the U.P. Government for the matter of that intends that the village panchayats and local bodies should be specially encouraged, it has full discretion to do so without the amendment being accepted here. Therefore, I think that the article as it stands should go in.

Shri R.K. Sidhva: May I know from the honourable the speaker whether he desires that the terminal tax collected from the jurisdiction of one province can be transferred to the other jurisdiction of that very province? Does he mean that?

Shri V.S. Sarwate: That would depend upon the principle. It is provided that the total amount collected would be divided among all the provinces. The principle of division which would be presented in the caste of duties in respect of succession to property may also be prescribed in the case of terminal taxes also. As I interpret it, there may also be different principles prescribed for the different categories (a) and (b) and different principles for (c) and (d) when Parliament passes the law prescribing principles of division. The article as it is gives a wider scope and greater elasticity and by the amendment we are creating difficulties for the provincial Governments.

Shri Brajeshwar Prasad: Mr. Vice-President, Sir, I rise to support the article; I am opposed to Mr. Sidhva's amendment for a very simple reason.

This Constitution recognises only two levels of Government, Central and provincial. There is no third legal entity known to constitutional law.

Shri R.K. Sidhva: Read section 250 carefully, you will find local bodies are mentioned there.

Shri Brajeshwar Prasad: That comes only by the way. If we give this power to the local bodies, we will have also to say what are the powers and functions of these local bodies. We will have to make a constitution for these local bodies here. Though in fact, it is a *de facto* Government, in this Draft Constitution, there are only two levels of Government known. We shall be creating innumerable difficulties and complications if we recognize a third level of Government by the backdoor.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, I am sorry I am not able to support the amendment moved by Mr. Sidhva. This article 250 has been taken word for word section 137 of the Government of India Act. On that alone, I am not basing my claim. On the other hand, the principle that Mr. Sidhva's amendment seeks to introduce is both dangerous and not feasible. It is dangerous from this point of view. We are trying to interfere with provincial autonomy. He has ready some extracts from books and publications, the views of some Ministers of particular provinces. It is open to them to say so because the distribution of the proceeds of the taxes which are collected by the Centre can be made in any way they like. We introduce this principle of allocating or earmarking of particular taxes collected by the Centre to the provinces not for being utilized for such purposes as they may consider proper, but for a particular head of provincial administration, that would be interfering with provincial autonomy. I do not know how many of these Ministers are in favour of this proposal. We have already got the petrol tax which is being earmarked for the purpose of roads; there is a certain amount earmarked for education, and so on. Ultimately, what remains to the provinces? You ought to make the provision as flexible as possible.

There is another difficulty also. The terminal taxes are collected not at every terminal; not always in the same place. The amendment does not say that the amount collected at particular terminal are to be earmarked for those local administrations. Again, there are many local bodies; there are panchayats in the villages; there are district boards covering the entire district; there are municipalities having jurisdiction over only particular areas. Does he mean to say that amount should be distributed among the panchayats, district boards and municipalities? Even there, a certain amount of discretion is vested in the hands of the provincial Government. Again, the local administrations are in charge of various subjects, primary education, secondary education, health, sanitation, drainage, water-supply. For what purposes does he mean that this amount should be utilized? Even if this amendment is accepted, even then it would not interfere with the discretion vested. Even though it may not be flexible but rigid, it is still open to the provincial Government to use such powers as they have and to say that this amount shall be utilized for such and such purposes by the local bodies. It is not right that the Constitution itself should sub-divide and earmark the amounts for particular purposes and for particular local administrations. I was sorry to hear when my honourable Friend said that if the amendment had come from any other Minister, the drafting Committee would have accepted it. I am sure the Drafting Committee goes into these matters on their own merits and not with reference to the person who brings forward a particular

amendment.

Shri R.K. Sidhva: That has happened in one case.

Shri M. Ananthasayanam Ayyangar: That may have happened. But, so far as article 250 is concerned, the persons who are in charge of and are interested in this matter are the persons in charge of the provincial administration. My honourable Friend Mr. Sidhva must take into consideration the experience, weight and authority which flows with any recommendation made by the provincial Governments as against individuals, by they as high as Mr. Sidhva himself. He cannot say that he has got all the experience of the Premier of a provincial Government. He ought not to have made such a remark in the House that the Drafting Committee makes invidious distinctions. I have got the greatest respect for the Drafting Committee. They are putting themselves to enormous inconveniences and trouble. We address ourselves only to some amendment here and there. They are incharge of the entire drafting of the Constitution. I take this opportunity to thank the Drafting Committee for the able manner in which they are carrying out the work. Any aspersion against their character or alleging that they make invidious distinctions is out of place.

Shri R.K. Sidhva: May I know from the honourable Member what answer he has to this point? Before the Government of India Act of 1935, this was a provincial subject, which has since been brought into the Centre by the Act of 1935.

Shri M. Ananthasayanam Ayyangar: It is not as if the proceeds are taken away by the Centre. The Centre is only a collecting agency. The Centre collects only for the purpose of ensuring uniformity. My honourable Friend may also see that with respect to another provincial tax, the sales tax, for the purpose of ensuring uniformity, a conference of provincial Finance Ministers is being called. The Centre may be able to act with greater speed and efficiency allocate the proceeds of the taxes to the various provinces. We are not unused to this, there is the duty in respect of succession to property; there is the Estate Duty in the same category.

Mr. Vice-President: Also, does Mr. Sidhva think that the taxes collected in Calcutta, Bombay and Madras should go to those provinces exclusively or to the local bodies in those provinces?

Shri R.K. Sidhva: At present these taxes are collected by the local bodies. The Government of India Act of 1935 makes it a Central subject.

Mr. Vice-President: We have now included terminal taxes on goods or passengers carried by sea. Take terminal taxes collected in Calcutta, Bombay, Madras and other big ports which serve large areas. Should the particular corporation or provinces be entitled to retain them?

Shri R.K. Sidhva: The Calcutta Corporation or the Madras Corporation gets the benefit.

Mr. Vice-President: The main point is, the Calcutta Port carried goods and passengers for more than one province. Anyway, does Dr. Ambedkar want to say anything?

The Honourable Dr. B.R. Ambedkar: I do not want to say anything.

Mr. Vice-President: I will now put the amendments to the House.

The question is:

"That in sub-clause (c) of clause (1) of article 250, after the word 'railway' a comma and the word 'sea' be inserted."

The Amendment was adopted.

Mr. Vice-President: The question is:

"That in clause (2) of article 250, for the words 'revenues of India' the words 'Consolidated Fund of India' be substituted.

The amendment was adopted.

Mr. Vice-President: The question is:

"That in amendment No. 2851 of the list of Amendments, for the words proposed to be added in article 250, the following words be substituted:-

"The net proceeds of such taxes recovered under sub-clause (c) and (d) be assigned by the States to the local authorities in their jurisdiction."

The amendment was negatived.

Mr. Vice-President: I now put the whole article as amended. The question is:

"That article 250, as amended, stand part of the Constitution".

The motion was adopted.

Article 250, as amended, was added to the Constitution.

Article 277

Mr. Vice-President: We now go to 277.

The Honourable Dr. B.R. Ambedkar: Sir, I beg to move:

"That article 277 be re-numbered as clause (1) of article 277, and to the said article as so re-numbered the following clause be added:-

'(2) Every order made under clause (1) of this article shall, as soon as may be after it is made, be laid before each House of Parliament.'"

This article 277 is a consequential article. It lays down what shall be the financial consequences of the issue of an emergency proclamation by the President. Clause (1) of the article says that provisions relating to financial arrangements between provinces and the Centre may be modified by the President by order during the period of emergency. It was felt that it was not proper to give the President this absolute and unrestricted power to modify the financial arrangements between the provinces and the States and that the Parliament should also have a say in the matter. Consequently, it is now proposed to add clause (2) to article 277 whereby it is provided that any order made by the President varying the arrangements shall be laid before each House of Parliament. It follows that after the matter is placed before the Parliament, Parliament will take such action as it deems proper, which the President will be bound to carry out.

Mr. Vice-President: Amendment No. 14 is not moved by Shri Brajeshwar Prasad.

Pandit Kunzru - No. 72.

Pandit Hirday Nath Kunzru (United Provinces: General): Mr. President, I beg to move:

"That with reference to amendment No. 3007 of the List of amendments and Amendment No. 13 of List I (Fourth Week) of Amendments to Amendments, for article 277, the following article be substituted:-

277. (1) While a Proclamation of Emergency is in operation, the Union may,
notwithstanding Modification of the anything contained in article 251 of this Constitution, retain out of the
provisions relating to moneys assigned by clause (1) of that article to States in the first
year of distribution of taxes on a prescribed period such sum as may be prescribed and
thereafter in each income during the period year of the said prescribed period a sum less than
retained in the preceding proclamation of year by an amount, being the same
amount in each year, so calculated that emergency is in the sum to be retained in
the last year of the period will be equal to the
operation. amount of each such annual deduction:

Provided that the President may in any year of the said prescribed period direct that the sum to be retained by the Union in that year shall be the sum retained in the preceding year and that the said prescribed period shall be correspondingly extended, but he shall not give any such direction except after consultation with the States nor shall he give any such direction unless he is satisfied that the maintenance of the financial stability of the Government of India requires him so to do.

(2) In this article, 'prescribed' means prescribed by the President of Order."

Sir, the language of the amendment is complicated but it has been borrowed from the Government of India Act, 1935, with which honourable Members are familiar. I think that Dr. Ambedkar who laughed without any cause should also be familiar with it. The meaning of my amendment is this. Under article 251 a percentage has to be prescribed which will represent the share of the provinces in the divisible portion of the net proceeds of the income-tax. The language of that article is such as to make it appear that the entire provincial share shall have to be made over to the provinces at once. As soon as it has been prescribed by the President, with or without consultation with the Finance Commission as the case may be, it must be made over the provinces at once. What my amendment proposes is that notwithstanding the language of article 251, the Centre may make over the entire provincial share to the provinces not at one bound but in a certain period; but if during that period an emergency occurs, an emergency so grave as to require the issue of a Proclamation of Emergency, then the President may direct that the transfer of the provincial share in the particular year in which the emergency occurs shall be stopped. In other words, my amendment if accepted would restrict the power proposed to be given to the President by article 277. Further, while there may be delay in the transfer of the provincial share to the provinces nothing that has been already given to the provinces can be taken back from them.

Now having briefly explained the purpose of my amendment. I shall deal with article 277 as modified by the amendment of Dr. Ambedkar. When I referred to article 277 the other day and said that it was practically subversive of the financial rights of the States, Dr. Ambedkar objected to my referring to it and said that the article had not been moved and might therefore not be moved or be modified. He has now introduced a modification; but does this modification mean anything at all? Suppose Dr. Ambedkar had not moved this amendment, could anything have debarred Parliament from taking into consideration the modification of the financial relations between the Provinces and the States, brought into effect by the order of the President during the period of emergency? Parliament has got an inherent right to consider any matter that it likes. Consequently, the amendment moved by Dr. Ambedkar adds nothing to its power. It gives it no right that it would not otherwise possess. Let us, therefore, consider article 277 as it is, in the form in which it has been proposed in the Draft Constitution. We need pay no attention whatsoever to the amendment moved by Dr. Ambedkar because it means nothing in practice. It gives Parliament no additional opportunity of dealing with any order that the President might make that it would not otherwise have.

Now article 277 authorizes the President, while a Proclamation of Emergency is in force, to direct "that all or any of the provisions of articles 249 to 259 of the Constitution shall for such period, not extending in any case beyond the expiration of the financial year in which such proclamation ceases to operate, as may be specified in the order, have effect subject to such exception or modifications as he thinks fit". The President in this article will enjoy full authority to alter the financial relations between the Provinces and the States in any manner that he likes. Let us therefore, consider what it is that the articles, referred to it article 277, give to the provinces. Under article 249, the Union may levy stamp duties under any law made by Parliament and such duty of excise on medicinal and toilet preparations as are mentioned in the *Union List*. These duties shall be collected and appropriated by the States. The Centre has never claimed a share in their proceeds. Article 250 that we have just dealt with provides that certain duties and taxes including duties in respect of succession to property other than agricultural land, and estate duty in respect of property other than agricultural land, shall be levied and collected by the Centre, but shall be distributed entirely between the Provinces except in so far as they represent the share attributable to the States for the time being specified in Part II of the First Schedule. This is the second source from which provinces will derive their income and it too is entirely provincial. The Centre has never laid claim to a percentage of their process of these duties. The third source will be the taxes on income. The President will, by order, fix the percentage of the divisible portion of the net proceeds of the income-tax that should be made over to the Provinces. I have already dealt with this.Then we come to the excise duties, duties of excise, other than duties of excise on medicinal and toilet preparations mentioned in the Union List, are to be levied and collected by the Government of India. But if Parliament so provides, the proceeds of these duties may be divided between the Centre and the Provinces. The President has no power to deal with them. Then there is the duty on jute which is not to be distributed now, between the Centre and the Provinces, but such provinces as are entitled to a share in the proceeds of the jute export duty will get a sum to be prescribed to compensate them for the loss of their share in the duty. Lastly, Sir, there are the grants from the Centre which of course can be altered from time to time.

These are the various ways, Sir, in which the Provinces will derive their income. And article 277 allows the President to arrive at any decision he likes in regard to the availability of any or all these sources of income to the provinces. Now, what are the provinces to do, if such action is taken by the President? If the sum to be made over by the Centre to the Provinces were to be parted within a prescribed period, then in an emergency, the President could well say that the Centre could not afford to part with more money than it had already given to the province, so long as the emergency lasted. Such a proceeding would be intelligible and reasonable, but what is now proposed is that, after a financial settlement has been arrived at with the provinces and they have increased their expenditure and have come to depend on the money received by them from the Centre for meeting their liabilities, the President may say to them that whatever happens to them the financial settlement made by them must be modified. What are the provinces to do in these circumstances? So far as I can see, they are to enjoy the blessing of financial *nirvana*. The Provincial Governments and the people of the provinces may suffer seriously-may, so to say go about with a loin cloth- but the Centre will have little regard for their plight. Such a proceeding, I think, is both iniquitous and impracticable. My contention is, as I have already said, that if you have to give a certain sum of money, or a certain percentage of the proceeds of certain taxes to the provinces, you may delay the full distribution of the provincial share, but nothing that has been once given to them ought to be taken back. The Government of India Act, 1935, proposed nothing so drastic. The framers of the Act realized as well as the framers of the Constitution do, that the Centre may some day be involved in an emergency. But all that they provided was that the transfer of the full provincial share of the divisible portion of the proceeds of the income tax may be delayed on account of an emergency, but no part of the divisible portion given to the provinces before the occurrence of the emergency could be taken away from them. As regards the proceeds of the Central Excise Duties and the Central Export Duties and the other taxes that I have referred to, there could be no change in them whatsoever in any emergency. The position of the provinces in regard to the other taxes was to remain wholly unaffected by the occurrence of an emergency. It was realized that if the provinces, depending on the money received by them from the Centre extended primary education, or made it compulsory, or increased the number of hospitals and dispensaries, or undertook a programme for the improvement of the condition of the rural masses, they could not in justice be asked suddenly to change their budgets and tell their people that the facilities already available to them in respect of education, public health, medical relief or rural welfare shall be withdrawn. If such a thing were to be done in future, there would be serious discontent in the provinces, so serious indeed as to create another emergency greater than that to deal with which the President is to be given the plenary power contained in article 277. I think, therefore, Sir, that article 277, the effect of which on the provincial administration will be exceedingly harmful, should be replaced by the amendment that I have moved.

Sir, I do not know what the exact share of the divisible portion of the net proceeds of the income-tax now received by the provinces is. But I understand that the maximum share is still that prescribed in 1936, namely 50 per cent and that in all probability, the provinces are getting about 42 or 43 per cent of the divisible portion. I do not know what the prescribed percentage in future will be. Let us suppose that it is 60 per cent. Then you can lay down that the differences between 42 per cent and 60 per cent shall be transferred to the provinces within a certain period, and that if an emergency occurs during this period, the process of transfer can be halted. The provinces will thereby not suffer materially but article 277 is contrary to the best interests of the provinces and if given effect will create chaos there.

The House will undoubtedly be surprised that so drastic a provision should have been included in the Draft Constitution. The framers of the Constitution are reasonable people. We have therefore to consider what made them think of inserting such an article in the Constitution. When I dealt with some of the articles relating to the future financial position of the provinces, I pointed out that if the settlement were made too generous to begin with, the Centre might be faced with a serious position later when an emergency occurred. I ventured to say that it would be better if the Centre were a little cautious in the beginning so that it might have to take no action that would completely dislocate the finances of the provinces later. But that warning was not heeded. The only way now in which, according to the framers of the Constitution, the future financial position of the Centre can be safeguarded is that the President should be allowed during an emergency practically to annual the provisions of the articles 249 to 259. It will be open to the Finance Commission when it is appointed, and to the President after the Constitution has been passed, to consider carefully the existing situation and distribute the proceeds of the divisible sources of revenue between the Centre and the Provinces in such a way as to take due note of the interests both of the Provinces and the Centre. In spite of our having passed all the articles referred to in article 277, the President can still so fix the provincial and Central shares that the Centre may not be driven to take action of the kind envisaged in article 277. Such a course would be far better than pleasing the provinces now and making them gnash their teeth and tear their hair afterwards.

Sir, I have explained the meaning and purposes of my amendment as clearly as I could. I hope that the representatives of the Provinces realise how grave a danger to their interests article 277 constitutes. If the Provinces are not even to enjoy financial autonomy in certain circumstances, they will have no independence left whatsoever and their position will be equivalent to that of the municipalities and district boards. But it is not primarily on that ground that I have moved my amendment. I have done so in the interests of the people of the Provinces who cannot arbitrarily be deprived of the facilities that they have become accustomed to in such matters as education, medical relief and the welfare of the masses even during a war. Such a thing did not happen during the last war. Why should we then think that it would happen or might happen during a future war? Article 277 is an expression of nothing but the undiluted financial autocracy of the Centre. I hope therefore that every Member of the House will protest against this iniquitous provision and see that it is changed in such a way as to assure the Provinces that their finances cannot suddenly be disorganized by any order of the President and that at the same time the position of the Centre is such as to enable it to discharge properly its supreme responsibilities.

Amendments Nos. 3009 and 3010 on page 318 of the Printed List were not moved.

Prof. Shibban Lal Saksena: Sir, the speech delivered just now by my honorable Friend Dr. Kunzru will certainly give food for thought to the House for reviewing this important article. I have very carefully followed his speech and also studied his amendment. When we were discussing articles 275 and 276 and when we gave to the President powers to issue a Proclamation when necessary, we had provided that within two months of that Proclamation, it must be laid before each House of Parliament and must be approved. Only then will it continue for a further period of six months.

In article 277 it is provided that not only will the Central Parliament have concurrent jurisdiction over subjects which are the province of the States but also that "provisions of articles 249 to 259 of this Constitution shall for such period not exceeding in any case beyond the expiration of the financial year in which such proclamation ceases to operate, as may be specified in the order, have effect subject to such exceptions or modifications as the President thinks fit". So that, by this article, articles 249 to 259 lose their existence during an emergency. For the President has the power to pass orders in contravention of the provisions of these articles. I would have been happier if whatever changes or variations of the articles are desired were also part of the Proclamation and are brought before Parliament for approval. I have throughout protested against arming the President with almost autocratic powers in financial matters, but I am sorry to have to say that our protests have gone in vain and every time when an amendment comes, the President is armed with powers of issuing orders by which even the provisions of this Constitution can be amended. I think Dr. Kunzru has pointed out what difficulties arise if this article is passed as it is. The amendment of Dr. Ambedkar does not help matters at all. To "lay it" before each House of Parliament is not a sufficient safeguard. I therefore think that Dr. Kunzru has done a service to the House by bringing forward this amendment and by pointing out the danger inherent in this article 277.

This is a vital article. The budgets framed by the States may be upset by an order of the President and if he is not very favourably disposed towards some of the Ministers of any Province, then woe betide that Province. Therefore, it is not proper to pass this article in its present form. I would request Dr. Ambedkar and the Drafting Committee to review this article in the light of the arguments advanced by Pandit Kunzru and also in view of the fact that such powers should not be given to the President which may upset the budgets of the Provinces. Of course no President will deliberately use such powers and upset all their plans, but unless there are safeguards in the Constitution it is not proper to give those powers. With the best will in the world and with the most pious intentions he may pass order which may bring about the position I have pointed out. I therefore request that some machinery may be provided for in the Constitution by which that position may not be brought about. I hope that in the light of these arguments, the learned Doctor will accept my amendment.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. Vice-President, I should like to say a few words in support of article 277 along with the amendment moved by my Friend, the Honourable Dr. Ambedkar. A lurid picture has been painted by my esteemed Friend Pandit Hirday Nath Kunzru as to the effect of this article. Hospitals will be closed, all constructive activities of the Provinces will be set at naught, Provincial autonomy will come to a dead stop, the Central Executive will assume dictatorship, there will be nothing but chaos as a result of this article taken along with the amendment.

My friend forgets that article 277 is a sequel to 275. We are proceeding on the footing that the security of India is threatened or that there is war or domestic violence of a character which necessitates the President to proclaim an emergency posited by article 275. The normal conditions are disturbed by the very premises with which we start, namely war, and everybody must be ready to support the security of the country, to see that the State itself which is the basis for individual liberty does not fall to the ground. That is the basis of article 275.

Then article 277 does not say that the whole of the financial provisions will come to an end. It says, "subject to such exceptions or modifications as he thinks fit". Normally it is not expected that he will abrogate the 249 to 259 of the Constitution shall for such period have effect subject to such exception or modification as he thinks fit. Therefore, it is an exception to the rule that has been working for sometime, it is a modification of the rule that has been working for some time. It is not an obliteration of the entire financial structure or the financial relation between the Provinces and the Centre that is contemplated under article 277.

Even in normal times the Parliament has the power to interfere with the distribution. That is stated in the very articles, 249 to 259. The whole question of distribution is left to Parliament. No doubt distribution implies that a certain percentage at least will be left to the

Provinces, but the intervention of the Federal Parliament is posited in the various articles to which reference has been made by my Friend Pandit Kunzru. Therefore, what we are now doing is- and he himself has pointed this out-to see that the plenary authority of Parliament to pass any law to interfere with the distribution is not affected even by the powers conferred upon the President under article 277. The President's power is not exclusive of, and does not derogate from, the plenary authority of Parliament under the Constitution. Therefore, the only question is that in an emergency like this, the President acting on the advice of the Central Cabinet ought to modify or to provide for certain exemption in regard to the distribution of the various proceeds.

So far as the right to distribute income-tax is concerned, even in normal times, it rests upon an order of the President - (on an Order of His Majesty in Council under the present Constitution)- it does not rest on Parliamentary authority. It no doubt contemplates that after the Statutory Commission makes its report a degree of permanency will be introduced in the distribution of income-tax proceeds, but until the financial provisions come into operation the power rests with the President which means the Central Cabinet. It does not mean that they will flout the claims of the various Provinces who are represented in the Upper house, and in the Lower House, and we are not to proceed on the footing that the representatives will not discharge their functions and their duties to their constituencies properly.

Therefore, I submit, Sir, that there is nothing drastic in article 277. You cannot carry on a war under the principle which obtains in normal times. You must provide the Centre with an emergency power and that emergency power is by no means so drastic and so omnibus a power, so all-comprehensive a power as might be imagined. It expressly says "subject to such exceptions or modifications as the Cabinet thinks fit." An exception cannot be the rule. A modification can only be a modification and an exception can only be an exception. Therefore, in an emergency, is the President, is the Central cabinet, to be clothed with some kind of discretionary power in regard to the adjustment of the financial relation between the Provinces and the Centre subject to the plenary power of Parliament and to the intervention of Parliament if anything goes wrong in the action of a Cabinet which is responsible to the Lower House and in which both the Houses can take the Cabinet to task for putting the emergency provisions into operation? Under those circumstances, I submit that it is inevitable that you should have a provision of that description. Whenever we refer to these things we must remember that we are dealing with a Cabinet which is responsible to the people. A Government which is responsible to the Parliament and the people can certainly be invested with greater powers than his Majesty in Council who was responsible only to the British Parliament and not to the Parliament of the country. It will mean the negation of the principle of responsible government to say that the responsible Government today must exercise in the circumstances of a war. At that time other people were responsible for the maintenance of India and for seeing there was no internal commotion. We are responsible now for the security of India and for the safety of the State. That is the principle contained in article 277. It is necessary consequence of article 275 which posits the existence of war or some domestic situation equivalent to war. There can be no exception taken to the principle underlying article 277 and the amendment which has been brought before the House by Dr. Ambedkar.

Shrimati Renuka Ray (West Bengal): Mr. Vice-President, Sir, I am one of those who believe that, in the present context of things in this country and in view of the fact that we have so much leeway to make up in the matter of the nation-building services, we should of course have a very strong federal Centre. It is necessary that the Centre should be in a position to see that the provinces do not fall behind in regard to the minimum standards of development. But, none-the-less, I must say that the arguments that Pandit Kunzru has advanced before the House this morning have a great deal in them. It is not possible for a province to administer its responsibilities in an adequate manner if its financial position is unstable or uncertain. I realise that it is in the case of emergencies alone that this power under article 277 is sought to be given to the President, which means the Central Government. None-the-less I do feel that this is a very drastic measure. The provinces draw their finances from two sources. One source is the obligatory allocation made to them to maintain their general services. The other is the grants made for development purposes. I could have understood it, if a demarcation had been made and the finances of the provinces had been left intact in the matter of obligatory taxes with which they carry on their normal life. Even that has not been done. I do not want to reiterate all that Pandit Kunzru has very pertinently pointed out. I do feel that this is a vital matter. There is article 276-B under which all extravagant expenditure during emergencies could be stopped. The provinces can be requested to drop their development programmes during an emergency such as war. But surely it should not be in the power of the Centre or the President to stop the normal functioning of the provinces. It is through the provinces that the life and activities of the people of the country is administered. I should like to point out that the Centre does not work in the air. It has to work through the provinces and I can see no reason whatsoever for having this provision just as it is. I do think that Pandit Kunzru has drawn attention to a very important point. I would therefore request Dr. Ambedkar and Drafting Committee to hold over this article and re-draft it in the light of the observations that have been made.

Prof. N.G. Ranga (Madras: General): Hold over till the emergency is over?

Shrimati Renuka Ray: I do not mean that Professor Ranga has sought to be very sarcastic. I would point out to him that even in an emergency the normal functioning of the provinces must continue. I see no reason whatsoever to give the President power to stop those sources of revenue from which the provinces have to function in a normal way, even in an emergency. I can understand stopping the development activities of a province in an emergency, but how can the normal functioning of the provinces be stopped even in emergencies? Even in war-time, people have to continue to eat, to have education and be protected against evil-doers. I do appeal to Dr. Ambedkar and the Drafting Committee to reconsider this article which is a vital one. I support the changes proposed by Pandit Kunzru.

Mr. Vice-President: Mr. Biswanath Das may now speak.

Pandit Hirday Nath Kunzru: It is nearly one o'clock.

Mr. Vice-President: We shall now adjourn and meet again at 9 a.m. tomorrow.

The Assembly then adjourned till Nine of the Clock on Saturday, the 20th August 1949.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Saturday, the 20th August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. Vice-President (Shri V. T. Krishnamachari) in the Chair. .

Shri Biswanath Das (Orissa: General): Mr. Vice-President, Sir, I stand to oppose article 277 as unnecessary in this Constitution. Sir, the emergency powers incorporated in this Constitution are more or less adapted on the lines of Section 93 of the Government of India Act, 1935, with certain modifications necessary from their point of view for the purpose. An analysis of the clauses reveals that it is classified under three heads, firstly, provisions relating to war emergencies, secondly, provisions relating to domestic violence and thirdly, provisions relating to any such violence and acts of violence which the President considers imminent and dangerous. A Government functioning under any constitution has always the right to take all necessary powers to deal with the situation has always the right to take all necessary powers to deal with the situation in cases of external aggression or war emergencies. To that extent, any restriction of the powers and privileges of the ordinary citizens may be allowed under the Constitution. I do not believe that any honourable Member of this House seriously object to that aspect of the question. It would be ridiculous to call it democracy if a party or a provincial Government goes on in its own way to take a cow action which is contradictory and conflicting with the best interests of the Union or its safety. Under these circumstances, any power reserved for the Centre in war time and war emergencies Is welcome.

Sir, we come to the question of domestic violence and any acts of violence which according to the- President are considered imminent and dangerous. These are different questions and have to be considered from a different point of view. As I have stated on many occasions, I repeat that we are contemplating party Government in a system of democracy. Party Government necessarily means different parties. In a federation with a Centre and Units' there is no denying the fact that different political parties may be in charge, of the administration 'in the different units or even in the Centre. Under these circumstances, there is a possibility of misuse of these powers. Speaking personally. I have experience of this misuse. Recollecting-my past experience-of Madras and the Justice Party, I have seen how the District Boards and Municipalities were mercilessly superseded without rhyme or reason because the Government had the power kept to itself to supersede these municipalities. What- has been done in Madras by a certain party with regard to district boards and municipalities may be repeated by the-Centre. Therefore, I plead with the Honourable Members of this House that no more power need be left with the Centre or with the Governors who are practically the agents of the Centre to deal with any ad situation

Any power that you reserve to yourself for war emergency is quite welcome. We do not oppose it. I concede the fact that the provisions contained in articles 275 to 277 and the rest are not as drastic as they are in the small Section 93 of the Government of India- Act. I do realise that the framers of the Constitution (513)have not arrogated to the Governor all the executive and legislative powers that),on have under Section 93. 1 also further concede the fact that you do not wipe off the High Court if and when it suits you. All that is conceded. Why should you have article as 277 which is not even contemplated under Section 93 ? Section 93 does not suspend the allocation of grants from the Centre. Speaking from past experience, let me state that even in the war years (during the second world war), the provinces were getting their financial allocation from the Centre, even in the provinces where we had government under Section 93. I also feel that a responsible Government functioning at the Centre cannot afford to suspend the grants that

are given to the provinces to be utilised for nation building activities unless it wants to bury itself. There is also the possibility of a totalitarian party coming into power at the Centre. Under these circumstances, I do not see any reason why more powers should be reserved in the Centre under the Constitution for taking necessary action in such cases. Sir, this is giving autonomy with vengeance to the provinces. Therefore, I plead with the honourable Members of this House as also with the Drafting Committee that a reconsideration of this article is called for.

Again, I have to state that the reports, both of the Central Committee and the Provincial Committee, have not recommended such powers as are proposed to be given to the provinces under article 277. 1 do,not see any reason why the Drafting Committee should have taken this course without any authority from this House or anything of the like contained or contemplated in the reports of the Provincial or Central Constitution Committees. With the proclamation of emergency under article 275, autonomy in the provinces is being suppressed and the powers practically vested in the provincial executive lapses more or less: into the Centre in the sense that the province has to be governed under the directions of the President. That being the position, why should you take a further step in refusing even the grants, suspending or reducing the grants which are allocated to the provinces not by the President, nor by the legislature, but by a non-political body that you yourself have constituted ?

Assuming for a minute that the grants are suspended, activities, connected with it for nation-building or administrative activities are suspended to that extent. What do you do with the money? Allocations have been made on a regular defined basis; each province gets its share while this money lies idle with-. out being used for its legitimate purpose. Why should you create this discrimination among the provinces ? If power is taken under sub-clauses (b) and (c) as I have already stated for domestic violence or such acts of violence as the President considers imminent and dangerous in the province or provinces, why should you punish the people of the province as different from the Government which may be responsible for mishandling or for encouraging these unlawful and violent activities ? It may be enough if the provincial executive is suspended; it may be enough if the provincial legislature is also suspended. But, why should the people be punished for an act for which they are not in the least responsible Under these circumstances, I find neither mason nor justice in the article has been placed before the House for approval. I have no option but to oppose it.

Shri Brajeshwar Prasad (Bihar: General): Mr. Vice-President, Sir, I rise to support this article with all the emphasis that I command. My Friend Mr. Bishwnath Das raised the question of democracy. He is shedding tears at the prospect of democracy being liquidated when there is a great emergency in this country. I am definitely of opinion that the issue involved is not democracy but the security of the country and I feel that this article is a necessary corollary of article 275. 'There must be a political reservoir of power somewhere at the Centre to deal and to meet with a situation that may arise in the country when there is a grave emergency in this country. The whole idea is unsupportable that any Government at the Centre will starve the provinces and medical facilities, Educational facilities or other nation-building departments will-come to an end. Mr. Biswanath Das is under the impression that provincial autonomy or democracy will survive in this country if there is a totalitarian party at the Centre. If a totalitarian Government at the Centre emerges, there will be no provincial autonomy left. I am of opinion that we half 'already given too much powers to the provinces and at a time when there is an emergency the whole Constitution must be changed. into a unitary constitution. It is only when there is a unitary

State in this country that there can be progress. The main issue is not democracy but security of the country and the economic well-being of the people of India. We want progress of the country. Therefore, I support this article.

Shri Kuladhar Chaliha (Assam: General): Sir, I consider this a very drastic provision. It will have the effect of completely dislocating a province. In fact I think Assam will be the first casualty. If you have the power to suspend the Constitution, then how will the provinces function ? Under the pretext of this provision probably you will take all the finances to the Centre and we will have nothing left to the provinces. What will happen under this provision ? On a certain date the Communists of Burma right come into the Eastern frontier. Then under that pretext an emergency will be declared and you will take all the powers. If the entire State is on revolt against the Centre, then of course this emergency may be declared; but unless there is definition of what is 'an emergency and under what circumstances these provisions could be applied, it will be causing something which is not expected. I submit that this provision is put in a manner which does not show, all the consequences; if this is applied, it will lead to the greatest hardship, Mr. Brajeshwar Prasad is of course a very straight and balanced man and always thinks of the stability of the country and thinks that the Constitution may be jeopardised if powers are left to provinces, and he further thinks alI the good qualities are in the Centre and they are all devoid of good-the qualities in the provinces. He is anxious to concentrate all power in the President. If we go on like this the provinces will be left with nothing. You are only introducing dyarchy like the old dyarchy and everything will be in the Centre and provinces will be mere nonentities: If you want to have this provision, then you have to define what is an emergency and under what circumstances they can be applied; otherwise this word 'emergency' is so vague that even if a small Nag tribe attacks Assam you will declare emergency, or if there is Communist disturbance at Dibrugarh you may declare an emergency. I therefore request Dr Ambedkar to define the word 'emergency' and under what circumstance this ,suspension or taking the taxes can be taken by the Centre. Provinces are o course going to be mere puppets in the hands of the Centre and I trust the gentle. men in charge of the drafting of the Constitution will think over the matter and try to define what an emergency is and under what circumstances this can be applied.

Mr. Vice-President (Shri V.. T. Krishnamachari): I think Shrimati Durga Bai has moved for closure. I am sure the House will agree to that.

Honourable Members: No. No.

Shrimati G. Durgabai (Madras: General): Mr. Vice-President, Article 277 empowers the President to effect alterations which are necessary in the existing arrangements with regard to the distribution of revenues between the units and the Centre. This power is conceded to the President only for the period of emergency and in my opinion this is a necessary, sequel to article 275 which has already been agreed to by this House. This Ho-use has already agreed that (]urine a period of emergency the President ought to be clothed with overriding ' powers to safeguard 'the interest and peace of the country. What are those special powers worth, may I ask, if the President is denied the authority of pleading with the units to readjust the allocation of finances between the unit and the Centre? A grave emergency arises when there is a war or a threat even to the Constitution of this country and no sacrifice is too great to successfully overcome this period of emergency. An honourable Member vehemently opposed this article 177. She has conceded that the President could ask the units to stop expenditure on development schemes of the units, but in the same breath she said that the Centre should not have power to readjust the allocation of finances or make the necessary adjustments with regard to

existing finances between the units and he Centre. It should not be forgotten that first of all the President means the President acting on the advice of his Cabinet; secondly we have given this power to President only for the period of emergency. This power will not exceed in any case the financial year and lastly, it is subject again to the intervention of the Parliament at any stage even during this period if anything went wrong.

So I do not understand why some of the honourable Members should take objection to the giving of these powers, under the circumstances that have already been explained by. Dr. Ambedkar, and also by other Members who have supported this article. Under these circumstances, it is extraordinarily unjust to suppose that this article provides for financial autocracy of the Centre. Certainly it should not be considered so because we have given these powers for a period which we call an emergency period, and also we have limited its period only to the financial year in any case, and also we have given the power to Parliament to intervene at any time if anything went wrong. Therefore, Sir, I support the article 277 as amended by Dr. Ambedkar.

Shri S. V. Krishnamoorthy Rao (Mysore State): Mr. Vice-President, Sir, I also rise to support article 277 as it is framed and amended by Dr. Ambedkar's amendment. With all respect to Pandit Kunzru, I oppose his amendment. In fact, I think Mr. Chaliha has not read article 275. An emergency comes into operation only in case of war, or internal disorder or external aggression. In such circumstances, extraordinary powers have to be given to the Centre. The suspicion, I believe, is born out of the feeling that the Centre is something different from the Provinces. In fact, the period of emergency lasts only for two months, and it continues only if Parliament approves of the emergency powers within one month of the date of the meeting of Parliament; if it is not approved, then the state of emergency lapses. And also, the period for which the financial powers are given tinder Section 277 cannot be longer than one year because the budget is framed from year to year. During the period of emergency, the security and safety of the entire country must be the sole responsibility of the Centre and extraordinary powers have to be given to the Centre. Otherwise, during the period of grave emergency, if Quarrels for adjustment of financial contributions are allowed to be going on between the Provinces and the Centre, the safety of India will be jeopardised; and if India survives every province survives and every citizen survives,-not otherwise. The safety of the country must be the predominant factor and these powers as are given under article 277 are absolutely essential, and therefore, I support this article.

The Honourable Shri Satyanarayan Sinha (Bihar: General): The question may now be put.

Mr. Vice-President: I have promised Mr. Sarwate that I would allow him to speak. I will put the question later.

Mr. Naziruddin Ahmad (West Bengal: Muslim): There are also several other speakers; you may give them a little time each, say two minutes at least.

Shri V. S. Sarwate (Madhya Bharat): Mr. Vice-President, I thank you for giving me this opportunity to express my feelings. However, I shall not be long. I think that Sections 276, 277 and 227 are to be read together. When an emergency arises, the Government at the Centre would have to function in two departments, the Executive and the Legislative. By article 227, powers have been given to the Centre to legislate on matters which come within the purview of the State legislature. By article 276 (b) power has been given to the Central Government to take upon itself executive functions in respect of such matters. Now, when the Central Government takes upon itself central duties which otherwise would have been done or executed by the Provinces or States, then it is but natural and necessary that it should be provided with the necessary funds. Therefore, it follows that article 277 is a repercussion in the financial sphere, of the powers which have been given by articles 227 and 276 to which the House has already agreed. For instance,-if the Centre takes over to itself the functions of the police, in case of emergency in a State, it will require certain more financial expenditure. That has been provided by article 277. If this provision is not made, then it would be something like providing a car and not providing the petrol for running the car. Therefore, I say that these three articles are closely knit together and you away the financial provisions from the rest. With these remarks I support this proposition.

The Honourable Shri Satyanarayan Sinha: Sir, the question may be put now.

Shri H. V. Kamath (C. P. & Berar: General): Sir, Mr. B. Das has been trying to catch your dye since yesterday.

Mr. Naziruddin Ahmad: Sir, the request to put the question is very premature,

Mr. Vice-President: I do not know about that. I have asked Mr. B. Das to speak.

Shri B ' Das (Orissa: General): Sir, Part XI of the Draft Constitution provides the emergency provisions. If you look at pages 129 to 131, you find articles 275 and 276 where you have the original intentions of the Union Powers Committee and the Union Constitution Committee of which Pandit Jawaharlal Nehru was the Chairman. The Drafting Committee seem to have had some inspiration and it has not been explained how it got this inspiration about the financial provisions in article 277, and the subsequent article 278,-additional articles introduced by them. Sir, it is said that India is for world peace and is following in the footsteps of the Father of the Nation. But anyone who reads article 277 can see for himself, and if it is passed it would show that India is preparing to starve all the resources of the Provinces for aggressive Wars against other nations. What does article 277 require ? It Would give that power to the President-this new Frankenstein that has been created by the Draft Constitution, for the President of India is not a democratic President, he is to be something like the South American Presidents who will exercise all emergency powers-all financial powers and even starve the provinces. Articles 249 to 259 have been discussed- threadbare on behalf of those under-fed provinces of Assam, Orissa, Bihar and Bengal which are starved for no fault of theirs, and if article 277 is allowed to be passed on the floor of the House, woe betide these poor provinces.

Sir, if I compare the attitude of mind of the authors of the Drafting Committee and that of the predecessor government here,-the former British rulers, I find that the latter did not take away the resources of the provinces during the last great war. They went on, it is true, taxing, they went on extending their taxable capacity by putting extra income-tax, corporation-tax, excess profit-tax and so many other taxes. They brought in higher export duties and so on of course, that was taxing the people of the Provinces; but at no stage did the Centre encroach upon the resources of the Provinces. Today we ,are asked to hand over that power of confiscating the provincial revenues to the President. We are told that an elected Cabinet would be there and the ,Cabinet would advise the President. We have an elected Finance Minister in the present Government as Member of this House. Why is it that he has not justified his attitude as to why he advised or his Ministry advised the Dr" ,Committee to. encroach or expropriate or usurp the resources of the provinces in time of emergency- ? Sir, this is a challenge to the democratic spirit of the 'future Parliament. Do members' of the Drafting Committee think that the Parliament will not be willing to hand over such absolute power to the dent or the Cabinet when an emergency arises ? It did in other countries. Why should the Indian Parliament be have differently ? I may say the future Parliamentarians will be as good, bad or indifferent as we all are at present.

I feel grateful that my honourable Friend Pandit Hirday Nath Kunzru has raised a debate on the important point of the

President's power in regard to usurpation of provincial financial resources. It is like capital levy. it is like taking away by force what others possess. During the last Great War, the Nazis took away iron and metals from the householders not only in their own country but in conquered territories. Why should the Government of India, like the Nazis, expropriate the revenues assigned to the States in an emergency? I can not understand it at all. Is it charity which the Centre has been giving to provinces, that it would take away that part of the revenue in times of emergency? I find the provinces derive substantial shares of revenue from income-tax and central taxes :

Orissa .. 24 per cent.

Assam .. 22 per cent.

Bihar .. 20 per cent.

Bengal .. 19 per cent.

U. P. .. 18 per cent.

Bombay .. 19 per cent.

and Madras which has the largest revenue of 55.94 crores has15 per cent. from the sources of income-tax. Surely this is not a new allocation that we have done today. The present Government is not responsible for this assignment except for certain modifications by an Ordinance in 1974 whereby when Pakistan came into existence West Bengal which originally had 20 per cent.of income-tax now will have to be content with 15 per cent.

I think, Sir, that such an emergency power is not necessary. Such an usurpation will not be allowed in any democracy, not to speak of India. I listened most attentively to the speech of my honourable Friend Mr. Alladi Krishnaswami Iyer and I felt that his was a legal argument and there was no substance in it to justify the granting of such power to the President, or the Cabinet. Everybody knows that the Government of India are now angling to collect all the sales tax on behalf of the provinces and to distribute them. If article 277 will be in the brain of the Finance Minister and his Ministry, they will try to collect all resources, so that provinces will have little which they will collect, and in time of emergency the Centre will apply article 277 and thereby take away whatever provincial resources are collected by the Centre. Who says that the Cabinet of the time in time of emergency will be more democratic than it is today? The sympathy which the Finance Minister and the Finance Ministry have shown over the discussions on the Federal Finances on the floor of this sovereign House shows that provinces will get scant justice, not to speak of scant courtesy, in times of emergency. Suppose we have a Finance Minister who gets fluttered over every little incident, who becomes extra-ambitious. During the Second World War, the Government of India through their Executive Councillors became extra-ambitious and took away by means of Ordinances all our resources - lock, stock and barrel. Who can similarly doubt the power of the Central Government to pass Ordinances as ambitiously or as ignorantly as the British Government did?

They imposed "control" prices and supplied all they required for themselves and the Allies and the result is that India is in the grip of inflation and prices are now 365 per cent. of the pre-war level, whereas in America they are somewhere about 200 per cent., and in England somewhere about 100 per cent. That is the effect of the "control" prices and controlled purchases.

Let me hope there will be no war, no emergency. I am for peace, in India and peace in the world. But supposing an emergency unfortunately arises, who suffers ? The people. The people have to suffer and supply goods at controlled prices as they did between 1939 and 1947. What does inflation mean ? It means that the provincial governments and the people can not make both ends meet, and if a new Finance Minister is extra-ambitious he may begin taking all the resources of the provinces by asking the President to exercise article 277. How much is that - something like 60 per cent. of the income tax; 40 per cent. of the excise duties and 40 per cent. of the jute duty in certain provinces, it comes to something like Rs. 60 crores now.

If this sovereign House had accepted the Sarkar Committee Report the provinces would have got about 60 per cent. of the proceeds of all sources of income-tax (which comes to somewhere about 150 crores of rupees) and about 60 per cent. of the share of excise duties which would have meant very large sums. If you will kindly permit me, I shall illustrate my point with reference to Orissa. The total revenue of Orissa is Rs.6.82 crores of which about 3 crores is derived from the Centre as extraordinary grants. That means Orissa's net revenue is only Rs. 3.82 crores. The standard of living of people in Orissa is very, very low.

Mr. Vice-President: Are all these details necessary ? Will the honourable Member pleas conclude his speech?

Shri B. Das: I would very much like to. But I am only expressing the feelings of the lacerated hearts of provinces which have to be deprived of even the moiety which till now they were getting from the Centre as share of central taxes. I want to quote certain figures to illustrate the standards of our administrations.

Bombay spends five annas and one pie on Education; UP spends 6.5 annas; Bihar spends 3.11 annas; Assam spends 6.2 annas, while Orissa spends 4.1 annas. If you take the question of public health and medicine about which we talk always the figures are more discouraging. C. P. spends 2.1annas *per capita*; Assam spends 3.1 annas. Orissa spends much less.

This is the condition of the provinces and today we are asked to be a party to article 277 whereby even the low standard of living in the provinces will become lower still. I am very much perturbed; I am very much disturbed. I think democracy will not lead to autocracy which will create Frankensteins and South American Presidents who can do anything. I have studied this Constitution carefully. I find the President can any moment become an autocrat: he can dismiss his Cabinet and dissolve the Legislature. It is no use framing a Utopian Constitution which any President can upset; and who knows that the Gandites will rule India all along !

I feel very sad at heart - I fully support the observations of my honourable friend Pandit Kunzru and I have fully sympathy with the lady Members from Bengal, Shrimati Renuka Ray, who spoke so cogently on behalf of her province. Assam has spoken and Orissa has been speaking for the second time. I, therefore, feel that Dr. Ambedkar will see his way to withdraw article 277 or redraft it to suit the wishes of the aggrieved provinces.

Mr. Vice President : The question is :

"That the question be now put."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar (Bombay : General): Mr. Vice-President, Sir, I have given as close an attention as it is possible to give to the amendment moved by my honourable friend Pandit Kunzru, and I am sorry to say that I do not see eye to eye with him, because I feel that in large measure his amendment seems to be quite unnecessary.

Let us begin by having an idea as to what financial relations between the Centre and the provinces are normally going to be. I think it is clear from the articles which have already been passed that the provicnes will be drawing upon the Centre, in the normal course of things.

(1) proceeds of income-tax under article 251;

(2) a share of the central excise duties under article 253; and

(3) certain grants and subventions under article 255.

I am not speaking of the jute duty because it stands on a separate footing and has been statutorily guaranteed.

Let us also have an idea as to what the article as proposed by me proposes to do. What the article proposes to do is this, that it should be open to the President when an emergency has been proclaimed to have the power to reallocate the proceeds of the income-tax, the excise duties and the grants which the Centre would be making under the provisions of article 255. The article as proposed by me, gives the President discretion to modify the allocations under these three heads. That is the position of the draft article as presented to the House by the Drafting Committee.

Now, what does my Friend Pandit Kunzru propose to do by his amendment ? If I have understood him correctly, he does not differ from the Drafting Committee in leaving with the President complete discretion to modify two of the three items to which I have made reference, that is to say, he is prepared to leave with the President full and complete discretion to modify any allocation made to the provinces by the Centre out of the proceeds of the excise duty, and the grants made by the Centre under article 255. If I understood him correctly, he would have no difficulty if the President, by order, completely wiped off any share that the Centre was bound to give in normal times to the provinces out of the proceeds of the excise duties and the grants made by the Centre.

Pandit Hirday Nath Kunzru (United Provinces: General): I never said any such thing.

The Honourable Dr. B. R. Ambedkar: Your amendment is limited only to the income-tax. That is what I am trying to point out. You do not, by your amendment, in any way suggest that there should be any different method of dealing with the proceeds of the excise duties or the grants made by the Centre under article 255.

Pandit Hirday Nath Kunzru: The reason why I cast my amendment in that form is this. In so far as the distribution of the proceeds of any taxes depends on a statue passed by Parliament that power can not be taken away from Parliament but it does not belong to the President. But so far as income tax is concerned, the Government of India Act 1935, envisaged the transfer of the full share of the provinces to them within a certain period and allowed the Governor-General, in case there was an emergency, to delay the transfer to the provinces and thus lengthen the total period in which the provinces were to get their full share. That was the only reason; the inference drawn by my honourable Friend is completely unjustified.

The Honourable Dr. B. R. Ambedkar: I am entitled to draw the most natural inference from the amendment as tabled.

Pandit Hirday Nath Kunzru: The honourable Member is completely misunderstanding me. Under my amendment the President will have no power to alter the distribution of the proceeds of the Union excise duties.

The Honourable Dr. B. R. Ambedkar: I am sorry the honourable member did not make the matter clear in his amendment. And if he wants to put a new construction now and make a fundamental change the amendment should have been such as to give me perfect notice as to what was intended. There is nothing in the amendment to suggest that the honourable Member wants to alter the provisions of articles 253 and 255. It may be an afterthought but I can not deal with after thoughts; I have to deal with the amendment as it is tabled. Therefore, as I read the amendment, my construction is very natural.

Pandit Hirday Nath Kunzru: The honourable Member is utterly unjustified.

The Honourable Dr. B. R. Ambedkar: That is the honourable Member's opinion. My reading is that something new is being put forward now.

Pandit Hirday Nath Kunzru: The honourable Member is misrepresenting me and knows that he is doing so.

The Honourable Dr. B. R. Ambedkar: The honourable Member is misrepresenting his own thoughts. Therefore, as I understand it, there is no question of my honourable friend suggesting any alteration in the system of modifying the proceeds of the excise duty and the grant. The only question that he raised is the question of the modification of the allocation of income-tax during an emergency. Even so what do I find ? If I again read his amendment correctly, he is not altogether taking away the discretion which is left to the President in the matter of the modification of the allocation of the income tax. All that he is doing is that if the President was to make a modification of the allocation of the income tax as contained in the previous order, then the President should proceed in a certain manner which he has stated in his amendment. In other words, the only difference between the draft clause as put by me and the amendment of my honourable Friend Pandit Kunzru is this that, so far as the discretion of the President is concerned, it should not be left unregulated, that it should be regulated in the manner which he suggests.

My reply to that is this; Where is the reason to believe that in modifying or exercising the power of the President to modify the provisions relating to the distribution of the income-tax he will act so arbitrarily as to take away altogether the proceeds of the income-tax? Where is the ground for believing that the President will not even adopt the suggestion that the President is going to wipe out altogether the total proceeds which the provinces are entitled to receive under the allocation. After all the President will be a reasonable man; he will know that to a very considerable extent the proceeds of the income-tax do form part of the revenues of the provinces; and he will also know that, notwithstanding the fact that there is an emergency, it is as much necessary to help the Centre as it is necessary to keep the provinces going.

Therefore in my judgement there is no necessity to tie down the hands of the President to act in a particular manner in the way suggested by the amendment of my Friend Pandit Kunzru. It might be that the President on consultation with the provinces or on consultation with the Finance Commission or any other expert authority might find some other method of dealing with the proceeds of the income-tax in an emergency, and the suggestion that he might have then might prove far better than what my Friend Pandit Kunzru is suggesting. I therefore think that it would be very wrong to tie down the hands of the President to act in a particular manner and not leave him the liberty or discretion to act in many other ways that might suggest themselves to him. I suggest that it is better to leave the draft as elastic as it is proposed to be done by the Drafting Committee; no advantage will be gained by accepting the amendment of my Friend Pandit Kunzru.

As I have said, I have made another amendment in the original draft which left the matter entirely and completely to the discretion of the President and Parliament had no say in the matter. By the new amendment I have proposed it is now possible for Parliament to consider any order that the President may make with regard to the allocation of the revenues; and therefore if the President is doing something which is likely to be very deleterious or injurious to the interests of the provinces, surely many representatives in Parliament who would be drawn from the provinces would be in a position to set matters right. I, therefore, think that the original arrangement should be maintained by virtue of the fact that it is the more elastic than what is suggested by my honourable friend Pandit Kunzru.

Mr. Vice President: The question is :

"That article 277 be renumbered as clause (1) of article 277 and to the said article as so renumbered the following clause be added :-

(2) Every order made under clause (1) of this article shall, as soon as may be after it is made, be laid before each House of Parliament ."

The amendment was adopted.

Mr. Vice President: The question is :

"That with reference to amendment No. 3007 of the List of Amendments and Amendment No.13 of List I (Fourth Week) of Amendments to Amendments for article 277 the following article be substituted:-

Modification of the provisions relating to distribution of taxes on income during the period a Proclamation of Emergency is in operation.

277 (1) While a Proclamation of Emergency is in operation the Union may notwithstanding anything contained in article 251 of this Constitution retain out of the moneys assigned by clause (1) of that article to States in the first year of a prescribed period such sum as may be prescribed and thereafter in each year of the said prescribed period a sum less than that retained in the preceding year by an amount, being the same amount in each year, so calculated that the sum to be retained in the last year of the period will be equal to the amount of each such annual deduction:

Provided that the President may in any year of the said prescribed period direct that the sum to be retained by the Union in that year shall be the sum retained in the preceding year and that the said prescribed period shall be correspondingly extended, but he shall not give any such direction except after consultation with the States nor shall be give any such direction unless he is satisfied that the maintenance of the financial stability of the Government of India requires him so to do.

(2) In this article 'prescribed' means prescribed by the President by Order "-

The amendment was negatived.

Mr. Vice-President: The question is :

"That article 277 as amended, stand part of the Constitution".

The motion was adopted.

Article 277, as amended, was added to the Constitution.

New Article 279-A

Mr. Vice-President: Pandit Thakur Das Bhargava may move his amendment No. 73 to add a new article 279-A. There is an amendment of his also to article 280 in exactly the same terms as amendment No.73. I wish to know from him whether he will move this as a new article or propose it as an amendment to article 280.

Pandit Thakur Das Bhargava (East Punjab:General): Sir, I beg to move:

"That with reference to amendment No.15 of List I (Fourth Week) of Amendments to Amendments after article 279, the following new article be added :-

'279-A, Any law made or any executive action taken under article 279 in derogation.'"

Mr. Naziruddin Ahmad: On a point of order, Mr. Vice-President. This should be moved as an amendment to article 280.

Mr. Vice-President: But he wants now to move it as a new article after article 279.

Mr. Naziruddin Ahmad: Then, article 280 also may be moved and the whole thing considered together.

Pandit Thakur Das Bhargava: I have no objection to that course being adopted.

Mr. Vice-President: I think Pandit Bhargava might move his amendment No.74 after article 280 is moved. Instead of moving amendment No.73, he may move amendment No.74 after Dr. Ambedkar moves article 280.

Article 280

The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That for article 280, the following article be substituted:-

Suspension of the rights guaranteed by article 15 of the Constitution during emergencies.

'280. (1) Where a proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III of the this Constitution as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the proclamation is in force or for such shorter period as may be specified in the Order.

(2) An order made as aforesaid may extended to the whole or any part of the territory of India.

(3) Every order made under clause (1) of this article shall as soon as may be after it is made be laid before each House of Parliament.'"

Sir, the House will realise that clauses (2) and (3) are additions to the old article . In the old article there was a provision that while a Proclamation of Emergency was in force the President may suspend the provisions for the rights contained in Part III throughout India.

Now, it is held that, notwithstanding the fact that there may be emergency, it may be quite possible to keep the enforcement of the rights given by Part III in certain areas intact and there need not be a universal suspension throughout India merely by reason of the Proclamation. Consequently clause (2) has been introduced into the draft article to make that provision.

Thirdly, the original article did not contain any provision permitting Parliament to have a say in the matter of any order issued under clause (1). It was the desire of the House that the order of suspension should not be left absolutely unfettered in the hands of the President and consequently it is now provided that such an order should be placed before Parliament, no doubt with the consequential provision that parliament will be free to take such action as it likes.

Mr. Vice-President: Now Pandit Thakur Das Bhargava may move amendment No.74.

Shri H.V. Kamath; There are other amendments in List I of Third Week.

Mr. Vice-President: I am coming to all that.

Shri H. V. Kamath: List I may be taken up first.

Pandit Thakur Das Bhargava: With your permission I propose to move amendment No.73 for new article 279-A as well as amendment No.74 to article 280.

Mr. Naziruddin Ahmad: This proposed new article is not on the agenda for today.

Mr. Vice President; Pandit Thakur Das Bhargava has to move amendment No.74. That is what was agreed to.

Pandit Thakur Das Bhargava: The point is that if new article 279-A is agreed to, I would have no objection to drop the amendment to article 280.

Mr.Vice-President: You agreed sometime ago that you would move the amendment for the new article 279-A as an amendment to article 280.

Pandit Thakur Das Bhargava: My submission is that I have given notice of two amendments, Nos.73 and 74. The substance of both is the same. But, while one seeks to substitute article 280, the other seeks to add article 279-A. At the same time, the objective of both the amendments, is quite separate. Therefore, you may allow me to move both and put both - in fact all the amendments to the House.

Mr. Vice President: Very well, you may speak.

Pandit Thakur Das Bhargava: Sir, I move:

"That with reference to amendment No.15 of List I (Fourth Week) of Amendments to Amendments, after article 279, the following new article be added :-

279-A. Any law made or any executive action taken under article 279 in derogation of the provisions of article 13 of Part III of the Constitution shall ensure for such period only as is considered necessary by the State as defined in that Part and in no case for a period longer than the period during which a Proclamation of Emergency is in force ".

"That in amendment No.15 of List I (Fourth Week) of Amendments to Amendments for the proposed article 280, the following be substituted:-

"280. Any law made or executive action taken under article 279 ensure for such period only as is considered necessary by the State as defined in part III of the Constitution and in no case for a period longer than the period during which a Proclamation of Emergency remains in force".

"That in amendment No. 15 of List I(Fourth Week) of Amendments to Amendments in clause (1) of the proposed article 280, after the words 'a Proclamation of Emergency' the words, figures and brackets under article 275(1) of the Constitution be inserted".

"That in amendment No.15 of List I (Fourth Week) of Amendments to Amendments, in clause (2) of the proposed article 280, the following be added at the end:-

'for a period during which the Proclamation is in force or for such shorter period as may be specified'".

"That in amendment No.15 of List I (Fourth Week) of Amendments to Amendments after clause (2) of the proposed article 280, the following new clause be added :-

(2A) Any such order may be revoked or varied by a subsequent order".

That in amendment No. 15 of List I (Fourth Week) of Amendments to Amendments, in clause (3) of the proposed article 280, the following new clause be added at the end:-

'and shall cease to operate at the expiration of one month unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such order is issued at a time when the House of the People has been dissolved or if the dissolution of the House of the People takes place during the period of one month referred to in clause (3) of this article and the order has not been approved by a resolution passed by the House of the People before the expiration of that period, this order shall cease to operate at the expiration of fifteen days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the order have been passed by both Houses of Parliament."

Sir, I would beg of the House to consider article 279 which we have already passed and the present article 280 together and in the light of what we have passed under article 279, consider the effect of article 280 along with article 279.

So far as article 279 goes, we have so far agreed as follows :-

"While the Proclamation of Emergency is in operation nothing in article 13 of Part III of this Constitution shall restrict the power of the State as defined in that Part to make any law or to take any executive action which the State would otherwise be competent to make or to take".

When we have passed this article 279, it follows that as a matter of fact we have given very extensive powers to the executive, in so far as the restrictions which have been imposed by provisos to article 13 in regard to fundamental rights have been practically taken away. While the Proclamation of an emergency is in operation, the executive can change any law and make any law with regard to fundamental rights, of freedom of speech etc., and those restrictions which have been placed by the statue under Section 13 as such power will no longer avail, which means that during the period of emergency the Executive will be armed almost with autocratic powers.

Now, if you will kindly look at 280 it is half not so drastic as article 279. In regard to article 280 as it now emerges from the Drafting Committee the prick of the clause has been taken away. If you will kindly see the original section 280 then the House will come to the conclusion that this section as originally drafted was much more drastic than it is at present. The old article 280 as originally found in the Draft Constitution ran thus :-

"Where a Proclamation of Emergency is in operation, the President may by order declare that *the rights* guaranteed by article 25 of this Constitution shall *remain suspended* for such period not extending *beyond a period of six months* after the proclamation has ceased to be in operation as may be specified in such order ".

So that according to article 280 all the rights spoken of in article 25 would have remained suspended. Not only the right to move and the guarantee of the right to move the Supreme Court for implementing these rights was taken away, but the rights themselves were taken away. Now, there is a great difference between the guarantee of moving the Supreme Court being taken away and the rights guaranteed under III being taken away. If the rights were not taken away then the position is very safe and the Supreme Court and other citizens can not go against the declared law of the country but only the right to move the Supreme Court by appropriate proceedings is taken away. The laws remain as they are, but if the right to change the law is taken away, as it has been taken away by article 279 a position is created in which the Executive becomes too autocratic. They can do whatever they like, they can pass any law if they can make the Parliament to enact it, so that article 279 is much more drastic in its effect than article 280. If you will kindly see article 279, it appears that during the period of emergency you authorise the executive to take any action untrammelled by the provisions of article 279 and similarly, you authorise the legislature to pass any law, a legislature as it is defined in article 7, without those safeguards and restrictions which the Constitution has in its wisdom taken the trouble to enact in respect of article 13, so that the result will be that if any action is taken or the law is passed during that period, the action and the law will be good and will inure for all time. Article 279 does not say that the action taken or the law is passed during that period, the action and the law will be good and will inure for all time. Article 279 does not say that the action taken or the law passed will only be applicable for the period of emergency or within six months after that and article 279 is totally silent upon that. Therefore, any law enacted during this period will be a good law unless it is repealed or avoided. My amendment seeks to restrict this period and I want that any law passed during this period or any executive action taken during this period under the provisions of article 279 may only inure for the period of the emergency or such shorter period as the State enacting it or the executive taking the action thinks it necessary.

Therefore independently, of what we do in regard to article 280, it is absolutely necessary that you agree to the enactment of article 279-A. Otherwise, the effect will be that the powers taken under an emergency and action taken and law enacted during that period will inure for all time unless it is repealed or avoided. If you accept the amendment, then automatically as soon as the emergency passes away and normal condition return, the effect of any such action or law would be taken away and the action and the law will be automatically repealed and avoided.

In regard to article 280 I would beg of the House to consider its full implication before it considers this article. The wording "emergency" has not been defined anywhere and one of my honourable friends suggested to Dr. Ambedkar to define the word "emergency" and I told Dr. Ambedkar that he will certainly perform a miracle if he succeeded in defining the word "emergency" as the word "emergency" is so fluid and is of such a nature, that you can not possibly define it. It depends upon a particular executive to say whether there an emergency has arisen and an ordinary emergency may soon unnerve the executive of any State. A small bubble may at any time develop into a glacier and even the biggest seeming mountain of truth may just dwindle into a mere scrap of sand. Nobody can foresee or can say beforehand how the actual trouble will develop. Therefore, a panicky cabinet will declare an emergency very soon, whereas a strong and sturdy Cabinet will not declare in any such situation that an emergency has arisen. It will depend upon the nerve and spine of the Cabinet as to how they deal with this question. Therefore, I think that we should not visualise that the present Cabinet shall remain for all time or there will not be cabinets in the future which will perhaps not take the view which our present Cabinet is expected to take. Let us therefore be cautious and see that we arm the executive with such powers as are necessary, so that the liberties of the people are not jeopardized by a panicky Cabinet. Therefore it is up to us to see that we enact provisions which do not arm the Executive with too much power.

After all is said and done, Parliament is the alternate authority. If we can take away some of the powers which are sought to be given by this article 280 and invest the Parliament with those powers, it would be doing the right thing. It is in that view that I have proposed the other amendments to this article.

The first amendment in this connection to which I would draw the attention of the House is No.75. So far as this amendment is concerned, I think it is only a clarification. I have pointed out that a Proclamation of Emergency can only be issued under article 275(1). Under article 278 it is not contemplated that any proclamation of emergency can be issued. I only want to make it quite clear that it is only under this article that the power can be taken.

In regard to amendment No.76, I beg to submit that as I read the amendment of Dr. Ambedkar, I can understand that the proclamation or order may apply to the whole of India or it may apply to a part of India. In so far as the question of time is concerned, if you keep the article as it is and do not incorporate the amendment contained in No.76, in clause (2) it would mean that every order shall remain in force for the full time of its duration in the whole of India or part of India. If you add these words, it would be possible that in certain parts the order may be for a shorter period, and in the rest of India, it may be for the full period. Unless you add this, the object which Dr. Ambedkar has in view will not be fulfilled.

In regard to amendments 77 and 78, I do not want to take much of the time of the House because as a matter of fact, these two amendments have been taken from the original clause which we have already passed about the Proclamation of Emergency. If you kindly refer to article 275, you will see that these two are already there. I want these two safeguards which appear in article 275 in regard to Proclamation of Emergency may also appear in regard to this order also. After all, the first and foremost effect upon the citizens of a proclamation of emergency is that it takes away their fundamental rights. They are affected very vitally. When I understand that an emergency may be as elastic as the proverbial foot of the Chancellor, then my difficulty becomes all the greater. Unless and until Parliament confirms the particular order taking away the guarantee of enforcing the fundamental rights, we will not be safe in this country and no citizen would be safe with his liberty, unless this provision is enacted.

If you look at the present position in regard to articles 279 and 280 you will find, as a matter of fact, this provision of article 280 is not so necessary as it appears to be. One of my amendments is that instead of article 280, we may substitute article 279-A. I wish to take the House with me in coming to the conclusion that the enactment of article 280 is not so necessary as it appears at first sight. So far as the fundamental rights are concerned, article 13 is the principal article. If you take away article 13, very little remains in the Fundamental Rights over which a person should feel enthused or to feel concerned. Article 13 being practically taken away by article 279, what is there to worry any person about fundamental rights? In regard to the personal liberty of the subject and the protection of his rights, article 15 is there. The House will kindly excuse me if I dilate a bit on this provision.

Now, Sir, according to the fundamental rights as they exist today, this article 15 is the greatest blot on our Constitution. By article 15, whatever we had given in article 13 we have taken away. If the adjective law has been sought to be corrected by enacting article 13, and safeguards against the misuse of the powers given under article 13 were provided by the use of the word "reasonable " before the word "restrictions", they are all washed away by article 15, because in regard to procedure we have not put in any restriction whatsoever on the powers of the legislature. Under article 15, the legislature is at perfect liberty to pass any law it likes. It can take away all the safeguards that exist today. Under article 15 any legislature is competent to enact that no accused shall be defended by counsel. Any legislature, under article 15 as it exists today, is competent to enact that as a matter of fact, the present provisions relating to arrest, relating to remands and bail, production of defence, appeal etc. can all be abrogated. Under article 15, any special courts with special powers and procedure can be created and the liberty of the subject can be reduced to zero. This is the present position. Unless and until we see that article 15 is righted, there is nothing which you possess can be taken away by article 280. If you take full powers under article 13, what else is there for which one should feel sorry for the deprivation? If you kindly look at the fundamental rights, you will be astonished to see there is no other such fundamental right which could possibly be taken away by enacting this article 280. In the first place, if you look at those rights one by one, you will come to the conclusions that article 280 does not practically touch many of them. Taking article 8, I do not think that any person will dispute that article 280 touches any of the right in regard to the use of wells, roads, hotels, etc. Similarly in regard to article10 which deals with employment and article 11 in regard to untouchability and article 12 in regard to titles. Article 13 has already been taken away. In regard to article 14, I understand something worse can be done if article 280 is enacted. A person who has committed a crime two months ago may be tried by a law enacted subsequently by virtue of which he may be liable to a greater amount of punishment. Similarly, there can be two convictions for the same offence and the right to move the Supreme Court for immediate remedy will be taken away. In regard to article 15, I have already submitted. If the article 15 remains in its present form, I can predict that after all this Constitution is enacted and all the dust of controversy is over, and Dr. Ambedkar sits down in his bunglow, he will repent the day when he passed article 15 without any safeguards. I appeal to him and to the House that if they really mean well to the people of the country, they must see that article 15 is amended. If article 15 is not amended, this Constitution and these fundamental rights are not worth having. Therefore, I submit so far as article 15 is concerned, the law already provides that Parliament may make any law as regards procedure and thus there is no fundamental right in respect of procedure. So that, there is no other vital fundamental right which this article touches.

In regard to article 16, which deals with freedom of trade, the Parliament already possesses the power to enact laws. Article 17 deals with prohibition of traffic in human beings, and article 18 deals with the employment of children. I do not think any Government worth the name will try to conscript under article 17 one class only. The State is empowered by this article to conscript without discrimination. It is thus more an enabling than a disabling clause. No other fundamental right is affected if article 280 is not passed, in regard to articles 19, 20, 21, 22, 23 which deals with religious and cultural rights and article 24 deals with compensation.

So, that my humble submission is if my interpretation is correct, article 280 only takes away the power guaranteed to the people of moving the Supreme Court alone. The rights are not taken away; the laws are not taken away; the laws will remain as they are. Only I can not move the Supreme Court by appropriate proceedings. The laws will not be taken away except in regard to article 13. If the President takes power under this article 280, the laws will remain as they are; only the immediate remedy by appropriate proceedings is taken away. Therefore, my submission is, unless and until you change article 15, I do not care whether you enact article 280. If article 15 is amended or the safeguards are further provided by enacting other articles, as I think they must be and shall be provided in the Constitution, then article 280 would have a meaning. Then article 280 will be a necessary article because it would mean that if emergency is there, the important rights which the amended article 15 will confer will be taken away, and we should see that the Executive is not armed with such powers as to take away all the cherished and vital rights of the citizens. As I have submitted, this emergency may be very serious or may not be serious at all. Suppose there is a war in Kashmir or in any outlying part of the country, I do not see what would thereby happen to Tranvancore and Mysore, and why the rights of the people there should be taken away. It would depend upon the particular emergency. A panicky cabinet may take away all the rights, without good reason.

Therefore my humble submission is that as ultimately our last resort is the Parliament, Parliament should be given all those powers and should have the last say in the matter and as soon as an Ordinance is passed, it should be subject to the veto of the Parliament and Parliament should within one month be able to say whether it accepts it or not. If there is a Resolution that the order is not accepted, it should be scrapped. Therefore, if you want to safeguard the rights of the people, you must see that article 280 is not passed in the way it is sought to be passed by the amendments of Dr. Ambedkar.

Shri B.N. Munavalli (Bombay States): Mr. Vice-President, I beg to move:

"That in amendment No. 15 of List I(Fourth Week) of Amendments to Amendments, in clause (3) of the proposed article 280, the full stop occurring at the end be substituted by a comma and the words 'when it meets for the first time, after such an Order' be added thereafter".

Sir, the article 280 is an article which arms the President with drastic powers. If we look to the other constitutions of other nations, we will find that no President is armed with such powers. Unless the French Constitution the President is simply Phantom of the King without Crown. The only power he assumes is that of veto and even that power is scarcely used. During the last fifty years there was no occasion to use such a power. So also under the Swiss Confederation, the President is no clothed with such powers; but curiously enough, the

President under our Constitution, instead of becoming a Phantom of a King without a Crown is so to say a Phantom of King with a Crown and also with a Sceptre. Of course he is armed with these powers at the time of emergency but the fundamental rights which every citizen is to enjoy under this Constitution, will be deprived, by passing an order under this article by the President. He has no recourse even to law; but even then there is one sanguine point viz., the clause (3) which states that an order passed by President may be placed as soon as may be after it is made, before the Parliament. My amendment to this clause is that as soon as the Parliament meets for the first time after the President passes such an order, it should be placed before the House of Parliament instead of postponing the matter. My Friend Pandit Bhargava has moved certain amendments and they are quite regular and proper because the article as it stands will simply stun the citizens as they are deprived of all the fundamental rights and if his amendments are accepted, there will be some facilities. So, I support the amendments of Pandit Bhargava.

Mr. Naziruddin Ahmad: Mr. Vice-President, Sir, I beg to move -

"That in amendment No. 15 above, in clause (1) of the proposed new article 280, for the word and Roman figure Part III the words and figures 'articles 13 and 16' be substituted".

Sir, this proposed new article 280 is also equally drastic. It is just in keeping with other equally drastic clauses which are allied to it. What is the effect of article 280 as it is proposed in its new shape? It may be recollected that this article was moved by Dr. Ambedkar on a former occasion in a milder form. There were serious objections in the House. Dr. Ambedkar desired that its consideration be postponed till he could attend to it and then he has brought in something which is much more drastic, more objectionable and therefore there was not only no consideration of the objections raised but the article has been presented again to the House in a more objectionable from. In its present form it strikes at pending cases also. What is the purport of article 280? It is that during the pendency of an emergency the President may by order suspend the right of any person to go to Supreme Court or other Courts which might be empowered in this behalf by Parliament to vindicate his rights under Part III of the Constitution. What are the rights contemplated in Part III of the Constitution? They are what are called "Fundamental Rights". It is suggested that those Fundamental Rights should remain, but no one would be able to approach the Court for redress if they are violated. Pandit Bhargava has drawn a distinction which does not really apply at all. He contends that the rights will not be taken away but only the resort to Court for their vindication will be prevented. The right will be there; its existence is not to be denied, but people would be merely prevented from going to Court. This is a wrong way of approach. There is no point in giving anyone any right unless he is also enabled, in case the right is violated, to go to Court. If you say 'we give you a property absolutely, but if I take it away you must not go to Court", that is as good as denying the right itself. I submit taking these two together it amounts to this that the rights are also suspended. What are the rights that are going to be suspended? They are described in the Constitution itself - Fundamental Rights. They are however such rights which should not be in the least affected by the fact that there is an emergency. You must give the President power to act in an emergency. That power is conceded by the House. What is now contended is that needless power, the power needlessly to interfere with fundamental rights should not be given. The powers now sought are absolutely unnecessary and an emergency cannot be solved by refusing to give the people rights which are fundamental. Now, what are the fundamental rights granted by the Constitution, the enforcement of which through Court is prohibited? I shall briefly point out these rights. They are laid down in articles 9 to 23-A.

Article 9(1) lays down that there shall be no discrimination against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

Does this article mean that this fundamental right of protection against discrimination is to remain in abeyance when there is a Proclamation of Emergency? Can any honourable Member conceive of a situation where it will be possible to suppress the rights relating to this that there should be no discrimination on grounds of religion, sex, and so on ? Does it mean that during an emergency, the State may make discrimination on the ground of religion or race or caste, sex, or place of birth ? Under article 7 "State" includes the Government and Parliament of India and those of the Provinces and even the "local or other bodies ". I think the obvious implication of the suppression of these rights means that it would enable any Government or even a District Board or a Municipality or a Union Board to discriminate against any person on these grounds. I think nothing can be more absurd than this.

Then we come to clause (1-a) of article 9. There it is said that there should be no disability on grounds of religion, race, caste, sex, etc. etc., in having access to shops, public restaurants, hotels and using wells, tanks, bathing ghats, roads and places of public resort. May I ask whether, during an emergency any section of the people should not be allowed to go to shops, or public restaurants, hotels, use wells, tanks and so forth? I submit these rights can not remain suspended even during an emergency.

Then we come to article 10 which says there shall be equality of opportunity in the matter of employment or appointment. If you suspend these rights during an emergency, it would mean that during an emergency, there should be no equality of opportunity. May I ask what is the point of this suspension?

Then we come to article 11 which deals with a most important right. By article 11 untouchability is abolished. If there is any observance of untouchability, if there is any discrimination on the ground of untouchability, it is made penal. Do you mean to give the President down to the meanest village Union Board authority to re-impose untouchability? I think this will not solve an emergency but will accentuate it.

Then in article 12, the conferring of titles is prohibited, or rather it says that titles are not to be recognised by the State. Does the suspension of this mean that during an emergency titles will flow from our Governments or from foreign governments and will be recognised by the State? I fail to see how this will solve an emergency.

Then we come to article 13 which guarantees the freedom of speech, and to assemble peacefully and without arms, to form associations and move freely from one place to another and so forth. But these are also hedged in by conditions, that in making the speeches we should not commit libels, slander or defamation; that there should not be violation of decency or morality, that there should not be any attempt through this freedom of speech to effect the security of the State or any attempt to overthrow the State. This freedom of speech has been circumscribed by conditions in such a way that they would be harmless even in time of emergency. Then the same conditions apply to assembling. Anything done against public order such as unlawful assemblies and similar other things are safeguarded. I think, Sir, therefore, that this right to assemble peaceably has been sufficiently safeguarded and conditions imposed so as to make them perfectly harmless. And then the right of forming associations and other things are also hedged in with similar conditions. These fundamental rights have been given to the people in such a way that they can not be used for any purpose detrimental to the safety of society or to public morals or public peace.

Then coming to article 14(1), it says that there should be no conviction except in due course of law. If you suspend this right, then it would mean that there should be conviction without any law, that you can catch hold of any person who speaks against the Government, or any newspaper writing any article against the Government and send him to jail without the authority of law. In article 14(2), we have also laid down that there should be no double prosecution and no double punishment for the same offence. If you suspend this right, it will authorise any one being punished twice for the same offence as also without the authority of any law. Also no accused under this article can be compelled to give evidence against himself.

Article 16 deals with trade and commerce, that trade and commerce should be free.

These Sir, in general, are some of the more important fundamental rights guaranteed in so many words by the Constitution. There are others but it is not necessary to recapitulate them. May I ask what earthly purpose could be served by suspending these rights? In most cases, the suspension of these rights as I have pointed out would lead to absurdities and in some cases to serious injustice, without in any way helping the State to come out of the emergency. In these circumstances, I submit that the suspension of these rights is not only unnecessary but would lead to hardship and injustice and in many cases to patent absurdities. But my amendment makes some exception in the case of articles 13 and 16. Article 13 deals with the right of freedom of speech, freedom of assembly and so on. These rights may, during an emergency, have to be curtailed in the interest of the State itself. Similarly freedom of trade guaranteed under article 16 , may have to be restricted on public grounds. In an emergency consumer goods may be concentrated in the hands of a few who may use them for purposes of blackmailing. So, it may be necessary for the State, to interfere with this right during an emergency. I have therefore by my amendment provided that the rights guaranteed under article 13 and 16 may be suspended during an emergency.

Article 280, as it would read along with my amendment is that during an emergency, the President may order that no person shall have the right to move the Court, that the rights under articles 13 and 16 have been interfered with. I have conceded this right of suspension to this extent, though I fail to see to what extent these could be legitimately or usefully suspended even during an emergency. At any rate, I am prepared to give the right to the President to interfere with these rights.

Sir, as I have already submitted an emergency is not a ground for suspending these important and valuable rights. Fundamental rights will cease to be fundamental if they could be suppressed on these flimsy and unnecessary grounds. These are inalienable rights and should not be interfered with, without the State being in the least benefited by such interference. Even during the two great World Wars - the greatest emergencies that can happen to mankind-courts were never closed. In fact, Indian and English Courts kept their doors open. No one thought that their powers should be curtailed. These rights should be justiciable. Otherwise it is impossible to say that the rights exist. The very right of violated rights being challenged in court would act as a deterrent upon the State officials acting arbitrarily. The sacred name of the President has been used - I submit exploited - in these articles. As I have already submitted, the President will not act himself. He is not supposed to be acting on his individual discretion. He has always to act on the advice of his Ministry and it is conceivable that the Ministry may be moved to action by some Secretary or Under Secretary who may start the mischief innocently, and so valuable rights which are the essence of liberty, will be suspended in the sacred name of the President.

The feeble provision that orders must be placed before the next sitting of the Legislature seems to be a poor consolation in view of the fact that such order as it passed by the President can not be questioned or criticized or even discussed in the House. So, the mere fact that they are placed before the House without any opportunity of discussing them, I submit, is a poor consolation for those who value individual freedom more than anything else.

I think, Sir, that these powers should be curtailed as much as possible, though everybody will concede that some powers should be given to the President to be exercised which are really needed to meet an emergency. But the powers claimed for the President will suppress the liberties of the people. During the War, the English Courts were open and the Indian Courts were also open and one of the greatest Law Lords - Lord Atkin - when an argument was made that during the war, justice should be so modified and individual rights so curtailed as help the war effort-made a famous pronouncement. He said: "War or no war, justice must go on. His Majesty's can not be curtailed or in the least affected by the existence of a war". War is the greatest emergency conceivable, and yet law courts were open to give effect to individual rights. We have not defined emergency. Emergency may mean anything; or it may mean nothing. A trivial matter may be called an emergency and may be used wantonly to interfere with fundamental rights and liberties of the people with which the emergency may have nothing to do. The rights may be totally irrelevant for the emergency, but yet they will remain suspended and the Courts will be absolutely powerless to give them redress. I submit that these powers can not be given. They can be confined at least to rights guaranteed under articles 13 and 16 as I have submitted. I think the matter is too serious to be passed by a mere majority of votes without any adequate debate by the device of premature closure motions.

Mr.Vice-President: Are you proposing to move No. 17?

Mr. Naziruddin Ahmad: No Sir.

(Amendment No. 16 was not moved).

Shri H. V. Kamath: Mr. Vice-President, the draft of the proposed article 280 now before the House is a mere rehash of the old draft of the same article. The House will recollect that on the last occasion, further discussion of this article was held over and the wise men of the Drafting Committee asked for time to put the article into better shape. We hoped-at any rate those of us who had taken an interest in the subject- we hoped that this article would come back to the House in a more presentable form, in a better shape. Our hopes have been disappointed. There is an old saying in Sanskrit that a person tried to do something but got something worse out of his labours :

Vinayakam Prakurvano Rachayamasa Vanaram

(written in Devanagari)

A person who set out to make an image of Vinayaka -Ganesha-ultimately got out of it a model of monkey. That is what has happened to the labours of the Drafting Committee. The Drafting Committee hoped-or at least we hoped-that the Committee would consider the various suggestions made in the House and embody them in the new draft. But that was not to be. The Constitution has been founded - at any rate, we the founding fathers here have tried to found the Constitution - on what I would call the "Grand Affirmation" of fundamental rights. We have tried to build on that the edifice of democracy, but I find surmounting that edifice or facade is the great negation of Part XI the notorious negation of Part XI; and article 280 is to my mind the key-stone of this arch of autocratic reaction.

The draft now before the House has been sought to be amended by my friends Pandit Thakur Das Bhargava, Mr. Munavalli and Mr. Naziruddin Ahmad. I have tabled several amendments to this proposed article which, by your leave, I shall now put before the House. My amendments visualise two separate schemes. One scheme is to vest this great fundamental power of suspension of fundamental rights completely in Parliament. That is one scheme. If that scheme be not acceptable to the House, I propose a second scheme whereby the action of the president shall be subject at every turn to the consideration and approval or rejection of Parliament. Amendment No.18 comprises these two sets and according to the order in which they appear in the list, I shall now move them before the House.

I move:

"(i) That in amendment No.15 above, in clause (1) of the proposed article 280 for the words 'the President may by order declare' the words 'Parliament may by law provide' be substituted.

(ii) That in amendment No.15 above, in clause (1) of the proposed article 280 for the words 'mentioned in the order' the words 'specified in the Act' be substituted.

(iii) That in amendment No.15 above, in clause (1) of the proposed article 280 for the words 'the rights so mentioned', the words 'any of such rights so mentioned' be substituted.

(iv) That in amendment No.15 above, in clause (1) of the proposed article 280 for the words 'in the Order' occurring at the end of the clause, the words 'in the Act' be substituted.

(v) That in amendment No.15 above, in clauses (2) and (3) of the proposed article 280 the following clause be substituted:-

(2) An Act made under clause (1) of this article may be renewed, repealed or varied by a subsequent Act of Parliament'."

These as I have already stated, vest the power of divesting or depriving the individual of the fundamental rights guaranteed to him by Part III of the Constitution in Parliament and not in the President.

The second set of amendments provided for the conferral of provisional power to suspend fundamental rights upon the President subject to its immediate ratification or rejection by Parliament. That set, Sir, is the alternative set which I have tabled, and which by your leave, I shall now move.

Sir I move:

"(i) That in amendment No.15 above in clause (1) of the proposed article 280 for the word 'mentioned' where it occurs for the first time, the word 'specified' be substituted;

(ii) That in amendment No. 15 above in clause (1) of the proposed article 280 for the words 'the rights so mentioned' the words ' any of such rights so mentioned' be substituted.

I am not moving (iii)

(iii) That in amendment No. 15 above, for clause (3) of the proposed article 280, the following be substituted:-

'And order made under clause (1) of this article, shall before the expiration of fifteen days after it has been made, be laid before each House of Parliament, and shall cease to operate at the expiration of seven days from the time when it is so laid, unless it has been approved earlier by resolutions of both Houses of Parliament.'

(iv) That in amendment No.15 above in clause (3) of the proposed article 280, the following new clauses be added:-

' (4) An order made under clause (1) of this article may be revoked by a subsequent order.

(5) And order made under clause (1) of this article may be renewed or varied by a subsequent order, subject to the provisions of clause (3) of this article.'

v) That in amendment No. 15 above at the end of the proposed article 280 the following new clause be added:-

'Notwithstanding anything contained in this article, the right to move the Supreme Court or a High Court by appropriate proceedings for a writ of *habeas corpus*, and all such proceedings pending in any court shall not be suspended except by an Act of Parliament.'

Now, the matter under discussion today is a very serious one in all conscience and I would appeal to the House not to dismiss it very airily, but to bestow on its mature judgement. As I have already said this article to my mind is the Great Negation; and I am sure that when tempests blow- God forbid that they blow- the weight of this Negation will be so heavy that I am afraid the whole edifice will collapse. It is for that reason that I have sought your leave, Sir, to move these amendments and I would again appeal to the House to consider them earnestly and seriously.

The argument has been very often trotted out that we must have a strong centre. I am all in favour of a strong Centre-especially so in a time of emergency when the security and the stability of the State are at stake. But what do you mean by the Centre? The Centre, I may remind the House, is not merely the Executive. The Centre is Parliament, that is the Legislature, plus the Executive *plus* the Judiciary. We are apt to forget this when we speak of a strong Centre. We are inclined to think that by a strong Centre is meant a strong Executive. That is a wholly erroneous conception- a fallacy which should be discarded at the earliest possible moment. The Centre therefore is the Parliament (Legislature), the Executive and the Judiciary. make all the three strong - I agree- but not one at the expense of the other two, not the Executive at the expense of the Judiciary or the Legislature.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Saturday, the 20th August 1949

The other day the Prime Minister, I believe while addressing some public meeting, referred to the frequent conflict between the liberty of the individual and the security of the State. Yes, I agree that the State should be secure so that the individual may have life, liberty and happiness. But the liberty of the individual is not a thing to be trifled with at the mere behest or arbitrary fiat of the executive. It was the great American thinker Thoreau who said: "At a time when men and women are unjustly imprisoned, the place for the just man and woman is also in prison." If this article as moved by Dr. Ambedkar were passed today can we say with any degree of assurance, that the liberty of men and women in this country would be worth a moments purchase and would not be trampled under foot without a moment's notice ? Sir, I do not want to alarm the House and sing a jeremiad, but I fear that such a situation is likely to arise if this article be passed today. As an autocratic negation of liberty this article takes the palm over all other constitutions of the world. Article 279 which we have already passed provides that as long as an emergency proclamation is in force the guarantees of individual freedom as set forth in article 13 will be automatically suspended throughout the Union; and now article 280 denies to the citizen the right of access to courts of law for making complaints about the violation of not only the rights of individual freedom but all other fundamental rights during the period of emergency. A general authorisation of this kind for restricting individual freedom has no parallel anywhere else.

The Drafting Committee took time to prepare a new Draft and they have tried to put up a rehash of the article. I find that the language of this article compares unfavourably with that of the Emergency Powers Act (DORA) passed in England in 1920 which the Drafting Committee have plagiarised in a dishonest fashion. Clause (3) of the proposed Draft reproduces the first part of one of the clauses of that Act, but the second and vital portion of that clause has been conveniently and dishonestly dispensed with. I do not know why this subterfuge has been resorted to. The relevant clause of that Emergency Powers Act reads thus :

If Parliament is then separated by such adjournment or prorogation as do not expire. within five days, a proclamation shall be issued for the meeting of Parliament within five days, and Parliament shall accordingly meet 'and sit upon a day appointed by that proclamation and shall continue to ;it and act in like manner as if it had stood adjourned or prorogued that day."

And the further safeguard is this

"Any regulations so made under the Act shall not continue to be is force after the expiration of seven days from the time when they are so laid unless a Resolution is passed by both Houses providing for the continuance thereof."

This vital portion of the Emergency Powers Act of England is absent from our,Draft article.

Then I come to the Weimar Constitution whose provision came very near to ,this clause but which was still very mild. as compared to this. In clause 48 of $he Weimar Constitution occurs this provision :

'(2) If Public safety and order in the German Reich is materially disturbed or endangered the National President may take the necessary measures to restore public safety and order and, if necessary, to intervene by force of arms. To this end he may temporarily suspend, in whole or in part, the fundamental rights established in articles 114 (personal liberty) 115 (inviolability of dwelling, 117 (secrecy of postal, telegrahic and telephonic communications), 118.(freedom of speech and press), 123 (right of peaceable assembly). 124 (freedom of association), and 153 (guarantees of property rights)."

But even to this there were safeguards. The next clause was to the effect that the President must immediately inform the Reichstag of all measures adopted by authority of this article and that these measures shall be revoked at the demand of the Reichstag. This was the safeguard of the German Constitution.

Under the American Constitution the privilege of the writ of habeas corpus shall not be suspended unless when in case of rebellion the- public safety may require it. But even here the suspension can be authorised only by the Congress whose decision can be tested by the Supreme Court as to whether the conditions under which such suspension would be justified did exist or not. That is so far as the American Constitution is concerned. So also in the Italian ,Constitution there are similar safeguards. But, unfortunately, we who Profess to build a Sovereign Democratic Republic in India have no use for such safeguards. We trust the executive implicitly. God grant that our trust be justified. But if our executive demands our trust, why should not the executive trust the judiciary, why should it not repose confidence in Parliament? Is our judiciary, bereft of all wisdom, integrity and conscience that the executive should snap their fingers at them? This is a most disgraceful state of affairs. I do not see how we can build up an egalitarian or democratic State on such a foundation.

It has been suggested that in a time of emergency the State has got to be preserved. By all means preserve the State; but not at the unjust sacrifice of the liberty of the individual. In some cases and on some occasions, the loss of liberty is worse than the loss of life. I for one would claim that liberty is even more precious than life, and the most serious emergency should not enable the State to unjustly deprive the individual of his liberty. That is a great principle and that should be the lodestar or the Pole-star of our Constitution. The right to a writ of habeas corpus is a sacred right in which is enshrined the liberty of the individual : it gives him the right of appeal to the ,Supreme Judiciary. This article before us today destroys this right of the individual.

We want ace and order so that the State will be safe during an emergency. But what sort of peace are your going to have at this rate? What to have at this rate? What sort of security or stability are you going to leave ? The State will be preserved I But it may be that the peace that you thus visualise will be the peace of the grave, the void of the desert. If that is the peace the Drafting Committee's wise men have in mind, I would rather die than live in such a peaceful situation.

In our passion for making the Centre strong, we are misinterpreting it as the strength of the executive. If we want a strong executive, let us also have a strong legislature and a strong judiciary. I have pleaded that it is not the executive alone that makes the State. 'We have the Parliament and the Judiciary which, together with the executive, make the State. All my pleadings have fallen on deaf ears. I sometimes tell myself, "O Judgment, thou art fled to brutish ceasts, And Men have lost their reason". Have we come to that stage ? I hope not. I hope, for the good of India, for the good of our fellow men and women who have just emerged from the darkness of slavery into the light of freedom, we shall do something for their happiness and not merely be content with strengthening the hands of a group) of people, a tiny coterie or caucus in power. That is not the idea which the Father of the Nation had in mind. As the House. well knows he was all for decentraliasation, and not for strengthening the Centre at all. lie was for a decentralised State and for giving power to self-sufficient units.

We are discussing the provisions for an emergency. I therefore grant that the Centre should have certain powers. All I plead is that there should be adequate safeguards, judicial safeguards and parliamentary safeguards. None of these safeguards is here in the Draft article. But this re-hashed article has come before the House for consideration and for approval. I believe it will be approved in due course. I have closely followed the provision for emergency powers in the Emergency Powers Act, 1920 of the United Kingdom. It Provides that Parliament must be summoned within five days. Secondly, the decree will expire at the end of seven days unless earlier approved by Parliament. On the same lines I have sought in my amendment No. 4 to provide that any order made under clause (1) of the article shall, before the expiration of fifteen days-India is a vast country of distances compared to England. So for So for seven days I have put in fifteen days be placed before Parliament for approval. If you mean business and if you mean to secure to individuals their liberty, and not merely the safety of the State and the security of the men in power, fifteen days would be adequate time to summon Parliament. I have also provided further on the same lines as the Emergency Powers Act of England that this order suspending the fundamental rights shall expire at the end of one week unless it has been approved earlier by resolutions of Parliament. This is a wise safeguard which I hope the House will consider in all earnestness.

My last amendment- I am not going to speak on my remaining amendments- is No.6 of the Second Week. There I do not object to power being conferred on the President subject to Parliamentary regulation and control. Therefore the last amendment of mine is to the effect that the right to move the Supreme Court or the High Court for a writ of *habeas corpus* by appropriate proceedings shall not be suspended except by an Act of Parliament.

During the last world war, the british Government here were indulging in the everest forms of repressing for the preservation of their Empire. Mr. Churchill went to the length of saying, "I have not become Prime Minister to preside over the liquidation of the British Empire," which shows that even Mr. Churchill feared at one time that the Empire was in danger and that it might be liquidated. Though they were thus engaged in a life and death struggle, the British Government did not suspend the right to move the courts for a writ of *habeas corpus*. The famous case of Talpade of Bombay is a case in point. This case came up to the Federal Court and the Chief Justice, Maurice Gwyer held Section 26 of the Defence of India Act *ultra vires*. This section was subsequently amended as a consequence thereof. It must be fairly fresh in the memory of my colleagues here. I therefore do not wish to dilate upon that matter. As I was saying, even the British Government did not then suspend this important right. But we who are drawing up a democratic Constitution are contemplating a provision for suspending even that right in an emergency.

After all, most of our leaders are telling us that we are today passing through a crisis. By crisis they mean a sort of emergency: we have had trouble in Hyderabad, Kashmir, West Bengal and other parts of India. But the Central Government has lived and is getting on very well without proclaiming a state of emergency. None of the fundamental rights or right to move for *habeas corpus* has been suspended. Even here, on August 15, 1947, when the old Government of India Act was adapted under the India Independence Act, the emergency powers vested in the Governor-General and in the Governors were omitted from the Act as adapted. They were not embodied in this adapted Act of the Government of India and the emergency powers were not conferred upon either the Governors or the Governor-General under the Act of the Government of India, as adapted. We have tided over two fateful years, very difficult years, very critical years, without any of the emergency provisions or powers being vested in the Governor or in the Governor-General. Sardar Patel told us some months ago that this country is getting more stabilized. In one breath you say the situation is getting better and more stable, and in the very next you try to insert a clause in the Constitution which seeks to deprive the citizen of all fundamental rights in case of an emergency. Dr. Ambedkar might get up and reply: "Oh! It is just written in the Constitution; it will remain a dead letter. I hope we shall not be required to use it or to put it into operation." I hope we shall never use it. That is what he said on a previous occasion I agree Dr. Ambedkar might say that. I readily grant they are all honourable men, they are all wise men and true, but a Constitution is not meant for Dr.Ambedkar or Pandit Nehru or Sardar Patel; the Constitution is meant not only for this generation; but we are building it for other generations to come, and not for Dr. Ambedkar and the present Government. I hope this Constitution will last for many generations. At times, however, apprehensions arise in my mind; looking at the Constitution as it is being built, as it is being framed by us here, sometimes I apprehend that this Constitution may not last very long. God forbid that my fears should come to pass. But I occasionally fear that the Constitution- the whole of it, at any rate may not last many more years than one can count on the figures one of one's hands.' That is what I feel: I hope I am wrong and I hope I am painting too gloomy a picture; but, Sir, I wish to plead with the House that by all means if you want to save the State, do save it, but do not unjustly deprive the individual of his rights, of his liberties, his fundamental freedoms, which we have in the opening chapter of the Constitution guaranteed to him. Towards the fag end of the Constitution we are taking away with one hand what we have given with the other. Is this the sort of liberty we have fought for? Is that the sort of liberty that we aspired after? Is that the sort of democracy that we are building........

Mr. Vice President: Will the honourable Member kindly bring his remarks to a conclusion? He has been speaking for 45 minutes.

Shri H.V. Kamath: If you think I am repeating, I shall bow to your ruling, but if I am not....

Mr. Vice-President: I am sorry to say that the Member is repeating his arguments and I shall be very glad if he will kindly conclude his remarks.

Shri H.V. Kamath: I will take only two minutes more, Sir. I bow to the Vice -President's ruling and I shall conclude. I wanted to say much more but I shall reserve that for another occasion. I am afraid that the article, if it is adopted by the House as moved by Dr. Ambedkar, is fraught with grave danger to the rights and liberties of the individual guaranteed to him under the Constitution. I fear that by this one single chapter- Chapter XI,- we are seeking to lay the foundation of a totalitarian State, a Police State, a State completely opposed to all the ideals and principles that we have held aloft during the last few decades, a State where the rights and liberties of millions of innocent men and women will be in continual jeopardy, a State where if there be peace, it will be the peace of the grave and the void of the desert. I only pray to God that He may grant us wisdom, wisdom to avert any such catastrophe, grant us fortitude and courage. Let me conclude with the prayer of Mahatma Gandhi; "Sab Ko Sanmati De Bhagawan."

Prof. K.T. Shah (Bihar:General): Mr. Vice-President, Sir, I beg to move:

"That in part (vi) of amendment No.18 above, for the proposed new clause in the proposed article 280, the following be substituted:-

'Notwithstanding anything contained in this article, the right to move the Supreme Court, as guaranteed by article 25 of this Constitution, by appropriate proceedings, shall not be suspended, nor shall any proceedings in respect of such right pending at the date of the Proclamation of Emergency in any court be suspended:

Provided that in the event of any cause of action arising in respect of any violation of any of the Fundamental Rights declared or conferred by Part III of this Constitution, against any person of authority, Parliament may, by a special Indemnity Act passed in that behalf, indemnify any such person or authority against the consequence of any such act done *bona fide* during the period while the Proclamation of Emergency was in force."

Sir, I have as strong an objection as many of the speakers who have addressed this House on this subject to arming the President with such extraordinary powers extending even to the suspension of the one solitary right which by the express terms of the Constitution is guaranteed, namely, the right to move the Supreme Court for certain prerogative writs whereby any violation of the rights declared or conferred on citizens may be remedied. Here is one right more precious perhaps than any other because it makes other rights workable, real, concrete, and actually experienceable; so that if anybody feels aggrieved because of any of the fundamental rights mentioned in Part III being denied, such a person shall be in a position to move the Court which may give him appropriate relief or remedy.

As the article is now proposed a President would be in a position to suspend even this right by an executive order. The amendment of Dr. Ambedkar suggests that having made the order he must place it before Parliament as soon after making it as possible. I confess, I do not see that this is any improvement over the original draft, because, even if you lay an order *ex post facto* before Parliament, you only invite either acrimonious criticism, which may be of no use or avail whatsoever, of an act already done or make the relations between the Executive and the legislature strained. If you had suggested that before the order is made, Parliament would be consulted, or if you had even suggested that the remarks of Parliament may be given effect to by modification of the order, I could have understood.

Shrimati G. Durgabai: On a point of order, may I know whether the honourable speaker is speaking on the original motion or is moving his amendment?

Prof. K.T. Shah: I have moved the amendment.

Mr. Vice-President: He has moved the amendment.

Prof. K.T. Shah: That being the case, in the article and the amendment proposed by my Friend Mr. Kamath, I am suggesting further by my amendment that this fundamental right, which is the only one right guaranteed in the Constitution, shall in no case be suspended, notwithstanding anything that may have been said in the pre ceding articles. Whatever the emergency, this particular right should not be suspended. As another honourable speaker has mentioned, even if a war is there, the justice of the people, justice of this country shall not be stopped or suspended.

I realise, however, that in an emergency the officers of Government, both civil or military, may not be in a position to wait before taking action. They have to learn, however, that if we are going to live under a free democratic Constitution, whoever does a wrongful act will have to bear the consequences of that act. Anything that he might have thought was required in the interests of the country would not avail him as an answer to an act wrongful in itself. To guard, however, against any undue hardships being imposed upon officers, who act bona fide n the interests of the community and in pursuance of the orders issued for dealing with an emergency, if any fundamental right,-let us say, the freedom of movement of association, or expression,- is violated, any violation would not *ipso facto* be covered by the proclamation. But subsequently Parliament may pass an Act of Indemnity, enumerating the cases which might give rise to such prosecution, or such suits, or actions against individual officers, and extending the protection in its sovereign capacity as legislature to such persons, and providing a valid defence for any such charge.

This is a procedure very well known in the British Constitution which we have been copying almost *ad nauseam* in, and here is one case in the British Constitution, where I think we might as well take a lesson from it, and instead of giving a carte blanche as it were, to the President to do or allow any act to be done merely on the score of a Proclamation of Emergency, we would lay down, that though an officer may be acting primarily on his own risk under this order, on a proper case being made out, Parliament may consider the advisability of giving a general or special Indemnity.

What would happen would be, that public servants or officers of the State would be automatically restrained. Instead of using any force or extending their authority in any way they think proper or necessary, they would think twice before taking such steps as may not be permitted by an Act of Indemnity. Or Parliament may not pass an Indemnity Act at all. Here would be a very salutary restraining factor, which I think would be for the benefit both of sound administration and also continued freedom of the citizen.

If you accept this idea, as I hope the sponsors of the article will accept, a provision of this kind, worded as they like, suited to the occasion will amply meet the case. I think much of the difficulty that the previous speakers have referred to, much of the apprehensions that many of us feel as regards the unnecessary extension of the executive authority, would be avoided by this means.

Nowhere in this Constitution is any mention made, so far as I remember, of such a provision as I am advocating here, that is to say, an Indemnity Act. Time and again; those in authority, those responsible for the Draft Constitution, have characterised criticism in this House as being destructive or serving no purpose either for themselves or for the House. Here I make a present of this a constructive proposal, with the very respectable authority of the British Parliament and British History behind it. It is a matter of test whether the sponsors have sufficient regard for the freedom of the citizen to accept even such a suggestion as this. I leave it to their good sense.

(Amendments Nos. 20, 21, 22 were not moved.)

Shri B.M. Gupte (Bombay: General): I beg to move:

"That in amendment No.78 of List II (Fourth Week) of Amendments to Amendments, in the words proposed to be added at the end of clause (3) of the proposed article 280 for the words 'one month', wherever they occur, the words 'two months' be substituted."

Sir, this is an amendment to an amendment moved by my Friend Mr. Thakur Das Bhargava. The only difference between my amendment and his is that I propose two months for the submission of the order to the Parliament while he has proposed only one month. Two months are preferable because that period is mentioned in the main article 275. No doubt, Dr. Ambedkar has respected to a certain extent the sentiments - expressed in this House when the matter was debated last time. But, he has not gone far enough and has not mentioned any definite period within which an order under this article shall be submitted to Parliament. Under article 275, the main Proclamation of Emergency must be endorsed by Parliament within two months. I do not see why the same effective control should not be given to the sovereign legislature in this matter, which after all, would be the most important consequence of that Proclamation. The suspension of the remedy for the fundamental rights is a very fundamental matter and it should be incumbent on the executive to get it ratified within a short specified period, say two months. I do not see that there should be any difficulty about this. Most probably, the order would be issued shortly after the Proclamation is issued, i.e., most probably it may be issued in the intervening period between the issue of the Proclamation and the meeting of Parliament. Thus there would be no difficulty in the Proclamation and the order being simultaneously submitted to Parliament. Even granting that the order may have to be issued after Parliament has dispersed, what happen? Parliament will have to be convened only for this specific purpose. I say, there is no objection. The only argument against this course would be the question of cost. I submit that in matters of vital importance, cost is of no consequence at all. We have deliberately chosen democracy as the form of our Government and after that we should not grudge the cost that might be necessary to make that democracy really effective. Of course, I do not mean to say that there should be wasteful expenditure. Those who are responsible for the conduct of the Government hereafter must so arrange their business that no unnecessary expenditure is saddled on the public purse.

But at the same time in important matters, where important principles are involved, consideration of cost is of no avail at all. It cannot certainly be a decisive factor. The suspension of Fundamental Rights is not only a very important matter but a fundamental matter and I would therefore request Dr. Ambedkar to accept Pandit Bhargava's amendment, as amended by me.

Prof. Shibban Lal Saksena: (United Provinces: General): Mr. President, Sir, I beg to move:

"That in amendment No.15 of List I (Fourth Week) of Amendments to Amendments at the end of clause (3) of the proposed article 280, the following words be added:

'and if the House of the People by a resolution passed by it, amends, varies or rescinds the order, the resolution shall be given effect to immediately."

If this amendments is made, clause (3) of Dr. Ambedkar's amendment would read as follows:-

"Every order made under clause (1) of this article shall as soon as may be after it is made be laid before each House of Parliament, and if the House of the people, by a resolution passed by it, amends, varies or rescinds the order, the resolution shall be given effect to immediately"

During the discussion on this article on the last occasion I had proposed an amendment that for the words 'President may by order' the words 'Parliament may by law' be substituted. I had hoped that the Drafting Committee had been convinced of the mistake and they would make suitable amendments. I find an improvement has been made over the former Draft, and all the rights conferred by Part III of the Constitution shall not be abrogated automatically but only those rights which the President may declare as abrogated. I think if this article forms part of the Constitution, it will still be an arbitrary denial of the liberties that we are giving in the fundamental rights. I therefore think that either the amendment which I had moved the other day and which has now been moved by Mr. Kamath to this very article 280 should be accepted or at least this amendment of mine to clause (3) of Dr. Ambedkar's amendment should be accepted. This will at least have the effect that if the Parliament is not meeting and the President thinks that the emergency requires that he shall exercise such powers, this amendment will give him that right; but as soon as Parliament meets, he will bring forward that order and see that that is laid on the table of the House and the House of People shall be entitled to vary it, rescind it or alter it. This should not be objected to. What Dr. Ambedkar wants is that during an emergency, the powers of the President should not be fettered. I am not fettering them. In fact the very proclamation of emergency will come before the House of People within two months and will have to be renewed. So Parliament is the final authority. Then what is the harm if the abrogation of fundamental rights also- if they are made in an emergency- is brought before the Parliament as soon as it meets and Parliament must have the right- particularly the House of people- to amend it, vary or rescind it. Otherwise the most fundamental rights- the most cherished rights that are given in the Chapter on fundamental rights- shall be taken away. I value the rights guaranteed in article 25 very much- the rights of *Habeas Corpus* and other rights. As I said last time, when we were in jails in 1942, even then during the war the foreign Government did not think it fit to deprive us of the right of *Habeas Corpus*. So if the power is given to the President to abrogate this right, it will be a slur on our Constitution and it should not be allowed to be included in it.

I therefore think that if Dr. Ambedkar is not prepared to accept Mr. Kamath's amendment, he should at least accept mine which will meet the point of view of his, that the President will be having the power in emergencies and even to suspend those rights but as soon as Parliament meets, then the order of the President will be liable to be rescinded by Parliament. This is the most modest amendment and if the Drafting Committee thinks over it, I hope they would accept it. Our learned Friend Pandit Kunzru had voiced his great opposition the other day about this article and he had said that this is a very dangerous article and the article should not have found a place in this book but if it is included, at least it must be so modified that the ultimate authority of Parliament is not questioned. If the Parliament has no right to vary or alter his order, then a fundamental right of the Parliament is infringed. You may say it is always open to the House to censure the executive but that is an extreme method and nobody would like to adopt it for simple variation of an order passed by the President. I therefore think that my amendment to this clause will entitle any Member who may like to move for a modification or alteration of the order of the President by a resolution. This is a very modest amendment and I hope Dr. Ambedkar will accept it.

Mr. Vice-President: There is amendment No.3031 by the Honourable G.S. Gupta.

(The amendment was not moved)

Shri H.V. Kamath: There is an amendment by Mr. Kunzru.

Mr. Vice-President: It has already been moved.

Shri R.K. Sidhva (C.P. & Berar: General): Mr. Vice-President, Sir, this is a clause which relates to emergency powers in the event of some grave emergency or a national peril existing in the country. Now, what is an emergency? My Friend Pandit Bhargava stated that an emergency can be interpreted in many ways. He is right. It is a very flexible word but it cannot be denied that an emergency is an emergency. Emergency means- according to Oxford Dictionary- a sudden juncture demanding immediate action. One cannot deny that a certain action has to be taken by a Government. May I know whether a democratic government, a government of the people, is going to take an action which will come into conflict with the wishes of the people? Are they going to take any action of such a nature which in the ordinary course it would be said that they want to suspend the Constitution because there is some small disturbance? That Government cannot exist for a day if it is going to be a democratic government. Therefore that apprehension does not stand for one moment.

I want to know, in the event of an emergency when there is a calamity and when the freedom of the country is threatened, I want to know from my friends who oppose this article whether they wasn't, like Nero fiddling when Rome was burning, if they want our ministers should be listening to radios or to some music when things may be taking place in a distant part of the country which may disturb our very freedom? If that is the attitude of these friends who oppose this article, then I do not think they have really understood the meaning of this article. This article is to be applied only in the event of a national calamity and when our very freedom is threatened. My Friend Mr. Kamath said that our well-deserved freedom must be preserved and asked why these rights are being taken away, do you want the people to revert back to slavery? I say it is for the very purpose of safeguarding our freedom, our well-deserved freedom during an emergency that I want to give the Ministers sufficient powers to see that no danger comes to our freedom and that we do not revert back to slavery.

Shri H.V. Kamath: I do not object to that but only provide the necessary safeguards.

Shri R.K. Sidhva: My friends have quoted from foreign constitutions. In the Canadian and Australian constitutions there is no such provision. But there they have the convention that in the event of emergency, the Centre can take all the necessary powers from the provinces. It has by convention been accepted as an inherent power of the Centre to do so, in the event of an emergency. Every Government has such inherent power, this inherent right to take action in the interest of our freedom, for the purpose of maintaining our freedom. If we do not safeguard our freedom in this manner, then I may assure you that our freedom will be in danger. I will go further and say that with such things as are happening I want our government to be invested with all the powers so that we may see that our freedom is not lost. Do my friends want that our freedom and our security may pass into the hands of our opponents and our enemies?

Pandit Thakur Das Bhargava: Is Parliament your enemy?

Shri R.K. Sidhva: No, I entirely agree with my Friend pandit Bhargava. I do not consider him an enemy of the country. But there are people outside who are enemies of the country, in this country and also outside, mischief mongers who are out to create mischief. I want ot safeguard our freedom against them, and for that purpose I am prepared to sacrifice a little of my own freedom, for the purpose of keeping the country's freedom intact. I do not want anybody to disturb our freedom which we have won after a great struggle.

Sir, I may tell my Friend Mr. Kamath that even in America, in the United States Constitution, there is provision to this effect.

Shri H.V. Kamath: Have you read that constitution?

Shri R.K. Sidhva: I have read it, you can also read.

Shri H.V. Kamath: I have quoted from it.

Shri R.K. Sidhva: Yes, the American Constitution recognises the power in article 1, section 8, clause 18, on the same principle of emergency.

Shri H.V. Kamath: Is it the text or the commentary?

Shri R.K. Sidhva: I have given Mr. Kamath the section. he cannot now argue that.....

Shri H.V. Kamath: It is a misquotation.

Mr. Vice-president: I shall be glad if Members do not interrupt the honourable Member.

Shri R.K. Sidhva: Sir, I strongly support this article. But at the same time, I do feel that some of the objections raised by some of my friends have some justification, that the whole of Part III need not have been suspended. There are in Part III certain clauses which even in an emergency, could be allowed to remain intact. For instance, under fundamental rights article 11 relates to untouchability. May I know whether in the event of an emergency, you want untouchability to be re-imposed? Also there is the article about titles. Do you want titles to be bestowed in an emergency? There is clause regarding *begar*. Do you want that in an emergency *begar* should continue? Article 18 says that no child below the age of fifteen shall be employed in mines. If it is an emergency, do you wish that a child of fourteen should go into a mine and work? And then there is article 19 about rights relating to religion, education and so on.

I can understand the argument of my friends as far as these rights are concerned, and I can appreciate that argument, that the Drafting Committee should not have suggested that the whole of Part III should remain suspended during an emergency. Certainly there are many rights, as for instances the right about freedom of speech, of free association etc., which cannot exist during an emergency. That is against the very principle of an emergency. But I do feel that the Drafting Committee need not suggest the wholesale suspension of Part III, where untouchability, titles and such other things are also dealt with. Emergency does not mean that the Government will not function for the day to day work also, but for the purpose of our retaining our freedom such laws, rights and privileges that are given to the people which affect the very existence of the country could be suspended, and must be suspended. But the extraordinary powers of the law can be suspended. With these words, I strongly support the article. I know this would mean taking away some of individual persons' rights, but I do not mind it, because I want and I am anxious to see that the freedom of my country is maintained and I am sure the friends who have opposed this article are also equally anxious to preserve our freedom. It is only a slight difference in the outlook. Some of my Friends, like Mr. Kamath may say that some other government may come into power and on the ground of emergency upset the whole Constitution. But change of government is always possible in a democracy. A future Government may bring in much worse laws, we cannot say what kind of Government it may be. But in the earlier stages, when we have attained our freedom after great struggle and when we know that there is danger, we should be prepared to lose a little right- although I may say I cherish my rights as much as anybody else- for the purpose of retaining our freedom. With these words, Sir, I strongly support the article.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. Vice-President, in supporting the amendment moved to the article by the Honourable Dr. Ambedkar, I should like to say a few words. In the first place, the first part of article 280 as now put forward meets the point of view put forward by the Committee on a former occasion, namely, that the mere existence of a war is not to result in a suspension of all fundamental rights. What the article says is:

"where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III of this Constitution as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the Order."

It is not intended that the President will suspend all the rights such as were referred to by my honourable Friend Mr. Sidhva which are mentioned in the Chapter on Fundamental Rights. He is quite right in saying that there are rights that do not need a suspension during the period of the war. Such rights will not, and cannot, be suspended. But instead of singling out particular clauses, it is left to the President, who- I have no doubt- will act in a reasonable and proper manner, not in a spirit of vandalism against the Fundamental Rights guaranteed to the citizen in the Constitution.

The second part of the article says:

"An order made as aforesaid may extend to the whole or any part of the territory of India."

This is to remove any possible objection that the commotion, war or internal disturbance may not extend to the whole of India and may be confined only to a particular part, and therefore there is no need for suspending the Fundamental Rights in every part of the territory of India.

Lastly, it enjoins the President or the Cabinet to place the order before the Parliament as soon as may be after it is made. There is nothing to prevent Parliament from taking any action it likes. The President may suspend, but yet the Parliament may say that there is absolutely no necessity for the suspension of this right or that right. Time and again, it has been mentioned before the House that it is a Cabinet responsible to the Parliament that is taking action in the name of the President. Parliament has a right to take any action it likes with reference to the course adopted. Under those circumstances, there can possibly be no objection to the article.

In this connection, I will remind the House of a famous saying that "a war cannot be fought on principles of the Magna Carta". Freedom of speech, right of assembly and other rights have to be secured in times of peace but if only the State exists and if the security of the State is guaranteed. Otherwise, all these rights cannot exist. We are envisaging a situation threatened by war, in a country with multitudinous people, with possibly divided loyalties, though technically they may be citizens of India. We trust that the time will come when the citizens of India will not look to far-off countries but we cannot proceed on the footing that in regard to all citizens of this country their loyalty is assured. Freedom of speech may be used for the purpose of endangering the State and resulting in crippling all the resources of the country. If only we realize that the country must exist, that the nation must exist, that the State must exist, if liberty and other things are to be guaranteed, there can be no possible objection to this article.

A reference has been made in the course of this Debate to the American Constitution. I do not know if Members of this House have read a recent book by Prof. Corwin one of the greatest authorities on constitutional law, on the President's power. During the Civil War, President Lincoln suspended the Writ of *Habeas Corpus*. In the American Constitution, power is given to suspend the *habeas Corpus*, but it is not mentioned whether the authority to suspend is the Congress or the President. But as a matter of fact the President did suspend the Writ of *Habeas Corpus* during the Civil War and the American people as a nation in their wisdom, never questioned the President's power.

I want to refer to another passage in regard to the President's powers. There is no country in which the President has more dictatorial powers than the United States. Prof. Corwin puts it in these terms on page 317 of his recent book:

" The war power of the United States has undergone a three-fold development. In the first place, its constitutional basis has been shifted from the doctrine of delegated powers to the doctrine of inherent powers, thus guaranteeing that the full actual power of the nation is constitutionally available. In the second place, the President's power as Commander-in-Chief has been transformed from a simple power of military command to a vast reservoir of indeterminate powers in time of emergency- an aggregate of powers- in the words of the Attorney-General Biddle. In the third place, the indefinite legislative powers which are claimable by Congress in war time in consequence of the development first mentioned may today be delegated by Congress to the President to any extent, that is to say, may be merged to any extent with the indefinite powers of the Commander-in-Chief."

That is the position today in America the most democratic country. Here we have the doctrine of Parliamentary sovereignty. Therefore, the Ministry must be acting in close liaison with the Parliament. The moment they act against the wishes of the Parliament, there is an end of their power so far as the powers of the President of the United States are concerned, they are unbridled. He cannot be questioned. Therefore, why quarrel with the powers of a Cabinet- I use the word Cabinet advisedly because in spite of repeated reminders. Members of the House seem to forget that the expression "President" in every article of the Constitution must be understood as a Cabinet responsible to the people. There can be no better and more profitable reading than that of Lincoln's life.

Now, I should deal with the various objections that have been raised in the course of the debate. My honourable Friend Mr. Bhargava's point has been answered in the previous part of my remarks, namely, that Parliament has the final voice in the matter. Parliament may rescind any action of the President. It may remove the Cabinet if it so chooses, because the Cabinet is as responsible to the House of the People during the war as it is during peace.

Its life depends upon parliamentary majority. There being continuous liaison between the Cabinet and the Parliament, this bogey of Parliamentary sovereignty need not be put forward at every stage. There is no question of denying the right of Parliament. The only question is how is the Parliament to govern. In times of peace it may govern by every day interfering with the executive: at another time it may govern by entrusting the power to the President or the Cabinet in whom they have confidence. Therefore, it is times and circumstances that determine the manner of action of the Parliament whose authority and sovereignty nobody disputes.

Then an extraordinary suggestion has been made that we must pass an Act of Indemnity. What is the meaning of an Indemnity Act? In countries where parliamentary sovereignty obtains an Indemnity Act is generally passed after the war is over. In spite of all Acts and Ordinances, it may be that particular officers may have outstepped the limits of law. In order to guard against infringement of the law and people being molested by action for damages and criminal prosecutions, Acts of Indemnity are generally passed. I would in this connection refer to Professor Dicey's Book on "The Law of the Constitution" in which he explains the scope and principle of an Act of Indemnity. An Act of Indemnity is not normally passed before the war is over. If Professor Shah means to say that even before the war is over, you can pass an Act of Indemnity, it would be worse than suspension of fundamental rights, because you give a *carte blanche* to the executive. Thereby you guarantee to absolve them of all acts of lawlessness perpetrated by them. That certainly is not what Professor Shah wants. Therefore, I submit that this proposition which has been placed before the House by Professor Shah cannot meet with their acceptance.

The third point was a legal one raised by Pandit Thakur Das Bhargava namely, with regard to to article 279: "while a Proclamation of Emergency is in operation nothing in this Act shall restrict the power of the State to make any law or to take nay executive action." As it is, if a law is passed during the period of Proclamation, it will automatically lapse with the end of the emergency: that is the meaning of article 279. Those who are for limiting the power of the President cannot quarrel with the provision as it is because where the period is restricted to a particular duration, automatically the law will come to an end, unless there is a provision in the Constitution or in the particular Act giving it a fresh lease of life after the termination of the emergency. Therefore, if anything my honourable Friend Pandit Thakur Das's amendment will give fresh life instead of cutting short the life of the law passed under article 279.

Therefore, under these circumstances, I submit that as the security of the State is more important, as the liberty of the individual is based upon the security of the State and as a war cannot be carried on under the principles of the *Magna Carta*, or principles of individual freedom, particularly in a country with multitudinous types of people with possibly diverse loyalties, this provision is very necessary. It will be the life of this Constitution. Far from killing the democratic Constitution- as one of the speakers said- it will save democracy from danger and from annihilation.

With these remarks I support the amendment.

Shri Krishna Chandra Sharma (United Provinces: General): Mr. Vice-President, Sir, I have listened to my honourable Friend Mr. Alladi Krishnaswami Ayyar with the attention he deserves. But what I could not understand is this, that in article 13 certain rights are given. In that very article there is a provision that those rights may be restricted. There are certain other rights given in article 15; in that very article there is a provision that the law can be made for the restriction thereof. Then again there is article 279 under which the rights given in article13 can be done away with under emergency declaration. Now my respectful submission is that when there are no rights there are no remedies, and there is no need of article 280, but when there are rights left there must be remedies for them. So, I see no reason in enacting article 280 by taking away the remedy even for the rights that have not been curtailed or taken away under the emergency legislation.

We have heard a lot about emergency. Sir, when two world wars were fought, the right to approach the High Courts of this country for certain fundamental rights was never taken away, even though we were ruled by a foreign power who were fighting for their own safety and the safety of civilization and of the world and we were fighting for our independence against that power. I do not apprehend such an emergency would even arise in this land; and there is no need to take away the rights which were not taken away even by the Britishers. After all, liberty is the sweetest thing in the world and you cannot take it away so easily. The end of all Government is the prosperity and well being of the people. We have had enough of the police state. If under any Government or any constitution a state of emergency arises so often, that Government and that constitution must be ended. If the State is strong and the people are prosperous there can arise no such emergency. You cannot rule by curtailing the rights of the people; you can maintain the constitution only if the people are prosperous and law-abiding. By resorting to police methods no State can continue. Therefore I submit that this proposed article 280 will serve no purpose whatever and it has no precedent in any constitution. Even if there are precedents you have to look to the time and the circumstances in which these constitutions were framed. By enacting this measure you will only give a handle to people who are out to create chaos and anarchy. Sir, you cannot suppress liberty and do away with the authority of the courts. I submit that this article would serve no useful purpose and it should not be passed.

An Honourable Member: The question may now be put.

Mr. Vice-President: The question is:-

"That the question be now put."

The motion was adopted.

The Honourable Dr. B.R. Ambedkar: Sir, I am not at all surprised at the strong sentiments which have been expressed by some speakers who have taken part in the debate on this article against the provisions contained in the clause as I have put forward. The article deals with fundamental matter and with vital matters relating to rights of the people and it is therefore proper that we should approach a subject of this sort not only with caution but- I am also prepared to say- with some emotion. We have passed certain fundamental rights already and when we are trying to reduce them or to suspend them we should be very careful as to the ways and means we adopt in curtailing or suspending them.

Therefore my friends who have spoken against that article will, I hope, understand that I am in no sense an opponent of what they have said. In fact, I respect their sentiments very much. All the same I am sorry to say that I do not find possible to accept either any of the amendments which they have moved or the suggestions that they have made. I remain, if I may say so, quite unconvinced. At the same time, I may say that I am no less fond of the fundamental rights than they are.

I propose to deal in the course of my reply with some general questions. It is of course not possible for me to go into all the detailed points that have been urged by the various speakers. The first question is whether in an emergency there should be suspension of the fundamental rights or there should be no suspension at all; in other words, whether our fundamental rights should be absolute, never to be varied, suspended or abrogated, or whether our fundamental rights must be made subject to some emergencies. I think I am right in saying that a large majority of the House realises the necessity of suspending these rights during an emergency; the only question is about the ways and means of doing it.

Now if it is agreed that it is necessary to provide for the suspension of these rights during an emergency, the next question that legitimately arises for consideration is whether the power to suspend them should be vested absolutely in the President or whether they should be left to be determined by Parliament. Now having regard to what is being done in other countries- and I am sure every one in this House will agree that we must draw upon the experience and the provisions contained in the constitutions of other countries- the position is this. As to the suspension of the right of what is called habeas corpus. That is the position in Great Britain. Coming next to the position in the United States, we find that while the Congress has power to deal with what are called constitutional guarantees including the suspension of the writ of habeas corpus the President is not altogether left without any power to deal with the matter. I do not want to go into the detailed history of the matter. But I think I am right in saying that while the power is left with the Congress, the President is also vested with what may be called the *ad interim* power to suspend the writ. My friends shake their heads. But I think if they referred to a standard authority Corwin's book on 'the President', they will find that that is the position.

Pandit Hirday Nath Kunzru: Will you let me interrupt him, Sir? I am sure he is familiar with Ogg's Government of America. Perhaps he will regard that book as a standard book

The Honourable Dr. B.R. Ambedkar: Yes. That is not the only book. There are one hundred books on the American Constitution. I am certainly familiar with some fifty of them.

Pandit Hirday Nath Kunzru: It is stated there that the best legal opinion is that the right to suspend the privilege of the writ of *habeas corpus* vests in the Congress and that the President may exercise it only where, as Commander-in-Chief of the Armed Forces he considers it necessary for the security of the military operations.

The Honourable Dr. B.R. Ambedkar: Yes, My submission is that in the United States while the Congress has the power, the President also, as the Executive Head of the State, has the *ad interim* power to suspend.

Now, in framing our Constitution, we have more or less followed the American precedent. By the amendment which I had made, Parliament has been now vested with power to deal with this matter. We also propose to give the President an *ad interim* power to take such action as he thinks is necessary in the matter of the constitutional guarantee.

Therefore, comparing the draft article and comparing the position as you and in the United States, there is certainly not very great difference between the two. Here also the President does not take action in his personal capacity. We have a further safeguard which the American Constitution does not have, namely, our President will be guided by the advice of the executive and our executive would be subject to the authority of Parliament. Therefore, so far as the question of vesting all the power to suspend the guarantees is concerned, my submission is that ours is not altogether a novel proposal which is made without either reference to any precedent or made in a wanton manner without caring to what happens to the fundamental rights.

Now, having dealt with that question, I come to amendment No.74 of Mr. Bhargava. I think that is an important matter and should therefore explain what exactly the provision is. His amendment really refers to article 279, although he has put it as an amending to article 280. What he wants is that any action taken by the State under the authority conferred upon it by the emergency provisions to suspend the fundamental rights should automatically cease with the easing of the Proclamation. I think that is what he wants so far as amendment No.74 is concerned. My submission is that if the article is read properly, that is exactly what it means.

I would like to draw his attention to article 279. He will see that that article does not save anything done under any law made under the powers given by the emergency. In order that the matter may be clear to him I would like again to draw his attention to article 227. If he compares the two, he will see that there is a fundamental difference between the two articles. Article 227 is also an article which give power to the Centre to pass certain laws in an emergency even affecting the State List. I would draw his attention to clause (2) of article 227. He will find at the end of it that 'all acts cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate except as respects things done or omitted to be done before the expiration of the same period. This clause does not occur in article 279. Therefore, not only any law that will be made under the provisions of article 279 will vanish, but anything done will also cease to be validly done. Thus, a person who was arrested under the provisions of any law made under article 279, would when the law has ceased to be in force not be governed by it merely because it has been done under any law made under that article. Under this article 279, not only the law goes, but the act done also goes.

Then I would draw attention to clause (2) of article 8. That again is an important article which must be read with article 279. Article 8 is an exception to the general provisions contained in this Constitution that the existing law will continue to operate. What article 8 says is that any existing law which is inconsistent with any of fundamental rights will be in operative. Article 8 clause (1) deals with the existing law and clause (2) deals with future laws. Thus, 'any law made under article 279' would be a future law. When the emergency ceases any law made under article 279 will come under clause (2) of article 8 so that if it becomes inconsistent with the fundamental rights it would automatically cease.

Therefore my submission is that, so far as amendment 74 is concerned the fears expressed are groundless. There is ample provision in the existing law which would cover all the cases my honourable Friend Pandit Thakur Das Bhargava has in mind.

Pandit Thakur Das Bhargava: In article 227 (2) the reference is to a law made by Parliament. It has no reference to any action taken by the executive. Secondly, it speaks of law made by Parliament whereas under article 13 we have reference to a law made by a State as defined therein.

The Honourable Dr. B.R. Ambedkar: The State there means both because the word 'State' used in article 279 is used in the same sense in which it is used in Part III where it means both the Centre, the provinces and even the municipalities.

Pandit Thakur Das Bhargava: Whereas in 227 (1) the reference is only to Parliament.

The Honourable Dr. B.R. Ambedkar: That is what I say. 279 will also be governed by 8. Therefore any law which is inconsistent with the fundamental rights granted will cease to operate.

Now, I proceed to deal with amendment No.78 of Pandit Bhargava. In that amendment he has stated that the order issued by the President suspending the provisions of any of these fundamental rights shall be expressly ratified. He says that there must be express ratification by Parliament of an order issued by the President. The draft article proposed by the drafting Committee provides that the ratification may be presumed unless Parliament by a positive action cancels the order of the President. That is the real difference between his amendment and the article as I have formulated.

Pandit Thakur Das Bhargava: But it is very fundamental difference.

The Honourable Dr. B.R.Ambedkar:But it is very fundamental thing. In a sense it is fundamental and in a sense it is not fundamental because we have provided that the Proclamation shall be placed before the Parliament. That obligation I have now imposed. Obviously if the Parliament is called and the Proclamation is placed before it, it would be a stupid thing if the people who come into the Parliament do not take positive action and such a Parliament would be an unnecessary thing and not wanted.

Pandit Thakur Das Bhargava: Is it not necessary to say that the law will only be applicable for the period of the emergency and not for shorter period and not for six months after the proclamation?

The Honourable Dr. B.R. Ambedkar: I am coming to that, but so far as this question is concerned, it is a matter of mere detail whether the Parliament should by an express resolution say that we want the President to withdraw it, or we want the President to continue it, or we want the President to continue it in a modified form. Once Parliament is called and Parliament has become seized of the matter, is it not proper that the matter should be left to Parliament and its consent presumed to have been given unless it has decided otherwise? Where is the difficulty? I do not see anything with regard to the amendment.

An honourable Member: It is one o'clock now.

Mr. Vice-President: We are going to finish this article.

The Honourable Dr. B.R. Ambedkar: Mr. Gupte has moved an amendment which is an amendment to the amendment of Pandit Bhargava, No.78. He wants that a definite period should be mentioned, that the Proclamation should be placed before Parliament within two months. Pandit Bhargava's amendment was one month, I think, if I mistake not and my original proposal is "as soon as possible." Well I do not know whether anybody wants to make this a matter of conscience and if this matter was not guaranteed, we are going to fast unto death. I think "as soon as possible" may be worked in such a manner that the matter may be placed before Parliament within one month, within two months or may be even a fortnight. It is a most elastic phrase and therefore, I submit that the provision as contained in the draft is the best under the circumstances and I hope the House will accept it.

Mr. Vice-President: I now place the amendments before the House.

Amendment No.3028- Volume II Printed List.

The Honourable Dr. B.R. Ambedkar: I withdraw that, Sir.

(The amendment was, by leave of the Assembly, withdrawn.)

Mr. Vice-President: Amendment No.3030.

Shri H.V. Kamath: I withdraw that amendment.

(The amendment was, by leave of the Assembly, withdrawn).

Mr. Vice President: I now place before the House amendment No.211 of Pandit Kunzru in the printed Consolidated List.

Pandit Hirday Nath Kunzru: I withdraw that amendment.

The amendment was, by leave of the Assembly, withdrawn

Mr. Vice-President: I place before the House the amendment in List No.1
The question is:

"That in amendment No.15 above, in clause (1) of the proposed new article 280 for the word and Roman figure 'Part III', the words and figures 'articles 13 and 16' be substituted."

The amendment was negatived.

Mr. Vice-President: The question is

"(i) That in amendment No.15 above, in clause (1) of the proposed article 280, for the words 'the President may be order declare' the words 'Parliament may by law provide' be substituted.

(ii) That in amendment No.15 above, in clause (1) of the proposed article 280, for the words 'mentioned in the order' the words 'specified in the Act' be substituted.

(iii) That in amendment No.15 above, in clause (1) of the proposed article 280, for the words 'the rights so mentioned', the words any of such rights so mentioned' be substituted.

(iv) That in amendment No.15 above, in clause (1) of the proposed article 280, for the words 'in the Order' occurring at the end of the clause, the words 'in the Act' be substituted.

(v) That in amendment No.15 above, for clause (2) and (3) of the proposed article 280, the following clause be substituted:-

'(2) An Act made under clause (1) of this article may be renewed, repealed or varied by a subsequent Act of Parliament."

The amendment was negatived.

Mr. Vice-president: The question is:

"(i) That in amendment No.15 above, in clause (1) of the proposed article 280, for the word ''mentioned' where it occurs for the first time, the word 'specified' be substituted.

(ii) That in amendment No.15 above, in clause (1) of the proposed article 280, for the words 'the rights so mentioned' the words 'any of such rights so mentioned' be substituted.

(iii) That in amendment No.15 above, for clause (3) of the proposed article 280, the following be substituted:-

"An order made under clause (1) of this article, shall, before the expiration of fifteen days after it has been made, be laid before each House of Parliament, and shall cease to operate at the expiration of seven days from the time when it is so laid, unless it has been approved earlier by resolutions of both Houses of Parliament.'

(iv) That in amendment No.15 above, after clause (3) of the proposed article 280, the following new clauses be added:-

(4) An order made under clause (1) of this article may be revoked by a subsequent order.

(5) An order made under clause (1) of this article may be renewed of varied by a subsequent order, subject to the provisions of clause (3) of 'his article.

(v) That in amendment No.15 above, at the end of the proposed article 280, the following new clause be added:-

'Notwithstanding anything contained in this article, the right to move the Supreme Court or a High Court by appropriate proceedings for a writ of *habeas corpus*, and all such proceedings pending in any court shall not be suspended except by an Act of Parliament."

The amendment was negatived.

Mr. Vice-President: Amendment No.19 falls because it is based on amendment No.18.

Amendments Nos. 23, 24, 25 and 26 all fall because Amendment No.3028 has been withdrawn.

Then I proceed to List No.2

The question is:

"That with reference to amendment No.15 of List I (Fourth Week) of Amendments to Amendments, after article 279, the following new article be added:-

"279-A. Any law made or any executive action taken under article 279 in derogation of the provisions of article 13 of Part III of the Constitution shall enure for such period only as is considered necessary by the State as defined in that Part and in no case for a period longer than the period during which a Proclamation of Emergency is in force."

The amendment was negatived.

Mr. Vice President: The question is:

"That in amendment No.15 of List I (Fourth Week) of Amendments to Amendments, for the proposed article 280, the following be substituted:-

"280. Any law made or executive action taken under article 279 shall enure for such period only as is considered necessary by the State as defined in Part III of the Constitution and in no case for a period longer than the period during which a Proclamation of Emergency remains in force."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in amendment No.15 of List I (Fourth Week) of Amendment to Amendments in clause (1) of the proposed article 280, after the words 'a Proclamation of Emergency' the words, figures and brackets 'under article 275(1) of the Constitution' be inserted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in amendment No.15 of List I (Fourth Week) of Amendments to Amendments, in clause (2) of the proposed article 280, the following be added at the end:-

'for a period during which the Proclamation is in force or for such shorter period as may be specified."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in amendment No.15 of List I (Fourth Week) of Amendments to Amendments, after clause (2) of the proposed article 280, the following new clause be added:-

'(2A) Any such order may be revoked or varied by a subsequent order."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in amendment No.15 of List I (Fourth Week) of Amendments to Amendments, in clause (3) of the proposed article 280, the following be added at the end:-

'and shall cease to operate at the expiration of one month unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament.

Provided that if any such order is issued at a time when the House of the people has been dissolved or if the dissolution of the House of the people takes place during the period of one month referred to in clause (3) of this article and the order has not been approved by a resolution passed by the House of the People before the expiration of that period, this order shall cease to operate at the expiration of fifteen days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the order have been passed by both Houses of Parliament."

The amendment was negatived.

Mr. Vice-President: The question is:

"That in amendment No.15 of List I (Fourth Week) of Amendments to Amendments in clause (3) of the proposed article 280 the full stop occurring at the end be substituted by a comma and the words 'when it meets for the first time, after such an Order' be added thereafter."

The amendment was negatived.

Mr. Vice-President: Amendment No.86 does not arise.

The question is:

"That in amendment No.15 of List I (Fourth Week) of Amendments to Amendments, at the end of clause (3) of the proposed article 280, the following words be added:-

'and if the House of the People, by a resolution passed by it, amends, varies or rescinds the order, the resolution shall be given effect to immediately."

The amendment was negatived.

Mr. Vice-President: The question is:

"That for article 280, the following article be substituted:-

280. (1) Where a Proclamation of Emergency is in operation, the President may by order Suspension of the rights declare that the right to move any court for the enforcement of such of the guaranteed by article 25 rights conferred by Part III of this Constitution as may be mentioned of the constitution during in the order and all proceedings in any court for the enforcement of the emergencies. rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the Order.

(2) An order made as aforesaid may extend to the whole or any part of the territory of India.

"(3) Every order made under clause (1) of this article shall as soon as may be after it is made be laid before each House of Parliament."

The amendment was negatived.

Mr. Vice-President: The question is:

"That article 280, as amended, stand part of the Constitution.

The motion was adopted.

Article 280, as amended, was added to the Constitution.

Shri H.V. Kamath: The House will now adjourn to Monday 9 a.m.

The Assembly then adjourned till Nine of the Clock on Monday, the 22nd August 1949.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Monday, the 22nd August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Mr. President : I think we have to begin with article 284 today. The motion is:

"That article 284 form part of the Constitution."

The Honourable Dr. B. R. Ambedkar (Bombay: General) : Sir, I move:

"That for article 284 the following article be substituted :-

284. (1) Subject to the provisions of this article. there shall be a Public Service Commission for the Union and a Public Service Commission for each State.

(2) Two or more States may agree that there shall be one Public Service Commission for that group of States, and if a resolution to the effect. is passed by the House or. where there are two Houses, by each House of the Legislature of each of those States Parliament may by law provide for the appointment of a Joint Public Service Commission referred to in this Chapter as Joint Commission) to serve the needs of those States.

(2a) Any such law as aforesaid may contain such incidental and consequential provisions as may- appear necessary or desirable for giving- effect to the purposes of clause (2) of this article.

(3) The Public Service Commission for the Union, if requested so to do by the Governor or Ruler of a State, may, with the approval of the President agree to serve all or any of the needs of the State.

(4) References in this _Constitution to the Union Public Service Commission or a State Public Service Commission shall, unless the context otherwise requires, be construed as references to the Commission serving the needs of the Union or, as the case may be, State as respects the,particular matter in question."

The article is self-explanatory and I do not think that any observations are necessary to clear up any point in this article. I will therefore reserve my remarks to the stage when I may be called upon to reply to any criticism that may be made.

Shri Lakshminarayan Sahu (Orissa: General) : May I know, Sir, why the provision as to any such law by Parliament is introduced and also why mention has been made of Ruler in these provisions ?

The Honourable Dr. B. R. Ambedkar: If I understand my Friend Mr. Sahu correctly,'he wants to know why we have introduced the provision for Parliament to make law. He will understand that the basic principle is that each State should have its own Public Service Commission. But, if, for administrative purposes or for financial purposes it is not possible for each State to have a Public Service Commission of its own, power is left open for two States by a resolution to confer power upon the Centre to make provision for a joint Regional Commission to serve the needs of two such States which, as I have said, either for administrative or for financial reasons are not in a position to have a separate independent Commission for themselves. Obviously, when such a power is conferred upon the Centre, it must be that the power so conferred must be regulated by law made by Parliament and it should not be open to the President either to constitute a Joint Commission for two States by purely executive order. It is for that purpose that power is given to Parliament to regulate the composition of ally Commission which is to serve two States,

Shri Lakshminarayan Sahu : The other point as to why the 'Ruler' has been mentioned ?

The Honourable Dr. B. R. Ambedkar: Because it may be that even a State in Part III may find it unnecessary to have an independent Public Service Commission for itself. Consequently, the door again there should not be closed to a State in Part III if that State were to agree to any State in Part I jointly to make a request to the President that a Joint Commission may be appointed. That is the reason why 'Ruler' is included in the provisions of this article.

Shri R. K. Sidhva (C. P. & Berar: General) : I want one clarification. In cause (3) it is stated "with the approval of the President, agree to serve all or any of the needs of the State." May I know if any local body wants to utilise the service of the Service Commission, will that be allowed?

The Honourable Dr. B. R. Ambedkar: Yes. There is a separate article for that, making provision that if a local authority wants its needs to be served by the Public Service Commission, it will be possible for Parliament to confer such authority upon the Public Service Commission also to serve the needs of such local authority.

(Amendment No. 2 was not moved.)

Mr. President: I take it that the other amendments relating to the original article now do not arise. Does anyone wish to move any other amendment?

Mr. Naziruddin Ahmad (West Bengal : Muslim): I have three amendments to move to this clause. Regarding the first amendment I find that if this amendment is accepted, it will lead to some drafting anomaly. So I would ask your permission to move it in another form. I am quite certain that my amendment, whether my amendment is reasonable or not, will never be accepted by the House. I therefore crave your permission to move it in a more proper form though there is no hope of it being accepted by the House. So if you permit me to move it in a slightly altered form I think the amendment will read better. I could not correct it before in time because these amendments came all of a sudden like so many air raids and it is impossible to be ready in time.

Mr. president: They were circulated a week ago.

Mr. Naziruddin Ahmad: Though these amendments were circulated last week, still there are a variety of bewildering things coming before the House in large numbers and it is difficult to keep pace with them. When the Drafting Committee takes months together to make up their minds, it is difficult to expect us to be ready instantly to meet the onrush of new amendments. I am guilty of being a little late. I therefore ask Your special Permission.

Mr. President: Very well, you may move it.Mr. Naziruddin Ahmad : Sir, I beg to move:

"That in amendment No. 1 of List I (First Week) in the proposed now article 284 for clause (2) the following clause be substituted:

"(2) Two or more States may by Resolution in their Legislative Assemblies or where there are two Houses, in both the Houses, agree that there shall be one Public Service Commission for that group of States."

I wanted to delete the latter part of this clause but that would have left the drafting in a state of unhappy condition. So I have moved it in this form. In essence there is no difference between the amendment already tabled and the amendment now moved.

Sir, I also move :

"That in amendment No. 1 of List I (Fifth Week) of Amendments to Amendments, In clause (2a) of the proposed article 284, for the word law' the word 'agreement' be substituted."

I also move

"That in amendment No. 1 of List I (Fifth Week). of Amendments to Amendments. in clause (3) of the proposed article 284, the words 'or Ruler' be deleted."

The purpose of my first amendment is this that in the original article as it was in the Draft Constitution the essence of that clause was that two or more States may decide to have a common Public Service Commission by agreement. Now the basis of agreement has been taken away. In fact power is being given to Parliament to set up a Joint Public Service

Commission for two or more States with their agreement expressed by Resolutions in their Legislative chambers. This is another instance of interference with Provincial affairs. This is absolutely needless. My amendment would restore the position with slight changes as it existed in the original draft article with the proviso that the agreement of the States will be based upon resolutions in their Legislative chambers. The object of my amendment is that the States in Part I should be enabled to adjust their own affairs so far as the appointment of Joint Public Service Commission is concerned. It would be entirely a matter between two States and it will be entirely a matter contractual between the parties. There is no reason for Parliament to interfere in this business. All that we should do is to allow the Provinces to function automatically and consider the mutual advantage or disadvantage and then to agree to appoint a Joint Public Service Commission and they will have the power under clause 2 (a) to agree upon incidental matters, viz., pay, leave and various other small matters. I should think that this is an attempt wantonly to take away or deprive the Provinces of their legitimate powers which were conceded to them in the Draft Constitution. If I may, I would draw the attention of the House to another article, the new article 287. This article is printed on page 9 of the printed list. In this new article the proviso which appears in the original article has been entirely omitted. The proviso was to this effect :

"Provided that where the Act is made by the Legislature of a State, it shall be a 'term of such Act that the functions concerned by it shall not be exercisable in relation to any person who is not a member of one of the services of the State except with the consent of the President."

Sir, this proviso to the original article 287 empowered the State Legislatures to legislate in the matter of Public Services Commissions. That power has been taken away in the proposed new article 287.

Then again, to keep up this policy, there has been introduced in the new article under consideration, i.e., article 284-power for Parliament to supersede.the discretionary power of the States to pass a law. The provision for Parliamentary law in clause (2) of the present articles and the deletion of the proviso in the old article 287 would show that there is a set policy of interfering with Provincial matters as much as possible. The effect of this interference aft every stage. would be to reduce die Provinces into a state of importance. The result would be that inefficiency, corruption and dissatisfaction which re supreme in some of the Provinces would show no sign of abating. On re other hand, I submit these would be aggravated. It is giving the Provinces responsibility without power. The responsibility for good- administration of the Provinces lies with the Provinces; but the powers, financial, legal, legislative and others, are to pass on to the Centre. As to money powers, we. know the situation. The effect of these will be to create more and more dissatisfaction in the Provinces, leading to more and more irresponsibility and more and more inefficiency. I do not wish to say anything more on this subject, beyond the fact that I enter my humble protest against this.

Then with regard to my amendment No. 65, it says that in clause (2a) of the proposed article 284, for the word "law" the word "agreement" be substituted. It is a corollary to the first amendment of mine. I desire to revert to the original scheme of the old article, that the whole matter should be settled. by agreement and not Parliamentary law, though it may be by Provincial law. So in clause the word "law" which clearly refers to Parliamentary law must be changed into one of "agreement". This is consequential to my first amendment and it is in keeping with the scheme of the original article.

Then I come to my amendment No. 66. This I submit, raises some important questions of principle and also some serious questions of drafting. This amendment says that in clause (3) of the proposed article 284, the words "or ruler" be, deleted. These two words "or Ruler" have been introduced in the proposed new article 284. It is said that the Public Service Commission for the Union, if requested to do so, by the Governor, or Ruler of a State, may agree to serve the needs of the. State. Sir, I submit that the introduction of these two innocent-looking words "or Ruler" would altogether change the entire situation. By the introduction of these two words, the, Indian States will all come in; or it is attempted to bring them in. But I think this will only lead to confusion and also lead to unnecessary complications. This article appears in Part XII of the Draft Constitution. In article 281

we have defined the word "State" and said that in this Part, unless the context otherwise requires, the expression "State" means a State for, the time being specified in Part I of the

First Schedule, that is to say,the Provinces. I submit that on a careful consideration of Part XII, it will be clear that this Part provided only for the purpose of the Provinces. The conception of their Rulers being included in this Part is absolutely foreign to the article. I submit that if we introduce the words "or Ruler" it will lead to confusion. The word, "State" clearly means "Province", not the Indian States. Even the introduction of the saving clause-(....... unless the context otherwise requires" will not improve the situation. These are ordinary words of precaution. They do not extend the idea of the article. if we are to include the Rulers also, the entire structure of the article will have to be changed. This- also shows the danger of the tendency to improve matters day by day, by introducing new things into the scheme. if we introduce the' conception of an Indian State here, then it will be extremely difficult to find out whether the word "State" occurring in other places in this Part has been used as including the Indian States. It will be difficult for even trained lawyers or experienced Judges to say whether in every case the word "State" also includes a State in Part III of the. Schedule. The words "or Ruler" have been introduced only in a few stray articles. The question would be whether the word "State" throughout Part XII. also includes' the 'Indian States. That difficulty cannot be' solved in this way, and as I said, it will lead to a great deal of confusion. If the Indian States are to be included in the scheme of things, then the whole ,Chapter should be re-drafted so as to serve that 'Purpose. It cannot be achieved by stray interpolations of the words "or Ruler" into the body of only some of the articles.

Apart from the technical difficulty and. the danger of creating confusion there is another objection to the inclusion of the Indian States-into the scheme of things. I understand that the Indian States are going to frame their own Constitution, and it is already known that there, is an attempt on their part to induce the Constituent Assembly to undertake this drafting for them If that is so, there is then a prospect of the entire subject of the States being dealt with by adequate legislation by this House, itself. So, if it is necessary to admit the Indian States into the scheme of things, then the proper place would be in their Draft Constitution and not by stray, half hearted and hasty introduction of words only here and there. This very attempt shows a change of mind and confusion. Words have been introduced here and there which must lead to a great deal of trouble. I submit, therefore, that we should not touch the States, except by thoroughly recasting the entire provisions here. We should rather leave this to the States, or to the Constituent Assembly acting on their behalf when it frames a Constitution for these States. In these circumstances, the best thing would be to leave out the words "or Ruler" which will clarify the situation and leave the matter to be dealt with by the Constituent Assembly on its own merits. However, I do not mean that there should be no law to govern the Rulers, or that there should be no provision for the appointment of Joint Public Services Commission between an Indian State and a Province. But I should think that this half-hearted attempt to improve matters by the introduction of the words "or ruler" would dislocate the arrangement of the articles and would complicate matters. If it is necessary at the time of considering the Indian States constitution that an article of this nature is essential, that can be introduced by the Constituent Assembly at a suitable stage when we have an overall picture of the Constitution of the Indian States. At present, I think these words should be deleted and the question for the States being concerned in the matter should not be prejudiced. Sir, I feel that these constant changes of these clauses create a considerable amount of difficulty in the House. It is not my humble self alone that has been feeling this difficulty, but there are many honourable Members who are serious workers, who are also unable, to follow the amendments or the changes or their implications.

I submit that the House is entitled to be treated in a more humane fashion than this.

Mr. President: I have received a notice of two amendments today at about 9-15 in the morning. I do not know if they are in order. They are certainly out of time. But as they want only deletion of certain clauses-of clause (2) and clause (2a) of the proposition moved by Dr. Ambedkar-they do not really amount to amendments. If the Members so desire I might put those two articles separately to vote and if they wish they might vote against each of them. Does any other Member wish to move any of the printed amendments?

Shri G.S. Guha (Tripura, Manipur and Khasi States): I had an amendment-No.3052.

Mr. President: Do you wish to move it?

Shri G.S. Guha: No, Sir, as it is generally covered by the new Draft articles.

Shri Brajeshwar Prasad: (Bihar: General): Sir, i rise to accord my general approval to article 284. While doing so I would like to draw the attention for the House to some features of this article with which I am not in agreement.

Clause (1) says that there shall be a Public Services Commission for the Union and a Public Services Commission for each State. Sir, I am not in agreement with the latter part of clause (1). I want that there should be administrative unification of the country. I am not in favour of the existence of provincial Civil Servants. I want that all officers in the services must be the servants of the Government of India and of the Government of India alone, so that the mischief of provincial autonomy may remain circumscribed within very narrow limits. Sir, our experience has been that the members of the provincial Public Services Commissions have not been able to prevent corruption, inefficiency and nepotism in the Provincial Governments. Therefore I am strongly opposed to the second part of clause (1), wherein provision has been made for Public Services Commissions for each State. I am opposed to State Commissions.

In clause (2), the procedure that has been adopted for the establishment of a Joint Commission is also not agreeable to me. I do not see any reason why a resolution by the Provincial Legislature should be necessary and why Parliament should be asked to frame a law or the establishment of a Joint Commission. The procedure prescribed in clause (2) is entirely different from the procedure prescribed in clause (3). If for the establishment of a Public Services Commission, which shall function for all the States it has not been felt necessary to seek the approval of the Provincial Legislature, if for the liquidation of the State Commissions it is not felt necessary to seek the approval of Parliament, I do not see any reason why a different procedure should be adopted for the establishment of a Joint Commission. The matter of a Joint Commission is not so important as the establishment of one Public Services Commission for the whole country. If a Governor and the President can, or if all the Governors and the President acting together, can liquidate all the State Commissions, I do not see any reason why Provincial Legislatures and Parliament should be asked to dabble in the establishment of Joint Commissions. If you ask the Provincial Legislature to express its opinion, it will hesitate, because it will feel that some of its powers will be taken away by the establishment of a Joint Commission. Everybody likes to keep power in its own hands. No one likes to transfer it to others.

As far as clause (3) is concerned, I would have very much preferred if the power would have been invested in the Governor in his discretion and in the Ruler in his discretion, because provincial Ministers will never agree to the liquidation of the State Commissions. But if the matter is left in the hands of the Governor in his discretion and the Ruler in his discretion, then probably in consonance with the needs of the time, they will take a broader view of things and be in favour of the establishment of a Joint Public Services Commission in the country.

Dr. P.S. Deshmukh (C.P. & Berar: General): We are this morning starting to debate and approve of articles dealing with Public Services Commissions. Sir, these Commissions are said to be a necessity of a modern State. These commissions are primarily meant to keep appointments away from day to day politics, party preferences and influences and the attempt is made, by having recourse to these Commissions, that the appointments shall be as far as possible on merit and there shall be no interference in their choice or in their selection from day to day by the executive authorities of the States. On the whole, Sir, I am prepared to say that the Commissions in India, have not worked too badly; but there are devices by which the recommendations of the Commissions are often procured or set at naught. There have been complaints so far as the working of our Public Services Commissions are concerned in this respect. Not so much that they have been partial, or that there is any other allegation to that effect, but that the whole procedure is so circumvented, or some short cuts devised, by which the choice of the Public Services Commissions becomes more or less an automatic approval of the appointments already made. That is one kind of complaint and it arises out of the following method that is resorted to. Very often appointments are made by Ministers and Heads of Departments to temporary vacancies and since it is one of the rules that the head of the department, where the vacancy occurs should also sit as a member of the Commission and since no other member knows anything about the qualifications or the capacity of the particular candidate already holding the post, the word of the head of the department is bound to weigh and as a rule weighs with the rest of the Commission. In very many cases it is his recommendation that is automatically accepted. This evil has gone to such an extent that some people contend that vacancies are made for persons and persons are not sought for vacancies, although the provisions with regard to Public Services Commissions are complied with.

I have however a different point of view to urge. In all this paraphernalia of Commissions and our attempt to be very fair and impartial and give recognition only to sheer merit, I must point out that the rural communities of India have suffered tremendously. They have had no representation whatsoever. It is the advanced people who are going ahead and serving their self interest and no attention is paid to these other communities. There are small minorities which organise themselves and make the life of the Government impossible by propaganda and otherwise because they can make their demands effective and respected. But so far as the huge majority communities are concerned, lakhs and crores of the population, where the percentage of education is hopelessly lower than in many cases some of the Scheduled Castes even, they have been left behind. In spite of the fact that there is an independent Government of India in power no attempt whatever is being made to give any representation to these communities in the public services. If we do not pay timely heed to this, I am sure it will be one of the factors leading to a revolution in India. It is a square fact which stares everybody in the face that sooner or later there is going to be a revolution in India. Whether it is going to be bloody or not will depend upon our present rulers. If today we neglect to end the persecution and exploitation of the rural communities, if we are not prepared to pay any attention to their demands, if they want to depend only upon Public Security Acts and their guns utilized increasingly for shooting people down when they agitate for their demands, there is no escape from a bloody revolution. We have to pay timely attention to their demands, for they get no education, they suffer from so many handicaps and yet they are made to compete with those persons who have high schools and colleges and everything else almost next door. In passing these provisions regarding the Commission I shall be grateful if the House pays a little more attention to this fact and does not commit the country to too many rigid clauses in which it will be very difficult for the provincial governments or legislatures or even the future Parliament to bring about any radical but desirable changes. There is a provision by which a member of the Commission will hold appointment for six years. The choice of these persons will be made by persons who are now in office and their successors would be precluded from effecting any change for a long time. So far as this item is concerned I am prepared to go to the extent of saying that people have very little confidence in the impartiality or their being just and fair to the claims of these large communities who live in the rural areas, whose chances of higher education are very very remote. In making these provisions I would submit that we should not tie the hands of the future parliaments. The whole structure of appointments is going to be entirely different when there is going to be adult franchise. There are millions of people whose claims are not recognised today and it may not be possible to resist them hereafter. Today you are treating them with contempt. You think that it is only the first class B.As., Hons., or M.As., who are the only competent persons who must be considered. While giving every opportunity to merit you have to consider the claims of those persons who for no fault of their own have been left behind and have had no opportunities of coming forward. This is a vital question. People will think that these are matters of fishes and loaves. I beg to differ from it. It is not a question of fishes and loaves; it is a question of the administration of the country, not under the aegis of the British people but under your own people. Why should there be any hesitation that instead of A or B there is X or Y from your own kith and kin, a citizen of this country, who has been suffering from certain handicaps which other communities do not suffer? If you are not prepared to pay any attention to this, my submission is that you will be repenting it one of these days.

My submission is that so far as the provisions relating to the Commission are concerned they should not be too rigid. It should be possible for the future Parliament to scrap it if they want, if they think that it is not fair and just and does not answer to the demands and claims of various communities and people of India. When we are embarking upon passing these provisions I would like my honourable Friend to have this side of the question in mind and not bind the hands of the provincial legislature: I for one would like to abolish the provincial legislatures but so long as they are there you must not tie their hands in such a way that they will be tempted to tear the Constitution to pieces. That is the reason why such a matter ought to be left to the future people.

Some of my Friends are afraid when they consider the character of the future Parliament. My Friend Mr. Brajeshwar Prasad is already nervous. If we want that our Constitution should exist and continue and should not be materially altered, try and place as little obstacles as possible in the way of amending it by future parliaments. If you make it rigid, then along with the bad parts even the good ones will go. Even if you try and give extraordinary powers to the President to preserve your interests and those of the governing classes you will not be able to do so, because the whole Constitution will be torn to pieces because of these clauses, I do not want to say more except this much by way of preliminary remarks so far as the subject of the Public Service Commissions is concerned.

Shri Lakshminarayan Sahu: *{Mr. President, I stand to support the new article which is going to replace article 284 of the Draft Constitution. But while lending my support to it I must say that the Government should not have the power to reject the candidate selected by the Public Service Commission. At present it is found that a candidate selected by the Public Service Commission is sometimes rejected by the Government. I want that the provision should be made so rigid that the Government may not have the power to overrule the decisions of the Commission and reject the candidate selected by it.

My second point is that the personnel of the Public Service Commission would always look up to the Government unless they are secured with regard to the tenure of their services. I would, therefore, suggest that the tenure of their service which is at present kept as six years should be increased. They must have security of tenure so that they may be independent and make selections properly. The members of the Public Service Commission will always follow the dictates of the Government unless they are provided with security of tenure. I, therefore, submit that the tenure of the Service of the members of the Public Service Commission should be increased. Moreover, I would also like that the members of the subordinate services too should be selected by the Public Service Commission. If the members of the subordinate services are taken through the Public Service Commission, nobody can complain of nepotism. But if the appointments to subordinate services are kept out of the scope of the Public Service Commission, there would always be complaint against one minister or the other of being guilty of nepotism in the appointments made by them. With a view to avoid such criticisms I want that the subordinate services may also be selected by the Public Service Commission.

I do not agree with the view just now expressed by Dr. Deshmukh that the Public Service Commission should not be made so rigid that it may not be changed in future. On the contrary I want that, right from now since we have been assembling in this Constituent Assembly House, we should begin to build the Public Service Commission in such a manner that it may act smoothly in future. As the article stands at present it provides that the members of the Commission may be removed. But such a removal would be after due enquiry and consequently this need not cause any apprehension in the mind of everyone.

One thing more I would like to submit here is about the mention of the rulers made in this article. The question of Hyderabad yet remains undecided. Thought must be given to the question as to what will be the future set-up of the State. Some rulers have been nominated as Rajpramukhs, but I do not agree with this. In future, when complete democracy obtains in the States, whether nominated rulers will remain in their offices or others will come in their places is a matter which should be considered. When real democracy will obtain in the States the offices of the Rajpramukhs, that are held by the rulers now, will be held by persons selected by the people. I would therefore, like that the Drafting Committee should consider this matter and if possible make some changes in the articles in the light of what I have said.)

Sardar Hukum Singh (East Punjab: Sikh): Mr. President, Sir, apparently there is much clamour for the ideal recruitment on merit alone, and in independent and impartial Commission will be the only security against any favouritism or nepotism. But there is another aspect of the picture as well which should not be ignored. India is a vast country and all regions are not equally developed so far as education is concerned. Then there are sections of the nation that are more backward than the others. It is no fault of theirs that they had not had equal opportunities so far as development in that respect is concerned.

I want to draw the attention of the House particularly to the Punjab. This province started in the race of education seventy years after the others had begun. The first private institution, Hindu College, in Calcutta was started in 1817 while in Bombay the first institution was started in 1827. But so far as the Punjab is concerned, our first private institution opened only in 1887. Similar was the case of universities. Under these circumstances, naturally the Punjab was left behind in this race and cannot be expected to compete with other provinces if regional considerations are ignored altogether.

Then there is another peculiarity or a mishap to which I want to draw the attention of this House. The recent partition has retarded the pace considerably. The East Punjab was economically much backward. An ordinary cultivator there has got only one acre or even less than that. That holding is not economical and that cultivator cannot afford to provide higher education to his children. About seventy per cent of the students in the United Punjab used to come from West Punjab which is now included in Pakistan. With this partition those schools and colleges have been lost. Parents and guardians have been rendered destitute and they cannot afford to provide education for their wards now. You must have seen that the children of school-going age are hawking in the bazars and in the streets with parched gram or cigarettes on their heads. Their education has been arrested and in spite of the best intentions nothing has been done to rehabilitate them. The young and the old are struggling for their bare subsistence. With such handicaps is it possible for these Punjabis to compare favourably in any open competition with candidates from other provinces which are more advanced and which had a considerably early start? What would be the result then? Already the Central Secretariat is full of Menons, Swamis and Ayyangars. And in a few years we will see the provinces would be flooded with ambitious young men who would not be so familiar with the local usages or customs. Local problems would not be appreciated. The sons of the soil would be squeezed out and there would be fresh prejudices. In backward areas such as the Punjab growth will be stunted, and development arrested. There would not be harmonious progress of each component part of the country.

Another point I might submit. Before partition the Punjab representation in the Centre was mostly of the Muslims. With the partition that personnel has migrated to Pakistan. There is very meagre representation now. And if there is open competition for the whole country there is no likelihood of any improvement in this representation. If no impetus is given to regional recruitment, the backward-I mean educationally and economically-areas would become colonies for these educationally advanced regions of the country.

I appeal to this House therefore to consider this question dispassionately and make a special provision for the Punjab at least, because this refugee problem is not to be ignored. I press it again that it is not possible for these uprooted people, with the conditions under which they are living, to provide their wards with suitable education which can equip them for the competition that you require and for the recruitment on merit alone. Therefore my submission is that some consideration for regional recruitment must be provided so that backward areas also have opportunities to develop side by side till a stage comes when their young men also can stand in competition with other provinces.

Chaudhri Ranbir Singh (East Punjab: General): *[Mr. President, I cannot help agreeing with the views expressed by Dr. Punjabrao Deshmukh in support of this article. I do feel what open competition under the circumstances, can mean. A child born in the city listens to the Radio from his very childhood, he gets a newspaper daily at his place, and has got many a facility; the school is also at a distance of a few yards from his house. When that child attains the age of three or four years, he can learn many things in the school, in the bazar, which a country boy who has passed the eighth class cannot learn. When competition is held by the Public Service Commission, the same type of questions are asked, and the decision is made on the criteria whether he is able to reply to those questions or not. This country is a land of villages and is dominated by the rural population; but none can deny on the basis of facts that the townsmen have developed with greater speed and they are much more advanced than the people of the countryside, and if in these circumstances a man from rural areas is made to compete with a person of urban area and similar types of questions are asked of them, there cannot be any doubt that the former cannot compete with the latter successfully or on equal terms.

There are only two ways of setting this right; one method is that in the public services a certain proportion should be reserved for the candidates from the countryside and they should be allotted the reserved number of posts in the services, and for those posts only persons from among the rural population should be allowed to compete.

The other method is that while appointing the members of the Public Service Commission, it should be particularly kept in view that at least 60 to 70 per cent of the members should be such as may sympathise with the rural people and understand their difficulties. I wish to give you a general illustration. Now a rule has been enforced in the matter of recruitment to our forces that the preliminary competiton will be held through the Public Service Commission. You can imagine that a boy who may be very good at study may not necessary be a success in the fighting line, for fighting can be done only by the person who is well built and has a strong heart. Through the Public Services Commission you will only be able to recruit good English-knowing people, but if such people are sent to the army, you may rest assured, that the army will never be successful in its job. The army's job is entirely of a different nature. In the case of a person who becomes a military officer we have to see how much sense of a sacrifice he has got, how much courage he possesses and how much physical strain he can bear. But if the recruitment to the army is made through a preliminary competition there is no doubt that the rural people will soon be left out even in the field of Military recruitment. There is no doubt that the persons formerly known as martial races belonged to the countryside; those people still join the army as soldiers. But the military officers are mostly urban people. The need of the hour is that the backward people of the countryside should be helped to advance forward, and for the present they should be given their due place as military officers on the basis of their population.

Nowadays there are so many villages, where there is not even a primary school. First of all, a villager's spending capacity is so little that he cannot send his children to the secondary or the higher schools in the city. Apart from this, you can just imagine how many villages are provided with facilities for primary education.

In these circumstances, if you want to act just like a machine, I have no doubt the fears expressed by Dr. Deshmukh will definitely come true. If the country is to progress on the basis of non-violence, we will have to take this into consideration according to the circumstances. As we have reserved a few seats for the backward classes or the schedule classes, we can perhaps adopt the same method in respect of the rural people. This method can be introduced either in respect of the Public Service Commission or in respect of the public services. It would be better if a certain percentage of posts is reserved and those posts are open only to the villagers for competition.

This is one thing more. Many of our people, who have been born and educated in the cities and can speak English well, are selected by the Public Service Commission in the competition; but most of those selected people are ignorant of the rural life and cannot put up with the difficulties of the rural life. There are no roads, there are no facilities that are available in the urban areas, it is not an easy task to go there. Hence those officers shirk going to the countryside and leave everything to their subordinates; in this way the villages are deprived of proper justice. I therefore think that the suggestions made by Dr. Deshmukh should be kept in view while appointing the Public Service Commission.

I do not agree with Shri Sahu that the tenure of the Public Service Commission should be prolonged. Our ex-President of the National Congress, Acharya Kripalani, had declared that the Government is not successful. One of the reasons for this is that the Government is not co-operating with the Public Service Commission, and one of the main causes is that the Public Service Commission was recruited according to the needs of the old order, and the old regime had recruited them in accordance with their own views.

It is therefore essential that the services should undergo a change with the change in the Government. The Government should have an open hand in the matter so that it can remove the Public Service Commission whenever it is deemed necessary. I, therefore, support Dr. Deshmukh strongly.

So far as nepotism is concerned it will continue even in future, it is not so easy to check it as you imagine. There are numerous considerations before members of the Public Service Commission; I think we need not be too apprehensive of the evil. Nepotism can be checked only if their conscience becomes strong, their ideas change. Till the present ideas and minds of the Public Services Commission change, you cannot check it by prolonging the life of any Public Service Commission.

Mr. President: I would like to remind honourable Members that the speeches which have so far been made on these articles have very little to do with the articles themselves. There have been speeches on the character of the public services, on the method of recruitment, who should be recruited and so forth. I will not allow any further digression. I would request Members who wish to speak to confine themselves to the articles under consideration.

Shri B.N. Munavalli (Bombay States): Mr. President, Sir, we are now discussing a subject of very great importance, *viz.*, that the Civil Services. "The Government of Great Britain is in fact carried on, not by the Cabinet, not even individual Ministers, but by the Civil Services." So, the importance of the Civil Services cannot be gainsaid. That is why the introduction of a Public Service Commission in our Constitution. The candidates are to be appointed on merits according to these articles. Even in other countries, nowadays, they have come to the conclusion that it is the merit system alone which can successfully be worked. Before that, in Great Britain, they tried the system of patronage. The relatives and friends and supporters of Ministers used to get jobs in the Government, and even in America people used to distribute the spoils amongst their friends and supporters and it is said that Andrew Jackson is the father of the spoils system. This spoil system continued for about fifty years or so since 1828 when Andrew Jackson became the President of the United States of America, but thereafter they found that it was very difficult to continue with the spoils system. So, they appointed a Commission of three members who were to hold examinations to fill up the posts that were vacant. The systems of examination in America and Great Britain are very different. In America, importance is given to practical side, but in Great Britain importance is given to general education. About seventeen hundred types of examinations are being held in America according to the various positions in different departments. The merit system came into existence in England since 1835 by law. So also in Japan it came into existence in 1888.

So, if we look to the various Constitutions, we will find that the Civil Services are established on merit by examinations. Here in India also, the same system is sought to be followed and accordingly article 284 has come into existence which seeks to establish Public Service Commissions both in the Union and in the States. But the circumstances in India are quite different. We have to take into account many factors. If we recruit solely on merit and on merit alone, as has been rightly said by my honourable Friend, Dr. Deshmukh, the majority communities will be left with no representation in the government services, but there are certain things which will go a long way in removing such grievances. In filling up posts in government service, formerly there were three classes, *viz.*, advanced classes, intermediate classes and backward classes, so that there may be fair and equitable distribution. If tests are held for each category of classes and candidates are selected on merit from each category of classes, I do not think there will be much heartburning amongst the people. But now what we find in the various provinces after the Congress came into power is that the microscopic communities which are very advanced are sweeping the overwhelming majority of the Posts in Government service, and so there has been a great dissatisfaction in the country so much so that, if timely remedies are not adopted, there is a great apprehension of a bloody or bloodless revolution.

So I think that the Public Service Commissions which will be appointed hereafter will take into consideration the various factors, to see that not only the advanced classes get proper representation but also the intermediate and backward classes also are getting representations according to their own merit and according to their own standard.

Shri Kuladhar Chaliha (Assam: General): Sir, I shall be short if possible sweet and I must obey the directions of the President who wanted us to be brief. I give my general support to this subsidiary article and I think it is one of the best that can be evolved under the present circumstances. I have enough faith that we have a good many people amongst us who will be far not only to the more advanced section of the people but also to those who are down-trodden and oppressed. The more suspicion that they will be forgotten is a charge which ought to be repudiated; we have some character and we have brains to use. The very fact that we have been suspecting all men in this way has led us to believe that we are a sort of people who cannot be just to others, to our neighbours or to our brethren, and this sort of charge ought to be repudiated on the floor of the House. I think this is one of the best articles that can be evolved out of the many suggestions that have come.

Shri Brajeshwar Prasad has very kindly stated that we should not have two Commissions, one Commission in the Centre and one Commission in the State, but that we should have one All-India Commission. It is a very healthy object and first of all we should see that it would come up to that ideal. He himself charged that all Provincial Commissions are corrupt and so forth and much has been brought up in this House and in that way we have reduced the Provincial Governments to almost a nullity by all these unfounded charges and it has produced a bad effect. I trust that none of us should level charges on the floor of the House against the Provincial Cabinet or against the Prime Minister; that is very bad and it has been causing a great deal of harm in the provinces, and elsewhere and in the public. I trust that these charges will not be made without proper scrutiny and in future men like Mr. Brajeshwar Prasad, responsible men, balanced men and men of great integrity will not do that and I trust that he will allow in others the same sort of integrity as he will to himself.

Sir, I feel that some suspicion is felt by Sardar Hukam Singh that Menons and Ayyangars are flooding the country. Yes, intelligence has always a certain advantage, but I also find that if I go to Army Headquarters the forbidding bearded Sikh or the sleek, fat Punjabee is there in large numbers; courage and fitness will always tell and because they are fit for all these services, they are holding these jobs. Yet I feel that the All-India Public Service Commission will be just and fair to all sections in the provinces.

Sir, what I dislike in this article-and in this I fully agree with Mr. Naziruddin Ahmad-if there is an under-current flowing through all Dr. Ambedkar's amendments which wants to take as much power out of the provinces as possible and bring it to the Centre. Here in the Draft Constitution we had not left any initiative to the provinces. Now I find that even the little that was there has been taken out. If two or more States want a Joint Public Service Commission and if a resolution to that effect is approved by the Parliament and a law enacted, that will have to be made by agreement and even that is taken away. We have left no initiative to the provinces. Even if a few States can agree and do something in common, jointly, even that has been taken out of the statute. It is indeed unfortunate that somehow or other we are reducing our provinces to mere automatons; we have not left to the provinces any leadership or any initiative. Dr. Ambedkar's amendments clearly indicate that greater and greater power should be given to the Centre. I therefore feel like supporting Mr. Naziruddin Ahmad who has submitted two amendments and if they are accepted it will give more power to the Provinces and many States can have a Joint Public Service Commission and they can make rules by agreement. The new subsidiary article takes away these little powers.

Generally I think the article is very well conceived and as the President has said, we must not be irrelevant. I therefore support this subsidiary article with these remarks.

Shri Raj Bahadur (United States of Matsya): Mr. President, Sir, I find from certain speeches delivered in the House on this article today that the very basis and the principles on which the creation of the Public Service Commission proceeds, have been attacked. My honourable Friends, Dr. Deshmukh and Shri Ranbir Singh have come forth with the suggestion that a sort of class distinction or discrimination should be recognized as between the urban people and the rural people, in the matter of recruitment to Government Services. While I stand here as no advocate of the urban people or of the rural people, I beg to express my emphatic opposition to all sorts of discriminations or class distinctions between the people of India.

Dr. P.S. Deshmukh: I did not suggest or make any class distinction. I wanted that the provision should not be too rigid.

Shri Raj Bahadur: I am glad if you did not. I think that you suggested that some sort of preference should be given to the rural communities because they are backward educationally and that the principle of selection on the basis of merit should be modified to that extent. It was a sort of distinction and discrimination which was not permitted even by our Constitution. It runs counter to some of the articles relating to Fundamental Rights which we have already adopted. We know that in article 9 we have specifically laid down that "the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them". Similarly so far as employments are concerned, in article 10 that we have already adopted it is provided that 'there shall be equality of opportunity for all citizens in matters relating to employment or appointment to office under the State". As such I plead, Sir, and if we go down deep to probe into the very basis and the principles on which the Public Service Commissions are created, we would find that the necessity to create these commissions was felt mainly on three grounds: firstly, that favouritism and nepotism was rampant when there were no such commissions and individual likes or dislikes whims and fancies came into play; secondly, merit was not recognized, and instead of merit, birth descent or other such things were recognized, as the basis of selection for Government jobs and lastly, canvassing was free. In order to eliminate all such defects, in order to secure the very best and the most deserving men for all the jobs in the State, we recognized the necessity of creating Public Service Commissions and thus they came into being. I feel, Sir, that merit and merit alone should be the sole criterion for selection for all appointments under the State. If we sacrifice the principle of merit and seek to modify it, it will turn out to be a dangerous precedent and a very dangerous principle. I at once recognize and I am in whole-hearted sympathy and agreement with the views of my Friend Dr. Deshmukh so far as the handicaps and the backwardness of the rural population in this country is concerned.

Mr. President: May I point out that the honourable Member is going beyond the article? We are not discussing appointments for particular classes or groups; we are discussing only the Public Service Commission.

Shri Raj Bahadur: I bow to the ruling of the Chair. I was simply mentioning that while discussing this article, the very basis and the necessity for the creation of the Public Service Commission was attacked. I want to defend that basis; I think article 284 is necessary. In a way, Dr. Deshmukh expressed himself opposed to the creation of Public Service Commission. Hence, the justification for me to make certain remarks in this connection. What I mean to say is that we must for the purpose of selecting men for the services recognise the principle of merit, and we must recognise the necessity of creating a Public Service Commission.

I perfectly recognise, that there are serious complaints about the way in which in recent years Public Service Commissions have functioned. It is a general complaint that jobs are filled up already and the selection, and interviews are only a formal business in order to keep up the show. I do not know how far that complaint is correct: but the complaint is there. To that extend, Dr. Deshmukh's remarks are justified. What I mean to suggest is that there should be no emphasis on sectionalism or class distinctions. That is my principal objection to the views expressed by Dr. Deshmukh; and this is the only justification for my taking a few minutes of the valuable time of this House.

I would like to remind my honourable Friends who were very eloquent about the small percentage of the people from rural areas in the public services that this small percentage of the rural people and the preponderance of the urban people in the services is due to certain psychological conditions and certain traditions also. In our country, we have had an adage:

"Uttam Kheti madhyam banj,
Nikhad chakari, bhikh nidhan.

Agriculture is the highest, trade is mediocre, service is the lowest and beggary penury-amongst professions.

These were the principles and the attitude which we had all through adopted in the choice of our avocations in life and this is one of the reasons why we do not find many rural people in the services. The glamour that has now come to be attached to services and jobs under the Government is only of recent origin. This is why the Father of our nation always emphasised the necessity and desirability of adopting the healthy principle of "return to the villages". As a matter of fact, he always advocated that the glamour which has been attached to Government service must be eliminated and the attraction that we feel for urban life should be resisted. The centre of gravity must shift from the urban areas to rural areas. That is the only way in which we can solve the problem. If instead of this we give preference to certain sections of the people, we would be simply playing the game which the late foreign rulers of this country wanted us to play for their sake and their purpose. I therefore submit in all humility that the only principle which should guide the Public Service Commission, which forms the basis of the creation of the Public Service Commission should be merit and merit alone.

I may add here a word about one of the amendments which has been moved by Mr. Naziruddin Ahmad. He has taken objection to the word 'Ruler' that has been used in sub-clause (3) of this article and in order to justify his remarks, he has referred to article 281 wherein the definition of the expression "State" is given. He says that the definition includes only those States as have been specified in Part I of the First Schedule. I submit we have not yet considered articles 281 and 282. It is therefore quite natural and necessary that when we come to consider these articles, the States mentioned in Part III may also be included and as such the remarks that he has made about his amendment do not hold good.

With these few words, I conclude.

Shri V.I. Muniswamy Pillai (Madras: General): Mr. President, I stand before you today to support the motion moved by my honourable Friend Dr. Ambedkar.

It is admitted on all hands that there ought to be a Public Service Commission both in the Union and in the States. But, I feel that it must be the duty of this august Assembly to express in unequivocal terms whether the Public Service Commissions are to continue in the same manner as they have done in the past or they should have a better outlook in the future. So far as we know, the functions of the Public Service Commissions have not been performed so satisfactorily in so far as the unrepresented communities and the minorities are concerned. The recent recruitment to the Indian Administrative Service and the Indian Police Service is outstanding before us as proof that justice has not been done to these unfortunate communities. In the provinces, though there may be Ministers here and there, they are helpless in the matter of the services. As has been rightly pointed out, service is the soul of administration. We are all agreed that the best men must be got; but what happens in the functioning of the Public Service Commission is this. Though a Schedule Caste man might have passed all the examinations required, there comes the fact that the Service Commission says that he is not suitable for the post. According to the communal Government Order, that particular man is left out and the next community is called to take the post. This has been happening not only in the province where I live, but even in the Federal Public Service Commission I know as a matter of fact that members of the Harijan community, though they had obtained very good marks, and they had the required academic qualifications, still on some pretext or another, they were not given the chance. It is my humble opinion that the future outlook of this Commission must be far better. Due to communal distinctions in this country, some of these communities, though they may be intelligent and competent to hold any post, have not been given their due chance. For the several departments of the Government panels of candidates are created to choose from. Though the Commission may select the people, they say something as to the suitability or otherwise of the man thus banning the best man from service. It is this kind of thing that has greatly disappointed the young men of these unfortunate communities. As a matter of fact, I know Dr. Ambedkar was able to get a certain percentage for the Scheduled Castes in the various services. But, if we take stock of the present position, the number of Scheduled Castes people that are occupying posts both in the Centre and in the provinces is very negligible. It is to give a better outlook to the future Public Service Commissions that I plead before this House that proper directions must be given.

Mr. President: Dr. Ambedkar.

The Honourable Dr.B.R. Ambedkar: I do not think there is anything that I need say.

Mr. President: I would put the amendments to vote. The first amendment is amendment No.64, moved by Mr. Naziruddin Ahmad. He has substituted that by another amendment which I will read to you now.

"That in amendment No.1 of List I (Fourth Week) in the proposed new article 284, for clause (2) the following clause be substituted:

(2) Two or more States may by resolution in their Legislative Assemblies or when there are two Houses, in both the Houses, agree that there shall be one Public Service Commission for that group of States."

The amendment was negatived.

Mr. President: Then, amendment No.65.

Mr. Naziruddin Ahmad: That does not arise in view of this.

Mr. President: Then, I put amendment No.66.

The question is:

"That in amendment No.1 of List I (Fifth Week) of Amendments to Amendments, clause (3) of the proposed article 284, the words 'or Ruler' be deleted."

The amendment was negatived.

Mr. President: Then, I would put the proposition as moved by Dr. Ambedkar. Would Messrs Chaliha and Lakhsminarayan Sahu like me to put the two paragraphs separately?

Shri Kuladhar Chaliha: No, Sir.

Mr. President: The question is:

"That for article 284 the following article be substituted:-

Public Service Commission for the Union and States	Subject to the provisions of this article, there shall be a Public Service Commission for the Union and a Public Service for the Union and Commission for each State.

284.(1) (2) Two or more States may agree that there shall be one Public Service Commission for that group of States, and if a resolution to that effect is passed by the House or, where there are two houses, by each House of the Legislature of each of those States, Parliament may by law provide for the appointment of a Joint Public Service Commission (referred to in this Chapter as Joint Commission) to serve the needs of those States.

(2a) Any such law as aforesaid may contain such incidental and consequential provisions as may appear necessary or desirable for giving effect to the purposes of clause (2) of this article.

(3) The Public Service Commission for the Union, if requested so to do by the Governor or Ruler of a State, may, with the approval of the President, agree to serve all or any of the

needs of the State.

(4) References in this Constitution to the Union Public Service Commission or a State Public Service Commission shall, unless the context otherwise requires, be construed as references tot he Commission serving the needs of the Union or, as the case may be, the State as respects the particular mater in question".

The motion was adopted.

Article 284, as amended, was added to the Constitution.

Article 285

Mr. President: Article 285-Dr. Ambedkar.

Mr. Naziruddin Ahmad: Sir, I rise on a point of order. Mr. President you will be pleased to find that this is an amendment to the Constitution itself, not any amendment to amendment and therefore under the rules it should not be allowed. We have certainly made some exceptions in special cases but these exceptions are now showing a tendency of becoming the rule. I submit therefore that this amendment should be ruled out on technical grounds alone. There is again a question of convenience. I think in form this amendment is most objectionable. The clauses of article 285 of the Draft Constitution have merely been repeated here with additions and alterations of a variety of sorts. The amendments however should have come as amendments to the original article. Instead the whole article is written with new ideas incorporated or interpolated and the old clauses and amendments have been presented as a new article. It takes a long time to find out what are the changes made.

Dr. P.S. Deshmukh: As in the Hindu Code Bill.

Mr. Naziruddin Ahmad: As Dr. Deshmukh aptly points out-like the Hindu Code Bill. Old clauses and new ideas have been blended together and presented as new with necessary interpolations here and there. It is extremely difficult to sort out what are the real changes made. Clause (2) has been changed in many places. Then there is article 285-A which is entirely new. Then article 285-B is composed of parts of old article 285 and the proviso of this article is entirely new. It purports to be a reproduction of 285(3) but it is now made a new article with entirely new features. Clause (d) of this article is entirely new. I think it is difficult for anyone to try to follow these changes. I therefore object not only on the ground of their being in breach of the rules but also on the ground they are in a form not readily intelligible and they should have been expressed as amendments to the Constitution itself. That would have made it easier for honourable Members to follow the changes.

The Honourable Dr. B.R. Ambedkar: This is not the first time when my Friend has raised a point of Order. You have been good enough to allow the Drafting Committee to depart from the technicalities of the Rules of Procedure and I therefore submit that in this case also you will be pleased to allow us to proceed.

Dr. P.S. Deshmukh: Sir, I rise to protest against this attitude of Dr. Ambedkar. You have allowed him some privilege and he is misusing that, Sir. He can and must show how he wishes to alter the original draft articles concretely and specifically and not proceed in the way he did with the Hindu Code Bill and substitute anything in any place without specifying how it compares with the original.

Shri M. Ananthasayanam Ayyangar (Madras: General): My friends who raised the point of order should know that the whole scheme of Public Service Commission has been altered and these are consequential changes. Therefore if others had not been altered, possibly this would not have required any alternation. Under those circumstances, these objections are not valid.

Dr. P.S. Deshmukh: I beg to submit that every amendment must be related to the original draft that was circulated.

Mr. President: So far as the Drafting Committee is concerned I have allowed a certain amount of latitude because many of the difficult articles about which there was likely to be difference of opinion or which required consideration were left over for the purpose of reconsideration and if as a result of reconsideration the Drafting Committee proposes new article, I do not think I should allow any technicalities to stand in the way of the new articles being placed before us. I therefore allow these articles to be moved.

Mr. Naziruddin Ahmad: There are a number of articles and these articles should be put separately.

Mr. President: That is a different matter and we can discuss them separately. Dr. Ambedkar may explain how the separate articles came into being . You move them together and we may take them separately at the time of voting.

The Honourable Dr. B. R. Ambedkar: yes, they may be put separately.

Sir I move:

"That for article 285, the following articles be substituted:-

285(1)

Appointment and term of office of members	The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union Commission or a Joint Commission, by the President, and in the case of a State Commission by the Governor or Ruler of the State: Provided that at least one- half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State, and in computing the said period of ten years any period before the commencement of this Constitution during which a person has held office under the Crown shall be included.

(2) A member of a Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains, in the case of the Union Commission, the age of sixty-five years, and in the case of a State Commission or a Joint Commission, the age of sixty years, whichever is earlier:

Provided that-

(a) a member of a Public Service Commission may by writing under his hand addressed, in the case of the Union Commission or a Joint Commission, to the President and in the case of a State Commission, to the Governor or Ruler of the State, resign his office;

(b) a member of a Public Service Commission may be removed from his office in the manner provided in clause (1) or clause (3) of article 285a of this Constitution.

(3) A person who holds office as a member of a Public Service Commission shall on the expiration of his term of office, be ineligible for re-appointment to that office.

285A. (1)

Removal and suspension of a member of	Subject to the provisions of clause (3) of this article, the Chairman or any other member of a Public Service commission shall only be a removed from office by order of the President on the ground of misbehaviour after the Supreme Court on a reference being made to it by the

Public Service Commission

President has, on inquiry held in accordance with the procedure prescribed in that behalf under article 121 of this Constitution, reported that the Chairman or such other member, as the case may be, ought on any such ground be removed.

(2) The President in the case of the Union Commission or a Joint Commission and the Governor or Ruler in the case of a State Commission may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the Supreme Court under clause (1) of this article until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything contained in clause (1) of this article, the President may, by order, remove from office the Chairman or any other member of a Public Service Commission if the Chairman or, such other member as the case may be,

(a) is adjudged an insolvent; or

(b) engages during his term of office in any paid employment outside the duties of his office;"

And here I want to add a third one, as (c):

"(c) is in the opinion of the president unfit to continue in office by reason of infirmity of mind or body.

(4) For the purpose of clause (1) of this article, the Chairman or any other member of a Public Service Commission may be deemed to be guilty of misbehaviour if he is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit from emoluments arising therefrom otherwise than as a member and in common with the other members of any incorporated company.

Power to make regulations as to conditions of service of members and staff of the commission.

285-B. In the case of the Union Commission or a joint commission, the president and in the case of a State Commission, the Governor or Ruler of the State may by regulation-

(a) determine the number of members of the commission, and their conditions of service; and

(b) make provision with respect to the number of members of the staff of the commission and their conditions of service:

Provided that the conditions of service of a member of a Pubic Service Commission shall not be altered to his disadvantage after his appointment.

Bar to the holding of office by members of Commissions on ceasing to be such member

285-C.On ceasing to hold office-

(a) the Chairman of the Union Public Service Commission shall be ineligible for further employment either under the Government of India or under the Government of a State;

(b) the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of any other State Public Service Commission but not for any other employment either under the Government of India or under the Government of a State;

(c) a member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission but not for any other employment either under the Government of India or under the Government of a State.

(d) a member other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State.

Sir, these are the clauses which deal with the Public Services Commissions, their tenure of office and qualifications and disqualifications and their removal and suspension. I should very briefly like to explain to the house the matters embodied here, the principal matters that are embodied in these articles.

The first point is with regard to the tenure of the Public Service Commission. That is dealt with in article 285. According to the provisions contained in that article, the term of office of a member of the Public Service Commission is fixed at six years or in the case of the Union Commission, until he reaches the age of 65 and in the case of a State Commission until he reaches the age of 60. That is with regard to the term of office.

Then I come to the removal of the members of the Public Service Commission. That matter is dealt with in article 285-A. Under the provisions of that article, a member of the Public Service Commission is liable to be removed by the President on proof of misbehaviour. He is also liable to be removed by reason of automatic disqualification. This automatic disqualification can result in three cases. One is insolvency. The second is engaging in any other employment, and the third is that he becomes inform in mind or body. With regard to misbehaviour, the provision is somewhat peculiar. The honourable House will remember that in the case of the removal of High Court Judges or the Judges of the Supreme Court, it has been provided in the articles we have already passed, that they hold their posts during good behaviour, and they shall not be liable to be removed until a resolution in that behalf is passed by both Chambers of Parliament. It is felt that it is unnecessary to provide such a stiff and severe provision for the removal of members of the Public Service Commission. Consequently it has been provided in this article that the provisions contained in the Government of India Act for the removal of the Judges of the High Court would be sufficient to give as much security and as much protection to the members of the Public Service Commission. I think the House will remember that in the provisions contained in the Government of India Act, what is necessary for the removal of a Federal Court Judge or a high Court Judge is an enquiry made by the Federal Court in the case of the High Court Judges or by the Privy Council in the case of the Federal Court Judges, and on a report being made that there has been a case of misbehaviour, it is open to the Governor-General to remove either the Federal Court Judge or the Judge of the High Court. We have adopted the same provision with regard to the removal of Public Service Commission, wherever there is a case of misbehaviour.

With regard to automatic disqualifications, I do not think that there could be any manner of dispute because it is obvious that if a member of the Public Service Commission has become insolvent, his integrity could not be altogether relied upon and therefore it must act as a sort of automatic disqualification. Similarly, if a member of the Public Service Commission who is undoubtedly a whole-time officer of the State, instead of discharging his duties to the fullest extent possible and devoting all his time, were to devote a part of his time in some other employment, that again should be a ground for automatic disqualification. Similarly the third disqualification, namely, that he has become infirm in body and mind may also be regarded, without any kind of dispute, as a fit case for automatic disqualification. Members of the House will also remember that while reading article 285-A, there is a provision made for suspension of a member of the public Services Commission during an enquiry made by the Supreme Court. That provision is, I think, necessary. If the President thinks that a Member is guilty of misbehaviour, it is not desirable that the member should continue to function as a member of the Public Services Commission unless his character has been cleared up by a report in his favour by the Supreme Court.

Now I come to the other important matter relating to the employment or eligibility for employment of the members of the Public Services Commission- both the Union and State Public Services Commission. Members will see that according to article 285, clause (3), we have made both the Chairman and the Members of the Central Public Services Commission as well as the Chairman of the State Commission, and the members of the State Commission ineligible for reappointment to the same posts: that is to say, once a term of office of a Chairman and Member is over, whether he is a Chairman of the Union Commission or the Chairman of a State Commission, we have said that he shall not be reappointed. I think that is a very salutary provision, because any hope that might be held out for reappointment, or continuation in the same appointment, may act as a sort of temptation which may induce the Member not to act with the same impartiality that he is expected to act in discharging his duties. Therefore, that is a fundamental bar which has been provided in the draft article.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Monday, the 22nd August 1949

Then the second thing is that according to article 285-C, there is also a provision that neither of these shall be eligible for employment in any other posts. There is therefore a double disqualification. 'Mere is no permission to continue them in their office, nor is there provision for their appointment in any other posts. Now, the only exceptions, that is to say, cases where they could be appointed are these :

The Chairman of a State Public Services Commission is permitted to be a chairman or a Member of the Union Commission, or a Chairman of any other State Commission. Secondly, the Members of the Union Commission can become Chairman of the Union Commission or any other State Commission.

Thirdly, the Members of the State Commission can become a Chairman or a member of the Union Commission, or the Chairman of a State Commission.

In other words, the exceptions are : namely, that one man, who is a Member of the Union Public Services Commission, may become a Chairman of the State Public Services Commission : or a Member of the State Public Services Commission can become a Chairman of the Union Public Services Commission, or become a Member of the Union Public Services Commission. The principal point to be noted is this, that neither the Chairman nor the Member of a State Commission can have employment under the same State. He can be appointed by another State as a Chairman or he can be appointed by the. Central Government as the Chairman of the Union Public Services Commission or a Member of the. Union Public Services Commission, the object being not to permit the State to exercise any patronage in the matter either of giving continued employment in the same post, or in any other post, so that it is hoped that with these provisions the Members of the Commission will be as, independent as they are expected to be.

I do not think there is any other point which calls for explanation.

Shri Lakshminarayan Sahu : What about Members of Joint Commissions?

The Honourable Dr. B. R. Ambedkar: A Joint Commission is the State Commission. That is defined in clause (4) of article 284.

Dr. Manmohan Das (West Bengal: General): I would like to be clear on some points about 285-A. If the Supreme Court as being referred by the President reports that the Chairman or some other Member of the Public Service Commission should be removed, then will it be obligatory on the part of the President to remove him ?

The Honourable Dr. B. R. Ambedkar: Certainly.

Mr. Naziruddin Ahmad: You have asked the honourable Member to explain to the House the difference between the new draft and the original. That would have been helpful for a proper appreciation of the real changes.

The Honourable Dr. B. R. Ambedkar: If any point is raised in the course of the debate, I will explain it in the course of my reply.

Mr. Naziruddin Ahmad: I do not know whether to oppose or not to oppose.

The Honourable Dr. B. R. Ambedkar: You must have read both drafts. The only thing you might not have read are the commas and semi-colons.

Mr. President : I will now take up the amendments.

Shri Jaspat Roy Kapoor (United Provinces: General) : Sir, I beg to move:

"That in the proviso to clause (1) of the proposed article 285, for the word 'one-half the word 'one-third' be substituted."

The question of the formation and the personnel of the Public Services Commissions is of considerable importance. In fact, it is impossible to over-emphasize its importance. Entrusted with the task of selecting candidates to fin various posts under the Central and the Provincial Governments, the formation of both the Central and the State Public Services Commissions becomes of very great importance. On its proper formation and on the proper selectionof the Members of such Commissions depends the proper selection of persons who will be called upon to discharge the responsible and, onerous duties of the Government in the various Departments. That being so, I think it is worthwhile that

we should consider the various articles relating to this subject in detail and with very great cm and caution.

The proviso to which I have just moved my amendment lays down that one-half of the members of every Public Services Commission shall be persons who at the dates of their respective appointments have held office for at least ten years, either under the Government of India or under the Government of a State, and so on. This means, Sir, that in actual practice, the official members shall almost always be in a majority in the Public Services Commissions. Ordinarily, the total strength of a Public Services Commission is either three or five, so that if there are three Members, half of them at least-which would mean two at least-would be Government servants.

Only one place is left to be filled by one who has not been in government service for ten years. Similarly, if there are five members, three at least shall always be government servants and only two can be recruited from outside that sphere. This I consider to be rather giving government servants undue representation on the Public Service Commission. The government servants views should not be so overwhelmingly represented on the Public Service Commissions. While it is necessary that we must have the advantage of the experience of government servants of ten years' standing, at the same time I think that their views should not be the determining factor in the selection of all candidates and that the views of the non-officials and representatives of other interests should also be properly represented on the Commissions. But it would not be so if by a statutory provision the majority of the members of all the Commissions shall always be persons of ten years' standing in government service.

The longer the period a person has been in government service the more conservative he becomes and develops the whims, caprices and even the idiosyncrasies of that class. They get out of touch with public opinion and the changing needs of the society. I think, therefore, it would not be safe and in the public interest to give government servants a permanent majority on both the Central and States Commissions. The freshness of the outlook of nonofficials must also be brought to bear upon the selection of candidates in a fair measure.

My honourable Friend Dr. Ambedkar is not present here. (An honourable Member : He is here), if he is here, he does not care to hear anything that is said with regard to the articles he has moved, because he feels safe that it is not possible for any Member to carry the vote. of this House against any one of his proposals. However, I hope that this House on this occasion would seriously consider whether it should not compel Dr. Ambedkar to accept some of the amendments which I will move. I have already moved one and some more I will move hereafter. It seems Dr. Ambedkar has developed a great deal of regard and affection for government servants. Perhaps it is due to the fact that he has been so long associated with the _government and the cabinet. I do not grudge the government servants the affection and regard they have been able to Win from Dr. Ambedkar. But I do think that Dr. Ambedkar has allowed himself to be rather unduly influenced by the views of government servants so far as this article is concerned, for we find that he has absolutely ignored the views and opinions of the Chairman of the present Federal Public Service Commission. the unanimous view of the Members of the F.P.S.C. as also the views of the Chairmen of the different provincial Public Service Commissions.

Let us see what their views on this subject are. There was a conference held last year in New Delhi, a conference of the Chairman and members of the F.P.S.C. and the Chairman of the different provincial Public Service Commissions. This is how they expressed themselves on this point. I am reading from the pamphlet which has been circulated to us by the Constituent Assembly Office containing comments on the draft provisions from various bodies.

"The proviso to clause 285(1) of the Draft Constitution provides that at least one half of the members of every Public Service Commission shall be persons who at the date of their respective appointments have held office for at least ten years in the Government of India or under the Government of a State. The Conference is of opinion that in order to provide for the representation of the interests involved this proviso should now be amended so as to provide one-third in place of one-half occurring in the first line of the provision."

This wholesome advice based on long experience of such responsible person as the Chairman of the F.P.S.C., unanimously supported by the other members of the conference has been absolutely ignored, and the views of the permanent officials of the Home Ministry have been allowed to prevail. How conservative the views of the officials of the Home Ministry are can be easily found if we refer to what they have suggested in their memorandum :

"The only further comments that we would like to offer are with reference to the recommendations made by the conference of Chairmen of the Public Service Commissions forwarded to the Constituent Assembly with the Federal Public Service Commission's letter, No........... dated.........

In paragraph 4 of that letter, it has been suggested that the provision for service personnel in article 285(1) should be altered from one-half to one-third. This Ministry is inclined to the view that from the point of view of public service (not from the point of view of the country as a whole but of course from the point of view of the existing public servants) the services be even more strongly represented on the Commission."

So if they had their way they would probably make the Public Service Commissions an absolute monopoly of the government servants and a close preserve for them. What we now find is that the Drafting Committee headed by Dr. Ambedkar has simply accepted the recommendations of the officials members of the Home Ministry in absolute disregard of the saner counsel of the F.P.S.C. and the Chairman of other provincial Public Service Commissions. This I consider to be a highly unsatisfactory state of affairs.

Not only this. I would draw your attention to one more point with regard to this article. In this proviso what is wanted is not only that one-half of the members of such Commissions shall have ten years experience of government service, but in their case it is also necessary that at the time of their appointment they must be government servants, which means that if a person has retired from government service only a few months before a particular date he is not eligible for appointment as a member of the Public Service Commission. That is, he should not have had an opportunity of associating himself freely even for a month or so after retirement from government service. I do not understand the reason or the logic behind it. Let us take the case of a retired High Court Judge retiring at the age of sixty. After that retirement, along with his retirement he can be appointed to the Union Public Service Commission, but if unfortunately he has been out of office for even a month or two he shall not be eligible for such appointment. I submit that there is no sense in it, there is no logic in it. I would therefore submit that in order that interests other than government servants are properly and duly represented on Public Service Commissions, in the place of 'one half' in the proviso we should have the word 'one-third'.

While discussing the previous article my honourable Friend Chaudhri Ranbir Singh was making out a strong case for the appointment of rural-minded persons on the Public Service Commissions. If we retain the word 'one-half' there will not be a reasonable opportunity either for the appointment of a rural-minded member or an urban-minded member. I think honourable Members will agree that in the Public Service Commissions we should, if possible, have always a good educationist, a good public man and so on. But if we retain the word 'one-half' here it will be impossible to have suitably formed Public Service Commission either at the Centre or in the provinces.

The next amendment that stands in my name is this which I beg to move.

"That in clause (2) of the proposed article 285, the words 'In the case of the Union Commission, the age of sixty-five years, and in the case of a State Commission or a Joint Commission' be deleted."

So that, after the deletion of these words, clause (2) would read thus:

"A member of a Public Service Commission shall hold office for a term of six years from the date on which he enters upon his office or until he attains the age of sixty years, whichever is earlier."

The object of this amendment is that the age of retirement should be uniformly at the age of sixty both in the case of the Union Public Service Commission as also in the case of State Public Service Commissions. I see no reason why there should be this difference between the ages of retirement in the two cases. If a person becomes unfit to continue to work as a member of a State Public Service Commission at the age of sixty, surely he does not become more qualified to discharge the more onerous and more responsible duties of a member of the Union Public Service Commission. If he is unfit at the age of sixty to act in one place, surely he is unfit to act as a member on the superior body. I think, therefore, that at least for the sake of consistency if not for any other reason it is necessary that the age of retirement in both the cases should be sixty.

My third amendment is:

"That clause (3) of the proposed article 285 be deleted."

Clause (3) runs thus:

"A person who holds office as a member of a Public Service Commission shall, on the expiration of his term of office, be ineligible for re appointment to that office."

I desire its deletion not because I am opposed to the contents of this clause but because it is absolutely redundant and unnecessary in view of article 285-C which has been moved by Dr. Ambedkar which forms part of article 285. Under article 285-C it is specifically laid down as to what particular employment could be held by retiring members of any Public Service Commission. Under its various clauses-which I need not read here as they are quite clear-it is not possible for a retiring member of a Public Service Commission to be reappointed to that particular post. He can of course be employed to other posts in the different Public Service Commissions, but he cannot be re-employed to the very post which he has vacated. Clause(3) of this article, therefore, is absolutely unnecessary and the Constitution may not be burdened with the retention of this unnecessary clause.

The next amendment that stands in my name is No.10 (List I, Fifth Week).

Mr. President: What about No.8 ?

Shri Jaspat Roy Kapoor: I am not moving No. 8 because it refers to the original article as it had been proposed, but has now been given up and, therefore, it will have no place now.

I move my amendment (No.10) and it is this:

"That in clause (b) of the proposed new article 285-B, the following words be inserted at the beginning:-

"in consultation with the Chairman of the Public Service Commission concerned."

So that clause (b) of article 285-B would read thus:

"In the case of the Union Commission or a Joint Commission, the President and, in the case of a State Commission, the Governor or Ruler of the State, may be regulations-

(b) in consultation with the Chairman of the Public Service Commission concerned make provision with respect to the number of members of the staff of the commission and their conditions of service."

I think that this amendment of mine should be readily accepted because all that it seeks is that in making appointments of members of the staff of the Commission and in determining their salaries and conditions of service, etc., out of courtesy, if for nothing else the Chairman of the Public Service Commission concerned should be consulted by the President or the

Governor or the Ruler as the case may be. It may be done not only out of courtesy, but I think it will serve a very useful purpose. The Chairman of these Commissions are, the best persons to know what the requirements of the commission are, what sort of persons they want on their staff, what should be the strength, salary and other conditions of service of the staff. It has been provided in the case of the appointment of the staff of the High Court, the staff of the Auditor-General and in other cases that while the appointment is to be made either by the President or by the Governor, the head of the office should be consulted. That is a necessary and useful provision and I think we must have it here in article 285-B.

Sir, my next amendment is No.11. It runs thus:

"That in the proposed new article 285-C-

(i) for the word 'employment' wherever it occurs the words 'office of profit' be substituted; and

(ii) in clause (d), after the words 'State Public Service Commission' where they occur for the second time, the words, 'or as a member of any other State Public Service Commission' be inserted."

I will take these two amendments one by one. In article 285 we have the word 'employment' throughout. It is intended thereby that a member of that Public Service Commission, after retirement, shall not be employed by the Central or provincial Commissions in any capacity whatsoever except in the capacities mentioned in the article itself. This is a very salutary provision and I am entirely in agreement with it. I wish that its scope had been extended to which point. I will later refer when I move another amendment. But I do not see why it should not be open to the Central or Provincial Governments to utilise the services of retiring members of the Public Service Commissions in an honorary capacity. I take it that the word "employment" would cover all employment, whether paid or honorary. Even if ordinarily the word 'employment' is understood to carry certain salary, I think to make the position clear I would be advisable to substitute it with the words 'office of profit'. I hold strong views on the subject that persons who have been in Government service for long on handsome salaries and may be in receipt of handsome pensions also should be expected to render honorary service to the State and to society. I therefore think that it is necessary to accept this amendment of mine.

The next amendment I have moved is:

"That in clause (d), after the words 'State Public Service Commission' where they occur for the second time, the words 'or as a member of any other State Public Service Commission' be inserted."

This clause will then read: "A member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service commission or as the Chairman of that or any other State Public Service Commission or as a member of any other State Public Service Commission.........." The implication of this amendment is that a member of a State Public Service Commission, on ceasing to hold office as such, may be eligible for appointment as a member of any other State Public Service Commission. In clause (d) we find that the Chairman of a State Public Service Commission shall be eligible for appointment as Chairman of any other State Public Service Commission. It means that he shall be eligible for appointment to a parallel post. On the same analogy I think a retiring member of a State Public Service Commission should be eligible for appointment to another parallel post in another Sate public Service Commission. I see no reason for making this distinction between the Chairman of a State Public Service Commission and a member thereof.

Now, Sir, my last amendment is this: Honourable Members may not have copies of it, because it was submitted by me this morning just before the session began. It reads thus:

"That at the end of the proposed new article 285-C, the following proviso be added:-

'Provided that a member's total period of employment in the different public service commissions shall not exceed twelve years."

This amendment is more than important than my other amendments. I was confirmed in this view from what I heard Dr. Ambedkar say this morning in moving his own amendment. He said, while explaining article 285 that a person shall not hold office as a member of a Public Service Commission for more than six years. That of course is partially provided in clause(3) of article 285. But that clause refers only to the re-employment of a person to that particular post. So far as the other posts are concerned, that clause does not apply. So, according to article 285-C a member of a Public Service Commission can continue to be a member of one or other of the public service commissions for any number of years. I say any number of years because, because for six years one can be a member of State Public Service Commission. Thereafter, for another six years, he can be the Chairman of a State Public Service Commission. It comes to twelve years. Thereafter again he can be the Chairman of another Public Service Commission for a third term of six years, thus putting in a total eighteen years' service. he can next be a member of the Union Service Commission for six years, making his total service twenty-four years. If fortune favours him again for the next six years he can be the Chairman of the Union Service Commission. Thus for thirty years he could be in service or till he reaches 65 years of age. I submit this is not a satisfactory state of affairs. I hope it is not even the intention of the Drafting Committee, much less of the Honourable Dr. Ambedkar, that it should be open to the Government to go on conferring its favours on a particular member of a Public Service Commission who acts according to the wishes and inclinations of the Government.

This article 285-C of course makes a show of putting bar with regard to the employment of retiring members of the Public Service Commissions, but when we analyse it carefully, we find that only a show is made so far as the substance is concerned, we find that the Government can go on retaining a person in the service of a Public Service Commission, of course in different Public Service Commissions, for any length of time. I consider this article as it stand at present to be more obnoxious than if there was a provision that members of the Public Service Commission shall be permanent servants until they attain the age of sixty-five.

Shri Brajeshwar Prasad: Until they die.

Shri Jaspat Roy Kapoor: If they were permanent, they would not be looking up to the President or the Governor for their future employment, the President and the Governors would in their turn be only acting on the advice of their Cabinets. If the members of the Public Service Commission were permanent, they would not have to look to the favours of the Government of the day concerned for their future, and they would act absolutely independently. They would neither be after the smiles of the Government nor would be afraid of their frowns. As it is, when the period of six years would be nearing completion, they would be looking to the Government of the day concerned for being reappointed to some other Public Service Commission and it cannot therefore be expected that they would act in an absolutely independent and impartial manner, as I hope Dr. Ambedkar would certainly like them to work. It is necessary, therefore, that this temptation of being reappointed after every six years should not be put before the members of the Public Service Commission. If it is really the intention of Dr. Ambedkar that the term of service should be not more than six years, I would very much prefer to have the words "six years'; rather than "twelve years" in my amendment, but if it is not the intention, I think it is necessary to accept the amendment I have moved limiting their term of service only to a period of twelve years and no further.

These are the various amendments, Sir, which I have moved and I hope Dr. Ambedkar would be good enough to give his serious consideration to them and accept them, if not all, at least the more important ones.

Pandit Hirday Nath Kunzru (United Provinces: General): Mr. President, Sir, I move;

"That in amendment No. 3 above, for the proposed new article 285-B, the following article be substituted:-

Conditions of service of members and staff of the Commission

285-B.-(1) In the case of the Union Commission or a Joint Commission, the President and in the case of a State Commission, the Governor or Ruler of the State may, by regulations, determine the number of members of the Commission and their conditions of service and the number of members of the staff of the Commission:

Provided that the conditions of service of a member of a Public Service Commission shall not be altered to his disadvantage after his appointment.

(2) Appointments of the members of the staff of a Public Service Commission shall be made, and the conditions of service of those members shall be such as may be prescribed, by the Chairman of the Commission or such other member of the Commission as the Chairman may direct:

Provided that the conditions of service prescribed under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval, in the case of the Union Commission or a Joint Commission, of the President and in the case of a State Commission, of the Governor or Ruler of the State."

Sir, the purpose of my amendment is very simple. Article 285-B as moved by Dr. Ambedkar does not state how the members of the staff of a Public Service Commission should be appointed. My amendment fills up this gap. It lays down that the members of the staff of the Public Service Commission shall be appointed either by the Chairman of the Commission or by such other member of the Commission as he might authorise in this behalf. The House will remember that the Supreme Court and the High Courts have been given the right to appoint members of their staff. in the case of the Supreme court they are to be appointed either by the Chief Justice or by such other Judge as might be authorised by him in this connection. A similar provision has been made in connection with the appointment of members of the staff of the High Courts. As the public Service Commissions will be very important bodies, it is desirable that they should be given the same freedom as will be possessed by the Supreme Court and the High Courts in connection with the appointment of the members of their staff.

The importance of the Public Service Commissions is manifest. They will deal with the recruitment of persons to posts under the State. The efficiency of the administration of the State will consequently depend on the manner in which recruitment is made. It is therefore of the utmost importance that the body making the recruitment should possess within limits as much independence as possible. I propose therefore that the staff of a Public Service Commission should be appointed by the Chairman of that Commission or by any other member authorised by him to make appointments.

pp. 583

criticised. I am, however, entirely in favour of it. A public Service Commission must be an independent body. Its members should not be able to look up to the executive for any favour. If the provision proposed by Dr. Ambedkar is retained then there will be no fear that a member of a Public Service Commission will be subservient to the wishes of the executive because he cannot secure an extension of his term of office; he can therefore be expected to discharge his duties independently and fearlessly. But if the term of office of a member of a Commission is allowed to be extended, or if, he is allowed to be re-appointed as a member then there is every fear that members of the Public Service Commissions in order to secure their re-appointment will try to curry favour with the executive. I am not, therefore, in favour of any change in the provisions suggested by Dr. Ambedkar.

The next point that I should like to refer to is the eligibility of the Chairman and members of Public Service Commissions for further employment under the State. The provisions of article 285 (c) have been criticised as being too wide or in some respects too narrow. My honourable Friend, Mr. Jaspat Roy Kapoor has proposed that a member or chairman of a Public Service Commission should not be debarred from serving the State in an honorary capacity. I confess that I had not thought of the subject before, but as I thought about it when he was speaking, it seemed to me that he was putting forward a reasonable suggestion. In one or two cases in the United Provinces it was wished that the Chairman of the Public Service Commission on his retirement might be usefully employed in an honorary capacity. The man was competent and it was thought that the community should not be wholly deprived of his services. I, therefore, agree with the view expressed by Mr. Kapoor on this point.

I part company with him, however, when he goes on to suggest other changes in article 285(c). I think this article is a great improvement on the corresponding article contained in the Draft Constitution. If allows a member of a Commission to accept the Chairmanship of another Commission, whether it is a State Commission or the Union Commission. The fear was expressed that if this was done, the members of the Public Service Commissions might try to win the favour of the Executive and secure their appointment as Chairman of one Public Service Commission after another. What has to be borne in mind in this connection is this. The Chairmanship of a Public Service Commission is a position requiring great experience and ability and if it is felt that a man had discharged his duties either as a member of a Commission or as Chairman of a Commission so well as to justify his appointment as the Chairman of another Commission, I do not see why this should be objected to. It is to the advantage of the country that it should be able to use proved capacity in its service without thereby curtailing the independence of a member of a Commission. The proposal that a member of a Commission might for two terms be a member of the same Commission stands on a different footing, because this provision will certainly interfere with the independence of the member. But if the Chairman of a Public Service Commission in a province is appointed Chairman of the Public Service Commission of another province, there can hardly be any fear that his re-appointment will be due to the recommendation of the premier or the Governor of the State to which the first Commission belonged. I do not think therefore that the provision that has been criticised requires any change.

I think that the articles as they are deserve to be accepted by the House except in respect of the change suggested by Mr. Kapoor. I hope that Dr. Ambedkar will see his way to accept the suggestion made by Mr. Kapoor that retired members of a Public Service Commission should not be debarred from serving the country in an honourable capacity.

Shri Jaspat Roy Kapoor: May I know that the honourable Member, Pandit Kunzru thinks with regard to my suggestion that the period of employment should be limited to twelve years?

Pandit Hirday Nath Kunzru: I have already dealt with that. A member of a Public Service Commission can remain in employment for eighteen years only if he has the good luck of being appointed as the Chairman of two Commissions successively. Had appointment to the Chairmanship of the Commissions been under the Central Government, then, my honourable Friend Mr. Kapoor's objection would have been valid. In the case of the Chairmanship of the State Commissions, however, the appointing authority will not be the same. There will be a different appointing authority for each Commission. Consequently, there need be no fear that a Chairman of a Public Service Commission in order to be appointed as Chairman of another Commission after completion of his tenure of office will be liable to be subject to any improper influence on the part of the executive or will not discharge his duties with perfect independence.

Mr. Naziruddin Ahmad: Mr. President, Sir, I have a lot of amendments; but I wish to move only one. I should rather desire that I should move it now and then take part in the general discussion at the end. That would be very convenient. In fact, there are a variety of sections and a variety of amendments most of which may not be moved. It would be convenient if you give me this permission.

Mr. President: Which amendment do you want to move?

Mr. Naziruddin Ahmad: I would move only amendment No.69. It is very nearly a drafting amendment; but it seems to me to be important. I beg to move:

" That in amendment No. 3 of List I (Fifth Week), of Amendments to Amendments in clause (1) of the proposed new article 285-A, for the words 'shall only be removed from office by order of the President on the ground of misbehaviour' the words 'may be removed from office by order of the President only on the ground of misbehaviour' be substituted."

May I have your permission to defer the general comments when all the amendments are moved?

Mr. President: Very well.

Shri H.V. Kamath (C.P. & Berar: General) Mr. President, this House is dealing with an important chapter of our Constitution today. Ever since we became free two years ago, unfortunately to the accompaniment of partition, we have found that the Public Services, many of them at any rate, have been depleted considerably, and this question of the purity of the services and their administrative efficiency has come to the fore more pointedly than ever. Therefore, I feel that the more attention we bestow upon the consideration of this chapter the better it would be for the future of our country.

I have given notice of four amendments which now, by your leave, I shall move before the House. I crave your pardon as well as the pardon of the House for having sent them in only this morning, as a result of which my colleagues have not been supplied with copies of my amendments. I am entirely to blame for that; I would appeal to my honourable Friends to follow the amendments as I read them before the House.

The first amendment is to the effect.

"That is amendment No. 3 of List I (fifth week), in the proviso to clause (1) of the proposed article 285 for the words at least one-half' the words 'not more that one-half' be substituted."

The second amendment is:

"That in amendment No. 3 of List I (Fifth Week), in clause (1) of the proposed article 285-A, for the words, 'misbehaviour or of infirmity of mind or body", the words 'misdemeanour or incapacity' be substituted."

The third amendment has two alternatives. If the first be unacceptable to the House, I would urge that the second alternative be accepted. The first one is to the effect:

"That in amendment No.3 of List I (Fifth Week), sub-clause (b) of clause (3) of the proposed article 285-A be deleted."

Or if this be not acceptable to the House, alternatively:-

"That in the same clause 3 (b) of the proposed Article 285-A for the words 'engages during his term of office in anybody's employment' the words 'take up during his term of office any other employment ' be substituted."

My fourth amendment is:

"In article 285-B for the words 'the President the Governor or Ruler of the State' the words 'Parliament and State Legislature' be substituted, respectively."

If this were accepted 285 (B) would read as follows:-

"in the case of the Union Commission or a Joint Commission, Parliament and in the case of a State the Legislature may be regulation etc."

These are the four amendments to the article moved by Dr. Ambedkar before the House.

It is agreed on all hands that the permanent services play an important role in the administration of any country. With the independence of our country the responsibilities of the services have become more onerous. They may make or mar the efficiency of the machinery of administration-call it steel frame or what you will,- a machinery which is so vital for the peace and progress of the country. A country without an efficient Civil Service cannot make progress in spite of the earnestness of those people at the helm of affairs in the country. Wherever democratic institutions exist experience has shown that it is essential to protect the public Service as far as possible from political or personal influence and to give it that position of stability and security which is vital to its successful working as an impartial and efficient instrument by which Government-of whatever political complexion-may give effect to their policies. It is imperative that whichever Government comes into power, the permanent services must carry out the policy laid down by the Government for the time being in office. In countries where this principle has been neglected, and where instead the spoils system has taken its place, inefficient and disorganised Civil Service has been the inevitable result and corruption has become rampant with all its attendant consequences. It is therefore of the utmost importance that the Public Service Commissions that we contemplate under these articles should be completely independent of the Government of the day whether at the Centre or in the States. Otherwise I am afraid the Civil Services will apprehend that amenability to Ministerial pressure and a correct attitude towards questions in which a little coterie or the group for the time being in power, is interested, will secure them promotions rather than merit or efficiency. I have often known that a Secretary to a Minister if he volunteers an opinion which is not palatable to the Minister in Office, the Minister puts him on the blacklist and he is not considered favourably for future promotions. Of course once a policy is laid down the public servants have to carry them out. But I know of instance where Ministers have looked upon with disfavour Secretaries or other servants, whose opinion was invited criticising their policies: this is a very undesirable state of affairs and I am sure that sort of thing should not be encouraged. Therefore I hold that where there is any apprehension on the part of Civil Servants that, if they are amenable to Ministerial pressure, they are likely to be promoted, and that merit and efficiency count less, if that mentality seizes public servants, there is likely to be demoralisation throughout the ranks of the services.

It is, with that in view that I have proposed the first amendment. The draft is to the effect that at least one-half of the members of every Commission shall be persons who have been in the service either in the Government of India or the Government of a State. Mr. Kapoor moved an amendment seeking to reduce this to one-third. Mine seeks to make this minimum the maximum. It always happens that the minimum goes on increasing till it swallows or comprises the whole and if this article is passed there is no bar to all the members of the Commission being appointed from those persons who have held offices under the Government of India or of a State. Therefore I want that this minimum should be the maximum and in no case should this maximum be exceeded. That will at least be a safeguard against weightage of these Service Commissions by persons who have been in Government service and who have come-I will not say from the umbra but the penumbra of this Governmental influence, who have moved in a particular rut and who are likely to be always influenced by particular attitude of mind towards the Government in power. Therefore to preserve the impartiality and independence of the Public Service Commissions I have moved this amendment, the effect of which would be that the minimum of one-half would be the maximum and in no case would that one half be exceeded, so far as the number of those who have held office under Government, is concerned.

As regards the point made out by my Friend Mr. Kapoor, that the age of 65 should be reduced to 60, for both Union and State Commissions, I am of a different view. I feel that the figure must be 65 for both, that the age limit of 65 should be laid down both for the Union Commission and for the State Commissions. We know that the age-limit of 55 for superannuation which was fixed by the British, has now been increased by the recommendations of the Pay Commission to 58; and the general trend in India-and perhaps in the rest of the world also-is towards an increase in the expectation of life and in the prolongation of youth. That is to say, in the twentieth century, the trend is towards the prolongation of youth though I would not venture an opinion whether we are going "back to METHUSELAH" of Bernard Shaw. But all the world over, longevity is tending to increase because of a modern methods of medicine and dietetics.

Dr. P.S. Deshmukh: Dietary but not diet.

Shri H.V. Kamath: Yes, Sir, who would say that our leaders today, you, Sir, including, who are over sixty, who dare say that any one of them who are leading us to day cannot grace the highest office in the land with credit and glory to the country? If that be so, then I think there is no reason why the Chairmanship or membership of the Public Service Commissions should be confined to the age-limit of 60, that the Chairman or the members should be asked to retire at the fairly early age of 60. I for one would like this age limit to be uniform for both the Commissions and be raised to 65.

Then my second amendment is more or less verbal in that it seeks to substitute the words "Misdemeanour and incapacity" for "misbehaviour and infirmity of mind or body." Taking the second first, "incapacity". I would invite the attention of the House to the article which we have already passed regarding the removal of the Vice-President of India. The word used there is "Incapacity" and that word refers to both mind and body. The word "Infirmly" I feel is rather a medical or scientific term and not, if I may say so, a constitutional term. Incapacity would be the more appropriate word.

As regards the word "misbehaviour" that word has a sort of conversational or colloquial ring about it. But the House is familiar, in law and constitutional law with the expression "grave misdemeanour' of officers or of high dignitaries and os on. I therefore, feel that the word "misdemeanour" would express the sense intended here in this article, far better than the word "misbehaviour". I would however leave it to the far wiser men who are busy drafting the Constitution, and I would only request them to consider this matter with the consideration which I believe it deserves.

My third amendment deals with sub-clause (3) (b) of article 285-A. Firstly, it deals with the deletion of the sub-clause, because in my humble judgement, this will be comprised in the term "misdemeanour". A person who, while holding the office of Chairman or member of a Public Service Commission takes up any other employment can certainly be charges with misdemeanour. If this view be not acceptable to the experts of the Drafting Committee, I would only plead with them, and I am sure they will realise that these words, "any body" are so very vague, clumsy and ugly. I do not know how Dr. Ambedkar in spite of his profound knowledge of the English language tripped and stumbled and fell in this manner. I have never come across this sort of ugly and clumsy words as "anybody's employment" in any constitutional treatise. I feel the idea would be much better expressed by "any other employment.". Further, depending on my meagre knowledge of the English Language, I may say that "engaging in an employment" is not quite correct. You may take up an employment--I am however, not quite happy about my own amendment in this regard- but you generally engage in the work or service; but to say "engaging in an employment" is not King's English, or constitutional English. I hope this will also receive the attention of the wise men of the Drafting Committee and that they will clothe their idea in better language when it comes in its final form before the House.

Then my last amendment, No.4, is an amendment of substance. Its effect would be that instead of the President or the Governor or Ruler of a State having the power, this power to make regulations as to conditions of service of the members and staff of the Commissions will be vested in the Central Parliament and the State Legislatures. I would request the House to turn for a moment to the original draft of the article 285 as it stood in the Draft Constitution. I invite the House to look for a moment at clause (2) of this original article 285. That provides that matters affecting not merely the number of Members of the Commission but their tenure of office, their conditions of service and the number of members of the staff of the Commission shall be vested in the President or the Governor. The House will see the difference between the draft as it has come before us today and the draft as it originally stood. The tenure of office has been taken out of the purview of the President and the Governors. In article 285 we have provided for the tenure of office of members on the three Commissions -Union, State or Joint. Clause (2) of article 285 deals with that matter. That means to say that the Drafting Committee has felt the need for bringing this matter, namely the tenure of office, before the Constituent Assembly. I desire that matters relating to the number of Members of the Commission, their conditions of service and the number of members of the Commission and their conditions of service-regulations in regard to these matters-must be left to either Parliament or the State Legislatures. I do not for one moment dispute or question the proposition, that so far as appointment is concerned, it should be made by the Governor or the President in consultation, if necessary, with the Chairmen of the various Public Service Commissions. But so far as these matters are concerned, *viz.* how many members there should be on the Commission, the conditions of service of these Members and of their staff-of course parliament cannot certainly appoint these persons-must be left to parliament or the Legislatures to deliberate upon and to decide. After Parliament has framed the rules in this regard, the Governor, Governors or the President would be asked to make appointment accordingly. I feel that unless the Members of these Commissions are absolutely sure that their conditions of service will be secured throughout their tenure and entirely independent of the executive, they will not put their heart into the work and they will not bring to bear that deep interest in those problems that confront them from day to day, which is so necessary for the efficient discharge of their public functions.

I am glad to find that article 285-C is an improvement on the original draft. The original draft was comprised in clause (3) of article 285. That provided for certain exemptions by the president and the State Governors in so far as the bar to the appointment of Members of the Commissions on ceasing to hold office was concerned. It is very salutary, nay, essential that members of these Commissions must not be eligible to any office in the Government of India or the Government of a State. The old Government of India Act did provide that the Governor-General could make exemptions where he deemed it necessary or fit. But I think it was a very wise move not to exercise this power through the Governor-General in cases where it was absolutely un-called for. About a month ago, some of us were agitated on learning of an appointment of a Member of the Bombay Public Services Commission to an ambassadorial post. I do not wish to mention the name. He was appointed to this post even before he had resigned his office. After he was appointed, he resigned his office naturally. But this sort of irregularity, to say the least, which might smack of nepotism and personal favouritism, must not be countenanced if you wish to make the services strong and efficient. If a Member of the Public Services Commission is under the impression that by serving and kow-towing to those in power he could get an office of profit under the Government of India or in the Government of a State, then I am sure he would not be able to discharge his functions impartially would not be able to discharge his functions impartially or with integrity. This appointment which was made recently was a bad one in principle, and I am sure though the Governor-General must have given his approval, is no reason why that particular person was deemed so necessary that the very salutary rule with regard to the bar to the appointment of Public Services Commission members was set at naught. I am glad, however, that the present draft of the article makes no such exemptions and the Members or the Chairman of the Public Services Commission will not be eligible to any appointment under the Government of India or the Government of any State after they cease to hold office.

Lastly, I would like to observe that most of the democratic countries in the world have set up Public Services Commissions to free the matter of appointments from nepotism or favouritism and the exercise of political patronage, and in order to protect Ministers against the charge-it may be unfounded or ill-founded- of using their positions to promote family or group interests. The public here have sometimes been made to feel that family or group interests have been promoted at the expense of the national; and to protect the Ministers against such a charge, it is necessary that the Public Service Commissions must be kept completely independent of the executive, and further that the recommendations made by these Commissions in the matter of appointments must normally be given effect to, and in every case when Government or a Minister, makes an appointment contrary to the recommendations of the Public Services Commission, he must give adequate reasons in writing as to why he disregarded the recommendations of the Commission.

Instances have happened during the last two years, and Ministers were asked questions in the Legislature as to why certain persons were appointed contrary to the recommendations of the Federal Public Services Commission. The answers were to my mind unsatisfactory and created grave doubts in the minds of many honest people as to why Ministers should go out of their way to make appointments without any regard to the recommendations made by the F.P.S.C. I hope under the new set-up that is coming in our country this sort of thing will not prevail, that we will have a better and purer dispensation and that the Public Service Commissions both in the Union Centre and in the States will function in such a manner that firstly, the members of these Commissions will discharge their duties absolutely independently of the governments of the day, with impartiality, integrity and with wisdom and, secondly, the Services will be manned by such persons as will not be amenable to ministerial pressure or ministerial patronage at the cost of efficiency and the administrative purity of the State.

(Shri Kuladhar Chaliha did not move his amendment).

Dr. P.S. Deshmukh: Sir, I move:

"That in amendment No.3 of list I (fifth Week), of amendments to amendments, in sub-clause (b) of clause (3) of the proposed new article 285-A, the word 'body's' be deleted."

The amendment is somewhat on the lines of the amendment that has been moved by my Friend Mr. Kamath. He has correctly characterised the wording as very unhappy, and if there is to be an improvement which can be acceptable to Dr. Ambedkar I think the dropping of the word "body's" would be a great improvement. But if Dr. Ambedkar agrees I would not mind accepting my Friend Mr. Kamath's amendment.

So far as the whole article is concerned I would very strongly like to support the amendment moved by Mr. Jaspat Roy Kapoor, especially the first one which refers to curtailing the number of government servants on the Commissions to one-third instead of one-half. I wish it were possible for you to give me permission to move for the deletion of the whole provision. It is a pity that nobody has taken into account what this proviso means. I do not expect that you, Sir, would condescend to be the Chairman of any of these commissions even of the union commission. But if by any chance you were, even persons like you, Sir, who have taken any part in the liberation of the country will not be eligible to be appointed on the Commission so far as half the portion of it is concerned.

Appointments are going to be confined only to government servants who have ten years' standing. This means that the choice would have to be confined to only old servants and all those who have been appointed by the present Independent Government of India will have to wait till 1957 before any of them will be eligible for appointment in this preserved half. It puts a definite premium on those who, contrary to the interests of the country, served the British Government and enslaved the country in the interest of the British if we are going to preserve half of the commission for them in those terms. It is an obnoxious provision and I do not think any Congressman would like it to remain so as to exclude all patriots from half of that body. Even those who had refused government services on patriotic grounds alone will be debarred from entering the Commission to the extent of this half. The least possible thing that should be done is to accept Mr. Kapoor's amendment although I think the House will agree with me that the whole proviso should go.

It is a pity that the present rulers of India are in such great love with the permanent services. The ambassadorial posts ought really to go to non-official workers and leaders who have sacrificed themselves in the interests of the country. None of them are considered fit. We might have different ideas and administration. But it is totally wrong that such posts should go more and more to persons who have not had the country's interests at heart when the time came and I consider that there is every reason to urge that this policy ought to be altered as also the ideals with which our present rulers are actuated. The House ought to be more careful in passing articles without sufficient consideration. This provision is a shadow of our slavish past which ought to be wiped out from this article.

Shri B.Das (Orissa: General): Sir, the Draft Constitution has provided three instruments by which the integrity of our administration would be maintained. The first is the Supreme Court and the Chief Justice of India, the second is the Auditor -General, who will maintain the purity of our finances, expenditure and the collection of taxes; and the third is the Federal Public Service Commission which will maintain the purity and integrity of our services. It has already been observed by other Members that in the past as a reward for their loyalty people had become members of the Public Services Commissions. IT has not on merit but on loyalty to those who ruled the country in the past. The provision of article 285 and the duties specified in article 286 remove favouritism from the Home Ministry and even the Home Minister.

There is one thing which I do not like, A government servant with ten years' standing can be a member of the F.P.S.C. It means that if he joined the service in his 25th year he will remain for 30 years. He might get rusty and the onus of proving his uselessness will be left to the members of Parliament to move a resolution in the House for dismissal of that member of the F.P.S.C. So far as I can see the Draft Constitution is enamoured of the age of thirty-five. Whether it is the Governor or the Governor-General or the High Court Judges or the Judges of the Supreme Court or the Members of the Federal Public Service Commission the age should be thirty-five.

If I have my inclination I would support the idea of my honourable Friend Mr. Jaspat Roy Kapoor that only one-third of the members of the Federal Public Service Commission should be officials. The rule is there that fifty per cent of the members should be officials, but today as far as I can gather most of the members of the Federal Public Service Commission are officials. My friend Dr. Deshmukh said that they will continue for another six years. I do hope that steps will be taken simultaneously with the promulgation of this Constitution that only 33 per cent or 50 per cent of the members of the Federal Public Service Commission will be allowed to be filled by the appointment of officials and the rest left for others who are not officials. At the same time a High Court Judge or a very high official or even the President or the Governor-General should examine how these people have come to the Federal public Service Commission, whether they have come by favouritism or whether they do satisfy under the rules and conditions of recruitment of high officials under the Draft Constitution to continue as members of the Federal Public Service Commission for the next five or six years.

The evil tradition is there. It is a very bad tradition-a tradition of nepotism. The Home Department in the past have thrown away the recommendations of the Federal Public Service Commission. As far as I am aware, the Home Ministry has made new Rules of recruitment by which the recommendations of the Federal Public Service Commission will have to be accepted. It is for the Governor-General and the President to see that the recommendations of the Federal Public Service Commission as such are accepted. We know today the Government of India contains people who are the wife's brother or sister-in-law's cousin or something like that of all people. All such nepotism should go. And to maintain the integrity of the administration and the security of the Government of India only those shall be recruited that will be recommended by the Federal Public Service Commission-not as it exists today but as it will be reorganised after 26th January 1950.

I do hope that in spite of article 285 or 286 it will be possible for us to examine the question of the continuity of some of the old fossils-retired gentlemen-who have entered the Federal Public Service Commission not by merit but through loyalty in other spheres of life, on communal basis of life, etc. It should be done away with. Without that the constitution will prove a failure.

Mr. Naziruddin Ahmad: I want to speak. You said that you will permit me.

Mr. President: I want to close the discussion and the voting on this today. There is hardly any time now as there are only five minutes to one. There are some other articles dealing with the Public Service Commission and you will have an opportunity in the next article.

The Honourable Dr. B.R. Ambedkar: Mr. President, Sir, there are just a few points on which I would like to say a word or two in reply to the criticism made on the articles which I have submitted to the House.

The first criticism is with regard to the composition of the Public Service Commission. The reservation made there that at least one-half of the members of the Public Service Commission should have been servants of the Crown has been objected to on the ground that this is really a paradise prepared for the I.C.S. people. I am sorry to say that those who have made this criticism do not seem to have understood the purpose, the significance and the functions of the Public Service Commission. The function of the Public Service Commission is to choose people who are fit for Public Service. The judgement required to come to a conclusion on the question of fitness presupposes a certain amount of experience on the part of the person who is asked to judge. Obviously nobody can be a better judge in this matter than a person who has already been in the service of the Crown. The reason therefore why a certain proportion is reserved to persons in service is not because there is any desire to oblige persons who are already in the service of the Crown but the desire is to secure persons with the necessary experience who would be able to perform their duties in the best manner possible. However, I am prepared to accept an amendment if my Friend Mr. Kapoor is prepared for it. I am prepared to say "Provided that as nearly as may be one-half" instead of saying "Provided that at least one-half."

Shri H.V. Kamath: Why not say "Not more than one-half"?

The Honourable Dr. B.R. Ambedkar: No, I have done my best.

With regard to the second question, that persons who have been in the Public Service Commission should be permitted to accept an honorary office under the State, personally I am not now inclined to accept that suggestion. Our whole object is to make the members of the Public Service Commission independent of the executive. One way of making them independent of the executive is to deprive them of any office with which the executive might tempt them to depart from their duty. It is quite true that an office with which the executive might tempt them to depart from their duty. It is quite true that an office which is not an office of profit but an honorary office does not involve pay. But as everybody knows pay is not the only thing which a person obtains by reason of his post. There is such a thing as "pay, pickings and pilferings", But even if it is not so, there is a certain amount of influence which an office gives to a person. And I think it is desirable to exclude even the possibility of such a person being placed in a post where, although he may not get a salary, he may obtain certain degree of influence.

Now I come to the amendment of my Friend Mr. Kunzru. I quite agree with him that there is obviously a distinction made between the services to be employed under the Public Service Commission and the services to be employed under the High Court, the Supreme Court and the Auditor-General. I would like to explain why we have made this distinction. With regard to the staff of the High Court and the Supreme Court, at any rate those who are occupying the highest places are required to exercise a certain amount of judicial discretion. Consequently we felt that not only their salaries and pensions should be determined by the Chief Justice. In the case of the Public Service commission much of the staff-in fact the whole of the staff-will be merely concerned with what we call "ministerial duties" where there is no authority and no discretion is left. That is the reason why we have made this distinction. But I quite see that my argument is probably not as sound as it might appear. All the same I would suggest to my honourable Friend Pandit Kunzru to allow this article to go through on the promise that at a later stage if I find that there is a necessity to make a change I will come before the House with the necessary amendment.

Sir, my attention is drawn to the fact in the cyclostyled copy of my amendment to article 285-A in sub-clause (3) (b) the words ought to be 'in any paid employment'. They have been typed wrongly as 'in any body's employment.' I hope the correction will be made.

As I said to Pandit Kunzru, the Drafting committee will look into the matter and if it feels that there are grounds to make any alteration they will, wish the permission of the House come forward with an amendment so that the position may be rectified.

Mr. President: I will now put the amendments to vote first.

The question is;

"That in amendment No.3 above, in the proviso to clause (1) of the proposed article 285, for the word 'one-half' the word 'one-third' be substituted."

Shri Jaspat Roy Kapoor: In the place of this I accept the suggestion made by Dr. Ambedkar to have 'as nearly as may be one-half'.

Mr. President: Then I shall put that to vote. The question is:

"That in amendment No.3 above, in the proviso to clause (1) of the proposed article 285, for the words 'at least one-half' the words 'as nearly as may be one-half' be substituted."

The amendment was adopted.

Shri Jaspat Roy Kapoor: I beg leave of the House to withdraw amendment No.5.

The amendment was, by leave of the Assembly, withdrawn.

Shri Jaspat Roy Kapoor: I beg leave of the House to withdraw amendment No.6.

The amendment was, by leave of the Assembly withdrawn.

Shri Jaspat Roy Kapoor: I also took permission to withdraw my amendments Nos. 10 and 11 and also the one given notice of this morning.

Mr. president: They refer to article 285-B to which we have not yet come. Amendment No.1 of Mr. Kamnath falls to the ground since an amendment to add 'as nearly as may be one-half' has been accepted.

Shri H.V. Kamath: If you hold it falls through, I have nothing to say.

Mr. President: There is no other amendment to article 285.

The question is:

"That proposed article 285, as amended, stand part of the Constitution."

The motion was adopted.

Article 285, as amended, was added to the Constitution.

Mr. President: Now we come to article 285-A. The first amendment is, that Mr. Naziruddin Ahmad, No. 69.

The question is:

That in amendment No.3 of List I (Fifth Week) , of Amendments to Amendments, in clause (1) of the proposed new article 285-A, for the words "shall only be removed from office by order of the President on the ground of misbehaviour" the words "may be removed from office by order of the President only on ground of misbehaviour" be substituted.

The amendment was negatived.

Mr. President: Amendment No. 2 of Mr.Kamath. The question is:

"That in amendment No.3 of List I (Fifth Week), in clause (1) of the proposed article 285-A, for the words, 'misbehaviour or of infirmity of mind or body', the words 'misdemeanour or incapacity' be substituted."

The amendment was negatived.

"That in amendment No.3 of List I (Fifth Week), sub clause (b) of clause (3) of the proposed article 285-A be deleted."

The amendment was negatived

Mr. President: The next amendment of Mr. Kamath. The question is:

"That in amendment No.3 of List I (Fifth Week), sub clause (b) of clause (3) of the proposed article 285-A, for the words 'engages during his term of office in anybody's employment.' the words 'takes up during his term of office any other employment', be substituted."

The amendment was negatived.

Mr. President: The next one is the amendment of Dr. Deshmukh. It does not arise now, because those words are not there.

Now I will put article 285-A to vote. Members will remember that in sub-clause 3(b) there is a misprint 'in any body's employment' for 'a paid employment.' The question is;

"That proposed article 285-A stand part of the Constitution."

The motion was adopted.

Article 285-A was added to the Constitution.

Mr. President: Now we come to article 285-B. I will put amendment No. 9 to vote.

Pandit Hirday Nath Kanzru: Sir, in view of the assurance given by Dr. Ambedkar I do not want my amendment to be put to the vote.

The amendment was, by leave of the Assembly, withdrawn.

Shri Jaspat Roy Kapoor: Sir, I beg leave of the House to withdraw my amendment No.10.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then I will put amendment No.4 of Mr. Kamath.

The question is:

"That in amendment No.3 in the proposed new article 285-B, for the words 'the President and in the case of a State Commission, the Governor or Ruler of the State' the words 'Parliament and the State Legislature' be substituted respectively."

The amendment was negatived.

Mr. President: The question is:

"That proposed article 285-B stand part of the Constitution."

The motion was adopted.

Article 285-B was added to the Constitution.

Mr. President: Then we come to 285-C. Amendment No.11.

Shri Jaspat Roy Kapoor: I beg leave of the House to withdraw that amendment also.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That proposed article 285-C stand part of the Constitution."

The motion was adopted.

Article 285-C was added to the constitution.

Mr. President: The House will now adjourn till nine o'clock tomorrow morning.

The Assembly then adjourned till nine of the Clock on Tuesday, the 23rd August 1949.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Tuesday, the 23rd August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Mr. President: We shall now proceed with the consideration of article 286 and the subsequent articles.

Honourable Dr. B. R. Ambedker: Sir, I move:

with your permission, move amendments Nos. 12, 16, 17 and 19 together? They all relate to the same subject. There may be a common debate and then you might put each amendment separately.

Mr. President: Yes, I agree.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for article 286, the following article be substituted:--

286.Function of Public Service Commission. (1) It shall be the duty of the Union and the State Public Service Commissions to Conduct examinations for appointments to the services of the Union and the services of the State respectively.

(2) It shall also be the duty of the Union Public service Commission, if requested by any two or more States so to do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted-

(a) on all matters relating to methods of recruitment to civil services and for civil posts;

(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointment. promotions or transfers;

(c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;

(d) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in a civil capacity, that any costs incurred by him in. defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India or, as the case may be, of the State-

(e) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in a civil capacity, and any question as to the amount of any such award.and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President or, as the case may be, the Governor or Ruler of the State may refer to them

Provided that the. President as respects the All India Services and also as respects other services and posts in connection with the affairs of the Union, and the Governor or Ruler, as the case may be, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a

Public Service Commission to be consulted.

(4) Nothing in clause (3) of this article shall require 'a Public Service Commission to be consulted as respects the manner in which appointments and posts are to be reserved in favour of any backward class citizens in the Union or a State.

(5) All regulations made under the proviso to clause (3) of this article by the President ,of the Governor or Ruler of a State shall be laid for not less than fourteen days before each House of Parliament or the Houses or each House of the Legislature of the State, as the case may be, as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as both Houses of Parliament or the House or both Houses of the Legislature of the State may make during the session in which they are so laid."

"That for article 287, the following be substituted

287. Power to extend functions of Public Service Commission. An Act made by Parliament or, as the case may be, the Legislature of a State may provide for the exercise of additional functions by the Union Public Service Commission or the State Public Service Commission as respects the services of the Union or the State and also of any local authority or other body corporate constituted by law or public institution." "That for article 288, the following be substituted:--

288. Expenses of Public Service Commission. The expenses of the Union or a State Public Service Commissions including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission. shall be charged on the consolidated Fund of India or. as the can may be, the State-"

"That for amendment No. 3075 of the List of Amendments the following be substituted :-

'That after article 288, the following new article be added:--

288-A. Reports of the Public Service Commission. (1) It shall be the duty of the Union Commission to present annually to the President a report as to the work done by the Commission and on receipt of such report the President shall cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reason for such non-acceptance to be laid before each House of Parliament.

(2) It shall be the duty of a State Commission to present annually to the Governor or Ruler of the State a report as to the work done by the Commission, and it shall be the duty of a Joint Commission to present annually to the Governor or Ruler or each of the States the needs of which are served by the Joint Commission a report as to the work done by the Commission in relation to that State, and in either case the Governor or Ruler, as the case may be, shall, on receipt of such report, cause a copy thereof together with a memorandum explaining as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before the Legislature of the State."

The article are self-explanatory and I do not think that at this stage it is necessary for me to make any comments to brine out any of the points, because the points are all very plain. I would therefore reserve my remarks towards the ,end when after the debate probably it may be necessary for me to offer some "plantation of some of the points raised.

Sir, I move.

Shri Jaspat Roy Kapoor (United Provinces: General) : Mr. President, I beg to move :

"That in amendment No. 12 above, clause (2) of the proposed article 286 be deleted and the subsequent clauses be renumbered accordingly."

Clause (2) of article 286 reads thus :

"It shall also be the duty of the Union Public Service Commission, if requested by any two or more States so to do. to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required."

I desire its deletion because, whatever is provided herein is already covered by clause (3) of article 284 which we have already adopted yesterday. Clause (3) of article 284 reads thus

"The Public Service Commission for the Union, if requested so to do by the Governor or Ruler of a State may, with the approval of the President, agree to serve all or any of the needs of the State."

Obviously, Sir, whatever is provided in clause (2) of article 286 is provided for in clause (3) of article 284. Clause (3) of article 284 is apparently of much wider import than clause (2) of article 286. Hence, obviously this clause (2) is unnecessary and redundant. The deletion of this clause (2) of article 286 will not in any way affect the unusual length of article 286, for, even after its deletion, it will continue to be pretty long enough and the Drafting Committee need not have any apprehension that the habit which it has got into of drafting long articles and providing in the Constitution every little detail win be materially affected. Of course, we know that the Drafting Committee has an inexhaustible store of words and phrases; but they need not pour out the whole of it in this Constitution by providing every little detail and making it a very cumbrous one. I think, therefore, that in order to remove an unnecessary and redundant thing, it is necessary that this clause (2) should be deleted. That is all I have to submit in this connection. I do not wish to move amendment No. 18 with reference to article 288.

(Amendments 14, 15, 74 and 75 were not moved.)

Sardar Hukam Singh (East Punjab: Sikh) : Mr. President, I beg to move:

"That in amendment No. 12 of List I (Fifth Week) of Amendments to Amendments, the proviso to clause (3) of the proposed article 286 be deleted."

In my humble opinion, this proviso is not in consonance with the spirit of the other articles. We are prescribing a very vast field where the Public Service Commission has to be consulted, and we have included transfers, promotions, and other things as well. This is a very good ideal. If we are providing that the Public Service Commission should be consulted even in these matters, then, we should not leave this loophole, by which the majority party may find it easy to secure regulations from the President or the Governor that they need not consult the Public Service Commission. In my opinion, even though it is provided here that the Governor and the President shall have the power to frame regulations, they would be guided by the advice of their Ministers, and the Ministers would represent the majority party. These regulations will be changing from time to time and there is scope when, with the object of extending favouritism and nepotism, they might make such regulations as may suit their convenience. My objection is that because this is only a consultative body, it is not necessary that the advice of the Public Service Commission must be acted upon. There is a provision in article 288-A that the Public Service Commission shall present to the President annually a report and that the President shall cause a copy thereof together with a memo. explaining if in any cases the advice of the Commission was not accepted, the reasons for such non-acceptance, to be laid before Parliament. The reasons shall have to be given. Therefore that provided a good check and if this proviso is not there, we shall have very wholesome effect on the working of this article. In my opinion this proviso should be deleted.

Shri Lakshminarayan Sahu (Orissa: General) : Sir, I want to make a little change because the wording here is not properly done. I want to substitute the words 'having a scale with a maximum of 250 or more' for 'carrying a maximum of Rs. 250.

Mr. President: Yes.Shri Lakshminarayan Sahu : *[Mr. President, my amendment reads thus :- "That in amendment No. 12 of List I (Fifth Week) of Amendments to Amendments, for clause (3) of the proposed article 285, the following be substituted :-

(3) The Union Public Service Commission as respects the All-India Services and also as

respects other Services and posts in connection with the affairs of the Union, and the State Public Service Commission as respects the State services and also as respects other services and posts in connection with the affairs of the State, shall be responsible for all appointments, carrying a maximum of Rs. 250 (Two Hundred and fifty rupees)."

The idea that has led me to move the amendment is that we are providing for the formation of a Public Service Commission solely with a view to ensure the smooth and efficient running of our Republican Government. If that is not the view, there is no need for creating a Public Service Commission. We ourselves 'can manage everything. But when a democratic form of Government is established many political parties dominate the field and they adopt undesirable methods for appointments in the services. We are going to form the Public Service Commission solely with a view that political parties may not be in a position to adopt such methods. A body must be created to decide about the appointments in Services, so that no one may be able to suggest that the Services are working under the influence of any political party.

In view of all this, we find that the creation of a Public Service Commission is essential; and when it is essential to create such a Commission, Our Constitution should contain some provision that the Commission should have complete control over the appointments to services. It is the opinion of some person,-, that when we are going to establish a Republic here, we must trust the Government. They contend that a democratic Government cannot function unless the people trust it. But I have heard that even in England and in the Dominions, where a democratic form of Government is obtaining, the Public Service, Commission have a large measure of control over the appointment in services. 1, therefore, think that this amendment should be accepted.]

Dr. P. S. Deshmukh (C. P. & Berar: General): Mr. President, I rise to move amendment No. 82 of List III Fifth week of Amendments to Amendments : "That in clause (3) of the proposed article 286, for the word 'shall' the word 'may' be substituted." Yesterday when we were about to embark ,on the discussion of these articles dealing with the Public Service Commission. I had urged on the floor of the House that the provisions with regard to the Commissions may not be made as stringent as they were proposed to be and this amendment of mine is in the same line. I want that in this proposed article 286 where a very large number of things are going to be made obligatory and compulsory there should be a choice left with the Legislatures and the Parliament as to whether the Public Service Commission should be consulted compulsorily or should be left to deal exclusively with these matters or not.

Now the various matters mentioned in clause (3) are very important and if all these are made compulsory, there would be very little latitude left for the Governments of the various States as well as the Parliament to vary the terms and conditions of recruitment to Public Services or to alter them in any way as it may be necessary according to the circumstances that may arise. The first clause says :

"The Union Public Service Commission or the State Public Service Commission, shall be consulted - (a) on all matters relating to methods of recruitment to civil services and for civil posts;"

This would mean that if the Public Service Commission say that mere passing University or other Examination is the final criterion of merit, that will have to remain there irrespective of the fact that the State Legislature or Parliament thinks otherwise. I have always contended that these University qualifications have been made a fetish by the British Government because they wanted to reduce the Indian Nation to a clerkdom. There is no other criterion still thought of by our present Government. This

p. 601, para-1-3.

of education which they fear w&#0;mountable obstacles in their progress. Why have we proposed reservations for the tribal people? That is also for the same reason. There are also, in the same manner as the tribal people and the Scheduled Castes, millions of people in our country whose handicaps and obstacles are in no way different from those of the tribal people and the Scheduled Castes; and I wish to leave room for such people to come in and inequalities resulting from the present systems rectified.

I say this because it is for the first time in the history of the country that the real representatives of the people are going to govern the country hereafter, and therefore their hands should not be fettered. It should be possible for the elected State legislatures and the elected Parliament-elected on the basis fixed by this very House, with its very limited franchise, for even here thee are not many people who represent all that the masses of India think and feel-let these future State legislatures and Parliament have the power to make changes in the conditions for the recruitment of the services. It is no use copying the phraseology or imitating the ideology of the British. These will not suit as here in India. India has not become England, and it is no use copying England. There the whole people has progressed together, similarly and simultaneously; not so in India. Even today more than 85 per cent of the people of India are without the facilities for education as they live in the villages, and we are asking these people to compete with people who have these facilities near by. This is quite impossible. It is like having a one-mile race between two persons one of whom had already gone ahead half-a-mile and another who had yet to start. That is quite unequal, unfair and unjust; and if you persist in this injustice and in this unfairness, then I am sure it is not going to be beneficial to us.

These are all important matters that are provided for in article 286. They relate, firstly, to methods of recruitment; secondly, to principles to be followed in making appointments as well as promotions and transfers; thirdly, to all disciplinary matters affecting a person and including memorials and petitions; fourthly, to any claim by or in respect of a person who is serving or has served under the Government or the Government of State or under the Crown in a civil capacity; and lastly, to claim to pensions etc. It is clear that the whole field of recruitment and allied issues are tobe determined by the Public Services Commission so as to preclude even if Parliament or the State legislatures want to change any of the above conditions in any way. I do not say that it should be left altogether vague, but I only say that the Legislatures or the Parliament should be in a position to alter these various tings whenever and wherever they want to do so.

It is apparent, Sir, that we want to clothe with every possible power the President of the Union. Here also in this proviso we find that the President is empowered to keep back any cases which in his discretion thinks need not go to the Commission. I wish rather that we gave this power to the Parliament and to the State Legislatures and not to an individual.

Sir, there is also another amendment which with your permission I wish to move, which is of course, more or less in the same strain and in furtherance of the same objective as the one I have already moved; but it proposes a particular and a specific provision in article 286.

Mr. President : No. 86?

Dr. P.S. Deshmukh : Yes, Sir, I move:

"That in amendment No. 12 of List I (Fifth Week) of Amendments to Amendments, the end of clause (4) of the proposed article 286 the full-stop be substituted by a comma and thereafter the following be added :-

`or for the purpose of bringing about a just and fair representation of all classes in Public Services of the Union or a State.'"

There is also an alternative amendment, i.e. No. 88 which I would like to move also :

"That in amendment No. 12 of List I (Fifth Week) of Amendments to Amendments, after clause (4) of the proposed article 286, the following new clause (5) be inserted, and the existing clause (5) be renumbered as clause (6) :-

`(5) Nothing in clause (3) of this article shall require a Public Service Commission to be consulted as respects the manner in which appointments are made and posts reserved for purposes of giving representation to various classes according to their numbers in the Union or a State.'"

These two amendments, Nos. 86 and 88, are as I said alternatives, and if one is accepted, I would not press the other, although I personally would urge that No. 86 which is more specific would be preferable.

The purpose of this amendment is to secure a just and fair representation of all classes in the public services of the Union and the States, and not leave it to bare competition and according to the sweet choice of the Public Services Commissions themselves. Now, if we examine the systems of recruitment to the public services, we know that as a matter of fact certain provinces, because the public of those provinces were more alive to their rights, agitated that they were not having any share in the administration of their province and as a result of their agitation, the Governments of those provinces had to yield. This has happened particularly in that enlightened and advanced province of Madras where the various communities were grouped in various groups and each group was given, according to the basis of its population, representation in the government services. This has worked very well, with the result that Madras has become one of the most advanced provinces in the whole of India. That is the reason why we find Delhi being crowded by Madrasis, because their standard of education has gone up due to the fact that all the communities have advanced equally with the others and not disproportionately as elsewhere. There you do not have the disproportionate advancement which you find in other provinces where the suppressed communities have always been content with their lot, where thy have not agitated to get more places in the government and where the advanced communities have never been charitable to consider their claims or to give them any help. This has happened particularly in the province of Central Provinces & Berar where we find that even today in the whole department of education there is hardly a person belonging to any other community except one particular community. There are departments after departments where ninety per cent and more of the incumbents come from a specific community.

Sir, if this is not communalism, what is communalism? And these people who now fill every place in the department see to it that anybody else, who wants to come in, is effectively prevented from doing so. Is this not communalism? A community which is only 3 to 5 per cent of the population, is it destined to govern the whole province so far as every department is concerned? Would it not be charitable to give at least a few places to the other people who have never been given what they have been asking for? Those Members of this House who are taken in by the sweet name of merit and efficiency, I can tell that it will be detrimental to the country. There might have been a slight falling-off of the standard, but that much we have always tolerated. When we were not able to compete with the British people we asked for places for Indians from the British. We wanted increased recruitment in the I.C.S. We struggled for it and we have passed resolutions to this effect even at the Sessions of the Indian National Congress. But when the same thing is done by other people we call it communalism. I submit there is ample room for doing justice to all. In Madras or Bombay where this principle has been practised, it has not led to any ruin of efficiency or to any very great danger or damage to the administration. If that is our experience, there is no reason why other provinces should not be wise also before the event and try and give sympathetic consideration to the other sections of the populations. The contention is on behalf of more than 85 per cent of the population and so it cannot be called communal. If you do not want to name the communities, or castes, there are other devices by which you can do it. But I submit, this demand ought to be considered more sympathetically, and since we have adopted the basis of population for representation, the basis of population should also be followed so far as recruitment is concerned.

I have urged what I wished to without specifying any community, without trying to go against any particular community. All that I want is that Parliament and the Legislatures should be free to see that there is a fair proportion of representation for all classes and communities in India. I had not specified that any single community should be given preference or priority - I want that there should be a fair distribution so that the unity and freedom of India will be real and genuine. It appears to me that the development in India has been lop-sided, one-sided. About 80 per cent of the people take no part so far as your cultural affairs are concerned., so far as they are concerned; an iron curtain between them and the rest; unless every community, especially the larger and more popular communities advance equally and the advanced communities afford them opportunities for development, the advancement of India will be impossible. All that I demand is fairness and justice for the millions of people who are not in a position to come forward and compete with you, and in saying so I do not introduce any communalism, I do not introduce any discrimination. These things have been tried, they worked well and there is no reason why they should not work well on a larger scale.

When any Friend Shri Lakshminarayan Sahu got up yesterday, there were evil forebodings in the shape of failure of electric lights. I think even Providence wants to give a warning against the passing of this article. The same thing happened when Dr. Ambedkar got up to speak. I hope that a little more care is taken, a little more wisdom expended on the final draft of these articles, and I hope my amendment-either No. 86 or 88 will be accepted. It will do no harm to the structure of the Public Services Commission as envisaged by the Drafting Committee. After all they had to say in clause 4:-

"(4) Nothing in clause (3) of this article shall require a Public Service Commission to be consulted as respects the manner in which appointments and posts are to be reserved in favour of any backward class of citizens in the Union or a State."

All that I wish to add is because the "Backward classes" are likely to be defined in a very limited and restricted manner, it is not the claim of only the Scheduled Castes that they are backward it is not the tribal people alone who should be considered backward; there are millions of others who are more backward than these and there is no rule nor any room so far as these classes are concerned. In those communities education is at a low ebb. In the whole of India there is 15 per cent of literacy. If you analyse it you will find about half a dozen communities have got literacy to the extent of 90 per cent and the others are illiterate to the extent of 98 per cent. There are communities whose populations may be millions but whose literacy standard may not go beyond 5 per cent.

There is no use trying to look at England or at America. I am surprised that my honourable Friend Shri Lakshminarayan Sahu, the great sponsor of the cause of the agriculturists, should come forward to propound a different view and not take these facts into consideration. (An honourable Member : "Better fight for the education of the illiterates"). The heavens are fighting for the education of illiterates. We know how precious little is being done so far as that is concerned. You cannot do that in a day. That method by itself would not do. You could have as well told that to the Scheduled Castes themselves that by and by they will be educated and by and by the advanced classes will come to their senses and untouchability will automatically disappear. So do not agitate do not demand anything. It will all come to you may be in a hundred years hence. "You need not ask for reservations." I am afraid that advice cannot satisfy any one. We should know that the same demand is there and will be there whether you like it or not, and the more you want to prevent or suppress it the more insistent and irresistible it will become.

Sardar Hukam Singh : Sir, I am not moving my amendment No. 83.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Sir, I beg to move :

"That in amendment No. 12 of List I (Fifth Week) of Amendments to Amendments after the proviso to clause (3) of the proposed article 286, the following new proviso be added :-

"Provided further that the Public Service Commission of the Union shall always be consulted where the service carriers a maximum pay of Rs. 500/- per month and the State Public Service Commission shall always be consulted where the service carries a maximum pay of Rs. 250/-"

I also move the next amendment No. 85.

"That in amendment No. 12 of List I (Fifth Week) of Amendments to Amendments clause (4) of the proposed article 285 be deleted."

With regard to my first amendment for the addition of a new proviso to clause (3) of the proposed article 286, the first proviso to clause 3 provides that the President or the Governor or the Ruler as the case may be, may direct that on a questions relating to certain classes of services "it shall not be necessary for the Public Service Commission to be consulted." it gives the President, the Governor and the Ruler the discretion to decide what questions relating to particular kinds of services or what services shall be placed before the Public Service Commission and in such cases it wold be optional on the part of these authorities to place these questions before the Public Service Commission.

My amendment tries to provide a limitation. The grant of unrestricted power by the first proviso to choose at the discretion-not of the President or the Governor or the Ruler, but at the discretion-of the Ministry for the time being in power, would be dangerous. The very object of a Public Service Commission is to provide the country with a competent and reliable machinery through examination and otherwise to select fit candidates without fear or favour. The very utility of the Public Service Commission is its independence, its aloofness from politics and its elevated status. It would be for the House to consider how far the President, Governor or Ruler should be allowed to exempt questions relating to particular services from being placed before the Public Services Commission.

There should, I submit, be some limitation. Had it merely been a question of the personal responsibility of the President or the Governor or the Ruler, things might have been different. A President or a governor or a Ruler, of a State will have no personal axe to grind and in that case things may have been left to his discretion. But the power which is attempted to be conferred upon these authorities by the existing proviso to leave no discretion in them but to allow the Ministry functioning to use their sacred name to serve their own personal ends. We already know and it is freely given out that there is considerable amount of jobbery in giving appointments from the highest to the lowest quarters. Sometimes, the Public Service Commission and then there is considerable amount of jobbery in giving appointments from the highest to the lowest quarters. Sometimes, the Public Service Commission is by-passed by giving anticipatory appointments-temporary appointments- and then there is an attempt to face the Service Commission with an accomplished fact saying that here was a candidate in an unhappy situation who had worked for some time and has obtained experience and so on and should on that account receive special consideration. There is a tendency-very natural tendency-on the part of Ministries both at the Centre and in the Provinces to by-pass even existing rules, and if we allow the Proviso to stand as it is, it will mean that a particular Ministry may think it necessary to exempt a particular class of Service from the jurisdiction of the Public Service Commission. That is, I submit, a sufficient justification for introducing some kind of Limitation. The qualification I seek to introduce through the new proviso is that where a service carries a maximum pay of Rs. 500 in the case of Union Services and a Service caries a maximum pay of Rs. 250 in the case of State

pp.605, para-4-5

to the President or the Governor or the Ruler to exempt some class of cases from the jurisdiction of the Public Service Commission must be accepted on principle. The post of a peon or a petty clerk or a small post does not obviously require to be placed before the Public Service Commission.

So I have admitted two important principles-that there must be some cases where these authorities should have some discretion and that there must be some cases which must be taken out of the jurisdiction of these authorities from withholding them from the purview of the Public Service Commission. The principle which I want to establish by means of this new proviso would be that in certain classes of superior services, it would be compulsory on the part of these authorities to place these matters before the Public Service Commission. I invite a discussion as to the principle and then as to the actual pay or other limit to be laid down, that would be a matter for adjustment if the principle is accepted.

We hear of many scandals in the matter of appointments which show the need for extreme caution in this respect and for not allowing free scope to Ministries to restrict the scope of the Federal or State Public Service Commission. There has always been a tussle between the executive and the Public Service Commission. There has always been a desire to by-pass the Public Service Commission and the original proviso, if left untouched as it is, will increase the danger of the Public Service Commission being by-passed.

The next amendment which I have moved relates in clause (4) of article 286. This clause relates to appointments reserved for backward classes, in respect of which it says that the Public Service Commission need not be consulted. This again raises a very important question of principle. There is a doubt as to the exact import of clause (4). We are passing the Constitution in such a great hurry that it is impossible to give detailed and proper consideration, but I presume-as many honourable Members will do-that clause (4) seeks to take out of the jurisdiction of the Public Service Commission matters relating to appointments of the backward classes. I concede that backward classes require special treatment. No one would grudge that. The very fact that they are backward requires that their case should be treated with some amount of sympathy and statesmanship. In fact, the backward classes are backward educationally, morally, financially and in other respects.

Dr. P.S. Deshmukh : Morally they are better.

Mr. Naziruddin Ahmad : Yes I stand corrected. Dr. Deshmukh's suggestion that they are morally better is certainly right. It was an unconscious error of mine which led to the statement. So I am thankful for the correction. Educationally and in other respects they are really backward. In this respect, they require some amount of special treatment. The special treatment which I would suggest would be that with regard to those classes some minimum standard of efficiency should be laid down for a job, because we cannot demoralize the efficiency of the public services. Supposing there is a backward class candidate who has a minimum qualification needed for the job in hand and there is another class of candidate who has superior qualification, in that case the backward class candidate may be accepted because he has to be protected and has the necessary minimum qualification. In this way the backward classes will have some protection.

But there is no reason why they should be totally excluded from the purview, of the Public Services Commission. The Commission may be given the choice of selecting backward class candidates from those possessing minimum qualifications to the exclusion of candidates of other classes possessing superior qualifications. In this way we can serve the backward classes and the Commission can ensure proper efficiency of candidates. So I suggest that their cases should go to the Commission for their recommendation but directions should be given as to the sufficiency of certain qualifications for the service in question. So I see no justification for excluding these classes from the jurisdiction of the Commission.

Then, Sir, my honourable Friend Dr. Deshmukh's amendment seeking to replace "shall" by "may" will have serious consequences on the operation of article 286(3) . In the context the word "shall" is very much better. For instance, clause (a) relates to methods of recruitment. This raises a question of principle and it is better that the executive must consult the Commission in deciding the method of recruitment though the executive may not be bound to accept their views. In this respect I think "shall" is a much better word.

Then, clause (b) refers to the principle to be followed in making appointments. This also is a question of principle on which the Commission should be consulted. Clause (c) refers to disciplinary action. These cases, I submit, should be compulsorily placed before the Commission before taking any action. Sometimes clerks or officers incur the displeasure of higher officers and are sacked. These people will have their remedy in courts of law, for damages or reinstatement. But it is better that these cases should be compulsorily placed before the Commission, so that injustice may be redressed and it will also reduce the number of cases in court.

Sub-clause(d) relates to the case where an officer sues or defends a suit relating to an act done or purporting to have been done in his official capacity and incurs costs. In such cases also the opinion of the Public Service Commission should be taken compulsorily. Then cases about pensions and other claims should also be compulsorily placed before the Commission. I therefore submit that we should have the word "shall" instead of "may" as that will ensure justice in all cases.

The other amendment of Dr. Deshmukh requiring fair representation of the different classes is one which deserves acceptance. In fact although distinctions between classes and communities have been done away with, there may be some remnants here and there and the decision of the Commission with regard to fair representation of different classes would be welcome and it would be above criticism. So this amendment, I submit, should be accepted.

With regard to article 288-A, unlike other hasty interpolations in the Constitution, this is very good. This provides for a report by the Public Service Commission to the President or the Governor or the Ruler about cases where their recommendations are disregarded or appointments are made without reference to them. Parliament is unaware as to how things are shaping; too much into administrative details. Article 286-A provides an automatic check upon action taken by the Government and appointments made without consultation with the Public Service Commission or in disregard of their recommendations. The report would be placed before Parliament for necessary action. I think this is a healthy step. Members of Parliament, as well as the public at large should judge in what cases the recommendations of the Commission were disregarded justly and in what cases unjustly and want only. I therefore support this new clause. With regard to the other articles we have to accept them because the Members have not the time or the opportunity of moving as fast as the Drafting Committee is moving.

With these few words I suggest that my amendment be fairly considered and not brushed aside with a remark by the Chairman of the Drafting Committee that he does not feel it necessary to reply. In the opening remarks the Chairman sometimes says that the articles are self-explanatory and in the end he says that he does not consider that any reply is called for. In the midst of these remarks we do not know where we are. I ask the House to consider the amendments on their merits and reject those that was improper or unjust after full consideration.

With your permission, Sir, I shall move amendment No. 91 also, viz.,

"That in amendment No. 16 of List I (Fifth Week) of Amendments to Amendments in the proposed article 287, for the words "or other body corporate" the words "or other body corporate not being a company within the meaning of the Indian Companies Act 1913 or banking companies within the meaning of the Banking Companies Act, 1949' be substituted."

Article 287 reads thus :

"An Act made by Parliament or, as the case may be, the Legislature of a State may provide for the exercise of additional functions by the Union Public Service Commission or the State Public Service

Commission as respects the services of the Union or the State and also as respects the services of any local authority or other body corporate constituted by law or public institution."

I submit that this article authorises a reference to a Public Service Commission of all maters of service relating to local authorities. It is a very necessary provision. The local authorities often appoint persons who are under-qualified, for party or personal reasons. Reference of such cases to the Public Service Commission for their opinion would be very proper.

But I have objection to the inclusion of "other body corporate". A body corporate is one like the Damodar Valley Corporation, or the Industrial Finance Corporation. They are semi-government authorities established by Government under the authorities of specific Acts. In such cases also, a reference to the Public Service Commission may be desirable. But there are other classes of body corporate such a public or private Limited Companies. They are private bodies though "bodies corporate", and their affairs concern the shareholders. But, for the protection of the interests of the shareholders and the public at large some Government control is provided. With regard to the appointments that such concerns make for carrying on their affairs I think it would be improper to introduce the system of reference to the Public Service Commission. In business, efficiency is the sole test. It may be that a man who is not very literate may have high professional experience. I know of experts who work in coal mines and in steel and iron factories and other such undertakings who, by mere look can tell the quality of coal or the percentage of iron or steel in a sample of iron ore. They are experts in their line and paid highly though not possessing the usual academic qualifications. If their cases are placed before the Public Service Commission they will be absolutely nowhere. They are not graduates of any university and, according to all accepted standards, they will be nowhere. In fact, the appointment of managers and managing agents or experts to look after the affairs of a business concern does not require any qualifications except experience and efficiency. They are known to their employees but cannot be ascertained or judged by the Public Service Commission. Reference of such cases to the Public Service Commission would create difficulties and deadlocks and lead to inefficiency and delay in the execution of the business of the company concerned. I should therefore think that 'companies' within the meaning of the Companies Act are corporate bodies, but I believe they are not intended to be governed by this article. I think their inclusion was not intended. But this will be the logical meaning of the words "r other body corporate" in the article. Public companies and banking companies would be certainly 'body corporate'. But obviously they are not fit subjects to be brought within the jurisdiction of Public Service Commission. Therefore this limitation on the Commission would be desirable. If we introduce which are needlessly comprehensive, without limiting their application, the result will be that in private business houses and concerns of that type State interference will be intolerable and would lead to inefficiency. I therefore submit that this exception should be clearly provided in the Constitution.

Shri R.K. Sidhva : (C.P. & Berar : General) : Mr. President, Sir, I beg to move :

"That in amendment No. 12 of List I (Fifth Week) of Amendments to Amendments at the end of proposed article 286, the following new clause be added :-

'(6) The Commission shall submit to the Legislature every year a report setting out all cases, the Government's reasons in each case, and the Commission's views thereon, where there is difference of opinion.'"

Sir, my amendment is very simple. Under the article as moved by my Friend, Dr. Ambedkar, it is not incumbent upon the President to consult the Commission on all matters. In certain matters, he has the prerogative to do what he likes, and then it is just possible that his views might run counter to the views of the Public Service Commission.

Mr. President : Mr. Sidhva, does not 288-A cover your point?

Shri R.K. Sidhva : 288A simply says :

"It shall be the duty of the Union Commission to present annually to the President a report as to the work done by the Commission and on receipt of such report the President shall cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before each House of Parliament."

This simply say that where the Government does not accept the recommendations of the Commission, it should be laid before Parliament. My amendment is that, in the event of the Commission not accepting the Government's views, it should also be brought before Parliament, so that Parliament may have the view-points of both the Public Service Commission and the Government. What may happen is that sometimes the Government may feel that their views are correct and the Commission may not accept them. In other cases, the Commission might feel that the Government's views are not correct. So there may be conflict. So I would like that the House of Parliament should be acquainted with the views of both sides, so that they may be in a position to judge whether the Government was in the right or the Commission was in the right.

Shri Raj Bahadur (United State of Matsya) : Sir, the honourable Member is hardly intelligible to us, as he is literally facing the Chair.

Shri R.K. Sidhva : I was saying that in some cases the Government might feel that they are in the right and the Commission might feel that they are in the right, and so it is but fair that Parliament should be acquainted with the views of both sides, so that Parliament may be in a position to know whether the Commission was right or the Government was right. Therefore the amendment that I have moved is an improvement on the amendment that has been moved by my honourable Friend Dr. Ambedkar. We all certainly want the Commission to have a free hand in the matter of appointments and I would like to go further than what the article lays down. The proviso to clause (3) of article 286 says :

"Provided that the President as respects the All India Services and also as respects other services and posts in connection with the affairs of the Union, and the Governor or Ruler, as the case may be, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted."

Thus under this clause the President or the Ruler or the Governor may not consult the Public Service Commission in any matter and may frame rules which may be in in conflict with the functions of the Public Service Commission while there is an article providing for that, it is very necessary that Parliament should know as to how the Public Service Commission is functioning, whether there has been any interference by the Government. At present, we hear of interference in the work of the Public Service Commission by the executive wherever they would like their favorites to be appointed. We know that now-a-days a member of the Ministry concerned sits with the Commission and some of the incumbents who are actually in service acting in their respective posts are being sent along with others who have applied through the public advertisement and are not selected. I do not say that they should not be preferred if they are competent and if they are better than those who have applied to the Public Service Commission through public advertisements. These are matters which we are experiencing today, and while I appreciate the improvement upon the present system brought about by these new articles. I do feel still that the Commission should not be fettered by any kind of administrative disability. The Commission should be free to decide what they think fit. But Parliament should be in a position to judge whether the Public Service Commission has decided matters independently, judiciously and impartially; and from that point of view there should not be any interference by the President the Ruler or the Governor which means the executive, since they have to act on advice tendered by their Ministries. Experience has shown that in this important matter of appointments, there has been favouritism in many cases. It is not anything new that I am saying. We must see to it that this favouritism does not continue and for that purpose we must see to it that rules are so framed that the least scope is allowed to the Commission to indulge in any kind of favouritism. That is why an improvement has been made in this article by the Drafting Committee, but I do feel that there is still some lacuna in this matter. Therefore my amendment seeks that, where the views of the Government and the Commission are at variance, the Parliament should hear both sides.

In view of the remarks made by me, I hope the Drafting Committee and particularly Dr. Ambedkar will consider my amendment favourably in the interests of the Parliament knowing both sides. I hope the Drafting Committee will accept my amendment.

Sardar Hukam Singh : Mr. President, Sir, I beg to move :

"That in amendment No. 12 of List I (Fifth Week) of Amendments to Amendments after clause (4) of the proposed article 286, the following Explanation be added :-

'Explanation - Backward class of citizens would mean and include class or classes of citizens backward economically and educationally.'"

These words "backward classes" have been used in our Draft Constitution in the various articles that we have passed. Now, in clause (4) of this article 286, it is said that.

"Nothing in clause (3) of this article shall require a Public Service Commission to be consulted as respects the manner in which appointments and posts are to be reserved in favour of any backward class of citizens in the Union or a State"

I wholeheartedly support this clause. This is a very wholesome provision, but my difficulty is that the term 'backward classes of citizens' is not defined anywhere in the whole Constitution. This phrase has been used in some places and, in my humble opinion, it does not convey any definite meaning. It is so loose and vague that it might be interpreted differently by different Governments or by different authorities. In article 10(3) it is stated :

"Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens who, in the opinion of the State, are not adequately represented in the services under the State."

The second phrase is found in article 37 and there the words used are different. It runs as follows :

"The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the scheduled tribes and shall protect them from social injustice and all forms of exploitation."

The Scheduled Castes and the scheduled tribes have been defined in the interpretation clause under article 303, but there is no definitions of those backward classes. Here the words used are "weaker sections". I feel some difficulty whether these weaker sections mean the same thing as backward classes, or these would have a different meaning so far as article 37 is concerned.

Then I wish to bring to the notice of the House the following :

"The State shall promote with special care the educational and economic interests of the weaker sections."

Then we have passed another section namely article 301. There it is provided that:

"The President may be order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to...."

Here also the Commission that is to be appointed shall investigate the conditions of socially and educationally backward classes. Here the word "economically" is absent. It is not provided as to who would decide who are the backward classes. I endorse the remarks of my honourable Friend, Dr. Deshmukh that there are regions in this vast country and there are classes of persons who are as backward as the Scheduled Castes and unless we provide for the development of their interests and bring them forward along with the other sections, when they could compete with other sections of the community, they would remain backward and the country would not grow harmoniously. Therefore, I submitted yesterday it is very essential that we should define here who would be the backward classes. This must be defined at some place at least. We can provide that the President shall have authority to appoint a Commission which would prepare a schedule, as there is one for the other Scheduled Castes and Scheduled Tribes, or a special tribunal should be appointed or some officer deputed to go into the conditions of these citizens and then decide; otherwise if that is not done, there would be difficulty and some persons might be suffering from certain difficulties in a certain region; they might not be looked after as backward classes while persons in similar conditions might be given advantages and their development might be looked after in another region. Therefore, I have by this explanation only tried to give some kind of definition. It is not conclusive and it is not exhaustive; it does not say who the backward classes are but it only indicates that backward classes must include classes backward economically and educationally.

I have not included the word "socially" purposely because I thought perhaps most of the classes who were backward socially might be included in Scheduled Castes and scheduled tribes and even though some are left out, the object an be achieved by amendment of that schedule. Therefore, my purpose here is that it should be made clear that backward classes should man and include all those persons and all those classes who are left behind and cannot keep pace with the other section of the community because they are economically and educationally backward in this respect. I request my honourable Friend, Dr. Ambedkar to remove this difficulty of mine whether a definition would be provided somewhere to define who would be the "backward classes" under this Constitution because this phrase has been used in so many places.

Shri Lakshminarayan Sahu : (Mr. President, Sir, I beg to move :

"That in amendment No. 14 of List I (Fifth Week) of Amendments to Amendments for the proposed clause (3) of article 286, the following be substituted :-

"(3)" The Union Public Service Commission with regard to All India Service and also in regard to other services and posts in connection with the affairs of the Union, and the State Public Service Commission in regard to the State Services and also in regard to the services and posts in connection with affairs of the State shall be consulted in respect of all appointments, transfers and disciplinary, matter relating to these Services."

I have moved this amendment because so long as we do not make the Public Service Commission a very strong body we cannot run the administration of the province or of the country in a proper way. I know of a Director of Public Instruction who earned the displeasure of the Cabinet and the Prime Minister for transferring some Inspectors of Schools and he was pressed to call back those people. The D.P.I. was openly called but he said that they should not interfere in the matter. The result of it all was that the D.P.I. resigned and left his job.

I know of another case wherein efforts were made to remove a Civil Service man who was working efficiently in the province. The people made their own efforts and sent a telegram to the Governor to this effect that it would not be proper to transfer him. The transfer was stayed for two months but after that period he was removed.

Therefore, in the circumstances, I can only plead for a very strong Public Service Commission so that such lapses may not occur. Dr. Deshmukh is a little displeased at this. He is in favour of such a provision as may not give great powers to the Public Service Commission. What more can be done? I want that things should not find a place in the Constitution which can be done advantageously by means of rules. Therefore, the real amendment should be moved. It includes the rules in an abridged form. I would like to say that so long as the Public Service Commission is not made a strong body there will always be something wrong, with the selection of candidates. We see what type of selection they have in the railways. Everywhere there is difficulty and everyone dislikes the system. I have nothing more to add in this connection. With these words I move this amendment.

(Amendment 18 and 76 were not moved)

Mr. President : I think these are all the amendments. The amendments and the articles are now open for discussion.

Shri H.V. Kamath (C.P. & Berar : General) : Mr. President, I have noted with considerable satisfaction some of the changes that have been introduced in these various articles as compared with the draft as it originally stood. I should particularly like to point out the change which has been incorporated in clause (5) of article 286 as well as the change embodied in article 288-A.

However, certain thoughts arise in my mind in connection with these changes which have been introduced. Article 286, as it originally stood, provided - I invite the attention of the House to clause (4) of the original article - "Nothing in this, article shall require a Public Service Commission to be consulted as respects the manner in which appointments and posts are to be allocated as between the various communities in the Union or a State." This has been suitably and wisely modified so as to refer only to the backward class of citizens and not to the various communities. In this view, I am sorry I am not able to agree with the proposition that has been adumbrated by my honorable Friend Dr. Deshmukh. Though it is difficult not to be in sympathy with the general view he has expressed, I feel, constitutionally there is a difficulty, in so far as the incorporation of that proposition in this article is concerned. The House will recollect, Dr. Deshmukh I am sure is well aware, that this Assembly long ago adopted article 10 in the Chapter on Fundamental Rights, which provides, firstly, that there shall be equality of opportunity for all citizens in matters of employment under the State, secondly that no citizen shall on grounds only of religion, race, caste, sex, descent, place of birth or any of them, be ineligible for any office under the State. The only exception to this provision, is what we have already adopted, "Nothing in this article shall prevent the State........

Dr. P.S. Deshmukh : What I have suggested would be the right fulfillment of these fundamental rights; it would be in no way contradictory.

Shri H.V. Kamath : I am sorry Dr. Deshmukh did not hear all I had to say and chose to interrupt before I concluded my say in the mater. I was pointing to clause (3) of article 10 which lays down that nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens, but not for any community. The class referred to explicitly in this Clause (3) of article 10 which is an exception to the general rule propounded , is any backward class of citizens. Now, if Dr. Deshmukh seeks to include not merely these backward classes of citizens- I for one hate this very term "backward class; it connotes a stigma which I hope we, in this country, will do away with at the earliest possible opportunity. I hope that are long no class of citizens will be called backward in our country.

Dr. P.S. Deshmukh : It is only descriptive.

Shri H.V. Kamath : I do hope that all citizens will be equally backward or equally forward and there would not be any particular class of citizens to be dubbed as backward.

Chaudhri Ranbir Singh (East Punjab : General) : This not so today.

Shri H.V. Kamath : I say in the future. I hope Chaudhri Ranbir Singh listens to me patiently and makes his remarks wen the time comes. I do not mind interruptions; but I hope he will hear me first and then make any interruption.

Now, Dr. Deshmukh suggests that we should incorporate in this article 286 his amendment No. 86 adding "or for the purpose of bringing about a just and fair representation of all classes in Public Services of the Union or a State," and his amendment No. 88, adding, "nothing in clause (3) of this article shall require a Public Service Commission to be consulted as respects the manner in which appointments are made and posts reserved for purpose of giving representation to various classes according to their numbers in the Union or a State. Unfortunately, this provision if accepted by the House, will militate against what the House has already adopted in article 10 providing for reservation only to backward classes. I wish article 10 had been adopted in a different manner, but article 10 having been adopted already in the form in which it was adopted, it is too late now, unless that is revised so to make a provision in this fashion, firstly to give representation to all classes as well as the second one; otherwise it will conflict with article 10 (1) (2) and (3) which we already adopted. I for one would not mind even weightage being given to those people who are really backward for the transitional period, but a constitutional provision of this nature in this article would militate against the article which we have already adopted. It can be safely left to be regulated by Parliament. I am sure the future Parliament in this country will deal fairly and squarely with all communities, and there should be no difficulty about leaving the matter of making provision in this regard to the future Parliament.

I should however like to say that the draft of the articles that have been brought before the House by Dr. Ambedkar seems to my mind to be far too ponderous, like the ponderous tomes of a law manual. A document dealing with a Constitution hardly uses so much padding and so much of verbiage. I have this morning received a copy of the Bonn Constitution, the latest Constitution, of Western Germany adopted in 1949 and this is a little pamphlet of 52 pages containing 146 articles. Compared to this our Constitution is three times as big-perhaps four times - and packed and crammed with matter good deal of which could have been easily left out. For instance, in 288 itself so much has been packed, God alone knows why. Could we not have said ' All recommendations or proposals made by the Public Services Commission shall be given effect to except for reasons stated by the President or Governor'? That one sentence would have been adequate to our purpose.

All this verbiage reflects the mind of lawyers who have spent most of their lives in arguing and bandying words with each other in Courts and does not reflect the spirit of a people, the fighting spirit of people who have been though the fire and steel of the freedom struggle, and who have solemnly assembled to infuse our Constitution with life and light. Unfortunately our Drafting Committee has been weighted with men who have led a sheltered existence, who have been hardly touched by the effulgent light of a deathless ideal and who have spent most of their lives in the service of Government. Perhaps it is difficult for them to compose a document which should be, to my mind, not a law manual, but a socio-political document, a vibrating, pulsating and a life-giving document. But to our misfortune, that was not to be, and we have ;been burdened with so much of words, words and words which could have been very easily eliminated.

There is one other point viz. that clause (5) requires, - correctly too, - that all regulations made by the President or Governor under clause (3) should be laid before Parliament. In this connection I may remind the House what the Drafting Committee failed to do in another connection; that was with regard to article, 280 in which it was provided that the regulations, rules, decrees made by the President would be laid before Parliament but the vital part of this clause (5) that they shall be subject to such modification whether by way of repeal or amendment as Parliament would deem necessary - that was completely omitted in the Draft of that article which was passed. That was a vital matter compared to this, affecting as it did the lives and liberties of millions of men and women are a mere trifle compared to the rights of a few thousands of servants. That is the way in which this Constitution is being drafted. Regulations dealing with the Fundamental Rights of millions do not come before Parliament for repeal or alteration, but mere rules as regard public services do. I am sorry for this state of affairs.

Further, I feel that as for the subject matter in clause (4) of this article the Public Service Commission might be consulted as regards the reservation of appointments, and posts for backward citizens. When posts are reserved for a particular class, of course, I am not sure whether there would be weightage in the services for these classes - If there is, well and good-but if there is reservation on some basis either of population or some other, then the number is first fixed - so much for that etc.

Now, Sir, suppose the President takes it into his head that so many posts should be filled by nomination. There should be a certain proportion for nomination, as it used to be, for instance, in the case of the I.C.S. in the olden days, that so many posts will be filled by nomination and so many by open-cum-petition. Here also the President will have to decide what proportion will be recruited by nomination and what proportion by open competition. Unless this number is decided, it will be difficult for the President to finally fix the relation between domination and competition. Therefore, in that connection he will have to consult the Public Service Commission, and there is nothing wrong, or derogatory to the dignity of the President, if he thus consults the Commission as to the number of posts which have to be reserved. Considering the importance that we have attached to the Commissions in our Constitution, it would have been better that the Commission should be consulted about this matter also, besides the matters mentioned in clause (3) of article 286.

Then, finally a few words about the point set forth in article 288A. I hope, Sir, that this article before us, although the Constitution has not yet come into force - and I do not know when it will come into force-but I hope that this article, if it is passed by the House today, in future, even before the Constitution comes into force, even before the Constitution is enforced or given effect to in January or February next, that even during the interregnum also, I hope appointments will be made accordingly, that the recommendations of the Federal Services Commission here or the other Commission will be given that weight and that consideration by the Government which they deserve and that they will not be set at naught or disregarded or slighted without adequate reasons, being given. My Friend, Mr. Sidhva or Mr. Naziruddin Ahmad,-I think, has pointed out that on many occasions the recommendations, the proposals of the Federal Public Service Commission have been by-passed and disregarded. I am also aware, and even high-placed officials have told me, officials of the Government of India have also told me, that because of this indifference to the recommendations, because of this sort of callousness on the part of the Government towards the recommendations made by the Commissions, these Commissions themselves are falling into disrepute. That is not the testimony of any non-official or a man in the street, but that is what I have heard from some of the highest officials under the Government of India. The Commissions make recommendations, and the Ministers snap their fingers at them and make their own appointments. That is which they should. And another point is, because of this, there is ministerial nepotism and favouritism. Some of the Ministers have become rank nepots. This sort of thing must be put an end to. Otherwise this is bound to lead to demoralization in the services because the services will think. "Well, our ability and our integrity and our efficiency are of no avail. they do no matter, so long as we are not persona grata, so long we do not have the necessary pull with the Minister so long as we are not in the good books of the Ministers." Well, if that be the feeling, then woe betide this country when the services have this kind of mentality, when they are affected by this kind of mentality.

Finally, as I have said, the vision of the Drafting Committee has been clouded, and their judgment warped by mere legalistic considerations, but in spite of that, they have produced an article which though very wordy, I consider is sound. I hope that our government, and our State, will have regard for this article, not merely in the letter, but also in the spirit which is so very sadly lacking today.

Shri Phool Singh (United Provinces : General) : Mr. President, Sir, I rise to give my support, my whole-hearted support to the two amendments moved by Dr. Deshmukh. The other point of view expressed in this House is for giving greater powers to the Public Service Commission, and the opponents hold that efficiency and merit should be the only tests in recruitments. It is not a fight for a few loaves and fishes for those who are ultimately to be appointed to these posts. Self-Government, means government of the people, and if the legislatures are to be manned by the toiling masses, to make good laws, the proper execution of these good laws depends upon the services, and hence the importance of the services. Much has been made of merit in this case; but equal merit pre-supposes equal opportunity, and I think it goes without saying that the toiling masses are denied all those opportunities which a few literate people living in big cities enjoy. To ask the people from the villages to compete with those city people is asking a man on bicycle to compete with another on a motorcycle, which in itself is absurd. Then again, merit should also have some reference to the task to be discharged. Mr. Tyagi interrupted Dr. Deshmukh by saying that it is a fight for the illiterates. I think, however sarcastic that remark may be, he was probably right. Self-Government, means a government by the people, and if the people are illiterate, a few leaders have no right to usurp all the power to themselves. This cry, this bogey of merit and fair-play is being raised by those who are in a advantageous position and who stand to suffer if others also come into the picture.

Sir, I can quote numerous instances where a mess has been made by those who claim to be efficient enough. To give an example. The U.P. Government legislated that petty proprietors should not transfer their land without the permission of the court. Now it depended upon the court. If the Magistrate happened to be a man who came from a poor family, he was very conscientious and would not permit the transfer. But in the case of those who are either themselves money-lenders or big capitalists, or who had nothing to do with masses, it only meant the expenditure of a few more rupees to be given to the Peshkar. I can give another instance. In the U.P. as late as last year, one very big official got the canal stopped at the time when the harvest was about to ripen. This resulted in the loss of many lakhs maunds of good rice. This is what happens if you appoint people who can compete in examinations, but who have nothing to do with the task in hand, who

know nothing about the task that is going to be allotted to them. Sir, efficiency, I say, should have something to do with the task that the man is called upon to discharge.

A few years back I complained that all the commodities that the grower had to sell are being controlled, whereas he is offered no facility whatsoever in the production of food grains. I quoted the example of cane-crushers. Cane crushers could be had at Rs. 20 before the war. During the war its hire went up to Rs. 250 though everything else was being controlled. My complaint went up to the Government and then to the Secretariat. It was, I may tell u, the month of October, and everybody in this House knows that the crushing season does not start before November. The Secretariat reported that all the cane-crushers had already been let out. There were no cane-crushers left to be hired. This will always happen when you man the services with people who do not know their jobs.

Tuesday, the 23rd August 1949

It is not a question of competition. If you want to ran the country, properly, if the administration is to be efficient as my friends want it to be, then you must have people in the job who know something about the job and who come from the masses. Otherwise the administration will lose touch with the masses. That is why in almost all the countries of the world fresh blood is being recruited to services constantly and a judge's son does not necessarily become a judge or the deputy collector's son does not necessarily become a deputy collector. 'Me practice should be that those, who have be in the services for a long time-should be asked to go and settle in the village while men from the villages should be called to run the administration because they alone know the difficulties of the masses they alone can feel for the masses and they alone can interpret their sentiments.

If I may be permitted to refer to the clauses moved by Dr. Ambedkar, they give all the powers to the Public Services Commission and make the Government defunct to that extent. I do not know what is the difference in those, few persons who have been appointed by the highest Government, officials as compared to those few persons who have been elected by the whole country and who have a record of service behind them. If the Prime Minister can make mistakes, I think the Public Services Commission can commit greater mistakes. I can quote numerous instances in which the Public Services Commission' has gone astray and in which the integrity of the Public Services Commission can be questioned. If the whole country cannot be trusted, if the whole record of service of a man is not enough to authorise him to make appointments, I am sure the appointments to the Public Services Commission of a few people will not serve the purpose. With these few words I support the amendments moved by Dr. Deshmukh. Kaka Bhagwant Roy (Patiala and East Punjab States, Union) : *[Mr. President, Sir, I am here. to support the amendment of my Friend Mr. Sahu, I fail to understand, when Public Service Commissions will operate in the States and Unions, why the vacancies to be filled should not be under their control. Often, it has been seen that the vacancies which are to be fined by nominations are not filled on the consideration of merit. I have had experience of' Indian States. The vacancies are filled there either by the relatives or friends or by those who flatter the government. Hence I am afraid lest the same may happen hereafter as well. Recently it has been heard, and I suppose it is a matter of two or three months, that some vacancies of I.A.S. were to be filled. enough a board was constituted for the same still some of the vacancies were filled by those who did not come under its jurisdiction. For this the reason given was that since the vacancies were filled in a hurry hence it was unavoidable. But later on it was revealed that they were either relatives or friends of the officers. therefore, I want to emphasise that, since you are appointing Commissions and entrusting them with powers, such things should not happen there. The things that are happening these days bring a bad name to the Government and to the Congress. High Officers and responsible people are recruiting undeserving candidates who are not fit enough, with the result that the prestige of the Congress is suffering tremendously in the country and abroad. It is right that you are giving powers to Public Service Commission to fill the vacancies by deserving hands, but it will be ruinous for you to give this authority to anybody other than this. It is better for recruiting capable people, but it will not be better if you would like to give this authority to any body else besides this body. I would ask you to accept Mr. Sahu's suggestion that the limit of two hundred and fifty or five hundred rupees be placed; you would be at liberty to increase or decrease the figure. By doing so their hands will be bound and they would not be able to do what they desire.

So far as Mr. Naziruddin's amendment is concerned in article 287, I support it. If the Public Service Commission will meddle in the affairs of private firms and companies, then their working will be set at naught. I think that perhaps the Public Service Commissions will not be able to understand the difficulties of their business and their daily routine. Their interference will hinder their business and difficulties will arise in the business. Therefore I would request that this amendment should be accepted].

Shri Brajeshwar Prasad (Bihar : General) : Sir, I rise to support all the articles that have been moved by the Chairman of the Drafting Committee. while doing so. I would like to point out certain aspects of the provisions that are going to be incorporated with which I am not in full agreement.

The powers of the Public Services Commissions are going to be of an advisory character. They are going to be bodies which will recommend to the Ministries concerned, Ministries of the Government of India and of the Provincial Governments. Their recommendations may be accepted or may not be accepted. I want that the powers of the Public Service Commission s must be of a mandatory character. All matters relating to appointment, promotion and transfer must be solely and exclusively vested in the hands of the Public Service Commission s. The Ministries should have nothing to do with these things. I am referring here not only to Provincial Ministries but also to the Central Ministries. In England powers have been vested in the hands of the Whitley Councils. I would like honourable Members of this House to know that half of the Members of the Whitley Commission are appointed by the Services themselves. In Canada, Australia and South Africa, in all the Dominions, appointments, promotions and transfers lie exclusively in the hands of the Public Service Commissions. I want that the same procedure should be incorporated in our Constitution.

I am not going to repeat the argument that there has been corruption, inefficiency and nepotism in the Provincial Governments regarding appointments, promotions and transfers. There is another reason why I am very keen about it. I want that the basic foundations of our Civil Service must be laid on a sound basis. It is not only a question which affects the life of a handful of persons as has been made out by Mr. Kamath. It is the backbone of the administration. If your Civil Services are not efficient, if they are not independent, then every thing will go down. I am of opinion that the future of India lies not in the hands of parliamentary politicians but in the hands of the civil services. I am of opinion that with a view to secure the independence of the Public Service Commission, itself. But now those articles have been passed. Therefore, the only course left open to me is to suggest that a member of any political party should not be allowed to be recruited to the services.

Today the position is that the Public Service Commissions have got no control over the services after their appointment. They re not free or competent to protect them from political and other influences. I want that the future Public Service Commissions of India should be in a position to protect civil servants not only from the influence of Ministers but from all kinds of political influences. An eminent writer has compared the Indian Civil Service with Plato's Philosopher Kings. I also want our civil services to be above board and enlightened. I feel that not only regarding appointment, promotion and transfer, but also regarding all maters concerning discipline power should remain in the hands of the Public Service Commission. I fail to see why, this procedure which has not led to any conflict or confusion of authority in the Dominions and in England, should not be incorporated in our Constitution. When the ideal is easily within our grasp. I think it is not right or proper to choose the second best. The Drafting Committee ought to have laid before the House what they considered to be the right course on this question. It is for the House to make compromises. Political considerations ought not to have been allowed to enter into the drafting of these clauses.

With these observations, I support the articles.

Prof. Yashwant Rai ((East Punjab : General) : (Mr. President, Sir, I have come here to support the amendments moved by Dr. Deshmukh.

After two thousand years the Harijans of this country had begun to entertain the hope that they too would get the same rights as others did. In spite of the fact that twelve to seventeen per cent of posts have been reserved for us in the services, injustice is done even now.

It was as the result of Dr. Ambedkar's efforts that some students were sent to foreign countries and the Central Government spent a lot of money on them. Such examples, as I am going to state prove that injustice is being done even now. A Harijan young man who has come back after obtaining the degree of M.A., M.ED. was getting a salary of Rs. 180 per month before going abroad, but I regret to say that on his return no Public Service Commission selected him for any better job, and he is even now rotting on a salary of Rs. 220 per month only, although on this student alone the Central Government spent an amount of forty thousand rupees.

In the circumstances, I cannot believe that the Federal Public Service Commission or other Commissions will not do injustice in the case of Harijans. I believe that there will not do injustice in the case of Harijans. I believe that there will certainly be injustice in their case. We se that in the subordinate services the principle of providing friends and relatives alone is followed. Recommendations are made for relations. I have seen that even the Ministers speak to the Members on the phone in regard to their candidates and secure interviews for them. In the circumstances, I think that until some special interviews for them. In the circumstances, I think that until some special provision is made under this clause, there will always be injustice in the case of Harijans and backward communities. I want to impress that there should be some representatives of the Harijans on the Federal Public Service Commission and the commissions which are formed in the States and provinces so that they may watch over the interests of the candidates who apply for different posts and who may prevent any injustice being done to Harijans.

After thousands of years the Harijans for the first time under the leadership of Mahatma Gandhi and thanks to Swami Dayanand felt encouraged to take to education and they began to hope that untouchability would be eradicated from society and that they would enjoy equal rights with others. If we want to achieve these objects and to form a classless society, we should include a provision to that effect in the Constitution. Mr. Kamath has said that in article 10 of the Fundamental Rights it has been stated that there shall be equality of opportunity for all irrespective of caste, creed and colour. We see that untouchability has been abolished under the clause regarding untouchability. But this has had no effect in the rural areas. You can find for yourselves that in the rural areas 85 per cent. of the people, who will have to follow this Constitution, are uneducated.

Therefore, if you want to give equal status to those communities which are backward and depressed and on whom injustice has been perpetrated for thousands of years and if you want to establish Indian unity, so that the country may progress and so that many parties in the country may not mislead the poor, I would say that there should be a provision in the Constitution under which the educated Harijans may be provided with employment. I have examples of high-caste matriculates holding the same posts as Harijan M.A.'s. Therefore in the circumstances and for a special provision for them is not an unreasonable one.

Therefore, I support the amendments moved by Dr. Deshmukh.

Shri S. Nagappa (Madras : General) : Mr. President, I support article 286. In doing so, I just want to bring to the notice of the House certain points which are very important. Among the functions of the Public Service Commission there is also a clause : "To conduct examinations." When I think of these examinations, I wonder. The results railways topsy-turvy. For instance, if a First Class M.A. appears before a Service Commission, the First Class becomes Third Class and the Third Class man becomes First Class. At times the way in which people are examined - anything that can be said will not be an exaggeration. The questions are so silly that I think sometimes even the questioner does not know what the answer is. For instance, they may ask : "what is the distance between sun and the moon?" ; what is the number of stars in the sky?"; why is milk white" and such like questions. And another thing. Physical disqualifications. "Your nose seems to be very straight. Your fingers seem to be longer than what is expected." These are the grounds on which these people are disqualified. "Oh, you do not know how to tie a tie or wear a collar. You do not know how to put on boots". These are the things on which our candidates are examined. Sir, I would prefer to have a curriculum prescribed and textbooks laid down for these people. There should not only be an oral examination, but some sort of written examination also.

As regards the Scheduled Caste candidates, I cannot describe the miseries which they have to undergo at these examinations for selection. But after all these troubles and miseries do they get selected? No, because the intention is to by-pass them and give those places reserved for the Scheduled class people to the candidates belonging to the community next in the list. In order to favour their people they have their own methods, back-door or open door. The services form an essential pat of the machinery of administration. Therefore the services are the bones of contention between different classes of people in the country. Everyone should therefore have equal opportunity. It is no use merely defining or adopting any article in the Constitution. We have to see that every letter and every word in the Constitution is translated in action in the true spirit with which it has been drafted. Only then all that we do here will be justified and will be equitable.

Injustice of this kind done constantly and continuously to these poor, down-trodden people, it not because people have no sympathy for these people, but unfortunately, it is all lip-sympathy which they show to the fullest extent possible. It does not go the material side of it. So, Sir, all this injustice is done. The main reason is that there is not a single member of the Scheduled classes in any of the Provincial Public Service Commission s or in the Federal Public Service Commission. May I ask why this injustice has been done? I can give you dozens and dozens of persons possessing higher qualifications and having higher status than the present Members of these Commissions. What is the character and what is the conduct of the existing members? Ceaser's wife must be above suspicion, but I am sorry to say that the present Commissions are not above suspicion. They have their own backdoor methods. They have their own ways. Well, Sir, people holding Cabinet rank go to the extent of ringing up these Commission Members and, ascertaining who the candidates for a particular posts are, see that their own candidates are preferred, irrespective of whether the most suitable person is a Harijan or a non-Harijan. This is how things are taking place. Such things were going on when we had foreign masters. But now everyone should realize and should feel that he is a free country and that freedom is common to all, whether a Harijan or non-Harijan, whether he is rich man or a poor man. Only then will we deserve this independence.

Mr. President : I have heard many Members making complaints against the Ministers..........

Shri S. Nagappa : Now I will go the next point, Sir.

Mr. President : I have heard many members making complaints against Ministers, against members of the Public Service Commission s and against other authorities who are not present in this House to defend themselves. I would only point out that it is not fair to make sweeping charges against persons charged with public duties. I hope honourable Members will bear this in mind. The public will of course take such statements as one-sided statements made by individual Members.

Shri S. Nagappa : Thank you very much. I bow to your ruling. I will not touch them even with a pair of tongs.

I will now give a description of the backdoor methods employed. If the executive want to make to some thirty or forty appointments, they say that there is an emergency and cannot wait for selection by the Public Service Commission, and then make the appointments. After an year or so they ask the Service Commission to advertise for these very posts. Now, along with the raw graduates from the colleges, these people who have one year's office experience also apply and naturally they get selected. This is the sort of backdoor method going on in every province. I cannot say about other provinces. But this us what is going on in my own province of Madras. Hundreds of appointments are made in this way.

Mr. President : This is exactly the thing to which I objected. I would ask the honourable Member to ventilate his grievances in this respect in the proper place. Here he has to confine himself to the article under discussion which relates to the Public Service Commission and not to appointments which have been made or are likely to be made by any Ministry.

Shri S. Nagappa : Now, Sir, as regards its functions. I would request the House to make the Service commission more efficient. They interview the candidates today and inform them about the results months hence. They must be more efficient. They must move quickly. They can have more staff if they want.

I am very much thankful to the Honourable Dr. Ambedkar and the Drafting Committee for bringing in this particular provision, viz., "appointments and posts are to be reserved in favour of any backward class of citizens in the Union or a State". Now, as my Friend Mr. Kamath has pointed out, what is the basis of the reservation? Whether it is population or some other basis must be prescribed. I would prefer, in order to be just and equitable , that the reservation should be on population basis.

Another thing is that "backward classes" include so many classes. I would request Dr. Ambedkar to state clearly who all come under this category. I think he has in mind Scheduled Classes, Scheduled Tribes and other backward classes. If there are any others I would request him to explain now.

From this clause I see that certain categories of jobs are excluded. While it may be necessary from the point of view of the administration to so exclude them, the executive must bear in mind that in the clause there is reservation for the backward classes and that the spirit of this clause must be translated in action by the executive and a certain proportion of such posts also is given to the backward classes.

I am glad that there is another provision by which these things are to be brought before Parliament for scrutiny. But what is the good of it? These things will be coming before Parliament after the action has been taken. This is not a preventive method. Parliament will have an opportunity only to scrutinize what has taken place. I would request the Members of this House to support this clause as it is and I would request my honourable Friend, Dr. Ambedkar, to be good enough to explain as to what "backward classes" mean, who are the people who come under that category. I would request him to be good enough to explain this.

Shri Raj Bahadur : Mr. President, Sir, the discussion on this article has brought into the forefront certain vital question of principle as well as of national policy. It appears to me that clause (4) of article 286 is only a painful reminder to us of the cancer from which our body-politic has suffered for such a long time - I mean to refer to the curse of caste system. The amendments No. 86 and 87 moved by my Friends, Dr. Deshmukh and Sardar Hukam Singh, are also pointers in the same direction. It has to be recognised without any hesitation that there has been injustice and inequity in the distribution of jobs and services amongst the different classes and castes in our country. As I submitted the other day, there has been a certain amount of favouritism and nepotism on the part of those who happened to be in power. But apart from that certain psychological conditions and traditions that have prevailed throughout our history are also responsible for this alleged injustice.

Nevertheless I would submit, Sir, that we should rather go to the root of the evil. The remedy for the evil does not lie in providing a few jobs or posts in services of the State to persons living in rural areas or to persons living in urban areas. The remedy perhaps lies elsewhere. We can, however, trace the cause of these injustices or inequities to the evil of caste system, the evil that was responsible for our prolonged slavery, the evil that has resulted in our degeneration morally and politically, the evil that has resulted in creating so many watertight compartments, the evil that has created other evils like untouchability etc. It is only a symptom of that evil that all communities are not represented in the services in an equitable or just manner. To ask for representation, however, on class or caste basis in the services is to remedy that disease only superficially. But we have got to cure the disease from its very roots.

I would submit, Sir, that if we wan the best sort of government in our country, then we must have the best men possible to man our services, - the best men available, the most deserving and the most hones men that we can lay our hands upon. We cannot gamble with our freedom. We cannot afford to gamble with the peace, progress and tranquillity of our nation, by simply trying to provide jobs for a few persons belonging to certain classes either in the urban or in the rural areas.

My main objection to the amendment proposed by Dr. Deshmukh does not therefore, proceed from any lack of sympathy for the injustice-which I recognise-from which certain classes of people have been suffering from. My objection is based on the ground that the proposed amendments obviously seek to perpetuate the evil from which we have been suffering and which we want to eradicate. The amendments clearly recognise representation on the basis of castes and classes in the services of the State. It is high time that we do away with such representations. It is high time that we recognise that our safety, the safety of our freedom, the safety of our country lies in our unification, in making our nation a homogeneous whole. I would submit that if, for the sake of argument, we recognise the principle that appointments should be made on the basis of castes and classes, let us think where it would lead us. It is obvious that in that case we would shift the centre and focus of our loyalty and allegiance. It would shift from that to the nation as a whole, to loyalty and allegiance to the interests of a group or a class or caste. Our allegiance to the nation would become only secondary. Our primary allegiance would be to class or caste. This is an evil from which we have suffered so long, an evil that led to the partition of the country. This would also kill all incentive for progress. If you say that representation in the services should be on the basis of caste or class, then you remove all incentives to self-development. All incentive for efficiency will be lost.

Dr. P.S. Deshmukh : I did not say that representation should be on the basis of caste or class.

Shri Raj Bahadur : Your amendment says :

"or for the purpose of bringing about a just and fair representation of all classes in Public Services of the Union or a State."

There you recognise the principle of representation in the services on the basis of class. If you do that, all incentive to progress, all incentive to efficiency, goes. When this incentive to progress and efficiency goes, the whole nation degenerates. In such a case we would also remain infected with the evil of separation and with the evil of group or class prejudices.

I would submit, Sir, that this evil would go even further than that and would permeate into all aspects of our national life. Elections would then be fought not on the basis of loyalty or service to the nation, not on the basis of the will and capacity for sacrifice for the cause of the nation, but on the basis of class loyalty. Can we afford to do that? I respectfully, submit that we cannot. We have had enough of it, and it is time that we try to remove all class or caste distinctions. My honourable Friend Shri Phool Singh, while supporting Dr. Deshmukh's amendment, quoted instances where people got into jobs for which they were not fit. I submit that in quoting those instances he went against his own viewpoint. That only shows that people have been appointed on considerations other than merit. To say that the people have been appointed on considerations other than merit. To say that the people of the urban areas alone are good or the people of the rural areas alone are good is not correct. We find good and bad people everywhere. We find efficient and inefficient people in all classes and in every walk of life. To brand one as entirely good and another as entirely bad is not wisdom. On the other hand it is sheer non-sense in my opinion. No man is entirely good or bad. One of our famous poets has said :

In man whom men condemn as ill,

I find so much of goodness still,

In man whom men proclaim divine,

I find so much of sin and blot,

That I hesitate to draw a line,

Between the two where God has not.

We are all mixtures of good and evil. We are all mixtures of efficiency and inefficiency, of perfection and imperfection. God alone is perfect. Hence we should better do away with all sorts of class prejudices and caste loyalties. That is the only way in which we can strengthen our nation.

We are responsible not only to the present generation but also to posterity, the coming generations. If we try to perpetuate class distinctions, the evil from which we have been suffering so long, I think we would not be acting faithfully to our posterity. As such I find myself in total disagreement with the principles underlying the amendments moved by my honourable Friend, Dr. Deshmukh.

I want to add one word more, Sir, about certain remarks that have fallen about the discriminations and handicaps which are being experienced by the rural communities and by the Scheduled Castes. I have already submitted, that we have got to recognize that these inequities do exist, but I submit that they are simply symptoms of the disease and if we want to do away with these inequities or injustices, we must not try or proceed to cure those symptoms of the disease, we must try to get to the disease itself, we must try to go to the root of the evil and kill the evil itself, instead of simply fumbling our way here or there for superficial remedies. I would submit that these jobs, services, posts and seats in the Legislature have always served as "apples of discord" for our nation. We must beware of that apple of discord. We must try to make this country into one compact and strong unified nation. We must try to see that fissiparous tendencies and all sorts of causes which are responsible for our disunity must be eliminated. I would, therefore, request Dr. Deshmukh and Sardar Hukam Singh to withdraw their amendments.

So far as Sardar Hukam Singh's amendment is concerned, I submit, Sir, that to me it appears that this amendment defeats the very purpose with which it has been moved. His amendment reads : "Backward class of citizens would mean and include class or classes of citizens backward economically and educationally." "Backward classes" may mean anything, backward educationally, economically, socially or otherwise. Why try to specify or restrict its meaning here? I think in its present form it is a much wider term and should be left as it is. I submit that it is time that we should try to eliminate all sorts of class distinctions and class prejudices. The real remedy to my mind is that we should try to strike at the very root and at the very foundation of this caste system. We should try to exterminate it as early as practicable, by an effective pieces of legislation so that no class distinctions, discriminations, or caste or communities are recognised any further in any form, and further make it compulsory that a person born in one particular so-called caste shall not marry himself or his sons or daughters in that particular caste. It should be made penal for him to marry in his own so-called caste. For the present this appears to me to be the only remedy. By enacting a piece of legislation alone we can do away with this evil of caste system. The evil cannot be eradicated by superficial remedies.

Shri M. Ananthasayanam Ayyangar (Madras : General) : Sir, a healthy, efficient and honest public service is the very backbone of a Government or its administration. Therefore, if we scan this clause a little carefully it will pay us very well.

I believe that whatever complaints have been placed before us regarding the administration of this service here and the manner in which Public Service Commissions have been acting, all those loop-holes are sought to be plugged by the various amendments that have been made in the present Section 266 of the Government of India Act. Mr. Nagappa said - I do not agree with him - that the President Public Service Commissions, whether at the Centre or in the Provinces, are so bad as he would like to depict. No Public Service Commission or State Commission can do ample justice or absolute justice to one or two applicants. Whosoevers' application is not accepted, certainly he turns against the Public Service Commission, forgetting that he is one of many and that he could have stood the test prescribed by them. There may be hardships, may be some cases where hardship has really occurred, which the persons who undergo that hardship might not deserve. Therefore, it is no good quarrelling with individuals. It is true that proper men should be selected even for these public services! provisions regarding the staff and other matters have already been made. We are now at this stage of laying down the functions, of seeing to it that those functions are discharged properly.

Now, as regards the qualifications and the manner of appointment, it has been left to the President in the one case and the Governor or the Ruler of a State in the other case; but in all these cases they will act only on the advice of their Ministers. Popular Governments will be there, but once they appoint, they will have nothing more to do in the regulation or in the conduct of the members of the Public Service Commissions. They are absolutely free and their freedom cannot be interfered with by the executive from time to time. That is the guarantee. Even for their removal, we have got other procedure and they could not be arbitrarily interfered with. This will no doubt be prescribed by the President or Parliament in the earlier clauses that we have passed, steps having been taken to ensure that great integrity and honesty prevails in the matter of administration of these Public Service Commissions.

Now, what are their functions? Some of the complaints that have been laid before us by Mr. Nagappa are due to certain provisions in Section 266 of the Government of Act. It is not as if every appointment that is to be made for public services under the present Government of India has to be done by the Public Service Commission. There are certain exceptions. Under the present Act, the Governor-General can lay down rules and regulations withdrawing certain clauses of appointments from the purview of the Public Service Commission. It is also carried over and a similar provision is found in the draft article 286. But a safeguard has been put here which is wanting in the present Government of India Act. The safeguard is that wherever a particular appointment, the Public Service Commission need not be consulted unlike the provision in the earlier clause. Clause (3) of clause 286 says : "The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted etc.", and then "Provided that the President as respects the All India Services and also as respects other services and posts in connection with the affairs of the Union, and the Governor or Ruler, as the case may be, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted". A similar provision exists in the Government of India Act today, but it might have led to a number of abuses, in the matter of selection by the Ministry without consulting the Public Service Commission. This is sought to be remedied in the provision in clause (5) which says : "All regulations made under the proviso to clause (3) of this article by the President or the Governor or Ruler of a State shall be laid before the Parliament or before the respective legislatures." There is that safeguard. It comes before the scrutiny of the legislature and amendments will be made from time to time.

The other objection that Mr. Nagappa raised was that appointments are made a year in advance and later on the appointments are advertised by the Public Service Commission and the departments try to push those people whom they have appointed without any examination on the score that they are experienced. Such things do occur. It is not exclusively the fault of the Minister concerned. I have heard the honourable Mr. Santhanam telling me that he wanted a selection to an appointment made by the Public Service Commission and they have not been able to find time to select and it has been there for nearly seven or eight months and he has to hold up the appointment for that purpose. There are certain cases where the Public Service Commission on account of want of staff of too many applications having been received, have not been able to find time. These are exceptional cases but these must in the very nature of things be exceptional. I hope in the years to come there will not be any ground for complaint of the nature that Mr. Nagappa made and the rules that we are now framing under clause (5) will avoid those inconveniences and with the best of intentions, I am sure, such things would not be repeated in the future.

Then, as regards the manner in which these Public Service Commissions are to work, the first requisite is that all appointments shall be made in the interests of public administration on merit and merit alone. But, having regard to the conditions of our country, there must be some provision in favour of those persons who are not even economically and socially advanced and may not be able to come up to the mark. There must be some limitation no doubt. With regard to appointments which require enormous skill and capacity, certainly, these rules cannot be relaxed, because public interests demand otherwise. Take, for instance, the case of an eminent surgeon; merely because he belongs to a particular community, he ought not to be taken for that job. There are other classes of jobs where such enormous technical skill and capacity may not be necessary, in which case there must be distribution. A hard and fast rule cannot be laid down in the Constitution. Therefore, some provision has been made in favour of the backward classes. There are some communities which have taken to trade; take, for instance, the Marwari community. They are rich; they have taken to trade. Is it open to them under the existing circumstances to say that they have not received proper representation in the services? In reality public service has no attraction for them. Two or three members of a family engage themselves in business and become millionaires. It is true not one of them is in the public service. To avoid giving representation to the richer classes, the term "backward classes" has been introduced instead of the word 'community'. Though the term "backward classes" has not been defined. I am sure a Commission appointed by the President will determine who are the backward classes. There are backward classes in every community. Therefore, greater attention has to be given to these backward classes. Whether or not a certain class of people are backward does not depend upon the caste, or community. There is one rich class; there is a poor class. Some classes have economic advantages; some classes have not. The term backward classes is sufficiently comprehensive. To find out who are the backward people, under article 301 a Commission will be appointed to go into this matter and I believe whosoever is found as such will come under this clause for whom special reservations are sought to be made. Under article 10 of the Fundamental Rights, it is said that no discrimination shall be made; but discrimination is allowed to afford special help in favour of the backward classes who will be hereafter found to be so or whose names will, after investigation by a Commission, be declared as such. I believe Dr. Deshmukh will be sufficiently enough to place the case of the various sub-communities and other classes before it so that justice may be done to all of them who are in need of special help.

There is another improvement made in this article on the existing state of things under Section 266 if the Government of India Act of 1935. If any addition to the subjects that have to be placed before the Public Service Commission for consultation is to be made, the Act of Parliament has first of all to get the sanction of the President or the Governor General before introduction of the Bill. Under the new article, the sanction of the President is not necessary to introduce a Bill to clothe the Public Service Commission whether at the Centre or in the provinces with additional powers or subjects. It is open to an official or a non-official member to introduce a Bill wherever necessary, after some experience is gathered of the working of the Constitution, straightaway, enlist the opinion of this House and carry it through. This is another improvement. After having experience of the working of the Government of India Act of 1935, all the defects that were noticed in practice have been sought to be removed by making special provision for the backward classes, by seeing that the rules and regulations exempting certain things from the scope and jurisdiction of the Public Service Commission have to be placed before Parliament for scrutiny from time to time, and by deleting the provision which required the sanction of the President for the introduction of a Bill to invest the Public Service Commission with more powers. In these respects, I submit to the House that these articles are an improvement. I hope with God's grace these provisions would work satisfactorily. If per chance, after working this Constitution, we find some more defects, there is inherent provision in article 286 by which we can amend these provisions. After all, the success of an institution depends not so much on the rules and regulations that are made though, of course, rules and regulations are necessary, but on the integrity, efficiency, honesty of purpose of those persons that work. Let us wish that all these defects will be removed in practice, that honest straightforward public-minded men will be in charge of the administration of the Public Service Commissions and the reproach that has been there, either of nepotism or favouritism, will wholly disappear.

Pandit Hirday Nath Kunzru (United Provinces : General) : Mr. President, I think that the articles before us represent a great improvement on the provisions contained either in the Government of India Act, 1935; or in the Draft Constitution, with regard to Public Service Commission. My honourable Friend Mr. Ananthasayanam Ayyangar has pointed out one or two matters in which the new draft is better than the provisions contained in the Government of India Act, 1935 or in the Draft Constitution. I should like to point out more and more important features of the articles that we are considering which should be welcomed by anybody that understands the purpose of appointing Public Service Commissions.

Its object, as has been stated by several speakers is to secure for the State efficient public servants who will serve all people equally and will always watch over the interests of all communities and the State as a whole. But, the provisions that are at present in force, leave a number of loop-holes for Executive interference. The Government of India Act, 1935, empowers the Governor-General to specify by regulation any matter in respect of which the Federal Public Service Commission need not be consulted. The regulations may be unnecessarily wide, or they may be changed in such a way from time to time as to enable the executive to exercise a considerable amount of undesirable patronage. Article 286 as now drafted provides a check, and a very good check, on the vagaries of the executive. The President or Governor will have the power to specify the matters in regard to which it will not be necessary to take the advice of the Public Service Commission; but, at the same time, it will be his duty to see that the regulations made by him are laid before the legislature and the legislature will have the power not merely to criticise these regulations, but to amend them in any manner that it likes. We can, therefore, feel sure that no regulations will be made by the President or Governor that are not likely to secure public approval. If he is tempted to deviate from the right path, he will hesitate to give in to the temptation for he will know that his regulations will have to be laid before the legislature.

Another very welcome feature of the articles that have been laid before us is that the Public Services Commission have been required to submit annually reports of their work to the executive, drawing its attention to those cases in which their advice has not been accepted by the Executive. The Executive is further required to place the reports of the Public Service Commissions before the appropriate Legislatures. This is very valuable provision. Its importance cannot be exaggerated. We come to know from time to time of cases in which we feel that the Governments concerned have been guilty of irregularities but there is no method provided in the Constitution by which we may know definitely the cases where irregularities occur and the extent to which they occur. In the absence of facilities for obtaining accurate information on this point, members of the Legislature ask questions with regard to recruitment that sometimes do grave injustice either to the Ministers or to the Public Service Commissions. Article 288(a) will remove this danger and should the Executive be tempted unduly to disregard the advice of the Public Service Commissions, the representatives of the people will have an opportunity of criticising the action of the Executive and preventing it in future from disregarding the considered advice of the Commissions.

Sir, the point of view that I have placed before the House is not founded merely on theoretical considerations. The checks provided in the articles laid before us have been found to be necessary in practice at least in one case. The Calcutta High Court some time ago considered an application questioning the validity of an appointment made by the Local Government without consulting the Public Service Commission. The High Court expressed the opinion that the provisions contained in article 266 of the Government of India Act, 1935, with regard to matters in respect of which the Public Service Commission shall be consulted were not mandatory because it was not stated what would be the consequence of the disregard of those provisions. They were, therefore, held to be only directory. In other words, from the point of view of the public the obligation laid on the executive was not a fundamental right but only a directive principle. If such a case occurs in future, the Public Service Commission concerned will be able to mention this in the report which will have to be laid before the Legislature. There is a reasonable certainty therefore that the Executive will be disposed to act with caution and not exercise its powers in an arbitrary fashion and act as if the Public Service Commissions did not exist.

Sir, one other provision that I would like to draw the attention of the House to is article 287. In the draft as it stood before, the Commissions had to be consulted only in regard to the Union or State Services generally speaking, but now even appointments connected with corporations or other public institutions created by law shall be dealt with by the Commissions. This again is an important safeguard. It is not unlikely at all that in the near future a number of corporations dealing with important matters may be created. The number of posts with which they will deal may be quite large and many of these posts may carry high salaries. As the draft stood it would not have been within the purview of the Public Service Commissions to make recruitment to these posts. But the amended draft that has been laid before us requires that posts under a Corporation or Public Institution created by law should be dealt with in the same manner as posts under the Union or a State.

Taking all these things together, it is clear that the articles that have been placed before us deserve to be warmly welcomed. If the members of the Public Service Commissions are properly chosen and they act without fear or favour, than there is no doubt that recruitment to the public services will not merely be above reproach but also above suspicion. If, however, the personnel of the Commissions is not good or if the members do not discharge their duty properly, then we have no remedy. The Constitution cannot either create competent men or compel the Executive to chooses the officers required to discharge important functions with care and impartiality.

Sir, the articles that we are considering have been subjected to a certain amount of criticism. My honourable Friend Dr. Deshmukh finds that the articles do not protect the rights of all classes of the population. He is not satisfied with the provision in article 286 regarding the reservation of posts for any backward class of citizens without consultation with the Public Service Commissions. He wants that this principle should be extended and that it should apply to all classes. Indeed, he goes further than this and wants that the State should, without consulting the Public Service Commission, lay down that the various classes shall be represented in the Public Services according to their numbers in the Union or the State. This amendment has been dealt with so fully by a number of speakers that I do not think that I need dwell at length on it. But I should like to add my voice to that of those speakers who have opposed this amendment. We are all desirous that the public services should be recruited in such a manner as to give satisfaction to the public as a whole, but it would be ....

Dr. P.S. Deshmukh : That is all I want.

Pandit Hirday Nath Kunzru : I am glad to know that this is all that my Friend Dr. Deshmukh wants. But his amendment has been drafted in such a way as to create a very serious danger. I mean, that if it is acted upon, the public interests will suffer seriously. Steps can be taken to see that the interests of no community are ignored; but it will be most undesirable to require the executive to lay down that every class shall be represented in the public services according to its numerical strength. We all know that education is not widely spread in this country. There is, therefore, a large majority of people who are uneducated. Can we, seriously speaking, ask in this state of things, that all the classes should be represented in accordance with their population? If it were a question of representation in the legislature, this argument would have force. But where important business of the State requiring knowledge and judgement has to be carried on from day to day, we should appoint people only on the ground of merit. We cannot appoint them merely on the ground that their appointment will give satisfaction to certain classes; for if that were done, the very classes that want an adequate share in the public services would be the first to suffer, for they have to gain more by the efficiency of the administration and the impartiality of the officers than the members of the more advanced classes. I am, therefore, compelled to oppose Dr. Deshmukh's amendment. I have hardly any doubt that the House will not accept it.

Shri T.T. Krishnamachari (Madras : General) : Sir, I move that the question be now put.

Mr. President : The question is :

"That the question be now put."

The motion was adopted.

Mr. President : Dr. Ambedkar.

The Honourable Dr. B.R. Ambedkar : Mr. President, Sir, after the speeches that have been made by my Friend Mr. Ananthasayanam Ayyangar and my Friend Mr. Kunzru, there is very little that is left for me to say in reply to the various points that have been made. Mr. Jaspat Roy Kapoor said that clause (2) was unnecessary. I do not agree with him because clause (2) deals with a matter which is quite different from the one dealt with in the original article 284. I think it is necessary, therefore, to retain both the clauses.

The only point that remains for me to say anything about is the question that is raised about the Scheduled Castes and the Backward Classes. I think I might say that enough provision has been made, both in article 296 which we have to consider at a later stage and in article 10, for safeguarding the interests of what are called the Scheduled Castes, the Scheduled Tribes and the Backward Classes. I do not think that any purpose will be served by making a provision whereby it would be obligatory upon the president to appoint a member of what might be called either a Scheduled Caste, or Scheduled Tribe or a member belonging to the backward classes.

Shri A.V. Thakkar (Saurashtra) : Other backward classes.

The Honourable Dr. B.R. Ambedkar : The function of a member of the Public Service Commission is a general one. He cannot be there to protect the interests of any particular class. He shall have to apply his mind to the general question of finding out who is the best and the most efficient candidate for an appointment. The real protection, the real method of protection is one that has been adopted, namely, to permit the Legislature to fix a certain quota to be filled by these classes. I am also asked to define what are backward classes. Well, I think the words "backward classes" so far as this country is concerned is almost elementary. I do not think that I can use a simpler word than the word "Backward Classes". Everybody in the province knows who are the backward classes, and I think it is, therefore, better to leave the matter as has been done in this Constitution to the Commission which is to be appointed which will investigate into the conditions of the state of society, and to ascertain which are to be regarded as backward classes in this country.

Shri A.V. Thakkar : May I ask whether it will not take several years before that is done?

The Honourable Dr. B.R. Ambedkar : Yes, but in the meantime, there is no prohibition on any provincial government to make provisions for what are called the backward classes. They are left quite free, by article 10. Therefore, my submission is that there is no fear that the interests of the backward classes or the Scheduled castes will be overlooked in the recruitment to the services. As my Friend Pandit Kunzru has said, the articles I have presented to the House are certainly a very great improvement upon what the articles were before in the Draft Constitution. We have, if I may say so for myself, studied a great deal the provisions in the Canadian law and the provisions in the Australian law, and we have succeeded, if I may say so, in finding out a via media which I hope the House will not find any difficulty in accepting.

Mr. President : I will now put the various amendments to vote. The first amendment to article 286 was No. 13 moved by Shri Jaspat Roy Kapoor. The question is :

"That in amendment No. 12 above, clause (2) of the proposed article 286 be deleted and the subsequent clauses be re-numbered accordingly."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 12 of List I (Fifth Week) of Amendments to Amendments the proviso to clause (3) of the proposed article 286 be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 12 of List I (Fifth Week) of Amendments to Amendments, for clause (3) of the proposed article 286, the following be substituted :--

(3) The Union Public Service Commission as respects the All India Service and also as respects other services and posts in connection with the affairs of the Union, and the State Public Service Commission as respects the State services also as respects other services and posts in connection with the affairs of the State, shall be responsible for all appointments, carrying a maximum of Rs.250/- (To hundred and fifty rupees)."

The amendment was negatived.

Dr. P.S. Deshmukh : I beg leave to withdraw amendment No. 82 moved by me.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The next amendment is No. 84 moved by Mr. Naziruddin Ahmad. The question is :

"That in amendment No. 12 of List I (Fifth Week) of Amendments to Amendments, after the proviso to clause (3) of the proposed article 286, the following new proviso be added :--

'Provided further that the Public Service Commission of the Union shall always be consulted where the service carries a maximum pay of Rs.500/- per month and the State Public Service Commission shall always be consulted where the service carries a maximum pay of Rs.250/-"

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 12 of List I (Fifth Week) of Amendments to Amendments, clause (4) of the proposed article 286 be deleted."

The amendment was negatived.

Dr. P.S. Deshmukh: Sir, I beg leave to withdraw amendment No. 86 moved by me.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : Then amendment No. 87. The question is :

"That in amendment No. 12 of List I (Fifth Week) of Amendments to Amendments, after clause (4) of the proposed article 286, the following Explanation be added :--

'Explanation ---Backward class of citizens would mean and include class or classes of citizens backward economically and educationally.'"

The amendment was negatived.

Dr. P.S. Deshmukh : I beg leave to withdraw amendment No. 88 moved by me.

The amendment was, by leave of the assembly, withdrawn.

Mr. President : Amendment No. 89 by Shri R.K. Sidhva. The question is :

"That in amendment No. 14 of List I (Fifth Week) of Amendments to Amendments, at the end of the proposed article 286, the following new clause be added :--

(6) The commission shall submit to the legislature every year a report setting out all cases, the Government's reasons in each case, and the Commission's views thereon where there is difference of opinion'."

The amendment was negatived.

Mr. President : The question is :

That in amendment No. 14 of List R (Fifth Week) of Amendments to Amendments, for the proposed clause (3) of article 286, following be substituted :--

(3) The Union Public Service Commission with regard to All India Services and also in regard to other Services and posts in connection with the affairs of the Union, and the State Public Services Commission in regard to the State Services and also in regard to the services and posts in connection with affairs of the State shall be consulted in respect of all appointments, transfers and disciplinary matters relating to these Services'."

The amendment was negatived.

Mr. President : I will now put article 286 as proposed by Dr. Ambedkar to vote.

The question is :

"That proposed article 286 stand part of the Constitution."

The motion was adopted.

Article 286 was added to the Constitution.

Mr. President : I will now take up article 287, as proposed by Dr. Ambedkar. There is one amendment to it by Mr. Naziruddin Ahmad. The question is :

"That in amendment No. 16 of List I (Fifth Week) of Amendments to Amendments, in the proposed article 287, for the words 'or other body corporate' the words 'or other body corporate not being a company within the meaning of the Indian Companies Act, 1913 or banking companies within the meaning of the Banking Companies Act, 1949 be substituted."

The amendment was negatived.

Mr. President : The question is :

"That proposed article 287 stand part of the Constitution."

The motion was adopted.

Article 287 was added to the Constitution.

Mr. President : There is no amendment to article 288, so I will put it to vote. The question is :

"That proposed article 288 stand part of the Constitution."

The motion was adopted.

Article 288 was added to the Constitution.

Mr. President : The question is :

"That the new article 288A stand part of the Constitution."

The motion was adopted.

Article 288A was added to the Constitution.

Article 292

Mr. President : We shall now take up article 292.

Pandit Thakur Das Bhargava (East Punjab : General) **:** But there is a new article 291A proposed by me which may be taken up.

Mr. President: I think it is covered by another article.

Pandit Thakur Das Bhargava : But mine is more comprehensive.

Mr. President : You can move it as an amendment to 295A. It is not covered by 295A?

Pandit Thakur Das Bhargava : Yes Sir, but 295A does not deal with articles 293 and 295, which are covered by my amendment.

Shri T.T. Krishnamachari : The honourable Members' amendment is closely related to the proposed article 295A. Article is restricted in its scope. The amendment of the honourable Member of article 291A extends the scope of these articles. It would therefore be proper for the honourable Member to move his amendment as an amendment to article 295A. I think the suggestion made by the President is appropriate. The honourable Member may move it as an amendment to 295A.

Mr. President : That is what I was suggesting.

Pandit Thakur Das Bhargava : Just as you please, Sir.

The Honourable Dr. B.R. Ambedkar : I move that for article 292, the following be substituted :

"292 (1) Seats shall be reserved in the House of the People for ----

Reservation of seats for (a) the Scheduled Castes ;

Scheduled Castes and (b) the scheduled tribes except the scheduled tribes in the tribal areas of

Scheduled Tribes in the Assam;

House of People (c) the scheduled tribes in the autonomous districts of Assam

(2) The number of seats reserved in any State for the Scheduled Castes or the scheduled tribes under clause (1) of this article shall, save in the case of the Scheduled Castes in to the total number of seats allotted to that State in the House of the People as the population of the Scheduled Castes in that State or of the Scheduled tribes in that State or part of that State as the case may be , in respect of which seats are so reserved bears to the total population of that State."

This article 292 is an exact reproduction of the decisions of the Advisory. Committee in this matter and I do not think any explanation is necessary.

Mr. President : This represents the decision which was taken at another session of this House when we considered the Advisory Committee's report. This puts in form the decision then taken. We have several amendments to this here. I will taken them now.

Prof. Nibaran Chandra Laskar (Assam : General) : Mr. President, Sir, I shall move No. 24. I am not moving No. 23. I move.

"That in amendment No. 22 above in clause (2) of the proposed article 292, after the words, brackets and figure 'under clause (1) of this article shall' the words 'save in the case of the Scheduled Castes in Assam' be inserted."

If my amendment is accepted, then clause (2) of the article 292 will read thus :

"The number of seats reserved in any State for the Scheduled Castes or the scheduled tribes under clause (1) of this article shall, save in the case of the Scheduled Castes in Assam, bear, as nearly as may be, the "same proportion to the total number" of seats allotted to that State in the House of the People as the population of the Scheduled Castes in that State or of the scheduled tribes in that State or part of that State, as the case may be, in respect of which seats are so reserved bears to the total population of that State."

I wholeheartedly support the proposed amendment of Dr. Ambedkar with a very slight modification as mentioned in my amendment. During the last session of the Constituent Assembly, the historic decision was made to abolish the reservation of seats for minorities except in the case of Scheduled Castes and scheduled tribes. I offer my heartfelt thanks to the Members of the Constituent Assembly who were good enough to support the report of the

Minorities Sub-Committee and granted these privileges to the Scheduled Castes and scheduled tribes. I shall be railing in my duty if I do not say that the Scheduled Castes and scheduled tribes in the country will ever remain grateful of the Honourable Prime Minister and the Honourable Deputy Prime Minister, the Chairman of the Minorities Sub-Committee, who really felt the demands and grievances f the Scheduled Castes and scheduled tribes and who had to face strong opposition for their cause. It is through their grace the Scheduled Castes and tribes are getting these political rights.

I believe that any reservation will go against the principle of democracy, but the circumstances such as political unconsciousness, backwardness in education and the very poor economic condition of the Scheduled Castes compel them to demand for these privileges. If Dr. Ambedkar's amendment is accepted, then he Scheduled Castes or scheduled tribes will get reservation of seats. But it has been stated as a fundamental concept of the Constitution that the representation for the House of the People would be on the basis of one seat to at least 5 lakhs of people, and it will be considered according to the preceding census just before the election. Therefore, i have great doubts in my mind whether the Scheduled Castes in Assam will get the benefit of this privilege. Unfortunately, the district of Sylhet which was a part of Assam has been annexed to Pakistan by referendum, and thereby about three lakhs of Scheduled Castes people went over to Pakistan and the population of the Scheduled Castes which was 6,76,566 before partition, has come down after partition to 3,77,025 according to 1941 census, although I question the authenticity of the census figures of 1941. Now, I shall try to prove it. On the figure as given in 1941 census, the Schedule Castes cannot claim as of right any seat in the House of the People. Therefore, by my amendment I want to have an exception to be made to give scope to the Scheduled Castes to approach before the Election Commission or whatever that authority may be to place their legitimate demands. First of all, I shall show to the House that the figures of the 1941 census are incorrect, inaccurate and fallacious. In the whole of Assam the total population is only about one crore. I shall take only the major communities. In Vol. IX of the Census Report of 1941 the following figures are given about the variation of communities from 1931-41:- Among Hindus there is a decrease of 12 per cent and among Muslims there is an increase of 24 per cent. The Tribes have increase by 184 per cent. In the Brahmaputra Valley there has been an increase in the Tribals of 477 per cent, and in the Surma valley 2266 per cent. From these figures the House can see the inaccuracy of the census figures of 1941 : While there is a general increase of 18 per cent, in the province of Assam, among the Tribals there is an increase of 184 per cent and among the Hindus there is a decrease of 12 per cent.

In the Minorities Sub-Committee Report, some 9 lakhs of garden labourers, considered as Tribals in the 1941 Census, have been shown as general population. If the Census figure is correct, then there is no justification for taking out 9 lakhs of garden labourers from the fold of the Tribals and showing them as general. By this the strength of the Scheduled Castes has been reduced. I shall prove that their number is more than 10 lakhs now. Leaving aside the gradual decrease-of the number of the Scheduled Castes from 1911 to 1931, if we take the garden labourers numbering 9 lakhs who are included in general population, then we can easily get the number of Scheduled Castes. Then what Communities do the garden labourers belong to? I can prove from records that 80 per cent of them are Hindus and 80 per cent of these Hindus belong to Scheduled Castes.

Shri A.V. Thakkar : We are unable to follow the speaker.

Prof. Nibaran Chandra Laskar : There has been a tendency from 1911 onwards amongst the Scheduled Castes to change their communities, because they were very much afraid that the caste-name generally prohibited them from getting into any Government services. Therefore the community began to decrease gradually. In 1911 the strength of the Scheduled Castes was 13 lakhs, in 1921 it was 14 lakhs and in 1931 it came to about 6 lakhs and in 1941 it came to 4 lakhs. As for instance, the strength of the Scheduled Patni community in 1911 it was 1,11,000, but in 1921 the strength came down to 45,000. With regard to this Community the Census Superintendent in his report of 1921 Vol. III Part I page 154 says. "It was suggested by one of the Leaders (himself a Brahmin) that a caste which was looked down upon could not hope to improve its status without a better name." This shows that Scheduled Castes were made to decrease by the leaders not belonging to their own communities.

Mr. President : Are you likely to take a long time?

Prof. Nibaran Chandra Laskar : I will take sometime more.

Mr. President : Then we shall go on with this tomorrow. The House stands adjourned till nine of the clock on Wednesday.

The Assembly then adjourned till Nine of the Clock on Wednesday, the 24th August, 1949.

---

*[ ] Translation of Hindustani speech

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Wednesday, the 24th August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Mr. President: Prof. Laskar will continue his speech.

Prof. N. C. Laskar (Assam: General): Mr. President, Sir, yesterday I was speaking about the gradual decrease of the Scheduled Castes since 1921. I would like to draw the attention of the House today to the' Census Report of 1921, Vol. III, Part I ; and in page 154, of that report a table was given with the variation in caste, tribe, etc., since 1881 and from this table I shall give certain instances of gradual decrease of the depressed classes.

Patni population in 1911 was 1,11,000.

Patni population in 1921 was 45,000.

Nandiyal population in 1911 was 68,000.

Nandiyal population in 1921 was 18,000.

Rajbansi population (they are considered as Scheduled Caste in Bengal) in 1911 was, 133,000.

Rajbansi population (they are considered as Scheduled Caste in Bengal) in 1921 was, 92,000.

Now I would like to draw the attention of the House to the Census Report of 1931, Vol. III, Part 1, page 219, wherein it is stated :--

"The total for the exterior castes, i.e., Scheduled Caste-of Sylhet is therefore 392,000 at a minimum. and for Cachar 80,000 and the total for the whole of the Surma Valley is 472,000 at a minimum. For the Assam and Surma Valley together the total is 655,000 and for the whole province is 657,000."

The Census Superintendent made certain remarks also with regard to the Patni community in that page of that Report. He said "the Census figures give. 9,000 only in the District of Cachar and the correct figures are at least 40,000. In Sylhet the figure for the Patni community is given as 43,000 only and there are at least 70,000. The total population for the depressed classes ,for the whole Province is 6,57,000."

In 1921, the strength of the Scheduled Castes was 12 lakhs. Then, there is a big gap in 1931. Because the garden labourers were considered as depressed classes in 1921 but in 1931 they were separated from the depressed classes and considered as a single caste, that is the garden cooly caste. That is why, in the census of 1931, their strength came down from twelve lakhs to six and a half lakhs. In article 155 of that Report dealing with the difficulties of return of caste, the Census Superintendent said : "When it comes to castes like the Kayasths, Mahisyas, and Patnis, I confess that the figures appear to me to be worthless and not worth the trouble of collecting." In the same page, he again said : "When we came to castes like the Patnis in the Surma Valley, we find that at each successive census their numbers have been melting away in a most mysterious fashion." That shows that the 1931 census could not give the accurate or correct figures of the Scheduled Castes people, and also indicated a gradual decrease in the number of the Scheduled Castes.

Now, Sir, what were the causes of this decrease ? There were two causes.. The first is that, between 1911 and 1931, the Scheduled Castes could not get scent of the divide and rule policy of the British Government, the award of the Simon Commission and the provisions of the Government of India Act, 1935. Therefore' there was a tendency to raise the social status by removing the caste designation. The second reason is, that there was a tendency to raise their social status by changing their caste names and the Scheduled Castes took the help of certain leaders who did not belong to their own Communities or of the Puranas or the Shastras. These leaders made them Caste Hindus only in name; but they could not make them free from untouchability. This accounts for the gradual decrease in the Scheduled Castes people.

Then, I would like to draw the attention of the House to the position of the garden labourers. The 1911 census figures show that the strength of the garden labourers was 5,07,058. They mostly belonged to the depressed classes. I refer to article 73, page 57 of the Census report of 1921, Vol. III, part 1, in which it is stated the total garden labour population is 9,22,000. Over 7,82,000 or 85 per cent are Hindus. (Vide 1931 census, Report, Vol. III, Part 1, Page 222) : "these garden labourers were considered as garden cooly castes and their total population given in the report was 14 lakhs in which the number of Hindus was 13,16,000." According to the 1941 census, these garden cooly castes changed their status and they were considered as garden tribes. They were included in the Scheduled Tribes and thus increased the population of Scheduled Tribes from 16 lakhs to 28 lakhs. Thus, the status of the garden labourers has been changed gradually. Up to 1921 they belonged to the depressed classes; then they were promoted to garden cooly caste in 1931, then they were considered as garden Tribes in 1941.

Now, fortunately nine lakhs of them are going to be recognised as general, i.e., Caste Hindus. If we consider that out of 11,34,000 (vide 1941 census report) of the garden labourers 80 per cent (of this population) are belonging to the Hindu Community, then, the strength of the garden labourers comes to a total of about 10 lakhs Hindus. I strongly feel that 80 per cent of these Hindus garden coolies belong to the Scheduled Castes; thus we get about 8 lakhs of Scheduled Castes from the garden labourers. If we add these with the total population of Scheduled Caste of 1941 census then, I can claim rightfully that the Scheduled Castes population is sure to be about 11 lakhs even according to 1941 census. Therefore, if a real census is taken before the election, I can assure the House that we shall get about 11 to 12 lakhs of Scheduled Castes in the province of Assam.

Before the partition, one seat was allotted in the Constituent Assembly to the Scheduled Castes from Assam. After the partition also, this community was treated with exceptional generosity by the members of the Assam Legislative Assembly and one seat was allotted to them in the Constituent Assembly.

Mr. President: Is it your argument that because they happen to be eleven lakhs, there should not be any reservation of seats ?

Prof. N. C. Laskar: There should be, but I have some doubts in my mind; therefore I want some clarifications.

Mr. President: What are you driving at? Is it because they happen to be eleven or twelve lakhs in the province they should not have reservation of seats ?

Prof. N. C. Laskar: I would like to say that according to the 1941 census their numbers are about four lakhs. I have great doubts in my mind whether this population can claim any seat in the House of the People. Therefore, by my amendment I want some exception to be made for the Scheduled Castes of Assam so that they get representation in the House of the People.

Mr. President: Whatever their population may be, reservation of seats will be in proportion to their number.

Prof. N. C. Laskar: I have already proved before the House that the census figure of 1941 is not correct. I demand a regular census before election and if not, some exceptions to be made for this community before elections. I would like to say that for granting one seat in the Constituent Assembly even after the partition, I am very much grateful to the Honourable Premier of Assam and the Congress Parliamentary Party of the Assam Legislative Assembly. I feel that they realised the real strength of the Scheduled Castes in Assam and therefore granted one seat in the Constituent Assembly.

Then, Sir, in the amendment of Dr. Ambedkar, it is stated that:

"The Scheduled Castes or the Scheduled Tribes shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State...... as the population of the Scheduled Castes in that State or of the Scheduled Tribes in that State..

The insertion of the words "as nearly as may be" cannot remove my doubts, the meaning of the words "as nearly as may be" seems to be vague. The Election Commission may make out a common formula such as, "no seat should

be allotted to a community having a population of less than 4,50,000." Thereby we cannot claim any seat in the House of the People. Therefore I want some exception in the provision of this article.

The language that has been used in my amendment is not my language. It is the language of the Drafting Committee. Mine' is not a "solitary example". Exceptions have already been given to other communities also. By the provision of article 293 some exceptions are being made for the Anglo Indian community, and again by article 149 some exceptions are being made for the people of the tribal areas and Shillong constituencies of Assam. In Clause (3) of article 149 it is stated :

"The representation of each territorial constituency in the Legislative Assembly of a State shall be, on the basis of the population of that constituency as ascertained at the last preceding census of which the relevant figures have been published and shall, save in the case of the autonomous districts of Assam and the constituency comprising the cantonment and municipality of Shillong. be on a scale of not more than one representative for every seventy-five thousand of the. population."

The Shillong constituency contains a population of about 12,000. Exception is also being made for that Shillong constituency under the provisions of this Constitution, and therefore I think my demand in my amendment is legitimate.

I cannot check temptation in giving some facts about the present situation of the Cachar districts in Assam which contain about one-third of the Scheduled Caste population, of Assam, which narrowly escaped from the grip of Pakistan by Radcliffe award and which district I belong to. After the partition, the total population of this district is 10,24,581. Of these, Scheduled Castes are 1,17,205, Hindus are, 2,82,646, and Muslims 4,34,205. There are also refugees who have come from Eastern Pakistan to Assam. Their total population will be about 55,000. The Muslim influx in this district is not less than that.

I shall now deal with the present position of the major communities of Cachar district. First of all, I shall take up the case of Hindus. About fifty per cent of these caste Hindus are untouchables. They are mainly belonging to Manipuries, Naths communities. There are some communist elements in my district. In the last Assembly election the Communist candidate from this district polled the largest number of votes amongst the Communist candidates in the whole of India, and therefore I cannot say that the Communist movement has been checked in my district. Some reactionaries of the Muslim community created also some troubles in my district. On the twelfth day after the assassination of Mahatmaji, small children started a silent procession and it was intercepted with lathi charge by some Muslims and the offenders were convicted in the court. Again in my district, I can quote another instance after partition. A cow was slaughtered on the land of' the Hindus just in front of a Kali temple. The offenders were caught hold and the case tried in the Law Court and the offenders were convicted. Therefore you can imagine, Sir, that there are some Muslim disrruptive elements also in my district. As regards the Scheduled Castes there are some followers of Mr. J. N. Mandal also. After Partition, the President of the Assam Scheduled Caste Federation appeared before the Boundary Commission with a memorandum to get Cachar included in Pakistan. Then just before the referendum, Mr. J. N. Mandal of Sylhet District, the Honourable Minister of Pakistan Government, was invited by the Scheduled Caste Federation and Mr. Mandal in a meeting requested the Scheduled Castes to vote for Pakistan.

But in the last election all the Scheduled Caste seats were captured by the Congress in Assam. Each seat was contested by the Scheduled Castes Federation but was badly defeated by the Congress. I do not know, if the Honourable Dr. Ambedkar has in his mind any prejudice against the Scheduled Castes of Assam. I hope he will kindly wash it off from his mind. Because I

believe that he loves Scheduled Castes more than I do. He did much for the Scheduled Caste and I hope he will do much more. Therefore I request him to accept my amendment. If any privileges are not given to Scheduled Castes people of Assam, then these poor innocent people of Assam may be handled by some other reactionary groups. Therefore in consideration of the geographical position and political and strategic condition of Assam, I appeal to the House to accept my amendment. With these words, Sir, I move.

Shri Jaspat Roy Kapoor (United Provinces : General): Mr. President, Sir, I beg to move :

"That in amendment No. 22 above, at the end of the proposed article 292. the following proviso be added -

'Provided that the constituencies for the scats reserved for the Scheduled Castes or Scheduled Tribes shall comprise, so far as possible such contiguous areas where they are comparatively more numerous than in other areas."'

If this is not acceptable to the House, I move alternatively that the following proviso be added :-

"Provided that reserved seats shall be allotted to such constituencies as contain comparatively larger number of Scheduled Castes or Scheduled Tribes members than in other constituencies.

Sir, I am sure that everyone of us here today is very happy at the amendment which has been moved by the Honourable Dr. Ambedkar. By his amendment he is replacing the old draft of article 292. This is one of those few amendments which is going to have a far reaching consequence for the great good of the country, It is based on the agreement which has been arrived at in the Minorities Committee, between the major and the different minority communities of this country. By that agreement our Muslim friends and our Christian friends as also our Sikh brethren have agreed to give up reservation of seats in the different legislatures. I would like to take this opportunity to congratulate them all for this wise and bold decision that they have taken in the larger interest of the country. I would particularly like to congratulate my Muslim brethren because for so many years past they have had separate electorates and separate representation and they had begun to think that therein only lay their salvation and that without separate electorate and separate representation it would not be possible for them to safeguard their interests. We know they were grossly mistaken but then all the same because of the clever tactics of the British Government, this thing had been instilled on their minds they always felt convinced about the property of this separate representation. It is a very fortunate day for us and for this country that they have now come to realise that such a system is certainly not in their interest. I congratulate them once again for this wise and bold decision. They have now thrown the responsibility of safeguarding their interests on the major community and it is now for the major community to show by their conduct, by their actions, by their dealings towards the Muslim brethren to convince them that they were in the wrong in the past and that they are right now, that their interests are safe when they forget to think themselves as a separate community and that their interest is the same as the interest of the major community or rather that the interest of every community and every citizen of the country lies in the interest of the country as a whole.

The major community has already begun to realise what a tremendous responsibility has been thrown on its shoulders. I know of several places where members of the majority community have realised their responsibility. I would hereafter very much prefer not to refer to any community as major or minor community and I am sure after the adoption of this article and the coming into being of this Constitution we should forget the sting of communities as major and minor communities. Because the more we talk in this way the more we remind the people that we are not one Nation and that they are different communities with different interests. I have often felt that when we address meetings and say Hindu and Muslim "Bhaiyon", and when we appeal to them that the Hindus, Muslims and Christians should come together - I have always felt that we remind them by that appeal that they are so many different communities who need being brought together. It is much better that we do not refer them as Hindus, Muslims and Christians in our meetings and publications. The members of the majority community have already begun to realise that a heavy responsibility has been cast on them by their Muslim brethren. They have now thrown themselves at our mercy - if I could put it like that and therefore, we now owe it to our Muslim brethren and we owe it more to ourselves to prove by our conduct and actions that the trust that they have reposed in us will not be betrayed, that this step has not been a wrong one and that they have everything to gain thereby. The majority community is out to make specific efforts to see that in the elections - municipal and otherwise, that are to take place shortly in some places the Muslims may be elected not only in proportion to their number but even more, if possible.

Of course the task is not an easy one. It would have been easier before partition. It has been made more difficult by partition, because partition has been brought about because of the existence of separate electorates and separate representation. That canker in our political system leading to the partition of the country and the consequent tragedy thereafter has left behind bitter memories, and it will take sometime before these bitter memories are wiped out but all responsible members of the major community are keenly alive to the responsibility that has now been cast on their shoulders, and they have already begun to take active steps to see that in the elections that will take place hereafter their Muslim brethren's interests are amply safeguarded.

I would also like to congratulate our Christian friends who have also given up their contention of separate representation and reservation of seats. In the past the Christians had hardly ever demanded separate representation. They have all along been nationalists to their core, but somehow when this Draft Constitution was under preparation some of them thought that since Muslims, Scheduled Castes and even Sikhs and probably even Parsees were thinking of having separate seats reserved they might as well take advantage of this and claim a few seats in the legislatures. Happily they gave it up, which of course I know was hardly ever put with any seriousness. The credit in a great measure for this must go to my honourable and reverend Friend Dr. H.C. Mookherjee who adorned this Chair in your absence, Sir. I have known how hard he worked to persuade his own community and how still harder he worked to persuade the other communities to give up claiming reservation of seats, and if he has not succeeded in persuading the Scheduled Castes Members to give up this claim, the fault is not surely his.

As I am thinking of Dr. Mookherjee I cannot forget to mention my Friend Mr. Sidhva over there. He was perhaps thinking why I am forgetting him but I had not forgotten him. I was thinking that at the end I would congratulate him and not only for giving up the claim of reservation but for something more and that is for never having thought of it at all. There is an example worth emulating. The Parsee community is neither a majority community or a minority community. It is, if I may say so, a baby community, and though a baby may well always claim special treatment and special nursing, this baby community has never thought of any special protection. What is the result? We find Parsees being represented not only represented but even overwhelmingly represented, looking to their small number, in this country, not only in the legislature but in every walk of life, be it social, industrial, commercial banking or any others. They have always been patriots whose example is worth emulating. On this occasion I cannot forget mentioning the sacred names of Dadhabhoy Naoroji of referend memory, the late Sir Pherozeshah Mehta, the late Shri Dinshaw Wacha whose names go down in history as the makers of modern India, as the harbingers of freedom in this country and to their sacred memory I bow my head in reverence. I congratulate and express my great appreciation for the patriotic attitude which this baby community has always adopted in this country.

Late of all, Sir, I would like to refer to my Sikh brethren. They also deserve our congratulations for having fallen in line with the other minority communities. As a matter of fact our Sikh brethren should never have thought of being a minority community. They have always been part and parcel of the Hindu community. Only for a few loaves and fishes of office or seats in the legislatures they allowed themselves to be tempted to claim separate representation. I say they are always a part and parcel of the Hindu Community, in spite of what any Sikh friend of mine might say to the contrary. There has always been inter-dining; there has always been inter-marriages between the Hindus and Sikhs, though these inter-marriages have become less common now ever since our Sikh brothers have begun to say that they are entirely separate from the Hindus. I hope there will be a change in their attitude also and we shall have occasion hereafter to welcome this changed attitude on their part. Our Sikh brethren have always been not only part and parcel of the Hindu community, but they have always been the sword-arm of the Hindus and of the country as a whole. Hereafter we are going to forget thinking in terms of Hindus. Muslims and Sikhs as such and they shall continue to be the sword-arm of India. To them we shall look up for the defence of the country and for keeping our enemies out of our boundaries.

But, Sir, I wish I could similarly congratulate my Scheduled Caste friends, but then, unfortunately today there is no such occasion. They still think that they cannot safely fall in with other minority communities in this country. As I said about the Sikhs, so also the Scheduled Castes people are not a minority community which have a separate entity from the Hindus; they are blood of our blood and flesh of our flesh. Why should they think that they are in any way separate from the rest of the Hindus community? We do not wish to impose o them our judgement and our views. We will leave it to them to realize in course of time that they are not in the right when they demand reservation of seats; and the other communities of this country is as short a time as possible by their conduct must convince the members of the Scheduled Castes that their interests are as safe in the hands of the rest of India as in their own hands. The rest of India must, therefore, make specific efforts to remove this apprehension in the minds of the Scheduled Castes, so that even before the period of ten years they may themselves come forward with the suggestion that they do not want any reservation of seats. My amendment is in that direction. Now that they have demanded reservation of seats, let us give it to them. Let us not only give it to them but let us make such provisions which may ensure a representation of their to their satisfaction. My amendment suggests that constituencies which are reserved for the Scheduled Caste members should be such as contain a larger number of Scheduled Caste voters than in other constituencies so that it may be easier for the Scheduled Castes to send to the legislatures such persons as are of their confidence. The larger the number of the members of the Scheduled Castes in a constituency the easier will it be for them to elect member of their choice. Their choice if it not be actually the determining and deciding factor, at least it should have a great voice, a very influential voice in the selection or the election of candidates. This is my objection moving this amendment.

Again I say, it is for the Scheduled Caste themselves to see whether this amendment of mine is to their advantage or not. My intention is to suggest to them that they might accept it, for I consider it to be in their interest, and in whatever lies their interest, lies the interest of the rest of the communities of this country. Should they feel that they have nothing to gain by accepting this amendment, or that they have something to lose thereby, I shall readily withdraw this amendment, because I do not want to press any amendment which, though moved with a view to safeguard their interests, and to give them some thing more than what they have for themselves, does not meet with their approval. With these words, Sir, I place this amendment of mine for the consideration of the House or I should rather say particularly for the consideration of my Scheduled Caste friends, but if they do not want it, it should not be there.

Mr. President: I may point out to honourable Members that the articles which we are now considering represent decisions which we have taken after two days' debate and it is not necessary to repeat that debate again. So Members might confine themselves to the amendments, or if they have any different views they might express them, but we need not go over the same ground that we covered during the debate which lasted two days.

The Honourable Dr. B.R. Ambedkar (Bombay: General): I was going to suggest, with regard to the amendment which stands in the name of Rev. Nichols-Roy, that this is more relevant to the interpretation clause where the Scheduled Castes and the Tribal people will be defined. If my friend is keen on moving this amendment, I think it should properly stand over until we come to that part of the Constitution - article 303.

Mr. President: Have your followed Dr. Ambedkar?

The Honourable Rev. J.J. M. Nichols-Roy (Assam : General) : Yes, I have. My amendment was based on the amendment which was going to be moved by Mr. Thakkar, No. 3108, and I now find that the amendment (No. 28) which he is now going to move is in a different form. However, if Mr. Thakkar is not going to move this amendment, I also will not move my amendment now. But I reserve the right that I hall move my amendment at the time when this matter will be discussed under article 303.

The Honourable Dr. B.R. Ambedkar: I also suggest that the amendments which stand in the name of Mr. Thakkar should stand over and be taken at the same time when we are dealing with article 303.

The Honourable Rev. J.J. Nichols-Roy: If Mr. Thakkar agrees. I will agree.

Shri A.V. Thakkar (Saurashtra) : I completely agree.

Mr. President : So both amendments stand over.

Sardar Hukam Singh (East Punjab : Sikh) : Sir, I am not moving amendment Nos. 29 to 31. I beg to move:

"That in amendment No. 22 of List I (Fifth Week) of Amendments to Amendments, at the end of the proposed article 292, the following Explanation be added:

'Explanation - The members of the Scheduled Castes and the Scheduled Tribes mentioned in sub-clauses (a), (b) and (c) of clause (I) above shall have the right to contest unreserved seats as well.'"

At the outset, I might submit that the Explanation proposed in this amendment is not a new idea. It was already there in the recommendations of the Minorities Advisory Committee and that recommendation was also placed, and I am sure, agreed to, by this sovereign body on the 27th and 28th August 1947. In my opinion it was a wholesome provision. I do not know why it has been dropped in this draft. Of course things were different when the original was put before this Constituent Assembly and all religious minorities had been given........

Shri S. Nagappa (Madras : General) : I rise to a point of order. The amendment which my honourable Friend is moving is superfluous. It has been provided in the Constitution itself that Scheduled Castes and Scheduled Tribes can contest not only seats reserved for the Scheduled Castes but the general seats as well. So my honourable Friend's amendment s superfluous. So I would request my honourable Friend, that as it is already provided for in the Constitution......

Mr. President: That is not a point of order. After he has moved it you can ask him to withdraw it.

Shri S. Nagappa: I would recommend to my Friend not to move his amendment as it would be superfluous.

Sardar Hukam Singh: I am thankful to my Friend for this counsel, and if I am convinced that certainly it is not required, I will have no hesitation to withdraw it subsequently. But I think it should be made clear here, as it was in the original draft that the Scheduled Castes and Scheduled Tribes shall have the additional right to contest the general seats as well.

I was submitting, Sir, that when the first draft was put before the House all religious minorities were given reservation of seats. They have now voluntarily agreed not to have them. My community is also one of those religious minorities. The Sikhs are not sorry for having come to that decision. They think that it is the right decision for the benefit of the minorities themselves.

But Mr. Kapoor has referred to one or two things, to which, I must beg permission to reply. He has said that the minorities, - and he has given very good counsel, - should cease to think in terms of minorities and majorities and that we should all consider ourselves as one whole community. I do agree with him there and I can assure my honourable Friend that the Sikhs do want to be and will try to be welded into one whole. I have also heard several times slogans here in this House and outside as well that there are no minorities now. I wish it were so. But my submission is that so far we have this question the minorities are there. Mere wise counsels and slogans will not eliminate them. It is something else, something better, that is required to bring about the objective, the goal that we desire to reach. For that purpose, I cannot do better than read a passage from the introductory remarks of our learned Friend Dr. Ambedkar when he introduced this Draft Constitution. He gave very sound counsel to the majority and the minorities and I think those words have much significance and they stand even today as the only solution of this problem.

He said then that the minorities have loyally accepted the rule of the majority which is basically a communal majority and not a political majority. It is for the majority to realise its duties not to discriminate against minorities. Whether minorities will continue or will vanish must depend upon the habit of the majority. The moment the majority loses the habit of discriminating against the minority the minorities can have no ground to exist. They will vanish, but that depends entirely upon the attitude of the majority.

I cannot improve upon it. My only submission to Mr. Kapoor is that this is the only solution and if the majority behaves and conducts itself in a manner that the minorities feel secure, then certainly they will vanish in a certain period of time. So far as the Sikhs are concerned - I cannot speak for the others - they have certain natural apprehensions and these slogans and these wise counsels will only increase those apprehensions. They feel that it is the future alone that could tell them whether their fears are well-founded or not.

Now I come to the merits of this amendment of mine. I think the original object was that, because we were taking a jump over from the separate electorates to unadulterated joint electorates, the Minorities Committee recommended that lest the minorities might feel apprehensive of the sudden change they must be assured some seats by reservation and a minimum number of seats should be secured to them. It could not be the object of the Minority Committee or this Assembly that the maximum should be limited. If this additional right is not given then the only effect is that the maximum number is being limited and not that the minimum be secured.

My second point is that this feeling of separation should go. We are accepting this reservation of seats as an unavoidable evil for the present, though it is only for the Scheduled Castes and the Scheduled Tribes. I am not directly concerned with it, but I do feel that if we want this feeling of separatism to go, then it is necessary that side by side with this reservation there should be a feeling in the minds of these classes as well that they are a part of the whole and that they have some part to play in other seats as well and that they can stand for those seats as anybody else. If after ten years suddenly we were to go to the other side, then this might not be accepted with equanimity and there might be certain bickering.

The third point I want to submit is that this additional rights would not materially affect the numerical strength of the majority. So far as I can make out it is only a psychological gesture; otherwise there is very little chance that the minority for whom these seats have been reserved shall secure additional seats to any considerable extent. But why should there be a feeling in their minds that a close preserve is being maintained by the majority for itself and it is to their benefit that such seats are being reserved? In my humble submission there is no harm absolutely if that additional right which was contemplated in the beginning is given to them and they are allowed to contest the seats that are not reserved for them.

Shri V.I. Muniswamy Pillay (Madras : General) : Mr. President, Sir, I rise to move the two amendments that I have given notice of. I move.

"That in amendment No. 22 of List I (Fifth Week) of Amendments to Amendments, in clause (2) of the proposed article 292, after the words 'as the population' the words 'actually exists or known by a fresh census' be inserted."

I do not wish to take much of the time of the House since the reports of the Advisory Committees have been dealt with thread-bare in this House. I would, however, like to bring to the notice of the Drafting Committee certain factors which will go a long way to assure the Scheduled Castes of the seats that ought to be allotted to them under the scheme of reservation. The reason for my suggesting that the population must be taken as it exists today, or determined by a fresh census is because in the 1931 census the total population of Scheduled Castes was computed to be 50 millions, but in the census of 1941 it is shown as nearly 44 millions. I do not know how it is possible for a community like the Scheduled Castes to dwindle in the course of ten years. In August 1947 when the report of the Minorities Committee was considered in this August Assembly my honourable Friend, Mr. Khadekar, who happens to be the President of the Depressed Classes League of India, urged that a census should be taken before the allocation of seats, or that our numerical strength should be fixed on the basis of the 1931 census. We are prepared to accept representation either on the basis of the 1931 census or on a new census which will be taken in 1951. But the figures of the census of 1941 are utterly wrong so far as the Scheduled Castes are concerned. Any representation on that basis would be grossly unjust to us.

Secondly, due to the division of the country there has been a great influx of Harijans from the East Bengal to West Bengal and also from the West Punjab to East Punjab. It is a well known fact that lakhs of people of my community have had to emigrate to India due to the partition and various other causes. This matter should be taken note of by the Drafting Committee.

The third point I wish to make is that the 1935 Act and the orders thereon give power to the various Provincial Governments to include such of the communities as are considered to be backward and take them in the list of Scheduled Castes. From 1941, many communities have been taken on to the list of the Scheduled Castes, and as a matter of fact my Friend Shri Thakkar Bapa has given notice of a few communities that should be taken on the list. Taking these into consideration I feel that the population of the Scheduled Castes will be more than what it was in 1941. It will therefore be necessary that a census should be taken as early as possible for the purpose of computing the number of seats so that the Scheduled Castes may feel satisfied that they have secured their political rights.

Another thing which I would like to submit to this August Assembly is in regard to determining the seats for the Scheduled Castes on the population basis. This House has granted adult franchise. Those that were minors in 1941 would have become adults during these ten years, and unless a correct census is taken it cannot be said that the population of the Scheduled Castes has been correctly computed. This is one of the import reasons, because the article clearly says:

"The same proportion to the total number of seats allotted to that State in the House of the People as the population of the Scheduled Castes in that State or of the Scheduled Tribes in that State or part of that State, as the case may be, in respect of which seats are so reserved bears to the total population of that State."

All those who were minors in 1941 would have become adults at present and so it is imperative that they must be included in the population list. Hence a fresh census for this purpose is necessary.

The other day my honourable Friend Dr. Ambedkar said that there is no reservation in the Upper House. As I read the report I could not come to that conclusion at all. I feel strongly that a large number of Scheduled Castes must get into the Lower House, if there is no reservation in the Upper House, so that our position may be safer.

I would also like to state that by reservation which is envisaged in this article it should not be taken to perpetuate the seclusion of this community for all time. I know the real Gandhian spirit has been applied in this article, so that other communities may rise up to the occasion; and whether it be for the more years the other communities must exhibit a very brotherly love towards this unfortunate community known as the Scheduled Castes, so that after this period they themselves may come forward and say that they require no reservation.

With regard to my second amendment, which I move "determining constituencies where the Scheduled Castes are in largest numbers in each district", my honourable Friend Mr. Jaspat Roy Kapoor has given us enough and more reasons why it is necessary that determining of seats or constituencies for the Scheduled Castes must be in contiguous areas, where the largest number of them inhabit. The reason is that in years past the seats were allotted in such places where the caste Hindus and other communities predominated and hence the Harijan was not given free scope to exercise his franchise as also to see that the best men of the community were returned. It is for this reason that I have given notice of this amendment as well. I hope that the Drafting committee will either accept my amendment or that of Mr. Kapoor.

With these words I support the motion moved by Dr. Ambedkar.

(Amendment No. 96 was not moved.)

Mr. President: Mr. Sahay's amendment will also have to stand over. Pandit Thakur Das Bhargava has expressed a desire to move some of his amendments. I would like to know which of them he proposes to move.

Pandit Thakur Das Bhargava (East Punjab : Genera) : Sir, I wish to move amendments No. 237, 236 and 234 in the Consolidated List up to the 10th July 1949.

I beg to move:

"That in amendment No. 225 above at the end of the proposed article 292 the following proviso be added:

'Provided that the members of the scheduled tribes in Assam will not have the right to contest general seats.'"

"That in amendment No. 225, above, after clause (2) of the proposed article 292, the following new clause be added:

'(3) The reservation of seats shall, as far as possible, be secured b single member territorial constituencies.'"

"That in amendment No. 225, above, in clause (2) of the proposed article 292, but before the Explanation, the following proviso be inserted:

'Provided that for the calculation the balance of the proportion is more than half of what is requires to obtain one seat, one seat shall be allotted and if it less than half it shall be ignored."

I accept the interpretation which my Friend Mr. Nagappa just put on the general articles which we have passed already. According to the relevant article which the House has already passed every person has a right to stand for the general seats, which means that persons for whom seats are being reserved shall also have the right to contest general seats unless there is a provision to the contrary.

It is quite true that democracy means one person one vote. When the House agrees to reservation of seats for certain classes it really gives them a concession, an unavoidable concession under the circumstances in which we are placed. This is the right solution of the difficulty. I do not know whether any member of the Scheduled Castes wants that seats be reserved for them. All that he wants is that he should come up to the general standard of the other communities in this land and for this purpose there are other means in which this could be brought about. Since these classes think as also others that they will not be returned in the general constituencies it is best that we have agreed to reservation of seats for them. I have no doubt that if they are allowed to contest general seats we are certainly doing a wrong thing. We are departing from a principle but all the same I think that if this right is allowed to the Scheduled Castes no harm is being done. If psychologically they are happy over it, let them have that happiness. I do not think there will be a single seat in the whole of India from the general seats to which a member of the Scheduled Castes will be returned.

I will be happy if many of them are returned. I want that the members of the Scheduled Castes should enjoy the confidence of the other classes. I would be happy if many of them are returned defeating the other candidates. I do not grudge them this rights. I am sure that after the lapse of ten years many of them will say : "We tried to see if other classes support us. We have not been supported. Therefore there is a case for the continuance of the reservation". Then this argument will not be open to them. As they have accepted the extreme limit of 10 years with open eyes.

In regard to the Scheduled Castes of Assam, the case is peculiar. In Assam, as I have been told, there are 20 per cent. Muslims, 32 per cent. Scheduled tribes and those who are not reserved from about 48 per cent of the population. If there is a big majority for those that are not reserved, I do not mind giving the persons who have seats reserved right to contest the general seats. But in relation to people whose numbers are less than half, this kind of right is certain to give valid ground for grouse.

Kazi Syed Karimuddin (C.P. & Berar : Muslim) : Muslims and others for whom seats are not reserved will get more than 60 per cent.

Pandit Thakur Das Bhargava : My Friend's 60 per cent adds more weight to my argument. I submit that reservation of seats being not a desirable thing, reservation for classes is calculated to induce a feeling of separateness and exclusiveness and would stand against the amalgamation of classes. In this view also it will not be fair to give these classes who have been favoured with this undemocratic right the right to contest other seats thus reducing still further the strength of those who have not been given reserved seats. Sir, everyone has got a right to be represented by a person of his choice. By reserving seats to certain classes you are depriving people of their right to be represented by persons of their choice. I can understand the argument that you are taking away the rights of others also. Those persons belonging to the Scheduled Classes may also choose to be represented in the legislatures by persons of their choice. And it may happen that they may place more faith on particular candidates from the unreserved classes. So reservation as a matter of fact deprives all people of their right to choose. It should be therefore our endeavour to see that the evils of this reservation do not harm the interests and the legitimate rights of the others. Therefore I say that in the case of Assam, where the unreserved people are less than 50 per cent, it is but fair that you do not allow the reserved classes to infringe upon the rights of the unreserved people.

Now I come to my second amendment 236 :

"That in amendment No. 225 above, after clause (2) of the proposed article 292, the following new clause be added:

(3) The reservation of seats shall, as far as possible, be secured by single-member territorial constituencies.'"

If there are plural constituencies my humble submission is that the representation secured is not fair. Those candidates who have to stand for plural-member constituencies will not fully represent those for whom they stand in the same effective manner in which those who represent single-member constituencies will represent those for whom they stand. In the case of the Scheduled Caste men those who will stand to represent them would be persons quite unknown except in their own neighbourhood. Therefore to ask them to stand for plural-member constituencies will mean that people who vote for them will be absolute strangers to them. This is also true of the other unreserved classes, because people are not generally known far beyond their immediate neighbourhood. As a matter of fact a person who is popular in his own district has no right to stand for another district. He may be unknown there. Therefore representation by means of plural-member constituencies is no right at all.

Moreover, when you consider the question of expenditure for convassing an electorate of 7,50,000 people spread over a vast area you will understand the difficulty and the trouble of candidate. Similarly I submit that if there are single-member constituencies people living in the constituency will be deprived of their right to choose their particular candidate in so far as only persons from a particular tribe will be allowed to stand. If these are plural-member constituencies the trouble will be greater. Considering all these, neither in the interests of the classes for whom seats are reserved nor in the interests of the others there should be plural-member constituencies. I would appeal to the House to accept this suggestion of mine and make it a part of the Constitution that, as far as possible, this representation of the Scheduled Castes also should not be from plural-member constituencies, but from single member constituencies.

Now I come to my third amendment, viz.,

"That in amendment No. 225 above, after clause (2) of the proposed article 292, but before the Explanation, the following proviso be inserted:

'Provided that for the calculation the balance of the proportion is more than half of what it requires to obtain one seat, one seat shall be allotted and if it is less than half it shall be ignored.' "

It is a rule of mathematics and an equitable rule too. I do not want to say anything further about it. This is a just proposition.

Mr. President: The amendments moved by Pandit Bhargava are, Nos. 234, 236 and 237 of the List of Amendments of 10th July 1949.

Shri Kuladhar Chaliha (Assam : General) : Mr. President, I shall confine my remarks firstly to the motion moved by my Friend Professor Laskar. I feel deeply sympathetic to his case, but then we are faced with a difficult situation. If you take the figures of population of Assam his case will not stand scrutiny. First, we find that we have there 34 lakhs of tribal population and 17 lakhs of Muslims, leaving the general population in a sort of minority. According to the 1942 census the total population of Assam (Divided) was about 74 lakhs. As such, it is very difficult to give representation in the House of the People on the basis of population which is only 3-1/4 lakhs of Scheduled Castes. There are other communities in Assam such as Ahoms. They are three lakhs odd. The ahoms were the ruling community and therefore they will have as much right to claim a seat: Then we have Mataks and Morans who are also 3-1/2 lakhs, Chutias about 1-1/4 lakhs, seats for them also to be created and carved out of the general community which, as I have said, is a minority. I feel that Mr. Laksar's community deserves our sympathy and I hope Mr. Laskar will have a seat in the House. But our position is such that it is impossible for us to concede his point. We have grown a convention in our part of the country to see that as far as possible all communities are represented. The Congress Committee has observed this for a very long time and they will make sure that in spite of the fact that the number of his community is small, there is a chance in the next five years for him to come into the House of the People.

Mr. Laskar has also found fault with the census figures. The Congress was not in power in 1941. It is true that most of the figures for the tribals have been inflated. Some of the Scheduled Castes were said to have been converted to tribal religion because they were addicted to drink, and other were said to have been converted to Hinduism, and the increase in 184 per cent. But that is not the fault of the Congress. If there is an increase of the tribal population God alone is to be blamed and none else. I hope in the next census, such sort of things will not occur, and that things will be just and equitable.

As regards Pandit Thakur Das Bhargava's amendment, Sir, I agree with him. The general constituencies of Assam are in a minority. Those who claim reservation should not further transgress into the domain of the general population and should have no right to seek seats there. Fortunately in Assam we have been carrying on happily, making adjustments, and I am sure that the minorities will show us the tolerance which we expect of them and we will show them that tolerance which they expect of us as well.

With these words, Sir, I oppose Mr. Laskar's amendment and I give my qualified support for Pandit Thakur Das Bhargava's amendment. Also I am at one with REv. Nichols Roy in his views, that the seats reserved for the tribal's should not be deprived on one ground or another and the tribals should not be divided as proposed in another amendment.

Mr. President: Mr. Jaipal Singh.

Shri M. Ananthasayanam Ayyangar (Madras : General) : The question may now be put.

Shri Jaipal Singh (Bihar : General) : Mr. President, Sir, it is most unfortunate that this House has not had an opportunity to discuss the recommendations made by the two Tribal Sub-Committees. I know we had a debate of two days to consider the report of the Minorities Committee in regard to whether the Scheduled Castes and the Muslims were to get any reservation of seats or not. At that time all the discussion was confined to the Muslim problem only. When I raised the question of our reports, you were pleased to say, Sir, that this House would have an opportunity in the future to discuss the reports. However, if it is the wish of the House that without any discussion the articles which deal with the scheduled tribes will be taken up in this House. I have no personal quarrel except that it is very unfortunate that the two Chairmen of these two Sub-Committee should not have an opportunity to explain to the Members why their recommendations have taken a particular pattern.

Take for example the recommendations of the Sub-Committee of which I myself was a member and over which the venerable social reformer the honourable Mr. Thakur presided. In due course we will have to discuss certain provisions that have been recommended by this

Sub-Committee. Why these recommendations have been made will to be explained by someone. I should have thought that it would be very much better if a discussion had taken place which would have put the Members wise as t the investigations that have been carried out, as to why the Sub-Committee had come to certain conclusions, as to why, for example, I had to submit a minority minute of dissent, as to why my Friend, Mr. Devendra Nath Samanta, had to agree with me in regard to my minute of dissent, etc. All these things would have been thrashed out in extenso in the discussion so that the Members would have appreciated the difficulties of the Sub-Committee on the tribal problems before they participated in the discussion and before they exercised their vote for or against any of the recommendations.

Having said that, Sir, I would like to congratulate Dr. Ambedkar for his new amendment which he has presented to us today. As I have said before, if there is any group of people who have got a right to rule over India, they are the Adibasis. They are first-rate Indians and all the others are second-rate, third-rate, fourth-rate, nth-rate Indians. I think that situation has to be appreciated when we take up questions like the reservation of seats. Sir, we are not begging anything. I do not come here to beg. It is for the majority community to atone for their sins of the last six thousand odd years. It is for them to see whether the original inhabitants of this country have been given a fair deal by the late rulers. But the future can be brightened up. What has happened in the past, let it be a matter of the past. Let us look forward to a glorious future, to a future where there shall be justice and equality of opportunity.

One honourable Member said that he was glad that the Muslims and the Christians had given up something, given up the reservation of seats. Sir, the Adivasis are not giving up anything because they never had anything. It seems very surprising that people should talk of democracy when their whole conduct has been anti-democratic in the past. What have the general community done for these backward people in the past? Has there been anything in the statute to prevent them from putting up the Adivasis in more seats than were due to them according to their population? Take Bihar. There are 5.1 million Adivasis in Bihar, but only 7 Adivasi M.L.As. Did the Congressmen put up a single Adivasi for a general seat? No. Take the Central Provinces and Berar. There were before the merger of the States 2.9 million Adivas; but there was only one seat for the Adivasis. After the merger, there would be an addition of something like 2.8 million more, a large majority of whom would be Adivasis. I can say the same thing about every province. Even in a province like Bombay, where without the merged States, there was an Adivasi population of 1.6 million, which would be added to on account of the merger by a figure that may double itself from out of the 4.4 million that have been put within the province, there is only one seat reserved. And also in a province where the Premier has been a very ardent worker amongst the Adivasis for many years. He was the President of the Adivasi Seva Mandal there and it was a privilege for me to see something of the work he did before he became the Premier. After he became the Premier, he could not devote so much time for that work.

Even in a province where you have such a sympathetic leader of the dominant party, you find no generosity whatever. People talk of democracy. Le them search their hearts. Is there anything that prevented them from bringing out these people from their jungle fastnesses into the legislature? How do they explain their niggardliness, in fact their apathy, hostility to bring these people to the legislature and other forums of public life? It is essential that these people should be compelled to come ut of their jungle fastnesses. It is for that reason reservation is very necessary. If you want unity in this country, we must all get together.

Sir, in this connection, I would like to quote something that you said about nine years ago when you were the Chairman of the Reception Committee of the 53rd session of the Indian National Congress at Ramgarh. I am not quoting anything out of its proper context. I think what you said is very relevant to prove what I have been endeavouring to say. You said:

"That portion of Bihar where this great assemblage is meeting today has its own peculiarities. In beauty, it is matchless. Its history, too, is wonderful. These parts are inhabited very largely by those who are regarded as the original inhabitants of India. Their civilisation differs in many respects from the civilisation of other people. The discovery of old articles shows that this civilisation is very old. The adibasis belong to a different stock (Austrick) from the Aryas and people of the same stock are spread toward the south-east of

India in the many islands to a great distance. Their ancient culture is preserved in these parts to a considerable extent, perhaps more than elsewhere. It is not, however, as if the Aryas and the Adibasis never mingled with one another. As a matter of fact, there have been considerable intermixture and exchange. Aryas have taken many things from them and they have taken many things from the Aryas. With all this, however, they have kept themselves apart. It is the opinion of experts that the colour and facial expression of the Biharis, the formation of their skulls and even their language exhibit clear unmistakable marks of their influence. Having, however, once cast their influence on the Biharis, the Adibasis have made much of our culture and our speech their own."

Their has been this peculiarity. In certain parts of India, what is called inter-mixture and inter-mingling has been fairly considerable with the result that the process of absorption into the hindu fold has been very great. On the other hand, in particular areas, this has not been the case. There has however developed somehow a hostility between the ancient people, and the new- comers. When the aryan hordes came into this country, naturally they were unwelcome because they were intruders. But they began to pour in streams one after another and pushed the people that were there, the aboriginals, the Adivasis, further and further away. The Arya-speaking people settled in the rich Gangetic valley and ousted the Adivasis who had to retreat to the jungle fastnesses because the Aryas found them inhospitable. That is roughly the history as to why the Adivasis arre today found only in the mountainous tracts, because these tracts were inhospitable, were inclement to the Aryan people.

Now, that, of course, is no longer the case. Nothing is isolated. We can get everywhere and therefore, intercourse on a fresh scale, on a much more intensive scale, will take place in the future.another reason for the hostility and bitter feeling against the *dikus,* as we call the new-comers- *diku* means new-comer-- has been the fact that the new-comer has always exploited the simple, ignorant Adivasi; he has looted him of his land; he has expropriated him of his many rights; he has taken away that jungle freedom from him. This the Adivasi rightly resents. All this hostility that has gone on for thousands and thousands of years must be done away with. I am very glad indeed that in the new Constitution there is not going to be anything like separate electorates. I welcome the fact that the Adivasis will be elected from the joint general electorates. I also welcome the fact that the House, as a whole, is unanimous that the Adivasis must be compelled to come into the Government of the provinces as well as at the Centre. The result of this article 292 will be, whereas in the past we had seven M.L.A.s. from Bihar, now we shall have something like 51. There must be 51 because there will be 51 seats reserved for them. There may be more if the political parties would be generous enough to give more seats than is due to the Adivasis according to their population figures. Like that, in the Central Provinces, whereas there is only one Adivasi M.L.A., there may be as many as thirty. In Assam, according to the population, there are 2.4 million Adivasis; at present there are only nine seats, reserved for them. Well, I am not one who was ever an admirer of the census figures. Ever since the Hindu Mahasabha became a millitant political organisation, the census figures have never been reliable or accurate. We have yet to get to a stage where we want to get scientific facts in an honest way. Take for instance, the Central Provinces. You compare the figures of Adibasis there, say in 1941; take the censuses of 1921, 1931 and 1941. You find in between 1911 and 1941 the figure gets reduced by 18 lakhs. I know particularly that the Adivasis are not a dying race and yet somehow or other one minute the Gonds are enumerated as Hindus and the next minute they come back as Adivasis; and that tyep of cooking of figures and misenumeration has gone on at every census and the sooner this country becomes honest about it and tries to find out statistics in an honest way, without any religious bias, the better it will be. At the last Session of the Indian Science Congress, the scientists said- there are bias- that there were in this country not less than 30 million Adibasis. In 1941 census the figure is of course only 24.8 million. You may multiply that by 5 or not, but the fact is that any section of our socieity that is economically and politcally backward must have safeguards and provisions which will enable it to come up tot he general level.

That is the only reason, Mr. President, why I do support the reservation of seats for Scheduled Castes and the scheduled tribes and for no other reason. I am not at all optimistic that in the short space of ten years, which means two general election, Adibasis will have come to the level of the rest of India and therefore at the end of ten years reservation of seats should be done away with. I am not one who will be so bold as to believe in such a miracle. Things are not going to move as fast as we would like them to move. I would have preferred that this matter should have been reviewed at the end of ten years to find out whether Adibasis and Scheduled Castes in the two general elections that will take place during the ten years had made good, whether they had been able to assert themeselves in the Councils and take their share in the national life of the country. When that had been made, then I think the Parliament could decide whether or not these reservtions should be done away with or continued for a further period of say ten or fifteen or twenty-five years. I would have preferred it that way but if there is any suspicion in the minds of non-Scheduled Caste people or non-Adibasis, I would not insist on it. The generous thing would have been to give them ample scope to come into all the Councils int he provinces and at the Centre and not to limit them only to two general elections.

Some people harp on seperatism being implied in reservation of seats. Some people have a kink and they like to explain everything away by attributing separatism to any difference of opinion. It has become the fashion in this country to call every rebel a Communit. Similarly, those of us who desire that the backward groups in our society should be compelled to come by the front door and not by backdoor and the front door is open reservation, are dubbed as separatists. It does not lie in the mouth of peole to talk of separatism when 30 million Adibasis have been treated as political untouchables over centuries. IT does not lie in the mouth of those people to tell Adibasis what democracy is. Adibasi society is the most democratic element in this country. Can the rest of India say the same thing? Can people who have for centuries been living under the Caste system honestly and genunely say that they can have a democratic outlook? It takes time. In Adibasis society all are equal, rich or poor. Everyone has equal opportunities and I don not wish that people should get away with the idea that by writing this Constituttion and operating it we are trying to put a new idea into the Adibsi society. What we are actually doing is you are learning and taking something as you, Mr. President, said. Non-Adibasi society has learnt much and has still to learn a good deal. Adibasis are the most democratic people and they will not let India get smaller or weaker. It is not they who are responsible for the partition. Adibasis claim the whole of India. So I would like that Members should look at it from that generous angle and not be so condescending. You are clearing your own conscience, having expropriated them from their lands, having made laws whereby you have driven them out of their rights. What is the position today? Why are there about ten lakhs of people in Assam crimped away from Chhattisgarh, Orissa and Bihar and they are running from place to place with no sense of security? It is because non-Adibasis have taken away their lands, cheated them and they continue to cheat.

Now it is very necessary in the interest of this country, for its great future, that every element of India, be it backward or forward, should get together and pull in the same direction and for that we must see to it that the backward sections come up. Reservation is very necessary for the backward people whether they are Adibasis or whether they are Scheduled Castes, or Jains or Muslims. Once you acknowledge that something has tot to be done, some fulcrum has to be pushed in to tilt them up to a higher level, then the question of separatism does not arise at all. Therefore I, as an Adibasi representative, am not ashamed to accept this principle of reservation. I regret it is there only for ten years, because I am convinced that India is not going heaven, that everybody is not going to become a graduate in ten years or that everybody will get politically educated. What is necessary is that the backward groups in our country should be enabled to stand on their own legs so that they can assert themselves. It is not the intention of this Constitution, nor do I desire it, that the advance community should be carrying my people in their arms for the rest of enternity. All that we plead is that the wherewithal should be provided as has been provided in article 292, so that we will be able to stand on our own legs and regain the lost nerves and be useful citizens of India.

There is much more to be said, but, I understand that some of the amendments have been deferred to another occasion and, therefore, I would not say much at this stage. But I am sure and I may assure non-Adibasis that Adibasis will play a much bigger part than you imagine, if only you will be honest about your intentions and let them play a part they have a right to play.

Shri R.V. Dhulekar (United Provinces : General) : What does he exactly want?

Shri Jaipal Singh: I want Mr. Dhulekar to behave just as he used to when he was a student in St. Columba's College, Hazaribagh, when he mixed freely with the Adibasis and spoke of them as being the finest citizens in India. But at the present moment, the Adibasis have been put into a water-tight compartment. I know there are people who will say that the British put them into zoos. We have now an Indian National Government. Is the zoo not still there? Popular ministries have been heard of in this country for the last twelve years; what have they done in any way to remove this stigma? Have they done anything? During the Sub-Committee's tour - wherever we went - Provincial Governments came out with elaborate reports of the heavenly things they were doing for the Adibasis to fight their poverty and the evil disease in their midst, and how all that was going to be removed. One Provincial Prime Minister told me that he had set aside Rs. 20 lakhs for ameliorative measures for the Adibasis in a particular district. I asked him how much he had spent in the last eight months. He said : "We still have our plans but we hope it will be ready on paper!" What happens is just paper and paper : all window-dressing. We want concrete work among these people. Some people think that by opening a few schools and giving some scholarships they will be making a tremendous change among the Adibasis. It is economic betterment that the backward people need. Once they are economically better, they will be able to educate themselves.

I would like to, if I may, tell the provincial Prime Ministers who are here and in whose provinces there are large number of Adibasis, that no good will come out of the lakhs and lakhs that they profess to earmark for welfare and other work among the Adibasis and other backward people in their provinces, unless there is the missionary spirit behind it. I know in my own province of Bihar that all welfare work has a political background. In Bihar, unfortunately, there have been three conflicting militant groups, one pulling eastwards towards Bengal, one pulling southwards towards Jharkhand, and one pulling northwards towards the Himalayas. Now, in order to kill the eastwards and southwards groups, lakhs and lakhs of rupees are being spent, all in the name of welfare among the backward people. Evidence is there, Mr. President, of leading Congressmen in Manbhum, in Palamau, in Ranchi, in Hazaribagh and other districts.........

Shri Balwant Das (Orissa : General) Are all these matters relevant to the subject matter of the discussion?

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Every truthful statement in this connection is certainly relevant.

Shri Jaipal Singh: Lakhs of rupees are being spent, not for the direct benefit of the people, but for the employment of armies of welfare workers and the money gets swallowed up in the payment of wages and salaries, and motor cars and propaganda vans. The actual result to the Adibasi is nil. It is very much like the Grow More Food campaign. If for the amount of money that we spend in this campaign, one more grain was grown, it would have been a success. But it seems to be the other way round.

The idea of the generosity of the Members as a whole in recognising the necessity of giving reservation of seats to the Scheduled Castes and the Scheduled Tribes was that these people, who as you have said at Ramgarh have somehow or other kept apart, will now be compelled to come into the inner circle and do their best and contribute their share for the betterment of this country. I know there is fear in certain quarters. There is fear in Assam : there was fear in West Bengal. When Mr. Khaitan moved his amendment, or rather gave notice of his amendment - he is no longer in our midst - I discussed with him why he wanted no reservation of seats for the Scheduled Castes in West Bengal. He was quite honest about it. He said, if the Scheduled Castes combined with any minority group, then the upper class people were nowhere. Some such apprehension has been indicated from a Member from Assam. I know perfectly well that it is not a question that you have reserved so many seats for Adibasis therefore you should not given then any of the general seats. That is not the general issue. Let us be honest. What the upper classes in Assam fear is that if the Scheduled Castes and the Adibasis were to combine, and if these two groups were given the right to contest also the general seats, then the upper classes might not remain in power.

That is the truth of the matter as I see it and I deeply beg of everyone not to thin in terms of fear. Let us not be afraid of our fellowman because, if we do not trust him, we have no right that he should trust us. We have been living under different circumstances in the past. Now the destiny of our country is in our hands. Whatever has happened in the past has happened.

It may have been due to our own fault or due to the mischief of alien rulers. Now everything is in our own hands. We are masters of the situation and if now and hereafter we go on thinking in terms of fear, if we refuse to relegate ourselves to the background and let others also have the chance, then we are thinking along the wrong lines.

I have great pleasure in supporting the amendment of Dr. Ambedkar to article 292.

Mr. President: There has been a closure motion.

(At this stage several Honourable Members rose to speak)

Mr. President: I do not think it is necessary to enter into a discussion on all that Mr. Jaipal Singh has said.

The Honourable Shri Krishna Ballabh Sahay (Bihar : General) : He has made several observations which I would like to contradict.

Mr. President: You will have a opportunity somewhere else on another occasion.

Shri Brajeshwar Prasad (Bihar : General) : I would like to point out that editorial comments have been made in the Statesman that some vital articles are being rushed through and closure motions are being made. This is a very important article and only two or three speakers have taken part in the general discussion. More speakers should be allowed to speak. You have the power either to admit the closure motion or not.

Mr. President: I do not think there is any justification for the remark that we are rushing any article through. So far as I am concerned, I have given the fullest opportunity and the fullest latitude to all Members, and if anything, I have been more generous in this respect that perhaps I should have been.

Mr. Naziruddin Ahmad : There is no suggestion like that from any section. But there is a desire to speak more.

Mr President: So far as this particular article is concerned, we have already had two days discussion on this very question and any general remarks will only mean a repetition of what was stated them. It is therefore not necessary further to discuss this particular article.

So far as certain remarks which have been made by certain speakers are concerned, if any Members have to say anything with regard to them, or to contradict those remarks, probably they will get another opportunity in connection with some other article and they might take advantage of it then.

The Honourable Rev. J.J.M. Nichols-Roy: Certain wrong information has been given to this House regarding the tribal people and this must be corrected now.

Mr. President: If it is only a question of correcting some information which has been wrongly given, I might allow him to make the correction, but no more than that.

Shri Jagat Narain Lal (Bihar : General) : Even if the closure motion is accepted, the president can certainly allow a speech or so and I think it is not right that what has been said with reference to this article should be sought to be contradicted or controverted in the course of a debate on an other article. So, I would request you, Sir, to allow one speech with reference to what has been said by the previous speaker.

Mr. President: I do not think any useful purpose would be served by simply contradicting statements which have been made.

The Honourable Rev. J.J.M. Nichols-Roy: Sir, in Assam there are three classes of scheduled tribes, and all these together are calculated to be about 23 to 24 lakhs. Eight lakhs of them are in the plains area eight lakhs of them are in hills area and the remaining eight lakhs are in the tea gardens. The tribals in the tea gardens are included in the general population, with the result that the only people will have reserved seats will be the eight lakhs in the plains area and the eight lakhs in the hills area. As regards the eight lakhs of tribals living in the plains area the Working Committee of the Assam Provincial Congress Committee have agreed to allow them to stand as candidates from the general constituencies and my honourable Friend the Premier of Assam himself has said that he does not want that there should be any limitation on any tribals of the plains to stand for the general seats.

Therefore, Sir, I oppose Pandit Bhargava's amendment regarding preventing the tribals of Assam from standing as candidates from the general constituencies.

Sardar Bhopinder Singh Man (East Punjab : Sikh) : As a number of amendments have been moved, it seems to me that some time be given to oppose those amendments.

Mr. President : As I said we have discussed this very proposition for two full days in this House, and every section of the House had full opportunity of expressing itself on the general principles. Now it is those very principles which are sought to be embodied in the resolution which has been placed before the House by Dr. Ambedkar. I do not think any further discussion will help the Members.

The Honourable Dr. B.R. Ambedkar : Mr. President, Sir, a great many of the points which were raised in the course of the debate on this article and the various amendments are, in my judgement, quite irrelevant to the subject matter of this article. They might well be raised when we will come to the discussion of the electoral laws and the framing of the constituencies. I, therefore, do not propose to deal with them at this stage.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Wednesday, the 24th August 1949

There are just three points which, I think, for a reply. One point is. the one which is raised by Mr. Laskar by his amendment. His amendment is to introduce the words " save in the case of the Scheduled Castes in Assam '. I have completely failed to understand what he intends to do by the introduction of these words. If these words were introduced it would mean that the Scheduled Castes in Assam will not be entitled to get the representation which the article proposes to give them in the Lower House of the Central Parliament, because if the words stand as they are, "save in the .case of the Scheduled Castes in Assam" unaccompanied by any other provision, I cannot see what other effect it would have except to deprive the Scheduled Castes of Assam of the right to representation which has been give to them. If I understand him correctly, I think the matter, which he has raised, legitimately refers to article 67B of the Constitution which 'has already been passed. In that article it has been provided that the ratio of representation in the Legislature should have a definite relation to certain population figures. It has been laid down that the representation in the Lower House at the Centre shall be not less than one representative for every 7,50,000 people, or not more than one representative for a population of 5,00,000. According to what he was saying-and I must confess that it was utterly impossible for me to hear anything that he was saying-but if I gathered the Purport of it, he seems to be under the impression that on account of the division of Sylhet district the population of the Scheduled Castes in Assam has been considerably reduced and that there may not be any such figure as we have laid down, namely, 7,50,000 or 5,00,000, with the result that he feels that the Scheduled Castes of Assam will not get any representation. But I should like to tell him that the provision in article 67 (5) (b) does not apply to the Scheduled Castes. It applies to the constituency. What it means is that if a constituency consists of 7,50,000 people, that constituency will have one seat. it may be that within that constituency the population of the Scheduled Castes is much smaller, but that would not prevent either the Delimitation Committee or Parliament from allotting a seat for the Scheduled Castes in that particular area. His fear, therefore, in my judgment, is utterly groundless.

Then I come to the amendment moved by Sardar Hukam Singh in which he suggests that provision ought to be made whereby the Scheduled Castes and the Scheduled tribes would be entitled to contest seats which are generally riot reserved for the Scheduled Castes or the Scheduled tribes. He said that the Drafting Committee has made a deliberate omission. I do not think that is correct It is accepted that the Scheduled Castes and the scheduled tribes shall be entitled to contest seats which are' not reserved seats, which are unreserved seats. That is contained in the report of the Advisory Committee which has already been accepted by the House. The reason why that particular provision has not been introduced in article 292 is because it is not germane at this place. This proposition will find its place in the law relating to election with which this Assembly or the Assembly in its legislative capacity will have to deal with. He therefore need have no fear on that ground.

With regard to the point raised by my Friend Mr. Pillai that the population according to which seats are to be reserved should be estimated by a fresh census, that matter has been agitated in this House on very many occasions. I then said that it was quite impossible for the Government to commit itself to taking a fresh census but the Government has kept its mind open. If it is feasible the Government may take a fresh census in order to estimate the population of the Scheduled Castes or the scheduled tribes in order to calculate the total representation that they would be entitled to in accordance-with the provisions of Article 292. The Government is also suggesting that if in any case it is not possible to have a fresh census, they will estimate the population of these communities on the basis of the voters strength which may be calculated from them, in which case we might be able to arrive at what might be called a rough and ready estimate of the population. I do not think it is, possible,for me to go beyond that.

All the other amendments I oppose.

Prof. N. C. Laskar: Sir, I beg to withdraw my amendment No. 24.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is

"That in amendment No. 22 at the end of the proposed article 292 the following proviso be added:

'Provided that the constituencies for the seats reserved for the Scheduled Castes or Scheduled Tribes shall comprise so far as possible, such contiguous areas where they are comparatively more numerous than in other areas'."

The amendment was negatived.

Sardar Hukam Singh : Sir, if what I have suggested in my amendment (No, 77) is provided for elsewhere I do not press it.

The amendment was, by leave of the Assembly, withdrawn.

Shri V. I. Muniswamy Pillay: Sir, in view of this lucid explanation of Honourable, Dr. Ambedkar, I beg to withdraw my amendment No. 94.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Amendment No. 95 is to the same effect as the one that the House has already rejected. The question is :

"That in Amendment No. 225 after clause (2) but before the Explanation, the following proviso be inserted :-

'Provided that for the calculation the balance of the proportion is more than half of what it requires to obtain one seat, one seat shall be allotted and if it is less than half it shall be ignored'."

The amendment was negatived.

Mr. President : The question is

"That in amendment No. 225 after clause (2) the following new clause be added:

'(3) The reservation of seats shall, as far as possible, be secured by single member territorial constituencies'."

The amendment was negatived

Mr. President: The question is

"That in amendment No. 225 at the end the following proviso be added:

'Provided that the members of the scheduled tribes in Assam will not have the right to contest general seats'."

The amendment was negatived.

Mr. President: The question is:

"That proposed article 292 stand part of the Constitution."

The motion was adopted.

Article 292, as amended, was added to the Constitution.

Article 293.

(Amendments Nos. 3118 to 3121 were not moved.)

Mr. Mohd. Tahir (Bihar: Muslim): Sir, I beg to move:.......

Shri T. T. Krishnamachari (Madras : General) : Sir, on a point of order; this amendment is not really germane to the article before the House; it has nothing to do with the subject matter of article 293.

Mr. Mohd. Tahir : Article 292 refers to the matter of the reservation of ,eats. Article 293 says:

"Notwithstanding anything contained in article 67 of this Constitution, the President may, if he is of opinion that the Anglo Indian Community is not adequately represented in the House of the People, nominate not more than two members of the community to the House of the People."

These are articles where. representation is to be fixed and reservation is allowed to different communities. This is the only place where I want that minority communities which are given reservation of seats should also have a chance of getting themselves elected from the general constituencies. The amendment is quite relevant and this is the place where this subject can be introduced so that minorities might have the right to seek election in the general constituencies also.

Mr. President: I do not think this question arises under article Z93 which relates especially to the representation of the Anglo-Indian community. I do not think you can bring in the right of members of the other communities for whom seats have been reserved to seek elections from the general constituencies in this article. The amendment is not in order.

Mr. Mohd. Tahir: I submit to your ruling, Sir.

Sardar Hukam Singh : Sir, I beg to move:

"That with reference to amendment No. 3119 of the List of Amendments, for article 293, the following be substituted .-

'293. Notwithstanding anything contained in article 67 of this Constitution the President may, if he is of opinion that any minority community is not adequately represented in the House of the People, nominate an adequate number of members of that community to the House of the People."

Shri R.K. Sidhva (C.P. & Berar : General): I rise to a point of order. This amendment seeks that any minority community which is not adequately represented may be given nomination by the President. Sir, the question of election of minorities has been decided by this House. We have decided that there should be no representation for minority communities except the Scheduled Castes, Scheduled Tribes and the Anglo -Indians. Article 67 has decided that. You cannot now go back on what has been decided in article 67. If you allow that article to be again opened, it would lead to complications. If the President feels that some community has not been adequately represented, he should make the choice. You cannot mention that a particular minority shall be nominated by the President. That will go against the decision of this House and it will be a dangerous precedent if you allow this amendment after we have adopted article 67. After we have passed it you cannot allow something to be done by the backdoor. My second reason is that after the House has decided the question of the minorities it should not be re-opened.'

Mr. President: Do you wish to say anything about this point of order, Sardar Hukam

Singh?

Sardar Hukam Singh: I do not think there is any force in the point of order raised by my honourable Friend. We are, under article 293, arming the President with powers that when the Anglo-Indian community is not represented adequately, to nominate two of them. My amendment is that it should not be confined to the Anglo-Indian community alone, If that community is adequately represented in the elections and there is another minority that is not adequately represented in the elections and there is another minority that is not adequately represented, it should be open to the President, in the same way as he would look to the interests of the Anglo-Indian community, to see that the other community also gets representation. I do not want to upset the provisions that have been passed. But in this article itself we are providing that the President shall have this of nomination. I do feel that all these constituencies have been demarcated. We cannot increase their number that has been fixed. But there is this provision in article 293 itself which gives the President power to have two seats in his own hands. Whenever he finds that the Anglo-Indian communities not represented adequately he can nominate two of them. My object that, instead of saying that only he Anglo-Indian community should be safeguarded in that way, if it is not that any other community which finds itself in that position might be given these nominations to the extent of two, three or four. If it is found that the Anglo-Indian community is properly represented and any other community is not properly represented, should not, in justice, that community be allowed representation by the President?

Mr. President: I am inclined to agree with Sardar Hukam Singh that this amendment seeks only to extend to other communities the privilege given under this article 293 to get nominations for their interests if they are not adequately represented. I think the amendment is in order.

Sardar Hukam Singh: Sir, I may in the beginning say that I do not grudge this concession being given to the Anglo-Indian community. I do realise that they are in very small numbers. I am also conscious of the fact that they are diffused over different parts of the country. I do feel that there is little likelihood of their being returned and I agree that they should have the first choice and the first concession. I do not even oppose instructions being given to the President that their case might be considered first of all. But what I want to submit is that when their interests are safeguarded, we cannot exclude this possibility that they might be returned according to their population-when we are aiming at a secular State where everybody could stand and could vote, there will be some possibilities where even this small community might get representation in certain cases-if some other community is not represented properly. I feel justified in saying that the President should have power to give it some representation at least. We are depending upon the vargaries of the voters. Any responsible man can see that the voters do not care whether some community gets justice or not. In these special circumstances, I want to submit that the power should be given to the President to use in whatever way he likes, though the consideration might be uppermost in his mind that this (Anglo-Indian) community should be given preference. I do not grudge them this concession. But this power should be general that any community which is not properly represented it should be open to the President to give some representation to.

Mr. President: There is then notice of an amendment by Mr. Sahu (No.104) that this article be deleted. That is not an amendment which can be moved. The honourable Member may vote against the article. Then there are two amendments in the Printed List of 10th July 1949. I understand that they are not being moved. Any Member who wishes to speak may do so now.

Shri R.K. Sidhva: Mr. President, Sir, this article deals exclusively with the Anglo-Indian community. It says that notwithstanding anything contained in article 67 the President may, if he is of opinion that the Anglo-Indian community is not adequately represented in the House of the People, nominate not more than two members of that community to the House of the People. The article relates to one community and also the number is specified. The President cannot nominate more than two. As regards the other communities, my friend says that if any community is nor properly represented, then the President shall have the right to make nominations from that community. Sir, that will be going against the very spirit of the decision that we have taken in this House. We have taken the decision that minorities voluntarily gave up their rights to special representation, and now to ask the President to nominate members from those minority communities, that too in the Constitution itself, is to negative the very spirit of the decision of this House. I feel strongly that if we allow this article to be inserted in the Constitution and if we accept this amendment, it will mean that, although the right to special representation has been voluntarily given up by the various communities, the House desires that the President may nominate persons from those communities, which is not the desire of the House. The House has rejected nominations and reservations of seats. They have allowed nomination to the Anglo-Indian community as a special case. Having decided that, if we accept this amendment now, it will go against the spirit of the decision we have already taken and I do hope that the House will reject it summarily.

There are other amendments coming. My Friend, Mr. Nagappa, is also trying to open up the question of minority communities if they are not represented properly. The Minorities Committee considered this question and came to the unanimous conclusion, the House came to the unanimous conclusion that there should be no nomination and no reservation of seats for the minority communities, and we should not go against the spirit of that decision. I submit that this amendment should be summarily rejected.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, if we accept the amendment so Sardar Hukam Singh, the whole House of the People will be dominated by members who are nominated. This article provides for an exception. The nomination of members of the Anglo-Indian community to the House of the People is an exception. I do not think it is intended to perpetuate this exception or enlarge the scope of this exception to other communities. The article says-

"Notwithstanding anything contained in article 67 of this Constitution, the President may, if he is of opinion that the Anglo-Indian community is not adequately represented in the House of the People, nominate not more than two members of the community to the House of the People."

In regard to the others, if there is any constituency where there are five lakhs of people, that constituency is entitled to elect one member to the House of the People. The other communities, the Muslim community, the Indian Christian community or the Sikh Community of this country are not so small as would go unrepresented on this basis. It would not be so in the case of the Anglo-Indian Community. Their whole population would not be even five lakhs for the whole of India. You cannot point out to any constituency where they will be in a majority. Therefore this exception has had to be made, because they may not come in through the process of election. Article 292 originally stated that there would be reservations for the Muslim community, for Indian Christians and others. But they have voluntarily given that up and reservation is now only to be made for the Scheduled Castes, and scheduled tribes. The latter may not be able to come in normally in elections. Therefore, some reservation is made for them. I would submit that the Anglo-Indian community stands on a special footing. The Anglo-Indians are highly advanced, but they are not numerous. They were once part rulers of this country and therefore they should be shown some partiality for some time to come. Nomination has been provided for in the Upper House for certain interests but the Upper House has been made innocuous, and so far as the Lower House is concerned, there ought to be no nominations. The case of the Anglo-Indian community is an exception and there is no reason why it should be extended in favour of the other communities and why those communities should try to get by nomination why they have voluntarily given up. Not more than two is an insignificant figure in the Lower House. I oppose the amendment.

Mr. President: Dr. Ambedkar.

The Honourable Dr. B.R. Ambedkar: I do not think it is necessary to say anything.

Mr. President: The question is:

"That with reference to amendment No.3119 of the List of Amendments, for article 293, the following be substituted:-

'293. Notwithstanding anything contained in article 67 of this Constitution the President may, if he is of opinion that any minority community is not adequately represented in the House of the People, nominate an adequate number of members of that community to the House of the People."

The amendment was negatived.

Mr. President: The question is:

"That article 293 stand part of the Constitution."

The motion was adopted.

Article 293 was added to the Constitution.

Article 294

The Honourable Dr. B.R. Ambedkar: Sir, I move

"That for article 294, the following be substituted:-

Reservation of seats for minorities in the Legislative Assemblies of the States.

"294 (1) Seats shall be reserved for the Scheduled Castes and the scheduled tribes , except the scheduled tribes in the tribal areas of Assam in the Legislative Assembly of every State for the time being specified in Part I or Part III of the First Schedule.

(2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.

(3) The number of seats reserved for the Scheduled Castes or the scheduled tribes in the Legislative Assembly of any State under clause (1) of this article shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the scheduled tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved bears to the total population of the State.

(4) The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in the Assembly a proportion not less than the population of the district bears to the total population of the State.

(5) The constituencies for the seats reserved for any autonomous district of the State of Assam shall not comprise any area outside that district except in the case of the constituency comprising the cantonment and the municipality of Shillong.

(6) No person who is not a member of a scheduled tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district except from the constituency comprising the cantonment and municipality of Shillong."

This article is exactly the same as the original article as it stood in the Draft Constitution. The only amendment is that the provision for the reservation of seats for the Muslims and the Christians has been omitted from clause (1) of article 294. That is in accordance with the decision taken by this Assembly on that matter.

(Amendment Nos. 34, 35, 36 and 39 were not moved)

Shri Brajeshwar Prasad: Mr. President, Sir, I rise to give my qualified support to the article, Sir, I am convinced in my own mind that the Scheduled Castes do not form a minority in this country. They are not distinct or separate in any way whatsoever from the rest of the people of this country. Numerically they form a considerable section of the population. Moreover, I am convinced that the problems confronting the Scheduled Castes are in no way of a political character. The problems are primarily educational and of an economic character. They are of a cultural character. We want to raise the cultural level of these down-trodden and oppressed people. I do not see how their representation in the legislatures will in any way alter the material and the moral level of these people. Representations here and there will provide opportunities for a handful of leaders but it will not in any way materially alter their economic or their educational level. Better lay down in the Constitution that a fixed percentage in the budget, both Central and Provincial, shall be exclusively devoted for their welfare. I am a lover of those people who have been suffering and my whole attempt is to somehow liquidate their backwardness. I do not want by any back-door method to suppress or to deprive them of their just rights. If you want to give them representation, by all means give them. I am not opposed to their representation as such but I feel that this will be inadequate it will not solve their problems. I want that for the tribals and for the Scheduled Castes provision must be made in the Constitution not in the directive principles. It should be laid down clearly in express terms that educational and free education shall be imparted to them. There is only one country in the world where free education is imparted up to the university stage and that is Ceylon. I hope in the future with the growth and development of our economic resources it will be possible for us to provide the same facilities to our citizens. I want that for the tribals and for the Harijans provision must be made in the Constitution that free agricultural lands should be given to them. If we cannot give any one of these, I am quite clear in my own mind that by giving them a few seats here and there, their economic condition and their education level will in no way be improved.

A friend of mine, an honourable Member of this House, has said that there are people who are opposed to the reservation of seats on the ground that it promotes fissiparous tendencies. I have very great regard and very great respect for that honourable gentleman. I know that he is a representative of the tribal people. I think he will realize that it promotes fissiparous tendencies and weakens the foundation of the State. I am a great friend of these people, I want to help them. I am prepared to incur the displeasure of those who are closely associated with me on this question. May I ask how 50 persons in a legislature where there will be 200 or 300 non-tribals, achieve anything substantial for the tribals? They will raise a terrible hue and cry but nothing substantial will be achieved. All those things that we consider to be necessary and desirable for the economic advancement and the moral uplift of the tribals should be decided here and now and laid down in the Constitution.

I would like at this stage to raise the point which I had raised a few days back. We have not decided the constitution of the tribal people. Now to say here that seats shall be reserved for the tribal people in the legislature is rather premature. It is quite possible that when we discuss the Schedules relating to the tribal areas, we evolve a Constitution entirely different from what has been proposed.

Lastly, I would say that I am opposed to the introduction of the principle of elections in the tribal areas. This will disrupt the life of the tribal people. It is a fissiparous tendency and they have got a system of society which is entirely different from ours. It is more or less a corporate society which emphasises group consciousness. The principle of elections emphasises individualism and the principle of competition. The tribal people being ignorant, being backward, being down-trodden, will be exploited by powerful groups during the times of election. I hold that the principle of election is not at all suitable to these people. With these words, I support the article.

Mr. Naziruddin Ahmad: Mr. President, Sir, I had no desire to intervene in this debate; but a few of the remarks made by my honourable Friend who has just preceded me calls for a reply.

Mr. President: You need not worry about his remarks.

Mr. Naziruddin Ahmad: Sir, I bow down to your wisdom.

Mr. President: You can confine yourself to the article.

Mr. Naziruddin Ahmad: In fact, if the honourable Member's speech was relevant a reply would also be relevant: but if you think that they are absolutely irrelevant, then I have nothing to say at all. The only point I wanted to submit was that a few of the sentiments given expression to in this House should be objected to. I must make my position perfectly clear. I was a member of a minority community. I have now shaken off that minority feeling and I speak as a perfectly independent man having no axe to grand. I feel that the Scheduled Castes and the scheduled tribes some times require protection. My honourable Friend Mr.

Brajeshwar Prasad remarked that a few members selected in the legislative assemblies will not improve their lot. I seriously contest this proposition. Theirs is a life of misery and exploitation. They are exploited on account of their ignorance and backwardness. If a few members are selected by them, they will ventilate their grievances, will focus public attention on their grievances and difficulties and that would lead to their redress. If a few seats given to the Scheduled Castes will not improve their lot. I ask how can a large number of members coming from the non-Scheduled classes be of any service to them? That argument should be of no avail. I believe this representation means representation of the weak. It is for their protection. My honourable Friend's contention that the benefits of democracy cannot be given the Scheduled Castes, I should think, must also be contested. Democracy is a blessing. Democracy alone can lift these unfortunate Scheduled Castes and scheduled tribes from their miserable lot.

I do not desire to say anything more. I fully support the article. But, my honourable Friend who preceded me while trying to support the article actually advanced arguments which went against it.

Shri Kishorimohan Tripathi (C.P. & Berar States): Mr. President, Sir, I have just come to seek clarification from Dr. Ambedkar.

The proposed article 294 says in clause (1):

"Seats shall be reserved for the Scheduled Castes and the scheduled tribes, except the scheduled tribes in the tribal areas of Asam, in the Legislative Assembly of every State for the time being specified in Part I or Part III of the First Schedule."

When I look at Part III of the First Schedule, in division B, it is stated, "All other Indian State which were within the Dominion of India immediately before the commencement of this Constitution." Most of these States have now either formed into Unions or have merged into the provinces. Among the latter category come some of the States which I represent here. These States taken together and known as the Chattisgarh States, have a tribal population of roughly 50 per cent, that is, about 14 lakhs out of the total population of nearly 30 lakhs. I want to know from Dr. Ambedkar as to how reservation of seats will apply to these States which have now merged in the province of C.P. I will quote, for example, the State of Baster; it has a tribal population of 4,78,970 out of a total population of 6,33,888. The State of Udaipur which forms part of the newly formed district of Raigarh contains 72 per cent of tribals out of its total population. These States have got tribal population in contiguous areas. Each State by itself can claim reservation for itself. I would therefore like to know from Dr. Ambedkar as to how these States are to be treated in respect of reservation of seats as also other advantages accruing to tribals under this Constitution.

The Honourable Rev. J.J.M. Nichols-Roy: Mr. President, I rise to support this article as moved by Dr. Ambedkar. I had given notice of an amendment; but that amendment has been included in this amendment which has been moved by Dr. Ambedkar. I am very glad that that has been incorporated here.

I just want to make a statement in regard to the statement made by Mr. Brajeshwar Prasad regarding tribal people. There are different kinds of tribal people. In Assam, we have got tribals who are very democratic. These democratic institutions which we have here in this Constitution will suit them very well. They are used to this kind of democratic institutions. There may be some other tribals who may not be used to such democratic institutions; I do not know where they are. Wherever I have known, the tribal people are very very democratic-minded. There may be Scheduled Castes and scheduled tribes in some other parts of India where the people are very down-trodden and not looked after, and democratic institutions may not suit them. As far as the tribals are concerned, as Mr. Jaipal Singh has already stated, they are very democratic, and in Assam they are so, For that reason I believe that this right and privilege given to them of sharing in the democratic institutions in the whole of India is a very good thing indeed.

Shri H.J. Khandekar (C.P. & Berar: General):* [Mr. President, I stand to support article 294 moved by Dr. Ambedkar. This article provides for reservation of seats for the Scheduled Castes and scheduled tribes. As a member of Scheduled Castes, I would like to submit that the reservation which is being provided for us is no favour to us. The members of the Scheduled Castes have, for thousands of years, suffered cruelties and oppression in various forms at the hands of their brethren belonging to castes other than their own. Now reservation is being provided for us as a compensation for the atrocities we have suffered, and therefore I do not deem this provision as any great favour to us. The article that was originally drafted to provide for reservation, contained provisions for the reservation of seats to Muslims also, on the basis of their population. But for some reasons this provision has now been dropped. I think reservation ought to have been provided for Muslims as well. Though, I do not belong to the Muslim Community, I would like to say that from the political point of view...........]

Mr. President:* [I think, you should not take up this question because it has already been discussed.]

Shri H.J. Khandekar:* [I would like to say only one sentence in this connection.]

Mr. President:* [Even one sentence will re-open the matter.]

Shri H.J. Khandekar:* [I hold that politically it was a mistake. However, I shall not touch that question as I do not belong to the community concerned. To resume my point, reservation is being provided to Harijans only for ten years. But from the experience that I have of the Scheduled Castes and other communities of the country, I feel certain that the condition of the Harijan cannot improve within the next ten years. Continuously from 1927 to the time of his death Mahatma Gandhi made every effort physically, mentally and financially, for the uplift of the Harijans, but even within a period of twenty or thirty years no appreciable improvement as was expected, could be brought about in their conditions. I am unable, therefore, to accept that within a period of ten years for which reservation is being provided for them, a complete reform or change can be brought about in their condition.

I therefore, think that if, along with reservation in respect of Legislatures, a similar reservation is provided in respect of Local bodies-Municipalities, and District Boards too,. it will help much to improve their lot. But no mention of such a provision has been made here. If you look at the conditions obtaining in each and every province of the country, you will find that politically their condition, even today, is very deplorable. If any Harijan stands for election to any local body and tries to secure the votes of the Caste Hindus, I have myself been witness to it, he is never able to get their votes and is unable therefore to get elected. As for the future, I am sure no candidate belonging to Scheduled Castes or scheduled tribes would ever be returned to these bodies in elections. This is the state of affairs obtaining in our country today, and it is in view of this state of affairs that you have accepted our demand for the reservation of seats. I think if you provide reservation in respect of local bodies also, Harijans will be able to benefit considerably.

Secondly, if any one thinks that the provision of reservation would cause an all-round improvement among the Harijans. I would say, he is sadly mistaken. there are many avenues in which Harijans will have to make improvement. They have to make much progress and require much help to be able to come on a part with other communities of the country. Reservation of seats alone will not do much. We were exploited in the past; and we are being exploited today and even in future, after the Constitution is passed, we should be exploited by members of the other castes. Divisions will be created amongst us. In a constituency where caste Hindu voters have a majority over Harijans if one section of the Scheduled Castes, say for example *chamars* have a majority over the other Scheduled Castes, our caste Hindu friends will not enter into an alliance with the chamars but they will support the minorities of the Scheduled Castes in the constituency and thus suppress the majority section of the Scheduled Castes. This will be the ultimate outcome of this provision of reservation. This is bound to happen because the Harijan voters are not in majority in any constituency.

What I mean to say is this, that this provision of reservation will be helpful to Harijans only when they are given reserved seats in constituencies where they are in a majority. Otherwise in the name of Harijans, showboys only would be returned to Legislatures as is the case today in the Central and Provincial Legislatures. So by this provision, I am afraid you are not going to do any good to Harijans; rather you would be doing them harm.

I want to tell you one thing more, and it is, that you should provide for the same type of reservation in the Cabinet as you have provided in the Provincial legislatures so as to enable to Harijans to promote their advancement. However, I have seen it and you might have also seen it, and it is a matter of regret that whenever the interest of a caste Hindu and that of a Scheduled Caste man clashes, it is the scheduled caste man who suffers. This is the situation in the country and no sensible man can deny it. To give an instance, if you look at the cabinet of a province where twenty four to twenty five per cent of the people are Harijans you will find that there is only one Harijan in the cabinet. But it is a matter of regret that in a province where the caste Hindus, that is to say the Brahmins, are in a minority and in such a small minority as two per cent of the population, ten ministers out of twelve are Brahmins. Would you consider this an injustice?]

Pandit Balkrishna Sharma (United Provinces:General):Down with the Brahmins!

Shri H.J. Khandekar: That you can say that non-Brahmins can say. Very well, they can be downed.

* [I mean to say that if you had provided for reservation for Harijans in the cabinet it would have prevented the injustice that is being perpetrated on the Harijans and scheduled tribes. It is a matter of regret that that article is no longer under discussion. Some people have remarked that barring the seats reserved for Harijans, they should not be allowed to contest the election for other general seats. But I want to tell you that if you do not allow the Harijans to contest the elections for general seats, you will never be able to bridge the gulf that has been created between the Harijans and the caste Hindus.]

Mr. President *[As you were not present in the House you could not listen to the previous debate. Had you listened to it, you would not have said such things.]

Shri H.J. Khandekar:*[I was not present and I did not listen to it. But I want to say that if we have to level the breach between us and the caste Hindus, the same treatment should be meted out to us as is asked for by us. However, the treatment that is meted out to us is one that suits people blinded with self-interest. If I cite examples where self-interest was caught to be promoted, it will take the whole of the day and even tomorrow. I do not want to threaten anybody but I want to tell the caste Hindus in this House and outside that they should remember one thing. It is that if you want to atone for the atrocities perpetrated by you on the Harijans, you should bring them up to your level by granting them whatever they ask for. If you do not do this, the Harijans will intensify the movements they have launched for their progress, which you do not desire they should make, and through these movements they shall effect an improvement in their lot though I cannot predict what may happen in the country as a result thereof. I am not holding out any threat. Members of parties seeking to exploit the situation for their own benefit move about amongst the Harijans of India and propagate such views as might go against the interests of this country. I warn you of this situation and urge you to grant to Harijans whatever facilities they ask for to come to your level.

I shall place before you one more example. Hundreds of Harijans applied recently for Indian Administrative Service and Indian Police Service and they were interviewed. But it is to be regretted that none of them was selected for the posts. The reason stated is that none of them was fit for the posts. You are responsible for our being unfit today. We were suppressed for thousands of years. You engaged us in your service to serve your own ends and suppressed us to such an extent that neither our minds nor our bodies and nor even our hearts work, nor are we able to march forward. This is the position. You have reduced us to such a position and then you say that we are not fit and that we have not secured the requisite marks. How can we secure them?

You just look at the position in which we are placed. The condition of our village boys is very bad today. They do not get the facilities enjoyed by the sons of well-placed men. How can you then expect our boys to compete with those who enjoy all sorts of facilities. You do not know under what conditions our students receive education in schools. The Government does not show any consideration to them. I know of a Harijan boy of C.P. who lives in Delhi. He studies in the Pusa Institute. He is a poor boy and his parents are dead. He is in such circumstances that for the last one month he has had no money to pay his fees. His monthly expenses amount to Rs.105/- including the sum of Rs.75/- which he has to pay towards fees etc. every month. A week back he received a notice that he should deposit his fees for being permitted to prosecute his studies. The only recourse for this poor boy, who has no money to meet the expenses of food, clothes and fees, is either to beg or to steal. He has no other remedy. The other alternative before him is to leave the school but then he would be ruined completely. Yet it did not strike the mind of any government official that either he should be exempted from paying fee or some other kind of help might be given to him. This boy submitted many applications to the government, but as yet nobody has replied to him. Under such troubles and hardships how can that boy compete with the other boys who have all facilities available to them?

You have given us privileges for ten years. After that period you will tell us that you helped us in all respects. I would then ask you, in what respect you helped us. Will you prepare some scheme for the uplift of Harijans in these ten years? Have you prepared any scheme for education of Harijans up to this day? Have provincial governments earmarked some money for the uplift of the harijans?]

Mr. President:* [A period of ten years has been provided in this article. Other things are covered by other articles. You can say these things then. At present, I shall not allow you to take up this issue.]

Shri H.J. Khandekar:* [I mean that our students do not get those facilities which other students get and hence they cannot stand in competition with others. The government has never thought of our uplift. Very often we have requested that to safeguard our interests there should be at least one Harijan minister appointed in every province and one at the Centre also who should work for the uplift of the Harijans. Had such ministers been appointed in every province and Centre, who could have thought over the difficulties of the Harijans, there would have been a lot of improvement by this time. In every province such resolutions were passed and were sent to the government by the Harijans from all the places requesting that these resolutions should be given effect to, but is is very painful to note that those persons have not as yet received a written acknowledgment of the receipt of their resolutions. This is the value and importance attached to the uplift of the Harijans. Such an attitude reveals that you want to please them with sweet words. In India there are many who talk sweetly and the Harijans are very easily taken in. They serve their selfish purpose. Except Mahatma Gandhi and ten or twenty other persons there is none to think of the uplift of the Harijans in the true sense.]

Mr. President :* [You are talking of the provinces.]

Shri H.J. Khandekar :* [I am talking of may provinces, and whatever I say is based on my personal experience. I have got an experience of about twenty or twenty-five years. I have been witnessing even up to this day that nothing good has been done for the Harijans. You have appointed Harijans ministers in the provinces but they are all your men. Then article about reservation provided by you is not going to safeguard our interests. In this way all the problems of Haijans would not be solved.]

Mr. President :* [It appears that you have been continuously absent.]

Shri H.J. Khandekar :* [I was not absent from this Assembly for a day, I was present all along even if someone marks me absent. I was here in my seat all the while]

Mr. President :*[But I would like to tell you that you can speak on the question which is under consideration. You cannot be permitted to discuss the question of all the Harijans. Nothing would be gained by that. If you are a member of any provincial assembly you can raise this question there. Others also, who get an opportunity of speaking here, should restrict themselves to this article only. It is useless to talk of other things here.]

Shri H.J. Khandekar:* [I am speaking on this article. I want to submit that I do not believe that the reservation that has been provided will do any good to the Harijans. I say that this reservation can bring no good to the Harijans. But the painful aspect of the problem is that those, who believe in the uplift of the Haijans and also know that they suffer in many ways, are in favour of this article. But I feel that this article of reservation provides no scope for the uplift of the Harijans.

There are differences amongst our sub-castes. This article provides scope for creating all kinds of differences amongst the sub-castes of the Harijans. It has got a scope for ousting the Harijans who are in majority in a province. Every community will have some percentage. You know that there is one community in majority in Bombay. None has paid any attention to it. There are ten or twelve persons who can enter the legislature of Bombay Province through reservation. Those members of the minority community who, come from that fold will be ousted. Up to this present day there are only two three men of the minority community in the Bombay Legislature. Even now there are members of such minority communities who are not even two per cent of the Harijans. I submit that when this article is implemented the Harijans would move still more backward rather than forward. I submit to you, Sir, that it would neither be beneficial to the country nor the Congress government nor even to the Harijans.

This is what I mean and after explaining it I support the article and resume my seat..

Shri Mahavir Tyagi (United Provinces:General: *[Mr. President, I rise to lend my support to this article. I would like to submit, that the question of reservation for the Scheduled Castes was raised in this land during the British regime in pursuit of a policy which was then followed by them. By raising the same question in respect of Muslims the Britishers created a division between the Hindus and Muslims of the country-a policy which ultimately culminated in the creation of Pakistan. 'Divide and rule' was the policy of the alien rulers in India in those days. It was in pursuit of this policy that in the Round Table Conference the English politicians made attempts for the first time to establish the system of separate representation for the Scheduled Castes by creating a division between them and the caste Hindus. At this, Mahatma Gandhi declared his resolve to fast unto death if attempts were made to create another part of Scheduled Castes in India. As a result this, they could not be separated from the Hindus and the system of separate electorates could not be adopted for them as was done for the Muslims. But seats were reserved for them on the basis of their population. Mahatma Gandhi settled this question with Dr. Ambedkar and gave an award which offered the Scheduled Castes more seats than what were given to them by the Round Table Conference. It was then felt that justice must be done to the Scheduled Castes.

The statement made by my Friend Mr. Khandekar that prior to this award no representative of the Scheduled Castes was ever elected, is a fact. According to the agreement reached between Mahatmaji and Dr. Ambedkar in regard to this question, representatives of the Scheduled Castes were to be elected by a common electorate but a certain number of seats were reserved for them and the number of seats so reserved was greater than what was given to them in the Round Table Conference.

Now when after fourteen years we are again going to decide that seats will be reserved for them, we must not lose sight of the experience gained in the past in this respect. I would like to draw the attention of the House to the past experience with regard to this question. The reservation of seats has benefited us in many ways. Firstly, it has created an awakening among the Scheduled Castes; it has brought among them a spirit of self-progress: it has made others to realise that the members of the Scheduled Castes are citizens, equal to them and that they too should be entitled to all the rights that a citizen should have. It has also developed amongst us a habit to sit together and decide the future of the country and to discuss the important grave problems of the country mutually. This helps a lot in our affairs.

But we have to see what will in fact be the advantage of such a reservation. My Friend Mr. Khandekar has just now complained that the majority community does not allow minority community to send its representatives. This is a fact. In this respect I too belong to a minority community. The strength of my community in my district consists of myself, my daughters and a policeman. They are all five in number. Still, whenever there is an election in my district, I am returned. But this is not the general rule. Those who are not elected on the basis of service to the country, are returned on the strength of their relations. Whoever has a large number of relations, is returned. In the district of Meerut, where the Jats are in a majority, only a Jat candidate can come our successful A Brahmin cannot be elected there. Therefore, this is not a question of Scheduled Castes only but is so in the case of other Castes also. This, of course, is very unfortunate for this country. Even if we confine our attention to the Scheduled Castes alone we find that they also suffer from the same malady. Twenty seats have been reserved for the Scheduled Castes in our province and there are perhaps eight seats for them in the Punjab. If we undertake a study of the caste composition of the members filling the seats and if Shriyut Khandekar does the same in regard to the seats reserved for the Scheduled Castes all over India it will be found that excepting two or three Mahars, including my Friend, Mr. Khandekar and Dr. Ambedkar, the majority of seats have gone to *Chamars* because among the Scheduled Castes they have a majority. If you look at the Ministers also, you will see that excepting Dr. Ambedkar there is no Scheduled Caste Minister who is a non-Chamar.]

Some Honourable Members: *[In Bihar, there are.]

Shri Mahavir Tyagi:* [Yes, excepting Bihar, in all other places these people alone are ministers. May I ask whether the four hundred communities are taking advantage of the Scheduled Castes seats? Out of these four hundred communities only two or three communities are taking advantage of the seats reserved for Scheduled Castes. In Bombay the Mahars are in a majority but owing to joint elections some other members of the community have been returned and this has given cause to Mr. Khandekar to complain. I am opposed to this type of mentality. The scheduled castes have been formed by combining together four to five hundred communities but if a majority section and a minority section are found among them, it would mean that the seats reserved for Scheduled Castes would go to the majority section. Even if we reserve a number of seats in India for the *Chamars* the result would-be the same as we have achieved by reserving seats for Scheduled Castes because in our province the *Chamars* are in a majority and they alone get the majority of votes. Every party too puts forward a candidate on the consideration whether he has a large number of relations, so that matters may be facilitated. Therefore all the Scheduled Caste people do not benefit by reservation. There are five hundred to six hundred Scheduled Castes and we are not familiar even with their names. Indeed, it will never be possible for them to get representation in the Assembly.

This means that we provide seats for Scheduled Castes to benefit those who have a large number of relations. The advantage of joint elections, to which my Friend Mr. Khandekar objects, would be that caste Hindus would be able to extend justice to those Scheduled Castes people who are in a majority. They would realise that the *Chamars* have a majority in the district and that those people who are in a minority have no chance of winning an election, although their candidates are well qualified for being returned to the Legislative Assembly. They would help these candidate and make up the deficiency of votes in their favour. What I mean to say is this, that the advantage of other caste people participating in the elections for Scheduled Caste seats would-be that besides those who are in a majority among the Scheduled Castes, even those who are in a minority among them would be able to fight elections and win them. This is my reply to the objection that has been raised. We should keep in view the interests of all the Scheduled Castes specified in the schedule and not only of those which are in a majority.

I would like to draw the attention of the House to another aspect of this problem. The reservation that has been provided for the Scheduled Castes until now, is producing, the effect; among others, of the formation of a separate kind of group of the Scheduled Castes. And if this practice is continued for some time more the leaders of the Scheduled Castes will act in the same way as the Muslim leaguers did. They can become ministers and members of the Assembly as long as the reservation of their seats is continued. Under such circumstances the separatist tendency cannot be brought to an end in this country. I, therefore, feel that there should be no kind of reservation.

In my province of U.P., the Panchayat Election has just been held. It may be a surprise to the House that the election of Sarpanch of these Panchayats was a joint one. In our eastern districts more than half of the Panchayats are such wherein the members of the Scheduled Castes have been elected as Sarpanch. This is the result of the Gram Panchayat election held through the government and the members of the Scheduled Castes were elected as Sarpanch. It is wrong to think that the minorities are not enjoying the privileges in the political spheres. Had I been a leader of a minority community I could have very easily demonstrated to you that in a House consisting of one hundred members I could form a ministry with the backing of my twenty followers in the legislature. I hold this belief because I am confident that the remaining eighty members of the House would-be divided into a number of parties and I could, therefore lend my support to one of these parties and thereby enable it to be dominant in the Legislature. By this bargain I could easily obtain the premiership for myself. The fact is that all the world over the ministers enter into such bargains and are thereby able to secure their ends. There are different groups in the majority, and the minority always secure advantages for itself by favouring one group or the other. It is therefore wrong to say that the minority groups does not secure advantage for itself. In the same way the minority pushes its candidate in general elections too and it is a clear misunderstanding that the minorities cannot take part in elections.

My own idea was that there should be no reservation. On the other hand, the provision of reservation makes me feel that there has been a little of injustice to the Sikhs. They have been living separate for many years and this right of reservation has been denied to them. Similarly Christians have also been denied this right. All the other minorities generously accepted to give up this right. I therefore fail to see why this reservation should be kept. I believe that even without reservation the members of the Scheduled Castes can gain seats in proportion to their population. You will see after ten years that they will gain seats in a greater proportion. I would like to repeat it again that in election importance should be attached to the capabilities of the candidate and not to the caste of the candidate. It should be considered as to who has served the country in a better way and who can represent the country in a better way. Unfortunately people having good knowledge of English gain success. It is a misfortune that nobody thinks for those Brahmans who are even poorer than the members of the Scheduled Castes. Similarly there are Kashtriyas, Rajputs and some persons and families among all the other castes, who do not get any opportunity to gain education and wealth. There is no provision for them in this Constitution. They are poor and illiterate and can neither become representative nor ministers. Unfortunately the conditions are such that those, who have English education and have adopted English methods, are the representatives of India. Only such persons can gain representation. It pains me greatly that there is no scope in this country for the illiterates. I say that until the rein of administration is held by non-English knowing illiterate persons and until a majority of illiterate persons comes in Government Service, India would not be able to feel the glow of freedom. The educated persons are demoralised. And in the present regime the administration of India is in the hands of those who are devoted to English culture and language and are demoralised. Just as with other castes, in Scheduled Castes also there is no opportunity for their real representatives even after the removal of the British regime. Persons like Dr. Ambedkar, who are capable in all respects, will come forward from the Scheduled Castes. To what Scheduled Castes does Dr. Ambedkar belong to, who is the Pandit of the Pandits? He only takes advantage of the Scheduled Castes. At the same time Dr. Ambedkar can come into the Legislature from any part of the country by virtue of his own merits.

I, therefore, see no advantage, as I have already stated, in reservation. The true representatives do not enter the Legislatures even through reservation. This may be attained only when we change our mentality and elect persons according to our old Indian custom based on honesty, ability, conscientiousness, service to humanity and intelligence. We have been so much entangled in the English language that one who has attained even an alphabetical knowledge of this language attains the right of being the representative of the country. Even after saying so much I feel that this provision is good. They will get opportunities for ten years more and after that period it will automatically come to an end and there would be joint elections.

Mr. President: This is one of those articles which represent the decisions arrived at at a previous session and I do not think much discussion is necessary. However, I have not stood in the way of members speaking.

The question is:

"That for article 294, the following be substituted:

'294 (1) Seats shall be reserved for the Scheduled Castes and the Scheduled tribes
reservation of seats for except the scheduled tribes in the tribal areas Assam, in the
Legislative minorities in the Legislative Assembly of every State for the time being specified
in Part I or Part III
Assemblies of the States of the First Schedule.

(2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly

of the State of Assam.

(3) The number of seats reserved for the Scheduled Castes or the scheduled tribes in the Legislative Assembly of any State under clause (1) of this article shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the scheduled tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved bears to the total population of the State.

(4) The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in that Assembly a proportion not less than the district bears to the total population of the State.

(5) The constituencies for the seats reserved for any autonomous district of the State of Assam shall not comprise any area outside that district except in the case of the constituency comprising the cantonment and the municipality of Shillong.

(6) No person who is not a member of a scheduled tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district except from the constituency comprising the cantonment and municipality of Shillong."

The motion was adopted.

Article 294, as amended, was added to the Constitution.

Article 295

Mr. President: This is a non-controversial article.

The question is:

"That article 295 stand part of the Constitution."

The motion was adopted.
Article 295 was added to the Constitution.

New Article 295-A

The Honourable Dr. B.R. Ambedkar: Sir, I move:

"That after article 295, the following new article be inserted:-

'295-A Notwithstanding anything contained in the foregoing provisions of this
Reservation of seats for Part, the provisions of this Constitution relating to the reservation of seats for the Scheduled

Scheduled Castes and Castes and the scheduled tribes either in House of the People or in the Legislative Assembly

scheduled tribes to cease of a State shall cease to have effect on the expiration of

to be in force after the expiration ten years from the commencement of this Constitution.

of a period of ten years from the

commencement of this

Constitution."

This is also in accordance with the decision of the House. I do not think any explanation is necessary.

Mr. President: There are certain amendments to this. Amendment No.39 has been given notice of by three Members.

Shri Yudhisthir Mishra: (Orissa States): Sir, I move:

"That in amendment No.38 above, in the proposed new article 295-A, the words 'and the scheduled tribes' be deleted."

The effect of my amendment will be that the provision of this Constitution regarding reservation of seats for the Scheduled Tribes both in the Centre and in the Provinces shall not cease to have effect even after the lapse of ten years from the commencement of this Constitution. The purpose of this new article 295-A is not to allow reservation of seats to Scheduled Castes and tribes after a period of ten years from the date of the commencement of this Constitution. My amendment seeks to provide that the reservation of seats for the tribes should not be limited to ten years only.

We decided in the last session of the Constituent Assembly, in a motion tabled by the Honourable Sardar Patel, that the system of reservation of seats for minorities other than the Scheduled Castes in the legislatures be abolished and that the reservation of seats for the Scheduled Castes shall be limited to ten years only. The communities referred to in this resolution are Muslims, Sikhs, Scheduled Castes and Indian Christians. It was held that in the context of a free and independent India, and according to the present conditions, there should not be any reservation of seats for religious communities. Therefore, it did not affect the reservation of seats for the scheduled tribes. Sir, in the report of the Advisory Committee dated 11th May 1949 submitted by Sardar Patel to this House on the subject of political safe-guards for minorities, it has been specifically stated that nothing contained in the resolution passed by the Minorities Advisory Committee shall effect the recommendations made by the North-East Frontier (Assam) Tribal and Excluded Areas Sub-Committee and the Excluded and Partially Excluded Areas (other than Assam) Sub-Committee with regard to the tribals in the legislatures. It was also laid down that the resolution would not affect the special provision made for the respresentation of Anglo-Indians in the legislatures.

Now, Sir, in their report, the Advisory Committee for Tribal and Excluded Areas have suggested some protection for the tribes, and no limitation, as far as I remembers, was fixed as regards the period for which such protection should be provided. It is of course surprising to me how the Drafting Committee in its recent amendment or in its new article 295-A has put in a time limit. We have passed new article 215-B which provides for the administration and control of the tribal areas in any State, according to the provision of the Schedule V and Schedule VI of the Draft Constitution. This provision in 215-B is a permanent feature of the Constitution which will not cease to be operative even after a lapse of ten years.

Then again , in the Vth and VIth Scheduled in the Draft Constitution, a Tribal Advisory Committee has been provided to advise the Government of the States in all matters pertaining to the administration of the scheduled tribes and the welfare of the tribal people in all States. Now, three-fourth of the Tribal Advisory Committee will consist of the elected representatives of the scheduled tribes in the legislature of the States. If there is no reservation for the tribes, how are you going to give effect to the provisions of this Constitution as far as the provisions laid down in the Scheduled V of the Draft Constitution are concerned? So far as the tribal people are concerned, due to their social, educational and political backwardness, I am sure very few of them will be returned to the Assembly if reservation is abolished. I feel that even after the lapse of ten years we shall not be able to remove the backwardness of the tribes. I hold that the standards of education and material well-being of the Scheduled Tribes are lower in most cases than even those of most of the Scheduled Castes. That is clear from the representation of the scheduled tribes in this House in comparison with the representation that the Scheduled Castes have been able to secure. Even the representative character of this House, as far as the interests of the scheduled tribes are concerned has been challenged by some people. I recently received some letters and telegrams from the tribal people of the Orissa States that the representatives in this House are not entitled to make any Constitution for them and that even if a Constitution is made, they are not bound by it. This is due to the apprehension in their minds that they will receive proper justice unless we go and try to understand their feelings as far as reservation of seats are concerned. Therefore we should think twice before abolishing reservation of seats for the tribal people after the lapse of ten years. I feel that the scheduled tribes will not be able to attain the same social standard as the other people within ten years. So I submit that the time-limit should be removed. I hope this amendment will receive due consideration at the hands of the Drafting Committee.

Mr. President: We shall take up the other amendments tomorrow.

Before we part, there is one matter which I would like to mention to the House, although it is not usual to do so. I have just received a resignation letter from Dr. S. Radhakrishnan who is going as our Ambassador to Moscow. I am sure this House appreciates the work which he has done here. We shall be missing him very much in the future. But what is a loss here is going to be a gain to the country. He is going with a great reputation as a philosopher and writer of international fame and I hope and trust that his appointment to a country with which we wish to be on the best of terms will bear good fruit and will prove to be very helpful and useful to the country.

On my behalf and on behalf of this House I offer my best wishes to Dr. Radhakrishnan in his mission.

Prof. S. Radhakrishnan (United Provinces: General): Mr. President and fellow Members, I thank you very much, Sir, for the very kind sentiments which you just expressed. I regret that it has not been possible for me to attend the meetings of this Assembly and take any useful part in its discussions. It is due entirely to circumstances beyond my control. I hope the House will appreciate that fact.

We have laid down our objectives and if we implement them with speed and steadfastness, our political and economic future may be taken as assured. It all depends on the way in which we carry out those objectives. Politics are more a result than a cause. Political upheavals occur the world over because there are unsatisfactory economic conditions. Wherever standards of life are all right, political stability is assured. Where you have economic unstability, upheavals occur. I hope that our trusted leaders who are now running this Government will carry out all those obligations put down in our Draft Constitution and will not allow it to be said that we have delayed social justice and so denied social justice. We have just listened to an impassioned statement on Harijans, their rights, etc. Our aim is social democracy which transcends these distinctions of caste and outcaste, of rich and poor. We will be judged in the world by the way in which we carry out these proclamations which we have inserted in our Constitution.

Sir, you have referred to my appointment in Moscow. We are working under the great leadership of Mahatma Gandhi. If there are political conflicts, there are two ways of overcoming them. One way is to give a knockout blow to defeat, to destroy and establish your own supremacy. That is what is called power solution. There is another way. That is understanding why our opponent believes what he does, trying to appreciate his view and trying to bring about a reconciliation. That is what is called the knowledge solution. We in this country are wedded to the adoption of the knowledge solution, and in Soviet Russia it will be my purpose to interpret and understand their policies and also interpret and make them understand our policies. That will be my work towards reconciliation, and I am very much fortified by the fact that in my new assignment I carry the good wishes of you. Mr. President, and the other Members of the House.

Mr. President: The House stands adjourned till nine o'clock tomorrow morning.

The Assembly then adjourned till Nine of the Clock on Thursday: the 25th August, 1949.

---

*[ ] Translation of Hindustani speeches

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Thursday, the 25th August, 1949

The Constituent Assembly of India met in the Constitution Hall, New, Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Mr. President: We shall take up the amendments to article 295-A.

Shri S. Nagappa (Madras: General): Mr. President, Sir, I beg to move.,

"'That in amendment No. 38 above, at the end of the proposed new article 295-A, the following proviso be added:-

Provided the people for whom seats in the Legislatures have been reserved are brought to the level of other advanced classes of people educationally, socially and economically."'

My intention in moving this amendment is not to extend the period of reservation, but to see that Government takes effective care that, within this ten years' period, the people for whom seats have been reserved are brought to the level of other advanced classes. As it is, in the various provinces there are ministries which are in charge of Harijan uplift, but in the Centre, I do, not find such a ministry And I would request the Government to create a Ministry of that sort and see that a Harijan is kept in charge of this Ministry and a plan is chalked out for ten years so that these people are brought to the. level of other advanced classes, educationally, economically and socially. In order to achieve this object, I would request the Central Government to set apart 5 per cent, of its revenues in order to give grants to the Provincial Governments as they have been doing in the case of rural water-supply or in the case of medical relief to the rural areas. So also, in order that these people ire brought to the level of the other people we must have such definite, plans and schemes. Unless-and until such schemes are chalked out and are worked' out, I do not think it will be possible for us to bring these down-trodden people to the level of other advanced communities within the short period of ten years.

The Harijan movement was started in the year 1932 with the blessings and' active co-operation of our revered leader Mahatmaji. All these days we did it and we have been doing it with the public co-operation and by constant propaganda in order to see that the Harijans are also treated equally along with others. No doubt, Sir, it has brought about some psychological change in the minds of people who are modern; who are civilized, who are educated, who can understand things, who can move with the times, but as regards people who are not educated, who are still orthodox type of people, who believe in the old theory, to those people especially in the rural areas, it has, not brought any change. Indeed I am thankful to. the Central Government as well as to the various Provincial Governments for having been good enough to include in article in this Constitution and having brought suitable legislation in various provinces in order to see that untouchability is made an offence and that too a cognizable offence, but still, to my knowledge, it is not worked out in the same spirit with which it has been enacted. Well, Sir, the proof of the pudding is in the eating. We must see that what we have enacted, every word of it, every, letter of it, with all the spirit behind it must be transmitted into action, not in the cities, not in the towns, but in the villages. In order to achieve this object at least five per cent. or the Central revenues should be set apart; there should be a Ministry in charge of these people in the Centre to consolidate the work that is being done in the various provinces and States.

Another thing that would go a long way in bringing these people to the level of the other advanced classes is education. As it is, in our country illiteracy happens to be the highest. After all, the literate population may be 12 to 15 per cent. If you take the Harijans alone, I think it will be 1 per cent or 2 per cent. Every year we must watch what percentage is converted to literacy and we must give a great fillip to this movement for the spread of education. Education is the key of all-round development. Unless and until they are educated, you may not be in a position to bring them to the level of the other advanced people. I would request you to make elementary education compulsory to these people. I know that large tracts of waste land are available in this country. But, unfortunately, these people are not allowed to cultivate the land. I would request the Government to have a definite plan, especially the Ministry of Agriculture and Food. They must go on alloting these lands to these people in order to produce more food and in order to elevate the economic condition of these people.

In order to raise these people economically, multi-purpose co-operative ,societies must be organised all over the country and you should see that each society has a definite plan in order to see that a particular thing is done in a particular time. We see the strike mentality is spreading among the workers. There is a mentality of profit-making among the capitalists. As a result of the strike mentality of the labourers and as a result of the profit-making mentality among the capitalists, the country is suffering as production is going down. I would suggest a solution for this : that is, make the worker the owner of the factory. You may ask, how to make him the owner ? It is, a very simple thing. For instance, we may take it that a worker cams about Rs. 2 a day. Suppose, in a mill the investment is Rs. 40 lakhs and 4,000 people are working in that mill. If you go on deducting at the rate of two annas in the Rupee that every labourer earns, for every labourer you will be saving four annas a day, and for 4,000 people it means Rs. 1,000. In course of time, you will be, able to make up the capital invested in the factory. You may give that money to the capitalist and then you may say to the workers, "well, this is your own from today; go along and produce whatever you like". The capitalist will get back his money and be may invest it in some other industry. The country will be developed industrially. I would particularly request the Honourable the Minister for Labour to bear this carefully and see that this is done at an early date. If the Honourable the Minister for Labour takes it into his head, he can do it and the production could be increased to many more times its present output. He can make the country above want if he has a mind to do so. There is no use of this profit-sharing or any other sharing. You must make the worker feel that it is Ms own factory. If you bring about that consciousness. he will put his heart and soul into the task. By simply saying that you will get 50 per cent. of the profit and this and that, you cannot increase production.

Mr. President : I am sure you are making a good suggestion which will receive due consideration. But, these suggestions are out of place so far as this article is concerned.Shri S. Nagappa: Certainly I think this is the best way in which we can bring the condition of these people to the level of the other people economically.

My amendment it that this reservation should last for ten years, provided the Government takes this actually into its head and sees that these people are brought to the level of the advanced class". I am not simply agitating, I want to give constructive suggestions and in order to give suggestions I have to express these things elaborately. You must have a definite scheme, You must at least take up 100 young men from this community and send them to foreign countries to make them experts technically, as was done under the Bevin Boys' Scheme or any other scheme. You must send there to foreign countries, and make them technical experts. There must be a definite quota or a definite scheme for each year. There is no use of saying that everything will be done and leaving it in the air that we will do this and that. You must start with a definite scheme. I come to understand that there is a Scholarship Board; but to my surprise, the amount that is set apart at its disposal is very limited, when the applications that

have come for scholarship are taken into consideration. About 60 or 70 per cent. of the applications have had to be rejected because there are not enough funds at their disposal. I would request the Government to see that every application that is sent to this Scholarship Board is granted and every student that seeks Government help is given help and that too in time, and he should be allowed to make the best use of the good-will of the Government to his best ability.

When these people are equipped with all the qualifications necessary, it is again a problem for them to get themselves absorbed in responsible positions, because there are so many hurdles for them to cross. The Services Commission is one of the bottlenecks for these people. In order to see that the interests of these people are safeguarded, in every Provincial Service Commission there should be at least one member belonging to these people. In the Central Commission also, there should be one. Only then, will these people advance further.

Another most important thing is that these people are well-fitted for any military job. They have enough stamina; they can withstand any amount of physical strain. These people must be recruited in large numbers to the Military not merely as sepoys alone, but to responsible posts also. At the end of five years, you should appoint a commission to go round the country and take into consideration what advance these people have made during the last five years, and whether the advance is commensurate with the scheme that we have on hand and if the advance has not been sufficient, what suggestions could be made to go further.

Another most important thing is this. In the Constitution we have provided that equal opportunity should be given to all irrespective of caste, creed and colour, religion or race. Well, it sounds well, so far as we read it. But, we must see that it is translated into action. While making appointments to responsible jobs like Governors, Ambassadors, High Commissioners, Trade Commissioners and other Eke cases, you must take into consideration the claims of these people. We are an independent country for the last two years, I am surprised to find not a single Governor, not a single ambassador from these people.

Sardar Hukam singh (East Punjab: Sikh): On a point of Order, Sir. Why should colour be emphasised now? Because all Indians are of one colour.

Shri S. Nagappa : So far as my honourable Friends from the North are concerned, they may have a uniform colour, but for us South Indians, who are nearer the Equator we have a different colour. Whether we are black or brown, we have an Indian colour. We are Indians irrespective Of Our Colour. You have been good. enough to enact that we should give equal opportunity -for one and all. It must be acted up to in the same spirit. Can you give one example of a Scheduled Caste man being a Governor in this country ? You .arc adding insult to injury. What opportunity you have provided for these ,people? Can you say, out of those whom you have selected either as Cabinet Ministers or other officers, have they failed ? They have been doing work .more than others. Why do you brand them as inefficient ? Somehow or other you want to by-pass our claim. Do not utter it hereafter. The most important means by which you can bring in the rural population to an economic level at the earliest opportunity is by providing them facilities in order to encourage themselves commercially, provide them lands and give them licenses for controlled commodities and send them to countries which have advanced commercially.

Another thing is you are abolishing the zamindari system all over the country. It is a good sign of advancement but what is going to happen ? It the Zamindars am sent out, the chota Zamindars are created i.e., those who are supposed to be the agriculturists. They do not till them land and it is the mazdoor who tills the land. You make them owners of the lands, give lands to these people or let it be given to co-operative societies and give them Government loans and

modem machinery to cultivate the lands........

Shri L. Krishnaswami Bharathi (Madras : General) : It is relevant ?

Shri S. Nagapppa : It is relevant for the elevation of Harijans. So I would request the Government to bear in mind that we have agreed to the reservation..........

An honorable Member: There is no Government.

Shri S. Nagappa : I am suggesting to the future Government as to how 'it should conduct its affairs. We are enacting a Constitution for our future 'Government. These are the implications that are implied in it. So I would request that the honourable Members would be good enough to accept my amendment. You must realise that greater responsibility is now laying on your shoulders. You have to bring us to that level by which we will be able to say that we do not want reservations. We cannot go on begging for a favour. As it is, we are making the Government to commit itself for the future advancement of this country and of this community. I would request the honourable Members to support this amendment. I would particularly request Dr. Ambedkar who belongs to the same community to accept this. Sir, I ,thank you very much.

(Amendment No. 98 was not moved.)

Shri V. I. Muniswamy Pillay (Madras: General): Mr. President, I beg to move:

"That in amendment No. 38 of List I (Fifth Week) of Amendments to Amendments. in the proposed new article 295-A after the words 'ten years' the words or longer period if the Parliament so decides at a later date' be inserted."

My Friend, Mr. Nagappa moving his amendment has explained to the House the difficulties under which the, Scheduled Castes are labouring today. Now, my view or rather my request to this House is that the, period of ten years that has been accepted on the report of the Advisory Committee is a premature one. It is clearly seen in article 299 that the Drafting Committee has brought an article whereby it clearly says that

"It shall be the duty of the Special Officer for the Union to investigate all matters relating to the safeguards provided for minorities under this Constitution in connection with the affairs of the Union and to report to the President upon the working of Ox safeguards .at such intervals as the President may direct, and the President shall cause au such reports to be laid before Parliament."

Under this clause I feel that this House will do well to prolong the period of ten years until the Special Officers have investigated into the matters. connected with the minorities and a report is made to the President. The President according to this article has to place this matter before Parliament It is this that I wish, that after a period of ten years the Special Officers, report can go before the President who in turn can place it before Parliament. The Parliament can review the whole thing and see whether the Scheduled Castes have advanced so well that the reservation ought to be taken away. I think by this House accepting ten :years will be putting the cart before the horse. We do not know what will be the position of the Scheduled Castes after this period of ten years. If there is real advancement among them, if they have progressed in all ways, then we need not have anything further, this reservation can go at the end of that period- But if their position is the same as it is now, or if it is worse, if they have made less progress than we expect, then it is highly necessary that this period should be prolonged.

Sir, I have got several other reasons also why it is necessary that this period should be extended. We may remember that in the year 1947, 'when the ,report of the Advisory Committee came up for discussion in this House and for its decisions, several recommendations were made But I do not think either the Government of India at the Centre, or the Provincial Governments have taken the clue from the discussions that took place here on these recommendations and they have not done much by way of amelioration 'of the condition of the Scheduled Castes. Even in the Constituent Assembly (Legislative) a resolution was adopted and all Members who were sympathetic towards the Scheduled Castes took part in the discussion of that resolution and then an assurance was given that everything will be done for the welfare of' the Scheduled Castes. May I know what steps have been taken ? I know, as a matter of fact, that only in the U.P. and in' Madras in a less degree, they have taken steps to do something for the amelioration of the Scheduled Castes. In Madras they, have set up a committee and after two years' labour, and after debating the subject in the Legislature, very lately, the Government 'has come to the rescue and they have started a department called the Harijan Uplift Department and only this year this Department started functioning, with a small amount-to start with.

What I would request is that if the Government or this House is definitely to have only this period of ten years for reservation, then they must have a dynamic plan for the uplift of the Harijans, and in this connection, I hope it will not be too much, if I suggest to the Government of India that they must have a separate Minister and a separate portfolio for Harijan Uplift, as has been done in the Province of Madras. I Unless this is done, and unless the Government takes a keen interest and shows to the Harijans that their position will definitely be improved during the course of the next ten years, it is no use .accepting this period of ten years now. In this House it has been possible to review the whole position and also to change things that have been adopted previously. Therefore, it will not be wrong if this House, after hearing us, decides that this period of ten years may be prolonged, as required in my amendment. With these few remarks I support the motion of the Honourable Dr. Ambedkar.

Mr. President: Dr. Monomohon Das.

Mr. Naziruddin Ahmad(West Bengal: Muslim): There is one amendment, No. 105.

Mr. President :Yes, but we are still on No. 100. We shall come to 105 after that.

Dr. Monomohon Das (West Bengal: General) : Aft. President, Sir, I move

"That in amendment No. 38 of List I (Fifth Week) of Amendments to Amendments, at the end of the proposed new article 295-A the following be added :-

'unless Parliament by law otherwise provides'."

If My amendment is accepted, then the new article proposed will read as follows:--

"Notwithstanding anything contained in the foregoing provisions of this part, the provisions of this Constitution relating to the reservation of seats for the Scheduled Castes and the scheduled tribes either in the House of the People or in the Legislative Assembly of a State shall cease to have effect on the expiration of a period of ten years from the commencement of this Constitution, unless Parliament by law otherwise provides."

The proposed new article of Dr. Ambedkar declares that the safeguards which have been granted to the Scheduled Castes and the scheduled tribes will come to an end at the expiration of ten years. But my amendment,proposes that these safeguards will come to an end at the end of ten years, but if the Parliament, after consideration of the situation then of the Scheduled Castes, and the scheduled tribes, thinks that these provisions for reservation of seats should be continued, for some further period, then these reservations of seats, these political concessions granted to the Scheduled Castes and the scheduled tribes will continue and not come to an end.

It is not very pleasant for a man to stand before his colleagues and friends and beg for concessions for himself or his community, especially when one knows that the majority in. the House is not favourably disposed towards the grant of such concessions, especially when he knows that his pleadings and entreaties for a down-trodden community are sure to meet with unkind, unfriendly and unsympathetic criticisms. But in spite of all this, when I take into consideration the great magnitude and importance of this article, when I take into consideration the great bearing that this article will have upon the future political life of millions of the scheduled caste people and the scheduled tribes, I am inclined to think that I shall be greatly failing in my duty to these people whom I claim to represent here, if I do not place before you their grievances.

Sir, the problem of the scheduled caste and the scheduled tribes is not a new one. The British rulers, in the latter part of their regime, recognised this problem and made some provisions for it. It is true that they made those provisions not out of genuine love for the scheduled castes and the scheduled tribes, not for the welfare of those classes, but they did it for the benefits that they themselves hoped to acquire from them. The Indian National Congress became conscious of the problem at the instance of Mahatma Gandhi. Mahatmaji found that millions of people in this country were groaning under inhuman oppression for thousands of years. The distinction between man and man, the distinction between one class and another did not escape the notice of Mahatma Gandhi. This diabolical contrivance to enslave humanity did not escape the discerning eye of Mahatmaji and he declared to the people of India that emancipation of the country from a foreign yoke will be nothing but a mockery to the millions of down-trodden Scheduled Castes and Scheduled Tribes of this land, if we fail to tear away, if we fail to break down this diabolical contrivance for enslaving humanity.

Sir, so long as Mahatmaji was living, we the people of this land, we the oppressed and down-trodden people of this land found in him a court of appeal; not only we, but everyone who has aggrieved or oppressed or down-trodden, found in him a court of appeal. Whenever we thought that some injustice had been done to us, we know that if we could approach him, we would get not only justice but more than justice.. We knew that if we could convince him of the righteousness of our case, when we would get not only our due, but more than our due.

Sir, that court of appeal is no longer amongst us, and to our great misfortune, today we find that after his departure, the attitude in this country towards the Scheduled Castes and the Scheduled Tribes is gradually becoming definitely stiffened. So long as he was here amidst us, we the scheduled caste and the scheduled tribes were treated with some sympathy, and with a touch of feeling, but now after his demise, we find that we are treated as rivals, political opponents, as co-sharers, as co-partners.

The Advisory Committee on Minorities in their report dated the 8th August, 1947, clearly stated that there will be reservation of seats for the scheduled castes and the scheduled tribes for a period of ten years. At the end of ten years this position was to be reconsidered. This formula was accepted by the Constituent Assembly during its session on August 1947. But in their subsequent meeting on 11th May 1949 the Advisory Committee on Minorities abolished reservation of all other minorities except the Scheduled Castes and the scheduled tribes. The reservation of seats for Scheduled Caste and scheduled tribes was retained for ten years as originally decided, but nothing was said about the reconsideration of the problem at the end of ten years. I beg to lay emphasis upon these words that nothing was said about the reconsideration of the question at the end of ten years. This silence on the part of the Advisory Committee on Minorities about the question of reconsideration of this problem has been construed to mean that the Advisory Committee is against reconsideration at the end of ten years. In their report the Minorities Committee say that they have given this political concession to the scheduled castes and the scheduled tribes because 'the standards of education and material well-being of the Scheduled Castes, even on Indian standards, are extremely low and moreover they(the scheduled castes) suffer from previous social disabilities'. Therefore it is evident from the Report of the Minorities Committee that it is on account of the extremely low educational and economic conditions of the scheduled castes and the grievous social disabilities from which they suffer that the political safeguard of reservation of seats had been granted to them.

Now, I ask the honourable Members of this House, do they believe that in the next ten years the economic and educational conditions of the scheduled castes and the scheduled tribes are going to be improved to such an extent that there will be no necessity of these political safeguards for those communities ? I ask my honourable friends do they really believe that the grievous social disabilities under which these classes of people have been suffering for thousands of years will be removed in the coming ten years ? I ask the honourable Members of this House are they prepared to give us a guarantee to that effect.

A very pertinent question has been raised by our esteemed Friend Mr. Brajeshwar Prasad in yesterday's meeting. My Friend Mr. Brajeshwar Prasad shed much tears I could say over the pitiable conditions of the scheduled castes and the scheduled tribes. But he failed to see what part this reservation of seats would play towards the amelioration of the conditions of these classes. He thought that it will lead to the exploitation of these classes and it will give rise to fissiparous tendencies among them. If any "exploitation" he means economic exploitation, then I can not understand how a few seats in the Central Legislature or in the Provincial Legislature will lead to the exploitation of the Scheduled Castes and the scheduled tribes. If he mean by "exploitation" political exploitation, then I must remind him that a leader who has more capacity to appeal to our sentiments and reasoning is more able to exploit us. It is a matter of common knowledge with the Members of this House as to how many times we have been compelled to revise our decisions by the convincing and eloquent reasonings of Dr. Ambedkar or our Prime Minister. So, if by " exploitation" he means that the political leaders will bring these scheduled castes and scheduled tribes under their own influence, I will say to him that this is the case everywhere.

About the fissiparous tendencies, everyone of us knows that a hundred illiterate people come to a common conclusions more easily than a hundred educated, cultured men. It is common knowledge that in the present times, in a family consisting of father, mother and two sons we wee the father is a Congressman, the mother is a Hindu Mahasabhite, the older son is a Socialist and the younger son is a Communist. So, fissiparous tendencies are found more among the educated and cultured classes than among these classes.

I next come to the question, what part does reservation of seats play towards the amelioration of our grievances ? In the golden days of yore when civilisation was not so advanced as it is now, physical strength was the only potent weapon for protection of life and property and protection from tyranny and oppression. With the advancement of civilization and with the advancement of modern scientific instruments and weapons we find that physical prowess is of no avail towards these ends. It is political strength, it is political power, it is the part in the administration of the country, it is the influence you wield, it is the voice you have got in the administration of your State-it is these things that will give you protection of your life and property and protection from tyranny and oppression. Therefore, I think the view expressed by my friend Mr. Brajeshwar Prasad is diametrically opposed to truth.

I appeal to the honourable Members of this House, why do you grudge a few seats in the Central or in the Provincial Legislature to the Scheduled Castes and the Scheduled tribes ? In this House containing more than three hundred members there may be at the maximum thirty to forty members belonging to the scheduled castes and the scheduled tribes. What have they done to you- what disadvantage have they created for you? They simply come here and watch the proceedings of the House, practically taking no part in its proceedings except when their own interests are going to be trampled down by the decisions of this House. I appeal to you to take these Members into your confidence. Then you will see that they will strengthen your hands and not weaken them. I appeal to you to treat them as your younger brothers and you will find that they are with you and not against you.

My amendment proposes to reconsider the situation at the expiration of ten years. If at the end of ten years, it is found that the conditions of the Scheduled Castes and the Scheduled Tribes have changed to such an extent that no safeguard is necessary, then the Parliament will do away with it. I fail to understand why there is this hurry, why there is this indecent haste to close all doors of reconsideration of the problem at the end of ten years. Let the future take its own course. After all, what is there to be afraid of for the majority community? If you are in thumping majority today in the Indian Parliament you will be so tomorrow, the day after tomorrow and for all times to come. Whatever may be the form of Government whatever political parties may come to power, the majority will always remain a majority and it will have the minority under its fee, at its mercy. So, what is there to be a raid of the scheduled castes ?

In the Report of the Advisory Committee it has been said that "The Committee was always anxious that the representatives of the minorities should have adequate time to reflect fully so that a change, if effected, would be sought voluntarily by the minorities themselves and not to be imposed upon by the majority community". If that be the case, if that be the attitude of the Advisory Committee on minorities, why then should this provision of consideration be deleted without the consent of the representatives of the Scheduled Castes and the scheduled tribes ? I am sanguine that there is not a single Member from the Scheduled castes or the scheduled tribes in this House who can give the consent to such a proposal of deleting this stipulation that there will be consideration of their question at the end of ten years.

I feel, Sir, that justice has not been done in this case and the will of the majority is going to be imposed by force upon-us-the minority-against our will. Therefore, I appeal to the honourable Members of this House that my amendment which proposes to reopen the whole question at the expiration of ten years, and which is in no way against the decision of the Advisory Committee, may be accepted by this House.

Mr. President: No. 105, Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: Mr. President, Sir, I beg to move:

" That in amendment No. 38 of List I (Fifth Week) of Amendment to Amendment, at the end of the proposed new article 295-A, the following be added :-
'and a general election shall be held thereafter".

It seems to me that there is an ambiguity in the article. The article says that the reservations of seats for the scheduled castes and scheduled tribes in the House of the People at the Centre and in the Lower Houses in the States shall cease to have effect at the expiration of a period of ten years from the commencement of this Constitution. I think there is some amount of lurking ambiguity in the expression though the idea is quite clear. I submit a question which should be considered. At the next election I believe........

Shri T. T. Krishnamachari (Madras:General): Mr. President, if it will help to shorten my friend's remarks, may I mention that the Drafting Committee has an amendment to fit into the contingency that he envisages?

Mr. Naziruddin Ahmad: Where is that amendment ?

Mr. President: I was just going to point out amendment No.114 which covers the point which the honourable Member has raised.

Mr. Naziruddin Ahmad: The idea must have been misappropriated or stolen from my amendment. I am very grateful for it- it is a great compliment paid to me.

The point is that the expiration of ten years from the commencement of the Constitution and the expiration of the House of the People or of the States Assemblies may not coincide. It may be that for various reasons the second election is held in the ninth year of the passing of the Constitution. Then there would remain only one year for the completion of ten years but there would be an unexpired period of four years for the Legislature to expire. What is ambiguous is that on the expiration of ten years the duration of the Assemblies might not have expired. The question would be whether on the expiration of ten years the elected Legislature would cease to function entirely and there would be a fresh election or whether there would be no more election but the body elected will continue for the unexpired period of its normal life. It is to clear up that ambiguity that I have tabled the amendment. I am glad however that the error has been noticed. The difficulty of the Drafting Committee is that though in the usual number of cases they are prepared to accept good ideas, sometimes they do not like to admit their mistakes, it is on this account that many good amendments have not been accepted. :But we shall look up to the Third Reading which, I hope, would be another elaborate Second Reading on account of the many errors we have passed over.

Pandit Thakur Das Bhargava (East Punjab:General): Sir, I beg to move:

"That in amendment No.38 of List I (Fifth Week) of Amendments to Amendments, in the proposed new article 295 A, after the word 'Constitution ' the brackets and letter(a) be inserted and after the word 'State' the following be inserted:-

(b) relating to the representation of the Anglo-Indian Community either in the House of the People or in the Legislative Assemblies of the States through nomination".

In regard to this amendment, I would beg the House to consider that the present proposal contained in article 295-A only refers to the reservation for scheduled castes and the scheduled tribes. It does not refer to articles 293 or 295. When 293 and 295 were adopted and a decision was reached among the various members of the Minorities Committee, this nomination was given to the Anglo-Indian Community in place of reservation. The first proposal was that the Anglo-Indian Community will be given reservation like the Scheduled Castes and the scheduled tribes but as that involved weightage, ultimately it took the shape of nomination. It was absolutely clear from the very beginning that the Anglo-Indian community will get this reservation through nomination only for ten years. It was never agreed that they will get it for all time, and when we did not move our amendments to articles 293 and 295 it was under the belief that as a matter of fact this community also will get this reservation through nomination for ten years. Therefore, if only the agreement is to be implemented, then even ten years should be the time fixed for this nomination. If there is no such agreement, then I would place other reasons before the House. I was also a member of the Minorities Committee and I remember that when the decision was arrived as it was made absolutely clear that this will be only for ten years. I have consulted some of the prominent members who took part in arriving at this decision and I am reliably informed that this was the intention when the agreement took place. Because we did not want to disturb the agreement among our leaders we refrained from moving amendments, it is therefore only fair that this reservation is given to the Anglo-Indian community, even on other grounds except agreement, these provisions for nomination should not inure for a period longer than ten years.

The Anglo-Indian community is one of those most advanced communities in India which can hold its own against other communities. I know that their number is small, but there are many other communities who have got smaller numbers. I am glad that our leaders considered the claims of this community and dealt with them in a generous way as admitted by Mr. Anthony himself. But all the same, I believe that in regard to the House of the People this is the only community which gets a seat through nomination. There is no other provision for any community through nomination and we do not want that our Constitution should be disfigured by a provision of this nature. The Anglo-Indian community has been to a great extent protected by the provisions of articles 297 and 298. In regard to those provisions also, instead of ten years they are getting twelve and more. I do not grudge any sort of provision for any community on fair and reasonable grounds; but all the same when the other communities come forward. When the scheduled castes and scheduled tribes come forward for our consideration their claims are based on an entirely different footing; if they want much more representations, I can understand their position and we should not grudge to give them what they want. But so far as an advanced community is concerned, there is absolutely no reason why this community should be favoured so unduly that these provisions may inure for all time. You may say that this is only a discretionary provision, but when a discretion is given in particular circumstances, it becomes an obligation and a duty.

I, therefore, submit that there is no reason why we should agree to accept these provisions for a longer period than ten years, and I have no doubt in the matter that if the Anglo-Indian community behaves well-and I know from my own experience they will do so-we know our Friend Mr. Anthony, he is a persona grata with most Members of the House-and there is no reason why he should not succeed in the General Elections if he stands after ten years. The whole complexion of India shall have changed by that time. Otherwise, I do not see why there is no great force in the amendments which have been moved by Members of the Scheduled Castes and scheduled tribes. After ten years we shall have a society in which the present distinctions shall cease or shall not have the same force as there is today. If we do not expect that, if we proceed on the basis that they will remain, then my humble submission is that there is no reason why we should not have to extend the period of ten years in the case of other communities also.

I am rather astonished at the amendments moved by some of my friends belonging to scheduled castes. On the day when the Minority Report was discussed in the House, I moved an amendment then that these reservations and nominations should be for ten years and the amendment was accepted. Along with that, there was an amendment by Mr. Nagappa himself and in those very terms. Now he comes forward and brings another proposition. I do not think he has the right to do so. He is stopped from doing so, as he himself and other Members agreed that this reservation will continue for ten years. As I submitted yesterday-I do not want to repeat the same arguments today-this reservation derogates from the enjoyment of the full electoral rights of the people in general. It is harmful to the general community and to the scheduled castes also.

Therefore, my humble submission is when we agree to deprive ourselves of the exercise of full electoral rights, it is just to place to our friends and at the same time to do them the justice which they fully deserve. We ourselves are guilty of having brought them to this level. It is upto us to see that they are not left in the lunch and they advance with the other communities. While this period of ten years is a challenge to the depressed classes to come upto the level of the other people, it casts an obligation upon the whole country and upon all the communities living in India, because now not only Hindus but the Muslims and the Sikhs and all other communities are on the general list. Now it becomes our solemn duty that we should see that within these ten years, we behave in such a manner that these people of the Scheduled Castes and the scheduled tribes come up to our standard. What is the use of articles 301, 296, 299 and 10 if the community does not rise to the height to which it is expected to rise? It will be our duty in future to see that our Central Government and the Governments of the provinces do their duty by our brethren-the Members of the Scheduled Castes and the scheduled tribes.

Mr. Nagappa indicated some of the ways in which it should be done. This is not the occasion and I shall not take up the time of the House in giving some of those ways in which we should behave, but all the same I must say that apart from the Governments, it is the duty of everyone of us who have given our pledges and who support and swear by this Constitution to see that within the coming ten years, we bring all these classes up to our standard. If we do not do that, if we do not do our duty, I do not know with that face we can deny these very rights to them for another ten years, and that would be a most serious thing, because it would deprive all of us including the scheduled castes of the elementary rights of the exercise of full electoral rights. Therefore, I would submit that from today we should resolve after passing this, that when we make it ten years we mean to make if ten years, but at the same time our duty becomes all the greater and therefore we should begin from today to discharge our duty in the right fashion. This duty will not be discharged by passing a resolution here or passing a resolution there. Unless the economic position is bettered, unless we are willing to make them feel like human begins, which they do not do today, our duty will not have been performed.

I would in this connection, submit that all these governments should pass a law in which they may be given full rights of ownership in their houses in the villages where they are not enjoying them today. Like all others fundamental rights are open to them, but I know in many villages these Scheduled Castes are not enjoying fundamental rights. Therefore we should see that they enjoy fundamental rights. Similarly, I would submit that in 301 the Commission should be forthwith appointed as soon as the Constitution comes into force and when the Commission makes its report, we should see that the Report is implemented. Therefore, my humble submission to the House is that when we pass this clause it becomes our duty to see that this particular clause is backed up by the force of all our resolves and determination to do our duty by our Scheduled Castes and Scheduled Tribes brethren.

Shri T. T. Krishnamachari: Mr. President, Sir I move:

"That in amendment No. 38 (List I) to the proposed article 285A the following proviso be added:-

'Provided that nothing in this article shall affect the representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the then existing House or Assembly as the case may be".

Sir, this amendment is self-explanatory and in moving it, I would like to say at once that the Drafting Committee does not claim any originality or copyright for it. If the incentive for this amendment has been the amendment moved by Mr. Naziruddin Ahmad, we are prepared to give him full credit, but anyway it was felt by the Drafting Committee that there was a lacuna similar to the one pointed out by Mr. Naziruddin Ahmad, as if it happens that a period of ten years falls at a time when the House has just begun its life or it is halfway through its life or in any stages of its life, the representation in that House-the membership of that House-should not be affected by the wording of article 295 a moved by Dr. Ambedkar. The House will undoubtedly understand that .this fits into the scheme in a better way than the amendment of Mr. Naziruddin Ahmad.

I would like to add one words in regard to the remarks made by Pandit Thakur Das Bhargava. He has attempted to be logical. I felt, as he was speaking, that he was trying to direct a heavy machine-gun against a small mosquito. This provision of two nominated seats in the House of the People, if the President thinks it necessary to so nominate and a few seats in the Lower House of a State if the Governor so thinks fit, is merely a permissive provision. It is not an obligatory or mandatory provision. If the Anglo-Indian community is not given these seats by nomination they could not go to a court of law on eh ground that the Constitution has provided for nominations, and that has been ignored by the authorities. Full discretion to nominate or not is given to the President or to the Governor of the State concerned. Why therefore, bring in all these arguments and all this logic against a purely permissive provision?

So far as the Anglo-Indians are concerned, it is doubtless true that they are not large in numbers. It is also true, as pointed out by Pandit Thakur Das Bhargava, that special provision has been made in articles 297 and 298 in regard to the services and in regard to the educational facilities of this community respectively. That being so, he asks why any provision should be made for the continuance of this political privilege. I would ask him not to exercise his mind on a small matter of this kind which is purely left to the discretion of the executive of the day both in the Center and in the Provinces. I would also ask him to take note of one idea that, while the Scheduled Castes are members of the Hindu Community and are part and parcel of ourselves, and only the economic level of their existence deters them from assuming a position of equality with the others-the Anglo Indians happen to be a distinct community. Because of the fact that we are supposed, in the years to come, to go farther and farther from the European civilisation to which we were subjected in the years of our slavery. The difference in the way of life of the Anglo-Indian community and in the way of life of the other communities of our country will be more and more glaring hereafter and the possibility of assimilation of the Anglo Indian community in the body-politic will be difficult. It all depends on whether our standards of living approximate to the ideas obtaining in the West or whether we propose to go back on the level we have attained. All these are problems in regard to which we do not know which way they will ultimately take. It would be cruel to ask these people to completely merge themselves in the body-politic of our country, if the future standards of life are if even anything less than our present standards.

This concession, which has been generously made by the Minorities Committee on page 35 of the Appendix to their Report, says:

> "In regard to the Anglo-Indians there should be no reservation of seats. But the President of the Union and the Governors of the Provinces shall have power to nominate representatives to the Centre and the Provinces respectively if they fail to secure adequate representation in the Legislature as a result of the general election".

Actually it will happen that if Mr. Anthony gets returned to the Central Legislature no other person will have perhaps any chance. The President has no chance for exercising his discretion so far as nomination is concerned and has to be guided by the views of the ministry. Similarly in the provinces, it is purely a permissive thing to fill a lacuna or a contingency in which the majority community might completely neglect the Anglo-Indian community. I think this concession need to be restricted for a period of ten years. It is not an obligatory provision, similar to the reservation provided for other communities.

I, therefore, suggest that my honourable Friend Pandit Thakur Das Bhargava will not press his amendment. This is a very small matter. There is nothing wrong in allowing the Anglo-Indian community of India this very doubtful privilege which is conferred ex gratia by the executive of the day for a period longer than ten years if it be necessary. I hope he will not press his amendment.

Shri Chandrika Ram (Bihar: General): Mr. President, Sir, I am here to support the article as moved by Dr. Ambedkar as subsequently amended by Shri T. T. krishnamachari. The only consideration for the Members of the Scheduled Castes in this House and outside is that this period of ten years is very small. This is a fact that within this short period the Scheduled Castes may not come upto the standard of other communities . This is based upon the fact that the provincial governments as well as the Central Government are not doing things as they should. We know from personal experience over the last twelve to fifteen yeas that when for the first time Congress Ministries came to power nothing practical or appreciable was done for the amelioration of the depressed classes which are backward economically, socially and educationally. This is a question of faith. We do not want even ten years. If they like, the Central and provincial governments can do a lot for these people within the next five years. But the question of good faith is not there. That is the fear of the Scheduled caste Members who have moved so many amendments for the extension of the period from ten to fifteen years and move.

We know so much about the work done by the Father of our nation, Mahatma Gandhi and we are all followers of that great man. But when we look to the actual working in the provinces and in the Centre we find nothing done. It is all very good to say that there must be a separate portfolio for the backward classes and that there must be a Minister and Parliamentary Secretary from the backward classes. My feeling is that if you appoint some Ministers and create some posts and give some portfolios to Scheduled Castes and tribes you can improve the condition of those people. I know the working of the last Ministries in the provinces. In the province of Bombay there were no Ministers or parliamentary secretaries from the Scheduled Castes, but the welfare work done there was far more and better than that done in any other provinces in the country. So that without having special Parliamentary Secretaries or Ministers or special officers a good deal can be done for the scheduled Castes. We know that the Centre has two very important Ministers like Dr. Ambedkar and Mr. Jagjivan Ram. But we know, too, that in the Scheduled Castes Board there are 3,000 applicants, but only 625 scholarships. What is the use of having Ministers and Parliamentary Secretaries if you do not have money? The whole question is that you must have money. If the provincial Ministers and the Central Ministers who are all followers of Mahatma Gandhi have sufficient funds at their disposal, without creating any posts or portfolios, they can do the work for the Scheduled Castes very well and raise them to the general level of society.

Therefore it is a question of faith, a question of confidence and a question of goodwill. I would like to say that if this work is not done during this period it may be that the scheduled classes will go against the Hindu society and against the general community. Therefore there may not be any general improvement which we envisage within ten years. I do not care much for the period, I care much for the work. I know that even in the last 25 to 30 years Mahatmaji and their people who have been working for this clause in this country, could not make much progress regarding removal of untouchability. You know in the rural areas, it is as and today as it was before and I know among the educated classes in towns and the people with English education, there has been a change and it is this fact that has given us encouragement. And we know that the provincial governments are passing some enactments to remove this disability. It is a good thing for us, for the country and for this August Assembly that we have passed article 11 to remove untouchability for ever. But only passing a legislation for the purpose, or appointing ministers and allocating some portfolio will not do. If the whole amount of work has to be done, it is to be done by having funds at our disposed and my appeal to both Central and Provincial Governments is to allot enough funds, so that educationally they may be raised and economically their condition may be bettered.

Regarding their social disability we know that in social matters, we should not hurry. In social matters it is all a matter of change of heart. I know that persons who are prepared to hang themselves for the cause of the country, they are not ready to remove this untouchability from their houses or from the members of their family, because it is a social custom, it is a social manner from time immemorial; it has come into the blood of these caste-Hindus and the Hindu society as a whole because these have been written in many books of Shastras, Vedas, and all that.

Therefore regarding social matters we have to wait and both sides have to wait. There can not be a social revolution at once because India is a vast country and vast numbers of people are living here having different ideas and different faiths. We know there are those faiths where this untouchability is a crime, like Sikhism, Buddhism, and among the Muslims as well. Therefore, in a social matter we have to wait; we have to work and we have to go on slowly. Regarding their economic condition we have to do a little more. As yet, they have not done anything. As a matter of fact there is no programme before us as to what should be done first. Even in doing things we must have priority. For the Harijans we have no plan and no programme and no actual policy to work. Therefore my suggestion was this that the Government of India should appoint a Commission or a Committee at once and that Commission or Committee should go into the entire matter of the social, educational and economic field of the harijans and should suggest ways and means and make recommendations so that the Governments in the Provinces or at the Centre just after the election start work on definite in the Provinces or at the Centre just after the election start work on definite lines as suggested by the Commission in their report. That was my suggestion. The question of period is not very important to me.

As I said before, the question of funds at the disposal of the Government and the question of faith and goodwill and good wishes are very important. Otherwise, we the Members representing the Scheduled Caste Community, we do want that even this concession for ten years should go if our conditions are improved very much within this period. We shall be glad to remove this caste and communities, scheduled castes, harijans, achuths and all that if our social conditions are bettered within this period. We have faith in our leaders, we have faith in the future and even if our condition is not bettered during this period, we have hope and faith that after ten years the members of our community, the members of the Assembly and Council, the members of the Government, the Provinces and Centre will look to this matter and examine these questions and if another period is required they will give. Therefore, we are not vary anxious about having the period but we are anxious to have the funds at our disposal and we are anxious to have the good will of the people belonging to the minority community belonging to the Caste Hindus society.

Shri Jagat Narain Lal (Bihar : General): Mr. President, the principle of reservation generally is one which has done much harm to our country. I do not wish to dilate on it and if we have accepted this principle of reservation in the case of the Scheduled Castes and the aboriginals, it is because there is a very strong case for them. If there is any case, the case is for these two classes of people in our country. The proposal that the period should terminate after ten years and there should be no reservation after that is certainly a desirable one. But at the same time, I wish to add my own humble voice to that of the previous speaker, and I wholeheartedly share the sentiments which he has expressed in this House. If we really want to raise the Scheduled Castes to that level in which the other communities in this country find themselves, we have to be very earnest about the matter. If the Provincial Governments or for the matter of that, the Central Government feel satisfied that they have set apart a certain sum, that they have appointed certain officers and that they have thereby discharged their duty and obligation, it would not be proper. We have seen speaker who share our national feeling, who are equally patriotic, but who feel for their brethren and for the troubles and sufferings to which they are being put in the interior particularly. I, therefore, suggest that the Central Government and the Provincial Governments, if they are really serious that this period of ten years should not be extended and that within ten years we should sincerely and honestly discharge our obligations to these two classes of our countrymen who have remained very much backward so long, I we should be really very earnest about the matter and I would suggest that the Government should whip up the Provincial Governments and if possible at the end of every year or every two years watch how much progress has been made in the matter. If, Sir, within these ten years by the combined efforts of the Governments, of the upper classes and of the Scheduled Castes, we have not been able to raise them up to the level to which we would like all communities of this country all classes of people of this country to be raised we cannot have any case for terminating that period of reservation. And therefore, while on the one hand, I support this proposal that during this period of ten years alone seats should be reserved and that no reservation should continue in this country after that, I very strongly support the plea made out by the previous speaker, Mr. Chandrika Ram and certain other speakers that every possible effort should be made both by Government by the people, by various organisation in this country to see that the Scheduled Castes and the abroginal tribes also are raised to that level to, which we find all other communities in this country raised so far.

So far as the Anglo-Indian community is concerned, I feel, as Pandit Thakur Das Bhargava feels, that it is a most enlightened community, a most advanced community in this country. If there is to be any reservation for them, it is because they are in a minority. On that ground, we can find so many other communities in this country which are in a very great minority. No community, however, small in this country, should ever think of claiming representation or having representation in the legislatures or anywhere on the ground of being in a minority.

Service and capacity alone should be the passport. I feel that if there are really members among the Anglo-Indian community advanced at they are, who are equally imbued with the spirit of service to this country, and to the people, they will continue to have representation and this country will not deny that representation to them. I would like them to depend upon their service and capacity and ability more than on any reservation being continued in the Constitution giving them representation in the legislature and here and there. These are the few words that I want to submit on this article.

Shri Upendranath Barman (West Bengal:General): Mr. President, Sir, Three Scheduled Caste MCAs in this House have moved separate amendments. From those amendments it is quite clear to the House that even at this stage, the Scheduled Castes are very much apprehensive of their future even after the 10th years of the coming into force of this Constitution. I do not like to comment either way on their proposal but I simply submit to this August House that this is a genuine apprehension in the mind of the Scheduled Castes,. and therefore I appeal to the House to take stock of the whole position.

I myself have got different views in the matter. I know very well that if there is no real sympathy, if it be only lip sympathy not only ten yeas but twenty years will be of no avail. So long as the advanced community in this country, simply realise that they have done some wrong to their brethren, and that it is now their duty to give some help, I think we shall not get what we really want and what the country really needs. I should appeal to them to think entirely in a different light. Who are the Scheduled Castes and Scheduled Tribes? Do not constitute 85 or 90 per cent of India's population? Many of my friends have times without number expressed concern for the rural people. To my mind, the term rural people is synonymous with the sum total of the Scheduled Castes and scheduled tribes and the backward classes. You are leaving behind 85 or 90 per cent of the total population in a backward condition. Unless you level up this 85 per cent of the population, is it possible for India to advance a step further, that is expected of free India now? I think not. This is not my personal view. I can cite one of the greatest men of India, our late revered poet, Rabindranath Tagore. In an exasperated mood, he cried aloud in his poem " My unfortunate country", in fact the who theme of that poem is this, that unless and until you level up this 90 per cent of your population, you can never rise up,. because what he says is, those you have left behind they are dragging you down. If you understand from that angle of vision that unless you level up the 80 or 90, or whatever that may be, per cent, of the population, you can not rise up yourself; you cannot progress as you want to. I think it would be really action by which this unfortunate condition of this country could be improved.

That is one aspect of the matter which I would like to place before my honourable Friends who are advanced.

My next appeal is to my Scheduled Caste brethren and it is this. We have seen that since 1932, these Scheduled Castes have been recognised as a separate community and certain advantages were being conceded to them by the then Government. After that, when the 1935 Act came, they were recognised as a different entity and several provisions have been made for our uplift in the Act, itself. But from 1935 or 1937, up till now, it is now more than a decade that has passed, and I ask, how much have we really improved ? Excepting a fraction of our community who had somehow got a chance of getting education, all the rest of our brethren remain in the same static condition. Under this process, even our present government gave us some latitude, gave us some concessions in the way of scholarships and stipends, a Minister here or a Parliamentary Secretary there. But, I do not think that the whole lot of the Scheduled Castes has been greatly improved. I think there is a fund of sympathy in the mind of our advanced brethren because they understand more than we understand ourselves. And it is for us to drink deep unto that fountain and put our legitimate claims before the Government, before the public and also before our August organisation. If, even after that, our legitimate claims and demands are not conceded, then it would be our duty to stand on our own legs and try our level best to get our just share.

After all, I want to consider our position in India as a family consisting of four brothers. The eldest brother somehow got the opportunity for education, public life and other kinds of experience and is far advanced. The other three brothers are left in the dark and they are lagging behind. Unless and until the other three brothers understand their equal rights alongwith the eldest, I do not think that the eldest brother will really feel that it is his duty to do justice to his other brothers, because man is essentially selfish and what is true of a man is mostly true of a class also. So long as there are class distinctions in this country there is no solution and once the class distinction go, all this trouble will go. I do not know when they will go. Even after two years of independence, I do not find either from the Government or from the Congress organisation itself any active and vigorous step to drive away this curse, which we every day admit to be a curse. So that hope is to be left our now. We have to assert our rights. We are, after all, children of the same soil and if our eldest brother is doing some job we are also doing some other job and according to the law of the land we have equal rights to whatever assets our motherland has conferred upon us. So if we assert our right then we shall see that right is conceded and if that is not conceded, then we can stand on our own legs. Revolt-I purposely use the word 'revolt' because when justice is not done, it is only by revolt that justice can be done and once we stand on our rights and are determined to get it, I know there will be no difficulty in getting that justice conceded, because after all, this Constitution of India as it is being framed by this Constituent Assembly has given us one fundamental right viz., adult franchise. If we find that our interests are not being served by the intelligent section of this country, then what we have to do is to choose our own men and according to adult franchise, I have no doubt that we shall overwhelmingly preponderate in any assembly or council. We can therefore take the Government in our own hands and do justice to others and to ourselves.

So we should not be entirely crying for mercy and justice but we should not only ask for justice to ourselves but also strive to lever up our own condition. For that purpose if we find that certain communities are no cooperating, then our next duty would be to take the Government in our own hands. But that would be an unfortunate position. What I mean is this, that we should do our own duty and then accuse those who are at the helm of affairs for not doing full justice to us. In that context, I should submit that this ten years' limitation is perhaps right. So long as we think that the advanced community will do everything for us I think there would be some diffidence in our minds and out of that diffidence we shall not strive to attain what is justly due to us. But once it is fixed that ten years is the limit, then from tomorrow we shall have to think out how to do our part in the play. We have got adult franchise and the right to choose our men in Government. I think there will be no obstacle in our way. But if we fix a period indefinitely, much energy which is needed for the purpose will not be coming. Therefore, I am for supporting the article that has been presented by Dr. Ambedkar as subsequently amended by him and would ask my Scheduled Caste brothers to cooperate with the advanced community and get justice from them in whatever direction we need, but failing which I would ask them to unite and snatch away the justice that is due to us.

Shri Jadubans Sahay (Bihar:General): Mr. President, with your permission I shall devote myself to the analysis of the amendment moved by Shri Yudhisthir Mishra so far as it relates to scheduled tribes. So far as the scheduled castes are concerned, enough has been said and I should not take the time of the House by adding more to what has already been said. So far as the amendment of Shri Yudhisthir Mishra is concerned the effect of that will be that after ten years the reservation of seats to the scheduled tribes will continue. I say most respectfully that this approach is rather wrong, from the point of view of the tribes. Our approach to this problem should not be from the point of view of the backwardness of the tribes. We know that the tribes are backward and we know for centuries past they are backward; but our approach should be not what the tribes would do for themselves, but what we should do for them. I have faith in myself and the organisation to which I belong and I have faith in the present democratic set up of Government and I can say that within the course of ten years, if you are not able to elevate and to ameliorate the conditions of the tribes, then woe be to us, not the tribes. It was said by Dr. Kunzru once that this Constitution and the letters embodied and printed in the book of this Constitution will not avail much if there are not men honest enough to execute them.

Shri Brajeshwar Prasad (Biahr:General): Sir, may I say that Mr. Sahay should speak in the mike. He is not audible.

Shri Jadubans Sahay: I was saying that what is embodied in the Constitution will not bring relief by itself. The letters, the printed cold letters will not bring relief either to the tribal or to any part of the down-trodden citizens of this country. It requires a band of workers, a band of people imbibing in themselves the vigour, the spirit, the message as also the gospel of Mahatma Gandhi. We have, I confess, travelled a long way and have not been able to follow the gospel of Mahatma Gandhi. But we have still a spark left in us and I have no doubt that within the course of ten years we shall be able to do what we think we should achieve for the tribes. It is not a test for the tribes, really it is a test for us-this period of ten years and therefore I will appeal to my friends not to approach this problem from the view of tribes.

It was said yesterday- I will not take up the time of the House by following or analysing the criticisms made yesterday-I will not go into that because the time at my disposal is short but I must say that the irresponsible statements and baseless allegations which were made yesterday could not advance the cause of the aboriginals.

We know, I confess, that for eight decades down to this decade charges have been levelled against us. We plead guilty and we are ready to do what we can, but simply by abusing us you will not help any one. It will throw a cold douche in the hearts of those who are there to work for the tribes.

It was asked, what good the Bihar Government as well as other Governments have done to them? I will not try to convince those who refuse to be convinced; but given time. I will give you some figures. During the course of three years, you will be surprised to know, a grant of rupees one crore has been spent over the construction of irrigation bunds for the five districts of Chota Nagpur. Is that politics? Bunds were constructed so that the aboriginals could irrigate their fields, and thus grow two blades where they could only grow one. But yesterday, Mr. Singh said that this is politics. If it is politics, then in spite of what Mr. Singh says, we would stick to that politics, the politics of constructing more bunds. As our Premier said only a few days back, every village of the aboriginals should have a bund to irrigate their fields, because the problem of the aboriginals is their economic poverty. They cannot get industries and factories all at once. But if bunds are constructed for them then they can get enough water to irrigate their lands. If we do this, then you will see that within ten years these people will be quite different from what they are. We do not claim to have done much for them, but for what we do in our province we claim that we are swiftly travelling towards the solution of this problem.

Not only have we constructed bunds, we have also taken steps for the removal of the money-lenders from among the aboriginals. We have also opened hostels - 52 of them in three years, for the aboriginal boys. For irrigation bunds we have spent a crore of rupees though for the rest of Bihar we would have spent not more than fifty lakhs or less. Indeed this is a sort of complaint by the people there, though they do not mean it seriously, but they joke, that everything seems to be for the aboriginals, that the Finance Minister is loose with his money when the aboriginals are concerned, that our Revenue Minister is concerned much more with the uplift of the aboriginals than with other problems. We can only beseech you to give us some time, and we have laid down this period of ten years so that during this period we may go rapidly and not slacken our progress. Otherwise, we might think, that the aboriginals are going to get this reservation and so we need not go fast with our work of bringing them up the level that we want them to reach. It was said yesterday that from the epic age, ever since the Aryans came to this land we have only neglected and done nothing for the aboriginals. I can only say that during the last fifty years, during the British rule, they did not achieve even as much as we have claimed to have progressed during the last three years. What was my friend doing, Sir, who was so vociferous yesterday in criticising us? What was he doing during the British rule? Recruiting soldiers, when we were fighting for the aboriginal. Even new if I............................

Mr. President: I will ask the honourable Member not to digress about this.

Shri Jadhubans Sahay: I bow, Sir, Even now, without meaning any offence to anyone, I will simply say if the Government only proceeds rapidly, for a period of three years, we can work wonders with the aboriginals. Only the heart is required, and the money. Bihar is a poor province, but in spite of our poverty, in spite of the fact that Bihar is the poorest province in India, we can claim that we have done more than what was done under the British and even under our own rule under the 1937 regime. So, I pleas with my friends to give us these ten years. This period of ten years will be a period of test for us. It will not be a test for the tribals, for the oppressed people of Chota Nagpur or of the oppressed people of any other part of India, but it will be a test for the non aboriginals. it is a challenge to us. it is a challenge to the social workers in India, and we accept that challenge. We only request you to give us this ten years time.

Shri B. L. Sondhi (East Punjab:General): The question may be put.

Mr. President: Closure has been moved.

The question is:

"That the question be now put".

The motion was adopted.

Mr. President: Dr. Ambedkar

The Honourable Dr. B. R. Ambedkar (Bombay:General): Mr. President, Sir, there are just four amendments about which I would like to say a few words. I will first take the amendment of my Friend Mr. Bhargava, and say that I am prepared to accept his amendment, because I find that although in the general body of the report that was made to this House, no mention as to time-limit was made to the proposal for allowing representation to Anglo-Indians by nomination, I find that in the subsequent debate which took place on that report, there is an amendment moved by my Friend Pandit Bhargava which is very much in the same terms as the amendment which he has now moved, and I find that amendment of his was accepted by the House. I, therefore, am bound to accept the amendment that he has moved now.

Next, with regard to the question raised by Mr. Naziruddin Ahmad, one part of it has been , I think, met by the amendment moved by my Friend Mr. Krishnamachari which I also accept. I am not at all clear in my own mind at the present stage whether the words in the clause mean that the time-limit should begin to operate from the commencement of the Constitution or whether from the date of the first election to the new Parliament. But all I can say at this stage is that that is matter which the Drafting Committee will consider and if it is necessary, they will bring about some amendment to carry out the intention that the period should be from the date of first meeting of the first Parliament.

With regard to the other arguments which have been used by my Friends Mr. Muniswami Pillai and Mr. Monomohon Das, I am sorry it is not possible to accept that amendment. Their proposal is that while they are prepared to leave the clause as it is, they propose to vest parliament with the power to alter this clause by further extension of the period of ten years. Now, first of all we have, as I said , introduced this matter in the Constitution itself, and I do not think that we should permit any change to be made in this, except by the amendment of the Constitution itself.

I would like to say one or two words on the remarks of Members of the Scheduled Castes who have spoken in somewhat passionate and vehement terms on the limitation imposed by this article. I have to say that they have really no cause for complaint, because the decision to limit the thing to ten years was really a decision which has been arrived at with their consent. I personally was prepared to press for a larger time, because I do feel that so far as the Scheduled Castes are concerned, they are not treated on the same footing as the other minorities. For instance, so far as I know the special reservation for the Mussalmans started in the year 1982, so to say, the beginning was made then. Therefore, the Muslims had practically enjoyed these privileges for more or less sixty years. The Christians got this privilege under the Constitution of 1920 and they have enjoyed it for 28 years. The Scheduled Castes got this only in the Constitution of 1935. The commencement of this benefit of special reservation practically began in the year 1937 when the Act came into operation. Unfortunately, for them, they had the benefit of this only for two years, for from 1939 practically up to the present moment, or upto 1946, the Constitution was suspended and the Scheduled Castes were not in a position to enjoy the benefits of the privileges which were given to them in the 1935 Act, and it would have been quite proper I think, and generous on the part of this House to have given the Scheduled Castes as longer term with regard to these reservations. But, as I said, it was all accepted by the House. it was accepted by Mr. Nagappa and Mr. Muniswamy Pillai, and all these Members, if I may say so- I am not making any complaint-were acting on the other side, and I think it is not right now to go back on these provisions. If at the end of the ten years, the Scheduled Castes find that their position has not improved or that they want further extension of this period, it will not be beyond their capacity or their intelligence to invest new ways of getting the same protection which theya re promised here.

Shri A. V. Thakkar (Saurashtra): What about the scheduled tribes who are lower down in the scale?

The Honourable Dr. B. R. Ambedkar: For the Scheduled tribes I am prepared to give far longer time. But all those who have spoken about the reservations to the Scheduled Castes or to the Scheduled tribes have been so meticulous that the thing should end by ten years. All I want to say to them, in the words of Edmund Burke, is "large Empires and small minds go ill together'.

Mr. President: I shall now take up the amendments one by one, Amendment No. 39 (List I - Fifth Week)

Shri Yudhisthir mishra (Orissa States) Sir, I would like to withdraw my amendment.

The Amendment was, by leave of the Assembly , withdrawn.

Mr. President: Amendment No.40 (List I Fifth Week)

Shri Nagappa: In view of the explanation given by Dr. Ambedkar, I do not wish to press my amendment.

The Amendment was, by leave of the Assembly, withdrawn.

Mr. President: Amendment No. 99 (List III-Fifth Week).

Shri V. L. Muniswamy Pillay: I was not present in the House on the 25th May when the second Report of the Minorities Committee was considered. However, in view of what Dr. Ambedkar has said I would like to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Amendment No. 100 (List III-Fifth Week).

Dr. Monomohan Das: My amendment is just and right. I do not want to withdraw it. let the will of the majority be imposed upon minority.

Mr. President: The question is :

"That in amendment No. 38 of List I (Fifth Week) of Amendments to Amendments, at the end of the proposed new article 295-A, the following be added:-

'unless Parliament by law otherwise provides ".

The amendment was negatived.

Mr. President: Amendment No. 105 (List IV-Fifth Week)

Mr. Naziruddin Ahmad: The principle of my amendment has been substantially accepted by Mr.T. T. Krishnamachari's amendment. Therefore I wish to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The next amendment is No. I13 by Pandit Thakur Das Bhargava. This has been accepted by Dr. Ambedkar.

The question is:

"That in amendment No. 38 of List I (Fifth Week) of Amendments to Amendments, at the end of the proposed new article 295-A after the word 'Constitution' the brackets and letter '(a)' be inserted and after the word 'State', the following be inserted:-

'(b) relating to the representation of the Anglo-Indian community either in the House of the People or in the Legislative Assemblies of the States through nomination".

The amendment was adopted.

Mr. President: The next amendment is Drafting Committee's amendment No. 114.

The question is :

"That in amendment No. 38 of List I (Fifth Week) of Amendments to Amendments, at the end of the proposed new article 295-A, the following proviso be added:-

'Provided that nothing in this article shall affect the representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the then existing House or the Assembly, as the case may be".

The amendment was adopted.

Mr. President: The question is :

"That article 295-A, as amended, stand part of the Constitution".

The motion was adopted.

Article 295-A, as amended, was added to the Constitution.

Mr. President: It has been suggested to me that the Drafting Committee should be given some time to deal with the other articles which are still outstanding and that it would be better if we shorten the sittings for a day or two. I, therefore, suggest that we rise now and that the House should meet against tomorrow at 9 a.m.

Mr. Naziruddin Ahmad: I would like to submit that the Drafting Committee should be given enough and ample time so that they may give us a complete picture of the rest of the articles. Otherwise it is difficult for us to follow. If they give us a complete picture that would be convenient and will be much appreciated.

Mr. President: The difficulty is not only with the Drafting Committee. There are certain matters which require further consideration about which a decision has been taken by all concerned. Therefore it is no use giving the Drafting Committee more time than it requires.

The Assembly then adjourned till Nine of the Clock on Friday, the 26th August,1949.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Friday, the 26th August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Mr. President : Article 296.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I rise on a point of Order. Amendment No.106 which the honourable Chairman of the Drafting Committee is proposing to move is a new amendment. It is again, like many others, an amendment to the Constitution itself and not an amendment to any amendment Notice of it was first given on the 23rd of August and was received on the 24th and would, ordinarily, have been considered on the same day, but for want of time it could not be.

An honorable Member drew my attention to changes of a serious nature sought to be introduced by this amendment. By this amendment certain service rules are to be made applicable only to Scheduled Castes and scheduled tribes. In the original article of the Draft Constitution all minorities were sought to be covered. I would like to know what is the reason for this change why this change should be made in this disguised form. It would have been straightforward for any Member to give notice that for "all minority communities" in the original article, the words "members of the Scheduled Castes and scheduled tribes" be substituted. instead of that the whole clause was redrafted. It is only by chance that I noticed the change. My point of Order, therefore, is : first that it is an amendment to the Constitution itself; and second, it is not one of those subjects which, as I know, has ever been submitted for consideration by the House.. Thirdly, it is not expressed to indicate the precise change to be effected on the original article. I wish to know how long this practice of facing the House at the, eleventh hour with absolutely new articles containing vital changes which it is difficult to discover is going to be followed. One day recently I reminded Dr. Ambedkar that he had not complied with your request to explain the difference between the original article and the newly drafted article and the only thing he could say was that I must have read the original article and also the new article except the "commas and semi-colons." He could not rise above indulging in a coarse joke of this kind. Are we to go on every day adding new articles and breaking our own rules ? How can we expect the people to follow the Constitution if we systematically break our own rules? I submit there should be a limit somewhere. There should be some recognised rules and recognised exceptions. I have never quarrelled with your rulling in particular cases that the change is regular. In this case. I submit with all humility, that a new article is sought to be introduced without the usual safeguard of- giving the, members clear notice of the exact change. If you allow this amendment I have other serious objections on the merits. but I do not wish to submit them now, At least we should have got some notice. Then should have been consultation with Minorities, as Sardar Patel did in a similar context. This is highly unfair.

Mr. President: Will it meet your case if it is put off to some other date ?

Mr. Naziruddin Ahmad: I do not know, Sir, whether the House will be in a better mood to consider it on some other date, but I leave the matter entirely in your hands. In fact I think things would not very much improve by then. I object to this clause being put in this manner. My point is that the amendment should be rejected on technical as well as substantial grounds.

Shri T. T. Krishnamachari (Madras: General): May I submit, Sir, that my honourable Friend is wholly out of Order in raising this point of Order, because this matter was accepted by the 'House. The honourable Member had two clear days' notice of it and if he is not able to understand the significance of the amendment in two days, I am sure he cannot understand it-in two months.

Mr. President : Is it suggested that when the question

was reopened last time with regard to reservation of scats this also was one of the point considered and on this point also a decision was taken then?

Shri T. T. Krishnamachari : MY suggestion is that since Muslims and Indian Christians are no longer to be treated as minorities this point does not arise.

Mr. Naziruddin Ahmad: Not at all. I submit that what was considered was the question of representation of minorities in the legislature. But this new article relates to a different matter, viz., the protection of the minorities in getting minor jobs in 'the Secretariats and districts etc. On the matter of representation in the legislature Sardar Patel was kind enough to consult us and we agreed not to have any reservation in the legislature.

The Honourable Dr. B. R. Ambedkar (Bombay: General) : Sir, the position is this. The report of the Minorities Committee provided that all minorities should have two benefits or privileges, namely, representation in the legislatures and representation in the services. Paragraph 9 of the report which was accepted by this House contained, this

"in the all--India and provincial services the claims of all minorities shall be kept in view in making appointments to these services consistently with the consideration of efficiency in the administration."

That was the original proposition passed by this House. Subsequently the Advisory Committee came to the conclusion on the consent of the two minorities--Muslims and Christians--that they were not to be treated as minorities. When the House has now accepted that the only minorities to be provided for in this manner are the Scheduled Castes and the scheduled tribes, obviously the Drafting Committee is bound by the decision of the House and to alter the article in terms of such decision.

Mr. President: The point of Order taken is that what was decided at the time of reconsideration of the articles relating to minorities referred only to reservation of seats and that the question of services was not taken into consideration and that point was not decided.

The Honourable Dr. B. R. Ambedkar: As I understand it, the decision was that they were not minorities and therefore they are not to have either of the two privileges.

Hukam Singh (East Punjab : Sikh): Sir, I have with me the reports of the Minorities Advisory Committee as well as the sub-committee, and it is nowhere even suggested that all safeguards will go or that the minorities are not to be treated as minorities. The only decision that was agreed to was :

"That the system of reservation for minorities other than Scheduled Castes in legislatures be abolished,"

That was the only decision agreed by these minorities. But it was not the only safeguard. What Dr. Ambedkar read out related to reservation in the legislature. The claims of all minorities had to be considered under article 296 when making appointments to junior posts other than those to be recruited by the Federal Public Services Commission. So I am afraid the minorities would think that it is a breach of faith and a violation of gentlemen's agreement. If Sardar Patel were here I think he, would not agree to this because. what we agreed to was only about reservation of seats in the legislature. Therefore I think this proposal should be withdrawn. The original draft was a much better provision and only two articles, 266 and 299, are left for the safety of the minorities; and they are only wishful thinking. They are not fundamental, they are not even directive principles, they are not justiciable. The only comfort of minorities is that in some respects their interests will be cared for; if that is also taken away it will be a violation of a gentlemen's agreement.

Mr. President: I am afraid in view of the stand taken by some Members of the minority communities it would be necessary to let this matter stand ,over for reconsideration, when of course all points of view will be taken into account.

An honourable Member: We can accommodate them and decide it here.

Mr. President: In matters relating to

minorities we have always proceeded with their consent. And now when there is difference of opinion it is better that they should be ironed out in private discussion. That is why I suggest that it may stand over. We shall now take up the next article.

Article 299

The Honourable Dr. B. R. Ambedkar: Sir, I beg to move:

"That for article 299, the following article be substituted :-

'299. Special officer or minorities. (1) There shall be a Special Officer for minorities to be appointed by the Special Officer, President.

(2)It shall be the duty, of the Special Officer to investigate all matters relating to the safeguards provided for minorities under this Constitution and to report to the President upon the working of the safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament."'

The original article provided that there should be a minority officer both in the Centre and in each of the provinces. It is now felt that, as the number of minorities has been considerably reduced, it is not desirable to have a ,cumbrous provision, like that for having an officer in each province. The purpose of the original article will be carried out if the Centre appoints an officer and makes him report to the President.

Dr. Manmohan Das (West Bengal: General): I rise to a point of Order. It has not yet been settled as to who these minority communities are. Minorities have been grouped for the provision of safeguards in respect of two matters-, one is in respect of safeguards by means if reservation of seats in the legislatures and another is by means of reservation of posts in the services. Who these minorities are. has not yet been settled.

Mr. President: This article, I understand, will not touch those points at all. Whatever the minorities are, the Special Officer will deal with all of them. Whether they are two minorities or more than two, they will all be dealt with by this officer who will be appointed.

Sardar Hukam Singh : If article 296 is to remain as it is drafted now, then there will be no other safeguard for any other minority except the Scheduled Castes. That being so, why not we wait and take up this article side by side with the other article which deals with Scheduled- Castes, scheduled tribes, etc. ?

Mr. President: Here there is no mention of particular minorities. 'Me expression used here is 'minorities'. It will cover all minorities whatever their communities are.

Sardar Hukam Singh : But if article 296 is to remain as it is, and if any other Scheduled Castes and tribes are to be treated as minorities, there will be no other safeguard for them. Why should here in article 299 the word 'minorities occur ? It is illusory and will mean, that there. is no other safeguard.

Shri T. T. Krishnamachari: 'Mere are minority castes, tribes and so on. This comprises all the minorities

Mr. President : So far as this article is concerned, it covers all minorities whether contemplated under article 296 or not. There is no difficulty therefore in taking it up. This article does not mention particular minorities.

Mr. Naziruddin Ahmad: If the new article 296 is carried, this article will be meaningless.

Mr. President : It will not be meaningless, because there are more than two minorities there. For the Anglo--Indians also there is the same provision.

Mr. Naziruddin Ahmad: But the safeguards already provided are taken away here.

Mr. President : Whatever safeguards are provided for the minorities and whatever the minorities, this Special Officer will deal with them all.

Mr. Naziruddin Ahmad: But there will be no safeguards for other minorities. This therefore would be inapplicable.

Mr. President: I am leaving over article 296 for reconsideration. You proceed upon the assumption that it relates only to two minorities. We have not yet decided that it should stand in the form in which it is proposed.

Shri M. Ananthasayanam Ayyangar (Madras: General). Why not allow this also to stand over?

Mr. President:

No. It would not make any difference if this is passed.

Shri M. Ananthasayanam Ayyangar: The word minorities' is so general that it might apply to linguistic minorities and to minorities based on religion, caste, etc. When we know that the Special Officer is to be appointed for two or three minorities, why not we say here, 'Anglo-Indians, Scheduled Castes' and so on? There is no definition- of 'Minorities' in the whole of the Draft Constitution. Therefore let us specify the names of the minorities hem That is my suggestion to the Drafting Committee. We may say that the Scheduled Castes, scheduled tribes and the Anglo-Indians are the three minorities for whom we are making provision here. There are other minorities also. Let us not leave its interpretation to the jurisdiction of courts. Let us here decide what the minorities are. Otherwise any minority can come forward and ask for this or that right.

Mr. President : The safeguards are specified, and whatever the minorities are which enjoy these safeguards will have the protection of this Special Officer.

Shri M. Ananthasayanam Ayyangar : It is not stated' anywhere who the minorities are. No community has been classified as a minority. There is no definition of 'minority'. If there is one, we can say this article win apply to such and such minorities. We use, the word 'minority' here and do not say' that this applies to this or that minority. It may be that we are contemplating to have a general officer for them all. But the Constitution is for the future. We should therefore clear up this matter and include only those minorities for whom we intend making provision.

Mr. President : Personally I thought it is not necessary to put this off. But if Members think that we take article 296 and 299 together in order that they may specify the minorities here I have no objection.

Shri T. T. Krishnamachari : It is entirely left to you. But I think your ,original stand was the right one.

Mr. President : But if the House wants to put off the consideration of this article I have no objection. Personally I thought this could go through without affecting the decision that may be taken in regard to article 296.

Shri T. T. Krishnamachari : I hope the House will adopt that course. That is the proper course- We have- very little work before us otherwise,.

Mr. President: Mr. Ananthasayanam Ayyangar takes a different view.

Mr. Naziruddin Ahmad: In that case, we may proceed with the consideration of the article.

Mr. President: I think we had better proceed with article 299. It does not create any difficulty.If we, later decide that there are- certain other minorities than those mentioned in article 296, they will be covered by article 299.

Pandit Hirday Nath Kunzru : (United Provinces: General): I understood you to say that we may proceed, with the discussion of article 299, because our decision about it will not affect our decision in respect of article 296. But. out decision as regards article 296 will affect our decision about article 299. The two are inter connected. I cannot see really how the two can be discussed separately. The words 'minority communities' are used in both these articles. If the argument is that, as the Anglo-Indian community is to be treated as a minority in respect of the services. for ten years, therefore the words minority communities' can be justifiably used in article 299, then the same argument applies to article 296. And so it is all the more necessary that this article also should be postponed. As you have decided that the, discussion on article 296 should be postponed, I think it logically follows that he discussion on article 299 also should be postponed.

Mr. President: Dr. Kunzru, may I point out that in article 296 two particular minorities are mentioned. Therefore that article can refer only to those two particular minorities, whereas article 299 does not mention any particular minorities. It- mentions the word "minorities" generally and whatever the minorities may be, they will be covered by article 299. Only the

question of what communities will constitute, minorities is left over. That is Article 296.

Pandit Hirday Nath Kunzru : Is it agreed that if in the Not of our decision on article 296 we find it necessary to revise any conclusion that we' may now reach about article 299, the reconsideration of article 299 will be allowed ?Shri T. T. Krishnamachari: Very unlikely.

Pandit Hirday Nath Kunzru: My Friend Mr. Krishnamachari says it is very unlikely. That means it is a possibility, and it is the possibility that must be taken into consideration now.

Mr. President: If it has to be reconsidered, let it not be taken into consideration today at all. Let it be considered once rather than twice. Article 299 stands over. We will now proceed to the next article 302. There, are certain amendments of which notice had been given, which are printed in the second volume of the printed amendments.

It is pointed out to me that there is some difficulty about article 302 also. Dr, Ambedkar has just now been telling me that there is some consideration to be given to one of the provisos in this article. He would like this article to be held over. In that case, the only thing left is Schedule III. Is there any objection to Schedule III also?

Mr. Naziruddin Ahmad: No, Sir, there is no objection.

Third Schedule

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That in the Third Schedule, in Form I of the Declarations, for the words and brackets 'solemnly affirm (or swear)', the following be substituted:-

Solemnly affirm swear in the name of God."'

Sir, I also move:

"That in the Third Schedule, in Form II of the Declarations, for the words and brackets solemnly affirm (or swear)', the following be substituted

'solemnly affirm swear in the name of God."'

"That in the Third Schedule, in Form III of the Declarations,--

(a) for the word 'declaration' the words 'affirmation or oath' be substituted;

(b) for the words 'solemnly and sincerely promise and declare' the following be substituted :-

'solemnly affirm swear in the name of God."'

"That in the Third Schedule, in Form IV of the Declarations,-

(a) for the word 'declaration' the words 'affirmation or oath' be substituted;

(b) for the words 'solemnly and sincerely promise and declare' the following be substituted :-

'solemnly affirm swear in the name of God."'

"That in the Third Schedule, in Form V of the Declarations,--

(a) the words and figure 'for the time being specified in Part I of the First be omitted;

(b) for the words and brackets 'solemnly affirm' (or swear). the following be substituted :-

'solemnly affirm' in the name of God."'

"That in the Third Schedule, in Form VI of the Declarations-

(a) the words and figure for the time being specified in Part I of the First be omitted;

(b) for the words and brackets 'solemnly affirm (or swear), the following be substituted :-

'solemnly affirm swear in the name of God.'

That in the Third Schedule, in Form VII of the Declarations,-

(a) for the word 'declaration' the words 'affirmation or oath' be substituted;

(b) the words and figure 'for the time being specified in Part I of the First Schedule be omitted;

(c) for the words 'solemnly and sincerely promise and declare' the following be 'solemnly affirm swear in the name of God."

"That in the Third Schedule, in Form VIII of the Declarations,-

(a) for the word 'declaration' the words 'affirmation or oath' be substituted;

(b) for the words 'solemnly and sincerely promise and declare' the following be substituted:- 'solemnly affirm swear in the name of God."'

Sir, I also move:

'That in the Third Schedule for the heading 'Forms of Declarations' the beading 'Forms of affirmations or Oaths' be substituted."

Mr. President : I take it that there is no objection to the heading being changed.

Mr. Naziruddin Ahmad :There is no objection, Sir.

Mr. President: Then the heading is changed.

Then we take up the first part. There. are several amendments to that.

Shri H. V. Kamath (C.P. & Berar: General):

Mr. President, Dr. Ambedkar has just now brought before the House a revised form of affirmation or oath prescribed in the Third Schedule to the Constitution. I find that the several amendments moved by him prescribe....

Mr. Naziruddin Ahmad : Sir, are we considering Form No. 1 or are we dealing with the heading?

Mr. President : There beading we have passed.

Mr. Naziruddin Ahmad: I have some amendments to Form No. 1.

Mr. President : You may move them after Mr. Kamath has finished.

Shri H. V. Kamath : I find that the form of the oath or affirmation as moved by Dr. Ambedkar in this new Schedule differs from that which this House has adopted already in the case of the President and Governors. I invite the attention of the House to article 49, and also to the corresponding article 136 prescribing the oath or affirmation for the Governors of States. I refer to this copy of articles as agreed to by the Assembly, supplied to all Members of the House. Turning to article 49, my honourable colleagues willsee that the oath or affirmation as passed by the House has got a form which Dr. Ambedkar has now inverted In the amendment that he has just moved. That form in article 49 stands thus :

swear in the name of God"I, A B, do----------------------- solemnly affirm,"

I remember and I hope my memory does not betray me-that when Mr. Mahavir Tyagi brought this amendment to my original amendment in this House some months ago, he made a point of this and pleaded that so far as the oath, the swearing was concerned it should go above the line, being more important, and the affirmation should go beneath the line, and the House accepted it. accordingly; and this final form of the affirmation or oath was as stated in article 49 which has been incorporated in this little. booklet supplied to us. I am sure Mr. Tyagi will bear me out when he makes a speech today in the House. In this connection I am also glad to see that Mr. Jaspat Roy Kapoor has tabled an amendment on the same lines as mine, that is to say restoring the form of the oath as adopted in this House. Dr. Ambedkar has inverted it-now, and I appeal to the House to restore the status quo ante, the original form of oath or affirmation as accepted and adopted by the House. Dr. Ambedkar might argue that the difficulty is that the language of the first amendment which he has moved today is to the effect : "Forms of Affirmations or Oaths" that is to say the word "'affirmation" comes first and "oath"' comes next. Therefore, according to that wording affirmation must come on the top of line and the oath must come below the line. I wonder whether Dr. Ambedkar will bring forward this argument, but if this argument is brought forward, then I for one would say that the heading could be changed' to the effect' "Forms of Oaths or Affirmations" and then retain the form of the oath as adopted by the House already, that is to say, the swearing of the oath should go on top of the line and the. affirmation must go below the line. I am not a stickler for forms but I think that so far as the House is concerned it must not deviate from the form which it adopted long ago in December last; and I think that without adequate reason we should not alter or invert the form of oath or affirmation which the House has already adopted. Sir, I move my amendment No. 103 List II, Fifth Week, and commend it to, the House. for its earnest consideration. It is as follows :

"That in amendments Nos. 56 to 63 of List I (Fifth Week) of Amendments to Amendments in the form of the oath or affirmation in the Third Schedule, for the words:

'solemnly affirmswear in the name of God."'

(proposed to be substituted), the following be substituted:-

swear in the name of Godsolemnly affirm."'

Mr. President : Amendment No, 110 in the name of Mr. Jaspat Roy Kapoor is the same as Mr. Kamath. So that does not arise now.

Shri Jaspat Roy Kapoor (United Provinces: General): Yes, Sir.

Mr. President : Amendment No. 112 also stands in the name of Mr.Jaspat Roy Kapoor.

Shri Jaspat Roy Kapoor: It will serve my

purpose if Mr. Kamath's amendment is accepted.

Sardar Bhopinder Singh Man (East Punjab: Sikh): Sir, I move:

"That in amendments Nos. 56 to 63 of List I (Fifth Week) of Amendments to Amendments, in the form of the oath or affirmation in the Third Schedule (in the words proposed to be substituted) the words 'swear in the name of God' be deleted."

My object in moving this amendment is that God's name for swearing purposes may not be permitted. I am not being inimical to the idea of God that I move the House to delete the name of God, but on religious and ethical considerations and also on reasons of great constitutional importance that I ask the House to delete the name of God for swearing purposes. When we were in school days, we were swearing too often "By God, it is true", "By God, I will do it", "By God, I will not do it", "By God, this is wrong", etc. and invariably we had'. been told by our teachers and elders that it was not a good habit to swear. I wonder how our habits which was then considered to be bad now becomes to be good when we are grown ups. To be, asked to swear, even otherwise, becomes too offensive. If a' person is asked in spite of his declarations or solemn affirmation, to swear by God, he will say : "I am telling the truth. You must believe me as such. There is no need that I should swear by God." I believe it is beneath one's dignity to be asked to swear by God. I believe, at the same time, Sir, that is showing disrespect to God Himself that we should use His name for swearing purposes. Apart from that, I know it is doubting the individual's integrity to ask him to swear by God.

Besides this, I do not know whether the Drafting Committee and its Chairman has taken any steps to ascertain the wishes of God Himself on such a vital matter. I do not doubt the sovereignty of this Assembly; but I consider, Sir, that your sovereignty does not extend to such limits as to be binding even on God. He may not be a willing party to this affair. Without ascertaining His wishes, we are associating God's name in various places. According to Mr. Kamath's amendment, somewhere, in the clauses we have already incorporated the name of God. We are again incorporating the name of God for purposes of swearing. Tomorrow, you are going to associate. His name somewhere in the Preamble. I am doubtful whether God will at all like this. It may be a clever piece of Constitution for you; but still He may not like this Constitution. He may not like to be associated with this Constitution. He may be a communist God or He may have strong socialist inclinations. I would ask the Members and Dr. Ambedkar, "suppose without ascertaining His wishes you incorporate His name, what would happen to the Constitution if tomorrow He in His wisdom would withdraw His consent and would refuse to be associated with this Constitution at all?" Then, I would request you, before you incorporate His name in various ways and associate Him with your Constitution, to ascertain His wishes. In case Dr. Ambedkar had no access to God, then I request you Sir, to use your good offices to ascertain His wishes and let the House know that He is a willing party to this affair. After all oath taking. means two parties, the person who swears and the Person by whom you swear. Indeed, it is a point of Order with me and I submit whether at all we can incorporate or use the name of a person who is not a Member of this House and without His consent in the Constitution. It is really of great constitutional importance. Tomorrow, the whole labour will be lost if He withdraws his consent and refuse to be associated with' your Constitution.

Mr. Naziruddin Ahmad: Mr. President, Sir, I beg to move :

"That with reference to amendment No. 56 of List I (Fifth Week) of Amendments to Amendments in the Third Schedule, in Form I of the Declarations, after the word 'solemnly' the words 'and sincerely' be inserted."

I beg to move :

"That with reference to amendment No. 56 of List I (Fifth Week) of Amendments to ' Amendments, in the Third Schedule, in Form I of the

Declarations, for the words 'all manner of people' the words 'all people' be substituted."

I beg to move:

"Mat with reference to amendment No. 56 of List I (Fifth Week), of Amendments to Amendments, in the Third Schedule, in Form I of the Declarations, the comma and the word 'affection' after the word 'favour' be deleted."

My first amendment would raise a very important constitutional question namely whether the Ministers, as apart from Members, are required to be sincere or insincere. The House will be Pleased to note that there are eight Forms of Declarations. With regard to Ministers, of the Union, there are two Forms, I and II. The first relates to oath of office and the second relates to oath of secrecy. There are again two other forms relating to Ministers in the States, namely Forms V and VI, one relating to oath of office and the other relating to oath of secrecy. In all these cases the Ministers have to take the oath or make the affirmation to discharge their duties "solemnly" and not necessarily sincerely. One would think that the omission of the Word sincerely does not mean any departure from the existing practice. I would ask the honourable Members to consider the forms of oath to members of Parliament and Judges. The Member of Parliament is to found in From III. He has Declaration which has to be made by a in Form III. He has to make a declare to take an affirmation in Form No. IV. He has also to declaration "Solemnly and sincerely. A Judge had to that he will do his duty "solemnly and sincerely." Then, Sir, the oath to a member of a legislature of a state is given in Form No. VII. He has to declare that he would discharge his duties "solemnly and sincerely." Lastly, the judges of the High Court under Form No. VIII, have to declare that they will discharge their duties "solemnly and "Sincerely." There is a carefully chosen phraseology, one set for the members 'of Parliament as well as members of the State legislatures and Judges of the Federal Court and High Courts that they will discharge their duties "solemnly and sincerely", but not so in the case of the Ministers both of the Union and of the States. I would like to know whether the omission in the case of the :Ministers is intentional or purely accidental. The careful manner in which the word "sincerely" is required in the case of the members of Parliament and :members of the S tate legislature and Judges would show that this omission is deliberate and intentional. I would like to know from the members of the House whether it is their conception that so long as they are members of the Legislature, They are to discharge their duties solemnly as well as "sincerely," but the moment he steps in the gaddi of a Ministry, he has to forsake sincerity. Is that the idea? If that is so, it is certainly in keeping with current ideas. In fact, Ministers are not required to be sincere, they are to be insincere. Insincerity in certain cases I know amounts to a virtue-. The famous Radha addressed Shri Krishna :

"Nipata Kapata tua Shyam"

"Shyam, you are insincere". That is the highest form of adoration. Shall we address our Ministers,

"Nipata Kapata tua Shyam"

'You are our masters, but absolutely insincere." The oath is of that kind,I would like to know whether the word 'sincere' is inapplicable to a Minister of Free India. I knew that Ministers have got to be diplomatic; they have got to be clever; but I never thought that diplomacy which would be 1required of a Minister would preclude him from being sincere. That is with regard to amendment No. 119.

The next amendment is a mere matter of drafting. Form I says, "I will do right to all manner of people." I think the words "all manner of people" rather amount to bad use of English. The wording "all people" would be better. What the expression "all manner of people" implies, I fail to see., Therefore this is a drafting amendment which I think would be worthy of acceptance.

Then, my third amendment relates to the words 'affection or ill-will occurring at the end of the form. It says that a Minister of

the Union is required to do his duty in accordance with the Constitution and law "without fear or favour". Thai is quite good. The words "without fear or favour" are very appropriate as a Minister must discharge his duties to the people without fear or favour. But is he to discharge his duty without 'affection to people? Should he be not imbued with a sense of love and affection to people ? Yet the affirmation says that a Minister must act "without affection or ill-will" to the people.'Without affection' is absolutely mischievous.,He must have some some amount of love and affection for the people but we find that Ministers today are getting away from the people. The lovefor the people which should characterise them is forsaking them. They are following a Oath of disaffection for the people. We find in the Provinces, and in the Centre there is disaffection towards the people. If the Ministers. take the oath that I will deal with you without affection' the people will reciprocate also 'we will also deal with you without any affection. So there will be mutual disaffection and ill-will. I submit that my first amendment with regard to the requirement of "sincerity" and with the requirement of affection should be accepted. But if the differential phraseology was not deliberately selected to give effect to obvious implications, I think in the first place the words 'and sincerely' should be inserted and in the second place,, the words 'without affection' should be deleted.

Mr. President: These are the amendments relating to all the forms.. There are certain amendments which relate to particular forms. I may take them up later. Dr. Ambedkar, there are some amendments in your name in the printed list relating to other forms. Does any Member wish to move any other amendment? Regarding other forms I have, noted, there are two amendments 123 and 128 which are of a different nature.

Mr. Naziruddin Ahmad: I think we shall confine our speeches to the present form. In that case them will be no more amendments. I do not wish to move 123 and 128 at this stage.

Mr. President : If Dr. Ambedkar moves 3401, perhaps it might become unnecessary. You consider that.

The Honourable Dr. B. R. Ambedker : Sir, I move

"That in Form VI of the Forms of Declarations in the Third Schedule, the words or as may be specially permitted by the Governor in the case of any matter pending to the functions to be exercised by him in his discretion' be omitted."

These are unnecessary because we do not propose to leave any discretion in the Governor at all.

Shri H. V. Kmath: May I remind Dr. Ambedkar that 143. has not yet been amended?

The Honourable Dr. B. R. Ambedkar: Yes, I remember that.

Mr. Naziruddin Ahmad: Sir, I beg to move:

"That with reference to amendment No. 57 of List I (Fifth Week) of amendments to Amendments, in the Third Schedule, in Form II of the Declarations, the following be added at the end :

or as may be specially permitted by the President in the case of any matter pertaining to the functions to be exercised by' him in his discretion."'

Mr. President : We have abolished all discretion.

Mr. Naziruddin Ahmad: The difficulty arises in connection with the phraseology occurring at the end of Form VI.

Mr. President: That is why Dr. Ambedkar has moved for its deletion.

Mr. Naziruddin Ahmad: In that case this will nut be required. I do not move 128 also as it is similar. Sir, I move

"That with reference to amendment No. 60 of List I (Fifth Week) of Amendments to Amendments, in the Third Schedule, in Form V of the Declarations, after the Word 'solemnly' the words 'and sincerely' be inserted."

"That with reference to amendment No. 60 of List I (Fifth Week) of Amendments to Amendments, in the Third Schedule, in Form V of the Declarations, for the, words 'all manner of people' the words 'all People' be substituted."

"That with reference to amendment No. 60 of List I. (Fifth Week) of Amendments to Amendments, in the Third Schedule, in Form V of the Declarations, the comma and the word 'affection' after the

word 'favour' be deleted."

"That with reference to amendment No. 61 of List I (Fifth Week), of Amendments to Amendments, in the Third Schedule, in Form VI of the Declarations, after the word solemnly' the words 'and sincerely' be inserted."

Shri Brajeshwar Prasad, (Bihar: General): Mr. President, Sir, I rise to endorse the sentiments expressed by Sardar Bhopinder Singh Man. I am opposed to the idea of dragging God in the Third Schedule. I am opposed to this because even those persons who swear by the name of God do not do everything in this world in the name of God. Where is the necessity of asking a man, however religious he may be, that he must do this and start doing that thing in the name of God. I may be a religious man but do I ,do everything in the name of God ? When I wash my mouth in the morning do I do it in the name of God ? Here we are performing a secular function A Governor, a Minister or a President has to take into consideration the provisions of the Constitution when he is performing certain functions and duties. There is no meaning in asking him to swear by the name of God at ,the time of taking his appointment.

Secondly, I am quite clear in. my own mind that secularism is the negation of all religion. Whatever statesmen and politicians may say on the ground of expediency, I am quite clear in my own mind that the concept of religion and the concept of secularism are poles asunder. There is no meeting ground between these two.

Thirdly, I am opposed to the idea of dragging in God here because I feel that no man would be prevented from following God, if he wishes to do so, ,even though he does not swear by His name at the time of taking up his office.

And lastly, I am opposed to this proposal because in politics, one has to do things which are irreligious things which are of a non-religious character.

Statesmen and politicians, we all know, have to undertake wars. A statesman has to resort to methods of violence and bloodshed, and it would be a mockery, a farce. and quite ridiculous if he were to swear in the name of God and then resort to these things when the occasion arises. Having regard to all these considerations I am firmly opposed to the idea of dragging in God in the Third Schedule.

Shri Mahavir Tyagi (United Provinces : General),: Sir, the small amendment which my Friend Mr. Kamath has moved does not really Warrant many speeches or many words for its support. The House has once discussed the question of the oath and it was decided that the oath should be taken in the name of God. There were my friends in the House who were really objecting to the oath being taken in the name of, God, as they felt, "After all, why bring in God?" But in spite of their objection, the Constituent Assembly ,decided that for such persons as had faith in God, their oath must be the same as the one they usually take in their private life; and therefore the words, "Swear in the name of God" were introduced, through an amendment In the original draft, these words, "Swear in the name of God" did not occur. These words were. introduced at the express desire of the House. And so the oath was so shaped that the words "Swear in the name of God" were over the line, and "solemnly affirm" were under it.

Now I am sorry that Dr. Ambedkar has come forward just with a little trick-the trick of a school-boy, it he will pardon me. What he has done, is, he has brought on the words 'solemnly affirm" above the line, and brought God under the line. If it is to be only a trick, I would not mind it. But we should see that the people do not get the idea that now, after Swaraj, God has gone under. So, I say since the Constituent Assembly has once decided in connection with the oath, these words, 'Swear in the name of God" should be above the line, and the other words must be below the line and naturally too. I say naturally, because even in spite of the presence of some agnostics in India, there are still the vast majority of the masses who believe in God. And while we are making a Constitution here, the masses have not given us a blank cheque for us to do as we choose. We have to make the Constitution to the liking of the masses whose representatives we are. I submit, Sir, that Dr. Ambedkar, honest as he always is, is sometimes too clever, I would say. He has been quite honest and outspoken. So I would request him not to do anything which is against the wishes of the masses whom he represents. Why bring in a little personal prejudice of his and make God go under the line? What is the significance of putting God under the line? What is God? Sir, God is Truth. So an oath taken in the name of God means that it is an oath in the name of Truth. And 'affirmation' as opposed to God is expediency. Sublimated so to speak. So the position is Truth versus 'expediency sublimated'. "What is the need of taking an oath"? They say, a gentleman when he affirms a thing, it may be taken that he means it and shall act up to it. Similarly, one would argue that when a gentlemen is elected to an. office voluntarily, why need he even affirm ? Why ask him for an affirmation ? It must be taken for granted that he will remain a gentleman, and he win always be acting in a truthful manner. Then why have the formality of having any affirmation or oath. But when we are having the formality of an oath, I should be allowed to distinguish between an oath and an affirmation. As I have said, God is Truth and affirmation is 'expediency sublimated. I desire expediency to go under the, line and Truth to go up. I am afraid some of the Honourable Members may not attach much importance to this question, and really I also admit that it-is. not a matter of very great importance.' But Dr. Ambedkar seems to be playing pranks with us. Why does Dr. Ambedkar come out with an amendment when on a previous occasion the House had already given its decision on this question? Through, his amendment Dr. Ambedkar wants the whole House to commit itself to putting God under the fine. But let us not forget that India gave the idea of God to the whole world. I have heard leaders of his House say that we must own the international numerals as against the Hindi numerals because the, former were given to the world by India. Similarly I submit that when the world was rotting in chaos, we gave it the idea and conception of Truth and God. India gave it to the world.. Why then should God go down particularly when He has 'made us free? God primarily belongs to India. This is the land of God. So God should be, above and affirmation below. Let us stick to the original draft. So I hope the House will not accept Dr. Ambedkar's amendment. There is no, question of party discipline, let not the Members be afraid of any Whips. My appeal to them is to reject the amendment of Dr. Ambedkar. Let us not be duped by what agnostics say--I am sorry for the word, but............

Mr. President: You want the House to accept the amendment of Mr. Kamath ?

Shri Mahavir Tyagi: I want the House to oppose the amendment of Dr. Ambedkar and stick to the original draft we had decided upon in the be in connection with the oath to the President.

Shri Prabhu Dayal Himatsingka (West Bengal: General): Sir, I find a storm has been raised unnecessarily about the form which has been suggested by Dr. Ambedkar. In fact this one has been brought in, in place of two forms. Two alternative forms have been put into one form. Some people swear in the name of God and others solemnly affirm. Instead of having two different forms, it is put in one form. If originally instead of underlining, there was a stroke between "swear in the name of God' and solemnly affirm", that also will serve the purpose. There is no meaning in suggesting that because in the amendment or the form proposed by Dr. Ambedkar, "solemnly affirm" has been put above the line, and the words swear in the name of God" underneath, there is a suggestion that one is more important than the other. Alternative forms had to be used by those who either belong to the Christian religion who "swear" and the Hindus and other solemnly affirm. Therefore, there is no reason why there

should be any formal amendments In fact, the form suggested by Dr. Ambedkar and the form suggested by Mr. Kamath are one and the same. Whichever is accepted it will make no difference.

Shri Jagat Narain Lal (Bihar: General): Sir, discussion might be obviated if Dr. Ambedkar himself gets up and accepts the amendment. There is no meaning in putting one above the other. There is sentiment involved, in it. Both are one and the same. He may put "swear in the name of God" above and "solemnly affirm" below, so t`at it may suit peoples of both tastes and feelings.

The Honourable Dr. B. R. Ambedkar: In proposing this amendment, I have not the slightest desire to offend the sentiments of some of the, Members who have spoken against the draft on the ground that God has been placed below the line. Sir, in this matter I must admit that we have really no consistent policy which we have followed. For instance, in article 49, which has been passed, God has been, I think, placed above the line and affirmation below the line. In article 81, we have placed affirmation first and the oath afterwards. In this article, to which we have moved amendments, we have merely followed the wording, of the principal clause, which runs: "Affirm or Swear". That being the language of the principal clause, the logical sequence was that the affirmation was placed above the line and the oath was placed bellow, It is a purely logical thing. Now, the reason why wehave thought it desirable to place affirmation first and oath afterwards, was because in this country, at any rate, the Hindu, when he is called upon in any Court of Law to evidence, generally beings by an affirmation. It is. only Christians, Anglo-Indians and Muslims who swear. The Hindus do not like to utter the name of God. I therefore thought that in a matter of this sort, we ought to respect the, sentiments and practice of the majority community, and consequently we have introduced this particular method by stating the position as to affirmation and oath. As I said, I have neither one view nor the other. I am perfectly prepared to carry out the wishes of the House. If the House is of the opinion that Mr. Kamath's amendment should be accepted-and I submit that that would be contrary to the practice prevalent in this country so far as the Hindus are concerned-then what I would suggest is this, that my amendments would be allowed at this stage, with the liberty that the Drafting Committee will take into consideration all the other articles which have been incorporated in the Constitution so far as to bring the whole matter in line. It-will not be proper to make a change here and to leave the other articles as they stand.

Shri Mahavir Tyagi: Let grammar not stand in the way of God

Shri H. V. Kamath : With regard to article 81, there was no amendment before the House. It was stated that every Member in each House of Parliament should make an affirmation and an oath according to the Third Schedule. But what the House has already adopted is the oath or affirmation for the President and the Governors, and that is in the form set out by me in my amendment today.

Mr. President: It is not necessary to have a discussion over this matter. You had better vote on it. It is not a question on which there is room for much discussion. As Dr. Ambedkar has said, he has no particular feeling in the matter. and if the House decides one way, he wilt ask for the liberty to put 'all the' articles in that form. So I shall put the amendment to the vote.

Mr. Naziruddin Ahmad : My amendments have not been touched by Dr. Ambedkar at all.

Mr. President: That is different.

The Honourable Dr. B. R. Ambedkar : After the word "sincerity" ? After "sincerely" I would like to add something more. It would not be enough.

Mr. President: He wants the omission of the word "affection".

(after a pause)

Well, I will take up the amendment. The question is

"That in amendments Nod. 56 to 63 of List I (fifth Week) of Amendments to Amendments. in the form of the oath or affirmation in the Third Schedule, for the

words

,solemnly affirm swear in the name of God."'

(proposed to be substituted), the following be substituted ,swear in the name of God solemnly affirm."'

The amendment was adopted.

Mr. President-: I take it that the House gives leave to Dr. Ambedkar to put the other articles, wherever such similar expressions occur in the same order.

Honourable Members: Yes.

Shri Jaspat Roy Kapoor : May I suggest that in all the places where we have the words "affirmation or oath" we may have the 'oath' first and 'affirmation' afterwards. It should be so in the substantive clause also.

Mr. President: That is so. It should be put in the same order wherever the expression occurs.

The question is :

"That in amendments Nos. 56 to 63 of List I (Fifth Week) of Amendments to Amendments, in the form of the oath or affirmation in the Third Schedule (in the word proposed to be substituted) the words 'swear in the name of God be deleted."

The amendment was negatived

Mr. President: The question is:

"That with reference lo amendment No. 56 of List I (Fifth Week) of Amendments to Amendments, in the Third Schedule, in Form I of the Declarations. after the word 'solemnly' the words 'and sincerely' be inserted."

The Amendment was negatived. Mr. President: The question it :

"That with reference to amendment No. 56 of List I (Fifth Week) of Amendments to Amendments, in the Third Schedule, in Form I of the Declarations for the words 'all manner of people' the words 'all people' be substituted."

Mr. Naziruddin Ahmad: This may be left to the Drafting Committee.

Mr. President: It is not pressed. So I take it that it is dropped.

The question is .

"That with reference to amendment No. 56 of List I (Fifth Week), of Amendments to Amendments in the Third Schedule in Form I of the Declarations. the comma and the word affection' after the word 'favour' be deleted."

The amendment was negatived

Mr. President: The question is:

"That in Form VI of the Forms of Declarations in the Third Schedule, the words ,or as may be specially permitted by the Governor in the case of any matter pertaining to word 'affection' after the word 'favour' be deleted."

The amendment was adopted.

Mr. President : I do not think it is necessary to put the other amendments to vote, because the voting will be the same as with regard to the other amendments.

Mr. Naziruddin Ahmad: They may be formally put and rejected by the House.

Mr. President: The question is:

"That with reference to amendment No. 57 of List I (Fifth Week) of Amendments to Amendments, in the Third Schedule in form II of the Declarations, after the word the words 'and sincerely' be inserted."

The amendment was negatived.

Mr. President: The question is:

"That with reference to amendment No. 60 of List I (Fifth Week) of Amendments to Amendments, in the Third Schedule, in Form V of the Declarations, after the word solemnly' the words 'and sincerely' be inserted."

The amendment was negatived.

Mr. President: The question is:

"That with reference to amendment No. 60 of List I (Fifth Week) of Amendments to Amendments, in the Third Schedule, in Form V of the Declarations, for the words all manner of people' the words 'all people' be substituted,."

The amendment was negatived.

Mr. President: The question is :

"That with reference to amendment No. 60 of List I (Fifth Week) of Amendments to Amendments, in the Third Schedule, in Form V of the Declarations, the comma and the word 'affection' after the word 'favour' be deleted."

The amendment was negatived.

Mr. President: The question is:

"That with reference to amendment No 61 of List I (Fifth Week), of Amendments to Amendments, in the Third Schedule., in Form VI of. the Declarations, after the word .solemnly' the words 'and sincerely ' be inserted."

The amendment was negatived.

Mr. President: Then I put the proposition moved by Dr. Ambedkar, as amended by Mr.

Kamath's amendment and Dr. Ambedkar's own amendment, ,with regard to all these forms. I do not think it is necessary

to read them separately.

The motion was adopted.

Mr. President: The question is :

"That the Third Schedule, as amended, stand part of the Constitution."

The, motion was adopted.

The Third Schedule as amended, was added to the Constitution.

Mr. President: We now adjourn till 9 o'clock on Monday.

The Assembly then adjourned till Nine of the Clock on Monday, the 29th August 1949.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Monday, the 29th August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Mr. President: We shall take up today the Seventh Schedule.

There is one question to which I have given some consideration and that is as regards the procedure to be followed in dealing with this schedule. We have got a large number of entries and there are notices of amendments to some of these entries. I take it that so far as those entries, in regard to which there are no amendments, are concerned there will be no speeches. I win of course put them to the vote of the House. But as regards those item as to which notice of amendments has been given, they will of course be moved, but I would ask honourable Members to confine their remarks to say five minutes or so on each item. We have a very large number of items and if longer time is given to speeches we will have to set apart a good many days to go through the lists. I hope this will suit honourable Members. If there be any particular item regarding which I find that more discussion is required I will certainly allow it but ordinarily I would confine each item to five minutes.

Shri Mahavir Tyagi (United Provinces : General) : Even in the case of such items where there are no amendments will you be pleased to allow Members to put questions and ask for answers so as o remove their doubts?

Mr. President: If there are any doubts, they will of course be removed.

Shri B. Das (Orissa : General) : There are, Sir, 91 items in List I alone. There are of course some honourable Members who have given notice of amendments in regard to particular items. But if there is a general discussion concerning the. principles involved in the Union, Concurrent and State, Lists it will considerably clarify the position and will help us to understand the Lists much better. This is my submission, Sir.

Mr. President: I am afraid that will only duplicate the discussion. It will not have the advantage of curtailing discussion. Therefore, any question arising in regard to any particular item will be of course taken into consideration. But I do not think any useful purpose will be served by having a general discussion with regard to the division of the subjects in the Three Lists. As a matter of fact we have had some sort of discussion on that point when we. were dealing with the articles in the Constitution.

Sardar Hukam Singh (East Punjab: Sikh): We bow to your decision that those items which have no amendments may be adopted without any speeches. We understand the spirit behind this ruling. The real difficulty is that these items have been substituted afresh and the notice has been so short that we could not go through them. For my part, either I was not very vigilant or I did not have sufficient time to go through the items that have been substituted.

Therefore the best thing to do is to pass over a number of items on the agenda. As I said, most of the items have been substituted and they are new ones and therefore it cannot be said that there are no amendments and therefore the Members may be taken to have accepted them. On the other hand, we find difficulty in going through them.

Mr. President: If my difficulty is pointed out by any particular Member I shall take that into consideration.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I have a point to submit. Mr. President, I do not take pleasure in repeatedly coming to the rostrum to raise points of order. It is utterly against my own nature to do so, as it must be to many honourable Members present. But today we are faced with an unprecedented situation. Dr. Ambedkar has out-done his past achievements so far as these amendments are concerned.

Sir, you may be pleased to notice that some of the amendments tabled are entire re-drafts of the items in the draft Constitution. I say with considerable thought and care that I find some serious interpolations in them. As was done in

the case of the Hindu Code Bill, a large number of serious interpolations have been made here also. But there has been an attempt to disguise these interpolations and therefore they hive been put in the draft amendments of to day in the shape or re-drafts. It will certainly be claimed by Dr. Ambedkar that the changes are of a drafting nature as it was claimed in the case of the amendments to the Hindu Code Bill. But I submit that here also there are serious interpolations. I got these amendments yesterday morning and it was by chance that I and Sardar Hukam.Singh met and carefully considered the texts of the amendments. We then discovered serious changes or interpolations, but the time allowed for sending in amendments was till five of the clock yesterday. We had only a few hours to consider the amendments. Like Sardar Hukam Singh I confess that I have not been able to do our duty with regard to these amendments in the way in which our constituencies would like,

I submit that in regard to these items which are entire re-drafts we may postpone consideration. We have not been able to carefully consider them. I support the suggestion of Sardar Hukam Singh that though there are no amendments submitted to some of the items it should not been taken that they are free from objection. I find that only a few Members have submitted amendments to Two Lists. No other Member has submitted amendments. I believe they have not had time to go through the new re-draft. I asked Pandit Kunzru who said that he got the Lists only last night and had no time to consider them. In the face of this grave situation we must decide our procedure once for all. I accept your ruling with regard to the limitation of speeches to five minutes. Some Members may not require the full five minutes allowed. But I submit that these amendments which contain new ideas we should be given time to consider. We should settle our procedure in regard to them once for all now.

Mr. President: May I make a suggestion ? If the Members promise that they will finish the Schedules tomorrow, we might rise now and sit for four hours tomorrow, instead of two hours today and two hours tomorrow.

Pandit Hirday Nath Kunzru (United Provinces: General): Nobody can give that undertaking, and even if we can, as a matter of principle, we should not. Ibis is my feeling, Sir.

Mr. Naziruddin Ahmad: With regard to most Members, they will not be able to come to an understanding. I do not think I can come to such an understanding. The difficulty is that we have not been able to fully consider the amendments. Most Members are in the happy position that they have not read the amendments and have not noted their significance. I am not in that happy position.

Mr. President: I do not think the Member has any justification for supposing that other Members do not study the amendments.

Mr. Naziruddin Ahmad: I have been assured by some very serious Members that they have not read the amendments. Therefore, in view of the serious nature of the amendments I say that the House should have time to consider them. If it is stated that sonic of the Members, who try to do their duty in a fashion which is not the general fashion in the House, have considered these amendments and that no useful purpose will be served by further discussion or consideration of those amendments, then we should leave the matter entirely to Dr. Ambedkar & Co. to do what they like.

Mr. President: If any question is raised with regard to any particular amendment or item and if Members want time, we shall consider that at that time. Let us now proceed item by item.

The Honourable Dr. B. R. Ambedkar (Bombay: General): I would like to say that these amendments were circulated on Saturday, day before yesterday.

Mr. President: Were they circulated on Saturday.

Some Honourable Members: Yes, Sir.

The Honourable Dr. B. R. Ambedkar: On Saturday evening, I think. So far as Mr. Naziruddin Ahmad is concerned, there are some forty amendments standing in his name.

Mr. Naziruddin Ahmad: Only twenty.

The

Honourable Dr. B. R. Ambedkar: They cover the whole of List 1. Therefore my submission is that the complaint, so far as he is individually concerned, that be did not have time, must be regarded as absolutely unfounded.

UNION LIST

Entry 1

Mr. President: We shall proceed with the items now. Item No. 1. I do not find notice of any amendment to this item. A list has just been handed over to me of certain amendments by Dr. Deshmukh. I have received it today just now.

Shri T. T. Krishnamachari (Madras: General): There is no amendment to Entry 1.

Mr. President In that list, there is an amendment to Entry 1.

Dr. P. S. Deshmukh (C.P. & Berar: General): That was the earliest I could do.

Mr. President: Very well, you can move your amendment.

The Honourable Dr. B. R. Ambedkar: At least we should have a copy of the amendment.

Mr. President: I myself have not got a copy. I have handed over the only copy to the, Member.

Dr. P. S. Deshmukh: Sir-, I beg to move my amendment which is to the following effect :

"Substitute for Entry I the following 'defence of India and of every part thereof and generally for all purposes of defence including all such acts as may be necessary in times of war including, training, conscription, demobilisation, etc."'

Sir, apart from the fact that my amendment is better expressive of the purpose of the Entry, there are one or two things which, I think, it is necessary to include specifically e.g. conscription and training. Demobilisation of course finds a place in the Entry as it stands, but there is no mention during times of war of training which is most essential for purposes of war. There is also no mention of conscription. We, are fighting more and more total wars these days and it may be necessary at any moment for the Union Government to declare and have conscription. It is not a matter which can be said to form part of the defence arrangements of the country. This is a special item which requires special enactment and Ordinances would be necessary, and in view of that, it would be advisable to have a specific provision for the Union Government to have recourse to conscription, whenever the necessity arises.

Shri H. V. Kamath (C.P. & Berar: General): Is not conscription comprised in "all such acts as may be conducive in times of war to its successful prosecution" ?

Dr. P. S. Deshmukh : I do not think so Sir. If it is necessary to mention demobilisation, which is a part and parcel of the consequences following a war, then I think there is every reason why conscription should be specially mentioned. Of course this is only a suggestion. My Friend, Mr. Kamath, appears to take a different view. If that is so he is welcome to have it. But so far as I am concerned, my view is that the Entry as it is worded is not so comprehensive as it should be. I think it is necessary to mention conscription as part of the defence arrangements. In the Entry as it stands there is no mention of all the purposes so far as defence or the preparation for war is concerned, and I would therefore recommend this re-draft of the Entry for not given notice of this amendment originally, not R. Ambedkar: This is not an amendment to are the acceptance of the House.

Mr. President: You had even in the first instance.

The Honourable Dr. B. amendment.

Mr. President: This is altogether a new amendment.

Dr. P. S. Deshmukh: I am moving this amendment on the same principle as that on which Dr. Ambedkar has been moving his amendments so far as the articles are concerned.

Mr. President: There was previously no notice of an amendment to entry 1.

This is the first time we have an amendment to this entry.

Dr. P. S. Deshmukh: It is a fact, Sir. If Dr. Ambedkar feels that a rewording of this Entry is necessary, he might perhaps accept it- otherwise I am prepared to withdraw it.

The Honourable Dr. B. R. Ambedkar: This is merely a paraphrase of Entry 1. You have ruled that we should not spend more than five minutes on an Entry and it is already more than five minutes

Mr. President: As Dr.

Ambedkar has pointed out, this being merely a paraphrase of the Entry, we might leave it to him to consider. I do not think we should have much discussion on these matters, especially when they do not happen to be new ideas.

Prof. Shibban Lal Saksena (United Provinces : General): Sir, we should be allowed to have our say.

Mr. President : About the original Entry or the amendments ?

Prof. Shibban Lal Saksena: On both.

Mr. President : Is it necessary to say anything on the original Entry when ;there is no opposition ?

Prof. Shibban Lal Saksena : I want to say something on the Entry..

Shri T. T. Krishnamachari: May I point out, Sir, that in regard to these three lists, the main objection can only be that a particular Entry should not find a place in list 1, but should find a place in list II or list III. This is how the arguments should proceed. So far as this particular Entry is concerned, it is a matter beyond dispute altogether. It must be in the Central List. Dr. Deshmukh's amendment is merely an amplification of the entry as it is. I think that there should be no discussion on a vital matter like this on which ,all persons are generally agreed, that the responsibility belongs to the Union.

Mr. President: In this amendment it is not suggested that this should be put in any other List. The only idea is that it should be amended so as to express the same ideas in a somewhat different form. Is much discussion necessary on that ? If the proposal was that it should be transferred from one List to another, then it would be a question of substance.

Prof. Shibban Lal Saksena : We are entitled to suggest improvements in the wording also.

Mr. President : I do not question your right of doing it. I am only suggesting whether it is at all, necessary in this case. You have not given notice of any amendment for that purpose.

Prof. Shibban Lal Saksena : But another honourable Member has given .notice of an amendment.

Mr. President: But he is prepared to leave it to Dr. Ambedkar to improve the wording if he so feels.

Prof. Shibban Lal Saksena: Those Members who have given no amendments, can they not speak on the Entry ?

Mr. President: I do not question the rights of Members to speak on anything but I am only suggesting whether it is necessary when there is really no difference of opinion.

Prof. Shibban Lal Saksena: I would not have risen to speak if I did not feel ,it to be necessary.

Mr. President : If there is any question of substance.Prof. Shibban Lal Saksena : I think it is a question of substance.

Mr. President: If I allowed in one case, I shall have to allow in many other cases and at every time there will be discussion and once discussion starts, I cannot stop one Member when I allow another Member. So it means an interminable discussion which might go on for weeks on these Lists.

Shri Mahavir Tyagi : Prof. Saksena himself would be able to carry on for the whole day, if you allow him to speak once.

Shri H. V. Kamath: There are at least some entries which are important, on which I hope you will be so good as not to shut out general discussion.

Mr. President : If I find that there is any question of substance raised, I shall certainly allow it, but if it is merely supporting the entry as it is or resting something in the nature of language, I think that might be left to, Drafting Committee. As Prof. Saksena does not wish to say anything against the entry and simply wants to support Dr. Deshmukh's amendment, which Dr. Deshmukh himself has referred to the Drafting Committee, I do not see where a question of speaking arises in this case.

Prof. Shibban Lal Saksena: He has not accepted it.

Mr. President: It is not a question of accepting. It is a question of improving the language and he says he will leave it to the Drafting Committee.

Prof. Shibban Lal Saksena: At least I thought the word "conscription " should be there.

Mr. President: Well, if it is a new idea, then in that case other considerations. come in, but I thought that it was not a new idea and that is why I

told him like that.

Shri T. T. Krishnamachari: Generally all preparations for defence, that is the wording, Sir, and that includes everything, not merely conscription but. also something beyond that.

Prof. Shibban Lal Saksena: I want it to be made explicit.

Mr. President: That is not necessary. The question is "That Entry I stand pan of the Union List."

The motion was adopted.

Entry 1 was added to the Union List.

Entry 2

The Honourable Dr. B. R. Amendment : Sir, I move

"That for entry 2 of List I, the following entry be substituted.

'2. Central Bureau of Intelligence and Investigation."'

The only words added are "and Investigation". Otherwise the entry is the same as it exists in the draft.

Shri Mahavir Tyagi: What is the significance of this addition ? Will you please throw light as to why you have added these words ?

The Honourable Dr. B. R. Ambedkar: The idea is this that at the Union office there should be a sort of Bureau which will collect all information with regard to any kind of crime that is being committed by people throughout the territory of India and also make an investigation as to whether the information that has been supplied to them is correct or not and thereby be able to inform the Provincial Government as to what is going on in the different parts of' India so that they might themselves be in a position to exercise their Police powers in a much better manner than they might be able to do otherwise and in the absence of such information.

Mr. Naziruddin Ahmad: Mr. President, Sir, I beg to move:

"That in amendment No.1 for List I (Sixth Week) in the proposed entry 2 of List I,the words 'and investigation' be deleted."

Then I move my next amendment which is an alternative to the first:

"That in amendment No. 1 of List I (Sixth Week) in the proposed entry 2 of List I for the word investigation' the words 'Central Bureau of investigation' be substituted."

The original entry was "Central Intelligence Bureau". The re-drafted entry is "Central Bureau of Intelligence and Investigation. 'Me words. "and Investigation" seem to me to appear to give an ambiguous effect. I submit that the duty of the Union Government would be to maintain a Central Intelligence Bureau. That is all right. Then we have the words "and Investigation", and we do not know what these words really imply. Do these words. "and investigation" mean that the Bureau of Investigation was merely to carry out the investigation ? They will mean entirely different things. If it is to enlarge the scope of the Central Intelligence Bureau as well as the Bureau of Investigation, that 'would have been a different matter but Dr. Ambedkar in answer to a question put by Mr. Mahavir Tyagi has said that the Central Government may think it necessary to carry on investigation. Sir, I submit the effect of this amendment, if that is the kind of interpretation to be given to it, would be extremely difficult to accept._ We know that investigation of crime is a provincial subject and we have, already conceded that. If we now allow the Central Government also to investigate, the result would be that for a single crime there must be two parallel investigations. one by the Union Government and other by the State Government. The' result of this would be that there will be a clash and nobody will know whose charge-sheet or final report will be acceptable. The Union Government may submit a final report and the Provincial Government may submit a charge-sheet, and there may be a lot of conflict between these two concurrent authorities. If it is to carry on investigation, then it will not be easy to accept it. It was this suspicion that induced me to submit this amendment, though without any hope of being accepted, at least to explain to the. House my misgivings and these misgivings are really substantiated by Dr. Ambedkar himself. I would,, like to know whether it is possible at once to accept this implication, to give the Central Government power to investigate crimes. My first amendment is intended to remove the words "and investigation". If you keep the investigation within this entry it should be the Central Bureau of Intelligence, as well as Bureau of Investigation. If there are two Bureaus only there, could be no, difficulty and there wilt be no clash and let us have as many Bureaus as you like but if you want investigation, it will be inviting conflict. Rather it is another attempt to encroach on the, provincial sphere. I find there is no limit to the hunger of the Central Government to take more and more powers to themselves and the more they eat, the. greater is the hunger for taking more. powers. I oppose the amendment of Dr. Ambedkar. I appeal to the House not to act on the spur of the moment; it is easy for them to accept it as it is easy for them to oppose it and the entry does not seem to be what it looks.

Sardar Hukam Singh: I do not move my amendment as it is already covered'.

Mr. President: There is no other amendment.

Shri Brajeshwar Prasad (Bihar: General): I would like to speak a few words on this item.

Mr. President: I do not like to permit any one if I can help it.

Shri Brajeshwar Prasad: It is entirely in your hands.

Mr. President: We have already had an explanation given by Mr. Naziruddin Ahmad of his point of view. Dr. Ambedkar will explain his point of view and we can put the entry to vote.

Dr. P. S. Deshmukh : I have something very substantial and important to, urge. I will be brief.

Mr. President : if, I allow you, I cannot disallow others.

Prof. Shibban Lal Saksena: Sir, you are taking away the right of the Members to speak. We will be brief. We should not be shut up.

Shri Brajeshwar Prasad : For certain reasons, it would be better if without moving the amendments we are permitted to speak on the items.

Mr. President: Dr. Ambedkar has spoken on the item and the mover of the amendment has also made his speech.

Shri Brajeshwar Prasad.: If discussion is not allowed the result would be that a large number of Members would be, prevented' from expressing their views. Probably, the amendments may not be moved at all.

Mr. President: I am only thinking of the number of entries. If I allow discussion even for ten minutes on each, it means a week.

Dr. P. S. Deshmukh : I want to make a suggestion to the Drafting Committee.

Mr. President: So far as this entry is concerned, I do not think there is much room for discussion.

Shri Brajeshwar Prasad : If I am permitted to speak only two lines, I would be content.

Mr. President: Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Sir, I am not in a position to accept any of the amendments moved by my Friend Mr. Naziruddin Ahmad. These amendments seem to be the result of a muddled head.

Mr. President: Dr. Ambedkar tied not use strong language.

The Honourable Dr. B. R. Ambedkar: Amendment No. 146 seeks to remove the words 'and investigation'. The ground for removing the word 'investigation as suggested by my Friend Mr. Naziruddin Ahmad, is that there would be conflict between the jurisdiction of the Centre and the. Provinces. If that is how he understands the entry as I have moved it, I do not quite understand 'how he can consent to allow the word 'investigation' to remain in the two subsequent amendments which he has moved, numbers 147 and 148.Mr. President : 147 only.

The Honourble Dr. B. R. Ambedkar: He has got another.

Mr. President: Amendment No. 148 has not been moved.

The Honourable Dr. B. R. Ambedkar: The point of the matter is, the word "investigation" here does not permit and will not permit the making of an investigation into a crime because that' matter under the Criminal Procedure Code is left exclusively to a police officer. Police is exclusively a State subject; it has no place in the Union List. The word "investigation" therefore is intended to cover general enquiry for the purpose of finding out what is going on. This investigation is not investigation preparatory to the filing of a charge against an offender which only a police officer under the ,Criminal Procedure Code can do.

Mr. Naziruddin Ahmad:

Then, why not use the word "enquiry" ? The word "investigation" has acquired a very definite meaning. Why use a word 'which has acquired another meaning?

Mr. President: I will now put the amendments to vote. The question is

"That in amendment No. 1 for List I (Sixth Week) in the proposed entry 2 of List I, the word,; 'and investigation' be deleted."The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 1 of List I (Sixth Week) in the Proposed entry 2 of List I, for the word investigation' the words 'Central Bureau of investigation' be substituted."

The amendment was negatived.

Mr. President: The question is :

"That for entry 2 of List I, the following entry be substituted.

2. Central Bureau of Intelligence and Investigation".

The amendment was adopted.

Entry 2, as amended was added to the Union List.

Mr. President : The motion is:

"That entry 3

That entry 3 form part of the Union List."

The Honourable Dr. B. R. Ambedkar: Sir, I beg to move-:

'That for entry 3 of List I, the following entry be substituted:- '3. Preventive detention in the territory of India for reasons connected with defence, foreign affairs, or the security of India; persons subjected to such detention.'

Comparing this entry with the original entry in the Draft Constitution, it will be noticed that there are only two changes : for the words 'external affairs' we have now used the words 'foreign affairs'. "Persons subjected to such detention" is an addition; this did not exist in entry 3 as it stands. But, this, again. has already been passed by the House in the amendment to the Government of India Act. Therefore, substantially, there is no change in the amendment that I am proposing.

Mr. Naziruddin Ahmad : Sir, in moving my next amendment, I take a great risk of disclosing a further muddled head. But, I should however state with great respect to Dr. Ambedkar that though I have a muddled head, I have not a guilty conscience. The expressions which Dr. Ambedkar has chosen to use in giving his explanation are considerably beneath the dignity of the House I, however, will not emulate his example and I shall rather confine myself to some of the difficulties which I have a right to 'address the House, not to Dr. Ambedkar, whose mind is locked, whose conscience is guilty and whose intelligence is prejudiced by preconceived ideas. I do not wish to move the rest of die amendments. It is useless. When an honourable Member takes an. unusual course of describing another Member as having a muddled head, I was pained to see that a few Members to my left ....

Mr. President: I myself asked Dr. Ambedkar not' to use strong language.

Mr. Naziruddin Ahmad: I was pained to see that it caused some amount of vulgur response from a certain section of the House. The object of my amendment is this. The wording has been changed to 'foreign affairs' from 'external' affairs'. We have been accustomed to use of the expression 'external affairs'. What is wrong with 'external affairs"? Is there, any difference? If there is any difference, the difference may be explained. I have come here only to raise a point so as to get clarification. As Mr. Mahavir Tyagi said that ha wants clarification, I also wants clarification, by my amendment No. 149, which reads :-

"That in amendment No. 2 of List I (Sixth Week) in the proposed entry 3 of List I, for the word 'foreign' the word 'external' be substituted." With regard to amendment No. 150, I submit "persons subjected to such detention" would be absolutely needless. The words "preventive detention" includes certainly "persons subjected to such detention. These are words added to the original entry without any purpose. Though I may disclose a muddled head, I only like a muddled head to be cleared not by unseemly :expressions, but, by reason. Reason would be appreciated more than hard expressions.

Mr. President: Your next amendment No. 150?

Mr. Naziruddin Ahmad: I do not move amendment No. 150; it is useless.

Dr. P. S. Deshmukh : I am not moving

the amendment.

Shri Brajeshwar Prasad: I am not moving my amendment,, but I would like to speak.

Shri H. V. Kamath : It is a very important item. I shall only put two questions to the Drafting Committee.. There are some lacunae in this and one or two aspects of the matter have been left untouched. I am not going to make a speech.

Mr. President : Put the questions from there.

Shri Brajeshwar Prasad: I would also like to put one question.

Shri H. V. Kamath: The first question that arises in my mind is, we have provided for preventive detention in this entry but. can there not be a situation when Government may find it necessary to extern persons from the territory of India in connection with defence, foreign affairs or India's security? How will you provide for such externment of persons from Indian territory ?

The second question is : We have already adopted article 275 in the Draft Constitution in a slightly different form from what it was in the original draft. Article 275 as it originally stood provided for the President proclaiming an emergency when the security of the country is threatened but later on the House has changed' it. The new article says that 'where the security of India or any part of the territory thereof is threatened'. Here this entry provides for detention only when the security of India is threatened. Should we not make it clear and say that 'where for reasons connected with defence, foreign affairs or the security of India or any part of any territory thereof' in consonance with 275 which we have already adopted?

As regards the point raised by Mr. Naziruddin Ahmad, I support him because the Ministry of Foreign Affairs is still called the Ministry of External Affairs and not Foreign Affairs and so I do not see any reason for changing the term.

Dr. P. S. Deshmukh: Sir, on reconsideration, I would like to move my amendment.

Mr. President: Yes.

Dr. P. S. Deshmukh: Sir, I thank you for permitting me to go back on my decision, but the amendment I have suggested is really of very vital importance. I move:

"That after the word reasons the words 'of State' be added to the item as has been re-drafted."

My first argument in favour of this amendment is that wherever you have such powers in the Government of India Act. the reasons are always menti onedas reasons of State. If my friends were to retort and say that reasons Connected with defence and external affairs are by themselves sufficient, I would plead that it is not so. All reasons on the strength of which we are going to give this power of preventive detention must have reference to the interests of the State as such, and therefore I hope the learned Doctor will accept this amendment. It is a small amendment but highly important. In the Government of India Act also we have these words "for reasons of State" Otherwise, any reason which may have the remotest connection with external affairs would also be a reason for preventive detention which would really be a bad thing in principle. The power which the British Government 'in India. was not prepared to take in its hands by the Government of India Act we would be giving to the Union, which is absolutely unnecessary if not dangerous also. Preventive detention is being already resorted to in such a widespread manner that I think we ought to be cautious and not omit the words of State which are of vital importance so far as this item is concerned. This is an amendment of substance and I hope this will be accepted.

Shri Brajeshwar Prasad: I should like to seek clarification on one point only. I want to know whether the words 'reasons connected with defence' include "public safety or interest".

Prof. Shibban Lal Saksena: Sir, I want to oppose the amendment of Dr. Ambedkar. This is a very important entry in this list. I have throughout held and protested against the powers of the Executive' to detain persons without trial and I opposed those provisions which enable the President to pass Ordinances and in consistency with my view I have come here to oppose this entry also. I

do not think we should disfigure our Constitution by such denial of personal liberty. If we, have any suspicion against anybody then we must give him a chance to rebut the evidence against him in a proper trial 1, therefore, think that this entry continues the same line that the British took to take away the civil liberties Of the people. I know there may be cases where it might be necessary to detain some persons, and probably it might be in the interest of the, State also to do that, but what I am afraid of is that this power may be abused more than used in the interest of the country.

On balance I think it is better to take the risk of allowing personal liberty to the fullest extent than to feter it by this provision. When we are framing a Constitution for free. India, we must not disfigure it with this entry. Uptill now if a person is interned in Assam the practice is that his relatives can go and see him; but once this power comes under the Centre, then that man could be transferred to Bombay or Coorg and thus his relatives will not be able even to see him. Therefore Dr. Ambedkar's amendment to the original ,entry makes it worse for then it will be possible that those persons who are detained shall be liable to be removed from their normal place of residence and removed to places which may be extremely difficult of approach by his relatives and friends. I therefore think this addition makes the article worse. I am totally opposed to the entry.

The Honourable Dr. B. R. Ambedkar: In answer to the question put to me by my Friend Mr. Kamath I should like to tell him that there can be no provision for the cxternment of a citizen. There can be detention and not externment. The externment law can be applied only to aliens, and there is an entry in our list dealing with aliens etc. According to that, the State will be able to deal with an alien if it wants to extern him.

Shri H. V. Kamath : Where is the entry in the list ?

The Honourable Dr.B. R. Ambedkar: Entry No. 19. Now, with regard to the question put to me by my Friend Dr. Deshmukh, he wants that thewords "for reasons connected with the State" should be, substituted. In my, judgment, that would be a limiting entry; and ours is a much better one as it specifies the subject-matter in connection with which the preventive detention may be ordered.

And then Mr. Brajeshwar Prasad wants public safety to be introduced.

Shri Brajeshwar Prasad: I did not want it. I only wanted to know whether the phrase "reasons connected with defence etc." included "public safety or interest."

The Honourable Dr. B. R. Ambedkar: Yes, "security of India" is a very wide term.

Shri Brajeshwar Prasad : I am not referring to "security of India" but to "public safety or interest".

Honourable Dr. B. R. Ambedkar: Now, with regard to Mr. Naziruddin Ahmad's question, he wants the words "persons subjected to such detention" to be deleted.

Mr. President: No, he has not moved that amendment. He only.wants to substitute the word "external" for the word "foreign".

The Honourable Dr. B. R. Ambedkar: We are hitherto using the word "foreign" throughout, and I think it is better we keep to the same word.

Shri H. V. Kamath : Is the security of India the, same as the security of any part of it? And is the present entry in consonance with article 275 ?

The Honourable Dr. B. R. Ambedkar: Yes, undoubtedly.

Mr. President : I shall put amendment No. 149 of Mr. Naziruddin Ahmad to vote. The question is-:

"That in amendment No. 2 of List I (Sixth Week) in the proposed entry 3 of List I, for the word 'foreign the word 'external' be substituted."

The amendment was negatived.

Mr. President: Then I put Dr. Deshmukh's amendment. The question is :

"That after the word 'reasons' the words 'of State' be added to the item as has been re-drafted."

The, amendment was negatived.

Mr. President: Then I put the entry as it was moved by Dr. Ambedkar.

The question is:

"That for entry 3 of List I, the following entry be substituted

'3. Preventive detention in the

territory of India for reasons connected with defence, foreign affairs. or the, security of India persons subjected to such detention.'

The amendment was adopted.

Entry 3, as amended, was added to the Union List.Entry 4

Mr. President: Then we come to entry 4.

The Honourable Dr. B. R. Ambedkar : I move :

"That for entry 4 of List I, the following entry be substituted

'4. Naval, military and air forces; any other armed forces of the Union."'

Honourable. Members will see that this entry was a very large entry and it consisted of two parts. Part one of the entry related to the raising of the forces by the Union. Part two related to the forces of the States mentioned in Part III. In view of the fact that it has. been decided to put the States in Part III on the same footing as the States in Part 1, it is desirable to delete the second part of this entry. And so far as any States have today any forces, it would be provided for by a provision in the part dealing with the transitory provisions of this Constitution.

With regard to the first part of the entry, it is felt that it is a mouthful, and that many of the words are not necessary, and that the short phraseology now proposed-naval, military and air-forces-would be quite sufficient to give the Union all the powers that are necessary for the purposes of maintaining an army, navy and air-force.

Mr. President : There is an amendment to this, of Mr. Naziruddin Ahmad, No. 151. Yes, Sardar Hukam Singh, you may move it.

Sardar Hukam Singh : Mr. President, Sir, I beg to move

"That in amendment No 4 of List I (Sixth Week), in the proposed entry 4 of List I,the words 'any other armed forces of the Union' be deleted."

So. far as I can see, there are only three armed forces--naval, and air-force-and they have specifically been mentioned here, and I think all the' forces are covered even now. Just now we have heard the honourable Dr. Ambedkar say that all these three, are covered, and I think there are no other forces that are not covered.

Shri Brajeshwar Prasad: Armed police is not covered.

Sardar Hukam Singh: Armed police is not a force of the Union, therefore, my friend is beside, the point.

If we look at the original draft, we see that the "raising training, maintenance and control of the Naval, Military and Air Forces" are mentioned. And there, no other force has been mentioned. Entry 6 also has only "Naval, Military and Air Force Works." The Drafting

Committee has been at this work for a year or more, and if the Drafting Committee is getting wiser every day, and its brain is getting clearer there is no wonder that the brains of some Members might be getting muddled. But it is quite clear that there are no other forces, and this addition now suggested would be a useless appendage here in this item.

Mr. President: Are you not moving the alternative ?

Sardar Hukam Singh : No, Sir.

Shri H. V. Kamath: May I ask Dr. Amedkar whether semi-armed forces, such as the Prantiya Raksha Dal, or the Home Guards raised by the Provinces will be brought under the jurisdiction of the Union Government?

Mr. President: Dr. Deshmukh has got an amendment?

Dr. P. N. Deshmukh : I do not propose to move it.The Honourable Dr. B. R. Ambedkar: It is necessary to retain the words any other armed forces of the Union" because, besides the regular army, there are certain other forces which come under the armed forces and which are maintained by the Centre. For instance, there are what are called the "Assam Rifles" to guard the border. There are certain armed police forces maintained by the Centre with regard to the certain Indian States. In order, therefore, to give them a legal basis, it is desirable to include them in this entry 4. I might also mention that they were also recognised in entry I of the Government- of India Act, 1935, as distinct from the naval, military and air forces.

Mr. President: I shall put Sardar Hukam Singh's amendment to the House. The question is :-

"That in amendment No. 4 of List I (Sixth Week), in the proposed entry 4 of List I,

the word 'any other armed forces of the Union' be deleted."

The amendment was negatived.

Mr. President Then I put the entry moved by Dr. Ambedkar. The question is:-

"That for entry 4 of List I, the following entry be substituted:-

'4. Naval, military and air forces; any other armed forces of the Union."'

The amendment was adopted.

Entry 4, as amended, was added to the Union List.

Entry 5

Mr. President: Then we take up entry 5. There is an amendment by Mr. Brajeshwar Prasad.

Shri Brajeshwar Prasad: I am not moving it.

Mr. President : Then there is no amendment to Entry 5. I shall put it to the vote now. Does anyone want to speak about it?

Prof. Shibban Lal Saksena: Sir, I want to say a few words, as I think this entry is much too sweeping.

Mr. President : Do you then oppose it? You can either oppose it or support it. There is no amendment.

Prof. Shibban Lal Saksena: We had no time to give amendments.

Shri Mahavir Tyagi: He wants to know if the D.T.S. is also included.

Mr. President : I think the entry is quite clear, but if you want to oppose, it you can do so.

Prof. Shibban Lal Saksena: Mr. President, Sir, this item is 'in my opinion far too sweeping and by virtue of it, the Parliament may by law bring in fact every industry under the purview of the Centre. It can say that every industry is remotely connected with the purpose of defence or the prosecution of war. There is no single industry which cannot be said to be necessary for the prosecution of war. Therefore, if Parliament is given this right, then it is quite possible that the Provinces will be denied all rights over all the industries. As I said, the entry is far too sweeping. There should be some limitation. If any industries are to be taken over from the Provinces by the Centre I suggest that it should be done by a Constitutional amendment with two-thirds majority.Shri Brajeshwar Prasad : Mr. President, Sir, the meaning of this entry is that in respect of industries declared by Parliament to be necessary or expedient in the public interest or for the purpose of defence or for the prosecution of war Parliament will have the right to frame laws : it does not mean that such industries will be taken over by the Government of India.

secondly, I am not in favour of asking Parliament to make a declaration to that effect. This power should have very well been vested in the President himself. If the President declares these industries to be necessary, then the power of Parliament to frame the necessary law should come into operation.

The Honourable Dr. B. R. Ambedkar: Sir, entry No. 5 should be read along with entry No. 64. Entry 64 deals with the control of industries which Parliament has declared to be necessary in the interests of the public. Ibis, that is entry 5, relates to the taking over of industries for the purpose of defence, or for the prosecution of the war. That being the important difference, I think it would hamper war effort considerably if entry 5 was made analogous to entry 64. Declaration by Parliament will be necessary in both cases. But the scope of entry 5 is much wider than that of entry 64. Having regard to the, different ends and aims in view, it is sought to differentiate entry 5 from entry 64.

Mr. President : The question is

'That entry 5 stand part of the Union List."

The motion was adopted.

Entry 5 was added to the Union List.

Entry 6

Entry 6 was added to the Union List.

Entry 7 The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for entry 7 of list I,, the following entry be substituted

'7. Delimitation of cantonment areas, local self- government in such areas, the constitution and powers within such 'areas of cantonment authorities and the regulation of House accommodation (including the control of rents) in such areas.'..

There is an amendment to this standing in the name of my honourable Friend Mr. T. T. Krishnamachari the effect of which is merely to omit the word "self" in the expression "local self-Government" so that it will read "local

government".

Shri Mahavir Tyagi : Mr. President, Sir, as the entry is rather controversial and pertains to the control of house rents and allotments as well I would suggest that you might please agree to hold it over and not decide it today, for we have not been able to table any amendments. I also submit that this Schedule is the basic provision by which we are distributing powers between the Centre and the States. It is very important from that point of view. But amendments could not be tabled for want of time. I do not want to interfere with every item but in this case my request is that you might please agree to hold it over so that the question may be decided as to whether the cantonment boards will decide and control house rents, allotments etc. or the local governments will control them.

Shri T. T. Krishnamachari : May I point out that Mr. Sidhva has already tabled an amendment (Nos. 3515 and 3516) and actually the Drafting Committee's amendment follows the lines indicated by Mr. Sidhva's amendment because we thought that there was something in it which could be incorporated,into the entry.

Shri Mahavir Tyagi : My friend has forgotten my name. I am not Mr. Sidhva. I am Mahavir Tyagi.

Shri R. K. Sidhva (C.P. & Berar: General): Sir, if you will kindly see the printed list I have tabled an amendment-No. 3515. I am very much obliged to the Drafting Committee for having accepted my amendment. My Friend Mr. Tyagi is forgetting that the amendment that has, now been proposed covers rents and other things which may -come hereafter. The, main point is that the cantonments were -allowed, within -the area where the troops are, to be administered by the Centre. We, have now allowed the delimitation of the civil areas, that is, where the civilian population resides, and I am thankful to the Drafting Committee for having accepted my amendment.

The only important difference is that just now by his amendment Mr. T. T. Krishnamachari wants to delete the word "self" so that instead of "local self-government" it will become "local government". The idea underlying was that the, local body should be allowed and not the local government which means the Provincial Government. I do not know why that change is sought to be made. Otherwise it was a very sound and reasonable amendment which the Drafting Committee accepted. I would only request the honourable Dr. Ambedkar to allow the words "local self-government" to remain and not substitute them by putting in "local government".

Shri Mahavir Tyagi: Sit, in case you are not acceding to my request you might please agree to allow me to put in this amendment, namely :

"That the last words 'and the regulation of House accommodation (including the control of cents) in such areas' be deleted."

I want that I should have consultation with other friends also. It is a Every vital point.

The Honourable Dr. B. R. Ambedkar : He might speak on it.

Mr. President: As a matter of fact that very idea is contained in Mr. Sidhva's amendment. You could have moved an amendment to Mr. Sidhva's amendment.

Shri R. K. Sidhva: If these words are deleted it will spoil the whole structure. It will be a negation of the amendment that has been accepted.

Shri Mahavir Tyagi: I would like to understand what Mr. Sidhva's amendment would mean. Would it leave powers in the hands of the States? In other words will the State law apply or the Central law apply in the case of regulation and control of rents?

Mr. President: "Regulation of house accommodation and relation between landlord and tenants", I take it, includes rent also.

Shri Jagat Narain Lal (Bihar: General): Now that Provincial Governments have become 'States', 'local government' is enough; 'local self-government' is not necessary.

Dr. P. S. Deshmukh: Sir, the amendment which has been moved by Dr. Ambedkar is more or less a paraphrase, as he is pleased to describe such thing, or a re-wording of the original item as it stood in the draft. My amendment also is somewhat in the nature of a paraphrase but it also includes the point of view

that has been urged by Mr. Tyagi. The amendment which I wish to move and the wording I want to propose for this item is as follows :

"Delimitation of and local self-government in Cantonment areas, constitution and powers of Cantonment authorities within such areas and regulation and requisition of accommodation in such areas."

I think the wording I have proposed not only puts the whole item in a much better phraseology but it removes the necessity of having a reference to rent because rent is a part of the regulation and requisition of accommodation, and there is no necessity of specifically pointing out that the Union Government will have power of control of rents in any particular area.

Secondly, I think my Friend Mr. Sidhva was quite correct in asking that the word "self-government" should be retained and the word "government" should not be introduced. The words "local self-government" are very clearly understood; and although it is contended by certain friends that because there will be no local Governments hereafter there will be no confusion, I am certain that if we retain the words "local government"--unless we are prepared to define it somewhere in the Constitution-it would lead to much confusion. It is better therefore that Mr. T. T. Krishnamachari's amendment is not accepted, the word "self-government" is retained and the wording I have proposed is approved.

Shri Mahavir Tyagi : Sir, may I suggest that the entry be held over?

The Honourable Dr. B. R. Ambedkar : Why? 1 do not understand. If you have any comments to make we are quite prepared to hear and give you a reply.

Shri Mahavir Tyagi : I feel that either we must be given a full chance of tabling our amendments and putting our case before the House, or such articles as are controversial may please be ordered to be held over.

The Honourable Dr. B. R. Ambedkar: This amendment standing in the name of Mr. Sidhva has been there from 26th January My friend has now become awake to the situation. There was plenty of time for him to give an amendment and I am even now prepared to say that he can make out his case for such changes as he wants and I am prepared to satisfy him.

Shri Mahavir Tyagi : Sir, we have accepted Dr. Ambedkar's speed-he is going very fast-we have taken no objection to that. But on items like these he might agree.............

The Honourable Dr. B. R. Ambedkar: Why don't you say what you want to say?

Shri Mahavir Tyagi : My submission is that such items on which there are controversies or on which honourable Members say or feel that they want to table an important amendment, such items may please be held over. It will smooth the way, it will accelerate the work.

Mr. President : Then the House will adjourn till 9 o'clock tomorrow. We shall take all the amendments tomorrow as they come, but I shall not give any further time.

The Honourable Dr. B.R. Ambedkar : I am entirely in your hands, Sir, so far as this amendment is concerned. If I can know 'Whit objections may Friend Mr. Tyagi has, I am prepared to deal with his case now in the House

Shri Mahavir Tyagi : Sir, it you give me a few minutes.......

Mr.President : No; we shall adjourn till tomorrow 9 o'clock. I shall not give any more time for amendments. All amendments must come in by 5 o'clock to-day and we shall take up the entries tomorrow morning.

The Assembly then adjourned till Nine of the Clock on Tuesday, the 30th August 1949.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Tuesday, the 30th August 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Mr. President: We shall take up the discussion of Entry No. 7. I find that several Members have given notice of amendments. No. 172 Dr. Deshmukh.

Dr. P. S. Deshmukh: (C. P. & Berar: General) : I have moved it already, Sir.

Mr. President: Then 173. Shri T. T. Krishnamachari.

Shri T. T. Krishnamachari: (Madras: General) : Mr. President, I move:

"That with reference to amendment No. 6 of List I (Sixth Week), in the proposed entry 7 of List I of the Seventh Schedule, for the words local self-government' the words 'local government' be substituted.

This has been explained by Dr. Ambedkar yesterday. There is no need for me to explain that further.

Shri Mahavir Tyagi: (United Provinces : General) : Sir, I am sorry that for a small matter yesterday you adjourned the House; otherwise I think it would have been clairfied yesterday. My difficulty is that when you put the Cantonments and Cantonment Boards and the regulation of house accommodation (including the control of rents in such areas in the hands of the Government of India) a great inconvenience will be felt. Personally, I feel that the cantonments in various States are Dot imperial islets. For all practical purposes, all the civil population in cantonments is controlled by the States. The cantonments were brought into being just to see that the sanitation of those places was suitable to the military neighbourhood and that all local government activities were in the hands of the military authorities or at least influenced by military authorities, so that the military areas may not find any sort of inconvenience with regard to health, hygiene or other matters.

Now, Sir, in the beginning the cantonments were mostly comprised of military barracks and officers' mess and a few other bungalows considered to be of military. Now what has happened is; let us take an instance. Take Meerut. In Meerut there is a military Cantonment, three-fourths of which is composed of civil population. There is the Sadar Bazar and there are lawyers and others living in that cantonment area. That area is within the area and the jurisdiction of the Cantonment Board. All the laws of the U.P. apply to the inhabitants of the cantonment areas. For instance, in the bazar there is the same sales tax as is elsewhere in U.P. For all purposes of law and order, they are controlled by the very same civil authorities of the Provinces everywhere in India. It was only the local government part of it which was transferred or rather intended to be transferred to the hands of the Cantonment Boards and the rest of the laws of the States equally apply to the citizens of cantonments.

Now, Sir, at most of the places cantonment area is exactly adjacent to the city areas. If the house rent controls and all similar powers were handed over to the Centre, and if those adjacent areas were to, be controlled by the Centre, then it will be an anomaly. One shop on this side of the demarcation line will be controlled by one law; the other shop on the other side of the line will be controlled by another. For a few years we controlled the house rents and house allotments by means of a law in the U.P. which was equally effectively controlling the rents of the cantonment areas. For two or three years it was getting on peacefully, but for the last one year or so, when a our Province the Rent Act was amended, they excluded the cantonment area, perhaps on the desire of the Central Government, with the result that I have received a number of letters from the cantonments of my province, complaining against the hardships which their civil population was undergoing with regard to house rents. I will read a few lines from the letter of the Secretary of the Cantonment Taxpayers' Association. "More than 1,000 suits for ejectment of tenants from houses and shops in Meerut Cantonment have already been filed in the civil courts, and decrees for ejectment in some cases have already been passed." This is not a case where the ownership of the buildings or shops belongs to Government. It is about the civil area. The Secretary further says. "In Meerut alone the civil population in the cantonment is more than one lakh". Now, this one lakh of people belonging to one State shall now for all practical purposes be controlled by a different law from the Centre just as Delhi is controlled by the Centre. When that State enacts a law it will not automatically apply to the civil population in cantonments. The, law will only apply if and when the Centre thinks it fit to extend the application thereof to those areas. If this is going to be the state of affairs under the future Constitution. I must protest against it, because all those civilians living in cantonment areas are as good as the rest of the population in a State. To make this distinction will be 'invidious and unfair. I therefore submit that, except for the local self-government part of it, the civil population of cantonment areas must be controlled on an equal footing with their fellow citizens living as neighbours in the very same State.

I therefore move :

"That in amendment No. 6 of List I (Sixth Week), in the proposed entry 7 of List I, the words 'and the regulation of House accommodation (including the control of rents) in such areas be deleted."

Rent control is the function of the State everywhere in the Union. Why should the civil areas in the cantonments now be handed over to the Centre ?

My alternative, amendment, which I shall presently move, will come in only in case this is not accepted. It runs thus:

"That in amendment No. 6 of List I (Sixth Week). in the proposed entry 7 of List I, for the brackets and words '(including the control "of rents)' the brackets and word '(excluding the control of rents)' be substituted.

I mean this control of rent must not be left in the hands of the Union administration. I have received another letter from Jhansi saying that the people there are in trouble, because the United Provinces has not been permitted to control the rent in cantonment areas. I therefore submit that if my first suggestion is not approved my alternative proposal may be accepted; or Dr. Ambedkar's genius might find some other way to accommodate my wishes

(Amendments Nos. 175 to 177, were not moved.)Shri R. K. Sidhva (C.P. & Berar: General) : Mr. President, I want to speak. on Mr. Tyagi's amendment.

Mr. President : Very well, but do not take more than three minutes. I, shall be looking at the clock.

Shri R. K. Sidhva: Yesterday, while speaking on this amendment I made: the position very clear that the Drafting Committee, will accept the amendment. But the point is that Mr. Tyagi wanted to cover the extent to which delimitation of cantonments could take place. Mr. Tyagi wanted that house rent should be deleted from this. That means delimitation also would come to the Provincial List. Unless you absolutely remove from this List delimitation also, you cannot have house-rent regulation left in the Central List. I know the difficulty he has mentioned about the control of rents in the United Provinces. Complaints have, come to me also that the Rent Act is not applicable to the cantonment areas. That is a matter of opinion of the various, provincial Governments. In Bombay the position it different. In Poona Cantonment the House Rent Control is made applicable by the provincial Government. Apart from that, I do not think it is germane to Mr. Tyagi's amendment, because it will take away the entire delimitation now in the hands of' the Centre. .

Shri Mahavir Tyagi: For the information of my Friend I may say I have given notice of an amendment to include this in the Provincial List.

Shri R. K. Sidhva: When it comes we shall see. But so far as this is, concerned, you cannot divide the two, rent and delimitation. I am not prepared to support his amendment. I think that the Drafting Committee's amendment serves the purpose.

The Honourable Dr. B. R. Ambedkar (Bombay: General) : Sir, the amendments moved by my Friend Mr. Tyagi are the only amendments which call for reply. His amendments are in alternative form. In the first, place, he wants to delete the whole part dealing with regulation of house accommodation including the control of rent. In his alternative amendment he is prepared to retain the control and regulation of house accommodation, but wishes to, delete the words 'rent control'. It seems to me, the matter is really one of common sense. If my Friend has no objection to the retention of the words, regulation of house accommodation", as is clear from his alternative amendment, then it seems to me that the control of rent is merely incidental to the power of regulation of house accommodation. It will be quite impossible to carry out the purpose, namely, of regulating house accommodation, I think he must not have any objection to the transfer of control also.

Mr. President : I will now put the amendments to vote. The first is that of Dr. Deshmukh.

Mr. P.S. Deshmukh : I will be content if the Drafting Committee will be pleased to consider it at the time of the final draft.

Mr. President : It is only a matter of drafting so far as I can see. So we might leave it to the Drafting Committee.

The question is :

"That with reference to amendment No. 6 of List I (Sixth Week), in the proposed entry of List I of the Seventh Schedule, for the words 'local self-government' the words 'local government' be substituted.

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 6 of List I (Sixth Week), in the proposed entry 7 of List I, the words 'and the regulation of House accommodation (including the control of rents) in such areas' be deleted."

Mr. President : The question is :

"That in amendment No. of List I (Sixth Week), in the proposed entry 7 of List I, for the brackets and words (including the control of rents)' the brackets and words (excluding the control of rents)' be substituted."

The amendment was negatived.

Mr. President : We have now disposed of all the amendments.

The question is :

"That for Entry 7 of List I, the following entry be substituted :-

"7. Delimitation of cantonment areas, local self-government in such areas, the constitution and powers within such areas of contonment authorities and the regulations of House accommodation (including the control of rents) in such areas."

The amendment was adopted.

Mr. President : The question is.

"The Entry 7, as amended, stand part of List I.'

The motion was adopted.

Entry 7, as amended, was added to the Union List.

Entry 8

Mr. President : I find there is no amendment to Entries 8,9,10 and 11 originally.

Shri Brajeshwar Prasad (Bihar : General) : There is one amendment No. 178 to Entry 8.

Mr. President : It is new amendment. I was referring to the original printed list of amendments to Entries 8,9,10 and 11. Consequently there was no amendment even in the smaller printed list. Now, I have got notice of new amendments, but I do not think I will allow new amendments to the original entries. So, amendments Nos. 178, 179 and 181 are ruled out.

The question is :

"That Entry 8 stand part of List I."

The motion was adopted

Entry 8 was added to the Union List.

Entry 9

Entry 9 was added to the Union List

Entry 10

Entry 10 was added to the Union List.

Entry 11

Entry 11 was added to the Union List.

Entry 12

Mr. President : There is an amendment in the name of Professor Shibban Lal Saksena that entry 12 be deleted. It is opposition. If he wishes to speak about it, he may do so. I also understand that there is an amendment by Mr. Kamath.

Shri H.V. Kamath (C.P. & Berar : General) : Mr. President, I move, Sir :

"That in entry 12 in List the words 'or any other international body' be inserted at the end."

That is to say, I want this entry to be modified so as to comprehend any international body other than the United Nations Organisation. In moving this amendment, Sir, I would like to state that the United Nations Organisaion is not the only or the last word in international organisation. My honourable Culeagues are very well aware of a certain League of Nations which was founded after the First World War and which dies an untimely death a few years later. World be a rash prophet who would give a long lease of life for this Organisation also. Already there are rifts and cracks ....

Mr. President : Would not your purpose be served by entry 132.

Shri H.V. Kamath : No, Sir. I would come to that entry presently. There are already rifts and cracks in this Organisation and one never knows when this United Nations Organisation will go the way of the League of Nations. I hope that our Constitution will last quite a long time, and I need not point out that sceptics and pessimists are not wanting who are predicting an early death for the United Nations Organistion. God forbid that its end should come about in that manner, but nobody knows whether this Organisation would stand or whether some other

Organisation will take its place. Apart from that, it is quite likely that in the future we might have regional organisations in the world. We are well aware that an Asian Relations Conference was held in April 1947 and in pursuance of that Conference an organisation called the Asian Relations Organisation has been set up. It may be that in times to come the Government of India along with the Governments of some other States might elect to become members of the Asian Relations Organisation. It may be that that Organisation may prove to be even more permanent than the United Nations Organisation.

You were good enough to draw my attention, Sir, to the fact that my proposal might probably be covered by what is mentioned in entry 13, that is to say, international associations and other bodies. If that were so, then my plea would ;be that there is no need for entry 12 as well, because the United Nations Organisation is also an international body or association. I suppose that what is meant by entry 13 is participation in these conferences and bodies form time to time, while entry 12 refers to membership of the organisation with its attendant consequences, responsibilities, duties and obligations. This, Sir, seems to be the distinction between entries 12 and 13 Entry 13 refers to participation in these conference while entry 12 is more comprehensive and includes the obligations and responsibilities resulting from membership of a particular international organisation. I therefore plead that considering that the United Nations Organisation is not at all a permanent body so far as we can see, and considering that we hope that our Constitution will last much longer than any other international body, I think we should provide for this contingency in the List and provide for our membership, with its attendant consequences and responsibilities, of not merely the United Nations Organisation but also any other international organisation which might come into being in the future. I therefore move amendment No. 3517 and commend it to the House for its consideration.

Prof. Shibban Lal Saksena (United Provinces : General) : Mr. President I beg to move that this entry No. 12 be deleted, and my reasons for demanding its deletion are as follow : I would like to draw the attention of the House to the Report of the Union Powers Committee and in that report in paragraph 2 it is said :

"'foreign Affairs' connotes all matters which bring the Union into relation with any foreign country and in particular includes the following subjects :-

(1) Diplomatic, consular and trade representation;

(2) United Nations Organisation;

(3) Participation in international concerences, associations and other bodies and implementing of decisions made thereat; etc."

In fact 17 subjects are mentioned and here we find almost all of them reproduced verbatim in this list. In entry 10 we have said : "Foreign Afairs; all matters which bring the Union into relation with any foreign country." So this entry No. 10 is very comprehensive and in fact includes all the entries which follow, at least 17 of them. I do not see any need of duplication. My second point is more important and it is this. We are framing a Constitution for our country and I do not see that in this Constitution we should provide an entry relating to the United Nations Organisation as a permanent part of our Constitution. As we all know the United Nations Organisation has only come into existence about four years back and even now it is not an organisation in which all the nations put trust, and I very well know that in spite of its existence the nations are trying to prepare for war and they have no trust that the United Nations Organisation can prevent war. If we lay down the United Nations Organisation as one of the entries in this List that means that we give to it importance which is not justified by plain facts. It may be that the united Nations Organisation may cease to exist tomorrow. It may be that India may desire to leave it and if so what is the sense in keeping this entry in the Union List ? I personally feel that entry No. 10 is very comprehensive and it is a matter of foreign policy whether we should continue our membership of the United Nations Organisation or whether we should get out of it. So I do not see any reason why we should put this entry in our Constitution. I also personally feel that the experience of India as a member of the United Nations Organisation has not been very happy and the amount of expenditure which it has involved was not at all commensurate with the advantages, if any, which we have derived from its membership, and in the Kashmir question, we know that we have not been able to get things settled. in fact it has become more complicated. We had hoped that we will get justice and, instead of that international politics have vitiated the whole thing and we are involved therein.

Similar is the case in the matter regarding the treatment of Indians in South Africa. We very well know that India has not got any real voice in the United Nations Organisation. ;The United Nations Organisation has got five permanent seats in the Security Council, and countries like Britain, America, Russia, France and China have each got one seat and India with a population almost bigger than any of them has not been given any seat. I, therefore, think that it is not very honourable for India to be there on these terms.

It is quite possible that tomorrow the parliament may decide that we shall not be in the United Nations Organisation and in that case this entry in the Constitution may be a sort of hindrance. The United Nations Organisation is mentioned as something permanent and I therefore think that this entry in the Union List is superflous as well as injurious. It really binds down the Parliament, and so I personally feel that this entry has no place in this list. Neither India is committed for ever to the United Nations Organisation nor does the House wish to aspire to do so and when we study the reactions of the world to this United Nations Organisation, we find that there is always criticism that it can only be a real world organisation when other nations are ready to part with a little of their sovereignty. The veto power gives power gives power to the United States of America and the Soviet Russia, who do not want to part with any of their sovereignty, to veto any proposal and in this way, I do not think it can go very far with this sad state of affairs.

I therefore, think that the United Nations Organisation is not an organisation of such a character that it should be put down in our Constitution as entry No. 12 in List No. 1 of Seventh Schedule. I think that entry No. 10 is quite comprehensive and it will include the United Nations Organisation. I therefore strongly feel that this entry 12 must be deleted and we must not have this in our Constitution.

The Honourable Dr. B.R. Ambedkar : Sir, there are various considerations which arise with regard to this amendment. As my honourable Friend, Mr. Kamath will see this is not the only entry which relates to foreign nations. There is, in the first place, an entry called Foreign Affairs which is broad enough, to be operated upon by this country if it wishes to establish itself as a member of any international organisation. There is also the entry following, which we are dealing with now, which permits legislation relating to participation in any international conference or any international body. In view of that, I should have thought that the kind of amendment which has been moved by my honourable Friend, Mr. Kamath is really unnecessary. Secondly, it must be remembered that this is merely a legislative entry. It enables the State to make legislation with regard to anybody of the Draft Constitution which limited the legislative power of the State given by any one of these entries, the question such as the one raised by my honourable Friend, Mr. Kamath would be very relevant, ;but I do not find that there is any limiting article in the Constitution itself which confines the legislative power given under this entry to the membership of the United Nations Organisation and there is no such entry at all in the article. Therefore the State can act under any of the other items and be a member of any other international organisation. But if the House is particular about it, I think no harm can be done if Mr. Kamath's amendment is accepted and therefore, I leave the matter to the House to decide.

Mr. President : The question is :

"That in entry 12 in List I the words 'or any other international body' be inserted at the end."

The amendment was negatived.

Mr. President : The question is :

"That entry 12 stands part of List I."

The Motion was adopted.

Entry 12 was added to the Union List.

New Entry 9-A

Mr. President : There is notice of one amendment by Prof. Shibban Lal Saksena for adding one more entry : " Cosmic energy, and scientific and industrial research and other resources needs for its production, development and use." It comes after entry No. 9. I missed it just then. I should have put it after entry No. 9.

Would you like to move it, Mr. Shibban Lal Saksena ?

The Honourable Dr. B. R. Ambedkar : I do not know what it means.

Mr. President : We have atomic energy; he wants to have cosmic energy also.

Prof. Shibban Lal Saksena : Sir, I beg to move :

"That after entry 9 of List I, the following new entry be added :-

"9-A. Cosmic energy, and scientific and industrial research and other resources needed for its reproduction, development and use."

Sir, we have provided in entry No. 9 for atomic energy and mineral resources essential to its production. We very well know that atomic energy has revolutionised the whole conception of defence. In fact, the biggest problem in the U.N.O. is about the atomic energy. You all very well know that there is also the cosmic energy. About this also, researches are being made by Russia. We have often heard that on the Pamir Plateau there are laboratories where Russia is investigating into cosmic rays and its use for war purposes. In these days we cannot remain ignorant of this great advance in science. I think our State should also undertake this research work which is at present being carried on by Russia and other countries. Therefore, I think there should be entry No. 9-A in which we should provide for this item. We have recently passed a Bill for atomic energy and we are doing something about it. About this cosmic energy and cosmic rays also about which we have heard so much in the scientific magazines, I think we should make provision in our Constitution. I hope Dr. Ambedkar will see that this lacuna is removed.

The Honourable Dr. B R. Ambedkar : Sir, all I can say is that if the amendment moved by my Friend Prof. Shibban Lal Saksena is at all necessary, I think we have enough power under entry No. 91 of List I to deal with that : "any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists". That matte could be covered by this.

Shri H. V. Kamath : That would cover many of the entries in the List itself.

Mr. President : The question is :

"That after entry 9 of List I, the following new entry be added :-

"9-A. Cosmic energy, and scientific and industrial research and other resources needed for its reproduction, development and use."

The motion was negatived.

Entry 13

Mr. President : There is an amendment of which notice has been given by Messers Mohammed Ismail, Pocker, and Ahmed Ibrahim. I find none of them here. So that is not moved.

There is no other amendment to this entry.

Entry 13 was added to the Union List.

Entry 14

Mr. President : There is no amendment.

Shri Brajeshwar Prasad : I would like to speak on this, Sir.

Mr. President : Speak on war and peace ? Why ? We all understand war and peace. It is there.

Shri Brajeshwar Prasad : I would like to speak a few lines.

Mr. President : Oppose it or support it ?

Shri Brajeshwar Prasad : I would like to have further elucidation.

Mr. President : Very well; come along.

Shri Brajeshwar Prasad : Mr. President, Entry 14 : War and Peace. While discussing entry No. 5, I had suggested that instead of the word parliament, the word 'President' ought to be incorporated--"such industries which are declared by Parliament to be essential for certain purposes". Here, it is not defined whether the question of declaration of the President or Parliament. On the lines of the American Constitution, I would like clarification of this question. It is a very vital question, Sir. The power to frame laws regarding war and peace has been left to Parliament. But, I want that this power should not be left in the hands of Parliament. It should be left in the hands of the President. I have nothing more to add.

Mr. President : Dr. Ambedkar, would you like to say anything in reply ?

The Honourable Dr. B. R. Ambedkar : No elucidation is necessary.

Mr. President : The question is :

"That entry No. 14 stand part of List I."

The motion was adopted.

Entry No. 14 was added to the Union List.

Entry 15

Mr. President : There is no amendment to this.

Entry 15

Mr. President : There is no amendment to this.

Entry No. 15 was added to the Union List.

New Entry 15-A

Mr. President : There is a suggestion by Mr. Kamath that another entry be added, No. 15-A, Mr. Kamath, you may move it.

Shri H.V. Kamath : Mr. President, I move :

"That after entry 15 in List I, the following new entry be inserted :-

"15-A. The acquisition, continuance and termination of membership of any international or supra-national organisation."

I am sorry there is a printers devil : it is 'Supernational' It should be super-national'.

I feel, Sir, that in view of the rejection of my last amendment which happily enough commended itself to Dr. Ambedkar ....

Mr. President : But not to the House.

Shri H.V. Kamath : Unhappily though, not to the House. I feel, Sir, there is some raison d'etre for this amendment of mine. Had my last amendment been accepted, namely, membership of ;the UNO or any other international body, then, there would have been no need for this amendment. But as the advice of Dr. Ambedkar, I think that this provision should be made in this List. My honourable Friend Dr. Ambedkar pointed out to me Entry 10 and said that it had a very wide field and covered many things not otherwise specifically mentioned. It may be that the term 'foreign affairs' means all things to all men. But in a matter like this I.e., in the Union List (Legislative) we ought to be specific as far as lies in human power. It is not enough to say just 'foreign affairs'. It conveys either everything or nothing. Apart from that, the second part of Entry 10 refers to all matters which bring the Union into relation with any foreign country. No organisation or association or international body is mentioned as such. Entry 12 which we had adopted refers only to UNO. This list therefore to my mind suffers from a little lacuna and that is, our membership of any international body, or I may call it super-national body, other than the UNO. I have made a distinction between "international" and "super-national." Super-national in political parlance today connotes more than merely international. In modern political theory, after the birth of the League of Nations, politically interested people started talking of the Super-State-the Super-State to which all component States would willingly surrender a portion of their sovereignty. That was called a Super-State. But here we are talking of an organisation which has no powers, coercive powers of the State apparatus which we may find in a World Government of which many are dreaming today. Here we are confining ourselves to an organisation of nations where various nations assembled in conclave or in conference might discuss several matters affecting all of them and arrive at certain decisions for implementation by the various Government concerned or members of the particular organisation and here comes the moot point, viz., the membership of any international or super-national organisation must be a matter which has got to be considered in great detail before one elects to become a member of any organisation. Today membership of an organisation caries with it several commitments of various sorts and therefore it is necessary to provide for not merely the acquisition of membership but also its continuance and termination. If we say mere membership, it is in my judgment too vague, and therefore we must specifically state everything. I am not mentioning only UNO because it is only one of the many organisations which human wisdom has created. There are no bounds to man's wisdom, here as elsewhere. I, therefore, feel that in view of the rejection of my previous amendment, and in view of the non-mention of this particular item in the other entries of this List, that this is a very vital matter which not merely Dr. Ambedkar but also the House might choose to consider in all seriousness. I, therefore, commend my amendment to the House for its consideration.

Shri S.V. Krishnamoorthy Rao : (Mysore) : Mr. President, acquisition, continuance and termination of membership of international or supernational organisations can be only according to the rules-bye-laws framed by those bodies and I think it has already been provided in entry 13 which we have already accepted-participation in international conferences, associations and other bodies and implementation of decisions made therein. So I feel that entry 13 which the House has already accepted covers this and this amendment is superfluous. I, therefore, oppose it.

Mr. President : The question is :

"That after entry 15 in List I, the following new entry be inserted :-

"15-A. The acquisition, continuance and termination of membership of any international or super-national organisation."

The amendment was negatived.

Entry16

Mr. President : We go to Entry 16. There is no amendment to that. I put it to vote.

Entry 16 was added to the Union List.

Entry 17

Entry 17 was added to the Union List.

Entry 18

Entry 18 was added to the Union List.

Entry 19

Entry 19 was added to the Union List.

Entry 20

Entry 20 was added to the Union List.

Entry 21

Entry 21 was added to the Union List.

Entry 22

The Honourable Dr. B.R. Ambedkar : Sir, I move :

"That for entry 22 of List I, the following entry be substituted :-

'22. Piracies and crimes committed on the high seas' or in the air; offences against the law of nations committed on land or the high seas or in the air.'"

[The Honourable Dr. B.R. Ambedkar]

The second part of this entry - "Offences against the law of nations comitted on land or the high seas or in the air." is new. It was an omission made in the earlier part of the draft. With regard to the first part, we are substituting the word "crimes" for "felonies and offences", as it is the common word used in India. "Felonies and offences" are English technical terms. We are also taking out of the first part, the words, "against the law of nations" because piracies and crimes are matters which can be regulateld by any country by reason of its own legal juridication and authority. It has nothing to do with the law of nations.

Mr. President : There are two amendments to this, of which notice is given by Mr. Diwakar and Mr. Brajeshwar Prasad. But they do not arise after the amendment which has been moved by Dr. Ambedkar. Then there is the amendment of Prof. Saksena. But is your amendment any different ?

Prof. Shibban Lal Saksena : No, it is covered by the same amendment.

Mr. President : Then there is the amendment of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Sir. I move :

"That in amendment No. 8 of List I (Sixth Week), in the proposed entry 22 of List I-

(i) for the word 'Piracies' the word 'Piracy' be substituted : and a semi-colon be inserted thereafter;

(ii) the word 'and' after the word 'Piracies' be deleted; and

(iii) the words 'committed on land or the high seas or in the air 'be deleted.'

Sir, with regard to the first part of my amendment, I want to change the word "Piracies" from the plural to the singular. I shall not press this matter to the vote, but I would ask the Drafting Committee to consider the matter. I would like to draw the attention of the House to certain other items which precede this item, and to say that they are all in the singular. I submit that the word "piracy" is quite sufficient to include the subject. It is not necessary that we should use the word in the plural. For instance, we have in item, 11, said-"Diplomatic, consular and trade representation: and not "representations". So also in item No. 14 we speak of "War and Peace" and not "Wars and Peaces". Tehen we come to item 16-"Foreign jurisdiction" and not "Foreign juridications." We come to item 17-"Trade and Commerce" and not "Trades and Commerces". Then we come to item 20- "Extradition" and not "Extraditions". I think these would be enough to show that the singular is quite sufficient in this item also. But as I said, I shall be quite content to leave the matter to the tender care of the Drafting Committee.

Then with regard to the second part of my amendment, I want to remove the word "and" occurring after the word "Piracies" or "Piracy"-whichever would be more acceptable. I say that that word, Piracy or Piracies should stand alone, and then there should be a semi-colon so as to entirely separate this from what is coming on, because they are entirely different. A semi-colon has been accepted as a favourite device in similar other places. This is also a matter of drafting.

Then comes the expression "crimes committed on the high seas or in the air". I should leave it untouched. But when we come to the words "offences against the law of nations" and then there is an unnecessary explanation-"committed on land, or the high seas or in the air." The addition of those last words, I think, is first of all. absolutely unnecessary. If we leave it at "offences against the law of nations," it includes offences committed anywhere. As the honourable Member Dr. Ambedkar has just now explained, in dealing, with another article, we should be elaborate when dealing with a subject in an article, but in specifying a certain subject in the legislative list, it is enough to mention the subject, and the question as to in what direction the legislature will act, that is a matter for the legislature alone. We need not try to elaborate the jurisdiction of the legislature in that respect. In this case, I humbly suggest that the words-"committed on land, or the high seas or in the air" have the effect-if they have any effect at all- of curtailing the jurisdiction of the Union Legislature, and quite unnecessarily too, and without perhaps appreaciating the curtailment effected. I submit that if we leave the expression "offences against the law of nations" that will imply offences committed anywhere. By saying that the offences must be committed on "land, the high seas or in the air," we are needlessly elaborate. I also submit that the very mention of the expression "high seas" would leave out offences against the law of nations committed in the low seas or within the limits of the territorial waters. If any offence against the law of nations is committed between the land and the high seas, then I think entry 22 as it is now drafted, would preclude it from the jurisdication of the Union Legislature. Therefore I submit it is better to omit the words "committed on land, or the high seas or in the air".

Sir, while considering a previous entry the honourable Member referred to entry 91. That is a residuary article. There it is stated-"Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists". But I submit it would not be a very safe thing to rely upon the curative virtues of entry 91. It is not meant, I submit most respectfully, to cure any specific omission of a certain subject in a specific part of a list. It is a well-known law of interpretation that where you make a specific mention of a subject, and omit certain specific subjects, then the general words in any other part would not cover that omission, and would not cure any defect or omission which might have been left in the specific items. I suppose the items introduced by the Honourable Dr. Ambedkar have been submitted to the House with careful thought and careful consideration. So it would be said that offences against the law of nations committed in this no-man's area would be out of the jurisdiction of the Union Legislature. Therefore, I submit it will be better to leave out the explanatory portion altogether. That part is, in my humble judgment, absolutely unnecessary and may lead to some amount of quibbling. I know my fear are justified by some leading cases on this point. There are some very authoritative rulings to the effect that general words at the end of a list do not enlarge the powers already given or to supply the gaps which are definitely left in the body of the enumerated list. That is a well-known law of interpretation. But I believe probably that I am submitting my arguments to the Honourable Dr. Ambedkar without any effect, because he has not heard me and was engaged in conversation.

Mr. President : There is then Mr. Kamath's amendment, No. 184.

Shri H.V. Kamath : Sir, I move :

"That in amendment No. 8 of List I (Sixth Week), in the proposed entry 22 of List I, the words 'and crimes' be deleted."

I am not sure, Sir, in my own mind as to whether crimes of all types should be within the exclusive jurisdiction of the Union Government and not also concurrently with the State Governments. As regards high seas there is no doubt on that point, because shipping, navigation and allied subjects are within the purview of the Union Government.

[Shri H.V. Kamath]

The House is very well aware that many States and provinces have made considerable headway in civil aviation. Most of the provinces have now flying clubs and some of the provinces have planes of their own for their Ministers. Facts reported in the press recently-not in our country, but in other countries like America and Europe-have brought to light different types of crimes committed when a plane was in mid-air. There has been mar peet inside a plan; there have been scuffles for money, or rum or liquor. Suppose, for instance, one of the provincial or State planes, or the plane of a flying club is up in the air and some sort of offence is committed. Or, consider, for instance, a pilot who may be drunk tries to jump out of the plane, either with parachute or without it; then he is certainly attempting to commit suicide and putting the lives of people inside it into danger. In such contingencies should we leave these matters solely to the exclusive jursdiction of the Union Government ? Should we not make such matters concurrent between the Union and the State Governments and confer power upon the States also to make rules or regulations, or even to legislate in matters of this kind ?

I eel, that this matter needs some attention because of the recent developments in civil aviation.

The Honourable Dr. B.R. Ambedkar : Sir, listening to what my honourable Friend Mr. Naziruddin Ahmad said, I am afraid I have again to say that he has not got a very clear notion of what this entry 22 proposes to do.

Mr. Zaziruddin Ahmad : The difficulty was that Dr. Ambedkar was engaged in conversation and did not hear me.

The Honourable Dr. B.R. Ambedkar : I was no doubt engaged in conversation; but I was quite avadhan to what he was saying.

My Friend first posed the question as to why we should use the term "piracy and crime" in plural. Well, the other way in which we can use piracy and crime would be in collective terms. I think in maters of this sort, where criminal legislation is provided for, it is much better not to use the word in collective form. He cited some examples, but he forgets the fact that in some cases the generic use of the term is quite sufficient; in other cases it is not sufficient. and crimes" in plural because it is appropriate in the context in which it is used.

My Friend Mr. Naziruddin Ahmad said as a second count against this entry that there ought to be a semi-colon after 'Piracies'. Now, that, I think, would distort the meaning and the purport of item 22 . Supposing we had a semi-colon after 'piracies', 'piracies' in item 22 would be dissociated from the rest of the entry. Now, if piracies are dissociated from the rest of the entries, it would mean that the Centre would have the right to legislate on all piracies, including piracies in inland rivers also. It is not the intention of this entry to give to the Central Legislature the power to legislate on piracies of all sorts. The words "committed on high seas or in the air" are words which not only qualify the word "crime" but they are also intended to qualify the word "piracy"/

Then, the third count of my Friend was that we should omit the words "on land, on high seas and in the air" after the words "ofences against the law of nations". That would not make it clear that the second entry is an all-pervasive entry and gives the power contrary to the first part of the entry to the Central Legislature to deal with offences against the law of nations, not merely on the high seas and in the air but also on land. In other words, the States will have no kind of power so far as the second part of the entry is concerned. I, therefore, submit that the entry as proposed carries the intention of the draftman and no amendment is necessary.

Mr. Naziruddin Ahmad : The honourable Member has not heard me. What about offences committed against the law of nations, which is neither on land, nor on high seas, nor in the air, but in the low seas ?

The Hounourable Dr. B.R. Ambedkar : It can only be in his imagination, it cannot be anywhere else.

Sardar Hukam Singh : (East Punjab : Sikh) : If piracies are not dissociated from ;;the remaining items, then would these words 'in the air' also qualify the word 'piracy' ?

The Honourable Dr. B. R. Ambedkar : There may be piracies in the air also.

Mr. Naziruddin Ahmad : Piracies are always on water, never on land or in the air.

Mr. President : I will now put the amendments to vote.

Mr. Naziruddin Ahmad : I would like only the last one to be put to vote.

Mr. President : The question is :

"That in amendment No. 8 of List I (Sixth Week), in the proposed entry 22 of List I, the words 'committed on land or the high seas or in he air' be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 8 of List I (Sixth Week), in the proposed entry 22 of List I, the words 'and crimes' be deleted."

The amendment was negatived.

Mr. President : The question is :

"That for entry 22 of List I, the following entry be substituted :-

"22 Piracies and crimes committed on the high seas or in the air; offences against the law of nations committed on land or the high seas or in the air."

The Amendment was adopted.

Entry 22, as amended was added to the Union List.

Entry 23

Entry 23 was added to the Union List.

Entry 24

Entry 24 was added to the Union List

Entry 25

Entry 25 was added to the Union List.

Entry 26

The Honourable Dr. B.R. Ambedkar : Sir, I move :

"That for entry 26 of List I the following be substituted :-

'26 Import or export across customs frontiers; definition of customs frontiers.'"

Mr. Naziruddin Ahmad : Sir, I move :

"That in amendment No. 9 of List I (sixth Week), for the proposed entry 26 of List I, the following be substituted :-

'26 Customs frontiers; import and export across customs frontiers.'"

I fully admit that this is more or less of a drafting nature and therefore, I should explain the reasons which induced me to suggest this amendment and then leave it to the Drafting Committee for final consideration. The entry as moved by Dr. Ambedkar says "import or export across customs frontiers". I fail to see the real purport of the word "or". Are the subjects "imports" and "exports" alternative ? Should it be import or export, or should it be import and export ? The form in which it is moved makes the entry "either import or export". It would seem from the alternative way of expression that if the Union will have "import" it cannot have "export" and *vice versa.* I do not think that this contingency was intentional but it is a drafting error which should be corrected.

Dr. Ambedkar's amendment puts it as "definition of customs frontiers". I think the expression "Customs frontiers" would include the entire subject of customs frontiers and necessarily implies the power to define customs frontiers. You cannot have jurisdiction to pass laws over customs frontiers without having jurisdiction to define customs frontiers. The very fact that customs frontiers is within the cognisance of the Union legislature also empowers it to define it and it is absolutely unnecessary to expand it further. The word "and" in "import and export" in my amendment is most important. As I have said already this is more or less of a drafting nature and therefore I would leave it to the Drafting Committee to deal with it without having my motion put to the House.

The Honourable Dr. B.R. Ambedkar : Sir, I am content with clarity and I do not wish to run after elegance.

Mr. President : The question is :

"That for entry 26 of List I the following be substituted :-

'26. Import or export across customs frontiers; definition of customs frontiers.'"

The amendment was adopted.

Entry 26, as amended, was added to the Union List.

New Entry 26-A

Mr. President : The honourable Member's (Mr. Shibban Lal Saksena) amendment No. 185 is already covered by one of the articles we have passed (271-A). We have already passed the chapter dealing with ownership of property. That gives the right to the legislature to deal with the subject.

Prof. Shibban Lal Saksena : I want that the power to legislate on the subject should be given only to the Union legislature and not to the States.

Mr. President : It will come under entry 42 which will cover that.

Prof. Shibban Lal Saksena : Will it exclude the power of the State ?

Mr. President : Oh, yes. All properties of the Union are covered by entry 42. I do not think the amendment is necessary at all.

Prof. Shibban Lal Saksena : Sir, there have been cases in the Supreme Court of America on this subject and I would like it to be clearly stated. I would therefore like to move my amendment. Sir, I move :

"That after entry 26 of List I, the following new entry be added :-

'26-A. Ownership of and domination over the lands, minerals, and other things of value underlying the ocean seaward of the ordinary low watermark on the coast exceeding three nautical miles.'"

I am aware that in the Constitution we are taking over these things but I do want that it should be made absolutely clear. I would refer to one important case recently decided by the Supreme Court of America on June 23rd, 1947. The case was United States vs. California. In that case, they had found some very valuable quantities of oil and gas underneath the land near California. The case went to Supreme Court and although the majority of the Court were in favour of the United States, two judges, Justices Reed and Frankfurter were against it. I think it is a very important thing that this right of the Union should be absolutely above suspicion. I would quote a paragraph from that judgment :

"The very oil about which the State and Nation here contend might well become the subject of international dispute and settlement. The ocean, even its three-mile belt in this of vital consequence to the nation in its desire to engage in commerce and to live in peace with the world; it also becomes of crucial importance should it ever again become impossible to preserve that peace. And as peace and world commerce are the paramount responsibilities of the nation, rather than an individual State so if wars come, they must be fought by the nation. The State is not equipped in our constitutional system with the powers or the facilities for exercising the responsibilities which would be concomitant with the dominion which it seeks. Conceding that the State has been authorized to exercise local police power functions in the part of the marginal belt within exercise local police power over this area. Consequently, we are not persuaded to transplant the Pollard rule of ownership as an incident of State soverignty in relation to inland waters out into the soil beneath the ocean, so much more a matter of national concern."

This is from the judgement of the U.S. Supreme Court, who laid down that the property underneath the ocean belongs to the Federal State. If this is mentioned specifically in the Union List, then there is no likelihood of any future dispute arising in regard to any such minerals or other wealth which may be found in the coast underneath the land. I, ;therefore, suggest that if this entry is added, it will make the whole thing very clear.

The Honourable Dr. B.R. Ambedkar : This matter is already covered, if I may say so, by article 271A. My difficulty is : my Friend Prof. Shibban Lal's amendment speaks of ownership. Now, in all these legislative lists, we only deal with power to make law, not power appropriate. That is a matter which is regulated by another law, and not by legislative entries. I therefore, cannot accept it.

Mr. President : He has referred to a judgment of the Supreme Court of the United States, but I think that is based on the absence of something like article 271A of our Constitution.

The Honourable Dr. B. R. Ambedkar : We decovered that there was no entry and this was therefore a matter of doubt and in order to clear that doubt we put in 271A. It is practically a verbatim reproduction of Mr. Shibban Lal's amendment.

Mr. President : So I shall put Mr. Shibban Lal's amendment. The ques is :

"That after entry 26 of List I, the following new entry be added :-

'26-A. Ownership of and dominion over the lands, minerals, and other things of viz underlying the ocean seaward of the ordinary low water mark on the coast exceeding the nautical miles.'"

The motion was negatived.

Entry 27

Entry 27 was added to the Union List

Entry 28

Mr. President : Then we come to entry 28. There is an amendment Mr. Naziruddin Ahmad No. 158.

Mr. Naziruddin Ahmad : Not moving, Sir.

Entry 28 was added to the Union List.

Entry 29

Mr. President : Now we come to entry 29. There is an amendment by M. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Not moving, Sir.

Entry 29 was added to the Union List.

Entry 30

Mr. President : There are no amendments to entry 30.

Entry 30 was added to the Union List.

Mr. President : I find there are some amendments to every 31.

The Honourable Dr. B.R. Ambedkar : Sir, I move :

"That for entry 31 of List I, the following entry be substituted :

'31. Highways declared to be national highways by or under law made by parliament. It is just transposition of words to make the matter clear.

Mr. President : There is notice of an amendment to the original entry Mr. Karimuddin, but that is not to be moved. There is no other amendment. So I put this entry No. 31 as moved by Dr. Ambedkar.

The question is :

"That entry 31, as amended, stand part of List I."

The motion was adopted.

Entry 31, as amended, was added to the Union List.

Entry 32

Mr. President : There is an amendemnt to entry 32, but that is only for deletion.

Entry 32 was added to the Union List.

Entries 33 and 34

Entries 33 and 34 were added to the Union List.

Entry 35

Mr. President : There is an amendment to entry 35 by Mr. Santhanam.

The Honourable Shri K. Santhanam : (Madras : General) : Not moving, Sir.

Entry 35 was added to the Union List.

Entry 36

Entry 36 was added to the Union List.

Entry 37

The Honourable Dr. B.R. Ambedkar : Sir, I move :

"That in amendment 12 of List I, in entry 37, for the words 'by air or by sea' the words 'by railway, by sea or by air' be substituted."

This is just caused by an omission.

Dr. P.S. Deshmukh : Sir, I beg to move :

"That in amendment No. 12 of List I (Sixth Week), in entry 37 of List I for the words 'by railway, by sea or by air' (proposed to be substituted), the words 'by land, sea or air' be substituted."

My reason is quite plain. The present change introduced according to the amendment moved by Dr. Ambedkar is for the addition of the words 'by railway'. I do not see any reason why the change should be so restricted. If the transport of goods and passengers by railways have to be brought within the jurisdiction of the Union Government, why not we use the term 'by land'? If this is not done, the carriage of goods and passengers on the national highways will not come within the jurisdiction of the Union Government. If there is any particular reason why this should not be made applicable to passengers moved by roads, I would not press my amendment. I do not think so because although road transport falls within State jurisdiction exclusively inter-State road-transport cannot. I would like therefore to know why the amendment should be confined to railway traffic only and should extend to traffic on roads also ?

Shri R.K. Sidhva : What about buses run by provincial Governments ?

Mr. President : They all come under your amendment.

Dr. P.S. Deshmukh : Bus transport in the State will be excluded. It will apply to inter-State traffic only.

Shri R.K. Sidhva : This could be applied to them.

Mr. President : This could be applied to the carriage of passengers by air, by sea or by railway.

Dr. P.S. Deshmukh : If goods and passengers carried by railway are to be placed under the Union Government according to my amendment it should include also goods and passengers carried by road, but only where the movement covers more than one State. The States having been given exclusive jurisdiction within their territories will not be affected.

Mr. President : The entry does not cover only inter-State traffic. It may be within one State, but if the transport is by railway it will be within the cognisance of the Central legislature. If you put down 'by land', it will bring in the ekka, the tongas and even the bullock-carts.

Dr. P.S. Deshmukh : I intend my amendment to be limited to traffic covering more than one State only.

Mr. President : It is not limited like that here.

Dr. P.S. Deshmukh : That was my intention. If it covers more than one State, it will be necessary for the Union to have this jurisdiction.

Mr. President : The next amendment stands in the name of Mr. Kamath to substitute the word 'rail' for the word 'railway'. Is a speech necessary for moving this amendment ?

Shri H.V. Kamath : I shall leave it to the cumulative wisdom of the Drafting Committee which I am sure is abundant. My knowledge of English language, though very meagre, impels me to say that the expression 'carriage by railway' is not quite correct and opposite. We usually say 'carriage by rail' and not by 'railway'. Therefore I just formally move this amendment, Viz.,

"That in amendment No. 12 of List I (Sixth Week), in entry 37 of List I, for the word 'railway' (proposed to be substituted), the word 'rail' be substituted."

The Honourable Dr. B.R. Ambedkar : Sir, I am afraid I cannot accept the amendment move by Dr. Deshmukh, because if we include it, it will become a central subject.

Dr. P.S. Deshmukh : If it is between two provinces ?

The Honourable Dr. B.R. Ambedkar : That will come under inter-State traffic.

Dr. P.S. Deshmukh : I am prepared to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

(Shri H.V. Kamath did not press his amendment.)

Mr. President : The question is :

"That in entry 37 of List I, for the words 'by air or by sea' the words 'by railway, by sea or by air' be substituted."

The amendment was adopted.

Entry-37, as amended, was added to the Union List.

The Honourable Dr. B.R. Ambedkar : Sir, I move :

"That for entry 38 of List I, ;the following entry be substituted :-

'38. Railways.'"

I think this change requires some explanation. If honourable Members will turn to entry 38 as it stands in the Draft Constitution, they will notice in the first place the distinction made between Union railways and minor railways. The distinction was necessary because, in respect of ;the Union railways, the Centre would have the authority to legislate with regard to safety, minimum and maximum rates and fares, etc. The responsibility of actual administration as carriers of goods and passengers, in respect of minor railways, was limited. In other words, so far as maximum and minimum rates and fares, station and service terminal charges etc. are concerned, they were taken out of the jurisdiction of the Central legislature. It is felt that it is desirable that, as the railway service is one uniform service throughout the territory of India, there should be a single legislative authority to deal with railways in all matters on a uniform basis. Consequently the entry in the First Part is now extended to all railways including minor railways. Again, as legislation is intended to be uniform, it is felt that it is unnecessary to retain the second part of the entry which made a distinction between Union railways and minor railways.

I might also say that this entry is purely a legislative entry. It is not an entry which deals with ownership. That means that even if the Centre had power to regulate minimum and maximum fares and rates and terminal charges, every State which owned a minor railway, whether it is a State in Part I or Part III, if it was the owner of the particular railway, would be entitled to receive and keep the proceeds of the rates and fares as may be fixed by the Centre. It does not affect the rights of ownership at all. They remain as they are. If the Centre wishes to acquire any minor railway now owned by any State either in Part I or Part III the Union will have to acquire it in the ordinary way. Therefore this is purely a legislative entry. The object of the amendment is to have a uniform law with respect to all matters dealing with railways and it does not affect any question of ownership at all.

The question of tramways is however separated from the question of railways. We propose in the Interpretation Clause of define railways in such a manner as to exclude tramways so that the States in Parts I and III will retain the power to regulate tramways in all respects as though they are not covered by 'railways'.

Shri R.K. Sidhva : There is a Minor Railways Act which is worked by the Provincial Government. May I know whether it is intended to repeal that Act and bring it into the Union ?

The Honourable Dr. B.R. Ambedkar : Yes, the Union will have power to abrogate that Act, make any other law or retain it if it so feels. It is only an enabling entry which will enable the Centre either to make 'different laws regulating the major and minor railways or make one single law regulating all railways irrespective of whether they are a major railways or minor railways.

Shri R.K. Sidhva : Then the minor railways will be governed by the Minor Railways Act ?

The Honourable Dr. B. R. Ambedkar : Yes, the existing law will continue until Parliament changes it. This is merely to give power to the parliament to change it.

Mr. President : I would now put entry 38 to the vote. I am told there is an amendment which I have received this morning after nine. I am afraid I cannot accept it. The question is :

[Mr. President]

"That for entry 38 of List I, the following entry be substituted :-

'38. Railways.'"

The amendment was adopted.

Entry 38, as amended, was added the Union List.

Entry 39

The Honourable Dr. B.R. Ambedkar : Sir, I move :

" That for entry 39 of List I, the following entry be substituted :-

'39. The institutions known on the date of commencement of this Constitution as the National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, the Indian War Memorial, and any other institution financed by the Government of India wholly or in part and declared by parliament by law to ;be an institution of national importance.'"

The substance of the entry is the same as it exists at present, except for a few verbal changes which have taken place in the nomenclature of the institutions subsequent to the 15th August 1947.

Shri B. Das : (Orissa : General) : When the Constitution comes into force, will the name "Imperial Library" has been changed to "National Library" ?

The Honourable Dr. B.R. Ambedkar : I understand that the "Imperial Library" has been changed to "National Library", but the Imperial War Museum retains its existing name. These descriptions are intended merely to identify the institutions, whenever Parliament wishes to make any law about them.

Shri B. Das : I want to know whether when the Constitution comes into force and the Adaptations are made, the word "Imperial" will go. I expect words like "His Majesty's Government", "The Crown" etc., will vanish.

The Honourable Dr. B.R. Ambedkar : Adaptations will apply to laws and not to names.

Mr. President : This entry gives the right to Central Legislature to change the names.

There is an amendment to this by Mr. Naziruddin Ahmad, No. 160.

Mr. Naziruddin Ahmad : Mr. President, Sir, I beg to move :

"That in amendment No. 14 of List I (Sixth Week), in the proposed entry 39 of List I-

(i) for the words 'on the date of commencement' the words 'at the commencement' be substituted;

(ii) for the words 'other institution' the words 'other similar institution' be substituted; and

(iii) for the words 'by Parliament' the words 'by or under any law made by Parliament' be substituted."

With regard to the first part of my amendment, it is of a drafting nature. Entry 39 as it is at present refers to the "date of commencement of the Constitution". I submit the "commencement" of the Constitution means the date on which the constitution comes into effect. We have used this expression in numerous places in the Draft Constitution in the articles which have been accepted by the House. We ;have described the date of commencement of the Constitution as the "commencement of the Constitution". The words "date of" would be not only unnecessary but would not be in keeping with the moneniclature and the phraseology used in other articles which have been accepted by the House. I submit ;that there should be some amount of uniformity, and instead of ;"on the date of commencement" of the constitution, we should have "at the commencement" of the Constitution which certainly means the date. Commencement always starts on a date and it begins immediately after twelve midnight of the previous day. This is of a drafting character and I merely draw the attention of the House and of the Drafting Committee to this so that they can make the necessary change, if they so choose, in the interest of uniformity.

The second part of my amendment is important. The item moved by Dr. Ambedkar runs thus : "The Institutions known as the National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, the Indian War Memorial, and any other institution financed by the government of India". I want to change the last part to read as "any other similar institution "financed by the Government of India. Sir, here we are dealing with a particular class of institutions. The National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and the Indian War Memorial, they all belong to a class, and if we do not restrict the last part of the entry to any other "similar"institution, we would be unconsciously including many other institutions of any entirely dissimilar character. This will enable Parliament to cover under this entry any other institution financed wholly or in part by the Government of India, apart from its character, apart from its being related to congnate subjects specifically included herein. I submit, therefore, that in order to clarify the meaning of this entry and restrict it to similar class of institutions, we should definitely say "any other similar institution". There is again the rule of interpretation to which I referred a little while ago that if we specify certain items and at the end we include a general expression, the general expression will be controlled by the items mentioned. Courts will be inclined to declared that " any other institution" will enlarge the scope of the entry beyond the class or character of the institutions specifically mentioned. This is known to every lawyers but may not be known to every non-lawyer. That is why I say that though the meaning should be clear, it is far better to be on the safe side. That will certainly maintain the integrity of the entry and also make it sufficiently elastic to include similar institutions. But if the expression "any other institution" is intended to include other classes of institutions, then I think it is vague and it should be definitely be brought in by means of an independent entry. So this amendment raises a question some what of principle.

The other part, the last part of my amendment is for the words "by parliament" the words "by or under any law made by parliament" be substituted. In this connection I would only refer to amendment No. 10 introduced by Dr. Ambedkar, the insertion of a substituted entry No. 31. It reads :-"Highways declared to be national highways by or under law made by parliament." There is a distinction between a declaration made by parliament and a declaration under any law made by parliament, and in the one case Parliament makes the declaration on the floor of the House but in the other case Parliament empowers others to make the declaration and declarations are made the law. In order to keep to the phraseology of the amendment entry No. 31, I have also attempted to introduce "or under law made by parliament". It will make it more elastic and Parliament need not be required to make the declaration directly but will permit the declaration being made by some other authority empowered in this behalf. I have seen in many other entries the expression "by or under law made by Parliament". So I wanted to make it uniform so as make it more elastic. I submit this is more or less of a drafting nature and may be left to the Drafting Committee but with regard to the second portion of my amendment, namely, "similar institution", I think it may have some important consequences. So I will ask the House to consider the second part of the amendment.

Prof. Shibban Lal Saksena : Sir, in this entry we have named a few institutions and we have said that they shall be in the Union List. The institutions which have been mentioned are such as the Imperial War Museum, the Victoria Memorial, etc., and in the end we have also got a clause which says : "any other institution financed by the Government of India wholly or in part and declared by parliament by law to be an institution of national importance." If it is only one institution of its kind, there would be no objection. But so long as we put in our Constitution the words "Imperial War Museum" But so long a we put in our Constitution the words "Imperial War Museum" I think that it is not worthy of Free India. In our Constitution also we are trying to perpetuate things which remind us of that imperial power which kept us under bondge so long. I think, Sir, that any trace of that imperialism or a reminder of that must not find a place in our Constitution. I, therefore, think that we must only mention that there should be some institutions and it should be left for the Parliament to define the institutions and in the meantime if you put this in the Constitution, it will be difficult for us to change it afterwards. I, therefore, think that it will be better that these things should be left for the parliament to decide instead of putting them in the Constitution.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Tuesday, the 30th August 1949

Honourable Dr. B. R. Ambedkar: I do not think that much explanation is necessary as to why I cannot accept the amendment of Mr. Naziruddin Ahmad. As you will see the entry really falls into two parts. In the first part it deals with specific institutions which are enumerated therein. In the second part it deals with institutions which are either financed by the Government of India, wholly or in part. Therefore, it is not possible to use the words "similar" because that would circumscribe the object of the entry, which is to give the Central Government power to take over any institution which is either financed by itself or financed partly by itself and partly by the Provinces.

Mr. President: The question is:

"That in amendment No. 14 of List I (Sixth Week), in the proposed entry 39 of List I-

(i) for the words 'on the date of commencement' the words 'at the commencement be substituted;

(This was not pressed by the Mover.)

(ii) for the words 'other institution' the words 'other similar institution' be substituted; and

The amendment was negatived.

(iii) for the words 'by Parliament' the words 'by or under any law made by Parliament' be substituted."

(This was not pressed by the Mover.)

Mr. President: The question is

"That for entry 39 of List I, the following entry be substituted:-

'39. The institutions known on the date of commencement of this Constitution, as National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, the Indian War Memorial, and any other institution financed by the Government of India. wholly or in part and declared by Parliament by law to be an institution of national importance."'

The amendment was adopted.Entry 39, as amended was added to the Union ListEntry 40

The Honourable Dr. B. R. Ambedkar: Sir, I move:"That for entry 40 of List I, the following entry be substituted

'40. The institutions known on the date of commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University, and the Delhi University and any other institution declared by Parliament by law to be an institution of national importance."'

I submit the word "university" is a mistake and it ought to be "institution" and I hope you will permit me to substitute it.

There is no fundamental change in this except that the latter part permits also Parliament to take over any institution which it thinks is of national importance.

Dr. P. S. Deshmukh: May I suggest that 40A may also be taken together? I, is part and parcel of the same thing.

The Honourable Dr. B. R. Ambedkar: Sir, I move:"That after entry 40 of List I, the following new entry be inserted

"40A. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance."

Mr. President: There are some amendments to entry No. 40. Item 162 stands in the name of

Mr. Naziruddin Ahmad and item I thereof substituting " at the commencement" for "on the date of commencement" need not be moved.

Mr. Naziruddin Ahmad: Sir, I beg to move:"That in amendment No. 15 of List I (Sixth week) in the proposed entry 40 of List I,"the words 'and the Delhi University and any other institution declared by Parliament by law to be an institution of national importance' the deleted."'

I have slightly altered my amendment to suit the change introduced by Dr. Ambedkar in. his own amendment. I submit that Dr. Ambedkar's amendment would unduly enlarge the jurisdiction of the Centre and many things which would be otherwise cognizable by the Provinces would now, by virtue of the words which I seek to delete, be included within the jurisdiction of the Centre. The Benares Hindu University and the Aligarh Muslim University have been regarded from their very inception as institutions of a national character and importance and therefore they have been rightly regarded so far as national institutions and they have

been rightly placed under the jurisdiction of the Union. But, Sir, the wording "any other institution declared by Parliament by law to be an institution of national importance", would give undue latitude to the Centre. By virtue of these words, the Union Government will be enabled at any time to acquire jurisdiction over one institution or another of a similar kind. In fact, from a University, a College or school down to a small village school, anything may be claimed as within the jurisdiction of the Centre. While one can appreciate the desire of the Centre to express a carnivorous instinct in this respect, trying to eat everything good or bad, whether belonging to somebody else or belonging to it, I should think that the Centre is getting seriously encumbered with a large number of subjects. The effect of that would be that the Provinces or the States as they are now called will feel less and Yes-, responsibility. They will have less and less money and so they will have less and less responsibility. They will develop an irresponsibility and a sense of grievance against the Centre. The result would be that for everything, the Provinces will throw the responsibility upon the Centre.

While there is a natural desire on the part of the Centre to he the guardian of the Provinces who are regarded as not having ittained the age of majority,the Centre is taking an undue responsibility which would make it cumbersome and will highly complicate its machinery and induce it to go into matters of details of administration which should be left to the Provinces. After all the Provinces should be allowed to meddle with their own affairs, to make mistakes and learn from experience. This is the only way that Democracy grows. It is 'not by the extension of your paternal jurisdiction over the Provinces that you can make them learn democracy by experience. In fact, in this respect the, present Constitution as it is now being shaped goes far beyond the acquisitive tendency of even the British Government.

I would point out the dangers that may arise out of these words. With regard to the Delhi university, it may be supposed that the Centre should have some amount of jurisdiction. But, the Centre has already jurisdiction over the matter. It is a University in an area which is centrally administered. Therefore, so long as the Centre has jurisdiction to maintain it as a centrally administered area, Delhi University will certainly continue to be within its jurisdiction. But we are looking forward to a day when the Delhi University or Delhi itself may be made over to a Corporation or other authority and if it is desired to make Delhi a separate Province, then Delhi University will be on the shoulders of the State and not on the Union.

Then, again, we say, "any other institution declared by Parliament by law to be an institution of national importance." Any other institution may mean an institution which is not even educational. Supposing it to mean any other educational institution, it would have the effect of unduly enlarging tile jurisdiction of the Union, and curtailing the jurisdiction of the Provinces. This tendency should stop. After all the House took serious decisions in this House before the Draft Constitution was prepared. There were resolutions on individual topics and the Draft Constitution was prepared in accordance with these resolutions. Those decisions should be respected; but we find those decisions have, been flouted or circumvented without any iustification, without telling the House that our own resolutions were being violated and in what respect and to what extent. In one case, we have found, Sardar Patel thought, rightly thought, that the decision of the House should be changed. A strong and powerful man as he is he felt the necessity of taking the House into confidence; he placed his cards fully on the table and got the decision altered in a formal way. The House cheerfully accepted it. So far as the present amendments are concerned, there are wholesale changes of the decisions which we have arrived at after careful

consideration in this House, ;which are recorded in our proceedings. They are being changed without adequate reasons being assigned and without allowing the House an opportunity to consider them. This tendency is a thing to which I have referred on previous occasions and I oppose this tendency. I hope the House will carefully consider the implications of this tendency and the tremendous burden of responsibility which the Centre is taking. I believe, if there was an enemy of the Central Government, he would do the very thing that we are doing to discredit it in the end. This is the best and the most effective way of encumbering it and making unpopular any future Central administration. I think we are doing something Which only our enemies would like us to do. This tendency should stop. The Drafting Committee or the men behind it want to eat more, the more they are fed.

Sardar Hukam Singh : I am not moving my amendment as it is covered.

Shri Brajeshwar Prasad: Sir, I move:

"That in amendment No. 3529 of the List of amendments, for the proposed entry 40 of List I, the following be substituted:--

"40. Education."

May I move the other amendment, Sir ?

Mr. President : Yes.

Shri Brajeshwar Prasad: Sir, I move:

"That in amendment No. 3529 of the List of Amendments, for the proposed, entry 40 of List I. the following be substituted :-

"40. All the Universities, advanced scientific research institutes and public and private educational and cultural organisations in the Indian Union shall be subject to the supervision, superintendence direction and control of the Union Government.

I consider this subject to be of vital national importance. The only way that India can rise rapidly in the councils of the nations is by providing education to the illiterate masses of this country. No form of Government can be laid on a secure basis unless the people are educated. Especially in a Parliamentary form of Government, unless the people are educated, Parliamentary democracy cannot function. The danger that, by vesting a large number of powers in the hands of the Centre, the whole machinery of administration will break down seems to me clearly an ephemeral one. Till recently India was governed on a unitary basis and the British people ran the administration on scientific, sound and efficient lines. There is no reason why there should be a change 'from a unitary to a federal form of Government. But, at the present moment, I am not going to enter into that discussion. My object is of a very limited character. I want education to be placed in the Central list. Power, Sir, must have some relation to the economic and financial resources of the provincial Governments. The financial implications of the powers that are going to be vested in the hands of the Provincial Governments have not been ascertained. I am quite clear in my own mind that they are not competent, they have not got the economic resources to fulfil or discharge even one-tenth of the powers that are going to be vested in their hands.

Sir, I do not like to make a long speech on this subject but I would like to-urge another point before I conclude. There are linguistic minorities living in different provinces and the provincial governments have not got the resources even to impart education to the permanent people living in their regions. To ask them to impart education in the mother-tongue of those linguistic minorities who have come from different provinces is to ask them to perform an impossible task. Therefore, for the sake of uniformity, for the sake of the rapid development of our education I am definitely of opinion that this subject should be vested in the hands of the Centre.

Shri H. V. Kamath: Mr. President, may I hope that you will "tend to me the same latitude that you have extended to Dr. Ambedkar to permit me to change the word 'university' to 'institution' ?

Mr. President: Yes.

Shri H. V. Kamath : Sir, I move:

"That in amendment No. 15 of List I (Sixth Week) in the proposed entry 40 of List I, the words 'and any other

institution declared by Parliament by law to be an institution of national importance' be deleted."

Sir, I would like to move 191 also as Dr. Ambedkar has moved 40A.

Mr. President: Yes.

Shri H. V. Kamath: I move:

"That in amendment No. 19 of List I (Sixth Week)List I, after the word 'education' the words 'and research' be inserted."

Taking my first amendment first, I feel that the acceptance of the amendment moved by Dr. Ambedkar, referring to an institution which may be declared by Parliament by law to be one of national importance,-I am not referring to Delhi University at all but the second part of the amendment-is fraught with dangerous consequences. I hope the House will pause to consider whether such a sweeping provision for bringing within the purview of the Central Government any institution-which of course Parliament may declare by law to be of national importance-is at all necessary. The House will see that in the previous Entry No. 39 which we have passed we have given power to the Union to legislate about any institution financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance. This entry goes further and gives power to Union to legislate in regard to institutions, whether financed wholly or in part or not at all by Government. I have in mind certain institutions in this country which are doing very good work, wholly privately run but run on efficient lines without any Government interference. The amendment just now moved by Dr. Ambedkar shows that the grabbing instinct of the Drafting Committee is growing by leaps and bounds; and if this passes muster, if this is accepted by the House I am sure the day is not far distant when the acquisitive instinct of the Union Government will run riot and the Union will try to step in where perhaps angels fear to tread. This is a possibility, not merely possibility but probability which, I do not desire, should eventuate in our country.

As regards the two Universities mentioned in this entry, the Benares Hindu University and the Aligarh Muslim University-of course, either, it may be true that they are of national importance or because they have the communal tag attached to them, Government to show their impartial non-communal nature might legislate in regard to these Universities. As regards Delhi too because the status of Delhi is not yet defined it is perhaps desirable that it should be within the purview of the Union. But to specify here very vaguely that any other institutions may be also taken over by the Union, legislated upon by the Union - though of course the saving proviso is there that Parliament should declare by law those institutions to be of national importance - but, Sir, in modern times Parliaments are becoming more and more very pliant tools in the hands of the Executive; and if a Government takes into its head to take over or legislate or administer any particular institution not financed to take over or legislate or administer any particular institution not financed by Government at all, Parliament according to the dictates of the Executive may declare that to be one of national importance, and then the Government could take it over and administer it as it likes. I have in mind certain institutions - to take only one instance -several Yogic Institutes in this country; one very well-known Yogic Institute is Kaivalyadhama in Lonavala, in Bombay. Some Government of the future may smell a rat where there is none. Of course our present Government is well disposed towards this, but there is no guarantee that the present Government will continue for many long years to come. Suppose a Government comes into power, and it is hostile to our ancient culture, especially Yogic and Spiritual matters, that Government may get a very obedient Parliament to declare that institution as of national importance and take it over and ultimately suppress it. The House must be well aware that Herr Hitler, soon after he became the Fuhrer and Reichskanzler of Germany, closed down certain Nature Kultur, nature Culture institutions because ....

Dr. P.S. Deshmukh : He did not act on any list.

Shri H.V. Kamath : We have the facade of democracy, which is worse. Hitler found perhaps through his Gestapo that people assembling in those Nature Kultur institutions were undesirables and were planning and plotting against the Government and so he closed them down. Here we are proceeding in another way which is more vicious than that one. At least that was a straightforward course. Here we are enabling the Union to give it a colour of propriety and legality.

As I said, if you have this entry, you will give power to the Union Government to take over any institution, firstly which is financed wholly or partly or not all by Government, and secondly, which the Government may think is contrary to their interests, for the time being. I think entry 39 as already passed is quite sufficient to cover such institutions as may be financed wholly or in part by the Government of India. There are other institutions, and or in part by the Government of India. There are other institutions, and these may be left free to act in any manner that is not contrary to the national interest.

Sir, one word more about the universities. In list II of the Schedule, there is item 18 - "Education including Universities other than those specified in entry 40 of List I." This, of course, is to be modified in the new draft which will be brought before the House shortly. But I do feel that the Union has taken more power than is necessary, more power than is desirable with regard to these matters. Personally I hold that that university is the best which is the least contaminated by governmental interference. But in modern times, of course, education, including higher education suffers from such interference. I am not against primary and secondary education being regulated by government. But the true university is, to my mind, a centre of learning and it must be the least touched, if not completely untouched by governmental interference. But I know in these days there is dragooning and regimentation not only in the primary schools and the secondary schools, but also in the higher stages of education, in the universities, though it is contrary to the true spirit of freedom, of learning which has been so aptly summarised in the Gita as -

"Na hi jnanena sadrisam

Pavitramiha Vidyate."

But the purity, Pavitrata, of Jnanam is being sought to be polluted by governmental interference at every step. I hope, Sir, that at least so far as the universities are concerned, apart from these three universities, we shall leave them to be regulated not overmuch by the State Governments concerned. But provision in this entry is a very sweeping provision as regards other institutions. It is a very pernicious provision, and I hope this House will not accept it, and that this House will pass the entry only with regard to these three universities, Benares, Aligarh and Delhi. I also hope that at no distant date the communal tag of the Benares and Aligarh universities will also disappear.

As regards the second amendment, No. 191, I do not know whether any provision has been made in this List for research of this type. There is some provision for research, but whether there is provision for scientific and technical research. I am not sure. If there is provision for research in the scientific and technical fields, I shall withdraw amendment No.191. But if there is no such provision for research in scientific and technical fields, I should like to see this provision included in the entry 40A through my amendment No.191.

I move amendments Nos. 188 and 191 and commend them to the House.

Mr. President : Dr. Deshmukh, do you want to move your amendment?

Dr. P.S. Deshmukh : Yes, Sir. I move:

"That in amendment No.15 of List I (Sixth Week), in the proposed entry 40 of List I, after the words "academy of institution" be inserted."

My reasons for moving these amendments are quite simple. I was glad to find that the

Honourable Dr. Ambedkar himself was of the opinion that the word "university" should be changed to "institution". But the amendment which I proposed seeks to retain the word "university" also and add to it the words "academy or institution". And if these words are there, then there is no necessity for defining what kind of institutions will come under the purview of the Union, and the long and unnecessary entry No. 40A could be easily deleted. Institutions can include scientific institutions, technical institutions, research institutions, etc. There is no necessity whatsoever to particularise and to give all these details, as well as to refer to the fact whether they are financed by the Government or not. The entry will be quite comprehensive and will meet all the purposes that are in view, if these words are added. The word "university" also should be there. You might have seen, Sir, it was only this morning, that a suggestion was made by Dr. Jayakar that university education should be taken over by the Centre. One need not got so far as that. If there are universities of national importance or academies, it should be permissible for the Union to take them over.

Mr. friend Mr. Naziruddin Ahmad and my Friend Kamath have gone far beyond what is contemplated here, and they have attributed motives which have no foundation. Mr. Kamath has smelt a rat where none exists. It does not give power to the Executive. I was rather surprised that they also do not trust the future Parliament. There need be no apprehensions. Everywhere in this schedule power is sought to be given, and authority sought to be conferred on the Parliament and there is therefore no room or justification for any apprehension of the executive acquiring power over the institutions. Nor will the Central Government be keen to acquire institutions. It will be the institutions that will be keen that the Centre should take them up. The whole thing is absolutely beside the point.

My amendments make the position clear, and if the Honourable Dr. Ambedkar will kindly listen a little more carefully, I am sure he will agree that they do away with the necessity for another item, and also the specification of the various kinds of institutions. On the other hand, even if you have the institution as specified in the entry No.40A, even then you will not be able to bring art institutions within the provision of the entry. We have scientific and technical institutions, but we know art institutions are different from these and they will not be included. So if you have these three words that I have suggested, then the entry will be sufficiently comprehensive and that will serve the purpose far better. I hope the Honourable Dr. Ambedkar will at least once be reasonable enough to accept this amendment.

Mr. President : Mr. Naziruddin Ahmad has two amendments.

Mr. Naziruddin Ahmad : I am not moving them, Sir.

Mr. President : Then there are no more amendments.

Prof. Shibban Lal Saksena : Sir, I want to speak. I want to oppose it.

Mr. President : Very well; but please do not take more than three minutes.

Prof. Shibban Lal Saksena : Sir, the entry as it stands envisages central control over three universities. But I feel universities education should be a central subject. This important subject has been debated all over the country and the Inter-University Board in our country has also discussed it, and it has come to the opinion that university education should be a central subject. So I feel we need not mention here these three universities only. In fact, this proposition that university education should be in the Union List has got a very large number of supporters. In fact, a large number of members of the universities themselves are in favour of it.

At present these universities are provincial subject and are under Provincial Governments. If there is co-ordination between these universities and some of them specialise in some branches of learning and others in other branches, it will lead to considerable advancement in the filed of education and research and there will be economy in expenditure. I know that in Oxford and Cambridge, particular colleges specialise in particular subjects. If, therefore, all the Universities in the country are brought under the purview of the Centre, we can have planned education for the whole country. At present there is a lot of duplication, leading to waste. Centralisation will lead to better co-ordination and also to better control, resulting in greater national unity.

The Honourable Dr. B.R. Ambedkar : Sir, I find my honourable Friends, Mr. Naziruddin Ahmad and Dr. Deshmukh, running at cross-purposes. One wants to enlarge the scope of the article by adding the word "academy". The other wants to limit the scope of the article by dropping the word "Delhi University and any other institution declared by Parliament by law to be an institution of national interest".

So far as Dr. Deshmukh's amendment is concerned, it seems to me quite unnecessary to introduce the word "academy" because the word 'institution' is large enough to include both University and academy. Therefore, that is quite unnecessary.

With regard to the amendment of my honourable Friend Mr. Naziruddin Ahmad, Delhi University is as was pointed out by already under the Central Legislature by virtue of the fact that the Delhi University is in a Comissioner's province, which is subject to the legislation of the Centre. Therefore, in introducing the words "Delhi University" we are really not departing from the existing state of affairs. With regard to the subsequent part of the entry relating to any other institution declared by law by Parliament, it seems to me, that it is desirable to retain those words, because there might be institutions which are of such importance from a cultural or from a national point of view and whose financial positioin may not be as sound as the position of any other institution and may require the help and assistancee of the Centre. In view of that, I think the last part of the entry is necessary and I am not prepared to accept his amendment.

Now with regard to my honourable friend Mr. Mamath, he wanted to introduce the words "research institution". He has forgotten, or probably his attention has not been drawn to my amendment dealing with entry. No.57A which deals with research institutions. Of course, that entry is limited to coordination and maintenance of standards. Mr. Mamath has, perhaps, in mind agencies established by the provinces and which it may be desirable for the Centre to take over. It seems to me that it is no use overloading the Centre with every kind of institution. It would be enough if, as I said, the provisions contained in 57A were allowed to pass because that will give the Centre enough power to maintain by law coordination and the maintenance of standards for higher education in scientific and technical institutions. I think that ought to suffice for the present.

Mr. President : I will now put the amendments. The first is, amendments Nos. 16 and 17 of Shri Brajeshwar Prasad.

Shri Brajeshwar Prasad : I ask for leave to withdraw both my amendments.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President : Next, I shall take up Mr. Naziruddin Ahmad's amendment No.162.

The question is :

"That in amendment No.15 of List I (Sixth Week), in the proposed entry 40 of List I, -

"the words "and the Delhi University and any other university declared by Parliament by law to be an institution of national importance" be deleted."

The amendment was negatived.

Mr.President : The question is :

"That in amendment No.15 of List I (Sixth Week), in the proposed entry 40 of List I, the words "and any other institution declared by Parliament by law to be an institution of national importance" be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 15 of List I (Sixth Week), in the proposed entry 40 of List I, after the words "any other university" the words "academy or institution" be inserted."

The amendment was negatived.

Mr. President : The question is :

"That for entry 40 of List I, the following entry be substituted :-

'40. The institution known on the date of commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University, and the Delhi University and any other institution declared by Parliament by law to be an institution of national importance."

The amendment was adopted.

Entry 40, as amended, was added to the Union List.

Mr. President : I shall now put the amendments to 40-A. There is an amendment (No.191) by Mr. Kamath.

The question is :

"That in amendment No.19 of List I (Sixth Week), in the proposed new entry 40A of List I, after the word "education" the words "and research" be inserted."

The amendment was negatived.

Mr. President : I now put entry 40A to vote.

The question is :

"That after entry 40 of List I, the following new entry be inserted :-

"40-A. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance."

The motion was adopted.

Entry 40A was added to the Union List.

(Amendment No.18 relating to new entries 40A and 40B, and Amendments Nos. 3530,3531, and 3532 were not moved.)

New Entry *40B*

Pandit Thakur Das Bhargava : (East Punjab : General) : Sir, I would like this to be held over as I would like to consult my friends on this subject.

(The entry was held over.)

The Honourable Dr. B.R. Ambedkar : Sir, I move :

"That in entry 41 of List I for the words "and Zoological" the words Zoological and Anthropological" be substituted."

Shri H.V. Kamath : Sir, I move :

"That with reference to amendment No.20 of List I (Sixth Week), in entry 41 of List I, for the words "and Zoological" the words "Zoological, Anthropological and Ethnological" be substituted."

I am glad to see that this entry runs the whole gamut of life on our planet. Modern science has established that there is no such thing as inanimate matter at all. Every thing is animate : it might be occult or manifest life.

An Honourable Member : It is not modern science : it is very ancient science.

Shri H.V. Kamath : Our philosophy has held :

Sarvam Khalvidam Brahma.

Neha nanasti kinchana !

Modern science is coming to the same view that every thing in the Universe has occult or manifest life. "Geological" refers to what is called in ordinary parlance inanimate matter - ordinary matter without life but of course even there life is occult. Then we come to botanical, plants where you have the first quivering of sensation and of life. Higher up is zoological, animals with life and in whom a rudimentary mind by way of instinct has developed. Dr. Ambedkar perhaps rather feels it below or derogatory to human dignity to include man also in the term "zoological". Zoology comprehends all animals and man has been described as a social, political or philosophical animal, but a higher animal all the same. Perhaps Dr. Ambedkar feels that man should be assigned a separate category. I do not know whether anthropology includes ethnology also. Some of us are aware that many years ago during the British regime certain surveys were conducted in this country called ethnological surveys which showed the ethnic distribution of population in India. Their results have been incorporated in various history books. I do not know whether the science of anthropology would include this as well. Anthropos means man and anthropology will mean the science of man. If I am assured by the wise men of the Drafting Committee that ethnology is comprehended in the term anthropology I should not like to press my amendment. Otherwise it is an important branch of human science and if there is any doubt on that point, whether it does or does not include ethnology, I would certainly like to press my amendment and commend it to the House for acceptance.

The Honourable Dr. B.R. Ambedkar : The word "anthropological" is very wide and would cover even "ethnology".

Shri R.K. Sidhva : Sir, I move :

"That in entry 41 in List I , the word "Geological" be deleted and the words "the Geological Surveys" be inserted."

My object in deleting the word "geological" from the Union List is that in the past the Centre has neglected this very important department of survey. The country is full of potential wealth and there are rich minerals but the Government of India have taken no pains or care to discover them or survey them. If the Government of India in the past had appointed a sufficient number of geologists to do the surveys in various parts of the country we would have enough of minerals for our own consumption, a also to spare a large quantity for export to other countries. Thus our country would have been richer and wealthier.

I find that in the Government of India there has been a practice prevailing that once in five years geologists are sent to the provinces and they make a survey for three months and then the next turn will come after another five years. If the geologist finds some mineral he does not know whether commercially it is useful or not. Perhaps because the Government of India has not a sufficient number of geologists or because of lack of efficiency in the department concerned this has been neglected. Many provincial governments have complained in the matter and they are prepared to appoint geologists if the subject is transferred to the provincial List. I beg the Drafting Committee to consider this matter. It is in the interest of the country and if the Government of India is not going to exploit our rich minerals it is better to leave it to the provinces who are considerably interested in the matter. I may state that wherever the geologists have gone they have found some rich minerals existing but no effort was made to develop them for commercial purposes. I, therefore, strongly plead that geology be removed from the Union List and transferred to the Provinces.

The Honourable Dr. B.R. Ambedkar : Sir, I am afraid my Friend Mr. Sidhva has drawn too much upon the attitude of neglect and indifference shown by the Central Government in the past towards geological surveys in India. I quite admit that hitherto this matter has been neglected by the Centre, but it does not follow from that that the provinces are going to take any more interest in geology than the Centre has taken hitherto.

First of all, this is a matter of very great magnitude involving a great deal of expense and I do not think that the provinces will be able to find the resources to develop the minerals which are to be found within their area. From that point of view I think there will be no advantage in transferring geology to the Concurrent List so as to give the provinces an opportunity to legislate about it.

The second difficulty I find in accepting his amendment is that we have in the Union List an entry stating that the mineral resources of India may be developed by the centre. if Parliament were to make a law that the mineral development of the country shall be a central subject obviously here would be very great difficulty created in the way of Parliament executing that law or developing the mineral resources, if the provinces retained with themselves concurrent power of legislation. Therefore, my request to Mr. Sidhva is to allow the entry to remain as it is.

Mr. President : Then I put the amendments to vote. The first amendment moved by Mr. Kamath ....

Shri H.V. Kamath : As Dr. Ambedkar assures me that the word "anthropological", I accept his superior wisdom and won't press the amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : Then Mr. Sidhva's amendment..................

Shri R.K. Sidhva : In view of the assurance given, I beg to withdraw the amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

That entry 41, as amended, stand part of List I.

The amendment was adopted.

Entry 41, as amended, was added to the Union List.

Entry 42

Mr. President : I do not find any amendments to entry 42.

Entry 42, was added to the Union List.

Entry 43

Mr. President : Now we take up entry 43. Dr. Ambedkar has to move an amendment.

The Honourable Dr. B.R. Ambedkar : Sir, I move :

"That for entry 43 of List I, the following entry be substituted :

'43. Acquisition or requisitioning of property for the purposes of the Union.'"

Members will see that the original entry as it stood had other words along with it, namely, the principles of compensation etc. Those words, it is proposed to put in a separate entry in the Concurrent List. So it is unnecessary to retain those words here. That entry will be entry 35 in the Concurrent List.

Shri Syamanandan Sahaya : (Bihar General) : Sir, I want to make a suggestion.

Mr. President : Just wait a little. There is an amendment to be moved.

Shri Syamanandan Sahaya : I want to make it before the amendment is moved. This item on the list which is proposed by Dr. Ambedkar will have a deal to do with the language of article 24 and I suggest therefore that this item be held over till we have passed article 24. It may be said that in any case acquisition and requisitioning of property by the Union will be a necessary factor and will have to find a place in the items somewhere. I concede that that is an important consideration and this item will have to be included, but, after we have passed article 24, we will be in a better position to frame the language of this item, because it may be that certain powers with regard to acquisition in the States also may according to article 24 have to be vested in the Centre. I would therefore suggest that this item on the list may be held over till we have passed article 24.

The Honourable Dr. B.R. Ambedkar : I submit that is unnecessary because the power to lay down principles in any case will have to be given to the legislature. The question is whether the Centre should have a separate entry and the Province should have a separate entry for laying down principles of acquisition. What is proposed is this, that for both Centre as well as the provinces, there should be a common entry in the Concurrent List. Therefore, whatever happens to article 24, this entry regarding principles will have to be put in somewhere. Unless my friend has any objection to putting the matter in the Concurrent List, there is no object served by postponing the consideration of this entry.

Shri Syamanandan Sahaya : I was thinking of a case where even in the matter of acquisition by States the principle may have to be decided by the Central Parliament.

The Honourable Dr. B.R. Ambedkar : That is exactly the point. If my friend would understand it, if we put it in the Concurrent List, the Centre also will have power.

Shri Syamanandan Sahaya : Precisely, but you say that the "Centre also will have". My submission is.........

The Honourable Dr. B.R. Ambedkar : What I am saying is this : that we are cutting out the words "principles"etc. and putting them in entry 35 of the Concurrent List. If my Friend will refer to the two entries, 43 in the Union List and 9 in the State list he will find both of them are exactly in the same terms. In other words, both of them not only give the power to compulsorily acquire property but also give the power to lay down principles. Instead of distributing the entry regarding principles between the Centre and the provinces independently of each other, it is now proposed to take out those words "principles"etc., and put then in entry 35 of the Concurrent List.

Prof. Shibban Lal Saksena : Would there be any harm if the thing is postponed until the other article is passed ?

The Honourable Dr. B.R. Ambedkar : No good will be served by postponing. I am not in favour of having these things postponed. There is already so much time taken in the consideration of this matter.

Dr. P.S. Deshmukh : Sir, I move:

"That in amendment No.21 of List I (Sixth Week), in the proposed entry 43 of List I, after the words "of property" the words 'according to law of the Union' be inserted."

From the discussion that has just taken place, it is quite clear that it is understood that this matter, so far compensation or the principles of acquisition or requisitioning are concerned, will be subject to the legislation of Parliament. My purpose in proposing this amendment is to be make this intention obvious and leave no room for any doubt. This does not raise the question as to what should be the compensation or whether there should be compensation or anything of that nature. The Parliament should have the latitude and the power to determine all these things just as occasion may arise from time to time, but it would not be correct to leave the wording as has been proposed at the moment without referring to the powers of the Parliament or the law making powers of the Union. I think this would lead to clarity and will obviate any ambiguities hereafter which might lead to very serious trouble. I, therefore, hope that the amendment proposed by me which specified that any acquisition or requisitioning of property shall be by law passed by the Parliament and shall not be undertaken arbitrarily will be accepted.

The Honourable Dr. B.R. Ambedkar : It is quite unnecessary. These entries do deal with legislative power. What is the use of adding the words according to the law of the Union' ? According to the entry as it is, the Union will have the power to make the law. It cannot mean anything else.

Dr. D.S. Deshmukh : I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

"That for entry 43 of List I, the following entry be substituted :

'43. Acquisition or requisitioning of property for the purpose of the Union.'"

The amendment was adopted.

Entry 43, as amended, was added to the Union List.

Entry 44 was added to the Union List.

Entry 45 was added to the Union List.

Entry 46 was added to the Union List.

Mr. President : There is an amendment to entry 47 standing in the name of Mr. Santhanam. As Mr. Santhanam is not moving it, I shall put the entry to the vote of the House.

Entry No.47 was added to the Union List.

Entry 48

Entry 48 was added to the Union List.

Entry 49

Mr. President : There are certain amendments to entry 49. Thakur Cheedi Lal may move his amendment No.3537 in the Printed List.

As the Member is not in the House, the amendment is not moved. Amendments Nos.3538 and 35539 are also not moved. Now I will put entry No.49 to vote.

Entry 49 was added to the Union List.

Entry 50

Mr. President : Entry 50. Mr. Brajeshwar Prasad has an amendment to this entry.

(Amendment 22 was not moved.)

Shri T.T. Krishnamachari : Sir, I move :

"That for entry 50 of List I, the following entries be substituted :-

'50. The incorporation regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies.

'50A. The incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State but not including universities.' "

Sir, the reason for this amendment is that the existing entry 50 which is a comprehensive entry was found to be a little confusing by some Members of the House. They represented to us that the language is a little involved and it might be made to express clearly the objects indicated therein. For instance, there was doubt whether a co-operative society carrying on trading operations in more than one State will be included in the entry or not. It was thought desirable, therefore, to split up the entry into two, clearly demarcating the position of trading corporations including banking, insurance and finance corporations and other corporations whether trading or not when they operate in more than one State, and also excluding universities. This is merely a clarificatory amendment and I do not think there is any need for explaining it further. It has been framed to meet the wishes of several Members of the House who expressed the view that the entry as it originally stood did not clearly indicate the purpose for which it stood.

Mr.President : I understand that Mr. Krishnaswami Bharathi and Shri K. Santhanam are not moving the amendments standing in their name in the printed list.

Shri Jagat Narain Lal : (Bihar : General) : Sir, I venture to suggest that splitting up of the entry into two may not be necessary in case the words "corporations, that is to say", are omitted. If this is done the entry will read thus:

"The incorporation; regulation and winding up .... but not including universities."

This will make the meaning quite clear. There will be no ambiguity. I suggest this to Shri T.T. Krishnamachari. The object they have in view can be achieved by adopting my suggestion.

The Honourable Dr. B.R. Ambedkar : I will consider the matter. For the present the entry proposed by Shri T.T. Krishnamachari may go in.

Mr. President : The question is :

"That for entry 50 of List I, the following entries be substituted :-

'50. The incorporation regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies.

50A. The incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State but not including universities'. "

The amendment was adopted.

Entries 50 and 50A were added to the Union List.

***Entry** 51*

Entry 51 was added to the Union List.

***Entry** 52*

The Honourable Dr. B.R. Ambedkar : I move:

"That for entry 52 of List I, the following entry be substituted:-

'52. Constitution and organisation of the Supreme Court and the High Courts; jurisdiction and powers of the Supreme Court and fees taken therein; persons entitled to practice before the Supreme Court or any High Court'. "

The last words are additions. It is found necessary to have them because the time has come when it is necessary to regulate the right to practise of persons practising in both the High Court and the Supreme Court.

Mr. President : There are certain amendments to this.

Shri Brajeshwar Prasad : I am not moving amendment No.24, Sir.

Mr. President : Mr. Naziruddin Ahmad who has given notice of an amendment to this entry is not in his place.

Sardar Hukam Singh : Sir, I beg to move :

"That in amendment No.23 of List I (Sixth Week), in the proposed entry 52 of List I-

(i) the words "and the High Courts" be deleted; and

(ii) the words "or any High Court" be deleted."

We have just listened to Dr. Ambedkar. He said that the last portion was newly included. The original draft entry 52 reads thus :

"Constitution, organisation, jurisdiction and powers of the Supreme Court and fees taken."

There is absolutely no mention of the High Courts in that entry in the original draft. This is an innovation. When we started, we had in view the framing of a federal Constitution and it was clearly observed by the honourable the Mover then - and he took credit for its flexibility - that in normal times this is framed to work as a federal Constitution, and in times of war it is so framed that it would work as a unitary Constitution. But now what do we find? With every day that passes, we are progressing more and more towards a unitary system, not merely in times of war as was first intended, but in normal times as well. Everywhere you find that there is an attempt to grab all powers for the Centre and emasculate the provinces altogether. Provincial autonomy has been made a farce. There is nothing left there. They are only municipal boards now. The reasons given are that the circumstances have changed; there are some dangers on the borders and we have to provide against them; the Centre must be sufficiently strong. I agree with all this; I am second to none in lending my support to making the Centre as strong as possible, but I differ about the way in which the Centre is going to be made strong. The question is whether the units should be free, whether sufficient confidence is reposed in them, whether there should be sufficient initiative with them, in which case they would be willing partners in lending every support to the centre, or whether we should frame an authoritarian Constitution and impose our will on them.

The Honourable Dr. B.R. Ambedkar : I do not wish to interrupt the debate, but I would like to point out that we have already passed articles 192A, 193, 197, 201 and 207 which deal with the constitution of the High Courts. Under those articles, except for pecuniary jurisdiction, the whole of the High Courts are placed, so far as their Constitution, organisation and territorial jurisdiction are concerned, in the Centre. It seems to me, therefore, that this amendment is out of order.

Sardar Hukam Singh : All I can say is that I differ from the honourable Doctor. I was going to submit that I do not agree that this pressure from outside would make the Centre strong and would make the units voluntary partners in lending their support to the Centre. So, in my humble opinion, we should not try to take every power for the Centre. So far as the persons practising in the High Courts are concerned, this can be safely left to the provinces themselves. Sir, many things are being done not even with the object of making the Centre strong, but their sole desire is to grab everything for the Centre. So, I move that the words "and the High Courts" and "or any High Court" be deleted from the entry.

Dr. P.S. Deshmukh : Sir, I move :

"That in amendment No.23 of List I (Sixth Week), for the proposed entry 52 of List I, the following be substituted :-

'52. Constitution, jurisdiction and powers of all courts including the Supreme Court; enlargement of the appellate jurisdiction of the Supreme Court and conferring of supplemental powers thereon, regulation of fees chargeable by the Supreme Court and licensing and regulation of persons entitled to practise before the Supreme Court or any High Court'. "

According to the first draft, entry 52 was to be worded as follows :-

"Constitution, organisation, jurisdiction and powers of the Supreme Court and fees taken."

That is to say, it was solely intended to cover the Supreme Court and there was no reference to High Courts at all. According to the present amendment, all the High Courts have been brought in, not only for purposes of constitution and organisation, but also so far as the persons entitled to practise therein are concerned. So, Sir, it has been found necessary to widen the scope of the item as; it stood originally. I have tried to make it still wider in its application so as to bring it into line with the original of this entry to be found in entry 53 of the Government of India Act of 1935. That entry reads as follows: -

"Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list and, to such extent as is expressly authorised by Part IX of this Act, the enlargement of the appellate jurisdiction of the Federal Court, and the conferring thereon the supplemental powers."

So, if it is necessary to include the High Court, I do not see why we should not refer back to what was provided in the Act of 1935 and provide for the constitution, jurisdiction and powers of all courts including the Supreme Court.

The second point that I want to urge is that it is necessary that there should be a provision, just as there is in the Act of 1935, for the enlargement of the appellate jurisdiction of the Supreme Court and conferring of ;supplemental powers thereon. Then the last portion really seeks to give a better shape to the amendment that is proposed, so far as licensing of legal practitioners and the levying of fees chargeable by the various courts are concerned. I would be glad, if this could be accepted.

In any case, if any satisfactory and cogent explanation is coming forth which would convince me that it is not necessary to refer to the powers of all the courts or to make any provision for the enlargement of the appellate jurisdiction of the Supreme Court, I would see my way not to press this amendment. Otherwise, I think it would be necessary that the Union should have powers of enlargement of the jurisdiction of, as well as for giving supplemental powers to, the Supreme Court.

Mr. President : Amendment No.197 is covered by the amendment moved by Sardar Hukam Singh.

Shri H.V. Kamath : All right, Sir.

Shri Alladi Krishnaswami Ayyar (Madras : General) : With regard to the amendment moved by Dr. Ambedkar, I should like to say a few words. In the first place, we have already taken a particular step in regard to the High Court; that is, the appointment of the Judges is in the hands of the President. Secondly, so far as the organisation and jurisdiction is concerned, the idea is that there must be uniformity in the organization of the High Courts in the different parts of India, subject of course to the provisions o the Constitution. Therefore, in so far as the organization is concerned, with a view to emphasize the principle of uniformity and to see that there is uniformity in the different High Courts, this power is transferred to the Central Legislature. It will be realized that we have High Courts and High Courts. There ae High Courts which have been functioning for several years, for a century. There are High Courts which have come into being recently, and it is also proposed to bring in all the High Courts in the States under the jurisdiction of Parliament, and see that there is a certain uniformity in the organization and constitution of the different High Courts in India. The only legislature that can function in this regard is the Parliament. That is why that part of the amendment provides for it.

Secondly, it makes important provision in regard to the right of practitioners in the Supreme Court and in the different High Courts in India. Under the present law as it stands, each High Court makes its own rule for the enrolment of an Advocate and for the right of a person to practise in a particular High Court. So far as the Supreme Court is concerned, the Supreme Court has the power to make its own rule in regard to the person entitled to practise before the Supreme Court. The power of the Supreme Court is subject to the power of Parliament. The power of the High Court also is subject to the power of the appropriate legislature.

Now, there are certain anomalies which have necessary to be removed, an anomaly which was adverted to by Sir S. Varadachari when he retired from the Federal Court. Today any practitioner entitled to practise in the Federal Court can appear in that Court but if the case is remanded, say, to the High Court of Bombay, that practitioner will not be entitled to appear in the High Court unless he is an advocate of the Bombay High Court. That is an anomaly. You might have done a good part of the case; you might have mastered the details, the facts and the law of the case when the case was presented before the Federal Court and there is neither reason nor principle behind permitting the practitioner to appear before the Federal Court and no before the High Court from which an appeal is lodged. The proposed amendment does not give straightaway a right of audience in the High Court. It enables Parliament to remove anomalies and to see that there is a ;uniform judicial system throughout the country. I can give one instance, for example when the Honourable Sir Tej Bahadur Sapru applied, for permission to appear in the Bombay High Court, on account of the rules of the Bombay High Court, permission was refused to Sir Tej Bahadur Sapru to appear in the original side of the Bombay High Court. Similar instances have occurred in the case of other practitioners of eminence and position at the bar; and therefore to see that these anomalies are removed the Parliament is invested with the right to regulate the right of audience of the practitioners in the Supreme Court as well as in the High Court. Of course, until and unless the plenary power is exercised in a particular manner by the Parliament the existing rules of the Supreme Court and of the different High Courts in India will continue to operate. In the Parliament different sections are represented and I have no doubt that the Parliament will take a wise step calculated to improve the tone of the judicial administration as also to see that there is a certain uniformity observed in the different parts of India. That is the object of the amendment. I do not think any exception can be taken to the amendment as proposed by Dr. Ambedkar. It is a move in the right direction.

Shri H.V. Kamath : Mr. President, I shall be content with a bare and bald statement of my view in this regard. I seek to delete the words "or any High Court" appearing at the end of this proposed entry. My amendment is No.197, List III, Sixth Week, Neither Dr. Ambedkar nor my jurist friend, Mr. Alladi Krishnaswami Ayyar has shown any valid reason why the power in this regard to make regulations in respect of persons entitled to practise before the High Court, should not be given to the State Legislatures. Mr. Alladi Krishnaswami Ayyar said that at present every High Court makes regulations in this regard but we have certainly not tried to consider why this power could not be conferred on the State Legislatures. We can trust the laws of the Central Parliament. I invite your attention and the attention of the House to article 208. Dr. Ambedkar pointed out article 207, and in the light of article 207 I do not dispute the desirability of the Union Legislature to regulate in regard to the constitution and organization of High Courts; but the point with regard to persons entitled to practise, the practitioners in the High Courts, is on a different footing. Article 208 which the House has passed confers certain powers on the State Legislature with regard to jurisdiction of certain High Courts in certain circumstances. If that power can be given to the State Legislatures. I do not see why this trifling power of legislating with regard to practitioners appearing in the High Courts could not also be given to the State Legislatures, and so that matter might be transferred to List II, i.e., the State List. Otherwise I feel that by empowering Legislatures as has been done in article 208 with regard to jurisdiction of High Courts and divesting the Legislatures of power to make regulations with regard to practitioners appearing before the High Courts, I feel that the Drafting Committee is straining at a gnat while swallowing a camel.

Mr. Naziruddin Ahmad : Mr. President, as I was coming to the rostrum, I heard a remark from my honourable Friend Mr. Mahavir Tyagi that this concerns the lawyers. I should however think that the subject concerns not merely the lawyers, but the entire population of India. In fact, the independence of the High Courts, their judicial integrity are matters of concern for all.

I would like to draw the attention of the House to the manner in which the words and the High Courts' have been introduced into the amended entry. I submitted yesterday that there were certain interpolations in many of the entries. The present is a good example of this bad tendency. The original entry read thus : "Constitution organisation, jurisdiction and powers of the Supreme Court and fees taken". Fees have been taken out and I have no quarrel with that. The original entry dealt with the Supreme Court only. In the new entry proposed by Dr. Ambedkar, it reads : "Constitution and organisation of the Supreme Court and the High Courts,". Then again, he has added "persons entitled to practise before the Supreme Court or any High Court".

My first objection is as to the surreptitious manner in which important things are interpolated into the entries. I could have well understood................

(Interruption)

Shri Mahavir Tyagi : On a point of order, Sir, is the word "surreptitiously" parliamentary ?

The Honourable Dr. B.R. Ambedkar : Is it a proper argument, Sir, to say that the Drafting Committee has surreptitiously tried to introduce something? My honourable Friend is entitled to ask me an explanation as to why I have altered the entry. There is nothing surreptitious. I am perfectly prepared to justify every item and every part of it.

Shri Mahavir Tyagi : I want your ruling, Sir, is the word "surreptitiously" parliamentary ?

Mr. President : I confess I am not acquainted with parliamentary practice to such an extent as to say whether 'surreptitiously' is or is not parliamentary. I would ask the honourable Member not to use expressions which may be offensive.

Mr. Naziruddin Ahmad : I bow down to your ruling, Sir. I submit that it would have been much more straightforward to say that we should insert the word 'High Courts'. What I meant was that instead of doing the obvious thing in the open way of clearly and specifically indicating the exact changes proposed, by the addition of the words "and the High Courts", the whole entry has been re-written, and my submission was that this was done for the purpose of not making it apparent that the words 'High Courts'are introduced here by way of change. It would require long land patient comparison between the amended entry and the original entry to bring this out. It took us a few hours, including Sardar Hukam Singh and others, long and patient comparison in order to enable us to discover this. I fail to see any reason for not moving these introductions as so many specific amendments to the original entries. This I consider to be highly objectionable and at the same time highly inconvenient.

Mr. President : Consideration of every amendment involves a study of the original which is sought to be amended by the amendment and it is nothing extraordinary if the honourable Member had to study the original along with the amended form of the entry.

Mr. Naziruddin Ahmad : All that I was respectfully submitting was that the exact change might have been indicated by the suitable amendment that the word 'High Court' be introduced at the proper place. The objection was that in every case we have to carefully compare each entry with the past entries and it took us a very long time. In fact, nothing has been gained except that it put the Members to additional labours. That is in regard to the manner in which they are being introduced. There are numerous other cases where objectionable words are not introduced openly, but through the device of a re-draft. I fully admit the justice of your remark that every Member should come prepared to read and compare them. What I was submitting was that matters might have been made easier. We have only a very short time to consider innumerable innovations. Matters have been unnecessarily made more difficult, considering the short time at our disposal.

So far as the High Courts are concerned, they were all under the Provincial jurisdiction except the Calcutta High Court. The Calcutta High Court, for reasons of history, enjoyed a peculiar position of its own. The Calcutta High Court was situated geographically at a place where before 1911 the Government of India had its seat. So, somehow or other, the Government of India and the Imperial Council had been enjoying jurisdiction over that High Court. Then, with the passing of the Government of India Act, 1935, jurisdiction over the Calcutta High Court was made over to the Provincial Government and Legislature. There were long disputations over this. One of the reasons assigned was that the Provinces were getting greater rights and as the Centre was establishing the Federal Court, the Centre should be dealing with the Federal Court and not with the High Courts. In that way, the Calcutta High Court which was under the jurisdiction of the Centre for long was taken away and was placed under the jurisdiction of the Province. Thenceforward, all the High Courts were under the jurisdiction of the Provinces. The Centre is sufficiently encumbered with Central matters. The Centre should have been concerned, I submit, with matters relating to the Supreme court, leaving it to the Provinces and the Assemblies lot deal with the High Courts. I find that every item, financial, political, legal land others, is being taken away one by one in a systematic manner from the Provinces and made over to the Centre. I submit that the position of the High Courts is of great importance. I do not know why the Centre should assume jurisdiction in a summary manner like this over the High Courts.

I wish to raise another constitutional point with regard to this. So far as the High Courts are concerned, they were placed before in the Provincial list by common consent. We debated these matters as to the jurisdiction of the High Courts and the Supreme Court here before and the Drafting Committee was asked to draft a Constitution in accordance with those decisions. I submit that we should not disregard those decisions. In fact, if we disregard those decisions, many things would be upset. I would ask your ruling, Sir, as to whether we should lightly upset those decisions. Jurisdiction over the High Courts is a matter which was provincial, and I beg to ask whether it is proper to allow this being upset without a proper consideration of the subject, without the matter being placed directly before the House we are going to make these changes.

I submitted a few minutes ago the example of Sardar Patel. On a very important occasion, he came to the House and asked for a reconsideration of the decision and then suitable amendments were incorporated in the Constitution. So far as the High Courts are concerned, this is only one of the instances. I submit that is a very important constitutional step and the matter should have been placed straightforwardly before the House instead of its being put in this way. The matter will cause much dissatisfaction. Taking jurisdiction over the High Courts in this manner is highly improper and this should have been allowed to be dealt with by the provincial assemblies. I submit, the Provinces should have been allowed full jurisdiction over their High Courts; instead of that, if the Provinces are to be deprived of their privileges one by one like this, I would rather have the Provinces abolished entirely.

Shri T.T. Krishnamachari : The attention of the Members of the House has already been drawn by Dr. Ambedkar to article 207. May I say, Sir, in view of that that the honourable Member need not labour this point?

The Honourable Dr.B.R. Ambedkar : I can reply. I want only ten minutes. I have understood what he wants to say.

Mr. Naziruddin Ahmad : There is a promise to reply but it would be an unusually fortunate thing for me actually to get a reply from Dr. Ambedkar. Hitherto, points have not been replied to. I should submit that the subject of jurisdiction over the High Court should have been introduced only after sufficient consideration and ample debate in the House. Instead of that a mere re-drafting of the entry should ;not have been the manner in which this should be done. This is too important a matter to be lightly dealt with. I submit that if we assume that the Drafting committee is entitled to do whatever it likes, then of course I am entirely out of Court. I feel I am faced with certain defeat irrespective of reason.

The Honourable Dr. B.R. Ambedkar : Sir, I am constrained to begin by stating that I have on very many occasions noted ;that my Friend Mr. Naziruddin Ahmad has got into the habit of speaking of the Drafting Committee in most derisive terms. I have not descended to his level in order to reply to him, but I should like to give him a warning that if he persists in doing this kind of thing, I shall certainly not fail to pay him in the same coin.

Mr. Naziruddin Ahmad : Are Members to be threatened in this manner? Of course it produces no effect on me.

The Honourable Dr. B.R. Ambedkar : This is not a threat. This is a warning.

Now coming to the points raised by my Friend Dr. Panjabrao Deshmukh, I am very sorry that I cannot accept his suggestion. Because he wants to enlarge entry 52 in such a manner and to such a magnitude as to include every court in this country. It is an impossible proposition and I am afraid I cannot accept it.

I shall now deal with the arguments of my Friend Mr. Naziruddin Ahmad. First of all, he said that we were trying to smuggle in the High Court in this entry 52, because it did not find a place in the entry as it stood before. The House will remember that the Drafting Committee has been from time to time revising not only the entries but also the articles. I am not here to claim any omniscience on the part of the Drafting Committee. If the Drafting Committee has failed to grasp the whole thing at one grasp, I am not prepared to blame the Drafting Committee nor am I prepared to allow anybody to sit in judgement over it and pass censure upon the Drafting Committee. It is a huge task and we are bound to go slowly on our way.

Shri H.H. Kamath : Cannot the House sit in judgement on the Drafting Committee?

The Honourable Dr. B.R. Ambedkar : But the House should recognise what I am saying viz., that it is not possible for the Drafting Committee to bring forth before the House a neat and complete formula which will not require reconsideration. Now Sir, my Friend said that we have brought in the High Courts. Well, we have deliberately brought in the High Courts because we felt that it was necessary to bring in High Courts in view of certain articles that we have already passed. My Friend, Mr. Naziruddin Ahmad, evidently forgot articles 192A, 193, 197, 201 and 207 which deal with the High Courts and if he were patiently to apply his mind to these articles, he will find that the only matter that is left to the Provincial Legislatures is to fix jurisdiction of the High Courts in a pecuniary way or with regard to the subject matter. The rest of the High Court is placed within the jurisdiction of the Centre. Obviously when considering entries in the Union List which are meant to give complete power to the Centre, we were bound to make good this lacuna and to bring in the High Courts which, as I said, by virtue of these articles excepting for two cases have been completely placed within the purview of the Parliament. There is nothing surreptitious about it. This is merely correcting an error which originally crept in by reason of the fact that the article and entry were not properly composed. That is the reason why High Courts have been brought in.

Coming to the question as to why we have brought in the entry - Persons entitled to practice before the Supreme Court and the High Court - the position has been already explained by my Friend Mr. Alladi Krishnaswami Ayyar; but I will put the same matter very shortly, and it is this that, really speaking, there is nothing very extraordinary in bringing in these words - persons entitled to practice before Supreme Court or High Court - as Members will see article 121 which gives Parliament the power to make any law with regard to persons practising before the Supreme Court. Therefore, that power is already there and there is nothing new so far as the entry refers to persons entitled to practise before the Supreme Court.

Now with regard to the High Court, the position is this. The power ;which the Centre have today is contained in entry 17 of the Concurrent List which deals with professions, and legal profession is one of the professions. It is, therefore, perfectly possible for Parliament to enact a law regulating the practice of persons appearing in the High Court by virtue of the power given to it by entry 17 which is in the Concurrent List, but the trouble with that is this. Concurrent List means that both parties can legislate. The Centre can legislate and the provinces can legislate and the legislation may be not quite in consonance with each other. Consequently it was felt that while leaving entry 17 as it is in the Concurrent List to cover all professions, to pick out a part of the legal profession and to put it here so as to make any legislation with regard to legal profession in so far as it relates to practice of persons before High Courts an exclusive subject for legislation by the Centre, and the reason why we did it was because of the hard cases referred to by my friend Mr. Alladi Krishnaswami Ayyar and I may repeat one of them. Probably you have not heard what he said. Supposing, for instance, a lawyer or a barrister from Madras appears in a case in the Supreme Court and the Supreme Court instead of deciding the case remanded the case to Bombay High Court. What happens? The Bombay Government or Bombay law if enacted under entry 17 may not permit a person from Madras to appear in the Bombay high Court, with the result that lone Madras, lawyer who appeared in the Supreme Court conducted the whole case but if the case is remitted back to the High Court of Bombay, that High Court may be law prevent him from appearing before it. I think it will be agreed that is a great hardship. In order therefore to have a uniform position with regard to persons practising in different High Courts what this entry proposes to do is to cut it from entry 17 dealing with professions and to put it here so that the practice of persons appearing in the High Court may be regulated by uniform law. There is nothing revolutionary and there is nothing surreptitious in entry 52 as is proposed by the Drafting Committee.

Mr. President : I will now but the amendments to vote. There is first the amendment of Sardar Hukam Singh. It is in two parts, and I will put the two parts separately. First part.

The question is :

""That in amendment No.23 of List (Sixth Week), in the proposed entry 52 of List I, -

(i) the words 'and the High Court' be deleted."

The amendment was negatived.

Mr. President : Then the second part :

The question is :

"That in amendment No.23 of List I (Sixth Week), in proposed entry 52 of List I,-

(ii) the words 'or any High Court' be deleted."

The amendment was negatived.

Mr. President : Then there is the amendment of Dr. Deshmukh - No.196.

The question is :

"That in amendment No.23 of List I (Sixth Week), in the proposed entry 52 of List I, the following be substituted :-

'52. Constitution, jurisdiction and powers of all courts including the Supreme Court, enlargement of the appellate jurisdiction of the Supreme Court and conferring of supplemental powers thereon; regulation of fees chargeable by the Supreme Court and licensing and regulation of persons entitled to practise before the Supreme Court or any High Court.' "

The amendment was negatived.

Mr. President : I will put the entry as moved by Dr. Ambedkar.

The question is :

"That for entry 52 of List I the following entry be substituted :-

'52. Constitution and organisation of the Supreme Court and the High Court; jurisdiction and powers of the Supreme Court and fees taken therein; persons entitled to practise before the Supreme Court or any High Court'. "

The amendment was adopted.

Entry 52, as amended, was added to the Union List.

Mr. President : We rise now. We adjourn till nine o` clock, tomorrow morning.

The Assembly then adjourned till Nine of the Clock on Wednesday, the 31st August, 1949.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Wednesday, the 31st August 1949

The Constituent Assembly of India met in the- Constitution Hall, New Delhi, at Nine of the Clock Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

List I : Entry 53

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir I move:

"That in Entry 53 of List I, the words and the figure except the States for the being specified in Part III of the First Schedule' be omitted.

This is because we propose to make no distinction between a State in Part I .and Part III.

Shri B. V. Kamth (C.P. & Berar: General): There is a little amendment ,of mine, No. 198. Sir, I move:

That with reference to amendment No. 25 of List I (Sixth Week), in entry 53 of List I, for the words 'and exclusion of the jurisdiction of any such High Court from', the words .and exclusion from the jurisdiction of any such High Court of' be substituted.'

This is only an interposition of words, I know, but it changes the meaning slightly land brings out what is intended in the entry,. I believe ,that this entry has reference to exclusion from the jurisdiction of any High Court of certain areas. It is therefore not correct to say "exclusion of the jurisdiction of any such High Court". You exclude something from the jurisdiction: you ,cannot exclude jurisdiction from. You can say that you do not extent jurisdiction to some other area. But to say that you exclude the jurisdiction of a Court from something is not correct English. What is intended is that you exclude certain areas from the jurisdiction of a particular Court, and the entry as it stands does not bring out the meaning which it is intended to convey. I am sure Dr. Ambedkar will agree that the entry intends to exclude certain areas from the jurisdiction of the High Court. If that is so, the wording should be "exclude from the jurisdiction of a Court certain areas". The Court has jurisdiction : not, in this context, a State or any other area. dare say this will be quite proper, and I commend this. little amendment of mine to the House for its consideration.

The Honourable Dr. B. R. Ambedkar: Sir, Mr. Kamath's amendment is wholly unnecessary because the object of my amendment is to delete altogether hat portion of entry No. 53 beginning from "except" to the end. If I was etaining any part of the entry then of course the question might arise whether he phraseology used in the entry is better than the one suggested by Mr. Kamath or vice versa.

Shri H. V. Kamath: My amendment has reference to the entry itself not to he amendment.

The Honourable Dr. B. R. Ambedkar: I think that cannot arise because I am omitting the whole thing. The second point is that the language used in entry 53 has to be in keeping with the language employed in article 207.

Shri H. V. Kamath: If this is accepted the language in the other article which has already been passed will have to be amended-at the third reading.

Mr. President: I find that Dr. Ambedkar's amendment refers only to a part of this entry.

The Honourable Dr. B. R. Ambedkar: I am taking out the last part "except the States for the time being specified in Part III of the First Schedule". The entry as amended would stand :

"Extension of the jurisdiction of a High Court having its principal seat in any State within the territory of India to, and exclusion of the jurisdiction of any such High Court from any area outside that State."

The entry merely provides for the extension or the exclusion of the jurisdiction.

Shri H. V. Kamath : My amendment refers to the second part, "exclusion of the jurisdiction of any such High Court from any area outside that State".

The Honourable Dr. B. R. Ambedkar: I am not accepting your quibbling.

Shri H. V. Kamath: It is no quibble. It is a question of correct English.

The Honourable Dr. B. R. Ambedkar: If it is a matter of mere English we can take it up at the next stage.

Mr. President: Then I shall put Mr. Kamath's amendment to vote.

The question is:

"That with reference to amendment

No. 25 of List I (Sixth Week), in entry 53 of List I, for the words 'and exclusion of the jurisdiction of any such High Court from,' the words 'and exclusion from the jurisdiction of any such High Court of' be substituted."

The amendment was negatived.

Mr. President: I shall now put Dr. Ambedkar's amendment to vote.

The question is:

"That in entry 53 of List 1, the words and figures 'except the States for the time being specified in Part III of the First Schedule' be omitted."

The amendment was adopted.

Mr. President: The question is:

"That entry 53, as amended, be adopted."

The motion Was adopted. Entry 53, as amended, was added to the Union List.

Entry 54

Entry 54, was added to the Union List.

Entry 55

Entry- 55. was added to the Union List.

Entry 56

The Honourable Dr. B. R. Ambedkar: I move:

That for entry 56 of List I the following entry be substituted:-

56. Inquiries, surveys and statistics for the purpose of any of the matters in this List'

There is hardly any difference. We have merely made it "for the purpose of any of the matters in this List".

Mr. Naziruddin Ahmad (West Bengal: Muslim): Though my amendment No. 167 will improve the text, I do not want to move it.

(Amendment No. 254 was not moved.)

Shri Phool Singh (United Provinces: General): Mr. President, Sir, the amendment suggested by Dr. Ambedkar will limit the scope of this entry. Under the original entry the Government is free to collect statistics regarding any matter, but if the proposed amendment is accepted that scope would be limited only to the matters entered in this List. For example, there is the case of fixing the price of sugar. In order to fix the price of sugar the Government of India has to find out the cost of manufacture of sugar. That is not a thing entered in this List. Unless the Union Government is in a position to legislate on that point the factories may withhold the information. So, I suggest that the amendment may not be accepted and that the original entry, namely "Inquiries, surveys, and statistics for' the purposes of the Union" may be kept intact. For that will enable the Government to make enquiries, bold surveys and collect statistics for purposes even other than those entered in this List. With these few words I request Dr. Ambedkar to reconsider the situation.

The Honourable Dr. B. R. Ambedkar: Sir, I think the fear expressed by my friend is somewhat groundless and arises from the fact that he has not adverted to the fact that all other inquiries and so on relating to the States, and other matters, are now put in the Concurrent List. So there is no absence of any such purpose that he wants.

Mr. President: The question is:

"That for entry 56 of List I the following entry be substituted

'56. Inquiries, surveys and statistics for the purpose of any of the matters in this List."

The amendment was adopted. Entry 56, as amended, was added to the Union List.

Entry 57

The Honourable Dr. B. R. Ambedkar. Sir, I move:

"That for entry 57 of List I the following be substituted :

'57. Union agencies and Union institutes for the following purposes, that is to say, for research, for professional, vocational or technical training. for scientific or technical assistance in the investigation or detection of crime, for the training of police officers, or for the promotion of special studies'."

The entry is somewhat enlarged by the introduction of the words 'vocational training" and "investigation or detection of crime, for the training of police officers" and so on.

Mr. President: Now we will take up-the amendments.

(Amendment No. 168, was not moved.)

Shri H. V. Kamath: Mr. President, I move, Sir, amendments Nos. .199 and 200 of List III of Week VI. Amendment No. 199 reads as follows:-

"That in amendment No. 27 of list I (Sixth Week).

that is to say, the amendment just now moved by Dr. Ambedkar,--

'.... in the proposed entry 57 of List I, for the word 'research' the words 'historical scientific and spiritual research' be

substituted'."

Amendment No. 200 is to the effect ......The Honourable Shri K. Santhanam (Madras : General) : Mr. President, yesterday I think the honourable Member protested against Government interference in such matters.

Mr. President: He has a right to be inconsistent

Shri H. V.Kamath: I am sorry, Sir, Mr. Santhanam has not cared to follow. I think he is very busy with his Railway and Transport portfolio and does not follow the proceedings-at least not what I said in the House yesterday. When I make my point clear here, I believe he too will change his view.

Amendment No. 200 is to the effect that-

"That in amendment No. 27 of List I (Sixth Week), in the proposed entry 57 of List I. for the word 'police' the words administrative and police' be substituted."

Taking the first amendment first, let me try in my own humble manner to dispose of the objection raised by my honourable Friend Mr. Santhanam. He chose to remark that yesterday I had pleaded against governmental interference........

An Honourable Member.- By the Centre.

Shri H. V. Kamath: Any way, interference by the Centre or governmental interference in yogic matters. I suppose he referred to the observations I made with regard to the yogic institutes in India. What I had pointed out yesterday--I am sorry my Friend Mr. Santhanam did not understand it-was that there are certain institutes today run by private agencies which are doing splendid work in yoga and yogic research. They should not be interfered with so long as they-are running very efficiently and to the advantage of the people at large. But today the point I am making out is about Union institutes the word used in this entry has reference to Union agencies and institutes of the Union. These are different from private institutes run by private agencies, and I hope my Friend Mr. Santhanam will understand the distinction that has been made between this entry and my remarks made yesterday.

As regards the point of my amendment No. 199, I wish to state that we should make the word "research" very clear here. Yesterday Dr. Ambedkar, moving the amendment with regard to surveys in India, expanded the term "zoological" so as to bring in or to include the word "anthropological" as well. His intentions were excellent. It was to make the meaning quite clear and unambiguous. So also, here, following- in his own estimable footsteps, I want to make the word "research" absolutely unambiguous and clear. There are various kinds of research. There is historical research, conducted in various institutes; one of the well-known institutes in Poona, the Bhandarkar Institute has been doing very good work for many years. Then scientific research institutes there are so many. But institutes of the third kind, those which are doing spiritual research have so far been few in number. There have been yogic ashram as but they are different from institutes which carry on research in the spiritual field. The only institute which has been doing this work, to my knowledge, in a scientific manner, in the spiritual field, is the Kaivalyadhama Institute of Lonavla; and Government, during the last Budget session or soon after that, recognised 'his Institute and sanctioned a grant of Rs. 20,000 for advancing or promoting scientific research in yoga. I am speaking on very reliable authority. The head of the Institute applied for a grant to carry on scientific research in yoga, and Government granted to the Institute Rs.20,000, for conducting and promoting scientific research in yoga.

With the advent of freedom and the dawn of Indian renaissance, I have no doubt in my own mind that our spiritual culture, our ancient culture, must be revived not in one direction only but in all possible directions. One objection that is levelled against spiritual culture -*yogic* culture especially-is that it is unscientific. Today the pioneer of scientific research in yoga, Swami Kuvalayananda, at Lonavla is doing splendid wok in this field. I am sure that as we grow in stature, as India's freedom grows, there will be many more institutes of this kind which will promote research in the spiritual field. It is very necessary. As Mahayogi Aurobindo Said recently, the West is turning to the East for some light and guidance, and if the East fails the West today then the world is doomed. He further exhorted us saying that India should not run after the materialistic baubles of the West. It is all right to increase the standard of living, but to become merely materialistic is not all in life. The world craves something else and the world is looking towards India. It is high time we did something in this direction and showed the light to an expectant world.

I hope the Union will promote agencies under its aegis to promote not merely historical and scientific research but also research in yoga and the spiritual field on a really scientific basis, science understood in the largest and most comprehensive sense, not in the very narrow sense of having a little laboratory, test tubes, flasks, pipettes and burettes, but the real scientific outlook of experiment, the outlook of a man seeking knowledge-*scio* "to know".

As regards my second amendment, I think through an oversight the word "administrative" has been omitted from this new proposed entry 57. The training of policy officers has been referred to. As far as I am aware, in the olden days the members of the I.P.S. and also the I.C.S. had to undergo a period or probation first in England and then on their arrival here complete that training departmentally. During World War II, owing to unsettled conditions in England, the training of the members of the I.C.S. was conducted here at Dehra Dun. That training was an integral part of the general instruction given to members of the I.C.S. Till they passed this training course and the other departmental tests they were regarded as probationers not eligible for confirmation or to draw increments in their pay.

I understand that, after August 1947, a school for the training of administrative officers has been started in old Delhi at Metcalffe House which housed part of the old Secretariat or the Delhi University. The principal of the school is a member of the old I.C.S. Training is being imparted there to the members of the new I.A.S. which has replaced the I.C.S. If it is considered that the police officers should have this training it is all the more important that the members of the new I.A.S. should have this training too. They have replaced the old I.C.S. and hence they should have the same kind of training. I see no reason why the training of members of the I.A.S. should not be included along with the training of the police officers unless of course Dr. Ambedkar in his profound wisdom can give some reason to the contrary. I suggest that the item "training of police of officers" should be omitted. But if that cannot be done. I see no reason why the members of the I.A.S. should not be included. I commend my amendments 199 and 200 for the consideration of the House.

Mr. President: There is an amendment to this-entry 57, standing in the name of Mr. Karimuddin (No. 3544). As it is not being moved, Dr. Ambedkar may reply.

The Honourable Dr. B.R. Ambedkar: Mr. President, I have compared the amendments moved by my honourable Friend Mr. Kamath with the entry as proposed by me. I think except for one matter, it will be quite open to central Government to carry out the purpose which my honourable Friend Mr. Kamath has in mind. The only thing which the Central Government will not be able to effectuate under entry 57 is spiritual research. I do not think that this House, knowing full well the various problems with which the Central Government has to carry on these days, would like to burden it with any such agency as spiritual research. The rest of the objects of the amendment will be covered by entry 57.

Shri H.V. Kamath: How do you say that the administrative service officers are covered by the entry as proposed?

The Honourable Dr. B.R. Ambedkar: I think so because the training is not only for officers. The language used is "research, for professional, vocational or technical training". Anything can be brought in under the above.

Mr. President: The question is:

"That in amendment No. 27 of List I (Sixth Week), in the proposed entry 57 of List I, for the word 'research' the words 'historical, scientific and spiritual research' be substituted."

The amendment was negatived.

Mr. President: The question:

"That in amendment No. 27 of List I (Sixth Week), in the proposed entry 57 of List I, for the world 'research' the words 'administrative and police' be substituted".

The amendment was negatived.

Mr. President: I will now put the entry as moved by Dr. Ambedkar in the amended form. The question is:

That for entry 57 of List I, the following entry be substituted:

'57 Union agencies and Union institutes for the following purposes, that is to say, for research, for professional, vocational or technical training for scientific or technical assistance in the investigation or detection of crime, for the training of police officers, or for the promotion of special studies'."

The amendment was adopted.

Entry 57, as amended, was added to the Union List.

New Entry 57 (A)

The Honourable Dr. B.R. Ambedkar: Sir, I move:

"That after entry 57 of List I, the following new entry be inserted:-

'57(A) Co-ordination and maintenance of standards in institutions for higher education, scientific and technical institutions and institutions for research'."

This entry is merely complementary to the earlier entry, No. 57. In dealing with institutions maintained by the provinces, entry 57A proposes to give power to the Centre to the limited extent of coordinating the research institutions and of maintaining the standards in those institutions to prevent their being lowered.

Sir, I also move:

"That in amendment No. 28 of List I (Sixth Week) in the proposed new entry 57A of List I, for the word 'maintenance' the word 'determination be substituted."

Mr. President: Amendments Nos. 201 and 255 are only for deletion. Dr. Deshmukh and Mr. Sarwate may speak on them if they want to do so, but the amendments need not be moved.

Shri V.S. Sarwate (Madhya Bharat): I have an alternative amendment also. I will move it with your permission.

Sir, my alternative amendment runs thus:

"That in amendment No. 28 of List I (Sixth Week), in the proposed new entry 57A of List I, for the words, 'Co-ordination and maintenance' the words 'Promotion by financial assistance or otherwise' be substituted."

The amended entry will read thus:

"Promotion by financial assistance or otherwise of standards in institutions for higher education, scientific and technical institutions and institutions for research"

My object in moving this amendment is that if the entry as proposed by Dr. Ambedkar is to stand it would be unnecessary interference with the provincial sphere of education.

Yesterday, there were two propositions made casually or otherwise in the course of speeches. One was that education should be a Central subject. The reason given was that it was of national importance. Another was a remark casually made by an eminent educational scholar that education in universities should be entrusted to the Centre. The reason he assigned was that the provinces had not sufficient resources. To me both these reasons are neither proper nor sufficient. If the provinces have not got sufficient resources for advancing education, the alternative should be not to transfer resources available to them to carry on their function of imparting education.

Fortunately for us, in the new Constitution provisions have been made suitably. The Finance Commission is immediately to make recommendations for grants-in-aid to provinces. Further, in making these recommendations for grants-in-aid, the Finance Commission is expected to see what are the necessary items of expenditure which the provinces have to make for education and for social services.

The other point that was made was that because education is of national importance, therefore it should be transferred to the Centre. If this argument is to be taken to its logical sequence, then practically every sphere of activity at present entrusted to the provinces would have to be transferred to the Centre. Medicine is of national importance, hygienic is of national importance, and practically all social services which are at present in the domain of the provinces will have to be transferred to the Centre. Now I think this is not the test for fixing the functions of the Centre and the provinces. To me it appears that the best should be that the subject besides being a subject of national importance, it should satisfy either of the three things which I shall just mention. Firstly, it should have a direct and immediate bearing on defence. Secondly, it should be of such a nature that it can best be managed only by the Centre. For instance, geological survey of the whole country can be best undertaken only by the Centre. Thirdly, it should be of such a nature that uniformity is the desideratum and is necessary in the interests of the nation. For instance, standards of weights and measures should be laid down by the Centre because it is in the national interest to do so. If in any sphere uniformity is not necessary but on the other hand there should be diversity and variety, it is the sphere of education.

The modern trend in education is that education should be adapted to each individual so that the personality of each individual might be developed to its fullest extent, of course consistently with the personalities of other individuals. If this is the desideratum in education, then there must be full scope for variety. There should not be any uniformity in education as uniformity would kill the growth of the individual. Nobody can say that there should be a standard of intellectual weights and measures for human beings. Therefore I think that education should be left entirely to the provinces.

I feel that the entry as it stands, "Co-ordination and maintenance of standards" in the educational sphere would come in the way of experiments in the educational field, in the research field. If education is to be adapted to the national needs of the country, if an individual's capacity is to be developed fully, there must be variety and there must be freedom for experiment. Therefore, my contention is that it should be entirely left to the provinces. Now, the Centre has already sufficient authority which it can exercise to bring the institutions in the provinces up to the standard as far as research is concerned. There is already a provision in item No. 57 for control by the Centre of Union agencies for research and through these Union agencies the Centre can lay down standards, which it should be the business of the provinces to follow and emulate. So there is no necessity for giving power to the Centre to fix standards so far as research is concerned.

As far as higher education is concerned, the policy which has been adopted in all federal countries is that the Centre does not take power to lay down standards. They give the fullest freedom to the provinces in this sphere. But what they do is that the Centre declares that if such and such an experiment is carried out, such and such grants would be made. The same thing was done by President Roosevelt and the other Presidents of the United States and is being done in Australia and Canada. The same method should be followed by the Centre here. If the Centre wants that any particular standard should be maintained, it should do it in the universities which they control or in their Union agencies for research, or they can provide for making grants to such universities as maintain the stand it wants. There is also another way of controlling this. The university graduates, as circumstances stand today, go mostly to the services, and the Government can lay down rules so that only those who satisfy certain standards would be eligible to enter the services. In this indirect way they can make the universities adopt the standards which the Centre desires. There should be no direct laying down of standards by the Centre.

Already there is sufficiency of State control in education. Anybody who has the interests of education at heart would note with sorrow that there is not sufficient private effort in the field of education. The State should encourage private enterprise and promote private schools which can make experiments and find out new methods, new system of education. That is the desideratum and not uniformity in this way. Diversity and variety being the aim of education, there should be no direct attempt by the Centre to lay down standards. I have in my amendment followed the way which the federal counters are following. Therefore, I have said- "Promotion by financial assistance or otherwise of institutions for higher education, scientific and technical institutions and institutions for research".

[At this stage, Mr. President vacated the Chair, which was then occupied by Mr. Vice-President, Shri T.T. Krishnamachari.]

One word more, Sir. I think that it will be difficult for Parliament or the Central Government to fix standards of higher education, for example in higher medical education. Would it be possible for the Parliament to find out what are the standards for medical education?

Shri T.T. Krishnamachari (Madras: General): They can have an Expert Committee to advise them.

Shri V.S. Sarwate: Why appoint a Committee when the Universities in their very nature and incorporation are expert Committee meant for this purpose? Moreover, the more the administrative burden on the Centre, the less efficient will it grow. I find that the whole trend is to take more and more functions for the Centre and I am afraid that the result of this will be that the Centre would encumbered with so many functions that its own standards of efficiency would deteriorate. It is to avoid this that I have sought to move my amendment. Sir, I move.

Dr. P.S. Deshmukh (C.P. & Berar: General): Mr. Vice-President, Sir, I think it is necessary to remind the honourable Dr. Ambedkar that we are discussing and deciding upon a list of items on which the Union will have exclusive power to legislate and if we look at this entry from the point of view, I would like to ask whether the Parliament is going to lay down by law the standards for the various institutions, of whatever status, of whatever nature so far as higher education, scientific and technical institutions etc., are concerned. I think many of the Members including some of the members, at any rate, of the Drafting Committee, are repeatedly falling into the error as if this Schedule is meant to determine and define the powers of the Union. This is not the purpose of this List and I think it would be well if the Drafting Committee Members would kindly look at this entry from that very important stand-point. I submit it was a learned speech which was just delivered by my honourable Friend Mr. Sarwate but it was probably not audible to many Members. Of course there are only a few Members who are to listen to any speeches other than their own and there are few Members who have not mortgaged their intelligence with the Drafting Committee and with that of Dr. Ambedkar. That is the reason, Sir, why in the country a feeling is growing that very few Members take this House seriously and the country is gradually learning to take the House much less seriously than it should. I do not think that this is a happy situation either for us or the country. I do not wish to take any credit for discovering this. It is a writing on the wall which anyone who runs can read and satisfy himself.

For the present I would like to say to Dr. Ambedkar that there is no necessity so far as this entry is concerned.

Shri Raj Bahadur (United States of Matsya): May I point out to the honourable Member that perhaps the remarks which he has chosen to make are not intended for the majority of the Members of this House. I suggest that he should not indulge in such generalizations.

Dr. P.S. Deshmukh: I am glad there is at least one honourable Member who is prepared to protest and probably his protest so far as he as an individual is concerned is correct. Many Members feel Sir, that University education may probably be taken over by the Centre. We have not decided to take it and university education as a whole is still left with the provinces.

Shri H.V. Kamath: Is Dr. Ambedkar listening, Sir, or is he engaged in private conversation? There is no point in Dr. Deshmukh proceeding with his speech when he is not listening.

Dr. P.S. Deshmukh: I have reconciled myself to that behaviour. My honourable Friend has yet to cultivate that virtue and I hope in time to come he will cultivate it. We do our duty and lay before this House or such parts of it as are prepared to listen and the nation outside to the extent the newspapers are prepared to give us publicity whatever we feel irrespective of what view others take or what attention Dr. Ambedkate is prepared to pay. I have given up from the beginning............

Mr. Vice-President (Shri V.T. Krishnamachari): Will Dr. Deshmukh go along with his speech?

Dr. P.S. Deshmukh: All right, Sir. As I said there were many Members who felt that higher education and especially University education should be the concern of the Union. We have neither accepted nor acted on that principle. We have not taken that step. In view of that, how are we going to co-ordinate and determine the standards? Are we going to alter the University Acts passed by the various provinces so as to interfere with their standards? I do not think so. Even if we take this power here, it will not be possible by any means to interfere with the autonomous powers which have been given unless you are prepared to put down University education as a subject of and for Central legislation. There is another thing which is objectionable and that is that merely sitting in judgement on the University bodies and other learned organizations and dictating from here as to what should be the proper standard and what shall not be, is not at all desirable. That should be based on something which the Centre is prepared to give. If donations or financial assistance is not given to any of the universities or institutes, then the Centre has no right to interfere in their autonomy, and if the Centre is in a position, if the Parliament wishes to spend more and more on higher education, if it is in a position to give block grants, and regular 'grants-in-aid then it will not be necessary to legislate for this purpose. It will be sufficient if the advice is given from the Centre, by the Union experts to rest of the universities and learned bodies and I am sure they will always be prepared to change their standards.

So it is not at all necessary to have the power of legislation which will mean compelling these several bodies by Parliamentary legislation to accept certain propositions or to accept certain standards. If you are not going to give any financial assistance, this power to legislate will be unjustifiable interference on the part of the Centre. If you give financial assistance, I am sure nobody nor any institution will be foolish enough or will be bold enough or would be careless enough in its own interests to defy the Centre's advice because of the financial assistance that it received from the Centre.

So from all these points of view, this item is hopelessly ill-conceived and I hope the honourable Dr. Ambedkar, even if he has not listened so far, will listen to my concluding remarks that this is an infructuous brain-wave resulting probably from the heavy work that the Drafting Committee members are required to do. I think this slip is due to their being over-burdened, being overwhelmed, and over-strained energies and I hope it will be corrected in time. There is no justification for this entry, and it is not going to help anybody; it is going to irritate the university bodies if we are going to have recourse to legislation to determine their standards. In view of these considerations and in view of what has been already urged by my friend Mr. Sarwate I hope that the entry will be withdrawn and not pressed.

Mr. Naziruddin Ahmad: Mr. Vice-President, Sir, I have a few short comments to make. I submit that the amendment of Mr. Sarwate will really make Central interference a bearable and an agreeable one. The amendment of Dr. Ambedkar seeks power in the Centre to meddle with educational affairs but unless it takes the shape of monetary help, such meddling with educational affairs would amount to advice *gratis* under the high sounding name of "co-ordination and maintenance of standards". The entry proposed is of the vaguest character. I submit that Mr. Sarwate's amendment discloses a considerable sense of humour. He says that the Centre should interfere by promotion of education only by financial assistance. Finance is the essence of the matter. In fact if the Centre should interfere in education, which is essentially provincial, it should be by financial assistance, not merely by advice *gratis* or by criticism or comments. I think Dr. Ambedkar should accept the humour of the situation and accept the amendment which would reduce interference to financial assistance to the Provinces which would really be a desirable interference.

Shri Basanta Kumar Das (West Bengal: General); I have an amendment- No. 29.

Mr. Vice-President: I thought they were new articles. Dr. Ambedkar, would you prefer that to be moved before you speak?

The Honourable Dr. B.R. Ambedkar: Yes.

Mr. Vice-President: Mr. Das, you may move No. 29.

Shri Basanta Kumar Das: Sir, I move:

"That with reference to amendments Nos. 3544 and 3545 of the List of Amendments, after entry 57 in List I, the following new entries be inserted:-

'57A. Promotion of scientific researches and of higher technical and technological education.

57B. Co-ordination of educational activities of the States for the purpose of maintaining a uniform national educational policy.

57C. Provision of adequate financial assistance to the States for proper development of education and maintenance of uniform standard of education throughout the Union.'"

The amendment of Dr. Ambedkar states that co-ordination is required only in a limited sphere viz., the sphere of higher education but the object of my amendment is that education should be taken as an integrated whole and it should not be viewed piece-meal. Therefore, I want that there should be co-ordination in the activities of the States to maintain a uniform national educational policy. The State should have a uniform national policy. This House accepted article 36 which states-

"The State shall endeavour to provide within a period of ten years from the commencement of this Constitution for free and compulsory education for all children until they complete the age of fourteen years."

Again in 31 (vi) it is said -

"That childhood and youth are protected against exploitation and against moral material abandonment."

In order to fulfil these provisions I think there should be a uniform national policy of education and that policy is to be implemented by co-ordination by the Centre. If there be no adequate financial provision the States will not be able to maintain a uniform standard of education throughout the Union. Education is a subject which must be given priority even after food. We should take care that all the States reach a certain standard within a limited time otherwise the provisions already accepted by the House cannot be implemented. There is a tendency in every State to go their own way. I do not deny that they have a right to do so. Education being a provincial subject there ought to be varieties according to the varying needs of provinces, but still there must be a national policy and that national policy must be implemented with the help of the Centre. My first point has been to a certain extent covered by entry 57 just now accepted but in 57(b) land (c) I want to make out that the Centre should have enough power to go with a uniform policy of education and to give financial assistance to the States so that a uniform standard may be reached within a specified period.

Shrimati Renuka Ray (West Bengal): Mr. Vice-President, Sir, I should like to support the amendment that has been moved by Mr. Basanta Kumar Das. It is a very wholesome amendment. As he has pointed out the first part of his amendment has already been accepted but 57(b) and (c) are also extremely important. The co-ordination of educational policy and, in particular, the maintaining of a uniform national minimum standard of education throughout the country is essential. Education is the very basis of our progress and advancement; and unless the Centre is able to co-ordinate education and to see that no part of the country falls behind a minimum standard of education, it is really impossible for us to advance. Any State or any area in this country which remains behind a minimum standard will be a drag on the rest of the country. Therefore I feel that this is extremely essential. At the same time it is not possible to provinces or States to maintain a minimum standard of education unless they have sufficient finances to do so.

At the present moment perhaps due to the many transitional difficulties we have faced and may be for other reasons up to now we have not been able to focus sufficient attention on these very essential nation-building services. Those services that were neglected and treated in a step-motherly manner in the past, under the old regime, have yet to get that help that they need in order that the country may progress. I would say that at least 25 to 30 per cent of our national income should be set aside immediately for the nation-building services. I do claim that in every province at least 15 if not 20 per cent. of our national income should be set aside immediately for the national building ser-a vicious circle in this country that unless we can produce more we cannot increase our national income. It has been pointed out that unless we increase our national income how is it possible to find the money for these essential services? We have to break that vicious circle somewhere. It is not possible for our country to progress or produce more unless the efficiency of the worker is increased. Unless the worker is given the basic opportunities, how can efficiency be increased. This implies that there must be minimum standards for education and health. Unless the men and women who are the builders of society have a minimum standard of education and of health, it is not possible for us really to have any increase in efficiency, and unless we have increase in efficiency it is no use talking about producing more. I think it is at this end that we must tackle this problem.

If we are to do so, this particular amendment of Mr. Das will help towards this end. Both the points that he raised that the Centre must have power to co-ordinate and be able to see that no state remains behind a minimum standard and the fact that the States must be given sufficient financial assistance to be able to develop education are most important. I do not say that the Centre should have any power to interfere with any State going ahead of the minimum standard. That is not a power that is implied in this resolution. The power that is implied in this is that no state should remain behind the minimum standard and I do hope that Dr. Ambedkar and the Drafting Committee would consider this and will accept this amendment.

Shri Lakshminarayan Sahu (Orissa: General): *[Mr. Vice-President, I disagree with the new amendment that has been moved here because, education being a State or Provincial subject, it would not be proper to give such extensive powers to the

Centre in regards to it. It should at least, be kept in the Concurrent List. Moreover, another article lays down that: "Parliament has exclusive power to make laws with respect to any of the matter enumerated in List 1 of the Seventh Schedule". It would not be proper in view of this that we should take away the powers of Parliament. My contention is that, education having been accepted a State subject, Universities should have all powers in regard to this subject, and the Centre should have no power. Unless Universities have full freedom in this respect, education cannot be imparted to the people properly. I may point out that of all the universities in India, the Calcutta University enjoyed the highest autonomy. Even at present it functions more freely than other Universities and we find that because of the freedom it enjoys its products have been very useful to the Nation. I oppose the amendment because it seeks to curtail the powers of the Universities. I would like to point out one thing more in this connection and it is that we must be told as to what is meant by higher education. We do not know if the term "higher education" stands for university education or for Secondary education. The term "higher education" should be clearly defined. If this term refers to college education, the Centre should give all possible aid to the Universities. But if this term is meant for Secondary education, well it is extremely lamentable. I want that every province must have complete freedom in regard to secondary education and the Central Government should have no power in this matter. We have seen that during the British regime, when the Central Government was all powerful, education was a centrally controlled subject and any one who wanted education to be imparted on a new line was not able to work on his lines. Even at present people hold different views about education and some want it to be imparted on one line and others on some other line. But unless this autonomy is provided to the provinces and so long as we continue to control educational activities from the Centre we shall be producing persons without any initiative. I, therefore, submit that Universities should have complete freedom in regard to education and Centre should provide all possible financial help to them. With these words I oppose the amendment.]

Prof. Shibban Lal Saksena (United Provinces: General): Sir, shall I move my amendment 256?

[At this stage Mr. President resumed the Chair.]

Mr. President: That is an addition of a new entry.

Prof. Shibban Lal Saksena: Sir, just now you allowed 259.

Mr. President: Do you want to move it as an amendment to this?

Prof. Shibban Lal Saksena: They are connected subjects.

Mr. President: That is a new entry you want. Mr. Phool Singh.

Shri Phool Singh: Mr. President, Sir, while I rise to support amendment 57(b) I am afraid it is not possible for me to agree to amendment 57(c). A uniform national educational policy is necessary because some of the

Universities have made their degrees so cheap that those passing out of those Universities are looked down upon by the authorities entitled to make appointments. Some of the Universities have made their degrees so cheap that the boys who could not otherwise have passed have been able to pass through very easily in those Universities. This has created a lot of confusion and a uniform national policy therefore is necessary. But while I agree with this, I am afraid it may be putting too great a strain upon the Centre to ask the Centre to give adequate financial assistance to the States, because unless we increase the income of the Centre it may not be possible for the Centre to finance all these activities. Therefore, I support 57(b) and oppose 57(c).

The Honourable Dr. B.R. Ambedkar: Mr. President Sir, I think there is a certain amount of admixture made by my friends who have spoken on this entry 57A. So far as I have been able to gather, their contention is that this entry 57A should be allowed only if there was some grant made by the Central Government to the Provinces. It seems to me quite unnecessary to mix up the two matters. The question of grants from the Centre to the Provinces has been dealt with in two separate articles-255 and 262. Article 255 provides for grants to be made by the Centre to the Provinces for assistance-

"Such sums, as Parliament may by law provide, shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the Consolidated Fund of such States as Parliament may determine to be in need of assistance....."

Therefore, the provision for supporting the States by way of financial help is already there in article 255. I should also like to draw the attention of the Members of the House to another important article, which is article 262, which is much wider in scope. It says-

"The Union or a State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws."

As the House will see, it has a much wider scope. It says that although a subject may not be within List I, nonetheless, Parliament would be free to make a grant. Therefore, this question having been dealt with separately, I think there is no necessity to mix it up with entry 57A.

Entry 57A merely deals with the maintenance of certain standards in certain classes of institutions, namely, institutions imparting higher education, scientific and technical institutions, institutions for research, etc. You may ask, "why this entry?' I shall show why it is necessary. Take for instance the B.A. Degree examination which is conducted by the different Universities in India. Now, most provinces and the Centre, when advertising for candidates, merely say that the candidate should be a graduate of a university. Now, suppose the Madras University says that a candidate at the B.A. Examination, if he obtained 15 per cent. of the total marks shall be deemed to have passed that examination; and suppose the Bihar University says that a candidate who has obtained 20 per cent. of marks shall be deemed to have passed the B.A. Degree examination; and some other university fixes some other standard, then it would be quite a chaotic condition, and the expression that is usually used, that the candidate should be a graduate, I think, would be meaningless. Similarly, there are certain research institutes, on the results of which so many activities of the Central and Provincial Governments depend. Obviously you cannot permit the results of these technical and scientific institutes to deteriorate from the normal standard and yet allow them to be recognized either for the Central purposes, for all-India purposes or the purposes of the State.

Consequently, apart from the question of financial aid, it is absolutely essential both in the interest of the Centre as well as in the interests of the Province that the standards ought to be maintained on an all-India basis. That is the purpose of this entry, and in my judgement it is a very important and salute provision, in view of the fact that there are many provinces who are in a hurry to establish research institutes or establish universities or lightly to lower the standards in order to give the impression to the world at large that they are producing much better results than they did before.

Dr. P.S. Deshmukh: Is it the Government intention to fix the percentages and marks for passes?

The Honourable Dr. B.R. Ambedkar: They may do so. It is up to Government to maintain the standard by any means which they think proper. I cannot say what a Government may do.

Mr. President: I will now put the amendments to the vote. The first set are the three new entries proposed by Shri Basanta Kumar Das, namely, 57A, 57B and 57C.

Shri Basanta Kumar Das: I beg leave of the House to withdraw them.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That in amendment No. 23 of List I (Sixth Week), in the proposed new entry 57A of List I, for the words 'Co-ordination and maintenance' the words 'Promotion by financial assistance or otherwise' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That after entry 57 of List I, the following new entry be inserted:-

'57A. Co-ordination and determination of standards in institutions for higher education scientific and technical institutions and institutions for research'."

The motion was adopted.

Entry 57-A was added to the Union List.

Mr. President: There is a new entry proposed by Prof. Shibban Lal Saksena is amendment No. 256. After all this discussion, which we have had about university education and the power of provinces with regard to education, does the honourable Member think it worth while moving this amendment?

Prof. Shibban Lal Saksena: If you suggest, I will not.

Mr. President: Very well. We will drop it.

Entry 58

The Honourable Dr. B.R. Ambedkar: Sir, I move:

"That for entry 58 of List I, the following entry be substituted:-

'58. Union Public Services, All-India Services: Union Public Service Commission.'"

(Amendment No. 169 was not moved)

Dr. P.S. Deshmukh: Sir, I move:

"That in amendment No. 30 of List I (Sixth Week), in the proposed entry 58 of List I, the words 'All-India Services:' be deleted."

The wording of the entry now proposed will stand as:

"Union Public Services, All India Services, Union Public Commission."

I fail to understand why the wording "All India Services" is necessary. 'Union Public Service', in my opinion includes the all India Services, because the Union covers the whole of India and is "All India". and I do not think the word "public" is going to make any difference. I, therefore, think that the addition of the words 'All India Services' is superfluous. But if there is any specific purpose to be served, I would not press the amendment. If the wording "Union Public services" is restricted to particular services and All-India services are not included in it, then the name of the Commission will also have to be altered so as to cover the All-India Services will not be referable to that Commission, at any rate ordinarily, since the Services Commission is called the Union Public Services Commission. So the All-India Services will have no place so far as this Commission is concerned. This is an unnecessary addition. But all that I seek is more information.

Shri H.V. Kamath: Sir, I move:

"That in amendment No. 30 of List I (Sixth Week), in the proposed entry 58 of List I, the words 'and Joint Commission' be added at the end."

The entry then would read as follows:

"Entry 58. Union Public Services, All-India Services, Union Public Services Commission and Joint Commission."

The House will recollect that a few days ago we adopted articles 284, 285, 285A, 285B, 285C, 286, 287 etc., etc., providing for the creation of Public Service Commissions which were in three different classes; firstly, the Union Commission: secondly, the State Commission: and thirdly, the Joint Commission for two or more States who have agreed to set up such a Commission for the purposes of those two or more States. Unfortunately this matter of the Joint Commission has been overlooked by the drafting Committee because the House will see that article 284 invests Parliament with the power to provide by law for the appointment of Joint Public Services Commission to serve the needs of two or more States who have agreed to set up a Joint Commission as among themselves. Article 285 also vests power in the President to appoint the Chairman and other Members of a Joint Commission, and this and succeeding articles also confer power on the President or the Parliament in regard to the Constitution and organization of the Joint Commission. In any case, I do not find that this matter of the Joint Commission has been provided for in other Lists-Lists 2 and 3-and even if they are provided for I do not think they fall within the purview of these two lists. The right place for the Joint Commission is in List I, within the jurisdiction and purview of the Union authorities. Accordingly I suggest that this addition be made by accepting my amendment seeking to include the Joint Commission in this proposed entry 58. I move amendment No. 204 and commend it to the House for its consideration and acceptance.

The Honourable Dr. B.R. Ambedkar: With regard to the amendment of my

Friend Dr. Punjabrao Deshmukh requiring the deletion of all-India services, it is not possible to accept that for the simple reason that heretofore the all-India services and the regulation thereof did not figure in the Government of India Act because that was a matter which was kept exclusively in the hands of the Secretary of State. The Secretary of State having disappeared, it is necessary to provide for the regulation of the all-India services, somewhere by some agency in the Constitution and the most appropriate agency therefor is the Centre. List I deals with matters which are within the purview of the Centre. The natural place for all-India services is therefore in List I. That is one argument.

The second argument is this that there are already two sorts of all-India services at present in existence. There are the remnants of the old I.C.S. still continuing to serve the Government of India. Secondly, there have been instituted during the course of the last two years what are called the All-India Administrative Service and the All-India Police Service. Whether the Centre continue to recruit civil servants on the basis of the All-India Administrative Service or the All-India Police Service is a matter which has to be determined in the course of a subsequent article with which we will be concerned. But there is no doubt about it that these services have been brought into existence with the consent of the Provinces. Secondly, they being there it is necessary to make provision for their regulation. And I submit that the Union List is the proper list where this provision can be made.

With regard to my Friend Mr. Kamath's suggestion that the Joint Commission should be mentioned in this entry, my submission is that on a deeper consideration that would create complications. The Joint Commission, so far as its constitution, the appointment of its members and their removal are concerned-and only in these three respects-is an all-India subject, and provision for these three matters is already made in article 284. In all other respects it is really a State Public Service Commission: say, for instance, for the purpose of excluding certain services or consulting them in certain matters, it will still be a State Public Service Commission. And it is not desirable to oust the jurisdiction of the States in these matters as would be the consequence if the Joint Commission was also mentioned in entry 58. It is for that purpose that I object to Mr. Kamath's proposal.

Shri H.V. Kamath: May I know if this will go to the Concurrent List?

The Honourable Dr. B.R. Ambedkar: No.

Shri H.V. Kamath: Where will it go?

The Honourable Dr. B.R. Ambedkar: It can be the Centre only in certain respects: for instance, if the States jointly say that a Joint Public Service Commission should be constituted, then as a result of the resolution the Centre gets jurisdiction and not otherwise. In all fundamental matters, it is distributively, if I may say so, a State Public Service Commission.

Dr. P.S. Deshmukh: I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: I shall put Mr. Kamath's amendment to vote. The question is:

"That in amendment No. 30 of List I (Sixth Week), in the proposed entry 58 of List I, the words 'and Joint Commission' be added at the end."

The amendment was adopted.

Mr. President: The question is :

"That for entry 58 of List I, the following entry be substituted:-

'58. Union Public Services, All-India Services; Union Public Service Commission."

The amendment was adopted.

Entry 58, as amended, was added to the Union List.

Entry 58A

The Honourable Dr. B.R. Ambedkar: I move:

"That after entry 58 of List I, the following entry be inserted:

'58A. Union pensions, that is to say, pensions payable by the Government of India or out of the Consolidated Fund of India'."

This entry did not exist in the draft. We felt it necessary to have such an entry as a measure of caution.

(Amendment No.170 was not moved).

Dr. P.S. Deshmukh: Sir, I move:

"that in amendment No. 31 of List I (Sixth Week), for the proposed new entry 58A of List I, the following be substituted:-

'58-A. Pensions payable out of the Consolidated Fund of India or otherwise by the Government of India.'"

My amendment seeks to omit the word "Union" and for this important reason namely, so long as the pensions are payable or made payable out of the consolidated Fund of India, I am sure no other pension except those with which the Union is concerned would be included in that. I have not been able to understand if there are any pensions which can be paid out of something which is not part of the Consolidated Fund of India. I thought the total revenues of India were going to be designated as the Consolidated Fund of India. Therefore I am unable to understand where the other source of payment of these pensions can be sought out. But I have not altered even this, I have merely put it in a more appropriate form, according to me at any rate, and I think the wording that I have suggested should be acceptable, that is, without any reference to the Union. So long as they are payable out of the Consolidated Fund of India, they will be only Union pensions and the word is therefore superfluous.

The Honourable Dr. B.R. Ambedkar: I do not think that the amendment suggested by my Friend Dr. Deshmukh is any improvement or has any substantial difference from the amendment as I have moved. The difference that is sought to be made is this that there may be certain pensions which may be payable out of the Consolidated Fund of India, which means out of the proceeds of taxes. It may be perfectly possible for the Government of

India to institute pensions which are of a contributory character in which case the burden may not be on the Consolidated Fund but on the person who has already contributed to a Fund. That is the distinction. And that is why the entry has been worded in the way I have worded it.

Dr. P.S. Deshmukh: I would like to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That after entry 58 of List I, the following entry be inserted:-

'58A. Union pensions, that is to say pensions payable by the Government of India or out of the Consolidated Fund of India.'".

The motion was adopted.

Entry 58A was added to the Union List.

Entry 59

Entry 59 was added to the Union List.

Entry 60

The Honourable Dr. B.R. Ambedkar: Sir, I move:

"That for entry 60 of List I, the following entry be substituted:-

'60. Ancient and historical Monuments and Records declared by Parliament by law to be of national importance.'"

The rest of the entry as it originally stood, namely, "archaeological sites and remains" is proposed to be transferred to the Concurrent List.

Shri H.V. Kamath: Mr. President, I move, Sir, amendment No. 206 of List III (Sixth Week). It runs as follows:-

"That in amendment No. 32 of List I (Sixth Week), in the proposed entry 60 of List I, for the words 'Ancient and Historical Monuments and Records' the words 'Monuments places and objects of artistic or historic interest be substituted."

Let me at the outset make it clear that I am not excessively fastidious about the wording or the phraseology of any entry or article so long as it brings out the meaning of the article completely. I am not also opposed to anybody changing his views or the language he might have used on a previous occasion, nor am I opposed to any inconsistencies on anybody's part, so long as any valid, cogent reason is shown for a change of view or a change of language and so long as it appears at least plausible. Even Mahatma Gandhi used to say that he was always prepared to change his view so long as he was convinced of the need for the change, so long as he had valid reasons for doing so.

I would invite the attention of the House to article 39, Part IV, Directive Principles of State Policy Article 39 which this House adopted many months ago reads a follows:-

"It shall be the obligation of the State to protect every monument or place or object of artistic or historical interest, declared by Parliament by law to be of national importance, from spoilation, destruction, removal etc. etc."

Now, in the Union List, so far as I can understand, we have included the subject matter of article 39 and I see no reason why we should change the language in which we clothed article 39. Here the proposed entry is as regards ancient and historical monuments and records. *Records*-I do not know how that word has crept it. In addition to monuments if we mention places ad objects of historical interests, it is enough; records are of course one of the objects which you can protect from spoilation, destruction, etc. Why not therefore say, the other "objects" of historical interests besides monuments? Why not places, not merely of historic but of artistic interest, to which this House after mature deliberation provided for in article 39 in one of the Directive Principles of State Policy? I think Dr. Ambedkar has advanced no cogent reasons for changing the language of article 39 which is sought to be embodied now in this entry. I therefore move amendment No. 206 and commend it to the House for its acceptance.

(Amendment Nos. 207 and 208 were not moved).

Mr. President: Would you like to say anything on amendment No. 206?

The Honourable Dr. B.R. Ambedkar: No. Sir, it is quite unnecessary to say anything on this subject.

Mr. President: Then I will put the amendment moved by Mr. Kamath to vote. The question is:

"That in amendment No. 32 of List I (Sixth Week), in the proposed entry 60 of List I for the words 'Ancient and Historical Monuments and Records' the words 'Monuments, places and objects of artistic or historical interest' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That proposed entry 60 stand part of List I".

The motion was adopted.

Entry 60, as amended, was added to the Union List.

Prof. Shibban Lal Saksena: Sir, may I be permitted to move my amendments?

Mr. President: You were here when I called them out. I am sorry it is too late now.

Prof. Shibban Lal Saksena: they are very important amendments, Sir, and I think they are independent also.

The Honourable Dr. B.R. Ambedkar: You have no equity in your favour.

Mr. President: Let me finish the List and then we shall see. Now, entry No. 61. There is an amendment in the Printed List, of which notice is given by Dr. Ambedkar No. 3548.

The Honourable Dr. B.R. Ambedkar: Sir, I am not moving that.

Mr. President: Then there are two amendments in the name of Mr. Santhanam.

The Honourable Shri K. Santhanam: I am not moving them.

Mr. President: Then I put entry No. 61 to vote.

Entry 61 was added to the Union List.

Entry 61-A

The Honourable Dr. B.R. Ambedkar: I move:

"That after entry 61 of List I, the following entry be inserted:-

'61-A. Establishment of standards of quality for goods to be exported across customs, frontier or transported from one State to another."

We have already got entry 61 which deals with standard of rights and measures and it is felt that there ought to be a provision for establishment of standards of quality for goods.

Mr. President: There are two amendments to this. Amendment No. 209, Dr. Deshmukh.

Dr. P.S. Deshmukh: Mr. President, I welcome the proposed addition of entry 61A, but I think it is not comprehensive enough and I therefore move these two amendments of mine so as to make it fully comprehensive and cover all sides of the question. My amendment No. 209 reads as follows:-

"That in amendment No. 33 of List I (Sixth Week), for the proposed new entry 61A of List I, the following be substituted:-

'61A. Grading and standardization of quality of agricultural produce or goods intended to be consumed in the country or exported outside India or transported from one State to another'."

The next amendment, No. 210, is:-

"That after the proposed new entry 61A of List I, the following new entry be added:-

"61B Prevention of adulteration of articles of food, whether imported, proposed to be exported or otherwise, arrangements for analysis, control and regulation of all such articles'."

Sir, the amendment is in fact clear enough. I seek to add the grading of agricultural produce. Anybody who is familiar with the importance of our export trade as well as the fact that there is a very real absence of grading would find that it causes much loss to the agriculturist. This is one of the things with which the Ministry of Agriculture is also seriously concerned. I have no doubt that all the Provinces will agree that some Central legislation is necessary as well as the determination of a definite policy so that the standards of production will rise, there would be proper grading of all articles that are produced and our export market will also improve. So, this is a highly important thing which was probably not pressed upon the attention of any of the Members of the Drafting Committee, and as none of them was probably so familiar with the Ministry of Agriculture or the difficulties of agriculturists or their needs, this omission has occurred. I therefore propose that this wording which covers all that is proposed by the learned Doctor to be included in 61A adds to it certain things which are also absolutely essential and it does not necessarily limit it only to the exported goods or to goods transported from one State to another only; it also refers to agricultural produce as well as goods intended to be consumed in the country. So far as the second suggestion, with regard to the addition of 61B is concerned, I shall particularly refer to the vicious habits of our merchants of adulterant foodstuffs and food-grains. This generally occurs not at the stage at which the agriculturists produce and sell the articles but at the stage at which they are offered for sale by the merchants and traders. This evil has been so rampant that I make bold to say that it is very difficult to get anything in a pure form from any shopkeeper. Their greed for lucre is so great that they are not content with their legitimate profit and they very freely adulterate sugar, flour, oil, etc., with all the unimaginable things. Sometimes they mix even cement with flour and this is consumed by our unfortunate brethren. I have also suggested a consequential provision for analysis, control and regulation of such articles. I think both these amendments are very necessary. I hope Dr. Ambedkar will agree that it is necessary that the union should have this power.

Sir, it may be said that this matter may be left to the provinces. I think it will not be proper to do so, because it would really be funny that we should legislate and decide upon the quality of the articles for maintaining standards for the markets etc., and not take the other necessary step of maintaining the same standard throughout the Union. I trust that my amendments will be accepted.

Mr. President: Amendment No. 260 in terms refers to entry 61, but it is covered by the amendment moved by Dr. Deshmukh. So it is not necessary to move it.

The Honourable Dr. B.R. Ambedkar: Sir, the point raised by my Friend Dr. Deshmukh might well be raised when we discuss the entries in List II. They are matters within the jurisdiction of the States. We are dealing here only with List I, which is intended to circumscribe the power of the Centre so as not to interfere with the internal affairs of the States. Consequently, the entry has been worded in a very cautious manner. As my Friend will see, the entry speaks of standards of goods to be transported from one State to another. In regard to these it is not intended to give the Centre power to interfere with the administration of the States. If he wants to raise this question he may do so when we discuss the State List.

Dr. P.S. Deshmukh: May I suggest that this entry might be held over and the Agricultural Ministry consulted before we finalize this List?

The Honourable Dr. B.R. Ambedkar: when we come to List II, we can discuss the matter.

Mr. President: I will put the amendments to vote. The question is:

"That in amendment No. 33 of List I (Sixth Week), for the proposed new entry 61A of List I, the following be substituted:-

'61A, Grading and standardization of quality of agricultural produce or goods intended to be consumed in the country or exported outside India or transported from one State to another'."

The amendment was negatived.

Mr. President: The question is:

"That after the proposed new entry 61A of List I, the following new entry be added:-

'61B. Prevention of adulteration of articles of food, whether imported, proposed to be exported or otherwise, arrangement for analysis, control and regulation of all such articles'.".

The amendment was negatived.

Mr. President: I shall now put the new entry 61A to vote. The question is:

"That after entry 61 of List I, the following new entry be inserted:-

'61A. establishment of standards of quality for goods to be exported across customs frontier or transported from one State to another'."

Shri V.S. Sarwate: I would like to know from Dr. Ambedkar what the meaning of the term 'exported across customs frontier' is?

Mr. President: I am afraid the questions comes too late, after the voting has taken place.

The Honourable Dr. B.R. Ambedkar: I will explain it to the honourable Member if he will come to me afterwards.

Mr. President: The question has been put.

The motion was adopted.

Entry 61A was added to the Union List.

Entry 62

Mr. President: Entry 62. Does Sardar Hukam Singh move his amendment to this entry?

Sardar Hukam Singh (East Punjab: Sikh): I am not moving it.

Entry 62 was added to the Union List.

Mr. President: I May just point out to Members that the progress today is rather slow. I want to finish consideration of the three Lists tomorrow. So I suggest that we should proceed a little faster.

Dr. P.S. Deshmukh: We are going sufficiently fast, I think.

Entry 63

Mr. President: Not today. We may now take up entry 63.

The Honourable Dr. B.R. Ambedkar: Mr. President, I am not moving amendment No. 3551 to the original entry. In regard to amendment 34 which I am moving I shall in doing so incorporate in it amendment No. 212 also. Sir, I move:

"That for entry 63 of List I, the following entry be substituted:-

'63. Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable'."

Prof. Shibban Lal Saksena: Sir, I move:

"That in amendment No. 34 of List I (Sixth Week), in the proposed entry 63 of List I, the words 'Prospecting for and' be inserted in the beginning."

Then, Sir, the entry would read thus:-

"Prospecting for and regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable."

The entry as it stands provides for regulation and development of oilfields and mineral oil resources. Prospecting for oilfields and oil resources is not provided for. My amendment therefore says "Prospecting for and regulation and development, etc." It means that the amendment will give the Central Government power to prospect for oil. You know, Sir, that prospecting in rocks and mountains has to be done in order to find oil resources. Huge sums of money have to be spent on geological surveys of sites which are supposed to be rich in oil. The latest inventions of science are taken advantage of in the discovery of oilfields. I therefore think that general regulation and development of existing oilfields will not do. We must have power to prospect for the discovery of oilfields and oil resources. My amendment only completes the amendment which has been moved by the Drafting Committee. Surely they do not want to confine India to the resources of a few oilfields in Assam. They would certainly want that we must find out oilfields in other parts of India, and it will not be possible to do this under the entry as it is, since it does not give power for prospecting. The States cannot do it for want of the required funds and therefore the prospecting for oil should be the function of the Central Government. I hope Dr. Ambedkar will accept this amendment.

Shri Raj Bahadur: Mr. President, Sir, I move:

"That in amendment No. 34 of List I (Sixth Week), in the proposed entry 63 of List I after the words 'dangerously inflammable' the words 'corrosive or explosive' be inserted".

---

*[ ]translation of Hindustani speech

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Wednesday, the 31st August 1949

Shri Raj Bahadur: Mr. President, Sir, I move :-

"That in amendment No. 34 of List I (Sixth Week), in the proposed entry 63 of List I after the words 'dangerously inflammable' the words 'corrosive or explosive be

Sir, my purpose in moving this amendment is to include acids also within the. purview and ambit of this entry. I hope, Sir, that I can say without fear of contradiction that it is positively necessary to legislate in respect of the possession, storage, transport and sale of acids. We have seen how acids have been misused in even ordinary petty disputes and quarrels. We have also seen of late the growth of the cult of the acid bulbs in the field and arena of political controversy. It is therefore necessary that we should control the storage, possession etc., of acids and see that no mischief is made or created with the help of such liquids. We should hence, include acids also within the purview of this entry. The entry as moved by the Drafting Committee deals firstly with oilfields and mineral oil resources. Secondly it deals with petroleum and petroleum products and lastly it deals with substances declared by Parliament by law to be dangerously inflammable. I would submit that in the last Category we should include acids also. It may be useful to point out that acids by selves could be and are being used as weapons and acids are also used in the manufacture of explosives. So, it is necessary that the Union should control such articles as acids also. Sir, I move.

The Honourable Dr. B. R. Ambedkar: I do not think that either of these two amendments is necessary. The purpose which my Friend Professor Shibban Lal Saksena has in view, viz., that entry 63 should also permit the Centre to regulate prospecting for oil, etc., would be served by the words we have used "Regulation and development". With regard to the addition of the word "corrosive", I think it is not necessary to have any such power at all.

Mr. President : The question is

"That in amendment No. 34 of List I (Sixth Week), in the proposed entry 63 of List I,the words "Prospecting for and" be inserted in the beginning."

The amendment was negatived.

Mr. President: Then amendment No. 262.

Shri Raj Bahadur: I, do not press my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question, is:

"That for entry 63 of List I,, the following entry be substituted63. Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable ."

The amendment was adopted.

Entry 63, as amended, was added to the Union List.

Entry 64

The Honourable Dr. B.R. Ambedkar : Sir, I move :

That for entry 64 of List I, the following entry be substituted

'64. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest'."

Kaka Bhagwat Roy: *[Mr. President, my amendment is as follows:-

That in amendment No. 35 of List I (Sixth Week) in the proposed entry 64 of List I,. for the word 'Industries the words 'development of Industries' be substituted."

It appears from the amendment which the Honourable Doctor has introduced in the original entry that he wants to hand over all the powers regarding industries to the Centre. It is very good; the Centre ought to be strong, and during transition, the Centre should be vested with such powers as are essential for the Industrial development of the country. But in normal times, the Centre should not be vested with such authority. India is a very big country. She has many provinces. These Provinces have their own difficulties and cam understand their problem much better than the Centre.

The problem of Industries is very complicated. Therefore so far this question is concerned. every province should be given facilities to solve its own problems. If you make the Provinces responsible for industrial

development and do not give them powers to deal with the situation, then the problem of Provinces cannot be solved and it will retard the industrial progress of the country. Although I am somewhat deviating from the point, yet I must say that the present Industrial policy of the Centre will prove a stumbling-block in the path of the Country's progress.]

Mr. President :*[You are not only speaking on your amendment, but you are opposing it.]

Kaka Bhagwant Roy: *[I bow down to your ruling. But I would like to, say that so far industries are concerned, the Provinces should be entrusted with necessary powers ; for they can understand the problem of their industries. better With these words I would request the Honourable Doctor to accept the amendment.]

Shri H. V. Kamath : Mr. President, I move amendment No. 214 of Third' List (Sixth Week) which reads as follows:-

That In amendment No. 35 of List I (Sixth Week) in the proposed entry 64 of List I, for The words the control' the words 'the development and control' be substituted."

This amendment includes or embraces the amendment Just now moved by my honourable Friend, Kaka Bhagwant Roy. The original entry as it-stood in the Draft Constitution referred to the development of industries. I wonder why the Drafting Committee has suddenly developed an antipathy to the word "development" in this entry. My amendment is on the lines of a legislative

---

[] Translation of Hindustni speech

measure which was introduced in the Assembly during the last Budget Session and which has been referred to a Select Committee. That Bill provided for governmental action in industries, the development and control of which was to be regulated by the Centre and the title of the Bill was "Industries (Development and Control) Bill", that is to say, the subject-matter of this entry has been already taken cognizance by the Central Government in a Bill, the title of which includes not merely control but the development of industries which are deemed necessary or expedient in the public interest. I realize it is quite possible the Drafting Committee owing to the excessive strain under which it has laboured during the last two years and especially during the last few weeks or months, is liable to commit slips here and there, but I hope that the Drafting Committee. has not developed a closed or a calcified mind, which is not receptive to any change whatsoever. I think that the meaning of this entry will be, more adequately and more fully conveyed by amending this word "control" on the lines I have suggested and seeking to incorporate in this entry not merely control but also the development of industries, which means, industries the development and control of which by the Union is declared by Parliament, by law, to be expedient in the public interests I move amendment No. 214 of List III (sixth Week) and commend it to the House for its earnest Consideration.

Mr. President : There are two other amendments which are in

the printed book of amendments, No. 3552 in the name of the Honourable Dr. Syama prasad

Mookerjee and No. 3553 in the name of Honourable Shri K. Santhanam. I take it that they are not moved.

The Honourable Dr. B. R. Ambedkar: Sir, the. entry as it stands is perfectly all right and carries out the intention that the Drafting Committee has in mind. My submission is that once the Centre obtained jurisdiction ,over any particular industry as provided for in this entry, that industry becomes subject to the jurisdiction of Parliament in all its aspects, not merely development but it may be in other aspects. Consequently, we have thought that the best thing is to put the industries first so as to give undoubted jurisdiction to Parliament to deal with it in any manner it likes, not necessarily development. Therefore, the entry is far wider than Mr. Kamath intends it to be.

Mr.President : The question is:

That in amendment No- 35 of List I (Sixth Week) in the proposed entry 64 of List I, for the

word 'Industries' the words 'Development of Industries be substituted."

The amendment was negatived.

Mr. President: The question is:

That in amendment No. 35 of List I (Sixth Week) in the proposed entry 64 of List I, for the word 'the control' the words 'the development and control' be substituted."

The amendment was negatived,

Mr. President: The question is :

That for entry 64 of List I, the following entry be substituted:--

64. Industries the control of which by the Union is declared by Parliament by law to be expedient in the public interest."'

The amendment was adopted.

Entry 64, as amended, was added to the Union List.New Entry 64-A

Shibban Lal Saksena: Mr. President,Sir, I beg to move:

That after entry 64 of List I. the following new entry be added :-'64-A. Co-ordination of the development of agriculture including animal husbandry, forestry and fisheries and the supply and distribution of food."' Sir, I wish to point out to the Drafting Committee and its Chairman that this entry which I have suggested is in accordance with the recommendation made by the. Ministry of Agriculture of the Government of India. In fact in the letter which the Honourable Shri Jairamdas Daulatram wrote to the. Honourable Dr. Ambedkar in January 1948, he bad used the same words. I would only quote the last two paragraphs of that letter. He says:

"The difficulties of feeding the ever-increasing population of India and the experience of the last war have made it abundantly clear that the national interest demands that the Centre should play a more active role in the sphere of Agricultural Development and in January 1946 a statement of Agriculture and Food Policy in India was issued by Government from which it will be seen that the Centre assumed to itself specific responsibilities for the development of agriculture and the supply and distribution of food and to co-ordinate an All--India policy of Agricultural development, food production and distribution......

We have given the matter very careful consideration and we think that there will be no adequate answer to the challenge of the Ministry of Finance that the agricultural development is a provincial responsibility until there is some specific suitable provision in the Constitution Act itself. I am inclined to think that the time has come when the Centre ought to take tip the entire responsibility in regard to food, But the minimum that is essential in national interest is that the Centre must have an active hand in coordinating and guiding agricultural development all over the country. I would, therefore, suggest for your consideration that, besides the existing item No. 12 in the Federal Legislative List, the following item should also be included in that List. namely, "Co-ordination of the development of agriculture including animal husbandry, forestry and fisheries and the supply and distribution of food."

What I have done is only to point out the omission of the Drafting Committee. In fact it is well-known today that the, food problem is the most difficult problem which the country has to solve. The amount of imports which we have to make is really depriving us of all our resources and We cannot develop our industrial resources and other things.

So I think if we want that we should be. self-sufficient in food within a few years--one or two years as has been proposed,-then it is necessary that there should be a drive from the Centre. I am glad for what the Government is doing today. I do not think that even this much power has been provided for the Union Government in this Constitution. The present controls and other regulations will not be possible unless some such entry is included in the Union List. I really wonder whether the recommendations of the Agriculture Ministry contained in the letter of Shri Jairamdas Daulatram, dated 5th July 1948 which they have published in this booklet known as 'Comments on the Provisions contained in the Draft Constitution of India' have been altogether 'forgotten. In fact I am personally in full agreement

with his suggestions that it should be the responsibility of the Centre alone to see that India gets food in proper measure. Besides, what he suggests is not even that he only wants co-ordination of the development of agriculture including animal husbandry and fishery. He says the additional powers asked for relate to the inclusion of reclamation of waste lands on a large scale requiring the use of plant and machinery. forest laws and inland fisheries and fishery laws. He thinks all these are necessary if India is to be made self-sufficient in food.

Shri Mahavir Tyagi (United Provinces: General): What do the provincial Governments say?

Prof. Shibban Lal Saksena: Food problem can only be solved if we tackle it on an all-India basis. We have seen Bengal famine and the province of Bengal could not help it. Unless the Centre has powers to export food from certain provinces to meet famine in other provinces it will be difficult to solve the problem. It is not a question of taking away the powers of the province; but of meeting emergencies. I therefore think this power is necessary after seeing the history of the last five or six years regarding famines and controls. Government have been compelled to take powers in their hands which were necessary for them and I only want that we must provide for these powers if the Constitution; otherwise it will handicap us in solving the food problem. I personally feel that the reclamation of lands etc. cannot be taken up by small provinces and States and that will require the help from the Centre. The Centre must be able to devote attention to this exclusively. This is most important.

Shri Kishorimohan Tripathi (C.P. & Berar States): Mr. President, Sir, I beg to draw your attention to two amendments in the printed list-Nos. 74 A and 74B to be introduced as two new entries--which I proposed to move, but I do not propose to move them, and have come to support the amendment moved by Shri Saksena. As has been pointed out by Shri Saksena, this amendment has been proposed also to be incorporated in the Constitution of India, by the Ministry of Agriculture. Shri Saksena has already made a reference to it. Food is the most important problem in India and it is a very serious problem, and the Government of India have committed themselves to solve this problem as early as possible. in fact, we have made up our minds, that after the year 1951, no food imports should be allowed, because food imports have been eating a vital part fo our exchanges, and by selling imported food at rates available in the Indian markets, we have been incurring expenditure in giving subsidies to the provinces. During the last two years we have already spent in this way somewhere about Rs.40 crores. The problem of food cannot be solved unless the problem of agricultural development is taken in hand on an all-India basis. And unless this entry finds a place in the Union List, it will not be possible for the Government of India to prepare and execute all-India plans of agricultural development.

Apart from this aspect, the question, in relation to the food problem, has another bearing. India is primarily an agricultural country, and if we want to raise the standard of life of our people, we must see that the standard of life of the agriculturists--and by the agriculturists, I mean the agricultural labourer and the peasants--is improved. The structure of Indian economy cannot be reformed if agricultural economy in India is not reformed, and agricultural economy can only be reformed by all-India plans which must be planned by the Centre and executed by the Centre and the Provinces acting in co-ordination. We have seen that the Government of India, with a view to increasing the production in the field of manufacture, have given incentives by way of exemption of various taxes. Similarly, in order to improve agricultural production also, it will be necessary for the Government of India to legislate and give incentive to the agriculturists. In America such legislation has been undertaken. There, the minimum fair price for the producer has been assured. Here also we must have the minimum fair price legislation so as to bring home to the agriculturists and the peasants that they will be able to sell whatever they produce at a minimum fair price and thus get an adequate return for their efforts.

On these grounds, Sir, I support the amendment moved by Shri Saksena and I commend it for the acceptance of the Drafting Committee.

The Honourable Dr.B.R.Ambedkar: Sir, with regard to the amendment to have a new entry 64A, I may say that this matter was placed before the Premiers' Conference and the the Premiers' Conference did not agree to the proposal.

With regard to the question of distribution of food, we have provided in article 306, that for a period of five years, the Centre may have control over the distribution of food.

With regard to the second amendment, namely, the introduction fo the new entry 64B...........

Mr. President: That has not been moved.

The Honourable Dr.B.R.Ambedkar: Sir, I cannot accept the amendment moved.

Mr. President: I shall put the amendment to vote. The question is:

"That after entry 64 of List I, the following new entry be added:-

'64A. Co-odination of the development of agriculture, including animal husbandry, forestry and fisheries and the supply and distribution of food".

The amendment was negatived.

Mr. President: Amendment No.264, Mr. Saksena.

Prof. Shibban Lal Saksena: Sir, I beg to move:

"That after entry 64-A of List I, the following new entry be added:-

64-B. Regulation of trade and commerce in and of the production, supply, price and distribution-

(a) of goods which are the products of industries whose regulation under the control of the Union is declared by Parliament by law to be necessary or expedient in the public interest;

(b) of any other goods whose regulation similarly is declared by Parliament by Law to be necessary or expedient in the public interest."

Here, I would like to draw the attention of the Drafting Committee to the fact that a similar suggestion is contained in the recommendations of the Ministry of Industry and Supply, where they have suggested that in the Seventh Schedule in the Union List, such an entry as I have suggested should be provided for. In fact, I may refer the very page--page 14 of this booklet containing the comments of the various Ministries on the Draft Constitution. There the Ministry states-

"For effective implementation by the Union Government of the industrial policy announced by the Government of India on the 6th April, 1948, and for other reasons, it is necessary to invest the Union Government with certain powers over trade and commerce in respect of and the production, supply, price and distribution fo the goods produced by the industries to be brought under Central regulation and certain other goods such as wholly imported articles or agricultural products. The following additional item is, therefore, suggested:

'Regulation of trade and commerce in and of the production, supply, price and distribution-

(a) of goods which are the products of the industries whose regulation under the control of the Union is declared by Parliament by law to be necessary or expedient in the public interest;

(b) of any other goods whose regulation similarly is declared by Parliament by law to be necessary or expedient in the public interest."

Sir, apart from the fact that this amendment has the support of the Ministry of Industry and Supply, it should also be obvious to anybody that within the last four or five years our experience has shown us that unless there is this power to regulate trade and commerce and also production and distribution, there will be chaos in the country. Even the most important questions of the supply of food and clothing and other necessaries of life, cannot be tackled on a mere provincial basis, and they must be tackled on an all-India scale. So I say this power should be given to the Union by means of an adequate provision here in the Union List. Otherwise the Centre will not have the necessary power. I think it is a most important power which should be given to the Centre. Besides........

Mr.President: Will it suffice if I point out that there is a proposal for a new entry--entry 35 A in the Concurrent List? That covers this point, I think.

Prof. Shibban Lal Saksena: Is it an amendment, Sir?

Mr. President: Yes, amendment No.142.

Shri T.T.Krishnamachari (Madras: General): That amendment covers the first part of the honourable Member's amendment.

Prof. Shibban Lal Saksena: It is in the Concurrent List, of course, but it is not as wide as the one that I have suggested. I personally prefer this power to be taken by the Centre alone.

Mr. President: Very well.

Prof. Shibban Lal Saksena: Besides, the words that I have suggested give much larger powers to the Centre than it is proposed by the amendment in the Concurrent List. I suggest the experience of the past four or five years is sufficient reason for taking this thing in the hands of the Centre. Sir, I do not think that we should be afraid of investing the Centre with power in regard to these vital things, like food and clothing. Otherwise, I do not think we will be able to meet the needs of the country in the manner we desire. At present also the Central Government has got the power to lay down uniform policies in regard to these matters. But the Centre should also have the power to make all parts of the country to fall in line with the Central Policy so as to meet all the needs of the country.

The Honourable Dr. B.R. Ambedkar: With regard to the first part of the amendment, there is the proposal fo the Drafting Committee to put this matter in the Concurrent List, and if amy Friend Prof. Saksena were to examine the Concurrent List, he will find that there is an entry corresponding to entry 64B, (a) in entry 35A of the Concurrent List.

With regard to (b), it is a matter of controversy and the Drafting Committee has not yet come to any conclusion on the question. The Drafting Committee feels that (a) is a perfectly logical consequence of the power which we have already given to Parliament to declare certain industries of national importance. If Parliament has the power to declare certain industries to be of national importance, then Parliament should also have the power to regulate the goods and the products of such industries. But, (b) is about goods of industries other than those declared by Parliament to be of national importance. As I said, that is a matter of some controversy and the Drafting Committee has not come to any conclusion. I suggest Prof. Saksena may allow the matter to stand over till we reach entry 35 in the Concurrent List.

Prof. Shibban Lal Saksena: I have no objection to waiting.

Mr. President: Then it is held over.

Entry 65

Mr. President: There is an amendment No.265 of Prof. Saksena.

Prof. Shibban Lal Saksena: Entry 65 is in relation to regulations for labour and safety in mines and oil fields. Sir, I move:

"That in entry 65 of List I, after the word 'Regulation' the words 'and welfare' be inserted."

The entry will now read:

"Regulation and welfare of labour and safety in mines and oilfields......"

Shri T.T.Krishnamachari: If it would help my Friend I would draw his attention to entry 26 in the Concurrent List which seems to meet his requirements. It reads: "Welfare of labour: conditions of labour: etc..".

Mr. President : It is an amended form of 26 of which notice has been given by Dr. Ambedkar.

Shri T.T.Krishnamachari: It fits in with his requirements.

Prof. Shibban Lal Saksena: But mines and oilfields are Central subjects, and if you want that labour welfare should be in the Concurrent List, I have one objection to it. I was not in the House at the time, but I wanted that labour legislation, labour laws, etc., should also be Central subjects. From my experience of labour work, I can say that labour legislation is almost in a chaotic condition all over the country and in the various provinces. s In some provinces we have some labour laws, in others there are very different laws. In the same industry, like the sugar industry in Bihar, the U.P. and Bombay there were different labour laws in different provinces. Even in the textile industry in Bombay, there are certain laws but there are different laws for this industry in U.P. and other places. Even the Industrial Dispute Act has been modified by laws made by the U.P. and other Provincial Governments.

This leads to chaotic conditions. Therefore labour Legislation should come into the Central List. I do not want them in the Provincial List. Labour should be a Central subject and the Central Government should be able to deal with it; otherwise there will not be similar treatment of labour in the different provinces.

Shri H.V.Kamath: Sir, with regard to amendment No.215, (List III-Sixth Week) it was intended to apply also to entry 65. It is likely that the copy I sent to the office mentioned entry 66 only. I had intended that it should apply to both entries 65 and 66.

Mr. President: You want to move it?

Shri H.V.Kamath: Yes-for 35 also.

Mr. President: Very, well: you may do so. But I do not know how it fits in.

Shri H.V.Kamath: Sir, I move (with reference to entry 65 as well with your kind permission):

"That with reference to amendment No.37...."

Mr. President: It has nothing to do with 65. It applies only to 66. There is no amendment to entry 65.

Shri H.V.Kamath: It is with your kind permission that I am now moving this amendment to entry 65. Sir, I move:

"That with reference to amendment No.37 of List I (Sixth Week), in entry 66 of List I and entry 65 of List I, for the words 'and oilfields' the words 'oilfields, and submarine regions' be substituted."

I do not know why "submarine regions" have been excluded from the scope of this entry. Only the other day we adopted an article whereby all lands and all minerals underlying the ocean were vested in the Centre. I am told on reliable authority that the Pearl Industry, to mention only one instance, could be very usefully developed in the Cutch region, and I am sure that in many other parts of our oceanic areas the pearl industry stands a good chance of development in the future. Japan has developed this industry very considerably, and some Japanese scientists or experts have observed that India also can produce pearls of a very high quality. This will be a submarine industry and it will be as hazardous an occupation as labour is in mines and oilfields. I therefore feel that when you are regulating for labour and for their safety in mines and oilfields, ti is equally necessary and essential in the public interest to regulate for labour and its safety in those industries which we might develop in submarine regions. As I have already said, that is an equally dangerous occupation and the House might consider whether it is not desirable that an amendment to this effect should be incorporated in entry 65. I move, Sir, this amendment, seeking to incorporate submarine regions in entry 65 and commend it to the House for its consideration.

The Honourable Dr. B.R.Ambedkar: With regard to Mr. Kamath's amendment, it seems to me to be quite unnecessary because the word "oilfields" is used in general terms. Wherever it occurs, the Centre shall have jurisdiction. If an oilfield can occur below water..........

Mr. President: He says "and submarine regions".

Shri H.V. Kamath: I say "mines, oilfields and submarine regions".

The Honourable Dr. B.R. Ambedkar: What my friend has in mind is diving operations.

Shri H.V. Kamath: No the Pearl Industry.

The Honourable Dr. B.R. Ambedkar: All I can say is that I shall consider that matter.

Mr. President: Then I will first put the amendment moved by Prof. Saksena. The question is:

"That in entry 65 of List I. after the word 'Regulation' the words 'and welfare' be inserted."

The amendment was negatived.

Shri H.V. Kamath: In view of Dr. Ambedkar's assurance, I do not press my amendment now. It may be considered by the Drafting Committee.

Mr. President: The question is:

"That entry 65 stand part of List I."

The motion was adopted.

Entry 65 was added to the Union List.

Entry 66

The Honourable Dr. B.R. Ambedkar: Sir, I move:

"That in entry 66 of List I, the words 'and oilfields' be deleted."

It has already been transferred to entry 63.

Shri H.V. Kamath: Mr. President, I move, Sir:

"That with reference to amendment No.37 of List I (Sixth Week), in entry 66 of List I, for the words 'and oilfields' the words 'oilfields, and submarine regions' be substituted."

The effect of it will be not only to include submarine regions in this entry but also to oppose the amendment of Dr. Ambedkar seeking to delete the word "oilfields". The point of my amendment is this. Dr. Ambedkar rightly pointed out that this matter of oilfields has been comprised in entry 63. But as the House will see, entry 63 which we have adopted a few minutes ago is to regulate and develop oilfields and mineral oil resources. Entry 65 which we have already passed refers to regulation of labour and safety in mines and oilfields. This is a matter different from the matter included in 63, because the qualifying clause is to the effect "to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest". I do not know whether the retention of the words "mineral development" and omission of the word "oilfields" would be in consonance with entry 63 which the House has adopted. That entry refers to mineral oil resources. And here we have got mineral development. "Mineral development" refers to mineral resources in general. If there are adequate, valid and cogent reasons for retaining the words "mineral development" in entry 66 I see no reason why the word "oilfields" also should not be retained, because the particular term "oils" is only a part of the general term "minerals", scientifically speaking.

Shri T.T.Krishnamachari: It is there in 63.

Shri H.V. Kamath: I know that. My Friend would, I am sure, have made a different remark if he had closely followed what I was pointing out. I was pointing out that when we have mentioned oil resources in 63 and when we have also mentioned mineral development as a general matter there will be no harm in retaining the word "oilfields" also just to make it absolutely clear. I see no absolute necessity for it, but there will be no harm in retaining the word "oilfields".

Shri Brajeshwar Prasad (Bihar: General)" Sir, I beg to move:

"That in amendment No.3555 of the List of Amendments, for the proposed entry 66 of List I, the following be substituted:-

'66. Superintendence, direction, control, regulation, development and preservation of mines, oilfields and mineral resources including such questions as-

(a) the regulation and safety of mining employees,

(b) proprietary rights in or over lands where mines and mineral resources are found to exist,

(c) power to frame rules regarding terms and conditions for grant of prospecting licenses and mining leases,

(d) power to modify conditions and terms of existing leases,

(e) power to make rules for proper working of mines with due regard to the health and welfare of workmen employed in mines,

(f) power to establish Inspectorate of Mines to enforce these rules,

(g) power to enforce improved mining methods to ensure conservation of minerals and mineral products;

(h) power to control production, supply and movement of minerals and mineral products, and

(i) any other matter connected with mines, oilfields and mineral resources which may be declared by Parliament to be necessary or expedient in the public interest"

My whole aim in moving this amendment is to make redundant entry 28 of List II. I am clear in my own mind that Mines constitute a vital subject as important as Defence, Foreign Affairs and Communications. I am of opinion that if the system of defence is going to be organised on sound line then Mines must remain a Central subject. I do not want to give the Provinces the power even to "regulate mines and oilfields and mineral development subject to the provisions of List I" as has been provided for in entry 28 of List II.

A question has been raised in another connection on the floor of the House to what will become of Provincial Autonomy. It is a matter of no concern to me. We have not come here to safeguard the interests of Provincial Governments. We have come here to include those subjects in List I which we consider to be necessary and vital-subjects which are in consonance with the needs of the modern age. I am of opinion that Mines should be nationalised, but at this stage I am only saying that the power of legislation should remain exclusively vested in the Central Government.

(Amendment No.3555 was not moved).

Shri Lakshminarayan Sahu: (Mr. president, I wish to move the amendment which reads:

"That for entry 66 in List I, the following be substituted:-

'66. Power to frame rules regarding terms and conditions for grant of prospecting licences and mining leases, power to modify conditions and terms of existing leases, power to make rules for proper working of mines with due regard to physical safety of workmen employed in mines, their health and welfare, power to establish inspectorate of mines to enforce these rules, power to enforce improved mining methods to ensure conservation of minerals and mineral products, power to control productions, supply and movement of minerals and mineral products."

I have included everything in this amendment. The amendment just moved by Shri Brajeshwar Prasad contains all my points. But he wants to give so much power to the Centre, which I do not want to give. I, therefore, come to the State List, where I have suggested:-

Entry 28.

"That for entry 28 in List II the following be substituted:-

'28. Grant of prospecting licences and mining leases in accordance with the rules framed by the Union Government as provided in entry 66 of List I and collection and appropriation of all revenue therefrom."

I do not want to say much regarding this, I would only say that in India, 'mining' should be included in the central subjects. There is no doubt, that the Centre should be given power to unify the rules regarding the prospecting licences. I wish to say this emphatically, that the Centre should enact such rules as may be applicable to all the provinces uniformly.

Till the Centre is empowered to do so, there will be a lot of difficulty in obtaining the prospecting licences, and there would be differences in the conditions in various provinces in this respect. Hence I wish that this amendment of mine and my other amendment on State List II, should both be read together and considered in this connection.)

Shri Kuladhar Chaliha (Assam: General): Mr. President, Sir, it is really very difficult to agree with mr. Brajeshwar Prasad, but in this particular case I seem entirely to agree with him and I think his amendment is a great improvement on the provisions adumbrated by Dr. Ambedkar--it is rather all embracing and seems to cover all that is necessary for a provision on mines and oilfields.

We know in our part of the country some of the owners of coal mines have started producing less and less and we do not know the reason. The quality is also getting worse and worse. If you order any coal from them you get the worst quality. Therefore it is necessary that they should have a standard of the quality of coal they should supply to the clients. Similarly, in the oilfields also they are producing less and less. It is said that in Digboi they are not working to full capacity and that they are doing it with a purpose. It is said that unless sooner or later we have a target that so much should be produced in a certain time we will get probably much less than what we used to. Even now we know that we are getting from Digboi much less than what we used to a few years ago; we do not get even 30 per cent. of our Indian supply from Digboi, whereas formerly we used to get more. It is said that the British owned wells are intentionally doing it and they are trying to transfer their plants to Pakistan and other places.

Therefore, this amendment of Mr. Brajeshwar Prasad will give us ample power to control them and se that they produce properly and they produce the quantity we want and not the quantity they allege that they can produce. As such, for the first time in the history fo this Constituent Assembly I have been able to agree with Mr. Brajeshwar Prasad who, of course, generally holds views contrary to those of the majority. Sir, I support his amendment.

Shri H.V. Kamath: I hope, Sir, that the Drafting Committee will bear in its sub-conscious mind that part of my amendment referring to submarine regions.

Mr. President: It is expected that the Members of the Drafting Committee have heard what the honourable Member has said.

Shri Jagat Narain Lal (Bihar: General): Mr. President, I do not want to take much of the time of the House over this matter. I simply wanted to oppose the amendment - I am sorry- moved by Mr. Brajeshwar Prasad. The amendment that he has moved chooses on the one hand to give very wide powers to the Centre, on the other hand his amendment is in the shape of rules or bye-laws which can be framed after an Act is passed. I do not see why such detailed clauses and sub-clauses should be added to the Constitution. I support what Dr. Ambedkar has moved for the reason that that divides the powers between the Centre and the Provinces. The Centre has such powers as are necessary or as will appear necessary for the purpose of regulating the easy working of mines and mineral resources, and the Provinces will also have power which they ought to exercise for the purpose of regulating and developing mines and mineral resources in their territories. Therefore, I support the amendment moved by Dr. Ambedkar and oppose the amendments moved to them.

Shri Brajeshwar Prasad: Dr. Ambedkar's amendment deletes the word "oilfields".

Shri Jagat Narain Lal: The words "the oilfields" have to be deleted as those words have come earlier.

Mr. President: Would you like to say anything?

The Honourable Dr. B.R. Ambedkar: No, Sir, I would not like to accept any amendment.

Mr. President: We will take the amendment by Mr. Brajeshwar Prasad.

Shri Brajeshwar Prasad: Sir, I beg to withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then amendment No.3556 on the Printed List, moved by Mr. Sahu.

The question:

"That for entry 66 in List I, the following be substituted:-

'66. Power to frame rules regarding terms and conditions for grant of prospecting licences and mining leases, power to modify conditions and terms of existing leases, power to make rules for proper working of mines with due regard to physical safety of workmen employed in mines, their health and welfare, power to establish inspectorate of mines to enforce these rules, power to enforce improved mining methods to ensure conservation of minerals and mineral products, power to control productions, supply and movement of minerals and mineral products."

The amendment was negatived.

Mr. President: Then amendment No.215.

Shri H.V. Kamath: I leave it to the wisdom of the Drafting Committee.

Mr. President: Very well, then; that is to the wisdom of the Drafting Committee.

Then the amendment moved by Dr. Ambedkar. The question is:

"That in entry 66 of List I, the words 'and oilfields' be deleted."

The amendment was adopted.

Entry 66, as amended, was added to the Union List.

Entry 67

The Honourable Dr. B.R. Ambedkar: Sir, I move:

"That for entry 67 of List I, the following entry be substituted:-

'67. Extension of the powers and jurisdiction of members of a police force belonging to any

State to any area not within such State, but not so as to enable the police of one State to exercise powers and jurisdiction in any area not within that State without the consent of the Government of the State in which such area is situated; extension fo the powers and jurisdiction of members of a police force belonging to any State to railway areas outside that State."

Mr. President: There is an amendment by Sardar Hukum Singh for deletion. That need not be moved. Dr. Deshmukh has an amendment to this entry which I understand he is not moving. So I will put the motion to vote

The question is:

"That for entry 67 of List I, the following entry be substituted:-

'67. Extension of the powers and jurisdiction of members of a police force belonging to any State to any area not within such State, but not so as to enable the police of one State to exercise powers and jurisdiction in any area not within that State without the consent of the Government of the State in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any State to railway areas outside that State."

The amendment was adopted.

Entry 67, as amended, was added to the Union List.

Entry 68

The Honourable Dr. B.R. Ambedkar: I move:

"That for entry 68 of List I, the following entry be substituted:-

"Elections to Parliament and to Legislatures of States and of the President and Vice-President; and Election Commission to superintendent, direct and control such elections."

Shri H.V. Kamath: Mr. President, I move:

"That in amendment No.38 of List I (Sixth Week), in the proposed entry 68 of List I, for the words, 'Election Commission' the words 'Election Commission and Regional Commissioners' be substituted."

This amendment becomes necessary in view of the change which has been made in entry 68. The entry as it originally stood in the Draft Constitution ran thus:

"Elections to parliament and of the President and Deputy President; and Election Commission to superintend, direct and control such elections."

The new entry reads as follows:-

""Elections to parliament and to Legislatures of States and of the President and Vice President; and Election Commission to superintend..........

That is to say, we have incorporated the elections to Legislatures of States in the proposed new entry 68.

The House will recollect that a few weeks ago we adopted articles 289, 289A, 289B etc. If my honourable colleagues will take the trouble of turning to article 289, they will find that it provides, firstly, for the appointment fo an Election Commission without mentioning Regional Commissioners. Regional Commissioners came into the picture in clause (3) of article 289. That clause lays down that, before each general election to the House of the People and to the Legislative Assembly of each State and before the first general election, and thereafter before the biennial election to the State Council, the President shall also appoint, after consultation with the election commission, such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions enjoined on it by clause (2) of that article. Clause (4) vests certain powers in Parliament as regards the condition of service and tenure of office not merely of the Election Commissioners but also of Regional Commissioners. The Regional Commissioners are not a part of the Election Commission. They come into the picture only when the elections to the State Assembly and Council are about to commence. I, therefore, feel that this point must be made absolutely clear in the new draft of entry 68 which replaces the old one. It includes elections to Parliament as well as to State Legislatures for which purpose we have got Regional Commissioners. There is, therefore, this lacuna in entry 68. I hope the House will see its way to accept my amendment.

Mr. President: There is an amendment to this standing in the name of Mr. Santhanam. I think it does not arise in view of the decision we have taken with regard to some other articles.

The Honourable Dr. B.R. Ambedkar: It is unnecessary to accept this amendment, because the Election Commission will include Regional Commissioners also.

Mr. President: The question is:

"That in amendment No.38 fo List I (Sixth Week), in the proposed entry 68 of List I, for the words 'Election Commission' the words 'Election Commission and Regional Commissioners be substituted."

The amendment was negatived.

Mr. President: The question is:

"That for entry 68 of List I, the following entry be substituted:-

'Elections to Parliament and to Legislatures of States and of the President and Vice-President; and Election Commission to superintendent, direct and control such elections."

The amendment was adopted.

Entry 68, as amended, was added to the Union List.

Entry 69

The Honourable Dr. B.R. Ambedkar: Sir, I move:

"That for entry 69 of List I, the following entries be substituted:-

69. The emoluments and allowances and rights in respect of leave of absence of the President and Governors; the salaries and allowances of the Ministers of the Union and of the Chairman and Deputy Chairman of the Council of States and of the Speaker and Deputy Speaker of the House of the People; the salaries and allowances of the members of Parliament; the salaries, allowances and the conditions of service of the Comptroller and

Auditor-General of India.

69A. The privileges, immunities and powers of each House of Parliament and of the members and the Committees of each House."

Mr. President: There is an amendment to this, No.219 standing in the name of Mr. Kamath.

Shri H.V. Kamath: I do not want to move my amendment, but I would ask how Dr. Ambedkar has forgotten or lost sight of the Supreme Court Judges.

The Honourable Dr. B.R. Ambedkar: Their salaries etc., are provided for in the Schedule. We have said that their salaries shall be such as are specified in the Schedule.

Mr. President: Then amendment No.220 by Dr. Deshmukh. Does it not go more appropriately to the State List?

Dr. P.S. Deshmukh: No, Sir. I move:

"That in amendment No.39 of List I (Sixth Week), after the proposed entry 69 of List I, the following new entry be added:-

69A. Privileges, immunities and powers of the members of the State Legislatures and their Committees."

Sir, this is consequential upon the amendment that I proposed when the article was being discussed. I had urged then that it would not be proper to leave the privileges, immunities and powers of the members of the State Legislatures to the individual State Legislatures. It would be better if Parliament decides on it, so that there could be common privileges, immunities and powers for the members of all the State Legislatures. That point of view was urged by me. I think that Dr. Ambedkar had not sufficient time to consider it and therefore he declined to accept it. I am now trying to urge this for his consideration and the consideration fo the Drafting Committee. This is eminently reasonable and proper, and I hope they will accept this as an addition to this entry and also keep this in mind when they modify the provisions already accepted by the House also. I think it is very necessary that the privileges should be uniform and that they should not differ from State to State.

Shri Brajeshwar Prasad: Hear, Hear.

The Honourable Dr. B.R. Ambedkar: It is only proper that each Legislature should have the authority to define its own privileges, immunities and powers, and it is for that reason that we have provided that Parliament should have power to specify the privileges, immunities and powers of its own members, and the State Legislatures should have similar power with regard to their own members. I do not think that the whole power should be concentrated in the Centre. I should have thought that if Parliament passes an Act defining the privileges, immunities and powers of its members, the State Legislatures will probably follow suit and copy the thing verbatim with such minor amendments as they think desirable.

Mr. President: The question is:

"That in amendment No.39 of List I (Sixth Week), after the proposed entry 69 of List I, the following new entry be added:-

'69A. Privileges, immunities and powers of the members of the State Legislatures and their Committees."

The amendment was negatived.

Mr. President: The question is:

"That for entry 69 of List I, the following entries be substituted:-

69. The emoluments and allowances and rights in respect of leave of absence of the

President and Governors; the salaries and allowances of the Ministers for the Union and of the Chairman and Deputy Chairman of the Council of States and of the Speaker and Deputy Speaker of the House fo the People; the salaries, allowances and the conditions of service of the Comptroller and Auditor-General of India.

69A. The privileges, immunities and powers of each House of Parliament and of the members and the Committees of each House."

The amendment was adopted.

Mr. President: The question is:

"That entry 69, as amended, stand part of List I."

The motion was adopted.

Mr. President: The question is:

"That entry 69A stand part of List I."

The motion was adopted.

Entry 69 and 69A, as amended, were added to the Union List.

Entry 70

The Honourable Dr. B.R. Ambedkar: Sir, I move:

"That at the end of entry 70 of List I, the words 'or Commissions appointed by Parliament' be added."

As it stands, the entry refers only to Committees.

Mr. President: I do not think that there is any other amendment to this

The question is:

"That at the end of entry 70 of List I, the words 'or Commissions appointed by Parliament' be added."

The amendment was adopted.

Mr. President: The question is:

"That entry 70, as amended, stand part of List I."

The motion was adopted.

Entry 70, as amended, was added to the Union List.

The Honourable Dr. B.R. Ambedkar: Sir, I move:

"That after entry 70 of List I, the following entry be inserted:

'70A. The sanctioning of cinematograph films for exhibition."

This entry was originally placed in the Concurrent List. It is now proposed to put it in List I.

Mr. President: There are several amendments to this. Amendment No.221 by mr. Kamath wants the deletion of this entry. So it cannot be moved.

Shri H.V. Kamath: May I speak on that?

Mr. President: later.

Dr. P.S. Deshmukh: Sir, I move:

"That in amendment No.41 of List I (Sixth Week), for the proposed new entry 70A of List I, the following be substituted:-

'70A. Regulation and control of the exhibition of cinema films."

All that I propose is to change the wording. I am unable to understand how the sanctioning of cinematograph films is a subject for legislation. If there is to be legislation, it would not be on sanctioning. Sanctioning of cinematograph films for exhibition is not a happy expression. We should also have power to control the exhibition and from that point of view I would recommend the wording I have suggested, viz "Regulation and control of the exhibition of cinema films." Sir, I move.

Mr. President: There is notice of an amendment which I received this morning, by Kaka Bhagwant Roy.

Kaka Bhagwant Roy: Sir, I do not want to move it.

Shri Raj Bahadur: Mr. President: Sir, I move:

"That in amendment No.41 of List I (Sixth Week), in the proposed new entry 70A of List I, the words 'The sanctioning of and 'for exhibition' be deleted."

I move this amendment in order to widen the scope fo the entry. If my amendment is accepted, the words that would remain would be only "cinematograph films". It is obvious that the power of merely sanctioning of cinematograph films is not enough for the Union Parliament. As a matter of fact, the functions of the Union Parliament in the case fo cinema films must be widened considerably. We know that the cinema--films have proved to be a powerful medium of instruction and national education. We know that they also play an important part in the formation and moulding of national character. It is therefore necessary not only from the point of view of art and artists, but also from the point of view of national education that we should widen the power vested in the Union Parliament in this matter. In modern times, the cinema films have replaced the drama and the theatre. They have come to constitute the medium of expression of the genius of our people. Therefore it is highly necessary that, in the interest of the art, the Union Parliament should be enabled to take an active interest in the improvement and progress of cinematograph films. As such in my humble opinion the entry should not be restricted simply and barely to the sanctioning of the films, it should cover a wider field. I submit, therefore, that my amendment should be accepted.

May I also express my doubt about the suitability of placing this entry after entry 70 which relates to the enforcement of attendance of persons for giving evidence or producing documents before committees of Parliament. It should have been better placed elsewhere. In my humble opinion it could very well come after entry 28 which relates to Telephones. Wireless, Broadcasting etc. It should have been better there instead of here. With these words I commend my amendment for acceptance.

Shrimati G.Durgabai: (Madras: General): Mr. President, Sir, while supporting the new entry 70A moved by Dr.B.R.Ambedkar I wish to make a few observations.

This new entry 70A seeks to give power to the Centre to administer on the exhibition of films and the objects of the Centre taking over this power to itself is to lay down certain uniform standards in the films that are exhibited all over this country and also outside this country. Of course, we think whether such a power is necessarily to be given to the Centre to take over this administration. We feel that many films that are dumped on the public today have either very little or no educational value. Nauseating songs and very cheap themes are highly detrimental to our culture. Therefore, it is highly necessary to raise the standards of these films and thus help the producers to exhibit better films which reflect the civilization of this country. That is the primary object, and also they should promote international understanding between the citizens of this country and also of the outside world.

Sir, the position today as it stands is that the Provincial Governments have got their censorship boards, and to my knowledge and information the censorship starts only after the film is completed and some lakhs of rupees have been wasted on them and the Centre acts only in an advisory capacity and whatever the Centre does in that capacity will have only a post-mortem effect. Therefore, Sir, keeping this object in view, we have got to introduce uniformity in the standards of the films that are to be exhibited in this country and also outside this country which would help promoting good harmony and reflect our culture and the civilization of this country.

Sir, while supporting this amendment, I should like to say that the provincial interests or the provincial censorship boards that are today functioning in this matter should be consulted and their interests should be taken into consideration and in every matter their advice and co-operation ought to e sought in censoring these films. Sir, a point may be raised against this power being given to the Centre whether the Centre would be able to deal with this matter, because there are different languages and different types of dialects in which these films are exhibited, whether the Centre could cope up with this power and deal with this matter effectively. There is some justification in this argument but anyhow I would like to say that the Centre should act so carefully in administering on this subject that while the provinces could produce and contribute to the international or national unity they could also preserve the type of culture peculiar to themselves.

Sir, in this matter we have got to know that the first step has already been taken. We have amended the Government of India Act to give power to the Centre; also we have passed a Bill in the Legislative session by classifying the films by introducing the system of A and U class service. Therefore this entry in this list is only a corollary to what we have done. Some objections have been raised. I think my honourable Friend Mr. Raj Bahadur raised a point, that the powers ought to be widened and he suggested the deletion of the words "The sanctioning of" and "for exhibition" and thereby enlarging the power. I should like to say we have got already the licensing authority today under which this could be done. I understand that his object is to see that the Centre could insist on the provinces to produce such films and also exhibit such films which have got an educative value along with the films that are exhibited today. This we could do under the power that we have got already and even the provinces are exercising it under their licensing power. The Centre has already passed a Bill to classify the films. Therefore, it is not quite necessary. So I feel that this entry might find favour with the House.

Shri Raj Bahadur: Do not these words essentially restrict and limit eh meaning of the whole thing?

Shrimati G. Durgabai: No, Sir, because the other powers which you have asked are already being exercised under the powers of both the provinces and the Centre.

Dr. P.S. Deshmukh: What about the words I suggested "Regulation and control of the exhibition fo cinema films?"

Shrimati G. Durgabai: Even that would be exercised under the powers that we have got under our licensing authority; and the other matter about the protection fo children and other things, that is a matter for the Labour Department to deal with and not a subject-mater in this connection.

Shri H.V. Kamath: Mr. President, Sir, in pursuance of the spirit of my amendment which of course I could not move because it is a negative amendment, I wish to say that there is no adequate ground for shifting this entry from the Concurrent List to the Union List.

Shri TT. Krishnamachari: It has already been shifted in the Government of India Act.

Shri H.V. Kamath: It is unfortunate that Dr. Ambedkar made a bald statement moving his amendment and did not advance any cogent reason for the transfer of this entry from the Concurrent to the Union List. I am whole-heartedly in agreement with my honourable Friend Shrimati Durgabai that our films ought to reflect the genius and the culture of our nation. There can be no two opinions about that. There are, however, certain points which deserve some attention at the hands of this House while considering this matter of cinematograph films. These days the films produced are not mere silent films but they are, more often than not, talkies. Silent films have gone out of fashion, and talkies mean not merely moving pictures but also a lot of language and songs, conversations, monologues and dialogues and what not. Everyone is aware that when a particular film is exhibited in particular province the songs, monologue or dialogue or whatever else it may be, is translated into the language of the particular province in which it is sought to be exhibited. The question arises as regards the nuances and shades of meaning in every language. It is not possible for every person to be conversant with all the languages of the Union and every language has as I have said, got its own nuances, peculiar idioms and expressions. At present every province has its Provincial Board of Film Censors and the provincial people are more conversant with the languages of that province than members of a Central Board can possibly be, unless of course the Central Board included a member of every province or members who are well versed in the various languages of the Indian Union. That means it will be a very big Board.

My Friend Shrimati Durgabai referred to a Bill we passed in the last Budget Session of the Legislature. That Bill sought to categorise films into two classes--one for Universal exhibition, and the other for exhibition to adults only and not suited for children and adolescents. But the point which she sought to make out would be completely served if this matter of cinema films is included in the Concurrent List which seeks to give power to the States and the Centre and not merely exclusive power to the Union alone.

There is another aspect of the matter which might commend itself to the House, Customs, though our culture and civilisation are the same, vary from province to province and from State to State. My Friend Pandit Bhargava-- I hope my memory services me right--in the last Session fo the Legislative Assembly speaking on the Hindu Code Bill referred to certain practices prevailing in different parts of the union. In the South, marriages between the children of brother and sister are permissible. That is to say a man can marry his own uncle's daughter. But in the Punjab, Pandit Bhargava said, if such a thing happened the man will be cut to pieces. Suppose there is a film depicting or showing a marriage between a person and his uncle's daughter, it might be quite normal in a province like Madras or Bombay, but if it is exhibited in the Punjab people will be scandalised and shocked.

Dr. P.S. Deshmukh: Those instances seldom occur.

Shri H.V. Kamath: It is not beyond the bounds of probability. Films may show the important social ceremony fo marriage, and therefore it is necessary in my judgement that powers should be given not merely to the Union but also to States in this regard so as to sit in judgement over cinema films. I, therefore, seek the deletion of this entry from this list and its transfer back to the Concurrent List. I feel that is the right place for this entry. On a suitable occasion, I will move an amendment in that connection when the Concurrent List comes up for consideration in the House.

The Honourable Dr. B.R. Ambedkar: Mr. President, Sir the object of bringing this entry which was originally in the Concurrent List to the Union List is two-fold, firstly to prescribe as far as possible a uniform standard for sanction of films; and secondly, to prevent an injury being done to any producer of a film whose film may not be sanctioned by any particular province by reason of some idiosyncrasy or by reason of some standards which are of an extraordinary character and do not conform to general standards which ought to be prevalent in a matter of sanctioning of Cinematograph. Therefore I think it is very necessary that this matter of sanctioning instead of being distributed between the Centre and provinces so that each province may go on prescribing its own standard and the Centre be required to pursuade each province to examine its standard and point out whether the standards are good or bad, it is much better to bring it over to the Union List. So far as the rest of the matter is concerned it is proposed to leave the entry 43 in List II as it is so that the provinces will retain all the control they have over theatres, dramatic performances and cinemas minus the question of sanctioning. I do not think that any injury will be caused to any particular interest by the proposal I have made. On the other hand, as I have stated there would be distinct advantages in concentrating the power of sanctioning in a single body like the Centre.

Shri Raj Bahadur: Only sanctioning?

The Honourable Dr. B.R. Ambedkar: Once the Centre has sanctioned that the film is a good film and conforms to moral standards, I do not see any reason why there should be any further provision for the exhibition at all. The matter ends.

Mr. President: I put the amendment No.222 to vote.

Dr. P.S. Deshmukh: I would like to withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Shri Raj Bahadur: I would like to withdraw my amendment No.266.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

" That entry No.70A stand part of List I.""

The motion was adopted.

Entry 70A was added to the Union List.

Mr. President: There are certain new entries which are sought to be brought in here by Dr. Deshmukh. We may take them up at the end.

Dr. P.S. Deshmukh: They are more or less independent. I have no objection to their being taken up at the end.

Entry 71

Mr. President: There is no amendment to this. There is only notice of deletion by Sardar Hukam Singh.

Entry was added to the Union List.

Entry 72

Mr. President: Then we come to entry 72. There is no amendment to that either.

Entry 72 was added to the Union List.

Entry 73

Mr. President: Then comes entry 73. Dr. Ambeddkar.

The Honourable Dr. B.R. Ambedkar: Sir, I move:

"That for entry 73 of List I, the following entry be substituted:-

'73. Inter-State trade and Commerce."

The words that follow these words in entry 73 are unnecessary, because there is a proposal to drop entry 33 of List II.

Mr. President: There is an amendment to this amendment No.226 of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: I am not moving it.

Mr. President: Then there is no amendment to this entry. I put the entry as moved by Dr. Ambedkar, to the House. The question is:

"That for entry 73 of List I, the following entry be substituted:-

'73. Inter-State trade and Commerce."

The amendment was adopted.

Entry 73, as amended, was added to the Union List.

Entry 73-A

Mr. President: Then we come to entry 73A, and the amendment in the name of Dr. Diwakar. I take it that it is not moved. Then there is entry 73-A of Mr. Kamath-Inter-planetary travel.

Shri T.T.Krishnamachari: Sir, may I point out that if we talk about a provision for inter-planetary travel, it would be reducing the proceedings of the House to absurdity.

Shri H.V. Kamath: Sir, I am sure if my Friend Mr. Krishnamachari had kept himself abreast of the advance of science and not busied himself only with trade and commerce, he would not have made such a remark.

Mr. President: Have we reached a stage when the control of inter-planetary travel is necessary?

Shri H.V. Kamath: Yes, Sir, as I will try to show, in a few minutes. Sir, I move that................

Shri T.T.Krishnamachari: Sir, I rise to a point of order. It is an impracticable proposition that my Friend is suggesting, and therefore it should not be moved.

Shri H.V. Kamath: After you have heard me, Sir, you may decide.

Mr. President: I will hear him first.

Shri H.V. Kamath: Sir, I beg to move:

"That with reference to amendment No.42 of List I (Sixth Week), after entry 73 of List I, the following new entry be added:-

(Laughter)

Sir, Members of the House are welcome to laugh. But fifty years ago, if anybody, had talked of radios and wireless sets, he would have been held up to derision and mocked at, and perhaps stoned. But today radios and wireless sets have become a matter of course, and of every day occurrence. I am sure Mr. Krishnamachari has got a wireless set of his own in his house. And it is even supposed to a mark of culture today to have a radio set in every house. Take television. Twenty years ago perhaps television would have been looked upon as an impossibility. But today in America television has become so very common that important meetings and lectures are televised and shown all over the country. With the rapid advance of science for which this century is famous- I am sure within the last fifty years there has been more advance in the various fields of science than in the previous five hundred years- what with researches in X-rays, medicine, jet propelled planes of which we hear so much today, we can expect many big changes in the near future. The advance has been remarkable, phenomenal, if I may use such a word. It was only the other day I read in an American paper-it was I think the New York Times-there was a news item that a Company had been established, or floated in the United States where applications for journeys to the moon had been invited. It was in dead earnest,-I am not referring to it as a jest. They hope to do the journey probably by rockets. Till a few years ago-

Shri R.K.Sidhva: (C.P. & Berar): Can you show me the paper?

Shri H.V. Kamath: Yes, if you will kindly come to my place.

Mr. President: I thought people go to the Chandralok after death.

Shri H.V. Kamath: Yes, Sir, I was having it in mind. The Gita itself does say.......

Tatra Chandramasam Jyotiryogi Prapya Nivartate.

I do not dispute the possibility of a Yogi going even bodily to the moon by the power to his Siddhis and coming back too. But apart from that, Sir, this has come within the range of possibility, and in a few years time, it is quite possible that there may be journeys to the moon, and the phrase "man in the moon" will lose all its significance. Id are say, when the earth becomes more and more populate and congested, and when science makes further advance, people may start colonising the moon or some of the other thinly populated planets of the solar system. If we keep our minds open to the possibilities of science, and if we do not shut our minds in the mists of prejudice and misapprehension to the phenomenal progress of science, I am sure the House will not take this matter as lightly as it is inclined to do today. I do not want to be a prophet, but i may venture to suggest that within the next twenty-five years, perhaps sooner, such things will not be derided or mocked at, as some of the friends here and inclined to today.

Shri B.L. Sondhi: (East Punjab; general): In the time of our successors, perhaps.

Shri H.V. Kamath: No, even in the life-time of Mr. Sondhi and myself.

I therefore suggest that this matter should not be included in the Concurrent List or in the State List, but it should be the exclusive jurisdiction of the Union, so that when the time comes, the Union will have the power to exercise complete control. Of course, Dr. Ambedkar, may say that this is covered by the entry regarding passports and visas, but I do not think so. These passports and visas deal only with travel on this, our planet-The Earth. But inter-planetary travel will become more and more important in the near future, and therefore it should find a place in the Union List, and I therefore commend my amendment for the earnest and dispassionate consideration fo the House.

Mr. President: There is an amendment of Mr. Nziruddin Ahmad about travels to the planets and the satellites. He is not content merely with this amendment. Do you want to move it?

Mr. Naziruddin Ahmad: Yes, Sir, because if this amendment which was just now moved, is accepted, it will be incomplete without my amendment. I shall take only one minute. I beg to move:

"That in List III (sixth week), with reference to amendment No.227 in the proposed new entry 73A the following be added at the end:-

'travel between the planets and the satellites and between the satellites."

Mr. President: You have given notice of it only this morning.

Mr. Naziruddin Ahmad: Yes, Sir, the difficulty was that I bought the amendment yesterday afternoon ready in my pocket, but forgot to deliver it to the office.

Mr. president: I am not objecting. Go on.

Mr. Naziruddin Ahmad: I submit that, though a dream of the future, inter-planetary travel is coming on very soon. We had a long time ago a very good novel by Jules Verne, "From the Earth to the Moon and a Trip round it," and his numerous novels on scientific subjects. His dream has come true in a large measure and modern scientists believe that inter-planetary travel is a practical proposition and will soon be a reality and could be undertaken on a commercial scale. Mr. Kamath's amendment has a loop-hole and a defect. His amendment provides for travel only from one planet to another and not from a planet to its satellites and between the satellites. So if inter-planetary travel is to be included in the list as it must, this amendment will also have to be accepted. Journey from the Earth to the Moon and back is likely to be the earlies achievement. But Mr. Kamath's amendment will not make it possible. My amendment should be accepted to make the original amendment complete. hope, Sir, if the amendment is to be rejected, it is rejected in a more satisfactory way by vote.

Mr. president: I do not suppose any further speech is necessary!

The Honourable Dr. B.R. Ambedkar: I dot quite understand whether the proposals of my Friend rattle to matters which are unknowable or which relate to matters which are unknown. If they are unknown, then we have waste our time. But if they are unknown and not unknowable, then we have enough powers to deal with them. Why bother with any entry at all?

Mr. President: I will put Mr. Naziruddin Ahmad's amendment to the vote. The question is:

"That in List III (Sixth Week), with reference to amendment No.227 in the proposed new entry 73-A the following be added at the end:-

'travel between the planets and the satellites and between the satellites."

The amendment was negatived.

Mr. President: The question is:

"That with reference to amendment No.42 of List I (Sixth Week), after entry 73 of List I, the following new entry be added:-

The motion was negaived.

The Assembly then adjourned till Nine of the Lock on Thursday, the 1st September 1949.

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME IX

Thursday, the 1st September 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock. Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

STATEMENT *RE.* VINDHYA PRADESH REPRESENTATION IN THE ASSEMBLY

Mr. President : Before starting the proceedings for the consideration of the remaining entries, I desire to make one short statement. Notice of a motion was given by Mr. Kamath to the effect that steps should be taken by the Secretariat of the Assembly to get the Vindhya Pradesh representative into the Assembly. It is a fact-and a regrettable fact-that Vindhya Pradesh has not yet been represented in this Assembly. But all steps that could be taken by our Secretariat have been taken and as a matter of fact. I understand the States Ministry also have been taking interest in the Matter. So it is unnecessary to have a motion of that sort and it was decided by the Steering Committee that in view of the fact that steps have already been taken, Mr. Kamath may be asked not to move the motion. So I think Mr. Kamath will agree that no further steps are necessary in this matter.

Shri H. V. Kamath : (C. P. & Berar : General) I had given notice also of a motion requesting you to take steps regarding the representation of Hyderabad.

Mr. President: That stands on a separate footing. I do not know what the position of the Hyderabad State in regard to the Union is at the present moment.

Shri R. K. Sidhva: (C. P. & Berar: General) : What are the reasons for the representative of Vindhya Pradesh not being returned to the Assembly ?

Mr. President: I am not sure, but I think the reason is that there is no proper electorate which could elect the representatives as there is no legislature and the Rajpramukh has been asked to create a college of electors which has not been done yet. That is the reason for their non-representation at the present moment, but I think they will now take steps to do that.

Seth Govind Das : (C. P. & Berar: General) : May I take it that the constituencies have now been fixed and the Rajpramukh informed of it ?

Mr. President : We cannot fix the electorate. It is left to the Rajpramukh to fix the electorate. We have asked them to send representatives and they have promised also that they would do it now.

Shri H. V. Kamath: Will you kindly permit me to say just one word? I had asked not the Secretariat, but I had requested you, Sir, is President.

Mr. President: But whatever was done by the Secretariat was done under my orders.

Shri H. V. Kamath : But I request only you.

Mr. President : But what action can I take personally ? The thing has to go through the Secretariat.

Shri H. V. Kamath : My point was that the notice of my motion was to the President and not to the Secretariat.

Mr. President : The action has been taken under my instructions by the Secretariat.

We shall now take up entry 74. There are certain amendments to this. Dr. Ambedkar may move his first.

DRAFT CONSTITUTION-(*Contd.*)

Seventh schedule-(*Contd.*)

List I : Entry 74

The Honourable Dr. B. R Ambedkar: (Bombay: General) : Sir, I move:

"That for entry 74 of List I, the following entry be substituted :-

'74. The regulation and development of inter-State rivers and river-valleys to the extent to which such Regulation or development under the control of the Union is declared by Parliament by law to be expedient in the public interest."

Shri Brajeshwar Prasad: (Bihar: General) : Mr. President, may I with your permission, say one word before I move my amendment? Somehow, due to my fault perhaps, one word is missing from this amendment. I want the inclusion of the word "regulation". Sir, I beg to move :

"That in amendment 3562 of the List of Amendments, for the proposed entry 74 of List I, the following be substituted :-

"74. The regulation and development of inter-State rivers and inter-State waterways, including flood control, irrigation navigation and hydroelectric power and for other purposes, where such development under the control of the Union is declared by Parliament by law to be necessary or expedient in the public interest.'"

Sir, I have only one comment to offer, that this amendment of mine is more comprehensive than the amendment moved by Dr. Ambedkar.

Mr. President: There is an amendment of which notice has been given by Shri Kala Venkata Rao that this entry should be dropped altogether. It is only a motion for deletion and he need not move it as an amendment.

The Honourable Dr. B. R. Ambedkar : Sir, all that I would like to say is that whatever Shri Brajeshwar Prasad wants is included in my amendment and it is therefore unnecessary to accept it.

Shri Brajeshwar Prasad: I beg leave to withdraw my amendment. The amendment was, by leave of the Assembly, withdrawn.

Mr. President: I put the amendment in the form in which it has been moved by Dr. Ambedkar.

The question is:

"That for entry 74 of List I, the following entry be substituted:-

'74. The regulation and development of inter-State rivers and river-valleys to the extent to which such regulation or development under the control of the Union is declared by Parliament by law to be expedient in the public interest'."

The amendment was adopted.

Entry 74, as amended, was added to the Union List,

Entry 75

Mr. President : Then there are two additional entries 74-A and 74-B. I think, were covered by amendments which were moved yesterday and which were rejected. So they do not arise now. Then I come to entry 75.

Mr. Naziruddin Ahmad: (West Bengal: Muslim) : Mr. President, Sir, I beg to move

"That in entry 75 of List I, the Words 'beyond territorial waters' be deleted."

Item No. 75 runs thus, "fishing and fisheries beyond territorial waters" Sometime ago this House accepted an article-I cannot put my finger immediately on it--but it is a well-known article, that the Centre will have fishing or some other right on the seas. A question was raised in the House at that time as to whether the Centre should have any right over the territorial waters. The implication of that article was that the Centre would have fishing and other rights in all seas, whether high seas or in territorial waters.

Mr. President: It is article 271-A.

Mr. Naziruddin Ahmad: Then, entry 75 as it stands now will curtail the right of the Centre purported to be given to it by article 271-A. I feel that entry 75 has not been revised to bring it into conformity with article 271-A. I wanted only to have a clarification, and if it is necessary to bring it up-to-date I think the amendment should be accepted.

The Honourable Dr. B. R Ambedkar: No, Sir, I cannot accept the amendment.

Mr. President : Then, we will have to put the amendment to vote. The question is :

"That in entry 75 of List-I, the words 'beyond territorial waters' be deleted."

The amendment was negatived.

Mr. President : Then I put the entry as moved in the original form. The question is :

"That the proposed entry No. 75 stand part of List I."

The motion was adopted.

Entry No. 75, as amended, was added to the Union List.

Entry 76

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for entry 76 of List I, the following entry be substituted:-

'76. Manufacture, supply and distribution of salt by Union agencies; regulation and control of manufacture, supply and distribution of salt by other agencies'."

Mr. President : There is no amendment to this; so I put this entry to vote. The question is :

"That for entry 76 of List I, the following be substituted:-

'76. Manufacture, supply and distribution of salt by Union agencies; regulation and control of manufacture, supply and distribution of salt by other agencies.'"

The amendment was adopted.

Entry 76, as amended, was added to the Union List.

Shri Mahavir Tyagi : (United Provinces: General) : Sir, when you put the question to vote, Dr. Ambedkar says "Ayes" beyond the mike; with the, result that the Ayes have an undue volume of their voice.

Mr. President: Unfortunately Dr. Ambedkar is unwell today; that is why he is having the mike before him. But I hope the mike will not be used for voting purposes.

Entry 77

Shri Brajeshwar Prasad: Sir, entry 77 vests in the Union Government, the power to deal with grave emergencies in any part of the territory of India. These powers are not restricted to the provisions made in the Constitution. My interpretation is that over and above the powers granted to the Centre by the articles of this Constitution, this entry vests the

Union Legislature with additional powers to deal with grave emergencies affecting any part of the country. If we delete this entry it will mean that the powers of the Union Government will be restricted by the articles of the Constitution. This is a mighty power which is rightly being conferred. Therefore, I strongly oppose the motion to delete this entry from List I.

Mr. President: The question is

"That entry 77 of List I be omitted."

The motion was adopted.

Entry 77 was deleted from List I

Entry 78

Entry 78 was added to the Union List

Entry 79

The Honourable Dr. B. R. Ambedkar: Sir, with regard to entry 79, I have to make one observation. Some Members of the House are under the impression that if entry 79 remained in List I it would be opened also to the Centre to appropriate the proceeds of any taxes that may be levied on the Stock Exchanges and futures market and taxes other than stamp duties on transactions therein. I would like to make it clear that in putting Stock Exchanges and futures market in List I, there is no intention on the part of the Drafting Committee that the Centre should have any right to appropriate the proceed of any taxes that might be levied under this entry. Consequently, the Drafting Committee proposes, in order to remove all sorts of doubt, to amend article 250 which requires the proceeds of certain taxes to be distributed among the provinces. What we propose to do is, as a consequential provision, to add to article 250 which contains clauses (a) to (d) enumerating the taxes to be distributed, 'proceeds of any taxes on Stock Exchanges and futures market', so that they too will be subject to distribution among the provinces. That would, I am sure, remove all doubts that certain Members have that this entry if it remains in List I would give power to the Centre to appropriate the taxes. That is not the intention. The entry there is purely legislative. It would have no financial implications at all.

Pandit Hirday Nath Kunzru: (United Provinces: General): May I ask Dr. Ambedkar whether he intends also to bring in a modification of article 277 in this connection ?

The Honourable Dr. B. R. Ambedkar : Well, I shall consider any consequential provision necessary to bring in to make the matter consistent.

Mr. President : Sardar Hukam Singh and Shri Brajeshwar Prasad are not moving their amendments.

Mr. Naziruddin Ahmad: Sir, the original item 79 deals with stock exchanges and futures market and taxes other than stamp duties on transactions therein. Stamp duties are leviable by the Province on sales within their jurisdiction. The shares and stocks and securities are also liable to the payment of stamp duties on their sale price. As all stamp duties on sales are realised by the Provinces, any sales effected in the Stock Exchanges should also be levied directly by the States. The result of removing that condition from this entry will be to allow the Centre to levy this stamp duty although it would be credited to a certain fund. This will also enable the Central Government to distribute it to any State they think fit and not to the State in which the sale was effected and the stamp duty levied. I submit that the stamp duties should be exempted from the purview of the Centre.

Mr. President : Is not that the effect of the provision as it is ?

Mr. Naziruddin Ahmad: I believe there was an amendment moved.

Mr. President: That amendment was not moved by Sardar Hukam Singh.

Mr. Naziruddin Ahmad: In that case I am sorry. I need not have made, these observations. But, Sir, things are proceeding so fast that I was not able to fully follow the debate. I regret my mistake.

Mr. President: Now I will put entry 79 to vote. Mr. Naziruddin Ahmed made certain remarks under a misapprehension. He has withdrawn them. The question is :

"That entry 79 be added to List I."

The motion was adopted.

Entry 79 was added to the Union List.

Entry 80

Mr. President: There are no amendments to entry 80.

Entry 80 was added to the Union List.

Entry 81

Shri Brajeshwar Prasad: Mr. President, Sir, I beg to move:

That for amendment No. 3572 of the List of amendments, the following be substituted:-

That for entry 81 of List I the following be substituted :-

"81. Duties in respect of succession to property including agricultural land."

The amendment that I have moved is with the view that there should be no financial autonomy in the hands of the provinces. While discussing the financial. provisions of the

Constitution, I had already referred to the fact that I was only in favour of a limited character of provincial autonomy being conferred upon the provinces. I think that most of us seem to ignore the realities of our political life. Provincial autonomy has led to inequality between man and man, between one province and another. I think, Sir, that an equitable. system of financial distribution can only be achieved if the Centre is vested with all powers in this matter. It is not only dangerous but it is almost tragic that we should go on extending the powers of the provinces. I was under the impression that a proper lesson would be drawn from the experiences of the past. The effect of partition and uprooting of millions of homes compels us to draw a proper conclusion. We must make the Centre strong. We are centuries behind the advanced nations of the world. Various forces are menacing us from many sides and in order to meet those forces, it is necessary to make an all-out effort. Provincial autonomy comes as a stumbling block and we must uproot it. We have got centuries of development to accomplish. Centuries will have to be compressed into moments. It is only under the leadership of one government in India that we can do this. Sir, powers must be vested in the hands of those who desire to serve the people. Powers must be vested in the hands of those who have got the ability to serve. If it is the desire of the provincial governments to serve the people, they must seek the co-operation of-the Central Government in this matter. If they want to help the people in the provinces, they must welcome the co-operation of the Centre. If they oppose this, then it gives rise to suspicion. It raises some doubt in our minds. Sir, there is that over Centralisation will lead to dominance. I do not understand, what people mean by dominance. Is it the contention that the, Government of India will exploit the people living in the provinces ? The point has been made that it is not possible for the Government of India to govern the whole country from Delhi, so far away and so remote from the other parts of the country. I am definitely of opinion that the developments of science, the developments in the means of communication have annihilated distance, time and space. After all, India is not so big as it was before. Partition has made the country smaller. The development of science has made even the world very small. The world has become a small place now, and I feel that the whole world can be governed by one Government. We all owe allegiance to the ideal of a world State. So, I do not see how the Government at the Centre cannot function efficiently. I am not opposed to delegation of powers. I am only opposed to the distribution of powers, to the division of powers to the extent....... .

Shri R. K. Sidhva : How is all this relevant to the entry under consideration, Sir ?

Mr. President: We have heard these arguments before from the honourable Member. He has used the same arguments all along the line, in connection with so many amendments. Therefore it is not necessary to repeat the same arguments.

Dr. P. S. Deshmukh: (C. P. & Berar: General) : We can take his arguments for granted.

Mr.President: We cannot go back on all the decisions taken so far, by altering one entry in this List.

Shri Brajeshwar Prasad: I do not want to reopen the provisions on which agreement has been reached in the House. I am only asking that this particular entry should be amended on the lines suggested by me. If it is your ruling that I should not continue my speech, I am quite willing to abide. by your decision, Sir.

(Prof. Shibban Lal Saksena rose to speak.)

Mr. President: I hope it is not just for contradicting what Mr. Brajeshwar Prasad said.

Prof. Shibban Lal Saksena: (United Provinces: General) : No, Sir, I am supporting him. Mr. Brajeshwar Prasad has given his reasons. I personally feel that there is some substance in his amendment from another point of view. I want that there should be uniformity of taxation in this matter also. Let the duties be collected by the Centre and distributed to the provinces, so that the duties can be on a uniform scale. The duties should not vary from province to province. I am therefore glad that the amendment of Mr. Brajeshwar Prasad seeks to vest this power in the Centre. The Centre can make the laws and collect the duties and then whatever is obtained may be handed over to the provinces.

The Honourable Dr. B. R. Ambedkar : I may mention, Sir, that this matter was considered at the conference with the Provincial Premiers. They were of opinion that, although the principle might be sound, they were at the present moment not prepared to make this radical change.

Mr. President: I will put amendment No. 49 to the vote.

Mr. Brajeshwar Prasad: I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That entry 84 stand part of List I."

The motion was adopted.

Entry 81 was added to the Union List.

Entry 82

Mr. President: There is a similar amendment, by Mr. Brajeshwar Prasad.

Shri Brajeshwar Prasad: I will not deliver any speech. I would only move the amendment.

Shri R. K. Sidhva : There is no difference between this amendment and the previous amendment except that it reads "Estate duty in respect of' instead or of "Duties in respect of succession to".

Shri Brajeshwar Prasad: Sir, I move:

That for amendment No. 3574 of the List of Amendments, the following be substituted :-

"That for entry 82 of List I, the following be substituted:-

"82. Estate Duty in respect of property including agriculture land."

If you will permit, Sir, I would advance different arguments as to why provincial autonomy should be modified. If you do not want me to proceed, Sir. I will go back to my seat.

Mr. President : It is not necessary to discuss provincial autonomy any further. I will put the amendment to the vote.

Shri Brajeshwar Prasad: I withdraw the amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That entry 82 stand part of List I."

The motion was adopted.

Entry 82 was added to the Union List.

Entry 83

Mr. President: There are two amendments to this.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in entry 83 of List I, after the word 'railway' a comman and the word 'sea' be inserted."

The intention is to complete the entry by the addition of the word "sea" which was inadvertently omitted.

(Amendment No. 51 was not moved.)

Mr. President : There are certain other amendments to this. No. 228 by Dr. Deshmukh.

Dr. P. S. Deshmukh : Mr. President, Sir, I do not propose to move item No. 228 but I beg to move item No. 230 which is the proper amendment to item 52.

"That with reference to amendment No. 52 of List I (Sixth Week) in entry 83 of List I, for the word `railway' the words 'land, sea' be substituted."

I believe that yesterday I was not properly understood when I said passengers and goods traffic on the roads, especially those between more than one. State, should be within the cognizance and jurisdiction of the Union. I have no intention of taking away the right of the States so far as their jurisdiction is confined to the territories under those States, but what will happen so far as traffic from one State to another is concerned and wherever more than one State comes into play? I have not been able to see any objection, if "sea and air" are to be included, why inasmuch as we are going to have national highways the word "land" also should not be included. I, therefore, move that the words "land, sea" may be added, unless Dr. Ambedkar has any special reason or there is any other ground on which this would be not proper.

Shri H. V. Kamath : My amendment No. 229 is a merely verbal amendment and I leave it to the Drafting Committee.

Shri R. K. Sidhva : Mr. President, Sir, my amendment No. 3576 on page 387 of Second Volume of printed amendments reads as under :

> "That in entry 83 in List I, the following words be deleted :-
>
> "Terminal Tax on goods or passengers carried by rail or air'."

Just now you called upon the Honourable Pandit Pant to move the amendment which he has sent in. But he is not in the House. That amendment of his is identical to mine. From this you can realize what great importance he attaches to this entry being deleted from here and put in the Provincial List. I have always said that Terminal Tax is a Provincial subject and that Terminal Tax is levied by the local bodies. We have passed the other day that the Terminal Tax should be collected by the Centre and the proceeds distributed to the provinces. I quite appreciate that. But despite that I say that if this is passed a consequential change can be made in that article. I strongly feel that the Local Bodies and they have been levying it throughout the century and it will be wrong for the Centre to take away this item. Pandit Pant feels very strongly about it, but unfortunately he is not present. I am sure he would have moved and the amendment would have been carried. I, therefore, request that the Drafting Committee will kindly consider about this entry and see that it is removed from here and taken to the Provincial List. It may be said that in view of the article that we have passed, it may not be possible to accept my amendment, but I will remind the House that Dr. Ambedkar had said: "If you pass anything here, a consequential change may be made in the article which we have already passed". Under these circumstances, I hope the Drafting Committee will have no objection.

The Honourable Dr. B. R. Ambedkar : Sir, I cannot accept Dr. Deshmukh's amendment because the inclusion of the word "land" would also permit the Centre to levy Terminal Tax on goods and passengers carried by "road". Under our scheme Terminal Taxes on goods and passengers carried by road will be a matter which will be exclusively within the jurisdiction of the different States. That is the principal objection why I cannot accept his amendment. You will remember, Sir, that he tried to move a similar amendment on another occasion which had been rejected by the House.

Now with regard to Mr. Sidhva, this matter again was debated last time and I said that although these taxes were leviable by the Centre, the proceeds of all of them would be distributable among the different Provinces. The Centre would not claim any interest. If the Provinces after getting the proceeds want to pass on any part of those proceeds to the local bodies they are free to do so. It is not possible in this Constitution to make a provision for any matter of taxation that may be available to a local authority. That is a matter *inter se* between the State and the local authority and therefore it is not possible now to alter this entry either by way of amending it or by way of transferring it to List No. II.

Shri R. K. Sidhva : Sir, I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Dr. P. S. Deshmukh : I also withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

"That in entry 83 of List I, after the word `railway' a comma and the word 'sea' be inserted."

The amendment was adopted.

Entry No. 83, as amended, was added to the Union List.

Entry 84

Mr. President : Item 53 stands in the name of Mr. Brajeshwar Prasad. It is worth while to move that amendment?

Shri Brajeshwar Prasad : As you permit me, Sir, I would like to move this amendment without delivering any speech.

Mr. President : I take it that you have moved it.

Shri Brajeshwar Prasad : All right, Sir.

(Amendments Nos. 3577, 3578 and 3579 were not moved.)

Mr. President : The question is:

"That entry 84 stand part of List I."

The motion was adopted.

Entry 84 was added to the Union List.

Entry 85

Entry No. 85 was added to the Union List.

Entry 86

(Amendment No. 54 was not moved)

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in entry 86 of List I, the words 'non-narcotic drugs' be deleted."

The proposed list put non-narcotic drugs in the Concurrent List.

Mr. President : There is one other amendment of which we have notice from the honourable Shri K. Santhanam, but I take it that it is not moved.

Mr. Naziruddin Ahmad : Mr. President, Sir, the deletion of the words non-alcoholic drugs.

Mr. President : Non-narcotic drugs.

Mr. Naziruddin Ahmad : Non-narcotic drugs would entirely change the meaning of entry 86. The entry is to this effect : "Duties of excise on tobacco and other goods manufactured or produced in India except certain things including non-narcotic drugs".

Now, Sir, Dr. Ambedkar wants to delete the words `non-narcotic drugs'. The effect of this will be not as simple as it looks. Non-narcotic drugs were excepted from the central subject in the original entry. They were therefore Provincial subjects under the original article. If we delete these words, we delete these words from the exception. By this deletion of non-narcotic drugs from the exception, they will automatically be included within the body of the entry. By a simple deletion of these words, the effect would be that instead of this being a States subject, it will at once become a Central subject. I submit that these entries were accepted by the House after considerable deliberation. The removal of these words would rob the Provinces of a subject and unnecessarily burden the already overloaded duties of the Centre. I think this matter should be pointed out and though I know that my opposition will have o effect in this House, still I deem it necessary to voice my protest. If the Provinces are to be robbed one by one of their powers, political, financial and others, it would be for better for us to say here and now that Provincial Autonomy must go and there must be Unitary Government. I would rather welcome the attempt of Mr. Brajeshwar Prasad to scrap Provincial Autonomy at once. The effect of the present arrangement as we are changing from day to day is to kill Provincial Autonomy altogether. I can well understand that Provincial Autonomy should be abolished at once. This is a thing which I can understand. Rather than reducing the Provinces to a state of importance a state resembling the District Boards and Municipalities, I think it would be far better to abolish the provinces altogether, and .....

Shri R. K. Sidhva : It is a larger issue, Sir, to suggest that Provincial Autonomy should be abolished.

Mr. Naziruddin Ahmad : That is what we are doing. I merely say that instead of doing it bit by bit and taking away from the powers of the Provinces in slices indirectly, it would have been far better to do so directly and say that there shall be no Provincial Autonomy except to the extent the Centre please. That would have been better. This removal of the words `non-narcotic drugs' is a dangerous chance as many other dangerous changes have been made.

The Honourable Dr. B. R. Ambedkar : It is quite true, Sir, that at present this entry is in the provincial list. But, there are two facts to be recognised. One is that no province has at any time so far levied any tax on these items. Therefore, it has not been exploited by the provinces for their financial purposes. Secondly, even when the matter becomes concurrent, and any legislation is made by the Centre, which has a revenue aspect, the revenue will be liable to be distributable under the provisions of clause (2) of article 253. Consequently, so far as finances are concerned, there is really no loss to the provinces at all. Then, it is necessary that we should have an All-India Drug Act operating throughout the area. That cannot happen unless non-narcotic drugs are put in the Concurrent List. That also saves the power of the Provinces to make such local legislation as they may like with regard to these drugs.

Mr. President : I put the amendment moved by Dr. Ambedkar. The question is :

"That in entry 86 of List I, the words `non-narcotic drugs' be deleted."

The amendment was adopted.

Mr. President : The question is :

"That entry 86, as amended, stand part of List I."

The motion was adopted.

Entry 86, as amended, was added to the Union List.

Entry 86-A

Mr. President : There is an amendment by Mr. Kamath for adding entry 86-A.

Shri H. V. Kamath : Mr. President, Sir, I move :

"That with reference to amendment No. 55 of List I (Sixth Week), after entry 86 of List I, the following new entry be added :-

'86-A. Prescription and maintenance of standards for drugs, medicines and other pharmaceutical products'."

It is a notorious fact that in this country, as perhaps in some other countries of the world, all sorts of cheap drugs and quack medicines are put for sale on the market without any effective control by Central or Provincial Governments. It is a very serious matter inasmuch as it imperils the health of the nation which is already at a somewhat low ebb. It has been held by many medical authorities in this country that if some effective control is not exercised by Government in this regard, it would be difficult to raise the standard of health of the people, when they are exposed to all sorts of dangerous quack remedies in the market. I do not find in Lists I, II or III any specific provision in this regard. There is entry 40 in List II which refers only to intoxicating liquors, and narcotic drugs. There is entry 20 in the Concurrent List. `Poisons and dangerous drugs.' I do not think that these two entries cover the subject-matter of my amendment. There is of course the omnibus entry in List II, No. 15, Public Health and Sanitation. But, I feel that this matter is far too important to be relegated to a general entry, Public Health. We are talking so much about raising the standard of health of the nation and this is one of the important matters with which the State will have to deal. In the last Budget session, the Health Minister, in reply to one of the questions, said that the whole matter of drug standards was under the active consideration of Government.

Mr. President : Will you refer to entry No. 20 of List III as amended by amendment No. 129?

"20, Drugs and poisons, subject to the provisions in entry 62 of List I with respect to opium."

Shri H. V. Kamath : Perhaps, it provides to some extent, but my amendment is specifically with regard to the maintenance of standards which is not mentioned in the entry which you have just quoted. I would therefore suggest, having regard to the vital question of the health of the nation and bearing in mind the reply given by the Health Minister in the last budget session that this whole matte of drugs and similar provisions regarding the prescription of standards were under the active consideration of Government, that the Centre and not the provinces must have exclusive legislative power in this regard, because it is such a vital matter. I move amendment 231 of List III (VI Week) and commend it to the House for acceptance.

Shri Mahavir Tyagi : Why you want to prescribe the medicine?

Shri H. V. Kamath : It is prescribing of standard.

Mr. Naziruddin Ahmad : Very ambiguous.

Shri H. V. Kamath : I do not know if the medical and scientific terminology used in my amendment has been misunderstood. This terminology will be found in any standard book on Pharmacology.

The Honourable Dr. B. R. Ambedkar : We have got the power. It is covered by entry 20 which we are going to put in the Concurrent List.

Mr. President : The question is :

"That with reference to amendment No. 55 of List I (Sixth Week), after entry 86 of List I, the following new entry be added :-

86-A, Prescription and maintenance of standards for drugs, medicines and other pharmaceutical products'."

The amendment was negatived.

Entry 87

Mr. President : Entry No. 87. There is no amendment.

Entry No. 87 was added to the Union List.

Entry 88

Mr. President : Entry 88.

Shri Brajeshwar Prasad : Sir, I move :

"That for amendment No. 3583 of the List of Amendments, the following be substituted :-

"That for entry 88 of List I the following substituted :-

> '88. Taxes on the capital value of the assets, inclusive of agricultural land, of individuals and companies; taxes on the capital of companies."

Dr. P. S Deshmukh : I beg to move :

"That is amendment No. 56 of List I (Sixth Week), in the proposed entry 88 of List I, for the word `inclusive' the word `exclusive' be substituted."

My amendment is an amendment to that of Mr. Brajeshwar Prasad. Actually it is negation of the proposed entry 88. Otherwise I am content with the entry as it stands.

Mr. President : I put Mr. Brajeshwar Prasad's amendment to vote.

Shri Brajeshwar Prasad : I beg leave to withdraw it, Sir.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

"That Entry 88 stand part of List I."

The motion was adopted.

Entry 88 was added to the Union List.

Entry 88-A

Mr. President : I have notice from a large number of members for addition of an entry 88A. Shri Goenka.

Shri Ram Nath Goenka : (Madras : General) : Mr. President, I beg to move.

Shri Deshbandhu Gupta: (Delhi): I rise on a point of Order, Sir. The amendment, which stands in the name of Mr. Goenka offends against the Fundamental Right guaranteed in clause 13-A which refers to freedom of speech and expression and as such cannot be considered. In this connection I wish to refer to the Supreme Court Judgment of the United

States which was given recently in the famous Louisiana case. The facts of the case are that a 2 per cent licensing tax was levied on the newspapers in that State. Nine publishers opposed that and questioned the validity of the tax on the ground ....

The Honourable Dr. B. R. Ambedkar : I hope my friend is not going to read that 4 pages printed judgment of the Supreme Court of the United States. It has been circulated to everybody.

Shri Deshbandhu Gupta : It is wrong for my friend to presume that the whole judgment will be read. Of course, if it is necessary to read some extracts I will do so. I am only referring to the parts which are relevant to point raised by me. I wish to point out that exception was taken by those publishers on the ground that the tax violated the Federal Constitution in two particulars (1) that it abridges the freedom of the press in contravention of the due process clause contained in Section 1 of the Fourteenth Amendment (2) that it denies appellees the equal protection of the laws in contravention of the same amendment.

The Honourable Dr. B. R. Ambedkar: I am also rising on a point of order.

Mr. Naziruddin Ahmad : There could not be two points of order at the same time.

The Honourable Dr. B. R. Ambedkar : My point of order is an elementary one whether my friend who is a signatory to this amendment – his name is mentioned here after Shri Sitaram Jajoo – having already given notice of this amendment can he now say that this is not in order ?

Shri Deshbandhu Gupta : My friend has amended his own amendments hundred times.

The Honourable Dr. B. R. Ambedkar : If he was to propose an amendment to his amendment, that would be in order.

Shri Deshbandhu Gupta : I have every right to change my opinion just as my friend has done very often.

Mr. President : Even if he has signed the notice, I do not know whether he signed for 88A.

The Honourable Dr. B. R. Ambedkar : His name is Shri Deshbandhu Gupta!

Mr. President : Any way I do not think we could prevent him from speaking now.

Shri Deshbandhu Gupta : I am glad that you have held that I am perfectly in order in raising this point of order. I was pointing out that the ground for appeal was that it violated the Federal Constitution in, two respects, *viz.,* freedom of press and expression. The Honourable Justice Sutherland of the Supreme Court accepted the point of appeal and held that the measure which was in question did offend against the liberty of the press granted by the U. S. Constitution. They traced the history of this tax and the struggle that has been going on in England for over a century on this point. The important observation they made was :

- "That conclusions there stated is that the object of the constitutional provision was to prevent previous restraints on publication, and the Court was careful not to limit the protection

> of the right to any particularly way of abridging it. Liberty of the Press within the meaning of the constitutional provision, it was broadly said, meant principally although not exclusively, immunity from previous restraints or (from) censorship."

Justice Cooley said :

> - "The evils to be prevented were not the censorship of the press merely but any action of the government by means of which it might prevent such free and general discussion of public matters as seems absolutely essential to prepare the people for an intelligent exercise of their rights as citizens."

In the light of this test the Supreme Court held :

> - "The predominant purpose of the grant of immunity here invoked was to preserve an untrammelled press as a vital source of public information. The newspapers, magazines and other journals of the country, it is safe to say, have shed and continue to shed, more light on the public and business affairs of the nation than any other instrumentality of publicity; and since informed public opinion is the most potent of all restraints upon misgovernment, the suppression or abridgment of the publicity afforded by a free press cannot be regarded otherwise than with grave concern."

And at the end, they say :

> - "The tax here involved is bad not because it takes money from the pockets of the appellees. If that were all, a wholly different question would be presented. It is bad because, in the light of its history and of its present setting, it is seen to be a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guarantees. A free press stands as one of the grant interpreters between the government and the people. To allow it to be fettered is to fetter ourselves."

Sir.........

Shri S. Nagappa : (Madras : General) : Sir, on a point of order. Is the honourable Member raising a point of order or making a speech? He has already taken some fifteen minutes.

Mr. President : He has mentioned his point of order that he is now arguing the point.

Shri Deshbandhu Gupta : My point is this. In the light of this important judgment of the Supreme Court of U.S.A. the amendment which my Friend Shri Goenka seeks to move offends against the fundamental right guaranteed in article 13A and as such in *ultra vires*. I therefore suggest that this matter may be held over and referred back to the Drafting Committee to be examined in the light of the judgment of the Supreme Court of the U.S.A., and also in the light of the point of order that I have raised. I do not want to obstruct the proceedings of the House and only urge that this matter being an important matter, and concerns the fourth estate, it is a very vital question, and therefore, nothing would be lost if the Drafting Committee is asked to re-examine the whole question from this point of view. I hope the House will agree with me and that this matter will be held over.

Shri R. K. Sidhva : May I know whether a judgment of the Supreme Court, of the U.S.A. is binding upon us ? What is the point of order raised please?

Mr. President : The point of order is that the amendment proposed offends against article 13 which we have already passed.

Pandit Thakur Das Bhargava (East Punjab : General) : Sir, the point of order which has been raised and in respect of which certain extracts have been read out to the House from the decision of the Supreme Court of the United States of America, is further strengthened by a reference to article 13 we have already passed. In article 13, we have already said :

"All citizens shall have the right to freedom of speech and expression."

and this right is only circumscribed by clause (2) of the same article, which says :

"Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, libel, slander, defamation or any matter which offends against decency or morality or which undermines the security of or tends to overthrow, the State."

This provision is only a safeguard in the hands of the Government against the unrestricted use of the right of freedom of expression. Now, when a State seeks to tax the press, as such, it certainly seeks to tamper with the right of the freedom of speech. It is, of course, an accepted principle of law that what cannot be done directly by the law cannot be done indirectly by it. When we are incompetent to pass any law to restrict the freedom of speech unless it comes within clause (2) of article 13, it stands to reason that we cannot indirectly take away the right of freedom of speech.

Then again, Sir, if you will kindly refer to article 8, you will see that it lays down that :

"All laws in force immediately before the commencement of this Constitution in the territory of India, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency be void."

And further :

"The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void."

Sir, my contention is that any law which restricts the freedom of speech of an individual, or freedom of expression of the Press-because the freedom of the Press is only an extension of the principle of the freedom of speech of an individual-any law that abridges that right, is inconsistent with article 8, and is void. As it is, we by one provision in the Constitution guarantee the right of freedom of speech, and by another take away the same provision by another subterfuge. I do not want at this stage, to stress the point whether this is a tax on knowledge, whether it is opposed to the fundamental law as in America or England. But so far as our own Constitution is concerned, my contention is that this provision is opposed to the spirit and the letter of article 13. Therefore, this amendment is out of order.

Mr. President : I should like to bear the Members on the main question. But before I do that, I would like to know whether the Drafting Committee would reconsider this item. In that case I shall be saved the trouble of going into the question. In any case I shall not be able to give a decision just now; I have to take some time to consider it.

The Honourable Dr. B. R. Ambedkar : We should like to hear the various points of view as expressed in this House, and if the House or you, Sir, find that it is not possible to come to any definite conclusion right now, then the matter may be remitted to the Drafting Committee so that the Committee, in view of the various expressions of opinion, might find out some formula acceptable to the House. But I do not think, as it is, it is any use trying to recast it. We have got here very definite amendments. One is by my friend here and there is another by my friend Mr. Jhunjhunwala – quite definite amendments.

Mr. President : There are really two points to be considered. One is whether the amendment which is proposed to be moved by Mr. Goenka is in order in view of the previous article which we have already passed. And the second is........

The Honourable Dr. B. R. Ambedkar : Sir, if I may say so, this matter I cannot be decided on the basis of whether something will be *ultra vires* or whether something will not be *ultra vires.* This House is not competent to decide that. That is a judicial matter. All that the House must decide is whether we want to give protection to the newspapers from the various entries which are included, either in List I, List II or List III; and if we want to give them any exemption from these entries then to what extent we should give this exemption. What the court will decide is a matter of which we cannot be sure about. We cannot give any assurance to any newspaperman here and now that we have made a case which is fool-proof and knave-proof. We cannot give that assurance. So we had better decide the particular question, whether we do want to give protection to newspapers from the operation of the various entries. That is the main question.

(Shri R. K. Sidhva, Pandit Thakur Das Bhargava, Shri Mahavir Tyagi and other Members began talking all together.)

Mr. President : One at a time please.

Shri R. K. Sidhva : If I have understood Mr. Gupta....

Mr. President : Are you going to argue the point?

Shri R. K. Sidhva : Yes, Sir.

Mr. President : Please wait. There are two points involved. One is the point of order which has been raised, whether the amendment which is sought to be moved by Mr. Goenka is in order or not, in view of the article which we have already passed. And the second point is whether on the merits, the amendment of Mr. Goenka should be accepted in its present form or in any other form.

Shri Alladi Krishnaswami Ayyar (Madras : General) : On the first point, I should like to say a few words.

Mr. President : I was just asking if there was any chance of deciding the question on its merit, then the question of point of order might be done away with, and I would not be required to go into the question. If I am required to go into that question. I shall in any case take a little time to consider it and I will not be able to give my decision right away just now. Therefore, I am asking if it is to be held over, whether the Drafting Committee might consider it and then let us know what the position is, and if they think that this must remain there, then in that case, I would have to give my decision, of my ruling.

Shri T. T. Krishnamachari (Madras : General) : Sir, it is for you to decide. If you remit anything to the Drafting Committee, the Committee has got to consider it. If that is your decision, then the Drafting Committee has nothing more to do, except to reconsider the matter and submit its report to you.

Mr. President : If that is so, I would rather suggest that in order to save time the Drafting Committee reconsider this matter and if they think.........

Shri Alladi Krishnaswami Ayyar : In the view, at any rate, of some of the members of the Drafting Committee, there is no substance in this point of order. They are quite clear and they are able to convince you. If even then you feel any doubt, by all means refer it to the Drafting Committee. We will be prepared to reconsider the whole situation. I do think that what exactly are the points of view must be presented to the House and to you, Sir, because ultimately the duty falls on you to decide whether there is any substance in this point of order or not. All that the Drafting Committee or any individual Members can do is to assist you in arriving at a conclusion with regard to the point of order. It is not a matter of voting. Therefore, all that we can do is to assist you to come to a conclusion whether there is any substance in this point of order or not. So far as I am concerned, it may be that I may be open to conviction and if really you think also that there is some doubt over the matter, we will consider it when it is referred to the Drafting Committee; but so far as this point of order is concerned, I have very, very clear and definite views. If you will permit me to say a few words on this point of order at any stage you think fit, I can convince you. A point of order simply because it is raised by any Honourable Member, cannot at once be referred to the Drafting Committee. It is not as if there is substance in every point of order. But, this one is of very great and fundamental importance. Therefore, I would ask you to consider it and then rule on the question whether it is a matter worth or fit for consideration.

Shri Jagat Narain Lal (Bihar : General) : Sir, all the while, the point of order is being discussed. As I understood you to say was this : that if the matter is such as could, on merits, be considered by the Drafting Committee, the point of order may not arise and it may not be discussed. But I find that that matter has not received consideration. I suggest that the point of order may be held in abeyance and the views of the House on the merits of the question, if necessary, may be taken.

Mr. President : That is the difficulty. If it is not out of order, then in that case the views of the House will have to be taken, but if it is out of order, then.........

Shri Alladi Krishnaswami Ayyar : The Drafting Committee considered the question as to whether it can be transferred to the Central List. My friend the Honourable Dr. Ambedkar, President, will bear out that we came to the conclusion that we can support the transfer to the Central list. We have given our best consideration and we have come to the conclusion that having regard to the wide circulation of newspapers, having regard to the fact that newspapers are inter-provincial in their character, we can agree to the matter being put on the Central list. So far as that point is concerned, we have decided and clearly.

Mr. President : You should also consider the question whether it does not offend against article 13.

The Honourable Dr. B. R. Ambedkar : On that we have some views and if you are prepared to hear, I will submit them.

Shri Jagat Narain Lal : Before Dr. Ambedkar is called upon to submit his point of view, we should be allowed to support the point of order raised by Mr. Deshbandhu Gupta.

Shri R. K. Sidhva : Not necessarily the views in support! There may be opposition also.

Mr. President : That is the whole point-whether we should have a full-dress debate on this question or whether one or two speeches should be allowed. Messrs. Deshbandhu Gupta and Bhargava have put their point of view before us. I would like to hear the other point of view.

Shri R. K. Sidhva : The point of order raised by Messrs. Deshbandhu Gupta and Bhargava is that this offends against article 13 and therefore is out of order. They have quoted 13 (a) relating to freedom of speech and expression. Now the amendment says "taxes on newspapers". Surely, newspapers pay tax on income. It does not mean that because the expression "freedom and speech and expression" is there, they are not going to pay any taxes or anything of that kind. With due deference to my friends, there are taxes on newspapers. They have to pay income-tax on the profit they make. If there are any further taxes to be levied, surely this article does not offend article 13. If you go to that extent in interpreting freedom of speech and expression, there will be a chaos. It does not mean that we are going to tax the articles or editorials appearing in a newspaper. That is a very narrow conception of that interpretation. I do not know where that will lead us. If there is any exemption from any tax today on the proprietors of newspapers, I can understand it; but may I know whether newspaper proprietors pay taxes today or not? They do pay taxes. Therefore, I contend that the objection does not stand for one moment.

Shri Jagat Narain Lal : As representing the Press, some of us claim to be heard by this House. Sir, freedom of speech and expression are terms which we have imported from the English and American Constitutions and we are trying to forge a Constitution at present which shall be ahead of these Constitutions. If we are forging a constitution which instead of being ahead of these constitutions goes backward, I should say that we cannot be proud of such a constitution. I have heard Mr. Sidhva. His interpretation seems to be too narrow. Dr. Ambedkar shuddered at the idea of the whole judgment of the Supreme Court being read. I do not propose to read the entire judgment. I will confine myself only to a few passages. I would like him as an eminent jurist to go through them. It is not simply a judgment to be merely casually read but it embodies the public opinion both from England and American constitutions; and I should say that at this stage and in this century it is becoming for us, as an advanced country, to guarantee full freedom of speech and expression. I will read only a few passages :

> "In 1712 in response to a message from Queen Anne (Hansard's Parliamentary History of England Vol. 6. p. 1063) Parliament imposed a tax upon all newspapers and upon advertisements. Collect, Vol. I, pp 8-10. That the main purpose of these taxes was to suppress the publication of comments and criticisms objectionable to the Crown does not admit of doubt. Stewart, Lennox and the Taxes on knowledge, 15 Scottish Historical Review, 322-327. There followed more than a century of resistance to, and evasion of, the taxes, and of agitation for their repeal. In the article last referred to (p. 326), which was written in 1918, it was pointed out that these taxes constituted one of the factors that aroused the American Colonists to protest against taxation for the purposes of the home government; and that the Revolution really began when, in 1765, that government sent stamps for newspaper duties to the American colonists."

Then I will read the rest of the portion. It says :

> "It is idle to suppose that so many of the best men of England would for a century of time have waged, as they did, stubborn and often precarious warfare against these taxes if a mere matter of taxation had been involved."

The aim of this struggle was not simply to relieve the Press of the burden of taxation but to establish and preserve the right of the. English people to full information in respect of the doings or misdoings of their Government. If words so telling as this could be interpreted as an intention to evade taxation it is very unfortunate indeed.

I do not want to read more of this passage. What I want to say is this that if it is the intention to create unnecessary commotion in this country, it is very unnecessary and undesirable indeed. Therefore, Sir, I think that the point of order raised by Shri Deshbandhu Gupta is very timely.

Mr. Naziruddin Ahmad : Mr. President, Sir, this point of order, I submit, raises an important constitutional question. The point sought to be made is that under article 13 we have guaranteed freedom of opinion and freedom of expression to all people and also to newspapers. Under clause (2) of article 13, there are certain powers given to curtail this right.

The question really turns upon whether the imposition of a tax on newspapers is really an attempt to affect the freedom of opinion and freedom of expression of a newspaper. It may be argued that the tax does not affect the freedom of expression and freedom of opinion, but is merely a realisation of some taxes from the press. This was, as I find, the exact situation which arose before the United States Court and the opinion expressed by the United States Court in this respect, so far as it is relevant, consists of two or three sentences. There the question was raised that it was merely a tax and did not directly affect the expression of opinion and therefore, did not go against the constitutional guarantee. But the reply of the United States Supreme Court was to the effect that the tax would curtail the right of freedom of opinion and expression. I shall just read only two or three sentences from the judgment :

> "The tax is a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the Constitutional guarantee."

Mr. President : Do you read that in favour of the view that it is *ultra vires?*

Mr. Naziruddin Ahmad : I submit that the judgment has pronounced against the validity of the tax.

Mr. President : If the motive is to curtail circulation.

Mr. Naziruddin Ahmad : The verdict of the Supreme Court was that it was really in the guise of a tax to control and stop circulation and expression of opinion.

Mr. President : But supposing there is no intention to control or curtail the expression of opinion. Then that would not be *ultra vires.*

Mr. Naziruddin Ahmad : The matter would really depend not upon the intention, because that is a matter which cannot be understood, ascertained or measured except from the words of the statute. It can only be judged by the terms of the Act and by the effect that it may produce. The main argument of the American Court was to the effect that though it is a mere tax and apparently not in derogation of freedom of opinion and freedom of expression, still it will have the effect of reducing the circulation of many newspapers. We cannot therefore go into the intention, whether it is good or whether it is bad, because that is a matter which cannot be ascertained otherwise than through the wording. We are to consider the tax mainly by its effect. There is no doubt that the tax will have the effect of suppressing many newspapers; in that way it will curtail freedom of expression and of opinion if the tax has the effect of reducing the circulation however slightly. It is well known, Sir, that a free press stand as an interpreter between the Government and the people. To allow it to be fettered is to fetter ourselves.

Then, of course, there is the question of merit; but that is a different, matter But as we have guaranteed the freedom of expression and opinion by article 13 clause (1), and also taken some power to curtail the right under clause (2) I specified directions, there should be no further attempt to curtail these rights. I submit that this is a matter which has to be carefully considered.

I readily admit the fact that there is no question of intention involved. We cannot attribute any bad intention to the legislature at all. But under the guise of a tax freedom of opinion, will be curtailed consciously or unconsciously.

Sir, one of the elements which ensure freedom in a democratic country is the Press. It is called the Fourth Estate of the Realm, the other three being the Legislature, the Judiciary and the Executive. Any attempt in any way to curtail the liberty of the press should, therefore be carefully considered by us.

Mr. President : I would like to hear Dr. Ambedkar and Shri Alladi Krishnaswami Ayyar on this point of order. I do not think it is necessary to have any more speeches in favour of the point of order.

The Honourable Dr. B. R. Ambedkar : Sir, I should like at the outset to state what the point of order is, or how I have understood it, because I should like to be corrected at the outset, if I am wrong. The point of order seems to be this that in view of the fact that this Assembly has passed article 13 which is a part of the Fundamental Rights and which says right to freedom of speech or expression-in view of this, is it open to this House to pass an article which would curtail the fundamental right given by article 13? I take it that is the point that we have now to consider.

In support of the proposition that this House is now debarred from considering any proposal which would have the effect of limiting freedom of speech, there has been cited a judgment of the Supreme Court of the United States in which – I have not read the whole thing, but only parts- it has been said that any tax levied on the press is ultra *vires,* in view of the fact – I am using the language of the United States – that it abridges the freedom of the press.

Shri Deshbandhu Gupta : Barring income-tax. It is stated in the judgment itself.

The Honourable Dr. B. R. Ambedkar : Now, Sir, it is not clear from the statement of fact of that particular case what the nature of the particular tax was which was called in question, nor is it clear as to the severity of that particular tax which was called in question. In my judgment, apart from the levy of the tax, the severity of the tax also would be an element in considering whether the tax was *ultra vires* or not. As I said, there is no reference to this important fact in this judgment. I am therefore not prepared to go by that judgment.

I am proceeding along other lines of arguments which I think are substantial and are not open to any criticism. The first point I want to submit is this : that, notwithstanding the fact that the constitutional guarantees which were given in the Constitution of the United States, the United States Supreme Court itself has held that these fundamental rights, guaranteed by the Constitution are not absolute and that the Congress of the United States has, notwithstanding the language used in the Constitution, the right to impose reasonable restrictions on those fundamental rights. In fact I may remind the House that, in the opening speech which I made in support of the motion that this House do proceed to take into consideration the draft Constitution, I devoted a considerable part to the consideration of this matter, because I had noticed some criticisms in papers and by others, to whom I was bound to pay a certain amount of respect and attention that our fundamental rights were of no value at all, as they were subjected to various limitations which were enumerated in propositions that follow article 13, namely clauses (2), (3), (4) and (5).

In order to meet those criticisms, I took some trouble to examine the decisions of the Supreme Court on this matter. I did so because at one time I felt that in view of the fact that the constitutional guarantees which were called fundamental rights were enunciated in the, Constitution of the United States in absolute terms without any qualifications, it may not have been open to the Supreme Court of the United States to limit those provision. But to my great surprise I found that the United States Supreme Court had taken the very same attitude that we have taken in the framing of the Constitution, namely that fundamental rights, however fundamental they may be, could not be absolute rights. They must be subject to certain limitations.

Now, if the House will permit me I shall quote only one passage from my speech. This is what I said.

> "In Gitlow vs. New York, in which the issue was the constitutionality of a New York, 'criminal anarchy' law which purported to punish utterances calculated to bring about violent change, the Supreme Court said :
>
> "It is a fundamental principle, long established, that the freedom of speech and of the press, which is secured by the Constitution, does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom."

And I quoted many other cases. My whole point is this: that even in the United States itself, it is an acknowledged proposition that there must be some limitations upon the fundamental rights. On that there can be no question at all, in my judgment. Therefore, in so far as our entry – I am not going into the amendments for the moment – deals with tax on advertisements, my submission is that that entry could not be questioned as an entry which is *ultra vires* of this House, because it is going to put some kind of limitation upon the freedom of the press if it is acted upon by the provincial Governments. I entirely refuse to accept that interpretation that any tax levied under the head `Advertisements would be *ultra vires* because it would infringe article 13.

The proposition which I submit could be enunciated and which is plausible and which may be accepted is this : that any imposition upon a newspaper of a tax of a severe nature which will result in wiping it out altogether, such an exercise of the taxation power, would be *ultra vires,* because it would completely wipe out the freedom of speech which has been guaranteed by article 13. In so far as the taxation imposed upon advertisements is not of a reasonable nature and is discriminatory, that is to say, it is merely confined to newspapers and all other forms of advertisements are exempted, then I can understand that that would violate article 15 under which we propose to give equal protection to all. Therefore my submission is that any argument which goes to the length of saying that anything which affects newspapers and the freedom of speech or writing in a newspaper would be *ultra vires.* I take the liberty to say, is not an argument which I am prepared to accept and which, I hope, this House will not accept.

Now I come to the other question. It is quite true that, in view of certain circumstances which have come to the surface in certain provinces, it may be necessary to transfer this particular entry regarding newspapers from List I to List II or place it in List III. This is a matter not of constitutional law. That is a matte of policy and a matter of confidence; whether you are prepared to put more confidence in the Centre or whether you are prepared to put more confidence in the provinces or whether you are prepared to put confidence in the provinces but would like to reserve to the Centre a certain amount of liberty and power to correct any wrong that a province might do in a matter which of course is open for discussion. That is what we have been discussing; whether any particular entry should remain in List I or part in List I and part in List II or in List III.

On that the House has of perfect liberty to decide, because it is matter on which the House has got complete freedom, and nobody is going to suggest that the House has its hands tied down by reason of article 13 and that it cannot do anything to impose any kind of limitation upon the newspapers. I repudiate that argument absolutely.

Now, Sir, I should like to deal with the various amendments. If you will permit me, I would like to deal with them because those who may follow me may criticise what I am saying. It seems to me that the friends who are interested in newspapers are really trying to get complete immunity, so to say, from any kind of taxation that may be levied by the provinces. The first amendment moved by my friend, Mr. Goenka, and several others-there are some fifty or sixty names- is that it should be transferred to the Union List, List I. In doing that they have done something which we ourselves had not done. Our newspaper entry is not connected with taxation. Those members who have closely watched the arrangement in List I and List II will realise that we have separated the entries into two parts, entries which are purely legislative and entries which are taxational. You will remember that newspapers, although they are mentioned in List III, they are mentioned only among the legislative entries. Now, the amendment moved by my friend, Mr. Goenka, has done the worst from his point of view, viz., he has put the newspapers in that part of List I which deals with taxation. It means that it would be open now for the Centre to levy a tax on newspapers. (*Hear, hear*) I do not like newspapers and I am not interested in either injuring them or in protecting them. I am prepared to place the whole matte in the hands of the House to do what it likes.

The second amendment moved by my friend, Mr. Jhunjhunwala, does what? He thinks that, although newspapers may be transferred to List I, newspapers as goods open to sale, will still remain in List II because the entry in that list is a very broad entry and would cover newspapers as goods and therefore he feels that there is no purpose served by merely accepting the amendment of Mr. Goenka because they would be liable to be taxed by the provinces under the entry relating to taxes on sale of goods. Therefore he has moved his amendment to get the newspapers out of the Sales Tax Act.

Now, the question to be considered is whether the provinces would agree that so important a part of what I may call the base of their taxation as constituted by the newspapers should be altogether eliminated from the field of provincial taxation. It is matter which has to be considered. Sir, being a financial matter, I do not think that the Drafting Committee would be prepared to take the responsibility on its own shoulders without consultation either with the Finance Ministry or with the Finance Ministers of the Provinces. We have been taking a great deal of responsibility so far as purely legislative entries are concerned. When the question of finance is concerned, we have a sort of standing convention that we should always consult the Central Finance Ministry as well as the Finance Ministers of the various provinces.

Therefore, these are the difficulties that are involved in these amendments. Now I do not know if you transfer the entry on newspapers to the Union List, the Centre may levy a tax on newspapers as manufacturers, because the, Centre is entitled to put an excise duty on any goods manufactured in any part of India. It seems to me therefore that it would be difficult for the newspapers to escape taxation. All these things have to be taken into consideration. That is to say, these are extraneous matters to which I have given expression at this stage because I think that every Member who wants to take part in the debate, ought to know what the difficulties are. All that I am interested in at the moment is this that there is no bar to the House considering any kind of limitation notwithstanding that we have passed article 13. The proposition which is being sought to be placed before the House for its acceptance is in my judgment a very dangerous proposition. It would eliminate even taxation absolutely. Even article 24 could not be there. Many other complications would arise. If you say that because fundamental rights are guaranteed therefore the taxation power should also not be exercised because that would result in the limitation or the destruction of the fundamental rights, it is too large a proposition and I do not think that anybody will ever accept this.

Shri Alladi Krishnaswami Ayyar : Mr. President, Sir, I do not want to travel the same ground so ably covered by my friend, the Honourable Dr. Ambedkar, but I should like to add a few words in regard to certain points which were not touched by him. Reliance has been placed on article 13. If as a result of the interpretation of article 13 none of the subjects referred to in that article ought to be the subject of any taxation, what we are leading up to, the House may realise. Freedom of the press may be taken as included in freedom of speech and expression, though as in other Constitutions, there is no special clause relating to the freedom of the press. If you refer to 13(f) ("to acquire, hold and dispose of property") a man has got a right to hold property. Therefore if this argument were sound no succession duty can be levied; his heir is entitled to hold the property; no estate duty can be levied. No kind of tax including capital levy will operate on that property, because you have guaranteed in the Constitution the right to acquire, hold and dispose of property. This will be a most dangerous doctrine to lay down, and I do not think that any court will be so foolish as to put that meaning on the expression "to acquire, hold and dispose of property". Proposals are on the anvil for the abolition of zamindari property. A zamindar has got the right to acquire, hold and dispose of property. Therefore you cannot have any kind of legislation with regard to the abolition of zamindari property. Then again take the right to practise any profession the lawyer's profession or any other profession. That right is there and therefore a professional tax cannot be levied according to the argument of the other side. We have already passed an article to the effect that professional taxes can be levied. Then take the expression "carry on any occupation, trade or business." The right is there and therefore you cannot levy any tax on any trade; you cannot levy any tax on any business or on any occupation. The result of this doctrine, of this mixing up a taxation provision with the provisions guaranteeing fundamental rights under article 13 would be to tie the hands of the State in such a way that no progress can be made. No State can function on that basis. It will be impossible to subscribe to a proposition of that description. It is unnecessary for me to go over other clauses, similarly in the chapter on Fundamental Rights, because I am not arguing, before a Court of Law to reinforce this particular point.

Then, reference has been made to the United States Supreme Court. I hope I will not be guilty of advertising myself if I refer to the fact that it was I that gave a reference to this case to the gentleman who was sponsoring the cause of newspapers of this country and my honourable Friend, Mr. Goenka will bear me out......

Shri Deshbandhu Gupta : We are thankful to you.

Shri Alladi Krishnaswami Ayyar : Having regard to the infancy of newspaper industry or whatever you call it in this country, the need for inter-provincial circulation, the possibility and the hardship of differential and different taxes being levied by different provinces, I felt the justice of the particular claim, namely, that it is much better whatever might be the form the tax may ultimately take that power should adhere in the Centre. I was of that opinion and I still adhere t that opinion and I am not holding any view against that, but to hold that opinion is not to give a *carte blanche* to newspapers or to say that every profession in India, every kind, of income every kind of industry, every kind of business can be taxed, but not newspapers or advertisements in newspapers. We have to some extent to count upon the wisdom of Parliament. It may be that under certain circumstances no tax ought to be levied at all and under other circumstances a tax may be levied at a low rate.

I should like to say a few words about advertising. A cinema girl is advertised in a newspaper and the newspaper is making plenty of money out of it. The marriage proposal between two parties is advertized or sometimes referred to in a newspaper. Let us realize the gravity of the step which you want to take. Under these circumstances to say that because it is a newspaper it is to be exempted from taxes, I submit is not a proposition which will either commend called a public point of view. At this stage of the discussion I am purely on the Constitutional point of view. At this stage of the discussion I am purely on the Constitutional point of view. Some reference has been made to the American constitution. It was unfortunate that instead of taking all the articles into consideration one should take hold of a judgment, read a passage here or read a passage there, take hold of some rules in a text book and then to lead or mislead the House and sometimes the public.

An honourable Member : That is what the lawyers always do.

Shri Alladi Krishnaswami Ayyar : There are two articles in the American Constitution, articles 5 and 14 referring to due process of law. The House may remember that at a particular stage in the proceedings of this House, I took strong exception to that expression `due process' being borrowed into our Constitution. Yesterday in some other meeting somebody said that I was in favour of imprisoning all people. I do not favour such a preposterous proposition. I cannot bear a prison and I can sympathize with people who are sent to prison. The only question is whether in the larger interests of the State what exactly are the limitations to be put on the rights guaranteed under the constitution including the right to property.

I will give you one instance. There is a provision in the United States Constitution to the effect that judges shall get a fixed salary and their salary shall not be diminished during the term of office. In the very early stages of the history of the United States Supreme Court the view was taken by the judges themselves that their salaries were exempt room taxation. fortunately in the later years the United States Supreme Court has gone back upon that view and the Court itself has said that a fixed salary does not mean that the judges are immune from the ordinary liabilities incidental to citizenship. Therefore you will have to take in all these cases. Supposing you put in a licence fee in respect of certain kinds of meetings, then you are interfering with the freedom of speech. If the tax is so oppressive as to strike at the very foundation of the right, it may be that the Court may well say that that law is invalid. That is what the honourable Dr. B. R. Ambedkar was alluding to. In the case of written Constitution, when you are dealing with the question whether the Legislature is acting within the terms of its power under a particular provision or not, the Courts are called upon to decide whether the legislature is keeping to the terms and spirit of the particular provision which clothes the Legislature with that particular power. If in acting under one provision the legislature misuses or abuses the power contained in the provision or invades the field entrusted to another legislature the Court may very well come to the conclusion that that provision is invalid. For example relying upon the maxim of Chief Justice Marshal that the power to tax is the power to destroy, you so tax as to practically destroy the freedom of the Press, certainly the arm of the Court will be long enough to protect that.

Under those circumstances, the House will be taking a dangerous step and a step which is fraught with serious evil to this country if it is said that particular people are exempt from taxation. It is another thing whether that power is within the term and within the spirit of the Constitution. In regard to other matters I have nothing to add to what the Honourable Dr. Ambedkar has said, but I venture to state, Sir, in all humility that there is absolutely not substance in the points of law raised, whatever might be the amendments that may be brought in order to see that newspapers do not suffer, that there is free circulation, that there is freedom of the press, that the power to tax is not so used as to destroy the foundation of free speech and opportunity of expression.

Pandit Thakur Das Bhargava : Supposing there is not complete destruction of this right, but there is material curtailment or abridgment, will it not be covered by this?

The Honourable Dr. B. R. Ambedkar : What is reasonable the Court will decide.

Shri Alladi Krishnaswami Ayyar : I have nothing to add to my speech.

(At this stage Shri Deshbandhu Gupta rose to speak)

Mr. President : I do not think there is any right of reply in a matter like this.

Shri Deshbandhu Gupta : On a point of order, I want to clear one or two points which seems to have created confusion.

Mr. President : No. It is question whether you have the right to reply or not.

An Honourable Member : The President has already said that the honourable Member has no right of reply.

Shri Deshbandhu Gupta : Sir, as some points have been raised and I would request you to explain these points particularly as no speaker from this side has spoken after Shri Alladi Krishnaswami Ayyar raised the points.

Mr. President : I think a larger number of people spoke from your side and from your point of view.

I have understood the point of order that has been raise. I shall have to consider it and I will give my ruling later, but in the meantime I would ask Dr. Ambedkar to consider the other point which he himself has raised, supposing. I rule that it is in order, then in that case I would expect him to be ready with the answer on the merits also as to whether you will have it in the form in which it is sought to be moved by Mr. Goenka or sought to be amended by Mr. Jhunjhunwala.

The Honourable Dr. B. R. Ambedkar : In that case, they should withdraw the

amendment.

Shri Deshbandbu Gupta : The amendment has not been moved. I took exception to the moving of the amendment.

Mr. President: I shall give my ruling later. We shall take up the other items now. Certain new items have been proposed. Some are. in the printed list. Before we go to that, let us go through the other entries.

Entry 89

Mr. President : I do not find any amendment to entry 89.

Entry 89 was added to the Union List.

Entry 90

Entry 90 was added to the Union List.

Entry 91

Mr. Naziruddin Ahmad: I shall not move the amendment; but I shall speak on the entry itself.

The Honourable Dr. B. R. Ambedkar: Why not present the baby with the song? Why the song only? You may move the amendment and make a speech.

Sardar Hukam Singh (East Punjab : Sikh): Mr. President, Sir, I beg to move :

"That in entry 91 of List I, the word 'other' be deleted."

I have another amendment also that was submitted along with this, but that has been numbered and placed at 171 "That entries I to 90 of List I be deleted." This has been put separately. I wanted to move them together. That opportunity was not given. My idea is, Sir.......

Mr. President: You are moving amendment number 234?

Sardar Hukam Singh: Yes, Sir. My only submission is that I put these two things together, amendments 234 and 171; but they have been split from each other and they appear in different places. No. 171 was not called. Perhaps it was considered too late or it may be called at the end, I cannot say. They were complete when read together and I would deal with both of them if I am permitted.

Mr. President: We have already passed all these entries.

Shri T. T. Krishnamachari: How could entries which we have passed be deleted ?

Sardar Hukam Singh: This is what I am submitting. This amendment. I was not permitted to move then. That has been put separately. I will now deal with amendment No. 234.

My difficulty, Sir, is that after dealing with all these entries from 1, to 90 and after discussing all those details, and even considering interplanetary travels and those journeys from one satellite to another, from the moon to earth and from earth to moon, we have at last come to the conclusion that they are not complete and there might be others that might be required to be included in this List. The object of this entry 91 is, whatever is not included in Lists II and III must be deemed to have been included in this List. I feel that it could be said in very simple words, if the word 'other' were omitted, and then there would be no need for this list absolutely. Ultimately, it comes to this that whatever is not covered by Lists II and III is all embraced in the Union List. This could be, said in very simple words and we need not 'have taken all this trouble which we have taken.

Shri Mahavir Tyagi : On a point of order, Sir, I beg to submit that the second part of the amendment which my honourable Friend Sardar Hukam Singh has moved, is out of order. It is not an amendment of entry No. 91. It is an amendment to entries from I to 90, which we have already passed. If the amendment were to be moved, it could be moved only when entry I was under consideration or entry 2 was under consideration.

Mr. President: He is not moving it; he is moving amendment 234,-that in entry 91 of List I, the word "other" be deleted.

Shri Mahavir Tyagi : The second he is not moving?

Mr. President: He is moving only the other one.

Shri Mahavir Tyagi: I beg your pardon, Sir.

Sardar Hukam Singh: My submission was that the omission of the word 'other' from this entry would have served the whole purpose of putting this long list. I fear there might not be some servile mentality exhibited here because the Act of 1935 had about 320 articles and ten schedules, and then the seventh schedule had three lists and that has been followed in this Draft as well. Otherwise, we need not have gone into these details. I am reminded. of a short story. A gentleman asked his expert friend, what was the best method of catching a crane. The expert friend replied, 'just go when it is dark, put some wax on the. head of the crane, when the Sun would rise afterwords, it would melt the wax which is sure to fall into its eyes. The bird would be blind and you can catch it. The gentleman asked, then why not catch it at the very beginning when you go to put the wax ? He replied, if it were done so easily, then where was the master's feat, *i.e.*, ustad ki ustadi

I fail to understand, Sir, why all this procedure should have been gone through. When we come to entry 9 1, we have to put, this residuary power. It could have been more easily done by paying more attention to Lists 11 and III and simply saying any matters not enumerated, in Lists II or III including any tax not mentioned in either of those lists. That would give us the same effect without bothering about all these details, With these words, I move my amendment.

Mr. Naziruddin Ahmad: Mr. President, Sir, I do not wish to oppose entry 91. It is too late to do it, but I should submit that the moment we adopted entry 91, it would involve serious redrafting of certain articles and entries. Under article 217 we have stated in substance that entries in List I will belong to Union List II to States and List III common to both. That was the original arrangement under which we started. We took the scheme from the Government of India Act. When an entry like 91 was considered at an earlier stage we agreed that the residuary power should be with the Centre. This was an innovation, as there was nothing like it in the Government of India Act. As soon as we accept entry No. 91, article 217 and a few other articles would require redrafting and entries 1 to 90 would be redundant. In fact all the previous entries-from I to 90 would be rendered absolutely unnecessary. I fail to see the point now retaining entries 1 to 90. If every subject which is not mentioned in Lists II and III is to go to the Centre what is the point in, enumerating entries I to 90 of list I? That would amount to absolutely needless, cumbersome detail. All complications could be avoided and matters simplified by redrafting article 217 to say that all matters enumerated in List. II must belong to the States, and all matters enumerated in List III are assigned to the Centre and the States concurrently and that every other conceivable subject must come within the purview of the Centre. There was nothing more simple or logical than that. Instead, a long elaborate List has been needlessly incorporated. This was because List I was prepared in advance and entry No. 91 was inserted by way of after thought. As soon as entry 91 was accepted, the drafting should have been altered accordingly. Article 217 should have been re-written on the above lines and matters would have been simplified. May I suggest even at this late stage that these needless entries be scrapped and article 217 be re-written and things made simple? I had an amendment to that effect but I did not move it because I know that any reasons behind an amendment would not be deemed fit for consideration by the House.

Prof. Shibban Lal Saksena : Sir, to-day is a great day that we are passing this entry almost without discussion. This matter has been the subject of discussion in this country for several years for about two decades. Today it is being allowed to be passed without any discussion. The point of view of Mr. Naziruddin Ahmad is not correct. In fact Dr, Ambedkar has said that if there is anything left, it will be included in this item 91. I therefore think that it is a very important entry. There should not be any deletion of items 1 to 90. I know this entry will include everything that is already contained in the first 90 entries as well as whatever is left. This entry will strengthen the Centre and weld our nation into one single nation behind a strong Centre. Throughout the last decade the fight was that provincial autonomy should be so complete that the Centre should not be able to interfere with the provinces, but now the times are changed. We are now for a Strong Centre. In fact some friends would like to do away with provincial autonomy and would like a unitary Government. This entry gives power to the Centre to have legislation on any subject which has escaped the scrutiny of the House. I support this entry.

The Honourable Dr. B. R. Ambedkar : My President, I propose to deal with the objection raised by my Friend Sardar Hukum Singh. I do not think he has realised what is the purpose of entry 91 and I should therefore like to state very clearly what the purpose of 91 in List I is. It is really to define a limit or scope of List I and I think we could have dealt with this matter, *viz.*, of the definition of and scope of Lists II and III by adding an entry such as 67 which would read :

> "anything not included in List II or III shall be deemed to fall in list I".

That is really the purpose of it. It could have been served in two different ways, either having an entry such as the one 91 included in List I or to have an entry such as the one which I have suggested – 'that anything nor included in List II or III shall fall in List I'. That is the purpose of it. But such an entry is necessary and there can be no question about it. Now I come to the other objection which has been repeated if not openly at least whispered as to why we are having these 91 entries in List I when as a matter of fact we have an article such as 223 which is called residuary article which is 'Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List'. Theoretically I quite accept the proposition that when anything which is not included in List II or List III is by a specific article of the Constitution handed over to the Centre, it is unnecessary to enumerate these categories which we have specified in List I. The reason why this is done is this. Many States people, and particularly the Indian States at the beginning of the labours of the Constituent Assembly, were very particular to know what are the legislative powers of the Centre. They wanted to know categorically and particularly; they were not going to be satisfied by saying that the Centre will have only residuary powers. Just to allay the fears of the Provinces and the fears of the Indian States, we had to particularise what is included in the symbolic phrase "residuary powers". That is the reason why we had to undergo this labour, notwithstanding the fact that we had article 223.

I may also say that there is nothing very ridiculous about this, so far as our Constitution is concerned, for the simple reason that it has been the practice of all federal constitutions to enumerate the powers of the centre, even those federations which have got residuary powers given to the Centre. Take for instance the Canadian constitution. Like the Indian Constitution, the Canadian Constitution also gives what are called residuary powers to the Canadian Parliament. Certain specified and enumerated powers are given to the Provinces. Notwithstanding this fact, the Canadian constitution. I think in article 99, proceeds to enumerate certain categories and certain entries on which the Parliament of Canada can legislate. That again was done in order to allay the fears of the French Provinces which were going to be part and parcel of the Canadian Federation. similarly also in the Government of India Act; the same scheme has been laid down there and section 104 of the Government of India, Act, 1935 is similar to article 223 here. It also lays down the proposition that the Central Government will have residuary powers. Notwithstanding that, it had its List I. Therefore, there is no reason, no ground to be over critical about this matter. In doing this we have only followed as I said, the requirements of the various Provinces to know specifically what these residuary powers are, and also we have followed well-known conventions which have been followed in any other federal constitutions. I hope the House will not accept either the amendment of my Friend Sardar Hukam Singh nor take very seriously the utterings of my Friend Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Never.

Mr. President : I shall put the amendment moved by Sardar Hukam Singh to vote.

The question is :

"That in entry 91 of List I, the word "other" be deleted."

The amendment was negatived.

Mr. President : Then I put the entry 91. The question is :

"That entry 91 stand part of List I".

The motion was adopted.

Entry 91 was added to the Union List.

Prof. Shibban Lal Saksena : Sir, I have got three amendments which you said could be taken up at the end.

Mr. President : Yes, I remember.

I will now take up a number of new amendments which are sought to be proposed. I will take the first amendment - in the Printed List. There are three new entries suggested. One is in amendment No.3586 in the names of Pandit Lakshmi Kanta Maitra, Shri Sures Chandra Majumdar and Shri Mihirlal Chattopadhyay; the next one is in No.3587 in the name of Shri Arun Chandra Guha. I take it these are not moved. And then there is amendment No.3588 in the names of Shri M. Ananthasayanam Ayyangar, Shrimati G. Durgabai and Shri Sures Chandra Majumdar. That is also not moved.

Then we come to No.58 in List I (Sixth Week), the amendment of Shri Brajeshwar Prasad. Do you wish to move it?

Shri Brajeshwar Prasad : Yes, Sir. I beg to move:

"That with reference to amendment No.3588 of the List of Amendments, the following entries be added to List I :-

1. "Scheduled Areas" and "Tribal Areas".
2. All the entries from 1 to 66 in List II."

Sir, may I move the other amendments also?

Mr. President : No, we had better take them, one by one.

Shri Brajeshwar Prasad : Sir, I hold the view that if we have got the interest of the tribal people to heart, if we want to do justice to them, then the tribal areas and the scheduled areas must come to the Centre. Sir, forests and minerals lie in these zones, and I regard these subjects as vital subjects. And if these two subjects are to be taken up and be in the hands of the Centre, I feel that the tribal areas must also be taken up by the Government of India. While discussing another article I said that by making the tribal areas centrally administered areas, the tribals will develop a sense of unity and oneness among the tribal people. I feel also that the Provincial Governments, due to the lack of economic resources have not been able to pay much attention to the problems that confront them. So the problem of poverty and illiteracy among these tribal people cannot be solved by the Provinces with the limited financial resources that they have. If we, therefore want that the tribal people should be brought to the level of the other non-tribal people living in India, then the Central Government should take charge of these tribal areas.

The point was raised the other day that such a course would prevent the assimilation of the tribal people with the general public of our country. Sir, I think that the ideal of assimilation is merely a distant goal. This is not the immediate issue before us. Let us first try to assimilate ourselves before we try to assimilate the tribal people with ourselves. In spite of the fact that Biharis and Bengalees have lived together for centuries, we have not been able to assimilate ourselves. In spite of the fact that we have had Telugus and Tamils living together for centuries, they have not been able to assimilate themselves. In spite of the fact that there has been a common government at the Centre, the distinctions and the differences between the people of the North and the people of the South have persisted. Let us first solve this problem. It does not indicate a high sense of proportion in us if instead of achieving these goals we talk of assimilating the tribal people.

I also maintain that the question of their assimilation should be decided by the leaders and representatives of the tribal people themselves. Let them decide that question. Our duty is only to provide them with the means of development, to give them the opportunities for their educational, cultural and economic development. If we provide these things For the tribal people, then I would consider that we have done our duty. And then let their own leaders decide whether they should merge with the rest of the population or remain as a separate entity. My own feeling is that this question of assimilation is a very far-fetched question and it has no connection with the problems that confront us today.

As regards the second point, I am not prevented from moving this by any articles of the constitution that we have already passed. I am suggesting that there should be only two Lists – the Union List and the concurrent List.

Shri R. K. Sidhva : Is it in order to make this suggestion now?

Shri Brajeshwar Prasad : If it would not have been in order, the motion would not have been allowed to be moved.

Shri R. K. Sidhva : Do you want the provinces to be liquidated?

Shri Brajeshwar Prasad : I do not want the provinces to be liquidated. They should have concurrent powers of legislation. I want provincial governments to exist. I hold the view that the social purposes of the age cannot be fulfilled if we do not, with all possible haste, do whatever lies in our power to develop our agricultural, mineral and industrial resources. These developments require to be scientifically planned within the shortest possible time. We cannot afford to have a house divided into a large number of water-tight compartments. The old concept of division of powers or separation of powers does not fit in with the needs of the present century. It was suited to the needs of a bygone age.

Mr. President : I think you are going over the same ground again that there should be no provinces.

Shri Brajeshwar Prasad : No, Sir. The provinces should exist, but they should enjoy only concurrent powers. I am not against provinces. Whatever my own personal feelings in the matter may be, at the present moment I am not advocating that the provinces should be abolished. What I am saying is that they should have only limited powers – concurrent powers.

I know that you are very keen on time, Sir, so in deference to your wishes I will only urge one point more and conclude my speech. I feel that if we are to play our part in foreign politics, we must not have provincial governments vested with a large number of powers. They must not have autonomous powers. They should have only concurrent powers. What is the game of our opponents? The game of Anglo-American powers in Asia has been to prevent the establishment of a United, strong Centre in India. They want the disruption of India. It was with this end in view that they separated Burma from us. It was with this end in view that they divided this country. It was with this end in view that they gave complete independence to the Indian States. Now, are we going to fall in line with the hopes and aspirations of the Anglo-American powers? *(Interruption)*. If we want to frustrate the aims of our enemies, we must have a strong Centre and provinces vested only with concurrent powers. I would have taken more time, but I feel that the temper of the House is not favourable.

Mr. President : I think it is not necessary to have any further discussion on this point. However, if Dr. Ambedkar has anything to say about it, I would hear him; but otherwise I do not think any discussion is necessary on a point like this.

The Honourable Dr. B. R. Ambedkar : No discussion is necessary. I do not wish to say anything.

Shri Brajeshwar Prasad : I would like to withdraw my amendment.

Mr. President : I take it the House gives him leave to withdraw.

Prof. Shibban Lal Saksena : No.

Mr. President : You do not give him leave to withdraw. Very well, I will put it to vote. The question is :

"That with reference to amendment No.3588 of the List of Amendments, the following entries be added to List I :-

1. "Scheduled Areas" and "Tribal Areas"
2. All the entries from 1 to 66 in List II"

The amendment was negatived.

Mr. President : There were two amendments of Dr. Deshmukh which I held over yesterday –223 and 224. He may move them.

Dr. P.S. Deshmukh : Sir, I shall move amendment 223. I beg to move :

"That after the proposed new entry 70A the following new entry be added :

"70B. Protection of children......"

'I would beg your pardon and request you to permit me to add the, words "and young men" after the word "children"

.... and young men ...." (Interruption)

Mr. President : And not young women?

Dr. P. S. Deshmukh : Man includes woman. It is contained in the article in the Directive Principles. So "protection of children and young men, their exploitation and abandonment," would be the altered form of my amendment.

Sir, if you refer to the proposed entry in List II, No.5, you will find that for the States we have the entry "Prisons, reformatories, Borstal institutions and other institutions of a like nature and persons detained therein". Then, in the concurrent List, entry 6, we have "marriage, and divorce, infants and minors; adoption".

Shri H. V. Kamath : May I point out to my friend that the word used in Part IV Directive Principles is not "young men" but "youth"? I refer to article 31.

Dr. P. S. Deshmukh : If that is the word, then I had probably referred to the wording as it stood in the original Draft. I would like to change it to "youth", or whatever there is in article 31 as finally approved. From these two entries I have mentioned, you will find, Sir, that the States have been given power to deal with child delinquents by giving powers of legislation – with regard to reformatories and Borstal institutions and so that question of child delinquency has been dealt with already or will be dealt with when we discuss List No. II.

So far as entry 6 in List III is concerned, we would be giving concurrent power with regard to marriage and divorce. So far as infants and minors are also mentioned and are to be taken in the same context. It is quite clear that this can refer only to the infants and minors so far as their legal status is concerned and by the above entry it would be possible for the State Governments to make legal provisions in so far as they are concerned. But unfortunately there is nothing so far as the welfare and protection of children and youth is concerned, especially their exploitation and abandonment, which has been one of the articles which we have already passed, *viz.* article 31. By this article we want the Union Government to be responsible for the protection of children and to see that there is no exploitation or abandonment of children and youth. I think it is in the fitness of things that we should have an entry in the Union List so as to empower the Union to legislate in this matter.

I have already answered the view that this entry is unnecessary. If any body were to contend to that effect because there are entries in Lists II and III and therefore say that this entry is not necessary, my submission to the House is that those entries do not cover the case. I have in view. We have very rightly and properly taken pains to have an entry in the article with regard to the exploitation of children and youth in our Directive Principles, and therefore it follows logically that the Union ought to be empowered to pass legislation in this respect. I do not think I need draw the attention of the House as to how children in this country are neglected, how destitute children wander about at the railway junctions and railway stations, near and about the Cinema Theatres and Bus Stands, etc. In our country one easily gets the impression that the children are the Cheapest of articles. If only we analyse our attitude towards them, one gets the impression that even sewage and dirt is more valuable than children. I am glad that we have taken care to include this in our Directive Principles and if we are serious about our Directive Principles, then the Union should have the power to legislate in this matter and to take early steps to remedy the present abominable situation. From this point of view, Sir, I press that this entry be accepted by the House.

So far as the other two entries are concerned, I would beg for your leave to move them when we come to the discussion of the amendment so far as newspapers are concerned.

Mr. President : Has Dr. Ambedkar anything to say on this ?

The Honourable Dr. B. R. Ambedkar : No, Sir, I have nothing to say in reply. Young men and young women are capable of taking care of themselves. Why bother about them ?

Mr. President : The question is :

"That after the proposed new entry 70A of List I, the following new entry be added: -

'70B Protection of children and young men their exploitation and abandonment.' "

The amendment was negatived.

Mr. President : There were three additional entries which stood in the name of Professor Shibban Lal Saksena, Yesterday when I called them he was not in his seat; I took them as not moved. As he said that he wished to move them I said I would consider the matter.

Prof. Shibban Lal Saksena : Sir, I beg to move:

"That after entry 59 of List I, the following new entry be added : -

'59A. Labour Legislation, and Legislation for settlement of Industrial disputes.' "

"That after the entry 59 of List I, the following new entry be added:-

'59B. Co-ordination of machinery for settlement of industrial disputes in States and in the Union and the provision of Supreme Industrial Appellate Tribunals.' "

"That after entry 59B of List I, the following new entry be added :-

'59C. Unemployment Insurance.' "

Sir, I thank you for having given me an opportunity of moving these amendments and I wish to draw your attention to the importance of these entries. I know that in the Concurrent List we have got items.

26. Welfare of labour; conditions of labour; provident funds; employers' liability and workmen's compensation; health insurance, including invalidity pensions; old age pensions.

27. Unemployment and social insurance.

28. Trade Union; industrial and labour disputes.

which means that both the provinces as well as the Centre can pass laws in that connection. In entry No. 59 it is said that industrial disputes concerning Union, employees shall be a Central subject, so that even though industrial disputes are in the concurrent list, so far as Union employees are concerned, legislation to settle these disputes will be the province of the Union Government. what I want is this : that these items in the Concurrent

List may remain as they are, but the items which I have proposed may be added to the Union List. The main Purpose of this amendment is to bring about uniformity in the matter of labour legislation all over the country. At present the position is this. Although the same industry is dispersed all over the country still labour is governed by different laws in different parts of the country, with the result that there is discontent among labour. That, for instance, is the case with regard to the sugar industry. The industry is situated in the U. P., Bihar, Madras and Bombay; but the labour is governed by different laws in different parts of the country. That is also the case with regard to jute textile and other industries. I therefore, want that labour legislation should be uniform all over the country.

My second amendment relates to the co-ordination of machinery for the settlement of industrial disputes. Machinery for this no doubt exists in every province, but there is no coordination of these activities of the various provincial Governments. Again there is no appellate tribunal to which all can go. I consider it a very important thing which must be provided for. I understand that the Central Government is intending to bring in a Bill to establish an appellate tribunal. I therefore want that this power should be given to the Centre. Coordination cannot be done by the provinces. Therefore this entry must be in the Union List.

My next amendment runs thus:

"That after entry 59B of List I, the following new entry be added:-

'59C. Unemployment Insurance.' "

It is now in the Concurrent List. The provinces will never be able to enforce this. If you want to make it a reality and to make it uniform throughout India, you must take this on to the Union List. Labour the world over is one and therefore the conditions of labour throughout India must be uniform. There will be discontent and heart burning if in Bombay, for instance, there is the system of doles and elsewhere there is not. In the United Provinces there are labour laws governing the conditions of labour in sugar factories and so on, while in other provinces there are no such laws. This leads to competition among industrialists and the labour suffers. If there are uniform laws labour will be contented.

The Honourable Dr. B. R. Ambedkar : I do not accept any of the amendments.

Mr. President : I will now put the amendments to the vote of the House. The question is :

"That after entry 59 of List I, the following new entry be added :-

59A. Labour legislation, and legislation for settlement of industrial disputes.' "

The motion was negatived.

Mr. President : The question is :

"That after entry 59A of List I, the following new entry be added:-

59B. Co-ordination of machinery for settlement of industrial disputes in States and in the Union and the provision of Supreme Industrial Appellate Tribunals.' "

The motion was negatived.

Mr. President : The question is :

"That after entry 59B of List I, the following new entry be added: -

'59C. Unemployment Insurance.' "

The motion was negatived.

Mr. President : Then there are several new items which Shri Raj Bahadur wants to add.

Shri Raj Bahadur (United State of Matsya) : sir, from among the items included in amendment No.267 I am moving only one. I beg to move:

"That after entry 90 of List I, the following new entry be added:-

'90A. control and eradication of beggary.' "

Sir, I believe, it will be admitted on all hands that no other country in the world suffers from the evil of beggary so much as India. In fact in most countries they have legislation prohibiting beggary; but in our country this evil continues as a stigma on our fair name and reputation. By pressing for the inclusion of the aforesaid entry I want to focus the attention of the future Parliaments to this evil, so that, no matter what party is there in power, action may be taken by the Government to check this evil.

We know, that the problem of beggary is closely inter-linked with the problems of poverty and unemployment. We know how the slavery of our country in the past and the callous indifference on the part of foreign rulers for the welfare and progress of the people, has resulted in exploitation and abject poverty of the masses of this country.

Apart from that aspect, however, certain psychological conditions also have accounted for the problem of beggary in our country. We have certain notions of charity. They are laudable but have more often been misdirected. In most cases charity is misconceived and misplaced. Instead of seeing to it that our charity is directed only to such purposes as deserve it, we give alms to undeserving members of society and thus encourage beggary. We give alms purely guided by faulty notions and sentiments. Moreover, our climatic conditions also result in lethargy and laziness in the habits of our people. This has also accounted for this abnormal number of beggars in the land. Some people turn beggars only because they are too lazy to work. They fill their stomach without earning their livelihood by honest work. They simply live on alms and do not work. They are a burden on Society. This srot of lethargy is increased by the existence of illiteracy.

This is, hence, a multifaced problem and ought to be solved not only on a local or municipal basis but on a national basis. I, therefore, seek by means of this amendment to include the control and eradication of beggary in the Union List. It is high time that we removed this blot and blemish from the fair face of our country. I submit that a scientific and systematic treatment of the problem is indispensable. Today if we go anywhere in our country, in towns or villages or every street-corner or by-lane, on the foot-paths, in front of the cinema houses and bus-stands we find swarms of these miserable wretches stretching out their palms for alms. We have got to realise the seriousness of the problem. As I said, I would not move any of the other amendments because I feel somewhat discouraged to see that the Honourable Chairman of the Drafting Committee is not even taking the trouble to reply to most of the amendments moved by other members suggesting new entries.

Shri T. T. Krishnamachari : He is engaged in studying the amendment moved by you.

Shri Raj Bahadur : I would be very fortunate if I get a reply to my motion.

The Honourable Dr. B. R. Ambedkar : Sir, as my friend expects a reply from me, I would just say one or two words.

The question of control and eradication of beggary is a matter which has been already provided for in List III in entry 24,'Vagrancy', which includes beggary. The only point is whether it should remain there or should be brought in List I. I think it will be better to leave it in List III so that both the Provinces and the Centre could operate upon that entry.

Shri Raj Bahadur : Vagrancy and beggary are distinct terms. The term 'Vagrancy' connotes somewhat a bad character and all beggars may not be bad characters. 'Vagrancy' may include beggary, but some beggars may not be vagrants at all.

Mr. President : I will now put Mr. Raj Bahadur's amendment to the vote.

Shri Raj Bahadur : If the Honourable Chairman of the Drafting Committee thinks that vagrancy includes beggary, I am prepared to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : There is one more entry proposed by Dr. Deshmukh, amendment No.235.

Dr. P. S. Deshmukh : I do not want to move it.

Mr. President : Then there is another entry which was left over, by Pandit Thakur Das Bhargava, amendment No.192.

Pandit Thakur Das Bhargava : I do not propose to move it at this stage, I will subsequently move the subject matter of this amendment to be taken to the Concurrent List.

Mr. President : We will now take up List II, entry I. I have got notice of an amendment that entries 1 to 66 be transferred to List III, by Mr. Brajeshwar Prasad. I do not think it is necessary to move it.

Shri Brajeshwar Prasad : It may be taken as moved.

Mr. President : Yes, and withdrawn also.

Shri Brajeshwar Prasad : That will come at a later stage, Sir.

Mr. President : I do not think it is necessary to move it. There is another amendment by Mr. Brajeshwar Prasad that entry 1 of List II be transferred to List I as new entry 2A.

Shri Brajeshwar Prasad : May I request your permission to move that entry.

Mr. President : Yes, you can move it.

Shri Brajeshwar Prasad : Mr. President, Sir, I beg to move :

"That entry 1 of List II be transferred to List I as new entry 2A".

Sir, this entry refers to public order.

Dr. P. S. Deshmukh : On a point of order, Sir, we have already disposed of the whole of List I. Any entry which was intended to be added to List I ought to have been moved before. So long as Mr. Brajeshwar Prasad did not say then that he wanted this entry to be added there, I do not think it is proper for him to move the amendment now because we have already finalised List I, except in respect of newspapers.

Shri Brajeshwar Prasad : I would submit that so long as List II and List III have not been finally disposed of, it is within our competence to transfer one entry from one List to another. Of course, if it is your ruling, Sir, that the point which has been raised by Dr. Deshmukh is valid, then I am quite prepared to resume my seat. But hereafter no new entry should be permitted to be added to List I.

Dr. P. S. Deshmukh : But you ought to have moved it at an earlier stage.

Shri Brajeshwar Prasad : I have moved it in the stage which I think is the proper stage.

Shri T. T. Krishnamachari : It would have been perfectly proper for the honourable Member to have moved this amendment when we were considering List I.

Mr. President : The point of order is whether any addition can be proposed to List I now.

Shri T. T. Krishnamachari : We have already finalised List I. Now we can only allow transfer from List II to List III, not to List I.

Mr. President : I think it would be much better if we allow him to move it.

Shri Brajeshwar Prasad : Sir, the administration of public order in the provinces has not been of a satisfactory character. They have not the resources to maintain an efficient system of administration. Seventy-two per cent. of the budget of Assam goes in the form of salary bills. The other twenty-eight per cent. is left for managing a large number of subjects. The result has been deterioration in the efficiency of the administration. There are also some States and provinces on the borders of foreign States. Is it the opinion of the House that it is not risky, it is wise to leave the question of public order entirely in the hands of the provincial governments? In a State like Assam and East Punjab, public order.....

Shri B. L. Sondhi (East Punjab : General) : What is wrong with East Punjab?

Shri Brajeshwar Prasad : There is nothing wrong about East Punjab. I was only saying that these States are on the borders of foreign States. Therefore it is necessary that the power to maintain public order should remain in the hands of the Central; Government. With the limited resources at their disposal, it will not be possible for these States to maintain public order.

An Honourable Member : Strengthen them.

Shri Brajeshwar Prasad : The provinces of West Bengal and East Punjab are partitioned provinces. They are suffering from the problem of relief and rehabilitation, from the problem of migration of population, and there has also been infiltration of subversive elements in the services of these two provinces. I do not say that the services of the other provinces are safe; there has been infiltration in the services of the other provinces also; but in the case of these two provinces in particular, there has been considerable infiltration of subversive elements. The result is that the integrity, the efficiency of the provincial administration – my friends from West Bengal will bear me out – has deteriorated. Sir, in other provinces also crimes are on the increase. The machinery of law and order has been considerably weakened. Lawlessness prevails in many provinces. The pursuit of power politics by provincial ministers and the growth of caste feelings have shattered all semblance of civilised administration. I, therefore, strongly feel that public order should become a Central subject. There are dangers within and dangers without, and we cannot depend upon the loyalty of the provincial administration in times of crises. Centrifugal forces have been the bane of our political life since the dawn of history. I therefore urge, Sir, that public order should become a Central subject.

Mr. President : Do you want to say anything, Dr. Ambedkar ?

The Honourable Dr. B. R. Ambedkar : I do not want to say anything.

Shri Brajeshwar Prasad : I withdraw my amendment.

Mr. President : The House evidently is not in a mood to give permission for this amendment to be withdrawn. I will put it to the vote. The question is :

"That entry 1 of List II be transferred to List I as new entry 2A."

The amendment was negatived.

Mr. President : There is an amendment by Dr. Ambedkar, amendment No.63.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in entry 1 of List II, the following words be deleted:

'preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention.' "

It is proposed that this entry should be put in List III. That is the reason why I propose that these words be deleted.

Sardar Hukam Singh : Sir, I move:

"That in entry 1 of List II, after the words "naval, military or air forces" the words "or any other armed forces of the Union" be inserted."

My purpose in moving this amendment is that I feel that it is a lacuna, an omission on the part of the Drafting Committee. If I am told that it has been deliberately omitted............

The Honourable Dr. B. R. Ambedkar : I am prepared to accept this amendment.

Sardar Hukam Singh : Then I need not say anything.

Mr. President : The question is :

"That in entry 1 of List II, after the words "naval, military or air forces' the words 'or any other armed forces of the Union' be inserted."

The amendment was adopted.

Mr. President : The question is :

"That in entry 1 of List II, the following words be deleted:-

"preventive detention for reasons connected with the maintenance of public order, persons subjected to such detention."

The amendment was adopted.

Mr. President : The question is :

That entry I as amended, stand part of List II.

The motion was adopted.

Entry 1, as amended, was added to the State List.

Entry 2

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for entry 2 of List II, the following entry be substituted:-

'2. The administration of justice, constitution and organisation of all courts except the Supreme Court and the High Courts; fees taken in all courts except the Supreme Court.' "

The only change made is that the High Courts have been brought in because as I explained yesterday so far as the constitution and organization of High Courts are concerned, they are completely under the control of the Centre.

Mr. President : Then there is amendment No.236. I do not think it could arise now because we have already passed the entry including the High Courts in the first list. The amendment is to the effect that the High Courts should be deleted. So it is out of order. The next amendment is 237, standing in the same of Dr. P. S. Deshmukh. It is also the same thing.

Dr. P. S. Deshmukh : Sir, I do not move it.

Sardar Hukam Singh : Sir, I beg to move :

"That in amendment No.64 of List I (Sixth Week), in the proposed entry 2 of List II, after the words 'and the High Courts' the words 'and persons entitled to practise before the Supreme Court or any High Court' be inserted."

My object in moving this is similar to the one that I moved previously.

Mr. President : This was practically passed yesterday in connection with an entry in List No.1. So this question cannot be moved. We have already passed an entry in List No.1 which covers this point.

Shri T. T. Krishnamachari : The idea is that he wants the exclusion of those words expressly.

Sardar Hukam Singh : You have included these persons also in List No.1. When we exclude the Supreme Court, the High Court, then the persons entitled to practise should also be excluded along with this Supreme Court and the High Court.

Shri T. T. Krishnamachari : It is specific entry.

The Honourable Dr. B. R. Ambedkar : Yesterday's entry was a specific entry and therefore his amendment is unnecessary.

Shri Raj Bahadur : Sir, I move:

"That in amendment No.64 of List I (Sixth Week), in the proposed entry 2 of List II, after the words 'Supreme Court' where they occur for the second time, the words 'and the High Courts' be inserted."

Sir, as has been observed by the Honourable Dr. Ambedkar, the supervision, control and organization of the High courts has been made a subject in the Union List. It is but meet and proper that the fees should be uniform in every High Court. Therefore fees taken not only by the Supreme Court but also fees taken in the High Court should be a subject-matter which should be excluded form the purview of this new entry.

Shri T. T. Krishnamachari : The position really is that entry 52 expressly puts the fees, taken by the Supreme Court in List I and if we accept the amendment of Mr. Raj Bahadur, the power to levy fees by the High Court will be left in the air.

Mr. President : The question is :

"That in amendment No.64 of List I (Sixth Week), in the proposed entry 2 of List II, after the words 'Supreme Court' where they occur for the second time, the words 'and the High Courts' be inserted."

The amendment was negatived.

Mr. president : The question is :

"That for entry 2 of List II, the following entry be substituted:-

'2. The administration of justice, constitution and organisation of all courts except the Supreme Court and the High Courts; fees taken in all courts except the supreme Court.' "

The amendment was adopted.

Mr. President: The question is :

That entry 2 as amended, stand part of List II.

The motion was adopted.

Entry 2 as amended, was added to the State List.

Entry 3

Entry 3 was added to List II.

Entry 4

Shri Brajeshwar Prasad : I will move my amendment without offering any comment, *i.e.*, I will not deliver any speech. Sir, I move :

> "That for amendment No.3589 of the List of Amendments, the following be substituted: -
>
> "That entry 4 in List II be omitted from that List and be included in List I.' "

Sir, I may with your permission say that instead of List I the entry should be included in List III. It will meet the objection of Mr. T. T. Krishnamachari. Sir, I regard "Police" as a vital subject and I think it should be included in the concurrent powers and thus brought under the Centre.

Shrimati Purnima Banerji (United Provinces : General) : I want to ask whether you are satisfied that 'police' includes the Home Guards and the Pranthiya Raksha Dal.

The Honourable Dr. B. R. Ambedkar : That depends upon any legislation made by the province. If under the Police Act they enroll a certain person, he is a police for that purpose or if they enroll under some other Act and they are given the powers of the Police, that will also be police.

Shri Mahavir Tyagi : May I ask whether the Home Guards and the Pranthiya Raksha Dal go under the residuary powers of the Government of India or be controlled by the local Government? Where will they go?

The Honourable Dr. B. R. Ambedkar : If it is not Police, then it will go under the Central Government. "Police" is used in contradiction to "Army". Anything which is not "army" is police.

Shri Mahavir Tyagi : Let that go down as your ruling within quotations.

Pandit Hirday Nath Kunzru : If Dr. Ambedkar's interpretation is correct, then a province can raise an army without calling it by that name.

The Honourable Dr. B. R. Ambedkar : No, I do not think they can do it.

Dr. P. S. Deshmukh : That is what is happening already.

The Honourable Dr. B. R. Ambedkar : An army is enrolled under the Indian Army Act of 1911 and there are stringent conditions laid down as to enrolment in that Act. A province has no right to legislate on that entry at all.

Pandit Hirday Nath Kunzru : A province will not legislate with regard to the creation of an army at all. But, it can raise a force and give it military training without calling it an army.

Shri T. T. Krishnamachari : I might mention, Sir, that there are special armed police in the provinces. They are recruited under the powers given under the Police Act. They are considered to be a police force even though they are on a *quasi* military basis.

Shri Mahavir Tyagi : Why don't you add the word Home Guard and make it clear?

The Honourable Dr. B. R. Ambedkar : There are armed police; there are unarmed police.

Mr. President : The question put by Pandit Kunzru is whether a province will be able to raise an army, without calling it an army, but calling it police.

The Honourable Dr. B. R. Ambedkar : I am sure if a province is going to play a fraud on the Constitution, the Centre will be strong enough to see that that fraud is not perpetrated.

Mr. President : I will put the amendment of Mr. Brajeshwar Prasad to vote.

Shri Brajeshwar Prasad : I beg leave to withdraw it, Sir.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

"That entry 4 stand part of list II."

The motion was adopted.

Entry 4 was added to the State List.

Entry 5

Entry 5 was added to the State List.

Entry 5-A

Mr. President : Amendment 3590 has not been moved.

Shri Brajeshwar Prasad : You have always given that latitude; without the amendment being moved. I have already moved many amendments to amendments.

Mr. President : The way in which this amendment is worded, it cannot read, "subject to the supervision, direction and control of the Government of India."

Shri Brajeshwar Prasad : I will correct it, Sir, with your permission :

"Provincial Militia subject to the supervision, direction and control of the Government of India."

This is my amendment. Especially in the United Provinces of Agra and Oudh, this is assuming serious proportions. This is a violation of the spirit of the Constitution. I am afraid it may take a shape which may not be in consonance.

Mr. President : I am afraid this would not do. This additional entry which Mr. Santhanam wanted to move, but which he has not moved, raises a new question altogether, and any amendment to that involves a new question, I do not think I can allow the amendment. Your amendment will have the effect of bringing in a new entry.

Entry 6

Mr. President : We take up entry No.6. There is no amendment.

Entry 6 was added to the State List.

Entry 7

Entry 7 was added to the State List.

Entry 7-A

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That after entry 7 of List II, the following entry be inserted : -

'7-A. State pensions, that is to say, pensions payable by the State or out of the Consolidated Fund of the State.' "

This is merely a corresponding entry to what we have already done so far as List I is concerned.

(Amendment No.238 was not moved.)

Mr. President : The question is :

"That after entry 7 of List II the following entry be inserted : -

'7-A. State pensions, that is to say, pensions payable by the State or out of the Consolidated Fund of the State.' "

The motion was adopted.

Entry 7-A was added to the State List.

Entry 8

Entry 8 was added to the State List.

Entry 9

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for entry 9 of List II, the following entry be substituted: -

'9. Acquisition or requisitioning of property except for the purposes of the Union, subject to the provisions of entry 35 of List III.' '

The only change is that the underlined words are now put in the Concurrent List and it is therefore necessary to omit them from this entry. This is also what we have done with regard to a similar entry in List I.

(Amendment 239 was not moved.)

Shri Raj Bahadur : Sir, I move :

"That in amendment No.69 of List I (Sixth Week), in the proposed entry 9 of List II, the words 'subject to the provisions of entry 35 of List III' be deleted."

My reason for moving this amendment is that this entry corresponds to entry No.43 in the Union List. After the acceptance of the amendment No.21 moved by the Drafting Committee, that entry stands in the following form now :

"Acquisition or requisitioning of property for the purposes of the Union."

The words, "subject to the provisions of entry 35 of List III" are conspicuous by their absence in that entry. I see no reason why there should be any difference in the terms or phraseologies of these two similar entries in respect of property acquired by the Union on the one hand and in respect of property acquired by the State on the other hand. These words, 'subject to the provisions of entry 35 of List III' should either be retained in both the places or they should not be kept in either entry. In order to secure consistency, and uniformity in principles therefore, these words should be deleted here.

Apart from that, unless and until we have taken some decision in respect of article 24, we should not accept or take for granted the principle of awarding compensation for property acquired by the Union or by the States in the public interest. On this ground also it is not proper to put these words, 'subject to the provisions of entry 35 of List III' in this entry. With these words, I commend my amendment for the consideration of the Drafting Committee and the House.

The Honourable Dr. B. R. Ambedkar : It is not a proper amendment, I cannot accept that.

Shri Raj Bahadur : May I know the reason for it ?

Mr. President : Are you withdrawing the amendment?

Shri Raj Bahadur : I do not withdraw because I have not been given any reasons.

Mr. President : The question is :

"That in amendment No.69 of List I (Sixth Week), in the proposed entry 9 of List II, the words 'subject to the provisions of entry 35 of List III" be deleted."

The amendment was negatived.

Mr. President : The question is :

"That for entry 9 of List II, the following entry be substituted : -

'9. Acquisition or requisitioning of property except for the purposes of the Union subject to the provisions of entry 35 of List III.' "

The amendment was adopted.

Mr. President : The question is :

"That entry No.9, as amended, stand part of List II."

The motion was adopted.

Entry 9, as amended, was added to the State List.

Entry 10

Entry 10 was added to the State List.

Entry 10-A

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That after entry 10 of List II, the following entry be inserted : -

'10-A. Ancient and Historical Monuments other than those specified in entry 60 of List I.' '

We have distributed this entry, kept apart in List I and the other part is now placed in List II.

Mr. President : The question is :

"That Entry 10-A stand part of List II."

The motion was adopted.

Entry 10-A was added to the State List.

Entry 11

Mr. President : Entry No.11.

Shri Raj Bahadur : I do not wish to move my amendment.

Entry 11 was added to the State List.

Entry 12

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for entry 12 of List II, the following entries be substituted : -

'12. the salaries and allowances of Ministers for the State, of the Speaker and Deputy Speaker of the Legislative Assembly, and if there is a Legislative Council, of the Chairman and Deputy Chairman thereof; the salaries and allowances of the members of the Legislature of the State.

12-A. The privileges, immunities and powers of the Legislative Assembly and of the members and the Committees thereof, and if there is a Legislative Council, of that Council and of the members and the Committees thereof.' "

This is merely a counterpart of what we have done so far as List I is concerned regarding the centre.

Dr. P. S. Deshmukh : I do not move my amendment.

Mr. President : The question is :

"That for entry 12 of List II, the following entries be substituted: -

'12. The salaries and allowances of Ministers for the State, of the Speaker and Deputy Speaker of the Legislative Assembly, and if there is a Legislative Council, of the Chairman and Deputy Chairman thereof; the salaries and allowances of the members of the Legislature of the State.

'12-A. The privileges, immunities and powers of the Legislative Assembly and of the members and the Committees thereof, and if there is a Legislative Council, of that Council and of the members and the Committees thereof.' "

The amendment was adopted.

Entries 12 and 12-A were added to the State List.

Entry 13.

Mr. President : Entry 13.

Shri Brajeshwar Prasad : I do not move any amendment.

Entry 13 was added to the State List.

Entry 14

Mr. President : Entry 14.

Shri Brajeshwar Prasad : I am not moving my amendments.

Shri Mahavir Tyagi : Mr. President, sometimes it is really embarrassing to move amendments. I had given this amendment with reference to an amendment in the printed list. That amendment has not been moved and now he raises a point that I cannot bring in my amendment.

Mr. President : I think there. is some substance in it.

Shri Mahavir Tyagi : Morally it seems he has let me down.

Mr. President : You should not have depended on him. You should have moved as a separate amendment.

Shri R. K. Sidhva : Since giving notice of my amendments changes have taken place and so I do not move my amendment.

Shri Mahavir Tyagi : The rule of giving notice, I always understood, means that Members are informed as to what subject is to come up for consideration. That purpose having been served in this case, I submit you might at least treat this as an independent amendment and allow me to move it.

Mr. President : Your amendment is something very different from entry 14. Entry 14 lays down :-

> "Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration."

Your amendment is 'regulation and control of Houses and rents'. These are two different things.

Shri Mahavir Tyagi : The amendment in the printed list reads : -

> "Local self-government in cantonment areas, the regulation of house accommodation in such areas and the delimitation of such areas."

Therefore my amendment was relevant in relation to the amendment which I sought to amend.

Mr. President : We passed an entry which put the controls.

Shri Mahavir Tyagi : That was about Cantonments in List I. Now it is list II. As the matter is important you may allow this, and it may be numbered as a new entry.

Shri R. K. Sidhva : He wants to substitute the old entry with this 'regulation and control of Houses and rents'. I want to ask – regulation by whom? My amendment was quite different.

Mr. President : These are two different altogether.

Shri Mahavir Tyagi : Sir, my amendment was in substitution of the amendment in the printed list and after substitution it would read like this :-

> "The regulation and control of houses and rents."

Mr. President : These two are different.

Shri Mahavir Tyagi : Then I would request you to allow me to move it as a separate entry and no member can take objection on the ground that it was not notified. If it is acceptable to the House, a new number can be given to It. It may be 14 or at the end.

Dr. P.S. Deshmukh : You cannot amend something which does not exist.

Mr. President : I cannot allow it to be moved as an amendment of 14. We will dispose of 14 now and then we will consider whether to take it up.

The question is :

"That Entry 14 stand part of List II.

The motion was adopted.

Entry 14 was added to the State List.

Mr. President : Now the question is whether we should have an additional entry as "Regulation and control of Houses and Rents". Mr. Tyagi, you move it as a separate entry.

The Honourable Dr. B. R. Ambedkar : Yes, he may move it as a separate entry.

Shri Mahvir Tyagi : I am grateful to you and also to Dr. Ambedkar. He has for the first time been generous to me.

Sir, I do submit that it is really embarrassing to move an amendment to the list which has been submitted by the Drafting Committee, for the Drafting Committee, is always very resourceful and it is very difficult to struggle with them successfully.

Mr. President : But you are moving an additional entry.

Shri Mahavir Tyagi : Yes, Sir, but the acceptance of the Drafting committee has to be sought. After all it is primarily they who accept suggestions, and if they accept them, then the House readily agrees to them.

The House has already agreed to one entry which says that all the residuary powers will go to the Centre, all that is not mentioned in List II or List III. I submit that the control of Houses in urban areas and the control of rents of those houses are an important matter today. It was not in the original list of the Government of India Act, 1935, because at that time the control over the houses and their rents was not needed and it was not prevalent in India.

The Honourable Dr. B. R. Ambedkar : I understand the honourable Member's argument and I could reply to him in a few minutes.

Shri Mahavir Tyagi : Yes, and I therefore only submit that this subject of control of the houses and the control of the rents should be there. I would even go further and say that the control of food grains also should come in. If the House agrees, it may be brought in as an independent item somewhere.

The Honourable Dr. B. R. Ambedkar : Sir, there are, I think three distinct questions, although they have not been stated by Mr. Tyagi in that form. The first question is whether the Provincial legislature should or should not have any power to regulate and control houses and house-rent. I think on that issue, there can be no difference of opinion, that the provincial Governments must have such power. The question then is whether the Draft Constitution and the entries in the list make any provision for the provincial legislatures to exercise powers for the purpose of regulating and controlling the houses and the rents. Now, my submission is that the specific entry as proposed by Mr. Tyagi is quite unnecessary, because there are two other entries, namely entry 24 of List II which deals with "land, rights in or over land, land tenures including the relation of land-lord and tenant, and the collection of rents etc. etc." That is one entry. Then there is another entry No.8 in List III about transfer of property other than agricultural land; registration of deeds and documents. These two entries have been found to be quite sufficient to enable the Provincial Governments to make laws relating to the regulation and control of Houses and rents. My Friend Mr. Tyagi knows also, that notwithstanding the fact that such an entry does not exist even today, under List II of the Government of India Act, none-the-less, the provinces have enacted laws in this matter. Therefore entry 24 relating to land and the other entry. No.8 about transfer of property are quite sufficient to give the power which Mr. Tyagi wants that they should have.

Another difficulty in the way of accepting the amendment of Mr. Tyagi is this. Suppose we were now to include this entry, it would cause a certain amount of doubt on the laws that have already been made by the provinces for the purpose of regulation of houses and the control of rents. It would appear that the legislature itself felt that the entry as it already existed, was not sufficient for the purpose of giving the legislature power to make laws for this purpose. And therefore it was necessary specifically to give this power. I think we would be unnecessarily casting doubts upon the validity of laws already made. Therefore, this is an additional ground against accepting the amendment. In the first place, as I have said it is unnecessary because the provinces have got sufficient power to make such laws and the other is this question of validity of laws made.

Now I come to the third part. My Friend Mr. Tyagi has been struggling to some extent when I was dealing with the question of cantonments to remove the power of allowing cantonments to regulate rents and the premises within their areas. If my friend's intention is that by getting this entry accepted, it would be possible for the provinces to nullify the power which has already been given by the entry in List I, as it has been already passed, then I think, he is completely under a mistake. Notwithstanding the fact that this entry may become part of the Constitution, the entry which we have already passed would be valid; notwithstanding any power vested in the Provinces, the Cantonments will have the power to make regulations with regard to the premises and the rent of the premises situated in that area. Therefore, I submit to my Friend Mr. Tyagi that his purpose is already served and it is unnecessary to have this entry, especially because it would be casting a certain amount on the validity of the laws already made under these entries as they stand.

Shri Mahavir Tyagi : Sir..........

Mr. President : There is no right of reply.

Shri Mahavir Tyagi : I only want to put a question, if you will please permit me.

Mr. President : Put your question.

Shri Mahavir Tyagi : Will Dr. Ambedkar tell us, whether we should be guided by the difficulties which might be experienced by one Government or the other, or whether we should make the law without regard to the previous commitments of the provincial

Governments, and authorise the provincial Governments to enact laws to control the rent? We cannot proceed on the basis that because no one has so far objected to an irregularity, everything is all right. Suppose the owner of a house takes objection on the ground that the provincial government has no right to control rents, then what happens?

The Honourable Dr. B. R. Ambedkar : No, he cannot because under the General Clauses Act, land includes the buildings.

Shri Mahavir Tyagi : It is a new interpretation of the law, that land includes the building.

The Honourable Dr. B. R. Ambedkar : It is new because law is not the profession of Mr. Tyagi.

New Entry 14-A

Mr. President : I shall put the new entry to vote. The question is :

"That after entry 14, the following new entry be added :

"14-A. The regulation and Control of houses and rents'. "

The motion was negatived.

Shri Mahavir Tyagi : Sir, I had no chance of saying "Aye" because I was actually on my way back to my seat.

Mr. President : No, I gave you the chance, but you did not say "Aye". Now, we come to entry 15.

Shri R. K. Sidhva : Sir, about the programme for the present session, I would like to ....

Mr. President : I shall dispose of this entry and then listen to what you say. Dr. Ambedkar.

Entry 15

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in entry 15 of List II, the words "registration of births and deaths' be deleted."

This is transferred to the concurrent List.

Mr. President: There is no amendment to this?

Shri Brajeshwar Prasad : Yes, Sir, there is one from me. But as Dr. Ambedkar has agreed to transfer this entry to List III, I do not move it, and I have nothing more to say.

Mr. President : Then there is amendment No.280 (Fifth List, Sixth Week) by Mr. Kamath.

Shri H. V. Kamath : It is one o'clock, Sir. Shall I move it?

Mr. President : I think we had better stop here.

Shri R. K. Sidhva : Sir, before you adjourn the House we would like to have some idea about the programme for this session. There are several important articles remaining, and we do not know when they will be taken up. If you can give us some idea as to when they will be taken up, we can......

Mr. Naziruddin Ahmad : And also since they are important articles we should be given some time to consider them and give our amendments.

Mr. President : I think I shall be able to give you tomorrow some idea of the articles with the particular dates on which they will be take up; and the articles will be circulated in time to enable Members to give any amendments to which they may be entitled.

The House now stand adjourned till nine o'clock tomorrow morning.

The Assembly then adjourned to Nine of the Clock on Friday the 2nd September, 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME IX

Friday, the 2nd September 1949

The Constituent Assembly of India met in the Constitution Hall New Delhi, at Nine of the Clock Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair

----

CONDOLENCE ON THE DEATH OF SHRI GOPINATH SRIVASTAVA

Seth Govind Das (C. P. & Berar: General) : Sir, before the commencement of today's business, I want to draw your attention to certain rumours about the adjournment of the House. We want to fix up our programmes and we want to know when this session is going to be terminated. At the same time, suppose a certain day is fixed for a certain article and it is not disposed of; I would like to know whether you will accept closure on that article-a sort of guillotine-so that the article might be finished by one o'clock that day.

Mr. President: I mentioned yesterday that I would be able to give some idea of the programme, of this Session today. I will do that at the end of the day.

I am very sorry to announce to the Members of the House the sudden death of Shri Gopinath Srivastava, who was a Member of this House in the beginning and later had to leave it on his appointment as a Member of the Public Services Commission of the United Provinces. He had a distinguished public career in his own province and had devoted all his time for many years to public activities. The province is especially poorer on account of his death and we shall all miss him in the public life of the country. I wish Members will show respect to his memory by standing in their places.

(The Members stood in their places for a minute)

DRAFT CONSTITUTION-(*Contd.*)

Seventh Schedule-(Contd.)

List II. Entry 15-(Contd.)

Mr. President: We were dealing with entry 15 yesterday when we rose.

Shri Brajeshwar Prasad (Bihar: General) : Sir, I did not follow the, amendment moved by Dr. Ambedkar.

Mr. President: It is "That in entry 15 of the, List the words 'registration of births and deaths' be deleted."

Shri Brajeshwar Prasad : He said something to the effect that it should be transferred to List III. He did not move the amendment as it finds place in the Paper.

The Honourable Dr. B. R. Ambedkar :(Bombay: General): But there will be an amendment when we deal with List III .

Shri Brajeshwar Prasad: I was then mistaken. Therefore I would like to move my amendment. I thought that he had moved that this whole entry should be transferred to List III. I now find that. his amendment is of every limited character. Therefore, Sir, I seek your permission to move my amendment.

Mr. President: Very well, after Mr. Kamath.

Before we proceed with the entries, I would remind the House about what has been mentioned by Seth Govind Das. We must expedite the discussion of of these entries and I wish to finish them today. if we cannot, we may have to sit in the afternoon or tomorrow because we cannot go on with this List on Monday as I have fixed the programme for the days following in next week.

Shri R. K. Sidhva (C. P. & Berar : General) : I think it was agreed that you would allow each speaker five minutes.

Mr. President : I said three minutes.

Shri Brajeshwar Prasad : I would rather have an evening session than a session tomorrow.

Mr. President: I hope it will not be necessary. We should be able to finish the entries today.

Shri H. V. Kamath: (C. P. & Berar: General) Sir, I move:

"That with reference to amendment No. 78 of List I (Sixth Week), the proposed entry 15 of List II be transferred to List III."

The proposed entry will now be minus that clause relating to registration of births and deaths. That entry will stand thus :

"Public health and sanitation : hospitals and dispensaries."

This entry, I suggest may be transferred to List III, that is the Concurrent List.

I find that Dr. Ambedkar has a separate amendment for the inclusion of the omitted item, that is to say the registration of births and deaths in List III under Vital Statistics. The. purpose of my amendment is to transfer the entry 15 with or without the registration of births and deaths to List III, Concurrent List.

While commending my amendment seeking to transfer public health, sanitation, hospitals and dispensaries to the Concurrent List, I should like to state that public health has been the Cinderella of portfolios in the Cabinet of our country. During the British Regime it was specially so, very sadly neglected and not much provided for : as a result of which the health of the nation has fallen to C-3 standards, it is the object of our government today to raise the health of the nation from C-3 to A-I standard. If this were the aim of our Government we could not do better than make public health a Concurrent subject. It must be accorded top priority if the nation is to rise to its full stature. We have the old maxim :

Shareeramadyam khalu dharmasadhanam.

It means that health is the pre-requisite of higher life; and if the bedrock of health is not there nothing strong and durable can be erected on shifting sands. If the bedrock of health is there, the super structure will stand the test of time and will resist the storms and winds that blow.

I know, from my experience of certain provinces, that the health schemes that are launched be provincial Governments while commendable as regards their good intentions, fail to achieve the desired consummation, because of the lack of direction and co-ordination from the Centre. In the last Budget Session the Health Minister pleaded for more powers for the Centre to co-ordinate and initiate various health schemes in the provinces so that our aim to raise the standard of health of the nation could be realized with the least possible delay. In modern times......

Mr. President : The honourable Member has exceeded his three minutes.

Shri H. V. Kamath : I thought that the time limit was five minutes. However, Sir, this is a matter on which there is very serious divergence of opinion. I learn that provincial governments or ministers have resisted the transfer of this entry to List III and they are reluctant to have any change in this entry. I do not know how far it is correct, but I have heard rumours to the effect that provincial health ministers are reluctant to the transfer of this entry to List III. That is why I, want the Drafting Committee and the House to bestow some more consideration on this subject.

The House is well aware that the Central Health Ministry has during recent times not merely advised the provinces about various health schemes and in the methods of disease-prevention, but also launched mass, vaccination schemes like BCG, and I believe they have also taken steps in the direction of Penicillin treatment on an All-India scale. Apart from that, the Central Government took the initiative in appointing what is known as the Chopra Committee, which has submitted its report dealing with various aspects of public health.

Bearing all these points in mind and viewing this important and vital mattes from different points of view I feel very strongly that public health should not be relegated to the legislative powers only of the States but should be a rent subject at least. I am sure my Friend Mr. Brajeshwar Prasad would try to include it in List I, but I would be happy if this matter were transferred to List III. Sir, I move my amendment and commend it to the House for its acceptance.

Shri Brajeshwar Prasad : Sir, I move :

"That in amendment No. 3600 of the List of Amendments, for the word and figure 'List III, the word and figure

List I' be substituted."

Sir, I do not understand the opposition of provincial ministers in this respect. If they feel that they are in a position to deal with all problems of public health and sanitation, if they are of opinion that hospitals and dispensaries can be run on efficient lines without the help and co-operation of the Government of India, they are welcome to hold their opinions. I also come from a province. I do not come from No man's land. I know that the administration of these departments has deteriorated after power was transferred to our hands. If you go to a general hospital you will see that flies and bugs are multiplying, that the clothes of the nurses are dirty, that phenyle and medicines are not available and the patients are not treated well. There is utter neglect and deterioration in efficiency. Therefore I feel that public health, sanitation, hospitals and dispensaries should be included in List I. The powers which I want the Centre to possess are in for the purpose of aggrandisement of the Centre. They are intended for the performance of social service. I cannot understand why the co-operation of the Centre is not welcome. The provinces have enough powers in their hands but the resources at their disposal are of a very limited character. If the nation is to be saved from the scourge of disease and epidemics, all powers as far as this entry is concerned must be vested in the hands of the Centre. Of course" I fully appreciate the point that by wresting those important powers Provincial autonomy will be modified to a very large extent, but provincial autonomy is not an end in itself. It is only a means to an end-the end being the economic political and cultural advancement of the people of this country. Any movement of ideology that stands in the way of the economic, political and cultural advancement of the people of India must be liquidated and wiped out.

Mr. President : I do not think I should allow the honourable Member to repeat his arguments against provincial autonomy. This amendment is one which is in line with Was other amendments which seek to transfer all powers to the Centre. Yet I have allowed him to move the amendment, but his arguments are the same which he has advanced many times previously.

Prof Sibban Lal Saksena (United Provinces : General) : I do not move amendment 297.

The Honorouble Dr. B. R. Ambedkar : I do not accept any of the amendments moved.

Mr. President: I will put the amendment moved by Mr. Kamath (280).The question Is:

"That with reference to amendment No. 78 of List I (Sixth Week), the Proposed entry 15 of List II be transferred to List III."

The amendment was negatived.

Mr. President: Now amendment No. 77 moved by Shri Brajeshwar Prasad is for the vote of the House. The question is :

"That in amendment No. 3600 of the List of Amendments, for the word and figure III' the word and figure 'List I' be substituted."

The amendment was negatived.

Mr. President: The question is :

"That in entry 15 of List II, the words 'registration of births and deaths' be deleted."

The amendment was adopted.

Mr. President: The question is:

"That entry 15, as amended, stand part of List II."

The motion was adopted.

Entry 15, as amended, was added to the State List.

Entry 16

Mr. President: Entry 16 is now for consideration.

Prof. Shibban Lal Sakesena : I move :

"That for entry 16 of List II, the following be substituted:-

'15. Pilgrimages to places within the State.' "

Sir, the entry in List II simply says, 'Pilgrimages, other than pilgrimages to places beyond India'. I therefore think that we should substitute for entry 16 in List II the words, 'Pilgrimages to places within the State.'

Shri T. T. Krishnamachari: (Madras : General) : Sir, the purpose of Professor Shibban Lal's amendment is that pilgrimages to places within a province should vest in the State. That is precisely the idea contained in entry 16. Actually a State cannot interfere with what is happening with regard to pilgrimages in another State. The idea is clearly carried out in entry 16, as it is.

Prof. Shibban Lal Saksena : Is that carried out in the entry ?

Shri T. T. Krishnamachari : Yes, it is fully carried out. The wording is the same as in the Government of India Act. The only type of pilgrimage for the time being with which the Centre is concerned is the Haj pilgrimage. That is a matter which is entirely within the purview of the Centre. If it happens that they have to regulate pilgrimage or pilgrim traffic to Haj and give directions to the provincial Governments in regard to quarantine accommodation, etc. for the pilgrims, that will be done by the Centre. This is purely a State List intended to control pilgrimages within the State. The purpose will not be served by accepting Prof. Shibban Lal's amendment. I 'therefore suggest that the House should reject the amendment and pass the entry as it is.

Mr. President : The question is :

"That for entry 16 of List II` , the following be substituted

'16. Pilgrimages to places within the State. ' "

The amendment was negatived.

Mr. President: The question is :

"That entry 16 be added to List II."

The motion was adopted.

Entry 16 was added to the State List.

Entry 17

Mr. President: I do not find any amendment to entry 17. I shall therefore put it to the vote of the House.

Entry 17 was added to the State List.

Entry 18

The Honourable Dr. B. R. Ambedkar: Sir, I move,

"That for entry 18 of List II, the following entry be substituted:-

'18. Education including universities, subject to the provisions of entries 40, 40-A 57 and 57-A of List I and entry 17-A of List Ill.' "

Shri Brajehswar Prasad : Sir, with your permission, out of the three amendments to this entry standing against my name, I will move the second one only. I move :

"That in amendment No. 3607 of the List of Amendments, in the proposed entry 18 of List II, the words 'subject to the supervision, direction and control of the Government of India' be added at the end,"

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I am not moving my amendment No. 242, for reasons of economy of time.

Maulana Hasrat Mohani : (United Provinces : Muslim) : *[Sir, it would be astonishing to you all why I, a protagonist of provincial autonomy and am opponent of making a strong Centre, am trying to make this particular item a subject. Education should be included in the Concurrent List and not be made a provincial subject. Even then, I do not say that it be included in the First List. As I do not want to make the Centre all-powerful, I am trying to get this included in the Concurrent List. I would not have said even this much but I am helpless. I find, and I quite agree in this with my Friend Mr. Naziruddin, that Dr. Ambedkar is ever trying to increase the powers of the Centre, and to make the provinces weaker. I would go a step further and say that what is happening here today would only result in altering the very basis of the Constitution. At first I thought that this Constitution was being-framed in accordance with the Objectives Resolution and it would be on the, pattern of a Federal Republic and a Socialist Republic, but they have already done away with 'Socialist', and now they seem to be attempting to create a Unitary Indian Empire after merging all the States into it, like the old British Unitary Indian Empire. Besides that, I do not see any other object. Further on you will realise that it is not only I who hold the opinion that it is no more Republican, Socialist or Federal in character. It would become a purely Indian Empire in which provinces will have no powers. This is my opinion. That is what I am totally opposed to it.

Now, I would tell you as to why I want the centre also to be vested with this power. It is because it is connected with the education in provinces. I want that provincial Governments should not be given full power as regards education in their provinces. I have proposed this because provinces have adopted autocratic and quite unreasonable attitude in regard to the question of the medium of instruction in education, regarding which Provinces have been given powers to take any decision they like,, irrespective of the wishes of the Centre or of the people. This has been possible because it is a provincial subject and provinces can take any decision they like and they can have any medium of instruction. Perhaps my Friend would retort that in the provinces primary education would be imparted in the regional languages *i.e.*, in Madras Province education in the primary and secondary stages would be imparted through the medium of regional language, the same would be the case with the Bombay Province. In Bengal, ,education would be given through Bengali, in Punjab through Punjabi, or Gurumukhi. But I would like to tell you what are my difficulties. The difficulties which confront U. P.' ites are these that U. P. Government has adopted a strange procedure. They say that Hindi is the Provincial language, and their regional language is Sanskritised Hindi, and that Urdu has no place in the province. I am not saying this to you at random. You will be simply surprised, if I tell you what is happening there. Mr. Tandon, the Speaker of the Provincial Assembly, has ordered that all Bills to be moved in the Assembly should be in Hindi and Hindi alone. We do not get its copy in English. There, the agenda is also framed in Sanskritised Hindi and the list of questions is also prepared in Sanskritised Hindi. And if anybody happens to send his questions in Urdu, they are thrown away. This is not all. They have issued instructions in districts that anyone, who wants registration, must produce the document in Hindi. And if the document is brought in Urdu, registration is refused. Please tell us what to do in these circumstances. Urdu is not the language of Muslims only, it is the language of Hindus also.

Now, it is said that upto the primary and secondary stages the medium of instruction will be the regional language. But they do not follow even this instruction. They ought to impart education in these stages in the regional languages. And in regard to higher education they can do what they like. I do not want to take up this question for the present. I would like to say only this much that the system which they have adopted for the instruction in the primary and secondary stages is unjust. They ought to impart education in these two stages in the mother-tongue. Boys, between the ages of six and eleven years, should be given instruction in their mother-tongue, so that they should be free from the burden of learning other languages. Formerly we used to oppose the British Government for this very reason and used to curse them for they had fixed English as the medium of instruction in High Schools. But you have surpassed them. They did so in high schools only. But apart from this, they started Vernacular Middle schools and gave the option of passing the middle class in Hindi or Urdu. Those who wanted to acquire further education in English used to join High Schools. So I want to say that the Provincial governments, now, are doing things which the British Government abstained from doing.

Besides this, I would like to say that compulsory education has been introducing in all primary schools in the villages. And it is obligatory on everyone that he should get his children admitted in primary or basic schools, because people are bound to get their children admitted in these schools for their education. Now you see what is happening there. When these boys are admitted in the first class, they are told they would not be taught "Alif" , "Bay", as there was no arrangement for that. Now you can see for yourself what would these boys do whose mother-tongue is Urdu. They are told that they could not learn "Alif", "Bay", as there was no arrangement for that. So you should learn "Ka" "Kha" "Gha". What a cruelty it is, and what an injustice is this. Has any Government in the world ever done the injustice which has been perpetrated by the U. P. Government? And moreover they say that, as it is a provincial subject, they can o whatever they like For this reason I have clearly said that in regard to this matter the Centre should issue instructions. Whatever mother-tongue is favoured in any region by the people should be adopted there.

In the University Commission report submitted by Mr. Radhakrishnan it is clearly written.

> "Mother language according to the Commission should be the medium of instruction in all stages of school education."

This is the opinion of your University Commission. Moreover, Shri Raj Gopalacharya, in the Newspapers conference at Bombay on 10th August, said the following about the medium of instruction:-

> "The State language should be learnt by itself. I personally feel that teaching should be done in a mixture of regional language and State language."

And many people say that, if not so much, at least you keep the mother-tongue as the medium of instruction. In regard to this, I say that three provinces, namely, Delhi, U. P., Bihar and Mahakoshal or C. P. should be made bilingual provinces. And those whose mother-tongue is Urdu should be given instruction in the same language.

The assertion of U. P. Government that its State language is Hindi and its regional language is also Hindi and that Urdu has no place there and that Urdu should be wiped off the face of the earth, is high-handedness. You know very well that the birth place of Urdu is U. P.]

Mr. President: *[Maulana Saheb, this is not the question before us at the moment. At present the question is that the education should be a provincial subject.]*

Maulana Hasrat Mohani: *[I am also saying the same thing. I do not say that the Centre should be given all the powers. I would like to say only this and I have ventured to say so with this object that at least in fixing the medium of instruction, they should also have a hand. From what the U. P. Government is doing, it appears that it is bent upon wiping off Urdu from the face of the earth.

Sir, I shall finish my speech after citing a few examples. In the Education Ministers' conference which was held here, they unanimously passed the following:-

> "The medium of instruction and examination in the junior basic stage must be the mother-tongue of the child, and where the mother-tongue is different from the regional or state languages, arrangements must be made for instruction in mother-tongue by appointing at least one teacher, provided there are not less than forth pupils speaking the language in the whole school or ten such pupils in a class."

This is their opinion.

After this the memorandum submitted in the Education Minister' Conference by the West Bengal people was very clear. They have displayed utmost sense of justice and they say, "The policy pursued in West Bengal regarding the medium of instruction in schools and the principle which should be adopted in this regard in all provinces were explained at the All-India Education Ministers' Conference.

Further they say, "The Education Ministry of West Bengal is of opinion that if the principle be adopted in other provinces and the provincial and regional language, where it is different from the mother-tongue of a child, be introduced as a compulsory second language in the secondary stage, then the difficulties of the school-students belonging to the linguistic minorities in different provinces may easily be removed."]*

Mr. President: *[Maulana Sahib, there can be two opinions perhaps about the things you are talking."]*

Maulana Hasrat Mohani : *[Yes, Sir, but U. P. Government do not say so, on the other hand they stick to the plea that education is a provincial subject and so they do not care for the Centre. We are put in a great difficulty as my daughters who go do schools are asked to read "ka kha gha" and they further say, that they do not have instructions for teaching Urdu. What is this? How can such things happen? Therefore, my opinion is that whatever is suggested by Centre regarding the medium of instruction should be under the control of the Centre, and hence because of this control the subject of education should be added in List No. III, instead of List No. II. I do not want to give this right to the Centre but at the same time the Centre should have the power of setting them right in cast they do anything unjust. But if this is not done then they should make it clear that they are not giving any right to the linguistic minorities and that they propose to wipe away Urdu from the surface of the earth. Therefore, either Dr. Ambedkar should accept my proposition or he should give me an assurance that the provinces would not play havoc with the medium of instruction. I want that this should be made clear.]

Mr. President: I think amendment No. 299 is the same as that of Maulana Hasrat Mohani.

Prof. Shibban Lal Saksena: No, Sir, it is quite different.

Mr. President: It is the same-"that entry 18 of List II be transferred to, List III".

You can move amendment No. 300.

Prof. Shibban Lal Saksena: Mr. President, Sir, I beg to move:

"That in amendment No. 79 of List I (Sixth week), for the proposed entry 18 of List II, the following be substituted:-

'18 Education up to the secondary standard'."

I take it that my amendment No. 299 has already been moved. It is my firm belief that in order to have one single unified nation, it is necessary that at least higher education must be a Central subject. I am glad that in many of the amendments the Honourable Dr. Ambedkar has provided that some of the institutions which impart higher education shall be treated as Central subjects; but I wish that University education should be a responsibility of the Union Government alone. In this respect, Sir, I wish to read out a passage from a letter from the Honourable Maulana Abdul Kalam Azad, Minister for Education to the Drafting Committee, dated the 28th April 1948, in which he said:-

"The second point to which I would draw your attention is that in the present state of development of Education in India, it is imperative that there should be Central guidance if not Central control, on Provincial progress. You have yourself seen the dangerous symptoms of fissiparous tendencies in the recent months. If it can be secured that Education throughout India follows the same general pattern, we can be sure that the intelligentsia of the country will be thinking on similar lines. This would be a better check against the dangers of fragmentation than any centralisation of Government or concentration of power in the hands of the Central Authority."

I therefore think with this main purpose in view, the whole nation must be given education on the same lines, so that it may be able to think on a particular pattern, and I think this is a very important object which we should strive to achieve. Besides, there are other difficulties which have also to be faced. We remember that Mahatma Gandhi spent a large part of his time in evolving his scheme of Basic National education and he wanted it-to be uniform throughout the whole of India. The scheme was evolved after very great research and very great thought by the educationalists all over India. It is obvious that such plans and such schemes can only be evolved and carried out on an All-India basis.

Then there are other advantages from university education under Union control. Firstly, our country has not got such large resources as other advanced countries. Our Universities should therefore specialise in different subjects in different places, so that there may not be much duplication in teaching an waste of effort. I think, therefore, that the Central Government should control all the universities so that it can advise each university with regard to the subject in which it should specialize. Secondly, I feel that the State cannot afford adequate funds for University education. My feeling is that they are already spending large sums on primary education and secondary education and therefore University education is being starved. There must be provision for university education under the Central Government. That will enable those universities to develop properly and in the national interest. Sir, I therefore think that this List II must only contain education up to the Secondary standard and not up to the university standard. Besides, Sir, the Inter-University Board wherein all the Universities are represented is of the opinion that University education should be a Central subject. For all these reasons, I hope the Drafting Committee will consider the subject and that the entry will be amended suitably.

Mr. President: Amendment No. 311 by Pandit Lakshmi, Kanta Maitra: that is the same as the one moved by Maulana Hasrat Mohani. That need not be moved.

Dr. Ambedkar, do you want to say anything?

Shri T. T. Krishnamachari: Mr. President, Sir, there seems to be a 'general tendency on the part of a number of Members of this House to transfer a number of items in List II to List III. May I say at once that we, members of the Drafting Committee, are faced with two opposing problems. Certain Members of the House want that a greater responsibility should be shouldered by the Centre. On the other hand, there are a number of Members in this Hose who feel that the Centre is taking on to itself far more than it ought to, thereby rendering provincial autonomy a mere farce. Actually, such complaints also appear in the papers and I found recently a lecture by Mr. C.R. Reddy, Vice-Chancellor of the Andhra University who has heavily underlined this tendency of power gravitating to the Centre. I would like to repudiate at once so far as the Drafting Committee is concerned, that there is any idea of either overloading the Centre or erring on the side of the provinces. All that we have done, to the extent that we are able to do, is only to see that the Centre takes only such powers as are needed for the purpose of coordinating the activities of the provinces. My Honourable Friends who have moved these amendments either to take over the entry "education" to the Concurrent List or to limit the scope of entry 18 to Education up to the Secondary standard, if they would please pursue the items relating to Education in List I, they will see that we have provided and the House has accepted those provisions, which confer enough power on the Centre to coordinate the educational activities of the States in the field of higher education, in the field of technical education, in the field of vocational education and also in the field of scientific research. That is about as far as it is safe for the Central Government to go it would not be wise for any Central Government to go beyond that limit.

In regard to the particular point raised by my honourable Friend Maulana Hasrat Mohani, I must say that I do sympathise with his fears, if I am able to understand the gist of his speech. But I am afraid, in a matter like this, the remedy does not lie in the Centre taking over the power on to itself, though I have no doubt that the minorities may probably feel safer with the Centre than with the provinces. I would like to point out that he is not without remedies if the provinces should abuse their power to the extent of shutting out education facilities for any minorities. The fundamental rights, article 23 and article 74-A give him enough power to assert his own rights.

Maulana Hasrat Mohani: They are not sufficient; please read them closely.

Shri T. T. Krishnamachari: I am afraid I must differ with my honourable Friend. I think that is about the best that we can possibly do, consistent with the idea of having States with a large measure of autonomy for themselves and the Centre taking up the question of security, defence and general well-being of the country, leaving other things to the States. I think it is probably just a matter of the moment where enthusiasm outruns discretion and some provinces want to introduce new reforms at a fat pace. I may tell my honourable Friend that before long he will find things settling down and every provincial Government will respect the articles of fundamental rights 23 and 23-A and the minorities will have no cause for fear. In fact, he would find that there might be other articles coming up for discussion in the House later on which would give him additional safeguards in regard to the safeguarding the languages of particular groups of people. The question cannot be solved by the Centre taking over a responsibility which it cannot on the face of it adequately discharge.

In regard to the amendment of my honourable Friend Prof. Shibban Lal Saksena, I would like to tell him that the Centre has enough powers by means of entries 40, 40-A, 57, 57-A in List I to co-ordinate higher education. The cry that the provinces have not got enough money to spend in regard to University education is not quite real for the reason that what the provinces have really to spend on this type of education is only a microscopic portion of the entire educational budget on University education. I think, the expenditure by provinces is fairly liberal as things go. If the matter is really one where finances are retarding higher education, I have no doubt that the powers vested in the Centre under article 253(3) will be used wisely and generously so that the provinces will have adequate grants for the purpose of furthering higher education.

I therefore submit that the points raised by my honourable Friends to either restrict the scope of entry 18 beyond what it has been restricted to or to move it to List III are without substance, and I suggest to the House that they should accept the amendment moved by my honourable Friend Dr. Ambedkar.

Mr. President: The question is:

"That in amendment No. 3607 of the List of Amendments, in the proposed entry 18 of List II, the words 'subject to the supervision, direction and control of the Government of India' be added at the end."

The amendment was negatived.

Mr. President: The question is:

"That with reference to amendment No. 79 of List I (Sixth Week), the proposed entry 18 of List II be transferred to List III."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 79 of List I (Sixth week), for the proposed entry 18 of List II, the following be substituted:-

'18. Education up to the secondary standard'

The amendment was negatived.

Mr. President: I now put the entry as moved by Dr. Ambedkar. The question is:

"That for entry 18 of List II, the following entry be substituted:-

"18. Education including universities, subject to the provisions of entries 40, 40-A, 57 and 57-A of List I and entry 17-A of List III.' "

The amendment was adopted.

Entry 18, as amended, was added to the State List.

Entry 19

Shri T. T. Krishnamachari: Mr. President, I move:

"That in entry 19 of List II-

(a) the words and figures 'minor railways subject to the provisions of List I with respect to such railways,' and

(b) the words and figures 'ports, subject to the provisions in List I with regard to major ports', be omitted."

Sir, in regard to item (a) of this amendment, we have already passed the entry in regard to railways in List I which is a comprehensive entry and legislative in regard to all railways whether major or minor now vests with the Centre. In regard to item (b), the idea really is that this entry should be transferred to List III and an amendment has been tabled to that effect. Instead of having the classification major and minor ports, or giving power to the Centre to declare certain ports to be major ports, the idea is that the Centre will be given powers to give certain directions or make regulations for the provinces to follow in regard to the administration of ports called minor ports. In order to give the Centre this amendment is made transferring this particular portion of entry 19 to the Concurrent List. I hope the House will accept this amendment partly because they are already committed in regard to part (a), and partly because, so far as item (b) is concerned, the transfer is one that will conduce to the improvement of our minor ports generally. I move.

(Amendment No. 84 was not moved)

Prof. Shibban Lal Saksena: Sir, my amendment is of a drafting nature. I beg to move:

"That in entry 19 of List II-for the words 'Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I' the words 'Roads, bridges, ferries, and communications with their help' be substituted."

I hope the drafting committee will accept it. I am not moving the second part of the amendment.

Shri T. T. Krishnamachari: I do not think there is any particular merit in the amendment proposed.

Mr. President: The question is:

"That in entry 19 of List II-for the words 'Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I' the words 'Roads, bridges, ferries, and communications with their help' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in entry 19 of List II-

(a) the words and figures 'minor railways subject to the provisions of List I with respect to such railways', and

(b) the words and figures 'ports, subject to the provisions in List I with regard to major ports'; be omitted."

The amendment was adopted.

Mr. President: The question is:

"That entry 19, as amended, stand part of List II."

The motion was adopted.

Entry 19, as amended, was added to the State List.

Entry 20

(Amendment No. 86 was not moved).

Prof. Shibban Lal Saksena: Sir, I beg to move:

"That entry 20 of List II be transferred to List III."

I might point out that there are a number of amendments in this Order Paper to entries 20, 21, 22, 24, 27, 29, 34 and 46. These amendments are really of the same nature. What I really want is that agriculture and land revenue systems all over India should be amendable to planning on an all-India scale. Now we are making them State subjects in which the Centre will have practically no power. In fact the other day I read out a passage from Shri Jairamdas Daulatram's letter in which he had said that the time had come when the Centre ought to take up the entire responsibility in regard to food. I feel it should be realised that agriculture, irrigation, cattle, land, forests etc. shall have to be developed according to an All-India Plan and under Central direction. In fact we have in List III one entry No. 34 for planning. If we take up any book on planning we will find that no plan can be complete, unless it includes all-round long-term development of land and agriculture within its purview. Today we are thinking that if we put these items in List III, then we shall be depriving provinces of their autonomy. This is quite incorrect. By putting them in List III, we only mean that the Centre will have power to co-ordinate these activities, to finance them when necessary and to give expert advice. I do not want them to go to List I, but they should be put in List III so that the Centre will not interfere with the States and will only advice and co-ordinate their activities. It may be pointed out that even the 1935 Act had made such a complete division as is now proposed. In that Act there was the Central responsibility of the Governor-General which was overriding and so that could keep the whole administration centralised but today we are dividing the functions of the Union Govt. and the State Govts. in water-tight compartments. Today we are fortunate in having one part ruling the whole country but tomorrow it may not be so and then it will be difficult to carry out the same plan in all the States. If India is to be made self-sufficient in food it must have irrigation facilities on a very large scale for the entire country, but can we know that the provinces and States will not be in a position to carry out large irrigation schemes costing several hundred crores? The total area irrigated at present is about 50 million acres of which Government canals account for nearly 28 million acres. The capital outlay on these projects is about Rs. 153 crores. During the next ten years according to the people's plan the irrigation projects should be extended by about Rs. 400 per cent. The total capital expenditure on this scope would be about Rs. 600 crores and the maintenance charges will be about 15 crores. These will not be within the competence of any province. I would suggest that this subject should along with others be taken under Central direction so that plans according to entry 34 in List III could be implemented with the co-operation of the Centre and the States.

Shri T. T. Krishnamachari: Sir, I do not accept the amendment.

Mr. President: The question is:

"That entry 20 of List I be transferred to List III."

The amendment was negatived.

Mr. President: The question is:

"That entry 20 stand part of List II."

The motion was adopted.

Entry 20 was added to the State List.

Entry 21

Shri Brajeshwar Prasad: Sir, I beg to move:

"That with reference to amendment NO. 3586 of the List of amendments, entry 21 of List II be transferred to List I as new entry 92."

Sir, agriculture is a vital subject. We have been taking great interest in our legislative body and we subjected the Ministry to severe criticism. I would like to say that unless the Centre has got ample powers, unless agriculture becomes a central subject the problem of food supply and distribution will not be effectively tackled with and all programmes and schemes will unhappy come to naught. The real problem is how to prevent the sub-division and fragmentation of land. We have, to change the laws of inheritance if our national economy is to be laid on sound scientific basis. Therefore I plead that agriculture must be nationalised, but here I am only saying that the power to legislate on this subject must remain exclusively in the hands of the Centre. All our defences and Foreign affairs will be of no avail if the system of agriculture is not improved. India is an agricultural country. The Centre must take up agriculture in its hands if the menace of subversive movements is to be effectively challenged and met with. There are other reasons why I am not in favour of agriculture being vested in the hands of the Provincial Governments but having due regard to observations that were made, I do not like to dilate upon them.

Mr. President: Mr. Saksena, do you wish to repeat your argument?

Prof. Shibban Lal Saksena: Sir, I beg to move:

"That entry 21 of the List II be transferred to List III."

We are dealing with agriculture-I will only read out two or three important points in this connection. Development of agriculture can be done in two ways. Firstly, we can have intensive cultivation or we can extend the area under cultivation. The net area sown in British India is about 210 million acres. During the period of the next ten years according to the People's Plan this area should be extended by about 100 million acres of new land. This would amount to bringing under the plough new land to the extent of about 50 per cent of the present net sown area. The expenditure needed for this purpose has been calculated at the rate of 60 rupees per acre on average. That would demand a sum of Rs. 600 crores. I do not think the Provinces can undertake such an amount of expenditure nor can they co-ordinate the efforts of the various provinces. For intensive cultivation what is required is the provision of adequate manures, improved seeds, etc. to the cultivator. For this Rs. 720 crores is required for the entire period of the next ten years covered by the plan. It will be obvious that no single State can undertake this huge responsibility. Therefore, I feel that this entry should also got to List III, so that the efforts of the Provinces and the efforts of the Centre could also be coordinated to solve these huge problems.

Chaudhri Ranbir Singh (East Punjab: General): *[Mr. President, in this connection I would like to submit that there are many pests problems that are inter-provincial by nature. Take for instance the locust problem. It is not conferred to any particular province or country, but it is an international problem. There are many other pests that are of inter-provincial nature. A province may not have any information of its existence, until it is actually invaded by the pest from the neighbouring province. So when the province is actually faced with that pest, it is not in a position to combat the menace. I therefore, request that 'pests' should particularly be included in the

Concurrent List. Secondly, India is an agricultural land and there is shortage of food at present in this country. This subject is directly connected with agriculture and for this consideration too it ought to be placed in the Concurrent List.]

Shri T. T. Krishnamachari: Mr. President, Sir, this subject of agriculture has been brought up before this House in a variety of ways and a number of Members of this House have emphasised the need for the Centre taking it on hand. Well, it may be that there is a lot of force in many of the arguments adduced by them, in support of this stand. At the same time, agriculture happens to be the principal industry in this country, and practically one of the main functions of the State, and beyond taking certain powers for the purpose of co-ordination, I do not think the Centre is at all capable of handling this vast problem. I might also take the House into confidence and tell the Members that certain proposals perhaps somewhat on the lines of those now made, were put before the Provincial Ministers when they met here a couple of months back, and the Drafting Committee also was invited to discuss those proposals with them. But there was a fairly general resistance to any further inroads into the field of provincial autonomy, and the proposals had to be dropped. I do not believe that the Centre is without resources at all, in this matter. There are many ways of the Centre directing the provinces to make improvements in agriculture or provide other amenities to the agriculturists by means of the grants and so on. The experience that the Centre has in helping the improvement of agriculture for the last six or seven years, I' think will make it possible for it to effectively help in the proper promotion of agriculture by grants. Beyond saying that, and beyond pointing out to the entries in List I and to the powers that the Centre has to give grants, lump-sum grants for specific purposes, I am afraid the Drafting Committee are unable to accept the suggestion to transfer practically one of the major items in the administration of State Governments, to the Centre, whether it be in List I or List III. Sir, I oppose the amendments.

Mr. President: I put the amendment of Shri Brajeshwar Prasad.

The question is:

"That with-reference to amendment No. 3586 of the List of Amendments, entry 21 of List II be transferred to List I as new entry 92."

The amendment was negatived.

Mr. President: Then I put Prof. Saksena's amendment.

The question is:

"That entry 21 of List II be transferred to List III."

The amendment was negatived.

Mr. President: I then put entry 21.

The question is :

"That entry 21 stand part of List II"

The motion was adopted.

Entry 21 was added to the State List.

Entry 22

Mr. President: Then we come to entry 22 and I find there is an amendment of Prof. Saksena, saying that entry 22 of List II be transferred to List III.

Shri T. T. Krishnamachari: There are also other amendments. There is an amendment of Drafting Committee-No. 282, and there is No. 283 by Pandit Thakur Das Bhargava.

Mr. President: Yes, No. 282.

Shri T. T. Krishnamachari: Mr. President, Sir, I move:

"That in entry 22 of List II for the words 'Improvement of stock' the words 'Preservation, protection and improvement of stock' be substituted.

Sir, I would like to tell the House that the provocation for this amendment was an amendment of which Pandit Thakur Das Bhargava had given notice, in respect of improvement of the wording and adding to the wording of entry 30 which is an entry designed to legislate for the protection of wild birds and animals. He had brought in the idea of "Preservation and improvement of stock and useful breeds of cattle, banning the slaughter of animals etc." especially the slaughter of milch cattle. The matter was discussed by the Drafting Committee with him, and we felt that there was some force in his arguments, and that the proper place to put in his amendment was under "Improvement of stock," in entry 22. At the same time we were unable to take in the entire wording of his amendment, i.e., specifically mention the banning of cattle-slaughter and so on, for the reason that the entry in these lists only mentions the legislative powers of the State or the Central Government, an does not go into the policy behind that power. In fact it would be inappropriate to determine policy by the wording of these entries. The idea really is that by means of preservation and protection and improvement of stock, the Government should have ample power to ban cattle slaughter and to protect stock, to protect milch cattle and so on. There is no need, we felt, to put in specifically the idea which has been put in the Directive Principles which really dictate the policy. Therefore, we feel that the purpose that Pandit Thakur Das Bhargava has in mind would be amply served by the amendment that I have now proposed, namely, preservation, protection and improvement of stock, and all possible, steps that the Government may want to take in furtherance of the views of Pandit Thakur Das Bhargava can be taken by them, by means of the powers vested in them by this entry. I have no doubt that he will feel that this amplification of entry 22 is in the right direction and it also gives support to the expressed views of this House in passing an article relating to the protection of milch cattle and so on. I do hope that the House will accept this amendment and I also hope that my Friend, Pandit Thakur Das Bhargava will feel satisfied that the object that he has in view will attained by means of this entry, even though we have not put in, for reasons that I have mentioned before, the exact wording that he sought to include in this entry NO. 13, as original amendment stands. Sir, I move:

Pandit Thakur Das Bhargava (East Punjab: General): I do not propose to move the amendment that stands in my name but with your permission I would wish to make some observations on the amendment proposed by Mr. T. T. Krishnamachari. I am very much satisfied to know from Mr. Krishnamachari that he has accepted the underlying idea of my amendment. It appears it was in their minds that the ban of slaughter of animals was the accepted policy of the Government. We also passed an article here in this House. It is article 38-A, Now a reference to that article would establish that it is not only the improvement in the breeds of cattle that is contemplated by that section but it goes further and lays down the policy as follows:

> "The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall in particular take steps for preserving and improving the breeds of cattle and prohibit the slaughter of cows and other useful cattle specially milch and drought cattle and their young stock.' "

In response to public demand, you yourself Sir, were instrumental in getting a Committee appointed. We know the recommendations of that Committee. The recommendations of the Preservation and Development Committee appear on page 14 of the report. Their final recommendations are:

> 'This Committee is of opinion that slaughter of cattle is not desirable in India under any circumstances whatsoever, and that its prohibition shall be enforced by law. The prosperity of India to a very large extend depends on her cattle and the soul of the country can feel satisfied only if cattle slaughter is banned completely and simultaneous steps are taken to improve the cattle which are in a deplorable condition at present. In order to achieve these ends, the Committee suggests that the following recommendations should be given effect to:
>
> (i) The first stage which has to be given effect to immediately should cover the total prohibition of slaughter of all useful cattle other than as indicated below:
>
> (a) Animals over 14 years of age and unfit for work and breedings.
>
> (b) Animals of any age permanently unable to work or breed owing to age, injury or deformity.

I do not wish to read further from the recommendations because the Government of India through the Minister of Food and Agriculture on the 24th March accepted these recommendations of the Committee. Now the Government is committed to the prevention of useful cattle and they have brought in a Bill also, in the Legislative Assembly to ban the slaughter of useful cattle. This being so my humble submission is that the entry should have been amended in such a manner as to take it from the bounds of possibility that subsequently it could be said that the protection of cattle could be enforced by killing cattle. Two days back I received a pamphlet called: *"Anti-slaughtering campaign and its effect on Leather industry"* by Dhirendrodite, G. Puranesh which advocates that the protection, of useful cattle can be achieved by slaughtering useless cattle. My humble submission is that when the Government of

India appointed a Committee and accepted the policy of preservation and protection of these cattle banning slaughter of animals, then banning should be clearly proclaimed to be the policy and we should not be shy of saying so, because we have passed article 38-A, not with the help of this or that section of the community, but with the help of almost all communities in this House. This banning of slaughtering cattle is also an accepted principle all over the world and even Pakistan has prevented the slaughter of animals. Therefore, I do not see why we should not say openly that the Government of India has accepted this policy. It may be said that these words should not come into the Constitution but I would suggest further that if they wanted brevity only, they could have substituted the word "animals" only for the entire entry, because the disease of animals etc., are all included in the word "animals". When they wanted to have an entry in respect of this important matter, they ought to have had such an entry as would have responded to public feeling in this matter. Only yesterday we heard Dr. Ambedkar expatiating, while he was discussing section 223 and section 91, and saying that though the entry 91 was redundant, as both entries said the same thing, still with a view to allay public feeling and satisfy the Provincial Governments he would have this redundant entry. So I do not understand why the Government is feeling shy of using the words "ban of the slaughter of animals" in this item. If this is their policy, I do not think this Secular State will fall down if we use the right words. I would have been glad if the Drafting Committee used this expression at least for the purpose of satisfying the sentiments of the people. However, I bow down to the wisdom of the Drafting Committee and I do not want to move my amendment. After all, public sentiment does matter and if you are doing the right thing it is but right that you not only respond to public feeling but satisfy it by saying that you have responded to it. You have agreed to the principle but you are refraining from using the correct words. I am not satisfied with the wordings of the Drafting Committee, but as they have seen it fit to eliminate these words of mine, I do not propose to move my amendment.

Prof. Shibban Lal Saksena : Sir I move:

"That entry 22 in List II be transferred to List III."

This entry has been amended by Dr. Ambedkar and he has used the words "Preservation protection and improvement of stock". Sir, I object to his method of providing for ban on Cow Slaughter by the back door. Why is the Drafting Committee ashamed of providing for it frankly and boldly in so many plain words?

There is no sense in trying to camouflage such vital matters. The entry as it stands now has no meaning, so far as ban on Cow Slaughter is concerned. I want that this entry should go to List III, not only on account of cow protection but because of the other problems involved. The entry relates to the improvement of stock which is a national problem and the provinces alone cannot solve it. In my part of my own province the cattle are so inferior that we cannot improve them, unless we import cows and bulls from Hissar etc. The same is the situation in other parts of the country. If you want to improve the stock you must have an all-India plan which should be coordinated by the Centre. If you put this Entry in List III, i.e.., the Concurrent List, the provinces will have all the powers and at the same the Centre can co-ordinate their efforts. Therefore this Entry must go to List III so that the Centre with its funds and knowledge would be able to co-ordinate State plans for improving the cattle stock, which is essential for improving the agriculture of the country.

Shri Lakshminarayan Sahu (Orissa: General): *[Mr. President, I do not want to take much of your time in regard to this matter, but I would like to make one point. Here we want to mention 'preservation, protection and improvement of stock', which, in my opinion, does not exclude all possibility of ambiguity. Hence I would say that we should use the expression 'improvement of indigenous kinds of live-stock' which would better express our intention. When we say 'improvement of stock', it is not clear what 'stock' we mean; then we further say 'prevention of animal diseases'. The expression 'live-stock' would make it quite clear.

The other point is, that this should not be included in the Concurrent List. If it is included in the State List, every province will know what steps it has to take. We see that the animals sent to our province from Hissar and Sind cannot easily live there. Their young ones have got a short life. Hence I wish that this should be better included in the State List rather than the Concurrent List. We will have much more knowledge about the condition of our province, about the development of our live-stock than the Centre can.]*

Shri T. T. Krishnamachari: Sir, in regard to Mr. Saksena's amendment it seems to be like a saying current in my part of the country which says that if you throw as many stones as you can at a mango tree at least one of them is bound to hit a mango and bring it down. Likewise my friend seems to have a scheme to have a series of amendments to get as many subjects transferred from List II to List III, in the hope that at least one amendment of his would be accepted by the House. If that is the approach I have nothing to say about is except to state that responsibility for the administration of these subject should rest with the States.

As regards my honourable Friend Mr. Thakur Das Bhargava I had anticipated his argument when I spoke moving my amendment. We fully sympathise with him. We recognise that the purpose he has in view has been conceded by this House by putting it in the Directive Principles. But so far as putting anything which is a statement of policy in the list which confers legislative power on the Centre and the provinces is concerned, I am afraid we must say that we cannot agree with him. Therefore I feel that he might be satisfied that the purpose will be achieved without specifically putting the words in the entry. I hope the House will accept the amendment moved by me.

Mr. President: The question is:

"That in entry 22 of List II, for the words 'Improvement of stock' the words 'Prevention, protection and improvement of Stock' be substituted."

The amendment was adopted.

Mr. President: The question is:

"That entry 22 of List II be transferred to List III."

The amendment was negatived.

Mr. President: The question is:

"That entry 22, as amended, stand part of List II."

The motion was adopted.

Entry 22, as amended, was added to the State List.

Entry 23

Entry 23, was added to the State List.

Entry 24

Prof. Shibban Lal Saksena: Sir, I move:

"That in entry 24 of List II, after the word 'loans' the words 'Consolidation of agricultural holdings; State, co-operative and collective agricultural farms; acquisition by the State of rights in agricultural land' be inserted."

Sir, I had also given an amendment that this entry should be transferred to List III which seems to have been omitted by mistake.

My Friend Mr. T. T. Krishnamachari objected to my amendments for transferring certain items of List III. I would draw his attention to para 233 of the report of the Joint Committee on Indian Constitutional Reforms where they say:

> "We turn now to the problems presented by the Concurrent List. We have already explained our reasons for accepting the principle of a Concurrent List, but the precise definition of the powers to be conferred upon the Centre in relation to the matters contained in it presents a difficult problem. In the first place, it appears to us that while it is necessary for the Centre to possess in respect of the subjects included in the List a power of co-ordinating or unifying regulations, the subjects themselves are essentially provincial in character and will be administered by the Provinces and mainly in accordance with Provincial Policy; that is to say, they have a closer affinity to those included in List II than to the exclusively federal subjects. At the same time, it is axiomatic, that, if the concurrent legislative power of the Centre is to be effective in such circumstances, the normal rule must be that, in case of conflict between a central and a provincial Act in the concurrent field, the former must prevail."

It is obvious that the Concurrent List is intended to be a list of those subjects in which the Centre should have the power of co-ordinating the activities of the States and of advising them and therefore when I suggested that these entries should be transferred to List III, I did not want to deprive; the provinces of their power. I only want that the Centre should have the power of advising the units and of co-ordinating their activities and the finances of the Centre will be helpful in the development of those activities.

I feel that this particular item is a most important one in the whole list and you cannot carry out any scheme of planning without having it under Central control. I will quote some figures.

We are now engaged in the abolition of the zamindari and in my own province it will cost about 150 crores of rupees in compensation alone.

Similarly, in Bihar a large amount will have to be spent in acquiring zamindari property. In regard to these big schemes of social engineering, the provinces have experienced great difficulty, and therefore if such schemes are taken up by the Centre, then the Government of India can have a uniform policy for the liquidation of the system all over the country. It is my opinion that India cannot prosper and her rural economy cannot improve, until the present antiquated system of land tenure is abolished. There is this difficulty in every province. Fortunately in my own province it will soon be solved. If we want that this zamindari system should be abolished all over the country quickly, then this subject should be in the hands of the Centre. We should have for all-India a uniform system of land tenure. If this subject is therefore in the Concurrent List, the Centre will be able to regulate the policy to be followed by the provinces and may succeed in abolition of landlordism in the shortest possible time.

If you want to develop land, I suggest that consolidation of agricultural holding shall have to be included in a comprehensive ten-year plan. Collective farms, some 20,000 in number, shall have to be established costing Rs. 3 crores. This much sum cannot be found by one single State unit. Therefore I suggest that this entry might be transferred to List III.

Shri Brajeshwar Prasad: Sir, I move:

"That for amendment No. 3611 of the List of Amendments, the following be substituted:

"That entry 24 of List II B, be transferred to List I.'"

With your permission I shall move also the next amendment, viz.,-

"That for amendment No. 3611 of the List of Amendments, the following be substituted:-

"That for entry 24 of List II, the following be substituted:

'24 Land, that is to say, rights in or over land, land tenures including the relations of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization subject to the supervision, direction and control of the Union Government.

I heartily endorse the arguments advanced by my honourable Friend, Mr. Shibban Lal Saksena. His premises are sound, but the conclusion he has drawn does not follow therefrom. He has made out a case for the transfer of this entry to List I. I agree that there should be all-India planning and uniformity in regard to this matter. But that does not mean that this should be transferred to List III.

The Honourable Dr. B. R. Ambedkar: We do not accept the amendments.

Mr. President: I will now put amendment No. 88 of Shri Brajeshwar Prasad to vote.

The question is:

"That for amendment No. 3611 of the List of amendments, the following be substituted:-

"That for entry 24 of List II, the following be substituted:

'24. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization subject to the supervision, direction and control of the Union Government.'"

The amendment was negatived.

Mr. President: Now I will put Prof. Shibban Lal's amendment No. 305.

The question is:

"That in entry 24 of List II, after the word 'loans', the words 'Consolidation of agricultural holdings; State co-oprative and collective agricultural farms; acquisition by the State of rights in agricultural land' be inserted."

The amendment was negatived.

Mr. President: The question is:

"That for amendment No. 3611 of the List of Amendments, the following be substituted:-

"That entry 24 of List II be transferred to List I.'"

The amendment was negatived.

Mr. President: Then we have the next amendment of Prof. Shibban Lal Saksena.

The question is:

"That entry 24 of List II be transferred to List III."

The amendment was negatived.

Mr. President: The question is:

"That entry 24 stand part of List II."

The motion was adopted.

Entry 24 was added to the State List.

Entries 25 and 26

Entries 25 and 26 were added to the State List.

Entry 27

Mr. President: If Mr. Brajeshwar Prasad is moving amendment NO. 89, he should not repeat the old arguments.

Shri Brajeshwar Prasad: No Sir, I move:

"That entry 27 of List II be transferred to List I."

Mr. President: In the case of the next amendment also Prof. Saksena need not repeat his arguments.

Prof. Shibban Lal Saksena: I will take only two minutes, Sir, I moved:

"That entry 27 of List II be transferred to List III."

In this connection I want to refer to the condition of the forests in our land. Out of 1,200,000 square miles of State forests nearly 54,000 sq. miles are inaccessible. They have remained unexploited. Therefore with a view to explore and exploit them and to conduct researches on an all-India basis, and to co-ordinate the activities of the various States, I have moved this amendment.

Shri Brajeshwar Prasad: I endorse all the sentiments expressed by Prof. Shibban Lal Saksena.

Mr. President : The question is :

"That entry 27 of list II be transferred to List I."

The amendment was negatived.

Mr. President: Now I will put Prof. Shibban Lal Saksena's amendment to vote. The question is:

"That entry 27 of List II be transferred to List III."

The amendment was negatived.

Mr. President: The question is:

"That entry 27 stand part of List II."

The motion was adopted.

Entry 27 was added to the State List.

Entry 28

Shri T. T. Krishnamachari: Sir, I move:

"That in entry 28 of List II, the words 'and-oil-fields' be deleted."

This is explained by the moving of a similar entry in List I. Sir, I move:

Shri Brajeshwar Prasad: Sir, I move:

"That entry 28 of list II be transferred to List I."

Mr. President: The next one.

Shri Brajeshwar Prasad: I am not moving any other amendment.

Mr. President: The question is:

"That in entry 28 of List II, the words 'and oilfields' be deleted."

The amendment was adopted.

Mr. President: The question is:

"That entry 28 of List II be transferred to List I."

The amendment was negatived.

Mr. President: The question is:

"That entry 28, as amended stand part of List II."

The motion was adopted.

Entry 28, as amended, was added to the State List.

Entry 29

Prof. Shibban Lal Saksena: Sir,. I move:

"That entry 29 of List II be transferred to List III."

Mr. President: The question is:

"That entry 29 List II be transferred to List III."

The amendment was negatived.

Mr. President: The question is:

"That entry 29 stand part of List II."

The motion was adopted.

Entry 29 was added to the State List

Entry 30

(Amendment No. 94 was not moved.)

Shri T. T. Krishnamachari: Mr. President, Sir, I move:

"That for entry 30 of List II, the following entry be substituted:-

'30. Protection of wild animals and birds.'"

It was suggested that the wording of the entry as it stands in the Draft Constitution should be amended, and therefore it has been amended on the lines suggested by me. Sir, I move:

Shri Brajeshwar Prasad: I would like to speak on this.

Mr. President: Very well.

Shri Brajeshwar Prasad: Sir, I support the entry as moved by my Friend, Mr. T. T. Krishnamachari, but he seems to be partial towards wild animals and birds. I think he ought to have included all animals and birds in general. Why only wild animals and birds? After all, in this country there is a tradition of non-violence and to the extent to which it May be possible for provincial Governments to show consideration and mercy to animals and birds in general that consideration ought to be shown.

(Amendment No. 243 was not moved.)

Mr. President: The question is:

"That for entry 30 of List II, the following entry be substituted:-

'30. Protection of wild animals and birds.'"

The amendment was adopted.

Entry 30, as amended, was added to the State List.

Entry 31

Prof. Shibban Lal Saksena: Sir, I move:

"That entry 31 of List II be transferred to List III."

Mr. President: The question is:

"That entry 31 of List II be transferred to List III."

The amendment was negatived.

Mr. President: The question is:

"That entry 31 stand part of List II'.

The amendment was adopted.

Entry 31, was added to the State List.

Entry 32

Shri T. T. Krishnamachari: Mr. President, Sir, I move:

"That for entry 32 of List II the following entry be substituted:_

'32. Trade and commerce within the State, subject to the provisions of entry 35-A of List III; markets and fairs.'"

Sir, the amendment has been found to be necessary because we have put in the Concurrent List an entry which empowers the Centre to give directions in regard to trade and commerce and the products of industries which is controls. Therefore, this change has been made and for no other reason.

Shri Brajeshwar Prasad: Sir, I move:

"That in amendment No. 3616 of the List of Amendments, in the proposed entry 32 of List II, for the words and figure 'provisions of List I' the words 'superintendence, direction and control of the Union Government' be substituted."

Mr. President: There is no other amendment. The question is:

"That in amendment No. 3616 of the List of Amendments, in the proposed entry 32 of List II, for the words and figure 'provisions of List I' the words 'superintendence, direction and control of the Union Government' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That for entry 32 of List II, the following entry be substituted:-

'32 Trade and commerce within the State, subject to the provisions of entry 35-A of List III; markets and fair.'"

The amendment was adopted.

Mr. President: The question is:

"That entry 32 as amended, stand part of List II."

The motion was adopted.

Entry 32, as amended, was added to the State List.

Entry 33

Shri T. T. Krishnamachari: Sir, I beg to move:

"That entry 33 of List II be deleted."

Sir, this entry is no longer necessary because provision has been made elsewhere for this purpose.

Shri Brajeshwar Prasad: Sir, I beg to move:

"That for amendment No. 3617 of the List of amendments, the following be substituted:

"That for entry 33 of List II, the following be substituted:-

'33. Regulation of trade commerce and intercourse with other States for the purposes of the provisions of article 244 of this Constitution subject to the supervision, direction and control of the Government of India"

Mr. President: Do you wish to move the next amendment No. 99 ?

Shri Brajeshwar Prasad: Sir, I move:

"That in amendment NO. 3617 of the List of Amendments, for the word 'deleted' the words and figure 'included in List I' be substituted:-

Mr. President: The question is:

"That for amendment No. 3617 of the List of Amendments, the following be substituted:-

"That for entry 33 of List II, the following be substituted:-

'33. Regulation of trade commerce and intercourse with other States for the purposes of the provisions of article 244 of this Constitution subject to the supervision, direction and control of the Government of India.' "

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 3617 of the List of Amendments, for the word 'deleted' the words and figure 'included in List I' be substituted:-

The amendment was negatived.

Mr. President: The question is:

"That entry 33 of List II be deleted."

The amendment was adopted.

Entry 33 was deleted from the State List.

Entry 34

Prof. Shibban Lal Saksena: Sir, I beg to move:

"That entry 34 of List II be transferred to List III."

This is an important amendment. I would like the House to realise the magnitude of the problem. We all want to wipe out rural indebtedness. Sir, in this connection I would like to read an extract from the *People's Plan for Economic Development of India*, which runs as follows:

> "The other problem that will have to be tackled, along with this problem of the outmoded land tenure system, will be the problem of rural indebtedness. The total rural indebtedness was estimated by the Central Banking Inquiry Committee, in the year 1929, at about 900 crores of rupees. Subsequent estimates have however, put the figure at a much higher level. The estimate according to the report of the Agricultural Credit Department of the Reserve Bank of India in the year 1937 is about 1800 crores of rupees. It is not possible that this might have reduced to any significant extent since the year 1937, nor can the so-called agricultural boom at present be said to have produced very substantial reductions. The money-lender in the country dominates more in that strata of the agricultural population which is relatively worse off."
>
> "The boom can hardly be said to have benefited that strata. On the other hand, the debt represents accumulations of decades. The debt legislation in the various provinces has not, admittedly, been able to touch even the fringe of the problem. We feel it necessary, therefore, that the debt should be compulsorily scaled down and then taken over by the State. Experiments made in this direction in the Province of Madras, for example, serve as a useful pointer. Under the working of the Madras Agriculturist' Relief Act of 1938, debts were scaled down by about 47 per cent and the provisions of the Act can, by no logic be characterized as drastic. In the Punjab, under the operations of the Debt Conciliation Boards, debts amounting to 40 lakhs were settled for about 14 lakhs. It should, therefore, be possible and must be considered as necessary to scale down the present debts to about 25 per cent. before they are taken over by the State. Assuming the present indebtedness to amount to about Rs. 1,000 crores the debt to be taken over by the State will come to about Rs. 250 crores.
>
> The compensation to be paid to the rent-receivers as well as to the usurers will thus amount to Rs. 1985 crores. This should be paid in the form of self-liquidating bonds issued by the State. These should be for a period of 40 years at the rate of interest of 3 per cent and should be compulsorily retained by the State in its possession. The annual payments to be made by the State for these bonds will come to about Rs. 60 crores.
>
> On the carrying out of these initial measures will depend the success of the planned economy for raising the productivity of agriculture in the interests of

> the cultivators. Unless the *status quo* is changed in this manner there can be no hope of improving the standard of living of the vast bulk of our peasantry, and therefore, no hope of building up an industrial structure in the country on sound, stable and secure foundations. We are aware of the difficulties in the way of carrying out the above measures, but we are unable to see any alternative to them whatsoever."

It is thus obvious that if we really want to remove agricultural indebtedness, the problem cannot be solved merely by action taken by individual States. Only a comprehensive plan and its bold execution with the fullest co-operation of the Union Government with the Government of the states can solve these problems. It is therefore that I have suggested that this entry should be transferred to List III.

Sir, I have tabled my amendment only with this purpose in view. I feel and I am quite convinced that we cannot change the face of our country and we cannot realise the 'India' of our dreams unless we adopt a comprehensive plan and have powers to co-ordinate the activities of the Centre and the Provinces. I therefore commend my amendment for the earned consideration of the House.

Entry 36

Shri T. T. Krishnamachari: Mr. President, Sir, I move:

"That for entry 36 of List II, the following entry be substituted:--

'36. Production, supply and distribution of goods subject to the provisions of entry 35-A of List III.'"

The words that have been added are ",Subject to the provisions of entry 35A of List III." I have explained before that there is a specific entry in List III in regard to production, supply and distribution of goods of industries that are subjects under Central control and therefore this addition has become necessary. Sir, I move:

Shri Brajeshwar Prasad: Sir, I beg to move:

"That in amendment No. 3619 of the List of Amendments, in the proposed entry 36 of List II, for the words and figure 'provisions of List I' the words 'superintendence, direction and control of the Union Government' be substituted."

Prof. Shibban Lal Saksena: I only move, amendment No. 310.

"That entry 36 of List II be transferred to List III".

Mr. President: The question is :

"That in amendment No. 3619 of the List of Amendments, in the proposed entry" 36 of List II, for the words and figure 'provisions of List I' the words 'superintendence, direction and control of the Union Government' be substituted."

The amendment was negatived.

Mr. President: The question is :

"That entry 36 of List II be transferred to List III,"

The amendment was negatived.

Mr. President: The question is :

"That for entry 36 of List II, the following entry be substituted:-

'36. Production, supply and distribution of goods to the provisions of entry 35-A of List III."'

The amendment was adopted.

Mr. President : The question is

"That entry 36, as amended, stand part of the List II."

The motion was adopted.

Entry 36, as amended, was added to the State List.

Entry 37

Shri T. T. Krishnamachari : Mr, President, Sir, I move

"That for entry 37 of List II, tile following entry be substituted:-

'37. Industries, subject to the provisions of entry 64 of List I.'"

Shri Brajeshwar Prasad: Mr. President, Sir, I beg to move

"That in amendment No. 3620 of the List of Amendments, in the proposed entry 37 of List II, for the words and figure 'provisions of List I' the words 'superintendence, direction and control of the Union Government' be substituted,"

Mr. President: The question is:

"That in amendment No. 3620 of the List of Amendments, in the proposed entry 37 of List II, for the words and figure 'provisions of List I' the words 'superintendence, direction and control of the Union Government' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That for entry 37 of List II, the following entry be substituted:-

'37. Industries, subject to the provisions of entry 64 of List I."'

The amendment was adopted,

Mr. President: The question is:

"That entry 37, as amended, stand part of List II."

The motion was adopted.

Entry 37, as amended, was added to the State List.

Entry 38

Shri Brajeshwar Prasad: Mr. President, Sir, I beg to move:

"That in amendment No. 3621 of the List of Amendments, for the word 'deleted' the words and figure 'transferred to List III' be substituted."

Shri H. V. Kamath: Mr. President, Sir, on a point of order. Amendment No. 3621 has not been moved and therefore I do not see how this amendment will arise, when that has not been moved.

Mr. President: His amendment only seeks to substitute the words 'transferred to List III" instead of "deleted." Deletion is not transfer. We do not want propositions for deleting an entry to be moved. We take them as moved, because they are of a negative character.

Shri Brajeshwar Prasad : Sir, adulteration of foodstuffs and other goods have assumed scandalous proportions in this country. It is not a problem that is confined only to one province. Therefore, it must be- tackled on an All-India basis. There is not one single food commodity that we get which is, not adulterated. When we purchase milk there is more water than milk. In fact there is hardly any commodity that has not been adulterated. Now, Sir, the evil has assumed an All India proportion. It is therefore in the fitness of things that this Government of India which proclaim to be the servants of the people must serve the people in this vital affair.

Pandit Lakshmi Kanta Maitra (West Bengal: General) : Mr. President Sir, I beg to move :

"That entry 38 of List II be transferred to List III."

Entry 38 relates to adulteration of foodstuffs and other goods. It has been included' in the State List. My suggestion is that it should be transferred to the Concurrent List so that not only the Provincial Governments, the State Governments but the Government at the Centre also may have power to legislate with regard to this.

Sir, I can assure you at the very beginning that I have not the least desire to take the time of the House when it is hard pressed for it unless I feel absolutely convinced of the importance of this subject. I will therefore beseech you to bear with me for a few minutes if I make a few hurried remarks with regard to the background against which I want this amendment to be considered.

The Government of India in 1937 brought into being a body called the Central Advisory Board of Health which had been functioning till the formation of the last Interim Cabinet before the final transfer of power. I happened to be an elected member of the Central Advisory Board of Health from its very inception. This Central Advisory Board of Health was composed not only of the provincial ministers and State Ministers of Health, but also of important persons concerned with the medical profession and public health. Year after year. the Board were confronted with the problem of tackling this question of adulteration of foodstuffs. It was a very embarrassing situation for any Government to tackle. Each one of the provincial Governments had almost its own set of standards. The result was nothing short of confusion. What complied with the requirements of a particular province failed to comply with those of another. So, in this state of flux and uncertainty, the Government of India appointed a technical Committee, an expert Committee to go into the whole aspect of food adulteration in India. It was a purely Technical Committee. But, unfortunately or fortunately, I happened to be one of the members of that Technical Committee and I had to devote a considerable amount of study to the subject. We produced an unanimous report. This report indicated that certain types of foodstuffs which had inter-provincial, inter-state circulation could not be effectively dealt with by any state legislation alone.Take for instance ghee, any of the milk products. I am particularly referring to ghee. Ghee used too constitute until before the war a most important item in the dietary of this country6. today, we do not get ghee; ghee has parctically left the land, thanks to the advent of the hydrogenated edible oil, the *Dalda Banaspati.* what was felt at that time was that articles like ghee, mustard oil, cocoanut-oil-because cocoanut-oil and *til* oil are used for edible purposes in several places-milk and milk products-all these circulated freely throughout this country and therefore the places of their sale are not the only places where the mischief should be combated. The Expert Committee found that there were certain indispensable tests. With regard to ghee, there is, for instance, the Butyro-refracto-meter test, the Reicherst Wolny value test, the saponification value test, the iodine value test, the phytesterol Acetate test, the specific gravity test and others. These are technical matters; I do not want to weary the House with all these details. The rock-bottom fact is that the expert Committee, which was also composed of experts brought from outside, found that with regard to these tests, there should be one denominating factor which should govern all species of ghee. For instance, ghee is manufactured in Kathiawar. They have got one set of tests. Guntur is another manufacturing- area; it has got, to comply with another set of tests. Khurja in the U. P. has mother set of tests. The consuming provinces like ours, Bihar, Bengal, Orissa, Assam who mainly consume these products imported from outside their own areas, are in a in a helpless condition. They cannot effectively tackle this problem with their individual provincial measures. All that they can do is, if milk is sold in a particular town in a particular province, they have got the lactometer test under the Food Adulteration Act of the province which simply deals with the percentage of water. Today it has been found and amply demonstrated that this test is an absolute fraud and that we can by some artificial means. by some addition of sucrose content, we can get the prescribed standard with adulterated stuff.

Therefore, the Government of India felt the need to pass an, all-India Food Adulteration Act. A model Act was drafted by us in consultation with all the provinces. Now, before that Act could be brought before the legislature, the transfer of power took place. The findings of the Expert Committee are there and the Government of India was absolutely convinced that without such a piece of legislation emanating from the Centre, it would be a hopeless task to tackle with this problem of food adulteration. My honourable Friend Mr. Brajeshwar Prasad rightly pointed out that it has assumed the proportions of a scandal.

Sir, the country appreciates with a deep sense of gratitude the stand that you have taken with regard to these hydrogenated edible oils. If other eminent persons also set their feet against this, I think this problem of food adulteration could be effectively checked. This cannot be done if it is left simply to the, provincial legislature. Take for instance the scandal about mustard oil that we see in Bengal today. The Public Health Department of the Calcutta Corporation has announced that the city and the rural areas also have been passing through an epidemic of dropsy, call it beri-beri or whatever you like, in a very acute form. They say you may drop down dead at any moment without even a moment's notice because of your consumption of the poison of mustard oil. They say that the mustard oil which is largely used in Bengal, Bihar, Orissa for edible purposes, is mixed with a sort of thing called argemon seed, which is dangerous for human health. Now, the poor fellow who sells the mustard oil in Patna-, Bhagalpur or Calcutta, has to import the whole stuff from another province. e.g., the U. P. You can at best get hold of him, put the article to some tests and then you can straightaway punish him. That fellow will say, and with good reason " what have I done'? I have purchased these fifty or sixty or two hundred tins from such and such place in U. P.; it is our main source of supply". The provincial Government of the place where it is retailed has not got the power to deal with the Supplies from a different province. All they can do is to ,get hold of these pedlars, retail dealers and deal with them.

This is a matter of serious import. You must go to the root of the matter, The evil must be tackled at the very source. It is rather unfortunate that this matter has come before the House when its attendance is thin and the members are also inattentive. But, let me tell the House, that as a member of that Committee, or perhaps the only surviving member in this House of the Central Advisory Board of Health, I can say with an amount of emphasis which is peculiarly mine, as it is born of my conviction that if this country is determined to stamp out this evil of food adulteration, it cannot be done in this kind of halfhearted manner by placing this matter in the provincial field. I know my honourable Friend Mr. T. T. Krishnamachari of the Drafting Committee will get up and say we have got provision for that in entry 66-A in the Union List, "standardisation of goods". Let me tell him frankly that this will not meet the situation. You can put "standardisation of goods" in the Union List; but in the State List entry 38, you definitely say "adulteration of foodstuff,-," belongs to the provincial sphere. Whenever the Centre will seek to legislate on foodstuffs and prescribe standards therefore the provincial Governments will at once raise the hue and cry "You are entrenching on our field because food adulteration is specifically provided for in entry 38 in the State List".

I have only referred to one or two matters. I can speak for hours. This matter took us full two years and I now find that with all the great amount of labour on the part of representatives of Health Ministers from the different provinces and experts from outside, and the tremendous expenditure of money, their findings could not be given effect to because of the sudden change in the political set-up. Now that we are going to enact a Constitution, I beseech the members of the Drafting Committee to consider this aspect. I want the provinces as well as the Centre to get seisin of the matter, so that even now we can give effect to the findings of the Central Advisory Board of Health, now defunct. I wish the Honourable the Minister for Health had been here. I am sure if the Director General of Medical Services were here, he would have supported me. It is my misfortune that I happen to be the only surviving member in this House of the Central Advisory. Board and there is no body else to support me. The Government representatives of the Public Health Department also are not here.

I therefore suggest in all seriousness that nothing would be lost if it is transferred to the Concurrent List. I am not the type of a member who moves amendments for nothing. Unless I am morally convinced, I do not move amendments or make speeches. Today food adulteration has assumed proportions which, unless you check it now, will kill the whole nation. Recently I have been interested in the movement which. was very kindly inaugurated by you. Mr. President, with regard to Dalda. Mahatma Gandhi with his characteristic insight rightly started this. In six different institutions researches are now being carried on with regard to the hydrogenated oils. I have seen reports of one or two important research institutes. I had a prolonged discussion with some of the eminent scientists about a month ago about the results they had achieved regarding this. The results are conflicting. There is perhaps no vice as such in the process of hydrogenation; but what matters most is the basic oil pressed out of diseased seeds and mixture with other varieties of injurious stuff with the result that the product of hydrogenation assumes deleterious properties which bring on disease. I am awaiting the results of the researches of the other five institutions. You, Mr. President, rightly sounded the note of warning. Unless these matters are tackled both from the Centre as well as from the provinces this great social vice cannot be stamped out or effectively checked. I commend this amendment to the consideration of the House, as I feel that it is essential in the interest of the national health of this country.

(Amendment No. 105 was not moved.)

Dr. P. S. Deshmukh: (C. P. & Berar: General): Mr. President, I strongly support the amendment that has been moved by Shri Brajeshwar Prasad. When I moved a similar amendment some time ago it fell on deaf ears so far as the members of the Drafting Committee and the learned Dr. Ambedkar were concerned; but probably I should have been prepared to bear this without complaint as they were not prepared to accept my amendment regarding the prevention of adulteration of articles of food whether imported, proposed to be exported or otherwise, arrangement for analysis, control and regulation of all such articles, as an entry in List I. It is very necessary that I should speak here because I have given notice of a similar amendment to List III; but if this amendment is put to vote and rejected I would be precluded from moving that amendment or even speaking on that occasion because you may give a ruling that the subject had been discussed and decided.

So I would beg your permission to support the amendment that has been moved by Mr. Brajeshwar Prasad and to urge that the amendment of which I had given notice so far as the Union List was concerned and of which I have given, fresh notice, which is amendment 295, by which I seek the entry so far as adulteration of foodstuffs to be altered as follows :-

"Prevention of adulteration of articles of food whether imported, proposed to be exported or intended for domestic use, arrangements for analysis, control and regulation of all such articles."

The importance of this question has already been amply brought home to all the honourable Members of this House by my Friend Pandit Maitra who has just spoken and although he may be the last surviving member of that Commission which he referred to I hope the whole House is alive to the need of stopping adulteration of foodstuffs. It is a disgrace that should be put down at the earliest possible opportunity. It is really curious that for two years all sorts of adulteration of foodstuffs has gone on and the evil is showing no signs of diminishing yet and in spite of the fact that we are passing hundreds of laws and ordinances and rushing through dozens of Bills in a couple of minutes each, the Government has not come forward with a Bill dealing with this important matter and so as to stop this evil which is affecting the health as well as the prosperity of the whole nation. It is likely to affect the country much more seriously than any other single thing. We know that this adulteration is going on on such a scale that people have not left anything undone. in this respect. I may mention here a highly interesting case which came to light in my province. A certain merchant was, throughout the war, i.e. for nearly six years melting tons of gur in big pans. After melting it, he mixed it with near about twenty per cent of mud, earth taken from the old "gadhies" of which we have many in the C. P. and from which we get very find earth. This earth was consistently mixed with gur to the extent of 20 per cent and the adulterated gur was sold to all sorts of people, for all those years. The case came to the court only because the potter who supplied the large quantity of earth on the backs of his donkeys was not paid the money due to him, by the avaricious merchant and he had to bring the matter to the court. That was how the Government came to know of this dastardly offence. There are even worse cases than this.

Hence I claim that there is absolute necessity for putting this matte at least in the Concurrent List, if it is not possible to leave it to the exclusive powers of the Union. It is essential that there should be legislation which will prevent this kind of cases. What I propose is done in any and every agricultural country. In Canada as early as 1920, there are provisions for the proper grading of all sorts of agricultural products, and for the punishment of offences of adulteration. Even the irresponsible British Government was alive to the issue and that is why it appointed a Commission to go into this question. But our independent national government has not realised the importance of this question, and this amendment among other things seeks to bring this important question to the attention of the Central as well as the Provincial Governments. It seeks more to focus the attention of the Centre on this question, as the Provincial Governments are liable to prove ineffective.

Moreover, it is absolutely impossible for one State to check the evil because other States also are equally vitally concerned. There are also ports from which the adulterated stuffs are sent round the whole country. Therefore it is necessary to have all-India legislation. There should be not only the prevention of adulteration, but there should also be arrangements for government analysts who will be able to detect what sort and extent of adulteration there has been and thus bring home the offences to the people who have committed them. I therefore, think that the amendment moved by my Friend is quite proper and this subject should not be left only to the States. By placing it in the Concurrent List, we do not deprive the States of their power of legislation in respect of this subject, but so far as may be necessary, the Centre will have the power to interfere. I know the Drafting Committee has been criticised on various occasions. I do not wish to indulge in such criticism over again; but I do feel that some of the things said about the Committee are justified, that it need not be obstinate enough not to take into account the reasonable suggestions which have not occurred to them or appealed to them previously. I think this is none of them, and I do hope even at this late stage, that they will agree to the amendment proposed, and transfer this entry to List III.

Mr. President: I do not think it is necessary to have many speeches. We have had the point clearly put before us.

Shri T. T. Krishnamachari: Mr. President, Sir, I must confess that I have a great deal of sympathy with the objects which my honourable Friend Pandit Maitra wants to serve, by transferring this entry from List II to List III, and I do not for one moment even contemplate refuting the various arguments that have been put forward by previous speakers in regard to the necessity for prevention of adulteration of foodstuffs. These arguments, I admit, are sound. I do admit that adulteration exists and that it ought to be prevented. The dispute really is, which is the agency to prevent it? Is it to be the Centre or is it to be the State? I am afraid, Sir, that our technical advisers who happen to be the Ministry of Health in this particular instance, have not even suggested that we should transfer this entry from List II to List III.

Pandit Lakshmi Kanta Maitra: Did you refer this matter to them at all? What is the use of saying that did not make such a suggestion?

Shri T. T. Krishnamachari: My honourable Friend will please bear with me for a minute. The whole matter has been referred to the various ministers according as their interests lay, and actually, I might mention that in regard to public health legislation, the Health Ministry wanted to take it over, and make it a Concurrent subject. As has been explained on a previous occasion......

Dr. P. S. Deshmukh: The Health Ministry, Sir, is not the last word here.

Shri T. T. Krishnamachari: As was previously explained by Dr. Ambedkar, there was a lot of resistance from the Provinces and the Health Ministry did not suggest that this item should be transferred to the Concurrent List. I agree with my honourable Friend Dr. Deshmukh that the Health Ministry is not the last word on the subject; nor are we, the Drafting Committee, the last word on the subject. Ultimately the last word on the subject happens to be the wishes of this House. Well, this is a difficult question-the question of appointment of the legislative powers between the Centre and the Provinces. It has to be considered carefully. The safest thing is to maintain the *status quo*. But if there is to be a change, the change should be made after full and careful scrutiny, after full investigation and after obtaining the full consent of the authorities who are in charge of the administration. That is the only safe way of determining where the legislative powers ought to be vested and the responsibilities of the Centre and the States determined in so far as the Scheduled is concerned. And I would submit that the Drafting Committee has followed that line. It has not merely forwarded all these various entries to the Ministries concerned, at the Centre, but every opportunity was taken to get into correspondence with the Ministries in the Provinces, frequent conferences were held, opposing views were mentioned there and the lists and the amendments as we now propose them, are the result of those conferences and the result......

Pandit Lakshmi Kanta Maitra: Sir, can the honourable Member say whether in the case of these last minute, these fifty-ninth-minute changes he is in communication with the Ministers of the Provinces? Then in that case, the honourable Member must be having the power of clairvoyance and also clair-audience.

Shri T. T. Krishnamachari: I would willingly admit to the honourable member that every change that we make in the fifty-ninth minute and in the fifty-ninth second is a change that is based on a certain amount of consultation and some investigation. It is not an *ad hoc* change introduced by the Drafting Committee, because the Drafting Committee does not take the initiative in any of these matters.

Dr. P. S. Deshmukh: Does the honourable Member hold to this opinion even after what has been said in the House?

Shri T. T. Krishnamachari: Will the honourable Member please allow me to finish my speech?

As I was saying, this item was discussed with the various Premiers of the Provinces, and it was suggested that a small change should be made, and the Drafting Committee, accordingly tabled an amendment in support of that change. But we then found that some of the entries in List III would conflict with this entry, if that change were made. That is why I did not move that amendment. Every item on this List has been gone through with the Provincial Prime Ministers.

Pandit Lakshmi Kanta Maitra: And the Provincial Prime Minister say that these were not considered and discussed with them.

Shri T. T. Krishnamachari: I leave it to the discretion of the honourable Member to believe whomsoever he likes. But so far as I am concerned, I feel perfectly safe in mentioning that everyone of these items in the List were gone through and the decisions to make changes or not to make them are the results of such discussions.

Now, coming to the main point, I quite appreciate the force of the argument of Pandit Lakshmi Kanta Maitra. But as he himself has pointed out, I do not think the Centre is without any power whatsoever with regard to the control of movement of adulterated foodstuffs, from one State to another. He himself referred to entry in List I, entry 61-A which has been accepted by the House. It reads thus-

> "Establishment of standards of quality for goods to be exported across customs frontier or transported from one State to another."

Under this, I suggest there is ample power for the Centre to prevent adulterated foodstuff from going from one State to the other, and there will be enough power under this legislative entry for the Centre to impose penalties on those merchants who export adulterated foodstuffs from one State to another, and the purpose that my honourable Friend has in mind can be served. What, then, is the object of transferring it to the Concurrent List or to List I, I do not understand.

Pandit Lakshmi Kanta Maitra: May I explain ? The object is to save the Government from the odium that the Centre does not want to face the responsibility and so wants to pass it on to the Provincial Governments. We want to help the Central Government and to restore public confidence in it.

Shri T. T. Krishnamachari: The honourable Member is an old friend and colleague to mine, and I know he feels strongly on any point that he exercises his mind on. But I think he will understand that in this fairly important matter, we cannot take *ad hoc* decision here, because some people feel strongly on the subject. The interested parties are the Health Ministry here and the Provincial Ministries, and after full discussions we have come to the conclusion that such and such provisions should be there and punitive measures can be taken by the provinces. We have left it to the provincial governments to see that these provisions are observed. And I think if circumstances are such that we cannot..... (*Interruptions by Pandit Lakshmi Kanta Maitra and Dr. P.S. Deshmukh*). There is no use interrupting me. I must finish my arguments. If the Central Government feels, and if the Provincial Governments also feel that the powers vested in the provincial governments under entry 38 of List II and under entry 61 A. of List I are not adequate for the purpose, even then, we are not entirely without power.

Dr. P. S. Deshmukh: This finding has already been reached by a Commission.

Shri T. T. Krishnamachari: I say, even then we are not entirely without resources. Action can be taken under article 226 or 229. If it is found necessary, a Central Act can be passed under article 229. Such an Act was passed in the past in order to control the drug trade, which was entirely a provincial subject, and it was because of that Act that we have e now put it in the Central List, because co-ordination is necessary. We are not, therefore, entirely without resources. The position is undoubtedly serious, but it need not be unduly magnified by reason of the fact that the powers are put in the State List and not in the Concurrent List. Some honourable Members seem to think that the great Central Government of the future will have so many arms with which it can clutch at any offender at any particular place. We must on the other hand, place the responsibility squarely on the shoulders of the provincial Governments. I think that is the only way in which the purpose of my honourable Friend can be served. The Provincial Governments are on the spot and they are the persons to take action. If the Provincial Governments do not take any action for carrying out the necessary punitive measures for the purpose of seeking that the coordinating measures are not infringed upon, then 61-A gives enough power in the hands of the Centre to act. I do feel that although there is a lot of sentiment in this matter, and there is a lot of truth that there is adulteration of foodstuffs, the remedy cannot be sought by merely putting the entry into the Concurrent list or List I. Provincial Governments must accept the responsibility and face it squarely and if there is need we have enough powers under 61-A of the Act. But I feel that, much as I sympathise with my friend, I am unable to accept the suggestion.

Dr. P. S. Deshmukh: Why not wait till Dr. Ambedkar is there and consult him.

Pandit Lakshmi Kanta Maitra: I think at least they can ask the Health Ministry. On several occasions statements have been made on the strength that Provincial Ministers have agreed. But I have often been told by Provincial Ministers that they have not been consulted. This is our experience. This being an important matter, the Health Minister can be contacted, the Director-General of Medical Services could be contacted, and the Director of Health, Delhi, could also be contacted before any decision is taken. It will be a great national calamity if the Centre does not tackle it.

Mr. President: It is not usual for me to take part or sides.

Pandit Lakshmi Kanta Maitra: Quite true. I am appealing to my friend to be considerate.

Mr. President: Suppose if the matter is held over ?

Shri T. T. Krishnamachari: It could be held over. The point is that I cannot see how the Provincial Government can be consulted in the matter, and quick decision taken.

Mr. President: You can consult them.

Shri T. T. Krishnamachari: If it is a suggestion from the Chair I have no other option but to accept it.

Mr. President: It is not so much from the Chair. But I see that there is considerable feeling in the House and I must confess that I have my sympathies with that feeling. It is not really from the Chair but from the House.

Shri T. T. Krishnamachari: If you agree, it could be taken up a week hence.

Mr. President: Yes, we may do that.

Shri T. T. Krishnamachari: I would suggest that the Drafting Committee refer the matter to the Ministries concerned.

Entry 39

Mr. President: Since there are no amendments to entry 39 I shall put it to the House:

Entry 39 was added to the State List.

Entry 40

Shri T. T. Krishnamachari: Sir, I move:

"That for entry 40 of State List II, the following entry be substituted:-

'40 Intoxicating liquors, that is to say, the production, manufacture, possession transport, purchase and sale of intoxicating liquors.'"

This amendment is necessary because we have shifted poisons and drugs to the Concurrent List and opium happens to be in the Central List. This entry, therefore, will suffice for the purposes of State Governments. Sir, I move.

Shri H. V. Kamath: What is the distinction between production and manufacture? Is there any fine distinction?

Mr. President: Between production and manufacture?

Dr. P. S. Deshmukh: I suppose it is legal phraseology to cover all possibilities!

Mr. President: I think that is the explanation.

So I shall put the amendment to the House. The question is:

"That for entry 40 of State List II, the following entry be substituted:-

'40 Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors."

The amendment was adopted.

Mr. President: The question is:

"That entry 40, as amended be added to List II."

The motion was adopted.

Entry 40, as amended, was added to the State List.

Entry 41

Shri T. T. Krishnamachari: Sir, I move:

"That in amendment No.107 of List I (Sixth Week) for the proposed entry 41 of List II, the following entry be substituted:-

'41 Relief of the disabled and unemployable.'"

The original entry read: "Relief of the poor: unemployment". We are taking "unemployment" to the Concurrent List. Therefore what remains is only relief of the poor. It was felt by many Members of this House that it is offensive to sentiment for the word "poor" to be there. Actually the relief that is contemplated is not relief of the poor but only relief of those people who are needy, of the disabled and unemployable. That is why these words have been substituted. I hope the House will accept the amendment.

Dr. P. S. Deshmukh: I would like to move only a part of my amendment, Sir, I move:

"That in amendment No.107 of List I (Sixth Week) for the proposed entry 41 of List II, the following entry be substituted:-

> '41-A. Relief of the poor, control of begging, poor houses, training and employment of young persons."

My only point in moving this amendment is to provide for the control of begging. There has been some discussion yesterday on this point and the question is whether it will not be necessary to put specifically the control of begging as one of the items for legislation in this List.

But so far as employment is concerned, I am glad to find that it has been related to the Third List, which is certainly an improvement, and I feel happy about it.

So far as the control of begging is concerned, I would like to know if that is also proposed to be placed in List III, or whether it is considered to be covered by some other items. I am not sure of this. If my Friend could throw some light on it I would be in a position to consider my amendment.

Mr. President: Which amendment are you moving?

Dr. P. S. Deshmukh: Amendment 41-A. I am not moving the rest.

(Amendment 245 was not moved)

Shri H. V. Kamath: Sir, I find from the Concurrent List that there is a new article, entry 27-employment and unemployment. They are very comprehensive terms. I want to know from my honourable Friend Mr. T. T. Krishnamachari what exactly is connoted by the word "unemployable" here, apart from the word "disabled" already used. A man is unemployable-is something else meant than by saying that he is disabled and therefore unemployable: or does it mean that there is a category of persons for whom the State cannot provide work, though according to the Directive Principles of State Policy, we have laid down that the State must secure the right to work for every person. Does it mean people for whom Government cannot obtain employment, or those people who for some reasons, other than being disabled, cannot secure employment? If that is so, what is that category? I would like my Friend to throw some light on this point.

Shri T. T. Krishnamachari: I would at once confess that I have not had the opportunity that my honourable Friend Mr. Kamath has had of education in England and therefore I am unable to appreciate the point raised by him.

Shri H. V. Kamath: I am sorry, Sir, to interrupt, but I was not educated in England.

Shri T. T. Krishnamachari: The suggestion came from persons for whom most of us have very great respect. Obviously the idea seems to be to indicate those that are disabled and for some reason or other cannot undertake any employment.

So far as the amendment moved by Dr. Deshmukh is concerned there was some discussion yesterday in regard to beggary when it was pointed out by Dr. Ambedkar that that might be covered by entry 24 in the Concurrent List- Vagrancy. In any case if proper relief is provided for the disabled and the unemployable I think beggary to a large extent by those who are really needy will cease.

Dr. P. S. Deshmukh: Though I am not satisfied with the explanation of Mr. T. T. Krishnamachari I beg to withdraw my amendment.

The motion was by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That in amendment No.107 of List I (Sixth Week), for the proposed entry 41 of List II, the following entry be substituted:-

'41. Relief of the disabled and unemployable."

The amendment was adopted.

Mr. President: The question is:

"That entry, 41, as amended, stand part of List II."

The motion was adopted.

Entry 41, as amended, was added to the State List.

Entry 42

Entry 42 was added to List II.

Entry 43

Pandit Thakur Das Bhargava: Sir, I move:

"That with reference to amendment No.3626 of the List of Amendments, entry 43 in List II be transferred to List III as entry 9-A."

In regard to this entry it is clear that religious endowments, etc., etc., have provincial as well as inter-State importance. There are many institutions which may be said to be of more than provincial importance. For instance there is the Gandhi National Memorial, the Kasturba Trust, the Kamala Nehru Hospital, the Begum Azad Hospital, etc. As regards religious institutions we have a very large number in this country, especially in big towns. There are the Somnath Temple, the Badrinath, Jagannath, Rameshwaram, Dwaraka, Vishwanath, Madura, Srirangam and many other temples which are held in veneration and people go for worship from all parts of India. Similarly we have very big Mutts and Akharas. For instance there are the Ramakrishna and Vivekananda Missions, the Gurudwaras, Dharamshalas etc. The income from some of them are sufficient to run even universities. The beneficiaries consist of crores of people and therefore in regard to such charitable institutions it is very necessary that the Centre should also be invested with power to legislate in addition to the States. In regard to such institutions which are of provincial or local importance the State alone may have the right to legislate. I have, therefore, suggested that so far as these other institutions are concerned both the States and the Centre will have the power to legislate. The line of demarcation between them is not very distinct and therefore it may happen that it will be difficult to decide which is of local and which of more than local importance. But as it is a matter in which both the Centre and the provinces are equally interested and there is no chance of any clash of interest whatsoever.

When we come to fundamental rights in article 19 the right to religion has been to a certain extent hedged in by two sub-clauses which run as follows:

> "Nothing in this article shall affect the operation of any existing law or preclude the State from making any law-
>
> (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
>
> (b) for social welfare and reform or for throwing open Hindus religious institutions of a public character to any class or section of Hindus."

When we consider this aspect of the question it becomes all the more necessary that the Centre should have the right to legislate. Therefore my submission is that this entry be transferred from the States List to the Concurrent List.

Sardar Hukam Singh (East Punjab: Sikh): Sir, I have come to lend wholehearted support to the amendment moved by my Friend Pandit Bhargava. Ordinarily no support is necessary to an amendment like this nor is one permitted, but I felt myself bound because I had certain fears. In this connection I support the grounds as well, mentioned by Pandit Bhargava.

When I saw this entry in this List it certainly struck me that if such important institutions are allowed to remain in the States List they might not be maintained and looked after as they ought to be. Therefore, I felt that I should move an amendment regarding Gurudwaras, particularly for the insertion of a new entry and I did that by amendment No.253. I was particular about the maintenance and control of Gurudwaras such as those in States like Hyderabad and in Assam and which are of historical importance. There might not be, and probably there would not be, any Sikh representation those local legislatures, to put the case of those Gurudwaras. I, therefore, felt that there should be a special entry in the Concurrent List and I sent a notice of that amendment. Now, that Pandit Bhargava has moved this amendment that this entry should be transferred to the Concurrent List there is no need for me to move my amendment and I wholeheartedly support Pandit Bhargava's amendment.

The Honourable Dr. B. R. Ambedkar: Sir, I am prepared to accept this amendment.

Mr. President: The question is:

"That with reference to amendment No.3626 of the List of Amendments, entry 43 in List II be transferred to List III as entry 9-A."

The motion was adopted.

Entry 43 of List II was transferred to the Concurrent List.

Entry 44

Shri T. T. Krishnamachari: Sir, I move:

"That for entry 44 of List II, the following entry be substituted:-

'44. Theatres, dramatic performances, cinemas, sports, entertainments and amusements, but not including the sanctioning of cinematograph films for exhibition.' "

With your permission, I move also amendment No. 287 standing in my name, *viz.*

"That in amendment No. 111 of List I (Sixth Week), in the proposed entry 4 of List II, for the words 'not including' the words 'subject to the provisions of List I with respect to' be substituted."

The amended amendment will read thus:

'44. Theatres, dramatic, performances, cinemas, sports, entertainments and amusements, subject to the provisions of List I with respect to the sanctioning of cinematograph films for exhibition."

The idea that the sanctioning of cinematograph films for exhibition should be transferred to the Centre has been accepted. There is no further variation here except that 'sports, amusements and entertainments' have been added to the original entry in the Draft Constitution.

Mr. President: Dr. P. S. Deshmukh and Shri Raj Bahadur are not moving their amendments.

Amendment No.286 stands in the name of Mr. Kamath.

Shri H. V. Kamath: Sir, I move:

"That in amendment No.111 of List I (Sixth Week), in the proposed entry 44 of List II, for the words 'entertainments and amusements, the words 'playgrounds, gymnasia and stadia' be substituted."

I feel, Sir, that by including 'entertainments and amusements' in this entry- they were not there in the original draft-the Government are trying to arrogate to themselves far more powers to interfere with the lives of citizens than are necessary. The other day there was a report in the Bombay papers that that Government was trying to ban even a harmless game like rummy. I think that entertainments of this kind at least must be kept beyond the purview of Government.

Shri T. T. Krishnamachari: It comes in as entry 45 in the List.

Shri H. V. Kamath: It comes under the term 'Entertainments and amusements.' I do not want that entertainments and amusements should be subject to any kind of governmental interference. Already in modern times Governments are taking so much power that it seems that the sky as the limit to their greed for power. With the sky as the limit the Government are tiring to encroach upon each and every field. I do not see any reason why entertainments as such should be mentioned in any of the lists here. I have mentioned specifically, 'playgrounds, gymnasia and stadia,' because in recent times, in Russia as well as in Germany and Italy, during the third decade of this century, it was governmental action which brought into existence amphitheatres, vast playgrounds and what are called parks of culture and rest. Government might move in these matter and organise these things for millions of citizens. But this is something different from legislating with regard to entertainments and amusements. We have the old Sanskrit saying:

'Kavya Shastra vinodena kalo gcchati dhimatam.'

Any Government if it is so disposed might regard *vinoda*, innocent entertainment as coming within the ambit of this provision.

Just as you cannot beat people into conformity, just as you cannot shoot people into loyalty or obedience, so too you cannot legislate people into moral beings. If crimes against humanity are committed, then the State should intervene and punish the offender. But it is one thing to punish crimes against humanity, and quite another to create conditions for the commission of offences. That is what you are doing here. Government are trying to legislate with regard to certain amusements and entertainments. One does not know which amusements will fall within this entry and which not. I am really unable to understand why this entry should have been modified in this regard--The old draft entry 44 might have been left as it was. I do not know why this change has been made. I would be happy if the words 'entertainments and amusements' are deleted , even if my amendment to insert "playgrounds, etc." is not accepted. But the words 'Entertainments and amusements' must go.

Prof. Shibban Lal Saksena: Sir, I beg to move:

"That in amendment No.111 of List I (Sixth Week), the proposed entry 44 of List II be transferred to List III."

My only reason for moving this amendment is that I consider theatres, cinemas and dramatic performances to be very important modern means of promoting adult education. In our country, if we want to bring literacy to everybody, this entry should go to List III so that there can be co-ordination and regulation of the production and use of the films for educational purposes of the whole nation. By putting this in List III we would not be taking away anybody's powers.

Shri Brajeshwar Prasad: Sir, I rise to support the new entry moved by Shri T. T. Krishnamachari. I am opposed to what all was said by Mr. Kamath on this occasion. I hold that entertainments and amusements if they are to be available to the poor, the provincial Governments must have power. The entertainments today are available only to the rich. The poor are deprived of these amenities of life. The record of the Soviet Union in this sphere is simply admirable. I support the amendment moved by Shri T. T. Krishnamachari.

Shri T. T. Krishnamachari: Sir, I appreciate what my honourable Friend Mr. Kamath has said in regard to undue interference by the State in the activities of private persons in Clubs and other places, but I do not think that this entry relates to that matter at all. What it really relates to is a certain amount of control which the States should have over places of public resort for purposes of health, morality and public order. These three matters of the State will have to safeguard in places of public resort. What my friend contemplates to do should be done under the powers conferred by the next item 45. The recent order of the Bombay Government is to stop the play of rummy because of the stakes involved. The people that play this game for such high stakes that it takes the form gambling, and it is for that reason that under the powers that the Bombay Government have under entry 45 they have sought to prohibit the playing of rummy for money. I do not think that this particular entry under discussion will be abused by any State Government to unduly restrict any pleasures or diversions that people have. The purpose of this entry is entirely different.

Mr. President: Then I will put Mr. T. T. Krishnamachari's amendment to the vote No.287.

Shri T. T. Krishnamachari: No.287 and 111 form part of one whole.

Mr. President: The question is:

"That in amendment No.111 of List I (Sixth Week), in the proposed entry 44 of List II, for the words 'not including' the words 'subject to the provisions of List I with respect to' be substituted."

The motion was adopted.

Mr. President: Then amendment No.111 as amended by amendment No.287. The question is:

"That for entry 44 of List II, the following entry be substituted:-

'44. Theatres, dramatic performances, cinemas, sports, entertainments and amusements, but subject to the provisions of List I with respect to the sanctioning of cinematograph films, for exhibition."

The amendment was adopted.

Mr. President: The question is:

'That in amendment No.111 of List I (Sixth Week), in the proposed entry 44 of List II, for the words 'entertainments and amusements, the words 'playgrounds, gymnasia and stadia' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No.111 of List I (Sixth Week) the proposed entry 44 of List II be transferred to List III."

The amendment was negatived.

Mr. President: The question is:

"That entry 44, as amended, stand part of List II."

The motion was adopted.

Entry 44, as amended, was added to the State List.

Entry 45

Mr. President: Amendment No.313 is for deletion of the entry. It is not an amendment but Prof. Shibban Lal Saksena can speak on it.

Prof. Shibban Lal Saksena: Sir, betting and gambling are being legalised by this entry in the Schedule. I thought that gambling was a crime and so I am surprised to see that gambling and betting are provided for as a legitimate field of activity under this Schedule. In fact, I was sorry that entry No.78 in List I was passed without any opposition, "Lotteries organised by the Government of India or the Government of any State." I think that this is against the principles to which we are committed. Gambling and betting should be banned. Sir, I strongly oppose this entry.

Shri Lakshminarayan Sahu: *[Mr. President, I am opposing this for the reason that when we are going to build the entire structure of our State on the foundations of truth and non-violence, when we are guided by the lofty ideals of Mahatma Gandhi, there should be no mention at all of betting and gambling in the Constitution we are to frame. The very mention of these words would indicate that our National Government favours the idea of encouraging betting and gambling and seeks to have its own control on them. Have we forgotten the lessons of the Mahabharat ? Taxation on such items does not appear proper. The clause relating to lottery laid down in the Constitution, is also not proper.]*

Sardar Hukam Singh: Does the honourable Member want that there should be no betting and gambling ?

Shri Lakshminarayan Sahu : *[Yes, I want that.]

Sardar Hukam Singh : Who is to prohibit it?

Shri Lakshminarayan Sahu: The Constitution Assembly which is making the rules now, should prohibit it. *[Therefore, Mr. President, I oppose it]

The Honourable Dr. B. R. Ambedkar: Sir, I am very much afraid that both my friends, Mr. Shibban Lal and Mr. Sahu, have entirely misunderstood the purport of this entry 45 and they are further under a great misapprehension that if this entry was omitted, there would be no betting or gambling in the country at all. I should like to submit to them that if this entry was omitted, there would be absolutely no control of betting and gambling at all, because if entry 45 was there it may either be used for the purpose of permitting betting and gambling or it may be used for the purpose of prohibiting them. If this entry is not there, the provincial governments would be absolutely helpless in the matter.

I hope that they will realise what they are doing. If this entry was omitted, the other consequence would be that this subject will be automatically transferred to List I under entry 91. The result will be the same, *viz.* the Central Government may either permit gambling or prohibit gambling. The question therefore that arises is this whether this entry should remain here or should be omitted here and go specifically as a specified item in List I or be deemed to be included in entry 91. If my friends are keen that there should be no betting and gambling, then the proper thing would be to introduce an article in the Constitution itself making betting and gambling a crime, not to be tolerated by the State. As it is, it is a preventive thing and the State will have full power to prohibit gambling. I hope that with this explanation they will withdraw their objection to this entry.

Mr. President: The question is

"That entry 45 stand part of List II."

The motion was adopted.

Entry 45 was added to the State List.

Entry 38-(contd.)

The Honourable Dr. B. R. Ambedkar: May I request you to go back to entry 38 and to amendment No.311 standing in the name of Pandit Lakshmi Kanta Maitra ? I heard, Sir, that you were pleased to direct Mr. T. T. Krishnamachari to have this entry held back, but I am prepared to accept the amendment suggested by me honourable Friend, Pandit Maitra.

Mr. President: Very well. I The question is:

"That entry 38 of List II be transferred to List III"

The amendment was adopted.

Entry 38 was transferred to the Concurrent List.

Entry 46

Shri Brajeshwar Prasad: Sir, I beg to move:

"That entry 46 of List II be transferred to List I"

Prof. Shibban Lal Saksena: Sir, I beg to move:

"That entry 46 of List II be transferred to List III."

I wish to point out to the Drafting Committee that the present stage of land records varies from province to province so much that no reliable all India statistics about land can be obtained. In fact in my province of U. P. it is the patwaris who keep all records and they are very able and from them we can get many statistics. But in Bihar there are no patwar is and so the Bihar Government have not got many important statistics. A question arose as to how much acreage was grown with sugarcane in Bihar, and the Bihar Government could not supply that information. So without proper land records, it is impossible to maintain uniform statistics for the whole country and it is a very important thing which must be provided for. In accordance with the amendments which I have already moved, that all entries about agriculture and land and allied subjects should be transferred to Part III, I suggest that this also should be transferred in the same manner and in this way we shall have uniform systems of keeping land records and uniform rates of land revenue and I consider this to be most important. If that is not done, you cannot have any statistics on a country-wide basis on a uniform basis, and agricultural progress will be handicapped.

Chaudhuri Ranbir Singh: *[Mr. President, Sir, I am sorry for not being able to send my amendment in time. Mr. Brajeshwar Prasad wants that this subject should be included in the 1st List but I do not want that. I want that this should be transferred to the Concurrent List. I shall just state my reasons for this suggestion. At present the land revenue is assessed in different provinces on different principles. I want that land revenue should be assessed on a uniform basis throughout the whole country. Land revenue should also be assessed on the principle on which other income-taxes are assessed. There should be one system for the assessment of land revenue throughout the whole country, and in my opinion the same principle on which other income - taxes are assessed should be followed in regard to land revenue also. An income of Rupees three thousand has been exempted from tax, and this exemption should also be applied in the case of agricultural income. Millions of agriculturists are, today, looking to this Assembly with the hope that it would pass some law which will free them from the injustice they have been constantly subjected to for thousands of years. This cannot be done only by including this item in the Concurrent List, for such inclusion will enable the future Central Legislature to pass a uniform Law in respect of income-taxes.]

The Honourable Dr. B. R. Ambedkar: I cannot accept this amendment. As our system of revenue assessment is at present regulated, it would upset the whole of the provincial administration. The matter may, at a subsequent state be investigated either by Parliament or by the different provinces, and if they come to some kind of an arrangement as to the levy of land revenue and adopt the principles which are adopted in the levy of income-tax, the entry may be altered later on but today it is quite impossible. The matter was considered at great length in the Conference with the Provincial Premiers and they were wholly opposed to any change of the place which has been given to this entry.

Mr President: The question is:

"That entry 46 of List II be transferred to List L"

The amendment was negatived.

Mr President: The question is:

"That entry 46 of List II be transferred to List III.'

The amendment was negatived.

Mr. President: The question is:

"That entry 46 stand part of List II."

The motion was adopted.

Entry 46 was added to the State List.

Entry 47

Prof. Shibban Lal Saksena: I do not propose to move my amendment No.315.

Mr. President: There is no other amendment to this entry.

Entry 47 was added to the State List.

Entry 48

Shri Bajeshwar Prasad: Sir, I beg to move:

"That in amendment No.3631 of the List of Amendments, for the word 'deleted' the words and figure 'transferred to List I' be substituted".

Prof. Shibban Lal Saksena: I also move my amendment No.316:

"That entry 48 of List II be transferred to List III."

The Honourable Dr. B. R. Ambedkar: I do not accept that.

Mr. President: The question is:

"That in amendment No.3631 of the List of Amendments, for the word 'deleted' the words and figure 'transferred to List I' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That entry 48 of List II be transferred to List III."

The amendment was negatived.

Mr. President: The question is:

"That entry 48 stand part of List II."

The motion was adopted.

Entry 48 was added to the State List.

Entry 49

Shri Brajeshwar Prasad: Sir, I move:

"That in amendment No.3632 of the List of Amendments for the word 'deleted' the words and figure 'transferred to List I' be substituted."

Prof. Shibban Lal Saksena: Sir, I beg to move:

"That entry 49 of List II be transferred to List III."

My object in moving both of my amendments to entries 46 and 49 is that these taxes should be uniform all over the country and for that reason I have moved that these entries should be removed to List III. My whole scheme postulates that everything about agriculture and land should go to List III for enabling both the Centre and provinces to work together in close co-operation.

The Honourable Dr. B. R. Ambedkar: For the reasons which I have given while dealing with entry 46, I do not accept the amendment.

Mr. President: The question is:

"That in amendment No.3632 of the List of Amendments for the word 'deleted' the words and figure 'transferred to List I' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That entry 49 of List II be transferred to List III."

The amendment was negatived.

Mr. President: The question is:

"That entry No.49 stand part of List II."

The motion was adopted.

Entry 49 was added to the State List.

Entry 50

The Honourable Dr. B. R. Ambedkar: Sir, I move

"That in entry 50 of List II, the words 'or roads' be added at the end."

Prof. Shibban Lal Saksena: Sir, I beg to move:

"That entry 50 of List II be transferred to List III."

My only object is that you are taxing passengers and goods carried on inland waterways and roads. These roads and waterways pass through various States. In order that there may be uniformity and control and co-ordination, it is necessary that the Centre should have some power. I suggest that this should go to List III so that the Centre and the provinces may co-ordinate their work.

The Honourable Dr. B. R. Ambedkar: I do not accept the amendment.

Mr. President: The question is:

"That in entry 50 of List II, the words 'or roads' be added at the end."

The amendment was adopted.

Mr. President: The question is:

"That entry 50 of List II be transferred to List I11."

The amendment was negatived.

Mr. President: The question is:

"That entry 50, as amended, stand part of List II"

The motion was adopted.

Entry 50, as amended, was added to the State List.

Entry 51

Shri Brajeshwar Prasad: Sir, I move:

"That in amendment No.3633 of the List of Amendments, for the word 'deleted' the words and figure 'transferred to List I' be substituted."

Prof. Shibban Lal Saksena: Sir, I move:

"That entry 51 of List II be transferred to List III."

This is rather an important amendment that this entry should be transferred to List III. Agricultural Income-tax is a very important tem of taxation. I am prepared to give all the proceeds of the tax to the provinces. But, there must be uniformity of scale in its imposition all over the country. Suppose Madras were to levy at one rate and Central Provinces at another rate. This would create great discontent. For purposes of uniformity and co-ordination, this entry should be transferred to List III so that if there are conflicting legislations, they may be coordinated in the best interests of the country.

Mr. President: The question is:

"That in amendment No.3633 of the List of Amendments, for the word 'deleted' the words and figure 'transferred to List I' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That entry 51 of List II be transferred to List III."

The amendment was negatived.

Mr. President: The question is:

"The entry 51 stand part of List II."

The motion was adopted.

Entry 51 was added to the State List.

Entry 52

Shri Brajeshwar Prasad: Sir, I move:

"'That for amendment No.3634 of the List of Amendments, the following be substituted:-

"That entry 52 in List II be transferred to List I.'"

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That in entry 52 of List II, the words 'non-narcotic drugs' be omitted."

This is merely consequential.

Mr. President: The question is:

"That in entry 52 of List II, the words 'non-narcotic drugs' be omitted."

That amendment was adopted.

Mr. President: The question is:

"That for amendment No.3634 of the List of Amendments, the following be substituted:-

'That entry 52 in List II be transferred to List II.'"

The amendment was negatived.

Mr. President: The question is:

"That entry 52 as amended, stand part of List II."

The motion was adopted.

Entry 52, as amended was added to the State List.

Entry 53

Entry 53, was added to the State List.

Entry 54

Shri Brajeshwar Prasad: Sir. I move:

"That entry 54 of List II be transferred to List I."

Mr. President: There is no other amendment. The question is:

"That entry 54 of List II be transferred to List I."

The amendment was negatived.

Mr. President: The question is:

"That entry 54 stand part of List II."

The motion was adopted.

Entry 54 was added to the State List.

Entry 55

Entry 55 was added to the State List.

Entry 56

(Amendment No.120 was not moved.)

Prof. Shibban Lal Saksena: Sir, I move:

"That entry 56 of List II be transferred to List III and the following explanation be added at the end:-

> '*Explanation*-Noting in this entry will be construed as limiting in any way the authority of the Union to make laws with respect to taxes on income accruing from or arising out of professions, trades, callings and employments.'"

Sir, I may say this explanation is also contained in the amendment proposed by the Premier of the United Provinces, but he is not here to move the amendment. I think that it is necessary that this Explanation should be there. Otherwise, the objection may be raised that any taxes on professions may be regarding as limiting the authority of the Union to levy income tax. Therefore, I think it is proper that this Explanation should be added.

The Honourable Dr. B. R. Ambedkar: Sir, I think this amendment is rather based upon a misconception. This entry is a purely provincial entry. It cannot limit the power of the Centre to levy Income-tax. On the other hand, this entry 56 may be so worked as to become an encroachment upon Income tax that is leviable only by the Centre. You may recall, Sir, that I introduced an amendment in article 256 to say that any taxes levied by the local authorities shall not be deemed to be Income-tax. This amendment is not necessary.

Prof. Shibban Lal Saksena: I do not press the amendment, Sir.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That entry 56 stand part of List II."

The motion was adopted.

Entry 56 was added to the State List.

Mr. President: There is notice of an amendment for adding a new entry by Mr. Patil and Mr. Gupte.

(The amendment was not moved.)

Entry 57

Mr. President: There is no amendment.

Entry, 57 was added to the State List.

Entry 58

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for entry 58 of List II, the following entries by substituted:-

'58. Taxes on the sale or purchase of goods.

58-A. Taxes on advertisements."

We are trying to cut out the word 'turnover'.

Prof. Shibban Lal Saksena : Sir, I move:

"That in amendment No.121 of List I (Sixth Week), the proposed entries 58 and 58-A of List II be transferred to List I."

Sir, this is a very important entry, about tax on sale and purchase of goods, and tax on advertisements. The imposition of sales tax by the various provinces has caused much confusion and there has been a great indignation in business quarters against the varying rates in this tax.

It varies from place to place and has a very bad effect on the trade and industry in the province. Therefore there has been a very great volume of opinion in the press that there should be uniform scales of taxation on sales and it is therefore necessary that these taxes should be imposed by the Centre. I would not mind that the entire yield is given over to provinces but the principles on which these are based and the method in which they are levied should be decided by the Centre. I do not know how these have been included in this entry. Regarding advertisements, only yesterday we had a big debate that this amendment was *ultra vires* on article 13. Tax on advertisement really means tax on freedom of opinion. You are pleased to hold over your ruling on the point and so I do not know how this can be moved at all.

Mr. President: there is No.122 of which notice is given by a large number of Members.

Shri V. I. Muniswamy Pillay (Madras: General): I move:

"That with reference to amendment No.3638 of the List of Amendments, in entry 58 of List II, after the words 'purchase of goods' the words 'other than Newspapers' and after the words 'taxes on advertisements' the words 'other than those appearing in Newspapers' be inserted respectively."

Shri Deshbandhu Gupta (Delhi): I suggest this may be also held over.

Mr. President: This was a question which was raised yesterday. I held it over for my ruling.

The Honourable Dr. B. R. Ambedkar: I suggest that amendment No.122 might be treated as an independent thing which may be brought in by an additional entry. Then subsequently the Drafting Committee may work the two things together if accepted. Subject to that, this entry may go. Those interested in 122 may be permitted to bring in this in the form of an additional entry.

Mr. President: Your point is not touched so far as newspaper and advertisement is concerned.

Shri Deshbandhu Gupta: If it is felt that the Drafting Committee should provide this somewhere else then it would become difficult to revise the past, once a decision is taken by the House on this entry.

The Honourable Dr. B. R. Ambedkar: Before we conclude discussion of the three Lists this matter may be brought up.

Mr. President: I am prepared to allow this to be taken up separately when we take up 88-A which we held over yesterday. So the position is that the question relating to advertisement is held over, but apart from that, this entry is to be put to vote, as amended by Dr. Ambedkar.

Prof. Shibban Lal Saksena: When a ruling is pending how can it be passed?

Shri Deshbandhu Gupta: It will be simpler if it is held over.

Mr. President: Well, let it be held over. We will take it up along with 88-A which we held over yesterday.

Entry 58 of List II was held over.

Entry 59

Mr. President: Entry 59.

The Honourable Dr. B. R. Ambedkar: I move:

"That in entry 59 of List II, the following be added at the end:-

'Subject to the provisions of entry 21 of List III.'"

In List III we are going to say that the Centre should have the power to lay down the principle of taxation.

Mr. President: The question is:

"That in entry 59 of List II, the following be added at the end:-

'Subject to the provisions of entry 21 of List III.' "

The amendment was adopted.

Mr. President: The question is:

"That entry 59, as amended, stand part of List II."

The motion was adopted.

Entry 59, as amended, was added to the State List.

Entries 60 to 63

Entry 60 was added to the State List.

Entry 61 was added to the State List.

Entry 62 was added to the State List.

Entry 63 was added to the State List.

Entry 64

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That entry 64 of List II be deleted."

That is taken in the Concurrent List.

Mr. President: The question is:

"That entry 64 of List II be deleted."

The motion was adopted.

Entry 64 of List II was deleted from the State List.

Entries 65 and 66

Entry 65 was added to the State List.

Entry 66 was added to the State List.

Mr. President: There are certain new entries proposed. No.322.

Entry 67

Kaka Bhagwant Roy (Patiala & East Punjab States Union): Sir, I move:

"That in List II, the following new entry be added:-

'67. Allowances to be paid to a ruler of a State in Part III of the First Schedule."

Sir, the allowances to the ruler of a State in Part III of First Schedule are to be paid out of the revenues of the State and it must be a charge and a burden on the State budget. Therefore it is meet and proper that the State legislature should have the power to consider over this. The people of the State have to pay the revenues out of which these allowances are to be paid. Therefore the State peoples, representative should have some say in the matter and my entry will give the State Legislatures the opportunity to consider the allowances that are given to the rulers. So I request that this subject should be placed in List II.

The Honourable Dr. B. R. Ambedkar: Sir, this matter will be covered by the Part of the Constitution which we propose to add to the existing Draft, the part where all the payments that are to be made to the rulers will be dealt with, and for the present, I do not see any necessity for any such amendment. I think my Friend, after seeing that part which we propose to introduce by way of an amendment, may see whether his object is carried out by our proposal. If not, he may be quite in order in moving an amendment to that part when that part comes before the House.

Kaka Bhagwant Roy: Sir, I wish to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr President: Then there are several amendments by way of new entries, in the Printed List, Vol. II.

(Amendment Nos. 3642, 3643, 3644, 3645, 3646, 3647, 3648, 3649 and 3650 were not moved.)

These are all the amendments which we have relating to List II.

List III: Entry I

Mr. president: Then we go to List III. Entry No.1 if List III. I do not see any amendment to that. So I put it to vote.

Entry 1 was added to the Concurrent List.

ENTRY 2

Mr. President : Then we come to entry 2. 1 do not see any amendment to that either. I put it to vote.

Entry 2 was added to the Concurrent List.

Entry 2-A

Mr. President: Then we come to entry 2-A. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That after entry 2 of List III, the following entry be inserted:-

'2A. Preventive detention for reasons connected with stability of the Government established by law and the maintenance of public order and services or supplies essential to the life of the community; persons subjected to such detention.'"

Prof. Shibban Lal Saksena: I want to oppose it.

Mr. President: There is an amendment by Mr. Kamath-No.289.

Shri H. V. Kamath: I move, Sir amendment No.289 of List V, Sixth Week.

"That in amendment No.124 of List I (Sixth Week), the proposed new entry 2-A of List III be deleted."

Mr. President: It is really not an amendment, but asking for deletion. But I will allow you to speak.

Shri H. V. Kamath : Sir, I feel that after the adoption of entry 3 in List I, we should not provide any more scope of grounds for preventive detention as such. I think we have restricted the freedom and liberties of the subject to a very considerable extent in the Constitution, and in item 3 of List I that we have passed a few days ago, it was provided that the legislative power of the Central Union, extended to preventive detention in the territory of India for reasons connected with defence, foreign affairs, or the security of India. I cannot conceive of any other reasonable circumstances where preventive detention could be or ought to be exercised. The power for preventive detention should not be exercised by the State except for reasons connected with defence, foreign affairs or the security of India, and this power has already been vested in the Union Legislature. I do not think, it is safe or wise to include it among the concurrent powers, that is to say, with the Union as well as with the States. We should not confer powers with regard to preventive detention for reasons connected with stability of the Government established by law and the maintenance of public order and services or supplies essential to the life of the community. I am not aware of any Constitution in the world which provided in the body of the Constitution either as an article, or as a Schedule to the Constitution such sweeping powers for the units or the Centre. Of course, I am well aware of the powers vested in the Centre in times of emergency. For that we have already made provision in Chapter XI which this House has adopted. The Centre, under entry 3 of List I, has got the powers for preventive detention. Now. this is a very dangerous move on the part of the Drafting Committee, and I hope the House will not be a part to this move, to vest further powers in the Centre and in the States for detention, for reasons connected with the stability of the Government. That is a very vague wording, and very mischievous in its connotation and dangerous in its implications, and certainly not in conformity with the spirit of the democratic republic which we profess to build in this Constitution for our country. I feel that if, at all, powers are to be vested in the Centre or in the States, for reasons connected with the stability of Government, say so-call it sedition or what you will, and provide for it as a crime punishable after fair trial. But I do not want such powers as these to be vested in the Centre or in the State to detain a person on the suspicion that he may jeopardise the stability of the Government established by law. You can provide for his arrest and proper trial and conviction; but to detail him merely because the men in power think that the stability of the government is in danger would be the worst tyranny that has been exercised in modem times. I feel, Sir, that this is a most serious matter. Such a provision would lead to very serious consequences in the hands of unscrupulous persons. I, therefore, feel that this entry should be deleted from this List.

Mr. President: I was asked to make some announcement with regard to the future programme. I propose to give the programme for the next week, that is to-say, from Monday next to the end of the week.

5th September: Monday: Fifth and Sixth Schedules and the Second Schedule.

6th September: Tuesday: Articles 263A, 264, 264A, 265, 265A and 266.

7th September: Wednesday: Articles 281, 282, 282A and 283.

8th September: Thursday: Articles 296, 299, 302, 243, 244, 245 and 234A.

9th September: Friday: Articles 304 and 305 and the Eighth Schedule.

If I find that the work is not progressing as quickly as we wish, and we are unable to finish the whole thing within the week, then I shall have to consider whether we should not sit twice a day, because I do not want to go beyond the week for finishing this programme. I shall adjust the programme according to the progress that we make.

I thought we would have finished this List III today but we have not. So the only course is either to meet in the afternoon today or to meet tomorrow.

Seth Govind Das: You have not announced the date up to which this session will go. I wanted to know that so that we could fix up our programme.

Mr. President: I have no definite programme about that in my mind, because it is difficult to know what progress we shall make. But we do want to finish it as soon as possible.

So, we shall meet tomorrow at 9 o'clock. We should be able to finish it by 11 o'clock.

The Assembly then adjourned till Nine of the Clock on Saturday, the 3rd September, 1949.

[Translation of Hindustani speech]

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Saturday, the 3rd September 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock. Mr. 'Vice-President (Shri V. T. Krishnamachari) in the Chair.

DRAFT CONSTITUTION---(*Contd.*)

Seventh schedule---(*Contd.*)

List III (Concurrent List) Entry 2-A

Mr. Vice-President (Shri V. T. Krishnamachari) : We are now doing entry 2-A of the Concurrent List.

Mr. Naziruddin Ahmad (West Bengal: Muslim) Mr. Vice-President, Sir, I would seek your permission to make a verbal change in my amendment No. 290. No. 289 has been moved by Mr. Kamath. I wish to move the next entry and I seek your permission to make a slight verbal alteration. I know that the amendment will never be accepted-that it will not even be considered. So there is no harm in making the amendment look better. May I have your permission to substitute for the words "overthrow of the Government by force" in my amendment, the words "security of the State" ? The wording "security of the State" seems to be more proper and the change is only verbal.

Mr. Vice-President: Yes.

Mr. Naziruddin Ahmad: Sir, I beg to move....

The Honourable Dr. B. R. Ambedkar (Bombay: General) : Sir, may I suggest to my Friend that if he is prepared to accept the wording as I suggest now, namely, "connected with the security of the State" instead of the words "connected with stability of the Government established by jaw" I shall be prepared To accept it, because I find that that is exactly the language we have used in amended entry 3 in List I-We have. used he word "security of India" there. If my Friend is satisfied with the wording I have now suggested I shall be prepared to accept it.

Mr. Naziruddin Ahma : I am grateful to Dr. Ambedkar, but this is exactly the change which I was asking to the Vice-President to permit me to make.

The Honourable Dr. B. R. Ambedkar: Your words were different.

Mr. Naziruddin Ahmad: I was going to move an amended amendment and that is exactly on the lines, word for word, as the one that Dr. Ambedkar now suggests.

The Honourable Dr. B. R. Ambedkar : Then there is nothing to speak about it. If my honourable Friend will move the amendment as I have suggested then I am prepared to accept it.

Mr. Naziruddin Ahmad: I must move my amendment.

Mr. Vice-President.: As Dr. Ambedkar is accepting it, is it necessary for the Honourable Member to move the amendment and speak on it?

Mr. Naziruddin Ahmad: If my honourable Friend fails to recognize that I was going to move an amendment which is correct and exactly corresponds to his ideas, I cannot help it. But let me move my amendment.

Sir, I beg to move :

That in amendment No. 124 of List I (Sixth Week), in the proposed new entry 2-A of List III, for the words "stability of the Government" the words "security of the State" be substituted.

The expression "stability of the Government" is not proper.....

The Honourable Dr. B. R. Ambedkar: I do not think any argument is needed as I am accepting the amendment.

Mr. Naziruddin Ahmad : I know. But there is the House. I will say only one or two words. The expression "stability of the Government" is rather vague in the context of the new entry proposed by Dr. B. R. Ambedkar, namely, "preventive detention for reasons connected with the stability of the Government". "Government" and "State" are different things.

The Honourable Dr. B. R. Ambedkar : That is the reason why I have accepted it.

Mr. Naziruddin Ahmad: But, Sir, he has not made it clear as to why he has accepted it.

The Honourable Dr. B. R. Ambedkar: I have said that "security of the State" is the proper expression. So there is no necessity of an argument.

Mr. Vice-President: The amendment proposed by the honourable Member having been accepted, there is no need for elaborate arguments.

Mr.Naziruddin Ahmad : But the House should know. Why should there be so much nervousness about the exposure of bad drafting ? That is the point.

The Honourable Dr B. R. Ambedkar: If my honourable Friend is satisfied with an admission on my part that I have made a mistake I am prepared to make it.

Mr.Naziruddin Ahmad : It should be appreciated not merely by the House but by the world at large. Drafted as it is, "stability of the Government" may mean insecurity of the Ministry for which they might imprison the opposition.

The Honourable Dr. B. R.Ambedkar : Very well, we have bungled. Is that enough ?

Mr. Vice- President: I do not think there is any other amendment.

Shri Brajeshwar Prasad (Bihar : General) : I want to speak on the amendment. Mr. Vice-President, I rise to offer a few remarks on this new entry which has been proposed by the Chairman of the Drafting Committee.

This entry vests power into the hands of the Government of India to detain persons for reasons connected with the security of the State established by law and the maintenance of public order and services or supplies essential to the life of the community.

The power vested in the hands of the Centre is of a very limited character. Over and above preventive detention, the Government of India has got no other power till the situation has deteriorated to such an extent that emergency provisions come into operation. The Government of India ought to, have been vested with more powers to nip the mischief in the bud. If the Government of India feel's that without its co-operation and assistance a State Government is not likely to deal effectively with outbreak of lawlessness, than it must have the power to step in and take command of the situation. It is sheer folly to circumscribe the limits of its jurisdiction. Concurrent powers over maintenance of public order is necessary in order to strengthen the forces of law and order. If we want that emergency provisions should not come into operation at all, it is necessary to enlarge the scope of the Central jurisdiction. Where there is a conflict between the forces of law and order and the claims of provincial autonomy, there should be no hesitation in choosing the former as against the latter.

I regret I do not find myself in agreement with Mr. Kamath here as well. His political doctrines are a strange mixture of Individualism and Philosophical anarchism. Both these doctrines have no place in our life. The challenge of the forces of collectivism are so strong and insistent that no political being, unless be wants to live in the land of lotus-eaters, can afford to pay even lip homage to the memory of Mill and Bakunin the torch-bearers of Individualism and Philosophical anarchism.

Mr. Vice-President: I will now put the amendment to vote.

The question is :

"That in amendment No. 124 of List I (Sixth Week), in the proposed new entry 2 A, of List III, for the words 'stability of the Government' the words 'security of the State' be substituted."

The amendment was negatived.

The Honourable Dr. B. R. Ambedkar : Sir, the amendment as amended has to be put and not as in the Notice Paper.

Mr. Vice-President: I will now put amendment No. 124 as revised by Dr. Ambedkar. The question is :

"That after entry 2 of List III, the following entry be inserted:--

'2-A. Preventive-detention for reasons connected with the security of the State and the maintenance of public order and services or supplies essential to the life of the community; persons subjected to such detention.' "

The motion was adopted.

Entry 2-A, as amended, was added to the Concurrent List.

Entry 3

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for entry 3 of List III, the following entry be substituted:-

'3. Removal from one State to another State of prisoners, accused persons and persons subjected to preventive detention for reasons specified in entry 2A of this List.'"

Mr. Naziruddin Ahmad: I am not moving amendment No. 291.

Mr. Vice-President: Amendment No. 292. The Member is not present and the amendment is not therefore. moved.

I will put Dr. Ambedkar's amendment to vote. The question is:

"That for entry 3 of List III, the following entry be substituted:--

'3. Removal from one State to another State of prisoners, accused persons and persons subjected to preventive detention for reasons specified in entry 2A of this List.' "

The amendment was adopted.

Entry 3, as amended, was added to the Concurrent List.

Entry 4

The Honourable Dr. B. R. Ambedkar : I move :

"That in entry 4 of List III, the words and figures 'for the time being specified in Part I or Part II of the First Schedule' be deleted."

Mr. Vice-President : There are no other amendments to this entry.

I will put the amendment to vote. The question is :

"That in entry 4 of List III, the words and figures 'for the time being specified in Part I or Part II of the First Schedule' be deleted."

The amendment was adopted.

Mr. Vice-President : The question is:

"That entry 4, as amended, stand part of List III."

The motion was adopted.

Entry 4, as amended, was added to the Concurrent List.

Entry 5

Mr. Vice-President: Mr. Kamath is not in his place. The amendment standing in his name (No. 293) is not moved.

Entry 5 was added to the Concurrent List.

Entry 6

Dr. P. S. Deshmukh (C. P. & Berar: General) : Sir, I move:

"That in entry, 6 of List III, after the word 'infants' the words 'care and protection of destitute and abandoned children and youth' be inserted."

or, alternatively,

"That in entry, 6 of List III, after the word 'infants' the words 'protection of childhood and youth against exploitation and against moral and material abandonment' be inserted."

Sir, this is my second attempt to bring in the care of children and young ones who are likely to be exploited or abandoned either morally or materially. Last time I moved an amendment that this entry be included in the exclusive powers of the Union. It may be said that it was a subject which need not be in the exclusive jurisdiction of the Centre. But I am now moving to include it as an item in List III so that both the States as well as the Centre can have concurrent jurisdiction in regard to this. It is likely to be urged that the words. "infants and minors" can be interpreted to include what I propose and that there would be sufficient scope to look after children and youthful persons under the entry as it is in the original draft as entry No. 6.

I had pointed out before and I beg to reiterate now that infants have a specific meaning and the word can by no means include all children. Again minors are persons who do not include all minor children *ipso facto*. "Minority" is something of a legal nature and it will therefore refer only to those persons who are minors under the law. Moreover, Sir, all these five words that you find in this entry "marriage and divorce; infants and minors adoption" refer to their legal status and do not refer in any way whatsoever to their being given any care and protection.

Secondly, it will be found that there are provisions and entries so far as assisting religious organisations or literary, scientific and cultural institutions is concerned. Some of my friends drew my attention to entries 42 and 43 in the State List. Those two entries will be confined to giving financial assistance to these institutions. What I wish the Centre and the States to take up, however, is direct responsibility for looking after the welfare of the destitute and abandoned children. For this there is no specific provision and it will be very wrong at the present moment and under the present circumstances not to have a specific provision to this effect. If we examine legislation in foreign countries, we will find that every care is taken of this subject. As late as 1946 and 1948 the British Parliament passed new legislation on this subject.

There are two aspects of this question. We have had legislation in the provinces so far as delinquent children are concerned, but so far as the responsibility either of the provinces or of the Centre in respect of the abandoned and destitute children are concerned, there has been no legislation whatever. The wording of article 31 is exactly what I have put in my amendment, "that childhood and youth are protected against exploitation and against moral andmaterial abandonment." It is said that the very fact that this is included in the Directive Principles of State Policy will give the Centre jurisdiction. I am not a at all convinced of this argument and I feel convinced as a matter of fact of the inadmissibility of this argument. The mere inclusion of this in the Directive Principles of State Policy does not mean that power for legislation has been given, more especially because ours is going to be come sort of a Federation and it will always be arguable whether the responsibility for this is that of the Centre or the. provinces; and since this ambiguity will be there, I think, Sir, that it is very necessary that there should be some provision for this in the Concurrent List so as to make the responsibility for this both that of the States as well as of the Centre.

I have already given notice of a Bill to be moved in the Legislative Assembly and I have taken MY stand on the Directive Principles which have been embodied in the Constitution. If we do not have this entry, it may be urged that this is a thing which does not fall within the purview of the Centre; since Borstal institutions are subject-matters for the States, it is the States alone who are competent to deal with this and therefore legislation must emanate from the provinces. In order to avoid this ambiguity, in order to avoid this difficulty, in order to remove any obstacle in the way of looking after these children and youthful persons by the Centre also, I have urged that this entry should be there. If we examine legislation in other countries, we will find that they take care not only of children up to the age of 14 but that the age has been taken right up to 25. Their contention is that the State has now ceased to be a mere policeman and a judge and that it is becoming more and more of a social corporation and in a social corporation nothing can be more important than the care and protection of children and youthful persons.

From that point of view, it is absolutely necessary that this entry should be there. I hope that we will not have to waste time in bitter discussion over this matter as we did yesterday in trying to convince the sponsors and leaders of the Drafting Committeeto accept the item with regard to the adulteration of food. This is more important, if I may say so, than even that entry and it will be a disgrace if for any technical reason or for any other reason this entry is opposed and is not accepted. I know that a large number of honourable Members of this House wish to support this entry and I hope therefore that without much discussion or debate it will be possible for the honourable Doctor to accept either of my two amendments. I would prefer the second to the first.

Shrimati G. Durgabai (Madras : General): Mr. Vice-President, Sir, I have great pleasure in supporting the amendment moved by my Friend, Dr. Punjabrao Deshmukh. I wish to say and also I appeal to the Drafting Committee and this House to realise the great importance of this subject. *viz.* the protection of children from exploitation or abandonment, and accept the principle behind it; I appeal more especially to the Drafting Committee to find a suitable entry for this subject. Unless the State takes up a direct responsibility to pass legislation on this matter, I do not think there will be adequate attention given to this subject. I know that they have not neglected this matter and the Chairman of the Drafting Committee would come forward to say that there are a large number of entries to this effect in all the three Lists and that sufficient protection is being given to the protection of children and the destitutes and the abandoned. I know that they have accepted this principle under the Directive Principles. Article 31. clause (vi), lays down the principle in the terms of the amendment now moved. It is the protection of children and youth against exploitation and against moral and material abandonment. Sir, this is exactly the language of the amendment which is moved by Dr. Punjabrao.

No doubt this principle has been recognised under the Directive Principles. I should say that there is no use in simply recognising this principle under the Chapter on Directive Principles. It will remain a really pious declaration or intention on our part to do something in the matter of protection of children, but that is not sufficient. None of the entries has mentioned this subject. If you examine all the three Lists, you do not find a definite entry to this effect in anyone of these Lists. In the absence of a definite entry on this matter, really there will not be adequate protection given to children. It will leave this matter in great confusion. You do not know who will legislate on this matter, whether it will be the Centre or the State or both.

Therefore, Sir, I would appeal to the Drafting Committee to see its way to include this matter in this Concurrent List or any other List.

Unless the State undertakes a direct responsibility there will be no good. It is open to the State to come forward and make some subsidy or give some donation or some contribution to an Association either started by private enterprise or by a philanthropist for the protection of infants. We know how these associations are struggling for their daily existence and for lack of fund they are not able to get on well and in this manner these poor homes could no longer serve the cause of poor children. I do not know what kind of help they will get if the State does not take direct responsibility. This is not a matter which could be left to private enterprise, but the State must take direct responsibility. There is no good in our stating the Directive Principles, which will remain as pious declarations unless given effect to by the State.

It may be argued that there is penal law which deals with the matter. I know that the criminal law deals with this matter of abandonment. I also know, because I am conversant with it, how deep matters are going on. it is true that the persons who is charged with the offence of abandoning is really punished and he or she is sentenced for that offence. But what happens to the child that is abandoned ? That is the question. Where, is it to go ? How long is it going to wait in search of somebody to come forward and take it for protection ? Therefore, Sir, it is a very dangerous thing. If only we leave the children to themselves, they will take to,beggary and also to 'many vices such as stealing and they would cultivate very bad habits. Therefore it is the duty of the State to come forward and help these children sufficiently in time, to see that they are developed well, because these children are our future hope and the nation depends upon these children, their good-manners, their upbringing, their good health and their strong character.

Sir, I tell you that if the Drafting Committee could find its way to make an entry for the protection of wild birds, I do not know whether the children could not come under the classification of even wild birds. Therefore, if you see your way to give a particular place in the Constitution for wild birds, I appeal to you to see your way also to give protection to the children that are abandoned, by a suitable entry in the Constitution.

Shri Brajeshwar Prasad : Sir, I would like to speak before Dr. Ambedkar is allowed to reply on this entry.

Mr. Vice-President: Shrimati Durgabai, have you finished?

Shrimati G. Durgabai : I have finished. I have nothing further to say. I only wish that Dr. Ambedkar assures us that he will see his way to examine all the clauses in the Constitution for this purpose. Certainly he will find it easier to accept our proposition. He can include it in any list, we do not mind, but let us be assured that this entry finds its way into the Constitution and also there will be no further difficulty in accepting this principle. Sir, I appeal to the Drafting Committee and to the House to give recognition to this matter, realizing the great importance of this subject.

Shri Brajeshwar Prasad: Sir, I rise to support the amendment moved by my honourable friend Dr.Deshmukh and supported by Shrimati Durgabai. If there is to be protection of childhood and youth against exploitation and against moral and material abandonment, the Government of India must be vested with the necessary powers. The Government of India must provide necessary facilities for birth-control, if we are to protect the future generation from exploitation both moral and material.

Secondly, Sir, I am definitely of the opinion that the profession of prostitution must be regulated on sound scientific lines. Sir, in 1938 I moved a resolution in the Gaya Municipality, when I was a member of that Municipal Board. The resolution was on the lines of amendment No. 252 standing in the name of Dr. P. S. Deshmukh. The resolution which I tabled in the Board was for the regulation and control of prostitution and maintenance of public houses. This resolution is on similar lines. But I am sorry to say that the resolution was disallowed by the President of the Municipal Board on the ground that it did not fall within the purview of the Municipal Board. Sir, I want that the Government of India and the Provincial Governments must take an interest in this matter regulate this profession so that the youth of the country may be protected from moral abandonment. There is another argument that I wish to place before this House. It is the duty of the State to nurse every child from the moment of its birth till he or she reaches the age of maturity. The State must provide education, medical facilities and means of livlihood to each and every citizen living within the ambit of the Indian Union. The institution of family is undergoing rapid transfomation. I do not know what ultimate form it will assume. But I am quite clear in my own mind that today it is not in a position to protect childhood and youth against exploitation and against moral and material abandonment. It is incumbent therefore on the State to protect the youth of the country from all evil influences. Family, according to Plato, circumscribes the horizon of a man's love and affection. One nursed in the cradles of family life cannot but be an intellectual and moral dwarf. If man is to rise to the height of his being, be must be protected from the pernicious influences of family life. If he is to rise to grand heights and to develop all that is latent in him the institutions of private property and marriage, in conformity with the doctrine of Plato's Republic, will have to be wiped out. I support the amendment moved by Dr. P. S. Deshmukh.

The Honourable Dr. B. R. Ambedkar: Sir, there can be no doubt that the amendment of my honourable Friend, Dr. Deshmukh, in so far as it seeks to interpolate certain words dealing with the protection of children in entry 6 are out of place because entry 6 no doubt refers to infants and minors, but it has to be borne in mind that taking the entry as a whole, that entry deals with status. In so far as the status of infants and minors are concerned, these categories arc included in entry 6, but "care and protection of destitute and abandoned children and youth" are not germane to their status.

Dr. P. S. Deshmukh: That was exactly why I had wanted to introduce an independent entry. There is an amendment already in my name which seeks to have an additional entry separately.

The Honourable Dr. B. R. Ambedkar : I was just going to deal with the amendment moved by him. These words could not be interpolated in this entry 6, without seriously damaging the structure of that entry No. 6. Therefore at this stage I certainly cannot accept the proposition of interpolating these words.

Now, Sir, I will deal with the general question of the protection of children. There can be no doubt about it that every Member in the House including myself and the members of the Drafting Committee could ever take any exception to the protection of children being provided for by the State, and there can be no difference of option; but the only question is whether in the list as framed by the Drafting Committee that matter is not already covered. In framingthese entries, what we have done is to mention and categorize subjects of legislation and not the objects or purposes of legislation.

Protection of children is a purpose which a legislature is entitled to achieve if in certain circumstances it thinks that it must do so. The question is whether under any of these entries, it would not be possible for the State to achieve that purpose, namely, the protection of children.

It seems to me that any one of these entries which are included in List II could be employed by the State for the purpose of framing laws to protect children. For instance, under entry 2 of List II, administration of justice, it would be open for the State to establish juvenile courts for children.

Dr. P. S. Deshmukh : That is not what I meant. I never referred to juvenile Courts.

The Honourable Dr. B. R. Ambedkar: For instance, take prisons and formatory and Borstal institutions, they may be emplowered to establish special kinds of prisons where there would be, not the principle of punishment, but the principle of reformation. Take the case of education.

Shrimati G. Durgabai: May I submit, Sir, the case of delinquent children stands absolutely on different tooting and from destitute and abandoned children ?

The Honourable Dr. B. R. Ambedkar: As I was saying entry 18, which deals with education in List II, could be used by the State for the purpose of establishing special kinds of schools for children including even abandoned children. Under entry 42, dealing with the incorporation of societies and so on, it would be open to the State to register societies for the purpose of looking after children or they may themselves start some kind of corporation to do this.

Therefore, if my friends contend that the statement, which I am making in all sincerity, that there is every kind of provision which the State may make for the purpose of protecting children under the entries which are include in List II, I think there is no purpose in having a separate entry dealing with the protection of children. As I stated, protection of children cannot be a subject of legislation; it can be the object, purpose of legislation.

Dr. P. S. Deshmukh: You have made provision for the protection of wild birds, even

The Honourable Dr. B. R. Ambedkar: I can quite see both of my Friends are very persistent in this matter. I would therefore request them to withdraw their amendment on the assurance that the Drafting Committee in the revising stage will go into the matter and if any such entry can be usefully put in any of the Lists, they will consider that matter and bring a proposal before the. House. At this stage, I find it rather difficult to accept it because I have not had sufficient time to devote myself to a full consideration of the subject which is necessary before such an entry is introduced.

Mr. Vice-President : Does Dr. Deshmukh wish to. press his amendment?

Dr. P. S. Dashmukh : I would like to request Dr. Ambedkar at least to say that by the time my next amendment for in independent entry is reached, he will be able to say something more favourable than be has been able to say now.

The Honourable Dr. B. R. Ambedkar : I will consider the whole matter.

Dr. P. S. Deshmukh : I do not press this amendment here in view of the fact that I am moving the Other amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President :The question is

That entry No. 6 stand part of List II."

The motion was adopted.

Entry 6 was added to the Concurrent List

Entries 7 to 14

Entry 7 was added to the Concurrent List.

Entry 8 was added to the Concurrent List.

Entry 9 was added to the Concurrent List.

Entry10 was added to the Concurrent List.

Entry11 was added4 to the Concurrent List.

Entry12 was added to the Concurrent List.

Entry13 was added to the Concurrent List.

Entry14 was added to the Concurrent List.

Entry 15

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for entry 15 of List III, the following entry be substituted:--

'15. Actionable wrongs-"

The words which I seek to omit are really unnecessary.

Mr. Vice-President: The question is:

"That for entry 15 of List II, the following entry be substituted:--

15. Actionable wrongs'."

The amendment was- adopted.

Mr. Vice-President: The question is:

"That Entry No. 15, as amended, stand part of List III."

The motion was adopted.

Entry 15, as amended, was added to the Concurrent List.

Entry 16

Entry No. 16 was added to the Concurrent List.

Entry 17

Shri R. V. Dhulekar (United Provinces: General) : Sir, I want to speak on the entry-entry 17. Entry 17 deals with legal, medical and other professions. With your permission, Sir, I shall try to make some observations on the medical subject alone leaving the other portion of the entry to other gentlemen to deal with.

First of all, I wish to submit that the word "medical" that is being used in India for some time past has been laying too much stress on the medicinal side, of the health problem of this country. The word 'medical' is a misnomer. It simply means medication and therefore we have come to a position when we feel that the administration of the medical department could only be seen and looked at from the point of view of what medicines are useful in the country. I would submit, Sir, that having studied the medical question from different points of view, I have come to the conclusion that it is the duty of the State to see that every individual, every. human being who possesses of body, must know something about the preservation, protection and prolongation of life. The word "medical" is a wrong word. I would submit that the word in India was Ayurveda, science of life.

Looked from that point of view, I feel, that this subject has not been given the importance which it deserves during the British regime and today also. I feel that the Government of India is not doing any thing towards imparting the knowledge of the science of life. The science of life, Ayurveda, is a basic science in the country and it has been taught for a long number of years, thousands of years. But the foreigners came and foreign education came and Ayurveda has been relegated to the background. It has been made out from Platforms and platforms by Health Ministers and other people that Ayurveda that was taught in India in ancient times and which is existing in India today and ministering to the needs of 85 per cent. of the people of this country' is not a science at all. I would say that this word "medical" is a word which should be eschewed from our vocabulary.

Lately some attempts are made to join the word 'health' with medical department. There are Health Departments in the provinces and there is Health Department in the Centre also. As this is a Concurrent List, I would say, that sufficient attention should be paid to the medical or I would say, the life problem of the country. I am not one of those who fix all responsibility for preservation of health of individuals on the State. I do not feel that, just like the Bhore Committee report, all emphasis should be laid only on the State. If we take into consideration the Bhore Committee report we find, crores on rupees, even if they are spent annually, will not solve the problem of the health of India. So I feel that the words as they are put-"`profession of medical" etc. would not serve the purpose. The science of life cannot be a profession. I wish to draw the attention of the Assembly to the important fact that unless and until we take to the principle that every human being knows something about his life, something about his body and health and hygiene we cannot solve the problem.

Therefore, I say that where you put legal, medical and other professions I would say that you will lay more emphasis on the medical education that is to be imported to a human being than on the profession itself. What I am driving at is, if you want to control the medical profession, then it does not mean that registration of medical profession is the only thing you should do Medical profession has become a profession of loot. It is not a profession of helping humanity; and therefore where you can call the medical profession, I would advise the Assembly to bear in mind, when the time comes, these observations of mine that the medical profession will be controlled not from the point of view of only allowing the people to fleece others but from the point of view of helping humanity.

Mr. Vice- President: The question is:

"That entry 17 stand part of List III."

The motion was adopted.

Entry 17 was added to the Concurrent ListNew Entry 17-A

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That after entry 17 of List III the following entry be inserted:-

'17-A, Vocational and technical training of labour'."

Mr. Vice-President: Amendment 249 is not moved. The question is:

"That after entry 17 of List III the following entry be inserted:-

'17-A. Vocational and technical training of labour'."

The motion was adopted.

Entry 17A was added to the Concurrent List.

Entry 18

Entry 18 was added to the Concurrent List.

Entry 19

Entry 19 was added to the Concurrent List.

Entry 20

The Honourable Dr. B. R. Ambedkar : Sir, I move

"That for entry 20, the following entry be substituted :

'20. Drugs and poisons. subject to the provisions in entry 62 of List I with respect to opium'.

The amendment was adopted.

Entry 20, as amended, was added to the Concurrent List.

Entry 21

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for entry 21 of List III, the following entry be substituted:-

'21. Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied'."

Mr. Vice-President: 'The question is:

"That for entry 21 of List III, the following entry be substituted:--

' 21. Mechanically propelled vehicles including the Principles on which taxes on such vehicles are to be levied'."

The amendment was adopted.

Entry 21, as amended, was added to the Concurrent List.

Entries 22 to 25

Entry 22 was added to the Concurrent List.

Entry 23 was added to the Concurrent List.

Entry 24 was added to the Concurrent List.

Entry 25 was added to the Concurrent List.

New Entry 25-A

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That after entry 25 of List III, the following new entry be inserted:-

'25-A. Vital statistics including registration of births and deaths'."

Mr. Vice-President : The question is:

"That after entry 25 of List III, the following new entry be inserted:--

"25-A. Vital statistics including registration of births and deaths'."

The motion was adopted.

Entry 25A was added to the Concurrent List.

Entry 26

The Honourable Dr. B. R. Ambedker: Sir, I beg to move:

"That for entry 26 of List III, the following entry be substituted :-

'26. Welfare of labour including conditions of work, provident funds, employers liability, workmen's compensation. invalidity and old age pensions and maternity benefits'."

Mr. Vice-President: I now place amendment No. 132 before the House.

The question is:

"That for entry 26 of List III the following entry be substituted:--

'26. Welfare of labour including conditions of work, provident funds, employers, liability, workmen's compensation, invalidity and old age pensions and maternity benefits'."

The amendment was adopted.

Entry 26, as amended, was added to the Concurrent List.

New Entry 26-A

Mr. Vice-President: Now Dr. Deshmukh may move his new item 26-A.

Dr. P. S. Deshmukh: Sir, I move:

"That in amendment No. 133 of List I (Sixth Week), after the proposed new entry

26-A of List III, the following new entry be added :-

"26-B. Welfare of peasants, farmers and agriculturists of all sorts'."

Mr. Vice-President: I am sorry. I should have first rested Dr. Ambedkar to move his amendment regarding entry 26.--amendment No. 133. After that you may move your new entry.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That.after entry 26, of List III, the following entry be inserted:-

'26-A Social insurance and social security'."

Mr. Vice-President : I do not think there is any amendment to this. I put it to the House. The question is :

"That after entry 26 of List III, the following entry be inserted:--

'26-A. Social insurance and social security'."

The motion was adopted.

Entry 26A was added to the Concurrent List.

New Entry 26-B

Mr. Vice-President: Now Dr. Deshmukh may move his amendment No. 250.

Dr. P. S. Deshmukh: Sir, I move:

"That in amendment No. 133 of List I (Sixth Week), after the proposed new entry 26A. of List III, the following new entry be added:--

'26-B. Welfare of peasants, farmers and agriculturists of all sorts'."

Sir, it is really unfortunate that it should be necessary to remind the House regarding the welfare of this section of our people and to bring forward an amendment to this effect. India is known to be and is still proclaimed to be the land of agriculturists, where the agriculturists predominate, not only by numbers, but also by the importance of the interest they serve. It is this class of persons who are the real and legitimate masters of India; and yet their welfare is the concern of nobody. There can be only two explanations for this. Either that it is a colossal responsibility, which no one is capable of looking after or, that it is so unimportant that there is no necessity for any specific provision, no need of any special effort nor any specific entry in our Constitution required.

Sir, I am really surprised and cannot suppress my sense of utter dissatisfaction of the way in which the Drafting Committee seems to have made up its mind on many matters of very vital importance and the attitude with which it looks at all of them. I think they are suffering from an obsession, and from a certain false conviction, as if these are the very people who are going to be perpetually in power, that there is going to be no other side to the question, and that these entries are not capable of being interpreted in more than one way. God forbid, but they may themselves have to rue the day and repent the power they are giving to the President and progressively reducing the sovereignty of Parliament every day. It may be that they do not continue in power for long, and when other people come and sit on judgment and exercise those very powers, these may be the very people probably, who will have to resort to black flag processions and protests and walk-outs in Parliament. I would not be surprised if this happens. At the present moment their attitude is so obstinate. I am sorry it-is not one of compromise, not one of adjustment, but one of resisting each and every new suggestion and in this case the inclusion of any new entry. Even the suggestion to include an entry for the protection of children was so strongly resisted; one regrets to have to say, by having recourse to such farfetched arguments. Dr. Ambedkar flung the same arguments in my face which I had myself put forward before and which he then refused to accept. The interpretation of entry 6 which he has given now is exactly the same as I had advanced yesterday. Then he said infants and minors covered every thing. Now he says children cannot appropriately even be mentioned along with infants. That is very curious very disappointing, but I hope that so far as this amendment of mine is concerned.......

Mr. Vice-President: We are not dealing with entry 6, but with entry 26.

Dr. P. S. Deshmukh : I have come back to entry 26, Sir. I hope that so far as this amendment is concerned, the Honourable Doctor will take up a different attitude.

It is very necessary to have this amendment, because it is a matter of concrete fact that the welfare of peasants and farmers seems to be the concern of none. But look at the case of labour. From the time we have had special labour representation, from the time we have had labour representatives and Labour Ministers, the welfare of the labourers has been an integral part of the labour portfolio and of our administration. Labourers form only a small number compared to agriculturists, but still we are solicitous that there should be hospitals for them, air-conditioned factories for them, provision for their medical relief, sanitation and all these things. And this huge mass of humanity, the agriculturists, on whose sweat all of us prosper live and maintain ourselves, for these persons, not a single welfare officer has yet been appointed. I am sorry to say-and I am glad also, in a way-that I was the first, as a member of the Standing Committee for Agriculture at the Centre to press that the Ministry of Agriculture at the Centre also should include in it the welfare of agriculturists. That suggestion I learnt went to the Law Ministry-I do not know what the wonderful Law Ministry has to do with it-and they appear to have given an interpretation that it cannot form part of the Ministry of Agriculture of the Centre, because the subject 'agriculture' was a provincial subject.

These are the difficulties and as the Honourable Dr. Ambedkar knows them fully, I hope he will rather err on the side of having more entries than having less, I hope even now he will consider the matter with a sympathetic heart and be prepared to accept this amendment-although I have very little hope as I have seen him advance most wonderful arguments such as when he said that the welfare of children can be included in the Police list-the strangest and the most surprising argument that could be used. But he is in power and he has got the authority and the backing of the whole House and whatever be says is law. Even so, I would request him to concede a little and err on the side of having even a superfluous entry, since so many Members of the House feel so strongly about it, and not turn down the suggestion.

I hope he will look at this entry from that point of view. I have found that it is not included anywhere. Nowhere has it been considered or regarded as the duty of the Agriculture Minister to look specifically to the welfare of the peasants and farmers. And nobody can gainsay the fact that the education of the labourers is better, their sanitation is better, that their welfare is better looked after than those of the innumerable peasants and farmers in our villages That is simply because so much has been done for the former, but hardly anything has been done for the latter. It might be said that the whole Government after all, is directing its attention to them. But if you think that for a few million labourers, special welfare officers are necessary, why not have at least a few more of such officers for the farmers and peasants who will at least tell you from time to time what is necessary ? The situation is tragic and I feel nothing will be lost by making a provision here by which the State and the Legislature will be made responsible for the welfare of the peasants and agriculturists in a special way. I am certain that if we had some officers of this nature, the condition of the agriculturists would not have remained what it is. We have appointed welfare officers even for Scheduled Castes. Why did we do it ? Because we know that they suffer from special and very serious handicaps.

Shri S. Nagappa (Madras: General): Sir, my honourable Friend says, "We have appointed labour officers even for Scheduled Castes." Only Scheduled Castes require those officers. Why should he use that word "even" ? I take objection to that word : he should withdraw it.

Dr. P. S. Deshmukh: These special officers are only for special classes of people.

Shri S. Nagappa : They, the Scheduled Castes, are the people who require them.

Dr. P. S. Deshmukh: If they are appointed only for the Scheduled Castes, these officers have certainly contributed to the welfare and progress of the Scheduled Castes. It they could help the Scheduled Castes ....

Mr. Vice-President: The honourable Memberhas already exceeded his time.

Dr. P. S. Deshmukh: All right, Sir. If the Scheduled Castes could be helped and their uplift secured, may be even in the smallest of measures by the appointment of these officers, why not the same be done so far as the peasants, the farmers and agriculturists are concerned? We know they too are handicapped for want of education, for want of sanitation and have innumerable other difficulties to face. If it was possible for these Ministries to take account of their condition and look after the welfare of the peasants, much more progress than what we find today would have been achieved.

Sir, I do not wish to take more time, but that does not mean that I have not other arguments by which to convince the somewhat unconvinceable Dr. Ambedkar. But I hope that so far as this entry is concerned, he will be sympathetic and accept my amendment because as a matter of fact this is a thing which is not regarded as the legitimate duty by any of the Ministers for Agriculture and I have heard at least the Honourable Minister for Agriculture at the centre say that the provisions of the Government of India Act come in their way. That lack of provisions could have reference to nothing else except this Schedule. From that point of view, Sir, I think the entry is absolutely necessary.

Shri R. K. Sidhva (C. P. & Berar-General) : Sir, I do not think the idea here is to redress the grievances of labour or of agriculture. I only want to know from Dr. Ambedkar whether-in entry 26, 'Welfare of labour'- whether "labour" includes agriculturists and peasants or only industrial labours. As I have understood the term, 'labour' means industrial labour and not agricultural. If that is so, I wholeheartedly support Dr. Deshmukh's amendment.

Sir, if you enact legislation for industrial labour, you cannot exclude agricultural labour. Therefore, peasants and farmers must be included either in entry 26 or in a separate entry as Dr. Deshmukh has suggested. The peasants are the backbone of the country. We cannot look after the welfare of only industrial labour which is vocal and whose grievances, could be heard and redressed by Government; we cannot certainly ignore the peasants who are not local and who are not well organised. I personally feel that this labour legislative should be in List I. I know that being in the Concurrent List, each Province will have its own legislation. At present Bombay has enacted legislation which is in conflict with that of U.P., and U.P.'s legislation is in conflict with that of Bengal. If there had been a central labour Organisation, I am quite confident that the condition of labourers would have been different.

I, therefore, even go to the length of saying that labour legislation of all classes should be entered in List I : but if that is not possible, I certainly feel, Sir, that you cannot under any circumstances ignore that section of labour known as agricultural labour, the peasants, the farmers etc. You are particularly mentioning industrial labour and giving it a place in the Constitution. How will it be understood ? It will be understood that the House ignored the peasants when they were giving a preference to industrial labour. Because labour can make tremendous noise and approach the Ministers and Government and get their grievances redressed, this has been done. It is most unfair. I therefore strongly support the amendment moved by Dr. Deshmukh, unless my friend Dr. Ambedkar is prepared to satisfy us that 'labour' includes agricultural labour also. If he by any means wants to convince the House that it does include agricultural labour, I am prepared to accept his wording, and oppose Dr. Deshmukh's amendment.

Mr. Naziruddin Ahmad: Mr. Vice-President, I beg to support the amendment moved by Dr. Deshmukh. The cause, of the peasants, farmers and agriculturists is going by default. So far as industrial labour is concerned, that is well cared for. In fact, they are the pampared children of the Government. But so far as agricultural labourers are concerned and the peasants, farmers and agriculturists, they are being sacrificed at every step. There are the capitalists at the top, there is the labour at the bottom and the middle classes between the two are going to be squeezed out of existence. This entry, if accepted, will at least make it incumbent on the part of the Government to look into their case, to frame adequate legislation and to chalk out an administrative programme. I submit that this subject is highly important and an entry to this effect will cause no harm-it will draw attention of Government and of the Legislature to the need for focussing Government and public attention on this subject. So, from this point of view, this entry should be accepted.

Chaudhri Ranbir Singh (East Punjab :General) : *[Mr. Vice-President, I support the amendment moved by Dr. Deshmukh. If you compare the present conditions of workers with those of the agriculturists you will find a glaring difference between the two. We are going to include in the Draft Constitution an exclusive clause relating to Labour, which lays down that if there be even twenty-five children having the same language, the State shall provide them with schooling facilities. But in contrast to this, no school or hospital facilities are provided for the children of millions of agriculturists. I have all sympathy for such brethren as have migrated from West Punjab or other regions. School and hospital amenities should be provided for them and their children. I am second to none here in supporting their cause. But it would be a pity if no facilities with regards to schools and hospitals are provided for the children of agriculturists. It is not a question of merely a single entry; rather, I say it is a question of life and death for the peasants. If this item is included in the list it will offer them some hope and consolation. Millions and millions of peasants of India are looking today to you. I mean, to the Members of this House with the expectation that the new Constitution would certainly contain some specific provision for their welfare and that when it comes into force they will be benefited. If you do not include in the Constitution any specific provision for their welfare, it will give them a very cruel disappointment, the extent of which, perhaps, you cannot imagine.

I, therefore, without taking any more time of the House, lend my wholehearted support to the amendment and hope that Members of the House who have to approach the electorates for the, coming election will keep their future in view]*

The Honourable Dr. B. R. Ambedkar: Sir, may I explain ? There stems to be a certain amount of confusion and misunderstanding about the entries. in the List. With regard to my Friend Dr. Deshmukh's amendment, he wants welfare of peasants, farmers and agriculturists of all sorts. Well, I would like to have some kind of a clear conception of what these omnibus words, "agriculturists of all sorts" mean. Does he want that the State, should also undertake the welfare of zamindars who pay Rs. 5 lakhs as land revenue ?

Shri R. K. Sidhva: You can drop those words.

The Honourable Dr. B. R. Ambedkar: It will also include malguzars. Before I accept any entry, I must have in my mind a clear and consistent idea as to what the words mean. The word "agriculturists" has no precise meaning. It may mean a track-renter. It may mean a person who is actually a cultivator. It may mean a person who has got two acres. It may also mean a person who has five thousand acres, or five lakhs acres.

Dr. P. S., Deshmukh : I am prepared to omit that particular expression.

The Honourable Dr. B. R. Ambedkar : That is one difficulty I find.

The second point is my Friend Dr. Deshmukh does not seem to pay much attention to the different entries and what they mean. So far as agriculture is concerned, we have got two specific entries in List II-No. 21 which is Agriculture and No. 24 which is Land. If he were to refer to these two entries he win find....

Dr. P. S. Deshmukh: What fallacious arguments are being advanced ! For that matter, Labour welfare is a specific entry and yet you wanted separate provision for their vocational training ? Do not advance fallacious arguments.

The Honourable Dr. B. R. Ambedkar: It is not my business to answer questions relating to the faults of administrations. I am only explaining what the entries mean. As I said, we have already got two entries in List II. Entry 21 is there for Agriculture "including agricultural education and research, protection against pests and prevention of plant diseases".

Dr. P. S. Deshmukh: Then why do you want "welfare of labour" ?

The Honourable Dr. B. R. Ambedkar: Why can't you have some patience? I know my job. Do you mean to say I do not know my job ? I certainly know my job.

Dr. P. S. Deshmukh : I know your attitude also. Do not try to fool everybody!

The Honourable Dr. B. R. Ambedkar : There is already an entry which will empower any State to do any kind of welfare work not merely with regard to agriculture but with regard to agriculturists as well. In addition to that we, have entry 24 where it is provided that laws may be made with regard to "rights in or over land, land tenures including the relation of landlord and tenant". All the economic interests of the peasants can be dealt with under this entry. Therefore, so far as entries are concerned there is nothing that is wanting to enable the Provincial Governments to act in the matter of welfare of agricultural classes.

Then I come to the question raised by my Friend Mr. Sidhva which, I think, is a very legitimate question. Hill question was what was the connotation of the word 'labour' and he asked me a very definite question whether 'labour' meant both industrial as well as agricultural labour. I think that was his question. My answer is emphatically that it includes both kinds of labour. The entry is not intended to limit itself to industrial labour. Any kind of welfare work relating to labour, whether the labour is industrial labour or agricultural labour, will be open to be undertaken either by the Centre or by the Province under entry 26.

Similarly, conditions of work, provident funds, employers' liability workmen's compensation, health insurance, including invalidity pensions.--all these matters.-would be open to all sorts of labour, whether it is industrial labour or agricultural labour. Therefore, so far as this entry, No. 26, is concerned, it is in no sense limited to industrial labour and therefore the kind of amendment which has been proposed by my Friend Dr. Deshmukh is absolutely unnecessary, besides its being-what I might call-vague and indefinite, to which no legal connotation can be given.

Dr. P. S. Deshmukh : Is there no class of persons except agricultural labour in this country ? Has Dr. Ambedkar ever heard of a class called "farmers" and "peasants" ?

The Honourable Dr. B. R. Ambedkar: Their welfare will be attended to under entries 21 and 24 of the Provincial List, as I have already explained.

Mr. Vice-President: I now place amendment No. 250 (Dr. Deshmukh's amendment) before the House.

The question is :

"That in amendment No. 133 of List I (Sixth Week), after the proposed new entry 26A of List III, the following new entry be added:-

'26-B. Welfare of peasants, farmers and agriculturists of all sorts'."

The motion was negatived.

Dr. P. S. Deshmukh: Sir, I demand a division.

Mr. Vice-President: I shall ask Members to hold tip their hands.

The Assembly divided by show of hands.

Ayes : 26

Noes : 42

The amendment was negatived.

Entry 27

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for entry 27 of List III, the following entry be substituted:--

'27. Employment and unemployment.' "

Mr. President: The question is:

"That for entry 27 of List III, the. following entry be substituted :--

'27. Employment and unemployment.' "

The amendment was adopted.

Entry 27, as amended, was added to the Concurrent List.

Entry 28

Mr. Vice-President : There are no amendments to entry 28.

Shri S. Nagappa: Before it is put to vote I want to say a few words.

Mr. Vice-President : The honourable Member will finish in three minutes.

Shri S. Nagappa : Mr. Vice-President, Sir, the term "trade union" denotes, as far as its currency goes, only those as regards industrial labour. The Honourable Dr.

Ambedkar was kind enough to say that the word "labour" includes agricultural labour also. When this article was passed in this Constitution I gave an amendment that "labour" should mean also agricultural labour, He was kind enough to accept that and to say definitely that it would mean agricultural and other classes of workers.

Again, with regard to "labour disputes" there may be a dispute among the labourers themselves. My friends who have been good enough to vote for agricultural labour now have misunderstood the position they do not draw a line or difference between agriculturist and agricultural labour. The agriculturist also does work hard. But for whom does he work? For himself. On the other hand agricultural labour labours for the sake of others. The agricultural labourer is a wage-earner, whereas the agriculturist labours for himself and acquires the property for himself. There is a difference between agriculturist and agricultural labourer which should be understood. Now, if my friends are reasonable and if they come forward and press this august Body to include a clause to defend that agricultural labour and to give it all sorts of privileges, I am one with them. Otherwise I cannot understand why the agriculturist should be given this sort of facility. After all agriculture, or land has been given by nature to all the children of the soil. But by their greediness and avocation somehow or other the agriculturists have grabbed it. Now they want still more facilities to be given to them. It is unjust and going out of the way to agree to it. I do not think the agriculturists require any such protection in this country. I do not think any agriculturist has a right over the land. He has only the right to cultivate the land and pay land-revenue to the State.

Mr. Vice-President: I am afraid the honourable Member has exceeded the time-limit.

Shri P. S. Nagappa_: This is an important thing. About 70 per cent of the population of this country are agricultural labourers.

Dr. P. S. Deshmukh : It has nothing to do with agricultural labour.

Shri S. Nagappa : It has everything to do with agricultural labour. If you organise them into a union they will get the right to claim Government support and the Government will be bound to give it So far as the agricultural labourer is concerned, it is not easy to organise it. Almost all agricultural labourers are illiterate and ignorant people. I think it is the duty of the future Government to come forward and do what is necessary for these people. I hope the Government in future will be composed of these very people under the system of adult suffrage. They will be the right royal owners and wield power hereafter. But I think it will be the duty of every sane, just and benign Government to see that these people are given their just rights.

Mr. Vice-President : I will now put the question.

The Honourable Dr. B. R. Ambedkar: I want to say a word. The words "trade union" with regard to welfare of labour have a very wide connotation and may include trade unions not only of industrial organisations but may also include trade unions of agricultural labour. That being so, I am rather doubtful whether by introducing the word 'industrial' here, we are not trying to limit the scope and meaning of the term 'trade union'. But I am not moving any amendment. I would like to reserve an opportunity to the Drafting Committee to examine the term and to consider this. I want the entry to stand as it is now. I have expressed my doubt that in view of the wide connotation of 'trade union', a part of the entry may require amendment.

Mr. Vice-President : Subject to what Dr. Ambedkar says, I put entry 28 to vote. The question is :

"That entry 28 stand part of List III.

The motion was adopted.

Entry 28 was added to the Concurrent List.

New Entry 28-A

Honourable Dr. B. R. Ambedkar: I move :

"That after entry 28 of List Ill. the following new entry be inserted:--

'28-A. Commercial and industrial monopolies, combines and trusts.' "

"Dr. P. S. Deshmukh : I am not moving my amendment.

Mr. Vice-President: I will put the amendment to vote. The question is:

"That after entry 28 of List III, the following entry be inserted:-

'28-A. Commercial and industrial monopolies. combines and trusts."'

The motion was adopted.

Entry 28A was added to the Concurrent List.

Entry 29

Mr. Vice-President : As there is no amendment to entry 29, 1 win put it to 'vote.

Entry 29 was added to the Concurrent List.

Dr. P. S. Deshmukh: Sir, a part of this amendment of mine was very kindly accepted yesterday. But; so far as the wording is concerned, we have yet to decide it. When we were discussing the State List, it was decided that we should transfer 'adulteration food' to List III and therefore it would probably be relevant if we take up the wording of this entry at this stage. At the same, time I would like that the first amendment of mine should also be accepted.

The Honourable Dr. B. R. Ambedkar : May I draw attention to the fact that the introduction entry 29A has already been covered by entry 61A in List I which has been passed by the House in much wider terms ? The words used are "goods" which will include agricultural products, etc. Similarly 29B was accepted yesterday on the motion of Mr. Maitra and it is now entry 20A in List III.

Dr. P. S. Deshmukh: I accept the first part of my friend's suggestion. I do not move for adding 29A. But I am not clear whether it is the were transposition of the entry as it stood in List II that is proposed ?

The Honourable Dr. B. R. Ambedkar : It is transferred to Concurrent List as 20A. That was the motion passed by the House.

Dr. P. S.Deshmukh : Would it not be better to enlarge its scope ?

The Honourable Dr. B. R. Ambedkar: 'Adulteration of food' includes everything, I think.

Dr. P. S. Deshmukh: If that is so, I do not move this amendment.

Mr. Vice-President : Then I will put entries 30 and 31 to vote.

Entries 30 and 31 were added to the Concurrent List.

New Entry 3 1 -A

The Honourable Dr. B. R. Ambedkar: I move:

"That after entry 31, the following new entry be inserted:-

'31-A. Ports, subject to the provisions of List I with respect to major ports'."

Mr. Vice-President: The question is:

"That after entry 31, the following new entry be inserted:-

'31-A.' Ports, subject to the provisions of List I with respect to major ports'."

The motion was adopted.

Entry 31 was added to the Concurrent List.

Entry 32

The Honourable Dr. B. R. Ambedkar: I move :

'That entry 32 of list III be deleted."

This has been transferred to List I.

Mr. Vice-President : The question is:

"That entry 32 be deleted."

The motion was adopted.

Entry 32 was deleted from the Concurrent List.

Entry 33

The Honourable Dr. B. R. Ambedkar : I move:

"That entry 33 of List III be deleted."

As I said, this also has been transferred to List I.

Mr. Vice-President : The question is:

"That entry 33 be deleted."

The motion was adopted.

Entry 33 was deleted from the Concurrent List.

Entries 33A and 33B

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That after entry 33 of List III, the following new entries be inserted:--

'33A. Custody, management and disposal of property (including agricultural land) declared by law to be evacuee Property.

33B. Relief and rehabilitation of persons displaced from their original place of, residence by reason of the setting up of the Dominions of India and Pakistan.' "

(Amendment No. 296 was not moved.)

Mr. Vice-President,: The question is:

"That after entry 33 of List III, the following new entries be inserted:--

'33A. Custody, management and disposal of property (including agricultural land) declared by law to be evacuee property.

33B.Relief and rehabilitation of persons displaced from their original place of residence by reason of the setting up of the Dominions of India and Pakistan'."

The motion was adopted.

Entries 33 A. and 33 B. were added to the Concurrent List.

Entry 34

Shri Brajeshwar Prasad: There is an amendment to this. After that amendment is moved, I would like to speak on this entry, Sir.

Shrimati Purnima Banerjee (United Provinces: General) : Sir, I move:

"That for entry 34 of List III, the following be substituted

'34- Economic, educational and social planning.' "

The reason why I have added the word "educational" is that, I think, most Members of this House would agree with me that social planning is something quite separate from educational planning and does not include the connotation of educational planning. Social planning means Planning for society which may change the structure of society upon a completely different basis. It really relates to economic planning. I therefore hope that the Drafting Committee, particularly Dr. Ambedkar, will gee the difficulty which I find. Under the Union List, the Centre has taken powers to lay down standards of education. By entry 40 it has taken upon itself the task of running important educational institutions. By entry 40A they are going to take over scientific and technical institutions. Under 57 A. they are taking over co-ordination and maintenance of educational standards in institutions for higher education. If all these the Union seeks to do, I am certain that the Union should also have powers for educational planning all over the provinces.

While discussing the Union List, some friends went to the extent of saying that university education should be entirely a Union subject. I do not agree with them to that extent, but I do think that the Centre should plan education for all the provinces, and because I feel that economic and social planning does not include educational planning specifically, I seek to move my amendment. I, therefore, suggest that either the word "educational" should be included in this entry, or educational planning should be provided for in a separate entry, whichever may be found convenient by Dr. Ambedkar. I hope Dr. Ambedkar will see our difficulty and tell us whether he does not agree that social and economic planning have got a particular meaning and actually educational planning does not form a major part of it even though it may be a minor part, of it, or whether he considers that under this entry the Union has got power to plan education throughout the country.

Shri Brajeshwar Prasad: Mr. Vice-President, Sir, I rise to support the amendment moved by my sister, Shrimati Purnima Banerjee. It is only in the sphere of higher education that the Centre has been vested with the power of planning. This amendment purports to vest the Government of India with the power of planning in the sphere of education without any restriction or reservation. This power must be vested in the hands of the Centre if our nation is to advance rapidly. It ought to be the duty of the Centre to see that wrong type of education is not instilled in the minds of the young in the primary and secondary stages of education. The impressions of this period of primary and secondary education are not likely to be erased from the minds of the young, whatever we may do in the university stage to wipe out the, impressions of the wrong type of education imparted during the primary and secondary stages of education. There is a real danger that provincial governments imbued with the spirit of provincialism may be tempted to poison the minds of the young. If an all-India outlook is to be developed, educational planning must be placed in the Concurrent List so that the Centre May have the power to plan our education on a sound and secular basis.

Sir, there is another aspect of the question to which I would like to draw the attention of the House. Entry 34 reads thus:

"Economic and Social planning."

What about political planning ?

Some Honourable Member: It will be too disastrous.

The Honourable Dr. B. R. Ambedkar: It can be done by way of amendment of the Constitution.

Shri Brajeshwar Prasad : Let me continue. There is need for political planning as well. Plato in his Republic advocated a rigid system of discipline and training for philosopher Kings. We must also produce rulers and administrators. There is dearth of leadership in the country. An attempt was made in Nazi Germany to train rulers and administrators on a planned basis. A similar attempt should be made in this country also. Public Service Commission examinations are not enough.

An Honourable Member: Do you want Nazism here ?

Shri Brajeshwar Prasad : It is easy to label ideas. Ideas should not be labelled. Labels and Trade marks are meant for Post Offices and Government Departments.

There should be a similar attempt at planning in all the spheres of our political life. Our foreign policy must be planned. I am glad that my honourable Friend, Mr. Keshkar, is present here today. The distant and immediategoals must be laid down in clear and explicit terms. There is need for the establishment of an Institute for the study of geopolitics in this country. The whole gamut of our political life must be systematically and scientifically planned. Political planning is as essential as economic and social planning. Every step taken in the political sphere must be on a planned basis.

Shri Rohini Kumar Chaudhuri (Assam: General)* : Sir, it seems to me to be an age since I spoke last. It is not that my tongue does not reach so long, but I loathe to speak in this House lest I impede the progress of the work here, but today the heart-throbbing speech of my honourable Friend Shrimati Purnima Banerji has aroused me from my slumbers. I come here not to appreciate the speech of my honourable Friend Shrimati Purnima Banerji but to oppose it with all the might that I posses. Sir, we have come nearly to the end of these Lists, I, II and III and what do we find ? What we find is that the position of the States are no longer States or Provinces, but they have been reduced to the position of municipal and other local bodies. All the powers have been taken away either in List I or List No. 3. It reminds me of the words in the Upanishad:

Poornasya Poornamadaya

Poornamevavasishyate.

After having taken out everything the same fullness remains : it is as if it is a full Moon. We are taking slices of the full Moon and yet the full Moon still continues as before. That is the position to which we have arrived after going through all these lists.' No power is left to the Provinces and the full Moon remains a full Moon as before.

Sir, I would draw the attention of the House to An amendment which was proposed or was tabled-by my honourable Friend, Mr. Santhanam, amendment No. 3668 in which he rightly tries to delete this entry 34 altogether. It would have been much better to have dropped this entry 34 altogether. What do you mean by economic and social planning? The economic and social planning of a province or State must be left entirely to the legislature itself. Whenever there is any conflict between List II and III, the legislation which is proposed by the Centre will prevail. In that case by admitting this entry, are you not exposing the State to an interference by legislation passed by the Centre in the ordinary normal working of the State in the matter of social and economic planning? What do you mean by social and economic Planning. All the subjects which have been mentioned in List II in one way or the other lead to economic planning and the result of having economic planning in List II and to have another entry here in order to give jurisdiction to the Center to interfere with such economic planning, is I think most unwise. And it is still more unwise on the part of my honourable Friend, Shrimati Purnima Banerji, to limit the powers of the State by adding the word "educational". 'Education' has beenrightly left in the hands of the State. Why should the Centre in any way interefer with educational facilities ? It should in the opinion of the States be given to the provinces. You want to put in "educational facilities" here, but why not put "health facilities" also ? Why do you want to lay stress on education ? If you agree to the amendment moved by Shrimati Purnima Banerji, I ask, why not put health facilities also which is more important than education ? If the object of Shrimati Purnima Banerji is to draw pointed attention of the House to educational facilities,. then why should she not think of health before education ? After all, health is more important than education. Then another Member who is absolutely enamoured of artistic subjects might say that art facilities also might be put in. You can go on increasing one facility after another and take away as far as possible the powers which have been given to the State. That is the object of Shrimati Purnima Banerji and that object should be strongly disapproved of by this House and I would submit if it is possible even at this late stage the House would do well to delete entry 34 altogether.

The Honourable Dr. B. R. Ambedkar : Sir, I am very sorry but I cannot accept this amendment moved by Shrimati Purnima Banerji. The introduction of the word "education" seems to me to be, quite unnecessary. The word " social" is quite big enough to include anything that relates to society as a whole except, of course, religious planning, and a contradiction would be only between 'social' and 'religious'. What the State would not be entitled to plan would be 'religion'; everything else would be open to the State.

With regard to the observations of my honourable Friend Shri Rohini Kumar Chaudhuri, I think he will realize that this entry finds a place in the Concurrent List and the State also would have the freedom to do its own planning in its own way. It is only when the Centre begins to have a plan and if that plan conflicts with the plan prepared by the State that the plan prepared by the State will have to give way and this is in no sense an encroachment upon the planning power of the State and therefore, this entry, I submit,. should stand in the language in which it stands now.

Mr. Vice-President : The question is:

"That for entry 34 of List III, the following be substituted:-

'34. Economic, educational and social planning'."

The amendment was negatived.

Mr.Vice-President : The question is:

'That entry 34 stand part of List, Ill."

The motion was adopted.

Entry 34 was added to the Concurrent List.

Entry 34-A

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That after entry 34 of List III, the following new entry be inserted:-

'34A. Archaeological sites and remains.' "

This would be Concurrent.

Mr. Vice-President: The question is.

"That after entry 34 of List III, the following new entry be inserted:-

'34 A. Archaeological sites and remains.' "

The motion was adopted.

Entry 34A was added to the Concurrent List.

(At this stage Mr. Vice-President vacated the Chair which was taken by Mr. President.)

Entry 35

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for entry 35 of List III, the following entry be substituted:--

'35. The principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined and the form and the manner in which such compensation is to be given.' "

Mr. President : There is no amendment to this.

The question is :

"That for entry 35 of List III, the following entry be substituted:-

'35. The principles on which compensation for property acquired or requisitioned for the purposes of the Union or of a State or for any other public purpose is to be determined. and the form and the manner in which such compensation is to be given.' "

The amendment was adopted.

Entry 35, as amended was added to the concurrent List.

Entry 35-A

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That after entry 35 of List III, the following new entry be inserted:

'35A. Trade and commerce in, and the production, supply and distribution of the products of industries where the control of such industries by the Union is declared by Parliament by law to be expedient in the public interest."

(Amendment No. 331 was not moved.)

Mr. President : The question is :

"That after entry 35 of List III, the following entry be inserted

'35A. Trade and commerce in, and the production, supply and distribution of the products of industries where the control of such industries by the Union is declared by Parliament by law to be expedient in the public interest."

The motion was adopted.

Entry 35A was added to the Concurrent List.

Entry 36

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for entry 36 of List III, the following entry be substituted:--

'36. Industries and statistics for the purposes of any of the matters specified in List

II or List III.' "

Mr. President: There is no amendment.

The question is:

"That for entry 36 of List III, the following entry be substituted:-

'36. Industries and statistics for the purposes of any of the matters specified in List II or List III.' "

The amendment was adopted.

Entry 36, as amended, was added to the Concurrent List.

New Entry

Mr. President: There is a new entry proposed by Pandit Govind Ballabh Pant.

(Amendment No. 144 was not moved.)

Dr. P. S. Deshmukh : Sir, I move:

"That the following new entry be added in List III:--

"Protection of children and youth from exploitation and abandonment, *vide* article of (vi).' "

Sir, I had moved similar amendments on two occasions........

The Honourable Dr. B. R. Ambedkar: This amendment was considered along with other amendments and I gave a reply telling my friend that this matter will be considered by the Drafting Committee. He was then agreeable.

Dr. P. S. Deshmukh: My only submission is that the wording may be altered as the Drafting Committee may decide but provisionally the entry may be accepted as proposed by me. It should not merely be left to be considered by the Drafting Committee-. Any wording that may be suitable may be put in; but there should be an entry which refers to the protection of children and youth from exploitation and abandonment. I hope Dr. Ambedkar will kindly accept this.

The Honourable Dr. B. R. Ambedkar: I have told my friend that if I find that the purpose which he has in mind is not covered by any of the other entries, I will do my best to introduce some such entry. I have given him that assurance.

Dr. P. S. Deshmukh: This is a question to which I and at least some Members of the House attach very considerable importance. It is only a quarter past eleven now and we have got a lot of time. If the learned Doctor would take half an hour, there could even be a recess for half an hour and we can meet again, and he can say definitely whether there is need of such entry or not. We have been discussing various entries. We have an entry for labour welfare. Still we have put in an entry for vocational training for labour. If in this case. Dr. Ambedkar came to the conclusion that in spite of the entry "Labour Welfare" being there, it was necessary specifically to provide for the vocational and technical training, of the same class of persons by an independent entry. I cannot understand why he should resort to far-fetched interpretation so far as children's care is concerned. I hope, Sir, no damage will be done if we have an entry like the one I have proposed in the case of children.

The Honourable Dr. B. R. Ambedkar: I will give my best consideration to the matter. I am in entire sympathy with its object. What more can I say?

Dr. P. S. Deshmukh : I must content myself with this assurance. I hope ultimately an entry to this effect will be introduced.

Mr. President: There are certain other amendments. Dr. Deshmukh. No. 252.

Dr. P. S. Deshmukh : Sir, I move:

"That in List III, the following new entries be added:-

(i) Regulation. control and maintenance of public houses;

or alternatively

'Regulation and control of prostitution and regulation, control and maintenance of public houses.'"

Either of these two may be accepted. I do not wish to take the time of the House......

Shri R. K. Sidhva: I might mention, Sir, that even the provincial Governments have the power to do these things.

Dr. P. S. Deshmukh : I would like to refer to the speech delivered by my honourable Friend Mr. Brajeshwar Prasad where it was pointed out that there was no specific power with the municipalities because the provinces have not enacted any law of this sort. For the sake of uniformity, and also if any State really wants to prohibit or abolish prostitution, that sort of question would not be covered by leaving it only to the interpretation of other entries. Therefore, I would suggest to Dr. Ambedkar to accept this for inclusion. If he does not, I would not like to press this too strongly.

But, the next amendment I want to press as I attach considerable importance to it.

"That in List III, the following new entry be added:--

'Establishment, and maintenance of National Farms and Parks.' "

There is a mis-print here; it should be 'parks' instead of 'farms' where it occurs for the second time. It may be said here also that this is a sort of inherent power which can be utilised under this or that entry. I think we are coming to a stage where we attach more and more importance to nationalisation of various things. There is ample waste land which could be taken over and which could be utilised for co-operative farms, for national farms and parks. National marks are now regarded as a necessity, not only for the sake of providing some healthy place for recreation and for other purposes, but it has several agricultural utilities also. Not only so far as farms are concerned, but parks also where we can teach the general public and the agriculturists how to stop erosion and other things. All these things are necessities in our modern life. If we go to Amercia or other civilised countries, we will find that there are extensive farms not only maintained by the State, but maintained by the Federal Government also and they are looked after., I think a specific mention of this sort would not be in any way harmful and it would be desirable that this entry should be accepted,

Shri Mahavir Tyagi (United Provinces: General) : May I know if the honourable Member by controlling this wants to bring into existence some permit system ?

Dr. P. S. Deshmukh: No, Sir.

Shri Mahavir Tyagi: He says control and regulation of prostitution. I have heard of food control and house control by permits. Is it the meaning of this that permits will be issued by the Government ?

Dr. P. S. Deshmukh: Yes, Sir. That is the intention. There are licensed public houses where doctors periodically visit, by which alone the evil of venereal diseases can be controlled. This is not a novel thing; this has been done already in many countries. If prostitution has to be there, it is necessary that it should be under State control. There should be medical examination and there should be licensing of these houses so that the evil does not spread throughout the country and extend to almost every house or to every section of society. By controlling and licensing it is intended not to allow it to expand and spread to others. I think my friend had not had the opportunity of going to France, otherwise he would have been much wiser than lie appears to be.

Shri Mahavir Tyagi: I must congratulate you for your experience

Shri Brajeshwar Prasad: Mr. President, Sir, I feel that the gravity of the situation has not been realised. As one who had to do with books but having no practical experience of France or other countries, I am in a position to say that it is such a vital thing of national concern that the Government of India must do something in this matter if the youth of the country is to be protected from moral abandonment. My Friend Shri Deshmukh spoke in the vein that probably it can be abolished or abrogated altogether. I do not agree with him on that point. Prostitution is a very old institution-as old as the hills and it cannot be abolished. The roots of this institution lie deep in our human nature. The only thing that we can do is to regulate it. The idea that there should be licenses is a perfectly scientific one and if the youth of the country is to be protected, we cannot depend upon Provincial Governments alone. I had an occasion to table a resolution similar to what Shri Deshmukh has tabled today in this House, while I was a member of the Gaya Municipality in 1938. It was ruled out of order by the President of the Board on the ground that the matter did not lie within the jurisdiction of the Municipality, and that it was a matter which required specific law empowering the Municipality by the Provincial Government.

An Honourable Member: Does the honourable Member suggest that all licenses will be issued from Delhi ?

Shri Brajeshwar Prasad: When we are placing this power in the Concurrent List, it means the Centre has power to plan, regulate and see that the Provincial Government act accordingly and if the Provincial Governments fail then the Centre steps in. The Provincial Governments have not done much in this direction. Therefore the Centre must take the responsibility on its shoulders.

Shri R. K. Sidhva: Mr. President, I was rather surprised at the attitude of Shri Brajeshwar Prasad. He says this institution is centuries old and it cannot be abolished. Prostitution in India is a disgrace and shame to us and it is regrettable that Shri Brajeshwar Prasad should advocate its continuance. I am sorry that the Provincial Governments, despite the powers that are vested in them, have not yet abolished prostitution. I know in some Provincial Governments; they have enacted acts. If the other provinces have not done, it is their fault. To say that the prostitution should be allowed on licenses is also bad. Licences are issued even today but that is not the point. It is a disgrace and shame to society that this kind of thing should be allowed to continue, I would say that the Provincial Governments must take immediate steps and I support the amendment of Dr. Deshmukh. I, however, say there is no justification for this amendment because the powers are today vested with Provincial Governments; but if Dr. Ambedkar feels there is no power, then certainly I win support it because it is an entry which really goes to improve the morality of a class of people. It is not that that class wants it but under certain circumstances this institution has remained in existence and it is high time that this is abolished and should,not be encouraged. I know some provincial Governments have taken steps and some class of prostitutes have come to Government saying that they had been living on this and have been deprived of their livelihood. Even today I learnt that in Pakistan the Government are contemplating abolishing prostitution and I know under what conditions and in what places in the heart of the city this trade exists.

Shri Brajeshwar Prasad : Probably lie is not aware of the scientific ideas on this subject. If you abolish, the whole thing will go underground.

Shri R. K. Sidhva: My Friend may understand the scientific methods. He is welcome to it. I know what lie talks-about venereal diseases etc. My point is that this thing should be stopped. It is a disgrace and shame. I, therefore, state that if the powers are not complete-if Dr. Ambedkar says that then I support this amendment. Otherwise I know the Provincial Governments do possess this power as I know there are Acts actually enacted in some of the provinces.

Seth Govind Das: (C. P. & Berar: General) : *[Sir, the speech delivered by Shri Brajeshwar Prasad has been to me one of the most surprising events in my life. At a time when we are directing our efforts to raise the moral standard of society and want to create a new social order based on morality, I am surprised to find that there are even now persons amongst us who want to retain the institution of prostitutes.We, who have worked under the leadership of Mahatma Gandhi for the last thirty years, had formed new ideas about the standard of morality and bad expected that under the new Constitution to be framed after independence, we would try to create a new moral order in which such institutions as prostitutes, bars and gambling would become extinct. But I am surprised to find that even today there are persons amongst us who favour the retention of these institutions. I would like to request Dr. Ambedkar to ensure that whatever items we pass here shall be such as are rooted in morality and therefore possess survival value. He should also see to it that the new social order which we are going to create may serve as a model not only to us but to the whole of the world.]

Shri Brajeshwar Prasad : On a point of personal explanation.

Mr. President: It is not, necessary. We all understand what you said Everybody has put his own interpretation on that.

Mr. Naziruddin Ahmad: Sir,. . . .

An Honourable Member: Closure.

Mr. President: I have already called Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : One speaker has just now given out that prostitution should be entirely prohibited. With regard to the point of sentiment behind it, not only my humble self but the whole House will agree; but the question is, is it practical and is it desirable ?

The Honourable Dr. B. R. Ambedkar: Is this a question which we need debate ? The only question is whether there is power-with the State or with the Centre or should it be Concurrent. How the power is to be exercised whether to permit partially or prohibit completely is a matter for each Legislature, which we must leave to the legislature.

Mr. Naziruddin Ahmad: My submission is that it is relevant. The amendment provides for "regulation and control of prostitution." One honourable Member says you must entirely stop prostitution and regulation and control are undesirable. I submit this is neither undesirable nor impracticable. You cannot stop prostitution. You can only regulate and control. You cannot prohibit and if you do it. you close a safety valve for society. The objection is due to impractical idealism. I suggest that there is nothing inherently or practically wrong in the amendment. That was the reason why I spoke..

Shri V. I. Muniswamy Pillay (Madras: General) : I wish to speak, Sir.

Mr. President: Closure has been moved. The question is:

"That the question be now put."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar: Sir, there is enough power given to the State under these entries to regulate these matters, namely, either for dealing with public houses or having-some large-scale farming. If my Friend, Dr. Deshmukh were to refer to List II, entry 1, which deals with public order, and entry 4 which deals with police and the Concurrent entry which deals with criminal law, he will find that there is more than enough power given to regulate these matters. If he were to refer to entry 24 dealing with land, entry 21 dealing with agriculture in the State List, he will find that there is more than enough power in the States to have State farms or whatever they like.

Therefore, the only question that remains is this, whether this subject relating to the creation of farms and the regulation of public houses should be in the Concurrent List. In my judgment, the criterion to decide whether this matter should be in the Concurrent List or in the State List is whether these matters are of all-India concern or of purely local concern. In my judgment prostitution, the regulation of public houses, and creation of farms are matters of local concern and it is therefore better to leave them to be dealt with by the States. They have got more than enough power for that. I do not know how the Centre can do the job. The Centre has not got any agricultural land. If the Centre wants to establish a farm, the Centre has to acquire the property from the farmers. The same thin- could be done by the State. I do not see what purpose would be served by having these entries in the Concurrent List; and it must also be remembered that our States which we call States are far bigger than many States in Europe.

Shrimati G. Durgabai: Will Dr. Ambedkar make one point clear ? The entry speaks of regulation or Prohibition of prostitution. I do not understand the meaning of "regulation" here, and I think it should be complete prohibition.

The Honourable Dr. B. R. Ambedkar: The States can regulate them and also prohibit them. The States can do it.

Mr. President: Then I put the amendments. The question is:

"That in List III, the following new entries be added :-

(i) Regulation, control and maintenance of public houses."

The amendment was negatived.

Mr. President: Then I put the second new entry-

"(ii) Regulation and control of prostitution and regulation, control and maintenance of public houses."

The amendment was negatived.

Mr. President: Then I put the third new entry-

"(iii) Establishment, maintenance of National Park- , and Farms." The amendment was negatived.

Mr. President: Next is amendment No. 253 of Sardar Hukam Singh.

(Amendments Nos. 253 and 325 were not moved.)

These are all the new entries of which I have notice, and so we Complete 'the Third List.

New Entry 88-A

Mr. President: The House will remember that a question of order was raised with regard to an entry, and we had to pass over it, the other day. The question has been raised whether an entry in List I of Schedule VII to the following effect is in order, namely,

> "88A. Taxes on newspapers including advertisements published therein."

It has been argued that this entry, being inconsistent with article 13 which lays down that all citizens shall have the right to freedom of speech and expression, is out of order. It is argued that the only limitation to this fundamental right is the one laid down in clause (2) of article 13 and the proposed entry not coming under that is out of order. Reliance has been placed in support of this view on a decision of the Supreme Court of the United States in Alice Lee Grosjean *V* American Press Company, which laid down that an Act of the Legislature of Louisiana levying a licence tax of 2 per cent. of the gross receipts of revenues obtained by newspapers, magazines and periodical publications having a circulation of more than 20,000 copies per week was invalid ,as violating the Federal Constitution, and abridging the freedom of the press. The question which I have to decide is whether an entry in Schedule VII, List I or for that matter in any of the lists of the nature mentioned above is in order, I am not concerned with the question as to whether a particular legislation based on that entry is *ultra vires* as violating the rights given in section 13. That will be a matter for courts to decide. The entry proposed only gives the right to the Union Legislature to impose a tax on newspapers including advertisements published therein. Article 13 does not lay down anywhere that newspapers including advertisements published therein shall not be taxed. The entry therefore, appears to be not inconsistent with article 13. Provision for taxation has to be considered independently and on its own Merit apart from the question of the fundamental right to speech and expression. Even the decision of the Supreme Court of the United States on which reliance has been placed does not exclude all taxation. It expressly lays down "It is not intended by anything we have, said to suggest that the owners of newspapers are immune from any of the ordinary forms of taxation for support of the Government. But this is not an ordinary form of tax but one single in kind with a long history of hostile misuse against the freedom of the press". Further the judgment says--"The tax here involved is bad not because it takes money from the pockets of the appellants. If that were all a wholly different question would be presented. It is bad because in the light of its history and of its present setting, it is seen to be a' deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guarantees". The particular tax was levied on papers having a circulation of more than 20,000 copies per week. There was a competition between such papers and others having a smaller circulation, and the judges held that this discrimination against newspapers having circulation of more than 20,000 operated as restraint in a double sense. First its effect was to curtail the amount of revenue and second its direct tendency was to restrict circulation. It will be a question in any particular case, if it arises to be decided, whether a particular tax operates as a curtailment of the right of freedom of speech and expression and it cannot be laid down that there can be no tax on newspapers or advertisements published therein. The entry as proposed is therefore 'in order.

We shall take up that entry now.

Shri Deshbandhu Gupta (Delhi) : Sir, in vew of the fact that the matter is now under the consideration of the Drafting Committee, I request it may taken up later.

The Honourable Dr. B. R. Ambedkar: I am prepared to accept the amendment moved by the 58 gentlemen.

Shri Mahavir Tyagi: May I inform you, Sir, that a large section of the House would like the-deletion of the entry and so you might kindly agree to hold over the item for further consideration of the Drafting Committee?

The Honourable Dr. B. IL Ambedkar: Sir, if the mover of this amendment cares to move it, I am prepared to accept it.

Shri Ramnath Goenka (Madras: General) : Sir, the other day, you requested Dr. Ambedkar to be ready with his alternative proposal.

The Honourable Dr. B. R. Ambedkar: He did not say anything of that kind.

Shri Ramnath Goenka: This item will take some time, Sir.

The Honourable Dr. B. R. Ambedkar: Sir, the amendment is here.

Shri Ramnath Goenka: What I suggest is that we could get in touch with the Drafting Committee and come to a formula acceptable to all.

The Honourable Dr. B. R. Ambedkar: This is a formula which you have proposed.

Shri Ramnath Goenka: We will have the benefit of consultation with you.

The Honourable Dr. B. R. Ambedkar: Sir, I am prepared to accept entry 88A if they move it.

Shri S. Nagappa: It has been moved.

The Honourable Dr. B. R. Ambedkar: It has not been moved yet. That was entry 88A in List I-not in the State List. Objection was taken that it was not in order and it was not moved. Therefore, if Mr. Goenka wishes to move. it........

Shri Deshbandhu Gupta: Sir, I formally move that the matter be held over.

The Honourable Dr. B. R. Ambedkar: Why ? We tried to finish the whole list. That is why we hurried up, not allowing many Members to speak to the extent they used to. Now that We have. got a clear-cut amendment signed by many people I do not see why it should be held over.

Shri Deshbandhu Gupta: It is not in a clear-cut form as Dr. Ambedkar himself saw something objectionable in the draft and was prepared to help us with a better draft.

Mr. President: As I understood Dr. Ambedkar the other day, the only question was whether it should be in List I or List II. He said the question of policy had to be decided.

The Honourable Dr. B. R. Ambedkar: If you want to put it in List I, I am prepared to accept it I

Mr.President: So far as the particular place where this entry will go that is to be left to the Drafting Committee.

Honourable Dr. B. R. Ambedkar: The whole trouble is this. This entry was originally in List II. Their objection was that it should not be in List II but it should be in this form in List I. I am prepared to accept that if they want it.

Shri V. I. Muniswamy Pillay : Sir, may I move the amendment? I beg to move:"That with reference to amendments Nos. 3582 and 3588 of the List of Amendments after entry 88 of List I, the following new entry be inserted:--

88A. Taxes on newspapers including advertisements published therein."

I do not think many words are required from me on this amendment since my honourable Friend Mr. Goenka has made the whole position clear. Sir, I move.

Shri Deshbandhu Gupta : Sir, on a point of information, may I inquire as to That will happen to entry No. 58 in the second List which was held over yesterday ?

Mr. President : It would go.

Shri Deshbandhu Gupta: It was held over yesterday because these two go together.

Mr. President: It was held over because there was an amendment which wanted to transfer this to List II. If it is passed in List I then that amendment will be out of order.

Shri Deshbandhu Gupta: There are two amendments. There is one that this may be transferred to List I and there is another defining the scope of entry 58. The amendment was held over yesterday because this matter was not before the House at that time. They must go together.

The Honourable Dr. B. R. Ambedkar: I am not bound to accept it. They do not go together. I refuse to accept that.

Mr. President: There was an amendment, No. 122, consideration of which was held over because of this amendment. If the amendment which has been just moved is accepted then in that case amendment No. 122 becomes out of order, and the only proposition before the House will be Dr. Ambedkar's proposition namely amendment No. 121.

Shri Ramnath Goenka: Will there not be a consequential amendment in List II ? In the State List certain powers are given to the State for taxes on sale as well as on advertisement. If this is transferred to List I, then the consequential amendment of which we have given notice....

Mr. President: The notice is that it be included in List I. If it is taken in List I then it goes out.

Shri Ramnath Goenka: But the exception will have to be provided for in List II in the entry; sale of goods excepting newspapers.

Mr. President: It is not necessary.

The Honourable Dr. B. R. Ambedkar: It is not a consequential amendment at all. Both the amendments are quite independent. One amendment is that the entry should be expanded by the addition of a new entry to be called 88-A. Then there is another amendment which is amendment to my amendment to entry 58 in List II dealing with sales tax. That amendment says that the word "goods" should be so qualified as to exclude newspapers. That will be dealt with on its own merits. The immediate question we have to deal with is whether List I is to be expanded by the addition of entry 88-A in terms as moved here.

Shri Ramnath Goenka: The position is this. We have proposed an entry in List I that taxes on newspapers including advertisements- therein, should be transferred to List I and that the Provinces should not have the authority. to levy any taxes on newspapers. Therefore the amendment No. 57 is a consequential amendment to the amendment No. 122 in entry 58 in List II. So both these amendments will have to be taken together. Yesterday when this question of entry 58 in List II came before us, you put it off until you gave a ruling and said a decision could be taken to other on these entries.

The Honourable Dr. B. R. Ambedkar: Take them one by one. Let both tile amendments be put one after the other.

Shri Ramnath Goenka : May I suggest, Sir. that we put entry 58 in List II first and then 88-A ?

The Honourable Dr. D. R. Ambedkar: You can have it in any way you like, but I want to tell you that voting in a particular manner on the second amendment would be inconsistent with voting on the first in another manner. It will be open to the House to accept the one and reject the other.

Shri Ramnath Goenka: I would like to have your ruling on this matter. If you transfer the taxes on newspapers to List I then it cannot have any place in List II also. If it has a place in List I then it necessarily goes out from List II.

The Honourable Dr. B. R. Ambedkar : It will go out of List II only so far as taxes are concerned. But so far as the sale of goods is concerned it would remain. You want to get that out also ? Your object, if I understand, is twofold, namely, that the newspapers should not be liable to any duty and should not be liable to any tax under the Sales Tax Act also. I am not prepared to give you both the advantages, to be quite frank.

Shri Ramnath Goenka : May I request you, Sir, to hold this matter over till Monday morning so that we can put our heads together and come to you, because whatever the interpretation, what is said, is the object of our amendment. If that object is not carried we will have to put in other amendments. But that is our intention. We are only laymen and we will be guided by Dr. Ambedkar. The entire taxation should be taken away from the Provinces to the Centre. If that purpose is not being carried out I am afraid some other amendment will have to be moved which will have the effect of carrying out our intentions. These are our intentions.

Mr. President : Dr. Ambedkar, will you object if the matter is held over ?

The Honourable Dr. B. R. Ambedkar: I will be quite frank about it. I have a mandate to accept entry 88A. I am prepared to follow that mandate and accept entry 88A. I have no such mandate with regard to the other thing (amendment No. 122). 1 am sure that it will be difficult to accept it. To have a complete exemption from any kind of taxation on newspapers is to me an impossible proposition.

Shri Ramnath Goenka : It is not so. I want taxation to be left to the Centre and not the Provinces. If I may tell Dr. Ambedkar, the mandate was that it should be taken away from the Provinces.

The Honourable Dr. B. R. Ambedkar: You are not to interpret the mandate for me. I know what it is. It is quite clear to me.

Shri Ramnath Goenka: As it is, I am interpreting it to you. (*Interruption.*)

Shri Deshbandhu Gupta: Since Dr. Ambedkar has referred to the mandate I may make it clear that when this question was taken up with the authority which gave the mandate, it was absolutely clear that the two amendments went together. We wanted this tax to remain a Central tax and not a Central as well as a provincial tax.

The Honourable Dr. B. R. Ambedkar: It is not right to refer here to matters discussed elsewhere. But, as I said, I am quite prepared to abide by that mandate. The other matter was brought in surreptitiously by our friends after they heard what I said in another place as to what a mess they had made by bringing in this amendment.

Shri Ramnath Goenka: As Dr. Ambedkar suggests that we have made a mess we want a way out of the mess.

(*Interruption.*)

Mr. President: I find there is much feeling in the matter. So we had better take it up on some other day when the feelings are a bit cooler.

I was asked by some honourable Members in the morning to let them know when we are likely to take up the question of language. Yesterday I give the programme up to Friday, the 9th September. And according to the provisional programme which we had made, articles dealing, with Property and Language were allotted three days, 10th, 12th and 13th. It was only provisional. If Members have no objection to these dates we may stick to them.

Seth Govind Das : Sir, You have said just now that they are provisional dates. May I take it that if on these dates the question of Language is not taken up it will be taken up at least in this session and that people will be informed accordingly of the dates beforehand so that they may be present on those occasions ?

Mr. President: There is no question of the thing not being taken up. It is going to be taken up. Unless the House has any objection, as I said, I have fixed these dates. I said they are provisional only in the sense that I had fixed them and it is open to the House to ask me to fix some other dates. But if the House has no objection, I shall take these items up on 10th, 12th and 13th.

Shri M. Ananthasayanam Ayyangar (Madras: General) : May I ask you to have it on 12th, 13th and 14th instead of on the 10th. 12th and 13th ?

The Honourable Pandit Ravi Shankar Shukla (C. P. & Berar: General) : May I suggest that the discussion of articles 264-A, 265 and 266 be taken up either on the 10th or after the 13th, because most of the members and Premiers who are interested in this are not here and may not be able to come on the 6th when these articles are likely to be taken up. So I suggest that the discussion of these three articles may be taken up after the language question so that everybody will have notice and have time to be present-here.

Mr. President : I have fixed the order of business with reference to the drafts which the Drafting Committee is preparing. The drafts of these particular articles are ready and therefore they have been allotted first. The drafts of the other articles are not ready. Then the members will begin to complain that they have not had time after the circulation of the draft proposals to give notice of amendments. As I have already said, this order has been fixed with reference to the drafts which are ready. And I should expect that Members should come back. There is still time. We announced it yesterday.

The Honourable Pandit Ravi Shankar Sbukla: I want to know whether the draft is finally ready for discussion in the House.

Mr. President: I understand it is.

Shri K. M. Munshi (Bombay: General) : The drafts of these articles are ready and I suppose whatever discussions have to be carried on could be finished tomorrow and the matter brought up before the House. It is necessary that we should go on with the scheduled programme day after day. If-we postpone any matter, it will lead to a great deal of difficulty in the future. These drafts are ready : only some Premiers want a revision of one or two provisions which could be done tomorrow. There is otherwise no work for Monday. Day after tomorrow there will be no work for the House if these drafts are kept back. We have a few articles left which, unless we go on from day to day, it will be very difficult to finish in time.

Mr. President: We have fixed Fifth and Sixth Schedules. for Monday. I hope they will be finished that day and, if not, we shall go on to the next day.

The Honourable Pandit Ravi Shankar Shukla: Unless we have sufficient notice of the programme it will be inconvenient for some of us.

Mr. President: I announced yesterday that this will be taken up on Monday.

The Honourable Pandit Ravi Shankar Shukla: We are living in places far away from the Capital.

Mr. President: Now-a-days it is not difficult to reach any place in a few hours' time.

The Honourable Shri Purshottam Dos Tandon (United Provinces: General) Mr. President, in regard to the language question, may I know what dates you propose to fix for discussion ?

Mr. President: I have just announced that we have fixed three days for the discussion of the property question and the language question. The dates are the 10th, 12th and 13th September.

The Honourable Shri Purshottam Das Tandon: May I take it that the language question will be taken up on those days after a decision has been reached on the question of property ?

Mr. President: Yes.

Honourable Shri Purshottam Das Tandon: May I take the liberty of suggesting that you may, as 10th is a Saturday and 11th is Sunday, fix the 12th September for taking up the language question ?

Mr. President: I take it that the language question will really be begun on the 12th, because on the 10th we are going to discuss the property question.

The Honourable Shri Purshottam Das Tandon: The language question, instead of being left to chance, may be considered on the 12th that is all I request.

Mr.. President : Nothing will be lost if discussion of the language question is taken up on the date fixed, *viz.*, the 10th. If we finish the property article early on the I 10th, we. shall begin the discussion of the language question. But I do not anticipate that it will end on the 10th. It will be continued till the 12th.

Mr. Naziruddin Ahmad: I have one point to suggest. We are proceeding on the assumption that the drafts will be made available to us in time. Up to this time however no draft has been made available. Our programme must therefore be conditional upon the drafts being made available to Members in sufficient time to give notice of amendments. These questions relating to language and property are important and complicated ones.

Mr. President: So far as Monday is concerned, the two draft Schedules for consideration have been circulated.

Mr. Naziruddin Ahmad: Yes. They have been circulated already.

Mr. President: Then, for Tuesday's programme, article 263, etc. in draft form will reach honourable Members today.

Shri Brajeshwar Prasad: The draft of the 6th Schedule has not been distributed to us.

Mr. President: It will be distributed today.

Mr. Naziruddin Ahmad: I was speaking of the draft articles relating to property and language.

Mr. President: I do not know about the draft article on language.

Shri K. M. Munshi: I have already submitted the draft. Notice has been given about it ;and it will be circulated straightway.

Mr. President: We shall circulate it tonight.

Shri L. Krishnaswami Bharathi (Madras: General) : Sir, you have allowed only two days for the consideration of the article about language. I may submit that this is a most vital and important question affecting all of us. It is therefore likely that most of us would like to participate in the debate, and two days, in my view, are hardly sufficient. We may require four or five days, for its consideration.

Mr. President: If necessary we shall sit twice on both the days and thus make two into four.

Shri L. Krishnaswami Bharathi: More days are required. That is all my submission.

Mr. President : Everything will depend upon the progress of the discussion.

The House is adjourned till Nine of, the Clock on Monday, the 5th September.

The Assembly then adjourned till Nine of the Clock on Monday, the 5th September, 1949.

CONSTITUENT ASSEMBLY OF INDIA

Monday, the 5th September, 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION—*(Contd.)*

Fifth Schedule

Mr. President : We will take up the Fifth Schedule.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, I move:

That for the Fifth Schedule, the following Schedule be substituted :—

"FIFTH SCHEDULE

[Articles 215-A (a) and 215-B (1)]

PROVISIONS AS TO THE ADMINISTRATION AND CONTROL OF SCHEDULED AREAS AND SCHEDULED TRIBES

Part1

GENERAL

1. *Interpretation.*—In this Schedule, unless the context otherwise requires, the expression "State' means a State for the time being specified in Part I or Part III of the First Schedule.

2. *Executive power of a State in scheduled areas.*—Subject to the provisions of this Schedule, the executive power of a State extends to the scheduled areas therein.

3. *Report by the Governor or Ruler to the Government of India regarding the administration of the scheduled areas.*—The Governor or Ruler of each State having scheduled areas therein shall annually, or whenever so required by the Government of India, make a report to that Government regarding the administration of the scheduled areas in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas.

Part II

ADMINISTRATION AND CONTROL OF SCHEDULED AREAS AND SCHEDULED TRIBES

4. *Tribes Advisory Council.*—(1) There shall be established in each State having scheduled areas therein and, if the President so directs, also in any State having scheduled tribes but not scheduled areas therein, a Tribes Advisory Council consisting of not more than twenty members of whom as nearly as may be, three-fourths shall be the representatives of the scheduled tribes in the Legislative Assembly of the State :

'Provided that if the number of representatives of the scheduled tribes in the Legislative Assembly of the State is less than the number of seats in the Tribes Advisory Council to be filled by such representatives, the remaining seats shall be filled by other members of those tribes.

(2) it shall be the duty of the Tribes Advisory Council to advise on Such matters pertaining to the welfare and advancement of the scheduled tribes in the State as may be referred to them by the Governor or Ruler, as the case may be.

(3) The Governor or Ruler may make rules prescribing or regulating as the case may be—

(a) the number of members of the Council, the mode of their appointment and the appointment of its Chairman and of the officers and servants thereof;

(b) the conduct of its meetings and its procedure in general; and

(c) all other incidental matters.

5. *Law Applicable to scheduled areas.*—(1) Notwithstanding anything contained in this Constitution the Governor or Ruler, as the case may be, may by Public notification direct that any particular Act of

Parliament of the legislature of the State shall not apply to a scheduled area or any part thereof in the State or shall apply to a scheduled area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification.

(2) The Governor or Ruler, as the case may be, may make regulations for the peace and good government of any area in a State which is for the time being a scheduled area.

In particular and without prejudice to the generality of the foregoing power, such regulations may—

(a) prohibit or restrict the transfer of land by or among members of the scheduled tribes in any such area;

(b) regulate the allotment of land to members of the scheduled tribes in such areas;

(c) regulate the carrying on of business as money-lender by persons who lend money to members of the scheduled tribes such areas.

(3) In making any regulation as is referred to in sub-paragraph (2) of this paragraph, the Governor or Ruler may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.

(4) All regulation made under this paragraph shall be submitted forthwith to the President and until assented to by him shall have no effect.

(5) No regulation shall be made under this paragraph unless the Governor or the Ruler making the regulation has in the case where there is a Tribes Advisory Council for the State, consulted such Council.

Part III

SCHEDULED AREAS

6. *Scheduled Areas:*—(1) In this Constitution, the expression "scheduled areas" means such areas as the President may by order declare to be scheduled areas.

(2) The President may at any time by order—

(a) direct that the whole or any specified part of a scheduled area shall cease to be a scheduled area or a part of such an area;

(b) alter, but only by way of ratification of boundaries, any scheduled area;

(c) on any alteration of the boundaries of a State or on the admission into the Union or the establishment of a new State, declare any territory not previously included in any State to be, or to form part of a scheduled area, and any such older may contain such incidental and consequential provisions as appear to the President to be necessary and proper, but save as aforesaid, the order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order.

Part IV

AMENDMENT OF THE SCHEDULE

7. *Amendment of the Schedule.*—(1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and when the Schedule is so amended any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended.

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for purposes of article 304 thereof."

I would like very briefly to explain the principal changes which have been made in the Fifth Schedule as amended and put forward before the House. The first important change is in paragraph 4 which deals with the creation of the Tribes Advisory Council. As the paragraph originally stood in the Draft Constitution, it was obligatory to have a Tribes Advisory Council in every State where there were scheduled areas or scheduled tribes. It was felt that there was no necessity by the Constitution to create an Advisory Council for a State where there were some members of the scheduled tribes living in some part of the State but which had no scheduled area. It was felt that if there was a necessity for creating an Advisory Council for the purposes of the Scheduled tribes who are not living in a scheduled area, it would be better to leave that matter to the President whether or not to create an Advisory Council. Consequently the words "and, if the President so directs, also in any State having scheduled tribes but not scheduled areas therein, a Tribes Advisory Council". In the case of scheduled areas there is an obligation to create an Advisory Council. In the case of scheduled tribes it is not obligatory by the Constitution to create an Advisory Council but it is left to the discretion of the President.

The other paragraph which has undergone an important change is paragraph 5. Paragraph 5 deals with the applicability of the laws made by Parliament and by the local Legislature to the scheduled areas. Paragraph 5, as it originally stood, required that if the Tribes Advisory Council directed that the law made by Parliament or made by the local Legislature should be made applicable to the scheduled areas in a modified form, then the Governor was bound to carry out the order or the decision of the Tribes Advisory Council. It was felt that it would be much better to let the Governor have the discretion in the matter of the application of the laws made by Parliament or by the local Legislature to the scheduled areas and that his discretion should not be controlled absolutely, as it was proposed to be done by the original provision contained in paragraph 5.

The other important thing to which I should like to call the attention of honourable Members is to paragraph 6. Paragraph 6, as originally drafted, set out a schedule of what are to be scheduled areas. This provision has become necessary particularly because it is not possible at this stage to know what are going to be the scheduled areas in States in Part III. It is felt that both for meeting the difficulty to which I have referred as well as to make the provisions elastic, it would be much better to leave the power with the President rather than to have a definite part dealing with the scheduled areas.

Another important amendment to which I should like to draw attention is paragraph 7 which is included in Part IV and which deals with the Amendment of the Fifth Schedule. Originally, as the paragraph stood, there was no provision for the amendment of the Fifth Schedule. It is now provided that Parliament may amend this Schedule and I think it is desirable that Parliament should have the power to amend this Schedule. It is no use of creating a sort of a State within a State and it is not desirable that this kind of special provision under which certain tribes would be excluded from the general operation of the law made by the legislature as well as Parliament and the provision contained in sub-paragraph (2) of paragraph 5, where, so to say, 'the Governor is constituted a law-making body for making regulations of certain character which are mentioned in (a), (b) and (c) and which are to have overriding powers in so far as they relate to these matters over any law made by Parliament or by the legislature, should not be stereotyped for all times and that it should be open to Parliament to make such changes as time and circumstances may require. Consequently, it has been provided in the new Paragraph 7 of Part IV that Parliament shall have such power to make such amendments as it finds necessary and any such amendment of the Schedule shall not be deemed to be an amendment of the Constitution, but shall be made by the ordinary process of law.

I may mention that the Drafting Committee in putting forth this new Schedule had discussed the matter with the representatives of the provinces who are concerned with this particular matter, namely of scheduled area and scheduled tribes. We had also taken into consideration the opinion of my honourable Friend, Mr Thakkar, who knows a great deal about this matter and I may say without contradiction that this new Schedule has the approval of all the parties who are concerned in this matter, and I hope that the House will have no difficulty in accepting the new Schedule in place of the old one.

Mr. President : I have got a large number of amendments to the original Schedule and there are some amendments to the new Schedule also. I think it is no use taking up the amendments to the old Schedule, because the old Schedule has not been moved at all.

So we shall take up only the amendments to the new Schedule as proposed by Dr. Ambedkar now. I will take them one by one.

Shri R. K. Sidhva . (C.P. & Berar: General) :May I say that in view of the fact that Dr. Ambedkar had said that all the parties are agreed on this matter, only those amendments which have some principal change should be taken up ?

Mr. President : We shall see to that as we go on with the amendments.

Mr. Naziruddin Ahmad : (West Bengal: Muslim) : Mr. President, Sir, I wish to move amendment No. 154 after omitting the first part. That change is only of a drafting nature. May I have your permission to do that ?

Mr. President : You may do that.

Mr. Naziruddin Ahmad : Sir, I beg to-move my amendment No. 154.

"That in amendment No. 20 of List I (Seventh Week), for paragraph 2 of the proposed Fifth Schedule, the following be substituted:—

'2. The executive power of a State shall extend to the Scheduled Areas within the State subject to the provisions of this Schedule'."

I also move my next amendment in this connection. Here also I omit the first part.

Sir I move :

"That in amendment No. 20 of List I (Seventh Week), in paragraph 2 of the proposed Fifth Schedule—

(a) for the word 'extends' the words 'shall extend' be substituted;

(b) for the word 'therein' the words 'within the State' be substituted."

Sir, I submit that these amendments are of a drafting nature and I draw the attention of the Drafting Committee to the changes suggested. In paragraph 2 I think the better words to be "shall extend" because this is the manner in which it is expressed in paragraph 3 of the original amendment. There it is said "the executive power of the Union shall extend". In paragraph 2 in question the wording is that, "the executive power of the State extends". Instead of the word "extends" it should be "shall extend."

(Amendments Nos. 156 and 157 were not moved.)

Mr. President : As the amendments moved by Mr. Naziruddin Ahmad are of a drafting nature and as he proposes to leave them to the Drafting Committee, I do not suppose it is necessary to put them to vote. The Drafting Committee will take them into consideration. We now pass to para 3.

(Amendments Nos. 158, 159 and 160 were not moved.)

Paragraph I

Mr. Naziruddin Ahmad : May I suggest, Sir, that the paragraphs may be put and adopted one by one.

Mr. President : Yes. I shall put paragraph 1.

Shri A. V. Thakkar : (Saurashtra) : Sir, I want to make a few general observations with regard to the whole Schedule. When shall I make them ?

Mr. President : I shall give an opportunity in connection with one of the amendments; you may make your general observations and you may cover the whole thing.

Prof. Shibban Lai Saksena (United Provinces : General) : May he not be allowed to make his general observations? We may have a general discussion.

Mr. President : It will take two hours and we shall be going over the same ground. I do not want to take that much time of the House.

Shri Amiyo Kumar Ghosh (Bihar: General) : May I suggest that all the amendments be moved first, then have a general discussion and thereafter the amendments be put to vote one by one ?

Mr. President : The amendments will be put one by one. The question is:

"That Paragraph 1 of the Fifth Schedule stand part of the Schedule."

The motion was adopted.

Paragraph 1 was added to the Fifth Schedule.

Paragraph 2

Mr. President : I do not put the amendments moved by Mr. Naziruddin Ahmad to paragraph 2 as they are of a drafting nature. The question is:

"That paragraph 2 stand part of the Schedule."

The motion was adopted.

Paragraph 2 was added to the Fifth Schedule.

Paragraph 3

Mr. President : Amendment 161 is also of a drafting nature.

Pandit Hirday Nath Kunzru (United Provinces : General) : May I ask you, Sir, what is the procedure that you are following? Are you going to allow the Members to discuss the provisions generally or not ?

Mr. President : I will allow that.

Pandit Hirday Nath Kunzru : If each paragraph is put to the vote and carried, will there be an opportunity for a general discussion ?

Mr. President: If there is any amendment which lends itself to a general discussion, in that connection I will allow the whole thing to be discussed.

Pandit Hirday Nath Kunzru : So far, the procedure that you have adopted has been to allow a discussion on the article generally after all the amendments have been moved. Is that procedure being departed from now ?

Mr. President : **I** am not preventing any discussion. If there is no amendment to an article, there is nothing to be said. If any Member wishes to speak about any article, I will permit him.

Shri T. T. Krishnamachari (Madras: General) : May I suggest, Sir, that we may take up one paragraph for purposes of general discussion. I suggest para. 4 may be taken. There are some amendments. It, really, is the crux of the whole problem, you may allow the House to discuss that.

Mr. President : We shall take up general discussion in connection with paragraphs 4 and 5.

Babu Ramnarayan Singh : (Bihar: General): Even if there is no amendment to any paragraph, that paragraph may require some observations.

Mr. President : I am not preventing that. If any Member wishes to speak about any paragraph, I will permit that.

Babu Ramnarayan Singh : Observations may be allowed to be made on the Schedule as a whole.

Mr. President : That may be done in connection with paragraph 4.

Prof. Shibban Lal Saksena : I suggest, Sir, that all the amendments may be moved first and then there may be a general discussion allowed.

Mr. President : I will call every paragraph. If any Member wishes to speak, he may do so.

Pandit Hirday Nath Kunzru : May I venture to make a suggestion, Sir ? If you permit, as has been suggested by Professor Shibban Lal Saksena, all the amendments to be moved, you will still have the right to put each paragraph to the vote separately. This procedure will give such Members as wish to make general observations not merely on one paragraph, but on two or three, an opportunity to express their opinion. No additional time will be taken by such a procedure.

Mr. President : Do you suggest that all the amendments be moved and then paragraph by paragraph be put to vote ?

Pandit Hirday Nath Kunzru : Yes.

Mr. President : Very well; I can do that.

Pandit Hirday Nath Kunzru : Before they are put to the vote, I take it that such Members as wish to make general observations will have an opportunity of doing so.

Mr. President : I will allow that, I have already put paragraph 2. We will take up paragraph 3.

Mr. Naziruddin Ahmad : This will lead to a great deal of complication and the House may be confused. It is far better to allow discussion of a general nature within reasonable limits, and then dispose of the amendments paragraph by paragraph. Otherwise, the amendments will get confused.

Mr. President : May I know how many Members wish to take part in the general discussion ?

(About twelve Members rose in their places.)

Mr. President : It is at least three hours programme. Twelve Members; it means three hours. I was thinking of economising time. If the Members do not wish to finish the second reading before the Dusserah, I can allow that. At this rate, we may not be able to finish before the Dusserah. The whole programme may be upset later on.

I think I had better allow all the amendments to be moved and then we can have a general discussion.

The Honourable Shri Binodanand Jha (Bihar: General) : That procedure will be more welcome.

Mr. Naziruddin Ahmad : Mr. President: I beg to move:

"That in amendment No. 20 of List I (Seventh Week), in paragraph 3 of the proposed Fifth Schedule, for the words 'the executive power of the Union shall extend to the giving of directions', the words 'the Union Government may give directions' be substituted."

The expression in the context is roundabout. There would be economy of words if this amendment is accepted.

Sir, I beg to move:

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (1) of paragraph 4 of the proposed Fifth Schedule, for the words 'There shall be established' the words 'The Governor or the Ruler, as the case may be, shall establish' be substituted."

Sir, I also move:

"Thai in amendment No. 20 of List I (Seventh Week), in sub-paragraph (1) of paragraph 4 of the proposed Fifth Schedule, for the words 'twenty members.'

(a) the words 'twenty members appointed by him' be substituted".

I do not move part (b).

I also move:

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (2) of paragraph 4 of the proposed Fifth Schedule, for the words 'advise on such matters', the words 'advise of the Governor or Ruler on such matters', be substituted."

Sir, I also move:

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (2) of Paragraph 4 of the proposed Fifth Schedule, for the words 'by the Governor or Ruler, as the case may be,' the words 'by him' be substituted."

That exhausts my amendments as to paragraph 4. With regard to paragraph 4, there are a few points to which I wish to draw the attention of the House, specially of the Drafting Committee. The para, begins with the expression, "There shall be established in each State having scheduled areas therein and ,a Tribes Advisory Council". Instead of saying "there shall be established", we should say that "the Governor or Ruler shall establish etc. I want to say that the 'Governor or Ruler shall establish'. That would place the matter beyond any doubt instead of saying 'there shall be established'. Then instead of the expression 'twenty members and so forth' I wish to make it 'twenty members appointed by him. "It would be far better to make it quite clear here that the 'Governor or Ruler will appoint or establish etc... Then with regard to another amendment to para 2 there is the proviso 'that the Tribes Advisory Committee to advise'. I submit that it should be 'to advise the Governor or Ruler'. That would make it complete. Then the last amendment is that instead of 'by the Governor or Ruler, as the case may be' the words 'by him' be substituted. In sub-para. (3) there is a drafting amendment. In sub-para. 3 (a) there is the expression 'Members of the Council'. In every case where the Council is mentioned, the full expression Tribes Advisory Council is used. Nowhere the contraction "the Council" has been used. In order to keep to the general trend of the draftsmanship the expression 'Tribes Advisory Council' should be written in full.

With regard to amendment 162,1 ask the Drafting Committee to consider the matter or Dr. Ambedkar to reply or it may be—if you so think fit—left over to the Drafting Committee.

Shri Brajeshwar Prasad : (Bihar: General): I would like to make a few general observations on para. 4. If I am given that opportunity, I will not move any amendment.

Mr. President : You will get the opportunity.

Mr. Naziruddin Ahmad : Sir, I beg to move.

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (3) of paragraph 4 of the proposed Fifth Schedule, after the words 'Governor or Ruler' the words 'as the case may be' be inserted."

This is purely drafting.

Sir, I beg to move:

"That in amendment No. 20 of List I (Seventh Week), in clause (a) of sub-paragraph (3) of paragraph 4 of the proposed Fifth Schedule, for the word 'Council' the words 'the Tribes Advisory Council' be substituted."

I beg to move:

"That in amendment No. 20 of List I (Seventh Week), in clause (b) of sub-paragraph (3) of paragraph 4 of the proposed Fifth Schedule, for the words 'its procedure' the words 'the procedure to be followed" be substituted."

Sir, with regard to the last amendment 170 I wish to point out that the original para, as moved by Dr. Ambedkar requires some improvement. I think the wording I have suggested would be more fitting in the context.

Sir, I then move:

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (1) of paragraph 5 of the proposed Fifth Schedule, for the words 'any particular Act Parliament or of the Legislature of the State' the words 'anyparticular existing law or any law that may be passed by the Parliament or by the Legislature of the State be substituted."

This is more important.

Prof Shibban Lai Saksena : Sir, I have an amendment to paragraph 4.

Mr. President : I will take them up later.

Mr. Naziruddin Ahmad : Regarding 172 I may say that in para. 5 sub-para. (1) it is stated that the "Governor or Ruler may by public notification direct that any Particular act of Parliament or of the Legislature of the State shall not apply to a scheduled area or any part thereof etc." I submit that I would rather leave amendment 20 for consideration of the Drafting Committee.

I then move:

"That in amendment No. 20 of List 1 (Seventh Week), in paragraph 5 of the proposed Fifth Schedule:—

(a) 'in sub-paragraph (2), for the words 'may make' the words 'may, after previous consultation with the Tribes Advisory Council, make' be substituted;'

(b) sub-paragraph (5) be deleted."

This is necessitated by consideration of the text. I then move:

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (2) of paragraph 5 of the proposed Fifth Schedule for the words 'any area in a State which is for the time being a scheduled area' the words 'any scheduled area' be substituted."

In this connection we have defined the expression 'scheduled area' and I submit that the use of the expression 'scheduled area' would be sufficient.

I then move:

"That in amendment No, 20 of List I (Seventh Week), in sub-paragraph (2) of paragraph 5 of the proposed Fifth Schedule, the brackets and figure '(3)' be inserted before the sentence beginning with the words 'in particular and without prejudice etc.' and the remaining sub-paragraphs be renumbered accordingly."

Now the original amendment has been worded in a roundabout fashion. I put it in a more simple form but the point is this that in para. 5 sub-para. (2) there is another sub-para. 'in particular and without prejudice and so on'. All that I desire is that this should be separately numbered and should not be left as part of sub-para. (2). It is an independent sub-para. and the object of my amendment is to number it independently and to renumber the other sub-paras. accordingly. Similar clauses or propositions in all other places are numbered separately and there is no reason why this should not be given a distinctive number.

Sir, I then move:

"That in amendment No. 20 of List I (Seventh Week), in clause (c) of sub-paragraph (2) of paragraph 5 of the proposed Fifth Schedule, for the words 'carrying on of business as money-lender by persons who lend money' the words 'business of lending money' be substituted."

The expression in the context is extremely roundabout. It says "carrying on the business of money-lender by persons who lend money". I fail to see how a man can be a money-lender unless he is a man who lends money. So 'carry on the business of moneylender by persons who lend money' would be rather too long and the expression 'business of lending money' would be quite enough and should be acceptable.

Then I move my amendment No. 178 and I may submit that I have made a slight verbal alteration here and there which I shall notify to the office; they are, however, of an immaterial nature. Sir, I move:

"That in amendment No. 20 of List I (Seventh Week), for sub-paragraph (3) of Paragraph 5 of the proposed Fifth Schedule, the following new sub-paragraph be substituted:—

'(3) The Governor or Ruler, by regulation made under sub-paragraph (2) of this paragraph, may, notwithstanding anything contained in any other part of this Constitution, direct that any existing law or any law that may be passed by the Parliament or by the Legislature of the State shall not apply, or shall apply with such modifications and changes, to any scheduled area or part thereof."

I think I should explain the reason why I have moved this amendment. Coming to sub-paragraph (3) of paragraph 5, it says:

"In making any regulation as is referred to in sub-paragraph (2) of this paragraph the Governor or Ruler may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question."

The principal object of my amendment is to avoid the words "repeal or amend any Act of Parliament or of the Legislature". What is intended by the sub-paragraph is not to allow the Governor to repeal or amend any Act of Parliament or of the local legislature and what power is being given to the Governor is to make such changes and adaptations as would bring them really applicable to the tribal areas. Therefore, I submit that the expression "repeal or amend" any Parliamentary Act or any Act of the State would be rather improper. In fact, he does not repeal any Act. That he cannot do. Repeal of an Act has a technical meaning. The Governor of a State does not repeal any Act. All that he does is to see that a Parliamentary Act or law does not really apply to the tribal area, or that he so modifies it and applies that Parliamentary law in a modified form. So I think the power to repeal or amend, would be inapplicable to the circumstances of the case. He can modify or say that the law does not apply. So I think the amendment should be acceptable to the House.

Then, I move my amendment No. 179.

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (3) of paragraph 5 of the proposed Fifth Schedule—

(a) for the word 'regulation' the word 'regulations' be substituted.

(b) for the words 'as is referred to' the word 'under' be substituted.

(c) for the words 'repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question' the words 'direct that any existing law or any law that may be passed by the Parliament or by the Legislature of the State, shall apply with such modifications and changes as he thinks fit' be substituted".

Sir, this is in a way an analysis of amendment No. 178, and even if No. 178 is not acceptable, the different parts in this amendment No. 179 may be accepted separately.

Sir, then I move my amendment No. 182.

"That in amendment No. 20 of List I (Seventh Week), a sub-paragraph (2) of paragraph 5 of the proposed Fifth Schedule, for the words 'shall be submitted forthwith to the President and until assented to by him shall have no effect[1] the words 'shall be valid on receiving the assent of the President' be substituted."

With regard to this amendment, I have to say that the text of sub -paragraph (4) as modified by Dr. Ambedkar's amendment says that as soon as regulations are made, they shall be submitted forthwith to the President. But I fail to see the real purpose of or the import of the word "forthwith" here. And then it says, "until assented to by him, shall have no effect". All that is indicated is presumably the normal procedure, that the regulation will have effect if assented to by the President. The condition that it shall be submitted to him forthwith is absolutely pointless. The regulation may be submitted to the President in due course. There is no hurry about it. If there is any urgency, the Governor will certainly submit it forthwith. But to lay it down as a condition that he must submit the regulation to the President forthwith is absolutely unnecessary, and it is totally unwanted. All that is intended is, as in the ordinary case of a Bill, the assent of the President makes it law. If we say that it shall be valid on receiving the assent of the President, instead of unless assented to, it is not valid, it is quite enough.

Sir, then I move my amendment No. 185.

"That in amendment No. 20 of List I (Seventh Week), in the heading of Part III of the proposed' Fifth Schedule, for the word 'Areas, the word 'Area' be substituted."

I also move No. 186:

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (1) of paragraph 6 of the proposed Fifth Schedule, for the word 'areas' whenever it occurs, the word area' be substituted."

Sir, with regard to this series of amendments, I find that in sub-paragraph (1) the word "areas" is defined in the plural. But in sub-para. (2) it is in the singular. I think only one form—plural or singular—should be used throughout. I think the singular word would be proper and it includes the plural also.

Then I move my amendment No. 187:

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (2) of paragraph 6 of the proposed Fifth Schedule for the words 'as appear' the word 'as' may appear be substituted."

That exhausts my amendments. I fully concede that most of these amendments are of a drafting nature and they are intended to draw the attention of the-Drafting Committee to these points.

And then, Sir, may I with your kind permission refer to a still smaller matter, namely, that the expressions "Scheduled Castes", "Scheduled Tribes" and "Scheduled Areas" whether they should be capitalised or should begin with the small letter. This may be very insignificant looking, but to people of my way of thinking, they are important. We have capitalised the word in the case of "Scheduled Castes", but in the case of " scheduled tribes" we have tried to make them insignificant. There is no doubt that while it represents a community or class of people, the expression should be capitalised. But when referring to the "scheduled areas" also, there is the importance, and I think the expression should be capitalised there also. They refer to definite tracts of the country or the States. We described the "Non-regulated provinces" with capital letters. In order to give them due importance and grammatical symmetry, I think the expression "Scheduled Areas" should also be capitalised by the Drafting Committee before the Third Reading.

Shri Jaipal Singh (Bihar: General) : Mr. President, I beg to move:

"That in amendment No. 20 above, in paragraph 3 of the proposed Fifth Schedule, after the words 'scheduled areas' wherever they occur, the words 'and scheduled tribes' be inserted; and the words 'or whenever so required by the Government of India' be deleted."

General observations I would rather reserve to the general discussion, but in moving my amendments, I would like to state briefly why I am moving them. I find that the heading of Part I is as follows:

"PROVISIONS AS TO THE ADMINISTRATION AND CONTROL OF SCHEDULED AREAS AND SCHEDULED TRIBES"

but, in III, I find that "scheduled tribes" has been left out. I do not understand why exactly that has been done. Surely, the report of the Governor or Ruler to the Government of India should comprehend all the scheduled tribes, whether they are within the scheduled areas of the future or outside them. If the report is to apply only to those tribes who are in the scheduled areas, it would simply mean that the Government of India would know very little about scheduled tribes as a whole and, there would be literally millions of them outside the scheduled areas. Without knowing how the scheduled areas are going to be demarcated, it is almost futile to argue whether or not the report will include all the scheduled tribes of a particular list. We do not know whether the whole of Bihar will be scheduled or not. Supposing, for the sake of argument, we were to say that the whole province of Bihar were to be declared as scheduled area, then, Mr. President, my amendment is not necessary. But, we do not know yet what the result of the Commission, which I suppose the President is bound to appoint to go into the demarcation of scheduled areas in the new setup, would be. Till that is done, I am bound to insist that, at this stage, there must be a definite and certain provision whereby the Governor will be constrained to report on what has been done for all the scheduled tribes and, for the matter of that, of the backward people in each State. I hope Dr. Ambedkar will accept this amendment and, if he does so, the paragraph will read as follows:

> "The Governor or Ruler of each State having scheduled areas and scheduled tribes therein shall annually make a report to the Government of India regarding the administration of the scheduled areas and scheduled tribes in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas and scheduled tribes of the State."

Now, the second part of my amendment is for the deletion of the words "or whenever so required by the Government of India." This again, to me seems necessary; it should become statutory that an annual report should be submitted. I do not know how long the Schedule is going to last. Till I know that, I am bound to insist that the work of bettering the conditions of scheduled tribes be accelerated and that will not happen if the country is blind to what is being done r not done at all. Therefore, it is, I think, necessary that the emphasis should be on the word "annually". I certainly confess that I am not very particular about the second part of my amendment, because I do not see why I should be suspicious of the Government that it will sleep over it for ten years or whatever it is and, perhaps, ask for a report once in twenty years. I have no reason to be suspicious. I am not very particular about the second part of my amendment, but I would definitely insist that the scheduled tribes be included as a whole.

I shall move 33 also. I beg to move:

> 'That in amendment No. 20 above, for sub-paragraph (2) of paragraphs of the proposed Fifth Schedule, the following be substituted:
>
> '(2) It shall be the duty of the Tribes Advisory Council generally to advise the Governor or Ruler of the State on all matters pertaining to the administration, advancement and welfare of the Scheduled Tribes of the State'."

I think my amendment is quite clear. This amendment favours the original draft and I hope Dr. Ambedkar will accept it.

Then, I shall move 47 also. I beg to move:

> "That in amendment No. 20 above, in sub-paragraph (1) of paragraph 5 of the proposed Fifth Schedule, after the words 'as the case may be' the words 'if so advised by the Tribes Advisory Council' be inserted."

I find that this new proposed Fifth Schedule has, somehow or other, perhaps without meaning it, emasculated the Tribes Advisory Council. The whole pattern of the original draft was to bring the Tribes Advisory Council into action. It could initiate, originate things, but, somehow or other, the tables have now been turned. The initiative is placed in the hands of the Governor or Ruler of the State. I regret that that is a situation I cannot accept, and, while I say this, Mr. President, I would like to state it is a matter of regret I have to tell the House that, for the last days secret talks and conferences have been going on among certain people. I have not been consulted. It cannot be said that all parties were consulted. I certainly was no brought to any of those conferences. Suddenly a bomb-shell is thrown by way of the new proposed Fifth Schedule. I do not grumble about the Fifth Schedule. But what I say is there is plenty of scope for improving the Fifth Schedule. I as an Adibasi had and must hive the first claim to be consulted in the proposed change.

Then my last amendment is No.50. I beg to move:

"That in amendment No. 20 above, in sub-paragraph (2) of paragraph 5 of the proposed Fifth Schedule, the words 'in any such area' be deleted."

The idea behind this amendment is similar to what I have already said before and it is that any benefits we might want to confer on the scheduled tribes should not be limited or circumscribed by the areas, that they should extend to the entire State or wherever the scheduled tribes may be.

Then there is one more amendment, No. 52.

I beg to move:

"That in amendment No. 20 above, in sub-paragraph (5) of paragraph 5 of the proposed Fifth Schedule, for the word 'consulted' the words 'been so advised by' be substituted."

Here again I want that the Tribes Advisory Council should be effective and have a real say in what is being done. I would not, for one moment, deny the Governor or the Ruler his powers in initiating things, but, at the same time, I do feel that the word "consulted" is not the right word there. If my amendment is accepted, it will read: "No regulation shall be made under this paragraph unless the Governor or the Ruler making the regulation has, in the case where there is a Tribes Advisory Council for the State, been so advised by such Council".

As I have already stated, there are only two principles involved in my five amendments: first, that the. Scheduled Tribes, all of them, should be benefited by-the provisions of the Fifth Schedule and, secondly, that the Tribes Advisory Council should be a reality and not a farce. Let us not give it a big name, without any powers to do things.

Shri Yudhisthir Mishra (Orissa States): Sir, I move:

"That in amendment No. 20 above, in sub-paragraph (1) of paragraph 4 of the proposed Fifth Schedule, the words 'if the President so directs' be deleted."

I have just heard the Honourable Dr. Ambedkar and he told us that where there are Scheduled areas in any State it is obligatory on the part of the President to constitute a Tribes Advisory Committee, but where there is no Scheduled area in any State it is left to his discretion as to whether he would think it proper to set up a Tribes Advisory Council.

Now, Sir, the purpose of the amendment which I have just moved is to dy away with these discretionary powers and also to do away with the distinction which has been sought to be introduced into the proposed Fifth Schedule Sir, the Scheduled tribes are backward and therefore deserve the special attention and care of the Government both in the Centre and the provinces and I think it is for this reason that some areas are specified as Scheduled areas and some tribes have been described as Scheduled tribes. If we are going to set up a Tribes Advisory Council in a State where there is a Scheduled area, should we not also for the same reason provide a Council for the tribes where there is no scheduled area ? If it is left to the discretion of the President, he will have to depend upon the advice of the executive authority of the Centre and the provinces and it may so happen that the Provincial Governments may not like the existence of such a Council. I, therefore, submit that for the benefit of the tribal people it should be made incumbent on an Government to set up a Tribes Advisory Council even in the States where there is no Scheduled area.

Then I move amendment No. 32.

"Thai in amendment No. 20 above, for sub-paragraph (2) of paragraph 4 of the proposed Fifth Schedule, the following be substituted:—

> '(2) It shall be the duty of the Tribes Advisory Council to advise the Government of the State on all matters pertaining to the administration of the scheduled areas and the welfare and advancement of the scheduled tribes in the State.' "

Now, the proposed Fifth Schedule in sub-paragraph (2) of paragraph 4, provides that the Tribes Advisory Council should advise the Government of a State on matters relating to the welfare and advancement of the Scheduled tribes as may be referred to them by the Governor or Ruler, of a State as the case may be. In this amendment, I propose to provide, firstly, that the Tribes Advisory Council' should, instead of advising only for the welfare and the advancement of the scheduled tribes, also advise for the administration of the scheduled areas and secondly that the advisory power of the Council should not be limited by the whims and fancies of the executive authority. If the Advisory Council is to advise only on those matters which will be referred to it, then the very purpose of the Fifth Schedule will be defeated. Sir, it may happen that a particular matter may affect the tribal people, but still the Government may not refer the matter to the Advisory Council, and therefore in those matters the Advisory Council will be powerless and will not be in a position to have any say. Sir, we have already provided in article 215- B that the provision of Fifth Schedule shall apply to the administration and control of the scheduled areas and the tribes. But according to the proposed Fifth Schedule the Advisory Council will have no power to advise in the administration of the scheduled areas. The Advisory Council is for all practical purposes only an advisory body. The Governor is not bound to accept the advice tendered by the Council. We will thus be making the Council a nonentity.

Then, Sir, I move amendment No. 46:

"That in amendment No, 20 above, in sub-paragraph, (1) of paragraph 5 of the proposed Fifth Schedule, after the words 'as the can may the words 'on the advice of the Tribes Advisory Council' be inserted.

If the above amendment is not acceptable to the House, my amendment No. 51 may be taken into consideration. Sir, I move:

"That in amendment No. 20 above, in sub-paragraph (5) of paragraph 5 of the proposed Fifth Schedule, after the word 'No' the words 'notification or' be inserted,"

Now, Sir, the purpose of both the amendments is that if a notification is to be issued under the sub-paragraph (1) of paragraph 5, then, the Tribal Advisory Council should be consulted. Now, a distinction has been made between a notification to be issued and a regulation to be promulgated by the Governor or Ruler of a State. In the case of a notification, the Tribes Advisory Council may not be consulted but it has been provided in sub-paragraph (5) of para. 5 that no regulation can be made under this paragraph unless the Governor or Ruler, as the case may be, has consulted it. Therefore I would submit that even in the case of issuing notifications, the Tribes Advisory Council should be consulted. It may find a place either in sub-para. 1 or sub-para. 5. Sir, I move:

"That in amendment No. 20 above, in sub-paragraph (1) of paragraph 5 of the proposed Fifth Schedule, after die words 'scheduled area', the words 'and also the scheduled tribes' be inserted."

An amendment to that effect has been moved by Mr. Jaipal Singh, and in moving this amendment I submit that it is the duty of the Government to issue a notification or regulation for the advancement and welfare of the scheduled areas and also for the welfare of the tribes. If it is proposed to retain para. 5 of the Fifth Schedule, then the Governor is not bound to direct that any particular Act of Parliament or of the Legislature of the State shall not apply to that particular tribe.

The special purpose for moving this amendment is that there are areas in Orissa and the C.P. States which may not be specified as scheduled areas but there are certain Scheduled tribes among which certain kinds of land laws are prevalent. For example, in C.P. and Orissa States, it is not permissible on the part of a non-aboriginal to acquire the lands of an aboriginal without the sanction of the Government. Now, Sir, in that case, supposing according to paragraph 5, the Governor or the Ruler of a State does not make any regulation and retains the same provisions applicable to non-aboriginals with respect to the transfer of lands; then I shall submit that there will be no use in saying that the Government is prepared to safeguard the interests of the tribal people.

Sir. I move:

Mr. President : Are you moving amendment No. 49 ?

Shri Yudhisthir Mishra : Sir, I move:

"That in amendment No. 20 above, in sub-paragraph (2) of paragraph 5 of the proposed Fifth Schedule, after the words 'for the time being a Scheduled area' the words 'and also for the welfare and advancement of the scheduled tribes' be inserted."

It carries the same meaning as amendment No. 48.

Mr. President : So far as I can see, there is no other amendment to the Fifth Schedule as now proposed.

Prof. Shibban Lal Saksena : I have some amendments.

Mr. President : Coming at the last moment, these amendments have not been circulated to Members. They came in at 8-58 this morning.

The Honourable Dr. B. R. Ambedkar : I have no idea about them. These should not be allowed.

Mr. President : If you have any amendments, you may make your observations. I may tell the House that I have a set of new amendments sent in by Prof. Shibban Lal Saksena and Dr. Deshmukh. - .

The Honourable Dr. B. R. Ambedkar : We have no copies. We do not know what they are talking about.

Mr. President : Dr. Deshmukh's amendment came in at 9-20 in the morning. Prof. Saksena's came in at 8-58 in the morning. Technically you are just before the commencement of the session but I think it is very inconvenient to the other Members.

Dr. P. S. Deshmukh (C.P. & Berar: General) : My amendments are of a drafting nature.

Mr. President : Very well, they will be handed over to the Drafting Committee. I do not think there is any substance in any of your amendments, Prof. Saksena ?

Prof. Shibban Lal Saksena : Yes they are essential.

Mr. President : Under the rules Members are entitled to give notice of amendments before the commencement of the session, and it is just before the commencement of the session that Prof. Saksena's amendments came in.

Prof. Shibban Lal Saksena : I thank you very much for allowing me to move my amendments. I may say that these amendments are conceived with one purpose. Sir, the existence of the scheduled tribes and the Scheduled areas are a stigma on our nation just as the existence of untouchability is a stigma on the Hindu religion. That these brethren of ours are still in such a sub-human state of existence is something, for which we should be ashamed. Of course, all these years this country was a slave of the British, but still we cannot be free from blame. I therefore think Sir, that these scheduled tribes and areas must as soon as possible become a thing of the past. They must come up to the level of the rest of the population and must be developed to the fullest extent. I only want that these scheduled tribes and scheduled areas should be developed so quickly that they may become indistinguishable from the rest of the Indian population and that this responsibility should be thrown on the Union Government and on the Parliament. Of course the States' Governors and Rajpramukhs will have to do their work but I want that the responsibility for their welfare, and their advancement must be laid on the Central Government only. Therefore my amendments only pertain to putting the President of the Parliament in place of the Governor/Ruler wherever these words occur. I move:

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (3) of Paragraph 4, and in sub-paragraph 5 of the proposed Fifth Schedule, for the words 'Governor or Ruler' the words 'President in consultation with the Governor or Ruler' be substituted."

As it stands, "the Governor or Ruler" may make rules prescribing or regulating as the case may be (a) the number of members of the Advisory Council, etc." This Council is a very important body. This will administer the areas and will advise about their advancement. Its constitution, the number of members in it and other things connected with it are made the responsibility of the Governor. I want it to be the responsibility of the President in consultation with the Governor or Ruler. I also want it in paragraph 5 too. There it is said:

"Notwithstanding anything contained in this Constitution the Governor or Ruler as the case may be, may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a scheduled area or any part thereof in the State or shall apply to a scheduled area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification."

Now, here you will find that under 5(1) 'Notwithstanding anything contained in this Constitution the Governor or Ruler may by public notification' abrogate an Act of Parliament in regard to a scheduled area. All that I am proposing is that for the words "Governor or Ruler" we should substitute "President in consultation with the Governor or Ruler." Such a substitution will be democratic and proper. It should not be possible for the Governor or the Ruler to abrogate an Act of Parliament.

Sir, my second amendment is this:

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (4) of paragraph 5 of the proposed Fifth Schedule, after the word 'All', the words 'notifications and' be inserted."

This is necessary because in sub-paragraph (1), we are empowering the authorities to direct this or that 'by public notification'. I want that these notifications also should be issued with the consent of the President.

Again, Sir, in sub-paragraph (5) of paragraph 5, I propose—

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (5) of paragraph 5 of the proposed Fifth Schedule, after the word 'No' the words 'notifications or' be inserted."

My intention is to see that all notifications are issued only after consultation with the Advisory Council.

My amendment in respect of paragraph 6(1) is.

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (1) of paragraph 6 of the proposed Fifth Schedule, for the words 'President may by order' the words 'Parliament may by law' be substituted."

It is not proper to leave these things to the President. Parliament should have the power by law to declare an area 'a scheduled area'.

Sir, the rest of my amendments to this paragraph are consequential to the above amendments.

The first of these is:

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph 6 of the proposed Fifth Schedule (2) for the words 'such order may' the words 'such law may' be substituted."

In view of the fact that 'such order' concerns. the rectification of boundaries of 'scheduled areas', it is important that this should be done by law made by Parliament, and not by a President's order. I am next proposing that:

"(b) for the words 'to the President' the words 'to the Parliament' be substituted."

This is merely consequential upon the earlier amendments.

Then I come to the last important amendment of which I have given notice. It reads:

"(c) the words 'but save as aforesaid, the order made under sub-paragraph (1) of this paragraph shall not be varied by any subsequent order' be deleted, and the words 'any such law may contain such provisions as are considered by Parliament to be necessary' be added."

My object in moving this is that the existence of a huge population in sub-human conditions is a stigma on our country. By the end of ten years they should be no more a separate sub-human group. I want Parliament to have this stigma removed and enable these people to become assimilated with and part of the general population of the country;

Mr. President : Now all the amendments have been moved.

An Honourable Member : I have an amendment to move.

Mr. President : That refers to the old Schedule. I am not allowing amendments to the old Schedule to be moved. The whole of it has been changed.

Now that all the amendments have been moved, we, can discuss the Schedule as well as the amendments together.

Shri Kuladhar Chaliha : (Assam: General) : I was not able to send notice of any amendment to this Schedule because the List reached me only at 10 p.m. last night.

Mr. President : There can be no amendments to amendments.

Shri Kuladhar Chaliha : These amendments reached me only at ten last night.

Mr. President : They were distributed on Saturday. The Fifth Schedule was distributed on Friday. The List that was circulated last night, was the consolidated list of all the amendments.

Shri Kuladhar Chaliha : The Sixth Schedule was distributed last night.

Mr. President : The Sixth Schedule was distributed on Saturday.

Shri Brajeshwar Prasad : Sir, I rise to support the schedule as moved by Dr. Ambedkar. While doing so, however, I would like to point out that I am not in full accord with some of the provisions included therein. I had a few lays ago advocated on the floor of this House that the best form of Government for the tribal people would be to make all the tribal areas Centrally administered areas.

Mr. President : May I suggest to the honourable Member that it is no use saying : 'I rise to support the Schedule proposed' and in the sentence following it adding I am not in agreement with the provisions'. There must be some consistency in the speech at least.

Shri Brajeshwar Prasad : Sir, I was saying that I have accepted the Schedule because it has been agreed to. After all, in a democratic Organisation one has to abide by the decision of the majority of the people whatever may be his own individual opinion about that decision. It was in that light that I made that observation. I accept the observation that it is not logical and proper and it does not look well to make a statement which sounds contradictory.

Sir, the 'Statesman' in its editorial dated 4th September 1949, Delhi Edition, made the following observations:

> "Recently the House agreed to reservation of seats for aboriginals in the Federal and State Lower Houses for ten years. With that decision few will quarrel; but its value will depend on the mode of choosing these representatives, whether as trusted spokesmen of their tribes or because of party allegiance. The evils of political strife among peoples ill-fitted for it by temperament and intellect have perhaps been too little appreciated in the provinces."

Sir, it proceeds to say .

> "In Delhi, however, some observers have discerned a new awareness of danger Recent aboriginal outbreaks and evidence of reversion to old barbaric practices have caused disquiet. Re-examination of the entire aboriginal problem is desired. In this may lie assurance that, though they will follow with sympathetic interest the democratic experiment in the scheduled areas. Republican India's President and State Governors will continue to regard themselves as the especial custodian of the tribes constitutionally entrusted to their care. If they endeavour to bring to this duty the tact and understanding shown by the late Sir Akbar Hydari in Assam not much can go wrong."

I have no other comments to make in this direction. I am not in favour of the Tribes Advisory Council. This is merely side tracking the issue. What the tribals want is not a Council but a guarantee by the Constitution that means of livelihood, free education and free medical facilities shall be provided for all tribals. This is not an impossible demand which I am making. I am not making this demand for all the citizens of this country but for only twenty five million people. The provinces being weak in economic resources are not in a position to shoulder this responsibility. Hence I plead that the Centre should take command of the tribal areas. The Government of India has no right to exist if it cannot undertake to guarantee means of livelihood and free educational and medical facilities even for such a small number of people. The Centre can do all these things without divesting in any way the authority of the provincial governments in other spheres of administration. Of course the ideal form of government would be to bring all tribal areas under the sole jurisdiction of the Centre. There is only one obstacle in the way of the achievement of this goal. It is the lust for territorial aggrandisement that stands as a stumbling block to economic prosperity and cultural advancement of the tribal people.

The people of India will not stand to lose in any way if tribal areas becomes Centrally administered areas. If there is any interest of any province which is not in accord with the interest of India as a whole, I for one will stand with India and not with the province. The interests of India can never be opposed to the interests of its component parts. If there is any interest which seems to be in conflict with the interests of India as a whole, that interest must be opposed and liquidated. It is absurd to talk of any provincial interest which can ever come into conflict with the interests of India.

There is one other point with regard to this paragraph 4 to which I would like to draw the attention of the House. The Tribes Advisory Council should consist of all the members representing the tribes in the Legislative Assembly of the State. The largest number of tribal members will be in Bihar, where they will be about fifty-five in number. Surely this number is not too large. The Tribes Advisory Council has got only advisory powers. It is not vested with any executive and legislative powers. If it would have been otherwise, then it would not have been desirable to provide representation for fifty or fifty five members. There ought not to be any objection in providing seats for all these fifty persons in the Tribes Advisory Council, since it is purely an advisory body having no legislative or executive functions.

Then in regard to paragraph 5, two things ought to have been provided for in this paragraph. The passing away of lands from the hands of the tribals to non-tribals ought to have been prohibited by the Constitution itself. I demand this on humanitarian grounds. Failure to do this will also lead to political consequences of which we do not seem to have a proper appreciation. It will embitter the relation between the tribals and the non-tribals. It will promote the growth of fissiparous tendencies in tribal regions.

I want, Sir, that no land in the scheduled areas belonging to an Adibasi should be allowed to be sold or mortgaged even to tribals without the permission of the Deputy Commissioner, Such a provision exists in Santhal Pargana. I am not at all in favour of dispossessing those non-tribals who have got lands or property in the scheduled areas, but no further lands should be given to non-tribals. This protection is needed in the interests of the tribals. It is also in consonance with the demands of the tribal leaders. This concession will generate a feeling of loyalty in the hearts of the tribal peoples. Loyalty is the product of social circumstances. Unlike the Divine soul it is not inborn. If it would have been a part and parcel of our existence, the question of disloyalty would not have arisen at all Instead of delivering sermons to the minorities to be loyal and faithful to the country, we must remove those conditions which breed a feeling of disloyalty and of extra-territorial sympathies. Sir, there was an apprehension in our minds that a small section of the tribal people would fall in line with the Muslim League on the issue of the creation of a separate Islamic State. Happily that danger is over now. If we want that such a contingency should never confront us in the future, we must go even out of our way to allay the apprehensions of the tribal people. A discontented minority is a source of grave danger to the stability of the State. The minorities have shattered Europe to bits. At the critical moments when the nation is confronted with some catastrophe, the minorities can tilt the balance one way or the other. It is absolutely necessary that the Nation should stand solidly behind the State if it is confronted by enemies abroad. If at such a critical juncture the discontented minorities choose to light the fire of rebellion, no State can survive the onslaught. I plead once again that the power should not be vested in the hands of the Governor to prohibit or restrict the transfer of land. The Constitution itself should prohibit the transfer of land into the hands of the non-tribals.

Secondly, I demand that no moneylender should be allowed to carry on his nefarious trade in these regions. It is wrong to permit an institution which flourishes on the exploitation of the poor and the illiterate tribals. It ought to be the duty of the State to perform the functions of a moneylender in the tribal zone. The expulsion of the moneylender must be guaranteed by the Constitution itself.

Shri Lakshminarayan Sahu (Orissa : General) : *[Mr. President, I have worked among the aboriginals and as such I would like to make some observations regarding the provisions that are going to be included in the Draft Constitution in respect of the Adibasis.

I would like to point out that it has not been clearly stated as to who are to be included in the terms 'Scheduled Tribes'. We should duly consider which tribes should be included in this term. We have used the term 'scheduled areas' and in respect of this term also we should duly consider as to what areas should be included in it. Under the proposed article, the President will have the powers to declare as to what areas are covered by the term 'Scheduled areas.' It will not be proper to vest this power in the President. As has been suggested by my Friend Mr. Shibban Lal Saksena, this power should belong to the Parliament. If this power is not vested in the Parliament, there may arise strong agitation when the areas are re-distributed. Therefore, I submit that this power should be vested, not in the President, but in the Parliament.

I would like to submit one thing with regard to the Tribal Advisory Council. It is true we are going to constitute a Tribal Advisory Council consisting of 20 members, three-fourths of whom will be taken from the tribal people, but there is no mention as to who will be taken in for the remaining one-fourth of the places. I want that this one-fourth should consist of representatives of the organisations that are working in these areas. Almost all the Governors will be aware of the requirements of the Tribal people. Some may argue that some of the organisations that are working in these areas belong, some to Christians and some to Hindus, and that it may lead to evil consequences. In my opinion there need not be any fear of this. The organisations that are working in these areas have done and are still doing much good work for the welfare of the aboriginals. And moreover the final authority is going to be vested in the Governor. In view of all these considerations, representatives of the organisations that are working in these areas should be taken in the Advisory Council for the remaining one-fourth of the places.

Some problems may arise in future in regard to the Scheduled tribes and I may point out in this connection that many of the tribes that have been recorded as scheduled tribes are politically very advanced. For example, in Orissa there are two tribes named 'Dambi' and 'Pani' who are politically quite advanced. They have been included in scheduled tribes. When we take up the question of that area, we should exclude them from the scheduled tribes. Otherwise the scheduled tribes or the 'Adibasis' will not be able to benefit from the provisions that we are including in the Constitution for their welfare. Therefore, I suggest that the 'Dambi' and 'Pani' tribes of Orissa, should be excluded in due course from the scheduled tribes. We cannot get any indication from the provisions of this schedule as to what would be the character of the rules framed for the administrations of these areas and tribes. This creates some misgivings in my mind. I would suggest that it should be made clear by Dr. Ambedkar by an amendment that, as provided in a previous article which states that "provided that where such Acts relates to any of the following subjects, that is to say marriage, inheritance of property and social customs of the tribes etc., etc." the rules also would not be making any change in regard to marriage, inheritance of property and social customs.

Lastly, I submit that their life is gradually changing. There is a tribe in Orissa known as "Shabar Tribes"; formerly they were Adibasis, but now they have adopted the Hindu way of life and have become Hindus. Some of the customs of the aboriginals have crept into Hinduism and some of the useful customs of the Hindus have found place in the life of aboriginals. This interchange is gradually going on among Hindu and aboriginals. If a few non-aboriginals are not included in the Advisory Council, it may develop a belief among the Adibasis that they are separate from us and in course of time, it may be develop separatist tendencies among them. Perhaps this amendment, that the provisions will operate only for ten years, has been moved in view of these considerations. I think we should not bother about the period, whether it be ten years or twenty years, for the Adibasis are so backward that the period of ten years prescribed here may be safely extended to twenty years. We need not worry about this. The main thing that we should be anxious about is that we do not forcibly bring them into our fold. Some of us advocate that we should force them to come into our fold. It is very improper. It is only by a gradual process of creating closer relations that they should be absorbed amongst us.

With these words I conclude my observations.]

Babu Ramnarayan Singh (Bihar : General) : Mr. President, Sir, I shall not take much time of the House, because I am keeping generally silent these days. My honourable Friend Babu Brajeshwar Prasad is very fond of Central administration I ask him to study the situation obtaining in centrally administered areas and for that he will not have to go far....

Mr. President: That remark need not taken seriously because he has not moved any of his amendments of which he has given notice.

Babu Ramnarayan Singh : Thank you, Sir, I think he should study the situation here in Delhi where there is a Central Government and where he himself lives and he should go and see how the administration is going on here in Delhi itself. Sir, I have come only to remind you, the Honourable House and the whole country as regards this subject, of our previous commitments, acts and advocacy; it is under the instruction of our Indian National Congress that we have all along advocated in the Central Legislature that there should be no discriminatory administration in any part of our country. We wanted that there ought to be one and one administration only in every part of the country. We were ashamed of such things as backward tract or excluded area or partially areas. Now, Sir, it pains me and I think it must be paining everybody in this country to find that we have begun to do things now against which we have, protested so long during the British rule. During the British rule, we did not want that there should be such a thing as backward tracts or excluded areas, but now we are going to have such a thing as a Scheduled area. There will be administration different from that in other parts of the country. During the period of British rule here they kept the area separate from other areas so far as administration went, but they did nothing for the real benefit of the people. I thank the Missionaries, the Christian Missionaries who have done a lot of improvement to the people.

Here, I must say one thing; I should not be misunderstood as speaking against anything that the people of the backward areas may require, may demand. I wish they should have all they demand. I know and everybody knows that there are backward people in every part of the country, in every village, in every town, even in the city of Delhi. The remedy does not lie in separating one part or area and doing something here and there. I know that the Government will not be able to do much by separating any part of the country as a scheduled area or anything like that. As it was said during the days of the British rule, there are certain people in the country, as honourable Members know, who require special treatment. Let the Government bind themselves to do three or four things. Let the Government educate all the children of the aboriginal people and other backward people in this country entirely at the cost of the Government. This education should also include military training. After having imparted education, let these people. be given preference in Government appointments. Next, I suggest let the Government give every aboriginal man and every backward people some land. Having done all these things, then, I feel there will be no distinction in social status, the people will have their own way and the general level of the well-being of the people will be one, and there will be no such thing as backward people or aboriginal people.

Then, Sir, there is one thing. What is our aspiration for the future ? Our aspiration is this. Unfortunately, the country has been divided into so many classes and communities. We should proceed in such a way that all the different communities may vanish and we may have one nation, the Indian nation. If we proceed as the British did, with this class and that class, with this. area and that, we shall fail in the future. I am glad that this amendment of Dr. Ambedkar is less pernicious. I have not much to say against this or the original provisions. But, I feel that such a thing should not have come up for discussion in this House.

Shri Jadubans Sahay (Bihar : General) : Mr. President, Sir, I have taken my stand here in order to congratulate Dr. Ambedkar and those associated with him for having brought about this redrafted Schedule V. I congratulate them because Schedule V as originally drafted was too rigid as has been observed by Dr. Ambedkar.

The problem, or rather the treatment of the problem of the tribal people is a very difficult and delicate one, and hence in dealing with these problems we have got to see that we should not tie down the hands of those who want to do good to them. It is true, and we are all, each one of us, here and outside, determined and agreed that this problem of the tribals is not of recent making. Their exploitation, their poverty, their economic backwardness, their social backwardness, all the things deserve the special attention not only of the provincial Governments, but also of the Central Government. But, in this, as has been right' pointed out by Babu Ramnarayan Singh, we have got to depend upon the State legislature and the provincial Governments. We should have faith in the provincial Governments as also in those non-official institutions who are working in order to ameliorate the conditions of the tribal areas. Here, I cannot withhold not only my thanks, but the thanks of all those workers who are working among the aboriginals, to Shri Thakkar Bapa. We know even in this old age, he has been touring those areas. I need not say here that if we go by his advice, and if he is given to us for another ten years, we shall be able to do not only something concrete to show to this House or to Parliament, but also which will bring real happiness, and economic, educational, social advancement to the tribal people.

I wish to make one observation so far as Mr. Jaipal Singh's amendment is concerned. His first amendment is that not only with regard to the tribals living in the Scheduled areas, but also of all the tribal people, living in the province, the report of the Governor should be submitted to the President. I think Dr. Ambedkar will consider over this matter. Because, it is none of our wish nor his that a report on only the scheduled tribes in the Scheduled areas should be submitted to the President. We know that the tribals living outside the proposed Scheduled areas are more backward, less organised and there are very few people to care for them. Therefore, if it be possible, this amendment of Mr. Jaipal Singh may be accepted.

There is another matter to which I wish to draw your attention. It has been said that so far as the Advisory Council is concerned, they should be invested with more powers, powers of trying cases and all those, things. But, I submit, Sir, that this Advisory Council should be entrusted, as has rightly been done, with the work of welfare and advancement of the tribals. If we tie down this Advisory Council with work of a political nature, then, what would happen to the councils formed by the tribal people ? Even our village Panchayats in some places, as you may know, have become a ground for political rivalry and political bitterness. If we really want the advancement of the tribal people, this Advisory Council should not be, as has been rightly done in the new draft, rather burdened with the task of trying cases and all those things regarding land, etc. So far as land is concerned, it is not our intention; nor of the provincial Governments where the tribals live—provincial Governments have made laws to see that land should not pass out of the hands of the tribal people; in our province, the Chota Nagpur Tenancy Act was modified and altered long long before 1937 in order to see that no land should pass out of the hands of the tribal people. But, there were various difficulties in the original schedule; that land should not be settled by the Government to any one except the tribal people. In the Scheduled areas, there are not only the tribal people; there are Harijans also; there are other castes also who are equality backward, if not otherwise, at least economically, as the tribal people. Is it, then, Sir, our wish that in those areas where the Harijans and other backward people remain, land should not be settled by the Government to them also ? Of course, the tribal people should have the preference as well as the Harijans living in those areas. If these things are made elastic, we should have nothing to say on this point. But, the, Government should see and in the future we also should see that preference is given to the tribal people and if they have no land, the landless tribal people should have the first priority.

Then, Sir, regarding the other provisions it is not here for us to debate I have come here to congratulate the Drafting Committee. I think Sir, in the future, when the question of scheduled areas comes up, the Provincial Governments will give a correct advice to the President to whom has been entrusted the formation of the Scheduled areas. At present, among the Scheduled areas, there are various areas which should not have been kept there. Take the case of Latehar Sub division from which I have been returned. There are a large number of tribals no doubt, but the non-scheduled tribals are in a majority but these things are not to be taken up here. I will only say that by leaving all these for the full consultation of the Provincial Government and other leaders of the country who are entrusted with the work of the tribals and also of tribal leaders, nothing will be lost.

Shri A. V. Thakkar : Mr. President, Sir, It gives me very great pleasure to support Dr. Ambedkar's revised Schedule No. 5, because of two reasons. One is that it is very very abridged. Abridgment does not take away anything from that except one or two small points, but it widens it in respect of inclusion of the tribals of the Indian States which have formed themselves into Unions as well as those that have merged in the provinces. Those tribals that existed that live at present in the wilds of Rajasthan, in the Central India, States of Madhyabharat, also in the Vindhya Mountains, also in the Himachal, also in the Western Ghats of Travancore and Cochin—they were all neglected upto now and now they come into the picture for the first time in this revised Schedule. They were not included in the original Schedule. That is a great improvement which will affect not only lakhs but millions of tribals residing in the Indian States.

The other thing is that the Tribal Advisory Councils come into the picture for the first time in the history of India. Even with the Scheduled classes and the movement of Gandhiji for the amelioration of the Scheduled Castes, the Scheduled Caste Committees about administration were never formed. They are now being formed for the tribal areas for the first time and that is a very great advance. Not only that, but the Tribal Advisory Committee will consist of three-fourth of tribal members. They can if they like, take the greatest advantage of it in all ameliorative measures as well as in the conduct of everyday affairs of the Scheduled tribes, as well as Scheduled areas, but I am afraid our tribal friends are too shy yet. They have to be brought out not only from the plains of the country but also from the hills and hilltops, from the distant Himachal, from the distant Vindhyachal, from the Hills of Chota Nagpur, from the hills of Travancore and Cochin. Even there there are places on the hills where even the Christian Missionaries have not yet reached, and I am glad to say that some of our new social workers are reaching them even in the hills of Travancore and Cochin. Let me say that this question is very little known to all of us. I, will give you only one instance of that. When I went with the Assam Tribal Committee to tour in the areas of Assam with the Chairman Mr. Gopinath Bardolai and the prominent Minister Rev. Nichols Roy all the members of the Committee, one and all, went for the first time to the Lushai Hills and Naga Hills in the year 1947. Even the Premier of Assam had never visited the Lushai Hills and Naga Hills, much less a man like-me. Therefore the more we are able to know of these tribes the better it is for the country as a whole and to assimilate those tribal people as fast as we can in the whole society of the nation as we are now.

The other day my honourable Friend Dr. Kunzru was telling me "Thakkar, why don't you arrange a tour for me to go into the outside areas of Assam where tribals live those in Balpara areas and Sadia areas and Tirip areas." I say in reply to this House that if the Government can arrange a trip of 40 or 50 members of this Assembly to tour in all the tribal areas of the country it will be a very great knowledge gained and it will solve the problem a good deal. Even my friend Mr. Jaipal Singh does not know anything about the tribals outside Bihar—his own province. He does very little touring in other parts. I would wish him to do that. I would see that he is provided with money to tour everywhere, wherever he likes to go in the tribal areas or other parts of the country than Bihar. Bihar is not India. There are so many Bihars in India and let him take care-if he likes—of all the remaining provinces where there is great necessity, more necessity of doing tribal welfare work than in Bihar. The tribes of Bihar as a whole are much advanced, comparatively speaking. I will give only one instance. There are Oraons and Mundas. These are the main tribes of Ranchi District which is the centre of Bihar tribals. Take the nearest State of what was called the Sarguja District of C.P. The Oraons of Surguja are twenty timers more Jungly than the Oraons of Ranchi District. I have been reading recent papers obtained from those places from friends and co-workers and from the staff of the C.P. Government who are engaged in the welfare work, and I find that the Oraons of Sarguja District will not come down, for anything that you will give them, from the hills to the plains. Such is the difference between Oraons of one province and Oraons of the adjacent district of Sarguja. Another thing is people have very little idea of what progress we have made in the matter of amelioration of the condition of the tribals during the last two years only. I would say two years, only from 1947 to 1949, the Governments of Bombay, C.P., Bihar etc. have made wonderful progress. I am using the word purposely. Very few people have any idea. I am not giving you a secret if I say that Dr. Ambedkar was asking me a week ago 'Has any Government been doing practical work for the amelioration of the tribal'? I said 'Yes, Dr. Ambedkar, you are not aware of the things that are going on in the provinces'. I am running to those places occasionally and also giving some guidance to the social workers there. The Bombay Government has recently introduced a system of backward class inspectors in 11 or 12 districts where the tribals predominate. The Government of C.P. has done the same thing on a much larger scale. Let me say that as the C. P. is said generally to be a backward province compared to Madras or Bombay. There a large number of States have been merged in the Province and the States contain a much larger proportion of tribals than the Province proper. There even they are spending money like water—if I may say so. Have you ever heard of— one Department working for the welfare of tribals in one Province been given a sum of fifty lakhs per year. That the C. P. Government is doing today. I do not know whether my friend the Honourable Premier Shri Ravi Shankar Shuklaji is here or not but it is really so, and it is a thing on which the C.P. Government may be congratulated. One word more, Sir, the President has already ruled that this suggestion of Shri Brajeshwar Prasad for making the tribal areas centrally administered, need not be taken seriously. But he said that all the tribal areas should be maintained by the Centre as Centrally Administered areas. But has not the Centre any other work? Has the Centre too little work ? Is not the Centre saddled with so many new responsibilities so that they should be given additional burden of so many centrally administered. areas ? Already many States are being centrally administered. Then why this additional charge on them ? Tripura, Cooch Bihar, Manipur and Bhopal and other States are being centrally administered. So, why throw this additional burden on the Centre?

And moreover, this is the work of the Provinces really, if I may say so. Of course, the directive must come from the Centre, as well as money; a good part of the money must come from the Centre. But this is work which can only be done by the Provinces and not by the Centre. The Centre has already enough responsibilities, such as the international-field, the question of war and peace as well as directing the provinces. Therefore it will be a sin to saddle the Centre with more responsibility. It is often complained that the Centre is taking all powers to itself, by this Constitution that we are making, and so many people find fault with it. Then why ask the Centre to take up this additional responsibility, especially when it is a responsibility which cannot be undertaken by the Centre. It is a work for which so many agencies are required. And it has to be done in the course of ten short years. After ten years, the whole system of reservation of seats will be abolished. Of course, with it the department of welfare will not be abolished, I am sure of that. But the reserved representation of the tribals that we have promised them today, on adult franchise system, will be abolished ten years after, and therefore, they will not come in as large numbers as they will now. Therefore this small period of ten years has to be utilised to the utmost and that must be done by several agencies, and not by the Centre or by the Government of the Union alone.

Sir, I have very great pleasure in saying that I support amendment No. 20 of Dr. Ambedkar that has been put forward. Not only has it been abridged, but it has widened the scope of its application. The total population is two and a half crores, all the tribal people in the Provinces as well as in the States. If we had not gone in for the States being included in this Schedule Five, then about more than one third of their population would have been neglected, especially those tribals of the States, coming for the first time into human knowledge, if I may say so. Nobody cared for them; nobody was allowed to go into them. Therefore, this is a very great improvement, and I hope the Government of India will vote ample funds for this work. That is the crux of the whole thing. I know the financial tightness under which the Centre is at present suffering. But that is a thing which will pass off in a year or two. After that the Centre should give not less than a crore of rupees per year as help to the Provincial Governments, not only provincial, but also to the States, I would say, and more is needed for the Indian States than for the Provinces.

Shri Muniswamy Pillay (Madras : General) : Mr. President, Sir, at the outset. I must say that great credit is due to the Tribal Committee which went round the country and saw for themselves the great disabilities under which these tribal people are living. I think great credit is also due to the Drafting Committee for so ably bringing forward this Fifth Schedule which goes a long way to improve the conditions of the tribal people. Sir,coming as I do from a province and region which is inhabited by many varieties of tribes and aborigines, I feel that this is opening up a new chapter in the history of the elevation of the depressed and oppressed communities of this great land. I feel proud that in the new set-up the people who have been neglected for centuries, find a place and chance for progress.

Sir. I do not want to take the time of the House. But I would like to refer to one or two points in the Schedule. My friend Mr. Jaipal Singh has brought in an amendment to item 3 whereby he wants the Schedule Tribes to be added along with the Scheduled Areas. Sir, there are several tribes in the provinces who are scattered in many places and the population there do not count for representation of these communities in the Legislatures. According to adult franchise, one seat will go to every 75,000 of the people. But as these people are scattered, I do not think these people will be able to find enough place in the Assemblies. I know, as a matter of fact, in the Madras Legislature there is only one man representing the tribes, out of 215 members. Now, this Part II envisages to have Advisory Council or Committee, the composition of which will be three-fourth of the members from the Assembly. Unless a scheme is adumbrated whereby special representation for the scattered tribes is made, it will not be possible for these tribes to come in large numbers to take part in the Legislative Assemblies and also, to take part in the Tribes Advisory Committee. So I think some way must be devised whereby it will be possible for these tribes to get into the Advisory Council.

A second suggestion has been made whereby if it is not possible to get members of the Assembly for this Advisory Council, members could be co-opted to the Council. I only say that care must be taken that only persons who have sympathy for the tribals and also people who have been working in the field of elevation of the tribals must find **a** place in this Tribes Advisory Council.

I know, in the south there are many tribes, such as the Todas, the Puliyas who are already dwindling in population. Recently Prince Peter of Greece who happened to be in the Nilgiris went into the question of the Toda uplift and he has made certain suggestions to the Government of Madras designed to better their lot. My Friend Thakkar Bapa has said that it is not the Government alone who should work in this field, but all who feel for the elevation of the depressed and oppressed communities must take a keen interest in suggesting ways and means for their elevation.

Sir, it is said that the Tribes Advisory Council will be only advisory. I feel that some provision must be made that whatever recommendations are made by this Council, must be mandatory, and the Government, without overriding the recommendations of the Advisory Committee, must give effect to them. If this is done, I think the new set-up for the elevation of the tribes will go a long way.

Sir, it has been argued that reservation for the Scheduled tribes also must be for ten years. I am not in agreement with Thakkar Bapa who has great credit for having worked for the Adibasis and aborigines and other tribes. Their condition is so bad that it will be impossible for any Government or people to, uplift them in the course of ten years. So I think that period of ten years, for everything must disappear from our minds.

With these remarks, Sir, I strongly support the Fifth Schedule that has been brought by the Drafting Committee.

Shri Jaipal Singh : Mr. President, Sir: At the outset, it is rather unfortunate that I should have to talk about myself and my travels for the edification of my venerable Friend Mr. Thakkar. Only a few minutes ago, he said that I knew my Bihar and little outside. He hinted that I did not travel about much, that he would enable me by his own personal courtesy, as also perhaps with powerful financiers that are behind him, to go all over India, to the outposts of North East India and elsewhere, so that I may become the wiser by those travels. I thought he knew me well enough. It seems he does not. Let me tell him that I have lived for several years in the C.P. and there is not a single State there that I have not visited. Let me also tell him that I lived in Bengal for about five years and it was part of my job to go to the most inaccessible parts of even Eastern Bengal. Western Bengal, where there is a large Adibasi population, is almost next door to my own home district. For seven years, I lived in Jamshedpur, which attracts a good many Adibasis from Western Bengal and elsewhere. Assam—Mr. Thakkar went with the Sub-Committee only two years ago. May I enlighten him that have been to every tribal tract in Assam not only once, but a dozen times? Madras is not unknown to me. Nor is Bombay. I am not one who advertises my itinerary as he or somebody else does. I go about quietly moving about among my own folk, and I try to understand them and I do not come to hasty conclusions. I have for the last eleven years tried my best to educate non-tribal people to appreciate the self-respect, the imponderables of Adibasi culture. For a couple of years, it was my privilege to under-study some foreign anthropologists. I do not know how many Adibasi languages Mr. Thakkar actually knows.

Shri A. V. Thakkar : None.

Shri Jaipal Singh : I am glad he is honest enough to admit he knows not a single Adibasi language. -

Shri A. V. Thakkar : Except of Gujarat.

Shri Jaipal Singh : Even in the evening of his life, I would venture to suggest that if his workers were to learn the language of the people-be they Adibasis or any other backward groups like the Scheduled Castes—their work could be more valuable. If, for example, his team who are in Southern Bihar and the Chota Nagpur Plateau were to learn Santali, Uraon of Mundari—all of which I can speak—they would be treated with less suspicion than they are now. Adibasis are very suspicious of non-tribals. Quite rightly, because the role of non-tribals has in the past been one of Dikus. That word 'Diku' is not something I have coined, as some Ministers in Bihar are so fond of alleging. Diku has been in the record of rights for the last eighty years, long before I was born. The non-Adibasi has played a very damaging role in the past. The generality of non-Adibasis have.

I will be the first one to acknowledge the sterling services a few of them, like my honourable Friend Mr. Thakkar, have rendered amongst these helpless people. I am not here to sing my own praises, but I would only like the House to know that I am not as untravelled in India or elsewhere as my honourable Friend. I do not know how many times Mr. Thakkar has been round the world. I have gone round twice at least. I have lived in Africa for five years. I have seen the aborigines of Polynesia. I have been elsewhere also. I have tried to understand the Adibasi problem as it confronts us today and, as it confronted the previous alien regime, from a scientific angle, not through the eyes of the politician as a great many of the people in this country are inclined to do. It is much better that we should try and probe into it, try to get behind the mind of the Adibasi as to how we can make him do the work which we intend should be done for him. We cannot obviously carry 24.9 million Adibasis in our laps. Surely, that cannot be done. There, again, Mr. President, I have to correct my venerable friend that the figure is not 2 1/2 crores. It is 24.8 million. It is more than 2 1/2 crores. I do not want to argue about it.

Mr. President : 24.8 million is actually less than 2 1/2 crores!

Shri Jaipal Singh : Never mind. There is a silver lining in the speech of my Honourable Friend. I am particularly gratified that he has risen above party politics and tried to present a case that should be worthy of him and his antecedents. I have been much worried by some of the amendments he had tabled against the original draft. Fortunately for him, he has dropped all of them and has forgotten all about them. This has required courage in him and I do admire his statesmanship.

It is quite true that the revised form of the Fifth Schedule is more comprehensive than the original draft. That is as it should be and it is to that end that I have tabled all my amendments and I hope Dr. Ambedkar and his Drafting Committee will produce their own mantar and, somehow or other, incorporate the ideas I have tried to put forward in my five amendments. There has been a tremendous change in the whole scene. Not only freedom, but the merger of the States has brought about a change in the entire aspect of the aboriginal problem. Numerically the aboriginals need not be so helpless everywhere. Orissa will perhaps, have the most difficult problem not, because the problem is difficult, but because there are things which cannot be tackled unless the wherewithal is forthcoming. With the best of intentions in the world, Orissa will not be able to do much for its backward people Adibasis and the other depressed classes, unless specific funds, *ad hoc* funds, are placed at its disposal by the Central Government. So is the case in regard to Assam. I am very glad that my Friend the Honourable Pandit Ravi Shankar Shukla has started in a humble way. To my mind Rs. 50 lakhs is not such a colossal figure that one can enthuse over it. Anyway he has made a beginning and I am very glad about it. But if he can add one more zero at the end of the amount, that he has set apart, then I can, congratulate him. Funds will be needed and that is why I am somewhat cynical about the time limit some people have indicated. I would much rather that no date were specified at the end of which these provisions should come to an end. Would it not be very much better that during these ten years, or twenty years, we should be on trial and at the end or that, the President should see to it that a Commission was appointed to investigate as to the extent to which the ameliorative measures had succeeded and as to whether a further period was necessary. I think some review is necessary. Let us not live in a fool's paradise and think that we will be able to work wonders within ten years. It will take much longer than that. It will take ten years to persuade the Adibasis to come out into the open to co-operate with us. The atmosphere of suspicion which exists at present has to be removed. Let us, therefore, be realists. For that reason, Mr. President, I would rather that the position were reviewed, say, at the end of ten years and we ourselves and the rest of the country will be in a position to know what we have been able to do. Then we can decide as to whether or not provision has to be made for a further period of another ten or fifteen years. I am strongly opposed to any idea of fixing a limit say of, ten years, at the end of which these safeguards should come to an end.

Sir, if my Madras friends will permit me, I would like to say a few words in Hindi, the Hindi that I have learnt in Bihar.

*[Mr. President, Sir, I heartily congratulate the Drafting Committee as they have accepted the new provisions and the new schedule. I would only request that your translation Committee should not translate Scheduled tribes as "Banjati" . The word 'Adibasi' has not been used in any of the translations made by the several Committees. How is it? I ask you why, it has not been done. Why has the word 'Adibasi' not been used and the, word 'Banjati' has been used? Most of the members of our tribes do not live in jungles. You may go to Western Bengal. You will find that there are no jungles, near about the places where these members of these tribes live, nay not even is there any trace of trees. How can they be appropriately, termed as Banjati or forest tribes—tribes which live in forests? I wish that you should issue instruction to your translation Committee that the translation of Scheduled tribes should be 'Adibasi'. The word Adibasi has grace. I do not understand why this old abusive epithet of Banjati is being used in regard to them-for till recently it meant an uncivilised barbarian. This is the first point I would like to lay emphasis upon.

Another matter to which I would like to draw your attention is this. There are many Members of this House who like the world to believe that their hearts are full of sympathy for the Adibasis. They ask us to forget the past. They tell us that for the future they are determined to risk even their lives in order to promote the interests of the Adibasis. At election time, manifestoes full of such pledges are issued.]*

The Honourable Shri Ghanshyam Singh Gupta (C.P. & Berar: General) May I interrupt the Honourable Member for a minute ? Now we are not using that word at all. We have discarded it.

Shri Jaipal Singh : Which word?

The Honourable Shri Ghanshysam Singh Gupta : The word to which you were just now referring—"vanajati." Our difficulty is that we are translating and not improving.

Shri Jaipal Singh : I am very glad that you have become wiser.

Sardar Bhopinder Singh Man (East Punjab: Sikh) : What is the new word?

The Honourable Shri Ghanshyam Singh Gupta : We are using the word "janajati."

Mr. President : There is another expression which is being used in connection with an organisation which is working in Bihar; that is "adimjati"

Shri Jaipat Singh : *[Whatever that may be, you have heard my views. In my opinion, it should be Adibasi. If you go towards C.P. and Bombay you will find many places where "Adibasi Seva Mandals" have been working. This word has been in use for a long time. All Adibasis understand it. I can never accept therefore that the use of this is likely to create any misconceptions. In my opinion it should be Adibasi I am an Adibasi, I call myself an Adibasi. I cannot understand why you wish to give us another name. The fact is that the name 'Adibasi' would be most welcome to us.

Sir, I was speaking of the zeal which several people of this House profess to have for promoting the interests of Adibasis. I would like to tell all such friends in the House or those outside it that they should talk less and work more. I would like to emphasise that such friends should bear in mind that unless they have a genuine respect for the people whom they propose to serve, they would not have earned the right or acquired the capacity to serve. If, however, your mission of amelioration of the lot of the Adibasis is of the kind that the British professed to have, coming to India over all this distance of six thousand miles, I would ask you mercifully to leave us alone, and quit the Adibasi regions. I would remind such people of the adage "Physician, heal thyself. Please put your house in order before you think of reforming others. Mr. President, there are a few other matters]

Mr. President : *[But why are you continuing your speech in Hindi? I thought that you wish to say in Hindi something particular to some Madrasi friends here.]*

Shri Jaipal Singh : Sir, I would like to say a few words in Madrasi also.

Mr. President : *[Not necessary. They would admit that you know a number of languages.]

Shri Jaipal Singh : I was going to end my speech with a few words in my own, the most ancient-language of this country. The country belongs to my most ancient group and we are very glad to have Mr. Munshi. I am very sorry to disappoint him that, in supporting the Fifth Schedule, I did not dress in my bows and arrows, the loin cloth, feathers, ear-rings, my drum and my flute. I have disappointed him I know. But I shall be very glad to educate the organization, of which he is the prime mover, next cold weather. He has invited me to take a group of dancers to Western India and then I will show him what it is that Adibasis can teach the rest of the country.

Shri Biswanath Das (Orissa : General) : May I know whether the Honourable Member has ever put on clothes like that ?

Shri Jaipal Singh : What makes Mr. Das think I never wear the clothes that my people wear ? There has to be reciprocal co-operation. That distrust, that fear that existed before must be made to vanish from both sides. The non-Adibasi must go to the Adibasi as his friend, and, similarly, the Adibasi in his turn should take his proper place, the role of honour that is accorded hereafter in the national life of this country. I know Adibasis will respond. As you said during the last general election campaign at Chakradharpore, Mr. President, if I may remind you, you said that for the last six thousand years Adibasis had been struggling stubbornly for their *izzat* and for their self respect. For eternity hereafter they will see to it that the honour of India does not in any way get impaired. I have great pleasure in supporting the amendments to the Fifth Schedule.

Mr. President : Do we require many speeches?

Shri Biswanath Das : I contested the election of 1937 after signing the Congress pledge to break the Constitution of the 1935 Act. After the elections we were called upon to play the role of iconoclasts. The second stage came when we came into the Provincial Ministries with the object of breaking the Constitution framed under the Act of 1935. It is a painful surprise to me to see that today we are too much wedded to that Act. Nay, as if all that was not enough, we are happy to have the partially excluded areas that we had under the 1935 Act. Therefore, this comes to me as a very unhappy brooding whether the step we had taken was unwise. The present step, with repetitions of vast portions of the 1935 Act, I shall leave to future generations for judgment. I must frankly state that I am not at all happy for the way in which we have been proceeding, copying in most cases important portions of the Act of 1935. With the greatest difficulty, after a fight of forty years, we have been able to remove the communal virus introduced into the body politic of India, officially and statutorily after die Act of 1909, known as the Morley-Minto Reforms as also of the Acts of 1919 and 1935. We had to fight against that but' not without difficulty and not without serious loss to India and ourselves. That was the partition of India into Pakistan and India.

What are we doing now ? We are creating another virus, a racial virus, by bringing, in Tribes Councils, Scheduled areas and the rest. Sir, whom does this benefit? We have tried our best to meet the situation as far as possible. We have tried to stand for our ideals to the best of our capacity. The Congress has been said to be the greatest anti-imperialist institution in the world. It is the greatest institution that is fighting against the colour bar in the world.

The Negroes in America, after more than a hundred years of fighting have not yet been fully enfranchised to the extent that a citizen in America is today, what to speak of other States wherein they are undergoing immense sufferings! We have declared at the top of our voice that every person in India, be he male or female, irrespective of class, creed or community or race, shall be equal and shall have equal citizenship rights. Not being satisfied with what we have done, we have enfranchised quickly millions nay crores of people who never thought that they would be enfranchised. Sir, we have conferred franchise on all the tribes and peoples of India by a system of universal suffrage. We have not only done this but have also proceeded further in safeguarding the minimum rights and privileges, essential and necessary for human beings in the Constitution by what is known as Fundamental Rights. After having done all this, are we, I appeal to you, justified in creating cleavage and gaps with partially excluded areas and Tribes Councils and the rest ? Though it has been thought wisdom for over a hundred years or more by British Imperialists to keep these tribal people and these Scheduled are as as museums for purposes of demonstration and exhibition before the world to justify their existence in India, what is the purpose today,-to perpetuate this evil ? There is absolutely no purpose. We are committed to a programme of social regeneration. We are committed to a programme of civilising and uplifting and raising up the standard of life of all people, including the tribes. Where then is the justification for these tribal areas, Tribes Councils and the rest? I plead for reason.

My honourable Friend, Mr. Jaipal Singh, has spoken of conferences behind his back. There has been nothing of the kind. I appeal to him to shed this attitude of distrust of people who least deserve to be distrusted. Sir, they were trying their best how to satisfy all interests concerned, and at die same time they will have something which would be acceptable to one and all in this House and that explains why today my honourable Friend congratulates the Drafting Committee as well as Thakkar Bapa than whom I cannot find a more devoted man to the cause of the tribal people. Comparisons are odious, but no option is left. I would not compare my Friend Mr. Jaipal Singh with Shri Thakkar Bapa. It would be ridiculous for me, and for the matter of that for anyone, to be taken anyone, howsoever great he may be, as the sole representative of the hill tribes. A person, from his residence in the second or third floor of the Hotel Imperial, ill compares himself with a person like Thakkar Bapa.

Mr. President : I would ask the Honourable Member not to refer to personalities.

Shri Biswanath Das : I know and I will not do so. But I must record my sense of resentment decrying Thakkar Bapa.

Sir, I may say that I would not very much congratulate the Drafting Committee for all that they have placed before us. But I must also recognise the serious difficulties, inconveniences and the hardships to which the Members of the Committee had been put to when they had to approach and satisfy persons, interests and classes from dawn to dusk and dance attendance on them and find agreements agreeable to them.

Sir, I am not satisfied that we are doing materially enough for the tribals under these Schedules. More benefits should be available to these people. I recollect the happenings in Orissa, in 1940, the fituri which was caused by the differences between the Savaras and the Panas who are recognised here as Adibasis. This trouble led to a loss of hundreds of lives at a time when we were all clapped in jail and the Government of Orissa was carried on under section 93 of the Government of India Act. The result was that the converted classes (Panas) and the tribal people (Savaras) fought among themselves. The latter believed that the converted people were their exploiters who deprived them of their belongings, lands and wealth. This fight ultimately led so the imprisonment of thousands of Savaras. Are you going to confer benefits on all these people indiscriminately ? The provision, that you have made, makes it very convenient for all sorts of people to claim themselves as Adibasis. A few days back a gentleman from Bihar approached me with a complaint against the registering (election) officer of his areas saying that he did not record him as an Adibasi.

Shri Brajeshwar Prasad : May I know the name of this Harijan friend of my honourable Friend ?

Mr. President : It is not necessary.

Shri Biswanath Das : From this instance the House can see how the bait is thrown. The way is left open for such claims by non-Adibasis to be enrolled as Adibasis. My friend need not worry himself. What I am submitting is that the provision made here makes it possible for others than Adibasis to prefer claims to be treated as Adibasis.

My Honourable Friend Mr. Jaipal Singh referred to history six thousand years ago. I have not come here to discuss history with him. But is it far wrong to suggest, knowing as we do also history and Puranas that he talks of theories long exploded. But we should not leave this question of Adibasis and non-Adibasis for exploitation of politicians. Sir, there are a class of Brahmins in Orissa who call themselves Aranyas, meaning jungle Brahmans. Are you going to treat them as Adibasis or as non Adibasis ? Sir, why not save the country from the troubles arising from the distinctions between Adibasis and non-Adibasis ? I have pleaded with Shri Thakkar Bapa, to save the country from this unfortunate expression 'Adibasis'. As long as you recognise such terms you keep on fanning differences and find very many people like the Aranyas or Jungle Brahmins seeking to come under this category. I am therefore pleading with Mr. Jaipal Singh and Shri Thakkar Bapa not to perpetuate these distinctions tending to encourage separatist tendencies in our land. It is this curse that has kept India divided so long.

Sir, myself I claim to be an Adibasi and an original inhabitant of the country as Mr. Jaipal Singh. If you want lands, by all means have them. Ask for it. Let those who want lands have them. If you want development schemes, have money from the Government of India. I would appeal to the Government to sanction any sum that is required for the development of the depressed and oppressed classes. That is no reason why, we should go on harping upon oppression, past or present, and at the same time perpetuate this separateness. I would appeal to Mr. Jaipal Singh and all those who think with him to utilise their influence for the good of the country and save her from this separatist tendency .

One point more, Sir. Having said so much in support of the provisions contained in the Schedule, I now come to offer a few comments an it. We have today got not only Governors nominated by the Centre, but also Rajpramukhs, hereditary and irremovable governors or heads of States. By virtue of their wealth and position, by virtue of their lifelong existence as irremovable rulers, they enjoy a prestige and influence which cannot be ignored. With these powerful agents you are leaving very important powers. You give them an opportunity to add to their influence by collaboration with the Adibasis. When I say this, I am not casting any aspersion on any Rajpramukh. I am only speaking from my own experience in my own province of Orissa. Some of them have tried to combine with the

Adibasis and create a platform against the Government and the Congress, by exploiting the situation and by exploiting their racial and communal feelings. Therefore the powers which you give now to the Rajpramukhs are capable of immense mischief. You might say that there is the approval of the President; as such no harm can be expected on that score. Having secured the approval of the Tribal Council, it will be difficult, if not impossible, for the President to undo the recommendations. Under these circumstances I feel that it is not fair to leave such important weapons in the hands of the Rajpramukhs.

Sir, now I know in my own province, they have made the existing law very stringent for non-aboriginals with regard to the transfer of lands. That being so, *viz.,* the Ministers who are the representatives of the people having taken definite and important steps with regard not only the transfer of land but also regarding the ownership of lands in the interests of the protection of the hill tribes, why provide in the body of the Constitution a clause to interfere even with the existing Acts? Why should you do it? I plead again with the Drafting Committee that this is unnecessary, undesirable and uncalled for. Under these circumstances, Sir, I have no other option but to oppose the motion, however much I may sympathise with certain portions.

Shri K. M. Munshi (Bombay: General) : Mr. President, Sir, I would not have intervened in this debate but for a couple of remarks of my friend Mr. Jaipal Singh. He complained that when some of us who are interested in this problem met at a conference he was not consulted. He will agree that it is not a fair charge. Three times my friend. Mr. Jadubans Sahai from Bihar was sent to invite him. He said he was coming but did not come.

With regard to the other remark of his that I was disappointed that he did not appear with bows and arrows, in his Adibasi dress, I agree I was disappointed, though not for the reason that he did not appear in his Adibasi dress; I was disappointed because he could not give his unequivocal and wholehearted support to the new-draft of the Schedule which, I think is a considerable improvement on the old one. Several members of this House including Ministers of some provinces who are carrying on large-scale reforms as pointed out by Thakkar Bapa felt that the old draft was unsatisfactory. It was therefore found necessary to revise the Schedule for two reasons. The first reason was that we had produced one uniform stereotyped code for the whole country, while the problem of the Scheduled tribes differs from one province to another it would have certainly been prejudicial to the interests of the tribes, whose problems differ from one province to another, sometimes even from district to district. The second reason was that the States in Part III are coming into the scheme. The old draft of the Schedule only related to the provinces. Therefore, it was. necessary to have one kind of scheme for the whole country applying to all the scheduled tribes.

The policy behind this, as has already been pointed out, is the same which my friend, Mr. Jaipal Singh, has at heart, *viz.* that these scheduled tribes in course of time might be raised to the level of other Indians in the Provinces and might be absorbed in the national life of this country. With regard to that policy, we are all one, but I can realise why my friend, Mr. Jaipal Singh, was not pleased to attend the conference to which he was invited. The method by which he seeks to achieve the aim is absolutely different from the one which this House and the Congress have adopted. My friend's attitude is based on two factors. The first is a question of fact on which there is complete disagreement between us. The second is difference in outlook. I will take the first factor.

He thinks that all these tribes, sometimes thirty to fifty in each province, which he called Adibasis collectively form part of a single community. Now, that is—I know something about my own province—an entirely incorrect statement of fact. Each province has many scheduled tribes of its own. Each of these tribes is different from the other ethnically as mellas from the point of view of language, from the point of view of social and religious customs. There is nothing in common between one tribe and another. In my own province there are five tribes, who are scheduled tribes under this Constitution. Dublas, Bhils, Kolis, Bardas and Gonds. I know something about them. They are completely different from one another. I am sure no one would agree with the view that the Santals of Bihar, the Gonds or Bhils of Bombay and the Nagas of Assam are members of the same ethnic, religious or social group. They belong to different types of civilisations and different geological periods and it is necessary that different considerations should be applied for bringing them up to the level of the rest of the country. To call them all Adibasis and group them together as one community will not only be an untruth in itself but would be absolutely ruinous, for the tribes themselves. Therefore it is necessary that in order to give them a proper place in society, different sets of activities would have to be adopted. This is the cardinal difference between the attitude of my friend Mr. Jaipal Singh the rest of us. The Adibasis are not one conscious corporate, collective whole in this country so that somebody can speak in its name or can lead a movement combining them into a single unit. It would be fatal to the tribals themselves if such a policy is followed in this country.

The second point on which we differ cardinally is this: We want that the Scheduled tribes in the whole country should be protected from the destructive compact of races possessing a higher and more aggressive culture and should be encouraged to develop their own autonomous life; at the same time we want them to take a larger part in the life of the country adopted. They should not be isolated communities or little republics to be perpetuated for ever. The amendments which Mr. Jaipal Singh has moved will show that his object is to maintain them as little unconnected communities which might develop into different groups from the rest of die country. The result would be exactly to frustrate the common aim Mr. Jaipal Singh and ourselves have that these tribes should be absorbed in the national life of the country.

One of my honourable Friends amendments says (amendment No. 27) that after the words "Scheduled areas" wherever they occur the words "and scheduled tribes" be inserted. That would mean that any member of any scheduled tribe, even if he comes to a city and has been more or less absorbed in the life of the city, must still be regarded as a different individual from the rest of the community and must have a tribal committee to look after him. This will destroy the whole object which he says he has in view.

In his next amendment No. 33 he wants to add in sub-paragraph (2) of paragraph 4 the following words : "it shall be the duty of die Tribes Advisory Council generally to advise the Governor or Ruler of the State, on all matters pertaining to the administration, advancement and welfare of the scheduled tribes of the State." Now the word "administration" has been purposely omitted for the reason that administration would include the appointment of a Collector and of some Inspector or Superintendent of Police it means the administration of the forests; it means the administration of law and order. Surely on all these matters, it is not suggested that the Advisory Council should be consulted by the Governor. All that we are concerned with here is the welfare and advancement of the tribals only with regard to those matters the Tribes Advisory Council have to be consulted. If you add the word 'administration', as my honourable Friend wants to do by his amendment No. 33, the result will be that nothing could be done in a small scheduled area in a district without consulting the Advisory Committee. That position, I submit, is entirely unwarranted.

The third set of amendments which my honourable Friend, Mr. Jaipal Singh, has moved (amendments Nos. 47 and 52) and Mr. Yudhishthir Mishra's amendment No. 46, are to the effect that the Tribes Advisory Council should he miniature senates with power to aid and advise the Governor in all matters falling within the purview of this schedule; there should be a kind of responsible Government with regard to these matters under which the Governor should accept the advice of not of a ministry but an assembly. That is an utter absurdity. Take the first case; an Act of the Parliament or an Act of the State would straightaway apply to the Scheduled area, but if the Governor thinks that in the interests of the tribals, certain sections of such an Act should not apply, he should be free so to decide. Is it possible for each Tribal Advisory, Committee of a small tribe to come to a common conclusion with regard to an elaborate Act of Parliament as to what provisions of it should or should not apply. Under the draft as it stands all that the Governor has to do is that they should be consulted with regard to regulations. In regard to notifications when he thinks that certain provisions of the Central Act or the Act of the State should not apply in the interests of the tribals, no previous consultation will be necessary because after all the sacred trust in respect of this step is placed on the Provincial Government. Further, with regard to the regulations of transfer of land and other things relating to the welfare of the tribes the tribal assembly will have to be consulted. Naturally their interests will be placed before the Government in the course of consultations. But to make the decision depend upon the advice of this assembly would in the end lead to disaster to the tribes themselves. It may be that after consultation the Governor may feel that their advice is not correct. Take for instance, money-lending. It is such difficult subject and I am sure some of the tribals on my side, would not be able to understand the implications of Money-lenders' Act, and if their advice is sought, I am sure, they would say that they do not understand a word of it. The word "consulted" therefore has been put in the place of "advice" purposely.

The last amendment of Prof. Shibban Lal Saksena leaves it to the Central Parliament to declare a scheduled area. I do not think it is right. The problem, as I said, varies not only from province to province but from district to district and it would be impossible for Parliament by law to do it. Therefore, I submit that the whole Schedule, as it is, in the interests of the tribals themselves and I hope the House will accept it.

Mr. President : I wish to close the discussion now. Does Dr. Ambedkar wish to say anything ?

The Honourable Dr. B. R. Ambedkar : Mr. Munshi has said everything that was needed to be said and I do not think I can usefully add anything.

Mr. President : Then, I shall put the amendments to vote now.

Mr. Naziruddin Ahmad : My amendments need not be put to vote, but they could be considered, by the Drafting Committee.

Shri K. M. Munshi : Some of them are very valuable.

Mr. Naziruddin Ahmad : But they will be rejected by the House.

Mr. President : We have already passed the first two paragraphs. I come to paragraph 3. The first amendment is by Mr. Jaipal Singh, No. 27.

Mr. President : The question is:

That in. amendment No. 20 above, in paragraph 3 of the proposed Fifth Schedule, after the words "scheduled areas" wherever they occur, the words "and scheduled tribes" be inserted; and the words "or whenever so required by the Government of India" be deleted.

The amendment was negatived.

Mr. President : The question is :

"That the proposed paragraph 3 stand part of the Fifth Schedule."

The motion was adopted.

Paragraph 3 was added to the Fifth Schedule.

Paragraph 4

Shri Yudhisthir Mishra : I beg leave to withdraw amendments Nos. 31 and 32.

Amendments Nos. 31 and 32, were by leave of the Assembly, withdrawn.

Shri Jaipal Singh : I accept Mr. Munshi's explanation and would like to withdraw amendment No. 33

Amendment No. 33 was by leave of the Assembly, withdrawn.

Mr. President : The question is:

That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (3) of paragraph 4 and in sub-paragraph (1) of paragraph 5 of the proposed Fifth Schedule,, for the words "Governor or Ruler" the words "President in consultation with the Governor or Ruler" be substituted.

The amendment was negatived.

Mr. President : All the other amendments are not put to vote. I think these are all the amendments relating to paragraph 4. The question is:

That the proposed paragraph 4 stand part of the Fifth Schedule.

The motion was adopted.

Paragraph 4 was added to the Fifth Schedule.

Paragraph 5

Shri Yudhisthir Mishra : I beg leave to withdraw amendments Nos. 46, 48 and 51 standing in my name.

The Amendments were, by leave of the Assembly, withdrawn.

Mr. President : The question is:

"That in amendment No. 20 above, in sub-paragraph (1) of paragraph 5 of the proposed Fifth Schedule, after the words 'as the case may be' the words 'if so advised by the Tribes Advisory Council' be inserted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 20 above, in sub-paragraph (2) of paragraph 5 of the proposed Fifth Schedule, the words 'in any such area' be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 20 above, in sub-paragraph (5) of paragraph 5 of the proposed Fifth Schedule, for the word 'consulted' the words 'been so advised by' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (4) of paragraph 5 of the proposed Fifth Schedule, after the word 'All' the words 'notifications and' be inserted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 20 of List I (Seventh Week) in sub-paragraph (5) of para 5 of the proposed Fifth Schedule, after the word 'No' the words 'notification or' be inserted."

The amendment was negatived.

Mr. President : The others are amendments moved by Md. Naziruddin Ahmad. I think he does not want them to be put to vote. The question is:

"That the proposed Para 5 of the Fifth Schedule stand part of the Schedule."

The motion was adopted.

Paragraph 5 was added to the Fifth Schedule.

Paragraph 6

Mr. President : Amendments 185, 186 and 187: I think Mr. Naziruddin Ahmad does not wish them to be. put to vote. The question is :

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (1) of paragraph 6 of the proposed Fifth Schedule, for the words 'President may by order' the words 'Parliament may by law' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 20 of List I (Seventh Week), in sub-paragraph (2) of paragraph (6) of the proposed Fifth Schedule.

(a) for the words "such order may" the words "such law may" be substituted;

(b) for the words "to the President" the words "to the Parliament" be substituted; and

(c) the words "but save as aforesaid, the order made under sub-paragraph (1) of this paragraph

shall not be varied by any subsequent order" be deleted."

The amendment was negatived.

Mr. President : The question is:

"That the proposed Para 6 of the Fifth Schedule stand part of the Schedule."

The motion was adopted.

Para 6 was added to the Fifth Schedule.

Paragraph 7

The proposed Para. 7 was added to the Fifth Schedule.

Mr. President : The question is:

"That the Fifth Schedule as moved by Dr. Ambedkar stand part of the Constitution."

The motion was adopted.

Fifth Schedule was added to the Constitution.

Sixth Schedule

Mr. President : We now go to the Sixth Schedule.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in sub-paragraph (1) of paragraph 1, before the words, 'The tribal areas' the words 'Subject to the provisions of this paragraph' be inserted."

Originally, the draft merely said that the Tribal areas were those which were included in the table attached to this Schedule. There was no power given to define the boundaries of those areas included in the Table. It is felt that it is necessary to give the Governor die power to define the boundaries of those areas included in the Table. In order to provide for this power for the Governor, it is necessary to add the words which are contained in this amendment.

Mr. President : Amendment number 99 also relates to paragraph 1.

The Honourable Dr. B. R. Ambedkar : May I move that ?

Mr. President : Yes.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

That for sub-paragraph (3) of paragraph 1, the following sub-paragraph be substituted :—

"(3) The Governor may, by public notification—

(a) include any area in Part I of the said Table,

(b) create a new autonomous district,

(c) increase the area of any-autonomous district,

(d) diminish the area of any autonomous district,

(e) unite two or more autonomous districts or parts thereof so as to from one autonomous district,

(f) define the boundaries of any autonomous district:

Provided that no order shall be made by the Governor under clauses (b), (c), (d) and (e) of this sub-paragraph except after consideration of the report of a Commission appointed under sub-paragraph (I) of paragraph 14 of this Schedule."

In this amendment, the new things to which attention must be drawn are, included in sub-clauses (e) and (f) of sub-paragraph (3). That is necessary because it may be required, in any particular state of affairs, that two or more autonomous districts may be united together. The power contained in sub-clause (f) is also necessary because it may be desirable to define the boundaries in case there is any particular dispute between the different tribes.

The proviso introduces a change. By comparing the proviso with the original provisos, it will be seen that there were two provisos to sub-paragraph (3). In the first proviso, the Governor could act under clause (b) or clause (c) on the recommendation of a Commission. But, if he wanted to act under clauses (d) or (e) he was required to have a resolution of the District Councils of the Autonomous Districts concerned. It is felt that this distinction made by the two provisos for the different parts of sub-paragraph (3) is not necessary. It is better to make it uniform by requiring the Governor to act after consideration of the report of a Commission which is proposed to be appointed under sub-paragraph (1) of paragraph 14 of this Schedule.

Mr. President : As regards this Schedule, as the Schedule as a whole has not been changed but only certain amendments to some of the paragraphs have been suggested, I propose to take this paragraph by paragraph. Regarding the first para, these are the two amendments which have been moved on behalf of the Drafting Committee. I will now take the other amendments of which notice has been given. There are some printed in the second volume of the list of amendments.

(Amendments 3489, 3490 and 3491 were not moved.)

There is one amendment that paragraphs 1 to 16 be deleted. I do not know whether to take it.

The Honourable Dr. B. R. Ambedkar : That need not be taken.

Mr. **President :** Yes. The Member can vote against each paragraph. It is not necessary to take it now.

No. 101 Shri Brajeshwar Prasad.

Shri Kuladhar Chaliha : I have No. 100. Sir, I want both the provisos to be taken out but here one proviso has been taken out but the other remains in, the next paragraph. If you look at para. 14 you will find this :

> "provision of educational and medical facilities and communications in such districts;
> the need for any new or special legislation in respect of such districts; and
> the administration of the laws, regulations and rules made by the District and Regional Councils."

But you do not find mention of these subjects in paragraph 3. It mentions something else. Unless para. 14 is modified or amended, I do not think it would cover these subjects. As such my object is that we should delete this entirely so that there will be no necessity of having a Commission and the Governor may by public notification can do these.

Shri T. T. Krishnamachari : If he reads Amendment 134 tabled by the Drafting Committee, he will find the answer to his query. It covers these.

Shri Kuladhar Chaliha : I have read 134. It covers to a certain extent but I do not want that it should be done by a Commission. A Governor means of course the Cabinet. I do not want a Commission. The Governor would have the power in consultation with his Cabinet to discuss these things and if it is be left to a Commission there will be obvious delay, You have also not decided as to the composition of the same and who will be members, whether the, legislature will be represented in it or whether there will be only selected members from the autonomous districts. None of the Plains areas which are somehow or other by fluke included in the Hills will ever be excluded. Unless it is definitely stated that the members of the Legislature will be represented, it will have no effect. As such I feel that para. 14 as drafted will not satisfy. You should declare what will be the composition of this Commission. Unless that is decided properly, the defect remains there. As such I submit that this proviso should be deleted. I therefore move:

"That with reference to amendment No. 3487 of the List of Amendments (Volume II), the provisos to sub-paragraph (3) of paragraph I be deleted."

Shri Brajeshwar Prasad : There are three amendments and I would like to know whether I should move also 188, 190 and 191.

Mr. President : You can move them. 101 and 102 are the same as Mr Chaliha's.

Shri Brajeshwar Prasad : I will move 103. I move:

"That the following be added at the end of paragraph 1 :—

'The functions of the Governor under this paragraph shall be exercised by him as the agent of the President'."

or alternatively,

"The functions of the Governor under this paragraph shall be exercised by him in his discretion."

There are other amendments. I move:

"That in sub-paragraph (3) of paragraph 1 for the word 'Governor' the word 'President' be substituted."

I also move:

"That the two provisos to sub-paragraph (3) of paragraph 1, be deleted."

Mr. President : It is the same as Mr. Chaliha's.

Shri Brajeshwar Prasad : Then it may not be taken as moved. The effect of these amendments, if approved by the House, will be to place the administration of the tribal areas in Assam under Central jurisdiction. I am very serious when I suggest that it is necessary in the interest of the country that these areas should form part of the Centre. I have tabled 49 amendments in this Schedule VI and I had similarly tabled 49 amendments in Schedule V. It was not due to any lack of seriousness on my part that I did not move those amendments.

Sir, it was in accordance with the wishes expressed on the floor of the House that the time at our disposal is short and that we wanted to finish this work before the commencement of the Dusserah vacation, that is why I did not move them. But, if the criterion of seriousness is the moving of amendments, I am prepared to move all these 49 amendments.

Well, Sir, I am opposed to handing over the administration of the tribal areas into the hands of the provincial government, because Assam is on the border of five or six foreign Slates. I am referring to China, Tibet, Burma and Pakistan. Sir, in Assam, the conflicts between the Ahoms, and the Assamese, the Bengalies and the Muslims and the Mangoloid races have assumed proportions of which probably we the members of the House are not fully aware and so do not realise the gravity of the situation with which the Government of Assam is confronted. Sir, infiltration on a mass scale is going on from East Bengal and the, Government of Assam has not been able to check it, and I understand that in spite of a request that the Government of Assam made to the Centre to provide facilities to enable it to check this, somehow or other, no facilities were given to the Government of Assam and the result has been mass infiltration of fifth columnists and subversive elements, not only from East Bengal, but from all those States which I have mentioned a few minutes back. Sir, the conflict between the Bengalees and the Assamese 'in Assam, the conflict between the Hindus and the Muslims and the conflict between the tribals and the non-tribals, these are the problems with which the Government of Assam is confronted. About 72 per cent, of the budget of the province is swallowed up in the form of salary bills..

Therefore Sir, is it right, is it safe, is it strategically desirable, is it militarily in the interests of the Government of India, is it politically advisable, that the administration of such a vast tract of land should be left in the hands of the provincial government, especially in a province where there is no, element of political stability ? Sir, I love this country more than provincial autonomy. I know the problems in Assam are too complicated and are beyond the economic resources of the province to tackle, they are much too complicated and large to be tackled by the Provincial Government of Assam. Therefore these problems should be left into the hands of the experts, social workers, doctors, teachers, engineers, psychologists, professors, 'philosophers, and sociologists, and no politicians should be allowed to meddle in this affair.

Mr. President : Mr. Chaliha, then I take it that your amendment is also moved ?

Shri Kuladhar Chaliha : Yes, Sir.

Mr. President : I do not think there is any other amendment to this paragraph. Dr. Ambedkar, would you like to say anything?

The Honourable Dr. B. R. Ambedkar : Sir, there are just two points which have been raised in the course of the remarks made on these amendments which call for reply. The first question is the one, which was raised by Mr. Chaliha. I must say I was somewhat surprised at the amendment tabled by Mr. Chaliha, because like the Fifth Schedule the Sixth Schedule also has arisen, so to say, out of an agreement between the Drafting Committee and the Premier of Assam, my Friend Mr. Nichols Roy and at which conference Mr. Chaliha also was present, and he accepted the new schedule as amended by the Drafting Committee. However, it cannot take long to dispel the doubt he has in his mind as to who would constitute this Commission, who would be its members, and all matters relating to the Commission. I think if Mr. Chaliha had only read carefully the wording of the Sixth Schedule he would have been that in appointing the Commission the Governor is not going to act in his discretion. There is no discretion left in the Governor. That being so, it is quite obvious that in constituting the Commission, and defining its terms of reference, the Governor would be guided by the advice of the local ministers, and I do not think, therefore, there need be any fears such as the one that he has expressed.

Now, with regard to the amendment of my Friend Mr. Brajeshwar Prasad, this is the one amendment I think in which so far as I am concerned, I, feel that he has urged some serious argument. He says that the whole of the tribal area should be lifted from the Province of Assam and should be made a Centrally administered area, because there cannot be any other effect of the amendment which he has put forward except the one which I have suggested. It means practically constituting the area as a Centrally administered area. But he seems to have forgotten two things. The first is this. Although we have constituted autonomous districts for the purpose of the satisfaction of the tribal people living in those areas that they will have, at any rate for the first ten years, autonomy in the matter of the government of their areas, we have nowhere provided that the autonomous districts shall not constitute part of the province of Assam. That being so, it is very difficult to leave part of the Province to be governed by the Governor of the province and part of the province to be administered as a Centrally administered area.

The second point he has forgotten is this. He has forgotten to take note: of the fact that even in constituting the autonomous areas, the Drafting Committee has not forgotten that there are what are called certain "frontier areas", bordering on the autonomous districts. It has been provided in this Schedule that so far as the administration of these frontier areas of Assam is concerned, the Governor would be acting under the President. Consequently whatever strategic importance, the frontier areas may have, the Centre would certainly have ample jurisdiction to see that none of the disturbing factors to which he has made reference will find any place there. I therefore, think that all these amendments are unnecessary and out of place.

Shri Kuladhar Chaliha : Is amendment No. 139 accepted?

The Honourable Dr. B. R. Ambedkar : I cannot say off-hand now. I am only dealing with your amendment and the amendment of Mr. Brajeshwar Prasad, and I think they are unnecessary.

Mr. President : And amendment No. 139 has not been moved at all. It deals with paragraph 14.

The Honourable Dr. B. R. Ambedkar : We shall deal with it when we reach paragraph 14.

Shri Kuladhar Chaliha : But it is connected with this, practically.

Mr. President : We cannot take up paragraph 14 now. So now I put the amendments to vote. First I put. No. 98 of Dr. Ambedkar—The question is:

"That in sub-paragraph (1) of paragraph 1, before the words 'The tribal areas' the words 'Subject to the provisions of this paragraph' be inserted."

The amendment was adopted.

Mr. President : Then I put amendment No. 99. The question is:

That for sub-paragraph (3) of paragraph 1, the following sub-paragraph be substituted:—

"(3) The Governor may, by public notification—

(a) include any area in Part 1 of the said Table,
(b) create a new autonomous district,
(c) increase the area of any autonomous district,
(d) diminish the area of any autonomous district,
(e) unite two or more autonomous districts or parts thereof so as to form one autonomous district,
(f) define the boundaries of any autonomous district:

Provided that no order shall be made by the Governor under clauses (b), (c), (d) and (e) of this sub-paragraph except after consideration of the report of a Commission appointed under sub-paragraph (1) of paragraph 14 of this Schedule."

The amendment was adopted.

Mr. President : I think the other amendments, which relate to the deletion of the proviso, do not arise after this has been passed. There is only one amendment which now remains, the one moved by Mr. Brajeshwar Prasad. I put it to the House. The question is :

That the following be added at the end of paragraph 1:—
"The functions of the Governor under this paragraph shall be exercised by him as the agent of the President."

The amendment was negatived.

Mr. President : Then there are two other amendments moved by Mr. Brajeshwar Prasad.

Mr. President : Amendment No. 188—

The question is:

"That in sub-paragraph (2) of paragraph 1, for the word 'Governor' the word 'President' be substituted."

The amendment was negatived.

Mr. President : Amendment No. 190—

The question is :

"That in sub-paragraph (3) of paragraph I, for the word 'Governor' the word 'President' be substituted."

The amendment was negatived.

Mr. President : I now put paragraph 1 as amended by Dr. Ambedkar's amendment.

The question is:

That paragraph 1, as amended, stand part of the Schedule.

The motion was adopted.

Paragraph 1, as amended, was added to the Sixth Schedule.

The Assembly then adjourned till Nine of the Clock on Tuesday, the 6th September 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA
Tuesday, the 6th September, 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION-*(Contd.)*

Sixth Schedule-*(Contd.)*

Paragraph 2

The Honourable Dr. B. R. Ambedkar (Bombay : General): Sir, I beg to move :

"That in sub-paragraph (1) of paragraph 2, for the words 'not less than twenty and not more than forty members, the words 'not more than twenty-four members' be substituted."

This amendment is introduced because it was felt that the original number forty might be too large.

Sir, I move :

"That sub-paragraph (2) of paragraph 2 be deleted."

The reason why the deletion is made is-because we propose to leave the delimitation of constituencies to rules rather than provide it in the Constitution itself.

Sir, I move:

"That after clause (d) of sub-paragraph (7) of paragraph 2, the following clause be added :--

'(dd) the term of office of members of such Councils;' "

This was omitted from the rule-making powers.

Shri Kuladhar Chaliha (Assam: General): Sir, I move:

"That with reference to amendment No. 3487 of the List of Amendments (Vol. II), at the end of sub-paragraph (5) of paragraph 2, the following be added :-

'subject to such directions as may be given by the Governor or by the Legislature of the State.' "

Para. 2 sub-para. (5) reads :

"Subject to the provisions of this Schedule the administration of an autonomous district shall, in so far as it is not vested under this Schedule in any Regional Council within district, be vested in the district council for such district and the administration of an autonomous region shall be vested in the Regional Council for such region."

If you allow this sub-para as it is there will be injustice done to us, unless this proviso is there, viz., "subject to such directions as may be given by the Governor or by the Legislature of the State."

The Nagas are a very primitive and simple people and they have not forgotten their old ways of doing summary justice when they have a grievance against anyone. If you allow them to rule us or run the administration it will be a negation of justice or administration and it will be something like anarchy.

If you see the background of this Schedule you will find that the British mind is still there. There is the old separatist tendency and you want to keep them away from us. You will thus be creating a Tribalstan just as you have created a Pakistan. The ultimate result will be that you will create a Communistan, and hence it is that I am suggesting this amendment "subject to such directions as may be given by the Governor or by the Legislature of the State.

There are so many people of our country, so many Assamese, Punjabis and Sikhs- all people of the country. You cannot consign them to mis-rule, to a primitive rule. It is impossible that they should remain such. It is said that they are very democratic people, democratic in the way of taking revenge; democratic in the way that they first take the law into their own hands. And it is threatened by some that they are so democratic that they will chop off our heads. They have not been able to chop off our heads for the last three thousand years and till 1948 they have not been able to do anything, and we are not afraid that they will chop off our head if they are not given independence of administration. It is a threat which is useless and worthless. We should not be frightened by these threats of some people who say that they will come down on us. This is intended to be imposed on us by the threats of some people, and we should be aware of these interested persons. There is no need to keep any Tribalstan away from us so that in times of trouble they will be helpful to our enemies.

In the subsequent provisions of this Schedule you will find that an Act of Parliament cannot be imposed on them unless they consent to it. Have you ever heard that an Act of Parliament cannot be applicable to any people unless they agree to it ? Such a thing is impossible and therefore I say that this Schedule has been conceived in a way the background of which is to keep them away from us and to create a Tribalstan. And the result will be that there will be a Communistan there. The Communists will come and they will have a free hand, as in Manipur one of the Ministers was already a Communist. Your Governor will not be able to act, your Parliament will not be able to act. If you go on like this we will have no government there. The whole Schedule is conceived in a way which is a negation of government. As such I commend this to the consideration of the Drafting Committee. I commend this to Dr. Ambedkar who should think over again and not conceive it in the way they have conceived this schedule.

Mr. President: You may move No. 257 also

Shri Kuladhar chaliha: Sir, I move:

"That in amendment No. 105 of List I (Seventh Week). in sub-paragraph (1) of paragraph 2, for the words 'not more than twenty-four members' (proposed to be substituted), the words 'not more than fifteen members' be

substituted."

The Naga Hills contain only a lakh and seventy thousand people and it contains about ten tribes. If you give them for every district twenty-four members it will be too much. They will quarrel among themselves. The less the number the better. Therefore I have suggested in my amendment fifteen for twenty-four and one-third will be nominated by the Governor. In order to make a proper proportion ten will be elected and five will be selected by the Governor. Therefore I commend this amendment to the House. It is no one having twenty-four. It is much too many. There are ten tribes having a population of about 1,70,000 and the villages or tribes will be about from 1,000 to 2.000 per ten tribes. They ought not to have so many members. It will be only giving cause for trouble. As such the number should be less. I should say that the number should even have been five. It should not be so much, as it will lead only to interminable quarrels and trouble to the Governor and trouble to us.

(Amendment No. 3493 was not moved.)

Mr. President : Nos. 109,. 110, 111 and 112 are based upon 3493. They do not therefore arise now.

Shri Brajeshwar Prasad (Bihar: General): This can very well fit in as an independent amendment as well. I will move only 110 and make a few general observations.

Sir. I beg to move:

). "That in amendment No. 3493 of the List of Amendments (Volume II), for the proposed new sub-paragraph (7-A) of paragraph 2, the following be substituted :-

'The functions of the Governor under sub-paragraph (7) shall be exercised by him as the agent of the President.' "

I am thoroughly opposed to paragraph 2. I am opposed to the division of India into Provinces. I can never be a party to dividing Assam into a large number of sub-Provinces. This is exactly what sub-paragraph (4) of paragraph 2 does. I am opposed to the District Councils and Regional Councils because they will lead to the establishment of another Pakistan in this country. I stand second to none in my enthusiasm for social, educational and cultural advancement in the tribal areas of Assam. For it is on the achievement of these 'objectives that the security of the State can be guaranteed. But the step that we have taken is neither in accord with the general well-being of the tribals nor with the interests of the people of India as a whole.

The responsibilities of parliamentary life can be shouldered by those who are competent, wise, just and literate. To vest wide political powers into the hands of tribals is the surest method of inviting chaos, anarchy and disorder throughout the length and breadth of this country.

I may be confronted with the question "What will you say to the tribals if they come and tell you that they want political autonomy and all the powers that have been vested in the District and Regional Councils ?" I will never concede this demand. I am not in favour of the principle of self-determination. I believe in the principle of the greatest good of the greatest number. I will not jeopardise the interest of India at the altar of the tribals. The principle of self-determination has worked havoc in Europe. It has been responsible for two world wars in my life-time. It led to the vivisection of India, arson, loot, murder and the worst crimes upon women and children. It led to the assassination of Mahatma Gandhi. I do not find myself equal to the task of supporting the formation of these District and Regional Councils on the ground that the principle of self-determination must be supported by all. Let those who believe in political shibboleths support the provisions of paragraphs 2. I am strongly opposed to it.

The argument may be raised that we are doing nothing new in vesting powers into the District and Regional Councils.

Democratic institutions exist in the tribal areas. Paragraph 2 only gives constitutional recognition to the existing state of affairs. Sir, I am not impressed by these arguments. If there is an evil it must be suppressed, however old it may be.

Another argument may be advanced that the Scheduled areas and the reforms that have been incorporated are based upon the report of the Tribal Committee of which Shri Thakkar Bapa was the Chairman and that it had the support of the Premier of Assam. I hold the view that the political implications of that report have not been grasped. We are doing a great disservice to the people of this country as a whole. Frankly stated, my own view is that you should be appealed to direct the Drafting Committee to reconsider this Schedule. We are jeopardising the interests of the whole country. This is not a question in which the people of Assam only are concerned. This is a question which affects the whole of India. This question affects the defence of the country as a whole. I hope my friends from Assam will rise to the occasion and treat the question in that light. I request you, Sir, to send back this Schedule to the Drafting Committee for re-consideration. This should be re-drafted on the lines of the Fifth Schedule. The existing Schedule Six bristles with difficulties and it may lead to anarchy and chaos later on unless it is suitably amended now.

Mr. President : Amendment No. 192 standing in the name of Mr. Naziruddin Ahmad need not be moved. These are all the amendments to be moved.

The Honourable Shri Gopinath Bardoloi (Assam: General): Mr. President, Sir, I did not want to participate in this debate. But it seems to me that many Members are not fully cognizant of the tribal situation in Assam, and what is more, many have not been able to appreciate the background of the recommendations of the Advisory Sub-Committee set up by the Constituent Assembly for the purpose of enquiring into the tribal situation in Assam.

I wish to state, Sir, that there are three categories of tribals in Assam. There are the plains tribals-- men who were the original inhabitants and who have a culture and civilization of their own. They were gradually absorbed into the folds and the culture of other plains people, to put more appropriately the Aryan culture. These people have now been classed with the minorities, just as the Scheduled classes and they have been granted the same rights as the other minority community.

Then there are the hill tribes proper. These again can be divided into two clear categories. One such class of hill tribes is administered by the Governor as the Agent of, the Governor-General of India and the other class, coming under the Sixth

Schedule, is proposed to be administered as autonomous groups. We are not concerned with the first category in the Sixth Schedule except to extent of the provision contained in paragraph 17 which says that any area now administered by the Governor as the Agent of the Governor-General, can be brought under the category of autonomous districts in his discretion only under certain circumstances. For that purpose the Governor has been given power as mentioned by me under paragraph 17.

Now I would like to give this information to the House that in the Agency area these tribes have no self-governing institutions of their own at the present moment. The draft Constitution provides that these areas should be administered directly by the Governor without any restriction whatsoever. But the time may come when they may become fit to govern themselves. The proposal is that at that time they may be brought under the category of autonomous districts. These areas lie on the northern banks of the Brahmaputra on the foothills of the Himalayas. The others who come under the category of autonomous districts are those who inhabit the southern bank of the river bordering Burma and Pakistan. There are some six different types of tribes among them and the autonomous districts are envisaged for them.

Now I want to place before you the background in which this draft had to be formulated. It is not unknown to you that the rule of the British Government and the activities of the foreign Missions always went together. These areas were formerly entirely excluded areas in the sense that none from the plains could go there and contact them. That was the position till 15th August 1947, when India became independent. The foreign rulers till then had in these areas power to send out of the place anyone they desired within 24 hours. Again, Sir, some of these areas were war zones. During the war, the then rulers and officers developed in the minds of these tribal people a sense of separation and isolation and gave them assurances that at the end of the war they will be independent States managing their affairs in their own way. They were led to believe that the entire hill areas would he constituted into a province and put under some irresponsible Governor. You might possibly have read in the papers that plans were hatched in England in which the ex- Governors of Assam evidently took part, to create a sort of a Kingdom over there.

Now, with this background, Sir, our investigation began early in 1946. People of this area were already fully suffused with these ideas of isolation :and separation. The most important fact that presented itself before this Committee was whether for the purpose of integration the methods of force, the methods of the use of the Assam Rifles and the military forces, should be used, or a method should be used in which the willing co-operation of these people could be obtained for the purpose of governing these areas.

Sir, it is necessary to mention here that there are certain institutions among these hill tribals which, in my opinion, are so good that, if we wanted to destroy them, I considered it to be very wrong. One of the things which I felt was very creditable to these tribals was the manner in which they settle their disputes. Cases which would go in the name of murder according to our Penal Code were settled by these people by the barest method of Panchayats decision and by payment only of compensation. Then, the democracy which prevails there--through limited in the sense it is confined only to the tribals of a clan or region--will rouse the admiration of any disinterested student. And again take the instance of their village administration. The district authorities have indeed very little to concern themselves with the way things go on there. Take again the case of Ao Nagas who distributed the entire functions of the society through certain age groups of people in their society. The boys would perform certain simple functions, leaving the sturdier functions of the State to the adults, while the elders would give their judgments in cases of disputes and order distribution of lands for jhuming and things of that kind. In other words, they are exercising a certain amount of autonomy which, I thought, and the members of the Tribal Sub-Committee thought, should be preserved rather than destroyed. What is necessary for good government is already there.

It is true that some of these tribal people sometimes indulge in head hunting, but it should be clearly understood that this is only when there is enmity of one clan against another. These people nurtured a spirit of collective hatred in them for generations. The point therefore that presented itself to us was whether we should raise in their a spirit of enmity and hatred by application of force or whether we should bring them up under the broad principle of government by good will and love. The Advisory Committee thought that the latter course was the course that should be adopted. I myself am a firm believer in Gandhian principles. If therefore Gandhian methods are to be followed, there is no alternative but to adopt the course which we have thought was the best method. Now, with that background the draft was prepared and was placed before, you. In the meantime, great changes have come in the structure of the Government of India. More powers are being vested in the Centre today than it was contemplated then. Therefore those powers at present have to be put in the appropriate place. The trend of criticism on the amendments that have been submitted seems to indicate that we gave more powers to these autonomous Councils, perhaps very much beyond what the State Legislature of Assam could. I do not agree with this view. As a matter of fact, most of these provisions are nothing more than translating something which already prevails in the tribal societies, and therefore we are not giving too much as has been pointed out by some of my friends.

Then coming to the amendments which have been moved by Mr. Chaliha, excepting for what he was objecting to that a particular place Dimapur, has been included in the Naga Hills, the rest have all been accepted by the Drafting Committee. It is true that the, area was included in the Naga Hills only for administrative convenience. The Drafting Committee have however provided for two things. First, that any area as a whole could be excluded from the autonomous district Secondly it has also been provided that the men who are living there or similar area shall have the right of exercising their vote in a neighbouring general constituency.

I submit, therefore, that nothing has been proposed here which is not in line with the pattern and the structure of the Constitution which we are framing for the whole of India, and that wherever there was any anomaly, that anomaly has been removed. That is all that I have to say. I therefore request that the Movers of these amendments take into consideration the background of the draft and also the peculiar conditions which prevailed in the hills before.

Shri Rohini Kumar Chaudhuri (Assam: General): May I ask the honourable Member to refer to that provision of the new Constitution whereby the people--non-tribal people-living in a tribal area can exercise their choice in areas not included in the tribal area? In the first, place the tribal areas as it now stand, are not final. The Governor is given the power of fixing the boundaries. Again 16(a) reads as follows :-

"*Exclusion of areas from autonomous districts in forming constituencies in such districts*—For purposes of elections to the Legislative Assembly of Assam. the Governor may by order declare that any area within an autonomous district shall not form part of any constituency to fill a seat or seats in the Assembly reserved for any such district, but shall form part of a constituency to fill a seat or seats in the Assembly not so reserved to be specified in the order."

That is the amendment we shall be moving. It would be seen that we have done nothing wrong to anybody of the plains : but have recognized the autonomy of these areas to the extent that the tribes are capable of exercising them.

I hope, Sir, in the. circumstances the amendments that had been given notice of are moved in an appreciative way and not in a spirit of destructive criticism.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. President, Sir, I have very carefully listened to the speech of the Honourable Mr. Gopinath Bardoloi. I do admit that we are not very much conversant with the conditions in the autonomous districts and therefore, I accept what he has said and I also want to assure him that the House will give him full opportunity to have the government of the area in the way in which he wants it. I do feel, however, that there must be some method by which these autonomous districts should at some later date at least be absorbed in and become part of the normal population of the whole province.

The Honourable Dr. B. R. Ambedkar : If you like, Sir, I would make a few observations at this stage and then probably many people may not find it necessary to speak and all these doubts, I think, would have been dispelled.

Prof. Shibban Lal Saksena: I only wanted to say that if this scheme of thing, is going to be put in a permanent Constitution that will mean that some areas of Assam shall remain beyond the control of Parliament for ever. I want that for ten years, fifteen years. or for a fixed period or time, this may be provided for together with whatever else you want for their welfare, but let us conceive of some time after which these people should become absorbed in and become part of the normal population of the province and it should not be necessary to have a separate province for them. I tried to study the whole Schedule, and I did not find any such provision in the amendments which are to be moved. Dr. Ambedkar has moved article 20 by which Parliament can amend the Schedule, but no method is indicated to bring in those areas into greater affinity with the rest of Assam. This separation will take a permanent character and it may lead to the division of the province itself. The honourable Mr. Gopinath Bardoloi has given us the background under which this has been done, but I do want that with that background, we must foresee the future and should try to amend this Schedule in such a way that after some considerable time, say ten or fifteen years, these Scheduled areas may not be necessary and that they may become part of the whole province of Assam.

Mr. President: Power is given to the Parliament under the paragraph 20 to repeal the whole of the Schedule, if it thinks necessary. What more do you want ?

Prof. Shibban Lal Saksena : Sir, I have referred to this fact in my speech.

Mr. President: Does Dr. Ambedkar like to say anything at this stage?

The Honourable Dr. B. R. Ambedkar : If you like, Sir, now that Honourable Members want to speak, let them speak.

***Shri Rohini Kumar Chaudhuri** : Mr. President, Sir, I have listened with great attention to the speech which has been delivered on the floor of this House on the question of protection of the interests of the tribal people. After having heard the opinion of the tribal Members themselves, after having seen the attitude which has been taken by the non-tribal Members of this House, who have very little information about the conditions obtaining in the tribal areas, the only reaction which has come to my mind is this : India, independent India, we were. It is on account of differences amongst ourselves that India was lost to the Mughals and Pathans. It is on account of a policy of appeasement that we had ultimately to lose some prosperous areas of this India to be lost entirely and to be converted into Pakistan. I want this House and through this House, the people of India to know that on account of the wrong information which the persons in authority have and on account of the want of information of among the persons not in authority, India is going to lose a great deal, and is going to lose entirely the whole of the tribal areas. In truth, Sir I say I have no information worth the name about the tribal areas and at the same time, I shall say that none of my honourable Friends here, not even the Honourable the Premier of Assam, has much of in information about the tribal areas in India. *(Hear, hear).* The reason is not due to the negligence or indifference of the Honourable the Premier but is due to the state of things which existed before the independence of this country. The Honourable Premier when he was the Honourable Premier before Independence came to India had not the right to visit the tribal areas; he did not have free access to these areas and he could have gone there only with the Permission of the Governor and not otherwise. That was the position. The Honourable Rev. Nichols Roy who was also one of the Ministers--he too could not have gone to any other tribal areas, except perhaps to Khasi Hills. As a matter of fact he never went anywhere except perhaps to Naga Hills on business. I do not know, but absolutely there was no means of knowledge either by himself or by anybody in the public or by anybody in the Ministry to know about these tribal areas. Sir, these tribal areas were kept as a close preserve by the British people. When the I. C. S. officers came to India, their first concern was to find out some territories in the Province of Assam where there were no mosquitoes, there were not lawyers and where there were no public men. That was the first aim of the officers there, and whatever rules they framed for the administration of justice in these hill areas, whatever rules they framed for the conduct of business, these rules were framed in order to keep these tribal areas exclusively as a different country from the rest of India, where Europeans could live as Europeans, enjoying the same climate., enjoying the same authority and enjoying whatever it pleases them to get in India. That was the whole object. That was the object. Therefore, none but the Christian missionaries, and missionaries of no other religion, were allowed to visit those areas. There was no provision in the rules and regulations that a man should be defended by a lawyer or any one of that kind, even in a most serious criminal case, because he had no right to be defended. He can get special permission to be defended; but he had no right to be defended; not to speak of civil courts. No lawyers were allowed to remain in these hills and practise there. No other people were allowed to migrate to these areas except with the permission of the authorities. The British wanted to keep the people of these areas as primitive as possible. I tell you, and the House will be surprised to learn that in the Naga Hills, -- Naga means naked,-- people used to go about naked in the past. There was a Deputy Commissioner who used to flog any Naga who was dressed in Dhoti. The British wanted the Nagas to remain as they were they should not clothe themselves properly;they should not live like civilised men. That was the position, I may tell you.

Shri Kuladhar Chaliha : Dhoties were not allowed to be worn by the Nagas. That was the order of the Deputy Commissioner all the time.

Shri Rohini Kumar Chaudhuri : What is more, Sir, you will be surprised to learn that before the advent of the British, these Nagas were friendly with the Assamese. They had adopted the Assamese language. This was so till about ten years ago when the Roman script was introduced forcibly by the British officers. Even up to that date Assamese used to be the court language of the Nagas. During the last ten years, they have tried to substitute the ordinary Bengali by the Roman script. The same sort of rules apply to the Ballipara Frontier tract, the Sadiya frontier tract and all the Hill areas, including the Garo hills. In the Garo Hills there are a large number of non-tribal people. Even in the Garo Hills, Assamese and Bengali used to be the court language before in the early days of the British occupation. The British gradually substituted these scripts and language and introduced English. That is how they were doing. I do most regretfully observe that what Dr. Ambedkar is doing in regard to this Schedule VI is that he is closely, absolutely closely, following, except in some cases, the British method. He is wanting to perpetuate the British method so far as the tribal areas are concerned. This action on his part is due more to ignorance than to intention. I would therefore respectfully submit to this House not to be impatient to reconsider the whole question in its proper perspective. Let this Constitution about the tribal areas be worked out by persons who have a direct and intimate knowledge of the affairs in the tribal areas. None of these persons. I assert with all the emphasis that I can command, neither my honourable Friend Mr. Munshi, neither Dr. Ambedkar nor my honourable Friend the Premier of Assam, have any intimate knowledge of the affairs going on in the tribal areas. There are good reasons for this; I do not find fault with them. But, after the attainment of independence, they can acquire that knowledge, they can go about and find out. Let a small committee of this House composed of people of tribals and non-tribals go round the areas, see the condition of things themselves and let them revise the whole constitution, in this Schedule. That is the only course open now. Unless you wish to lose the entire tribal people, unless you wish to lose control over the tribal areas, the only course which is left open to this House would be to have a small committee consisting of persons in whom we can have confidence. Let them go, round the tribal areas and let them revise the whole Constitution. That would be proper method.

We want to assimilate the tribal people. We were not given that opportunity so far. The tribal people, however much they liked, had not the opportunity of assimilation. So much so, that I living in Shillong cannot purchase property from any Khasi except with the permission of the Chief of the State or with the permission of the Deputy Commissioner. I have no right to purchase any property in the tribal areas. An Indian has no right to purchase lands in those areas without the permission of the Deputy Commissioner or the Chief of the State. That ridge is still continued. If this

Constitution is adopted, those disabilities still continue. I am not allowed to associate with the tribal people; the tribals are not allowed to associate with me. Here comes our Friend Mr. Nichols Roy pleading for autonomous districts. Why do you want autonomous districts ? My honourable Friend Mr. Bardoloi says that he wants autonomous districts in order to educate the tribal people in the art of self - government. Why not give them local self-government itself ? (*Interruption*) You will be surprised to learn that in none of these hills there is a municipality except in the Shillong administered areas. This Municipalities Act of Assam is not in force in any of the tribal areas. The Local Self-Government Act by virtue of which District Boards and Local Boards are formed is not in force in the tribal areas. If you really want to educate the people of the tribal areas in the art of self-government why do not you introduce this Act in those areas? Why do you want autonomous districts for these Municipal purposes. Why not introduce the Municipalities Act? Then, they will themselves know the art of self-government. Why do you want to dissociate them from us by creating these autonomous districts which will remain autonomous ? Do you want an assimilation of the tribal and non-tribal people, or do you want to keep them separate, ? If you want to keep them separate they will combine with Tibet, they will combine with Burma, they will never combine with the rest of India, you may take it from me.

Shri Jaipal Singh (Bihar : General) : Question.

Shri Kuladhar Chaliha : Mr. Jaipal Singh attend the British club in Shillong.

Shri Rohini Kumar Chaudhuri : This autonomous district is a weapon whereby steps are taken to keep the tribal people perpetually away from the non tribals and the bond of friendship which we expect to come into being after the attainment of independence would be torn as under. During the British days, we were not allowed to introduce our culture among those people. Even after the British have gone, we find the same conditions in the new Constitution of Dr. Ambedkar.

Shri A. V. Thakkar (Saurashtra) : May I ask, my Honourable Friend if this cannot be changed by a change in the Constitution by a good majority, say a two -thirds majority ?

Shri Rohini Kumar Chaudhuri : It can be changed. Therefore, I most respectfully request the Members of the House who do not belong to Assam to take more interest in this province of Assam. It is important that the honourable Members do so and agree to the formation of a Committee, an intelligent committee, to let them go round those areas and see things for themselves, speak to them and gain personal knowledge. You will find that this hatred on the part of the tribals is a thing invented by interested persons. Formerly, there were inter-marriages between the tribals and non-tribals. This hatred is being continued by interested persons.

Shri Lakshminarayan Sahu (Orissa : General): *[Mr. President, I would like to make a few observations with regard to this question. I had gone to Assam in 1938, not for travel but in connection with relief work. In that year, there had been devastating floods in Assam, I went there for flood relief work and toured every district, but could not go to the Naga Hills. The reason for my not going there would have been clear to you from the speeches so far delivered by other speakers. What was the cause? I would only like to say that the Nagas are headhunters; we could not therefore get an opportunity to work among them. Certainly we have to be careful in enacting laws for these, people. The regional councils we propose to set up for them, well, in my view neither benefit these people nor us; for these people have got an organisation for each tribe, which is like our *panchayat*. They hold their Panchayat in every village. Their customs differ from village to village. The regional councils set up there would make uniform laws and these are likely to cause any number difficulties among the various villages. In view of this, I would say that the powers vested in us, the Centre and the States should be kept intact. For a moment let us consider the likely consequences if we delegated these powers to these councils. The result would be that these people would develop on their own lines without in any way being connected with us. It is quite on the cards that after they have developed in this splendid isolation for a period of, say ten years, their ideas would be of an altogether different character, and under the stress of their different ideas they would begin to fight amongst themselves, and with us asserting that they are absolutely free. It is therefore, absolutely necessary that we proceed in this matter with the ,greatest caution and circumspection.

I am working among Kangh people of Orissa, among whom there is a system of human sacrifice. That system has been abolished by law. These people also have considerably changed in this respect. But even these we have often to overlook cases of such sacrifice, because even now there are cases of human sacrifice. Human sacrifice is done in great secrecy. Even if we come to know of such a case, we do not arrest them. This is the right course to follow. But the people like Kangh tribe who still perform human sacrifice have been included by us in the Constitution. Then why should we free the Nagas at once? I understand that we cannot bring them very much under the provisions of law; still we should see that we are trying to unite India into a common bound and as such we should not keep them aloof, out of fear. I therefore, wish that we should think over this and not hurry in the matter, for we can be strong only by doing so.

I would like to make one further observation. Mr. Rohini Kumar Chaudhuri has stated that he cannot purchase land in Khasi Hills, even though he lives in Shillong. We have got a similar law in Orissa and we wish that none should be able to take away land from the aboriginals since they do not understand their own economic interest. There should be an independent act for the lands and we have therefore provided for it. We wish to make the law stricter so that any outsider, who is not an aboriginal, should not be able to purchase land. Shri Rohini Babu has complained that he can not purchase land. But this must be the case, because till those people acquire some capacity for judgment, we should protect them by law. I would therefore like that, despite these Acts, we should confer such powers on this Council, that it may have a beneficial effect on their customs and traditions. By doing so we would be able to bring Naga Hills in line with the rest of India, because we regard them as a part of us and we should try strongly to bring them into our fold; we should not leave them aloof, for after ten years some difference may be created between them and us. We should therefore take this into consideration and make some modifications, and the differences of opinion between Premier Bardaloi and Rohini Babu and Shri Kuladhar Chaliha, should be taken into consideration though our respects are due to them.]*

Shri Jaipal Singh : Mr. President, Sir, I must confess that I have been shocked by the amount of venom that has been poured forth this morning by some of the Members against what they imagine the tribal people of Assam are going to do, if this or that is passed by this House. I wish that some of these Members were present when the Tribal Committee met when the Honourable Sardar Patel explained why he also had accepted the recommendations of the Tribal Sub-Committee for Assam. May I simply repeat what he said ? It was after considerable difficulty and negotiations that the tribal people of Assam were persuaded to agree to the recommendations. There was a definite understanding on the part of the rest of India that those agreements, those understandings would be, honoured. It was definitely on that understanding that the tribal people agreed to do away with the agitation that had been inspired by the departing rulers. I wish people would talk with knowledge. The learned Ambassador in Moscow; the day he left, gave us two solutions for dealing with situations. One was the power solution, the other was the knowledge solution. The vehement language of some of our Members inclines towards power solutions. They want to force the tribal people of Assam to do things against their wishes and expressed will. I suggest that is no solution at all. If you do that you are certainly going to bring about what you fear. You are not going to obviate, but you are going to bring about a further disintegration of India. It is useless now to blackguard the British for what they did and what their motives were in doing things in a certain way. What purpose does that black guarding serve ? Now, the whole matter is in our hands. Let us be states men like in handling these problems. It does no one any good to suspect the intentions of the tribal people of Assam. Do my friends believe that the Naga is not a man of his word? Do they mean that the people of the Lushai Hills are trying to deceive us? What do they mean? There is the definite understanding between the leaders and the Tribal Sub-Committee that went round the place. Then why this doubt.? I know there were difficulties in some of their trips. The Sub-Committee were prevented from going to some places, I know that. But all these obstructive tactics were inspired, we have got concrete evidence of that. And now the British are gone and it is for us to handle the situation. The idea of subjugating the tracts by requisitioning the Assam Frontier Rifles and so forth will not work. We must inspire confidence in our fellow citizens, in the hearts of the tribals of those hills. Let us do that, and let us do it genuinely and sincerely, and not try to run them down and think of them as though they were hostile to the Indian Union. They are not My friends complain that they have not been into these tracts. That is exactly the reason why they should be a bit chary of talking about these tribes.

I wish the country, as a whole, would appreciate the difficulty of my friend, the Honourable Shri Gopinath Bardoloi, the difficulties that he and his colleagues have ahead of them in coming into the picture for the first time, as far as the fully excluded areas of Assam are concerned. I do not think it is quite correct to say that it was altogether impossible for non-tribals to get into those tracts. Certainly, the so-called agitators were precluded, and were prevented from entering those areas. That is perfectly true. But I do not think it can ever be said that social workers were also equally prevented. I do not think that can be said. Assam is a very difficult province. The inter-group hostilities are not confined to the hill tracts only. What about the hostilities that exist, shall we say, between the hills and plains people? What about the hostilities that exist, say between the plains tribals and the hill tribals, I could go on. But it will be out of place now to harp on this sort of thing. But the hill people have agreed....

Shri Kuladhar Chaliha : May I know from the honourable Member if he can mention any instance of hostility between the plain tribals and the hill tribals ? Can he give one instance ? There is no use making generalisations, unless he can give us instances.

Shri Jaipal Singh : I do not think, Sir, it is necessary for me to go into details. I do not think it is necessary. If the House wants to accept my statement, it is there for it to accept. But I do maintain that there are various kinds of hostilities. Fortunately, in the new set-up we have an opportunity to forget the past and to make a happy beginning, in the beginning of which the hill people have given us their assurance, and I am very glad that the Tribals Sub committee have gone as far as they can, to accommodate the wishes of those hill tribes. And the tribal people themselves, the hill tribal people themselves also have climbed down, if I may say so, to meet the wishes of the leaders of the Province. There is no question of keeping the hill tracts permanently in water-tight compartments. It is not good for them. It is not good for Assam, nor for the rest of India. That will not happen. The world is getting smaller and smaller every day whether you like it or not. India cannot isolate itself from the rest of the world, not can the hill tribes. And more so after all these hill tracts have been occupied by the various warring forces in the last global war. They are no longer inaccessible. Now ideas have penetrated the tracts, these mountainous tracts that were previously inaccessible. The position has completely changed. There is a new outlook. It is no good trying to think of the Naga as the eternal head-hunter. I wish people would read Haimendorf's *The Naked Nagas* and try to understand these people even if they have not been to the Naga Hills. Let them understand what are the ideas that work behind the mind of the Naga. There are several books on these people. I know some of my friends think that just because these books happen to be written by non-Indians, they are worthless. That is a kind of attitude for which I have absolutely no use. There have been scientists, there have been anthropologists and various others who have written books, on the Assam hill tribes, and I would only wish that some of my friends had read some of them; and then they would have realised that the problems that my friend Shri Bardoloi and his colleagues have to tackle in the future are really immense, and I am indeed very glad that he has taken courage in his hands and he is confident the pattern of government, the pattern of administration that the sub-committee has recommended, while it may not be exactly all that he would like it to be, certainly gives him an opportunity to unite Assam, which in the past has been kept more or less in water-tight compartments. I would appeal to Members to be generous in what they say about the tribal people, to be generous to them and not think as if they were enemies of India. That seems to be the idea lurking in the minds of some here. They seem to think that they are going to get out of India and join Burma or join the communists or something like that. I am not pessimistic. Indeed, I am very optimistic about the future of Assam particularly if the Sixth Schedule, even with all its shortcomings, is operated in the spirit in which it should be operated, in a spirit of accommodation and in the real desire to serve the hill people of Assam, as our compatriots, and as people whom we want to come into our fold, as people whom we will not let go out of our fold and for whom we will make any amount of sacrifice so that they may remain with us.

Shri A. V. Thakkar : Mr. President, Sir, I consider it my duty to speak on this subject, as I happen to be one of the members of the committee appointed to enquire into the tribal matters of Assam. Unfortunately, I was laid up for some of the time when the Committee was on tour, and therefore I could not visit all the parts that the Committee visited. But I can say that I have good knowledge, and I have visited the Lushai Hills, though not the Naga Hills. But the Naga Hills were visited by me as early as the year 1926. I visited Kohima with the kind permission of our Friend Mr. Muhammad Sa'adulla who was one of the ministers then, and I was able to see Kohima, the headquarters, the capital of the Naga Hills. At that time I could see that the Nagas, were really naked Nagas, though perhaps now we may not be able to see them naked. But I am very much ashamed at the ignorance we are all showing about the knowledge of the tribals, in Assam especially. (*Hear, hear*). Even of my Friend Shri Rohini Kumar Chaudhuri, I would say that.

First I will try to answer my Friend Mr. Lakshminarayan Sahu. He was talking about Orissa, but not of the current century, but of the last century, of the year 1846 when one Mr. Mac Donald suppressed *maria* or human sacrifice ceremony. But why does he talk of things which existed one hundred years ago now in the year 1949 ? He was right in saying that at the present moment we do hear of complaints about human sacrifices being made even at the present day. But do not murders take place nowadays? Do not dacoities take place nowadays ? Do not firings take place nowadays ? Similarly, *maria* sacrifice that existed in the year 1850 does exist in the year 1949 or even 1950. Why compare that old state of things with the present state of things ?

Talking of Mr. Rohini Kumar Chaudhuri's remarks, I am afraid he has brought Assam politics into this Constituent Assembly. Let me ask him, Sir, with your permission as to why he did not offer evidence before the Tribal Committee that was touring in Assam. It was open to him to do it, it was open to him to give all his views about autonomous districts or about regional councils or anything else that was contemplated. Not that he was not in the know of it--he could have easily known it from all the Members of the Committee who were friends of his and who were colleagues of his. He could have done that, but he did not care to do so.

Talking of Nagas, I was the other day talking with my Honourable Friend the Rev. Nichols Roy. Nichols Roy. He reminded me of the fact that there were seven sub-divisions amongst the Nagas each having a different dialect of its own. I had read this many years ago but had forgotten it, he reminded me of the same. And who does not know even at the present time of the system of head-hunting that prevails among the Nagas? They are so ill-developed, they are so much behind in civilization that they go and fight with their neighbouring villagers--not to speak about the fight with the plains tribes about whom our friend Mr. Jaipal Singh was speaking--but of one tribe of Nagas killing another tribe of Nagas, Ao Nagas and Sema Nagas, and cutting off their heads and putting them on the door tops as a memento of their victory. Even last year when a friend of mine visited the Naga Hills, he said there were 150 cases being conducted in the court of law wherein 150 people were charged with head-hunting or taking part in it at the present day. Now, what do you say of such a thing as that ? Why take no notice of such a state of things existing at the present day ? The Committee, with its own difficulties, tried to inquire into the state of affairs not only the Nagas but of all the tribal area people and came to this particular conclusions on which is based Schedule No. VI. The Nagas are a very difficult race to deal with, I know. We had a Naga member on the Committee, Mr. Imti was his name. He was a graduate of the Calcutta University. Somehow or other he worked with the Committee for some time but afterwards withdrew because he was persuaded by his other Naga friends not to work with the Committee, not to give his helping hand and not to be one of us. That was an unfortunate thing.

Shri Kuladhar Chaliha : Mr. Imti is a man of Golaghat, is a Christian and was brought up at Golaghat itself.

Shri A. V. Thakkar : Is he not a Naga ?

Shri Kuladhar Chaliha : He is not. He was born and bred in Golaghat.

Shri A. V. Thakkar : But he is a tribal man, there is no doubt about that. I am sorry, my information is that he is a Naga-that is what he himself told me.

Shri Jaipal Singh : He is a Naga.

Shri A. V. Thakkar : He is a Christian, but what does it matter? He is an Ao Naga, that is what my other friends told me. If you like I will ask him by a special letter whether he is a Naga or a Mihir. But that does not change the question.

The Committee tried its best and put forward the proposal which was acceptable not only to the Committee but also to the various tribes themselves,--I mean this system of autonomous districts. When I heard first of the proposal of these autonomous districts, I myself too was surprised, let me tell you, because I had never heard of autonomous districts in any part of India elsewhere. But I came to know afterwards by the persuasion of friends that this is the only possible way there and that therefore the system of autonomous districts should be kept there for future modifications when the proper time comes for the same. There is no reason why we should fear this autonomous districts business and should not make the most of it, as if it were giving away or making States within States for or permanent period. It is not for a permanent period. All constitutions are changeable, all laws are changeable and we can change the law, change the constitution, when you think the time is ripe for it. In the meantime let us all study the question of the tribals as best as we can.

The Honourable Rev. J. J. M. Nichols Roy (Assam General): Mr. President, Sir, some of the aspersions that have been made here are really very unfortunate and they are based on a lack of knowledge of the conditions of the hills people in Assam. I wish that those honourable gentlemen, my friends who come from Assam, had visited these places, had mixed with the people and had known the feelings of these people, had known the desire of these people as expressed in meetings, in Committees and before the Sub-Committee also of which I was a member. Sir, the first principle for bringing about a feeling of reconciliation between people who are estranged from one another is that one must place himself in the place of another. I wish some of my friends who had spoken would place themselves in the place of these tribal people, place themselves in their conditions, study their views, realise what their ambitions and their aspirations are, and whether it they were in that place they would like those feelings and aspirations to be crushed to pieces and themselves just cowed down by the sword, or whether they would like to be won by love and by association and by the gradual understanding of one another. The attitude manifested in the way that speeches have been delivered by some friends of mine here perhaps due to lack of knowledge, if kept up, would actually upset the good association between the hills people and the gentlemen who have spoken; but I thank God for a leader like the Honourable Mr. Gopinath Bardoloi who is known to be very kind and sympathetic to all these hills people and who has been respected by these hill tribes wherever he had been, and who has studied, very closely the position of these hill tribes.

I myself being a hill man, know what I feel. Being a Christian, I want universal brotherhood everywhere. I want this in the whole of India and in the fold of the tribal people also. Therefore, when I speak in this House, I speak with the knowledge of the feelings of the hill tribes. I speak also with a sense of universality and brotherhood of mankind. I speak keeping in view the high ideal of raising all people to the same level.

It is said by one honourable gentleman that the hill tribes, have to be brought to the culture which he said "Our culture" meaning the culture of the plains men. But what is culture? Does it mean dress or eating and drinking. If it means eating and drinking or ways of living, the hill tribes can claim that they have a better system than some of the people of the plains. I think the latter must rise up to their standard. Among the tribesmen there is no difference between class and class. Even the Rajas and Chiefs work in the fields together with their labourers. They eat together. Is that practised in the plains ? The whole of India has not reached that level of equality. Do you want to abolish that system? Do you want to crush them and this their culture must be swallowed by the culture which says one man is lower and another higher. You say " I am educated and you are uneducated and because of that you must sit at my feet." That is not the principle among the hill tribes. When they come together they all sit together whether educated, or uneducated, high or low. There is that feeling of equality among the hill tribes in Assam which you do not find among the plains people.

Let me read some of the statements made by the Assam Government regarding the hill areas :

> "The tribes are of Mongoloid stock found nowhere else in India and differing from most Indians than that the latter do from Europeans Except for a few non-tribal shopkeepers and officials and the population in any area is homogeneous. Thus a traveller in the Naga Hills would see no one but Nagas, in the Lushai Hills no one but Lushais and so on."

These people have come there from outside. They have never been under a Hindu or Muslim rule. They had their own rule, their own language, court and culture. To say that the culture of these people must be swallowed by another culture, unless it is a better culture and unless it be by a process of gradual evolution, is rather very surprising to anyone who wants to build up India as a nation and bring all people together.

Then it is said here :

> "The manifold languages belong to the Tibeto-Burman linguistic family with the exception of Khasi, which belongs to the Mon-Khmer family. None of these languages is spoken elsewhere in India."

> "None of the tribes professes the Hindu religion or Islam, except a section of Kacharis in the North Cachar Hills, who practise a form of Hinduism, Tibetan Buddhism has been introduced in the Northern Hills and Burman Buddhism in the Tirap Frontier Tract. A considerable number of tribesmen are Christians particularly among the Nagas, Lushais and Khasis. The rest of the tribesmen are Animist. There is no communal feeling between animists

and others."

The Hindus do not eat beef but the tribesmen do. The Muslims do not eat pork but the Tribal people do. Therefore these people cannot be either Hindus or Muslims. The Government report is that the people of the hills have their own culture which is sharply differentiated from that of the plains. The social organisation is that of the village, the clan and the tribe and the outlook and structure are generally strongly democratic. There is no system of caste or purdah and child marriage is not practised.

So that is the culture of the hill tribes. India should rise to that feeling or idea of equality and real democracy which the tribal people have. They should not for a second think that these people should give up their democracy and equality and be swallowed up by another culture which is quite different from what they have been used to, and which is considered by them not at all suitable to their Society.

To say that these tribesmen will be inimical or they would raid Assam or go over to Tibet if this Sixth Schedule is introduced in these areas is rather surprising. This idea is based on wrong understanding of facts and a wrong psychological approach to the problem of bringing the hill folks and the plains people together. This schedule has given a certain measure of self-government to these hill areas but the laws and regulations to be made by the District Councils are subject to the control and assent of the Governor of Assam. What is more unifying than that? The sub-committee for the tribal areas in Assam recommended that these districts mentioned in this Sixth Schedule should have a sort of self-government, to rule themselves according to their culture and genius. The Congress principle has been to allow each group to grow according to their own genius and culture. If that be so, the sub-committee did the right thing by recommending this kind of local self-government for these hill areas but they will be subject to the control of the Governor of Assam. Even the laws and regulations which will be made by these district councils will be subject to the assent of the Governor. The Governor may withhold his assent. Where there is the Pakistanising influence there mentioned by certain speaker. The provisions of the Sixth Schedule satisfy these people to a certain extent and at the same time joins them to the rest of the province.

There is another point which must be considered in this connection. To keep the frontier areas safe these people must be kept in a satisfied condition. You cannot use force upon them. Human nature is such that when you use force to make a people do something they run to somebody else. If you want to win them over for the good of India you will have to create a feeling of friendliness and unity among them so that they may feel that their culture and ways of living have not been abolished and another kind of culture thrust upon them by force. That is why the sub-committee though that the best way to satisfy these people is to give them a certain measure of self-government so that they may develop themselves according to their own genius and culture. That will satisfy them and they will feel that India is their home and they will not think of joining Tibet or Burma. But if you were to follow some of the ideas advanced by one or two honourable Members of this House, it will not be a unifying influence but an influence which will divide these hill tribes from India and that will be very unfortunate indeed. I was somewhat surprised at the statement made by one of my honourable friends from Assam that even the Premier of Assam did not know the conditions of these people. I think that the honourable friend did not visit these areas and does not know their conditions. The Premier of Assam visited these areas and knows their conditions. I know their conditions. I know their feelings. We have met them in big meetings. We have met them in Committees and on several occasions. We have visited them, heard them, and many of them were associates of our sub-committee which went round to find out the conditions of these hill tribes. And many people came to give evidence there and they expressed their feelings. The provisions of the Sixth Schedule are based on the recommendations of the sub-committee after considering the evidence given by these hill people, a few of whom were members of our sub-committee.

Someone spoke as if he is very much interested in the advancement of the hill tribes. I thank that gentleman whoever he may be, for his good motive in desiring the advancement of the hill tribes! But advancement cannot come by force. Advancement comes by a process of assimilation of a higher culture, higher mode of thinking and not by force. Advancement will be accepted by the people when you allow them to see something better than what they have. The hill men realise that their own village councils, or what may be called village panchayats, are much better and more suitable to them than the regular courts and the High Court of Assam. To some of them, it is too expensive to go to the High Court. They have no money for that. Therefore among some of the hill tribes village courts are more suitable to them. The Assam Government is trying to introduce village panchayats even in the plains of Assam. Of course that will take away a very large number of law suits from some of the regular courts, but it will be better for the people themselves. The village councils in the autonomous districts and the District Councils will enable the hills people to rule themselves in their own way and to develop themselves according to their own methods. Why should you deprive the people of the thing which they consider to be good and which does not hurt anybody on earth? It does not hurt India. Why do you not want them to develop themselves in their own way? The Gandhian principle is to encourage village panchayats in the whole of India. Why then should any one object to the establishment of the district councils demanded by the hills people ? This measure of self-government will make them feel that the whole of India is sympathetic with them and India is not going to force upon them anything which will destroy their feeling and their culture. I therefore think that unnecessary storm has been raised in this House, and it is not at all palatable, but I hope that a better study will be made of these problems.

I would like very much if Parliament will appoint a committee to see these tribal areas. Perhaps they will see that in some places they are so far advanced that the whole of India must follow their example. In those areas there is no difference between man and woman : the woman does work, goes to the bazaars and does all kinds of trade. And she is free. In the plains the woman is just beginning to be free now, and is not free yet. But in some of the hills districts the woman is the head of the family; she holds the purse in her hand, and she goes to the fields along with the man. Women and men are not ashamed of any kind of labour there. In the plains of Assam there are some people who feel ashamed to dig earth. But the hill man is not so. Will you want that kind of culture to be imposed upon the hill man and ruin the feeling of equality and the dignity of labour which is existing among them? Why talk of culture? There is some kind of culture in the hills areas which is far better than what is obtaining in the plains. Therefore the Sub-Committee on the tribes of Assam has decided that this would be the best method of allowing people to grow according to their culture and according to their genius and at the same time to become unified with the whole of India.

Shri Rohini Kumar Chaudhuri : Why do you make propaganda against our people? Do not we dig earth in our villages and raise houses ? Why do you vilify our people?

The Honourable Rev. J. J. M. Nichols Roy : Many of them do not. I am not vilifying anybody. I am telling facts. The whole of Assam knows that some people in Assam would not dig earth.

Shri Kuladhar Chaliha : Please withdraw your remarks.

Mr. President : The honourable Member has not said anything which requires withdrawal. He is perfectly justified in saying what he has said.

The Honourable Rev. J. J. M. Nichols Roy : I am not vilifying anybody. Some people would not dig earth because of their feeling of superiority. But in the hills areas you do not find anything of that kind. That is a fact which is known throughout Assam. In my own Department - the Public Works Department--we have road earth works and we have to teach some of the local people to do it, and labourers have to be brought from Bihar and Noakhali in order to carry earth and make roads in Assam. That is a fact I am telling.

Shri Rohini Kumar Chaudhuri : Yes, the Honourable Minister has discharged the Hindu workers there and employed Muslims from Noakhali. He is under the impression that we are not able to dig earth.

The Honourable Rev. J. J. M. Nichols Roy : That is a wrong statement altogether.

When I am talking about culture what I mean is this. Labour is an honour to these hills people. No one of them consider that it is beneath their dignity to work. And men and women work together. Even the people who are in big positions in life like Rajahs and Mantris work in the same way as other people, whereas that principle is not found everywhere in India. And India must rise to that place where they feel that there is dignity in labour. When there is such a culture among the hills people why not allow them to develop that and be a little model for all the others--to the good of all India?

Finally, Sir, I support the amendment moved by Dr. Ambedkar. At the same time I must say before I sit down that these hills people feel that even this Sixth Schedule has controlled them too much and that they have not got enough what they would like to have. I think many of us realise that. Even Mr. Bardoloi the honourable Premier of Assam realises that. But under the circumstances we have agreed in order to have a compromise and in order to bring peace between all parties. Therefore, do not think that the hill areas have been given too much. They have not been given enough according to their ideas. But at the same time they have been brought under the control of the Governor of Assam. And that is the process by which they will be unified.

Shri H. V. Kamath (C. P. & Berar: General): May I Sir, suggest that, in view of the widely divergent views expressed regarding this Schedule, the finalisation of it may be postponed to a more propitious day ?

Mr. President : I will call upon Dr. Ambedkar to reply. I think we had better finish this now. We have had enough discussion.

The Honourable Dr. B. R. Ambedkar : We have debated this question for two hours and I think the debate was mostly on points that are really not concerned with the Schedule. It is time that we attended to the Schedule itself, unless any particular Member has something very new to say, we need not continue the debate.

Mr. President : I have already called upon you to reply.

The Honourable Dr. B. R. Ambedkar : I am very much obliged to you. Sir, we have two amendments before us and I propose to deal with them before I reply to the general debate

The first amendment is No. 100 moved by Mr. Chaliha. With regard to this, I do not see how it is appropriate in sub-paragraph (5) of paragraph 2. Sub-para (5) merely deals with the jurisdiction of the Regional and District Councils. It has nothing to do with any directions that may be given by the Governor or the legislature of the State. We are simply creating a District Council and a Regional Council. If the honourable Member wanted to move any such amendment he ought to do to the appropriate provision. This Schedule deals with the subject matter with which the District Council and the Regional Council will be concerned. So I fail to understand altogether the appropriateness of the amendment at this particular place.

With regard to amendment No. 257 whereby the honourable Member seeks to limit the number on the Council to fifteen, it seems to me, again, quite unnecessary, because my own amendment says, 'not more than twenty-four'. Twenty-four is the maximum. Consequently, if it was necessary to have a Council of less than fifteen, even then my amendment should suffice. I, therefore say the amendment Number 257 is quite unnecessary.

Now, having disposed of these amendments, I will turn to the general debate on the question whether there should be Regional and District Councils for the purpose of the tribals living in Assam. Sir, in dealing with this matter, I am sorry to say, many Members who took part in the debate, did not properly study the provisions contained in this Sixth Schedule. I am sure about it that if they had properly studied the provisions of this Schedule, they would not have raised the point which they raised that by creating these Regional and District Councils we were creating a kind of segregated population. It does nothing of the kind.

Now, the position of the tribals in Assam stand on a somewhat different footing from the position of the tribals in other parts of India.

Shri A. V. Thakkar : Hill tribals please.

The Honourable Dr. B. R. Ambedkar : I am not concerned with the terminology. I am speaking of Assam and other areas for the moment. The difference seems to be this. The tribal people in areas other than Assam are more or less Hinduised, more or less assimilated with the civilization and culture of the majority of the people in whose midst they live. With regard to the tribals in Assam that is not the case. Their roots are still in their own civilization and their own culture. They have not adopted, mainly or in a large part, either the modes or the manners of the Hindus who surround them. Their laws of inheritance, their laws of marriage, customs and so on are quite different from that of the Hindus. I think that is the main distinction which influenced us to have a different sort of scheme for Assam from the one we have provided for other territories. In other words, the position of the tribals of Assam, whatever may be the reason for it, is somewhat analogous to the position of the Red Indians in the United States as against the white emigrants there. Now, what did the Untied States do with regard to the Red Indians? So far as I am aware, what they did was to create what are called Reservations of Boundaries within which the Red Indians lived. They are a republic by themselves. No doubt, by the law of the Untied States they are citizens of the United States. But that is only a nominal allegiance to the Constitution of the United States. Factually they are a separate, independent people. It was felt by the United States that their laws and modes of living, their habits and manners of life were so distinct that it would be dangerous to bring them at one shot, so to say, within the range of the laws made by the white people for white persons and for the purpose of the white civilization.

I agree that we have been creating Regional and District Councils to some extent on the lines which were adopted by the United States for the purpose of the Red Indians. But my point is that those who have based their criticism of this Schedule on this fact, namely that we, are creating Regional and District Councils have altogether failed to understand the binding factors which we have introduced in this Constitution. I should therefore like to refer to some of the provisions which nullify this segregation, so to say.

The first thing that we have done is this : That we have provided that the executive authority of the Government of Assam shall extend not merely to non-tribal areas in Assam but also to the tribal areas, that is to say, the executive authority of the Assam Government will be exercised even in those areas which are covered by the autonomous districts. This, as will be seen, is a great improvement over the provisions contained in the Government of India Act, 1935. In the provisions contained in that Act, the executive was divided into two categories, one was called the Government of the province and the other executive was called the Governor in his discretion, so far as the tribal areas were concerned. This applied not only to the tribal areas in Assam, but also to completely excluded areas in other areas. The executive authority which operated upon those areas was not the executive of the province, but the Governor in his discretion. We have abolished that distinction so that the whole of the tribal areas including those in the autonomous districts is now under the authority of the provincial Government. The thing which is a binding thing, to which honourable Members have paid no attention is this. That, barring such functions as law-making in certain specified fields such as money-lending land and so on, and barring certain judicial functions which are to be exercised in the village panchayats or the Regional Councils or the District Councils, the authority of Parliament as well as the authority of the Assam Legislature extend over the Regional Councils and the District Councils. They are not immune from the authority of Parliament in the matter of law-making, nor are they immune -and that is the aim of the new amendment--from the jurisdiction of the High Court or the Supreme Court. This, I submit, is one binding influence.

The other binding influence is this : that the laws made by Parliament and the laws made by the Legislature of Assam will automatically apply to these Regional Councils and to the District Councils unless the Governor thinks that they ought not to apply. In other words, the burden is thrown upon the Governor to show why the law which is made by the Legislature of Assam or by the Parliament should not apply. Generally, the laws made by the local Legislature and the laws made by Parliament will also be applicable to these areas. I say that this is another unifying influence. Yet another unifying influence to which I must make reference is this. We are not saying that the political authority or, power we have given to the tribal people through the constitution of the Regional Councils or the District Councils is all the sphere of influence to which they will be entitled. On the other hand, we have provided that the tribal people who will have Regional Councils and District Councils will have enough representation in the Legislature of Assam itself, as well as in Parliament, so that they will play their part in making laws for Assam and also in making laws for the whole of India. Now, if these cycles of participation, if I may say so, to which I have referred, viz., representation in the legislature of Assam and representation in Parliament, the application of the laws made by Parliament and the application of the laws made by the Assam Legislature, are not binding forces, I would like to know what greater binding forces we can provide for the purpose of unifying the Regional Councils and the District Councils with the political life of the province as a whole.

I do no therefore agree that in creating the Regional Councils and the District Councils, we have cut up the population of Assam into two water-tight compartments, *viz.*, tribals and non-tribals. On the other hand, we have provided, as I have stated, many cycles of participation in which both can politically come together, influence each other, associate themselves with each others, and learn something from one another. I am sure about it that the argument which has been urged against the provision of Regional Councils and District Councils is entirely based upon a misunderstanding and inadequate reading of the other provisions contained in this Schedule.

Sir, I was rather surprised at the attitude taken by my Friend, Mr. Chaliha, in moving his amendment, also at the attitude of my Friend, Mr. Rohini Kumar Chaudhuri. I feel that they are not now a happy and united family. What is the cause of it I do not understand, but I can say that, when these amendments were made, they were made with the consent of Mr. Chaliha, they were made with the consent of the Premier of Assam, and also with the consent of my Friend, Mr. Nichols Roy, who is a principal party concerned in this. I see they are now indulging in criticising each other because of factors which lie outside this Schedule. I cannot find any other reason for this dissention, for this open dissension and hostility which has been exhibited by one against the other, and I do not wish therefore to enter into what I regard is a purely domestic quarrel.

Shri Rohini Kumar Chaudhuri : Is the Honourable Dr. Ambedkar entitled to make insinuations against us ?

The Honourable Dr. B. R. Ambedkar : I am, not making any insinuations; I was only saying, Sir, that it was a domestic quarrel into which I would not enter. My own view is that we have made the best provision...

Shri Kuladhar Chaliha : I object to Dr. Ambedkar imputing motives for honest opinion expressed.

The Honourable Dr. B. R. Ambedkar : I am not imputing any motives. Mr. Chaliha was a party to every change that has been made in this Schedule. I would like him to deny that fact. Can he deny it ?

Shri Kuladhar Chaliha : Yes, I deny. I told Mr. Bardoloi that I did not agree with some things.

The Honourable Dr. B. R. Ambedkar : He might have whispered in the ears of Mr. Bardoloi. He did not say a single word against these changes in the Drafting Committee. I did not get his signature as I did in certain other cases, because I do not want any Member to go back upon his word. However, what I was saying was that the Regional Councils and the District Councils have been given certain autonomy for certain purposes and at the same time they have been bound together in the life of the province and in the life of the country as a whole. If these circumstances which are of a unifying character, do not bind, do not bring the tribal people with the rest of the plains people in Assam and in the country, then the cause for such an unfortunate event must be found in something else. My friend, Mr. Rohini Kumar Chaudhuri, stated that if you create the Regional Councils, the tribal areas will go the way of Tibet and go the way of some other area. I do not know that that prophecy could be confined only to the tribal areas. I fear that Assam itself might go. For that we cannot make any provision in the Constitution. I am sure about it.

Shri B. Das (Orissa: General) : May I ask Dr. Ambedkar if he is aware that British agents are still working on the Assam-Burma border and that they have been responsible for the troubles between the Karens and the Burmans, and whether those same British agents are not still working in the tribal areas of Assam? After hearing the speech of my friend, Rev. Nichols Roy, I think that he wants the tribal areas to be separate entity so that British influence could permeate these tribal areas. As a Member of the Government Dr. Ambedkar knows well--and I have known something--about these tribal areas.

The Honourable Dr. B. R. Ambedkar : All I can say is that it is perfectly possible to devise some means by which we can eliminate this foreign influence altogether.

Shri B. Das : The Drafting Committee...

The Honourable Dr. B. R. Ambedkar : The Drafting Committee has nothing to do with eliminating this foreign influence. It is the function of some other body but I can assure my friend that it would not be difficult to get rid of this foreign influence.

Mr. President : I shall now put the various amendments to vote.

The question is:

"That in sub-paragraph (1) of paragraph 2, for the words 'not less than twenty and not more than forty members' the words 'not more than twenty-four members' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That in amendment No. 105 of List I (Seventh Week) in sub-paragraph (1) of paragraph 2, for the words ' not more than twenty-four members, (proposed to be substituted), the words 'not more than fifteen members' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That sub-paragraph (2) of paragraph 2 be deleted".

The amendment was adopted.

Mr. President : The question is:

"That after clause (d) of sub-paragraph (7) of paragraph 2, the following clause be added:--

'(dd) the term of office of members of such Councils:' "

The amendment was adopted.

Mr. President : The question is :

"That with reference to amendment No. 3487 of the List of Amendments (Volume

II). at the end of sub-paragraph (5) of paragraph 2, the following be added :-

'subject to such directions as may be given by the Governor or by the Legislature of the State.' "

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 3493 of the List of Amendments (Volume II), for the proposed new sub-paragraph (7-A) of paragraph 2, the following be substituted :--

'The functions of the Governor under sub-paragraph 7 shall be exercised by him as the agent of the President.' "

The amendment was negatived.

Mr. President : I think these are all the amendments. The question is:

"That paragraph 2, as amended, stand part of the Sixth Schedule. "

The motion was adopted.

Paragraph 2, as amended, was added to the Schedule.

Paragraph 3

Shri Kuladhar Chaliha : Mr. President, Sir, I beg to move:

"That with reference to amendment No. 3494 of the List of Amendments (Vol. II), for paragraph 3, the following be substituted :--

'3 The Governor shall make laws and regulations entrust the District Council and Regional Councils with such powers as the State Legislatures may approve.' "

Sir, you would find in paragraph 3 that regional and district councils have been given such powers as can hardly be imagined. It says that they shall have power to make laws with respect to the management of any forest not being a reserved forest, the use of any canal or water-course for the purpose of agriculture. If it is so desired they can prevent you from using the water. Then it says with respect "to the regulation of the practice of jhum or other forms of shifting cultivation". Supposing some people live in the hills and have property; they have their marriage and social customs as well. The Regional Councils will be entitled to change Hindu Laws of marriage and inheritance. So instead of the existing clause, I have substituted the following :--

"The Governor shall make laws and regulations and entrust the District Council and Regional Councils with such powers as the State Legislature may approve."

These are very consistent and very wholesome and it gives the power to the Governor. Of course, it has been mellowed down by amendment No. 114 which at the end says : "All laws made under this paragraph shall be submitted forthwith to the Governor, and until assented to by him shall have no effect", At the same time it gives the power to the Regional Councils to make regulations, of course, at the end. This is nothing but mellowing down only. If they thought it wise to add this, why make this camouflage ? The Drafting Committee could have gracefully accepted my amendment. Why do not they say plainly that the Governor shall have the right to do so. Instead of doing it plainly and saying that the Governor shall have the right, you allow the power and then you say "All laws made under this paragraph shall be submitted forthwith to the Governor, and until assented to by him shall have no effect." In fact this amendment is the same, as mine and therefore Dr. Ambedkar should have accepted mine than by adding like this and watering down and making a fuss of making laws. It is better to accept by amendment No. 113 than the amendment of the Drafting Committee.

The Honourable Dr. B. R. Ambedkar : The honourable Member has already moved it for me. If you will take it as it moved by me, it will save time.

Mr. President : I take it that he has moved.

The Honourable Dr. B. R. Ambedkar : Shall I move it formally ?

Mr. President : Yes.

The Honourable Dr. B. R. Ambedkar : Sir, I move

"That after sub-paragraph (2) of paragraph 3, the following sub-paragraph be added :--

> '(3) All laws made under this paragraph shall be submitted forthwith to the Governor, and until assented to by him shall have no effect'."

(Amendment No. 258 was not moved.)

Shri Rohini Kumar Chaudhuri : Mr. President, Sir, I beg to move:

"That in amendment No. 114 of List I (Seventh Week) for the proposed sub-paragraph (3) of paragraph 3, the following be substituted :-

> (3) All laws made under this paragraph shall be submitted to the Governor who shall forthwith place them before the legislature of the State and until agreed to by the Legislature and assented to by the Governor such laws shall have no effect'."

Sir, the object of my amendment is that it should not merely be sufficient if the laws have the assent of the Governor, but the Governor should place all those laws before the Legislature as early as possible and unless the Legislature has agreed or until the Governor has assented to such law, this law shall not come into force. I submit, Sir, that there should not be any nervousness over this change. In the Legislature there are the members who represent the tribal areas and on the support of a large number of the tribal members and the House the Government will function, and therefore unless this and the assent of the leading majority party of the Government is obtained, it should not be enforced as law. Although the law may have a particular bearing on the people of the areas, the District Council of which has passed the law, although it may have a greater bearing on the people of that area, certainly it may have some bearing on the people of the other areas in the neighbourhood, it should be placed before the whole Provincial Legislature and not the District Council. Therefore, whatever law is passed by the District Council or Regional Council ought to go to the main legislature of the province and if it is agreed to by the legislature of the province, then only the question of sending it to the Governor should arise and if the Governor gives his assent, the law comes into force. I hope this amendment would be acceptable to Dr. Ambedkar.

Mr. President : Amendment No. 260 given notice of by Mr. Kuladhar Chaliha is the same as amendment No. 259; that need not be moved.

Mr. Naziruddin Ahmad (West Bengal): Muslim): Amendment No. 195. This is a drafting amendment. I have explained the purport of this amendment in connection with the Fifth Schedule. I would only like that it should be considered by the Drafting Committee.

Shri Brajeshwar Prasad : Mr. President, Sir, I beg to move:

"That in amendment No. 114 of List I (Seventh Week), in the proposed new sub-paragraph (3) of paragraph 3, for the word 'Governor' the word 'President' be substituted."

Sir, I am of opinion that if the Governor is vested with the power of scrutiny, the power of vetoing laws passed by the District Councils, then, there will be conflict. This will create bitterness and ill-will between the provincial Government and the District and Regional Councils. It will impinge upon provincial autonomy. Therefore, in order to protect the provincial governments in order to strengthen the hands of the provincial authorities, it is necessary that this power should be vested in the hands of the President. I really want that in the Center there should be separate portfolio in charge of the tribal areas in Assam, both parts I and II of the Table appended to paragraph 19 of the Schedule. I am of opinion that it is such a vital matter that it should not be placed in the hands of the Governor. It is risky to do so. If the Governor fails to discharge his functions under this paragraph, due to any reason, the interests of the whole country will be jeopardised. The intention is to veto legislation which is of a fissiparous character. I also apprehend that the Governor may not be able to perform his functions properly because parliamentary democracy and narrow considerations of provincialism may stand in the way.

There is another argument I am opposed to this power being vested in the hands of the Governor. I am one of those who is in a minority in the House. I am in the minority of one. I believe in the doctrine of political centralisation. I am of opinion, I am convinced in my mind that decentralisation is a symptom of the classless society. It is capable of being achieved only in a classless society, where political violence has been liquidated and where the State itself has withered away. I strongly repudiate the suggestion made yesterday on the floor of this House that due to the pre-occupation of the Government of India in the sphere of our Foreign relations with other powers, due to pre-occupation of the Government of India with the problem of the Native States, the Centre is not in a position to shoulder a wider responsibility, We accepted this plan of political decentralisation in order to accommodate the Muslim Leaguers, in order to accommodate the Princes. It was an act of absentmindedness, it was an act of gross negligence on our part not to switch over to that type of Government to which we were wedded to, to that type of Government which had been the common basis of all Governments in India since time immemorial. I mean the unitary type of Government. I strongly commend my amendment for the consideration of the House.

Mr. President : Dr. Ambedkar, do you wish to say anything? I do not think there is anything in this to discuss.

The Honourable Dr. B. R. Ambedkar : Sir, with regard to my Friend Mr. Chaliha's amendment No. 113, I really do not understand what it means. It says : "The Governor shall make laws and regulations and entrust the District Council and Regional Councils with such powers as the State legislature may approve." I cannot understand what it means. I am therefore unable to say that I accept it.

With regard to my amendment and the amendment moved by my honourable Friend Mr. Rohini Kumar Chaudhuri, there is hardly any difference except a failure to understand on the part of my honourable Friend as to what the word 'Governor' means. He says that the laws shall be approved by the legislature of Assam. According to my amendment, the laws will be approved by the Governor as advised by the Ministry of Assam, because in all this scheme, we ,are dropping the words 'in his discretion? Wherever the word Governor occurs, it means Governor acting on the advice of the Ministry. I should like, to ask him whether he really thinks there is very serious difference between a law being approved by the Governor acting on the advice of the Ministry and a law being approved by the legislature of Assam itself. I 'think my scheme is much more consistent with the originals of the scheme, namely, that the tribal people themselves should have a certain inherent right given by the Constitution to make laws in certain respects. That being so, my paragraph (3) is much more consistent with the scheme and gives the Assam Ministry some power to advise the Governor as to whether he should accept or not accept any law. The intervention of the legislature, is quite unnecessary.

Shri Rohini Kumar Chaudhuri : If I have understood the Honourable Dr. Ambedkar a right, I would be prepared to withdraw my amendment. I mean, if the Governor is to be advised by the Ministry and the Ministry takes the opinion of the legislature, then, I have no objection. If the advice of the Ministry means that the Ministry will take no such action until the House has had an opportunity of discussing it, then, I think it is the same thing which I want and which Dr. Ambedkar wants. In that case, I shall withdraw.

The Honourable Dr. B. R. Ambedkar : I think he is understanding more than what I have said. I am not prepared to give him that assurance at all.

Mr. President : I shall put the amendment to vote. The question is:

"That with reference to amendment No. 3494 of the List of Amendments (Vol. II). for paragraph 3, the following be substituted :-

'3. The Governor shall make laws and regulations and entrust the District Council sad Regional Councils with such powers as the State legislature may approve.' "

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 114 of List I (Seventh Week). for the proposed sub-paragraph (3) of paragraph 3, the following be substituted :-

'(3) All laws made under this paragraph shall be submitted to the Governor who shall forthwith place them before the legislature of the State and until agreed to by the legislature and assented to by the Governor such laws shall have no effect'."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 114 of List I (Seventh Week), in the proposed new sub-paragraph (3) of paragraph 3, for the word 'Governor' the word 'President be substituted."

The amendment was negatived.

Mr. President : The question is:

"That after sub-paragraph (2) of paragraph 3. the following sub-paragraph be added :--

'(3) All laws made under this paragraph shall be submitted forthwith to the Governor. and until assented to by him shall have no effect'."

The amendment was adopted.

Mr. President : The question is:

"That paragraph 3, as amended. stand part of the Schedule."

The. motion was adopted.

Paragraph 3, as amended, was added to the Schedule.

Paragraph 4

Shri Kuladhar Chaliha : Mr. President, I beg to move:

"That for paragraph 4, the following be substituted:-

'4. The Governor shall constitute courts with such powers as he may deem proper and in making appointments and conferring judicial powers he shall follow as nearly as possible the Criminal and Civil Procedure Codes of India, and the High Court of Assam shall exercise all the appropriate powers conferred on it by law'."

Sir, Paragraph 4 has given the Regional Council for autonomous regions powers as follows:--

(1) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of areas within the district other than those which are under the authority of the Regional Councils, if any, within the district may constitute village councils or courts for the trial of suits and cases other than those to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply or those arising out of any law made under paragraph 3 of this Schedule, to the exclusion of any court in the State, and may appoint suitable persons of such courts, and may also appoint such officers as may be necessary for the administration of the laws made under paragraph 3 of this Schedule.

(2) Notwithstanding anything in this Constitution the Regional Council for an autonomous region or any Court constituted in this behalf by the Regional Council or, if in respect of any area within an autonomous district there is no Regional Council, the District Council for such district, or any court constituted in this behalf by the District Council, shall exercise the powers of a Court of Appeal in respect of all suits and cases between the parties all of whom belong to scheduled tribes within such region or area, as the case may be, other than those to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, and no other Court in the State shall have appellate jurisdiction over such suits or cases and the decision of such Regional or District Council or Court shall be final."

Do you see the impossibility of this provision that even the High Court or District Court shall have no jurisdiction over the decisions of the District Councils and Regional Councils? Therefore I have tabled my amendment. I find in this Constitution they have mellowed down again in a mind form in 119 and 120 the same thing. In 119 they have said 'except the High Court and the Supreme Court shall have jurisdiction over such suits or cases'. In 120 they have said--

"The High Court of Assam shall have and exercise such jurisdiction over the suits and cases to which the provisions of sub-para (2) of this para apply as the Governor may from time to time by order specify."

But here the District Court has been deprived of the natural jurisdiction which it should have. So in spite of the amendments of Dr. Ambedkar it does not improve much. It deprives the ordinary Courts of their legitimate jurisdiction. You have omitted that. You have referred to High Court and Supreme Court only and the District Court has been cut out. Probably the judgments may be very elementary and without reason and yet it will go to High Court. Why not the District Court? The District Court will be sufficiently acquainted with the laws of the country and I think the District Courts should have been referred. As such my amendment is much better than the amendment of the Drafting Committee. Perhaps they are in a hurry and are rushing through with these schedules. If you run through the whole schedule you will find that you have neglected the Assamese people. You have never thought of them and you have neglected the district judge's court existing there and you pass over to High Court and Supreme Court. As such, I commend my amendment for the acceptance of the House.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in sub-paragraph (1) of paragraph 4, the words and figures 'or those arising out of any law made under paragraph 3 of this Schedule' be deleted."

They are unnecessary.

Sir, I also move :

"That in sub-paragraph (2) of paragraph 4, for the words 'shall have appellate jurisdiction over such suits of cases and the decision of such Regional or District Council or Court shall be final ' words 'except the High Court and the Supreme Court shall have jurisdiction over such suits or cases' be substituted."

Sir, I also move :

"That after sub-paragraph (2) of paragraph the following sub-paragraph be added :-

'(3) The High Court of Assam shall have and exercise such jurisdiction over the suits and cases to which the provisions of sub-paragraph (2) of this paragraph apply, as the Governor may from time to time by order specify.'"

This amendment makes an important change. Originally under sub-para. (2) of para. 4 the decision of the District Court was final. Now we have provided that they shall be subject to appellate jurisdiction of the High Court and the Supreme Court which was a necessary provision.

Shri Rohini Kumar Chaudhuri : Mr. President, Sir, I beg to move:

"That in amendment No. 3496 of the List of Amendments (Vol. II) in the proposed proviso to sub-paragraph (2) of paragraph 4 of the Sixth Schedule..."

Mr. President : But, Mr. Chaudhuri, amendment No. 3496 was for adding a proviso and that amendment has not moved and that proviso therefore does not come in. Therefore your amendment No. 118 has no place. It is an amendment to an amendment which has not been moved.

Shri Rohini Kumar Chaudhuri : But such amendments have been moved before.

Mr. President : But where will you put it now ? Independently ?

Shri Rohini Kumar Chaudhuri : Then may I speak generally on this?

Mr. President : Yes, you can do that after I finish the amendments. There is No. 197 of Mr. Naziruddin Ahmad. But that is a drafting amendment. Then there is the one in the name of Shri Brajeshwar Prasad, No. 198.

Shri Brajeshwar Prasad : Sir I move this amendment without any comment. Sir, I move :

"That in amendment No. 120 of List I (Seventh Week), for the purposed new sub-paragraph (3) of paragraph 4, the following be substituted :--

'(3) The High Court of Assam shall have and exercise such jurisdiction over the suits and cases to which the provisions of sub-paragraph (2) of this paragraph apply as the President may by order from time to time declare and prescribe'. "

Mr. President : I think these are all the amendments. No, there is one more, No. 261, of Mr. Sahu.

Shri Lakshminarayan Sahu : Sir, I move: That...

Mr. President : But your amendment does not come now after the amendment No.119 moved by Dr. Ambedkar where it is said for the words "shall have appellate jurisdiction over such suits etc. etc." The words "except the High Court and the Supreme Court shall have jurisdiction over such suits or cases" be substituted.

Shri Lakshminarayan Sahu : Then I do not move my amendment.

Mr. President : Then you can speak now, Mr. Chaudhuri.

Shri Rohini Kumar Chaudhuri : Sir, the present position with regard to the administration of justice in the hills is this. In civil suits the final appellate authority was formerly the Governor. The Deputy Commissioner and the Assistant Deputy Commissioner had jurisdiction to try civil suits up to any value. So far as criminal suits are concerned, the Deputy Commissioner and the Assistant Deputy Commissioner could inflict any sentence they liked, subject, of course to the power of revision of the High Court. But so far as the States are concerned, the High Court of the Province has absolutely no jurisdiction to interfere.

Now I want to raise one point with regard to the amendment which has been moved by Dr. Ambedkar. Whenever there is a civil suit between a non-tribal and a tribal over which the District Court has jurisdiction, whether the courts will have full jurisdiction or whether there will be some other procedure prescribed for it. sub-para. (2) of para.4 says--

> "Notwithstanding anything in this Constitution the Regional Council for an autonomous region or any court constituted in this behalf by the Regional Council or, if in respect of any area within an autonomous district there is no Regional Council, the District Council for such district, or any court constituted in this behalf by the District Council, shall exercise the powers of a Court of Appeal in respect of all suits and cases between the parties all of whom belong to scheduled tribes within such region of area, as the case may be, other than those to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, and no other Court in the State."

The subsequent portion has been sought to be amended. But I want to Jay stress on the words-- "between parties all of whom belong to scheduled tribes". Suppose there is a case in which one of the parties is a non-tribal, then what is the provision made in paragraph 4 and under the amendment of Dr. Ambedkar ? That is what I want to know. Unfortunately I cannot get the attention of Dr. Ambedkar at the present moment, but I should like to have some answer to this question. When there is a dispute between a tribal and a non-tribal, which is going to be the appellate court? Whether the court of the District Council will have full jurisdiction or whether the case is liable to be transferred to some other court under the jurisdiction of the High Court ? Under the present arrangement, whenever there is a dispute between a tribal and a non-tribal, if the defendant or the accused happens to be a non-tribal, he has the right to be defended by a lawyer and the ordinary procedure applies to him But I want to clarify this point, whether in Courts in an autonomous district and according to the contemplation of the Drafting Committee in the autonomous districts there will be a large number of non-tribals as for instance in the Garo hills, in the Naga Hills--and in the Khasi Hills - will the non-tribal people there be regulated by the provisions of the Code of Civil Procedure and the Code of Criminal Procedure, or whether they will be subjected to the ordinary laws, to the primary laws or the primitive laws which are meant only for the tribal people? That is question number one.

Question number two is this. Whether these people will have the right to be represented, to be defended in the civil court by a lawyer or not. And thirdly, whether any appeals arising out of those cases, whether the appeals shall lie to the High Court or the District Court, because sub-para (2) while discussing appeals particularly mentions only about scheduled tribes. Is justice in the Naga Hills and the Garo Hills going to be administered in the same half-barbaric way in which it was administered before, or is there going to be any change in favour of the tribals or in favour of the non-tribals resident in the tribal areas? There are particular rules now for administration of justice in the Hills where it is not obligatory on the part of the court to allow a pleader to appear, where pleaders are only allowed to appear where non-tribal people are either defendants or accused; in this case only pleaders are allowed to appear now. The appeals, under Dr. Ambedkar's amendment, will go to High Courts and will have some sort of revision power. I want to know whether non-tribal people in these Hills shall have a right of appeal either to the High Court or to the District Court, because in the amendment only the tribes are mentioned.

The Honourable Dr. B. R. Ambedkar : Sir, I must say that I was somewhat surprised by my honourable Friend's putting me these questions. I think he could have answered them himself. But I will now answer them as he has put them to me.

With regard to the first question of whether lawyers will be allowed to appear in courts established in the tribal area, the answer is very simple. In the first place, the Provincial Government will have the power, under the entry in List III dealing with professions, to make any law with regard to the legal profession; and if under that law they provide that lawyers shall be entitled to appeal in the courts, in the districts which are known as autonomous districts, then that law will apply unless the Governor thinks that that law should not apply. Therefore, that matter is quite clear.

With regard to the question of appeals from the decisions of the tribunals which are created under this paragraph, the answer again is quite simple. The paragraph first provides that a court of appeal may be constituted there. Now the Governor or the Provincial Ministry may either constitute a new court of appeal in which case appeals will go to that court, or may declare the District Judge's Court as a court of appeal which will hear appeals from decisions made by the village panchayats and other courts. Therefore, there again there is a provision for appeal. According to my amendment now, there may be a further appeal from the District Court of appeal either to the High Court or to the Supreme Court.

Shri Rohini Kumar Chaudhuri : I particularly read out these lines of sub-paragraph (2) :--

> "...the Regional Council for an autonomous region or any court constituted in this behalf by the Regional Council or, if in respect of any area within an autonomous district there is no Regional Council the District Council for such district or any court constituted in this behalf by the District Council shall exercise the powers of a Court of Appeal in respect of all suits and cases between the parties all of whom belong to scheduled tribes...."

What would happen when one of the parties is not a member of a scheduled tribe?

The Honourable Dr. B. R. Ambedkar : If the parties are such that one is a tribal and the other a non-tribal, then the ordinary law will apply.

Shri Rohini Kumar Chaudhuri : Where have you provided it?

The Honourable Dr. B. R. Ambedkar : It follows from it. Even now it says, "where the parties are......". I do not think there is any difficulty and I hope my friend has understood it.

Shri Rohini Kumar Chaudhuri : There is no provision made anywhere, Sir.

The Honourable Dr. B. R. Ambedkar : The jurisdiction of the ordinary court is ousted only to the extent provided for in paragraph 4. Otherwise the jurisdiction of the ordinary courts continues. These will not be the only courts in this area; there will be other courts established by the Provincial Government for the purpose of administration of the general law of the Province.

Mr. President : I will now put the amendments.

The question is:

"That for paragraph 4, the following be substituted :-

'4. The Governor shall constitute courts with such powers as he may deem proper and in making appointments and conferring judicial powers he shall follow as nearly as possible the Criminal and Civil Procedure Codes of India, and the High Court of Assam shall exercise all the appropriate powers conferred on it by law'."

The amendment was negatived.

Mr. President : The question is:

"That in sub-paragraph (1) of paragraph 4, the words and figure 'or those arising out of any law made under paragraph 3 of this Schedule' be deleted."

The amendment was adopted.

Mr. President : Amendment No.118.

The Honourable Dr. B. R. Ambedkar : It was not moved.

Mr. President : Yes, then amendment No. 119.

The question is :

"That in sub-paragraph (2) of paragraph 4, for the words 'shall have appellate jurisdiction over such suits or cases and the decision of such Regional or District Council or Court shall be final' the words 'except the High Court and the Supreme Court shall have jurisdiction over such suits or cases' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That after sub-paragraph (2) of paragraph 4, the following sub-paragraph be added:-

'(3) The High Court of Assam shall have and exercise such jurisdiction over the suits and case to which the provisions of sub-paragraph (2) of this paragraph apply as the Governor may from time to time by order specify.' "

The amendment was adopted.

Mr. President : Then there is amendment No.198 moved by Mr. Brajeshwar Prasad.

The question is :

"That in amendment No. 120 of List I, for the proposed new sub-paragraph (3) of paragraph 4, the following be substituted:-

'(3) The High Court of Assam shall have and exercise such jurisdiction over the suits and cases to which the provisions of sub-paragraph (2) of this paragraph apply as the President may by order from time to time declare and prescribe'."

The amendment was negatibved.

Mr. President : I will put the whole paragraph to vote.

The question is:

"That paragraph 4, as amended, stand part of Sixth Schedule."

The motion was adopted.

Paragraph 4, as amended, was added to the Schedule.

Paragraph 5

Mr. President : Then paragraph 5. There are two amendments to this. First is No. 199.

Shri Brajeshwar Prasad : Sir, I beg to move:

"That in sub-paragraphs (1) and (2) of paragraph 5, for the word 'Governor' wherever it occurs, the word 'President' be substituted."

Mr. President : Then amendment No. 262 and 263, Mr. Sahu.

Shri Lakshminarayan Sahu : *[Mr. President, my amendment reads as follows :--

"That for the heading to paragraph 5, the following be substituted :-

'Conferment of Powers'."

I also move :

"That after sub-paragraph (3) of paragraph 5, the following new sub-paragraph be added :-

"(4) Notwithstanding anything contained in sub-paragraph (1) of paragraph 5 in a trial between a tribal and non-tribal, the proceedings shall be in accordance with the Civil Procedure Code, 1908 and Criminal Procedure Code, 1890.' "

My intention in moving it is to specifically provide that any dispute between the tribal and the non-tribal should be adjudicated according to the Criminal Procedure Code, and the Civil Procedure Code until it is specifically provided. It may well be that the hill people might not know as to how a dispute between the tribal and non-tribal people was to be adjudicated.

If the Nagas were to try the matter, it is quite possible that they may order beheading of a non-tribal person. Such things are common in the Eastern and Western tribal areas. I know the case of a friend of mine who was fined Rs. Twenty thousand according to the Law of the North Western Frontier tribes. He was to be beheaded if the fine was not paid; so in the circumstances the had to pay the amount. He came here and appealed to the Government of India and filed a suit, and though he had to spend Rs.10,000, he got the refund of Rs. 20,000. He later on took a job in the Mycology Department of the Government of Bihar where he is at present employed.

So I know in the aboriginal areas, there are many number of disputes. In our region, there are such disputes in which a person is given heavy punishment for theft. For small thefts, they apply a live charcoal to his cheek. If the theft committed is bigger, he is fined and a red hot piece of gold is put in his mouth. Such bad things occur in all tribal and non-tribal areas. Hence I wish that this provision should be made here.

Shri T. T. Krishnamachari (Madras : General): Sir, I am afraid Dr. Ambedkar has already answered the question raised by amendment No.263 in dealing with the previous paragraph.

Mr. President : The question is:

"That for the heading to paragraph 5 of the following be substituted:--

'Conferment of powers.' "

The amendment was negatived.

Mr. President : I shall now put Mr. Brajeshwar Prasad's amendment to the House.

Shri T. T. Krishnamachari : Is it necessary to put it to vote, because the principle has been negatived on previous amendments, where the House has not agreed to substitute the word "President" for "Governor" ?

Mr. President : I shall however put it to the House.

The question is :

"That in sub-paragraph (1) and (2) of paragraph 5, for the word 'Governor' wherever it occurs, the word 'President' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That after sub-paragraph (3) of paragraph 5, the following new sub-paragraph be added:--

"(4) Notwithstanding anything contained in sub-paragraph (1) of paragraph 5, in a trial between a tribal and non-tribal, the proceedings shall be in accordance with the Civil Procedure Code, 1908, and Criminal Procedure Code, 1890.' "

The amendment was negatived.

Mr. President : The question is:

"That paragraph 5 stand part of the Sixth Schedule."

The motion was adopted.

Paragraph 5 was added to the Schedule.

Paragraph 6

Paragraph 6 was added to the Schedule.

Paragraph 7

Paragraph 7 was added to the Schedule.

Paragraph 8

Shri Kuladhar Chaliha : Sir, I move:

"That for paragraph 8, the following be substituted:-

'8. The Governor shall lay down rules to assess collect land revenue and impose taxes for the District Councils and Regional Councils and place them before the State Legislature.' "

If you will look at para,8 you will find that powers have been given in excess of what has been given to the district boards of Assam. The power of collection of land revenue is in the hands of the Government and I do not see any reason why these elementary, primitive regional and district councils should be allowed to tax professions, trades, callings, animals, vehicles and also collect land revenue. In Assam the land revenue is collected by the land revenue staff of the Government of Assam and the same procedure still exists even in the Naga hills. This is an anomalous and retrograde provision. It has been made without a consideration of the land laws of the country and it is a negation of every thing. As I said before, the Drafting Committee seems to have been in a huff and did not know what to do and whatever was dictated to them by somebody without a knowledge of the country and its laws was put in there. Why should the ordinary laws of the province be rescinded and new laws like this should be incorporated in this paragraph. My suggestion is very simple and should be accepted by the Drafting Committee. It says :

"The Governor shall lay down rules to assess, collect land revenue and impose taxes for the District Councils and Regional Councils and place them before the State Legislature."

The legislature should have a voice in it. The district or regional council might tax anything: it might impose a tax on anyone with a head, which is a thing unthinkable. Therefore we should try to bring the laws of a primitive people in line with civilised standards, I have suggested my amendment and I trust that people are there to advocate these laws; and therefore, in order to bring them in line with civilised standards, I have suggested my amendment and I trust that the Drafting Committee will accept it. In fact the Nagas will have a voice to speak in the legislature, for when such questions come before the legislature they will be there to say what is wrong with them and point out what is there which should not be there. Therefore this small amendment has been put forward before you to accept it. The Drafting Committee should accept it and not have this retrograde and primitive paragraph 8 incorporated in the schedule. It is a primitive law and a primitive rule. Somebody has put into their head that this is a good law. I think it is one of the most retrograde laws that has ever been imposed on the people.

Mr. President : Then there is amendment No.201 by Mr. Brajeshwar Prasad which is in line with the other amendments giving power to the President in all matters, and I do not think I should allow that. The question is:

"That for paragraph 8, the following be substituted :-

'8. The Governor shall lay down rules to assess, collect land revenue and impose taxes for the District Councils and Regional Councils and place them before the State Legislature'."

The amendment was negatived.

Mr. President : I shall put paragraph 8 to vote.

The question is :

"That paragraph 8 stand part of the Sixth Schedule."

The motion was adopted.

Paragraph 8 was added to the Schedule.

Paragraph 9

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That sub-paragraph (1) of paragraph 9 be deleted."

That paragraph refers to licence or lease granted by the Government of Assam for the prospecting for or the extraction of minerals. That matter now is with the Central Government and therefore it is unnecessary to have this sub-paragraph here.

Mr. President : The question is:

"That sub-paragraph (1) of paragraph 9 be deleted."

The motion was adopted.

Mr. President : The question is :

"That paragraph 9, as amended, stand part of the Sixth Schedule."

The motion was adopted.

Paragraph 9, as amended, was added to the Schedule.

Paragraph 10

Shri Kuladhar Chaliha : Sir, I move :

"That for paragraph 10, the following be substituted:-

> '10. The Governor shall make regulations to control money leading and trading in the tribal areas.' "

I find in paragraph 10 that power is given to the District Council to make regulations for the control of money-lending and trading by non-tribals. Under sub-paragraph (2) such regulations may "(a) prescribe that no one except the holder of a licence issued in that behalf shall carry on the business of money-lending; (b) prescribe the maximum rate of interest which may be charged or be recovered by a money-lender; (c) provide for the maintenance of accounts by money-lenders and for the inspection of such accounts by officers appointed in this behalf by the District Council; and (d) prescribe that no person who is not a member of the Scheduled Tribes resident in the district shall carry on wholesale or retail business in any commodity except under a licence issued in that behalf by the District Council". Look at this last provision. Under these regulations will it be possible for any Assamese, Marwari, Sindhi, Punjabi, or Sikh from the plains or from Bombay to carry on business in the Naga Hills if we have a rule like (d) ? To say the least, this is an impossible provision. These provisions are so bad that the only way out, I trust, is to accept my amendment. I have given a very mild amendment to the effect that "the Governor shall make regulations to control money-lending and trading in the tribal areas". During the British days the British were believed. Do you think we shall not be believed ? The British induced the belief that they were their greatest friend and the Hindus and men of the plains were their enemies. That was the belief they created. I think we are insisting on that and inducing that belief again. And we are not allowing our business men to go there and do business. My amendment is a permissive law. The Governor has power to make rules and regulations and if he thinks that a certain man is objectionable or is not a desirable man he can rule such men out. I, therefore, submitted that this amendment should be accepted.

The provisions as drafted by the Drafting Committee are such that no civilised government can make them. I strongly resent these rules being made in such a hasty manner without considering the entire background and without considering what will be the effect of these things. They will be able to prescribe rules "providing for the maintenance of accounts by money-lenders and for the inspection of such accounts by officers appointed in this behalf by the District Council". Are they acquainted with accounts ? Have, they got sufficient number of literate people ? Have you ever considered these things ? it is an possible thing. you have not understood these thing. You have never cared to understand the problem from all-India point of view and you believe people telling you something which is not correct.

With these words, Sir, I commend my amendment to the acceptance of this House.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in sub-paragraph (2) of paragraph 10, for the words 'Such regulations may' the words 'In particular and without prejudice to the generality of the foregoing power, such regulations may' be substituted."

It is merely a drafting change.

I also move :

"That after sub-paragraph (2) of paragraph 10, the following sub-paragraph be added :--

'(3) All regulations made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect'."

Mr. President : There are two amendments by Mr. Naziruddin Ahmad which are of a drafting nature and another by Mr. Brajeshwar Prasad substituting the word "President" for "Governor" which need not be moved.

Shri Rohini Kumar Chaudhuri : Mr. President, Sir, we have been hearing the replies which the honourable Dr. Ambedkar has been giving to the various amendments moved by Mr. Chaliha, myself and others. Each time he has quoted the Premier of Assam and some other persons in his support. I would ask him whether there is anybody who had gone to him and said that this provision should remain in the new Constitution--the provision that no person who is not a member of the Scheduled Tribes resident in the district shall carry on wholesale or retail business in any commodity except under a licence issued in that behalf by the District Council? Is there anybody in this House who will support this discriminatory treatment between tribal and non-tribal people, in a place where they have been moving together for a very long time ? Even the British would have been put to shame by such a provision.

Take Shillong where there is a large number of non-tribal people who are carrying on retail business. Do you mean to say that the tribals living in the town of Shillong will require no licence but non-tribals will require a licence ? Is there anybody who favours such a discriminatory treatment, I wonder ? If there is anybody who supports discrimination between tribals and non-tribals I would say that is useless to argue with him.

Mr. President : The first amendment to be put to vote is the one moved by Mr. Chaliha, No. 123. The question is :

> "That for paragraph 10, the following be substituted :-
>
> > '10. The Governor shall make regulations to control money lending and trading in the tribal areas'."

The amendment was negatived.

The Honourable Dr. B. R. Ambedkar : May I say a word or two with regard to matters about which my friend is terribly excited ? There are three things provided by way of safeguards which my friend has not taken into consideration. The first provision to paragraph 10 says : "Provided that no such regulations may be made under this paragraph unless they are passed by a majority of not less than three-fourths of the total membership of the District Council." This is one safeguard. The second safeguard is contained on page 184 of the Draft Constitution. It says : "Provided further that it shall not be competent under any such regulations to refuse the grant of a licence to a money-lender or a trader who has been carrying on business within the district since before the time of the making of such regulations." Therefore, existing rights are not affected.

The third thing to which my friend has not cared to pay any attention is the amendment I have moved, *viz*., "All regulations made under this paragraph shall be submitted forthwith to the Governor, and until assented to by him shall have no effect."

These precautions are there.

As regards his remark that what the Drafting Committee has done is a barbaric thing, not done even by the British Government. I may point out that he forgets the fact that this excluded area was entirely within the discretion of the Governor; it was his fault. We have altogether taken away that discretion of the Governor. He can now act only subject to the advice of the Ministry.

I wonder now whether my Friend Shri Rohini Kumar Chaudhuri is satisfied with the explanation I have given?

Honourable Members : Not at all.

The Honourable Dr. B. R. Ambedkar : I know you want something more than what I can give. You are like hungry David Coperfield asking for more gruel.

Mr. President : I will now put amendment No.124 to vote.

The question is :

"That in sub-paragraph (2) of paragraph 10, for the words 'Such regulations may' the words 'in particular and without prejudice to the generality of the foregoing power, such regulations may' be substituted."

The amendment was adopted.

Mr. President : Now I will put amendment No. 125.

The question is:

"That after sub-paragraph (2) of paragraph 10, the following sub-paragraph be added :-

'(3) All regulations made under this paragraph shall be submitted forthwith to the Governor and until assented to by him, shall have no effect'."

The amendment was adopted.

Mr. President : The question is:

"That paragraph 10, as amended, stand part of the Sixth Schedule."

The motion was adopted.

Paragraph 10, as amended, was added to the Schedule.

Paragraph 11

Shri Kuladhar Chaliha : I am not moving amendment No. 126.

Mr. President : Amendment No. 204 of Shri Brajeshwar Prasad is to the same effect as 126.

Shri Brajeshwar Prasad : Sir, my object is to have the notification published in the Official Gazette of India. I will not move it if you so wish.

Mr. President : It is not a question of my not wanting or wanting it.

Shri Brajeshwar Prasad : If you permit me I shall move it.

Mr. President You want it to be published in the official Gazette of India ?

Shri Brajeshwar Prasad : Yes, Sir.

Mr. President : But the question concerns only Assam?

Shri Brajeshwar Prasad : It is part of the amendments which I moved.

Mr. President : That is why I said it is out of place when the principle you advocated has been rejected more than once by the House.

I will now put paragraph 11 to vote.

The question is :

"That paragraph 11 stand part of the Sixth Schedule."

The motion was adopted.

Paragraph 11 was added to the Schedule.

Paragraph 12

Mr. President: Paragraph 12. Amendment No. 127.

Shri Kuladhar Chaliha : Sir, I move:

"That clause (b) of paragraph 12 of the Sixth Schedule be deleted."

Sir, fact is stranger than fiction. Even Parliament will have no power over the autonomous district unless the regional or district council agrees. The clause reads thus :

> "The Governor may, by public notification, direct that any Act of Parliament or of the Legislature of the State to which the provisions of clause (a) of this paragraph do not apply shall not apply to an autonomous district or an autonomous region, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may with the approval of the District Council for such district or the Regional Council for such region specify in the notification, if a resolution recommending the issue of such direction is passed by such District Council or such Regional Council, as the case may be."

The Governor has no power and the Parliament has no power unless the Regional Council or the District Council by a resolution recommends a particular course.

The Honourable Dr. B. R. Ambedkar : May I draw your attention to my amendment No. 128 on the Order Paper ? As that is going to be moved, this amendment of my friend will be quite unnecessary. Therein I am proposing the omission of the words objected to by him.

Shri Kuladhar Chaliha : I am glad that for once some kind of sense has dawned upon the Drafting Committee. It is fortunate that for the first time sense has dawned on the Drafting Committee.

The Honourable Dr. B. R. Ambedkar : That is because for the first time you have convinced me by your arguments.

Sir, I will now move my amendment No. 128:

"That in clause (b) of paragraph 12, for the words 'with the approval of the District Council for such district or the Regional Council for such region specify in the notification, if a resolution recommending the issue of such direction is passed by such District Council or such Regional Council, as the case may be' the words 'specify in the notification be substituted."

The Governor, by this amendment, is freed from the trammels of any resolution that may be passed by the District Council or the Regional Council. He can now act on the advice of the Ministry whether a particular law passed by Parliament or by the Legislature of Assam is to apply to that area or not.

Mr. President : There are two amendments to this paragraph Nos. 205 and 206 standing in the name of Shri Brajeshwar Prasad. We have discussed more than once and rejected the principles contained in them. I do not think therefore that we should take them up. The question is :

"That in clause (b) of paragraph 12 for the words 'with the approval of the District Council for such district or the Regional Council for such region specify in the notification, if a resolution recommending the issue of such direction is passed by such District Council or such Regional Council, as the case may be' the words 'specify' in the notification' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That paragraph 12, as amended, stand part of the Sixth Schedule."

The motion was adopted.

Paragraph 12, as amended, was added to the Schedule.

Paragraph 13

Mr. President : Amendment No. 129.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in paragraph 13, after the words 'the State of Assam shall' the words 'be first placed before the District Council for discussion and then after such discussion' be inserted."

Mr. President : Amendment No. 130 by Mr. Rohini Kumar Chaudhuri. It is more or less the same as No. 129. Do you wish to move it ?

Shri Rohini Kumar Chaudhuri : Mr. President, Sir, I move ?

"That in amendment No. 129 above, in paragraph 13, after the words 'and then after such discussion' (proposed to be inserted) the words 'and such separate statement pertaining to autonomous districts shall be subject to such modifications and alterations as the State Legislature may make' be inserted."

This is only a formal amendment. I think it is the intention of the Drafting Committee that the estimated receipts and expenditure pertaining to an autonomous district should be subject to such alterations or modifications as the State Legislature may make. This is evidently an omission, and the addition of these words will make the meaning perfectly clear. Otherwise it will be meaningless to place the Statement before the House, unless it is subject to modifications and alterations.

Shri Brajeshwar Prasad : I am not moving either of the two amendments 131 and 132.

Mr. President : Would you like to say anything, Dr. Ambedkar, about Mr. Rohini Kumar Chaudhuri's amendment?

The Honourable Dr. B. R. Ambedkar : I must complain that, although the words "Section 177" occur in the original draft, my Friend Mr. Rohini Kumar Chaudhuri has thought it fit to bring in this amendment No. 130. The effect of regarding it as a financial statement within the meaning of 177 means that it will be discussed by the Assam Legislature and, voted upon. Amendments may be moved and the appropriation law would apply. The only thing is that before the Assam Legislature deals with it, it is desirable to allow the District Councils to have their say as to how the money should be allocated. I hope he is now content.

Mr. President : The question is:

"That in paragraph 13. after the words 'the State of Assam shall' the words 'be first placed before the District Council for discussion and then after such discussion' be inserted."

The amendment was adopted.

Mr. President : The question is :

"That in amendment No. 129 above, in paragraph 13, after the words 'and then after such discussion' (proposed to be inserted) the words 'and such separate statement pertaining to autonomous districts shall be subject to such modifications and alterations as the State Legislature may make' be inserted.' "

The amendment was negatived.

Mr. President : The question is:

"That paragraph 13 as amended, stand part of the Sixth Schedule."

The motion was adopted.

Paragraph 13, as amended, was added to the Schedule.

Paragraph 14

Shri Brajeshwar Prasad : Mr. President, Sir, with your permission, I beg to move :

"That for amendments Nos. 3500, 3501 and 3502 of the List of Amendments (Vol. II), the following be substituted :-

"That for paragraph 14 of the Sixth Schedule, the following be substituted :-

"The Governor of Assam as the agent of the President--"

the words "(or alternatively the Governor of Assam) in his discretion" I am not moving, Sir.

"may at any time appoint a Commission consisting of not less than seven members, of whom not less than three shall be members of the scheduled tribes and the rest shall be chosen from the ranks of eminent anthropologists, retired judges of the Supreme Court and of the High Courts and men of science and letters, to examine and report on any matter specified by him relating to the administration of autonomous districts and autonomous regions in the State, or may appoint a similar commission to inquire into and report from time to time on the administration of autonomous districts and autonomous regions in the State generally and in particular on-

> (a) the provision of educational, cultural, medical, economic and religious facilities and communications in such districts and regions;
>
> (b) the need for any new or special legislation in respect of such districts and regions;
>
> (c) the administration of the laws, regulations and rules made by the District and Regional Councils, and define the procedure to be followed by such Commission."

I have only two points to make. I have enlarged the scope of this Commission. I have said that it is to inquire into the provision for educational, cultural, medical, economic and religious facilities. These words do not find a place in the original paragraph.

Mr. President : Educational and medical facilities are there.

Shri Brajeshwar Prasad : But not cultural and religious facilities. My amendment enlarges therefore the scope and functions of the Commission. Secondly, Sir, I have also circumscribed the sphere of choice of the Governor in appointing the members of the Commission. He is not free to choose all whom he likes. He has to choose from among the categories of persons that I have enumerated in my amendment. Beyond this, I have nothing more to say.

The Honourable Dr. B. R. Ambedkar : Sir, I do not think that this amendment is necessary. So far as....

Mr. President : You have yourself certain amendments to move first.

The Honourable Dr. B. R. Ambedkar : Yes, Sir, I will move them first. Sir, I move:

"That in sub-paragraph (1) of paragraph 14, after the words 'autonomous districts in the State' the words, brackets, letters and figures 'including matters specified in clauses (b), (c), (d) and (e) of sub-paragraph (3) of paragraph 1 of this Schedule' be inserted."

"That in sub-paragraph (1) of paragraph 14, after the 'autonomous districts', in the two places where they occur, the words 'and autonomous regions' be inserted."

"That in clauses (a) and (b) of sub-paragraph (1) of paragraph 14, after the word 'districts' in the two places where it occurs, the words 'and regions' be inserted."

"That in sub-paragraph (3) of paragraph 14, after the words 'autonomous districts' the words 'and autonomous regions' be inserted."

Some of these amendments are consequential. Others are purely verbal.

Shri Kuladhar Chaliha : Mr. President, Sir, I move:

"That with reference to amendments Nos. 3500 and 3501 of the List of Amendments (Vol. II), after clause (c) of sub-paragraph (1) of paragraph 14, the following new clause be added:-

'(d) inclusion or exclusion of any tribal area from any district or Regional Council.' "

Sub-paragraph (1) of paragraph 14 provides for the appointment of a Commission to inquire into and report on the administration of the autonomous districts. Somehow or other they have omitted to include a provision for the inclusion or exclusion of any tribal area from the District or Regional Councils. They say that the Commission will report on-

> "(a) the provision of educational and medical facilities and the communications in such districts;
>
> (b) the need for any new or special legislation in respect of such districts; and
>
> (c) the administration of the laws, regulations and rule made by the District and Regional Councils."

I understand that the Commission will have power to include or, exclude any tribal area, but I find that no provision has been made for the Commission to enquire into that question. It may be that some of the plains area have been included in the tribal areas and if he wanted to get rid of them, the Commissioner should have the power to go into them. Sir, I have tabled a very modest amendment, namely, "inclusion or exclusion of any tribal area from any district or Regional Council." I trust the Drafting Committee will reciprocate the kindness after all the unkindness they have shown and that they will accept this and include my amendment in (d), it will greatly improve the clause.

The Honourable Dr. B. R. Ambedkar : I should like to draw my honourable Friend's attention to the amendment which I moved to paragraph 1 of this Schedule, in which the provisions of sub-paragraph (3) were altered in certain respects. This matter which he now wants to provide is to be regulated on the recommendation of the Commission. That paragraph has already been passed, and therefore, it is not necessary.

Shri Kuladhar Chaliha : Is it amendment No. 99 ?

The Honourable Dr B. R. Ambedkar : Yes, it is 99.

Shri Kuladhar Chaliha : But yet you have limited the commission here in paragraph 14 to (a), (b) and (c). That is my difficulty.

The Honourable Dr. B. R. Ambedkar : That is what had been passed.

Shri Kuladhar Chaliha : It has already been passed, but all the same you have limited it in (a), (b) and (c).

The Honourable Dr. B. R. Ambedkar : If I may explain to my honourable Friend, the operation of sub-paragraph (3) which deals with the alterations in the tribal areas either by inclusion or exclusion, are divided into two categories. The first is this : Inclusion in any part of the said table which is (a). That the Governor can do, at the very start. For that no recommendation of the Commission is necessary. But according to my amendment if action is to be taken under (b), (c), (d) and (e), then the Commission's recommendation is necessary and as I said that part has been passed by the House. It is not possible to re-open this now.

Shri Kuladhar Chaliha : You have limited it again with the consideration of the report of the Commission appointed under sub-paragraph (1) of paragraph 14 of this Schedule. You have provided amendment No.99 but limited it again. I should like to hear what Dr. Ambedkar has to say about it.

The Honourable Dr. B. R. Ambedkar : It is not limited by paragraph 14.

Shri T. T. Krishnamachari : If the honourable Member will please look at amendment No. 134, which wants the inclusion of the words "including matters specified in clauses (b), (c), (d) and (e) of sub-paragraph (3) of paragraph 1 of this Schedule" after the words "autonomous districts in the State" in sub-paragraph (1) of paragraph 14 then he will find the object that he has in mind has already been served by this amendment.

Shri Kuladhar Chaliha : Thank you, Sir.

Pandit Hirday Nath Kunzru (United Provinces: General): I have some difficulty in understanding this. The amendment moved by Mr. Chaliha is to the effect that the Commission that may be appointed by the Governor should consider not merely the inclusion of any new tribal area but also its exclusion. An area may be excluded from an existing tribal area without its being included in another tribal area and that thing has not been provided for here. All that the amendment No.99 of Dr. Ambedkar provides is that an area may be taken out of one tribal area and united to another area but there is no power given to the Commission to inquire and to report about the desirability of excluding an area altogether. Only Parliament will have the power to exclude an area. Parliament will have the power to exclude an area from a tribal area, but without having the considered recommendations of the Commission before it because this Commission will not be empowered to deal with the matter.

The Honourable Dr. B. R. Ambedkar : If I may deal with my honourable Friend, Pandit Kunzru's difficulty, I think my honourable Friend has not clearly understood the purpose of Mr. Chaliha's amendment. Mr. Chaliha's amendment is "inclusion or exclusion of any tribal area from any District or Regional Council," that is to say, the diminution of the jurisdiction of the District or Regional Council. That is what Mr. Chaliha is speaking of. What my honourable Friend is speaking of is with the taking away altogether from an autonomous district any area and include it in the general territory of Assam. These are two quite different matters.

Pandit Hirday Nath Kunzru : Why should not the Commission be asked to report on that matter?

The Honourable Dr. B. R. Ambedkar : The Commission has got power to report. If my honourable Friend will read the provision, he will find the following : "The Government of Assam may at any time appoint a Commission to examine and report 'on any matter". "Any matter" may include also the provisions contained in paragraph I and they are also specifically mentioned "specified by him relating to the administration of the autonomous districts in the State or may appoint a Commission to inquire into and report from time to time on the administration of Autonomous districts" includes matters specified, that is "any matters". My amendment No. 134 I have moved in order to make it quite clear and not to lead to interpretation of the words "any matter". I have now specifically mentioned that these may "include matters specified in clauses (b), (c), (d) and (e) of sub-paragraph (3) of paragraph 1 of this Schedule," and these will be referred to the Commission. That is the purport of my amendment No. 134.

Pandit Hirday Nath Kunzru : I understand the purport of the amendment all right and I am well aware of the contents of clauses (b), (c), (d) and (e) of the paragraph but what I say is that the Commission that will be appointed to deal with any matter connected with the administration of the autonomous regions does not seem to me to have the power of reporting that an area already included in a tribal area may be excluded from it and amalgamated with an ordinary administered area.

The Honourable Dr. B. R. Ambedkar : My honourable Friend ought to refer to (d) of paragraph (3) of the said table.

Pandit Hirday Nath Kunzru : That has been removed by your own amendment.

The Honourable Dr. B. R. Ambedkar : That I think will have to be done by Parliament by law.

Pandit Hirday Nath Kunzru : Without having the considered recommendations of the Commission. Parliament should have before it the report of the Commission but now it will have to deal with the matter entirely on the strength of such knowledge as it may have.

The Honourable Dr. B. R. Ambedkar : This is a matter which is not within the competence of the Governor. As passed, the exclusion of any area from the tribal areas is a matter which is taken out of the purview of the Governor. It is left to Parliament to decide. This Commission is merely to guide the Governor to deal with matters which are mentioned in clauses (b), (c), (d) and (e) of sub-para (3). Any matter which is outside it is a matter for Parliament. Parliament may appoint a Commission independently of this Commission and then legislate.

Prof. Shibban Lal Saksena : There is no provision for it.

The Honourable Dr. B. R. Ambedkar : No provision is necessary. Parliament may act upon the advice of the Assam Ministry. If Parliament thinks that that advice is not independent and that there should be independent evidence, Parliament is free to appoint a Commission and make an enquiry of its own.

***Shri Rohini Kumar Chaudhuri:** Sir, I beg to move:

"That with reference to amendment No. 135 above, the following proviso be added after sub-paragraph (1) of paragraph 14 of the Sixth Schedule :-

'Provided that the State Legislature shall be represented by two members elected by the Assam Legislative Assembly.' "

I would like to draw the attention of the House to paragraph 3 as amended and passed by the House which says that all laws passed by the District Councils shall be placed before the legislature and that the Governor shall give his assent on the advice of the Ministry. That is to say, that the legislature has a voice through their Ministers in the matter of laws passed by the District Councils and Regional Councils. One of the objects for which this Commission will be appointed is the need, under sub-clause (b), for any new or special legislation in respect of such districts. The Commission will be expected to report on the need for any new or special legislation in respect of such districts. Furthermore, sub-paragraph (2) of paragraph 14 lays down that the report of every such Commission with the recommendations of the Governor with respect thereto shall be laid before the legislature of the State by the Minister concerned together with an explanatory memorandum regarding the action proposed to be taken thereon by the Government of Assam. It follows from this sub-paragraph that the whole report will be discussed by the legislature. I therefore think that when the Commission is expected to report on the need for any new special legislation, and when the report of the Commission will be placed before the State legislature for discussion, it is only in the fitness of things that two members of the provincial legislature should be represented in the Commission. These two members who will be with the Commission at the time of collecting materials for the report, will be able to give their important advice in the House itself. If the opinion of the members from the province of Assam counts for anything in regard to the discussion on this Sixth Schedule which relates primarily to Assam, I think the Honourable Dr. Ambedkar would agree to accept my amendment. I think we are fairly unanimous--I do not know about the two Ministers, but the rest of us are unanimous--on the need for accepting this amendment.

Prof. Shibban Lal Saksena : The Governor is free to appoint anybody to the Commission.

The Honourable Dr. B. R. Ambedkar : There are no limitations at all on the Governor.

Shri Rohini Kumar Chaudhuri : I say two members should be elected by the legislature.

The Honourable Dr. B. R. Ambedkar : He is not prevented from doing so.

Shri Rohini Kumar Chaudhuri : There is no harm in saying that. A man may live or die. Why do you say, die ? I want to say live. Please accept my amendment.

The Honourable Dr. B. R. Ambedkar : The Governor will proceed to appoint a Commission on the advice of the Ministry. You think your Ministry will not appoint two members from the legislature.

Shri Rohini Kumar Chaudhuri : I want them to be elected by the legislature. I attach certain importance to election by the Assembly. I think the Honourable Dr. Ambedkar also used to give such importance; but he may change his mind now.

Mr. President : There are certain other amendments proposed by Mr. Brajeshwar Prasad : 207,--"President" for "Governor"; 208,--"President" for "Governor"; 209,--"Parliament" for "State legislature"; 210,--"Union" for "Assam"; 211,--"Union" for "State"; 212,--"President" for "Governor"; 213,--"in the State of Assam" for "in the State".

Shri Brajeshwar Prasad: I do not want to move these.

Mr. President : All the amendments to this paragraph have been moved. Would you like to say anything, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar : No.

Mr. President : I would put the amendments now.

The question is :

"That for amendment Nos. 3500, 3501, and 3502 of the List of Amendments (Vol. II), the following be substituted :-

'The Governor of Assam as the agent of the President may at any time appoint a Commission consisting of not less than seven members, of whom not less than three shall be members of the scheduled tribes and the rest shall be chosen from the ranks of eminent anthropologists, retired judges of the Supreme Court and of the High Courts and men of science and letters, to examine and report on any matter specified by him relating to the administration of the autonomous districts and autonomous regions in the State, or may appoint a similar commission to inquire into and report from time to time on the administration of autonomous districts and autonomous regions in the State generally and in particular on-

(a) the provision of educational, cultural, medical, economic and religious facilities and communications in such districts and regions;

(b) the need for any new or special legislation in respect of such districts and regions;

(c) the administration of the laws, regulations and rules made by the District and Regional Councils, and define the procedure to be followed by such Commission.' "

The amendment was adopted.

Mr. President : The question is:

"That in sub-paragraph (1) of paragraph 14 after the words 'autonomous districts', in the State the words, brackets, letters and figures 'including matters specified in clauses (b), (c), and (e) of sub-paragraph (3) of paragraph 1 of this schedule, be inserted."

The amendment was adopted.

Mr. President : The question is:

"That in sub-paragraph (1) of paragraph 14 after the words 'autonomous districts' , in the two places where they occur, the words 'and autonomous regions' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That in clauses (a) and (b) of sub-paragraph (1) of paragraph 14, after the word 'districts' in the two places where it occurs, the words 'and regions' be inserted."

The amendment was adopted.

The President : The question is:

"That with reference to amendments Nos. 3500, 3501 of the List of Amendments (Volume II), after clause (c) of sub-paragraph (1) of paragraph 14, the following new clause be added:-

'(d) inclusion or exclusion of any tribal area from any district or Regional Council.' "

The amendment was negatived.

Mr. President : The question is:

"That with reference to amendment No. 135 above, the following proviso be added after sub-paragraph (1) of paragraph 14 of the Sixth Schedule :-

'Provided that the State legislature shall be represented by two members elected by the Assam Legislative Assembly.' "

The amendment was negatived

Mr. President : The question is:

"That paragraph 14, as amended, stand part of the Sixth Schedule."

The motion was adopted.

Paragraph 14, as amended, was added to the Schedule.

Paragraph 15

(Amendment No. 140 was not moved)

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That sub-paragraph (3) of paragraph 15 be omitted."

That is because it gives discretion to the Governor which it is not proposed now to leave with him.

Mr. President : Amendment No.142: We have dealt with the question of discretion so many times. Is it necessary to move it ?

Shri Brajeshwar Prasad: As you direct me, Sir.

Mr. President: I do not think it is necessary. Amendment 214 : again "President" for "Governor"; Amendment 215, "Parliament" for "legislature of the State"; Amendment 216 : That is the same as Dr. Ambedkar's. These are all the amendments. Dr. Ambedkar, would you like to say anything ?

The Honourable Dr. B. R. Ambedkar : No. As I have said we are taking away the discretion from the Governor which we had originally laid with him and it is therefore necessary to delete this sub-para (3).

Mr. President : The question is:

"That sub-paragraph (3) of paragraph 15 be omitted."

The amendment was adopted.

Mr. President : The question is :

"That paragraph 15, as amended, stand part of the Sixth Schedule."

The motion was adopted.

Paragraph 15, as amended, was added to the Schedule.

Shri Brajeshwar Prasad : Sir, I would suggest that we sit for a few minutes more and finish this schedule.

Mr. President : It will take time. We may not be able to finish. I was just going to remind the House that we are very much behind our scheduled time and something will have to be done to catch up the lost time.

Shri R. K. Sidhva (C. P. & Berar: General): Today we have no other words and we may sit in the afternoon.

The Honourable Dr. B. R. Ambedkar : Tomorrow if you like we can sit. Today we have called a meeting of the Drafting Committee to take up some articles which have remained for consideration.

Mr. President : Very well, we shall consider that tomorrow. The House stands adjourned till 9 o'clock tomorrow.

The Assembly then adjourned till Wednesday, the 7th September 1949 at 9 A.M.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA

Wednesday, *the 7th September, 1949*

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION-*(Contd.)*

Sixth Schedule-(Contd.)

Paragraph 16

Mr. President : We shall now take up paragraph 16. Shri Kuladhar Chaliha can move his amendment No. 143.

Shri Kuladhar Chaliha (Assam: General) : Mr. President, Sir, I beg to move:

"That the second proviso to paragraph 16 of the Sixth Schedule be deleted."

I have a very modest amendment and I think the Drafting Committee will be pleased to accept it. I want that our Governor should have the power to exercise his powers property. If you read paragraph 16, you find that he is hedged in by so many conditions that in an emergency he will not be able to act properly. It reads-

"Dissolution of a District or Regional Council.

The Governor may on the recommendation of a Commission appointed under paragraph 14 of the Schedule by public notification order the dissolution of a Regional or a District Council and

(a) direct that a fresh general election shall be held immediately for the reconstitution of the Council or

(b) subject to the previous approval of the Legislature of the State assume the administration of the area under the authority of such Council himself or place the administration of such area under the Commission appointed under the said paragraph or any other body considered suitable by him for a period not exceeding twelve months:"

And then you have the proviso-

"Provided that when an order under clause (a) of this paragraph has been made the Governor may take the action referred to in clause (b) of this paragraph with regard to the administration of the area in question pending the reconstitution of the Council on fresh general election":

Provided again--

"Provided further that no action shall be taken under clause (b) of this paragraph without giving the District or the Regional Council, as the case may be, an opportunity of being heard by the legislature of the State."

Sir, I find the language in this paragraph is so very involved. The Governor will have first to appoint the Commission, and on the recommendation of the Commission, he shall have to consider the report of the Commission and then submit it to the Legislature for approval and if approved, to direct a general election to be held immediately for the reconstitution of the Council, and assume the administration of the area. But that safeguard even is not considered sufficient and it is provided further that no action shall be taken without giving the District or Regional Council an opportunity of being heard by the Legislature of the State. When will they be heard? At what stage? And what is the necessity of consulting them ? This little body, the District or Regional Council, will be heard again. Why ? The Commission will sit, examine different aspects of the questions and different parties will be heard. After this their recommendations will be put up to the Governor who after necessary examination will put up before the Legislature for approval. Then what or where is the necessity for District or Regional Council to be heard again by the Legislature, and when ? Should there be a second sitting of the Legislature ? There is the first sitting, for approval of the action of the Governor. And then look at the process and procedure involved, and the time taken. It is an emergency practically. The people are probably recalcitrant. They do not obey the law. They are rather restless, and therefore this action is necessary on the part of the Governor and he should act quickly. But then you hem the Governor in, in such a way that be. cannot act in an emergency. The procedure here laid down will take more than a year, when the situation requires that action should be taken in one day. Sir, I think my proposal is a very reasonable one, and the first proviso is quite enough. Let the Governor act some time when he feels like acting and it is not necessary that he should again be circumscribed by the representation of the Regional Council or the District Council to the Legislature. It is not necessary that they should be heard again. My amendment, as I said, is a reasonable one and I commend it to the House and I hope Dr. Ambedkar will accept it.

Mr. President : There are two other amendments which I rule out, because they are on the same lines as the other amendment of Shri Brajeshwar Prasad. Dr. Ambedkar, do you wish to say anything ?

The Honourable Dr. B. R. Ambedkar (Bombay: General) : I should like to hear the Premier of Assam, if he has any views on this matter.

The Honourable Shri Gopinath Bardoloi (Assam: General) : Sir, with reference to the amendment moved by Srijut Chaliha just now for the deletion of the second proviso to para 16, all that I have to say is that in every cage where action of this kind is taken-the parties affected thereby are given an opportunity of being heard. I agree that in this proviso no machinery by which this could be done has been laid down. Therefore, if Srijut Chaliha would modify his amendment as follows namely, that instead of the words "opportunity of being heard by the legislature" the words "an opportunity of placing the views of the Regional Council" may be substituted, then the purpose of his amendment would be served.

Shri Kuladhar Chaliha : I am prepared to do that.

The Honourable Dr. B. R. Ambedkar : I am prepared to accept the amendment of Mr. Bardoloi to the amendment of Mr. Chaliha, which he has accepted. The proviso will now read like this:

"Provided further that no action hall be taken under clause (b) of this paragraph without giving the District or

the Regional Council as the case may be an opportunity of placing their views before the legislature of the State."

Mr. President : The question is:

"That for the second proviso to paragraph 16 of the Sixth Schedule, the following be substituted:

'Provided further that no action shall be taken under clause (b) of this paragraph without giving the District or the Regional Council as the case may be an opportunity of placing their views before the legislature of the State.' "

The amendment was adopted.

Mr. President : The question is:

"That paragraph 16, as amended, stand part of the Sixth Schedule."

The motion was adopted.

Paragraph 16, as amended, was added to the Sixth Schedule.

New Paragraph 16-A

The Honourable Dr. B. R. Ambedkar : Sir, I beg to move:

"That after paragraph 16, the following paragraph be inserted:-

'16A. Exclusion of areas from autonomous districts in forming constituencies in such districts. - For the purpose of elections to the Legislative Assembly of Assam the Governor may by order declare that any area within an autonomous district shall not form part of any constituency to fill a seat or seats in the Assembly reserved for any such districts but shall form part of a constituency to fill a seat or seats in the Assembly not so reserved to be specified in the order.' "

The object of this is to give the people who are included in the autonomous districts but really who are not part and parcel of the people inhabiting the autonomous districts an opportunity to have a place in the Legislative Assembly by having their own constituencies marked out for them.

Mr. President : The question is:

"That paragraph 16A stand part of the Sixth Schedule."

The motion was adopted.

Paragraph 16-A was added to the Sixth Schedule.

Mr. President : There is notice of another amendment by Pandit Kunzru. It refers to 19. Therefore, it may come later.

Pandit Hirday Nath Kunzru (United Provinces : General) : Very well, Sir.

Paragraph 17

The Honourable Dr. B. R. Ambedkar : Sir, I move-

"That after sub-paragraph (2) of paragraph 17 the following sub-paragraph be added:-

'(3) In the discharge of his functions under sub-paragraph (2) of this paragraph as the agent of the President, the Governor shall act in his discretion.' "

Mr. President : There are certain amendments by Mr. Brajeshwar Prasad on the same lines.

Shri Brajeshwar Prasad (Bihar: General) : Sir, I move:

"That for sub-paragraph (2) of paragraph 17, the following be substituted:-

'The administration of the tribal areas of Assam specified in the Table shall be carried on by the President through the Governor of Assam as his agent and the provisions of Part VIII of his Constitution shall apply thereto as if such area were a territory specified in Part IV of the First Schedule'."

Sir, the whole object of this amendment is to bring both the parts of the Table under the government of the President. I have spoken on this subject more than once. I shall not dilate and repeat my arguments. I am convinced of the fact that the policy pursued by the British Government was a very sound one. I am not at all keen whether Biharis, Bengalis, Oriyas and Assamese are allowed to go into those territories. It is a matter which concerns the defence of the country as a whole. It is an area which is of international importance. Therefore, all the tribal areas should be centrally administered areas.

The Honourable Dr. B. R. Ambedkar : I do not accept it, Sir.

Mr. President : Then I put Dr. Ambedkar's amendment first. The question is:

"That after sub-paragraph (2) of paragraph 17, the following sub-paragraph be added:-

"(3) In the discharge of his functions under sub-paragraph (2) of this paragraph as the agent of the President, the Governor shall act in his discretion."

The amendment was adopted.

Mr. President : Now I put Mr. Brajeshwar Prasad's amendment, which is really an amendment to the amendment just now carried. The question is:

"That for subparagraph (2) of paragraph 17, the following be substituted:-

'The administration of the tribal areas of Assam specified in the Table shall be carried on by the President through the Governor of Assam as his agent and the provisions of Pan VIII of this Constitution shall apply thereto as if such area were a territory specified in Part IV of the First Schedule.' "

The amendment was negatived.

Mr. President : The question is:

"That paragraph 17, as amended, stand part of the Sixth Schedule."

The motion was adopted.

Paragraph 17, as amended, was added to the Sixth Schedule.

Paragraph 18

Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in paragraph 18, in line 22, the words 'in his discretion' be deleted."

"That clause (c) of paragraph 18 be deleted."

Mr. President : Amendments Nos. 148 and 149 are ruled out. Then we have amendments Nos. 223, 224, 225 and 226 which are more or less on the same lines. Would you like to move No. 226, Mr. Brajeshwar Prasad ? The other three I have ruled out.

Shri Brajeshwar Prasad : I do not like to move any of my amendments, Sir.

Mr. President : Then, I put Dr. Ambedkar's amendments No. 146 and 147.

The question is:

"That in paragraph 18, in line 22, the words 'in his discretion' be deleted."

The amendment was adopted.

Mr. President : The question is:

"That clause (c) of paragraph 18 be deleted."

The amendment was adopted.

Mr. President : The question is:

"That paragraph 18 of the Sixth Schedule, as amended, be adopted.

The motion was adopted.

Paragraph 18, as amended, was added to the Sixth Schedule.

Paragraph 19

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That with reference to amendments No. 150 and 151 of List I (Seventh Week) for Paragraph 19 and the Table appended to it the following paragraph and Table be substituted:-

"19. *Tribal areas.*-(1) The, areas, specified in Parts I and II of the Table below shall be the tribal areas within the State of Assam.

(2) The United Khasi-Jaintia Hills District shall comprise the territories which before the commencement of this Constitution were known as the Khasi States and the Khasi and Jaintia Hills District, excluding any areas for the time being comprised within the cantonment and municipality of Shillong, but including so much of the area comprised within the municipality of Shillong as formed part of the Khasi State of Mylliem:

Provided that for the purposes of clauses (e) and (f) of sub-paragraph (1) of paragraph 3, paragraph 4 and paragraph 5 and subparagraph (2), clauses (a). (b) and (d) of sub-paragraph (3) and sub-paragraph (4) of paragraph 8 of this Schedule, no part of the area comprised within the municipality of Shillong shall be deemed to be within the District.

(3) Any reference in the Table below to any district (other than the United Khasi-Jaintia Hills District) or administrative area, shall be construed as a reference to that district or area on the date of commencement of this Constitution:

Provided that the tribal areas specified in, Part II of the Table below shall not include any such areas in the plains as may, with the previous approval of the President, be notified by the Governor of Assam in this behalf.

Table

PART I.

1. The United Khasi-Jaintia Hills District.
2. The Garo Hills District.
3. The Lushai Hills District.
4. The Naga Hills District.
5. The North Cachar Hills.
6. The Mikir Hills District.

PART II.

1. North-East Frontier Tract including Balipara Frontier Tract, Tirap Frontier Tract, Abor Hills District, Misimi Hills District.
2. The Naga Tribal Area.' "

Pandit Hirday Nath Kunzru : Sir, with your permission, I shall move amendments Nos. 330, 332 and 333 together.

Sir, I move:

"That after paragraph 16 of the Sixth Schedule, the following paragraph be inserted

'16A. *Provisions applicable lo areas specified in Part 1A of the Table appended to paragraph 19.*

(1) Notwithstanding anything contained in this Constitution no Act of Parliament or of the Legislature of the State shall apply to any tribal area specified in Part 1 A of the Table appended to paragraph 19 of this Schedule unless the Governor by public notification so directs; and the Governor in giving such directions with respect to any Act may direct that the Act shall in its application to the area or to any specified part thereof have effect subject to such exceptions or modifications as he thinks fit.

(2) The Governor may make regulations for the peace and good government of any a tribal area and any regulation so made may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to such area. Regulations made under this sub-paragraph shall be submitted forthwith to the President and until assented to by him shall have no effect.' "

My second amendment runs as follows:

"That in paragraph 19 of the Sixth Schedule, for the words and figures 'Parts I and II' the words and figures 'Parts 1, IA, and II' be substituted."

My last amendment is:

"That for Part I of the Table appended to paragraph 19 of the Sixth Schedule, following be substituted:-

PART I.

1. The Lushai Hills District.
2. The Naga District.
3. The North Cachar Sub-division of Cachar District.

PART IA.

1. The Khasi and Jaintia Hills District excluding the cantonment and the municipality of Shillong but including so much of the area comprised within such municipality as forms part of the Mylliem State.
2. The Garo Hills District.
3. The Mikir Hills portion of Nowgong and Sibsagar Districts excepting the mouzas of Barpathar and Sarupathar."

I have put forward these amendments in order to place, a difficulty that I feel, before the House and in particular before my honourable Friend, Dr. Ambedkar. The areas that are mentioned in Table I appended to paragraph 19 as moved by him contains all those areas that were formerly regarded as excluded or partially excluded areas. The difference between these areas was that while the Governor could act in his discretion in regard to excluded areas, he could only exercise his individual judgment-in regard to partially excluded areas. In other words, while in connection with excluded areas be was not bound to consult his Ministers at all, in respect of partially excluded areas he was bound to act according to their advice, unless he felt that he must dissent from it. Now this distinction no longer exists because the Governor, practically speaking, is required in all cases to act on the advice of his Ministers.

Shri T. T. Krishnamachari (Madras: General): Bar one!

Pandit Hirday Nath Kunzru : I have said 'practically speaking. The only exception is with regard to areas specified in Part II of the table appended to paragraph 19. There he has to act in his discretion because he will act as an agent of the President and obviously the directions given by the President cannot be allowed to be modified by the Provincial Ministers. But though the legal distinction between excluded and partially excluded areas has been done away with by the Draft Constitution, the fact to which it corresponded still exists. What lay at the bottom of the division of backward areas into excluded and partially excluded was that while areas that were totally unable to look after their own interests were classified as excluded, other backward areas, owing to their contact with the people of the plains and thereby being in a better position to protect their interests than those living in the most backward areas, i.e., the excluded areas, were classified as partially excluded areas. This distinction was made, it meant that the people living in the partially excluded areas, however backward they might from our point of view, were more advanced than those living in the excluded areas.

Now the arrangements made in the Sixth Schedule are concerned with the protection of the interests of the most backward people in respect of certain matters. I have no objection whatsoever to this protection being given. On the contrary, I welcome it and I hope that the new awakening on the part of the State in respect of the duty that it owes to the tribal people, who have been neglected for centuries and centuries, will bring about a speedy improvement in the condition of the people in the excluded areas. But is it necessary for this purpose, that areas more advanced than those that were formerly known as excluded should be placed on the same footing as the most backward areas ? I am all in favour of establishing local self-government in areas that were formerly known as partially excluded areas that is, the Khasi and Jaintia Hills district *minus* the Khasi States that were at that time quite distinct from the British administered portion of the Khasi and Jaintia Hills district, the Garo Hills districts and the Mikir Hills district. I know, Sir, what the report of the Bardoloi Committee and the memorandum of the Assam Government have to say on this point. These documents show that the people living in the areas that I have just referred to are backward. But fact remains that fourteen years ago they were though to be more advanced than the people living in areas that were then known as excluded areas. Is it necessary, in order to improve the condition of the people living in the Khasi and Jaintia Hills district or the Garo Hills district or the Mikir Hills to make no distinction between them and the people living in the Naga Hills district, the Lushai Hills district and the North Cachar sub-Division of the Cachar district? I see no reason why the status of the people living in the former areas should be lowered and why they should be regarded as helpless when, owing to their intercourse with the people of the plains, their consciousness has been awakened and they are better able to look after their vital interests than those living in the Naga Hills. It may be though that if district council and regional councils are established in the areas formerly known as partially excluded areas, no harm would be done to them and that there was therefore no reason for objecting to giving them the rights that the people living there would get under this Constitution.

Sir, in order to clear our minds on this point let us consider whether we would approve of such an arrangement in connection with the plains districts. Somebody may say, if it is desirable for a local body to enjoy the rights that are being conferred on regional and district councils under Schedule Six, there is no reason why the more advanced people should not enjoy them. What would our reply be in that case ? Our reply would be that, however good the provisions of the Sixth Schedule might seem, they segregate people living in different districts and thus make unity much more difficult. I feel the same difficulty in connection with the inclusion of what were partially excluded areas before in the table placed before us by Dr. Ambedkar. When these people have reached a state of development in which they can better look after themselves than those who are living, say in the Naga Hills District, why should we regret that fact? Why should we make the arrangements with regard to them rigid and make future changes more difficult ? Our policy should be to take advantage of the natural progress made by them in respect of the understanding of their interests and bring them closer to the other areas, that is, to the plains districts without in any way affecting heir essential interests. This is the purpose of the first amendment I have moved. If the position that I have taken up is correct and honourable Members share my view, then it is obviously desirable, unless Dr. Ambedkar can give us convincing reasons to the contrary, that the arrangements for the tribes mentioned in Part IA of my table should be different from those made for the tribal areas mentioned in Part I.

Now, under the Government of India Act, the Governor exercises two powers in relation to partially excluded areas. In the first place he can modify or amend any law passed by the Central or provincial legislature in its application to partially excluded areas. He enjoys this power even in respect of the excluded areas. In the second place he has the power to make rules for the peace and good government of the tribal areas, whether excluded or partially excluded. It was thought that these provisions by themselves were sufficient to enable the Governor to protect the interests of the people living in the partially excluded areas. In the excluded areas, in some places, there were tribal councils and there were other arrangements for enabling the people to take counsel among themselves. But the arrangements that existed in the partially excluded area were not of the same kind according to the report of the Bardoloi Committee. Election in some form of the representatives of the partially excluded areas to the provincial legislature is in existence. Though the election is indirect in some places, in this respect, the partially excluded areas are in a better position than the excluded areas. Now it is proposed to place both of them on the same footing. I venture to think that the interests of the people living in the partially excluded areas and the interests of the province of Assam as a whole would be better consulted if we continued, in relation to the government of these areas which are specified in part IA of my table, the arrangement that existed under the Government of India Act, 1935. I have already said, and I should like to repeat, in order to prevent any misunderstanding from arising, that I am in favour of complete protection of the interests of the people who will be unable without the help of the State to look after themselves. All that I have submitted to the House is that it is not necessary to treat the areas of present known as partially excluded and excluded in the same way, because that is not in accord with the differences in the mental advancement and the practical knowledge of the people of these areas.

My last two amendments relate to the Table appended to paragraph 19. In accordance with the first amendment moved by me, I have divided the table into three parts, I, IA and II. This requires no explanation in view of the remarks I have already made. The last amendment however requires some explanation. In item 1 of Part IA of the Table, I have not altered the area of the Khasi and Jaintia Hills District. In other words, the Khasi and Jaintia Hills District will include only the area that it does at present and that was recommended by the Bardoloi Committee. In the Table moved by Dr. Ambedkar, however, it has been stated that the Mylliem State should get back such portion of the municipality which has been in existence for two or three generations will lose a part of the area that it has been governing for so long a time. The Bardoloi Committee undoubtedly had all the facts of the situation before it but it nevertheless recommended no change in this respect. Yet, we are now told that the limits of the Khasi and Jaintia Hills District must be increased and those of the Shillong Municipality must be correspondingly contracted.

This is not a small matter, Sir. The Memorandum of the Assam Government explaining the position of the tribal people states on page 2 that the larger part of the municpality of Shillong is comprised in the Mylliem State. I see no reason why so great a change should be made. Dr. Ambedkar, in putting forward his table, which is different from that included in the Draft Constitution, did not say a word to justify this change. he treated it as if it were of no concern to us, and therefore needed no notice. I think, however, that the matter is not as insignificant as he considers it to be. It is a matter of some concern that an area that has been within the jurisdiction of the municipality of Shillong for so long a time should be taken out of it and included in the tribal area. If it is desired that the tribal people living in this area should be able to vote in the elections to the district Council, that can be allowed. Paragraph 16A moved by Dr. Ambedkar makes provision for the exclusion of voters not belonging to the tribal area from the tribal voters. We can on the same lines make a provision allowing the tribal people living within the municipality of Shillong to vote in connection with the elections to the District Council but there is no reason why for this purpose any part. In fact the greater part, of the municipality of Shillong should be excluded from it and be given back to the Mylliem State. I know, Sir, that negotiations are being carried on for the merging of the twenty five Khasi States in the Khasi and Jaintia Hills District but even when this amalgamation has taken place, there will be no reason why the Shillong municipality should be deprived of any part of the area but it controls now. If people there have become used to more advanced ways of life and if their interests have been adequately protected so far, the burden of proving that the present arrangement is unsatisfactory lies on those who want to bring about a change in existing position. Sir, I hope that I have explained sufficiently the reasons for the amendments that I have placed before the House.

Mr. President : Pandit Kunzru, in your amendment No. 333 in Part IA you have used the same expression as Dr. Ambedkar.

Pandit Hirday Nath Kunzru : I do not think, so, Sir.

Mr. President : It is the same wording, "excluding the cantonment and the municipality of Shillong but including so much of the area comprised within such municipality as form part of the Mylliem State".

Pandit Hirday Nath Kunzru : I am sorry, Sir. That was a mistake. Those words should not be there. The words "but including so much of the area comprised within such municipality as forms part of the Mylliem State" should be cut out. I think that this item should be retained in the form in which it is included in the Draft Constitution. This is the form recommended by the Bardoloi Committee.

Mr. President : There are certain amendments to the amendment moved by Dr. Ambedkar. They have come too late. I find that several amendments to the same effect have been given notice of. I will allow one of them to be moved. Mr. Chaliha and another gentleman whose name I cannot read want that in amendment No. 331 the words "but including so much of the area comprised within the municipality of Shillong as formed part of the Khasi State of Mylliem" be omitted. You can move it if you like.

Shri Kuladhar Chaliha : There is also another amendment, Sir, for the insertion of the words "except the mouza of Dimapur" after the words "The Naga Hills District"

Mr. President : You can move both. I find Mr. Das has also given notice of an amendment to the same effect.

Shri Rohini Kumar Chaudhuri (Assam: General) : May I explain what we want by moving these amendments : firstly, that the entire municipality of Shillong including the area owned by the Mylliem State should be excluded from the jurisdiction of any kind of the autonomous district and secondly, that the Mouza of Dimapur in Naga Hills which is inhabited by non-tribal people should be outside the jurisdiction of the District Council of Naga Hills.

Mr. President : Mr. Chaliha will move his amendments and make it clear.

Shri Kuladhar Chaliha : Sir, I beg to move:

> "That in amendment No. 331 List V (Seventh Week) in item 3 of part I after the words `Naga Hills District' the words `except the mouza of Dimapur' be added."

Sir, I also move:

> "That in amendment No. 331 of List V (Seventh Week) the words `but including so much of the area comprised within the municipality of Shillong as formed part of the Khasi State of Mylliem' be omitted."

Sir, firstly I shall take up the mouza of Dimapur. In telling you the history, I shall be a little long and I shall ask the patience of the House to hear me. It is said that this country otherwise called the Brahmaputra valley was conquered by the Kacharis as early as 3000 B.C. and it continued under them till lately. You will find a reference to this history in pages 247 to 249 of Gait's History of Assam.

"In the thirteen century it would seem that the Kachari Kingdom extended along the south bank of the Brahmaputra, from the Dikhu to the Kallang or beyond and included also the valley of the Dhansiri and the tract which now forms the North Cachar Sub-division....Towards the end of this century, it is narrated that the outlying Kachari settlements east of the Dikhu river withdrew before the advance of the Ahoms. For a hundred years this river appears to have formed the boundary between the two nations and no hostilities between them are recorded until 1490, when a battle was fought on its banks. The Aboms were defeated and were forced to sue for peace. But their power was rapidly growing, and during the next thirty years, in spite of this defeat, they gradually thrust the Kachari boundary back to the Dhansiri river".

When war again broke out in 1526, the neighbourhood of this river was the scene of two battles : the Kacharis were victorious in the first but suffered a crushing defeat in the second. Hostilities were renewed in 1531 and a collision occurred in the south of what is now the Golaghat sub-division in which the Kacharis were defeated and Detcha, the brother of their king, was slain. The Ahoms followed up their victory and, ascending the Dhansiri, penetrated as far as the Kachari capital at Dimapur on the

Dhansiri, forty-five miles south of Golaghat. Khunkhara, the Kachari king, became fugitive and a relative named. Detsung was set up by the victors in his stead.

"The ruins of Dimapur, which are still in existence, show that, at that period, the Kacharis had attained a state of civilization considerably in advance of that of the Ahoms. The use of brick for building purposes was then practically unknown to the Ahoms, and, all their buildings were of timber or bamboo, with mud-plastered walls. Dimapur, on the other hand, was surrounded on three sides by a brick wall of the aggregate length of nearly two miles, while the fourth or southern side was bounded by the Dhansiri river. On the eastern side was a fine solid brick gateway with a pointed arch and stones pierced to receive the hinges of double heavy doors. It was flanked by octagonal turrets of solid brick, and the intervening distance to the central archway was relieved by false windows of ornamental moulded brick-work."

"Inside the enclosure are some ruins of a temple or perhaps a market place, the most notable feature of which is a double row of carved pillars of sandstone averaging about 12 feet in height and 5 in circumference. There are also some curious V-shaped pillars which are apparently memorial stones. There are several fine tanks at Dimapur, two of which are nearly 300 yards square."

From 1531 till Word War No. 1, the Mouza of Dimapur was under the Ahoms kings and in the district of Sibsagar under the British but somehow or other the Political Agent of Manipur or a D.C. at Kohima got annoyed with a Station Master who was not very polite to him, because his seats in the first class compartment were not reserved for him or that a telegram was not received duly and the Station Master was not obliging and so a representation was made out and Dimapur Station was included in the Naga Hills and taken out from Golaghat subdivision of Sibsagar District which formed part of it for about hundred years even during British rule. In those days it was the object of the British to suppress the Assamese as much as possible as they became politically conscious and those were the worst days one would have passed there. Sir, in the beginning of my life I was a magistrate of Golaghat and was in charge of the Sub-division for sometime and I know that that place is inhabited by 20,000 people and there is not a single Naga anywhere in that part of the world.

Now, Sir, it is a prosperous state where you find Assamese, Bengalees, Sindhis, Punjabees, Sikhs, Marwaris doing business after having invested crores of rupees; but do you know their fate ? They can be ejected in 24 hours bag and baggage. Their business can be ruined and they are still included in that area. It is rather an irony of fate why the Drafting Committee could not see to it. Sir, I happened to be the President of the Excluded area of Assam as well as All India Excluded Area Conference at Haripur and I know about the Excluded areas much better than many people. I was the President of Assam Excluded Areas Association for a long time and therefore, I say with all humility that the inclusion of the Dimapur mouza in the Naga Hills is the negation of justice. It is nothing but consigning a civilized people, a forward people, an advanced community tot he mercy of the autonomous districts, which have rather primitive rules and primitive ways of criminal laws and Civil Procedure Code. I submit and request, if they care to hear, that they accept this humble suggestion of ours. They are talking, they hardly give attention to my speech in spite of my voice; I am sorry that Dr. Ambedkar is not attending at all to what I have said.

Shri Brajeshwar Prasad : The honourable Member should be stopped till the gets attention of the Members of the Drafting Committee.

Mr. President : I know my duty.

Shri Kuladhar Chaliha : I wish to state to the Drafting Committee again that the Mouza of Dimapur is inhabited by civilized people, men from Madras, Bombay, Assam, Bengal, Punjab and other provinces and crores of rupees have been invested and if this area is to be governed as a tribal area by a Deputy Commissioner, who can do what he likes, or by autonomous councils or regions where none but a tribal can be a member as it is going to be now, the people will be ruined and they can be eschewed in 24 hours. I therefore request the Drafting Committee to give us a little attention and exclude the Mouza of Dimapur. Up to the World War No. 1 it was included in the Golaghat sub-division of Sibsagar District. It was never in the Naga Hills. Here I should like to say that Mr. Guha was the Sub-divisional Officer there and he knows the mouza of Dimapur and that it was in Golaghat Sub-division. I was myself a Magistrate there and I know that part of the country very well. I submit that you may be pleased to accept that amendment and will not stand on dignity or ceremony.

As regards the cantonments and municipality of Shillong I should like to speak that the entire area is inhabited by the people of Assam, Bengal and of other areas. Men of the Khasi tribes have so much advanced that there are scholars, principals of colleges and ministers and if you call them "tribes", it is an injustice to them. Here we have the highest literacy in Assam and as such I should think that Mylliem State which is within the municipality of Shillong should be excluded from part I of the table. I commend both these amendments for the acceptance of the House and I trust that the Drafting Committee will be pleased to accept them.

Shri Rohini Kumar Chaudhuri : Mr. President, Sir, I am not sure if I have followed correctly the import of the amendment which was moved by my honourable Friend Dr. Ambedkar. But I would say that the amendment which he has moved this morning is merely a camouflage.

The Honourable Dr. B. R. Ambedkar : Camouflage for what ?

Shri Rohini Kumar Chaudhuri : Because Dr. Ambdkar, seems to indicate by this amendment that he has altered his view in regard to the inclusion of any part of the Shillong Municipality in the autonomous district.

The Honourable Dr. B. R. Ambedkar : I have not altered my view.

Shri Rohini Kumar Chaudhuri : Paragraph (2) of the amendment as it stands includes.......

Shri T. T. Krishnamachari : May I point out, Sir, that we here are completely disinterested in this matter and there is no need for any camouflage at all.

Mr. President : There is no question of camouflage because the paragraph is perfectly clear that he wants to exclude, the Municipality of Shillong except that part of it which is comprise in the state of Mylliem.

Shri Rohini Kumar Chaudhuri : But includes that part which forms part of the

Mylliem State; that is my difficulty. He excludes the Municipality and Cantonment of Shillong, but includes so much of the area as is comprised within the Municipality of Shillong and forms part of the Khasi State of Mylliem.

Mr. President : There is no camouflage; it is stated in so many words there. You say it is a camouflage; I say it is not, because it is sated clearly in so many words.

Shri Rohini Kumar Chaudhuri : I stand corrected. If Dr. Ambedkar does not practise camouflage, he would not be a good fighter. But, what I thought was that certain honourable Members may be misled as I was misled by what he had stage in his proviso.

The proviso seeks to exclude some paragraphs from operation in the Mylliem portion of the Shillong Municipality. I will show presently that these exceptions do not go very far. My first proposal is that these words appearing in paragraph 2 of his amendment, namely, "but including so much of the area comprised within the municipality of Shillong as forms part of the Khasi State of Mylliem" Should be deleted, and consequently, in the table, part I in (1) which says "The United Khasi-Jaintia Hills District", the words "excepting the Municipality and Cantonment of Shillong" should be added. The original draft was "The Khasi and Jaintia Hills District excluding the town of Shillong". The words "Town of Shillong' are comprehensive enough; it included the entire Municipality of Shillong as well as the Cantonment. I would have no objection if the original draft-stood as it is. Now, I want to omit these words and also that the table should be amended accordingly, and it should be stated. The United Khasi-Jaintia Hills District excepting the Cantonment and Municipality of Shillong".

Let us see what benefit we have got under the proviso. Under the proviso, Dr. Ambedkar has excluded the operation of clauses (e) and (f) of sub-paragraph (1) of paragraph (3).

The Honourable Dr. B. R. Ambedkar : You are studying now !

Shri Rohini Kumar Chaudhuri : Sub-paragraph (1), paragraph 3, clause (e) says: "establishment of village or town committees or councils and their powers". So far so good. By the omission of this clause, the question of establishing village or town committees in the Shillong municipality so far as it is; comprised in the Mylliem State would not arise. But that is not much of a benefit; that would only remove a confusion which would have otherwise taken place. Clause (f) says, "any other matter relating to village or town administration including village or town police and public health and sanitation". That is also good so far as it goes. Because, if those clauses (e) and (f) remain, it would have meant that within the Municipality of Shillong, that is to say, in the capital town of Assam, there would have been another police besides the Assam Police. It will be a Town police or village police, and there would be another management for public health and sanitation which of course, the autonomous district will have failed to carry out. But the other provisions in paragraph 3 will remain in force: that is to say, provisions regarding allotment, occupation or use of land, management of any forest, use of any canal or watercourse, regulation of the practice of jhum, appointment or succession of Chiefs etc. Let us see what further exemption this amendment makes.

The next exemption is about paragraph 6. Paragraph 6 says, that the District Councils for an autonomous district may establish, construct or manage primary schools dispensaries, markets, ferries, fisheries, roads and waterways. . .. What is the meaning of this amendment, may I ask Dr. Ambedkar ? Where are fisheries in the municipality of Shillong comprised in the Mylliem State? Fisheries, roads, all these belong to the Government of Assam. How does the exclusion of this paragraph benefit anybody in any way? It is absolutely meaningless.

The next exemption is made in respect of sub-paragraph (4) of paragraph 8. Sub-paragraph (4) of paragraph 8 says that a Regional Council or District Council as the case may be may make regulations to provide for the levy and collection of any of the taxes specified in sub-paragraphs (2) and (3). That only applies to the levy of any tax. These are the clauses which he had exempted from operation by the District Council, in that portion of the Shillong Municipality which lies in the State of Mylliem.

Mr. President : Mr. Chaudhuri, probably you did not notice that Dr. Ambedkar added two more paragraphs 4 and 5.

Shri Rohini Kumar Chaudhuri : "Provided that for the purposes of clauses (e) and (f) of sub-paragraphs (1) of Paragraph 3,..........

Mr. President : After that, he has added paragraphs 4 and 5.

Shri Rohini Kumar Chaudhuri : That is not in the amendment.

Mr. President : While he was moving his amendment he added these paragraphs.

Shri Rohini Kumar Chaudhuri : I am glad that he has added paragraphs 4 and 5, which relate to the administration of justice in the autonomous districts. I am glad that these clauses are not in operation and that the *status quo* is maintained. The High Court of Assam has complete jurisdiction over the Municipality of Shillong. The judiciary there is the ordinary judiciary as it obtains in other parts of the province. But, what he does not exempt is paragraph 10, which, in my opinion, is the most objectionable paragraph of all these paragraphs. Paragraph 10 says that the District Council of an autonomous district may make regulations for the regulation and control of money-lending or trading within the district by persons other than scheduled tribes resident in the district. Now there are business concerns and even banks in the Sates and the Districts Council will be in a position to regulate their affairs and furthermore this regulation may prescribe that no one excepting the holder of a license shall carry on the business of money-lending. Ordinarily the Assam Money-Lenders' Act would apply to the Municipality of Shillong but by virtue of this para, the Assam Money-Lenders' Act will not be enforced and another money-lenders' Act may be introduced by the District Council. Clause (d) of para. 10 reads.

> "No person who is not a member of the scheduled tribes resident in the district shall carry on wholesale or retail business in any commodity except under a licence issued in that behalf by the District Council."

This will be in force even after this amendment.

In the Shillong Municipality two-thirds belong to Mylliem State, and if two-thrids is taken out then very little remains of the town. There will be the Cantonment which is inhabited more or less by a floating population and there will be what was before as the British portion of Shillong comprising the Secretariat and other office buildings and a little space of Gohati Road with some shops. This is all that we shall have in the

'Shillong Municipality if we exclude the portion which belongs to the Mylliem State. The large majority of the non-Khasi people who were working in the Government offices and private offices and who are carrying on business there are living in the Mylliem State itself. All these people will reap the benefit enjoyed by others. Now, may I ask if this position would be acceptable to this House, that in the town itself the major portion of the town in which is living the non-Khasi people who have been compelled to go there to make their living should be deprived of the advantages which is enjoyed by people living in other parts of the town ? I am afraid the House is not taking that sympathetic interest which it ought to take in matters like this. Why should people who have bee compelled to live there on account of their vocation, on account of the fact that Shillong is the Capital of Assam, be deprived of ordinary facilities. Even now there is a clamour for removing the Capital to its original place Gohati. In Shillong they cannot acquire property without the permission of the Deputy Commissioner and they have to huddle themselves toothier in one-third part of that town and they cannot get any land to purchase outside by virtue of this provision. If anybody wants to purchase land it is dependent on the permission of Government and that permission may be refused. There is no remedy for it. Not to speak of purchasing from tribals, if Mr. Guha wants to purchase a plot from me he cannot purchase it without Government's permission. The position will be worse if the entire right of granting permission to sale of property is made over to the District Council.

So in order to avoid all difficulties I appeal to every Member of the House to consider our position, whether they like us to be subjected to such disabilities as regards our properties as has been envisaged by this Constitution. Such disabilities do not exist anywhere in India and it will be aggravated by this amendment of Dr. Ambedkar. If things remain as they are now viz., Khasi State will be without Shillong. I would have no objection. Why Dr. Ambedkar is anxious to introduce this provision in order to take away the rights of ordinary citizens it is incomprehensible. What mesmerism has been practised over him is more that what I can see. I cannot understand a man like him trying to circumscribe him. He has come to a position where he can ridicule an orphan, Oliver Twist or David Copperfield whatever he calls him. He has come to a position that he can ridicule a hungry orphan. But I hope he will forget Oliver Twist and David Copperfield but try to remember Barkis. Let Barkis be willing I would ask Barkis Ambedkar to be willing to accept any reasonable proposition which is put before him irrespective of whatever mesmerism and witchcraft he has been subjected to.

Mr. President : I suggest that the Premier of Assam should assist the House with his opinion in this matter.

The Honourable Shri Gopinath Bardoloi : Sir, I am grateful for the opportunity you have given me to speak on the amendments that have been presented before the House.

I oppose Dr. Kunzru's amendment seeking to maintain the old distinction between the partially excluded and the fully excluded areas.

Pandit Hirday Nath Kunzru : We cannot hear Mr. Bardoloi.

The Honourable Shri Gopinath Bardoloi : I think I must speak much louder. Well, I was saying that Dr. Kunzru's amendment seeks to perpetuate the old distinctions which were maintained in the province between the partially excluded area and the fully excluded area. The fully excluded areas were within the discretion of the Governor, while the administration of the partially excluded areas was under his individual judgment. Now, since August 1947, these areas, both partially excluded and the fully excluded areas are under the administration of the provincial government and I could tell you, in the meantime, nothing has occurred by which it could be shown that the administration has deteriorated or anything like that. What I would therefore, point out is that there is absolutely no necessity for changing the general structure which has been adopted by this Constitution, in reference to the powers of the Governor.

Pandit Hirday Nath Kunzru : May I ask Mr. Bardoloi whether he realises that my amendment practically reproduces the provision of Section 92 of the Government of India Act, 1935, as amended in 1947 ?

The Honourable Shri Gopinath Bardoloi : I do know. But what I desire to point out is that there is absolutely no necessity, after this Sixth Schedule has been accepted, for maintaining this distinction. That is what I desire to point out. In the first place, even before 1947, the whole administration of the partially as well as the fully excluded areas was done under certain regulations which were promulgated in the name of the Governor and the governor or the District Officers saw to the administration of these areas. But in fact, what these District Officers did was to accept virtually the authority of the village courts in almost all its affairs, not merely in the field of administration but also in the sphere of the administration of justice. What the present Schedule Six wants to do is only to put this thing in a statutory form up to a certain stage, and beyond that stage the administration is integrated with the general working of the Constitution for all areas both in the region of administration as well as in the region of justice. It is now integrated after a certain stage with the rest of the government, in all their functions. Therefore, I do not see, Sir, how the thing would improve if we have two categories of tribals, even in reference to those six districts which have now been put in the Sixth Schedule.

With reference to the amendment that has been tabled by Mr. Chaliha, we have the fullest sympathy. The Advisory Sub-committee for the tribal areas had investigated into this affair. It is quite true that for administrative reasons only about 35 years or 40 years ago – 35 years I think is more correct – this area of Dimapur was brought under Naga Hill administration. The mouzas of Sarapathan and Borpathan in Golaghat sub-division brought under partially excluded area with the result that this portion-the mouza of Dimapur – was cut off altogether from the normal administration. They had, therefore, to tag it on with the administration of the Naga Hills. We had the opportunity of examining the inhabitants of this area and we saw that they were determinedly opposed to their inclusion in the Naga autonomous District. We fully sympathize with their aspirations, taking into consideration that this place at one time was the capital of a big kingdom of the Kacharis. But the remedy has already been provided in the Constitution, and I think, it is not possible for us to take the case of particular mouzas piece-meal. The Constitution can provide only general articles or provisions for the purpose of meeting such cases. It will be seen that it is possible under paragraph 1, sub-clause (3) to diminish any area in an autonomous district. I do not know whether the word "diminish" would cover such cases as we now have, and I should have no objection to substituting it by the word "exclude" (that might also better serve the purpose) and in the third reading, this correction, if necessary, may be made.

Prof. Shibban Lal Saksena (United Provinces : General) : What harm is there if you accept Mr. Chaliha's amendment ?

The Honourable Shri Gopinath Bardoloi : There is no harm. But by saying "Dimapur mouza" it will be difficult to fix the boundary. We have to define the boundary.

Shri Kuladhar Chaliah : The boundary is there already. You can look at the old map of Sibsagar District, which are available in the Government of India Survey Department and even Assam also.

The Honourable Shri Gopinath Bardoloi : But that is a matter on which there may be disputes. The Nagas may say that their district would go up to a certain point and the Dimapur people would say that their boundary would come up to some other point. This matter may be disposed of satisfactorily under the provisions of the Sixth Schedule that we have already adopted. Therefore, it is not necessary (while I have the fullest sympathy with the object of this amendment), to go into the details of many places where such distribution of boundary will be desirable.

Then there is also another provision, 16-A which says that people living in any area, even within an autonomous district may, for the purpose of the franchise, exercise the same in the general constituency instead of in the tribal constituency. This has also been made possible under provision 16-A which we have passed just now.

Then with regard to the amendment of Mr. Chaudhuri – I am not sure whether it was an amendment, but he made certain remarks. It is very necessary for us to understand the real position of the town of Shillong. It is there that more than half of its area are included in the Mylliem State. The question that now faces us is how to maintain the District Council with its powers, and at the same time integrate it with the larger administration of the town of Shillong. That is the question. The view of the Drafting Committee as I understand was that while for the purpose of municipal and general administration the rights should be there with the provincial government or any authority created by it, the right of the tribal people of this area to their representation in the District Council should not go. The amendment has been put before us with that idea, I believe : in the first place, to let a uniform administration prevail in the Shillong Area including the whole of the municipality, at the same time to give the tribal people their right to representation in the District Council. It will be seen that the new amendment proposed by Dr. Ambedkar is to exclude from the operation of the District Council such rights and powers which as municipal administration the municipality under the authority of the government should be able to exercise and all those powers have been given. Secondly, their rights in regard to justice in court have also been conceded in paragraphs 4 and 5 which deal with the matter of justice.

An Honourable Member : Distribution of land ?

The Honourable Shri Gopinath Bardoloi : There is very little of distribution of land . All these lands are occupied by people today and it it comes under the District Council administration with the merger of the Khasi States in Assam, then all the rights of the Government for acquisition of land will be there.

Mr. President : What about para. 10 about money-lending ?

The Honourable Shri Gopinath Bardoloi : If the autonomous district picture prevails there is no difficulty whatsoever. Three-fourths of the men are elected. They may bring in any new regulation and all the old administration is to remain according to the provisions of that paragraph. When we know for a certainty that these States area are going to be merged into the districts of Assam, I do not think that there can be anything wrong.

Shri Rohini Kumar Chaudhuri : May I be permitted to explain ? According to Dr. Ambedkar's amendment, para. 10 will apply to that portion of Shillong Municipality which is under the Mylliem State because so far as para 10 is concerned, that portion of the Municipality will be under the District Council and the District Council under para. 10 may prescribe that no person who is not a member of the scheduled tribes resident in that district can carry on wholesale or retail business except under a licence granted by the Council. Does the Premier of Assam desire that this clause should be applicable to persons resident in Shillong Municipality the land of which belongs to Mylliem State and does he want that Dimapur which does not bear one single tribal man should also be subject to this regulation ?

The Honourable Shri Gopinath Bardoloi : The question of Dimapur should not have been raised for the simple reason that it may be altogether cut off from the Sixth Schedule or, if it remains, I assume it will be governed by para. 10. It is necessary to understand what paragraph 10 says. You have read the potion relating to the necessity of obtaining a licence in the case of a non-tribal resident. As against this, there are these safeguards.

"Provided that no such regulation may be made under this paragraph unless they are passed by a majority of not less than three-fourths of the total membership of the District Council."

Shri Rohini Kumar Chaudhuri : There cannot be a single non-tribal man in the municipality not to speak of three-fourths.

The Honourable Shri Gopinth Bardoloi : It is only in respect of three-fourths that this is applied. Three-fourths of them are to be elected one-fourth are to be nominated and those nominated members may be anybody. It is nowhere stated that they could not be non-tribals. Apart from that, there is also the proviso:

"That it shall not be competent under any such regulations to refuse the grant of a licence to a money-lender or a trader who has been carrying on business within the district since before the time of the making of such regulations."

That means to say it does not apply to old cases. It applies to new cases.

Shri Rohini Kumar Chaudhuri : On a point of information, may I ask the honourable Member whether a non-tribal man can be a member of the autonomous council?

The Honourable Shri Gopinath Bardoloi : There is no bar.

Shri Rohini Kumar Chaudhuri : There is.

The Honourable Shri Gopinath Bardoloi : All regulations made under this Assam Assembly?

Mr. President : I think the Premier should be permitted to proceed in his own way.

The Honourable Shri Gopinath Bardoloi : All relations made under this para. shall be submitted to the Governor and assented to by him. If there is any prejudicial regulation, the Governor cannot assent to it. But if it is thought that sub-para 10 will yet work harshly, I can agree personally to the deletion of sub clause (g) but in view of the fact that already there are so many safeguards for seeing that nothing wrong can be done under this sub-clause I do not think it is necessary.

Pandit Hirday Nath Kunzru : May I put a question to Mr. Bardoloi ? What I should like to know, Sir, is whether the Committee on Tribal Areas in Assam over which Mr. Bardoloi presided, has pointed out that the present system has led to any injustice to the tribal people living within the limits of the Shillong municipality?

The Honourable Shri Gopinath Bardoloi : I am sure no injustice whatsoever has been done. On the other hand it is trying to do all that is possible to be done with the finances at the disposal of the Government of Assam.

I also find that the safeguards are enough for the purpose of preventing any abuse of the powers of the district councils.

Mr. President : What the Premier of Assam has suggested is that he would have personally no objection if, in the proviso moved by Dr. Ambedkar to paragraph 19(2), clause (d) of sub-paragraph (2) of paragraph 10 is also included. That gives power to the Council to prescribe that no person who is not a member of the scheduled tribes resident in the district shall carry on wholesale or retail business in any commodity.

The Honourable Dr. B. R. Ambedkar : Sir, I did not think that my amendment No. 331 substituting a new text of paragraph 19 would cause any kind of difficulty such as the one which I now find. I did not, therefore, consider it necessary to spend much time in explaining the provisions contained in paragraph 19. But now that so much debate has taken place of an acrimonious sort I am bound to explain the provisions as contained in the new amended paragraph 19.

Now, the chief part of the controversy has centered round sub-paragraph (2) of paragraph 19. I should like to explain what this means. It means that so far as the United Khasi-Jaintia Hills District is concerned which is mentioned as entry 1 in Part I of the Table, that portion of the area comprised within the municipality of Shillong and which forms part of the Khasi State of Mylliem shall be part and parcel of the United Khasi-Jaintia Hills District. It means that the part of the Mylliem state which is included in Shillong will form part of the United Khasi-Jaintia Hills District. It is realised that this part of the Mylliem State is really subject now under the new provisions of paragraph 19 to two separate jurisdictions. It is subject to the jurisdiction of the Municipality of Shillong, because by this provision we are of altering the boundaries of the Shillong municipality. The boundaries of the Shillong municipality, as defined by the Municipal Act passed by the Assam Legislature, remains intact. According to that Act this particular part of the Mylliem State is part of the municipality. It is recognised that this double jurisdiction, namely the United Khasi-Jaintia Hills District and the municipalty might come in conflict. In order to overcome this conflict, I have added the proviso to sub-clause (2). The effect of the proviso is this that for the purposes mentioned in the proviso the jurisdiction of the District Council of the United Khasi-Jaintia Hills District is ousted and to the extent that the jurisdiction of the municipality is restricted to this purpose mentioned in the proviso the jurisdiction of the District Council will continue over this area. The idea of the proviso is to avoid conflict of jurisdiction. Some people on the other side have said that the Mylliem State area should be completely excluded from the United Khasi-Jaintia Hills district and should be made exclusively part and parcel of the Shillong municipality.

Pandit Hirday Nath Kunzru : As it is now.

The Honourable Dr. B. R. Ambedkar : I do not know whether that is so. The point is this, that as some one from that side said – I think my Friend Shri Rohini Kumar Chaudhuri – three-fourths of the municipality is really covered by this area. There is not the slightest doubt about it that so far as marriage laws, inheritance laws and other customs and manners are concerned, the people living in this part of the Mylliem State share the same laws, the same customs, the same marriage laws and ceremonies of the whole district. Consequently what will happen is this. Supposing this area were completely excluded from the United Khasi-Jaintia Hills district, the result will be that these people although they are fundamentally alike to their brethren interest of the part of the Mylliem State with regard to marriage laws, their customs, etc., etc., they will become at once subject to the general law of inheritance, general law of marriage, all general laws which the Parliament may make or which the Assam Legislature may make. I do not think that it is right that a part of the people who are homogeneous in certain matters should be severed in this manner. A pat will obtain autonomy so far as their tribal life is concerned and a part will be subject to the general law to which the rest of the population is subject. It is for this reason that the Drafting Committee felt that the provision contained in sub-clause (2) and the proviso which accompanies it was the proper solution of this problem, namely, that for the purpose of the municipality as defined in the proviso that part of the Mylliem State which is part of the municipality should remain subject to the municipality, while for purposes for which the district council if constituted that part should remain subject to the district council. There is no conflict and it helps to sub serve the fundamental purpose, namely, that a homogeneous people should be subject to the same sort of laws, and to the same sort of administrative system which all of them should have and have.

Now, there may be some controversy as to whether the proviso is sufficiently big enough to cover all matters that ought to be covered or whether it is too narrow. I am not prepared to express any opinion about it. The drafting Committee has been guided in this matter by the two principal representatives, who must be credited with sufficient knowledge and information about this matter, namely, the Premier of Assam and his colleague, Rev. Nichols-Roy. If they in their wisdom think that some other matters ought to be included, the Drafting Committee will certainly not raise any objection because the Drafting Committee has nothing to do with this matter.

Shri Rohini Kumar Chaudhuri : Is it that the non-Tribal people who live in Shillong have no voice in this matter ?

The Honourable Dr. B. R. Ambedkar : In What matter ?

Shri Rohini Kumar Chaudhuri : In Whatever matter you are touching on now.

The Honourable Dr. B. R. Ambedkar : I cannot understand the point. What we have done is that the people living in this part have a double right. They have a right to elect their representatives under the Shillong Municipality and they will have a right to elect their representatives in the District Councils Beyond that, the jurisdiction is quite separate. I do not think there is any other point so far as this new paragraph 19 is concerned.

Shri Rohini Kumar Chaudhuri : On a point of information, does the Member who is now speaking, mean to say that those people in Dimapur where there is not a single tribal person, and those people in Shillong, are, to be guided entirely by the opinion of Rev. Nichols-Roy.

Mr. President : He has not said anything about Dimapur. He is dealing with the question by Mr. Bardoloi that paragraph 10, sub-clause (d) of sub-paragraph (2) might be included in the proviso.

The Honoruable Dr. B. R. Ambedkar : I have no objection. We leave the matter to them. If they think that certain matters should be included, why should we object? We are acting upon their advice.

Pandit Hirday Nath Kunzru : May I ask Dr. Ambedkar for information on one point ? Has the Drafting Committee or Mr. Bardoloi and the Rev. J. J. M. Nichols-Roy who signed the report of the Tribal Areas Committee of Assam received any representation anything for a change in regard to the position of the tribal people living within the limits of the Shillong municipality ?

The Honourable Dr. B. R. Ambedkar : I have not questioned their credentials nor have I examined whether they have fortified themselves with any such representation.

Pandit Hirday Nath Kunzru : I put this question because my honourable Friend referred to the authority of the Prime Minister of Assam and Rev. Nichols-Roy. Both these gentlemen have signed the report of the Committee to which I have referred and that Committee says that the limits of the Shillong Municipality should be what they are now and does not suggest any change in the status of the people living in that area.

The Honourable Dr. B. R. Ambedkar : That they may have done but the report cannot act as an estoppel for further re-examination! I do not think we can carry the matter any further. As I said the Drafting Committee felt that this was such a local matter that they could not act without the authority or advice of the principal participants in this matter. We took their advice and we carried out the work. If they think....

Shri Kuladhar Chaliha : In Dimapur people from all over India reside.

Mr. President : There is no use saying anything about Dimapur. He has said nothing about Dimapur.

The Honourable Dr. B. R. Ambedkar : I have so far said nothing about it; I am coming to it.

Now I come to the exclusion of certain areas from the autonomous districts.

In this connection I would like to remind the House of the new article 16- A which has just been passed. I would like you to refer to that. In framing article 16- A, two questions were raised. One question related to some two mouzas of what are called the Garo Hills. Along with that the question of the Dimapur area was also raised by my Friend Mr. Chaliha, and I think I am justified in saying that he was present at the Conference. There were three representatives of Assam who were also present at this Conference. Mr. Bardoloi, Rev. Nichols-Roy and Mr. Chaliha and it was considered whether these mouzas of the Garo Hills and the Dimapur area should be separated from the autonomous districts. It was said at the conference that it was not desirable to separate them from the autonomous districts because the life of these mouzas - their economic life - was closely bound up with the life of the people in the autonomous districts. It was therefore said that it would be enough if these areas, that is to say, the three mouzas from the Garo Hills and the Dimapur area were separated purely for giving political representation to the inhabitants of this area in the Legislative Assembly. That was definitely stated by my Friend, Mr. Chaliha, who has now raised the question of the Dimapur area. It was therefore at their request and at the instance of these three representatives of Assam that paragraph 16- A was framed in the terms in which it has been framed. If at that time they agree that there should be a complete separation, that this should not form part of the autonomous area, we would have had no objection to carrying out their wishes. Therefore, it is no use blaming the Drafting Committee for doing something which it was not advised to do. That is my first submission. Paragraph 16- A embodies the concrete conclusions of the Drafting Committee and of the three representatives of Assam, including Mr. Chaliha, who for the first time raised the matter of the Dimapur area.

Shri Kuladhar Chaliha : May I submit that I was asked to go there as an Adviser and to see. I never felt that I was a member of the Drafting Committee and you will not find my name there.

Mr. President : No one has suggested that you were a member of the Drafting Committee. He has said that you were present.

The Honourable Dr. B. R. Ambedkar : That is his opinion. There is a further point to be made, namely under amendment 99 which gives power to the Governor to alter boundaries, to diminish areas and so on. It would be perfectly possible for the Governor to server any area, exclude any area from the area now to be included in he autonomous area. If that is not clear, the Drafting Committee would be quite prepared to include an express clause to that effect. But I do like to say that it is very unfortunate, to put it in the very mildest terms possible, that representatives should come to a conference, agree to certain agreement, and then reside from that agreement, bring in amendments and make it a point to comment against the Drafting Committee and say that they have done something which is either contrary to the wishes of the representatives......

Shri Kuladhar Chaliha : No.

The Honourable Dr. B. R. Ambedkar : I am very sorry. All I can...

Shri Kuladhar Chaliha : No, no.

The Honourable Dr. B. R. Ambedkar : I am very sorry. Therefore, so far as paragraph 16-A is concerned, it provides separation for the purpose of political requirements. If complete separation is wanted I submit it is already provided for in the paragraph we have passed. If it does not do that, I am prepared to add a clause to make that thing quite clear that the Governor will have power to exclude any area if he thinks fit. so far as my amendment contained in new paragraph 19 is concerned I believe that all points of controversy have been answered.

Now, Sir, I propose to deal with my honourable Friend Mr. Kunzru's amendment which is for the addition of another paragraph. It will be noticed that his amendment is nothing but a repetition of paragraph 5 of the Fifth Schedule which has already been passed and which deals with tribal areas or scheduled areas in States other than Assam. There is nothing more in his amendment than this. My submission as against his amendment is this: so far as sub-clause (1) of his new paragraph is concerned, it is quite unnecessary. It is governed by paragraph 12 (b) of the Sixth Schedule which gives the Governor the power either to apply or not to apply or if apply, apply with modifications laws made by Parliament or laws made by the Legislature of Assam. Therefore, that provision is absolutely unnecessary, and is already contained in our Draft.

With regard to the second sub-clause (2), the position is this. It is quite true that so far as the Fifth Schedule is concerned, we do give the Governor the power to make regulations in respect of that area, but we do not propose to give that power to the Governor in the case of the Sixth Schedule. It is for this reason that in the case of the Fifth Schedule the tribes have no authority to make any regulations for themselves, but in the case of the Sixth Schedule, we have given the district council and the regional council the right to make laws in certain respects. It seems to me, therefore, that where the tribes have not been given the power to make regulations it is necessary to give the power to the Governor to make regulations. But where the, trible councils themselves have been given power to make similar regulations it seems to me that conferring powers upon the Governor to make similar regulations is utterly superfluous. That is the reason why we do not propose to give the power to the Governor so far as the Sixth Schedule is concerned. I therefore submit that his amendment is quite unnecessary.

There is one other point which I would like to make quite clear. The power to make regulations which it is proposed to give to the District Council under the Sixth Schedule is not a new power at all. As a matter of fact there exists now in Assam certain regulations which give the tribes the same power of making regulations which we are giving by our Schedule. The Schedule therefore is not anything new. It is merely continuing the existing position, namely, that the tribes have the power now to make regulations in certain matters. Therefore, for the reasons, I have explained his amendment is quite unnecessary. I therefore oppose it.

Mr. President : I was going to suggest that there is really not as much difference in the viewpoints expressed here as would appear from the discussion that we have had. As I have followed Dr. Ambedkar's statement, I believe that if two suggestions are accepted, probably much of the differences will disappear. I was going to suggest therefore that he should include clause (d) of sub-paragraph (2) of paragraph 10 in the proviso.

The Honourable Dr. B. R. Ambedkar : If we leave it to the Drafting committee it will do that.

Mr. President : I was going to suggest that we add to clause (b) of sub-paragraph (3) in amendment No. 99, after the words "diminish the area of an autonomous district" the words "or exclude any area from an autonomous district." This would cover all the points.

The Honourable Dr. B. R. Ambedkar : That we are quite prepared to do.

Mr. President : I find this difficulty. Most of the Members of the House including myself are not acquainted with the local situation and are therefore not in a position to take any definite line of our own with regard to Assam. We have to be guided by friends from there. Since there is difference in some respects among them, our position becomes very difficult. I would therefore suggest that it would be best to leave the thing to be dealt with by the local Government. The suggestions which I have made will enable the local Government to deal with this matter. I understand that Dr. Ambedkar has no objection to the two suggestions I have made.

The Honourable Dr. B. R. Ambedkar : No, Sir, I am prepared to add 10 (2) (d) to the proviso and also add, 'power to exclude' in the other case.

Mr. President : I think that will satisfy the friends from Assam.

The Honourable Rev. J. J. M. Nichols-Roy : I do not understand your proposal. Sir.

Mr. President : My first proposal is that, in the proviso which Dr. Ambedkar has moved to sub-paragraph (2) of paragraph 19, add the words in paragraph 10(2) (d).

Shri T. T. Krishnamachari (Madras: General) : It will read like this :

"Clause (d) of sub-paragraph 2 of paragraph 10, be added:"

Pandit Hirday Nath Kunzru : What was your suggestion, Sir ?

Mr. President : It is to insert the following in paragraph 19:-

19. "Exclude any area from Pat 1 of the suggested Table."

Please turn to amendment No. 99 which we have already passed.

The Honourable Rev. J. J. M. Nichols-Roy : In the proviso to clause (2) the proposal is to exclude. .

Mr. President : No; to include the words "sub-clause (d) of sub-paragraph (2) of paragraph 10" after the words "paragraph 8".

The Honourable Rev. J. J. M. Nichols-Roy : The difficulty is only here. Already the power has been given to the local Government to stop any regulation made by the District Council from having effect. The local government has already been given the power to stop any law from having effect which is passed by the District Council for the regulation and control of money-lending, within the district. Sub-paragraph (3) of paragraph 10 reads :

> "All regulations made under this paragraph shall be submitted forthwith to the Governor, and until assented to by him shall have no effect."

If we give power now to the Governor to exclude any area it will be too wide.

Mr. President : That is not the position.

The Honourable Rev. J. J. M. Nichols-Roy : My whole point is that power has already been given to the local government when we have provided that "All regulations made under this paragraph (by the District Council) shall be submitted forthwith to the Governor, and until assented to by him shall have no effect."

Mr. President : What paragraph is that?

The Honourable Rev. J. J. M. Nichols-Roy : It is amendment No. 125 by Dr. Ambedkar :

> "That after sub-paragraph (2) of paragraph 10, the following sub-paragraph be added:-
>
> '(3) All regulations made under this paragraph shall be submitted forthwith to the Governor, and until assented to by him shall have no effect.' "

That covers everything, Sir. I am not agreeable to the powers of the Governor being made too wide.

Mr. President : The proposal is different under paragraph 19.

The Honourable Rev. J. J. M. Nichols-Roy : I do not see any reason why you should put under paragraph 19 a matter which is already covered by paragraph 10.

Mr. President : The idea is to put in "sub-clause (d) of sub-paragraph (2) of paragraph 10" not the whole of paragraph 10.

The Honourable Rev. J. J. M. Nichols-Roy : What is the use of putting it here in this proviso ? It is already there under paragraph 10.

The Honourable Dr. B. R. Ambedkar : Sub-clause (d) of sub-paragraph (2) of paragraph 10 covers only trading, not money-lending. That is what is sought to be included.

Mr. President : As regards the question of exclusion, it was in the original draft.

The Honourable Dr. B. R. Ambedkar : Mr. Nichols-Roy, it is all right. I do not think you stand to lose anything.

The Honourable Rev. J. J. M. Nichols-Roy : I am asking you whether or not you are going to put in the text an amendment to the effect giving power to Governor to exclude any area of an autonomous district.

The Honourable Dr. B. R. Ambedkar : "Exclude" also we, are giving. To "diminish" means really "exclude".

Mr. President : "Diminish" means "exclude".

The Honourable Rev. J. J. M. Nichols Roy : I suppose, Sir, it may be all right. Mr. President, Sir, I am very thankful to Dr. Ambedkar for the explicit way in which he has put the position before this House regarding Shillong Municipality. I think this House has understood that the Shillong Municipality is composed of two areas which were called before the British area and the Mylliem State area, and no act of the Provincial Legislature or of Parliament could be applied to this Mylliem State area unless agreed to by the Mylliem State authorities; but for municipal purposes the Mylliem State had given the power to the local Government and that is only for municipal purposes. The land still belongs to the Mylliem State. Therefore, Sir, the power of the District Council should remain over this area; and as it is understood from the Ministry of States this Mylliem State is going to be united with the District Council, this area should form part of the District Council and will be under the power of the District Council as regards land. The same conditions will be kept but all the municipal laws will apply there. At the same time, Sir, according to this the proviso which Dr. Ambedkar has' moved regarding the Khasi and Jaintia Hills, it is stated that the Khasi States will be included in that area. For this reason, I believe that the pressure that has been put before the House is very reasonable. From the standpoint of the people the tribal people should live in that area; they would like to have the same rights and privileges which they had before, but according to this proviso even the judiciary of the Mylliem State will not be functioning there. Because paragraphs 4 and 5 have already excluded the judicial power of the District Council over this area. That to my mind, Sir, is a great concession in order to pacify the feelings of the people who are not tribal people. It has been really a great concession and a sacrifice also to the tribal people to allow these areas to be altogether under the power of the regular court instead of going to the District Court. Sir, I do not feel very happy about this, but under the present conditions of the people of Shillong and the feelings of all classes of people, I felt that this was a compromise that was arrived at between myself and the other parties.

Shri Rohini Kumar Chaudhuri : Is the honourable Member opposing the suggestion put forward by the Honourable Premier of Assam with regarding to paragraph 10 (d) ?

The Honourable Rev. J. J. M. Nichols Roy : I am not opposing. I have already said, I do not want to be disturbed. I have to leave and go away to Assam today, Sir. What I want to say is that this compromise that has been arrived at is according to the ideas placed before the House and the amendment proposed by the Drafting Committee is acceptable considering all the possible conditions and also the feelings of all the parties and therefore, I support the amendment that has been placed before the House by Dr. Ambedkar.

I am sorry, Sir, I have to be in a hurry because I have to leave today; otherwise I would have taken more part in this discussion. I thank the Drafting Committee for all that they have done in order to realize the position of this difficult situation there in Shillong.

Shri B. Das (Orissa : General) : Sir, before I give my vote for the amendment may I know if this will not lead to disenfranchisement of large number of citizens in Shillong and is the deprivation of civil liberties, of rights and privileges of a section of the people that live today in the Shillong Municipality ? I should like to say that a sovereign body like ours should not deprive the civil liberties of those people. When I heard Rev. Nichols-Roy, I felt clear in my mind that he wants to perpetuate the old order of things. He does not want the inclusion of 10(2) (d) in the proviso that the Honourable President has recommended. Let Dr. Ambedkar explain to us as to why does he want to disenfranchise those people ? Why does he want to take away the civil liberties of people who have enjoyed them for years in the Shillong Municipality ? Part of my observations apply also to Dimapur. Dr. Ambedkar has changed his views ten times this morning and I am left no wiser. Sir, I may be a fool in this House but I just want the House to know that what Rev. Nichols-Roy said is only in continuation of the "two-nation theory".

Mr. President : You did not hear him.

Shri B. Das: I am sensing him. I am very sorry that a great liberator like Dr. Ambedkar should introduce such an anachronism in his amendment No. 331 to para 19(2) of the Sixth Schedule, which disenfranchises the civil liberties of people of the Shillong Municipality and makes the people of educated class to depend on primitive people. Sir, I hate the provision of Sixth Schedule whereby you are perpetuating primitive conditions of life. I have warned you yesterday and I warn you again. The British spies through help of British and American missions and Communists are coming through these tribal areas and for that Reverend Nichols-Roy will be held responsible.

Shri T. T. Krishnamachari : Sir, the question be now put.

Mr. President : I shall now put the amendments to vote.

The question is :

"That after Paragraph 16 of the Sixth Schedule, the following paragraph be inserted:-

'16A. Provisions applicable to areas specified in Part IA of the Table appended to paragraph 19.

(1) Notwithstanding anything contained in this Constitution no Act of Parliament or of the Legislature of the State shall apply to any tribal area specified in Part IA of the Table appended to paragraph 19 of this Schedule unless the Governor by public notification so directs; and the Governor in giving such directions with respect to any Act may direct that the Act shall in its application to the area or to any specified pan thereof have effect subject to such exceptions or modifications as he thinks fit.

(2) The Governor may make regulations for the peace and good government of any such tribal area and any regulation so made may repeal or amend any Act of Parliament or of the Legislature of the State of any existing law which is for the time being applicable to such area. Regulations made under this sub-paragraph shall be submitted forthwith to the President and until assented to by him shall have no effect."

The amendment was negatived.

Mr. President : Amendment moved by Dr. Ambedkar, paragraph (1).

Shri H. V. Kamath (C. P. & Berar : General) : On a point of information, Sir, have your suggestions been accepted by Dr. Ambedkar on behalf of the Drafting Committee ?

Mr. President : Yes. Therefore I am going to put the paragraphs separately. The question is :

"That with reference to amendments Nos. 150 and 151 of List I (Seventh Week), for paragraph 19 and the Table appended to it, the following paragraph and Table be substituted:--

'19. Tribal areas.-(1) The areas specified in Parts I and II of the Table below shall be the tribal areas within the State of Assam.' "

The amendment was adopted.

Mr. President : The question is : Paragraph (2).

___"(2) The United Khasi-Jaintia Hills District shall comprise the territories which before the commencement of this Constitution were known as the Khasi States and the Khasi and Jaintia Hills District, excluding any areas for the time being comprised within the cantonment and municipality of Shillong, but including so much of the area comprised within the municipality of Shillong as formed part of the Khasi State of Mylliem:

Provided that for the purposes of clauses (e) and (f) of sub-paragraph (1) of paragraph 3, paragraphs 4 and 5, paragraph 6, and sub-paragraph (2), clauses (a), (b) and (d) of subparagraph (3) and sub-paragraph (4) of paragraph 8. and clause (d) of sub-paragraph (2) of paragraph 10 of this Schedule, no part of the area comprised within the Municipality of Shillong shall be deemed to be within the District."

The amendment was adopted.

Mr. President : The question is: Paragraph 3.

"(3) Any reference in the Table below to any district (other than the United Khasi Jaintia Hills District) or administrative area, shall be construed as a reference to that district or area on the date of commencement of this Constitution:

Provided that the tribal areas specified in Part II of the Table below shall not include any such areas in the plains as may, with the previous approval of the President, be notified by the Governor of Assam in this behalf."

The amendment was adopted

Mr. President : Table Parts I and II. The question is:

Table

PART I

1. The United Khasi-Jaintia Hills District.
2. The Garo Hills District.

3. The Lushai Hills District.

4. The Naga Hills District,

5. The North Cachar Hills.

6 The Mikir Hills.

PART II

1. North-East Frontier Tract including Balipara Frontier Tract, Tirap Frontier Tract, Abor Hills District, Misimi Hills District.

2. The Naga Tribal Area.

The amendment was adopted.

Mr. President : The question is :

"That paragraph 19, as amended, and the Table, Parts I and If, stand part of the Sixth Schedule".

The motion was adopted.

Paragraph 19, as amended, and the Table, Parts I and II were added to the sixth Schedule.

Paragraph 1

Mr. President : There is a suggestion that we reopen amendment No. 99 and add one, more sub-clause to it :

"That after clause (a) of sub-paragraph (3) of paragraph 1 of the sixth Schedule, the following be inserted :

'(aa) exclude any area from part I of the said Table.' "

This gives power to the local Government to exclude any area. As a matter of fact, it is included in sub-clause (d) which says "diminish the area of any autonomous district". But, to make it beyond all question, this is sought to be added.

The question:

"That after clause (a) of sub-paragraph (3) of paragraph 1 of the Sixth Schedule, the following be inserted :-

'(aa) exclude any area from Part I of the said Table,'"

The amendment was adopted.

Paragraph 20

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That after paragraph 19, the following new paragraph be inserted:-

'20. Amendment of the Schedule.-(1) Parliament may from time to time by law amend by way of addition, variation of repeal any of the provisions of this Schedule and when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended.

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for purposes of article 304 thereof."

Prof. Shibban Lal Saksena : Sir, I beg to move:

"That in amendment No. 153 of List I (Seventh Week), for the proposed new paragraph 20, the following be substituted:-

20. *Parliamentary Commission and Amendment of the Schedule.*- (1) As soon as may be after the commencement of the Constitution but not later than two years thereafter, there shall be constituted a Parliamentary Commission consisting of fifteen members of whom ten shall be elected by the House of the People and five shall be elected by the Council of States in accordance with the system of proportional representation by single transferable vote.

(2) It shall be the duty of the Commission to investigate the entire problem of the tribal areas of Assam and to make recommendations to the President as to,-

(i) ways and means by which the tribal people may rise up to the level of the rest of the population educationally and economically so that at the end of a period of ten years since the commencement of the Constitution, these special provisions for the tribal people and the tribal areas, in Assam may not be necessary and may be abolished, and

(ii) legislation that should be undertaken by Parliament to revise this Schedule with the above-mentioned purpose in view.

(3) On receiving the report of this Parliamentary Commission, Parliament may by law amend by way of addition, variation or repeal any of the provisions of this Schedule, and when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed, as a reference to such Schedule as so amended.

(4) No such law as is mentioned in sub-paragraph (3) of this paragraph shall be deemed to be amendment of this constitution for purposes of article 304 thereof."

Sir, in the last two paragraphs of my amendments, I have kept the two clauses of the amendment which has been moved by Dr. Ambedkar and I have added only the first two clauses. I want that the conditions in the tribal areas should be investigated by a Commission. The debate during the last two days has shown that most Members here do not know anything about the province of Assam. In fact, Mr. Rohini Kumar Chaudhuri went so far as to say that event the Prime Minister of Assam was not fully aware of the conditions and that many of these representatives have not gone to some of those areas. I think this is a very important problem, particularly because Assam is a frontier province. In the last war, it was a most important area. Therefore, I think that the ultimate destiny of these areas must be a matter of concern not only of Assam, but of the whole country.

I therefore want that after the new elections according to the new Constitution, the new Parliament should appoint a Commission and that Commission should consist of members of both the Houses. This Commission should investigate into the conditions and make a report, and according to that report, Parliament must then make legislation. The aim should be that at least within ten years we should be able to absorb these people in the rest of the population and they should form an integral part of the entire population of Assam. During this interval, this Schedule, if it is necessary, should be changed. In fact, yesterday Dr. Ambedkar told us that he has tried to follow a middle course policy between two extremes. But he admits that we want these people to become one with the rest of the people. I feel, Sir, that whenever there have been separate electorates, the result has been more separation and no attempt at assimilation has succeeded them.

What I am afraid of this. Although in the present condition of these tribes, it would be necessary to provide ample safeguards for them, and not to introduce any violent changes in their economy, I do think that something should be done to remove the separation and to effect a gradual assimilation of these people in the whole population of the province.. I therefore suggest, that because the House is not aware of the conditions of the people there, and the people of Assam are divided on this subject, provision should be made in this Constitution for this Commission. It may be said that there is already a Commission provided for in paragraph 16. That is a Commission which will report to the Governor mainly on three subjects which fall within the province of the Governor himself. I want the entire Schedule to be changed according to the report of the Commission. Of course, the power is there and parliament can always do that. But, Parliament will not have any information about the conditions of these tribes. Besides, Parliament may not exercise that power unless it has got all the information before it. Therefore I say this should be laid down in the Constitution itself that within two years or as soon as may be possible, there should be a Commission which should make a report on which Parliament should proceed to revise this Schedule.

Shri Brajeshwar Prasad : Mr. President, I rise to support the idea of a Commission. I am not clear in my own mind whether it should be a parliamentary commission consisting of members of the Houses-both the Upper and Lower Houses-or it should be a body appointed by the President. by the President. I feel that members of the Houses of Parliament will not be in a position to discharge the functions properly because they are laymen. They are not acquainted with tribal problems especially tribal problems on the borders of Assam which are of a very complicated nature. I have already placed my views more than once in this House. I feel that this body should consist of members who are experts, who know the problem of these areas and who have an appreciation of the realities of the situation, who understand the international importance of these areas. I am not in favour of the members of the Houses because I have a felling in my mind that these members may tilt the balance in favour of provincial autonomy. I want both the areas specified in Parts I and II to be certainly administered areas and therefore I am of opinion that provincial members should not be allowed to become members of this body.

Secondly, I feel that my Friend Mr. Saksena has not properly drafted this amendment. At one place-I am referring to clause (2) (i)-he says that the Commission shall not have the power to recommend the complete repeal of the Sixth Schedule before the end of ten years and then he says in clause (3)-'On receiving the report of this Parliamentary Commission, Parliament may by law amend by way of addition or repeal any of the provisions of this Schedule'. Sir, Parliament according to (2) (i) has not got the power. The Commission has not got the power to recommend the repeal of the entire Schedule, but my friend says in clause (3) that such a thing can be done. Then in sub-clause (ii) of clause (2), there is the following-

"legislation that should be undertaken by Parliament to revise this Schedule with the above mentioned purpose in view".

If after the word 'revise' the word 'or repeat' had been there, it would be far more satisfactory. I feel that this Commission is very-very necessary. Of course it is left open to Parliament to appoint a Commission whenever it likes. What my Friend Mr. Saksena wants is to bind the Government and Parliament to appoint a Commission within a period of two years from the date of the commencement of this Constitution. On the whole I am glad to support the amendment moved by my Friend Mr. Saksena.

The Honourable Dr. B. R. Ambedkar : I do not accept the amendment.

Mr. President : The question is :

"That in amendment No. 153 of List I for the proposed new paragraph 20, the following be substituted :-

20. *Parliamentary Commission and Amendment of the Schedule.*-(1) As soon as may be after commencement of the Constitution, but not later than two years thereafter there shall be constituted a Parliamentary Commission consisting of fifteen members of whom ten shall be elected by the House of the People and five shall be elected by the Council of States in accordance with the system of proportional representation by single transferable vote.

(2) It shall be the duty of the Commission to investigate the entire problem of the tribal people and the tribal areas of Assam and to make recommendations to the President as to,-

(i) ways and means by which the tribal people may rise up to the level of the rest of the population educationally and economically so that at the end of a period of ten years since the commencement of the Constitution, these special provisions for the tribal people and the tribal areas in Assam may not be necessary and may be abolished, and

(ii) legislation that should be undertaken by Parliament to revise this Schedule with the above mentioned purpose in view.

(3) On receiving the report of this Parliamentary Commission, Parliament may be law amend by way of addition variation or repeal any of the provisions of this Schedule, and when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended.

(4) No such law as is mentioned in sub-paragraph (3) of this paragraph shall be needed to be amendment of this Constitution for purposes of article 304 thereof."

The amendment was negatived.

Mr. President : The question is:

"That after paragraph 19, the following new paragraph be inserted:-

'20. Amendment of the Schedule: (1) Parliament may from time to time by law amend by way of addition, variation repeal any of the provisions of this Schedule and when the Schedule is so amended, any reference to this Schedule and when the Schedule is so amended, any reference to this Schedule in This Constitution shall be construed as a reference to such Schedule as so amended.

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for purposes of article 304 thereof.'"

The motion was adopted.

Paragraph 20 was added to the Sixth Schedule.

Mr. President : I put the whole Schedule now.

The question is :

"That Schedule VI, as amended, stand part of the Constitution"

The motion was adopted.

Schedule VI, as amended, as added to the Constitution.

Article 281

Mr. President : Then we go to Article 281.

The Honourable Dr. B. R. Ambedkar : I move:

"That for article 281 the following be substituted:-

Interpretation	'281. In this Part, unless the context otherwise requires, the expression 'State' means a State for the time being specified in Part I or Part III of the First Schedule.' "

Mr. President : There is no amendment. The question is;

"That for article 281 the following be substituted:-

Interpretation	'281. In this part, unless the context otherwise requires the expressing 'State' means a State for the time being specified in Part I or part III of the First Schedule."

The motion was adopted.

Article 281 was added to the Constitution.

Article 282 to 282-C.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That with reference to amendment No. 3034 of the List of Amendments (Volume II), for article 282. the following articles be substituted:-

'Recruitment and conditions of service of persons serving the Union or a State.	282. Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment and conditions of service of persons appointed to public services, and to posts in connection with the affairs of the Union or of any State :

____Provided that it shall be competent for the President in the case of services and posts in connection with the affairs of the Union and for the Governor or, as the case may be, the Ruler of a State, in the case of services and posts in connection with the affairs of the appointed to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

Tenure of office of persons serving the Union or a State.	"282A.(1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor or, as the case may be, Ruler of the State.

(2) Notwithstanding that a person holding a civil post under the Union or a state holds office during the pleasure of the president or, as the case may be, of the Governor or Ruler of the state, any contract under which a person, not being a member of a defence service or of an all-India service or of a civil service of the Union or a state, is appointed Under this Constitution to hold such a post may, if the president or, the Governor or the Ruler, as the case may be deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation if before the expiration of an agreed period that post is abolished or he is for reasons not connected with any misconduct on his part required to vacate that post.

Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or State.	282 B. (1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until be has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that this clause shall not apply-

(a) where, a person is dismissed, or

removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;

(b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause;

(c) where the President or Governor or Ruler, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity.

(3) If any question arises whether it is reasonably practicable to give notice to any person under clause (b), of the proviso to clause (2) of this article, the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the cm may be, shall be final.

All-India Services.

282C. (1) Notwithstanding anything in Part IX of this Constitution, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more All-India Services common to the Union and the States, and subject to the other provisions of this Chapter, regulate the recruitment and the conditions of service of persons appointed to any such service.

(2) The services known on the date of commencement of this Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this article.' "

Sir, I do not propose, at this stage, to say anything on the amendment I have moved, because the articles themselves are quite clear. There are several amendments which may raise some points of criticism, and I, shall then be in a position to give the House the explanations that may be necessary in order to dispose of those amendments.

Mr. President : Amendment No. 3-Shri Satis Chandra Samanta.

Shri Satis Chandra Samanta (West Bengal: General) : Respected President, Sir, I beg to move:

"That in amendment No. 2 above, to the proposed article 282, the following proviso be added:-

'Provided further that no person shall be eligible for appointment to any of the superior public services and posts in connection with the affairs of the Union unless he is thoroughly conversant with any other regional language of India besides the National language of India.' "

Sir, in connection with the amendment that I have moved, I propose to refer to the report of the Universities Commission and to its recommendation, and also to one of the resolutions passed by the Language Convention held in Delhi in August last. The Universities Commission under the chairmanship of Dr. Sarvapalli Radhakrishnan has recommended that every university should teach its students one other regional language of India, besides the State language. And the language Convention has also passed a resolution that excepting the regional language in the province or State, everyone should be conversant with any other regional language of India. Sir, India is a country which has so many languages, so many divergent languages and in order to make India one, all Indians should know one common language, and thereby acquaint themselves with the common people and with one another. So long as we have no common language or our own we should learn one other regional language. Therefore I want that at least the superior officers of the Union should be conversant with any other regional language of India besides the official language of India so that they may freely mix and have contact with the common people. Sir, I know that against my amendment, it will be said that it will come under the rules and regulations. But considering the importance of the subject. I request that this amendment should be added to the Constitution. This is my request and I hope the House will accept my amendment.

Mr. President : There are two other amendments-Nos. 4 and 5 which have the same effect. These need not be moved. Then we come to No. 6 - Mr. Brajeshwar Prasad.

Shri Brajeshwar Prasad : Mr. President, Sir, I beg to move:

"That in amendment No. '3034 of the List of Amendments (Vol. II) in the proposed article 282, for the words 'Acts of the appropriate Legislature may regulate' the words 'the Union Public Service Commission as respects the All-India services and also as respects other services and posts in connection with the affairs of the Union, and the State Public Service Commission as respects the State services and also as respects other services and posts in connection with the affairs of the State shall make regulations on all matters relating to be substituted; and the proviso be deleted."

Sir, I want our Commissions to be constituted on the lines of the Whitley Commission of England, and I want these Commissions to have exactly similar powers and functions. I have though over this matter very carefully. This amendment was tabled in 1948 and since then my views have undergone changes on this question. I am prepared to admit that the power of recruitment should be vested in the hands of Parliament, but in no case I am prepared to concede that this power should be given to the provincial legislatures. If this power is vested in the hands of Parliament it will strengthen the foundations of our State. I want to place before the House some reasons and some arguments why I am in favour of this proposition. It will generate a feeling of security in the minds of the public servants of the State. It will hamper the growth of communalism and provincialism and will thereby promote the cause of nationalism. If all the servants serving in different provincial government are governed by uniform rules of recruitment and conditions of service, the result will be the growth of a feeling of oneness amongst all ranks of officers India. The danger of discontent will be eliminated. A contented and efficient bureaucracy will go a long way in solving the major problems that confront us . The trend of the modern world is towards bureaucratic rule. The managerial state is the next step in the course of our political evolution. An enlighten bureaucracy is the need of the hour. We must strengthen the foundations of our civil service and protect if from the onslaught of mobocrats who are , in the name of democracy, trying day in and ay out to boss over and dictate over those who are their superiors in intellect and morals. Men of small statue riding on the crest of popular enthusiasm are placed in positions of power and authority. No civil servant will tolerate the antics and clownish performances of political upstarts. If the evils of adult franchise in a community which is steeped in ignorance and poverty are to be avoided, the civil services must be placed outside the purview of provincial autonomy.

Shri Phool Singh (United Provinces: General) : Mr. President I beg to move:

"That in amendment No. 3034 of the List of Amendments in the proposed article 282, after the words 'affairs of the Union or any State' the words 'and fix the minimum as well as the maximum amount of salary of a Government servant as also lay down the condition to be fulfilled by a group of persons to be able to be included in the list of public servants be inserted."

The first part of my amendment is an amplification of the principle already adopted by this House in articles 34 and 31, namely, that of living wage and equal remuneration for equal amount of work. While article 34 recommends a living wage for an agricultural, industrial or other sort of worker, there is no such suggestion regarding government servants. Not only that, the disparity between the pays of government servants is enormous. There are those who get Rs. 3 or Rs. 8 per month while there are those who get more than they deserve and also more than they need. IT is also astonishing to know that in the case of government servants of higher ranks, even the contract of service is not adhered to. An I.C.S. even according to the contract is entitled to a maximum of Rs. 2,250. At present the Chief Commissioners get Rs. 3,500 and Commissioners Rs. 3,000; and who are these Commissioners and Chief Commissioners to today ? They are the Deputy Collectors and Collectors of yesterday. The exist *en masse* of the Britishers from the services of India after independence has given easy lifts to these higher ranks-lifts which they neither contracted for nor ever dreamt of Numerous devices have been invented to secure higher pays for these people by way of personal pays or some such things. It is but fair that we should fix the minimum as well as the maximum amount of salary that a government servant should get, so that there may be no harm done. As things are at present, the salaries do not very even according to responsibilities. Take the case of Secretaries of Departments who were formerly doing the work which the Ministers are now doing. After the introduction of this Government, the responsibilities of these Secretaries has surely decreased, but there has been no down-grading of pays in their case. They continue to enjoy the salaries they were enjoying before this Government was established.

Mr. President : So far as I can see, this clause has nothing to do with present incumbents. It relates to recruitment of people who will come into the services in future.

Shri Phool Singh : 282 and 283 refer to future incumbents as well as to present incumbents and 283-A refers to transitional period. These have not been moved. But I think I will cover all the cases and save the House repetition of the same arguments over again. My only submission is that it is but proper that we should fix the maximum amount of pay that a government servant should get. That is far as the first part of my amendment is concerned.

So far as the second part is concerned, it will be interesting to note that those people who are called government servants are only a small minority of those who are virtually government servants but have not been styled so. If a post is created even temporarily, the incumbent is called a government servant. But just think of those thousands of workers in the countryside in the P.W.D. and other departments, whose job is not at all temporary. In their case there is no prospect of their job being finished; still they are not called public servants. I had the opportunity to take up such cases with a provincial government and the answer given by people in the higher ranks of the service was that if these people are called government servants, they will slacken their efforts to work. If that is true, it should apply to all government servants and if it is false, then it will not be fair to punish these people under this pretext.

My submission is that it is better that we frame rules so that if any class of people who are working for the government fulfill those conditions, they should automatically be entitled to come under that list. Not only pay but all other considerations are also denied to these people. If a government servant in the higher rank is transferred, he gets not only single fare, not only fare for himself but for his family; while people at the lowest rung sometimes are denied any railway fare and in most cases even if they have families they are given only one single fare. Those in the higher ranks are given conveyances or touring allowances, but those on the lowest rungs even in cases where their circle covers an area of forty miles are not given even cycles.

Sir, if these people are included in the category of public servants I think it will save them a lot of heartburning and it will improve the lot of those who well deserve it and who are doing real service to the Motherland.

With these few remarks, Sir, I submit that my amendments may be considered and accepted.

Prof. Shibban Lal Saksena : Sir, I beg to move:

"That in amendment No. 2 of List I (Seventh Week), in the proposed article 282, for the words 'Acts of the appropriate Legislature' the words 'Acts of Parliament' be substituted."

Along with this amendment of mine should be considered my amendment No. 234. Sir, I move:

"That in amendment No. 2 of List I (Seventh Week), for the proviso to the proposed article 282, the following be substituted:-

'Provided that Parliament may by law specify the public services in the States with regard to which Acts of appropriate Legislature may regulate the recruitment and conditions of services of persons appointed to them'."

Dr. Ambedkar's amendment provides that "Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment and conditions of service of persons appointed to public services, and to posts in connection with the affairs of the Union or of any State." The object of my amendment is to bring about uniformity in regard to the recruitment to the important public services all over the country. At present the only services where there is a certain amount of uniformity is the Indian Administrative Service (which has replaced the Indian Civil Service) and the Indian Police Service. The object of my amendment is that this practice should be extended to the other important services as well.

Dr. P. S. Deshmukh (C.P. & Berar : General): Mr. President, Sir, I move:

"That in amendment No. 2 of List I (Seventh Week) in the proposed article 282, for the word 'may', where it occurs for the first time, the word 'shall' be substituted."

Sir, looking to the whole structure of the provisions of this article, I think it is necessary that the provision in article 282 should be made obligatory and not left in doubt as it has been done here. It may probably be said that 'may' has the force of 'shall'. If that is our intention, why not use the word 'shall'? I would, therefore, suggest that this amendment of mine may be accepted if it is found, as I hope it will be, that his change would be better suited to the whole position and carry out our intention better also.

Dr. Monomohan Das (West Bengal: General): Mr. President, Sir, I move:

"That an amendment No. 2 of List (I Seventh Week), at the end of the proposed article 282, the following new proviso be added:-

'Provided that in order to be recruited for any of the posts in connection with the affairs of the Union, a candidate must be thoroughly conversant in the following languages :-

(i) The official language of the Union.

(ii) The English language.

(iii) Any other regional language of the Union except the official language.' "

Sir, my amendment proposes that in order to be recruited as an officer under the Union Government a candidate must possess a fairly workable knowledge in three languages at least, namely, English, the official language of the Union and a regional language of India different from the official language of the country. In the amendment moved by Dr. Ambedkar, article 282, the President has been invested with power for framing rules and regulations regarding the recruitment of services under the Central Government. My amendment seeks to introduce some principles into these regulation so far as the question of language is concerned. These principles are of such importance that I feel they should not be left to the sweet will and pleasure of the President but they must find a place in the Constitution.

Sir, a fairly workable knowledge of English should be an essential requirement for any Government officer in the Centre because English has become practically the international language of the world today. In addition to this, it is through the medium of the English language that education in scientific and technical subjects has been imparted to the people of this country for more than 150 years. Moreover, the link between India and the outside world today, which is growing stronger and stronger every day is being maintained through the medium of the English language. Therefore, it will be disastrous on the part of our Government if the officers under the Central Government lack a fairly workable knowledge of the English language.

Secondly, our officers under the Central Government will be required to have a fairly workable knowledge in any regional language different from our official language of the Union.

Thirdly, our officers under the Central Government will be required to have a fairly workable knowledge in any language different from our official language. Sir, the Indian Union consists of so many States having different languages and the Central

Government should be always in intimate touch with the provinces and States. So it is essential and necessary that our officers under the Central Government should have at least some knowledge of the regional languages of the States that comprise the Indian Union today. This knowledge of the regional languages of the States of India, is also necessary from another point of view. This is for maintaining a common standard for educational qualifications, especially linguistic qualifications among the members of our Central services.

Sir, this Assembly has not yet selected the official language of this country. We have deferred this issue up till now to avoid unpleasant consequences that a controversy on this subject may give rise to. But the time has come when we shall be able no longer to defer this issue and we must have to take some decision one way or the other without delay. Sir, a section of the population, whose mother tongue will be accepted by this House as the official language of the country, will have an undue and unjustified and inherent advantage over the sections whose mother tongue will not coincide with this official language of India. In order to do away with this difference.......

The Honourable Dr. B. R. Ambedkar : I think my friend has said enough on the point and he need not continue. We have understood his point. We must get through today at least one article.

Dr. Monomohan Das : If that is the case, I shall stop.

Dr. P. S. Deshmukh : Sir, I move:

"That in amendment No. 2 of List I (Seventh Week), in the proviso to the proposed article 282, the words 'and rules so made shall have effect subject to the provisions of any such Act' be deleted."

My purpose is simple because the previous wording says that "it shall be competent for the President in the case of services and posts in connection with the affairs of the Union and for the Governor or, as the case may be, the Ruler of a State in the case of services and the posts in connection with the affairs of the State to make rules regulating the recruitment and the conditions of service of persons appointed to such services and posts *until provision in that behalf is made by or under an Act of the appropriate Legislature."*

In view of these concluding words it appears that there is no necessity of adding a clause to this effect by which the rules are to have effect subject to the provision of any such Act. So long as the words "until provision in that behalf.....etc." are there, the rules made by the above-named authorities would be operative, only till the appropriate Legislature deals with the matter by an Act.

There are two more amendment. They are more of a drafting nature and I am prepared to leave them to the Drafting Committee. So I do not propose to move them.

Shri Mahavir Tyagi (United Provinces : General) : Sir, I beg to move:

"That in amendment No. 2 of List I (Seventh Week), at the end of the proposed article 282, the following new proviso be added :

'Provided further that all tests, examinations, interviews and competitions held for the purpose of selecting candidates for services and posts in connection with the affairs of the Union or a State shall, as far as practicable, be conducted in the language recognised for the official purposes of the Union or the States as the case may be.' "

It is very simple amendment. The grievance of the whole country for a century and a half has been that the indigenous talents and intellect which the country produced was never recognised by the British. They had their own pattern of pedantism with which they thought they could run the administration of the country. Therefore those who took to learning the English language and who began to practice English mannerism were considered to be educated, and fit to take charge of the Government of the country. My regret is that even today the same conditions obtain. The country fought for freedom not against the British, as Mahatma Gandhi said. It was not against colour. It was against the bureaucracy that we fought and wanted to be free from it. Now the very same bureaucracy stands as it is. According to my opinion, Government must not be allowed to be run by persons who are mercenary, who come and offer their intellectual talents on hire. I am a man of a different way of thinking. I consider the English education as a curse to India. All these pedants who boast of their foreign accents suffer from a superiority complex. They are generally speaking a demoralised and denationalised lot. I think Government servants must be paid according to their needs and they should not be encouraged to bargain their talents. They must offer as volunteers to serve the State. Only then the old pattern will change and that can come about only if we discord the English language and own our own culture with pride. Now all stress is on the English language. I am opposed to present method of selection of candidates to the services. My friend Shri Monomohan Das complains that if Hindi were made the official language, persons who belong to non-Hindi speaking areas will suffer in competition with people who come from these areas. I therefore suggest that the overall capacity must not be examined even in Hindi. I am not only for Hindi. My submission is that every candidate must be examined in his own mother tongue. It is in one's own mother tongue that one would be able to express his ideas best.

Mr. Naziruddin Ahmad (West Bengal : Muslim): The members of the Public Service Commission would then have to learn the language of a candidate they want to test.

Shri Mahavir Tyagi : If you legislate like that they will have to learn those languages.

Mr. Naziruddin Ahmad : There are about 130 principal languages in India and about 300 dialects.

Shri Mahavir Tyagi : It is not necessary to test the intelligence of a candidate by examining the amount of Oxonian accent he has adapted. You can test him in Hindustani or Madrasi or Punjabee or Bengalee or any other language. Proficiency in a, language is not the sole criterion of education. To claim to be educated, one must be possessed of a general knowledge of the world, and one should prove that he has taken the fullest advantage of knowledge by practising it on himself, and that one has consumed knowledge. He must radiate knowledge by his habits and manners. But today as we see the main stress is on correct English and on good table manners in the approved English style. Such men are selected at the interviews. If things go on at this rate I am afraid, we can never enjoy freedom. The only proper method of recruitment to Government services of the true sons of the soil is to test the candidates in their own mother tongue.

Sir, even in the army, recruits are selected not because of their capacity to use the sword effectively, but because of their knowledge of handling the fork and spoon. They are selected for their English mannerisms. I have seen selections for the army made of people whose only qualification is knowledge of English. This is a slavish Habit. India cannot stand it any longer, I submit that people should be examined in their own language and the candidate should be absolutely free to prove their talents even in broken English.

Mr. President : The honourable Member has expressed his views at length.

Shri Mahavir Tyagi : If you have been convinced I am thankful.

Mr. President : I do not say I am convinced. I have understood what you have said. All the concerned amendments have been moved.

Shri H. V. Kamath : With your permission Sir, I shall say a few words. I shall not take more than two minutes.

On this amendment moved by my Friend Mr. Tyagi I wish to say that his intention is laudable, but I fear that there will be considerable difficulty in implementing his amendment. Let me at the outset state that prejudice against any language as such is thoroughly irrational. Prejudice against even the English language is irrational. We fought British rule in India, but we never fought against the English language. I may remind the House that Kemal Ataturk, after Turkey was freed from foreign rule, almost overnight adopted and promulgated the Roman script throughout Turkey.

Now, Sir, the difficulty in adopting this amendment is two-fold. Firstly, the posts in connection with the affairs of the Union do not fall all under one category. Does Mr. Tyagi want that even the candidates for the consular and diplomatic posts should be examined only in the official languages of the Indian Union ?

Shri Mahavir Tyagi : I said in the language of the region from which the candidate comes.

Shri H. V. Kamath : He has not followed me. I want to know from him whether persons to be selected for diplomatic and consular posts abroad should be examined only in an Indian language.

Shri Mahavir Tyagi : I have said, 'as far as practicable.' If you are selecting a candidate for our Embassy in France, let him have a knowledge of French. But he should be examined in his own mother tongue. I have no objection to a man being examined in Marathi language.

Shri H. V. Kamath : My friend has put all tests, examinations, interviews and competitions together in his amendment. I may tell him that I respect the spirit of his amendment. I am only pointing out the practical difficulties in the way of its acceptance. Even in England the tests conducted by the Selection Boards for appointments to diplomatic and even the Home Civil Service are not all of them in the English language alone.

Mr. President : Mr. Kamath has taken more than the two minutes he himself promised to take.

Shri H. V. Kamath : I shall conclude in a few seconds, Sir. I may tell the House that the examinations in England itself are not all conducted in English. So also in India it would not be practicable to hold all tests and examinations only in the official language of the Union or of the States.

I have said that as regards posts in the Union, there are various categories of them; and each category calls for particular qualifications. Secondly, as regards a particular State, it may like to have officers for the purpose of liaison with the Union Government. For such posts a mere knowledge of the language of the State would not be adequate. Knowledge, of the official language of the Union *plus*, perhaps, knowledge of a foreign language as well may be necessary for persons appointed as liaison officers between States and the Centre and for officers in foreign countries. I therefore feel that Mr. Tyagi's amendment. . .

Mr. President : The honourable Member has exceeded his time-limit. Does Dr. Ambedkar like to speak?

The Honourable Dr. B. R. Ambedkar : I do not accept any of the amendments.

Mr. President : I shall now put the amendments to vote. The question is:

"That in amendment No. 2 above, to the proposed article 282, the following proviso be added:-

'Provided further that no person shall be eligible for appointment to any of the superior public services and posts in connection with the affairs of the Union unless he is thoroughly conversant with any other regional language of India besides the National language of India.' "

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 3034 of the List of Amendments (Vol. II), in the proposed article 282, for the words 'Acts of the appropriate Legislature may regulate', the words 'the Union Public Service Commission as respects the All India services and also as respects other services and posts in connection with the affairs of the Union, and the State Public Service Commission as respects the State Services and also as respect other services and posts in connection with the affairs of the State shall make regulations on all matters relating to' be substituted; and the proviso be deleted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 3034 of the List of Amendments, in the proposed article 282, after the words 'affairs of the union or any State' the words 'and fix the minimum as well as the maximum amount of salary of a Government servant, as also lay down the conditions to be fulfilled by a group of persons to be able to be included in the List of public servants be inserted."

The amendment was negatived.

Mr. President : Then amendment No. 228.

Shri Brajeshwar Prasad : What about my amendment No. 8 to the proposed new article 282-A?

Mr. President : I am not taking up 282A yet.

Shri Brajeshwar Prasad : I am sorry, Sir.

Mr. President : At that time I said that you should not move it and you did not move it. We have not taken up 282 A-yet. The question is:

"That in amendment No. 2 of List I (Seventh Week), in the proposed article 282, for the words 'Acts of the appropriate Legislature' the words 'Acts of Parliament' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 2 of List I (Seventh Week), for the proviso to the proposed article 282, the following be substituted:

'Provided that Parliament may by law specify the public services in the States with regard to which acts of appropriate Legislature may regulate the recruitment and conditions of service of persons appointed to them.' "

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 2 of List I (Seventh Week), in the proviso to the proposed article 282, the words 'and any rules so made shall have effect subject to the provisions of any such Act' be deleted."

The amendment was negatived.

Mr. President : The question is:

"That is amendment No. 2 of List I (Seventh Week), at the end of the proposed article 282, the following new proviso be added:-

"Provided further that all tests, examinations, interviews and competitions held for the purpose of selecting candidates for services and posts in connection with the affairs of the Union or a State shall, as far as practicable, be conducted to the language recognised for the official purposes of the Union or the State as the case may be.' "

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 2 of List I (Seventh Week), at the end of the proposed article 282, the following new proviso be added :-

'Provided that, in order to be recruited for any of the posts in connection with the affairs of the Union, a candidate must be thoroughly conversant in the following languages:-

(i) The official language of the Union.

(ii) The English language.

(iii) Any other regional language of the Union except the official language.' "

The amendment was negatived.

Mr. President : I think these are all the amendments. I will now put Dr. Ambedkar's proposition to the vote. The question is:

"That proposed article 282 stand part of the Constitution."

The motion was adopted.

Article 282 was added to the Constitution

Article 282-A

Shri Brajeshwar Prasad : Mr. President, Sir, I move:

"That in amendment No. 3034 of the List of Amendments (Vol. II) in the proposed new article 282-A-

(i) in clause (1), for the word 'holds' in the two places where it occurs the words 'shall hold' be substituted; and for the words 'during the pleasure of the President and during the pleasure of the Governor of the State' the words 'until he attains the age of sixty eight' be substituted:"

I realise, Sir, ...

Mr. President : You are not moving clauses (ii) and (iii)

Shri Brajeshwar Prasad : No, Sir, they relate to 282- B. I have modified my stand since this amendment was moved. I am now in favour of the proposition that every civil servant of the State, whether he is serving in the Union or in the provinces should hold his office during the pleasure of the President and of the President alone. I cannot agree to the proposition that every civil servant of a State should hold office during the pleasure of the Governor or, as the case may be, the Ruler of the State. The Governor or the Ruler means the Ministry.

Mr. President : You are not supporting your own amendment.

Shri Brajeshwar Prasad : I sought your permission, Sir, on that point. I submitted to you, Sir, that since I moved that amendment, I have now come, to the conclusion that it is advisable that all civil servants of the State should hold office during the pleasure of the President.

Mr. President : The interval between your moving your amendment and your request to me was so short difficult for me to form any opinion about it.

Shri Brajeshwar Prasad : If you do not consider it advisable for me to speak on this article at the present moment, during the general discussion when this article is taken up, I would like with your permission to say a few words.

Mr. President : I make no promise. You may take your chance.

Shri Jaspat Roy Kapoor (United Provinces : General) Does the honourable Member want the age to be 86 or is it a misprint for 68?

Mr. President : We go to the next amendment, No. 235 by Dr. Deshmukh.

(Amendments Nos. 235, 236 and 237 were not moved.)

I think these are all the amendments to 282-A.

Shri Brajeshwar Prasad : I would like to make a few observations.

Mr. President : I do not think so. I think we had better do without your observations.

Shri Brajeshwar Prasad : As you please, Sir. Your word is law to me.

Mr. President : There is no other amendment to 282-A. The question is;

"That proposed article 282-A stand part of the Constitution."

The motion was adopted.

Article 282-A was added to the Constitution.

Article 282-B

Mr. President : I have got a large number of amendments to this. We might move one or two today. Mr. Brajeshwar Prasad, No. 9.

Shri Brajeshwar Prasad : I would like to reserve my right to speak for tomorrow. Within five minutes, I would not be able to read the amendment and speak on it.

Mr. President : You might move your amendment now.

Shri Brajeshwar Prasad : Mr. President, Sir, I move:

"That in amendment No. 3034 of the List of Amendments (Vol. II), in the proposed new article 282-B.-

In clause (2), for the words 'by an authority subordinate to that by which he was appointed' the words 'except by an order of the Union Public Service Commission, or, as the case may be, by the State Public Service Commission' be substituted."

Mr. President : You are reading clause (ii) of the previous amendment. That relates to 282-A.

Shri Brajeshwar Prasad : That relates to 282 B.

Shri Jaspat Roy Kapoor : No. 9 is the amendment that you should move.

Shri Brajeshwar Prasad : No, No. 9 relates to 282-C. Sir, these are the old amendments.

Mr. President : But the old article has not been moved.

Shri Brajeshwar Prasad : This is an amendment to 282-B.

"No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed."

Sir, I would like to move my amendments tomorrow.

Mr. President : I do not think these amendments fit in at all, (ii) and (iii). They do not fit in with 282-B; so they do not arise.

Shri Mahavir Tyagi : They may be taken as moved.

Mr. President : No, they cannot be taken as moved, because they do not fit in.

Shri Brajeshwar Prasad : I will try to amend them and with your permission would move them tomorrow, Sir.

Mr. President : I think it is already one now and we should rise. A suggestion has been made that we sit in the afternoon.

Honourable Members : Yes, Sir, we shall sit in the afternoon.

Mr. President : There are difficulties. There is a Cabinet meeting which the Honourable Dr. Ambedkar has to attend.

Shri R. K. Sidhva (C.P. & Berar: General) : The Drafting Committee can meet later on.

Mr. President : It is not the Drafting Committee that I am speaking of. There is a meeting of the Cabinet.

Shri R. K. Sidhva : But there are other members of the Drafting Committee who can be present.

Mr. President : We can make much more progress within the scheduled time if Members take care, of the time. I think there is some difficulty in my way. It is very difficult for me to stop any Member from speaking if he insists on speaking.

Shri R. K. Sidhva : We are prepared to sit and finish. We can sit for seven or eight hours.

Mr. President : That is not possible. We cannot sit for eight hours. After all we work like human beings. We cannot work like machines. So I do not think it will be possible. What do you say, Dr. Ambedkar, is it possible to have an afternoon sitting today?

The Honourable Dr. B. R. Ambedkar : I expect to be back from the Cabinet meeting at about half past five. If the House is prepared to sit for two hours after that, I am quite prepared, but we have a Drafting Committee meeting from half past five onwards, because unless we are ready with the articles which have already been held up, it will be difficult to proceed. We have to go to another place to obtain a decision and then to come here. If the House so wishes, we can change the sitting of the Drafting Committee to some other time.

Mr. Naziruddin Ahmad : There are other difficulties which I want to submit. I do not mind sitting for any length of time. The only thing that I care for is that we should be given sufficient time to consider the amendments. The Drafting Committee is not yet ready with some of their most important amendments. I would most respectfully ask you to consider our situation. If we are to take any part in the drafting of the amendments, or in speaking on them, without adequate preparation, the result would be desultory talking. I submit that the Drafting Committee should give us sufficient time to consider their late draft. They are changing their mind every day. They may think that we have no part to play-that is a different matter-but I have come here for a part to play, to do my duty. In that case, I think the amendments should reach us in sufficient time to enable us to consider them. If we are to sit in the afternoon also, where is the time to consider what amendments to suggest and then let the office have them in time so that they may circulate them among the members in good time ?

Mr. President : We have already circulated amendments to about fifteen articles. 281 and 282 we have already dealt with. 282A we have death with. Then come 282B, 282 C, 283, 243, 244, 245, 274 A-E, 264, 265, 265 A and 266. All these were circulated yesterday and so Members have had time to give notice of any amendments.

Mr. Naziruddin Ahmad : They are coming to us in a scrappy form. In fact, the amendments come in irregular order. The method of the juggler is followed in this respect. In fact, there is no opportunity for Members to see them in their proper light. That is one difficulty. Afternoon sittings would interfere with proper consideration of the amendments. I do not myself mind sitting for any length of time. The only question is that we should be given sufficient time to consider the amendments. Though the Drafting Committee is not in a position to accept our suggestions, still as much as possible we have got to study all the amendments. So we want some time. The whole difficulty is with the Drafting Committee, but perhaps they are themselves the scapegoats of certain other factors. But our position also should be considered. There are many other important articles which have to be considered. A number of articles which have been given to us recently are so varied, so difficult and so complicated that each article has to be considered in its proper context. We are not in the fortunate position of the Chairman of the Drafting Committee who has very able expert assistance at his call. He need not hear any arguments, and when the time comes for reply, he can say that he does not want to say anything. We do not find ourselves in that fortunate position. And so my submission is that we should be given some time to study the amendments.

Mr. President : I do not think that any Member can have any grievance that he has not had sufficient time to consider amendments so far as these articles are concerned.

Shri R. K. Sidhva : We have received the amendments, there is no doubt about it. We have got amendments for the next week dealing with language and compensation. We have already received it, but Sir, as far as the programme of this House is concerned, you are aware that for the last ten days the Drafting Committee has been telling us that they are not ready and when they asked us to sit for two hours, we acceded to that request. We are wasting the public money and yet they are not ready. They are wasting public money by not sitting in the afternoon now. My suggestion is that if the Drafting Committee is not yet ready, in order to save the public money, they should adjourn for 15 days, so that the amendments may be ready and the Drafting Committee should be prepared with the full programme. Yesterday we were prepared to sit in the afternoon and the day before yesterday we were prepared to sit in the afternoon, but Dr. Ambedkar is busy. So the whole expenditure of the State will lie on the shoulders of Dr. Ambedkar and not on the shoulders of the members of the House.

Shri T. T. Krishnamachari : I submit it is very unfair because if the House is willing to finish the work on the Order Paper before the day after tomorrow, we can assure the House that we will have enough work on Friday, but the question is whether the House will be prepared to complete the work on the Order Paper.

Mr. President : There is enough work till Tuesday next because these articles which are already in hands of the Members are likely to take till date after tomorrow and after that on Saturday, Monday and Tuesday, we have important subject to consider. So there is enough work and we can't take up anything, it is not because of want of preparation on the part of the Drafting Committee. They have given us enough work till the following Wednesday.

Shri R. K. Sidhva : We want to sit in the afternoons.

Mr. President : It is not because there is no work that we are not sitting in the afternoons. It is for other reasons that it is suggested that we should not sit. I would leave it to the House whether they would like to sit in the afternoon.

Honourable Members : No, Sir.

Shrimati G. Durgabai (Madras : General) : Let us sit at 5-30 in the afternoon.

Shri Biswanath Das (Orissa : General) : I speak on behalf of myself and on behalf of my friends and I make my submission to you, Sir, that we are not willing to sit seven or eight hours as has been suggested by my honourable Friend Mr. Sidhva. We are human beings, as you have rightly suggested, not are we going to hear long and elaborate speeches after the detailed discussions we are having in the party and also after fairly good discussions here. I would therefore request you to control the speeches of the Speakers. In this view of the matter, I see that there is possibility of economy. Sir, I have nothing to blame the Drafting Committee. *(interruption.)* They deserve nothing but congratulation from us. They are undergoing immense hardship. They have got far less leisure than ourselves and it would be unkind and unfair to comment on the work of the Drafting Committee. With these words, Sir, I would beg of you to control the debate and try to finish as early as possible.

Shri Brajeshwar Prasad : I would like to say a few words, Sir.

Mr. President : Not necessary; I do not want any discussion on this point. I shall be able to conduct the proceedings of the House if the House cooperates with me. My appeal to the Members is, in the first place, to cut the tendency of giving notice of amendments. It involves the office in a very hard work because they have to print a number of pages till late at night and distribute them. Then, many of these amendments , I find, are sometimes not moved, sometimes not pressed, sometimes they are withdrawn and most of them are defeated. So, I would ask honourable Members in the first instance to consider whether the amendment which they are thinking of giving notice of are really amendments which deserve the consideration of the House. Or course, it is difficult for me as President to rule out the amendments which are within the rules. I cannot rule them out. But, my appeal to the members is to consider the amendments and if they find that they are really essential then alone they should give, notice of them. In the second please, my appeal to them is to curtail the speeches. If we could do this, I think we should complete the work within the scheduled time. But, if we go on giving notice of amendments from day to day and delivering speeches on every amendment, well, I do not know when we shall be able to finish.

So far as this evening's Session is concerned, there is a suggestion that we should sit from 5-30 to 7-30. Is that the wish of the House.

Several honourable Members : Yes.

Several honourable Members : No.

Mr. Naziruddin Ahmad : We shall cut down our amendments and our speeches rather than be forced to sit twice a day. Not that we are unwilling to work: some work should be done at home and some work here.

Mr. President : When the House is divided in a matter of this kind, I should not force any section of the House to sit more than it desires to sit. We shall not sit this evening.

Shri Jaspat Roy Kapoor : May I submit, Sir, *(Interruption)* if we have a complete programme of the work you would like to be finished by 17th we may be able to finish the work by that. Most of us are sincerely anxious to finish the programme before the

17th.

Mr. President : I shall do that. The House stands adjourned till Nine of the clock tomorrow.

The Assembly then adjourned till Nine of the Clock on Thursday, the 8th September 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 8th September 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION--*(contd.)*

Article 282-B

Mr. President : We shall take article 282-B

Shri Brajeshwar Prasad (Bihar: General): Sir, this amendment No. 8 fits in with article 282-B clause (1). The last line of that clause is 'by an authority subordinate to that by which he was appointed'. I want to substitute the words by 'except by an order of the Union Public Service Commission, or, as the case may be, by the State Public Service Commission'. May I move this amendment ?

Mr. President : Yes.

Shri Brajeshwar Prasad : Mr. President, Sir, I beg to move:

> "That in Article 282 B clause (1), for the words 'by an authority subordinate to that by which he was appointed' the words 'except by an order of the Union Public Service Commission, or, as the case may be, by the State Public Service Commission' be substituted."

The purpose of my amendment is obvious. The power of dismissal, removal or reduction in rank of persons employed in several capacities under the Union or State should be in the hands of the Public Service Commission. I want that disciplinary matters should not rest in the hands of the Ministers, either Central or Provincial. Sir, I am not in any way suggesting a course of action which has got no precedent in any part of the world. In Great Britain, in Canada, in Australia and in South Africa in all these countries the public servants are not under the Ministers, and there has been no conflict or no confusion of authority. In the circumstances in which we are placed to-day, I am quite clear in my own mind that if the foundations of our civil service are to be laid on sound and scientific basis they must be removed from the control of the Ministers. The independence of the bureaucracy from the control of the Ministers is as important, if not more, than the independence of the judiciary from executive interference. 'The role of the public servants, according to my humble judgment, is more important than that of Ministers. "Men may come and men may go, but I go on for ever", The Public servants remain, though Ministers may come in and go out of the cabinet with bewildering rapidity. The foundations of our national life can be secured if the public servants are assured of their security, if they get the conviction that there will be no ministerial interference. For no fault of theirs, if they do not find favour with the Ministers, they are transferred to some unknown regions in some God for saken districts. This creates a sense of insecurity. I am quite clear in my mind that there is need for administrative unification of the country. Sir, I am of opinion that all the civil servants should be brought under the control of the Union Public Service Commission. As a matter of concession I am prepared to agree that some control should also be vested in the hands of the State Public Service Commissions. I stand for the proposition that the civil servants of India, whether Central or Provincial, should be under the Central Public Service Commission.

We are passing through a very difficult period, Sir. The whole of our society is passing through a period of decadence and decay and if we want that the birth-pangs of the new social order should not be prolonged, we should lay the foundations of our civil services on safe and secure basis.

Mr. President : You do not move to clause (3) ?

Shri Brajeshwar Prasad : Yes, Sir. I move:

"That in paragraph (b) of the proviso to clause (3), for the words 'where an authority empowered to dismiss a person or remove or reduce him in rank' the words 'if the Union Public Service Commission, or, as the case may be, the State Public Service Commission' be substituted."

I have got only one word to say about this amendment. In this proviso the authority to dismiss, remove or reduce in rank has been vested in the hands of three authorities, Superior Officers, Governor and the President. Sir, I am opposed to this procedure. I am convinced that there should be some authority in the State to dismiss a public servant if a civil servant is found guilty, if the authority is convinced that he is a fifth columnist and that it is not desirable to keep him in service. But there should not be so many authorities vested with this power. I feel that the President alone should be empowered with this power. It is not right vesting this power in the hands of a large number of officers. If you do so, it will give no security to officers.

Mr. President : Amendment No. 10--Mr. Jaspat Roy Kapoor.

Shri Jaspat Roy Kapoor (United Provinces: General) : Sir, I beg to move:

"That in the proposed article 282 B, sub-clause (b) of clause (2) thereof be deleted, and clause (3) also of the said article be deleted, and thereafter sub-clause (c) be relettered as sub-clause (b)".

Clause (2) of the proposed article 282- B reads thus

"(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:"

and to this substantial portion of clause (2) there are three provisos, of which proviso (b) reads thus :--

"where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause;"

and it is this sub-clause (b) that I seek to delete.

And then the other clause which I seek to delete is clause (3) which reads thus--

"(3) If any question arises whether it is reasonably practicable to give notice to any person under clause (b) of the proviso to clause (2) of this article, the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final."

It will be clear that deletion of clause (3) is consequential and is necessary in the event of sub-clause (b) of clause (2) being deleted.

Sir, the object of article 282-B is obviously to give security and protection to Government servants so that these government servants may feel that they shall not be punished in any way whatsoever, unless and until a reasonable opportunity has been given to them to show cause why any order punishing them in any way whatsoever may not be passed. But, Sir, while the object of this article is to give this sense of security and protection to these government servants, unfortunately this article is so worded that what is provided in the substantive portion of clause (2) is being taken away by the subsequent long and detailed provisos which follow. So, what has been conceded in the substantive portion of this clause is being taken away by the provisos which follow. This article has been framed on the model of section 240 of the old Government of India Act. In fact, that section 240 of the Government of India Act has been bodily taken over from there and incorporated here, but with two additions both of which go against the interests of the Government servants. The two portions of this proposed article which have been added to section 240 of the Government of India Act are sub-clause (c) of clause (2) and clause (3) of this article. My submission is that it is the inherent, fundamental and elementary right of every person not to be condemned unheard. We should not take away this inherent and fundamental right in the case of government servants. It is true that this right has been recognised, in this article, but as I have submitted, merely to recognise the right at one place and take it away substantially, though not altogether, in another, by providing various provisos that have been mentioned herein, does not appear to be fair.

Let us see what these provisos are. The first proviso says :

> "Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge".

no opportunity need be given to the government servant to show cause why an order of dismissal or removal or reduction should not be passed against him. This sub-clause (a) of clause (2) as it stands is much too wide. It says that if a person is convicted of any offence, howsoever trivial it may be (for that is the natural implication), he may be dismissed, etc., and he need not be given an opportunity to show cause why such an order may not be passed against him. This is much too wide and it is, therefore, necessary, I think, that some clause may be added to the effect that the criminal charge of which the person is convicted is one which involves moral turpitude.

It may be said that even if the sub-clause is not there, no superior officer is going to act in such a foolish and stupid manner as to dismiss or reduce a government servant for any trifling offence of which he may have been convicted. True, this clause was there in its present form in the old Government of India Act and it may be said that government servants never felt that because of this clause being there, they were unduly harassed or punished in a manner the hardship of which was felt by them. But when we are going to start on a clean slate, when we are going to have a fresh constitution there seems to be no reason why these lacunae need not be provided for......

Mr. President : I would ask the honourable Member to be short. The amendment is clear and Members are able to follow the effect of it.

Shri Jaspat Roy Kapoor : Not only do I wish to be short but for that reason I have not moved an amendment to this clause, and I will say nothing further on the subject.

The second proviso for the deletion of which I have moved my amendment reads :

"Where an authority empowered to dismiss or remove a person or to reduce him rank is satisfied that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause;"

in that case no such opportunity need be given to the person concerned. I cannot conceive of any circumstances under which it cannot be reasonably practicable to give such an opportunity to any government servant. If a person is abscording, how will it be possible for such a person to be given an opportunity, it may be asked. My simple answer is that the notice may be served at the place where he last resided or at the place the address of which he had given to his employer. That would certainly be considered as the man having been given a reasonable opportunity. Such a thing always happens in a court of law or under the company law. If a shareholder is served with a notice at the registered place of his residence it is supposed to be enough. So I submit that I cannot possibly conceive of any difficulty in regard to the government servant being served with a notice if an adverse order is to be passed against him.

Clause (3) which I seek to delete must necessarily be deleted if my amendment seeking deletion of proviso (b) is accepted.

Besides, clause (3) is very drastic, for it seeks to make final the decision of the authority dismissing or otherwise punishing a government servant; on the question as to whether it is reasonably practicable or not to give notice. There is to be no appeal even against this decision. This makes the implications of sub-clause (b) of clause, (2) worse still.

One word more with regard to proviso (c). The implication of this is that whenever the President, the Governor or the Ruler is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity, no such opportunity need be given. Even in the case of political offenders, where a person is deprived of his liberty, the Government, as we know very well by our own experience, does inform the person who is being detained as to under what circumstances and for what reason he is detained. An opportunity is given to him to show cause why such an order should not be passed or confirmed. But under this sub-clause, if a government servant is dismissed, removed or reduced no such opportunity need be given to him. I do not see any reason why the government servant should be deprived of this elementary right of his. If we want our government servants to work efficiently, if we want our government servants to remain. happy and contented, if we want them to work with a sense of security, it is absolutely necessary that we must provide that no order will be passed against them unless a reasonable opportunity has been given to them to show cause why they should not be punished or Penalised.

Mr. President: I desire to tell honourable Members that I propose to finish at least up to article 245 in the course of this day, that is before lunch, and I would therefore seek the co-operation of honourable Members. The amendments are more or less obvious and their effect is perfectly clear. So, long speeches are not required either in favour or against the amendments. I would therefore ask honourable Members to confine themselves to moving the amendments and not to speak for more than two minutes, if they at all wish to speak.

Pandit Thakur Das Bhargava (East Punjab: General) : Sir, I may be permitted to move my amendments Nos. 239, 244 and 245.

I beg to move

"That in sub-clause (a) of the proviso to clause (2) of the proposed new article 282 B, after the word 'conduct' the words 'involving moral turpitude' be inserted."

Or, alternatively.

"That in sub-clause (a) of the proviso to clause (2) of the proposed new article 282 B, after the word 'charge' the words 'involving moral turpitude' be inserted."

I also beg to move :

"That in sub-clause (b) of the proviso to clause (2) and in clause (3) of the proposed new article 282 B, for the word 'practicable' the word 'possible' be substituted."

I further beg to move :

"That in sub-clause (c) of the proviso to clause (2) of the proposed new article 282 B, for the words 'is satisfied' the word certifies' be substituted."

In regard to these I need not take much of the time of the House. As regards amendment 239, it is obvious that there are many cases in which convictions take place in courts which do not afford sufficient ground for the removal of such persons. If the clause stands as it is, and unless the words I suggest are inserted, every conviction will earn a dismissal or removal of a public servant, and that is not satisfactory. I know that there are cases of persons who are convicted on the basis of conscientious objections, for instance if they do not resort to vaccination. There are cases of negligence. There are many cases in which there is no question of moral turpitude involved. The public conscience will be shocked if on a mere conviction a public servant will be discharged or dismissed. My humble submission is that in regard to these cases, the cases may be decided on merits. I hold that even an acquittal order may be tantamount in a particular case to conviction. A man may be acquitted on a technical ground but on matters of fact the judgment may be one of conviction. Again if it is an order of conviction on technical grounds but as a matter of fact one of acquittal, it is but meet that the person should not be subjected to dismissal or removal. In these circumstances I beg the House to accept my amendment so that honest persons may be saved and dishonest persons may be punished as the occasion arises.

In regard to my amendment No. 244, it is true as my Friend Mr. Jaspat Roy Kapoor has complained before you that what is given by one hand is taken by the other. This is a balanced set of rules and the balance should not be tilted in favour of the employer or the employee. As it stands the provision which is contained in 282 B is quite fair. But at the same time we should see that in practice it does not work any hardship. Therefore I propose that instead of the word "practicable" the word "possible" may be there. In ordinary cases it would happen that whenever it is possible, all attempts should be made to see that the person is served with notice to show cause. Not to allow him to appear before you and show cause is not fair. To prevent abuses of the "practicability" of his being afforded an opportunity to show cause, I have said that where it is reasonable "possible" be should be allowed an opportunity. This would as a matter of fact ensure a proper opportunity for every public servant.

Similarly in regard to amendment 245 I want to submit a word. As it is, the words used here are "is satisfied". We know how the words "satisfaction" and "satisfied" are interpreted. In fact it is not the satisfaction of the President at all. The satisfaction is generally of the Minister in charge. It is not even of the Minister in charge but of some Secretary or Under Secretary. Therefore, as a measure of precaution I want to substitute the words "is satisfied" by the word "certifies", so that when the certificate is made full caution is exercised. Before the certificate is given the mind of the Minister in charge or the President is brought to bear on the question at issue. If the word "certifies" is there the relevant authority would certainly think twice before certifying. But if the word "satisfied" is there and this satisfaction is at the back of the public servant, then the protection afforded to him is obscure and illusory.

Mr. President : In amendment No. 240 by Mr. Naziruddin Ahmad there are three parts. The first part is covered by Pandit Thakur Das Bhargava's amendment 239. The second part is covered by amendment 10 which has been moved by Mr. Jaspat Roy Kapoor. Only the third part which seeks to delete sub-clause (c) is not covered by any of the amendments moved.

Mr. Naziruddin Ahmad (West Bengal : Muslim): Yes, Sir, that exactly is the position. But though the first part of my amendment is identical in purpose with Pandit Thakur Das Bhargava's amendment there is some verbal difference. Therefore, with your permission I shall move the first part also.

Mr. President : Very well.

Mr. Naziruddin Ahmad : Sir, I move :

"That in the proviso to clause (2) of the proposed new article 282-B,-

> (i) in sub-clause (a), for the words "on the ground fo conduct which has led to his conviction on a criminal charge" the words "on the ground that he has been convicted of an offence involving moral turpitude" be substituted: and
>
> (ii) sub-clause (c) be deleted."

As regards my other amendment, No. 246, for the deletion of clause (3), that has already been covered by Mr. Jaspat Roy Kapoor's amendment No. 10 and so I need not move it.

Sir, I submit that this article is very important and it affects the welfare of a large number of government servants. As regards higher government servants I submit that they are more than well protected. They are influential, and they can take care of themselves and any injustice to them will be rare and may be rectified. But with respect to a large number of middle class public servants rotting in the districts and in the sub-divisions, in out of the way places and also in higher places, the injustice to them might be very great. So, I submit that the House should carefully consider the provisions which would affect them and which may result in serious injustice to them.

Clause (2) of this article says that no officer shall be removed or reduced or dismissed until an opportunity has been given to him to show cause against any proposed order. Then comes the proviso. The proviso, I submit, takes away literally all the safeguards which are purported to have been given in the body of clause (2). The first proviso is that no opportunity need 'be given to show cause if the man has been discharged or dismissed on account of a criminal conviction. My honourable Friend Pandit Thakur Das Bhargava has already clearly explained that the conviction should be a conviction for an offence involving moral turpitude. There are various offences like assault, trespass, technical defamation and similar things which are compendiously described as offences not involving moral turpitude. In all such cases if the office master tries to drive him off, all that we ask for is that he should be given an opportunity to show cause.

The Honourable Dr. B. R. Ambedkar (Bombay: General) : There is no amendment to delete clause (3). Your amendment is only to delete sub-clause (b).

Mr. Naziruddin Ahmad : Yes, I have given notice of this amendment too. See amendment No. 246.

The Honourable Dr. B. R. Ambedkar : There is an amendment by Mr. Jaspat Roy Kapoor to delete clause (3) of 282 B.

Mr. President : There is an amendment by the Honourable Member (Mr. Naziruddin Ahmad) also.

The Honourable Dr. B. R. Ambedkar : He can go on; I merely wanted to draw his attention.

Mr. Naziruddin Ahmad : I have given notice of an amendment to delete clause (3) but I did not move it because that has already been moved by Mr. Jaspat Roy Kapoor. Dr. Ambedkar was probably engaged in more interesting conversation than listening to the point I made as to why I was not moving it.

Sir, the proposal has already been made for the deletion of clause (3). It was made by my Friend Mr. Jaspat Roy Kapoor. He has already moved it and as you referred to the matter and gave me directions I did not seek to move it because it was unnecessary.

This proviso is extremely important. With regard to proviso (a) the condition is that the officer or public servant need not be given any opportunity to show cause if he is removed, discharged or reduced in rank on account of a conviction in a criminal case. But a conviction in a criminal case does not necessarily involve moral turpitude. There is many an important man who would assault people on provocation; on almost a justifiable cause, but he may be convicted; that does not in the least affect his moral or intellectual qualities or in the least make him unfit for Government service. In a case where he is convicted of an offence involving moral turpitude, of course the usual safeguard of giving him an opportunity need not be provided. But I wish to restrict myself to the proviso (a) dispensing with the necessity of giving opportunity to show cause to be confined to offences involving moral turpitude where the conviction will be conclusive and no explanation need be taken.

Mr. Jaspat Roy Kapoor has clearly explained why opportunities should always be given. What is the meaning of the expression, "it is not reasonably practicable to give" him notice

? In fact, a man in office can easily be available for serving the notice. If he runs away, he would be dismissed on that ground alone. If he is on leave, he has a notified address and the notice can be sent to that address. All that I want is that an opportunity should be given. An opportunity is a great thing and sometimes an explanation might reveal strong points in the delinquent's case and might help him. To refuse to give an opportunity is to refuse justice.

Then, Sir, my amendment which is not already covered by other amendments is the deletion of clause (c) of this proviso. This I consider to be very important. Clause (c) runs thus :--

> "where the President or Governor or Ruler, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity".

The expression "security of the State" which is so dear to the heart of everyone is a much exploited expression and has been needlessly over-emphasised in proviso (c). I quite concede the need for ensuring the security of the State. But I utterly fail to see how, when a Government officer is reduced or dismissed, any opportunity given to him to show cause why he should not be dismissed or otherwise dealt with is really going to affect the "security of the State". All that I want is that he should be, given an opportunity. If an officer is very undesirable and undermines the security of the State—if his activities are dangerously undesirable in this respect—he may be kept in detention; even then it cannot affect the security of the State to give film an opportunity to explain; if his conduct is otherwise bad and affects the security of the State, there are ample powers to deal with him, but that could be no justifiable or reasonable cause for refusing to give him an opportunity to explain. I think, Sir, the expression "security of the State" is fantastically out of the question in a matter like this. Security of the State can never be affected by giving, anyone an opportunity. If the man is in detention you can send him a notice in the prison and he can send the explanation and no harm would be caused in considering the explanation. What is the harm in doing him justice ? He may be dangerous to the security of the State—for that adequate provisions have been made and he can be adequately dealt with. But we are concerned with the security of the services. We are considering whether opportunity should be given to them. If we say that it is the opinion of the Governor or the President that the man is so dangerous that he should be dismissed on that ground, it is a different matter. But when he is being dismissed or reduced in rank not on the ground that he is a danger to the security of the State, then the security of the State is attempted to be made a ground for refusing to give him an opportunity to explain his alleged misconduct or shortcoming.

I think no purpose will be gained by introducing this imposing expression "security of the State" . At this expression everyone will jump up and cry out---"security of State, security of State, security of State". I submit that if the security of India would be seriously affected by giving an officer opportunity to show cause, if the security of India is based on this, I think there is no security in India must be dangerously insecure if her security is based upon a refusal to give an opportunity to an humble officer. What happens in such cases is that men are dismissed by higher officers on insufficient cause, sometimes on bias and not always with a sense of impartiality. We hear of these things; these things are not published in the Press nor are they subject matters of Council questions, but these things happen, in fact they are very widespread. An opportunity to show cause would place on record the delinquent's version; nothing will be lost but much will be gained by allowing him to put on record his reason. An officer who dismissed him may be biassed, but a superior officer may read his explanation and do him justice. It is provided that the decision of the officer dismissing him would be final. Nothing could be more improper than giving the higher officer an arbitrary power. In fact, the officer himself is the complainant, he is the judge and he is the final appellate authority. There is no point in questioning his authority. Clauses (a) and (b) of this proviso were taken from the proviso to section 240 of the Government of India Act, 1935. In those settings this was highly proper; there was the imperialistic Government , they would dismiss anyone they liked and any opportunity to explain would be refused. But we are living in a free India. We must take care to safeguard the rights and liberties of our poor, humble officers; they are the middle classes and they require protection. So, whatever may be the justification for retaining these clauses (a) and (b) in the Government of India Act, in free India there cannot be any such a thing. We should be more open to conviction, we should give more opportunities to show cause we are bound to give them an opportunity to show cause. If reasonable opportunity is not given, I think there is no sense of security.

Sir, these amendments should be taken into consideration carefully as they will affect these officers who would be entirely at the mercy of their dissatisfied superiors; they require sufficient protection. All the protection is merely nominal, it is merely psychological. You must give an opportunity to show cause. These clauses of the proviso cannot be given effect to and they should be deleted. With regard to proviso (a) it should be seriously modified so as to reduce it to cover offences involving moral turpitude.

Sir, I have taken a little more time than I should have but I bow down to your ruling that we should cut down our speeches to the minimum and I give my assurance that I shall cut down my speeches to the minimum.

Mr. President : Amendment No. 241. Mr. Shibban Lal Saksena. Both 241 and 242 are covered by amendments already moved.

Prof. Shibban Lal Saksena (United Provinces: General): I want to speak, Sir.

Mr. President : Not now. Then, amendment, No. 243, Mr. Kamath. Your amendment also is covered by the one already moved.

Shri H. V. Kamath (C. P. & Berar : General) : Not the whole of it. The alternative is not covered.

Mr. President : All right. I want to be strict in regard to the time-limit on speeches.

Shri H. V. Kamath : But in view of the importance of the subject some latitude may be shown. If I am found to repeat myself you may pull me up.

Mr. President : The honourable Member need not read out his alternative to amendment No. 243.

Shri H. V. Kamath : My amendment runs:

"(a) That in the proposed new article 282 B, in sub-clause (b) of the proviso to clause (2), for the words 'that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause' the words 'on grounds to be recorded in writing, that the whereabouts of that person are unknown' be substituted;

(b) That in the proposed new article 282 B, sub-clause (c) of the proviso to clause (2) be deleted;

(c) That in the proposed new article 282 B, clause (3) be deleted."

May I humbly add my feeble voice to the protest that has been raised in the House by several honourable Members against the injustice that has been sought to be embodied in this article ? We have proclaimed in the Preamble to the Constitution that Justice shall be the Pole Star or the lode-star of our Constitution. We have given pride of place in the Preamble to our ideal that Justice, social, political and economic, shall be meted out to all. I hope we shall not deny any class of people, public servants or others, the fundamental justice that is their due. I was wondering whether, after all, these articles 282 A, 282 B and 282 C are at all necessary to be embodied in our Constitution. I was wondering whether we in this House are sitting as mere lawyers framing Fundamental Rules for civil servants or a Civil Service Manual, or whether we as a free people, after the attainment of freedom, are busy drafting a Constitution for a free people---a Constitution illumined by the ideals of liberty, equality, and justice. These articles are reminiscent or redolent of the Civil Service Manual. There is no need for these articles in the Constitution. No constitution any where in the world includes such rules. Our Drafting Committee has taken the Government of India Act, 1935, as a guide to draft a Constitution for a free country. I am sorry for it. My friend Mr. Naziruddin Ahmad pointed out how iniquitous it is to copy in our Constitution the provisions of the Government of India Act with regard to the Civil Services. This, to say the least, is a blot on our escutcheon and denial of the Justice which we have proclaimed to the world in the Preamble of our Constitution. I would only say that if we adopt this article as it is, I warn the House that the services will have no heart in their work; they will get demoralised and they will not be efficient. There will always be, hanging over their heads, this sword of Damocles. When will it fall, when will a whimsical or a vindictive Minister let it fall?

Mr. President : The honourable Member has taken more than three minutes already.

Shri H. V. Kamath : I will not take more than five minutes. I am not speaking on any other article today.

Mr. President : Finish your peroration.

Shri H. V. Kamath : It is no peroration, Sir. If however you deem it so, I have nothing to say.

Sir, I was saying that the public services, with this sword hanging over their head, will not put their heart into their work. A capricious Minister might any day dismiss or remove a civil servant without serving a notice asking him to show cause. Of course the article mentions the President or Governor; but it means the Minister or the Council of Ministers. A Minister might take it into his head to inform a public servant, thus : "In the interests of the security of the State, I hereby take action against you. You are removed from service". This is most unfair to anybody, not to say a civil servant.

About sub-clause (b) I think the attention of the House has been drawn by Pandit Thakur Das Bhargava or Mr. Naziruddin Ahmad that the only circumstance in which it will not be possible to serve a notice upon a public servant asking him to show cause is when his whereabouts are unknown. As that is the case, I have moved my alternative amendment (a) to the effect that for the words "that for some reason to be recorded by that authority in writing, it is not reasonably practicable etc., etc." the words 'on grounds to be recorded in writing, that the whereabouts of that person are unknown' be substituted. This is the only circumstance when it would not be possible to serve a notice on a public servant. The two lacunae in this article are, firstly, that a person, according to (b) and (c) could be summarily removed without any opportunity being given him to show cause. If it is not practicable, I would like the authority to record in writing that the whereabouts are unknown. If otherwise it is obligatory on the State to ask him to show cause, (c) must be deleted. It is grossly unfair to summarily dismiss any man without giving him an opportunity to explain. Even detenus in jails, during the last war you will remember, Sir, were informed of the grounds of detention and given an opportunity to make their representations in writing. This has been proposed to be denied to Government servants who form an important part of the machinery of the State.

There is another point on which I would say a few words. There is no right of appeal specifically mentioned in the article.. I feel that every public servant before he is removed must be given not only an opportunity to show cause why he should not be removed, but also the right of appeal against any such order before be is finally removed.

Mr. President : The honourable Member has taken eight minutes.

Shri H. V. Kamath : Unfortunately, Sir, . . .

Mr. President : He should not take advantage of my indulgence.

Shri H. V. Kamath : I am concluding my speech. If unfortunately this article is adopted without amendment, I feel that public servants, whether of the Union or of the States, who are so important to an efficient administration will be reduced to the position of virtual slaves or serfs. I for one shudder to think what will happen to our administration if that situation develops. I commend my amendments. Sir . . .

Mr. President : Amendment No. 247.

Shri H. V. Kamth : I am concluding, Sir.

Mr. President : I have already called upon the mover of the next amendment to move it.

Shri H. V. Kamath : I am sorry you are, over-strict today.

Mr. President : I am sorry you are taking advantage of my lemency. Amendment No. 247, Shri Munavalli.

Shri B. N. Munavalli (Bombay States) : Sir, I move:

"That in clause (3) of the proposed new article 282 B, for the, word 'If', the words 'if, on the application of the person, so affected,' be substituted.

(2)That in amendment No. 2 of list 1, 7th week, in clause (3) of the proposed new article 282 B, for the words 'any person' the word 'him' be substituted."

If this is not done, the question may be raised by the relatives of the person to whom a notice has not been given under 282 B (2) (b), or his friends may raise the question or, if any organisation of employees is in existence, it will raise that question. So according to this clause there is wide scope. The purpose of my amendment is to restrict that scope to the person who has been affected. It is only that person that should raise this question so that it may be dealt with according to law. The general principles embodied in this article can be seen to exist in the laws of the various nations. Even in the U.S.A. it has been established that there should be permanency of tenure. In Great Britain also by tradition the permanency of tenure has become so firmly entrenched that it is not possible for any new Ministry to assail it. All these provisions have been substantially embodied in this article. Some of the honourable Members said that what has been provided in this article has been taken away by the proviso. Sir, it is not so. To my mind it seems that the proviso is applicable only in the case of those civil servants whose loyalty is very doubtful. There are civil servants whose political affiliations are open to criticism and whose loyalty to the existing government is doubtful. Under those circumstances there is no other course but to deal with them according to this proviso. Such laws can be traced in the history of other nations also. For example in 1933 when the National Socialists came to power in Germany they promulgated a Civil Service Law whereby it was provided that those civil servants whose political affiliations were questionable and open to criticism could be discharged or reduced in rank. So also those that came out openly in an aggressive manner against the existing government were severely dealt with. Similarly in our country also, for dealing with those civil servants whose loyalty is questionable and who come out openly in an aggressive manner against the government, there must be some proviso, so that the heads of departments could properly deal with them. Therefore I am of opinion that this proviso should exist and I support the provisions of this article wholeheartedly.

Mr. Mahboob Ali Baig (Madras: Muslim): Mr. President, Sir, it is to be regretted that this important question which involves millions of public servants should have been brought before us when we are very much pressed for time. Anyway, the President has been kind enough to allow us to move amendments in this regard. Sir, I move.

"That in clause (2) of the proposed new article 282 B, after the words 'aforesaid shall be' the word 'suspended' be inserted."

"That in sub-clause (a) of the proviso to clause (2) of the, proposed new article 282 B, the following be added :-

"for offences of bribery, corruption or treason, or offences involving moral delinquency."

Then 325.

Mr. President : That is already covered.

Mr. Mahboob Ali Baig : Amendments Nos. 325, 326 and 327 have already been moved, but I will comment on them. Then amendment No. 328. Sir, I move :

"That the following new clause be added at the end of the proposed new article 282 B :-

"The Parliament, in the case of Union services, and the Legislature of the State, in the case of State services, shall lay down rules and regulations in this behalf to be followed by the appropriate authority."

Under article 282A a public servant holds his office during the pleasure of the President or the Governor as the case may be. The legal implication is that a public servant when he has been dismissed or removed, cannot claim to be restored through a court. That is the legal implication. So, it has become very necessary for us to provide safeguards which must be, adequate, fair and just, in order that the services may feel secure in their tenure of office, on which depends the welfare of the State and of the administration which is so necessary. Now, Sir, this article 282B seeks to provide such safeguards. Let us see whether they are adequate, fair and just. That is the question before us when we are discussing this 282B. My first amendment No. 323, proposes that a public servant cannot be suspended without being given an opportunity to show cause why he should not be suspended. The punishment of suspension is a severe one and a serious one. That is my proposal, Sir, as far as 323 is concerned.

My amendment No. 324 refers to sub-clause (a) of the proviso to clause (2). What I propose is that where a person is dismissed, removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge, then no opportunity need be given to the public servant for showing cause why he should not be dismissed or removed. It has already been argued by many honourable Friends who came before me that a man may be convicted and sentenced for offences which do not involve either a dereliction of duty as a public servant or for any offence involving moral turpitude or moral delinquency and such cases have been cited also. But I have added two or three instances also such as "for offences of bribery, corruption, or treason or offences involving moral delinquency". The circumstances in which a public servant may have been convicted or sentenced in these cases are of a very serious nature and when he has been so convicted, he should not be given an opportunity. That seems to be fair; but if you state that he was convicted for any offence before a criminal court, then he need not be given any opportunity, it is too sweeping a circumstance and therefore, Sir, I submit that the amendment, as drafted by the Drafting Committee may be amended as I have suggested.

I have purposely added the word "treason" for this reason. Clause (c) perhaps contemplates all cases where a person may be suspected of being disloyal and that a public servant is disloyal cannot be proved, it may be argued. It may also be true that there may be mere allegations against him. I submit that either you give an opportunity. to him to prove that he is not disloyal or if he is tried by a court of law and found to be treasonable or disloyal, then he need not be given an opportunity. Beyond that it is not fair that he should not be given an opportunity to prove that he is disloyal and therefore he should be dismissed.

Now, Sir, with regard to clause (b) it has been argued by my honouralable friends that we cannot conceive of cases where you cannot serve a notice upon him and a reasonable opportunity cannot be given to him. I do not know why such a clause has been introduced unless it be to facilitate the work of the inquiring officer when a delinquent has absconded and is not to be found anywhere. For that there is the procedure which can be easily followed. I do not see any reason why this clause should be there. With regard to (c), it is very unfortunate that this clause has been introduced. Even the Government of India Act, section 240, does not mention any provision of this kind. Where a foreign Government, a bureaucratic Government has not found it necessary . . .

Mr. President : The honourable Member is only repeating what has been said by more than one member. He can confine himself to amendment No. 328.

Mr. Mahboob Ali Baig : I consider that sub clause (c) is not only unnecessary but it is retrograde and ought to be deleted.

Now with regard to clause (3) also I might mention that such a clause also does not find a place in section 240 of the Government of India Act. The reason for this may be that clause (b) states as follows :-- "Where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied". This itself was quite enough. So perhaps it is not necessary to have introduced clause (3) here.

Then my amendment No. 328, I submit, is very necessary. The reason is that, as we know, these rules and regulations are framed not by the legislature but by the Government. I want that these rules and regulations should be framed by the legislature and not by the Governments concerned. The safeguards that you can provide . . .

Shri T. T. Krishnamachari (Madras : General) : If the honourable Member refers to article 282, he will find what he wants there.

Mr. Mahboob Ali Baig : So what I want is that in the absence of the help of the court in the case of persons sought to be removed you must provide very adequate, fair and just safeguards and those safeguards must be very clear and they must be made by the Parliament or the legislature to be followed by the appropriate authority. The words "reasonable opportunity" have no meaning at all. We have known many cases where the Government servants go to a court after being removed and they are told by the court that it has no jurisdiction at all because they are holding service during the pleasure of the Crown. The only way in which the Court can safeguard the rights of the person who goes to a court is to see what is a "reasonable opportunity" whether the procedure laid down by the Government, laid down by the legislature has been followed satisfactorily by the appropriate authority before dismissing him. It is only in those circumstances the Court can say whether the "reasonable opportunity" has been given to the person aggrieved and then come to his rescue. Even then he cannot be rescued or restored at all, but compensation only can be granted to him. I am not only referring to the remedy that he may have before the court; but in order that he may feel secure, that he might have confidence in his office, it is necessary that these rules should be framed and the authorities concerned should follow them strictly. Though it is stated "if any question arises whether it is reasonably practicable to give notice to any person under clause (b)", you have not provided in clause (3) any appellate authority to find out whether the reasons given by the appropriate authority, that he is satisfied that it is not reasonably practicable to give notice are sound. It is the person who dismisses the Government servant who has to decide whether it is reasonably practicable to give notice or not. You have not provided that some appellate authority should examine the matter and come to the conclusion that the appropriate authority who refused to give a reasonable opportunity is really right in having dismissed a Government servant without notice. If you say that the legislature might provide, for that, you might make it clear even now when we are dealing with this matter.

Therefore, Sir, my submission is that while the article makes an attempt to provide safeguards, in my considered view they are not adequate, fair and just and it is necessary that in order to safeguard the interests of these millions of Government servants on whose efficiency and honesty our administration depends, these amendments of mine should be accepted.

(Amendment No. 367 was not moved.)

Prof. Shibban Lal Saksena : Mr. President, Sir, While carefully listening to the debate, I have been wondering whether the removal of this article from this Constitution would not be better than putting it in this form. In fact there is the fundamental principle that no man shall be condemned unheard. What we are laying down here is that some persons can be condemned unheard. If this article is removed, at least everybody could go to a court of law and say "I will be heard before I am punished." I know Dr. Ambedkar has introduced this article, not because of the provisos, but because of the fundamental principle involved in it that he wants to guarantee to the people in Government service that they shall not be removed from service or punished unless they are heard. But I say, Sir, that the provisos have ruined the whole thing. In fact under clause (a) even Pandit Jawaharlal Nehru, yourself and probably half of the House would all be liable to be dismissed because of our conviction on criminal charges during Satyagrah movement which did involve moral turpitude. I hope, Sir, the amendment of Pandit Thakur Das Bhargava, of which he has given notice, will be accepted.

About clauses (b) and (c), I cannot see how the mere giving of an occasion or an opportunity to show cause would be dangerous. You are not giving anybody an assurance that that explanation will be accepted. What I want is that these sub-clauses (b) and (c) must be removed. It is said that there are Communists in service whom it is necessary to remove and therefore this clause is necessary. It is said that it will be difficult to give an opportunity to show cause. I say, Sir, that by putting this clause in the Constitution, you are going to make the services a communist nest. I am not afraid of communism or their philosophy. By this clause, you are only making the people labour under a sense of injustice and grievance that they have not been heard. That is the feeling which in fact infects the people with disaffection and disloyalty. I therefore think that for the sake of seeing that the services are satisfied, you must give them an opportunity to be heard. I do not say that you must always accept their explanation; but they must have an opportunity to explain. I hope Dr. Ambedkar will accept the amendment.

Shri T. T. Krishnamachari : I move, Sir, that the question be now put.

Mr. President : Closure has been moved. The question is :

"That the question be now put."

The motion was adopted.

Mr. President : I shall now put the amendments to vote. Dr. Ambedkar, do you wish to say anything?

The Honourable Dr. B. R. Ambedkar : I should like to say one or two words, Sir.

As I listened to the criticisms made by the various speakers who have moved their amendments, I have come to the conclusion that they have not succeeded in making a clear distinction between two matters which are absolutely distinct and separate : these matters are grounds for dismissal and grounds for not giving notice. This article 282-B does not deal with the grounds of dismissal. That matter will be dealt with by the law that will be made by the appropriate legislature under the provisions of article 282. In what cases a person appointed to the civil service should be dismissed from service would be a matter that would be regulated by law made by Parliament. It is not the purpose of this article 282-B to deal with that matter.

This article 282-B merely deals with, as I stated, the grounds for not giving notice before dismissal so that a person may have an opportunity of showing cause against the action proposed to be taken against him. The purport of this clause is to lay down a general proposition that in every case notice shall be given, but in three cases which have been mentioned in sub-clauses (a), (b) and (c), notice need not be given. That is all what the article says. It has been, in my judgment, a very wrong criticism which has been made by my honourable Friend Mr. Kamath that this article is a disgrace or a shame or a blot on the Constitution.

Shri H. V. Kamath : *(Interruption)* . . . .

The Honourable Dr. B. R. Ambedkar : I should have thought that that was probably the best provision that we have for the safety and security of the civil service, because it contains a fundamental limitation upon the authority to dismiss. It says that no man shall be, dismissed unless he has been given an opportunity to explain why he should not be dismissed. If such a provision is a matter of disgrace, then I must differ from my honourable Friend, Mr. Kamath in his sense of propriety.

Shri H. V. Kamath : I am referring to the provisos to the article.

The Honourable Dr. B. R. Ambedkar : I am coming to the provisos.

So far as clause (2) is concerned, I have no doubt in my mind that everybody who has got commonsense would agree that this is the best proviso that could have been devised for the protection of the persons engaged in the civil service of the State. The question has been raised that any person who has been convicted in any criminal case need not be given notice. There, again, I must submit that there has been a mistake, because, the regulations made by a State may well provide that although a person is convicted of a criminal offence, if that offence does not involve moral turpitude, he need not be dismissed from the State service. It is perfectly open to Parliament to so legislate. It is not in every criminal charge, for instance, under the motoring law or under some trivial law made by Parliament or by a State making a certain act an offence, that that would necessarily be a ground for dismissal. It would be open to Parliament to say in what cases there need not be any dismissal. It would be perfectly open to Parliament to exclude political offences. This clause in so many words merely deals with the question of giving notice. Parliament may exempt punishment for offences of a political character, exempt offences which do not involve moral turpitude. That liberty of the Parliament is not touched or restricted by sub-clause (a). I want to make this clear.

With regard to sub-clause (b), this has been bodily taken from section 240 of the Government of India Act. I think it will be agreed that the object of introducing, section 240 of the Government of India Act was to give protection to the services. Even the British people. who were, very keen on giving protection to the civil services, thought it necessary to introduce a proviso like sub-clause (b). We have therefore not introduced a new thing which had not existed before. With regard to sub-clause (c), it has been felt that there may be certain cases where the mere disclosure of a charge might affect the security of the State. Therefore it is provided that under sub-clause (c) the President may say that in certain cases a notice shall not be served. I think that is a very salutary provision and notwithstanding the obvious criticism that may be made that it opens a wide door to the

President to abrogate the provisions contained in sub-clause (2). I am inclined to think that in the better interests of the State, it ought to be retained.

Coming to clause (3), this has been deliberately introduced. Suppose, this clause (3) was not there, what would be the position ? The position would be that any person, who has not been given notice under sub-clauses (a) or (b) or (c), would be entitled to go to a court of law and say that he has been dismissed without giving him an opportunity to show cause. Now, courts have taken two different views with regard to the word 'satisfaction' : is it a subjective state of mind of the officer himself or an objective state, that is to say, depending upon circumstances ? It has been felt in a matter of this sort, it is better to oust the jurisdiction of the court and to make the decision of the officer final. That is the reason why this clause (3) had to be introduced that no Court shall be able to call in question if the officer feels that it is impracticable to give reasonable notice or the President thinks that under certain circumstances notice need not be given.

Now, another misapprehension which I should like to clear is this. Some people think that under the provisions regarding civil service which I have introduced the Government has an absolute unfettered right to dismiss any civil servant and that this power is aggravated by the introduction of sub-clauses (a), (b) and (c) of clause (2). I submit that again is a misapprehension because under the provisions relating to Public Service Commission which we have passed already there is a provision that every civil servant who is aggrieved by any action taken by any officer relating to the conditions of service will have a right of appeal to the Public Service Commission. Therefore, even in cases where the Government has not given the officer an opportunity to show cause, even such an officer will have the right to go to the Public Service Commission and to file an appeal that he has been wrongfully dismissed contrary to the provisions contained in the rules made relating to his service. I, therefore, think that the apprehensions which have been expressed by honourable Members with regard to the provisions contained in this article are entirely misfounded and are due to misunderstanding of the provisions of this Act, the provisions of article 282 and the provisions relating to Public Service Commission.

Mr. President : The question is:

"That in the proposed new Article 282 B clause (1), for the words "by an authority subordinate to that by which he was appointed" the words 'except by an order of the Union Public Service Commission, or, as the case may be, by the State Public Service Commission' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in the proposed new article 282-B, in paragraph (b) of the proviso to clause (3) for the words 'Where an authority empowered to dismiss a person or remove or reduce him in rank' the words 'If the Union Public Service Commission, or, as the case may be, the State Public Service Commission', be substituted."

The amendment was negatived.

Mr. President : The question is :

"That sub-clause (b) of clause (2) of the proposed new article 282 B be deleted."

The amendment was negatived.

Mr. President : The question is:

"That clause (3) of the proposed new article 282-B be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in sub-clause (a) of the proviso to clause (2) of the proposed new article 282 B, after word 'conduct' the words 'involving moral turpitude' be inserted."

The amendment was negatived.

Mr. President : The question is :

"That in sub-clause (a) of the proviso to clause (2) of the proposed new article 282 B, after the word 'charge' the words 'involving moral turpitude' be inserted."

The amendment was negatived.

Mr. President : The question is :

"That in the proviso to clause (2) of the proposed new article 282 B, sub-clause (c) be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in the proposed new article 282 B in sub-clause (b) of the proviso to clause (2) for the words 'that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause' the words 'on grounds to be recorded in writing, that the whereabouts of that person are unknown' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in sub-clause (b) of the proviso to clause (2) and in clause (3) of the proposed new article 282 B for the word 'practicable' the word 'possible' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in sub-clause (c) of the proviso to clause (2) of the proposed new article 282 B, for the words 'is satisfied' the word 'certifies' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in sub-clause (3) of the proposed new article 282 B, for the word 'If', the words 'if on the application of the person, so affected,' be substituted.

The amendment was negatived.

Mr. President : The question is :

"That in clause (3) of the proposed new article 282 B for the words 'any person' the word 'him' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in clause (2) of the proposed new article 282 B, after the words 'aforesaid shall be' the word 'suspended' be inserted."

The amendment was negatived.

Mr. President : The question is :

"That sub-clause (a) of the proviso to clause (2) of the proposed new article 282B. the following be added :-

'for offences of bribery, corruption or treason or offences involving moral delinquency'."

The amendment was negatived.

Mr. President : The question is :

"That the following new clause be added at the end of the proposed new article 282 B :-

"That Parliament, in the case of Union services, and the Legislature of the State, in the case of State services, shall lay down rules and regulations in this behalf to be followed by the appropriate authority."

The amendment was negatived.

Mr. President : I put the original amendment of Dr. Ambedkar-Article 282-B.

The question is :

"That proposed article 282-B stand part of the Constitution."

The motion was adopted.

Article 282-B was added to the Constitution.

Article 282-C

Mr. President : We go to 282-C.

Shri Brajeshwar Prasad : Sir, I move :

"That in clause (1) of the proposed article 282 C the words 'if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do' be deleted and after the words 'other provisions of this Chapter', the words 'the Union Public Service Commission shall' be inserted."

The whole aim of Article 282 C is to protect the Federal foundations of this Constitution. Therefore, this power has been given to the Upper Chamber. They have the right to take the initiative in the matter and the Lower House has no power in this respect. Secondly, not only they have this power of moving this resolution but something like a veto power has been given to them. A resolution must be passed by two-third members of the House. I do not see any reason why the Federal foundations of this Constitution should be protected. Our constitution is not merely federal in character but it is also unitary in character. There is no reason why the unitary foundations of this Constitution should not be protected. Federal Government tends towards unitary type of Government. It would be wrong on our part to put the hands of the clock back. I am in favour that all services in the country should be centralised and I am convinced that there are no classes of persons in this country who are champions of Federal rights.

Let me place my ideas in this connection. Who are the people in this country who want to protect the federal sentiments ? I come to the industrial workers in this land. Sir, Karl Marx had the vision to see that the industrial workers fare international minded. Circumstanced as they are today in this world there is no course left open to them but to become champions of internationalism. Therefore these industrial workers are not at all in any way champions of local rights.

Mr. President : All this is quite irrelevant to the amendment.

Shri Brajeshwar Prasad : The whole aim of this article is to protect the Federal Constitution or else there is no meaning in giving this power. I want to deal with the theoretical foundations of this Constitution. If you want me to speak only on the provisions and not to deal with the philosophical background I am quite prepared to do so.

Mr. President : I think you had better confine yourself to the amendment tabled by you instead of talking of the background.

Shri Brajeshwar Prasad : Well, Sir, there is no danger if this power is vested in the hands of Parliament instead of vesting this power in the Upper Chamber because thereby you give the power to the Central Ministry, and no Ministry in its senses would resort to a process of centralisation of services unless a need has been felt for it and unless it has developed the technical resources for that purpose. The other part of the amendment says that the power to regulate recruitment and conditions of service should be placed in the hands of Parliament. I have suggested that this power should be vested in the Union Public Service Commission.

I had more to say, but since you Sir, do not want that I should deal with the theoretical foundations of this article, I stop here.

Mr. President : Yes, because that is merely speculation. Then we come to No. 249 of Dr. Deshmukh. But that is a drafting amendment, I think. Then No. 250.

Dr. P. S. Deshmukh (C. P. & Berar : General) : They are, of a Drafting nature, and I am prepared to leave them to the Drafting Committee.

Mr. President : No. 251 also is of a drafting nature.

Dr. P. S. Deshmukh : But I should like to speak on the amendments.

Mr. President : Very well, after I have finished with these. No. 368 Mr. Muniswamy Pillay.

Shri V. I. Muniswamy Pillay (Madras : General) : Sir, with your permission I move the amendment standing in my name :

> "That in amendment No. 2 of List I (Seventh Week), in clause (1) of the proposed new article 282 C, after the words 'Union and the States' the words 'giving equal opportunities to all Unrepresented communities' be inserted."

This clause envisages giving power to Parliament to make laws for the creation of more all-India services coming under the Union and the States, regulate recruitment and so on, I feel it my duty to bring to the notice of the House the paucity of members of the backward communities in the services, both at the Centre and in the Provinces. Sir, due to the influences that have been exercised by some privileged communities, it was not possible for these backward communities to get their adequate share in the services. Since this clause wants to make laws for the rules and regulation of recruitment, I feel that accurate statistics must be obtained before any law is made, so as to find out the number of persons serving, belonging to the various communities in the provinces and in the Union, and to make such laws so that those people who are being left out from the services may get equal opportunities with the rest, in all the services.

Mr. President : Mr. Muniswamy Pillay, there is another provision which directly provides for that. Is it necessary to bring this here, in this roundabout fashion?

Shri V. I. Muniswamy Pillay : There is one impediment in the way. Some of my friends who spoke yesterday were referring to the knowledge of the official language. I think, Sir, since we have a clause coming later, about the language, it is not advisable that any "stick to" – should be made about the official language. But I feel that the language which at present is adopted in all the provinces should be the order of the day, until Parliament by law at a later date affirms what the language in the province and the State should be. With these words, I strongly support the amendment that has been brought forward by Dr. Ambedkar.

Mr. President : There is no other amendment to this article. You wanted to speak, Dr. Deshmukh.

Dr. P. S. Deshmukh : Sir, I support the amendment moved by my Friend Shri Brajeshwar Prasad in regard to the omission of the words:

> "If the Council of States has declared by resolution supported by not less than two thirds of the members present and voting that it is necessary or expedient in the national interest so to do."

I had intended to move a similar amendment, No. 250, but I do not propose to move it now since an identical amendment has been moved. I have been unable to understand this provision. Nowhere has the initiative, in any important matter been left to any other House except the House of the People in the Central Parliament. But here for the first time, according to my knowledge and information, we give the initiative to the Council of States. Sir, either the central services are desirable or they are undesirable. If they are desirable, then they should not be cramped with so many impediments created in the way of their being started. If they are undesirable, then there should not have been any provision whatsoever. I think, more and more there will be the tendency to have all-India services, and therefore in my opinion there was no point in making their introduction so difficult. Why should the proposal have the support of not less than two-thirds of the members present and voting of the Council of States? I think these, words are absolutely unnecessary, unless they are intended to clothe the useless House of the Council of States with some dignity or some function. I think that appears to be the only anxiety at the root of this brain-wave, of giving the initiation of such an important matter to the Council of States. I see no purpose for these words and therefore move that they be omitted.

Mr. President : Dr. Ambedkar, would you like to say anything?

The Honourable Dr. B. R. Ambedkar : Just one word. I think neither Mr. Brajeshwar Prasad nor my friend Dr. Deshmukh, the one in moving the amendment and the other in supporting it, seems to have read carefully the provisions of article 282. Article 282 proceeds by laying down the proposition that the Centre will have the authority to recruit for services which are under the Centre and each State shall be free to make recruitment and lay down conditions of service for persons who are to be under the State service. We have, therefore, by article 282 provided complete jurisdiction. 282 C to some extent takes away the autonomy given to the States by article 282, and obviously if this autonomy is subsequently to be invaded, there must be some authority conferred upon the Centre to do so, and the only method of providing authority to the Centre to run into, so to say, article 282 is to secure the consent of two-thirds of the members, of the Upper Chamber. The Upper Chamber is the only body mentioned in article 282. *Ex-hypothesi* the Upper Chamber represents the States and therefore their resolution would be tantamount to an authority given by the States. That is the reason why these words are introduced in article 282 C.

Mr. President : I put Shri Brajeshwar Prasad's amendment in two parts. The first part is this. The question is :

> "That in clause (1) of the proposed article 282 C, the words 'if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is

necessary or expedient in the national interest so to do' be deleted."

The amendment was negatived.

Mr. President : Then the second part. The question is :

"That in clause (1) of the proposed article 282 C after the words 'other provisions of Chapter' the words 'the Union Public Service Commission shall' be inserted."

The amendment was negatived.

Mr. President : Then there is the amendment moved by Shri Muniswamy Pillay.

Shri V. I. Muniswamy Pillay : I would like to withdraw that amendment.

The amendment was by leave of the Assembly, withdrawn.

Mr. President : Then I put the article as moved by Dr. Ambedkar. The question is :

"That proposed article 282 C stand part of the Constitution."

The motion was adopted.

Article 282 C was added to the Constitution.

Article 283

Mr. President : Then we come to article 283. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That for amendment No. 3037 of the List of Amendments (Volume II), the following be substituted :-

"That for article 283 the following article be substituted :-

Transitional provisions.

283. Until other provisions is made in this behalf under this Constitution, all the laws in force immediately, before the commencement of this Constitution and applicable to any public service or any post which continues to exist after the commencement of this Constitution, as an All-India service or as service or pos under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution'."

This is a purely transitional provision.

Mr. President : There is amendment No. 12 of Shri Jaspat Roy Kapoor. That is not moved.

No. 252 of Mr. Naziruddin Ahmad is purely of a drafting nature.

No. 253 of Pandit Thakur Das Bhargava is not moved.

There is no amendment moved, then. Does anyone wish to say anything about this article?

(No Member rose to speak.)

Then I put article 283.

The question is :

"That proposed article 283 stand part of the Constitution."

The motion was adopted.

Article 283 was added to the Constitution.

Article 302

Mr. President : Then we take up article 302. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : I move:

"That in clause (1) of article 302. after the word 'Governor' the words 'or Ruler' be inserted."

"That in the second proviso to clause (1) of article 302, for the words and figures 'bring against the Government of India or the Government of a State such proceedings as are mentioned in Chapter III of Part X of this Constitution the words 'bring appropriate proceedings against the Government of India or the Government of a State' be substituted."

"That in clause (2) of article 302, after the word 'Governor' the word 'Ruler' be inserted."

"That in clause (3) of article 302, after the word 'Governor' the words 'or Ruler' be inserted."

"That in clause (4) of article 302-

(a) after the word 'Governor' in the first place where it occurs, the words 'or Ruler' be inserted;

(b) for the word 'Governor' in the second place where it occurs, the words 'as Governor or Ruler' be substituted; and

(c) after the word 'Governor' in the third place where it occurs, the words 'or the Ruler' be inserted."

An Honourable Member : What about 13, Sir

Mr. President : It is not in the Order Paper. It is held over.

The Honourable Dr. B. R. Ambedkar : Amendments 14, 16, 17 and 18 are purely drafting amendments. The only amendment perhaps which requires an explanation is No. 15. The reason for bringing in this amendment is that reference to Chapter III really means reference to article 274. Article 274 deals with the right of suit against Government and that article is divided into two parts. One part deals with the right of suit as exists on the date of the commencement of the Constitution. The other part is regarding the power of Parliament to make further provision with regard to the right of suit against Government. If the words as there remain, it would only mean that the right of suit against Government would be in terms of 274 as it would be on the date of commencement of the Act. The substitution of the words "appropriate proceedings" is intended to cover not only the right of suit as it would exist on the date of commencement of the Act, but also as to subsequent proceedings which Parliament may by law provide against the Government of the day. That is the reason for this amendment. I might also mention to the House that I find that if this amendment is carried, I shall also have to bring in a small consequential amendment in article 202 where there has been a sort of omission.

Mr. President : There are several amendments printed in volume II of the printed amendments. I do not know if the Honourable Members would like to move them. 3203---Mr. Kamath.

Shri H. V. Kamath : Mr. President, Sir, I move amendment 3203. I do not move 3204, 3205 and 3206 as they do not arise in view of the changes in the article. Amendment 3203 is as follows :

"That in clause (1) of article 302, for the word 'duties' the word 'functions' be substituted."

I feel that in the context of this article the word "functions" expresses the meaning intended, far better than the word "duties". We always refer to the functions and powers and not duties of an officer or dignitary.

With regard to clause (2) I have, a slight difficulty. Clause (2) says that no criminal proceedings whatsoever shall be instituted or continued against the President or the Governor or the Ruler of a State in any court during his term of office. The doubt that has arisen in my mind is as to whether the President or the Governor or the Ruler has no liability for any criminal act committed by him during his term of office. Suppose for instance he commits a crime---God forbid that the President or the Governor or the Ruler of a State should be guilty of criminal conduct, but human nature is fallible---so if he unfortunately commits a criminal act, does this clause mean that no proceedings can be instituted against him during the whole prescribed term, or whether it means while he is in office only, that is to say, whether as soon as a prima facie case is made against him, the president should resign his office irrespective of the period put in by him; whether in the case of a Governor or a Ruler committing a criminal act, the President ought to remove him from office. The phrase "during his term of office" is rather ambiguous. I hope Dr. Ambedkar or Mr. Krishnamachari whoever replies on behalf of the Drafting Committee; will throw some light on this matter and clarify the content of clause (2) of this article.

(Amendment 3207, 3208, 3209 and 3210, 19 and 256 were not moved.)

Mr. President : So there is only one amendment moved by Mr. Kamath. Does Mr. Ambedkar wish to say anything on that?

Shri T. T. Krishanamachari : No, Sir. Sir Alladi Krishnaswami Ayyar wishes to say something.

Shri Alladi Krishnaswami Ayyar (Madras : General) : Mr. President, after listening to the reasons which were given by the Honourable Dr. Ambedkar in regard to the amendment concerning the proviso to article 302, I should like to say a few words. In other parts of the Constitution we have made a provision guaranteeing fundamental rights. The High Court also is invested with the jurisdiction to ensure the necessary writs in regards to fundamental rights. When once the rights are guaranteed, it is only fit and proper that there must be the proper remedy against the encroachment of those rights. That is why we have provided that the High Court can exercise, all the jurisdiction in respect of the necessary remedies for the enforcement of fundamental rights. The second proviso, as it stands, reads:

"Provided further that nothing in this clause shall be construed as restricting the right of any person to bring against the Government of India or the Government of a State such proceedings as are mentioned in Chapter III of Part X of this Constitution."

That could only refer to suits as against the Secretary of State or against the Government referred to in Chapter 3, part X. There may be the danger of the proviso being so construed as to negative the enforcement of fundamental rights guaranteed in other parts of the Constitution. That is why the Honourable Dr. Ambedkar has brought forward the 'amendment before the House so that effective remedies may be secured for the enforcement of the fundamental rights. It is all the more necessary because in the corresponding section 202 of the Government of India Act, it was held by the High Court that no sort of writ can lie against the Government, and therefore in order to make it quite clear that the restrictions imposed on the High Court in section 202 of the earlier Government of India Act no longer applied, this amendment is introduced. Therefore, if in the exercise of any statutory or other function, Government out-steps the limits of its power, it wilt be open for the aggrieved person to seek the necessary remedy. As the Honourable Dr. Ambedkar has already pointed out certain necessary changes might have to be made in other parts of the Constitution. The idea is to get over the restriction that has been placed by the High Courts in regard to the issuing of writs against the government. When the Government exercises quasi judicial or statutory functions it must be open to the High Court to issue the necessary writs. Even under the Act of 1935 the Madras High Court has taken the view that no such writ lies. It is to get over this that the proviso is sought to be modified. There is no need to apprehend that the. story of the conflict between the Governor-General and the Supreme Court in those, days after the regulating Act will be repeated. That need not now be anticipated and this right I have no doubt will be wisely exercised by the High Court in the enforcement of fundamental rights guaranteed under the Constitution.

Mr. President: Would you like to say anything about Mr. Kamath's amendment ?

Shri T. T. Krishnamachari: We have been attempting to explain to him what it really means.

Mr. President: I will put Mr. Kamath's amendment No. 3203 to the vote.

Shri. H. V. Kamath: Is there no reply to my difficulty about the term of office ?

Mr. President: Mr. Krishnamachari has told the House that the thing has. been explained to you.

Shri H. V. Kamath: No, it has not been explained.

Mr. President: You may not accept the explanation.

Shri H. V. Kamath : No, reasons have been given. If he does not wish to give reasons, I shall not force him. If he is not able to answer my question, then that is different.

Shri T. T. Krishnamachari : I am advised that the wording had better remain as it is.

Mr. President: Dr. Ambedkar, there is an amendment moved by Mr. Kamath that in clause (1) of article 302, for the word "duties" the word "functions" be substituted.

The Honourable Dr. B. R. Ambedkar: The word "functions" is a large word and it includes both powers and duties. We have said powers and duties which include, all the functions that we can have. It is unnecessary to have any kind of amendment like that.

Mr. President : The question is

"That in clause (1) of article 302 for the word 'duties' the word 'functions' be substituted."

The amendment was negatived.

Mr. President: That is the only amendment that has been moved. I shall now put the amendment put by Dr. Ambedkar.

Shri T. T. Krishnamachari: The whole lot can be put together.

Mr. President: If the Members want that, I shall put them separately.

Very well. I shall put them together. The question is :

"(1) That in clause (1) of article. 302. after the word 'Governor' the words 'or Ruler' be inserted.

"(2) 'That in clause (1) of article 302, after the word 'Governor' the words 'or Ruler' 'bring against the Government of India or the Government of a State such proceedings as are mentioned in Chapter III of Part X of this Constitution' the words 'bring appropriate proceedings against the Government of India or the Government of a State be substituted.

(3) 'That in clause (2) of article 302. after the word 'Governor' the word 'Ruler' be inserted.

(4)That in clause (3) of article 302, the word 'Governor' the words 'or Ruler' be inserted.

(5) That in clause (4) of article 302-

> (a) after the word 'Governor' in the first place where it occurs, the words 'or Ruler' be inserted :
>
> (b) for the word 'Governor', in the second place where it occurs, the words "as Governor or Rule" be substituted : and
>
> (c) after the word 'Governor' in the third place where it occurs the words 'or the Ruler' be inserted."

The amendments were adopted.

Mr. President : The question is :

"That article 302, as amended, stand part of the Constitution."

The motion was adopted.

Article 302, as amended, was added to the Constitution.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That the heading above article 243, and articles 243, 244 and 245 be omitted."

That might be put, so that the others may be taken, separately. It is an independent thing.

Mr. President: The, question is:

"That the heading above article 243, and articles 243, 244 and 245 be omitted."

The motion was adopted.

The heading above article 243, and articles 243, 244 and 245 were deleted.

PART XA

The Honourable Dr. B. R. Ambedkar: Sir. I move :

That after Part X, the following new Part be inserted, namely:-

"Part XA

Trade, Commerce and Intercourse within the territory of India.

Freedom of trade, commerce and intercourse throughout the territory of India.

274A. Subject to the other provision of this Part, trade, commerce and intercourse throughout the territory of India shall be free.

Power of Parliament to impose restrictions on trade, commerce and intercourse by law.

274B. Parliament may, by law enacted by virtue of powers conferred by this Constitution, impose suchrestrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest.

Restrictions of the legislative powers of the Union and of the states with regard to the trade and commerce.

274C. (1) Notwithstanding anything contained in article 274B of this Constitution neither Parliament northe Legislature of a State shall have power to make any law giving or authorising the giving of preference to one State over another or making any discrimination or authorising the making of any discrimination between one State and another by virtue of any entry relating to trade. or commerce in any of the Lists in the Seventh Schedule.

(2) Nothing in clause (1) of this article shall prevent Parliament from making any law giving any preference or making any discrimination as aforesaid if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India.

Restrictions on trade, commerce and intercourse among State

274D. Notwithstanding anything contained in article 274A or article 274C of this Constitution, the legislature of a State may, by law--

(a) impose on goods which have been imported from other States any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and

(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest

Provided that no Bill or amendment for the purpose of clause (b) of this article shall be introduced or moved in the legislature of the State nor shall any Ordinance be promulgated for the purpose by the Governor or Ruler of the State without the Previous sanction of the President.

Appointment of authority to carry out the provisions of article 274A to 274D.

274 E. Parliament may by law appoint such authority as it considers appropriate for carrying out the purposes of articles 274 A, 274 B, 274 C and 274 D. of this Constitution, and confer on the authority so appointed such powers and such duties as it thinks necessary.' "

Sir, all that I need do at this stage is to inform the House that originally the articles dealing with freedom of trade and commerce were scattered in different parts of the Draft

Constitution. One article found its place in the list of Fundamental Rights, namely, article 16, which said that trade and commerce, subject to any law made by Parliament, shall be free throughout the territory of India. The other articles, namely, 243, 244 and 245 were included in some other part of the Draft Constitution. it was found in the course of discussion that a large number of members of the House were not in a position to understand the implications of articles 243, 244 and 245, because these articles were dissociated from article 16. In order, therefore, to give the House a complete picture of all the provisions. relating to freedom of trade and commerce the Drafting Committee felt that it was much better to assemble all these different articles scattered in the different parts of the Draft Constitution into one single part and to set them out seriatim, so that at one glance it would be possible to know what are the provisions with regard to the freedom of trade and commerce throughout India. I should also like to say that according to the provisions contained in this part it is not the intention to make trade and commerce absolutely free, that is to say, deprive both Parliament as well as the States of any power to depart from the fundamental provision that trade and commerce shall be free throughout India. The freedom of trade and commerce has been made subject to certain limitations which may be imposed by Parliament or which may be imposed by. the Legislatures of various States, subject to the fact that-the limitation contained in the power of Parliament to invade the freedom of trade and commerce is confined to cases arising from scarcity of goods in any part of the territory of India and in the case of the States it must be justified on the ground of public interest. The action of the States in invading the freedom of trade and commerce in the public interest is also made subject to a condition that any Bill affecting the freedom of trade and commerce shall have the previous sanction of the President; otherwise, the State would not be in a position to undertake such legislation. Article 274-E is merely an article which would enable Parliament to establish an authority such as the Inter-State Commission as it exists in the United States. Without specifically mentioning any such authority it is thought desirable to leave the matter in a fluid state so as to leave Parliament freedom to establish any kind of authority that it may think fit.

If any further points are raised in the course of the debate. I shall be glad to offer the necessary explanation.

Mr. President: We shall have to take up the amendments one by one. The first amendment is with regard to the heading-that is by Pandit Thakur Das Bhargava (No. 339).

Pandit Thakur Das Bhargava: Before I move this amendment, I would humbly submit that I may be permitted to move all the amendments together. Sir, I move :

"That in amendment No. 269 of List IV (Seventh Week) in the heading of the proposed new Part X-A, for the words 'Trade, Commerce and Intercourse' the words 'Trade and Commerce' be substituted."

"That in amendment No. 269 of List IV (Seventh Week), in the proposed new article 274 A for the word 'Part' the word 'Constitution' be substituted."

"That in amendment No. 269 of List IV (Seventh Week), in the proposed new article 274 B before the word 'restrictions' the word 'reasonable' be inserted."

"That in amendment No. 269 of List IV (Seventh Week), in the proposed new article 274 B, for the words 'trade, commerce or intercourse' the words 'trade or commerce' be substituted."

"That in amendment No. 269 of List IV (Seventh Week), in the proposed new article 274 B, for the words 'public interest' the words 'interests of the general public' be substituted."

"That in amendment No. 269 of List IV (Seventh Week), the proposed new article 274 C be deleted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (1) of the proposed new article 274 C, for the words 'to one State over another' the words 'to any State as against any other State in-the Union or to any part within that State' be substituted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (1) of the proposed new article 274 C, for the words 'between one State and another' the words 'between any State and another State of the Union or between any parts within that State' be substituted:'

"That in amendment No. 269 of List IV (Seventh Week), in clause (1) of the proposed new article 274 C, the words 'by virtue of any entry relating to trade or commerce in any of the Lists in the Seventh Schedule' be defeated."

"That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274 C, for the words 'a situation' the words 'any emergent situation' be substituted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274 C, before the word 'scarcity' the word 'temporary' be inserted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274 C, the words 'for the period of the emergency' be added at the end

"That in amendment No. 269 of List IV (Seventh Week), the proposed new article 274 D. be deleted."

"That in amendment No. 269 of List IV (Seventh Week), clause (b) of the proposed new article 274 D, be deleted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (b) of the proposed new article 274 D, the words 'or intercourse' be deleted."

"That in amendment No. 269 of List TV (Seventh Week), in clause (b) of the proposed new article 274 D, the words "with or' be deleted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (b) of the proposed new article 274 D, for the words 'in the public interest the words 'in the interests of the general public and are not inconsistent with the provisions of article 13' be substituted"

'That in amendment No. 269 of List IV (Seventh Week). in clause (b) of the proposed new article, 274 D, for the words 'public interest' the words 'interests of the general Public' be substituted."

"That in amendment No. 269 of List IV (Seventh Week) in clause (b) of the proposed new article 274 D, the words "during any period of emergency arising from scarcity of goods within the State for the period of such emergency be added at the end."

"That in amendment No. 269 of List IV (Seventh Week), in the proposed new article 274 D, the following new clause be added at the end :-

'The President shall be competent to revoke such sanction when he considers it expedient to do so in the interest of the general public and on such revocation being made the law of the State imposing restrictions shall become void.' "

"That in amendment No. 269 of List IV (Seventh Week), the proposed new article 274 E be deleted."

'That in amendment No. 269 of List IV (Seventh Week), after the proposed new article 274 E, the following new article be added:-

'274 F. Notwithstanding anything contained in, this Constitution, any citizen or State shall have the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by article 13 or Part X-A of the Constitution.' "

or alternatively,

"That in article 16, after the word 'Parliament' the words and figures 'under article: 282 B and 274C' be inserted."

Now, in regard to these amendments my submission is that the way in which I look at the subject is different from the way in which Dr. Ambedkar look at it. According to me, these rights of trade and commerce and intercourse should be absolute and only circumscribed by provisions relating to emergencies while in his view, the power of the Central Government as well as of the provincial Governments should be there, and these rights should be qualified. We have already passed article 16 which runs thus :

"Subject to the provisions of article 244 of this Constitution and of any law made by Parliament, trade, commerce and intercourse throughout the territory of India shall be free."

This article yet stands as it is. There has so far been no amendment that it stands abrogated. The existence of this article in the Chapter on Guaranteed Rights assures us that this is a fundamental right. The nature of this fundamental right has been, I know, curtailed to a great extent by the use of the words "and of any law made by Parliament". Subject to this, this fundamental right has been guaranteed to the citizens of India by the Constitution we have already passed. Along with this I would ask you to consider the effect of article 13, the relevant portion of which says :

"All citizens shall have the right (d) to move freely throughout the territory of India, (e) to visit and settle in any part of the territory of India, (f) to acquire, hold and dispose of property; and (g) to practise any profession, or to carry on any occupation, trade or business."

Now, I submit that this provision of Dr. Ambedkar comes to a certain extent in collision with the parts (d) to (g) of article 13. According to my understanding of the provisions of article 13, every citizen has got the right to carry on any occupation, trade or business subject of course to article 16 which we have adopted. According to it, only in the general interests of the public some restrictions can be put on the rights of a citizen. Now you will see that the expression 'public interest' has been used in the amendment moved by Dr. Ambedkar in several places which I have sought to substitute with the words "the interests of the general public". I maintain that there is great difference between the two expressions. 'Public interest' in regard to a State would only include the interests of the inhabitants of that State at the most though the word 'public' includes portions of the public. Therefore, the interests of a part of the inhabitants of a State would also mean 'public interest', whereas if you use the words "interests of the general public" they would have reference to the interests, of the. general public of India as a whole. It may be that on many occasions a conflict may arise. between the public interest as understood in the amendment of Dr. Ambedkar and 'the interests of the general public' as used in article 13. When that conflict arises it would be encouraging provincialism and the interests of a few as against the general interest if we accept the words 'public interest' in the place of the words "in the interests of the general public".

If it is true that article 16 confers on the citizens a fundamental right which could be enforced by appropriate proceedings through the Supreme Court, it means that the right given is being taken away by these articles if we pass them in their present form. Then there will be no fundamental right of an absolute character conferred by article 16. My submission, therefore, is that we are tampering with the right which has been guaranteed. Therefore, to save that right, I have tabled an amendment which seeks to amend article 16 also. My attempt is to see that, either the amendment relating to article 16 may be accepted or the 'amendment which runs as follows : 'Notwithstanding anything contained in this Constitution, and citizen or State shall have the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by article 12 or Part X-A of the Constitution'.

Now, the words 'of any law made by Parliament' in article 16 will mean only that they are in conformity with the provisions which are now sought to be put in by this amendment. Articles 274 C and 274 D are laws of that nature which are contemplated in article 16. I cannot think of any other law by means of which the liberties of the citizens of India can be curtailed. These two provisions are more than enough. But in relation to these articles also my humble submission is that if the provinces are allowed to have their own way to impose restrictions upon the citizens of any other State, then this one Nation talk, this unity and this one-Government and one-country talk will mean nothing. It has happened even now. The Government of India exercises some powers and the provinces exercise other powers in relation to the commodities essential for the life of the community. In regard to this, the whole House knows and we of the East Punjab know to our best how these Provisions are being worked. It has happened that while the whole country is suffering from scarcity of food-stuffs and very large quantities of food are being imported from other countries and the grow-more-food campaign is being vigorously pursued, we know that as the- result of the exercise of the powers enjoyed by the Government of India and the Provincial Government, today the position is that food-grains of the value of crores of rupees are being waited in East Punjab on account of the exercise of these powers.

Now, Sir, if you will kindly read the provisions which are to be enacted by virtue of this amendment of Dr. Ambedkar, it follows that each State is authorised to impose reasonable restrictions on the freedom of trade, commerce and intercourse as may be required in the public interest. This means that Bombay can say that in the interests of the Bombay people, they would put some restrictions on the freedom of trade in cloth. Similarly in the East Punjab, we have enough gram to spare. Well suppose these grams are not allowed to be exported by the policy of the Central Government or the local government it way happen that while gram is selling at Rs. 6 or Rs. 7 in the East Punjab, in parts of Bengal or Madras the same gram may be selling at Rs. 20 or Rs. 22. Neither Madras nor Bombay would be benefited by the existence of surplus gram in the East Punjab, nor the people of the East Punjab would be benefited by the increase in, the prices elsewhere. This is not a picture which is due to my imagination.. This is what is happening and what has happened in the past. I have approached people in the central Government as well as the provincial government and told them the whole story but still they have not moved.

I want, Sir, that so far as this question of freedom of trade, commerce and intercourse is concerned, it should be absolutely free, only subject in times of scarcity or times of national emergencies to such restrictions as may De imposed in the public interest. Otherwise, in normal times no restrictions should be allowed, if we really mean that we all belong to parts of the same country or we are living under the same government. The whole scheme of article 243 is that it speaks of certain kind of preference or discrimination. Now, 274 A give us a proposition which I Welcome because it says that trade and commerce shall be free. But what I object to in this is the words "subject to the other provisions of this Part". I want the word "part" to be substituted by the word "Constitution". So far as the Constitution puts restrictions, I am ready to accept them, but this part puts so many restrictions upon this freedom of trade which are irksome and unnecessary. It is the same thing throughout in this Constitution that what is given by one hand is taken away by the other. I want, Sir, that the rights given under article 13 should be restricted only by the restrictions which we have already placed on them, but not to the extent in which they are sought to be restricted now I feel that such restriction will give rise to provincial jealousies, and provincial patriotism will do great injury to India as a whole.

Now, in regard to section 274 B I have submitted that I want before the word "restrictions" the word "reasonable" to be inserted. In article 13 which is justiciable we have used the word "reasonable". The question which arises is whether the rights under this chapter will be justiciable or not. According to my reading, and according to the meaning of the words which Dr. Ambedkar has been pleased to use, I apprehend that he does not want that this should be justiciable. If he says that they are justiciable, then I will take back some of the amendments which I have tabled.

Dr. P. S. Deshmukh: Dr. Ambedkar has already told us that he is going to alter the fundamental rights provided by article 16.

Pandit Thakur Das Bhargava: Sir article 16 is of the fundamental rights and as such justiciable. I know the reply would be that the words used are "subject to any law made by Parliament". But now it is much more restricted because even the States can take away those rights. My whole point is that this fundamental right of the citizen should not be taken away an-,I therefore all the amendments that I have moved should be accepted and this right should be made justiciable.

As regards the other amendments which I have read out to the House, I will not take any more time of the House. I will not speak on each of the amendments the words in which they are couched make their meanings quite clear. I will only speak on the principles on which they are based.

Now, speaking about trade and intercourse, Sir, I have taken exception to this : article 13 says that every citizen has got a right to go, reside and settle in any part of India. This is the intercourse which I can understand. I do not know what other meaning is there of the word "intercourse". As regards article 13, we have already provided for reasonable restrictions and we need not make any further restrictions. I do not understand what intercourse can there be between State and State. I can understand it only in relation to individuals. Now, Sir, the difference between this chapter and article 13 is this. The State is not an individual. Between State and State there will be very few occasion for inter-State commerce, trade and intercourse, but very many occasions will arise for that when the interests of individuals are involved If article 13 remains as such, my submission is that will be difficult to deny this fundamental right to individuals under 274 A. etc. If I practise a trade or a profession, I want to understand how it is possible for any State to put restrictions on that, so long as my fundamental right under 13 exists. Occasions are bound to arise when there will be conflicts between article 13 and the present article. Therefore, I have moved an amendment to the effect that these restrictions should be subject to the provisions of article 13. If this is accepted, this can be made justiciable. My submission is that the prevailing idea in the minds of the mover of the amendment seems to be that the rights under 13 and 16 are too wide and he wants to restrict those rights. I do not think that these rights should be tampered with in this way.

With regard to my amendment relating to 274 C, I have submitted that the last two lines should be taken away. My point is that if you removed the words "by virtue of any entry relating to trade or commerce in any of the Lists in the Seventh Schedule", this will become fool-proof and no discrimination or preference would be possible anywhere.

Again in 274 C (2) these words have been used "for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India". In times of famine, etc., by all means let this be used; I have no objection. But that power must be restricted to real emergencies. Otherwise, this right will be abused to the detriment of the general public, though it may be to the advantage of the inhabitants of the particular State.

Similarly Sir, in regard to article 274 D, I have no objection to clause (a); but so far as (b) is concerned, this is the clause to which I object most seriously. I think this is unnecessary because when the powers are given to the Parliament as originally they were given to the Parliament, I have no objection. The Parliament shall have to consider it from the general standpoint, from the standpoint of the whole of India, whereas a State is bound to consider it from a parochial point of view from the point of view of the State and therefore, this mutual jealousy is bound to arise if we allow these powers to the State. Therefore, the policy of the Government should be that so far as the State is concerned, they should not be allowed to exercise that power unless it be through Parliament. If a State is empowered to use its powers under clause (a) I have no quarrel as it will be a salutary power; but if you allow clause (b) to remain as it is, I do not understand what it may lead to. I can understand that under article 13, considerations of health when epidemic, like plague etc. justify quarantine regulations, intercourse may be restricted but if general intercourse in normal times is disallowed or restricted it amount to passing against the people in general orders under the Safety Acts and placing embargo on their entering any State, which is absolutely wrong. Every person has a right to go into any State and no State has a right to prevent intercourse of people in the rest of India. I consider it is most dangerous to arm a State with this power especially with the words as they stand "as may be required in the public interest."

Then again, Sir, the safeguard of sanction is provided so that this power may not be abused. After all the safeguard is quite illusory. The only safeguard is that the previous sanction of the President is there. We know how the President's sanction is given. It only means that some secretary, some Minister, some person who is interested may be able to get the order of the President. In this way sanction could easily be secured. Therefore, this power should not be allowed to remain with the State. If clause (b) is to be retained, then I will propose that the sanction may be such as may be revocable and as soon as Government thinks that this power is being abused, it should be able to withdraw that sanction so that ultimately the powers of the province may be curtailed to that extent.

In regard to all these amendments, the House has to be very careful because this is one of the most important matters which we have so far dealt with, considering that the amendments which are coming in are curtailing the rights of the individual in the whole of India; and therefore the powers given to the State, according to me, should never in any case be allowed, because that would mean that every State shall be able to raise barriers against the rest of India and people living in other States and they will constitute a state of things, which I feel, will not conduce to the unity of the whole of India.

Shri Brajeshwar Prasad : There are a large number of amendments standing in my name . I would like to move one amendment only, that is 295. It has reference to article 274 D.

Mr. President : We shall see when we come to 274 D. I will take the amendments first as they appear on the Order Paper in regard to the new articles.

(Amendment Nos. 317, 318, 319 and 320 were not moved).

Dr. P. S. Deshmukh : Mr. President, Sir, I move:

"That in amendment No. 269 of List IV (Seventh Week), for the proposed new article 274 A, the following be substituted:-

'274 A. Subject to other provisions made in this Constitution, trade and commerce in any State or territory of India or between any two or more States of the Union, shall be as may be determined by the Parliament from time to time'"

I move:

"That in amendment No. 269 of List IV (Seventh Week), for the proposed new article 274 B, the following be substituted:-

'274 B. Parliament may by law enacted by virtue of powers conferred by this Constitution impose such restrictions on trade and commerce in or between any parts of India as may be determined by the Parliament from time to time."

I move:

"That in amendment No. 269 of List IV (Seventh Week), for the proposed new article 274 C, the following be substituted:-

'274C. (1) Legislature of a State shall not make any law giving or authorizing the giving of preference to one State over another or making any discrimination or authorizing the making of any discrimination between one State and another except with the consent of the Parliament.

(2) Legislature of a State may, however, by law-

(a) impose on goods imported from other States any tax to which similar goods manufactured or produced in that State are subject so as not to discriminate between goods so imported and goods so manufactured or produced; and

(b) impose such reasonable restrictions on trade and commerce or inter-commerce with or within that State as may be required in the public interest with the previous approval of the

Parliament.'"

I move:

"That in amendment No. 269 of List IV (Seventh Week), for the proposed new article 274 D, the following be substituted:-

'274-D Parliament may, by law, appoint such authority or delegate its powers to such person or persons and confer on then, such powers and duties as it thinks necessary.' "

Mr. President, Sir, I for one, do not regret the fact that we are already finding our fundamental rights cumbersome and impending our progress, if not the Constitution itself. I have always regarded these fundamental rights as so many ghosts which we are going to place permanently on the chest of the future Parliaments for ever to wage battles; and wars with. I am not therefore surprised that long before the ink of these articles has dried, we have discovered that some powers and privileges which we thought were indispensable, some fundamental rights which we considered it our solemn duty to promulgate and enunciate are no longer convenient for us to maintain. Dr. Ambedkar has made bold to say that it is impossible to leave the trade and commerce between the various parts of India so free as we contemplated. We gave this article (Article 16) the dignity of a fundamental right, a right moreover which is justiciable; and now before even the second reading is complete, we are going to tell the people, we are going to resolve and decide that the justiciable right shall not be any more justiciable. I wonder if it will remain any right at all. I for one hope that before we make the draft final, we will realize our mistakes in having these fundamental rights. As a matter of fact most of them have not remained as fundamental as we should have liked them to be; and the rest of them which are fundamental in some way or the other, they are also tampered with from time to time. This, as I have already stated, affects the supremacy and sovereignty of the Parliament. So far as my amendments are concerned, I do not wish that we should complicate the whole commercial and trade relations between the various States and fetter the discretion of Parliament for all time.

Trade and commerce are not things which are decided once for all; they are things that arise and grow from day to day. They may be varied; there may be circumstances and situations when the whole thing will have to be revised. This may arise so far as a particular State is concerned or in respect of more than one State. How pompously did we decide that there shall be "free trade" everywhere. It is not such an easy thing as that and I hope that this is now broadly realized. For instance, we know that the stage of advancement and progress of the various units of the Union varies considerably. Some of them are backward like Assam or Orissa where there are very few industries and very little trade is in the hands, at least of the indigenous population. We may have probably to give them some protection in order that they may rapidly come on par with other units. It may be necessary also from time to time to vary our provisions so far as aid and concessions to industries and other things are concerned. I therefore do not think that is right to bar all discrimination, as it is called (in fact it is not), barring all possibility of help to those who are backward and who are unable to compete with the more advanced, and who therefore, stand in need of assistance. From that point of view, my amendment seeks to give Parliament a blank cheque and leave to it entirely the determination of the policy. with regard to trade and commerce not only of the whole Union or in regard to any particular State or States, but so far as all States and their trade and commerce *inter se* is concerned. Therefore, I have proposed a very simple provision as has been embodied in my amendment No. 340.

If we analyse the new articles that have been proposed, it is very difficult to understand them and I think the comment is absolutely justified that this is going to be a lawyers' constitution, "a paradise for lawyers" where there will be so many innumerable loopholes that we will be wasting years and years before we could come to the final and correct interpretation of many clauses. If we read this article 274, you will find, Sir, that this is one of the most wonderful articles in the whole Constitution. This is not the only one; there are many others. If we count the use of the word 'notwithstanding' in this Constitution, I am certain that the number of times that word is used will far exceed the use of the word 'Parliament' or 'Constitution' in the whole Constitution. If you will permit me, Sir, I will describe the situation a little graphically. We first of all provide, and say or declare that a certain person is a man. Then, we say, notwithstanding this declaration, you shall wear a *sari* and nothing but a *sari*.

Shri T. T. Krishnamachari : There is no bar to that.

Dr. P. S. Deshmukh : Then, notwithstanding the fact that you are considered a man, and notwithstanding the fact that you wear nothing else but *saris,* you will wear a Gandhi cap also. Then we have another 'notwithstanding'. Notwithstanding that you are a man, notwithstanding that you shall wear nothing but a sari, notwithstanding that you shall also wear a Gandhi cap, you will be at liberty to describe yourself as a woman. (*Laughter*) Some thing of that sort, as funny and as amusing, is really the situation so far as the first part is over, we start with "notwithstanding whatever is said in the first part, such and such a thing will happen". In the next clause, we say, not only notwithstanding what is contained in the first clause, together with notwithstanding what is contained in the other clauses' and then add something more. I think there is a better method of drafting. Even if it is necessary to cope with complex situations and to provide something on the lines proposed, there should be a simpler and more direct way of drafting and making a provision which is not so ununderstandable that only superman could read this constitution, even assuming that only superman are to be born in India hereafter. If this Constitution is made for the average man, if it is going to affect the rights and privileges of the ordinary common man, it is necessary that the drafters of this constitution should be more clear and use phraseology which is more easily understandable and simpler.

My honourable friend, Pandit Thakur Das Bhargava, pointed out, and he for one regretted the fact that not only trade and commerce, but intercourse also, with a hyphen in between, was not going to be free. We are going to interfere also with inter-course. By this means, we are going to fetter the discretion of the future Parliament. I think trade and commerce is a thing which cannot be determined once for all, knowing the varying degree of progress which the various units of the Union have attained. It may become necessary to give protection to several States because they are not, on the mere ground of merit and competition, in a position to compete with the rest. I have studied this question with some care and I can say that there are many issues which are likely to arise. For instance, the question of rationalisation of industries, *i.e.*, deciding in what places there should be new industries started, whether in the places where there are no industries or only where there are. It will be the policy of the Indian Union to encourage starting of new industries. If it is necessary to encourage them, it may be necessary to assist them in more than one way and give them concessions.

There was at one time a complaint that all the industrialists were rushing to the Indian States because they got certain monopolies, privileges and advantages there which were not available to them in British India. Therefore, they had to decide upon a policy of restricting the growth of industries in the Indian States. Just as we have had to restrict the growth of industries in Indian States, it may be necessary on the other hand to encourage them not only by giving them certain concessions and privileges, but also by putting certain handicap on the States which are advanced enough so as not to allow anybody else to compete with them. Such situations are imaginable.

I hope therefore that the whole chapter will be made simpler. Instead of tying the hands of both the States as well as of Parliament, it would be far better not to commit ourselves to any policy, but to leave the whole thing to Parliament. Otherwise, the situation which has arisen already in respect of article 16 may arise in respect of article 274 itself. It is therefore better to have simpler provisions and I have given then the simplest form. I hope that this will appeal to the drafters of the Constitution and if they accept it, I can tell them that they will be out of much of the trouble. But if they insist upon the draft that they have produced, it will be very difficult for trade and commerce not only to prosper but even to exist.

Shri B. Das (Orissa : General) : Mr. President, I move :

"That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274C, after the words 'prevent Parliament from making any law' the words 'with previous consultation of the Government and legislature of a State' be inserted."

Sir, I welcome this new part XA. It is necessary that the conditions of our trade and commerce and intercourse within the territory of India, between the different States, are all codified at one place so that we know how trade and commerce should be regulated under the new Constitution. I will confine my remarks only to the amendment I have moved. I do not apprehend any interference by Parliament and the Union into the affairs of the States that I heard of from the two previous speakers. But as regards my own amendment, while article 282 C (1) allows restrictions on the legislative powers of the Union and of the States with regard to trade and commerce, in clause (2) it takes away that power and gives Parliament special power when a situation will arise when there is scarcity of goods in any part of the territory of India. I concede that the Parliament will have such a power but I do want the points would be clarified by acceptance of my amendments and the States which shall be affected, their Governments and Legislatures must have to be, consulted before clause (2) of article 274 C will operate. Mine is not a revolutionary idea to what is contained in the original draft. I only wish the position of the Provincial Legislature and the Provincial Government be clarified and it will be obligatory on the Union Government to consult the State Governments and State Legislatures.

Mr. President : Mr. Brajeshwar Prasad.

Shri B. P. Jhunjhunwala (Bihar :General) : There are other amendments also to this article.

Mr. President : We shall see later on.

Shri Brajeshwar parasad: Amendment 295 fits in with new article 274-D The old article 244 has now been replaced by 274 D. Sir, I move:

"That in amendment No. 269 of List of Amendments, for the proposed article 274 D, following be substituted:-

'It shall not be lawful for any State either to impose any tax on goods imported from any State or to impose any restrictions on the freedom of trade, commerce or intercourse with any state.' "

I want that there should not be any obstacle in the way of the development of a feeling of common consciousness of oneness and unity in this country. The doctrine of nationalism has been accepted by each and every citizen,. Now to give a loophole in this mater will lead to undesirable consequences. I know this power has been restricted. In spite of that, I feel that it will be better if we conform to the old fundamental principle that we have accepted in the Fundamental Rights. I do not care what will happen to the finances of the Provincial Governments. Constitution or no Constitution, it is the duty of the Government of India to see that there is peace and progress in this country, that there is general prosperity in all parts of the country. I have nothing more to add.

Shri B. P. Jhunjhunwala : Sir, I have tabled an amendment to the amendment of Pandit Thakur Das Bhargava. My amendments are amendments to the old articles 243, 244, etc. I beg to move:

"That in amendments No. 287 above, in clause (b) of the proposed article 244, after the word and figure 'article 13' (proposed to be inserted), the words 'and with the general economic improvement of India as a whole' be added."

There is another amendment No. 293 as follows:-

"That in amendment No. 292 above in the proposed clause (c) of the proposed article 244, after the word 'Constitution' the words 'and with the general economic improvement of India as a whole' be added."

Now all these articles have been changed and I could not give my amendment to those changed articles, but Pandit Bhargava has given an amendment to all those articles as have been changed which are given as 274 A, 274 B, 274 C, 274 D, and 274 E.

The main purpose of my amendment is that whatever a State Legislature or the Parliament may pass any law or order putting any restriction regarding trade and commerce, between one State and another, that should not be inconsistent with articles 13 and 16 of the Constitution and the general economic improvement of India as a whole. Pandit Bhargava has dealt with article 13 and he has said that there is a fundamental right of every citizen to have free trade and commerce He has also dealt at length on the use of the words "public interest" and shown how it has been misused by the State. He has given example of grams in Eastern Punjab as to how the Punjab Government has muddled this trade by putting queer restrictions. Similarly there are many instances where you will find that the States in making certain law or order have totally forgotten the interest of India as a whole and have acted only on the temporary interest either of their State or of any particular interest. If there is any time when there is necessity to have any check on the passing of such laws and orders, it is at present when we find that our economic condition is deteriorating in such a way. Without any disrespect to provincial or Parliament Legislature I would like to say that these require some check and Pandit Bhargava has tabled his amendment No.366 which is 274 E. wherein he says-

> "Notwithstanding anything contained in this constitution any citizen of a state shall have the right to move the supreme court by appropriate proceedings by the enforcement of the rights conferred by article 13 or part XA of the constitution."

To this I want to add that this right of moving the Supreme Court is also open to a citizen or State when the law or order passed by a State legislature or Parliament is inconsistent with the general economic policy improvement of India as a whole.

I am told that article 16 of the Constitution which gives free right of trade will also be taken away and the right to move the Supreme Court will also be taken away by the amendment which Dr. Ambedkar has moved. If that right is taken away, it is very necessary that the amendment of Pandit Bhargava which is given as 274 F, with my addition be accepted. I shall give a few instances as to how the different laws of the Parliament and of the States have acted against the general economic improvement of India as a whole.

If the honourable Members have seen the communique and the comment of a Staff Reporter as to how our export trade has gone down-in which one of the causes he has mentioned is that we have been unable to export our oilseeds to such an extent as we would have been able to do but for some restrictions on the movement of the same by Provincial Governments, thereby raising its price. This has told a great deal upon the economy of India as a whole. The U. P. Government put restrictions on the movement of mustard seeds and did not allow the mustard seeds to move from its province to another place, with the result that the whole thing was confined to U. P. traders to crush those seeds and sell the, oil at a very high-rate in the U. P. and other Markets and that oil was allowed to be, sent from U. P. to other places so that the mills of other places may not have the advantage of taking that seed and crush it and then sell it at a competitive rate to the people. This year mustard seed is, not available in many of the provinces and even people who crush the seed by country method, that is, by means of *ghani,* they do not get seeds. I got a complaint from the Sadaquat Ashram of Patna which has started various village, industries that they are not in a position to get mustard seeds, as the U. P. Government had put a ban on its export and that some people were getting it by some other means and so on, and they asked me if I could help them to get supplies of these seeds, from persons who are getting their supplies. Of course that was arranged. But my point here is that the U. P. Government in dealing with this thing did not take into consideration the interests and the economic condition of India as a whole and especially of the general masses.

Then, Sir, I shall give another instance, and that is about potato seeds. Recently an order was promulgated that potato seeds should not be allowed to be exported from one province to another unless the exporter obtained a certificate from the consignee's agricultural department, I mean from the agricultural department of the consignee's province. This thing was enquired into, as to what they meant by it and when the agricultural department of the consignee's province was approached, it was said that all the seeds in the cold storages established in the province should be consumed first, and after that export from other provinces will be allowed. Here, Sir, there are two disadvantages in this arrangement. The first is that this restriction will increase the price of potato seeds in the province of U.P. because those who had stored the seeds would have the monopoly of it and they will charge higher and higher prices. And the second and most important point is that the Government of the U. P. did not take into consideration when promulgamating their order - which order was agreed to by the Government of India, Railway Department-the fact that it is not the seeds grown in the U. P. which will give good result. Seeds of the same place or the same kind of soil are not as suitable for giving good results as the seeds brought from other provinces. Bihar produces very good potato seeds and that province supplies to the whole of India. As such, this order of the U. P. Government, in addition to raising the price of potato seeds in their province will result in less production of potato in their and other provinces.

Sir, the Agricultural Officer had said that he would allow it after the whole cold-storage seeds of this province are used up. But the planting season lasts only for a few days, and what with the red-tapism in Government Departments, and the long delay in getting an order passed, by the time they allow the import of seeds from other provinces, the planting season would be over and the seeds in Bihar would be spoilt and the cultivators they will find their potato seeds all have got rotten and apart from their suffering a great loss the other provinces, will not get seeds in time resulting in less plantation and less contentment production. Sir, after a great deal of difficulty this order was removed.

Then, recently there was another order from the Himachal Pradesh putting an export duty on potato sent out from Himachal Pradesh. We all knows that at present it is essential that the price of foodstuffs should go down as fast as possible. Though potato may be regarded a vegetable it serves more or less as a cereal also. This export duty on potato may yield more revenue to the State, but it will tell upon the price of potato. If they had allowed free export of potato, then the price of potato here would have come down, and people would have got it at a much lower rate, than the price at which they get now.

There is another instance, to which though it may not be quite relevant here, with your permission I would like to refer. In the year 1940, the Governments of Bihar and U. P. passed an order that as there was surplus of sugar, no more cane should be allowed to be crushed. The industry and the general public tried its best to see that canes were allowed to be crushed so that the poor cultivators may not suffer, but their requests were not heard. The result was that the cane was allowed to dry in the fields, resulting in the, loss of crores of rupees to the poor cultivators. Not only that, subsequently, the U. P. and Bihar Governments brought down the price of cane. In 1940 or 1939-- I do not exactly remember, it was 11 or 12 annas and this was suddenly brought down to 4 annas 9 pies in the subsequent year with the result there was a great setback in the sugar industry, due to less plantation of cane; at least the industry in Bihar has not yet recovered from that set-back.

I may give you another one instance, the instance of sugar. At present I find that every day the Government of India is issuing a communique to control the price of sugar. It is right that they should try to stop the price from going higher and higher and whether they will succeed or not is a different question. It was very bad of the syndicate to have allowed the factories to sell the sugar at higher price and charge a premium privately or publicly. Even if the sugar going into the market was being sold at a higher price, the millers and the syndicate should not have indulged in charging premiums as I feel fair play must begin at some source and one should not take to wrong thing by saying that otherwise others will get benefit out of it and thereby create vicious circle. Well, it was pointed out as far back as November 1948 to the Government of India that there would be a shortage of sugar and certain suggestions were made by which the production of sugar could be increased, even with the standing crop of cane. One of the suggestions was that the price of cane should be higher which comes from a long distance and the other suggestion was that if the cane is crushed at a later stage when there is less sucrose in cane, for that sugar some allowance should be made in price of sugar. If those two suggestions had been accepted by the Government of India and they had taken it into their head to understand those suggestions, this situation would not have arisen and we would have had sugar at a cheaper rate. As I said in the beginning, without any disrespect, without any disregard of the State legislature or Parliament or any of the Ministers either in the provinces or in the Centre, I would suggest that the amendment moved by Pandit Thakur Das Bhargava with the addition I have proposed is very essential and this question should be regarded as justiciable of course making exception when such law or order is for temporary emergency purposes; as it will act as a check on them.

Shri Kuladhar Chaliha (Assam : General) : Sir, I have not been able to follow Mr. Jhunjhunwala as to why his amendment has been moved. The objectionable provision has already been deleted and Dr. Ambedkar has put in a new article which is a great improvement on the original. Though we have often had to disagreed with the Drafting Committee, in this particular case it could not have been better. I find when textiles are purchased in Bombay, they are taxed there and again it is done in Assam. This discrimination is taken away. We shall have uniformity of law in inter-State trade. If potato seeds are taken from Shillong to Calcutta or Bihar they will not be taxed as before. I do not know why Mr. Jhunjhunwala made such a long speech on his amendment. I find Dr. Ambedkar's amendment is a great improvement on the existing law and I support it whole-heartedly and oppose Mr. Jhunjhunwala's amendment.

Shri Prabhu Dayal Himatsingka (West Bengal : General) : Sir, I beg to support the various amendments moved by the honourable Member, Pandit Bhargava. So far as these articles are concerned the idea should be to put as few restrictions as possible, and trade and commerce should be allowed to be free without any restriction. Restriction should be only when it is absolutely necessary and in the interest of the general public or in a special emergency. Pandit Bhargava's amendments seek to limit the power of the Government to reasonable restrictions and when such restrictions are required in the interest of the general public. He has also suggested certain amendments to article 274C by introducing the word "temporary" by his amendment No. 353 before the word "scarcity" and also by adding the words "for the period of the emergency", which is amendment No. 354. I would request the Drafting Committee to consider whether or not they should accept this amendment No. 343 suggesting the introduction of the word "reasonable" before the word "restriction" in article 274 B, and the amendment No. 345 suggesting the substitution of words "interests of the general public", for the words "public interest" Similarly I would request them to consider accepting amendments Nos. 353 and 354.

As it is intended that article, 16 should be, removed from the present chapter on Fundamental Rights and 274 A is intended in substitution of that, section, I think amendment No. 366, suggested by Pandit Bhargava for adding an additional clause as 274

F has also become absolutely necessary. Otherwise it would be a question of doubt even when we know that certain restrictions and proceedings are invalid as to whether a person is entitled to seek redress in a court of law. Therefore, I support the various amendments moved by Pandit Bhargava and would request the Drafting Committee specially to consider his amendments Nos. 343, 345, 353, 354 and 366. With these words I support the amendments moved by Pandit Thakur Das Bhargava.

Prof. Shibban Lal Saksena : Sir, this new chapter, Part X-A, is a very important one. This article 274 A is what was formerly article 16 in the Constitution as a fundamental right. It would now become an ordinary article of the constitution and in that respect we have lost. But the other articles which have been proposed also need to be carefully amended and I am very glad that Pandit Thakur Das Bhargava has tabled his amendments to these. I myself had tabled an amendment to the former article 244 for the abolition of clause (b) of that article. Now of course that amendment is out of order, because the whole thing has been changed and put in a different form. I therefore desire only to support the amendments moved by Pandit Bhargava. Particularly, I do not see that there can be any argument against his amendment No. 343 to article 274 B. In fact even in article 13 on fundamental rights he had succeeded in getting the word "reasonable" introduced before all those restrictions imposed on those fundamental rights. I therefore think that this right of freedom of trade is very essential and if any restrictions are to be imposed upon it they should be "reasonable" so that the rights may be justiciable and people may go to a court if Parliament or a State legislature tried to impose any restrictions which are not reasonable.

Mr. Jhunjhunwala dealt at length with the way in which freedom of trade may be interfered with. I could also have gone into such details but I am conscious of the urgency with which you, Sir, are trying to finish the article, So that I will not go into details. But I must say that I was shocked to learn only recently that in East Punjab several crores of maunds of gram had not been moved outside because of the restrictions which the Government had imposed. When India is importing grain from outside and spending crores of rupees, I think it is criminal waste that crores of maunds of gram should have been allowed to be spoilt in that area and reasonable facilities for inter-provincial trades should not have been allowed so that the gram could have been used elsewhere.

I think my amendment which is intended to remove part (2) of 274 C, which has also been sought to be done by Pandit Thakur Das Bhargava, should be accepted, so that there, may not be any discrimination and the Centre may be at liberty at least to restrict the freedom of provinces to keep such grains for themselves. I think the amendment is a very important amendment and I hope Dr. Ambedkar will see the wisdom of accepting it.

Shri T. T. Krishnamachari : Mr. President, Sir, I have no desire to flatter the Drafting Committee, but I do believe that the amendments that have been placed before the House in respect of trade, commerce and intercourse within the territory of India are about as nearly perfect as human ingenuity could possibly make them.

There are two sets of arguments against these articles that this House his had to face. The first is by my honourable Friend, Pandit Thakur Das Bhargava, who has moved a series of amendments, the main purport of them bring to whittle down the limited discretion that is given to Parliament, or to the Legislature of a State as the case may be, in respect of these articles. My honourable Friend wants in article 274 B the word "reasonable" to be introduced so that restrictions imposed may be reasonable. I know in another instance we have accepted his amendment, particularly in regard to article 13, and I am also aware how it is going to open up an absolute flood-gate of litigation. My honourable Friend also objects to any power being given to the States in order to put restrictions on trade and commerce to a very limited extent. The other amendments he has suggested are only consequential. It is certainly a matter of opinion whether the wording has to be "in the public interest" or "in the interests of the general public". Actually the idea seems to be that it must be made as vague as possible.

Let me tell the House that so far as I am concerned I think this is about the maximum amount of liberty that we can give for trade and commerce, the maximum amount of concession that we can given to trade and commerce consistent with the future economic improvement of this country. Even as it was originally suggested, that we should make it a matter of fundamental right, and even without the restriction that have been put in article 16, I am afraid the economic progress of the country will become well-nigh impossible. There is absolutely no use in the honourable Member trying to confuse a matter of civil liberty with a matter or rights in respect of trade and commerce. The world has well-nigh come to a position when trade and commerce cannot be run without control and some kind of direction by the Government. If my honourable friends think that we are in the days of the nineteenth century when the *laissez faire* enthusiast had practically the ordering of everything in the world I am afraid they are mistaken.

Let me take one particular amendment of my honourable Friend Pandit Thakur Das Bhargava. He objects to the, wording of clause (2) of article 274 C. He says that a situation arising from scarcity of goods must be qualified by the word "temporary". I am asking my honourable Friend if he can today say that the scarcity of goods in this country which manifests itself in various parts of this country is going to be a temporary affair. Is it not a matter which is going to be more or less permanent, certainly for a period of years, probably decades ?

Pandit Thakur Das Bhargava : Certainly not.

Shri T. T. Krishnamachari : If my honourable Friend holds that opinion I can only agree to differ. I for my part do hold that our present position in the matter of food and certain other essential commodities - the scarcity that is attached to them is a thing which it will be difficult for us to get over even in a period of a decade and over. If my honourable Friend is an optimist, I have no quarrel with him But I am not one of the category that holds such opinions. I have a right to say that the fundamental purpose of this Constitution is that it should enable the citizen of this country to live. On this fundamental principle there can be no difference of opinion. I do believe that we cannot fetter the right of a State to order the economy of the country in such a way that the maximum number of people will be benefited by it.

I would say this in regard to the structure of this Chapter. A certain amount of freedom of trade and commerce has to be permitted. No doubt restrictions by the State have to be prevented so that the particular idiosyncrasy of some people in power or narrow provincial policies of certain States should not be allowed to come into play and affect the general economy of the country. That I think is amply covered by a general statement of the proposition in article 274 A and also by permitting Parliament which I have no doubt will be free. from provincial prejudices and would not like to favour one province against another normally, to control the extent of limitation power, trade and commerce. Certain amount of powers in regard to restriction on trade is necessary and has been provided for.

Then again the question arises whether it will be right to allow Parliament to discriminate between one State and another. It may be that the people who are in power - at any rate the majority of them - have got particular leanings, and we have to put a check against any improper discrimination between one State and another. That is provided for by article 274 C. At the same time a certain amount of discrimination would sometimes become necessary and also, desirable. I might give an extreme case thought it might not altogether fit in with all the contingencies that have been envisaged by my friends. If supposing in ordering the distribution of cloth which is being produced by and large by the Bombay mills the Government of India says that the distribution so far as Madras is concerned must be restricted to a *per capita* basis of ten yards as against twenty yards to Punjab or twenty-five yards to Punjab and Delhi, having in view the fact that Madras produces a certain amount of handloom goods which ought to be consumed in that are for the benefit of those people, goods which ought to be consumed in that area for the benefit of those people, and one of the citizens to whom my honourable Friend, Pandit Thakur Das Bhargava wants to give a right to go to the Supreme Court might feel offended for the reason that he has to pay a much higher price for the handloom cloth. He has, by reason of this restriction of import of mill-made cloth into Madras to purchase more handloom cloth at perhaps relatively higher price and he therefore feels aggrieved and he, wants to take it to the Supreme Court. Can such a thing be allowed There would be plenty of cloth available of a general category. It may be that it is necessary for the general well being of the country as a whole that the Madras consumer is asked to pay a little more in regard to a portion of the cloth that he buys. It is a perfectly reasonable restriction. But if my honourable Friend Pandit Thakur Das Bhargava has his own way, any person who is offended or aggrieved by a decision of the Government of India on these line could go to the Supreme Court. Sir, the idea of 274C (2) is merely to allow the Government of India permission to restrict the movement of goods so as to arrange the whole economy in such a manner that the economy of the country will be well-balanced and everybody will be supplied with his necessities. As my honourable Friend Prof. Shibban Lal Saksena said the other day, the primary condition in regard to satisfaction of human needs must be satisfaction of their necessities. And I do feel that if the Government which is going to come into being as a result of this Constitution has to stay put for a long time, has to carry out the directives and purposes of this Constitution, it must be given enough power to control the economy of the country of the benefit of the masses of the country and not for the benefit of a few traders or merchants.

So far as 274 D is concerned, my honourable Friend Pandit Thakur Das Bhargava will either wholly amend it in such a way as to completely change its shape or completely eliminate it. I feel that it arises- I have no doubt - from a particular bitter experience of his in which a Provincial Government has not executed its duty towards its people in the proper way. But hard cases do not always mean bad law. There is not reason for us to completely shut out discretion or the States in so far as the Central Government will have enough power not merely to have a uniform fiscal policy but also as far as possible to have a uniform economic policy. And that is provided by the fact that the President's previous sanction is necessary in regard to any legislation undertaking by the State under clause (b) of 274 D.

Pandit Thakur Das Bhargava : Is it not exactly the reason why the Provinces and the State Legislatures should not be given the power?

Shri T. T. Krishnamachari : That is exactly the reason why they should be given the power. The State should be given a certain amount of right in this matter and the only reason why the Centre should interfere is to see that the economic and fiscal policy of the Centre is not unduly interfered with, and to the extent that it cannot be interfered with the State must be given a reasonable amount of power to order its own affairs.

I would like to say a word more before closing about the details mentioned in this Chapter. The reason for such detailed provision and a balancing of the interests of both the Centre and the Provinces is not one that has arisen because of a very particular whim or wish of either Dr. Ambedkar or the other Members of the Drafting Committee. It is more or less based on the experience of how this restriction on the power of the other Central Legislatures in the other Constitutions - or the conferment of a special power on the Central Legislatures by certain other Constitutions - has operated in practice. My honourable Friend Pandit Thakur Das Bhargava knows the amount of case law that has grown round the commerce clause so far as the United States Constitution is concerned. On the other band, I do not know if he realises that an ombnibus right such as the one that we recognise should not be given so far as freedom of trade and commerce is concerned, which perhaps has an echo in article 92 of the Australian Constitution, which has made the economic position of Australia a very difficult one today. They in Australia find that by reason of the fact that their provisions for amendment of the Constitution are so difficult that they are not able to amend the Constitution, and article 92 stands as a bar to any progressive legislation which they have undertaken. It may be right or it may be wrong - the people of Australia are behind the Government- but when they wanted to nationalise banking, article 92 of the Australian Constitution has been held as a bar to the Government's power to nationalise the banks. There is no point in shutting the hands of the future Government in operating this Constitution.

Dr. P. S. Deshmukh : When was this situation understood and realised for the first time?

Shri T. T. Krishnamachari : If my honourable friend wants me to say that I owe the realisation of this fact to my honourable Friend Dr. Deshmukh, I must deny any such idea. The thing has been realised long ago; any student of constitutions knows that there are similar articles in the various constitutions, and it is only because of the difficulties experienced by the people who work those constitutions that we have taken the liberty of putting forward this balanced and comprehensive chapter in regard to control of trade and commerce before the House. I do suggest, Sir, that the

House would do well not to depart from the scheme, as the scheme as I said before is the best that could possibly be forged at the present moment having in view the demands of the future and the well-being of the country which would depend on how this Constitution would work.

Sir, I support the motion made by Dr. Ambedkar.

Shri Alladi Krishnaswami Ayyar : Mr. President, Sir, the first place, I venture to state that these articles form a very well-thought-out scheme in regard to inter-State trade and commerce. This problem of inter-State trade and commerce has baffled constitutional experts in Australia, in America and in other Federal Constitutions. My Friend Dr. Ambedkar, in the scheme he has evolved, has taken into account the larger interests of India as well as the interests of particular state and the wide geography of this country in which the interests of one region differ from the interests of another region. There is no need to mention that famine may be raging in one part of the country while there is plenty in another part. It may be that manure and other things are required in one part of the country while profiteers from another part of the country may try to transport the goods from the part affected. At the same time, in the interests of the larger economy and the future prosperity of our country, a certain degree of freedom of trade must be guaranteed.

My friend Mr. Krishnamachari has pointed out that this freedom clause in the Australian Constitution has given rise to considerable trouble and to conflicting decisions of the highest Court. There has been a feeling in those parts of Australia which depend for their well-being on agricultural conditions that their interests are being sacrificed to manufacturing regions, and there has been rivalry between manufacturing and agricultural interests. Therefore, in a federation what you have to do is, first, you will have to take into account the larger interests of India and permit freedom of trade and intercourse as far as possible. Secondly, you cannot ignore altogether regional interests. Thirdly, there must be the power intervention of the Centre in any case of crisis to deal with peculiar problems that might arise in any part of India. All these three factors are taken into account in the scheme that has been placed before you.

Now, let us take the comments that have been made. The scheme is this. Article 274 A lays down the general principles of freedom of trade and commerce as this governing principle. Then 274 B deals with certain restrictions, "as may be required in the public interests". I do not want to go into that metaphysical or subtle distinction between "the interests of the public" and "public interest". I do not think there is any substance in that contention; the 'interest of the public and the public interest are in my view identical. Therefore, instead of leaving the freedom of trade guaranteed under article 274 unfettered, it clothes Parliament with the power to interfere with the freedom in certain cases in 274 B; that is, certain restriction may be made in the interests of any part of the territory of India as may be required in public interest. That is the principle of article 274 B

Now about article 274 C, I am rather surprised that people should take exception to it while they stand by the original article 16. If anything, it enlarges the freedom of trade which has been guaranteed under article 16. Article 16 gives an omnibus power to

Parliament to make any inroad on the rights that are guaranteed under article 16. So far as 274 C is concerned, it further secures freedom of trade by enlarging the freedom of trade and putting an embargo upon the Parliament as well as the Legislature of the State, namely that they shall not discriminate. Therefore, the advocates of the freedom of trade throughout the territory of India cannot take exception to an article which are from restricting the freedom of trade enlarges it.

The next comment was, there should be no reference to the power in relation to trade and commerce. It was advisedly put in for the reason that there might be very many powers which may be exercised by the different States in regard to supply of goods, the internal or indigenous industry, which may trench upon trade and commerce but which may not bear directly upon trade and commerce. It is not the intention to interfere with these powers of the Provinces or States. Therefore, the main article itself provides that by virtue of any power vested in them in regard to trade and commerce, neither Parliament nor the legislature shall enact any discriminatory law.

Then as to the principle of article 274 C. The situation in the great continent of India may not be the same everywhere; there may be profiteers in one part and entrepreneurs in another and famine and scarcity in a third part - to deal with particular situations a certain course of action may have to be taken. When there is scarcity in one part it need not be accentuated by people from another part of the country exporting articles from profits motives. Parliament should have power to control it. That is the object of this article.

Then I am surprised at exception being taken to the terms of article 274 D. It does not give any unfettered power to the States. The, proviso clearly lays down-

"No Bill or amendment for the purposes of clause (b) of this article shall be introduced or moved in the legislature of the State nor shall any Ordinance be promulgated for the purpose by the Governor or Ruler of the State without the previous sanction of the President."

Therefore, if on account of parochial patriotism or separatism without consulting the larger interests of India as a whole if any Bill or amendment is introduced, it will be open to the President, namely, the Cabinet of India to withhold sanction. This is therefore a very restricted power that is conferred on the legislature of a State. After all what is the nature of the power given? The power is confined to imposing such reasonable, restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest therefore the President who has to grant sanction will have the opportunity to see that the legislation is in the public interest and that the restriction imposed is reasonable. It is not possible to devise a water-tight formula for the purpose of defining these restrictions.

Lastly, I want to say that there is absolutely no substance in the observation that this offends against any fundamental rights guaranteed. If a man has a right to move about the territory of India, hold property and so on, under article 13, this does not in any way restrict that right conferred by that article. So far as article 16 is concerned, the substance of the freedom of trade guarantee is preserved. We have prohibited the States and the Centre from passing discriminatory laws.

Shrimati G. Durgabai (Madras : General) : Sir, the question may now be put.

The President : The question is:

"That the question be now put."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar : Mr. President, I do not think I can usefully add anything to what my Friends Shri T. T. Krishnamachari and Shri Alladi Krishnaswami Ayyar have said.

Mr. President : Now I will put the amendments to vote. The first amendment relates to the heading. The question is:

"That in amendment No. 269 of List IV (Seventh Week), in the heading of the proposed new Part X-A, for the words "Trade, Commerce and Inter-course" the words "Trade and Commerce" be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 269 of List IV (Seventh Week), for the proposed new article 274A, the following be substituted:

'274-A. Subject to other provisions made in this Constitution, trade and commerce in any State or territory of India or between any two or more States of the Union, shall be as may be determined by the Parliament from time to time.'"

The amendment was negatived.

Mr. President : The question is :

"That in amendment No.292 above, in the proposed clause (c) of the proposed article 274A, for the word 'Part' the word 'Constitution' be substituted."

The amendment was negatived

Mr. President : The question is :

"That proposed article 274-A stand part of the Constitution".

The motion was adopted.

Article 274-A was added to the Constitution.

Mr. President : The question is :

Pandit Thakur Das Bhargava : You may put all the amendments together to the vote. That will save time. They are all being negatived.

Mr. President : I thought the formality had to be observed. I will adopt the course suggested. The question is :

"That in amendment No. 269 of List IV (Seventh Week), for the proposed new article 282 B, the following be substituted:-

"That in amendment No. 269 of List IV (Seventh Week), in the proposed new article 274 B, before the word "restrictions" the word "reasonable" be inserted.'"

"That in amendment No. 269 of List IV (Seventh Week), in the proposed new article 274 B, for the words 'trade, commerce or inter-course' the words 'trade or commerce' be substituted."

"That in amendment No. 269 of List IV (Seventh Week), in the proposed new article 274 B, for the words 'public interest' the words 'interests of the general public' be substituted."

The amendments were negatived

Mr. President : The question is :

"That proposed article 274 B stand part of the Constitution".

The motion was adopted.

Article 274 B was added to the Constitution.

Mr. President : The question is :

"That in amendment No. 269 of List IV (Seventh Week), the proposed new article 274 C be deleted."

"That in amendment No. 269 of List IV (Seventh Week), for the proposed new article 274 C, the following be substituted:-

"274-C (1) Legislature of a State shall not make any law giving or authorizing the giving of preference to one State over another or making any discrimination or authorizing the making of any discrimination between one State and another except with the consent of the Parliament.

(2) Legislature of a State may, however, by law-

> (a) impose on goods imported from other States any tax to which similar goods manufactured or produced in that State are subject so as not to discriminate between goods so imported and goods so manufactured or produced; and
>
> (b) impose such reasonable restrictions on trade and commerce or inter-commerce with or within that State as may be required in the public interest with the previous approval of the Parliament.'"

"That in amendment No. 269 of List IV (Seventh Week), in clause (1) of the proposed new article 274-C, for the words 'to one State over another' the words 'to any State as against any other State in he Union or to any part within that State' be substituted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (1) of the proposed new article 274-C, for the words 'between one State and another' the words 'between any State and another State of the Union or between any parts within that State' be substituted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (1) of the proposed new article 274-C, after the words 'by virtue of any entry relating to trade or commerce in any of the Lists in the Seventh Schedule' be deleted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274-C, after the words 'prevent Parliament from making any law' the words 'with previous consultation of the Government and Legislature of a State' by inserted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274-C, for the words 'a situation' the words 'any emergent situation' be substituted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274-C, before the word 'scarcity' the word 'temporary' be inserted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274-C, the words 'for the period of the emergency' be added at the end.,"

"That in amendment No. 269 of List IV (Seventh Week), in clause (2) of the proposed new article 274-C, the words 'for such period as the situation lasts' be added at the end."

The amendments were negatived

Mr. President : The question is :

"That proposed article 274-C stand part of the Constitution."

The motion was adopted.

Article 274-C was added to the Constitution.

Mr. President : The question is:

"That in amendment No. 2821 of the List of Amendments, for the proposed article 244, the following be substituted:-

'244. It shall not be lawful for any State either to impose any tax on goods imported from any State or to impose any restrictions on the freedom of trade, commerce of intercourse with any State.' "

"That in amendment No. 269 of List IV (Seventh Week), for the proposed new article 274-D, the following be substituted:-

'274-D. Parliament may, by law, appoint such authority or delegate its powers to such person or persons and confer on them such powers and duties as it thinks necessary.'"

"That in amendment No. 269 of List IV (Seventh Week), clause (b) of the proposed new article 274-D be deleted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (b) of the proposed new article 274-D, the words 'or inter-course' be deleted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (b) of the proposed new article 274-D, the words 'with or' be deleted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (b) of the proposed new article 274-D, for the words 'in the public interest', the words 'in the interests of the general public and are not inconsistent with the provisions or article 13' be substituted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (b) of the proposed new article 274-D, for the words 'public interest' the words 'interests of the general public, be substituted."

"That in amendment No. 269 of List IV (Seventh Week), in clause (b) of the proposed new article 274-D, the words during any period of emergency arising from scarcity of goods within the State for the period of such emergency' be added at the end."

"That in amendment No. 269 of List IV (Seventh Week), in the proposed new article 274-D, the following new clause be added at the end:-

"The President shall be competent to revoke such sanction when he considers it expedient to do so in the interests of the general public and on such revocation being made the law of the State imposing restrictions shall become void.' "

The amendments were negatived

Mr. President : The question is :

"That proposed article 274-D stand part of the Constitution."

The motion was adopted.

Article 274-D was added to the Constitution.

Mr. President : The question is:

"That in amendment No. 269 of List IV (Seventh Week), the proposed new article 274-E be deleted."

The amendment was negatived

Mr. President : The question is :

"That proposed article 274-E stand part of the Constitution."

The motion was adopted.

Article 274-E was added to the Constitution.

Mr. President : The question is :

"That in amendment No. 269 of List IV (Seventh Week), after the proposed new article 274-E the following new article be added:-

> '274-F. Notwithstanding anything contained in this Constitution, any citizen or State shall have the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by article 13 or Part X-A of the Constitution.'"

The amendment was negatived

Mr. President : I think these are all the amendments to deal with.

The House will now adjourn till Nine of the Clock tomorrow morning.

The Assembly then adjourned till Nine of the Clock on Friday the 9th September, 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES

Friday, the 9th September 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajndra prasad) in the Chair.

DRAFT CONSTITUTION-(*Contd.*)

Shri Yudhisthir Misra (Orissa States): Before we begin today's proceedings, may I draw your attention, Sir, to a pamphlet which has been issued yesterday about international numerals and which was circulated from the Office. of the Constituent Assembly. The pamphlet has been issued by the Hindi Sahitya Sammelan and contains certain offensive paragraphs, and for your information I will read one or two sentences from it. First, may I know, Sir, whether this pamphlet can be issued from the office of the Constituent Assembly, as it contains certain offensive remarks against the Prime Minister and also against some other Members ?

Mr. President: It is not issued by the Office of the Constituent Assembly.

Shri Yudhisthir Misra : It was in the dak which was circulated from the office to the Members.

Mr. President: It should not have been done by the office. I was not aware of it. I received a complaint about the distribution of another pamphlet by another Member, but that was not to the Members of the House, but it was in the Press Gallery. As it was in the Press Gallery, I did not take any notice of it, but this has been distributed from the officer. I am really sorry; it should not have been done.

We shall begin with article 264 now. Amendment No. 270.

Article 264

Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, I move:

"That for article 264, the following article be substituted :--

Exemption of property of the Union from State Taxation.

"264. (1) The property of the Union shall be exempt from all taxes imposed by a State or by any authority within a State.

(2) Nothing in clause (1) of this article shall, until parliament by law

> otherwise provides, prevent any local authority within a state from imposing any tax on any property of the Union to which such property was immediately before the Commencement of this Constitution liable or treated as liable so long as that tax Continues to be levied in that state."

I will speak after the amendments have been moved, if there is any debate.

Mr. President: Amendment No. 303 of which notice has been given by Mr. Brajeshwar Prasad, but that relates to the original article. Do you wish to move it ?

Shri R. K. Sidhva (C. P. & Berar: General): There are amendments Nos. 208 and 209 on page 28 of the printed list standing in my name. I had given notice of these amendments long ago in conformity with the rules of procedure. There is also another amendment, No. 435 in List IX Seventh Week to that effect standing in my name.

Mr. President : We will come to that.

Shri Brajeshwar Prasad (Bihar: General) : Sir, I move my amendment No. 303.

Mr. President : Your amendment does not fit in with this article.

Shri Brajeshwar Prasad : May I move (b), Sir ?

Shri T. T. Krishnamachari (Madras: General): Nor does that fit in the proviso, Sir.

Mr. President : There is no proviso in this and therefore (b) does not fit in.

Shri R. K. Sidhva: I do not think that amendments that came late should be given preference over the amendments which I have given notice of according to rules of procedure.

Mr. President : I think this list was circulated several days ago.

(Amendment No 304 was not moved.)

Shri R. K. Sidhva : Sir, I beg to move :

> "That in amendment No. 270 of List IV (Seventh Week), for the proposed article 264, the following be substituted :-
>
> '264. The property of the Union shall, save in so far as the Parliament may by law otherwise provide, be as much liable to all taxes imposed by any local authority within a State as any property of an individual'."

Sir, this amendment is of very vital importance as far as the taxes of the Union properties are concerned. The Union properties in the territory of India are the Posts and Telegraphs, the Customs House, the Excise, the Auditor General and the most important is the railway properties. These properties an sought to be exempted from the payment of taxes by the local bodies. This contentious subject-has been a bone of contention between the Provincial Governments and the Union Government for the last

25 years. The local authorities render service to these properties and therefore tax them. So I do not see any reason why the Union property should be exempted and invidious distinction should be made. Because the Union is the supreme Government, it does not mean that taxes which are due to be paid to the local bodies, which are weaker bodies in the matter of finances, should not even take their legitimate taxes to which they are entitled. As regards the buildings which I stated of Customs, and Posts and Telegraphs, in many towns they are in rented buildings and there the question does not arise but as regards the properties of the Union themselves the question of taxes arise. In almost each town and each village there is railway Property and railway properties have been sought to be exempted by this article Under section 35 of the Railway Act which is known as the Railway Local Authority Taxation Act, 1941, if any local authority seeks for the levy of the tax a notification has to be issued by the railway authorities. Not only that, Sir, the local authority has to prove to the officials that the tax is due. Secondly, it is stated that the onus of proof lies with the authorities, although it is apparent to everyone that the local authority render service for sanitation, hygiene, conservancy, roads, lighting, fire-brigade; all these are maintained in the railway buildings, yet when they are asked to pay and which they are entitled, in many cases these dues are not paid. I will quote instances where the railway authorities in spite of the local authorities complying with their requests have not paid their dues which they are supposed to pay. in this respect almost all the provincial ministers have unanimously resolved that this tax should be paid. I will quote you Presently the opinion of various Governments in regard to the payment of taxes on these Union buildings from which it will be seen that not one Provincial Government has stated that there should be exemption.

In Bengal in Rishra-Konnagar a notification for declaring liability for holding and conservancy rates was published in 1916. On 16th January 1944 the area was split up into two Municipalities and the Railways suddenly stopped payment on 1st April 1946 on the ground that fresh notification was necessary. Such a notification was issued only on 25th August 1948. Moreover, although liability to pay lighting tax was declared in 1945 by the Government of India, the railway administration held up payment on one pretext of another and then the Railway Board agreed, and yet the Board later on stated that these liabilities are not due and they should not be paid. In Kanchrapara Municipality, prolonged correspondence has failed to elicit the Railway Board's consent to pay conservancy rate, the Railway Board replying on 2nd November 1948 that it did not get any drainage service from the Municipality in spite of the fact that all these requests were complied with.

On account of this controversy, Sir, a conference was held in Delhi of the various ministers from the Provinces in August 1948 and the opinion of Ministers who assembled there was that they unequivocally and unanimously supported that the Union property should be taxed. The Minister from Madras........

Mr. President: Mr. Sidhva, the unfortunate fact is that there are many Premiers of provinces who are Members of this Assembly and not one of them has thought fit to send in an amendment to this article and to which you have given your amendment.

Shri R. K. Sidhva: Sir, that does not matter. I represent all the provinces, as far this matter is concerned. I am speaking in my capacity as the President of the Local Authorities Union and on the initiation of the local authorities a conference was called......

Mr. President: I may draw attention to the fact that you cannot draw any inference from what they said at conferences when they have not themselves thought fit to say anything in this Assembly.

Shri R. K. Sidhva: Though they have not sent amendments, they have reliance on me as an authoritative speaker and they have left the matter entirely to me. Sir, what I was stating was that this income is one of the major incomes of the local bodies. No Member, I can assure you, Sir, who is interested in the local bodies will say that these taxes should not be levied.

Mr. President: I am not saying anything on the merits. I am only saying.

Shri R. K. Sidhva: I say, Sir, any Member who is interested in the local bodies; there are many Members who have no interest....

Mr. President: You cannot rely upon the authority of what the Ministers said elsewhere when they are not repeating the same thing here in this House.

Shri R. K. Sidhva : I am quoting from the records to state what is happening in the province, so far as these taxes are concerned. The Madras Minister was of the opinion that the general principle of taxation applicable to private property and those belonging to provincial Governments should be followed in regard to taxation of railway property as well. I do not want to quote the speech at length. The Bombay Government has very strongly stated that the railways are commercial undertakings, run for profit, and there is no equitable reason for giving them a privileged position in respect of local 'taxation, especially as the residents of the railway colonies take advantage of the road and other amenities which are provided by the local authorities. In the province of Bombay, Sir, no exemption is admissible even to the provincial Government in respect of property used for purposes of profit, and local taxes have to be paid in respect of property and there is no reason why the railway administration should not be treated exactly like other commercial undertakings whether private or State. The Assam Government's view is that the Central Government railway property should be liable to local taxation like provincial Government. property. The Central Provinces and Berar Government are of the view that the railways are commercial undertakings making large profits and it would only be just and proper that they should like other commercial undertakings contribute towards the cost and maintenance of sanitation, and other amenities in the municipal areas in which the properties are located. The United Provinces Government have very strongly stated that this exemption has no justification and that there is no reason why the Dominion Government property should enjoy such privileges while enjoying the amenities provided by the local bodies by virtue of such properties being situated within the jurisdiction of local bodies. These are the opinions of some of the Governments. From these it will be seen how keen the provincial Governments are to support the local bodies in getting these taxes, because this is a major source of income. I can give you, Sir, one illustration. The Howrah Municipality has represented to the Government that if these taxes are exempted, it will lose to the extent of Rs. 206,000. You can understand, Sir, a small Municipality like the Howrah Municipality losing such a large amount.

Mr. President : This article does not cause that loss. The second paragraph saves that.

Shri R. K. Sidhva: I quite admit that, Sir. I am only just quoting what is happening despite the second paragraph which is more or less existing in the present Act. Further, this question has been before the Legislative Assembly and discussed many times, and many Members have taken great exception in this matter in protesting against the Government for making a discriminatory law exempting the Union Government from payment of these taxes.

The result of this would be that the economic strain to the local bodies would be great and they are likely to suffer as they are even at present suffering. I may assure you, Sir, that the terminal taxes and taxes on property are main sources of income of the local bodies. After all, we must not forget that the Central Government is our own Government; the provincial Governments are our own Governments and the local bodies are our own Governments. The local bodies are the bodies which should be supported to a large extent. These are the bodies where our future Members in the legislature take their first training.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Terminal taxes are not affected by this article.

Shri R. K. Sidhva: I was only mentioning that. Those members of the legislature who have been in the local bodies, have been very useful really. That is the training ground. The local bodies require to flourish and they should be supported by the Central Government and the provincial Governments. They are crippled from all sides from the financial point of view. They are asked to levy their taxes; but their sources are very limited. If you go to foreign countries the local bodies are given great assistance and lump grants are made by the Central Government. They are given grants for all their departments. In England, one-fourth of the taxes on State property are given to the local bodies. Similarly in the United States also because they feel that the local bodies are the pivot of the whole national Government.

I feel that this matter has been lightly treated by this House and by some of the honourable Members. I am sure that those Members who have taken an interest in local bodies arc very keen in this matter. I am sorry that the Honourable Pandit Govind Ballabh Pant who has given notice of an amendment is not here to move it. He has actually fought with cudgels on this matter I do not see why against the unanimous opinion of the provincial Ministers, the Finance Minister or the Railway Minister should come in the way; that is my difficulty. If you do not care to listen to the unanimous opinion of all the provincial Governments and only depend upon one Minister in the Centre, then I can tell you, the local bodies and the provincial Governments cannot function satisfactorily. These are creatures of our own Constitution. If you are not prepared to listen to these bodies who express their view unanimously, as I have quoted just now, I do know what more proof could be produced to show that these bodies require help.

Having gone into this question, I might mention that the Railways feel, as they generally feel and complain, that they are not legitimately taxed or that they are likely to be taxed heavily. The Madras Government have made a suggestion : appoint a committee consisting of some members of the Central Government, some members of the provincial Government and some members of local bodies and find out a solution and fix the amount which is legitimately due. My honourable Friend Dr. Ambedkar has not made any speech while moving his amendment. I do not know therefore what his objections are. But, if he feels, as I anticipate rightly, that the Union Government is the supreme Government, and the Union Government having no voice in the local bodies, no taxes could be levied on the Union Government, I say, Sir, if that analogy is accepted, there are commercial and industrial interests which are not represented in the local bodies and the local bodies cannot levy any taxes on them. Moreover, he would say no taxation without representation, therefore no representation being given to the local bodies by the Union Government, it is not proper that they should be taxed. I can tell my Friend Dr. Ambedkar that the power of levying taxes by local bodies is not absolute. It is subject to the sanction of the provincial Government and the Central Government. I can cite the Municipal laws, Borough Municipal laws, District Municipality laws, Corporation laws where it is laid down that any tax, big or small which is levied by the local bodies shall be subject to the sanction of the provincial Government and the Union Government.

That being so my Friend Dr. Ambedkar cannot come and say that because there is no representation given to them, therefore they cannot levy the tax. If any tax is levied the matter will finally come to Central Government for approval. The Central Government can reject that. They have rejected in the past. Several municipal corporations have passed certain taxes' and the Central Government have turned them down. Therefore that argument does not stand to reason for one moment. I wish he had given his reason while moving the amendment and I would like to know why his Committee is adamant, in not acceding to the unanimous opinion of the Ministers of Provincial Governments. My friend may say that this article was framed probably after consultation with the Premiers of all the provinces. I have no access to that. I am prepared to believe what he says, but I do not know. If I were there, I would have faced those Premiers with the opinions of their own Provincial Local Self Government Ministers who attended this Conference and gave their opinions.

The Local Finance Committee which was appointed at the instance of the Health Minister of the Government of India met as early as 11th June 1949 to consider this subject when the Constitution was being framed because they felt that if they did not consider this matter, their question will go by default. I quote to you the unanimous resolution of all the Provincial Ministers who were present in the Committee meeting.

> "As regards Union properties (except the railways), the same basis of local taxation, *viz.*, the basis applicable to Provincial Government properties, should be applied and the same method of assessment, is suggested above (*i.e.*, in Resolution No. 1) should also apply."

Resolution No. 1 is in connection with railway property.

> "After holding discussions with the representatives of the Central Government, the committee is of the opinion that railway property should be held liable for the payment of local taxes in the same way as Provincial Government properties are. As regards the assessment of railway property, the Committee feels that there should be an independent machinery consisting of representatives of the railway authorities, provincial governments and local bodies in order to ensure a proper assessment."

You can see from this that any kind of excess levy, although they do not levy, they cannot levy, still a *via media* has been found out to meet the wishes of the Railway Ministry and despite this, this resolution was communicated to the Drafting Committee; I do not know whether Dr. Ambedkar took this into consideration or not. He owes an explanation to this Committee because this Committee was appointed by the Government of India; to facilitate the finances of the local bodies this Committee was appointed, and despite all these facts, the opinion of the Ministers and the Opinion of this Committee have not been taken into consideration, and we are told that either the Railway Minister or the Finance Minister are not prepared to accept, the unanimous decision of this Committee. Why are you throttling the opinion unanimously expressed by this Committee? This is not a hypothetical question. If the argument is that there can be no taxation without representation, then I have given him the answer that that argument cannot stand for one moment. Many interests are taxed by local bodies but they have no representation there. Even if it is taxed they have no absolute right to tax and they have to go to Central Government for approval finally. Why do you come in the way of local bodies doing some good work ? The Central Government say we do not recognise them. Is the object of this Constitution to throw out these small bodies ? Our aim is that these small bodies should be brought up to that level where they could be happy and prosperous. The Central Government are not prepared to give the necessary amount to these bodies. Some of the provincial Governments are doing their best from their money. The Central Government takes the terminal tax. The other day I broke my head with the Drafting Committee for the terminal tax. They have stopped asking the provincial government to levy terminal tax. Everybody wants money. I am a member of the Central Legislature, I am as keen as my friend that the Centre should be strong. At the same time I do not want the local bodies' finances to be jeopardised by this method.

I am very strong in the matter because I have been fighting for this for the last twenty years. Not only myself but the provincial Governments and everybody has been fighting for this. I am prepared to prove by facts. It is for Dr. Ambedkar to disprove these. If he is prepared to prove that, I am subject to any enquiry to show that the Provincial Government are absolutely in favour of allowing the Union property to be taxed. If not, let me have his views. With these words I move this amendment.

Pandit Lakshmi Kanta Maitra: Mr. President, Sir, I feel myself called upon to make certain observations in connection with this article. In my opinion this article raises certain very important issues. The question is, whether the property of the Union should be subject to the taxation in the States or whether there should be an absolute exemption from such taxation. I am not going to examine or controvert the theory that State properties should not be taxed. But I am placing certain observations in the light of what has actually been the practice in this country with regard to taxation of the Union property.

I think most of the Members of this House are not aware that this question came up for consideration in the shape of a Bill in 1941. I am not going to give any details from the proceedings-, of the Central Legislative Assembly of 1941 when this Bill was discussed and passed, but I will make a passing reference to some pages and I invite the attention of the House to the proceedings reported in Volume IV of 1941 November Session of the Legislative Assembly in 1941. The Bill that came up for consideration and was eventually passed was 'The Railways Local Authorities Taxation Bill'. In that Bill-I give the gist of it-it was contended that the railway property as such would not be subject to any form of local taxes unless the local bodies rendered specific services to the railways. I may tell you at once that I stoutly resisted that proposition and throughout the discussion of this Bill I put up a stiff fight on behalf of local authorities as I felt that such a condition would act very disastrously on the finances of local self-governing institutions of the country. However, there was a settlement, a compromise. All the Mayors of the different corporations in India were called together, a conference was held in which I was a participant, and eventually a formula was evolved which somehow was acceptable to us.

Now the point that has to be considered in connection with this, is this. Are we in a position now to exempt all the Union property from local taxes ? Look at the equity of it, apart from the theory involved in it, from the practical aspect. In all municipalities there are certain types of taxes imposed on holdings, and holdings are defined in municipal laws in different ways. Generally a particular plot of land with, certain boundaries is a holding. Now, municipalities have got different forms of rates. They have holding rates, conservancy rates, lighting rate, education rates, water rates and other rates. It so happens that no property situated within the limits of the municipal jurisdiction is exempt in any way from any of these items of taxation. Even if there is a fallow piece of land in a municipality and practically the municipality renders no service to it, even then this fallow land is a holding and as such is subject to all these forms of taxation : no question arises of services rendered by the municipality. Similarly in big cities like Calcutta, Bombay, Madras, Allahabad, Moghulsarai, look at the vast amount of railway property that is there. The railway workshops at Kanchrapara, Lilooah, Jamalpur, Moghulsarai and other places the staff quarters, the railway colonies, railway sidings, railway lines and so on. There was a perpetual controversy between the corporations and the government with regard to local taxation of these railways. And in order to avoid the taxes the railways in many cases later on had their own sources of water-supply, electricity and conservancy arrangements and things like that, and then they contended, "We have provided our own arrangements, and government properties will therefore not be liable to taxation". I submit that this is a very questionable proposition. As I said, there is absolutely no consideration shown to any private person for granting immunity on the grounds that I have stated. I agree that the Drafting Committee's latest amendment is a great improvement on the original draft. It provides that for the period immediately following the commencement of the Constitution, such taxes as were leviable on the Union property would continue to be levied, unless and until Parliament prescribed otherwise. This certainly is an improvement. But it is necessary for me to place on record for future reference by the Indian Parliament that this is a very vital issue. It is not a question of railway property alone, though that forms the bulk of the Union property in the States. According to the Act of 1941, if there is a notification to that effect by the Government local taxes in respect of them, could be collected. But the taxes would be in a modified form. There the criterion is services rendered.

The Honourable Dr. B. R. Ambedkar: You have taken more than five minutes.

Pandit Lakshmi Kanta Maitra: It does not matter. Nobody is going to speak after me. This is a very vital issue and I have been fighting for the protection of municipalities and all other local bodies, and I feel it my duty to warn future parliamentarians to proceed very slowly and very cautiously in this matter and that they should not be guided by mere theory. The taxes from railway properties is an important source of revenue to the corporations, municipalities, district boards and union boards. Let this fact not be forgotten that grant of exemption will be a serious encroachment on the finances of these local self-governing institutions. That is one side. Now there is the other side. You have provided in the article-and of course, theoretically it is all right-you have provided in article 264 that Union property shall not be taxed. And in article 266 you have provided that income of the State shall not be taxed by Central Government. Of course, here is the principle of reciprocity which in vulgar language means, "You scratch my back, and I will scratch yours". And in between these two arrangements the local self-governing institutions have to suffer.

That is the whole point for consideration. In municipalities even the humanitarian the public institutions like orphanages, dispensaries, schools, temples, mosques, dharmisalas etc.-bodies that are not profit-earning institutions-are not exempt from local taxes. And as I said, no discrimination is shown in their favour even when they have not utilised any of the services offered by the municipality in any way. That is no consideration either for reduction of tax or exemption from it. That being so, it becomes a very dangerous thing to prescribe that Union property as such shall not be subject to taxes.

But it is not railway property alone : Government of India has got a lot of other varieties of property. Take for instance the fertilizer factory at Sindhri. Do you mean to say that the local body there, whatever it be, say, the local board or Union board there would not be entitled to levy any local taxes thereon ? Then there is the Mint, the Currency offices, Post and Telegraph and Telephone office buildings in different places; the Reserve Bank Offices. Numerous other central institutions are springing up all over the country and if you make a sort of general provision that no Union property shall be subjected to local taxes, it will be very difficult for us to accept it, in view of the very delicate nature of the finances of the local self-governing institutions at present and the reaction it will inevitably have on them, if these provisions are literally put into effect. But the only salient feature about the Provision is that at least from the date of the commencement of this Constitution, these institutions will be entitled to levy these taxes as before, and I am thankful to the Drafting Committee for conceding that much. But I would have very much liked that this kind of statutory exemption for all forms of Union property, were not embodied in the Constitution. It could have been left out, it should not have found a place in the Constitution. The whole matter could have been left to the Parliament for decision one way or the other. But as the Drafting Committee is closely following the Government of India Act, 1935, as a model, I have no quarrel. I would only sound a note of warning; let not the authority, in the future lightly deal with this question, because it affects the well-being and the very existence of local self-governing institutions, such as corporations, municipalities, district boards, local boards, union boards etc. The fate of all these is inextricably bound up with the provisions contained here. If their taxation is allowed to be continued, it is all right. It will leave them some modicum of wherewithal to carry on. If this is withdrawn, it will mean nothing but disaster to the self-governing institutions. This is all that I have to say. Thank you, Sir.

Shri Chimanlal Chakubhai Shah (Saurashtra): Mr. President, Sir, article 264 has to be read with article 266 which I suppose will be moved presently under amendment 272. The two articles embody a principle of mutuality, namely, the property of the Union shall not be subject to tax by the State and the property of the State shall not be subject to tax by the Union. That is a principle which I accept. But when the property of the Union is exempted from taxation by the State it also means exemption from taxation by any authority within the State. I also agree that should be so, because if the local authorities were left free to tax the property of the Union as they like, it will be easy for the State merely to assign the tax to the local authority which will enable the local authority to tax Union property which the State itself could not tax. I have, therefore no quarrel with the principle embodied in articles 264 and 266. There are, however, two points on which I wish to draw the attention of the House.

Speaking on behalf of the local authority with which I have been associated, namely, the Bombay Municipal Corporation, the Bombay Municipal Corporation has been carrying on a controversy with the Bombay Government since many years to augment its sources of revenue. That controversy is still not at an end. Only recently the Bombay Government appointed a committee with Mr. A. D. Shroff as President to consider the question of giving additional sources of revenue to the Corporation. After all, the sources of revenue of a local body are very limited and also very inelastic. The local body has merely to tax within the four corners of the Act which enables it to tax. The Centre can tax to an unlimited degree. The liabilities and responsibilities of local authorities are increasing and also their expenditure. The Bombay Municipal Corporation, though it is supposed to be one of the richest Corporations, is finding it difficult to make both ends meet. Last year the Bombay Government was pleased to give Rs.50 lakhs as a grant to meet its deficit and similarly this year also they gave given Rs.50 lakhs. That is possible because the Congress Government in the province is sympathetic and the Congress party is in majority in the Corporation and each of them work in co-operation. But I submit that the local authority should not be left in the position of having to beg every time. Nothing should therefore be done to deprive the local authorities of their legitimate sources of revenue. I am sure it is not the intention of article 264 to starve the local authorities and I would be glad if the Honourable the Finance Minister can give an assurance on that point.

In article 266 it is said that the property and income of a State shall be exempt from Union taxation. Will that necessarily mean that the property and income of any local authority within the State will also be exempt? If it means that, I should be happy. Secondly, clauses (2) and (3) of article 266 empower the Parliament to tax any trade or business which may be Carried on by the State. Should there not be a corresponding provision in article 264 also ? Because, with the policy of nationalisation on which we are embarking it is possible that the Union will acquire large undertakings and will own considerable property. These may be within the limits of the State. Would you not permit the State and the local authority to tax those properties of the Union which the Union owns for business ? For instance, several local authorities are taking over transport services, public utility concerns, electricity undertakings, etc. I should like an assurance that the income of the local authorities from such transport services and public utility services will be exempt from taxation of the Union, particularly income-tax. The Bombay Municipal Corporation has, for example, recently taken over the Tramway, Bus and Electricity undertakings. It will be a considerable additional source of revenue for them. If these are liable to tax, particularly income-tax, it will reduce their sources of revenue. I would therefore request Dr. Ambedkar to consider these two points, namely, (1) whether in article 266 it is not necessary......

The Honourable Dr. B. R. Ambedkar : We are for the moment considering 264 and not 266. That may be dealt with when we come to article 266.

Shri Chimanlal Chakubhai Shah: If you do not want me to say anything on that at the present moment, I will not. But I think the two articles are correlated and the one has to be read with the other. That is the only reason why local bodies are not being permitted to tax the Union property, because under 266-you are also exempting the State property and income from State property from Union taxation. These are the two points to which I wanted to draw the attention of the House.

Shri B. M. Gupte (Bombay: General): Sir, I rise to support the amendment of Mr. Sidhva. Exemption of Central Government property from taxes of local bodies has been a long standing grievance and it is a pity the Drafting Committee did not see its way to remove it. The present position is defended on certain principles and theoretically, I am prepared to concede, that they are correct; but I am afraid that in practical application they are not so.

One of the principles on which it is defended is that the Central Government has no representation in local bodies and has no means of controlling the taxation and it is argued that the power to tax is almost a power to destroy. Naturally therefore, the Central Government cannot give blindly such power to the local bodies. In theory, it is correct, but in practice it is not; because after all local bodies are subordinate to the State and the States are subordinate to the Central Government.

Shri T. T. Krishnamachari: It is not so.

Shri B. M. Gupte: Although in the Constitution we are framing for the country, we call it a Federal State, still the picture that is emerging is not a picture of a federal State. I would rather describe it to be a decentralized form of unitary government. Under this Constitution, not only the local body but even a State cannot afford to defy or be recalcitrant to the Union. Therefore, it is no use saying that the centre has no control over the local body. In other ways also, there are practical limits tot he taxation. The local body cannot put a higher rate of tax on Union property than that they can impose on ordinary persons. If there is an exorbitant rate, the rate payers will rise in revolt. And if the rate is not exorbitant, there is no reason why the same rate should not apply to the Union property. Then even judicial appeals are allowed to the District Judge or the City Magistrate. Therefore, it is no use saying that the Centre has got no control over the taxing power of the local body and on that ground therefore the present position cannot be defended.

Then there is another principle which is urged; and that is that local bodies are after all subordinate units of the Government itself; the Central Government, the States and local bodies together from the entire Government and one part of the Government cannot tax another part of the Government. This argument also is not valid. I will give you another example. Take two departments of the same government. If one department of the Central Government sends a telegram to another department, naturally it has to pay the telegraph charges. One department debits it and another credits it. Therefore, I submit that in this matter it is more a question of convenience and of comparative need than of absolute principle or a hard and fast rule.

With regard to comparative need, I will put it to Dr. Ambedkar whether the need of the local body for finance is greater than the need of the Union property for exemption. The local bodies come into daily contact with the people : their activities touch the daily life of the people and naturally therefore their responsibilities are great. Their financial condition is already very straightened today. The Central Government gives them no grant. So if the Central Government gives them no grant, why should not they at least pay taxes to the local bodies on their properties ? These taxes will increase the efficiency of the local bodies and to that extent the Central Government properties that are situated there and the persons who take advantage of those properties would be benefited by the increased efficiency of the local bodies. Then a difference is made by the Union Government. It is prepared to pay the service taxes I know a distinction is made between service taxes and non-service taxes but that distinction is made simply for the sake of the principle that the local bodies should not make any profit from service taxes. A service tax should be strictly limited to that amount which is necessary for the purpose of that service. That was the intention in devising that classification service and non-service taxes. That does not mean that non-service taxes do not confer any benefit. There is indirect benefit that is derived from the amenities provided by the local bodies. Suppose a very large office is maintained in a city by the Central Government and there is access to that office from the road. That road is built, lighted and swept by the local body. You will say that you derive no direct benefit and therefore you are not bound to pay the non-service taxes, but you do derive benefit from the general service of the local body maintained by those non-service taxes. Therefore this distinction should not be taken advantage of in this connection. The local bodies have to be maintained and they cannot function without grants either from the State or the Centre. There is no question of principle in the matter: the article itself contains an exception and therefore there should be no objection to accepting the amendment.

It must be admitted that the Centre must be strong but a strong Centre cannot be sustained on weak units or weak sub-units. These local bodies are the sub-units which come into intimate contact with the people and unless they function efficiently and are strong, their inefficiency and weakness are bound to recoil on the Union Government itself. I therefore support the amendment.

Shri T. T. Krishnamachari: Sir, the question be now put.

Mr. President: The question is:

"That the question be now put".

The motion was adopted.

Shri R. K. Sidhva: In view of the unanimous views of the Members who have spoken, will the Honourable Dr. Ambedkar kindly reconsider the position ?

Babu Ramnarayan Singh (Bihar: General): Sir, this is a very important article and the discussion should not be closed so quickly.

Mr. President: The view points have been placed before the House. Dr. Ambedkar will now reply to the debate.

The Honourable Dr. B. R. Ambedkar : Sir, I will first refer to the provisions contained in clause (2) of the proposed article 264. I think it would be agreed that the intention of this clause (2) is to maintain the *status quo*. Consequently under the provisions of clause (2) those municipalities which are levying any particular tax on the properties of the Union immediately before the commencement of the Constitution or on such property as is liable or treated as liable for the levy of these taxes, will continue to levy those taxes. All that clause (2) does is that Parliament should have the authority to examine the nature of the taxes that are being imposed at present. There is nothing more in clause (2), except the saving clause, viz., "until Parliament by law otherwise provides". Until Parliament otherwise provides the existing local authorities, whether they are municipalities or local boards, will continue to levy the taxes on the properties of the Centre. Therefore, so far as the *status quo* is concerned, there can be no quarrel with the provisions contained in article 264.

The only question that can arise is whether the right given by clause (2) should be absolute or should be subject to the proviso contained therein, until Parliament otherwise provides. In another place where this matter was discussed I submitted certain arguments for the consideration of the House.

Pandit Hirday Nath Kunzru (United Provinces: General): Which is the other place that my honourable Friend is referring to ? Is there any other Chamber of the Assembly?

The Honourable Dr. B. R. Ambedkar: It is unmentionable and therefore I am saying "another place". Because the arguments that I presented there have been reproduced in a garbled fashion I think they have not succeeded in impressing the House with their importance and therefore I should like to repeat my arguments because they are my own, and I should like to repeat them in the way I should like the House to understand them.

I said then that it was difficult to give a *carte blanche* to the local authority to levy taxes on the properties of the Union without any kind of limitation or condition and the arguments were two-fold. First of all, I said and I say right now here that it is impossible theoretically to conceive of any property of a person who is not represented or whose interests are not represented in any particular organisation,- to allow that organisation a right ad *infinitum* to levy any tax upon the property of such persons. It is a principle contrary to the principles of natural justice and I said that so far as the local authorities are concerned, whether they are municipalities or local or district boards, there is practically no representative of the Central Government in those bodies. I said the same thing elsewhere. Secondly, I said that the taxing authority of a local body is derived from a law made by the local legislature, the legislature of the State. It is quite impossible for the Centre to know what particular source of taxation, which has been made over by the Constitution to the State legislature, will be transferred by such State legislature to the local authority. After all, the taxing power of the local authority will be derived from a law made by the State Legislature. It is quite impossible at present to know what particular tax a local body may be authorised by the State Legislature to tax the property of the Central Government. Consequently not knowing what is to be the nature of the tax, what is to be the extent of the tax, it is really quite impossible to expect the Central Government to surrender without knowing the nature of the tax, the nature of the extent of the tax, to submit itself to the authority of the local body.

That is the reason why in clause (2) it is proposed to make this reservation that Parliament should have an opportunity to examine the taxing power of the local authority, the amount of tax that they propose to levy, before parliament will submit itself to allow its property to be taxed by the local authority. As I said, there is not the slightest intention on the part of the parliament or on the part of those who have proposed this article, that parliament when it exercises this authority which is given to it by clause (2) will exempt itself completely from the taxation levied by the local authority. The only reason why this proviso is introduced is to allow Parliament an opportunity to examine the taxation proposals before it is called upon to submit itself to that taxation. I do not think that there is any inequity so far as clause (2) is concerned. Secondly, clause (2) does not take away anything by way of the financial resources now possessed by the local authorities from what they are getting now.

There is, however, one point which I have discovered now, that is a sort of lacuna in clause (1) which I am prepared to rectify. Clause (2) deals with the cases of those municipalities or local authorities which have been levying that tax. We also think that it is desirable that this right should not be confined to those municipalities or local authorities which have been exercising that right, but Parliament may also extend that privilege of taxing the property of the Centre to those municipalities and local boards which have not so far exercised that power or failed to do that. Therefore, I am prepared to, introduce these words in clause (1) :

"After the words 'The property of the Union shall' the words 'save in so far as Parliament may by law otherwise provide', be added."

That is to say, it would permit Parliament to confer power or to recognise taxation by other municipalities and other local boards which are so far not recognised. I think that is a lacuna which I am prepared to make good so that there may be no discrimination between local authorities which have been taxing and those which have not been taxing. It would be open to Parliament, even after the passing of the Constitution, to make a law permitting those municipalities and local authorities which have not so far levied a tax to levy a tax. Beyond that I am not prepared to go.

Shri Syamanandan Sahaya (Bihar: General): Even under the existing Government of India Act, 1935, municipalities were not allowed to tax buildings belonging to the Government of India.

The Honourable Dr. B. R. Ambedkar: That is what I have said. I could have elaborated the argument a great deal but I do not want to do it because I have accepted that the status *quo should* be maintained. Purely from the Constitutional point of view, I would have tremendous objection to clause (2) and I would not allow it, but we are not having a clean slate; we are having so much written on it and therefore I do not want to wipe off what is written. That is the reason why I will have clause (2) and also modify clause (1) to permit Parliament to enable those municipalities which have not been taxing Central property to tax them.

Babu Ramnarayan Singh: Dr. Ambedkar said Parliament will consider the respective claims of the local bodies later on. I want to know what will be the immediate effect of the passing of this Constitution. For instance, in my Province of Bihar certain district boards, especially the District Board of Hazaribagh, always gets a large amount of money from the Government colliery as road cess. May I know whether that payment will be stopped as soon as this Constitution is passed or will it continue to be paid till it is decided upon by the Parliament ?

The Honourable Dr. B. R. Ambedkar : Sir, I cannot express any opinion upon individual taxes that are being levied, but the general proposition is quite clear that if any municipality or local board, has been levying a tax that tax will continue to be levied against the property of the Centre and against such other property as will be held liable to taxation. There will be no change in the position of those municipalities which are levying those taxes.

Shri R. K. Sidhva: At present under the Indian Railways Taxation Act, a notification has to be issued in the event of local bodies demanding payment of tax. May I know whether Dr. Ambedkar is prepared to consider that section to be amended ? Of course it cannot be amended here but is there any assurance from the

Railway Minister that it is going to be amended in Parliament ?

The Honourable Dr. B. R. Ambedkar: Sir, I wish my Friend Mr. Sidhva drew a proper lesson from the Railway Taxation Act. Parliament voluntarily submitted itself by passing an Act to allow the properties of the Railways to be taxed by the local authorities. Any Parliament can voluntarily submit its properties to be taxed by local authorities and there is no reason to suspect that Parliament will not volunteer to allow its other properties also to be taxed in the same manner. If the Railway Property Taxation Act is not properly carried out or if there is any lacuna, it would be open to Parliament to amend it, and I suppose it would be also open to Mr. Sidhva to go to a court of law and have the money paid if it becomes payable and due under the Railway Property Taxation Act.

Mr. President: I will now put the amendments to vote. No.435, Mr. Sidhva.

Shri R. K. Sidhva: Sir, in view of the improvement that he has made in clause (1), I do not press it.

The amendment was by leave of the Assembly, withdrawn.

Mr. President: Then I will put the proposed article to vote as modified by Dr. Ambedkar's amendment to clause (1)

The question is:

"That proposed article, 264, as amended, stand part of the Constitution:"

The motion was adopted.

Article 264, as amended, was added to the Constitution.

Article 265

Mr. President: Article 265. There is an amendment, notice of which has been given by Pandit Govind Ballabh Pant; to have an article 264-A, but he is not here. Then we come to article 265, amendment No.306.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That in article 265, for the words 'a Union railway', wherever they occur, the words 'any railway' be substituted."

This is mainly consequential upon the changes we have made in List I of Schedule VII.

Shri Brajeshwar Prasad : I beg to move:

"That with reference to amendment No.2953 of the list of Amendments, in article 265-

(a) the words 'save in so far as Parliament may, by 'law, otherwise provide' be deleted;

(b) the words beginning with 'and any such law imposing' and ending with 'a substantial quantity of electricity' be deleted."

Mr. President: As there is no other amendment to be moved to this article, if no Member wishes to speak on it, I shall put the question to vote. The question is :

"That in article 265, for the words 'a Union railway', wherever they occur, the words 'any railway' be substituted."

The amendment was adopted.

Mr. President: The question is :

"That with reference to amendment No.2953 of the List of Amendments, in article 265-

(a) the words 'save in so far as Parliament may, by law, otherwise provide' be deleted;

(b) the words beginning with 'and any such law imposing' and ending with 'a substantial quantity of electricity' be deleted."

The amendment was negatived.

Mr. President: The question is:

"That article 265, as amended, stand part of the Constitution."

The motion was adopted.

Article 265, as amended was added to the Constitution.

New Article 265-A

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That after article 265, the following article be inserted :-

Exemption from taxation by states in respect of water or electricity in case of certain authorities.

'265A. (1) Save In so far as the President may by order otherwise provide, no law, of a State in force immediately before the commencement of this Constitution shall impose, or authorise the imposition of, a tax in respect of any water or electricity stored, generated, consumed, distributed or sold by any authority established by any existing law or any law made by Parliament for regulating or developing any inter-State river or river-valley.

Explanation.--In this clause, the expression "law in force" has the same meaning as in article 307 of this Constitution'."

In the following paragraph of the article, I wish to introduce some new words with your permission and move it with those words.

"(2) The Legislature of a State may by law impose, or authorise the imposition of, any such tax as is mentioned in clause (1) of this article but no such law shall have any effect unless it has, after having been reserved for the consideration of the President, received his assent; and if any such law provides for the fixation of the rates and other incidents of such tax by means of rules or orders to be made under the law by any authority, the law shall provide for the previous consent of the President being obtained to the making of any such rule or order."

Mr. President: Mr. Naziruddin Ahmad is not moving amendment No.308. As there is no other amendment to this motion, I will put it to vote. The question is :

"That new article 265-A, as moved in the amended form, stand part of the Constitution."

The motion was adopted.

New Article 265-A was added to the Constitution.

Article 266

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for article 266 the following article be substituted :-

'266. (1) The property and income of a State shall be exempt from Union taxation.

Exemption of the Governments of States in respect of Union taxation.

(2) Nothing in clause (1) of this article shall prevent the Union from imposing or authorizing the imposition of any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government 'of a State, or any operations connected therewith, or any property used or occupied for the purposes thereof, or any income accruing or arising therefrom.

(3) Nothing in clause (2) of this article shall apply to any trade or business, or to any class of trade or business, which Parliament, may by law declare as being incidental to the ordinary functions of government."

Mr. Naziruddin Ahmad (West Bengal: Muslim): I am not moving amendment No.309.

Shri P. T. Chacko (United State of Travancore and Cochin): I beg to move:

"That in amendment No. 272 of List IV (Seventh Week), in clause (2) of the proposed article 266, after the words 'trade or business of any kind carried on' the words 'beyond its limits' be inserted."

The purpose of my amendment is to exempt all properties and income of a State from Union taxation, even when the State is carrying on a business or trade within its own limits. The Union will have no power to tax properties or income of a State in one case where the State carried on a business or trade outside its limits. This principle of immunity from inter-governmental taxation was accepted by this House when it accepted article 264 where it is provided that the properties of the Union shall be exempt from taxation by a State. I only want that this principle should be extended and applied in the case of the States as well. In the United States Constitution there is no provision exempting the Union properties or State properties from reciprocal taxation. But, in interpreting the Constitution the Supreme Court has very clearly laid down this principle of immunity from reciprocal taxation. power to tax was held to involve power to destroy. Until recently, even the income of an officer of a State was exempted from the taxation of the Union. Later on, however, in applying this principle the Supreme Court began to draw a sharp line of distinction between the governmental and traditional functions of a government on one side and the business or trade carried on by a State merely for the purpose of profit on the other. Immunity was denied in cases where the State carried on a business or trade as distinct from a governmental function. But to define 'governmental function' is not easy. What might have been deemed in earlier days as a dangerous expansion of State activities may today be deemed to an indispensable function of the Government. The State Government does not exist for its own sake. It enters the field of private enterprise, not with profit motive alone. It is no doubt the duty of a State to nationalise public utility services and also the key industries. The modern concept of a State is such that the conduct of a business or trade within its own limit very often becomes a function of a State. There is an express provision in the Constitution of the Commonwealth of Australia granting immunity from reciprocal taxation. Section 114 of the Constitution reads :

> "A state shall not without the consent of the Parliament of the Commonwealth raise or maintain any naval or military force or impose any tax on property of any kind belonging to the Commonwealth, nor shall the Commonwealth impose any tax on property of any kind belonging to a State."

The provision is imperative and properties of all kinds belonging to a State are exempted.

Secondly, Sir, this power, if vested in the Union, to tax the properties of a State indiscriminately, would hamper the progress of the State. Taxation is always a double-edged weapon and it has a tremendous power to regulate the subject of taxation. Any tax on industries conducted by a State serves the purpose of discouraging the State from running any industry. The result would be to discourage the State from nationalising public utility services and other industries. Some progressive States may have a well-defined scheme of social programme. You are destroying such social programe by adding one more obstacle to the innumerable obstacles already in existence.

In short, this taxation would prevent the State from carrying on its social functions and would in effect reduce the capacity of the State to serve its own people. A State cannot be looked upon just like an individual who is conducting business. In the case of an individual, the profit goes to his own pocket, resulting in concentration of wealth in his hands and thereby giving him more economic power, which may be utilised for the further exploitation of his own fellow-beings. His income is taxed purposely to prevent the concentration of wealth in the hands of the private individual. In the case of a State, the profit obtained by the State obviously enables the State to serve its own people better.

I would also like to point out that the proposed taxation would even prevent the expansion of industrialisation, which is so much needed for us. Take for example a State like my own, Travancore. It is a State which is thickly populated. It is one of the most thickly populated States not only in India but probably in the whole world. The majority of the people are agriculturists Land suitable for cultivation is limited there. Whereas, in other places the problem is to obtain the labour force for cultivating the available land, the problem in Travancore is to obtain land to utilise the available labour force. In such a State, there was only one salvation for the people, that is, industrialising the State, and the State came forward with a steady policy of Industrialisation and invested a large amount of money, four to five crores of rupees. The State has succeeded to a very large extent in its venture to industrialise. The effect of the proposed taxation is definitely to discourage a State like this from investing any further amount of money in industries.

Now, in a State like this, industrialisation is a vital problem, a problem of life and death for the seven million inhabitants of the State. The industrialization of the State becomes a governmental function there. To give the Centre. the power to tax the properties of the State and the industries conducted by the State will be to discourage the State from investing any further amount in industries. Again it would be impossible for private enterprise to exploit certain resources of a State. In such cases where private capital refuses to venture, it is the duty of the State to invest capital for that purpose. This tax would prevent, would discourage the State from investing any amount to exploit such resources.

Finally, Sir, the proposed tax may cripple or obstruct the ordinary governmental functions of a State. As Chief Justice Marshal put it, the power to tax involves the power to destroy also. If power to tax is conceded, the State will have no voice in fixing the extent of taxation. As a matter of right, if a State can be taxed lightly it can also be taxed heavily. If it can be taxed justly, it can also probably be taxed oppressively. Generally, the business or trade carried on beyond the limits of the State may be assessed as something distinct from a purely Governmental function. The State may have only a profit motive in conducting business outside the limits of that State, a just reason why the business or trade carried on by a State beyond its own limits could be taxed by the Union. I only point out, Sir, that the principle underlying the proposed article is not sound. The power proposed to be invested in the Union will necessarily retard the progress of a State. It will act as a check to social programmes of a State. It will check the expansion industrialisation and finally it may cripple the State itself. I request the House to consider its repercussions on the States and their social programmes.

Shri S. P. Nataraja Pillai (United State of Travancore & Cochin): Mr. President, Sir, I beg to motive :

> "That in amendment No.272 of List IV (Seventh Week), the following proviso be added to clause (2) of the proposed article 266 :--
>
> 'Provided that the trade or business which was carried on by or on behalf of the Government of a State before the commencement of this Constitution and any income accruing or rising therefrom shall not be liable to Union

> taxation'."

Sir, my amendment has only a limited scope. I want to exclude from Union taxation the existing trade or business in a State or any income accruing therefrom. In this connection, I would like to submit before the House that if this article as it stand is given effect to immediately it will have the effect of paralysing the finances of the State, probably leading to a financial breakdown. I am sure it will be the case in some of the South Indian States at least. For example, Sir, in Mysore and Travancore, for the last two decades and more, an active policy of industrialization was adopted and followed and crores of rupees have been invested in industries. If we take the case of Travancore alone, nearly five to six crores of rupees have been invested in industries and annually there is a net revenue of fifty to sixty lakhs of rupees to the State from this sources. The policy of industrialization was adopted not only to improve the material condition of the people but also as a method to find funds to meet the progressive needs of the Government. This attempt was successful. Now as a result of the financial integration scheme which has now been adopted as a result of the Federation that is being hammered out here, according to the present estimate Travancore State is expected to lose at least 40 per cent of its revenues. Curiously enough in Travancore 40 per cent of its revenue is being budgeted for expenditure on education, public health and public works. If, in addition to the gap which is expected to occur as a result of this financial integration this Union tax is to be enforced immediately on the income which the State derives from trade and industries, that will widen the gap still further and will result in a financial breakdown as it were.

But when I say this, Sir, I do not for a moment forget the tremendous responsibilities of the Union and the absolute necessity of providing financial resources to discharge its activities. But at the same time, Sir, the Centre has also to see that if the States are to shoulder their responsibilities and discharge their duties, financial resources must be available to them too. I have heard it said here, Sir, that the authority of the Centre is all prevailing and pervasive and their demands are paramount; but I feel that that approach is not quite correct. As far as the States and the Centre are concerned, they are only discharging two different and distinct functions of the Union Government. The inefficiency or ineffectiveness of one is sure to react on the efficiency and the effectiveness of the other.

In these circumstances, it is absolutely necessary that the State finances should not in any manner be affected so as to prevent the State from functioning with efficiency. At this time of transition as I pointed out before, when this State stands the chance of losing at least 40 per cent. of its revenue as a result of the financial integration scheme that is being worked out, this provision to tax the income from trade or business in the State should not be given effect to.

The Government of India appointed a Committee known as Indian States Finances Enquiry Committee and they have published a very valuable report after carefully going into the question of State finances. In page 47 of Vol. I of that report they refer to article 266 of the Draft Constitution, that is about this identical article, and the following words occur :

> "We cannot however, overlook the fact that if it should be enacted in its present form (that is, in the form of giving the right to the Centre to tax the State trade) it will have adverse consequences upon the finances of Indian States, to the extent that they are now dependent upon the tax-free income from those enterprises; in some States such income is considerable. We

> recommend, therefore, that should article 266 be enacted in its present form, the existing State owned and operated enterprises should be exempted from federal taxes on income to the extent to which they now enjoy such immunity........"

I have only put this idea in my amendment and my object is only to exempt the existing State-owned and operated enterprises from the Union taxation. That will give relief to the State when the State is faced with a difficult financial situation on account of the new Constitution that comes into force immediately. And when its revenues stand to lose a good portion of it we should not enact a provision by which it will be reduced still further Clause (2) of the proposed article vests the authority with the parliament to tax the business or trade or income accruing therefrom in future in the States. So when that is being done, I completely agree with the general principle since tax on income being an item of the federal finance, the Union may have the right and necessity to tax the income to meet its demand. But when the State has been enjoying a particular amount of revenue on an investment they have made and when on the basis of that a financial system has been evolved and when their administrative structure has been based on that, it will be unwise to immediately enforce this taxation and dislocate it. It win paralyse the Government's activities and at the same time lower the efficiency of that administration.

I therefore, very earnestly request the Drafting Committee to consider whether this exemption could not be granted as recommended by the Indian States Finances Enquiry Committee and accept my amendment which I feel will substantially help the State in its present situation. Travancore situated as it is, having to face grave problems of over-population and re-organization schemes, having adopted compulsory primary education, having enforced prohibition as the next step and having introduced reforms in the land revenue assessment and taxation to a basic tax, I think it is only fair that such a State as that should be given all facilities to carry on that administration without lowering its present standards.

Shri S. V. Krishnamoorthy Rao (Mysore State): Mr. President, Sir, I have tabled two amendments Nos. 312 and 436. I will move both of them; they apply to the same question.

Sir, I move:

"That in amendment No.272 of List IV (Seventh Week) for clause (3) of the proposed article 266, the following be substituted:-

'(3) Nothing in clause (2) shall apply to--

> (a) any trade or business, or to any class of trade or business which the Government of a State was carrying on as an ordinary function of such Government, at the commencement of this Constitution.' "

Sir, I do not move clause (b) as it is already there.

Sir, I also move:

> "That in amendment No.312 of List V (Seventh Week), in sub-clause (a) of the proposed clause (3) of article 266, after the words 'at the commencement of this Constitution' the words 'and such programmes of their development

and expansion the preparations for which are complete' be inserted.' "

Sir, article 266 clause (1) gives general immunity to the income and property of a State....

Mr. President : You are not moving clause (b) of amendment No.312 ?

Shri S. V. Krishnamoorthy Rao : Clause (b) is already there in the present clause (3) of article 266; therefore I am not moving this. It is already there.

Clause (1) gives a general immunity to the property and income of the State. Clause (2) gives power to Parliament to tax any trade or business carried on by a State. Clause (3) gives exemption to clause (2), so that Parliament may declare by law any trade or business as being incidental to the ordinary functions of Government. My submission is that clause (3) will seriously affect the finances of a State like Mysore or Travancore, as already submitted by my honourable Friends, Mr. Chacko and Mr. Nataraja Pillai. The Mysore Government have, during the past fifty years, by a judicious policy of State enterprise and state aid, developed a number of industries. According to the proposal of financial integration as recommended by the States Finances Enquiry Committee, a number of central taxes will go to the Centre. In fact, at page 30, paragraph 32 of their report, they say that present dependence of Mysore on federal sources of revenue is indeed considerable and the immediate scope for developing provincial taxes is rather limited. By these proposals Mysore stands to lose nearly 321.59 lakhs of Rupees. Of course the Central Government proposes to make good sixty per cent. of this loss during the course of fifteen years. But what remains will be a few industrial concerns and public utility concerns like Hydro-electric works, industrial and other works, the Iron and Steel works. The Mysore Government have already invested nearly fifteen crores of Rupees as reported at page 31 of the States Finances Enquiry Committee report on Hydro-electric works, industrial works, Iron and Steel works. They are running nearly twelve items of industries like the Central Industrial works, Soap factory, Porcelain factory, Silk Weaving factory, Electric factory, the Mysore implements Factory. The Mysore Chromate Factory, Silk and filature factory, Iron and Steel works. Nationalised Motor Transport, the Sandalwood oil factory, etc. If all these industries which were started and developed during a period when there were no central taxes, were now to be taxed as a result of article 266, my submission to this House is that the finances of the State will be very greatly crippled. Mysore has got vast schemes of electrification of every village with a population of 1,000 and more, within the course of next two or three years. We have got a scheme for introducing electric trolly buses in the Bangalore city. We have got schemes of rural development, and spread of education. With the taking over of the central resources of revenue, the financial position of Mysore will be greatly jeopardised. If additional taxes also were to be introduced on the trade and business that are being carried on by the Government as part of the Government-these are industries which are being carried by the Industries, Department of the Government of Mysore-it will greatly hamper the financial position and further development of educational and other facilities that the State intends to give to the people.

My respectful submission is that the financial policy of the Government of India should be to help the States and not to hamper their development. In fact, I learn that such an assurance was given in the Finance Ministers' Conference. Dr. John Matthai, our finance Minister, is here and if an assurance were to be given by him that those industries which have been already started and are being run by the State as an ordinary function of the Government, will not be taxed, I am not going to press the amendments. In fact, the supply of electricity is the cheapest in Mysore. Industrial concerns are supplied from six to two pies per unit for the development of industries. For irrigation purposes, we supply electricity at half an anna per unit. I think nowhere in India is electricity supplied so cheap. If we are to continue this policy of industrialisation my submission is that the central taxes should not fall on the industries and trade which are already being carried on by the Government. Of course, clause (3) says that Parliament may by law declare. I too accept this proposition so far as future industries that are to be started by the State are concerned. Some States may, in order to avoid central taxes, take over certain industries and certain private trade and business and run them as a department of State. Such things should be prevented; but that would apply to future industries, future trade and business. Trade and business, and industries which have already been started by the Government as part of their routine, I submit, should not be taxed and this clause, should not act as a hindrance for the development of the State. My respectful submission is that these amendments should be accepted or if the Honourable Dr. Ambedkar is not willing to accept them, if an assurance is given, I do not propose to press these amendments.

Mr. President : There are four amendments of which notice has been given by Mr. Brajeshwar Prasad. As they all relate to the other amendment........

Shri Brajeshwar Prasad: There are five amendments, the fifth amendment is number 338 in List VI which I want to move.

Mr. President : You may move that; the others do not arise.

Shri Brajeshwar Prasad: Sri, I move:

"That in amendment No.272 of List IV (Seventh Week), in clause (1) of the proposed article 266, for the words 'exempt from' the words ' 'subject to' be substituted."

Sir, the only constitutional justification which may be urged in support of this provision is that such a provision finds a place in the Canadian or in the Australian Constitution. I am convinced that the analogy does not hold good in our case. The constituent units of Canada and Australia. The facts of Indian history cannot be ignored. These provinces and the Indian States have never been sovereign in any sense of the term. They have been servants and agents of the Government of India. I think that the scope must be widened for union taxation; nothing is lost by restricting the sphere of union taxation.

It is not only on constitutional grounds, but also on political grounds that I am opposed to this article. It is risky, it is dangerous to give wider autonomy to the provinces. I am convinced that the only reason why we are making provision for this article in our Constitution is that the majority of Members of this House are champions of State rights. The fact is that all the provinces and the Indian States, whatever constitutional status we may confer on them, are the agents and servants of the Government of India. Let us not blink at these facts. There is one party ruling in this country and there is not the slightest possibility of any other party coming into power or of the provinces becoming autonomous. They are all knit together under the aegis under the leadership of the Congress Party. There is neither historical nor constitutional justification for vesting this power of taxation into the hands of the

States. A realistic approach of the situation would entitle us to subject the property and income of a State to Union taxation.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. president, with my intimate acquaintance for over twenty years with conditions in Mysore and also with my acquaintance with condition at present in Travancore, I may at once say, my sympathy is in favour of certain observations made by the Mysore and Travancore representatives, so ably presented to this House. At the same, time we will have to look at the matter in the, large perspective of Indian industry and Indian advancement.

So far as any exemption is called for in regard to Mysore, and Travancore industries which have been going on for some time, I do not believe that there would be any controversy in that regard. I am sure the Government of India and the Parliament of India will take a very favourable view of the situation and will extend the necessary encouragement to those industries which have been thriving for such a long time. It is unnecessary to say that under the able Dewanship of Sir M. Seshadri Iyer, Sir M. Viswesvarayya and other talented Dewans of Mysore; Mysore has made a very rapid progress in this regard, and I think we on this side of India are equally interested in the progress of Mysore. We are not anxious that Mysore should live on mere subsidies from the Government of India, as is necessarily apt to for some time until the finances are in proper order--upto fifteen years. That is so far as these particular States are concerned; you have an express provision that Parliament may exempt. It is a permissive power that is given to Parliament under the section. There is no duty cast upon Parliament to, levy a tax and I am sure in the larger interest of trade and industry, parliament will certainly not go to the length of taxing these industries which have been thriving.

With regard to the other parts of India, the question will have to be viewed somewhat differently. For various reasons under the British regime no socialisation of industries began. The provinces were functioning practically as police states and not interesting themselves in the large schemes of industry excepting in regard to Pykara scheme and similar projects when Sir C. P. Ramaswamy Iyer was Member of the Madras Government. There is the danger on the part of the provinces to start a number of industries which may not be financially successful but at the same time they may kill private enterprise. Our objective may be towards socialisation of key industries, but if that objective is to fructify and to yield excellent results, it has to be necessarily a little slow. As we advance there is no, doubt that the time will come when most of the key industries will be taken up by the State. That is the object of the provision to the effect that if trade is started, it shall be open to the Centre to levy a tax.

Reference has been made to Australian, Canadian and American Constitutions. There is no need to go into that. At the time when the Canadian and Australian Constitutions were drafter it was not thought that large schemes of socialisation would be undertaken. Therefore they put in simply in the general language that the property of the State shall not be subject to taxation by the Union or Federal Government and the property of the Union Government shall not be subject to tax at the instance of the Provincial Government. So far as the United States is concerned in the early days though there was no express provision through the medium of the doctrine of Instrumentality, they held that the State cannot tax the Federal Government and the Federal Government cannot tax the State instrumentality because both are parts of a single composite mechanism and if you permit one to tax the other, it may destroy the whole mechanism. Later, the doctrine if instrumentality itself was felt to be not in the large interest of the State, and quite recently the swing of the pendulum is the other way. The other day one of the most enlightened of Supreme Court Judges held in what is known as the Spring of the State of New York, in regard to certain springs which were worked by the State of New York-for this part of business they held that there is no immunity of the State from tax. They said 'You have to draw some line between one kind of activity of a State and another kind of activity. Of course it cannot be a rigid definition. What may be in one sphere may easily pass into another sphere with the progress of the State and with the development of the polity in the particular State'.

But, normally speaking, you cannot regard at the present day under existing conditions the carrying on of trade and business as a normal or ordinary function of the Government. It may develop into ordinary function-certain aspects of it, especially the transport service and certain key industries, may soon become the parts of the State enterprise. The clause runs thus:

> "Nothing in clause (1) of this article shall prevent the Union from imposing or authorising the imposition of any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State or any operations or connected therewith, or any property used or occupied for the purposes thereof, or any income accruing or arising therefrom."

The Parliament will take note of the progressive tendency of the particular times and may at once declare accordingly. it might not have been the ordinary function of Government before. Now it may become an ordinary function. There will be sufficient elasticity in clause (3) to enable the Government to exempt from taxation particular trades or industries which are started as public utility services or declare them as regular State industries. Nobody can question a law made, by Parliament because the Parliament has stated that a particular industry is an ordinary functions of the State whereas according to the nations of an individual economist A or B it is not so ordinary function of a Government Parliament will lay down the law of the land and it will be the sole arbiter of the question as to whether it is an ordinary function of Government or not.

Therefore having regard :

(a) to the plenary power of Parliament to exempt any particular industries, and particular business from the operation of the tax provision.

(b) having regard to the fact that it is not obligatory on Parliament to levy any tax.

(c) that the very conception of State industry may change with the further evolution of the State and changing times, and

(d) to the inter-connection between one State and another.

it will be very difficult to differentiate between particular States, between States which have been working certain industries and other States. But as a matter of administrative policy and as a matter of Parliamentary legislation it may exempt States like Mysore and Travancore which have been carrying on trade and business for a very long time and such industries to-day are as solid and stable footing so as to warrant an exemption, but on the other hand to lay down a general principle of law that even at the present day before the provinces are on their feet every trade or business is exempt from taxation will lead to wild-goose schemes being started by various provinces. They may not take into account the general interests of the trade and industry in the whole country. They may not have regard to the difference between one kind of industry and another. Under those circumstances the particular provision which has been inserted by Dr. Ambedkar is a very salutary one and is consistent with the most advanced principles of democratic and federal policy in all the countries. With these words I support Dr. Ambedkar's amendment.

The Honourable Dr. John Matthai (United Provinces : General) : Sir, I do not propose to go into the details of the various suggestions that have been made in the course of the debate this morning on this subject. But there are certain general observations that I would like to make and which I hope would allay the fears that have been expressed by honourable Members who have taken part in the discussion.

My friends from Travancore have been extremely apprehensive as to the sort of use that might be made of this provision by a Travancore who happens to be the Finance Minister of the Centre today, and Travancore's fears appear to be shared by the neighbouring State of Mysore. I want to make this perfectly clear that, speaking for myself and for my colleagues ill the Central Government today, there is nothing which we are more anxious to encourage and put through than the industrialisation of the country. And if there is any apprehension that this provision is likely to have the effect of checking the progress of industrialisation in the country, either through private enterprise or through State enterprise. I want this House to take this assurance from me, that that is about the last thing we want to do in the use of this particular provision; because if there is the slightest possibility of the operation of this particular provision having the effect of putting some restriction or curb upon the industrialisation of the country, then as far as we in the Centre are concerned, the House may rest assured that the operation of the provision would certainly be adjusted to the requirements of the country in this regard.

There is really no greater problem, for example, the faces me today as the Finance Minister at the Centre than the determination of the precise repercussions upon industrial development, of the present structure of direct taxation in the country. And as far as we are concerned at the Centre, we are anxious that consistently with public requirements, the structure of direct taxation in the country should be so modified that all unnecessary handicaps in the way of industrial development are not merely removed, but removed as early as possible. Well, that is the point of view from which the Central Government as looking at the problem of industrialisation. I am justified in asking the House to accept this assurance from me that if this Provision should have the slightest effect in checking industrialisation in any of the States concerned, then we would be the last to make of this provision.

There is another matter also in regard to which I should like to make a general observation. The speeches this morning, to my mind, seem to be based on the assumption that there is a kind of inevitable conflict between the financial objectives of the Centre and the financial objectives of the States. Nothing could be farther from the truth.

Shri T. T. Krishnamachari : Hear, hear.

The Honourable Dr. John Matthai : As things are shaping today, and as we realise more and more the need for a united structure 'in the country, both politically and economically, the identity of interests between the Centre and the States is bound to be extremely close. If by the operation of a provision of this kind it is found that the finances of a State are rendered difficult, then it is a problem which will cause. anxiety not merely to that State, but to the Centre also. I am faced with that problem in a large number of cases today. Therefore, if the operation of this provision is going to have the effect of causing budgetary difficulties to any State, the House may depend upon it that it would be as much the interest of the Centre as it would' be the interest of the State to see that necessary adjustments are made.

Most of the particular industries to which reference has been made by those who have spoken this morning on behalf of Travancore and Cochin and Mysore are industries which belong to the category of what are called public utility undertakings. Now, public utilities are not quite an easy matter to define with the precision required in a court of law. But we all have a general idea of what public utility concerns imply. I would therefor give this assurance not merely on behalf of the Central Government, but I know I can give this assurance also on behalf of the Drafting committee who are responsible for this provision, that it is not our intention to levy any tax of the kind referred to in this provision, upon industries run by States whose object is to produce services of a public utility character. That, as far as our intentions go, is clearly outside the scope of the provision that is under debate today.

There is another assurance that I would like to give. If it happens that this operation is brought into force in respect of any industrial undertakings owned by a State, and if there happens to be, at the same time, an undertaking owned by the Centre of the same character, it is our intention that the liabilities imposed upon the State should be equally imposed upon the Centre. As the House knows, it is our idea that when the Centre hereafter, promotes undertaking of an industrial character, those undertakings should, as far as possible, be organised and managed on the basis of independent public corporations. These corporations for running industrial undertakings would be treated on exactly the same basis as the States would be treated in respect of similar industrial undertakings. With regard to undertakings run by the Centre directly, departmentally, the analogy of the railways and the Posts and Telegraphs which are expected, if there is any surplus in their budgets to make a certain contribution towards the general revenues of the country, would apply.

So I am able to give this assurance. First of all, public Utility undertakings would be outside the scope of taxation under this provision; secondly, there would not be any discrimination between the Centre and the State in regard to the taxation of industrial undertakings, and I hope the House will now find less difficulty in accepting this provision.

There is just one other point to which I would like to make a reference. As regards the question of the budgetary difficulties that might be caused to the States in consequence of taxation imposed under this provision, it is necessary for the House to remember that as in the case of every federal government in the world, so here, we are rapidly making use of the expedient of subsidies or subventions from the Centre for helping the States in promoting essential undertakings of a public utility character, and development projects of national importance. If it happens that the revenue resources of a State are seriously crippled by taxation under this provision, then, assuming that the development projects are projects of national importance, it automatically follows that there is a corresponding obligation which will fall upon the

Centre to make up so far as its resources permit such shortfall as might occur in the financial resources of the States. I mention this point only to enforce the suggestion with which I started, that there is today, in the set-up which is gradually growing up and which would be finalised when this Constitution comes into force, a complete identity of interests in respect of financial matters between the Centre and the States. Any objection to this provision on the assumption that there is to be a continuing conflict between the Centre and the Provinces has no justification whatsoever.

The Honourable Dr. B. R. Ambedkar : Sir, the only part of this article which has been subjected to any criticism is clause (3), There has been no comment on any other part of this article. I do not believe that after the reassuring speech which has been made by the Finance Minister there is anybody in the House who will entertain any kind of doubts or fear of parliament exercising this power without regard to the financial resources of the State. I do not think I need say anything more on that point.

Shri P. T. Chacko : In view of the assurance given by the Honourable Finance Minister I would like to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Shri P. S. Nataraja Pillai : I would like to withdraw my amendment also.

The amendment was, by leave of the Assembly, withdrawn.

Shri S. V. Krishnamoorthy Rao : I would like to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : What about Mr. Brajeshwar Prasad ?

Shri Brajeshwar Prasad : I am not withdrawing my amendment.

Mr. President : The question is :

"That in amendment No. 272 of List IV (Seventh Week), in clause (1) of the proposed article 266, for the words 'exempt from' the words 'subject to' be substitute."

The amendment was negatived.

Mr. President: The question is:

"That proposed article 266 stand part of the Constitution."

The motion was adopted.

Article 266 was added to the Constitution.

Article 296 and 299

Mr. President: There are two articles 296 and 299 and some Members have presented to me that they got notice of certain amendments to these too late.

The Honourable Dr. B. R. Ambedkar : I am prepared to hold them over.

Mr. President : So these, two articles (296 and 299) will stand over.

Mr. Naziruddin Ahmad: Can have an assurance as to when these are coming up?

Mr. President : Some day next week. I may tell honourable Members that we propose to finish all the articles and all schedules except some articles dealing with States and one Schedule and certain other miscellaneous articles two or three-we want to finish all the rest. It depends on the House how soon we shall be able to complete consideration of all the rest of the articles.

The Honourable Shri Ghanashyam Singh Gupta (C. P. & Berar : General) : By the 17th at the latest, I suppose.

Mr. President : I have that in my mind, but it depends on the House.

An Honourable Member : Fix a date.

Mr. President : If we make quick progress I need not fix any date.

I shall now take up the entries in the Seventh Schedule which were left over-88A in List I and 58 and 58A in List II.

Seventh Schedule and Article 250-*Contd.*

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That after entry 88 in List I of the Seventh Schedule, the following entry be inserted:-

88-A. Taxes on the sale or purchase of newspapers and on advertisements published therein'."

I also move :

"That for entry 58 of List II of the Seventh Schedule, the following entries be substituted :-

'58. Taxes on the sale or purchase of goods other than newspapers.

58-A. Taxes on advertisements other than advertisements published in newspapers.' "

Sir, with your permission I shall move the other amendment-No. 374-to article

250 also as it is really part of this.

I move :

"That in clause (1) of article 250, after sub-clause (d), the following sub-clauses be added:-

"(e) taxes other than stamp duties on transactions in stock-exchanges and futures market;

(f) taxes on the sale or purchase of newspapers and on advertisements published therein.' "

Shri. T. T. Krishnamachari : I would like to mention that the formal permission of the House will have to be obtained to reopen article 250 which it will be necessary to do in respect of amendment No. 374.

Mr. R. K Sidhva: I raise a point of order that an article which has been completed and passed by the House cannot be reopened.

Mr. President: That is just the point that Mr. Krishnamachari has raised.

Shri R. K. Sidhva : No, Sir. He has moved an amendment to reopen the subject. I am raising a point or order that it cannot be reopened.

The Honourable Dr. B. R. Ambedkar : That the President will decide-whether you are right or he is right.

Mr. Naziruddin Ahmad : There is another matter to which I would like to draw your attention. In regard to the amendment to entry 88-A it is the same amendment as that of Mr. Junjhunwala. It has now been stolen by the Drafting Committee and is being passed on as their own. Curiously enough, Dr. Ambedkar's amendment No is 379 which is the section of the Indian Penal Code relating to theft. Can this sort of literary piracy be allowed ?

Mr. President: You can take credit for having pointed it out.

The Honourable Dr. B. R. Ambedkar: He is quite content with that. He has not lodged a complaint of theft or robbery.

Mr. Naziruddin Ahmad: But theft is a cognizable offence. It is also non-compoundable. It does not depend on the complaint of any one, absence of objection will not excuse it.

Mr. President : We shall deal with the entries first.

The Honourable Dr. B. R. Ambedkar : Sir, when this matter came up last time before the House there was a lot of debate as to what was exactly intended, what the House could do and what I was prepared to accept. You were kind enough to say that the matter might be recommitted to the Drafting Committee. The Drafting Committee after consideration of the same has brought forth new proposals. The proposals are that newspapers and taxes on advertisement in newspapers should be put in List I.

That is a matter to which the Drafting Committee has now agreed. The second amendment-No. 379-is merely a consequential thing because since newspapers and taxes on the sale of newspapers and advertisements therein has been brought into List I, it is necessary to exclude the taxation on newspapers under the Sales Tax Act and advertisement therein from the jurisdiction of the State Legislature.

Shri R. K. Sidhva : Sir, I move :

"That in amendment No. 378 of List VIII (Seventh Week), for the proposed new entry 88-A in List I, the following be substituted :-

'88-A. Taxes on advertisement published in newspapers.' "

"That in amendment No.379 of List VIII (Seventh Week), in the proposed entry 58 of List II, the words 'other than newspapers' be deleted."

Sir, when this subject came up before the House some time back my honourable Friend, Dr. Ambedkar, vehemently opposed the motion that is now sought to be moved by him, or rather moved by him and he made very strong remarks. I wish I could lay my finger on the proceedings and the speech and place them before the House, but unfortunately I could not get them. But I know the House will remember and you, Sir, will remember that he said that under no circumstances shall he allow the sales tax also to be included in List I.

Mr. President : The matter was held over for reconsideration by the Drafting committee. The Drafting Committee is not prevented from reconsidering and putting forward another amendment.

Shri R. K. Sidhva : I know that is so. Everyone has a right to change his opinion, but Dr. Ambedkar while moving his amendment should have enlightened the House as to the reasons which necessitated him to change his views.

My point is this, that this amendment, as proposed by Dr. Ambedkar, seeks that the sales tax on newspapers which is in the State. List should also be brought under List I. Now this is an invidious distinction. Sir, I think that in the list of items on which the provinces levy a sales tax there are hundreds of items. To select one item out of them and to put it in the Union List is, in my opinion, objectionable, invidious and unfair. It might be misunderstood by the people as a whole in the country. They will be suspicious as to what has actuated the Constituent Assembly to select this particular items which is rightly put in List II, and bring it to List I. It may be argued that this is done as newspapers have a bearing on the fundamental rights as was urged the other day. As you have rightly held the other day in your ruling. Fundamental Rights relate to speeches and expressions. What have taxes to do with speeches and expressions?

I, therefore, fail to understand why it is going to be brought in List I. My difficulty is that when a very responsible member as the chairman of the Drafting Committee held a different view the other day, he should have explained to us what was the object. If I were satisfied, I would not have raised this point. Let all the sales tax go to the Centre. Sales tax, as it is at present levied in the different provinces, have worked havoc on trade and commerce. An article is taxed in Bombay; the same article is sent to C. P. and is taxed over again. Therefore, I certainly desire that the sales tax should come within the purview of the Centre. As at present levied it upsets the whole economy of the country. But why choose this particular item, I fail to understand. I might be misunderstood by the country as an instance of favouritism. The best course in the present circumstances would be to hold this item over till the whole question of the sales tax is decided. Let the Centre take over the sales tax. I am in favour of it.

I was myself a signatory to the amendment that was moved by my Friend, Mr. Goenka. I was very clear in my mind when I put my signature that it related to the advertisement only and not to the sales tax. But my attention was drawn to the fact that the language used covered the sales tax as well. I admit my mistake in signing it. Generally I do not sign anything without reading and understanding its implications. But my intention now is the same as it was before that sales tax should not go into List I.

Now, Sir, it may be that this inclusion in List I is for the purpose of exemption of newspapers from advertisement and sales tax. I have very great regard for the nationalist papers which have fought for the freedom of the country during the days of British imperialism whose main object was to crush nationalist newspapers. I do not dispute for a moment that they deserve all kind of encouragement; there is no question about it. But today I do not know which paper to call nationalist. Having been an editor and proprietor for over twelve years of a newspaper, I know the odds against which they had to struggle in those days. I take my cap off before them. *The Bombay Chronicle* one of the biggest nationalist papers in India was killed twice, but it still survives, thanks to its able editors like Mr. Horniman and Mr. Brelvi. Effort was made to kill the *Indian Daily Mail* started by a millionaire in Bombay and it was actually killed through the agency of British Imperialism. I appreciate all that the nationalist papers have done, but I want that appreciation to be expressed by the front door in recognition of the services rendered by them. Why do you want this to be put in List I and create complications and doubts in the mind of the public? My point is that if exemption is to be given, I am for it on the grounds I have urged. Never mind if other papers take advantage of it, but this tax is also bad. I know today 80 per cent of the papers are small ones and they could not afford to bear the proposed tax. Only 15 per cent of the papers are today rolling in money and it may be asked why should they not pay the tax? My Friend Deshbandhu Gupta – I have great respect for him. From a small man he has risen to a big man. Mr. Suresh Chander Mazumdar another gentleman deserves same compliments. But why should these others who are rolling in wealth in other business – why should they be exempted? Yesterday, I was reading that an American syndicate is going to purchase the "*Civil and Military Gazette*". They are out to purchase important newspapers in India. Is it fair that they should be exempted? I do not want to make any distinction between Indian and foreign newspapers. If *Times of India* can be purchased, on payment of crores of rupees this syndicate can purchase all important newspapers. Why should they be exempted? When you put this tax in the Constitution, you bind down for all times. I submit the case has not been properly placed before the House and my Friend Mr. Goenka will excuse me for saying that he has bungled.

Shri T. T. Krishnamachari : May I tell my honourable Friend that no exemption whatever is contemplated?

Shri R. K. Sidhva : Well, Mr. Krishnamachari, better leave it to common-sense.

You are not the authority to state here that exemption is not contemplated. I know what is contemplated. That is why I am worried. Let us be straightforward. These things should not be brought forward in this manner just to hoodwink. It is hoodwinking the people and nothing else. Let us be straightforward and honest. You cannot humbug the people or hoodwink the House. Dr. Ambedkar may be too clever but he cannot be too clever all the time. We understand what is behind the screen. I do not like this to be brought in this fashion. If this amendment is held over, let us apply our mind and put up a proper amendment. I shall be prepared to move an amendment that papers be exempted from all taxes, if it is agreeable I do realise that the nationalist papers have done service and in recognition of that service, if you want to exempt them, I am prepared for it. I am prepared to go further and exempt all papers. I suggest therefore that instead of accepting the amendment, I humbly suggest to my friends Messrs. Goenka and Gupta : "Let us apply our mind and put in an amendment for exemption, so that our position may not be misunderstood." I again repeat this august Body, this Constituent Assembly, should not humbugged. This august Body should not be hoodwinked. I want straightforward manners to be adopted, particularly in our Constitution. I hope, Sir, that you, Mr. President, will also appeal to Dr. Ambedkar and Messrs. Goenka and Gupta not to put in something for which the Constituent Assembly may be ridiculed. This august Body should not be ridiculed. Let there be no criticism that we have somehow or other, for somebody's benefit, transferred this to List I in the name of Fundamental Rights which I fundamentally oppose. This is not germane to the Fundamental Rights. I again appeal, in the interests of this Constituent Assembly for which I have great respect, to you, Sir, who is the President and Custodian of this Assembly – I submit to you in all humility that you will kindly prevent invidious distinction being caused. I repeat 80 per cent of the newspapers will suffer by taxes. Only some of the newspapers can afford to pay. After all tax on newspaper advertisements will be borne by those who advertise. The cinema tax – who pays it? The consumers pay. Provincial governments levy it on cinemas, the cinemas levy it on the consumer. Similarly, if there is to be a tax on advertisements, the advertiser has to pay. I do not want to envisage that position. I do not want small new-spapers to be killed. If there are ten big newspapers who will be exempted, I do not mind. Let not 80 per cent be injured. Let us from that point of view try to come to a settlement.

Mr. President : I confess, Mr. Sidhva, that I have not been impressed by your moral indignation. I have not seen any cause for it. It is a simple amendment moved by the Drafting Committee and I do not see anything wrong in the amendment proposed.

Shri R. K. Sidhva : Out of all, why is the newspaper singled out ?

Mr. President : That is a different matter.

Shri R. K. Sidhva : That is the point. Why has it been singled out ?

An Honourable Member : Wait and see.

Shri Deshbandhu Gupta (Delhi) : Mr. President, Sir, it is a matter of no small satisfaction to me to note that the Drafting Committee has appreciated the point of view urged by my Friend Mr. Goenka and many members of this House in the amendments which they sought to bring before the House. It is a matter of still greater satisfaction that even Dr. Ambedkar has agreed to these amendments and that these amendments have his wholehearted support. There is much in one point made out by my Friend Mr. Sidhva. The House is aware that the other day when this matter was discussed on the floor of the House, I did take fundamental objection to the very imposition of taxes on newspapers. No one would be happier than myself and my friends belonging to the press, if the House were to decide today that newspapers will be free from all such taxes. Of course that is what it should be, because in no free country with a democratic Government we have any such taxes as the sales tax or the advertisement tax.

But I fail to understand the argument of my Friend Mr. Sidhva when in one breath he says that he is prepared even to go to the extent of exempting newspapers from all taxes and in the same breath he holds that there should be no distinction between newspapers and other goods so far as the imposition of sales tax is concerned. This is an argument which, I must say, is very difficult for me to understand. I claim that newspapers do deserve a distinctive treatment. They are not an industry in the sense that other industries are. This has been recognised all over the world. They have a mission to perform. And I am glad to say that the newspapers in India have performed that mission of public service very creditably and we have reason to feel proud of it. I would therefore expect this House and my Friend Mr. Sidhva to bear it in mind at the time when God forbid any proposal, comes before the Parliament for taxation. That would be the time for them to oppose it.

Sir, after all, this is an enabling clause. It does not say that there shall be sales and advertisement tax imposed on newspapers. It does not commit the House today to the imposition of a tax on the sales of or a tax on advertisements published in newspapers. All that we have emphasised is that newspapers as such should be taken away from the purview of the provincial Governments and brought to the Central List so that, if at all at any time a tax is to be imposed on newspapers it should be done by the representatives of the whole country realising the full implications of their action. It should not be an isolated act on the part of some Ministry of some Province. That was the fundamental basis of our amendment. When we tried to convince the Drafting Committee and other Members and particularly our Friend Dr. Ambedkar, our main argument in favour of transferring the subject to the Central List was a political one. It should not be taken for granted that I or my friends of the Press of India are in any way committeed or agreeable to the imposition of such taxes. Not in the least. We have been all along opposed to it; we must recognise that barring the two provinces of Bombay and Madras all other Provinces have so far stood for the freedom of the Press. They has never exercised the right of taxing newspapers. But, ever since this question came up before the country the whole Press has opposed it vehemently on fundamental grounds, and demanded that if these taxes are to be levied they should be levied by the Centre. While making this demand, are we not aware that the newspapers published from the provinces that have not imposed any such taxes remain untouched today, particularly the newspapers of Delhi which are directly under the Centre and on which there can be no question of a sales tax being imposed unless the Parliament goes to the extent of imposing it? If today all newspapers including those published from Delhi, are opposing the imposition of these taxes with one voice and demanding their inclusion in the Centre List, they do so, not because it is a question of saying some money, but because the fundamental question of the liberty of the Press is involved. By advocating their transfer to the Central List we are prepared to run the risk of having these taxes imposed in Delhi, and in other provinces which have not sought to impose such taxes so far. But we do not want to leave it to the provinces so that the liberty of the Press remains unimpaired. We have faith in the Parliament; we have faith in the collective wisdom of the country and we have no doubt that when this matter is viewed in the correct perspective, there will be no such taxes imposed on the newspapers, but we have not got that much faith in the provincial Ministries. It is in that hope and having a full realisation of the situation that we have agreed, as a matter of compromise, or should I say as a lesser evil, to have these two taxes transferred from the Provincial to the Central List.

I am glad to know that my Friend Mr. Sidhva was also at one time connected with the Press like so many other political leaders who in their career had at one time or other been connected with the Press; and I am sure that if the question of imposing such taxes came up before Parliament, at any time, we will have his fullest support and his voice will be raised against any attempt on the part of parliament to impose taxes on either the sales of or on advertisements in newspapers.

To my mind it appears that in certain quarters there exists a general prejudice against newspapers. As my honourable Friend Mr. Sidhva believes, some newspapers may have given the impression that they are "rolling in wealth", but what is their number? Sir I do not want to take the time of the House in discussing the economy of the newspapers and painting the true picture of the newspapers as to where they stand today as compared with the taxes of other free countries of the world. But, I may point out to Mr. Sidhva and those who think alike, that there may be some big newspapers which can afford to pay taxes and that it may be that it was to hit such newspapers that these taxes were conceived but take it from me that the bulk of the newspapers will be simply crushed and if there is any hope of independent journalism in this country, that can be realised only if we leave the newspapers alone and not impose these distinctive taxes. Otherwise we will be paving the way for the transfer of smaller newspapers which have been struggling all along for existence to the capitalist.

I believe no one knows better than you, Sir, as to why the *Searchlight* of which you were the founder has joined a chain. There are other papers which have similarly joined one or the other chain. If you look into the past history of the newspapers you will find that there was not a single nationalist newspaper in India which was not started with the beggar's bowl in the hands of its founder. Sir, who does not know that the late Pandit Madan Mohan Malaviya had to go from house to house begging people to take the shares of one of the biggest papers which Delhi is proud to own today.

Mr. President : I did not want to interrupt the honourable Member. But then here we are concerned only with the entry in the Union List.

Shri Deshbandhu Gupta : Sir, as Mr. Sidhva has raised the question that the newspapers did not deserve a distinctive treatment, I am only trying to remove that prejudice. I am fully conscious of the fact that I must not take more time of the House. But then as this is an important matter I seek your permission to give me a little more time.

The history of many other newspapers will show that they too had a very precarious beginning and that those who started them did not do so with a commercial motive. It is true that during the last few years some newspapers have financially benefited by the last war. But their past history should not be forgotten and we should not ignore the fact that after all newspapers have a mission to perform and that they are essential for the very existence of a democratic form of Government. They are essential for educating the electorate and for running the democratic form of Government in the country on proper lines. In these circumstances any step taken to weaken the Press will be calculated to harm the democratic form of Government, nay, the freedom of the people will be jeopardised as has been rightly pointed out by the U.S. Supreme Court Judges to whose memorable judgment reference was made the other day. According to them "Fettering the press is fettering ourselves." So, in the name of the freedom of the Press and in the name of the future of Indian journalism, I appeal to this House always to bear in mind that newspapers as such to deserve a distinctive treatment. Newspapers are as essential for the Government as for the good of the country and we must always regard them as such.

Sir, I hope most of the Members of this House are well aware that in the freedom movement of 1942 out of the 145 papers, as many as 96 papers voluntarily closed their offices soon after the memorable Resolution of 9th August was adopted. Can you cite another example in the history of the whole world when such a large number of newspapers at a moment's notice closed their shops without caring as to what will happen to them in the future? Most of them were not content with merely closing their shops, their proprietors and editors took active part in the movement and went to jail. Sir, even today there are many nationalist papers which, although struggling for existence, have imposed a voluntary check on themselves and do not publish advertisements of liquor , and foreign cloth? Can one deny, Sir, that these papers have placed an ideal before them and that they have been trying to live up to those ideals? Do not they deserve exemption from such taxes? It may be that even a few rich newspapers will benefit if no such taxes are levied. But such newspapers have been benefiting from the very beginning. They have been enjoying Government patronage in the past in large measure, and perhaps the House will be surprised to learn that there are some papers in this country today which had closed in 1942 voluntarily, and had always been the vanguards of the freedom movement, but are being discriminated against in the matter of placing advertisements by some Governments. In some cases old circular still continue to be acted upon and these nationalist papers are being discriminated against in the matter of placing Government advertisements.

Mr. President : We are not concerned here with any circular, or any decision for levying a tax. It is only a provision in the Constitution that we are concerned with. When the question of levying a tax arises, all these arguments will arise.

Shri Deshbandhu Gupta : I only wish to say, Sir, that even our Government has recognised the distinctive nature of the press, in the matter of transport facilities, in the matter of concessions in postal rates, in the matter of so many other concessions. So it is already recognised that newspapers have to be treated distinctly.

I do not want to elaborate the argument further but I do wish to place before the House one other aspect of the question and the reason why we seek to transfer these subjects to the purview of the Centre. There is a Bill that is pending before the Select Committee in Madras. I wish to make a passing reference to some of the clauses of this Bill. Under the Madras Bill they seek to impose an advertisement tax of 10 per cent on the gross revenue from advertisements.

Prof. N. G. Ranga (Madras : General) : Only newspapers getting above a minimum revenue.

Shri Ramnath Goenka (Madras : General) : It is not so.

Shri Deshbandhu Gupta : If you refer to the Bill, you will find that it applies to all newspapers. The Madras Government has not only gone to the extent of proposing a tax of 10 per cent on press advertisement revenue of newspapers; their Bill further seeks to give to the Government the power to exempt certain papers from these taxes. It also seeks to provide the taking of a licence by newspapers before they can start functioning. So this is the respect they show to the newspapers and to the honourable profession of journalism. There is no realisation of the fact that newspapers are the real saviours of democracy, and the fighters of the rights of the common man. The Bombay Government too has imposed a tax of 6 1/4 per cent., that also on the gross revenue from advertisements. This was an eye-opener to us and a clear indication of the fact that if these taxes were allowed to remain within the purview of the provincial governments, there may come a day when most of the smaller newspapers will have to close down. It was in view of this realisation, by the Press that my Friend, Mr. Goenka and other, suggested as a lesser evil that these taxes should at least be transferred to the Central List so that the country may as a whole decide whether newspapers should be taxed at all and, if to be taxed, to what extent.

One word more and I have done. Sir, although I support the amendment proposed by my Friend, Dr. Ambedkar, I only wish to make it clear that this should not be taken to mean that we agree to the imposition of any such taxes on newspapers in the future. Perhaps the House is aware that the All-India Newspaper Editors' Conference, the Indian and Eastern Newspaper Society and the Indian Languages and Newspapers Association, all these three bodies representing the Press of India met in Delhi last month and passed a unanimous resolution against all such taxes on newspapers – of course I am not referring to income-tax or super-tax, to which no one objects. All these bodies take a very serious view of this question. I hope that in any decision which this House takes now or the Parliament may take in future, they will always bear in mind that the existence of a vigorous and independent press is very essential for the good of the country and that anything done to weaken the press will weaken democracy, weaken the Government and will weaken the strength of the people. With these words, Sir, I extend my support to the amendment moved by Dr. Ambedkar and I thank him once again for having appreciated the point of view of the newspapers.

Prof. N. G. Ranga : Mr. President, Sir, I am glad that this clause has come to be included in the Constitution. It is necessary that the newspapers should come within the purview of Central taxation. It also shows how strong has come to be this fourth estate today. If the newspapers of this country, especially the daily newspapers, had not come to be so powerful, it would not have been possible for these alterations to be made in the lists of taxation that are proposed to be included in this Constitution. This question would not have come up at all for such serious consideration if the Madras Government had not taken the initiative in proposing to tax all advertisement revenues of the daily press and the other presses also. Once the taxation move was made by the Madras Government, my friends of the newspapers opened their eyes and saw that any amount of mischief could be done against themselves and their revenue if ever the provincial governments were to be given this power to tax. Therefore, they have raised this matter in this forum and succeeded in including this in the Central List, as an item of Central taxation. Sir, I do not grudge this, but I do wish to maintain that the financial position of the newspapers has considerably altered ever since the last war. Whatever might have been the position of many of the daily papers in this country before the last war ever since this war most of them have come to make huge profits and many of them are not mere independent journals, mere independent newspapers, but many of them have come to be included in a series of chains of proprietors and proprietorships.

Shri Deshbandhu Gupta : May I ask honourable friend, who has been to the Western countries, as to how does the best of the Indian papers compare with those in the Western countries?

Prof. N. G. Ranga : I wish my honourable friend every success in his attempts to gain as much money as the Western proprietors are making. I would not grudge him indeed if his paper were to flower out one of these days like the *New York Times* and produce 60 or 64 pages on every Sunday and serve its readers; but I do grudge him when he has got all the revenue for himself and he is not prepared to part with a portion of it to the State. That is why I say Sir, that these daily newspapers which make these huge profits anyhow and these newspapers which are making profits over a particular prescribed minimum should not be given any special treatment but should on the other hand be made to pay as any other estate would have to pay upon the revenues that they would be deriving from advertisements.

Shri Ramnath Goenka : They pay income-tax and super-tax.

Prof. N. G. Ranga : In spite of that they make such huge profits. My honourable Friend Mr. Goenka himself must be knowing it, not to his cost, but to his benefit; and these newspapers have got to be made to pay and contribute as well as they could, and I do not see any reason why these concessions should continue to be given, and it is high time that our politicians and our legislators should be able to assert themselves in all their independence and see that these people, powerful as they are, more and more powerful as they threaten to grow in the near future, that they should be expected to make some sort of contribution correspondingly and indeed progressively as any other source of income that we find in our part of the world.

Sir, newspapers, it is true, serve a very useful national interest; otherwise, they would not be here at all. They would be prohibited just as arrack and spirits and all these things are prohibited; merely because they serve a useful purpose they are allowed to carry on their trade. As long as they are allowed to carry on their trade; let them be treated only in the same way as all other trades and let them not ask for any special privilege. My honourable Friend, Mr. Deshbandhu Gupta has grown eloquent about the contribution made by the newspapers during the national struggle. All glory to them and to such of them which had the courage to close down their offices. That is no reason why the profits they are making today, tomorrow and the day after tomorrow....

Mr. President : I wish to tell Mr. Ranga, that we are not discussing any proposal for taxation today but that we are only discussing an entry in the Constitution.

Prof. N. G. Ranga : I am very glad indeed that this entry is being made in the Constitution. But I would have been gladder if this item had been kept in the Concurrent List so that it would have been a boon to the Provincial Governments as well as the Central Government.

Shri Ramnath Goenka : Have you taxation in the Concurrent List? Have you ever heard of it in our Constitution?

Prof. N. G. Ranga : To the extent that it can possibly be kept there.

Mr. President : Mr. Goenka, I hope you would not go into the history of newspapers. All that we have already done.

Shri Ramnath Goenka : Mr. President, Sir, I did not want to intervene in this debate, but Messrs. Ranga and Sidhva have prompted me to say a few words. So far as I am concerned, I am not proud of the fact that this entry finds a place in the Central List. In fact this taxation had been condemned as far as 150 years back in the advanced democracies of the world. I am really ashamed that such an entry should be found in the Constitution of this country. There is no Constitution in the world where such an entry of taxation of newspapers exists. This is the only country where we have it, not because it is the right thing to do, but because we have Sidhvas and Rangas and therefore it is that we have this entry in this List. I am sure, Sir, when the time comes for the Central Parliament to decide the matter in regard to the taxation, they will go by – not the revenue which the newspapers make, by circulation, advertisements and such things – but on the basis of the net profits that they make. I am one of those who will say that newspapers are not money-making propositions. I will say that newspapers are there to serve the public and give them a free flow of information. I am one of those who will go the whole hog and say that newspapers should not be allowed to make an considerable sums of money; but you shall not take away the money before they are allowed to serve the public, by taxation on sales and advertisements, whatever their incidence may be.

An Honourable Member : You serve the public very rarely.

Shri Ramnath Goenka : What I would like to say is this that if any taxation is to be levied on newspapers, it should be levied on the basis of the net profits they make. I am one of those who would say that if any newspaper makes more than 3 per cent. of its capital, the rest of the money should be appropriated by the State but before you allow them to serve, you cannot take away the money from them. So far as the newspaper economy is concerned, you will be amazed to know that the cost of the newsprint used in production of a newspaper is only equal to the net proceeds of the sale of the newspaper. Therefore, the gross revenue is only the advertisement revenue and if you take away 10 per cent. 15 per cent. and 20 per cent. of the gross revenue, what will be its effect on newspaper economy? Do you want your newspapers to compare favourably with *the Manchester Guardian, the London Times* and *the New York Times* or would you like your newspapers to be some sort of a rag produced in this country?

Shri R. K. Sidhva : Produce the balance sheet.

Mr. Naziruddin Ahmad : On a point of order, are we considering the item as in the List or are we considering a proposal for taxation?

Mr. President : You are perfectly justified in raising the point of order. I have myself reminded the speaker several times that we are not considering any proposal of taxation but only an entry in the Constitution.

Shri Ramnath Goenka : I will bow to your ruling : but so far as the newspapers are concerned, they are not proud of seeing this entry either in List I or II, but as a matter of compromise we had to agree to it and I say that this taxation which has been condemned in all the advanced democracies of the world 150 years ago, should not have found a place in this Constitution and since we have certain difference of opinion in regard to this matter, we have agreed to this; and I hope, believe and trust that the Central Government will not resort to his taxation.

Mr. President : I do not think any further discussion is necessary.

Shri B. L. Sondhi (East Punjab : General) : Closure, Sir.

Shri Prabhu Dayal Himatsingka (West Bengal : General) : I should like to say just one or two words. I want the sales tax should be put in the Central List. In fact there was an amendment to that effect.

There is so much confusion in the different provinces on account of the sales tax that something must be done to regularize the thing and remove part of the difficulty that is being felt by all under it.

Mr. President : We are not discussing that now.

Dr. P. S. Deshmukh (C. P. & Berar : General) : Closure will save exposure.

The Honourable Dr. B. R. Ambedkar : Sir, in view of what my honourable Friend Mr. Sidhva said that I have been inconsistent in my attitude towards these entries, I should like to offer one or two observations by way of explanation. Sir, I said in the course of the debate that took place last time over this matter that the newspapers were very intimately connected with article 13 which deals with Fundamental rights. Therefore in making any provision with regard to newspapers that is a matter which has to be borne in mind.

The second thing is that so far as any regulation of fundamental rights is concerned, under article 27 of the Constitution which we have already passed we have left all matters of legislation regarding fundamental rights to Parliament and we have not left any power with the States. It therefore appeared to me and also to the Drafting Committee that in view of these consideration, namely, that newspapers were coming under fundamental rights, and all laws regarding fundamental rights were being left to Parliament, it was only a natural corollary that newspapers for purposes of taxation should also come under the authority of the Centre.

A third consideration which prevailed with the Drafting Committee as well as with myself was that in view of the fact that newspapers were connected with fundamental rights, namely the freedom of expression and thought, it was desirable that any imposition that was levied upon them should be uniform and not vary from province to province. Such uniformity can be obtained only if the matter was left to Parliament to make laws. These are the three considerations which prevailed with me and prevailed with the Drafting Committee in the view that they have taken.

The only other consideration of importance was that this item was not purely an item dealing with making laws. It also dealt with levying a tax in so far as newspapers were included in the term goods in entry 58 of List II. We therefore thought that in order not to deprive the provinces of such revenue as they might be able to make by imposing a levy upon newspapers under the Sales Tax Act, the proper thing to do was to include the sales tax on newspapers in article 250 which includes many other items and provides that if any taxation was levied upon them, the proceeds shall be distributed among the various provinces.

Therefore, the only question for consideration that arises is whether by making this transfer from List II to List I, we are injuring so to say the finances of the provinces. My answer is that we are not doing any injury to the provinces because if the House would agree to carry my amendment No. 374, the provinces will get such portion of any tax on the sale of newspapers as they may have raised and now receive, under the amendment No.374. In making these proposals, we have taken into consideration as I said the general proposition that newspapers having been connected with fundamental rights, ought to come under the jurisdiction of the Centre, and that any financial gain which the provinces would have got should not be lost sight of. Both these considerations have prevailed with the Drafting Committee in making these changes.

I submit, notwithstanding the declamations of my honourable Friend Mr. Sidhva which I can understand, because he is smarting under a great injury which he suffered in another place, I say that there can be no objection to the entries that we have proposed.

Shri R. K. Sidhva : Sir, I take exception to Dr. Ambedkar's remarks when he said that I am smarting under some injury. I shall pay him in his own coins unless you ask him to withdraw those remarks.

The Honourable Dr. B. R. Ambedkar : I am quite prepared to withdraw them, Sir. But, I know it very well.

Mr. President : That settles the matter. I shall now put the amendments to vote.

The question is :

"That in amendment No.378 of List VIII (Seventh Week), for the proposed new entry 88-A in List I, the following be substituted :-

'88-A. Taxes on advertisement published in newspapers.' "

I think the Noes have it.

Some Honourable Members : Ayes have it, Sir.

Mr. President : No.

The amendment was negatived.

Mr. President : Then I put the original proposition moved by Dr. Ambedkar :

The question is :

"That after entry 88 in List I of the Seventh Schedule, the following entry be inserted :-

'88-A. Taxes on the sale or purchase of newspapers and on advertisements published therein.' "

The motion was adopted.

Entry 88-A was added to the Union List of the Seventh Schedule.

Mr. President : The question is :

"That in amendment No.379 of List VIII (Seventh Week) in the proposed entry 58 of List II, the words 'other than newspapers' be deleted."

The amendment was negatived.

Mr. President : Then, I put the entry as moved by Dr. Ambedkar.

The question is :

"That for entry 58 of List II of the Seventh Schedule, the following entries be substituted:-

'58. Taxes on sale or purchase of goods other than newspapers.

58-A. Taxes on advertisements other than advertisements published in newspapers.' "

The motion was adopted.

Entries 58 and 58A, as amended, were added to the State List of the Seventh Schedule.

Article Re-opened

Mr. President : We have got several articles placed in the order paper today which require reconsideration of the articles that have been passed. The first is article 250 which is intimately connected with the amendments which we have just now passed. Under the rules, no question which has once been decided by the Assembly shall be re-opened except with the consent of at least one-fourth of the Members present and voting. I should like to know if the House gives its consent.

Honourable Members : Yes.

Shri R. K. Sidhva : In the second reading stage, Sir, when article by article is being passed, it is not permissible to reopen. If you allow this precedent, it will be very bad precedent for the future. You cannot shut out any other Member from moving for a reconsideration of any article. There will be no finality then.

Mr. President : I cannot shut out; it is for the House to shut out. If one-fourth of the members wish a question to be reopened, it can be reopened. I find more than one-fourth of the members are willing to reopen this article 250.

There are other articles also which will have to be reopened which are mentioned in today's Order Paper : articles 239-242, 248-A, 263, 202. May I take it that the House gives leave to reopen all these articles?

Shri R. K. Sidhva : Sir, Members may not have objection to some articles, while they may object to some. The articles may be put one by one.

Mr. President : I shall put them one by one. Articles 239-242. I take it that the House gives leave to reopen then.

Several Honourable Members : Yes.

Mr. President : Article 248-A. I take it that the Hose gives leave to reopen it.

Several Honourable Members : Yes.

Mr. President : Article 263. I take that the House gives leave to reopen it.

Several Honourable Members : Yes.

Mr. President : Article 202. I take it that the House gives leave to reopen it.

Several Honourable Members : Yes.

Mr. President : Leave is given to reopen all these articles. Article 250 : Dr. Ambedkar.

Article 250

Shri T. T. Krishnamachari : Dr. Ambedkar has already moved it. It is only a formal matter and it can be put to vote.

Mr. President : Does any one wish to say anything about amendment No. 374 moved by Dr. Ambedkar?

(No Member rose.)

Mr. Honourable Dr. B. R. Ambedkar : It is only a consequential thing, Sir.

Mr. President : There is no amendment to this. I shall put this to vote.

The question is :

"That in clause (1) of article 250, after sub--clause (d), the following sub-clauses added :-

(e) taxes other than stamp duties on transactions in stock exchanges and futures market;

(f) taxes on the sail or purchase of newspapers and on advertisements published therein.' "

The amendment was adopted.

Article 202

Mr. President : Article 202.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That in clause (1) of article 202, after the words 'to issue' the words 'to any person or authority including in appropriate cases any Government within those territories,' be inserted."

I said when moving an amendment to article 302 that a consequential amendment would be necessary in article 202. I am therefore moving this Article 202 as amended will now read as follows: -

"Notwithstanding anything contained in article 25 of this Constitution, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority including in appropriate cases any Government within those territories directions or orders in the nature of writs of *habeas corpus*, mandamus, prohibition, *quo* warranto and *certiorari,* for the enforcement of any of the rights conferred by Part III of this Constitution for any other purposes."

It is just consequential.

Pandit Thakur Das Bhargava (East Punjab : General) : Why do you say in appropriate cases'?

The Honourable Dr. B. R. Ambedkar : Because appropriate cases will be laid down by law of Parliament.

Mr. President :The question is :

"That in clause (1) of article 202 after the words 'to issue' the words 'to any person or authority including in appropriate cases any Government within those territories' be inserted."

The amendment was adopted.

Article 234-A

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That after article 234, the following new article be inserted :-

'234A. (1) The executive power of the Union shall also extend to the giving of direction Control of the Union over States to a State as to the measures to be taken for the protection as respects protection of railways, of the railways within the State.

(2) Where by virtue of any direction given to a State under clause (1) of this article costs have been incurred in excess of those which would have been incurred in the discharge of the normal duties of the State if such direction had not been given there shall be paid by the Government of India to the State such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India in respect of the extra costs so incurred by the State.' "

Sir, all police first of all are in the Provincial list. Consequential the protection of railway property also lies within the field of Provincial Government. It was felt that in particular cases the Centre might desire that the property of the railway should be protected by taking special measures by the province and for that purpose the Centre now seeks to be endowed with power to give directions in their behalf. It is possible, that by reason of the special directions given by the Centre some extra cost above the normal may be incurred by the provinces. In that event what that extra cost is, may either be determined by agreement or if there is no agreement, by an arbitrator chosen by the Chief Justice of India. The second clause is analogous to many of the clauses that we have passed in the Constitution for settling the disputes between the Centre and the Provinces so far as extra cost is concerned.

Dr. P. S. Deshmukh : Mr. President, I do not feel convinced about the necessity of this provision which refers only to railway property. I do not know what cause there is for special apprehension so far as the property belong to railway is concerned. There will be property belonging to the Centre spread over the length and breadth of India; and why should there be a special and specific provision for the protection and for issuing specific directions in this case only? The House is aware that the Centre has got authority for issuing directions in various spheres and giving certain directions which are necessary for the maintenance of law and order, and for protection of their property also the Centre has power of issuing those instructions generally. Therefore, I have not been able to follow why it was necessary to refer to it specifically and make special mention of the railway property and what causes there are which make us apprehensive of the possible damage to railway property only. I do not think it is proper that we should have such apprehensions apart from the general powers. We have already clothed the Centre with more than sufficient powers and this article should not be necessary. In any case the justification given has not convinced me of the necessity of having this article. There is nothing to fear that the States will not carry out directions without such an article being there and that any dispute will arise so far as the cost is concerned. These are matters which may arise in the normal administration and they can be normally settled and there is no necessity of abnormal provisions and abnormal means of settlement.

Shri Brajeshwar Prasad : Mr. President , Sir, I rise to extend my hearty support to clause (1) of this article, but I am thoroughly opposed to clause (2). There is no reason why an arbitrator should be appointed if there is a conflict between the Centre and the States regarding costs that have been incurred in excess of that that which would have been incurred in the ordinary performance of provincial duties. The master and the servant cannot be placed on the same platform. It is wrong to do anything which would bring about any deterioration of the power and position of the Majesty of the Government of India. Therefore, I want that if there is any conflict between the Centre and the provinces as far as the costs are concerned, the matter may be left entirely in the hands of the President.

The Honourable Dr. B. R. Ambedkar : Sir this clause is very necessary. Mr Friend Mr. Deshmukh when he said, that there were adequate provisions in the existing article we have passed - I am sorry to say - he is fundamentally mistaken. Railway Police is a subject within the authority of the State. Police as an entry does not find a place in List I. Consequently the Centre has no authority to make a law with regard to any police matter at all, nor, not having the legal authority, has it any executive authority. Therefore so far as protection of the railway property is concerned, the matter is entirely within the executive authority of the State. That being so, there are only two methods of doing it. Either the Centre should be endowed with police authority for the purpose of protecting their own property in which case an article such as the one which I have moved is unnecessary or we should have the provision which I have suggested *viz.* to give directions. Supposing the Centre has a police to protect railways, that police may come in conflict with the police authority of the State. Therefore the double jurisdiction has been avoided by the scheme which has been suggested *viz.*, that the Centre should have the authority to give directions that more police may be posted on the railways, better precautions may be taken, so that there will not be any conflict, and should more expenditure be incurred the Centre should be ready to bear it. I cannot see what difficulty there can be. Dr. Deshmukh's premise that this matter is already covered in hopelessly wrong.

Dr. P. S. Deshmukh : What is the reason, why we do not need any protection so far as the rest of the property of the Union is concerned? How do you distinguish between railway property and others?

The Honourable Dr. B. R. Ambedkar : Because we find the railway property needs more attention. The safety of passengers is there.

Mr. President : The question is :

"That after article 234, the following new article be inserted :-

Control of the Union over States as respects protection, of railways.

'234A. (1) The executive power of the Union shall also extend to the giving of direction to a State as to the measures to be taken for the protection of the railway within the State.

(2) Where by virtue of any direction given to a State under clause (1) of this article costs have been incurred in excess of those which would have been incurred in the

> discharge of the normal duties of the State if such direction had not been given, there shall be paid by the Government of India to the State such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India in respect of the extra costs so incurred by the State.' "

The motion was adopted.

New article 234A was added to the Constitution.

New Article 242-A

Mr. President : Dr. Ambedkar, you may move amendment No.372 A. regarding the heading.

Shri T. T. Krishnamachari : If No. 373 is passed, then the deletion of the heading is consequential.

The Honourable Dr. B. R. Ambedkar : Sir, I move amendment No. 373 :

"That after article 242, the following new article be inserted :-

Adjudication of disputes relating to waters of inter-State riers or river valleys.	'242A. (1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.

> (2) Notwithstanding anything contained in this Constitution, Parliament may, by law, provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1) of this article.' "

Sir, originally this article provided for Presidential action. It was thought that these disputes regarding water and so on may be very rare, and consequently they may be disposed of by some kind of special machinery that might be appointed. But in view of the fact that we are now creating various corporations and these corporations will be endowed with power of taking possession of property and other things, very many disputes may arise and consequently it would be necessary to appoint one permanent body to deal with these questions. Consequently it has been felt that the original draft or proposal was too hide-bound or too stereo-typed to allow any elastic action that may be necessary to be taken for meeting with these problems. Consequently I am now proposing this new article which leaves it to Parliament to make laws for the settlement of these disputes.

Shri R. K. Sidhva : Article 242 is proposed to be deleted, and so how does this new article 242A come up after article 242?

The Honourable Dr. B. R. Ambedkar : This one only indicates the position.

Mr. President : We have passed article 242. Now, does any one want to speak on this new article ? There is no amendment to it.

Shri Brajeshwar Prasad : Mr. President, Sir, I support clause (1) of this article, but I feel that there is no necessity for vesting power into the hands of Parliament to make laws for resolving disputes in connection with inter-State river and river valleys. That matter I feel, should have been left in the hands of the President alone.

Mr. President : Now, I put the new article 242-A to vote.

The question is :

"That article 242A stand part of the Constitution."

The motion was adopted.

New article 242A was added to the Constitution.

Mr. President : Amendment No.372 A.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That the heading above article 239, and articles 239, 240, 241 and 242 be deleted."

These are covered by article 242-A and therefore are unnecessary.

Mr. President : Does anyone wish to say anything about this amendment? There is no amendment. I then put it to the House.

The question is :

"That the heading above article 239, and articles 239, 240, 241 and 242 be deleted."

The motion was adopted.

The heading above article 239, and articles 239, 240, 241 and 242 were deleted.

Articles 248-A, 263 and 263-A

The Honourable Dr. B. R. Ambedkar : Sir, I should like to move the three amendments 380, 381 and 382 introducing three new articles, and I begin with amendment No. 382 because the rest are consequential.

Mr. President : All right.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That after article 263, the following new article be inserted :-

'263A. All moneys received by or deposited with --

Custody of suitors' deposits and other moneys received by public servants and courts.

(a) any officer employed in connection with the affairs of the Union or of a State in his capacity as such, other than revenues or public moneys raised or received by the Government of India or the Government of a State, as the case may be, or

(b) any court within the territory of India to the credit of any cause, matter, account or persons shall be paid into the public account of India or of the State, as the case may be.' "

Sir, if you permit me, I shall move the other amendments also and then offer some general observations to enable Members to understand the changes that we propose to make.

Mr. President : Yes.

The Honourable Dr. B. R. Ambedkar :I move amendment No.380 and amendment No.381. I move:

"That for article 248A, the following article be substituted :-

Consolidated Funds and Public Accounts of India and of the States.

'248A. (1) Subject to the provisions of article 248B of this Constitution and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India and all loans raised by them by the issue of treasury bills, loans or ways and means advances and all moneys received in repayment of loans shall form one consolidated fund to be entitled. "The Consolidated Fund of India" and all revenues received by the Government of a State, loans raised by the Government of a State by the issue or treasury bills, loans or ways and means advances and all moneys received by a State in repayment of loans shall form one consolidated fund to be entitled "The Consolidated Fund of the State. "

(2) All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India, or of the State, as the case may be.

(3) moneys out of the Consolidated Fund of India or of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.' "

Amendment No. 381.

"That for article 263, the following article be substituted : -

Custody of consolidated Funds, contingency Funds and moneys credited to the public accounts and the payment of moneys into and withdrawal of moneys from such Funds and public accounts.

'263, (1) The custody of the Consolidated Fund and theContingency Fund of India, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of India, their payment into the public account of India and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by Parliament, and, until provision in thet behalf is so made by Parliament, shall be regulated by rules made by the President.

(2) The custody of the consolidated Fund the Contingency Fund of a state the payment of moneys into such funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such funds received by or on behalf of the Government of a state, their payment into the public account of the state and the withdrawal of moneys form such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by the Legislature of the state and until provisions in that behalf is so made by the Legislature of the state shall be regulated by rules made by the Governor of the state.' "

Briefly, the changes are two-fold. In the original article No.248A as it stood, the scope of the Consolidated Fund was limited. The Consolidated Fund did not specifically refer to the proceeds of loans, treasury bills and ways and means advances. We now propose to make a specific mention of them so that they will form part of the Consolidated Fund.

The second thing is that in drawing the definition of the Consolidated Fund we lumped along with it certain other moneys which were received by the state, but which were not the proceeds of taxes or loans, etc., with the result that public moneys received by the State otherwise than as part of the revenues or loans also became subject to an Appropriation Act, namely the provision contained in sub-clause (3) of article 248A. Obviously the withdrawal of money which should strictly not form part of the Consolidated fund from other funds which go necessarily into the public account that these changes are made. There is no other purpose in these changes. The Finance Ministry drew attention to the fact that our provision in regard to the Appropriation Act was also made applicable to other moneys which generally went into the public account and that that was likely to create trouble. It is in order to remove these difficulties that these provisions are now introduced in the original article.

Mr. President : The question is :

"That after article 263, the following new article be inserted : -

'263A. All moneys received by or deposited with--

Custody of suitors' deposits and other moneys received by public servants and courts.

(a) any officer employed in connection with the affairs of the Union or of a State in his capacity as such, other than revenues or public moneys raised or received by the Government of India or the Government of a State, as the case may be, or

(b) any court within the territory of India to the credit of any cause, matter, account or persons, shall be paid into the public account of India or of the State, as the case may be' "

The motion was adopted

New article 263A was added to the Constitution.

Mr. Mr. President : The question is :

"That for article 248A. The following article be substituted:--

Consolidated Funds and public accounts of India and the of the States.

'248A. (1) Subject to the provisions of article 248B of this Constitution and to the provisions of thisChapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the government of India and all loans raised by them by the issue of treasury bills, loans or ways and means advances and all moneys received in repayment of loans shall form one consolidated fund to be entitled. 'The Consolidated Fund of India' and all revenues received by the Government of a State, loans raised by the Government of a State by the issue of treasury bills, loans or ways and means advances and all moneys received by a State in repayment of loans shall form one consolidated fund to be entitled "The Consolidated Fund of the State.

(2) All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the public account of India or of the state, as the case may be.

(3) No moneys out of the consolidated fund of India or of a state shall be appropriated except in accordance with law and for the purposes and in the manner provided in this constitution.' "

The motion was adopted.

Article 248-A Was added to the Constitution.

Mr. President : The question is :

381 "That for article 263, the following article be substituted :--

Custody of Consolidated Funds, Contingency Funds and moneys credited to the public accounts and the payment of moneys into and withdrawal of moneys from such Funds and public accounts.

'263. (1) The custody of the Consolidated Fund and the Contingency Fund of India, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of India, their payment into the public account of India and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by Parliament, and until provision in that behalf is so made by Parliament, shall be regulated by rules made by the President.

(2) The Custody of the Consolidated Fund and the Contingency Fund of a state the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of a state, their payment into the public account of the state and the withdrawal of moneys form such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by the Legislature of the state, and until provision in that behalf is so made by the Legislature of the state, shall be regulated by rules made by the Governor of the state.' "

The motion was adopted.

Article 263, as amended, was added to the Constitution.

The Assembly then adjourned till Nine of the Clock on Saturday, the 10th September 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME IX

Saturday, the 10th September 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi. at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION-*(Contd.)*

Article 24

Mr. President : We shall take up article 24 this morning and we shall begin with amendment No. 369. I desire to impress upon honourable Members that we must finish the discussion of this article today, as we have fixed the other question regarding language for Monday and Tuesday.

I have got some 97 amendments to this amendment : many of them overlap each other and others repeat similar amendments. I hope Members will bear this in mind when insisting upon moving their particular amendments, so that we may not have the same arguments repeated by different Members while moving their amendments. The first amendment we shall take up is No. 369.

Seth Govind Das (C.P. & Berar : General) : Sir, may I take it that if the discussion of this article is not over by one o'clock it will be continued in the afternoon also, so that we will have Monday and Tuesday free for the language question ?

Mr. President : That we shall see on Monday. Today we shall have an afternoon session if necessary.

The Honourable Shri Jawaharlal Nehru (United Provinces : General) : Mr. President, I move :

"That for article 24, the following article be substituted

'24. (1) No person shall be deprived of his property save by authority of law.

Compulsory acquisition of property.

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined.

(3) No such law as is referred to in clause (2), of this article made by the Legislature of a State shall have effect unless such law having been reserved for the consideration of the President has received his assent.

(4) If any Bill pending before the Legislature of a State at the commencement of this Constitution has, after it has been passed by such Legislature, received the assent of the President, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article.

(5) Save as provided in the next succeeding clause, nothing in clause (2) of this article than affect-

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or penalty or for the Promotion of Public health, or the prevention of danger to life or property.

(6) Any law of a State enacted, not more than one year before the commencement of this Constitution, may within three months from such commencement be submitted by the Governor of the State to the President for his certification; and thereupon, if the President by public notification so certifies, it shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article or sub-section (2) of section 299 of the Government of India Act, 1935."'

Sir, this House has discussed many articles of this Constitution at considerable length. I doubt if there are many other articles which have given rise to so such discussion and debate as this present article that I have moved. In this discussion many eminent lawyers have, taken part, in private discussions and discussion in another place, And naturally they have thrown a great deal of light so much light indeed that the conflicting beams of light have often produced a certain measure of darkness. But the questions before us really are fairly simple........

Shri H. V. Kamath (C.P. & Berar: General): Sir, the Honourable the Prime Minister is hardly audible on this side.

Shri Jaspat Roy Kapoor (United Provinces: General) : We want to hear every word of what he says.

The Honourable Shri Jawaharlal Nehru : Sir, I was saying that in spite of the great argument that has taken place, not in this House but outside among Members over this article, the questions involved are relatively simple. It is true that there are two approaches to those questions, the two approaches being the individual right to property and the community's interest in that property or the community's right. There is no conflict necessarily between those two : sometimes the two may overlap and sometimes there might be, if you like, some patty conflict. This amendment that I have moved tries to remove or to avoid that conflict and also tries to take into consideration fully both these rights the right of the individual and the right of the community.

First of all let us be quite clear that there is no question of any expropriation without compensation so far as this Constitution is concerned. If property is required for public use it is a well established law that it should be acquired by the State, by compulsion if necessary and compensation is paid and the law has laid down methods of judging that compensation. Now, normally speaking in regard to such acquisition-what might be called petty acquisition or acquisition of small bits of property or even relatively large bits, if you like, for the improvement of a town, etc.-the law has been clearly laid down. But more and more today the community has to deal with large schemes of social reform, social engineering etc., which can hardly be considered from the point of view of that individual acquisition of a small bit of land or structure. Difficulties arise-apart from every other difficulty, the question of time. Here is a piece of legislation that the community, as presented in its chosen representatives, considers quite essential for the progress and the safety of the State and it is a piece of legislation which affects millions of people. Obviously you cannot leave that piece of legislation too long, widespread and continuous litigation in the courts of law. Otherwise the future of millions of people may be affected; otherwise the whole structure of the State may be shaken to its foundations : so that we have to keep these things in view. If we have to take the property, if the State so wills, we have to see that fair and equitable compensation is given, because we proceed on the basis of fair and equitable compensation. But when we consider the equity of it we have always to remember that the equity does not apply only to the individual but to the community. No individual can override ultimately the rights of the community at large. No community should injure and invade the rights of the individual unless it be, for the most urgent and important reasons.

How is it going to balance all this ? You may balance it to some extent by legal means, but ultimately the balancing authority can only be the sovereign legislature of the country which can keep before it all the various factors-all the public, political and other factors-that come into the picture. This article, if you will be good enough to read it, leads you by a chain of thought and refers to these various factors and I think refers to them in an equitable manner. It is true that some honourable Members may criticise this article because of a certain perhaps overlapping, because of a certain perhaps-what they might consider-lack of clarity in a word here or there or a phrase. That to some extent is inevitable when you try to bring together a large number of ideas and approaches and factors and put them' in one or a number of phrases.

This draft article which I have the honour to propose is the result of a great deal of consultation, is the result in fact of the attempt to bring together and compromise various approaches to this question. I feel that that attempt has in a very large measure succeeded. It may not meet the wishes of every individual who may like to emphasize one part of it more than the other. But I think it is a just compromise and it does justice and equity not only to the individual but to the community.

The first clause in this article lays down the basic principle that no Person shall be deprived of his property save by authority of law. The next clause says that the law should provide for the compensation for the property and should either fix the amount of compensation or specify the principles under which or the manner in which the compensation is to be determined. The law should do it. Parliament should do it. There is no reference in this to any judiciary coming into the picture. Much thought has been given to it and there has been much debate as to where the judiciary comes in. Eminent lawyers have told us that on a proper construction of this clause, normally speaking, the judiciary should not and does not come in. Parliament fixes either the compensation itself or the principles governing that compensation and they should not be challenged except for one reason, where it is thought that there has been a gross abuse of the law, where in fact there has been a fraud on the Constitution. Naturally the judiciary comes in to see if there has been a fraud on the Constitution or not. But normally speaking one presumes that any Parliament representing the entire community of the nation will certainly not commit a fraud on its own Constitution and will be very much concerned with doing justice to the individual as well as the community.

In regard to the other clauses I need say very little except that clause (4) relates to Bills now pending before the Legislature of a State. The House will know that there are such Bills pending. In order to avoid any doubt with regard to those measures, it says that as soon as the President has assented to that law No question should be raised in a court of law in regard to the provisions of that enactment. Previous to this it has already been said that the matter has to go to the President. That is, if you like, a kind of a check to see that in a hurry the Legislature has not done something which it should not have done. if so, the President no doubt will draw their attention to it and suggest such changes as he may consider fit and proper for Parliament's consideration.

Finally, there are certain other saving clauses about which I need not say much. Clause (6) again refers to any law which has been passed within the last year or the year before the commencement of the Constitution. It says that, if the President certifies that no other obstruction should be raised. Reading this article, it seems to me surprising that we have had this tremendous debate on it-not here but elsewhere. That debate was due perhaps not to this article but to rather other conflicts of opinion which are in the minds of Members and, I believe, many outside.

We are passing through a tremendous age of transition. That of course is a platitude. Nevertheless platitudes have to be repeated and to be remembered lest in forgetting them we land ourselves in great difficulties and in crisis. When we pass through great ages of transition, the various systems-even systems of law-have to undergo changes. Conceptions which had appeared to us basic undergo changes. And I draw the attention of the House to the very conception of property which may seem to us an unchanging conception but which has changed throughout the times, and changed very greatly, and which is today undergoing a very rapid change. There was a period when there was property in human beings. The king owned everything-the land, the cattle, the human beings. Property used to be measured in terms of the cows and bullocks you possessed in old days. Property in land then became more important. Gradually the property in human beings ceased to exist. If you go back to the period when there were debates on slavery you will see how very much the same arguments were advanced in regard to the property in human beings as are sometimes advanced now with regard to the other property. Well, slavery ceased to exist.

Gradually the idea of property underwent changes not so much by law, but by the development of human society. Land today, as it has been yesterday, is likely to be a very important kind of property. One cannot overlook it. Nevertheless, other kinds of property today are very important in industrially-developed countries. Ultimately you arrive at an idea of property which consists chiefly in a millionaire having a bundle of paper in his hands which represents millions, securities, promissory notes, etc. That is the conception of property today; that is the real conception of the millionaire. It is rather an odd conception to have to protect carefully that property which, in the larger concept of vastly greater properties, is paper. In other words, property becomes today more and more a question of credit. It becomes more and more immaterial and more and more a shadow. A man with credit has more property and can raise property and can do wonders with that credit. But a man with no credit can do nothing at all. I am merely mentioning this to the House to show how this idea of property has been a changing one where society has been changing rapidly owing to the various revolutions, industrial and other.

Again, another change takes place. Property remains of course property, but the ownership of property begins to spread out. The individual, instead of owning a very small share, more or less begins to own a very large share partly and thereafter becomes the co-sharer of a very large property and gets the benefit of that, although be is not complete master of it. So co-operative undertakings, so in a sense the joint-stock system, etc., began. So in a sense also spread the idea of an individual becoming a part owner as a member of a group of properties on a big scale which no single individual can ever hold except very rarely. In recent years the tendency has been for monopoly of wealth and property in a limited number of hands. This does not apply to India so much, because we have not grown so much in that direction. But where industrially countries have grown fast there has been monopoly of capital with the result that even the old idea of property and free enterprise is not easily applicable, because in the ultimate analysis the few persons who possess a large monopoly of capital really dominate the scene. They can crush out the little shop-keeper by their methods of business and by the fact that they have large sums of money at their command. Without giving the slightest compensation, they can crush him out of existence. The small man is crushed out of existence by the modern tendency to have money power concentrated in some hands. Thus the old conception of the individual owner of property suffers not only from social developments, as we see them taking place and from new conceptions of co-operative ownership of property, but from the development on the old lines when a rich man with capital can buy out the small one for a song.

How are you going to protect the individual? I began by saying that there are two approaches-the approach of the individual and the approach of the community. But how are we to protect the individual today except the few who are strong enough to protect themselves ? They have become fewer and fewer. In such a state of affairs, the State has to protect the individual right to property. He may possess property, but it may mean nothing to him, because some. monopoly comes in the way and prevents him from the enjoyment of his property. The subject therefore is not a simple one when you say you are protecting the individual's rights, because the individual may lose that right completely by the functioning of various forces today both in the capitalist direction and in the socialist direction.

Well, this is a large question and one can consider the various aspects of it at length. I wish to place before the House just a hint of these broader issues, because I am a little afraid that this House may be moved by legal arguments of extreme subtedly and extreme cleverness, ignoring the human aspect of the problem and the other aspects which are really changing the world today.

The House has to keep in mind the transitional and the revolutionary aspects of the problem, because, when you think of the land question in India today, you are thinking of something which is dynamic, moving, changing and revolutionary. These may well change the face of India either way; whether you deal with it or do not deal with it, it is not a static thing. It is something which is not entirely, absolutely within the control of law and Parliaments. That is to say, if law and Parliaments do not fit themselves into the changing picture, they cannot control the situation completely. This is a big fact. Therefore it is in this context of the fast-changing situation in India that we have to view this question and it is with this context in the wide world and in

Asia we are concerned.

It must be said that we have to consider these problems not in the narrow, legalistic and juristic sense. There are some honourable Members here who, at the very outset, were owners of land, owners of zamindaries. Naturally they feel that their interests might be affected by this land legislation. But I think that the way this land legislation is being dealt with today-and I am acquainted a little more intimately with the land legislation in the United Provinces than elsewhere-the way this question is being dealt with may appear to them not completely right so far as they are concerned; but it is a better way and a juster way, from their point of view, than any other way that is going to come later. That way may not be by any process of legislation. The land question may be settled differently. If you look at the situation all the world over and all over Asia, nothing is more important and vital than a gradual reform of the big estates.

It has been not today's policy, but the old policy of the National Congress laid down years ago that the zamindari institution in India, that is the big estate system must be abolished. So far as we are concerned, we, who are connected with the Congress, shall give effect to that pledge naturally completely, one hundred per cent. and no legal subtedly and no change is going to come in our way. That is quite clear. We will honour our pledges. Within limits no judge and no Supreme Court can make itself a third chamber. No Supreme Court and no judiciary can stand in Judgment over the sovereign will of Parliament representing the will of the entire community. If we go wrong here and there it can point it out, but in the ultimate analysis, where the future of the community is concerned, no judiciary can come in the way. And if it comes in the way, Ultimately the whole Constitution is a creature of Parliament. But we must respect the judiciary, the Supreme Court and the other High Courts in the land. As wise people, their duty it is to see that in a moment of passion, in a moment of excitement, even the representatives of the people do not go wrong; they might. In the detached atmosphere of the courts, they should see to it that nothing is done that may be against the Constitution, that may be against the good of the country, that may be against the community in the larger sense of the term. Therefore, if such a thing occurs, they should draw attention to that fact, but it is obvious that no court, no system of judiciary can function in the nature of a third House, as a kind of Third House of correction. So, it is important that with this limitation the judiciary should function.

You have decided, the House has decided, rather most of the Provincial Governments have decided to have a Second Chamber. Why has it been so decided ? The Second Chamber also is an elected Chamber mostly. Presumably, they have so decided because we want some check somewhere to any rapid decision of the First Chamber, which that Chamber itself may later regret and may wish to go back on. So, from that point of view, it is desirable to have people whose duty is, not in any small matters but with regard to the basic principles that you lay down, to see that you do not go wrong, as sometimes even the Legislature may go wrong, but ultimately the fact remains that the legislature must be supreme and must not be interfered with by the courts of law in such measures of social reform. Otherwise, you will have strange procedures adopted. Of course, one is the method of changing the Constitution. The other is that which we have seen in great countries across the seas that the executive, which is the appointing authority of the judiciary, begins to appoint judges of its own liking for getting decisions in its own favour, but that is not a very good method.

I submit, therefore, that in this Resolution the approach made protects both individual and the community. It gives the final authority to Parliament, subject only to the scrutiny of the superior courts in case of some grave error, in case of contravention of the Constitution or the like, not otherwise. And finally in regard to certain pending measures or measures that have been passed, it makes it clear beyond any doubt that there should be no interference. I beg to place this amendment before the House.

Shri Syamanandan Sahaya (Bihar: General) : Mr. President, Sir, before we proceed with the discussion of this amendment which is really the draft of article 24 now, I would like to raise a preliminary objection on a point of order. Before I make my submission, I would like to point out that I am doing so, not for obstructing this article, but in my own humble way to draw attention to a defect which exists in this. Sir, I wish to draw your attention and the attention of the honourable the Mover to clause (4) of this article which reads thus:-

> "If any Bill pending before the Legislature of a State at the commencement of this Constitution has, after it has been passed by such Legislature, received the assent of the President, the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article."

If you will kindly refer, Sir, to the discussion in this House on the recommendations of the Fundamental Rights Committee, you will find that they accepted the principle that no property shall be taken possession of or acquired without the payment of compensation. This view, Sir, has also just now been expressed by the Honourable the Prime Minister when he said in his opening speech that there is no question of expropriation without compensation. I take my stand on that principle which we accepted in this House and on the statement just now made by the Honourable the Prime Minister in moving his amendment. Now, if we carefully read the wording of clause (4)........

Shri B. Das (Orissa: General) : May I enquire what fundamental right my friend is referring to ?

Shri Syamanandan Sahaya : Clause 19 of the Fundamental Rights Committee's report. If you want the page, I will give you.

Some Honourable Member: But what is the article that we have passed ?

Mr. President : I would ask honourable Members to allow the Member to make his point. He has not yet come to his point of order. He is making his preliminary observations. Let him make his point of order.

Shri Syamanandan Sahaya : If you read clause (4) of this article, it will appear that a Bill which is pending before a Legislature, shall not be called in question in a court of law if it contravenes the provisions of clause (2) of this article. It is only in clause (2) that we have provided that any law that is passed for taking possession of or acquiring private property shall provide for compensation and either fixes the amount of the compensation or lays down the principles and the manner in which the compensation is to be determined. Now, clause (4) lays down that if a Bill contravenes the provisions of clause (2), even then no question can be raised in any court, which means that it is empowering the legislature to pass if necessary, a law taking possession of or acquiring private property without paying any compensation. The compensation provision is in clause (2) only and nowhere else.

Pandit Balkrishna Sharma (United Provinces: General) : May I point out, Sir, that the arguments that are being advanced by the honourable Member are in no way related to any point of order ? He is only discussing the proposition before the House, and therefore........

Mr. President : So far as I have followed him, he is raising his point of order with regard to clause (4). I do not know whether he is right or wrong. I am just explaining what he is driving at, as I have understood him. Under clause (4) in the form in which it is at present presented, if a Bill which is now pending or which will be pending at the time of the commencement of this Constitution does not contain any provision for payment of compensation or for laying down the principles and the manner in which the compensation is to be determined, if that Bill is passed and if it receives the assent of the President, that cannot be questioned in any court of law. His point of order is that you are thereby nullifying clause (2) in the case of pending Bills. That is his point of order.

Shri Syamanandan Sahaya : That is precisely my point.

Pandit Balkrishna Sharma : Is there any point of order involved in it if we are modifying the previous clause ? We are a supreme body.

Shri Syamanandan Sahaya : Quite right. Let us understand it. Let the House be sure of what it is passing. If the House is prepared to pass a legislation which empowers the legislature to pass even a legislation of expropriation without compensation, and if that is precisely what is also the idea of the Honourable Premier, who is the mover of the, amendment, then I have nothing to say. I take my stand, as I have stated, on what we have already passed in this House before in clause 19 of the Fundamental Committee Report and articles 13 and 15 of this Constitution and what is already incorporated in clause (2) of this very article; and when I find that clause (4) contravenes those provisions, and infringes upon them, then, Sir, I naturally feel that such a provision ought not to find a place in the Constitution, unless it is suitably amended. That is my whole point. Of course, these arguments relate to clause (6) also, but the point being similar, I do not want to take your further time.

What I desire to say before I sit down is that this is a point which is very vital. The House must know where we stand. We want to pass a law whereby we could expropriate without compensation. If that is not the view of the House and if that is not the underlying idea of this amendment, then this should be suitably amended. If, Sir, it is contended that it is not possible, that a legislation without compensation will be passed by the legislatures which have men of the highest ability and also in the various Governments and that we should not feel in any way apprehensive about such a legislation going through, I will only say that a democratic leader of the stature of the Honourable the Prime Minister would not advise us to depend upon the goodwill of individuals and not on the provision for the safety of our rights in the Constitution itself.

The Honourable Shri Ghanshyam Singh Gupta (C.P. & Berar: General): Mr. President, there is no doubt that clause (4) is an exception to clause (2), In all articles there are exceptions to previous articles. We always say "notwithstanding this", "Provided that", etc., and I do not see that any point of order arises because clause

(4) is simply an exception to clause (2). Whether we should have such an exception is a different matter and whether there can be an exception to a substantive clause is quite different matter. We authorize such exception in every proviso. Therefore, all that I wanted to submit is no point of order has been raised by the honourable Member. Of course, if we remove the exception and give powers to the Prime Minister that such exceptions would not be made to clause (2) that is a different matter.

Shri Biswanath Das (Orissa : General): I wish to speak.

Mr. President : Do you want to support the point of order ?

Shri Biswanath Das : I want to oppose the point of order raised.

Mr. President : Then you need not.

Mr. Naziruddin Ahmad (West Bengal: Muslim) : Mr. President, I wish to partly support and partly oppose.

Mr. President : You have made out a case for speaking certainly

Mr. Naziruddin Ahmad : Sir, the point of order raises two questions. The first is that we are going against our own decisions on the Fundamental Rights. So far as that part of the argument is concerned, I am here to support it. The decision which was taken in lie House can be changed only in the regular way and if we are to accept clause (4), we must change our decision in the regular way, namely, in the manner laid down in the rules. So this part of the point of order is conditionally right, subject to our decision being changed in the regular way.

With regard to the other part of the point of order, namely, that it contravenes clause (2), that is not really a point of order. It is rather an argument an the merits. I do not wish to go into the merits, but I think it is not a point of order. Legally this House has the power to make a law and provide exceptions.

Mr. President : I do not think that the honourable Member has raised a point of order. There are several clauses in this article, some of them qualify what is stated in the previous clause. That very often happens in all legislations and it does not raise really a point of order. It is a question whether this clause should remain as it is on its merits and that is for the House to decide, and therefore no point of order arises.

Then I will ask the Members to take up the amendments.

Shri B. Das: On a point of information, Sir, will each Member move his amendment and make the speech or will speeches be allowed after all the amendments, have been moved ?

Mr. President : I will expect every Member who moves the amendment to make his speech, so that he may not have to speak again.

Shri H. V. Kamath : Sir, there is another difficulty. I want to know whether the amendments will be taken up clause by clause, because I find from the lists that they are grouped together that way.

Mr. President : I will take the amendments and the discussion and then at the time of voting, I shall decide whether to take the whole, article or take the clauses separately.

Shri Damodar Swarup Seth (United Provinces: General): Mr. President Sir, with your permission, I move :

"That in amendment No. 369 of List VII (Seventh Week), for the proposed article 24, the following be substituted :-

"24 (a) The property of the entire people is the mainstay of the State in the development of the national economy.

(b) The administration and disposal of the property of the entire people are determined by law.

(c) Private property and private enterprises are guaranteed to the extent they are consistent with the general interests of the Republic and its toiling masses.

(d) Private property and economic enterprises as well as their inheritance may be taxed, regulated, limited, acquired and requisitioned, expropriated and socialised but only in accordance with the law. It will be determined by law in which cases and to what extent the owner shall be compensated.

(e) Expropriation over against the States, local self-governing institutions, serving the public welfare, may take place only upon the payment of compensation."'

Now, Sir, before actually speaking in support of my amendment, I hope I will be excused to say something by way of introduction to the proposed amendment. The Draft Constitution has, in my humble opinion, failed, and failed rather miserably to deal properly with the question of the economic rights of the people. This article 24, which is now under discussion, I am sure, is soon going to be a *Magna Charta* in the hands of the capitalists of India. While we were under foreign rule, a few years back, we had been hoping fondly, not against hope, that in a free India the people of this country will be able to frame a really peoples' constitution which will as a whole be the *Magna Charta* of the toiling masses. But, alas, Sir, two years of Swadeshi rule have not only sadly disillusioned us, but all our hopes of better living and a prosperous India have been dashed to the ground. The standard of living of the masses is slowly going down and the index of prices of necessaries of life is daily rising. It is not possible for one to say as to where and when this rise in prices and the worsening of the economic condition of the masses will end. The plight of the middle class-people, Sir, is indescribably piteous. All this is happening in the face of the famous and historical Quit India Resolution in which the toiling masses of this country were solemnly promised Ram Rajya, *i.e.,* that the power, political and economic, snatched from the foreigners will be vested in their hands. It is true that the toiling masses are even now attempted to be lulled into sleep by some tempting promises and sweet words. Even now if I correctly remember, Sir, the Honourable Prime Minister of India who has just moved this article 24, while speaking on the Objectives Resolution had declared in the most clear and emphatic terms 'that he stood for socialism and that India would go to the making of a Socialist Republic. If a Socialist Republic has actually to be established in this country, or as the President of the India National Congress promises every now and then, that there will be a classless society in this country during the next five years, then a Socialist Republic or a classless society are not to be dropped on this land of ours from Heaven like Manna. If they do mean anything, it requires some spade-work and clearing of way by dealing properly with the question of the economic rights of the people.

Now, Sir, this article 24 as a whole and clause (2) in particular, is worded not only vaguely, but unhappily. It is not clear whether the words "acquisition of property for public purposes" include socialisation of land and Industries or compulsory transfer of property from one set of persons to the other. It may well be argued that these words mean acquisition of property only for the general use of the Government, local self-governing bodies and other charitable and public institutions and cannot be allowed to be stretched to nationalisation or socialisation. The subject therefore needs clarification, and that clarification, in my humble opinion, is not possible unless we discard the idea or I should say the theory, that man has natural right in property and also the idea that property is a projection of personality and any invasion on property is an interference with the personality itself. We. cannot confuse personality with property; nor can we forget the social and functional character of property. Man has no natural right in property. Claim to property is acquired by law recognised by community. The community, Sir, has always reserved to itself the right to modify laws with respect to property and acquire it from its owners in the common, social and economic interests of the people. Property is a social institution and like all other social institutions, it is subject to regulations and claim of common interests.

Laws of property have been changed from time to time. Many proprietary laws of the middle ages have been abolished without compensation. For example, when the law of slavery was abolished in America, no compensation whatsoever was paid to the slave-owners although many of them had to pay hard cash while acquiring that claim. The property of the entire people, it must be understood, is the main-stay of the State in the development of national economy and the right to private property cannot be allowed to stand in the way or used to the detriment of the community. The State must have the full right to regulate, limit and expropriate property by means of law in the common interests of the people. The doctrine of compensation as a condition for expropriation cannot be accepted as a Gospel truth. Death duty is a form of partial expropriation without compensation and it forms an essential feature of the financial systems of many a progressive country in the world.

It is almost universally recognised that full compensation to the owners of properties will make impossible any large project of social and economic amelioration to be materialised. It is impossible for the State to pay owners of property in all cases and at market value for the property requisitioned or acquired in times of emergency or for the purpose of socialization of big industries with a view to eliminating exploitation and promoting general economic welfare. Partial compensation is therefore suggested by many thinkers in the world as a *via media* and they maintain that partial compensation will neither hinder socialisation nor at the same time will it deprive a large number of persons of the means of their livelihood. Much can be said in favour of partial compensation, if socialisation is to be carried on gradually and individual economy is retained over a wide field. Even partial compensation will have no justification when general transformation of economic structure on socialist lines takes place. In such a case all that the persons of vested interests can claim in a socialist economy is an opportunity and a share on par with all other citizens of the State. Thus it is not possible, Sir, to be dogmatic on the question of compensation and the State should he left free to determine compensation according to social will and prevailing social conditions.

Now, public needs often require, Sir, transference of property from one authority to another. For instance public utility undertakings, owned and managed by various Municipalities, may after some time be required to be pooled together on a provincial basis. Public good, may thus need their transference from one authority to another, *i.e.,* to the provincial authority. But this transference must be accompanied with compensation, especially when different public authorities are allowed, by law, to keep separate accounts, finances, assets and liabilities. Transference of public property from one authority to another therefore without compensation may undermine the financial stability of the institutions or bodies, of lower grade and may also undermine the mutual harmony so essential amongst various constituents of a Federated State. It is therefore necessary to provide for compensation in cases of expropriation over against the provinces, the States, Local Self-Governing bodies and the associations serving public interests.

I, therefore, hope, 'Sir, that this amendment of mine will be given serious consideration by the Honourable Members of the House and if they think it desirable in the interest of the toiling masses of India that their economic rights should be dealt with properly and in the spirit in which they ought to be dealt, then I feel, Sir, that there will be no difficulty for the honourable Members of this House in accepting my amendment.

Prof. Shibban Lal Saksena (United Provinces: General) : Mr. President, Sir, I beg to move :

"That with reference to amendments Nos. 720 to 769 of the List of Amendments; for article 24, the following be substituted :-

'24. (1) No person shall be deprived of his property save by authority of law.

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition except on payment in cash or bonds or both of the amount determined as compensation in accordance with principles laid down by such law.

(3) Nothing in clause (2) of this article shall affect-

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing' or levying any tax or for the promotion of public health or the prevention of danger to life or property.' "

Sir, may I also move amendment No. 516 which really forms part of this?

Mr. President : That is separate. We will take it up later.

Prof. Shibban Lal Saksena : Sir, before making any comments upon this I wish the House to understand the difference between my amendment and the amendment of the Honourable the Prime Minister. The Prime Minister's Resolution in clause (1) says the same thing that none should, be deprived of his property without authority of law but it is in clause (2) that the chief difference lies. This clause (2) in his amendment is a pure reproduction of section 299 of the Government of India Act, 1935. Only three words have been taken away and these am 'the payment of. I may read out clause (2):

> "Neither the Dominion Legislature nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking, or any interest in, or in any company owning any commercial or industrial undertaking, unless the law provides for *the payment* of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined.' "

So then by this new article proposed by the Honourable Pt. Jawaharlal Nehru, we are really perpetuating the provisions of section 299 in our new Constitution. Only two exceptions have been made and these are in clauses (4) and (6).

These amendments have been specially devised to protect the Zamindari legislation of the U.P. and Bihar and Madras, clause (4) to protect the Zamindari abolition Bill in the U.P. and clause (6) to protect the Zamindari abolition Acts passed by the Bihar and Madras Legislatures. Even there I am afraid the new amendment of which notice has been given by Shri Alladi and Shri Munshi Nos. 504 to 506-if they are accepted-then I think the Madras and Bihar Bills will also become somewhat *ultra vires* of this Constitution in their present form. So in fact the only Act protected will be the U.P. Zamindari legislation.

Now, Sir, I want to ask this question of the House, is the House prepared to protect the position that, excepting the Zamindari property of the U.P., no other property in the country shall be acquired for public purposes, or in the interests of the State ? The words used in the article moved by the Honourable Prime Minister are-

> "No property .... etc........ shall be taken possession of .... etc. unless the law provides for *compensation* for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined."

In law, the word 'Compensation' means 'fair and equitable compensation'. What is to be fair and equitable compensation ? Parliament, under the amendment of Pt. Jawaharlal Nehru, is not the final authority to decide that. The Parliament or the State legislatures may fix any amount or specify any principles to determine compensation, yet the Supreme Court will finally decide whether the amount fixed or the principles specified to determine compensation ensure fair and equitable compensation. So the final decision lies with the Supreme Court in the amendment moved by Pt. Nehru, and it can well declare that the principles specified by the Parliament for determining compensation are 'fraudulent'. The Supreme Court and not the Sovereign Parliament is thus the ultimate authority to decide what is 'fair and equitable compensation'. So you cannot acquire the key industries of the country and nationalise them, because, you cannot pay fair and equitable compensation. You cannot acquire even the zamindari property in any other province, *e.g.*, in Rajasthan, for the same reason.. If the article is passed in the form proposed by the Honourable the Prime Minister. It will mean permitting the capitalistic system in the country to remain intact. We cannot nationalise the key industries, nor even take over the zamindaries, except in the province of the U.P.

This being the position, I wonder if the House will accept this article as it has been proposed by Jawaharlalji. In my amendment, I say-

> "No property movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition *except on payment in cash or bond or both of the amount determined as compensation in accordance with principles laid down by such law."*

So under my amendment Parliament can lay down the rules for fixing the compensation to be paid for taking over properties, and whatever Parliament thinks is the proper compensation for any particular property shall be the fair and equitable compensation, and the law made by out Sovereign Parliament shall be final. No Supreme Court or any other body will sit in judgment over the principles laid down by our Sovereign Parliament.

I want this House to consider this fundamental question, whether it is prepared to put some other authority over the sovereignty of the Parliament which will be elected on the basis of adult franchise. Is it prepared to bind the hands of the future Parliament in this manner ? Our present Constituent Assembly has been criticised on the ground that it has been elected on the basis of indirect votes of persons who themselves have been elected on a narrow and not adult franchise. The new Parliament is to be elected by adult franchise and by this article, we bind the sovereign Parliament of the future, which win be elected by adult suffrage and say that it shall not be the final authority to determine the principles on which properties should be acquired for national purposes.

Sir, I feel that we should not bind the future sovereign Parliament in this manner in such a vital matter over which this House is itself so keenly divided. My amendment in fact, leaves the Parliament sovereign and it can determine the principles on which compensation shall be paid and nobody, not even the Supreme Court, can question its decisions regarding those principles. In some cases in the interests of the nation, property may have to be taken even with, out paying any compensation, and it is quite possible that Parliament may decide to give full compensation in some other cases, but it will be entirely according to the judgment of the Parliament, and we trust the judgment of Parliament will be quite fair. According to the article, 24 of the Prime Minister, the law made by Parliament can be questioned by the Supreme Court and the judgment of the Court will, be final, as to whether the compensation and the principles according to which this compensation is determined, are fair or not. The question to be decided is whether we should have article 24 in that form or in some other form as the one proposed by me according to which the decision of Parliament shall be final.

Sir, I have taken keen interest throughout in the making of this Constitution avid I have vehemently opposed some of the articles. I have called these articles such as articles 15 and 280 which we have passed as wholly undemocratic and have said that they are a blot on the Constitution which we have framed. But I think that this article, if it is passed in the form in which the Prime Minister has proposed it, will be the darkest blot on our Constitution. I say this, firstly because as I have said, this amendment takes away the sovereignty of the Parliament and secondly because it will be a negation of all that the Congress has stood for all these so many years.

There is one interesting thing about this article which I must point out. Clauses (4) and (6) of this article are a sort of confession that the principles laid down in clause (2) of the article would lead to chaos and revolution if applied to acquisition of huge zamindari properties in the U.P., Bihar and Madras. Clauses (4) and (6) say that whatever Acts or Bills which are passed or are pending before legislatures on the commencement of this Constitution shall not be questioned before the Supreme Court, but all other Acts or Bills shall be liable to be questioned. Therefore there is discrimination here, even so far as zamindari properties are concerned, discrimination between zamindari property already acquired or to be acquired under a pending Bill and zamindari property to be acquired hereafter. There is thus also discrimination between industrial property and zamindari property. And let me tell the House that the Congress has always stood against discrimination.

I was surprised to hear the Honourable Prime Minister making a reference several times in his speech to the ultimate sovereignty of Parliament, and yet he has proposed an article in a form which will take away that sovereignty and this sovereignty has been put in the hands of the few judges of the Supreme Court who, however able they may be, will be empowered to set at naught the considered will of the Parliament. Now let us see who will really gain ultimately by this article ? I say only the lawyers will gain, lawyers who will fight out the cases in the Supreme Court, and the major portion of the property will find its way into the pockets of these lawyers. It will be a lawyer's paradise if this article is passed in this form.

As I said, this article is a negation of all that the Congress has stood for during all these years and it goes against the various resolutions of the Congress. Here I will quote certain paragraphs from the speech delivered by the revered Father of the Nation, Mahatma Gandhi, at the Round Table Conference, so that we may know what he said. He said:

> "India free, I would love to think, would give a different kind of lesson and set a different kind of example to the whole world. I would not wish India to, live a life of complete isolation whereby, it would live in water-tight compartments and allow nobody to enter her borders or to trade within her borders. But, having said that, I have in mind many things that I would have to do in order to equalize conditions. I am afraid that for years to come India would be engaged in passing legislation in order to raise the down-trodden, the fallen from the mire into which they have been sunk by the capitalists, by the landlords, by the so- called higher classes, and then, subsequently and scientifically, by the British rulers. If we are to lift these people from the mire, then it would be the bounden duty of the National Government of India, in order to set its house in order, continually to give preference to these people and even free them from the burdens under which they are being crushed. And, if the landlords, zamindars, monied men and those who are today enjoying privileges- I do not care whether they are Europeans or Indians-if they find that they are discriminated against, I shall sympathize with them, but I will not be able to help them, even if I could possibly do so, because I would seek their assistance in that process and without their assistance it would not be possible to raise these people out of the mire.
>
> Look at the condition, if you will of the untouchables if the law comes to their assistance and sets apart miles of territory. At the present moment they hold no land; they are absolutely living at the mercy of the so-called higher castes, and also, let me say, at the mercy of the State. They can be removed from one quarter to another without complaint and without being able to seek the assistance of law. Well, the first act of the Legislature will then be to see that in order somewhat to equalise conditions, these people are given grants freely.
>
> From whose pockets are these grants to come? Not from the pockets of Heaven. Heaven is not going to drop money for the sake of the State. They will naturally come from the monied classes, including the Europeans. Will they say that this is discrimination ? They will be able to see that this is no discrimination against them because they are Europeans; it will be discrimination against them because they have got money and the others have got no money. It will be therefore, a battle between the haves and the

> have nots.

Mr. President : I do not want to interfere with the Honourable speaker. But I do not see the force of this long quotation that he is reading out. What relevance has it got to the article we are considering now?

Prof. Shibban Lal Saksena : I will just finish the sentence. Then show its relevance.

Mr. President : You need not have read the whole of the speech, but only that particular sentence.

Prof. Shibban Lal Saksena : No, Sir. It was also necessary.

> "It will be therefore, a battle between the haves and the have nots; and if that is what is feared, I am afraid the National Government will not be able to come into being if all the classes hold the pistol at the heads of these dump millions and say : 'You shall not have a Government of your own unless you guarantee our possessions and our rights'."

The relevancy of this quotation is this, that the Father of the Nation has said that in order to lift these untouchables and the downtrodden, and the fallen, from the mire, India would be engaged in passing legislation to equalise conditions. He said that the first burden of the National Government should be to equalise conditions. But this amendment of Pandit Jawaharlal Nehru makes all this impossible. There is no possibility of equalising conditions, because we cannot take away any property for public purposes without full compensation. The Father of the Nation provided one formula for it. He said:

> "I have got another formula also, hurriedly drafted because, I drafted it here as I was listening to Lord Reading and to Sir Tej Bahadur Sapru. It is in connection with existing rights :
>
> 'No existing interest legitimately acquired, and not being in conflict with the best interests of the nation in general, shall be interfered with except in accordance with the law applicable to such interests'."

He was fighting on our behalf in the Round Table Conference that every title to property should be examined, whether it is legitimate or not. He was fighting to see that whatever property has been acquired was acquired legitimately and that it was not in conflict with the interests of the nation. That was the view of the Father of the Nation. In fact, he said :

> "If they have obtained concessions which have been obtained because they did some service to the officials of the day and got some miles of land, well, if I had the possession of the Government I would quickly dispossess them. I would not consider them because they are Indians and I would as readily dispossess Sir Hubert Carr or Mr. Benthall, however admirable they are and however friendly they are to me. The law will be no respector of persons whatsoever."

He was for dispossessing them if he found that they had acquired property without legitimate right. In fact, my amendment, which I shall move later on, suggests that all properties confiscated from patriots, because they took part in the war of independence, shall be restored to them and those, who had got property merely because they did service to officials shall be deprived of them. With your permission, I would like to quote what Mahatma Gandhi said further. He said :

> "Then you have 'not being in conflict with the best interests of the nation'. I have in mind certain monopolies legitimately acquired undoubtedly, but which have been brought into being in conflict with the best interests of the nation. Let me give you an illustration which will amuse you somewhat, but which is on natural ground. Take this white elephant which is called New Delhi. Crores have been spent on it. Suppose that the future Government comes to the conclusion that seeing that we have got this white elephant it ought to be turned to some use. Imagine that in Old Delhi there is a plague or cholera going on........

Mr. President : Mr. Saksena, I do not think you are justified in quoting all that. I have not followed what you are saying. Are you speaking about your own amendment or are you opposing the amendment which has been moved or are you supporting something else ?

Prof. Shibban Lal Saksena : I am quoting this to show that Mahatma Gandhi had said that he would be willing to expropriate property if it had not been acquired in a legitimate manner.

Mr. President : Your amendment does not say anything of that sort.

Prof. Shibban Lal Saksena : I have said in my amendment that the Parliament is the ultimate authority to determine whether compensation should be paid or not instead of the Supreme Court. That is the only difference between my amendment and that of the Prime Minister. The law is final. Parliament shall be the final arbiter according to my amendment. If you will permit me, I should like to quote a few lines more.

Mr. President : I think you should think of the time, also. At this rate we cannot go on. I have given you more time than I would have allowed to anybody else. You had better leave out the quotations. You may make out your point.

Prof. Shibban Lal Saksena : If you will permit me, I shall just read a couple of lines. Mahatma Gandhi had said:

> "If the National Government comes to the conclusion that that place is necessary, no matter what interests are concerned they will be dispossessed and they will be dispossessed. I may tell you, without any compensation, because, if you want this Government to pay compensation it will have to rob Peter to pay Paul, and that would be impossible."

This is what the Father of the Nation said about compensation being paid.

I stand for these Congress principles. Socialists have come and attacked this article that it is not democratic. I oppose this amendment because this is a negation of all I have stood for in my life and of all that the Father of the Nation and the Congress stood for throughout all these years. I missed in the speech of the Prime Minister the fervour which usually is present in his speeches. It is clear that he is torn within himself and he has moved an amendment which he does not believe in and I wish to say that his amendment should not be accepted. I commend my amendment for the acceptance of the House.

Mr. President : Mr. Brajeshwar Prasad-385.

(Mr. Brajeshwar Prasad was cheered as he walked up to the rostrum.)

An Honourable Member : The cheers are an invitation to the Honourable Member to make his speech short!

Mr. President : The cheers are to cheer you out.

Shri Brajeshwar Prasad (Bihar : General) : Mr. President, Sir, I move:

'That for amendment No. 720 of the List of Amendments, the following be substituted :-

That for article 24, the following be substituted :-

24. (1) All private property in the means of production may be acquired by the Government of India.

(2) The President shall determine in each case, to what extent, if any, the owner whether a private individual, a State, a local self-governing institution or a company, shall be compensated.

(3) That within four years from the date of the commencement of this Constitution, the Union Government shall become the owner of all private property in land which is being used or capable of being used for agricultural purposes.........

With your permission, I want to delete.

(4).........

". .. .(4) The provisions of this article may be amended if ratified by the people signified by 51 per cent. of the total number of voters on the electoral list framed on the basis of adult franchise."

May I move the other amendments also-387, 390, 391.

Mr. President : I do not think you can move 391 because that is not consistent with 385. I think you had better content yourself with one amendment and be consistent.

Shri B. Das : Mr. President, I submit the amendment is out of order because it negatives all existing laws and negatives the resolution moved by the Prime Minister.

Mr. President : These are all amendments for substituting an article as it was originally moved just as the Prime Minister's is for substituting the article as originally framed.

Shri Brajeshwar Prasad : Moreover, Sir, I, would like to place before you that the procedure we have adopted today is not in conformity with the procedure that we have followed up till now, because it was Dr. Ambedkar who ought to have moved article 24 or some other article in an amended form. No Member of the House has got a right to move an amendment before an article has been moved on behalf of the Drafting, Committee.

Sir, I am thankful to the honourable Members of the House for their cheers. It is in no spirit of out-Heroding Herod that I have moved this amendment or this substitute article. I am a man of simple ideas and I know one thing, that this question of how property should be regulated has been determined by members of the Congress High Command and it shall always be determined by them and them alone and Parliament will have no power to come to any decision on this question. As long as there is poverty and illiteracy in this country no Parliament will be able to play any vital part in Indian politics. It is in that light, that I have deleted the word 'Parliament' and substituted the word 'President'. When I say 'President' I do not mean one man the President. I mean the President in consultation with the Cabinet, the members of the Congress High Command which consists of men like Pandit Jawaharlal Nehru and Sardar Vallabhbhai Patel and others.

My whole intention in moving this article is to by-pass the controversy that has arisen on the question of compensation and justiciability. I am quite clear in my own mind that if we incorporate these principles in our constitution the result will be social injustice. The result will be that the whole country will hasten towards chaos, anarchy and civil war. With a view to avert that calamity I have moved this article. I am quite clear that no government in India as long as this Constitution is in operation, no democratic government-much less the Congress Government-will embark upon a course of expropriation of property without payment of compensation. But I feel that in the event of a crisis, when the country is confronted with dangers of insurrection and bloodshed, power must vest in the hands of the Government of India to change the very basis of society, so that the foundations of the state may be strengthened. At this moment the question of compensation and justiciability should not be allowed to thwart the greatest good of the greatest number. It is therefore with that view that I have moved this substituted article.

I hold the view that at the present moment there is a group of persons at the helm of affairs in Delhi who are in a position, by virtue of their high intellectual ability and attainments, by virtue of their nobility and character to take a long-range and disinterested view on the question of the regulation of the institution of private property. The argument may be urged that if we do not give compensation and concede justiciability there will be no industrial development in the country. Industrial development is very dear to my heart, but the sufferings of the millions, he starving, masses in India, cannot ignored Therefore I give preference to the masses. I do not cam whether those investors, foreign or Indian, lose their profits or opportunities because in no case, under no circumstances, the interests of the millions can be sacrificed at the altar of a handful of persons.

Sir, I will enter into two or three arguments before I conclude. I am opposed to vesting power into the hands of Parliament, because I feel that a parliament elected on the basis of adult franchise in a country where millions of people are illiterate and poor will not be able to discharge its functions as far as the question of the regulation of private property is concerned.

There is also the apprehension in our minds that most of the members of the future Parliament of India will come from the ranks of peasant proprietors who will each have their own property and therefore it would be very difficult for those who have got their own private property to rise to the height of the occasion and take a detached view of things. I hold the view that the system of peasant proprietorship is the greatest hindrance in the way of socialism and progress. There is much truth in the Marxist theory that the state is an instrument of exploitation in the hands of the dominant group in society.

Therefore I say that this power should he taken away from the hands of Parliament and vested in the hands of our philosopher-kings.

I know that this Constitution is not going to be a permanent constitution of this country. The question may therefore be asked, why are you laying down such provisions in this Constitution which ought to incorporate only general principles of internal value? I think that this Constitution will not last more than ten years. With this feeling in view I want that all the powers should be vested in the hands of our leaders.

I have placed this question outside the purview of the provincial legislatures because I feel that it is very necessary for the sake of uniformity that no power should vest in the hands of the provincial governments. It is too vital a power to be placed in the hands of the provincial legislatures. I am not speaking against the intellectual merits of provincial-ministers but the provincial Ministers are accustomed to deal only with provincial problems and they cannot therefore take an all-India view of things. Hence I am in favour that this power should not be vested in the hands of any provincial government.

Lastly, I am of opinion that people expect more justice from the hands of the Central Government than from the hands of the provincial governments. So it will allay the apprehension of the minorities and the apprehension of all those people who have got some private property if exclusive power is vested into the hands of the Central Government. Hence I want that this power should be vested in the hands of the Central Government. A Kher here and a Pant there cannot basically alter the fact that provincial governments do not enjoy the confidence of the people.

One word more and I have done. I do not say that what I have said should be achieved within the twinkling of an eye. I do not want that private property should be liquidated on the 26th January 1950. I say that the power must be vested in the hands of the in this direction must be left Government of India. I strongly consideration of the House. this amendment. I sincerely people are quite free to agree Government of India and the measure of advance to be determined by the President and the commend this amendment of mine to the earnest It is in no spirit of bravado that I have moved hold the view expressed in the amendment and or disagree with it.

Mr. President : There are two other amendments which seek to replace the whole amended article. I would like them to be moved first.

Shri Kishorimohan Tripathi (C.P. & Berar States) : Sir, I beg to move:

"That in, amendment No. 369 of List VII (Seventh Week), for the proposed article 24, the following be substituted:-

Private property. 24. (1) No person shall be deprived of his property save by authority of law.

(2) No property, movable, or immovable including any interest in, or in any

company owning any commercial or industrial undertaking, shall be taken possession of or acquired under any law unless the law provides for compensation for the property taken possession of or acquired.

Provided that where an entire category of property, movable or immovable, is taken possession of or acquired under any law passed by Parliament or the legislature of a State for the distinct purpose and object of gradually and peacefully establishing a classless society in India the principles of law authorising the taking possession of or acquisition shall in no case be called in question in any court:

Provided further that it shall be the natural right of every citizen whose property is taken possession of or acquired to get rectified in a proper court of law any wrong done to in the process of execution of the law providing for compensation."

Sir, with all due deference to the observations and views expressed by the honourable Pandit Jawaharlal Nehru, I do not agree with the draft article which he has moved. My reasons are these : firstly, that the title of the article is not proper. We are discussing Fundamental Rights, and in this particular article we are going to describe the extent of private property which a citizen shall have. It is not a subject of compulsory acquisition of property and therefore the title should be changed into "Right of Private Property" or "Private Property'.

Then, although apparently the article as moved by the honourable Pandit Jawaharlal Nehru does not discriminate between property and property, as facts stand I feel that it discriminates between industrial property and landed estates. Such a discrimination between property and property as contained in this article is, I strongly feel very dangerous and may create a very unhealthy atmosphere in the country which is already full of discontent. I seek in my amendment to place the whole article in such a way that while in the very serious circumstances of the country we are not in a position to socialise property, industries and other things at present, we make the article sufficiently elastic so that in future whenever occasion arises it shall be possible for Parliament to take steps to socialise any property, whether industrial or landed. In the article as presented to us by Panditji there is provision for socialisation of landed property in such provinces as have either passed necessary Acts or as would pass Act & or introduce Bills by the 26th January, 1950, when we hope to enforce this Constitution.

But in the case of other provinces which may not be in a position to move a Bill or pass an Act for the abolition of zamindari to which we are pledged within the said time limit, the article as proposed makes no provision. This is a very vital part of the Constitution and it has been rightly observed that this article represents the soul of the Constitution, and therefore we must have a proper background to appreciate the importance of the article.

The Congress today as the largest single Organisation representing the aspirations of our people has accepted as its objective the establishment of cooperative commonwealth in this land, and this co-operative commonwealth is nothing but another name for the establishment of a class-less society in India. This article therefore must give us a proper lead towards that direction. But I feel, as it is proposed, it does not give that lead. We must also remember that the future pattern of our national economy in India will revolve round article 24, and therefore if we make any mistake in defining private property, I feel that we shall be doing something which will be very strongly hindering our progress on the path of establishing a class-less society in India. I have, therefore, amended the article in such a way as would enable the future Parliament of India, representing the wisdom of the people, to be in a position to give proper lead for the establishment of a class-less society.

At the same time I have made provision in my amendment that where in the process of execution of the principles as laid down by Parliament, or by a State Legislature, there is any mistake committed and any wrong is done to any individual, then it shall be open to the individual to seek redress in a court of law. Let us remember that that great man, the Father of the Nation, of whom, it has rightly been said that he moulded us into men out of dust, held before our people the view and the picture of Ram Rajya which to the common man never meant merely political emancipation but freedom from economic want. We must, therefore, in all earnestness see that in our Constitution this freedom from economic want is guaranteed to the common man.

If you look to the various other provisions of the different articles under the Chapter relating to "Fundamental Rights" you will notice that each fundamental right is conditioned by certain terms. And each of the conditions, as laid down for example in the matter of Freedom of Speech, Freedom of Association, Personal Liberty, indicates a duty on the part of the citizen. So also there should be some condition in the matter of private property. And that condition should be that private property is merely a public trust and at the instance of the community or at the instance of the government it should come to the use of the community.

Some people have argued that this right should be made justiciable. While being a layman, I do not fully appreciate the implications of justiciability, I do not know how a section of our people fears that a Parliament elected under adult franchise, representing the solid will of the people and the wisdom of our leaders shall do anything but justice in paying compensation for any property that is taken possession of or that is acquired for the common good of the people. I will draw your attention to article 26 in the Yugoslavian Constitution relating to property which says :

> "It shall be the right and duty of the State acting in the interests of the community and upon the basis of the law to intervene in economic, relations between citizens in a spirit of justice and with a view to averting social conflict."

In the same Constitution article 37 lays down:

> "Private property shall be guaranteed. The obligation imposed by the private ownership of property shall be recognised. The use of property must not be injurious to the interests of the community. The scope, extent and limits of private ownership shall be regulated by law."

So also in the Irish Constitution there are limitations which have been placed upon the right to private property. In all these cases whenever necessary, at the instance of the community and at the instance of the Government representing the community, property is made available for the social good.

It is argued by a section that in drafting this article the members of the at Congress Organisation have departed from the pledges given to the people. The pledges were that whenever private property is taken possession of or acquired, we shall equitably and fairly compensate the owner. We do not deny them compensation. But it must be remembered that we have also held out promises to another greater section of the people, the common men, to the effect that we will strive hard to give them higher and higher standards of living. We have to achieve that objective also. Therefore the criticism levelled against us that we are denying something to a certain section of the people is utterly wrong. We have to adjust the promises given to the different sections and in this connection it has to be remembered that a dynamic nation has to shape and reshape its means for the achievement of objective according to the need and demand of time.

I have another point to make. During the last two years, since 15th August 1947. It has been our sad experience that the hand of co-operation that we extended to the vested interests in this country has not been greeted by them. Capital has been shy and industries and manufacturers have not played their part, their proper part in the matter of nation building. It is high time therefore that we now divert our attention and seek strength from the common man. We should change our policy suitably.

With these few words I commend my motion to the House for its acceptance.

Shri H. V. Kamath : Mr. President, it is with considerable trepidation that I rise to move the various amendments that stand in my name, amendments to article 24 which has a vital bearing on the socio-economic structure of our State.

Sir, the Prime Minister has told the House that the draft before the House, represents the fruit of the ceaseless cerebral activity of many eminent lawyers. Therefore I asked myself whether, in the face of this draft produced by so many experts, I should say anything at all. But it struck me that lawyers, however eminent they may be, are likely to have their vision clouded by legalistic formulae and are sometimes apt to miss the wood for the trees. I move therefore amendments Nos. 386, 395, 403, 410, 418 and 431 :-

"That in amendment No. 369 of List VII, (Seventh Week), in clause (1) of the proposed article 24, after the word 'property' the words 'except in the national interest and' be inserted."

"That in amendment No. 369 of List VII (Seventh Week), in clause (1) of the proposed article 24, for the words, 'taken possession of or acquired,' where they occur for the second time the words 'to be taken possession of or acquired' be substituted."

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, after the words 'to be determined' a comma and the words 'provided that such principles or such manner of determination of compensation shall not be called in question in any Court' be added."

"That in amendment No. 369 of List VII (Seventh Week), clause (3) of the proposed article 24 be deleted."

"That in amendment No. 369 of List VII (Seventh Week), for clause (4) of the proposed article 24, the following be substituted :-

'(4) Any Bill pending before the, Legislature of a State at the commencement of this Constitution shall not after its subsequent enactment, be called into question in any Court on the ground that it contravenes the provisions of clause (2) of this article.' "

"That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the proposed article 24, the words 'may' within three months from such commencement be submitted by the Governor of the State to the President for his certification; and thereupon, if the President by public notification so certifies, it' be deleted."

While commending these various amendments for the consideration of the House, may 1, Sir, make a few observations ? The Prime Minister has told the House, firstly, that the policy of the State is that there should be no expropriation without compensation, and secondly, that the right of he individual can in no case over-ride the right or interests of the general community. He went on to say that notwithstanding these fundamental policies, the individual has got to be protected. He remarked that of course there are a few who can protect themselves. I was wondering whether this doctrine of protection of the few, should be the foundation of our State. To me, it seems that the few are entitled to justice, but that those who are to be protected and cherished by the State are vast many. The few can in no case, in Po event, under no circumstances, be pampered or be treated in a manner which is detrimental to the interests of the larger whole. If this is not accepted, that the few can get only justice but it is the many who are to be protected, if this is not accepted, then, Sir, I feel that in this country of ours weighed down by centuries of poverty and misery, poets, prophets and leaders will arise who will tell the people, as did the poet of revolution in England in the last century. That poet exhorted the British people, saying :

Men of England, wherefore plough for the lords who lay you low ?

Wherefore weave with toil and care the rich robes your tyrants wear ?

Rise like lions after slumber in unconquerable number,

Shake your chains to earth like dew, ye are many, they are few

Therefore. Sir, I would suggest in all humility that the foundation of our State should be that the many should be Protected and the few should be justly dealt with. Of course, nobody should be denied justice.

The Prime Minister went on to trace the evolution of the institution of property. I think that ideas about property have ranged from the divine right to property, in other words, the sanctity of private property, to the almost whilst dictum of M. Proudhon that "Property is theft." The movements for and against property have been based on this whole gamut of conceptions relating to property. On the one, hand, on the one extreme we have the divine right of property, the sanctity of private property; but that to my mind is now exploded. It is dead as the dodo, it has gone the way of the Divine Right of Kings. If at all there is right to property, I can only slay that it is not the divine right of the individual to property, but it is the right of God himself to all property, and so for all His children on earth. All this trouble about property could have been obviated, could have been got over if only men had clearly understood what the divine right meant, that it meant that the property should be utilised justly and wisely in the interests of the whole of mankind.

It was on this basis that Mahatma Gandhi preached and lived his doctrine of "Aparigraha" that property holders should be mere trustees of that property for the good of the community. If this had been accepted in letter and spirit by the property holders in our country and in the world at large, then so much of misery could have been prevented; but man, in his foolishness has not heeded the advice of the Mahatma and other prophets that have preceded him in the history of mankind. If the great ideal of the Ishopanished-

"Renounce that you may enjoy

Enjoy by renouncing."

had been followed by property holders, then all these conflicts, all these disputes about property would not have arisen. But, Sir, that unfortunately has not been the lot of humanity. The history of humanity, as had been stated by a great historian, is strewn with the crimes, follies and stupidities of mankind.

Mr. President : Let us not talk of the follies and stupidities of mankind, Lot us confine ourselves to the article under consideration.

Shri H. V. Kamath : I was developing, my argument about the evolution of the idea of property, as Prime Minister has in his speech referred to the matter.

Now, Sir, about my amendments. No. 386 is a very obvious amendment wherein I have sought to provide that no property shall be acquired save in the national interests. The Prime Minister has stated that the few must be protected. I agree that the few must get justice; and so if we specifically provide that property shall be acquired only in the national interest, we guarantee that the few who own property will be justly dealt with, because according to the Prime Minister, on his own showing, the few cannot override the interests of the people, of the nation as a whole. In the national interest any property can be and must be acquired. That is with regard to my first amendment.

My second amendment No. 395 is merely a verbal amendment and I leave it to the wisdom of the Drafting Committee to be dealt with at the appropriate stage.

Amendment No. 403 is a vital amendment and I therefore crave your indulgence to offer a few remarks thereon. In this amendment, I seek to provide that the principles of giving compensation, offering compensation or fixing compensation and the, manner of determination shall not be called in, question in any court. The clause, as it stands, is somewhat ambiguous though the Prime Minister did remark that Parliament and legislatures will be ultimately sovereign. But I feel that no loop-hole should be left for any of those few who might take. It into their heads to fight against the interests of the community. It is with this purpose in view that I want this clause to be made clear on this point that neither the principles nor the manner or compensation Shall be called in question in any court. What is justiciable, what can be called into question is merely the application of these principles. If an aggrieved party feels that the principles have been wrongly applied, have been unjustly applied, then it is open to him to go to a Court and question the application of the principles in that court of law, but if the Parliament or the legislature lays down the principles or the basis of the calculation of compensation and also prescribes the manner, for instance, spread over how many years in cash, bonds and all that, all these things shall not be called in question in any court. The amount of compensation fixed on this basis, that is to say the application of these principles may be made justiciable. The latest constitution to be framed in Europe, that is, the Bonn Constitution of Western Germany has a clause similar to this. The justiciable part of that clause with regard to property is only this, that "with regard to the extent of compensation an appeal may be made to the ordinary courts in case of dispute". I seek through my amendment No. 403 that the principles and the manner of compensation shall not be justiciable, but only the amount of compensation or the application of those principles can be called in question in a Court.

Amendment No. 410 relates to clause (3) of the article which vests power in the President to assent to or withhold his assent from any Bill passed by a State Legislature. I feel that so far as that property is concerned which is within the purview of the State Legislature, so far as property listed in list II of Schedule Seven is concerned, if the State intends to acquire that property under this article, there should be no hurdles or obstruction placed in final acquisition of that property by the State. If clause (3) is adopted as it is, I am afraid it might result in unpleasant consequences for the State and the Union as a whole. Supposing for instance, one of the constituent units of the Union has passed a law acquiring property under this article, but some interests which are involved try to pull the strings at the Centre and the President, if unfortunately he, too, is not favourably inclined towards this measure, for various reasons into which we need not go, if the President withholds his assent from this Bill passed by the Legislature, then there is bound to arise a serious conflict between the State and the Union Government and once the seeds of discord have been sown between the State and the Union, Government, I cannot say how far this discord will go, this conflict will be waged between the State and the Union. To obviate this contingency I want to make the State Legislature sovereign in respect of such property as is within the purview of the State and want to provide that the President's assent to the legislation is not necessary before it becomes, operative. Then I come to amendment No. 418.

Mr. President : It is more or less a verbal amendment, I think.

Shri H. V. Kamath : My amendment No. 418 follows as a consequential amendment to the previous amendment to clause (3), wherein I have Sought to delete the necessity for the President's assent to a Bill of the State legislature before it becomes operative; and so here also in amendment No. 418 I want to recast clause (4) on the same lines, to the effect that the President's assent is not necessary for it to become operative; when it is enacted in the usual course, it should take effect, and the rest of the clause, is all right.

Then I come to amendment No. 431. Clauses (4) and (6) are similar except that clause (4) refers to pending Bills and clause (6) refers to Bills already enacted by the State and therefore the amendment which I have moved to clause (3) seeking to delete the provision with regard to the assent of the President to State legislation applies both to clauses (4) and (6) and wherever the President has stepped in into these clauses, I have moved amendments to delete the provision for the assent of the President before the law of the State becomes operative. That is with regard to my amendment No. 431.

Before I close, I would like to urge only one consideration and that is this. We have provided in our fundamental rights, article 9, that there shall be no discrimination as between man and man. As regards women and children only there is a proviso to that article on non-discrimination. I feel that it would have been in the fitness of things if we had provided for no discrimination of whatever kind between landed property and industrial property *(hear, hear),* that if we wanted to lay down that the acquisition of landed property should be non-justiciable, I would have welcomed that the, acquisition of industrial property and commercial capital, ought also to be non-justiciable.

Another consideration in that regard is article 13, sub-clause (f) of clause (1) which confers the right to acquire, hold and dispose of property. There is, of course, a proviso to that, proviso No. (5); "Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public, etc., etc.". Bearing these two articles in mind, I have suggested this amendment to clause (2) of the proposed draft article 24. That is to say, I want to provide specifically that even in the case of industrial property including any interest in or in any company owning any commercial or industrial undertaking, the principles and the manner of payment of compensation shall not be justiciable. That would approximate to the principle of non-discrimination as between industrial property, and landed property with regard to which certain provinces have already taken action. I have provided for only the amount of compensation being made justiciable, because the Prime Minister stated in his speech today that the few have also to be protected, and therefore I feet that the only safeguard that they can, have is as regards the amount of compensation. On no other ground can they go to the court and question the principles or the manner of payment of compensation.

Lastly, I would refer to the Government of India Act mentioned in clause (6) of the proposed draft article 24. Section 299 of the Government of India Act lays down in sub-section. (3) that Bills passed by the legislature of a State need not be submitted to the Governor-General for his assent. I fear that the power conferred on the President to give or withhold his assent might lead to serious complications in future and the only way to obviate any conflict between the States and the Union is to confer sovereign powers upon the legislature to acquire any property which is within the purview of the State.

Sir, I commend my various amendments to the House for its serious and mature consideration.

Mr. President : Mr. Brajeshwar Prasad, you have several amendments in your name; but it does not appear how they will fit in with the present discussion and the present amendments. Some of them are with reference to the present amendment which has been moved by the Prime Minister. Others refer to the previous amendments which have not been moved. Those which refer to the previous amendments, I rule out. There is thus one amendment No. 387 where you want to substitute "President" for the word "law". You have already spoken upon this subject at length and I take it as moved.

"That in amendment No. 369 of List VII (Seventh Week), in clause (1) of the proposed article 24, for the word 'law', the words 'the President' be substituted."

Prof. K. T. Shah (Bihar : General) : Mr. President, I have also got several amendments. May I give you a list of the numbers ?

Mr. President : I have got a list.

Prof. K. T. Shah : These amendments are taking the place of those which I have submitted to the original article and therefore, those are not to be moved.

My first amendment is number 388:

"That in amendment No. 369 of List VII (Seventh Week), at the end of clause (1) of the proposed article 24 the following proviso be added :

Provided that no rights of absolute property shall be allowed to or recognised in any individual, partnership firm, or joint stock company in any form of natural wealth, such as land, forests, mines and minerals, waters of rivers, lakes, or seas surrounding the coasts ,of the, Union; and that ultimate ownership in these forms of natural wealth shall always be deemed to vest in and belong to the people of India collectively; and that they shall be owned, worked, managed or developed by collective enterprise only, eliminating altogether the profit motive from all such enterprise.' "

The next one is amendment No. 394.

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24,-

(i) for the words 'No property' the words 'Any property' be substituted;

(ii) for the words 'shall be taken' the words 'may be taken' be substituted;

(iii) for the words 'unless the law provides for compensation' the words 'subject to such compensation, if any' be substituted;

(iv) for the words 'acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be be determined the words 'acquired as may be determined by the principles laid down in the law for calculating the compensation' be substituted;"

If you will permit me, Sir, I may read the amended clause which would be clear instead of in this disjointed manner. The amended clause will read thus :-

"Any property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, may be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition subject to such compensation, if any, for the property taken possession of or acquired as may be determined by the principles laid down in the law for calculating the compensation."

Then, Sir,

"(v) the following be added at the end :

'Provided that no compensation whatsoever shall be payable in respect of :

(a) any public utility, social service, or civic amenity which has been owned, work managed or controlled, by any individual partnership firm, or joint stock, company for more than 20 years continuously immediately before the day this Constitution comes into force;' "

I have added the word "immediately". I have an amendment No. 490 in this respect. That means, not at any time, but immediately before.

Then, Sir,

"(b) any agricultural land forming part of the proprietary of any land-owner, howsoever described, which has remained uncultivated or undeveloped continuously for ten years or more immediately before the day this Constitution comes into force;

(c) any urban land, forming part of the proprietary of any individual partnership firm or joint stock company, which has remained unbuilt upon or undeveloped in any way for fifteen years or more continuously immediately before the day this Constitution comes into effect;

(d) any agricultural land forming part of the proprietary of any landowner, howsoever described, which has remained in the ownership or possession of the same individual or his family for more than 25 years continuously immediately before the day when this Constitution comes into operation;

(e) any mine, forest or mining or forest concession which has remained in the ownership or possession of the same individual, partnership firm or joint stock company for at least twenty years immediately before the day this Constitution comes into operation;

(f) any share, stock, bond, debenture or mortgage on any joint stock company, owning, working, managing or controlling any industrial or commercial undertaking which has been owned, worked, controlled or managed by the same joint stock company, or any combination or amalgamation of it with. any other company for more than thirty years continuously immediately before the day this Constitution comes into operation,

or

which has paid in the course of its operations and existence in the a the shape of dividend or interests, a sum equal to or exceeding twice up value of its shares, stock, bonds or debentures;

or

whose total assets (not including goodwill) at the time of the acquisition by the State of any such undertaking are less in value than its total liabilities."

The next is No. 410 which has already been moved by Mr. Kamath and I do not wish to take the time of the House over that. Next is No. 419. I move:

"That in amendment No. 369 of List VII (Seventh Week), in clause (4) of the proposed article 24,-

(i) for the words 'If any' the word 'Any' be substituted,

(ii) for the words 'has, after it has been 'the words 'may be' be substituted;

(iii) the word, 'received the assent of the President,' be deleted; and

(iv) for the words 'assented to' the word 'passed' be substituted."

Sir, I move :

'That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the article 24, for the words 'not more than one year' the words 'at any time' be substituted."

I also move:

"That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the proposed article 24, for the words beginning with 'may within three months and ending with 'Government of India Act, 1935', the following, be substituted :

'shall not be called in question in any court on the ground that it contravenes any provision of this article'."

Sir, I now speak to all the amendments, which, taken together, make a constructive proposition, and an alternative to the policy laid down in the amendment moved by the Honourable the Prime Minister. The Prime Minister 'has advanced the proposition that under this Constitution, there shall be, no expropriation without compensation. I am afraid I am unable to share this view, if it is to apply to *all* property indiscriminately and without modification. For not all property is such that the present holder or owner of it can claim, in justice, in ethics, any right to be compensated since the origin of property is not always unquestionable.

A great French thinker asked the question 'What is property' and he answered it by saying 'it is theft'. I am afraid 'theft' perhaps is very often too mild a Word because much of the property has been acquired-if you go into the origins of this-by force, fraud and violence which under any system of ethics can hardly be justified. If you are going to seek to compensate those who have acquired property, no matter how long since, by such means as force or fraud or violence or theft, I am afraid you would not be acting up to the ethical standards which are supposed to animate this Constitution.

Mention has been made by one of the previous speakers in the course of this debate, of slavery the right to own human beings, prevailing in the Southern States of the United States which was abolished at the cost of a civil war. That form of property had to be abolished, and to the best of my recollection, without any compensation. True, compensation was given for the slave-holding owners in the British West Indies Colonies by the British Government when they decided without any violence to abolish slavery. But the ethical proposition does not become objectionable because in the case of the United States, and many other countries instances can be quoted-where nefarious forms of property have not been compensated for by those who expropriated the owners of such properties.

In this case I suggest that there is a certain divergence between the sense of economics and of ethics. Property is not an ethical institution, I venture to submit. It is an economic institution with close connection with ethics. I may say the economics has suffered because of this divergence from ethics, and holding property sacrosanct and demanding compensation even if the property is acquired by force or fraud or is used or abused or even unused.

At a later stage I shall come to that part of the argument which seeks to give compensation without any condition, or according to my amendment, which restrict compensation by certain conditions. But at this stage I am concerned to point out that there are public utilities, social services and civic amenities which under the existing system are under private enterprise. They are owned by individuals who derive considerable profit. By their nature they are monopoly or they have become monopoly; and whether operated by individuals, partnership firms or joint stock companies, they tend to rob, in my opinion, the community of that which belongs and ought to belong only to the community.

For such, therefore, I venture to submit there should be no compensation. The amendment I have suggested says that whatever may have been the case hitherto, hereafter, under this Constitution, no absolute right of property shall be allowed or recognised, whether in any individual, in partnership firm or in joint stock company, which concerns the working, controlling managing or operating of any public utility, social services or civic amenity; and that these shall be in future operated entirely for the public benefit by public enterprise in which there shall rot be any private profit in the least.

I trust the actual wording of my Amendment in that regard will be carefully scrutinised by those who may not take the same view as myself. I have been very moderate in laying down the conditions. I repeat I refer only to the future, without regard therefore to what has happened in the past, in regard even to these utility services and amenities. I consider, even in regard to that future, the absolute right of ownership should not be recognised under the Constitution in any private concern whether individual or firm or company. But hereafter they must be operated by collective enterprise for the common benefit without any profit motive. I trust the essential modesty of this demand will be accepted and recognised and the Prime Minister would agree to accept this amendment.

Passing on to clause (2), I have suggested that there should be a positive clause. Instead of opening the clause in a negative manner, which somehow seems to suggest that the primary right and overriding right is that of the individual. I would lay down rather positively the right of the State or of the community to acquire any property if for any purpose it deems it necessary to do so. It has been limited by the words 'for public purposes'. In 'public purposes' I include, not merely the non-remunerative and common civic amenities *e.g.,* when you want to clear the slum of a big city and acquire the ground held by tenements, you may keep up that ground for public purposes in the shape of parks or open spaces- I think that would be a very legitimate category of "public purpose'. But there may be public purposes which are not only of that character-not only for building open spaces, parks or gardens; not only for building schools, hospitals or asylums, but even for building those lands on a more economic and more profitable scale - I mean profitable to the community and not to any single individual.

Acquisition of lands for public purposes, acquisition of any form of property, movable or immovable, for any public purpose, including the working of that enterprise for the benefit of the public, is, I think, an inherent right of the sovereign community which should not be subject to any exception of the type implied if not so much laid down in the wording of this clause (2). I have therefore suggested that any such property to be acquired can be acquired for public purposes without defining what is exactly meant by 'public purposes' subject to such compensation if any. I would like to sound a distinct note of warning in connection with the calculation of compensation-in fact on the very basis of compensation. Not all property is deserving of compensation nor should the Constitution recognise categorically without qualification or modification the right to compensation as appears to me to be the case in the clause under discussion and hence the amendment I have suggested to it. I would certainly leave the margin of doubt whether any compensation is ever due and must be paid in every case without question. Doubt having thus been expressed by the term "if any" I would also go further and say one thing more : viz., that property having been acquired, movable or immovable, the law should lay down the general principles according to which the, compensation will be calculated and the law should not try to lay down the exact detailed amount for each case.

I would now give you my reasons for objecting to the laying down of the amount in law, and preferring to lay down the principles according to which compensation should be calculated. The amount, if laid down by the Legislature, which presumably will be dominated by parties, is liable to be fixed more, perhaps for party reasons than because of the inherent or intrinsic justice of each claim, apart from the fact that the Legislature would be involved in endless series of individual recognitions. I think it would be ethically wrong for the legislature to go into the details of each valuation, let us say of each estate, each share or stock or debenture as the case may be. Now, it would be the best course for the Legislature to lay down only broad principles according to which, in any case, where it is decided to give compensation, that compensation will be calculated., and the calculation should be made- by tribunals which tribunals, as I have always been insisting, should be free from any influence or contact with any other organ of the Government, whether executive or legislative. You will be doing the right thing if you entrust the administration of tile principles that you lay down in your sovereign legislature to the judiciary.

Having said this, I next lay down certain categories of property in which, according to my judgment, no compensation should be due or be payable, and that I contend, is inherent both in the economics and ethics of the case I am trying to advance. That is to say, any agricultural property which may form part of any proprietary, which is utterly unused for a number of years, neglected for a number of years, may be taken over without payment of any compensation. The land has remained utterly unutilised, or the zamindari has become unsocial, and therefore for that unsocial act, for that act of negligence, or for that incompetence or indifference the community is not bound to compensate the owner. I, therefore suggest that in the case of any property which is capable of being properly used, which is capable of adding to the growth and wealth of the co unity, but which on account of the indifference, incompetence, negligence or otherwise of the owner is not so utilised, the owner does not deserve to be compensated and the community would be wrong if it gives any compensation in respect of such items of property.

I say the same thing with regard to public utility and social services which may have been hitherto- operated by private individuals, corporations or firms and which. according to general principles, should not have been left in their hands. But since they have been there, let us compensate them, provided that these have not been held for a period exceeding the one I have suggested or some such period. Again, the basic principle of my argument is the same. They have gained from this kind of monopoly, from this kind of public service, a profit and a surplus far in excess of what should be legitimate, to the exclusion of the public benefit, and therefore, they have no right to demand compensation for such services. If the period for which they have held it is in excess of the one I have mentioned, the presumption is that they have already had more than enough, they have compensated themselves more than enough. Therefore no compensation is, in law or ethics or economics, due to them and should be paid to them.

Similarly too with regard to urban lands which very often is held merely in the hope that by development of population, by the growth of population, the development of social services, and of public utilities the value of he land will be increased. People simply do not want to invest any more capital and just wait, until purely by the conjunction of and by the operation of social forces, the value of the land is increased. They simply allow the forces of nature to play upon such lands, and therefore no compensation should be paid to them. I think they are social offenders and the community would be well within its rights to deal with them as social offenders for having taken potential sources of production and not utilised and developed by them. Therefore, they are not entitled to demand any compensation for this kind of unsocial or even anti-social behaviour.

I pass on now to other forms of natural wealth such as mines, forests and mining concessions which are also in the nature of monopolies. They are gifts of nature belonging to the community, but have been alienated from the community to private individuals-I will not use a harsher term. If these have fallen into hands of individuals because of our helplessness or by reason of the foreign rule, we see no reason why we should go on recognising this injustice, this robbery of the people's right. Therefore, I do not think that for these mines or mining concessions, forests or forest concessions, any compensation is due. If operated for the given number of years I have stated, the, holders have in all conscience received more than enough and therefore, they cannot demand any more compensation, whether they be coal-miners, or iron miners, or gold miners. Compensation for them would be utterly unjust and must not be allowed.

Apart from these forms of natural wealth, I pass on to the next, industrial and commercial undertakings which is their own way, are no less offensive than perhaps the primary sources of production like land, mines or forests. These too have got into private hands, because of the prevailing economy of those days, and it is now too late to complain. But the have been operating, and those of them which have been operating for a number of years, have been earning sizeable profits from this operation, these should not be entitled to demand compensation, as they have already received enough, in my opinion, and more, enough and to spare, for times to come.

The three categories I have laid down are, first, those who have been paid in the aggregate more than twice the amount of their share capital or debentures or stock or whatever it may be, so that in a period of so many years they have already reimbursed themselves, and consequently therefore it is necessary, it is but just and proper that the community should be called upon to take over their enterprise and conduct it in the way that it deserves to be conducted in a properly coordinated and planned economy for the nation: Those again, who have held it for the entire period, say for thirty years, whether with or without profit, have proved themselves either too, incompetent or unprofitable and therefore they do not deserve, to continue holding the property. 'Therefore they should be expropriated. The others have already received sufficient and more than sufficient to reimburse themselves for any investments they may have made, and therefore they are not entitled to any further compensation. I do not wish to offer examples of mining concerns and concerns connected with basic industries like iron and steel, banking and insurance which have in the last generation or more, particularly since the Swadeshi movement, tried and earned very fat dividends, very large, surpluses, which should be taken to have more than reimbursed them; and now in these cases, particularly those which are of basic necessity for the country's development, to pay compensation on anything like the artificial value which is given to them is, I submit, utterly unfair and ought not to be permitted. I have therefore suggested by this amendment that no compensation shall be payable to categories of property of this kind.

Lastly, in the case of the industrial and commercial undertakings, in the case of those whose liabilities and assets do not tally, whose assets are much below their liabilities and therefore it being always a losing concern, for compensation to be given to such concerns would be putting a premium on wastefulness and extravagance. and uneconomic working and therefore ought not to be allowed. Time and again, the State has taken over in the past enterprises which were in the previous two, three or four years so wasting their resources as to make themselves a white elephant. I am particularly speaking of some of the railways which had to be taken over by the State and which under the terms of the agreement worked in such a manner that the assets received were much below Any real value of the liabilities that they will Out upon us. The any such case, therefore, I submit it is unfair, it is unwise, uneconomic, unethical, to offer any compensation merely because it is a losing concern or that the owners have, proved themselves utterly incompetent and undeserving of any compensation merely because of their own negligence they have failed to make both ends meet,

The other amendments which I have tabled are of a procedural character and as such I will not take too much time of the House on them. I do not think it is desirable that any room should be left for an avoidable conflict between, for example, the head of the State and the legislature. Therefore clause (3) which suggests that every Bill of this kind may be reserved for the assent of the President and make it an item of importance is in my opinion unwise and therefore ought to be avoided. I have therefore suggested that that clause be deleted.

Similarly, in the case of pending Bills or Bills which have been passed one. year before or at any time before this Constitution comes into force,, there should be no need, in my opinion, for any reservation, for the approval or the assent of the supreme executive authority in the land and create a kind of tension between the Central authority, the national authority and the local or State authority as the case may be. I trust these points that I have advanced so briefly would meet with the approval of the House and the amendments work be accepted.

Shri Jadubans Sahay (Bihar : General) : Mr. President, Sir, I beg to move:

"That in amendment No. 369 of List VII (Seventh Week), clauses (2), (3). (4). (5) and (6) of the proposed article 24 be deleted."

My justification for moving this amendment must have been very clear to the Members by this time. The draft article as it stands before us is, I venture to submit, one of the most wonderful examples of chaos and confusion of ideas. Nowhere possibly you will find such a conglomeration of things, such a confusion of ideas, on such an important and vital issue as this concerning the property of the country. As an august body, we are going to lay down the foundation of property for future legislatures and for the posterity of this country, but I venture to submit that we have utterly failed in this task. It must be apparent to the members of this is House that the more the two differing schools of thought have tried to compromise their view-points the more confounded has this entire draft become. You know that the question of property has been engaging the attention not only of this country but of other countries as well. Agrarian and industrial reforms have set at naught centuries-old definition of property in many countries. It was expected of us that at least on a matter affecting the teeming millions, on a matter affecting the future economic structure of the country, we should come out with a clear-cut economic formulation of policy regarding property. But what we find is that the draft has not been able to inspire confidence in any class.

Take the industrialists and capitalists. They are not satisfied with it. Take the landed magnates They are not satisfied with it. So far as the teeming millions are concerned, they would not be satisfied with it, had they the voice to lay before you their feelings regarding this Draft Constitution. They in whose name we have come here and for whose sake no doubt all of us possibly are making this Constitution-what are we giving to them ? I will not enter into the controversy as to whether compensation as provided in this article can root out the growth of capitalism that is taking place in this country so rapidly and which is bound to affect the future political economic and other growths of the country.

Suffice it to say that the conception of property has been changing. The world has been changing. From the Divine Right of the sovereign we have, come to the sovereignty of the people. But our mind- have not been changing so far as the concrete realities of the question of property are concerned. Are we going to hold out hopes for the future that industry in this country will be nationalised or socialised in the interests of the masses of the people ? No. This Constitution does not hold out any hope; rather it binds down the future generation, the future legislatures, to pay full compensation to any industry which they may want to nationalise.

This article has not created any enthusiasm in the mind of anyone. So far as. Bills, are concerned, what do we find? There is confusion reigning there because in one province we find that a Bill which is pending is given recognition here. Is it the duty of the constitution-makers to deal with Bills which are pending, which have not gone, to the Select Committee. So far as the amendment is concerned, I am seeing that chaos and confusion reigns everywhere. What would be the, effect on other provinces ? Leave the case of the U. P., Madras and Bihar. What policy are you going to lay down for the guidance of Assam, Bengal and also C. P., where zamindaries may be abolished in the future. Would they be asked to pay compensation or would they get protection under clauses (4) and (6) ?

I would beg to yoy to consider that this article is the most important in the you whole Constitution and it is an acid test of the Members of this House. We have failed because like what we are on every other thing we have become victims of confusion. When problems face us we shirk them or we try to interpret them in two different ways. There are two schools of thought and one of them should have found place here-it is either compensation or no compensation. It is quite a different thing to say that we should not, in the present state of our country, in the present crisis in the country, proceed in a way that such a legislation might overawe our industrial magnates and make capital shy. I think the State legislatures and Parliament will certainly take note of the crisis In the country. But it is quite a different thing that for all generations to come you are going to bind the hands of the future by such provisions. It is because of this possibly that we have not enunciated clear economic policy to the country.

My forebodings may not be correct, but I fear that upon this Constitution, possibly the whole labour we have put in in this House for the last two years, might be thrown away, because it is bound to be one of the most controversial things, for we are taking a line which is neither to the left, nor to the right nor in the centre. There is conflict and confusion in our minds. Therefore I have in view that only the first clause Should remain and all others should be deleted. Let it be left to the State legislatures or Parliament or to our leaders who run the government to give direction to the country, to say how laws should be formulate regarding property in any province. But for God's sake do not burden this Constitution with all such things which you do not find in any other constitution of the world.

Mr. President : Amendments Nos. 390, 391, 392 and 393 are ruled out. Amendment No. 396 is verbal and need not be moved. I call upon Mr. B. Das to move his amendment No. 397.

Shri B. Das : Sir, I move :

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed new article 24. for the words 'unless the law provides for compensation' the words 'unless the law provides for or and equitable compensation' be substituted."

With your permission, Sir, I would also move amendment No. 427:

"That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the proposed article 24, for the words 'not more than one year before the commencement of this Constitution' the words and figures 'after August 15, 1947' be substituted."

Sir, I support the motion moved by the Honourable Pandit Nehru. I think if my two amendments are accepted by the House It will just clarify the situation so that we do not fall into the traps of which we just now heard form our honourable Friend Prof. K. T. Shah, who is going to be the leader of the Opposition in the Parliament a few days hence.

On the 9th August 1942 all our leaders were incarcerated for giving the nation the battle slogan "Quit India" and they came back sanctified, and determined to achieve our FREEDOM. In 1945-46 our leaders issued the Congress election manifesto to the nation in which, referring to the reform of the land system and acquisition of property, they declared :

> "The reform of the land system which is urgently needed involves the removal of intermediaries between the peasant and the State. The right of such intermediaries should therefore be acquired on payment of *equitable* compensation."

It has been recognised by a majority of Congress leaders outside and some of them inside that equitable compensation should be paid for properties acquired. Somehow there has been a big controversy both inside and outside the House that nationalisation and expropriation should prevail and not fair and equitable compensation. Unfortunately when Congressmen came into power in 1947 some of the younger section of the party began to talk of nationalisation and expropriation. Today some of them are Members of this House and even of the Congress Government and they are silent over the word .expropriation' which has 'been enunciated so definitely by the democratic socialist leader, my old friend Prof. Shah.

We Congressmen have an onerous duty to the country. Are we to fall into the trap of the Socialists and take shelter under the law and pay no compensation in the name of the law or are we to stand by the Congress Parliamentary manifesto that equitable compensation should be paid ? That is why I want the exact words of the manifesto to be introduced in the amendment of Pandit Jawaharlal Nehru.

As regards the second amendment where it has been said "any law that has been passed one year before the commencement of the Constitution," I find that others too have tabled amendments to the effect that it should be one and a half years. Why mince matters ? We attained our freedom and independence - though that independence is today qualified by our kowtowing to the Commonwealth countries. Why not say "any law that has been passed after the 15th August, 1947" ? This does not alter materially the amendment which Panditji has moved but it fixes a date which is well known and it is no use talking of one year before the commencement of this Constitution.

Coming to the motion moved by Pandit Nehru, whether my amendments are accepted by the House or not, I have to accept it, because there has been no fairer proposition that has been tabled or moved by any other member of the House. In accepting that we must admit that we recede from our original ideals. We go back on the election manifesto that gave to the country high hopes and high ideologies, for the last four years-the election manifesto of 1945-46. Perhaps as we exercised power, power-politics have upset the leaders of the nation and the leaders of the Congress Party feel that idealism is not the right thing and that there must be compromise in life.

But I am not one who will be cowed down by the Socialists. If the Socialists want to succeed the Congress in the country, let them plan out what they will do. Except making a few criticisms of Congress leaders in the press and on the platform the Socialists have not evolved or done any constructive work in the country whereby they show their fitness to succeed the great Congress Party in the country in the control of the administration of the nation, I was amused to read a little note in the "Statesman" this morning where the writer has mentioned that the Socialists have formed themselves into the Social Democratic Party in the Parliament to oppose the Congress Government. He says that besides irresponsible talks-irrelevant garrulity inside, the Assembly and little action outside, they have not so far produced any planned programme by which they can establish better Government in the country, or rather Government to usher in a peaceful era of constructive Socialism. If I am to understand the Socialist programme as my Friend Professor K. T. Shah enunciated a few minutes ago, they want expropriation of all properties. I interjected "Why does not my Friend Professor K. T. Shah want to expropriate all movable properties of the citizens of India?" That will give him and the Socialist Party a certain amount of property and wealth by which they can carry on their so called programme, as the Pakistan Government is carrying on by confiscating properties worth Rs. 4,000 crores of displaced Hindus and Sikhs who have migrated to India. That is not the right solution. Expropriation is not the right solution to produce better wealth. Expropriation will not work the industries that Professor K. T. Shah and perhaps the Socialists want to work in the country for greater production and larger prosperity and well being of the people. No industry can survive if it is expropriated. If expropriation will make the Socialist labour workers to do better work to produce more, I think they are thinking on wrong lines. Unless there is adequate production on man-hour basis, whether industries are private-owned or State owned, such industries must produce enough to maintain the national credit of India. If my Friend Professor K. T. Shah, who was the Secretary of the National Planning Committee, after writing those beautiful and studied volumes has come to the conclusion that national credit cannot be maintained unless you expropriate all property, be it landed property or be it public utility concerns or other concerns, if that is the sort of dreams that Socialism has, then I pity the Socialists and they will never be at the helm of the Government of India in the near future.

In supporting Pandit Jawaharlal Nehru's motion I accept the compromise. It does not satisfy my soul, but it satisfies the present exigencies and on that ground I support it.

Mr. President: Amendment 398 is to the same effect as 397. Also 399 the first part of it-is to the same effect. Therefore these need not be moved.

Shri Jaspat Roy Kapoor: May I submit that part (a) is something different from amendment 397 or 398 ?

Mr. President: You may move clauses (b) and (c) ot your amendment.

Mr. Naziruddin Ahmad : (b) and (c) have also been covered already-by amendment 389.

Mr. President: Yes, that has been moved by Mr. Jadubans Sahay. Therefore all these amendments need not be separately moved.

Shri S. Nagappa (Madras : General): Mr. President, Sir, I move:

That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, for the words "for compensation for" the words "compensation not more than 5 per cent. of the market value of" be substituted.

When these words are substituted the clause will read thus:

"No property, movable or immovable, including any interest in, or in any company owning. any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides compensation not more than 5 per cent. of the market value of the property taken possession of or acquired" etc.

We have made this article non-.justiciable. When we do so there must be some principle. What is the maximum that we can pay as compensation? We are not going to pay justiciable compensation. Whatever we give is supposed to be just and equitable. All these days the State has given protection to the zamindars or capitalists to acquire the properties. Now we are requiring the properties for the State, for the good of the State, for the betterment of the common people in order to maintain the national economy of the country. So we Must also take into consideration how these capitalists and zamindars have been responsible for the fall of national economy by not utilising the property in a proper manner, that is to say, by not roducing the required amount of value out of the capital that has been in their possession. As a result of that they have been responsible for the fall of production. Let us for example take a zamindar who owns thousands of acres of land. At times because he may not find enough manual labour he may not cultivate the whole land and most of the land goes fallow. Or even if he does it he may not do it with all the intensity that is required and necessary, and he may not produce the quantity that can be produced from that land. So he has been responsible for the fall in the national wealth. He therefore deserves not compensation but something else. He must be taken to task for having deprived the nation of the national wealth.

Now we are glad that the country has realised that we should not allow properties to be owned by either individuals or corporations, but that all property should be, at the disposal of the country as a whole. We have been abolishing the zamindari system. It has already been commenced in two provinces. Now, to whom does this land go? It should not go into the hands of petty zamindars. It must go to the State. We should not create innumerable petty zamindars in the place of a few. 'That is not abolition of zamindaries. Now if you give more compensation, it will mean purchasing the zamindaries and not abolishing them. When you acquire properties for State purposes, the State should have control over them. After all the person who is in possession is there only to make use of the land. He need not own it. A pattadar today is not the owner of the land he is using. Government is the owner because the Government has conquered it inch by inch and should therefore be the owner. The pattadar has only the right of using the land. He cannot say that the land belongs to him. Even the zamindars were there having the custody of the land on behalf of the people, that is all. They were collecting also rent from the people. Now you are taking away the right to collect rent and giving the land to the people who have been under the thumb of the zamindars cultivating it. You are not taking the land to the State. You are taking away the land from the zamindars and creating a number of chota zamindars, more numerous than the former. That way you cannot solve the land problem. The solution of the problem lies in nationalising or socialising the land. The people of the locality must be the owners of the lands; the tillers of the soil must be the owners. Then only you cad say that you have acquired the land for State purposes. Until and unless this is done you can not say that you have solved your problem.

We decided in the beginning that our aim is to establish a co-operative commonwealth. Unless you socialise the land you cannot have that commonwealth. The lands acquired from the zamindars must be plotted out on a co-operative basis and given to well-trained cultivators with instructions that they grow more and more food. Now what I propose is that while you acquire land for this purpose it is just and proper that you pay 5 per cent. or less. With these few words I commend my motion for the acceptance of the House.

Mr. President: Amendment No. 401 of Mr. Naziruddin Ahmad is covered by the amendments already moved.

Mr. Naziruddin Ahmad: No, Sir.

Mr. President : All these expressions 'fair compensation'. 'full compensation', etc., mean the same thing.

Mr. Naziruddin Ahmad: There is a shade of difference between them.

Mr. President: Well, shades of differences are matters for drafting. Amendment No. 402 is also covered.

Pandit Thakur Das Bhargava (East Punjab: General) : This item (iii) of 402 is entirely different. This is not covered.

Mr. President: Only item (iii) in amendment 402 which seeks to introduce appropriate" before the word "principles" is new. You may move it.

Pandit Thakur Das Bhargava: I beg to move:

> "That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24- before the word 'principles' the word 'appropriate' be inserted."

Then, Sir, I move:

> "That in amendment No. 369 of List VII (Seventh Week), in clause (4) of the proposed article 24, after the word 'Constitution' the word 'and designed to execute a scheme of agrarian reform by abolition of Zamindari and conferring rights of ownership on peasant proprietors for such compensation as the Legisature of the State considers fair', be inserted."Mr. President: Your amendment No. 479 cannot be moved. It is covered by previous amendments. You may move amendment No. 487.

Pandit Thakur Das Bhargava : Then I move :

> "That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, after the words 'or specifies the' the word 'proper' *or alternatively,* 'fair' be inserted."

Next I move, Sir,

"That in amendment No. 369 of List VII (Seventh Week), in clause (3) of the proposed article 24, for the words 'having been' the word 'is' be substituted."

Mr. President: Your amendment No. 503 is covered by amendment No. 389. Amendment No. 512 also cannot be moved.

Pandit Thakur Das Bhargava : Then with your permission I move:

"That in amendment No. 369 of List VII (Seventh Week), after clause (6) of the proposed article 24, the following new clause be added :-

'(7) If any State passes a law designed to execute a scheme of agrarian reform in the State by abolition of Zamindari conferring rights of ownership on peasant proprietors or at least rights of occupancy for such compensation as the State Legislature considers fair on the lines of the law referred to in clause (4) of this article, such law shall be submitted by the Governor or the Ruler as the case may be, to the President for his certification. If the President by public notification certifies the law, it shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article'."

In regard to the amendments, I beg to submit that the present principle of acquisition of property for public purposes is sought to be saved by clause (5) of the proposed article. The existing law is contained in Act 1 of 1894, according to which, before property is acquired or requisitioned, compensation is to be paid. The compensation which is laid down by the law to be paid is the market value of the property at the time of the acquisition plus 15 per cent. for disturbance. I understand that clause (5) of article 24 saves that law, so, that before any other provision is made by the legislature subsequently. this law will hold the field, and if any land is acquired, it will be acquired according to this law. Under the present law, an executive officer determines the compensation but his determination is not final. A person aggrieved from this order can go to a civil court or a District Judge and there get the order revised, if he is not satisfied by the order of the executive officer or the revenue officer or whoever the officer determining the compensation may be. After that, it becomes a civil suit and the civil court will find out what the market value is and add 15 per cent. to it. This is the present law. According to amendment No. 369, if any law is passed by the legislature subsequently, then that law will be on the lines given in article 24.

Now, this article 24, as it is, seeks to delude any person who reads it that he has got a justiciable right. We have been told times without number not in this House but in other places, that this right is justiciable. Exception was taken on the core that it should not be justiciable so far as zamindars are concerned. The whole dispute centered round this question whether the right given by article 24 of the Draft Constitution was justiciable or not. From the very start I have been of the opinion that there is little of justiciability in article 24 of the Draft Constitution. because after the legislature has laid down the principles, those principles become unalterable. These principles cannot be questioned in any court of law. Nobody can agitate before a court that the principles which have been approved by the legislature fail to give adequate compensation. The word "compensation" itself means a good *quid pro quo'* In the word "compensation" itself the adequacy and fullness of the consideration is implicit, though doubts have also been thrown on this connotation of the word "compensation". I do not know whether this word compensation has got this meaning or not, but as I understand this article 24, I am absolutely clear in my mind that if clause (2) remains as it is on the Statute Book, then the legislature and not the courts shall become the final arbiters of the compensation.

It would follow that if the principles are given in a piece of legislation, those principles will ultimately decide-what the compensation has to be. of course, if practically no compensation is given, a man can go to a court of law; otherwise he cannot go to a court of law. Thus if the compensation paid is a fraud upon this section, then in that case the matter can be taken to courts. It means that if instead of 100 rupees one rupee is paid, then it will be complete destruction of the word "compensation". If out of one hundred rupees one rupee is paid, it will be a fraud; if ninety-eight rupees are given or five rupees are given, it would not be a fraud. I think Sir, that this clause (2) is at present a fraud on us because I understand that it is not justiciable. It is made to appear to be justiciable to convince the general public. My submission is that it can only be justiciable in one way and that is what I have submitted for your consideration in my amendment No. 402 that the word "appropriate" be added before the word "principles". If the House accepts this it will mean that the principles must be appropriate, must be fair, and the application of these appropriate principles must result in one thing viz., that full compensation, or fair compensation will be given. My submission, Sir, is that if the word "principles" remains here without any adjective, I am sure the clause is not justiciable. Therefore if the House accepts my amendment, then we can make this right justiciable, as it is evidently the intention of the framers of the Constitution that it should be so. And 'so my submission is that the House will be well-advised to accept my amendment.

I have heard the arguments of my Socialist friends who are of the view that if the legislature fixes some compensation, or the principles, then the courts should not have any power, should not have the final say in the matter. I do not quarrel with them because it is only a point of view, but to those of us who believe that the courts in this country, as in all other, countries, are the final arbiters of civil rights, to them it is very clear that this article 24 goes against the very principal of justiciability and the rights of property, even as recognised and guaranteed under article 13.

Now, Sir, the Honourable Prime Minister, when he moved this amendment, told us that the rights of the individual as opposed to the rights of the community should also be considered. I quite agree. in the Objectives of our Constitution, we have already laid down that we want to ensure justice, economic and social. I want that the dignity of the individual and the unity of the nation must be there. I think, Sir, that we should arrive at a happy blend between the rights of the individual and the rights of the community, and in this regard the Congress and the whole country is committed to the abolition of the zamindari. We shall not be in the, right if we go back and say that there will be no abolition of zamindari. I do not want that the whole thing should be resolved in this manner. Every person in this country should understand and accept the principles, the broad principles of legislation in this respect.

With regard to clause (4) I have seen the legislation of the U. P. and I am satisfied with the principles which govern this legislation. The whole idea of that legislation is that the peasants should become owners of the property, that every person must be made the owner of his land, so that he may take full interest in the land and develop it as much as he can. I accept the principle that if for the purposes of agrarian reform by virtue of which the peasants or the tenants are made proprietors and the zamindari is abolished, then in that case such compensation may be given as is equitable and in that case the State Legislature may be the final arbiter and the best judge of it. Therefore, I have put in an amendment No. 514 which seeks to have another clause, namely clause (7) wherein I say that if such an occasion arises when any State in future also wants to have a law, like this, it can have the benefit of the law under clause (4).

In regard to clause (6) I have given an amendment that it should be deleted. I am not satisfied with the Bihar law at all. I went through the Bihar law and when I read its provisions, I was simply startled. Its provision says that from a certain date when the public notification is there, all rights of property will be confiscated and those persons who were owning properties today will become only occupancy tenants if they possess, Sir, lands. So far as this, law is concerned, the Bihar Government is not affected at all because if they want to have a law on this new basis, if they abolish zamindari and then create instead peasant proprietors with full rights of ownership, I am one with them. There is another amendment sought to be moved by Messrs. Munshi and Alladi Krishnaswami Ayyar and that amendment says that if such law goes to the President, the President shall have the power to require any specified amendments to be made in such law.

Moreover I cannot understand why Madras, U. P. and Bihar Governments should have such laws passed in this manner and other States should be denied the liberty of having the Zamindari dissolved. I think we ought to be fair and equitable. If the basis of the U. P. legislation is accepted by law, we should see that that principle is applied to all the other cases. These words "that there must be an agrarian reform by abolition of Zamindari and conferring rights of ownership on peasant proprietors" are there in my amendment and these principles are sound. They have been sanctified by experience of ages, of course there are the people who have owned those properties for a long time and on account of their absence from their places the exercise of rights by those people cannot be so useful to the community as in the case of others. Unless this exception is made and this is made applicable to all the provinces, this will not be fair.

I have put in amendment No. 496 which seeks to substitute the word "is" for the words "having been". If my amendment is accepted it would mean that the Provincial Government will thereby be compelled to hold it for the assent of the President and then the. President will give the assent because today, supposing a Provincial Government does not hold the Bill back for the assent of the President, then a difficulty would arise as it may not be allowed to go to the President at all.

In regard to all these, I have to submit that these fundamental rights we have been told are justiciable, times out of number. Now I see that attempts are being made to see that the rights which are guaranteed to the citizens of India are being taken away, one by one. Two or three days back, I had occasion to say that article 16 was sought to be taken away and it will be taken away and article 13 is also I see being burdened with such reservations and being subjected to such modifications that it is also being taken away. The accursed article 15 is neither fundamental nor justiciable.

If we really mean to have a Constitution of this nature for which we have been boasting all over the country, we should not enact a provision like article 24 because it is the very negation of the rule of courts in this country. In our country where we have got this freedom without going through any bloody revolution, it is necessary that we should see that discipline and democratic ideals are installed in our hearts and that the law of the land becomes the law by which every person is governed. Unless and until the courts are empowered, and the courts are the final arbiter of the civil rights and of the liberties of the people, I feel that if the legislatures alone are given the power we are coming to a point where fiats of executive officers will deny us our rights and this would be very wrong. I feel in the activities of the Government a tendency that everywhere we seek to destroy the powers of the courts and substitute therefore the power of the legislature or the executive.

What is an executive officer ? Supposing an executive officer has to decide my fate; he is the person who is interested in getting my property and giving me a very small compensation. That is not fair. He should not be a person who should represent the Government's interest in all the stages. The courts will also be appointed by the Government. Let those courts decide our civil rights so that people may have confidence; and moreover, Sir, in regard to ordinary properties excepting the Zamindari, etc., I am not fully satisfied as to how the principle of superiority of the rights of the community has precedence over the rights of the individual. After all where is the law that you should usurp the rights of the individual with a view to benefit the rest of the society excepting that individual ? The salutary rule which we have accepted for the last sixty years and more is that the present market value is the proper basis for fixing the amount of compensation and this should not be departed from, unless for scheme of agrarian reforms involving millions of people and multiplicity of litigious suits. I understand that my socialist friends come, here. Some of them are very rich themselves and do not practise what they preach and are engaged in amassing as much property as they can lay their hands upon. I just want to submit for the consideration of the House the views of the common man. The common man does not recognize your doctrines of "Property is theft". He believes in the sanctity of property. Supposing any land or house is taken away for the purpose of a railway line or some undertaking of the Government, no doubt for a public purpose, will any one be satisfied if he is not given full compensation, and is there any valid reason why he should not be fully compensated ? As a matter of fact no one will feel confident if you enact laws as you propose to enact that not the courts. but the executive officers should be the final arbiters of the civil rights of the people, and it is not politic to undermine the confidence of the people.

Dr. P. S. Deshmukh (C. P. & Berar: General): Mr. President, Sir, I move :-

"That in amendment No. 369 of List If (Seventh Week), in clause (2) of the proposed article 24, after the words 'is to be determined' the words 'and paid' be added."

Sir, I have also given notice of another amendment which is No. 434, I do not propose to move the first portion by which I sought to add 24A, but I would beg leave to move the last portion, Sir, which is styled here as 24B and if it is accepted it will have to be numbered as 24 A.

Sir, I move :-

"That with reference to amendment No. 369 of List VII (Seventh Week) after the proposed article 24, the following new article be added:-

> '24 A. Nothing in this Constitution shall prevent the Parliament from exercising jurisdiction over, and the State Legislature from acquiring any properties movable or immovable belonging to any public charitable trust without compensation and for the purpose of better utilization and management of the trust property."'

Sir, this is undoubtedly a very important provision in the Constitution and it is not therefore surprising that we have been deliberating with regard to these provisions for a very long time. In spite of our efforts, it has not been possible to evolve a formula which is acceptable to everybody. Sir, the claims to property or our outlook towards property is next only to individual liberty the very essence of all political thought and constitutions. More and more as time advanced, the outlook towards private property has been undergoing very great changes. On the one hand there has been a system of excessive capitalism; on the other we have the instance of Russia where all private property was confiscated. India has come into its own as one of the greatest nations of the world and on this one thing as to how we regard private property is going to depend the state of politics if not the governance and fate of this country.

The formula that has been presented here in the shape of this article, in my opinion, is a half-hearted one. It neither protects private property, nor does it confiscate it. If it is necessary to respond to the cry of the people who are more and more being dominated by proletarian ideas that all land, all mines and all things belong to the people as such and there can be no preserved or separate right of any individual with respect to it. If we wanted to give effect to this or to respect the wishes of the people or act in consonance with this demand of the people, which, in spite of all our efforts to keep communism away, is getting more and more popular with our people, if we do not want to go back on the of-proclaimed promises held out under different conditions and- circumstances, it would be necessary for us to go much further than we have been able to go in this particular formula. But, Sir, I wish to advise a cautious attitude. I believe, sooner or later, there will be no private property in India. We are fast approaching that ideal, that goal, or that catastrophe if you like to describe it in that way. But, for the present, I would have liked to keep the thing in a somewhat fluid, undefined and elastic condition by accepting the amendment that has been moved by my honourable Friend, Mr. Sahaya.

I think, Sir, as I have advocated on many occasions, that we should not try to commit or fetter the powers of Parliament in such a matter and at this stage any way. This is a matter which requires very careful and thorough consideration and I feel at the present moment it is impossible for us to spare for it the time that is needed. In my opinion we have hardly had time to collect all the relevant information and if I may say so, the worthiest amongst us has not been able to decide upon a definite policy with regard to property as a whole in the whole of India. It is clear from the nature of the amendments that have been given notice of and put forward in this House that very few people including my friends the Socialists have a clear conception as to how exactly we are going to deal with these rights to private properties, whether we are going to preserve them or whether we are going to abrogate them so far as all private property is concerned. of course it is noteworthy that even Socialists have not advocated expropriation.

That being so, it is not at all easy to determine, where the limit may be set or where the line should be drawn. Especially when we are making a constitution, we have no time to investigate the various circumstances of this whole sub-continent, where the conditions vary from district to district and vary still more immensely from province to province. Each one of us has different ideas and there are every where different tenures of land, Jagirs, Zamindaris, Izardaris, Malgujaris, etc., and it is not possible for us to deal with them all in one way or to evolve a formula which would be not only acceptable to everybody, but of which we shall be able to say for certain that it is going to achieve the salvation of India, and that no other solution would be better fitted to meet the circumstances of the case.

From that point of view, I would have much rather liked that all that we say and provide is the first clause which is of course the same as in the Government of India Act : "No person shall be deprived of his property save by authority of law." If we had done this, then all the various things that we have included in the article as it has been placed before the House by the Honourable the Prime Minister would have been unnecessary. The article has perforce to be an involved one; there have got to be 'save' and 'except'; there have got to be "notwithstanding" this and that; "nothing in this will apply to that" and "subject to what is stated" etc. I do not think we are in a position to judge of the future so quickly and in such definite terms as to lay down a certain formula which will be, without doubt, of benefit to the whole country. I would therefore urge that all that we should say is that Parliament may by law determine property rights from time to time.

There have been two interesting speeches delivered by my honourable Friends, Mr. Kamath and Professor Shah. They have described property by quoting certain definitions. Mr. Kamath said that some one had defined property as theft. My honourable Friend, Prof. Shah has gone further and quoted that it was described as "robbery, dacoity, deceit" and what not. I shudder to think what will happen to the fine sherwani which Prof. Shah is wearing or the silken upper garment that Mr. Kamath puts on on his shoulders if we were to accept any of these definitions and give effect to the purpose behind the definitions. But, we are unable to fly so high or accept the ethical and spiritual heights to which our spiritual friends, if I may be permitted to say so, have flown. We cannot in this important matter commit our future successors to any policy which will fetter their discretion, and which will probably create innumerable difficulties in their way. We are also in the midst of a financial crisis; it is not a crisis of this country alone; it is a crisis which the whole world has to face.

Under these circumstances also, even if we do not like it, we have got to curry favour with capitalists and those who have got large properties and in view of the results that may accrue, we cannot wholly disregard them. On the other hand, there, is the demand by the people that they want to own,' and to re-distribute the whole land. In the province of Berar, more than two-thirds of the land, I think, is owned by money-lenders. It is natural when the whole nation is thinking and becoming conscious, that they should not like any individual proprietors to monopolise such extensive properties.' Therefore, the pressure is going to be more and more that there shall be a re-distribution of property especially landed property. If we wish to resist this demand, then we will have to make up our mind solidly and plainly say that private property rights which are existing at the present moment shall continue to exist. But we cannot have a half-hearted, half-way house like the one which has been presented here, which neither takes us nearer those whom we wish to please, nor shall we be consistent with what we have declared from time to time. Under these circumstances, Sir, I think it would be better to leave the more detailed description of the rights to property to the future Parliament.

Sir, the second amendment that I have moved refers especially to religious trusts. I know, Sir, that most people are aware of the way in which these religious trusts are managed and I think it is necessary that the question of compensation cannot arise in this case. The sooner we utilise these vast properties for the benefit of the nation, the better it would be. This is something that is extremely desirable, and I hope, Sir, that this addition that I have proposed to article 24 would also be accepted.

Mr. President: Amendment No. 405: that is covered by the amendment which has just been in moved by Dr. P. S. Deshmukh. Amendment No. 406: Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: It is already one o'clock, Sir.

Mr. President: We shall then meet at four o'clock.

Shri H. V. Kamath: May I suggest, Sir, that we might meet at nine o'clock in the night, if that be convenient to you ?

Mr. President: I think it suits Members more to meet at four o'clock rather than at nine o'clock. The House stands adjourned to four o'clock.

The Assembly then adjourned till Four of the Clock in the afternoon.

The Constituent Assembly re-assembled after Lunch at Four of the Clock. Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Mr. President: Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: Sir, I beg to move:

"That in amendment No. 369 of List VII (Seventh Week) after clause (2) of the proposed article 24, the following proviso be added :

'Provided that when any such law provides for the acquisition by any State of the interests of the Zamindars of various degrees and other intermediaries for the purpose of abolishing the Zamindari system, it shall be sufficient if the law provides for the payment of compensation amounting to not less than twelve times the estimated average net income of the Zamindar of any degree or any intermediaries whose interests are to be acquired.'"

My amendment No. 417 is already covered.

I move :

"That in amendment No. 369 of List VI (Seventh Week) for clause (5) of the proposed article 24, the following be substituted :-

'(5) Save as provided in the next succeeding clause, nothing in clause (2) of this article shall affect the provisions of any existing law or of any law which the State may hereafter make which imposes or levies any tax or penalty which seeks to promote public health or to prevent danger to life and property.'"

I also move No. 425.

"That in amendment 369 of List VII (Seventh Week) in clause (5) and in clause (6) of the proposed article 24, the words "Save as provided in the next succeeding clause" be deleted."

I also move

"That in amendment No. 369 of List VII (Seventh Week) in clause (6) of the proposed article 24, the words, figure and brackets 'clause (2) of this article' be deleted."

I do not move No. 439.

The proposed new article 24, to say the least in effect though not in appearance, a most revolutionary provision. It indicates a serious departure in the policy of the Government. The article is simple-looking, but as I have already indicated in effect it is extremely dangerous.

The crux of the whole problem before the House, so far as this article is concerned and which affects the various, amendments, centres round one important principle viz., the principle of compensation. Should you or should you not pay compensation for lands and properties acquired for public purposes ? Compensation, before this new article 24 was ushered into this House, had a definite meaning. Compensation meant that sufficient, fair, legal or equitable compensation must be given. Whatever be the description you must pay for what you take. That was the idea in India before article 24 was introduced and that is still the idea in all civilized countries. That was the idea in India before this article came into the scene. Sir, the payment of fair compensation seems to me to be so just, so fair and so reasonable that it would not have required any arguments to support the idea. There is the provision for payment of compensation in the new article. But in view of the context, and in view of cetrain pronouncements and in view of certain subtle provisions lying concealed within its meshes, one should proceed rather cautiously and warily in dealing with this subjects.

The situation has become much more difficult on account of certain pronouncements in this House by our honoured Prime Minister. Sir, I have the highest respect and affection-my humble respect and affection for him-but the legal proposition which he has enunciated requires respectfully to be dissented from. He has in effect said that property belongs to the public, to the people. I do not quote him verbatim, but this seems to be the effect of what he said, that "property belongs to the people, and the people want it, and therefore they must take it; compensation or adequacy of compensation does not enter into the picture". But as I was submitting, the adequacy of compensation or its fairness and the like is the most vital thing. So, far as the entire civilized world is concerned, the law is that whenever you take property for public purposes, you pay fair and adequate compensation.

It is only in Russia that property is taken without compensation or only with mere nominal compensation. We are today going to imitate the example of Russia, a singular example in the civilized world in this respect. That is the example which we are going to follow. In fact, so far as this matter is concerned, there is no difference between the authors and the Supporters of this article, and the Communists today, except in the manner of their approach, except in the method of the execution of their policy. Sir, believe the Communists, the Socialists and the supporters of this article would kill and extirpate the middle classes and the uppper classes altogether. These three groups of persons agree amongst themselves in their ideal, they differ only in their methods of approach and in the practical way of attaining it. Whilst the Communists would kill them by use of force, and violence, while the Socialists would kill them-as apparently Prof. K. T. Shah would do by arguments and speeches and theories, the sponsors of the present article would kill them by legal means. There is essentially no difference in the ultimate effect or desire. The question now is this, We are in the middle of a road and the road bifurcates. Which way to proceed is the question, to proceed as the Communists have done or to proceed along the road that the entire civilized world has followed ?

Sir, I shall briefly state before you the law of compensation in all civilised parts of the world. The whole subject has been dealt with very elaborately in the Encyclopaedia Britannica, subject-Compensation, Vol. VI, pages 177 to 179. I do not want to go through all of it, but only mention certain points. Compensation, according to that great authority is "reparation or satisfaction made to the owner of the property which is taken away by the State for State purposes. The right of individual ownership is challenged in Russia which has abolished the the right to private property and it for alleged public purposes without compensation. But to however, the U. S. S.R. has been compelled to reverse its policy. influenced by communism and these States, in the name of has expropriated a large extent, They are now agrarian reform have expropriated private property either with inadequate compensation or without any compensation."

Sir, I go to other parts of the world, the entire civilised world. There individual ownership is recognised not only in the civil law of the entire civilised world, but also in the international laws, both in times of peace and of war. It is stated in that authoritative work that even in peace treaties following World War one principle that was respected by the Nations was the inviolability of private property. So far as the civil law is concerned, the French Civil Code says that "no one can be deprived of his property except for purposes of public utility and for adequate compensation.,?' The Belgium law is to the same effect. The Italian Code says that in order to acquire property by the State, "previous payment of just indemnity" is necessary. The Spanish Code is to the same effect, namely, that compensation must be paid on a "just valuation". The law in the South American States is similar. The German Code in article 153 says that "adequate compensation" must be given. The law of the United Kingdom is that "full compensation" must be given. The U.S.A. law says that "just compensation" shall be given.

An Honourable Member: You are repeating.

Mr. Naziruddin Ahmad: I am quoting from a very recognised authority and from a recent edition, and saying that this is the law in the whole civilized world. Should we follow the law which the civilised world is following or should we follow the Russian method of expropriation ? That is the question. So far as the present article is concerned, I wanted to insert certain words, such as "fair compensation" or "full compensation" or "just compensation". But an Honourable Member has already moved a similar amendment and so I did not move mine as mine suggested merely verbal variations. The substantial question is whether we should provide in our Constitution that whenever there is a law for acquisition of property by the State for public purposes, we should provide therein that the law must also provide for "fair and equitable" compensation. As I said just now, up to yesterday, the law was thus, and the point would not have required any clarification. But in view of certain declarations in the House and the language of certain clauses and sub-clauses, I think this clarification is very necessary. In fact if we really want to expropriate private property for public purposes without compensation or with a nominal compensation, that should be stated fairly, fully and openly. Instead of that there is the provision for payment of compensation. It leaves the Provincial Governments free to expropriate land on a nominal compensation. The article provides a loophole, a linguistic loophole, through meaning in civilised countries all along has been the same.

I submit that compensation should be full, fair, just or adequate. If we do not state it, these will be serious mischief committed against private property. If we do not respect private property all talk of fundamental or constitutional rights will come to naught. We have already passed article 13 where in sub-clause (f) of clause (1) it is said "All citizens shall have the right to acquire, hold and dispose of property." If we allow right to acquire, hold or dispose of property it follows that if anybody took it full price should be given.

We hear of nationalisation. If nationalisation is to be effected free of cost, it would degenerate to a kind of cheap nationalism. It would be just adding to the practical ruination of our credit structure which we have already succeeded in achieving. If we go to the public for subscription to large limited companies for industrialisation there is no credit and no money. Our capitalists are gone. Now we have been driven to go to the foreign markets not only for loans of very big sums but also to induce them to open commercial undertakings in our country. There are the glaring examples of some clauses in the article which stare us in the face to which I shall draw the attention of the House. Will any foreigners, who are to be credited with a little shrewdness and business acumen, think of investing their money in industrialising our country whereby they stand to lose in two ways ? They will stand to lose or partly lose through expropriation their capital and capital appreciation, if their business is successful, and then by helping India to be industrialised they lose their own business at home. In such circumstances there is a double check upon flow of foreign business in India.

Then there is clause (5) of article 13 which limits to a certain extent by prescribing certain restrictions. The only restriction mentioned is "reasonable restriction on the exercise of any of those rights for the general public." The only condition is that I must not "exercise' my rights over property to the detriment of the public. Rights to property are never contemplated in article 13. I submit that article 24 will go directly against article 13 in this respect. However, as I said in the course of the debate earlier, in connection with a point of order, we have a right to be inconsistent. The point of order raised was no real one. It was only a glaring piece of injustice to which the honourable Member put his finger in raising the point of order. If we adopt clause (4) of the article then serious in-justice will be perpetuated. Hence I opposed the honourable Member who raised the point of order. But I fully sympathise and agree with him and lend my feeble support to his view that this clause is a most pernicious one which will perpetuate injustice on a large scale.

Coming to the vital matter which lies concealed behind these amendments is the question of the abolition of the zamindari. Somehow or other some persons think that zamindari property is no property at all and they should be expropriated without any mercy or compensation on the absurd ground that it would be for the benefit of the public, as if the zamindars do not form part of the public at large. I might state here frankly that I am not a zamindar and I have no interest in zamindars at all.

Mr. B. Das: I think you are zamindar.

Mr. Naziruddin Ahmad : Mr. Das says that he thought that I was a zamindar . . .

An Honourable Member: He might wish you the pleasure of the thought.

Mr. Naziruddin Ahmad: Mr. Das thinks of many things which are unreal. I was a very petty zamindar but I sold away my interests 5 or 6 years ago, for I saw what. was coming. Today I am independent, free and disapassionate, a man having absolutely no interest in that question. I am safe and happy. But those poor zamindars who believe in the stability of the law of the land are today sadder, though wiser. In this business we should proceed upon constitutional principles of rights of property and so on. If it is necessary that zamindaries should be acquired, of which there is no doubt, all that I claim Is that proper compensation should be paid When the Bank of England was nationalised full compensation was given to the shareholders. In India when we nationalised the Reserve Bank the full market price was given, though at a time of depression. The question is, does zamindari property differ from other properties so as to receive this step-motherly treatment? The zamindars are small in number and are scattered. They have tenants to contend with and the Government find themselves in the happy position that they can kill them without anyone weeping for them. If we destroy civil rights the effect of it would be that it will recoil on us in no distant time.

With regard to zamindari property we should know what it means. There was nothing like a zamindar during the period of the Hindu kings. During the Muslim period they were unconsciously created as a matter of administrative necessity. On account of the exigencies of the situation military governors were despatched to distant corners of India to maintain law and order, to maintain military outposts and to maintain themselves out of the revenues of the local areas.

Shri Biswanath Das: We all know the history.

Mr. President: The honourable Member should remember that we have to finish the discussion of this article tonight. All this discussion may be interesting but let us confine ourselves to the article.

Mr. Naziruddin Ahmad: All that I am emphasising before the House is that zamindari property is like any other property. Zamindars were unconsciously created by the Moghul emperors in order to make it easy for them to realise rents to maintain themselves out of them and many people volunteered to collect rents. From these beginnings the zamindaries were formed. Zamindaries were transferable like any other properties and for the speedy realisation of revenue the early British administrators provided for the sale of the zamindaries for arrears. Zamindari is like an ordinary property. The present body of zamindars have paid for them with hard money. Therefore, if we can confiscate zamindari property without sufficient compensation, we would also confiscate any business concern or limited company on the alleged ground that they will be for the 'benefit of the public.' There are many properties or business concerns which come to people like windfalls. If they have acquired any right even by a windfall, should that be any reason for confiscating such property for the benefit of the public without paying compensation? I submit not. Then why is it that in the case of zamindari property this distinction is being made? I have in amendment No. 406 put a limit to the payment of compensation. I have put it at 12 times the estimated net annual income of the zamindar. In fact, the ordinary rule of valuation of such properties is twenty times on a 5 per cent. income basis. But I would put it at 12 times the- annual net profit. That would be a via media between utter confiscation and . . .

Shri Biswanath Das: On a point of order, Sir. We are not discussing the question of compensation; we are discussing amended article 24 wherein authority is being provided for legislation to be undertaken. There is therefore, no need for all this.

Mr. President: The honourable Member wants to limit the discretion of future legislation with regard to compensation by laying down a certain figure and I think lie is perfectly in order in doing that.

Mr. Naziruddin Ahmad: I am grateful to you, Sir, for this clarification. Mr. Biswanath Das has not followed the amendment or my speech. I want to limit the payment of a minimum compensation to 12 times. For instance, in the U. P. they desire to pay 8 times. I want to make it 12 times. The U. P. legislation has another loophole. Out of the income, the estimated agricultural income-tax is to be deducted. The estimated agricultural income-tax has been introduced recently. It comes to half or even more than half in the higher regions of income in the case of big zamindars. In that case, 8 times the annual income would actually mean something like 4 times the annual income. This 8 times is an exaggerated and illusory figure. In reality it is much less. So I wish to put a limit by means of proviso to clause (2).

The other point to which I wish to draw attention is the deletion of clause (4). If we keep it, the effect will be that any law which has been passed and receives the assent of the President will be regularised, but any law which has not been passed or may be passed hereafter will not stand in this advantageous position. So the Provinces which have passed the law before will be in a more advantageous position. They will not need to pay compensation as required in clause (2). Why should this distinction be made between Provinces who were first in the run and those who were late? The principle of compensation is binding on all There should be no discrimination between one Province and another on the mere ground that it has come earlier. With regard to another amendment-to clause (5)-it amounts to certain verbal alterations to give effect to the principle I have chosen to submit.

Then there is an amendment to clause (6) which will also seriously affect the Compensation question. This clause says that laws which have been passed with-in one year would be valid notwithstanding clause (2) of this article, *i.e.* notwithstanding it provides for even no compensation at all. These matters centre round the payment of adequate compensation. If we really do not pay adequate compensation, it will be injustice committed on a large scale and clauses (6) and (4) are so worded as not to give obvious and necessary information. One has to guess the object of these discriminatory provisions. The real purpose has been left concealed. If the principle of compensation is binding on one Province, it should be binding on-all. If any Province has made any law which would contravene this principle, to that extent it should be ultra vires and void. We are inserting article 24 in the Fundamental Rights Chapter and in clause (2) we have provided that whenever any law is passed which contravenes wholly or partly the fundamental principles of these articles, the law would to that extent be void. Why should therefore there be any exception in the case of Provinces which have disregarded the principles of clause (2) ? These principles are immutable and must be respected in all cases, and if there has been any violation it has been a deliberate violation of a sound principle and should not be excused. I submit that the law of compensation should apply to all equally. I regret very much that I have taken a little more time than I might have, but I believe that the case goes without much attention in the House and that is my excuse for speaking at length.

Mr. President: Amendment 409-Mr. Bharathi.

Shri L. Krishnaswami Bharathi (Madras: General): Not moving.

Mr. President: Amendments Nos. 416, 417 and 421 are covered by amendments which have been moved already. 423.

Shrimati Purnima Banerji (United Provinces : General): Sir, I beg to move:

"That in amendment No. 369 of List VII (Seventh Week), in sub-clause (b) of clause (5) of the proposed article 24, after the word 'property' the words 'or for ensuring full employment to all and securing a just and equitable economic and social order' be added."

Sir, the object with which I move this amendment is to give effect to some of the principles and clauses which we have already passed when laying down the Directive Principles of State Policy. There we have stated that the State shall endeavour to secure a society in which justice, economic, political and social, shall inform all the institutions of the State. We have already said that an adequate means of livelihood to men and women shall be provided and the economic resources of the country shall be so handled as to avoid concentration in the hands of a few and to avoid its working to the detriment of the common people. At that time when these clauses were under consideration we also felt-and some of us felt very strongly-that in the Fundamental Rights the right of livelihood, the right of earning honourable bread, should be guaranteed to all people. But at that moment we realised that in order to do that a new order of society will have to come into being which possibly will take some time and therefore the right of livelihood was included in these Directive Principles of State Policy. We consider these Principles to be absolutely essential and in fact our guiding star in the future. For that reason, if provisions are not made in this article dealing with Property Rights and the economic policy of the future State is in any way fettered and made rigid, we feel that we shall not be able to succeed in these articles which we have already passed.

Mention has been made of the U. P. legislation, the Abolition of the Zamindari Bill. Perhaps some of us recall that at that moment we had also passed a resolution saying that the U. P. Assembly stands committed to the principle of abolition of capitalism. If that resolution has to have an effective meaning and if we are to see that the 'country does develop upon such lines as will harness the resources of the State for the common benefit, it is most essential that when public good should so demand we should be able to do so. Provision should be made that compensation should be paid, as it has been proved that we are all anxious to pay compensation, but if we are not able to do so, the clause should provide the taking of property without it. We are all anxious to see that a peaceful transference of society takes place and therefore there is no fear of our expropriating anyone. As you see, the U. P. Abolition of Zamindari Bill not only gives the zamindar compensation but also gives rehabilitation grant. So it proves that it is not in a vindictive spirit that the House in the future may or will function or the new order that is to be created will be pursued in any arbitrary way. If in keeping with this spirit an occasion should arise, as it may arise, when the capitalist system prevalent in the country should be taken in hand for the common good, a provision should be here so that this Constitution may provide for all future development and thus command prop-or respect from the people and may have in it the seeds of that future development upon which the welfare of our country depends.

With these words I move.

Mr. President: Amendment No. 424 is already included in some amendment. No. 428.

Shri Kala Venkata Rao (Madras: General): Sir, I move:

"That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the proposed article 24, for the words 'one year' the words 'eighteen months' be substituted."

I will give my reasons in the end after speaking about another matter which is connected with this clause. I think it was Machiavelli who said that one will excuse the murderer of his own father but not the person who will take away his property. Perhaps that is the reason why there is so much discussion about this subject here and elsewhere. Property is not of a single species; property is or various species. I may particularly point out to you Sir, and the honourable Members, that clauses (4) and (6) of this amendment refer to a particular species of property, namely zamindari property. I really feel that the word "property" should not be applied to this particular species at all, because when the *sanad* was granted in 1802, or earlier than that in Bengal when the Permanent Settlement was introduced, the *sanad milkiyat intimrari*, gave the right to the zamindars to collect the rent only. They were only mere agents to collect the rent and were asked to pay a portion of it as *peshkash* to the Government. Therefore the belief that the zamindars have got a right of property in this business is far from the truth. It is a well-known maxim that nobody can confer on someone what he does not himself possess. From time Immemorial the tradition and the law of this country has been that the tiller of the soil, or the society of which he has been a member, is the owner of the village or the particular holding. Therefore, when only the right to collect the rent was conferred on the zamindar it can never be said that a kind of property was conferred upon these gentlemen because the grantee himself had no proprietory right in that land.

Secondly, even this right to collect rent was restricted even from the beginning. Regulation No. 25 of 1802 in Madras granted the *sanad Milkiyat intimrari* on the 13th of July 1802. On the same day four other Regulations were issued. Regulation No. 30, called the Patta Regulation, definitely said that the rent that was to be, collected from the individual Pattadar should be the same as it existed on that date and should not be altered. The word "unalterable" was used in the Regulation No. 30 of 1802. These

Regulations ,having been promulgated on the same day and by the same government, we have to draw the conclusion that while the *sanad* granted him the right to collect the rent, another Regulation of the same day stated that the rent to be paid by the particular pattadar, should not be increased by the zamindar. This was made clear after a long struggle, by Regulation No. 5 of 1802 which definitely said...

Shri Alladi Krishnaswami Ayyar (Madras: General): On a point of order, Sir, are we just now interested in going into the whole history of zamindari with reference to a consideration of clauses (4) and (6) of the draft article ?

Shri Kala Venkata Rao: The question has been asked on the floor of this House as to why there should be any discrimination as is shown in clauses (4) and (6) regarding zamindari property. My submission is that 'zamindari' is, not a property at all and therefore it should be discriminated from the other types of property. From our knowledge of history and the zamindari legislation I assert that it was never deemed to be real property, as we know it to be in some other categories.

I will illustrate this. And I am telling you what His Excellency our present Governor-General said when he took part in the discussion on the Estate Lands Committee report in the Madras Legislative Assembly in 1939. Say that I have a house in a village near Delhi. I passed, say B. L., and was coming to Delhi for starting my practice. I gave that house on rent to Mr. Munshi saying "you please pay me Rs. 8 as rent every month". But as I was just leaving I met Mr. Krishnaswami Ayyar and I said to him "please collect Rs. 8 from Mr. Munshi every month and send me Rs. 6 and for the trouble you take please take Rs. 2 as commission". After ten years I returned to my place and found that there were few tiles on the roof or no cement at all on the flooring. Then I asked Mr. Munshi "How is it you have kept my house in bad repair though I gave it to you for a small rent of Rs. 8 ?" Mr. Munshi said to me "I was paying Rs. 24 as rent for this house all along and Mr. Krishnaswami Ayyar has all along been collecting it". This increase of rent from Rs. 8 to 24 was unauthorised and has been pocketted all along by the gentleman whom I requested just to collect the rent. The result was that neither the owner of the house nor the tenant thereof got any benefit out of the increase. The gentleman who was mere rent collector has been pocketing this difference of Rs. 16. If Shri Krishnaswami Ayyar gets what is called property in this transaction the zamindars also have property.

In Madras, in the year 1802 the total rental of all estates was Rs. 72 lakhs of which 48 lakhs were paid to the Government as *peshkash.* Now the zamindars of Madras are collecting Rs. 219 lakhs as rent, but pay the same 48 lakhs as *peshkash* even today. I therefore say this is no real property as we ordinarily know it and so should be treated on a different footing.

Then I have to mention in this connection that the zamindar did not also always discharge his obligations as were fixed in the sanad. It has been laid down that he must maintain irrigation works, etc. He never did anything of the kind. All the irrigation works are in disrepair and everywhere rent was increased nonetheless without any benefit coming to the ryots. Mr. Veblan defined what a 'vested interest' in property means as "a marketable right to get something for nothing". We could have terminated this authorisation to collect rent by issuing a notice but we are giving compensation and therefore be ought to thank us., Many of the zamindaries were created at the time of the decline of the Moghul rule when jungle law prevailed. We want today tocompensate them under the rule of law. Bihar has to pay 130 crores;

United Provinces has to pay an equally big sum and Madras has to pay about 15 1/2 crores. All these sums will go to the zamindars just because they possess some sanads. We are not treating those sanads as mere scraps of paper. As a matter of fact are treating them as scrips. We are paying for these scrips a value related to their history and based on equity. 'Therefore I maintain that from every point of view we have to treat this species of property called the zamindari right as one different from the ordinary type of property, which we come across ordinarily.

Section 299 of the adapted Government of India Act has practically been redrafted as the present article with only a few alterations . The only main change is the dropping of the word 'payment'. It has been held by an eminent jurist that as long the word 'payment' is there, we have to pay compensation only in the legal tender of the country and therefore in cash. Therefore many of the provincial legislatures have to suffer. Now under this clause the amount can be paid in bonds. So, the provincial Governments can reconsider the question of paying the first instalment of compensation at an early stage. As a matter of fact, it will benefit the provincial governments to pay like this in bonds, particularly in Madras where section 50 makes liberal provision for interim payments. If there is an estate with an income of 6 lakhs, the sum of one lakh will be the basic annual sum. We have to pay this one lakh till we pay the total compensation without counting these payments as part of it. If we pay in money or bonds now we will gain much in the shape of interest.

Mr. President: I would remind the honourable Member that we are not discussing the Madras Bill here.

Shri Kala Venkata Rao : I am only illustrating Sir.

Mr. President : I know that lie was Revenue Minister there and knows more about that Bill than anybody here. But he need not give the benefit of that knowledge to this House. He may confine himself to the article.

Shri Kala Venkata Rao : I will just conclude Sir. Instead of paying at the rate of one lakh of rupees as interim payment for some years we will be paying Rs. 30,000 only as interest on bonds.

I would like to say one thing more. The right of Parliament to fix compensation or the principles of compensation must be kept sacrosanct. Only when a fraud is committed on the Statute the courts can interfere in the matter.

Sir, as you pointed out, I am not justified in going into all these details. I was only trying to point out that the zamindari property is a different kind of property and therefore it has been rightly treated so in clauses (4) and (6) of this article.

I want in this connection to tell my friends what Mr. Fosdick said "History's current is sweeping us into the future and the illusion that security is dependent upon the absence of change is perhaps the most dangerous form of imbalance which plagues the mind of men". With these few words I request the honourable Mover to accept my amendment to substitute 'eighteen months' for 'one year' in clause (6), for the simple reason that if the Constitution does not come into force on 26th January 1950, there may' be some difficulty for the Madras Bill which received assent in March 1949. If the mover accepts my amendment that anticipated difficulty can be removed. Mine is only a formal amendment and I request the honourable Mover to accept it.

Thank you, Sir.

The Honourable Shri Krishna Ballabh Sahay (Bihar: General): Sir, I do not move my amendment. My purpose will be served if the honourable Mover will see his way to accept the amendment moved by Shri Kala Venkata Rao.

Shri Jaspat Roy Kapoor (United Provinces: General): Sir, I move:

"That in amendment No. 369 of List VII (Seventh Week), after clause (6) of the proposed article 24, the following new clause be added :-

'(7) The provisions of clause (2) of this article shall not apply to any property belonging to evacuees to the Territory now included in Pakistan and declared as evacuee property by any law promulgated to deal with such property in the event of failure of any agreement being arrived at between India and Pakistan on the subject of property belonging to evacuees to both the countries."'

The word 'communities' is a mistake for 'countries'.

Sir. on the same subject there is another amendment which I have tabled, No. 510.It reads thus :

That in amendment No. 369 of List VII (Seventh Week), after sub-clause (b) of clause (5) of the proposed article 24, the following new Sub-clause be added:-

'(c) the provision of any law already enacted or which may be enacted for the administration or disposal of any property which may under or for the purpose of the law be regarded as evacuee property."

Sir, I had occasion to discuss both these amendments with the Honourable Shri Gopalaswami Ayyangar and as a result of that discussion, we have come to the conclusion that the purpose of these amendments will be well served if amendment No. 510 is slightly amended and I therefore seek your permission, to move this redraft.

Mr. President: Read out the Amendment.

Shri Jaspat Roy Kapoor: I move:

"That in sub-clause (b) of clause (5) of the proposed article 24 the word 'or' be added at the end."

This is only a formal thing. The substantive thing follows-

"That after sub-clause (b) of clause (5) of the proposed article 24, the following sub-clause be added :-

'(c) the provisions of any existing law made or of any law that the State may hereafter make in pursuance of any agreement arrived at with a foreign State or otherwise with respect to property declared by law to be evacuee property.'"

Mr. President: Yes, you can move it.

Shri Jaspat Roy Kapoor: Thank you, Sir. The other amendment that stands in my name is amendment No. 488.

Mr. President: What about 511 ?

Shri Jaspat Roy Kapoor: I do not propose to move it. The amendment that I have just now moved with your permission will take the place of 510 and 433. Amendment No. 488 which stands in my name reads thus:-

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, after the word 'determined' the words 'and given' be added."

Mr. President: This is already covered.

Shri Jaspat Roy Kapoor: I am sorry, Sir. The other amendment which stands in my name is No. 495. Sir, I move-unless it is already covered by any amendment previously moved-

Mr. President: I do not remember. You may move it formally.

Shri Jaspat Roy Kapoor :

"That in amendment No. 369 of List VII (Seventh Week), in clause (3) of the proposed article 24, for the words unless such law having been reserved for the consideration of the President has received his assent the words 'has received the assent of the President' be substituted-."

Then there is another amendment, No. 508. Sir, I move-

"That in amendment No. 369 of List VII (Seventh Week), sub-clause (a) of clause (5) of the proposed article 24 be deleted."

I must confess, Sir, that I am feeling very unhappy, and I believe I am expressing the view of many other Members of this House because I am sure they also feel unhappy, at the manner in which this question of compensation is being dealt with and the long debate that it has necessarily given rise to. This subject of compensation has not been placed before us as a new subject. It has been engaging the attention of the country for the last so many years. It has been discussed thoroughly in the country by various political parties, in the press and on the platform, it has been discussed here in the Constituent Assembly, while we were discussing the report of the Fundamental Rights Committee, and we have-all the political parties in their own way, the government of the day, the Prime Minister and the Constituent Assembly-all , have reached definite decisions on the subject, and all that remained for us or for the Drafting Committee was to draw up an article in consonance with those definitely accepted principles and commitments.

But unfortunately we find that in the article now presented to us, all those things, to a very large extent, the whole question has been thrown open again for discussion and final decision. A point of order was raised by my Friend, Mr. Symanandan Sahaya but that was disallowed by you, Sir; but apart from that being a point of order, there was very great substance in his submission that a good portion of this article includes things which run contrary to the decisions arrived at even by the Constituent Assembly.

Let us see, Sir, what are those various things that have been discussed in the country and by the Constituent Assembly also and on which final decisions have already been arrived at. So far as the Congress is concerned, the government is concerned, the Honourable the Prime Minister is concerned and this House is concerned, these three things have already been decided : No. 1, that the zamindari system shall be abolished; No. 2, that just and equitable compensation shall be paid to those from whom these zamindari rights are acquired; and No. 3, with regard to any other property that we acquire, just and fair compensation shall be paid. These are the three things that have been decided, to which the Congress is committed. This was what we put down in our election manifesto. This is what was also incorporated in the resolution of the government as announced from the floor of this House on the 6th April 1948. This again is the thing which was declared by the Honourable the Prime Minister on the floor of the Parliament on the 6th, April 1949. Not only this, during the course of the statement made by the Honourable the Prime Minister on the 6th April 1949, he went further to assure' the foreign investors that not only would they be given just and fair compensation for any industrial- concern of theirs that shall be acquired but that necessary facilities would also be given' to them for the transmission of their money to their own country. These are the commitments of ours, of the Constituent Assembly, of the Government and or the Honourable Prime Minister.

Now, Sir, it does appear to me and I am sure it must appear to all other Members here that it is not fair, not proper, neither desirable, to go behind either wholly or even partially what we have already stated and promise in the past. Let us see, Sir, whether this article is in conformity with what we have decided or whether there is any departure from those commitments of ours. If there is any departure from these commitments of ours, surely this should not be accepted by us.

In clause (2) while it is conceded that no property shall be acquired without compensation therefor being determined, it does not say that the compensation shall be fair, just and equitable, the three essential words which we have always been using in our election manifesto, in the decision arrived at here and in the Honourable Prime Minister's statement and the Government's statement on industrial policy. These are essential words, Sir, and I see no reason why they should not be incorporated here. If it is contended that they are redundant and unnecessary, I do not think it is correct because these words have been deleted after due, deliberation and discussion and with a definite purpose. I submit, Sir, that it should not be so. It was, in one of the amendments that stood in my name, which, of course, is now barred by another amendment which is moved by another honourable Member and I desire that at least the word "equitable" should be inserted before the word compensation". I was agreeable to delete the words "just and fair" even, because it appeared that feelings are running, very high on this and in order that it may not appear very irksome to some of our friends to incorporate them here. of these three words, I thought if we have only the word "equitable" It may be acceptable to them and it may improve the draft at least to some extent. I do not see any reason, Sir, why at least the word "equitable" should not be placed before the word "compensation". After all, what is the intention of the framers of this resolution or of the honourable the mover of this article? Is it not his intention that an equitable compensation is paid? If it is his intention, then let the word be there; and if it is not, it is going behind our professions, assurances and commitments. It is said that if we insert the word equitable" here it would become justiciable. Why should we be afraid of anything being justiciable ? The Honourable the Prime Minister had said with very great enthusiasm and very loudly that "we are determined to stand cent per cent"-that was the expression used by him- "by all our commitments". I want no more than this and no less than this. If you make a statement with a good deal of enthusiasm, it does not convert anything into a fact, if really it is not. What were our commitments ? That we shall abolish the Zamindari. Well and good. That we must reserve to ourselves the right of acquiring the industrial property. Well and good. But what about the third of the commitments which is given the go-bye, that we shall pay "fair, just and equitable compensation" ? It is only 66 per cent. at best of the commitments that we have made : Out of these three, only two are accepted now. The third is thrown to the winds. I submit, Sir, it is not correct to say that we are prepared to abide by our commitments cent per cent.

Now, Sir, I was submitting, why is it that we are afraid of making these justiciable ? I have faith in our legislatures; I have faith in our Parliament and I am sure that at no stage any State Legislature or our Parliament will enact any law whereby any property would be taken away for public purposes without provision being made for an equitable. compensation being given. Well, if we really mean to give equitable compensation, why should we think that the judgment of a court will go against what we shall be providing in the law? Surely we should not think so. The word "equitable" is a very flexible one. What is equitable today may not be equitable tomorrow. "Equitable" as I understand, is something which is equitable in accordance with the existing political theories, the existing accepted economic principles of the society, and surely our judges and our courts of whom we have very satisfactory experience would never fail us. Have we not seer, that the interpretation of the same law has been different by different judges from time to time in accordance with the accepted political and economic principles of the day ? Take, for instance, the case of the law of sedition. The particular section of this law is the same now as it was ever before. But then in the year 1906 in the days of Lokamanya Tilak the interpretation of the law of sedition was something entirely different from what the interpretation of it is today. What was sedition then is, now merely a criticism of the Government and even a fair criticism and is not only tolerated, but even encouraged not only by the courts but even by us here. MN, submission is that our judges have always interpreted laws in accordance. with the needs of the society and in accordance with the accepted political, economic and social theories of the day. To take one more illustration, judgments in and interpretation of Hindu law have been changing with the changing views and needs of the society. I find rot dilate further upon it now. Sir, I submit that there is no reason why we should be afraid of making all these provisions justiciable.

Then I submit, Sir, the worst into consideration, if a particular Bill, a particular Act is taken to a court of law by any person to test its legality, what will happen ? If we provide in an Act that we shall pay Rs. 100 for the acquisition of a certain prorperty and if the court of law declares that Rs. 100 IS not equitable and it adjudicates that it should be Rs. 125 or Rs. 150, we do lose nothing, because the framers of this aritcle have taken jolly good care. to provide clause (b) to clause (5) wherein they say : "Save as provided in the next succeeding clause, nothing in clause (2) of this article shall affect-

> (b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying *any tax* or penalty or for the promotion of public health or the prevention of danger of life or property."

I draw your attention particularly to the words "for the purpose of imposing or levying any tax". Now this is a very big right which you are reserving to yourself. If in the place of Rs. 100 the court adjudicates that you must pay Rs. 150, why not Say "Thank you, my Lord, we shall pay Rs. 150" and then come back and enact a law under clause 5 (b) saying "thirty-three per cent. of that shall be taxable" and realize that Rs. 50 by 'way of taxes. I, therefore,, submit with these powers reserved to us under clause 5 (b), it is absolutely unnecessary for us to be afraid of making the whole thing justiciable. It is what we say : "Gunah belazzat". Why have the odium of all this ? Why expose yourself to the the charge that you are afraid of making your law justiciable ? We have nothing to gain thereby and everything to lose. I would, therefore, submit that the word "equitable" at least must be added before the word "compensation" and certain consequential amendments in clause (2) may also be made, notice of which I have already given, but the consequential amendments are a. minor matter.

Coming now, Sir, to clauses (4) and (6) which are sought to be incorporated in this article, what do we find? The first impression of a man who reads these two clauses is that they are something which are difficult to understand. Of course, we who know what really is behind these clauses can understand the reason and the motive behind them. But, if a foreigner were to read these two clauses, he would simply rub his eyes in wonder and enquire what is the logic behind these, what is the reason behind these? He may even say, what after all is the sense behind these?; for what purpose they have been incorporated? Clause (4) says: "If any Bill pending before the Legislature of a State at the commencement of this Constitution etc. Why should there be a particular sanctity attached to a Bill which is merely pending in a legislature on the date on which this Constitution comes into force ? There is no logic behind it; there is no reason behind it. It is merely an arbitrary thing.

Then, Sir, clause (4) makes a distinction between one State and another. It makes a distinction between a State which has a legislature and a State which has no legislature. We know that we have several States which have no legislature. If a Bill is pending in the legislature of a State, it will have the benefit of clause (4). But, if there is a State which unfortunately has no legislature, it cannot have the advantage of the provisions of clause (4). To make a distinction between one State and another certainly appears to me to be something ridiculous. Not only that, Clause (6) makes a distinction between a State which has a Governor and a State which has no Governor. Clause (6) says, "Any law of a State enacted not more than one year before the commencement of this Constitution, may within three months from such commencement be submitted by the Governor, of the State to the President" so on and so forth, and thereafter, if the President certifies that Act, it becomes very good law and the whole of the provisions of clause (2) may be nullified thereby. But if a State has, unfortunately or I do not know-fortunately, a Ruler and not a Governor, that State even though it may have enacted a law heretofore or may enact a law tempted by these provisions, between now and January 26, 1950 on, which date this Constitution is to come into force, that State cannot take advantage of the provisions of clause (6): Why this distinction. Is it our intention to encourage a revolution in those States? Is it our intention to ask the citizens to somehow stage a show-down and get a Governor so as to be able to take advantage of the provisions of clause (6) ? Several honourable Members who are representatives of the States are very sore on this count and rightly, because they say "we also want to abolish Zamindaries in our States; we also want to abolish jagirdaris in our States; but we have neither a legislature, some of us; nor have a Governor." While a State having a legislature and a Governor can appropriate Zamindaries and industrial property by merely enacting a law between now and 26th of January 1950 without making the slightest provision for compensation--for that after all is the implication of clauses (4) and (6), your intention is a different thing-the States which have neither a legislature nor a Governor have no right to do that. Why this invidious distinction ? Not that I want that they too should have the same right; but I am only submitting how absurd is the insertion of clauses

(4) and (6) in their present form. (An honourable Member: Question).

There is one more defect in clauses (4) and (6), as I have already submitted, the intention of the framers in clause (4) is to safeguard the U. P. Zamindari Bill and the intention of clause (6) is to safeguard the Mad as and Bihar Acts. If you had put it down specifically there, it would have been an evil only to that extent. You do not say that specifically; but you make this provision in a general way which means that any other State or even the States of U. P., Madras and Bihar may enact any law whereby they can take to themselves the right of appropriating the Zamindaries or any property whatsoever without making provision for the payment of one single cowrie. After all, that is the implication of these clauses. It is a different thing that in your fairness you may not go to that extent; but the law must be clear and definite on that subject.

One impression that we create on everybody's mind by having this article in this way, particularly by having clauses (4) and (6), would be that the period between now and the commencement of the Constitution is going to be one of the darkest periods in the history of India. Is the pre-republic period in this country being made so dark that the subsequent period after the republic comes into being must appear to be very bright ? That period will it-deed be bright in itself. It :Is no use king the pre-republic period, a period of five months or so, appear so dark and gloomy and arbitrary. I submit therefore that it looks very ridiculous to have particularly these clauses (4) and (6) in the Fundamental Rights. These do not give any fundamental rights; in fact, they are a negation of the fundamental rights, which we have already adopted while adopting the Fundamental Rights Committee's report. With your permission, Sir, I would like to read the resolution adopted along with the report of Fundamental Rights Committee.

Mr. President: I would ask the honourable Member to finish.

Shri Jaspat Roy Kapoor: I am finishing, Sir; I will not take more than a couple of minutes.

I shall not even read; that honourable Members know that only too well. I will proceed immediately to my next amendment which seeks the deletion of sub-clause (a) of clause (5). Sub-clause (a) of clause (5) says : "Save as provided in the next succeeding clause, nothing in clause (2) of this article shall affect : (a) the provisions of any existing, law." May I ask, what is the necessity for this sub-clause ? What are the existing laws which are in contemplation ? I know of one law, and that is the law relating to the acquisition of larded property, take Land Acquisition Act. So far as that Act is concerned, it is certainly in consonance with the provisions of clause (2), because, that Act specifically lays down the basis on which property must be acquired. That Act needs no safeguarding by this clause. Which other Acts are intended, I do not know. I certainly would wish that it must be made clear as to what other laws there are in force today in this country which are intended to be safeguarded by this clause. Is there any other law the provisions of which are not in consonance with the provisions of clause (2)? I am lot aware of any; though I cannot venture to hazard an opinion on that subject being no expert on legal matters, I want to seek enlightenment on this subject from the honourable the Mover of this article as to what are those particular laws which he has in view and which he wants to safeguard. Even if there be one, the provisions of which are not in consonance with the provisions of clause (2), why should that Act be safeguarded ? The object of this article 24 is to make provision for Fundamental Rights. They are to be safeguarded and not any law which strikes at the root of a fundamental right.

I, therefore, submit that these clauses must go. Otherwise, it will encourage States. to rush in for laws to appropriate property without any fair compensation during this intervening period, for all these laws will be considered to be existing laws on the date on which this Constitution comes into force and will be beyond the scrutiny of a court of law.

Lastly, I come to my amendment relating to evacuee property which, in fact, is the most important of all the amendments. Though it is the most important of the amendments, I would not dilate upon it, firstly because it is rather a very delicate subject, and secondly because I am glad it is going to be accepted by the honourable the Mover. One word only about it, I will say. Our refugee brethren who have come over from Western Pakistan have left their property worth about 1,500 crores and the evacuee property in this country is worth about 500 crores or so. Delicate negotiations are going on between this country and Pakistan and they are being carried on by no less able a negotiator than the Honourable N. Gopalaswamy Ayyangar. So far, he has failed to bring about any settlement on this issue in spite of his accommodating nature, in spite of his reasonable attitude, in spite of all the greatness he has in him. So far, he has to persuade Pakistan to come to a settlement, on this question. Perhaps a settlement may be found or it may not be found In either case it is necessary that any law that we may be under the necessity of enacting hereafter and all the existing-laws and Ordinances on this subject must be beyond the pale of the provisions of clause (2), because if it is not so, when unfortunately at a subsequent stage in the event of no agreement being arrived at, we have to appropriate evacuee property, not only then we shall be losing all the property of the refugees to the extent of 1,500 crores but we shall be compelled under clause (2) to pay compensation to evacuees also. Therefore I submit it is necessary, and since it is going to be accepted I need say nothing further on this subject. With these words and with my amendment I beg to support the article which has been moved.

Mr. President: No. 474-Mr. lbrahim. I would remind honourable Members that we have to finish this article tonight whatever the time taken and I would request them to cut short their remarks as far as possible.

Mr. K. T. M. Ahmed Ibrahim (Madras: Muslim): Sir, I move:

"That in amendment No. 369 of List VII (Seventh Week), in clause (1) of the proposed article 24, the following be added at the end :-

'and except on payment of fair and equitable compensation based on the market value of the property.' "

I also move:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, for the words provides for compensation' the words 'Provides for fair and equitable compensation based on market value' be substituted."

Article 24 lays down a vital fundamental right and I think I am not going too far in stating that the entire economy of the country depends upon the proper enforcement of this Fundamental Right. Clause (1) provides that no person shall be deprived of his property save by authority of law. That is a fundamental right which is sought to be created by this article. But the succeeding clause, viz., clause (2), in effect deprives the citizen of the Fundamental Right that is sought to be secured by clause (1) because it gives to the Legislature power to determine the entire value of the right that is secured to him by clause (1). The value of any property depends upon the price it would fetch in the open market but clause (2) says that the value can be fixed by the Legislature according to its sweet will and pleasure. Then what would be the value of the property in the open market? On account of clause (2) there is bound to be uncertainty about the value of property and a sense of insecurity in the land. What would be the effect of such a sense of insecurity and uncertainty of the value of property in the economy of this country ? That is the question that arises. I would say that on account of this, clause (2) takes away almost completely what is sought to be secured to the citizen by clause (1).

Even now under the existing law we find that compensation is to be awarded to properties according to the market value of similar lands adjacent to the land sought to be acquired. That is the well-known principle of law that is being administered in this country but what would be the effect of this clause on that principle. Thai would be completely annulled. The Legislature can fix any amount of compensation. The scale of compensation depends upon the Legislature and the principle for awarding compensation also depends upon the Legislature. Such being the case there cannot be certainty about that value. There will be no incentive for people to invest money in lands or commercial undertakings or industries. It is very comprehensive and all sorts of properties are included in this clause with the result that there will be no incentive for people to invest in commercial undertaking or lands. That is the problem which arises out of this clause (2).

I would request the House to consider this impartially and without any passion and prejudice. This is a matter affecting the economy of the land Will this clause ensure the confidence in the minds of people which is needed most for the success of any commercial undertaking or for the success of any agricultural undertaking? Surely not, because the whole thing is nebulous and nobody knows what value the legislature will attach to any kind of property at any time. It is only from that point of view I request the House to look at this clause and my amendment is based only with this perspective in view. I do not think that in any part of the world compensation is awarded for any kind of property at the pleasure of the Legislature. Probably the framers of this article have been obsessed with the present question of the abolition of the Zamindari system. If you want that the Zamindari system should be abolished even without any compensation, you may frame some other article for that purpose. Let that question be not confused with the general idea of property and the general-Fundamental right of property.

My Friend the Honourable Mr. Kala Venkata Rao said something about Zamindars. He proceeded on the assumption that the whole class of Zamindars comprises of only farmers of revenue; but I would remind him that that is not a proposition which can be, accepted without any qualification. There are zamindars who have been or who are descendants of Rulers and Princes and there are Zamindars who are descendants of persons who have paid full value for the lands which they originally bought from the East India Company; there are also zamindars who have paid full value to the descendants of the persons who were originally appointed as tax-gatherers. They have paid full value to them with the knowledge and with the full consent of successive Governments. Successive Governments have allowed even these farmers of revenue to treat their property as their own property and have allowed them to alienate, lease and mortgage them. Therefore are they not ostensible owners of these properties ? Have you not allowed them to sell these to others? Have they not paid their hard-earned money for these? That also has to be taken into account while you assess the compensation for these Zamindars.

Sir, I think nothing more need be said regarding the importance of my amendment. It is only intended to ensure confidence in the people and to enable them to feel that property will have full value in the eye of the administration of the country, and that properties will not be valued according to the whims and fancies of legislatures. So that there can be development of industry, development of agriculture and development of commerce. Sir, with these words, I commend my amendment to the House.

Mr. President: Amendment No. 475-Shri Phool Singh.

Shri Phool Singh (United Provinces : General): Mr. President, Sir, I beg to move :

"That in amendment No. 369 of List VII (Seventh Week), for clause (2) of the proposed article 24, the following be substituted:-

'(2) Private property and private enterprises are guaranteed to the extent they are consistent with the general interests of the toiling masses.

(2a), In the case of acquisition or taking possession of any property movable or immovable including any interest in or in any company owning an, commercial or industrial undertaking such property shall be acquired or taken possession of only in accordance with law which shall determine the cases in which compensation is to be allowed as also the amount of compensation to be allowed and the manner in which the compensation is to be given.

(3) No such law shall be called in question in a court of law on the points Stated in clause 2(a), above.'"

Sir, the only points that arise for consideration in this connection are, whether in case of acquisition, any compensation should be allowed, and if so, what should be the amount of compensation, and what should be the manner of its payment. The other point is, whether this right should be justiciable. This takes us to the question of private property, whether it should be an absolute right or whether it should be a right so far as it is consistent with the interests of the toiling masses. To hold that there should be no acquisition without compensation is to mortgage the future or to tie. future generations so long as this law stands. Cases are quite conceivable when it may not only be just, but it may be necessary to acquire property without compensation. Under these circumstances, it will be best to leave it to the future Parliaments to decide as to whether compensation should be allowed in the different cases that will come before Parliament from time to time.

Similarly, he amount of compensation cannot be decided only with reference to the value of the property. There have been speakers who have even supported full compensation. I wonder why they hesitated to put in the word " market price". What is full compensation ? Market price would have been the proper word. But I think it full compensation is conceded, then it is better to say that there should be no acquisition, because the few legislations that are before the different States, they alone show that if full compensation were to be allowed, there would be no acquisition.

When fixing the amount of compensation, it is not the value of the property alone but there are many other considerations that have to be taken into account. The capacity of the State to pay the compensation, the profit that the owner of the property has already derived and the purpose for which the property is to be acquired, these are only a few of the considerations that should be taken into account when making a decision as to what should be the amount of compensation. Similarly the question whether the compensation should be paid in cash or whether it should be paid at the time of acquisition or at a later date, also cannot be decided once and for all.

All these questions have to be decided when the particular case arises according to the circumstances of each case. Sir, to decide all these points once and for all is to lose faith in the national commonsense. I think those who will come afterwards and who will legislate and decide these points will take all the relevant factors into consideration, and I think it will be better not to fetter their judgment. It is for this reason that I neither take. the view that compensation should always be allowed, nor support the view that there should be no compensation whatsoever. I think the best and the proper course will be to leave it to the Parliament to decide as each case arises.

The next point is about the justiciability of this right. The amendment that was moved this morning by the Honourable the Prime Minister states that only under two conditions the law passed will not be called in question by a court of law, and they are, either where legislation is pending when this Constitution is enforced, or when legislation is passed within one year of the date of coming into force of this Constitution. When this clause is applied to the facts, the position is this, that only in three cases, the cases of the U. P., Bihar and Madras, the courts will not be permitted to question the legality or otherwise of the legislation. But it does not take into consideration all the numerous States that have merged into our Union and where there are no legislatures, and consequently where it is not at all possible to introduce any legislation before the new Constitution is brought into force. It will not be out of place to say that it is probably those very States which most need such a provision as this. I therefore, suggest that it will be better to protect all such legislations, whether they be pending when the Constitution comes into force or they are introduced at a later date,-all such legislations should be protected from interference by courts of law.

I do not want to waste the time by repeating my previous- argument. I think when the representatives of the nation sit, they will take care to pass a legislation which will be fair and just and if the representatives of the whole nation go wrong, I doubt if any court of law will be able to correct it. To allow a court of law to go into this question is to nullify the very purpose of introducing such law.

With these words, I commend my amendment to the acceptance of the House.

Shri Guptanath Singh (Bihar: General): Sir, I beg to move:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24-

(i) for the words 'No property' the words 'all property' be substituted; and

(ii) for the words 'unless the law. provides for compensation for the property taken possession of or acquired and either fixes the amount of compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined' the words 'with or without compensation as determined by law' be substituted."

If you trace the history of private property, you will be pained to find that it Is a tale of awful woes, a story full of fraud, felony, exploitation, expropriation, inhumanity, injustice, treachery, torture, tyranny and tears. So, Sir, private property can briefly be described. In the words of a French writer, in a single sentence "all property is theft." Certainly it looks very odd, but the fact is that property is theft. It has been declared and confirmed by Lord Christ, by Maharshi Vyas and Mahatma Gandhi. Sir, if you go through the Mahabharat, Shanti Parva, Adhyaya 15, Shloka 2 you will find that the Rishi has described property beautifully, plainly and frankly. He says :

Colossal money, big capital, cannot be amassed unless and until you scratch the of others, commit heinous acts and kill others by entrapping the people just as the fishermen butcher fishes by entrapping them. When I first came across this Shloka and the verdict of the French writer, I could not believe or agree to it, but gradually and gradually when I began to see the tendencies and forces working in the society, I came to the conclusion that these thoughts were quite correct. People claim compensation for their private property. If you will permit me to use Vedic phraseology, I will ask my capitalist friends and zamindar brothers:-

Whose property is this ? Our capitalist friends and zamindar brothers win come forward with red eyes, clenched fists and frenzied emotions and say, "Well, chap, Do not you know that the whole world dances on the tip of my finger ?"

What is why, they will say, they are claiming Compensation. But I tell you that what they claim as their private property is the property which belongs to, the nation. In Vedic parlance it may be said:

All this property belongs to (Isha) and (Isha) is represented by the nation and nation is represented, by the society and society is represented by cultivators and labourers who represent the teeming millions. Thus all property belongs to the society and not to a particular individual.

So, all the massive big buildings, mansions, and all the factories belong the nation and the society and not to a particular individual. People say that they have purchased some factories, built some buildings, and bought some lands. But I ask them where did they get the money from and how did they earn it and who erected the buildings and factories. They were erected by the teeming millions; they were cultivated by the farmers and labourers and not by those factory owners and land-lord zamindars. Therefore, these people do not deserve and cannot claim compensation for their property as a matter of right. On the merits, they have no claim, but if you examine the income of property owners, zamindars and capitalists, you will find that they have expropriated, they have consumed, they have enjoyed, several times more than the capital they invested. They have acquired and consumed lakhs of rupees. They have purchased jewelleries worth crores of rupees. They have created numerous sources of incomes.

According to Manu, the land belongs to the cultivators.

The land belongs to the man who cultivates it, not to the big zamindar friend. Therefore, the claim of compensation made by our zamindar friends is not right. I ask them one single question, Will compensation for Red Fort and other things be allowed to the descendants of Moghul Emperors? Sometime ago, I came across a news in some paper in U. P. that the descendants of Moghul Emperors had requested Pandit Jawaharlal Nehru that compensation should be given to them for their ancestral property. Is it not a fantastic thin ? Have Britishers given any compensation to descendants of Moghul Emperors for the Red Fort and other massive mansions and buildings ? Numerous buildings were constructed by Britishers though the money belonged to us, but have we given anything, to them when they quitted ? These people cannot claim compensation for their property. They should not be given any compensation at all. They cannot claim it as a right but it is due to our generosity that we are allowing something to them. We have allowed compensation in Bihar, 20 times to 3 times. In Madras also the Government have allowed and in U. P. the Government are going to allow something; but as a matter of right Zamindars cannot claim any compensation. There is one thing which does not seem to me to be good.

There is some discrimination made as between abolition of capitalism and zamindaries, between nationalisation of factories and other means of production and the abolition of zamindaries. Lands and factories both belong to the same category and both must be nationalised or socialised in the course. Some provision must be made in the Constitution to abolish both these things when time is ripe for it.

Panditji has moved an amendment and made a speech. If you give the speech of Pandit Nehru to a person without telling him whose speech it is, as also 'the amendment moved by him, the man will say that the speech has been made by some revolutionary and the amendment has been moved by someone other than a revolutionary. Pandit Nehru has certainly a revolutionary mind but the article in its present form seems to be framed by brains controlled by some unseen forces.

On merit, people do not deserve compensation, but some provision must be made in the law that compensation should be given to those who deserve and for those properties for which compensation should be paid. The forces that are working in the country and the word are concentrating towards the elimination of capitalism, and the House and the country must realise this and act accordingly. Therefore I appeal to the House to accept my amendment.

(Amendment No. 481 was not moved.)

Shri Prabhu Dayal Himatsingka (West Bengal: General): Sir, I move:

"That in amendment No. 369 of List VII (Seventh Week) in clause (2) of the proposed article 24, the words 'and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined' be deleted."

This amendment was one of was of several other amendments given notice of by me, but which have been moved by others. By my amendment I want to make it specific that the compensation to be paid should be fair and equitable for the property acquired. So far as the fixing of the price and the manner in which compensation is to be determined are concerned, we have already laid down in Concurrent List item 35 of the 7th Schedule that both the Centre and the States will have the right. The Prime Minister in his speech today has stated that the compensation to be paid will be equitable and fair. That has also been the the considered statement of the Government in their declaration on their industrial Policy on the 6th April 1948. The same principle was repeated in the Honourable Prime Minister's statement on the 6th April 1949 in which foreign Capital was invited.

Therefore there is no reason why the compensation should not be clearly stated to be equitable, fair or just, whatever word is acceptable to the framers of the article. so that there will be no doubt that the compensation intended to be paid will be fair and equitable if property is acquired. It is a question of creating confidence in the minds of investors and if we want the country to a be more and more industrialised and that people should be encouraged to put in their money in industrial undertakings, there should be some sort of guarantee that if and when such properties or undertakings are acquired by the State a fair and equitable compensation will be paid. That will be a definite encouragement to the people, and, industrial development, also will be given an impetus. It is a psychological factor, and might act as a damper. Economic conditions are already bad and if the clause acts as a damper it will further aggravate the economic condition. Without economic improvement it Will be very difficult to carry 'out any of the nation-building activities or other improvements we are anxiously aspiring for. My amendment is aimed at defining compensation payable for acquisition of property and I hope the drafting committee will accept it.

(Amendment No. 485 was not moved.)

Shri B. P. Jhunjhunwala (Bihar: General): Sir, I move:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, the words 'either fixes the amount of the compensation, or' be deleted, and the following provisions be added at the end of the clause :-

'Provided that in applying. such Principles, due regard shall be paid to the consideration whether the property in question is being utilised by the owner or holder so as to make a definite contribution to the sum total of the country's wealth:

Provided further that this proviso shall apply also in the case of all laws which have been passed within one year before the commencement of this Constitution and to all Bills pending at the time of the commencement of this Constitution."'

Before speaking on my amendment I wish to make a few remarks on the proposed article moved by our respected Prime Minister, the Honourable Pandit Jawaharlal Nehru. There are two questions involved in this article. One is acquisition of property by the State and the other is the payment of compensation for the same.

The main principle enunciated by our respected Prime Minister, is that the interest of the individual is subordinate to the interest of the community or of the state, and no patriotic Indian should deny this principle. In other words if the interest of the state or community demands, the individual should ungrudgingly give. The whole question while acquiring the property is whether it is acquired in the interest of the State or not. Secondly, when the property is acquired, whether due compensation is paid to the property owner or not.

What are the circumstances under which property should be acquired by the State ? If the principle as enunciated by our Honourable Prime Minister is applied; certainly I presume that the State should acquire the property of any individual only when it is in the interest of the State but not by merely saying we want to nationalise a particular industry, and therefore we want to acquire it." Nationalisation of a particular industry may not be in the interest of the State at all. I shall just give an instance in respect of England which is such an advanced country where recently the transport was nationalised. And the report is (it appeared in day before yesterday's papers) that Britain's nationlised transport-road services, docks and waterways-ended its first year 1948 of State ownership with a loss of pound 4,733,000, and the report was summed up as unsatisfactory and prophesied that a further marked deterioration of the working result was "inevitable" in 1949.

As I have said, there are two principles which have to be taken into consideration in connection with this article. One is the acquirement of the property. My amendment relates particularly to this first principle. If any property or industry is to be acquired proper attention should be paid as to whether such principle is applied, and the State Legislature or the Parliament while fixing the principle for compensation as mentioned in clause (2) of the article should state whether and what if any advantage will accrue to the State-be it a zamindari property or an industrial concern,-and further in laying down the principle, it should be taken into consideration-as I have said here "whether the property in question is being utilised by the owner or holder so as to make a definite contribution to the, sum total of the country's wealth" or whether the owner was wasting the property along with his energy in antisocial and anti-national activities. If we find that the owners of the private owned properties or private-owned industries are making good progress in increasing the wealth of the country and have not in the past and are not indulging in anti-social activities, in that case there should not be any occasion' for the State to acquire that property, and if it is to be acquired full compensation should be given. That point has been made clear in our Industrial Policy enunciated in the Legislative Assembly where it is said that at least for ten years there are certain industries which shall not be nationalised and after ten years stock will be taken of the position as to whether there is any justification for acquirement of any industry or not and then that industry will be acquired.

if this principle is accepted, as has been accepted in the Legislative Assembly and as has been so many times made clear by our respected Prime Minister, I do not see any reason why there is so much stir among the industrialists or among the public and why the capital is becoming shy and is not coming forward for investment in industry.

The second question which is, engaging the attention of the people is, if our industry will be acquired at all, whether they shall be given proper compensation or not. On this point also our Prime Minister has said that there is no question of expropriation if any property will be required by the State. People are watching as to what this Constituent Assembly does regarding this article 24. So in moving this article our Prime Minister has made it explicitly clear that no property will be expropriated and that if any property is acquired it will be acquired by giving compensation.

The only question which remains is what sort, of compensation it will be, whether it will be equitable and fair compensation or any compensation which Parliament will decide, and whether the decision and the principles which will be decided by Parliament will be justiciable or not. That is the only point which is engaging the attention of the public outside. There are differences of opinion on this point and I am not competent to say one way or the other. But if it is made clear that it will be justiciable, then there is no reason for any apprehension or any encroachment upon the fundamental right, as had been said by my honourable Friend Pandit Thakur Das Bhargava that this article is a sort of encroachment upon our fundamental right.

As I have said, when giving compensation the most important point which has to be taken into consideration is whether the person to whom compensation is given was utilising the property for improvement and in increasing the wealth of the country or not. That point should be included in the principle which the law lays down. If the industrialists or the zamindars have utilised and are utilising their wealth more in anti-social or anti-national work, and have outlived their utility that in my opinion should be a point which the Parliament should take into account while fixing the principle or amount, for compensation. If these points are covered by the article there is no necessity for any stir in the market.

There is a view that compensation should also depend upon the purpose for which it is acquired, i.e., if it is acquired for philanthropic purpose for the benefit of the people or under any scheme, the compensation may be less. In this connection I have to say that if that point is contemplated in this clause-I do not know if it is there-a person of small means who happens to own a property which may be necessary for a benevolent purpose or under a scheme, these persons, should be fully compensated.

With these few words I support the article.

Shri Lakshminarayan Sahu (Orissa: General): *[Mr. President, my amendment reads as follows :-

"That in amendment No. 369 of List VII (Seventh Week), at the end of the clause (2) of the proposed article 24, the following proviso be added :-

'Provided that no compensation shall be payable to any owner or holder of any movable or immovable property, who, having owned or held such property for thirty years continuously immeditely before the coming into force of this Constitution, has either not habitually resided within the State were such property is situated, or has not done anything to develop such property.' "

Mr. President, we have stated earlier in our Constitution that we would provide social, economic and political equality to everybody. In view of this declaration that we so emphatically made to the whole world, it is our duty to consider how we can secure it and what provisions we should make for it. It is in view of that that many Members have stated that the question of property is the most important in the scheme of the Constitution. This should be decided after proper consideration.

We should first of all decide as to what would be the shape of, the free India. When we go on saying that we would abolish the class distinctions, we would not run our country on the basis of religion and that we would make it a secular State, we should think over the ways of securing these objectives. In the Directive Principles also we have stated that it shall be our duty to see that the operation of the 'economic system does not result in the concentration of wealth and means of production to the common detriment'. When many a man accumulates vast wealth, we would scarcely be able to shape India in our way. We cannot do so. Thus we should give very deep consideration to the question. Take a few instances. Today there are big industries.

In an industry, one person accumulates so much wealth; after ten or twenty years, he grows so rich that he does not regard anybody else as a man, The fact is that he begins to live in a dreamland, thinking very highly of himself and looking down upon others as petty men. This system will have therefore to be abolished. I belong to a poor family, I never put on a shirt since my childhood till my matriculation. I know what hunger is. When I was a student in the Engineering College, I had nothing to eat, so I left the College, and was on the verge of committing suicide.

I therefore wish that this matter should be decided properly. One man earns Rs. 600, or 800, or 1,000 in a day, but the average income of a person in this country is merely 6 annas daily. How then can we make the people of free India happy? People say that my province, Orissa, is a very poor province, and a very small province. Why is this so 9 This is the matter that needs consideration. When I talk of Orissa it may well be that some people may insinuate that it is the spirit of provincialism that makes me do so. It is not provincialism that makes me to talk of my province. It is out of sheer necessity of self-existence; I desire to live. But in order to do so I must also see as to how the people around me keep healthy and how they can live happily. I wish to tell you that all the land in Orissa has passed into the hands of the absentee landlords. They do not live in Orissa but live outside,, and come there only to recover their dues. Now, if you look into the matter you would find that these people have not got their lands by spending much money. The people of Orissa lost their land through he operation of the Sunset Law. At that time the High Court was at Calcutta and not at Cuttack. Many people therefore lost their rights in land. In this way two-thirds of the land in Orissa passed into the hands of absentee landlords. How can Orissa progress in such circumstances ?

I therefore wish that there should be such a provision as would ensure that the persons who have vast lands, who cannot improve them, and who have enjoyed them for 30 years should not get any compensation. We want to shape the world in a new fashion, and want to abolish capitalism at once. Even our ideal was this:-

[Always take wealth as a source of great evil. Surely, it cannot impart even little of pleasure. The maxim "Those who are after riches are even afraid of their own progeny" has been proclaimed everywhere.]

This is from Shankaracharya. We used to prepare the people of this country for this ideal. Later on, however, new ideas began to pour into our country from the West, and the most powerful of this was the spirit of free competition; we had to adapt ourselves to their values. But the consequence of all this was that the poor man was ruined while the man with the means became almost like a conqueror, knowing not moral law. Might became right and the powerful acquired domination over the people and the country.

I therefore submit that keeping in view our goal of building up India, on new principles, it is our duty to keep before us the outlines of the new system, and we should think out how these ideas can be realised in the various provinces. I have suggested this proviso from the view-point of my province. I believe that you would be taking a correct decision in this matter but if you fail to do so, it will not be in the interests of my country; I have therefore suggested this proviso I wish that you consider it thoroughly.

Among the aboriginals, a system obtains that all the land is distributed equally among the people and in case somebody accumulates more land the position is readjusted after every 10 or 12 years. Our society is static. It has been standing still like the Himalayas since long, has been unmoving; it does not move. Those who joined the western new-comers began to perpetrate cruelty on their people and lowered their status. For this reason we should have a provision like this while we are constructing a new India. I want to say only this much.

Mr. President: Mr. Mahboob Ali Baig, No. 493.

Mr. Mahboob Ali Baig (Madras: Muslim): I have 482 also,

Mr. President: You can move that also.

Mr. Mahboob Ali Baig: Sir, I beg to move:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, for the words 'unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined' the words 'unless due compensation is paid for', or, alternatively, 'unless the law provides for due compensation' be substituted."

I also move:

"That in amendment No. 369 of List VII (Seventh Week). in clause (3) of the proposed article 24, the following be substituted :-

'(3) No such law as is referred to in clause (2) of this article made by the Legislature of the State shall have effect, unless such law receives the assent of the President.' "

Sir, the other amendments have been covered already and therefore I do not propose to move them, but I will offer my comments on them. Sir, my amendments have a two-old purpose. The first is that they seek to declare the right of a person to property as fundamental in character, independent of the legislature or any other authority. Secondly, my amendment seeks to declare this right justiciable beyond any shadow of doubt. While the Government must have the unquestioned right to acquire property owned by individuals for public purposes, it cannot compel the owners thereof to part with them for any value less than their proper value, and the right of the person whose property is acquired to have the value determined by a court of law cannot be taken away. Our State has not yet abolished private property; at any rate this Constitution does not abolish and is not abolishing it. I refer to article 13, clause (1) sub-clause (f), that is, "subject to the other provision of this article, all citizens shall have the right to acquire, hold and dispose of property" and the sub-clause which controls this right is sub-clause (5) and there it is stated "Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing restrictions on the exercise of any of the rights conferred by the said sub-clauses. . . . . ". Even this sub-clause (5) which modifies the fundamental right says you can impose only restrictions on the exercise of any of these rights.

Therefore, Sir, it is clear that our Constitution does not propose to abolish private property, as the U. S. S. R. has done in its Constitution. The U. S. S. R. has clearly abolished private property. Our society is still based on what is technically called capitalistic system of economy, meaning thereby that property is held by individuals and not by the entire people. Our system is similar to the system prevailing in the U.K. and U.S.A. and in the Constitution for the U.S.A. it is clearly laid down that the State cannot deprive a man of his life, liberty or property without due process of law. So is the case in the U.K. To illustrate, when the present socialistic Government of England acquired mining rights. from private owners, it awarded compensation which was found to be in excess of what the courts themselves determined the value of the mines to be.

Thus, Sir, their society is based on the recognition of private property and is based on the capitalistic system of economy. The persons whose property is acquired must be paid the proper price and the machinery to determine what the proper price is, is the court. So, Sir, two important and inevitable concomitants of the nature of property as private property are these two, that the rights are fundamental and the rights are justiciable beyond any shadow of doubt, but it is open to us to abolish private property altogether, which we have not done till now. It would be a different matter if private property is abolished altogether and people are assured free medical aid, free education and they are assured of employment. The structure of the society has not changed.

What I am seeking today now is, while we recognize private property under article 13 and also by implication under clause (I) of this article itself, what we are trying to do tinder clause (2) is that we are giving power to the legislature to grant any compensation it pleases or retain principles for assessing value. of the properties. Now, Sir, whether it is permissible under any Constitution which frames fundamental rights, whether the legislature of the country should be given the power, the jurisdiction to deal with those fundamental rights, tinker with them and abridge them, is the question before us. My submission is this, that this article finds a place in the chapter which deals with fundamental rights. Fundamental rights are those with are beyond the jurisdiction of a legislature, especially of party legislature in parliamentary democracy. As soon as they are,' subject to the jurisdiction of the legislature, they cease to be fundamental. What is the fundamental right that you are giving to the people under article 24 as sought to be amended by the Prime Minister ? There is nothing at all. Therefore, it would be better not to have mentioned these rights at all under the chapter dealing with fundamental rights. The only thing that I could understand from the speech of the Prime Minister is "Your rights are recognised" yes and "when they are going to be acquired, compensation will be given to you", "What is the amount of compensation that-will be given to you will not be determined by a court of law". In fact he would have, nothing to do with courts and law. He would vest this power, to determine what the compensation will be, in the legislature. He calls the legislature 'sovereign'. It would be more correct to say that the Constitution is "sovereign". The legislature, the executive and the judiciary and all of us are governed by the Constitution. A legislature cannot have overriding powers over the provisions of a Constitution. It is the Constitution that is binding until it has been amended by the will of the people.

Therefore, Sir, the legislature is sovereign in the sense that the people are sovereign and if the people elect members with a particular purpose of changing the Constitution, then it is correct to say that that body which is elected by the people for the purpose of changing the Constitution, that is sovereign. This question of a legislature being sovereign overriding fundamental Tights is not correct at all. Either you declare under article 24 fundamental rights or not at all. It would have been better if article 24 bad not been enacted at all and not been proposed at all; I could understand that. It will be open to the legislature provided that is liable under law to grant compensation in any way it pleases. Therefore, Sir, my submission is that it is a misnomer to say, it is incorrect, it is misleading to say that we are under article 24 declaring rights in property.

Mr. President : The honourable Member has made that point formerly.

Mr. Mahboob Ali Baig: Therefore, the amendment which I have moved, No. 482, proposes that in the matter of granting compensation, the, fixation of the amount of the laying down of the principles on which compensation should be determined be entirely taken away from the jurisdiction of the legislature. If it Is necessary that a certain land should be acquired for a public purpose, it would then pass an enactment saying that this property shall be acquired giving compensation. What the compensation should be must be determined by a court of law.

Now, Sir, one word with regard to clause (3). I have stated that the law that may be passed by a State legislature or the Union legislature must receive the consent of the President. In the clause as proposed, it is stated "such law having been reserved for the, consideration of the President". want that to be categorically stated that all such laws whereby property is sought to be acquired must necessarily receive the assent of the President. Sir, one word with regard to clause (4) I have to offer and it is this. The Prime Minister said in the morning that under clause (1), unless the legislature has abused its powers, the court's jurisdiction is ousted. What he meant perhaps is that if the legislature granted compensation which is a pittance or merely illusory, then, the courts can interfere. Now, Sir, my point is this. Why not you give that benefit at least to cases that come under clause (4) ? Is it fair, I ask, that even that chance of a person who is deprived of his property to contend that the compensation that has been given to him is a pittance or merely illusory, or is a fraud on the statute should be taken away? Why should we deprive a person who is aggrieved in that way of his right to have the matter agitated in a court, and ask it to decide whether the compensation is merely illusory, whether it is a fraud on the statute, while it grants this right under the circumstances in clause (2) ? Therefore, it is very unreasonable and as my honourable Friends Pandit Thakur Das Bhargava and Mr. Jaspat Roy Kapoor have said clearly, such a thing is unknown to law, unjust and unfair and discriminatory. Therefore, clause (4) must go.

My comment with regard to clause (6) is this. When some Acts were passed by some local legislatures, the law prevailing was the Government of India Act of 1935, section 299. Laws were enacted for the abolition of Zamindaris and that was the law applicable. Is it fair, I ask that you should prevent those persons from going to court and asking the court to determine whether the enactments were *ultra vires* or *intra vires.* Even in this case, as I have said, whatever chance a man may have under clause (2) to show in a court that the compensation is merely illusory is taken away. I have not come, across any such constitution where rights which accrued previously and which were enacted under certain laws, were purposely taken away. As I said, Sir, in this case also, it is very unjust, unfair and discriminatory.

One word more before I sit down, that is, with regard to certain remarks made by my honourable Friend Mr. Kala Venkata Rao. I agreed with him in the legislature of the province of which he was the Revenue Member that these Zamindaris should be abolished. Even earlier, than be thought of it, in 1938, as a member of the Zamindari Abolition Committee I have clearly advocated that these Zamindaris must be abolished because they were anachronisms and they have ceased to servo their purpose. I also held that owner of the property must be the tenant and not the Zamindar. I agreed with him so far. But, I found that from 1802, rightly or wrongly, according to me wrongly. Sir, the Permanent Settlement Regulation XXV vested the proprietory rights in the Zamindar.

Mr. President : It is not necessary to go into that.

Mr. Mahboob Ali Baig : I am just pointing out. My Friend Mr. Kala Venkata Rao is wrong in saying that that Regulation did not vest the proprietary rights in the Zamindar. The very expression "Sanad Milkiyat Istimrari" when translated. means, Sanad of Permanent Settlement of proprietorship in the Not only by enactment, but the highest courts have held that the Zamindar is the owner, as I said, on the basis of legislation which according to me was passed wrongly. On this basis several transactions have taken place : sales, mortgages and all sorts of things. Over a period of 150 years these Zamindars and their transferees have acquired substantive legal rights.

I differ from my honourable Friend on the question or compensation. said that compensation must be given. I am not going to refer to the several inaccuracies in the statement of law and facts made by them. Therefore, the question whether the compensation that these Zamindari abolition enactments have given is just, fair or equitable, or is merely illusory, must be left to the court to determine. As I have said, till we change the structure of society from a capitalistic system of society, to a socialistic society, where it is not the individual, that owns the property but it is the entire people or the State or the co-operative agency, till then, we cannot get away from the fact that due, proper compensation should be, given.

I am compelled to remark, Sir, that in this matter, we are not very definite and bold enough. If we think that this society must be changed, we must take courage in both the hands and act. This sort of dealing with property will land us in difficulties.

Mr. President. The honourable Member is repeating himself.

Mr. Mahboob Ali Baig: As Mr. Naziruddin Ahmad asked, what is the impression that is going to be created on the public, especially on persons who are asked by us, who are asked by the Government to invest money in factories and industrial ventures? Would they dare to do it? Would anybody come forward with his money to invest his money in any venture ? He would read this and say......

Mr. President: I think you have taken more than enough time. You You may finish now.

Mr. Mahboob Ali Baig: Sir......

Honourable Members : Order, Order

Mr. President : No. 499.

Shri Ajit Prasad Jain (United Provinces : General): Sir I do not propose to move it.

Mr. President: No. 500.

Shrimati Renuka Ray (West Bengal : General): Sir, I move:

"That in amendment No. 369 of List VII (Seventh Week), for clause (4) of the proposed article 24, the following be substituted :-

'(4) No law making provision as aforesaid shall be called in question in any court either on the ground that the compensation provided for is inadequate or that the principles and the manner of compensation specific are fraudulent or inequitious."

I am compelled to move this amendment even at this late hour because we are faced with a very genuine and a real difficulty. By clauses (4) and (6) of the draft that we are considering, we, find that pending legislation or legislation that has already been enacted in regard to compensation for property is to be treated on a different basis to compensation for all other types of property. If it becomes necessary to have an exemption clause for certain types of zamindari property-for, coming to brass tacks, it means the zamindari Bills of U. P. and those of Madras and Bihar are to be exempted it necessarily follows that all other property including zamindari property in other areas must be justiciable. It means that the authority of the sovereign Parliament is to be challenged by Courts of law. I know that there is difference of opinion amongst some of the lawyers. Some hold that although other forms of property are included as justiciable, the Courts of Law will not challenge the authority of Parliament in laying down principles of compensation until and unless there is intent to fraud. Other lawyers again support the view of the Supreme Court of the United States that the word 'compensation' means equivalent value. I am not a lawyer and I have neither the merit nor the right to enter into the hair-splitting arguments that are the lawyers paradise; but as a layman I would like to know that how it is that there has to be this differentiation. Is it then that the provision of the U. P. Zamindari Bill has shown an intent to defraud, or that no compensation to be paid under its provisions 9 Why is it that the special provisions have to be made for the Zamindari Bills of U. P. Madras and Bihar ? If it were that the lawyers who hold the view that the justiciability would not be challenged unless there 'Was intent to defraud, were correct then it would not be necessary to include ,clauses (4) and (6). Shorn of all legal technicalities, as we can see it, the position really comes down to this, that it is not the Sovereign Parliament that has the last word, but it is the Court of Law that will have the last word in case of other properties except those covered by clauses (4) and (6). I would like to ask what justice is there for this procedure? There are other fundamental justiciable rights, but even these rights are subject to the, proviso that it is under the authority of law, e.g., the right of freedom of speech and expression, to assemble freely without arms, to form associations or unions-all have limitations, by which they come under the authority of Parliament. What is the justification in 1947 for us to place property on a very different basis? Pandit Nehru said in his speech this morning that the very conception of property is changing. The sacrosance attached to property it no longer there. Surely when we are deciding this issue today we must make it so that it is Parliament whose authority shall be supreme and that we shall not lay down a vested interest for all times.

It is quite true that Parliament sometimes does pass hasty legislations. Well we have the second chambers as Panditji pointed out this morning. Apart from that there is clause (3) of this article which gives the President, i.e., the Central Government, final power as assent has to be given by the President before any such legislation comes in. I think the safeguards here are surely enough. It is not for us to include provisions whereby there can be various interpretations given by Courts of Law. If there can be various interpretations amongst a few lawyers, even now just think of the varying interpretations that we shall have with different courts deciding differently. As I said before it will indeed become a lawyers Paradise and litigation will become even more widespread.

Mr. President: You have made out that point.

Shrimati Renuka Ray: There is no question of expropriation of property. The question of nationalisation or socialisation really does not arise today. These are issues that have been raised to confuse the matter: The Government has laid down its economic policy. That policy does not include any nationalisation or socialisation except in the case of the abolition of Zamindari property.

Shrimati Durgabai (Madras: General): May I know from the speaker through you, Sir, whether it is her intention to oust the jurisdiction of the Court even when the compensation so fixed is fraudulent?

Shrimati Renuka Ray: I say, who is to decide what is fraudulent? Is the Zamindari Bill of U. P. and the compensation fixed in it today fraudulent, and if that is not so, then why have we to make provision for an exemption clause ? Therefore, I say that it must be Parliament that must have the supreme voice in the matter, and it cannot be left to Courts of law to challenge the decisions of Parliament even on the excuse that it is fraudulent-A Court of Law may decide that even paying half the value is fradulent. There will be nothing to debar it unless this amendment is included.

Now, as I said, there has been confusion of issues. This question of expropriation of property has been brought up. There is no question of expropriation today, and even in the Parliament of tomorrow I do not think that so long as there is a constitutional authority and so long as there is responsible government there can ever be any question of expropriation of property, without paying compensation. Even those people who want a new economic structure and who believe in the gradual transformation of the present structure into a new economic structure where economic justice prevails, even they do not want that a new class of destitute or poor should be created. We do not want and the government of the future will not 'want to- create a new liability for the State. Thus, neither the Parliament of today nor that of the future will expropriate property without compensation, because their object will be to bring about a reduction in the disparity of wealth and not to create new class who will become the concern of the State. Mr. President: I hope you have finished now ?

Shrimati Renuka Ray: I have just one or two more points.

Mr. President: More points or more words ?

Shrimati Renuka Ray: More points, Sir. Another point that has been raised in some of the speeches made today is that because of the economic difficulties of today it is essential for us to put this clause in the draft. Mr. Himatsingka asked the question as to how production could be increased if you do not satisfy the capitalists on this point. I say, we have been making concession after concession to capitalists, and still production has not gone up so far. The question of capital for nation and of increased production is an urgent one today. Even if capitalists do not conform, we have to find ways and. means towards this end. We cannot be at their mercy altogether if they do not play the game. But I fail to see what this article has got to do with this. This is not a provision that is being incorporated in an Act of the Legislature, but something we are considering in a permanent Constitution for the future.

Sir, before I conclude, I just want to point out that if we do not allow constitutional remedies, if we bind and fetter the future, then a timer will come when extra-constitutional remedies will. be resorted to, and when this Constitution will be treated as a scrap of paper.

Sir, before I conclude I would appeal most particularly and most especially to Pandit Jawaharlal Nehru who, above all, believes in economic justice and social justice, to accept this amendment and substitute clause (4) by my amendment. I appeal to the Drafting Committee that if they have, any differences of opinion, then this makes it quite clear. If they believe that the provision does not mean justiciability, then what objection can they have to my amendment?

Last of all, I appeal to this House and say, let us not accept something which posterity may point to and say that, we were more interested, and concerned at all in entrenching vested interests in the Constitution, than all other rights. Let them not say that the right of property was the only fundamental right in which we showed most concern as only to it we gave a double assurance by the incorporation of article 24 in this manner let us not forget that no other economic right is incorporated in fundamental rights--all others Ire on directives as pious hopes for the future.

Mr. President: Shri Siddaveerappa, No. 502.

Begum Aizaz Rasul (United Provinces: Muslim): Sir, may I invite your attention to the fact that it is quarter past seven now and we have been sitting for more than seven hours ? There are still a large number of speakers who want to take part in this important subject. Therefore, may I request you, to adjourn the discussion after taking the consent of the House till Monday and resume it again on Monday ?

Shri R. K. Sidhva (C. P. & Berar: General): No, Sir. Most of us want to finish this subject today.

Shri Mahabir Tyagi (United Provinces: General): Sir, even if they cannot have full compensation, let the zamindars have their full say!

Sardar Hukam Singh (East Punjab: Sikh): Yes, let them have their dying sobs and sighs.

Shri Deshbandhu Gupta (Delhi) : Sir, may I suggest that the general discussion may be postponed to Monday and the discussion on amendments finished today ?

Shri H. V. Kamath: I suggest, we may meet after dinner, say, at ten o'clock tonight.

Mr. President: My intention was to finish this article today and I expressed this intention to the House more than once, and I wanted the speakers also to take this into consideration while speaking. But unfortunately, it is not possible for me to stop speakers when they are dealing with their amendments and when they are to the point. Therefore, I have not been able to stop them and more time has been taken than I had anticipated. Now it has been suggested by some Members that we should adjourn till Monday next. I should like to know the view of the House.

(Cries of "Adjourn" and "Do not adjourn.")

The Assembly divided (by show of hands):

Ayes : 48

Noes . 47

Shri Syamanandan Sahaya: There has been some misunderstanding, Sir. I though those who wanted to bring up this article on Monday should raise hands now.

Mr. President: The House is almost evenly divided, 48 being for adjournment and 47 against.

Pandit Hirday Nath Kunzru (United Provinces: General). Sir, if I may respectfully interpret this voting, it means that there is a very large section of this House desiring adjournment. We have discussed matters of much smaller importance for a much longer time. We are now holding two sessions. But we are trying to bring the discussion of a very important article to an end speedily, merely in order that the second reading may practically come to an end on the 17th September. Is this such an important purpose, that we should, go any length to achieve it rather than allow more time for such a debate?

Mr. President : The House stands adjourned till nine o'clock on Monday morning.

The Assembly then adjourned till Nine of the Clock, on Monday the 12th September 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME IX

Monday, the 12th September 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION-*(Contd.)*

Article 24-*(contd.)*

Mr. President: We shall now take up the remaining amendments.

Shri H. Siddaveerappa: (Mysore, State) : Sir, I beg to move :

> "That in amendment No. 369 of List VII (Seventh Week), at the end of clause (4) of the proposed article 24, the following explanation be added :-
>
> > '*Explanation*.-The provisions of this clause shall not refer to the system of land tenure called *Ryotwari* anywhere in the Union including the Indian States'."

I shall very briefly and succinctly explain the reasons that prompted me to move this amendment. I am not unaware of the fact that the legislative enactments dealing with the abolition of zamindari in Madras and Bihar do not refer to the system of *ryotwari* lands. In fact, the Bill pending before the United Provinces Legislature also does not in any way affect the *ryotwari* system.

As you are aware, Sir, under the *ryotwari* system the owner of the land is himself the cultivator : either he personally cultivates or he cultivates with the help of agricultural labour. There is no intermediary between him and the State; there is no man who gets an unearned income as under the zamindari system. If you refer to clause (4) you will find that it refers not only to the pending Bill of the United Provinces but any Bill that may be introduced in any legislature of a State before the commencement of this Constitution.

Sir, there are some people who believe and who have got their pet theories, namely, that all lands, irrespective of the nature of the tenure must be nationalised. I may in, this connection refer to amendments No. 385 and 394 moved by two honourable Members of this House. It will be seen that under the *ryotwari* system the holdings are very small and under the present Mitakshara system of the law of inheritance the holdings are becoming smaller and smaller. As a matter of fact, a different set of land reform is required in the case of those holdings. If you are to take the line of these amendments that I just now referred, namely, 385 and 394, it may as well be possible for any over-zealous legislature of any State to legislate for these lands called *ryotwari* lands also, and it is as a matter of caution and prudence that I have moved this amendment.

Shri K. M. Munshi (Bombay: General) : Mr. President, Sir, I may mention that amendment No. 504 is of a verbal nature and is related to amendment No 505. If you will permit me I would like to move them together.

Sir, I move :

"That in amendment No. 369 of List VII (Seventh Week), in clause (5) of the proposed article 24, the words 'Save as provided in the next succeeding clause' be omitted."

"That in amendment No. 369 of List VII 'Seventh Week), for sub-clause (a) of clause (5) of the proposed article 24, tile following sub-clause be substituted:-

> '(a) the provisions of any existing law other than a law to which the provisions of clause (6) of this article apply, or'."

if the House is pleased to turn to the original motion moved by the Honourable the Prime Minister it will find that in clause (5) the words were "save as provided in the next succeeding clause, nothing, etc., etc....... Save as provided in the next succeeding clause" governs both sub-clause (a) and sub-clause (b). But it is not intended to govern sub-clause (b) and therefore it is necessary that that should be placed in sub--clause (a). The object of amendment No. 504 is to remove those words from the first line of clause (5) and to transfer that saving clause to sub-clause (a).

That is merely a verbal change and I do not think I need take up the time of the House by explaining it further.

I may also mention one matter which is a typing mistake, if I may so put it. It is this. In clause (I) after the words "the compensation is to be determined" the words "and given" are omitted. I hope in the Third Reading Stage or at a suitable time the words "and given' will be accepted.

Mr. President: There are amendments to that effect.

Shri K. M. Munshi: I do not wish to move No. 506.

Shri Krishna Chandra Sharma: (United Provinces : General) : Mr. President, Sir. I move :

"That in amendment No. 369 of List VII (Seventh Week), after clause (6) of the proposed article 24, the following clause be added :-

> '(7) The Parliament may by law in case the social and economic conditions so necessitate, provides for the socialization of any class property on such terms and conditions as provided in the law'."

Sir, my amendment raises four questions. In the first place, there is no justiciability of the terms. Secondly, there is no mention of the compensation. My third point relates to the conditions prevailing- that is, economic and social conditions. The fourth is socialization. None of these things has been covered in the proposed draft of article 24 or in clause (6) thereof.

With regard to the first point, namely, justiciability, I beg to submit that despite the long list of Constitutional provisions cited by my Friend Mr. Naziruddin Ahmad, those provisions came on the statute book at a time when the conception of property was different from what it is today. The classical conception of property, as the conception of many other things, was the conception of something existing, something static whereas the present conception of property is dynamic. What the classical jurisprudence gave to the world was a juristic static; what the modern world gives in juristic dynamics. As the Honourable the Prime Minister said, property today means credit, promissory notes, securities. It is not gold and silver so much; it is not the women and children.

The present day conception of property is a functional conception. It is, its work, its movement. You cannot have property deposited in your house or hold it always in your possession without any regard to the question whether it serves any purpose, function or work whatsoever. The old conception of property today is an impossible one. So, two things arise. What is the function, work or place of the property as such in the social and economic structure of the society ? Secondly, what does the man who claims the property do with the property ? If the property does not help in the performance of any function or work and has no place whatsoever in the moving changes and structure of society, then the property is nothing; it is a useless thing and nobody can make any claim to it as property. So, when it is said that these are dark days, that there is no light and that everything is being attacked, I would respectfully submit that there is light even in the night where in the nature there would be darkness, but you do not see the light because you shut your eyes to the things around you.

My respectful submission, therefore, is that Mr. Naziruddin's contention that compensation and justiciability find place in almost all Statutes has no force because the conception of property has changed, the situation has changed, the circumstances have changed and society from a static form-from a position of mere existence or place as it was-has passed on to one of dynamics, to one of changes and the old conceptions do not hold good in the present circumstances; so much so that the most property-conscious people of America who up till 1936 were sticking to certain conceptions, notions and old precedents of law changed them ever since 1936. For instance, measures like the Minimum Wages Bill, measures relating to the Hours of Work in the Factories, Welfare Acts and so many other measures which were once held to be invalid and as contravening the provisions of the constitutional law of America have after 1936 been held to be valid. And many other such measures will be so held because the judges interpreting them have changed and the whole conception has changed with the changes of time.

I will just give the provision from the 1919 Constitution of Germany. It is article 155. It says :

> '"The distribution and use of land shall be supervised by the State in such a way as to Prevent abuse and with a view to ensuring to every German a healthy dwelling and to all German families, particularly those with many children, a dwelling and economic homestead suited to their needs. Special consideration shall be given in the framing of the Homestead Laws to persons who have taken part in the war.
>
> Landed property may be expropriated when required to meet the needs of housing, or for the purpose of land settlement, the bringing, of land into cultivation of the improvement of husbandry. Testamentary trusts are to be terminated.
>
> The cultivation and full utilization of the land is a duty the landowner owes to the community. Increment in the value of landed property, not accruing from any

> expenditure of labour and capital upon the land, shall be devoted to the uses of the community."

That is the conception of property expounded by Proudhon in the latter half of the Eighteenth Century, that is, every citizen has a right-a fundamental right-to the material which is necessary for production of his needs for existence. I quote from a book on American Constitution you know this Constitution makes the property question justiciable and it says not that a law court has the final word, but that the whole question of compensation can be taken out of the jurisdiction of the court. It says : When private property. is taken for a public or a semi-public purpose the constitutional requirement is that 'just compensation' must be paid to the owner. But how is that compensation determined? As a matter of practice the officers of Government first make their own valuation and offer the owner what they deem to be just. The owner, in most cases, rejects this offer and asks for more. Then by the usual process of bargaining, an agreement or some compromise .figure might be reached. But if the owner cannot get what he believes to be fair compensation in this way he has an appeal to the courts." This is important. *"But it is allowable to have the decision made by an administrative tribunal, with no appeal to the regular courts on questions of fact, provided a fair administrative procedure is followed."* You will note that there is no regular appeal to courts on questions of fact provided a fair administrative procedure is followed.

So, Sir, the sacred right asked for by Mr. Naziruddin Ahmad as indispensable to the citizen, viz., the right to go to the courts for compensation no longer exists anywhere in the world in spite of the fact that it finds a prominent place in the Statute Books. In practice it is no longer possible for one to stand up and say: "This is my land; I will not leave it. I will have it at all costs" though it is required for building a hospital for the needs of children who are suffering from tuberculosis. Such an attitude cannot be taken up by anyone in the present-day world.

As regards compensation, I beg to submit that property is a human institution. You cannot enjoy property unless society permits you to hold it, to enjoy it. The right to property is limited by social conditions. I may illustrate what I mean. Suppose you have a job. You cannot reach your place of work unless you have the transport service made available to you by the State. So even your job you cannot attend unless the social circumstances help you and the transport workers labour for you. You cannot produce anything on your property unless the social conditions permit you. You cannot even hold that property unless your neighbour permits you and you cannot enjoy it unless the society agrees to your enjoying it. So, the institution of Property is a social institution conditioned by the social changes around you. Therefore you cannot dictate the terms of compensation when that property is required for some common purpose. Compensation means the will of the people as a whole. If society does not like you to hold that property, you cannot hold it. You cannot call this tyranny' Because, by its very nature property is a social institution and as such, even from the primitive times there has been such a thing as dominance of right in property by somebody else superior to you. In mediaeval times it was the King and in modern times it is held by the sovereignty of the people. So there is no such thing as property for you to claim as yours and dictate terms of compensation. Fair compensation depends on what use that property is put to and what function. it is likely to perform.

Mr. President: May I remind the honourable Member that this point has been emphasised by several other speakers ?

Shri Krishna Chandra Sharma: Sir, I have finished with fair compensation.

The third point I wish to mention is the social and economic condition. Sir, it is a new expression I have used. I have not found it anywhere in any of the amendments and I am in duty bound to explain the need for this expression.

Sir, with regard to the conception of property, I must point out that it should be regarded as the common need of man. No one should be able to stand up and say: 'I want to do this and not that', because social forces are so overwhelmingly great as to make him do what they want despite his will. The situation has arisen when 'an individual could not do what he wants to do. A man now is made to do a job contrary to his own inclinations and is taken to a place where he does not willingly want to go. Times are changing. Forces are operating upon individual will. Therefore the situation has arisen when nobody can dictate or do what he wants to do or refuse to do what he does not, want to do. Even sections of society cannot stand in the way of mass movements of progress. That being so, no individual can dictate terms as regards the property that has to be acquired or as regards the uses to which it may be put. It is the cumulative effect of human forces and the social forces that will remove all difficulties in the way.

My emphasis is, therefore, upon the social and economic conditions of the country as a whole. A tiny section of society, be it a ruler or a legislature, cannot dictate terms in contravention of what the social and economic forces demand. So I beg to ask you not to close your eyes and say, you see darkness. Darkness you see because you have shut your eves. These social forces are operating somewhere. Be alive to the realities of the situation. Nobody can envisage where he would be some time hence. You could not imagine that you would be here where you are.

Therefore we should move with the times. If we do not move with the times, it will mean stagnation and-death and we will be inviting disaster. It is only people who do not move with the times who say that there is darkness around them, there is immorality around them. there is no sanctity around them. Throughout the centuries changes have come, upheavals have come, revolutions have taken place and those people who could not adjust themselves to the changed circumstances were swept away. Things change and change and those people who are crying hoarse about the sanctity of property, about the sacredness of property and so many other fine things, get swept away.

Mr. President: You are not only repeating the other speakers but yourself.

Shri Krishna Chandra Sharma: My contention is, Sir, that social and economic conditions change and that we should have to move with the times. One more point, Sir.

Mr. President: You have still some more points ?

Shri Krishna Chandra Sharma: I only want to touch upon socialisation.

Mr. President: There have been so many speeches and so many amendments covering this point.

Shri Krishna Chandra Sharma: But socialisation has not been touched upon by any Member.

Mr. President: Then you ought to have spoken on this, instead of speaking on other matters which have already been touched upon.

Shri Krishna Chandra Sharma: I am sorry, Sir, but I would be very short. I beg to submit that ours being a democratic republic with sovereignty having been vested in the people, the people will have the right to do anything with property. In the beginning, property was a communal institution. Later on as things developed, and cultivation came into vogue, the land became an individual institution and became the property of individual who cleared away the bushes and made the land cultivable. Therefore he became the proprietor thereof. Now, the ways of cultivation and the ways of production having changed, it is good that in the interests of society and in the interests of the State, property should again become a communal institution. In the interests of social progress it is in the fitness of things that the institution of property, if circumstances so demand, should pass on from being the concern of the individual, from being the right of the individual, to being the concern and right of society is a Sir, I move.

Mr. President: All the amendments which were on the Order Paper are finished. The proposition and the amendments are now open to discussion.

Mr. Naziruddin Ahmad (West Bengal: Muslim) : May I point out, Sir, that amendment No. 504 which has been moved by Mr. K. M. Munshi has already been covered by my own amendment No. 425 ?

Mr. President: May be I made a mistake in asking him to move it. Now the proposition and the amendments are open to discussion.

Mr. Naziruddin Ahmad: Amendment No. 504 is exactly the same as 425.

Shri Kameshwar Singh of Darbhanga : (Bihar : General) : Sir, I thank you for giving me this opportunity to have my say on this very important item of the Constitution. It embodies the principle and lays down the procedure according to which a private property has to be dealt with by the State when it Is necessary to acquire it for public purposes.

It gave me a rude shock when I read the amendment proposed by no less a person than our Prime Minister and such legal luminaries and constitutional experts as the Honourable Shri N. Gopalaswami Ayyangar, Shri Alladi Krishna swami Ayyar, Shri K. M. Munshi and the Honourable the Premier of the United Provinces.

I fail to understand as to how such eminent men could subscribe to the proposition that if a confiscatory law is passed after the commencement of the Constitution it is justiciable; whereas if such a law is either pending or has been passed before the commencement of the Constitution it becomes non-justiciable. I ask the House and the mover himself to consider whether such a discrimination is fair or just.

By excluding these two classes of legislations from law courts, is it not admitted by the authors of this amendment that the provisions' of these legislations are so unjust and improper that they cannot stand the scrutiny of the Law courts? In fact, clauses (4) and (6) of the amendment contravene the letter and spirit of the general principles enunciated in the article and negative the recommendations of the Fundamental Rights Committee already adopted by the House and incorporated in the Draft Constitution. They permit even confiscatory legislation approved by the executive authority to go unchallenged and deny to a section of the people the protection which the Constitution affords to others. Does it behove such an august Assembly as this to discard principles and disfigure the, edifice which is sought to be built on the four pillars of Justice, Liberty, Equality and Fraternity, by introducing inequitous discrimination ? We know that the Constitution guarantees certain Fundamental Rights to all citizens and creates a forum for the protection of those rights. Now does it not betray lack of confidence even in the highest judicial tribunal of this land which will be set up to uphold the- rule of law ? I feel constrained to submit that I never expected that the eminent persons who are associated with the amendment would adopt this attitude.

Only the other day, H. E. the Governor General of India made a significant observation regarding the role of the judiciary in the democratic set-up of the country. He said:-

> "It is by impartial interpretation of law and independent dispenstaion of justice between man and man and between State and subject that the judiciary holds aloft the banner of democracy which can sustain only by instilling the confidence in the poorest of the land that his wrong will be redressed and his justifiable grievances redeemed."

Clauses (4) and (6) of the amendment, as the House will notice, deny the aggrieved party the right to go to the court of law and this place the executive authority in the position of an autocrat.

I would like the House to appreciate that the underlying principles of the Constitution we are giving to ourselves guarantee the right of personal liberty and it is based on common rights and reason-the fundamental principle of all democracy. Now, is such a discrimination as is sought to be introduced by the amendment compatible with common rights and reason? Is it not tainted with prejudice and bias created by circumstances that have now changed?

I am aware of the fact that the Congress Party, which is in an overwhelming majority in the House, is pledge-bound to abolish the Zamindari system but it is equally pledge-bound to do so on payment of equitable compensation. Now, in implementing the first part of its pledge, is it not fighting shy of implementing its second part, by preventing the question of the abuse of power by State legislature in the matter of the determination of compensation from going to the judiciary ? As Pandit Jawaharlal Nehru has himself remarked: "Parliament fixes either the compensation itself or the principles governing that compensation and they should not be challenged except for one reason. Where it is thought that there has been a gross abuse of the law, where, in fact, there has been a fraud tile Constitution , naturally. the judiciary comes in to see if there has been a fraud on the Constitution or not", but so far pending legislations and recent enactments are concerned even for this limited purpose judiciary has been shut out. This distinction, I humbly submit, is extremely unfair.

Then again clauses (4) and (6) of the amendment discriminate (though not in so many words, but actually), between the provinces of Madras, Bihar and U. P. and other provinces, between Zamindari property and other kinds of properties and provide loop-holes for provinces to enact confiscatory legislations, if they so desire before the commencement of the Constitution. The amendment in fact, has retrospective effect and takes away the justiciable rights even with regard to section 299 of the Government of India Act. The amendment enunciates a very vicious principle. It is vicious because it virtually discriminates between one kind of private property and another. It is vicious because it treats one section of the Citizens of the Indian Union differently from another. It is vicious because it sanctions virtual expropriation of private properties. I would humbly ,entreat the supporters of the amendments not to introduce the vicious principle in the Constitution. if they do so, what at present is misfortune for some of us, may be a misfortune for the country as a whole. The Congress Organisation has built up a career on great and noble principles. The destiny of the country has passed into its hands and it has great duties to discharge and heavy responsibilities to shoulder. I would implore the Mover of the amendment not to get anything done by the Assembly which might either militate against the priniciples adopted by the great Organisation or be contrary to the pledge given by it in pursuance of its principles.

Mr. President: There is, I find, some kind of humming going on around which disturbs, I believe, honourable Members as it disturbs me here and I would make an appeal to the Members to allow the debate to proceed in a way in which all can take interest.

Shri Krishnaswami Ayyar (Madras: General) : Mr. President, Sir, in Supporting article 24 as moved by the Honourable the Prime Minister, I crave the indulgence of the House to say a few words if only because in regard to some of the points covered by the article, I have not always seen eye to eye with the Honourable the Prime Minister and I have now without any mental reservation accepted his point of view.

(At this stage Mr. President vacated the Chair which was then occupied by Mr. Vice-President, Shri T. T. Krishnamachari.)

The expression "payment" in section 299 which is reproduced in article 24 of the Draft Constitution has given rise to some difficulty as it may lend support to the view expressed in certain quarters that payment imports payment in the current coin of the realm, not in bonds, not possibly even in instalments but payment immediately on the compulsory acquisition of property. Clause (2) as placed before the House omits any reference to payment as the expression "payment" has given rise to some difficulty in interpretation. The article now drafted merely provides that the law must provide for compensation for the property taken possession of or acquired. This, taken along with Entry No. 35 in the Concurrent List already passed by this House, which enables the Legislature concerned to provide for the manner of payment, removes all possible manner of doubt in regard to the question whether compensation need, be paid in the current coin of the realm and immediately.

The other portion of clause (2) which has given rise to a good deal of controversy is the import of the expression "compensation" in section 299 of the Government of India Act 1935 and article 24 as originally drafted which in substance is merely a reproduction of section 299. On the one side it has been urged that the expression "compensation" by itself carries with it the significance that it must be equivalent in money value of the property or the date of the acquisition, *i.e.* its market value. On the other side, it has been urged that taking the clause as it is which refers to the law specifying the, principles on which and the manner in which the, compensation is to be determined, it gives a latitude to the Legislature in the matter of formulating the principles on which and the manner in which the compensation is to be determined. In this context, it is necessary to note that the languge employed in section 299 and that employed in article 24 is not in *pari materia* with the language employed in corresponding provisions in other Constitutions referring to the compulsory acquisition of property on payment of just compensation. The, expression 'just' which finds a place in the American and in the Australian Constitutions is omitted in section 299 and in article 24. There is also no reference to any principles and the manner in which the compensation is to be determined at all in the Australian or in the American

Constitution- The principles of compensation by their very nature cannot be the same in every specie,-, of acquisition. In formulating the principles, the Legislature must necessarily have regard to the nature of the property, the, history and course of enjoyment, the large class of people affected by the legislation and so on. There is the further point that the Legislature, in Schedule- Seven, item 35 of the Concurrent List already passed by this House, is clothed with plenary power to formulate the principles and the manner of compensation.

It is an accepted principle of Constitutional law that when a Legislature, be it the Parliament at the Centre or a Provincial Legislature, is invested with the power to pass a law in regard to a particular subject matter under the provisions of the Constitution, it is not for the Court to sit in judgment over the Act of the Legislature. The court is not to regard itself as a super-Legislature and sit in judgment over the act of the Legislature as a Court of Appeal or a review. The, Legislature may act wisely or unwisely. The principles formulated by the Legislature may commend themselves to a Court or they may not. The province of the Court is normally to administer the law as enacted by the Legislature within the limits of its power. Of course, if the legislation is a colourable device, a contrivance to out step the limits of the legislative power or, to use the language of private law, is a fraudulant exercise of the power, the Court may pronounce the legislation to be invalid or *ultra vires.* The Court will have to proceed on the footing that the legislation is *intra vires.* A constitutional statute cannot be considered as if it were a municipal enactment and the Legislature is entitled to enact any legislation in the plenitude of the power confided to it. As I have already pointed out, there is no item corresponding to Item 35 as already passed by this House in the Government of India Act 1935, which in terms confers upon the Legislature the power to formulate the principles of compensation and in any construction of article 24, this win be an important factor to be considered. I might mention I have formally indicated my view to the Honourable the Prime Minister even before the article was tabled for consideration by the House. In the view which I have indicated as to the main part of article 24, it may be possibly urged that clauses (2) and (3) apparently intended to deal with the U. P. legislation now pending in the U. P. Assembly are unnecessary. It was felt, however, that, having regard to the fact that a most well-considered opinion by its very nature can be no guarantee against a different view being taken by the highest court in the land and the magnitude of the problem, it was thought desirable in the best interests of all concerned to give a quietus to litigation and that is the reason for the insertion of clauses (2) and (3) in the article.

Clauses (2) and (3), as I have already pointed out are primarily intended to deal with the U. P. legislation now pending in the U. P. Assembly and expected to go on till after the new Constitution is passed. The two clauses provide for the........

Mr. Naziruddin Ahmad: It must be clauses (4) and (6) not (2) and (3)

Shri Alladi Krishnaswami Ayyar: I am obliged to you for that.

The two clauses provide for the reservation of the Bill for the consideration of the President and the President exercising his judgment and giving his assent to the measure. The President is expected to see that the Bill conforms to the main scheme of article 24 and unless the measure is in compliance with the principles as to compensation appropriate to the nature of the subject-matter dealt with by the legislation, he is not expected to give his assent to the measure. The assent of the President in the context and under the circumstances is not a formal assent. If be is, satisfied that the Bill has not done justice in the sense and to the extent I have already indicated to the proprietory right of the people who are deprived of their property it will be his obvious duty to withhold assent.

Instead of leaving the matter to be litigated in courts and having regard to the large class of people that are likely to be affected by the legislation, the delay, the trouble, expense and misery that might result from the matter being canvassed in different courts, a conclusive effect is given to the legislation as a result of the President's assent. I am not acquainted with the details of the U. P. measure and I am not in a position to pronounce upon the justice or other-wise of the measure. A reference is made in the clause to a Bill because it is expected in the normal course that the Bill would not pass into law but would be pending when the new Constitution is passed. An appropriate provision may have to be possibly made in the transitory provisions to the effect that a Bill pending on the date when the Constitution is passed may be taken over and continued even after the new Constitution comes into force.

The last clause is obviously intended to deal with the Madras Estates Abolition Act and the Bihar Act. Already notices have been given challenging the validity of the Act. The Act itself is admittedly incomplete in several particulars even according to the views expressed by the Madras Government and possibly defective. 'the position as taken up by the Madras Government is to the effect that they are authorised under the provisions of the Act to notify several estates and take possession of them without paying any compensation as a condition of their taking possession. It is alleged on behalf of the Government that under the provisions of the Act, they can take their own time for the payment of compensation until after the survey and settlement operations are over which may take several years. The Government have not paid even a portion of the compensation simultaneously with their taking possession of the estates and it is stated that they are advised that they cannot pay compensation even on agreements being executed by the landholders to the effect that any amount paid may be adjusted as against the compensation that might ultimately be found due. The Act provides for rules being made in regard to certain matters connected with the payment of compensation and it was given out in the papers that at the time when the assent to the Madras measure was given it was on the understanding that the rules would be made as early as possible and that the same would be placed before the Governor-General. The non-enactment of these rules however, according to the view of the Madras Government does not stand in the way of their taking immediate possession.

From the papers, I gather that notices of suit have been served by some of the landholders challenging the validity of the Act. If under these circumstances the law is allowed to take its own course and the various proprietors affected are to start litigation. it will take several years before this issue is finally settled by the Supreme Court. To say the least, there can be no certainty about the chances of litigation in courts. One court may decide in favour of the Government Another court may decide in favour of the, proprietors. Clause .(6) is intended to give a quietus to all future litigation by providing for a certification by the President. Having regard to the large classes of people affected by the legislation, the future, of agriculture and the agricultural prosperity in my province, I accord my full support to clause (6) as moved by the Honourable the Prime Minister. On several occasions I have expressed myself against the Madras measure and I might mention that I am a small proprietor who is vitally affected by the Madras legislation. If the matter is viewed merely from the technical point of view, the proper course may be to have section 299 of the Government of India Act 1935 amended in an appropriate manner or the law passed by the Madras legislature may have to take its own course until the decision of the final court of appeal. But, I felt that the clause as moved by the Honourable the Prime Minister enabling the Government to seek the certification of the President will put an end to litigation. The President would and could grant the certificate only if on examination of the provisions he is satisfied that the measure conforms to the provisions of the Constitution and the landholders affected are getting as speedily as possible a fair and equitable compensation, taking all aspects of the matter into consideration, for the property of which they are deprived. If the President suggests an amendment and the Government or the legislature concerned do not choose to accept the suggestions as to the amendment, it will be the obvious duty of the President to withhold certification and the matter will have to be fought out in a court of law. I do not believe that a Ministry with a sense of responsibility will choose the latter course of fighting out the matter in a prolonged litigation, instead of remedying the defects if any pointed out in a speedy and easy manner. It is in the firm belief and hope that wise counsel will prevail and that the Government will take a broad and just view of the matter that I am supporting the clause as put forward by the Prime Minister.

A few words on the general aspects touched by the Honourable the Prime Minister. Though a lawyer by profession, I may claim I have never approached. law in a legalistic spirit. Law according to me, if it is to fulfil its larger purpose, must serve as an instrument of social progress. It must reflect the progressive and social tendencies of the age. Our ancients never regarded the institution of property as an end in itself. Property exists for Dharma.

(At this stage, Mr. President resumed the. Chair.)

Dharma and the duty which the individual owes to ,he society form the whole basis of our social frame-work. Dharma is the law of social well-being and varies from Yuga to Yuga. Capitalism as it is practised in the West came in the wake of the Industrial Revolution and is alien to the root idea of our civilisation. The sole end of property is Yagna and to serve a social purpose, an idea which forms the essential note of Mahatma Gandhi's life and teachings. In the fervent hope that the amendment will further social progress of the teeming millions of the agricultural population of this country, I accord my whole-hearted support to the proposition as put forward by the Honourable the Prime Minister.

Shri Syamanandan Sahaya: (Bihar: General) : Mr. President, Sir, I stand here with a certain amount of trepidation, not being quite sure of what reception my view-point will receive this morning.

Pandit Balkrishna Sharma (United Provinces : General) : Do not worry.

Shri Syamanandan Sahaya : I have however sufficient confidence in the wisdom, the sagacity and the prudence of this House not to deter me in. spite of Pandit Balkrishna Sharma to express myself freely and frankly on the issues that arc at present under consideration in this House.

Pandit Balkrishna Sharma: I was only encouraging the honourable Member.

Shri Syamanandan Sahaya : Sir, it is fortunate in many respects that the amendment has been brought up by the Honourable the Prime Minister of India, fortunate in the sense that be is endowed with the gift of transcending all formalities, and false notions of prestige in achieving an objective, in accepting a proposition even if it runs counter to his own and unfortunate also in some respects because the scale against the proposition which I am placing before you has been very much over weighted indeed. I shall, therefore, proceed with the handicap but in the hope that my appeals will receive in proper quarters the consideration that they deserve. Even though Panditji is not present in the House at present, I understand he has placed the portfolio in the hands of another able man-that of the Premier of the United Provinces of Agra and Oudh. I shall make a special request to him to consider the few points which I raise in this House and to give it such consideration as it properly deserves.

A lot has been said in this House about private property, about changing conditions. about the impact of time, about the forces that surround us. I have heard them all with great respect and great attention. But without commenting in any great detail on them, I would like to tell this House that the recognition of the right to private property was a thing that was evolved as society grew up. It was not something which dropped all on a sudden from the high skies and in fact the recognition in olden times of the right to private property was a recognition of the principle of right over might. Friends might not agree with me. It is not my purpose here to detain you long over this controversy and perhaps now a hackneyed question; but even so I would be failing in my duty. if I did not impress on you the fact that it is really not so simple as some critics think to come here and say that this theory of private property Is an exploded one. Whether we like it or not, whether we accept it or not, the fact remains that if you dispose of property as something not deserving of consideration. you really go back to the 'Might is right' theory. It have at, one time the physical might- today it might be the numerical might.

I fully concede that socialisation of the means of production is a sure and certain stage in the evolutionary process. It must come. My only quarrel is with those who want to take it away from the evolutionary process and desire to bring it by revolution. I disapprove of the methods which seeks to hustle it into being. Sometimes my socialist friends begin to act in this manner and behave like the young man in a hurry, with the great risk of not only missing the bus but also missing the ceremony at the Church. It requires a great technique to decide what is the proper occasion for bringing about this important change in the structure of society. If you pluck a mango a day too soon, before it is thoroughly mature you lose the sweetness, the fragrance and the flavour of it, although you might have the satisfaction of possessing the mango and eating it too. I claim that the time for taking up that great stride, for socialisation and nationalisation of all means of production is not yet come. It has accepted by some of the greatest thinkers of socialistic theories that individual enterprise must have its fullest play before you can adopt socialistic methods and socialist means of production.

I ask every friend, I ask every sincere friend to whom the country, and not a slogan. is dear whether really we have moved. forward to an extent where it might be possible for us to distribute the wealth of the country. Today if we start distributing in the words of the Honourable Prime Minister, the mover of this amendment-it will be distributing our poverty alone, for that is what we possess. Man in the ultimate analysis must be the sole consideration and not only man but man with his psychological bearing. if you remove the incentive of the development of private property, you reduce the man ultimately to an automation. You may have some results to begin with but I feel confident that it will not stand the test of time. Even in countries where this method was adopted, people are beginning to visualise that it is useful to allow the man to have some private property and some incentive for the development thereof.

Now let us take the land problem. I concede that the position with regard to socialisation and nationalisation of land is not the same, is not on a par with that of industries. Industries have not been worked enough but land has been. Our difficulty however is that once we start on this errand, we frighten others and then we do not know where to cry halt. Suppose you eliminate a few zamindars what happens next ? The wealth of the land is still concentrated in the hands of a few as compared to the very large number who are still landless. The question therefore which I might ask is how long, how often and to what extent are we willing to go to bring about the equilibrium.

Some friends have characterised property as theft. Sir, this I attribute to ignorance. They do not realise that most of the property held now is really purchased property, whether it be landed property or otherwise. Land was the safest investment till a ago and the hard-earned savings of the people were invested in land. It was supposed to be an insurance against old-age, against sudden calamities, for widows and for orphans. It is another matter if we decide upon taking away those properties; but let us not go to the extent of characterising property as theft. That, in my humble opinion, would be a very wrong conception of property as it has evolved.

Another friend from Madras seemed to think that he bad made a great point by saving that zamindars who started with an income of Rs. 40 lakhs in that province were now having an income of Rs. 240 lakhs. But let me point out to my friend that he has taken only one figure, namely, the figure or income at the time the zamindari settlement was made and now. If the had only cared to see another figure, then he would have been satisfied that he was not making any point at all. That figure is the figure of the land under cultivation at the time of the zamindari settlement and the land under cultivation now.

Shri Kala Venkata Rao : (Madras : General) : I know these figures, but can the honourable Member enlighten me how this will improve the situation ?

Shri Syamanandan Sahaya: I hope to be able to convince my friend a little later and show how it will improve the situation. If he had ventured on that enquiry, he would have found that land under cultivation now is much larger than what it was. Might I ask how all this land came under cultivation? Was it by a magic wand ? It might be contended and perhaps rightly, that it was due to the tenant, the iller of the soil. I concede that. But who provided the wherewithal ? These, Sir, are questions which I think must be taken into consideration by those whom Providence, today has placed in authority to consider what developments, what procedure, what changes should be brought about in the revenue system of this country. Luckily, Sir, for the zamindars, there are two types of land revenue systems in this country. One is the *ryotwari* system where there are no landlords and the other is the zamindari system. If you compare the condition of the tenantry of both these types of land revenue systems, if you compare the rent payable by the tenants under the *ryotwari* system and the rent payable under the zamindari system, you will find that the condition of the tenantry in the ryotwari areas, is in no way better than that in the zamindari areas. I am quoting, Sir, from a commission known as the Floud Commission in Bengal which ultimately decided upon the abolition of zamindari. Even they made it quite plain that the condition of the tenantry was in no way better in the ryotwari area. You will be surprised if you compare the rents in the ryotwari areas with the zamindari areas, In the Province of Madras, the average rent varies from Rs. 6 to 7 per acre and for wet lands it varies from Rs. 10 to 12 per acre, average; whereas in the permanently settled zamindari area in Bihar, Bengal and other places the rent is between Rs. 3 to 4 per acre.

Shri Biswanath Das (Orissa : General) : Sir, I rise to a point of order. It is this. We are here discussing the question whether or not to have article 24 which is a rider on item No. 9 of the State List in Schedule. Seven. There is no Bill relating to the acquisition of zamindari lands pending before us now to be discussed so as to compare and contrast the levels of rents in and ryotwari lands. Therefore, such comparisons and discussions are out of order.

Mr. President: Other speakers have dealt with the question in a general way and I cannot prevent a representative of the zamindars from putting forward his view-point.

Shri Syamanandan Sahaya : Sir, as a matter of fact, the real position is this. Article 24 is being considered and it deals with compensation for private property, and it has been suggested more than once that compensation need not be given and that right to private property need not be respected. Land is one kind of private property. Therefore, apart from the consideration that other people have spoken on the subject, I think I am entitled to speak and say that private property should be respected and full compensation paid in case of acquisition.

Mr. Naziruddin Ahmad: It his even been maintained that zamindari is no property.

Shri Symanandan Sahaya : Now, Sir, there is another kind of private property and that is industry. We have heard a lot about industrialists having made a lot of profits. Our friends and critics have only given attention to the profits which industries or the industrialists are making, but have they considered what they do with these profits ? If I may say so, the answer is simple mills and more mills, In fact if you wanted to describe the present-day capitalists in this country, you can give no better or worse description of them than call them the members of a "Mill Multiplication Society." I ask my friends to consider whether this is a good or bad for the country. We are faced with tremendous difficulties. Every day we hear that there must be full production and more production. How is that to be achieved overnight, if we begin socialising all means of production and give no chance to private enterprise to do its best?

I must, therefore, Sir, congratulate our leaders on their sticking to the property rights and guaranteeing them under this Constitution. While I do so, I have a feeling that the new draft of the compensation clause aims at a certain amount of discrimination not only between property and property, but also between the same type, of property. Whatever my Friend Mr. Biswanath Das from Orissa might say. the fact is, and it was made quite clear by the honourable Mover in his speech yesterday, that clauses (4) and (6) have been incorporated in the draft with the sole purpose of meeting the case of certain Bills and Acts in certain provinces. If Mr. Biswanath Das had cared to follow things in this country he would have known that they relate to land only.

In this draft, we find an attempt to fight shy of our own judiciary. It is an accepted principle all, over that the judiciary is the ultimate custodian and guardian, and the strongest bulwark of democracy. Would it therefore do, Sir, in the very beginning of our Constitution to Jay down a procedure by which we might show, in howsoever small a measure, Any disregard of or want of confidence in our own judiciary ? There is no denying the fact, there is no need of emphasising the point that the judiciary cannot take over the powers of a legislature. It simply cannot. The judiciary can only interpret your law and interpret your law in a just and fair manner. Would it be wise at this stage, I may ask, would it be wise to make a provision with a view to clearly oust the jurisdiction of courts ? Some grounds have been placed before us for this, and same difficulties have been pointed out.

Let us however not forget that the vital difference between democracy and other forms of Government like autocracy, oligarchy, etc., is that the democratic system of Government provides for fair and impartial justice not only between citizen and citizen but also between the citizen and the State. And what is the system that has been evolved for this purpose? I know of none else than the judiciary. I, therefore, submit that it will be, wrong to concede, and to Jay down, that the jurisdiction of law courts should be ousted for any purpose.

Now, Sir, the difficulty which has been envisaged by the Honourable the Mover is mostly what he calls 'dilatory and financial'. The Mover in his speech said that "if we allow these Acts to be considered by law courts it will involve us in such prolonged litigation that we shall never be able to carry out any reform at all and if we pay compensation according to market rates we shall never have the financial Wherewithal to undertake zamindari abolition"-I respectfully differ from him. The Government cannot be deterred by any prolonged litigation for the simple reason that the Government can any moment make a legal provision that they shall pay whatever compensation they consider fair, but if later on the courts decide that a higher compensation should be paid the Government will pay it. This is no new procedure; it is already followed under the Land Acquisition Act. The Land Acquisition Officer makes an award, takes over the property and if ultimately the judges decide that more compensation should be paid the extra amount is paid to the party. Therefore, the question of prolonged litigation should not stand in the way of the reforms that we propose to undertake in the matter of land in this country.

Now, let us take the financial aspect. Of the three provinces with which we are at present concerned and for which I am told clauses (4) and (6) have been particularly drafted, we find that in the case of Madras there is no financial difficulty at all as the Honourable the Prime Minister and the Revenue Minister of Madras have made it quite plain on more than one occasion. The total financial requirement according to them is only about Rs. 15 crores, which for a province like Madras ought not be difficult to find if not in one year, at best in two or three years. In the United Provinces the Honourable the Premier and the Members of his Cabinet have evolved a scheme which, I suppose, is going to bring them more money than they would require to pay the zamindars. If will be a kind of what you call an improvement trust scheme where ultimately the trustees gain rather than lose. In Bihar the position, in my opinion, is comparatively simple, because the Government there desire to take up for acquisition larger estates to begin with and with the sayings made from them. they propose to acquire 'smaller estates. They have even made a statement to the Government of India that they do not at present (perhaps I am using the word "at present" as my own and not that of the Government of Bihar) propose to take over zamindaris of less than Rs. 5,000. If that is so, the problem of payment of compensation even in Bihar is not a difficult one.

I submit, therefore, that neither the prolonged litigation problem, nor the financial problem is so difficult that without making a provision of the nature, I have been discussing here, in the Constitution, it will not be possible to undertake land reforms.

Sir, I believe our administrators nay be genuinely and sincerely apprehensive of these difficulties. If the proposals are the same today as they were, I feel no apprehension whatsoever in any of these Governments undertaking the land reform even with the financial resources that they possess.

Let us now see how the country and the Congress have been looking. at the zamindari problem and the compensation to be paid in case of acquisition. I have no doubt that you will be aware that as late as the year 1915 the All India Congress passed a resolution which I would like to read out for the information of the House.

It runs thus :

> "This Congress is strongly of the opinion that a reasonable and definite limitation should be put to the demand of the State on land and that Permanent Settlement be introduced in an areas, ryotwari or zamindari, where that settlement is not in force, or a settlement for a period of not less than 60 years be introduced "

Some friends, Sir, seem to think that 1915 has long gone by and that I am harping on something which is long since dead and gone. But I feel that it would not be wise not to consider the opinions held only about 35 years ago particularly about such an important matter.

However, coming to recent times I may recall to you, Sir, a statement made by Sardar Patel as late as 1939, at Brindaban, where you and Mahatmaji were also present. Referring to the abolition of zamindari system the Sardar maintained that the national and economic salvation of India did not lie in it. The Congress Manifesto, though it advocated the elimination of the intermediaries between the State and the tiller of the soil, recognised-I am using the language of the resolution that the rights of the intermediaries should be acquired on payment of equitable compensation.' As late as 1948 and 1949 (on the 6th of April in both years) the Honourable the Prime Minister of India made two policy statements in both of which he clearly stated that any acquisition of private property would only be. on the basis of fair and equitable compensation. Equitable compensation therefore seems to be a recognised fact.

What is really perplexing to me is who is to decide what is equitable compensation. The State is taking over the property; the citizen is involved. Will the State be the final arbiter ? The State may set up any machinery for determining equitable compensation, but it has to be other than the Government itself. An honourable Friend speaking a few minutes back said that some kind of administrative tribunal might be set up. We have nothing to say against it. But where it is a matter between the State and the citizen some machinery, be it judicial, or be it an administrative tribunal, should be devised which would decide what equitable compensation is.

Now, Sir, let us come to the Constituent Assembly itself and scrutinise the views expressed and the principle accepted here. In the Objectives Resolution which we passed here we laid down quite clearly what the constitution will strive for and what it will guarantee to the citizens of the State. It guaranteed among other things equality of status before the law. Now, Sir, if we, weight clauses (4) and (6) of this draft on the scale of this guarantee, I have no doubt the House will concede that there is no equality of status so far as clauses (4) and (6) are, concerned. It does not even given us an opportunity of going before a court of law, much less claiming any equality before it. And for what ? Not for considering whether the compensation is fair or not. Only clause (2) lays down the principle of payment of compensation. At no other place have we said that compensation shall be paid. And clauses (4) and (6) say that "the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2) of this article". Now, the contravention might be of the entire principle of compensation. Even if a province, for instance, decides not to pay any compensation, such contravention cannot be taken to a court of law. The other day the Honourable the Prime Minister speaking on this particular part of the draft said that it has been provided that if there is a fraud on the Constitution the matter can be taken to court. I will appeal to the legal luminaries present in the house and particularly to the Honourable Prime Minister of U. P. to consider whether clauses (4) and (6) leave any room open for a party to go to a court even if no compensation is paid by the legislature. If that is the position I submit that I have made out a strong case for amending this clause, if not for completely deleting it.

This point has been further clarified in discussions in this House and in clause 13 F, where we have guaranteed the "acquiring, holding and disposing of property" and further on in article 15 of our Constitution where we have guaranteed "equal protection of law" to everybody. I might ask; Is it equal protection of law to deny to one class of zamindars the right of justiciability with regard to the right of compensation for their acquired property and to give other zamindars -of other provinces-the same right? The fact of the matter is that only three provinces are affected. If, suppose, C. P. or Orissa or Bengal bring up a Bill for acquisition of zamindari later on, the zamindars of those provinces will have the protection of law. They shall have the right to go to a court and seek justice. On the other hand we in Bihar, U. P., and Madras are being denied that right. I might ask this House is it really "0equal protection of law" ? This, we have guaranteed; this we have already passed, Some friends might get up and say "Well, Sir, this House is a Sovereign Body and we can do anything". I would humbly point out to such friends that this House might have the right to make a foot of itself, but wise men will always counsel the House not to make that attempt. Sir, this is an important thing which we are incorporating in clauses (4)' and (6). Even the amendment which Mr. Munshi had tabled, namely, that the President before certification may return the Bill for such amendment as lie might consider necessary has not been moved by him. It therefore comes to this that President has either to accept the Bill or reject it. And it will be exceedingly difficult for any President to reject the Bill wholesale. I ask the Honourable the Premier of U. P. and other friends : Is it not right that some such provision must be made here which should authorise the President to give to the Legislature concerned his advice and opinion ? Will it be fair to leave him only wit] the option of either accepting or rejecting it? I thought that on the very fact of it, it was a proposition which could not be accepted. And there is time yet.

Shri Alladi Krishnaswami Ayyar: I thought that it was implicit in the provisions.

Shri Syamanandan Sahaya: There are many things which are implicit, but we want to make some things explicit also. I submit that this is a point which deserves serious consideration. The time has not been lost yet. I think here is still time when some such amendment to these clauses could be brought up, and with your express consent it could be done even now.

I know, Sir, that I have already taken a great deal of your time. But I would like to recapitulate our commitments before I conclude. As I said, there is the Congress Manifesto, the Policy Declaration by the Honourable the Prime Minister only in April 1949, the Objectives Resolution, the Fundamental Rights Committee Report where we have clearly accepted the principle of acquisition only on compensation, which we are not deviating from in clauses (4) and (6). Then there are articles 13 (f) and 15 of our draft Constitution guaranteeing clearly that there shall be equal protection of the law for all citizens. Although perhaps it may be considered as a suggestion late in the day, I will submit that there are already amendments for deleting clauses (4) and (6) and it might be open to the authorities to consider the suggestions which I am making, even at this stage.

As I have said just now, the certification of the President gives him no option and I think it will ultimately come to this that be will have to accept the Bill. As you have given, Sir, twelve hours for the discussion of this matter I do not think I have, by the socialistic procedure, had enough time wherein I could place the point of view of zamindars. However, I will conclude now. But before I conclude I will again appeal to the authorities to consider the points which I have made not merely in the interests of zamindari but in the general interest of constitution-making. I am reminded here of an important point made by the late revered Pandit Motilal Nehru while be was arguing the famous "Searchlight" Defamation Case. He said it was not only necessary for the judiciary to Jay down good law but it was equally important for it to create the confidence that the judiciary were laying down good laws and the interest of the citizen was safe in its hands. Sir, it is more important for the Legislature and even more so for a Constituent Assembly that we, should lay down only such law as will appeal to all sections of the people as being fair, just and equitable. I plead with the House to accept my suggestion for deleting clauses (4) and (6). If, however, I am not able to secure the approval of the House for my suggestion I shall content myself by exclaiming with Lord Byron that "my only solace is that our tyrants are after all our own countrymen".

Pandit Balkrishna Sharma : Mr. President, Sir, it is a curious thing that this proposition which has been moved by the Honourable the Prime Minister and supported by no less a jurist than Shri Alladi Krishnaswami Ayyar should have evoked a sort of conflicting opinion and emotions in this House. There are many zamindar friends here who are opposed to it because they think that there is something in this article which tries to tread upon their toes. Then there are other men like me who are really opposed to this amendment moved by the Honourable the Prime Minister because we think that this leaves certain loopholes which may make it difficult for our State-either provincial or Central-to do things with speed for the public weal and for the common good. Here we have laid down certain principles which cannot be justified on the grounds of the greatest good of the greatest number. Clause (2) of this article definitely lays down that for public purposes acquisition of property can take place but that acquisition cannot take place without laying down the principles for paying compensation or actually making payment for the things acquired. When this article says : "Property taken possession of or acquired shall not be taken possession of or acquired unless the law provides for compensation for that property or it fixes the amount of the compensation or specifies the principles", it clearly means that we are here leaving a loophole for a sort of legal quibbling. Shri Alladi Krishnaswami Ayyar has very definitely told us here today that this clause does not empower anyone to go to the court and question the decision of the Government on the ground that the compensation paid is inadequate or that the principle laid down is in any way inequitous or fraudulent. That is what the eminent jurist Shri Alladi Krishnaswami Ayyar told us.

Now, if actually it is so, then why should we not accept the amendment which has been moved by my sister Shrimati Renuka Ray ? In that amendment she has tried to clarify the issues by saying definitely that no law making provisions as aforesaid shall be called in question in any court either on the ground that the compensation provided for is inadequate or that the principle or the manner of compensation specified is fraudulent or inequitous. If really clause (2) of this article means what Shri Alladi Krishnaswami Ayyar says and what other jurists maintain, I think there is no reason why the Honourable the Prime Minister should not accept Shrimati Renuka Ray's amendment which makes the matter clear beyond any shadow of doubt. That is my first suggestion about the proposition before the House. As it stands the clause leaves several loopholes. That being so, all our protestations about either the judiciary stepping in or our making the judiciary a third chamber and things of that sort will do us no good, because the proposition as it stands is capable of being interpreted by interested persons in a manner which will put almost insurmountable obstacles in the way of social progress. Therefore, my submission is that while accepting this proposition we must also at the same time accept the amendment of Shrimati Renuka Ray.

If I have understood this article, it only means that we are hereby laying down the principle which will facilitate the activities of the State in the direction of doing some things for the common good and that no private interest shall be permitted to stand in the way of achieving that common good. This is, I believe, the essence of this proposition :

Sarve bhavantu sukhinah, sarve santu niramayah

Sarve bhadran pashyantu ma kashchit dukhbhag bhavet.

This is what we want to achieve. Let everyone in society in this world, be happy. Let none suffer from any illness. Let everybody develop the capacity to see the truth and let nobody be unhappy. This is the prayer which has arisen from the enormous depths of Indian thought and this is the prayer in which we have believed from time immemorial.

Sir, this article I think is an attempt to embody that prayer and to make the way clear for the Government to bring about changes in our social and economic structure. But, as I have pointed out, clause 2 is defective. If it is not, as Shri Alladi Krishnaswami Ayyar says, then there seems to be no need for clauses (4) and (6). If actually we have placed the principles laid down in the article beyond the jurisdiction of the courts of law, then clauses (4) and (6) are absolutely unnecessary. But we have brought in these clauses simply because we wanted to ensure certain social legislations which are on the anvil or may be on the anvil in the United Provinces and in the Presidency of Madras. Therefore we think that there may be something in clause (2) which may militate against our efforts in this direction. Now if we are here discussing that proposition with such reservations, then I would beg of the House not to do so and to make it absolutely plain beyond any shadow of doubt by accepting the suggestion put forward by Shrimati Renuka Ray.

Many questions have been raised here about property . there were questions about the sanctity of private property; questions about private. property being an incentive for work and for development of society and also questions about the undesirability of bringing on the Statute Book laws which will take away that incentive which an individual would feel only if he is assured . that his private property shall not be touched. These are questions which raise fundamental issues. The one fundamental issue now before the House is what sort of social concept we shall have and what sort of social concept we shall not permit to be incorporated in our Constitution : this is philosophy more than anything else-philosophy behind a certain idea or a certian line of action which ultimately influences the conduct of society as a whole. We have seen that in the early nineties the idea brought by Darwin-Survival of the fittest-was accepted as true. This truth was borne out by biological developments and by the observations of those scientists who for the first time brought before society the theory of evolution, that nature was red in tooth and claw and that it was only the fittest who could survive and that it is war to the knife. Now, this philosophy, this idea, got hold of the mind of the Westerner to such an extent that everyone of the nations there tried to be the fittest by way of increasing their armaments, with the result that within twenty-five years or thirty years two devastating wars engulfed them, overtook them. We have to see whether that concept of society, that the fittest alone will survive, was right. Subsequently we have found that it is not only' the principle of the survival of the fittest that was working in nature but also that the principle of mutual aid was there, that whereas nature was red in tooth and claw, yet nature was mother also, that nature knew how to fondle the child, how to render help to the helpless, and that those principles also were working in nature. Similarly if we today stand up here and say "No, property is sacrosanct, property. shall not be touched and any attempt to touch property will violate the principles which have been sanctified by tradition", then I 'would like this House to know that this is not the way in which your forebears looked at this question. You must remember the famous saying in the Bhagavad Gita-

Yajna shishtashinah santo muchyante sarv kilbishaihi.

Bhunjate te twagham papa ye pachantyatma karnat.

The *Gitakar* has definitely stated that they are thieves and sinners who have only their own comfort before them in acquiring property and who forget that ultimately the whole society has been created with the spirit of Yajna, with the spirit of sacrifice, with the spirit of mutual aid. As you know, the *Gitakar* has very definitely stated-

Sahayajna praja srishtwa purovach prajapatihi

Anena prasavishyadhwam eshawo stwishta Kamadhuk.

Prajapathi created this whole universe........

Mr. President: I am afraid the honourable Member has become too philosophical for the House. Let him confine himself to the Resolution.

Shri Kala Venkata Rao: Being so conversant in Sanskrit, I hope that he win be prepared to support Sanskrit as the national language!

Pandit Balkrishna Sharma: Knowing as I do that the honourable Member is a Sanskrit Pandit, I am prepared to let him have advantage over me. However, as I said, Sir, the idea behind all this is that the whole society has been borne with the spirit of sacrifice and, therefore, if anybody, whether he be a zamindar or a capitalist, stands up in the House and says that his rights are to be safeguarded, are to be protected, then I think he is not true to his own traditions, to his own spirit of the past, which has sustained him throughout the dark ages, and therefore to my zamindar friends I would say, do not look at this question in a pettyfogging manner.

We, as a State, we as a political party, have a great responsibility upon us. If we make the acquisition of certain properties justiciable and the acquisition of certain other sort of property non-justiciable, then we will be laying ourselves bare to the attack that we are here definitely giving a sop to one section of the society, the capitalist. section of society. Does clause (2) mean that we are keeping the door open for the capitalist to go to a court of law and claim that the principle on which compensation has been decided is fraudulent or that the compensation which has been given is not adequate or equitable ? Is this the meaning clause (2)? If this is the meaning, Sir, then I beg to submit we should not be surprised if our opponents come and say that we are acting as mere stooges of the capiatalists. If we do not mean it, then we must say 'in no uncertain terms that no law which makes such provision for the acquisition of property for social purposes shall be called in question in any court either on the ground that the compensation provided for is inadequate or that the principles on which that compensation is to be paid are fraudulent or inequitous. That is what I want to submit. If we do not make this clear, then I think we are paving the way for very serious consequences to overtake and invade us. With these words I oppose the motion and I request the Honourable the Prime Minister to accept the amendment which has been moved. With that amendment, this will be an ideal proposition before the House and therefore I will have no compunction in giving my full-throated support to the proposition, but unless this point is made clear, I cannot bring myself round to the view that this should be accepted by the House.

Shri Jagannath Baksh Singh (United Provinces : General) : Mr. President, Sir, I move an amendment for the deletion of clause (4), but according to your ruling, and in view of the fact that general discussion has commenced, I shall speak in general mainly on clause (4). I am equally opposed, I may several honourable Members who know better about that clause, I shall only endorse their arguments and not speak to the House on that aspect of the amendment.

Sir compulsory acquisition of property has hitherto been governed by the provision of section 299 of the Government of India Act, 1935 as adapted by the Indian Independence Act and the consequential orders. This section has, not so far been taken into use in acquiring property. I think the property so far compulsorily acquired has been under Act I of 1894, *i.e.,* the Land Acquisition Act. Regarding the main question of justiciability of rights, there are two provisions in section 23 of this Act which I may mention here. Section 23 Subsection I provides that market value shall first be taken into consideration in determining the compensation for the land acquired; Sub-section (2) further lays down : "In addition to the market value of land as provided above the court shall in every case award a sum of 15 *per centum* on such market value, in consideration of the compulsory nature of the acquisition."

Over and above this, there is a proviso attached to section 35 of the same Act which reads thus : "In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof; the Collector shall refer such difference to the decision of the Court."

These, Sir, are the provisions for "adequate" or perhaps more than "adequate" compensation for the acquisition of property under an Act enacted by what might be called an executive-ridden body of legislators, and being worked under a constitution which is based on the principle of the supremacy of the executive over the judiciary.

Is it not a contrast full of ironical significance that this constitution which is streamlined for its respect for the Rule of Law, which claims to guarantee the individuals right of access to the judiciary should contain a proviso like clause (4) of the proposed amendment which prevents judicial redress against interference by a State Government with one of the basic rights of man ?

Clause (4) lays down two principles for such States where Zamindari Abolition Bills are pending before the legislature at the commencement of the constitution. These are : Firstly, transfer of power to the State Governments to lay down the principle and method for the, determination and payment of compensation; secondly, exclusion of the jurisdiction of the law court to question the principle and method as laid down above. Shri Alladi Krishnaswami Ayyar, whose opinions on legal matters are, rightly taken as authoritative has made a clarification of article 24 as it stands amended today. For a layman like myself, it may not be quite possible to judge the implications of the opinions expressed by him, but as I have submitted, I am mainly concerned with clause (4). With reference to clause (4) Shri Alladi has said that this particular clause concerns a Bill in the United Provinces. He however, admitted that he was not aware whether that Bill contained provisions which are just or otherwise. Shri Alladi and other eminent lawyers and persons were members of the Fundamental Rights Committee and the Bill of the U. P. came long after the report of the Fundamental Rights Committee. I take it that they too ire not supposed to know thoroughly about the Bill. I may take it that other members of the Drafting Committee too are not aware of 'the implications of the Bill which is pending in the U. P. Legislature. It may, not therefore be out of place if I go into some detail regarding the Bill which is before the U. P. Legislature. I submit that I shall not go into intimate details.

That Bill, is a voluminous piece of legislation and it contains 310 clauses, including sub-clauses which may go to a thousand, and this House has no time to listen to the details of that Bill. Taking that into consideration, I have decided to speak on two points and that too very briefly. The two points are, firstly the effect of compensation and secondly how far it expropriates the proprietors of their rights. Sir, the area of the United Provinces I is roughly 6 crores of acres, and 59 per cent. of this is under the tenants who are going to get transferable rights. One per cent, is under the cultivating possession of zamindars, who are going to get that land for their living. This one per cent. works to about 3.74 acres per family of a Zamindar of whom there are about 20 lakhs of families according to the Government figures and 23 lakhs families according to our estimate. This comes to 60 per cent. of the area of the land in the U. P. The zamindars are treated as intermediaries with respect to 59 per cent. of the total area. Taking the meaning of the word "intermediary" as a person who stands between the State and the cultivator of the land, 59 per cent. of such land is under the rights of intermediaries. The remaining 40 per cent. of land 216 lakhs of acres is culturable waste for which the Zamindars have a direct settlement with the Government. Here there are no cultivators and therefore there are no intermediaries. Now, in respect of the 59 per cent. of the total area where the Zamindar is an intermediary between the Government and the tiller of the soil, the compensation which is proposed to be given is briefly eight times the net profit of every estate. Provision gas been made for the payment of rehabilitation grant of different multiples on net income below Rs. 5,000 land revenue. About Rs. 5,000 there is only eight times, but on the top grade the payment of compensation will be only three times the net profit. I say so according to a statement of the Honourable the Premier of the United Provinces himself at a press conference held in Lucknow on June 10. Those persons who are going to get three times of their net profit, their compensation will work out to 75 per cent. of their annual For instance, a person whose income is a Lakh of Rupees will get Rs, 75,000 as compensation for the whole of his property. Calculated at 2 1/2 p.c. interest per annum. this will mean an income of Rs. 1,875 per year in place of Rs.1 lakh as now. This is the position regarding compensation for acquiring 59 p.c. of the area of the U. P.

In connection with the remaining 40 per cent. of the land with respect to which, as I have submitted, the Zamindars are not intermediaries, the Government is going to acquire that land without any compensation. This is about two crores odd acres which bears pastures, miscellaneous trees, jungles, forests, water reservoirs, wells and other works and constructions for the improvement and development and the waste lands as well as the cultivated areas, yielding no less revenue than the cultivated land. All this land is going to be acquired without any compensation and it may be noted that this expropriation hits the smaller Zamindar in a much greater degree than bigger ones. I shall place one particular point before the House..........

Shri Mahavir Tyagi (United Provinces : General) : May I know if that land pays any land revenue ?

Shri Jagannath Baksh Singh : Land revenue is being paid on that land as it is paid on the cultivated land. Those Zamindars who have purchased these lands have paid price for it, and their income from these areas, apart from being assessed to land revenue, is subject to income-tax by the Central Government which put the value of the land beyond doubt.

Mr. President: I would ask the honourable Member not to go much into the details of this particular Bill.

Shri Jagannath Baksh Singh : I would not go any further. Now, Sir, this point is not perhaps of a detail, and does not concern any particular province when I say that the acquisition of Zamindaris is being effected as a part of the Congress pledge to abolish the intermediaries between the State and the tiller of the soil. This pledge embodied in the congress election manifesto of 1945-46 has been repeated frequently in the legislatures and outside. I do not propose to take the time of the House in reading out that resolution. But, may submit here for the information of the House that with a view to implementing that pledge the U. P. Legislative Assembly, on the 8th August 1946, Passed a resolution. This resolution says :

> "This Assembly accepts the principle of the abolition of the Zamindari system in this province which involves intermediaries between the cultivator and the State and resolves that the rights of such intermediaries should be acquired on payment of equitable compensation."

(These words may be marked)

> "and that the Government should appoint a Committee to prepare a scheme for this purpose."

Now, this resolution was moved by the Honourable the Minister of Revenue, and the Honourable the Premier of U. P. in a fairly long speech supported this resolution. in his speech the said, (he spoke in Hindustani) *"Hamara farz hai ki ham Zamindaron ke sath insaf karen"* which means, "it is our duty that we should be just to the Zamindars. It is our dharma that we should be just to the Zamindars." We laid much store by his words and the implications of this resolution. I shall make no comment on this. I. shall only leave it to the House to judge whether the conditions of compensation and expropriation which I have very briefly described go to prove the fact that the Zamindars of the U. P. are getting an equitable compensation as the Government stated it to be their duty to be just to them. These are questions, on which I need not pass any verdict. it is for the House to judge.

I shall in conclusion to only say that the case of justiciable rights in respect of private property is unassailable. 'Paucity of funds is no argument against payment of compensation to the Zamindars when a State Government is making a clean profit of Rs. 45 crores out of sale to the tenants of transferable rights in the land acquired. Equality of treatment to all forms of private property is a principle to which this House stands committed by virtue of the declarations contained in the Objectives Resolution and the provision of article 15 already passsed. May I point out, Sir, that even apart from being contradictory to the previous commitments of this House, the amendment if accepted, will stand out as an unprecedented outrage on the fundamental right to property which is deemed sacred and guaranteed by almost every important constitution of the world. There is therefore at moral obligation to delete clause (4) from this amendment as also clause (6) and provide for the payment of a fair and equitable compensation as a justiciable issue. Justice, Sir, should not only be done, nor said to have been done, but it should also seem to be done. With these words, I strongly support the deletion of sub-clauses (4) and (6).

The Honourable Pandit Govind Ballabh Pant (United Provinces : General) : Sir, a large number of amendments have been moved since this article was placed before the House by the Prime Minister. The article has been attacked for various reasons. Many of these amendments run counter to each other and are altogether contradictory. Some of the speakers were not satisfied with the clause, because it concedes too much, while others thought that the compensation that was admissible under it was illusory and not likely to satisfy them.

I think there is still some misunderstanding in spite of the clear exposition given by Shri Alladi Krishnaswami Ayyar and the weighty speech made by the Prime Minister when he moved this article. Raja Jagannath Bakshi Singh, the leader of the Zamindari party my province, who is also a member of the Joint Select Committee which is considering this Bill, desires that compensation for Zamindaris should be paid in accordance with the principles laid down under the Land Acquisition Act, that is, that the Zamindars should get the market value plus 15 per cent. After hearing him, I feel that we would have been really making a great blunder if we bid not introduced clause (4). Vested interests' die hard, but, sometimes, they are not even capable of taking a sensible view of things much less a generous view.

He has attacked the Bill that I had the privilege of placing before the U. P. legislature. But, before going to that Bill, as he has referred to the Government of India Act, 1935, and said that section 299 had never been Put into force previously, I should like to make a few remarks in that connection. I think what I propose to say will disabuse him of sonic of his notions if he is still in a receptive mood about which I have my doubts. The Joint Select Committee had occasion to consider this question and what they said may satisfy him. In that Committee the question was considered at some length and what is an important general principle was accepted. There may, be acquisition of an individual's property for a specific and a limited purpose. There may be general acquisition of a class of property for the reconstruction of a social order. The principles have to be determined in the light of the purpose, the circumstances and other German and relevant considerations which have a bearing on these issues. Where the property of an individual is acquired for a post office or for a railway station or for a store house he his to be paid in accordance with the Land Acquisition on Act which prescribes a definite and precise yard-stick *i.e.,* he has to be paid the market value. But where property is acquired not for any such specific purpose but you acquire the property of large numbers of people, not for any productive purpose is such as such in at limited sense, but for promoting public Weal. then the principle,, have to advised with due regard for the purpose as well as for the occasion when such step is taken.

Now some friends have referred to the right of private property that is provided in this Bill. I would like to remind them of the Objectives Resolution that we passed on the first day. I would also like to remind them of the Preamble to this Bill. Some times we are apt to forget what is the basic and the vital principle,-the very soul of the legislation which we are undertaking and the Constitution that we are building here. In the Preamble we say-

> "We, the people of India having solemnly resolved ' to constitute India into a Sovereign Democratic Republic and to secure to all its citizens justice, social, economic and political, equality of status and of opportunities and to promote among them all fraternity assuring the dignity of the individual and the unity of the Nation"...........

I submit that the Zamindari abolition and Land Reforms Bill which we have introduced in our Legislature is designed to promote the social objective of our Republic. So when we judge its provisions we must bear in mind the supreme aim which our State has placed and defined for itself. I stand by every word that the Honourable the Prime Minister said and I repeat that we have no hostility against the zamindars. I for one, want to befriend them and want to be a friend to everyone. I feet we would not be discharging our responsibilities fairly if we deliberately wanted to cause injury to any particular class. So I stand for equitable compensation. Equitable compensation for ,everyone; but what is equitable compensation ? That is the point. Equity cannot be defined in terms of any yard-stick. When we introduce a large measure of social reform, then it would be most inequitous to provide compensation on terms which the State cannot fulfil, which cannot possibly be discharged and which will either break down the machinery of the State or which will be crumbled under its weight. We have to guard against both these things. The capacity of the State is limited. After all, when we take a measure for the well-being of the people while we have to be just to every class, we have to bear the main purpose constantly in mind, and that is the welfare of the entire State and of the entire community. No class and no interest can be allowed to come in its way and if it does come, it will be crushed-it will collapse, it cannot stand.

So, I say when I am told that I promised to be just I claim that I have been just and I am prepared to place the U. P. Zamindari Abolition Bill before any Arbitration Board to examine its contents and to pronounce upon the nature of the compensation provided in it. If any person who is responsible and who can take a large view of things and who can bear the supreme purpose for which our State stands, constantly in view is pleased to take this trouble. I am sure I am prepared to flatter myself with the hope-that he Will compliment me for what we have done and I claim that those who have cared to examine it carefully have almost reached the same conclusion, and in our own province many people think that we have been too generous.

What after all is the compensation that we have provided. We have about 20 lakhs of zamindars so-called. For more than 19 lakhs we have provided 28 times their net annual income as compensation. Can anybody say that it is inadequate ? You will find that no one who pays a revenue of Rs. 5,000/- or less is to get as compensation less than 10 times the net annual income. Is it unfair, is it inadequate and howsoever high the revenue paid by anybody, he is to receive no less than 8 times the net income. Those who are acquainted with the history of Zamindari must be aware that when the British first introduced this system, the zamindars were allowed to retain only 10 per cent. out of the gross assets collected by them and there were some who were asked to pay more than they could collect. So what zamindars are paying today or retaining today is only a creature of the Statute. In the olden days they had no status as such. The British Government to start with gave them only 10 per cent of net assets. I am prepared to give them 20 per cent. and to pay them at market value, and they must be satisfied with that. After all, what are these conventional notions about compensation ? Do we ever try to go deep into them ' What does compensation depend on even if you take market value ? Market value is more or less the creature of the State. If you demonetise your currency to-morrow, the market value collapses or it may rise hundred fold under a different set of circumstances. Since we took up this legislation for the abolition of zamindaris, the market value of zamindaris has gone down considerably and zamindars cannot get purchasers. Again, it is open to me, to the government, to impose land revenue to the extent of 95 per cent. of the total income, or impose agricultural income tax to the extent of 15 annas in the rupee. There is nothing to prevent any State from doing so. So, how do you define what is equitable compensation ? How can you define what is reasonable in the circumstances ? It is only a matter which can be determined in the light of all the relevant factors. So, let us not make too much of this mysterious and fashionable expression-justiciable' which seems to have possessed a large number of my friends today.

And even if you look at it from the point of view of justiciability, I may tell you that so far as my Bill goes, it enables the zamindars to approach the civil court If the amount of compensation provided for them by the Compensation Officer is not considered by them to be justified under the Bill, they can go to the civil court. They can appeal to the High Court. So courts are not excluded. The jurisdiction of courts has not been set at naught. What we do desire is this. In spite of the best efforts that we have made to do justice, there are still these notions, not based on reason, but perhaps on prejudice or on self-interest of an un-enlightened character. that what has been provided for is altogether inadequate and Meagre. And therefore it becomes necessary to have a clause of the nature of clause (4), for I know that our zamindars, and Taluqdars have still the last for litigation. In the olden days, they wanted to indulge in bull fights or pigeon contests Those days are gone. Now they have to fight somewhere and that is in the courts.

But when we are concerned with the solution of problems of enormous magnitude, affecting not hundreds and thousands, but literally millions, we cannot afford to indulge in such luxuries. Howsoever futile the results may be, the very process imposes a strain which should be avoided. Then, we have gone even beyond this. We have not only tried to give adequate compensation, but in addition to that, we are going to make the colossal effort to collect huge sums of money from tenants in order to pay compensation in cash, in whole or in part. I hope we will devise some method by which if we succeed in collecting the money such money will be used for productive purposes. But we are trying to collect the money. We have fixed for ourselves a target of about Rs. 150 crores to be collected in the course of a few months. That is what we propose to do. Does not that indicate our desire to be not only just, but also to settle this problem once and for all finally so that there may be no disputes over it in future. So far as the abolition of zamindaris goes, even if there were no general provision in the law, I would still have asked the House to make a specific provision so that there may be no difficulty hereafter. concede that we shall have to pay equitable compensation to everybody.

But we do not want to be involved in litigation in any case, whatsoever, and I presume that if at any time this legislature chooses to nationalise industry, and take control of it, whether it be all the industries or any particular class of it, such as the textile industry or mines, it will be open to it to pass a law and to frame the principles for such purpose, and those principles will be invulnerable in any court. They will not be open to question, because the only condition for disputing them, as has been pointed out by Shri Alladi, one of the most eminent jurists which our country has ever produced, is this, that it should be a fraud on the Constitution. No legislature can commit a fraud on the Constitution. No legislature can sink so low. as to commit a fraud on the Constitution. A legislature is meant to maintain and to uphold the Constitution. So. we should have no such apprehensions.

I do not see why there should be any doubt in any quarter. Some friends think that this clause will stand in the way of socialisation. I do not know what is meant thereby. But Seth Damodar Swaroop who is, I think the accredited representative of the Socialist Party, has himself suggested that there should be no acquisition except by law and also that compensation should be paid. That is accepted even by Socialists. But obviously the State can give such compensation and such compensation only, as will be considered to be equitable, with due regard to the purpose for which the property is acquired and circumstances under which it is acquired.

So, I submit to those who have moved amendments the other way, that they have no reason for apprehension. Whenever we socialise, we certainly will define and enunciate certain principles and those principles, you yourselves desire, should not be a fraud on the Constitution. So why should there be any, difficulty ? Why do you think that this clause will stand in the way ? Today our difficulty is that we want production, and more production and yet more of it, and we must not let ourselves to be obsessed by imaginary. apprehensions, in utter disregard of hard realities of the day. Some friends here spoke about our re-gaining the confidence of the investor. I do not yet know why we have lost it. If the investor does not choose to invest, it is not because this Government has failed to do its utmost to reassure him. But if in spite of such assurances there are no investments, then I might as well remind' the House that the provisions of article 24 go much further than those of section 299 of the Government of India Act. They felt no apprehensions so long as article 299 of the Government of India Act was there. The Government of India Act only dealt with compulsory acquisition of property, while our article 24 deals with not only compulsory acquisition of property, but also with our taking into possession of property for public purposes. So it goes much further.

When they had no apprehensions when section 299 of the Government of India Act was in force, I see absolutely no reason why this article 24 of our New Constitution should give them any cause for apprehension, disquite or distrust. It gives them greater assurance, and I say that, apart from anything, the Congress with its creed of non-violence stands for equitable compensation. But that equity is to be determined by the Legislature and not by the courts, because the Legislature alone is capable of taking that comprehensive view of factors which bear on such complicated issues. There is no justiciable material that can be placed before any court for obtaining its decision on such issues. In the circumstances no other form can possibly be found. Sometimes we may have to take into account not only domestic conditions, but even international conditions. What has happened in China for example cannot be ignored when we are considering the question of abolition of zamindari in our country. What is happening in Burma cannot be ignored. But no court can be asked to go to Burma, to make an inspection and submit a report. No Commission can be appointed for that purpose. So we have to rely on the Legislature and it we have no faith in ourselves, then I say that we cannot find any satisfaction anywhere else. So my appeal to the House is to take this article in its proper sense and full import, to understand its extensive scope and also its limitations and to remember that everything that we do is in accordance with the objective that we have set before ourselves.

Shri Biswanath Das: Sir, very important principle, such as the utility, protection and preservation of private property, adequate compensation, constitutional safeguards and the like have been brought into the arena of our discussions today. To me the point seems to be very simple and I would appeal to my honourable Friends to pay pointed attention to that aspect of the question which has a direct bearing on our discussions.

The position is this. We have already accepted List II of the Seventh Schedule, known as the State Schedule, attached to this Constitution. Therein we have invested the States with the powers of undertaking compulsory acquisition if and when required. Item No. 9 relates to acquisition of proper in the shape of lands. Attempts are now being made to restrict this power under the provisions of article 24 now under discussion. Therefore the question simply is that whether you are going to reverse, qualify or modify the powers that you have given to the provinces which are to be called States under the New Constitution, or allow the provinces or the States to continue to exercise those functions and those powers that have been vested in them under Schedule Seven attached to the Constitution.

In this connection I might invite the attention of Honourable Members to item 9 where practically the principle of compensation has been allowed and accepted. Two questions naturally arise. The first is whether the State is to, give compensation or not in case of compulsory acquisition. To this the answer is provided in item No. 9 of the Schedule 7. Here we have differed from persons who hold the view that no compensation need be paid. We are not ashamed of accepting the principle that compensation shall be given for properties to be acquired compulsorily by the State.

Sir, having taken up that position, the, other thing that is necessary and essential is whether the executive of the province is to take up acquisition themselves *suo motu* without having any power from the Legislature. To that, clause (1) of article 24 is the answer. I entirely agree with my honourable Friend from Bihar who pleaded with all vehemence that the rest of the article is unnecessary. I must frankly confess, despite all the respect and reverence I have for the Honourable Pandit Jawaharlal Nehru, that it is revolting to my sentiment to call this a Fundamental Right and bring it as a rider on the powers that have already been vested by a vote of this House on the States. You cannot have a cake and eat it too. You have provided for power under :he Constitution to the States to legislate on certain aspects of the Constitution. Wherein lies the justification and the justice for you to come now and say "Well, my good boys, I have given you power, but here are the safeguards for the vested interests". To me this is a contradiction in terms. I must frankly confess and record my protest that you have already treated the States, and State Legislatures with scant courtesy. You have given autonomy to the provinces, but you have wiped off the very autonomy which you have professed to have given them. The States are show of all the autonomy that they enjoyed even under the Act of 1935. To quote an instance, you have, provided in this Constitution the powers to levy taxation, realise taxation and distribute it according to a certain principle to be decided by the President. The responsibility of levying taxation which is a responsibility of the State Legislatures has been taken away from the States. The responsibility of assessment, which is a responsibility of State Legislatures, has been taken away from the States. And now you come with another important proposal in the realm of provincial activity by taking away, in the guise of Fundamental Rights, the right to legislate on the question of acquisition of properties. Let there be plain speaking at least. Let us stand erect and say "Here are you, States. We refuse to confide in you. You can have your two hundred members for each State and 'have a salary of Rs. 150 for each member per month, but you shall not have the power to legislate either on assessing taxation or to legislate on anything worth the name". Until that is done I think we are not playing the role that is expected of us. How long are you going to keep the States spoon-fed in this manner ? In may other provisions in the body of the Constitution, you hive already provided to keep the States spoon-feeding. I warn you that so long as you resort to spoon-feeding you can never inculcate the, sense of responsibility that you so much desire to have in the State Legislatures. The United States of America or Australia have given far more powers to the States. Is there any protest or any score that these powers vested in the States have been misused ? Why then this suspicion on the future working of State Legislatures when you have not seen either in the present India or in any other part of the world any instances of such misuse in the working of State Legislatures ?

Having stated so much about the responsibility that is going to be vested in the States. I now come to the actual body of article 24. I have my strongest objection to clause (6). This clause is an outrage on any sense of legislation, much less to speak of any constitution. Why should you at all have clause (6) ? What is the sin that Madras and Bihar have committed ? They have passed a legislation in terms of section 299 of the Government of India Act, 1935. The Government of India Act, 1935, lays down very important and essential safeguards in this regard. Provision has been made that previous sanction of the Governor is necessary. And these unfortunate Ministries have got this sanction for the Bills they introduced in their Legislatures. The Bins have been thoroughly scrutinized by both Houses of the legislature which these unfortunate provinces have. When the Government of

India Bill, 1935, was on the Parliamentary anvil it was justified in the House of Lords that second chambers have been provided because they will act as a check on any irresponsible work of the first chambers in Provinces. In these two cases both the Lower and the Upper House have approved these pieces of legislation of these Provinces. The Governors as also the Governor-General have been parties to it. Why then should you take the most unnatural course of putting to shame and disgrace these Legislatures by having to submit their Acts again for the approval of the President ? Where is there any parallel to this outrageous act of the Constituent Assembly in this regard, in the matter of an Act already passed by the Legislature, approved by the Governor, assented to by the Governor-General, having again to be submitted to the President of the Union ? this to me is an outrageous act on any Legislature--not to speak of Constitution-makers. I therefore record my strongest protest in this regard against clause (6).

Having stated so much about clause (6), I come to clause (4). Now compare and contrast between these three provinces. Why should you on the one hand kick these two provinces for their sin of having taken the earliest course of passing a certain pieces of legislation. 'This is a point on which I expected the Honourable Pandit Jawaharlal Nehru to furnish this House with an explanation. I waited to get that explanation but unfortunately there are none. Will at least the Drafting Committee do us the favour of 'explaining why this difference has been made ? If clause (2) is so very innocent and innocuous and so very useful, why is clause (4) necessary ? On behalf of the rest of the provinces of India, I record my strongest protest against clause (4). Why should you have clause (4) ? You are making acquisition of zamindaris in other provinces like Orissa, Bengal, Assam and the rest of India impossible hereafter. Having read this many times more than some of the Member, have attempted to do, I must claim that it will make acquisition of zamindaris hereafter, after a year, impossible under this Constitution. Zamindars. clever as they are, with their long purse, with their clever brain, their intelligence and intellect, and above all with the hired brain that India is capable of placing and talented Universities are capable of providing there, they will make this Constitution as a barricade against progress in future in this regard. I warn the honourable members of the Constituent Assembly through you, Sir. And it pains me very much in this regard--even to the point of shedding tears--because I was the first in India to inaugurate tenancy organisations. I was running two tenancy organisations--the Andhra Zamindari Ryots' Association and the Presidency Proprietary Ryots' Association in Madras-- two powerful tenancy organisations. in this regard from 1920 at a time when there was no talk of tenancy Organisation anywhere in India. I thought that at least in Free India, though not in India under the bondage of Britain, we would be able to realise our aims. Two years after achievement of Freedom for India, I see that I am where I was in 1920. My apprehensions in regard to this article are the result of mature consideration of the same. The moment I assumed office I wanted to take legislation for the liquidation of zamindaris I recollect today that, when we were discussing this very question in Bombay at a conference of Ministers and I raised this question, one of the biggest guns of the Congress High Command pounced upon me saying: 'You are offering to pay compensation to the zamindars'? Sir, I stand where I did, but I find that a change has come over others. From the speeches of friends demand for fair and equitable compensation for the zamindars is put forth. What is a zamindari except an office. That is the view expressed in the Permanent Settlement Regulations. Sir, assuming it is not an office, look at the

Prakasam Committee Report which was supported not only by the Lower House but also by the Upper House of the Madras Legislature. This monumental official Report speaks of the Permanent Settlement in terms of the Congress Resolution. We stand not only on our pledges given to the electorates, but also by the changes taking place resulting from our freedom in the country.

I would not detain the house longer. I know it is impatient. But, Sir, references have been made to election pledges. Yes, we have given pledges to the electorate and we have fought elections or those pledges. The question of zamindari abolition was stressed in our pledges to the people in the elections of 1937 and 1946. How are you going to honour that pledge ? In the year 1937, in the Congress pledge we have unfortunately stated that we are going to fight the Government of India Act of 1935. Soon after the election we were called upon to assume office. I was one of the unfortunate few who assumed office and undertook to form a Cabinet. At that time the direction given to us was that we should create deadlocks and make the working of that Act difficult and impossible.

Sir, I must congratulate my honourable Friend the Chairman of the Drafting Committee and Shri Alladi Krishnaswami Ayyar and other friends for their expert knowledge of affairs and for' having excelled all others in this matter of sugar-coating the provisions in such a way that they have made the impossible possible today. Look at the draft of the Constitution ? You will find nothing there about the liquidation of the Act of 1935. If the Act of 1935 was so good that we could now so fully embody its provisions in our Constitution, were we, congressmen, fools when we resolved to fight that Act and create deadlocks? Anyway I must thank the members of the Drafting Committee for making us swallow this sugar-coated pill which contains nothing but that same Act of 1935. In these circumstances I have no option but to support my friends in demanding that except clause (1), every other clause in article 24 should be wiped off. If this is not done I warm my friends that we will not be able to liquidate the the zamindaris any where except in the three provinces of madras, Bihar and the United provinces.

Honourable Members : The question may now be put.

Begum Aizaz Rasul (United Provinces Muslims) : Mr President, Sir, I am wondering whether after waiting for so long, it is my good fortune or bad fortune to be called upon to speak of this, very important and controversial matter after the speech of the Honourable the Premier of my Province Pandit Govind Ballabh pant. But in a way I think it is just as well, because after my speech he will not be able to make any reply to anything that I might say about my province, though I feel sure that I stand on strong ground when I answer some of the remarks he has made.

The Honourable the Prime Minister, in moving this amendment to article, 24 yesterday, rightly remarked that few articles in the Constitution have evoked greater and more keen discussion than this article. There is no doubt that for more than a year Members of this House as well as people outside, have been greatly concerned as to the shape and manner in which principles regarding acquisition of property and compensation will be laid down in the Constitution. Sir, with due respect to he Honourable the Prime Minister I am constrained to say that the amendment proposed by him does not lay down principles based on fairness and justice. There are two principles laid down in this article: One is; acquisition of property, clause (1), and the second is the manner and mode of the payment of compensation, clause (2). Now, Sir, under the following article 25 (1) it is clearly laid down that every person will have the right to approach the Supreme Court. This of course is not only in regard to acquisition of property but for every purpose. But ordinarily also any person has a right to file a suit attacking an Act authorising the acquisition of property if the compensation is not proper in his opinion. Therefore, Sir, my contention is that when a right has been given to every person living in this Union to approach the Supreme Court, to have recourse to justice, why should this right be taken away under clauses (4) and (6) from only those people who are being deprived of their property in the three provinces of the U. P., Bihar and Madras who are being subjected to legislation which will deprive most of them of their only source of livelihood. I contend that in the Constitution of a country such exceptions cannot be made and therefore I feel that if clauses (4) and (6) of this article are allowed to remain, it will be a great-blot upon this Constitution. The Constitution of a country is not made merely for a few years, or to suit this programme or exigencies of a political party :-it is made for generations and for all peoples and to keep a provision such as is provided in clauses (4) and (6) will not do credit to the Constitution-makers and will remain an ugly blot. Therefore I earnestly hope that wiser counsels will prevail and that such an absurd provision will not be included.

It may be considered by some people that I am speaking in this strain because I am being affected by it personally, but, Sir, I may say that, although my voice may be feeble in this House, I know that I am voicing the feelings and sentiments of hundreds of thousands of people when I say that such discriminating clauses should not find a place in the Constitution, many newspapers in India have written leading articles on this and expressed their strong disapproval.

The Honourable the Premier of the U. P. stated that the Zamindari abolition Bill that he has introduced in the House and which is now before a select Committee of which I have the honour to be a member, can be shown in any court of law and that the provisions that he has made regarding compensation would be borne out to be fair by any legal authority. I my respectfully suggest to him that if this is the case, then why the inclusion of this clause (4) which, it is well known, has been inserted at his insistence ? If he feels that he is on such safe ground that he can challenge any court of law about the validity the fairness and the equity of the compensation that he is giving to the zamindars of U. P., then I submit that he should not deprive us of that right that is being given to every man under this Constitution to approach a court of law The Honourable the Premier of U. P. also made the remark that the Taluqdars of Oudh have a lust for litigation. Sir, I should have thought that that would have gone in our favour. If we share our riches with other people and help lawyers in getting rich, I do not think that we should be condemned for that, I had given notice of amendments for the deletion of clauses (4) and (6),because I feel that such provisions, which are more on the lines of Parliamentary legislation, should certainly not find a place in the Constitution of a country.

My objection is based on two grounds; one is as already stated that certain provinces where legislation for acquisition of property is pending or has already been passed are being debarred from having recourse to the basic and fundamental right given to every citizen in India, namely, the right to approach the Supreme Court. The second reason is the discrimination between industrial and zamindari property because only zamindari property is on the anvil of legislation in the three provinces. Not only that but it also means that it any zamindari legislation is brought up in any other province of the, Indian Union, say the C. P., the East Punjab, Rajasthan, etc., the people of those provinces will have justiciable rights. I feel strongly that a Constitution of a country should not find a place for this sort of discrimination. Sir, I am afraid, that you will not give me time......

Mr. President: I think you had better conclude because before I close the discussion at 12.30, I want to give an opportunity to another Member to speak for some time.

Begum Aizaz Rasul: I only want to say something about U. P.

Mr. President: I do not think it is necessary.

Begum Aizaz Rasul: I am grateful to you for having given me an opportunity to speak but I am sorry I will not be able to make out my case properly at all, because the time that has been given to me is so short. I would like to ask the Premier of the U. P. to kindly consider whether by inserting this clause (4) he is not also taking upon himself the right of not giving any compensation at all if the legislature feels that oh account of financial reasons, it Is not in a position to do so. The Honourable the Prime Minister yesterday said that the legislature is supreme and no court can override its decisions-If that is so, then why are fundamental rights incorporated in the Constitution ? It is only because there is a fear that people might encroach upon other people's rights and therefore some basic fundamental rights are laid down, which are beyond the purview of any legislation and which cannot be touched by the provincial or the Central legislature. Therefore my contention is that either article 24 should not be placed in the Fundamental Rights chapter and if it is, it should be without clauses (4) and (6). In the U. P. nearly a crore of people are being affected by the zamindari legislation. The compensation proposed is so meagre that it will be extremely difficult for these people to plan their lives and exist. Has our Premier given thought to the fact as to what will happen to these people? They are being. turned on the streets with no proper provision for their livelihood. Socialisation of the country means all round socialisation. You must guarantee free education to our children--free medical aid and guarantee of employment to every citizen and we will not ask for any compensation-I warn the Premier of U. P. that by depriving the zamindars of their source of. livelihood without making any proper provision for them he is creating problems for himself which it may be difficult for him to cope with. With these few words I hope I have been able to convince some honourable Members of the injustice of these clauses.

Mr. President: Maulana Hasrat Mohani, Maulana Sahib, I wish to remind you that We are closing at 12.30.

Maulana Hasrat Mohani (United Provinces : Muslim) : I will try to keep to time, Sir.

Shrimati Renuka Ray (West Bengal : General) : Mr. President, Sir, you have just said that you want to close the discussion at 12.30. I would appeal to you that this is the most fundamental clause in the whole Constitution and a large number of Members wish to speak on this article. I hope you will allow full discussion.

Mr. President: The question has been discussed sufficiently.

Maulana Hasrat Mohani : Mr. President, Sir, almost at the very outset I declare that I am very seriously opposed to this whole process, I mean the process adopted by the U. P. Government and its Premier, Pandit Pant, who pretends that his scheme will lead to the abolition of the Zamindari. I think that it will do nothing of that kind. I submit that I have used the words "pretend" purposely because I am pretty sure that a shrewd politician like my honourable Friend, the Premier of U. P. must realize by this time, if he has not already realized, that his scheme will not lead to the abolition of the Zamindari but it will lead, I say to the perpetuation and establishment of such a Zamindari system in the worst form and in this way he proposes only to take the zamindari of a small number of big zamindars and he wants to distribute the lands so obtained among the petty tenants and even landless tenants if they pay ten times the rent which they pay now. Well, I submit, Sir, it will not make any difference. He says that he will make these tenants, if they pay ten times the rent, "Bhoomidars" I say that nobody will be deceived by this jugglery of words. What does it mean ? There is no difference between a 'Bhoomidar' and a Zamindar. Perhaps Pandit Pant might have said that be, cause "Zamin" is a Persian word and the word "Bhoomi" is a Sanskrit word, and therefore he wants to substitute one for the other. I say that this will not deceive anybody. I call it merely a jugglery of words. All those 'Bhoomidars' whom he is going to create afterwards will be Zamindars and as I say they will only deprive some big zamindars who pay a land revenue of more than Rs. 5,000 and they will create in their place a large number of small zamindars. It is no use our discriminating between a big zamindar and a small zamindar. The Zamindars will remain there and I admit it would have led to the abolition of Zamindari if his scheme had been based on a more justified basis. I say that if he had based his scheme on getting this land transferred from these big Zamindars to the people or to the State, that might have been something.

Our Premier the Honourable Pandit Jawaharlal Nehru himself admitted in his opening speech the other day when he said. "This resolution that I beg to move tries to avoid that conflict and tries to take into consideration fully both these rights, the rights of individuals and the rights of the community." Further on he says, "that we have to keep these things in view; we have to take property for the State and we have to see that fair and equitable compensation is given to them." I say that if you accept this version of our Premier and also accept that the proprietorship of land will be transferred from the Zamindars to the State, of course, I can understand that and it would mean something.' What are you going to do ? You are adopting a very curious process; you confiscate the land of a few big zamindars and directly take that into the open market; you are going to sell it at a profit to all these would be 'Bhoomidars' and tenants. I say "with profit" because Pandit Pant has himself admitted that the will realize something like 180 crores of rupees from these future Bhoomidars and that he will pay compensation to the extent of Rs. 140 crores. I say that this surplus sum of Rs. 40 crores (I cannot give it any other name), I say that this is a form of black-marketing of the worst type. We are all condemning the black-marketing going on in the food grain markets and in the cloth markets and I say that we must condemn this all the more. We take possession without any rhyme or reason from these big Zamindars and want to go into the open market and sell them to those people who are also smaller zamindars.

Therefore, what I submit is that I can never admit that this scheme is a scheme for the abolition of Zamindari. I insist on that. Instead of abolishing the Zamindari it will tend to establish and perpetuate an evil system of Bhoomidars that you am going to create who will have the same paraphernalia with them. We have been objecting to the Zamindars that they take advantage of their being zamindar and that they do not allow anything to go to the cultivators of the land. But if you create the smaller zamindars, they will practise the same thing and there is no escape from that. I submit, Sir, that if he says that I am indulging in negative criticism, then I have something to suggest to my honourable Friend, Pandit Pant, and that is be must take courage in both his hands and come forward and say that he will postpone the consideration of this Bill in the United Provinces Legislature, realizing at least the difficulties that will lie in his way and also the criticism of not only the Zamindars but the criticism I have uttered here. I challenge him to come forward and refute my argument. If not he not he should postpone the consideration of this article here in this House and also postpone the present Bill in the U. P. Assembly. I am not suggesting anything extraordinary. It has happened here the other day when my honourable Friend, Dr. Ambedkar proposed the Hindu Code Bill. After realizing that there is such a large antagonism against that Bill, he undertook to postpone its consideration. To save his face, he did not say it himself, but he entrusted the work to the Sardar who at the next meeting said : "We postpone its consideration." I think that discussion has been postponed *sine die;* it will never come up again. I suggest, Sir, that my honourable Friend Pandit Pant should also adopt the same procedure and postpone the whole thing; otherwise, he must come forward and reply to my criticisms first.

Several Honourable Members : The question be now put.

Mr. President : Closure has been moved.

Shri Algu Rai Shastri : (United Provinces: General) : *[Mr. President, I would like to submit to you, Sir, that this matter is of very great importance and gravity.]*

Mr. President : *[I do not think its importance will suffer in any way if its consideration is cut short by a few hours. I am, therefore, of opinion that it is not necessary to prolong its consideration any further. I am going to put the question of closure to the House.]*

The question is:

"The question be now put."

The motion was adopted.

Mr. President: Pandit Nehru.

The Honourable Shri Jawaharlal Nehru: (United Provinces: General) : It you will permit, Sir, my honourable Friend Mr. Munshi would reply.

Mr President : Mr. Munshi will reply.

Shri K. M. Munshi : Mr. President, Sir, after patiently hearing the speeches of those who moved the different amendments, I came to the conclusion that the article moved by the Honourable the Prime Minister cannot be more aptly described than in his own words as a just compromise which should be accepted by the whole, House unanimously.

The points of view have been ably put forward by all sides. After the masterly exposition of the Prime Minister, and my honourable Friends, Shri Alladi Krishnaswami Ayyar and the Premier of the United Provinces, very little need be said. But I may just refer in passing to a few amendments which deserve notice.

The amendments fall under four categories One set of amendments says that there should be no compensation at all. The second set of amendments says that Parliament should not seize property under the Fundamental Rights, but the President should, that is, the Executive should. That is a reversal to barbarism; I need not touch the point any further. A third set says that Parliament should be fully empowered without any judicial review to take over property after fixing the compensation which may be "fraudulent or inequitous" - I am quoting the very words of the amendment, thus giving to Parliament the right by constitution to pass a law which may be fraudulent or inequitous. The fourth.......

Shrimati Renuka Ray: Mr. President, Sir, I must point out that is a misunderstanding of the whole thing. The point is that it must be Parliament who will decide whether principles are fraudulent or not, and not a court of law. The amendment does not advocate that fraudulent grounds should be allowed but that it must be Parliament who shall decide whether any enactment contains fraudulent provisions or not. This misreading should be corrected.

Shri K. M. Munshi: I do not want to misconstrue or misinterpret anybody. much less my respected Friend, Mrs. Renuka Ray. The amendment she wants to be put on the Statute book runs thus :

> "No law making provision as aforesaid shall be called in question in any court either on the ground that the compensation provided for is inadequate or that the principles and the manner of compensation specified are fraudulent and inequitous."

She wants to go to the international assemblies with this Constitution in her hands. I do not want to say anything further.

The other set of amendments is of this nature not that when there is a fraud of Fundamental right, parties should go before the courts but the principles the form and the manner should all be scrutinised by the courts so that as the Honourable the Prime Minister said, the Supreme Court should become a third revising Chamber more powerful than both the Chambers of Parliament. That is the third set of amendments.

The fourth set refers to Zamindaris, that is, seeks the elimination of clauses (4) and (5) which has been fully dealt with by my honourable Friend Pandit Govind Ballabh Pant.

We cannot, Sir, go back upon the decisions of this House, nor upon the pledges of the Congress Party, nor upon the pledges of our Government. So far as our pledges are concerned, they are well known and find a place in the manifesto. We have promised even equitable compensation to the Zamindars by our Election Manifesto of 1945. As regards this House, Sir I submit, without being charged with inconsistency, it cannot go back upon the proposition that had been adopted by it. When this matter came up before the Advisory Committee, it unanimously accepted clauses (1) and (2). It was then anticipated that Zamindaris would be liquidated long before we came, to the final conclusion of our deliberations in this Constituent Assembly. Sardar Patel while moving it in the House said thus.:

> "Land will be acquired for many public purposes. not only land, but so many other things may have to be acquired. The State will acquire them after paying compensation and not expropriate them."

Proceeding further, he said with regard to Zamindaris:

> "This clause here will not become law tomorrow or the day after. It will take at least a year more."

Of course, at that time we thought that our speed would be so great as to finish our Constitution in one year. That is, his reference; but his hopes have been unfortunately belied :

> "It will take at least a year more. Before then, most of the Zamindaris would have been liquidated. Even under the present laws, different provinces have brought legislation to liquidate the Zamindaris either by paying just compensation or adequate compensation or whatever the legislature there think fit. The process of acquisition is already there and the legislatures are already taking steps to liquidate Zamindaris."

This House therefore, two years ago set the seal on this resolution by saying that whereas Zamindaris would be liquidated long before we passed this Constitution, so far as the other properties were concerned, they would be acquired on the lines of clause (2) of this particular article.

Therefore this House has accepted the position that acquisition can only be by law, that Parliament when it acquires property by law can fix the compensation, and that as Zamindaris would have been liquidated, there was no necessity for making a provision for that in this article. This is the decision of the House. This article carries out that decision, except in so far as it has become necessary to modify it in the light of circumstances that exist today.

We have extended very much, as has been already pointed out, the scope and powers of

Parliament. Members will please refer to entry 55 in list III which this House has passed. Powers of legislating on the principles of compensation, and the form and manner, have been solely left to Parliament and the State Legislatures. In the language of section 299 of the Government of India Act as Members know the words used are 'payment of compensation' which implies, at least on one view, that payment should be in cash and that payment is a pre-condition of acquisition.

Shri T. T. Krishnamachari : (Madras: General) : May I correct my honourable Friend : is he referring to List III of Schedule VII, item 35 ?

Shri K. M. Munshi: My Friend, Mr. T. T. Krishnamachari's memory is certainly much more accurate than mine. It is entry 35, I apologise, not 55. He must realise that I am a very old man-

An Honourable Member: You do not look it any way.

Shri K. M. Munshi: Compared to my honourable Friend.

It is not correct to say that Parliament has not been given full powers. It can fix the form and the manner of giving compensation; it can give bonds or land in exchange for the land acquired. It has much wider powers than the Legislatures in India ever possessed before. Therefore, Parliamentary powers have been enlarged. But Parliament, remember,-in spite of what has been said about justiciability and particularly against the tribe of lawyers more than once-is the sole judge of two matters. First, it is the sole judge of the propriety of the principles laid down, so long as they are principles. Secondly, it has been authoritatively laid down there is no doubt about it-as has been stated by my honourable Friend, Shri Alladi Krishnaswami Ayyar,- that principles may vary as regards different classes of property and different objects for which they are acquired, We find on the English Statute Book several Acts, the Land Acquisition Act, the Land Clauses Act, the Housing Act, in all of which a varying basis of compensation has been adopted to suit not only the nature of the property but also the purpose for which it is to be acquired. Parliament therefore is the judge and master of deciding what principles to apply in each case.

In this connection, if I may, I will mention an instance in my own experience. In 1938 when the Bombay Government wanted to-it was the Kher Ministry in which I bad the honour to be a Member-acquire Bardoli lands, the property in one case was worth over 5 lakhs and had been acquired for something like 6,000/- in a market in which there was no other purchaser, for which the Commissioner had brought down an old Dewan of a State in order to purchase the property. The income of that property was something like 80,000/- a year which he had enjoyed for about ten years. We drafted the Bill stating that the purchase of this property having been made under conditions where there was no fair market and that on account of serious political circumstances Do purchaser was ordinarily forthcoming and that therefore a principle had to be laid down by which the then owner was to be repaid the amount invested plus 6 per cent. etc. At that time the Government of India I was given to understand-referred the matter to their legal advisers and sought their opinion on two questions. First whether the basis of compensation that we had laid down in that Act contained principles within the meaning of Section 299 of the Government of India Act of 1935 and secondly, whether it was within the power of the Bombay Legislative Assembly to depart from the principles laid down in the Land Acquisition Act. On both these points our stand was held to he legal and the Governor-General gave the sanction to the Bill.

Principles are not rigid canons to be applied mechanically. They have to be formulated in the light of the circumstances of each situation; in the light of the reforms sought to be carried out; in the light of the purposes for which the property is acquired. The Parliament is to judge in each case as to what is fair and equitable and whether the principles laid down are calculated to yield compensation, fair and equitable in the light of such circumstances.

The question of justiciability, I fear his been unnecessarily brought into this controversy. In a civilised country, every article of the written Constitution, if there is one, and every law made by Parliament is justiciable in the sense that the Courts can examine each of them to decide that the law-making authority acted within the ambit of its powers and to ascertain the meaning and effect of its provisions. Even if you use the words "compensation shall not be questioned in Court", the Courts will have a right to adjudicate upon what is the meaning of 'questioned in Court'; whether the thing questioned is compensation at all; whether in law the Legislature was acquiring property for compensation. Let there be no mistake: unless you revert to the tribal law, where the word of the tribal chief is the last word, you cannot escape the tribe of lawyers. But one thing is clear. The rule of the tribe of lawyers is any day better than the rule of the tribe of tyrants.

An Honourable Member: Why not put the lawyers in a schedule ?

Shri K. M. Munshi : We may put them in a schedule; they will be too glad to legislate upon themselves; but they will take the law to the Law Courts and come out successful-schedule or no schedule.

The question is what is the extent of justiciability in this article ? The article requires that if the Legislature is to exercise the responsibility entrusted to it by the Constitution, it must lay down the principles of compensation; it must determine the manner and form in which the compensation is to be paid; and provided it yields compensation that is an equivalent recompense, no Court will go behind the policy of the measure. This has been laid down again and again by the Courts of the British Commonwealth as also by the Supreme Court in America, where the words in the Constitution are "just compensation" and where there is the 'Due Process Clause' in the Constitution The Courts will not substitute their own sense of fairness for that of Parliament they will not judge the adequacy of compensation necessarily from the standard of market value; they will not question the judgement of Parliament, unless the inadequacy is so gross as to be tantamount to a fraud on the fundamental right to own property.

In the minds of people who fear justiciability, there is a lurking feeling that if a law laying down principles of compensation goes to Court, the Court will invariably apply the market value standard. This has never been the case, In America, as I said, where the, words in the Constitution are "just compensation" and where the 14th Amendment arms the

Supreme Court with the Due Process clause, it has never been so held. In one American case--it was ail extreme and extraordinary case-one dollar was paid by way of compensation The Court held that looking to the circumstances of that case, even one dollar was just compensation. We need not assume therefore that our Supreme Court will consist of a set of stupid people who will indiscriminately apply the market value rule to every kind of acquisition.

In fairness, we cannot omit this kind of clause from our Constitution. I is necessary that the right of the Legislature in matters relating to acquisition of property should be property defined. It is equally necessary that judicial review should be permitted where there is a wrongful deprivation of the fundamental right to own property contained in our Constitution; where the Legislature has seized property by acting outside its powers or without fixing the amount of compensation or the principles on which to determine such compensation or where there is expropriation under the guise of acquisition; where the principles laid down are illusory or where the principles or the manner or the form of compensations are not calculated- to yield a fair equivalent; or where the whole thing amounts-as my eminent friend pointed- out-to a fraud on the Constitution. The draft as now placed before you, therefore, I submit, satisfies every approach which has been put forward in this House by any section of the honourable Members.

The, only other question is of zamindari and after the able and lucid exposition by my honourable Friend, Premier Pant, I need not say anything more. I do not however want this debate to be a controversy between the Premier of the United Provinces and the Zamindars of U. P., as at one stage of this controversy it looked. You must look at the country as a whole. This Constituent Assembly two years ago expected that before this Constitution took final shape, zamindaris will be liquidated. Therefore we are riot going back upon, the decision of the Constituent Assembly in incorporating clause, (4) and (6). Look at the figures involved in this question. Imagine the dangers there are there. I am not concerned with the merits of this controversy nor with the origin of Zamindari which my Friend, Kala Venkata Rao described. I am only concerned with pointing out that these three Bills of Madras, Bihar and U. P. are already before the country. Action has already been taken under them. We cannot allow a vast number of people to have their rights left in uncertainty after the coming into force of this Constitution.

Begum Aizaz Rasul : May I know if one test case in one province is not enough to decide the principles regarding compensation ?

Shri K. M. Munshi: You will realise that I am not concerned with the, merits of it. What will happen if clauses (4) Lind (6) are omitted ? I do not belong either to Madras, U. P. or Bihar nor have I any zamindari but we cannot allow the validity of these legislations fought out before any Court when the issues involved are so far-reaching and millions of people are affected by them. That is the reason why I have agreed to this and I think it is the soundest reason. Safeguards have been provided for the three zamindari legislations. All the three Bills will come before the President and he will, if he thinks proper, advise or consult the Provincial Ministries with a view to seeing that justice is done. There shall, however, not be a judicial review of the legislations.

Dr. P. S. Deshmukh: (C. P. & Berar: General) : May I know, Sir, whether he is arguing for or against the article ?

Mr. President: You may draw your own conclusions.

Shri K. M. Munshi: If you go to a judicial review, I will tell you what will happen. By these three legislations, seven crores forty lakhs acres have been affected. Secondly, seven crores twenty lakhs of agriculturists, tillers of the soil are affected. If you take the number of zamindars who are to receive less than 16 years purchase which is always considered a liberal measure of compensation, there are 13,000 of them if you take 12 years purchase 5,000 people are only affected as against seven crores and twenty lakhs of tillers. Do you want that the rights of all these people should be hung up for six years so that the laborious process of litigation may proceed from the Subordinate court to the District Court, from the District Court to the High Court and so on, and that all these new adjustments which have come into being should be upset? We cannot afford to do that. It will mean a revolution. We cannot go back, only for the sake of safeguarding the interests of some 5,500 zamindars in the........

Begum Aizaz Rasul : May I know, how you have calculated this figure ?

Shri K. M. Munshi: I have got the figures from the Ministers here and they have got them from the documents in their possession. If what they have given me is not correct, then I am not correct.

Begum Aizaz Rasul: May I inform the Honourable Member that only in the U. P. there are 22 lakhs of people directly affected, besides their dependents ? Shri K. M. Munshi: I have got the figures for U. P. also. In the U. P. there are only 10,000 zamindars who have got less than thirteen years purchase. These are the figures that I got from Pandit Pant, and there is no reason why they should be disputed. But even assuming that it is not 10,000 but 30,000 can you compare that figure to seven crores and twenty lakhs ? Are you going to have a revolution in the country-an agrarian revolt-so that a few thousand people may be kept entrenched in their luxuries and may have all that they have been having all these centuries ?

An Honourable Member: What about the individual loss ?

Shri K. M. Munshi: Sir, I am not looking at it from the individual point of view. I know sonic of my friends who but yesterday had an income of 5,000 per month have been reduced to 500 today. But we cannot look at the zamindari legislation from the point of view of individuals. It is a national and social revolution which we have achieved and we cannot go back on it.

An Honourable Member: How is the State........

Shri K. M. Munshi: I wish you stop interfering with my speech, I submit that this is the best compromise, a just compromise arrived at after discussing all the most important factors, and I want the House to accept it.

Sir, there are some amendments which I am going to accept. One is No. 405 of Shri Yadubans Sahai asking for addition of the words "and given" after the words "the compensation is to be determined". These words were omitted by a typing mistake. The other amendments that I accept are Nos. 504 and 505 which are verbal in nature. And then I accept No. 428 moved by my Friend, Kala Venkata Rao. He wants the period of one year to be extended to eighteen months because some people feel that the dates for the Madras and Bihar legislations cannot be fixed accurately. And the other amendment I accept is the one moved by Shri Jaspat Roy Kapoor with regard to evacuee property. On the suggestion of the Honourable Gopalaswami Ayyangar he has re-drafted it and made some verbal improvements, with a' view to bring accuracy.

Subject to these five amendments, I oppose all the others. I hope the House will carry this article with these amendments.

Shri Jaspat Roy Kapoor (United Provinces : General) : May I put a question to Mr. Munshi as to......

Mr. President: I do not think any further questions need be put or answered.

Dr. P. S. Deshmukh: My friend has accepted the amendment of Mr. Sahai, but my amendment should have been preferred to his because the word "paid" is certainly better than the word "given".

Mr. President: I do not know, it is for them to accept or not. No more questions. I am putting the amendments.

The procedure that I desire to follow with regard to the voting on this question is this. I will take, first of all those amendments which seek to replace the original amendment 369. And after these are disposed of, I will take the thing paragraph by paragraph and I will take the amendments to each paragraph.

Now, the first amendment which seeks to replace the whole thing is No. 383, moved by Shri Damodar Swarup Seth.

The question is :

"That in amendment No. 369 of List VII (Seventh Week), for the proposed article 24, the following be substituted:-

> '24. (a) The property of the entire people is the mainstay of the State in the development of the national economy.
>
> (b) The administration and disposal of the property of the entire people are

> determined by law.
>
> (c) Private property and private enterprises are guaranteed to the extent they are consistent with the general interests of the Republic and its toiling masses.
>
> (d) Private property and economic enterprises as well as their inheritance may be taxed, regulated, limited, acquired and requisitioned, expropriated and socialised but only in accordance with the law. It will be determined by law in which cases and to what extent the owner shall be compensated.
>
> (e) Expropriation over against the States, local self-governing institutions, serving the public welfare. may take place only upon the payment of compensation'."

The amendment was negatived.

Mr. President: Then I put No. 384 of Prof. Saksena.

The question is :

That with reference to amendments Nos. 720 to 769 of the List of Amendments, for article 24, the following be substituted :-

"24. (1) No person shall be deprived of his property save by authority of law.

> (2) No property, movable or immovable, including any interest in, or in any company owing, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition except on payment in cash or bonds or both of the amount determined as compensation in accordance with principles laid down by such law.
>
> (3) Nothing in clause (2) of this article shall affect-
>
> (a) the provisions of any existing law, or
>
> (b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or for the promotion of public health or the prevention of danger to life or property.'"

The amendment was negatived.

Mr. President : Then I take No. 385 of Shri Brajeshwar Prasad.

The question is:

That for amendment No. 720 of the List of Amendments, the following be substituted That for article 24, the following be substituted :-

> "24. (1) All private property in the means of production may be acquired by the Government of India.
>
> (2) The President shall determine in each case to what extent, if any, the owner whether a' private, individual, a State, a local self-governing institution or a

> company, shall be compensated.
>
> (3) That within four years from the date of the commencement of this Constitution, the Union Government shall become the owner of all private property in land which is being used or capable of being used for agricultural purposes.
>
> (4) Any existing law or the provisions of any law which may thereafter be made contrary to the provisions of this article shall be null and void.
>
> (5) The provisions of this article may be amended if ratified by the People signified by 51 per cent. of the total number of voters on the electoral list framed on the basis of, adult franchise.'"

The amendment was negatived.

Mr. President : Then No. 472 of Mr. Tripathi.

Shri Kishorimohan Tripathi: (C. P. & Berar State): Sir, I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then I take amendments to clause (1). The first amendment is No. 386 moved by Mr. Kamath. The question is:

"That in amendment No. 369 of List VII (Seventh Week), in clause (1) of the proposed article 24, after the word 'property', the words 'except in national interest and' be inserted."

The amendment was negatived.

Mr. President: The next one is No. 387 moved by Mr. Brajeshwar Prasad. The question is:

"That in amendment No. 369 of List VII (Seventh Week), in clause (1) of the proposed article 24, for the word 'law' the words 'the President' be substituted."

The amendment was negatived.

Mr. President : Next is No. 388 of Prof. K. T. Shah. The question is:

"That in amendment No. 369 of List VII (Seventh Week), at the end of clause (1) of the proposed article 24, the following proviso be added :-

> "Provided that no rights of absolute property shall be allowed to or recognised in any individual partnership firm, or joint stock company in any form of natural wealth, inch as land, forests, mines and minerals, waters of rivers, lakes or was surrounding the coasts of the Union; and-that ultimate ownership in these forms of natural wealth shall always be deemed to vest in and belong to the people of India collectively; and that they shall be owned, worked, managed or developed by collective enterprise only, eliminating altogether the profit motive from all such

enterprise'."

The amendment was negatived.

Mr. President: Then we go to the amendment which covers all the clauses (2) to (6). I will take them separately also, but now I take No. 389 which seeks the deletion of all these five clauses. The question is:

"That in amendment No. 369 of List VII (Seventh Week), clauses (2), (3), (4), (5) and (6) of the proposed article 24 be deleted."

The amendment was negatived.

Mr. President : Then I come to clause (2). There are several amendments to this clause,. I take No. 394 of Prof. K. T. Shah. The question is:

"That in amendment. No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24,-

(i) for the words 'No property' the words 'Any property' be substituted;

(ii) for the words 'shall be taken' the wards 'may be taken' be substituted;

(iii) for the words 'unless the law provides for compensation' the words 'subject to such compensation, if any' be substituted:

(iv) for the words 'acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined', the words 'acquired as may be determined by the principles laid down in the law for calculating the, compensation' be substituted:

(v) the following be added at the end:-

"Provided that no compensation whatsoever shall be payable in respect of:-

(a) any public utility, social service, or civic amenity which has been owned, worked, managed or controlled, by any individual, partnership firm, or joint stock company for more than 20 years continuously immediately before the day this Constitution comes into force;

(b) any agricultural land forming Part of the proprietory of any landowner, howsoever described, which has remained uncultivated or undeveloped continuously for ten years or more immediately before the day this Constitution comes into force;

(c) any urban land. forming part of the proprietory of any individual, partnership firm or joint stock company, which has remained unbuilt upon or undeveloped in any way for fifteen years or more continuously immediately before the day this Constitution comes into effect;

(d) any agricultural land forming part of the proprietory of any land-owner, howsoever described, which has remained in the ownership or possession of the same land-owner or his family for more than 25 years continuously immediately

> before the date when this Constitution comes into operation;
>
> (e) any mine, forest or mining or forest concession which has remained in the ownership or' possession of the same individual, partnership firm, or joint stock company for at least twenty years immediately before the day this Constitution comes into operation;
>
> (f) any share. stock, bond, debenture or mortgage On any joint stock company, owning. working, managing or controlling any industrial or commercial undertaking which has been owned, worked, controlled or managed by the same joint stock company, or any combination or amalgamation of it with any other company for more than thirty years continuously immediately before the day this Constitution comes into operation;
>
> *or*
>
> which has paid in the course of its operations and existence, in the aggregate in the shape of dividend or interest, a sum equal to or exceeding twice the paid-up value of its shares, stock, bonds or debentures:
>
> *or*
>
> whose total assets (not including goodwill) at the time of the acquisition by the State of any such undertaking are less in value than its total liabilities."

The amendment was negatived.

Mr. President: Then No. 395 of Mr. Kamath. The question is:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, for the words 'taken possession of or acquired' where they occur for the second time, the words 'to be taken possession of or acquired' be substituted."

The amendment was negatived.

Mr. President: No. 397 moved by Shri B. Das. The question is:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed now article 24, for the words 'unless the law provides for compensation' the words 'unless law provides for fair and equitable compensation' be substituted."

The, amendment was negatived.

Mr. President: Then No. 400, moved by Mr. Nagappa.

Shri S. Nagappa: (Madras: General) : I wish to withdraw my amendment, Sir.

Amendment No. 400 was, by leave of the Assembly, withdrawn.

Mr. President: Then No. 402. The question is:

"That in amendment No. 369 of List VII (Seventh Week). in clause (2) of the proposed article 24,-

'before the word "principle" the word "appropriate" be inserted.'-

The amendment was negatived.

Mr. President: No. 403, moved by Mr. Kamath. The question is:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, after the words 'to be determined' a comma and the words 'provided that such principles or such manner of determination of compensation shall not be called In question in any Court' be added."

The amendment was negatived.

Mr. President : No. 404 moved by Dr. Deshmukh. The question is:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed articles 24, after the words 'is to be determined' the words 'and paid' be added."

The amendment was negatived.

Mr. President: Then comes No. 405 which has been accepted by Mr. Munshi.

Mr. President: The question is :

"That in amendment No. 369 of List VII (Seventh Week) in clause (2) of the proposed article 24, after the words 'the compensation is to be determined' the words 'and given' be added."

The amendment was adopted.

Mr. President: The question is:

"That in amendment No. 369 of List VII (Seventh Week), after clause (2) of the proposed article 24, the following proviso be added:-

> 'Provided that when any such law provides the acquisition by any State of the interests of the Zamindars of various degrees and other intermediaries for the purpose of abolishing the Zamindari system, it shall be sufficient if the law provides for the payment of compensation amounting to not less than twelve times the estimated average net income of the Zamindar of any degree or intermediary whose interests are to be acquired.'"

The amendment was negatived.

Shri Phool Singh: (United Provinces: General) : Sir, I would like to withdraw my amendment No. 475.

The amendment was, by leave of the Assembly, withdrawn.

Shri Guptanath Singh: (Bihar: General) : Sir, I would like to withdraw my amendment No. 476.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, for the words 'provides for compensation' the words 'provides for fair and equitable compensation based on market value' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, for the words 'unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined' the words 'unless due compensation is paid for', *or, alternatively,* 'unless the law provides for due compensation' be substituted."

The amendment was negatived.

Shri P. D. Himatsingka: (West Bengal: General) : Sir, I wish to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Shri B. P. Jhunjhunwala: (Bihar: General) : Sir, I wish to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That in amendment No. 369 of List VII (Seventh Week), in clause (2) of the proposed article 24, after the words 'or specifies the' the word 'proper' *or, alternatively,* 'fair' be inserted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 369 of List VII (Seventh Week), at the end of clause (2) of the proposed article 24, the following new proviso be added :-

> 'Provided that no compensation shall be payable to any owner or holder of any movable or immovable property, who, having owned or held such property for thirty years continuously immediately before the coming into force of this Constitution, has either not habitually resided within the State where such property is situated, or has

> not done anything to develop such property.'

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 369 of List VII (Seventh Week), for clause (3) of the proposed article 24 be deleted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 369 of List VII (Seventh Week), for clause (3) of the proposed article 24, the following be substituted :-

> '(3) No such law as is referred to in clause (2) of this article made by the Legislature of the State shall have effect, unless such law receives the assent of the President'."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 369 of List VII (Seventh Week), in clause (3) of the proposed article 24, for the words 'unless such law having been reserved for the consideration of the President has received his assent' the words 'has received the assent of the President' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 369 of List VII (Seventh Week), in clause (3) of the proposed article 24, for the words 'having been' the word 'is be substituted,"

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 369 of List VII (Seventh Week), for clause (4) of the proposed ;article 24, the following be substituted :-

> '(4) Any Bill pending before the Legislature of a State at the commencement of this Constitution shall not, after its subsequent enactment, be called into question in any Court on the ground that it contravenes the provisions of clause (2) of this article."'

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 369 of List VII (Seventh Week), in clause (4) of the proposed article 24,-

> (i) for the words 'If any' the word 'Any' be substituted;
>
> (ii) for the words 'has, after it has been' the words 'may be' be substituted;
>
> (iii) the words 'received the assent of the President,' be deleted; and
>
> (iv) for the words 'assented to' the word 'passed' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 369 of List VII (Seventh Week), in clause (4) of the proposed article 24, after the word 'Constitution' the words 'and designed to execute a scheme of agrarian reform by abolition of Zamindari and conferring rights of ownership on peasant proprietors for such compensation as the Legislature of the State considers fair.'"

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 369 of List VII (Seventh Week), for clause (4) of the proposed article 24, the following be substituted:-

> '(4) No law making provision as aforesaid shall be called in question in any court either on the ground that the compensation provided for is inadequate or that the principles and the manner of compensation specified are fraudulent and inequitous.' "

The amendment was negatived.

Mr. President: The question is:

"That in amendment No 369 of List VII (Seventh Week), at the end of clause (4) of she proposed article 24, the following explanation be added :-

> '*Explanation*- The provision of this clause shall not refer to the system of land tenure called Ryotwari anywhere in the Union including the Indian States."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 369 of List VII (Seventh Week), for clause (5) of the proposed article 24, the following be substituted :-

> *(5)* Save as provided in the next succeeding clause, nothing in clause (2) of this article shall affect the provisions of any existing law or of any law which the State may hereafter make which imposes or levies any tax or penalty which seeks to promote

public health or to prevent danger to life and property.' "

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 369 of List VII (Seventh Week), in sub-clause (b) of clause (5) of the proposed article 24, after the word 'property' the words "or for ensuring full employment to all and securing a just and equitable economic and social order' be added."

The amendment was negatived.

Mr. President : **The** question is :

"That in amendment No. 369 of List VII (Seventh Week), clause (5) of the proposed article 24 be deleted."

The amendment was negatived.

Mr. President : The questions is :

"That in amendment No. 369 of List VII (Seventh Week), in clause (5) of the proposed article 24, the words 'Save as provided in the next succeeding clauses' be omitted."

The amendment was adopted."

Mr. President : The question is :

"That in amendment No. 369 of List VII (Seventh Week), for sub-clause (a) of clause (5) of the proposed article 24, the following sub-clause be substituted:—

'(a) the provision of any existing law other than a law to which the provisions of clause (6) of this article apply, or'."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 369 of List VII (Seventh Week), sub-clause (a) of clause (5) of the proposed article 24 be deleted."

The amendment was negatived.

Mr. President : These two amendments have been put in a new form. The question is :

"That in amendment No. 369 of List VII (Seventh Week), after sub-clause (b) of the proposed article 24, the following new clause be added :—

> '(c) The provisions of any existing law made or of any law which the State may hereafter make, in pursuance of any agreement arrived at with a foreign State or otherwise with respect to property declared by law to be evacuee property.' "

The amendment was adopted.

Mr. President : The question is :

"That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the proposed article 24, for the words 'not more than one year' the words 'at any time' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the proposed article 24, for the words 'not more than one year before the commencement of this Constitution' the words and figures 'after August 15, 1947' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No 369 of List VII (Seventh Week), in clause (6) of the proposed article 24, for the words 'one year' the words 'eighteen months' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the proposed article 24, for the words beginning with 'may within three months' and ending with Government of India Act, 1935, the following be substituted :—

> 'shall not be called in question in any court on the ground that it contravenes any provision of this article.'"

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the proposed article 24, the words may within three months from such commencement be submitted by the Governor of the State to the President for his certification; and thereupon, if the President by Public notification so certifies, it' be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the proposed article 24, the words figures and brackets 'clause (2) of this article' be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the proposed article 24 be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 369 of List VII (Seventh Week), in clause (6) of the proposed article 24, the following new clause be added :—

> '(7) If any State passes a law designed to execute a scheme of agrarian reform in the State by abolition of Zamindari conferring rights of ownership on peasant proprietors or at least rights of occupancy for such compensation as the State Legislature considers fair on the lines of the law referred to in clause (4) of this article, such law shall be submitted by the Governor or the Ruler as the case . may be, to the President for his certification. If the President by public notification certifies the law, it shall not be called in question is any court on the ground that it contravenes the provisions of clause (2) of this article.'"

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 369 of List VII (Seventh Week), after clause (6) of the proposed article 24, the following clause be added :—

> '(7) The Parliament may by law in case the social and economic conditions so necessitate, provide for the socialization of any class of property on such terms and conditions as provided in the law.' "

The amendment was negatived.

Mr. President : The question is :

"That with reference to amendment No. 369 of List VII (Seventh Week), after the proposed article 24, the following new article be added :—

> '24-A. Nothing in this Constitution shall prevent the Parliament

> from exercising jurisdiction over, and the State Legislature from acquiring any properties movable or immovable belonging to any public charitable trust without compensation and for the purpose of better utilization and management of the trust property.' "

The amendment was negatived.

Mr. President : I will now put to vote the original amendment No. 369 of List VII (Seventh Week), moved by the Prime Minister, as amended by the amendments which have been adopted.

The question is :

"That proposed article 24 as amended, be adopted."

The motion was adopted.

Article 24, as amended, was added to the Constitution.

The Assembly then adjourned till Four of the Clock in the afternoon.

The Assembly re-assembled in the afternoon at Four of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION-*(contd.)*

PART XIV-A—LANGUAGE

Mr. President : We have now to take up the articles dealing with the question of language. I know this is a subject which has been agitating the minds of Members for sometime and so I would make an appeal to the speakers who are going to take part in the debate. My appeal is not in favour of any particular proposition, but it is with regard to the nature of the speeches which Members may be making. Let us not forget that whatever decision is taken with regard to the question of language, it will have to be carried out by the country as a whole. There is no other item in the whole Constitution of the country which will be required to be implemented from day to day, from hour to hour, I might even say from minute to minute in actual practice. Therefore Members will remember that it will not do to carry a point by debate in this House. The decision of the House should be acceptable to the country as a whole. Even if we succeed in getting a particular proposition passed by majority, if it does not meet with the approval of any considerable section of people in the country—either in the north or in the south, the implementation of the Constitution will become a most difficult problem. Therefore, when any Member rises to speak on this language question I would request him most earnestly to remember that he should not let fall a single word or expression which might hurt or cause office. Whatever has to be said, should be said in moderate language so that it might appeal to reason and there should be no appeal to feelings or passion in a matter like this.

Now I desire to say one word about the procedure which I propose to follow so that I could have the approval of the House for that procedure.

I have found that there are some three hundred or more amendments to these articles. If each one of the amendments is to be moved I do not know how many hours it will take if I am to allow ten minutes to each mover to speak. Many of these amendments overlap; many make only difference of a shade in their meaning; many make practically no difference except in their wording. There are some of course which are of a substantial nature. I, therefore, propose to take all the amendments as moved and ask the Members to start the discussion straightway. Every Member who wishes to speak is free to do so on his amendment, but he has to remember that he must confine his speech to about 10 minutes or 15 minutes at the most. If he wishes to cover all the amendments or all the propositions which arise, probably he will have no time to deal fully with the particular item to which he attaches importance. It, therefore, naturally follows that in observing the time-limit, Members may have to concentrate on particular points to which they desire to attach importance. If the house co-operates and if the Members co-operate, there is no reason why we should not be able to finish the discussion of this question within a reasonable time, as we have done with the rest of the Constitution. I would like to know if the House approves of die procedure which I propose to follow.

Honourable Members: Yes.

Shri Mahavir Tyagi : Sir, I do not accept the procedure suggested, if discussion is to be permitted to cover the whole field of amendments, one will not be in a position to know exactly what a particular amendment signifies or what an amendment to an amendment means. Therefore if the procedure suggested by you is followed the House will not get the full benefit of the debate. I therefore suggest that either you may be pleased to take the salient points from these Lists of Amendments to be moved and take the decision of the House on them so that such decisions may thereafter be implemented by the Drafting Committee. If this is not done, and if discussion is carried on the question of the numerals, etc. simultaneously one would not know what he has to say. I therefore submit that the procedure suggested will not be fair.

Mr. President: I assume that the Members have read the amendments and understood their significance (Several Honourable Members : Yes.) It is on that basis that I placed my suggestion before the House.

Maulana Hasrat Mohani : May I suggest that the official resolution of Dr. Ambedkar and two others be moved and thereafter the amendments may be moved one after the other. They have become things of no significance. Therefore if you ask Dr. Ambedkar and his companions to come forward and move their amendments and then allow the amendments to those amendments to be moved, that will give a fair chance to honourable

Members to express their views.

Mr. President : It is open to Members to say that they do not wish to move any particular amendment. Otherwise I will take all amendments as moved. We shall start the discussion.

Maulana Hasrat Mohani : I have proposed an amendment to the amendment proposed by Dr. Ambedkar. If he says that he does not want to move his amendment.

Mr. President : Your amendment will be taken as moved.

Seth Govind Das (C. P. & Berar : General) : I would like to know whether, in view of the fact that you have said that all the amendments would be taken as moved, the discussion would take place on all the amendments or on each point.

Mr. President: I will follow the procedure which I followed earlier in the day in connection with the other proposition to which also we had a large number of amendments. 1 shall take the amendments first which cover the whole ground and after they have been disposed of, I shall take up paragraph by paragraph if Members so desire to discuss them.

Pandit Balkrishna Sharma : You were pleased to state that we shall take all the amendments as moved. What then will be the order of the members whom you will be pleased to call upon to Speak?

Mr. President: The same order which is ordinarily followed by any Speaker of the Assembly.

The Honourable Pandit Ravi Shankar Shukla (C. P. & Berar : General) : Are we going to take amendment by amendment for discussion or are we going to take the whole lot of them?

Mr. President : The whole lot of them,

The Honourable Pandit Ravi Shankar Shukla : If we take amendment by amendment, we shall be able to concentrate on each point. Otherwise there would be such a lot of confusion that you yourself would not be able to fix upon speakers.

Mr. President : That is why I suggested that Members in speaking will concentrate on the particular point to which they attach importance.

Mr. Mohamed Ismail Sahib (Madras : Muslim) : There are certain amendments coming still; are we to assume that they are all going to be taken as moved?

Mr. President : All the amendments which I have received up to this particular movement. They will be circulated this evening.

Pandit Balkrishna Sharma : Will it be possible for you to take up article by article?

Mr. President : At the time of voting.

Pandit Balkrishna Sharma : We can take up article by article and discussion will be confined to that particular article for the time being; then the second article can be taken up, so that if the same Member wishes to speak on that article, he can do so.

Mr. President : I do not like that, but of course it is open to the House.

An Honourable Member : Will every Member who has moved an amendment be entitled to speak as a matter of right?

Mr. President : I cannot say just now. I have not counted the number of Members who have moved amendments but I will try to accommodate every member who has moved an amendment.

Shri R. K. Sidhva (C. P. & Berar : General) : What about those Members who have not moved any amendments? Would they also be entitled to speak?

Mr. President : I will try to accommodate every Member.

Shri Jaspat Roy Kapoor : Sir, according to the suggestion which you have been pleased to make, all the amendments will be taken as moved. May I submit, Sir, that this whole Chapter deals with the question of language. Hitherto the practice adopted in this House has been that when a particular Chapter is under consideration, each article is taken up separately. The articles in this Chapter relate to entirely different subjects. One relates to numerals. Another relates to the language of the High Courts and the Supreme Courts, and another to the language of the States; another relates to the language which should be used in communications between one State and another. All these articles relate to absolutely different subjects, and I would therefore submit that, while there may be this departure which you have suggested, so far as taking up each article is concerned, the usual procedure that has been adopted so far may continue to be adopted. Otherwise there will be confusion.

Dr. P. S. Deshmukh : Why should this change be made at the fag-end of the Constitution-making?

Mr. President : Because it is the fag-end.

Mr. Naziruddin Ahmad : Then the time limit should be relaxed.

Mr. President : That is a matter about which I am prepared to re-consider. Instead of ten minutes, I may give some more time.

Mr. Naziruddin Ahmad : I want that each Member should be strictly relevant.

Mr. President : That is exactly the difficulty.

Mr. Naziruddin Ahmad : I have moved certain amendments. If I am not relevant at any time, you will be pleased to stop me, Sir.

The Honourable Shri Jawaharlal Nehru : You have given the ruling that all the amendments of which notice has been given will be taken as moved. Apparently there are two or three hundreds of them. Now, I imagine that some of them overlap and some are completely out of date. If we take them all as moved, ultimately it will take a lot of time. I am merely suggesting that those Members who want to withdraw their amendments might withdraw them by writing to you.

Mr. President : I am prepared to go a little further than that. I will call every amendment and then the member concerned can say if he wants to move it or not.

Shri Deshbandhu Gupta (Delhi) : Since the Drafting Committee has not been able to put forward any agreed amendment on this question may I suggest even at this late stage a Committee of nine or eleven Members be appointed by the House, to go into the whole question once again and try to bring about some agreed amendment?

An Honourable Member : No, Sir.

Shri Deshbandhu Gupta : At least, such an amendment can from the basis for discussion and the points of difference can be reduced. I suggest with your permission, Sir that the following members might serve on that Committee : The Honourable Pandit Jawaharlal Nehru....

An Honourable Member : No, we are not agreeable to the idea.

Mr. President : I do not think that is practicable. I understand that that procedure has been followed. It makes no difference.

Shri Deshbandhu Gupta : If we can have an agreed solution, that will save a good deal of time and botheration.

Mr. President : It will make no difference. I think I had better close this discussion now.

Shri B. Das (Orissa : General) : Sir, may I have your ruling if the amendments that have been tabled so far are the only amendment and that no further amendments will be accepted, so that time and expenses of the House could be saved?

Mr. President : The matter will be put to the vote now. The question is :

"That the procedure that I have suggested be generally adopted."

The motion was adopted.

Mr. President : I will now call the amendments one by one. Amendment No. 65.

Shri S. V. Krishnamoorthy Rao (Mysore State) : I have tabled an amendment, Sir, that the question of the language be left to the future Parliament. If that amendment is accepted, all this discussion could be avoided.

Mr. President : There are so many other amendments which, if accepted, would throw all the other amendments out of the picture. I shall now call each of the amendments, and if any Member wishes to withdraw his amendment, he will let me know.

(Members who had given notice of amendments Nos. 65 and 66 indicated that those amendments might be taken as moved.)

Amendment No. 67.

The Honourable Pandit Ravi Shankar Shukla : Sir, I wish to move each item separately.

Mr. President : It will be a question at die time of voting from that point.

The Honourable Pandit Ravi Shankar Shukla : My amendments so far as No. 67 is concerned contains three amendments : One is to delete articles 99 and 184.1 wish not to move that. That may be dropped: As regards amendment No. 67, I have given notice of amendments to each article separately. I wish they may be taken as moved and not amendment 67. Amendment No. 67 may not be taken as moved, but the other amendments may be taken as moved.

Mr. President : Which are the other amendments?

The Honourable Pandit Ravi Shankar Shukla : I have given amendments under h article under my name.

(Members who had given notice of amendments Nos. 68 and 69 indicated that these amendments might be taken as moved.)

The Honourable Shri Ghanshyam Singh Gupta (C. P. & Berar : General): Sir, I have a point of order with regard to amendment No. 69. Shall I raise it now or at the time of voting?

Mr. President : At the time of voting.

(Members who had given notice of amendments Nos. 70, 71 and 72 indicated that these amendments might be taken as moved.)

The Honourable Dr. B. R. Ambedkar : I am not moving amendment No. 73.

Shri Mahavir Tyagi : I move it, Sir.

(Members who had given notice of amendments Nos. 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84 and 85 indicated that these amendments might be taken as moved.)

Dr. P. S. Deshmukh : Sir, if an amendment is absolutely similar, is it permissible for an identical amendment being moved by several Members?

Mr. President : I shall leave them out at the time of voting.

(Member who had given notice of amendments Nos. 86, 87, 88, 89 and 90 indicated that these amendments might be taken as moved.)

(Amendment No. 91 was not moved.)

(The Member who had given notice of amendment No. 92 indicated that this amendment might be taken as moved.)

(Amendment No. 93 was not moved.)

(Members who had given notice of amendments Nos. 94, 95, 96, 97, 98, 99, 100, 101, 102, 103 and 104 indicated that these amendments might be taken as moved.)

Shri Mahavir Tyagi : Those Members who are not moving their amendments may pass a slip to you and thus save time.

(The member who had given notice of amendment No. 105 indicated that this amendment might be taken as moved.)

(Amendment No. 106 was not moved.)

(Members who had given notice of amendments Nos. 107, 108 109 and 110 indicated that these amendments might be taken as moved.)

(Amendments Nos. 111 and 112 were not moved.)

(Members who had given notice of amendments Nos. 113, 114, 115, 116 and 117 indicated that these amendments might be taken as moved.)

(Amendment No. 118 was not moved)

(Members who had given notice of amendments Nos. 119 and 120 indicated that these amendments might be taken as moved.)

Shri H. V. Kamath : On a point of order, Sir, is it proper for a member to give notice of amendments which are inconsistent with one another? Dr. Ambedkar has given notice of several amendments which are mutually inconsistent.

Mr. President : It is nothing unusual for Members of this House to be inconsistent.

Dr. P. S. Deshmukh : Including the honourable member himself *(Laughter).*

Shri H. V. Kamath : My amendments have not been inconstant like that.

(Members who had given notice of amendments Nos. 121, 122 and 123 indicated that these amendments might be taken as moved.)

(Amendment No. 124 was not moved.)

(Members who had given notice of amendments Nos. 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137. 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166 and 167 indicated that these amendments might be taken as moved.)

(Amendment No. 168 was not moved)

(Members who had given notice of amendments No. 169, 170, 171, 172, 173, 174 and 175 indicated that these amendments might be taken as moved.)

(Amendment No. 176 was not moved.)

(Members who had given notice of amendments Nos. 177 and 178 indicated that these amendments might be taken as moved.)

Mr. President : Is it necessary for me to go through the ceremony for the rest of the amendments? Nobody will be prepared to withdraw them. After going through 178 amendments, I do not think it is necessary to go through the ceremony for the rest, and I take them all as moved.

Pandit Balkrishna Sharma : May I draw your attention to the fact that some of us gave notice of amendments even today and you were pleased to admit them on the Order paper. May I know, Sir, whether even those amendments which we have given notice will be taken as moved?

Mr. President : Such of the amendments as were given notice of up to the moment this sitting commenced, will be taken as moved. They will be circulated this evening. There was no time.

Now we shall start the discussion. Mr. Gopalaswami Ayyangar will move the first . amendment No. 65.

The Honourable Shri N. Gopalaswami Ayyangar (Madras : General): Mr. president, Sir, I take it that it is quite unnecessary for me to read the whole of this amendment.

Mr. President : I do not think it is necessary.

The Honourable Shri N. Gopalaswai Ayyangar : At the outset, I wish to say that I shall endeavor to the best of my ability to confirm to the appeal you made at the opening of this afternoon's session. I shall try to be brief and what is more, it will be my endeavour to be objective in dealing with this problem. The problem has been before us for quite a long time now. We have discussed it amongst ourselves in small groups, in larger groups in the country, in the Press and so on. A great deal has been said on this problem in all these various places. Opinion has not always been unanimous on this question. There was, however, one thing about which we reached a fairly unanimous conclusion that we should select one of the languages in India as the common language of the whole of India, the languages that should be used for the official purposes of the Union. In selecting this language various considerations were taken into account. I for one did not easily reach the conclusion that was arrived at the end of these discussions because it involved our bidding good-bye to a language on which I think, we have built and achieved our freedom. Though I accepted the conclusion at the end that that language should be given up in due course and in its place, we should substitute a language of this country, it was not without a pang that I agreed to that decision.

Pandit Lakshmi Kanta Maitra : (West Bengal ; General) : Unfortunately I am not able to catch what the honourable Member says. Will somebody adjust the mike?

The Honourable Shri N. Gopalaswami Ayyangar : The final decision, as all honourable Members know, on that particular question is that we should adopt Hindi as the language for all official purposes of the Union under the new Constitution. That of course, is and ultimate objective to be reached. It certainly involves that when that achievement takes place, we have to bid good-bye to a language on which many of us have been reared and on the strength of which as I said we have achieved our freedom, I man the Kind of language.

The decision to substitute Hindi in the long run for the English language having been taken, we had to take also two subsidiary decisions which were involved in that one decision. Now the subsidiary decisions were that we could not afford to give up the English language at once. We had to keep the English language going for a number of years until Hindi could establish for itself a place, not merely because it is an Indian language, but because as a language it would be an efficient instrument for all that we have to say and do in the future and until Hindi established itself in the position in which English stands today for Union purposes. So we took the next decision, namely that for a period of about fifteen years English should continue to be used for all the purposes for which it is being used today and will be used at the commencement of the Constitution.

Then, Sir, we had to consider the other aspects of this problem. We had to consider, for instance, the question of the numerals about which I shall have to say something more detailed in the few remarks and I shall permit myself. Then we had to consider the question of the language of the States and we took a decision that, as far as possible, a language spoken in the State should be recognised as the language used for official purposes in that State and that for Inter-State communications and for communications between the State and the Centre the English language should continue to be used, provided that where between two States there was an agreement that inter-communication should be in the Hindi language, that should be permitted.

We then proceeded to consider the question of the language that should be used in our Legislatures and the highest courts of Justice in die land and we came to the conclusion after a great deal of deliberation and discussion that while the language of the Union 'Hindi' may be used for debates, for discussions and so forth in the Central Legislature, and where while the language of the State could be used for similar purposes in the State Legislature, it was necessary for us, if we were going to perpetuate the existing satisfactory state of things as regards the text of our laws and the interpretation of that text in the courts, that English should be the language in which legislation, whether in the form of Bills and Acts or of rules and orders and the interpretation in the form of judgments by Judges of the High Court—these should be in English for several years to come. For my own part I think it will have to be for many many years to come. It is not because that we want to keep the English language at all costs for these purposes. It is because the languages which we can recognize for Union purposes and the languages which we can recognize for State purposes are not sufficiently developed, are not sufficiently precise for the purposes that I have mentioned, *viz.,* laws and the interpretation of laws by Courts of law.

Then we have to recognise one broad fact, *viz.,* that while we could recognize 'Hindi' as the language for the official purposes of the Union, we must also admit that that language is not today sufficiently developed. It requires a lot of enrichment in several directions, it requires modernization, it requires to be imbited with the capacity to absorb ideas, not merely ideas but styles and expressions and forms of speech from other languages. So we have put into this draft an article which makes it the duty of the State to promote the development of Hindi so that it may achieve all these enrichments and will in due course be sufficiently developed for replacing adequately the English language which we certainly contemplate should fad out of our officially recognised proceedings and activities in due course of time Those generally speaking, are the basis of this particular draft which I have moved.

Now in considering this draft, I wish to place before the House one or two facts. The first that I wish to place before the House is that this Draft is the result of a great deal of thought, a great deal of discussion. It is also—what has emerged—a compromise between opinions which were not easily reconcilable and therefore when you look at this draft, you have to take it not as a thing which is proposed by an individual Members like me or by three Members if I include my two colleagues whose names are set down here. It is not to be looked upon as something which we have put forth. It is the result of a compromise in respect of which great sacrifices of opinion, of very greatly cherished views and interests, these have been scarified for the purpose of achieving this draft in a form that will be acceptable to the ful House.

Now I wish to draw the attention of the House to one or two of the basic principles underlying this draft. Our basic policy, according to the framers of this draft, should be that the common language of India for Union purposes should be the Hindi language and the script should be the Devanagari script. It is also a part of this basic policy that the numberals to be used for all official Union purposes should be what have been described to be the All-India forms of Indian numerals, authors of this draft contemplate that these three items should be essential parts of the basic policy in this respect for practically all times. I wish to emphasize that fact because I know there is a schools of opinion in this House that so far as the international forms of Indian numerals are concerned, they should be placed in this scheme on the same footing as the English language, Those of us who are responsible for this draft, we do not subscribe to this proposition. We consider that to the same extent the Hindi language and the Devanagari script for letters in that language should form a permanent feature of the common language of this country, to the same extent should the international forms of Indian numerals be part of this basic policy. That is at the root of this draft.

It is true that in order to effect a compromise with those who hold a different view we made one or two concessions in this draft which we thought would persuade the others to all into line with us. One concession was that though the international forms of Indian numerals would be a permanent feature, the President even during the first fifteen years during which the English language will continue to be used practically for all purposes, during that period he may direct that the Devanagari numerals also should in addition to the international forms of Indian numerals be used for one or more official purposes of the Union.

The second concession that was made was that the question of the form of Indian numerals be used for particular official purposes should be one of those questions which the Commission which would be appointed under article 301-B—I think it is 301-B—and it will be one of the duties of the Commission to make recommendations on that subject. We certainly visualised the possibility of that Commission saying, "Let the international forms of Indian numerals be replaced altogether by the Devanagri form of numerals." But we were willing to make this concession, because we thought it would be a gesture which would be appreciated by those who take a different view, and we also were perfectly sure that before an impartial Commission of the sort that will be constituted in the future, arguments in favour of the retention of the international forms of Indian numerals permanently will weight more heavily than it might in the atmosphere of a House where opinion is so divided as it is to day in this House. Well, we were willing to take those risks. I mention these facts to show how great a sacrifice those who stand for the basic policy which I have enunciated have had to make for the purpose of reaching an amicable understanding with the exponents of a different view.

Now, I do not think it will be necessary for me to recommend the claims of the international forms of Indian numerals to this House. They must have read a great deal about it already, and I am sure those who will follow me here will have a lot more to say about it, and so I do not go into the history of this question. I will only mention one or two facts. These forms of numerals originated in our country, and therefore, we should be proud to continue the almost universal use of these numerals which is now made in this country as a part of the future language set-up in this country. *(Hear, hear).* Secondly the whole world, perhaps with one or two exceptions, has adopted these numerals. It is but right that we should keep in step with the whole world, or it should be really the other way, the whole world is already ready to keep in step with us who really gave these numerals to the world. And shall we throw away this proud position in the world with all the attendant advantages that it brings to us? Shall we do so in order to take to something which is not universally used even in this country and which it is impossible for the world at large to use in the future? Those two facts I should like to place particularly before this House before they reach a conclusion on this matter.

Now, Sir, with regard to this particular point a number of alternatives have been proposed, but I would refer only to the latest which was put into your hands in the course of today, and that is the proposal which says it will place the international forms of Indian numerals practically on the same footing as the English language in the scheme of things. That means that for the first fifteen years, the international forms of Indian numerals will continue to be used and after that period Parliament might be left to decide for what purposes the international form or the Devanagari form should be used, or both should be used. It looks a very attractive proposition. But at the back of it is this feeling that you visualise the prospect of displacing that international form of Indian numerals altogether in this country. To those of us who are responsible for this draft, that is not a prospect which we can contemplate with anything like equanimity in the largest interests of the country and the world. And therefore it is because of this wrong approach to the whole problem that I am constrained to say that it is not possible for those who hold our particular view to consider this alternative.

Now, Sir, a few words as regards the provision we have made in Chapter III, mat is, the language of the courts. We consider it very fundamental that English shall continue to be used in the Supreme Court and the High Courts until Parliament after full consideration, after Hindi has developed to such an extent that it can be a suitable vehicle for law-making and law-interpretation comes to the conclusion that it can replace the English language. My own feeling is that English will last in the form of bills and Laws and interpretations of such laws much longer than fifteen years. That is my own expectation. Now, it is important that we should realise why this chapter has been put in. Law-making and law-interpretation require an amount of precision; they require a number of expressions and words which have acquired a certain definite meaning; and until we reach that stage in regard to the Hindi language—and I do not think at present the Hindi language is anywhere near it. ignorant as I am of Hindi myself *(hear, hear)*—I have seen a good deal of the Hindi translation of what happens in this House and I am constrained to say that even the little Hindi I know does not enable me to make out anything form that kind of translation, perhaps people more versed in Hindi may be able to understand it; perhaps I do understand it sometimes, because of the large number of Sanskrit words that are used in these translations. But that is not Hindi, in the sense that you could use it for court or legislative purposes.

I can tell you a story within my own experience. Ten years ago, I was making a Constitution for the State of Jammu and Kashmir. The language of the Legislature had to be described in a section, and those who were drafting it, those officers had simply copied out the language in the Government of India Act, that is to say, English should be the language, but if any member was unacquainted with it or was not sufficiently acquainted with the English language he might be allowed to speak in any language with which he was familiar. Well, it so happened that the late Sir Tej Bahadur Sapru happened to be in Srinagar when I was considering this draft, and I thought that I might take advantage of his presence there for advice and sent this draft to him. The only portion to which he objected initially was this section about the language of the Legislature. He said, "What, in an Indian State where Urdu is the language of the courts and schools, and so on, could you really put in English language as the language of your Legislature?" I had a long discussion with him; I told him, "I quite see your point. I am willing to agree that the language of the Legislature should be Urdu to the extent that those people who are not acquainted with English should be permitted to speak in Urdu. But you are a grate lawyer and supposing tomorrow I want you to appear before either the High Court here of the Privy Council and argue and interpret a section of the Constitution, if it is framed in Urdu would you feel happy?" He appreciated my point I told him as a compromise : "I will put in Urdu as the language of the Legislature for debates which a proviso that the authoritative texts of Bills and Acts shall be in the English language." He instantly agreed to my suggestion and thought that this was the most sensible solution of the problem that confronted us both.

I am mentioning that to you, because at the present moment in India we have to face a similar problem. Our courts are accustomed to English; they have been accustomed to laws drafted in English; they have been accustomed to interpret in English. It is not always possible for us to find the proper equivalent to an English word in the Hindi language and then proceed to interpret it was all the precedents and rulings which refer only to the English words and not the Hindi words. That is why we felt it absolutely necessary—almost fundamental—to this Constitution if it is to work that this Chapter should go into it.

Sir, I do not wish to go into other matters, because I am afraid I have already exceeded the time you have fixed for me. I would only appeal to the house that we must look at this problem from a purely objective standpoint. We must not be carried away by mere sentiment on any kind of allegiance to revivalism of one kind or another, we have to adapt the instrument which would serve us best for what we propose to do in the future and I for one agree with you, Sir, that it will be a most unhappy thing, a most disappointing illustration of our inability to reach an agreed conclusion on so vital a matter if on this point we have to divide the House. I am sure that good sense will prevail.

Sir, I move:

That after Part XIV, the following, new Part be added :—

New Part XIV-A

CHAPTER I—LANGUAGE FOR THE UNION.

Official language of the Union.

301A (1) The official language of the Union shall be Hindi Devanagari script and the form of numbers to be used for the offic purposes of the Union shall be the international form of Indi numerals.

(2) Notwithstanding anything contained in clause (1) of this article, for a period of fifteen years from the commencement of this Constitution, the English language shall continue to be used for all the official purposes of the Union, for which it was being used at such commencement:

Provided that the President may, during the period, by order authorise for any of the official purposes of the Union the use of the Hindi language in addition to the English language and of the Devanagari form of numerals in addition to the international form of Indian numerals.

(3) Notwithstanding anything contained in this article, Parliament may by law provide for the use of the English language after the said period of fifteen years for such purposes as may be specified in such law.

Commission and committee of parliament on official language.

301B. (1) The President shall, at the expiration of five years from the commencement this Constitution and thereafter at the expiration of ten years from such commenceme by order constitute a commission which shall consist of a Chairman and such oth members representing the different languages specified in Schedule VII-A the President may appoint, and the order shall define the procedure to followed by the Commission.

(2) It shall be the duty of the Commission to take recommendations to the President as to—

(a) the progressive use of the Hindi language for the official purposes of the

Union;

(b) restrictions on the use of the English language for all or any of the official purposes of the Union;

(c) the language to be used for all or any of the purposes mentioned in article 301E of this Constitution;

(d) form of numerals to be used for any one or more specified purposes of the Union;

(e) any other matter referred to the Commission by the President as regards the official language of the Union and the language of inter-State Communication and their use.

(3) In marking their recommendations under clause (2) of this article, the Commission shall have due regard to the industrial, cultural and scientific advancement of India, and the just claims and the interests of the non-Hindi speaking areas in regard to the public services.

(4) There shall be constituted a Committee consisting of thirty members of whom twenty shall be members of the House of the People and ten shall be members of the Council of States chosen respectively by the members of the House of the People and the members of the Council of States in accordance with the system of proportional representation by means of the single transferable vote.

(5) It shall be the duty of the Committee to examine the recommendations of the Commission constituted under this article and to report to the President their opinion thereon.

(6) Notwithstanding anything contained in article 301A of this Constitution, the President may after consideration of the report referred to in clause (5) of this article issue directions in accordance with the whole or any part of the report.

CHAPTER II—REGIONAL LANGUAGES

Official language or or language of a state

301C. Subject to the provisions of articles 301D and 301E. State may be law adopt any of the languages in use in the State Hindi as the language or languages to be used for all or any of t official purposes of that State:

Provided that until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the State for which it was being used at the commencement of this Constitution.

Official language for communication between one state and another or between a state and the union.

301D. The language for the time being authorised for use in tl Union for official purposes shall be the official language for communicati between one state and another state or between a state and the Union:

Provided that if two or more States agree that the Hindi language should be the official language for communication between such States, that language may be used for such communication.

Special provision relating to language spoken by a section of the population of a state.

301E Where on a demand being made in that behalf the president is satisfied tha substantial proportion of the population of the state desires the use of a a language spoken by them to be recognised by that state he may direct that su language shall also be officially recognized throughout that state or any part ther for such purpose as he may specify.

CHAPTER III—LANGUAGE OF SUPREME COURT AND HIGH COURTS, ETC.

Language to be used in the Supreme Court and in High Courts and for Acts, Bills, etc.

301F. Notwithstanding anything contained in the foregoing provisions of this part, until Parliament by lawotherwise provides—

(a) all proceedings in the Supreme Court and in every High Court,

(b) the authoritative taxts-

(i) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State,

(ii) of all Acts passed by Parliament or the Legislature of a State and of all Ordinances promulgated by the President or a Governor or a Ruler, as the case may be,

(iii) of all orders, rules, regulations and bye-laws issued under this Constitution or under any law made by Parliament or the Legislature of a State.

shall be in the English language

Special procedure for enactment of certain laws relating to language.

301G. During the period of fifteen years from the commencement of this Constitution no Bill or amendment making provision for the language to be used for any of the purposes mentioned in article 30lF of this constitution shall be introduced or moved in either house of parliament without the previous sanction of the president, and the president shall not give his sanction to the introduction of any such bill or, the moving of any such amendment except after he has taken into article 30lB of this constitution and the report of the committee referred to in that article.

CHAPTER IV—SPECIAL DIRECTIVES

Language to be used for representation for redress of grievances.

301H. Every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the union or a state in any of the languages used in the union or in the state, as the case may be.

Directive for development of Hindi.

301I. It shall be the duty of the Union to promote the spread of Hindi and to develop the language so as to serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichments by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India, and drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages."

SCHEDULE VII A

1. Assamese
2. Bengali

8. Marathi
9. Oriya

3. Canarese
4. Gujarati
5. Hindi
6. Kashmiri
7. Malayalam
10. Punjabi
11. Tamil
12. Telugu
13. Urdu

Pandit Lakshmi Kanta Maitra : With regard to the draft to which the honourable members was just now referring, does he contemplate that any portion of the draft can be considered separately or in isolation?

The Honourable Shri N. Gopalaswami Ayyangar : I thought I said that the scheme should be looked upon as a whole. It was the result of a great deal of discussion and compromise. If I may emphasize it, it is an integrated whole. We cannot give up one part of it unless it be a very minor or verbal correction that you want to make, or even a minor matter of substances. It does not matter very much. But the important things in this draft are an integrated whole and if you touch one part of it the other things fall to pieces.

Seth Govind Das : Sir, it has been a problem for me in which language I should Address the House today.

Mr. Naziruddin Ahmad : On a point of order, Sir. The honourable Member is supporting Hindi and he should not, therefore, speak in English.

Mr. President : I see no point of order in it. Any Member of the House is entitled to speak either in Hindi or in English, or in any other Indian language.

Seth Govind Das : I should like to say a few words to my South Indian Friends at the very outset. As I just now said, it has been a problem for me for a few days past and I have been thinking whether I should speak in English or in that official language which is going to be adopted by this House today.

I am convinced, Sir, that as far as we all are concerned, our views are made up and I do not expect that I shall be able to convert any Friend to my view. Therefore I do not want that it should go in the records of the history of our country that when I was speaking in favour of making Hindi as our official language I had spoken in English, in a foreign language and, therefore, I propose to speak in Hindi. I am sure that if my South Indian Friends will hear me attentively I shall try to speak in such language that they will be able to follow every would which I say.

Shri S. Nagappa : On a point of order, Sir. The honourable Member wants to carry the day without making us understand what he says. If he is to carry the House with him, is it not his duty......

Mr. President : There is no point of order in it. It is for him to decide whether he wants to carry the House with him or not.

Pandit Govind Malaviya (United Provinces : General) : May I make a request on behalf of those Members of this House who are supporters of Hindi that the honourable member may speak in English?

Seth Govind Das : *[Mr. President, I consider this to be the most important day in my life. Besides, the measure of my happiness at what is happening today is also very great. I express my gratitude to you, Sir, for the fact that you have always been kind to listen to whatever I have said here from time to time with regard to this issue. Also on the opening day of this august Assembly, when your Predecessor Dr. Sachidanand Sinha, who also hails from your province, was the provisional Chairman of this House, I had raised the question of National language. Thereafter, I have been raising this question here from time to time, which I feel may have caused annoyance to several of my Friends in the House. I have had too often to approach Members of this House with regard to this matter and it may not be an exaggeration to say that I must have convered miles upon miles in this House in doing so. I have visited them at their local residences; I have visited them in their home towns in connection with this question. I have been earnestly trying to persuade them to agree with our view-point in regard to this question.

I am very happy that agreement has been reached, as the Prime Minister puts it in respect of about 95 per cent, of the issues involved in this question. Nevertheless I would like to emphasize that on the question on which differences still exist, we should reach decisions in an amicable spirit. But if our differences are not resolved and even if a division is demanded at the time these questions are put to the House no bitterness should be allowed to come in. We have accepted democracy and democracy can only function when majority opinion is honoured. If we differ on any issue, that can only be decided by votes. Whatever decision is arrived by the majority must be accepted by the minority respectfully and without any bitterness. You have made an appeal, Sir, to the House to this effect and Shri Gopalaswami Ayyangar has also made a similar appeal and I too make the same appeal to the House.

I express my gratitude to my friends from South India and from other non-Hindi regions for having accepted at least one thing—that is Hindi in Devanagri Script alone can be the language of the Union, whether we call it the National language or the State language. As I have just stated, accordingly to our Honourable Prime Minister, unanimity has been reached amongst us over 95 per cent, of the issues, involved in the language controversy. In the remaining five per cent, some questions of principles are involved. If honourable Members from South India or from other regions are unable to agree to our view-point in regard to these questions, we should allow them the liberty to stick to their own view-point and without allowing any bitterness in our hearts we should leave the decision to be taken by votes.

I may now take the question of numerals for consideration. It is a question that is causing strong excitement in the minds of all. I fail to understand as to why it should cause any resentment at all. I would like to recall to the mind of the honourable Members, the events in connection with language question that have taken place during the last two or three years. When for the first time I had raised the question of national script before them, the question of numerals was not raised by my friends from the South. At that time they had a different outlook about this question and it did not then appear to them to be of such momentous importance as it appears to them today. In order to refresh their memory I am going to read out the formula that was signed by a large number of them. I read it out both in Hindi and English. In Hindi it reads thus:

Its English version is thus:

"We support the view that the Union constitution should lay down that the national language and character shall be Hindi and Devanagari respectively, that in the Federal Parliament business shall be transacted in Hindi written in Devanagari character or, for such period as the Federal Parliament decides, in English."]*

Kazi Syeed Karimuddin (C. P. & Berar : Muslim) : On a point of order, Sir, what is that document that is being read out in the House?

Seth Govind Das : *[This is a document that contains the formula regarding the national language. It was accepted and signed by a number of Members of this House. It contains the signatures of some of the big personalities here. It bears the signatures of Shri Gopalaswami Ayyangar, Dr. Pattabhi Sitaramayya, Prof. Ranga, Shri Algesan, Shri Thirumala Rao, Shri Ananthasayanam Ayyangar and Shri Kala Venkata Rao.]*

Shri Kala Venkata Rao : Why is my name being dragged? I do not under- stand the reference to me.

Seth Govind Das : You have signed this formula which I have just read. That is the reference in which your name has been dragged or has come in.

*[I submit, that when you had accepted Davanagari script you had accepted Devanagari numerals also, for otherwise you could have insisted on the introduction of international numerals even at that time.

Many of our Friends from Bombay also had given their acceptance to the formula and the signature of Sjts. Nijalingappa, Pataskar and Gupte are on the document.

Many of our Bengali Friends had also agreed to it. You will find on it the signature of Mr. Maitra, Mr. Majumdar, Mr. Guha and Shri Surendra Mohan Ghose and many others. Shri Bishwanath Das, Shri Lakshmi Narayan Sahu and Shri Yudisthir Mishra from Orissa had also given their consent to it. Shri Rohini Kumar Chaudhuri and Shri Chaliha from Assam too had accepted the formula. Signatures of almost ail the Hindi-speaking Members of the House are to be found on this document. What I mean to say is that the question of numerals has very recently been raised. Nobody gave any importance to this question at that time when this formula was adopted. I do not dispute any one's right to raise this question at this stage. Of course a Member has that right. My only submission is that when they were ready to accept Devanagari script in its present form, it is plain that they should accept Nagari numerals also, for numerals are an integral part of a script and are not something extrinsic to it. When they were in favour of accepting the Devanagari script they should at least permit us without any rancour, bitterness or anger, the right of remaining firm in our original views.

Now I take up the other points. The article moved by Shri Gopalaswami lays down that Hindi in Devanagari script shall be the official language of India. But if you read the article carefully, you will find therein an attempt to keep the day, when Hindi will take the place of English, as far as off as possible. This House seems divided into two groups on this issue. One accepts Hindi in Devanagari script to be the official language of the country but it wants to postpone the replacement of English by Hindi to the remotest possible date. The other group wants Hindi to replace English at the earliest possible moment. I would like to draw the attention of the honourable Members to the resolution passed by the Congress Working Committee—in this respect. The Working Committee wants that every attempt should be made completely to replace English by Hindi within the period of fifteen years so that English may have no place at all here after fifteen years. But Shri Gopalaswami Ayyangar has told us in his speech today that English may have to be retained for long, even after fifteen years. I must tell him that we do not agree to this. Our definite opinion is that if English is at all to go from the country it must go at the earliest possible moment. We are accepting an interim period of fifteen years during which English should be replaced by Hindi. But this does not mean that during this period English cannot at all be replaced by Hindi in any sphere. Sir, you and also the Members of the House are aware that formerly we were of the opinion that the question of interim period should be left to the Parliament for decision. The formula that I have just quoted was accepted also by the non-Hindi speaking people; later on we agreed to a period of five years. We had then thought that English could be replaced by Hindi during five year, if we made earnest efforts in that direction. Thereafter a National Language convention was held in Delhi. Though the convention was held under the auspices of the Hindi Sahitya Sammelan, learned persons from almost every region of the country were invited to it. I will content myself by saying that it was the first convention of its type in the country. Bengal was represented by Dr. Suniti Kumar Chatterji and Shri Sajni Kant Das, Secretary of the Bangiya Sahitya Parishad; Karnatak was represented by Shri L. Krishan Sharma, Secretary Kannad Sahitya Parishad. From Malayalam attended the great poet Vallathol who occupies the same exalted position in Malayalam literature as was occupied by the late Rabindra Nath Tagore in Bengali literature. Kunhan Raja of Malayalam also attended the convention. From Maharashtra, Mahamahopadhy Shri Kane was to come to it but being unable to undertake the journey he kindly sent a message for the' convention; Shri Ale Ballabh from Orissa, Shri Nil Kant Shastri, Dr. Raghwan Bishwanath Satyanarayan, outstanding figures of Telugu had attended it.

Thus you will find that the convention, though convened by Hindi Sahitya Sammelan, was attended by scholars of almost all the regional languages of the country. It decided that Hindi should take the place of English within ten years. Thus the interim period of five years that was decided earlier, was extended at this stage to ten years. Thereafter, when our South Indian Friends expressed the view that the time of ten years appeared to them very short, we agreed to fifteen years. I do not claim that we have done them any favour in this respect; on the contrary we express our gratitude to them for the favour they have bestowed upon us by accepting Hindi in Devanagari script as the National language of the country. We have no objection at all to fixing the period at fifteen if it be convenient to them. A period of five, ten of fifteen years may be considered a long period in an individual's life, but in the life of a Nation it is not much. It is with this idea that we agreed to extend the interim period from ten years to fifteen.

Now the main question that concerns us is whether you are going to replace English within fifteen years or you require a still longer time. The Congress Working Committee has already given its verdict on this issue. The National Language convention too has stated its view in this respect in clear terms- Even then Shri Gopalaswami says today that he does not find any prospect of complete replacement of English by Hindi for a long time even after fifteen years. I beg to tell him frankly that we at least do not agree to this. This is the second point covered by my amendment.

The third point in my amendment is this. Why should the provinces, that have already adopted Hindi and where Hindi is already in use in High Courts, be forced to use English? Take for instance U. P. There everything is being done in Hindi. All the Bills and Resolutions are drafted in Hind. Now, according to the article moved by Shri Gopalaswami Ayyangar, English will have *to* be used there for every purpose for fifteen years. It is plain that such a provision cannot take us forward in regard to the use of Hindi; it will only take us back in this respect. How can we accept a proposal which imposes English in the provinces where Hindi is already in use? In some States, Hindi has been in use, in Courts for all purposes, since long. But according to Shri Ayyangar's formula, Hindi should be replaced there by English. Well, there is wide difference between us and South Indian friends in this respect. We are unable to accept such a retrograde proposition.

Now I come to certain other points. A new charge has of late been levelled against the supporters of Hindi. We are accused of holding communal outlook in regard to language question. Even our great leaders have levelled this charge against us. I would like to tell them most humbly that so far as we are concerned, we do not look at this question from communal angle at all. We look at it, from a purely national point of view. I may point out that during my public life of the last thirty years I have never been a member of any communal organisation. Maulana Abul Kalam Azad is well aware of the fact that in 1921 when the Khilafat movement was afoot, I was a member of the Central Khilafat Committee. You may take the case of others also who are today taking any part in the Hindi movement. Tandonji's case is before you. Have we ever been connected with any communal organisation? In this connection, I may be permitted, Sir, to tell the House a few things about my own self. There was a time when Hindu-Muslim riots were frequent at Jubbulpore. During one of the riots a mosque was razed down. I got the mosque rebuilt at my own cost. At Khandawa, a town in my home province, my father has constructed a Dharamsala in memory of my respected mother at a cost of about few lacs of rupees. A temple of Shri Lakshmi Narayan had also been built in the precincts of the Dharamsala. The foundation of the temple was laid by Shri Vinoba Bhave. Almost all religious scriptures have been given a place in this temple. The Quaran is there; the Bible is there. Buddhist scripture, Guru Granth Sahib, Jain scriptures and Parsi scriptures are all there and their sanctity is duly mentioned. In view of this how can you accuse us, the supporters of Hindi, of communalism? It is a great injustice to accuse us of communalism.

I do not say that Urdu is used here only by Muslims. I do agree that many Hindu poets and scholars have also created outstanding literature in Urdu. Despite this, I cannot help saying that Urdu has mostly drawn inspiration from outside the country. If you want to verify the correctness of my observation, you may read the Urdu literature. I am not altogether a layman in this respect. I have some, though not profound knowledge of literature. In Urdu literature nowhere do you find any description of the Himalayas. Instead you find the description of *Koh Kaf.* You will never find your favourite *Koyal* (Cuckoo) in Urdu literature but, of course, *Bulbul* is there. In place of Bhima and Arjuna you will find there Rustom who is completely alien to us. Therefore, I must say that the charge that we hold communal outlook is absolutely unfounded. I do not say this because of any contempt for Urdu. We love Urdu and will continue to love it. I say so because it is a hard fact. To be frank, Sir, the supporters of Hindi have never been communal in outlook but the same cannot be said for the supporters of Urdu. They do have communal outlook.

Ours is a secular State and we all are one on this point. We treat every religion equally. We do not want to stand in the way of the development of any religion. But we do admit the fact, that in spite of our secularism there are different cultures in the country. There is Muslim population in China and Russia too but there is no difference at all among Muslim and non-Muslim population of these countries. There is no difference in their names; their dress, their language and their culture are all the same. It is true, we have accepted our country to be a secular State but we never thought that that acceptance implied the acceptance of the continued existence of heterogeneous cultures. India is an ancient country with an ancient history. For thousands of years one and the same culture has all along been obtaining here. This tradition is still unbroken. It is in order to maintain this tradition that we want one language and one script for the whole country. We do not want it to be said that there are two cultures here.

We have no hostility to any of the regional languages; we are well aware of the fact that the National language can never flourish unless the regional languages are fully developed and enriched. It is not to flatter my non-Hindi speaking friends that I am giving expression to this thought. In my Presidential address at the annual session of the All India Sahitya Sammelan held at Meerut, I had made it clear that the regional languages must be given every encouragement to develop themselves and that they should be given the highest place of honour in their respective regions. Every State of the Union must use its own language in its schools and colleges, in its courts and Legislatures. It is not my intention in saying so that the languages other than the State language, but spoken by substantial persons of the people of that State should not be given any recognition. But, as has been laid down in the resolution of the Congress Working Committee, the language demanded should be recognised, only when twenty per cent of the people of the State want it to be recognised. But if one or two per cent of the population makes a demand for the recognition of a particular language, the State cannot afford to satisfy the demand, for it will retard the development of the State language. With this view I have put in another amendment also which lays down that if twenty per cent of the people in a State make a demand for the recognition of any language, that may be conceded. This is quite consistent with the resolution adopted be the Congress Working Committee in this respect.

Our ultimate object is that Hindi should take the place of English at the earliest possible moment and for this I have embodied certain suggestions in my amendments. I have suggested that there should not be appointed two bodies— one Commission and then one Parliamentary Committee—for the same purpose. There should be only one committee—Parliamentary Committee—for this purpose. This Committee should be assigned the task of finding out ways and means to replace English by Hindi within fifteen years.

Lastly, I have one more observation to make. We had, the people of India had, visualized a picture of free India and that picture will remain incomplete until the question of national language is resolved. The people of the country will understand the meaning of *Swaraj* only when this question is completely resolved.

I am very happy that every one of us is prepared to accept Hindi as a national and State language; we should make all possible attempts not to allow any bitterness to come amongst us with regard to this issue. Hindi had received already the blessing of Pandit Nehru. Some eighteen years ago he wrote me a letter which I am going to read out in Hindi. It is dated, Colombo, the 16th May 1931, and is to the following effect :

> "I am sorry for not being able to come to Madura on this occasion. I wish I could come there and render some service which I possibly can, to my Tamil Nad friends. Particularly I wish I could take part in the deliberations of the Hindi Sahitya Sammelan. Hindi has now completely assumed the role of national language and most of the work of the Congress is being done in Hindi. It is gratifying to learn that Hindi is increasingly spreading in Tamil Nad. I would have come and gladly offered my co-operation in this pious task, but I am sorry that on account of compelling reasons I

> am unable to come there. 1 hope the session of the Hindi Sahitya Sammelan will be a success and will pave the way for the spread of Hindi in Tamil Nad.
>
> **Sd. JAWAHARLAL NEHRU.**"

Panditji wrote this letter eighteen years ago and I am glad to find that we have assembled today to give concrete shape to the prophecy he made eighteen years ago.]*

Mr. Naziruddin Ahmad : Mr. President, Sir,

Shri Deshbandhu Gupta : I hope the Honourable Member would speak in Sanskrit.

Mr. Naziruddin Ahmad : The subject before the House is of very great importance. I think in a matter of this great importance which affects thirty-four crores of people, there should be no quarrel, but at the same time I should say that there should be no unseemly or hasty compromise. It is not for as enlightened people as compared with the vast population of India to come here and exchange courtesies and agree in a mere spirit of a compromise on something which affects many other outside. *(Hear, hear).*

I submit Sir, that we have not been taking into consideration what is compendiously described as the non-Hindi areas. It will not do to say that some Members have entered into a compromise, into an agreement. That agreement will not be binding on the people, and people will not accept it. I submit that in a matter like this, we should proceed with caution and from experience to experience. There should be no compulsion; there should be a national language on a free, voluntary basis. If Hindi is to be accepted as the national language of India, it should be free and voluntary choice. Its beauties and other virtues should be understood by the people before it would be possible to accept Hindi finally as our national language. While my esteemed Friend, the last speaker, was speaking in Hindi, I heard whispers even from those who understand a little bit of Hindi that the language was unintelligible. I submit, therefore, that we should not all at once try to make Hindi the national language of India.

The amendment which I have ventured to submit before the House is No. 277. It is not necessary to read the amendment, as I am sure many honourable Members have already read it. The main purpose of my amendment it that we should not make a declaration of an All India language all at once. My subject is that English should continue as the official language of India for all purposes for which it was being used, till a time when an All India language is evolved, which will be capable of expressing the thoughts and ideas on various subjects, scientific, mathematical, literary, historical, philosophical, political. I submit that this should be the way of approach. The suitability of the language for all India purposes for ever should not be a matter left to be decided without a mandate from the electorate, by 315 members. It is easy to be led away by countesies and generosities. It is not a question of a marriage ceremony or a dinner party where we can afford to be generous. This is a matter which should be a matter of voluntary acceptance by the people.

I submit that so far as Hindi is concerned, it has yet to establish its claim. I have, however, heard the protagonists of the Hindi language say that this is the time when we should agree to have Hindi as our national language. I have also heard it said that if we do not accept Hindi now, the chances of Hindi would be gone for ever. If that is so, Hindi has no case for immediate acceptance. If it is a fact that this House, generously minded as it is, should agree in a voluntary manner without consulting the public convenience, without considering the necessary attributes of all All India language in a modern world, I think the voice of the people should be ascertained. But, I find that there is a tendency in this House to be overgenerous where they should be cautious and proceed on practical lines.

We have said that we want nationalisation. I hope it is already apparent that you cannot nationalise all at once and that it would be highly undesirable. We wanted to abolish the class distinction in the railways. We reduced the classes from four to three. I am sure now it is apparent to everybody that we have to revert to the four class system. We want to break capitalism all at once. I think there is already a realisation that though capitalism has its evils, it is a necessary evil. It should be modified, but should not be abolished. So also, in the field of industrialisation, much loose talk has dried the money-market. I should therefore think that in the matter of language, we should rather proceed in a cautious manner.

My suggestion is that English should continue for such a period till when an All India language is evolved. You cannot make a language suitable for a modern world by a legislative vote. The suitability of a language requires a large number of things. It requires great writers, great thinkers, grate men, scientists, politicians, philosophers, literateurs, dramatists and others. I believe without giving any offence, that Hindi is a language which is in a very rudimentary condition in this respect.

After all, India is free. We have to contend with modern forces in the international field. I submit in this modern world we cannot avoid English. We must have English whatever may be the other languages we may have. English is inevitable. But in this respect, we are showing a somewhat inferiority complex. We are really exhibiting what is called a compensatory behaviour. I should think there should be no inferiority complex in the matter of language.

An Honourable Member : Superiority complex!

Mr. Naziruddin Ahmad : It may be superiority complex which is even a bad thing. That would be a kind of weakness. I submit mat the British have gone; British domination was a thing worth removing. But what about their language? Is the English language a British language? I submit it is a world language. Take the case of many other colonies and many other countries. Take the case of Japan. Japan thought that it must rise in the world. It adopted the English language as the official language voluntarily. They went to America and other places and learnt English and with the help of the English language, English science, modern thoughts and world activities were open to her. But for the unfortunate entry of Japan in the last war, Japan would have been one of the greatest nations of the world. That is why I submit that English should be compulsory. It may be a disagreeable necessity; but still, it is a necessity.

Now, the question of selecting a national language, in my opinion, should be dependent upon two conditions. Before putting down these conditions, I should like to ask honourable Members to consider the situation. If you have, I am speaking from the point of view of non-Hindi areas—if you have to learn Hindi, you have to learn it as a foreign tongue. You can learn your mother tongue without literacy; but a foreign tongue you can learn only through books. Now, in a non-Hindi area, a boy must be first of all literate in his own mother tongue before he can possibly learn an All India language, Hindi.

I submit, therefore, that before we impose upon the people of India compulsory all-India language, the pre-requisite should be their literacy in their own language. After fifty years of tremendous labour, and of over forty years talk about primary education, we have not been able to make literate more than 13 or 15 per cent, of our people. At least 85 per cent, of our people are absolutely illiterate. Does it stand to reason that you can teach Hindi as the official language to the people of India all at once? You cannot do so. The pre-requisite condition of imposing upon the people of India national language should, I submit, be mass literacy in the various areas. I should submit that the first condition is there should be a mass literacy campaign and there should be a minimum percentage of literacy in each area before we impose a foreign tongue upon an unwilling people.

The second condition which I should prescribe would be that you must re-group the provinces on a linguistic basis. The reason is simple. We recognise in this official compromise draft that there should be regional languages. If we have regional languages, there will be clashes between the various people talking different tongues huddled together in the same province. In order to avoid all troubles, people generally speaking one tongue should be placed in one province. If we do not proceed like this, the difficulty would be that there will be tyranny of the majority in a certain area over the minority.

I do not wish to go into the various controversies which are now raging. I believe these controversies should die down when we re-group the provinces on that basis. If we do not do it now, it will never be done and endless troubles will arise. If the provinces are re-grouped on a linguistic basis, then, it would be possible for them to think of a foreign all-India tongue. I submit that for a modern State like India, we require a modern language. I submit that simple Hindi can not be the official language. It must be a mixture in which the various languages of India should contribute. I am not a man who does not believe in an official Indian language, but I am not to be blind to facts. I cannot permit myself to be blind to facts even out of patriotic motives. So, time should be given to evolve a suitable language. Our Constitution and our laws are in English and yet we provide only for fifteen years for a substitute. If you will try to translate only our laws, you will find how difficult it is to do it accurately.

After all there should be a realistic approach. I submit that if we proceed unrealistically the result would be reaction in the various non-Hindi provinces. It will be extremely difficult for them to pick up the tongue, and acquire sufficient mastery over that tongue in order to discharge the functions of an all-India language. The great thing to remember is that Hindi itself would have to be developed. It is not a question of fifteen years it is a question of experiment and experience. It will take long years' for great writers and thinkers to be born who will develop it; and secondly, it will require a long time for the people not merely to speak conversational Hindi—which is very easy—but literary Hindi which would be extremely difficult.

I submit that in one of the clauses of the proposed article 301 B, clause (3) it is provided that as far as possible the claims of non-Hindi areas should be reconciled in choosing men for public services. I submit this would be productive of considerable amount of hardship. Take the case of a boy in a non-Hindi area. He will have to learn his own mother-tongue which may be different from the regional language. The boy may have again to learn a mother-tongue which may be different from the regional tongue. He has therefore initially to learn two languages. If he is to aspire for higher honours in the public services and in the internal political field as well as in external field, he will have to learn English and then he will have to learn the official tongue—Hindi. Just think of the huge waste of energy which our boys and girls will have to undergo to learn these languages. The result would be that middle-class men of poorer means will be deprived of the advantage of learning English. The result of accepting an all-India language all at once would be that there will be less English schools and more Hindi schools; richer people—though we aim at a classless society—will become richer and poorer people will get poorer. English will be available only to children of richer people and therefore activities in the foreign field, activities in all-India field requiring knowledge of English in order to avail of the sciences and the arts of the West will be open only to them. The poor and the middle-classes will be deprived of it. This would be the effect of this sudden change. When British came here Persian was the official language and they waited for sixty years before they introduced English as the medium of instruction. Then again, they did not make it compulsory, they proceeded cautiously. I submit that we should take a leaf out of their experience. I have said in my amendment that there should be compulsory primary education and when we find that in each State there is at least 60 per cent. Literates in their own mother-tongue and when also the provinces have been divided on linguistic bases, then there should be a Commission and the Commission's report should be debated in the Legislative Assemblies and Councils as well as in the Parliament and then these debates would be before the country for a sufficient time, and then we will get a more true and real picture of what is to come. Then it would be easy for the people to select or evolve the national language. If we proceed like this, then acceptance of a national language and the selection would be easy otherwise it would be fraught with grave difficulties. It is not permissible to dwell at length on these matters since the decision on this question must depend on broader issues.

I submit that besides Hindi there are other claimants. I have tabled an amendment that Bengali should have its claims. This is only by way of suggestion that Bengali is the most advanced Indian language in the whole Dominion. That is accepted by persons competent to speak, I submit the first Bengali book 'Charya' was published in the 12th Century. That is the earliest Indian book traceable apart from Sanskrit. Then in the 16th and 17th Centuries there were a lot of Bengali books. Then there were a large number of writers Charu Chandra Dutta, Bankim Chatterjee and a host of others who enriched Bengali literature and, omitting a large galaxy of writers, the late lamented Rabindranath Tagore. He wrote enormously and enriched Bengali literature and it is the finest medium of thought; and I believe if you consider a language on merit, Bengali will have a prior claim. I do not wish to detract from the utility and excellence of other languages but I only put the claim of Bengali on a proper plane. I submit that Bengali language is highly developed and its only difficulty is that it is not spoken by a vast majority. But an official language should not be based merely by the fact that a large number of people speak it. Its suitability to express modern ideas, scientific literary and other, should also be an important factor. I do not want to take up the time of the House on the beauties of the Bengali language.

The Honourable Shri Ghanshyam Singh Gupta : We want to hear your views on Sanskrit.

Mr. Naziruddin Ahmad : I am extremely thankful to the honourable Member Mr. Gupta for anticipating me. If you have to adopt any language, why should you not have the world's greatest language? It is today a matter of great regret that we do not know how with what veneration Sanskrit is held in outside world. I shall only quote a few brief remarks made about Sanskrit to show how this language is held in the civilised world. Mr. W. C. Taylor says, "Sanskrit is the language of unrivalled richness and purity."

Mr. President : I would suggest you may leave that question alone, because I propose to call representatives who have given notice of amendments of a fundamental character, and I will call upon a gentleman who has given notice about Sanskrit to speak about it. The honourable Member had given notice of Bengali, English and also Sanskrit. So I think he can better leave it there. I think I had better allow a gentleman who has given notice of Sanskrit, independently of all other languages, to speak about Sanskrit.

Mr. Naziruddin Ahmad : Yes, Sir, I shall not stand in between. I will only give a few quotations. Prof. Max Muller says Sanskrit is the "greatest language in the world, the most wonderful and the most perfect." Sir William Jones said that "Sanskrit is of a wonderful structure, more perfect than Greek, more copious than Latin, more exquisitely refined than either. Whenever we direct our attention to the Sanskrit literature, the notion of infinity presents itself. Surely the longest life would not suffice for a single perusal of works that rise and swell, protuberant like the Himalayas, above the bulkiest compositions of every land beyond the confines of India". Then, Sir, W. Hunter says that the "Grammar of Panini stands supreme among the Grammar of the world. It stands forth as one of the most splendid achievements of human invention and industry The Hindus have made a language and a literature and a religion of rare stateliness." Prof. Whitney says, "Its unequalled transparency of structure give it (Sanskrit) indisputable right to the first place amongst the tongues of the Indo-European family." Professor Bopp says "Sanskrit was at one time the only language of the world." M. Dubo's says "Sanskrit is the origin of the modern languages of Europe." Professor Webar says "Panini's grammar is universally admitted to be the shortest and fullest Grammar in the world. Prof. Wilson says "No nation but the Hindu has yet been able to discover such a perfect system of phonetics." Prof. Thompson, says "The arrangement of consonants in Sanskrit is a unique example of human genius". Dr. Shahidullah, Professor of Dacca University who has a world-wide reputation as a Sanskrit scholar says "Sanskrit is the language of every man to whatever race he may belong."

An Honourable Member : What is your view?

Mr. Naziruddin Ahmad : My own view is that it is one of the greatest languages and

An Honourable Member : And should it be adopted as the National Language or not? It is not spoken by any one now.

Mr. Naziruddin Ahmad : Yes, and for the simple reason that it is impartially difficult to all. Hindi is easy for the Hindi speaking areas, but it is difficult for other areas. I offer you a language which is the grandest and the greatest and it is impartially difficult, equally difficult for all to learn. There should be some impartiality in the selection. If we have to adopt a language, it must be grand, great and the best. Then why we should discard the claims of Sanskrit. I fail to see. If the non-Hindi people have to learn a language, they would rather learn Sanskrit than a language which is infinitely below Sanskrit in status, quality and rank. And then with regard to the script of Hindi. I have here an article by Professor of Benarsas University—Mr. C. Narayana Menon who has written a pamphlet entitled "Script Reform". He has pointed out the script in Hindi is the most erratic. It has hands and feet proceeding in all directions like an octopus. The script is not smooth and rounded and the language is not capable of being speedily or easily written. Sir, this ease of writing is also one of the factors to be considered in a modern language.

Sir, I have taken some time but I submit the considerations are very serious and I submit that we should not take any hasty step. We should all evolve a language and test it before we adopt it. I submit Bengali, Sanskrit and other languages are so many candidates and their cases have to be considered.

Shri Sarangdhar Das (Orissa States): May I just ask one question of the honourable Member, whether ....

Mr. President : No question need be put or answered.

Shri Sarangdhar Das : I only wanted to know—I did not hear him clearly whether he said English was the official language in Japan?

Mr. Naziruddin Ahmad : Yes.

Mr. President: I may explain to Members the procedure I am following in selecting speakers. I am taking amendments which are of a fundamental character and asking the Movers of those amendments to speak, so that all the points of view of a fundamental nature might first come before the House.

The Honourable Shri K. Santhanam (Madras : General) : I hope that giving an amendment is not the only criterion for calling speakers.

Mr. President : No, that is really no criterion at all. But I am selecting the speakers who have given notice of amendments of a fundamental nature so that they may speak on their resolutions. Shri Krishnamoorthy Rao.

Shri S. V. Krishnamoorthy Rao : Sir, I have tabled four amendments. No. 69 says—that the *status quo* should be maintained and the question of language should be left to be decided by the future Parliament. In fact, when the Honourable Shri Gopalaswami Ayyangar's amendment was distributed to us, I thought we had buried the hatched and come to a decision about this language question. Sir, it is a most wholesome resolution which gives scope on the one hand for the Hindi protagonists to develop their language and to introduce it gradually as the common language in India. On the other hand it allays the fears of the other people of India that there will be no imposition of a language and that they will be allowed time to fall in line with their Hindi friends gradually and take their place in the Hindi speaking populations of India. But unfortunately the number of amendments of which notice has been given to this resolution makes me shudder, and I think it is better this question is left to the future Parliament to be decided. For the last two years, we have been wrangling over this question. It is unfortunate that we have not, though we have decided many questions by common understanding and adjustment, we have not been able to come to an understanding on this vital question. Sir, my submission, therefore, is that let the House accept my amendment to maintain the *status quo.*

My second amendment is about the clause which gives power to the President for the introduction of Devanagari form of numerals, in addition to the international form of Indian numerals in the common language of India. My submission is that this should not be to. In fact, as the Honourable Gopalaswami Ayyangar has already said, and as everyone knows, these international numerals are our numerals, and simply because they went out of India and others developed them and brought them up to their present form, that we should treat them as something foreign to us and that we should discard them, I think, will be the height of folly. Sir, are we going back or are we going forward with the rest of the world? It is the greatest contribution that India has made to the scientific thought of the world and revolutionised it, and I for one would never yield in my love of the international numerals which are Indian in origin and which are our numerals, and we should reclaim them as our own numerals and proclaim to the world that they are ours, and I think to discard them as something foreign is not in the interest of the whole country. So my amendment is that this power which has been given to the President in the proviso to clause (2) of 301 A—the latter part of it—"Provided that the President may during the said period, by order authorise the use of the Hindi language and of the Devanagari form of numerals in addition to the international form of Indian numerals." I men the latter portion of it— "and of the Devanagari form of numerals in addition to the international form of Indian numerals" should be omitted, and we should stick to the international form of numerals only as it is really ours.

Then my next amendment is No. 188 that is, about the establishing of an academy to develop Hindi language so that it may be acceptable to the whole of India. My respectful submission is that today Hindi is only a regional language and a provincial language and just because it is being spoken by about ten crores of people out of thirty-two crores, we are raising it to the level of a common language. I would call all languages spoken in India as our national languages—Tamil, Telugu, Kannada, Malayalam. Bengali, Gujerati and all the other languages are naitonal languages. But for the purpose of the Union, we want a common language and we are prepared to accept Hindi as our common language. But Hindi has to become such a language that its effect would be seen in al the ramifications of national life, and for this it should develop very much. My submission is that today Hindi has not yet developed to that stage. In fact I can quote from some of our own South Indian languages to show that they are far more developed than Hindi is today. To give a few instances. For certain scientific terms these are the words used in the Great Indian English Dictionary published in Lahore-

For Hydrogen, the words used are...................... *Udajan*

Mr. Banerjee used the word...............................*Aardrajan*

For Bromine..*Duroghree*

Mr. Banerjee uses the word..............................*Baramina*

For Nitrogen..*Bhooyathid*

Mr. Banerjee uses the word..............................*Netrojan*

For Iodine...*Janebukee*

Mr. Banerjee uses the word..............................*Yethena*

For oxyge...*Jaraka*

Mr. Banerjee uses the word............................ *Akshajan*

For carbon ....*Prangara*

Mr. Banerjee uses the word ....*Karajan*

So far hydrogen, nitrogen, oxygen and carbon we, in Kannada use 'Jalajanaka', 'Sarajanaka', 'Amlajanaka' and 'ingala'. Thus, different words are used for different scientific terms. If that is to be the case, how are our students and scientists to deal with the rest of the world? I maintain that so far as scientific and technical terms are concerned we must use international terms Take an article like 41 of the Constitution. It says here would be a President for India. We have got four translations of it here and the terms used are quite different.

Shri Sundar Lai's translation gives

Shri Rahul Sankrityayan says

Mr. Gupta says

Kaka Kalelkar translates President as parama panch

In the South Indian languages we use the word Adhyaksha which is quite easily understood. Why not use that word?

I may give you examples of some constitutional words from these four translations.

Compensation : In Kanarese we use the word 'parihara'.

Kaka Kalelkar uses the word

Shri Rahul Sankrityayan uses

Guptaji uses the word

Shri Sundar Lal says 'yethjana'.

Citizen : We say 'paura.'

Kaka Kalelkar says

Shri Rahul Sankrityayan says

Guptaji says

Shri Sundar Lal says

Republic : We use the words 'janta rajya'

Kala Kalelkar says

Shri Rahul Sankrityayan says

Guptaji says

Shri Sundar Lai says

Oath : We use the word 'pramana'.

Kala Kalelkar says

Shri Rahul Sankrityayan says

Shri Guptaji says

Shri Sundar Lai says

Take the word Residuary powr: We use the word sheshadhikar.

Kala Kalelkar says

Shri Rahul Sankrityayan says

Guptaji says

Shri Sundar Lal says

Take the word *Legislation :* We use the words 'sasana; kanun

Kala Kalelkar says

Shri Rahul Sankrityayan says

Guptaji says

Shri Sundar Lal says

Take the word *Authentication*

Kala Kalelkar says

Shri Rahul Sankrityayan says

Guptaji says

Shri Sundar Lal says

I have taken only five words and for these each translation gives a different word. Then which of them are we to use in the Constitution? My submission is that constitutional terms have certain connotations in the international field. Take for example the word "Parliament" you may go anywhere in the world, it has got one particular meaning. What word are we to use for it? I submit that these terms have to be evolved by a committee of experts, not only Hindi speaking people, but experts from all the important languages of India. That is why I have tabled my amendment No. 188 which reads—

'That in amendment No. 65 above, the proposed article 301-1 be renumbered as clause (1) of that article and the following be added as cause (2) :—

> (2) The president shall appoint a permanent Commission consisting of experts in each of the languages mentioned in Schedule VII-A for the following purposes :—
>
> (i) to watch and assist the development of Hindi as the common medium of expression for all in India,
>
> (ii) to evolve common technical terms not only for Hindi but also for other languages mentioned in Schedule VII-A for use in science, politics, economics and other technical subjects,
>
> (iii) to evolve a common vocabulary acceptable to all the component parts in India."

I hope Shri Gopalaswami Ayyangar will see his way to accept this amendment. In fact, my difficulty is that we use the same word to mean different things in the different languages of India. I will give you a few samples of these.

For the word aircraft the word given in this Kaka Kalelkar's glossary is *havagadi.* Why not use the word "viman"? It has been in common use. For bank the translation given in this is *sahukar, bunk,* whereas we have got a very fine word in Sankrit—it is *dhanakothi.* We use the word *mantri* for minister in South India, whereas in many of the invitations that we receive from our Hindi friends I find the word 'mantri' used in the sense of Secretary.

Then, for the Council of States the translation given is riyasat sadan. The States are gone now. Out of 582 States only two or three remain and still the old meaning of State is hanging over and is still being used.

The translation for the word 'court' is given as qutchery. We in the south use the word kutchery for office.

These are the words which are in common use in all the Indian languages. I began to learn *Devanagari* letters only when I learnt Hindi during my jail life. Hindi was for long called 'Musalmani' language in the South. This Hindi and Hindustani question is purely for the north. But we are prepared to accept Hindi. It was a great gesture when Maulana Abul Kalam Azad told us that Hindi in Devanagari script should be the common language of India. But a regular tirade is being carried on against him in some of the North Indian papers and he is accused of attempting to impose Urdu on the people of India. We cannot look at this question objectively at present. In the greater interests of the country this question should be decided in a dispassionate atmosphere when feelings have sobered down. That is the purport of my amendment.

So far as the time question is concerned, my submission is that there should be no relaxation of the fifteen years period. Sir, I have tried to learn Hindi. I have translated some books from Hindi into my own language Kannada also. But it is a very difficult language for me to make up my mind to speak before this House. We cannot learn the technicalities of the language, this idiomatic language of the Hindi-speaking people. It takes time. I would give a challenge. Let either Mr. Govind Das Tandonji or Guptaji live among the Tami people and learn to speak the Tamil language : the time taken, I will put it, as just enough for the introduction of the Hindi language for the south. They will take not 15 years, but 20 or 25 years. It is really a difficult problem. You cannot look at it only from your point of view. That is why I submit that a time lag is necessary and fifteen year is the minimum period that we can accept.

No language in the world can isolate itself. In fact I have got a glossary prepared by the Mysore Constituent Assembly for the technical terms. I just took out this book and tried to find out how many Urdu or Hindustani words were in this booklet. In fact this consists of 30 pages. We have got 67 words which are Urdu or Hindustani in origin. In our puritanism are we going to give up all these words? If you take English itself and study the history and development of that language, it has attained international importance because it has borrowed freely from other languages. If Hindi is going to be the common language of India and meet the needs of a growing nation, it should develop itself borrowing freely from all the languages. We cannot have any narrow outlook so far as the development of the language is concerned. Take the words 'bench', 'rail', 'table', etc. Many of these have become common words. What is the word that we can coin for bench in

Hindi. Are we going to change them? I think that should be a most suicidal policy.

My next amendment, Sir, is about the connotation of the word 'Kannada'. In the schedule it is mentioned as 'Kanarese'. This is a hybrid form of Kannada and this was only used by the missionaries who no doubt have done yeoman's service to the Kannada language. Kannada is the word used by one of our poets Nariapathunga in the 9th century. I hope Mr. Gopalaswami Ayyangar will accept my suggestion.

With these words, Sir, I commend my amendment for the acceptance of the House.

Mohd. Hifzur Rahman (United Provinces : Muslim) : *[Mr. President, my amendment relating to language is that in place of Hindi Hindustani should be the national language of India and it should be written in both the scripts—Devanagri and Urdu. Moreover, wherever our esteemed Friend Shri Gopalaswami Ayyangar has mentioned "Hindi", that should be replaced by "Hindustani" and for the word "Hindustani" "Hindi and Urdu" should be substituted. This Hindustani should be so developed that it may absorb Urdu, Hindi and all other languages of India and thus it may get an opportunity of full development.

The language problem is so important that we have to think over it, minutely. Since we have got an opportunity for discussing this problem' in the Constituent Assembly, I propose, because I think it necessary, to express my views relating to this problem.

At this juncture the language problem has assumed greater importance. When we look back, we find that during thirty years' battle of freedom which we fought under the leadership of Mahatma Gandhi, whenever the language problem was taken up, it was discussed fully. Today I am confused and confounded because till yesterday, the whole Congress was unanimous regarding the solution of the language problem. There was no dissenting voice. AH said with one voice "Hindustani shall be the national language of our country, which shall be written in both the scripts, namely, Hindi and Urdu." But today they want to change it.

Freedom of the country and language are among those problems in which Mahatma Gandhi was keenly interested and to which he attached very great importance. In the beginning when the Language problem came before the country he (Mahatma Gandhi) was enrolled as a member of the Hindi Sahitya Sammelan and he tried to advance the cause of Hindi. But slowly and gradually he realized that it was not the Hindi of his liking. It was a separate language which was Sanskritized and its protagonists were trying to make it more and more Sanskritized and call it "Hindi". He differed and proclaimed that to him, "Hindi" meant "Hindustani". This is the reason why he propagated for the advancement of "Hindi", that is, "Hindustani". Whenever I had any talk with him regarding this question, he always said to me "By Hindi I men the language which is spoken in Northern India and which is spoken and understood by the Hindus and Muslims throughout the length and breadth of India". This was the language which was according to Mahatmaji, Hindustani or Hindi. But when he realized that his object was not gaind by calling it "Hindi or Hindustani" he resigned his membership of the Sammelan and espoused the cause of Hindustani and said that only this plain and simple language could be the national language. He also said that he did not want Hindi as "Rashtra Bhasha" and that he wanted this position for 'Hindustani', the cause of which he would propagate. In this connection his efforts were crowned with success. He told the protagonists of Sahitya Sammelan that he accepted only Hindustani as the simplest language of the country. He did his best for the advancement of Hindustan. I still remember and cannot forget 30th January when the greatest tragedy occurred and a tyrant snatched away Mahatma Gandhi from us. Three days before this occurrence, I had a talk with Mahatma Gandhi in Birla House. It was 10 or 11 O'clock at night. He told me "it is a source of greatest pleasure to me that now there is peace in the country. You have helped me in restoring peace in Delhi. Now I have to propagate the cause of Hindustani and you have to help me in this task also." We assured him of our full support.

Gandhiji's one desire was to raise India to the highest summit of glory and greatness. Throughout his life he endeavoured for the achievement of this objective and eventually sacrificed his life for it and thus gained his object. It baffles me to this how anybody— high or low—who desires that India should be great and glorious, could forget the great principle propagated by Gandhiji, and how it is that they want to die away with this language for which Gandhiji lived and died. Now they want to replace it by Hindi. It confuses me to think how Congress could forget the principles preached by Mahatama Gandhi, although his name is associated with every thing that is being done. You may retort saying "Why do you associate Gandhiji's name with this problem?" To that, I would reply that I have mentioned Mahatma Gandhi in this connection only because this was a very important problem for Gandhiji. In addition to this, Congress, too, had accepted Hindustani as the *lingua frana;* therefore whatever Mahatma Gandhi has said and whatever principles he has laid down, should be followed, and nobody should raise any voice against his commandments.

The language problem is one of those problems on which Mahatma Gandhi had laid emphasis. When he was publishing his paper in Hindustani, he felt the necessity of closing the publication of his paper in Hindi. On that occasion he had said if his Hindustani paper was a source of displeasure for the people and if they objected to his doing so and they would not read his paper, they should not run away with the idea that he would only close down the Hindustani paper, nay, the Hindi paper shall also cease publication. At that time we had submitted to him that he need not close down any one of them, and that we shall tour all over India, raise funds and enrol subscribers for these papers and shall recompense the loss incurred. The result was that only in Delhi alone we had procured

100 subscribers in one day. In short, to him Hindustani alone was suitable for India. He called this language Hindustani and not Hindi. If ever he used the word 'Hindi', he changed his opinion later on. This shows that after hard thinking and research he had arrived at the conclusion that Hindustani should be the *lingua franca* of India.

But today here and now Hindustani is being replaced by Hindi and obviously steps are being taken against Gandhian ideology and against the thirty years' history of the Congress. Formerly Hindi was not considered to be outside the pale of Hindustani. But when the voice was raised that Hindi should be the language of the Union, then I realized the difference between Hindi and Hindustani. I learnt that by Hindi they mean that language which shall be Sanskritized and the words of Persian, Arable and Urdu origins shall be excluded and they shall be substituted by new words.

Again and again assurances are forthcoming that this is not the case and that by Hindi they do not mean to exclude the current words and the words of Arabic, Persian and Urdu origins. They assert that such words shall not be excluded nay, they shall remain as they are. We are consoled that these words shall exist. But take the example of U. P. As I have already pointed out in the party meeting in U. P. they have already declared Hindi as the language of the province and the State. The result is that new words are being coined and new methods are being adopted. Urdu words have been excluded and have been substituted by new words. They have also excluded the current words. The words 'Wazir' and 'Naib Wazir' are understood by very one. But today the use of these words is considered to be a crime. These words have been replaced by "Sachiv" and "Sabha Sachiv". This is not all. Even current words as Muqaddama, Misil, Muddai and Muddalay which even villagers speak and understand and use-- in their day to day conversation, are being replaced by such expressions which even Hindus neither understand nor, speak. This shows that by Hindi they mean Sanskritized Hindi, from which thousands of Urdu words shall be excluded and substituted by new words. At the same time every effort is being made to eliminate Hindustani and Urdu words. My Friend, Seth Govind Das, has just said that be had a soft corner for Urdu but it was the language of Muslims.]*

Seth Govind Dass: A word of explanation, Sir, I never said that Urdu was the language of Muslims.

Mohd Hifzur Rahman: *[Then please repeat what you have said. You made the following statement only because you accept Urdu as the language of a particular community :—

"I am compelled to say that in Urdu we find foreign expressions." I would like to submit that Muslims did not bring the language from Persia, Spain, or Arabia. Urdu is the product of Hindu-Muslim unity; their conservations and way of life, the glimpses of which could be found in every market-place, in .every house and every lane and by-lane. It was the product of their mutual love and affection. But today it is looked down with contempt because it contains foreign expressions, and for this reason it cannot be the language of the Union" But I say with all the emphasis at my command that this proposition is wholly incorrect; because in spite of the assertion to the contrary, in .point of fact, Urdu is pregnant with Indian thoughts and expressions. If you would study Urdu poetry and Urdu poets, you would realize your mistake. One of the modern poets of Urdu, namely Mushim of Kakori, while praising the Holy Prophet of Islam says thus :—

"From Kashi clouds are proceeding towards. Mathura. The cool breeze has brought the sacred waters of the Ganges on her shoulders. The news has just reached that clouds are coming for 'Tirath' (Pilgrimage) : on the wings of clouds, etc. etc." Even in a religious poetry like this 'Ganges' and 'Mathura' has been mentioned. The poet has substituted 'Kashi', 'Mathura' and 'Ganges' for 'Macca', 'Medina' and 'Zem-Zem'. This is the correct position and I would like to say that any assertion to the contrary is wholly incorrect.

Like Muhsim, Nazir of Akbarabad also draws his similes mataphors and inspiration from Indian background. Here is an example :—

He gives us a pen-picture of death and says:—

The poet means to say that when the "Banjara" (grain merchant) puts his loads on his carriers to leave the place, he has to leave behind all his grandeur, That is to say, when a man would die, he would leave behind all his wordly things here. In these lines the following words are purely of Indian origin an have nothing to do with Arabic and Persian :—

"(bullock) (worldly things)
(grain merchant) , (daughter)

In this connection I can also mention Amir Khusrau arid the modern poets like Iqbal and Akbar of Allahabad, who were influenced by the thoughts and ideals of this country.

This will have to be accepted in clearest terms that the present Sanskritized form of language which is being proclaimed as the *lingua franca* of India can never be the national language of our country. Similarly that form of Urdu which is encrusted with Arabic and Persian words, can never be the language of our day to day life, market-place and business. This is the reason why Mahatmaji had rightly said "If there is any language which can be the language of the Union, it is Hindustani in which both

Urdu and Hindi are incorporated." Even Bengali words and expressions of other languages of India have been included in this language.

The protagonists of Hindi assert that the State language should" be the language which has been developed through Sanskrit, and thousands of Urdu, Persian and Arabic words should be eliminated which are generally used and are included in the language of the country, and these words should be replaced by the words of Sanskrit origin and thus literary Hindi. should become the language of the country. Similarly, adoption of Urdu, as *lingua franca* means, the adoption of that language which has been developed through Arabic and Persian and which has no place for the words of Sanskrit origin.

Both these assertions are faulty. And I say that the language which is spoken in northern India should be accepted as State Language. It is simple and easy and possesses the tendencies of smooth development and popularity throughout the country, because it is not the creation of any particular individual.

There is yet another point. Some of my colleagues, while talking of Hindi Sahitya Sammelan, have said that Mahatma Gandhi had said that India's language was Hindi : I want to inform you that he had changed this view, and consequently Mahatmaji, through the "Hindustani Pracharni Sabha", adovcat-ed till his death that "Rashtra Bhasha" of the whole country should be Hindustani. Moreover, for the last thirty years, it has been declared over and over again from the platform of the Indian National Congress with unanimity that the State language of India would be Hindustani. And Hindustani has always been defined in these words :—"Hindustani is that language which is spoken from Bihar right up to Frontier". If we leave the excluded area of the Frontier, even then the fact remains that this language is spoken and understood from Bihar up to East Punjab. Not only this, there are Hindus and Muslims all over the country who understand and speak this language. You are ignoring the principle of Mahatmaji and the thirty years old history of the Indian National Congress and compelling us to accept that thing which is against the history of language; and Congress and you want to impose it upon us and you tell us in authoritative tone that only that language can be and will be the language of the countrv which you decide to be the language of the Union. I had challenged it in the Party meeting and I am enquiring here also. Tell me why this baseless thing, which is against the principle of Mahatmaji and the thirty years' old decision of the Congress, is being put forward. But I regret to say that neither was I given a reply there nor have I received any reply here.

After all, tell me why this change has been made in the principles laid down by Mahatmaji and the decision of the Congress? I would like to say faankly that unfortunately the partition has caused this bad effect on our minds and it was the result of this fact which has made us oblivious of such an important principle. This is the reaction of the partition. And it is due to this reaction that we are thinking in these terms. And in this state of grief and anger, which is the outcome of their own hands and for which all must share the blame, they are showing their narrow-mindedness against a particular community of the Indian Union. They want to settle the language question in the atmosphere of political bigotry and do not want to solve this problem as the Language problem of a country.

This is dangerous. I am astonished that in speeches this very sentiment is being expressed over and over again. And instead of settling this question amicably with mutual love, attempts are being made to overawe us with anger. But in my opinion, rather in the opinion of very wise man, this attitude is in no way helpful for the development of either the country or the language. In short, State language should be easily understandable and readily acceptable by the whole country. I should not be imposed by the majority, otherwise it would never attain popularity. For this very reason Mahatmaji had suggested Hindustani as the language of the Indian Union. The cause of Hindustani was espoused and advocated by the Congress for full thirty years before the whole world.

If we want to go back and decide to remain in the narrow sphere, as is happening today, we must not forget that in this world languages do not develop by putting limitations; on the contrary, they develop by expansion and by borrowing words from every language. They are not imposed on people. They attain popularity by their mode of expansion. History tells us that the languages of the world develop through expansion and by borrowing words from other languages. And if you coin and put forward new words for radio etc., it would become something like fun. The same sort of fun I find in the Assembly of U. P. As a member of the Assembly I have had chance to see that Ministers stand up and begin to read such words which they themselves find difficult to understand. But just after ten or twenty minutes when they stand to make a speech, they again begin to speak the same language which was declared by Mahatma Gandhi and the Indian National Congress as Hindustani.

Therefore, if you do not recognize the Hindustani language and adopt Hindi, it means that you are not following the right path. It is just possible that there would have been no intention to consider this matter on-communal lines and this thing would have come to our minds spontaneously. But I think that the communal tinge is there. Sometimes it so happens that a thing enters into one's mind and he cannot explain how he conceived it. So it is quite possible that the change from Hindustani to Hindi would have occurred in this very way. Partition took place and created this bitterness and reaction. Today it is thought that to overawe a particular community, such a thing should be brought forward which might prove that the language question is being settled in a different way and not in the manner in which it ought to have been settled.

It has been said, we want only one Hindi language for this reason that we want one "Sanskriti". It fail to understand what you mean by that. In India some people speak Punjabi, some Bengali and other speak some other languages. If this thing affects and influences 'Sanskriti' then the languages of all the States and Provinces of India should be wiped out, because "Sanskriti" remains safe only when the language of the entire country is one. But I think that speaking of different languages does not affect culture.

Switzerland is a small country, where four languages, namely, Italian, French, German and Swiss are spoken, and work is carried on in all these four languages which are recognized by the State. But this does not affect the culture of Switzerland. And if here it stands in the way of the cultural unity of India, then a pet language of a particular community should not be recognized by the State and a language easily understandable by all the communities and acceptable to all the citizens of India should be declared as the "Rashtra Bhasha" of our coun-try. It is against justice and integrity to impose one's "Sanskriti" on others.

Some people say that in Russia people have same names and they have the same way of living. Excuse me, this is not the issue. This has been simply dragged in. You must know that in Russia's 'several hundred different languages are spoken and all of them have been recognized by the State. In Russia people have still such names as Abdur Rahman,: etc. If somebody's name is Abdur Rehman or Shanti Parshad, it does not effect the culture of any country. It does not make any difference if on religious ground somebody is named after

"Khuda" or Ishwara" If you talk of such a "Sanskriti" in

which culturally all are one, I would submit that in this country I do not find that "Sanskriti". The honourable Members sitting here are putting on different costumes, speak different languages, and have different names. Do these things affect their culture? No; finis reaction is the product of Partition and under the influence of this reaction you are impressing upon- a particular community in a roundabout way that they have to accept this particular way of life.

This is not the way of solving the language problem. Solve the language problem scientifically. Solve it reasonably. The arguments which have been put forward are neither in accordance with the principles of Mahatma Gandhi nor with that of the Congress. If you consider the language question in the right way, you will find that neither literary Hindi nor literary Urdu can be the language of this country. Only simple Hindustani can be the language of the country. Therefore, we should adopt this language (Hindustani) and only this can be the language of the people.

In so far as the, question of script is concerned, I would submit that there is some difference between this question and the question of language. We find that in certain scripts some phonetic sounds cannot be expressed correctly. After declaring Hindi as the "Rashtra Bhasha", will you not tell us. "you

ought to say "Shakti" and not "Taqat" because the supporters of Hindi say that the word "Shakti" should be used and not the word "Taqat" They say, use the word "Hirday" and not "Qalb" or "Dil" : say "Samaj" and not "Majlis" "Bhawan" and not "Aiwan" Hindi says use the world "Bhawan" and Urdu says use the word "Aiwan" then Hindustani comes forward and puts forth the compromise. It

says use "Samaj" as well as "Majlis". Therefore, I say that the language ought to be such which contains all those words which are used generally. It should contain both the words "Taqat" and "Shakti", "Hirday" and "Qalb". It should accommodate all such words as "Samaj", "Majlis" and "Society". And it should be such a language which we can speak freely. If you want to adopt Devanagri script, I am not against it. But if you give Devanagri the first position, give Urdu script also an additional position.

For governmental information, communique and court proceedings Urdu script, too, should be permissible.]*

Shri Mahavir Tyagi: *[How will you accept numerals ?]*

Mohd. Hifzur Rahman: * [I feel if you solve the language question in this way, then certainly the language of the country would be such with which every one would be completely satisfied, and it will be spoken and understood throughout the length and breadth of the country and people would be able to take part in the affairs of the country freely. Numerals are also connected with this question as has been pointed out by my Friend Mr. Tyagi. I have nothing to say on the question of retaining English for fifteen years. I have already spoken about it on a previous occasion. I say you may adopt the language of the country, whether you call it Hindi or Hindustani, as soon as you like. I am not against it. But I agree with the arguments that have been put forward in support of retaining English for fifteen years and adopting English numerals. By accepting English for fifteen years, English numerals would automatically come in.]*

Shri Mahavir Tyagi: *[If you will write in Urdu seven hundred and eighty six, then you will have to write these figures in English numerals.]*

Mohd. Hifzur Rahman : *[If you accept English numerals, I do not think there would be any difficulty in expressing these figures either in Urdu or English. Before hearing the arguments in support of the English numerals I was not aware of their importance. Of course after hearing these arguments, I have realized that it would be more convenient to adopt the numerals of a language which has been in use for a considerably long time than to adopt the Devanagari numerals. But with the gradual development of Hindustani and with the progressive replacement of English by it, you can certainly use the Hindustani numerals also. I mean to say, you can use Nagri numerals by all means.

As regards the directive principles in which you have said that Hindi ought to be developed in such a way that it may contain all the languages and cultures of India, I would like to submit that you give this status to Hindustani and not to Hindi. And it should be made clear herein that the language should be all-embracing, so that it may absorb literary Hindi, literary Urdu, Oriya, Punjabi and Bengali, etc.

I agree with the regional languages which are mentioned in this list. It has my full support. I accept that in various regions and Provinces these languages should have the second place as State language. This is my honest opinion that in Delhi and in U. P., which is a big Province, Urdu, the simple and easy language too, should have been the State language, for the simple reason that U. P. is the cradle of Urdu and it has been nursed and nurtured here. In the first place, Hindustani ought to be the State language in UP. but if Hindi has been adopted, then Urdu also should be given the status of second language which like a State language should remain in use in educational institutions High courts and Legislature. It may get a place there and may be used freely.

I conclusion I appeal to the House to accept Hindustani as the language of the Union and the country, because in comparison to other languages it is simpler and more appropriate to be the *lingua franca* of India. As I have told you that in Switzerland four languages are in use, in the same way, I do not think that there would be any difficulty if Hindi and Urdu script also remain in constant use for fifteen years with English. There would be no difficulty if in such a big country two scripts remain in use for ever.

If we recognize the secular State with all its implications, then I would submit that secular State is an ascertion and no assertion can be true unless it has for its support some arguments and reasons. It we really believe in the secularity of the State then we should not consider such matters with a narrow outlook. And we should not give up those languages which we have nurtured here. We would not ignore Urdu which we even today own as ours.

we ought to consider these matters with a clean heart. If you will consider this matter in this way, I am sure will with me that the language of this country ought to be Hindustani, Hindustani and nothing but Hindustani , with Devanagari script, Urdu script should also remain.]*

Mr. President : The House stands adjourned till 9 O'clock tomorrow morning.

The Assembly then adjourned till Nine of the Clock on Tuesday, the 13th September 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME IX

Tuesday, the 13th September 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION-*(Contd.)*

NEW PARA XIV-A (LANGUAGE)-*(Contd.)*

Mr. President : There are two or three amendments more which I consider to be of fundamental character. There is one about Sanskrit language but I do not find Pandit Maitra here. The second is by Mr. Shankarrao Deo which says that all the reservations in favour of English should automatically cease at the end of fifteen years. That also I consider to be of fundamental character and there is another amendment of which notice was given by Dr. Subbarayan to have Roman character. So I propose to call these first and after that I go to general discussion.

Shri R. V. Dhulekar (United Provinces: General) : I have proposed amendment No. 240.

Mr. President: Come along, then.

Prof. Shibban Lal Saksena (United Provinces : General) : I have also an amendment.

Mr. President: All have, but I said "amendment of a fundamental character."

Shri R. V. Dhulekar: Mr. President, Sir, nobody can be more happy than myself that Hindi has become the official language of the country. I may remind the House that on the very first day when I spoke I spoke in Hindi and there was an opposition that I should not speak in the language which I called the National language of the country. I tried to move an amendment that the Procedure Committee should make all rules in the Hindi language with a translation in the English language. I said that the Hindi version should be considered as the authentic version and if there was any discussion about the interpretation, then the Hindi version should be considered authentic. On that day in spite of the fact that the then President tried to rule me out of order, I claimed that as a Member of the Constituent Assembly and as a son of this country I had a right to speak in the language which I feel is the national language of the country. A momentum was created and today I find that Hindi in Devanagari script has become the official language of the country.

Some honourable Members : Not yet.

Shri R. V. Dhulekar : Some say "not yet", but I say that it is a fact. However much you may try to postpone the day-in your opinion it may be an evil day-in my opinion it is a fortunate day, it has come. However you may oppose it, it is a decision that the country has taken. Some say that it is a concession to Hindi language I say "no". It is a consummation of a historic process". It is the result of an historical process which has been going for a long number of years, nay centuries. I may say that Swami Ramdas wrote in Hindi, Tulsi Das wrote in Hindi, then again the modern Saint, Swami Dayanand wrote in Hindi. He was a Gujarati but he wrote in Hindi. Why did he write in Hindi? Because Hindi was the national language of this country. Then again I may say that our Father of the Nation Mahatma Gandhi also, when be came into the Congress, immediately did away with English and he spoke in Hindi. He did not try to write in English. He wrote his own biography in Hindi and got it translated by Mahadeo Desai. I may submit to those people who are under a misapprehension that it is an imposition-I may say that it is not an imposition. Hindi has become the universal language of this country and has taken the field. there was a tug of war and there was a race among languages and the only language which had the national language characteristics in it, which had the power and the strength became today the national language of this country.

Shri H. R. Guruv Reddy (Mysore State) : Shall we not say official language ?

Shri R. V. Dhulekar : I say it is the official language and it is the national language. You may demur to it. You may belong to another nation but I belong to Indian nation, the Hindi Nation, the Hindu Nation, the Hindustani Nation. I do not know why you say it is not the National Language. Some of you want that Sanskrit be the national language-I may say Sanskrit is the international language-it is the language of the world. There are four thousand roots in Sanskrit language. Sanskrit is the root of all roots. Sanskrit is the language of the whole world. And you will see that some day when Hindi becomes the official and national language, Sanskrit will become the language of the world.

Now, today because we are nationally minded, therefore I say that Hindi is the national language. You say, Hindi is the official language. but I say it is the national language. You are mistaken when you say that it, is the official language. There was a race among the languages and Hindi has run the race and you cannot now stop its career. The amendment I have, moved is that Parliament should decide how long this present Official language English should last in this country. You are, afraid of the Congress, You are' afraid of your future Parliament, and therefore in framing this resolution, you have put in commissions and committees. I may tell you all that these Seigfried line and Maginot line will be of no avail when the members come to the Central Assembly after two or three years. They will say that Hindi will he the language of the country. That I have decided.

An honourable Member: But your decision is not binding upon us.

Shri R. V. Dhulekar: I have already sent in my amendment to the that all these commissions and committees should be brushed away, for however much you may wish to erect a barricade so strong that the surging tide of the Indian nation will not be able to defeat it, or to surmount it, I say that you will all fail and by putting in the clause about commissions and committees. you will be sowing the seeds of dissensions and.....

Mr. President : I would ask the honourable Member not to go into that question, but to confine himself to the merits of his case. I do not think you are advancing your own case by speaking like this.

Shri R. V. Dhulekar : I say, Sir, that you are creating from the very first day, 'a cause of action,' for Parliament, to decide that these commissions and committees should go.

When we take into consideration the long history of the growth of this national language you will see that it is not on this ground alone that I am going to oppose that the official language of the country should not continue for fifteen years. I feel that the lease of another fifteen years will not be in the national interest. My friends ask me, "What will you do if English is not adopted as the official language ?" I will most calmly and with folded hands request you to consider the position, and I will say that you do not know the heart of the country. English language is not the language of the brave people. It is not the language of scientists at all. 'I here is no word of science that the English language can calm to be its own-neither can it claim its own numerals. You say, let this. English language remain as the official language in this country for another fifteen years. I shudder at the very idea of it at the very idea that our universities and our schools and our colleges. colleges and our scientists, that all of them should, even after the attainment of Swaraj, have to continue to work in the English language. What will other people say ? What will the ,host of Lord Mecaulay say ? He will certainly laugh at us and say, "Old Johnnie Walker is still going strong" and he will say, "The Indians are so enamoured of the English language that they are going to keep it for another fifteen years." And some here say, it will remain for twenty years. and some say, for fifty years and there are still others who say, they not know for how long it should remain as our official language.

I would like to put a straight question to these friends of mine, and it is this. In 1920 or even in 1885 there are sonic who are older than myself here what were you thinking should be the language of this land? What should be our language after the attainment of Swaraj ? I would say that those who felt that English should be our official language, they were caught napping. They were caught napping by Swaraj. But when I entered the Congress at the age of 18, I had a clear vision that Swaraj will come. I had a clear vision that we will govern ourselves in a particular way. I had a clear notion about my language. I had a clear notion about my country. And I had a clear notion about my civilisation and I had a clear notion about my culture. If I had no clear notion like that, why should I have served this country from morning till night, since my birth into this country-that is, when I came of age ? I had the notion that my country will have my own language, and my own culture. But today, I hear people asking another fifteen years for English in this country. Have we not had enough of it ? We have bad it for the past two hundred years, we have had this slavery of a foreign language. This English language has produced no great men; Even in our slavery we produced great men. Some people may say that on account of the English language we got our freedom, I say, "No". Only those people joined the freedom's fight who forgot the English language, and who bad extreme hatred for the English language and who knew that the English language was a poison and that it will kill our country. I would with all humility say to Shri Gopalaswami Ayyanar, "I do not understand your language. And you do not understand my language. You did not know the language of the country for the last 40 years, and so you will not understand my language today".

And so. Sir, I confess I do not understand your language today and I will not understand your language tomorrow also. You put in a plea for the English language. You, Sir, all along were thinking that Swaraj will not come and so my friends there, were all along, working in English language. While we small people gave up our roaring practices, the other people had their roaring practices with the English language. We also can have a roaring practice today if I go to the Federal Court. But we are wedded to poverty; we are wedded to the freedom of our country, to the freedom of our country from bondage and from the bondage of a foreign language. But here you say, postpone the change for fifteen years. Then I ask, when are you going to read the Vedas and the Upanishads ? When are you going, to read the Ramayana and the Mahabharata and when are you going to read your Lilavati and other mathematical works ? When are you going to read your Tantrams ? After fifteen years ? You may say so. because you people believe in the saying. "After me the deluge. Let us impose upon this country, this beloved country the English language as the official language." My friends say we cannot learn the Hindi language and much less the numerals. Then I ask you , what is your official language. in the eyes of the outside world ? I am not in the confidence of the Government of India, but I am informed that when in Russia our Ambassador submitted the credentials in the English language, that country refused to receive it. They said you must present the credentials in your own language : and when the credentials were presented in Hindi, then they were accepted. Here is Russia which knows bow to honour a country's language and here are our friends who do not know how to honour their's. They feel that I am a stranger in my own country. They say that Dhulekar is talking a language which is not the language of the country. I say, and I claim that I am the only man in this House who can love the Hindi language, the mother's language. I am the only man who can express the Indian thought. *(Interruption)*. My friends are largely cut off from the common man in the street. Look at the galleries and see how few people have come here to hear you. That is because they know you have given up the cause of the country, because you have brought out a proposition so wrong and so big that it cannot be understood. You should put your proposition in the fewest number of words. The longer it is the greater the weakness of the Constitution. Why have you tried to hang all sorts of things on its sides and to erect barricades and Maginot lines ? You have done this because in your heart of hearts, you believe that this is not the voice of the country. Let us not surround the Hindi language with Devanagari script, with all tantric figures and........

An honourable Member: And *Mantras*!

Shri R. V. Dhulekar: And *Mantars* so that the future generations in India may not brush it aside. Let me point out in all humility that in spite of these Maginot lines, Hindi will be the language of this land and the Devanagari script and numerals will be the script and numerals for this country. My request is to leave it to Parliament to decide the question. May I ask my friends one question ? Are they afraid of democracy ? Are they afraid of Parliament? Are they afraid of their own sons and grandsons who will be the members of our future Parliaments ? Is that the reason why they do not want to leave this question to be decided by Parliament? It is only the people who are afraid of democracy who put in provisos after provisos for commissions and committees, because they have no faith in democracy. They do not believe that people who are elected on adult suffrage will be able to do the right thing.

Yesterday an appeal was made by my Friend Mr. Hifzur Rahman-I do not know whether he is in the House-yes, there be is-and I would like to give a word in reply, He is very much annoyed, very much perplexed to know why the people of India have forgotten Hindustani and why they have forgotten the Urdu script and the Persian script and all the paraphernalia which goes under the name of Hindusthani. And he made an appeal in the name of Mahatma Gandhi that we should make Hindusthani the official language of the country, writing it both in Persian and Devanagari scripts. I feel he has forgotten history, and I might remind him a little.

For the last thirty-eight years, during the period I have been in the Congress, the history of this appeasement policy or this friendly policy or the Hindusthani business has to be recollected a bit. I may ask in the name of Lokamanya Tilak, in the name of Surrendranath Banerjee, in the name of Mahatma Gandhi, why not have separate electorates also? I may say that except for a few thousands of Muslims, sons of this country, who are still with us except for them, the bulk of the Muslim population was not with us. They did not feel that this country was their. And therefore they wanted to separate. They wanted to have separate electorate. And the Congress knew as far back as 1916 and even before- that they could not fight against the foreign rulers by fighting a triangular fight and therefore.......

An Honourable Member : Are you speaking on your amendment? YOU are alone.

Shri R. V. Dhulekar: Yes, I am opposing Hindusthani. And I know you will never be with me.

As I was saying the Congress knew that it could not fight the triangular fight and so it was necessary to exclude the bulk of the Muslim population from the fight. There was a straight fight between the Indians and the English Government and this appeasement policy....

Mr. President : I would remind the honourable Member that it is not a Communal question at all. The question of language that we are discussing is not a communal question at all.

Shri R. V. Dhulekar : No, Sir. But I know Maulana Rahman and I have experience of U. P. and he has been lecturing there and here also, and I say whatever I heard yesterday it was all on a communal basis. I am going to give him a national interpretation of history. The bulk of the Muslims, barring our friends like Maulana Azad and Kidwai......

The Honourable Shri Jawaharlal Nehru (United Provinces: General) : May I enquire whether all this is relevant?

Mr. President : No, I have reminded the Speaker more than once.

The Honourable Shri Jawaharlal Nehru : But still he is persisting.

Mr. President: I do not think you are really advancing your case.

Shri. R. V. Dhulekar: I will not pursue this matter further, Sir. So it was necessary that we should go on with that policy, so that we might fight the British.

Now we find that policy was not successful to our woe. We have been through all these things in a friendly way and in a brotherly way; we have suffered and are suffering. Therefore it is with the greatest unhappiness that have to say that in spite of our honest efforts to solve the problem of this country on a non-communal basis, the result has been that we arc suffering still. Hence I wish that my Friend Maulana Hifzur Rahman may take it from me that it is only a reaction to our honest efforts, honest efforts which did not succeed, that the pendulum has gone over to the other side........

The Honourable Shri Jawaharlal Nehru : Hear, hear !

Shri R. V. Dhulekar: I am very happy at the thought that I have spoken the mind of my honourable Friend the Prime Minister. Certainly if their efforts had succeeded, whatever they said, or whatever the Father of the Nation said had succeeded, no person could have been happier than myself. Do not conceive for a moment that I am a communal-minded man. When I oppose Hindustani I do so, not on account of my lack of love for those people, but because of my love and affection for them, the honest love that an honest man has for his brethren. Today if you speak for Hindustani, it will not be heard. You will be misrepresented, you will be misunderstood and therefore my honest advice to Maulana Hifzur Rahman is that he should wait for two or three years and he will find that he will have his Urdu language, he will have his Persian script; but today let him not try to oppose this, because our nation. the nation which has undergone so many sufferings is not in a mood. to hear him. I have heard him, I appreciate him and I know how he feels. I am myself a Persian scholar and I have read Urdu and I have loved it. I can say that I have written more in Persian and Urdu than my Friend Maulana Hifzur Rahman. I had a clerk for twenty years who was a Muhammadan, all along when there was fight between Hindus and Muslims at Jhansi and other places. So many of my friends came to me and said "You have got a Muslim clerk, turn him out I said "No, he is my brother, he is my own kith and kin and blood of my blood." I believe that all Muslims who are in India and all those who are in Pakistan are my own blood, they are my own brethren. it is because of my abiding faith in my country and in myself that I am in the, Congress. The Congress does not-belong to Hindus or Muslims, it belongs to all. It may be surprising and strange that a person who claims that Hindi should be the national language of this country' should at the same time claim to be a friend of Urdu or Persian. I have the widest sympathies........

Mr. President : It is better the honourable Member concludes. he has been rather not always relevant and the House is not in a mood to listen to him.

Shri R. V. Dhulekar: With these words I move my amendments and support the unqualified adoption of Hindi in Devanagari script and Hindi Numerals, for no other language can be the official language of India, not even for a minute.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Mr. President, at the very outset I must apologise to you and to the House for my absence from the House when it commenced its sitting and when you were pleased to call me to speak to my amendment. My only explanation for it is that I was engaged so long in a very important committee meeting of the Government of India elsewhere and therefore my absence was not due to any slackness on my part.

Sir, I must confess that I am the sponsor of an amendment which has caused considerable surprise to many an honourable Member of this House and to many people outside. It has been received, if I may say so, with mixed feelings in the country. One set of reports that I have so far received and the shoals of letters and congratulations seem to indicate that I have hit upon a right and honourable course. The other set seems to suggest that I am trying to take India several centuries back :by proposing that Sanskrit should be the official and national language of India. Let me tell you 'at once that I am sincerely convinced that if on the attainment of freedom, this country is to have at all anything like an official language which is also to be the national language of the country, it is undoubtedly Sanskrit.

Some honourable Members: No, no.

Some honourable Members: Yes, Yes.

Pandit Lakshmi Kanta Maitra : I have no desire to wound the susceptibilities of those who think that Hindi is the be-all and end-all of their existence. I have no quarrel with them.. But let them not make a fetish of it, for that may ultimately defeat their very purpose. If I did not from the very beginning, Mr. President, press on MY friends for acceptance of my amendment, that is, my proposal for adoption of Sanskrit as the national and official language of India , it was because of my deep concern for the very serious efforts that were made by several responsible Honourable Members of the House to bring of India, it was because, of my deep concern for the very serious efforts that about a sort of an honourable rapprochement between the two important contending sections of opinion in the House. I held back and I refused to side one way or the, other because I felt that I could not honestly support either. However, when things reached a stage when we were almost 'hopeful that an agreed formula for an official language of India was going to be acceptable to both. with sufficient give and take on either side. I felt that I must not bring in my proposal of Sanskrit to upset the apple cart, Unfortunately for us. and may I say for the whole country. the matter took an unhappy turn. as in my humble opinion, for a very small and comparatively unimportant matter the whole agreement had to break. It is regrettable.

Today in this Constituent Assembly we are going to take the most fateful decision, the decision about the official and national language of India. Sir, in the present temper of the House I am really apprehensive that whichever amendment is carried by a majority of the votes-whether Hindi in Devanagari script and with the international form of Indian numerals as proposed in the draft moved by my honourable Friend Shri Gopalaswami Ayyangar on behalf of the Drafting Committee, or that moved by the other group, the' austere whole-hogger Hindi group with everything Hindi-the defeated Section will be leaving this Assembly with a sense of despair, a sense of frustration born of acute bitterness that has been generated in the course of the debates on this question for weeks on end. I have therefore come forward, knowing full well that it is temerity on my part, to ask the House to accept, as the national language of India, Sanskrit and not any other language.' Sir, my amendments in brief seek to replace Hindi by Sanskrit with all consequential changes in the draft moved by my honourable Friend Shri Gopalaswami Ayyangar. Besides that..................

Pandit Balkrishna Sharma (United Provinces : General) : Numerals also in Sanskrit ?

Pandit Lakshmi Kanta Maitra: I am coming to that.

Besides that, I have got another substantial amendment, namely the addition of

Sanskrit in the list of the languages of the Union. It is surprising that before my amendment was tabled, none even considered the desirability of recognising Sanskrit as one of the languages of India. That is the depth to which we have fallen. I make absolutely no apology for asking you seriously to accept Sanskrit. Who is there in this country who will deny that Sanskrit is the language of India? I am surprised that an argument was trotted out that it is not an Indian language, that it is an international language. Yes, it is an international or rather a world language in the sense that its importance, its wealth, its position, its grandeur have made it transcend the frontiers of India and travel far beyond India, and it is because of the Sanskrit language and all the rich heritage of Indian culture that is enshrined in it that outside India we are held in deep esteem by all countries. Is there any soul in this,., House who can challenge this proposition ? Is India admired and respected all the world over for her geographical size or for the multitude of her population ? Our land has been characterised by uncharitable foreigners as a country hopelessly heterogenous and bewilderingly polyglot. Yet, notwithstanding all that, they have earnestly sought for the message of the East which lies enshrined in the Sanskrit language.

Shri H. V. Kamath (C. P. & Berar: General) : On a point. of information, Sir, may I know whether this language is called Sanskrit or Samskrit

Pandit Lakshmi Kanta Maitra: I am deeply grateful to my honourable friend Mr. Kamath for this *debut in humour;* as a piece of honour it is all right.

Shri H. V. Kamath : It is not humour; I did not intend it as such.

Pandit Lakshmi Kanta Maitra: When I am talking in English I think it is natural that I should use the English pronunciation.

Sir, Sanskrit has the oldest and the most respectable pedigree of all the language in the world. I have got here a collection of opinions of some of the biggest orientalists that the world has ever produced; the concensus of opinion of men like Professor Maxmuller, Keith, Taylor, Sir William Hunter, Sir William Golebuk, Seleigman, Schopenhauer, Goether, not to speak of numerous other people like Macdonell and Dubois. All have accorded to Sanskrit the highest place, not to please us, because when these opinions were expressed we were a subject race under a foreign power on whose behalf adverse propaganda was conducted against us by personages like Miss Mayo whose *'Mother India'* was characterised by Mahatma Gandhi of hallowed memory as a "drain inspector's report". Notwithstanding all such adverse propaganda carried on against India by the interested agencies in foreign countries, the world came to know the real India, gradually through these great orientalists who had devoted their lives to the study of the Sanskrit language and literature and an that is contained in it. These great servants unhesitatingly declared that Sanskrit was "the oldest and the richest language of the world," "the one language of the world," "the mother of all languages of the world."

If today India has got an opportunity after thousand years to shape her own destiny, I ask in all seriousness if she is going to feel ashamed to recognise the Sanskrit language-the revered grandmother of languages of the world, still alive with full vigour, full vitality? Are we going to deny here her rightful place in Free India ? That is a question which I solemnly ask. I know it will be said that it is a dead language. Yes. Dead to whom ? Dead to you, because you have become dead to all sense of grandeur, you have become dead to all which is great and noble in your own culture and civilisation. You have been chasing the shadow and have never tried to grasp the substance which is contained in your great literature. If Sanskrit is dead, may I say that Sanskrit is ruling us from her grave? Nobody can get away from Sanskrit in India, Even hi your proposal to make Hindi the State language of this country, you yourself provide in the very article that that language will have to draw its vocabulary freely from the Sanskrit language. You have given that indirect recognition to Sanskrit because you are otherwise helpless and powerless.

But I submit that it is not a dead language at all. Wherever I have travelled, if I have not been able to make myself Understood in any other language, I have been able to make myself understood in Sanskrit. Two decades ago, when I was in Madras, in some of the big temples at Madura, Rameshwaram, Tirupati, I could not make myself understood in English or in any other language, but the moment I started talking in Sanskrit, I found that these people could well understand me and exchange their views. I came away with the impression that at least in Madras there was the glow of culture of Sanskrit. Notwithstanding their inordinate passion-which is only natural-for their regional languages-Tamil, Telugu, Malayalam and Kannada the Southerners did study Sanskrit on a fairly wide scale.

Our idea of Sanskrit has been very crude. We seem to think that Sanskrit is only composed of big, bombastic phases, grandiloquent phraseology, several feet long, that it has only one style like that of Bana's *Kadambari,* or of *Horshacharita* or *Dashakumar Charitam.* But may I submit to you what was, with some amount of self-conceit, said by an eminent poet,

Sahitya Sukumarabastuni :-

Drihra-nava-graha-granthila

Tarka ba Moyu Sangbidhatari

Samang Lilayata Bharati."

You think that I cannot compose simple yet forceful pieces in plain Sanskrit? Whether it is a soft, delicate matter like poetical literature or whether it is learned discourses in abstruse subjects like philosophy and dialectic, when I am composing it I can handle the language for either purposes with equal case." Sanskrit is such a language that it can be used either for very serious Subjects as philosophy, science and also for light literature, it is an easy vehicle of expression for all shades of thought. I am sure that those who know Sanskrit, will endorse every single word of what the great poet uttered some centuries ago.

An honourable Member: Will you please speak in Sanskrit, so that it may be understood by all of us ?

Pandit Lakshmi Kanta Maitra : I am not here to parade my knowledge of Sanskrit. I am not going to commit the blunder of some of my friends, who, in their zeal,--despite the request of others to speak in English so that they might be understood by everybody, persisted in the language of their bobby. I am not going to do that. I want to make myself understood by every single honourable Member in this House. If I can speak Sanskrit, I do not claim any special credit for it. I ought to be able to speak in it; and if I cannot speak, I ought to be ashamed of my culture and education. Therefore, you do not try to put me up as piece of curio here. When I am pleading for Sanskrit, let there be no derisive merriment anywhere in the House. Let me ask every honourable Member of this House, irrespective of the province he comes from, "Does he disown his grandmother ?"

Sir, we are proud of the great provincial languages of this country-Bengali, Marathi, Gujarati, Hindi, Tamil, Telugu, Malayalam, Kannada and others. They constitute a variety of wealth of Indian culture and civilisation. This is not a province's property. It is all our national property. But all these languages derive their origin from Sanskrit. That is the parent language and even in the case of the languages in the South, they have taken a large number of Sanskrit words to enrich their language. Therefore, I submit that if we could set our hearts on it, we could develop a simple, vigorous, chaste, sweet style of Sanskrit for the general purposes of our life.

I do not suggest that from here and now every one of us would be able to talk Sanskrit. My amendment is not like that. What I have proposed in my amendment is, that for a period of fifteen. years English will continue to be used as the official language for the State Purposes for which it was being used before the commencement of the Constitution. At the end of fifteen years, Sanskrit will progressively replace English. That is all my amendment purposes.

Let me tell you that in every province, in every University we have got arrangements for teaching of the Sanskrit language. Men like me, who tried to introduce Hindi in anticipation of its being adopted as the State language of this country, experienced a tremendous amount of difficulty in getting Hindi teachers at least in Bengal. You will be surprised to know that That is a problem. If you want to coach up thousands and thousands of your young men in Hindi, you want teachers for that ; you want literature for that, you ought to have elaborate printing machinery, books, texts, primers, teachers and all the rest of it. That would be a very great handicap; and, in spite of all that the Central Government and provincial governments might do, this problem cannot be easily solved. And mind you anybody from the Hindi speaking areas would pose as a great Hindi scholar. I have got them tested and found them no good. If on the, other hand, you 'have Sanskrit as the official language, every University has got Sanskrit as a compolsory subject up to a certain standard and as an optional subject after that stage. There will be therefore absolutely no difficulty on the score of teaching or learning Sanskrit.

Shri B. N. Munavalli (Bombay States) : The same difficulty will be felt.

Pandit Lakshmi Kanta Maitra: I know that in the case of Mr. Munavalli at his age-I hope he will not be offended ",hen I say that he is aged-it may be difficult to learn a new language. But if Mr. Munavalli thinks that he can more easily master Hindi, than Sanskrit, I have no quarrel. Let him have it.

What I am pleading is that I have noticed a deep feeling of jealousy--pro-ing. I do not justify it, but I realize that feeling. Many people, have been led to think, "of all, languages. why should Hindi be set up as the national language? It is after all a provincial language". Nobody can deny that it is a provincial language. You are lifting a provincial language to the status of a national language. You cannot deny that. There is a vast amount of truth in that. Who Will deny that languages like Bengali, Tamil, Telugu, Gujarati, Malayalam, Marathi, Kannada have got very rich literature of which they can legitimately feel proud ?

Yet Non-Hindi speaking members are not claiming their own provincial languages fox recognition as the official languages of India. Do you realise the spirit of sacrifice that lies behind it? I have never pleaded that Bengalee shall be the State language of this country. I have never suggested it, though I feel that I have a very rich language and literature made richer by our Poet Laureate Rabindranath Tagore and given an international reputation. I felt that in the larger interests of the Union, we must evolve a language, be it Hindi which by our joint co-operative effort might be built up for the use of the whole country.

But, having gone a considerable, way, we stood still at a certain stage. I personally feel that it was regrettable and unfortunate. Some of my friends have criticised, me saying : 'Having swallowed a camel why do you strain at a gnat?" They ask, why, having agreed to Hindi script, I am objecting to the Hindi numerals ? Now, do you seriously suggest that Indian freedom will not be worth having, will not be worth its name, if it is not cent per cent. Hindi in everything? Does anyone put this forward as a serious proposition? If so, why should they not have the sense of humour to realise that this very argument can be used by people an the other side in favour of adoption of their own languages ? Sir on this question there was a close tie. The Honourable Govind Ballabh Pant on one occasion made a magnificent speech. He said : 'We are not going to impose this language on the non-Hindi people'. That was a statement' worthy of the Premier of the biggest province in India. But unfortunately- that province and not mine has now become the problem province in this matter. This language trouble started there. The controversy about Urdu and Hindi and Hindi language with Nagari numerals started there till it reached, a stage when both sides sat down to settle their differences. When we could not achieve a measure of success in our endeavours notwithstanding the appeals made by speaker after speaker for an agreement, the Premier of the U. P. declared : "No, no. We are not going on impose Hindi on you, We must have an agreed formula." Now, if this is not imposition, Hindi language in Devanagari Script with Hindi numerals-what else is imposition, tell, me, ? If you say that there will be absolutely no imposition of Hindi but voluntary acceptance by all, and at the same time Insist on cent per cent acceptance of Hindi demands. is it not a demand for our voluntary surrender? Be frank about your proposition. But, this is not the way in which an issue like that of language can be solved. Language means the very life-blood of a nation. It cannot be, lightly trifled with. I do not believe in producing a language under a made-to-order procedure or by the fixing of a date-line and all that. It is a, living organism which grows and thrives.

Now if you want to have a language for the whole of India. what language has the largest claim? Certainly from the point of view of democracy from the point of view of the largest number of people speaking or understanding it, probably Hindi, which is spoken by about 14 crores of people. hag the strongest claim. Hindi has, however, a bewildering variety of dialects. People from U. P. have told me that if Hindi is accented as the State language the population of the western United Provinces would have to learn it afresh, because they do not know that language. Yet when the claim is made on the basis of statistics of 1931 that Hindi is the one language spoken by the largest number of people, according to the Common notions of democracy it may be all right But in settling language questions, mere theory of democracy must not prevail. If a language is spoken by a very large section in the land, it does not necessarily mean that it is the language of the majority.

In this connection I will give you an illustration which will show the extent to which passions can be roused on the question of language. I shall refer you to what happened last year in Eastern Pakistan. After the partition of Bengal, the Founder of Pakistan issued a fiat that for the whole of Pakistan, Urdu should be the State language. Do you know what was the reaction in East Bengal to this fiat ? The Bengalee Muslims of East Pakistan got very much agitated over this imposition of Urdu on them, and asked. "Are you going to destroy our Bengalee language ? We whole heartedly supported you in your effort to create the Islamic State of Pakistan. Dare you now touch our language ?" Demonstrations started all over Eastern Pakistan and there were the usual counter measures such as tear-gas attacks, lathi charges etc. Pakistan authorities raised the scare that it was the Hindu fifth column that was responsible for that agitation. But at once the Muslim intelligentsia and their educational and cultural associations came forward and said that it was all bunkum. They said " you are trying to throttle the language of Rabindranath Tagore. We are not going to tolerate it." People were lathi-charged, imprisoned for rising in revolt on the question of language. At a gathering of students and professors in Dacca, the moment Mr. Jinnah advised people to take to Urdu in Arabic script as the language, of the newly created Islamic state, there were cries of 'No, no'. As he proceeded, these cries rose louder and louder which could not be silenced. These things were not reported in the Press. After seven days' futile efforts, Mr. Jinnah had to retrace his steps to Karachi. Thereafter a communique was issued to the effect that Bengalee would continue to be the State language of Eastern Pakistan. The Bengalee speaking Muslims of Pakistan made it a condition precedent to their acceptance of Urdu in Arabic script, that Mr. Jinnah would make Bengalee also a State language in Central Pakistan. They said that they would go to Karachi to see that in every place there, side by side with Urdu there was also Bengalee used before they accepted Urdu also' for Eastern Pakistan. So when there was this counterblast by the Muslims of Eastern Pakistan, the authorities came to their senses. Next the authorities said that they would have Bengali in the Roman script. This was not tried. Recently they have proposed to make an experiment with Bengali in Arabic script in certain selected-places. But such efforts are bound to fail.

I submit that language is such a vital thing that if by mere votes or fiats you decide it, it will sink deep into the hearts of those who do not voluntarily accept it. They will go with sore and lacerated feelings, which will ultimately break all asunder. Sir, I am not a pessimist-but I feel that in the absence of an agreement our passions are. bound to be aroused on any decision on this issue of language. I heard the cold calculated speech of my honourable Friend, Shri Gopalaswamy Ayyangar. In it there was an undertone of depression but there was also a note of firmness that he was prepared to go thus far and no farther. When he was making his speech, I interposed an observation-

> "Sir, is it your idea that we will have to take the whole
> draft as it is or we can take out parts?"

He said, "No, no; it must be taken as an integrated whole". His idea is-and I think it is the right idea-that this whole chapter of linguistic provisions must stand or fall together; there that does not mean that small minor changes cannot be made here and there: but it will be absolutely unacceptable to us if simply the first part for instance, viz., "Hindi in Devanagari script" is carried and the. rest thrown out. The acceptance of Hindi is conditional on the rest of the provisions being accepted. *(Hear,*

hear.)

I am making my position absolutely clear. Now, Sir, it is my firm conviction that if we want to avoid the provincial jealousies and acrimonious feelings which are bound to follow the enforcement of a provincial language or the raising of it to the status of a national language-we must adopt Sanskrit which is the mother of all languages, a language, which can be learnt in my humble opinion in fifteen years by intensified effort, for which the necessary facilities and the arrangements, are already in existence in the country. Perhaps it would seem impossible to enforce it now-within 15 years, within the present generation it may not be possible; though those of you who know it might develop its use. But the coming generation can learn it and use it for all purposes.

Meanwhile I do not want to bring in inefficiency in the administration of the country. Therefore I want that for these fifteen years English should continue as the official language of the country. I know that when I was making a similar speech in another place, I. was severely criticised. A friend of mine from the Hindi-speaking area, told me, "Look here, Maitra, you are passionately pleading for English for the next fifteen years. What is your idea ? Are you waiting for the time when the British would come back ?" I told him that we had our grouse against the Britishers, against the British domination of our country but not against the English language and culture as such. When the Britishers first came to this country, in the last century, English was not understood. People knew not a syllable of it. A story goes that A Bengali babu serving in an English mercantile firm in those days went to his boss and said, "Sir, today is the "Rath Yatra" (car festival). "Leave, Sir, Leave". "What rath ?", the boss asked. With, his knowledge of English the Babu could not explain what "rath" was. He said, "Church" "Church" "wooden Church Sir" "Jagannath sitting", "rope and pull," Sir. The poor European was dumbfound. ed. This was the earliest stage of English knowledge but soon after, people like Raja Ram Mohan Roy, Keshab Chander Sen, Bankim Chandra, Ramesh Dutt and others mastered the English language. Then, within a few years magnificent poetry and prose were produced in the English language by poets like Kumari, Toru Dutt, Michael Madhu Sudan Datta and others whose poetry compares favourably with the finest lyrical poetry in the English literature So in the beginning there may-be difficulty but if you apply your mind, you will learn Sanskrit in no time. Meanwhile for international commerce, higher and scientific education, Judiciary etc. English has to be used in India.

Sir, I am a lover of the English language and literature in as much as it is the one priceless thing that we have acquired in all our humiliation, miseries and sufferings during the English rule. My honourable Friend, Shri Gopalaswamy Ayyangar, was referring to it as the instrument with which we got our freedom. I found derisive laughter was going round at this observation of his. But is it seriously proposed that the English language should be completely banished from this land and not allowed to play any part in our future lives ? If today, Mr. Krishnamachari or Maulana Abul Kalam Azad or Pandit Balkrishna Sharma and myself have to talk together, not in the English language but in our own tongues., it will be a veritable babel. it is out of such babel that the English language has drawn us together. And if any attempt is made now to banish the English language from this country. India will lapse into barbarism. We must have an international language and English is a language which is spoken by sixty crores of people. English is not now the property of the English people alone. It is their property and mine. There is a brilliant chapter in the book written by one of the Viceroys, called "Babu's English". The Britishers know the profundity of the knowledge of English that Indians possess; they know the clarity and precision with which the Indian people speak the language. This has been our reputation. In my experience extending over a decade and a half in high British circles, I have seen how the European members of the Legislative Assembly of old days had often wondered at our mastery of the English language. They often remarked, "We wonder how you people in the Legislative Assembly immediately after you listen to 'the speech ,of the Home Member or the Railway Member, stand up and criticise. We cannot do it. We must have enormous time to Prepare for it." So, we had beat them in their own field. English language has opened to us the vast store house of knowledge and wisdom of the world accumulated throughout the ages. We cannot afford to close its doors now. While English win be there, you will also develop Hindi, or for the matter of that every provincial language. Give every regional language of India free scope to develop according to its own genius, to be enriched by accretion of accession from other languages. If you want to do that, you must have Sanskrit as the national language.

What is being done in Israel? Now that the Jews got their freedom, they have installed Hebrew as the official language of their State. They wanted to show respect to their language, their culture, their civilisation, and their heritage. What I am asking, Mr. President, through my amendment is that we should revive our ancient glories through the study of Sanskrit. We should give our message to the West. The West is steeped in materialistic civilisation. The Message of the Gita, the Vedas , the Upanishads and the Tantras, the Charaka and Susrutha etc., will have to be disseminated to the West It is thus and thus alone that we. may be able to command the respect of the world;--not by our political debates, nor by our scientific discoveries which, compared with their achievements, are nothing. The West looks to you to give them guidance in this war-torn world where morals am shattered and religious and spiritual life have gone to shambles.

It is in these circumstances, it is in these conditions that the world looks to you for a message. What kind of message are you going to send to foreign countries through your Embassies ? They do not know who your national poets are, your language, your literature, or the subjects in which your forefathers excelled.

I was surprised to see that in the matter of the numerals, very few knew what magnificent contributions India had made to the world not only in regard to the numerals, but in algebra, in mathematical notation, the decimal system, trigonometry and all the rest of it. All these were India's contributions to the world. It was given to our illustrious friend from Madras-I am referring to the Chairman of the University Commission-and our present Ambassador to Moscow, whom the late revered father of our Industries and Supply Minister, Dr. Syama Prasad Mookerjee, picked up from the South and gave him the fullest facilities at the Calcutta University-to bring out the treasures of Indian Philosophy for the benefit of the outside world. If you do not know that language, the language which you have inherited from your forefathers, that language in which our culture is enshrined, I do not see, what contribution you are going to make to the world.

I Want to know whether my appeal evokes any response in the hearts of my friends from the north or the south. You should have the highest respect for Sanskrit, the language of your forefathers. Is it not the proper thing for you to do in difference to them, when you have got today the chance of shaping the future generations ? Let us bury our hatchets and cheerfully accept Sanskrit as the National and official language of free India. I honestly believe that if we accept Sanskrit, all these troubles, all these jealousies, all this bitterness will vanish with all the psychological complex that has been created. There may be, of course, a feeling of difficulty; but, certainly, there will not be the least feeling of domination or suppression of this or that, It is in that belief that I earnestly appeal to you in the name of that great culture and civilisation of which we are all proud, in the name of the great Rishis who gave that language to us, to support this amendment; for once, let the world know that we also know to respect the rich heritage of our spiritual culture.

Mr. President: I have been thinking of calling upon some one who has given notice of an amendment which is of a fundamental character. When he has finished, then, we can take up the other things. Mr. Anthony has given notice of an amendment to substitute the Roman script for any other script. I think that is more or less of a fundamental character.

Mr. Frank Anthony (C. P. & Berar: General): Mr. President, Sir, I have given notice of two amendments. These amendments appear in the eighth list and are numbers 338 and 347. The first amendment reads :

"That in amendment No. 65 of Fourth List, in clause (1) of the proposed new article 301-A, for the words 'Devanagari script' the words 'the Roman script' be sbustituted."

My second amendment is :

"That in amendment No. 65 of Fourth List, after the existing proviso to the proposed new article 301-C, the following proviso be added :-

"Provided that no change shall be made in the medium of instruction of any State University or in the language officially recognized in the law courts of a province or state without the previous sanction of Parliament."

Sir, in giving notice of these two amendments. I have sought to make my approach a highly objective one. The conclusions which I have reached are my own conclusions, but they are based, I believe, on a sense of realism and I believe also in the Principle of the greatest good to the largest number of people in this country.

Sir, in speaking on this subject, which, unfortunately, has become so highly controversial, may I at the outset, claim that I have no axe to grind ? I have been fortunate in that I came from Jubbulpore a Hindi speaking area. I have also been fortunate in that from an early age. I have learnt Hindi in the Devanagari script. More than that, I have had to earn my living essentially through the medium of Hindi, The cross-examination of witnesses in criminal cases is generally done in the Central Provinces through the medium of Hindi. Arguments in scores of murder cases before assessors who are not conversant with English have usually to be done through the medium of Hindi.

May I say also, it the very outset, that I accept this premise entirely, that if India is to achieve real unity, a real sense of Indian nationality, then every one of us must accept this premise that we must have a national language, English is my mother tongue. Because I am an Indian, because English is my mother tongue. I maintain that English is an Indian language. The honourable Member who has preceded me has just mentioned that English is not the prerogative or the monopoly of the Englishman. It has become the mother tongue, and assimilated to or has become part of the people in different parts of the world. Although English is my mother tongue and though I claim English as an Indian language, I realise that English cannot, for many reasons, be the national language of this country.

At the same time, I am bound to say with regret that I cannot understand the almost malicious and vindicative attitude towards English. As my honourable Friend Pandit Maitra has pointed out, understandably rightly, in the politicle field. there may have been a sense of bitterness, a sense of resentment against the Britisher. But do not let us get confused and muddled-headed in our thinking, do not let our resentment against the British be imported into our attitude towards the English language. As he has said, the English language is one of the few good things that the British incidentally, perhaps unthinkingly, gave to this Country, and so opened up a treasure house of literature, thought and culture which a knowledge of the English language has given to the Indian people. I cannot understand this attitude of bitterness against English, wanting to efface it, and thereby to do a deliberate disservice to our people. After all, a knoweldge of English which our people have acquired over a period of 200 years is one of the greatest assets which India possesses in the international field. I say this without qualification that India's claim, India's acceptance of leadership in the international field is due largely, if not entirely, to the capacity of our representatives abroad to hold their own, more than hold their own in speaking English in international forums.

Sir, at one time, there was no doubt in my mind as to what should be the national language. Before this unfortunate controversy was precipitated, I took it as axiomatic that Hindi would be the national language in this country. At that time, I say, I had no particular predilection as regards the script. I have been fortunate in that I know the Devanagari script. It is one of the simplest scripts in the world. At that time, before this unfortunate controversy was started, I would have, without qualification, accepted Hindi in the Devanagari script as the national language. But, today, I have moved away from that. I say without offence that those friends of ours Who have been ardent, if not fanatical, protoganists of Hindi have done the cause of Hindi greater disservice than any one else. By their intrasigence, by their intolerance,-they may not recongnise it as such, but the other non-Hindi speaking people have interpreted their actions and speeches and their attitude as fanatical intolerance,-they have created, whether they like it or not, an attitude as fanatical intolerance,-- attitude of resistance to what should have naturally been accepted as the national language of this country. Sir, I feel that because of the unfortunate heat and intolerance which has been imported into a subject of such a vital importance, it has become necessary to define the content and extent of Hindi. I come from a Hindi speaking province. Before this controversy started, we accepted Hindi as understood, not by a person who claims to be a person endowed with literary polish, but as understood by the man in the street, by a literate Hindi speaking Person, we understood Hindi to have a certain content. What do we find today? In this spirit of intransigence, in a spirit of fanatical zealotry, there is a process of a purge which has become current and unless we define it, my own feeling is that in this present fanatical movement a new kind of Hindi which is unintelligible to the Hindi speaking Hindu in the street a new kind of Hindi which is unfamiliar to the people, a highly sanskritised Hindi will be imposed. There seems to be some kind of a vendetta against languages which have a non-Sanskrit or a non-Hindi origin. There seems to be almost a sense of hatred against using the commonest language. Today the word 'Subera' is not used as it may have some Urdu origin but our friends use 'Prath Kal'. I talk to my servent about "Prath Kal' he does not understand what I am saying A student told me that an axiom which is taught to him regularly is,

This is the type of Hindi that we are seeking to impose on our people. Even it you take the Constitution in Hindi how many of your Hindi-speaking Hindus can understand it. I attempt to read our so-called Hindi translation but I do not understand one word in four sentences. I take up my various dictionaries and these unfamiliar words do not even appear in the dictionaries. How do you expect me to acquire this new form of Hindi overnight ? Therefore I feel that it is necessary that we should define it.

After all if we allow these precipitate, intolerant motives to inspire our national language at this stage, it will mean that terrible, unnecessary and avoidable hardship will be done to Hindi Speaking Hindus. When I go home to Jubbulpore students come and complain to me-Hindi speaking Hindu boys :

> "As a result of the Precipitate policy adopted by the Nagpur University. our careers are being ruined We were first class up to Matriculation standard. Certainly we speak Hindi in our homes but we have not achieved the necessary standard to take a first class degree. Overnight the Nagpur University have introduced Hindi."

If it is operating so harshly against the Hindi speaking Hindus, what is the position of linguistic minorities in C. P. ? Overnight you are rendering them illiterate. Yet you pay lip service to the ideals of secular democracy, you talk of equality of opportunities on the one side and on the other hand you implement precipitate policies which are the negation of the principle of equality of opportunity.

Sir, I am sorry to have to speak with such fervour on this particular subject but I do feel very strongly about it. As I have said, I have no axe to grind but my friends-I do not question their motives-I believe they are sincere and fervent but let me appeal to them-their sincerity is being misconstrued by those who do not see eye to eye with them. They feel that at the bottom of this intransigence and intolerance is an ill-conceived communal motives-whether they are directed with that purpose or not-to make all the ideals of a Secular State still-born. I cannot understand it. What are you afraid of ? Some of you have not forgotten the slave mentality of the past 200 years. As my Friend Pandit Maitra has said language is a living, dynamic thing. You cannot put it in a straight-jacket. You cannot artificially prescribe the process by which language will grow, and will be inspired. What are we seeking to do ? You seem to be motivated by a fear that the Hindus are so emasculated that they will repudiate their own culture, they will repudiate their own language; mid to prevent the Hindus from repudiating their culture in evolving their own language you must therefore put in a rigid formula. I cannot understand it. Who are you afraid of ? Who is going to take away your Hindi in its inevitable and natural growth to its full stature as the National language. Sir, I cannot help feeling that this attitude is analogous to an attitude where some Britishers wake up some morning; for some reason their memories am carried back to the bitterneses of the Roman invasion and they Start a movement that all words of Latin origin should be expurgated from English There is nothing different from a movement, to expurgate words of Latin origin from English-between that movement and the movement to purge Hindi of awry word however assimilated it may have become to Hindi which has either in Urdu or a persian origin.

I am not holding any brief for my Muslim friends, I never held any brief for them or for the politics of the Muslim League, but I do say that a language grows by natural processes and my friends there cannot cut across or retard by one iota dime natural processes. Hindi will assimilate words whether you like it or not, in spite of you-perhaps because of you-from all kinds of languages I And I regret that for some reason-it is not a logical reason, at any rate to my mind not a rational reason-you have excluded English from the list of languages from which Hindi can draw. What possible rational reason except that you were inspired again by a sense of hatred against the Britisher ? After all today it you talk to any well informed Hindu, he will use numerous English words which have become almost part and parcel of the Hindi language. And yet for no good reason at all except a fanatical and unreasonable reason, if I May go call it, you have sought arbitrarily to remove English from its place in the fourteen languages on which Hindi can draw.

I have given this amendment of Hindi in the Roman Scrip because I feel that looking at it objectively, if we look at it also in the larger interests of the country, we should accept it. I know that in the present temper of the country, in the present mood of the House, as a concession to sentiment and reaction and retrogressive forces, we will not adopt it. But what is there-I say it without offence-sacred in a script. Some people go about saying that this script is sacred and indulge in all kinds of hyperbole and extravaganza. If the Devanagari script is sacred to the Hindi-speaking Hindus, how can you introduce uniformity throughout India and ask other people whose mother-tongues are represented by provincial languages, to give up their script, and take to the Devanagari script.

I feel that if we do not lack courage and do not lack vision, then we will accept Hindi in the Roman Script as the national language. After all there are. many reasons why it should be considered and considered favourably. Two million jawans, in the process of three or four years, during the war were made literate in Hindi through the medium of the Roman script. If we adopted the Roman script, we would strike a mighty and a decisive blow in the cause of Indian unity and national integration. I believe if we accepted the Roman script in Hindi then there would be no difficulty at all in any of the provincial language also accepting the Roman script. Immediately you would strike a blow in the cause of inter-provincial social, cultural and linguistic intercourse..

But as I say, it requires courage and vision. It requires the need to resist sentiment and reactionary forces. I do not know whether this win be done, I feel-here my friend Shankarrao Deo will not agree with me-up to a point I endorse what he said but I feel we are making undue concessions to regionalism. I know how strongly the people in the different provinces feel about their respective mother-tongue It is inevitable. It is natural that Tamil, Telugu, Bengali and Gujarati will grow rich and to their full stature, but I can't help feeling-it is a little natural-that we mouth the slogans of Indian nationality and our sense of Indian nationality upto a point where it suits us. But when we come to a point where it does not suit us, then we argue in favour of a policy which I feel, if allowed to grow, will inevitably balkanize this country.

Only a person who is deliberately dishonest will argue that a boy who has had his primary, secondary and University education through the medium of Bengali will ever pay the slightest regard to Hindi. If we are really interested in a national language, let us all suffer an abatement of our respective vested interests. Let Madrasis, Bengalis and Gujaratis all in the cause of national integration and Hindi deliberately suffer an abatement. That is why I have moved this particular amendment. I say that the change in the medium of instruction of the Universities should not be made except with the previous sanction of Parliament and that the change in the official language or languages of the law courts should not be made except with the previous sanction of Parliament. I have moved this amendment advisedly.

I now come to the law courts. You have merely provided for the High Courts. What about the other courts ? What is to happen if tomorrow a particular provincial or state language is enforced, as it is bound to be in certain provinces, overnight ? What is going to happen to the Madrasi sessions judges for instance in the C. P. ? Are you going to ask these men to write up profound judgments enunciating nuances of legal interpretation in Hindi ? It, is fantastic. They will have to be interpreted and translated into English so that the High Courts will, be able to sit in judgment on those translated judgments. In the process of interpretation those judgments will lose a good deal of their strength and cohesion. If my second amendment is accepted, it will ensure that we will change over in every province by a process of evolution and natural transition. It will ensure that the national language will take its rightful and proper place in every sphere not only at the Centre but in the provinces as well.

Shri Deshbandhu Gupta (Delhi) : May I know whether it is not a fact that now-a-days in the United Provinces and Bihar, judgments are given by the lower courts in Urdu and they are translated for the purposes of the High Court in English.

Mr. Frank Anthony: I am not aware of that.

Shri Deshbandhu Gupta: Now, of course, Hindi is the language, but up till now in the United Provinces, Bihar and Punjab, judgments of the lower courts were given in Urdu.

Mr. Frank Anthony: I know of Bihar; in many cases that I have argued in that province, particularly before Sessions courts English is used.

Shri Deshbandhu Gupta: I mean documents are translated for the purpose of the Sessions courts.

Mr. Frank Anthony : As I say for a number of years certain ancillary work in all courts has been done through the medium of the local or provincial language. The accused is always examined in his mother tongue. Certain documents are always kept in Hindi. I am talking about the more fundamental work that even the lower courts are required to perform for instance, the writing of a judgment by a sessions court. I feel that if a change has to be made it should not be made at this stage. The change can be made later on when we can be sure that our judges have the capacity and knowledge to be able to write in Hindi with the same finesse, with the same analytical precision and with the same strength of a language as they do at present in English.

Sir, I feel that I have made out what I regard as a not unreasonable case both for the consideration of Hindi in the Roman script being adopted as the national language and also that no change should be made in the medium of instruction of any University or in the language or languages of any courts in any province without the previous sanction of Parliament. Sir, I move.

Mr. President : I am finding great difficulty in selecting the speakers. We have got many amendments-I have counted that the movers of amendments number sixty or more. If I counted the names attached to particular amendments, probably the number will go to more than hundred. Now, in these circumstances it becomes very difficult for me to select speakers. So far I have adopted the procedure of selecting speakers whose amendments are more or less of a fundamental character. But this process will soon come to an end and then I shall be at sea as to what to do. Every Member who has given notice of an amendment thinks that his amendment must be supported and he must get a chance. Others who have taken the trouble of not giving any amendments think that they should also get a chance. As between these two classes the whole House is exhausted. I want the guidance of the House in a matter like this.

Pandit Hirday Nath Kunzru (United Provinces: General) : It only means that the discussion should go on a little longer than you intended at first.

Shri Alladi Krishnaswami Ayyar (Madras : General) : I suggest, Sir, your electing representative speakers from each of the provinces. we have got two sets of people, the Hindi speaking and the non-Hindi speaking Provinces. The point of view of the one does not tally with the point of view of the other. We might at sonic stage come to an agreement and I hope it will be satisfactory to all. The proper way would, therefore be to select one or two people from Madras; similarly from C. P., etc. Because after all there is great deal of unanimity in regard to the point of approach.

Mr. President : Fortunately the division. is not on provincial lines.

Shri Sarangdhar Das (Orissa States) : Sir, may I make the suggestion that the provinces which are non-Hindi speaking should be given more opportunity to speak. If only the Hindi-speaking people are given an opportunity to advertise their case..........

Mr. President : If the Honourable Member had been present in the House since the discussion on this question started and if he had counted the names of speakers, he would have found that Hindi-speaking people are fewer than others so far.

Shri Ram Sahai (Madhya Bharat) : *[I beg to request Sir, that the States representatives be given opportunity to express their views with regard to the question of Hindi.]*

Mr. President : *[Is there any difference between, the Hindi used in States and that used in other places ?]*

Shri Ram Sahai: * [Of course there is no difference in that respect. But the difference exists in respect of their interests, requirements, and problems.]*

Mr. President: I have grasped it and shall give as much time to each speaker as is possible with due regard to each province and all other aspects of the question. But I do not think it will be possible for me to give every one a chance to express his views. I have no idea as to how long this discussion will continue.

Honourable Members: Till tomorrow.

Mr. President : I have no idea as to how long the House would like to continue discussions on this subject.

[We had at first drawn up a time table for this, but the position has changed now. I am trying to give every speaker fifteen to twenty minutes. I may vary this time in some cases. I am, however, very particular that every speaker should confine himself to the subject and does not become irrelevant in his observations. When I find any Member talking something irrelevant I try to stop him and I do stop him. Even then, in view of the shortage of time. I do not find that course very helpful. I would, therefore, like that every Member should bear this consideration in mind.]

Pandit Lakshmi Kanta Maitra : Could you not continue the discussion till tomorrow morning because it is a very vital matter ?

Mr. President : It will depend on the House. We shall consider it at the end of the day.

Shri Deshbandhu Gupta: The discussion can go on as long as an agreed formula is not arrived at.

Shri Mahavir Tyagi (United Provinces : General) : After what you have decided about the procedure in selecting the Speakers, may I know if the Members of the House have to go on seeking to catch your eye or will you yourself name them ?

Mr. President : Let them try to catch my eye and in that process I shall make my selection.

An honourable Member: I suggest you fix a time-limit of ten or five minutes.

Mr. President : I think we shall have to limit the speeches.

Pandit Govind Malaviya (United Provinces: General) : From what you have said, namely, that you will not allow any speaker to bring in irrelevant matters, I think there should be no question of any time-limit. If you find after two minutes that a speaker is irrelevant he should be asked to come back to the point or to close.

Secondly, this is so important a matter and evreybody in the House is so keenly interested in it that I think we cannot possibly lay down whether we should spend one day or half a day or two days or even more over it. It should all depend on your discretion to let the debate go on so long as there is some fresh argument or point of view to be placed before the House in this matter. It is so vital a subject that I think, in your discretion, you should allow the debate to go on.

Mr. President: Yes, you may leave it to my discretion.

Shri V. I. Muniswami Pillay (Madras: General): The language question was put for two days and most of the Members have come from various provinces under the impression that we are going to have only a two days' debate, I therefore think it is highly necessary that this debate should close this evening and voting should take place thereafter.

Mr. President : I cannot accept that argument as sufficient for closing the discussion. Members are expected to be in their places throughout the session.

Qazi Syed Karimuddin (C. P. & Berar: Muslim) : *[Mr. President. There are two amendments in my name. First is this :

"That in amendment No. 65 of fourth List, for the proposed New Part XIV-A, the following be substituted :-

301. A-The Parliament by law provide the National language of the Union within six months after the election of the Parliament on the basis of adult Franchise'."

My second amendment is this that in case this is not acceptable then Hindustani should be made the national language.

Sir, I cannot say whether in the present atmosphere my amendment would be accepted or not, but as poet Ghalib has said *"Tamashae ahle karam dekhte hain",* I am not concerned whether you accept it or not. What we are to see is this : do the conditions prevailing in 1947 still prevail or have they changed ? If there has been some change, then why has it come about? Today we are told that Muslim Members present here have been elected on communal basis. With regard to this I would say that the general elections prior to 1947 were held on commercial basis. Muslim Members, as well as Congress Members, all were elected on communal basis, and it is because of that we see passions so deeply aroused here today.

Mr. Dhulekar has just said that Urdu is the mother-tongue of Muslims. At present our passions are so greatly excited, that if two years hence a demand for the recognition of Urdu or Persian is made, we may accept that, but at present there is absolutely no-chance for its acceptance. Sir, that is the reason why I have put in this amendment. If in the present atmosphere they are unable to concede that demand, then how could if be expected that when-Hindi becomes the national language, they would concede it ? Therefore, I would request that till a fresh general election is held and all members of the now House, both Hindus and Muslims have been returned on the basis of joint electorate this question may be postponed. The decision taken by that Parliament would be just and proper. Instead of taking a decision on-that question today, it would be better if it is left undecided till then. It may be 'that to some provinces, or to some people the decision taken today may not be agreeable and that is why this is not the proper time.

Sir, the House has adopted this attitude because Pakistan after 1947 has declared Urdu as its national language and it may be its reaction that Hindi in Devanagri is being made the national language of India.

Shri Seth Govind Das had read out names of certain Members who had affixed their signatures in support of his proposal, but who have now changed their minds. I would like to ask him whether all those supporting Hindi in Devanagri script are not Congress Members ? They have suffered and sacrificed. Now, if they support Hindi in Devanagri script, are they not acting against the Congress creed ? Because they have accepted that creed, so they have changed their minds now. Congress had agreed that the national language of India would be Hindustani written both in Devanagri and Urdu scripts. If Mahatma Gandhi was alive today he, would have seen that on this issue Congress stood firm like a rock and Hindustani in both the scripts is adopted.

My Friend Mr. Dhulekar has said that it was by way of appeasement that Gandhiji had agreed to Hindustani in both the scripts. May I ask him, does it mean that whatever Congress does, it does only by way of appeasement ? Has the secular State also been established by way of appeasement ? I maintain that India belongs to the people of all sections who reside here, and they are entitled to live here. Now, to persuade you to change your minds it is being said that Gandhiji had accepted Hindustani written both in Urdu and Devanagri scripts, as the national language, of India, and the Congress had accepted that proposition by way of appeasement only. I would like-to remind Seth Govind Das of his budget speech of 1945 in which he had said that he was sorry that he could not speak in Hindustani. Has he forgotten that only in three years time ? In 1945, Hindustani was his language but today it is Hindi in Devanagri script. May I ask him what is his reason for that changeover? In 1947 the Indian National Congress had agreed to make Hindustani, written both in Devanagri and Urdu script as the national language of India, but today we are told that only Hindi in Devanagri script could be the national language. The reason for this change is, as I have already told you, that after partition in 1947 Pakistan declared Urdu to be its national language and so its reaction in India has been mat Hindi in Devanagri script is being adopted. In this connection what I want to say is that along with Devanagri script you should agree to keep Urdu script also.

Take the case of forty million Muslims of U. P. Bihar, and Berar. At present they are getting education through their mother tongue *i.e.,* Urdu. Now, if you make Hindi as the State language, would it ever be possible for them to enter the Government service ? You have provided a time-limit-say 5 years or 10 years-to the other languages for this change-over, but why not to Urdu ? I am not opposed to Hindi, but when Hindustani is our language then why so much aversion to Urdu ?

You have already agreed that English shall stay here for the next 10 or 15 years; then why you are denying the Muslims their rights by banning Urdu script ? You have got a majority so you are, trying to ban it completely-to finish it. Why is this happening ? It is because, as I say, our passions are excited, our sentiments have gained the upper hand and finally it is the reaction.]*Pandit Govind Malaviya: *[Who says that?]*

Qazi Syed Karimuddin: *[This is evident from the resolution.]*

Pandit Govind Malaviya: *[Where?]*

Qazi Syed Karimuddin : *[Clause (1) says that the script, shall be 'Devanagri'. In U. P. there are thousands of Muslim government employees who are conversant with Urdu only; so, if you make Devanagri as the national language then it would not be possible for them to remain in service. Unless you give them ten years time to learn, they would not be able to learn Hindi. That is my request to you. I would like to tell the House that this thing was acceptable to you till 1947 and was also to Mahatmaji's liking, rather regarding which he used to say that he would fight for it : then why are his followers giving it up today and why is Urdu script being banned ? For this change-over there can be no other reason than what has been stated by Mr. Dhulekar.

Seth Govind Das has said that one reason for not accepting Urdu is that it contains names of Rustom and Sohrab. For that my reply to him is that when Hindustani, written in both Devanagri and Urdu scripts, is made our national language, then would there be no mention of the names of our Indian leaders in it ? If we retain English language for the next fifteen years, would it not contain stories of Lord Clive's and Warren Hastings' atrocities ? Therefore, if you discard Urdu simply because it contains stories of Sohrab and Rustom. who were Parsis, than to me, it is not a sufficient reason for doing that.

He has also said that there is no country which has not got one culture and one language, and he has cited Russia as an example. I thing that Sethji has not read the history of Russia. There are sixteen languages in Russia. Those, who have cited Russia's example, have contradicted him. In Russia, all government gazettes etc., are published in all the sixteen languages. I would regard it as an act of great highhandedness, if today by sheer force of majority you pass a law making Hindi written in Devanagri script, as the national language and discarding the use of Urdu script. To cite the example of Russia in this connection is utterly misleading.

Another thing which has been pointed out by the honourable Member from Jubbalpore is that to make the present form of Hindi, both spoken and written, intelligible an interpreter would be needed. If Sir Sapru were living today, he would have repeated what he had once remarked that if Hindi-wallahs continued to trudge on this path the day is not far off when without the aid of an interpreter Hindi would not be understandable. Hence I say that only that language, in which both Hindus and Muslims easily express themselves and exchange their ideas and which has evolved through common intercourse, i.e. Hindustani, should be made the national language. I hope that before coming to a decision on this issue you will keep those high principles taught by Mahatmaji, before you. His photo is in front of you. He is, as it were, looking at you to see how far you are acting up to them. You should not be carried away by mere sentiments.]*

Shri Lakshminarayan Sahu (Orissa: General) : *[Mr. President, I belong to Utkal (Orissa), yet I fully agree to the adoption of Hindi as the national language. The resolution before us has been drafted after much thought. I, therefore, support it generally. While supporting it I would say a few words about the amendment tabled by me.

We should first think over the cause of the dispute. It is whether there should be a national language or not. It is the view of some people that they cannot recognise any language as the national language, though they may agree to accept one language as the official language. This, however, gives me much pain. When we regard India as a nation and are trying to make it one, that is no reason why we should call it official language. We must call it national language. If one language is accepted as the national language, that would not imply that changes will be made in the languages of the various regions. I have, therefore tabled an amendment, that after five or ten years when a Commission or Committee is set up for promoting Hindi, it should also seek to promote the interest of every provincial language. When every province and every provincial language is developed, our national language will also be developed.

Some people say that Hindi and Hindustani are different, while others say that they are not. I have to pay attention to this question of difference between the two for one reason. It is this. All of us possess a brain--a brain whose capacity to remember words, is limited and not unlimited. So every man cannot learn all the words that 'any dictionary may contain. Naturally we have to select some words and reject others. This happens in the case of all the languages. You should just see that Sanskrit is the mother of all the provincial languages, and it contains so many words that, we can derive from it every word that we may need. But we do not always use that. I take the instance of a particular word 'Pavan' which is used in Orissa. This word is also in vogue in Sanskrit. It means 'air' but it does not get much currency, and in Bengali language no one understands this word. So I say that when we accept Hindi as national language, we should have to reject a few words.

And while accepting Hindi, we will also accept its literature. It is not possible to reject the literature while accepting the language. We should therefore accept the literature of Hindi, after we have adopted it as our official language. it cannot be possible to evolve a Hindi which only contains simple words and is easily understood by all the people of the country. This can never be the, case. When we speak English, we take care to speak it rightly and not merely to speak it in any way we may care to. Hence it is not a correct idea that we can evolve our national language in any way we like. Of course, it would be right to enrich Hindi by taking words from other languages, if the vocabulary of the former is not already complete. I therefore clearly support the appointment of the commission and the Committee.

One gentleman has moved an amendment that the Bengali language should be the national language. In that way, I can also claim the same status for Oria, which is far more ancient than Bengali. The latter was not born when Oria, had taken shape as a language. Similarly, my friends from the South would claim that their language is very ancient. This is not a right approach. There is no question of ancient or medieval. When we wish to adopt Hindi written in Devanagri as the national language, which is the right thing, to do, we should also keep in mind that the other provincial languages should also be allowed to develop in their own field, and their progress should not be handicapped.

Here I would like to add that some people are so much enamoured of English that they think they would lose their very existence if English is not used as the official language. It is like a drunkard saying that he would die if there is prohibition and he is not allowed to drink. If a few people die as a result of the replacement of English, what is the harm ? We have to move forwarded in the interests of the whole nation and the country, and if a few people are inconvenienced they should put up with it.

A new dispute regarding the numerals has also cropped up and the issue is whether the numerals should be of international form or of Devanagri form. The crores of our South Indian friends are, insisting that they would not yield on this point, even though they may concede other points. What should then be done ? They have become obstinate, for the world does not go by logic; sentiment also prevails. We should therefore accept the foreign numerals.

Then there is the question of accepting Sanskrit as the national language. If all the South Indian friends and others accept Sanskrit, I would have no objection and would accept it. Of course, there is the apprehension that Sanskrit is a difficult language, and it will take a long time to learn it, but this is a different matter. The Hindi speaking areas are in a majority, hence Hindi should be adopted as the national language. But the effect of this should not be the extinction of the various provincial languages and their literatures. Every provincial, language should be protected and the Commission or the Committee formed in this connection should take care of it.

In the end I would only say that those who advocate the use of Roman script do not understand the very principles regarding the genesis of the script. The Sound of the language, which is used to express it, is formed into the script : When written in Roman script, Hindi is difficult to understand and cannot be pronounced correctly. Hence, I say, the Roman script is totally unacceptable : it is ugly and has no scientific basis. Hindi written in Devanagri script is most scientific and should be accepted.]*

The Honourable Shri N. V. Gadgil (Bombay: General): Mr. President, I do not want to make a long speech. From what I heard yesterday and this morning in this House and from what I see in the List consisting of 350 amendments, including one, to my discredit I should say, from me, I am impelled to make an appeal to the House to rise to the occasion and end this controversy.

Sir, the amendments range from the acceptance of Sanskrit as the national language to the retention of English for at least one century more. In this context, I do feel that the sense of responsibility with which we have so far carried on the deliberations on far more important topics should be appealed to.

As I analyse the proposition moved by my esteemed Friend Shri Gopalaswami Ayyangar, I think that that is the best in the circumstances. It does not mean that that is the right one under the circumstances. But let us not aspire to solve all the problems simultaneously. Let us leave some of them to the next generation to solve ten or fifteen years hence. What I find is that certain broad principles or broad facts clearly emerge from this proposition. No. I is that there is a fair measure of agreement on the fact that Hindi should be the official language of the Union. I think a declaration of that kind is an achievement. I find also the important fact that the script should be Devanagri. I think to have one script for the official language throughout the Union territory is also on achievement.

I further find, Sir, that there is a spirit of give-and-take in this proposition in as much as an interim period of fifteen years is contemplated during which those whose mother-tongue is not Hindi will have an opportunity to pick up Hindi and get themselves familiarised with it.

After all, the only difference that I find from the various amendments and the speeches relates to the numerals. It will be a sad tragedy if we were to hang the unity and solidarity of this Country on the cross of numerals. I therefore appeal to my Hindi friends with whom I agree in theory-but being a practical man-somebody has credited me with being a politician-I appeal to them to leave something to the next generation; Let the future solve this question of numerals. I do not think. it is such an insurmountable thing that it cannot be solved, given the necessary goodwill, but in the present context where I find a good deal of emotion and passion and play of personalities also, whatever efforts we may make now, instead of bringing the parties together, they win result in something contrary. I therefore appeal in particular to my esteemed Friend, Shri Purushottam Das Tandon that like a big brother he must make a gesture. Hindi today admittedly is a provincial language.

Mr. President : I request the speaker to make no personal reference. It places the gentleman referred to in an awkward position.

The Honourable Shri N. V. Gadgil: I accept your ruling and the reference may be deleted from the proceedings. After all, Hindi is a provincial language. There are languages in which literature is far more rich, and yet we have accepted Hindi as the national language. That itself is a great achievement for the Hindi people, and if you want to persuade others, the best way is not with the strength of your voting numbers but by persuasion, by tactfully handling the situation; if in the course of the next ten or fifteen years the Hindi people were to approach the non-Hindi people through the, various means of propaganda, I have not the slightest doubt that those people who have taken to English in the course of the last century and a half, will not fail to take to Hindi.

After all, there is not a single Indian who, if he is asked whether he would have English or any of the Indian languages, will vote for English, instead of any one of the Indian languages including his own mother-tongue. So, let the Hindi people go about their task with hope and faith just as they have done in the past and win over the rest by propaganda, not in an aggressive manner but in a persuasive manner. The proposition that has been moved itself provides the procedure whereby what they desire can be achieved, in a much better way than exists today.

In the course of the last three years we have not taken any important decision by going into the lobby. Let us not depart from that record. Let the world know that on all important questions, those which constitute the foundations of the Constitution, the decisions here were taken unanimously. If the decision today is taken unanimously, it will not leave any feeling of bitterness; but, as I said, if the Hindi people who constitute a majority in the country and also perhaps in this House, make that gesture, I think the judgment of history will be to their credit. I do not want to take up the time of the House further, but I do hope that what I have suggested will be acceptable to the House.

Shri T. A. Ramalingam Chettiar (Madras: General) : Mr. President, Sir, this is a very difficult question for us from the South to solve. It probably means life and death for the South. unless it is going to be handled in the way in which it ought to be done. Well, Sir, for us coming from the South to go back and face our people with any decision you are going to make here, you will see what it will mean. I have been told by friends of the North that if they were to yield on the question of numerals, they will be twitted by their voters and that they will find their life difficult when they go for elections. What will it be like when we, giving up our own languages, adopt the language of the North, go back to our provinces and face our electorates ? They do not seem to care for out position. Sir I have great admiration for the Hindi people for their great patriotism and the perseverance and the pesistence with which they are enforcing their decisions, but at the same time they will have to realise that we too may have some patriotism like that, we may have some patriotism and love for our language, for our literature and things like that.

After all, where do we stand ? We have got languages which are better cultivated and which have greater literature than Hindi in our areas. If we are going to accept Hindi, it is not on account of the excellence of the language, it is not on account of its being the richest language or on account of its being, as it has been claimed for Sanskrit, the mother of other languages and things like that. It is not that at all. It is merely on account of the existence of a large number of people speaking Hindi, not even a majority of the population of the country, but only among the languages which are spoken in India, Hindi claims probably the largest number of people. It is only on that basis that they are claiming that Hindi should be accepted as the official language of the whole country. Well, Sir, being practical, we do not claim that our languages which are better cultivated, which have got better literature, which are ancient, which have been there for millenniums, should be adopted.

Mr. President : May I make a request to the Members that we should not compare the literatures of different languages. I do not know whether any Member here knows the literature of the different languages that are prevalent in the country and when any Member says that his own language and literature is richer than that of this language or that language, he propounds a proposition which cannot be accepted, and the thing is not carried any further by that kind of argument. Let us confine ourselves to propositions which are ordinarily an generally acceptable and not enter into controversies which can be avoided.

Prof. N. G. Ranga (Madras : General): How is it possible to make out your case unless you compare one with the other.

Mr. President : You may make up your mind but do not say so.

Prof. N. G. Ranga : I do not think it is reasonable.

Shri T. A. Ramalingam Chettiar : Anyhow, I was saying that the claim of Hindi is not based on its literature, its antiquity or anything like that. Well, Sir, such being the position, I want the Hindi speaking brethren sitting here to consider whether they I are justified in making the claim for everything they want and putting us, coming from the South, in the false position which we will occupy if we are going to accept all their claims. That is the things which I want them to consider and consider deeply.

Sir, on account of the realities of the situation, as I said, we have accepted Hindi in Nagari script as the official language. I however said that you cannot use the word national language, because Hindi is no more national to us than, English or any other language. We have got our own languages which are national languages and for which we have got the same love as the Hindi speaking people have got for their language. We have agreed to Accept Hindi and the Nagari character as the official language. and script because, as I said, that language claims a larger number of people speaking it than any other language in India. If, for that reason alone, you are going to say that you ought to change over tomorrow, if you are to claim that it ought to be adopted As the official language today or tomorrow. I think it would not be accepted by the people. It would lead not only to frustration and disappointment, but something worse.

I may say that the South is feeling frustrated. If there is the feeling of having obtained liberty, freedom and all that, there is very little of it felt in the South. Sir, coming here to the capital in the northern-most part of the country, and feeling ourselves as strangers in this laud, we do not feel that we are a nation to whom the whole thing belongs, and that the whole country is ours. Unless steps are taken to make the people in the South feel that they have something to do with the country, and that there is some sort of unity in the country, I do not think the South is going to be satisfied at all. There will be a bitter feeling left behind. To what it may lead, it is not easy to say at present.

I have been saying that one of the most important questions is the question of the capital of India. The question is a very important one. People laugh at it sometimes; they do not know the seriousness of the matter. When a man has to come two thousand miles and do his things here, he naturally feels that he is not in his own land. He feels as if it is a strange country to which he has come. In the social life of Delhi, how many Madrasis have got a share, I ask the question. I have been here for the last two or three years; I know very few people in Delhi or U. P. That is the state of affairs. Unless things are made easier for the South, unless the capital is taken to a place, which will common ground for all people, which would not be claimed by the U. P. or the Punjab as their territory, the Southerners will feel that they are going to a strange land. It has been said the other day that the Madras is are holding positions. Does it show that there is any nationalism here ? Why should not Madrasis hold position if the Punjabis and people from the U. P. are not able to fill up those positions ? After all, if you claim that you have made progress within the last two years, is it not those people who are now at the helm of affairs that have contributed to that'? Sir, such things are not going to lead to unity.

This question of language is much more important than even the question of capital, the question of offices and things like that, If you are going to impose. anything and leave a feeling that you are going to impose it on other people, whether it is a real imposition or not, whether as a matter of fact, as somebody said, it is the natural course to which we have come and we could not avoid it, even if it is so, if there is this feeling that there is this imposition, of the North over the South, it will lead to very bitter results. I do not want to say anything by way of telling my friends in the North that things will go wrong, But at the same time, I think it is necessary for them to realise that, after all when we want to live together and form a united nation, there should be mutual adjustment and no question of forcing things on people who may or may not want it.

After all, what is it that we have asked for ? We asked for time for preparation. That is the first thing that we wanted. It was agreed to by the leaders on the other side. They said that they will allow fifteen years for preparation. What does the draft say? The draft goes back upon it. In the first clause it says, for fifteen years English will continue, In, the second clause, it says there will be appointed a Commission or a Committee after five years and the Committee will recommend for what purposes Hindi can be introduced and the President may issue orders- accordingly. What does it mean ? At least with reference to these matters with reference to which order will be issued, the term of fifteen years has been cut down to five. Then you say, after ten years, you are going to appoint another Commission and that Commission is to report and on that report, orders will be passed. What does this mean ? You are only saying that you are allowing fifteen years; but at the end of five years, and at the end of ten years, you are going to introduce Hindi with the natural result that we who are not able to take our part in the administration, in the Government, in the legislature and elsewhere will not be in a position to take our share because we are not prepared by that time. It is only giving a hope in the first portion of the section and taking away that hope and giving us mere stones in the latter portion of the draft.

I do not know who is responsible for the draft. I have no doubt that Mr. Gopalaswami Ayyangar has come out to propose it. But, I for instance cannot at all accept it unless the fifteen years period is made real and not merely chimerical by the introduction of these Committees and Commissions and changes which are expected after the fifth year and the tenth year. That is the main thing with which we in the South will be concerned.

The South is the only part of the country probably which does not feel that it is going to come into line with the other provinces soon, especially my part of the country where Tamil is the language spoken. We have been priding ourseleves that we have had nothing to do with Sanskrit. We do not claim that Tamil is derived from Sanskrit, or is based on Sanskrit in any way. We have been trying to keep our vocabulary as pure as possible without the admixture of Sanskrit. Now, we have, to go back upon all that. We have to take words from Sanskrit; we have to change our whole course of action. What it means to the people who have been brought tip in their own language, who have been priding themselves that their language has been independent of Sanskrit, and that that is the only language which can stand against Sanskrit, you have to consider. In that position, we are to prepare ourselves first with reluctance to give up our old position and take to a study of Hindi or Sanskrit. You will have first to educate the people, I mean make them reconcile themselves to the new order of things. Then, they will have to take to the study of Hindi, to enable them to take their place here among those whose mother tongue is Hindi.

Not only that, you are permanently handicapping us. Those whose mother tongue is Hindi they learn only Hindi. But, we in the South, we have got to study not only Hindi but also our own mother tongue; we cannot give up our mother tongue. There is also the regional language; we have to study that. Permanently, for ever, you are handicapping us by this arrangement. You in the North will have to realise what sacrifice we are making.

After all, what do we ask for in return ? We say, do not complicate matters by having not only the script, but also the numerals. The numerals are being used for purposes of accounts, for purposes of statistics and other things. You want to take away not only the language and the script, but also the numerals. You say that our accounts will have to be kept hereafter in the Hindi numerals if you are going to produce them before the Income-tax authorities. Sir, we have been habituated to these numerals for ever so long a time. After all, the question of numerals is not a question which concerns the South alone. It is a matter of convenience and it is a matter on which people both in India and outside are concerned; statistics have to go outside, Things have to be put in the accounts and sciences in a particular numeral. If you are going to say you have to adopt Hindi numeral, what are you going to do for other purpose? If you are to study anything from outside whether science, banking or anything else, everything will appear in other books only in the international numerals.

After all what is the objection to international numerals ? It is only on the ground that we ought to have 100 per cent. Hindi, because you have agreed to adopt the Hindi language in the Hindi script, you better adopt the Hindi numerals also. You do not care what results from that. After an, the whole world is adopting international numerals. Why should you fight shy because you want to dominate the whole of India ?

it is much more the spirit that actuates the people that is so difficult to meet. It is not even the things that are said-we have given up our language in favour of Hindi-but the way in which the Hindi speaking people treat us and the way in which they want to demand things that is more galling than anything which actually is done or is going to be done. That is the way in which it is said- 'of course you ought to accept'. That is the thing that exasperates us. I appeal to the North Indian people not to take up that attitude, to have a feeling that we are all living together in a common country, we have to create a nation-there is no such thing now-and that unless there is give and take, unless they are also prepared to adjust themselves and not demand everybody to adjust according to their dictates. It is only then that India can proceed and ran be successful and form a united nation.

Otherwise I shudder to think what may be the future for us. There ought to be accommodation. I need not say that history has taught us that if there is trouble the outlying places will always try to take advantage of the trouble. We have the example of Burma and other countries. Supposing tomorrow there is some difficulty here, what will be the position? Unless you weld the nation and you make everybody feel that they have got a share in the country and it is their country, unless you do that, if you go on keeping the spirit of domination of one part over the other, I am sure the result is not going to be for the progress or for the safety of the country. Sir, with these words I appeal again to the Hindi speaking people to give up their attitude of domination and of dictation and to adjust themselves.

Shri Satis Chandra Samanta (West Bengal : General) : Mr. President, Sir, I have moved amendments Nos. 223 and 278. In 223, I have proposed that Bengali should be taken as the official or national language of India. As regards language, children-learn language even in the laps of their mother and the language they talk is called the mother-tongue. Everybody loves his mother-tongue. Now we are in need of an official language, a national language for the administration of our country. So, there should be no controversy about the mother-tongues and languages used in different regions and so I have no grudge against any of the languages but I respectfully submit to put the case of Bengali before this august House for their favourable Consideration.

Bengali is a rich language; it has a long history; it has an ancient and a brilliant literature; it has its philology and the like. So it will not be out of place to put the case of Bengali for the acceptance of House. I know most of my friends are bent upon taking up a language which will be more intelligible to the people of India. I would say that only intelligibility to the largest number should not be the criterion, other things also should be taken into consideration. We are taking a language to be our official language or a national language and we should expect which it that we should try to make it one of the international languages. So if we have that point in mind viz., that we should make out national language an international language,-then we must see which of the languages of India has some place at least in the international world. I would submit that Bengali is taught in foreign Universities such as Oxford, Warsaw where Ravindrology is taught in Harvard in the U.S.A. It has also been recognised in language institution in Paris, Munich, Moscow and in Rome. So I submit that Bengali has some international connections. The vocabulary of Bengali should now be taken into consideration.

There is the question of scientific terminology, Shri P. C. Ray, Jagadanda Roy, of Santi Niketan the late Principal G. C. Bose of Banga Basi College Ramendra Sundar Trivedi and others tried their best and coined scientific terminologies in Bengali. There is a monthly magazine known as *Gyan Vigyan* devoted to the development of such scientific and technical terms. The Bengali language has all these things.

Over and above these, I would beg of you to consider the case of our revered poet Guru Dev, Shri Rabindranath Tagore. It was he who established the Viswabharathi and in that institution, he has made arrangements for the teaching of Bengali and all the other languages of India and even for some languages of other countries. Rabindranath's name is well-known to one and all not only in India, but all the world over. There is not a single man or woman here in this House who does not know this name. Rabindranath's lyrics and songs are learnt and sung by all. They have been translated into the various languages of the world and they have been treasured by all of them. In Calcutta University almost all the Indian languages are taught even in

Post-Graduate classes.

Another thing I would draw your attention to, is this. We are now a free nation and in our freedom's struggle, we were all inspired by that great song Bande Mataram; for this Mantram thousands have made sacrifice. For Bande Mataram thousands have sacrificed their property and all. This song inspired one and all in India and this Mantra was given to us by Bankim Chandra Chatterjee in his Ananda Math". So I would invite your hearts and mind to this fact, when you are going to select your national and official language. Sir, I have no quarrel with any one, language I would beg of you to see that Bengali contains Arabic, Turkish and Persian words right from 1200 A. D. Later on it has drawn on from Portugeese, French, English languages. Though originally Bengali was Prakrit, and therefore it contains a lot of Sanskrit words, it has grown by drawing from all these other language also. I would beg I would beg of you to consider this also when you are selecting the official and national language.

Time-honoured customs, culture, literature--all these are there in Bengali.

I would also add that Bengali has advanced in another direction also. It has got Bengali typewriting machine. The Bengali Lino-type machine has been made by Shri Suresh Chandra Mazumdar of *Ananda Bazar* an honourable Friend of mine of this august House. There has been Bengali shorthand from 1915. So official work can easily be carried on in this language. It will be quite suitable for such work in India.

Sir, a lot of controversy has been going on and I do not want to enter into any of them. I put forward before you the case of Bengali and I may say that for my part I am ready to accept the language which will be accepted by the overwhelming majority of this House. But it should not be less than three-fourth of the House, because if it is less, then there will be controversy and the people will not accept that language heartily. It is true that those people who will have to learn the national language will be put to some difficulty. We Indians have suffered so much and sacrified so much for attaining freedom for our country. Can you not suffer a bit for the national language of our land We should, and everybody should, be prepared to make that little sacrifice. The responsibility lies on us. We should select that language which will be acceptable to all and for which they will be prepared to make a little sacrifice. Sanskrit has been mentioned. Hindi has been mentioned. I am not going to say anything against them, because every language should be respected. I would request friends here not to get into controversies but to put their cases safely and justly so that the language selected may be acceptable to all of us. With these words, Sir, I commend my proposition for acceptance of the House.

Shri Algu Rai Shastri (United Provinces : General) : *[Mr. President, with your permission, Sir, I beg to move a small amendment to the amendment moved by Shri Gopalaswami Ayyangar and request the House kindly to accept the same. My amendment runs thus-

"That in amendment No. 65 above for the proposed new Part XIV-A, the following be :substituted :

'New Part XIV-A 301(1) The official language of the Union shall be Hindi in Devanagari script.

(2) Notwithstanding anything contained in clause (1) of this article, it shall be open to the government of the Union to use English for the purpose for which it has been in use all these years. during a transition period

extending over fifteen years at the most.

(3) It shall be the duty of the Government of the Union to encourage the progressive use of Hindi in Devanagari script in Government affairs in such a manner that after the end of the said transition period of 15 years Hindi may replace English completely'."

You will find that the amendment moved by Shri Gopalaswami Ayyangar is so lengthy that it constitutes a volume in itself. We are going to frame a Constitution and a Constitution should embody only fundamental principles. Article 99, as originally drafted by the Drafting Committee, briefly stated that the language of the Parliament shall be Hindi or English. The question was dealt therein in a very few words. But the amendment moved by Shri Gopalaswami Ayyangar contains many extraneous matters. When I read in the original article drafted by the Drafting Committee for the first time these few words contained in it, that the language used in Parliament shall be Hindi or English, it made me think that the whole question of language had been put in clear and definite terms.

English of course had become indispensable to us only for the reason that our country had been under the yoke of British imperialism for the last two centuries and the alien ruler imposed his language on us during that period, This imposed language dominated every aspect of the life of our country and became supreme of course in central administration. Even today it appears to be occupying a very prominent position. Till recently English held a dominating position in our country.

When we started the movement for our freedom, we had an ideal before us. What was that ideal? What was the objective for which we launched the struggle for freedom?' We wanted complete freedom from the British domination, we wanted swaraj (self government). We had visualised a picture of 'Swaraj'. This word 'Swaraj' is a Sanskrit word and it has become current in Hindi also in its original, sense. It has a very comprehensive meaning. It means 'self' that is one's individuality, personality are all included in this word. Politically it implies that we are one nation and one country.

We have a common and ancient history. We have a common language having a rich literature of its own. This Vedic Sanskrit-the ancient form of our language-was for long in dominant use in our country. But a language never remains stationary. Our language also underwent some changes. But this was what happened in the case of all other languages. Thus the ancient form of the English language which is being so much extolled here every day was not the same as that is today. I have just read a book from which I find that in olden days the word 'King' was spelt as 'Kynge' and was pronounced in a different way. The ancient style of English was also very much different from the modern style. There were only a limited number of words in English. Some specimens of that English can be found in what Karl Marx wrote about the Industrial Revolution in Britain. An historian has depicted the deplorable condition of the villages in England when the lands of the peasants were acquired in order to promote the trade of wool in foreign countries and farms for rearing sheep were established on them. an event on which the famous book *"Deserted Village"* was written. Some extracts from the history have been, taken by Karl Marx in order to give a picture of their conditions and these extracts are to found in his famous book *"Das Kapital"*. The language in which the condition of their English village is depicted provides us with a beautiful specimen of English used in those days.

The language current in those days bears no relation to the modern English. There is a wide difference between the style of ancient English and that adopted Ruskin, Dickens, Shakespeare, and Milton. It is thus plain that language never remains static. It is changing and developing. Similarly the language which we are going to make the national language of the land has descended from the very Vedic Sanskrit which was at one time a living language and was for centuries occupying a place of honour in our country.

We had been aspiring to recapture our fundamental and real self. The rose plant of our national life had so long remained buried deep under the ice of subjugation. Its leaves had withered, its flowers were dry and dead. Only one of its stems-I mean language-had some life left in it. But even in the darkest hour we knew that spring would return, we were sure that the ice of Subjugation will melt and our rosy life would bloom again, and we knew that the plant of our life would send forth beautiful rose flowers of its own. Our country had remained for centuries under foreign rule. Our rich and fertile plans were invaded by foreigners many a time; ultimately we lost our freedom and became slaves of the foreigners. We have always been making an effort to throw off the yoke of foreign rule. The national movement for freedom was but an aspect of this perennial effort of our people.

The movement for liberating ourselves which our people have carried on had a long history. The last phase of our armed efforts for liberation was the battle that we were forced to fight against the British Imperialist in 1857. The movement of 1857, known as the mutiny, was but an expression of that striving of our people for freedom. While the Objectives Resolution was being discussed in this House I had said that that movement of 1857 had been fertilised by the blood of such martyrs as the Rani of Jhansi and Bahadur Shah, the Begums of the Nawab of Oudh and Tippu Sultan, Tantia Tope and Nana Farnavis.

Ultimately the leadership of Mahatma Gandhi had made it possible for us to witness that dawn of freedom in which we had assembled to pay our homage to the great departed and sing the songs of our freedom. Now that we have attained *swaraj* it should be possible for our *'swa'* (self) to manifest itself. It is a matter of deep regret that there are some people here today who say that we have no language of Our own and that in fact we have nothing in common and that we have to create and develop all these things anew. But I would like to tell them that we do possess a language that is common to us, that is understood by a large number of people of this country. At least that is my experience.

In 1942 while returning from Bombay I had to rush straight to the Frontier Province. Khan brothers are not here amongst us and I may add that their absence is a source of agony to our hearts. But I had on that occasion the pleasure of meeting, the Khan brothers in a camp on the bank of river Sarab. What do you think was the language in which I carried on my conversations and talks with the common volunteers in that camp ? It was not Pushto. It was in no circumstances English. Will it surprise you what I tell you that it was simple Hindi-the Hindi in which I am at present addressing the House-that I talked with the volunteers and I found that they understood my Hindi quite well. Previously in 1928, I had accompanied Lal Lajpat Rai to Madras; I may inform you that there also I had talked to the people in Hindi, for the very simple reason that I am not accustomed to speak in English. Is it necessary for me to say that all those with whom I had occasion to talk understood my Hindi well and it may surprise some of my friends to learn that people there also talked in Hindi with me ?

During the Congress session of Cocanada, the annual session of the Hindi Sahitya Sammelan was also held there under the Presidentship of the late Shri Jamanalal Bajaj. I had there the occasion to hear a recitation of Hindi poem by some local girls. Perhaps a better recitation than that cannot be given even by the people of northern India.

What I mean to convey is that Hindi is understood in every province and we are pledged to make is our national language. It was Mahatmaji who gave birth and inspiration to this idea. We wanted that we should be free and that the English should go away from our land. We had hoped that with the departure of the English people their language would also disappear from this land and that we would be able to use our language in place of English. We had not learnt English voluntarily. It was introduced here under the scheme prepared by Lord Macaulay. The alien rulers wanted cheap clerks and to this end English was taught us. Those who learnt this language at the initial stage of its introduction came in close contact with the administration and the government and this, as was natural created a love in them for English.

We had thought that with the arrival of freedom, our dress, our language, will regain their lost position and that freedom in its wake would bring new ideas, sentiments and inspiration to us. The dawn of independence has actually brought all this with it :

> One who loves his language, dress and diet will never fall into the subjection of others. There was a natural longing in the people's mind to bring the national language to its own in free India.

The question may be asked as to what is our national language. There is no doubt that Sanskrit is the mother of all the languages spoken in India. An of them are derived from Sanskrit; for their vocabulary they have drawn upon Sanskrit which is an inexhaustible source of words. But Sanskrit, the mother of the current Indian languages, cannot be enthroned today on the pedestal of the national language. Its eldest and the seniormost daughter alone can today be the national language. There are many other people, Sir, in this country, but God has bestowed upon you the ability to adorn this high office and we earnestly wish you to be the first President of the Indian Republic. Who does not aspire for this office? But everybody has not the merit to occupy this august office. If we want that the President of the first Constituent Assembly of India should be the first President of the Indian Republic, does that mean that we are making any exaggerated claims or that we are giving vent to avarice ?]*

Mr. President: *[The Honourable member is talking beside the, point.]*

Shri Algu Rai Shastri: *[Discussion as to what should be our. national language, implies our acceptance, of the fact that English cannot be our national language. Now the question arises as to which one of the languages current in the country can be made the national language of our State. Hindi alone has acquired an inter-provincial status. A majority of the people of the country speak Hindi.

Some non-Hindi speaking friends have claimed that their literature is richer than ours. I may concede that claim, but can they honestly say that the number of the people speaking their language is greater than that of those who speak Hindi. If the answer be in the negative, I would like to ask them, which course would be more proper whether to replace English by a language and a script that is spoken and written by a majority of the people or by some other language? Hindi has rivalry with English alone. It has no rivalry with Bengali, Telugu, Tamil, Canarese or Pushto or any other language. The English Government has gone, II. English Governor-General and Governors have gone. Now an Indian Governor-General and Governors have been appointed In this context it is but fit that an Indian language should also take the place of English here.

Having due consideration for all the relevant factors relating to a language, I mean simplicity and intelligibility, etc., etc. Hindi alone can be. the national language of our State. The supporters of Hindi have no quarrel or hostility with any one. They support Hindi only because Hindi alone can claim to be the most popular and widely spoken language in India. I fail to see why any one should feel in his heart that the Hindi speaking people want to impose Hindi on non-Hindi people ? There is no question of imposition. It is the House or the Drafting Committee that have suggested that Hindi shall be the Official language of the State and the Parliament. If this is taken to be imposition, it is not from us rather it is from the House or the Drafting ,Committee.

Other Indian languages have not acquired an all-India position, they are confined to their own regions. May be that some of them are spoken by a few people outside their regions also, but no other language has acquired an all India importance, Hindi is spoken in U. P., Bihar C. P., Madhya Bharat, Rajputana and Peshawar. It is understood in almost every province. A language that is so widely spoken must be made the national-language of the Indian Union.

The credit for making Hindi the official language of the Union does not go to us the Hindi speaking people, but in fact it goes to others, who though they cannot speak Hindi fluently, have no command and control over Hindi and have not had any long practice in its use yet admit that Hindi is simple and intelligible.

It may not be out of place if I mention a few of the merits of Hindi script. One of my Friends here has suggested that we should adopt Roman script. He is a learned man, who can doubt the learning of my honourable Friend, Shri Anthony ? But we should consider every aspect of this script. There are two kinds of script one the shorthand script and the other ordinary or longhand script. It is necessary in the longhand script that a word be written exactly in the way it is pronounced so that there may not be any mistake about its correct pronunciation. That is. the most characteristic feature of the ordinary or longhand script. But in a shorthand script different devices are adopted to represent the greatest number of words with the minimum number of signs.

We begin the primary education of our children with our script etc. If we say but use it to represent the sound of it would be an unscientific method and we will be imparting a wrong training to our children, if we adopt this method. A B C D etc. are the alphabets of the Roman script. We use A & B to represent the sound of Similarly the letter C is used to represent the sound of This is not at all scientific. Rather it is an atrocious script. This is a very sericus defeat in the Roman script.

The Pitman's shorthand system has also adopted, as the reporters here are well aware, a script based on phonetic system of the Hindi script. Pitman adopted the phonetic arrangement of the letters for formulating his system. The shorthand reporters have found that arrangement to be very easy and have adopted it.

Therefore, the controversy regarding the script should end. So far as script is concerned, Roman or any other script can bear no comparison to the Hindi script. The Hindi script stands far superior to any other script. As I have already said the letters of a script should have a definite and intelligible phonetic basis.

From this point of view the Urdu script also is found to have the same defect that is found in Roman script. There the pronunciation of letter and the sound they represent are quite different. The letter 'Alif' is used to represent the sound of ; we pronounce 'Lam' but this letter represents the sound of. If we have to write 'Lokat" we will use the letters 'Lam', 'Wav', 'Kaf', 'Alif' and 'Tey'. The pronunciation of letters, in Urdu have no relation to the sound for which they are used. In a longhand script this should not be the case : of course in a shorthand script we may do so.

On the other hand the script and the alphabets of Hindi are not only simple but can also be learnt with very great ease. The pronunciation of its vowels is simple and scientific. The fact is that they can be pronounced with natural ease and they are also pronounced very clearly. Thus the vowel occurs as the first vowel of the Hindi alphabet and possesses a simple sound unlike the vowels of the other scripts. It stands for one single sound and not for any other. The other vowels also have the same scientific character and are all scientifically arranged. Moreover the Hindi alphabets are divided into certain groups according to the order of their pronunciation.

We have thus the classification that the vowel and the ' consonant group and are pronounced from the throat, while the vowel the consonant group and are palatal in pronunciation. In this manner the other consonants and vowels are also arranged according to the part of the vocal organs through which they are pronounced. Again the different letters and the groups have also been assigned to different deities--some to 'Indra' and some to 'Varuna' and so on.

It is plain, therefore, that no student can have any difficulty in mastering this language which is entirely scientific in character. I believe that any student can very well pick up--any, even master-its alphabets within a few weeks. I believe that the scholarly and distinguished lawyer members of the Drafting Committee also had an appreciation of this fact, for they also have in their draft provided for Hindi in Devanagari script as the official language of the Union. I add that even if only Hindi is referred to in the Draft, it would imply the use of Devanagari script as well. Just as we also imply the use of the Roman script when we refer to the English language.

Under that Draft English shall continue to be our official language for the next fifteen years. None of us can deny that the use of that language is essential for carrying on our work and that we cannot totally remove it earlier. All of us, therefore, agree that we shall keep English for our administrative and official purposes for the next fifteen years. But it is my belief that within this period of fifteen years, all the Government officials would be in a position to have a very good and sound knowledge of Hindi. I do not doubt in the least that they can do so with the greatest possible case and convenience. The period of 15 years is not a small one. Hindi also is not a difficult language to learn. In any case it is not such as cannot be picked up by our

Government officials within this period.

I am reinforced in my belief by the consideration that the members of the I. C. S. used to pick up several Indian languages within the period of two years of their training. It cannot, therefore, be doubled that these very people would be able to learn Hindi very well within this period of fifteen-years. I know that they are men of ability. I also know that they have all the facilities and opportunities for learning Hindi. I know that they are officials of an Independent Government and are men of learning and light. It is, therefore, my conviction that these people can have a very sound knowledge of Hindi within this period.

English is not a language which is the language of the people of any part of our country. Besides it is not the official language of any of these regions. So far this language had been that of the ruling class of the alien Government. It was, in other words, a language of their offices and people working in those offices for the benefit of the alien rulers. But this foreign language was mastered by our administrators and civilians through great labours. I put it, therefore, to you that if they could master of foreign language-the language which did not have its origin in this country, a language which had been brought to this country by foreigners and which had been imposed on this country by those foreigners as the official language for their own advantage and benefit--could be mastered by those of us who wanted to go in for administrative services, I put it to you, can it be said that these very people would not be able to put forth sufficient efforts to master Hindi which is a language of their own country? When you could go through such hard toil and labour for mastering English, I believe, you will have to put forth much less labour to learn Hindi which is much simpler than English and can, therefore, be learnt with much greater ease than that foreign language.

Even our children would not find any difficulty in learning this language. In this connection I cannot forget that many of the existing administrators would be retiring sooner or later. Those who would be filling their places can very easily learn the Hindi Language within the period of fifteen years which has been provided for in the Draft.

I would like in this connection to state that if we have to make Hindi our national language and to develop it for all our purposes; it is essential that every man of learning in this country should acquire a thorough knowledge of Hindi. This does not imply that Hindi would be, in any way, taking the place of the regional languages. If would not do so. Its evolution however is essential. English is a language that had been evolving from the very beginning. It has also been for centuries the national language of another country and that country has imposed it on other countries as well for its own benefit; but our children who have had to learn it under compulsion, have become denationalised. Their ideas and sentiments have been more or less anglicised and they have begun to approach the problems of fife from an alien point of view. If is plain, therefore, that English cannot be our national language. Besides we have not to remain tied down to the Dominion of Britain for all time to come.

it is, therefore our duty to consider that after the advent of freedom, it is essential for our dignity and self-respect that we should have a national language. We know fully well the good and the evil that English education. It Is an order that the people of this country may proudly claim Hindi as their national language and Devanagari as their national script that it is necessary that Hindi also should evolve. We should not be governed by narrow or selfish considerations and if we approach the problem of national language with that broad vision, we would succeeded. But if we do not do so, instead of making any progress our country will go down in disaster.

In this connection I would like to refer to the example of Estonia and Lithuania which had made a demand for their independence after the last Great War. Their main reason for demand of their freedom was that under the alien rulers attempts had been made completely to suppress their language and that they had to carry on an intensive struggle and undergo any amount of sufferings for protecting and maintaining the existence of their own language These petty States are not bigger than the district of Gorakhpur in our province. These people had protected and defended their language against the attempts of the Germans to suppress them. If they could do so, it is our duty also to do the same.

I would like to make it clear that all of us here want the development and promotion of the regional languages, for all of them are very dear to Hindi Several of these regional languages are very sweet and very well developed. Naturally I cannot and do not lay any claim to the superiority of Hindi as compared to any of the regional languages. But from the inter-provincial point of view, I can say that Hindi has a better claim for adoption as the national language, because it is not a language of any one province alone. If is the language of many provinces. I concede that there have been great poets in other languages as well and I would not like to institute any comparison between them and the poets of Hindi, such as Kabir and Tulsi. It is not necessary for me to go into this kind of comparison. I do concede that the Tamil Veda of Shri Tiruvalluvar of the Deccan is as great a composition-probably greater-than that of Kabir. I do not dispute, therefore, that great literature exists in other languages as well.

But I submit in all humility that the number of people speaking Telugu or Tamil is very much less than that of the people speaking and understanding Hindi. So far as I am concerned, the question whether a regional language has a great literature or not, is quite irrelevant to the decision of the question of the official language of India. We have to choose one language for this purpose and if we were to follow the principles of democracy and the rule of majority decision, we will have to accept Hindi, far from all points of views-it is an undisputed fact that the number of people speaking Hindi is greater than the number of people speaking other languages. Besides it is a very simple as well as a developed language.

I cannot resist the temptation of citing a few passages from the works of the great Hindi poet, Surdas, in order to give you an idea of the high level of development reached by Hindi.

> "Piyabinu nagini kaladi raat, Kabahunk
> yamini hoti Junahiya, Dansi ulati hai jaat,
> Mantra na footat yantra nahi lagat, Ayu
> sirani jaat, Soor Shyam bin bikul birahini,
> Muri muri lahiri khaat."
>
> "Alas, my darling is away, The snake like
> night curls and curls, The fangs of lightning
> pierce my heart, Incantations or amulets-
> nothing avails, While my life is ebbing
> away, The separation of Shyam says Sur,

'Keeps the lady love in paroxysms of pain.'"

I would like any one here to give me a parallel passage from the literature of any other language. I may add that the Hindi literature is full of numerous gems one better than the other. Thus I may cite a passage from Tulsidas which is as follows :-

"Arun parag jalaj ari neeke Shashi hi
bhoosh ahi lobh ami ke." "The tender and
delicate Lotus Its basom red with passion
Rises in a waving, Serpentine motion To
kiss the moon or sucking nectar."

The reference is to Ram applying Vermillion with his hand to the moon like face of Sita, his betrothed.

Mr. President: *[I would like the Member to remember that this is a Constituent Assembly and not a poets' gathering.]*

Shri Algu Rai Shastri : *[Sir, I was just giving an illustration in order to refute the suggestion that the Hindi language is undeveloped and does not have any literature worth the name. This assertion has been made here and I felt it necessary that something should be cited to refute it and to show that Hindi has a great and extensive literature.

But I would like to submit, Sir, that we are not demanding the adoption of Hindi as the national language on account of its literature. but because it is a language of the people and specially it is a language which, in comparison to other languages is spoken by a larger number of people and that it is a language whose area and sphere are very wide. It is for an these reasons that we are adopting it as the official language and the fact is that it is not we who are adopting it. It is history that is compelling us to adopt it. Every one of us has to accept it as the official language, simply because every one of us desires to replace the foreign language by a language of our own country. The adoption of Hindi is unavoidable in order to remove English from its present position of official language of the Union.

When we have no other option but to adopt Hindi in this manner, I would submit that there should be no dispute about its script, for it has already its script-a script in which the 'Rigveda' was written-a script in which 'Hanuman Chalisa' is written-the script in which all the books from the Rigveda down to the Hanuman Chalisa of Tulsidas have been written, is called the Devanagari script. I doubt whether we can, even if we search the whole world, discover a script as beautiful, as scientific as the Devanagari is. The script of our national language is Devanagari. and the numerals are an integral part of that script. The meaning of many. Hindi couplets would be lost if the numerals were changed. Thus Tulsidas has said:

Jaise ghatatna ank nav (')

Nav (') ke likhat pahad."

This numeral (9) is of the Devanagari script. Again Tulsidas says:

"Jag te Rahoo chatis has (36)

Ram Charon che teen (63)

Tulsi dekhoo vichari keya

Hai yeh matou pravin."

"Tulsidas says that a person should have an attitude of detachment forwards the world just as the numerals 3 and 6 appear to be in the figure 36. while he should have an attachment to the feet of Ram just as the figure 6 and 3 have in the figure 63, for to do so in the best wisdom according to Tulsi."

Naturally these passages would lose all meaning if the form of numerals is changed.

I, therefore, submit, Sir, that the numerals are even today in use in Devanagari just as they were to be found in the Sanskrit Rigveda and Yajurveda. I, therefore, fail to understand the basis of this discussion about numerals here. It is insinuated against us that we are quarreling over a Very minor matter and that our insistence upon the Devanagari from of Hindi numerals is, as a matter of fact, extremely unreasonable and unjustifiable. But I would like to submit very humbly that the matter which may appear to you to be very minor, may ultimately have very dangerous implications. A person may be able to take two seers of milk, but no one would like to take a small head of a fly with it, for, he can never digest that. In the same manner, I would submit, Sir that we are unable to accept violence being done to the form of the numerals, and what is more important we see no reason why and for whom we should do violence to them.

It is being argued by some people that the change sought to be made is very minor, because a number of the numerals, more particularly (1), are similar in form. But, in this connection, Sir, I would like you to visualise the situation that is likely to arise. in our province, if we agree to the adoption of international form of numerals. We have constituted in our province Village Panchayats' and 'Village, Assemblies'. For each group of 5 Village Assemblies or Councils we have established a 'Panchayat Court'. All these are now working there. Our province has a population of 60 millions and is, therefore, in no way smaller than England--rather it is bigger than the latter. In that province, we have established these, Panchayats for the villages and these bodies have been authorised to levy taxes. They will have to maintain accounts and keep records and registers. Just think of how they would be maintaining their accounts. I am sure, they cannot but use the Hindi method of accounting that is to say-they, would write Rs. 1-4-3 in the following manner :

In it the vertical line stands for the quarter of a rupee. Now the form of 1 in English is, as a matter of fact, used for indicating 1/4 of a rupee in the Hindi method of accounting. But the same symbol if drawn outside the bracket like symbol, its value is taken to be one pice.

We have thus been developing our numerals in this country. Is it your intention now to throw away all these improvements that we have made through our history for no reason or rhyme ? It has been argued here, Sir, that the use of Devanagari numerals would cause any amount of dislocation in industry and chaos in our army. But I fail to understand the kind of difficulties that would arise in the industrial sphere. We can easily avoid any difficulty by specifying the design of the machinery that we seek to import from foreign countries. This is what happens usually in trade and commerce. Even the ordinary traders send their designs and the 'Saries' and other articles manufactured according to these designs are imported from foreign countries.

Moreover, Sir, will we always continue to import all our machinery from foreign countries ? I believe that sooner or later, we will be casting them here and in that case it would be quite easy for us to use our own numerals. I may add that our numerals are a matter of great fortune to us. We are people of a great culture. Our history is glorious and grand. It does not befit us to humiliate ourselves and go down on all fours before the foreigners. I am confident, we can manufacture all the articles we need and I am confident that our country has the potential capacity to do so.

I may now say a few words, Sir, to those who feel that they would have considerable difficulties in learning Hindi. I would like to assure them that they would find Hindi to be a very easy language to learn, once they make an attempt to learn it. I admit that in view of the extensive use of English for all the official purposes and in all the branches of administration, it would not be possible for us to replace it at once by Hindi and if an attempt was made to do so, there would be considerable administrative dislocation.

I can, no doubt, speak Hindi with much greater ease and facility than many of my other friends. We have, therefore, to give some time to such friends to acquaint themselves very well with the Hindi language, so that they may be able to express themselves in idiomatic Hindi and may be able to think in it as well as to weep and sing in it. I recognise that only that language can be natural to any person in which he can sing out his joys and weep out his sorrows. I concede that time is needed by such friends to have felicity in the use of Hindi. A specified period has to be provided for them and I submit, Sir, that the period of fifteen years is more than adequate. It is my belief that we can replace English by Hindi within this period, provided we make a sincere attempt to do so. Of course, if we do not seek to do so, the position would be otherwise. But if we really make an effort, there should be no difficulty in replacing English by Hindi within this period.

I have therefore, in the second part of my amendment proposed that during this period of transition, every attempt should be made to put Hindi in place of English wherever it can be done. I visualise this process to be similar to that of erecting a new house in place of an old one. It is plain that the first has to be removed and the second has to be erected, and we have provided a period of fifteen years for effecting this change and it is my belief that this, work can be completed with very great ease during that period.

But who shall be responsible for effecting this change ? Obviously the Government, and I have, therefore, put in the second part of my amendment that it shall be the duty of the Government to take steps to effect this change. But in the draft that has been put before us, such details as the formation of a Committee or the appointment of a Commission have been included in regard to this matter. As we read this article, Sir, we find that the Drafting Committee has added a new clause, there was previously only one clause. In this manner the Committee want to go into minor details and they do not want to leave any possible matter for the decision of the Parliament or the

Government to come.

We, have, Sir, provided for *adult franchise* in our Constitution and representatives elected on that basis shall be composing the future Parliament and I believe they shall be making their own arrangement for the entire country in their own manner. But it is really funny that we would not like to leave even such matters for their decision as the salaries to be paid to our Civilians the number of people to be employed, the facilities to be granted to them and such other matters. Probably it is feared that persons of no education may be elected to the Parliament and such persons may cause any amount of dislocation and chaos. We,. in our anxiety, have included provisions with regard to the judiciary, to the type of the houses that are to be occupied by them, the salaries that are to be paid to them and the work that is to be done by them.

The same tendency appear to me behind this draft regarding language. There would be a Commission. there would be a Committee. All Acts, bye-laws, regulations in all provinces shall be in English. All these matters are found in this draft,-- notwithstanding the fact that Hindi is already in use in many provinces and is in use without any difficulty and with all the possible success with which a language can be used for official purposes. But you are bent upon putting in such provisions in spite of all these facts.

I admit that it is almost an impudence on my part to seek to improve the amendment which Shri Gopalaswami Ayyangar, who is a great thinker, a scholar, an expert, and an aged and experienced person, has moved. But I submit, Sir, would not the purpose be served if we leave to the future Government to make such arrangements as may enable Hindi to take the place of English within the period of fifteen years and to become the official language of this country ? The Government is today in the hands of the representatives of the people and I submit, it is time that the language of the people should also be the language of the State and that language of the people is Hindi, simply because it is understood in almost all provinces.

Some friends have mixed up Hindustani, Urdu and such other matters with the question of Hindi. I do not understand how a couplet of Nazir who was a great poet of Agra should be considered something outside the Hindi literature. . I may cite it here.

"Abra tha chaya huva aur fasal thi barsat ki,
Thi zamin pahne huve vardi hari banat ki."
"It was the season of rains and the sky was
cloudy. All around the earth was covered
with green verdure."

I would submit, Sir, that this is a Hindi verse composed by him and that it is one of the Hindi styles or dialects. Again-

"Rab ka shukar ada kar bhai Jisne hamari
gaye banai."

"Oh brother render thanks to God who has created the cow for us" is a couplet which all of us read in a book written by some Moulvi Sahib of Meerut. Are we to consider it as something not belonging to the Hindi literature? I do not think so. It is but natural that to a Moulvi or a Moulana such words would very naturally occur. But we have assimilated all these words in our language and I am sure, these words would

remain there. All these constituted a style of Hindi and are not beyond the purview of the Hindi language.

No doubt, some people claim Urdu to be a language. But Urdu is not a regional language, nor is it a language used or spoken in any region, or by any particular community. All of us use Urdu words. I was educated under a Moulvi. He used to teach us :

"Fakat tafavat hai nam hi ka, Darasal sab
aik hi hai yaro, Ja ab safi ke mouj mai hai,
Usi ka jalva hubab men hai, Kabili kurb nahi
be-adabon ki sohabat, Door rahe unse dil
jinko tera pas nahi."

"The only difference or dispute is in respect to names. In substance the reality is one. The same God whose light is visible in the clear waters of the Ocean, is to be perceived in the bubbles. One. should not, even, for a moment, remain in the company of the disrespectful and it is desirable that our heart should be away from those who do not have the love of God in their hearts."

I submit, Sir, that these great thoughts cannot be exiled from our language.

Mr. President : *[I believe you have already given sufficient citations]*

Shri Algu Rai Shastri : *[So, Sir, all these words are of the Hindi language and we cannot exclude them from it. My submission is that the words of other languages which have become current in Hindi must be considered to be part and parcel of the Hindi language. I would go further and assert that that language alone should be termed Hindi which has this tendency of including all such words.

Before I conclude, Sir, I would like to say a few words about the content of the Hindi language. There is a great dispute about the real character of Hindi. But I would submit in this connection that Hindi is Hindi and no other definition of this language can be given. Just as I may describe myself by saying what I am, similarly Hindi is described by saving that Hindi is Hindi. Really I fail to understand what other definition can be given. Bhojpuri, Maithili, Khadi Boli and Brij Bhasha are two forms of Hindi. Thus the following passage of Brij Bhasha is part of Hindi literature.

"Ankhiya Hari darshan ki piasi"

'My eyes wishfully long for the sight of God."

Similarly the following passage in Maithili :

"Sar binu sarsij, sarsij binu sar

Ki sarsij binu soore".

"The Lotus with the Lake and the Lake without the Lotus have no significance."

Similarly,

"Rab ka shukra ada kar bhai

Jisne hamari Gaye banai"

of Meerut is also Hindi. I do not think any one can prevent Moulana Hifzur Rahman from speaking the type of Hindi he pleases, for, there can be no dispute about its true nature since it can be taken down in Devanagari Script and it can be understood by quite a good number of people in this country.

The dispute regarding numerals I submit, Sir, is without any substance. The fact is that the numerals are but an integral part of the Devanagari script and cannot be distinguished from it and we should, therefore, accept Devanagari numerals. Such matters as the appointment of a Commission formation of a Committee for replacing English by Hindi within the period of fifteen years, should be left to the future Government for being decided in the manner it pleases.

With these words, I submit my amendment to you. I concede, Sir, that within this period of fifteen years, English should continue to be used. It is my conviction, that in our Constitution there should be an article declaring Hindi in the Devanagari script as our official language and that it should make provision that within the transitional period of fifteen years, English should continue to be in use but that after the expiry of that period, Hindi should completely replace English and within this period of fifteen years, it should be the duty of the Government to find out ways and means through which English can be completely replaced by Hindi.

I may add, Sir, that I have no ill-will towards English. I believe there would be English in our Universities even after the expiry of that period and that our students would be acquiring the knowledge of different languages. But I believe, Sir, that the signatures on our treaties etc. shall be in Hindi. Our national language shall be Hindi and our script shall be Devanagari which we have got from the Rigveda' and whose words have been borrowed from that great ocean of learning. It has been fertilized by waters from that source-the source which has given life and light to the world-the source whose literature, philosophy and codes are invaluable treasures of the entire world.

With these words, Sir, I conclude my observations and I thank you, Sir, for having been kind enough to give me so much time for expressing my views.]*

The Honourable Dr. Syama Prasad Mookerjee (West Bengal: General) Mr. President, Sir, we are considering a matter which is of vital importance, not to the people belonging to one or other of the provinces of India, but to the entire millions of India's population. In fact, Sir, the decision that we are about to take, even if we ignore for the time being the points of difference, vital though they may appear. to some, the decision that we are about to take is something which has never been attempted in the history of India for the last thousands of years. Let us therefore at the very outset realise that we have been able to achieve something which our ancestors did not achieve.

Some Members have spoken not doubt out of the warmth of their feeling and have tried to emphasise upon the points of difference. I shall say a few words on the points of difference a little later. But I would like the House to rise to the height of the occasion and flatter itself that it is making a real contribution to the national unity of our Motherland of which we and those who come after us may be legitimately proud.

India has been a country of many languages. If we dig into the, past, we will find that it has not been possible for anybody to force the acceptance of one language by all people in this country. Some of my Friends spoke eloquently that a day 'might come when India shall have one language and one language only. Frankly speaking, I do not share that view and when I say so, I am not ignoring the essential need for creating that national unity of India which must be the foundation stone in our future reconstruction. That unity must be achieved by allowing those elements in the national life of our country, which are today vital, to function and function in dignity, in harmony and in self-respect. Today it stands to the glory of India that we have so many languages from the north to the south, from the west to the cast. each one of which in its own way, has made contributions which have made what Indian life and civilisation are today.

If it is claimed by anyone that by passing an article in the Constitution of India, one language is going to be accepted by all, by a process of coercion, I say. Sir, that that will not be possible to achieve. *(Hear, hear)* Unity in diversity is India's key-note and must be achieved by a process of understanding and consent, and for that a proper atmosphere has to be created. If I belonged to a province where Hindi is the spoken language, I would have felt proud today of the agreement to which practically all the members of this House have voluntarily submitted themselves by accepting Hindi in Devanagari script as the official language of free India. That is a solid achievement which, I hope, those friends of mine who come from the Hindi-speaking provinces should appreciate.

I am not talking about the relative claims of other languages. Left to myself, I would certainly have preferred Sanskrit. People laugh at Sanskrit today perhaps because they think it is not practicable to use it for so many purposes which a modem State has to fill. I do not want to take your time by dwelling on the claim of Sanskrit. I am not fully competent to do so. but most certainly that is a language which still is the storehouse. shall I say the unlimited and illimitable storehouse, from which all knowledge and wisdom are drawn, not so much perhaps by the present generation of the Indian people but by others who have preceded us and by all true lovers of learning and scholarship throughout the civilised world. That is Our language, the mother-language of India. We do wish, not for paying lip sympathy or homage to its genius, but in our own national interests so that we may re-discover ourselves and know the wealth and treasure that we accumulated in the past and are capable of achieving in future,-we do wish that Sanskrit will reoccupy an honoured place in the national educationl system of India.

I am not similarly advocating the claims of other languages. You will not call it provincial if I say that I am proud of my own language. It is a language which has not remained as a mere language of the people of Bengal alone. It was the language enriched by many noble writers for centuries past-the language of Vande Mataram. It was our national poet Rabindra Nath Tagore who raised the status and dignity of India when he had his great thoughts and contributions in Bengali recognised it the bar of world opinion. *(Hear, hear)*. That is your language. It is the language of India, *(Hear, hear)*. I am sure that the languages of my friends from the South and the West. of which they are so proud, have also great records and must be protected and safeguarded in ample measure. All must feel that nothing has been done in the Constitution which may result in the destruction or liquidation or weakening of any one of these languages.

Why do we accept Hindi ? Not that it is necessarily the best of Indian languages. It is for the main reason that that is the one language which is understood by the largest single majority in this country today. If 14 crores of people out of 32 today understand a particular language, and it is also capable of progressive development, we say, let us accept that language for the purposes of the whole of India, but do it in such a way that in the interim period it may not result in the deterioration of our official conduct of business or administration and at no time retard true advancement of India and her other great languages. We accept that proposition, and the scheme which Mr. Gopalaswami Ayyangar has placed before you includes certain principles which we consider, taken as a whole, meet this view-point and will be not in the interests of the people coming from the south of India, but in the interests of the people of India as a whole. *(Hear, hear).*

You Have got sonic time, fifteen years, within which English will have to be replaced. How is it to be replaced? It will have to be replaced progressively. We will have to decide realistically whether for certain special purposes English should still be continued to be used in India. As sonic of my friend,, have already stated. we might have rid India of British rule-we had reasons for doing so-but that is no reason why you should get rid of the English language. We know fully well the good and the evil that English education has done to us. But let us judge the future use of English dispassionately and from the point of view of our country's needs. After all, it is on account of that language that the have been able to achieve many things; apart from the role that English has played in unifying India politically. and thus in our attaining political freedom, it opened to us the civilisation of large parts of the world. It opened to us knowledge, specially in the realm of science and technology which it would have been difficult to achieve otherwise. Today we are proud of what our scientists and our technical experts have done.

I say. Sir, we would be suffering from a sense of inferiority complex if we examine the role that the English language should play in this country from any narrow standpoint. There is no question of the English language being used today for political purposes or for dominating any system of national education. It will be for us, the representatives of the people of free India, to decide as to how progressively we will use Hindi and other Indian languages. how progressively we will get rid of the English languages if we feel that for all time to come for certain purposes, we will allow English language to be used or taught we need not be ashamed of ourselves. There are certain matters which we have the courage to speak out, not in individual or sectional interest but where we feel that such a step is to be taken in the interests of the country as a whole.

Sir, with regard to regional languages, I am now happy that the amendment proposes to include in the body of the Constitution itself a list of the principal regional languages of India. I hope we will include Sanskrit also. I shall speak here with frankness. Why is it that many people belonging to non-Hindi speaking provinces have become a bit nervous about Hindi ? If the protagonists of Hindi will pardon me for saying so, had they not been perhaps so aggressive in their demands and enforcement of Hindi, they would have got whatever they wanted, perhaps more than 'what they expected, by spontaneous and willing co-operation of the entire population of India. But, unfortunately, a fear has been expressed, and in some areas that fear has been translated into action, where people speaking other languages, not inferior to Hindi by any means, have not been allowed the same facilities which even the much-detested foreign regime did not dare to deprive them of.

I would beg of those who represent the Hindi speaking provinces in this Constituent Assembly to remember that while we accept Hindi, they in their turn, take upon themselves a tremendous responsibility. I was glad to find that some weeks ago at a meeting of the Hindi Sahitya Sammelan, a resolution was passed that in these Hindi speaking provinces, there will be compulsory arrangements for the study of one or more of the other Indian languages. (An honourable Member : A pious resolution !). Let that not remain a pious resolution. It will depend upon leaders like Pandit Govind Ballabh Pant, Babu Purshottam Das Tandon, Babu Shri Krishna Sinha, and Pandit Ravi Shankar Shukla to see to it that within the next few months, arrangements are made, if necessary by statute, for the due recognition in their areas of other important regional languages, specially if there are people speaking those languages residing in those areas. I shall watch with interest and see how these facilities are given and the resolution unanimously passed under the leadership of Babu Purushottam Das Tandon is carried into effect in provinces like Bihar and the U. P.

Sir, a lot of talk is going on about what is meant by Hindi. There cannot be any artificial political forces or forces created by statutory provisions dictating as to how a language is to be shaped. A language will be shaped in natural course of events, in spite of current controversies, in spite of individuals, however big or however eminent for the time being they may be. It is the people's will that creates changes; they come naturally and often imperceptibly. It is not a resolution of the Constituent Assembly which will decide the supremacy of a language. If you want that Hindi is to really occupy an All-India position and not merely replace English for certain official purposes, you make Hindi worthy of that position and allow it to Absorb by natural process words and idioms not only from Sanskrit but also from other sister languages of India. Do not obstruct the growth of Hindi. I can speak Hindi in my own Bengali way. Mahatma Gandhi spoke Hindi in his own way. Sardar Patel speakes Hindi in his own Gujarati way. If my friends from the U. P. or Bihar come and say that theirs is the standard Hindi which 'they have laid down and any one who cannot speak this language will be tabooed, it will be a bad thing not only for Hindi, but it will be a bad thing for the country. I am glad, therefore, that provision has been incorporated in the draft article suggesting as to how this language should develop in this country.

I do hope an Academy of Languages will be established by the Government of India and perhaps similar academies will be established in other regional areas in India where a systematic study of Hindi and other Indian languages will take Place, where comparative literatures will be studied and publications in Devanagari script of selected books in all Indian languages will be organised; where the more important task of finding out terms and terminology specially for commercial, industrial, scientific and technical purposes will be dispassionately undertaken. Let us not be narrow-minded in this respect. I played my humble part in giving to my mother-tongue its due place in my University, a work which was started by my revered father nearly sixty years ago and it was left to me to bring that work into fruition fifteen years ago. Calcutta gave ungrudging recognition to all languages in India. We selected our terms and terminology from the point of view of our future advance and not narrow sentiments. If: today it is said that all technical terms and terminology are to be used in Hindi, you may do so in the provinces where Hindi is being spoken. What will happen to Bengal, Gujarat, Maharashtra and Madras ? Will they also use their own technical terms in their State languages ? If that is so, what will become about the inter-change of opinion and inter-change of educational facilities between one State and another? What will happen to those who go to foreign countries for their future education ? These are questions I would ask you to ponder over. Let us not be carried away by mere sentiment. I am certainly proud of certain sentiments. I am anxious that there should be a language which gradually will become not only the spoken language of the entire population of India, but a language in which the official business of the Government of India will be carried, and will be capable of being used by all. We have agreed it will be Hindi. At the same time, it has to be adjusted and re-adjusted at every step in such a way that our national interests may not suffer and not injure the interests of the State languages also. If you proceed in that fashion I have not the slightest doubt that we will not have to wait for fifteen years ; more readily, it will be possible for people of all the provinces to agree to and implement our decision.

Lastly, I shall say a few words about the numerals. Much has been made about the numerals. We are having a minor war on numerals. But, this suggestion which has been made is not in the parochial interest of the people who come from South India. That is a point which must be understood by every section of this House. The continuance, until otherwise decided, of the international numerals, which really have come back to the land of their birth in a somewhat modified form, is vitally necessary in our own interests, at least for many years to come. Later on, if, on the recommendation of the Commission, the President feels that a change is to be made, that change may be made. You have got your statistics; you have got your scientific work to be done You have your commercial undertakings, banks, accounts, audit. You have so many other things in respect of which the use of international numerals is necessary.

Some of my friends ask me, if you are taking the entire Hindi language, and when some of the numerals more or less similar, why not accept a few more? It is not a question of learning three or four numerals. I believe every one will know the Hindi numerals, which may be also used right from the beginning. Hindi numerals will also be learnt by all. But the question is regarding their use for purposes for which you consider they cannot be properly used.

Some of my Hindi-speaking friends have asked, why compel us to use the international numerals? We are not banning the use of Hindi numerals in Bihar, Central Provinces or the U. P. where Hindi will be the State language. Obviously Hindi numerals will have a large part to play. Where is the harm if you learn the international numerals also and use them for all-India official purposes ? Rather, it will be to your benefit, specially for your higher educational curriculum. I would ask Babu Purshottam Das Tandon, and appeal to him that in this matter he must rise, equal to the occasion. It is not a matter which need be carried by a majority of votes. Even if some of there. I feel against the all-India use and recognition of the international numerals in addition to Hindi numerals, even if he feels that this is not fair and just, or is not to his liking, for the very fact that Hindi which is the language of his own province is being accepted by the entire people of India, he should have the statesmanship to get up and say that in spite of his personal feelings, he accepts the compromise and approves the resolution.

We have passed many important resolutions in this House during the past years.

We have faced many crises together. It will be making a childish affair if on a matter connected with numerals, the Constituent Assembly of free India commanded by one political party divides. We shall be making a laughing stock of ourselves and the whole of India and we would be strengthening the hands of our enemies. Let us emphasise not on the differences but on the substantial achievement of our common aim. Let us tell the whole world that we have done so without rancour and with unanimity. Let us not look at the matter from a political angle.

It pains to find that in some areas, acceptance of international numerals may become a first class political issue. It depends on the leaders of those provinces to take courage in both hands, get up here and say that they have accepted this compromise for the good of India and that they are going to stand together. If the leaders say so, I have not the slightest doubt that the people also will accept it. We have not banned the circulation of Hindi or Devanagari numerals in any province where the State legislature so decides or even for all India purposes. All that we have recommended is the acceptance of a formula which we feel will be fair and just to all. I hope that before the debate concludes it will be possible for the representatives of the different view-points to meet together and come forward before the House with the declaration that the proposition of Mr. N. Gopalaswami Ayyangar is going to be unanimously accepted.

Mr. President: The House stands adjourned till 4 O'clock.

The Assembly then adjourned for Lunch till Four of the Clock in the afternoon.

The Assembly re-assembled after Lunch at Four P.M., Mr. President (the Honourable Dr. Rajendra Prasad), in the Chair.

Mr. President: We shall now continue the discussion. Mr. Chacko.

Shri P. T. Chacko (United State of Travancore & Cochin) : Sir, my position is that English should continue to be used for a period to be fixed and the question of a national language should be left to the future Parliament. A national language has to evolve itself and is not to be created artificially. The national language for a great country like India should have certain minimum requirements. It should be capable of expressing all the needs of modern civilisation. To be capable of meetings all modern demands, it should have a lore of scientific literature. Language as the vehicle of thought determines to a large extent our mental makeup. The capacity for thought, and for thought development, to a great degree is limited by the thinker's language of expression. Each language has a vocabulary, a method of construction and a scheme of thought process distinctly all its own.

A person who knows only a primitive language cannot, of course, think in the same lines as one who speaks a well-developed language. The national language of a great country like India should also be great. Some of our languages in India are really rich in literature. But, Sir, I do not think that any of our languages contain a good scientific literature. It would be almost impossible to teach Chemistry, Physics and such other sciences in any of our languages in India. A language cannot be artificially moulded for ready use. It has to develop itself and that takes time. The adoption of a language from the languages which we are having in India will most probably retard our national progress. It may prevent our higher studies. It may prevent scientific researches which we need. Therefore, I believe we will have to wait till the time when a language in India develops itself and matures to that stage when we can make it our official language and our national language.

To replace an international language like English, very expressive, rich ill vocabulary, easy and simple in construction, and one which is recommended to be the international auxiliary language, is almost impossible. Probably Shakespeare decided the national language of England once for all, and for Italy probably Dante decided it. Like that, some literary genius will in future, according to me, decide the national language for India.

A national language can be decided upon only by mutual agreement. It cannot be done by taking votes; that is what I believe. No language can be imposed upon an unwilling people. No nation has ever succeeded in imposing the language of the majority upon the minority. In the day of Czarist Russia, speaking Lithuanian language was absolutely forbidden and the penalty for breaking this law was very severe, sometimes amounting to death. Nevertheless, when after two centuries, Lithuania declared itself independent, it was found that about 93 per cent. of the people still spoke the Lithuanian language Likewise, in Spain, the Catalan language was prohibited in 1923, but after a strenuous struggle which ensued in 1932, the State had to recognise that language.

On the other hand, we know what happened in Britain. Even now there are about six spoken languages in the British Isles. English evolved itself as a national language and the people willingly recognised it. The result was that Welsh in Wales and Gaelic in Scotland slowly were abandoned by the people. Likewise we will also have, to wait for some time till a language emerges from among the languages which exist in India. We will have to wait till it matures and reaches that position when we can make it *our lingua franca.*

Before deciding upon the official language, to me it appears that we have to decide one or two very important questions. Firstly Sir, the question is whether we should have one language or more languages as our official language. In Switzerland, for example, there are four languages spoken by the people. In schools the medium of instruction is that language which is spoken by the people in the locality where the school is located. In higher classes a second national language is compulsory and later on a third language. All the four languages are recognised as official languages.

In pre-war Czechoslovakia, though there were about twelve languages, besides some dialects spoken by the people, two languages were recognised as official. In public offices the language of the region in which the office was situated was used. In many other countries also more than. one language is recognised as official language.

Therefore it is a question to be decided whether we should have one single language as the official language of India or we should have more than one-for example Bengalee, Tamil, Hindi and even English. If we decide on one national language, we will again have to decide whether we should allow the Union Government to use any other language than the official language. In the U. S. S. R., for example, in European Russia itself there are about 76 languages spoken besides innumerable dialects and only one language is the official language of the U.S. S.R. But in offices the language of the region is also officially used. Where many languages are spoken and there are many other dialects also the question is to decide whether we should permit the Union to use only the official language or other languages also in public offices situated in particular regions.

I wish to point out that in Eire even now the English language is used for all official purposes. During the days of the Irish struggle for independence they were almost resisting the use of English. In 1893 a Gailic League was formed which played a most predominant part in the Irish struggle for freedom. In their schools now Irish is taught as a compulsory language. Though the Irish people want Irish to be their only official language yet they find it very difficult to replace English by Irish.

We are all almost agreed that English should continue for a period of fifteen years. So this is not an urgent question, though it is a very important question. It is a sound principle in democracy to know the wishes of the people and to respect the wishes of the people when there is doubt among the representatives themselves as regards the decision which may be taken by them. Though it is an important question, since .it is not an urgent question I would request that we take time to go back to the people to get a mandate from the people and for that we should leave the question to be decided by the future Parliament.

Why should we worry ourselves with the problem when we are faced with several very urgent problems which affect the life of the millions of people of the country ? When people who valiantly fought for the freedom of the country are dying for want of food and shelter, when trade and commerce is becoming duller day by day, when unemployment is rampant, especially in the South, when in the North we are having the Kashmir problem and in the South the menace of the Communist hooliganism--even today I got a telegram from my country that the son of a Congress worker who devoted twenty years in the service of the country was stabbed by a communist on Sunday last-and when the future of the very nation itself is hanging on the solution we might find for the food problem I ask why should this august Body waste its time over this question, the solution of which we intend to implement only after fifteen years, according to the agreement almost reached by every one in the House.

After having seen a sort of fanaticism in action in the matter of a comparatively smaller question of the numerals and after having heard a section of the people of this House speak as if all that mattered in life was the Devanagari system of numerals, I feel that it would be better for us to leave the decision on this question to soberer men. We can hope that our posterity will be more tolerant and wiser and hence they may be able to find an agreed solution for this problem. Our intolerance has already divided India. Let it not divide it again. Instead of imposing a language on posterity I believe it will be better for us if we leave this problem to be decided by posterity themselves.

Shri B. Das (Orissa: General) : Sir, this question of Hindi as the *lingua franca* has caused us a lot of misgivings. I will 'not be true to myself , my conscience and my God if I do not express my feelings. I will not be true to my great leader, Mahatma Gandhi, who is in Heaven, if I do not express truly and correctly the apprehensions that I have come to entertain during the last three weeks, and which have been aggravated more and more by the dominating attitude of my friends from U. P. and C. P.

As we want a *lingua franca* I do accept Hindi as the official language, but that does not mean that we have no apprehensions, we have no suspicions or that we have no fears. My Friend Dr. Syama Prasad Mookerji this morning indicated some of the fears and suspicions that non-Hindi speaking provinces including those in the South do harbour. This morning when Pandit Lakshmi Kanta Maitra was speaking I was almost persuaded to accept Sanskrit as the official language of the State, so that everybody will start with an even keel in that mother of all languages. There will then be no rivalry between the sons and daughters of the leaders of U. P. and C. P. that are present here and the sons and daughters of leaders of Orissa or Madras. They will all learn Sanskrit.

The fears and suspicions that we harbour today were harboured by us till a couple of years ago, when the officialdom was manned by the Britishers and the civil service examinations were conducted in London. Naturally, the Englishmen preponderated in service. Now that the civil services and other examinations are being held in Delhi, naturally hereafter the Hindi-speaking provinces (I am not talking of the immediate future but of fifteen years hence) the people of the Hindi-speaking provinces such as U. P. and C. P. will preponderate in the civil and other services of our country.

What shall be the standard or ideal of education and examination in Hindi language ? I do not know much of Hindi. I know a little of what is called Hindustani which the ordinary people use, that inferior Hindustani in which official folks talk to the servants and ordinary workmen. That much Hindustani I. know. According to my investigation Hindi is the only language in the world which requires its verbs to have different inflections according to the gender.

An honourable Member: What about German?

Shri B. Das : I am sorry I tried to learn German but with the advent of first war I gave it up. However, in my old age, I am not prepared to start speaking Hindi-all the time labouring under the dread that I might make a mistake, in the proper gender of the verbs I used and the nervousness that I may not be laughed at by Hindi-speaking ladies and gentlemen over mistakes, I have made.

But that is not the problem. Our children will have to learn a language so like the German where they will have to see that they do not make mistakes in their sentences by using wrong verbs. That is a misgiving, yet I am willing to overlook it. But I am not willing to reconcile myself to the position that for the next fifteen, twenty or thirty years the sons of the Hindi-speaking people, whether they belong to U. P. or to the C. P., will preponderate in the all-India services.

I have watched during the last twenty-One years the spread of Rashtrabhasha Hindi throughout the country. I do say, that very little has been done to train up Hindi speakers : excepting for the efforts of my Friends Mr. Satyanarayana and Shrimati Durgabai there, very little has been done, so that those who are today capable of a smattering of Hindi reading in Orissa or Madras, can they hope to compete with the Hindi-speaking people or can they compose music or songs like my Friend Pandit Balkrishna Sharma or write beautiful stories like my Friend Shrimati Kamala Chaudhri ? That may not count for my generation but it will count in later generations and affect them.

We know we must have a *lingua franca.* We accept Hindi. Why is it that the leaders of U. P. and C. P. are so intolerant ? I found leader after leader coming from those benches and talking in Hindi knowing that they are not appealing to the Members of U. P. or C. P. or even in Bihar. They are raising their voices to speak to the people of South India and even to the people of Orissa like me or to the Members from Bengal who talk just a smattering of Hindi. Everybody knows that the Bengali is a little bit conservative : he seldom learns an Indian language gracefully although he masters the English language. Sir, I do hope that when the next speakers rise from the benches of U. P., C. P. or Bihar let them address in English those Members of South India and those like me who cannot understand Hindi so very well. If they are so fond of their mother tongue, let them reserve it for other occasions. Let their arguments show that they have spirit of tolerance, that they want to concede and that they are not in that aggressive mood of, "You must have Hindi as *lingua franca,* we care a rap what happens to you, your sons or grandsons".

We are not going to allow that sort of attitude in speakers from U. P. or C. P. That way you will not make us co-operate in future or even now. Sir, that is what is agitating me and if I speak out my mind I do so in obedience to the dictates of my conscience.

Shri H. J. Khandekar (C. P. & Berar : General) : I would like to tell the honourable Member that C. P. is not a purely Hindi-speaking Province; it speaks Marathi as well as Hindi.

Shri B. Das: All right, Sir. I accept my Friend's correction. It is the Jubbulpore district which I have in mind which gave birth to the President of the Hindi Sahitya Sammelan, my Friend Seth Govind Das.

Sir, I have said already that we are human beings and the problems of loaves and fishes affect us as much as the problems of higher national ideology. Let the leaders of U. P. that will speak hereafter tell us how they are solving that problem so that they do not get an overriding weightage on the other Provinces like Orissa, Assam, Bengal, or the Southern Provinces and States like Madras, part of Bombay, Mysore and Travancore. That is a problem they will have to solve.

They will have to tell us how they are going to teach Hindi to the thirty odd crores of people of this sovereign India. Nobody has told us that, Simply passing the Resolution and making Hindi the *lingua franca* does riot solve the problem. Even during the last 21 years how many teachers bad U. P. sent out to the other Provinces ? Not more than 100. Do they expect that every village school teacher of U. P. will go to Orissa, Bengal, Assam and Madras and sufficiently teach Hindi so that our sons and daughters could equally compete, will the sons and daughters of U. P. and North C. P. ? If my friends of U. P. had tolerance they would not have caused us these heartburns for the last three or four weeks.

The question of numerals has loomed so much in the horizon that they do not appreciate the concession when the, United India, in a spirit of co-operation. agreed to accept Hindi as the *lingua franca* of India. Why do they not yield? The world is not stationary. What we may incorporate in the Constitution today may be a dead issue five or ten years hence. We, Hindus, know how the world is changing; we know how our conception of God bag been changing from time immemorial. From the days of Rigveda down through the Vistas of Upanishads, Puranas and the Bhagvatam to the present concept, we are changing all the time. Why are my friends from U. P. so insistent that only the Devanagari numerals be used and not also the Indian numerals of international character as many of us want ? I have supported the proposition to have these international numerals along with the numerals; our fears might prove to be wrong; ten or twenty years hence it might be proved that it was a wrong thing to have introduced international numerals, but at present the fear does exist and hence both the numerals the House should accept.

We do not want to fight over this small issue of numerals. Why should not my friends of U. P. and North C. P. agree that both the numerals will be allowed for another fifteen years ?-then most of us will not be here, at least I won't be in this world fifteen years hence. Then those who succeed, with the resurgence of the spirit of independence and after working the independent Constitution for fifteen years, let them meet together and solve the problem whether the international numerals should continue along with the Devanagari numerals.

With the advancement of science as Dr. Mookerjee rightly pointed out this morning, and with more and more international co-operation, more and more contact with outside world, more and more of the spirit of one world, we should have recourse to international numerals at least in the scientific and technical fields. What is right or wrong it is not for me to judge; it is for me to see that we evolve a common formula whereby all of us unanimously pass these articles which shall be incorporated in our Constitution. Let there be no bickerings. Let not South resent the discussions of the North. Let not North be overbearing to the South when they want the numerals of ancient times to be brought back in modern administration. If some of us who revere the memory of him who brought us this independence and was incarcerated and out of that memory we try 10 co-operate and not hurt the feelings of each other, it is expected of the leaders of U. P. who have pressed this question of language and numerals to show a spirit of tolerance which is expected of them.

Dr. P. Subbarayan (Madras : General) : Mr. President, Sir, this is the first time I venture to address this august Assembly and I feel rather overcome by that sensation. My amendment is a very simple one and all the other amendments actually follow in its wake.

My amendment is that the language of the Union should be Hindustani in Roman script. I feel that we ought to get akin to the world. The world is getting narrower today and we ought not to think in narrow terms of our own provinces but more with the idea of a "One World". If you do really believe in One World and peace, as Mahatma Gandhi preached to the world, then I am sure most of you, if you search your hearts, will be inclined to vote for the proposition I have propounded today.

Shri R. K. Sidhva (C. P. and Berar: General): Mahatma Gandhi did not say Hindustani in Roman script.

Dr. P. Subbarayan: Hindustani in Roman script, what I advocate, as two scripts are a difficulty and may be an acceptable solution.

There is also another thing which I would like to touch upon. Why all this awkwardness about English ? All this hatred against English ? With the coming of freedom I thought we had abandoned hatred altogether, and we bad become friendly with the English people. I would like to quote the American example. Today, if you take the American population, about 20 per cent. only belong to the British Isles. The very nature of the men who represent them in sporting contests of which alone I am well aware, come of races which cannot be described as Anglo-Saxon by any stretch of imagination. In the last Davis Cup against Australia the two representatives who did battle for America and won were Schroeder and Gonzales. Can you think of more strange names than Schroeder and Gonzales-the one a German and the other a Portuguese ?

Therefore, all there people who come of different nationalities residing in the United States have agreed to adopt the English language is their own. I would far rather that we were bold enough to say that English which has been with us for nearly a century and a half, and we who have imbibed as much of the heritage of the English language as anyone else, adopted as our common language.

But unfortunately we are not placed in such circumstances because there is still, in spite of all that has been said. the spirit of hatred, the spirit that feels that we should not touch the language of the conquerer though he, has ceased to be the conquerer and willingly left our country without the firing of a shot merely because he felt the time had come when he ought to accept the decision of a whole nation. But still I am willing to give in to national sentiment.

I would, however, like honourable Members to take their minds back to Mahatma Gandhi. I have been told that we should not utter the name of Mahatma Gandhi in this controversy about language. Why not, I ask. Because day in and day out honourable Members mention the sacred name and only run quite counter to what he taught us. When that is the case, Mr. President, why should I not appeal to Gandhiji's name for Hindustani being adopted as the language of the nation ?

Shri R. K. Sidhva : Quite right. He should be quoted correctly. Not for Hindustani in Roman script.

Dr. P. Subbarayan : Mr. Sidhva, if you will have a, little patience and hear me develop my argument you will know what I am driving at-I was not quoting him for the Roman script; I was quoting him for the name Hindustani. Well, Sir, to proceed with my argument, English being out of the way, then the next best thing we can adopt is Hindustani in the Roman script, because it keeps us akin to the world.

What is all this nonsense about numerals, I say. Do you want to be archaic and go back to things which have been forgotten for a long time, which you have revived today because you think it is Your own ? May I tell you, Sir, that these numerals are older than the numerals you so fondly bug to today.

Pandit Balkrishna Sharma : Question!

Dr. P. Subbarayan : There is no question of questioning that. It is a fact.

Pandit Balkrishna Sharma : It is not a fact.

Dr. P. Subbarayan : You may say what you like. I have my own opinion about it.

Pandit Balkrishna Sharma: Your opinion is not what matters.

Dr. P. Subbarayan : It is not my opinion. It is a fact and not an opinion. Yours is an opinion with which you want to change the fact. Well, Sir, to go back to this question of numerals, it has been said in the. Encyclopaedia Brittanica-it is merely to prove facts I am reading it, MT. Sharma, for your edification.

Pandit Balkrishna Sharma: Say for your enlightenment.

Dr. P. Subbarayan: I am enlightened enough.

> "Several different claims, each having a certain amount of justification, have been made with respect to the origin of our present numerals, commonly spoken of as Arabic, but preferably as Hindu-Arabic. These include the assertion that the origin is to be found among the Arabs, the Persians, the Egyptians and the Hindus. Intercourse between traders served to carry such symbols from country to country, so that our numerals may be a conglomeration from different some. The country, however, which first used, so far as we know, the largest number of our numeral forms is India...... "

"One, four and six are found in the Asoka inscriptions of the third century B.C., long before your numerals were thought of. Two, four, six, seven and nine appear in the Nana Ghat inscriptions a century later.

Pandit Balkrishna Sharma : Is Nana Ghat situated in Europe ?

Dr. P. Subbarayan: That is why I say they are our numerals, which you do not unfortunately accept. I am only proving that these numerals originated in India and nowhere else. Two, three four, five, six, seven and nine in the Nasik caves of the first and second century of our era.

Pandit Balkrishna Sharma : Have you seen these numerals on caves in the Nasik ? Can you enlighten the House whether these numerals are exactly like the ones now in use?

Dr. P. Subbarayan : I am not going to enter into an argument with the honourable Member. He will have his turn to make his observations. For the moment he may kindly bear with me in patience. Two, three, four, five, six and nine there are in the Nasik caves of the first and second century of our era. They bear considerable resemblance to our numerals. If the Honourable Member had waited in patience he would have understood my point. Those numerals have considerable resemblance to our own, our two and three being well recognised derivation from two and three.

None of these early Indian inscriptions gave any evidence of place value or of a zero. That would make our place value possible. Hindu literature gives some evidence that the zero might have been known before our era. But we have no actual inscriptions containing such symbols before the ninth century. The first definite external reference to the Hindu numerals is contained in a note of Severus Sebokht, a bishop who lived in Mesopotamia about 650. Since he speaks of nine signs the zero seems to have been known to him.

Mr. President : Are you going to decide this question on the basis of his verdict ?

Dr. P. Subbarayan : Not on the basis of that but on the basis of their being Indian in origin. I am only proving that these are our own numerals and that we need not fight shy of them.

Mr. President : We need not go into those details any more. The question is to be decided on broader grounds.

Dr. P. Subbarayan: Sir, all that I want to say is that we need not fight shy of these numerals. They are our own and we are only taking back to ourselves what was our own and what are commonly known all over the world. In this way we can be more akin to the world also, because today more than 60 per cent. of the people of the world use these numerals. There is no harm in this As this is so, I do not know why we should introduce archaic connotations and give up something well-known to us and which we have been using all these years.

I have already referred to the Roman script. *(Interruption.)* Mr. T. T. Krishnamachari is a constitutional expert. I do not pretend to be an expert. But what I say is this : When the script is well-known all over the world, and as the world is getting narrower and narrower, it will keep us akin. to the world and we shall be able to get our own scientists talk to the scientists of the world through the medium of our own language if we adopt the Roman script. It will be easily read by the rest of the world and therefore it will get us akin to the wide world. I hope Shri T. T. Krishnamachari is now satisfied.

Well. coming now to the rest of my amendments, I want that the Commission to be appointed under the Resolution as proposed by Shri N. Gopalaswami Ayyangar should not come after five years. Five years is too short a period for that. It should come on after ten years are over and until those ten years we should keep the English language as the medium. My friends from the United Provinces laugh at this. If they had the experience I had to go through during the Hindi controversy, they will understand why I am pleading for this gesture on their part. We from the south, wanting a national language, wanting to be in tune with all of you from the North of India, agreed to swallow almost 95 per cent. of what you wanted. And yet, you want the other 5 per cent. also, because you believe in the Tamil proverb : 'The hare you have got has only three legs'.

I am also reminded of the other Tamil proverb which says, if a man comes and asks for a little place on the verandah and if you grant it, he will next ask for entry into the house itself. That is the position of most of you gentlemen, today.

I feel, Sir, that it is very important that you should understand the South Indian position. If I tell you what exactly happened for three months when I holding was charge of the portfolio of education in Madras and Hindi was introduced as a compulsory subject in the first three forms of the High Schools, you will understand my anxiety that I should go back from here with something done, something accomplished. For three whole months, every morning when I got out of my house I heard nothing but cries of "Let Hindi die, and let Tamil live. Let Subbarayan die and Rajagopalachari die". That was the cry that went up for three months and what is more, we were constrained to use even the Criminal Law Amendment Act which we railed against previously.

Shri T. T. Krishnamachari (Madras: General): Hear, hear.

Dr. P. Subbarayan : Mr. Krishnamachari says : 'Hear, hear'. I remember his criticism on the floor of the House. If he had been in power at that time he would have used worse instruments.

Sir, I will give another information for the edification of my colleagues from the United Provinces. The Congress Bulletin is published both in English and in Hindi. If you compare the number of subscribers for these two editions you will be surprised. Only about 1/40th of those who subscribe for the English edition, subscribe for the Hindi edition. This shows that in spite of Gandhiji's attempts and in spite of everything that has been done, we have not been able to make even those who seem to be jealous of Hindi language buy the Hindi edition of the Congress Bulletin. My honourable friend the Secretary of the Congress (Shri Kala Venkata Rao) wants me to give the number. For reasons best known to him I do not want to give the numbers.

There is another amendment which I would like the House to accept and that is that English should be the fourteenth language in the Schedule. I think my Friend Mr. Anthony has explained the reasons for this, and correctly so. They may be an infinitesimal part of our population, but the Anglo-Indian community is as much Indian as anyone of us is. If we regard them as our kith and kin, their language ought to find a place in the Schedule as any of the other languages. Therefore I feel that 14th should be the English language.

Our Friend Shri Lakshmi Kanta Maitra wants also his amendment to be accepted. I am in favour of putting Sanskrit as the fifteenth language, because Sanskrit is our ancient language and we want also to have it mentioned in our Constitution. This is the one place where we could include it,

Considering everything, I feel that it would be correct if we adopt Hindustani written in the Roman script as the national language of the country.

Shri Kuladhar Chaliha (Assam : General) : Mr. President, Sir, after the speech of Dr. Subbarayan which was one of the most rational speeches ever made here in this House, if I come forward to support Sanskrit, I shall be taken as archaic or as an archaeological curiosity. I personally feel that we should have Sanskrit as our national language. Sanskrit and India are co-extensive. However much you can try, you cannot get away from Sanskrit. Our institutions are interwoven with it and values of our lives have been created out of its philosophy. All that is good and all that is valuable and all that we fight for and all that we hold precious have come from Sanskrit literature. The great personalities of Sri Krishna, the Buddha and the Father of the Nation-why do we follow them ? But for the heritage that we have in Sanskrit, we would not be following them. It is in Sanskrit that we have got the most beautiful literature, the most profound philosophy and the most intricate of sciences. Can we ever conceive of anything more beautiful than Kalidasa's Shakuntala or his Megadhuta ? Can we have any better things in the world or can you imagine any better culture in the world ? As regards philosophy, we have the rational philosophy of Sankhya, the philosophy that Swami Vivekananda took to Chicago, where he had it recognised that ours was one of the finest of religions. This was due to his deep knowledge of Sanskrit. Because of his volcanic energy, he was able to galvanise the world with his ideas.

I cannot be as sentimental or as expressive as my Friend, Pandit Lakshmi Kanta Maitra. I have not got the extensive knowledge of Sanskrit as he has, otherwise I would have given you all that we have in Sanskrit by way of science music, architecture, economics, political science and even surgery which will be surprising. It is there for us to draw upon. Sanskrit is such a vast storehouse that all the provincial languages, when they could not find the proper word for anything, have always' gone to Sanskrit to draw upon. Even good Hindi is nothing but Sanskrit. Sir, from birth to death, we perform ceremonies in Sanskrit mantras. Our whole life is so interwoven with Sanskrit that you cannot get away from Sanskrit. May be today only a few people understand Sanskrit, but what about English ? Only one per cent. or two per cent. of the people speak English.

As regards the proposition put forward by the Honourable Shri Gopalaswami Ayyangar, I accept it because it is a compromise solution, and because it is good for India, not because Hindi is a better language. As a matter of fact, when I heard people like the Maulana Saheb speaking in Hindustani, I was struck by the dignity, 'flexibility, refinement of style, sweet intonations of that language, and I thought that Hindustani would be a better substitute for Hindi. You do not ask me why; I do not know, I do not know how to read and write it, but the dignity of the language of Hindustani is such that, when I heard it, I thought it was very attractive. I heard speakers after speakers speaking in Hindi as well as in Hindustani, but I was struck only by the dignity, beauty of expression and the flexibility of the Hindustani language, and I thought it was, very attractive.

Now coming again to Sanskrit, it is the mother of all our provincial languages. We will become better Indians by adopting Sanskrit, because Sanskrit and India are co-extensive. Even if we adopt Hindi or Hindustani, we shall not be able to get away from Sanskrit, which has given us our philosophy and, all the beautiful things of the world.

Then a regards the numerals, the heavens would not tumble down if we adopt the international numerals. If we have used it for 150 year and more, we can use it even now, and nothing will be lost. I cannot follow the argument that the international numerals should not be used, for after all it is our own numerals. If we do not adopt the international numerals, we will not be able to adopt ourselves to the changing circumstances of the world. We should try to be a little more modern and a little more progressive in our outlook. With these words, I conclude.

Rev. Jerome D'Souza (Madras : General),: Mr. President, I venture to take a few minutes of this House, although I must confess that the points that I wish to bring before you have already been touched upon by various distinguished speakers. If, nevertheless, I crave the indulgence of the House for a few minutes, it is because with so many others in this House I feel the immense gravity and the vital importance of the topic on which we are engaged.

Sir, time and again during the last two years and more that we have gathered in this House, when questions of a controversial nature have engaged our attention and when sometimes passions were roused, some of us who have watched the political scene of our country with a certain detachment, not having been in the rough and tumble of it like stalwart fighters, asked ourselves whether the time would come when before the end of the discussion, our traditional spirit of adjustment and conciliation would assert itself and enable us to come to an agreed solution. And again and again to the deep satisfaction of those who have watched it, to the satisfaction of the friends of this country, possibly also to the deep chagrin of those who do not love us-I would not call them our enemies that spirit of compromise and understanding has asserted itself and we have come to some consensus of opinion.

Only at this point, to the grief of those of us who have wished to see this question also treated in the same spirit of compromise and understanding, I say only on this question, feelings have been embittered or excited to a degree which has not happened before. Now, I am not saying that as a matter of criticism I may even say that it was inevitable-because apart from perhaps religious convictions and in some cases even more than religious convictions, there is nothing inhuman activity which touches the springs of man's action and man's life more than language and all that language implies.

After all, when we come to think of it, there is nothing that proclaims our superiority to the rest of creation than this divine power of language and speech. Because, after all, a world, when the world is really good and sincere, is the flowing out of the very soul of man, is the very counter-part of his innermost being. Therefore, there is nothing that flows out of human life and the human heart more beautiful than beautiful words, nothing more detestable than harsh, hateful, insincere words. When words come out from the depth of the soul and express the innermost sincerity of that soul, the man who speaks in that manner gains a power over his fellow men, with which nothing else on earth can compare.

How, may I ask you, did our incomparable Mahatma Gandhi hold us as it were in the Palm of his hand, if it were not by the supreme force of sincere, crystalline, vibrating speech which was his own and which was incommunicable ? And whenever we find that a language which we claim as our own, a language which we think is the truest expression of our being is in some way denied to us, our passions are stirred as nothing else stirs them. That explains the passion of those who want a particular form of Hindi: that explains, my friends. the passion of those who, like me, wish to see that all the currents of Indian culture, including those of Muslim India, those of Christian India. those of the different parts of India should find a place within the hospitable limits of that language, which will be the official and which will ultimately become the national language of India.

Sir, what physical and geographical climate is to man's physical being language, its spirit, its genius, its vocabulary, are to the spirit of man, as intellectual climate in which the soul and culture of a people live. If that intellectual climate is not acceptable to any section, if the meaning, resonance, associations of ideas, historical and cultural implications of a very wide vocabulary do not give satisfaction to all the different elements of this varied and extraordinary nation of ours, in which so many different cultures have to find an expression, there will be great unhappiness. I say, if we do not, find some kind of contentment in the cultural climate, of our land as expressed by the spirit, the genius, the music and the rhythm, and variety of vocabulary, of the national language, then, we shall not feel at home, we shall feel we are strangers, as it were under a decree of banishment imposed upon us, not physically, but in the intellectual and cultural sense. That is the meaning of the stand we have taken; that is the reason why we with all the strength of our soul, plead for this larger-hearted treatment of the vocabulary of this language.

I rejoice that our friends have accepted this. On this most fundamental issue, those who have championed the cause of Hindi have assured us that they accept the explanation which has now been made a part of the proposals of Mr. Gopalaswami Ayyangar, that Hindi shall include the form of speech known as Hindustani as well as other cognate styles and forms. This gives us the assurance that in course of time, with the evolution of this language all the different elements that make up this nation will find in it a congenial intellectual and cultural atmosphere. On this point, therefore, let me in all sincerity express a profound satisfaction that we have come to an agreement about the language in general, about the content and spirit of it, and finally about the script that has to be used for it.

Having come thus far, shall a minor thing, a small thing, now dash away that cup of unity that has been offered to our lips? Shall our friends say that here again was one of great might-have-beens of our history? In the brief course of recent history in the evolution of events during the past 10 to 15 years, there came a stage when the majority of our people said that division of the country was inevitable. Still, it is possible to say judging after the passage of time, and with the detachment of a historian, that perhaps at such and such a point, if we had acted in a different way, or if the other party or such and such a person has acted slightly differently, the course of events in our history might have been entirely different.

It is difficult when we are so near to the events, when we are, as it were lost in them, to cultivate that distance and detachment and to pass judgment and to discern all that a particular action or gesture, or decision implies. As apparently insignificant action may have very great explosive possibilities, may contain germs that will develop in a manner which we cannot foresee at all. I feel Sir, that some of us here, whether we belong to one section of the House or another, are saying things performing actions, and aligning ourselves in the course of these discussions in a manner the full significance, the ultimate implications of which, we ourselves are not aware, and which time alone can show.

While therefore rejoicing that there has been basic agreement on this question, let me say in a spirit of prayerfulness and earnest desire that as regards the points that remain unsettled, God Himself may guide our steps and decisions, and ultimately move us to a solution which will ensure the preservation of that unity which we have got at such a price, for which such tremendous sacrifices have been made. I hope and pray therefore that on the minor points on which we are still divided, the unity of this country may not be shattered upon this rock of linguistic consciousness. I will not use the word fanaticism it is feeling, and passion nurtured by ignorance rather than fanaticism, ignorance of all the implications of the decision which we are called upon to make.

Nevertheless, I venture to plead for the acceptance in its broad outline of the proposal submitted by Mr. Gopalaswami Ayyangar, not because I think that in every detail it is acceptable but because it embodies the widest common measure of agreement. I agree with Dr. Subbarayan that reopening the matter within five years though it is asked for and has been conceded, is not a satisfactory arrangement; in five years we shall not be in a position to satisfy the commission which is envisaged that the time has come for a radical and important change. I hope means may be found to evolve a satisfactory formula on this point also, which will be universally acceptable.

The logic of events will convince all that the time is not enough for the mastery of this language by many sections of our people in a manner in which the official language. should be mastered, mastered so that it may become not merely the official language, but ultimately the national language. I may assure those that may think that we are rather lukewarm in giving our support to this, that we wish to see Hindi not only as the official language, but we wish to see it evolving, developing, gaining the hearts of all our people to such an extent that from an official language, it may become a truly national language, nay as Mr. Dhulekar said this morning, with all the sincerity which we recognise in him, that it may become an international language. We do want it. But if it is to be an international language, its international spirit, and outlook must be maintained. If we close our doors against words, ideas, ways and currents of thought, manners of expression and historical association which are implied in this, then, it will not have the international spirit; the spirit which will naturally and inevitably spread out beyond our country and enable it to become one of the preferred languages of strangers and foreigners.

Cultured people have preferences in the matter of foreign languages. The French people, proud of their language, have a fine statement : I do not know whether national self-love has inspired them to say so, but it expresses their pride in their language. All men have two languages, they say, their own and then the sweet French tongue :

"Tout homme a deaux, langues, la sienne et puis le francais"

Perhaps, a day may come when the whole civilised world may say, "All men have two languages, their own and then sweet language of India." But, if it is to be that, the capacity to spread and conquer the hearts of men should be there; a truly international spirit as manifested in the way that it has developed in many parts of our country, gathering spoils as we may say of many an age and culture, many a race and many an epoch in our history, should be stamped upon it.

It is for this spirit of universality that I would plead with my friends who have till now stood out on the question of numerals to accept the compromise, putting aside for the moment the merits of the question. Personally I believe that on rights and merits, international numerals have an indisputable superiority. I say as a teacher, as a student of science and literature, as a student proud of our contribution of the concept of zero and its associated numerals to the world culture, that on the merits of the case., it is better to have the international numerals. But even if it were not so, this question of numerals has now come to be a kind of symbol for many of us : Symbol on the one hand of the spirit of adjustment among the differing elements within our country, and on the other, symbol of the spirit of universalism and so we want this point to be conceded. However I should not call it a "concession," rather let me say an agreement on that point, as an affirmation of the spirit of universality from those who have not so far shown themselves willing to make it.

This language of India has to be learnt not only by the 350 millions of our brothers and sisters. Remember that it has to be learnt by the army of foreigners who come to our country, to study our culture, to take part in our commerce, to take part in foreign diplomatic representation. It is not merely Indians who have to learn a language, for which they have a natural affinity; it is foreigners also who have to learn this language which will be entirely foreign to them. When we ask for fifteen years it is also because the commercial interests of India are mixed up with this question. Foreign countries which need the knowledge of the Indian language require a fairly wide period for its study. Moreover this universal outlook is required not only in the interests of India but for the good of the world at large.

We wish to carry to the world the message of India's spirit, the message of her firm belief in the primacy of spiritual values, the message of love and *Ahimsa* which Mahatma Gandhi preached. We wish to communicate to others the literary and artistic treasures which we have inherited from our past, and unless we keep our windows and doors open, unless we make matters easy for those friends to share our cultural heritage, unless we leave-as it were-bridges by which they will easily recognise that it is not an entirely strange land from which we are going out and into which they will be stepping it will not be easy for us to carry out our mission.

I say the acceptance of these international numerals will be a symbol of the spirit of India which wants not merely a narrow nationalism but according to the spirit of Mahatma Gandhi, and Rabindranath Tagore and of our own great Prime Minister wants the spirit of. universal brotherhood. I say that for the sake of this we should not permit anything which would stand in the way of universal understanding and mastery of our language.

So, on all these grounds I should like to make a fervent and earnest appeal that these divisions which have caused so much distress of heart to the lovers of this country may be closed now, that the power and cohesion and the unity which led a mighty political party to win independence might not at this last stage of the deliberations of our great Assembly break down and be dissipated to the satisfaction of those who do not love us and to the deep distress of those who love us. I, therefore, most earnestly and humbly make this supreme appeal through you, Sir, that we may close our ranks; that on this question of language there may be the grace of general and universal acceptance; and that as we rise from this discussion, we may rise not as separated into camps, but as brothers, and children of one Mother--Our Motherland, India. *(Loud Cheers.)*

Shri B. M. Gupte (Bombay: General): Mr. President, I have tabled amendment No 281. It is a humble attempt at a compromise. The honourable Father D'Souza has just put in a very strong plea for a compromise but he has not put forward any specific formula. My amendment is an effort in that direction. I of course know the fate of those who venture to try their hand at compromise making. Very often they displease both parties rather than please both parties. But in the interest of unity and harmony I have taken that risk.

In my opinion the amendment 65-the Munshi-Ayyangar formula-is itself a very admirable compromise between the two schools of thought. It holds the scales evenly. The name of the language is accepted as Hindi but the protagonists of Hindustani are comforted with a directive clause. In that clause itself those who are the Champions of Sanskritised Hindi are appeased because it is said down that Sanskrit shall be the primary source of vocabulary, but at the same time the advocates of the other school are also placated by providing that the words from other languages shall not be boycotted. So it is an admirable compromise, it is a very balanced provision and but for one exception, I would have been tempted to describe it as a very fine feat of tight-rope walking. Only in one exception that is in the case of numerals there is unbalance and my amendment seeks to correct that unbalance. It is very unfortunate when there is so much unanimity on all other points only in this small matter there should be such a very serious difference of opinion but unfortunately it is there.

If we compare both these drafts we find that there is substantial agreement even on this point. Under both, the numerals will remain in official use for fifteen years. Under both, the language commission and the Parliamentary Committee will have full power to decide the question of numerals in the five yearly reviews of the situation. So this is common to both the drafts. The only difference is that in the Munshi-Ayyangar draft the international form of numerals alone is mentioned as the official form of numerals and there our Hindi friends feel aggrieved. They think that though their language is honoured, their numerals are torn from that language and all of a sudden in one thrust the foreign numerals are foisted upon them and we must sympathise with their sentiment.

Whether those numerals are really of Indian origin or not-some people contest it-I do not want to go into that controversy-it has to be admitted that they have today an appearance of being foreign, at least to Hindi language. I therefore submit that in this matter we should try to respect the sentiments of our Hindi friends. It is no use trying to thrust these numerals all of a sudden :let them be gradually and peacefully assimilated in the Hindi language. I have therefore proposed in my amendment that both these numerals should be mentioned in the first clause. That is a concession I should like to make to that school of thought. I therefore would plead with my Southern friends that even if according to you the Hindi numerals are to be in official use for such a long period as 15 years, then why not mention them in the, clause ? Why are you so chary about it ?

But at the same time our Mr. Ayyangar has insisted and rightly insisted that our ultimate aim should be that international form of numerals shall be the permanent form of numeral. There I agree with that school of thought and I have therefore provided that after fifteen years subject of course to the right of the Language Commission and the Parliamentary Committee to decide the question in any way they like, the international form of numerals shall be the only form of numerals.

Now I plead with my Hindi friends that they should yield on this point and there are very good reasons for it. It had been admitted by them that the question of language had been solved 95 per cent. to their satisfaction and I do not see why in the interest of unity and harmony they should not yield That 5 per cent. with good grace. Of course there is the other well-known argument about the utility and the progressiveness of using international forms as far as possible especially when they belong to us in their origin, but I will not emphasise that. I will emphasise this that if you have 95 per cent. of your demand, why create this. strife, why this disharmony and bitterness only for 5 per cent ?

I therefore beg of my Hindi friends that they should gratefully yield this five per cent. It is a small matter and we have solved much greater problems by agreement and good-will and amity. If we take, a decision on this by a vote of majority, then it will leave a trial of bitterness and rancour behind it. By our action now we may jeopardise the normal working of our new Constitution, even before it is passed. The party that is defeated may start an agitation for the amendment of the Constitution and the reaction of the other side also may be equally violent. Thus the members of controversy, will remain alive for long time. So, I appeal to the, honourable House. Let us take care that the verdict of history, the verdict of posterity on our labours on this matter, may not be that they set out to find a language to unite them but ultimately ended in allowing the numerous to divide them. Therefore I appeal to all for a compromise. I am not keen about my own formula. But I am keen on a compromise. I only want that there should be no division in this House on this matter, where there is so much substantial agreement.

With these words I leave this point and proceed to make certain observations with regard to another topic, a topic of more enduring interest and more enduring importance, and that is about the characteristic of the future development of the language. There are on the Order Paper certain amendments which advocate

Sanskritised Hindi as the official language. And even apart from those amendments, there is a strong tendency in certain influential quarters that Hindi should be over-sanskritised, and perhaps owing to that tendency there has been some difficulty about the adoption of this language as the official language. Of course, those advocates will take advantage of the provision, in the directive clause that Sanskrit would be the predominant source of vocabulary. I have no quarrel with that provision. But I feel that no one should take undue advantage of that. It is a compromise and it should be worked in the spirit of a compromise. I am not against Sanskrit; most of us cannot be, it is in our blood, It is the fountain head of our mother tongues and the storehouse of our culture. Not only that I am not against Sanskrit, but I am an admirer of Sanskrit literature, The most ennobling philosophy the subtlest thought and some of the most enchanting poetry of the world, are enshrined in the Sanskrit language.

But with all its grandeur, and with all my admiration for that grandeur, I have to admit that Sanskrit cannot be the language of the masses; and equally certainly over-Sanskritised Hindi also cannot be the language of the masses. In these days of democracy and adult suffrage, it is the masses that must be uppermost in our minds when we decide such questions. It is the language of the masses that we must be able to speak. Otherwise, as far as we Congressmen are concerned, and most of us here are Congressmen, we shall be kicking the ladder by which we rose. We are here because of the support of the masses to the great Organisation to which we have the honour to belong,-the Indian National Congress, and it is the support of the masses that gave it the power to govern the whole country. I submit therefore, let us not create an artificial barrier between us and the common man by artificially Sanskritising Hindi. Thus easy intelligibility to the common man should be the characteristics of the future development of our language. I appeal to my Hindi friends, do not dwarf your ambition. Do not be satisfied with making Hindi only the official language, but try to make it the national language embracing the entire nation. I admit that Sanskrit must predominate in the literary forms of Hindi. I also admit that Sanskrit must predominate in the scientific terms. Sanskrit also has a place in the language of the common man. But let us not force the pace; let us not force the content. Let things grow spontaneously, and I am sure a day will soon dawn when Hindi will not only be the official language, but a national language easily spoken and easily understood throughout this great country.

With these words, Sir, I commend my amendment to the acceptance of the House.

Mr. President : The Honourable Shri Jawaharlal Nehru.

The Honourable Shri Jawaharlal Nehru: Mr. President, there has been a great deal of debate here and elsewhere, and much argument over this question. Personally I do not regret the time spent on it, or even the feeling raised by it. Some times I may not agree with that feeling; but after all, the question before us is a very vital question, and it Is right that vital people should feel vitally about it.

We have had learned speeches, and speeches that were perhaps merely enthusiastic. Now, I do not know in which category to place myself. *(Laughter).* Neither the first nor the second suits me or is appropriate for me. So perhaps, you will put me in some third category. But I am interested vastly in this question from a variety of points of view; and I have listened to the arguments here and elsewhere, and sometimes I regret to say, I have got rather excited myself over it. And these scores and hundreds of amendments have also been perused by me. and yet I have felt that the matter is not one for verbal amendments here and there, but goes down somewhere deeper.

I rise to support the amendment that my Friend and Colleague Mr. Gopalaswami Ayyangar has placed before the House, *(Cheers)*. I support that amendment, not because I think it is perfect in every way; perhaps if I had my way, I would like to change it here and there. But I know that this is the result of continuous effort and endeavour, and thought and consultation, and as a result of all that consultation and thought, some integrated thing took shape. Now it is a difficult matter to alter or vary somethnig that is an integrated whole, which displays a certain strain of thought. You may change it here and there but I do not think that will do justice either to the original amendment or the person who wants to change it. It would be far better if some other integrated solution was found if the first one was not liked or approved of. Therefore, although I would have liked, perhaps if I had a chance, to lay greater emphasis on some aspects of that amendment, neverthless after all that has happened I think that amendment displays not only the largest measure of agreement but also, I think, a thought-out approach to this difficult problem.

Now I am not going to talk about any of the various amendments that are before you or even analyse the amendments that I am supporting. Rather I wish to draw your attention to certain other aspects, certain basic things which perhaps are presented by this conflict on the issue either in the House or in the country. After all it is not a conflict of words, though words may represent that conflict here. It is a conflict of different approaches, of looking perhaps in somewhat different directions.

We stand-it is a platitude to say it--on the threshold of a new age, for each age is always dying and giving birth to another. But in the present context of events, all over the world and more so perhaps in India than elsewhere, we are participating both in a death and in a birth and when these two events are put together then great problems present themselves and those who have to solve them have to think of the basic issues and not be swept away by superficial considerations. Whether all the honourable Members of this House, have thought much of these basic issues or not I do not know. Surely many of them must have done so. But there are those basic issues. What is our objective What are we going to do ? Where do we want to go to ?

Language is a most intimate thing. It is perhaps the most important thing which society has evolved, out of which other things have taken growth. Now language is a very big thing. It makes us aware of ourselves. First, when language is developed it makes us aware of our neighbour, it makes us aware of our society, it makes us aware of other societies also. It is a unifying factor and it is also a factor promoting disunity. It is an integrating factor and it is a disintegrating factor as between two languages, as between two countries. So it has both those aspects and when therefore you think in terms of a common language here you have to think of both those facts.

All of us here, I have no doubt, wish to promote the integrity of India. There are no two opinions about it. Yet in the analysis of this very question of language and in the approaches to it one set of people may think that this is going to be a unifying factor, another may think that if approached wrongly it may be a disintegrating factor and a disruptive one. So I. want this House to consider this question and therefore it has become essential for us to view it in this larger context and not merely be swept away by our looking for this or that.

A very wise man, the Father of our Nation, thought of this question, as he thought of so many important questions affecting our national future. He paid a great deal of attention to it and throughout his career he went on repeating his advice in regard to it. Now that showed that, as with other things, he always chose the fundamentals of our national existence. Almost every thing he touched, you will remember, was a basic thing, was fundamental thing. He did not waste time, thought or energy over the superficial aspects of our existence. Therefore he took up this subject in his own inimitable way, thinking of it always not as a literary man, though he was a very great literary figure, possibly unknown to himself, but always thinking in terms of the future of the Indian people and the Indian nation, how to build it up brick by brick, so that we can get rid of the evils that pursued us. Whether those evils were foreign domination or poverty, or inequality or discrimination amongst ourselves, or untouchability or the like, he put this question on that same high level and looked upon it from the point of view of a step which might either help us to build a powerful and enlightened India or be a disintegrating or weakening factor.

Now the first thing he taught us was this : that while English is a great language-and I think it is perfectly right to say that English has done us a lot of good and we have learnt much from it and progressed much-nevertheless no nation can become great on the basis of a foreign language. Why ? Because a foreign language can never be the language of the people, for you will have two strata or more-those who live in thought and action of a foreign tongue and those who live in another world. So he taught us that we must do our work more and more in our own language.

Partly he succeeded in that, only partly, possibly because of the inherent difficulties of the situation. For it is a fact that in spite of all his teaching and in spite of the efforts of many of the honourable Members present here who are keen and anxious to push up our own languages the fact is that we continue to do a great deal of our political and other work in the English language Nevertheless, this is true that we cannot go far or take our people by the million in a foreign language. Therefore, however great the English language may be-and it is great-we have to think in doing our national work, our public and ,our private work as far as possible, in our own various languages and more particularly in the language that you may choose for all India use.

Secondly, he laid stress on the fact that that language should be more or less a language of the people, not a language of a learned. coterie-not that is not valuable or to be respected, we must have learning, we must have poets, great writers and all that; nevertheless, in the modern context, even more than in the past, no language can be great which is divorced from the language of the people. Ultimately a language grows in greatness and strength if there is a proper marriage between those who are learned and the masses of the people. In India-though I am unlearned in those languages-we have two examples : one of Rabindranath Tagore who brought about that marriage in the Bengali language and thereby made that language even greater than it was and more powerful, the other the example of Gandhiji himself in the Gujerati language. There are, no doubt, others, but these are outstanding figures.

Now, in any language that we seek to adopt as an all-India language, or for the matter of that in any language whether-it is all-India or not, we have to keep in mind that we dare not live in an ivory tower of purists and precisionists. Though purists and precisionists in the matter of language have their place and should be there, it is a dangerous thing to allow a language to become the pet child of purists and such like people because then it is cut off from the common people. So you have to have both : certainly a certain precision, a certain profundity and a certain all-embraciveness in language and at the same time contacts with the people, drawing its sustenance from the common people.

The last thing in this matter to which the Father of the Nation drew our attention was this, that this language should represent the composite culture of India. In so far as it was the Hindi language it should represent that composite culture which grew up in Northern India where the Hindi language specially held away; it should also represent that composite culture which it drew from other parts of India. Therefore he used the word 'Hindustani', not in any technical sense, but in that broad sense representing that composite language which is both the language of the people and the language of various groups and others in Northern India, and to the last he drew the attention of the people and the nation to that. I am a small man and it is rather presumptuous of me to say that I agree with him or do not agree with him, but for the last thirty years or so, in my own humble way, I stood by that creed in regard to language and it would be hard for me if this House asked me to reject that thing by which I have stood nearly all my political life.

Not only that, but I do think that in the interests of India, in the interests of the development of a powerful Indian nation, not an exclusive nation, not a nation trying to isolate itself from the rest of the world but nevertheless aware of itself, conscious of itself, living its own life in conformity and in cooperation with the rest of the world, that approach of Mahatmaji was the right approach. I should have liked to see somewhat greater emphasis on that in this Resolution, but because of all that has happened, when ultimately this Resolution took shape I accepted it as at any rate in a certain part of it attention is drawn to this fact that I have mentioned. As I have said, I wish it had been more pointedly drawn, nevertheless it is drawn, so I accepted the Resolution. If unfortunately that attention had not been drawn there, then it would have been very difficult for me to accept this Resolution.

Now, we stand on the threshold of many things and this Resolution itself is the beginning of what might be termed a linguistic revolution in India, a very big revolution of far-reaching effects, and we have to be careful that we give it the right direction, the right shape, the right would lest it go wrongly and betray us in wrong directions. Men shape a language, but then that language itself shapes those men and society. It is a question of action and interaction and it may well be said that if a language is a feeble language or an unprecise language, if a language is just an ornate language you will find those characteristics reflected in the people who use that language. if the language is feeble those people will be rather feeble: if it is just ornate and nothing else they will tend to ornateness. so it is important what direction you give to it. if a language is exclusive those people become exclusive in thought and mind and action.

That is what I meant when I said at the beginning that perhaps behind all this argument and debate there are these different approaches. Which way do you look ? As you stand on the threshold of this new age, do you twist your neck and back and look backwards all the time, or do you look forward? It is an important question for each one of us to answer because there is, inevitably perhaps, a tendency in this country today to look back far too much. There is no question of our cutting ourselves away from our past. That would be an absurdity and a disaster because all that we are we have been fashioned by that past. We have our roots in that past. If we pull ourselves out of that past, we are rootless. We cannot go far merely by imitating others, but there is such a thing as having your roots in the soil but growing up to the sky above and not always looking down to the soil where your roots are. There is such a thing as marching forward and not turning back all the time. In any event, whether you want it or not, world forces and currents will push you forward but if you are looking back you will stumble and fall repeatedly.

Therefore, that is the fundamental thing in approaching this problem: which way are you looking, backward or forward ? People talk about culture, about Sanskriti etc., and rightly, because a nation must have a sound basis of culture to rest itself, and as I have said that culture must inevitably have its roots in the genius of the people and in their past. No amount of copying and imitation, however good the other culture may be, will make you truly cultured because you will always be a copy of somebody else. That is admitted. Have your roots in that powerful and tremendous culture that took shape thousands and thousands of years ago and took shape so powerfully that in spite of every attack upon it inside and outside, even in spite of our own failings and decay and degradation, yet it has subsisted and given us some strength ? Obviously that must continue. Nevertheless, when you are on the threshold of a new age, to talk always of the past and the past, is not a good preparation for entering that portal. Language is one of these issues, there are many others.

There are many types of culture. There is the culture of a nation and of a people which is important for it, there is also the culture of an age, the *yoga dharma,* and if you do not align yourself with that culture of the age you are out of step with it. It does not matter how great your culture is if you do not keep step with the culture of the age. That has been the teaching of all the wise men of our country as well as of other countries. There is a national culture. There is an international culture. There is a culture which may be said to be—if you like—absolute, unchanging, with certain unchanging ideals about it which must be adhered to. There is a certain changing culture which has no great significance except at the moment or at that particular period or generation or age but it changes and if you stick on to it even though the ages change, then you are backward and you fall out of step with changing humanity. There is the culture of time and the culture of various nations.

Now, whatever might have been the case in the past, in the present—today there can be no doubt whatever that there is a powerful international culture dominating the world. Call it, if you like, a culture emanating from the machine age, from industry and all the developments of science that have taken place. Is there any Honourable Member present here who thinks that if we do not accept that culture,—adapt it if you like, but accept it fundamentally—that we can make much progress merely by repeating old creeds ? If I may venture to say, it is because at a previous period of our history we cut ourselves off from the culture of the rest of the world—and in this culture I include everything including the art of war—we became backward and we were overborne by others who were not better than us but who were more in step with the culture of the time. They came and swept us away and dominated us repeatedly. The British came and dominated over us. Why ? Because in spite of our ancient *Sanskriti* and culture they represented a higher culture of the day—not in those fundamental and basic things which may be considered eternal, if you like—but in other things, the culture of the age, they were superior to us. They came and swept us away and dominated over us for all this long period.

They have gone. Are we going to think of going back in mind, thought and action to that type of culture which once brought us to slavery ? Of course, every honourable Member will say 'No'. Yet I say this line of thought is intimately related to what I say. It leads you to that. If you look backward, if you talk in the terms in which some honourable Members have talked today and yesterday, I say it inevitably leads to that conclusion, and I for one not only hesitate to reach that conclusion but I want to oppose it, because I think it is bad for India. You have—and I have—supreme faith in the Indian people and in the Indian nation. I am convinced that India, in spite of our present difficulties, is going to make progress and go ahead at a fast pace, but if we shackle the feet of India with outworn forms and customs, then who is to blame if India cannot go fast, if India stumbles and fails? That is the fundamental question before us.

Again, look at this language problem from another point of view. Till very recently—in fact, I would say a generation ago—French was the recognised diplomatic and cultural language of Europe and large parts of the earth's surface. There were other great languages—there was English, there was German, there was Italian, there was Spanish— in Europe alone, apart from the Asian languages. Yet French was the language in Europe, certainly of culture and diplomacy. Today it has not got that proud place. But even today, French is most important in diplomacy and public affairs. Nobody objected to French. No Englishman, or Russian, or German or Pole objected to French. So all those other languages were growing and today it might be said that English is perhaps replacing French from that proud place of diplomatic eminence.

Before French, in Europe the language of diplomacy was Latin just as in India the language of culture, and diplomacy for a vast period of time was Sanskrit, not the language of the common people but the language of the learned and the cultured and the language of diplomacy etc. And not only in, India, but the effect of that, if you go back to a thousand years, you find in almost all the South-East Asia, not to the same extent as in India, but still Sanskrit was the language of the learned even in South-East Asia and to some extent even in parts of Central Asia. The House probably knows that the most ancient Sanskrit plays that exist have been found not in India but in Turfan on the edge of the Gobi desert.

After Sanskrit Persian became the language of culture and diplomacy in India and over large Parts of Asia,—in India due to the fact of changing rule but apart from that, Persian was the diplomatic language of culture over vast parts of Asia. It was called— and it is still called—the "French of the East" because of that. These changes took Place while other languages were developing, because of the fact that French in Europe and Persian in Asia were peculiarly suited for this purpose. Therefore they were adopted by other countries and nation too. India may have adopted it partly because of a certain dominating influence of the new rulers, but in other countries which were not so dominated they adopted Persian when it was not their language because it was considered as suitable for that purpose. Their languages grew.

We took to English obviously because it was the conqueror's language, not so much because at that time it was such an important language, although it was very important even then,—we took to it simply because we were dominated by the British here, and it opened the doors and windows of foreign thought, foreign science etc., and we learnt much by it. And let us be grateful to the English language for what it has taught us. But at the same time, it created a great gulf between us who knew English and those who did not know English and that was fatal for the progress of a nation. That is a thing which certainly we cannot possibly tolerate today. Hence this problem.

However good, however important, English may be, we cannot tolerate that there should be an English knowing elite and a large mass of our people not knowing English. Therefore, we must have our own language. But English—whether you call it official or whatever you please, it does not matter whether you mention it in the legislation or not— but English must continue to be a most important language in India which large numbers of people learn and perhaps learn compulsorily. Why ? Well, English today is far more important in the world than it was when the British came here. It is undoubtedly today the nearest approach to an international language. It is not the international language certainly but it is the biggest and the most widespread language in the world today, and if we want to have contacts with the world as we must, then how are we to have those contacts unless we know foreign languages ? I hope many of us will learn other foreign languages, e.g., the Russian language which is a magnificent language, very rich; the Spanish language which may not be quite so important today but is going to be very important tomorrow in the context of a growing South America; the French language which of course always has been and is still important; the German etc. We will learn all of them no doubt, I hope. But the fact remains that both from the point of view of convenience and from the point of view of utility. English is obviously the most important language for us and many of us know it. It is absurd for us to try to forget what we know or not take advantage of what we have learnt. But it win have to be inevitably a secondary language meant for a relatively restricted number of people.

All these factors have been borne in mind in this amendment that Shri N. Gopalaswami Ayyangar has placed before the House. I do not know what the future will be for this language. But I am quite sure that if we proceed wisely with this Hindi language, if we proceed wisely in two ways, by making it an inclusive language and not an exclusive one, and include in it all the language elements in India which have gone to build it up with a streak of Urdu or a mixture of Hindustani—not by statute, remember, but by allowing it to grow normally as it should grow and if, secondly, it is not, if I may say so, forced down upon an unwilling people, I have no doubt it will grow and become a very great language. How far it will push out the use of the 'English language I do not know; but even if it pushes our English completely from our normal work, nevertheless English will remain important for us in our world contacts and in the international sphere.

So, to come back to the basic approach to this problem : Is your approach going to be a democratic approach or what might be termed and authoritarian approach ? I venture to put this question to the enthusiasts for Hindi, because in some of the speeches I have listend here and elsewhere there is very much a tone of authoritarianism, very much a tone of the Hindi-speaking area being the centre of things in India, the centre of gravity, and others being just the fringes of India. That is not only an incorrect approach, but it is a dangerous approach. If you consider the question with wisdom, this approach will do more injury to the development of the Hindi language than the other approach. You just cannot force any language down the people or group who resist that. You cannot do it successfully. You know that it is conceivably possible that a foreign conqueror with the strength of the sword might try to do so, but history shows that even he has failed. Certainly in the democratic context of India it is an impossibility. You have to win through the goodwill of those people, those groups in India in the various provinces whose mother tongue is not Hindi. You have to win the goodwill of those groups who speak, let us say, some, variation of Hindi, Urdu or Hindustani. If you try, whether you win or not, if you do something which appears to the others as an authoritarian attempt to dominate and to force down something then you will fail in your endeavour.

Now may I say a word or two about this business of Hindustani and Urdu and Hindi. We have accepted in this amendment the word 'Hindi', I have no objection to the word 'Hindi'. I like it. I was a little afraid that it might signify some constricted and restricted meaning to the others. I was afraid about this. I thought the word 'Hindi', which I like, might appeal to others also. I know, many honourable Members here know, and persons coming from the United Provinces know, that they can with a fair measure of facility speak in what might be called Urdu and can speak with equal facility and flow in what might be called fairly pure Hindi. They can do both. It is rather interesting and it is right that we should know both, with the result that they have got a rich and Fine vocabulary. I do not know whether your experience has been the same or not. We Find that in a particular subject or type of subjects we speak better in Hindi than in Urdu and in another type of subjects Urdu suits us better; it suits the genius of that subject a little better. My point is that I want both these instruments which strengthen Hindi that is going to be developed as our official and national language of the country. Let us keep in touch with the people. That is a good practice. If you do that, then you will keep all the other avenues open. Then the language develops. Without any sense of pressure from anybody, without any sense of coercion, it takes shape in the, minds of millions of people. They gradually mould it and give it shape.

Take the question of numerals. I shall be very frank with you. I have never before looked into this question. But when it did come up before me and when I did give thought to it, I was immediately convinced that the right approach was to keep these numerals, Indian in origin but which have taken a certain form which are used internationally. I was quite convinced of that. But mind you, nobody is banning the use of Hindi numerals. They can be used whenever anybody wants them, but in official use where all kinds of statistics on banking and auditing and census and other columns of figures come in, it is not only an undoubted advantage that these international numerals should be used, but there are also other advantages. These numerals remove at least one major barrier between you and the other countries. That is a very important thing in these days when numerals count for so much in the development of science and the application of science. As I said, you can use Hindi numerals. Anyone who learns can read the Hindi numerals and write them whenever he likes. But officially if you try to think in terms of limiting the use of these international numerals for official purposes, as I have mentioned, you will land yourself in difficulty.

Now what is your objection to this ? Do you want India to progress rapidly in the sciences and art of the modern day ? I can say with conviction that if we do not use these international numerals for these purposes we would fall back. We would put a tremendous burden on the children's minds and the grown-up's minds and, our work will increase tremendously in our offices and elsewhere, and that work will be cut off from the rest of the world. So, from every practical point of view, and it is desirable even from the sentimental point of view— we are not adopting anything foreign; we are adopting something of our own which is slightly varied—and from the point of view of printing, it helps. Perhaps many honourable Members here have something to do with newspapers and printing. I ask you, is it not a fact that it is far easier from the point of view of composing and printing to use these numerals than the Hindi numerals ?

I submit that the fact that we have got rather stuck over the numerals issue has certain importance, again from that basic fundamental point of view of which way we are looking. For my part, I know the Hindi numerals, I can read and write them quite easily and so there is no difficulty so far as I am concerned. But from the way this controversy has developed, this argument has developed, here and elsewhere, more and more I have been made to think that behind this controversy is this different approach. This is the approach of looking back on science, on everything that science and the modem world signify. It is backward looking. It is an approach which, I think, is fatal to India. It is an approach which will prevent us from becoming a great nation for which we have worked and dreamt.

We stand on the threshold of a new age. Therefore it is important that we should have this picture of India clearly in our minds. What sort of India do we want ? Do we want a modern India—with its roots steeped in the past certainly in so far as it inspires us— do we want a modern India with modern science and all the rest of it, or do we want to live in some ancient age, in some other age which has no relation to the present? You have to choose between the two. It is a question of approach. You have to choose whether you look forward or backward.

The Honourable Pandit Ravi Shankar Shukla (C. P. & Berar: General) : We have heard just now and before we dispersed at 1 O'clock speeches of very eminent honourable Members of this House. It is sometimes embarrassing to oppose such array of distinguished countrymen of ours, but there are occasions in the history of nations when there is no alternative left to us but to have our say. I am not opposing for oppositions sake. I stand here before you to give my view on this historic occasion.

There are two approaches to this question. One approach is of those who wish the English language to continue in this country as long as and as far as possible, and the other approach is of those who wish to bring an Indian language in place of English as early as possible. With these two viewpoints, we look at the resolution which has been moved by the Honourable Shri Gopalaswami Ayyangar. All the amendments that I have given are given from the last viewpoint. Had I found that the articles which comprise Chapter XIV-A are all of a nature which do not injure our cause, I would never have come here to speak. It is all right that we have raised to a very high pedestal the Hindi language and the Devanagari script. As far as numerals are concerned, I will speak later.

Having said that, I come to the operative part of this Chapter where the method and the manner in which it is proposed to bring about the desired end are set out. Hindi language is to be the national language, the official language of this country, and the Devanagari script is to be the script of this language. Having admitted all that, is it not right for us to find out ways and means by which we can bring this about? If we look at the various parts of this Chapter, it would appear to us that this is not the aim at all. What is aimed at is, judging the various hurdles that have been put in in this Chapter, to prevent Hindi from coming in as early as possible. If these hurdles are not crossed, if these hurdles are not pulled down and our approach to Hindi made easy, difficulties in our way are very great. When you come to that part of the Chapter which refers to the Commission and the Committee there is a provision which says more or less that for five years in the Centre as well as in the provinces, you have to go on with English as your official language, and there are also other barriers which have been created hereafter in other parts of this Chapter. You find that in provinces it would be difficult for us to bring about the use of Hindi as early as possible.

Many honourable Members of this House have said that it is a proposition which must be looked at from their point of view. We in the provinces find it difficult. How shall we substitute Hindi for English ? That is the proposition before us. Whatever may be done in the Centre, it is a task which we have to face in the provinces. Difficulties in our way are very great. When we took the reins of Government in our hands, we tried to establish departments which will bring about the use of Hindi as early as possible. In my province, I have established a Department called the Loke Bhasha Prasar Vibhag That is to say, we have appointed people who will translate books. There is a collection of vocabulary of twenty-four thousand words, technical words, which are needed for all scientific purposes. We have got scientific books translated into Hindi and Marathi, the two languages that are recognised in my province up to the Intermediate standard and materials have been collected whereby we can translate scientific books on Physics, Chemistry and all those subjects which are so difficult and technical into Hindi and Marathi up to the B. A. standard. Everything is there, but it would not be possible to bring them to use because of the article that has been proposed here.

The other point which I may say in that in my province there are two Universities. One of them has resolved that the medium of instruction in the colleges will be Marathi and Hindi from this year or from the next year. The other has decided that it shall bring into use Hindi as the medium of instruction from 1952. In our province we have altogether stopped English as the medium of instruction and from 1946 onwards, our high-schools are teaching through the medium of Hindi and Marathi. Both are recognised languages in our province. If there are schools and high schools where the medium of instruction is Bengali or Urdu or any other language, they are given grants by us. Therefore, in my province after three years, when the graduates come out from my Universities, unless they are conversant with the English language, they will not be utilised by the nation, and the province will be thrown into a very awkward position.

I consider that it is up to us to make, provision in this Constitution so that we maybe able to progress further as far as possible. My point is that the province must be left to itself to develop and come into line with the article which provides that Hindi shall be the national language or the official language with Devanagari as the script.

Shri B. P. Jhunjhunwala (Bihar: General) : Can you say that the provinces are not at liberty? Provinces are at full liberty to pass any law. *(Interruption).*

The Honourable Pandit Ravi Shankar Shukla : If you read carefully the provisions, you, will find that it is not so. In the original amendment number 65, it is stated, "Subject to the provisions of articles 301-D and 30I-E, a State may by law adopt any of the languages " If you refer to articles 301 -D and 301-E, you will find the limitations placed upon you. Article 301-D says : "The language for the time being authorised for use in the Union for official purposes shall be the official language for communication between one State and another State and between a State and the Union." Then, further, you will find : "Provided that if two or more States agree that the Hindi language should be the official language for communication between such States, that language may be used for such communication." So far as that part is concerned, it is an improvement upon the original draft, but so far as the official language is concerned, in a State, it is governed by article 301-D. For that purpose, the official language shall be the language of communication between one State and another and between the State and the Union. For all purposes, you have to use the English language. Provision has been made that where both the States agree to use the Hindi language, then only it can be used. But, as far as the other States are concerned, and communication between one State and another State, and between the State and the Union is concerned, it is only the English language that can be used. Therefore, I say that our liberty in the use of the language is being curtailed. To that extent, I object to this provision.

The most dangerous provision which I consider in this draft is the use of the English language in courts and the High Courts particularly in the provinces. So long as the language in the courts does not change....

An honourable Member : High Courts.

The Honourable Pandit Ravi Shankar Shukla : Yes, High Courts there is little hope for us so far as the subordinate courts are concerned, we are having Hindi and Marathi as our court languages; these are recognised languages of the court. But, what happens, what is happening today is that so far as the courts are concerned, no doubt it is open to us to present our plaints and written statements in Hindi or Marathi, Judges have been recording all the evidence in English and judgments are delivered in English. Therefore, for all practical purposes, the language which is being used is English and so long as we do not get people who will replace these persons, it is very difficult for us to adopt Hindi as our language in our province.

Therefore, I am looking at all the provisions from this point of view. We should be able to introduce Hindi in all departments and at all stages as early as possible. With that point of view, I say the restrictions placed upon us should be removed. So far as the Centre is concerned, there is already provision made and there is no restriction placed in its way. In one article they have put down so far as the States are concerned, that they are bound to have all their Acts, Bills, rules, bye-laws and everything in the language of the Union. That is to say, so long as English is there, we must have all these things in the English language. I submit that the provinces should be left free in this respect. Parliament may decide so far as the Union is concerned. But, if the State legislature decides to have these things in the language of the State, they should be at liberty lo do so, I have provided in my amendment that these Bills and other things which are to be passed by the legislature should be passed in the language of the State, but at the same time, an authentic and authoritative translation of the text should accompany them.

I would like to bring to the notice of the House a parallel case. There is one parallel only in the history of the world in this respect. It is found in Ireland. In 1921 after the treaty which the Irish entered into with the British Government the first thing they put in the Constitution was that Irish shall be the national language and they also said English shall be their second official language. The reasons for this I will point out. In Ireland the British Government prohibited the use and the learning of Irish language so long as they were rulers of that land and the result was that from the primary stage onwards upto the colleges, English was the language which was being taught and in a century from the beginning of the 19th century to the end of the 19th century, the Irish language was almost gone from the country and every Irishman was speaking English. In 1910 when the census was taken, out of the 3 to 4 millions population of that little Island only 21,000 knew Irish. In 1921 after the treaty the first provision they made in their Constitution was that Irish shall be the national language of that land and that was made by those Irishmen who did not know the Irish language then. Only 21,000 knew Irish and the rest were more English then the English themselves. These were the people who decided at once that the national language of Ireland should be the Irish language.

An Honaurable Member : With what result ?

The Houourable Pandit Ravi Shankar Shukla : For mere expediency, because it was not possible for them to throw away English downright, they had to keep English as second language, but bills that were to be introduced were to be introduced in the language of the land, *i.e.,* Irish and there was to be a translation of it or you may call it a counterpart in English. If a conflict arose between the two, the Irish text was to be considered authentic and authoritative. So in my amendment I have provided for allowing us to make our laws in the language of the State, whether it is Hindi or Marathi and there should be an authentic English text along with the original which we pass into law and in case of conflict where English is required English text may be considered as authentic, but for all other purposes Hindi or the State language text should be considered as authentic. I therefore consider that we should be left free. The provinces should not be hampered in using their language for this purpose. If we want to have Hindi, let us have it. Do not cur-tail our liberty.

With respect to numerals there has been high feeling running throughout this House for some time we have heard from no less a person than Panditji that so far as these international numerals are concerned they are required for very many purposes—some of them he mentioned. Some of the Members including myself thought that that was necessary also. So we have given an amendment to that effect that for certain purposes the English numeral shall continue to be used, *i.e.,* for purposes of accounting, banking and other business matters and official purposes for which they may be required. If that is admitted by the mover of this chapter 14-A, then our difficulties ought to be solved. They should not be confused with the language question at all. We all understand it is not difficult to understand. Let Hindi numeral be used as integral parts of the Hindi language and for purposes for which English numerals are required, let them be used independently. There is no trouble about them and I have framed my amendment with that view. I say that they may be used for purposes as the President may by order direct. Therefore if you take away the English numerals from Hindi, then there would be no confusion and I think everybody here will come to an agreement on that point. The question will be avoided; but what is running into the minds of all is that English numerals are being brought in as an integral part of the State language—Hindi. This is not the intention of this House. We may use the English numerals for purposes for which they are required—we have no quarrel and such provinces where English numerals are used in their language we have no quarrel with them—they can continue to use them but even if it is insisted by them that English numerals should be used in the official language of the Union, *i.e.,* in Hindi, I have made a provision that if there are official communications and correspondence for which English numerals are required, then those communications sent to those provinces should be with the English numerals but for the rest of India where they are not wanted, they should not be thrust upon them. So far as Hindi Provinces are concerned there the Hindi forms of numerals shall go along with all communications but so far as those parts of the country are concerned where English numerals are used in the language, let the Hindi that goes to them have English numerals. I have no quarrel because it does not concern us.

An Honourable Member : If one province does not want Hindi, will you give it freedom ?

The Honourable Pandit Ravi Shankar Shukla : It is for the all-India Union to say whether you want it or not. If you say that Hindi is to be the language of the Union with Devanagari script and if the Centre decides or if the Parliament decides that Hindi shall be the language communicated to you, you will have that language communicated by the Centre. So far as we in the provinces are concerned, there is nothing between us and you. You can settle your accounts with the Centre. We say, have the English numerals if you like or Hindi if you like and those of us who want both can have both, but so far as the Hindi language provinces are concerned let them not be compelled to have English numerals where Hindi is being used as provincial language or as a State language, so long as these provinces do not decide to have English numerals as an integral part of their language.

Therefore, I have in my amendment put in two clauses saying that so far as English numerals are concerned, they can be used in this way. The question of numerals will be settled if this amendment is accepted by the mover of the amendment. The solution is there and there is no conflict between the North and the South. I want to bring to the notice of the House that this question of language should not be looked upon from the position of the North or the South. Hindi language, so long as it is not adopted by the Centre or by the Union, is a provincial language. Any language you can adopt as your national or official language, it may be Hindi or if you like, Hindustani or Bengali or Marathi—and all these languages have been proposed, but once you adopt it as a national language, do not call it a provincial language. I appeal to you that once you raise that language to the pedestal of a Union language, then it is your language as well as my language and it is no longer a provincial language. It ceases to be a provincial language, and it will be your duty as well as mine to enrich it as best as we can.

A number of honourable Members have said that there are different words used for the same meaning. They say that Pandit Sundar Lal uses this word and my friend of the Hindi Sahitya Sammelan—Seth Govind Das, uses another word for the same thing and so on. There is no end to words. If you were to turn to the pages of a dictionary, of any language, you will find numerous words conveying the same meaning, and people are at liberty to make use of any word they like. In Sanskrit too, you have got *Amar Kosh* which gives synonyms for so many words. Similarly for the same meaning there may be a Sanskrit word, a Hindi word or a Persian word or a Bengali word. But all these can be part and parcel of the same language and when they are put in the dictionary or Kosh, they can be used by you and by all of us.

Therefore, my request is that you should not think that we are imposing this language upon any one. It is open to the House to choose any language and once you have chosen that language, do not regard it that it is an imposition upon you by us. It is a language which you have accepted as your own and it becomes your own language as it is my language. After this, no question and no controversy can be raised. As has been pointed out and I am also certain about it, this House will accept Hindi as the language of the Union with Devanagari script. International numerals may be used for all purposes for which the Union requires, independently of the Hindi language. But if it is found necessary at all to satisfy some provinces, let the English numerals be used for their purposes by the Union. But for the rest of India where Hindi is the language used and where they do not require these numerals, let Hindi continue unalloyed, quite independent of English numerals altogether.

We have got the time limit, fifteen years, I can say to my friends from the South that so far as they are concerned, it would be in their best interests to learn Hindi as early as possible, because if they do not learn Hindi quickly enough, they might be left behind. I say, so far as my South Indian friends are concerned—I am speaking frankly—they are very intelligent people. They are very industrious people as well, and I have found that in my province there are Departments in which Madrasi friends are working, and they are working as well, and sometimes even more efficiently than those whose mother tongue is Hindi. That is the position. I am speaking from my own experience as an administrator of long standing, and I think I can speak with responsibility. In my province there are so many of them. Here is a friend who belonged to my provincial service once and he can speak Hindi and also Sanskrit as well as anybody can do. And I say that I have got Madrasi civilian officers, I have got Madrasi provincial officers and I may tell you that there is one Department in my province in which work is carried on in Hindi in all places, whether it is a Marathi district or a Hindi district, and in that Department there are Marathi speaking people, there are Telugu-speaking people, there are Punjabis and Bengalees and all sorts of people, and all of them from the rank and file to the officers are there for the last 25 years and that is the Department of Police. It has been run as efficiently as we want by these officers and men, belonging to different regions using Hindi as the language of that Department. I do not see why our friends here should be afraid of learning Hindi.

An Honourable Member : No fear at all.

The Honourable Pandit Ravi Shankar Shukla : The hesitation is because of the fear that hurdles may be created for them. So I say, the earlier you learn Hindi the better it is for you, the better it is for us and for the country, because then there would be no difficulty in your way and you will be with us as you have been so long. Do not think for ever that it is our intention in any way to put any barriers by bringing Hindi as early as possible.

I have here a pamphlet which a friend of mine who is a Member of this House has given me and it says that that great social reformer of Bengal Keshab Chandra Sen wrote in 1874—and it appeared in a Bengali pice-weekly called "Sulabh Samachar". It asks that when without one vernacular language unity is not possible for India, what is the solution? The only solution is to use one single language throughout India. Many of the languages now in use in India have Hindi in them, and Hindi is prevalent almost everywhere. If Hindi is made the common language throughout India, the question may be solved easily. I may say, the text is in Bengali and I have given the English translation. This was written in 1874 and was a sort of a prophecy, because we are today discussing the same thing.

To talk of Hindustani or Sanskrit or any other language is out of the question. So far as Hindi is concerned. I can say only one word that the framers of this chapter realised that Hindustani was only a form and style of the Hindi language. Indeed, in the Schedule that they have given, they have not included Hindustani as a language. They have put it down in the directive clause as a form and style known as Hindustani and we have no quarrel with it. We shall adopt it and use it by all means possible. As has been asserted a language is made not by passing a constitution. It is the people devoted to it who form it. We do not form it here, but it is people outside the House who will form it, whatever the Constitution we may pass.

I therefore submit that on these four grounds my amendments may be accepted. First, on the question of language and secondly, my amendments are aimed at the solution of the numerals. Let the provinces evolve their own destiny and not be hampered by 'ifs' and 'buts', subject to this or that. Leave out the 'ifs' and 'buts' and other provisos and give us freedom to develop. We shall show you that our South Indian friends in my province will learn Hindi as easily as anybody within five years. I have got the material and friends, even Madrasi friends are working in that department which I have opened in my province. I therefore say that the High Court language should also be the State language and even if it is English elsewhere we should be allowed in our legislature to pass our Bills as we like in the State language. These are the four points on which I have given amendments and I hope they will be accepted by the House.

As regards numerals so far as accounting is concerned I have as a last resort, as a matter of compromise accepted that English numerals may be allowed for specific purposes even after fifteen years. But my original amendment is that clause (3) of article 301-A should be deleted.

We who are Members of the House and are members of the Congress have been following the Congress. The Congress has decided that fifteen years should be the deadline and beyond that we need not go. Therefore we should not think what will happen after fifteen years. Let us not make provision for posterity and bind them. When our representatives meet after fifteen years they will decide what to do. So far as we are concerned we decide for fifteen years. The Congress has ordered the progressive use of Hindi and it can be done by the amendments I have suggested and within fifteen years we can do it. My proposal is that in ten years we should finish all the commissions and committees. Parliament shall determine the ways and means by which Hindi is adopted, in years not exceeding fifteen. Following strictly the language of the resolution of the Congress Working Committee I have framed the amendments and I hope the House will accept them.

Shri L. Krishnaswami Bharathi (Madras : General): Has not the Congress passed a resolution that Hindustani shall be the official language ?

The Honourable Pandi' Ravi Shankar Shukla : So far as the Working Committee's resolution is concerned I do not think the word 'Hindustani' is used. It says Hindi shall be the official language in the Devanagari script. If some Member has the resolution he may give it to the honourable Member.

Shri Ram Sahai: *[Mr. President, I support the motion moved by Shri

Gopalaswami Ayyangar. But I may be permitted to submit, Sir, that I fail to understand the reason or the significance of inclusion of Chapter III in the part relating to language. When Hindi in Devanagari script has been accepted as the official language and an interim period of fifteen years has also been provided for, to replace English by Hindi I do not see why a separate provision on different lines should have been embodied, in respect of Supreme Court and High Courts in this part. It is for this reason that I have sent in three amendments: the first is to the effect that Chapter III of this part be deleted. My second amendment is to the effect that in article 301-F, the Period of fifteen years must be specifically mentioned as has been done in article 301-A. My third amendment seeks that the courts of the States where Hindi has already been adopted as the official language should be exempted from the operation of the article relating to them in this part. All the three amendments of which I have given notice have the one and the same object, that is, that on the commencement of this Constitution Hindi must continue to be used for all official purposes in the States where it has already been accepted as the State language. When our ultimate object is the establishment of Hindi as the official language for the whole of the country, I fail to understand why the States, where Hindi is in use and has already made considerable advance should be asked to replace Hindi by English for fifteen years. This proposition appears to me very strange. I would therefore, I request Shri Gopalaswami Ayyangar to consider over difficulties in this respect and not to force the States, where Hindi has already made considerable progress, to learn English afresh.

The argument may be advanced that the judges of the Supreme Court being unacquainted with Hindi, may be faced with some difficulty in regard to the judgment of High Courts that go up to that court in appeal. In this connection I may submit that the arrangement for the supply of the English version of the judgment can be made. Or at the most, the High Court Judges may be asked to write the judgments in English. But it will never be proper to direct the High Courts to conduct all the proceedings in English. In Madhya Bharat the language of the Legislature is Hindi. All the Bills, resolutions and amendments are drafted in Hindi and the proceedings of the House are conducted in Hindi. So it will have no meaning, rather it will be an anachronism, to introduce English in these States for fifteen years and again to replace the later by the former on the expiry of that period. The Constitution that we framed for our High Court lays down that Hindi shall be the language of the High Court or Madhya Bharat. In view of this I do not find any reason why we should be forced to unlearn Hindi which we have learnt and developed with great pains and to use English in its place for fifteen years and then again to go back to Hindi, after the end of that period. I may particularly mention that in Gwalior Hindi was adopted in 1901 and from 1902 all maps and documents etc. were begun to be prepared in Hindi. By 1919 all the correspondence save the correspondence with foreign countries and with the Resident has been carried on in Hindi and now everything is being done in Hindi. Since the Union of Madhya Bharat has been formed, many of the other States of this Union also, where Urdu had till then been in use, have adopted Hindi. There is no justification, therefore, in asking these States to adopt English. All these factors deserve thorough consideration.

Honourable Pandit Shukla has just informed us that he has constituted a committee in his province for translation purposes. This committee has been formed only recently. I may be permitted to inform the House that in Gwalior such a committee has been in existence for the last ten years and it has already prepared the Hindi version of almost all the laws of the Central Government such as the

Evidence Act, the, Contract Act, the Criminal Procedure Code, the Transfer of Property Act, etc., etc. The language used in the translation is very-very simple. I wish I could read out to honourable Members certain translations just to give them an idea of it and I am sure the House would appreciate the same, but since the time at our disposal is very short I am not doing so. It would be improper to use English for all official purposes, in my State where for the last fifty years constant efforts were being made for making Hindi the official language of the State and where in point of fact all laws have already been translated into Hindi within the period of the last ten years.

Recently there were three sittings of the Legislature of Madhya Bharat and sixty-eight Bills were passed and those were in Hindi. Of course we give English version also along with the original Hindi version. But authenticity is given to the Hindi versions, and not to the English one. At the most the States, where Hindi is already in use, may be asked to supply an authentic English versions of laws etc. for the purpose of the Union. But it can never be fair to ask them to adopt all their Bill etc. in English.

I have come to know from the talks I had with some friends that Hindi, in their opinion, is not yet well developed to give accurate expression to thoughts, I beg to submit that this motion is wrong. Not only Hindi has been the official language for the last fifty years of the Gwalior State, but for the last twenty five years, even the 'Law Reports' which publishes important Judgements of the High Court, is also being published in Hindi. Apart from this journal, another monthly Law journal is also being published for the last ten years and it too publishes the judgments of the High Court. Hindi has fully developed there during the last fifty years, and it will not be proper now to replace it by English.

The controversy at present is raging about numerals. I would like to make one thing clear in regard to this question. Of course it looks odd to introduce the English form of numerals in Hindi script, but in view of the situation obtaining at present, we should have no objection at all in accepting it. If our friends from South India want to introduce international numerals, which in fact belong to us, I must appeal to the Chair as also to the House to accept them. It will not be proper for us to reject their proposal. That is why I have not put in any amendment in regard to numerals.

While fully supporting Shri Gopalaswami Ayyangar's proposal, except Chapter III contained in it, I would request him to embody some provision, in it, so that it may be possible that Hindi is retained in the States; where it is in use and has made considerable progress. I would like to impress upon him the fact that the progress that Hindi has made in our State will be very helpful in adopting Hindi in the Union. But if he wants that even in these States also English should take the place of Hindi for all official purposes for fifteen years, I can only say that it will take us back and retard the development of Hindi.

Therefore, my humble submission to him is that he should thoroughly consider this problem and propose a measure, whether by accepting my amendment or the amendment of any other friend or by accepting a new amendment, to bring about a situation whereby Hindi might not be banished from the States where it is fully in vogue and where for the last fifty years every business including all the works of the offices, is being carried on in Hindi, and all the laws have been framed in Hindi. For no reason can it be proper to stop the progress of Hindi in those States.

Therefore, without taking more time of the House, I want to submit in regard to my amendment that it may be accepted in some form or other so that this object may be fulfilled.]*

The Assembly then adjourned till Nine of the Clock on Wednesday, the 14th September 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Wednesday, the 14th September, 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

ABOLITION OF PRIVY COUNCIL JURISDICTION BILL

Mr. President: The first item on the Order Paper today is notice, of a motion by Dr. Ambedkar to introduce a Bill to abolish the jurisdiction of His Majesty in Council.

The Honourable Dr. B. R. Ambedkar: (Bombay: General) : Sir., I move for leave to introduce a Bill to abolish the jurisdiction of His Majesty in Council in respect of Indian appeals and petitions.

Mr. President: The question is:

'That leave be granted to introduce a Bill to abolish the jurisdiction of His Majesty in Council in respect of Indian appeals and petitions."

The motion was adopted. The Honourable Dr. B. R. Ambedkar : Sir, I introduce the Bill.(Several Honourable Members rose to speak

Mr. President: Shrimati Durgabai.

Sardar Hukam Singh (East Punjab: Sikh): May I know, Sir, whether the have to stand up every time to catch your eye or is there some other method so that those who have amendments would get chances ?

Mr. President : I shall try to give a chance to as many Members as possible, but it is difficult for me to promise that every Member will get a chance. I may just explain the position. Yesterday, I calculated the number of speeches and the time that was spent on them, and the average comes to 22 minutes per speech. speech. Today I do not know how long the House would like to sit. Originally we had fixed two days or rather 14 hours, out of which we have already spent 10 hours. We have got only 4 hours, from now till 1 o'clock. If the House would like to finish by 1 o'clock then it will be necessary....

Shri Jainarain (United State of Rajasthan): On a point of information,. what about those amendments which not come up before the House ?

Mr. President: Every amendment is before the House.

Shri Jainarain : But they have not been discussed.

Mr. President : Now, after the discussion is finished the mere act of putting, all the 300 amendments to vote will take at least one hour. That has also to be taken out of the 4 hours if we have to finish by I o'clock and then probably there may be reply. Seth Govind Das (C.P. & Berar : General) : I propose that we should extend the time for speeches and voting should take place in the evening between 6 and 7.

Mr. President : If that is the wish of the House, I do not mind. I would not stand in the way. I would like to know the wish of the House in the matter.

Sardar Hukam Singh: There are several amendments which have not been moved at all. Would they get any time?

Mr. President : Just as I have said, I have been trying to give a chance to representatives of every school of thought here, but if there are some who have been left out, they might remind me and I will give them a chance.

Seth Govind Das : The matter is so important that I would again request you to extend to time to the evening.

Mr. President : I personally would have no objection if that was the wish of the House. May I know if the House wishes the time to extended till the evening? (Several Honourable Members : Yes.) I think the 'Ayes' have it. Shrimati Durgabai-May I request you that the point of view which you have to represent has been represented by other speakers and there may be others also. So I would request you to confine yourself to the most important points.

Shrimati G Durgabai (Madras: General) : Mr. President, the question of national language for India which was an almost agreed proposition until recently has suddenly become a highly controversial issue. Whether rightly or wrongly, the people of non-Hindi speaking areas have been made to feel that this fight or this attitude on behalf of the Hindi speaking areas is a fight for effectively preventing the natural influence of other powerful languages of India on the composite culture of this nation. I have heard some honourable Members

who are supporters of Hindi with Hindi numerals say, "You have accepted nearly 90 per cent. of our thesis; therefore, why hesitate to accept the other IO per cent. ?" May I ask them with what sacrifice-, we have accepted this? Some friends said : 'Absolutely there is no sacrifice on your part. You have to accept. You must'. This is the attitude in approaching the people of the non-Hindi speaking areas for asking them to accept their proposition in its entirety.

Sir, the National language of India should not be and cannot be any other than Hindustani which is Hindi plus Urdu. For the sake of satisfying the sentiments of our friends we have accepted Hindi in Devanagari script. It is no less sacrifice for us to have had to depart from a principle, which we have all along fought for and lived for. This departure means a very serious inconvenience to us and it is not without a pang that we have agreed to this departure from the tolerant Gandhian ideology, the Gandhian philosophy and the Gandhian proposition, namely, that the official language of India should be only that which is commonly understood and easily spoken and learnt. Sir, this is the sacrifice that we have made.

Perhaps Tandonji Seth Govind Dasji and others do not know this and are not aware of the powerful opposition in the South against the Hindi language. The opponents feel perhaps justly that this propaganda for Hindi cuts at the very root of the provincial languages and is a serious obstacle to the growth of the provincial languages and provincial culture. Sir, the anti-Hindi agitation in the south is very powerful. My Friend Dr. Subbaroyan dealt at some length on this point yesterday. But, Sir, what did we do we the supporters of Hindi ? We braved that fierce agitation and propagated Hindi in the South. Long before the Pandits of Hindi Sathya Sammelan realised the importance of having a national language for India. We all in the South obeyed the call of Mahatma Gandhi and carried on Hindi propaganda in the South. We started schools and conducted classes in Hindi. Thus with great inconvenience we dedicated ourselves very long ago to the propagation and learning of Hindi.

Sir, leaving alone the efforts of the Dakshina Bharat Hindi Pracharak Sabha, I must in this connection pay a glowing tribute to the women and children of the south who have taken with great zeal and earnestness to the learning of Hindi. Sir, Gandhiji's efforts and influence, worked tremendously on the students of colleges who, after putting in hard work in their colleges, used to come in the evenings to the Hindi classes to learn this language. Not only the students, even the lawyers after their court hours, officers after finishing their office work, instead of going in the evenings to the recreation clubs, attended Hindi classes and learnt Hindi. I am impressing this fact upon you just to show how genuinely and honestly we took to this propagation of Hindi as a result of Mahatmaji's call and appeal to us.

My friends will do well to note that all this was a voluntary effort on our part to paid in line with the national sentiment. In this connection I may refer to a visit which was paid to by the late Seth Jamnalal Bajaj in 1923. In that year, when Sethji visited Cocanada for the Congress Session he visited some ladies' institutions where he found some hundreds of women learning Hindi. Remember, Sir, that this was in the year 1923, some two and a half decades ago. Sethji was so happy to see the ladies learning Hindi that he offered a very handsome donation to the Hindi institution then working. But, the organisers declined the donation saying: "We also feel that we should have a national language. We are therefore conducting the school in Hindi with our own efforts." That is the spirit with which we worked.

Now what is the result of it all ? I am shocked to see this agitation against that enthusiasm of ours with which we took to Hindi in the early years of this century. Sir, this attitude on your part to give a national character to what is purely a provincial language is

responsible for embittering the feelings of the non-Hindi speaking people. I am afraid this would certainly adversely affect the sentiments and the feelings of those who have already accepted Hindi with Devanagari script. In short, Sir, this overdone and misused propaganda on their part is responsible and would be responsible for losing the support of people who know and who are supporters on Hindi like me.

I have already said that in the interests of national unity, Hindustani alone could be, the national language of India. We urge caution and an accommodating spirit on their part, in the interests of the minorities here who, like the Muslims, need time and sympathy to adjust themselves. Sir, they have all displayed large-hearted readiness to fall in line with the predominant sentiment Purely from the point of view of excellence of literature and international reputation, Bengali is worthy of adoption as the national language. From the point of view of sweetness and also from the fact that it is the second largest of the languages spoken in India, Telugu could be worthy of adoption as the national language. Sir, we have, given up our claims for Telugu. We have not spoken one word in favour of it. We have not advocated it. We have not suggested that one of these provincial languages should be accepted as the national language of our country. Now, Sir, when we nave made this sacntice, you come out and say, sacrifice another point and swallow the other five per cent. remaining out of the hundred Per cent. and adopt the Hindi numerals. I should say that is the height hesitate to put it that way but I must say it--of language tyranny and intolerance. We have agreed to adopt Hindi in the Devanagari script, but I must remind the House that we have agreed to the adoption of Hindi in the Devana-ari script, subject to certain conditions. Condition No. 1 is, whatever be the name of the language--I do not propose to speak about the controversy about Hindi versus Hindustani-whatever name you may give it, it must be all inclusive and therefore the clause concerned in Shri Gopalaswami Ayyangar's draft should commend itself to the House and the House should unhesitatingly and unanimously agree to that clause. That language should be capable of absorbing the words which are already in use, whether of Urdu or any other regional language. It is only then you will convince us that you are asking us to accept it as a national language and not the special brand of C.P. or U.P. Hindi.

Another condition which is equally important is that the status quo be maintained at least for a period of fifteen years, which would enable us to learn and to speak and also to adjust ourselves to the new environment. People from the Hindi areas are not even willing to concede this point. They say, "some of you can speak Hindi and so bring it into effect from tomorrow or at least in the shortest possible time." I have heard some people say-

I ask you, Sir are we going to have this Constitution only for ourselves and our lives ? What about our children and the generations to come ? Are they not to follow this ? I am speaking from my own personal experience. I learnt Hindi, I taught Hindi to some hundreds of women at least, in the South. My experience is this : Those who have passed the highest examinations in Hindi can read and write, but it is impossible for them to speak, because for speaking there must be some kind of environment, some kind of atmosphere. In the South, where do we find this atmosphere ? Nowhere in the South have we opportunities of speaking what we have learnt. You will only realise this difficulty when you come to the South and you have to speak one of the provincial languages there. Therefore. be patient and cultivate the spirit of accommodation and tolerance. This is the thing that we ask of you to show to us.

The third condition which is not clear from Shri Gopalaswami Ayyangar's draft is that there is some obligation placed on the non-Hindi speaking people to speak Hindi. There should be equally an obligation on your part to learn

one of the provincial languages. It does not matter whether it is Bengali, Tamil, Telugu or Kannada or any other language for that matter. Dr. Syama Prasad Mookerjee, while speaking on this subject yesterday, dwelt on this point sufficiently and on the resolution which the Sahitya Sammelan passed recently in their conference in Delhi. We will carefully wait and watch and see how that resolution would be implemented by the premiers of provinces who were parties to that resolution.

On the question of numerals, I do not want to say anything because sufficient has already been said. You have already understood the gravity of the situation. suffice it to say, Is there be no sentiment or let there be no question of its being a religion with anybody. If that is religion with you, it would be a powerful religious force with us, not to have adopted a language which is not our own, which is only a provincial language, which is not sufficiently developed. Therefore let not anybody say that it is religious with him or her

Sir, the other question which I wanted to speak about is that in the non Hindi speaking areas we have got to learn Hindi which we have raised to the position of an official language. Our purse is very meagre and we are already spending so much for the removal of illiteracy our provinces. Therefore it becomes the duty and responsibility of the Centre to give sufficient grants to the provinces which are non-Hindi speaking areas to develop and also to propagate this Hindi.

Sir, you have given me an opportunity to speak and I should not take much time of the House. Please remember that we are accepting Hindi only with these conditions which I have stated. For your part, you should have no hesitation to accept Shri Gopalaswami Ayyangar's draft. Even we do not agree with some of the provisions there, but we have accepted it, and therefore you should have no hesitation in accepting it and supporting it. Thank you, Sir.

Shri Shankarrao Deo (Bombay: General) : Mr. President, Sir, I would like to make clear at the outset that I stand here to support the amendment moved by my friend, Shri Gopalaswami Ayyangar, not that I agree with every detail and every clause of that amendment-which is not possible, because in the very nature of things, it is a compromise formula, and when we come to a compromise, we cannot have hundred per cent. of what we want.

The Honourable Shri Ravi Shankar Shukla (C.P. & Berar: General) : It is not a compromise formula. Nobody has agreed to it.

Shri Shankarrao Deo : There may be a few who do not agree, but I understand that many have agreed. According to me, there are many things in it which I do not like or do not appreciate. Still, I think it is the best solution of this problem in the present state of things. Therefore, as I have said, I stand to support that amendment. I myself have moved some amendments and I would request the House to accept them, because without changing the fundamental structure of the amendment, they will improve it and it will help some of us to accept that amendment more willingly.

Sir, as you have yourself said, this question of language has agitated our minds most, in my opinion, next only to freedom, because this question is most vital for the future development and growth of this nation. Those who have preceded me have already spoken much about the importance of language in the building and the growth of an individual or nation. To me, next to my mother, it is the language which is dear, because, my mother has given me birth, no doubt, but it is the language which has made me what I am today. That is why though many of us do not like it, this controversy has stirred our passions to their depth and sentiments have been roused and many a time, it blurs our judgment. I would request my friends from the South as well as from the North not to look at this question from an emotional or from a sentimental point of view. Let us be as objective as possible; let us bring reason to work on this issue.

What is it that we are out to achieve ? We are told

that we are going to choose a language for our country. The next question is what is it that this language is expected to do for us and what are its functions ? We are told that we must have one language to take the place of English. Everybody is agreed that English cannot hold the same position that it used to do during the last one century or more when the Englishmen were ruling over this country. I need not go into the importance of that language or whether in the future that language must have a good and proper place in this country's education, administration. various branches of science, advancement and so on. But everybody is agreed that English is to be replaced by some other language; the difference of opinion is about what is that language which should take the place of English and what should be its functions.

They appeal to us in the name of unity, in the name of culture, that this country must have one language. They say unless this country has one language, there cannot be unity and one culture; and if there is no unity, and one culture, then, this country has no future. in the same breath we antold that die regional languages must be enriched. The Working Committee Resolution says that though English may be replaced by some other language, as far as the regional languages are concerned, they must not only be maintained, kept intact, but they must be enriched. The, Working Committee Resolution which was recently passed says "in the provinces or States where more than one language is spoken, many of these languages are rich and have valuable literature of theirs. They should not only be preserved, but further developed and enriched and nothing should be done to act as a handicap to their growth."

I cannot understand how these two things can go together. I think we are speaking with two minds. We cannot hope to have one language for the whole country and at the same time work for the enrichment of the regional languages and assert that they must be maintained, and they must have a permanent place in the national structure or life. I have tried my best to understand how these two things can go together but failed. If you sincerely believe that this country requires one language, all the regional languages, whatever may be their past, whatever may be their present position, they must go. Those who have their regional languages will know at least where they stand and what they have gained by attaining freedom. If you really mean, if you are sincere and honest when you say that these regional languages must be enriched and nothing should be done to harm them, you cannot appeal in the name of unity or culture for one language. If in the course of things this country evolves one language, and the other regional languages disappear, if that is to be the future, who am I, who are you, to stop it ? But, I will not allow any group, any region or any Government, however powerful it may be, to do anything consciously or deliberately which will result in the disappearance of these languages from India. If they have to die, let them die a natural death when no tear will be shed.

Mr. President : Nobody has suggested that.

Shri Shankarrao Deo : I know it, Sir; though the suggestion is not there, the actions are such that there is a suspicion or a feeling to that effect. You will excuse me for that feeling if I have it; because, after all, an appeal from this House goes to the country, to the people and to the world that for unity, for culture we must have on language. If it is not so, then, let us be definite. What are to be the functions of this language which will replace English ? In that matter also, the Working Committee Resolution is quite clear.

Mr. President : I suppose the same functions as English performed.

Shri Shankarrao Deo: No; not that also.

Mr. President: That is the Resolution I think, so far as I-can judge.

Shri Shankarrao Deo: English was performing many functions which I would not like it to do now. I will show, Sir; if you will bear with me for some time. The language that will

take the place of English has to perform some definite functions. These are enumerated as I said in the Working Committee Resolution. "For all India purposes, there will be a State language in which the business of the Union will be conducted. That will be the language of correspondence with the Provincial an,: '-"ate Governments. All the records of the Centre will be kept and maintained in that language and it will serve as the language for inter-provincial, inter-state commerce and correspondence."

This is exactly how the functions have been defined, of the language that will replace English. There is no mention of culture, there is no mention of unity : not that I am against this country evolving a common culture. I would like to point out that the cry, namely, tone culture' has dangerous implications. The very word 'culture' has dangerous meaning. One does not know exactly what it means. The Chief of the R.S.S. Organisation appeals in the name of culture. Some Congressmen also appeal in the name of culture. Nobody tells us what exactly this word 'culture' means. Today, as it is interpreted and understood, it only means the domination of the few over the many. Therefore, in the Working Committee Resolution, there is no mention of culture, there is no mention of unity. Not that we do not want a culture for this country. But we should call it rather a composite culture; then the different varieties of Indian culture must have an equal opportunity of contributing to the moulding, evolving of this composite culture. If you appeal to this country and insist upon having one culture, then, to me it means the killing of the soul of India.

As I have tried to understand Indian culture, Sanskriti, Indian religion and Indian spiritual traditions, it is not uniformity but unity in diversity. It is Vividhata that India stands for. That is our richness; that is the contribution that India can make to the world-culture and world progress. I would like to maintain the variety of cultures, the different languages, 'each without obstructing, hindering or killing the unity of the country. Therefore when people use the term 'national language' my heart does not respond to it. I admit India is a nation and I am an Indian, but if you will ask me "what is your language", Sir, you will excuse me if I say 'My language is Marathi'. I am one of those who have been insisting that this language which will replace English should not be called the national language. If you mean by national language one language for the whole country, then I am against it. I must make it quite clear. India is a nation and I am an Indian but my language is Marathi.

An Honourable Member: My Friend is harping against an imaginary purpose.

Shri Shankarrao Deo: Some people even lack imagination.

Mr. President : I hope the honourable Member will not take the House on an imaginary discussion.

Shri Shankarrao Deo : Therefore this language and its function should be made clear. This language is either a State language or Union language or a federal language because we have accepted a Federation for our country. We have got autonomous States and therefore the States are expected to have their own languages, and as I have already said the Working Committee has made it clear what are to be the functions of the State language.

Now I come to the next point. Many of my friends here know when this question was first discussed somewhere else I was one of those who pleaded that this State language should be called Hindustani instead of Hindi. Not that we had anything particularly against Hindi, but as Congressmen we have been accustomed, we have been taught by Mahatma Gandhi and we were ourselves convinced that if the masses were to enjoy the freedom, the country must have a language which they will understand. Then alone the freedom can be translated in their daily life and they can contribute to the building of the nation. Therefore the Congress accepted Hindustani as its language and it wanted the State to accept the same nomenclature and not only nomenclature but

the content and the implications. As I have already said one cannot have everything in an Assembly or in a society, that is why I have agreed to the word Hindi with its contents defined, as has been done now. I wanted Hindustani because I felt that in that case there would be no restrictions and there will be no special privileged class in building the new language.Those who have followed the discussion during the las two days minutely must have understood how the difficulty has arisen in accepting the international numerals. Why are they objecting to them ? One of the reasons according to them is that they are not Hindi. As you are accepting Hindi they argue that you must also accept the Hindi numerals. They have not only taken for granted that we have accepted Hindi but also we have accepted Hindi of the pattern followed in U.P. and Bihar, and therefore they will dictate to us what is Hindi.

I want to free myself from such restrictions and I do not want to be dictated what is Hindi or Hindustani. What will be our choice will be decided by this Assembly. Nobody can come and say you cannot do that. This Assembly cannot be dictate to by anybody. We are going to choose our language and its name. You cannot say "this is not Hindi." U.P., C.P., Bihar, Rajasthan, Madhyabharat etc. may have Hindi and Hindi numerals. They may evolve their language according to their genius. Because U.P. and Bihar do not use these international numerals, it cannot mean that the Central Government will not use them.

I would remind my friends that they are living under an illusion if they think that we have accepted their language and we are going to build it according to their pattern. That is why there is a special directive about the content of the Hindi language to be adopted by the State. I know my friends from the North were not very enthusiastic about it. They said that if you want it you may have it. They were not as anxious as we were to define the contents of this language. They said "if you want it we are ready to satisfy you" but then they kept it not in the chapter of the language but in the chapter of the Directives.

Pandit Balkrishna Sharma (United Provinces: General) : Will you permit me to inform the honourable Member who is speaking that it was not we but the Drafting Committee who gave the Directive?

Shri Shankarrao Deo: I am glad to say and I must be obliged to Pandi Nehru because it was he who suggested that this Directive or this definition must find a place in the chapter of the language.

Pandit Balkrishna Sharma: Certainly not.

Shri Shankarrao Deo : But for him the thing would not have been so easily done. That is my opinion-I may be wrong. But I wanted to draw specially the attention of the House to this fact. This Directive says

"It shall be the duty of the Union to promote the spread of Hindi and to develop the language so as to serve as a medium of expression for all the elements of the composite culture of India"

The word 'composite culture' of India is a very fine word there. But my fear is--and fears are not rational, generally they are irrational but they play an important part in the life of a man that these words imply that we must evolve a language in which all these varied cultures of India will find expression. What I feel is that ultimately you want us to evolve such a language in which the whole culture, religion and our life's business will be expressed. If this has to come it must come so naturally that we will not feel the pangs or pain.

Let my friends of U.P. and Bihar realise what we have been asked to do. I do not want to appeal to you on bended knees-I am not one of those who are accustomed to do that. But I would appeal to your reason It is not we who are asking anything from you, but it is the nation which is demandingsomething from us. And we are willing to give it. After all when the time comes we will have to accept one language and other languages may go to the background. I will be ready if and when it comes. But if you want to allay my tears, if you want my

whole-hearted support, you must not do now anything which may raise my suspicions and which will strengthen my fears.

Sir, I do not want to take any more time of the House. I only wanted to draw the attention of the House to the fact that we must act wisely. We should not give ground for suspicion or fear. For, suspicions and fears though irrational have a place in deciding our action. So I would appeal to my friends who are the protagonists of Hindi, to see clearly the position. Let us be definite that we are not accepting any particular culture or language, We are making a free choice of a language.

After all, what is the claim that is now put forward ? The claim is that this language is spoken by a majority-I am not sure about that even I know when I go to Rajen Babu and when people from Bihar come to him they do not speak Hindi. If I am not wrong, neither Tandonji speaks Hindi at home.

So when you say that Hindi is spoken by the majority of the country I doubt it. I can only concede that it is perhaps understood by the majority, and that too, not the present high-flown Sanskritised Hindi which is understood by Pandits only. As Gandhiji said it should be a simple language which could be understood by the people in the villages of the North. Just as we speak Marathi, others speak tamil or Telugu. Hindi is not spoken by 14 crores. If to-morrow it so happens that the capital is transferred from here, to Madura or to Trivandrum, I am not sure after fifty years the language spoken by the majority in this country will not be Tamil or Telugu. After all, people from the South come to the North, not for the language, not for the culture that Hindi gives but to earn their livelihood. I do not want to belittle the culture or the richness of Hindi, but as far as culture goes, I can receive it from my own language, Marathi and Sanskrit, the grandmother of all languages. They are rich enough to do that.

Our forefathers accepted the English language not only because it was the language of the rulers, but they believed as Jawaharlalji pointed out that it opened a new world for them. They thought that it brought us into close touch with the outside world, and its various activities. Even today no Indian language can put forward the same claim. Some of our languages may do that to-morrow. Thus, rightly or wrongly our forefathers accepted English for its superiority.

People come from the South and they speak Hindi because they come here for bread. After all, it is for bread that people quarrel. Why this dispute about having English for fifteen for ten years more? Apart from the difficulty of learning a language, people are afraid that in the Secretariat and in the offices, they may be pushed out, not by superior men, but because they are backward in a particular language. My Friend Pandit Shukla has given lot of praise to the friends from the South therefore I need not put in any claims on their behalf.

An Honourable Member: Please speak in the mike. We cannot hear you.

Shri Shankarrao Deo : I am sorry, I will do so. I am not accustomed to the mike.

Sir. I was saying that today it is tot a question of culture or of religion or of tradition, but it is a question of bread and jobs. And if today Hindi is so much valued and people prefer it to any other language, it is not because it is superior to other languages but it is a means to get a job. When I comehere, I cannot speak in Marathi, except in the Maharashtra Club but it cannot give me a job.

People come to us and say "Why are you fighting for such small things ? After all, you have given 95 per cent. Why not yield 5 per cent. more ?" I want to make the position perfectly clear. I have not given anything to anybody. That is a wrong notion that some people seem to have that we have yielded 95 per cent. and so we should yield another 5 per cent; I have accepted this language because I feel I will have full liberty and full opportunity to would this language which is going to would me. I am one of those who would like to support the suggestion that even English should be

one of those languages to be mentioned in the Schedule.

Sir, in the list of regional languages, if you look at it, you will see Hindi mentioned. So Hindi is accepted as a regional language today. To that we have no objection. But please appreciate our difficulty. You want to keep Hindi as a regional language and at the same time make it the Union or State language. That gives you a superior position. You will excuse me, for I know you do not want it; still it comes to you, and you cannot help it. You must admit that however much a person may learn Hindi or Hindustani or any other language, unless it is his mother-tongue, unless he uses it all the 24 hours, he cannot master it. And unless he masters it, he cannot have a superior or a high position in the Secretariat or in any other field. I know the difficulty of the friends from the South. Since the English language lost its prestige in our national Organisation, they are practically only witness to its proceedings and are obliged to raise their hands. I have learned English, but I know what that learning means. It only enables me to utter a few words of that language. But if I have to administer the country, and to maintain a position, then learning must mean command over the language; for that a long number of years are necessary.

Honourable Members: Let the Honourable Member address the right side also. We cannot bear him.

Mr. President: He has now finished.

Shri Shankarrao. Deo: I am sorry. I speak here for the first time, I will learn the lesson and will make it a point to come here often.

As far as the international numerals and period are concerned, I will only say, let no Member of this House have the feeling that he is giving something, and we are accepting something. It is not charity. We are not beggars in this House. Everybody must have equal right and equal position. We are all together trying to build something which is so vital to us. Therefore, when we say, let international numerals be there, please do not misunderstand us. Do you know what is happening and what havoc is being done with the Nagari script by a few friends who know and who say that it is for facility of printing, for typing and composing that it must be changed. Do you know how Vinoba Bhave writes Devanagari ? If some of my Hindi friends would see it they' would weep: they would not recognise their mother tongue I myself feel the pang of it. When I read Vinoba Bhave's writing, I ask : Is this Devanagari ?

The protagonists of this change say that Devanagari will go and Roman script will come. I do not know which is better or superior. But today you are fighting for the numerals : To-morrow you will fight for the script, and you will say this is our script and no one will change it. Then what shall we do ? Shall we appeal to you and beg of you and say, "will you allow us to make this change ?" No, Sir. If you are labouring under the wrong idea thatthis is something which you are giving to us and we are in duty bound to maintain it as you gave it to us, and yours will, be the last word as to the correctness or wrongness about it, then please remove that idea.

Pandit Balkrishna Sharma: (Vehemently) Who has said all this?

Mr. President: I would appeal to the honourable Member to keep his temper. It is no use losing one's temper in a matter like this.

Pandit Balkrishna Sharma (More vehemently) : I would like to protest against the allegations which are purely imaginary. Mr. Shankarrao Deo is creating imaginary ghosts and slaying them. I can admire his swordmanship but he cannot in this way inspire any respect for his logic.

Mr. President: Even that is no reason.

Shri Shankarrao Deo: My honourable Friend can allow a fool to play with his imagination. No harm will be done. If it is so imaginary, and if it does not touch him, why is he so angry. The very fact that he is so angry and he has lost his temper, shows that what I have said touches him.

Pandit Balkrishna Sharma : (Very vehemently) : I must protest....

Mr. President: I am afraid this is not right and

the honourable Member must keep his temper if he wishes to sit in this House.

Pandit Balkrishna Sharma : I can walk out if you so wish.

Mr. President : No one has. the right to lose his temper.

Shri Shankarrao Deo : I am sorry that one friend has to lose his temper for what I have said. We must have freedom even to use our imagination unless it is unparliamentary. I do not want to go further. According to me these are not imaginary things. I have. been carefully following this controversy and I am one of those who want this House to come to some unanimous decision and I feel that unless the ground is cleared and people are not left under any illusion, the unanimity which is so necessary and which everyone longs for, will not come. It must be made clear that this Constituent Assembly is making the choice of a language for the State, for the Union, which does not belong to any group or any region.

Mr. President : You have made that point clear mom than once.

Shri Shankarrao Deo : I shall now refer to my amendments. I hope my friends will appreciate that one of my amendments says that after fifteen years English must be replaced by Hindi or any other language which we will choose as the State-language automatically. But that does not preclude or prevent us from using English for some specific purposes.

There are some friends from the South who do not agree with me. I can appreciate that also. But that is my feeling and here I would like my friends to listen to the voice which we have been accustomed to listen for the last thirty years, That voice says : "Unless the Governments and their Secretariats take care, the English language is likely to usurp the place of Hindustani" (of course Gandhiji wanted Hindustani). "This must do infinite harm to the millions of Indians who would never be able to understand English. Surely, it must be quite easy for the Provincial Governments to have a provincial language and the inter-provincial language, which in my opinion can only be Hidustani, written in Nagari or Urdu script"

I want this position to be accepted by this Assembly.

Shri Satish Chandra (United Provinces: General) : Please read the complete sentence.Shri Shankarrao Deo : I have gone to the end of the para. If I have done anything wrong you may correct me when your turn comes. What was relevant to my point I have read......

Shri Satish Chandra : You may read another paragraph from this very article where Gandhiji has envisaged the possibility of Hindi in Nagri script alone being adopted as the State language of India.

Shri Shankarrao Deo: I have read the first paragraph completely because I have the paper in front of me. That is what I take my stand on. After fifteen years English will cease automatically to be the language of the State. That does not mean that we are precluded or prevented from allowing English to be used further or to serve a definite specific purpose.

I have finished, except for one last sentence which I would like to utter here with all the seriousness that I can command. As I have said, I am not an accomplished speaker. I have come for the first time here to, speak. I am sincerely sorry and my friends may accept this apology if I have uttered words or sentiments which they have not liked. I also extend my appeal to the whole House, that as far as possible let us avoid a division. Let us not divide this House on this issue because it is a most vital issue, and if we are divided and if we go from this House with our hearts weeping or sorry, I am afraid that the implementation of the Constitution and the translating of freedom in the terms and the needs of the masses will be a very difficult task. Therefore, I would appeal to all my friends, irrespective of the fact whether they are from the South, or the North, or the East or the West or the Centre. My appeal is to all. Let us be unanimous. I admit that the amendment of the Honourable Shri Gopalaswami Ayyangar is not an ideal one; still it is the only formula on which unanimity is possible.

Sir, I have done.

Sardar

Hukam Singh : Sir, the atmosphere has been very tense and voices have been very loud Ad I hope I will bring the atmosphere down by my mild tone, though I am afraid that in view of the fact that Mr. Shankarrao Deo has not been heard so patiently I might also be interrupted. But I hope that I will have greater indulgence, because even if I enter into some controversial points my mild tone would be subdued further. There are several amendments but I will confine myself to 323 and 330.

My amendment No. 323 is that instead of Hindi in Devanagari script it should be Hindustani in the Roman script. That has already been moved by a very distinguished scholar and an eminent Member like Dr. Subbaroyan. I would not go over the ground again that has been covered already but I must say something about it.

I may make it clear in the beginning that when I passed my primary standard and had the option to elect Sanskrit or Persian as one of my elective subjects I chose Sanskrit and I developed a liking for it. I read it up to the matriculation. Even after I was elected a Member of this House and when this question arose here for the first time I was consulted by several Members and I gave my unreserved support for Hindi in the Devanagari script. I might emphasise here that I took it for granted that there could be no other language which could be accepted as the lingua franca or Rashtra Bhasha of our country.

As the days have passed I have changed my mind. The most enthusiastic Protagonists of this Hindi have alienated my sympathy and I must say that I agree with Mr. Anthony. I am one of those who have withdrawn their support from Hindi in Devanagari script simply because of the fanaticism and intolerance of those who support it. When I supported Hindi I understood that it was the language of the common people that could be spoken and understood by the ordinary man and that might sing sweet to his ears. Certainly I am for that language even now.

But when I have heard the ardent supporters of Hindi delivering their speeches on public platforms and in this house I am afraid that they axe, trying not to leave the language open to enrich itself from all other languages and let it grow as our common language, but they are trying to Sanskritise it and make it a close preserve. I do again make it clear that I am not against Sanskrit, and it' that is taken up straightaway I would support it. But as I find that it is not the intention of the House to take that up, therefore I say that we should be honest and say whether we are going to have a classical language and call it Hindi or whether we are going to adopt that language which is commonly understood and spoken by a majority of the population.

There was a keen contest before partition between Urdu and Hindi to become the Rashtra Bhasha. There were two fanaticisms, if I were permitted to say so. Urdu used to draw from Persian and Arabic and Hindi from Sanskrit. So there was antagonism. So far as I believe, it was on this account that a common language was sought to be evolved and that was named Hindustani. The fear again was in the minds of some of our Members and people outside that Hindustani might be a synonym for Urdu. In my humble opinion that fear is no longer there. After the partition there is no chance that any language that we adopt would draw so freely from Persian and Arabic. Of course they would not be excluded but there is no fear now that they will be the chief sources now. But if that fear is gone the other fear is there. If there is no danger of the language being Persianised or Arbicised the other danger is there that the language might be termed Hindi but may be Sanskritised. So we desire to exclude that fear as well, and that we, can only do if we call our language Hindustani., which will be commonly understood by most of our people and not call it Hindi which has those associations. This is my reason for moving that it should be Hindustani.

Then I come to the script. I would not repeat those grounds that have already been covered but I will only give four

or five reasons in favour of Hindustani in the Roman script :

(1) Hindustani in the Roman script is compulsory in all the armed forces and all people, whether from the North or South, find it equally convenient to learn it.

(2)There is a larger section of the population who are more proficient in the Roman script.

(3)Unless modified very radically, the Devanagari script would be an unsuitable medium for printing.

(4)The Roman script can be modified a little to suit our purpose by adding a few dots or dashes. The names of places, the railway time table, the telegraph code, etc., will not be thrown into a confusion.

(5)The most important reason is that this will link us up with the world outside and I borrow in this connection the name of Mr. Subash Chandra Bose who also advocated it.

(6)My last ground is that this will remove the antagonism that is apparent in this House and will enable our Southern friends as well to learn the language more easily.

Then I come to my second amendment No. 330.So far as regional languages are concerned, it has been laid down that-

"subject to the provisions of 301D and 301E, a State may by law adopt any of the languages in use in the State or Hindi as the language or languages to be used for all official purposes of that State."

My amendment says that--

"subject to the provisions of 301D and 301E, a State shall by law adopt the language spoken, according to the last census figures available for the purpose by the majority of the population as the language to be used for all official purposes of that State."

This might seem queer to some of our honourable Members, but the Punjab is a peculiar province. It is not an inter-provincial or inter-territorial question in the Punjab, but a communal question. This is a legacy of the pre-partition days. If we look at the census reports of 1931 and 1941, it would be clear that the Census Commissioners of those reports pointed out that persons, very respectable and honourable, gave wrong answers in their enthusiasm to choose one language or the other. People who wanted Urdu to be their language, while they actually spoke Punjabi, replied to the question that their mother-tongue was Urdu. Similarly, to counteract it, the answer from the other side was that their mother-tongue was

Hindi while they spoke and were conversant only with Punjabi. Under these circumstances the figures that were collected were wrong and the Census Commissioner had to give up that attempt which he recommended might be dropped altogether.

That was the reason why in the 1941 census these figures were not collected at all. My submission is this that this communalism about giving wrong answers and denying the mother-tongue is a legacy of the past and it has stayed even after Partition. If it is left to the States-I am talking of the Punjab particularly-to choose any language there which the State legislature likes, the danger is that the majority of a section of our people who deny that Punjabi is their mother-tongue might adopt a language which is not the main language as the official language of the State. I might also say here that Hindi has no fears from Punjabi if the (Hindi) is adopted as Rashtrabhasha.

If that is going to be the lingua franca, certainly every member of the community, whether he is a Hindu or a Sikh, whether he belongs to a majority community or minority community, will have to read it and write it and learn it in higher studies as well, because without it he would not be considered anywhere in this country. Therefore, Hindi's future even in States is safeguarded and guaranteed, but my fears are that Punjabi could not have its own status if it is left to the State Legislature. Communalism has not been correctly defined anywhere, but a convenient definition may be that whatever is said and done by the majority in a democratic country or at least in India is pure nationalism and whatever is said by a minority community is communalism. This is the basis on which we are proceeding. As there were fears in the minds of the

minority that Punjabi might be swept away altogether, they advocated its adoption as one of their demands to the majority community, but I fear that just a,, the protagonists of Hindi have done a disservice to that language so have the Sikhs by taking up the cause of Punjabi done it a great disservice because this demand has been dubbed as a communal demand.

But there was no other choice for them. as the majority community denied it to be their mother-tongue, so it was left to the minority community to advocate it and when they did so, the reply came that it was a communal demand. Certainly, that was a perplexing answer. The Press carried on a vigorous propaganda. They said the Sikhs were out to have a separate State,, they were separatists they were disruptionists. With this fear in mind that Punjabi was going to be ousted, the minority community wanted the adjustment of bounda-ries to be taken up and wanted that linguistic provinces may be demarcated. That too was again decried as a communal demand. It was not communal in other parts of the country, but it is communal so far as the cry of the minority community in the Punjab is concerned. I might also mention here that the Commission also has ruled out that so far as Punjab is concerned, it is no, going to be considered,These boundaries would remain as they are. When the minority community wanted that the Punjabi language might be conceded as the official language of the State, the result was that they said it was no language at all; it was only a dialect of the Hindi language. That surprised them most, because in 1932 the Punjab University had appointed a Commission and that had made a clear report that it was one of the richest languages of this country.

Another method has now been adopted. "Why should there be coercion on anybody ? Everybody should be free to choose what medium of instruction he wants. Nobody should be compelled to give instruction to his child in any language which he does not know". Now that is the state of affairs that is prevalent in the Punjab. I may here submit in all humility that we have been snubbed as communalism's. I might make it clear that now, after Partition no minority can be communal. It could be said that when the third party was there the minority communities were communalists and were looking to the third party for support-But now the minority has to look to the majority for everything that it wants. It has to look to the majority for favours, for rights or for concessions. It does not pay any minority to be communal now. What the minorities say or do now is not communalism. Their outlook has changed absolutely. They want pure democracy, because it is only in democracy that they can thrive and flourish. It would be to their disadvantage and would not pay them if they persist in communalism. But what they are afraid of is not the democracy of the majority, but the communalism of the majority. And Punjab is suffering from that. I request you and I appeal to this House to note that what I want is that I should be saved from the communalism of the majority and therefore I commend this amendment of mine to the House.

Shri Jaipal Singh (Bihar: General) : Mr. President, Sir, I feel that I would not be discharging my duty properly if I did not plead with the House that in Schedule VIIA some of the Adibasi languages that are spoken, not by a few, but, literally, by millions, should also be included. My amendment No. 272 says :

"That in amendment No. 65 of Fourth List, in the proposed new Schedule VIIA, the following new items be added:-

'14. Mundari,

15. Gondi,

16. Oraon."'

Sir, if you look at the list of Scheduled Tribes in the last Census, you will find there enumerated 176 of them. Of course there are not 176 languages. There may be dialects, in patois form, and the same language may be a shade different in different areas. You might ask me why I have singled. out only three out of 176. Sir, I do not wish that the Schedule should be overburdened with numerous languages and that is why I have selected only three

important ones. To deal first with the Mundari language, the first in my amendment, I may say that I have not mentioned Santhali because Mundari is the generic term given to the family of languages sometimes called Austric and at other times called Mon-Khmer. I find that in the last census, forty lakhs of people have been recorded as speaking the Mundari language. In the list or the Schedule as it is. I find that there are included in it languages spoken by fewer people than the Mundaris.Similarly my reason for including Oraons is that the Oraons are not a small group in our country. There are as many as eleven lakhs of Oraons. Of course, this language finds a place in the Schedule under the language called Kanarese ; So, actually, if Kanarese were to embrace Oraon, and if my Friend Mr. Boniface Lakra who speaks that language is satisfied that it does I would withdraw item 16 Oraon.

I have asked also that Gondi should be one of the languages as it is spoken by 32 lakhs of people. My main reason toy asking the House to accept these three languages is that I feel that by accepting them we will be encouraging- the cause of unearthing ancient history.

'The, House, somehow or other, finds itself divided into two groups-the Hindi purists and others who are generous enough to accept that it should be left to time to evolve a language. Let me confess that I am prepared to accept whatever the House decides. But I do feel very strongly opposed to the puritancial fanaticism that has gripped many people. What is a language ? A language is that which is spoken. I think we are taking a retrograde step in trying to think that we can enrich the language that is spoken to-day by sanskritising it one hundred per cent for sentimental reasons. I am a great admirer of Sanskrit. I do speak Hindi as it is spoken in my province of Bihar, but that is not the Hindi which my friends want me to accept here. Let Hindi be the language as it is spoken everywhere. Let it enrich itself by taking words from other languages. Let us not think that, if other words are brought into Hindi or Hindustani, we shall be impoverishing it. A language grows and is enriched because it has the courage to borrow words from other languages. I do not mind whether you call it Hindustani or Hindi. Whatever. you decide I will readily learn. The Adibasis will learn it. They are bilingual or trilingual. In West Bengal, the Santhals speak Bengali as well as their mother-tongue. Wherever you go you find that the Adibasi has accepted the language of the area in addition to his mother-tongue.

There is not a single Member here from Bihar who has had to learn an Adibasi language. Does my Friend Pandit Ravi Shankar Shukla tell me that although there are 32 lakhs of Gonds in the, Central Provinces he has tried to learn the Gondi language ? Has any Bihari tried to learn Santhali though the Adibasis are asked to learn the other languages ? It is a matter of pride with us that we can talk in other languages also.

I think there should be some reciprocity. There should be some spirit of accommodation, and the provinces that speak Hindi should make it a Point to learn another language. That is the spirit that should be shown by us. We should not move in a groove and say that the rest of the country must learn our language because we ourselves shall not learn anything else.

Sir, as I said, we have yet to unearth the hoary antiquity of India. We know very little of ancient India and there is only one way of learning about ancient India and that is by learning the languages that existed in this country before the Indo-Ayan hordes came into this country. Then alone shall we know what India in ancient days was like. I know my Friend, Mr. Munshi, has the idea that everytime I use the word "Adibasis" I think in terms of Adibasi republics. He thinks perhaps that by this amendment I am trying to create three linguistic republics. Sir that is not the case. Take Santhali. If my amendment is accepted , it is going to affect West Bengal. Assam, certainly Bihar and Orissa. Take the case of

Gondi. Gondi exits mainly in the C.P. but it stretches to Hyderabad a little bit to Madras and a little bit to Bombay also. Not one of these is an isolated area. They spread over distant provinces. All that I want is that these language should be encouraged and developed so that they themselves can become enriched and by their enrichment they enrich the Rashtrabasha of the country. I do not want that linguistic imperialism should get the better of us. Wherever I have been, it has been a pleasure to learn the language of the place I have had to live in.

So far as the script is concerned, I have very strong views and for practical reasons. I feel that we are making a wrong choice in accepting Devanagari. I belong to that school of thought which has been led, for the last thirty years by Dr. Suniti Kumar Chatterjee who has advocated international phonetics for all the Indian languages. By international phonetics, I can pronounce Tamil as a Tamilian speaks it. I can speak Kanarese as a Kanarese speaks it. Without knowing a language, I can read and pronounce it as a person whose language it is pronounces it, but I know that the House is not in a mood to accept it. So long as my friends suffer from a complex, the fear complex, I am afraid it is useless to appeal to them to have. a script that is practical not only for the purpose of teaching others or teaching oneself.

There is the commercial aspect of it also. It is a well-known fact that the Devanagari script has given headache to all the producers of printing machinery. In the time you can print something like fifteen thousand copies or twenty thousand copies in English, you cannot print even one-tenth of this number in Devanagari. Now, that is the commercial and practical aspect of it. I am not being sentimental. I think the country would have been wise to have done nothing which would retard its progress. By accepting Devanagari, we are impeding ourselves; we shall not be able to move fast enough, until such time as my freinds car. produce machinery that will move as fast as the international alphabet or something which is only slightly less speedy.

Sir, there is not very much more that I want to say. All that I plead, is that the languages of the most ancient peoples of this country should find a place of honour in the Schedule,. I need not say more. I want to assure the Members on both sides that I do not wish to be drawn into this quarrel about language and script. Whatever the House accepts, I and my people will readily accept, and it is in that spirit that I ask the House also to show a spirit of accommodation in accepting my amendment.

The Honourable Shri Purushottam Das Tandon (United Provinces : General) :-Mr. President. Sir, I do not propose to traverse the wide grounds which have been covered by some of the speakers who have preceded me. I have moved certain amendments to the amendments proposed by Shri Gopalaswami Ayyangar and in whatever I have to say, I shall try to keep as close as possible to the object of my proposals.

The speech which Shri Gopalaswami Ayyangar made reflects the spirit of the proposals made by him. According to him, it was on the strength of the English language that freedom was achieved, and it is therefore necessary to maintain English for administrative purposes for-to quote his words-many many years to come, in fact for a much longer period than the fifteen years during which under his own proposals, English should continue to be the language of the Union. His second predominent idea is that none of the provincial languages, and Hindi along with the rest, is sufficiently developed to meet the requirements of a language which has to carry the burden of administration in all its various phases, particularly in the realm of legal concepts and complexities. The whole scheme of his proposals is based on and coloured by these two dominent notions.

There is a third novel idea too in his proposal, namely that whatever may happen in course of time to the English language in India, the numerals which we have learnt from the English language and which are designated in hi-, draft as international forms of Indian numerals, must, in any event, stay andbecome an intrinsic part of the Nagari script, taking the place of our Devanagari-Sanskrit numerals, wherever and whenever the Devanagari script is to be used for purposes of the Union.

I would, in all humanity, request the honourable Members of this House to examine these three ideas a little closely, remembering that whatever we do today concerns not merely ourselves or those few men and women in the different provinces who are educated in the English way and nurtured and fed on the English language, but that our decisions will affect, influence and shape the lives of those millions of men and women who have no contact with the English language, for whom any contact with the English language is impossible and who have to be lifted up from their present state and trained in the ways of democracy and administration. We have also to remember, Sir, that the decisions we take here today will affect not merely the present generation, but will shape the destinies of the ,generations yet unborn.

The Prime Minister has, in his own manner warned us against looking backward, taking any steps which might lead us backward. I have always entirely agreed with the view, and have myself put it forward on many occasions, that we cannot rest content with what we have achieved in the past, and that we cannot entirely would ourselves on the pattern that existed in the past.

"Samaya bhedena Dharma Bhedah Avastha bhedena Dharma Bhedah are the mottos which I have placed before the people. With times and conditions our dharma our duties change: these are ancient mottos. We have to remember that our little systems have their day and then cease to be. The world moves on. The system of today yield , place to new systems, new manners, new ways of thought. There is always a fresh perfection treading on the heels of the old. We cannot, even if we would, get out of that great fundamental fact of existence.

At the same time, Sir, we have to remember, as was said by the Prime Minister, that we are all rooted in the past, and that we cannot cut ourselves away from it. In a way, we are bound to the past by a strong but invisible chain, an Akashik chain, which is, ever lengthening with time, but which remains unbroken and unbreakable. Therefore, in whatever we attempt to do, we have to take care that while we move forward to our destiny, the long, strong chain that binds us to the past is not weakened, but strengthened at every step. That, Sir, I submit, should be our basic political philosophy not to live in the past, but to live in the present which connects us with the past.

I stand for taking in the fullest measure the good that the West can give us. But I ask every one present here to remember that all that glitters in the West is not gold, that what is Western is not necessarily good, that our own country has produced concepts and traditions of a high order which are likely with the passage of time to influence more and more the destinies of the whole race of mankind.

It is in the light of these principles that I wish Honourable Members to examine the draft which has been placed for acceptance by out Friend Shri Gopalaswami Ayyangar. I shall not read it out. I take it that you are familiar with every important clause in it. This draft visualises the existenceof the English language for at least fifteen years, and not merely the existence but the predominance of that language in all that concerns the Union. I had imagined that although it would be necessary that for some time to come English should be retained for our official purposes that that time would not be so long. I had thought that within a much shorter time we might be able to go near the people and work in a language understandable by them. I do not forget that for our brethren who are here from the South Hindi which is proposed to be the official language will not be very easy to learn. At the same time I submit that the people in the South are not

strangers to Hindi Under the direction of the Father of the Nation, whose name always strikes a sensitive chord in our hearts, the work of Hindi began in 1918 in South India and during this period several lakhs of men and women have learnt Hindi and, as my Friend Shri Moturi Satyanarayana sitting here can tell you better, every year there are about 55 to 60 thousand examinees sitting in Hindi examinations held by the Dakshina Bharat Hindi, recently named Hindustani Prachar Sabha.

An Honourable Member: They can only read and write but they cannot express themselves.

The Honourable Shri Purushottam Das Tandon: That may be. An that I say is that that shows that the Hindi language will not be a new thing in South India, I was under the impression that such a long time as fifteen years would not be required to bring Hindi near to the young generation of Madras but, as Pantji said, it is for our brethren in the South to say as to what time they require and I entirely agree with the view that it is not for us to force their hands in the matter. We will offer our services, we can tender advice but we leave it to them to say how long they want and within what time, they will make their people ready to use Hindi for purposes of the Union.

It is in that spirit that we agreed to the fifteen years time. We had begun with five, then we went upto ten and then we saw that our brethren from the South wanted fifteen years' and we agreed to that. But in Shri Ayyangar's draft there is a hard provision in regard to Hindi not being used at all except in addition to English for five years and more, till a commission makes a recommendation and that recommendation is accepted by the President. That seems to me a rather hard provision. It might have been' somewhat softer. Why is it necessary to keep out Hindi entirely from those official purposes for which Hindi can be used without any inconvience to our friends of the South ? Under the present clauses a Minister of the Union cannot write a letter in Hindi on any official business to anyone unless that letter is accompanied by an English translation. Obviously, then, Hindi is not likely to be used at all. So it comes to this that for five years and more, so long as the Commission does not make a recommendation and that is not accepted by the President, no work can be done in Hindi except in the shape of translation from English. You may publish a book in English and you may translate it into Hindi also. That is all the work that will be done for five years and more. That is rather hard. Nevertheless I agree even to this--that nothing is to be done for five years in Hindi except when it is in addition to English.

But I ask you to give thought to what comes after five years. Under Shri Ayyangar's proposal, at the expiration of five years, a Commission is to be appointed to go into the question of language. This will necessarily mean an extension of the period of five years by another, two years or so, because the Commission after its appointment will meet and probably wander about in the country and then make a report. After that a Parliamentary Committee will sit and examine the Commission's proposals and then make its own final report. Let the appointment of the Commission be before the expiry of five years. I do not fix any time. All that my amendment says is "substitute before' for , at so that the report may be ready and Government may be in a position todirect that after the expiry of five years some changes which may be thought necessary in regard to the use of Hindi, may come into effect. This is a small amendment which I have suggested and I hope it will be accepted. It simply means that before five years have expired, the Commission will be appointed But I make it clear in my amendment that whatever recommendations art adopted, will be brought into effect only after the expiry of five years. And. shall be content that within five years, only that work will be done in Hindi which is a translation of English.

Similarly, in some other clauses I have proposed some modifications. As

the President has directed, these amendments have been taken as moved. So I shall not read them. I shall only mention the general purpose. A Parliamentary Committee has been suggested and it has been said that it will report on the recommendations of the Commission. I have added a small clause to the effect that this committee may make its own recommendations also-"such recommendations as it may deem fit". These are the few words that I have added to that particular clause about the appointment of the Committee and its report on the recommendations of the Commission. All that I ask is, let this Parliamentary Committee also, if it thinks fit, make some recommendations, and let the Government decide on the recommendations of the Committee as well as of the Commission.

These are the amendments which I have proposed in 301-B.

I now come to Chapter II on Regional Languages--301 C of Sri Ayyangar's draft. It is stated here that

"... a State may by law adopt any of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State."

I agree with that. It is the proviso to which I take exception. It says-

"Provided that until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the States for which it was being used at the commencement of the constitution."

I fail to understand why it should be at all necessary to encourage the use of English in States. It may be that at the commencement of the Constitution, they may be partially using English but they may want to change it. I know you provide that they may change it by law. But they may be. using not only English, but other languages. So I would like to put in this sentence in place of the proviso-

"Provided that until the Legislature of the State otherwise Provides by law the English or languages which were being used for official purposes within the State at the commencement of the Constitution shall continue to be so used."

In my own province, we are now using Hindi for official purposes. Bihar and C.P. also, I think, are using it. Why should it be necessary for us to pass a new law accepting Hindi? We are using Hindi at present under the direction of the Government, and therefore, *be words that I have suggested would be more suitable.

Then in article 301-E it is said that where the President is satisfied that a substantial proportion of the population desires the use of some other language, he may direct that such language shall also be officially recognised. I agree to that, but it seems to me that it would be better to follow the Congress Working Committee's direction in this matter and Jay down a certain proportion of the population on whose demand a language may be recognised. I think the Working Committee laid down 20 per cent. and we might well adhere to that; otherwise it would become very difficult for the Central Government to decide as to where to give in and where to refuse and that might create someconfusion and a certain amount of bitterness also in certain provinces. Where a proportion is fixed, the way for the Central Government will be clear.

And then in Chapter III-"Language of the Supreme Court and High Court," the proposals put forward in are-and Mr. Ayyangar will pardon me for saying it-palpably retrograde. You have adopted Hindi as the official language. You desire, I take it, that gradually Hindi should replace English. But that can be done only when you give Hindi the opportunity to replace English at least in the Hindi provinces. I know that the non-Hindi provinces have their difficulties; but. the Hindi provinces have none in regard to the use of Hindi. Do not exaggerate the difficulties. It has been said that the proper idioms, the proper phrases or the proper terminology cannot be found. Well, leave that to those, who will work in Hindi. In my own province, all the original texts of Bills and enactments are in the Hindi language. Obviously our work creates no

difficulties for our brethren in the South. Why should you force us to conduct all our official work in the English language, when we are already doing it in Hindi ? Again you say that so far as the Supreme Court and the High Courts are concerned, their work also must for fifteen years be done in English. I agree that the Supreme Court may work in English for fifteen years, but I submit that it is not necessary that all the High Courts should work in English for that period. The High Courts may be divided into two classes. There are those High Courts-some of them newly created in the States where work in done, and has traditionally been done in Hindi. Take for instance Gwalior or Indore. I am aware that English has also been used there, some of the judges imported from outside have done their work in English and it has been permitted; and yet a good deal of work is done in Hindi simultaneously. Will you now prevent it? Similarly, there is a High Court in Rajasthan, and in some of the other States also. Will you prevent these High Courts' from functioning in Hindi ? Under the present proposal all Hindi work in these, High Courts will become impossible. I say that must be changed.

Then there is another class of High Courts : those which have been doing their work in English but which can take up Hindi in a much shorter time than fifteen years. Take the High Court in my own province, or Bihar or the C.P. I am very. clear in my mind that our High Court can begin to function fully in Hindi after a lapse of five years. Gradually, during the next five years, the whole procedure can be built up and can be adapted to the needs of Hindi. Terminology will present no difficulty. It is already being created. A good deal of it is there, and it is, after all, not a very difficult task to coin necessary words. Hindi is not a new language. When Ireland framed its constitution it adopted the Irish language, which had not much literature and which had not a sufficient vocabulary and yet Ireland adopted it. Our language, Hindi, is a powerful language.

Mr. Ayyangar said that that language is entirely lacking in the terminology which will be necessary. What shall I say to that proposition He himself says that he is not conversant with that language and yet he pronounces judgment upon it. I submit that that is not fair. I for my own part, submit that Hindi, with the resources of Sanskrit, about which so much has been said in this House and which I endorse fully-Hindi with the backing of Sanskrit, can face all the difficulties of vocabulary with ease. Even before the expiry of five years. it seems to me, we can conduct the work of the High Court in Hindi. But I say that in any case five years is a sufficient period. We do not require that for fifteen years ours work should be carried on in English. So why make it compulsory for us to continue to work in English for that long period ? Give us room enough to expand and then after fifteen years all the work that matters, for example the work of the Union, will become easier of accomplishmentbecause Hindi provinces by that time will have created that atmosphere and built up that terminology which will be helpful to the whole country.

Maulana Hasrat Mohani (United Provinces: Muslim) : What do you mean by Hindi provinces?

The Honourable Shri Purushottam Das Tandon: I am referring to those provinces which have adopted Hindi as their language; for example, the United Provinces has formally adopted Hindi as its language: so has Bihar . . .

Maulana Hasrat Mohani : The United Provinces is either a Urdu province or a Hindustani province. It cannot be a Hindi-speaking province.

The Honourable Shri Purushottam Das Tandon: That may be your view. I do not propose to go into that controversy about Hindi, Hindustani, or Urdu. All I say is that Hindi has been adopted as the official language of the United Provinces and it is the language in which all the official measures and enactments are being passed today. Undoubtedly, a good deal of work is still being done in English, but by and by that work will also be done through the medium of the Hindi language. These are the smaller modifications which I have suggested.

Now, I come to the main amendment in 301-A, which relates to numerals. I know, Sir, that controversy over the numerals has created a certain amount of bitterness. I would be the last man to add to that bitterness. I would as far as possible remove it. I know that our Madras friends want to change the Hindi numerals.

Honourable Members: Bengal also

The Honourable Shri Purushottam Das Tandon: If I am wrong you can correct me; but I never heard that from my Bengal friends.

Honourable Members : Bombay also. As a matter of fact, all non-Hindi speaking people.

The Honourable Shri Purushottam Das Tandon: My submission is that it is not correct, to say the least of it, that all non-Hindi areas want that change. ask Mr. Shankarrao Deo and Dr. Ambedkar, who are sitting here. to tell me whether the people of Maharashtra are going to accept it.

Shri Shankarrao Deo : I say that whatever stand I take the Maharashtrians will take that stand too.

The Honourable Shri Purushottam Das Tandon: From my knowledge of Maharashtra I submit, because the script is the same, that if there is a referendum there, the people of Maharashtra will not accept the so-called international numerals.

Honourable Members : If there is a referendum in India Hindi will go

The Honourable Shri Purushottam Das Tandon: I would beg of honourable Members to interrupt me one by one and not many at a time. I shall be happy to hear Mr. Shankarrao Deo and Dr. Ambedkar.

The Honourable Dr. Syama Prasad Mookerjee: 'Why not refer it to a referendum ?

Shri H. J. Khandekar (C. P. & Berar: General) : I am a Maharashtrian and I can say that if referendum is taken in Maharashtra they would not accept the international numerals.Dr. P. S. Deshmukh (C. P. & Berar: General) : I am a Maharashtrian too and I can say that they would not accept the international numerals.

Mr. President : It is not necessary that individual Members should express their opinion on any particular proposition.

The Honourable Dr. Syama Prasad Mookerjee: The honourable Member is asking for opinions.

The Honourable Shri Purushottam Das Tandon : I submitted my view. You may agree with it or not. I did not ask Dr. Syama Prasad Mookerjee to express his opinion. What I said was, and I say it now and here, that if this proposition goes to the people of Maharashtra, they will not accept it. I am also in touch with that province. And I say, in spite of what my Friend, Mr. Munshi, may say, that when this provision goes into the hands of the Gujaratis, they will not accept it either.

(Interruption from several honourable Members)

Is it necessary for so many persons to speak at the same time? If one man interrupts I can hear him but when four or five people speak at the same time I cannot hear any of them.

I have heard Mi. Shankarrao Deo. He says that if the whole Constitution is referred to the people, they will not accept

Shri Shankarrao Deo: Much of it.

The Honourable Shri Purushottam Das Tandon : If that is so then much of it is fit to be thrown into the waste paper basket. there is any part of the Constitution which will not be accepted by the people then it must not be accepted here. I submit in all humility that I would gladly accept a referendum to the whole country. If the provinces do not accept Hindi, I would be the last man to force it upon them. I would then say at once that Hindi must not be the national language. Why should Hindi be forced upon any province ? It is for the provinces to decide whether they will or will not accept Hindi. They may continue with English or have an Esperanto if they like. I would agree to that entirely, if that is their view. But let some way be found for ascertaining the wish of the people. A gallup-pool has recently been taken by a body of students. We have read about it. Another method for gathering the views of the masses may be attempted in the whole country. Let that the done. in Madras also. Whatever

my friends here may say I am hopeful that a very large number of people in Madras will desire Hindi.

Several honourable Members: No, No.

The Honourable Shri Purushottam Das Tandon : But if there is no such reference to the people possible, I would appeal to all those who are in power today to listen to the small voice in their hearts and not to accept even one little thing which they feel is not likely to be accepted by the people......

Maulana Hasrat Mohani: I demand a referendum in U.P. on whether it is to be a Hindi or Hindustani province. Not a single person speaks Hindi in the Sanskritised form there.

Mr. President : May I just point out that this Constituent Assembly has been charged with the duty of framing a constitution for the country ? There is no provision in the Constitution of this Assembly for any referendum and therefore there is no question of a referendum either on the whole or a part of it So that need not give rise to any controversy, because it would be futile.

The Honourable Shri Purushottam Das Tandon: I appeal to those who are in power to think over the matter. I do not propose that this matter shouldnow go to a direct referendum. What is a referendum ? It simply means the will of the people., If it was left to the people, what would they say?

Mr. President : So far as the Constituent Assembly is concerned it reflects the will of the people.

The Honourable Shri R. R. Diwakar (Bombay: General) : Sir, what the honourable Member says is a reflection on the Members, of this Assembly.

The Honourable Shri Purushottam Das Tandon : If every time we refer to the will of the people it is objected that that is a reflection on the Members of the House it would become impossible to proceed. Sometimes the views of the House may differ from the will of the people. So far as the question of numerals is concerned I ask you to reflect upon it. Perhaps you have made up your minds. Yet I ask you to listen to what I say. Do not get warmed up over this issue about numerals

The Honourable Dr. Syama Prasad Mookerjee (West Bengal: General) : It is a warning for us.

The Honourable Shri Purushottam Das Tandon: You have made up your minds and you want to laugh at your opponents. It ill becomes you. I am serious about this question. I know that Mr. Ayyangar is serious about it. It is a matter which'. concerns the future of our people.

We have been speaking of a national language for years and years. is not a now subject before the House. It was in the 19th century that this idea of a national language took shape in Bengal, not in U.P. or Bihar. I can quote to you extracts but I do not wish to take up the time of the House. I have with me the original of what Bankim Chandra Chatterjee wrote. I have the original of what Keshub Chandra Sen said on the subject. I have the Original before me of what was written in 1908 by the 'Bandemataram' the editor of which was Shri Arabindo Ghose

Pandit Lakshmi Kanta Maitra (West Bengal: General) : We have been amply rewarded for all that I

The Honourable Shri Purushottam Das Tandon: That idea took shape there and then Tilak supported it and Mahatma Gandhi, the Father of the Nation, took it up. My point is that this movement has been there for years and people have worked in accordance with certain ideas about the acceptance of Hindi as the national language. It has been taken for granted more or less that Hindi is the national language and work has been going on in different provinces on that assumption.

A few minutes ago I spoke of the work done in Madras. I may also mention that in Bengal, Assam, Maharashtra, Gujerat and Orissa that work has gone on for years. Today examinations are conducted from Wardha in Hindi and about 1,40,000 young men and women annually appear for them-young men and women who do not belong to Hindi-speaking provinces but who come from non-Hindi speaking regions. That shows that it is not a new idea, that there is work on the basis of that idea to the credit of the country.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Wednesday, the 14th September, 1949

May I ask how long has this idea about the numerals been before the country ? No member could have the courage of coming before this Assembly, with a proposition about the acceptance of the Hindi language if that language had not already been more or less accepted by the people for years and years. It is on that basis that that clause in the Draft Constitution relating to language has been framed. But how long have people been discussing about these numerals ? Only for about two or three weeks,The Honourable Shri K. Santhanam (Madras : General) : I may inform the honourable Member that this question came up before us in the South in connection with the Hindi Prachar Sabha at least fifteen years ago and we decided that Hindi Prachar in the South should be conducted with international numerals.

The Honourable Shri Purushottam Das Tandon : I accept Mr. Santhanam's statement as correct. I never knew about it. But neither Mr. Santhanam nor the Hindi Prachar Sabha of Madras ever brought up this question before the country

Shri Moturi Satyanarayana (Madras : General) : You yourself were there on the Hindi Prachar Sabha fifteen years back ?

The Honourable Shri Purushottam Das Tandon: When I was in touch with the Hindi Prachar Sabha, it was the Nagari digits that were being used. I may give that information to my honourable Friend Mr. Satyanarayana whose connection with that Sabha, began long after mine. When I had something to do with that Sabha, when that Sabha was being guided from Allahabad all the work was being done through the Hindi numerals. It was at a later stage that he probably brought in the English numerals; and even today, I may remind him, some at least of the Hindi books that he has published have Nagari numerals. I have seen at least one of them.

Shri M. Satyanarayana: It was in 1927.

The Honourable Shri R. R. Diwakar: What about Hindi, Punjabi, Urdu who are using these numerals today ?

The Honourable Shri Purushottam Das Tadon: When you are adopting Hindi as the language, adopt also its numerals. I ask you to consider whether this is the proper time, when the country is not prepared with any views on that matter, to force English numerals upon Hindi ? I have said so many times that I would not force Hindi upon any province, but by the Constitution you are practically forcing this script for all official purposes upon all those who do their work through the Nagari script. I ask you to stay your hand there. The Prime Minister has repeatedly said that languages grow, that they are not born in a day. He has said that several times. (A voice-He is right). He is right. Languages grow. But the numerals grow also. (Interruption.) The numerals grow also, they have grown. (Interruption.) The numerals have grown along with the script. The script grows. like the language which uses it. The script is not born in a day. It has grown with all parts of it, the vowels, the consonants and the numerals. It is one artistic whole. You cannot patch something upon. the face of that whole. Today you say, "Take out the Nagari numerals." You might as well say-though you are not saying it today-"Take out the vowels, let the English vowels be used and let the consonants alone be Hindi". I say you would be creating a monstrosity.

The Honourable Shri N. Gopalaswamy Ayyangar (Madras: General) : That is is a caricature.

The Honourable Shri Purushottam Des Tandon: My friend says that is a caricature. He sees the absurdity of taking away the vowels. So far as we are concerned, we also see the absurdity of taking away the numerals. It does nobody any good. You are taking away something from us which does not enrich you but makes us poor indeed.

Our numerals are an ancient heritage. It has sometimes been said that these English numerals are our numerals and the question has been put: why should we not take them back ? As if we had lost our numerals and we aregoing to re-possess them Nothing of the kind. The knowledge of these numerals certainly went to Europe through Arabia from our country. We are all proud of that fact. There are many other matters in which Europe is indebted to us. But that does not mean that an object which has grown amongst us should be given up and we must bring back in their changed forms those things which originally went from here. They have modified their forms according to their needs and we have modified our forms in consonance with our genius. Circumstances and environments everywhere introduce changes. Changes have been made in our country also. Our numerals have grown as I said. They were written in a certain manner during Vedic times. Then changes came and for about sixteen centuries they have been written in the present style. Are we to give up now what has been used here for such a long time ? I say internationalism is no argument and it is not fair that our people should suddenly in this manner be asked to give up their own numerals.

The Honourable Shri R. R. Diwakar: We are using them in the South today.

The Honourable Shri Purushottam Das Tandon: I would beg of Mr. Diwakar to be patient. He can have his chance afterwards.

It has been authoritatively said in regard to the Devanagari script including the numerals, that our system is the most perfect that exists in the world. shall quote to you one or two extracts, although I have many before me. Here is one from Prof Monier Williams

"And now a few words in explanation of the Deva-Nagari or Hindu system. This. although deficient in two important symbols, 'represented in the Roman by z and f,..

(which deficiency as you know, has been made up by means of dots).

"........ is on the whole, the most perfect and symmetrical of fall known alphabets. The Hindus hold that it came directly from the Gods-whence its name (i.e. Devanagari) and truly its wonderful adaptation to the symmetry of the sacred Sanskrit-seems almost to raise it above the level of human inventions."

The late Sir Isaac Pitman, the great English inventor of phonography said:

"If in the world we have any alphabets the most perfect. it is those Hindi ones."

I shall refrain from reading other extracts. Some friends suggested that the Roman script should be adopted. It is for them to think over the extracts which I have just read out. My view is that it is possible that when our country grows in strength the, European nations may themselves be drawn more and more to see the excellence of our alphabet. This question of romanising our language was raised in the 19th century also. Some of the savants of England wanted that the people here should be given education through the medium of the Roman script. There was a long controversy over it and at last it was decided by the British Government that the Roman script could not profitably be used in this country and that the Nagari script was the most suitable. It is too late in the day now to think of Romanising our language. I hope that question will not be pressed.

Then,. Sir, something was said about the adoption of Sanskrit. I bow to. those who love Sanskrit. I am one of them. I love Sanskrit. I think every Indian born in this country should learn Sanskrit. Sanskrit preserves our ancient heritage for us. But today it seems to me-if it could be adopted I would be ha* and I would vote for it--but it seems to me that it is not a practicable proposition that Sanskrit should be adopted as the official language.Pandit Lakshmi Kanta Maitra: After fifteen years it will be all right, though it is not today.

The Honourable Shri Purushottam Das Tandon: I do not think that today in our Constitution it will be Possible for us to say that Sanskrit should take the place of Hindi. I think the most practical view is to ad-opt Hindi as the language for official purposes.

Shri Mahavir Tyagi: What is your amendment about numerals, Sir'

The Honourable Shri Purushottam Das Tandon: Therefore my submission is that in this perfect Devanagari script which has come down to us from time immemorial we should have Hindi as the official language. It is not right that all of a sudden, when the public have not been educated about it, when the subject has not been before them for a sufficiently long time, the Constituent Assembly should decide that Nagari numerals should be taken out of that script and the so-called international numerals or English numerals should take their place. There is some feeling among Members from South India about using the English numerals since they are using them in their languages, I am a man of peace. I do not desire to have any quarrel as far as possible.

My Friend Dr. S. P. Mookerjee made a kind of personal appeal to me I am grateful to him for it. I also wish that our language resolution could be passed. unanimously. With that object, although I feel strongly that Devanagari numerals should not be, inter-fared with in any manner, in order to meet the wishes of our friends from the South I have come forward with a formula. I hope that it will be possible for you to accept it. I say : let both Indian and international numerals be recognised for the purpose of the Devanagari script for fifteen years and let the President, that is the Government, decide from time to time as to where one set of numerals is to be used and where the other set is to be used. The Government work will for a long number of years be done in English. Some friends particularly Shri T. T. Krishnamachari, suggested to me that for statistics, for accounting and for banking, the international numerals should be allowed. I saw that they were keen about that. Therefore in one of the sub-clauses I have provided that so far as these matters on are concerned, during this whole 'period of fifteen years, only the English language should be used, so that the main purpose for which the international numerals are wanted will be served by the English language. employing the English numerals as a matter of course. I do not suppose any one desires that English numerals should be use for printing ordinary Hindi books. But even there I have left it to the Government. If Government desire that for any particular work English numerals may be used, they may do so. They may use Hindi numerals only when they think them necessary.

I appeal to you to accept the compromise and not to insist that for ever and for ever international numerals should be substituted, for the, Devanagari numerals. (Interruption.) I appeal to you not to pass that proposition here, because you will be then very hard on people who been using Hindi. Their minds are thoroughly unprepared for this kind of change. (Interruption.) After we have adopted the Devanagri as the official script and Hindi as the national language, it would be up to all of us to meet in Conventions. and decide what changes we should introduce in the Nagari character. Our system is perfect, but the shapes of some letters require a change. Also some new letters will have to be added, I submit it will be possible for all of us, after accepting the Nagari script as it is-today, and it will be necessary for the Government of India in particular, to hold conferences to consider what changes should be made in the script and in the numerals for the needs of the modem times. The, Prime Minister mentioned that for purposes of composing matter for the Press the internationalnumerals were more suitable. With all deference to him I say that lie is riot acquainted with the details of press work. The information given to me by press workers with whom I have come in contact is that it makes absolutely no difference at all whether they have to use Hindi or international numerals. The best composing work is done on monotype or linotype machines. In fact, I submit, our numerals are more artistic and more in keeping with the shapes of our letters. I appeal to you to accept the compromise in the spirit in which I have placed it before you. I ask you to save further bitterness. Otherwise, this thing cannot stop here. Do you think there would be no agitation over this matter ? This thing is bound to rankle in the hearts of those who have been using these numerals and

love them-whether they be Hindi-speaking, or Marathi-speaking or Gujarati-speaking. We are not meddling with your Tamil or Telugu scripts at all, but here you are meddling with our Nagari script.

Shri L. Krishnaswami Bharathi (Madras : General) : It. is only for official purposes.

The Honourable Shri Purushottam Das Tandon : I know it is only for official purposes of the Government of India. But once the Government of India begins this thing, it is bound to filter down and to spread as the Government is the centre of all activity. That is why we object to it. If you will kindly listen to me, I would request you in all humility to accept the compromise which I have placed before you and to adopt my amendments,.

The Honourable Maulana Abut Kalam Azad (United Provinces: Muslim): *[Mr. President I shall take some time of the House. I have come here to apprise you of my opinion about the language; also I would tell you the object with which I gave my advice to the Congress Party and the procedure adopted by the Drafting Committee, thereupon. I will place before you all these facts and through you will bring them to the notice of the country.

In this connection many questions came before us. The first question was as to how we could remove English from the position it has come to occupy in the Governmental machinery and in the sphere of education,-whether it should be set aside immediately or gradually. You will remember that two years ago I had expressed my opinion that we should wait at least for five years. In other words, English should remain in its place- in the universities and in the government offices for five years and that after this period a change in procedure be ushered in and during this interval we should try to bring our national language on such a footing that it can easily replace English.

My opinion that English should not be brushed aside immediately was generally appreciated, but the time limit fixed by me was acceptable only to a very small number of my friends. Particularly my friends from South and Bensal were of the opinion that a much longer period was required for that, and that for such an important change a period of five years will not be sufficient. I admit that experience of work and contemplation forced me to a similar conclusion as that of my friends. Now I feel that my estimate was not correct. In no way can we cover this distance in five or six years. I am in full agreement with the amendment of Shri Ayyangar that a period of at least fifteen years be fixed for it. You know very well that nobody can be more eager in seeing our national language reigning supreme instead of English.

*[] Translation of Hindustani Speech.Perhaps it would not be out of the place if I tell you that I am the first man who tried in the Assembly that Hindustani be heard from the Government benches instead of English. But considering the pros and cons of the matter I had to conic to this conclusion that the matter could not be brought to reality merely by sentiments and wishes. We must realise the difficulties of the situation and formulate conclusion accordingly.

Two great obstacles stand in our way. The first difficulty is that there is no national language as such which can immediately take the place of English. Time is needed to evolve it, brush it, and polish it. So far as the administration of the government offices and the imparting of higher education is concerned, none of our languages can all of a sudden claim the position of English. Though admission of this fact gives us heart-burning, we have to admit it with regret. During these one and a half centuries of the British rule, if our national language had been used in the administration and academic spheres then surely today our national language would have attained the same status with the other rich languages of the world, but unfortunately it was not so. The language of administration and instruction has been English with the result that today we are forced to carry on our state and private business through the medium of English. The

other obstacle is the non-existence of a common language in our country. If we try to bring immediately our national language in place of English, then, which can be that language which is read and written alike throughout the whole country ? No doubt the language of Northern India is widely spoken and understood : but, firstly, it is not spoken and written everywhere, and secondly, the South does not come under its domain. There you will come across only a very small section of population which can express itself in broken Hindi. We have got to admit that so far as language is concerned North and South are two different parts. The union of North and South has been made possible only through the medium of English. If today we give up English then this linguistic relationship will cease to exist.

Today, if we desire to replace English by our national language which would be the national as well as the Federal language, then there is no other way but to wait patiently and try to introduce instruction in the national language widespread, while keeping English for some time. In this we require the good will and co-operation of our brethren of the South more than of anybody else. Unless and until they lend us their hearty support. we cannot succeed in our mission. With full willingness they have asked for a period of fifteen years and it beloveds us to accept that with pleasure. If such an important problem as, that of a national language can be solved only within fifteen years than we should accept the bargain because it is very easily settled, and at the same time a very complex problem of the national life will be solved with ease.

In the life of a nation and a country a period of fifteen years is not long-nay it will not be more than fifteen days. To this some friends have raised this objection that this decision will have its repercussions on the provinces as well, though the fact is that some Provinces have already replaced English and some universities have decided that in the near future university education win be imparted through the medium of our national language. In this connection the names of two universities of the Central Provinces have been mentioned. I have no hesitation in saving that such a hasty decision will not benefit the object of having a national language. I am afraid that in this way the standard of education will suffer a set-back and it will not be in the interests of the academic capability of the students. The governments and the universities of the Provinces were aware of the fact that the Government of India are considering this matter and that a University Commission had been constituted which would consider this important matter in addition to other educational problems. It was necessary that they should have awaited the recommendations of theCommission and should have acted after due consideration. By acting divergently in the field of education we would not be serving the educational life of the country.

The Honourable Shri Ravi Shanker Shukla : I would like to inform you that this decision was taken by the University three years ago and the University Commission has been set up now.

The Honourable Maulana Abul Kalam Azad : That is right. They decided upon it three years ago, but we have to see whether this decision was expedient or not. I have no doubt that this decision does not fit in with what is expedient concerning our education and it is necessary to reconsider it. The Governmeat are in possession of the recommendations of the University Commission. Government will take an early opportunity to consider them.

I know that you will agree with me that in this connection the universities should not have different decisions. On the other hand, the country should act upon one uniform decision.

So far as education is concerned I am not of the opinion that we should wait for fifteen years. We can bring about this change earlier,' provided that we prepare ourselves on the right lines. But any such change which is brought about immediately will surely be a wrong step, and

it will put higher education in a topsy-turvey condition.

In this connection the question of courts has also come before us. It is my firm conviction that for fifteen years, English should be continued in the High Courts. If we replace English in haste, then legal tangles of various kinds will crop up. Over and above this, there would not be any common relationship or uniformity of language between the different courts of the provinces. This change should be ushered in only when a national language can be read and written in every part of the country and becomes mature enough for the expression of highly technical subjects. Surely for this work a period of fifteen years will not be too long.

Regarding language another question which confronts us is what should be four national language, what name should be given to it ?

So far as language in concerned, this has been admitted on all hands that the language spoken in Northern India can only be made the Lingua Franca, but it has got three names-Urdu, Hindi and Hindustani. Now, the point of dispute is as to what name should be given to it. Naturally, with different names are associated different forms and styles of the language; so in reality it is not a quarrel about the names but about the form or style. I want to give you a brief resume of the points of difference in these three names.

The general framework or the setup of the language spoken all over Northern India is one and the same, but in its literary style it has got two names-a style resplendent with Persian is called Urdu and a style leaning towards Sanskrit is known as Hindi. The term "Hindustani" has developed a wider connotation: it embraces all forms of the language spoken in Northern India. It includes 'Hindi' as well as 'Urdu' and even more than that. It includes each and every shade of the spoken language of the North. It does not exclude any. It covers all.

It was on my suggestion that, about a quarter of century ago, the All-India Congress Committee. when the question was before it, decided in favour ofHindustani. The object behind the decision was that in this language question we should not act with narrow-mindedness; rather we should try to extend its field. By adopting the name of "Hindustani" we had tried to do away with the differences that separated Urdu and Hindi, because when we try to speak in or write easy Hindi and easy Urdu then both becomes identical, and the distinction of Hindi and Urdu disappears. In the new framework of this easy vehicle of expression you can coin as many new words and new phrases as you please, there would be no obstacle. Besides, by adopting the name of Hindustani we leave untouched that vast and extensive field which the people of North India have created for their language. We do not put any check or obstacle upon them from above.

Think for a moment of the position in which people of this area find themselves today Only seventy or eighty years ago Urdu language was spoken and written by them. The movement for Hindi was started much later and a new literary style came into being which was known as Hindi. Now Urdu and Hindi are being used as two separate names for it. Even then, the language commonly spoken all over U.P., C.P., Bihar and Punjab is the same in shape and form. Those who have a liking for Sanskrit literature generally use words of Sanskrit origin and those who have got Persian education commonly use words of Persian origin. What the Congress had decided was that in Hindustani both these styles were included. They all speak Hindustani. If we want to develop a powerful, extensive and a literary language then we ought not to place any artificial obstacles in its way. We should let people speak the language they desire. After sometime a peculiar style would evolve by itself; words which are more natural and near to the rules of philology would come to stay in common use and uncommon words would be dropped out. Literary languages are not made to order by imposing artificial rules and checks. Languages are never made; they evolve. They are

never given a shape; they shape themselves. You cannot shut the mouths of people by artificial locks. It you do that, you Will fail. Your locks would drop down. The law of language is beyond your reach; you can legislate for every other thing but not for ordering its natural evolution. That takes its own course, and only through that course it would reach its culmination.

Anyway, by adopting the name of Hindustani, Congress had recognised that natural law according to which languages evolve. Congress only wanted to save it from artificial restrictions. Both Gandhiji and the Congress acted on this principle. He toured all over the country and everywhere he spoke in Hindustani. He did not belong to Delhi or Lucknow. He was brought up in Kathiawar. His Hindustani was neither literary Urdu nor literary Hindi, but an inter-mixture of both. In his vocabulary were many a words and phrases current in Bombay and Gujarat and he used them quite freely. Even them, the language he spoke was Hindustani, and through its medium his message did reach millions of Indians. If you look at the Congress you will see to what a great extent it has been influenced by him. Prior to his coming speeches only in English used to be made from the Congress platform, but since his arrival Hindustani came into vogue and upto this day speeches are made in Hindustani. But his Hindustani was neither the idiomatic Urdu of Delhi or Lucknow nor the Sanskritised Hindi of Banares. The language used by him was wider and more expansive. Any speaker could express himself freely in that language according to his own taste and learning and could make himself intelligible to thousands of his countrymen. Urdu-knowing people could speak in Urdu while Hindi knowing people could speak in Hindi. A speaker from Bombay would use Bombay-style Hindustani, while a Bengali speaker would speak in Hindustani with his own accent and style. All of them are covered by the wider term of 'Hindustani'. Hindustani has a place for all these styles.

It is necessary for us to maintain this extensive Character of the language, rather we should let it grow wider and richer. We should not try to keepit confined in any limited sphere. We have to replace English, which is a literary and extensive language, with a national language. That can only be done by making our own language rich and extensive rather than limiting its scope and extent, if you call it 'Urdu' then surely you narrow down its circle; likewise if you name it 'Hindi' you limit its extent, therefore by giving it the name of 'Hindustani' alone, you can widen its scope. It is the exact and right word which describes the real state of our language for the present.

For these reasons I have held this opinion for the last so many years that our national language should be called 'Hindustani'. I need not say that Gandhiji also held the same view upto the end. That was why he had started "Hindustani Pracharni Sabha", and had severed his connections from the Hindi Sahitya Sammelan. Now, when in connection with this Constitution this question came up before the Congress Party, naturally I emphasised the same view and I had hoped that at least the older congressmen would not forsake their previous stand and would continue to adhere to the Gandhian principles; but I need not hide my own feelings from you when I say that I was greatly disappointed. I realized that with few exceptions all have retraced their steps.

As you are aware,in the party meeting this question was thrashed out for several days, but they could not arrive at any conclusion. The question of fixing a time-limit for the retention of English and enforcement of the now change was the focus of the greater part of these discussions. Several fresh resolutions relating to language were also introduced. One resolution was to retain the word "Hindi" in the Constitution with this interpretation that Hindi includes that style of language also which is commonly known as Urdu. The object was to create that expensive spirit in "Hindi" which is associated with the name of

"Hindustani". At last, the question was left to the Drafting Committee with the. request to prepare a fresh draft of this part for the consideration of the party in the light of all those resolutions which were moved during the discussions in the party meeting. Several new members were also added to the Drafting Committee. I was also one of the members.

I attended the first meeting of the Committee, but I felt that the' majority of members had a particular type of' pre-conceived motion and they could not agree to adopt "Hindustani" in place of "Hindi", nor were they prepared to accept any such interpretation which can widen the scope of "Hindi". In the circumstances I could not associate myself with this Committee. Therefore I resigned and severed my connection with the Committee.

After my resignation this question was raised in the Committee afresh and an effort was made to introduce breadth of vision in solving the problem to a certain extent. The amendment of Mr. Ayyangar which he had moved in the party meetings was a product of this effort.--It is the same amendment which is now before you for your consideration.

This amendment has introduced several alterations in the original Draft which are worthy of consideration :-

(1) So far the name of the language is concerned, the name given in the original draft, namely "Hindi" has been retained. Then again an effort has been-made to explain the characteristic of "Hindi" by adding an Article.and it has been emphasised that it includes "Hindustani" also.

(2)It has been emphasised that India has a "composite culture", and the national language of India should be the focus of this "composite culture."

(3)Regarding Urdu it has been made clear that it is one of the recognized languages.......... of the country,So far Urdu is concerned, all of a sudden the events had taken such a turn that in future it might have affected the rights of millions of people, but this amendment has removed that apprehension to a great extent. Although Urdu had spread throughout the length and breadth of Northern India, yet in point of fact, U.P. was its place of birth and growth. After the downfall of Delhi, Lucknow became the centre of its activities, and in the 18th and 19th centuries, it gave to this country a fully developed language. If according to the previous decision of the Congress, "Hindustani" in two scripts would have been accepted, then the question of Urdu would not have been taken separately; for in that case according to the commonly accepted concept. Urdu would have been a part and parcel of "Hindustani" and to be sure, eventually after mutual assimilation the language would have taken a definite shape; this was not done and "Hindi" was adopted in place of "Hindustani". In the circumstances, fact and fair play demanded that Urdu should have been given official recognition at least in its place of birth, namely, U.P. But it has not been done and "Hindi" in one script has been accepted as the official language.

Naturally the question arose whether Urdu will have any place in the Indian Union? True, if 'a language is spoken by millions of people in their day-to-day life, its life need not depend on the recognition or non-recognition of any Government, as long as the people themselves do not give it up by common consent. None can compel them to renounce it. Nevertheless it would have been inappropriate for the Democratic Constitution of the country not to acknowledge a language which is the common heritage of millions of Hindus and Muslims, and which is their mother-tongue. This amendment has made it abundantly clear that Urdu is also one of the recognized languages of the country and it will receive same treatment at the hands of the Government which all the recognized languages should receive. Perhaps I should also tell you that the interpretation of language given in this article was not included in the Constitution at first; it was placed under Directives. But later on it was incorporated in the Constitution as an irrevocable article. This alteration made the position of

Urdu more manifest and firm.

So far as the question of script is concerned, the decision of the Congress was to adopt both the scripts, namely, both Devanagari and Urdu scripts. There was objection against this decision on the ground that if acceptance of both the script involves the commitment of giving equal right to both, the scripts for the documents in the Government offices then it would create difficulties, for the reason that offices will have to work harder and that expenses would increase I had felt the full weight of this argument and had agreed to adopt Devanagari as the script for Government offices. At the same time I had emphasised that all the Government declarations, resolutions, communiques and other similar documents should be published in both the scripts and that Government offices and courts should accept applications and petitions in both the scripts. I had also emphasised that this proposal should be incorporated in the Constitution, but this was not accepted. True, the right of the people to submit petitions In the recognized languages of the Indian Union has been accepted.

I do not propose, because I do not think it necessary to conceal the impression which I have got during the discussions over this problem. I was totally disappointed to find out that from one end to the other, narrow-mindedness reigned supreme. Do you know what is narrow-mindedness ? Narrow-mindedness means pettiness and density of mind and refusal to accept higher, nobler and purer thoughts. I would like to tell you that with such small minds we cannot aspire to be a great nation in the world. It was this narrow-mindedness which was the product of a later period, which had buried the glory and advancement of ancient India in the darkness of _gloom; and the danger is thatonce again we ire succumbing to this tendency. of all the arguments employed against "Hindustani", greatest emphasis has been laid on the point that if "Hindustani" is accepted then Urdu also will have to be accommodated. But I would like to tell you that by accommodating Urdu, the heavens will not come down. After all Urdu is one of the Indian Languages. It was born and bred and brought tip in India and it is the mother-tongue of millions of Hindus and Muslims of this country. Even today this is the language which serves the purpose of a medium of expression between different provinces and it is the only means of inter-provincial relations. Why should we allow our minds to be prejudiced to this extent against one of the languages of our country ? Why should we allow ourselves to be swept away by the currents of our narrow-mindedness to such a great distance?

My friends would pardon me if I say that I have witnessed an exhibition of this narrow-mindedness during the debates on numerals. One may differ from those who want international numerals in place of Devanagari numerals, but I fail to understand why it should create bitter passions and why it should be opposed so vehemently. After all it is a small matter. Again and again it has been emphasised that why should we borrow anything from another country when we have our own. But this is altogether baseless. These numerals, which are in use among all European nations today, are really a gift from India, which we had given to the world centuries ago. If we are going to adopt them today we are taking back our own thing.

These Indian numerals first reached Arabia, then from Arabia they reached Europe. This is the reason why in Europe they were known as Arabic numerals, though they originated from India. This style of the numerals is the greatest scientific invention of India, which she is rightly entitled to be proud of, and today the whole world recognises it, The story of how these numerals had reached Arabia has been preserved in the pages of history.

In the eighth century A.D. during the reign of the second Abbaside Caliph, Al Mansoor a party of the Indian Vedic physicians had reached Baghdad and bad got admittance at the court of Al Mansoor. A certain physician of this party was a specialist in astronomy and lie had Brahmaguptas' book "Siddhanta" with him, Al Mansoor, having learnt this, ordered an Arab philosopher, Ibraheem Algazari, to translate the "Siddhanta" into Arabic with the help of the Indian scholar. It is said that the Arabs learnt about the Indian numerals in connection with this translation, and having seen its overwhelming advantage, they at once adopted it in Arabic. Like Latin, in Arabic also there were no specific symbols for counting figures. Every number and figure was expressed in words. In cases of abbreviations various letters were made use of, which were given certain numerals values. At that time Indian numerals put before them a very easy way of counting. They became famous as Arabic numerals. And after reaching Europe they took that form in which we find them in International numerals at present.

I have emphasised that these numerals are India's own It. is not a foreign thing. But suppose it is an European invention. But if in accounting and arithmetic these are more clear, more striking and more useful., then why should we not adopt them without any hesitation ? Why should their use become objectionable for us, on the ground that they belong to some other country? Surely you cannot deny the fact that the form of these numerals is more clear and, more striking than the form of the Devanagari numerals. These can be identified more easily. In their aggregate form they look more prominent, more clear and more beautiful. Everybody would admit that in arithmetic and accounting these numerals are more useful than other numerals .Shri Jaspat Roy Kapoor (United Provinces : General) : Since when has this thing been experienced ?

The Honourable Maulana Abul Kalam Azad: This peculiarity of these numerals has attained this fame since the beginning of the popularity of these numerals. I shall tell you about the other oriental countries. Almost in all the oriental countries these numerals have been adopted. Even those people who do not know European languages have learnt these numerals and use them. However, so far as the question of numerals is concerned, I totally agree with the amendment of Mr. Ayyangar and I am glad that this essential reform is being worked upon.

So far as the question of language is concerned I have expressed my views clearly. I am sorry that the problem of language has not been settled in the way in which it ought to have been settled. I and some of my colleagues tried to solve this problem, but at last we realized that in the present circumstances no improvement can be made on Mr. Ayyangar's formula.

Today you will decide that the national language of the Indian Union will be "Hindi". You may decide that. There is nothing substantial in the name of "Hindi". The real problem is the question of the characteristic, of the language. We wanted to keep it in its real form by calling it "Hindustani" Your majority did not agree to it. But it is still in the hands of our countrymen not to allow the shape of Hindi to be deformed and instead of making it an artificial language let it remain an easy and intelligible medium of expression. Let us hope that the present atmosphere of narrow-mindedness which is the residue of the past misfortune will not last long and very soon such an environment will be created in which people freeing themselves from all sorts of sentiments would see the problem of language in its real and true perspective.

Mr. President, I have already taken much time of the House and I shall not burden the attention of my friends any longer.

I have finished.

Dr. Raghu Vira (C. P. & Berar : General) : Mr. President, so far the consideration of the language question has been by persons who have been predominently carried away by political considerations. Heat has been brought into problems which ought to have been considered with perfect coolness, and here agreement or disagreement would not, or should not have mattered in the least. My predecessor, the Honourable Maulana Saheb, has brought to our notice a very important item of nomenclature,

namely, Hindi and Hindustani. Ordinarily these names may not have much different Significance attached to them. But in the history of the last one century and a half the two words Hindi and Hindustani-have come to connote very different things. Unfortunately they have been taken up by opposing political parties in the country and given different connotations. They have made an effort to change the connotation of the word Hindustani and there now seem to be a great difference of opinion about Hindi and Urdu also.

The difference was exactly brought out by a European Philologist. Mr. Grouse. and this is what he said long ago about Urdu and there is no difference of opinion on it. "Urdu" is a Turkish word and we are familiar with the word in another form, the English word "horde" as in "military hordes". The word Urdu is clear in its connotation. I shall not be mincing matters when I say that the protagonists of Urdu have a responsibility on them and I hope they will not shirk it. It lies in the manner in which they started the bifurcation in the 19th century.In the beginning the difference between Hindi and Urdu literature was not great. If I had time at my disposal I would give you quotations and authorities from the 19th century. The writers of Urdu in the 19th century made it a law or an article of faith that not a single literary word shall be derived from Indian sources. While they took the grammar and construction of the language from India, the literary inspiration and other factors were taken from Arabic and Persian. In the 19th century it was felt that the loss which people had sustained from the disappearance of. Persian had to be made up by rearing up, Urdu. There are quotations without number from European writers in the 19th century who have made it clear beyond a shadow of doubt that the loss of Persian was a loss to the Muslim conquerors, a loss to the language of the Emperors. So that loss had to be made up. It was said that the streets of' Lucknow should be transformed into the streets of Ispahan in Persia.

So, the tradition was developed in the 19th century whereby Urdu became the repository of Persian and Arabic words and culture. There was a reaction in the same 19th century and hence developed the Hindi literature which had for its basis and structure the same language which was the basis of Urdu but whose literary tradition was native to the soil. This difference wept on developing and developing until today we find two literatures, which though they had the same basis have developed differently.

Then there is the third word. Hindustani. This word has been interpreted differently by different writers. As a student of languages I have-.myself tried to come to some conclusion whether we could or could not use the word Hindustani in one and one sense only. I have found it impossible. It is not a case where the Assembly can give a definite meaning to the word which has been used in different senses. In the Indian army the word Hindustani has been used widely, more widely than the word Urdu. Hundreds of books have been published. A few days ago I collected a number of books which bore the title Hindustani. I went to the bazar in Delhi and collected all the books I could and here I have one of the very important books published in Germany by Germans. It is "Hindustani Conversation--Grammar." From the beginning to the end, it is Urdu and nothing but Urdu. There are thousands and thousands of passages where Hindustani means nothing but Urdu. There are other passages though rare but important where the word Hindustani is used as a generic term to include both Hindi and Urdu. But one thing remains clear and absolutely clear, that that language which we call literary Hindi cannot be included in-'the word Hindustani. I am neither pleading for Hindi nor Urdu but I am just putting to you the problem of nomenclature. If we take the case to an impartial tribunal composed of judges of the high courts, put the word Hindustani before them and all the evidence pertaining to it, the tribunal can come to only one

conclusion and there can be no second, that Hindustani is Urdu. Nobody can deny that literary or high flown Urdu is Arabicised and Persianised. On the other hand Hindustani can include what we know as simple Hindi, the Hindi of the villages, what is called Khari boli. Literary Hindi, I submit, cannot be included in the word Hindustani. This is the difficulty before us but what we decide is a different matter. When the word Hindustani is capable of being interpreted differently by different people it is always better to use a clear word. I have great respect for the Honourable Maulana Saheb and I have to submit as a humble student of literature if you call Hindi a narrow language that is not the word to be used. That is not the limiting adjective. at any rate, that you can use for Hindi. Hindi is very widely based, more widely based than Urdu. Urdu is based at the most on the vernacular. in the words of Grierson, which is spoken in between Delhi and Meerut. He has given the figure as 52 lakhs for the vernacular Hindustani.Literary Hindi has for its basis the speeches from the borders of Bengal to the borders or Punjab, from the borders of Nepal to the borders of Gujerat. When you come to examinations in the Universities you will find literature of old Rajputana language, Dingal, the literature of Avadhi and other different dialects such as Braj and Bhojpuri whose literatures are included in literary Hindi. If you study literature for M.A. in Urdu you will never have literature of any one of the dialects of India to be studied. Why? Because Urdu does not concern itself with the dialects of India.

Firstly, Hindi is a widely based language and a national language should be broad-based. Secondly, when we come to Urdu there is a preponderance of Arabic and Persian words. My first school language was Urdu and my second language was Persian and I had occasion to have a peep Arabic also. As a student of languages it is not possible for me to hate any particular language and so the question of hatred does not arise. It is only through love that you can appreciate the beauty of a language.

I have here an Urdu magazine published by the Government of India bearing the title "Bisate Alam". It is a beautiful title in Arabic and nobody can quarrel with the content of the word. It is a literary word and denotes much. But does it denote anything for the Indian population ? If you look inside, the first line reads

"Bainul Quvami sayasiyat va kaifiyat ke hamil musavvar mahnama

Bisate Alam ka salnama ;"

This is the head line of this magazine. Whereas it could be perfectly intelligible in Persia or Arabia, it is not going to be intelligible in any part of India. I have been listening with great care to the fine speech of the Maulana Saheb. I have taken down certain words which if they were replaced by Indian words would be better understood. For instance, he used a word 'riyazi'. The friend sitting next to me said , "What does that mean ?" I told him it means "ganitam". Whether it is Tamil, Oriya, Assamese, Bengali or Gujarati, we have a certain common vocabulary, a common ideology and common life-values. An effort was made in the past and I hope that effort will be made in the future also, for simplifying Urdu; but when we simplify Urdu and call it Hindustani, even then we cannot include in it phraseology which will be used in other languages. When considering the Hindi and Urdu languages and their relative claims, it was contended by several front rank leaders of high name and prestige that we must have a bridge language which will bring the two languages nearer. But today the problem is not to bridge the gulf between Hindi and Urdu but to find a language which will bridge the gulf between Hindi, Bengali, Gujarati, Maharathi, Telugu, Tamil Assamese, Oriya, Punjabi--all the languages of India. We have to find a language which will serve the needs not only of Hindi and Urdu but also of all the languages in the North and in the South...........

An Honourable Member It is already one o'clock, Sir. The speaker may continue after

Lunch.

Mr. President: I know the time. Will the honourable Member take a long time to conclude ?

Dr. Raghu Vira : At least half an hour.

Mr. President : I cannot allow so much. I will give a few minutes more in the afternoon.It has been suggested to me that the House should meet at 5 o'clock instead of 4 o'clock. So we shall meet at 5 o'clock.

The Assembly then adjourned till Five of the Clock in the afternoon.The Assembly re-assembled at Five of the Clock in the afternoon. Mr' President (The Honourable Dr. Rajendra Prasad) in the Chair.

Pandit Balkrishna Sharma: Mr. President, may I, with your permission, move that the debate on this language question be closed and that Dr. Raghu Vira, if he wants to say a few words more and finish his speech, may be permitted to do so before the closure is put to the House ?

Mr. President : If Dr. Raghu Vira considers it worthwhile to speak, very well, he may have two minutes.

Dr. Raghu Vira : Mr. President, I join the other Members of the House in expressing our great satisfaction that a satisfactory arrangement has been reached between the different view-points on the question of the numerals. Now discussion may be conducted in a friendly manner. This is a matter in which I should congratulate the House. As there is no controversy now, the discussion may he closed.

Mr. President: Closure has been moved. I take it that the House accepts it.

Maulana Hasrat Mohani: Sir, you have accepted the motion for closure. I beg to withdraw my amendment of which I gave notice, for the reason that I am thoroughly disgusted with the attitude adopted by our Prime Minister yesterday and the policy of appeasement adopted by Maulana Abul Kalam Azad today. I also give up my right to make any speech in this matter. I shall simply oppose the whole thing.

Mr. President,': I am concerned only with the fact of the withdrawal and not with the reasons therefore,

Now I would like to know in what form I should put the question before the House. We have got something like 300 amendments.

The Honourable Shri Ghanshyam Singh Gupta (C. P. & Berar: General): Sir, Shri Gopalaswami Ayyangar is going to accept some of the amendments. Those amendments should then be placed before the House, All the other amendments may be treated as withdrawn.

Shri K. M. Munshi (Bombay: General) : Mr. President, may I request you to adjourn the House for about half an hour ? I am very glad to state to you that, on this very difficult question of language, most of us have come almost to a unanimous decision. One or two small points have been left outstanding in respect of which an amendment is being drafted. That will take a few minutes. If the House has no objection and if you permit it, Sir, we may adjourn for about half an hour.

Mr. President : I have no objection to the House adjourning for a short while.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : I would require notice if any, new amendment is going to be brought forward.

Mr. President : There is no amendment that is going to be moved at this stage. I think they are considering which of the amendments to accept. That will take a little time.Shri Mahavir Tyagi (United Provinces : General) : Let the Drafting Committee be put in charge of all the amendments.

Pandit Hirday Nath Kunzru (United Provinces : General) : I believe that a closure motion was moved only three or four minutes ago and that you accepted it. Unless the closure motion is withdrawn with the permission of the House, I do not see how any new amendment can be allowed to be moved either by Mr. Munshi or by anybody else.

Mr. President : Dr. Kunzru has raised a point of order.

The Honourable Shri Ghanshyam Singh Gupta: May I say a word about that point of order ? There are so many amendments on 'the Order Paper. The Mover of the main motion Shri Gopalaswami Ayyangar can pick and choose and accept or reject any of them. After the closure he has the right to speak. Therefore he can well speak and, while speaking, accept any of the amendments. closure does not mean that all the amendments moved are lost or thrown out. If he makes some verbal alterations here and there, that can be permitted by the vote of the House.

Mr. Naziruddin Ahmad : May I say a few words, Sir?

Mr. President: Yes, Mr. Naziruddin Ahmad may speak. In the meantime I expect Shri Gopalaswami Ayyangar and Shri K. M. Munshi to get the thing ready. They can do this while we are discussing the point of order.

Mr. Naziruddin Ahmad: Mr. President, Sir....

The Honourable Pandit Ravi Shankar Shukla: My proposal is that Pandit Balkrishna Sharma may withdraw his closure motion.

Mr. President: Let me hear Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: Mr. President, after strenuous work we have come to a practically unanimous resolution. But we have an important constitutional question to remember. We are setting an example on. constitutional principles to the country, not only to this country but to other countries. A pomp of order has been raised by Pandit Hirday Nath Kunzru that, after the closure motion was accepted, no new amendments could be proposed. Mr. Gupta did not reply to this point, but merely said that after a closure motion the mover of the main Motion will have a right of reply, and he may accept some of the amendments. I do not object to it. But the point raised by Pandit Kunzru is that after a closure motion has been accepted, no new amendment could be moved unless the closure motion is withdrawn. There is no precedent or rule or practice to permit the withdrawal of a closure motion accepted by the House. These are the difficulties.

Then I should submit that, although I am glad that a compromise has been reached and settlement come to amicably, still there are some unimportant minorities, numerical minorities here and there that have a right to consider the proposed new amendments and express their opinion. Therefore whatever amendment is going to be moved, some reasonable notice should be given to the Members to consider them. If an amendment has to be moved, nothing will be lost by postponing a decision on it. We may consider the matter tomorrow and come to a decision.

Mr. President: I think probably those who have arrived at some sort of agreed solution of the problem will take just a little time to put the thing in shape not necessarily by moving fresh amendments but by picking and choosing from amongst the amendments which are already on the order paper, which to accept and which not to accept. And if they do that, probably no question of the point of order which has been raised will arise, but I do not know how circumstances will develop. For the present, I think it is best to give them a littletime so that they might Consider the whole question with reference to the various amendments which have been moved to see to what extent these amendments can be accepted and the agreed formula can be fitted with the amendments which are already on the order paper. If the House has no objection, I would like....

The Honourable Shri Ghanshyam Singh Gupta: The whole thing may be finished today.

The Honourable Shri N. Gopalaswami Ayyangar : May I say a word?

The Honourable Shri K. Santhanam : Meanwhile, are you taking up the point of order ?

Mr. President : I have not said anything on the point of order, and I have not yet adjourned the House. I am still in the process of consultation and I am entitled to hear Shri Gopalaswami Ayyangar.

The Honourable Shri N. Gopalaswami Ayyangar: I might explain in four or five sentences. As regards the changes that should be made in the draft which I moved the other day, we have, I think, by negotiations outside the House agreed upon the substance of these changes. They are not many. I believe there are only four or five changes to be made. Two of them are merely verbral. The other two or three are matters which involve a little substance. As a matter of fact we have a rough draft on it, and if you give us some twenty or thirty minutes, we shall bring that draft before the House in a form which it would be in a position to accept. I would suggest that we

meet about half an hour later.

Honourable Members: We can meet at 6 o'clock.

Pandit Govind Malaviya (United Provinces: General) : We are the Constituent Assembly. We make our own rules and anything, which you think is going to help us in fulfilling the task for which we are here, and which has the approval of the House as a whole, should certainly be possible and permissible. I submit we should not stick to mere legalistic interpretations of Rules and we should adjourn the House for half an hour which has been requested.

The Honourable Shri K. Santhanam : In the meanwhile, let the discussion go on.

Mr. President: No, no. I am not giving any decision or ruling on the point of order that has been raised. I think we should adjourn the House for, say, about three quarters of an hour. We meet again at 6 o'clock.

The Assembly then adjourned till Six P.m.The Assembly re-assembled at Six P.m. Mr. President (the Honourable Dr. Rajendra Prasad) in the Chair.

Shri K. M. Munsshi : Mr. President, Sir, I understand closure has been moved and accepted. In view of what I state, Sir, I submit that the debate be reopened in order to enable me to submit amendments which I propose to place before the, House. I therefore move, Sir, that the debate be re-opened.

Mr. President : The motion which has been placed before the. House by Mr. Munshi is that the closure which has been accepted be nullified and the debate be re-opened. I take it that, under the Rules if a certain percentage of Members indicate their wish to re-open any resolution or decision, that it can be re-opened. I do not think there is any difficulty on that ground. I would like to know if the House wants to re-open the question.

Honourable Member : Yes.

Mr. Naziruddin Ahmad : Mr. President, Sir, some now amendments have just now been put into my hands. I have not even had the time to read them. I only desire that opportunities be given to us so that the new amendments may be examined and the effect of these new amendments be carefully considered. We shall have to consider as to what of our own amendments we shall press and what amendments we shall withdraw. (Interruption). In order to give us this opportunity, I think some little time should be given. There is Rule 13(o) .... (Interruption).

Shri C. Subramaniam (Madras: General) : Sir, the motion is that the closure be re-opend. We are not considering any amendments now. If the honourable Member wants to submit anything about this, he may proceed. The honourable Member is making submissions about some amendments which are not before the House.

Mr. Naziruddin Ahmad : I submit that the amendments have just now been put into my hands. I have not had the time......

Mr. President : We are at the present moment on the question of re-opening of the closure.

Mr. Naziruddin Ahmad: With regard to that, I have not the least objection.

Mr. President: At the present moment, we are only concerned with that.

Those who are in favour of re-opening the question of closure will say Aye.

The motion was adopted.

Shri K. M. Munshi : Sir, I move:

"That for clause (1) of article 301A. the following be substituted:-

(1) The official language of the Union shall be Hindi in Devanagari script.

The form of numeraja to be used for the official purposes of the Union shall international form of Indian numerals."

Shri Mahavir Tyagi : What is the meaning of (1) when there is no. (2) ?Shri K. M. Munshi : One, sentence has been split into two, and the word 'and' has been omitted, It is a purely verbal one.

Pandit Balkrishna Sharma: Mr. Tyagi's point is, there is only one sub-clause and why should it be 1 (1).

Shri K. M. Munshi : There is a sub-paragaph I (1) because there are other sub-paras (2) and (3) in the original article. Not this (2) but there are other (2) and (3).

Mr. President: I should like to see all the amendments.

Shri K. M. Munshi: I have the second amendment, Sir.

"That for clause (3) of article 301A, the following be substituted:--

'(3)Notwithstanding

anything contained in this article, Parliament may after the said period of fifteen years by law provide for the use of-

(a) the English language, or....... .. "

Some Honourable Members : It should be 'and'.

Shri K. M. Munshi: The word 'or' is proper; it means 'and'. However the Drafting Committee will consider it carefully. We did as well as we could within the forty five minutes. We feel 'or' is correct. If we find that 'or' is incorrect, we shall change it.

Shri H. V. Kamath (C.P. & Berar : General): May I suggest, Sir. . . . . .

Mr. President: He is on his legs. Why not lot him finish?

Shri K. M. Munshi :

(b) the Devanagari form of numerals, for such purposes as may be specified in such law.

My next amendment is-

"That Article 301F be renumbered as clause (1) of article 301F. and to the said clause as so renumbered the following clause be added :-

"(2) Nothing in sub-clause (a) of clause (1) of this article shall prevent a State from prescribing, with the consent of the President, the use of the Hindi language or any other language recognised for official purposes in the State for proceedings in the High Court of the State other than judgements, decrees and orders.

In continuation of this there is another clause.

"(3) Notwithstanding anything contained in sub-clause (b) of clause (1) of this article, when the Legislature of a State has prescribed the use of any language other than English for Bills, Acts, Ordinances and orders having the force of law and rules referred to in the said sub-clause, a translation of the same in English certified by the Governor of the State shall be published and the same shall be deemed to be the authoritative text in English under this article."

Honourable Members: What about 'Or ruler'?

Shri K. M. Munshi : There are many articles in which this omission will be found and it will be corrected. If you like I will put it here as 'Governor or Ruler of the State'. This corresponds to amendments tabled by the, Honourable Mr. G. S. Gupta, Nos. 164 to 167.

Then the next one is,-

'in the schedule substitute 'Kannada' for 'Kanarese' and after 'Punjabi' and 'Sanskrit'

Shri Mahavir Tyagi: Is there no amendment with regard to the language of Bills and Acts passed by State Legislatures ?

Shri K. M. Munshi: No more amendments,

Shri Mahavir Tyagi : Then it is not the (rue interpretation of the agreement

Shri H. V. Kamath : Mr. President, may I suggest a verbal change.Mr. Naziruddin Ahamd : On a point of Order. The whole question is that we should be given some breathing time to consider the amendments. This is an ordinary fairness to an individual Member, It may be that the overwhelming majority of Members have come to an agreement but that does not conclude the matter. Every single member must have an opportunity.

Mr. President : I think the whole question has been under discussion and we, have discussed it from all points of view threadbare. These amendments look like amendments because in the numerous amendments, of which we have received notice, no one amendment occurs in exactly the same words. I do not know if any of these amendments actually touches the substance of so many of the other amendments which have been moved and placed before the House. So, the only question is whether we shall have this formality of going through a fresh consideration of these amendments or we shall accept the amendments as they are being placed representing the substance of so many of the other amendments which are on the paper and representing the sense, of a number of Members who have agreed amongst themselves. If it were- a new question which was going to be raised altogether a new, probably there will be some justification for notice and also for anything else. Therefore under rule 38(0) which says-

"If notice of a Proposed amendment has not been given two clear days before the day on which the Constitution or the Bill, as the case may be, is to be considered, any Member may object to the moving of the amendment, and such objection shall prevail,

unless the President in his discretion allows the amendment to be moved",

I think I could not think of any other case which would be more fit for the use of the discretion of the President in favour of these amendments.

Shri H. V. Kamath: While commending this motion wholeheartedly to the acceptance of the House, may I suggest a purely verbal change ?

Mr. President : You bad better suggest it to the Mover. I can wait for a minute or two.

Shri H. V. Kamath : Thank you, Sir. I shall do so.

Prof. Shibban Lal Saksena (United Provinces : General) : Can I speak on this amendment ?

Mr. President: Certainly.

The Honourable Shri Ghanshyam Singh Gupta: Mr. President, there can be no debate be-cause you have said that the amendments or points moved by Mr. Munshi have been covered by the amendments that have been tabled already. I can give the numbers in which those amendments can be covered. If we reopen all the debate, then I must humbly submit that he has no right to speak as a debate on this motion. If he has any verbal amendment to suggest, that is a different matter.

An Honourable Member: Some of us are not in possession of the third sheet.

Mr. President: You will be getting it. In the mean time Mr. Saksena wants to speak on this. Let him speak.

Prof. Shibban Lal Saksena : Sir, this question ....

Mr. Naziruddin Ahmad : Sir, we have not yet got a copy of the 4th amendment.

Prof. Shibban Lal Saksena : Sir, this question of the national language has been the subject of hot controversy for the last two days, and these amendmentshave been suggested by Mr. Munshi as a sort of a compromise, and it supposes, that the Members of the House are agreed upon these amendments. Sir, with profound regret I have come here to lodge my protest and say that I do not agree with them and I do not accept these so called compromise amendments. I have myself moved my amendment, No. 70, but I am prepared to support as a compromise the amendment moved by Sri Purushottam Das Tandon. These amendments which are now moved are supposed to be a compromise but they are not an improvement at all and they do not in any meet the point of view urged by Tandonji or myself. In fact, the, fundamental point on which the supporters of Hindi have been insisting has been that the English numerals shall not be a permanent feature of our national language. But the amendment now proposed will make these so-called international numerals which are really only plain and simple English numerals, a permanent feature of one language by this Constitution, and that is a position which I cannot accept. All that is conceded in the compromise is this, that after fifteen years. Parliament may prescribe Hindi numerals for such purposes as may be specified by law. 'That means the Devanagari numerals can be used for some purposes, but the main numerals shall be the English numerals, and by accepting this amendment, we shall be committing this House and the future generations of our country to accepting the English numerals as a permanent feature of our language by this Constitution Act, and I shall not accept that under any circumstances. It is not without reason that I have taken up this attitude. I regard this draft of Mr. Gopalaswami as a fraud on the supporters of Hindi and a fraud on the Constitution itself. Really this draft perpetuates English for many, many years to come as Mr. Gopalaswami himself confessed. The Father of the Nation had warned the Nation of this danger which he had scented as early as Sept. 21, 1947, when he wrote his editorial in the Harijan of that date.

There are other amendments also which Tandonji moved and which also I had supported as a compromise. But as no real compromise has been possible, I will press my own amendment which runs as follow,, :-

"That in amendment No. 65 above. for the proposed new Part XIV-A. the following be substituted:--

PART XIV-A

CHAPTER I-LANGUAGE OF THE UNION

301A. (1) The State language of the Union shall be Hindi in Devanagari script. (2)Notwithstanding anything contained in

clause (1) of this article the English language may continue to be used for official purposes of the Union during the period of transition which shall not exceed 5 years. provided that the State language will be progressively utilised until it replaces English completely at the end of the transitional period of five years.

301B. (1) Within three months of the commencement of this Constitution, there shall be constituted a committee consisting of thirty members. of whom twenty shall be members of the House of the People and ten shall he members of the Council of States chosen respectively by the members of the House of the people and the members of the Council of States in accordance with the system of proportional representation by means of the single transferable vote.

(2)It shall be the duty of the Committee to make recommendation to the President as to the ways and means which should be adopted as to the progressive use of the Hindi language for all the official purposes of the Union and the replacement of the English language by the Hindi language at the end of the transitional period of five years.

(3) The Committee shall submit its report within a period of six months from the date of its appointment.

(4) Within a period of three months from the date of submission of its report by the committee, the President shall cause every recommendation made by the Committee together with an explanatory memorandum as to the action taken or to be' taken thereon to be laid before each House of Parliament. (5) (a) When any member of the House of the People or the Council of States cannot adequately express himself in the language in use for the time being in the House of the People or in the Council of States, the Speaker of the House of the people or the Chairman of the Council of States may permit him to address the House in his mother tongue.

(b) The Chairman of the Council of States or the Speaker of the House of the People may, whenever he thinks fit, make arrangements for making available in the Council of States or the House of the People as the case may be a summary in Hindi and in the language in use in the House for the time being of the speech delivered by a member in any other language and such summary shall be included in the record of the proceedings of the House in which the speech has been delivered.

CHAPTER II REGIONAL LANGUAGES

301C. (1) A State may by law about Hindi or the language or languages in use in the State as the language or languages to be used for all or any of the official purposes of that State.

(2) (a) When any member of a State Legislature cannot adequately express himself in the language in use for the time being in either House of the State Legislature, the Chairman of the Legislative Council or the Speaker of the Legislative Assembly may permit him to address the House in his mother tongue.

(b) The Chairman of the Legislative Council or the Speaker of the Legislative Assembly may, whenever he thinks fit, make arrangements for making available, in the Legislative Council or the Legislative Assembly as the case may be, a summary in Hindi or in the language in use in either House for the time being of the speech delivered by a member in any other language, and such summary shall be included in the record of the proceedings of the House in which the speech has been delivered.

301D. (1) (a) The language for the time being authorised for use in the Union for official purposes shall be the official language for communication between a State and the Union;

(b) if the language authorised for use in the Union is also the official language of any State, the official language of the Union shall be the official language for communication between that State and another State :

Provided that if two or more States agree that the Hindi language shall be the official language for communication between such States, that language may be used for such communication.

(2) The authoritative texts-

(i) of all Bills to be introduced or amendments thereto to be moved in the House or

either House of the Legislature of a State,

(ii) of all Acts passed by the Legislature of a State and of all Ordinances promulgated by a Governor or a Ruler, as the case may be,

(iii) of all orders, rules, regulations and bylaws issued under this Constitution or under any law made by the Legislature of a State.

shall be in the official language of the State :

Provided that if the State official language is not Hindi, they shall be accompanied by an authoritative text in Hindi :

Provided also that during the transition period of five years from the commencement of the Constitution, if the State official language is not English, they shall also, be accompanied by an authoritative text in English.

301E. Where on a demand being made in that behalf the President is satisfied that a substantial proportion of the population of a State, but not less than 20 per cent. desires the use of any language spoken by them to be recognised by that State, he may direct that such language shall be recognised throughout that State or any part thereof for such purpose as he may specify.

CHAPTER III

DIRECTIVE PRINCIPLE

301G. Every person shall be entitled to submit a re-presentation for the redress of anY grievance to any officer or authority of the Union or a State in any of the language used in the Union or in the State, as the case may be.

301H. It shall be the duty of the Union to promote the spread of Hindi and to develop the language so as to serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating the forms, style and expressions used in the other languages of India and drawing wherever necessary or desirable for its vocabulary primarily on Sanskrit

301-I. It shall be the duty of the Union to promote the use, of the Devanagari script throughout the territory of India.

301-J. It shall also be the duty of the Union to promote the study of Sanskrit throughout the territory of 'India as it is the source of most of the other languages in India."'

Shri Brajeshwar Prasad (Bihar : General) : Sir, I would like to say a few words.

Mr. President : It is not necessary.

The Honourable Shri Ghanshyam Singh Gupta: Sir, closure.

Mr. Mohamed Ismail (Madras: Muslim) Mr. President, I want to speak on these amendments.

Shri Jagat Narain Lal (Bihar: (General) Sir, I want to say a few words on these amendments which have been moved just now and in the framing of which I had a hand.

Mr. President : Is it necessary ? If we start a discussion, I do not know how long it will go on. If there is any Member who is opposed to the amendments, I would give him a chance. I would not like Members who are in favour of the amendments to take the time of the House. I have given a chance to Mr. Saksena because I understood he was opposed to these amendments. If you wish to oppose them. I shall allow you to speak.

Shri Jagat Narain Lal : I do not want to oppose it.

Mr. President : Then please leave it alone

Shri Mahavir Tyagi: Sir......

Mr. President : You want to oppose it ?

Shri Mahavir Tyagi : I want to move an amendment to this amendment.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Wednesday, the 14th September, 1949

Mr. President: About numbering the clauses ?

Shri Mahavir Tyagi : Yes, Sir. I would like........

Mr. President : That I think will be taken care of by the Drafting Committee.

Shri Mahavir Tyagi : Sir, there is not to be much discussion and I do not want to speak also. I only want to submit that in the clause as it originally stood there was the word "and", between these two sentences, and the only change now proposed is that the word "and" be removed and a full-stop be put in after the word "Devanagari script", and the paragraph has been split into two. I submit that the first sentence be lettered (a) and the second (b).

Mr. President : As it is placed before me, there are two separate paragraphs.

Mr. Mohamed Ismail: Mr. President, Sir, since the debate has been re-opened and the closure has been nullified, I think I can refer to the amendments which I have already tabled and are before the House.An Honourable Member : Other amendments?

Mr. Mohamed Ismail: No, the amendments of which I have already given notice of; because the closure has been nullified and the debate has been reopened, I think I have got the right to speak on the amendments.

Mr. President: Fundamentally he is right.

Mr. Mohamed Ismail : Sir, in doing that, first I have to say that I oppose the amendments that have been placed before the House just now by Mr. K. M. Munshi. The amendments which I have given notice of, in effect, ask for the acceptance by the House of Hindustani with Devanagari and Urdu scripts as the' official language of the Union, and the international form of Indian numerals as the numerals to be used for purposes of the Union. And one of my amendments also proposes that the English language which shall be continued for fifteen years in use for the purposes of the Union shall, even after the period of fifteen years, be so continued until Parliament decides, otherwise by a majority of the total membership of each of the Houses of Parliament. That in effect is my amendment.

Mr. President : Number ?

Mr. Mohamed Ismail : Sir, yesterday the Honourable Prime Minister in his noteworthy speech made three points amongst others. Firstly, he quoted the views and the authority of Mahatma Gandhi over this subject. Secondly, he said that we should not go back and look back too much, lest we should be retarded in our forward progress. Thirdly, he wanted us to realise that the world is becoming smaller and smaller now, and in that context we must realise how the world is pressing upon us from hour to hour. If we bear in mind the principles implied in these points, I think, the subject before us is very easy of solution.

It is agreed that the official language of the Union shall be an Indian language. It is also agreed that that language must be one that is spoken by the largest number of the people of the Union.

It is further agreed that that language must be such in nature as to be able to assimilate the modem tendencies and modern conditions in our national life. With regard to these points I do not think there is any disagreement. But what exactly is the language which satisfies all these conditions is a matter of discussion and controversy. On this matter I cannot do better than quote the authority of Mahatma Gandhi. In an article which was published on August 10, 1947, Mahatma Gandhi says :

"In Delhi I daily come in contact with Hindus and Muslims, The number of Hindus is larger. Most of them speak a language which has very few Sanskrit words and not many more Persian or Arabic. They or the vast majority do not know the Devanagari script. They write to me in indifferent English and when I take them to task for writing in a foreign language, they write in Urdu script. If the lingua franca is to be'Hindi and the script only Devanagari, what will be the plight of these Hindus ?"

That is the question Mahatma Gandhi asked, not very many years ago but as late as August 1947. It may be said that he refers here only to Delhi and

the surrounding parts. But in the same article later on he says-I am reproducing his exact words :

"The millions of villagers of India have nothing to do with books. They speak Hindustani which the Muslims write in Urdu script and the Hindus in the Urdu script or in the Nagari script. Therefore the duty of people like you and me is to learn both the scripts."

That, Sir, is the view of Mahatma Gandhi. Here lie makes it very clear that the language that is spoken by the largest number of people is Hindustani and the script used for that language, according to him, is Urdu and Devanagari,Therefore I and certain of my friends appeal to this House to adopt Urdu as well as Devanagari as the script of the official language, of the Union.

This language, Hindustani, is not a foreign language as you all know. It is an indigenous language. It was born and bred up in this country. A further advantage with regard to this language is that it was born under modem conditions and it has developed itself under and has been adapting itself to modern conditions. So I say it is the most suitable language for expressing modern ideas, sentiments and requirements. As I have already pointed out, it is this Hindustani, which is really the language that is being spoken by the largest number of people of this country.

With regard to the question of going back too much to the past, I have to say that if we want to go back we must be logical about it. Why do we want to go to the past ? Because some friends of ours want to have an ancient language not only an Indian language but an ancient language of the country-to be the official language of the Union. If it were granted then I make bold to say that Tamil, or to put it generally, the Dravidian languages are the earliest among the languages that are spoken on the soil of this country. No historian or archaeologist will contradict me when I say that it is the Dravidian language that was spoken first here on the soil of this country, and that is the earliest language. Tamil language has got a rich literature of a high order. It is the most ancient language. It is, I may say, my mother-tongue. I love it, and I am proud of that language. However, I am, and so also the other Tamilians are, sensible enough not to insist that this undoubtedly most ancient language of the country should become the official language of the country, because we know that it is not spoken by as large a number of people as some other language; if we go to the past, as I said, it is this language that must become the official language of the country, but the speakers of that language do not put forward that claim.

We are of course bound to our past. We cannot get away from it, as even Tandonji explained. But what I say is if we are to be bound by the chain of the past, that chain must not be static, must not be rigid : it must be elastic. We must not try to be all roots and only roots. We must try to become branches with ever fresh foliage, fruits and flowers. Therefore we must also take into consideration tile modern conditions.

Shri Ramnath Goenks (Madras: General): Sir, I have already moved for closure, and I can move for closure in respect of the speech of the honourable Member also.

Mr. President: I will allow the honourable Member to finish it.

Mr. Mohamed Ismail: Sir, I quite realise that if closure is moved and accepted I cannot say anything here. But as it is not done and as the debate is on. I think I am within my rights.

Shri Ramnath Goenka : He is repeating the arguments.

Mr. President: The honourable Member may finish his speech.

Mr. Mohamed Ismail: Sir, with regard to numerals I would like to say a few words. I am insisting upon the international form of numerals because many languages of the country have adopted these numerals. It was asked whether this question of numerals was before the country as long as the question of the official language was. I ask the question whether people do not know that this question of numerals is thoroughly different from the question of official

language. Now English is the official language of the Union. This has not permeated the masses. But the case is different with the numerals. The masses are making use of these so-called "English" numerals, which are really Indian numerals, in their everyday life. I have seen cart-main, manual labourers making use of thesenumerals. Now millions upon millions of the masses are already making use of these numerals. Therefore when my friends insisted that these numerals must be made a permanent feature of the official language of the Union, they were only echoing the sentiments of the people. They were only representing what is already there in existence in the country.

If we make any change in the form of the numerals, it will create a lot of confusion in addition to expense and waste of energy. As has been frequently pointed out, these are after all our own numerals. So I still appeal to the House that these numerals must be made a permanent feature of the official language and that it should not be changed into anything else after any number of years.

In brief, my proposal is that Hindustani with Urdu and Devanagari scripts must be accepted as the official language of the Union and the international form of Indian numerals must be made a permanent feature of that official language.

The Honourable Shri Satyanarayan Sinha (Bihar: General): Sir, the question be now put.

Maulana Hasrat Mohani: Sir, I request you to give me a chance.

Mr. President: Closure has been moved. Mr. Naziruddin Ahmad : Sir, I submit I have some serious thing to point out in amendment No. 4.

Maulana Hasrat Mohani: Sir, I request you........

Mr. President : Closure has been moved and I cannot allow you to speak. I think you had promised not to speak at a previous stage.

Mr. Naziruddin Ahmad: Sir, acceptance of the closure is entirely in the hands of the President. I want to submit a few words regarding amendment No. 4.

Mr. President : You want to oppose the amendment ?

Mr. Naziruddin Ahmad : Yes, Sir. Acceptance of the closure depends on this, that the President is satisfied that there has been sufficient debate,

Honourable Members Closure, closure.

Mr. President: I have to put the closure to vote. I think the House is not in a mood to have further discussion.

Mr. Naziruddin Ahmad: Is it your ruling that closure should be accepted?

Mr. President: I have to put it to the House.

Mr. Naziruddin Ahmad: No, Sir, it is not necessary. I submit you are not bound to put it to the House.

Mr. President : I do not say I am bound to, but I propose to put it to the House.

Mr. Naziruddin Ahmad: I wanted to say a few words. There are serious flaws in this amendment.

Honourable Members : No, no. Order, order.

Mr. President: The question is:

"That the question be put".

The motion was adopted.

Mr. President: Mr. Ayyangar, do you wish to say anything in reply to the whole debate ?

The Honourable Shri N. Gopalaswami Ayyangar: Sir, we are in a happy mood just at this moment and I do not want to mar this happy mood by anything like a long speech from me. I have formally, as mover of the major amendment, to accept the amendments to that amendment which have been moved by my honourable Friend Mr. Munshi. I accept them in toto.

I wish to add only one thing which I believe I committed myself to certain friends who moved certain amendments yesterday, particularly the amendment which was supported by a most well-reasoned speech from Mr. S. V. Krishnamoorthy Rao. He suggested that on account of the fluid condition of the Hindi language, particularly in respect of political, constitutional, scientific, technology cal and other terms, it is desirable that an academy or a commission should be established as soon as the new Constitution comes into force so that it may make a review of the use of this language in different parts of the country and standardise words and expressions. I think, Sir, it is a most helpful suggestion in the present conditions of the country. He moved an amendment to that effect, but I do not

think that it is necessary to add to the draft I have placed before you for carrying out his ideas. We have an article in that particular Part which directs the State to take steps for promoting the development of the Hindi language, to take all steps that may be necessary for enriching it, for enabling it to draw upon Hindustani and other languages in the country for styles, forms of expression and so on and for enriching its vocabulary by borrowing in the first instance from Sanskrit and secondarily from all other languages in the world. That is a comprehensive directive which we have put into this Part XIV-A and I am sure that whatever Government may be in power after this Constitution comes into force, will take steps necessary for promoting this particular object and in doing so the suggestion of Mr. Krishnamoorthy Rao will, I have no doubt, be implemented.

Mr. President: I have now to put the amendments to vote. We have got such a large number of amendments. I will go on calling the No. of the amendment and Members who desire to withdraw will say so and I will take it that the House gives them leave to withdraw them.

The Honourable Shri Ghanshyam Singh Gupta : Sir, may I suggest something ? If any Member particularly wants that his amendment be Put to vote lie may point it out. Otherwise, if you go on taking every amendment that will take a lot of time. I suppose we have made up our mind that only certain amendments should be accepted, so we can save a lot of time if you are pleased to ask only those honourable Members Who want that their amendment should be voted upon.

Mr. President : Is that the wish of the House ?

Honourable Members: Yes.

Mr. President: Then I would ask the, Members to indicate to me the amendments they wish to be put to vote.

Mr. Naziruddin Ahmad : Sir, I would like my amendment to be put.

Mr. President : What is the number of it ?

Mr. Naziruddin Ahmad: No. 277.

Mr. Z. H. Lari (United Provinces: Muslim) what is the procedure?Mr. President: It has been suggested to me that instead of my formally putting each amendment to vote, the Member who moved it having to withdraw it and asking the House leave to withdraw it, I should put only those amendments which Members who have sponsored them wish to put to vote.

Mr. Z. H. Lari : There would be confusion. The proper course is that those Members who want to withdraw their amendments can withdraw them first.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): When an amendment has been moved, the Member who has moved it should stand up and say that he withdraws it and the House must accept that withdrawal. That is the procedure laid down in our rules.

Shri Alladi Krishnaswami Ayyar (Madras : General): There is no necessity for every Member to get up and say that the withdraws the amendment. Those amendments which the movers do not want to press may be automatically taken as withdrawn. There is nothing in the rules to prevent such a procedure.

The Honourable Shri Purushottam Das Tandon : I just want to know what your decision in regard to this matter is.

The Honourable Dr. B. R. Ambedkar: Those Members who have moved amendments and do not want them to be put to vote may be taken to have given you the authority that they do not want to press them.

Mr. President: About this matter I have a suggestion to make. I have got a list of names of all the Members who have got amendments to their credit. I will call out the name of each Member and if he wishes any particular amendments to be put to vote I will put them. I think that will solve the problem. With regard to the rest I shall take it that Members withdraw their amendments and the House gives them the leave to withdraw the amendments.

The following Members asked for leave to withdraw the amendments against their names :-

Seth Govind Das

The Honourable Pandit Ravi Shankar Shukla

Shri Algu Rai Shastri

Shri Lakshmi Kanta Maitra

Shri H. V. Kamath

Maulana Hasrat Mohani

Shri L. Krishnaswami Bharathi

Shri H. R. Guruv Reddy

Shri Arun Chandra

Guha

Mr. Mahboob Ali Baig

Dr. P. Subbarayan

Shri S. Nagappa.

The Amendments were, by leave of the Assembly, withdrawn.

Mr. President: The question is

"That in amendment No. 65 above, for the proposed new Part XIV-A, the following be substituted :-

"PART XIV-A

CHAPTER I-LANGUAGE OF THE UNION

301A. (1) The State language of the Union shall he Hindi in Devanagari script. (2)Notwithstanding anything contained in clause (1) of this article,the English language may Continue Lo be used for official purposes of the Union during the period of transition which shall no(exceed 5 years, provided that the State language will be progressively utilised until it replaces English completely it the end of the transitional period of five years.

301-B. (1) Within three months of the commencement of this Constitution, there shall be constituted a committee consisting of thirty members, of whom twenty shall be members of the Council of States chosen respectively by the members of the House of the People and the members of the Council of States in accordance with the system of proportional representation by means of the single transferable vote.

(2)It shall be the duty of the Committee to make recommendations to the President as to the ways and means which should be adopted as to the progressive use of the Hindi language for all the official purposes of the Union and the replacement of the English language by the Hindi language at the end of the transitional period of five Years.

(3)The Committee shall submit its report within a period of six months from the date of its appointment.

(4)Within a period of three months from the date of submission of its report by the Committee, the President shall cause every recommendation made by the Committee together with an explanatory memorandum as to the action taken or to be taken thereon to be laid before each House of Parliament.

(5)(a) When any member of the House of the People or the Council of States cannot adequately express himself in the language in use for the time being in the House of the People or in the Council of States, the Speaker of the House of the People or the Chairman of the Council of States may permit him to address the House in his mother tongue.

(b)The Chairman of the Council of States or the Speaker of the House of the People may, whenever he thinks fit, make arrangements for making available in the Council of States or the House of the People as the case may be a summary in Hindi and in the language in use in the House for the time being of the speech delivered by a member in any other language and such summary shall be included in the record of the proceedings of the House in which the speech has been delivered. CHAPTER II-REGIONAL LANGUAGES 301-C. (1) A State may by law adopt Hindi or the language or languages in sue in the State as the language or languages to be used for all or any of the official purposes of that State.

(2)(a) When any member of a State Legislature cannot adequately express himself in the language in use for the time being in either House of the State Legislature, the Chairman of the Legislative Council or the Speaker of the Legislative Assembly may permit him to address the House in his mother tongue.

(b)The Chairman of the Legislative Council or the Speaker of the Legislative Assembly may, whenever he thinks fit, make arrangements for making available, in the Legislative Council or the Legislative Assembly as the case may be, a summary in Hindi or in the language in rise in either House for the time being of the speech delivered by a member in any other language, and such summary shall be included in the record of the proceedings of the House in which the speech has been delivered.

301-D. (1) (a) The language for the time being authorised for use in the Union for official purposes shall be the official language for communication between a State and the Union;

(b)If the language authorised for use in the Union is also the official language of any state the official language of the Union shall be the

official language for communication between that State and another State :

Provided that if two or more States agree that the Hindi language shall be the official language for communication between such States, that language may be used for such communication. (2) The authoritative texts-

(i) of all Bills to be introduced or amendments thereto to be moved in the House or either House of the Legislature of a State,

(ii) of all Acts passed by the Legislature of a State and of all Ordinances promulgated by a Governor or a Ruller, as the case may be, (iii) of all orders, rules, regulations and by laws issued under this Constitution or under any low made by tire Legislature of a State,

shall be in the official language of the State :

Provided that if the State official language is not Hindi, they shall be accompanied by an authoritative text in Hindi

Provided also that during the transition period of five years from the commencement of the Constitution, if the State official language is not English, they shall also be accompanied by an authoritative text in English.

301-E. Where on a demand being made in that behalf the President is satisfied that a substantial proportion of the population of a State, but not less than 20 per cent. desires the use of any language spoken by them to be recognised by that State, he may direct that such language shall be recognised throughout that State or any part thereof for such purpose as he may specify.

CHAPTER III.-DIRECTIVE PRINCIPLE

301-G. Every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State, as the case may be.

301-H. It shall be the duty of the Union to promote the spread of Hindi and to develop the language so as to serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating the forms, style and expressions used in the other languages of India, and drawing wherever necessary or desirable for its vocabulary primarily on Sanskrit.

301-I. It shall be duty of the Union to promise the use of the Devanagari script throughout the territory of India.

301-J. It shall also be the duty of the Union to promote the study of Sanskrit throughout the territory of India as it is the source of most of the other languages in India'."

The amendments were negatived.

Mr. President : The question is

"That in amendment No. 65 above, in clause (1) of the proposed new article 301A, for the word 'Hindi' the word 'Hindustani' be substituted,"

The Assembly divided (by show of hands). Ayes: 14

Noes: The rest, a large majority.

The amendment was negatived.

Mr. Mohammad Tahir (Bihar: Muslim) : I beg leave to withdraw my amendment No. 81.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is :

"That in amendment No. 65 above, in clause (1) of the proposed new article 301A, after the word 'Devanagari' the words 'and Urdu' be inserted."

The Assembly divided (by show of hands). Ayes: 12

Noes: The rest, a large majority.

The amendments were negatived.

Mr. President: Mr. Yudhisthir Misra is not in his place. Shri Phool Singh withdraws his amendment. Messrs. V. I. Muniswami Pillai, Shankarrao Deo and Shri R. V. Dhulekar withdraw their amendments.Shri Ramalingam Chettiyar's amendment is the next one on Paper.

Shri T. A. Ramalingam Chettiyar (Madras: (General): My amendment No. 105 may be put to vote.

Mr. President : The question is:

"That in amendment No. 65 above for the proposed new article 301B, the following be substituted : -

'301B. The President shall, after the expiration of 15 years from the commencement of this Constitution, lay down the method by which the substitution of English by Hindi should be carried out."'

The amendment was negatived.

Shri T. A. Ramalingam Chettiyar : Votes may be taken, Sir.

The Assembly divided (by *bow of hands).

Ayes: 6

Noes: The rest,

a large majority. The amendment was negatived. The alternative amendment was, by leave of the Assembly, withdrawn.

Shri Satis Chandra Samanta (West Bengal: General) : I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mahboob Ali Baig: What about my amendment No. 98 ?

Mr. President: I called the name of the honourable Member and at that time be did not ask me to, put his amendment to vote. If be now wishes me to put it to vote I will do so. question is :

"'That in amendment No. 65 above, the proviso to clause (2) of proposed new article 301A be deleted,"

The amendment was negatived.

The following Members asked for leave to withdraw the amendments standing against their names :-

Shri Ram Sahay,

Shri Mahavir Tyagi

Shri S. V. Krishnamoorthy Rao,

Shrimati Purnima Banerji,

Shri Krishna Chandra Sharma,

Shri Yudhisthir Misra.

The amendments were, by leave of the Assembly, withdrawn.

Dr. P. S. Deshmukh: I withdraw my amendments. But I hope that the Drafting Committee will look into them. My drafts are better than theirs.

Mr. President : You may hand them over to the Drafting Committee.

The amendments of Dr. P. S. Deshmukh and Shri Jaspat Roy Kapoor were, by leave of the Assembly, withdrawn.

Mr. Z. B. Lari: I press my amendments Nos. 258 and 310.Mr. President: The question is:

"That in amendment No. 65 of Fourth List, after the existing proviso to the proposed new article 301-D, the following be added :-

'Provided further that if any Indian language specified in the Schedule was used as official language in any State on 15th August 1947-the day of India's Independence-such language shall also be recognised as official language of the State for 15 years from the date of the commencement of the Constitution and thereafter if so directed by the President'."

The amendment was negatived. Mr. President : I shall now put the next of amendment of Mr. Lari to vote.

The question is :

"That in amendment No. 65 of Fourth List, at the end of the proposed new article 301H, the following clause be added :-

'Notwithstanding anything contained in the foregoing provisions of this Part, primary education shall be imparted through the mother tongue of a child where thirty students in a school or eight students in a class make such a demand."'

The amendment was negatived.

Shri Basanta Kumar Das and Shri B. Siddaveerappa asked for leave to withdraw their amendments.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President: Mr. Jaipal Singh. I think the Member is not in the House.

Shri Mahavir Tyagi: Sir, his amendment may be put to vote.

Mr. President: Mr. Lakra, what do you say ?

Mr. Boniface Lakra (Bihar: General): I withdraw.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: I withdraw all my amendments except two, 277 and 282.

All the amendments of Mr. Naziruddin Ahmad except 277 and 282 were, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That in amendment No. 65 of Fourth List, for the proposed new Part XIV-A, 'the following be substituted :-

"PART XIV-A

CHAPTER I.

LANGUAGE OF THE UNION

301 'A. The English language shall continue to be used for all the purposes of the Union for which it was being used at the commencement of the Constitution for fifteen Years in the first instance and then for such further period, if any, till an All-India language is evolved which is of sufficient vigour, richness and flexibility to serve the multifarious purposes and functions of the Union and ascertained and adopted in the manner hereinafter laid down in this part.

301-B. As a first step to facilitate the evolution and ultimate adoption of a Union Language referred to in the last preceding article, and to provide for and safeguard the continuance and growth of the regional languages referred to in article of this Constitution, parliament may, within ten years from the commencement of this

Constitution, by law-

(a) under article 3 of this Constitution regroup and reconstitute, as far as practicable, all the

States described in the First Schedule on linguistic bases according to the principal languages described in Schedule VII-A, and (b) introduce a system of mass literacy among the citizens of India.

301C. If within the period of ten years from the commencement of this Constitution. or as soon as practicable thereafter, the President is satisfied that the States have been reconstituted it, the manner laid down in clause (a) of the last preceding article and a minimum of sixty per cent of the adult and adolescent citizens of India have received primary education as laid down in clause (b) thereof, he shall require the Parliament and the Legislatures of the States to express their views on the question of the selection of the Union language or languages and the respective regional languages.

301-D. The President shall consider the views of the Parliament and the Legislatures of the States and may as soon as practicable, appoint a Language Commission representing the various languages enumerated in Schedule VII-A and also other languages and experts to investigate and report on the suitability of any one or more language or languages to be adopted as the Union language and one or more language or languages for the various States, regard being had to political, literary, official, legal, commercial, medical, technical, scientific, military international and other needs of India as a whole and of the States.

301-E. The President shall consider the report of the Commission and if he is satisfied that it is thorough and adequate, he shall direct the report to be placed before the Houses of Parliament and the Houses of the Legislatures of the States for expression of their opinions on the suitability or otherwise or any one or more of the Indian languages to be the official language of India as also the regional language or languages of the various States.

301-F. The President on a consideration of the opinions of the Legislatures and other documents and materials available, shall appoint a Committee consisting of thirty members of the House of the People and ten members elected by the Council of States on the principle of proportional representation by means of the single transferable vote to report as to the suitability of any one or more language or languages of the Union and of the various States.

301-G. The President shall consider the report of the Committee and may by notification in the official Gazette direct that one or more languages shall be official language of the Union with effect from such date as may be specially appointed in this behalf in the notification.

301-H. Notwithstanding anything contained in the foregoing provisions of this Part, Parliament may by law provide for the use of the English language after the date mentioned in the last preceding article for such purposes as may be specified in such law,

CHAPTER II.-REGIONAL LANGUAGE

301-I.Subject to the provisions of the next succeeding article, a State may, after consideration of the report of the Language Commission referred to in article 301-D of this Constitution and of the report of the Committee referred to in article 301-F of this Constitution, by law adopt any one or more of the languages in use in the State as the language or languages to be used for all or any of the official purposes of that State : Provided that until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the State for which it was being used at the commencement of this Constitution.

301-J. Where on a demand being made in that behalf, the President is satisfied that a substantial proportion of the population of a State or any substantial part thereof desires the use of any language spoken by them to be recognised by that State, he may direct that such language shall also be officially recognised throughout that State or any Part thereof for such purpose or purposes as he may specify.

CHAPTER III.-LANGUAGE OF THE SUPREME COURT AND THE HIGH COURTS, ETC.

301-K. Notwithstanding anything contained in the foregoing provisions of this Part, until Parliament by law otherwise provides- (a) all proceedings in the Supreme Court and in every High Court,

(b) the authoritative texts-

(i) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State.

(ii) of all Acts passed by Parliament or the Legislature of a State and of all Ordinance promulgated by the President or the Governor or Ruler, as the case may be,

(iii) of all orders, rules, regulations and bye-laws issued under this Constitution or under any law made by Parliament or the Legislature of a State,shall be in the English language.

301-L. Notwithstanding anything contained in the foregoing provisions of this Part, until Parliament by law otherwise provides, the proceedings in all courts subordinate. to the High Courts shall, subject to the directions of the Supreme Court, be in English or such other language or languages as may be prescribed by the High Court to which such court is subordinate.

301-M. Until the date mentioned in the notification referred to in article 301-G of this Constitution, no Bill or amendment making provision for the language to be used for any of the purposes mentioned in article 301-K of this Constitution shall be introduced or moved in either House of Parliament without the previous sanction of the President, and the President shall not, give his sanction to the introduction of any such Bill or the moving of any such amendment except after he has taken into consideration the recommendation of the Commission constituted under article 301-D of this Constitution and the report of the Committee referred to in article 301-F of this Constitution.

301-N. It shall be the duty of the Union to promote the spread of the official language or languages of tile Union and to develop the language or languages so as to serve as a medium or media of expression for all elements of the composite culture of India and to secure its or their enrichment by assimilating the forms, style and expressions used in the other languages of India, and drawing wherever necessary or desirable for its vocabulary on Sanskrit and other languages."

#"SCHEDULE VII-A

1. Assamese

2. Bengali

3. Canarese

4. Gujrati

5. Hindi

6. Hindustani

7. Kashmiri

B. Malayalam

9. Marathi

10. Oriya

11. Punjabi

12. Rajasthani

13. Telugu

14. Urdu."

The amendment was negatived.

Mr. President: The question is "That in amendment No. 65 of Fourth List. in clause (1) of the

'Proposed new article 301A, for the words 'Hindi in Devanagari script' the word 'Bengali' be substituted."

The amendment was negatived. The following Members requested leave of the House to withdraw the amendments standing in their names:--

Shri Har Govind Pant

Shri Prabhu Dayal Himatsingka

Shri B. M. Gupte

Acharya Jugal Kishore Shri Sures Chandra Majumdar

Dr. Raghu Vira

Shri Gokulbhai Daulatram Bhatt

Master Nand Lal

Shri B. P. Jhunjhunwala

The amendments were, by leave, of the Assembly, withdrawn.Mr. President : Shri Brajeshwar Prasad-

Shri Brajeshwar Prasad: I press 322, Sir. I want that the last proviso to clause.' (2) be deleted. The words are redundant.

Mr. President: I can only put the whole amendment to the, vote.

The question, is :

"That in amendment No. 65 of Fourth List, for the proposed new article 301A, the following be substituted :-

'301A. (1) The official language of the Union shall be Hindi In Devanagari script and the form of numerals to be used for the official purposes of the Union shall be the Devanagari form of numerals.

(2) Notwithstanding anything contained in clause (1) of this article, for a period of five years from the commencement of this Constitution, the English language and the international form of Indian numerals shall continue to be used for

all the official purposes of the Union, for which they were being used at such commencement :

Provided that the President may, during the said period, by order authorise for any of the official purposes of the Union the use of the Hindi language and the Devanagari form of numerals in addition to the English language and the inter-. national form of Indian numerals in addition to the Devanagari form of numerals.

(3) Notwithstanding anything contained in this article, the President may by order authorise the use of the English language and the international form of Indian numerals after the said period of five years for such purposes as may be specified in such order." The amendment was negatived.

Mr. President: Sardar Hukam Singh.

Sardar Hukam Singh: I want amendment No. 330 put to the vote.

Mr. President: The question is :

"That in amendment No. 65 of Fourth List, for the proposed new article 301C, the following be substituted :-

'301C. Subject to the provisions of articles 301D and 301E, a State shall by law adopt the language spoken, according to the last census figures available for the purpose by majority of the population, is the language to be used for all official purpose; of that State :

Provided that until the Legislature of the State otherwise provides by law the English language, shall continue to be used for those official purposes within that State for which it was being used at the commencement of this Constitution.'

The amendment was negatived.

The amendments of Dr. Monomohan Das were, by leave of the Assembly, withdrawn.

Mr. President: Shri Purushottam Das Tandon.

The Honourable Shri Purushottam Das Tandon: Which amendment are you referring to, Sir ?

Mr. President: No. 333.

The Honourable Shri Purushottam Das Tandon : I want it to be voted upon I am not withdrawing it.Mr. President: The question is :

"That in amendment No. 65 of Fourth List, for the proposed new article 301A, the following be substituted :-

'301A. Official language of the Union. (1) (a) The official language of the Union shall be Hindi in Devanagari script.

(b) Notwithstanding anything contained in sub- clause (a) of this clause both Devanagari and international forms of Indian numerals shall be recognised for Devanagari script. (c) The President may authorise the use of Devanagari form of numerals or the international form of numerals or both the forms for any one or more purposes of the Union. (d) Notwithstanding anything contained in the foregoing provisions of this clause, Parliament shall after the expiration of a period of 15 years from the commencement of this Constitution by law prescribe the use of Devanagari numerals or the international form of numerals or both for any one or more specified purposes of the Union.

(2) Notwithstanding anything contained in clause (1) of this article, for a period of fifteen years from the commencement of this Constitution, the English language shall continue to be used for all the official purposes of the Union, for which it was being used at such commencement :

Provided that the President may, during the said period by order authorise for any of the official purposes of the Union other than accounting, auditing and banking the use of the Hindi language in addition to the English language.

(3) Notwithstanding anything contained in this article, Parliament may by law provide for the use of the English language after the said period of fifteen years for such purposes as may be specified in such law." The amendment was negatived.

Mr. President: Then amendment No. 345.

The Honourable Shri Purushottam Das Tandon: That also may be voted upon. I do not withdraw it.

Mr. President: The question is

"That in amendment No. 65 of Fourth List, in the proposed new article 301B,-

(i) in clause (1), for the word "at", in the two places where it occurs, the word "before" be substituted;

(ii) in clause (2), sub-clause (d) be deleted;

(iii) in clause (5), after the word "thereon" the words "making such recommendations as they think

fit" be added; and

(iv) in clause (6). after the word "report", where it occurs for the second time, the words "which shall come into effect after the expiry of five Years from the commencement of the Constitution" be added."

The amendment was negatived.

Mr. President: Amendment No. 346.

The Honourable Shri Purushottam Das Tandon That I withdraw, Sir.

Mr. President: Amendment No. 348.

Honourable Shri Purushottam Das Tandon That also I withdraw.

The amendment were, by leave of the Assembly, withdrawn.

Mr. President: Amendment No. 349.

The Honourable Shri Purushottam Das Tandon: That may be voted upon.

Mr. President : The question is :

"That in amendment No. 65 of Fourth List, for the proposed new article 301F, the following be substituted :-

'301F. Notwithstanding anything contained in the foregoing provisions of this Part, until Parliament by law otherwise provides- "

The Honourable Shri Purushottam Das Tandon: May I interrupt: I am very sorry; I withdraw this.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Mr. Frank Anthony.

Mr. Frank Anthony (C.P. & Berar : General): I beg leave of the House to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: I think I have covered all the amendments. If there is any Member whose amendment I have left out, he may tell me now.

Shri Mahavir Tyagi: Mr. Munshi's amendments.

Mr. President: That I am coming to. I am thinking of the other amendments.

Mr. Mohd. Tahir: Amendment No. 175, Sir.

Mr. President: 'The question is :

"That in amendment No. 65 above, in the proposed new article 301H, for the words ,.used in the Union or in the State, as the case may be' the following be substituted

'specified in Schedule VII-A'."

The amendment was negatived. Mr. Mohamed Ismail Sahib: My amendments Nos. 336, 341, 342 and 344.

Shri T. T. Krishnamachari (Madras: General): They have been covered by the other amendments.

Mr. President: I think amendment 336 is covered by an amendment which has been lost. The next amendment 341.

Mr. Mohamed Ismail Sahib: I withdraw it, Sir.

Mr. President: Amendment No. 342.

Shri T. T. Krishnamachari: That is covered, Sir.

Mr. President: That is covered. Amendment No. 344.

Mr. Mohamed Ismail Sahib: I withdraw it also, Sir.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President: I think these are all the amendments. If I have left out any, the Member who has given notice of the amendments may point out otherwise they may be taken as withdrawn by leave of the Assembly.

I shall now put the amendments moved by Mr. Munshi. But, there is an amendment by Mr. Tyagi to number the paragraphs.

The Honourable Dr. B. R. Ambedkar: That is a matter we will took to later on.

Shri Mahavir Tyagi: it has been accepted, Sir.

Mr. President: It does not mean that it has been accepted. They will consider it.

Shri K. M. Munshi : I am not accepting it.

Mr. President: Are You Pressing it ?

Shri Mahavir Tyagi : If you are sending it to the Drafting Committee, I do not press it. I leave it to the good sense of the Drafting Committee.

Mr. President: The question is "That for clause (1) of article 301A, the following be substituted:-

'(1) The official language of the Union shall be Hindi in Devanagari script.

The form of numerals to be used for the official purpose-., of the Union shall be the international form of Indian numerals.' "

The amendment was adopted.

Mr. President: The question is : "That for clause (3) of article 301A. the following be substituted:--

'(3) Notwithstanding anything contained in this article. Parliament may after the said period of fifteen years by law provide for the use of- (a) the English language, or

(b) the Devanagari form of numerals,

for such purposes as may be specified in such law.'

The amendment was adopted.

Shri T. T. Krishnamachari : The other two amendments may be put together.

Mr. President : The question is

"That article 301F

be renumbered as clause (1) of article 301 F, and to the said clause as so remembered the following clause be added :--

'(2) Nothing in sub-clause (a) of clause (1) of this article shall prevent a State from prescribing, with the consent of the President, the use of Hindi language or any other language recognised for official purposes in the State for Proceedings in the High Court of the State other than judgments, decrees and orders.' "

"That after clause (2) of the proposed article 301F, the following be added:

'(3) Notwithstanding anything contained in sub- clause (b)) of clause (1) of this article, when the Legislature of a State his prescribed tile use of any language other than English for Bills, Acts. Ordinances, and Orders having the force of law, and rules referred to in the said sub-clause a translation of the same in English certified by the Governor or Ruller of the State shall be published and the same shall be deemed to be the authoritative text in English under this article.' "

The amendment was adopted. Mr. President: The question is :

'That in the Schedule, for "Canarese" the word "Kannada" be substituted; and after Punjab;' the word 'Sanskrit' be inserted."

The amendment was adopted. Mr. President: I shall put amendment No. 65 to which all these are amendments, to vote.The question is:

"That amendment No. 65 (proposed art. 301A to 301H) as amended by the amendments of Mr. Munshi which have just been adopted, stand part of the constitution.

PART XIV-A CHAPTER I-LANGUAGE OF THE UNION

301A. Official language of the Union. (1) The official language of the Union shall be Hindi in Devanagari script.

The form of numerals to be used for the official purposes of the Union shall be the international form of Indian numerals.

(2) Notwithstanding anything contained in clause (1) of this article, for a period of fifteen years from the commencement of this Constitution. the English language shall continue to be used for all the official purposes of the Union, for which it was being used at such commencement :

Provided that the President may, during the said period, by order authorise for any of the official purposes of the Union the use of the Hindi language in addition to the English language and of the Devanagari form of numerals in addition to the international form of Indian numerals.

(3) Notwithstanding anything contained in this article, Parliament may after the said period of fifteen years by law provide for the use of-

(a) the English language, or

(b) the Devanagari form of numerals,

for such purposes as may be specified in such law.

301B. Commission and committee of Parliament on Official language. (1) The President shall, at the expiration of five years from the commencement of this Constitution and thereafter at the expiration of ten years from such commencement, by order constitute a Commission which shall consist of a Chairman and such other members representing the different languages specified in Schedule VIIA as the President may appoint, and the order shall define the procedure to be followed by the Commission.

(2) It shall be the duty of the Commission to make recommendations to the President as to-

(a) the progressive use of the Hindi language for the official purposes of the Union;

(b) restrictions on the use of the English language for all or any of the official purposes of the Union;

(c) the language to be used for all or any of the purposes mentioned in article 301E of this Constitution;

(d) form of numerals to be used for any one or more specified purposes of the Union:

(e) any other matter referred to the Commission by the President as regards the official language of the Union and the language of inter-State communication and their use.

(3) In making their recommendations under clause (2) of this article, the Commission shall have due regard to the industrial, cultural and scientific advancement of India, and the just claims and the interests of the non-Hindi speaking areas in regard to the public services.

(4) There

shall be constituted a Committee consisting of thirty members of whom twenty shall be members of the House of the People and ten shall be members of the Council of States chosen respectively by the members of the House of the People and the members of the Council of States in accordance with the system of proportional representation by means of the single transferable vote. (5) It shall be the duty of the Committee lo examine the recommendations of the Commission constituted under this article and to report to the President their opinion thereon.

(6) Notwithstanding anything contained in article 301A of this Constitution. the President may after consideration of the report referred to in clause (5) of this article issue directions in accordance with the whole or any part of the report.

CHAPTER II-REGIONAL LANGUAGES.

301C. Official language or language of a State. Subject to the provisions of articles 301D and 301E, a State may by law adopt any of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State :

Provided that until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the State for which it was being used at the commencement of this Constitution.

301D. Official language for communication between one state and another of between a State and the Union. The language for the time being authorised for use in the Union for official purposes shall be the official language for communication between one State, and another State and between a State and the Union:

Provided that if two or more States agree that the Hindi language should be the official language for communication between such States, that language may be used for such communication.

301E. Special provision relating to language spoken by a section of the population of a State. Where on a demand being made in that behalf the President is satisfied that a substantial proportion of the population of a State desires the use of any language spoken by them to be recognised by that State, he may direct that such language shall also be officially recognised throughout that State or any part thereof for such purpose as he may specify.

CHAPTER III-LANGUAGE OF SUPREME COURT AND HIGH COURTS, ETC.

301F. Language to be used in the Supreme Court and in the High Courts and for Acts, Bills etc. (1) Notwithstanding anything contained in the foregoing provisions of this Part, until Parliament by law otherwise provides-

(a) all proceedings in the Supreme Court and in every High Court,

(b) the authoritative texts-

(i) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State,

(ii) of all Acts passed by Parliament or the Legislature of a State and of all Ordinances promulgated by the President or a Governor or a Ruler, as the case may be,

(iii) of all orders, rules, regulations and bye-laws issued under this Constitution or under any law made by Parliament or the Legislature of a State,

shall be in the English language.

(2) Nothing in sub-clause (a) of clause (1) of this article shall prevent a State from prescribing, with the consent of the President, the use of the Hindi language or any other language recognised for official purposes in the State for proceedings in the High Court of the State other than judgments, decrees and orders.

(3) Notwithstanding anything contained in sub-clause (b) of clause (1) of this article, when the Legislature of a State has prescribed the use of any language other than English for Bills, Acts, Ordinances, and Orders having the force of law, and rules referred to in the said sub-clause, a translation of the same in English certified by the Governor or Ruler of the State shall be published and the same shall be deemed to be the authoritative text in English under this article.

301G. Special procedure for enactment of certain laws relating

to language. During the period of fifteen years from the commencement of this Constitution no Bill or amendment making provision for the language to be used for any of the purposes mentioned in clause (1) of article 301F of this Constitution shall be introduced or moved in either House of Parliament without the previous sanction of the President, and the President shall not give hissanction to the introduction of any such Bill or the moving of any such amendment except after he has taken into consideration the recommendations of the Commission constituted under article 301B of this Constitution and the report of the Committee referred to in that article.

CHAPTER IV-SPECIAL DIRECTIVES 301-H. Language to be used for representation for redress of grievances. Every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State, as the case may be.

301-I. Directive for development of Hindi. It shall be the duty of the Union to promote the spread of Hindi and to develop the language so as to serve as a medium of expression for all, the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India, and drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages.

SCHEDULE VII-A

1. Assamese

2. Bengali

3. Kannada

4. Gujrati

5. Hindi

6. Kashmiri

7. Malayalam

8. Marathi

9. Oriya

10. Punjabi

10A. Sanskrit

11. Tamil

12. Telugu

13. Urdu.

The motion was adopted.

Maulana Hasrat Mohani: I want to have my adverse vote recorded with the remark..........

Mr. President : There is no procedure for recording the vote of any particular individual specially with his remarks.'

The question is :

"That Part XIV-A as passed stand part of the Constitution."

The motion was adopted. PART XIV-A was added to the Constitution.

Shri T. T. Krishnamachari: May I suggest, Sir, before adjourning the House, that you may put to vote articles 99 and 184 which this Chapter supersedes ?

The Honourable Dr. B. R. Ambedkar: No; no. It is not in today's Order Paper.

Mr. President : This brings the proceedings of this evening to a close but before adjourning the House I desire just to say a few words of congratulation. I think we have adopted a Chapter for our Constitution which will have very far reaching consequences in building up the country as a whole. Never before in our history did we have one language recognised as the language of rule and administration in the country as a whole. Sanskrit was the language in which all our religious literature and lore was enshrined and in which other literature was enshrined. That was studied no doubt in all parts of the country but it was never the language which was used for administrative purposes throughout the country as a whole. Today it is for the first time that we have got a Constitution,we are going to provide in our Constitution a language which will be the language of administration for the Union and that language will have to develop itself to suit the exigencies of time.

I do not claim to be a scholar of Hindi or any other language. I do not claim to have made any contribution to literature but this much I can say as a layman that it is not possible today to foresee what form this language, which we have adopted as the language of administration of the Union, is going to take in the future. As it is, Hindi has undergone change in the past an many many occasions and we have several styles of it, we have had literature written in Braj Bhasha. Khari Boli is now the prevalent style in Hindi. I think its contact with all the other languages In the country will give it opportunities for further development. I have no doubt that Hindi will benefit rather than lose by absorbing as much as it can of the best

that is to be found in the other languages of the country.

We have now accomplished political unification of the country, such as it is. We are now going to fore another link which will bind us all together from one end to the other. I hope all Members will go home with a feeling of satisfaction and even those who have lost in voting will take it in a sportsman like spirit and will help in the work which the Constitution will now impose upon the Union in regard to language.

I want to say one word about South India. It was in 1917 when Mahatma Gandhi wits in Champaran and I had the privilege of working with him that he thought of starting Hindi Prachar in the South and he decided to request Swami Satyadev and his dear son Devdas Gandhi to go and start the work which they did. Subsequently, in 1918 at the Indore Session of the Hindi Sahitya Sammelan, this Prachar work was accepted as one of its primary functions by the Sammelan and the work progressed. It has been my privilege to be associated although I cannot claim to be associated very intimately-with the work throughout this period of nearly 32 years no. I have gone to the South from one corner to the other and it has pleased my heart to see how the people of the South responded to the call of Mahatma Gandhi in respect of this language. I know the difficulties that they had to face, but the enthusiasm which they brought to bear upon this was simply marvellous. I have been associated with prize distributions on several occasions and it may amuse Members to hear that I have distributed the prizes to two generations at the same time if not three on some occasions; that is to say, the grand-parent, the Parent, and the grand-child-for having studied the language, having passed the prescribed examination and having come for the prizes and for their diplomas. The work has progressed and it has been adopted by the people of the

South as their work. Today I do not know how many lakhs (hey are spending over this Hindi Prachar work and I do not recollect the figures, how many examinees are sitting at the examinations from year to year. This means that the language has been recognised by a large section of the people in the South as the language for All-India purposes and the enthusiasm which they have exhibited in this deserves congratulation, deserves recognition, deserves gratitude from the people of the North.

If today they have insisted upon some particular thing, let us remember that after all if Hindi has to be accepted by them, they must accept it, not we for them; and after all what is it which has evoked so much controversy ? I was wondering why we should take so much time, so much discussion over a small matter. What are after all the numerals ? They are ten figures. Out of these ten, as far as I can say from memory, there are three which are identical in the English numerals and the Hindi numerals-2, 3 and 0. There are four others I believe which are identical in shape but convey different meaning. For example,.4 of Hindi is very like 8 of English, although one represents 4 and the other represents 8. 6 of English is very like 7 of Hindi, although they represent two, different meanings. 9 of Hindi in the form in which it is now being used, taken largely from Maharashtra, is very much like 9 of English. Well there are only two or three figures left which have a different shape and different meaning in each of the numerals. It is therefore not a question of convenience or inconvenience of the Press as some Members suggested. I think the English numerals are more or less the same, so far as printing press is concerned, as Hindi numerals.

But we have to respect the sentiments of our friends who wanted it, and I would ask all Our Hindi friends to accept this in that script, to accept it because we want them to accept the Hindi language and the Devanagari script, so far as the rest of it is concerned. And I am glad that this House has accepted the suggestion by a very overwhelming majority. It seemed to me that after all, it was not a question of making much of a

concession. We wanted them to accept Hindi and they accepted it and we wanted them to accept the Devanagari script and they accepted it. They want us to accept a different form of numerals; and why should there be any difficulty in accepting it? It looks like this, if I may give a small metaphor which may amuse. We want some friends to invite us. They invite us. They say, "You can come and stay in our house. We welcome you for that purpose. But when you come to our house, please wear the English type of shoes and not the Indian chappal which you wear in your own house." I should be not very wise to reject the invitation, simply because I do not want to give up my chappals. I would accept the English type of shoes and accept the invitation, and it is in this spirit of give and take that national problems can be solved.

Our Constitution so far has evoked many controversies, and raised many questions which had very deep differences; but we have, somehow or other, managed to get over them all. This was one of the biggest gulfs which might have separated us. Let us imagine what would have happened if the South had not accepted the Hindi language and the Devanagari script. In a small tiny country like Switzerland, they have got three languages which are recognized by the Constitution and everything has to be done in those three languages. Do we think, can we imagine, that we shall be able to keep together all the provinces, bind them together, if we thought of having as many languages as there are in existence, for central administrative purposes ? One page of printing will have to be extended-I do not know-perhaps to fifteen or twenty pages.

And it is not only a question of expense. It is also a question of psychology which will affect our whole life. This language which we shall use in the Centre will tend to bring us together, nearer and nearer. After all, the English language has brought us nearer and nearer because it was one language. If in place of English we have adopted an Indian language, it is bound to bring us closer together, particularly because our traditions are the same, our culture is the same, and everything that goes to make our civilisation is the same. Therefore, if we did not accept this formula, the result would have been either a large number of languages to be used, for the country as a whole, or separation of provinces which did not like to submit or accept any particular language under pressure. We have done the wisest thing possible and I am glad, I am happy, and I hope posterity will bless us for this.

The House stands adjourned now till 9 o'clock tomorrow morning.

The Assembly then adjourned till Nine of the Clock on Thursday the 15th September, 1949.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Thursday, the 15th September 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

New Article 112-B.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Mr. President, Sir, I move :

"That after article 112A, the following new article be inserted:-

112B. Jurisdiction and powers of His Majesty in Council under existing law in certain cases to be exercisable by the Supreme Court. Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to matters other than those referred to in the foregoing provisions of this Chapter in relation to which jurisdiction and powers were exercisable by His Majesty in Council immediately before the commencement of this Constitution under any existing law'."

Sir, the position is this that according to the ruling of the Privy Council there is a distinction between civil matters and matters relating to Income-tax and, for instance, acquisition proceedings. It has been held that the proceedings relating to income-tax and to acquisition of property do not lie within the purview of what are called 'civil proceedings.' And it might therefore be held that unless a special provision was made the powers of the Supreme Court were 'confined to civil proceedings. In order to remove that doubt this article 112B is now proposed to be introduced so as to give the Supreme Court full powers over all proceedings, including civil proceedings and other proceedings which are not of a civil nature. That is the reason why this article is sought to be introduced.

Pandit Thakur Das Bhargava (East Punjab: General) : Sir, I beg to move:

"That in amendment No. 17 above, in the proposed new article 112B, the words 'or practice' be added at the end."

My only purpose in moving the amendment is that I am not sure if the words "under any existing law" will cover the entire scope of the jurisdiction which the Privy Council has been enjoying for such a long time. We have now got a Bill which is going to be introduced in a day or two-I think it is coming for discussion on the 17th-in which an attempt has been made to confer such jurisdiction on the Federal Court as has been enjoyed by the Privy Council. Paragraph 2 of the Bill says :

"As from the appointed day, the jurisdiction of His Majesty in Council to entertain, and save as hereinafter provided to dispose of. appeals and petitions from. or in respect of, any judgment, decree or order of any court or tribunal (other than the Federal Court within the territory of India, including appeals and petitions in respect of criminal matters, whether such jurisdiction is exercisable by virtue of His Majesty's prerogative or otherwise, shall cease."

My submission is that it is doubtful in That manner and in what matters the Privy Council has been exercising jurisdiction. If there were no pre-existing law, but the Privy Council was exercising jurisdiction only as a matter of practice, those jurisdictions must be taken away from the Privy Council and conferred on the Federal Court. Much of the Constitution of England is by way of conventions, so that we have to see that the jurisdiction of our Federal Court may be foolproof and is no less expensive than that of the Privy Council.

Prof. Shibban Lal Saksena (United Provinces : General): Sir, I beg to move :

"That in amendment No. 17 above, the proposed new article 112B be numbered as clause (I and the following clause be added:--

'(2) The Supreme Court shall also have jurisdiction to hear appeals against sentences of death passed by Courts-martial'."

Sir, in article 112 of the Constitution, the Supreme Court has been given very wide powers. It has been said that the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree or final order in any case or matter, passed or made by any court or tribunal in the territory of India in cases where the

provisions of article 110 or article 111 of this Constitution do not apply. So, there is inherent power in. the Supreme Court. I want to make this specific as this question is important.

I have had occasions to discuss this matter with many persons who are connected with decisions of the courts-martial. One thing that has struck me is that in the hearing of the courts-martial, the Judge Advocate who is the Judge is also the prosecuting counsel. When a military officer is prosecuted for breach of army discipline, the case goes to the Judge Advocate who is both the Court and also the person to give directions as if he were the prosecution Counsel in that case, with the result that lie prepares the prosecution case and at the same time sits in judgment on the accused. Naturally, he cannot be expected to be so fair and impartial as laws of jurisprudence would expect him to be. The man who is the prosecutor should not be the Judge. I know of many cases where the ends of justice have not been met for this reason.

Recently the British Government appointed a Commission to enquire into the procedures of Courts-Martial. That Commission recommended that the Judge Advocate should have nothing to do with the prosecution. Hence my amendment that the Supreme Court shall also have jurisdiction to bear appeals against sentence of death passed by Courts-martial.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, the amendment which stands in my name is of a verbal nature and, therefore, I shall leave it to the Drafting Committee to consider. I, however, with your permission, desire to take part in the general discussion.

This article 112B seeks to be very intricate and circumspect in its approach. It is the inevitable result of piecemeal introduction of articles on the subject. I submit that the way in which the present articles have been worded would make it absolutely difficult to realise what they mean, Article 112B tries to give jurisdiction to the Supreme Court over subjects on which "His Majesty in Council" had powers. We are thus linking the rights and powers of the Supreme Court in matters of appeal to the undefined powers of His Majesty in Council, I think instead of proceeding in a roundabout manner like this, the more satisfactory course would have been to say that Income-tax and Acquisition proceedings are subjects on which there would be a right of appeal before the Supreme Court.

Sir, I would like to draw the attention of the House to article 11 1A which gives absolute jurisdiction with regard to criminal cases where there is a final judgment, or order or sentence of a criminal Court. Provided of course there is a substantial question of law and there is special 'leave. Then in article 112 it is said that the Supreme Court may give special leave to appeal from any judgment, decree or final order in any cause or matter passed or made by any Court or tribunal in the territory of India. These, I think, ought to be enough so as not to require any further clarification by means of article 11 1B.

Then again in article 112A we have already provided that the Supreme Court has the powers to review any judgment pronounced or order passed in any case. So in these circumstances, the real utility of article I 12B is not very clear. If there are some loopholes in the articles already passed the better course would be to clarify the matter by specific enactments.

With regard to the British Constitution the greatest difficulty is that it is in a fluid condition. Nobody knows what the powers of the King are and nobody can define them with precision. They are determined by the Courts or by the Parliament when they arise. The proposal of linking the powers of the Supreme Court with the powers of His Majesty would be open to two objections, namely, the linking up of the Supreme Court with something which is vague and undefinable and secondly to inevitably perpetuate the designation of "His Majesty" in the Constitution of Free India.

Shri Brajeshwar Prasad (Bihar : General) : Mr. President, Sir, I rise to support Prof. Saksena. I

feel that military courts are not likely to have proper regard for the sanctity of human life. I am against capital sentence. The traditions of non-violence are so strong in this country that it is not advisable to vest final powers into the hands of military tribunals in cases of death sentence. We cannot abolish capital punishment here. All judiciaries, even the Supreme Court are responsive to public opinion. I have no reason to think that our Supreme Court here will have no regard for public opinion and for the traditions of this country.

Mr. President: Dr. Ambedkar, would you like to say anything?

The Honourable Dr. B. R. Ambedkar: Sir, with regard to the amendment of my Friend, Pandit Thakur Das Bhargava, I do not think that that amendment is necessary if he is really enlarging the jurisdiction of the Court. The word " practice" is generally taken to cover matters of procedure, and article 112B which I have proposed does not deal with procedure but deals with substantive matter of jurisdiction. Therefore his amendment "or practice" is unnecesary.

With regard to the amendment of my Friend Prof. Shibban Lal Saksena, there are two points to which I would like to reply, The first is this, that it there is to be an appeal to the Supreme Court in matters of sentence of death passed by Courts-martial. then such a provision could be easily made by the Indian Army Act giving the accused person the right to appeal, and it has been provided, if I may draw my friend's attention to clause (1) of article 11 4, that the Supreme Court shall have such further jurisdiction and power with respect to any matters in the Union List. it reads :

"114(1). The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer."If Parliament thinks that such a power should be vested in the Supreme Court, there is no impediment in the way of Parliament making an appropriate provision in the Army Act conferring such a power on them. Again, I should like to draw attention to article 112 which deals with matters of special need. Under that it would be open to the Supreme Court to entertain an appeal against a Court-martial because therein the words used are--

"any cause or matter made by any court or tribunal",

and therefore, the wording being so large, no Court or tribunal could escape from the special jurisdiction of tile Supreme Court provided under article 112. Therefore, my submission is that his amendment is also quite unnecessary.

With regard to the amendment of my friend Mr. Naziruddin Ahmad to omit the words "existing law........

Mr. Naziruddin Ahmad: I have not moved that.

Mr. President: He has not moved it, he has left it to the Drafting Committee.

The Honourable Dr. B. R. Ambedkar : If he has left it to the Drafting Committee I am very glad, Sir. We shall certainly pay the, best attention that his point deserves.

Mr. President: Then I will put the amendments.

Prof. Shibban Lal Saksena: In view of the assurances given, I would like to withdraw my amendment.

Pandit Thakur Das Bhargava : I too am withdrawing my amendment, Sir.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That proposed article 112B stand part of the Constitution." The motion was adopted. Article 112B was added to the Constitution.

New Article 15-A

Mr. President: Then we go back to New Article 15A.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That after article 15, the following article be inserted

'15A. Protection against certain arrests and detentions. (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult a legal practitioner of his choice.

(2) Every person. who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place

of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in this article shall apply-

(a) to any person who for the time being is an enemy alien, or

(b) to any person who is arrested under any law providing for preventive detention; Provided that nothing in sub-clause (b) of clause (3) of this article shall permit the detention of a person for a longer period than three months unless-

(a) an Advisory Board consisting of persons who are or have been or are qualified to be appointed as judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention, or

(b) such person is detained in accordance with the provisions of any law made by Parliament under clause (4) of this article.

(4) Parliament may by law prescribe the circumstances under which and the class or classes of cases in which a person who is arrested under any law providing for preventive detention may be detained for a period longer than three months and also the maximum period for which any such person may be so detained'."

Sir, the House will recall that when at a previous session of this Assembly we were discussing article 15, there was a great deal of controversy on the issue as to whether the words should be "except according to procedure established by law", or whether the words "due process" should be there in place of the words which now find a place in article 15. It was ultimately accepted that instead of the words "due process", the words should be "according to procedure established by law". I know that a large part of the House including myself were greatly dissatisfied with the wording of article 15. It will also be recalled that there is no part of our Draft Constitution which has been so violently criticised by the public outside as article 15 because all that article 15 does is this, it only prevents the executive from making an arrest. All that is necessary is to have a law and the law need not be subject to any conditions or limitations. In other words, it was felt that while this matter was being included in the Chapter dealing with Fundamental Rights, we were giving a carte blanche to Parliament to make and provide for the arrest of any person under any circumstances as Parliament may think fit. We are therefore now, by introducing article 15A, making, if I may say so, compensation for what was done then in passing article 15. In other words, we are providing for the substance of the law of "due process" by the introduction of article 15A.

Article 15A merely lifts from the provisions of the Criminal Procedure Code two of the most fundamental principles which every civilised country follows as principles of international justice. It is quite true that these two provisions contained in. clause (1) and clause (2) are already to be found in the Criminal Procedure Code and therefore probably it might be said that we are really not making any very fundamental change. But we are, as I contend, making a fundamental change because what we are doing by the introduction of article 15A is to put' a limitation upon the authority both of Parliament as well as of the Provincial Legislature not to abrogate these two provisions, because they are now introduced in our Constitution itself.

It is quite true that the enthusiasts for personal liberty are probably not content with the provisions of clauses (1) and (2). They probably want something more by way of further safeguards against the inroads of the executive and the legislature upon the personal liberty of the citizen. I personally think that while I sympathise with them that probably this article might have been expanded to include some further safeguards. I am quite satisfied that the provisions contained are sufficient against illegal or arbitrary arrests.

As Members will see, the provisions contained in clauses (I) and (2) of article 15A are made subject to certain limitations

which are set out in clause (3) which says that the provisions contained in clauses (1) and (2) of article 15A will not apply to any person who for the time being is an enemy alien. I do not think that there could he, any further objection to the reservation made in clause (3) (a) in respect of an enemy alien. With regard to sub-clause (b) of clause (3) 1 think it has to be recognised that in the present circumstances of the country, it may be necessary for the executive to detain a person who is tampering either with public order as mentioned in the Concurrent List or with the Defence Services of the country. In such a case I do not think that the exigency of the liberty of the individual should be placed above the interests of the State. It is on that basis that sub-clause (b) has been included within the provisions of clause (3).

There again, those who believe in the absolute personal liberty of the individual will recognise that this power of preventive detention has been helped in by two limitations : one is that the Government shall have power to detain a person in custody under the provisions of clause (3) only for three months. If they want to detain him beyond three months they must be in possession of a report made by an advisory board which will examine the papers submitted by the executive and will probably also give an opportunity to the accused to represent his case and come to the conclusion that the detention is justifiable. It is only under that that the executive will be able to detain him for more than three months Secondly, detention may be extended beyond three months if Parliament makes a general law laying down in what class of cases the detention may exceed three months and state the period of such detention.

I think, on the whole, those who are fighting for the protection of individual ought to congratulate themselves that it has been found possible to introduce this clause which, although it may not satisfy those who- hold absolute, views in this matter, certainly saves a great deal which had been lost by the non-introduction of the words 'due process of law. Sir, I commend this article to the House.

Pandit Thakur Das Bhargava: Sir, if you permit me I shall simply read out the numbers of my amendments and they may be treated as moved in the House. This will save time.

Mr. President : Yes, as the amendments are lengthy ones they may be treated as read out in the House.

Pandit Thakur Das Bhargva: Sir, I request that all my amendments may be taken as moved.

"That after article 15 the following new article be added

'15A. No procedure within the meaning of the proceeding section shall be deemed to be established by law if it is inconsistent with any of the following principles :-

(i) earlier shall be produced Every arrested person if he has not been released before a Magistrate within 24 hours of his arrest excluding the reasonable period of journey from the place of arrest to the Court of the Magistrate and informed of the nature of the accusation for his arrest and detained further only by the authority of the Magistrate for reasons recorded.

(ii) Every person shall have the right of access to Courts to being defended by counsel in all proceedings and trials before courts.

(iii) No person shall be subjected to unnecessary restraints or to unreasonable search of person or property.

(iv) Every accused person is entitled to a speedy and public. trial unless special law or public interests demand a trial in camera.

(v) Every person shall have the right of cross examining the witness against him and producing his defence. (vi) Every convicted person shall have the right of at least one appeal against his conviction'." 1499

115B. No procedure within the meaning of Sec. 15 shall be deemed to be established by law in case of preventive detention if it is inconsistent with any of the following principles :-

(i) No person shall be detained without trial for a period longer than it is necessary.

(ii) Every case of detention in case it exceeds the period of

fifteen days shall be placed within a month of the date of arrest before an independent tribunal presided over by a judge of the High Court or a person possessed of qualification for High Court Judgeship armed with powers of summary inquiries including examinations of the person detained and of passing orders of further detention conditional or absolute release and other incidental and necessary orders.

(iii) No such detention shall continue unless it has been confirmed within a period of two months from the date of arrest by an order of further detention from such tribunal in which case quarterly reviews of such detentions by independent tribunal armed with powers of passing of orders of release conditional or otherwise and other necessary and incidental orders shall be made.

(iv) Such detention shall in the total not exceed the period of one year from the date of arrest.

(v) Such detained person shall not be subjected to hard labour or unnecessary restrictions otherwise than for willful disobedience of lawful orders and violation of jail rules." "That in amendment No. 1 above, for clause (1) and (2) of the proposed new article 15A, the following be substituted:--

'15A. No procedure shall be deemed to be established by law within the meaning of article 15 if the law prescribing the procedure for criminal proceedings and trials of accused persons contravenes any of the following established principles and rights-

(a) the right of production of the person under custody before Magistrate within 24 hours of his arrest (excluding the reasonable period of journey from the place of arrest to the court of Magistrate) and further detention only with the authority of the magistrate for reasons recorded;

(b) the right of consultation after arrest and before trial and the right of being defended by the Counsel of his choice;

(c) the right of full opportunity for cross- examination of witnesses produced against the accused and production of his defence;

(d) the right of at least one appeal in case of conviction'." 'That in amendment No. 3 above, after clause (d) of the proposed new article 15A, the following clauses be added :-

(e) right to freedom from torture and unnecessary restraints and from able search of person and property;

(f) right to a speedy and public trial unless special law and public interest demand a trial in camera'." "That in amendment No. 1 above, in clause (1) of the proposed new article 15A, for the weeds 'a legal practitioner of his choice the words 'and be defended by a legal practitioner of his choice in all criminal proceedings and trials' be substituted."

"That in amendment No. 1 above, in the proposed new article 15A. for clause (2), following be substituted :-

4(2) Every arrested person if he has not been released earlier shall be produced before a Magistrate. within 24 hours of his arrest excluding the reasonable period of journey from the place of arrest to the court of the Magistrate and further only by the authority of the Magistrate for reasons, recorded'.

Or, alternatively "That in amendment No. 1 above, at the end of clause (2) of the proposed new article 15A, the following be added :-

'and for reasons recorded'."

"That in amendment No. 1 above, after clause (2) of the proposed new article 15A, the following clauses be added :

'(2a) Every person accused of any offence or against whom criminal proceedings are being taken shall have the full opportunity of cross-examining the witnesses produced against him and producing as defence.

(2b) Every person sentenced to imprisonment shall have the right of at least one appeal against his conviction'."

"That in amendment No. 1 above, for clauses (3) and (4) of the proposed new article 15A, the following be substituted :-

'15B. No procedure shall be deemed to be established by law within the meaning of article 15 if the law prescribing the prevention or detention contravenes any of the following principles'--- (1) Such detention without trial shall only be allowable for alleged Participation in dangerous or

subversive activities affecting the public peace, security of the State and relation between different classes and communities inhabiting India or membership of any Organisation declared unlawful by the State,

(2) Such detention shall not be longer than two months unless an independent tribunal consisting of two or more persons being High Court judges or possessing qualifications for High Court judgeships and armed with powers of enquiry including examination of the detainee recommend continuance of detention within the said period of two months.

(3) Such detention shall not exceed the total period of one year.

(4) Such detention shall be free from unnecessary restrictions and hard labour otherwise than for wilful disobedience of lawful orders and violation of jail rules :

Provided that the Parliament shall never be precluded from prescribing other reason and circumstances which may necessitate such detention and the conditions of such detention'.'

"That in amendment No. 1 above. in the proviso to clause (3) of the Proposed new article 15A, for the word 'three' the word 'two' be substituted."

"That in amendment No. 1 above, in sub-clause (a) of the proviso to clause (3) of the proposed new article 15A, after the word 'Board' the words 'with powers of inquiry including examination of persons detained' be inserted."

"That in amendment No. 1 above, at the end of sub-clause (b) of the proviso to clause (3) of the proposed new article 15A, the following be added :-

'but in no case more than six months' or 'but in no case more than a year'."

"That in amendment No. 1 above, in clause (4) of the proposed new article 15A, after the word 'circumstances' the words 'and the conditions' be inserted."

"That in amendment No. 1 above, in clause (4) of the proposed new article 15A, for the words 'three months' the words 'one month' or 'two months' be substituted."

The House has just heard the speech of the honourable Mover of the main motion. I need not recall to the memory of the House the heated controversy which raged about a year and a quarter ago round the words 'due process of law'. Now a substantive part, of the 'due process' has practically been given up after 70 per cent. being secured in article 13. 1 should think that in the circumstances of our country, this provision of 'due process' is certainly necessary cent. per cent. It is the only right process in this country. Our country is not trained to the restraints and discipline which mark out a country in which democracy has worked for a long time. Our country is full of autocratic ideas. The domination by a foreign power of this country for hundreds of years has so demoralised our character that a man in the street....

The Honourable Dr. B. R. Ambedkar: Sir, may I say a word ? I am prepared to accept one of the amendments of my honourable Friend which says that the accused shall have the right to be defended. I can add these words in the last line of clause (1) of article 15A. It will run thus : be denied the right to consult or to be defended by lawyers of his, choice'. I think that will carry out my honourable Friend's intention.Pandit Thakur Das Bhargava : In trials as well as in criminal proceedings ?

The Honourable Dr. B. R. Ambedkar: 'Defended' means that. Could we not curtail the debate now ?

Pandit Thakur Das Bhargava: We have already passed an article, No. 24 about Compensations. Is it the idea that no compensation need be given at all ? If you make acceptance of amendments a price for my not speaking further, I should be paid full compensation.

So far as the question of compensation is concerned, we wanted that the words 'due process of law' should be there. I am glad that Dr. Ambedkar, who has been very cautious in this matter, has today confessed that he is 'of the same view as many other lawyers in this House. But our misfortunate was that the greatest obstacle to this 'due process' came from the greatest jurist in this House and it is most unfortunate to this country that we have not been able to pass this due process'

clause. In the long history of the struggle for liberty which the Congress had to wage with the foreign government, the High Courts and the Supreme Court many a time held that the laws passed by the bureaucracy were not valid. Now, this power is being taken away from our Indian courts in the name of liberty. My submission is that the first casualty in this Constitution is justice. After all what is a fundamental right? A fundamental right is a limitation of the powers of the executive and the legislature. Whatever fundamental rights we have given in this Constitution. lately an attempt has been made to take them away. Article 15 is the crown of our failures because by virtue of article 15 we have given the Executive and the legislature power to do as they like with the people of this country, so far as procedure is concerned. I cannot describe the state of mind in which I felt myself when I could not succeed in getting this House to agree to the due process clause.

Now, Sir, Dr. Ambedkar says that he has given a compensation for that clause. He has given us these two clauses (1) and (2). 1 congratulate him so far as these two clauses are concerned, although I shall have occasion to quarrel with him over one of these clauses. All the same, I congratulate him on the efforts he has made in salvaging something out of the lost cause. An the same, I do not know, Sir, which department of the Government of India or which Minister has got the cheek to oppose the whole nation when it wants to get into its own.

Now, Dr. Ambedkar says that he is agreeable to accept my amendment that the accused will have the right of being defended by a lawyer of his choice. I make bold to say that in no country, in no civilised country is that right not given. This too has been very niggardly given by Dr. Ambedkar. This Dr. Ambedkar says, is a sort of compensation to the original due process clause. I submit with great pain that this is in my opinion no concession at all. These two provisions mentioned by him are so elementary that I may say without any sort of hesitation that these two clauses are of such a nature that no civilised country, no civilised legislature, can have the heart to say that even these should not be recognised.

Now, in regard to the two matters of arrest and detention, these two clauses are sought to be introduced; but what happens after a person is arrested or detained ? His troubles begin then. When be is detained or arrested and he is in the clutches of the police, he is alone in the world, and the forces of the PC,' ice, the forces of the Crown and all other forces combine against him and he is helpless. We have made absolutely no provision to save him from the tyrannies of the police and the courts. After all, what is the magistracy?When we come to the other articles which are coming before the House, 209, etc., we will realise that the whole panorama of Swaraj is being taken away from us bit by bit. All the powers of the magistracy will remain in this country as before. They are not going to make any change so far as the question of the separation of the judiciary from the executive is concerned. Knowing well what kind of magistracy we have, we should at least provide some sort of check by the way of procedure at least. If you do not allow the courts, even the highest courts in this land to pronounce if any law is valid and just, you must at least have some compensatory thing. In regard to these principles, only two are sought to be put in. Now, after arrest and detention, there is absolutely no sort of right which is sought to be given.

Sir, if you will kindly examine these two clauses (1) and (2), you will be pleased to see that not only no further riot is sought to be given, but also that the take away from the existing rights. In regard to 15A (1), I submit it reads thus :-

"No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult a legal practitioner of his choice."

The law at

present is that no person is to be kept in detention for a single minute longer than is necessary or reasonable. Ibis section does not even give this right that the executive will be compelled to produce a person arrested before a court as soon as possible. If an officer detains a person longer than is necessary, he cannot be called upon to explain now. Fundamental Rights mean that these rights cannot be taken away by the legislature or the executive. Left to myself, I would rather be without any fundamental right, unless there is a modicum of right which ensures the liberty of the citizen. Sir, the present practice under 61 of the Criminal Procedure Code is as soon as a per-son is arrested, he must be produced before a court within twenty-four hours, excluding the time taken for the journey from the place of arrest to the nearest magistrate's court.

Apart from this, Sir, when he is brought before the Court under section 61 within twenty-four hours, then at that time the powers of the courts also are restricted under the present law, and I think they have been rightly restricted. We know that the magistracy, especially the special class magistrates, is police ridden, because the Superintendent of Police has only to write a letter in secret against the magistrate and the magistrate will be no more. Therefore the ordinary magistrates have not the guts to do anything against the wishes of the police. and therefore they allow detention as a matter of course. This is the present practice, and therefore the law enacted a provision in section 167 of the Criminal Procedure Code. With your permission, I would just read that provision.

The provision in the Criminal Procedure Code is as follows

"Whenever any person is arrested and detained in custody and it appears that the investigation...... cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well founded, the officer in charge of the Police-station or the Police Officer making the investigation if he is not below the rank of Sub-inspector shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case and shall at the same time forward the accused........ to such Magistrate."Now, this provision and the other provision say that an accused must be kept with the authority of a Magistrate;-and third-class and second class Magistrates, unless they are specially empowered, have not the right to authorise detention of a person, because in 1923 we passed a law whereby a proviso was added to this effect :-

"Provided that no Magistrate of the third class and no Magistrate of the second not specially empowered in this behalf (by the Provincial Government) shall authorise detention in the custody of the Police."

Even this right is taken away. There is an amendment by a friend of mine to this clause which says that only first-class Magistrates should be enabled to have, this power and to authorise detention. I do not agree with him, because unless and until the second-class and third-class magistrates are also specially empowered, it would be difficult to work it in practice, but at the same time, I do not SW any reason why this provision passed in 1923 should be taken away by this clause.

Then again, Sir, a very important and salutary check has been placed on the authority of the Magistrate by virtue of provision 167 (3) which says : "A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing," and I beg Dr. Ambedkar to kindly give me his car for half a minute. I beg to submit that only four words "and for reasons recorded" be added. When a person is brought before a Magistrate, this is exactly the time when his fate is going to be sealed or to be bettered. At that time, according to the practice followed in the Punjab and elsewhere, when an accused is presented before the Magistrate, when the 'remand is sought to be given, the Magistrate is bound to record his reasons and this is a very great check upon the power of the Magistrate. I have got some specific amendments to this effect. I want that in the first proviso in the proposed new article 15-A as moved by Dr. Ambedkar the words "and for reasons recorded" to be added and I beg of Dr. Ambedkar to kindly consider the full effect of these words.

I claim that unless these words are there, you will be taking away a very important right of the accused. If you put these words, then it would mean this that as soon as a man comes, as soon as the papers are presented to the Magistrate, it is the duty of the Magistrate to see how long the remand is to be given, for how long this man is to be put in the dungeon and give full reasons and these reasons could be scrutinized by the superior Courts and the accused could get that order revised. This order is revisable; it is a judicial order; it is not an executive order and therefore, reasons must be given. If reasons are given then, of course, we may say that the order is justified. If you provide the reasons to be given, then the Magistrate will be called upon to explain; he will have to hear the lawyer and then pass an order whether a man is to be detained for ten or five days and for what reasons he has to detain him. If you do not condition his order with the words "and for reasons recorded", the probability is that the Magistrate will mechanically make the order of remand.

I do not want to read from the rulings which give effect to it and why this is a very salutary law. I leave it to the House because I submit this is one of the most important amendments that I seek to make in this law. If these words are there, I submit Sir, the liberty of the accused will to a very great extent be secured and at the same time the present provision 15A (1) will not be necessary, because as soon as a person is brought within a period of twenty-four hours his counsel is there; then in that case when the Magistrate goes into the reasons as why he should allow further remand at that time, the reasons are gone into andthe accused is automatically informed and the accused can ask the Magistrate why he is granting a remand and why he is being put in custody. He has a right to an explanation from the Magistrate why he is detained, and thus the provisions of 15A (1) will be in effect fulfilled. If you put these words "and for reasons recorded" in clause, (2) then it would follow that 15A (I) will be unnecessary.

In practice what happens ? The police is all powerful, they misinform the persons, ill-treat him and his relations and give them wrong reasons of detention. You have got nothing to prevent this being done unless it lie by this clause. If a person has misinformed, the accused there is no record of it. You have got no check over the Police and have, no guarantee that these provisions will be, given effect to. Therefore the only check that you can place upon the police and on a Magistrate is, at the time when the man comes for remand and when he comes, you could certainly insist that the reasons must be recorded so that the Magistrate when he records the reasons and when he considers them he may also explain to the accused or to his counsel why he is being detained or for what further period he is to be detained. I only suggest that these words must be added to clause (2) if you really mean that a person may be secured in his rights. I do not think I am asking for more than what is absolutely due to the accused.

In regard to my other amendments, I am glad that one amendment has been accepted by Dr. Ambedkar regarding counsel and I will not take up your time by referring to this aspect of the case. The other amendments which follow also relate to such rights as have been already conceded by the Criminal Procedure Code and the only apprehension is that a panicky legislature or an autocratic Government may not take away those rights from the people and begin to tyrannise over them. Let us be quite clear in our minds about this aspect of the matter. The whole of India, though governed by the Centre, is at the same time governed by the Provincial Governments and States where the autocracy of the old days is still in vogue and it is high time that when the new legislatures come into being, we should see that the legislatures do not misuse the powers in respect of which they have not got any experience whatsoever. It is in the blood of every executive officer and much more so in India to have as much powers as possible. Does this House not remember that in 1947 we passed such a law as against which one of the present Ministers of the Crown stood up and said "It is a black law" ? Do we not remember that we in a panic passed in this House laws authorizing the Police to shoot over the public without any warning ? Do we not know that we in this House passed some laws whereby if a person wrote an article, not because it was inflammatory, but tended to do something which was quite vague in respect of worsening the relations between different Communities, not only his other publications, but the press in which they were published, could be confiscated without an appeal to any Court.'

I know that these powers were not used because we have got Sardar Patel at the helm of affairs, because we have got our own Government who do not want to use these powers. Suppose, Sir. in a new State which is being formed these powers are given to the Ruler of that State, who in his wisdom begins to exercise those rights, what would happen to the rights of the individual. We are making a Constitution which will save the liberty of the people. My humble submission is that that article 15 as it stands with these two safeguards also is a blot upon the Constitution. We have not been able to secure the rights which we wanted to secure. I know I am using strong words. But, my feelings are extremely strong and I cannot conceal them from this House. I want them toshare these feelings with me. As a matter of fact, I say this is the only time when you can impose some restrictions on the legislature. We must bring all the pressure on Dr. Ambedkar, and tell him that these are the minimum rights which we want to secure to the people at large. I would have rather liked that Dr. Ambedkar, instead of resisting the attempts of these 'people, should have, resigned from his post as a protest against the pressure which is being brought upon him by the powers so that these fundamental rights may not be put in.

We have agreed that due process of law shall not be there. But I do not agree that even these small rights should not be put in. I submit for your consideration what these rights are. One of these rights is that. every person accused of any offence shall have the right of cross-examining the witnesses produced against him and producing his defence. This is a very elementary right. If you do not allow this, why speak of a trial ? Do we not know every day that this right is being denied to the accused ? In the mofussil, the courts do not wait for the counsel and cases are conducted in places where witnesses do not reach. Me people are being deprived of their right of defence. So far as cross examination is concerned, we know even under section 256, the provisions are abused and attempts are made not to allow cross examination. Where is the guarantee that in the future the legislature will not assume, that the executive win not force the legislature to assume the power that any accused may be condemned even in his absence ? I know of the legislatures where attempts were made to see that in the absence of the accused, the hole trial is gone through. Do we not know the Rowlatt Act which said, no vakil, no daleel no appeal ?

Mr. President: The Honourable Member has made reference to this House several times. I do not know which House he means.

Dr. P. S. Deshmukh (C. P. & Berar: General) : In its legislative garb.

Pandit Thakur Das Bhargava: This House has got two forms, one legislative and the other constitutional. We pass laws in the other House and here we only pass this Constitution. I am referring to the other House. You are the

President of that House also though we have got a Speaker too. My humble submission is, we take full responsibility for what we have done. These laws have not been misused. My humble submission is, where is the guarantee that any other Government which is not manned at the Centre by people like the present Cabinet, or any other provincial Government will not exercise these powers ? We do not think this Government would do it. But, there are other Governments. Take the case of Rajasthan. They have just emerged from autocracy; we do not know to what extent they will go when they are confronted with an emergency. With regard to emergency........

Mr. President : I was thinking of reference to this House when you mentioned the Rowlatt Act.

Pandit Das Bhargava: The Rowlatt Act was passed in 1918, XIV of 1918, I know. My submission is, where is the guarantee that this House or the provincial legislatures will not enact a law like that Act ? This should be made foolproof so that the courts would sit in judgment and pronounce that these Acts are not valid. When it is a case of giving compensation, let us be fair and let that compensation be adequate and fair and just. It is neither, it is not even justiciable.

I shall come to another clause. No person shall be subject to unnecessary restraints or to unreasonable search of person or property. This clause has a history of its own. I do not want to go into the history of general search, etc.,as they happened in England. But, I want to refer to what happened in this very House. On 3rd December, Kazi Syed Karimuddin brought an amendment in this House in your absence.. It was to this effect : it appears on page 794 of the proceedings dated 3rd December 1948.

"That in article 14, the following be added as clause (4)

'(4) The right of the people to be secure in their Persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be siezed'."

When we were debating this, at the end, Dr. Ambedkar who is imbued with the notions of a criminal lawyer, I do not know whether he has practised or not, said, (it appears on page 796) : "I am however prepared to accept amendment No. 512 moved by Mr. Karimuddin. I think it is a useful provision and may find a place in our Constitution. There is nothing novel in it because the whole of the clause as suggested by him is to be found in the Criminal Procedure Code so that it might be said in a sense that this is already the Law of the land. It is perfectly possible that the legislatures of the future may abrogate the provisions specified in his amendment, but they are so important so far as personal liberty is concerned that it is very desirable to place these provisions beyond the reach of the legislature and I am therefore prepared to accept his amendment." The amendment was accepted. The Vice President said twice that the amendment was accepted. But then, the question was raised and ultimately this was negatived.

I am submitting this to prove that as a matter of fact, this Drafting Committee which we have appointed, which should have carried out the will of this House, has failed to do so. It has succumbed to extraneous influences from other authorities. I think that so far as this House is concerned, the Drafting Committee should have carried out the behest of this House. Dr. Ambedkar should have been allowed to have his own way. Dr. Ambedkar agrees that this is a useful provision. Yet, now, he is not prepared to accept my humble amendment to this very effect. What is the position? The position is,.that the win of the Members of this House is not being implemented- by this Drafting Committee. I do not want to read from the speeches of Dr. Ambedkar and Mr. Munshi who also was of this view. He gave very good reasons : I have taken my cue from those gentlemen: they are not my arguments; they are arguments proceeding from those gentlemen. I am very sorry that these gentlemen have had to succumb to pressure from other places. My humble submission is that so far as this amendment is concerned this is one which has been accepted by this House and I beg of Dr. Ambedkar to rise to the occasion and accept at least this amendment. He would have known fully well. if he had Practised as a criminal lawyer in the mofussil, that as a matter of fact, when houses are searched, it is not the search which we object to, but property is sometimes planted and then searches are made in the presence of witnesses who are procured by the police. The House must remember that at least in 50 per cent. of the criminal cases brought before the courts the accused are either discharged or acquitted. The House can see what amount of corruption, what amount of embarrasment and harassment is being caused to the public, on account of this corrupt and incompetent police.I know when we say this we are, condemning ourselves I do not take any pride in saying that the police is so bad. But we have just started reforming them after 200 years of slavery and it may take some time to change. If we continue to have the Cabinet which we have got now for some years more, I think things will improve. But, we must take stock of things as they are. We cannot be complacent that everything is being done rightly. May I humbly submit, Sir, I do not want to paint a gruesome picture, in the present circumstances of the country. But there is no doubt there is great corruption, there is great tyranny and there are no civil liberties in this country. Our ministers at the helm of affairs are not fully aware of the situation. May I tell you, Sir, what happened in Delhi to the refugees ? Without any law, police robbed the people of their goods, and broke up their stalls. There was no law; When asked under what law this was being done, the reply was that this was done under executive orders of the Cabinet. Now, my humble submission is that unless there is a reign of law in this country wherein no situation like the one in which we find ourselves will arise, the liberty that we have won is not worth the paper on which it is written.

What is the fifth right I claim ? I claim if there is a conviction, if a person is sent to imprisonment, at least you provide him with one appeal. Now it was after great fight and after you yourself took some interest in the affair that we were able to put in a clause relating to Federal Court that in cases of persons who are for the first time sentenced by the High Courts to death, in those cases an appeal was allowed; but even then if the High Court in its wisdom wants to sentence the accused to transportation for life, even though this is the first conviction, there is no appeal. My submission is that in every civilised country the judgment of one man is not given the power whereby he can put a person in imprisonment of transportation. I therefore want a very simple provision that every person when he is convicted or sentenced to imprisonment must have one right of appeal. Is it extravagant that at least when the liberties of the people are taken away, they will have at least one appeal.

Similarly when you go to the other question about speedy trial, what are the functions of Government ? Justice delayed is justice denied and I need not emphasize it. I am not one of those who want abstract rights-I am not one of those who are opposed to social control in the interest of the community but I do want that personal liberty may be secured to the individual in a full measure. My submission is that we must have the ordinary rights which have been enjoyed by every civilized country.

I now come to the second part of the provision and that is relating to preventive detention. There was a time when detention without trial was regarded as a very heinous offence by itself when every person said that no person should be detained without being tried. Now fortunately or unfortunately the time has come and in every civilised country we have a law about preventive detention. I do not want

that my country must not have the safeguard; on the contrary I have always stood for having a law about preventive detention and I am glad that we are going to have clause (4). At the same time I want that the preventive detention may be regulated by law. I want that at least the barest demands of justice be secured to a person who is a detainee. After all every accused person before trial is presumed to be innocent, and similarly 'a detainee who is not even tried is presumed to be innocent. Therefore no unnecessary restriction may be put upon him and be may not be put to bard labour unless for wilful disobedience to lawful order or infraction of jail rules. Therefore I suggest that so far as these persons are concerned, they may not be put to unnecessary hardship or restriction-,.Now I am not satisfied that three months period is the right period which has been prescribed by Dr. Ambedkar. In ordinary cases we give fifteen days to Police for preparing the case. In cases of this nature' when a case is prepared for this impartial tribunal, then according to me one month is quite sufficient. Taking the exigencies of the time I submit that before two months are over an order should be obtained from an impartial tribunal and not from a board. I want to use those words which a year and a halt ago Dr. Ambedkar himself used, I am reading from the proposed draft of Dr. Ambedkar which he presented before the committee appointed to consider the question of Due Process. At that time the draft had these words :-

"Nothing in article 15, 15A. 15B and 15C shall apply to persons taken in custody under any law providing for preventive detention of persons who are believed to be engaged in dangerous or subversive activities. Provided however no such person shall be kept for a longer period than three months without the authority of an impartial tribunal."

you call it Board and I call it Impartial Tribunal. If you call it an 'Impartial Tribunals, unconciously it gives the persons concerned an idea that it is an impartial tribunal. I want that this Board must be armed with the powers of examining the detainee. I regard it as one of the most salutary and one of the most elementary principles of justice.

We passed the other day an article that if a civil servant-if he was going to be reduced in rank or removed or dismissed, he must be given an opportunity of showing cause. Now this man whose liberty is taken away will not have such liberty of showing cause. Dr. Bakshi Tek Chand just showed me one of the laws of the Government of Madras which says that in a situation like this the Madras Legislature has in its wisdom sought to impose a restriction on the powers of the Executive that they must give the detainee the grounds for which he is detained and ask him his explanation of the same. When Dr. Ambedkar moved it he. said probably this power may be given to that Board. My submission is I do not want to stand on formalities. I want in our Constitution we must place it that every person who has been detained shall be given an opportunity before a tribunal to explain his conduct and- evidence against him and know the sources and the subject matter of evidence against him. He may be able to explain his conduct. I beg that this clause should be considered from this point of view. I want that this Board may be given the power of summary enquiry and examination of the detainee.

Now with regard to the ultimate period my humble submission is that in India the anticipation of life is said to be only 23 years and one year is certainly not a very short period because after that if the police is not able to secure evidence within that year and place before the Court, then I would imagine the evidence on which he is sought to be retained is not worth the paper on which it is written. Therefore this period may be taken to be one year.

I want these three amendments in this clause and I would be satisfied. My difficulty is if we pass these clauses as they appear in the amendment then we cannot touch this period of 3 months. This will become

absolute and we cannot say in the coming law under clause (4) that the three months may be reduced to two months. In fairness the Executive has to account for every minute of the detention of such persons. It is in the laws of every country that no police officer is authorised to keep a person detained for a moment longer than is absolutely necessary and three months even is an unconscionably long period. I would like to reduce it further, but I would not go further than two months. Therefore, so far as these provisions are, concerned, they should at least be reframed in such a way that these amendments are incorporated and 'these rights are secured to the citizens of this country.Mr. Naziruddin Ahmad: Mr. President, Sir, I beg to move:

"That in amendment No. 1 of List I (Eighth Week) for clause (1) of the proposed new article 15A, following be substituted :-

'(1) Every person arresting another in due course of law shall, at the time of the arrest or as soon as practicable thereafter, inform that person the reasons or grounds for such arrest, nor shall he be denied the right to consult a legal practitioner of his own choice."

I also move :

"That in amendment No. 1 of List I (Eighth Week), sub-clause (b) of clause (3) of the proposed new article 15A be deleted."

I also move :

"That in amendment No. 1 of List I (Eighth Week), sub-clause (b) of clause (3) of the proposed new article 15A be deleted."

Shri Mahavir Tyagi (United Provinces: General) : Then, with what will the Member connect the word "nor" occurring there ?

Mr. Naziruddin Ahmad: It is not bad English, it is just good idiom. If it does not sound well to the musical ears of Mr. Tyagi, we may leave it to the Drafting Committee to cure it. Now, Sir, I do not wish to go over the general ground so ably and elaborately covered by my honourable Friend, Pandit Thakur Das Bhargava. He speaks with unique authority and experience and he speaks with the fervour of a real patriot and he has had ample experience as a criminal lawyer, of the vagaries of the police. And he is now not a practising lawyer and therefore he looks on these questions with considerable amount of knowledge and detachment which ought to be respected in the House.

I shall confine myself to the three amendments which I have just moved. There is a difference between the original article moved and my amendment, to clause (1). In the original clause the words are that when a man is arrested, he should be informed, as soon as may be, of the grounds of such arrest. This leaves it entirely to the discretion of the man arresting another whether or not to give the arrested person the reasons or ground-, of his arrest, at once. It leaves him entirely free to give the reasons or not. He may give the reason later on, or rather invent a reason for the arrest, later on. My amendment says that the grounds and the reasons for his arrest shall be given at the time of the arrest, or as soon as practicable, thereafter. The point is that there should be no needless delay. If quickness in giving of the information is impracticable, then alone he may delay it momentarily. Even then, be must give the information as soon as possible. I shall give the House an example. It may be that a man who is to be arrested gets scent of it and runs, and the police officer chases him. In that circumstance, it would be impracticable on the part of the arresting officer just before the arrest, to give the arrested man the reasons for the arrest. He must first of. all, secure his body and must give the reason at the time, or as soon thereafter as practicable. All that I mean is that there should be no difficulty in giving the man arrested the reason for his arrest or the grounds for his arrest. The usual grounds for such arrests are that there is a credible or reasonable information against him that he has committed or is concerned with a cognizable crime or that from his demeanour or other circumstances, the officer arresting him has reasonable suspicion that be is connected with a cognizable crime or he is about to commit

such a crime. These are the general nature of the circumstances in which an arrest is effected. Other circumstances are there is a warrant or summons against him or there is an order,by an appropriate authority for his arrest. These are circumstances which it is easy for the police officer to explain, though not immediately before the arrest or at the time of making the arrest, at least immediately after that.

The need for such a provision is this. Although there are similar provisions in the Criminal Procedure Code, we must insert fool-proof provisions in the Constitution so as to make it impossible for a Legislature to change those salutary provisions. Therefore it is very necessary that the Constitution should be particularly careful about limiting the authority of the police in effecting arrests. There is nothing lost, but much gained by telling the accused immediately after the arrest or at the time of arrest the reasons for his arrest.

With regard to the other amendment, I seek to delete sub-clause (b) of clause (3) and of course the proviso to clause (3) which is connected therewith. Sub-clause (b) is to this effect-that nothing in this article shall apply to any person who is arrested under any law providing for preventive detention. Sir, I fail to see the necessity for this. If a man is to be detained, as a preventive measure, there is nothing lost, there would be no danger, nothing inconvenient in just letting the man know that he is being arrested for preventive purposes under, the orders of a Magistrate or the orders of a superior officer or that there are such and such reasons against him. In fact, it is very necessary that a man arrested should be given the reasons for his arrest. And the obvious necessity for this is that unless the police officer is bound to give him the in-formation at once, he may make indiscriminate arrests as is often done. If he can arrest a person without any justifiable reason, he will then be free to invent some reasons later on.

With regard to proviso to clause (3), there are a large number of elaborate provisions and I submit that they are going into too much details of administration. As, to what should be done for a man who is under preventive detention should be left to the Legislature. If we go too much into details, the result of that would be that cases which we do not provide for would be rather doubtful. In these circumstances, I submit that these amendments which I have proposed should be attended to and if thought proper, their substance may be incorporated in the article.

Shrimati Purnima Banerji (United Provinces : General) : Sir, I move:

"That in amendment No. 1 of List I (Eighth Week), in clause (1) of the proposed new article 15A. after the words as soon as may be' the words 'being not later than fifteen days' be inserted."

I further move:

"That in amendment No. 1 of List I (Eighth Week), in sub-clause (a) of the proviso to clause (3) of the proposed new article 15A, after the words 'a High Court has' the words 'after hearing the person detained' be inserted."

I further move:

"That in amendment No. 1 of List I (Eighth Week), in sub-clause (a) of the proviso to clause (3) of the proposed new article 15A, after the words 'such detention' the words 'but so that the person shall in no event be detained for more than six months' be added.'

I also move :

"That in amendment No. 1 of List I (Eighth Week). the following proviso be added to clause (4) of the proposed new article 15A :-

'Provided that if the earning member of a family is. so detained his direct dependents shall be paid maintenance allowance."' Sir, the article with which we are dealing at the present moment is a very serious one as it takes away some of the liberties granted by article 15 as fundamental rights and provides for arrests of persons and even detention of persons without trial I am sure I am voicing the views of most of my colleagues here that any form of detention of persons without trial is obnoxious to the whole idea of democracy and to our whole way of

thinking. Granting that we visualize a situation in which it may become necessary and occasions may arise, when powers of detention may have to be used and exercised by a particular Government : Clause (1) says that if a person has been arrested he shall soon after that be told the reason of his arrest and clause (2) says that after twenty-four hours be shall be placed before a Magistrate. We are not quite sure as to what is the length of time which will be considered suitable for a person to be told why he is arrested. And if he is placed before a Magistrate, does it presume and presuppose that before he is placed before a magistrate his charges will be given to him ? Having our own experiences in our own short political lives and careers of what it is to be detained and on what laws one is detained, we feel that in this clause a period should be specified; that is, if a person is arrested and is placed before a magistrate he should be given the charges for which he has been arrested within fifteen days at the most if his presentation in twenty-four hours before a magistrate does not involve such charge being framed within twenty-four hours.

Further it has been said that any detenu who has been put into jail shall be detained for three months till an Advisory Board decides whether he should be detained for a longer period. We feel that the detenu should be permitted to appear before this Advisory Board in person and state his case in full. We know the process how the person is detained. If a person is considered undesirable, the local Magistrates or the local authorities leave it to their subordinates to handle the situation and even to decide upon the situation, Then it happens that people in these situations have no manner or measure of relief because they are simply detained and not allowed to appear before any court and not told for the time being why they are being detained. Therefore we do feel that after being detained a detenu should have the right to appear before the Advisory Board in person before he is condemned or his detention is upheld. No facts regarding the detenu should ordinarily be withheld from the Advisory Board.

Thirdly, I have moved another amendment by which I say that if the Advisory Board should consider that such a person should be detained,' in no case should that period exceed six months. I am sure that within that period if sufficient evidence is found against the accused the proper course would be that he should be placed before a proper court or he should be released. Continuous detention from month to month without a person getting a chance of appearing, or considering himself, sufficiently defended, before a properly constituted Board is highly arbitrary.

Fourthly, whereas in our Constitution many provisions have been made as to how much salary one should draw, what allowance members of the House shall get, what shall be each one's position and status, if a person is detained in prison and if he is an earning member of the family I do earnestly plead that he should be given a maintenance allowance. It should not be left to the arbitrary will of any one to deprive anybody of his liberty and then later on to decide, by leaving it to their sweet will, as to how his dependents shall live and maintain themselves.

With these words I commend my amendments to the House.Dr. P. S. Deshmukh : Sir, there is more than one amendment standing in my name. I need not move amendment No. 103, but I would like to move Nos. 107 and 110.

I move:

"That in amendment No. 1 of List I (Eighth Week), for clause (2) of the proposed new article 15A, the following be substituted -

'(2) Every person who is arrested shall be produced before the nearest magistrate within twenty-four hours and no such person shall be detained in custody longer than twenty-four hours without the authority of a magistrate"'

I further move :

"That in amendment No. 1 of List I (Eighth Week), clause (3) of the proposed new article 15A be deleted."

Sir, I would like to offer some observations of a general nature on

this article. I do not share the vehemence which has actuated my honourable Friend, Pandit Thakur Das Bhargava, although the grounds that he has stated in the House really incline one to take extreme views. As has been remarked by the Honourable, Dr. Ambedkar himself, he had really anticipated the argument that there is nothing new in this article and that most of these provisions were really covered by those which are in existence in the Criminal Procedure Code. His point was to a certain extent elaborated by my honourable Friend, Pandit Thakur Das Bhargava, and it was pointed out that if this article was passed in the shape in which it has been placed before this House the situation would be worse than it is at present and there would be no improvement.

In addition to the sections which have been referred to by my Friend, Pandit Thakur Das Bhargava from the Criminal Procedure Code I would like to refer to section 81 also. He has referred to section 61 where it has been laid down that

"No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable. and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court."

So, the period of the detention; not to exceed beyond twenty-four hours, is already provided for in the Criminal Procedure Code. In addition to that we have got section 81, which is as follows:--

"The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 76 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person.' In addition to these there is section 167 to which a reference has already been made by my friend and that lays down the procedure when the investigation cannot be completed in twenty-four hours and a maximum period of fifteen days is allowed there. In addition to all these we have got the rights of the nature of habeas corpus which have been provided in section 460 and 461.

So, on comparing the provisions that exist in this Code of Criminal Procedure passed as early as 1898 with the provisions which we are seeking to make now, I was struck that a person like the Honourable Dr. Ambedkar could find anything new in it and these provisions which existed had been respected till we came into power more scrupulously than they have been of recent days. They were quite sufficient to protect the liberties of the people of this country I do not think. it can be said that there were very many cases in which these provisions in the Criminal Procedure Code were disrespected or violated. But the reason why we feel, the necessity of something being stated in the Constitution itself is, a reflection of the present day events, of what is happening,and the administration of law and justice in the Provinces, and probably through the Ordinances that we have promulgated and the legislations that we have passed in the Centre also.

So, the apprehension that the liberty of persons living in India will not be safe is not really based on the inadequacy of provisions existing in the Criminal Procedure Code. It arises from the fact that the provisions, which we had respected far more before, are not being respected today. I admit the fact that at the present moment we are not respecting the provisions which exist because there are many people who feel that the liberties or the rights given by the Code of Criminal Procedure or the penal laws of India are not such as can be enjoyed by people after freedom. I am quoting no less a person than Mr. K. M. Munshi who categorically stated in the Legislative Assembly that this Code of Criminal Procedure is out of date because people have got into the habit of committing offences and this Code which gives more liberties cannot be worked and is leading to many difficulties so far as the

administration is concerned.

If that is the point of view, if that is the attitude, then article 15A cannot be much of a remedy. The present situation is certainly most obnoxious. We know of instances in every Province where people's liberties are taken away. I will give a most poignant instance which should make every Member of the House sit up,and think. Two M.L.As. who were in Congress for eighteen years, who were elected on the Congress ticket, were detained by an order of the Bombay Government which is a Congress Government. One of them was released after a period of eleven months without being told at any time what the charges against him were, without there being any trial, without conviction; when his health was about to break down the Government was pleased to release him. The second M.L.A. is still in jail; he has not been tried, he has never been told what the allegation against him is, what offence he has committed; and to add insult to injury he has been told that because he has not attended the Legislative Assembly for a certain minimum period at laid down by the law, he ceases to be an M.L.A. of that Province. A person has been prevented from attending the Assembly because of an act of the Government and that has been made as a ground for ousting him from the membership of the Legislative Assembly. That I think is the height of disrespect for law. If that is the respect for law that we have, if that is the sort of administration that is going on in the Provinces and we are not to look into it or question their propriety, I do not think any provision in the Fundamental Rights would be of any use to us.

If you want to prevent this sort of thing happening, you will have to' go ,much farther than you are prepared to go in this article. This article can be no remedy; it is a mere repetition of what exists in the Code of Criminal Procedure and if you are not prepared to respect that Code I am sure there will not be much respect given to this provision either. As was pointed out by my Friend, Pandit Thakur Das Bhargava you are going to put in obstacles in the way of Parliament in enlarging the rights of the individuals; by the inclusion of sub-clause (3) you are going to lay down a procedure for all cases of preventive detention. If tomorrow the Legislature of a State or even the Parliament wishes to deal with the preventive detenus in a more liberal manner, they will be prevented from doing so by the fact that there is a provision in the Constitution which is of a fundamental nature and which cannot be altered by the Parliament. Therefore , this provision is absolutely useless. It does not protect the individual in any way to any greater extent than does the Code of Criminal Procedure. ifyou think that the Code of Criminal Procedure ought to be respected by the Provinces or by any individual who goes against it, there shall be some provision by which this evil can be prevented. But this is not the way in which it can be done. That is my humble opinion.

At any rate, if this article must be there, I have given so far as clause (2), is concerned my shorter draft of it. Of course, it is only in the nature of a drafting amendment, but I would like to support my Friend Mr. Naziruddin Ahmad and commend the omission of at least sub-paragraph (b) of clause (3) of this article, that is to say, the provision which will fetter the discretion of the future Parliament so far' as laying down the procedure for the release of the preventive detenus is concerned. This provision would be curtailing the rights of the individual and not enlarging them and I for one agree that there is much to be done so far as this abuse of law is concerned. My Friend Pandit Thakur Das Bhargava admitted that this autocracy is in our blood and it is showing signs everywhere. There have been shooting cases, there have been lathi charges and there has been no attempt whatsoever to investigate into the causes to look into the grievances of the people. The rule of unlawfulness, the want of the rule of law, is so rampant in the whole of India that it is

likely to recoil upon the heads of all of us one of these days. The people are. getting tired, and if you feel that this Government is not popular there are very many reasons for that, but unfortunately nobody is paying any attention to it. If this is the way in which we want to pay attention to these facts,- then I would beg of my Honourable Friend Dr. Ambedkar to provide a remedy which Will be a real remedy and not something which will be merely taking away what exists. In fact, if there is not going to be any stringent provision, I would be more content to leave the thing as it is, under article 15. It would be much better not to have this article 15A at all than have it in this particular shape.

I appeal to you, Sir, that the situation is grave; our respect for law is certainly decreasing. We are ruling our people in a manner much less generous than the aliens did; if these rights that were conferred by the alien rulers upon the people of India as early as 1898, which continued though with very many violations throughout this period of fifty years, are not at all respected, if you want to respect them, if you want to safeguard the freedom of the people and their liberty, there should be a more radical provision in the Constitution than what has been proposed.

Shri H. V. Kamath (C.P. & Berar : General): Mr. President, it was refreshing to hear Dr. Amedkar make a confession of faith. He expressed his dissatisfaction with article IS as adopted by this Assembly. and said that he was trying through this new article 15A to undo the harm that might accrue from the operation of article 15 as it stands. He commended this new article to the House in accordance with the age-old maxim

"Sarvanashe samapanne

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Thursday, the 15th September 1949

Ardham tyajati panditah". I wish, Sir, we,could accept this new article in this spirit, but I feel, not being a pandit myself in name or otherwise, that we are giving up more than half. If it was really half, ardham tyajati,. I would not have minded it, but in an attempt to, salvage what has been lost we are giving up much more than half.That is why I have tabled my amendments whose purpose is to salvage as much as possible and undo the harm that has been done by the, adoption of article 15. If the House would refer to article 15, as adopted, my honourable colleagues-will see that the reference there is to procedure established by law. Once having adopted this article in this form, I see no reason why the law according to which a person could be deprived of his life and liberty could not have been safely left to the future Parliament. Why by introducing the new article 15A do we seek to fetter the future Parliament of our country ? it is due, I fear, to a lack of faith in our future Parliament. I would not say that the House, but the Drafting Committee, is afraid that the future Parliament may not act wisely. I am sorry if the Drafting Committee is motivated by such a fear. This whole article detailing the law and the procedure under which a person can be deprived of his liberty could have been safely left to the future Parliament to lay down and to provide for. This has been an unnecessary intrusion into our Constitution and it would have been quite adequate for our purpose to mention in article 15 that life and liberty will be sacrosanct, except under procedure established by law, and that law could have been left for Parliament to provide and regulate.

Coming, Sir., to my amendments, I shall move them one by one. First, I shall take amendment No. 104, List III, Eighth Week. I move:

"That in amendment No. 1 of List I (Eighth Week), in clause (1) of the proposed new article 15A, after the word 'magistrate' Occurring at the end, the words 'who shall afford days following his arrest' be substituted."

It is a well known fact, that the police or other authorities or persons arresting or detaining people are not always actuated by the justest and the fairest of motives. As one who has spent a few years in the administrative field-in the administration of a district-I am well aware myself how the police arrest people for reasons wholly unconnected with security or order and sometimes merely with a view to paying off old scores or wreaking private vengeance. In order to obviate or at least mitigate the evils or the harm that might accrue from unjust arrest of people by the police or other authorities I wish to provide through this amendment specifically that the person arrested shall be informed of the grounds of his arrest. within seven days following his arrest. The words used in this article moved by Dr. Ambedkar are "as soon as may be". I would be happy if the person is informed of. the grounds even at the, time of his arrest.

The Honourable Dr. B. R. Ambedkar: That is the intention. You are worsening the position by your amendment.

Shri H. V. Kamath: Why not then make it specific? I would welcome the substitution of the words "as soon as-, may be" by the word "immediately". My Friend, Shrimati Purnima Banerjee, has also moved an amendment to the same article, where she wishes to substitute the words "as soon as may be" by " not less than fifteen days". I think fifteen days is far too long a period. I think twenty-four hours would be the best. In any case if there is any hitch in informing the arrestee of the grounds of his arrest, I think in no case should it exceed more than a week.

Coming, Sir, to the next amendment (No. 108), I beg to move:

"That in amendment No. 1 of List I (Eighth Week), after clause (2) of the proposed article 15A, after the word magistrate' occurring at the end. the words 'who shall afford such person an opportunity of being heard' be added."

The Honourable Dr. B. R. Ambedkar : I must tell my honourable Friend Mr. Kamath that he is worsening the position. Our intention is that the word,,; as soon as possible" really mean immediately after arrest if not beforearrest. Clause (2) says that every person who is arrested and detained in custody shall be produced before the-nearest magistrate within a period of twenty four hours of such arrest. No magistrate can exercise his authority in permitting longer detention unless he knows the charges on which a man has been detained.

Shri H. V. Kamath : I know a little of the Criminal Procedure. I have known of cases where magistrates have remanded persons for fifteen days at a stretch without the police filing a chalan or charge sheet before him. I know of magistrates who have remanded persons without caring to go into the prima facie merits of the case. Another thing that Dr. Ambedkar said was that the words "as soon as may be" really means "immediately".

The Honourable Dr. B. R. Ambedkar: it means in any case within twenty four hours.

Shri H. V. Kamath: May I invite his attention to certain articles where the words "as soon as may be" have been used without any specific connotation. Take for instance article 280 which relates to the Emergency Powers of the President.

The Honourable Dr. B. R. Ambedkar : The interpretation of the meaning of the words "as soon as may be" must differ with the context.

Shri H. V. Kamath: I do not know whether Dr. Ambedkar will be always in India to interpret and argue with doubting lawyers and doubting judges as to the meaning of the words and phrases used in this Constitution. I am sorry Dr. Ambedkar will not be immortal to guide our judges and lawyers in this country. As the Constitution is being framed not for Dr. Ambedkar's life time, but for generations to come, I think we must, be specific in what we say.

The Honourable Dr. B. R. Ambedkar: You are selling your immortality very cheap

Shri H. V. Kamath: If Dr. Ambedkar admits that in using the phrase "as however that Dr. Ambedkar presumes he will be immortal.

The Honourable Dr. B. R. Ambedkar : You might admit you have made a mistake in tabling this amendment.

Shri H. V. Kamath: If Dr. Ambedkar admits that in using the phrase "as soon as may be" he has erred, I would not say more.. He is standing on false prestige and showing obstinacy not worthy of him.

Coming to my amendment No. 108 I am glad to find that Shrimati Purnima Banerjee has also one on the same lines. Both these are to the effect that the advisory board shall decide every case after giving an opportunity to the arrestee or the detainee of being heard and that no case shall be decided by the advisory board without hearing the person concerned. In the article as moved by Dr. Ambedkar there is no satisfaction (in this point. I want that we should specifically provide that the advisory board shall hear a person or his lawyer before it recommends detention for a period longer than three months. The advisory board is liable to err and summarily dispose of cases especially where there are many of them awaiting disposal. We must clearly lay down in this Constitution that every person arrested or detained shall have an opportunity of being heard before his detention is extended under this article.Sir, I now move amendment No. 109;

"That in amendment No. 1 of List I (Eight Week), after clause (2) of the proposed new article 15-A, the following new clause be added :-

(2a) No detained person shall be subjected to physical or mental ill-treatment'."

I think Dr. Ambedkar is not quite aware of the frequent cases of physical or mental ill-treatment to which detenus were subjected during the British regime, especially during the dark days of 1942 and immediately thereafter. In one or two prisons where I myself was detained, I personally knew of cases, where detenus in C class were beaten mercilessly and also subjected to all sorts of third-degree methods of torture. There were cases where detenus were given no cloths to wear and were made to shiver in severe cold in a state of nudity. There were other cases where the cells of detenus were flooded and the detenus had to pass hours on the, damp floor which was not merely unhealthy, but definitely in some cases induced pneumonia and other diseases which proved fatal. Sir, after all, a man is detained on suspicion only. It is but fair that our Constitution should lay down specifically that no detenu will be subjected to physical and mental ill-treatment. The latest Constitution of Western Germany-the Bonn Constitution-though it is not the last word in constitution-making, has adopted, despite the prevalent chaotic conditions fraught with danger to the State, a clause on these very lines that no detenu shall be subjected to physical . and mental ill-treatment. In the Preamble to our Constitution we have paraded the ideals of justice, liberty, equality and fraternity and have proclaimed that our Sovereign Democratic Republic will secure these to all its citizens. The Chapters close to the Preamble, Chapters III, IV etc., seem to bear the impress of the Preamble, but as we wander further and further from the Preamble and especially when we come to the end of the Constitution one gets the impression that we have forgotten the Preamble. It seems to have slipped from our memory altogether and it looks as if, in very many cases, justice is being delayed, if not denied, and liberty is being suppressed. It is a very unfortunate state of affairs that, after having proclaimed so many fundamental rights in our Constitution, we should proceed to abrogate them and in some cases even nullify them.

My next amendment is No. 113.

Mr. President: Amendments Nos. 113 and 114 have been covered by the amendment moved by Shrimati Purnima Banerjee.

Shri IL V. Kamath: My next amendment is No. 1 16. This amendment goes to the root of the, matter and in my opinion it is a vital proposition. It runs as follows .

"That in amendment No, 1 of List I (Eighth Week), after clause (4) of the proposed new article 15A, the following new clause be added :-

'(5) Notwithstanding anything contained in this article, the powers conferred on the Supreme Court and the High Courts under article 25 and article 202 of this Constitution as respects the detention of persons under this article shall not be suspended or abrogated or extinguished'."

Sir, before I speak on this motion I would ask for clarification as regards the content of the motion moved by Dr. Ambedkar. I know that the amendment as moved by me is not couched in happy language. It can be put in better language by lawyers if they accept the principle embodied in this amendment. First, in regard to clause (4) of article 15A as moved by Dr. Ambedkar which invests Parliament with power to make laws regarding preventive detention. I would like to know whether with regard to the persons detained under thelaw of preventive detention, the jurisdiction of the High Courts and the Supreme Court, especially with regard to their right to issue a writ of habeas corpus will be ousted. If it is not ousted under this article, three is no need for amendment 116. If Dr. Ambedkar would make it categorically clear that the power and jurisdiction of the High Courts and the Supreme Court in regard to these detenues, and the right of the latter to move the High Courts and the Supreme Court, for a writ of habeas corpus, it these are not abrogated by this article 15A, then I would not press my amendment. do so. The article is silent on this point. Therefore it is that I have moved this amendment before the House.

We Sir, have already adopted article 280 seeking to vest in the President extraordinary powers in the event of an emergency. According to that article, in an emergency the right of the individual to move the High Courts and the Supreme Court for the enforcement of the rights guaranteed under Part III Fundamental Rights and the powers of the courts in this regard will be suspended. I hope this is the only article in our Constitution which seeks to abrogate or extinguish the fundamental rights conferred by this Constitution,-the rights of the individual as well as the powers of the Supreme Court and the High Courts in this regard.

Dr. Ambedkar in his speech referred to the enthusiastic champions of absolute liberty. I shall make it quite clear that I am not an advocate of absolute liberty.

Mr. President : He did not talk of absolute liberty today.

Shri H. V. Kamath: He did, Sir, if I remember aright. (The Honourable Dr. Ambedkar nodded in the affirmative). He referred to absolute personal liberty. I am not a champion or advocate of absolute personal liberty. No man can have absolute personal liberty if he wants to live within the social framework. If a man leaves the world and becomes an absolute sanyasi, not in the customary sense of the term but in the truest sense,-the case is different. If any man has to live in society, his personal liberty must be restrained. Liberty without restraint will become licence. The eternal problem of governments over the world has been how to reconcile the liberty of the individual in society with the safety and security of the State, and thinkers have widely differed on this point. Some have tried to exalt the State above the individual making it a leviathan making it a veritable supreme power, which can crush the individual without any compunction. There have been other thinkers who have sought to lay down the dictum' that the State is for the individual, and not the individual for the State. We will have to strike a balance between these two : the individual for the State and the State for the individual. We should bear in mind that the State has been formed, has been brought into being by individuals acting together, acting in unison, and we must provide that the State will not unjustly, unfairly override the claims of the individual to Justice and liberty. That is what we hear, the founding fathers of our free State, have got to provide in our Constitution. If we seek to take away or abrogate or extinguish the liberal of the individual without due course, without having in mind really the security of the State, but having in mind only the lust for power of a coterie, or a few men in power, then that provision to my mind stands self condemned.

The question is whether under the article as moved by Dr. Ambedkar we have provided for those cases where persons might be arrested and detained for long periods without even a show of justice. Clause (4) of this article laysdown that Parliament will prescribe the circumstances under which and the class or classes of casts in which a person who is arrested under any law providing for preventive detention may be detained for a period longer than three, months and also the maximum period for which any such person may be so detained., Supposing Parliament takes it into its head to lay down that the period of preventive detention may last a man's life-time, what stands in the way of the Parliament doing so ? But as a safeguard there, must be the courts of justice to go into every case and decide as to whether every person detained under that law has been justly detained, has beer) fairly detained and has been detained for longer than is absolutely necessary. That is why I want to vest the High Courts and the Supreme Court with this power to examine and decide the cases of persons detained under clause (4) of this article which provides for preventive detention. If, as I said, the powers and the jurisdiction of the High Courts and the Supreme Court have not been ousted by this article, then my amendment falls. Otherwise, there is a lacuna in this article and we shall greatly endanger the liberty of the individual if we do not provide any sort of safeguard against unjust detention which has been so often done in the past by the British Government. I do not mean to say that we will do so in future, but we know that the British detained persons without just cause, often on mere suspicion, or just because some officer wanted to take revenge on somebody.

Before I close, I would only say that it looks to me as though we are framing a short-term Constitution, we are drafting a Constitution

which will last perhaps just as long as some of us hope to be in power and we do not have a long-term plan or vision. Has anybody considered how some other persons, possibly totally opposed to our ideals, to our conceptions of democracy, coming into power, might use this very Constitution against us, and suppress our rights and liberties ? This Constitution which we are framing here may act as a Boomerang, may recoil upon us and it would be then too late for us to rue the day when we made such provisions in the Constitution. I hope, Sir, and I pray to God that we shall be guided by wisdom and vision, not merely wisdom but the vision for a long-term constitution and we will see to it that the Constitution that we are framing will not last merely for a few years but will last at least our life-time, if not for a few generations. If unfortunately this outlook is not there, the old Biblical saying will come true-"Where there is no vision, the people perish."

Shri H. V. Pataskar (Bombay: General) : Mr. President, Sir, there has been considerable discussion with respect to the way in which we have already passed article 15 and with respect to the fact that we failed then to make provision for due process of law and all that discussion has gone on for a long time. I have no desire to enter into all that discussion, to reopen it and take the time of the House because the Honourable Dr. Ambedkar the Chairman of the Drafting Committee has himself stated that in view of the article 15 as it has been passed, he has thought it necessary to bring forward this article 15A as a sort of compensation: I start from that point and do not want to go behind that. Then, Sir, I have tabled some three or four amendments which are on the basis that I do not want to refer to that controversy which was carried on for a large number of hours in this House, but I want to see if I can contribute anything to the improvement of the draft as it stands in certain technical matters and only one matter which I regard as a matter of principle.

My first amendment is No. 105 : it reads as follows:--

"That in amendment No. 1 of List I (Eighth Week), in clause (1) of the Proposed new article 15A for the words as soon as may be' the words 'within twenty-four hours' be substituted". So, far as the intention is concerned, I would just claim for five minutes the attention of Dr. Ambedkar; he and I agree. He himself said while interrupting Mr. Kamath that the meaning of the words "as soon as may be" is that it must be done immediately. I agree entirely with the object in view, and say that the words "as soon as may be" should be- replaced by the words "within twenty four hours". Dr, Ambedkar says in clause (2) as follows : "Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours", and the magistrate is to authorise his detention further. In paragraph I we have mentioned that the grounds should be communicated to the person "as soon as may be". It may happen in a particular case like this--and I would like to stress this point : Supposing the Police arrest a man, they take that man under clause (2) to the magistrate within twenty-four hours and there at that time they do not communicate any reasons to this man because under paragraph (2) what is required of them is to produce the person before the magistrate within a period of twenty-four hours. The only thing that paragraph (2) is concerned with is for a different purpose, it is for the, purpose of enabling the Police Officer to get from the magistrate an authority to detain him for more than 24 hours and it has nothing to do with the question of informing that mail of the grounds on which he has to be detained. I would like to make that distinction. Paragraph 1 refers to a matter which refers directly to the person who is detained, namely that he has to be informed of the reasons on which he is to be detained and paragraph (2) only refers to the matter that he must be produced before a magistrate within 24 hours. In a given case

it may be argued that a person was produced before a magistrate within 24 hours and the magistrate authorized that he may be detained for a further period of a month or fortnight or whatever it may be, but a man may still not be informed of the reasons for a longer period than 24 hours. So far as the principle is concerned, I entirely agree with him and the object is the same. I would like to draw his attention to paragraph (2) which is intended to enable the Police Officer to get from the magistrate the authority to detain an arrested person for a longer period and paragraph (1) relates to supplying of grounds to the Person who is detained. These are two different things.-Suppose A is arrested, he is detained and within 24 hours he is taken before a magistrate and we know it would not be very difficult for any police officer to get from the magistrate an extension for a further period and the accused may not be informed, as required by para (1). Therefore I would suggest to Dr. Ambedkar--Our objects are the same and we want that all these provisions in clauses (1) and (2) are based on the Code of Criminal Procedure provisions as they exist and there is no desire to go back on them-and I would appeal that this loop-hole be closed.

Therefore, I say instead of the words "as soon as may be" the words "Within twenty-four hours" be substituted. I hope I have been able to convince the Honourable Dr. Ambedkar that clauses (1) and (2) are entirely for different purposes and in respect of different persons. The idea between "as soon as may be" and "within twenty-four hours" is the same, and Dr. Ambedkar goes further than myself and he says that the man must be immediately informed. If that be, so I would appeal to him to accept my amendment No. 105.

As regards amendment No. 106 that also is an amendment which tries to carry out what is there already in the Code of Criminal Procedure. Along with several other arguments which were raised by Pandit Thakur Das Bhargava, he has already referred to this aspect of it. Under the Code of Criminal Procedure section 61 authories a Police Officer to detain a person for 24 hours and then thereis another section 167, and in that there is a proviso which says :

'Provided that no Magistrate of the third class and no Magistrate of the second class not specially empowered in this behalf by the (Provincial Government) shall authorize detention in the custody of the Police."

As the law stands now, the power has been given to extend the period of detention only to magistrates of the first class or to such third class and second class magistrates who are specially empowered in this behalf. Now, my amendment is that in amendment No. 1 of List I (Eighth Week), in clause (.2) of the proposed new article 15A, after the word "magistrate,", wherever it occurs, the words "of the First Class" be inserted. The reasons are clear. Probably on this point also, there may be no difference in principle. If under the Criminal Procedure Code, this power is to be exercised only by a Magistrate of the First Class and by magistrates of the Second Class and Third Class where they are specially empowered, I believe that in the Constitution, when we are making a provision of the nature which Dr., Ambedkar proposes to make, then, it is necessary that such a power should be confined only to Magistrates of the First Class, for reasons which I think it is not necessary for me to go into, knowing as he does the lower magistracy, its composition, ideas of justice and ideas of jurisprudence and all that. Probably Section 167 of the Criminal Procedure Co had to be amended because it was felt unsafe to leave this power in the hands of Second and Third Class magistrates unless they were specially empowered in this behalf. I would appeal therefore that this is a very salutary thing that when we are making a provision, this power should be given only to Magistrates of the First Class.

While I was discussing this matter with a colleague of mine, he suggested that the difficulty is that Second Class and Third Class

magistrates may be available at short distances and First Class magistrates may not be available easily. To this, Sir, I would appeal. that we may exclude the time taken for producing the person before the magistrate. When we are guarding the liberty of a subject, it is better, even if a man is detained for a few days more, rather than taking him before a Third or Second Class magistrate, he should be taken before a First Class magistrate, who is expected at any rate not to be influenced so much by mere police reports or the report of an executive officer. It is from that point of view that I have given notice of this amendment No. 106 which stands in my name. I hope this amendment also will be acceptable to the Honourable Dr. Ambedkar.

Then, there is another amendment, No. 1 1 1 :

"That in amendment No. 1 of List I (Eighth Week), in sub-clause (b) of the operative part of clause (3) of the proposed new article 15A, after the word 'law' the words 'of the Union' be inserted."

Sir, this is not a formal amendment and naturally, I would like to press my views on this matter. Clause (2) of this new proposed article 15-A says : "Every person who is arrested and detained in custody shall be produced before the nearest magistrate etc., etc." Clause (1) says that he should be informed of the grounds for such arrest. Clause (3) is in the nature of a proviso, or an exception being made (to the provision already made) in clause (1) and (2). Clause (3) says : "Nothing in this article shall apply (a) to any person who for the time being is an enemy alien." There can be no point of difference so far as that provision is concerned. With respect to the next provision, the clause says : "to any person who is arrested under any law providing for preventive detention." My point is that so far as these laws for preventive, detention are concerned, there must be uniformity in the new Union to come into existence. At the present moment, we have got public safety measures passed by different provinces. There is one law in Bengal; there is another law in Madras and there is a third law in Bombay . Theydiffer in their wording, in their content and they differ in the manner in which they take away the jurisdiction of the High Courts. There have been various interpretations and naturally, therefore, there is a sort of a confusion. We have already listened to some honourable Members who have pointed out some of the defects in the existing public security measures Acts in the different provinces. I need' not dilate upon that point.

But, my point as a lawyer is that there must be uniformity in this legislation and it is the Union Government and the Union Parliament that alone should pass this legislation. I am told that it would be too late in the day now, when we have put in the Concurrent List certain matters. Unfortunately, I was not here at that time to express my view,. Even that difficulty does not exist to my mind because in the Concurrent List I am told there is made a provision for legislation with respect to public safety. and with respect to the safety of the State it has been left exclusively in the hands of the Parliament at the Centre. Even if it is in the Concurrent List, there is nothing wrong in providing here in the Constitution that so far as laws regarding preventive detention are concerned, where the question of the liberty of the individual is concerned, it is better that this exception should be made in clause (3) in respect of laws passed by the Union only. If a provincial Government has passed any law, that law must be in conformity with the provisions that we are making in article 15A and it must be within the limits which are now being presented so far as such legislation regarding arrest and detention of persons is concerned.

Therefore, I think, it is just and proper, it is in the interests of the administration of the country, it is in the interests of the reputation of our people as a whole that we have one uniform law so far as this question of restricting the liberty of a person is concerned. It is no good of

having different provincial laws; ultimately, they react upon the whole country upon the reputation even of the Central Government whether the law are passed by this provincial Government or that. Therefore, I say this is an amendment of substance which I would like the honourable Members of the Drafting Committee to seriously consider. It is not my object to go back or blame this side or that. I know, if due process of law has not been accepted, it Is not the fault of Dr. Ambedkar is it was hinted by some other speaker; it is the fault of all of us. I deplore, more than any one else that we have riot done the right thing. Still, I say it is no good blaming them or charging them with this and that. The defect is that there is scant regard given in this House whenever measures of such importance come forward for reasons which, I would not like to go into.

Therefore, I would appeal to the Drafting Committee that it is better in the interests of the Central Government. it is better in the interests of the nation that we have one uniform law throughout the land with respect to this unwholesome and unpopular matter of detaining people with out trial. I learn on good reliable authority that even foreign countries we are being blamed for the way in which some of these provisions are being carried out. Is it not desirable therefore that we have one uniform legislation ? We have got our freedom newly. People have not learn to behave democratically and there are so many actions which are beyond control and resort has to be had to detention without trial. I would submit, let us not be warped by what is happening in the present, let us be guided by the wholesome principles which should prevail and if at all this thing is to be done, that should be done by the Central Parliament which may take a more dispassionate view rather than by the provincial Governments.Another drawback is that whenever power is given to any State or province to pass such a legislation, naturally, the human tendency is to go along the easiest line. If we anticipate some trouble somewhere for the ordinary process of law, which is believed to be cumbersome, the tendency is to curtail the liberty of the subject and to pass legislation which would prevent it. As a matter of fact, I find that that process, that method has not succeeded. On the contrary, it is bringing many of us into unpopularity. Because, as soon as a man is detained without trial under the Public Safety measures, he is exasperated, and his supporters get a handle. Therefore, I think it is best that if such measures are necessary, they should be uniform and they should be passed by the Central authority where representatives of all the States meet and where they can take a more dispassionate view rather than in the Provincial Governments. Therefore, Sir, I commend this amendment.

There is only one little point. 'Probably this was also intended by the Drafting Committee; as is apparent from what they have mentioned in para (4). Otherwise, it would not have been there. In paragraph (4) they say :

"Parliament may by law prescribe the circumstances under which and the class or classes of cases in which a person who is arrested. under any law providing for preventive detention may- be detained for a period longer than three months........ etc."

What is contemplated in clause (4) is-

"Parliament may by law prescribe the circumstances under which and the class or classes of cases in which a person who is arrested under any law providing for preventive detention may be detained for a period longer than three months and also the maximum period for which any such person may be so detained."

My amendment is that the exceptions should only apply to a person who is arrested under any law of the Union providing for preventive detention. I hope this amendment also will be, acceptable to the Drafting Committee.

My next amendment is No. 112

"That in amendment No. 1 of List I (Eighth Week) in sub-clause (a) of the proviso to clause (3) of the proposed new article 15A, the words 'or are

qualified to be appointed as' be deleted."

Now clause (3) in its latter portion makes provision for an Advisory Board because' it is thought that when we are trying to detain persons without trial their cases should be considered by some independent authority, so that there will be some sanction for the executive action by which the liberty of the individual has been taken away. We have been told of instances where people have to be detained for long periods. Therefore it has been wisely decided that this should be left at least after three months not to the discretion of the executive, but the matter should be brought before a Board. Therefore this is a wholesome provision. My amendment is that I do not want the words-'or are qualified to be appointed as.' The fundamental idea underlying the Constitution of this Board is that the matter should go before a judicial tribunal or before any authority which is capable of judiciously thinking, which has got either the experience or is at present concerned with administration of justice. But to make the provision for are qualified to be appointed as is dangerous. I can understand that this Board should consist of some High Court Judges at present working : I can understand if it should consist of some persons who have been High Court Judges and who therefore can take a judicious view of the question when it is brought before them.

Shri T. T. Krishnamachari (Madras: General): Will the honourable Member prevent a person like himself being appointed a member of the Advisory Board ?Shri H. V. Pataskar: Yes. Once you expand the scope of persons that can be appointed, it is dangerous. I expect the people will be appointed by the Executive and it will give a loophole in their hands-not that it is fair that I should charge that the present Executive would be unfair-but the question remains that if a loophole is kept whereby somebody who might in future be in charge of Government might take advantage of it and cram the Board with persons who are not fit enough for the purpose. Because a man is a graduate in law according to the provisions at present he can be appointed as High Court Judge and therefore he can be appointed to this Board. If we leave this loophole it may be abused. We can get people who are either Judges or who had worked as Judges. Of course there may be some eminent persons who are not on the Bench or who have not been on the Bench. If this loophole is kept it will enable an unscruplous executive to nominate persons who may be their own men. We have so many High Courts Judge-, and I am sure that a person who has acted in that position is likely to be more independent and fair than somebody who is unconnected. I need not dilate on this. There may be even better persons outside the High Courts but it is desirable, that it should consist of persons who have worked as Judges. It is from that point of view that I have moved amendment No. 112.

To sum up, I would appeal that I have desisted as far as possible from reopening that old controversy about due process of law. I am happy that Dr. Ambedkar and the Drafting Committee have thought fit to make amends or as described by him, to compensate regarding what has been lost in the present article 15A. I have no quarrel with the Drafting Committee but the objective with which they have brought forward this amendment should be carried out in a more satisfactory manner in order that whatever we have lost by 15 may to some extent be gained by 15A in a manner to allay the fears of those who unfortunately have at the present moment to suffer on account of several other measures which are there.

I therefore commend that so far as 105 and 106 are concerned, there is absolutely no difference. between me and the Drafting, Committee regarding the objective. Regarding 105 there is no difference. Regarding 106 it is consistent with the present provision of the Criminal

Procedure Code and I do not think there is :any desire to go behind those provisions in the Cr. P.C. Looking to 106, I think it should be confined only to first

class magistrates. It will be unsafe to rely upon the authority given to second class magistrates. We have not abolished honorary Magistrates. On the contrary I find there is a desire to perpetuate them for reasons into which I need not go while discussing this matter. Therefore it is better to follow the principle which has been followed in the present Cr. P.C. and leave this matter only in the hands of First Class Magistrates so that there may be some security No. 111 says there must be uniformity in legislation in respect of such matters. In spite of the fact that this is in the Concurrent List there is nothing to prevent us from saying that exception shall apply only in cases of persons arrested and detained under any law passed by the, Union. I hope my reasons will appeal to the Drafting Committee.

No. 112 is meant only for ensuring a sort of a feeling in the public that what we are doing is that we are trying to do our best consistent with the present circumstances which requires such action to be taken, to do our utmost to see that justice is done and no injustice is done and we are giving fair opportunities to those who have or are to be unfortunately detained.I therefore commend my amendments to the acceptance of the Drafting Committee and the House.

Shri R. K. Sidhwa (C. P. & Berar: General): Mr. President, I move:-

"That in amendment No. 1 of List I (Eighth Week), at the end of clause (3) of the proposed new article 15A, the following new proviso be added :

'Provided that in the case of any such person so recommended for detention as stated in sub-clause (a) of clause (3), the total period of his detention shall not extend beyond nine months provided the Advisory Board has in its possession direct and ample evidence that such person is a source of continuous danger to the State and the society'."

While going through this article I wanted to know whether it gives any kind of concession or facilities to the detenus or it stiffens the present provisions of the laws provided in the Criminal Procedure Code or the Indian Penal Code.

I think, Sir, that this article now proposed does not give any kind of concession or facility to the detenus. I do feet that while the present laws are not stiffened, there is nothing in this article which should find a place in the Constitution. In a matter like this, the laws must be flexible so that according to the times, the laws may be framed according to the conditions prevailing in the country. We have, under the existing conditions to consider the state of affairs, namely peace and tranquility and law and order, and from that point of view we cannot bind down the Constitution with rigid laws which may not be really desirable during the time when the peace of the country is in danger. Sir, I find that clauses (1) and (2) are reproductions of the Criminal Procedure Code, as has been stated by many honourable Members here. Clause (3) provides for the Advisory Board. Such advisory board already exists and it may exist 'in the future also. In the past the detenus were asked to give explanations, if they have any, and the Advisory Board, comprising of High Court Judges used to give their opinions to the respective governments. There is nothing new in this article even as far as the provision of the Advisory Board is concerned.

And clause (4) says that despite what is stated therein, Parliament may make laws and the period of three months' detention may be increased. My amendment says that when an Advisory Board is appointed, it should be seen that the aggregate, continuous detention of a detenu is not more than nine months. If it exceeds this period, then there should be definite evidence before the Advisory Board that the person detained is a danger to society, that he is a pest to society and that he is out to destroy our freedom. I am certainly agreeable to making any kind of law for dealing with a person who is out to destroy our well-deserved freedom by violent methods. He should have, from my point of view, no quarter or no kind of protection. I am quite clear

about that point. At the same time, I must say that persons detained on suspicion should be given the fullest protection, and from that point of view, I do not :find in this article any provision for that purpose. On the contrary, I find,from all sources his hands have been tied down. We know, Sir, during the British regime, detenus were put into prisons and the then legislature made law, that the maximum period should not be more than on year, which subsequently was enhanced to two years. In this article no maximum period is laid-down and a person' can be detained for an indefinite period. The Advisory Board may say that the detention should be continued. Today what happens is this. The detenu is asked whether he has to say anything against his detention. That is all. And on a statement by the accused, with C.I.D. report the judges give their opinion. My own feeling is that whatever the charges way be, whatever the evidence may be against the detenu, they should be supplied to himso that he may make a statement as to whether the charges are correct or not. Then it is for the judges to go into the matter. But it is not proper to give exports decisions by the judges on a mere statement from the C.I.D. and the detenu. He will certainly ask you, "For what purpose do you detain me' Please let me know the charge under which you detain me. You ask me for an explanation. I say, I am not guilty of anything, and so please release me." And the judges, on the other hand, say "There are good reasons for detaining you and so you must be detained for an indefinite period. That is not fair. I do not find any improvement made in this article. I do realise the conditions existing at present in the country, and for that purpose there should be some specific mention. But the whole thing should not be left to the discretion of the judges. I feel that, the charges for detention should be made public. The Advisory Board should say that such and such person has been detained because he is a danger to society and he is out to destroy the freedom of the country. By this method the confidence of the people will be gained. They will come to know that such and such a person deserves to be detained for an indefinite period. It may be that for certain purposes and in certain cases you may have to keep certain information secret.- But in the case of detention of such persons, you must make the grounds public. Otherwise the people will begin to have many doubts and suspicions as to why such and such person is detained.

Sir, from that point of view, my amendment makes the position clear and says that a man should not be detained for more than nine months, and if the detention is to be continued, then there should be explicit evidence against him, that he is a dangerous and violent person, that he is a danger to society; this should be made public. It should be known to the public, that that is the opinion of the judges, and they have got ample evidence to that effect. If such an amendment is made, then it can be said that this article is justified. Article 15 gives liberty. It says that a person shall have liberty to do anything, subject to the laws of the land. That is quite sufficient. He has not absolute liberty, but there are many laws of the land and he would be subjected to them. It is not that I state that every person should have absolute freedom. His liberty must be restricted, according to the law of the land. But at the same time, when a person is detained, I find article 15A gives no concession or facility to him. On the contrary, I must say, my feeling is it ties down his hands You tie him down under the Constitution by laying down all sorts of laws.

Therefore, there is no justification, in my opinion for providing article 15A in the Constitution. Parliament is there and Parliament makes the law and Parliament will see what are the conditions in the country and what is the state of affairs from time to time and make laws. But why do you put down such a clause in the Constitution ? It may become harmful to the State if you provide such

an article in the Constitution. You may require something very deterrent. But why do you want to put it in the Constitution ? Why not leave it to Parliament. The person detained may be quite innocent. After all, the machinery of the State is composed of officials and we know the mind of the officials. Officials, after all, are officials. They have a particular line to follow and from that point of view it is very likely that even under a democratic government, most of the laws would be 'abused. Therefore, under the existing circumstances, a detenu, if be is detained on mere suspicion, should be properly protected . That is my point. I have no sympathy, as I have said, and I repeat it, for the man is out to destroy our freedom. He must haveno quarter. I again repeat that, and from that point of view, and for that purpose if you want to add to the article any stringent law, I am with the Drafting Committee; but not for other purposes. We know that even today for peaceful demonstrations and for such other matters persons have been detained by officials, and then subsequently the Ministers have realised that it is not a wise course and they have been released. As I said, no improvement has been made in this article. After all, when you make a provision, when you provide an article, some concession or some liberty is given to the person, and for that purpose articles are provided.

Mr. President : You are repeating yourself.

Shri R. K. Sidhwa: Therefore, Sir, my object in bringing this amendment is what I have already state[]. I commend my amendment for the acceptance of the House.

Dr. Bakshi Tek Chand (East Punjab: General) : Sir..........

Mr. President: There is one amendment which Dr. Bakhshi Tek Chand is going to move I do not know if Members have got copies of it, but I hope he will read it out.

Dr. Bakhshi Tek Chand: Sir, I move.

"That in the proviso to clause (3) of article 15A, the following new clause be added:--

'(aa) As soon as may be after the arrest of the Person, the grounds on which he has been arrested shall be communicated to him, and he shall be informed that he may submit such explanation as he desires to make which shall be placed before the Advisory Board referred to in sub-clause (a)'."

Sir, it is a very modest amendment and I hope in article 15A, attenuated as it has been, Dr. Ambedkar will accept and incorporate it in the article. The amendment goes no further than what is provided in the Safety Acts that have been enacted by some of the Provincial Legislatures. For instance clause (3) of the Madras Maintenance of Public Order Act (1 of 1947) lays down :

"When an order in respect of any person is made by the Provincial Government under subsection (1) of section 2. etc., the Provincial Government shall communicate to the person affected by the order. so far as such communication can be made without disclosing the facts which they consider would be against the public interest to disclose, the grounds on which the order has been made against him and such other particulars as are in their opinion sufficient to enable him to make, if he wishes, a representation against the order. And such person may, within such time as may be specified by the Provincial Government. make a representation in writing to them against the order, and it shall be the duty of the Provincial Government to inform such Person of his right of making such representation and to afford him opportunity of doing so.

(2) After the receipt of the representation referred to in sub-section (1). or in case no representation is received after the expiry of the time fixed therefore. the Provincial Government shall Place before the Advisory Council constituted under subsection (3) the grounds on which the order has been made. and in case such order has been made by an authority or officer subordinate to them. the report made by him under sub-section (2) of section 2. and the representation. if any, made by the person concerned, etc.. etc."

I need not repeat the remaining sub-sections of that section. This is the

provision in the Madras Act.

Similar Provisions were to be found in the Rules made under the Defence of India Act. Many honourable Members of this House, who had been proceed against in 1942 and in the following years under the Defence of India Rules, will remember that the substance of the grounds on which they were detained were communicated to them and they were asked to make representations, if they chose to do so.Similar provisions existed even under the notorious Rowlatt Act passed in 1919, as a protest against which our revered leader, Mahatma Gandhi', started the great movement which ultimately culminated in the liberation of the country from foreign yoke.

In England under the Regulations framed under the Defence of Realm Act, both in 1914 when the first World War broke out and the Defence of Realm Act was enacted, and later again in the Regulations which were in force in 1939 when a state of grave emergency was declared and arrests or detentions began to be made in that country, similar provision existed.

As I have already stated, in Madras Act 1 of 1947 called "the Madras Maintenance of Public Order Act", similar provision has been made. In similar Acts in other Provinces, for instance in /Bombay, there is provision to the limited extent that the substance of the grounds on which a person is arrested and detained shall be communicated to him and he will be asked to submit, if he likes, an explanation. But there is no provision that his explanation will be laid before a tribunal or any other independent Board. The explanation is only for the consideration of the executive government which may, after considering it, either release him or confirm the previous order or order his detention for such longer period as it thinks proper. In the United Provinces also, while there is provision for an explanation of the person affected being taken, there is no provision for its being placed before an impartial tribunal. And in Bengal the latest Act is narrower still.

I submit this procedure is open to serious objection and it is necessary that Constitutional guarantees be provided, so that the legislatures of this country provincial or central--are precluded from enacting legislation of this kind. We should see that our legislature do not go farther than what the British Indian Government did under the Rowlatt Act or the Defence of India Act in 1942 or what was done under the Defence of Realm Act in England. That, Sir, is the, sum and substance of the amendment which I have moved.

Dr. Ambedkar, in the amended article 15A as he has introduced today, has made provision in clause (3) of the article that "an Advisory Board consisting of persons who are or have been or are qualified to be appointed as judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention". Of what value will the opinion of this tribunal be, if the explanation of the person affected is not laid before it ? It will be an exparte opinion expressed by the members of the tribunal upon such papers as may be placed before them by the executive government, which, in most cases will be based either upon police reports or reports of other officials or informers. The whole object of constituting a tribunal of three persons, who are High Court Judges or who have been High Court Judges or who are qualified to be High Court Judges, will be rendered nugatory if the explanation of the person affected is not taken and placed before it. And no explanation can be given by that person unless he is informed of the nature of the charges against him whether it was merely on suspicion or upon some solid ground that he had been arrested and was being detained. I submit that this is an elementary right which should be conceded Perhaps, this is an omission in Dr. Ambedkar's amended article, and if so, he will, I hope, supply it by accepting this amendment.

With your permission, Sir, I will now make a few general observations on article 15A as it has been introduced by Dr.

Ambedkar today, and then I shall say a few words with regard to some of the amendments which have beenplaced before the House by Pandit Thakur Das Bhargava and other' Honourable Members. I feel---and I may be pardoned for saying categorically that I consider article 15A as the most reactionary article that has been placed by the Drafting Committee before the House, and therefore I would ask the House to reject it altogether and not allow it to form a part of the Constitution. I will ask Dr. Ambedkar and I will ask Mr. Munshi and I will ask our great jurist Shri Alladi Krishnaswami Ayyar whose knowledge of constitutional law is perhaps second to none in this country, and who has contributed so much to the drafting of this Constitution, if there is any written Constitution in the word in which there is provision for detention of persons without trial in this manner in normal times. In the case of a grave emergency, as for example when the country is involved in war, there are provisions even for suspension of the fundamental rights. But apart from that, I have looked in vain in any Constitution for a provision for such detention without trial in peace times. It is not to be found even in the Japanese Constitution, which the Drafting Committee purports now to follow. That Constitution was prepared for Japan in 1946, it a time when that country having been defeated and lay prostrate under the heel of a dictator appointed by the conquering powers, the United States and the other Allied Nations.

I consider that this article, in the form in which it has now been framed instead of being a fundamental right of the citizen, is a charter to the Provincial legislature to go on enacting legislation under which persons can be arrested without trial and detained for such period as they think fit subject to a maximum period fixed by Parliament.

It does not give any fundamental right to the people. In fact it is a charter for denial of liberties, and I am surprised to find how the Members of the Drafting Committee including great lawyers, have subscribed to it. It is strange, indeed, how the Members of the Drafting

Committee have drafted from the position which they bad originally taken to the submission of the present article 15A. Sir, with your permission, I will place the history of this article before the House which will show how the Members of the Committee have come down from the high place at which they were at the beginning to the position to which they have ultimately come and which they want the House to adopt.

Our Law Minister, Dr. Ambedkar, a great lawyer, an eminent jurist, an erudite student of constitutional law as he is--what was the proposal that he submitted to the Drafting Committee before he had been appointed to the high office which he now occupies ? In 1947, soon after the Constituent Assembly met first, members were asked to submit their suggestions for the draft Constitution. A number of suggestions came. Dr. Ambedkar at that time was a private Member of this House; he had not been installed on the gaddi which he is occupying now and which, if I may say so with respect, he is so worthily occupying. Early in 1947 he submitted this note, which be circulated in the form of a book styled, "States and Minorities-What are their rights and how to secure them in the Constitution of Free India", by B. R. Ambedkar. At page 9, article 2, are his suggestions headed, "Fundamental Rights of Citizens", this article reads as follows :

"No State shall make or enforce any law or custom which shall abridge the privileges or immunities of citizens. Nor shall any State deprive any Person of life. liberty and Property without due process of law nor deny to any person within its jurisdiction equal Protection of law."

This is the suggestion which Dr. Ambedkar submitted to the Advisory Committee of the Constituent Assembly early in March 1947. That was his opinion as a private Member.Then we come to the Second stage of the consideration of this matter by the Advisory Committee of the Constituent Assembly. As you know,

the Advisory Committee on Fundamental Rights and Minorities was one of the earliest Committees appointed by the Constituent Assembly and Sardar Vallabhbhai Patel was its Chairman. The Committee consisted of a large number of Members including three of the most prominent Members of the Drafting Committee, namely Dr. Ambedkar, Mr. Munshi and Shri Alladi Krishnaswami Ayyar. This Committee submitted its report on the 23rd of April 1947 recommending the adoption of certain fundamental rights by the Constituent Assembly. In this report also this "due process of law" clause figured prominently. The report of this Committee came up for consideration before the House in April 1947, and we find from the Reports of the Committees, (First Series) issued by the Constituent Assembly office that at page 28 a List of what are called "justiciable fundamental rights." Article No. 9 at page 29 is as follows :

"'No person shall be deprived of his life or liberty without due process of law, nor shall any person be denied equality before the law within the territory of the Union." This was the considered decision of this House and the Drafting Committee was directed to draft the Constitution on these lines."

Now, what did the Drafting Committee do ? It met, considered the matter, and ultimately produced this Draft Constitution which was circulated to the Members in February 1948. There in article 15 instead of submitting a draft on the lines of the resolution of April 1947 which I have just now read, it suggested the following article :

"No person shall be deprived of his life or personal liberty, except according to Procedure established by law. Nor shall any person be denied equality before the law or the equal protection of the laws within the territories of India."

So, instead of the words "due process of law" which, as I shall presently show, have acquired a certain fixed meaning both in England and in America, as a result of the struggle for liberty against the Executive which went on there for centuries, the Drafting Committee put in the words "according to procedure established by law." There is a footnote appended to it in the Draft Constitution. The footnote says :

"The Committee is of opinion that the word "liberty' should be qualified by the insertion of the word "Personal" 'before it, or otherwise it might be construed very widely so' as to include even the freedoms already dealt with in article 13.

The Committee has also substituted the expression 'except according to procedure established by law' for the words 'without due process of law' as the former is more specific (c.f. Art. of the Japanese Constitution, 1946). The corresponding provision in the Irish Constitution runs : 'No citizen shall be deprived of his personal liberty save In accordance with law.'

Now, Sir, the reason given for the substitution of the words "according to procedure established by law" for the words "due process of law" is that the former expression is more specific and precise and are taken from the JapaneseConstitution. Well, no doubt, they are more precise in a sense. But while copying them from the Japanese Constitution the Drafting Committee has omitted some other important provisions which are to be found in that Constitution.

If I may just digress for a minute here, what does the, expression "due process of law" mean? It was for the first time introduced in England in the, year 1353 in the reign of King Edward III when a statute was passed incorporating the substance, of the great Magna Carta which King John had given to the people of England a century earlier.

Mr. President: I was not present during the discussion when article 15 was adopted, but I hope this whole question would have been discussed at great length and as a result of that discussion the article in the form in which it has found its place would have been passed.

Dr. Bakhshi Tek Chand: I won't take very long, Sir.

Mr. President: I am not objecting to your speaking. I Was only asking whether this question was not discussed at great length.

Dr.

Bakshi Tek Chand: Sir, it was discussed. But Dr. Ambedkar promised to place before the House an amended article, and he, on behalf of the Drafting Committee, has proposed the present article 15A. As I was saying in the Magna Carta the words were "no person shall be arrested, etc.. except according to the law of the land". That was the expression originally used. Later, it was incorporated in the Statute of Edward III in the words, "no person shall, be arrested without due process of-law". Centuries later when the American Colonies bad separated from England and they framed their own Constitution, in the 14th Amendment to that Constitution they put in the words :

"Nor shall any State deprive any person of his liberty or property without due process of law, nor deny to any person within its jurisdiction equal protection of the law."

Many Judges of the Supreme Court have said that this clause has been the bulwark of the liberty of the people of the United States. It has been said that there is no other single clause in the Constitution which has done so much to preserve the liberty and the rights of the people as this particular clause apparently and it was from the American Constitution that Dr. Ambedkar had copied it in his original draft which he submitted to the Advisory Committee,

There are various decisions of the courts of America. But the best exposition of it is by a great American lawyer Webster as to the meaning of the expression "due process of law", who said that "due process of law means the law which hears before it condemns; a law which proceeds upon enquiries and a law which renders judgment after trial. These are the three essentials that you will not condemn a person before hearing him; you will not proceed against hint without enquiry; you will not deliver judgment against him without trial.

Now there was great confusion in the American courts with regard to the interpretation of this phrase in regard to prop". Some Judges took the extreme view. that it protected the right of private property to the fullest extent and condemned socialistic legislation as unconstitutional. I need not go into that because that question does not concern us today.

But I do not know of any case in which there has been any confusion or conflict with, regard to the application of this phrase to personal liberty. in the context, its meaning has always been precise and clear.Let us now examine the reasons given by the Drafting Committee for substituting for this classic expression the phrase taken from the Japanese Constitution which was framed by eminent American lawyers. It has one obvious advantage. It steers clear of the expression "due process of law" so as to avoid any conflict of judicial decisions. I shall with your permission read the concerned articles.

"Article XXXI. No person shall be deprived of life or liberty, nor shall any other criminal criminal penalty be imposed, except according to procedure established by law."

This article 31 has been taken verbatim in our Draft Constitution. But in the Japanese Constitution there are other clauses, which embody the substance of the 'due process of law' clause and safeguard the rights of the subject, but which, unfortunately, find no place in our Draft Constitution. I shall read those articles:

"Article XXXIII. No person shall be apprehended except upon warrant issued by a competent judicial officer which specifies the offence with which the Person is charged, unless he is apprehended while committing a crime.

Article XXXIV. No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the Presence of his counsel.

The right of all persons to be secure in their homes. papers and effects against entries, searches and seizures shall not be impaired except upon warrant issued ,only for probable cause, and particularly

describing the place to be searched and things to be seized, or except as provided by article XXCIII.

Each search or seizure shall be made upon separate warrant issued for the purpose by a competent judicial officer.

The infliction of torture by any public officer and cruel punishments are absolutely forbidden.

Article XXXVII. In all criminal cases the accused shall enjoy the right to a speedy And public trial by an impartial tribunal.

He shall be permitted full opportunity to examine all witnesses. and he shall have the right of compulsory process for obtaining witnesses on his behalf at public expense.

At all times the accused shall have the assistance of competent counsel who shall. if the accused be unable to secure the same by his own efforts. be assigned to his use by the Government."

These are the additional provisions in the Japanese Constitution. They form one consistent, integrated whole, and incorporate the pith and substance of the phrase 'due process of law'. But what our Drafting Committee has done is to copy article XXXI only, and exclude from the Constitution of Free India ;anything corresponding to articles XXXII to XXXVII, which provide all the safeguards to ensure a fair trial, and to see that a person is not detained without being told as to what the cause of arrest is and without trial. Can it be said that this omission has been made for the sake of securing precision of expression only ?

When this clause came up for discussion before the House on 6th December 1948 an amendment was moved suggesting that the words "due process of law" be substituted for the words "according to procedure prescribed by law". The strongest supporter of this amendment at that time was our esteemed Friend Mr. Munshi. His speech on that occasion is to be found on page 851 to 853 of the proceedings of this House dated 6th December 1948, and I want to read portions from it.

Shri H. V. Kamath : Mr. President the honourable Member is awaiting your attention.Mr. President: The honourable Member may proceed.

Dr. Bakhshi Tek Chand: I will read only a few sentences from that speech. Mr. Munshi said:

"I know some honourable Members have got a feeling that in view of the emergent conditions in this country this clause, may lead Lo disastrous consequences. With great respect I have not been able to agree with this view."

"We have unfortunately in this country legislatures with large majorities facing very severe problems, and naturally, there is a tendency to Pass legislation in a hurry which give sweeping powers to the executive and the police. Now, there will be no deterrent if these legislations are not examined by a court of law. For instance I read the other day that there is going to be a legislation, or there is already a legislation, in one province in India which denies to the accused the assistance of lawyer. How is that going to be checked ? In another province I read that the certificate of report of an executive authority-mind you it is not a Secretary of a Government, but a subordinate executive--is conclusive evidence of a fact. This creates tremendous difficulties for the accused and I think, as I have submitted. there must be some agency in a democracy which strikes a balance between individual liberty and social control."

"Our emergency at the moment has perhaps led us to forget that if we do not give that scope to individual liberty, and give it the protection of the courts. we will create a. tradition which will ultimately destroy even whatever little of personal liberty which exists in this country. I therefore submit, Sir, that this amendment should be accepted."

Now, this was the position of Mr. Munshi. Why has he changed now?, I will next refer to the speech which Dr. Ambedkar himself delivered in this House on the 13th December 1948. That speech is printed on pages 999 to, 1001. I will not read the whole of it, but only three or four sentences from page 1000-

"The question of "due process" raises. in my judgment. the question of the relationship between the legislature and

the judiciary. In a federal constitution. it is always open to the judiciary to decide whether any particular law passed by the legislature is ultra vires or intra vires in reference to the powers of legislation which are granted by the Constitution to the particular legislature. If the law made by a particular legislature exceeds the, authority of the power given to it by the Constitution, such law would be ultra vires and invalid. That is the normal thing that happens in all federal constitutions."

Further he says-

"The "due process" clause, in my judgment. would give the judiciary the power to question the law made by the legislature on another ground. That ground would be whether that law is in keeping with certain fundamental principles relating to the rights of the individual. In other words. the judiciary would be endowed with the authority to question the law not merely on the ground whether it was in excess of the authority of the legislature, but also on the ground whether the law was good law. apart from the question of the powers of the legislature making the law. The law may be Perfectly good and valid so far as the authority of the legislature is concerned. But it may not be a good law, that is to say, it violates certain fundamental principles; and the judiciary could have that additional power of declaring the law invalid."

These were the views of Dr. Ambedkar in December last. Why has her changed since ? I shall not refer in detail to the speech of Shri Alladi Krishnaswami Ayyar in that debate. It was directed mainly in expounding the uncertainty of the meaning of the expression "due process of law", but he gave no substantial reasons why it should not be used in relation to 'personal liberty', as was sought to be done in the amendment.

Sir, that phrase is now sought to be substituted by the phraseology of Act XXXI of the Japanese Constitution, in article 15 of our Constitution, without the safeguards which that Constitution has incorporated in Act XXXII et seq to protect the rights of the individual. Why has not that been done ? In pursuance of the promise which Dr. Ambedkar gave at the time that he wouldagain come up with the matter before the House, he has produced this article 15-A which, if I may say so with due deference to him, is nothing but a cloak for denying the liberty of the individual. It really comes to nothing. The first two clauses of the proposed article do not go, as Pandit Thakur Das Bhargava pointed out, as far as the Criminal Procedure Code does today. The article then provides for an Advisory Board or Tribunal which will, within three months, advise the local governments as to whether the grounds on which a person is arrested are sufficient for his further detention. But in the draft placed before the House today there is no provision that the person affected will be given an opportunity of being told what the grounds for his detention are. No doubt you have Judges of the High Court on this Board, but what can the Judges do unless they hear the other side? They will only pass judgment ex parte. Therefore I submit that this provision is very defective. It is no protection at all. It is only intended to make a show that some sort of protection is given. I submit with great respect that this is not the proper way of dealing with this question.

I will now make a few more remarks with regard to some of the amendments. I do not want to carry my speech today after tomorrow. If the article is to be retained at all, the three amendments which have been suggested by the previous speakers should be accepted. First of all is the alternative amendment moved by Pandit Thakur Das Bhargava which is printed at page 4 of List I, which says that at the end of clause (2) of the proposed new article the words "and for reasons to be recorded" be added. If a man is to be arrested and remanded to custody, the Magistrate must record his reasons in writing. I do not think there can be any objection to this being incorporated in the Constitution. Then there is the other amendment by Pandit

Thakur Das Bhargava that indiscriminate arrests should not be permitted. If we are copying the Japanese Constitution, then let the provisions of article XXXV of that Constitution be also included. If the executive has to have this power of arrest and detention, then at least let the person affected have an opportunity of submitting his explanation. This is all that I have to submit on the amendment.

One word more, Sir. So far I have drawn your attention to the various Constitutions of the world, English, American, and Japanese. I will now make a reference to the Charter of Human Rights which is now being considered by the United Nations Assembly. As honourable Members are aware, to the Committee dealing with this matter, our country had also sent a delegate.

Prof. N. G. Ranga (Madras: General) : Into how much of detail are we being taken in this matter?

Mr. President: He is now completing his argument.

Prof. N. G. Ranga: He said he would complete it twenty minutes ago.

Dr. Bakhshi Tek Chand: My honourable Friend Prof Ranga who has just come from America, does not want to hear anything about the Charter of Human Rights. He is welcome to have that opinion., I shall read only two or three lines.

Sbri Mahavir Tyagi: It is quite important.

Dr. Bakhshi Tek Chand:

Article 3 provides : 'Everyone has the right to life. liberty and security of Person.Article 7.No one shall be subjected to arbitrary arrest or detention.

Article 8.In the determination of his rights and obligations and of any criminal charge against him everyone is entitled in full equality to a fair hearing by an independent and impartial tribunal.

Article 9.Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any offence on account of any act or omission which did not constitute an offence, under national or international law at the time when it was committed."

I will read nothing more. This is the substance of Fundamental Human Rights for civilized nations. But in our Constitution are we going to incorporate provisions which lay down that persons can be arrested and detained without trial for three months, then there will be a sort of make-believe examination of the case by a tribunal which will give its opinion on ex parte examination of such papers as the executive might place before it and then the person concerned can be kept in further detention for any length of time ? In some provinces it was originally six months, then it was varied to one year and then again to three years In one province they can detain indefinitely. Are you going to incorporate such provisions in the first Constitution framed by Free India; so that when people compare this Constitution with those of other countries, they will say : "Here is a country which permits its legislatures to frame laws of this kind"? Will it. I submit, not be better to omit it altogether and leave it to the good sense of future Parliament or the good sense of the various Provincial legislatures to pass such laws as they like, and not to disfigure our Constitution with a provision like Act 15A?

Shri Alladi Krishnaswami Ayyar (Madras:, General) : Mr. President, my honourable Friend Dr. Bakhshi Tek Chand has gone over the whole ground which has been travelled at length by this House when it came to a conclusion after a very full debate and after an adjournment of the House that the expression "due process" must disappear from the article for the reasons which were then considered by the House at length. I do not propose again to repeat what I have said on that occasion. I might mention that the main reason why "due process" has been omitted was that if that expression remained there, it will prevent the State from having any detention laws, any deportation laws and even any laws relating to labour regulations. Labour is essentially a problem relating to persons and I might mention in tile United States

Supreme Court, in the days when the Conservative regime dominated the U.S.A. politics, enactments restricting the hours of labour constituted a violation of the "due process of law". An American would be employed for five hours, ten hours or twenty hours and make a slave of himself and yet it was held to be interfering with due process of law if there was a restriction of the hours of labour until the United States Supreme Court put a different construction in a later decision.

After a consideration of all these points, with due regard to the whole history of the expression "due process" in the United States Supreme Court, this House deliberately came to the conclusion to drop that expression "due process" from our articles instead of leaving it to the Supreme Court judges to mould the Constitution or to read up all the decisions of the Supreme Court and adopt such decisions as appealed to them according to their conservative or radical instincts as the case may be. Therefore, I do not propose to go into that history, at this stage. I myself took some part on that occasion and it is enough for me to say it is entirely irrelevant for the purpose of the present discussion. At the same time on that occasion it was felt that there should be some guarantee for personal liberty; some essential rules of fairplayand justice should be adopted. It is because of some division of opinion and fighting over immaterial points that we were not able to insert any provisions in respect of those matters on that occasion.

The Honourable Dr. Ambedkar, who is as keen today on the problem of personal liberty as he has always been, has thought fit to bring forward this amendment and he thought that this article must find a place in the Constitution. My honourable Friend Dr. Bakhshi Tek Chand went so far as to say that he is ashamed, of being a party to the article 15A being passed. What is wrong with this article? Let us analyse. The first two clauses of the article are based upon the corresponding provisions of the criminal procedure and they are made into constitutional guarantees. The difference between that finding a place in the Criminal Procedure Code and that finding a place in a constitutional statute is that where as the Criminal Procedure Code is liable to alteration by the State Legislature or by the Central Legislature, when once it finds a place in the Constitution it cannot be changed excepting in the manner provided for the change of the Constitution. Therefore certain very important provisions which go to the fundamental principles are taken into article 15A. Therefore, I do not think any exception can be taken to, those two clauses. There are corresponding provisions in the Criminal Procedure Code and they are now transferred practically into a constitutional provision in order to prevent any change being made by any legislature in regard to those provisions because they were regarded as fundamental.

Then the next question is if you guarantee personal liberty in the Constitution either by the use of the words "due process" or "procedure" or any such thing the State will be hampered even with regard to detention and in regard to deportation. It is agreed on all hands that the security of the State is as important as the liberty of the individual. Having guaranteed personal liberty, having guaranteed that a person should not be detained or arrested for more than 24 hours, the problem necessarily had to be faced as to detention, because detention has become a necessary evil under the existing conditions of India. Even the most enthusiastic advocate of liberty says there are people in this land at the present day who are determined to undermine the Constitution and the State, and if we are to flourish and if liberty of person and property is to be secured, unless that particular evil is removed or the State is invested with sufficient power to guard against that evil there will be no guarantee even for that individual liberty of which we are all desirous. That is the object of the provision.

What do those provisions say ?

You cannot detain for more than three months unless the matter is placed before some kind of tribunal. The tribunal is to consist of people who are qualified to be judges of the High Court. Are we to say that a retired judge is eligible, but not a distinguished member of the Bar who might not have a chance of becoming a Judge of the High Court is eligible for a place in that Court ? If there is sufficient public spirit, I have no doubt members of the Bar who might have retired from the Bar or who might not have occupied the position of judges are eligible to be members of such tribunals, and it cannot be said that a person simply because he has not occupied a position of a judge is not good enough to be a member of the tribunal or to take a dispassionate view of the situation. Therefore, normally speaking, the tribunal will consist of people who were judges or people who. are fit to be judges, and people of high character. And after all, there are judges and judges, The one reason why we say that that it is better to have.judges is that they have security of tenure; they occupy a particular place in society and they are accustomed to deal with cases from a detached point of view and it is better to have these people as members of the tribunal.

You need not put an embargo on people who may take an impartial view of the question, who may be guided by principles of justice and fair play,. from being members of this tribunal, because they never happened to be Judges. I believe there is a sufficient number of people in this country who are fit to be in the tribunal other than Judges or people who are retired Judges. Imagine a man like Sir Tej Bahadur Sapru being alive and he being ineligible to be a member of the tribunal. I would have welcomed him as a member of the tribunal. The other day, Mr. Venkatarama Sastri was a member of the Board. A leading member of the Bar, who has occupied the position of Advocate General, he was a member of a Board which was constituted in Madras. He sat along with Judges who are much junior to him and possibly who could have sat under him and learnt some bit of law when they were at the Bar. Under those circumstances, we need not introduce a cast-iron provision to the effect that the members shall be only judges. There is absolutely no reason to believe that the members would not give an opportunity to the person before being satisfied that there is a case for detention if it is more than three months. Therefore, at any particular time, a person can only be detained for three months.

Beyond that time, there must be the imprimatur of this special tribunal' which will take into account all the circumstances of the case, examine all the materials placed before them and come to the conclusion whether there is a satisfactory ground or not. Normally, I have absolutely no doubt that they will give notice to the party in every case. To say that you must give notice, it might be to surrender the very principle. There are cases where it is not susceptible of exact proof, but there are materials from certain quarters which will carry conviction to any impartial mind. At the same time, these people who are concerned in subversive activities, sometimes take care to see that no sort of evidence is preserved. Therefore, it is to provide against these extreme cases this provision is made. On the other hand, if you say that in every case there shall be notice, there shall be a charge, there shall be a hearing, that there shall be examination and cross examination, there shall be counsel, then this Board may convert itself into a magistrate's court with all the paraphernalia of the magistrate's court, and it will defeat the very purpose of the article. This is the object of saying that you must have competent men with a fair sense of justice, trained in the law. It is such people that will be there in the Board. After all, it will be very difficult for a lawyer who has been a Judge to get rid of his legal mode of approach. That is the reason for having a tribunal.

Beyond that, Parliament will

intervene. Otherwise, that procedure is to be followed. There might be cases when Parliament will have to consider whether detention for more than the period referred to is called for in the interests of the State. Parliament which is elected on universal adult suffrage will have to pass, a law. There are other guarantees in the Criminal Procedure Code (other than the

Constitutional guarantees above referred to). The provisions of the Criminal Procedure Code are nowhere repealed or modified. The Constitutional guarantees constitute a minimum with which the legislature itself cannot interfere. The provisions in the criminal Procedure Code are liable to alteration by the legislature whereas this provision is not liable to alteration. Therefore, the question is which are the minimum rights that have got to be secured.I do not think my honourable Friend. Mr. Tek Chand can show any Constitution which contains all these provisions. I am quite willing to throw out a challenge to him to show any well known Constitution, which contains all these detailed provisions. I venture to say there is none. There is no known Constitution which contains such detailed provisions, transferring all these provisions of the Criminal Procedure Code into their Constitution so that they may hamper the action of the legislature, the action of the courts, which will become the battle-ground for lawyers. Therefore, the Honourable Dr. Ambedkar has taken care to put in what may be considered to be the fundamental principles into article 15A. The other guarantees are there, the guarantees under the Criminal Procedure Code. There is no intention of interfering with the provisions of the Criminal Procedure Code. Both these could be exercised side by side, the Criminal Procedure Code and the Constitutional guarantee. I thought of stating more; but I do not want to take more of the time of the House. It is better that the matter is finished as soon as possible. That is the reason why I refrain from taking more time of the House.

Shri H. V. Kamath: May I request, you, Sir, to be so good as to throw some light on the duration of this session ?

Mr. President : I have myself been considering that matter. There are certain matters which have to be held over for another session which will have to be held in October. The question is what we can dispose of now and what is to be held over for the October session. We have been considering the details and I think I shall be able to announce in the House tomorrow the details of the provisions which will have to be held over for the October session and those which we want to dispose of in this session. If we are able to get through our work quickly, we propose to finish this session by Saturday next. But, if by any chance, we axe not able to do it, we may have to o over to the next day or the day following.,

An honourable Member: The next day will be Sunday.

Mr. President: I do not know: if Members would sit on Sunday, I have no objection. Or we may sit on Monday.

Shri K. M. Munshi (Bombay: General) : We may sit' on Sunday, both morning and evening and finish it.

Pandit Lakshmi Kanta Maitra (West Bengal: General.) : The difficulty with some of us, orthodox Members is that we have got the Mahalaya ceremony which comes off on the 22nd.

Mr. President: It is not Monday.

Pandit Lakshmi Kanta Maitra: We have got to go back to our places; we may not be able to find transport later. If you can finish by Saturday, it will be helpful.

Mr. President: It is in the hands of Members. I shall try to get through the work as quickly as possible.

Shri Deshbandhu Gupta (Delhi) : Sir, when do we reassemble in October ?

Mr. President : As far as I can judge, this is not final, this is only provisional, we must begin about the 7th.The Honourable Shri Satya Narayan Sinha (Bihar: General) : Not earlier than the 10th, Sir.

Mr. President : Then there will be no time. We have a time limit on the other side. Diwali comes off on the 21st. If we have to complete these articles which will be left over, we must have sufficient time before we rise for Diwali Therefore, we have to begin the October session as early as possible. It all depends on the number of articles left over. Therefore, I said I would be able to say this with a little more definiteness tomorrow.

An honourable Member: If everybody speaks on every article, it may take two months.

Mr. President : I cannot prevent that.

We have got several time limits. We must finish the third reading at the, latest by the 18th of November. For that purpose, we are thinking of beginning the session for the Third Reading on the 7th of November, so that we may get about ten days for the Third Reading. Between the beginning of the Third Reading and the ending of the Second Reading, the Drafting Committee would naturally require some time to put the things in order, as renumbering, of the paragraphs, correcting of errors, getting the, thing printed and placing the whole Constitution in the hands of the Members in time for their consideration on the 7th of November. Therefore, it is necessary to complete the Second Reading pretty well in advance of the beginning of the Third Reading. Therefore I am suggesting that if we start, say, about the 7th October, we would be able to complete the Second Reading by about the 18th or 19th October and then we give them a fortnight for completing their revision and for printing and distributing to Members, so that we might start the Third Reading on the 7th November. These are the various dead lines which we may not cross and therefore it is necessary to fit in the whole programme within this time.

The House will now stand adjourned till Nine to-morrow.

The Assembly then adjourned till Nine of the Clock on Friday, the 16th September 1949.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Friday, the 16th September 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

(Shri Jaspat Roy Kapoor rose in his seat.)

Mr. President: Do you want to say anything?

Shri Jaspat Roy Kapoor (United Provinces: General) : Sir, I want to speak on article 15A.

Mr. President : Yes, we shall continue the discussion of article 15A. Mr. Jaspat Roy Kapoor.

Shri Ram Sahai (Madhya Bharat) : *[Sir, I would like to I-.now if you could give us an idea of the remaining programme of the House. It would have been convenient to us if you had made an announcement in this connection at the time the Assembly commenced its sitting today. I may draw your attention, to the fact that you had told us, you would be making this announcement today.]

Mr. President : *[I did not make the announcement in the beginning on account of certain difficulties.] I would request Members not to prolong the discussion, because, after all, it deals with a subject which was discussed ill the last session at great length, and we want to get through all this within today and tomorrow, if possible. If all this is discussed and finished, tomorrow there are certain other items which will come in later, namely, the Preamble and the first article.

Shri T. T. Krishnamachari (Madras: General) : The Preamble won't be taken up now, but at the end.

Mr. President: Very well. The first article will come, and we shall have also the Bill. The House now knows the amount of work which has to be gone through between today and tomorrow and if you take that into consideration, I hope the Members will curtail the discussion as much as possible so that we might finish the discussion tomorrow and end the session tomorrow,

Shri Jaspat Roy Kapoor: Sir, I assure you that, I will scrupulously respect your wishes in fact it is no pleasure to refer to article 15A; the whole article is jarring to the ear and is one more illustration of the conservatism which characterises the chapter on Fundamental Rights. 'De chapter can more appropriately be called 'Limitations on Fundamental Rights" or after the words "Fundamental Rights" we can add the words "and limitations thereon". For the emphasis seems to be not so much on rights of liberty as on restrictions and limitations thereof.

*[] Translation of Hindustani speech. I will only refer to four or five points. There are, firstly, two clause of persons who may be arrested : (1) those arrested on a specific charge, and (2) those who are to be detained, not for any specific offence, but because their detention is thought necessary in the interests of the State. With regard to the first class of persons, they are being given no new rights whatever. The article says that no person shall be arrested without the authority of a magistrate. But that right every citizen has got under the Criminal Procedure Code. It may be said that that Code can be changed by Parliament or even by the provincial legislature. But still, trusting in the good sense of the legislatures as we do, we may take it that they are not going to provide for detention, even on a specific charge, beyond 24 hours without the authority of a magistrate. Therefore, the right conceded here is one which the citizen already enjoys. It is further provided that he shall be produced after 24 hours of his arrest before a magistrate. That provision also appears in the Criminal Procedure Code. Therefore this article confers nothing that is new or guarantees nothing which any legislature would not provide for.

With regard to the second class of persons, i.e., persons who are, to be detained for security purposes, they are being given no rights worth the name in this article. Clause 3(b) provides that "Nothing in this article shall apply to any person who is arrested under any law providing for preventive detention", which means that the elementary right of not being detained beyond 24 hours except under the

authority of a magistrate is being denied to the Person detained, and he can continue to be detained for any length of time, subject of course to certain provisions of the law under which he may be detained. But that is another thing. It may be said that no preventive law would provide for the arrest and detention of a person without the authority of a magistrate. That means that you are depending on the good sense of the legislature. If so, there is no occasion for guaranteeing anything in the chapter on fundamental rights. In this chapter we must provide for certain essential fundamental rights irrespective of the fact that the legislature may or may not be reasonable. So this right of not being detained except with the authority of a magistrate is not being conceded to a person who is to be detained for security purposes.

Then, the person detained may be continued in detention for any length of time, except that if it goes beyond three months the advice of an advisory board would be necessary. Even here we find that after the board has considered his case he can continue to be detained for any length of time. That I consider to be very unfair. I think we should provide for the periodical review of such cases. I gave notice of ,in amendment to that effect but could not move it, as I was unfortunately unable to be present here when its turn came. But if it appears to be necessary to Dr. Ambedkar I think he can make a provision here to that effect. what I suggest is that the case should be reviewed every three months or even after longer intervals, so that the person detained may have the satisfaction of knowing that his case is being periodically reviewed. Otherwise :it will mean that if, after three months of detention, the Advisory Board feels that he should continue to be detained, his case will not be reviewed at all thereafter and he will be at the mercy of the executive for any number of years.

Shri Brajeshwar Prasad (Bihar : General) : Is it a fact that lie will be detained for any number of years, or will a maximum limit be prescribed by Parliament.

Shri Jaspat Roy Kapoor : It is not obligatory on Parliament to prescribe any maximum limit. Clause (4) says that Parliament may, if it so chooses,enact such a law, but it does not impose any obligation on Parliament. And besides a person detained under a law enacted by Parliament under clause (4) would not have, according to clause (3), proviso (b), the benefit of review of his case at all by the Advisory Board.

Shri Brajeshwar Prasad: If Parliament makes a law it will have to lay down a maximum limit.

Shri Jaspat Roy Kapoor: Yes, but is it obligatory on Parliament to make such a law ? And even if it does make the law, where is it prescribed that the maximum must be fixed and even if it is fixed, is any period being suggested here? Must not this Assembly suggest to Parliament for its guidance that such and such a period shall be the maximum period of detention which must be provided in the law which Parliament may make ? You are again leaving the whole thing to the good sense of Parliament. If so, why make an unnecessary show of this article 15A by saying that you are conceding certain fundamental rights, whereas, as a matter of fact, you are suggesting the extent to which the legislature can freely go to impose limitations on personal liberty ? So far as detenus are concerned, they are given no protection in this chapter and I submit that this is very hard and strikes at the very root of fundamental rights and personal liberty. The person detained may be kept in detention without the sanction of the magistrate and for any length of time and without even reason for detention being told to him. There shall be only one review of his case and there shall be no periodical review. I submit, if nothing else is conceded by the Honourable Dr. Ambedkar, at least this one thing should be conceded, namely, that the cases of such persons shall be reviewed periodically after every three months, or it may be even after six months : otherwise, once a person is detained,

and once the Advisory Board agrees to his detention for a period longer than three months, the fate of that person is virtually sealed and he is doomed. He is absolutely at the mercy of the Executive. After six months, after nine months and even after twelve months the conditions in the country may change. Something more may come to light and those changed circumstances, those new things must be placed before the Advisory Board, and the Advisory Board, in view of the changed conditions and the fresh facts coming to light and being placed before them, should be in a position to advise the Government whether continued detention for another six, nine or twelve months is necessary. This is a very simple and reasonable thing. Let not this last ray of hope which may be created in the detenus be taken away altogether. We who have had the good fortune, I should certainly say, of being detained during the various satyagraha movements, know how many of us anxiously looked forward to the expiry of the period of six months, whereafter we used to think and hope that our cases would be reviewed by the authorities and that they might consider it advisable and necessary to release some of us. Let us not forget these feelings and the experiences which we have bad, and let us not forget that though today we are in power, who knows tomorrow someone else may be in power and may be in the position in which the present detenus are So. whosoever may be detained, let him have these fundamental rights. Without even these rights being guaranteed here it is a huge joke to ask us to accept this article as even guaranteeing fundamental rights, whereas in fact it works more the other way about.

Shri M. Ananthasayanam Ayyangar (Madras: General): I would have very much liked to retain the words "due process of law" in the original article itself, but unfortunately our other friends differed and ultimately the House accepted the change of expression "procedure prescribed by law". My honourable Friend, the Chairman of the Drafting Committee himself felt that it was too wide and therefore there was not that guarantee of expression in article 15 as modified and which might not be a fundamental right, because Parliament can do whatever it likes. Therefore there is not anything like an inherent right which Parliament cannot remove. Another fundamental to be incorporated or implemented in a clause in the Constitution must be such as cannot be taken away by a provision of Parliament except under exceptional circumstances. That kind of limitation is not there in article 15 as passed. That is why the Honourable Dr Ambedkar and the Drafting Committee have thought tit to add these clauses by way of caution. It is no doubt true that these clauses find a place in the Criminal Procedure Code today but the necessity of incorporating these in the Constitution itself is this. It might be possible that what is now prevalent or what now obtains in the Code might itself be modified. As a matter of fact, many of my friends want some more restrictions to be imposed here, to prevent Parliament later on from modifying the rules and the Criminal Procedure Code in such a manner that the safeguards might be taken away. For instance, exception is taken to the words "as soon as may be". They want it to be done within 24 hours. I find there is a practical difficulty in this matter. Under section 107 of the Criminal Procedure Code, as soon as a man is arrested, he must with reasonable speed be taken before a Magistrate. It does not matter whether that Magistrate has jurisdiction over that case or not. There is that lacuna. But a Third Class Magistrate-unless a Second Class Magistrate is empowered-would not be authorised to commit or remand the prisoner into custody for a period of 15 ,days. Under the existing Criminal Procedure Code this is a defect. The man who is not in charge, who will not ultimately take the responsibility for hearing ,the case may remand to police custody for a further period of 15 days. There it is. In section 167 it is clear that the police who make an application that the accused must be further remanded to custody, must lay sufficient grounds before the Magistrate, the information that they have. the accusation against him, the charges that will be ultimately developed-all these matters have to be placed before the Magistrate to enable him to come to a conclusion as to whether it is necessary to remand the accused further for a period of 15 days. It may be possible for the police officer to give that information straightaway, in which case, the amendment asking for information within 24 hours is legitimate. But there may be cases where it may not be possible to give that information. The very object of remanding will be frustrated by giving the information straightaway within 24 hours. What is the object of remanding a man to custody ? It is to prevent him from tampering with the evidence that might be possible. In very serious cases this is a handicap. The man accused very often interferes with evidence and makes it impossible for that evidence to come about.

Under these circumstances, I have doubts in my mind as to whether it will be prudent in every case to give information to the accused within 24 hours of whatever information the police may have. There may be cases where the police may abuse that power and in their enthusiasm merely on suspicion they may arrest a person and also desire a remand to custody for a period of 15 days. Here in our own Government, in a Government where there will be a majority in favour of the popular Government, that Government may not easily allow such abuses. The balance of convenience is in favour of allowing this clause to remain as it is instead of substituting it by a period of 24 hours. It may be dangerous to give information before the evidence is ripe and can be placed before the Magistrate and the accused.

As regards the suggestion made that at the end of article 15(a)(i) the words "to consult a legal practitioner of his choice and also be defended in a court of law" be added, I agree with it. In many cases we know-as in the 1942 movement--there was more right to cross-examine witnesses.

Shri K. Kamaraj (Madras : General) : If the choice of a person for instance a Communist of the day, is a Russian lawyer, would you allow it ?Shri M. Ananthasayanam Ayyanger : A Russian lawyer is good for Russia, but a different kind of lawyer will be good for us. Let us not be prejudiced against lawyers. As a matter of fact, but for 'lawyers, this Constitution would not have come into existence. They are contributing a lot to the world. I do not want to dilate upon this. We can quarrel every day with a lawyer but you cannot get rid of him nor dispense with his services. More often than not, he is the victim of reproach and unfortunate misunderstanding. He has done yeoman service to the cause of freedom. Therefore this power or this right must be conferred by Statute. I would urge upon my honourable Friend, Dr. Ambedkar, whether the right to be defended by a lawyer and the right of crossexamining witnesses ought not to be conferred here. In cases of emergency, nothing can be done. But normally, this is what ought to be conceded to any person who is arrested.

There is an amendment which was tabled by my honourable Friend Pandit Thakur Das Bhargava that there must be a clause to say that the trial must be speedy. The present provisions in the Cr. P. C. are sufficient and hence there need not be a clause to this effect. In the nature of it the expression "speedy" is indefinite. What is speedy in one case may not be speedy in another. So such a clause is unnecessary.

I am in favour of making it obligatory that in every case where there is a punishment imposed or a sentence of punishment made there must be at least one right of appeal, because we cannot entrust the liberty of a person into the hands of only one individual. The present criminal law has been made with a view to protect property much more than a person. It is unfortunate that the previous government and those who conquered us did not value the human personality as much as they did property. That has to be changed. We are not giving the right of vote according to the property of a man, not even according to his literacy. Under the Constitution every human being is entitled to vote. Therefore every human being is entitled to be protected-at any cost : the human personality is sacred. Judging from that standpoint I would allow at least one right of appeal which should be incorporated in the Constitution itself.

As regards preventive detention my honourable Friend Dr. Bakshi Tek Chand has taken exception to the provision being made in the Constitution itself. He said that in no constitution in the world such preventive detention is provided for, meaning thereby that Parliament is not prevented from enacting a law subsequently, for the purpose of preventing the committal of any offence. It is not by virtue of this clause that Parliament is clothed with that power. We shall assume that, that power is not here. Unless you say definitely that there should be no preventive detention would it not be open to Parliament........

Pandit Thakur Das Bhargava (East Punjab : General) : According to the present section the Parliament will not be' able subsequently to enact that any person can be detained for less than three months. This gives power for three months practically to the local executive to put a man in prison without his being brought to trial. The Parliament subsequently will not be able to tamper with the period of three months. That is the difficulty.

Shri M. Ananthasayanam Ayyangar: The provision reads:

"An Advisory Board consisting of persons who are or have been or are qualified to be appointed as judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention."

From this I do not read that Parliament would not be empowered to change even the period of three months. All that it says is that it clothes the authorities with the power to detain for three months at the most. They cannot go beyond the period of three months without placing the matter before the Advisory Board. It does not speak of the Parliament's right. The main point is this. When a man is arrested his case must be placed before the Advisory Board. I believe, in spite of the wording, that Parliament has the right to say that notwithstanding this clause immediately after a man is arrested for purposes of preventive detention, his case shall go before the Board and it would be open to the Board to come to any conclusion, even to say that the man may be let off even within three months.

Shri Jaspat Roy Kapoor: Will a person detained under a law enacted under clause (4) have the benefit of a review by the Board?

Shri M. Ananthasayanam Ayyangar: Yes.

Shri Jaspat Roy Kapoor: No. He will not have that benefit.

Shri M. Ananthasayanam Ayyangar: The clause reads:

"Parliament may by law prescribe the circumstances under which and the class or classes of cases in which a person who is arrested under any law-providing for preventive detention may be detained for a period longer than three months and also the maximum period for which any such person may be so detained."

It is true that this apparently seems to apply only to cases where a man is sought to be detained beyond three months. If it is for a period below three months, whether Parliament has a right or not is not clear from this. As I read the article it is not intended to curtail the rights of Parliament. It may take away the right to get information from the police. It might be open to Parliament to empower the police not to give any such information at all. In those details Parliament's power of restricting the liberty of the citizen is taken away. Otherwise wherever an Advisory Board is appointed, whether Parliament prescribes the law or not, a man cannot be detained for more than three months unless the matter is decided by the Board. Parliament has to enact a law under what circumstances and what officer and of what rank can detain man for purposes

of preventive detention.

I find here a lacuna. It is not clear to me whether it is open to the Advisory Board to review cases from time to time, say once in three to six months. The cases of people detained in 1942 were reviewed once in six months. There is no such provision in proviso (a) as worded here. The proviso ought to be suitably amended 'so as to give the power of review to the Board to look into these matters. The Chairman of the Drafting Committee has been able to imagine a number of hardships and has tried to make provision for all of them but there is one thing wanting. He has never been for even a period of three months in jail at any time and therefore he has not thought of the hardships suffered by others, Even the previous government made a provision to review cases once in six months, though it may be said that such a provision for review was useless. But that is a different matter. We must provide here for review from time to time. The Advisory Board should not sit once for all. There may be other circumstances which may necessitate a man's release after a period of three or six months. So this provision must be subject to a law providing for review from time to time.

Lastly, our friends have tabled an amendment that the maximum period for which any such person may be detained may not be more than one year. While I agree that in the first instance it ought to be three months and should not exceed one year, there may be exceptional cases as in a state of emergency. In cases other than such there may be a restriction of one year........

Pandit Thakur Das Bhargava : In an emergency these provisions will not have any force at all.Shri M. Ananthasayanam Ayyangar: If these are intended in ordinary cases there might be a political party whose agitation is accompanied by plucking off of eyes or cutting off of arms and other barbaric methods by friends who are as dark in colour as we are. I do not know what to do with them. These have become a part of their tactics and I do not know whether they are likely to change. Under those circumstances in the interest of the State is it not reasonable that we should make provision without limiting the period of detention ? It might be that the officers or the executive might abuse this power. So I would say a year in the first instance, but in exceptional cases it may be continued for a year more. We should also fix the maximum period for which any such person should be detained. It may also be considered whether it ought not to be left to Parliament to fix the maximum according to the exigencies of the circumstances. If the period is now prescribed as one year, it may not be possible to change it except by an amendment to the Constitution which requires two-thirds majority. I am not fully in agreement with this. I therefore welcome a modification in the form suggested. Otherwise, the procedure 'as enacted by law' would throw open the flood-gates and Government will be able to curtail the liberty of the citizen and put him in jail even recklessly. If there is a political rival capable of fighting you at the elections the possibility is that you will clap him in jail. Therefore, this clause may be a little improved by provision that a lawyer might be engaged to defend a person Provision may also be made to enable the Advisory Board to review the cases within three months and also fix a period or empower Parliament to effect a change when necessary in this respect.

Shri Mahavir Tyagi (United Provinces: General) : Sir, Dr. Ambedkar will please pardon me when I express my fond wish that he and the other members of the Drafting Committee had had the experience of detention in jails before they became members of the Drafting Committee.

The Honourable Dr. B. R. Ambedkar: I shall try hereafter to acquire that experience.

Shri Mahavir Tyagi: I may assure Dr. Ambedkar that, although the British Government did not give him this privilege, the Constitution he is making with his own hands will give him that privilege in his life-time. There will come a day when they will be detained under the provisions of the very same clauses which they are making, (Interruption). Then they will realise their mistake. It is all safe as long as the House is sitting and the Members are sitting on these Benches. But then let us not make provisions which will be applied against us very soon. There might come a time when these very clauses which we are now considering will be used freely by a Government against its political opponents.

Sir, in this article we are required to grant rights and privileges to the people, but along with them I am surprised to find that it has occurred to the Drafting Committee and their friends and advisers to provide herein penal clauses also. This is a charter of freedom that we are considering. But is this a proper place for providing for the curtailment of that very freedom and liberty? When freedom is being guaranteed, why does the Drafting Committee think it fit to introduce provisions for detaining people and curbing the freedom? This is an article which will enable the future Government to detain people and deprive them of their liberty rather than guarantee it.

Sir, life, liberty and pursuit of happiness are the three chief fundamental rights of every individual. The state comes into being not because it has any inherent right of its own, but because the individual, who has inherent rights of life and liberty, foregoes a part of his own rights and deposits it with the State. Every individual is born equal. That is one principle. So everyindividual has the inherent right of freedom of life, of liberty and of option for the pursuit of happiness. These rights are inherent and inalienable. Even if one chooses to alienate these rights, I submit, he cannot do so because they are inherent in him and they are inalienable. But the individual voluntarily transfers some, of his inherent rights and pools them to the cumulative store of social rights known as the State.

The State is thus organised and constituted, not by depriving people of their inherent rights, but by the voluntary will of the people to enhance those rights and enrich the individual freedom. Individuals agree to form a society In the hope and with the intention that society, with the stock of cumulative rights contributed by them will help the individual in becoming richer with his freedom and freer in his pursuit of prosperity and happiness. So that the State would safeguard his individual freedom against the interference of another individual.

Now we are making a Constitution guaranteeing these inherent rights. What relevancy is there for a detention clause in the Constitution which is meant to guarantee fundamental rights to the citizens ? I am afraid the introduction here of a clause of this kind changes the chapter of fundamental rights into a penal code worse than the Defence of India Rules of the old government. I have suffered under the Defence of India Rules long detentions. I have suffered from such detention. How I wish Dr. Ambedkar was with me in jail after being arrested and hand-cuffed for a whole night ? I wish he had had my experience. If he had been hand-cuffed along with me, he would have experienced the misery. I fear, Sir, the provisions now proposed by him would recoil on himself. Sir, as soon as another political party comes to power. he along with his colleagues will become the victims of the provisions now being made by him.

Shri Brajeshwar Prasad : Constitution or no-Constitution.

Shri Mahavir Tyagi: In Urdu there is a couplet which says:

'Kas rahe hain apni minquaron se halqa jalka'.

That is what really we are doing. We are making it easy and convenient and legal for the future Governments to detain us. That is the meaning Sir, I do not wish to say more on this point. I only wanted to warn the House that if we pass this article as it is we will simply be making a provision which will be used against us.

Mr. President: That you have done. So far as the details are concerned, they have been dealt with by other speakers in great detail.

Shri Mahavir Tyagi:

If you think so, I shall now merely refer to the defects of the provision.

Mr. President: The defects have been pointed out by other speakers in great detail. You will be only repeating them hereafter.

Shri Mahavir Tyagi : No, Sir, I, will not repeat their arguments.

Here it is mentioned that "nothing in this article shall apply (a) to any person who for the time being is an enemy alien" this is agreed-and "(b) to any person who is arrested under any law providing for preventive detention." Now, Sir, such persons as are detained under any law of preventive detention will have the privilege, according to the proviso, of their cases being judged by an Advisory Board. Persons who are detained by the Government for more than three months, their cases will be judged or at least reviewed by anAdvisory Board, but the cases of such persons, as come under clause (4) Will not be reviewed at all. It is said "unless such person is detained in accordance with the provisions of any law made by Parliament under clause (4) of this article" which means, Sir, that all such cases of detention which come under such laws which are enacted by Parliament under clause (4) shall have no privilege of revision by any Advisory Board. I want to know why the privilege of report by the Advisory Board is not given to cases of detention under the provisions of any law made by Parliament under clause (4). When we are providing for an Advisory Board here, we could also include the cases of Such persons as are detained under any law which Parliament may hereafter make under clause (4). My Friend, Pandit Thakur Das Bhargava, has really done a wrong to the House by pressing his demand for safeguards against the misuse of article 15. Instead of giving more guarantees, Dr. Ambedkar has only brought in a couple of clauses from the Criminal Procedure Code which are no new guarantees, and immediately along with those clauses he has brought in a clause for detention.

I say, Sir, that it is not the business of the Constituent Assembly to vest in the hands of the future governments powers to detain people. It is for the coming generations to do that, if they think it necessary and if they want to incur the displeasure of the people by enacting such laws. It is not the business of the Constituent Assembly. In no constitution of the world have I read of such criminal law being enacted by the constitution-makers. We are here to guarantee the rights of the people and not to make criminal laws to deprive people of their rights. We have given here no right of referendum no right of recall, to the people, and still every fundamental right which has been given has been restricted by something or the other. And in this article particularly it is not only restriction, but it is a case of contradiction, total contradiction of the rights. I can never agree to the incorporation of this article.

I would ask Dr. Ambedkar and the Drafting Committee if they are also prepared to arm, the people also with the power to overthrow a government which works destructively against the fundamental rights which they have granted to them. Surely the people have got the right to overthrow, abolish or alter such a government and to constitute another government which they think would be more likely to effect their safety and happiness.

Shri T. T. Krishnamachari: It is an extra-constitutional right.

Shri Mahavir Tyagi: The constitution must also say something about the power of the people. Have you given the people anywhere the right to overthrow the government which acts destructively against the rights of the people ? That inherent right of the people you have not guaranteed. It is not for us to guarantee the rights of the Government alone. We have to see that government has rights but the people also must have rights. It will be a totalitarian government that we will be having immediately after we pass this Constitution, and I must warn the House that if they bring in so many restrictions on the rights of the people and arm the government with powers to be used against the

people, the people may not like this dreadful concentration of power in the government. The government can only have those rights which individuals voluntarily surrender to the government . No government has a right to have powers which individuals are not prepared voluntarily to contribute to it. With these words, I request the Drafting Committee to withdraw this article altogether.

Dr. P. K. Sen (Bihar: General) : Mr. President, Sir, after the eloquent appeal of my honourable Friend, Mr. Tyagi, it may be rather dull and drab for the House to hear me speak in a different vein. There is no question at all that the individual has rights which have got to be protected, but at thesame time I think, judging from the trend of this debate from the very beginning up till now, the House is agreed that there are circumstances which compel the world today-not only our country but every country to take certain measures which may defend the State against subversive measures. The only question is how far and to what extent individual right, the fundamental right to liberty and freedom, and safety and security of the person, should be circumscribed in the interests of the security and safety of the State as a whole. It is the old old question of individual versus State and the extent to which the rights of either should be adjusted so that, not by destroying individual liberty but by circumscribing it to a certain extent, the welfare of the whole State may be secured.

Sir, I do not propose at all to go through all_ the details which have already been placed before the House by my honourable Friends, Pandit Thakur Das Bhargava and Dr. Bakhshi Tek Chand and several other speakers. The whole dispute as to whether it should be "due process of law" or "the procedure established by law", and the history of it all has been discussed. The only short point upon which I wish to address the House today is in support of the amendment brought forward by my honourable Friend, Dr. Bakhshi Tek Chand, in regard to informing the detenu, the person arrested, of the grounds on which he has been arrested. This is really the minimum that can be done and should be done. It has been hinted that the Honourable Dr. Ambedkar was inclined to accept the amendment but that he was overborne by "extraneous forces." It has even been suggested that Dr. Ambedkar has appeared in this House in double personality, the one Dr. Ambedkar, plain and simple as he is intensely in sympathy with the individual as regards rights and liberties and the other somewhat like the ghost of himself, as it were, like the perturbed spirit in Hamlet hovering about and over his innate love of freedom and yet being overborne by other forces. I do not believe it, Sir. I do not believe that he is capable of it or that the Drafting Committee is capable of it. Let us not regard the Drafting Committee or those who are in charge of these articles before they are finally shaped as if they were an Opposition or as if we were in opposition to them. The simple question is this : Whether the modicum that should be allowed to the citizen has been allowed or not. I do believe that when a man has been detained, it is unquestionably his right to know the grounds upon which he has been arrested and detained. This is the minimum that can be done. The Board has already been provided for in the article constituted of judges of the High Court, or those who have been judges of the High Court or those who are qualified to be judges of the High Court. Such a Board is to go into the question as to whether or not the grounds are sufficient or not; and the whole affair as to whether three months should be the limit or whether the period could be enhanced or enlarged is to be in the hands of the Board. If that be so, it is the simplest thing in the world for the Board to know what the grounds of arrest are.

It is not suggested at all that the whole of the evidence should be placed before the person arrested, because it is a notorious fact that in regard to these persons who are charged with subversive activities the evidence is very difficult to find, the evidence may also be counteracted by concocted evidence, and therefore, it is not necessary at all for the purpose of acquainting him with the ground of his detention or arrest that he should be given all the materials or data of the evidence. That, I take it, is not suggested in the amendment. All that is suggested is that the moment a man is arrested the matter 'should be in the hands of this Particular Board which will be appointed, and that Board having gone into the matter should at once inform him of the ground of his arrest so that he may know where he is. It may be that there are circumstances which he can disclose from which it will be found that he was arrested on no ground at 'all. I therefore, most emphatically submit that this amendment should be accepted.

As regards the other points urged, I will not repeat them. There may be certain things in the provisions of the article which appear to be rather against the fundamental rights, but as I have said, having regard to the troublous times which not only this country, but all countries in the world are passing through, some special measures for the security of the State are necessary and I hope the House in considering article 15A will not lose sight of that fact and will not be carried away by emotion so as to think that it can make a clear sweep of the whole article (15A). That extreme view I am not prepared to subscribe to. I do submit, therefore, that he Drafting Committee would be pleased to consider this amendment very seriously and accept it. I thank you, Sir.

Pandit Hirday Nath Kunzru (United Provinces: General) : Mr. President, Sir, the article placed before us by Dr. Ambedkar deals with two matters, the conversion of the ordinary rights enjoyed by accused persons under the Criminal Procedure Code into constitutional guarantees and the manner in which persons detained under preventive detention laws should be dealt with. So far as the first question is concerned, it has been so fully dealt with that I do not want to deal with it except to say that I agree with the proposal of Pandit Thakur Das Bhargava that if an accused person is allowed to be detained for more than 24 hours by the Magistrate, he should record his reasons for doing so in writing that the accused person should have the right of examining the prosecution witnesses and of producing his defence and that at least one appeal should be allowed against every conviction. It is true, Sir, that most of these rights are enjoyed under the present Criminal law by amused persons, but if any of the rights now enjoyed is to become a constitutional right, it is desirable that the Constitution should contain the most important of those rights without which there cannot be a fair trial.

Now I come to the second part of Dr. Ambedkar's amendment. Clause (3) of this amendment says :

"Nothing in this article shall apply-to any person who is arrested under any law providing for preventive detention :

Under the various provincial Public Security Acts a man has to be informed almost as soon as he is arrested of the reasons for his arrest and detention; yet when we are dealing with this matter in connection with the Constitution, we are not giving a detained person the right that he now enjoys under the Provincial Public Security Acts. I think therefore that whether a detainee's case goes before the Advisory Board or not, he should be informed of the grounds on which he is detained as soon after his arrest as possible and should be given an opportunity of submitting his explanation to the Government. I should further like to submit that when a case is placed before the Advisory Board, the detainee should be given an opportunity of submitting a further representation to the Board, should he so desire. Besides, the Board should be at liberty to ask the Government to place the explanation of the detenu before it. If the Government do not choose to inform the Board of the explanation submitted by the accused, the Board should be at liberty to set him

free.'The second suggestion that I should like to make, in connection with clause (3) is that whether a State Government is required to place the cases of detenus periodically before the Advisory Board or not, there ought to be a limit to the period for which a man can be detained. After all, the judicial review provided for in this clause will proceed only on the basis of written charges and replies. No witnesses will be produced, the detainee will not be represented by counsel and he, will not have an opportunity of cross examining the prosecution witnesses. It is possible therefore that even the Advisory Board may arrive at a wrong decision. The materials placed before it by the Government justifying the detention of a person will consist, I suppose, of police reports; and these reports, to put it mildly, may not always be correct. The Advisory Board will have to proceed only on the basis of police reports and however wise its personnel, it may not always be able to arrive at correct decisions. I think, therefore, that a limit should be set to the period for which a man can be detained.

Now, I come to the case of a man detained under a Parliamentary statute. We are told that Parliament being the supreme legislative body in the country and representative of the entire country it may be supposed to be not merely willing, but anxious to do justice to all classes of people. There is, therefore, no reason why its bona fides should be questioned or its powers should be curtailed by the Constitution. We have, Sir, in the United States a body known as the Congress which, in that country, is as supreme ask Parliament will be in this country. Nevertheless, the Constitution' of the United States limits the powers of this body in respect of the arrest of persons, searches of dwelling places, and so on. We may, therefore, without casting any reflection on Parliament and without unduly derogating from its authority, provide in our Constitution some of the safeguards, or rather something remotely resembling the safeguards provided in the United States Constitution. Even if my proposal is accepted that is, even if Parliament is required to fix a period for the detention of a person, we shall be far from having provided all those guarantees of liberty that the United States Constitution does.

The United States Government is today controlling the administration of Japan. A Military Commander exercises ultimate authority there. But notwithstanding the abnormal position that prevails in Japan, the Japanese people have been given in substance all those Constitutional guarantees that the people of the United States enjoy under the Constitution of that country. In order to give an illustration of what I mean I shall read out only one provision of the Japanese Constitution. This provision is embodied in article 35 and runs as follows :-

"The right of all persons to be secure in their homes, papers and effects against entries, searches and seizures shall not be impaired except upon a warrant issued only for probable cause and particularly describing the place to be searched and the things to be seized, or except as provided for by article 33."

The exception provided for in article 33 relates to the arrest of a person while committing a crime.

The situation in India, even if it may not be supposed to be normal, is far better than the situation in Japan. But, the House has shown its unwillingness to give our people those guarantees of liberty that' the people of Japan have been provided with notwithstanding the, extraordinary situation existing there. If the article under discussion is passed, the Central Government and the Provincial Governments will have the right of detaining persons under special laws. We shall be far behind the United States Constitution or the Japanese Constitution in regard to this matter. In these circumstances, I think it is necessary that we should restrain the powerof the executive to detain persons without trial so as to ensure that the detainees are not kept in detention for an indefinite length of time.

This is the least that we can do for those who are deprived of their liberty.

I do not know, Sir, whether my suggestions will find favour with the Drafting Committee and the House. But I have no doubt whatsoever that the safeguards that I have suggested can be provided without affecting in the least the power of the Executive to deal even with such emergencies as may not be constitutionally recognised as such. It will have the power to arrest people and detain them. All that it will 'not be able to do is to detain them without limit of time.

It may be said that it is quite possible that it may not be desirable in the public interest that a person who is regarded as highly dangerous by the Executive should be set at liberty even after six months or a year. It is possible to conceive of such a case. If Government comes across such a case it will be able, to deal with it by setting the man concerned at liberty, watching his behaviour for some time and then re-arrest him after some, time. if he does not behave properly; but there is no justification whatsoever for allowing any Government even with the approval of the Advisory Board to go on detaining a man no merely for months but for years.

Shri B. M. Gupte: (Bombay: General) : Intervening at this late stage of the debate I shall be very brief. With regard to the details, they have been discussed at great length and I shall not traverse the same ground over again. I will only say that I am entirely in favour of liberalizing the provision as far as it is possible to be done. With regard to the general nature of the provision I will say that it is not an article over which one can enthuse. It is after all an attempt to rescue something out of fire and it should be judged in that light. It is an attempt to rescue something out of fire that eliminated the phrase "due process of law". Article 15 concerns the most vital of all the Fundamental Rights, viz., the right to life and personal liberty. 'nose of us who advocated the. adoption of that phrase wanted to give that right the essence of Fundamental Right And what is the essence of Fundamental Right ? In the small field of the basic needs of the civilized man, the limitation on the sovereignty of the Legislature and to that extent the supremacy of the judiciary, are the essence of the Fundamental Right, unfortunately we were defeated. This provision does not at all seek to restore that supremacy. Dr. Ambedkar has rightly said that article 15 gave a carte blanche for the arrest of any person under circumstances that Parliament may think fit. That right was there and it is not claimed that this article substantially restricts that right. Dr. Ambedkar is satisfied that these provisions are sufficient to guard against illegal and arbitrary arrest : but are they sufficient to prevent the Parliament from making any provision with regard to preventive detention ? That is the real test, and I submit that these safeguards are very minor safeguards. Clauses (1) and (2) of the article give no new rights at all. They are old rights-only they are made more difficult of abrogation. And the third point is in regard to the Advisory Committee. These are very minor safeguards and we can say that they are only small mercies. I am not against accepting them for whatever they are worth; but their real nature must be understood.

I do not blame Dr. Ambedkar or the Drafting Committee. We are all labouring in these matters under two handicaps. One of them, is that many of the provisions come here as a result of prolonged discussion and negotiation between various schools of thought and various shades of opinion. It is often said that the thing is an integrated whole and we have to take it as a whole or reject it as a whole. We have to pay this price for agreementand concoct. I do not therefore grudge it. But the other difficulty is greater. On occasions like this sympathies of most of us go out to the high principles which in the past we proclaimed from housetops. But there are other friends who occupy seats of authority and responsibility throughout the country. They warn us that the aftermath of war and partition has unchained forces which if allowed to gain upper-hand will engulf the country in anarchy and ruin. They therefore advocate, that Parliament must be able to pass laws arming. the Executive with adequate powers to check these forces of violence, anarchy and disorder. They are great patriots and our trusted leaders. Many of us are not convinced that dire results would necessarily follow the adoption of the phrase "due process of law". But the difficulty is this, that even if we were- to stand for our own convictions there is no scope far experimenting in such matters. 'There is a saying in Marathi that whether a thing is a poison or not cannot be tested by swallowing it; because if it is a poison the man dies. So in such matters there is no scope for experiment and we have therefore to heed to the warnings given by our leaders.

This does not mean that these provisions could not be liberalised. Even Dr. Ambedkar himself has said that these provisions could be expanded to add some more safeguards; but in substance we have ultimately to respect the warnings of our leaders and in these circumstances what should be our attitude ? Or at least what is my attitude ? My attitude is one of indifference. These are minor safeguards. Let them come for whatever they are worth. I will not oppose them with the vehemence of Pandit Bhargava or Bakhshi Tek Chand because after all they can do no harm. At the same time, if they are withdrawn by the Drafting Committee because of the opposition to them, then also no tears will be shed over their exit.

Shrimati G. Durgabai (Madras: General): Mr. President, Sir, while I support the new article 15A moved by Dr. Ambedkar, I shall make a few observations on the subject under consideration. I know that I will be exhausting the patience of the House only if I have, also taken some time to speak on this matter. But I feel strongly that I should make a few points and remarks on the speeches made during the debate in this House.

I have heard the honourable Members who were the enthusiastic champions of individual freedom and individual liberty, even to the extent of placing the exigencies of individual liberty above the exigencies of the State, describing this article as the Crown of all our failures. Sir, the question before us is this, whether the exigencies of the freedom of individuals or the exigencies of the State is more important. When it comes to a question of shaking the very foundations of the State, which State stands not for the freedom of one individual but of several individuals, I yield the first place to the State. I say this because I know that in my love and enthusiasm for individual freedom, I only stand for myself, and my interests; and the State is far superior, because it stands for the freedom and liberty of several individuals like myself. I do not think there can be a greater champion and advocate of individual freedom than De Valera the product of this century with the best democratic traditions. What is it that he has done-? The very first thing that he did after becoming President was to pass a number of Public Security Acts. He had no other go. He had to do it, because a situation arose when he himself was to be murdered, what was he to do ?

My friends who spoke here have criticised the power that is being exercised in the matter of arrest and detentions. But they have not examined the position when this power is to be exercised, and under what circumstances. Thepower is to be exercised only in cases when the individual tampers with the public order, as is mentioned in Concurrent List or with the Defence Services of the country. I need only ask you, to go to my part of the country, Madras, Malabar, Vijayawada. I may tell you, and I may draw your attention that no wife, no mother is feeling secure; they are not sure when their husbands would come back, whether they would return home or not. Such is the position. Also the menfolk when they go out, are not quite sure by the time they

return home, whether the wife or the daughters are safe there in the house. That is the position. In that case, what is the State to do? What is the Government to do, to assure some kind of safety and security to these people ? Only in those conditions, when there is ample justification will the State resort to arrests and detentions.

This new article 15A introduced by Dr. Ambedkar is a very happy compromise. Think of the 1818 Regulation which had no time limit at all. Thereafter came the Public Security Acts of the various provinces. Now the Board has been introduced in this new article. The Board has got to go through these cases. Also in no case is the detention to go beyond three months, and if it has to exceed, then the Board has got to report. The Court has got to examine the papers and representations made by the Executive, very carefully. Dr. Ambedkar has very ably explained the limitations and the restrictions over this power and I do not want to repeat them because I may be taking up too much time of the House. One point is that in no case is the detention to exceed three months. If it has to exceed, then the Board has to get a report and on that report. only can the detention exceed; and also there is Parliament which would make the law, describing all such cases in which such detention thus got to exceed this period. These are the restrictions which are there to limit this power.

Sir, I do not want to go into the various amendments introduced by my honuurable Friend Pandit Thakur Das Bhargava. He said : Give the right of appeal, at least once, and also the provisions for periodical reviews and conditional releases and so on. Dr. Ambedkar will deal with these points. I will only mention one or two points raised by my friend Shrimati Purnima Banerji in her amendments. I must say that I am very much in sympathy with two of her amendments. One of them provided for the personal appearance of the person detained, before the Board, to give reasons and explanations. I think the drafting Committee should have no difficulty in agreeing to that. After all, the Board will not lose much by at least having a look at the person detained and receiving his explanations and reasons. I do not know whether it raises any administrative difficulty, but that will be dealt with by the Drafting Committee. I have confidence in the Government. Can there be a greater advocate and champion of personal freedom than our government, our Prime Minister, and our Deputy Prime Minister who always are here to give relief to the, poor and the needy and those who suffer ?

Another amendment of Shrimati Purnima Banerji asks for the maintenance of the dependents of the person detained. Yes, here also I am very much in sympathy with her point, for if the person detained is a bread-winner, then his dependents, his immediate dependents have got to be provided. It would be better to give some sort of guarantee about this, instead of leaving it to Executive Power and to their sweet will. 'But how is it practicable ? That is the question. There are many people who 'are poor, in our country. Her point is that about fifty per cent of the cases would result in releases or discharges. And she also says that the benefit of doubt might be given to the accused in these cases. Are the dependents of the. man detained to suffer indefinitely? That is her question. But I say, this is a question which has always been considered by the government of the province and in deservingcases, the necessary relief is being provided. But in another way it might be argued that this is putting a premium on delinquency; if he is assured of provision for his family he might go on committing crimes and challenging the foundations of the State. I think it is better to leave this matter to the provincial Governments or which ever Governments might deal with these cases.

Then, Sir, I think the words "legal practitioner" in article 15A (1) require some explanation. We know that Mr. Kasim Razvi engaged counsel from England whose appearance was refused. Now should it be open to this

man to engage any one from any place ? If there are rules to cover this point I have no objection : otherwise I suggest that after the words "legal practitioner" the words "qualified or authorised to appear in these cases" may be added.

Sir, I commend this article for the acceptance of the House.

Mr. President: I understand Dr. Ambedkar has to make certain suggestions to meet the criticisms that have been made against this article. I would therefore give him a chance to speak at this stage and if any further question arises we can consider it.

Babu Ramnarayan Singh (Bihar: General) : Does he agree to remove the article altogether ?

Mr. President: No.

The Honourable Dr. B. R. Ambedkar: Sir, I really did not think that so much of the time of the House would be taken up in the discussion of this article 15-A. As I said, I myself and a large majority of the Drafting Committee as well as members of the public feel that in view of the language of article 15, viz., that arrest may be made in accordance with a procedure laid down by the law, we had not given sufficient attention to the safety and security of individual freedom. Ever since that article was adopted I and my friends had been trying in some way to restore the content of due procedure in its fundamentals without using the words "due process". I should have thought that Members who are interested in the liberty of the individual would be more than satisfied for being able to have the prospect before them of the provisions contained in article 15-A and that they would have accepted this with good grace. But I am sorry that is not the spirit which actuates those who have taken part in this debate and put themselves in the position of not merely critics but adversaries of this article. In fact their extreme love of liberty has gone to such a length that they even told me that it would be much better to withdraw this article itself.

Now, Sir, I am not prepared to accept that advice because I have not the least doubt in my mind that that is not the way of wisdom and therefore I will stick to article 15-A. I quite appreciate that there are certain points which have been made by the various critics which require sympathetic consideration, and I am prepared to bestow such consideration upon the points that have been raised and to suggest to the House certain amendments which I think will remove the criticism which has been made that certain fundamentals have- been omitted from the draft article 15-A. In replying to the criticism I propose to separate, the general part of the article from the special part which deals. with preventive detention; I will take preventive detention separately.

Now turning to clause (1) of article 15-A, I think there were three suggestions made. One is with regard to the words "as soon as may be". There are amendments suggested by Members that these words should be deleted and in place of those Words "fifteen days" and in some places "seven days"are suggested. In my judgment, these amendments show a complete misunderstanding of what the words "as soon as may be" mean in the context in which they are used. These words are integrally connected with, clause (2) and they cannot, in my judgment, be read otherwise than by reference to the provisions contained in clause (2), which definitely say that no man arrested shall be detained in custody for more than 24 hours unless at the end of the 24 hours the police officer who arrests and detains him obtains an authority from the magistrate. That is how the section has to be read. Now it is obvious that if the police officer is required to obtain a judicial authority from a magistrate for the continued arrest of a person after 24 hours, it goes without saying that he shall have at least to inform the magistrate of the charge under which that man has been arrested, which means that "as soon as" cannot extend beyond 24 hours. Therefore all those amendments which suggest fifteen days or seven days are amendments which really curtail the liberty of the individual. Therefore I think those

amendments are entirely misplaced and are not wanted.

The second point raised is that while we have given in clause (1) of article 15-A a right to an accused person to consult a legal practitioner of his choice, we have made no provision for permitting him to conduct his defence by a legal practitioner. In other words, a distinction is made between the right to consult and the right to be defended. Personally I thought that the words "to consult" included also the right to be defended because consultation would be utterly purposeless if it was not for the purpose of defence. However, in order to remove any ambiguity or any argument that may be raised that consultation is used in a limited sense, I am prepared to add after the words "to consult" the words "and be defended by a legal practitioner", so that there would be both the right to consult and also the right to be defended. A question has been raised by the last speaker as to the meaning of the words "legal practitioner of his choice". No doubt the words "of his choice" are important and they have been deliberately used, because we do not want the Government of the day to foist upon an accused person a counsel whom the Government may think fit to appear in his case because the accused person may not have confidence in him. Therefore we have used the words "of his choice". But the words "of his choice" are qualified by the words "legal practitioner". By the phrase "legal practitioner" is meant what we usually understand, namely, a practitioner who by the rules of the High Court or of the Court concerned, is entitled to practise.

Now, Sir, I come to clause (2). The principal point is that raised by my Friend Mr. Pataskar. So far as I was able to understand, he wanted to replace the word "Magistrate" by the words "First class Magistrate". Well, I find some difficulty in accepting the words suggested by him for two reasons. We have in clause (2) used very important words, namely, "the nearest Magistrate" and I thought that was very necessary because otherwise it would enable a police officer to keep a man in custody for a longer period on the ground that a particular Magistrate to whom he wanted to- take the accused, or the Magistrate who would be ultimately entitled to try the accused, was living at a distance far away and therefore he bad a justifiable ground for detaining him for the longer period. In order to take away any such argument, we had used the words "the nearest Magistrate". Now supposing, we were to add the words "the nearest First Class Magistrate" : the position would be very difficult. There may be "the nearest Magistrate" who should be approached by the police in the interests of the accused himself in order that his case may be judicially considered. But he may not be a First Class Magistrate. Therefore, we have really to take a choice : whether we shall give the accused the earliest opportunity to have his matter decided and looked into by the Magistrate near about, or Whether we should go in search of a First Class Magistrate. I think"the nearest Magistrate" is the best provision in the interests of the liberty of the, accused. I might also point out to my Friend, Mr. Pataskar, that even if I were to accept his amendment-"the nearest First Class Magistrate" it would be perfectly possible for the Government of the day to amend the Criminal Procedure Code to confer the powers of a First Class Magistrate on any Magistrate whom they want and thereby cheat the accused. I do not think therefore that his amendment is either desirable or necessary and I cannot accept it.

Now, those are the general provisions as contained in article 15(a), and I am sure..............

Pandit Thakur Das Bhargava: Kindly consider....

The Honourable Dr. B. R. Ambedkar: Now, my Friend, Pandit Thakur Das Bhargava has raised the question of the right of cross-examination.

Pandit Thakur Das Bhargava : And for reasons recorded.

The Honourable Dr. B. R. Ambedkar: Well, that I think is a salutary provision, because I think that the provision which occurs in several

provisions of the Criminal Procedure Code making it obligatory upon the Magistrate to record his reasons in writing enables the High Court to consider whether the discretion left in the Magistrate has been judicially exercised. I quite agree that that is a very salutary provision, but I really want my friend to consider whether in a matter of this kind, where what is involved is remand to custody for a further period, the Magistrate will not have the authority to consider whether the charge framed against the accused by the police is prima facie borne out.

Pandit Thakur Das Bhargava: At present also under section 167(3) these words are there. It is today incumbent upon every Magistrate to whom a person is taken to record the reasons if he allows the detention to continue.

The Honourable Dr. B. R. Ambedkar : That is quite true. They are there, But are they very necessary ?

The Honourable Dr. B. R. Ambedkar But are they very necessary ?

Pandit Thakur Das Bhargava: Absolutely necessary?

The Honourable Dr. B. R. Ambedkar: Personally, I do not think they are necessary. Let us take the worst case. A Magistrate, in order to please the police, so to say, got into the habit of granting constant remands, one after the other, thereby enabling the police to keep the accused in custody. Is it the case that there. is no remedy open to the accused? I think the accused has the remedy to go to High Court for revision and say that the procedure of the Court is being abused.

Pandit Thakur Das Bhargava: How can a poor person go to the High Court?

The Honourable Dr. B. R. Ambedkar: I do not want to close my mind on it. If there is the necessity I think the Drafting Committee may be left to consider this matter at a later stage, whether the introduction of these words are necessary. As at present advised, we think those words are not necessary.

Now I come to the second part of article 15(3) dealing with preventive detention. My Friend, Mr. Tyagi, has been quite enraged against this part of the article. Well, I think I can forgive my Friend, Mr. Tyagi, on that ground because after all, he is not a lawyer and he does not really know what is happening. He suddenly wakes up, when something which is intelligible to a common mind, crops up without realizing that what crops up and what makeshim awake is really merely consequential. But I cannot forgive the lawyer members of the House for the attitude that they have taken.

What is it that we are doing? Let me explain to the House what we are' doing now. We had before us the three Lists contained in the Seventh Schedule. In the three Lists there were included two entries dealing with preventive detention, one in List I and another in List III. Supposing now, this part of the article dealing with preventive detention was dropped. What would be the effect of it ? The effect of it would be that the Provincial Legislatures as well as the Central Legislature would be at complete liberty to make any kind of law with preventive detention, because if this Constitution does not by a specific article put a limitation upon the exercise of making any law which we have now given both to the Centre and to the Provinces, there would be no liberty left, and Parliament and the Legislatures of the States would be at complete liberty to make any kind of law dealing with preventive detention. Do the lawyer Members of the House want that sort of liberty to be given to the Legislatures of the States and Parliament? My submission is that if their attitude was as expressed today, that we ought to have no such provision, then what they ought to have done was to have objected to those entries in List I and List III. We are trying to rescue the thing. We have given power to the Legislatures of the State and Parliament to make laws regarding preventive detention. What I am trying to do is to curtail that power and put a limitation upon it. I am not doing worse. You have done worse.

Coming to the specific provision contained in the second part, I will first....

Pandit Thakur Das Bhargava: Who made

those Lists?

The Honourable Dr. B. R. Ambedkar: I made them: you passed them

I had these limitations in mind. Now I come to the proviso to clause 3 (b).

Shri Mahavir Tyagi: Will you help laymen to understand as to why you have not provided for the revision by the Advisory Board of the cases under clause (4) ?

The Honourable Dr. B. R. Ambedkar: I cannot explain to him the legal points in this House. This House is not a law class and I cannot indulge in that kind of explanation now. The honourable Member is my friend; if he does not understand he can come and ask me afterwards.

Now I will deal with the proviso which is subject to two sorts of criticisms. One criticism is this : that in the case of persons who are being arrested and detained under the ordinary law as distinct from the law dealing with preventive detention, we have made provision in clause (1) of article 15A that the accused person shall be informed of the grounds of his arrest. I said we do not make any such provision in the case of a person who is detained under preventive detention. I think that is a legitimate criticism. I am prepared to redress the position, because I find that, even under the existing laws made by the various provincial governments relating to preventive detention, they have made provision for the information of the accused regarding the grounds on which he has been detained. I personally do not see any reason why when provinces who are anxious to have preventive, detention laws have this provision, the Constitution should not embody it. Therefore I am prepared to incorporate the following clause after clause (3) in article 15 :

"(3a) Where an order is made in respect of any person under sub-clause (b) of clause (3) of this article, the authority making an order shall........

Babu Ramnarayan Singh ; Sir, Dr. Ambedkar says that provinces want the inclusion of this clause. .Mr. President: He has not said anything of that sort. What he has said is that several of the Acts which have been passed by the provinces for preventive detention contain certain provisions. He wants) to incorporate a similar provision in this article.

Babu Ramnarayan Singh: I wanted to know whether we are passing legislation at the dictates of the provinces.

Mr. President: Nothing of the sort.

The Honourable Dr. B. R. Ambedkar: I find that Mr. Ramnarayan Singh is somewhat disaffected with the provincial government to which he belongs.

As I was saying I think this provision ought to do :

After clause (3) of article 15A the following clause be inserted:

"(3a) Where an order is made in respect of any person under sub-clause (b) of clause (3) of this article the authority making an order shall as soon as may be communicate to him the grounds on which the order has been passed and afford him the earliest opportunity of making a representation against the order.

(b)Nothing in clause (3a) of this article shall require the authority making any order under sub-clause (b) of clause (3) of this article to disclose the facts which that authority considers to be against the public interest to disclose."

These are the exact words in some of the Acts of the provinces and I do not see any reason why they should not be introduced here, so that this ground of criticism that we are detaining a person merely because his case comes under preventive detention, without even informing him of the grounds on which we detain him. Now that is met by the amendment which I have proposed.

The other question is...........

The Honourable Shri K. Santhanam (Madras : General) : Is it in addition to the provision in clause (1) ? There is already a provision that no person shall be detained in custody without being informed.

The Honourable Dr. B. R. Ambedkar: It does not deal with persons arrested for preventive detention.

The Honourable Shri K. Santhanam: Does it not include a person who is arrested for preventive purposes ? I thought clause (1) includes every kind of detention.

The Honourable Dr. B. R. Ambedkar: No. That is not our

understanding anyhow. The cases are divided into two categories.

Shri Mahavir Tyagi: He is a lawyer.

The Honourable Dr. B. R. Ambedkar: That is in a court of law, not here.

Mr. President: He is not a lawyer.

The Honourable Dr. B. R. Ambedkar: I think it would be much better to say : Nothing in clauses (1) and (2) shall apply to clause (3). That is the intention. So I have met that part of their criticism.

Now I come to the question of three months' detention without enquiry or trial. Some Members have said that it should not be more than 15 days and others have suggested some other period and so on. I would like to tell the House why exactly we thought that three months was a tolerable period and 15 months too long. It was represented to us that the cases of detenus may be considerable. We do not know how the situation in this country will develop what would be the circumstances which would face the country when the Constitution comes into operation., whether the people, and parties in thiscountry would behave in a constitutional manner in the matter of getting hold of power, or whether: they would resort to unconstitutional methods for carrying out their purposes. It all of us follow purely constitutional methods to achieve our objective I think the situation would have been different and probably the necessity of having preventive, detention might not be there at all.

But I think in making a law we ought to take into consideration the worst and not the best. Therefore if we follow upon that position, namely, that there may be many parties and people who may not be patient enough, if I may say so, to follow constitutional methods but are impatient in reaching their objective and for that purpose resort to unconstitutional methods, then there may be a large number of people who may have to be detained by the executive. Supposing there is a large number of people to be detained because of their illegal or unlawful activities and we want to give effect to the provisions contained in sub-clause (a) of that proviso, what would be the situation? Would it be possible for the executive to prepare the cases, say against one hundred people who may have been detained in custody, prepare the brief, collect all the information and submit the cases to the 'Advisory Board? Is that a practical possibility? Is it a practical possibility for the Advisory Board to dispose of so many cases within three months, because I will say that the provisions contained in sub-clause (a) of the proviso arc peremptory in that if they want to detain a person beyond three months they must obtain an order from the Advisory Board to that effect.

Therefore, having regard to the administrative difficulties in this matter, the Drafting Committee felt that the exigencies of the situation would be met by putting a time limit of three months. There is no other intention on the part of the Drafting Committee in prescribing this particular time limit and I hope having regard to the facts to which I have referred the House will agree that this is as good and as reasonable a provision that could be made.

Now I come to the Advisory Board. Two points have been raised. One is what is the procedure of the Advisory Board. Sub-clause (a) does not make any specific reference to the procedure to be followed by the Advisory Board. Pointed questions have been asked whether under sub-clause (a) the executive would be required to place before the Advisory Board all the papers connected with the case which have led them to detain the man under preventive custody.

The pointed question has been asked whether the accused person would be entitled to appear before the Board, cross-examine the witnesses, and make his own statement. It is quite true that this sub-clause (a) is silent as to the procedure to be followed in an enquiry which is to be conducted by the Advisory Board. Supposing this sub-clause (a) is not improved and remains as it is, what would be, the consequences ? As I. read it, the obtaining the report in support of the order is an obligatory

provision. It would be illegal on the part of the executive to detain a man beyond three months unless ,hey have on the day on which the three months period expires in their possession a recommendation of the Advisory Board. Therefore, if the executive Government were not to place before the Advisory Board the papers on which they rely. they stand to lose considerably, that is to say, they will forfeit their authority to detain a man beyond three months.

Therefore, in their own interest it would be desirable, I think necessary, for the executive Government to place before the Advisory Board the documents on which they rely. if they do not, they will be taking a very grave risk in the matter of administration of the preventive law. That in itself, in my judgement is enough of a protection that the executive will place before it.If my friends are not satisfied with that, I have another proposal and that is that, without making any specific provisions with regard to procedure to be followed in sub-clause (a) itself, to add at the end of sub-clause (4) the following words :-"and Parliament may also prescribe the procedure to be followed by an Advisory Board in an enquiry under clause (a) of the proviso to clause (3) of this article." I am prepared to give the power to Parliament to make provision with regard to the procedure that may be followed by the Advisory Board. I think that ought to meet the exigencies of the situation.

Sir, these are all the amendments I am prepared to make in response to the criticisms that have been levelled against the different parts of the article 15A.

I will now proceed to discuss some miscellaneous suggestions.

Shri Jaspat Roy Kapoor: In that case, probably sub-section (b) of the proviso to clause (2) will go?

The Honourable Dr. B. R. Ambedkar: Nothing will go.

Dr. Bakhshi Tek Chand (East Punjab: General) : You have agreed that the grounds of the detention will be communicated to the person affected and his explanation taken.

The Honourable Dr. B. R. Ambedkar: And he will also be given an opportunity to put in a written statement.

Dr. Bakhshi Tek Chand: Will you agree also to the other point to which I drew attention, namely, that as in the Madras Act, the explanation will be placed before the Board'?

The Honourable Dr. B. R. Ambedkar: All papers may be placed before him. That is what I say.

Dr. Bakhshi Tek Chand: All papers may not be placed before him. I have some experience. They will say that this is a very small matter. If you give him an opportunity to submit an explanation within a specified time, why do you fight shy of incorporating this provision? In sub-clause (2) of sub-section (1) of section 3 of the, Madras Act there is provision that the explanation will be placed before, the Board.

The Honourable Dr. B. R. Ambedkar: That, I consider, is implicit in what I said.

Dr. Bakhshi Tek Chand : Why not make it clear? It is not there in the Bombay Act or in the United Provinces Act.

The Honourable Dr. B. R. Ambedkar: As I stated, in the requirement regarding the submission of papers to the Advisory Board under sub-clause (a) is implicit the submission of a statement by the accused. If that is not so, I am now making a further provision that Parliament may by law prescribe the procedure, in which case Parliament may categorically say that these papers shall be submitted to the Advisory Board. Now I am not prepared to make any further concession at all.

Shri Mahavir Tyagi: Dr. Ambedkar will please give me one minute?

The Honourable Dr. B. R. Ambedkar: Not now.

Shri Mahavir Tyagi : I want to know whether the detenus under clause (4), according to the law made by Parliament or by the provinces, will have the benefit of their case being reviewed by the tribunal?Sir, I want to know whether the detenus who will be detained under the Act which Parliament will enact under clause (4) will have the privilege of their case being reviewed by the tribunal proposed?

The Honourable Dr. B. R. Ambedkar : My Friend Mr. Tyagi is acting as though he is overwhelmed by

the fear that lie himself is going to be a detenu. I do not see any prospect of that.

Shri Mahavir Tyagi. I am trying to safeguard your position.

The Honourable Dr. B. R. Ambedkar: I will now deal will certain miscellaneous suggestions made.

Pandit Thakur Das Bhargava : What about the safeguards regarding cross examination and defence ?

The Honourable Dr. B. R. Ambedkar : The right of cross-examination is already there in the Criminal Procedure Code and in the Evidence Act. Unless a provincial Government goes absolutely stark mad and takes away these provisions it is unnecessary to make any provision of that sort. Defending includes cross-examination.

Pandit Thakur Das Bhargava : They even try to usurp power to this extent.

The Honourable Dr. B. R. Ambedkar: If you can give a single instance in India where the right of cross-examination has been taken away, I can understand it. I have not seen any such case.

Sir, the question of the maximum sentence has been raised. Those who want that a maximum sentence may be fixed will please note the provisions of clause (4) where it has been definitely stated that in making such a law, Parliament will also fix the maximum period.

Pandit Hirday Nath Kunzru: The word is 'may'.

The Honourable Dr. B. R. Ambedkar : 'May' is 'shall'.

Pandit Hirday Nath Kunzru: Parliament may or may not do that.

The Honourable Dr. B. R. Ambedkar : That is true,, but if it does, it will fix the maximum.

Another question raised is as regards the maintenance of the detenus and their families.

Shri Jaspat Roy Kapoor: What about periodical reviews ?

The Honourable Dr. B. R. Ambedkar: I am coming to that. That is not a matter which we can introduce in the Constitution itself. For instance, it may be necessary in some cases and may not be necessary in other cases. Besides, clause (4) gives power to Parliament also to provide that maintenance shall be given,

Personally. myself, I think the argument in favour of maintenance is very weak. If a man is really digging into the foundations of the State and if he is arrested for that, he may have the right to be fed when he is in prison; but he has very little right to ask for maintenance. However, ex gratia, Parliament and the Legislature may make provision. I think such a provision is possible under any Act that Parliament may make under clause (4).

With regard to the review of the cases of detenus, there again, I do not see why it should not be possible for either the provincial Governments in their own law to make provision for periodical review or for Parliament in enacting a law under clause (4) to provide for periodical review. I think this is apurely administrative matter and can be regulated by law. My Friend Mr. Ananthasayanam Ayyangar, said that I really do not have much feeling for the detenus, because I was never in jail, but I can tell him that if anybody in the last Cabinet was responsible for-the introduction of a rule regarding review, it was myself. A very large part of the Cabinet was opposed to it. I and one other European member of the Cabinet fought for it and got it, So, it is not necessary to go to jail to feel for freedom and liberty.

Then there is another point which was raised by my Friend, Mr. Kamath. He asked me whether it was possible for the High Courts to issue writs for the benefit of the accused, in cases of preventive detention. Obviously the position is this. A writ of habeas corpus can be asked for and issued in any case, but the other writs depend upon the circumstances of each different man, because the object of the writ of habeas corpus is a ,very limited one. It is limited to finding out by the court whether the man has been arrested under law, or whether he has been arrested merely by executive whim. Once the High Court is satisfied that the man is arrested under some law, habeas corpus must come to an end. If he has not been arrested under any law, obviously the party affected may ask for any other writ which may be necessary and appropriate for redressing the wrong. That is

my reply to Mr. Kamath.

Sir, I hope that with the amendments I have suggested the House will be in a position to accept the article 15A.

Shri H. V. Kamath (C. P. & Berar: General) : My question is whether we have provided in the article for this purpose.

The Honourable Dr. B. R. Ambedkar: It is not necessary. Everybody knows it. If you get into trouble, you can engage a lawyer who will let you know everything.

Shri H. V. Kamath: I shall engage yourself.

Mr. President : Is it necessary to have any further discussion?

The Honourable Dr. B. R. Ambedkar: The question may now be put.

Shri T. T. Krishnamachari: The House has discussed this for six hours already.

Sardar Hukam Singh (East Punjab Sikh) : From this corner I have been trying to catch your eye but without success. I would like to say a few words if you would permit me.

Shri Brajeshwar Prasad: I have been standing since yesterday.

Prof. Shibban Lal Saksena (United Provinces: General): This is a very important article in the Constitution and deals with personal freedom and liberty. The debate on this should not be curtailed.

Mr. President: I am entirely in the hands of the House. Closure has been moved. The question is :

"That the question be now put."

The motion was adopted.

Mr. President: I do not think I can give Dr. Ambedkar another right of reply.

The Honourable Dr. B. R. Ambedkar: I do not 'think so, Sir. Nobody said anything.Mr. President : I will now put the amendments to the vote.

The Honourable Dr. B. R. Ambedkar: They might all be withdrawn.

Mr. Naziruddin Ahmad (West Bengal: Muslim) : New clauses have just been added. Will they be put to the vote now?

Mr. President: Yes, just now.

Mr. Naziruddin Ahmad: It will be difficult to follow them without copies.

Dr. Bakhshi Tek Chand: They are not new amendments in any sense and it is not necessary to have further time to discuss them. Only some amendments of, Dr. Bhargava have been accepted in part. There has been sufficient discussion on them.

Mr. President : I was just going to say that myself.

The question is :

"That after article 15 the following new articles be added

'15A. No procedure within the meaning of the preceding section shall be deemed to be established by law if it is inconsistent with any of the following principles :-

(i)Every arrested person if he has not been released earlier shall be produced before a Magistrate within 24 hours of his arrest excluding the reasonable period of journey from the place of-arrest to the Court of the Magistrate and informed of the nature of the accusation for his arrest- and detained further only by the authority of the Magistrate for reasons recorded.
(ii) Every person shall have the right of access to Courts to being defended by counsel in all proceedings and trials before courts.

(iii) No person shall be subjected to unnecessary restraints or to unreasonable search of person or property.

(iv) Every accused person is entitled to a speedy and public trial unless special law or public interests demand, a trial in camera.

(v) Every person shall have the right of cross-examining the witness produced against him and producing his defence.

(vi)Every convicted person shall have the right of at least one appeal against his conviction.'

'I5B. No procedure within the meaning of Section 15 shall be deemed to be established by law in case of preventive detention if it is inconsistent with any of the following principles :- (i) No person shall be detained without trial for a period longer than it is necessary.

(ii) Every case of detention in case it exceeds the period of fifteen days shall be placed within a month of the date of arrest before an independent tribunal presided over by a judge of the High Court or a person possessed of qualification for High Court Judgeship armed with powers of summary inquiries including examinations of the person detained and of passing orders of further detention, conditional or absolute release and other incidental and necessary orders.

(iii) No such

detention shall continue unless it has been confirmed within a period of two months from the date of arrest by an order of further detention from such tribunal in which case quarterly reviews of such detentions by independent tribunal armed with powers of passing of orders of release conditional or otherwise and other necessary and incidental orders shall be made.

(iv) Such detention shall in the total not exceed the period of one year from the date of arrest.

(v) Such detained person shall not be subjected to hard labour or unnecessary restrictions otherwise than for wilful disobedience of lawful orders and violation of jail rules.". The, amendment was negatived.

Mr. President : Then No. 3. Is it necessary to read the amendment)?Pandit Thakur Das Bhargava: They need not be read. Such of the amendments as have been accepted may be taken and the others rejected.

Mr. President : The question is :

"That in amendment No. 1 above. for clauses (1) and (2) of the Proposed new article 15A, the following be substituted :-

'15A. No procedure shall be deemed to be established by law within the meaning of article 15 if the law prescribing the procedure for criminal proceedings and trials of accused persons contravenes any of the following established principles and rights-

(a) the right of Production of the person under custody before Magistrate within 24 hours of his arrest (excluding the reasonable period of journey from the place of arrest to the court of Magistrate) and further detention only with the authority of the magistrate for reasons recorded;

(b) the right of consultation after arrest and before trial and the right of being defended by the Counsel of his choice;

(c) the right of full opportunity for cross- examination of witnesses Produced against the accused and Production of his defence;

(d) the right of at least one appeal in case of conviction.' The amendment was negatived.

Mr. President: The question is

"That in amendment No. 3 above, after clause (d) of the Proposed new article 15A. the following clauses be added :-

(e) right to freedom from torture and unnecessary restraints and from unreasonable search of person and Property;

(f) right to a speedy and public trial unless special law and Public interest demand a trial in camera,' "

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 1 above, in clause (1) of the proposed new article 15A. for the words 'a legal practitioner of his choice' the words 'and be defended by a legal practitioner of his choice in all criminal proceedings and trials' be substituted."

The amendment was negatived.

Mr. President: Then No. 7.

Shri T. T. Krishnamachari: Dr. Ambedkar has accepted a portion of this amendment. It need not be voted upon. If it is rejected, then)X. Ambedkar will not be able to accept a portion of it.

The Honourable Dr. B. R. Ambedkar: Mine are in dependent amendments.

Mr. President: The question is

"That in amendment No. 1 above, in the proposed new article 15A, for clause (2), the following be substituted :-

'(2) Every arrested person if he has not been released earlier shall be produced before a Magistrate within 24 hours of his arrest excluding the reasonable Period of journey from the place of arrest to the court of the Magistrate and detained further only by the authority of the Magistrate for reasons recorded."'

or alternatively

"That in amendment No. 1 above, at the end of clause (2) of the Proposed new article 15A, the following be added :-

and for reasons recorded.'

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 1 above, after clause (2) of the proposed new article 15A, the following clauses be added :

'(2a) Every Person accused of any offence or against whom criminal proceedings are being taken shall have the full opportunity of cross-examining the witnesses produced against him and producing his defence. (2b) Every person sentenced to imprisonment shall have the right of at least one

appeal against his conviction."'

'The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 1 above, for clauses (3) and (4) of the proposed new article 15A. the following be substituted

"5B.No procedure shall be deemed to be established by law within the meaning of article 15if the law prescribing the prevention or detention contravenes any of the following principles,-

(1) Such detention without trial shall only be allowable for alleged participation in dangerous or subversive activities affecting the public peace, security of the State and relation between different classes 'and communities inhabiting India or membership of any Organisation declared unlawful by the State,

(2) Such detention shall not be longer than two months unless an independent tribunal consisting of two or more persons being High Court judges or possessing qualifications for High Court judgeships and armed with powers of enquiry including examination of the detainee recommend continuance of detention within the said period of two months.

(3) Such detention shall not exceed the total period of- one year.

(4) Such detention shall be free from unnecessary restrictions and hard labour otherwise than for wilful disobedience of lawful orders and violation of jail rules :

Provided that the Parliament shall never be precluded from prescribing other reason and circumstances which may necessitate such detention and the conditions of such detention."'

The amendment was negatived.

Mr. President: The question is:

"'That in amendment No. 1 above, in the proviso to clause (3) of the proposed new article 15A, for the word 'three' the word 'two' be substituted."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 1 above, in sub-clause (a) of the proviso to clause (3) of the proposed new article 15A, after the word 'Board' the words 'with powers of inquiry including examination of persons detained' be inserted."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 1 above, at the end of sub-clause (b) of the proviso to clause (3) of the proposed new article 15A, the following be added

'but in no case more than six months'

or 'but in no case more than a year"'

The amendment was negatived.

Mr. President.:' The question is :

"That in amendment No. 1 above, in clause (4) of the proposed new article 15A, after the word 'circumstances' the words 'and the conditions' be inserted."

The amendment was negatived.

Mr. President: The question is:

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Friday, the 16th September 1949

"That in amendment No. 1 above, in clause (4) of the proposed new article 15A, for the words 'three months' the words 'one month' or 'two months' be substituted."

The amendment was negatived.Mr. President : The question is :

"That in amendment No. 1 of List I (Eighth Week), for clause (1) of the proposed new article 15A, the following be substituted:-

'(1) Every person arresting another in due course of law shall, at the time of the arrest or as soon as practicable thereafter, inform that person the reasons or grounds for such arrest, nor shall he be denied the right to consult a legal practitioner of his own choice."' The amendment was negatived. Mr. President: The question is

'That in amendment No. 1 of List I (Eighth Week), in clause (1) of the proposed new article 15A, after the words 'as soon as may be' the words 'being not later than fifteen days' be inserted.'

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 1 of List I (Eighth Week), sub-clause (b) of clause (3) of the proposed new article 15A be deleted."

The amendment was negatived. Mr. President : The question is :

"That in amendment No. 1 of List I (Eighth Week), the proviso to clause (3) of the Proposed new article 15A be deleted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 1 of List I (Eighth Week), in Sub-clause (a) of the proviso to clause (3) of the proposed new article 15A, after the words 'a High Court has' the words 'after hearing the person detained' be inserted." The amendment was negatived. Mr. President : The question is :

"That in amendment No. 1 of List I (Eighth Week), in sub-clause (a) of the proviso to clause (3) of the proposed new article 15A. after the words 'such detention' the words 'but so that the person shall in no event be detained for more than six months be added."

The amendment was negatived.

Mr. President: The question is

"That in amendment No. 1 of List I (Eighth Week), the following proviso be added to clause (4) of the proposed new article 15A :-

'Provided that if the earning member of a family is so detained his direct dependents shall be paid maintenance allowance."' The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 1 of List I (Eighth Week), in clause (1) of the proposed new article 15A, for the words 'as soon as may be' the words 'before the expiration of seven days following his arrest' be substituted."

The amendment was negatived. Mr . President: The question is:

"That in amendment No. 1 of List I (Eighth Week), in clause (2) of the proposed new article

15A, for the words 'as soon as may be' the words within twenty-four hours' be substituted."

The amendment was negatived.Mr. President: The question is

"That in amendment No. 1 of List I (Eighth Week), in clause (2) of the proposed new article 15A, after the word 'magistrate', wherever it occurs. the words 'of the First Class be inserted."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 1 of List I (Eighth Week). for clause (2) of the proposed new article 15A. the following be substituted :-

'(2) Every person who is arrested shall be produced before the nearest magistrate within twenty-four hours and no such person shall be detained in custody longer than twenty-four hours without the authority of a magistrate."

The amendment was negatived.

Mr. President: The question is

"That in amendment No. 1 of List I (Eighth Week). in clause (2) of the proposed new article 15A, after the word 'magistrate' occurring at the end, the words 'who shall afford such person an opportunity of being heard' be added."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 1 of List I (Eighth Week), after clause (2) of the proposed new article 15A. the following new clause be added :-

'(2a) No detained person shall be subjected to physical or

mental ill-treatment."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 1 of List I (Eighth Week), clause (3) of the proposed new article 15A be deleted."

The amendment was negatived.

Mr. President : The, question is :

"That in amendment No. 1 of List I (Eighth Week), in sub-clause (b) of the operative part of clause (3) of the proposed new article 15A. after the word 'law' the words 'of the Union' be inserted.'

The amendment was negatived.

Mr. President: The question is

"That in amendment No.1 of List I (Eighth Week), in sub-clause (a) of the proviso to clause (3) of the proposed new article 15A, the words 'or are qualified to be appointed as' be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 1 of List I (Eighth Week). at the end of clause (3) of the proposed new article 15A, the following new proviso be added :-

'Provided that in the case of any such person so recommended for detention as stated in sub-clause (a) of clause (3). the total period of his detention shall not extend beyond nine months provided the Advisory Board has in its possession direct and ample evidence that such person is a source of continuous danger to the State and the Society.'

The amendment was negatived.Mr. President : The question is :

"That in amendment No. 1 of List I (Eighth Week), after clause (4) of the proposed new article 15A, the following new clause be added:-

(5) Notwithstanding anything contained in this article, the powers conferred on the Supreme Court and the High Courts under article 25 and article 202 of this Constitution as respects the detention of persons under this article-shall not be suspended or abrogated or extinguished'." The amendment was negatived. I think these are all the amendments which we moved yesterday. Dr. Ambedkar has moved certain amendments today and I would put them to vote now.

Mr. President: The question is:

"That in clause (1) of article 15A, after the word 'consult' the words 'and be defended by' be inserted."

The amendment was adopted.

Mr. President : 'The question is :

"That in clause (3) of article 15A, for the words 'Nothing in this article' the words, brackets and figures 'Nothing in clauses (1) and (2) of the article' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That after clause (3) of article 15A. the following clauses be inserted:-

'(3a) Where an order is made in respect of any person under sub-clause (b) of clause (3) of this article the authority making an order shall as soon as may be communicate to him the grounds on which the order has been made and afford him the earliest opportunity of making a representation against the order.

(3b) Nothing in clause (3a) of this article shall require the authority making any order under sub-clause (b) of clause (3) of this article to disclose the facts which such authority considers to be against the public interest to disclose'."

The amendment was adopted.

Mr. President: The question is :

"That at the end of clause (4) of article 15A, the following be added:-

"and Parliament may also prescribed by law the procedure to be followed by an Advisory Board in an enquiry under clause (a) of the proviso to clause (3) of this article'."

The amendment was adopted.

Mr. President : The question is :

"That proposed Article 15A, as amended, stand part of the Constitution."

The motion was adopted.

Article 15A, as amended, was. added to the Constitution.

Mr. President: I am sorry I forgot to put Dr. Bakhshi Tek Chand's amendment to vote. Of course it was not necessary. It is covered by Dr. Ambedkar's amendments.

*Article 209 A

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That after article 209, between Chapters VII and IX of Part VI the following be inserted:-- "Chapter VIII Subordinate Courts. 209A Appointment of District Judges. (1) Appointments of persons to be, and the posting and promotion of, district judges in any State

shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State. (2) A person not already in the service of the Union or of the State shall only be eligible to be appointed as district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

209B. Recruitment of other than district judges to the Judicial service. Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor in accordance with rules made by him in this behalf after consultation with the State Public Service Commission and with the High Court.

209C. Control over Subordinate Courts. The control over district courts and courts subordinate thereto including the Posting and promotion of, and the grant of leave. to. persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court but nothing in this article shall be construed as taking away from any such person the right of appeal which he, may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service Prescribed under such law.

209D. Interpretation. (1) In this Chapter-

(a) the expression "district judge" includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, Chief Presidency magistrate, additional chief Presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge;

(b) the expression "judicial service" means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge.

209F. Application of the provisions of this Chapter to certain classes of Magistrates. The Governor may by public notification direct that the foregoing provisions of this Chapter and any rules made thereunder shall with effect from such date as may be fixed by him in this behalf apply in relation to any class or classes of magistrates in the State as they apply in relation to persons appointed to the judicial service of the State subject to such exceptions and modifications as may be specified in the notification'."

Sir, the object of these provisions is two-fold : first of all, to make provision for the appointment of district judges and subordinate judges and their qualifications. The second object is to place the whole of the civil judiciary under the control of the High Court. The only thing which has been excepted from the general provisions contained in article 209-A, 209-B and 209-C is with regard to the magistracy, which is dealt with in article 209-E. The Drafting Committee would have been very happy if it was in a position to recommend to the House that immediately on the commencement of the Constitution, provisions with regard to the appointment and control of the Civil Judiciary by the High Court were also made applicable to the magistracy. But it has been realised, and it must be realised that the magistracy is intimately connected with the general system of administration. We hope that the proposals which are now being entertained by some of the provinces to separate the judiciary from the Executive will be accepted by the other provinces so that the provisions of article 209-E would be made applicable to the magistrates in the same way as we propose to make them applicable to the civil judiciary. But some time must be permitted to claps for the effectuation of the proposals for the Separation of the judiciary and the executive. It has been felt that the best thing is to leave this matter to the Governor to do by public notification as soon as the appropriate changes for the separation of the judiciary and the executive are carried through in any of the province. This is all I think I need say. There is nothing revolutionary in this. Even in the Act of 1935, appointment and control of the civil judiciary' was vested in the High Court. We are merely continuing the 'Same in the present draft.

Prof. Shibban Lal Saksena: I have got an amendment which is an alternative to this. It is number 166 in the consolidated list of amendments.

Mr. President: I will take it up after these amendments. Amendment No. 21 : Mr. Kuldhar Chaliha.Shri Kuldhar Chaliha :(Assam: General) : Mr. President Sir, I beg to move :

"That in amendment No. 20 above, in clause (2) of the proposed new article 209A, after the words 'seven years' and 'pleader' the words 'enrolled as' and 'of the High Court of the State or States exercising jurisdiction' be inserted respectively."

Sir, the object of this amendments is that unless a lawyer has practised in the same province in which he is going to be appointed as a Judge, it will be very difficult for him to appreciate the customs, manners and the practices of the country. We have in our country strange results from the appointment of I.C.S. officers in the beginning of British administration. So also in cases when officers from outside the province were brought in. I am not limiting thereby the enrolment of advocates from any province. They may come an practise. Only I am saying that he should have resided in the province for a period of seven years. The results from the appointment of persons from outside the province were like this. In our part of the country, there is a custom for the New , Year day for young men to go and dance 'and sing and go on a maying and sky-larking for some time, and then stage manage on the bank of a river or a stream that she has been kidnapped or taken by force. The parents brought criminal complaints that their girls had been kidnapped and the persons were sentenced very heavily by the Judges who did not know the elementary condition of life there. Some time later, the Government had to issue circulars that in such cases, the matter should be allowed to be compromised. Probably, in other provinces also, this would be taken as a very serious offence and the persons would be given four to seven years rigorous imprisonment. In our country for such cases a preliminary enquiry has to be made and a chance has to be given for compromise. In 99 per cent. of the cases, compromises were effected after giving some solatium to the parents. In the same way, as regards marriages, we have a very simple custom of tying the nuptial knot and blessings by the people present in the village completes a marriage. The People who come from Bengal and other provinces or Europeans, who have read the Hindu Law and other things, put into force the strict laws of those countries and the result was the nullification of marriages. This may happen in Orissa or Bihar. People may not know the customs in Ranchi and other places and they may commit mistakes. I have not prevented any man from coming from any other province and practising in the High Court of the province. The only thing I insist is that they should live there for seven years so that they may be acquainted with the customs in the country, to become eligible for appointment as district judges.

The interpretation clause has complicated the matter as it includes not only district judges. but also additional district Judges and assistant sessions Judges. They will have to deal with matters which are absolutely local. Therefore, if an advocate or lawyer has not practised in the High Court of the province where they are going to be appointed as judges, there will be failure of justice. My amendment is a very simple one and there will be no harm done if the Drafting Committee sees its way to accept this amendment.

Pandit Thakur Das Bhargava: Sir, I beg to move:

"That in amendment No. 20 above, in the proposed new article 209E. after the word 'may' where it occurs for the first time. the words 'at any time' be inserted."

Mr. President: You are not moving No. 22.

Pandit Thakur Das Bhargava: I am not moving 22; I am moving 23 and 24. Sir, I

beg to move

"That in amendment No. 20 above at the end of tile proposed new article 209-E, the following proviso be added:

'Provided that the Governor or the Ruler as the case may be shall-- (i) in the case of States mentioned in Part I of the first Schedule after the lapse of three years from the commencement of this Constitution if the Legislature of the State passes a resolution recommending the making of such direction, or if no such resolution is passed after the lapse of ten years from the commencement of this Constitution; and

(ii)in the case of States mentioned in Part III of the First Schedule after the lapse of seven years from the commencement of this Constitution, if the Legislature of the State passes are solution recommending the making of such direction and if no such resolution is passed, after the lapse of ten years from the commencement of this Constitution, by public notification make such directions'."

While reading, I am very sorry, Sir, I have discovered a mistake in para. (i) of amendment No. 24, The word 'ten' should be 'five' years. So far as I remember, I gave 'five' in my original. It may be by a slip of the pen I may have giver, the word 'ten'. What I intended was 'five'. I do not know if 'five' or 'ten' was given in the original. I would beg of you to amend it to 'Five'.

Mr. President: Very well.

Pandit Thakur Das Bhargava : Sir, in regard to this amendment, the result would be that so far as article 209E is concerned, it will remain with the sweet will of the Governor whether he makes the direction contemplated in article 209E. I should like to bind the Governor or Ruler of the State that. if the legislatures of the States mentioned in Part I of the First Schedule make a recommendation within three years, the Governor shall be bound to-give effect to that recommendation and in case they do not do so, then, the Governor will be bound after the lapse of five)?cars to make the direction contemplated in article 209E. Similarly, in the case of States mentioned in Part III of the First Schedule, after the lapse of seven years, if the legislature does not make a recommendation, then, the ruler will be bound to make the direction after the lapse of ten years. During the first seven years, it rests with the legislature to make a recommendation for this direction to be implemented.

Now Sir, this question of the separation of the judiciary from the executive is a very very old one. It has been the main plank of the resolutions of the Indian National Congress in the days of foreign domination. Now, when we have attained freedom, the people of the country expected that this reform which was over-due, shall be implemented as soon as possible. While we passed some directive principles, we also included a recommendation of this nature. Now when we read article 209E every person is bound to consider that at some time or other the Governor will make this directive. Now 209E is in the nature of a pious wish. Dr. Ambedkar when he introduced this said there is nothing revolutionary about this Chapter. I think lie was quite right; but unfortunately there is nothing even evolutionary about it because we wanted that with the advent of Swaraj, the Judiciary will be independent of the Executive control and the people will get Justice; but if it is not to be as soon ,is it is possible, I would rather like that the realities of the situation were appraised rightly and the period that I have prescribed was to be the ultimate period during which this reform should have been implemented.

What happens at present is known to all members of this House. At present the Magistrates are under the control of the District Magistrates who are also the Chief Officers of the Police, in the Districts. Therefore, the Magistrates do not work with that independence and impartiality which we should expect if we want even-handed justice to be meted out to the people. The District Magistrate in whom all powers are centered, if he wants to pull up the Magistrates, can call them to his own Court. The promotions of

the Magistrates depend upon the recommendation of the People and if the police makes a report against him it will affect his promotion-Mr. President: Is it necessary to go over those grounds? There is nobody here who says that there should be no separation. The question is only of convenience and time.

Pandit Thakur Das Bhargava: Confining myself to this aspect only, I will only submit that I know that there are certain parts of India in which, as the words imply, the rule of, the law is being established only now and in regard to those cases, I have fixed the limit of ten years.

Otherwise in Bombay, Madras and U.P. and certain other parts of the provinces even now this reform can be implemented. Therefore I have given the period of three years in regard to parts mentioned in Part' I and ultimately five years, and seven years and ten years to other States mentioned in Part II. My humble submission is if we do- not accept even this amendment then it means 209-E will for ever remain a pious wish as it will be a Directive Principle. There is no point in having this prospect dangling before our eyes as will-o'-the wisp which is never to be implemented. When we passed the Directive Principles I remember there was a row in the House-some people wanted it to be immediately effective and others said that the time is not ripe. Therefore to have a golden mean between the two I am suggesting these stages and this period. I would be very happy if Dr. Ambedkar accepted this amendment of mine.

Mr. President: 117-Member not in the House Pandit Kunzru.

Pandit Hirday Nath Kunzru: Mr. President, I move:

"That in amendment No. 20 of List I (Eighth Week). in clause (1) of the proposed new article 209A, the words 'and the posting and promotion of' be omitted."

I also move with your permission :

"That in amendment No. 20 of List I (Eighth Week) in the proposed new article 209C, after the words 'grant of leave to' the words 'district judges in any State and' be inserted."

The object of my amendments is to allow High Courts to be responsible for the transfer and promotion of District judges in the same manner as they will be for the transfer and promotion of Subordinate Judges and other Subordinate Judicial officers. My amendments do not touch the question of appointment. The Governor will appoint District Judges in consultation with the High Court. All that I desire is that District Judges after their appointment by the Governor should be under the control of the High Court. I have for my amendment the authority of no less a person than the Chairman of the Drafting Committee-my honourable Friend Dr. Ambedkar. The language of articles 209A and 209C ....

Shri T. T. Krishnamachari : They are all tentative. Do not throw your words on this here again.

Pandit Hirday Nath Kunzru : I am entitled to quote from or refer to the articles of which my honourable Friend Dr. Ambedkar gave notice in the last session and they are printed on the last but one page of Volume I of the Printed amendments. If I say anything that is incorrect, my honourable Friend Dr. Ambedkar will certainly be able to refute me but I do not see why I should Dot refer to an amendment given notice of by him that appears to me to be quite sound. Dr. Ambedkar has not told us why he has departed from the phraseology of his earlier amendments. They provided that while the appointment of District Judges should be under the control of the Governor, their promotion and transfer should be under the control of the High Court. Now, in my opinion it is necessary that the High Court should have control over all those officers who are concerned with the judicial administration. District Judges are judicial officers. There is no reason, therefore, why control in respect of their transferand promotion should not be made over to the High Court. I think that if High Courts are made responsible for this, the judicial administration will improve. We have found repeatedly in the past, that the absence of control by the High Courts over the posting and the promotion of District judges has weakened their authority and weakened also the judicial administration. The District Judges feeling that the High Court had no control over them, generally looked up to the executive. I do not mean to say that no District Judge paid any regard to the provisions of the law, or that the District Judges as a rule decided cases in accordance with the convenience of the executive. But any lawyer that we might consult would, I think, tell us that demands had been repeatedly made by associations representing various parties that District Judges should be placed under the control of the High Court. They had gone so far as to ask that their appointment too should rest with the High Court. I have not gone so far. My amendment is a conservative one. All that it seeks to achieve is that District judges should be transferred and promoted by the High Court in the same way as subordinate judge would be.

The question of promotion may seem to raise some difficulty. It may be thought that it means only promotion from District Judge to High Court Judge, but it does not mean this. We have already provided for the appointment of judges of the High Court in the section dealing with the power of appointment of the judges of the High Court. The word "promotion" here can only refer to the promotion of District Judges before they are made High Court Judges. Judges are promoted now from one grade to another, and if the grades continue to be as they are at present, the High Court will be able to promote the judges as the Executive Government does now. It does not seem to me, therefore, that the use of the word "promotion" will create any difficulty.

I have already said, Sir, that my amendments do not seek to make High Courts responsible for the appointment of District Judges. I could have done this; I could have put forward an amendment asking that the High Courts should have this power too. In Ceylon, Section 55 of the Constitution provides :

". . that the appointment. transfer, dismissal and disciplinary control of all judicial officers should be vested in the Judicial Service Commission."

The Judicial Service Commission will consist of the Chief Justice, a judge of the Court and one other person who is or has been a judge of the Supreme Court. But as I have said, my amendment does not seek to introduce in the Constitution the provision that exist in the Ceylon Constitution. It leaves the appointment of District Judges in the hands of the Government and their dismissal is to be regulated in accordance with such rules as may exist. My amendment, therefore, is a very moderate one and does not create any difficulty at all. On the contrary, it will strengthen the judicial administration by enabling the High Court to have control, to a large extent, over all those officers that will be engaged in the performance of judicial duties.

Shri R. K. Sidhva (C. P. & Berar: General): Sir, could you kindly call me again? I had been out on some office business when my name was called; but I have to move an amendment which is important.

The Honourable Dr. B. R. Ambedkar: Absence cannot be an excuse.

Mr. President: I am afraid it is too late now.

Shri R. K. Sidhva : it is rather an important amendment, as I want to show. In the event of difference of opinion between the High Court Judges and......

Mr. President : And in showing that, you will have to speak of course. How will you show that, without speaking ?

Shri R. K. Sidhva: Sir. I will take only two minutes.Mr. President: Very well. But please do not take more than two minutes.

Shri R. K. Sidhva : Mr. President, Sir, I am very thankful to you for kindly permitting me to move my amendment. I had gone out on some office work, and not on private business. I beg to move

"That in amendment No. 20 of List I (Eighth Week), at the end of clause (1) of the proposed new article 209A, the following be added :-

" where there is a difference of opinion regarding an appointment between tile Governor or Ruler of the State and the High Court, the opinion of the former shall

prevail.

My amendment is self-explanatory. It has been suggested that opinions are to be gathered from three agencies, government's opinion, comprising of the full Cabinet or the Home Minister the Governor and the High Courts Judges. If the Governor and the Government agree, and if the High Court Judges do not agree, then my amendment says that the Government's and the Governor's opinion should prevail. Sir, this is only fair, because the High Court Judges should not be given all the power. The opinion of the Government and the Governor should prevail. With these words I commend my amendment for acceptance.

Mr. President : Prof. Shibban Lal Saksena had given notice of a number of amendments to the original article as it is printed in Printed List Vol. 1, where Dr. Ambedkar had proposed some new articles as 209A, 209B and 209C. And Prof. Saksena had given notice of amendments to these articles. But now that these articles have not been moved, the question of substitution anything" for them does not arise.

Prof. Shibban Lal Saksena : Sir, you had allowed such amendments in the past.

Mr. President : But you had notice of this substitution motion, as other Members had, and they have given notice to this new article now before the House. You could have given notice of your amendments also. Wherever there was a question which was, germane, and where there was not sufficient notice of the amendment proposed, I allowed old amendments to be taken. But in this case the Member had sufficient notice of the amendment which was moved by Dr. Ambedkar.

Prof. Shibban Lal Saksena: So many amendments have been allowed to be moved to amendments which were not moved.

Mr. President : They could be fitted in and so they may have been allowed. But there has been sufficient time in this case and other Members have given notice of amendments to the amendment moved by Dr. Ambedkar. So I do not think I will allow it. But if you want to speak about it, you can.

Prof. Shibban Lal Saksena: Yes, I would like to speak, Sir. What I wanted to be substituted for this article has already been expressed in my amendment No. 106 contained in the old list. So far as the present draft is concerned, Dr. Ambedkar has himself confessed that the Magistracy will not be under the High Court. I am very glad for the frankness with which be admitted in regard to 15A that he wanted "due process of law" but he has not been able to get what he wanted. Similarly, he has confessed that he wanted the judiciary to be entirely under the High Court, but he has not been able to have it. He is giving us some compromise against his wishes for satisfying the Home Ministry. I realize the difficulty, but as we are making the Constitution for the future generations, we should at least have it on record that we are not in agreement with the views of the Home Ministry, whether it be at the Centre or in the Provinces. Articles 15 and 15A are a complete denial of liberty of person. They are the darkest Part of the Constitution. Under article 209E which Dr. Ambedkar has proposed. we are negativing the principle which hasalready been accepted under the Directive Principles, namely, that the judiciary shall be separate from the executive. I feel that although we have put it there, we do not really mean to implement it In the original article, three years time-limit was put and during the discussion, the Prime Minister said that it would be done earlier than three years. But even the ten years limit proposed by Mr. Bhargava is not being accepted.

I feel therefore that the, Drafting Committee has not been able to get the Home Ministries to agree to a separation of the judiciary from the executive. The present provisions are a complete denial of the civil liberties of the person. I had in my amendment suggested that the Supreme Court and the Chief Justice should be the ultimate guardian of the liberties of the subjects and all the High Courts and subordinate judges should be ultimately amenable to their control. But the article as now framed is really a reproduction of all that was contained in the Government of India Act and there is in fact no separation of the judiciary from the executive. If this provision is put in, I fear that there will be no such separation unless there is an amendment of the whole Constitution, because after these provisions in the Constitution I am sure no province will care to go in for separation of the executive and the judiciary. The amendment moved by Mr. Bhargava says that this separation should be done at least in some provinces quickly and in the some after three, five or ten years. Even that has not been accepted. That shows that all provincial Home Ministries do not want such separation. If that is also the view of the independent Central Government of India, I am afraid that liberty of the person will not be guaranteed and we shall still continue to be' under the old system of Government which has so far prevailed. We-are probably still living in the past. I hope that Dr. Ambedkar will see the wisdom of accepting the amendment of Mr. Bhargava and at least let those provinces which are advanced to have this separation of judiciary from the executive effected much quicker.

Shri Brajeshwar Prasad: Sir, I risk to oppose the amendment moved by my Friend Mr. Sidhva. I am definitely of opinion that where there is a conflict between the High Court and the Government, the opinion of the High Court should prevail.

Secondly, I am opposed to the words "in consultation with the High Court" I definitely hold the view that appointments, postings and promotions must be removed from the purview of the provincial governments. I know of cases where High Court Judges have been removed and transferred because certain members of the Congress who hold high influence in the Governments did not pull on with some judges. The High Courts did enter into controversy with the provincial governments and the High Courts were frustrated. Therefore, I am definitely of the view that this measure is not in conformity with the needs of the situation. The need is that the provincial administration must be purified, must be free from corruption, must be free from nepotism. In article 209D the words "in accordance with the rules made by him in this behalf after consultation with the State Public Service Commission and with the High Courts" are not clear. My knowledge of English is poor. I cannot see whether the words "after consultation with the State Public Service Commission" govern the word "rules" or the word "appointments", whether the Governor has to frame the rules in consultation with the High Court and the Public Service Commission or the appointments are to be made in consultation with the State Public, Service Commission and the High Court. I am of opinion that rules should be made in consultation with the Public Service Commission and the High Courts and appointments also made in consultation with the Public Service Commission and the High Courts.

Shri R. K. Sidhva: May I know whether my Friend does not trust his own Government and his own Governor ?Shri Brajeshwar Prasad: I have no faith in provincial autonomy. This is my general proposition which I have clearly expressed on the floor of this House times without number. I need not go into the reasons once again.

Dr. P. S. Deshmukh: (C. P. & Berar: General) : I am glad you realize that.

Shri Brajeshwar Prasad: The realization will also come to you at a later stage. I want that all classes of Magistrates should be outside the purview of the Council of Ministers as regards appointment, posting and promotion. It ought to be laid down in clear and explicit terms that this reform should be implemented within two years from the date of the commencement of this Constitution. This article does not lay down in clear and explicit terms when these reforms will come into operation. I am referring to article 209E.

There is another restriction attached to this article. The words used have been "subject to such exceptions and modifications as may be specified in the notification." Sir, the plea of administrative difficulties is

merely designed to cover the lust for political power and patronage. I do not want that this restriction should find a place in the article. I hold these views because there is a necessity for purifying the provincial administration. It will secure also the liberty of the individual. It will strengthen the foundations of the State and it will generate a feeling of loyalty towards all Governments in-India if the reforms, as I have suggested, are incorporated.

Shri P. S. Nataraja Pillai (Travancore State) : It is only to clear a doubt I stand here, Sir. I would like to ask whether it is intended by this article to exclude Schedule 3 States from the provisions of article 209A or is it that they are to be included ?

Shri R. K. Sidhva : My amendment says so

Shri P. S. Nataraja Pillai: In article 209A, B and E, the wording used is 'Governor of the State" and the word 'Ruler' is omitted. But in one of the amendments moved by Pandit Thakur Das Bhargava, I think, he suggested that all these articles will apply also to Schedule 3 State. I would like to clear the doubt whether this is intended to apply to Schedule 3 States as well and if so, the necessary changes may be made.

I would like also to support the amendment moved by Mr. Chaliha, as far as the subordinate judiciary is concerned. If I may say so, for my State, the land tenure laws, the special customs prevalent there even in money transactions and the laws in force make it necessary that the recruitment should be limited to lawyers who practise in those High Courts that exercise jurisdiction in that area. If the words as used here are adopted, the lawyers practising in any High Court may be eligible for recruitment to any High Court. Unless you limit the recruiting of lawyers of High Courts of those areas to those District Courts, it will create difficulties. I want that suggestion to be considered.

The Honourable Dr. B. R. Ambedkar: With regard to the observations of the last speaker, I should like to say that this chapter will be part of the Provincial Constitution, and we will try to weave this language into that part relating to States in Part III by special adaptation at a later stage.

There are two amendments--one by Mr. Chaliha and the other by Pandit Kunzru-which call for some explanation.

With regard to the amendment moved by Mr. Chaliha, I am sorry to say I cannot accept it, for two reasons : one is that we do not want to introduce any kind of provincialism by law as he wishes to do by his amendment. Secondly, the adoption of his amendment might create difficulties for the province itselfbecause it may not be possible to find a pleader who might technically have the qualifications but in substance may not be fitted to be appointed to the High Court, and I think it is much better to leave the ground perfectly open to the authority to make such appointment provided the incumbent has the qualification. I therefore cannot accept that amendment.

The amendment of my Friend, Pandit Kunzru, raises in my judgment a very small point and that point is this : whether the posting and promotion of the District Judges should be with the Governor, that is to say, the government of the day, or should be transferred to 209C to the High Court? Now the provision as contained in the Government of India Act, 1935 was this that the appointment, posting and promotion of the District Judge was entirely in the hands of the Governor. The High Court had no place in the appointment, posting and promotion of the District Judge. My Friend Mr. Kunzru, will see that we have considerably modified that provision of the Government of India Act, because we have added the condition namely, that in the matter of posting, appointment and promotion of the District Judges, the High Courts shall be consulted. Therefore the only point of difference is this: whether the High Court should have exclusive jurisdiction which we propose to give in the matter of posting, promotion and leave etc. of the Subordinate Judicial Service other than the District Judge, or, whether the High Court

should have jurisdiction in these matters over all subordinate Judges including the District Judge. It seems to me that the compromise we have made is eminently suitable. The only difference ultimately will be that in the case of Subordinate Judges any notification with regard to posting, promotion and grant of leave will issue from the High Court, while in the case of the District Judge any such notification will be issued from the Secretariat. Fundamentally and substantially, there is no difference at all. The District Judge will have the protection of the High Court because the consultation is made obligatory and I think that ought to satisfy the exigencies of the situation.

Mr. President: The question is :

"That in amendment No. 20 above. in clause (2) of the proposed new article 209A. after the words 'seven years' and 'pleader' the words 'enrolled as' and 'of the High Court of the State or States exercising jurisdiction' be inserted respectively."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 20 above, in the proposed new article 209E, after the word may' where it occurs for the first time. the words 'at any time' be inserted."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 20 above, at the end of the Proposed new article 209E. the following proviso be added

'Provided that the Governor or the Ruler as the case may be shall--

(i) in the case of States mentioned in Part I of the First Schedule after the lapse of three years from the commencement of this Constitution if the Legislature of the State passes a resolution recommending the making of such direction. or if no such resolution is passed after the lapse of ten years from the commencement of this Constitution, and

(ii) in the case of States mentioned in Part III of the First Schedule after the lapse of seven years from the commencement of this Constitution. if the Legislature of the State passes a resolution recommending the making of such direction and if no such resolution is passed, after the lapse of ten years from the commencement of this Constitution. by Public notification make much directions'."

The amendment *as negatived.Mr. President: The question is:

"That in amendment No. 20 of List I (Eighth Week), at the end of clause (1) of the proposed new article 209A, the following be added :-

'where there is a difference of opinion regarding an appointment between the Governor or Ruler of the State and the High Court, the opinion of the former shall prevail'."

The, amendment was negatived. Mr. President : There are two amendments by Pandit Kunzru, Nos. 132 and 133. The question is :

"That in amendment No. 20 of List I (,Eighth Week), in clause (1) of the proposed new article 209A, the words 'and the posting and promotion of' be omitted."

The amendment was negatived.

Mr. President: The question is: "That in amendment No. 20 of List (Eighth Week), in the proposed new article 209C, after the words 'grant of leave to' the words 'district judges in any State and' be inserted."

The amendment was negatived.

Mr. President: The question is :

"That proposed articles 209A, 209B, 209C, 209D and 209E stand Constitution."

The motion was adopted. Articles 209A, 209B, 209C, 209D and 209E were added to the Constitution.

*Article 215

Mr. President: It is suggested that we take up Article 215.

Shri Brajeshwar Prasad: Sir, I move:

"That for amendments Nos. 2732 to 2737 of the List of Amendments, the following be substituted :-

'That for article 215, the following be substituted

"215. (1) Any territory specified in Part IV of the First Schedule and any other territory comprised within the territory of India but not specified in that Schedule shall be administered by the President in his discretion either directly or acting through a Chief Commissioner or other authority to be appointed by him.

(2) The Chief Commissioner or other authority to be appointed by the President in his discretion shall be the delegate of the

President who shall have the Power in his discretion to resume or modify such powers as he himself had conferred.

(3) The President shall have the power to take any part of the Union of India under his

immediate authority and management by placing it in Part IV of the First Schedule.

(4) No Act of Parliament shall apply to any territory in Part IV of the First Schedule unless the President in his discretion by public notification so directs and the President in giving such a direction with respect to any Act may direct that the Act shall in its application to the territories in Part IV of the First Schedule. or to any specified part thereof, have effect subject to such exceptions or modifications as' be thinks fit.

(5) The President may in his discretion make regulations for the Peace, order and good government of any such territory and any regulations so made may repeal or amend any Act of the Parliament or any existing law which is for the time being applicable to such territory and, when promulgated by the President, shall have the same force and effect as an Act of Parliament........

Sir, I move without offering any comments.

Shri T. T. Krishnamachari: Sir, I have only one matter to place before you. House and through the House to be transmitted to the appropriate authorities.This article refers to those areas Which will be enumerated in Part IV of Schedule I and which would be directly under the administration of the Central Covernment: I would like one particular area which is not included in the Draft Constitution under Part IV of Schedule I to be included in that area. The particular area I have in mind is one that was provisionally included in Schedule V under Madras and by virtue of the amendment that the House has now accepted to Schedule V it is left to the President to enumerate what are the areas to be covered by Schedule V. I refer to those islands called Laccadive Islands, including Minicoy and Amindivi which form a cluster of islands on the western side of India in the Arabian Sea. Those islands are supposed to be scheduled areas and the administration is vested in the Government of Madras.

In suggesting that the Centre should take over these islands under its own care I would at once disclaim any idea of casting any reflection on the administration of these islands by the Government of Madras. The fact really is that the islands are tar away from the Madras Coast and the provincial government has hardly got the equipment necessary to look after the administration.-of an area like this, because they have not got any naval vessels or a private merchantile fleet either. What is being done at the present moment is, I understand, that a sub-collector visits these islands once a year along with a medical officer and that is about all the connection that the Government of Madras has with these islands. I have no desire here to emphasise the strategic value of these islands. They may or may not have such a value. But it seems perfectly obvious that the idea was a relic of the past by which the administration of these islands was vested in a provincial government which is a somewhat onerous responsibility for this administration and should no longer continue to be so. I do think that whatever value these islands might have for the future of the Union as such, it is a responsibility that must be taken over by the Centre and the administration of these islands must be looked after by the Centre in the same way as they would be looking after the administration of other areas covered by article 215, which find mention in Part IV of Schedule VII.

I hope these remarks of mine will be transmitted to the appropriate quarter by the Secretariat of the Constituent Assembly and when we come to consider Schedule I, Part IV appropriate amendments will be made on the suggestion of the Ministry concerned.

The Honourable Dr. B. R. Ambedkar: I have nothing-to say, Sir.

Sardar Hukam Singh : Sir, I have no amendment to move. I have one objection to clause (2) of this article, to which I want to draw the attention of the President of the Drafting Committee. The phraseology looks to me as derogatory to the sovereignty of the Parliament and I would request him, if possible to change the words :

"The President may make regulations for the peace and good government of any such territory and any regulation so made may repeal or amend any law made by Parliament."

I take objection to the provision that the President may amend any law made by Parliament, which we say is sovereign. Our purpose will be served if we say that regulation will provide that any Act of Parliament would not be applicable to such territory or it shall be applicable to the territory with any modifications.

I only want to bring this to the notice of the Chairman of the Drafting Committee.

Mr. President: Sardar Hukam Singh has made certain suggestions with regard to paragraph 2. He says that it is derogatory to the authority of Parliament to say that the President will repeal or amend any law made by Parliament and that the words should be so modified as to indicate that the power of Parliament is not in any way subordinated.The Honourable Dr. B.R . Ambedkar : That is so. It is a kind of adaptation. In regard to the autonomous districts of Assam the Governor of Assam has similar power to adapt the laws made by Parliament when he thinks fit so to do. The whole law made by Parliament cannot be applied to certain peculiarly constituted territories unless they are adapted.

Sardar Hukam Singh: Is that a sufficient answer, Sir ? My suggestion was that it is derogatory to the sovereignty of Parliament to say that the President would repeal an Act passed by Parliament.

Mr. President: The suggestion is about a word and not about the power ?

The Honourable Dr. B. R. Ambedkar: The President is part of Parliament. There is no difficulty at all.

Mr. President: I will now put the amendment of Shri Brajeshwar Prasad to vote.

The question is

"That for amendments Nos. 2732 to 2737 of the List of Amendments, the following be substituted :-

'That for article 215, the following be substituted':-

"215. (1) Any territory specified in Part IV of the First Schedule and any other territory comprised within the territory of India but not specified in that 'Schedule shall be administered by the President in his discretion either directly or acting through a Chief Commissioner or other authority to be appointed by him.

(2)The Chief- Commissioner or other authority to be appointed by the President in his discretion shall be the delegate of the President who shall have the power in his discretion to resume or modify such powers as he himself had conferred.

(3)The President shall have the power to take any part of the Union of India under his immediate authority and management by placing it in Part IV of the First Schedule.

(4)No Act of Parliament shall apply to any territory in Part TV of the First Schedule unless the President in his discretion by public notification so directs and the President in giving such a direction with respect to any Act may direct that the Act shall in its application to the territories in Part IV of the First Schedule, or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit.

(5)The President may in his discretion make regulations for the peace. order and good government of any such territory and any regulators so made may repeal or amend any Act of the Parliament or any existing law which is for the time being applicable to such territory and, when promulgated by the President, shall have the same force and effect as an Act of Parliament........

The amendment was negatived.

Mr. President: The question is:

"That article 215 stand part of the Constitution."

The motion was adopted. Article 215 was added to the Constitution.

Article 303

Mr. President: Article 303. We can now take up the definition article 303.

The Honourable Dr. B. R. Ambedkar: Mr. President, I move:

"That sub-clause (c) of clause (1) of article 303 be omitted.'Mr. President: I

was just going to enquire whether we should not proceed with this article in the same way as we did with the Lists in Schedule VII and pass item by item.

I shall take the items as they appear in the draft. Amendment No. 3211 in the List of Amendments, Vol. II, may be moved.

Shri H. V. Kamath: It is verbal amendment. I leave it to the Drafting Committee.

(Amendments Nos. 3212 and 3213 were not moved.)

Mr. President : The question is :

"That sub-clause (a) of clause (1) stand part of article 303."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar: As regards (b), I would just like to make one point. We are proposing to drop from the Constitution two Parts which we had originally proposed in which certain communities had been enumerated as Scheduled Castes and certain communities as Scheduled Tribes. We thought that was cumbering the Constitution too much and that this could be left to be done by the President by order. That is our present proposal. It seems to me that, in that event, it will be necessary to transfer the definition clauses of the Scheduled Castes and the Scheduled Tribes to some other part of the Constitution and make provision for them in a specific article itself, saying that the President shall define who are the Scheduled Castes and who are the Scheduled Tribes. Now it seems to me that the question has been raised with regard to articles 296 and 299 which have been held over. It may be that the definition of 'Anglo-Indian' and 'Indian Chritian' which is referred to in (b) and (c) may have to be reconsidered along with that proposition. I request you to hold them over for the present.

Shri V. I. Munsiwami Pillai (Madras: General) : The whole thing regarding the Scheduled Castes, etc. may be held over.

Mr. President: I take it that the House agrees to hold over the consideration of items (b) and (c).

[Sub-clauses (b) and (c) were held over.]

Mr. President: There are no amendments to item (d).

The question is :

"That sub-clause (d) be adopted."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That sub-clause (e) of clause (1) of article 303 be deleted."

Mr. President: There is no Chief Judge now. There used to be subordinate High Courts which were called Chief Courts and they used to have Chief Judges. The question is

"That sub-clause (e) of clause (1) of article 303 be deleted."

The amendment was adopted. Sub-clause (e) of clause (1) was deleted from article 303. (Amendment No. 3219 was not moved.)Mr. President: Then (f), There is no amendment to this.

"That sub-clause (f) of clause (1) stand part of article 303."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

" That for sub-clause (g) of clause (1) of article 303 the following sub-clause be substituted, namely:

'(g) 'corresponding Province'. 'corresponding Indian State' or 'corresponding State' means in cases of doubt such Province, Indian State or State as may be determined by the President to be the corresponding Province, the corresponding Indian State or the corresponding State, a,,; the case may be, for the particular purpose in question;'

We have only included Indian States.

Shri H. V. Knmath : Are we still going to retain the distinction between 'State' and 'Indian State' ?

The Honourable Dr. B. R. Ambedkar: The distinction is this. A State now means a constituent part of the Union. An Indian State means a State which is outside the Union but under the paramountcy or control of the Union.

Shri R. K. Sidhva: Is the Cutch State which is now administered by the Centre an 'Indian State'? So also Bhopal ?

The Honourable Dr. B. R. Ambedkar: An Indian State is defined at a later stage.

Mr. President: There is a definition of an Indian State given later on in amendment No. 140.

Shri T. T. Krishnamachari : There seems to be some confusion in the minds of Members. The terms "corresponding province" and "corresponding Indian State" these are terms pertaining to the period before the commencement of the

Constitution. The term "corresponding State" comes into existence after the commencement of the Constitution. The difference between the two is only this. I hope there will now be no confusion on this matter.

Mr. President: The question is :

"That for sub-clause (g) of clause (1) of article 303 the following sub-clause be substituted, namely :--

'(g) "corresponding Province". "corresponding Indian State", or "corresponding State" means in cases of doubt such Province, Indian State or State as may be determined by the President to be the corresponding Province, the corresponding Indian State or the corresponding State, as the case may be, for the particular purpose in question;"' The amendment was adopted.

Mr. President: The question is :

"That sub-clause (g) of clause (1), as amended, stand part of article 303."

The motion was adopted.

Mr. President: Then (h). There is no amendment to this. The question is

That sub-clause (h) of clause (1) stand part of article 303."

The motion was adopted.The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in sub-clause (i) of clause (1) of article 303, the words 'but does not include any Act of Parliament of the United Kingdom or any Order in Council made under any such Act' be omitted."

Such Acts as the Merchant Shipping Act might have to be retained until Parliament otherwise provides.

Shri H. V. Kamath: With regard to this (i), there is evidently a slight lacuna. It speaks of laws and bye-laws. But only 'rule' is mentioned. Why not 'bye-rule' as well ?

The Honourable Shri K. Santhanam: I have got an amendment to this. If it has been considered by the Drafting Committee and found to be unnecessary, I do not want to move it. The point that I want to bring to the notice of the Drafting Committee is that there are areas like Baroda which have been merged with other provinces. Now, in the case of Baroda, what will be the interpretation of the word "existing law" ? Will it mean only the laws which are in existence in the province of Bombay or will they include also the laws passed by the Baroda Government or Legislature before integration, because as things are, according to- the present term, it might include the laws passed by the previous Baroda Legislature or Government, even though they may have been superseded by the present Bombay laws. If that point is made clear, I do not want to press my amendment. Otherwise, I would want my amendment to be considered by the Drafting Committee.

The Honourable Dr. B. R. Ambedkar: Whether a law is in force or not would depend upon various considerations. First of all, the merger itself may have provided that certain laws shall not be in operation. It may be that the Bombay Government after that territory has been merged, may retain the laws for that particular territory known as Baroda, or its own legislation might abrogate it. Therefore any existing law means the law that is in force at the date of the commencement of the Constitution.

The Honourable Shri K. Santhanam: I do not press my amendment.

Mr. President: The question is :

"That in sub-clause (i) of clause (1) of article 303, the words 'but does not include any Act of Parliament of the United Kingdom or any Order in Council made under any such Act' be omitted."

The amendment was adopted.

Mr. President: The question is :

"That sub-clause (i) of clause (1). as amended. stand part of article 303."

The motion was adopted.

Mr President: There is no amendment to this. The question

"That sub-clause (j) of clause (1) stand part of article 303."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar : Sir, I move

"That after sub-clause (i) of clause (1) of article 303, the following sub-clause be inserted :-

(jj) 'foreign State' means any State other than India but does not include a State notified in this behalf by the President'."The Honourable Shri K. Santhanam : Would Dr. Ambedkar kindly explain what is meant by the latter portion of this sub-clause (jj) ? Will he give an illustration of that ?

Shri T. T.

Krishnamachari : If it is so desired the President might exclude certain States from the category of foreign States. Although it might be premature to say so, it may be according to this scheme under which would be subjected any such arrangement that the new commonwealth relationship might entail. The idea is that the Indian Government of this future could exclude such States from the conception of the foreign State, the President will have the authority to do so. The honourable Member might be aware of the peculiar position of Eire vis-a-vis Britain and also vis-a-vis India. Actually though there is nothing really on the statute book or anything covered by a treaty, we do not treat Eire exactly as a foreign State.

The Honourable Shri K. Santhanam : Sir, the definitions that we are making have got legal significance. Either a State is a foreign State or it is not. If it is not a foreign State, it is governed by the provisions of this Constitution and the laws made under the provisions of this Constitution. The example given by my honourable Friend, Mr. T. T. Krishnamachari does not come in either. We cannot by saying that 'Britain is not a foreign State possibly bring it under this Constitution or the laws thereunder. It is a question of convention apart from legal definitions. Therefore, I do not think we should have the words "but does not include a State notified in this behalf by the President." We have already given power to Parliament to include other territories in the territories of India. It should not be left open to the President by some notification to say that some State which does not come under the territory of India by parliamentary legislation is part of India. Technically, the meaning of saying "by notification of the President" that it is not a foreign State, is that it will be part of the Indian State. Unless you give some definition for a State which is neither foreign nor within India, I think this may lead to all kinds of confusion, if not difficulty. I do not think it is very advisable to have this sub-clause (jj) at all. It is wholly unnecessary and we should not try o bring matters of convention into matters of definition. I do not think we are going to suffer at all by not having this (jj).

The Honourable Dr. B. R. Ambedkar: Sir, the position is this : If one were to stop with the word "India", it means what a Foreign State ordinarily means. Every ;State is foreign to another State. That is quite clear from the first part of the definition. Therefore, there can be no quarrel with that part of the definition. In fact that definition may not be necessary even, but in view of the fact that we have used the words "Foreign State" in some part of our Constitution and in view of the fact that it may be necessary for certain purposes to declare that a Foreign State. although it is a Foreign State in the terminological sense of the word is not a Foreign State for certain purposes, it is necessary to have this definition and to give the power to the President to declare that for certain purposes a State of that kind will not be a Foreign State. The case of Malaya, I understand, is very much in point. Therefore, it really means that for certain purposes the President may declare that although a State Is a Foreign State in the sense that it is outside India, for certain purposes will not be treated as a Foreign State. It is for that purpose that this definition is sought to be introduced.

The Honourable Shri K. Santhanam: This sub-clause does not authorise the President to notify for certain purposes. It gives a definition.

The Honourable Dr. B. R. Ambedkar: That will, of course be remembered duly by the President when he issues the notification.Mr. President. The question is:

"That after sub-clause (j) of clause (1) of article 303. the following sub-clause be inserted

'(jj) 'foreign State' means any State other than India but does not include a State notified in this behalf by the President."

The amendment was adopted.

Many honourable Members: What about the, programme?

President : I

might inform the House that there are certain provisions of the Constitution which have to be dealt with and as soon as we finish those, we have to deal with one Bill which has already been introduced. When all this work is finished, we shall adjourn and it depends upon the House how long it will take to finish the business. I can mention the articles if you Re. Articles Nos. 99, 184, 303, 304, 305, Schedule VIII, Schedule IX, Article 1, New Schedule IIIA, Schedule IV, new article 264A. Then there is a motion of which notice has been given by Mr. Munshi regarding the Hindi version of the Draft Constitution, and lastly there is Dr. Ambedkar's Bill. This is what we have to get through in this session.

Pandit Govind Malaviya (United Provinces: General) ; May I know, Sir, if it is settled that we are going to have another session of the Assembly in early October ?

Mr. President : We are going to have another session in October.

Pandit Govind Malaviya: When we are going to have another session so soon, could we not put all this off till then'?

Mr. President: I have found that there has been a tendency when approaching the close of this session to shove everything to the next session; till yesterday I thought we would be able to deal with all the transitory provisions, but I was informed that we could not take them and we should shove them off to the next session. Today I am told that we could not dispose of the preamble and we should shove it off. Now you propose that all the rest of the work should be shoved off. It will not be possible because.......

Pandit Govind Malaviya: Sir, I say so for this reason. Originally it was thought that this session would be a snort session say, for a fortnight. We have now gone on for seven weeks If we are going to meet early in October again, probably it will not matter very much if we put off these items till then. But, it you think that we must complete some of this work which you have mentioned, then may I suggest, Sir, that, possibly, we could have both morning and evening sessions today and tomorrow and finish by then whatever work we can, and then we may adjourn.

Many Honourable Members: Yes, Yes.

Mr. President: The difficulty is this that we have got certain holidays to take into consideration. We have to take the convenience of the Legislative Assembly, which is to meet in November, and we have to pass the remaining articles of the Constitution for the Second Reading and then the whole Constitution in the Third Reading, and in between the completion of the Second Reading and the Third Reading, the Drafting Committee will naturally require some time which cannot be less than, say, three weeks or so, for putting things in order and getting them ready for the Members for the Third Reading. Therefore, all this difficulty arises because we have some sort of a time--limit on the other side and we have to fit in all these as far as possible. Therefore, I am trying to finish as much of the work as possible in this session so that in the October session we may not have more left than Is absolutely necessary. Even as it is, what is left for the October session is this. We havea Chapter with regard to the States, which we have not yet dealt with, that is to say, about the Indian States, merger and all that. So, a new Chapter or amendments to some of the articles which have been proposed in-the Draft Constitution will have to be done. That will take, I think, some little time. Then we shall have to deal with transitory provisions which have not been taken up today because I understand there is some difficulty with regard to that. There are two articles relating to minorities, articles 296 and 299 which we have left over. Then there is Schedule I that is regarding the territories. That may not be very difficult. Then, there, is Scheduled II dealing with salaries and emoluments : I do not know-it may evoke some amendments. 'That would take some time. Schedule III-B is a list of the constituencies for the Council of States. Then, there are two articles which are of a substantial nature, article 283-A relating to protection to services which has been held over and article 280-A relating to financial emergency. Apart from these, there are two more or less formal articles relating to commencement and repeal.

Shri R. K. Sidhva : These will not take more than a week or ten days.

Mr. President : I am not allotting more than ten days for these. If we start on the 10th we would go up to the 20th. Diwali begins on the 21st. The work we have to do, we must finish before the Diwali session finishes. If we have to sit for ten days, we shall have to begin about the 6th or so.

Shri R. K. Sidhva: Cannot we sit this afternoon and tomorrow and finish as much as possible ?

Mr. President : I am told that there are some articles of which the draft has not yet been finalised.

Pandit Thakur Das Bhargava: We can have two sittings tomorrow.

Mr. President: Tomorrow we will have two sittings.

Pandit Thakur Das Bhargava: And one sitting on Sunday.

Mr. President : I have no objection. If honourable Members agree, I do not mind. Or we can sit on Monday. Just as you like.

Shri V. T. Krishnamachari: I suggest we sit on Sunday and finish on Sunday.

Mr. President: I have no objection. Is it the wish of the House that we sit on Sunday.

Several Honourable Members: Yes.

Mr. President: We shall sit on Sunday.

Shri R. K. Sidhva : Is it a condition that all work should be finished on Sunday or we carry over the rest?

Mr, President: That condition cannot be fulfilled by me. That must be fulfilled by you. The House stands adjourned till nine of the clock tomorrow.

The Assembly then adjourned till Nine of the Clock on Saturday, the 17th September 1949.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Saturday, the 17th September, 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

ABOLITION OF PRIVY COUNCIL JURISDICTION BILL

Mr. President: The first item is the Bill. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay: General) : Mr. President, Sir, I move :

"That the Bill to abolish the jurisdiction of His Majesty in Council in respect of Indian appeals and petitions, introduced on the 14th September 1949, be taken into consideration by the Assembly".

I would like to say just one or two words and inform the House as to why this Bill has become a necessity and what the Bill proposed to do in substance. Tile necessity for the Bill arises because of two circumstance. One is the provision contained in clause (3) of the proposed Article 308. This article 308 is to be found in the midst of, what are called transitional provisions, Clause (3) of article 308 provides that-

"On and from the date of commencement of this Constitution the jurisdiction of His Majesty in Council to entertain and dispose of appeals and petitions from or in respect of any decree or order of any court within the territory of India, including the jurisdiction in respect of criminal matters exercisable by Ms Majesty by virtue of His Majesty's prerogative shall cease, and all appeals and other proceedings pending before His Majesty to Council on the said date shall be transferred to and disposed of, by the Supreme Court' which means that on the date on which the Constitution comes into operation, the jurisdiction of the Privy Council will completely vanish.

The second circumstance which has necessitated the Bill is that it is proposed that this Constitution should come into operation sometime about the 26th January, 1950. The effect of these two circumstances is that the Privy Council will have no jurisdiction to entertain any appeal or petition after the 26th January 1950, assuming that that becomes the date of the commencement of the Constitution. But what is more important is this that the Privy Council will not even have jurisdiction to deal with and dispose of appeals and Petitions which may be pending before it on the 26th January, 1950 Now making stock of the situation as it will be on the 26th January 1950 the position this. There are at present seventy civil appeals and ten criminal appeals ending before the Privy Council. The Calendar of cases which is prepared or the next sitting of the Privy Council has set down twenty appeals for hearing and disposal. It is also a fact that that is probably the only sitting which the Privy Council will hold for the purposes of disposing of the Indian appeals before the date on which the Constitution comes into operation.

According to the information which we have, this list of cases which is prepared for hearing at the next session of the Privy Council contains about twenty appeals, which means that on the 26th January, 1950, sixty appeals will remain pending undisposed of; and the question really that we are called upon to consider is this. What is to be done with regard to these sixty appeals which are likely to remain pending before the Privy 'Council on the 26th January, 1950? There are, of course, two ways of dealing with this matter. One way was to continue the jurisdiction of the Privy Council and dispose of all the appeals that are now pending before it. That was the procedure that was adopted in the Irish Constitution by article 37 whereby it was stated that nothing in their Constitution would affect the jurisdiction of the Privy Council to deal with matters that may be pending before them on the date of the Constitution. But as I pointed out, in the proposed article 308 clause (3), we do not propose to leave any jurisdiction to the Privy Council. We propose to terminate the jurisdiction of the Privy Council on the 26th January, 1950. The only way out, therefore, is to provide that the jurisdiction of the Privy Council shah terminate, that their jurisdiction shall be conferred on the Federal Court and that they shall transfer all the cases which are pending before them on the 10th October, except the twenty cases to which I made a reference earlier to the jurisdiction of the Federal Court. This is what the Bill does.

Now, Sir, coming to the specific provisions of the Bill, it will be noticed that clause 2 abolishes the jurisdiction of the Privy Council over all courts in the territory of India. Clause 3 abolishes the jurisdiction of the Privy Council over the Federal Court, and clause 5 is the converse of clauses 2 and 3, because it proposes to confer the Privy Council jurisdiction on the Federal Court. Clause 4 deals with the matters that are pending before the Privy Council. Although clause 5 confers the Privy Council's jurisdiction on the Federal Court, clause 4 is a saving clause and saves the jurisdiction of the Privy Council in certain appeals and petitions which are pending before it. They may be classified under four heads : (1) Appeals and petitions in which judgment has been delivered, but Order in Council has not been made before the 10th October, (2) appeals entered in the Cause List for Michaelmas sitting which begins on the 12th October, (3) petitions which are already lodged and may be lodged before the 10th October, and (4) appeals and petitions on which judgment has been reserved by the Privy Council although the hearing has. been completed. In clause 6, all those matters which do not come under clause 4 stand automatically transferred to the Federal Court even though they may be pending before the Privy Council. Clauses 7 and 8 are mere matters of construction.

While curtailing the, jurisdiction of the Privy Council it is felt that it is desirable to repeal and amend certain sections of the Government of India Act, 1935 which are necessary as a matter of consequence and which are also necessary to remove some- of the anomalies in the Government of India Act with regard to the jurisdiction and powers of the Federal Court. As I have said, clause 3 repeals Sections 208 and 218 of the Government of India Act which deal with the Privy Council and appeals from the Federal Court, and appeals from a court outside India. Both these changes are consequential.

It is proposed to amend Section 205 which deals with the appellate jurisdiction of the Federal Court, and Section 209 which deals with the form of judgment and the drawing up of decrees, 210 which deals with jurisdiction of the Federal Court over other courts and Section 214 which deals with jurisdiction of the Federal Court over courts outside India.

It is proposed, therefore, by these consequential and other necessary amendments to make the jurisdiction of the Federal Court complete and independent. This measure, undoubtedly, is an interim measure, because these' powers will last only up to the 26th January 1950 when the Constitution comes into operation. On the 26th January 1950, the powers of the Federal Court will be those that are set out in the Constitution.

Sir, I move.

Mr. President: The motion is:

"That the Bill to abolish the jurisdiction of His Majesty in Council in respect of Indian appeals and petitions, introduced on September 14, 1949, be taken into consideration by the Assembly."

Does any Member wish to say anything about it ?

Pandit Thakur Das Bhargava (East Punjab : General) : pleasure In supporting the motion moved by Dr. Ambedkar. It is but meet that the jurisdiction of the Privy Council which is the symbol of our judicial slavery should end as soon as possible. I do not understand if there is any connection between the declaration of our country as a Republic and the Privy Council. When the Independence Act was passed, that was indication enough for us that we should abolish the jurisdiction of the Privy Council. I understand that in Canada also, while the connection is as good as before, attempts are being made to sever that connection. I read in today's "Hindustan Times" as follows :

"In the speech from the

throne at the opening of Canada's 21st Parliament, yesterday the Governor- General Viscount Alexander announced that two Bills would be introduced aimed at cutting Dominion ties with Westminster.

One would be a Bill to amend the Supreme Court Act so that the Supreme Court Act so that Supreme Court of Canada would become the final court of appeal for Canada."

Therefore, I do not understand why this very thing which we are doing today could not have been done much earlier. When in 1947 a Bill was placed before the legislative part of the Constituent Assembly for the enlargement of the powers of tile Federal Court, Ajmer-Merwara was not included in the list of those High Courts from which appeals to the Privy Council were to be, substituted in future to the Federal Court, as Ajmer-Merwara was a Judicial Commissioner's court. But at that time many of us indicated that steps should be taken at once to see that this jurisdiction of the Privy Council was abolished.

Similarly in regard to criminal cases we have been trying for the last two years to see that the jurisdiction of the Privy Council is taken away. In the Legislative Assembly we brought in a Bill-Dr. Hari Singh Gour gave the notice and I introduced the Bill-and subsequently it was referred to Select Committee at my instance. But before the Select Committee it was found that that part of the Constituent Assembly had no power to enact a measure like that. therefore, before the last session of the. Constituent Assembly was over, Mr. Naziruddin Ahmad and I sent in a Bill, for abolition of powers of the Privy Council, to this House before August. We wanted that this jurisdiction should be abolished all at once. But unfortunately no notice was taken of that Bill. I am very glad that after all, now, on the last day of the session, this Bill has been brought.

In welcoming this Bill I would like to say that this is not the only point, namely, that our judicial slavery ends, about which we were so impatient. But I congratulate the Drafting Committee for their draft which is certainly much better than the draft which I placed for their consideration. This might also be one of the reasons why they have taken so much time in considering the question. The draft, as it stands, consists of two parts; one relates to the abolition of the jurisdiction powers of the Privy Council and the other relates to the conferment of the corresponding jurisdiction on the Federal Court. I am very glad that clause 5 finds a place as the subject matter of it did not as a matter of fact find a place in article 308. Article 308 only operates to abolish the jurisdiction of the Privy Council. But it failed to confer the jurisdiction of the Privy Council on the, Federal Court. Now., clause 5 seeks to place that jurisdiction which was enjoyed by the Privy Council on the Federal Court. The jurisdiction enjoyed by the Privy Council in regard to criminal matters was a very special kind of jurisdiction which could only be enjoyed by the Privy Council of a State in which there was monarchy. Now, the words in clause 5 are "the same jurisdiction to entertain and dispose of Indian appeals and petitions as His Majesty in Council has, whether by virtue of His Majesty's prerogative or otherwise". So under clause 5 these powers have now been transferred to the Federal Court.

When I come to my amendment I will have occasion to say how this is different from the ordinary jurisdiction in regard to appeals etc. At this stage I need not dilate upon that. The only point that I want to bring to your notice in this connection is that whereas in clause 9 we have got some statement of the powers of the Federal Court on the civil side, there is no corresponding statement in regard to the criminal powers of the Federal Court after they have been conferred on it under clause 5. And I have tried to fall up that lacuna.

Similarly, in regard to clause 4 relating to the exceptions which have been made so far as the Privy Council jurisdiction is to continue for certain appeals, my humble submission is that as a matter

of fact we should not allow any jurisdiction to continue in the Privy Council in regard to cases in which the Privy Council has so far done nothing. My opinion is that cases in which the Privy Council has done nothing should be transferred at once to the Federal Court. After all a petition for appeal consists of two main parts. Firstly the petition is lodged mechanically with the Registrar and the Registrar has done nothing to it except the formal record of the lodgment of the appeal. Then at the first hearing the question is gone into and sanction is accorded. It is but meet that in regard to these cases in which the appeals have only been lodged, the entire proceedings should take place in India because nothing has been done in respect of them in the Privy Council so far.

In regard to cases where something has been done, where they have been finally put before the Privy Council, where-I can understand-people have spent lakhs of rupees on counsels etc., those cases-twenty of them, as has been indicated by Dr. Ambedkar-may be heard by the Privy Council. But there is absolutely no reason why the cases in which only the petitions have been lodged before the Privy Council should be allowed to be gone into by the Privy Council and the question of sanction or ban decide. I for one do think that so far as the legal aspect of the matter is concerned we should see that the entire proceedings in those cases take place in India. Clause 5(2) says that even if the sanction is accorded, further proceedings are to take place here. But I understand that the more legal and more just thing is that the entire proceedings should be had in India.

In regard to pending cases, so far as any cases remain which are not disposed of by the Privy Council and which are not taken cognizance of, in the sense that they are not taken and finished in this session in 1949, 1 hope all these unfinished cases will come here, because there is no object in keeping any connection with the, Privy Council any further. I have put in an amendment, but at this stage I do not want to take up the time of the House. Sir, I support the motion before the House.

Mr. Naziruddin Ahmad (West Bengal: Muslim) : Mr. President, Sir, I welcome the motion for consideration of the Bill. The matter has already been unduly delayed, but after all I am happy that it has come at last.

I have two points to submit at this stage. One is the question as to what would happen to those appeals which were appeals against a decision of the Federal Court. This Bill absolutely prohibits the Privy Council from deciding them and they must lapse. I submit this will cause much hardship. I submit that appeals which have been admitted by the Privy Council, on the ground of leave having been given by the Federal Court or special leave given by the Privy Council itself, should not be killed in this fashion because when the appeals were lodged and were admitted the appellants acquired something like a vested right in the sense that they had a right to be heard and their contentions decided in a formal manner. This right is being taken away. Many must have spent a lot over them. This will create real hardship.

The other point to which at this stage I wish to draw the attention of Dr. Ambedkar is clause 10. With regard to clause 10 the procedure laid down in the Civil Procedure Code is retained. Those provisions are sections 109, 110, 111 of the Code of Civil Procedure and order XLB of the same Code. So far as these sections are concerned, they will now be, by virtue of this Bill, entirely obsolete. They deal with certain preliminaries relating to appears to the Privy Council from the judgment of the High Court. Those provisions are entirely covered by an earlier enactment of the Central Legislature passed in 1941 that is, Act XXI of 1941, and also by clause 9, sub-clause (2), of the present Bill. I submit that clause 10 of the Bill will result in a clash between the provisions of the Civil Procedure Code and Act XXI of 1941. By the Adaptation Order of 1937, section 111-A and Rule 17 to order

XLV of the Civil Procedure Code were added. But by the Act of 1941, section 111-A of the ,Civil Procedure Code and Rule 17 of Order XLV were repealed and by that Act the Federal Court was enabled to make their own rules. By virtue of that power, the Federal Court has already made rules and they would cover procedural matters relating to appeals. In the face of those rules which are self-complete, there would be a clash between those rules and the provisions of the Code of Civil Procedure. I should like to ask the honourable Member to consider the desirability of retaining clause 10. I shall give the details when it comes up, but I merely draw attention to the unnecessary character of this clause.

Sir, generally I support the Bill.

Shri B. N. Munavalli (Bombay States) : Mr. President, Sir, the Bill as it stands has been very carefully worded and has met all the difficulties that were being felt up till now. The Honourable Pandit Thakur Das Bhargava stated that all those appeals which have not been beard in the Privy Council should be transferred to the Federal Court. But we must look to the procedure of the Privy Council also. In the case of certain appeals which have already been registered, it is but natural that certain work with regard to them must be attended to there. So, although the appeals are not heard by the Privy Council, still it stands to reason that the appeals which have been registered should be left with the Privy Council for decision. But now when the Bill comes into force on the 10th of October 1949, all the appeals will vest with the

Federal Court. Also, if there are any appeals to the Privy Council which the High Court has certified, provision has been made there also for appeal to the Federal Court. Under these circumstances, I do not think there is any reason why there should be any changes in the Bill as piloted by Dr. Ambedkar.

My honourable Friend Mr. Naziruddin Ahmad said that the right of the persons who might have appealed against the decision of the Federal Court to the Privy Council had been taken away. But really speaking it is not so. The fact is that if they have already gone in appeal to the Privy Council and if those appeals have been registered, they will be heard by the Privy Council. That being the case, there is no grievance whatsoever. The Bill provides for every contingency and meets the grievances that were left unredressed up till now. So I am in agreement with the Bill and wholeheartedly support it Dr. Bakhshi Tek Chand (East Punjab: General) : Mr. President Sir, I rise to support the proposition that has been moved by Dr. Ambedkar and to oppose the amendment of my honourable Friend, Pandit Thakur Das Bhargava.

Pandit Thakur Das Bhargava: No amendment has not been moved yet.

Dr. Bakhshi Tek Chand: Oh, the amendment has not been moved yet.

Today is, if I may say so, a memorable day in the history of this country. It is exactly after 175 years that the judicial connection of this country with England comes to an end. It was, Honourable Members may be aware, in 1774, when, by an Act of Parliament passed in the previous year, a Supreme Court was,, established at Fort William in the Province of Bengal. By that Act provision was made for taking appeals from the judgments, decrees and orders of the Supreme Court to His Majesty's Privy Council in England. In 1800 a Supreme Court was established in Madras and in 1823 another Supreme Court in Bombay, and appeals from these three Courts were regularly taken to England. In 1883 the British Parliament passed the Judicial Committee Act by which the Privy Council appointed a Committee only, to hear and dispose of appeals from India and the colonies, consisting only of persons with judicial or legal experience from amongst its members. From 1833 up to now this jurisdiction has been exercised by that august body.

During this period, if I may say so, the Pr-ivy Council has been a great unifying force in the judicial administration of this country, and I would like, with your permission to express our high appreciation of the

work which it did. At a time when there were no Indian Judges in, the High Courts, and then the number of Indian lawyers was very limited, the Privy Council unravelled the mysteries of Hindu Law, it enunciated ten principles of Mohammadan law, and formulated with clarity the customs which were prevalent in this country. Their Lordships of the Privy Council have from time to time elucidated the various Indian laws with an absolutely detached mind. They have laid down the principles on which the judicial administration of the country was based. No doubt there have been lapses and mistakes, occasionally but, on the whole, the Privy Council has been a great unifying factor and on many occasions has reminded the courts of the country of those fundamental principles of law on which the administration of justice in criminal matters is based. This long connection, in the fullness of time is coming to an end, as it must, now that we have attained freedom. That is the first observation which I have to make.

With regard to the provisions of the Bill, we have, as has been pointed out, about eighty or to be more exact, seventy-nine appeals pending before the Privy Council. Of these, thirty-one appeals in civil matters have been brought as a right and the records relating to those appeals had been received in England before 1st February 1948 when the Federal Court enlargement of jurisdiction came into force. There are thirty-eight civil appeal from the High Court in India in which special leave has already been granted and the appeals admitted for hearing before the Privy Council. With regard to criminal matters there are only ten appeals in which special leave has already been granted. As honourable Members are aware, no appeal in a criminal case lies to the Privy Council as of right. It is only by special leave of their Lordships that criminal matters can be heard there. In ten cases, such leave has already been granted and the cases are ripe for hearing. This is the entire list of pending cases though out of these seventy-nine cases, records of fifty-two cases have already been received in England and petitions of appeal leave been lodged in forty-one. Another branch of cases which could under the existing law, go to the Privy Council are appeals from the Federal Court in India in matters in which interpretation of the Government of India Act, 1935, or of the Orders in Council made thereunder or of the independence Act, may be involved. No appeal from the Federal Court is, however, pending at present before the Privy Council. Therefore this question does not arise.

Out of these seventy-nine appeals, it is likely that about twenty only will be heard before the twenty-sixth of January next year when, it is expected that the new Constitution will come into force. If even these cases are brought over to India at this stage it will be a very great hardship to the litigants who have spent thousands of rupees in having the records printed and sent up to England, in engaging- solicitors and briefing counsels there. Therefore, it is a very salutary provision that as many of them as can be disposed of by the 26th of January, should be allowed to be heard and decided there. Those which are not finished by that time will automatically be transferred to India.

The other matter relates to criminal appeals. These are cases, in which as I have said already special leave has been granted. They are mostly cases in which the appellants are under sentence, of death or transportation for life or other long terms of imprisonment. The trials of these persons were held long ago and after a lengthy process, their cases have reached the Privy Council and are ready for being disposed of shortly. It will be very undesirable-if I may say so, cruel-to bring those cases back to India for final disposal here, and delay the final decision for several months more and put the appellants to additional expense

There is a third class of cases with regard to which my honourable Friend, Pandit Thakur Das Bhargava has made some remarks. These are cases in

which petitions for leave to appeal in criminal matters have been lodged before the Privy Council but such petition have not been heard yet. Now, what will be the position with regard to them? Two possible courses are open. The first is that provision be made for the immediate transfer of these petitions to the Federal Court. This alternative appears to be supported by Pandit Thakur Das Bhargava. The other is as the Bill provides, that they may be set down for the preliminary hearing before their Lordships. I submit that this provision in the Bill is an eminently reasonable one. The petitioners in these cases, most whom are tinder sentence of death which have been confirmed by the High Courts, have applied to the 'Privy Council for leave to appeal. Their petitions are already lodged there and the preliminary hearing will take-place in a few days. At the hearing their Lordships may refuse leave in some cases. In that event, there will be an end of the matter. The other possibility is that they may grant leave and then the appeals be admitted for final bearing. Provision has been made in the Bill that if leave is so granted the cases will be automatically transferred to India and the final disposal of those appeals will he in India before the Federal Court or the Supreme Court, as the case many be, I think, Sir, that is in eminently reasonable and practical provision and I submit that it ought to be accepted. It is not desirable to prolong the agony of these condemned persons much longer but to have the cases heard and finished as soon as possible.

Another suggestion made by an Honourable Member is that the Federal Court should be invested with jurisdiction to entertain petitions for leave with effect from the 20th September instead of the 10th October as laid down in the Bill. I may submit that this really does not make any material difference. According to the Privy Council rules, the Michaelmas term will begin on the 10th of October, and there is no chance of any petition being heard before, that date a the Privy Council is in vacation in these days. No list of cases which arc set down for hearing during the Michaelmas term under the rules of thePrivy Council can be issued after 23rd September except by special orders of their Lordships. Therefore this provision in the Bill is also eminently satisfactory and proper. I submit that-the.Bill as introduced contains very salutary transitory provisions which will make arrangements for the hearing of a small number of cases during the interval with the least expenses to litigants, and for the transference of the bulk of them to the Supreme Court in India. I therefore support the motion.

Mr. President : Is it necessary to prolong the discussion on this motion ?

Honourable Members : No, Sir.

Mr. President : The question is :

"That the Bill to abolish the jurisdiction of His Majesty in Council in respect of Indian appeals and petitions, introduced on September 14, 1949, be taken into consideration by the Assembly."

The motion was adopted.

Clause 2

Mr. President: Clause 2. The first amendment. (No. 8) is in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: Sir, I beg to move

"That in sub-clause (1) of clause 2 for the words 'entertain, and save as hereinafter provided to dispose of, appeals', the words 'entertain and, save as hereinafter provided, to dispose of appeals'

or, alternatively, entertain and (save as hereinafter provided) to dispose of appeals'

or, alternatively,

'entertain, and (save as hereinafter provided) to dispose of appeals' be substituted."

Sir, these are of a drafting nature, but they cannot be left to the Drafting Committee which has nothing to do with this Bill. nor can they be referred to the Honourable Member-in-charge under our rules.

I next move :

"That in sub-clause (1) of Clause 2, for the word 'court' the word 'Court' (with a Capital 'c') be substituted."

I am not moving amendment No. 10, because Pandit Thakur Das Bhargava, who is more concerned with it, will move it.

Sir, I move now my next

amendment No. 12

"That in sub- clause,(2) of Clause 2,

(a) for the words "The appeals and petitions', the words 'An appeal or a petition. and

(b) for the words 'Indian appeals', the words 'Indian appeal', and for the words 'Man petitions the words 'Indian petition' be substituted."

These are all of a drafting nature.

pandit Thakur Das Bhargava: Sir, my amendment No. 10 is really consequential to amendment No. 14.]If amendment No. 14 is not carried, amendment No. 10 will not arise. So, with your permission I will move amendment No. 10 after the House has disposed of Clause 3 to which my amendment No. 14 relates.

Mr. President: I do not know how that can be done.Honourable Dr. B. R. Ambedkar: Sir, it is contained in clause 3 if my friend will read it. 'Federal court' is provided for in sub-clause (2) of clause 3. That is why the words "(other than the Federal Court)" are there in clause 2.

Pandit Thakur Das Bhargava: In this list it is in clause 2 and my amendment applies to it only.

Mr. President: You can leave it out for the present.

The Honourable Dr. B. R. Ambedkar: I do not accept the amendment. It is quite unnecessary.

Shri B. Das (Orissa: General) : I beg to move:

"That in sub-clause (1) of Clause 2, the words 'or otherwise' be deleted."

Sir, it is very humiliating to me that, after you declare India a Republic on 26th January, 1950 certain powers of the King should be continued.- Our legal authorities Dr. Ambedkar and Shri Alladi Krishnaswami Ayyar think that the Privy Council enjoys powers in criminal cases. Sir, we have disestablished the King. Where then is His Majesty's prerogative ? I do not want any loophole should be left whereby the authority of the British nation should be perpetuated over us through the insertion of the words 'or otherwise'. This is a simple issue, if the Privy Council is not to decide any of our cases, why should we take shelter under the words 'or otherwise'? My friends the eminent lawyers like ' Mr. Munshi may say that I do not know law. But I know my political rights. I do not want that I should in any way be subjected to the sovereignty of India's former masters the British King or the King's Councillors.

The Honourable Dr. B. R. Ambedkar: Sir, I do not think this amendment is very necessary, because the jurisdiction of the Privy Council may be derived also from the prerogative conferred by Statute. Therefore the words 'or otherwise' are quite necessary. We want to put an end completely to the jurisdiction not merely arising from the prerogative but from other sources also.

Mr. President: I will now put the amendments to vote.

The question is :

"That in sub-clause (1) of Clause 2, for the words 'entertain, and save as hereinafter provided to dispose of, appeals' the words 'entertain and, save as hereinafter provided, to dispose of appeals'

or, alternatively,

'entertain and (save as hereinafter provided) to dispose of appeals'

or, alternatively,

'.entertain and (save as hereinafter provided) to dispose of appeal' be substituted.'

The amendment was negatived.

Mr. President: The question is :

"That in sub-clause (1)of Clause (2), for the word 'court' the word 'Court' be, substituted."

The amendment was negatived.

Mr. President: The question is:

'That in sub-clause (1) of Clause (2), the words 'or otherwise' be deleted."

The amendment was negatived.Mr. President : The question is

"That in sub-clause 2 of Clause 2,

(a) for the words 'The appeals and petitions', the words 'An appeal or a petition', and

(b) for the words 'Indian appeals' the words 'Indian appeal', and for the words 'Indian petitions' the words 'Indian petition' be substituted."

The amendment was negatived.

Mr. President: Now I will put clause 2 to vote. The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3

Shri S. V. Krishnamoorthy Rao (Mysore State) : Mr. President, I am not moving any of my amendments.

Pandit Thakur Das Bhargava: Mr.

President, I move:

"That for sub-clause (2) of clause 3, the following be substituted:-

'(2) Any legal proceedings pending by virtue of section 208 immediately before the appointed day before His Majesty in Council shall be transferred to the Federal Court and the Governor-General shall, in consultation with the Chief Justice of India, make proper and suitable arrangements for their disposal and all such proceedings pending before the Federal Court shall abate on the appointed day."'

In regard to this clause I submit that it is easy to realise that if you have given any right to any people they should not be divested of them ordinarily speaking. Now, as regards the orders of the Federal Court there are many persons who are a,-grieved. 'The present remedy is that they could get redress from the Privy Council. Some of these people must have made their petitions made their petitionsand appeals against these proceedings. Clause 2 only seeks to abate those proceedings. Since we are passing an Act by virtue of which the powers of the Privy Council shall cease there is no reason why these persons should be divested of those rights. But I see one difficulty. If the judges have participated in the decisions against which relief is sought in the Privy Council it may be difficult to provide disposal of such proceedings or appeals by the same judges. But that difficulty can be obviated by having an order may constitute a such judge who did not participate in original orders may constitute a Division Bench, or something else may be improvised. It is not beyond the capacity of the Chief Justice of India or of the Governor-General to make some arrangement for the disposal of such cases.

Shri T. T. Krishnamachari (Madras : General) : My friend's remarks can be cut short if I explained there are really no appeals pending before the Privy Council from the Federal Court.

The Honourable Dr. B.R.Ambedkar: There is no pending appeal.

Pandit Thakur Das Bhargava : I heard from Dr. Ambedkar and Dr. Bakshi Tek Chand that there is no appeal pending, but there may be other proceedings. My submission is that if there are proceedings whereby remedy is possible to be given the persons concerned should not be deprived of their rights, merely because we are doing away with the jurisdiction of the Privy Council

Mr. Naziruddin Ahmad: Sir, I beg to move:

"That after sub clause (2) of clause 3, the following proviso be added:-

'Provided that if special leave is granted on an Indian petition by the Judicial Committee of the Privy Council in a criminal matter, the appeal may be disposed of by the Judicial Committee before the commencement of the Constitution of India to be passed by the Constituent Assembly of India.'"The only thing that I wish to submit in this connection is that, it an accused has gone up to the Privy Council and his appeal is admitted by special leave or by leave of the inferior court, then in that case it would be a hardship for an accused person to spend large sums once in London in engaging lawyers and again in India in engaging other lawyers. 'There would be further difficulty if the matter depends upon technical questions of law. One, court admitting the appeal on some technical grounds, and another court in deciding them. The change of lawyers as that of the courts would create practical difficulties. So long as our Constitution does not conic into force, I would only submit that in a criminal matter, in order to avoid hardship to the accused persons, if there is an appeal before the Privy Council, the latter should be permitted to hear the appeal, provided the hearing is completed before the Constitution comes into force.

The Honourable Dr. B. R. Ambedkar: I do not think it is necessary to accept the amendment moved by my Friend, Pandit Thakur Das Bhargava. As my Friend, Mr. Krishnamachari, has stated; there are really no appeals pending before the Privy Council from the Federal Court, and consequently it is quite unnecessary to make any saving as proposed by my Friend, Pandit Thakur Das Bhargava, because

nobody is really adversely affected, there being no pending cases.

With regard to the amendment moved by my Friend, Mr. Naziruddin Ahmad, I cannot understand why we should depart from the, principle which has been laid down that any criminal matter which is lodged before the Privy Council before the appointed day may be heard by them for purposes of admission but they would be returned to the Federal Court for final disposal. He wants to make a departure from it but I have not been able to see that the reasons be has advanced warrant it. Therefore I cannot accept his amendment.

Mr. President : The question is

"That for sub-clause (2) of clause 3, the following be substituted

'(2) Any legal proceedings pending by virtue of section 208 immediately before the appointed day before His Majesty in Council shall be transferred to the Federal Court and the, Governor-General in consultation with the Chief Justice of India, make proper and suitable arrangements for their disposal and all such proceedings pending before the Federal Court shall abate on the appointed day.' "

The amendment was negatived.

Mr. Naziruddin Ahmad: I would like to withdraw my amendment No. 17.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is :

"That clauses 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

Clause 4

Mr. Naziruddin Ahmad : I do not want to move my amendments Nos. 18 and 19.

The Honourable Dr. B. R. Ambedkar: Sir, I move

"'That for sub-clause (b) of clause 4, the following sub-clauses be substituted.-

'(b) any Indian appeal or petition on which the Judicial Committee has, after hearing the parties, reserved judgment or order; or [The Honourable Dr. B. R. Ambedkar]

(c) any Indian appeal which has been entered before the appointed day in the list of business of the Judicial Committee for the Michaelmas sittings of the year 1949 and which after that day is not directed to be removed therefrom by or under the authority of the Judicial Committee; or';

and sub-clause (c) be re-lettered as sub-clause (d)."

What Probably requires some explanation is sub-clause (c). Although we have stated in the main clause that business or cases entered upon the calendar for the Michaelmas term may be left with the Privy Council for disposal, it is not quite certain how many of them may remain undisposed of. Therefore we propose to give permission to the Privy Council at the outset to say that, although a matter or a case is entered upon the cause list for the Michaelmas term, they will not be able to hear some of the matters, so that there may be no balance of pending cases left. In that event, those cases which the Privy Council directs that they will not be able to hear would also become automatically transferred to the Federal Court. It is to provide for that sort of contingency that I am adding this sub-clause (c) in terms of the amendment.

Pandit Thakur Das Bhargava: Sir, I move:

"That sub-clause (c) of clause 4 be deleted."

This sub-clause relates to Indian petitions lodged before the appointed day to the register of the Privy Council. Now, in regard to these petitions, I am very sorry that I have not been able to change my opinion even after hearing my Friend, Dr. Bakshi Tek Chand. I would like very much to fall in line with his fine of argument but I am sorry there are several points which are troubling my mind, and so I have been forced to move this amendment. In my opinion, when a petition is lodged before the Privy Council, the occasion for engaging senior and costly counsels arises when the hearing for sanction takes place and not when the appeal is lodged. The appellants or applicants will be saved this cost if sub-clause (c) is deleted.

Secondly, I understand the whole reason for the transference of these powers is that we want that our own judges may decide our cases according to our standards of justice and our mental outlook and thought and therefore I think that every Indian who had filed an appeal will have the

mental satisfaction of his case being decided by the courts in India. Then fact that appeals have been filed need not be a reason for continuing these appeals in a country other than India. The mere fact that an appeal has been lodged cannot constitute a good reason for continuing the appeals in that court. Moreover, it is an accepted proposition that the same judges who heard the case at the time of granting leave should decide the case ultimately. Now we have just got an example of this principle when Dr. Ambedkar moved his amendment No. 20 substituting sub-clauses (b) and (c) and it is but meet that the case must remain in the same hands. If at the time when the special leave is given any remark in respect of any legal principle involved or any fact in the case is made by the judge who admitted the case, it would be difficult for any judge subsequently to get over the effect of those remarks and the accused will either be deprived of the advantages of these remarks or will be unduly prejudiced by them if another judge was called upon to decide the case later. Therefore on all these grounds, nothing will be lost if all these cases which are in a preliminary stage where only an appeal has been lodged are transferred back to the courts here. I am clearly of opinion that clause (c) of clause 4 should be deleted.

(Amendment No. 22 was not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, I do not accept the amendment of Pandit Thakur Das Bhargava.Mr. President: The question is:

"That for sub-clause (b) of Clause 4, the following sub-clauses be substituted-

'(b) any Indian appeal or petition on which the Judicial Committee has, after hearing the parties, reserved judgment or order; or

(c) any Indian appeal which has been entered before the appointed day in the Est of business of the Judicial Committee for the Michaelmas sittings of the year 1949 and which after that day is not directed to be removed therefrom by or under the authority of the Judicial Committee; or';

and sub-clause (c) be re-lettered as sub-clause (d)."The amendment was adopted.

Mr. President: The question is:

"That sub-clause (c) of Clause 4 be deleted."The amendment was negatived.

Mr. President: The question is:

"That clause 4, as amended, stand part of the Bill."

The motion was adopted.

Clause 4, as amended, was added to the Bill.

Clause 5

Mr. Naziruddin Ahmad: Sir, I wish to move amendments Nos. 23 and 29. They are both of a drafting nature. I beg to move :

"That in sub-clause (1) of Clause 5, for the word "jurisdiction" the words "power and jurisdiction" be substituted."

This expression has been used in some of the newly drafted articles to the Draft Constitution. This would make the sentence full and complete.

I beg to move :

"That in sub-clause (3) of Clause 5,for the words 'certificate of the Registrar' the words 'certificate in this behalf by the Registrar' be substituted."

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That in sub-clause (3) of Clause 5, for the bracket-,, letters and word '(b) (c)' the brackets, letters and word '(b), (c) or (d)' be substituted-."

It is purely consequential.

Mr. President: The question is

"That in sub-clause (3) of Clause 5, for the brackets, letters and word '(b) (c)' the jurisdiction' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in sub-clause (3) of Clause 5 for the brackets, letters and word (b) (c)' the brackets, letters and word '(b), (c) or (d)' be substituted."

The amendment was negatived.

Mr. President: 'The question is :

"That in sub-clause (3) of Clause 5, for the words 'certificate of the Registrar' the words 'certificate in this behalf by the Registrar' be substituted."

The motion was negatived.Mr. President : The question is :"That clause 5, as amended, stand part of the Bill,"

The motion was adopted.

Clause 5, as amended, was added to the Bill.Clause 6

Pandit Thakur Das Bhargava: Sir, I beg to move:

"That in clause 6, after word 'appeals' the words 'or petitions'

be inserted."

Shri T. T. Krishnamachari: That follows the scheme which Pandit Thakur Das Bhargava has in regard to the deletion of sub-clause (c) of clause 4. Since that has not been accepted by the House, I am afraid there is no point in putting this amendment to vote.

Mr. President: I will put it to vote anyway.

The question is :

"That in clause 6, after word 'appeals' the words 'or petitions' be inserted."

The amendment was negatived.

Mr. President: The question is

"That Clause 6 stand part of the Bill."

The motion was adopted.

Clause 6 was added to the Bill.

Clause 7

Mr. Naziruddin Ahmad: Sir, I beg to move:

"That in Clause 7, the comma after the word 'effect' be deleted."

This comma seems to be offensive to the eye. The context is "shall have effect accordingly". There is no need for a comma after the word "effect".

Mr. President: I do not think this need be put to vote, this question of 'comma'.

The Honourable Dr. B. R. Ambedkar: This will be looked into. This need not be put to vote.

Mr. President : The question is

"That Clause, 7 stand part of the Bill."

The motion was adopted.

Clause 7 was added to the Bill.

Clause 8

Mr. Naziruddin Ahmad: Sir, I beg to move:

"'That in Clause 8, for the word 'petition' be words 'Indian petition' be substituted."

With regard to this we have defined "Indian petitions" in sub-clause (2) of Clause 2. There we have said "the appeals and petitions aforesaid are hereinafter referred to as "Indian appeals" and "Indian petitions", respectively. Here the words are used together, 'Indian appeals and petitions'. According to this clause strictly, they should be "Indian appeals" and "Indian. Petitions".

Then I move

"That in Clause 8, the comma after the word 'effect' occurring in line 3, and the comma after the word 'Council' occurring in line 4 be deleted."These words are unnecessary and impede the reading.

Shri B. Das: Sir, I beg to move:

" That Clause 8, be renumbered as sub-clause (1) of that clause, and the following new sub-clause be added :-

(2) Any such order or decree made after the appointed day must be simultaneously made by the Supreme Court in India after the date of-promulgation of the Constitution Act."

Sir, my..........

Shri T. T. Krishnamachari: My honourable Friend is labouring under a misapprehension. He thinks that the appointed day is 26th of January; the appointed day is the 10th-of October.

Shri B. Das: Quite so; you please listen to me' and you will under stand what my objection is.

Sir, it has been very irksome to me that the date, of declaration as Republic, of India has been postponed and we are labouring under the control of the British Raj, the United Kingdom Government in one shape or another. One hopes that after the 26th of January, 1950, there will be no domination by the United Kingdom Government or His Majesty in Council or anybody ill matters relating to India, unless, somehow through the back-door of Commonwealth, matters come in as unfortunately we have provided for in an article yesterday."

I agree with my honourable Friend, Mr. T. T. Krishnamachari that the appointed day is earlier. But, can we' guarantee that all orders will be passed by the Privy Council near about the appointed day and no others will be held up till the 26th January ? If some orders are held up, because the Privy Council reports to His Majesty in Council, and His Majesty in Council may sit over it and pass their order on the 27th of January and such orders may come on the 27th of January, , how will that order be announced in India ? Then, there are petitions and orders on these petitions may be passed on the 26th of January 1950. Suppose it takes time to be communicated to India after the 26th of January. When we are a Republic, we do not recognise any jurisdiction of the Privy Council or the so-called His Majesty in Council. Therefore, the proper thing is, if any such order is held up, the Privy Council or His Majesty in Council should forward it to our highest judicial court, the

Supreme Court, and if they announce it publicly in England on the 27th of January, simultaneously, the Chief Justice of the Supreme Court should announce it in India.

We do not want any further subordination in any shape or manner to the Privy Council. It went on fattening the British lawyers at the cost of India. One is glad, and I am very glad that British lawyers are going to be lean in the future because the huge amounts of money that flowed from India to the U.K. will not flow in future. But, at the same time, I am more proud of my sovereignty; I am more proud of my independence. Let Dr. Ambedkar and Mr. Munshi say-I would not accept Mr. T. T. Krisbnamachari's word on it that no such orders will be withheld after the 26th of January. They may be withheld. Therefore, I have moved my modest amendment which is purely political and constitutional. I am not raking up any legal point : I have no right to say anything on legal matters. But I do say it will be an insult to me if an order is not simultaneously issued by the Supreme Court for any order that His Majesty in Council or the Privy Council may issue after the 26th of January 1950, the date of India's becoming a Republic. That is my very modest amendment. I hope my honourable Friend, Dr. Ambedkar, will see the justice of it and to save our honour, and not to burden us with further indignities and humiliations through association with the British, my amendment should be accepted.The Honourable Dr. B. R. Ambedkar: I do not accept the amendment.

Mr. President:.Amendment No. 33 need not be put.

The question is :

" That clause 8 be renumbered as sub-clause (1) of that clause, and the following new sub-clause be added :-

"(2) Any such order or decree made after the appointed day must be simultaneously made by the Supreme Court in India after the date of promulgation of the Constitution Act."

The amendment was negatived.

Mr. President: The question is:"That Clause 8, stand part of the Bill."

The motion was adopted.

Clause 8 was added to the Bill.

Clause 9

The Honourable Dr. B. R. Ambedkar: Sir, with your permission' I would like to move the amendment which have been put in a somewhat different form because I thought that the amendments as tabled rather create a confusion. If you will allow me, I have put all these in a consolidated form. There is no substantial change at all. It is just a matter of form and I thought that the House would be in a better position to get at the idea of what we are doing in clause 9.

Mr. President: Yes.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

For clause 9, the following clause be substituted :-

"9. Amendments of the Government of India Act 1935. (1) In section 205 of the Government of India Act, 1935 (hereinafter referred to as the said Act), for sub-section (2) the following sub-section shall be substituted, namely

"(2) Where such certificate is given, any party in a case may appeal to the Federal Court on the ground that any question as aforsaid has been wrongly decided and, with the leave of the Federal Court, on any other ground."(2) In Section 209 of the said Act, for sub-sections (1) and (2) the following subsections shall be substituted,-namely :-

"(1) Act V 1908. The Federal Court in the exercise of its appellate jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, including an order for the payment of costs, and any decree so passed or order so made shall be enforceable throughout the territory of India"."

I should like to add one or two words to be interpolated, which have been omitted :

"In the manner provided in that behalf in the Code of Civil Procedure, 1908, or in such other manner as may be prescribed by or under a law of the Dominion_Legislature, or subject to the provisions of any such law. in the manner prescribed by rules made by the Federal Court."

"(3) In clause (a) of sub-section (3) of section 210 of the said Act, for the word, brackets and figure "sub-section (2)", the

word, brackets and figure "sub-section (1)" shall be substituted."

"(4) In section 214 of the said Act, after sub-section (1) the Following sub-section shall be inserted, namely :-"

I should like to add a few words at the beginning.

"(1A) Act V of 1908. Subject to the provisions of the Code of Civil Procedure, 1908, or any law made by the Dominion Legislature, the Federal Court may also from time to time, with the approval of the Governor-General, make rules of court for regulating the manner in which any decree passed or order made by it in the exercise of its appellate jurisdiction may be enforced."The object of clause 9 is to make the Federal Court a complete and independent Court. There were certain limitations under the existing Government of India Act, 1935 which prevented the Federal Court from. drawing up its own decrees. It had to send the matter to the Trial Court. All these limitations it is necessary to withdraw because the Federal Court is going to take the place of the Privy Council.

Mr. Naziruddin Ahmad: I beg to move:

"That in sub-clause (1) of Clause 9. in the proposed subsection (1) of section 209 of the Government of India Act, 1935, for the words 'is necessary' the words 'as it may consider necessary, be substituted."

The context where this occurs says 'make such order as is necessary'. I wish to make it 'as it may consider necessary'. This is the proper form. With regard to the large amendment moved by Dr. Ambedkar my-difficulty is,that there have been slight changes in the new draft which has been circulated and then again in moving sub-clause (4) of clause 9 some further changes have been made. I am not in a position to see the exact effect of this new change, orally introduced. I think he has introduced the words Subject to the provisions contained in the Civil Procedure Code 1908 or to any law or provision of law hereafter made by the Dominion Legislature. I think with regard to the latter condition, this is absolutely unnecessary. This clause 9 attempts to amend Section 205 of the Government of India Act. This Government of India Act will expire-we hope-on the 26th January or thereabout with the passing of India's Free Constitution. Therefore this amendment introduced by clause 9 of the present Bill will have a very short life. It will give a new lease of life to the amended Section 205 of the Government of India Act which is again also to expire on the 26th January. During this short period I do not know whether it is intended to introduce law affecting Section 205. If this is to be done, it is to be done now in this House in the "Constitution" Section and not in the other aspect of this House viz., the "Legislative" Section. I feel that unless it is intended to introduce any fresh legislation to affect the situation within this short interval, I do not think there is any necessity for these conditions. I do not know what these words really imply. Do they imply anything practical or merely a kind of a safeguard against a thing which does not really exist ?

I want only clarification. I do not move my other amendments Nos. 40 and 41.

Pandit Thakur Das Bhargava : Sir, I beg to move :

"That in sub-clause (1) of Clause 9, after the proposed new sub-section (1) of section 209 of the Government of India Act 1935, the following new sub-section be inserted :-

'(1A) The Federal Court in the exercise of its criminal jurisdiction conferred on it by section 5 of this Act shall notwithstanding anything to the contrary in any law, be entitled to Pass any order of release or set aside any sentence or pass any other appropriate order which it considers just under the circumstances if it regards the provisions of the relevant law depriving life or personal liberty to be not consistent with reason and justice or the procedure observed as unfair or the detention as unreasonable or unjust"

With your permission as an alternative I beg to move the following No. 4 3.

The Honourable Dr. B. R. Ambedkar: That amendment, I submit, is outside the scope of the Bill. The Bill deals merely with

the transfer of jurisdiction.

Pandit Thakur Das Bhargava: It is not a question of transfer of jurisdiction. I only give what is contained in clause 5 and am defining what jurisdiction shall be conferred, not leaving it to investigation as to what the prerogative of His Majesty was, I am only making these powers in a concrete form from what it is in the abstract ......The Honourable Dr. B. R. Ambedkar: This Bill does not propose to give any direction to the Federal Court as to the manner in which they should exercise the jurisdiction with which they become vested under the present Bill.

Pandit Thakur Das Bhargava: When a Bill specifically speaks of conferring jurisdiction, it is the business of the law to expound and define what the jurisdiction is. I only condense the contents of that jurisdiction and make, it absolutely clear what that jurisdiction means.

Shri K. M. Munshi (Bombay: General) : May I rise to a point of order? This is-really speaking-bringing in the due process of law by the back-door, which was disposed of more than once and debated over and over again in this House. The proposal was disposed of some months ago and disposed of day before yesterday. The idea is to vest the Supreme Court with that power. This is, therefore, entirely out of Order, apart from the stand taken by Dr. Ambedkar.

Pandit Thakur Das Bhargava: My submission is that it is certainly not out of order on merits. The amendment says the Federal Court shall exercise all its criminal jurisdiction conferred by Section 5. Section 5 says

"As from the appointed day,the Federal Court shall, in addition to the jurisdiction conferred on it by the Government of India Act, 1935. and the Federal Court (Enlargement of jurisdiction) Act, 1947, but subject to the provisions of this section have the same jurisdiction to entertain and dispose of Indian appeals and petitions as His Majesty in Council has. whether by virtue of His Majesty's prerogative or otherwise, immediately before the appointed day."

Up to now this prerogative of the Crown or His Majesty included tins power of due process. At present this being enjoyed by the Privy 'council. Clause 9(1) defines civil side powers. Clause 9(1) of the Bill reads as follows :

"It shall in the exercise of its appellate jurisdiction pass such decree or make such order as is necessary for doing complete justice."

So, in regard to civil law the powers are given in 9(1). So this is perfectly in order.

Mr. President: This Bill is intended to transfer whatever power and jurisdiction the Privy Council has to the Federal Court. If the Privy Council has got the power you suggest in this amendment, that will be transferred to the Federal Court. If it is, not, the question is whether in this Bill you can enhance or extend the power of the Federal Court.

Pandit Thakur Das Bhargava: It is beyond my intention to enhance that power in clause 9(1). Power has been described as the power necessary for doing complete justice on the civil side.

Similarly I want to declare what that power is in the exercise of the prerogative on the criminal side. Such powers are contained in the unwritten convention of England and we do not know specifically the full content of these powers but those conventions shall have to be imported and interpreted to defame the powers of the Federal Court. This is the time to interpret those powers and I am only making what is implicit in this clause explicit.

Mr. President: Is that implicit what you want to make explicit? If it is there, then it is quite unnecessary. If it is not there, you cannot add to it.

Pandit Thakur Das Bhargava: Dr. Ambedkar has moved a motion which shows what orders are necessary on the civil side in order to do justice. My suggestion is that the same thing may be done on the criminal side also. The civil side is being provided for. Why not the criminal side also ?Shri Alladi Krishnaswami Ayyar (Madras: General): We have mentioned what powers are necessary for doing complete justice. What my honourable Friend wants is to add to the existing

powers, and that is not permissible.

Pandit Thakur Das Bhargava: While they have made provision on. the civil side, they are silent on the criminal side. If the House does not agree, to my definition of these powers I am agreeable to cutting off the last three lines and say that in the exercise of its power, the Federal Court will be able to set aside any sentence or release any person.

Mr. President: This is a matter which we can consider when we are considering the powers of the Federal Court and then you might move an amendment giving the power you mention, to the Federal Court. But here we are, concerned only with the transfer of whatever power is vested in the Privy Council, to the Federal Court. Therefore the question you have raised does not arise here and I think it is 'out of order.

Pandit Thakur Das Bhargava: So far as amendment 43 is concerned it deals with the special jurisdiction on the criminal side and you are not inclined to give permission to move it. But so far as 39 is concerned, which I have already moved, I do not think any objection can be valid. I am only declaring what on the criminal side, the powers ought to be according to the right interpretation of clause 5.

Mr. President : As regards 39, let me see.

Pandit Thakur Das Bhargava: Objection is taken only to 43, but not to 30.

Mr. President: How does it stand on a different footing? It also say "The Federal Court shall be entitled to pass any order which it considers just under the circumstances

Pandit Thakur Das Bhargava: It only shows what are the powers for doing complete justice on the criminal side.

Mr. President : I do not think this is the proper place where you can put this in. If you want to confer any power on the Federal Court, you can do it independently or when we are dealing with the powers of the Federal Court. but not while we are transferring whatever powers are possessed by the Privy Council, to the Federal Court.

Pandit Thakur Das Bhargava: All that I can submit, Sir, is that if it is permissible to mention the civil side under 209 (1), it is equally permissible to mention what are the powers, on the criminal side also.

Mr. President: What are you referring to ?

Pandit Thakur Das Bhargava: I am referring to clause 9 sub-clause (1) of the Bill.

Mr. President: It is nowhere stated, "Notwithstanding any law to the contrary etc."

Pandit Thakur Das Bhargava : I want only the substance of the article to be put in and not the exact words.

Mr. President : You cannot bring it in this round-about way. If it is to be brought in it must be done in the proper way.

Pandit Thakur Das Bhargava : I may seek permission to eliminate the words "notwithstanding anything to the contrary in any law".

Mr. President: The question is whether it is something in addition to the existing powers of the Federal court or not. If it is. an addition to the existing powers of the Federal Court, then we,cannot take it up. I have given my ruling.Shri Shankarrao Deo (Bombay: General) : Sir, you have already given your ruling and I do not know why the Member is persisting.

Pandit Thakur Das Bhargava: Sir, I have not caught what Mr. Shankarrao Deo is saying.

Mr. President : I cannot allow it. It is ruled out.

Well, these are all the amendments. Does any one wish to say anything? Well, I will put the amendments. First I put the amendment moved by Dr. Ambedkar. I suppose I need not read it. It is No. 37.

The question is :

That for clause 9, the following clause be substituted.

9. Amendments of the Government of India Act, 1935. (1) In section 205 of the Government of India Act, 1935 (hereinafter referred to as 26 Ged. e.c. 21 the said Act), for sub-section (2) the following sub-section shall be substituted. namely :-

"(2) Where such certificate is given, any party in a case may I to the Federal Court on the ground that any question as aforesaid has seen wrongly decided and, with the leave of the Federal Court on any other ground. "

(2)In section 209 of the said Act, for sub-section (1) and (2) the

following sub-section shall be substituted. namely :-

'(1) Act V of 1908. The Federal Court in the exercise of its appellate jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, including an order for the payment of costs, and any decree so passed or order so made shall be enforceable throughout the territory of India in the manner provided in that behalf in the Code of Civil Procedure, 1908, or in such other manner as may be prescribed by or under a law of the Dominion Legislature, or subject to the provisions of any such law, in the manner prescribed by rules made by the Federal Court.'

(3)In clause (a) of sub-section (3) of section 210 of the said Act, for the word, brackets and figure "sub-section (2)", the word, brackets and figure "sub-section (1)" shall be substituted.

(4)In section 214 of the said Act, after sub-section (1) the following sub-section shall be inserted, namely :-

"(1A) Act V of 1908. Subject to the provisions of the Code of Civil Procedure, 1908, or in any law made by the Diminion Legislature. the Federal Court may also from time to time, with the approval of the Governor-General. make rules of court for regulating the manner in which any decree passed or order made by it in the exercise of its appellate jurisdiction may be enforced."

The amendment was adopted.

Mr. President: Then I put No. 38, Mr. Naziruddin Ahmad's amendment.

The question is :

That in sub-clause (1) of Clause 9, in the proposed sub-section (1) of section 209 of the Government of India Act, 1935. for the words "is necessary" the words "as it may consider necessary" be substituted.

The amendment was negatived.

Mr. President: Then I put the clause as amended by Dr. Ambedkar's amendment :

The question is

"That clause 9, as amended, stand part of the Bill."

The motion was adopted.

Clause 9, as amended, was added to the Bill.Clause 10.

Mr. President: Then we take, up clause 10. Mr. Naziruddin Ahmad has an amendment. Do you want to move it ?

Mr. Naziruddin Ahmad: 'No, Sir, but I would like to speak a few words.

I wish to oppose clause 10 on the ground, first, that it is unnecessary, and secondly, that it creates some amount of confusion. My reasons are that the Federal Court was constituted by the Government of India Act, 1935. In 1937, by the Adaptation Order in accordance with that Act, the Civil Procedure Code was amended. One amendment was the introduction of Section I II -A of the Civil procedure Code relating to the appeals to the Federal Court, and the other amendment was the addition of a new Rule 17 of Order XLV, which dealt generally with appeals to the Privy Council. The changes introduced by the Adaptation Order separated Federal Court appeals from those to the Privy Council. Before these adaptations, there were appeals to the Privy Council as well as to the Federal Court. But the procedure laid down in Sections 109, 110 and Ill of the Civil Procedure Code and in Order XLV of that Code was cumbrous. They were necessitated because ,some preliminary steps were necessary to be taken in India before an appeal to the Privy Council be taken. The Privy Council was situated at a distance of six thousand miles and therefore preliminary steps had to be taken in India. But after the creation of the Federal Court, as the Federal Court is situated within India, all the paraphernalia necessary in connection with Privy Council appeals ceased to be necessary. It was on account of this situation, and on account of the inconvenience caused to the parties who have one,, to go to the High Court and again to the Federal Court that Act XXI of 1941 was passed. That Act introduced radical changes in the existing- law so far as appeal from the High Courts to the Federal Court was concerned by enabling that Court to regulate its procedure by its own rules.

With regard to that Act XXI of 1941 there are only three sections to which I need refer. Section 2 repealed section 111A which had been introduced by the

Adaptation Order. Section 2 also repealed rule 17 of Order XLV which, as I have pointed out, had also been introduced in Order XLV of the Civil Procedure Code by, the Adaptation Order of 1937. Section 3 of Act XXI of 1941 gave power to the Federal Court to make Rules. On account of this the Federal Court made Rules in 1942 which have been amended and ,brought up to date from time to time. In these Rules all matters relating to appeals to the Federal Court have been exhaustively dealt with, both in civil and criminal cases. Therefore, the sections of the Civil Procedure Code which I have referred to, namely, sections 109, 110 and 111, and Order XLV which dealt with appeals to the Privy Council are inapplicable to the Federal Court.

What remain of these sections and of Order XLV merely relate to appeals to the Privy Council, and on account of the abolition of the jurisdiction of the Privy Council they would be dead letters and require to be repealed. But so far as the present purpose is concerned I submit that they are no longer applicable to present day circumstances. In the statement of Objects and Reasons of the Bill relating to Act XXI of 1941 it was stated :

"The Government of India (Adaptation of Laws) Order, 1937 added Section 111A and Order 45 rule 17 to the Civil Procedure Code and thereby made the Procedure of Privy Council Appeals applicable to Federal Court Appeals. The aforesaid procedure is cumbersome and dilatory. means for appeals to a Court six thousand miles away and should not be applicable to a court of appeal situated in India. Moreover, the addition of these provisions to the Civil Procedure Code have derogated from the powers of the Federal Court to regulate its own practice and procedure under section 214 of the Government of India Act and has been commented on unfavourably by the Federal Court in its decision in case No 15 of 1939, Lachmeshwar Prasad Shukul Vs. Basdeo Lal Choudhury. It is desirable therefore both from the points of view of

Simplifying procedure in Federal Court Appeals and restoring to the Federal Court its powers to regulate practice a and procedure that the new additions to the Civil Procedure Code should cease to be operative.'I submit that these additions which have been made in the Civil Procedure Code would have been applicable to a Court situated far away. So this cumbersome procedure was abrogated by the Amendment Act of 1941. No reference at all would therefore be necessary. to the Code of Civil Procedure, because the rules of Civil Procedure relating to appeals are as prescribed by the Federal Court in the Federal Court Rules of 1942 by virtue of Act XXI of 1941. In these circumstances I submit that the only rules that should prevail are the Rules made by the Federal Court. As I have said, they cover civil and criminal cases. A mere reference to those Rules would satisfy the Honourable Member as to the accuracy of the statements made by me.

I submit that clause 10 which says that the Civil Procedure Code shall have effect with regard to practice relating to appeals would be improper. We have already in the previous clause-clause 9-added sub-section (1A) to section 214 of the Government of India Act which deals with procedure relating to appeals to the Federal Court. I submit therefore that there would be a confusion between the Rules framed by the Federal Court, which are all complete by themselves, and the Civil Procedure Code which is purported also to be made applicable. If we are left between these two, I should think that the Rules prescribed by the Federal Court, which are complete in themselves, should alone occupy the field and the reference to the Civil Procedure Code in clause 10 should be abrogated. I hope the Honourable Member will consider this suggestion and agree to the deletion of clause 10.

Shri Alladi Krishnaswami Ayyar: Mr. President, my Friend Mr. Naziruddin Ahmad is labouring under a misapprehension. So far as the Rules under the law, as understood prior to this Bill now before us, are concerned there was no direct enforcement of the decisions of the Federal Court. The Federal Court has to send its judgment to the lower court for the necessary. Order being drawn up and there was no direct right of enforceability in regard to the judgments of the Federal Court. That is why that lacuna has been filled up by an earlier clause which has been passed, that is, it shall be enforceable and it is not merely sending the judgment to the lower court. There was an anomaly there, namely, of the High Court trying to give effect to the judgment of the Federal Court, but the Federal Court being powerless to ensure the enforceability of its own judgment or decree. That anomaly has now been removed because it has now been made enforceable. I am fairly certain that the Rules of the Federal Court did not and could not provide for that enforceability when the statute itself did not provide for the direct enforceability of the judgments of the Federal Court. Therefore, we have necessarily to provide for the proper machinery for the enforceability of the judgments of the Federal Court.

In the previous clause which has just been passed we have made a provision to the effect that the decree or order of the Federal Court shall be enforceable throughout the Dominion of India. Having made that provision, how is it to be enforced ? It has to be by a fresh Act passed by the Dominion Parliament. But until the Dominion Parliament passes some law, there must be some law in the field for the enforcement of the decrees passed by the Federal Court and there has to be adequate provision for their,enforceability. The object of this clause 10 is to apply, for example, Order XLV rule 15 so far as it may. For instance, the order of His Majesty in Council was directly enforceable under the provisions of Order XLV rule 15. It is merely to be sent to the High Courts in India and the High Courts in India will send them to the courts which originally passed the decree and they will enforce the decree. It is merely a question of adaptation. The provisions of the Civil Procedure Code in so-far as they will be applicable to the new circumstances will be applicable. At best all that can be said is "So far as it may be applicable". Therefore it is an extension of provisions like rule 15 for the judgments of the Federal CourtLater on it will be open to the Dominion Parliament to pass any law at variance with or in addition to the procedure provided in rule 15. But at present we have not got the necessary time and no law has been passed.

Therefore, when once all the jurisdiction of His Majesty in Council is transferred to the Federal Court and when you have made a provision that all the judgments and decrees of the Federal Court shall be enforceable throughout the Dominion of India, there must be a proper machinery for the enforceability of those decrees. No doubt you have made a substantial provision to the effect that the judgment and the decrees of the Federal Court shall be enforceable throughout the Dominion of India. That is why reference has been made to the Code of Civil Procedure and to the Dominion Parliament. No doubt the rules must necessarily refer to any existing law. To prevent a further lacuna, provision is made for the rules.

Therefore, there are three things. One is the extent- to which the provision of the Civil Procedure Code can be adapted and extended to the judgment of the Federal Court; in the new dispensation the provisions of the Civil Procedure Code will apply. Secondly, there is the dominant power of the Legislature to intervene and to make appropriate changes. Subject to these, any rules of the Federal Court can be made if there is any lacuna in any of these provisions. Therefore the object is to complete the thing, namely that there will be a triple machinery for the enforcement of a decree. That is the object of the provisions.

Mr. President: Dr. Ambedkar, would you like to say anything?

The Honourable Dr. B. R. Ambedkar: No, Sir.

Mr. President : The question is : -

"That clause 10 stand part of the Bill."

The motion was adopted.

Clause 10 was added to the

Bill.

Mr. President: Then-there is another amendment, a new clause to be added

Mr. Naziruddin Ahmad: I beg to move:

"That after, clause 10 the following new clause be added:-

'11. The Interpretation Act, 1899, applies for the interpretation of this Act as it applies for the interpretation of an Act of Parliament.' "

Sir, we are by this Bill amending the Government of India Act to which the British Interpretation Act of 1899 applies. We have also passed two Acts in this House to amend the Government of India Act and we have made the Interpretation Act of 1899 to apply to the interpretation of those Acts. As this Bill is going to be incorporated largely into the body of the Government of India Act, it seems proper that the interpretation of it, if there is any. would depend upon the Interpretation Act of 1899. It would be highly anomalous if the main part of the Act would be interpreted in accordance with the Interpretation Act of 1899 and the other parts of that big Act which are to be filled up by this Bill,would be governed by the General Clauses Act. If we do not limit in any way the interpretation of this Act, the General Clauses Act will normally apply. It was under these circumstances that this rule of interpretation was made applicable in all other cases in a similar situation. Though it is very unlikely that any question of interpretation of this nature may arise, still it may be that some fine question may arise which may depend entirely on the Interpretation Act and as to which Interpretation Act will apply. So I think there should be one Interpretation Act which would beapplicable, namely the Act of 1899 and not the General Clauses Act of India. This, it seems to me, is a corollary to what we have already agreed in the past and in the circumstances of the case.

The Honourable Dr. B. R. Ambedkar: Sir, I do not accept that amendment, it is quite unnecessary.

Shri Alladi Krishnaswami Ayyar: Sir, I should just like to say a word or two with regard to this point. So far as the Interpretation Act is concerned, it can apply only to Acts of(the British Parliament. This is not an Act of the British Parliament, it is an Act of our Parliament and therefore you cannot extend the provision of the 'Interpretation Act for the interpretation of a Dominion Act like this one. If any question incidentally arises as to the interpretation of a British Act for the purpose of construing this Act, you can always rely upon the interpretation Act. Supposing, for example, you have to refer to the Judicial Committee Act, the Judicial Committee Act will have necessarily to be construed in the light of the Interpretation Act because that will always be available. This particular Act is an Act of the Dominion Legislature and therefore the General Clauses Act is made applicable. Between the two there is no kind of lacuna. When any question comes up before the Federal Court, it will either be an Act of the British Parliament in which case the Interpretation Act will continue to be applicable, or it is an Act of the Dominion Legislature in which case the General Clauses Act is applicable. Therefore, under these circumstances, I submit there is absolutely no reason for this amendment.

Mr. President: The question is:

'That after clause 10, the following new clause be added

'11. The Interpretation Act, 1899, applies for the interpretation of this Act as it applies for the interpretation of an Act of Parliament."'

The amendment was negatived.

Clause 1.

Mr. President: Then we go to clause I.

Mr. Naziruddin Ahmad: Sir, I move:

.'That in sub-clause (1) of Clause 1, for the words 'Abolition of Privy Council Jurisdiction Act' the words and brackets 'Privy Council (Abolition of Jurisdiction) Act' be substituted."

Sir, in all cases where we have passed amending Acts, we have always named the Act by the most important condition first of all and then with the detailed description of it within brackets. I have a list of Acts of the year 1947. We have Act XII entitled "Railways (Transport of Goods) Acts," we have

Act XV, "Armed Forces (Emergency Duties) Act", we have Act 'XXIV, "Rubber (Protection and Marketing) Act". and there are many Acts with titles like this. I therefore submit that this nomenclature should be accepted.

Sir, I also move my other amendment :

"That after sub-clause (2) of Clause 1, the following new sub-clause be added

'(3) It shall also apply 'to Indian appeals and Indian petitions arising out of cases originating in Courts in the acceded States."

I do not know whether the acceding States are already governed by the Federal Court. I have no clear idea. I want by this amendment to seek clarification. If this is accepted then amendment No. 4 will have to be accepted as necessary corollary.Mr. President: Do you wish to say anything about this?

The Honourable Dr. B. R. Ambedkar: The emphasis is on the abolition of the jurisdiction of the Privy Council, and obviously that emphasis could not be realised if the words "abolition of jurisdiction" were put in brackets.

Mr. President: Do you wish to say anything about the 7th amendment

The Honourable Dr. B. E.. Ambedkar: Sir, the acceding States were never subject to the jurisdiction of the Privy Council. But as a measure of extreme caution, it will be seen that in sub-clause (2) the words used are "within the territory of India". Therefore, it is unnecessary to make any mention of the acceding States.

Mr. President : I shall now put the amendments to vote.

The question is :

"That in sub-clause (1) of Clause 1, for the words 'Abolition of Privy Council Jurisdiction Act' the words and brackets 'Privy Council (Abolition 'Of Jurisdiction) Act' besubstituted."

The amendment was negatived.

Mr. President : The question is :

'That after sub-clause (2) of clause 1, the following new sub-clause be added :-

'"(3) It shall also apply to Indian appeals and Indian petitions arising out of cased originating in Courts in the acceded States."

The amendment was negatived.

Mr. President : The question is :

"That Clause 1 stand part of the Bill."

The motion was adopted.

Clause I was added to the Bill.

TITLE AND PREAMBLE

Naziruddin Ahmad : I do not wish to move my amendment to the Preamable.

Mr. President : The question is

"That the Preamble stand part of the Bill."

The motion was adopted.

The Preamable was added to the Bill.

Mr. Naziruddin Ahmad: I do not wish to move my amendments to the Title.

Pandit Thakur Das Bhargava : I do not wish to move my amendments to the Title.

Mr. President.- The question is

That the Title stand part of the Bill."

The motion was adopted.

The Title was added to the Bill.

The Honourable Dr. B. R. Ambedkar : Sir, I move

"That the Bill, as amended, be passed."

Mr. Naziruddin Ahmad: The motion should have been:

"That the Bill as settled in the House, be passed.'Mr. President: That is the motion in the Order Paper-

"That the Bill, as settled by the Assembly, be passed."

Shri K. M. Munshi: Mr. President, Sir, I would like only to say a few words on this occasion when we are passing a Bill which will end our connection with the Privy Council which has been our highest court for about one hundred and fifty years. I share the gratification of this House as well as perhaps the gratification of this country that our Supreme Court in the future, and to a qualified extent the Federal Court in the present, will be completely independent of the Privy Council. I may take this opportunity of making a few observations on this point when we are parting company with the Privy Council.

Sir, though we are quite happy that we are becoming completely independent in the matter of the Judiciary, parting with the Privy Council-I am sure it is not my feeling alone, but the feeling of all members of the Bar in India-is not a matter which can be gone through without a pang. Most of us have looked to the Privy Council for the last century or so with great respect. If I may say so personally for several years in the beginning of my professional life, I have read in those

beautiful thin volumes of the Indian Appeals, the masterly judgment which go to make up practically the fountain-source of our law in India.

Sir, the British Parliament and the Privy, Council are the two great institutions which the Anglo-Saxon race has given to mankind. The Privy Council during the last few centuries has not only laid down law, but coordinated the concept of rights and obligations throughout all the Dominions and Colonies in the British Commonwealth. So far as India is concerned, the role of the Privy Council has been one of the most important. It has been a very great unifying force and for us Indians it became the instrument and embodiment of the rule of law, a concept on which alone we have based the democratic institutions which we have set up in our Constitution.

Sir, on the 26th of January our Supreme Court will come into existence and it will join the family of Supreme Courts of the democratic world of which I the Privy Council is the oldest and perhaps the greatest. I can only hope and trust that though we part with the Privy Council our Supreme Court will carry forward the traditions of the Privy Council, traditions which involve that judicial detachment, that unflinching integrity, that subordination of everything to the rule of law and that conscientious regard for the rights and for justice not only between subjects and subjects but also between the State and the subjects. And no higher tribute can be paid to the Privy Council than my hope that our Supreme Court may be given the strength to maintain the traditions of fearless justice which have prevailed in this country as a result of the supremacy of the Privy Council.

With these words, Sir, I support the motion that has been moved by my honourable Friend, Dr. Ambedkar.

Shri Alladi Krishnaswami Ayyar: Mr. President, it is the object of this measure to abolish the jurisdiction of His Majesty in Council from the appointed day, and place the Federal Court in, exactly the same position as the Privy Council. The Bill when passed into law will facilitate the transition to the New Constitution under which the Supreme Court is invested with the sole and exclusive jurisdiction in constitutional and other matters and is constituted the final court of appeal of not merely what are now provinces under the present regime, but also of Indian States.The only difference between the regime under the New Constitution and ,this Bill is that whereas under the New Constitution the Supreme Court will be the final court of appeal not only from the High Courts in what are known ,as the provinces, but also from High Courts in the Indian States, at present the jurisdiction of the Federal Court is confined to matters which arise or might arise under the Instrument of accession of the different States. Instead of detailing the various heads of jurisdiction, reference is made in clause 5 to all heads of jurisdiction which His Majesty in Council has been exercising before the appointed date.

There is one point which is a very important one and which I alluded to in the course of the discussion, namely, that the judgment of the Federal Court shall be enforceable throughout the Dominion of India and appropriate provision has been introduced to make the judgment enforceable.

Then. I wish to make only one or two general observations. The Bill, in anticipating the provisions relating to the powers and jurisdiction of the Supreme Court, marks the final stage in the history of the relations between the Courts in India and the. Privy Council and gives effect to the Principle of judicial autonomy which is becoming an essential feature of dominion status even in Dominions which acknowledge allegiance to the British Crown. Whatever might be said about the executive government under the regime which has come to an end with the Indian Independence Act, there can be no doubt that taking a broad and disinterested view of the matter, the record of the Judicial Committee of the Privy Council has been a splendid one. The reports enshrined in the volumes of Moore's Indian

Appeals and later in the Indian Appeals, bear ample testimony to the worth of the Privy Council. They have enriched Indian jurisprudence in many respect including our personal law. I may mention here that in the law of Adoption itself, though earlier, owing to an imperfect understanding of the Hindu law a broad view was not taken, they have since taken a broader view even before the Indian High Courts took such a step. It has rendered notable judgments in the field of the Statute Law of India too. It has contributed very much to the development of the commercial law of India. Occasionally there might have been legitimate complaints in regard to matters affecting the liberty of the subject in which the Judicial Committee has not always taken a view which has commended itself to the Indian people. But, on the whole, the verdict of history would be in favour of the Judicial Committee and there can be no more illustrious example for our Federal Court and Supreme Court to follow than the Judicial Committee of the Privy Council.

There is however, one point which I would like to emphasise viz., either the Federal Court or the Supreme Court must not blindly follow the precedents of the Judicial Committee. It is hoped that both the Federal Court and the Supreme Court will evolve a jurisprudence suited to the genius of the people and the conditions of our country. The Federal Court now and the Supreme Court under the new dispensation will occupy a position of unique importance and the verdict of history would largely depend upon the independence, the ability and the learning which they would bring to bear upon their task.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Saturday, the 17th September, 1949

Shrimati G.Durgabai (Madras : General) : Mr. President, I could not resist the temptation to speak a few words on this occasion which I consider is very important. To avoid taking up much of the time of the House I would straightaway say what I have to say.

I welcome this Bill which is going to be passed in a few seconds and which is a great land-mark in the judicial history of India. When this Bill is passed it will serve the long--standing connection existing between the Indian systemand the British system in the judicial sphere. I dare say, as a student of law and also a practitioner who is acquainted with the matter this connection, has benefited our Indian law and Indian system of jurisprudence greatly. I have had occasion to read the judgments of the Privy Council and other important decisions which were mentioned by Shri Alladi Krishnaswami Ayyar just now. I felt proud of that connection which had done substantial benefit to us. Therefore we should pay a tribute to this connection from Which we are now parting.

This Bill when it becomes an Act will usher in the era of judicial autonomy in India. The important changes made therein are all corollary to the political and constitutional independence of this country. When the Constitution is passed our Federal Court will be designated as the Supreme Court. It will be the highest court of appeal for all high courts and also the judicial authorityfor the interpretation of the Constitution. We wish and we hope that the Supreme Court which is going to be the guardian of the Constitution and of the fundamental rights guaranteed therein, will do its function very well and every citizen in India will have the occasion to say that it has protected his rights as a true guardian of this Constitution.

Sir, there was criticism heard this morning here that we are continuing the jurisdiction of the Privy Council in certain matters. May I say in reply that this will be so only in the class of cases, as Dr. Ambedkar explained, where the judgment has already been delivered or where the report has been made to His Majesty or where the cases have been entered in the list of the business of the Judicial Committee. All the other cases will be disposed of here. We have also made provision in clause 5 that if only leave has been granted after 10th October, the further steps will have to be taken only in the Federal Court. There are some 20 or 25 such cases and these, if they are not decided before 26th January 1950, will have to be taken over to India. It is only just and fair and polite on our part not to take away such classes of appeals which I have already mentioned. With these few words I commend this Bill and say that it will be a very interesting period in our history to watch the progress and functions of the Supreme Court.

Shri Mr. Ananthasayanam Ayyangar (Madras : General) : Sir, I congratulate Dr. Ambedkar that at least now he has found it necessary to bring in this Bill. On a. former occasion when a Bill was brought before Parliament for enlarging the jurisdiction of the Federal Court some of us suggested that all the appeals Pending before the Privy Council should ipso facto be transferred to the Federal court and the jurisdiction of the Privy Council abolished forthwith this was in 1947---we do not know why Dr. Ambedkar vehemently argued against it. I am, however, glad that before the Constitution is passed abolishing the jurisdiction of the Privy Council Dr. Ambedkar has chosen to bring in this Bill. This morning I read in the newspapers that even Canada is taking steps to abolish the jurisdiction of the Privy Council and vest that jurisdiction in their own Supreme Court. Therefore, whether we declare ourselves a Republic or not, this step ought to have been taken earlier-

I have the greatest respect for the Judges who sit in the Privy Council. Between Indian and Indian, from what I have been able to see, they have rendered justice. There may have been occasions when we did not agree with them in their judgments when the interests of Europeans and Indians clashed. Now, a heavy responsibility falls upon the Federal Court in the, matter of capacity, in the matter of integrity and in the matter of ability. In times when contending political parties are there, each contending to overthrow the other, trying to win mastery over the other, it is difficult to keep calm in that atmosphere. Therefore, all the greater responsibility falls upon the shoulders of the Judges of the Supreme Court and also the President who in future has to select proper men for filling up these posts.The Privy Council might have given a lead in many matters, but so far as social legislation was concerned, we have our own grievances against it. It wanted to fossilise ancient practices. It considered many things under the personal law of the Hindus obsolete. An Indian Supreme Court would not have taken that view. Many things could have been accomplished by an Indian Court interpreting them otherwise. Many things are done not merely by statute law. They are allowed-to progress. If the courts can help by way of interpretation, many things can be done, many revolutions could take place without people noticing them, and progress can be achieved without the legislature embarking on any legislation. I am sure that the future Judges of the Supreme Court, when it comes into being, will certainly rise to the occasion and justify this transfer of power, this transfer of jurisdiction, from the Privy Council.

Now, so far as the jurisdiction of the Privy Council being allowed to continue even after the 10th October is concerned, I am sure that on the date on which we declare India to be a Republic, if any appeals are pending before it, they would be automatically transferred to the Supreme Court. Already there is a provision in the Transitory Provisions of our Constitution that all such appeals would stand automatically transferred to the Supreme Court.

Sir, I have great pleasure in congratulating the honourable Member that at least now he has thought it fit to bring forward this legislation. With this, the last link with the British will be going. When the British came, they tried to exercise jurisdiction over us, instead of allowing us to settle our own affairs. That link is broken now. I congratulate ourselves and I congratulate the honourable the Mover of this Bill for having brought forward this legislation.

Pandit Thakur Das Bhargava: Sir, I have very great pleasure in supporting the motion that this Bill be now passed. Our connection with the Privy Council for such a long time,is now brought to a close. We must on this occasion pay our homage to the Privy Council which has so greatly helped us in the evolution of our laws during the last'175 years. The great traditions of the Privy Council, its impartiality, it, independence and its other characteristics would now have to be inherited by the Supreme Court, and we hope that the Supreme Court would rise to the same height.

Now, Sir, the system of Great Britain and the system of America which we have copied make it absolutely clear that it is the courts which are the final arbiters of the rights and liberties of the people. If we have adopted that system, it is but meet that our Supreme Court should be a court of final jurisdiction. Many countrymen of ours have taken a prominent part in the deliberations of the Privy Council on the Judicial side as Judges. I am glad that the Drafting Committee has now proposed to abolish the jurisdiction of the Privy Council and conferred that jurisdiction on the Federal Court of the same character as the Privy Council was enjoying.

Now, the- King in any country has some prerogatives. I do not want to say what those prerogatives are, but it is sufficient to say that the King is regarded as the fountain of justice, that he is above 'the law, lie has powers of reprieve and pardon, etc. The same powers are now granted to the President. Even if the courts have convicted a person., the King in his prerogative can grant pardon or reprieve.

There are many cases on the criminal side where the Privy Council in its jurisdiction upheld principles of natural justice and decided cases on such basis. It is true that in criminal matters it interfered with the lower courts on very rare occasions-as I said it was a special kind of jurisdiction-but it was always in the interests of administering justice. I hope, Sir, that nowthat our Federal Court is invested with the same jurisdiction, the Federal Court also would rise to the occasion and do the work which every court is expected to do. Though we have not succeeded in giving our ordinary courts such supremacy over the executive, as we desire, all the same this Bill is a landmark in that it transfers to the Federal Court the jurisdiction which has been so long enjoyed by the Privy Council. I hope this will ensure justice to all individuals. I am happy, Sir, that now all cases in India will be decided by our own courts. Sir, while paying my tribute, I want to place on record our sense of gratitude to the Privy Council which has for such a long time distributed even-handed justice to all.

Mr. President : The question is :

"That the Bill, as settled by the Assembly: be passed."

The motion was adopted.MOTION re TRANSLATION OF THE CONSTITUTION

Shri K. M. Munshi: Mr. President, Sir, I beg to move the resolution which stands in my name :

"Resolved that the President be authorised and requested,to take necessary steps to have a translation of the Constitution prepared in Hindi and to have it published under his authority before January 26. 1950 and also to arrange for the preparation and publication of the translation of the Constitution in such other major languages of India as he deems fit."

Sir, the House is fully aware of the steps that were taken by you with regard to having a Hindi translation of the Constitution. In 1947 a Committee was appointed, with my honourable Friend, Shri Ghanshyam Singh Gupta as Chairman. That Committee produced a Hindi draft. Later, at the request of the Steering Committee, Sir, you were pleased to appoint an Expert Committee on the 15th March 1949 for the purpose of revising that Constitution. The members of that Committee, as is known to the House, were distinguished scholars associated with literary activities in different provinces in India. The members of the Committee were Shri Ghanshyam Singhji (Chairman), Mr. Rahul Sankrityayana, ex-President of the Hindi Sammelan, Mr. Suniti Kumar Chatterjee, one of the greatest experts on Indo-Aryan languages in India, Sri M. Satyanarayana, a gentleman who more than any other single person has done the utmost to spread the Hindi language in the South, Mr. Jayachandra Vidyalankar and Mr. Date, a well-known authority in Marathi. This Committee has revised the other translation; it is in the press and a considerable section of the House expected that the translation would have been completed in time to be placed before this House. But several difficulties are in the way. The time is not sufficient; it would also involve the Constituent Assembly meeting even after the November Session if that version is to come before this House; and the costs also will be disproportionate. In view of these factors, it is much better that the translation, after it has been revised either by you, Sir, or as it is produced by this Expert Committee, or revised by any other agency that you might think proper, may be published under your authority. It is absolutely necessary that on the 26th of January we should have a translation in Hindi published under your authority, the reason being that no sooner this Constitution is passed on the 26th of January, all the Indian languages will require some basic glossary and some basic translation for the purpose of adopting it in the different languages. At present what happens is, that in every province newspapers are translating the words in theConstitution in any way they like. Some translations are extraordinarily funny and some are accurate, but it is necessary that the whole of our constitutional terminology should

be published in some kind on authorized form, so that the translations in our languages may become easy. Once this constitutional phraseology becomes current, once there is one translation published in Hindi, it will be very easy to have a common terminology throughout the country. Not only that, but if there are going to be any further authorized versions, it will provide 'a basis for that purpose. Therefore, it is absolutely necessary that we should have this translation.

One thing more, and I have done. The experts on this Committee are in their own respective spheres the best that India could produce and no doubt their translation would be of a character which will command weight all over the country. Some expression of opinion is found in some papers that the translation is likely to be very heavy. Now that is a matter of opinion, but for the life of me, I cannot understand how there can be any version of our Constitution in any Indian language without our having to coin new words to express the legal and constitutional concepts which we have expressed in English in this Constitution. In all our languages, except Sanskrit, there is no complete vocabulary of legal and constitutional terms. Even the Sanskrit Vocabulary is inadequate and we may have to coin new words in order to express certain modem concepts of constitutional law. Therefore, it is inevitable, I submit, that whichever the translation, it will have to be largely drawn from Sanskrit. I find that there is a considerable prejudice amongst certain classes of people in this country who seem to think that even constitutional and legal terminology could be so framed as to be accessible to what is called the 'common man'. Nowhere in the world has a complex constitution like this bristling in every section with different constitutional aspects been worded in easy or so popular language as to be accessible to the common man. Even among our lawyers, I am sure many phrases that have been used in this Constitution,-phrases which have been borrowed from the

American or the English Constitution-are such as are not easily accessible to an ordinary lawyer and not even accessible to lawyers of considerable standing. They are strange words to them unless they familiarize themselves with constitutional law; much more so in language like ours; and I think it is necessary that our new terminology should be largely drawn from Sanskrit introduced in words or words which are framed on the basis of Sanskrit roots. As soon as that is done, I am sure it will provide a nucleus for not only consolidating the phraseology of all our Indian languages, but lay the foundation of the new Hindi, the lines of development of which this House decided upon three days ago. With these words, I commend this resolution for the acceptance of the House.

Shri H. V. Kamath (C.P. & Berar: General): Mr. President, Sir, while supporting generally the motion moved by my honourable Friend, Mr. K. M. Munshi just now, may I place before the House certain amendments to this motion ? I am sorry, Sir, that because this agenda was received only last night., I could not give notice of the amendments in time, with the result that my honourable colleagues have, not got copies of the amendments.

I shall now therefore read them out one by one.

"(1) That in the motion, for the words 'the President be authorised and requested to the words 'the President do be substituted.

(2) That in the motion for the words and figures "before January 26, 1950" the words 'as speedily as possible" be substituted.

(3) That in the motion, for the words "the preparation and publication", the words "the early preparation and publication" be substituted. [Shri H. V. Kamath]

(4) That in the motion. for the words "other major languages", the words "other languages" be substituted."

If these amendments were accepted by the House, the motion would read as follows :-

" Resolved that the President do take necessary steps to have the translation of the Constitution prepared in Hindi and to have it published under his

authority as speedily as possible and also to arrange for the early preparation and publication of the translation of the Constitution in such other languages of India as he deems fit."

'Taking amendment No. (1), I feet Sir, that the expression used in Mr.Munshi's motion is somewhat clumsy. When the House adopts a resolution, ipso facto the President is authorized in pursuance' of that resolution. It is not necessary to state in a Resolution that the President is authorized to do such and such a thing. We resolve that the President do take steps and that itself is an authorization and a request; and 1, therefore, feel that the words "authorization and request"' are unnecessary for the purpose of this motion, and moreover they detract from the dignity of a motion to be adopted by this House.

As regards amendment No. (3) which seeks to insert the words "early preparation and publication," I need not dilate upon this much. I believe that Mr. Munshi intends, and the House also intends, that the translation will be done early in other languages too, I only wish to make it very clear that this matter or this translation in other languages will not be postponed indefinitely.

Shri B. Das : Sanskrit also.

Shri H. V, Kamath : My amendment is for the addition of the word "early' and it is a slightly substantial amendment too; but I leave it to the collective wisdom of the Drafting Committee to incorporate it in such manner as they deem fit.

In the last amendment, I wish to substitute "other languages" for the words other major languages". After all, who are we to say here which language is major and which language is minor? We have not adopted any motion or even an article on the various languages; nor have we stated in any schedule which language is major and which minor. If we adopt the motion as moved by Mr. Munshi to the effect that the translation will be in such major languages as the President may deem fit, suppose the translation is not done in some particular language, naturally the people of the country speaking that particular language will feel hurt that theirs is considered a minor language and therefore it has been omitted. It will have a bad psychological effect. To avoid any invidious distinction between one language and another, I wish to delete the word "'major " and say, that the President shall order translation in such languages as he deems fit, leaving the matter to him to decide. It is not for us to say here which is a major language and in which major language or languages the President may order translation of this Constitution. The interruptions of my friends Mr. B. Das and Mr. Chaliha also show which way the wind is blowing. They also feel hurt as to the incorporation of the word 'major'. Suppose, for instance, Assamese is not included by the President,-I do not mean to suggest that it will be excluded,-or Oriya is excluded, they will feel that theirs is not a major language. Therefore, the best thing is to delete the word 'major' and say "such other languages as the President may deem fit".

Coming to amendment No. 2 by means of which I seek to substitute the expression "before January 26, 1950" by the words "as speedily as possible" I have to advance two or three arguments in support of this amendment. Firstly. the House will recollect that on the closing day of the last session, we adopted a resolution about the next General election, the preparation of electoral rolls and other ancillary matters. The argument was put forth even on that occasion thatit is not proper to bind the House to a particular date ; and Dr. Ambedkar had to admit in his reply to that debate that if for some reason or other we were unable to prepare the electoral rolls early enough and if therefore the elections were to be postponed beyond the end of 1950, we will have to state 'our reasons, bring another motion before the House and thereby get the 'original motion amended. Therefore, it is not wise I think to specify any definite, date. I hope, may, I am almost sure, that the Committee which the President will set

up win strenuously labour at this task of translation and get the translation ready even before, long before the 26th of January. But, there is many a slip between the cup and the lip and unforeseen circumstance at times arise which upset the plans of men. Therefore, I think it would be the part of wisdom to delete any reference to any particular date and just say, as speedily as possible'. It may be ready even in a month's time. If you fix a date, it is likely that it may be published just the day before, the 25t of January. That would be within the ambit of the motion which we are discussing.

I would however request and I would plead strongly that the Hindi translation of this Constitution must be ready long before January 26, 1950, even within a month or six weeks, so that if possible, this Hindi translation of the Constitution may be brought before the House during the Third Reading of the Constitution. For that purpose, I would not mind even if the Third Reading is so adjusted that it falls, say in early December or even early January. When once we have passed the Second Reading of the Constitution and the Electoral rolls are being prepared at a pretty fast pace in the country, there Is no reason why we should hustle the Third Reading of the Constitution before the Hindi Translation is ready.

We have adopted Hindi as the State Language and Official language of the Union only two days ago. It is therefore only right and proper, and in the fitness of things that at the Hindi translation at any rate the State language translation should come before the House at the Third Reading of the Constitution. For that purpose, I would suggest that the Third Reading of the Constitution be postponed to early December or, even early January; and we can be ready with the final draft in English and Hindi before the 26th of January. V unfortunately something happens, some circumstances arise owing to which we cannot adopt the constitution, and promulgate or inaugurate our republic on the 26th of January 1950, 1 feel there is no reason to feel any compunction on that score because to my mind, though the 26th of January has got its own sanctity as being the Independence Day on which twenty years ago we took the pledge of Independence, yet it is conceivable, it is likely that we may have yet another date in our National Calender. After the 15th of August 1947, last year and even this year, the 26th of January has been observed as Remembrance Day and not as Independence Day. Now, if this Constitution proceeds at its usual pace we need not hurry it up just to synchronise it with independence Day, the 26th of January. I have no objection to that date : I would welcome that date.But, if it is not finished by that day, we can have a new date in our National Calendar, call it the Republic Day..........

Mr. President : You are discussing a subject which is not germane to the motion.

Shri H. V. Kamath : The date, January 26, is there mentioned in the motion I thought that has reference to Independence Day. I am not dilating on it: I only feel that we may have a new date in our National Calendar, call it a Republic Day and celebrate it annually. I only feel that the Hindi Translation of the Constitution must be before the House during the 'Third Reading of the Constitution, especially, in view of the fact that Hindi has been adopted as the State language, the official language of the Union just a few days ago. If the Third Reading is passed without the Hindi Translation before the House, I think we would be doing a wrong to this very House which has adopted this language asthe State language and official language of the Union. I commend my various amendments to the House for their consideration and acceptance.

The Honourable Shri Ghanshyam Singh Gupta (C.P. & Berar : General), Mr. President, Sir, I stand here to support the motion of Shri K. M. Munshi but I must confess that I am not very happy over it. If I had my way. I would very much have liked that the Hindi version of the Constitution also could have been adopted by this

House. It was also your desire that the version in the official language of the Union should be passed by the House but there were obvious difficulties also. The question of the official language was not decided earlier and therefore the time left is very short. If earlier decision had been taken about the official language of the Union, then it would have been more easy for us to pass the Constitution in our own national language also. But as it is, it seems to me that this is probably the best under the circumstances.

But, Sir, I appeal to the House about one thing. There is no doubt that we have decided that English shall go. It shall go during the period of fifteen years or earlier and in some respects it might take a longer time, but when English goes and English is replaced in the Centre by our official language Hindi, then at that time we will only be left with the authoritative text of the Constitution in English and only a translation in Hindi. I would very much wish that the Steering Committee and Dr. Ambedkar in their deep wisdom might find a way in which we could say that the provision is there that we have our authoritative version of the Constitution also in Hindi which can be used say after about fifteen years. As the resolution stands by itself, even after twenty or twenty-five years we would only have the translation. It will not have the sanctity which attaches to a Constitution adopted by the House. It will be absent in the translation in our national official language Hindi.

What I would very much request Dr. Ambedkar and the Drafting Committee to consider is to find out a formula by which some day we may be able to say that this Constitution which is in Hindi has the sanctity of the Constitution passed by the House itself and not merely that of a translation. There is section 304 but then I find that that section would not be quite sufficient for the purpose. If the Drafting, Committee could draft another provision in this Constitution itself by which some such provision is made that after English ceases to be the official language of the Union, we may have our Constitution in Hindi adopted by the Union Parliament to which the same sanctity could be attached as it it was passed by the House, I would be very happy. This is the side of the case which I must humbly but most emphatically wish to bring to the notice of the Drafting Committee. I am sure that the ingenuity of the Drafting Committee will evolve a formula by which this would be possible and our sons and grandsons will not be left in the position in which they will say that there is no such,thing as sanctified Constitution in our national language, and the Sanctified constitution is only in the English language. That will not be very credit. able for us. Even a small country like Ireland drafted their Constitution in both the languages, in their own language and in the English language. But they took very early steps and therefore it was possible. I do understand and realize the difficulties but I would appeal that a way should be found out in which what have said may be possible.

Now I have the good fortune of being associated with the Hindi translation from the very beginning and I know the difficulties of translation. Therefore I do realise that our words have to be settled. They have to get implications and that is bound to take some time. I will not like to take the time of the House to show as to how we are proceeding with this translation. In choosing of a vocabulary which has any technical significance we take good care that the vocabulary is such as is acceptable not only to the Hindi area but to all the regional languages of the country-Marathi, Bengali, Gujarati and the languagesof the South. Any word which is not acceptable to Shri Satyanarayanji or to Dr. Chatterjee or to Shri Date, we reject. We take words which are unanimously agreed upon so that we may have the basis for future terminology of technical term,, (so far as the Constitution is concerned) not only for Hindi but for all the major languages of India. 'And our

difficulties have been very very great indeed. I can tell this House what I have often told you that I have never devoted so much time, so much energy and so much attention even as a student in any of my studies, as I have devoted to the work which you were pleased to entrust to me and my colleagues. I support the motion.

Dr. P. S. Deshmukh (C.P. & Berar: General) : Mr. President, I mug con. fess I am somewhat unable to understand the purpose and necessity of this resolution. We are going to request and authorise the President to take necessary steps to have a translation of the Constitution. I do not think your authority was limited even as the President of this Assembly, to have a translation not only in the Hindi language but in the various languages of India. Secondly, this authority does not mean that the translation the President is going to get prepared is going to be the authorised translation. If this resolution was at all necessary, it should have been provided that any such translation which the President will promulgate shall be the authorised and recognised translation of the Constitution.

My second difficulty is, I do not know when the President is going to come into being. If the Constitution is to be promulgated on the 26th January, 1950, then what is the sense in saying that the translation' should be prepared before that date ? I do not conceive,. that unless this Constitution comes into being and is promulgated, the President- can come , into existence. If the President cannot come into existence. before 26th January, 1950, what kind of translation is to be published before that date I am unable to understand.

Shri R. V. Sidhva (C.P. & Berar: General) : The President of the Constituent Assembly is already there.

Dr. P. S. Deshmukh: If it is the President of the Constituent Assembly, then I beg pardon. I took him to be the President of the Union. If it is the President of the Constituent Assembly, who is meant I do not think the resolution is necessary. The work of translation is already going on and we can provide that the translation prepared by the President, or published by or through him should be the official translation which shall be recognised by everybody,

Then Sir, I think there is no necessity for the changes which have been suggested by my friend Mr. Kamath. 'The wording as it stands would probably serve the purpose. But in any case, the word "major" should be altered, or omitted 'altogether. It is especially difficult to define what are major and minor in this connection. It is not the phraseology we have accepted anywhere and it is therefore better to omit the word altogether.

Then I support the suggestion made by Mr. Gupta 'so far as accepting the translation as the only version of the Constitution, at some date or the other, and the sooner it is done the better. If it is our intention that after fifteen years period Hindi should be recognised as the only official language, that it should be used more and more, then the best place where it should be brought into use is the law courts I am sorry to see that in the various law courts and in the High court, English is to language in use. I differ very vehemently on this point. The language in the law courts is very important because it results in so many other things. If the, law courts are to use English, the lawyers will perforce have to be proficient in English and there will be so many others who will have to give preference to English. Therefore having the Constitution in Hindi and recognising it as the onlycorrect version is very important from many more points of view than the point of view of convenience only. And if it is our intention that Hindi should be recognised more and more, it should be possible for the President of the Union to declare that from such and such date, the English version of the Constitution shall cease to have effect and that the Hindi Constitution will be the only one to be referred to and interpreted by law courts. I think this suggestion is very welcome and I hope it will be possible for Mr.

Munshi to accept it.

Seth Govind Das (C.P. & Berar: General) : "[Mr. President, Sir, I am very much dissatisfied with the resolution moved by Mr. Munshi. You might remember that years back I raised the question of adopting the Constitution in our National language. Whenever the Constituent Assembly met in session and I got an opportunity of speaking, I placed before you the proposal that' our Constitution should be adopted in our own language, You might remember that whenever I raised this question you gave the assurances that the Constitution to be adopted will be in our own language. The resolution moved in the House means that the Constitution will be translated into Hindi. It will only be a translation and not the original one. When English is going to be altogether banished. I fail to understand how we will carry on our work if the original draft of our Constitution would be in English.

This resolution means that we still want to maintain English on the same pedestal which it occupied during our slavery. I want to tell you that whatever difficulties we may be conronted with, we feel even today that the original draft of our Constitution should be in our national language.

We have been meeting in this Constituent Assembly for the last three years, it was after thousands of years that we got an opportunity to have this Constituent Assembly. Is it not possible for us to meet for a month more for this work ? If we cannot meet now, we can do so after some time. We want to adopt the Constitution on the 26th of January next, and we have sufficient time at our disposal. During this period we can set aside a month to adopt our Constitution in Hindi. The resolution put forward by the Steering Committee in this regard was altogether different from the resolution moved by Mr. Munshi today.

We know that there are a number of Members in the Constituent Assembly who do not understand Hindi, but I would like to say that there are sonic Members also who do not understand English. A number of Members do not understand many words used in the Constitution. It is possible that when we shall place before this House our constitution in Hindi, many of its words also would not be understood by a number of 'Members. But this is no argument for not adopting the Constitution in Hindi. When we are adopting the Constitution in English, even though a number of Members do not understand many of its words, there should be no difficulty on the same ground to adopt our Constitution in Hindi also. When we have accepted Hindi as the franca, as the State language it is very necessary that our original draft. of the Constitution should be passed in Hindi after the English version of the Constitution is adopted. 'It should not be a translation. It should be the original Draft. The Constitution in English too be brought into force together with it as is the case in Ireland. I want to say with emphasis that the original draft of the Constitution should be framed in our own language and if there is any difference anywhere in our original draft and the English draft, the original draft should be taken as authentic and not the English draft.

---

*[] Translation of Hindustani speech.

This is a question of our prestige. This is a question of our national prestige. Ours is a vast Country and it has a big population. It has an old history and old culture. If after the dawn of freedom in such country its Constitution is not framed in the language of the country, it would be a matter of deep and unlimited humiliation and shame for us. I am very much dissatisfied with the resolution moved by Mr. Munshi, and I want to tell you that the time has cot= for fulfilling the promise made by you at the time we commenced our work. At that time it was said that so long as the question of the national language is not decided this cannot be done. Now the question of the national language has been solved and there is no difficulty in fulfilling that promise. Whatever has been done in this House from beginning to end in

regard to Hindi has not been right. The effect of all that has been that there is discontent among the people and they are taking no interest in our work, although the people of a free country should take sufficient interest in the framing of their constitution. If we do not adopt originally our Constitution in our national language, there is bound to be discontent among the people and they would take absolutely no interest in the Constitution.

In the life of a nation such difficulties present themselves- many times,- and I appeal to you that it should be the primary duty of our leaders to solve these difficulties. Whatever may be the difficulties we should remain firm and stick to our ideas and objectives. ' At the outset the Steering Committee had accepted that our Constitution should be framed in Hindi and that a

Committee of the House should be appointed to formulate it. We should sit for a month and consider all the Drafts that have been prepared so far and should adopt our Constitution in our national language.]

Shri R. K. Sidhva : Mr. President, Sir, I wholeheartedly support the motion moved by Mr. Munshi. I attach great importance to the publication of this Constitution in various languages, particularly in Hindi. I also attach even greater importance that this Constitution in the various languages should be published particularly on the 26th January, 1950. We have adopted Hindi as our national language and to publish only the English version on the 26th January, and the Hindi one later as was suggested by Mr. Kamath, would not be proper. It is essential that the two must be published simultaneously. I would even wish that the publication in the various other languages, I mean the fourteen languages which we have passed in the Schedule must also be done as early as possible. But I know the difficulties you, Sir, will be confronted with. Therefore it has been said that the English and Hindi versions shall be published by the 26th January, and as for the others, it has been left to you to see that they are brought out as early as possible. A very large number of people who could really take advantage of reading this Constitution in their languages should be enabled to do so. Therefore, the translation of the Constitution in these languages should be published as early as possible. I hope it is not intended by "such other major languages of India" that the Constitution should be restricted only to a few languages. The major language means those who would the larger number.

At an earlier stage we had stated in this Constituent Assembly that the Draft Constitution should be given the widest publicity and I think you, Sir, also stated that a very large number of copies will be published. But I may state that in January of this year I was addressing a public meeting on the Constitution. Visitors after visitors stated that they applied to your office and also to the book-sellers and to the Bombay Government but they could not get any copy. I found on enquiry that all the copies were exhausted.

Dr. P. S. Deshmukh: Are you referring to the English copies or to the translation ?Shri R. K. Sidhva : I am referring to the English copies. We had stated that the people should take interest in the matter, acquaint themselves with it and as a matter of fact express their opinions through the medium of the press and also by sending them to the office of the Constituent Assembly. I do not know how many copies were printed. I make a suggestion that a very large number of copies of the Constitution in English and Hindi should be published on the 26th January so that everyone who so desires should be able to get a copy.

I would also make one other suggestion that you, Sir, on your behalf and on behalf of this Assembly should give a short synopsis of what we have done during these three years and what are the special features of the Constitution. It should be available both in Hindi and English. That will be interesting and people would like to read it.

As regards the suggestion made by my Friends Seth Govind Das and Shri

Ghanshyam Singh Gupta I do appreciate that this Constitution in Hindi should have come here. But it is really difficult if you want to go clause by clause. And it has to go clause by clause--every Member has a right to discuss the Constitution clause by clause in Hindi as we have passed it in English. Of course they cannot make any special suggestions now. But in regard to the translation there are many experts in Hindi here. They will say 'this word is not suitable, this should be there' and they have a right to say so. I do not agree with Seth Govind Das that it can be done in- one month. It will take six months if you want to pass through all the stages.

While I admit the force of the argument I would like to make a suggestion. Eventually the Hindi Constitution will prevail because within fifteen years or after fifteen years English will go. Therefore we must have a duly authenticated Constitution in Hindi. It will not be the version that you will be publishing. In my opinion something has to be done and that is later on it has to go to Parliament for this purpose. The Hindi translation of the Constitution must be an authenticated translation for the purposes of interpretation in the Supreme Court. Where there is a difference of opinion in the interpretation it is very necessary. I do appreciate that point of view. Now only the English Constitution will be there for the purpose of interpretation. But English has to go. Therefore the Hindi translation must be an authenticated one. This Constituent Assembly will be dissolved and therefore it cannot meet. My suggestion therefore is that some arrangement should be made for this purpose. If it is necessary to be made a clause in this Constitution I have no objection. But the matter must go to Parliament and Parliament must have the power to pass that Hindi translation.

I appreciate that Hindi now having been recognized the Hindi translation should have the fullest support of this Constituent Assembly, that is to say, the Third Reading of the Constitution in Hindi should have been passed by the Constituent Assembly. But practical difficulties come and it will not be possible for us to bring in this Constitution on the 26th of January, 1950. I strongly support the motion and I hope you will bear this little suggestion of mine that it will be very much appreciated if you attach a little brochure explaining what we did for three years, what immense work we had to do, how we had to change clause after clause and article after article, and what an amount of effort and work has been done by the Constituent Assembly. Let it not be misunderstood by the public that we have wasted so much time. On the contrary I consider that if we have lengthened the period of this Assembly it is for the advantage of the country. What we did in 1948, half of it we have scrapped now. After gaining experience and after mature consideration we have introduced many important articles. I very much appreciate that. I am not at all sorry-I am glad that the period has beensomehow, by God's act, extended. It was not the desire of the Members of this Assembly that the period should thus be extended. We had wanted to pass it earlier in 1948. But God preferred that it should be extended. It is very good that at) a result of this extension, after full consideration and in the light of the experience that we gained in the country, we have been able to change many of the articles.

With these words I strongly support the motion. Mr.

President : Mr. B. Das.

Shri T. T. Krishnamachari : Sir, the question may now be put.

Mr. President: I have already called Mr. Das.

Shri B. Das : Sir, I support the resolution moved by my honourable Friend Mr. Munshi. I do hope he will see the points brought forward by my Friend Mr. Kamath and accept his third and, fourth amendments. I do not like my Friend Mr. Kamath asking us to pass a resolution that the President "do take the necessary steps". The President has been our mouthpiece, the embodiment of our conscience, the embodiment of the spirit of this House

over the sovereign Constitution which we have framed. Whenever any contacts take place with the outside world it is the President that has represented all our sovereign rights, all our conscience, all our hearts, and corresponded with them. So it is not for me to say that the President "do this". If I had drafted this I would have done away with the words "The President be authorised". I would have only said that "the President be requested to take necessary steps" and that satisfies me because we have trusted him and he will carry out the will and the wishes of this sovereign Houses as our chosen head and as our mouth-piece.

As regards the suggestion, which has also been supported by Mr. Sidhva and Dr. Deshmukh that the translation should be. made available in all the languages that have been included in the Schedule as early as possible. I would suggest a modus operandi for that. We find that whenever any Bill is introduced in the Parliament at once the Provincial Governments take steps to translate it in the Provincial languages and circularise' it or publish it in their gazettes. So, if the Honourable the President can take advantage of the existing machinery of the various Provincial Governments, then the translations in the languages of course the translation. in regard to Hindi will be the official version that will come from my friend the Honourable Sjt. Ghanshyam Singh Gupta-but the translation in the other languages could easily be done within a month's time and then on the 26th of January 1950 all these translations-in Oriya, Assamese, Bengali, Gujerati, Telugu, Tamil. Kannada and every other language of the fourteen languages-will be avail able. Whether a translation in Sanskrit will be available I do not know. We will have to approach the various Pandits headed by my Friend Pandit Lakshmi Kanta Maitra and ask them whether they can work over it and produce a translation for the Pandits that inhabit the sacred places of India. But I do hope my Friend Mr. Munshi will accept Mr. Kamath's suggestion, modified by Mr. Sidhva, of having the translations in the other languages as described in the Schedule to the Constitution.

Sir, I will echo the feelings of the House if I say that the House is grateful to MY honourable Friend the Honourable Sjt. Ghanshyam Singh Gupta for the labour and efforts that he has devoted to the Hindi translation. Whether it will be the accepted version ten years hence I cannot say, but it must be the accepted version in the country from the date it is published by your orders. But as regards the suggestion of my Friend Seth Govind Das that the Constituent Assembly should be prolonged infinitely and should pass the Hindi version, Sir, though I agree with the sentiment I do not agree with the Proposal. Although the Constituent Assembly has continued for three yearsand we are hoping that on the 26th January next we will declare a Republic when this Constitution will be promulgated, still to quote Mr. Kamath, "there is many a slip between the cup and lip". We saw two years ago tile people of France had three Constituent Assemblies; they drafted three Constitution,, they are carrying on their faltering existence in some way on the 3rd draft.

Whether this Constitution will outlive all times, I cannot say. Already I hear criticisms from my friends the Socialists and from those who have gone underground, I mean the Communists, that they do not like this Constitution at all. We are not for all times going to be the Government India-the Socialists are bound, to step in, though they will have to learn to acquire Inc capacity for administration of the Governments. They are mostly busy criticising the Congress and its ways-most of them were Congress members at one tune or another. So, the Constitution may not be a permanent thing. Even if fifteen years hence from January 26th a Hindi version is necessary as the statutory and authorised version, by that time I believe so many amendments will have taken place in the very Constitution that it will be desirable to have the authorised translation in

Hindi then. Perhaps then a new Constituent Assembly may be elected, not on the basis of franchise as the present Constituent Assembly was created but perhaps every State will send two or three representatives who will sit down and adopt the authorised Hindi version of the Constitution. But at present it will remain an educative version, it will not have any legal or statutory binding on the people. The very lawyers that preponderate in our country will seldom quote the Hindi version; they will always quote the authorised version of the English text which this House has passed.

So, that is not a very dreadful matter to me and I hope time and. experience will evolve the proper form of the Hindi language so that a proper, authorised Hindi translation will be evolved at least ten years hence, when I anticipate that language will be accepted all over India as the national language and then that version of the Hindi text will be accepted as authorised text. Of course I admire his sentiment that he wants that the, Hindi version should be an authorised version which this House is not at present in a mood to sit longer and pass.

Seth Govind Das: But when will it come ?

Shri B. Das: It will come ten years hence and I will not be there, you will be there.

Sir, I do appeal to you, and we are putting our trust and confidence in you in this matter to see that the thirteen languages excluding English-I do not know if Sanskrit will come in-will have their own version and they will all be published on the 26th January next so that the countryside will know in detail as to what we did by sitting long hours, what are the rights and privileges that are conferred on them by the Constitution and what hopes they can cherish under our Independent Republican Government.

Mr. President: Closure has been moved and so I will put it to vote.

The question is :

"That the question be now put."

The motion was adopted.

Shri K. M. Munshi: Mr. President, Sir, I will first deal with the amendments moved by my Friend Mr. Kamath. I am very sorry that I am not able to accept any of his amendments. As regards the first amendment, the words"authorized and requested' have been appropriately. used, firstly because the word "do" is mandatory and with reference to our President I do not think it appropriate to use a word like that, and secondly because theword "authorized" has been used after considerable deliberation. I would have been extremely glad if the translation had been placed before this House and accepted as an authorized version of the Constitution. But as things were, it was not possible to do so.

Seth Govind Das: May I ask one question of my Friend Mr. Munshi? Is it not a fact that the Steering Committee first decided that a Committee of this house should be appointed which will go into the question and consider that translation and then that that translation should be brought here and considered as the original version?

Shri K. M. Munshi : It is an open secret, I moved those resolutions. I was keen that we should have the version accepted by the House, but the circumstances are such that it is not possible for us to do so-at least that is the view of the bulk of the Member of the House. Whatever my personal view may be or whatever the view of my honourable Friend Seth Govind Das may be, the general opinion of the House is that it is not possible to do so. Therefore, we have to accept the best possible substitute, namely, we are delegating that authority of publishing a translation to the President himself. It is a perfectly legitimate way of doing things in view of our difficulty. My Friend Seth Govind Das in his enthusiasm forgot what Mr. Sidhva said. My honourable Friend. Mr. Sidhva thinks that this version should be placed before the House and carried through, article by article, clause by clause, with the numerous amendments which the Members of this Assembly might bring forward...

Seth Govind Das : I say it can be done.

Shri K. M. Munshi: Well, it =not be done in less than 12 months because I can assure my

Friend Seth Govind Das that whatever he may think about himself or whatever I may think about my capacity to translate there are quite a large number of Members here who share my Friend Mr. Sidhva's opinion that they are great experts even in the matter of translating a highly technical subject.

Seth Govind Das: I tee that if you bring it up it will be passed within a month.

Shri K. M. Munshi: I am not prepared to accept that view and my learned Friend need not spend his enthusiasm on the subject, but I do say that we have to reckon with Members here like my Friend Mr. Sidhva. I have suggested the best possible substitute and that accords with the general views so far as I have been able to ascertain. We do not need a discussion, in a popular House like this, on the niceties of language. It is much better that it should be left to the President to get such expert advice as he thinks proper and to produce a translation which, though-not approved by the House, is approved by the experts he wants.

Seth Govind Das : The same thing as was done for English may be done for Hindi also,

Shri K. M. Munshi : Sir, I have said it once and I am prepared to repeat it again that I am carrying out the general wishes of the Members of the House.

Shri Mahavir Tyagi : (United Provinces: General) : Can you not use the word "version" instead of the word "translation" ?

Shri K. M. Munshi: I would have been very glad to do it, were it not untrue. What we are doing is a translation. 'Version' means really-speaking re-writing the whole thing in an independent manner. This is a translation. Let us pass through the stage of translation. Then we can have an independent version of the Constitution, which it will be open to the Parliament to accept as the authorised version.

Shri Govind Das : Are you going to move any such resolution that the original version may be passe by Parliament ?Shri K. M. Munshi: I am afraid it will take an unduly long time of the House if I were to answer my honourable Friend's query.

The next amendment is of Mr. Kamath's who wants to substitute the words "as speedily as possible" for the words and figures "before January 26, 1950". 1 would feel happy if we could do it before the 26th of January, because after all it is a very technical and difficult work and cannot be turned out like cotton piece goods.

In regard to Mr. Kamath's third amendment, I see no reason to suppose that this preparation would not be done with convenient despatch.

In his fourth amendment Mr. Kamath wants the words "other major languages" to be substituted by the words "other languages". The position is this. There are many more languages in India than the fourteen that were enumerated in the Schedule to the chapter on the national language. Among the fourteen languages we have included a language like the 'Kashmiri' which, I am told, is spoken by not more than ten lakhs of people. Now, it may be that some of these languages are not in use in courts. If that is so, there is no reason why there should be a translation in that language. The whole object is that this translation should be available to all persons who will be dealing with the Constitution either in courts of law or in schools or colleges, or to people who want to familiarise themselves with the constitutional concepts embodied in the Constitution.

Pandit Lakshmi Kanta Maitra (West Bengal: General) : The, Provincial Governments may be entrusted with the work of translation into different languages.

Shri K. M. Munshi : The President has been given the discretion to select such languages as he considers to be the major ones. It may be a waste to spend money on translation into, take, for instance 'Cutchi'. 'Cutchi' is a sort of language, though all Cutchies speak Gujerathi. Why should there be a translation in 'Cutchi' ?

Some Honourable Members : 'Cutchi' is not a language.

Shri K. M. Munshi : Therefore we must give the President full discretion to deal with this matter, 1, therefore, request the House to accept this motion.

Shri H. V. Kamath : Is my

honourable Friend aware that the Irish Constitution was adopted in Irish as well as in English by Eire in 1937 ?

Mr. President : It does not matter. That will not solve the problem even if he is aware of it. I shall now put the amendments to vote.

Mr. President : The question is :

That in the motion, for the words 'the President be authorised and requested to' the words 'the President do' be substituted"

The amendment was negatived.

Mr. President: The question is :

'That in the motion, for the words and figures 'before January 26, 1950,' the words as speedily as possible' be substituted."

The amendment was negatived.

Mr. President: The question is :

"That in the motion. for the words 'the preparation and publication' the words 'the early preparation and publications, be substituted."The amendment was negatived.

Mr. President : The question is:

"That in the motion, for the words 'other major languages' the words 'other languages' be substituted."

The amendment was negatived.

Mr. President: The question is :

"Resolved that the President be authorised and requested to take necessary steps to have a translation of the Constitution prepared in Hindi and to have it published under his authority before January 26, 1950, and also to arrange for the preparation and publication of the translation of the Constitution in such other major languages of India as he deems fit.

The motion was adopted.

Mr. President : Now that the Assembly has adopted this resolution I wish to say a few words, because it now falls, upon me to implement it and I want the assistance and co-operation of the Members of this House, as also of others who may be interested in this subject. to help me in implementing it. So far as the Hindi translation is concerned, it has made considerable headway under the Chairmanship of Shri Ghanshyam Singh Gupta. We shall see how far that translation is acceptable and we shall also consider in that connection how far the particular expressions which have been used for technical words are acceptable to most of the languages of the country. For example, we have a word like "assembly" which is translated in different ways in different languages. It would be in the interests of the development of the country as a whole if we could have one uniform vocabulary for such expressions, at any, rate for those parts of the country where the languages spoken are of Sanskritic origin.

In appointing the Committee which is now working on the Hindi translation, I took care to have representatives from different parts of the country and people who might be considered more or less as authorities on the subject. Even then I shall take further care to see to it that the expressions which are adopted finally are such as will, as far as possible, be acceptable to all the languages.

I, therefore, suggest to honourable Members present here who represent practically all the provinces and all the languages to give me some names. They should, in the first instance, discuss amongst themselves so that I might be able to say that these are the names suggested by the representatives of the various languages spoken in the country who are Members of the Assembly. Take, for example, our Tamil-speaking Friends. I would expect them to give me one or two names; I would expect the Telugu-speaking Friends to give me one or two names; I would expect the Bengali-speaking Friends to give me one or two names. Similarly if all the Members representing the various provinces and the languages will give me the names I would make a selection and appoint a Committee which will sit and finalise the vocabulary, so far as the constitutional and technical terms are concerned. If that is once accepted ....

Sardar Hukam Singh (East Punjab: Sikh) : What about Punjabi-speaking areas ?

Mr. President : I have mentioned only two or three, by way of example. You are certainly welcome to give me the names you like.

If that vocabulary is once accepted, our work will become very easy. Then the translation will be a running

thing which can be easily done.I Propose also to address the various Provincial Governments to assist me with the co-operation of their Translation Departments and any experts that they may have in their own employ. If I get these names soon, I think the work of translation could be expedited.

I believe there are many translations already made in various languages. Those translations might also be utilised and I would request Members who have information about those translations to give me information with regard to them.

Shri V. I. Muniswamy Pillai (Madras: General): May I know when the tram selection will be over?

Mr.. President: As soon as possible. But there is this difficulty which the House will bear in mind. We have not finalised the Constitution as a whole. There are still many articles which have to pass the Second Reading stage. Whatever translation is prepared now will be only with regard to the articles which have been finalised so far as the Second Reading is concerned. There may be some changes made further, but they will be only minor changes.

As regards the Hindi I translation that work is proceeding on the basis of the articles finalised from day to day in the House. There is no other translation being prepared in that sense under our authority. But now that you have asked to get translations prepared in other languages also, I think this is the best course I can adopt in the circumstances. I hope the

House will give me authority and approval to this plan.

Shri K. M. Munshi : May I respectfully suggest that, if Members can give the names by this evening, then it will be possible for you to announce the names this evening ?

Mr. President: I do not think they will find it convenient to give the names by this evening. I would not limit the time to this evening.

Shri V. I. Muniswamy Pillai: Should the selection of names be confined to the members of this House.

Mr. President: Not necessarily. They may be outsiders also. They should be experts whose translation will be accepted as authoritative in their own languages. I shall have to depend upon the authority which those people carry to get the translation accepted by their own people.

Shri M. Ananthasayanam Ayyangar: Are the translations likely to be long delayed?

Mr. President : They will have to expedite the translations as soon as possible.

Babu Ram Narayan Singh (Bihar: General): In the beginning you announced that the Constitution will be passed in Hindi.

Mr. President : That was my wish and intention, but I find that it has not fructified and it is not possible. That is all I can say. Members are familiar with the events that have happened and the circumstances under which I had to give up that idea.

Article 303.-(contd.)

Mr. President: Now the House will proceed to the next item on the agenda. Consideration of article 303 may be resumed. There are no amendments to sub-clauses (k) and (1). Therefore I will put them to vote. The question is

"That sub-clauses (k) and (1) stand Part of article 303(1)."The motion was adopted.

The Honourable Dr. B. R. Ambedkar: I move:

"That after sub-clause (I,) of clause (1) of article 303, the following sub-clauses be inserted namely :-

(II)" High Court" means any court which is deemed for the purposes of this Constitution to be a High Court for any State and includes-

(i) any court in the territory of India constituted or reconstituted ended this Cons titution as a High Court, and (ii) any other court in the territory of India which may be declared by Parliament by law to be a High Court for all or any of the purposes of this Constitution.

(III) "Indian State" means-

(i) as respects the period before the commencement of this Constitution, any territory which the Government of the dominion of India recognised as such a State; and (ii) as respects any period after the commencement of this Constitution, any territory not being part of the territory of India which the President recognises as being such a State."'

Mr. President : 'Mere is no amendment to this.

As no one wishes to speak on this I will put it to vote.

The question is :

"That after sub-clause (1) of clause (1) of article 303, the following sub-clauses be inserted, namely :-

(II) "High Court" means any court which is deemed for the purposes of this Constitution to be a High Court for any State and includes-

(i) any court in the territory of India constituted or reconstituted under this Constitution as a High Court, and

(ii) any other court in the territory of India which may be declared by Parliament by law to be a High Court for all or any of the purposes of this Constitution.

(III)"Indian State" means-

(i) as respects the period before the commencement of this Constitution. any territory which the Government of the Dominion of India recognised as such a State; and

(ii) as respects any period after the commencement of this Constitution, any territory not being part of the territory of India which the President recognises as being such a State.' "

The amendment 'Was adopted.

Mr. President : The question is :

"That sub-clause (m) and (n) stand part of article 303(1)".

The motion was adopted.

(Amendment No. 141 was not moved).

The Honourable Dr. B. R. Ambedkar: I beg to move:

"That after sub-clause (n) of clause (1) of article 303, the following sub-clause be inserted, namely :-

(nn) 'Ruler' in relation to a State for the time being specified in Part III of the First Schedule means the person who for the time being is recognised by the President as the Ruler of the State and includes any person for the time being recognized by the President as exercising the powers of the Ruler of the State. and in relation to an Indian State means the Prince, Chief or other person recognised by the Government of the Dominion of India or the President as the Ruler of the State;' "

Mr. President : There is no amendment to this. I will put it to vote.

The question is :

"That after sub-clause (n) of clause (1) of article 303, the following sub-clause be inserted, namely :-

(nn) 'Ruler' in relation to a State for the time being specified in Part III of the First Schedule means the person who for the time being is recognised by the President as the Ruler of the State and includes any person for the time being recognised by the President as exercising the powers of the Ruler of the State, and in relation to an Indian State means the Prince. Chief or other person recognised by the Government of the Dominion of India or the President as the Ruler of the State;"The amendment was adopted.

Shri. H. V. Kamath: May I ask Dr. Ambedkar what exactly is the point in mentioning that 'securities' includes stock ? Why not mention shares also?

Shri T. T. Krishnamachari: I may mention, Sir, that the word usually used in respect of Government securities is 'stock' by the British Parliament.

Mr. President : There are no amendments to sub-clause 'o'.

Mr. President : The question is :

"That sub-clause (o) stand part of article 303(1)"

The motion was adopted.

Mr. President : I think we had better stop here.

Before we adjourn, there is one thing I desire to mention. I have received a letter addressed to me by Mr. Z. H. Lari, a Member of this Assembly. He has resigned his Membership of this House and in the letter of resignation he has mentioned certain reasons connected with the discussion about the language question which we had the other day. He has asked me that I should read out his letter to the House. I find, however, that before the letter reached me a copy of it was given to the Press and the substance of the letter has already appeared in the newspapers. That being so I do not think it is necessary that I should read out. this letter to the House. Of course I shall take the other action that is necessary in connection with it.

Shri Jaspat Roy Kapoor (United Provinces : General): On a point of order. If this House is going to take any cognisance of this matter, I think the contents of it may as well be discussed, and the Assembly given an opportunity to express its

view on that letter.

Honourable Members: No, No.

Shri Jaspat Roy Kapoor : I am not suggesting that it should be discussed. My only submission-is that the Assembly should not be considered to have taken cognisance of the contents of that letter.

Shri M. Thirumala Rao (Madras: General) : On a point of information, is it necessary that this letter should be placed before the House or the Members of this House should know the contents of that letter. I do not think it need be placed before the House.

Mr. President: If the matter had not been published, the question of reading it to the House may have arisen. I cannot say what decision in that case would have been, but since it has already been published, the question of reading it to the House does not arise.

Shri R. K. Sidhva: He should have had the courtesy not to publish it.

Shri Mahavir Tyagi : Is the formality of acceptance either by the House or by the President necessary ? The very fact that the resignation has reached ...

Mr. President : As I have said, I shall take action under the rules. Under the rules, I am authorised to accept resignations. That matter does not concern the House.

The House is adjourned till 4 o'clock this afternoon. The Assembly then adjourned till Four of the Clock in the Afternoon.The Assembly reassembled after lunch at Four of the Clock in the afternoon. Mr. President (the Honourable Dr. Rajendra Prasad) in the Chair.Article 303 (contd.)

Mr. President: We shall take up item (p) of article 303 now.

Shri T. T. Krishnamachari : There is no amendment to this.

Mr. President : The question is

"That sub-clause (p) stand part of article 303(1)."

The motion was adopted.

Mr. President: Then we shall take up sub-clause (q). Is there any amendment to this sub-clause ?

Shri T. T. Krishnamachari : There are amendments Nos. 3224 and thereafter standing in the name of Mr. Santhanam and others. I do not think they are being moved.

Mr. President : The question is

That sub-clause (q) stand part of article 303(1)."

The motion was adopted.

Shri T. T. Krishnamachari : Mr. President, Sir, I move

"That for sub-clause (r) of clause (1) of article 303. the following sub-clause be substituted :-

'(r) 'railway' does not include tramway, whether wholly within a municipal area or not.'

Sir, may I move the other amendments to sub-clauses (s), (t) and (u) because they are consequential ?

Mr. President: Yes.

Shri T. T. Krishnamachari: Sir, I move:

That sub-clauses (s), (t) and (u) of clause (1) of article 303 be omitted."

This is consequential on the revision that we have made in the entry in List I in Schedule VII. There is no need to define Union Railways, State Railways or Minor Railways separately.

The Honourable Shri K. Santhanam (Madras: General) : I only want to know whether tramway is defined anywhere. There is no fundamental difference between a railway and a tramway, except that one is called a railway and the other a tramway.

Mr. President : It is for this reason that it is sought to state that a railway does not include tramway.

The question is

"That for sub-clause (r) of clause (1) of article 303 the following sub-clause be substituted:-

'(r) 'railway' does not include tramway, whether wholly within a municipal area or not.' "The amendment was adopted..

Mr. President: The question is:

That sub-clauses (s). (t) and (u) of clause. (1) of article 303 be omitted"

The amendment was adopted.

Shri T. T. Krishnamachari: There is no amendment to (v),

Mr. President: The question is:

"That sub-clause (v) stand part of article 303(1)

The motion was adopted.

Shri T. T. Krishnamachari: Sir, will YOU take up amendments 203 and 204 together ?

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That with reference to amendment No. 147 of List IV (Eighth Week). for sub-clause (w} of clause (1) of article 303, the following sub-clause be substituted:-

'(w) 'Schedule Castes' means such castes, races or tribes or parts or groups within such castes, races or

tribes as are deemed under article 300A of this Constitution- to be Scheduled Castes for the purposes of this Constitution.' "

The only change is, the word 'specified' has been changed to 'deemed', Sir, I move :

"That with reference to amendment No. 148 of List IV (Eighth Week), for sub-clause (x) of clause (1) of article 303, the following sub-clause be substituted :-

(x) 'scheduled tribes' means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 300B of this Constitution to be scheduled tribes for the purposes of this Constitution,"

I am incorporating the other amendment which has also been tabled.

Shall we take up, the two other articles also at the same time ?

Mr. President : Yes.

*New articles 300A and 300B.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That after article 300, the following articles be inserted :-

300A. Scheduled Tribes (1) The President may, after consultation with the Governor or Ruler of a State, by public notification specify the castes, races or tribes or Scheduled Castes parts of or groups within castes races or tribes, which shall for purposes of this Constitution be deemed to be Scheduled Castes in relation to that State.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued by the President under clause (1) of this article any caste, race or tribe or part of or group within any caste. race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

300B. Schedule Tribes (1) The President may after consultation with the Governor or Ruler of a State, by public notification specify the tribes or tribal communitiesor parts of or groups within tribes or tribal communities which shall for purposes of this Constitution be deemed to be scheduled tribes in relation to that State. (2) Parliament may by law include in or exclude from the list of scheduled tribes specified in a notification issued by the President under clause (1) of this article any Tribe or Tribal community or part of or group within any Tribe or Tribal community but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

The object of these two articles, as I stated, was to eliminate the, necessity of burdening the Constitution with long lists of Scheduled Castes and Scheduled Tribes. It is now proposed that the President, in consultation with the Governor or Ruler of a State should have, the power to issue a general notification in the Gazette specifying all the Castes and tribes or groups thereof deemed to be Scheduled Castes and Scheduled Tribes for the purposes of the privileges which have been defined for them in the Constitution. The only limitation that has been imposed is this : that once a notification has been issued by the President, which, undoubtedly, lie will be issuing in consultation with and on the advice of the Government of each State, thereafter, if any elimination was to be made from the List so notified or any addition was to be made, that must be made by Parliament and not by the President. The object is to eliminate any kind of political factors having a play in the matter of the disturbance in the Schedule so published by the President.

Mr. President: 218A.

Shri T. T. Krishnamachari: In reading it he has included that. Mr. President : 224.

Pandit Thakur Das Bhargava: Sir, I move:

"That in amendment No. 201 of List V (Eighth Week) in clause (2) of the proposed new article 300A the following be added at the end :-

'for a period of ten years from the commencement of this Constitution."'

I also move :

"That in amendment No. 201 of List V (Eighth Week) in clause (2) of the proposed new article 300B the following be added at the end :-

'for a period of ten years from the commencement of this Constitution.'

I agree with the principle that for ten years to come no variation of the

notification originally made by the President should be possible. Because now that special privileges of reservation, etc., have been given to the Scheduled Castes, I do not like the idea that the Executive, President or Governor or any other person may be able to tamper with that right, but after a period of ten years, when this privilege will no longer be available to the

Scheduled Castes, there will be no difference between the Scheduled Castes and other backward classes which will be declared under article 301 of the Constitution. At that time there will be no meaning in taking away this power from the President in consultation with the Governor. Therefore my humble submission is that the proposed amendment be accepted to make the point absolutely clear and free from ambiguity. Unless we add these words for a period of ten years from the commencement of this Constitution, you will be taking away the power of the President to include or exclude proper classes from the purview of the notification which will he issued under 300A and B. After the first ten years the privileges which will be open to these classes are probably under article 10 and under articles 296 and 299. I do not know of any other privileges which have been specifically given to these Scheduled Castes. Whereas I am, very insistent and conscious that these provisions should not be tampered with, I do like that these castes may not become stereo-typed and may not lose the capacity of travelling out of the schedule when the right occasion demands it. I, therefore, submit that if you put these words you will be making the whole thing elastic and the President will have the power of including or excluding after the lapse of ten years such tribes or castes within the notification.Mr. President: Cr. Chaliha-you have two amendments. Once is 205 and the other is 225). I do not know if 205 arises now.

Shri Kuladhar Chaliha (Assam: General) : Mr. President, I move;

"That in amendment No. 201 of List V (Eighth Week) in clause (2) of the proposed new article 300B after the words 'Parliament may' the words 'and subject to its decision the State Legislature' be inserted."

I have always been fighting that the Governor should have power to safeguard the rights of the Tribes. I am glad in some measure this has been conceded. Yet I find certain amount of suspicion in that the State Legislature is neglected The Drafting Committee has not allowed the State Legislature ,to have a voice In order to fill up that lacuna I have said that Parliament may and subject to its decision the State Legislature'.

Shri. T. T. Krishnamachari :. Then what is left to the State Legislature

Shri Kuladhar Chaliha: Somehow or other I feel you have neglected it. In these you have covered' a good deal which you had objected to in the past. The Governor has been given power I am glad to say. The only thing is provincial assemblies have no voice in this. Whatever Parliament says they are bound by it; but if there is anything which consistently with the orders of the Parliament they can do anything, they should bet, allowed to have the power. That is why I have moved this. However I am thankful this time that the Drafting Committee has assimilated good ideas and only provincial assemblies have been neglected. However, the Governor is there-that is an improvement-Parliament, is there and the President is there. Therefore, I Thank the Drafting Committee for this.

Mr. President: Mr. Sidhva.

The Honourable Dr. B. R. Ambedkar: It is already covered.

Shri Brajeshwar Prasad (Bihar : General).There are some amendments seeking to add some more clauses.

Mr. President: 'That is a separate matter. These were all the amendments.

Shri V. I. Muniswami Pillai: Mr. President, I come to support the amendments that have been moved by the Honourable Dr. Ambedkar. These amendments deal with the definition of Scheduled Castes. As far as I can see he has made it clear that, according to the second part of it, the President on the 26th January 1950 will publish a list of such communities that come under the category of Scheduled Castes. But I would like to inform this House of the background which brought out the special name of Scheduled Castes. It was the intouchability, the, social evil that has been practised by the Hindu Community for ages, that was responsible for the Government and the people to know the section of people coming under the category of Hindus and who were kept at the outskirts of the Hindu society. Going backwards to 1916 it was in that year when Government found that something had to be done for the untouchable classes, (when they said untouchable classes, they were always understood to be Hindus,) and they had to be recognised. In Madras there were six communities that came under this classification. During the Montago Chelmsford reforms they were made ten. In 1930 when the great epoch-making fast of Mahatma Gandhi came about, then only the country saw who were the real untouchable classes. And in the 1935 Act, the Government thoroughly examined the whole thing and as far as the Province of Madras is concerned they brought 86 communities into this list or category, though there were some touchable classes also. Now, after further examination the Provincial Governments have drawn up a list and T think according to the amendment mover's suggestions, all those communities that come-under the category of untouchables and those who profess Hinduism will be the Scheduled Castes, because I wantto emphasise about the religion. I emphasise this because of late there have been some movements here and there; there are people who have left Scheduled Castes and Hinduism and joired other religions and they also are claiming to be scheduled Castes. Such convert cannot come under the ,cope of this definition. While I have no objection to Government granting any concessions to these converts, I feel strongly that they should not be clubbed along with Scheduled Castes.

Sir, I am grateful to the Drafting Committee and also to the Chairman of that Committee for making the second portion of it very clear, that in future, after the declaration by the President as to who will be the Scheduled Castes, and when there is need for including any other class or to exclude, anybody or any community from the list of Scheduled Castes that must be by the word of Parliament. I feel grateful to him for bringing in this clause, because I know, as a matter of fact, when Harijans behave independently or asserting their right on some matters, the Ministers in some Provinces not only take note and action against those members, but they bring the community to which that particular individual belongs; and thereby not only the individual, but also the community that comes under that category of Scheduled Castes are harassed. By this provision, I think the danger is removed.

I strongly oppose the amendment moved by Pandit Bhargava. The reason is that he wants to have the ten years period for observing these amendments. But he has entirely forgotten that under another article that we have already passed, or will pass the Constitution provides for the appointment of a Special officer at the Centre and also various officers in all the Provinces to go into the various disabilities of these communities and to submit a report to the President who will then be able to know whether the Scheduled Castes have reached a stage when the facilities now given to them could be withdrawn. I do not think that the reasons that he has advanced are fair and square for the uplift of the Harijans.

With these few words, I support the amendment.

Mr. President: Does anyone else wish to speak? Do you wish to say any thing Dr. Ambedkar ?

The Honourable Dr. B. R. Ambedkar : I do not accept the amendment of Pandit Thakur Das Bhargaava.

Mr. President : Then I put the amendments. The first is the one with reference to amendment 147.

The question Is :

"That with reference to amendment No. 147 of List IV (Eighth Week), for sub-clause(w) of clause (1) of article 303, the following sub-clause be substituted :-

(w) 'Scheduled Castes' means such

castes, race,.; or tribes or parts of or groups within such castes. races or tribes as are deemed under article 300A of this Constitution to be Scheduled Castes for the purposes of this Constitution;"'

The amendment was adopted.

Mr. President : Then the amendment regarding (x).

The question is

"That with reference to amendment No. 148 of List IV (Eighth Week), for sub-clause (x) of clause (1) of article 303, the following sub-clause be substituted :

'(x) 'Scheduled tribes' means such tribes or tribal communities or parts of or groups within such tribes or tribal as are deemed under article 300B of this Constitution to scheduled tribes for the purposes of this Constitution;"'

The amendment was adopted.Mr. President: Then I put the two new articles 300A and 300B. But I first put the amendment. No. 224 of Pandit Thakur Das Bhargava.

The question is :

"That in amendment No. 201 of List V (Eighth Week), in clause (2) of the proposed new article 300A, the following be added at the end:-

'for a period of ten years from the commencement of this Constitution."'

The amendments was negatived.

Mr. President: There is no other amendment.

I then put No. 201. The question is :

"'that after article 300, the proposed new article 300A stand part of the Constitution."

The motion was adopted.

*Article 300A was added to the Constitution.

Mr. President: Then 300B and the amendment moved by Mi. Sadhva or Mr. Krishnamachari about adding the word "tribal". But then there is another amendment, that of Mr. Chaliha.

The question is:

"That in amendment No. 201 of List V (Eighth Week), in clause (2) of the proposed new article 300B, after the words 'Parliament may' the words 'and subject to its decision the State Legislature' be inserted."

The amendment was negatived.

Mr. President : Then I put No. 227 of Pandit Thakur Das Bhargava.

The question is :

"That in amendment No. 201 of List V (Eighth Week) in clause (2) of the proposed new article 300B, the following be added at the end :-

'for a period of ten years from the commencement of this constitution.

The amendment was negatived.

Mr. President: Then I put Mr. Krishnamachari's amendment which has really been accepted by Dr. Ambedkar-218A.

The question is

"That in amendment No. 201 of List V (Eighth Week), in the proposed new article 300B-

(a) in clause (I), for the word 'communities' in the two places where it occurs, the words 'tribal communities' be substituted;

(b) in clause (2), for the word 'community', in the two places where it occurs, the words 'tribal community' be substituted."

The amendment was adopted.

Mr. President: Then I put article 300B as proposed by Dr. Ambedkar.

The question is :

"That proposed article 300B be adopted."

The motion was adopted.

Article 300B was added to the Constitution.

EIGHTH SCHEDULE

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That the Eighth Schedule be deleted."

Mr. President: There are certain amendments to the Eighth Schedule. They would not arise now.

The Honourable Dr. B. R. Ambedkar: No, Sir, they would not arise.

Mr. President : The question is :

"That the Eighth Schedule be deleted."

The motion was adopted.

Schedule Eight was deleted from the Constitution. (Amendment No. 3749 of Volume II seeking to add New Schedule IX was not moved.)

*Article 303 -(contd.)

Shri Brajeshwar Prasad: Sir, I beg to move:

"That in amendment No. 3234 of the List of Amendments, in clause (1) of article 303,after the proposed sub-clause (x), the following now sub-clause be added :-

(xx)'to aid and advise the President means that there is no statutory obligation that President is to be guided by ministerial advice.'

Sir, I do not want to move (z) and have moved only (zz).

Shri T. T. Krishnamachari : Sir, I am afraid the amendments is out of order for the reason that in the article relating to the Council of Ministers we have definitely provided that the President must act in such and such a manner as prescribed in Schedule

III-A. I think my honourable Friend cannot anticipate III-A and nullify the effect of the wording of that particular schedule The article referred to by me is (62) (5) (a). The amendment runs counter to the article and it cannot therefore be accepted.

Mr. President : Instead of taking it as a point of order I will dispose of the amendment.

The question is:

"That in amendment No. 3234 of the List of Amendments, in clause, (1) of article 303,after the proposed sub-clause (y), the following new sub-clause be added :-

"(zz) 'to aid and advise the President' means that there is no statutory obligation that President is to be guided by ministerial advice.' "

The amendment was negatived.

The Honourable Dr. B. R. Ambedkar : Sir, I move

"That in clause (2) of article 303, the following words be added at the end

'as it applies for the interpretation of an Act of the Legislature of the Dominion of India."'

The reference is to the General Clauses Act.

Shri Jaspat Roy Kapoor: I wonder whether there is any real necessity for making this. Even if it is, I do not know how far it would be correct if you have it like this "as it applies for the interpretation of an Act of the Legislature of the Dominion of India". Because, hereafter when the Constitution has come into force, there shall be no law which has been made by the Legislature of the Dominion of India'. The Dominion of India will cease then and all the Acts in force within the Dominion of India will automatically become Acts of the Union.

The Honourable Dr. B. R. Ambedkar: The point is this that the General Clauses Act applies to Acts, Regulations and Ordinances. It is therefore necessary to say to which class of these laws this will apply. That is the reason why this amendment is proposed.

Shri T. T. Krishnamachari : The reference is to the General Clauses Act for the purposes of interpretation. There are three classifications so far as the General Clauses Act is concerned, namely Acts, Ordinances and Regulations. What we want is that only those particular portions which refer to Acts should apply so far as this particular clause is concerned.

Shri Jaspat Roy Kapoor: What I mean to submit is that after the Constitution comes into force there shall be no law in existence which could be said to be a law of the 'Dominion of India. So I think our purpose would be fully served if we say "as it applies for the interpretation of any existing Act."

The Honourable Dr. B. R. Ambedkar : I am afraid you have not examined the General Clauses Act.Shri Jaspat Roy Kapoor: It is no use introducing some provision without carefully scrutinising it.

The Honourable Dr. B. R. Ambedkar: It had better be left to the draftsmen as to what is necessary and what is not.

Shri Jaspat Roy Kapoor: I agree that any necessary corrections should be left to the Drafting Committee. But there is no harm in admitting a mistake if it is a mistake.

The Honourable Dr. B. R. Ambedkar: I refuse to accept, it is a mistake. Shri Jaspat Roy Kapoor: I know it is not easy to convince you.

Mr. Naziruddin Ahmad: Sir, I submit amendment No. 206 is perfectly unnecessary. Clause (2) of article 303 is absolutely clear. It says :-

"Unless the context otherwise requires, the General Clauses Act, 1897 (X of 1897), shall apply for the interpretation of this Constitution."

This is quite enough. The addition of the words again, " as it applies for the interpretation of an Act of the Legislature of the Dominion of India" is absolutely unnecessary. It is of course absolute, plain truth that the General Clauses Act really applies to all the Acts of the Dominion of India. In a book on literature this adjective clause relating to the General. Clauses Act would be perfectly valid, but in a legislative enactment it is unnecessary. Clause (2) is perfectly clear that the Act applies to this Constitution, the addition of the explanatory matter" as it applies for the interpretation" of the Dominion Act is absolutely unnecessary. All that we need say is that the General Clauses Act shall apply

for the interpretation of the Constitution unless, of course, the context otherwise requires.

The Honourable Dr. B. R. Ambedkar: Sir, I have said what I had to say and after having seen the General Clauses Act right here, I am quite convinced that the amendment I have moved is a very necessary amendment.

Mr. President: The question is :

That in clause (2) of article 303, the following words be added at the end

as it applies for the interpretation of an Act of the Legislature of the Dominion of India."'

The amendment was adopted.

Mr. President : Then clause (3). There is amendment No. 156.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That in clause (3) of article 303--

'(i) after the word and figure 'Part I' the words and figures 'or Part III' be inserted;

(ii) for the words 'as the case may be, to an Ordinance made by a Governor' the words 'to an Ordinance made by a Governor or Ruler, as the case may be' be substituted."

It is purely consequential.

Mr. President : The question is:

That in clause (3) of article 303--

'(i) after the word and figure 'Part I' the words and figures 'or Part III' be inserted-,

(ii) for the words 'as the case may be, to an Ordinance made by a Governor' the 'to an Ordinance made by a Governor or Ruler, as the case may be be substituted."

The amendment was adopted.

Mr. President: Then I put the whole of this article 303.

The question is:

'That article 303, as amended, stand part of the Constitution."

The motion was adopted.

Article, 303, as amended was added to the Constitution.------------*Article 304

Mr. President : Article 304. Amendment No. 118.The Honourable Dr. B. R. Ambedkar: Sir, I move:

'That for article 304. the following be substituted:-

'304. Procedure for amendment of the Constitution. An amendment of the Constitution may be initiated by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent and upon such assent being given to the Bill the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in- (a) any of the Lists in the Seventh Schedule, or

(b) the representation of States in Parliament, or

(c) Chapter IV of Part V. Chapter VII of Part VI, and article 213A of this Constitution,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States for the time being specified in Parts I and III of the First Schedule."'

I will move my other amendment also, No. 207. I move:

.'That in amendment No. 118 of List III (Eighth Week), for the proviso to the proposed article 304 the following proviso be substituted :-

'Provided that if such amendment seeks to make any change in-- (a) article 43, article 44, article 60, article 142 or article 213A of this Constitution, or

(b) Chapter IV of Part V, Chapter VII of Part VI, or Chapter I of Part TX of this Constitution, or

(c) any of the Lists in the Seventh Schedule, or

(d) the representation of States in Parliament, or

(e) the provisions of this article,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States for the time being specified in Parts I and III of the First Schedule by resolutions to that effect passed by those Legislatures before the. Bill making provision for such amendment is presented to the President for assent.' "

Sir, I do not wish to say anything at this stage because I anticipate that there would be considerable debate on this article and I propose to reserve my remarks towards the end so that I may be in a position to explain the points that might be raised against this amendment.

Mr. Naziruddin Ahmad :It is far better to give the arguments in advance to avoid any unnecessary

debate.

The Honourable Dr. B. R. Ambedkar : If my friend will guarantee to me that be will not take time. I will do it, but I know my friend will have his cake and eat it too.

Mr. Naziruddin Ahmad: Sir, Dr. Ambedkar will give no argument at the beginning, saying that he will await arguments and speak in reply. But in the end on hearing arguments, he will merely say "I oppose the amendments and reject the arguments"

Mr. President: We shall take up the amendments. No. 119.

Shri T. T. Krishnamachari: Sir, I am not moving amendment No. 119 because it is incorporated in Dr. Ambedkar's amendment. It is covered by No 207.

Mr. President: No. 157, Mr. Santhanam.

The Honourable Shri K. Santhanam: I am not moving it, Sir.

Mr. President: No. 158, Mr. T. T. Krishnamachari.

Shri T. T. Krishnamachari : That is also covered by Dr. Ambedkar's amendment.Dr. P. S. Deshmukh : Mr. President, Sir, I move:

"That in amendment No. 118 of List III (Eighth Week), for the substantive part of the proposed article 304, the following be substituted :-

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Saturday, the 17th September, 1949

'304. This Constitution may be added to; or amended by, the introduction of a Bill for this purpose in either House of Parliament and passed in both Houses of Parliament by a clew majority of the total membership of each House. The provisions of the Bill shall not, however come into force until assented to by the President."'

Sir, I move amendment No. 210.

"That in amendment No. 118 of List III (Eighth Week), the following proviso be added to the proposed article 304 :-

Provided that for a period of three years from the commencement of this Constitution, any amendment of the Constitution certified by the President to be not one of substance may be made by a Bill for the purpose being passed by both Houses of Parliament by a simple majority. This will, among other things, include any formal amendment recommended by a majority of the Judges of the Supreme Court on the ground of removing difficulties in the administration of the Constitution or for the purpose of carrying out the Constitution in public interest and certified by the President to be necessary and desirable.'

Then there is another amendment, No. 212, Sir I, move :

"That with reference to amendment No. 118 of List II (Eighth Week), after article 304, the following new article be inserted:'304-A. Notwithstanding anything contained in this Constitution to the contrary, no amendment which is calculated to infringe or restrict or diminish the scope of any individual rights, any rights of a person or persons with respect to property or otherwise, 'lay be permissible under this Constitution and any amendment which is or is likely to ha 'Such an effect shall be void and ultra vires of any Legislature."'

Sir, it is obvious from the very reading of these amendments that they ar alternatives to one another. My first amendment (No. 208) is an amendment to the substantive portion of article 304 as presented to the House by Dr. Ambedkar this afternoon. It's main purport is that the amendment of the Constitution should not be made as difficult as it has been sought to be done by the article proposed by Dr. Ambedkar. The main reason for my suggestion to make it easier for the amendment of the Constitution is that, in spite of the fact that we may have spent more than two and a half years in framing this Constitution, we are conscious and I am sure many members of the Drafting Committee itself are conscious that there are many provisions which are likely to create difficulties when the Constitution actually starts functioning.

Of course there have been complaints from some ignorant quarters, mainly from pressmen and journalists, who are ignorant of what the Constitution Should be, that we are spending a lot of money. These are, I think, people who have just come into journalism recently and have not any idea or conception of the framing of a Constitution. I am sure, Sir, no sensible man will pay any attention to this type of journalism, because they have the ink and the pen with them and they are employed by some capitalists here and there to write out in dailies or weeklies whatever comes into their heads. I know they very often write things which are not in the public interest. I am sure, Sir, that we are not daunted by this type of criticism. In my opinion, we have not taken that much time that should have been taken, nor have we allowed many Members who have something to contribute to, the debate to do so. We have not, in fact, been acting up to the tenets and principles on which parliamentary democracies are to be worked and should work. Parliamentary democracy is known to be and shall always be a talking shop, and if this is so, it is intended that even the meanest amongst us may have something positive and beneficial to contribute and it is therefore incumbent upon us to give him a chance to have a say. That is the purpose of Parliament and if there are sometimes some long speeches I do not think that should be something we should complain against. So, my contention

is that we have not devoted as much time as we shouldhave in allowing Members to contribute their best to he framing of this Constitution.

These, are the reasons why this Constitution is bound to be and will prove to be defective in many respects. That being so, that being inherent in the circumstances under which we are working, I think, Sir, every facility should be afforded for amending, the Constitution. If you do not provide the necessary outlets or safety-valves for the air or the storm to pass through, it is likely that the whole ship may be blown up. For that reason, Sir, I have two amendments presented here. One is that it should be possible for the Parliament to amend it without recourse to two-thirds majority. In the clause proposed by Dr. Ambedkar there is a double provision. Not only the majority of the total Members of the House should be in favour of the amendments, but when it is brought before the House and the Bill is passed by the House there should be a two-thirds majority of the Members who are present and vote. That means there is a double check so far as any Bill to be passed for amendment of the Constitution is concerned. Even if you have to change a comma, even if you have to make some consequential changes, let alone changes in the Fundamental Rights, very strenuous efforts will have to be made for bringing about that change.

At least for a period of five years I have therefore suggested in my second amendment that it should be possible for the Parliament not only to pass amendments by a majority of the House, but I have also made two other suggestions : whenever the President certifies that a certain amendment is not one of substance, is not going to vitiate or abrogate the principles of the Constitution, but being one of form obstructs the working and the proper administration or governance of India, if the President certifies that this amendment which is not of substance is necessary, it should be possible to pass that amendment with a simple majority in the House. I have also brought in the Judges of the Supreme Court because on their wisdom is going to depend much of the fate of the Constitution.

Sir, I wish to protect the Constitution wherever we have conferred any rights on our people, whether they are rights of citizenship, Fundamental Rights or they are consequential rights. For that purpose I have suggested amendment No. 212. It provides that it will be ultra vires of any Parliament to bring forward a Bill by which an amendment of the Constitution is sought, infringing any of the rights of individuals or groups of individuals conferred by the Constitution. I am sure this will not prevent the bringing in of measures to amend the Constitution with a view to enlarge those rights nor is this necessary. There is apprehension in the minds of the people that the liberty of the people is not safe and that as we get more and more freedom, they are not allowed even that much freedom that the foreigner allowed them. Article 15A is not quite sufficient for the protection of the liberty of the individuals and therefore this amendment is both necessary and desirable. I hope that the House will agree that this amendment is necessary and have the article suitably amended.

I feel that at any rate for some time to come it would be necessary to amend the Constitution in many particulars. Though we have spent many months making the Constitution, there are still many defects in it. There are contradictory.provisions in some places which will be more and more apparent when the provisions are interpreted. Therefore, if we do not make it easy for amendments to be affected the whole administration will suffer. As I said in the beginning, if you do not provide outlets it might lead to, the whole, Constitution being rejected or not being accepted by future Parliaments and their resorting ,to something much more drastic and radical. if we do not allow them chances to mould the future of this country in their own ways, by simplifying the procedure by amendments, they will have no alternative left but

to go the wholehog and reject the Constitution as a whole. In such a situation it is the State that will suffer. Therefore it is better to provide outlets so that any dissatisfaction with any Provision in the Constitution may easily be cured. We should not allow complaints and dissatisfaction to grow to such a pitch as will result in dislocating the administration of the State.

Shri Brajeshwar Prasad: Sir, I move :

"That in amendment No. 118 of List III (Eighth Week), in the proposed article, 304, the words 'and by a majority of not less than two-thirds of the members of that House present and voting' be deleted."

My next amendment runs thus

That in amendment No. 118 Of List III (Eighth Week), clause (a) of the proviso to the proposed article 304 be deleted.

My third amendment is No. 299. It reads

"That in amendment No. 207 of List V (Eighth Week), in the proposed proviso to article 304, for the words 'Legislatures of not less than one-half of the States for the time being specified in Parts I and III of the First Schedule by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent' the word 'electorate' be substituted."

Sir, this new amendment No. 207 came into our hands last night at ten o'clock. We find that there is a world of difference between these two amendments. More powers have been taken away from the hands of Parliament and placed in the hands of the State legislatures. The effect will be that vital articles of the Constitution cannot be amended by the Parliament and the consent of 50 per cent. of the Legislatures will be necessary in order to pass an amending Bill,

I, hold the view that in this process of amendments the Legislatures of the States should not be associated. A proviso exists in the Australian Constitution to the effect that if there is a conflict between the two Houses of Parliament or if either House does not pass the amending Bill of the other, then the whole matter has to be referred to the electorate. It would be beneficial if we incorporate that provision of the Australian Constitution in our Constitution. I think that what is possible in Australia will be equally possible in India. If the people of Australia are competent and advanced to adopt this method of amendment, certainly we who are as competent as the Australians, if not more, are entitled to adopt the same method. I do not want to associate the States Legislatures in the process of amending the Constitution.

It is ordinary commonsense that should tell us that if we want to abolish landlordism you cannot seek the consent of the landlord. If you want to wait for that purpose you will never be able to achieve your object and abolish landlordism. Similarly if you want to abolish capitalism you cannot afford to look for the consent of the capitalists. The purpose of amending a Constitution in effect will be to take more powers from the hands of the State Governments and confer them on the Centre. That being so it is beyond my comprehension how any legislature will be agreeable to such a proposition. The provincial Governments constitute vested interests. They have as much vested interest in society as our capitalist friends. Therefore, adopt the simple method provided in the Australian Constitution for amending the Constitution.

Sir, I am in favour of a referendum, because referendum has many advantages. Referendum is democratic as it is only an appeal to the people, and no democratic government can have any objection to resorting to referendum in order to resolve a deadlock, when there is a conflict between Parliament and provincial governments. Secondly, I am in favour of referendum because itcures patent defects in party governments. People think that it is too radical a weapon and that a conservative people like ourselves ought not to use it without proper consideration and thought. It is conservative since it ensures the maintenance of any law or institution which the majority. of the electors effectively wish to, preserve. Therefore it cannot be a radical weapon. Thirdly, Sir, referendum is a clear recognition of the sovereignty of the people. Fourthly, it would be a strong weapon for curbing the absolutism of a party possessed of a parliamentary majority.

In this connection I would like to read what Professor Dicey has observed in his monumental book "Law of the Constitution" which I would like honourable Members of this House to note:

"Trust in elected legislative bodies is, as already noted, dying out under every form of popular government. The party machine is regarded with suspicion, and often with detestation, by public- spirited citizens of the United States. Coalitions, log-rolling and parliamentary intrigue are in England diminishing the moral and political faith in the House of Commons. Some means must, many Englishmen believe, be found for the diminution of evils which are under a large electorate the natural if not the necessary, outcome of our party system. The obvious corrective is to confer upon the people a veto which may restrict the unbounded power of a parliamentary majority."

It is to obviate this evil that the method of referendum has been advocated by a man like Professor Dicey, who is not a radical or a Socialist or Communist. Professor Dicey is of the opinion that referendum will promote among the electors a kind of intellectual honesty which is being rapidly destroyed. I refer only to the last part of the amendment which seeks to substitute "referendum" for "State Legislatures."

An Honourable Member: Has he finished ?

Shri Brajeshwar Prasad: I am coming to the other parts of the amendment. I do not want that the powers of the Parliament should be fettered. The method we seek to introduce by article 304 is totally detestable, totally repugnant to me. This two-thirds majority provision will act as a brake. No amendment of the Constitution will be possible if this requirement is adhered to.

I feel that even in the interests of the States, this is not necessary. The members of the Upper House of the Parliament will consist entirely of the representatives from the States and it is inconceivable that these people will under any circumstances seek to vest more powers in the Centre and take away the powers of the States. This two-thirds majority provision will act as a brake to any progressive legislation and even pave the way for revolutionary and anarchist forces in the country. I hold the opinion that at least for a period of ten years from the commencement of this Constitution, these safeguards must be removed. Sir, today are living under abnormal conditions The effect of Partition has blurred our vision. After the migration of large populations from one part of the country to another, and after witnessing their sufferings, we are not in a position to take an objective view of things. Many other factors also have clouded our vision with the result that we are not able to take a disinterested 'view of things. At least for a period of ten years from the commencement of this Constitution, the method of amending the Constitution must be, made easy.

There is another reason why I want this change. I am all for a flexible Constitution and not a rigid Constitution. There is likely to arise a revolutionary situation in Asia in the near future. In order to meet that situation, the Government of India should not be fettered in any way whatsoever. There is another reason why I am in favour of a flexible Constitution, as opposed to a rigid Constitution. I hold the opinion that we are passing through a period of decadence. It is only with the establishment of a new social order that wewill be in a position to sense the needs of the coming century. For heaven's sake do not make your Constitution rigid.

There is-yet another reason why I am in favour of a flexible Constitution. I hope friends will execuse me for my bluntness. The fear of domination of the North and the Hindi-speaking regions over the South and the non-Hindi speaking areas has mutilated this Constitution. We have framed a middle

class Constitution. We have done all we could do to prevent the establishment of socialism and a unitary State in this country. The dominant tendencies of tile age and the needs of our developing economy have been completely ignored. This Constitution will not survive the test of time unless we make it flexible. Our ancient law-givers were never influenced by extraneous considerations. We have sacrificed wisdom at the altar of expediency and vested interests both political and economic. With your permission, Sir, I would once again quote from Professor Dicey.(Interruption). I hope Members will allow me to develop my argument. Perhaps Members are not interested and do not realise the situation.

"The twelve unchangeable Constitutions of France have cacti lasted on an average foT less than ten years, and have frequently perished by violence. Louis Phillippe's monarchy was destroyed within seven years of the time when Tooqueville pointed out that no power existed legally capable of altering the articles of the Charter. In one notorious instance at least-and other examples of the same phenomenon might be produced from the annals of revolutionary France-the immutability of the Constitution was the ground or excuse for its violent subversion..........

Shri Kala Venkata Rao (Madras: General): Let him read slowly. We are unable to follow the speech.

Shri H. J. Khandehar (C. P. & Berar: General) : He is so hasty; I cannot follow him.

Ski M. Thirumala Rao: On a point of information, Sir. A Member who can talk extempore, can he read from a manuscript?

Shri Brajeshwar Prasad : I am reading from a book. I am quoting from Dicey.

"The best plea for the coup d' etat of 1851, was. that while the French people wishe for the re- election of the President the article of the constitution requiring a majority of three-fourth of the legislative assembly in order to alter the law which made the President's re-election impossible, thwarted the will of the sovereign people. Had the Republic an Assembly been a sovereign Parliament. Louis Napoleon would have lacked the plea, which seemed to justify, as well as some of the motives which tempted him to commit the crime of the 2nd of December.

I am not reading the whole chapter. I am reading only a paragraph with the permission of the President. (Interruption).

I think the Honourable President of the House should not be told how to conduct the business of the House. He is much more competent than anyone here.

Nor ought the perils in which France was involved by the immutability with which the statesmen of 1848 invested the constitution to be looked upon as exceptional; they arose from a defect which is inherent in every rigid constitution. The endeavour to create laws which cannot be changed is an attempt to hamper the exercise of sovereign power; it therefore tends to bring the letter of the law into conflict with the will of the really supreme power in the State. The majority of the French electors were under the constitution the true sovereign of France; but the rule which prevented the legal re-election of the President in effect brought the law of the land into conflict with the will of the majority of the electors and produced, therefore, as a rigid Constitution has a natural tendency to produce, an opposition between the letter of the law and the wishes of the sovereign. If the inflexibility of French constitutions has provoked revolution, the flexibility of English constitutions has, once at least, saved them from violent overthrow."Shri T. T. Krishanamachari : May I suggest that the honourable Members may read a little more slowly and then we can at least understand what he says.

Shri Brajeshwar Prasad : I know fully well, if not the other Members of this House, Mr. T. T. Krishnamachari has read this book and he should not make this objection.

'To a student, who at this distance of time calmly studies the history of the first Reform Bill, it is apparent, that in 1832 the supreme legislative authority of Parliament enable the nation to carry through a

political revolution under the guise of a legal reform. "

'The rigidity, in short of a constitution tends to check gradual innovation; but, just because it impedes change, may, under unfavourable circumstances occasion of provoke revolution.'

Mr. President: Mr. Brajeshwar Prasad, you have a number of amendments.

Shri Brajeshwar : I do not like to move any other amendment, Sir.

Mr. President : I agree they do not arise now. I think these are all the amendments that we have.

Shri H. V. Kamath: On the Printed List, we have several am Mr. President; Why do you go to the Printed List now?

Shri H. V. Kamath: Because, Sir, the article as moved by Dr. Ambedkar today minus the proviso is identical with the draft and my amendments are all to that first part of the article. The article as it stands today is identical with the old draft except the proviso, and therefore I thought that my amendments would be in order.

Mr. President : Which is the amendment which you wish to move? Let me know the amendments first.

Shri H. V. Kamath : Amendments Nos. 3239, 3241. 1 do not move amendment No. 3246. Then I come to 3248 and 3249 and 3250. They all relate to the first part of the article which is today identical with the old draft. Changes have been made only in the proviso to the article and none in the rest of the article, Sir.

Mr. President : You may move them.

Shri H. V. Kamath : Mr. President, I move, Sir, amendments Nos. 3239, 3241, 3248, 3249 and 3250 of the Printed List of Amendments, Volume II. I do not propose to move amendment No. 3246 that stands in my name in that list.

Sir, I move:

That before clause (1) of article 304, the following new clause be inserted and the existing clauses be renumbered accordingly :

'(1) Any provision of this Constitution may be amendment' the words by way of variation addition or repeal in the manner provided in this article'."

Sir, I move :

'That in clause (1) of article 304, for the words 'An amendment, the words 'A proposal for an amendment' be substituted.'

Sir, I move :

"That in clause (I) of article 304.for the words 'it shall be presented to the President for his assent and upon such assent being given to the Bill', the words 'it shall upon presentation to the President, be signedby him' be substituted.'

or, alternatively,

"That in clause (1) of article 304.for the words 'it shall be presented to the President for his assent and upon such assent being given to the Bill, the words 'it shall upon presentation to the President, receive his assent' be substituted.'Sir, I move :

"That in clause (1) of article 304, the words 'to the Bill' occurring in the 11th line be deleted."

Sir, I do not know what the 11th line today is but it is the penultimate line of the first paragraph of the article.

Sir, I move :

"That before the proviso to clause (1) of article 304, the following new proviso be inserted :

Provided that a period of not less than six months intervenes between the initiation of the Bill and its final passage in Parliament."'

If my honourable colleagues turn for a moment to the chequered history of this article during the last two years or more, they will at once realize, the need for flexibility of a Constitution. The very changes that this article and especially the proviso to the article has undergone during the last two years proves to my mind, that the Constituent Assembly has changed its mind from time to time. If we have made several alterations like this within less than a year, then how on earth do you propose or do you dare to bind and fetter the future Parliament by making this more and more rigid than before ?

Mr. President: Which amendment of yours Mr. Kamath, makes it flexible so far as that portion of that article is concerned ?

Shri R. V. Kamath : I have not moved amendment No. 3246 which might have made it more rigid.

Mr. President: You have not moved that amendment.It is therefore I say......

Shri H. V. Kamath : I am speaking generally on the article, and also with reference to the amendments. I

will come to them in time.

Mr. President : So far as the question of the rigidity of the Constitution is concerned, by not moving your amendment, you accept that part of it.

Shri H. V. Kamath: I accept it, but certainly I hope I am at liberty to offer some observations on the article at this time, because the proviso was sprung upon us last night, it has become more complicated and swollen, and it has gathered more and more moss as time went on. The proviso, as it was originally, comprised three items; now the proviso contains clauses (a) to (e) and clauses (a) and (b) comprises so many different articles and Chapters of this Constitution. The original article in the Draft Constitution comprised only the Lists in the Seventh Schedule, the representation of States in Parliament and the powers of the Supreme Court. Today, it has had so much of accretion that one wonders, if we can change our mind so often just because we can change in time, because so much time had been given to us, why not give the future Parliament also the time and scope for changing the Constitution by making it more flexible ?

I was glad to find an amendment in the name of Pandit Jawaharlal Nehru. number 3267. I am sorry that it has not been moved. I hope that it would be moved. If that had been moved, much of the objections of the rigidity of the Constitution might have been out of place. But, that amendment, which to my mind was an important one, considering the transition through which we are passing today, to which my honourable Friends Dr. Deshmukh and Mr.Brajeshwar Prasad also made reference, if it had been moved by Pandit Jawaharlal Nehru or by the Drafting Committee and accepted by the House,all the trouble that I foresee might have been obviated. That amendment, I suppose, is not going to be moved. Neither has it been incorporated in the draft of the article presented to the House today by Dr. Ambedkar.

Coming to my amendments, the first, No. 3239, is an introductory clause where the process of amendment is defined. What is an amendment? An amendment may mean either a variation, addition or repeal of the Constitution. If the House turns to the several constitutions of the world, the Irish Constitution or the South African Constitution or the Australian Constitution I believe, and several other constitutions, they will find that first of all, the article defines what an amendment is. I hope the House does realise that this article is second in importance only to a few other articles in the Constitution. The article dealing with amendment of the Constitution is one of the fundamental things that must be considered very earnestly by the House.

I perfectly appreciate the contention of several honourable Members that an amendment to the Constitution must not be allowed to be made lightly or easily. But, the argument on which that dictum is based is that the Constituent Assembly of any country is superior in constitutional status to any future Parliament of that country. That is the argument on which this is. based, that a Constitution framed by a sovereign Constituent Assembly must not be easily tampered with by a future Parliament which is inferior in status to the Constituent Assembly. But unfortunately, the conditions today in India, the conditions which brought this Assembly into being, have been such that this Assembly cannot be deemed to be superior in constitutional status to a future Parliament. Why ? First of all, this Assembly was elccted on a restricted franchise and then indirectly by the provincial assemblies on separate electorates, All these vitiated this Assembly ab initio, that is from the very beginning. The future Parliament, according to our Constitution will be elected on adult franchise, by direct election, and certainly to any constitutionally wise, sensible person it should appear obvious that a Parliament elected on adult. franchise, on a direct basis, must be superior to an Assembly elected like this, on a restricted franchise, indirectly by the provincial legislatures.

That is why in England, no

Parliament binds the future Parliament so far as the amendment of the Constitution is concerned. Parliament can amend the Constitution at any time by the usual process of law making. Considering the circumstances under which our Assembly was born, for a few years at least, say five years, which Pandit Jawaharlal Nehru mentioned in his amendment, which unfortunately has not been moved, I do not see any reason why, for five years, when the transition is not complete and conditions have not settled down, when perhaps a little more foresight and deliberation might point out various flaws in the Constitution, during this period, we should not allow it to remain flexible.

Some of my friends have pointed out that if the Constitution is not flexible, if it does not respond to social change, dangers inhere in such a Constitution. I feel, Sir. that this observation is well founded. If the Constitution holds up, blocks, the future progress of our country, I daresay that the progress which has been thus retarded will be achieved by a violent revolution : revolution will take the place of evolution. When a storm breaks out, it is the flexible little plants, blades of grass that withstand the storm. They do not break because they bend, they are flexible. But the mighty trees that stand rigid break, and they are uprooted in a storm. Therefore, I fear that when a social storm is brewing, if we want to resist that storm, this is not the way to procecd about it. You must make the Constitution flexible, and able to bend to social change. If it does not bend, people will break it. That is an eventuality which, I am sure, none of us here in this House wants to envisage. that is why I say that Pandit Jawaharlal Nehru's amendment should have been incorporated in this article. But as ill-luck would have it, it has riot been-I do not know what the future has in store for us, if we refuse to make the Constitution a little more flexible than we are seeking to make it today.

My next amendment 3241 is a verbal one and I leave it to the collective wisdom of the Drafting Committee. Amendment No. 3242 1 am not moving because I want to leave it to both the Houses, either House of Parliament, to initiate any proposal to amend the Constitution. Amendment No. 3246 also I am not' moving. Amendment 3248 relates to the assent to be given by the President. This is more or less a verbal and formal amendment, and so I am content to leave it to the Drafting Committee to be dealt with at he appropriate stage. 3249 is also verbal and that also I leave to the wisemen of the Drafting Committee. 3250 refers to the period that in my opinion should elapse between the initiation of a proposal to 'mend the Constitution in Parliament and its final passage in Parliament. I seek to provide through this amendment 3250 that not less than six months should elapse between the initiation of a proposal and its passage through Parliament, because we are not providing for a referendum or plebiscite on an amendment to the Constitution as certain constitutions have done. The Irish Constitution has provided for a referendum before the amendment is finally incorporated in the Constitution but we have not provided for such a thing. Therefore I wish to provide a safeguard against hasty amendment to, Constitution. If a period of six months is guaranteed under the Constitution between the initiation and the final passage of the Bill, then it would ensure a proper and adequate discussion in the country by the people at large. The people can voice their opinions and views upon the bill for an amendment initiated in Parliament. Six months at any rate ought to suffice.

Mr. President : The net result of your amendment is to make the Constitution more rigid.

Shri H. V. Kamath : Which one makes it more rigid, may I know, Sir?

Mr. President: 3246.

Shri H. V. Kamath: I am not moving it.

Mr. President : The net result of all your amendments was to make it rigid. You are speaking about making the amendment easy.

Shri H. V. Kamath: May I submit that I did not move it deliberately?

Otherwise I would havemoved it.

Mr. President : Eventhe ones you have moved and those you are speaking about have the tendencyto make it rigid.

Shri Mahavir Tyagi:He speaks both ways.

Shri H. V. Kamath :If my Friend Mr. Tyagi thinks that I speak both ways, he is welcome to speak in more than two ways. I did not move 3246 deliberately.

Mr. President: I was only pointing out the inconsistency between your speech and the amendments you have given notice of.

Shri H. V. Kamath: You will excuse my ignorance, Sir, and my inadequate judgment.

Mr. President: 3246 you have not moved, but you moved 3250.

Shri H. V. Kamath: If I had moved 3246 you could have charged me as making it more rigid.

Mr. President: Even 3250 has the effect of delaying the amendment of the Constitution for some time.Shri H. V. Kamath: This is Only procedural.

I am now coming to the new proviso that has been embodied in the article moved by Dr. Ambedkar. lie proviso has incorporated several Chapters of the Constitution which did not find a place in the earlier draft. Even the draft which reached us on the 15th September did not contain the several chapters which now have been incorporated in the provision. That is to say within two or three days the Drafting Committee has thought fit to make amendments with regard to several Chapters of the Constitution more difficult than it could have been otherwise, if the proviso had stood unchanged. Some of these chapters refer to the High Courts and Supreme Court, I do not quarrel with them-but there are certain chapters or articles dealing with relations between the Union and the States and the Constituent Units. The amendment of the Constitution regarding relations between these has been made very difficult under this new proviso which reached us only last night. That has made it incumbent upon the president not to give assent to the bill unless and until half the State Legislatures by appropriate Resolutions have approved of the amendment passed by Parliament.

Now the difficulty that arises in my mind is this. We cannot always guarantee that the unifying forces in the country-the centripetal forces-will On ground against the centrifugal or the disruptive forces in our land. Suppose, for instance, there is need for unifying the country by a more unitary type of Constitution for the country as time goes on, and in the light of that necessity Parliament feels that, certain amendments to the Constitution are needed which might vary the relations between the Union and the States, it is quite possible that a number of States faced with what they consider an inroad upon their powers, an encroachment upon their rights, many of them may become rather recalcitrant, or even otherwise they might feel that this amendment is not in their separate interest, though it might be in the interest of the country as a whole, though India as a whole may benefit by such amendment-and Parliament passes a Bill, then half the States do not approve it. What happens ? Parliament gets it back. I suggest to Dr. Ambedkar to revise this proviso so that the, Amendment Bill, even if not passed by the Legislatures of not less than half of the States, if that goes back to Parliament even after being defeated in the Legislatures of the States, if it goes back to Parliament and after its defeat in the Legislatures of the States it is passed again by the Parliament, then I would request Dr. Ambedkar to change the Proviso, that in that case if it is repassed for the second time, it should prevail, the amendment of the Constitution for the second time by Parliament must prevail as against the disapproval of the States Legislatures. Otherwise, I feel that Parliament's supreme authority will be set at naught, the unifying forces of the country will be set at a disadvantage, and the centrifugal or disruptive forces of the country might gain ascendancy. I therefore, feel that even now, at this stage, it is not too late to make suitable alterations in this article so that in future it may not be said of us, of this Assembly, many years

hence people may no say of us that the dead wanted to rule. the living and that the Assembly that made this Constitution wanted to hold up the progress of the country. If such a situation arises in future, I fear that progress will come about, not by constitutional means, but by methods other than constitutional, and that it %ill pave the way for revolution which, I have no doubt, this House wishes to avoid as far as it lies in its power.

Mr. Naziruddin Ahmad : Mr. President, Sir, at this fag end of the day and at the fag end of the session I will not tire the House with a long statement. I would only submit that the rigidity which has been given to the Constitution by article 304 is very Proper. The citation of the English and other Constitutions are not appropriate, because they have had long experience and they have gone through centuries of apprenticeship and they know exactly what changesare to be made and what not to be made. In the initial stages of this Constitution we should rather be very strict about changing its terms.

On the amendment brought forward by Dr. Deshmukh--No. 210 I desire to offer a few comments. By this amendment, he wants to introduce a provisoto the effect that if any administrative difficulties arise, then on the report of the Supreme Court, within the period of three years, amendments should be made rather easy. I fully sympathise with his view, and I have reason to believe that many difficulties may arise in the near future. We accepted after a good deal of debate, first of all, the principles of the Constitution. Then the Draft Constitution was prepared with a good deal of expenditure and labour. Then notices of amendments to the Constitution were sent and they have been printed in two big volumes. Then the Drafting Committee has been changing its mind every day and the Draft Constitution, with the sacred principles of the Constitution, and the amendments are all given up and they are obsolete and new articles and new amendments are coming every day. I therefore easily foresee that anomalies, anachronisms and difficulties would be sure to arise from day to day. So far a period of three years, amendments of this nature, amendments to remove difficulties and anomalies should be easy, and the easy procedure indicated by Dr. Deshmukh's amendment should be accepted. The proviso may not be acceptable as it is, but the principle may be accepted and a suitable draft adopted.

We have been leaving so many things to the Drafting Committee that the Third Reading, I am afraid, would be another glorified Second Reading. In fact, questions not merely of drafting,, but many substantial matters have been left to them, and some of these anomalies would occur to the Drafting Committee themselves and so they would come with amendments at the Third Reading, and that would, I am sure, lead to the reopening of many things. In these circumstances, I would submit, in view of the quick changes that we have made, from principles to principles, in the course of going back and coming forward, like a shuttlecock, we must have come across some anomalies which have not yet been apparent. I therefore submit that Dr. Deshmukh's suggestions should be considered.

Acharya Jugal Kishore (United Provinces : General): Sir, I have an amendment in my name, No. 3261, Printed List Vol. 11.

Mr. President: I have not called all the amendments which are printed in the Second Volume. But if you wish to move your amendment, you can do so.

Acharya Jugal Kishore: Sir, I have amendment No. 3261 of the printed list. But this may not fit in with the amendment proposed by Dr. Ambedkar. But there is another amendment-No. 124 of Shri Brajeshwar Prasad-3rd List. 8th Week, which is an amendment to mine of 3261. 1 do not know if he has moved that amendment. If he has moved it, I would like to support it. In any case, I would like to make certain observations in connection with this. I would have liked to suggest that discussion over this article be held over. But I know your anxiety to get as many articles as possible finished and

so I will not venture to make any such suggestion. Members too are very anxious to get away and the House is thin, and you can easily imagine that they are not taking much interest in what I consider to be a very important article in this Constitution.

Mr. President: I find yours is covered by Dr. Ambedkar's amendment.

Acharya Jugal Kishore: The arguments that I have to bring forward in support of my amendment are these. This is a very important Constitution.We have passed practically most of the articles. But we were under the impression in the beginning that Pandit Jawaharlal's amendment would be moved, and that for five years at least, there will be opportunities for amending the Constitution, without the rigidity which Dr Ambedkar's proposal implies We thought that there would be a certain amount of flexibility in the matter of amending the Constitution during the first few years. Since Pandit Jawaharlal Nehru has not moved that amendment, I would like to suggest to Dr. Ambedkar, and if he, is prepared to accept my suggestion, he may agree to the proposal that the Constitution can be amended for the next five years, by a simple majority of the Parliament, and his proposal or amendment will become applicable after the first five years.

My reasons for this suggestion are these. We have passed the Constitution under very difficult political conditions. The Drafting Committee has been under very heavy pressure of work, and they have all been under political pressure and also the conditions prevailing in the country. We have been engaged in other things also. And so we have not been able to apply our minds fully to all the articles of the Constitution. and to their implications. I would therefore suggest that at least for the next five years, after knowing how the Constitution is working, the difficulties that we have- to face and the shortcomings of the Constitution, we will be in a better position to amend these articles in a manner which will be easy and thereafter we can have a Constitution which will be a permanent Constitution and which can only be amended by the process suggested by Dr. Ambedkar in his amendment.

It is merely a suggestion and I hope Dr. Ambedkar will agree to accept this suggestion either in the form of an amendment as I have proposed or in the form of any other amendment which may fit in with my proposal. That is the only consideration I want to place before the House and I hope Dr. Ambedkar will see his way to accept it.

Shri Mahavir Tyagi: Sir, while considering this article we should not lose sight of the universally recognized maxim on which is based the whole conception of democratic society today-the maxim is that the, earth belongs in usufructs to all the living equally, and the dead have neither the powers nor the rights over it. From this maxim it is construed that a generation is disabled morally to bind its succeeding generations either by inflicting on them a debt or a Constitution which is not alterable. I, therefore, emphasise that a Constitution which is unalterable is practically a violence committed on the coming generations. But I do not see that our draft is absolutely unalterable. I A-ill give credit to the Drafting Committee and also to the House that the Constitution, as we have drafted it, is complete to the smallest details. People criticise it from the point of view of its being too bulky and of its dealing in too many detail,. We have done a service for the coming generations with a view to facilitate their administration and their smooth running of governments by giving all the possible details we could.

The parliamentary system of Britan has practically been adopted as the basis of this Constitution. And this is for the first time that we are constituting a State on the British Parliamentary system. But then let us realise that the British parliamentary system is successful not only because it is a parliamentary system but because there is a perpetual flexibility in the Constitution which is all unwritten. Therefore they can readily adapt their

Constitution to the changing circumstances that may arise along with changes both in time and space. We have adopted that very system, but have not adopted the real basis of that system-the basis that it is ever ready to be changed and ever ready to be adapted to the circumstances that the nation may face from time to time. We have not allowed that flexibility in our Constitution. It is not fair that we should deny facilities to the coming generations to change the Constitution. The experiment is new, as some of my Friends have already hinted, the Constitution is not given by the country as a whole.

We have. assumed that we are the representatives of the nation. Well, all of us have come through an indirect electorate-through the Legislative Assemblies of Provinces which had been elected when we were no-. free, when the British were here. Those Assemblies were elected in 1946. And we are making this Constitution in the hope and with the claim that we are the accredited representatives of India. I am afraid technically we are not the representatives of India-de facto we might claim to be, but de jure we are not.

Again, I am sorry that even as we were, in this Constituent Assembly we have not acted as independent representative each one of us. It is the majority party of the country which has given the, Constitution. Nobody can deny it. The fact is that although we the Congress Party who are a majority in the Assembly did not act as the party in power or treated others as the Opposition, really speaking it is the Congress Party which has given this Constitution. Others have not even been heard properly. They were in a minority. So the whole of India has not been represented in this Constitution. Let us be fair about that. Let us fairly admit and confess that this is a Constitution given by one party, be it the majority party. At this time when we are sitting as judges let us confess,-whatever be the Constitution good, bad or indifferent,-it will be judged by future generations-it does not have the sanction of the country as a whole and that it is a Constitution given by a majority party in the country.

An Honourable Member: Question.

Shri Mahavir Tyagi: You might question it, but the fact remains unquestioned. Other parties had little hand in it because we know it for a fact that the amendments emanating from other quarters or from the unattached Members had no value here and were rarely accepted. So it is the Congress Party alone which has given this Constitution.

In future, parties other than the Congress Party might come into power and they might find it difficult to carry on and steer their programmes out of this Constitution which was made by persons who had a different programme. I therefore submit that we must be fair to those parties which might come into power in future, so that they might be able to make convenient changes in the Constitution, although as a member of the Congress Party myself I wish to assure the country through this House that we have always taken care that we did not act really in that prejudicial spirit of a party. But even as the. case stands, it is a one party Constitution.

Supposing, after an experience of a year or two the coming generation feels that the system which we have, evolved does not actually work in their interests and the Government thus formed acts destructively against the interests of the country, then they must have an easier method to change the, Constitution to suit their whims or likings. Supposing that after experimenting with the parliamentary system for a generation or more they feel that they should bring in the American system of Presidential supremacy, or establish a Federal State I wonder if it would be possible for them to do so ?

Even this rigidity I like, particularly in the proviso which Dr. Ambedkar has wisely put. There are very important matters which he has taken under this proviso in which he says that a change in the list of the Seventh Schedule etc. will require the, sanction of more than half of the States. They are matters which are

highly important; matters like justice, and fundamental rights. Now judiciary is the sole guarantee of the rights of both individuals as wellas State. Therefore, it is but fair that in the matter of bringing about a change in these important matters which guarantee security to both individuals and States, there must be sufficient rigidity. I like 'this proviso, howsoever strict it be.

But it is in the main body of the article that Dr. Ambedkar is too stiff. There he ought to be rather flexible. He, has been stiff all through; that is his character it seems, and his character is reflected in every article he has produced. before us for consideration. He says that a change could be brought about only if an absolute majority of the House voted in its favour and two thirds of the Members present in each House voted in favour. It means that in the Lower House there must be at least 334 Members willing to make, a change.

Shri T. T. Krishnamachari: I am afraid my honourable Friend is wrong. It is only requires 251 Members provided they are two-thirds of the majority of those present and voting.

Shri Mahavir Tyagi: Sir, Dr. Ambedkar had rightly remarked yesterday that I was a layman; I really did not appreciate the cunnings of Law or the legal quibbles as you would call it. But then as I understand it you require an absolute majority of the House and two-thirds of the Members present voting in favour of a change. If the whole House is present then you need 334 to vote in favour, because two-thirds must vote in favour, and mathematics cannot be wrong though I might be wrong. Two-thirds of 500 is 334. Even the minority parties will come in their full strength and will make it difficult for the bigger party to implement any change howsoever important it may be, unless their number is double the number of the minority party. Absolute majority of the House I can understand, I am prepared to go so far, but to make it compulsory that even among the Members present two-thirds must vote in favour means that it will be too difficult to effect any change. I submit that some change as proposed by my Friend Dr. Deshmukh or Acharya Jugal Kishore will make it easy and enable the coming Governments to make a change if they so require. That is my point. If you do not do it, the Constitution will become too rigid. If it is not flexible, it will naturally become brittle and will break if it is hit even slightly. Do not let your Constitution become so hard as to acquire brittleness; it will break. I therefore submit, Sir, that we should provide for a convenient change in the Constitution.

Mr. President : I desire to remind Members that we propose to finish the items on the Order Paper tonight. If they would just shorten their remarks we could do it, otherwise we would require a session tomorrow which I understand most Members do not want.

Shri R. K. Sidhva : Sir, five Members have spoken against the motion, you should give an opportunity to those who support it.

Mr. President: Dr. Ambedkar will take care of it.

Shri R. K. Sidhva : But the Members also should express their views, Sir.

Mr. President : If the House wishes to carry on, I have no objection.

Shri R. K. Sidhva: We will finish it tonight.

Mr. President: How can we?

Babu Ramnarayan Singh: *[Mr. President: I would not be taking much time of the House. I also desire that the business fixed for today should be completed today. However, I can assure you that the little, time I would take would not in any way dislocate the time table. The fact, on the other hand is, that it is the intention and effort of all of us that all the business be completed today,

---

*[]Translation of Hindustani Speech.

Sir, there is one aspect of the problem under consideration today that obliges me to say a few words of my own. I am afraid that too many restrictions and conditions are being imposed with regard to the amendment of this Constitution by the future generations and all this is being done I believe, under the apprehension that radical amendments may be made in this Constitution by the future generations acting under rash and irrational impulses I would, however like to submit, that we should not entertain any such apprehension and that we should not entertain the idea that this Constitution would be radically amendment very early by the people, who will be taking our places in time to come. It is being laid down that the Constitution could be amended in future only by an absolute majority of the total membership of the House and a two-third majority of the members present and voting. Moreover in certain cases it is being provided that the amendment can be effected by a twothird majority. But I fail to see the reason behind these provisions.

You may be under the impression that you are doing a nice job of it by introducing these provisions. But I feel that if I had the power to do so I would like to scrap nearly half of the provisions that have been included in this Constitution. It is the basic principle of popular Government, of democracy, that all decisions be taken by a simple majority vote. I concede that this majority should truly reflect popular opinion. But this requirement would be fulfilled if, as Dr. Deshmukh has proposed, the amendment should be effected by the President acting upon the simple majority vote of the people.

My Friend Shri Brajeshwar Prasad has made a very sound suggestion in this connection. He said that if you really desire to secure a popular verdict with regard to a proposed amendment it is no use referring the question to the Provincial Legislature for decision. The right course would be to ascertain the opinion of the people by means of a plebiscite. Such a safeguard can be appreciated. But the kind of restrictions and prohibitions that are being imposed by you on the freedom of action of the generation to come in regard to this matter, are not proper and desirable. I can say that by doing so you are doing something that is unjust to the generation to come. I had intervened in the debate to submit that this injustice should not be done to posterity. with these words Sir, I resume my seat.]

Shri R. K. Sidhva : Mr. President, Sir, I was rather surprised that Member after Member has come here and opposed this amendment on the ground that in order to amend the Constitution there should be flexibility. I am rather surprised at that kind of an attitude. I have never seen any constitution, much less the constitution of a country, which can be played with and amended by a bare majority.

Shri Brajeshwar Prasad: May I know who pleaded for a bare majority ?

Shri R. K. Sidhva: Mr. Tyagi stated that up to five years they want a provision that the

Constitution may be amended by a bare majority. So did Mr. Jugal Kishore. Are we going to treat this Constitution which we have drawn up after so much of discussion and deliberations in such a light-hearted manner ? It was wrong of any Member to have stated that we have not given enough consideration to this 'Constitution and therefore something may happen tomorrow. I know this Constitution is not perfect. There may be laws in it, there may be omissions in it. But can any constitution anywhere in the world be perfect? Why, even after five years there may be flaws.

Another honourable Member stated that Members of this Assembly have not been afforded enough opportunity to express their views. It is a most incorrect statement, If anybody is liberal today in allowing the Members tomake their speeches, it is our President. He has given enough latitude to Members to express their points of view. Even germane or not germane, relevant or irrelevant speeches he has allowed and therefore to state that no opportunity is given to express their views is most unfair. Coming, Sir, to my honourable friend, Mr. Tyagi, he says that this Assembly comprises of one party. He should have stated it comprises of one majority party. But it is an admitted fact that this Assembly represents all the interests of this country and great pains have been taken to take in a good number of

men who are non-Congressmen. The honourable, Member who is Chairman of the Drafting Committee and who is piloting this Constitution is a non-Congressman. Out of seven Members of the Drafting Committee. six are non-Congressmen. It is therefore an entirely wrong statement for Mr. Tyagi to make.

Shri Mahavir Tyagi: Thinking is done by the Congress Party and the Drafting Committee drafts accordingly.

Shri R. K. Sidhva: But your sweeping remarks should be corrected. My point, therefore, is that you cannot cast a slur on the Constituent Assembly by stating that the opinions of Members are very lightly treated.

In fact I want the Constitution to be more rigid, at least this part of it. In fact I know that in certain Constitutions, a three-fourths majority is insisted upon. The Constitution which we have drawn up after so much of trouble is a great Constitution and we should be proud of it. In fact I have my own grievances in that they have not accepted many of my amendments which were reasonable. But in a democratic form of Government, we have to abide by the decision of the majority. 1, therefore, strongly support the motion moved by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Mr. President, Sir, of the many amendments that have been made and the speeches made thereon, it is not possible for me to pursue every amendment and to pursue every speaker. But am going to take as a general alternative suggested by the various speakers that our Constitution should be made open for amendment by the future Parliament either by a simple majority or by a method which is much more facile than that embodied in article 304.

Sir, before I proceed to explain the provisions contained in article 304, I should like to remind the House of the provisions which are contained in other constitutions on the question of amending the Constitution. I should begin by telling the House that the Canadian Constitution does not contain any provision for the amendment of the Canadian Constitution. Although Canada today is a Dominion, is a sovereign State with all the attributes of sovereignty and the power to alter the Constitution, the Canadians have not thought it fit to introduce a clause even now permitting the Canadian Parliament to amend their Constitution. It has also to be remembered that the Canadian Constitution was forged as early as 1867 and there is not the slightest doubt about it in the mind of anybody who has read the different books on the Canadian Constitution that there has been a great deal of discontent over the various clauses in the Canadian Constitution and even on the interpretation given by the Privy Council on the provisions of the Canadian Constitution; none the less the Canadian people have not thought fit to employ to powers that have been given to them to introduce a clause relating to the amendment of the Constitution.

I come to the Irish Constitution. In the Irish Constitution there is a provision that both Houses by a simple majority may alter, or repeal any part of the Irish Constitution, provided that the decision of the Houses to amend, repeal or alter the Constitution is submitted to the people in a referendum and approved by the people by a majority.Then let us take the Swiss Constitution. In that constitution too, the legislature may pass an amending Bill, but that amendment does not have any operative force unless two conditions are satisfied : one is that the majority of the cantons accept the amendment, and secondly-there is a referendum also-in the referendum the majority of the people accept the amendment. The mere passing of a Bill by the Legislature in Switzerland has no effect so far as changing the Constitution is concerned.

Let me now take the Australian Constitution. In that Constitution the provision is this: That the amendment must be passed by an absolute majority of the Australian Parliament. Then, after it has been so passed, it must be submitted to the approval of persons who are entitled to elect representatives to the Lower House of the Australian Parliament. Then again it has

to be submitted to a referendum of the people or the electors. A further condition is this : that it must be accepted by a majority of the States and also by a majority of the electors.

In the United Constitution the provision is that an amendment must be accepted by two-thirds majority of both Houses subject to the fact that the decision of both Houses by two-thirds majority. must be ratified by the decision of two-thirds majority of the States in favour of the amendment. I cite these facts in order to point out that in no country to which I have made reference it is provided that the Constitution should be amended by a simple majority.

Now let me turn to the provision of our Constitution. What is it that we propose to do with regard to amendment of our Constitution ? We propose to divide the various articles of the Constitution into three categories. In one category we have placed certain articles which would be open to amendment by Parliament by a simple majority. That fact unfortunately has not been noticed by reason of the fact that mention of this matter has not been made in article 304, but in different 'other articles of the Constitution. Let me refer to some of them. Take for instance articles 2 and 3 which deal with the States. So far as the creation of new States is concerned or the re-constitution of existing States is concerned, this is a matter which can be done by Parliament by a simple majority. Similarly, take for example article 148-A which deals with the Upper Chambers in the provinces. Parliament has been given perfect freedom to either abolish the Upper Chambers or to create new Second Chambers in provinces which do not now have them by a simple majority. Now take article 213 which deals with the States in Part H. With regard to the constitution of the States, the draft Constitution also leaves the making of constitution of States in Part II and their modification to Parliament to be decided by a simple majority.

Again take Schedules V and VI. They are also left to be amended by Parliament by a simple majority. I can cite innumerable articles in the Constitution, such as article 255, which deals with grants and financial provisions,which leave the matter subject to law made by Parliament. The provisions are 'until Parliament otherwise provides'. Therefore in many matters-I have not had time to examine the whole of the draft Constitution and so I am only just illustrating my point-we have left things in our Constitution in a way which is capable of being amended by a simple majority. If my friends who have been persisting in the criticism that Parliament should have more extensive powers of amending or altering the Constitution by a simple majority bad suggested to me a concrete case and referred to any definite article that that should also be Put in that category, it would have been open to the Drafting Committee to consider the matter. Instead of that, to say that the wholeof the Constitution should be left liable to be amended by Parliament by majority is, in my judgment, too extravagant and too tall an order to be accepted by people responsible for drafting the Constitution.

Therefore, the first point which I wanted to emphasise was that it is absolutely a misconception to say that there is no article in the Constitution which could not be amended by Parliament by a simple majority. As I said, we' have any number of articles in our Constitution which it would be open for Parliament to amend by a bare majority..

Now, what is it we do? We divide the articles of the Constitution under three categories. The first category is the one which consists of articles which can be amended by Parliament by a bare majority. The second set of articles are articles which require two-thirds majority. If the future Parliament wishes to amend any particular article which is not mentioned in Part III or article 304, all that is necessary for them is to have two-thirds majority. Then they can amend it.

Mr. President: Of Members present.

The Honourable Dr. B. R. Ambedkar: Yes. Now, we have no doubt

put certain articles in a third category where for the purposes of amendment the mechanism is somewhat different or double. It requires two-thirds majority plus ratification by the States. I shall explain why we think that in the case of certain articles it is desirable to adopt this procedure. If Members of the House who are interested in this matter are to examine the articles that have been put under the proviso, they will find that they refer not merely to the Centre but to the relations between the Centre and the Provinces. We cannot forget the fact that while we have in a large number of cases invaded provincial autonomy, we still intend and have as a matter of fact seen to it that the federal structure of the Constitution remains fundamentally unaltered. We have by our laws given certain rights to provinces, and reserved certain rights to the Centre. We: have distributed legislative authority; we have distributed executive authority and we have distributed administrative authority. Obviously to say that even those articles of the Constitution which pertain to the administrative, legislative, financial and other powers, such as the executive powers of the provinces should be made liable to alteration by the Central Parliament by two-thirds majority, without permitting the provinces or the States to have any voice, is in my judgment altogether nullifying the fundamentals of the Constitution. If my honourable Friends were to refer to the articles which are included in the proviso they will see that we have selected very few. Article 43 deals with the election of the President; article 44 deals with the manner of election of the President. It was the view of the Drafting Committee that the President. while no doubt in charge of the affairs of the Centre, nonetheless was the head of the Union, and as such the provinces were as much interested in his election and in the manner of his election as the Centre. Consequently we thought that this was a proper matter to be included in that category of articles which would require ratification by the provinces.

Take article 60 and article 142. Article 60 deals with the extent of the executive authority of the Union and article 142 deals with the extent of the executive authority of the State. We have laid down in our Constitution the fundamental proposition that executive authority shall be co-existensive with legislative authority. Supposing, for instance, the Parliament has the power to make an alteration in article 60 for extending its executive authority beyond the provisions or the limit contained in article 60, it would undoubtedly undermine or limit the executive authority of the States as defined in article 142, and we therefore thought that that also was a fundamental matter and ought to require the ratification of the States,Chapter IV, Part V, deals with the Supreme Court. There can be no doubt about it that Supreme Court is a court in which both the Centre and the provinces or the units and every citizen of this country are interested and it was therefore a matter which ought not to be left to be decided merely by a two-thirds majority. The same about the High Courts mentioned in Chapter VII of Part VI.

Chapter I of Part IX which is included in the third category, deals with the distribution of legislative power, and (a) deals with the lists of the Seventh Schedule. Nobody can deny that the provinces have a fundamental interest in this matter and that they should not be altered without their consent. Similarly the representation of the States in the Council of States which is dealt with in article 67.

I think honourable Members will see that the principles adopted by the Drafting Committee are unquestionable, except in, the sight of those who think that the Constitution should be liable, should be open to be amended every article of that-by a simple majority. As I said, I am not prepared to accept that position. The Constitution is a fundamental document. It is a document which defines the, position and power of the three organs of the State the executive,

the judiciary and the legislature. It also defines the powers of the executive and the powers of the legislature as against the citizens, as we have done in our Chapter dealing with Fundamental Rights. In fact, the purpose of a Constitution is not merely to create the organs of the State but to limit their authority, because if no limitation was imposed upon the authority of the organs, there will be complete tyranny and complete oppression. The legislature may be free to frame any law; the executive may be, free to take any decision; and the Supreme Court may be tree to give any interpretation of the law. It would result in utter chaos. Sir, I have not been able to understand when it is said that the Constitution must be made open to amendment by a bare majority. I can, applying my mind to this particular feeling, conceive of only three reasons. One is that the Drafting Committee has prepared a draft which from the drafting point of view is very bad. I can quite understand that position. If that is the thing......

Shri Mahavir Tyagi : It is not so.

The Honourable Dr. B. R. Ambedkar : It may not be so. If it is so, I as Chairman of the Drafting Committee and I think my other colleagues of the Drafting Committee would not at all object if this Constituent Assembly were to appoint another Drafting Committee or to import a Parliamentary draftsman, submit this draft to him and ask him to suggest and find out what defects there are. That would be an honest procedure and I have '-no objection to it at all.

If that is not the ground on which the argument rests, then the other Ground is that this Constitution proceeds on some wrong principles. Sir, so far as this matter is concerned, it seems to me that a modem Constitution can proceed only on two bases : One base is to have a parliamentary system of government. The other base is to have a totalitarian or dictatorial form of government. If we agree that our Constitution must not be a dictatorship but must be a Constitution in which there is parliamentary democracy where government is all the time on the anvil, so to say, on its trial. responsible to the people, responsible to the judiciary, then I have no hesitation in saying that the principles embodied in this Constitution are as good as if 'not better than, the principles embodied in any other parliamentary constitution.

The other argument which perhaps might have been urged--I was not able to bear every Member who spoke-is that this Assembly is not a representative assembly as it has not been elected on adult suffrage, that the large mass of-the people are not represented in this Constitution. Consequently this Assembly in framing the Constitution has no right to say that this Constitutionshould have, the finality which article 304 pro-poses to give it. Sir, it may be true that this Assembly is not a representative assembly in the sense that Members of this Assembly have not been elected on the basis of adult suffrage, I am prepared to accept that argument, but the further inference which is being drawn that if the Assembly had been elected on the basis of adult suffrage, it was then bound to possess greater wisdom and greater political knowledge is an inference which I _utterly repudiate.

Mr. Naziruddin Ahmad: It would have been worse

The Honourable Dr. B. R. Ambedkar: It might easily have been worse, says my Friend Mr. Naziruddin Ahmad, and I agree with him. Power and knowledge do not go together. Oftentimes they are dissociated, and I am quite frank enough to say that this House, such as it is, has probably a greater modicum and quantum of knowledge and information than the future Parliament is likely to have. I therefore submit, Sir, that the article as proposed by the Drafting Committee is the best that could be conceived in the circumstances of the case.

Mr. President: I shall now put the amendments to vote. I will first take up the amendments moved by Mr. Kamath in the second volume of the printed amendments. The first amendment is 3239.

Mr. President : The question is :

"That before clause

(1) of article 304, the following new clause be inserted and the existing clauses be renumbered accordingly :

' (1) Any provision of this Constitution may be amended, whether by way of variation, addition or repeal, in the manner provided in this article'."

The amendment was negatived.

Mr. President: The question is:

"That in clause (1) of article 304, for the words 'An amendment. the words 'A proposal for an amendment' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in clause (1) of article 304, for the words 'it shall be presented to the President for his assent and upon such assent being given to the Bill'. the words 'it shall upon presentation to the President, be signed by him' be substituted."

or alternatively

"That in clause (1) of article 304, for the words 'it shall be presented to the President for his assent and upon such assent being given to the Bill'. the words 'it shall upon presentation to the President, receive his assent' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in clause (1) of article 304, the words 'to the Bill' occurring in the 11th line be deleted."

The. amendment was negatived.

Mr. President: The question is:

"That before the proviso to clause (1) of article 304, the following new proviso be

inserted:-

'Provided that a period of not less than six months intervenes between the initiation of the Bill and its final passage in Parliament."'

The amendment was negatived.

Mr. President : There was one amendment, i.e., No. 3261 which was really not moved standing in the name of Acharya Jugal Kishore.

Acharya Jugal Kishore : I do not want this to be put to vote.

Mr. President: These are all the amendments on the Printed List. Then we come to the amendments in the cyclostyled Order Paper. I first take the amendments in the order in which they have been moved. The question is :

"That in amendment No. 118 of List III (Eighth Week), for the proviso to the proposed article 304, the following proviso be substituted :-

'Provided that if such amendment seeks to make- any change in-- (a) article 43, article 44, article 60, article 142 or article 213A of this Constitution. or

(b) Chapter IV of Part V, Chapter VIII of Part VI, or Chapter I of Part IX of this Constitution, or

(c) any of the Lists 'in the Seventh Schedule, or

(d) the representation of States in Parliament, or

(e) the provisions of this article,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States for the time being specified in Parts I and III of the First Schedule by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.' "

The amendment was adopted.

Mr. President: The question is :

That in amendment No. 118 of List III (Eighth Week), for the substantive part of the proposed article 304, the following be substituted :-

'304. This Constitution may be added. to or amended by, the introduction of a Bill for this purpose in either House of Parliament and passed in both Houses of Parliament by a clear majority of the total membership of each House. The provisions of the Bill shall not, however, come into force until assented to by the President.'

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 118 of List III (Eighth Week), in the proposed article 304, the words 'and by a majority of not less than two-thirds of the members of that House present and voting' be deleted."

The amendment was negatived.

Mr. President: The question is.

"That in amendment No. 118 of List III (Eighth Week), the following proviso be added to the proposed article 304 :-

'Provided that for a Period of 3 years from the commencement of this Constitution any amendment of the Constitution certified by the President to be not one of substance may be made by a Bill for the purpose being passed by both Houses of

Parliament by a simple majority. This will, among other things, include any formal amendment recommended by a majority of the Judges of the Supreme Court on the ground of removing difficulties in the administration of the Constitution or for the purpose of carrying out the Constitution in public interest and certified by the President to be necessary and desirable."'

The amendment was negativedMr. President: The question :

"That in amendment No. 118 of List III (Eighth Week), clause (a) of the proviso to the proposed article 304 be deleted."

The amendment was negatived.

Dr. P. S. Deshmukh: I beg to withdraw my other amendment No. 212.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is :

"That in amendment No. 207 of List V (Eighth Week), in the proposed Proviso to article 304, for the words Legislatures of not less than one-half of the States for the time being specified in Parts I and III of the First Schedule by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent' the word 'electorate' be substituted."

The amendment was negatived.

Mr. President: I think these are all the amendments. The question is "That proposed article 304 as amended, stand part of the Constitution."

The motion was adopted.

Article 304, as ,mended, was added to the Constitution.

Shri Brajeshwar prasad : Sir, now the time is seven o'clock.

Seth Govind Das: There is so much still to be done that I do not think that we shall be able to finish it. So I propose that either we should sit at nine o'clock tonight and go on till twelve o'clock or we, may sit tomorrow morning.

The Honourable Dr. B. R. Ambedkar: We have got only three articles.

Shri T. T. Krishnamachari: We have only three articles, two of which are of a formal nature.

Mr. President: I think it would be very inconvenient to adjourn now and come back again to the House. So we have to sit until we finish or we have to sit tomorrow.

The Honourable Dr. B. R. Ambedkar: We have got two or three article and I am sure they are. non-contentious and it would not take even half an hour.

Seth Govind Das: I do not think we can finish in one hour. There is the question of the name of the country in article I to be settled. I do not think we shall be able to finish all these.

Mr. President: The majority of the House seems to think that we shall continue. Am I correct?

Many Honourable Members: Yes, Sir.

The Honourable Dr. B. R. Ambedkar: We can finish the thing.

Mr. Naziruddin Ahmad : It cannot be done. There is article I and unless the sweets are, arranged by Dr. Ambedkar, the namkaranam ceremony cannot be done today.

Mr. President: Then we shall take articles 99 and 184.The Honourable Dr. B. R. Ambedkar : Sir, I move

"That for article 99, the following article be substituted:-

99. Language to be used in Parliament. (1) Notwithstanding anything contained in Part XIVA of this constitution but subject to the provisions of article 301F thereof, business in Parliament shall be transacted in Hindi or in English.

Provided that the Chairman of tile Council of States or Speaker of the House of the People or person acting as such, as the case may be, may permit any member, who cannot adequately express himself in either of the languages aforesaid to address the House in his mother-tongue.

(2) Unless Parliament by law otherwise provides. this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words or in English were omitted therefrom."

May I move the other one also. This is an analogous thing.

Mr. President : I suppose the argument will be the same in respect of both.

The Honourable Dr. B. R. Ambedkar: They are substantially the same.

Mr. President : I shall put them separately to vote.

The Honourable Dr. B. R. Ambedkar: We can have one discussion. So far as the discussion is concerned, the argument will be more or

less the same Sir, I move :

"That for article 184, the following article be substituted

184. Language to be used in the Legislatures of State (1) Notwithstanding anything contained in Part XIVA of this Constitution but subject to the provisions of article 301F thereof, business in the Legislature of a State shall be transacted in the official language or languages of the State or in Hindi or in English.

Provided that the Speaker of the Legislative Assembly or Chairman of the Legislative Council or person acting as such, as the case may be, may permit any member who cannot adequately express himself in any of the languages aforesaid to address the House in his mother tongue.

(2) Unless the Legislature of the State otherwise provides, this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words 'or in English' were omitted therefrom."'

Sir, I think no observations are necessary. The articles are very clear in themselves.

Mr. Naziruddin Ahmad: Mr. President, Sir, I beg to move:

"That with reference to amendment No. 1777 of the List of amendments (Volume 1), in clause (1) of article 99, after the word 'Hindi' the words 'or Bengali or any of the regional languages be inserted.

Mr. President: Mr. Naziruddin Ahmad, how do you fit in the amendment which you have read now?

Mr. Naziruddin Ahmad: This will fit in after the word 'Hindi'.

Mr. President : Yes.

Mr. Naziruddin Ahmad: Sir, I move:

"That with reference to amendment No. 2507 of the List of Amendments (Volume 1), in clause (1) of article 184, for the words 'language or languages generally used in that State', the words 'the regional language or languages of the State' be substituted."

An Honourable Member: These amendments have all lapsed.

Mr. Naziruddin Ahmad: I submit that it should be the other way. The amendment proposed by Dr. Ambedkar does not fit in with my amendments. That is the real truth. This amendment was sent long before and the Drafting Committee's amendment has come to us as a surprise. However, I shouldonly submit. a few points. The only point is that I want the regional languages also to be used in article 99. We have already accepted the principle that Hindi should be the official language of India. That we have decided by an overwhelming majority of votes. We have also decided that the regional languages should have sufficient scope for development. I should therefore think that the regional languages should also be encouraged in the Parliament. That is the reason for my amendment. If the amendment will not fit in with the exact text of the article now proposed, It should be left to the Drafting Committee to make suitable adjustments.

With regard to my amendment to article 184, the same principle also applies. There may be one regional language or more regional languages and those regional languages should be allowed to be used in the legislatures. The point which I want to make is that the Speaker or President has much latitude in allowing any member to speak a language with which be is familiar provided he does not know the 'official language. It gives some discretion to the President or the Speaker to allow the use of the regional languages who may refuse to allow anyone to speak in these languages. If you do not allow the regional languages also to develop, their contribution towards the development of the official language will be very small.

Mr. President : Is that not given in the amendment as proposed now ?

Mr. Naziruddin Ahmad : I shall ask the Drafting Committee to consider that. This is only a suggestion; it should fit in somehow. I know this is only a pious sentiment on my part because it is not going to be accepted.

Pandit Lakshmi Kanta Maitra: Are you going to allow discussion on the language question ? The whole language question is coming before the House.

The Honourable Dr. B. R. Ambedkar: No, No. The whole question has been discussed and decided.

Seth Govind Das: *[Mr. President, Sir, it is a pleasure to me to have come here to support this article. No one of us has felt completely satisfied in regard to the article adopted so far in connection with the national language. But in regard to this article I do not think that is any particular difference of opinion. The articles moved so far in this House in regard to language have put one impediment or the other in the way of the early adoption, of Hindi. This is an independent article for it does not provide for consent of the President being taken nor for entrusting its work to any commission or Parliamentary Committee.

In supporting this article, I am reminded of what happened twenty-two years ago. In 1927 1 moved a resolution on this subject in the Council of State. I do not want to take your time by reading out that resolution. In it a demand was made that permission should be Riven to speak in the House in Hindi and Urdu together with English, but that demand was rejected. I was then twenty-eight or twenty-nine years of age. Today when I think of this incident that occurred about twenty two years ago the subsequent events that occurred during the last twenty two years come flooding into my mind; I hope that henceforth at least the Hindi speaking people and all those who Fan speak Hindi but who for reasons best known to them, are proud of speaking in English, after the achievement of freedom, will consider the advisability of speaking in Hindi in free India when the official language will be Hindi after the adoption of the article and in any case it would not be English. If

----

*[]Translation of Hindustani Speech.

they do not do so, the Press of this country will certainly criticise them adversely for this omission. The place where Hindi can be propagated in a free way is our Parliament and I hope, that Hindi will take its rightful place in it.

In the end, I want to add that the people of this country came into contact with political movements after the assumption of leadership by Mahatma Gandhi, and if you want that they should come in contact with the, proceedings of their Parliament also, it is necessary they should be conducted in a language which is understood by the majority of the people in our country. With these words I whole heartedly support these two articles moved by Dr. Ambedkar.]Several Honourable Members : The question be now put.

Mr. President: Mr. Naziruddin Ahmad, do you wish your amendments to be put to vote?

Mr. Naziruddin Ahmad: I beg leave to withdraw them, Sir.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President: The question is :

"That for article 99, the following article be substituted

99. (1) Notwithstanding anything contained in Part XIVA of this Constitution but subject to the provisions of article 301F thereof, business in Parliament shall be transacted in Hindi or in English :

Provided that the Chairman of the Council of States or Speaker of the House of the People or person acting as such, as the case may be, may permit any member, who cannot adequately express himself in either of the languages aforesaid to address the House in his mother-tongue.

(2) Unless Parliament by law otherwise, provides, this article shall, after the expira tion of a period of fifteen years from the commencement of this Constitution, have effect as if the words 'or in English' were omitted therefrom.' "

The amendment was adopted.

Mr. President : The question is

"That for article 184, the following article be substituted:-

184.'Language to be used in the Legislatures of States (1) Notwithstanding anything contained in Part XIVA of this Constitution but subject to the provisions of article 301F thereof. business in the Legislature of a State shall be transacted in the official language or languages of the State or in Hindi or in English :

Provided that the Speaker of the Legislative Assembly or Chairman of the Legislative Council or person acting ,is such, as the case may be, may permit any member who cannot adequately express

himself in any of the languages aforesaid to address the House in his mother-tongue.

(2) Unless the Legislature of the State otherwise provides this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words or in English were omitted therefrom."'

The amendment was adopted.

Mr. President : The question is :

"That articles 99 and 184, as amended, stand part of the Constitution."

The motion was adopted.

Articles 99 and 184, as amended, were added to the Constitution.Article 305

Mr. President: There was one article 305. 1 have omitted it by mistake. There is a proposition that we should omit it.

Shri T. T. Krishnamachari: Sir, I move:

"That article 305 be deleted."

Mr. President: This article hag become unnecessary now. The question is:

"That article 305 be deleted."

The motion was adopted.

Article 305 was deleted from the Constitution.

*Article 1

Mr. President: There is one more article, article 1.

The Honourable Dr. B. R. Ambedkar: Sir, I propose to move amendment No. 130 and incorporate in it my amendment No. 197 which makes a little verbal change in sub-clause (2).

Sir, I move :

"That for clauses (1) and (2) of article 1, the following clauses be substituted:-

(1) India, that is, Bharat shall be a Union of States.

(2) The States and the territories thereof shall be the States and their territories for the time being specified in Parts 1, 11 and 111 of the First Schedule."

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, I want to submit that this is a very important article. It does not want only the name, but it also says that it will be a Union of States. This is very objectionable. I have given notice of an amendment on which I will take at least half an hour to explain. I am opposed to this Union of States. I do not want a Union of that kind, Because, originally we had republics. We have given up that idea of republics and we have brought in the States. This is a very serious matter. It cannot be disposed of in a simple manner. I spoke to Dr. Ambedkar; he says he will finish in five minutes. He cannot do that. This is a very serious matter and in this connection I have tabled amendments from the very beginning. I have tabled an amendment even now which is printed and circulated.

Mr. President: You move an adjournment of the discussion.

Maulana Hasrat Mohani: Sir, I want an adjournment of the discussion to-morrow morning.

Honourable Members: No.

Mr. President : I will take the sense. of the House. I have taken it once. I will take it again. The motion is :

"That the discussion be adjourned till to-morrow morning."

The motion was negatived.

Mr. President : Discussion will proceed. 131.

Maulana Hasrat Mohani : What about my amendment ?

Mr. President: It will come in time.

Maulana Hasrat Mohani : On a point of Order. I understand there is Do quorum. Therefore. this House Should be adjourned till to-morrow morning.Mr. President: I do not know. I' think under the procedure the bell has to be rung and then counting shall have to take place. Have the bell rung?

(The bells were rung.)

I think there should be counting now. Members will take their seats so that counting may proceed.

Maulana Hasrat Mohani: If you at least adjourn for half an hour, it will enable me to take my meals. I have not so far taken meals.

Mr. President : If I adjourn at all, it will be for the next session. It will be best to adjourn till the next session.

The Honourable Dr. B. R. Ambedkar: Sir, this can be finished in a short time.

Mr. President : What can we do? It is open to any Member to obstruct. Eighty-six Members are present, and under our rules one-third of the total number of Members should constitute the quorum, and that is about 97. So now, there is no quorum. I have to adjourn the House, there is no help.

An Honourable Member: Let this article go to the next session.

Another Honourable Member: We can meet to-morrow.

Another Honourable Member:

There is no guarantee of quorum even tomorrow.

The Honourable Dr. B. R. Ambedkar: We can bring some Members who may be outside. The bell may be rung.

Mr. President: The position is this. Either we have to adjourn till tomorrow........

Pandit Lakshmi Kanta Maitra : There will be no quorum to-morrow either.

An Honourable Member: We can adjourn for half an hour.

Mr. President: The suggestion is made that we adjourn for half an hour to enable Members to come.

May I make an enquiry? Adjournment is necessary now and we cannot avoid it. The question is only the time we meet next.

The first question is whether we should meet to-night, or to-morrow or leave it for the next session of the Assembly.

Sardar Hukam Singh: Sir, you cannot adjourn the House beyond three days without permission of the House, and the House now cannot give any such permission as it has no quorum.

Mr. President :Then we shall meet later to-night.

The Honourable Shri Binodanand Jha (Bihar : General) : A properly constituted House can give permission to adjourn beyond three days, but this Assembly now is not properly constituted as there is no quorum. In the absence of quorum, it cannot function. Clause (2) of rule 22 of the Rules of Procedure deals with quorum and the situation arising from want of quorum. You cannot, Sir, straightaway adjourn without the consent of this House.

Mr. President: Under rule 22 "If the Chairman on account being demanded by a Member at any time during a meeting, ascertains that one-third of the whole number of Members are not present, he shall adjourn the Assemblyor the Committee, as the case may be, for fifteen minutes, and if on a fresh count being taken alter that period it is found that there is still no quorum, he shall adjourn the Assembly or the Committee as the case may be, till the next day on which it ordinarily sits."

So we have to wait. We shall wait till eight o'clock.

(The time was ten minutes to Eight of the Clock.)

Mr. Naziruddin Ahmad : Sir, I think that fifteen minutes have passed already.

Shri Mahavir Tyagi : You cannot raise any point of order as there is no quorum in the House.

(On a count at Eight of the Clock it was found that there was still no quorum.)

Mr. President: There is no quorum, as there are only ninety-four Members present. The House stands adjourned till 9 o'clock tomorrow.

The assembly then adjourned till Nine of the Clock on Sunday, the 18th September 1949.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME IX

Sunday, the 18th September 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

MOTION RE OCTOBER MEETING OF ASSEMBLY

Shri K. M. Munshi (Bombay: General): Mr. President, Sir, may I move.....

Shri Mahavir Tyagi (United Provinces : General): Sir, lest it happens that there is no quorum during the course of the day, I would suggest that the date of the next meeting be first decided.

Shri K. M. Munshi: Mr. Tyagi may have patience. I am moving :

"That the President may be authorised to fix such a date in October as he considers suitable for the next meeting of the Constituent Assembly."

Shri M. Thirumala Rao (Madras: General,): Why should we have it in October ?

Shri K. M. Munshi : The meeting has to be held in October. I request the House to adopt the Resolution I have moved.

Shri H. V. Kamath (C.P. & Berar: General): May we know the probable date of the meeting in October?

Mr. President : If the House is so pleased it may give me authority to call the next meeting at any date which I may consider necessary. I may provisionally announce that as at present advised I propose to all the next meeting to begin on 6th October. Due notice will be given to Members about it,

An Honourable Member: How long will that session last ?

Mr. President: It will up to 18th or 19th October. We shall finish that section before Deepavali on 21st October.

Do I take it that the Resolution moved by Mr. Munshi is acceptable to the House ?

Honourable Members: Yes.The motion was adopted.

Mr. President : The House will now take up article 1. I think Mr. Kamath has moved amendment 220 and finished his speech.

Shri H. V. Kamath : I have not finished my speech, Sir.

Mr. President : Then, go ahead.

Shri H. V. Kamath : I move

"That in amendment No. 130 of List IV (Eighth Week), for the proposed clause (1) of article 1, the following be substituted :--

(1) Bharat or, in the English language, India, shall be a Union of States."

or, alternatively,"That in amendment No. 130 of List IV (Eighth Week), for the proposed clause (1) of article 1, the following be substituted :

'(1) Hind, or, in the English language, India, shall be a Union of States."'

Sir, I move :

"That in amendment No. 130 of List IV (Eighth Week), for the proposed clause (2) of article 1, the following be substituted :

'(2) The. States shall mean the territories for the time being specified in Parts III and III of the First Schedule."'

Taking my first amendment first, amendment No. 220, it is customary among most peoples of the world to have what is called a Namakaran or a naming ceremony for the new-born. India as a Republic is going to be born very shortly and naturally there has been a movement in the country among many sections--almost all sections-of the people that this birth of the new Republic should be accompanied by a Namakaran ceremony as well. There are various suggestions put for-ward as to the proper name which should be given to this new baby of the Indian Republic. The prominent suggestions have been Bharat, Hindustan, Hind and Bharatbhumi or Bharatvarsh and names of that kind. At this stage it would be desirable and perhaps profitable also to go into the question as to what name is best suited to this occasion of the birth of the new baby-the Indian Republic. Some say, why name the baby at ail? India will suffice. Well and good. If there was no need for a Namakaran ceremony we could have continued India, but if we grant this point that there must be a new name to this baby, then of course the question arises as to what name should be given.

Now, those who argue for Bharat or Bharatvarsh or Bharatbhumi, take their stand on the fact that this is the most ancient name of this land. Historians and philologists have delved deep into this matter of the name of this country, especially the origin of this name Bharat. All of them are not agreed as to

the genesis of this name Bharat. Some ascribe it to the son of Dushyant and Shakuntala who 'was also known as "Sarvadamana" or all-conqueror and who established his suzerainty and kingdom in this ancient land. After him this land came to be known as Bharat. Another school of research scholars hold that Bharat dates back to Vedic........

The Honourable Dr. B. R. Ambedkar (Bombay: General): Is it necessary to trace all this? I do not understand the purpose of it. It may be well Interesting in some other place. My Friend accepts the word "Bharat". The only thing is that he has got an alternative. I am very sorry but there ought to be some sense of proportion, in view of the limited time before the House.

Shri H. V. Kamath : I hope it is not for Dr. Ambedkar to regulate the business of the House.

Mr. President: What amendment are you moving?

Shri H. V. Kamath: I am moving two alternative amendments.

Mr. President: Alternative amendments but not contradictory amendments.

Shri H. V. Kamath : The idea is that if one is not accepted, the other may be accepted. In this I have followed the usual practice. I have got your ruling on previous occasions.

Mr. President: Here, one excludes the other. You can choose one name.

Shri H. V. Kamath : The first relates to the language of the amendment moved by Dr. Ambedkar, because he says "India, that is, Bharat". I have recast it in another form, It relates to the language, the phraseology, the constitution of the, sentence.Mr. President': So I take it that it is not a matter on which there need be long speeches. I do not think anything is gained by long speeches.

Shri H. V. Kamath: I want only five minutes.

Mr. President: You have already taken five minutes.

(Shri Shankarrao Deo rose.)

Shri H. V. Kamath: I need not obey you, Mr. Shankarrao Deo. I know the rules.

Mr. President: You can move one. I permitted you to move both of them, but I find that the two amendments are contradictory.

Shri H. V. Kamath: Are they contradictory, Sir? If you say they are contradictory, I have nothing to say.

Mr. President: Yes, if one is accepted, the other is ruled out.

Shri H. V. Kamath : My object is that if one is not accepted, the other may be accepted.

The Honourable Dr. B. R. Ambedkar: Why all this eloquence over it ?

Shri Shankarrao Deo : (Bombay : General) : There should be no arguing with the Chair.

Shri H. V. Kamath: I know the rules, Mr. Shankarrao Deo.

Mr. President: You can move one.

Shri H. V. Kamath : I shall move "Bharat".

Mr. President: Then It is only a question of language. It is only I verbal change.

Shri H. V. Kamath: I bow to your ruling, Sir, but I do think......

The Honourable Shri N. Gopalaswami Ayyangar: (Madras : General) There can be no 'but'.

Shri H. V. Kamath: If Mr. Ayyangar is so impatient......

Shri K. M. Munshi: Order, order.

Shri H. V. Kamath : It is not for Mr. Munshi to call me to order.

Mr. President : I have told you that if you select the name "Bharat", it is only a question of language and it does not require any speech.

Shri H. V. Kamath : I bow to your ruling. I only wish to refer to the Irish Constitution which was adopted twelve years ago. There the construction of the sentence is different from what has been proposed in clause (1) of this article. I feel that the expression "India, that is, Bharat"-I suppose it means "India, that is to say, Bharat"-I feel that in a Constitution it is somewhat clumsy; it would be much better if this expression, this construction were modified in a constitutionally more acceptable form and may I say in a more a esthetic from in() definitely in a more correct form.

if honourable colleagues in the House would take the trouble of referring to the Irish Constitution passed in 1937, they will see that the Irish Free State was one of the few countries in the modern world which changed its name or; achieving freedom; and the fourth article of its Constitution refers to the change in the name of the land. That article- of the Constitution of the, Irish

Free State reads as follows :

"The name of the State is Eire, or, in the English language, Ireland."

I think that this is a much happier expression that "Bharat, or, in the English language, 'India, shall, be and such". I say specifically the English language. Why ? Because Members might ask me, why do you say "the English language" ? Is it not the same in all European languages ? No, it is not. The German word is 'Indian' and in many parts of Europe. the country is still referred to as in the olden days as "Hindustan" and all natives of this country are referred to as Hindus, whatever their religion may be. It is quite common in many parts of Europe. It must have come from the ancient name Hindu, derived from the river Sindhu.

To sum up, I think that the construction of this clause "India, that is, Bharat" is a clumsy one, and I do not know why the Drafting Committee has tripped. In this fashion, has committed what is to me a constitutional slip. , Dr. Ambedkar has admitted so many slips in the past, I hope that he admits this one too, and revises the construction of this clause.

Clause (2) as moved by Dr. Ambedkar reads as follows

"The States and the territories thereof shall be those for the time being specified in Parts I, II and III of the First Schedule."

Mr. President: In place of clause (2) "that the territories thereof shall mean" is only a verbal

amendment.

Shri. H. V. Kamath : I am sorry, Sir, you have not been able, to follow my amendment. It states "shall mean the territories". I have moved the deletion of the words "territories thereof". as Dr. Ambedkar's amendment states "and the territories thereof shall be those."

Mr. President : They shall mean only the territories and nothing else.

Shri H. V. Kamath: I am making out my point from the Schedule itself. I am not going to argue in the air. Unless the Schedule is altered,-that is a subsequent point for the House to decide,--I must take my stand on that. The Schedule as it stands reads thus :

PART I

The States and the territories of India.

The territories known immediately before the commencement of this Constitution is the Governor's Provinces of-"

Now, Sir, if the clause as moved by Dr. Ambedkar is accepted by the House how does that read? "The States and the territories thereof." May I invite Dr. Ambedkar's attention to the clause as it stood in the original draft, "the State shall mean the states for the time being specified". I do not know why this change in the phraseology and the construction or the wording of this clause has been made, because if you say States as referred to in Schedule One, Part 1, these States are defined there, and what are these ? The States which were Governors' provinces before the commencement of the Constitution; similarly the territories in Part II known as the Chief Commissioners' Provinces.

Mr. President : I think your amendment arises on account of the fact that you do not know what form the First Schedule is going to take.

Shri H. V. Kamath : I take my stand on the Schedule as it stands Mr. President: We have not taken up the First Schedule and therefore, you do not know the change or the form in which the First Schedule is to be put.

Shri H. V. Kamath : Who is to know what is likely to be passed ? The best thing is to pass that Schedule first and take the other thing next.

Mr. President: May I read out the form in which the First Schedule will be placed before the House ?

"In Part I of the First Schedule, the following be substituted:

In Part I the names of the States are given. Only the names are given in the Schedule.

Then the territory of each of the States shall comprise such and such."'

Shri H. V. Kamath : I had not the benefit of this draft before me, and therefore I took my stand on the Schedule as it stands in the Constitution, and there was therefore no alternative but to move my amendment. Now that you have drawn my attention to the Schedule as it will be brought before the House and I hope will be accepted by the House,-in the light of that,

there is no need for me to speak further on this amendment. I move both amendments, Sir, and commend them to the House for consideration and acceptance.

Shri Brajeshwar Prasad : (Bihar: General) : Mr. President, Sir, there are six amendments standing in my name. I would like to move only one, amendment No. 192, List V, Eighth week. Sir, I move:

"That in amendment No. 130 of List IV (Eighth Week), for the proposed clause (1) of article 1, the following be Substituted :

(1) India, that is, Bharat is one integral unit."'

I am opposed to the incorporation of the words 'Union' and 'States' in our Constitution. There was a bitter and prolonged controversy in the United States of America on the question of the constitutional status of the constituent units.

The Honourable Shri K. Santhanam : (Madras: General) : On a point of order, Sir, we have already passed the Constitution defining the constitution of the States. Therefore, we cannot change the Constitution by a definition.

Shri Brajeshwar Prasad : It is only here, I submit, Sir, that this point could have been raised. The use of the word 'States' for the first time occurs in article I of the Constitution. This fundamental question could have been raised only in this clause.

Mr. President: As a matter of fact, the whole of the Constitution has been based on the assumption that there will be separate States, and that those States will constitute the Union. Now, you want to go back on that and say that there are no separate States, it is too late now, I think.

Shri Brajeshwar Prasad: I object to the use of the word 'Union'. Both these words are inter-related and integrated.

Shri S. Nagappa : (Madras: General) : What is the word objected to?

Shri Brajeshwar Prasad: Have patience. Please permit the Chair to regulate the proceedings of the House.

There was a prolonged and bitter controversy in the United States of America on the question of the constitutional status of the constituent units. It ultimately led to a bloody civil war.

Mr. President : We have, as a matter of fact, fixed the status of the Units in the articles which we have already passed. Whatever status, the States have, has already been fixed.Shri Brajeshwar Prasad : The use of the word 'Union' further aggravates the malady. I will confine myself to the use of the word 'Union'.

It ended in a bloody civil war. Having due regard to the lessons of American Constitutional history, I submit that the word 'Union' should be deleted from the Draft Constitution of India. We have not accepted the use of the word 'Union' anywhere in the Constitution.

Mr. President : I think you mean that the use of the word State' should be omitted.

Shri Brajeshwar Prasad: No, Sir. The word 'Union' should not be used.

The Honourable Shri K. Santhanam: We have got the 'Union List' which we have already passed.

Dr. P. S. Deshmukh: (C. P.,& Berar: General) : The statement is wrong that we have not used the word 'Union'.

Mr. President: We have used the word 'Union' in so many places in the Constitution. I think it is really too late to re-open that question.

Shri R. K. Sidhva: (C. P. & Berar: General) : We have got the Union List.

Shri Brajeshwar Prasad : We have never discussed the heading of List I. We began with entry No. 1.

Mr. President: The word 'Union' occurs in so many places in the articles. I think it is too late now. You cannot move this amendment.

(Amendments 190, 191, 193, 194, 195 and 196 were not moved.)

Mr. President: Amendment 197; that has already been moved. Amendment 219; Maulana Hasrat Mohani.

Maulana Hasrat Mohani: (United Provinces: Muslim) : Sir, I want, first of all, to explain that I am not in the habit of adopting any dilatory tactics or putting anybody to any hardship. Yesterday evening, I appealed......

Mr. President:. It is not necessary to go into that. That need not be explained. You go on with the amendment.

Maulana Hasrat Mohani: Sir, before explaining my two amendments, I first want to refer very briefly to the history of this Constitution

making business.

Seth Govind Das: (C.P. & Berar: General) : How can the whole question be now taken into consideration, this Constitution making business ?

Maulana Hasrat Mohani: My whole argument depends on that background I will not take more than two minutes.

Mr. President: Yes, Maulana.

Maulana Hasrat Mohani: The first thing is about the Objectives Resolution I have got a verified copy of this thing together with the two speeches delivered by Pandit Nehru at the time of the passing of the Objectives Resolution. It is this :

The Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution.

This is the Objectives Resolution, that is an Independent Sovereign Republic. These are the three words and Pandit Nehru has declared more than once' and it has made history, that there will be no change introduced in this Objectives Resolution. To my astonishment, when I got this copy of theDraft Constitution, I found, as a sort of an introductory remark Dr. Ambedkarhas given the direct lie to that thing. He will not follow this Objectives Resolution. Here is what he himself admits. In paragraph 2, he says, about the Preamble : "The Objectives Resolution adopted by the Constituent Assembly in January 1947, declares that India is to be a Sovereign Independent Republic. The Drafting Committee has adopted the phrase Sovereign Democratic Republic because independence is usually implied in the word "Sovereign", so that there is hardly anything to be gained by adding the word "Independent". The question of the relationship between this Democratic Republic and the British Commonwealth of Nations remains to be decided subsequently". This last portion of this explanation has let the cat out of the bag. Because, he had in his mind that the time is coming when it is quite possible that our Prime Minister will go and decide in some way or other to remain in the British Commonwealth.

Then, again, he says: "It will be noticed that the Committee has used the term Union instead of Federation. Nothing much turns on the name, but the Committee has preferred to follow the language of the preamble to the British North America Act, 1867, and considered that there are advantages in describing India as a Union although its Constitution may be federal instruction." Here also, he says, what is there in the name. I say, if there is no importance in the name, why should he change the word Federation into Union. Why did he not stick to the form Federal Republic of India ? Why drop the word Republic ? It is on this ground that I must declare that when Pandit Nehru introduced the Objectives Resolution in January 1947, he was agreeable to that. But later on, somehow or other and for reasons best known to himself I found that he has changed his mind.

Mr. President: We are not now discussing the Preamble. We are discussing article 1.

Maulana Hasrat Mohani: It is the same thing. Both are identical.

Mr. President: They are not.

Maulana Hasrat Mohani : Dr. Ambedkar said that this amendment is only about name. I say it is nothing of the kind because here he says 'India shah be a Union of States only'. Why States only ? Why not Union of Republics ? If there had been only a question of name, I would not have taken any part in the discussion.

Shri Mahavir Tyagi : They are sovereign states and so they are republics.

Maulana Hasrat Mohani: I will come to it later on and you will see whether it is a Republic or

Dominion or an Empire. Because Pandit Jawaharlal changed his mind and because he was committed to certain pledges, therefore he thought it advisable to hand over this task to Dr. Ambedkar so that he may be saved the charge of going back upon his promises and it was therefore entrusted to Dr. Ambedkar. Perhaps it was with his connivance or perhaps at his instance that Dr. Ambedkar in this Draft Constitution has introduced this thing. Article I says- "We the People of India having solemnly resolved to constitute India into

a Sovereign Democratic Republic and to secure to all the citizens, etc." The original word in the Objectives Resolution was Sovereign Independent Republic.

The Honourable Shri Ghanshyam Singh Gupta (C.P. & Berar: General) What are we discussing now, may I know, Sir ?

Mr. President : I have pointed out to the speaker that we are discussing article 1 and not the Preamble.Maulana Hasrat Mohani: I will say a few words and then resume my seat. Now the word 'Independent' is dropped in this because it was in the minds of both Pandit Nehru and Dr. Ambedkar that the relationship between India and the British Commonwealth had not yet been determined, therefore taking into consideration the possibility of India coming to terms with the British Commonwealth he said that in that case Pandit Nehru could not go back on his word 'Republic' and therefore lie allowed Dr. Ambedkar to change this and take the odium of changing the wording of this Resolution. I most seriously object to this.

Mr. President: There shall not be any speculation about the motives of the Drafting Committee or the Prime Minister.

Maulana Hasrat Mohani: Now, Sir, I now explain the reason why I have tabled this amendment. There are two alternatives, the first is about the phrase in clause (2) where, he says that 'India or Bharat will be a Union of States'. I say that I have got a right to propose that instead of 'Union of States' it should be 'Union of Republics of India or Union of Socialist Republic of India'. This was my contention. I proposed this amendment to the Preamble but because Dr. Ambedkar, I think, in his inner heart wanted to deprive me of that opportunity, so he got that thing in the first clause so that he may get it passed here and then when discussion of the Preamble takes place he would come forward and say that this is a settled fact and now we cannot frame a Preamble against the previous decision, although I have an assurance by the Honourable the President that he would not disallow me and declare me out of order when I will propose this very thing when the question of Preamble comes before the House. I have taken into consideration the difficulty. The word Republic is taboo for some people. If they do not have the, courage to use it, and find difficulty in accepting that word, I have an alternative proposal to call them Sovereign States of India. That is to say the provinces will be autonomous. When I was in the Congress up to the last I proposed a R.-solution of complete independence at the Ahmedabad Congress. I have always been of the opinion that India cannot remain in the same position as it was during the British rule here. The British divided India into so many provinces but it was only for administrative purposes. There was C.P., U.P. Bihar Bengal, but they were all for administrative purposes. As far as power was concerned, no province had got any right. The Governors were appointed by His Majesty the King and his rules were framed by the Central Government. I was determined to have this changed.

The Honourable Shri Ghanshyam Singh Gupta : The status of the States has been defined.

Mr. President: Let him finish.

Shri Brajeshwar Prasad: I think the same consideration ought to have been shown to me, Sir.

Mr. President: He is not talking of anything which has already been decided.

Maulana Hasrat Mohani: My idea of the present Constitution was I thought that the provinces will be made autonomous and the Indian States......

Shri Lakshminarayan Sahu (Orissa : General) : *[Mr. President, article I is at present under consideration. it is my feeling, however, that it would have been much more proper and desirable that article 1, was taken tip for consideration after we had finish our consideration of all the other articles.

----

*[] Translation of Hindustani Speech.

Naturally the taking up of article I for consideration without settling all other questions causes some suspicions and apprehensions in our mind. We must bear this consideration in our mind

that any changes necessary in article 1, which is under consideration today, would involve corresponding changes in other articles as well. It would not be easy to make such corresponding changes in the articles that have already been adopted. I repeat that any changes in article I would involve corresponding changes in all other articles, and, therefore, the more proper thing would be to decide upon the final form of article 1 in the light of and after all the other articles have been adopted by this House.]

Mr. President: "[It Would have been in time if you had put forward this suggestion yesterday, and it could have been then considered. But this article has been under consideration since yesterday and your suggestion cannot be considered now.]

Maulana Hasrat Mohani: Very well. Sir, I was saying that my idea of the Constitution was, and also that of many of my friends, if it was to be a union of States, then it must be a union of Sovereign States, that is to say, of completely autonomous provinces and groups of States, containing even the smaller States which have been merged in Districts and Provinces. I thought we would give to those groups of States also the same status as the Provinces, and then we would give them all complete provincial autonomy, and thus make our position quite different from what it was under the British regime. We all know that the set-up under the British regime was designed only for administrative convenience and not for any political purpose or for giving any political power to anyone. There was no provincial autonomy as such during the British regime. I want that at least after our struggle of the last forty years, we must get our provinces independent, and after that we will have a federation of independent units which will voluntarily give some central subjects or band over to the Centre some subjects such as foreign relations, defence and communications. That was the original idea, and I can give quotations from the speeches of Pandit Jawaharlal Nehru and even Dr. Ambedkar to show that they were of this opinion also at that time.

But now, somehow or other, these gentlemen have changed their attitude, and instead of making those groups of Indian States assume the same status is the Provinces, they have merged the smaller States and put them out of existence-only a very few remain now-and they have frustrated my hopes of having a federation of these completely autonomous units. Instead of proclaiming these groups of States as being on the same level as the Provinces and allowing them to have their own elected governors, now they have appointed Pramukhs and Raj Pramukhs and many other things which are beyond my comprehension to understand and which is all quite ridiculous. What do Pramukhs and Raj Pramukhs mean ? They do not allow any sort of independence, either to the Provinces or to the groups of States. Even at a very early state of our deliberations I raised this point. When Pandit Jawaharlal Nehru moved his motion about Provincial constitution to be provided here, I raised this objection. I asked, "Why do you anticipate the decision of the Constituent Assembly ? How do you know what will be the status of the Provinces now ? Why are you planning this model provincial constitution, and what right have you got to produce such a model constitution for the provinces before realising what will be the position of the Provinces ? " He wanted to silence me, and replied to me by asking, "Why do you bother about it ? We have already made up our mind that we will have such and such provincian con- stitutions." Sir, we bad said that we would have independent provinces and that the Governors would. be elected governors. But now what do we find here ? Instead of Governors, you have adopted that thing-Pramukhs. Andafterwards, for some unknown reasons, or due to some mystery, now Dr. Ambedkar came forward the other day and proposed a new thing. He said, "No, we will have no elected Governors, but the Governors will be nominated by the President, and even though he is the nominee of the

President, the President would not trust him, in an emergency; and they say the state of emergency should be determined by the Centre or by the President."

This shows clearly that they want to go back upon all their pledges and decisions; and as I said the other day, Dr. Ambedkar is doing something new, and changing the very nature of the Constitution. Formerly, our idea was that India will be a Federal Republic-a federation of republics, and even if you do not like this idea of republics, at least a federation of autonomous units, But what has he done now? He has brought in the words "Union of States". He has done this practically to obscure the word "Republic". That is the only object. I think the word "Union" does not signify the same thing as "Federation". He may ask, "What is in a name ?" If there is nothing in a name, why does he prefer the word "Union" to "Federation" ? You may take it from me, he wants this Union to be something like the Union proposed by Prince Bismark in Germany, and after him adopted by Kaiser William and after him by Adolf Hitler. He wants all the States to come under one rule and that is what we call Notification of the Constitution. I think Dr. Ambedkar also is of that view, and he wants to have that kind of union. He wants to bring all the units, the provinces and the groups of States, every thing under the thumb of the Centre.

My Friend, Prof. Shah and others have formed a separate party on this particular point. But here the attempt is to make India a sort of unitary government, and not only a unitary Government, but a sort of unitary empire. This merger of all the States into the Union clearly means that there is nothing more than that he wants to treat the whole of India as one and he wants to establish here a sort of not only Indian Dominion or something of that kind, but he wants to make it a sort of Indian Empire. Sir, I submit that I have been a constant opposer of the British Empire.

Seth Govind Das: He is out of order. He is repeating and repeating

Maulana Hasrat Mohani: I shall be a direct opposer of this proposal of Indian imperialism in the same way.

Mr. President: Have you anything to say in respect of your amendment ?

Maulana Hasrat Mohani : What I sa y is this : that I know that Dr. Ambedkar has made up his mind and Pandit Jawaharlal has also made up his mind. He has changed his whole attitude and career. I know he has got an overwhelming majority on his side. I was going to suggest last evening that you, Mr. President, could have treated my amendment in the same way as you did the other day. But you said : "All right, we, shall take all these amendments as read." Then you went a step further and said : "There is no need of any speech. Put these things to the vote" and the question is put to the vote. If Dr. Ambedkar ventures to say that it is night now, and not day, it is night. I said you should consider that you will have to answer before the Indian public and before God for hoodwinking the public in this manner You take advantage of your one-party Government and one-party business If you will adopt these tactics then take it from me that you will not be able to rule for very long.

Shri R. K. Sidhva: I do not wish to move any of my amendments.

Mr. President: These are all the amendments. Now the amendments and, the original article as moved by Dr. Ambedkar are open to discussion. Does, any Member wish to speak ?Seth Govind Das: *[Mr. President Sir, I will not take more than five minutes of the House and that too I have to because the atmosphere that was necessary in the House for the naming of the country has been disturbed by the speeches so far delivered. Naming has always been and is even today of great significance in our country. We always,, try to give a name under auspicious stars and also try to give the most beautiful name, I am glad to find that we are giving the most ancient name to our country but, Dr. Ambedkar will excuse me, we are not giving it in as beautiful a way as it was necessary. "India, that is, Bharat" are not beautiful words for,

the name of a country. We should have put the words "Bharat known as India also in foreign countries". That would have been much more appropriate than the former expression. We should however, at least have the satisfaction that we are today ,giving to our country the name of Bharat.

I was the first man to raise two questions in the Constituent Assembly; the first was with regard to the National language and the second with regard to the name of the country. We have solved the question of the National language and we are naming our country today. Therefore this day appears to be of great significance. There should be something on record in this connection and therefore I shall submit a few words and shall take only a few minutes, Some people are under the delusion that India is the most ancient name of this country. Our most ancient books are the Vedas and now it is being recognised that they are the most ancient books of the world. No mention of India is to be found in the Vedas. Ib(. words "Idyam" and "Idanyah" can be found in the Rig Veda and the words "Ida" in Yajur Veda. These words have no connection with India.]

Mr. President : Who said that India is the most ancient name ?

Seth Govind Das : *[Some people tell us so and in support of this a pamphlet has also been published in which an effort has been made to prove that "India", is more ancient than "Bharat". I want that it should be on record that this is incorrect. Idyan and "Ide" mean fire. 'Idenyah" has been used as an adjective of fire and "Ida" signifies voice.]

Shri Mahavir Tyagi: Should it, be understood that the word India is the product of the international form ?

Seth Govind Das: *[The word India does not occur in our ancient books. it began to be used when the Greeks came to India. They named our Sindhu river as Indus and India was derived from Indus. There is a mention of this in Encyclopaedia Britannica. On the contrary, if we look up the Vedas, the Upanishads the Brahmanas and our great and ancient book the Mahabharat, we find a mention of the name Bharat.

(Bbisma Parva)

We find a mention of "Bharat" in Vishnu Purana also.

In Brahma Purana too we find this country mentioned as "Bharat"

---

*[] Translation of Hindustani speech.

A Chinese traveller named Hiuen-Tsang came to India and he has referred to this country as Bharat in Ms travel book.

By my reminding the House of these ancient matters it should not be understood, as our Prime Minister and other Honourable Members say, that I am looking backward. I want to look forward and I also want that there should be scientific inventions in this country. But by naming our country as Bharat we are not doing anything which will prevent us from marching forward. We should indeed give such a name to our country as may be befitting our history and out culture. It is a matter of great pleasure that we are today naming our country as Bharat. I said many a time before too that if we do not arrive at correct decisions in regard to these matters the people of this country will not understand the significance of self-government.

We fought the battle of freedom under the leadership of Mahatma Gandhi by raisin,, the slogan of "Bharat Mata Ki Jai". It is a matter for pleasure that we are going to do a correct thing today. But I would like to say that we are not doing it in a beautiful way. Why whatever way we may do it, our country is going to get the name of Bharat. I am confident that when our Constitution will be framed in the national language this name of Bharat will occupy its rightful place. I am very much pleased to note that whatever manner it may be, the name Bharat is being given to our country. I heartily congratulate the Constituent Assembly on it.]

Shri Kallur Subba Rao (Madras: General) : Sir, I heartily support the name Bharat. which is ancient. The name Bharat is in the Rig Veda, (vide Rig 3, 4, 23.4). It is said there' "Oh, Indira all this progeny of Bharata". Also in Vayu Purana the boundaries of

Bharat also are given.

(Vayupuran U45-75).

It means that land that is to the south of the Himalayas and north of the (Southern ocean) Samundras is called Bharat. So the name Bharat is very ancient. The name India has come from Sindhu (the Indus river), and we can now call 'Pakistan as Hindustan because the Indus river is there. Sind has become Hind : as ('sa)' in Sanskrit is pronounced as (Ha) in Prakrit. Greeks pronounced Hind as Ind. Hereafter it is good and proper that we should refer to India as Bharat. I would request Seth Govind Das and other Hindi friends to name the language also as Bharati, I think for the name Hindi the name Bharati should be substituted, as the former denotes the Goddess of Learning.

Shri B. M. Gupte (Bombay: General) : Sir, I support the name Bharat but I want to point out certain implications of the adoption of the amendment and the anomalies arising therefrom,

In his introductory speech at the commencement of the Second Reading of the Constitution Dr. Ambedkar observed that the word 'Union' was advisedly used in order to negative the right of secession. My submission is that as far as I see there is no warrant for this proposition either in the dictionary meaning of the word Union or in the political science meaning of it, Therefore if it is necessary that the right of secession should be negatived that should be expressly provided for. I do not mean to say that if we do not expressly negative it there will be, the right of secession, because in regard to the provinces there is no question of secession at all. They were neverindependent and they have not come in by agreement. As far as the Indian states are concerned, those which signed the first Instrument of Accession, there is a provision in that Instrument which allows them to secede after they have seen the full picture of the Constitution. But once they accede after the commencement of the constitution they may perhaps not have the right. It is however worthwhile considering whether it is not necessary, in view of the provision in the Instrument of Accession, to expressly provide for this subject.

This leads us to the debatable point-whether the Union is a Federation or a Unitary State. I have already described it sometime ago, speaking on another article that this is not a federation proper but it is a decentralised unitary government. No doubt I admit that there is one characteristic of federation in this constitution and it is this that provinces have a fairly large number of subjects in their jurisdiction. But it is not an absolute characteristic as it is also compatible with a de-centralised form of unitary government. Therefore though there is one characteristic which can be said to be of a federal character, there are so many other characteristics of subordination. The other day when I said that the States are subordinate to the Centre our Friend Mr. T. T. Krishnamachari objected to that statement; but I can point out so many articles, so many characteristics which show bow the States are subordinate to the Centre.

If the constitution were of a federal character there would be no provision in it for the constitutions of the units. In a proper federal constitution the constitution of the units is not given at all. Here we are providing for the constitution of the States. The Governor is appointed by the Centre. Article 3 makes a distinction between State in Part I and State in Part III. With regard to the State in Part I the Centre is given the power to make any changes irrespective of the opinion of the State. The only obligation laid upon the President is that he shall consult the legislature of the State concerned. But with regard to the State in Part III it is laid down that the President shall obtain the consent of the State concerned. That shows that with regard to the State in Part I the Parliament can do anything, even if there is opposition from the State concerned. That shows the subordination of the States. Then under article 226 even without any reference to the States concerned any item from the State list can be taken by the Centre. And I can point out many other similar provisions. These are marks of subordination and therefore I say that this is not a proper federal Constitution.

But my objection is riot to what has been done in this direction. My objection is that we have not given the proper name to the units. I do not mind making the Centre strong. I know even in proper federal constitutions under the stress of modern conditions and due to the bewildering expansion of rapid means of communication there is a tendency of power to gravitate to the Centre........

The Honourable Dr. B. R. Ambedkar: It is proposed to alter the clause in article 3 dealing with the reorganisation of the provinces and States. States in both Parts I and III will be brought on the same level. There is an amendment to the article and that difference is going to be eliminated and it will disappear.

Shri B. M. Gupte : That is alright but as I was saying I am not against making the Centre strong. But at the same time we have given a glorified name to the units. We are taking away the powers of the States and bringing them in the Central or Concurrent list; and yet we have adopted the word State for the unit. If we study the federal or semi-federal constitutions we will not find a single instance in which the word State is given to a unit, where that unit has not got residuary powers or some semblance of sovereignty. Here we are giving the name State even to Commissioner's provinces, wherethere is not even a semblance of responsible government and where t is not even a legislature. As I said, in no federal or semi-federal constitution You will find it. Take the case of Canada. There the residuary powers are not in the units and therefore the units are called "provinces". But in Australia, the residuary powers reside in the units and therefore they are called "States". So also in the United States of America. So also in Soviet Russia. There the residuary powers reside in. the units and therefore they are called "Republics". Perhaps the case of South Africa is still more illuminating. There at first units were called "States", but when they devised a form which was more or less of a unitary type, they surrendered their sovereignty and thereafter those States which were called "States" themselves consented to be called "provinces". Therefore, my point is this, that in all these federal or semi-federal constitutions, the word "State" is used in a particular meaning and we have completely departed from that. I do not mean to say that no departure should be made, but what is the advantage of it ? Have you got uniformity ? No. On the contrary we have got clumsiness, because again and again we have to say State in Part I and State in Part HI and so on. I know we have not yet taken the First Schedule, but this much is certain that some difference between the State in Part 1, State in Part 11 and State in Part III will remain for the time being. But the more serious objection is that we are unnecessarily encouraging the States in the belief of independence and status which is not theirs and this is likely to lead to bitterness and friction.

The Honourable Dr. B. R. Ambedkar: Sir, this matter was debated at great length last time. When this article came before the House, it was kept back practically at the end of a very long debate because at that time it was not possible to come to a decision as to whether the word "Bharat" should be used after the word "India" or some other word, but the whole of the article including the term "Union"--if I remember correctly-was debated at great length. We are merely now discussing whether the word "Bharat" should come after "India". The rest of the substantive part of the article has been debated at great length.

Shri B. M. Gupte : I do not say that we should go back upon what we have done. I am merely pointing out the implications and the result of an this. I say that the word "State" and "Union of States" connotes something which is not really there in the Constitution and the States might consider that they are independent and their estimate of their status might be higher than what it really is. I therefore submit that at least as far as the right of secession is concerned, it is not too late yet expressly to negative it, if it is found necessary.

Shri Ram Sahai (Madhya Bharat): *[Mr. President, Sir, when the question of Hindi was under discussion in the House I had submitted that in Gwalior, which is a part of Madhya Bharat Union, Hindi had been the official language for the last fifty years. I also feel proud to say in this House that our States' Union of Cwalior, Indore and Malwa, had named itself Madhya Bharat as long ago as April 1948. There cannot be an occasion of greater elation for us than that the country, a part whereof we had named Madhya Bharat, is being named Bharat. This name, as Seth Govind Das has also felt, gives us a lot of pleasure. According to the ancient custom, the naming ceremony is performed in the beginning, but according to the modem practice while considering a Bill or law we take up the first article, regarding the name, at the end. According to this practice we are considering the first article after finishing consideration of most of the articles of the Constitution, and we are, by it, naming our country Bharat. In all our religious scriptures and all Hindi literature this country has been called Bharat. our leaders also refer to this country as Bharat in their speeches.

---

*[ ] Translation of Hindustani speech.

For some time, however, it was felt that this name may lead to some difficulties and there was some opposition to this name, but it is a matter for pleasure that we are going to accept the name Bharat without any opposition. The people of the States, who were always considered to be untouchables, separate from the people of the rest of India, would now be regarded as a portion of India, as partners, as part and parcel of India, as equal partners in it, who would be governed under the provisions of the same Constitution. They cannot have greater pleasure than what they have by participating on equal terms in the framing of this Constitution. Even today when the name of the country is being decided, they are taking the same part in the ceremony as the other provinces are doing. There had always been some distinction between the States and provinces.

When the Draft Constitution was prepared, an attempt was made therein too to keep the States aloof, and they have so far been kept separate, but after great endeavour the Drafting Committee has been made to realise that the people of the States or the Constitution of the States cannot be kept separate from this Constitution. By the grace of Sardar Patel the States were integrated, their administrative system was bettered, and the rule of the princes ended. Now the Drafting Committee has also suggested various amendments, besides our amendments, to bring the States to the level of the Provinces, even in' regard to matters for which it had originally made separate provisions for the States. For this I thank the Drafting Committee very much on behalf of the representatives of the States. The Committee has at last given due recognition to the aspirations of the people of the States and brought them to the same level as the people of the provinces in so far as this Constitution is concerned. Now the people of the States will also enjoy their rights exactly in the same manner and to the same extent as the people of the Provinces would do under this Constitution. They would be governed by the same administrative machinery.

There was a time when it was thought that the States were established with view to strengthen the British rule. A kind of bad odour surrounded the very name of the people of the States. But it is long since we succeeded in freeing ourselves from this bad name with the result that we have participated in the Constitution-making as a part of India, and we shall enjoy the fruits of this Constitution like the people, and along with the people, of the

provinces.

I do not want to take any more time of the House and I support this motion.]

Shri Kamalapati Tripathi (United Provinces : General) : *[Mr. President, Sir, I am grateful to you for having given me an opportunity to express my sentiments on an amendment which I consider to be very sacred. Today an amendment regarding the name of the country is before us. I would havebeen glad if the Drafting Committee had presented this amendment in a different form. If an expression other than "India, that is, Bharat" had been used, I think, Sir, that would have been more in accord with the prestige and the traditions of this country and indeed that would have done greater honour to this Constituent Assembly also. If the words, "that is" were necessary, it would have been more proper to use the words "Bharat, that is, India" in the resolution that has been presented to us. My Friend, Mr. Kamath, has moved the amendment that the words. "Bharat as it is known in the English language

---

*[] Translation of Hindustani speech.

India" should be used. It the Drafting Committee had accepted it, if it accepts it, even now, it would be given appreciable consideration to our sentiments and the prestige of our country. We would have been very glad to accept it. Still, Sir, we are pleased at the resolution that has been put before us and we congratulate the Drafting Committee on it.

When a country is in bondage, it loses its soul. During its slavery for one thousand years, our country too lost its everything. We lost our culture, we lost our history, we lost our prestige, we lost our humanity, we lost our selfrespect, we lost our soul and indeed we lost our form and name. Today after remaining, in bondage for a thousand years, this free country will regain its name and we do hope that after regaining its lost name it will regain its inner consciousness and external form and will begin to act under the inspiration of its soul which had been so far in a sort of sleep. it will indeed regain its prestige in the world. The revolutionary movement that took place in the country by following the footsteps of Bapu, the Father of the Nation, made us recognise our form and our lost soul. Today it is due to him alone and due to his penance that we are regaining our name too.

Sir, I am enamoured of the historic name of "Bharat". Even the mere uttering of this word, conjures before us by a stroke of magic the picture of cultured life of the centuries that have ,One by. In my opinion there is no other country in the world which has such a history, such a culture, and such a name, whose age is counted in milleniums as our country has. There is no country in the world which has been able to preserve its name and its genius even after undergoing the amount of repression, the insults and prolonged salvery which our country had to pass through. Even after thousands of years our country is still known as 'Bharat'. Since Vedic times, this name has been appearing in our literature. Our Puranas have all through eulogised the name of Bharat. The gods have been remembering the name of this country in the heavens.

The gods have a keen desire to be born in the sacred land of Bharat and to achieve their supreme goal after passing their lives here. For us, this name is full of sacred remembrances. The moment we pronounce this name, the pictures of our ancient history and ancient glory and our ancient culture come to our minds. We are reminded that this is the country where in past ages great men and great Maharishis gave birth to a great culture. That culture not only spread over all the different areas of this land, but crossing its borders, reached every corner of the Far East too. We are reminded that on the one hand, this culture reached the Mediterranean and on the other it touched the shores of the Pacific. We are reminded that thousands of years ago, the leaders and thinkers of this country moulded a great nation and extended their culture to all the four comers of the world and achieved

for themselves a position of prestige. When we pronounce, this word, we are reminded of the Mantras of the Rig Veda uttered by our Maharishis in which they have described the vision of truth and soul-experience. When we pronounce this word, we are reminded of those brave words of the Upanishads which urged humanity to awake, to arise, and to achieve its goal. When we pronounce this word, we are reminded of those words of Lord Krishna through which he taught a practical philosophy to the people of this country-the philosophy which can enable humanity even to lay to achieve its goal of peace and bless. When we pronounce this word, we are reminded of Lord Buddha, who had boldly told men all over the world that.-

(greatest good of the greatest number, greatest happiness of the largest number and the welfare of humanity) should be the watch-words of their lives and that they should awake andarise to promote the welfare of mortals and gods and to show to the world the path of knowledge. When we pronounce this word, we are reminded of Shankaracharya, who gave a new vision to the world. When we pronounce this word, we are reminded of the mighty arms of Bhagwan Rama which by twanging the chord of the bow sent echoes through the Himalayas, the seas around this land and the heavens. When we pronounce this word, we are reminded of the wheel of Lord Krishna which destroyed the terrible, Imperialism of Kshatriyas from India and relieved this land of its burden.]

The Honourable Dr. B. R. Ambedkar : Is this all necessary, Sir ?

Shri Kamalapathi Tripathi : I am just telling you to hear relevant things, Sir.

The Honourable Dr. B. R. Ambedkar : There is a lot of work to be done.

Shri Kamalapathi Tripathi: *[When we pronounce this word we are minded of Bapu who gave a new message to humanity.

We are pleased to see that this word has been used and we congratulate Dr. Ambedkar on it. It would have been very proper, if he had accepted the amendment moved by Shri Kamath, which states "Bharat as is known 'in English language 'India"'. That would have preserved the prestige of this country. By the inclusion of the word 'Bharat' and by accepting it, we shall. be able to give to this country a form and to give back to it its lost soul and we shall be able. to protect it also. Bharat will be a great nation and will be able to serve humanity on a world wide scale.]

Shri S. Nagappa: The question may now be put.

Mr. President: I have already called one speaker. After him, I will put the closure motion to the vote.

Dr. P. S. Deshmukh: There is no hurry today.

The Honourable Dr. B. R. Ambedkar: I have no time to hear.Dr. P. S. Deshmukh: If you do not want to hear, you can also go.

Shri Hargovind Pant: (United Provinces: General): *[Mr. President, during the early sittings of the Assembly I had moved an amendment to the effect that for the name of the country, we should have the word "Bharat" or "Bharat Varsha" in place of 'India'. I am gratified to see that some change in the name has at last been accepted. I, however, fail to understand why the word 'Bharat Varsha' is not acceptable to the House when the importance and glory of this word is being admitted by all here. I do not want to repeat what the other Members have said in regard to the acceptance of this glorious word, but I would make only a few observations in respect of this word.

'The word "Bharat" or "Bharat Varsha" is used by us in our daily religious duties while reciting the Sankalpa. Even at the time of taking our bath we say in Sanskrit :

"Jamboo Dwipay, Bharata Varshe, Bharat Khande, Aryavartay, etc."

It means that I so and so, of Aryavart in Bharat Khand, etc..........

The most celebrated and word-famous poet Kalidasa has used this word in his immortal work depicting the story of his two great characters-King Dushyanta and his queen Shakuntala. The son born of them was named 'Bharat' and his Kingdom was known as "Bharat". There are many fascinating descriptions of the heroism of Bharat in our ancient books. It is said that in his childhood he used to play with lion cubs and overpowered them. We are well acquainted with the story of Bharat. I fail to understand, in view of all this, why we are reluctant to accept, from the core of our heart the word 'Bharat Varsha' as the name of our country,

So far as the word 'India' is concerned, the Members seem to have, and really I fail to understand why, some attachment for it. We must know that this name was given to our country by foreigners who having heard of the riches of this land were tempted towards it and had robbed us of our freedom in order to acquire the wealth of our country. If we, even then, cling to the word 'India', it would only show that we are not ashamed of having this insulting word which has been imposed on us by alien rulers. Really, I do not understand why we are accepting this word.

'Bharat' or 'Bharat Varsha' is and has been the name of our country for ages according to our ancient history and tradition and in fact this word inspires enthusiasm and courage in its; I would, therefore, submit that we should have no hesitation at all in accepting this word. It will be a matter of great shame for us if we do not accept this word and have some other word for the name of our country. I represent the people of the Northern part of India where sacred places like Shri Badrinath, Shri Kedarnath, Shri Bageshwar and Manasarovar are situated. I am placing before you the wishes of the people of this part.I may be permitted to state, Sir, that the people of this area want that the name of our country should be 'Bharat Varsha' and nothing else.]

Mr. President : The question is

"That the question be now put."

The motion was adopted.

---

*[] Translation of Hindustani speech.

Mr. President : I will now put the various amendments to the vote. The question is :

"That in amendment No. 130 of List IV (Eighth Week), for the proposed clauses (1) and (2) of article 1, the following be substituted :-

'India shall be a Union of Indian Socialistic republics to be called U.I.S.R. on the lines of U.S.S.R."'

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 130 of List IV (Eighth Week), for the proposed clauses (1) and (2) of article 1, the following be substitute:

'India or Bharat shall be a Union of Sovereign States of India or Bharat to be called U.S.S.I. or U.S.S.B. on the lines of U.S.S.R."'

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 130 of List IV (Eighth Week), for the proposed clause (1) of article 1, the following be substituted :

'(1) Bharat, or, in the English language. India, shall be a Union of States."'

The Assembly divided by show of hands

Ayes: 38

Noes: 51

The amendment was negatived.

Mr. President: Amendment No. 223.Shri H. V. Kamath : In view of the statement made by Dr. Ambedkar that the schedule will be amended later on, there is no point in pressing this amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr.President : There is no other amendment except the one moved by Dr. Ambedkar himself, as amended by his own amendment No. 197.

Shri Brajeshwar Prasad: What about my amendment?

Mr. President: It was ruled out of order.

The question is :

"That for clauses (1) and (2) of article I the following clauses be substituted:

'(1) India, that is, Bharat shall be a Union of States.

(2) The States and the territories thereof shall be the States and their territories for the time being specified in Parts I, II and III of the First Schedule."'

The amendment was adopted.

Mr. President : The question is :

That article 1, as amended, stand part of the Constitution."

The motion was adopted.

Article 1, as amended, was added to the Constitution.

Mr. President : I think this bring this session to a close and we shall adjourn now. As announced earlier in the morning, I would fix a date for the next session, which most probably will be the 6th of October.

The

Assembly then adjourned till such day in October 1949 as the Honourable the President might fix.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME X

Thursday, the 6th October 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Eleven of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

ADJOURNMENT OF THE HOUSE

Mr. President : Honourable Members are aware that they have been discussing a very important question in their other capacity in the adjoining room and it has been suggested to me that we might adjourn today to enable the discussion of that question to be completed by this evening. I have said that personally I would have no objection if the Members of the House have no objection. I would therefore like to know if honourable Members have any objection to this.

Honourable Members : We have no objection.

Mr. President : Then we shall adjourn. The next question is, at what time do we meet

MEETING TIME FOR THE HOUSE

Some Honourable Members : At 10 o'clock.

Other Honourable Members : At 9 o'clock.

Seth Govind Das (C.P. & Berar : General) : Let us meet from Nine to one.

Mr. President : I do not see which opinion is stronger, but I can see that opinion is divided.

Shri M. Thirumala Rao (Madras : General) : Without consulting the House this meeting was summoned at 11 o'clock today. Let it stand for tomorrow also.

Mr. President : In the Rules it is provided that normally the Assembly will begin at 11 o'clock. I have summoned it at 11 o'clock in accordance with the rules.

Shri M. Thiramala Rao : Then why consult the House now ?

Mr. President : I am consulting it about the adjournment. We adjourn now. From tomorrow it is open to fix any time. But I shall be glad to consult the convenience of Members.

Shri R. K. Sidhva (C. P. & Berar : General) : Let us have it from 9-30 to 1-30.

Mr. President : That is a compromise between 9 and 10.

Shri Rohini Kumar Chaudhuri (Assam : General): Let it be from 9 to 12-30 or 1 P.M. because at 1-30 one feels terribly hungry.

Pandit Hirday Nath Kunzru (United Provinces : General) : I suggest you should have it from 10 to 1 or from 9 to 1, if you want to have four hours, but not from 9-30 to 1- 30.

Shri Alladi Krishnnswami Ayyar (Madras : General): 10 o'clock would be all right. I suggest 10 o'clock as a compromise, and for this reason. We from Madras are generally accustomed to take our meals by 10 o'clock; we do not take lunch and all that kind of thing. Therefore it will be much better to have it at 10 o'clock-because 11 will be too late.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : I think, Sir. that 10 to 1 will be all right.

Mr. President : It all depends upon the quantity of work we have to get through.

Shri K. M. Munshi (Bombay : General) : Sometimes we may have to meet twice a day.

Mr. President : I do not object to that. We will adjust the timings according to the quantity of work we have to get through.

Shri Biswanath Das (Orissa : General) : 9 to 1 is not acceptable to us. I would suggest 3 to 7 p.m.

Shri R.K. Sidhva : We must have two sessions later on.

Several Honourable Members : Let it be from 9 to 1.

Mr. President : I would suggest one thing, if the Members do not mind. I would suggest that to begin with we start at 10 o'clock tomorrow and then we see what progress we are making. If we find that we are able to complete the work with three hours every day then we can continue from10 to 1. If on the other hand we find that the progress is not satisfactory then we shall think of changing the timings. If this finds approval we shall begin at 10 o'clock tomorrow.

Several Honourable Members : That is agreeable.

Mr. President : The House stands adjourned till 10 of the Clock tomorrow.

The Assembly adjourned till Ten of the Clock on Friday, the 7th October, 1949.

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME X

Friday, the 7th October 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the Pledge and signed the Register:--

Shri Samaldas Laxmidas Gandhi: (Junagadh).

DRAFT CONSTITUTION-*(Contd.)*

Article 306

Mr. President : We shall now proceed with the consideration of the articles relating to transitory provisions.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, I move:

"That for clauses (a), (b) and (c) of article 306, the following clauses be substituted "

> (a) trade and commerce within a State in, and the production, supply and distribution of, cotton and woollen textiles, raw cotton (including ginned cotton and unginned cotton or *Kapas*), cotton seed, paper (including newsprint), foodstuffs (including edible oilseeds and oil), coal (including coke and derivatives of coal), iron, steel and mica;
>
> (b) (offences against laws with respect to any of the matters mentioned in clause (a), jurisdiction and powers of all courts except the Supreme Court with respect to any of those matters, and fees in respect of any of those matters but not including fees taken in any court."

The only changes which the amendment seeks to make in the original article 306 are these. From sub-clause (a), it is now proposed to omit petroleum and petroleum products and mechanically propelled vehicles. The reason why petroleum and petroleum products are sought to be omitted from sub-clause (a) is because that item is now included in List I of the Seventh Schedule. Mechanically propelled vehicles are omitted because they are at present decontrolled and they are placed in the Concurrent List. If the Centre wishes to legislate, it can legislate. Sub- clause (b) of the original article, relief and rehabilitation of displaced persons, is no longer necessary because that is also put in the Concurrent List. In regard to sub-clause (c), Inquiries and Statistics is also included in the Concurrent List and therefore this is also omitted. It is only a consequential thing. These are all the changes which this amendment seeks to make in the original article 306.

Mr. President : May I enquire of Dr. Ambedkar ? My impression is that cattle fodder including oil cakes and other concentrates was one of the things, adequate control over which was at one time felt necessary. The Government of India Act was sought to be amended; but it would not be amended at the time and considerable difficulty was being felt. I do not know whether you have considered that.

The Honourable Dr. B. R. Ambedkar : This article was re-drafted in consultation with the Industry and Supply Department. We have put in these matters which they thought were necessary to be controlled by the Centre, for a period of five years. If the House thinks that any particular addition may be made to the items included in sub-clause (a), I certainly have no objection.

Mr. President : I speak from my experience which is now rather out of date.

The Honourable Dr. B. R. Ambedkar : I think it is rather desirable to include that item.

Dr. P. S. Deshmukh (C. P. & Berar: General) : That may be done in consultation with the Agriculture Department.

Mr. President : That is what I suggest.

The Honourable Dr. B. R. Ambedkar : I think we shall add that. I can put in, foodstuffs including cattle fodder.

Mr. President : Cattle fodder including oil cakes and other concentrates.

There are certain amendments to this. Amendment No. 2. Dr. Deshmukh.

Dr. P. S. Deshmukh: Sir, I move:

"That in amendment No. 1 above, in the proposed clause (a) of article 306, for the words 'State in the words 'State with respect to be substituted."

"That in amendment No. 1 above, in the proposed clause (a) of article 306, for the words and brackets coal (including coke and derivatives of coal)' the words 'coal, coke and derivatives of coal be substituted."

These are more or less of a drafting nature, although the first one that I have moved would make some difference if my wording is preferred. However, I do not wish to press them and I am prepared to leave them for the consideration of the Drafting Committee.

Mr. President : There is an amendment printed in Volume II in the name of Pandit Kunzru.

Shri Brajeshwar Prasad (Bihar: General): I have an amendment Sir.

Mr. President: Yes, you can move it.

Shri Brajeshwar Prasad: Sir, I move:

"That with reference to amendments Nos. 3286 and 3287 of the List of Amendments (Volume 11) in article 306, for the word 'five' the word 'fifteen' be substituted."

The members of the Drafting Committee are of opinion that they will be able to tide over the economic difficulties with which we are confronted in the transitional period within a period, of five years. That is the only purpose why article 306 has been brought in this Draft Constitution. am of opinion that within five years they will not succeed in their venture. The economic crisis with which we are confronted is not only of a national character. It has an international bearing. I am of opinion that, as a result of the economic structure of the capitalist society and as a result of the war, the whole structure of human society is crumbling down and India especially is passing through a period of decadence and decline. The entire fabric of our society is in the melting pot. I feet that revolution is knocking at our doors. Matters like foodstuffs and minerals should have been kept within the purview of the Government of India, but now the only thing that we can do is to keep these under the Government of India at least for the transitional period. The period of transitions will cover a period of fifteen years and not five years.

But no crisis can continue for a longer period and if it continues longer, it will mean the end of the State. Either we tide over the crisis or the crisis will tide over us. It will bring utter chaos such as we are witnessing in China today if the crisis continues for more than fifteen years. So we must surmount these difficulties within this period.

The basis for this Constitution is federal in structure. I hold the opinion that centrifugal forces will become so strong that the process of amendment will have to be resorted to in order to change this Constitution. We must take into consideration the political facts of our life. With this background in view article 306 ought to be modified. My amendment is very reasonable. In the concluding portion of article 306 it has been said that all laws passed under this article to the extent to which they are inconsistent with the main provisions of this Constitution will cease to operate. I think this is unnecessary and undesirable. The work of centralization which will be achieved within five years should not be undone. The provincial Governments must accept the laws passed within this period of five years or fifteen years if the House accepts my amendment. The scope of article 306 is also limited from another point of view. We have given powers to Parliament to deal with production, supply and distribution etc., of these commodities. The entire gamut of these subjects ought to have been brought within the purview of the Government of India. Why this limited sphere ? This limited power is not desirable. I think fissiparous forces ought to be circumvented if we are to become a powerful nation.

Pandit Hirday Nath Kunzru (United Provinces : General): Sir, I move:

"That in clause (a) of article 306 after the word 'coal' the words 'charcoal, firewood' be inserted."

I am sure the House is well aware that under the Defence of India Act the prices of charcoal and firewood were controlled. But for the power delegated to the provinces by the Government of India the provinces would not have been in a position to control the prices of these two articles. The Defence of India Act is no longer in force and it is therefore desirable to amend clause (a) of the article placed before us by Dr. Ambedkar in order to include these two things. I understand that after the Defence of India Act expired these things continue to be controlled by the Government of India under the provisions of an Act amending the Government of India Act, 1935, passed by Parliament in 1946. There is no mention of charcoal or firewood there. But it is believed that they are included among the derivatives of coal. I am totally unable to accept this explanation. No one has challenged the action taken by the authorities in fixing the prices of charcoal and firewood but had anybody done so, I doubt whether any Court would have accepted the plea that charcoal or firewood was a derivative of coal. What we understand by coal, generally speaking is anthracite. Charcoal is the derivative of wood, and certainly not a derivative of coal. Neither charcoal nor wood can be regarded as a derivative of coal. It is, therefore, necessary to provide for the control of the Government of India expressly in respect of both these things. The common man is concerned with them. When we are providing for the control of the Government of India over a number of other things, it is both desirable and necessary that we should think of the needs of the poor man too, and take power in the Constitution to control the prices of those articles also, that affect his household budget. We all know how serious the position was during the war, in respect of these articles, and we also know how high their prices still are. We usually think of the high prices of foodstuffs, and few people realise that the high prices of charcoal and firewood are matters of as much anxiety to the poor man as the high prices of the foodstuffs.

As Dr. Ambedkar is in a mood to consider suggestions to amend the clauses placed before him, I hope that he will take this matter too into consideration and take power to see that the clause (a) is so amended as to give complete power to the Government of India to control trade in charcoal and firewood also.

Mr. President : These are all the amendments. Does anyone wish to say anything about the original proposition or any of the amendments ?

Prof. Shibban Lal Saksena (United Provinces : General): Mr. President, Sir, in this article, we have provided that certain subjects which normally form part of the State List should be in the Concurrent List for the first five years. At present also there is a similar provision in the Government of India Act (Adaptation) 1946 which is intended to tide over the present period. But the period fixed here in this article seems to me to be too short. This article says that for the first five years these items which are mentioned in the State List, it may be necessary to have in the Concurrent List so that necessary action may be taken by the Parliament. I would in this connection commend the amendment moved by my Friend Shri Brajeshwar Prasad to the effect that this period of five years is too short and that it should be for A longer period. If found unnecessary, we may cut it short, but there is no harm in having provision for a longer period in the Constitution.

Secondly, Sir, I would have liked that the Subject of relief and rehabilitation too had been mentioned in this list of subjects to be put in the Concurrent List. I do not know if it is the intention to omit this Subject from the Concurrent List. If not here, this subject should be mentioned somewhere else in the Constitution so that Parliament may be able to make proper laws for the relief and rehabilitation of millions of people who have been......

Mr. President : Entry 33B of Concurrent List includes Relief and Rehabilitation of persons displaced from their original places on account of the partition. So, you will see, it has-been provided.

Prof Shibban Lal Saksena : Sir, I am glad it has found a place in the Constitution. I will not say anything further about it. I shall withdraw my suggestion, But I feel that the period of five years should be extended.

Mr. President : Does anyone else wish to speak ? Dr. Ambedkar ?

The Honourable Dr. B. R. Ambedkar : Sir, I have only to say this much. I am not able to accept the amendment moved by Shri Brajeshwar Prasad. With regard to the other amendment suggested by yourself and by my Friend Dr. Kunzru, I may say that I have an open mind and I am prepared to introduce the necessary amendments after consultation with the Ministry of Industry and Supply. Therefore my amendment may be put through now.

Mr. President : And the Ministry of Agriculture also. You may consult that Ministry also.

The Honourable Dr. B. R. Ambedkar : Yes, Sir, I will consult the Ministries concerned.

Mr. President : Subject to what Dr. Ambedkar has said, I will put the article to vote. I take up the amendments first. Amendment No. 2 of Dr. Deshmukh is more or less verbal and he may leave it to the Drafting Committee also No. 3. What about No. 4 ?

Dr. P. S. Deshmukh : I am not moving it.

Mr. President : Then I put No. 5-amendment of Shri Brajeshwar Prasad.

The question is:

"That with reference to amendments Nos. 3286 and 3287 of the List of Amendments (Vol. II), in article 306, for the word 'five' the word 'fifteen' be substituted."

The amendment was negatived.

Mr. President : Then I put tile amendment moved by Dr. Ambedkar.

The question is:

"That for clauses (a), (b) and (c) of article 306 the following clauses be substituted:--

> '(a) trade and commerce within a State in, and the production, supply and distribution of, cotton and woollen textiles, raw cotton (including ginned cotton and unginned cotton or Kapas), cotton seed, paper (including newsprint), foodstuffs (including edible oil-seeds and oil), coal (including coke and derivatives of coal), iron, steel and mica;
>
> (b) offences against laws with respect to any of the matters mentioned ill clause (a), jurisdiction and powers of all courts except the Supreme Court with respect to any of those matters, and fees in respect of any of those

matters but not including fees taken in any court'."

The amendment was adopted.

Mr. President : Then I put the article as amendment by Dr. Ambedkar's amendment.

The question is:

"That article 306, as amended, stand part of the Constitution."

Tile motion was adopted.

Article 306, as amended, was added to the Constitution.

Article 309

Mr. President : Then we take up article 309.

The Honourable Dr. B. R. Ambedkar: There is all amendment by Shri Brajeshwar Prasad adding a new article 307A.

Mr. President: But shall we take it up now ?

The Honourable Dr. B. R. Ambedkar: It may be kept back.

Shri T. T. Krishnamachari (Madras: General) : The new article suggested by Pandit Thakur Das Bhargava in amendment No. 3303, Volume II may, I think be disposed of.

Mr. President: Well. Pandit Thakur Das Bhargava ? He is not in the House. There are two others who have given notice of it. Lala Achint Ram ? Shri Deshbandhu Gupta ? None of them is moving the amendment. The amendment of Mr. Brajeshwar Prasad also cannot be moved.

I will put article 309 to vote. There is no amendment to it.

The question is :

"That article 309 stand part of the Constitution."

The motion was adopted.

Article 309 was added to the Constitution.

Articles 310-A and 310-B

Shri T. T. Krishnamachari : The next article *viz.*, 310 is linked to article 308. These two may be considered together.

Mr. President: Consideration of article 310 is postponed. Then the House will take up consideration of the next articles 310-A and 310-B.

The Honourable Dr. B. R. Ambedkar : Sir, with your permission I move amendment No. 12 in a slightly amended form, thus:

"That after article 310, the following new articles be inserted:-

Provisions as to Comptroller and Auditor General of India.

"310-A. The Auditor-General of India holding office immediately before the date of' commencement ofthis Constitution shall, unless he has elected otherwise, become on that date the Comptroller and Auditor-General of India and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave and pension as are provided for under clause (2) of article 124 of this Constitution in respect of the Comptroller and Auditor-General of India and shall be entitled to continue to hold office until the expiration of his term of office as determined under the provisions (?) which were applicable immediately before such commencement".

Provisions as to public Service Commissions.

310B. (1) The members of the Public Service Commission for the Dominion of India holding Office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the members of the Public Service Commission for the Union and shall, notwithstanding anything contained in clauses (1) and (2) of article 285 of this Constitution but subject to the proviso to clause (2) of that article continue to hold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members.

(2) The members of a Public Service Commission of a Province or of a Public Service Commission serving the needs of a group of Provinces holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the members of the Public Service Commission for the corresponding State or the members of the Joint Public Service Commission serving the needs of the corresponding States, as the case may be, and shall, notwithstanding anything contained in clauses (1) and (2) of article 285 of this Constitution but subject to the proviso to clause (2) of that article, continue to bold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members."

Sir, these articles merely provide for the continuance of certain incumbents of the posts which are regulated by the Constitution such as the members of the Public Service Commission and the Auditor-General. There is no matter of principle involved in these articles.

Dr. P. S. Deshmukh : Sir, I move

"That in amendment No. 12 of List I (First Week), in the proposed new article, 310-B, after the words 'commencement of this Constitution' wherever they occur, the words 'whose services have not, for any reason, been terminated' be inserted."

I intended to move a similar amendment to article 310 also. My difficulty is that in case the proposed new article stands as it is, the question will arise as to whether every one who happens to be a member of a Service Commission of State even when the States have one combined Commission will have to be continued as a member of the Commission for the group of States. According to the article as it is worded, there will be no power left to the Government but to continue every single individual who is holding any post on the Commission at present even after the commencement of the

Constitution. If a member whose services could be terminated on the formation of a joint service commission for a number of States could not be so terminated if the wording of the article is to remain as it is. There is no provision there to terminate the services of some members. Every one would have automatically to be kept on. I think it will lead to considerable expenditure of money. I therefore propose that the words I have suggested may be included so as to reduce the number of persons who happen to be there in a particular area as members of the public service commission of that area.

The Honourable Dr. B. R. Ambedkar: I do not propose to accept the amendment of Dr. Deshmukh. It is unnecessary.

Mr. President: I will first put the amendment of Dr. Deshmukh to vote.

The question is:

"That in amendment No. 12 of List I (First Week), in the proposed new article 310B, after the words 'commencement of this Const on' wherever they occur, the words 'whose services have not, for any reason, been terminated' be inserted."

The amendment was negatived.

Mr. President: I will now put the articles contained in the amendment of Dr. Ambedkar one by one to vote.

The question is:

"That after article 310, the following new article be inserted:--

Provisions as to Comptroller and auditor- General of India

'310-A. The Auditor-General of India holding office immediately before the date of commencement of this Constitution shall, unless he has elected otherwise, become on that date the Comptroller and Auditor-General of India and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave and pension as are provided for under clause (2) of article 124 of this Constitution in respect of the Comptroller and Auditor-General of India and shall be entitled to continue to hold office until the expiration of his term of office as determined under the provisions (?) which were applicable immediately before such commencement.'

The motion was adopted

Mr. President: The question is:

"That after article 310-A, the following new article be inserted:-

Provisions as the Public Service Commissions.

310B. (1) The members of the public Service Commission for the Dominion of India holding officeimmediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the members of the Public Service Commission for the Union and shall, notwithstanding anything contained in clauses (1) and (2) of article 285 of this Constitution but subject to the proviso to clause (2) of that article continue to bold office until the expiration of their term of office as determined under the rules which were applicable immediately before such commencement to such members.

(2) The members of a Public Service Commission of a Province or of a Public Service Commission serving the Oneeds of a group of Provinces holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date members of the Public Service Commission for the

corresponding State or the members of the Joint Public Service Commission serving the needs of the corresponding States, as the case may be, and shall, notwithstanding anything contained in clauses (1) and (2) of article 285 of this Constitution but subject to the proviso to clause (2) of that article, continue to hold office until the expiration of their term of office as determined tinder the rules which were applicable immediately before such commencement to such members.' "

The motion was adopted.

Articles 310-A and 310-B were added to the constitution.

Article 311A

The Honourable Dr. B. R. Ambedkar : Sir I move:

"That after article 311, the following new article be inserted:-

Provisions as to Provisional President.	'311A. (1) Such person as the Constituent Assembly of the Dominion of India shall have elected in this behalf shall be the Provisional President of India until a President has been elected in accordance with the provisions contained in Chapter I of Part V of this Constitution and has entered upon his office.

(2) In the event of the occurrence of any vacancy in the office of the Provisional President by reason of his death, resignation, or removal, or otherwise, it shall be filled by a person elected in this behalf by the Provisional Parliament functioning under article 311 of this Constitution, and until a person is so elected, the Chief Justice of India shall act as the Provisional President'."

Mr. President: There are two amendments to this. One is for the deletion of the word "provisional" before the word "President":

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That in amendment No, 28 of List II (First Week), in clause (1) of the proposed article 311 A the word 'provisional' be deleted."

"That in amendment No. 28 of List II (First Week), in clause (2) of the proposed article 311A, for the words 'provisional President' in the first place where they occur. the words 'President so elected by the Constituent Assembly of the Dominion of India,' be substituted."

"That in amendment No. 28 of List II (First Week), in clause (2) of the proposed article 311A, for the words 'the Provisional President' in the second place where they occur, the word 'President' be substituted."

Dr. P. S. Deshmukh: Since the principle underlying my amendment has been accepted, I do not see any reason for moving my amendment.

Mr. President: The article and the amendments are now open to discussion.

Shri R. K. Sidhva (C. P. & Berar: General): I have an amendment standing in my name:

"That in amendment No. 13 in the proposed new article 311B for the word 'provisional' wherever it occurs, the word 'first' be substituted."

I am glad, Sir, that Dr. Ambedkar has agreed to leave out the word "provisional" before the word "President", because I cannot see how you can have a provisional President. The House, duly constituted, will elect the President. He may be the first President, but you cannot call him "provisional". The word "provisional" will mean that somebody has nominated him. I do not want any aspersion cast on our first President and I therefore thought that the word "first" will be more appropriate. Under the Government of India Act of 1935 when Orissa was separated from Bihar and N. W. F. Province was created into a separate province, and when Sind was separated from Bombay and constituted as a separate province, during the transitory period, the Governors of these provinces were called the first Governors although they were nominated. I think that the word "provisional" will be unjustified and unfair to use in connection with our first President whom we shall be electing under the provisions, of this Constitution. I am therefore glad that the Drafting Committee has omitted the word "provisional". I would prefer the word "first" but the omission of the word "provisional" serves my purpose, and I have no objection to it. With these words, I commend the amendment for the acceptance of the House.

Prof. Shibban Lal Saksena: Mr. President, Sir, clause (2) of article 311A as moved by Dr. Ambedkar says that in the event of the occurrence of any vacancy in the office of the Provisional President, it shall be filled by a person elected in this behalf by the Provisional Parliament functioning under article 311 of this Constitution. My point is that that Parliament should not be called "provisional". I hope Dr. Ambedkar will see the reasonableness of this suggestion and will omit the word "provisional" before the word "Parliament", as he has done in the case of the President.

The Honourable Dr. B. R. Ambedkar: I do not think there can be any great objection to the retention of the words "provisional Parliament" I do not propose to make any change in that. It would not be called the "Provisional Parliament" but for purposes of the language of this article I think it is necessary to say that it is the Provisional Parliament.

Shri R. K. Sidhva: But I thought that Dr. Ambedkar has agreed to omit the word "Provisional".

Mr. President: No, this is with reference to the Parliament. Mr. Shibban Lal Saksena wanted that the word "Provisional" should be omitted before the word "Parliament".

Dr. P. S. Deshmukh: If that is so, I would like to move my amendment for the deletion of the word "Provisional" in the other place also.

Mr. President: Does your amendment refer to Parliament also ?

Dr. P. S. Deshmukh: Yes, Sir.

Mr. President: Mr. Shibban Lal Saksena has moved it. That will be put to the vote. I will now put the various amendments to vote. The question is:

"That in amendment No. 23 of List II (First Week), in clause (1) of the proposed article 311A the word 'provisional' be deleted".

The amendment was adopted.

The Honourable Shri K. Santhanam (Madras: General): Does it mean the word "Provisional" will be deleted before the word "Parliament" also ?

Mr. President: No; that comes later on.

The question is-

"That in amendment No. 28 of List II First Week), in clause (2) of the proposed article 311A, for the words' provisional President' in the first place where they occur, the words 'President so elected by the Constituent Assembly of the Dominion of India' be substituted."

The amendment was adopted.

Mr. President: The question is:

"That in amendment No. 28 of List II (First Week), in clause(2)of the proposed article 311A, for the words' the provisional president' in the second place where they occur, the word 'President' be substituted."

The amendment was adopted.

Mr. President: Then I take up the amendment which was sought to be moved by Dr. Deshmukh but which was actually moved by Mr. Shibban Lal Saksena.

The question is:

"That in clause (2) of the proposed new article 311A, the word 'provisional' occurring before the word 'Parliament' be deleted."

The amendment was negatived.

Mr. President: The question is:

"That article 311 A, as amended. stand part of the Constitution".

The motion was adopted.

Article 311A, as amended, was added to the Constitution.

Article 311-B

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That after article 311 A the following new article be inserted:--

Council of Ministers of the provisional President.

'311B. Such persons as the provisional President may appoint in this behalf shall become members of theCouncil of Ministers of the provisional President under this Constitution, and until appointments are' made, all persons holding office as Ministers for the Dominion of India immediately before the commencement of the Constitution

> shall become and shall continue to hold office as members of the Council of Ministers of the provisional President under the Constitution.' "

Dr. P. S. Deshmukh: Sir, I thank you for giving me this opportunity of moving this amendment of mine. I move:

> "That in amendment No. 13 above, in the proposed new article 311B, the word 'provisional', wherever it occurs, be deleted."

May I add that since the Honourable Dr. Ambedkar has accepted the sense behind this amendment I do not wish to take up the time of the House any more. It becomes more or less a consequential amendment.

(Amendment No. 15 was not moved.)

Mr. President: I take it that Dr. Ambedkar accepts the amendment.

The Honourable Dr. B. R. Ambedkar: Yes, Sir, I do.

Prof. Shibban Lal Saksena: Sir, I cannot understand this provision. On the day the new Constitution comes into force the present ministry ceases to exist and a new Council of Ministers should be sworn in. There should not be a provision as:

> "all persons holding office as Ministers for the Dominion of India immediately before the commencement of this Constitution shall become and shall continue to hold office as members of the Council of Ministers of the provisional President under this Constitution."

I think the first act of the new Constitution must be the swearing in of the new Council of Ministers. When the new Constitution comes into being it is but meet and proper that the President should call in the new Ministers to their office. If we want to provide for something, we should provide for a care-taker ministry. Let the old Ministry not be called the Ministry of the new President. I would therefore suggest that this article should be amended. You may say that until the President appoints the new Ministry the old ministry shall continue as a care-taker ministry. It looks odd that the old ministers should automatically become the Council of Ministers of the new President. There is some lacuna which should be remedied so that on the 26th January 1950 when the new Constitution comes into force the old Ministers become care-taker Ministers till the new Ministers take charge of the Government that same day.

Shri H. V. Kamath (C. P. & Berar : General): Sir, there is some force in Mr. Saksena's contention. The point that he has sought to make out is that on the day the new constitution comes into effect the whole Council of Ministers must formally cease too, exist, and they might be sworn in again. I think this is very desirable when we are promulgating the new Republic and inaugurating this new Constitution. It may be necessary that the same Ministers should be sworn In on that day.

An Honourable Member: Not necessary.

Shri H. V. Kamath: It may not be necessary, but it is very probable that the same Ministers who were Ministers before the commencement of the new Constitution may be sworn in. But from the point of view of constitutional propriety and decorum I think we will be acting wisely if the Council of Ministers bodily, en bloc, resigned on that day. The Prime Minister should submit the resignation of the Council of Ministers to the President and the President should call upon the Leader of the House to form a new Cabinet under the appropriate article of the new Constitution.

There is another point in this connection. Our Constitution has adopted an oath of office which believe is slightly different from the old oath under which ministers were sworn in. We have now an invocation of God in the oath, but if a minister happens to be an agnostic or atheist he may make solemn affirmation. Considering this matter from these various aspects I think it would be wise on our part to provide for this contingency, and to lay down that on the day the Republic is proclaimed and the Constitution inaugurated the Council of Ministers should resign formally and the President calls upon the Leader of the House to form his own cabinet again.

There is one more point which I would like Dr. Ambedkar to consider. It is a verbal objection. Are Dr. Ambedkar and the Drafting Committee quite sure that this expression "Ministers *for* the Dominion of India" is quite correct? I do not like it myself. I object to the word "for". Is it not more correct to say "Ministers of the Dominion Government of India" or "Ministers of the Dominion of India"? "For" is not quite appropriate, but if Dr. Ambedkar and other linguistic experts hold that "for" is all right, I have nothing to say.

Shri Brajeshwar Prasad: Sir, I had no intention of speaking on this occasion but since my two friends Messrs Shibban Lal Saksena and Kamath spoke on the subject I take this opportunity to express my own views on the amendment. It would have been better if this word "Dominion" had been eliminated from this article. Personally I feel that with the advent of a new age and with the establishment of a Republic in India we should have a new Cabinet. I know that there are three figures in the Cabinet which are more or less indispensable. I refer to our great leader Pandit Nehru, the valiant Sardar and the greatest scholar of Asia, the great Maulana Saheb. These three figures are indispensable in the Cabinet. Other members of the Cabinet are more or less in the nature of migratory birds........

Mr. President: I do not think the honourable Member is justified in making personal references to individual Ministers. We are not concerned with them. We are taking the ministry as a whole.

Shri Brajeshwar Prasad: I am sorry, Sir, if the word "migratory" means any reflection on our able Ministers. I thought that with the establishment of a real Republic in this country we should have men in the Cabinet who will command the enthusiastic support of young India as well. Therefore it is in the fitness of things that a wider range of choice is left in the President who may take new blood into the Cabinet which may be in accord with the needs of the hour. As far as the present members of the Cabinet are concerned I have nothing to speak against them personally, but I feel that with the new age new men are required. It is no use putting old wine in new bottles.........

Mr. Naziruddin Ahmad (West Bengal : Muslim): Mr. President, Sir, the point, though a very short one, raises a question of constitutional form. I think when the Governor- General ceases to function and a new President comes to take his place, the Ministers should vacate and should be reappointed. This seems to follow logically from first principles. The first reason is that the existing Ministers hold office "during the pleasure of the Governor-General". The "Governor-General" means the Governor-

General who is now functioning. This Governor-General would be defunct at the inauguration of the Constitution and would be replaced by some other official,--the Provisional President. There will therefore be a break on the 26th of January next, or whatever date is ultimately agreed upon, on which the new Constitution comes into effect.

As the Ministers appointed by the Governor-General and as they are constitutionally to hold office "during his pleasure", as soon as the office of the Governor-General becomes defunct, he ceases to be subject to any pleasure or pain and therefore the Ministers will no longer continue to hold office during his pleasure. Somebody else's pleasure--his successor's pleasure--comes to occupy the field. Pleasure is a personal factor and the successor's pleasure will not necessarily agree with that of his predecessor. Therefore the new President should appoint or reappoint the Ministers to indicate his own pleasure. Till the appointment is made, the old Ministry may at the most function as a Care-taker Ministry.

This is no doubt a matter affecting constitutional form, but it seems to me of fundamental importance.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, this article 311B is merely a formal article permitting the President, so to say, to carry over the Ministry that may be existing immediately before the commencement of the Constitution. This article is analogous to the other articles which we have already passed, relating to members of the Public Service Commission and to the Auditor-General. Consequently there is really no fundamental difference between those articles and this article. If those who have corn, minted upon the provisions of this article 311B contend that no Ministry ought to be appointed or function on the 26th of January, 1950, unless that Ministry has the confidence of the Parliament, I am quite prepared to accept that contention. But I do not quite understand how this article makes it impossible either for the Parliament or for the Ministry to obtain what might be called a vote of confidence. If the members of Parliament do not think that the existing Ministry is competent enough to discharge the functions which it has to perform, it is open to this House before the 26th of January to pass a vote of no confidence in the Ministry and thereby dismiss the Ministry. It would be equally open to the Prime Minister, before submitting the names of the members of the Cabinet to the provisional President, to obtain also a positive vote of confidence in himself and his Ministry from the House. If neither the Prime Minister nor the House desires to apply the--test of no confidence or confidence before the 26th of January, 1950--assuming that to be the date for the operation of the Constitution--this article 311B does not, take away the power from the House after the 26th of January to table a no-confidence motion and to dismiss that Ministry. Nor is the Prime Minister prevented by this article from coming forward after the appointment of the Ministry to obtain a positive vote of confidence in himself and the Ministry.

Therefore it seems to me that those who have commented upon the provisions of article 311B, probably under the impression that this is a surreptitious attempt on the part of the existing Ministry to smuggle themselves, so to say, under the New Constitution, have been labouring under a misapprehension. The doors are perfectly open at present, and even after the 26th of January, for the House to take such action as the House prefers and to dismiss the Ministry if they do not like it. Therefore, this article is merely, as I said, a formal article permitting the carrying over of the existing Ministry into the New Constitution.

Shri H. V. Kamath: The Honourable Dr. Ambedkar has not answered the points raised by me. What about the oath of office I referred to ?

The Honourable Dr. B. R. Ambedkar : That will be taken undoubtedly. "Appointment" means taking the oath office. Otherwise there is no appointment.

Shri H. V. Kamath: On that very day?

The Honourable Dr. B. R. Ambedkar: Yes, certainly. On that very day. "Appointment" includes oath of office.

Mr. President: I shall put Dr. Deshmukh's amendment to vote--I take it that it has been accepted by the Mover.

The question is:

"That in amendment No. 13 above, in the proposed new article 311B, the word 'provisional Wherever it occurs, be deleted."

The amendment was adopted.

Mr. President: The question is:

"That the proposed article 311B, as amended, stand part of the Constitution."

The motion was adopted

Article 311B, as amended, was added to the Constitution.

Article 312

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for article 31 Z. the following article be substituted :-

Provisions as to provisional Legislature in each State.

'312. (1) Until the House or Houses of the Legislature of each State for the time being specified inPart I of the First Schedule has or have been duly constituted and summoned to meet for the first section under the provisions of this Constitution, the House or Houses of the Legislature of the corresponding Province functioning immediately before the commencement of this Constitution shall exercise the powers and perform the duties conferred by the provisions of this Constitution on the House or Houses of the Legislature of such State.

(2) Notwithstanding anything contained in clause (1) of this article, where a general election to reconstitute the Legislative Assembly of a Province was ordered before the commencement of this Constitution, the election may be completed after such commencement as if this Constitution has not conic into operation and the Assembly so reconstituted shall be deemed to be the Legislative Assembly of that Province for the purposes of that clause.

(3) Any person holding office as Speaker of the Legislative Assembly or President or the Legislative Council of a Province immediately before the

> commencement of this constitution shall after such commencement be the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be of the corresponding State for the time being specified in Part I of the First Schedule while such Assembly or Council functions under clause (1) of this article :

Provided that where a general election was ordered for the reconstitution of the Legislative Assembly of a Province before the commencement of this Constitution and the first meeting of the Assembly as so reconstituted is held after such commencement the provisions of this clause shall not apply and the Assembly as reconstituted shall elect a member of the Assembly as the Speaker thereof.' "

The provisions are quite clean and I do not think that they require any explanation.

Mr. President: Are there any amendments to this ? I do not see any.

Shri Mahavir Tyagi (United Provinces: General): Sir, I do not think that sub-clause (3) is at all necessary. When we have already said above that the Legislative Assembly of a State or the Legislative Council of a State will remain as it is, it is not necessary that we should also say that the Speakers or the Presidents of the respective Houses will also remain as they are, for, they go with the Houses. Secondly, what I feel is but I do not know Dr. Ambedkar always might again come forward with the plea that I being a layman, he does not take any notice of me--but what feel is that the wording perpetuates the Speaker and the President of the Houses. Why should we perpetuate them ? They are liable to be "no-confidenced" out from the Assembly, so to say, but we say they shall remain as Speaker and as the President. Will that not mean that they will be irremovable ? I do not want to emphasise further, I only want to point out these words:-

"Any Person holding office as Speaker of the Legislative Assembly or President of the Legislative Council of a Province immediately before the commencement of the Constitution shall after such commencement be the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be..........."

Why should we say that ? And then--

"....... of the corresponding State for the time being specified in Part I of the First Schedule while such Assembly or Council functions under clause(1) of this article".

So long as those Assemblies and Councils function, the Speakers and Presidents of those Legislative bodies shall remain. Will that not be construed to mean that, even it the Houses do not want them and want to change them, they will not be able to do so ? That is the only little doubt that I wanted to express.

The Honourable Shri K. Santhanam (Madras: General): Mr. President, Sir I am frankly apprehensive of these transitional provisions. I do not see any definite provision fixing a time limit for the duration of these provisional Assemblies and Parliament. When France decided to constitute a Constituent Assembly after the war to frame a Constitution and act also as a provisional Parliament, they fixed a time limit of seven months. They said, "It will enact the constitution within seven months. If it is not able to do so, that Constituent Assembly will stand dissolved and will be re-elected". Now, if any such provision had been inserted in the constitution of this Constituent Assembly, I feel that this Constitution would have been finished long ago, but because there was no provision for the automatic dissolution of this Constituent Assembly we have now taken three years to frame this Constitution.

I do not know how many years the so-called provisional Parliament and Assemblies will take to conduct elections. I think it will be nothing short of a national disaster if these provisional Parliament and Assemblies perpetuate them selves. It may be *bona fide,* it may be *mala fide,* it may be anything. We know what human nature is and faced with the elections on the basis of adult franchise there is quite a possibility that Members may be apprehensive of being not returned and would like to perpetuate themselves for six months, one year or two years.

Shri R. K. Sidhva : What about Ministers? Are they not apprehensive?

The Honourable Shri K. Santhanam : Sir, Ministers depend upon Parliaments. If Parliaments are dissolved, Ministers will automatically go out. I cannot understand the logic of Members wanting to perpetuate themselves and saying only the Ministers......

Shri L. Krishnaswami Bharathi (Madras : General) : Sir, it is a bad reflection on the Members of the House to say that they are apprehensive of elections. It is a reflection which it is not necessary to make.

The Honourable Shri K. Santhanam : I am not speaking about any particular person, I am speaking about human nature as such. I am riot speaking of Members of this House but of all the Provincial Assemblies. I think we are, here as the guardians of the people of India and we should care more for their interests than for anything else. I am speaking from the point of view of principle. If you give power to a body, you cannot say that they will not exercise it. The whole Constitution is full of checks and balances. We want to limit the power of future Parliaments by the Supreme Court. We have put in the Fundamental Rights to restrict it. But here we are giving powers to these provisional Assemblies and Parliament to perpetuate themselves almost indefinitely. Therefore, we must take some measures. Either put it in the Constitution or pass a resolution or take some other measures to fix a final and definite limit for these provisional Assemblies so that the people of India will know that the new Assemblies under the adult franchise will come into operation within a reasonable time. I think it is essential to do so. I do not think any individual should take it as a personal reflection; we want it for the future of the country and for the future of the Constitution because if the coming into force of the real Constitution is unduly delayed it may become out of date and we do not know whether there will be constitutional chaos. I want to prevent any such long interregnum or chaos taking place.

Therefore I am anxious that the Constitution which we have framed should come into full existence within six months or one year at most from the commencement of the Constitution on January 26. We must give a sort of assurance to the people of India that by January 26, 1951 or some such date the new Constitution will come into force. I think this is a matter in which every Member of this House is as much interested as myself. Therefore I hope no one will take my remarks as a personal reflection on any particular people or set of people. I would like to ask Mr. Bharathi whether it is not his duty to give the assurance which I am speaking of to the people of India. I hope he will join with me in giving that assurance.

Shri L. Krishnaswami Bharathi : Sir, may I draw the Honourable Member's attention to the fact that in this very House I pleaded that the elections should be held as early as possible?

Prof. Shibban Lal Saksena: Mr. President, I am very glad that my honourable

Friend Mr. Santhanam has drawn the attention of the House to this aspect of the question. I do feel that he is perfectly correct in saying that the Constitution should say after what time the new Assemblies shall come into power. It is really correct to say that unless we provide this thing, we may perpetuate ourselves for ever although I am sure this House will not do it. We have already passed a resolution that in 1950 we shall have elections. Still, that is only a sort of an advice. This Constitution should lay down a time limit. My honourable Friend has suggested one year. Well, it all depends on how soon our present Government and the new Ministry which will be appointed will be able to conduct the elections and complete the Parliament. Whatever time is fixed, let there be an upper limit, one year, one and a half years or two years at the most. Within these two years, the new Parliament and the new legislatures must be elected. If we do not want to put this in the Constitution, let there be a resolution which should say that by that date, the new Parliament shall be elected. It would be unfair for the country and for the people as a whole that they should not know how long it will take........

Dr. P. S. Deshmukh : On a point of order, Sir, in the absence of an amendment to this effect, I do not think these remarks can have any consequence.

Prof. Shibban Lal Saksena : My honourable Friend Mr. Santhanam suggested........

Mr. President: The honourable Member is entitled to speak generally on the amendments moved. He has drawn that conclusion from the amendment and he is commenting on it.

Prof. Shibban Lal Saksena: This article 312 does not say when the life of these legislatures will be over. If you read the article carefully, it says that they shall automatically become the new legislatures. You have not put in any time limit. They may continue for ever. Therefore, I say that Mr. Santhanam has raised a correct point. We must fix some time limit either in the Constitution I think that would be better--or by some resolution so that at the end of the upper limit, these legislatures should not have any power left and a new legislature should come into existence. This is necessary not only from the constitutional point of view, but for the people of the country, because they may say that there will be delay and so on and so forth. There must be something put down here that would work as a sort of an inducement to see that new legislatures are brought into existence as quickly as possible. I cannot say what limit should be put--one year or one and a half years or two years. Recently, new Unions of States have been formed and a period of one year may not be sufficient for making arrangements in them. At any rate, the period should not exceed two years. At the end of two years, we must have a new Parliament and new legislatures in every State.

Shri B. Das (Orissa: General): Sir, I was very glad to hear my honourable Friend Mr. Santhanam voice the view that lie is very anxious that the Constitution should come into effect to a certain scheduled date. My experience of my own Congress Cabinet is that they never keep to schedule. They have avoided shouldering responsibilities which are not the responsibilities of this House or the Parliament, but the responsibilities of the Cabinet. If we fix a time limit, say January 1951, it is the responsible duty of the Cabinet Ministers and the Ministers in the Provinces to delimit the constituencies and to prepare the voters' rolls. Can my honourable Friend Mr. Santhanam or any member of the Cabinet here present tell me how far they have advanced to carry out the wishes of this august House ? We the representatives of the people arc to voice the conscious democratic opinion of the country. We have appointed these Cabinet Ministers and their Colleagues as the Executive to give effect to those constitutional aspects of the Draft Constitution. If they fail in their duties, it is no use asking this House to fix a certain date over dissolution. May I enquire suppose the date is fixed as 1st January 1951, and suppose the Executive, be that our own Congress Cabinet here or the provincial Ministries, fail to discharge this responsibility, will my honourable Friend Mr. Santhanam or those other Ministers present here tell us how the Constitution will provide either in the Constitution or in that resolution that this House will have to pass eventually, that a certain enforcement must be enjoined on the Cabinet here and in the provinces ? I can take the horse to the water, but I cannot make the horse drink. People can appoint the Ministers. But the Ministers must solve the problems for which they are appointed as the Executive head of the Government of India.

The past traditions of the Government of India and the provincial ministers do not show that they are in any hurry to do everything for democracy. I make no reflection on any Minister; but I say that their collective action to render social. justice, to remove poverty, since August 15, 1947, does not show that they are very keen to give effect to those democratic principles which have been incorporated in this Constitution. It is for the members of the Government and the Cabinet and their colleagues the other Ministers to deliberate and to bring forward a resolution which this House will consider with great sympathy. In spite of my wish to dissolve this House on the 26th of January 1950, I have no confidence, I have no hope even that the present Cabinet and their colleagues and other Ministers have thought over the problems to give full effect to this Constitution. The burden is on the shoulders of the Cabinet Ministers inside and outside and not on the Members of this House. But I am ready to support him that the House must consider a resolution and pass it that the Constitution should not be delayed. The responsibility for that, the implementation of that, is on the Cabinet Ministers here and in the provinces and not on ourselves, not on this democratic House.

Shri H. V. Kamath : Mr. President, with the speeding up of our railway trains in recent months, even of the notorious Grand Trunk Express, it was in the fitness of things that our Minister of State for Railways, Mr. Santhanam should come before the House and plead for the speeding up of the Constitution. It is inevitable, it is very desirable that he should do it, if all the Members of this House. But, even he cannot afford to forget that the Grand Trunk Express does not keep to schedule even today. Last Sunday when I arrived here, the Grand Trunk Express was five and a half or six hours beyond schedule.

An Honourable Member : The Punjab Mail also!

Shri H. V. Kamath : I do not know about the Punjab Mail; the Grand Trunk Express was six hours beyond schedule. I arrived at twenty minutes past two instead of at 8-10 or 8-15.

The Honourable Shri K. Santhanam : The honourable Member may remember that there were floods.

Shri H. V. Kamath : I am coming to that.

Shri R. K. Sidhva : With new engines, the trains are late.

Mr. President : I hope Members will not go in to the question of floods, delays in railway timings, arrival of trains. We had better confine ourselves to the Constitution.

Shri H. V. Kamath : I was just coming to that. The point raised by my honourable Friend Mr. Santhanam....

Mr. President : He did not raise the question of railway timings and floods.

Shri H. V. Kamath : I hope, Sir, you have appreciated the illustration I have given. The point I sought to make out was that we make up our minds and pass very fine resolutions, but there are hurdles created somewhere by something or other. I may remind the House that there are higher powers that rule the destinies of men and things. I would like Mr. Santhanam as a Minister of State to bear in mind that something may happen somewhere in this wide world upsetting all our plans. Suppose a war breaks out tomorrow in Europe--God forbid--then under the Constitution everything will be suspended under Chapter II and there would be no elections. Suppose, again, there is disturbance or insurrection in the country, an emergency is proclaimed and the President will take everything into his own hands.

I yield to none in my desire for early elections. Let them be held even in February next if need be, but they should be on adult franchise, and not under the old scheme of the Cabinet Mission. We passed a resolution last year asking for the preparation of electoral rolls as early as possible so as to facilitate elections in 1950. Have we implemented that in letter and spirit? How far have the Governments of the provinces and States gone ahead with this task of preparing electoral rolls? Mr. Santhanam must throw some light on this before he comes to the Assembly to plead for a deadline for elections under the Constitution. I am not opposed to dissolution of this Assembly; but what is the point in holding elections under the old scheme of 1946? If at all there should be elections, certainly we should have them under the new Constitution.

Mr. President : Mr. Santhanam did not think of the old scheme.

Shri H. V. Kamath : He mentioned the dissolution of the Assembly. and holding fresh elections.

Mr. President : Not under the Cabinet Mission plan.

Shri H. V. Kamath : I am sorry, Sir. Then the only course open is to have theta under this Constitution with which I am in agreement. But bearing in mind the difficulties that may arise, is he sure in his own mind that we will be able to hold elections if we fix a schedule? We can pass are solution as a directive to the various Governments to get in trim for the elections. Mr. Santhanam referred to the French Constitution. I have not read the latest French Constitution but I can point out to him that the Bonn Constitution as well as the Italian Constitution--the latest--do not fix a date for elections to be held under the new Constitution.

Regarding Mr. Tyagi's point, I am inclined to be in agreement with him, that there is no need for incorporation of clause (3) in this article. It seems that by force of habit we have incorporated this. May I point out to Dr. Ambedkar and the Drafting

Committee that Chapter 3 of Part VI refers to State legislatures? That is the main heading, and then officers of the State legislature is; only a part of it a sub-chapter. When we are providing for the continuance of the entire legislature of the State as an interim measure, is there any sense for specially mentioning the Speaker, and if the Drafting Committee and Dr. Ambedkar think it necessary, then why not mention the Deputy Speaker and the Deputy President of the Upper House also? They have been referred to in this chapter 3 of Part VI Otherwise, delete it altogether because they are comprised in the legislature as, a whole, and clauses (1) and (2) of this article 312 refer to the State legislature as whole, and therefore every thing else, including conduct of business etc. is comprised in this chapter 3. If this clause is deemed necessary, why not make provision for the privileges and immunities of members, saying that they will continue as before the commencement of the Constitution or something similar to that? I suggest therefore that clause (3) may be deleted.

Mr. President : Mr. Bharathi, I think you had better cut short the discussion of this matter which really does not arise out of the article moved.

Shri L. Krishnaswami Bharathi : Very well, Sir. I had absolutely no intention of speaking and I shall very briefly bring to your notice and the notice of this honourable House what we have done. Mr. Santhanam's point of view is that, unless we put down a definite date, there might be an impression created that this House is likely to perpetuate itself and delay elections with all its disastrous consequences. I want to bring to your notice and to the notice of this House that this House has already passed a Resolution moved by the Honourable Pandit Nehru on the 8th January 1949 when the Vice-President was occupying, the chair. I was only anxious to draw the attention to the aspect of the matter. The resolution reads thus:-

> "Resolved that instructions be issued forthwith to the authorities concerned for the preparation of electoral rolls and for taking all necessary steps so that elections to the legislature under the new Constitution may be held as early as possible in the year 1950."

That is the resolution we passed on the 8th January 1949. Speaking on this Resolution Dr. Ambedkar has clearly indicated the scope of this resolution. I shall only read a portion.

> "The aim of the Resolution is merely to make a declaration that it is the intention of this Assembly that as far as possible election may be held, sometime in 1950, but the object of the Resolution is to convey some positive directions to the authorities in charge of preparing the electoral rolls which is the basis of all elections. It would be futile and purposeless merely to make a declaration that this Constituent Assembly desires that the election should take place in 1950, etc."

Therefore we have already passed a resolution, and unless Mr. Santhanam thinks this a mere pious resolution without any intention to give effect to it and I think he will not give that interpretation--this Assembly means and it the intention to hold elections as early as possible. I am only anxious that there should not be an impression created outside that this Assembly would like somehow to perpetuate itself. Far be it from our minds, to delay the elections a minute longer than is absolutely necessary by circumstances of the case, but there is this practical difficulty. Suppose we put in a date, what does it mean? If due to some unforeseen circumstances, we are unable to hold the elections, what are we to do? Therefore, what I say is, let it not be understood that the omission to mention a date means that this House wants to perpetuate itself. We have already passed a resolution and we propose to stand by it and it is the intention of the House to hold the elections as early as possible. Sir, this is the only point that I want to bring to the notice of the House.

Mr. President : I do not think it is necessary to continue the discussion on this point. If I had notice that this point would be raised I would have got a report up-to-date with regard to the steps that have already been taken. and if possible, I shall place before the House, if not today, the next day, a report showing what steps have already been taken and what progress has already been made with regard to the preparation of rolls and other matters in connection with the elections. As was pointed out, it was passed by this Assembly that steps should be taken in this direction, and it is the Constituent Assembly Secretariat Which has been in correspondence with the Provincial Governments with regard to 'the steps which have been taken. And steps have been taken. I only desire Honourable Members to remember this that we have decided to have adult franchise, and if we just consider what that implies, the tremendousness of the task with be apparent. With our present population, and with the information at our disposal based on the enrolment of voters, it seems our electoral roll will comprise anything between 170 and 180 million names. The mere act of printing this is Stitch a big and tremendous job that the governments are being hard put to it, to find the presses which will under take this big job. I was my self calculating one day the thickness of the volume of the electoral roll for all the provinces and I found that it will come to nearly three-fourth of a furlong. If we bear that in mind, you will appreciate that if there is delay, the delay will not be intentional on the part of either the Provincial or the Central Government, but because of the bigness of the job itself

I think that should set at rest all speculations on that point. We are trying our best, and as at present advised, the information which has come to us from the Provinces leads us to hope that the elections will be held some time in the winter of 1950-51, that is to say, any time between November 1950 and February or March of 1951. That is what we are expecting. Of course, if unforeseen difficulties arise, we do not know what may have to be done at that time.

Shri R. K. Sidhva : Sir, after what you have said, I do not want to make any speech. But I only want to say that the speech that Mr. Santhanam has made might create a very bad impression in the minds of the public outside this Hall. Therefore, I am very glad, Sir that you have clarified the position, I need only add that Mr. Santhanam, a responsible Minister should not have spoken in such an irresponsible manner. After this Constituent Assembly is over, who is to fix the election date? It is the cabinet. Let them fix it after six months, but it is for them to decide, and it is not proper for him to say that the House wants to perpetuate itself. I am very glad, Sir, that you have indicated the great interest you have taken to see that the elections do take place as early as possible. I was obliged to make this statement lest Mr. Santhanam's remarks should create any wrong impression. I am very sorry that he has made the statement that he has made.

Mr. President : I do not think he said so. I do not think that the remark is justified. I do not want any further discussion. I do not think it is necessary. If any Member wants to speak about the article he can do so.

Shri M. Ananthasayanam Ayyangar (Madras : General) : Sir, elaborate provisions have been made for the retention of the existing House or Houses of Legislatures, and there are provisions for the appointment of Ministers. But there is no provision for the dissolution of any House even in this transitory period, in case that becomes necessary. Sir, such a dissolution may become necessary, and from that point of view, Mr. Santhanam's suggestion becomes very necessary. Does anybody wish to prolong the life of this House? No. But having regard to the absence of provisions for the ....

Shri R. K. Sidhva : Sir, you said there should not be any more discussion on this point. Is this relevant?

Shri M. Ananthasayanam Ayyangar : I am only referring to the absence of provisions for dissolution of existing Houses of Legislatures. I am glad Mr. Sidhva has taken up the position of the President to say whether this is relevant or not relevant. I was only saying something about the absence of provisions for dissolution of Houses. If the House sits for three or four years, there should he some provision for its dissolution, if it becomes necessary. I therefore request honourable Members to consider this seriously. Are we to give a charter to the Legislatures, to the existing Houses to continue for over and for ever, even if it is not in the interest of the country? Many matters may happen which may require the Members going to the electorate. For instance, it may be a question whether prohibition should be introduced in some provinces where it is not introduced. Or it may be some other important matter on which we may have to go to the electorate. Then, what is to happen? That is a lacuna which must be filled up. I would urge even now that it is not too late to have a provision regarding dissolution of existing Houses.

Then as regards the privileges which my Friend referred to, I believe the existing Houses will continue to be governed and regulated by the existing provisions regarding the scope, subject matter etc. These will be governed by the Lists that are attached to this Constitution. In all other respects, such as the subject matter, the scope of jurisdiction and other activities, the rules and regulations under which they work, they will be governed by the Constitution. Therefore, whatever privileges are conferred upon the Members of Parliament in the earlier sections that we have passed, they will apply to the Members of Parliament. There is only this exception that there will not be election during the transitory period. All the other provisions regarding procedure in Parliament, and the powers of the legislatures in the Provinces will be regulated by the powers etc. which have been conferred by the Act.

Pandit Lakshmi Kanta Maitra (West Bengal : General) : Sir, I would like to get this clear. What dissolution is the honourable Member referring to?

Shri M. Ananthasayanam Ayyangar : The dissolution of House or Houses of Legislature. It may happen with regard to a particular matter. There may be serious difference of opinion, and they may have to go back to the country.. The dissolution may be by the Prime Minister or the Governor may dissolve the legislature so as to have a better verdict from the people regarding an important matter.

Pandit Lakshmi Kanta Maitra : He means to say that in the interim period a chance should be given to the electorate to give its verdict on a particular matter?'

Shri M. Ananthasayanam Ayyangar : Yes.

Pandit Lakshmi Kanta Maitra : Even during the interim period? And have a general election also ? Absurd.

Shri M. Ananthasayanam Ayyangar : It all depends how long the interim period lasts. If it is a short one, there may not be any need for the dissolution. But what if it is otherwise? We know every sitting Member win be anxious to continue and every other person who has not had a chance may like to have the House dissolved. I am not casting any aspersions on any particular Member. I only say that in the circumstances I have mentioned, there must be some provision whereby, if necessary, an opportunity can be had of changing the Assembly and going to the electorate.

The Honourable Dr. B. R. Ambedkar : Sir, after what has fallen from you, I do not think it is necessary for me to pursue the matter any further. So far as the merits of the amended article are concerned, I do not think anything has been said which calls for a reply.

Shri H. V. Kamath : What about the clause concerning the Speaker?

The Honourable Dr. B. R. Ambedkar : That was there in the original draft-

Mr. President : I will now put article 312 to vote. The question is:

"That the proposed article 312 stand part of the Constitution."

The motion was adopted.

Article 312 was added to the Constitution.

Articles 312A to 312E, 312G and 312H

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That after article 312, the following new articles be inserted :--

Provisions as to provisional Governor of Provinces	'312A. Any person holding office as Governor in any Province immediately before the commencementof this Constitution shall after such commencement be the provisional Governor of the corresponding State for the time being specified in Part I of the First Schedule until a new Governor has been appointed in accordance with the provisions of Chapter It of Part VI of this Constitution and has entered upon his office.
Council of Ministers of Provisional Governors.	312B. Such persons as the provisional Governor of a State may appoint in this behalf shall become members of the Council of Ministers of the provisional Governor under this Constitution, and until appointments are so made, all persons holding office as Ministers for the corresponding State immediately before the commencement of this Constitution shall become and shall continue to hold office as members of the Council of Ministers of the provisional Governor of the State under this Constitution.

Provisions as to provisional Legislatures in State in Part III of the First Schedule.

312C. Until the House or Houses of the Legislature of a State for the time being specified in Part III of the First Schedule has or have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the body or authority functioning immediately before such commencement as the Legislature of the corresponding Indian State shall exercise the powers and perform the duties conferred by the provisions of this Constitution on the House or Houses of the Legislature of the State so specified.

Council of Ministers for States in Part III of the First Schedule.

312D. Such persons as the Rajpramukh of a State for the time being specified in Part III of the First Schedule may appoint in this behalf shall become members of the Council of Ministers of such Rajpramukh under this Constitution and until appointments are so made all persons holding office as Ministers immediately before the commencement of this constitution in the corresponding Indian State shall become and shall continue to hold office as members of the Council of Ministers of such Rajpramukh under this Constitution.

For article 312E I propose amendment No. 21:

"That in amendment No. 16 above, for the proposed new article 312E, the following be substituted :-

'312E. For the purposes of elections held under any of the provisions of this Constitution during a period of three years from the commencement of this Constitution the population of India or any part thereof may, notwithstanding anything, contained in this Constitution, be determined in such manner as the president may by order direct.' "

Provision as to Bills pending in the dominion Legislature and in the Legislatures of Provinces and Indian States.

"312G. A Bill which immediately before the commencement of this Constitution was pending in the Legislature of the Dominion of India or in the legislature of any Province or Indian State may, subject to any provision to the contrary, which may be included in rules made by Parliament or the Legislature of the corresponding State under this Constitution, be continued in Parliament or the Legislature of the corresponding State, as the case may be, as, if the proceedings taken with reference to the Bill in the Dominion Legislature or in the Legislature of the Province or Indian State had been taken in Parliament or the Legislature of the corresponding State.

Transactions occurring between the commencement of the Constitution and the 31st of March, 1950.

312H. The provisions of this Constitution relating to the Consolidated Fund of India or of any State and appropriation of moneys out of such fund shall not apply in relation to moneys received or raised or expenditure incurred by the Government of India or the Government of any State between the commencement of this Constitution and the thirty first day of March, 1950, both days inclusive, and any expenditure incurred during that period shall be deemed to be duly authorised if the expenditure was specified in a schedule of authorised expenditure authenticated in accordance with the provisions of the Government of India Act, 1935, by the Governor- General of the Dominion of India or the Governor of the corresponding Province or is authorised by the Rajpramukh of the State in accordance with such rules as were applicable to the authorisation of expenditure from the revenues of the corresponding Indian State immediately before such commencement."

I do not think there is anything necessary to say by way of explanation of these articles.

There are two amendments Nos. 18 and 19 on the Notice Paper proposing to omit the word 'provisional' in articles 312A and 312B. I propose to accept these amendments in consonance with what we have already done.

Dr. P. S. Deshmukh : Mr. President, I move:

"That in amendment No' 16 above, in the proposed new article 312A, the word 'provisional', wherever it occurs, be deleted."

"That in amendment No. 16 above, in the proposed new article 312B, the word 'provisional', wherever it occurs, be deleted."

I am glad that the amendments are acceptable to Dr. Ambedkar. My reason for these are that it would be derogatory to the dignity of the President or the Governor to be described as 'provisional'. I commend the amendments for the acceptance of the House.

Shri H. V. Kamath : I move:

"That in amendment No. 16 above, in the proposed new article 312E, for the words 'by Order directs' the words 'may, with the approval of parliament, direct' be substituted."

If my amendment is accepted by the House this new article 312E will read as follows:

"For the purposes of elections held under any of the provisions of this Constitution during a period of three years from the commencement of this Constitution the population of India or of any part thereof may, notwithstanding anything contained in this Constitution, he determined in such manner as the President may, with the approval of Parliament, direct."

This 312E is somewhat different from the draft of the new article as it reached us a day earlier. Anyhow my amendment would apply to this draft article as well. The issue that this proposed new article raises is that of the elections to be held under this Constitution.

I believe the House will agree with me when I say that elections are a matter with which Parliament is and will be very intimately concerned, and will be interested in. I see no reason why Parliament should be left out of the picture so far as determination of the population of India or of any part thereof is concerned. We have just adopted an article providing for various matters upon the inauguration of the Constitution and the Proclamation of the Republic, and there will be an interim Parliament also functioning with effect from that date. To my mind there is no inherent difficulty about consultation by the President with this Parliament. I have not sought to provide that these matters must be provided for by Parliament. I only want that whatever measures, whatever action, whatever steps, are taken by the President in this connection must be laid before Parliament. My amendment comes to this, that whatever measures are taken by the President in this regard must meet with the approval of Parliament.

I do not wish to dilate or expatiate upon the desirability or the soundness of the amendment which I have moved. I am sure it will commend itself to the House, considering the matter with which this article deals. In the determination of the population of India or any part thereof I do not want that the President should act on his own or on the advice of his Council of Ministers. It is a very vital matter concerning elections to legislatures and this House will do well to provide that any measures taken by the President in this regard should be laid before Parliament for its consideration, and approval or otherwise. Otherwise we will be striking at the very roots of the Constitution that we are passing, where normally the supremacy of Parliament has been recognised. We are providing for a sovereign democratic Republic, and I do not see why in this matter of elections Parliament should not be taken into confidence by the President. I cannot see any inherent difficulty in or objection of the President laying his measures before Parliament. The straightforward course will be for the President to lay his decrees in this connection before Parliament, seek its approval and obtain it.

Mr. President : There is no other amendment to this article; but there is an amendment of which notice has been given by Mr. Sidhva but that relates really to article 311 which deals with the Central Legislature. When that article comes up, that amendment will become relevant, but it is not relevant to this article which deals with the provincial legislatures. We shall hold it over until article 311 comes before the House for consideration. Does anyone else wish to say anything on this ?

Prof. Shibban Lal Saksena : Mr. President, Sir, this is an omnibus article which provides for the needs of the transitional period. I only want to comment on article 312E and here I support Mr. Kamath in so far as he wants that the population may be determined by the President but it must be approved by Parliament. In fact, the original article 312E was more comprehensive. The revised article 312E says-

> "For the purposes of elections held under any of the provisions of this Constitution during a period of three years from the commencement of this Constitution the population of India or of any part thereof may, notwithstanding anything in this Constitution, be determined in such manner as the President may be order direct."

I think this too wide a power to give to the President. Here is this House which, it is proposed, will become the new Parliament. This House is passing a Constitution and we are providing here for the transitory period. If anything arises during transitory period for which there is no provision in the Constitution, then this Constituent Assembly will still be there as the new Parliament. If there is any difficulty, it can be referred to Parliament and Parliament can make the necessary law for the purpose.

I therefore do not think that we should burden our Constitution with powers given to the President for things not provided for in the Constitution. It is quite possible that during the transitory period matters may arise for which there is no provision in the Constitution, but which we should not permit the President to be the authority to decide. This very Parliament will be there. If any lacuna is seen, the President can refer it to this House and this House can frame a law providing for that contingency. In fact, the members of the Parliament will be elected on the basis of population. For a population of not less than five lakhs and not more than seven and a half lakhs there will be one representative in this House. So, determination of the population becomes very important and this should not be left to the sweet will of the President, which means actually the advice of the Ministers. To leave such an important power in the hands of the President will, I think, be unfair to this House and to the country. The amendment moved by Mr. Kamath is very fair, and if there is any action taken by the President on such an occasion, it should be laid before Parliament.

Then, Sir, I do not see any provision here regarding constituencies. I would like Dr. Ambedkar to inform us whether there is any provision in the Constitution for the delimitation of constituencies. Or, does he want to leave it entirely to the Election Commission? Formerly, under article 312B the constituencies were also to be delimited by the President. I am glad that he has omitted the provision. I do want to know whether any provision is made in the Constitution for the report of the Delimitation Commission to be submitted to the Parliament for approval. It should in the normal course be submitted to the Parliament which will come into existence in the coming January.

The Honourable Dr. B. R. Ambedkar : I cannot accept this amendment. My Friends Mr. Kamath and Prof. Saksena have read a great deal into this article 312E. As a matter of fact the article is of very limited importance and the question that is dealt with in this article is the determination of the population of any particular area. My friends very well know that according to the article which we have already passed the population for purposes of election is to be taken as determined by the last census. It is also accepted that having regard to the partition of India the census figures for 1941 cannot be taken as accurate, and consequently the delimitation of constituencies and the fixation of seats cannot be based upon the truncated provinces whose population figures have been considerably disturbed. Therefore, it is as well to have some one in authority to determine what the population should be taken to be and whether the population is to be taken as enumerated in the census or by a fresh enumeration or, as I said, by merely determining the population on the basis of the voting strength. These are the matters that are left to the President and I do not see what the approval of Parliament is going to do in a matter of this sort. It is a purely administrative matter necessitated by the special circumstances of the case and I think it is much more desirable to leave the matter to the President, if we want really that the elections should be expedited. I am therefore unable to accept the amendment moved by my Friend Mr. Kamath.

Shri H. V. Kamath : Has Dr. Ambedkar any objection to the principle of my amendment?

The Honourable Dr. B. R. Ambedkar : I do not accept it. The import of this article is very limited. It is the determination of the population, not delimitation of constituencies. The delimitation of constituencies will take place according to the provisions of the Constitution.

Mr. President : The question is:

"That in the proposed new article 312A, the word 'provisional', wherever it occurs be deleted".

The amendment was adopted.

Mr. President : The question is:

"That in the proposed new article 312B, the word 'provisional', wherever it occurs, be ,deleted."

The amendment was adopted.

Mr. President : The question is:

"That in the proposed new article 312E, for the words 'by Order directs' the words may, with the approval of Parliament, direct' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That proposed article 312A, as amended, stand part of the Constitution."

The motion was adopted.

Article 312A, as amended, was added to the Constitution.

Mr. President : The question is:

"That proposed article 312B, as amended, stand part of the Constitution."

The motion was adopted.

Article 312B, as amended, was added to the Constitution.

Mr. President : The question is:

"That proposed articles 312C and 312D stand part of the Constitution."

The motion was adopted.

Articles 312C and 312D were added to the Constitution.

Mr. President : The question is:

"That proposed article 312E, as amended, stand part of the Constitution."

The motion was adopted.

Article No. 312E, as amended, was added to the Constitution.

Mr. President : The question is :

"That proposed articles 312G and 312H stand part of the Constitution."

The motion was adopted.

Articles 312G and 312H were added to the Constitution.

Articles 313

Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for article 313, the following be substituted :-

Power of the President to remove difficulties.

313. (1) The President may, for the purpose of removing any difficulties, particularly in relation to the transition from the provisions of the Government of India Act, 1935, to the provisions of this Constitution, by order, direct that this Constitution shall, during such period as may be specified in the Order, have effect subject to such adaptations, whether by way of modification, addition or omission, as he may deem to be necessary or expedient:

Provided that no such order shall be made after the first meeting of Parliament July constituted under Chapter II of Part V of this Constitution.

(2) Every order made under clause (1) of this article shall be laid before each House of Parliament."

This is a reproduction of the provision contained in the Government of India Act which is necessary for the transition period.

Dr. P. S. Deshmukh : Sir, there are four amendments standing in my name, which I beg to move:

"That in amendment No. 23 of List I (First Week), in the proposed article 313, in clause (1), the brackets and figure'(1)'and clause (2) be deleted."

"That in amendment No. 23 of List I (First Week), in clause (1) of the proposed article 313, after the words 'The President may' the words 'on being moved by Parliament or any Provincial Legislature in that behalf' be inserted.,,

"That in amendment No. 23 of List I (First Week), in clause (1) of the Proposed article 313, for the words 'whether by way of modification, addition or omission' the words by way of modification,' be substituted".

"That in amendment No. 23 of List I (First Week), in clause (2) of the proposed article 313,the words 'for their approval' be added at the end."

The very nature of my amendments makes quite clear the intention in regard to these amendments of mine. The powers under this provision as it has been proposed in article 313 are certainly similar to those which were conferred on His Majesty by section 310 of the Government of India Act. But the powers so conferred by that Act were considerably limited and there was in any case a limiting period of six months provided for in section 310. There is no such provision here and it is also not at all ascertainable as to when the first meeting of the new Parliament may be field unless the proviso "Provided that no such order shall be made after the first meeting of Parliament duly constituted under Chapter II of Part V of this Constitution" means a meeting of this House continued after the 26th January, the date on which the new Constitution will come into effect. In that case I would not like to press my amendment.

But if these powers which are going to be conferred on the President are to continue till the new Parliament comes into being and starts functioning, as appears obviously the case, then I consider that the powers are extraordinarily wide and the mere limitation of these orders being placed before the Parliament would not be quite enough. For even apart from the powers that we have conferred on the President so far as the withdrawing of any of the provisions of the Constitution is concerned, this is a provision which is contemplated to be made specifically for the removal of difficulties. But if these provisions are meant to solve the difficulties, why should it not be possible to say that the proposal should emanate either from Parliament, or from the Provincial Legislatures ? if that safeguard is there, then there will be no difficulty in allowing the President, not only by way of adaptations to modify, but to add or even omit provisions from this Constitution. So in one of my amendments I have suggested that these modifications or additions or omissions should proceed only on the recommendation of Parliament or on the recommendation or suggestion of any Provincial Legislature.

It is obvious that the amendments I have proposed are in the alternative. There are two sets of amendments. If it is possible to provide that the orders in this connection of the President shall be limited to such matters as would be suggested by Parliament or the Provincial Legislatures, then there would be no need of the other sets of amendments. But if that is not acceptable then it would be necessary to provide that not only should the orders be laid before Parliament but they should also seek the approval of Parliament.

If it is possible for Dr. Ambedkar to throw any light on the observations I have made and to clarify the matter, I will see my way not to press these amendments. But I personally think that although it is based on section 310, there is no limitation so far as the time is concerned, and if we leave the provision as it is I think we are conferring very large and extensive powers of even omission and addition to the whole Constitution on the simple excuse that could be easily put forward that it certain provision leads to difficulties or certain other provision is necessary for the removal of a difficulty. There is no definition of the word "difficulty" and any difficulty which the President in his individual discretion considers a difficulty would be sufficient excuse for him to take advantage of this article and it will not be challengeable in any court of law. It is therefore capable of being misinterpreted to the detriment of the Constitution and the country. In view of that, I would suggest that this may be considered a little more carefully if possible or some explanation given so that I might decide whether to press my amendments or not.

Shri H. V. Kamath : Mr. President, there is an amendment in my name No. 3320 in the printed list of amendments, volume II--but I do not propose to move it. I would, however, like to say this much, that I am afraid that the Drafting Committee has not quite accurately described this transition through which we are passing. The sankrant which has overtaken us is somewhat different. The transition referred to by the Drafting Committee in this proposed article refers to the period between the Government of India Act, 1935 and this Constitution. There has been a slip somewhere--the Drafting Committee to my mind has tripped, and has not accurately described the present stage of this transition. We are being governed not under the Government of India Act, 1935, but that Act of 1935 as adapted by the Indian Independence Act of 1947. So my friend Dr. Ambedkar who has got such an eye to constitutional forms and propriety, and the constitutional pandit that he is, would do well, to describe this transition more accurately than fie has done. It would be more correct to say "the transition from the provisions of the Government of India Act, 1935 as adapted under the Indian Independence Act of 1947 to the provisions of this Constitution". It is plain as a pike-staff that the original Act of 1935 has ceased to exist and we are governed by the adapted Act. It would be better for him and the Drafting Committee to amend this--it can be amended--and I hope we will find it in a different form at the Third Reading. The House, I am sure, will have no objection to this amendment. I have not given notice of it, but as Dr. Ambedkar moved it today it struck me that even he--it is said, "Homer nods' has failed to notice the inaccuracy or the impropriety of the description of the transition in which we are living.

Prof. Shibban Lal Saksena : Mr. President, Sir, this article is intended really to provide for any contingency which may arise during the transition from the Government of India Act, 1935, to the new Constitution. It is assumed that there might be some lacuna in the Constitution which we have drafted in regard to which the President should be empowered to make provisions during the transitional period. But I feel that the powers given to him in this article are very wide. It says "this Constitution shall.... have effect subject to such adaptations, whether by way of modification, addition or omission, as he may deem to be necessary or expedient". Therefore the President is empowered to alter the Constitution, to omit sections of the Constitution or to modify them on the plea that it is necessary for the transition from the Government of India Act to the New Constitution. Of course, that means that if the Constituent Assembly had foreseen that contingency it would have made provision for it. I suggest that if the contingency should arise, which has not been foreseen and for which Dr. Ambedkar wants to empower the President with powers to modify, add or omit parts of the Constitution, this very House as Parliament should be able to do it. Why should not this very Parliament be then called upon to provide for the lacuna which may have been found.

I therefore think that this power is wholly unnecessary. What should be done is this: During this transitional period the Parliament should be empowered to provide for and fill any lacuna which may be discovered. To arm the President with power to omit something or to add something in the Constitution is something which is unparalleled in any other Constitution. It is most preposterous that the President should have this power even when this very Constituent Assembly will be there as the Parliament of the nation. This power for the President is wholly undemocratic and should not be allowed. The Parliament should be called upon to provide for and to fill any lacuna which may be found.

If Dr. Ambedkar insists on having it, then I would suggest that we accept the amendment of Dr. Deshmukh, amendment No. 33, so that if the President wants to make any modifications by way of additions or omissions then this Parliament should be called upon to approve them or disapprove them or modify them within a month or so. It must not be left entirely to the President to have such wide powers and the House should not arm him with these powers.

The Honourable Dr. B. R. Ambedkar : Sir, there seems to be considerable misapprehension as to the necessity of the provisions contained in article 313. My Friend Dr. Deshmukh who has moved his amendment very kindly said that if I gave a satisfactory explanation as to the provisions contained in article 313 he would not press his amendment. With regard to article 313 I think certain facts will be admitted. The first fact which I expect will be admitted on all hands is this. During the transition period there are bound to arise certain difficulties which it is not possible for the Drafting Committee, or for the matter of that any Member of this House, to fully foresee right now and to make any provision. Therefore, it is necessary that there should reside somewhere some power to resolve these unforeseen difficulties.

The question therefore is to what extent and tip to what period these powers should be lodged in that particular authority. My Friend, Dr. Deshmukh, said that under section 310 of the Government of India Act, the power was to last for six months. I think file is under a mistake. The power was to last for six months after Part III had come into operation. Ours is a very limited provision. The power to resolve difficulties by constitutional provisions vested by article 313 would automatically come to an end on the day on which the new Parliament under the new provisions comes into existence. We therefore do not propose under this article to allow the President to exercise the powers given to, him under 313 a day longer than the proper authority entitled to make amendments comes into being. That is one feature of this article 313.

Admitting the fact that difficulties will arise and that they must be resolved and the power must vest with somebody, the question that really arises for consideration is this : whether this power should vest in the President or it should vest in the provisional Parliament. There cannot be any other alternative. The reason why the Drafting Committee has felt that it would be desirable to adopt the provisions contained in article 313 and vest the power in the President is because the duration of the transitional Parliament is so small and it might be busy with so many other matters requiring Parliamentary legislation that it would not be possible for the Parliament sitting during the transitional period to grapple with a matter which must be immediately solved.

Let me give one or two illustrations of the difficulties that are likely to arise. By Our Constitution we leave made considerable changes in the powers of taxation of the States Lind the Centre. On the 26th January next, when the Constitution comes into existence, the powers of taxation of the Indian States enjoyed by them under the existing Government of India Act would automatically come to an end. It would create a crisis and therefore this matter should be regularised. If we were to get it regularised by the provisional Parliament, I think my friend would realise that it would take such a long time that the crisis would continue. Therefore, rather than adopt the ordinary Parliamentary procedure of having a Bill read three times, sent to Select Committee, having a consideration motion, circulation and so on, I think it is desirable, for the purpose of saving the Constitution from difficulties, to lodge this power with the President so that he may expeditiously act. Therefore, as I said, on the merits the provision is necessary. Comparing it with the provisions contained in section 310, ours is a much limited proposal, and I submit that having regard to these circumstances there cannot be any serious or fundamental objection to the House accepting article 313.

With regard to the point made by my Friend Mr. Kamath, I think he will realise that there is no error on the part of the Drafting Committee in referring to the Government of India Act, 1935, without making a distinction between the original Statute and the Statute as adapted, because he will see that the Statute as adapted itself provides that its short title shall be, "Government of India Act, 1935", and I have no doubt that it is in that sense that it will be understood when this article comes to be interpreted.

Dr. P. S. Deshmukh : May I ask a question? If the Parliament is asked to approve the order passed by the President would there be any harm?

The Honourable Dr. B. R. Ambedkar : But 'approval' means what? It may nullify the action taken by the President, and the object of this provision is to provide an effective remedy. That way it cannot come into force quickly while what we want is that the matter should come into force at once.

Mr. President : I shall put the amendments now. Amendment No. 37 moved by Dr. Ambedkar.

The question is:

"That in amendment No. 23 of List I (First Week), in clause (2) of the proposed article 313, the words 'each House of' be deleted."

The amendment was adopted.

Dr. P. S. Deshmukh : Sir, I beg leave to withdraw my amendments Nos. 30, 31 and 32 but not 33.

Amendments Nos. 30, 31 and 32 were, by leave or the Assembly, withdrawn.

Mr. President : The question is:

"That in amendment No. 23 of List I (First week), in clause (2) of the proposed article 313, the words 'for its approval' be added at the end."

The amendment was negatived

Mr. President I shall now put article 313 as proposed as amended by Dr. Ambedkar's amendment to vote.

The question is:

"The proposed article 313, as amended, stand part of the Constitution."

The motion was adopted.

Article 313, as amended, was added to the Constitution.

Mr. President : I think we have no other item on the Order Paper. We have to adjourn now.

The Honourable Shri Satyanarayan Sinha (Bihar : General) : We may meet at ten o'clock on Monday.

Mr. President : We adjourn till Ten o'clock on Monday.

The Assembly then adjourned till Ten of the Clock on Monday the 10th October, 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME X

Monday, the 10th October 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the pledge and signed the Register:-

Shri Hira Vallabh Tripathi (United Provinces : General).

DRAFT CONSTITUTION-*(Contd.)*

New Article 283-A

Mr. President : We shall now go on with the consideration of the articles, 283A-Mr. Munshi.

Shri K. M. Munshi (Bombay : General) : Mr. President, Sir I beg to move the new article 283A which is on List I of the Second Week. The article which I submit to the House runs as follows:-

Provision for protection of existing officers of certain services.

> "283.A. Except as otherwise expressly provided by this Constitution, every person who, being a member of a service specified in clause (2) of article 282-B of this Constitution or a service which was known before the commencement of this Constitution as an AR India service continues on and after such commencement to serve under the Government of India or of a State shall be entitled to receive from the Government of India and the Government of the State, which he is from time to time serving, the same conditions of service as remuneration, leave and pension, and the same rights as respects disciplinary matters or rights as similar thereto as changed circumstances may permit as that person was entitled to immediately before such commencement."

Sir, as honourable Members will see, the original draft article which was circulated had these words:

> "been a member of the service specified in clause (2) of article 282B of this Constitution or a Service which was known before the commencement of this Constitution as an All India Service."

This included a much wider category of civil servants and it has now been restricted only to members of the Civil Service of the Crown in India who continue on and after the commencement of this Constitution to serve under the Government of

India or of a State. Therefore, there is no material change except that the guarantee that was given by the Independence Act to certain members of the Civil Service has been continued and the wider implications of the clause as originally submitted has now been restricted.

In this connection, I wish to draw the attention of the House that in view of certain guarantees that were given before 15th August, 1947 by the leaders of the Nation who negotiated with the British Government some assurances found a place in Section 10 of the Independence Act. Section 10(2) of the Independence Act runs as follows:-

I am only reading the material part:

"Every person who having been appointed by the Secretary of State, or Secretary of State in Council, to a civil service of the Crown in India continues on and after the appoint. ad day to serve under the Government of either of the now Dominions of of any Province or part thereof;"

(b) is not material for the purpose of this article-

"shall be entitled to receive from the Governments of the Dominions and the Provinces or parts which he is from time to time serving or, as the case may be."

The same words are adopted in article 283A. Practically this is a reproduction of clause 2 (a) of Section 10 of the Independence Act and follows the assurances that have been given again and again by our national leaders before 15th August and by our Government from time to time. I therefore submit that this article should be accepted.

Mr. President : There are several amendments to this article. 124-Mr. Kamath.

Shri H. V. Kamath : (C. P. & Berar : General Mr. President, I am missing Dr. Ambedkar today and I hope if he is unwell.........

Mr. President : He is engaged elsewhere.

Shri H. V. Kamath : I move amendments **124 up to 131 inclusive.

Mr. President : You need not read them. You may read the article as it would emerge after incorporating your amendments.

Shri H. V. Kamath : If the amendments that I propose were accepted by the House, this article 283A would read as follows:-

"Except as otherwise provided by this Constitution, every person who, having been appointed by the Secretary of State or the Secretary of State in Council to the Civil of the Crown in India continues on and after the commencement of this Constitution to serve under the Government of India or of a State, shall be entitled to receive from the Government of India or the Government of the State as the case may be, conditions of service as regards salary, leave and pension and rules of conduct and discipline, as similar as the changed circumstances may permit, to what that person was entitled to immediately before such commencement."

Sir, when I read this article 283A my first reaction was that it had been in a hurry. The construction of the article is, to my mind execrable, and I will not be far wrong if I say that the last portion of it seems to have been messed up very badly. I am talking about the construction of it, and I feel that if it is left as it is, the Drafting Committee and ultimately the Assembly which passes it will be held up to ridicule. Perhaps partly be cause this is a foreign language, it is so, and this is an argument in itself to promote our *Rashtra Bhasha* as soon as possible so as to enable us to express ourselves much better in our own language.

Sir, the first amendment is a merely verbal one and I shall not bother to speak about it very much. I would leave it to the good sense of the Drafting Committee.

The second amendment-No. 125-deals with the antecedent of the words "Government of India and of a State." Naturally, to my mind, the sequence of that also must be "the Government of India or of a State" on the fines of their antecedent. Why put in the word "and". The correct word should be "or".

Amendment No. 126 seeks to substitute the phrase "as the case may be" for the words "which he is from time to time serving." It is not necessary to say "which he is from time to time serving". It may be that he is serving the Government of India or the Government of a State. But if you use the phrase, "as the case may be" it brings out the meaning equally well, and from the point of view of constitutional terminology or parlance also, I think it is a far better and a far happier expression.

Then I come to another verbal amendment which seeks to substitute the word "salary" for the word "remuneration." I feel that so far as the civil servants and public servants are concerned, "salary" is a much more dignified term than "remuneration." In all the other articles, I believe, we have used the word "salary" wherever this meaning was implied. We have been speaking of salary of judges, salary of the President and so also, I believe, the salary of the Ministers and the salary and allowances of the M. L. As. Here also, therefore, I think the more appropriate word would be "salary" and not "remuneration."

Now I come to that part of it which I said was messed up very badly. If my Friend Mr. Munshi and his colleagues on the Drafting Committee care to follow me in what I say, I am sure they will realise the mistake that has been committed, if their minds be open and not closed to any change. Here the language used is very very inaccurate and unhappy. The House will follow what I say when I refer to the part of the article beginning with "the same conditions .... " up to the end of it. But before I come to that I would like to say a word about the word "receive". I could not find an appropriate substitute for that, but I feel it is a very inaccurate word in this context. Receive what? Receive conditions of service? Receiving rights as regards disciplinary matters or rights? That is a very inapt expression. I have never seen the word "receive", used in this context, though unfortunately I could not myself find another word for it. I would, however request the Drafting Committee to look into the matter again and when the third reading comes, I hope the word "receive" would be substituted by some other and better word.

If the House will carefully peruse the last part of the sentence, it will see the bad construction of it. It speaks of tame conditions and similar conditions or similar rights as respects disciplinary matters and all that. Now if it is the same, it is identical, but not similar. You cannot have both same and similar together. So one or the other has to be omitted. I have therefore suggested the word 'similar', so that the conditions may be as similar as possible, to those that existed, as circumstances permit. My amendments Nos. 131 and 128 refer to this part of the article. I have sought to say that what is intended is something similar to what existed before the commencement of the Constitution and not the same. I am also sure that the Drafting Committee will agree with me that that is what they imply. Therefore, it will be more correct to say conditions and rules as similar to those existing, as the changed circumstances may permit.

Amendment No. 130 refers to the portion of the article which speaks of rights as respects disciplinary matters or rights. What exactly is meant, God only knows. The word "rights" is repeated. "Rights as regard disciplinary matters or rights". But there are no rights regarding disciplinary matters. There are rules of discipline, there is a code of conduct and there are regulations regarding discipline. But what is meant by "rights as respects disciplinary matters or rights" ? I have seen the service from the inside for some years, and I do not know what such rights are. There is only a code of conduct, there are no rights about discipline. When I read it once, twice, thrice, I wondered whether really the eminent draftsmen of the Drafting Committee had drafted it or somebody else had done it and the Committee had not looked into it closely.

One word more. Mr. Munshi has told us that Civil servants were given a guarantee by Government as soon as the Independence Act was passed on 15th August, 1947. So, that matter is not at all in dispute. But the whole article has been drafted so incorrectly that I would humbly request the Drafting committee to reconsider the whole matter and bring it up afresh, in correct and accurate language and with a happier construction, when it comes tip for the Third Reading.

Mr. President : No. 132, Mr. Naziruddin Ahmad.

Shri Brajeshwar Prasad (Bihar: General): What about amendment No. 14?

Mr. President: Amendment 14 refers to the previous draft.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, some of my amendments are of substance and some others are merely formal. I shall move only sub- numbers (iii), (iv) and (vii). Sir, I move:

> "That in amendment No. 1 of List I (Second Week), in the proposed new article 283A---
>
> for the word 'continues' the words 'shall continue' be substituted;
>
> for the words 'shall be entitled' the words 'and shall be entitled be substituted; and
>
> for the words the is from time to time serving' the words the shall from time to time be serving' be substituted."

My object in suggesting these amendments is that we are providing for the future of certain services. It seems to me that the provisions should tic in the future tense, but the present tense has been used here all along. Omitting a number of conditions, the bare sentence, article 283A is that "every persons who having been appointed by the Secretary of State or the Secretary of State in Council to a civil service of the Crown in India continues on or after the commencement of this Constitution........" Instead of the word "continues" I propose that the words should be "shall continue". My idea is that we are providing for the future of these services, and therefore the verb should be in the future tense. The other amendments are of a similar nature and do not require any further argument.

On a careful consideration of article 283A, it seems that the article, as has already been pointed out by Mr. Kamath, has been very hastily drafted. One glaring inconsistency from a drafting point of view has been pointed out by Mr. Kamath, namely the word "receive". The word seems to be totally inappropriate. I suggest that the Drafting Committee should reconsider the drafting in the light of some of the amendments and comments suggested and made in the House.

A further difficulty in the way of Members dealing with these articles is that these articles were circulated only yesterday at about nine or ten P.M. and then there was no time to consider the articles and to suggest amendments and to submit amendments to the office by five o'clock yesterday. That is the reason why some of the amendments have not been well-considered, and the word "receive" escaped my attention on account of hurry. I suggest that the Drafting Committee should reconsider the drafting of this article. There are a number of other small improvements which I have suggested and which I have not moved but I think they deserve the consideration of the Drafting Committee.

Mr. President: There is an amendment, notice of which has been given by Mr. Sidhva this morning.

Shri R. K. Sidhva (C. P. & Berar: General): I am not moving it, Sir.

Mr. President: Now the article and the amendments are open to discussion. There are one or two amendments proposing deletion. I do not take them as amendments.

Shri Mahavir Tyagi (United Provinces: General): Sir, on principle I do not agree that any such commitments should be made by this Constituent Assembly, the liability of which goes to the coming Parliaments. In the case of these few civil service people, only some guarantees are being transferred over, I have no objection to that, but they should be transferred from Parliament to Parliament. If these guarantees are now confirmed by this Constituent Assembly they will go as a perpetual liability to the coming Parliaments. At this stage I do not think that any opposition to this move will have much backing; still I want to ask a few questions before I vote for these guarantees.

As it happens, in India today persons of the Civil Service having only seven, eight or nine years' service are acting in the Secretariat as Secretaries and Joint Secretaries and getting much higher pay, a pay which, if India were not, independent, they would get after serving for eighteen or nineteen years. So, speedy elevation has been given to many Civil Service people. I want to know as to what will happen to those Secretaries who are more than the minimum guaranteed number of "eight". As far as I know, only eight posts of Secretaries had been guaranteed. These posts cannot be reduced from eight to seven or six, but at present there are twenty-one Secretaries. Now, the original liability was to pay Rs. 4,000 per month to each of these eight Secretaries. Now, we are paying the same rate of pay to twenty-one Secretaries. I want to know whether after passing this article we will be entitled or not to reduce the number of Secretaries from twenty-one to eight. Now, if this is also a commitment that the coming Governments will have to pay twenty-one Secretaries and a number of Joint Secretaries at the present scale of pay--a number, which is much bigger than the number originally guaranteed--is this not an extra liability on the future Parliament? Or will the future Parliament be free to reduce the number of the Secretaries?

Today, it seems to me that the bulk of benefit of independence bag gone to the Service people, and the other classes of people have gone down. The Service people are getting much bigger pay than they would otherwise get it if India were not independent. In understand that in Pakistan they have made a rule that every Civil Servant will either get the salary of the higher grade achieved by him after independence, or only thirty per cent. more than the pay he was getting before independence was achieved whichever is less.

There is no civil servant in Pakistan whose pay has been increased more than by thirty percent of what he was getting before the 15th of August 1947. But here, even very junior officers have got accelerated promotions on senior scales of pay on account of the opting of Muslim officers to Pakistan and the retirement of the European members of the Civil Services.

I would appreciate if Mr. Munshi would clarify as to whether, after the passing of this provision, it will be incumbent upon the future Parliament of India to maintain the same number of Secretaries on high salaries, or whether they will be free to reduce the number of Secretaries in the Secretariat, and pay them lower pay. Almost all the vested interests like the Princes and the Zamindars have gone. It is only the vested interests of the few Civil Servants that we are perpetuating by guaranteeing their interests. Will they be a perpetual liability on the future Parliaments?

Shri T. T. Krishnamachari (Madras: General): If it would help my honourable Friend to cut his argument short............

Shri Mahavir Tyagi: I have had my say. If the honourable Member wants to enlighten me on this issue he may kindly explain to me as to what the position really is.

Shri Rohini Kumar Chaudhuri (Assam: General): Mr. President, Sir, I welcome this new article which has been placed before the House by Mr. Munshi. I welcome it because it enables us to maintain that standard of conduct which any civilised Government ought to maintain with regard to Civil Services which co-work under them.

In considering this article before the House, we have to bear one, fact in mind--that although a revolution has been going on in our country for a long time, the immediate reason for the transfer of power was not a revolution, a revolution which would justify our upsetting everything that had existed before. We should remember that the power that the previous Government had exercised was peacefully transferred to us, and, therefore, the obligations which they had entered into should be respected, as far as possible. In this particular case not only that obligation should influence our conduct, but there is a consideration, and that is that a guarantee was given by our leaders--leaders who had taken the most prominent part in achieving for us the liberty of the country. No matter whatever may be the criticism against us, we must respect and honour the guarantees given by our leaders.

While I fully support this article, I would like to make a humble appeal to the members of the services. I would ask them to remember whether it would not be proper for them as a return of the gesture which we have shown by accepting this article, to renounce a percentage of the remuneration which has been given to them and which they will get by reason of the acceptance of this article. I remember, Sir, in 1931 when there was talk of retrenchment all over the country, the members of the I. C. S. whose salary could not be retrenched by the India Government, voluntarily submitted themselves to a cut in their salaries and allowances. While the European members of the Indian Civil Service could show such a gesture in the interests of this country, I am sure the Indian members of the Indian Civil Services, would not be found wanting in their sense of patriotism to their motherland. I believe, Sir, that there will be very little objection on their part in doing so, because they should remember that while the leaders of the Congress had given up their earning, had given up their vacation had given up their position in life and had gone into jail, the Civil Servants had remained quietly at their own desk, earning their own bread and doing their ordinary work. We did not grudge their doing so. If at that time all the members of the Civil Service had also resigned, there might have been great difficulty for us to carry on the work in the period of transition. I do not grudge their having done so at that time. But now as they are enjoying with us the liberty for which they have not made any sacrifice-of course, I am not talking of men like Subhash Chandra Bose and Mr. Kamath--who had resigned the coveted position out of a great sense of patriotism--now submit to a voluntary reduction of their remuneration.

Sir, in this connection we have to remember the position of some of the ministers *vis-a-vis* the status of their Secretaries. While the Ministers were drawing a salary ranging from Rs. 750 to 1,000 their I. C. S. Secretaries were drawing salaries ranging from Rs. 2,000 to 3,000. While the Ministers were trying to push their old motor-cars on the road in order to get a start-because they could not afford to have new motor cars-these Secretaries would pass by the Ministers in their new beautiful motor cars and just wave their hands to the 'Minister and say "Cheerio". He does not care to stop because his fashionable wife is sitting by his side. That sort of thing should not be repeated now. There should not be such a difference of status between the Minister and his Secretary. The only way of putting a stop to that would be to provide all Ministers with State cars. I had also seen that the Secretaries would not like to visit Ministers in their houses, because the Ministers of those days would not be able to furnish their houses in the manner in which I. C. S. Secretaries could do.

Therefore, while accepting this article, I would make an appeal to the services, once more, to give up their excessive income if they can do so. Let them come to the level of ordinary gentlemen and give up whatever they can. Even if they cannot give up whatever they can, do not let them have any luxury but try to invest their income in objects of national welfare. Give some charity for educational institutions or something of that kind or help in the uplift of the masses. That is what I would appeal. I support this article.

Shri R. K. Sidhva: Mr. President, Sir, while I believe entirely in the desirability of keeping the services of the State contented, the limit of that contentment should not be crossed over by the services. In this respect, it has been done so. With due respect to the members of that great service who are really serving the country, I would have preferred that this article should not have found a place in our Constitution. If we have made an agreement, we certainly are bound to carry it out and that would be a matter between the leaders and the services and it will be Known that it is faithfully carried out. Why should it find a place in the Constitution?

Then again, this article is not happily worded. Probably the Drafting Committee has not paid proper attention to the wording. For instance, take this word "remuneration". Even in the case of the Prime Minister, the Ministers, the Speaker, the Deputy Speaker, the word "salary" is mentioned. But why is the word "remuneration" mentioned here? It is a little better word. It has better pomp than "salary". That is why it has been put in. The services people want something extraordinary for themselves.

Then they want the same rights as respects discipline. Now, we know what discipline means. It means conduct within the four walls of the rules. The words as put in here will create complications for the future governments. This Government knows what are these conditions, but if you put it into the Constitution, the future government would be embarrassed considerably if the services are permitted to do things as they like and at the same time demand the same disciplinary rights along with continuity of their terms. I know that we are bound to give the services the things for which we have made commitments. do not dispute that. But I feel that they should not find a place in the Constitution. The services should be content with trusting our leaders that they will faithfully carry out the commitments.

We are proud of the services. But is it desirable that they should dictate to us the terms on which they would serve ? It is very unfair. If you study the language of this article, you will see that they want to dictate the terms under which they want to serve us in the future. I had sent in an amendment. I did not move it, because if I did not want to embarrass the services. My amendment states that after five years of this Constitution, Parliament shall have the right to make any law relating to the conduct of the services. But I have not moved it, because I do not wish it to be understood by the services that we want to embarrass them, that we do not want to fulfill the promises that have been made. We are a nation trained to fulfil a commitment if it has been made. That is what we have been taught by our leader and we do want to do that. At the same time, I do desire that our services should not dictate to us. With these words, I hope the Drafting Committee will reconsider this matter.

Dr. P. S. Deshmukh (C. P. & Berar: General): Mr. President. Sir, I am afraid I cannot resist the temptation of submitting to this House that it is not not very proper to continue to have a provision of this nature in our Constitution. It was well and good for those Constitutions which were framed by the British people or the British Parliament to have a clause like this. We are now framing a Constitution of Free India. Indians are framing their own Constitution for themselves. Under these circumstances, I do not think any guarantees of this nature were at all necessary. If there is a guarantee, if we have given our word, that word as it stands should be quite sufficient not only for the I. C. S. and other covenanted services but for the whole nation, for every one of us. If we do not value that word, then there is not much to be gained either by the nation or by the Civil Services by relying on an article which is embodied in the Constitution. Even from the point of view of appearances, it does not look nice that you should go out of your way to single out a certain service which is really the remnant of the days of our slavery, of our dependence, and that, to be incorporated almost bodily, in the same fashion as it existed ill the Act of 1935. I do not think this was at all necessary. I do not think that the services are really, as described by Mr. Sidhva, insistent upon this. I for one do not think they are insistent. I do not think the Civil Service as a whole have been consulted recently after the attainment of freedom or that they have passed any resolution or made any demand that their contractual relationship should remain intact. At least that is not my information. If they are given a chance. I have no doubt that they will probably be the first to say that they do not need any constitutional safeguard for their rights.

Secondly, if we really want to have a provision like this, then why should we have added these words "same rights as respects disciplinary matters... as similar thereto as changed circumstances many permit. ....". In my view this negatives the guarantee altogether. What is the meaning of "changed circumstances"? If the change in circumstances is going to enable any Government to change the contractual relationship that exists or the promises that have been made, then what is the guarantee worth? Any circumstances can at any time be utilised to go back upon the promises ? So I think we have created somewhat anomalous position. On the one hand we are solicitious of giving satisfaction to the Civil Service and they are a very intelligent class of people and on the other we are taking away all that we have given. I am sure they will know what we really mean by the use of the words "as changed circumstances may permit." Actually, we are trying to out-do the Britishers in following and imitating the 1935 Act. The I. C. S. was originally created by the British out of British personnel and they, at every stage when the political rights of Indian advanced, wanted more and more guarantees for those people who had come out of their country and were serving here. I am sure no Secretary of' State at any time was interested to the same extent in the Indian personnel. He was interested in the British personnel and these guarantees were intended for the British personnel. I am certain no Indian is so unpatriotic as to demand a constitutional guarantee nor so ignorant is to how our government may behave in such a matter that he will have much faith in a guarantee of this kind, especially when we take away the whole effect of the article by putting in the words "as changed circumstances may permit". Actually, what is the history of this Civil Service and the sanctity of contracts entered into with them? The history reveals that although the Civil Services were regarded as the steel frame and the contractual relationship between the Government of India and the Civil Service were always to be considered sacrosanct, there was at least one occasion when this sanctity of contract was completely violated.

In 1931 the same British Government itself had to come down and impose a cut of 10 per cent and this was done on the ground of a change in the circumstances. Some tried to give this the colour of a voluntary cut. Actually the sanctity of contract had to give way to the exigencies of the situation is early as 1931. So that, having regard to all this that has gone in the past. this contractual relationship is liable to be altered from time to time and I do not think therefore that it is wise or necessary to put in this article. If the guarantee is necessary, then whatever guarantee it is said we have already given are already there. They have not been taken away. Nobody has suggested that they should be withdrawn or abrogated and that I believe should be quite sufficient for the Civil Service.

Sir, there is also another reason and that is that the inclusion of this article especially with these words--"as changed circumstances may permit"--would really lead to a fresh grievance which does not exist. We are at the present moment passing through a financial crisis. It may be very necessary within about three months time hence to cut down the salaries of all people who are getting Rs. 1,500 or more. Actually we have set at nought our own solemn decision of the Pay Commission proposals. We accepted their recommendations not to pay any person a salary of more than Rs. 2,200 or so, and yet we have got the spectacle of having to pay 50 to 75 per cent. more than the maximum which we have accepted on the recommendations of the Pay Commission. So, in view of the present financial crisis and in view of the recommendations which we have accepted, it may be necessary for us within the next few months to come before Parliament and say that no one in India shall get more than such and such salary. We shall then have to have recourse to changed circumstances as the ground to justify our action. We will have to say that we cannot pay you anything more than Rs. 2,000 as the circumstances have now altered. What is the use giving a bombastic promise and then going back on it? It is no use.

Anyone can see that the present circumstances of India are such that you cannot afford to pay salaries at this rate to the civil servants at which we are paying today. When we are in the throes of these difficulties what is the use of contaminating our Constitution with a promise which we cannot fulfil? So I submit that this article should be reconsidered and as far as possible held back. If the civil servants insist on the guarantee, by all means give it to them. But it is not necessary to include it in the Constitution for that purpose.

Shri M. Ananthasayanam Ayyangar (Madras: General): I also thought that I should be is vehement in this matter as my Friend, Dr. Deshmukh, and others. I do agree that though a contented Civil Service is the very backbone of the administration in any country, this particular service for whom we are making provision here was the heaven-born service of the previous regime and will continue to be the heaven-born service for some time to come. We have not been able to give a guarantee for food and clothing to the ordinary masses of this country. We have not given a guarantee to the Under-dogs in the administration. The other day was passed certain articles whereby we have stated in this Constitution that all servants of the State will 'hold office only during the pleasure of the Government. This is an extraordinary guarantee that we are giving under this article. This guarantee means that they were the rulers under the old regime and that they will continue to be so in this regime. This guarantee asks us to forget that these persons who are still in the service-400 of them- committed excesses thinking that this was not their country.

This guarantee gives a guarantee to those persons who have played into the hands of others. My Friend, Mr. Kamath, and a few persons like him, who had the courage of their convictions, resigned in the cause of this country. All those people are honourable men, who at that time tried to muster courage and throw in their lot with the rest of the community in this country who was struggling hard for freedom. This is not to the credit of this service. They cared more for their money and the salaries they got. The European Government that ruled over us sometime ago could not rely upon the loyalty of any citizen in this country, because their loyalty and our loyalties were different. They belonged to a different country from ours and therefore that prejudiced their loyalty. It was the money that could attract loyalty of any citizen of this country to the King of England and therefore the salaries they gave and the scales they fixed knew no bounds. The Governor-General got Rs. 21,000 a month : a Governor got Rs. 10,000 a month a Secretary got Rs.4,000 a month,-out of all proportion to our national income.

Our national income is not more than Rs. 100 per annum, whereas the national income of Great Britain is Rs. 1200 per annum. America is diffent. So far as salaries ire concerned, they ire on a much higher scale in this country than in part of the world with respect to the Civil Service. So far as national income is concerned, ours is the lowest. These persons had to be purchased to serve by the previous British

Government. The best of our intellects had to be drawn away and they were made to do whatever things the previous Government asked them to do, irrespective of the place in which they were born and irrespective of any patriotic instinct.

But I am asking honourable Members of this House to have regard for certain things which our people had to do. The persons, who are our leaders and the winners of freedom of this country say that they have given a guarantee collectively and individually to every one of these people that this was a condition of the transfer of power by the British Government into our hands. They wanted these conditions, particularly in the interests of the Europeans, not so much in the interests of the Indians. Possibly they wanted the interests of the Indian bureaucrat to be safeguarded because they were loyal to them and they did not want to let them down when our own Government came in. I am not in favour of any provision in this Constitution. We could as well incorporate it in an Act of Parliament later on. But we must have the power to regulate,. are. becoming super-sovereigns of this country.

I am aware of all that but it serves no useful purpose to enter into recriminations against ourselves when our own responsible leaders, who have spent their lives in the cause of winning freedom, have given this assurance. Let it not be said that we intervened in this matter, and went back on this assurance. If I support this clause it is in that spirit that I am supporting it. It is not in the spirit that all these people served our country for freedom in our time. I might say that those members who are still opposing, and quite legitimately too, may have this consolation-they may feel that they have legitimate objection to the wording of the clause as originally drafted. But the amendment made later is not so wide. I would request the attention of, the honourable Members to amendment No. 11 in List II of the Second Week'. This has since been replaced by amendment. No. 1 in List I and we have changed it out of recognition. This amendment follows section 247 of the Government of India Act as adapted by the Indian Independence Act. It was not the intention even of our leaders who gave the guarantee that the Civil Servants under the new Constitution should have greater privileges than they had during the previous regime. Therefore, not to give them any further privileges, this amendment has been moved. As I read it, this amendment says, that as in the previous regime the Governor-General had the power to frame rules and regulations so as to modify the conditions of their service from time to time, as circumstances may permit, the Government may have similar power now. Therefore, under the amended clause, I do not think as we suffer much. There may be extraordinary cases where we may have to interfere; there is ample provision for that here. We need not therefore be touchy about this. No doubt, we can do without this. But, in regard to the guarantees and assurances given not merely to these services, but to the other persons who have left us, I wow earnestly appeal to all the Members of the House who have either tabled amendments or have spoken, not to press the amendments or to oppose this article.

Sir, I know that in the previous Government there were only eight Secretaries getting a salary of Rs. 4,000. Now, that number has been increased to 19 or 21. Honourable Member might remember that my honourable Friend Mr. N. Gopalaswami Ayyangar was appointed to go into the reorganisation of the Secretariat. The matter is still pending with him. I am sure that though, under the guarantee that has been given, the salary of 4,000 Rupees ought not to be reduced, it is not incumbent upon us to a point every one of these people as Secretary or increase the number of secretaries from 8 to 21. It is still open to Mr. N. Gopalaswami Ayyangar to suggest that in the interests of our country there ought to be only eight posts of Secretary, the others being made joint secretaries. That could be done. The people who insist upon the guarantees must themselves hesitate to ask for a guarantee. What does this guarantee mean? that he must get Rs. 4,000 instead of Rs. 3,000. Is he working for bread or is he hungering otherwise? Till now, they have not shown a gesture, they have not shown that they are members of the Independent Sovereign Republic. They must also contribute their mite to its growth. We assume that they are still sticking to their pound of flesh. Even then it is open to us to reduce our number and we are not helpless. Mr. Gopalaswami Ayyangar may consider this matter of the reduction of the number of secretaries posts from 21 or 19 to 8.This does not form part of the guarantee.

I have also got some other figures to show how much this Civil Service have got bloated. In the very bad times, the critical times that we are passing through,' it is absolutely necessary that we must take the axe in our hand and Cut off some of the unnecessary officer that have been created. Under the previous regime, there were only five Joint Secretaries. Today, we have got 30 Joint Secretaries. Each Joint Secretary is entitled to a salary of Rs. 3,000. 1 am not speaking to you alone here, but I am speaking to those people who think that they must have the guarantees and benefit by it. After all, the good-will of the Government and the good-will of the people at large are the suggest guarantees any man can have. Without that good- will, if they merely insist upon their salaries only, they cannot long count upon that. Now, Sir, five Joint Secretaries have been increased to thirty.

There is a further point. Under the previous regime, the Europeans became Secretaries after 25 years of service, became Joint Secretaries after 20 years of service. Now, on account of the Europeans having gone away, persons who were in the lower rungs of the ladder, Deputy Secretaries, with ten and twelve years of service, have immediately become Joint Secretaries, because the place has fallen vacant. This is wrong in principle. We ought not to have appointed them Joint Secretaries straightaway. Even now, it is not too late. In spite of this guarantee we can tell them, "you must have put in so many years of service to be entitled to a salary of Rs. 3,000." Therefore, even if we pass this article, we are not helpless. The rigors of this article and the exactitude with which they may claim these moneys can be mitigated by suitable action taken in the Committee that has been appointed under Mr. Gopalaswami Ayyangar's chairmanship.

I have one more word with regard to the services. We are making an exception in their favour. We are pampering them. But, even today, I am sorry to say that some of them have not changed their manners. They have not reconciled themselves to the new situation. They do not feel that they are part and parcel of this country. We hear so much about corruption. If there is corruption in any department, who is responsible for this? If the head of the department makes up his mind that he will root out corruption, cannot he do so? Can I or any of the Ministers who have no knowledge of the working of the administration, look into this? The Civil Service has got a claim to continue because it has got experience. The best talents have been drawn to this service. If today' in a department of which a Secretary drawing Rs. 14,000 is the head, there is corruption, he must be ashamed of himself. Am I to be going about asking for legislation that corruption should be put an end to? Who is corrupt? If in my household there is anything going wrong, the manager of the family must be held legitimately responsible for that. Like that, we do not grudge paying them a thousand Rupees more, for some time more, until this old band is exhausted. But.' we in return expect that they should root out corruption. Otherwise, they are not entitled to this salary.

If we have put in the Constitution that we have to have a greater majority for amending the Constitution, in Parliament we need have only a simple majority. Under the rules and regulations we have to have a greater majority to change the Constitution. If in spite of all we have done, in spite of these assurances given in spite of their having their salaries at an enormous level which we cannot afford, there is corruption in any department, we know how to deal with them. Even if the Constitution were written on stone, hard stone, indelibly, we may alter it.

With these remarks, I appeal to the members and I also appeal to the Home and request that all the amendments may be withdrawn and this article may be passed though not without hesitation.

Shri Brajeshwar Prasad: Mr. President, Sir, I rise to support this article. I have not been able to follow the speech of my honourable Freind Mr. Ananthasayanam Ayyangar. He began by opposing this article; but, somehow, in the middle, he changed his course and began to support it. If I am opposed to any article, I will oppose it. If I am in favour of it, I will support it. I cannot sail in two boats.

Sir, there is one important reason in my mind why I am in favour of this article. The objection of some of the Members in this House that this article should not be incorporated in the Constitution gives rise to a suspicion in my mind. What is it at the back of their minds? Why is it that they are opposing this article? Do they want to honour their pledged word or not? A nation that sacrifices vital principles, that does not stand by its pledged word, has no future in politics. We have given our pledged word to certain authorities that existence before the transference of power. I know fully well that if we do not abide by that word, nothing will happen to us. But, it will create a very bad impression. Therefore, I am in favour of this article. What we have pledged, we must stand by.

There is another reason why I am in favour of this article. If there would have been a gaurantee that those who have pledged their word of honour to the British Government would remain in power so long as these services are in employment of the Government of India, I would not be in favour of this article. But we have made a democratic Constitution. We do not know whether we will remain in power tomorrow or not. There is another reason why I am in favour of incorporating this article in the Constitution itself. I have no faith in adult franchise. I do not know what kind of people will come in the future Parliament of India. In the heat of extremism or at the altar of some radical ideology, they may like to do away with the provision that we have made in the articles of the Constitution in favour of the services. Therefore I want that this thing should be made a part of the Constitution so that the amendment being not easy it will be difficult for them to undo what we are doing today.

A point was raised by Mr. Tyagi that this Constituent Assembly has made certain commitments and we should not bind the discretion of the future Parliament of India I say that we have not made any commitments. Our leaders have made certain commitments. We stand by them and there is no question of binding the discretion of the Parliament because the future Parliament will not be a sovereign body. What we are doing today is in the nature of either expanding or restricting the power of Parliament and other different authorities in the Constitution. We are Sovereign and not the future Parliament. We tan fetter the discretion of the Executive, Judiciary or

Parliament. It is for this purpose that we are drawing up the Constitution.

Having these in my mind I am of opinion that this House should unanimously support this article so that the impression may got abroad that we stand by our words. This is only the first step-we do not know how many commitments we will have to make in the course of our international relations. One false step will lead to disaster. This step is not of a very important nature. We must learn how to practice the part of conducting ourselves in our relations with the foreign nations of the world. Therefore I take a very strong view of this question and attach the greatest importance to it. I am entirely in favour of this article.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. President Sir, I had given my amendment No. 12 for deletion of this clause. The more I study it the more I am surprised that it should have found a place for being made a part of the Constitution. I can understand the future Parliament giving to the incumbents of the old Civil Service their old conditions of service but that the Constitution should provide all guarantees which they enjoyed before is something which I cannot understand. Since the very beginning of its movements the Congress regarded the Civil Service as the Steel frame which enslaved us and criticised its conditions of service and the way in which it was pampered. It was regarded as the "heven-born" service. I think now when we have come into our own we should not perpetuate what we have criticized so far an plainly say that there is no reason whatsoever for perpetuating the same conditions. I am told that some guarantees and assurances have been given to them. I do not know of any, but if there are would suggest that Parliament should try to fulfil those conditions, but to bind the future Parliament and to say they shall not have the right to determine the conditions of service of its servants is something that will be derogatory to the, sovereignty of Parliament.

Then I am not happy even with the work of the old Civil Servants. I know there are many amongst them who have done wonderful work, who as Sardar said once, are worth their weight in gold but the same cannot be said about all and my own complaint is that many of the ills of our country at present are due to the way in which they are still behaving. I do not think that the Civil Services should be treated differently from the Services whom we are creating now--the Administrative Services--otherwise it will result in bad blood. They must all be placed on an equal footing. In fact their record is not what one would like it to be. Mr. Ananthasayanam Ayyangar said how they have been guilty of stabbing the Nation during our freedom struggle. Therefore I think this article is an anachronism. It must not find a place in our Constitution and it should be removed.

Shri Kuladhar Chaliha (Assam: General :) Mr. President, I think the clause as it stands is rather difficult to support; but all the same our words have been pledged by distinguished leaders who have sacrificed their lives and leisure for the attainment of liberty an independence and their words must be respected. Then there is the other side that we are in a sort of Scylla and Charybdis. We want to support the clause because our distinguished leaders have pledged their words, but at the same time we have been speaking to our Constituents that when we attained liberty we will reduce the salaries of the different services to such an extent as to be consistent with their power to pay. As Mr. Brajeshwar Prasad said we are bound to support the words which have been given and we are bound to carry it out in a way that will give confidence to the Services. We feel for the Services because they have done something without which it would not be possible for the Government to carry on. They are one of the best services in the world and in the international situations they have given a good account of themselves. Yet, they for themselves have to consider that the condition of the country is such that it is necessary for them to sacrifice and to forego the conditions which have been given to them and also the terms under which they wanted to work. That heven-born service has been pampered to such an extent by the Lee Commission and even then we cried hoarse. So if we have made any commitments we should honour them. As Mr. Ayyangar said, in the matter of food we have not been able to commit ourselves, and yet we are committing ourselves in this matter Are we justified in doing it? Are we not bound to carry out the recommendations of the Economy Committee? Mr. Ayyangar said the other day, the Committee has recommended many things but we have not carried them out. Are we not bound by those guarantees which have been given to the people.

If we look into the whole circumstances, I think we ought to put a step to the increment of the salaries and we should rather try to follow in this matter the Pakistan ideal that they have given only 30 per cent, increment, which they are entitled to. When a man becomes Joint Secretary he gets Rs. 3,000. Why should so much be given? If he is given 30 per cent, of his salary as addition, that should suffice. I do not know the exact words in which this guarantee or pledge was given, but I agree with Prof. Shibban Lal Saksena that it would be better not to tie down the hands of future generations by having a provision of this sort in the Constitution. I agree in a many matters that Mr. Ananthasayanam Ayyangar said, and I hope the Drafting Committee will consider this and see it if it could be modified in such a manner that future generations may not be tied down to it.

Babu Ramnarayan Singh (Bihar: General): *[Mr. President, sometimes such questions come up for consideration before the House, to which is very difficult to lend our support. I do not, however, intend to oppose the provision under consideration, since a guarantee has been given on behalf of the Nation to the members of Civil Services hat their interests will be secure, and that the emoluments and privileges, they were so far entitled to, will remain unchanged. In fact every sort of assurance is being given to them. But I, for one, fail to understand the need for such guarantees at a the present juncture. Such assurances might have been needed at the time the British left this land, for them the civil servants were apprehensive about their future; they were afraid that they might be removed from the services. But no such apprehension exists now. The position is quite changed. Now they feel that the administration of the country cannot be run without them. There is no need, therefore, for any such guarantee at this time.

If, however, you want to give them guarantees I have no objection to that course being adopted. But we must know and I may add, every Member of the House should note it in his heart that the English regime was some time ago maintained by these very services; we were maltreated, oppressed and jailed by them. What I mean to convey is this, that the civil servants in our country were for the British rule here. But now they must know that we do not want any one's rule. We have achieved and established *Swarajya.* (Self Government.) Under *Swarajya,* Civil Servants must offer to the community the assurance that they would serve the country sincerely. On our part we are today giving them assurance that their future will be safeguarded, but no reciprocal assurances are coming from them to the effect that they would serve the country sincerely, honestly and incorruptibly. It is common knowledge now that not even an iota of change has come in their behaviour and that still they are what they had been.

In the past--I am speaking of the recent past of two years ago--they thought that they were masters of the country, they would remain masters and that they would continue to rule the people. This mentality is still lingering in them. Now that the Britishers have gone and popular government has been established here, the Civil Servants should change their behaviour and outlook, so that the people may feel that they are not out to oppress and rule them but to serve an protect them. But I am sorry to no such assurances are being given by them. I may submit that the observations made by Shri Ananthasayanam Ayyangar are quite correct. We will also have to consider as to what extent these people can serve and protect the people properly. The Civil Servants must know that they have not so far changed themselves and unless they do so, the guarantees that are sought to protect them in the Constitution will have no value. They have to give their sincere services to the nation and to achieve this end they have to follow the wishes of the people. They must take note that unless they change their age-long policy and their behaviour the guarantees provided for them in the Constitution will do them no good.

I have nothing more to add but that I hope they would properly serve the country through their actions and behaviour and would always consider themselves as servants and never as masters. The idea of mastership must go now.]

The Honourable Sardar Vallabhbhai J. Patel (Bombay: General): Sir, I am distressed that a senior Member like Mr. Ananthasayanam Ayyangar, a responsible Member of this House, who is the Deputy Speaker of the Assembly considers and expresses the opinion that the members of the service were carrying on a very difficult administration for the last two or three years, and at the same time harbours the feeling that they are enemies of our country. If that is so, it was his business and the business of those people who think on those lines to move first a resolution to dispense-with them and run the administrations in vaccum--for there is no substitute of which he has thought of except the Congressmen or the Congress workers. I feet very said that the very instruments from whom we have to take work, we have been continuously quarrelling with. If that is so, we are not doing a service to the country. We are doing great disservice.

Now, he made a point that this guarantee should not have been given. What was he doing all this while? To those people who think on those lines, I say, this was not done in secret. No arrangement that was made with the British Government was done in secrecy, not done by an individual, but by the representives, by all the duly recognised representatives of the Nation. When Mr. Henderson came here to settle this question of the Services, he had long discussions with me. He said that before the transference of power arrangements should be made to the satisfaction of the Parliament, that transference of power will take place only when guarantees are given to the members of the Secretary of States' services, each individual member of which has a Covenant with the Secretary of State for permanency and for certain other guarantees. More than fifty per cent of the Secretary of State's services were Europeans. Britishers, and the rest were Indians. It was then suggested by him that there should be a treaty between England and India on this question. The suggestion was also made that they should be given due compensation if they have to leave the Services because they would not like to serve in the Indian administration, and that they should be given proportionate pension. Their status, their time-scale of pay, everything was to be settled before any question of transfer of power could be considered. Now, I had long negotiations and it was then a joint Government of the Muslims and the Non-Muslims. It was an all-India Government at that time and these negotiations resulted in certain conclusions which were placed before the Cabinet--it was a joint Cabinet at the time--and they were accepted by them. Then those conclusions were sent to Parliament and it was accepted there. Many of the Europeans who were in the services here have left now, but when the negotiations were going on, I told them to leave the case of Indians to us, that we shall deal with them as we deemed just, that they will trust us and we will trust them; and finally they agreed on certain conditions.

Now, I wish to point out that hardly anybody raised any objection to the arrangements that we were making at that time, but if they had suspected us, then there was plenty of scope at that time for them to come out and get better terms from outside agencies. Even now, if you are not willing to keep them, find out your substitute and many of them will go; the best of them will go. I wish to assure you that I have worked with them during this difficult period--I am speaking with a sense of heavy responsibility--and I must confess that in point of patriotism, in point of loyalty, in point of sincerity and in point of ability, you cannot have a substitute. They are as good as ourselves, and to speak of them in disparaging terms in this House, in public, and to criticise them in the this manner, is doing disservice to yourselves and to the country. This is my considered opinion.

Now, I will give you another series of facts which will convince you why guarantees were given. You had seen what was happening in the Punjab. In the five districts where havoc was being wrought, five British officers were in power and nothing could be done. I tried to get the District Magistrate of Gurgaon transferred. I could not succeed, and the British officer there arrested leading Congressmen when they were not at fault and put them in jail as hostages; he had the cheek to write on the application presented to him by the President of the Bar Association there to the effect that those were innocent and they should not be arrested and that they should be released immediately, that those people were being kept as hostages. This is the way he was doing this business. I was shocked and I went to Gurgaon. I saw him coming on the way and I asked him, "Have you arrested people as hostages?" He said, "No, who told you?" Fortunately, I had the document with me on which he had made that endorsement, and I showed him the endorsement. He asked, "How did you get this?" I said," That is not the question. Is this your endorsement or not?" After that, I tried hard, I wrote to the then Governor of the Punjab, I pleaded with the Viceroy, but I found it difficult to remove him, and you know the havoc that was played in Gurgaon an these other districts. It was not in the Punjab alone; in other places also many such things were done. It was a time of touch and go and we could have lost India. Then we insisted that we had come to a stage when power must be transferred immediately, whatever happens, and then we decided to resign. It was at that time that Lord Mountbatten came.

I give you this inner history which nobody knows. I agreed to Partition as a last resort, when we had reached a stage when we could have lost all. We had five or six members in the Government, the Muslim League members. They had already established themselves as members who had come to partitions the country. At that stage we agreed to Partition; we decided that Partition could be agreed upon on the terms that the Punjab should be partitioned--they wanted the whole of it--that Bengal should be partitioned--they wanted Calcutta and the whole of it. Mr. Jinnah did not want a turncated Pakistan, but he had to swallow it. We said that these two provinces should be partitioned. I made a further condition that in two months' time power should be transferred and an Act should be passed by Parliament in that time, if it was guaranteed that the British Government would not interfere with the question of the Indian States. We said, "we will deal with that question; leave it to us; you take no sides. Let paramountcy be dead; you do not directly or indirectly try to revive it in any manner. You do not interfere. We shall settle our problem. The Princes are ours and we shall deal with them." On those conditions we agreed to Partition and on those conditions the Bill in Parliament was passed in two months, agreed to by all the three parties. Show me any instance in the history of the British Parliament when such a Bill was passed in two months. But this was done. It gave birth to this Parliament.

You now say, why did the leaders give these guarantees? In order to allow you to have an opportunity to attack the leaders on this very point. What else? You are responsible Members of the Parliament of a huge country. The Leader of this Parliament has been invited to America, the highest honour that could be done to him. He is treated with great respect. They are giving him all honours. You here say, "Why did the leaders give these assurances?" Think of the past. Why do you forget it? Have you read your own recent history ?

What is the use of talking that the service people were serving while we were in jail? I myself was arrested, I have been arrested several times. But that has never made any difference in my feeling towards people in the services. I do not defend the black sheep; they may be there. But are there not many honest people among them? But what is the language that you are using? I wish to place it on record in this House that if, during the last two or three years, most of the members of the services had not behaved patriotically and with loyalty, the Union would have collapsed. Ask Dr. John Matthai. He is working for the last fortnight with them on the economic question. You may ask his opinion. You will find what he says about the Services. You ask the Premiers of all provinces. Is there any Premier in any province who is prepared to work without the Services? He will immediately resign. He cannot manage. We had a small nucleus of a broken Service. With that bit of Service we have carried on a very difficult task. And if a responsible man speaks in this ton about these Services, he has to decide whether he has a substitute to propose, and let him take the responsibility. This is not a Congress platform. It is said that we promised Rs. 500 for the Ministers in the Karachi resolution. There is a long distance between Karachi and Delhi today. It is a different thing. You want Rs. 45 a day free of income-tax. What is the use of taking about Rs. 500 today? It is very wrong.

But I am prepared to admit that if the Indian Government is to be run today on the basis of Gandhian philosophy without army, I am prepared to change the whole thing. You are today spending 160 to 170 crores of rupees per year on the army. Are you going to change that set-up? Tomorrow the whole of India will be run over from one end to the other, if you have not got a strong army.

The Police which was broken has been brought to its proper level and is functioning fairly efficiently. The Heads of the Departments of the Police in every province are covered under this guarantee. Are you going to change that? Are you going-to put your Congress volunteers as captains? What is it that you propose to do?

I am grieved to find that in a Parliament of this kind, Members, senior Members, speak in this strain. I would refer to you to the Indian Independence Act which gave birth to this Parliament and you find that the guarantees have been included there.

When the Indian Independence Act was to be passed in Parliament the draft was sent here. The leaders of the nation were called for; the Cabinet was there, the Congress President was there, your President was there and your Leader today was there. Mahatma Gandhi was also present. Every section was scrutinised and the draft was approved. After that it was passed in Parliament. Now, these guarantees were circulated before that to the provinces. All provinces agreed. It was also agreed to incorporate these into the Constituent Assembly's New Constitution. That is one part of the guarantee. Have you read that history? Or, you do not care for the recent history after you began to make history. If you do that, then I tell you we have a dark future. Learn to stand upon your pledged word, and, also; as a man of experience I tell you, do not quarrel with the instruments with which you want to work. It is a bad workman who quarrels with his instruments. Take work from them'. Every man wants some sort of encouragement. Nobody wants to put in work when every day he is criticised and ridiculed in public. Nobody will give you work like that. So, once and for all decide whether you want this service or not. If you have done with it and decide not to have this service at all, even in spite of my pledged word, I will take the Services with me and go. The nation has changed its mind.

The Services will earn their living. They are capable people. They were trained in a different setting. I know a senior Member of the Service with about twenty-five years service who went to England for higher education and training in the Civil Service, spent about fifty thousand rupees. He took a loan; he had not the money. But there is a glamour for the Civil Service on the part of the Indian youth. He went there, he passed with distinction and came here. He served very ably, very loyally the then Government and later the present Government. His business is to serve the Government-that he is serving. He had a sense of patriotism. Often he came into difficulties with the then Government when he had to carry out orders against the Congress people, putting them in jail and otherwise. But he could not go beyond a certain limit. Now all his balance today at the end of twenty-five years' service is ten thousand rupee, and his wife and children, when he dies, will get some provident fund.

These were the circumstances in which many of the service people took their training, came here and served. Now we can say "Very well, they did it with open eyes, let them suffer." Then you make up your mind to prepare for a substitute. We have already a substitute. We have started a training school here in India: we have fixed the cadre, proposals for which have been approved by Provinces--your know all that.

If you want an efficient all-India service, I advise you to allow the services to open their mouth freely. If If you are a Premier it would be your duty to allow your Secretary, or Chief Secretary, or other services working under you, to express their opinion without fear or favour. But I see a tendency today that in several provinces the services are set upon and told. "No, you are servicemen, you must carry out our orders." The Union will go-you will not have a united India, if you have not. a good all-India service which has the independence to speak out its mind, which has a sense of security that you will stand by your word and, that after all there is the Parliament, of which we can be proud, where their rights and privileges are secure. If you do not adopt this course, then do not follow the present Constitution. Substitute something else. Put in a Congress Constitution or some other Constitution or put in R. S. S. Constitution--whatever you like--but not this Constitution. This Constitution is meant to be worked by a ring of Service which will keep the country intact. There are many impediments in this Constitution which will hamper us, but in spite of that, we have in our collective wisdom come to a decision that we shall have this model wherein the ring of Service will be such that will keep the country under control.

As I told you, this agreement and these guarantees were circulated to the provinces and to individual members of the Service. Their agreement has been taken and signed by the provinces. They have agreed--both of them. Can you go behind these things? Have morals no place in the new Parliament? Is that how we are going to begin our new freedom? I have seen people who express their opinion about this Service as they used to talk in old fashion when 50 or 60 per cent were British element who dominated the Service and our members of the Service bad hardly any freedom to express their opinion and they were not independent. Today my Secretary can write a note opposed to my views. I have given that freedom, to all my Secretaries. I have told them, "If you do not give your honest opinion for fear that it will displease your Minister, please then you had better go. I will bring another Secretary," I will never be displeased over a frank expression of opinion. That is what the Britishers were doing with the Britishers. We are now sharing the responsibility. You have agreed to share responsibility. Many of them with whom I have worked, I have no hesitation in saying that they are as patriotic, as loyal and as sincere as myself. Those who think that the leaders were mistaken in giving these guarantees, they do not know their mind. They do not know what would have happened. They do not even now know. Yet we have difficult times ahead. We are talking here under security kept in very difficult circumstances. These people are the instruments. Remove them and I see nothing but a picture of chaos all over the country. I have difficulty because we have paucity of men. Provinces also suffer and they ask for more men. We have appointed a Special Commission to recruit about three hundred to four hundred men. They have just been selected. They are not selected from the, I. C. S. cadre. They have no experience. But yet we want instruments. They will learn from these people.

Now, what is it that you want to do? You decide. My advice to you is all Members of the Parliament should support the Services, except where any individual member of the Service may be misbehaving or erring in his duty or committing a dereliction of his duties. Then bring it to my notice. I will spare nobody, whoever he is. But if these service people are giving you full value of their Services and more, then try to learn to appreciate them. Forget the past We fought the Britishers for so many years. I was their bitterest enemy and they regarded me as such but I am very frank and they consider me to be their sincere friend. What did Gandhiji teach us? You are talking of Gandhian ideology and Gandhian philosophy and Gandhian way of administration. Very good. But you come out of the jail and then say, "These men put me in jail. Let me take revenge.", That is not the Gandhian way. It is going far away from that.

Therefore for God's sake, let us under stand where we are. Today, if you want to take anything from the Service, you touch their heart but do not take a lathi and say, "Who is to give you guarantee? We are a Supreme Parliament." You have supremacy for this kind of thing? To go behind your words? That supremacy will go down in a few days if you do that. That is my appeal to you and sincere appeal to you. You remember that and carry that to the provinces also and to the Congressmen also who are working outside. That is the way of administration. Otherwise, it will go gown. And when the country is stabilised and when it is strong enough, then if you want to make any change, it would not be difficult for the service people to be persuaded. If the Princes could be persuaded to give up their kingdoms, how could it be otherwise with the services who are our own people, whose children will be also serving with us, and who have laboured all day and night for the country? They are men who prefer honour, dignity, prestige and deserve the affection of the people. Very few people would like to serve only to be considered as enemies of the country. So, do not speak in those terms and I appeal to you to consider my word and give your judgment,

Shri Mahavir Tyagi: I want to know whether the question which I posed while speaking will be answered by Mr. Munshi or by the Honourable Sardar Patel ? May I repeat the question ?

Mr. President: It is not necessary. Your question has been put and if the Member in charge of the article wishes to reply, he will reply.

Shri T. T. Krishnamachari: I move that the question be now put.

Mr. President: The question is:

"That the question be now put."

The motion was adopted.

Mr. President: Mr. Munshi.

Shri K. M. Munshi: I do not think I should say anything after Sardars' speech.

Mr. President: I have now to put the amendments to vote.

Shri H. V. Kamath: I do not wish amendments Nos. 124, 125 and 128 to be put to the vote. I would rather leave them for the consideration of the Drafting Committee.

Mr. President: The question is:

"That in amendment No. 1 of List I (Second Week), in the proposed now article 283A for the words 'which he is from time of time serving' the words as the case may be' be substituted.

The amendment was negatived.

Mr. President. The question is:

"That in amendment No. 1 of List I (Second Week), in the proposed new article 283A, 'or the words 'the same conditions' the word 'conditions' be substituted."

The amendment was negatived.

President: The question is:

"That in amendment No. 1 of List I (Second Week), in the proposed now article 283A, for the words 'and the same rights' the words 'and rules' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 1 of List I (Second Week), in the proposed new article 283A, for the words as respects disciplinary matters or rights' the words of conduct and discipline be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 1 of List I (Second Week), in the proposed new article 283A, for the words 'as similar thereto as changed circumstances may permit as that person was entitled to immediately before such commencement', the words 'as similar, as changed circumstances may permit to what that person was entitled to immediately before such commencement' be substituted."

The amendment was negatived.

Shri H. V. Kamath: I think you will agree that this article is badly drafted Do you not, Sir?

Mr. President: It is no use my agreeing or disagreeing. We have the vote of' the House.

The next are the amendments of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: I am not pressing them. I leave them for consideration of the Drafting Committee.

Mr. President: The question is:

"That the proposed article 283A stand part of the Constitution."

The motion was adopted.

Article 283A was added to the Constitution.

Article 307

Shri. T. T. Krishnamachari: Sir, I move:

"That for clause (2) of article 307, the following clauses be substituted:-

> '(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such, adaptation or modification shall not be questioned in any court of law.

> (3) Nothing in clause (2) of this article shall be deemed--
>
> > (a) to empower the President to make any adaptation or modification of any law after the expiration of two years from the commencement of this Constitution; or
> >
> > (b) to prevent any competent legislature or other competent authority to repeal or amend any law adapted or modified by the President under the said clause."

"That in Explanation I to article 307, the words 'but shall not include an Ordinance promulgated under section 88 of the Government of India Act, 1935' be added at the end."

"That in Explanation 11 to article 307, for the word 'has' the word 'had' be substituted and after the words 'continue to have' the word 'such' be inserted."

"That for Explanation III to article 307, the following be substituted.-

Explanation III.-- Nothing in this article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration or the date on which it would have expired if this Constitution had not come into force.'"

Sir, the intention of the Drafting Committee is that clause (1) of article 307 is kept intact. Clause (2) has been varied for one particular purpose. There was some doubt whether the President may make adaptations, modifications, amendments or repeals of existing laws and in so doing whether his action could be questioned in a court of law and how for his action would attract judicial interference. Actually, the original clause (2) says that such adaptations could not be questioned in a court of law. But the idea of the Drafting Committee was that it should be made clear that what should not be questioned should merely be the form and adaptation or modification and an examination of the purpose underlying such action should be left open. For that purpose we have begun this article in clause (2) with these words:

"For the purpose of bringing the provisions of any law in force in the territory of India into :accord with the provisions of this Constitution...........

That is the basic purpose and if the adaptation or modification has been for any other purpose, undoubtedly that will be a matter which will come within the purview of the courts. So far as that purpose has been granted if any question of wording or minor variations are questioned, they cannot be taken to a Court, of law.

The second modification that has been admitted in this amendment is to limit the power of the President, in this behalf to a period of two years after the commencement of this Constitution by clause (3) (a). The other sub-clause (b) is taken out from the body of the original clause (2) and it has been made clear that nothing that the President might do shall prevent the appropriate authority from changing any law in force as it wishes to even if it had been adapted by the President. This will not act as a bar to any legislation being brought up before Parliament or before the legislature of a State.

So far as the modifications of the Explanations are concerned, the modification with respect to Explanation I is to restrict its meaning. This shall not apply in regard to ordinances promulgated under section 88 of the Government of India Act a provision, which should have been there. It is a lacuna which we are now seeking to rectify.

So far as the new Explanation (iii) is concerned, it is an amplification of the present Explanation.

Before I resume my seat, I would like to mention that this article should not be confused with article 313, which was passed the other day, where the President has been given power to modify the provision of this Constitution in case of any difficulty. The article under consideration gives the President a very restricted power and it is only in regard to those laws about which the President is advised that they come into conflict with the purpose of the Constitution that a modification will become necessary. It is very necessary because we have provided in article 307(1) that all the laws in force in the territory of India shall continue to remain in force subject only to the fact that they do not offend the provisions of this Constitution. This is a very necessary article and the modifications I have suggested are necessary in view of the fact that a certain lacuna in the original draft of the article has been brought to our notice and I do hope that the House will understand that the purpose we have in mind in suggesting these amendments is limited. The President's Powers are such that they can be overruled by Parliament or the appropriate legislature and it is only intended to serve during a period of time when neither Parliament nor probably the Legislatures of the States would have enough time to devote the detailed attention that is necessary to amend ,certain laws in force in our country. Some such action was taken in regard to certain laws when the Government of India Act, 1935, was adapted following the Indian Independence Act and this would follow the same lines.

By and large, the main modifications will be of it formal nature. Possibly, in many cases the words "Governor- General" will hive to go, and the word "President" will have to be put in and other similar changes will have to be made Substantial changes are not likely to happen except so far as we have provided in this Constitution. It is possible certain changes have to be made arising out of the fundamental rights, embodied in the Constitution.

There is one argument I would like to anticipate in view of the fact that certain amendments have been tabled. It has been suggested in these amendments that Parliament should do these adaptations. Well, if Parliament should do it, or Parliament should ratify the action taken by the President in their behalf then Parliament can undertake this question of modification by passing amending legislation. It is because we feel that Parliament will not have the time during the initial period for this purpose that we have provided this article.

Certain suggestions have been made that a tribunal or a committee may be appointed to go into the matter. That is to be left to the proper authorities who undertake this adaptation at the proper time. Whether they would think that the machinery in the hands of Government is suitable for this purpose, or that the machinery can carry out minor modifications, and if there are to be modifications of a major character that public opinion should be consulted or judges should be consulted, it will be for the appropriate executive authority to do what it feels is necessary. There is nothing to bar a tribunal being appointed, or an examination of the existing laws being made by either the Government of India or by the provincial Governments in the future. I hope these arguments will satisfy those people who have tabled amendments and this article will be passed as amended by the amendments that have been moved by me. Sir. I move.

Shri Brajeshwar Prasad: Mr. President, Sir, I move:

"That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307, after the words 'President may' the words 'in consultation with the Chief Justice of the Supreme Court and the Chief Justices of the High Courts of Bombay, Madras and Bengal, be inserted.'

Sir, there is a provision in article 307, I refer to the last line of clause (2), which says that any such modification or adaptation shall not be questioned in a court of law. I am not opposed to this provision; I am in favour of this. But, if we are going to pass such a drastic provision, it is necessary that an such adaptations or modifications which the President may make should be at least in consultation with the highest judicial authorities of the land. We are debarring the courts of law from going into the question. Here, the word President means the Minister for Law. It is he and he alone who will be in charge of modifications and adaptations. The President will have neither the time nor the inclination to go into these questions at all. I want that the Minister for Law should have the assistance of these Chief Justices. It is in no way a criticism or lack of confidence in the merit of the Law Minister, but it is only with a view to strengthen his hands, so that nothing should be left to chance. It is with that end in view that I have suggested this amendment.

Shri H. V. Kamath: Mr. President, Sir, I am one of the people, to use the language of my honourable Friend Mr. T. T. Krishnamachari,--Who have tabled amendments. I wish he had used a better term in conformity with parliamentary practice and decorum and referred to those who have tabled amendments as Members if not honourable Members. I think it is not proper to use the word 'people' in reference to my honourable colleagues who have tabled amendments. That is, however, by the way.

I move amendments 134 and 137 together by your leave:

"That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307, for the words 'repeal or amendment' the words 'alteration or repeal or amendment' be substituted."

"That in amendment No. 2 of List I (Second Week), in sub-clause (b) of the proposed clause (3)of article 3O7, forth on words repeal or amend the words 'alter or repeal or amend' be substituted."

They are more or less formal amendments and they are on the lines of the original draft article 307. Article 307 as it stood in the Draft Constitution reads as follows: "(1). Subject etc., etc., all the laws in force in the territory of India immediately before the commencement of the Constitution shall continue in force therein until *altered or repealed or amended* by a competent legislature or other competent authority." I think this is a very comprehensive statement of any changes that may be made. I feel, therefore, that the commission of the word 'altered' is a lacuna which this House would do well to remove. I have therefore moved amendments 134 and 137 so as to bring this new draft in conformity with the original draft article 307. I feel they are a more comprehensive and much happier expression of the meaning that we seek to convey.

Shri V. I. Muniswamy Pillay (Madras: General): Mr. President, Sir, I move the amendments that stands in my name, No. 135:

"That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307, the following words be added at the end:-

> 'but placed before the Parliament for ratification."

Sir, I feel that some principle is involved in the amendment that I have given notice of. While speaking on this article, my honourable Friend Mr. T. T. Krishnamachari told us that such a provision has been made in the Constitution to empower the president at times of emergency and also when the legislatures are not in session. I feel, Sir, taking into account what is happening in the provinces where the Governors who promulgate Ordinances feel in their duty to place before the concerned legislature when it meets in session what they have done in the matter of Ordinances or laws which are necessary in the interest ; of the country. The President as envisaged in the Constitution can look to Parliament as the body which has to ratify whatever action he has taken when the Parliament was not in session. We are only asking the President to place what adaptations or changes he has made in conformity with the constitution so that not only the country, but also the representatives in Parliament should know what the President has done during the absence of the legislature or Parliament. I feel, Sir, that this is as a matter of right due to the legislature or Parliament of the country because every Member is expected to know what the President has as an emergency measure done during the absence of the Parliament. I am sure that the Drafting Committee will consider this matter and accept my amendment. Moreover, it is made clear in clause (3)(b) that "nothing in this clause (2) shall be deemed to prevent any competent legislature or other competent authority to repeal or amend any law adapted or modified by the President under the said clause." Therefore, I feel, Sir, that this amendment can be accepted by the Drafting Committee.

Mr. Naziruddin Ahmad: Mr. President I move:

"That in amendment No. 2 of List I (Second Week), in the proposed clause (3) of article 307:-

> (i) in sub-clause (a), for the words 'after the expiration of two years from the commencement of this Constitution' the words 'after the constitution of the ministries of the Government of India or of the States as the case may be, after the first general election under this Constitution' be substituted; and
>
> (ii) in sub-clause (b), the words 'or other Competent authority' be deleted."

Sir, in moving these two amendments, I must say that I am in full agreement with the principle of the two clauses which have been moved. In the interim period when we pass through a very rapid transition, numerous anomalies and difficulties will arise and it is therefore necessary to authorise the President to make adaptations and modifications as may be required. The existing laws must be adapted and modified so as to conform to the standard laid down in the new Constitution. That was done when the Government of India Act, 1935, was passed. While agreeing with this principle, my amendment would try to limit the period during which the President may exercise these powers of adaptation and modification. In clause (3), sub-clause (a) it is proposed that the power of the President to make these adaptations and modifications shall be limited to two years. By my amendment instead of this period of two years I want to limit it to a period during which the general elections will be held and ministries will be constituted at the Centre and in the States. After that the Legislatures at the Centre and in the States will be in full operation. We may have general election under the Constitution within a period of two years. If so, there would be anomaly that the legislatures both at the Centre and in the States, will be in full operation and yet the President will be given power to make amendments and changes and modifications in the Constitution. When these legislatures will come into operation, the President's power should cease. The Legislatures alone should thereafter be entitled to make modifications. Therefore the power to make these modifications should last till the next general elections are held and ministries ,constituted. There is no occasion to extend it beyond that. It may be that elections may be delayed and in that case there would be a gap after two years and the time when the new Legislatures would come into force when there will be no authority to make these adaptations. In these circumstances, I should like to place the period till the period when elections are held and ministries. constituted.

My second amendment relates to the proposed clause (3) which runs thus;

"Nothing in clause (2) of this article shall be deemed to prevent any competent legislature, or other competent authority to repeal or amend any law adopted or modified by the President under the said clause."

I would like to delete the words 'or other competent authority'. I call well appreciate that the adaptation made by President may be changed by any competent legislature, but I fail to see what other competent authority there would be to make necessary changes. Therefore, we should leave this power to make changes in the decisions of the President to the competent legislatures and not to any other authority. I would ask for a clarification as to what competent authority beyond the legislatures may be empowered or should be empowered to make the necessary changes.

Prof. Shibban Lal Saksena : Mr. President, I move

"That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307, the words 'and any such adaptation or modification shall not be questioned in any court of law' be deleted."

This is a very important article by which we want to bring all the present existing law in consonance with the provisions of the Constitution and we are, only providing the machinery for the adaptation. The President is hereby authorised to do it. I have no objection to that. I think it is merely bringing the law which in existence today in consonance with the Constitution and I, therefore entirely agree that the President is the proper authority. But what I object to is this, that the adaptation which he may make should not be questionable in any Court of Law. Suppose by mistake or any other reason the modification made is not really in consonance with the purport of this clause and goes beyond this, then where is the authority which will pronounce that the adaptation is not in consonance with the intention of this article, which read& thus--

"For the purpose of bringing the provisions of any law in force in the territory of India into with the provisions of this Constitution, etc."

But what is the machinery provided for seeing that the purpose of this clause at the beginning is given effect to. If the intention is that every such case has to go, to the Supreme Court, it will be very troublesome and costly, because the law 'to be' amended will be very wide. I therefore think that the courts which administer that law should be empowered to judge whether the adaptation is, proper or not. The President will not have the time to go through all the law and see it adapted in accordance with the Constitution. The Law Department will do it and even the Law Minister will not have the time to go through it all. This will be done by the clerks of the Department.

We do not want that Acts of Parliament passed by former legislatures to be amended and adapted by ordinary clerks and they should not be liable to be challenged in a court of law even on the ground that they are not in consonance with the provisions of the Constitution.

I, therefore, wish that the normal machinery of law should be trusted to see that if any mistake is made in adaptation then courts should be empowered to correct it. If this is not done, many mistakes will be committed which could not be corrected by anybody in the country. If you want the Supreme Court to be approached, then I do not think every litigant will have the power to do it. I do not know whether the Supreme Court will also have the power. But I think the Supreme Court has inherent powers to go into anything. But still in this Constitution we should provide definitely that the the adaptation shall be with the purpose mentioned in the first clause and the Court shall be empowered to judge the correctness of the adaptation. The other amendments I do not object to, but I do think that the Drafting Committee will explain what machinery they are providing to see that adaptation made will be only in consonance with the provisions of this Constitution.

Pandit Thakur Das Bhargava (East Punjab: General): Sir, I beg to move:

"That in amendment No. 2 of List I (Second Week), for the proposed clause (2) of article 307 the following be substituted:-

"The President shall, as soon as may be after the commencement of this Constitution, by order, appoint a Committee of experts to examine all the laws in force in the territories of India by whichsoever authority enacted and to report to him within a period of 8 months if any or any portion of the laws in force is inconsistent with the provisions of this Constitution and what adaptations and modifications are necessary to bring into accord the inconsistent portions with the provisions of this Constitution. The Government shall forthwith take steps to repeal or such laws or portions of them as are not in accord with the provisions of this Constitution and unless such laws or portions of laws are repealed or amended by being brought within a further period of one year and four months from the date of report in accord with the provisions of this Constitution, they shall cease to be in force unless they are repealed or amended earlier by any competent authority or declared void by the courts.'"

I also beg to move:

"That in amendment No 2 of List I (Second Week), for the proposed clause (3) of article 307 the following be substituted:-

"(3) For the purpose of bringing the provisions of the laws in force in the territory of India relating to fundamental rights guaranteed by this Constitution into accord with the provisions of this constitution, the President shall, after the commencement of this Constitution, appoint, as soon as may be, a Committee of experts to examine the laws in force in the territory of India with instructions to report if any or any portion of them is inconsistent with the provisions rotating to fundamental rights and what adaptations and modifications are necessary to bring such inconsistent laws or portions of laws in accord with the provisions of this Constitution. The Government shall, on the receipt of the report, forthwith take steps to avoid, repeal or amend such laws or portions of them as are not in accord with the guaranteed fundamental rights. Such laws or portions of them as are reported to be inconsistent and not in accord with the guaranteed fundamental rights shall cease to be in force after an year of the commencement of this Constitution if they are not avoided, repealed or amended earlier."'

I also beg to move:

"That in amendment No. 2 of List I (Second Week), in clause (2) of article 307, for the words 'made, and any such adaptation or modification shall not be questioned in any court of law' the word made be substituted."

Also--

> "That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307, for the words 'and any such adaptations or modifications shall not be questioned in any court of law' the words 'except in so far as they are inconsistent with the provisions of this Constitution' be substituted."

I also move:

> "That in amendment No. 2 of List I (Second Week), in clause (2) of article 307, the words 'except on the ground that the law so adapted or modified is not in accord with the provisions of this Constitution' be added at the end."

And-

> "That in amendment No. 2 of List I (Second Week), the proposed clauses (2) and (3) of article 307, be deleted."

Sir, my purpose in moving these amendments is to give full effect to the provisions that we have already passed, *vide* article 8. Now, these existing laws can easily be divided into two kinds of laws--laws relating to fundamental, guaranteed rights, and the laws with regard to other matters. I want to make a distinction between these two, and as would appear from the amendments I have proposed, some of them relate only to the guaranteed rights and the other relate to the other laws in force. Now, I take very serious exception to the words--"any such adaptation or modification shall not be questioned in any court of law." And that is why I have proposed these amendments, so that such words may be taken away and such other words substituted as would make the meaning absolutely clear. I am almost despaired of getting the objectionable provision of this section cleared out and I have therefore even proposed that the entire cause (2) be deleted. Sir, I feel full thought has not been given to this matter, I mean as much thought as should have been given to it. If the proposition is accepted as it is, if the proposal of Shri Krishnamachari is carried, the result will be this. Not the legislature, but the Government through its department of law, not the law Member, but the Secretary or clerks will make these adaptations and, modifications and all these adaptations and modifications will never come before any Assembly or Legislature. The substantive law of the land will, *ipso facto,* by the Executive fiat, be adapted or modified and become the law of the land. The law shall stand modified or adapted and after that, that law becomes so immutable that the courts will not be able to question them. My submission is, we have passed article 8 already which says:

> "All laws in force immediately before the commencement of this Constitution in the territory of India, in so far as they are inconsistent with the provisions of this Part, shall to the extent of such inconsistency be void."

Now, all those laws which the Courts are today empowered to declare void are sought to be sanctified and made "pucca" by these adaptations. And it is not in accordance with clause (2) of article 8, which says:

> "The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void."

What would happen it a modification or adaptation is made which is really in contravention of the clause? That law cannot be questioned, no court will be able to question it, which means in plain English, that what we give by virtue of article 8(2) and 8(1) is being taken away by this back-door method. I do not say that is the desire of those who have framed this proposal, but my humble submission is, that that is the result, that it will result in a situation like that.

Let me just illustrate this point. Take article 13. We have practically changed the definition of sedition, by the provisions made under this article. Under article 13(3) we have put in "reasonable" before "restrictions on the exercise of the right........ and thereby we have given the courts of the country the opportunity to find if the particular laws which are harsh and onerous should be void or not. They come within the purview of the courts' jurisdiction and any court can declare that such and such law is against the letter and the spirit of article 13 and therefore, void. But as soon as the adaptation is made and it will not be something enacted by the legislature, but something done by the Executive--and if the adaptation fails to carry out the purpose, if it is not in consonance with article 8, no court will have the power or the authority to declare such adaptation to be wrong, which means that we give such power to the Executive as we have not entrusted to the legislature even. If this Parliament, after 26th January, 1950, passes any law in respect of these fundamental rights which abridges the liberty of the people, that can be questioned in a court of law, and any court of law can say that Parliament was wrong in so far as it contravened the provisions relating to the fundamental rights. If the adaptation is made in such a manner that it does not carry out the full purpose, then we are absolutely helpless. It is said that there is provision that any legislature can take such action as it deems necessary and repeal the law. Quite right. This is so. May I ask if this right is not completely illusory? Where is the Provincial Legislature which will come to the conclusion that the adaptation or modification made by the President is wrong and sit as a court of appeal on the decision of the President, and go ahead to frame the laws afresh? Where is the individual Member who will be given the facilities to bring in the necessary new provisions? We all know how many obstacles there are in the way of those who want to enact a law. My submission is that when once these adaptations or modifications are made, it will be very difficult to change them. Government will not change them. The local legislatures will not change them, and no private member will have the chance of changing them. It means in plain English that these adaptations or modifications will be there for all time, whether they are in accord with the Constitution or not. Who makes the law of the land? The legislature and not the executive or Secretary or Clerk in the office of the law Member. Even if the President were to pass any Ordinance, that Ordinance Will again be placed before the legislature within two months, but so far as these adaptations or modifications are concerned, they will never be placed before the Legislature. Therefore, my submission is that these adaptations will be defective in more ways than one. They will not receive the seal of the Legislature and the courts will not be competent to question those modifications.

Now, Sir, it is said that the first sentence "For the purpose of bringing the provision of any law in force in the territory of India into accord with the provisions of this Constitution" is sufficient guarantee. My submission is that this is no guarantee. My point is that the purpose is there, but what if the purpose is not carried out, if the adaptations or modifications are not good or do not go to the same extent that the Fundamental Rights do? The courts have no power to interfere. If you say, "necessary or expedient" are there, and the courts can go into the question of whether the adaptations are necessary or expedient, my submission is, what is the sense in having these words "shall not be questioned in any court of law"? I understood Mr. Krishnamachari to say that minor things should not be questioned but that only the purpose should be seen. The adaptations can say that for such and such purpose the adaptations are made, but that is not sufficient. The courts will not be able to go into the question of the purpose also. The purpose is there, but there is no guarantee that the adaptations will carry out the purpose. It may be said that such a provision in the shape of section 293 existed in the old Government of India Act of 1935. No doubt that section was there in the Government of India Act; but then the purpose is absolutely different. Here in this Constitution the main change that we have made is that we have given certain Fundamental Rights. In the Act of 1935 there were no Fundamental Rights. I would not care if you make adaptations to the ordinary laws of this country provided you do not touch the rights of the people. You may bring all the laws of the land in accord with the Constitution, but when you go and touch the very delicate rights of the people in general and touch their fundamental rights, then my submission is that the matter becomes of very great importance. In section 293 even these words 'shall not be questioned by any court do not appear. In the old section 293 you will find that the powers of the courts were not taken away. There the laws were subject to the jurisdiction of the court as before. Now these words have been specifically added that the adaptations or modifications shall not be called in question in any court of law. My main objection is to these words.

It is a secondary objection, though of equal import, that the executive should not be given the right to adapt these laws. I propose that in regard to these Fundamental Rights, a Committee of Experts should be appointed to go into the question. This will be an important Committee and the best heads of the country should be on it. They will go into all the laws and make a report to the President that he may be pleased to see that such and such Acts are enacted, because the law-making power is that of the Legislature and we cannot delegate this power to any President or any other set of people. After the Committee has reported, the Government will take steps to see that such inconsistent laws are repealed. In this I beg to submit that the authority of the court will not be taken away. It is the essence of these Fundamental Rights that the courts are the ultimate authority and possess ultimate sanctions and jurisdiction. After all, if the courts will not safeguard these rights, what chances are there that the executive will do it ? Really, you are putting the cart before the horse. In section 293 of the Government of India Act such rights were not touched at all. Only the existing laws were taken into consideration; there was no reference to Fundamental Rights and therefore also no taking away of the jurisdiction of the courts. It is possible that the rights guaranteed by article 13 may be so tampered with in the way of adaptations that we will not be able to change them for years to come.

Therefore it seems to me, Sir, that you have only trumpeted to the whole world that you have given these Fundamental Rights. I do not say that the, Law Minister will behave in this manner. I think he will not behave in this manner but he might ask someone in his chamber to go into this matter. I cannot possibly agree to delegate this power to any authority, even including the President or the Law Minister. Let the legislature go into these laws and find out whether adaptations are necessary or not. The executive should not change the law of the land in this manner. Mr. Krishnamachari said that these words are not important. All right, take them away, and my main objection would go away. Sir, in 1947 we had a Bill before the Assembly in which many old laws were sought to be repealed by the legislature. Why cannot you bring in a Repealing Bill before the Assembly again? In regard to these Fundamental Rights, people will go to court and the court will be able to hold that such and such law is not in accordance with the provisions of the Constitution. Why not give this power to the Courts? If you want to benefit the people, benefit them in a direct manner. As it is, you may abuse your position and bring disaster to the people.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. President, Sir, a great deal of the criticism of the amendment moved by my Friend, Mr. Krishnamachari, proceeds on an entire misapprehension. It is necessary to have in view what exactly is the object of this clause. Our Constitution has made certain fundamental changes in the structure of the Constitution, in the distribution of powers, in the powers vested in particular authorities, in the relation between the Unit Legislatures and the Central Legislature. At the same time, it is not our object to start afresh our career in legislation, but to take over all the enactments under the previous Constitution subject only to the prohibitions and to any special provisions in the present Constitution. It is necessary to have an idea of the number of Statutes, Ordinances, Acts, subordinate Acts, and rules there have been made in all these twenty years after the first adaptation in the year 1935. If every Act, every rule, and every order, is to be subject to the scrutiny of courts and this adaptation is to be canvassed from court to court, it will no doubt afford plenty of opportunities for lawyers and litigants, but it will not be in the larger interests of the country. Therefore, in taking over the whole body of legislation to the new Constitution you first provide that that legislation shall continue to operate unless it is repugnant to the principles of the Constitution.

That is the first principle and having laid that down, it becomes necessary to provide for adaptation. If that adaptation is to be made within the two years when Parliament is overloaded with work in regard to various matters consequent upon the new Constitution, to trouble Parliament with the work of adaptation will be an unwise task. Under those circumstances, what is provided is there will be adaptation by the Government. You need not proceed on the footing that the Governor-General or the President sitting at Delhi is going to make all the adaptations. The Government will be assisted by an expert body. The advisory bodies which my friend suggested may, be utilised for the purpose of making the adaptation, provided they do not become unwieldy and hamper the work of adaptation. The adaptation will have to be done quickly in addition to other work which the Constituent Assembly may have to take upon itself soon after the passing of the Constitution in order to bring the Constitution into effect.

Before I make my comment upon the article as put forward before the House, it is necessary to have in mind what exactly section 293 of the Government of India Act which has been adapted in this article 283 provides. Under the section 293, His Majesty was given the power of adaptation. No limit of time was imposed. The President of the Drafting Committee who was responsible for putting the limitation of these two years thought that a power for an indefinite length of time should not be vested in the President. It must be expedited and the adaptation must be finished within two years. Therefore the limit of two years was placed. Under section 293, the question came up before the Federal Court in the very first case after the new Constitution of 1935 whether an adaptation can be questioned in a court of law. Sir Maurice Gwyer, the then Chief Justice, delivering the judgment in the U. P. Cantonment Case stated that adaptation could not be questioned at all. We put a limitation in the present article in the opening words, "for the purpose of bringing the provisions of any law enforced in the territory of India in accord with the provisions of this Constitution." It is only for that purpose that this power is to be exercised by the President. This is a very necessary, wholesome, and salutary provision. With my experience in courts in regard to other provisions and bye-laws, I am bold enough to state that there is a general tendency to attack every rule and every Act, and I can say that this provision is most wholesome and salutary. Instead of leaving it to the Supreme Court or Federal Court again to deal with the point whether Sir Maurice Gwyer's decision is to be followed or not or whether some dissenting opinion expressed in the Lahore High Court is to be followed, the position is made clear that the adaptation shall not be questioned in a court of law. It was advisedly, deliberately put in in order to prevent frivolous, immaterial objections being taken. But if the adaptation is so alien to the main provisions of the Constitution to the very purpose of the Constitution, then the court will have the necessary jurisdiction to hold the adaptation invalid. It does not mean that every bye-law, every clause, every sub-clause, every expression, has to be canvassed in the court of law. If the main purpose is kept in view and if the adaptation is not alien to the purpose, it shall not be questioned in a court.

After all, the adaptation is not immutable. It is subject to the intervention of the legislature. If the legislature is vigilant, and sensitive to public opinion as to scrutinise every adaptation, I think there is nothing to prevent it from passing a law when an adaptation is not in accordance with the spirit of the Constitution. We are proceeding on the assumption that the legislature is quite alive to its duty, it is very vigilant, very capable, hard-working, and with the host of lawyers in the country who will surely canvass every bye-law and with a large public who are likely to be affected by it, there is no danger of its not being noticed by the vigilant public or equally vigilant lawyers or equally vigilant legislators. The legislators will be on the watch. The lawyers will be on the watch and the courts are sure to find any lacuna in legislation. Under these circumstances, I submit this is the most salutary provision. Already there is great criticism that the Constitution itself is intended for the benefit of lawyers. The provision in the Constitution that adaptation of the Constitution shall not be questioned in court is a most wholesome one.

Regarding the power of the legislature to intervene, it can do so at any moment. The provision does not stand in the way of the President constituting a body of able advisers like my Friend, Pandit Thakur Das Bhargava who certainly will have the public spirit to assist the President in making the necessary modification and at the same time, as a temporary phase it enables the President to make the necessary adaptation. Unless the President is mad or his Cabinet is mad, they will not violate Fundamental Rights. Of course, here and. there in respect of a particular clause, it is possible that the legislature may take a different view, but if there is a tenable ground, the legislature can look after it and it will be competent for the Government or the parties concerned to, alter that provision. Under these circumstances, I am sorry that this provision should be taken exception to,

Mr. President: It is suggested that we should meet in the afternoon, so that we might make more progress. So we shall sit again at 4 o'clock.

The Assembly then adjourned for lunch till 4 P.M.

The Assembly re-assembled after lunch at 4 P.M., Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Shri Biswanath Das (Orissa: General). Sir, the proposed amendment follows very closely the Government of India Act of 1935. If at all there is any difference, it is on the side of stringency. In the Act of 1935, as adapted, this section--I mean section 293--was omitted. We have naturally a right to expect an explanation why this omission was made and why a departure has now been felt necessary in this regard.

Sir, my honourable Friend, Pandit Thakur Das Bhargava, has clearly stated his objections. Most of those are our objections. My honourable Friend, Shri Alladi Krishnaswami Ayyar, representing the Drafting Committee, treated us to some homilies. He stated that the power of the Legislature has not been taken away by this amendment. I want to ask him whether it is necessary that an eminent lawyer like him to explain these elementary principles to us, as it the Members of the Assembly do not know that tinder a system of responsible Government the 'President' means the Cabinet or the Prime Minister himself. Then again he stated that it is in consonance with the spirit of section 293 that the Orders in Council were being issued by the British Cabinet. When you were trusting the British Government, why cannot you trust your own Government? If at all there is any element of distrust, I say that the boot is on tile other leg. So, it is unfair and unfortunate to state that we want a change in the section merely because we do not trust the Ministry. It is not a question of our trusting the Ministry. What has been proposed in this article is that the Honourable Dr. Ambedkar, the Chairman of the Drafting Committee, will transfer all the powers of the Legislature to the Honourable Dr. Ambedkar, the Law Minister of India. Here again we would not probably have so much bother, it lie or his Cabinet handled the whole question themselves. Sir, it is a well known fact that Cabinet Ministers are busy-bodies. It is not possible for them to go closely through all the Acts that have to be adapted in this regard.

While discussing this question we have to keep two or three things in view. The first thing is that you have in the Constitution the Fundamental Rights which, were never contemplated; nor were they conceived in the Act of 1935 and much less thought of by the British Government or the British Cabinet. Secondly you have barred the Jurisdiction of the courts by a specific provision in the Constitution. A point has been made out by our Friend, Shri Alladi Krishnaswami Ayyar, that it is the judicial pronouncement of the highest court. I must tell him again--as I have already suited--that my confidence in the pronouncements of the British judiciary under a system of imperial administration is not as it would be under the pronouncement of a free judiciary in a free India. Until that is done I must plead with him and with the honourable Members of this House that my confidence in the judiciary will be within its limitations.

Sir, a period of limitation of two years has been laid down--I do not known, for what reason. The enormous powers that are vested in the Executive are not at all desirable. When my honourable Friend Shri Alladi Krishnaswami Ayyar was thrusting his homilies on us to trust the executive, it took my breath away. I hardly expected that an eminent jurist and lawyer as he would teach me about our confidence in our Executive. I would plead with him to carry his logic further. By all means have all confidence. Why then have any law? Leave everything to the administration. Have no laws at all. Have no constitution; no Fundamental Rights are called for because we have it responsible Government and a popular Ministry. This is hardly expected of a very wise and sound jurist of his eminence.

Sir, I must complain in this connection that the Government have not placed all their cards before us. I do realise the fact that the Government is not represented here and the Members of Government are here in their capacity as Members of the House. But it is no doubt a fact that Dr. Ambedkar is also the Law Minister of India, and it is his responsibility and duty to explain to us what steps he has taken tip till now in this regard. This is, a very big order that he wants to be given to him. There ire thousands of laws, Central and Provincial in operation, including the Regulations passed by the British Government. All these have to continue in operation. Is it possible for ordinary Members, I ask, to undertake the private legislation to modify all these? What has been done by the Ministry of Law? I plead again with the Drafting Committee that the position they have taken so far, as also the action taken by the Law Ministry so far in this regard has not been helpful. My Honourable Friends have made various suggestions.

Mr. President: What is the kind of action which you expect from the Law Ministry on this subject?

Shri Biswanath Das: I am coming to it. In fact I will be failing in my duty if I do not state it and I will iterate. The British Government, before any adaptations were undertaken asked the Government of India and the Law Department of the Government of India to examine all the necessary Statutes. The Government of India were suggesting adaptations and the adaptations suggested by the Law Ministry, then, the Law Department of the Government of India, were being approved and published as the adaptations of the British Government in an Order-in-Council. My complaint in this regard is that neither the Law Department nor the office of tile Constituent Assembly have moved an inch in this regard. I expect that they should have kept ready the adaptations and examined the laws in operation.

Mr. President: Without knowing what the Constitution is going to be.

The Honourable Dr. B. R. Ambedkar (Bombay: General): My Friend is thoroughly misinformed. He does not know what is being done.

Shri Biswanath Das: I will be glad if I am misinformed and I will be glad If all this has been done. In which case, my Honourable Friend ought to have placed the whole thing at least by this time--as I said and I repeat--all the cards on the table, and said "I have got them ready, give me the order and I will publish." I do not agree with those who think that consultations with Chief Justice will improve the matter nor do I agree with those honourable friends who feel that reactions are to be placed before Parliament. The adaptations under the Indian Independence Act were placed before Parliament. But to what effect? Where has the legislature time for private Members to undertake this stupendous task? Under these circumstances, placing of adaptations for the reactions of Parliament will not help.

Another proposal has been placed before honourable Members and that is an Expert Committee. That would be certainly useful and helpful. But I would suggest that we are giving a big order and placing very responsible power and authority with the Executive. Therefore, I think it will be fair to the Legislature also if some of the eminent jurists, who happen to be Members of the Legislature, are constituted into a Committee to place recommendations before the Law Ministry so that the Ministry gives them merely legal shape. It should be the responsibility of the Law Ministry to put them into legal form. I am not inclined to place all other powers, importance and responsibility as they are, in the hands of the Executive. In this view of the question, for myself[will be fully satisfied if the Honourable the Law Minister or the Drafting Committee say that they are willing and anxious to have an Expert Committee of the Constituent Assembly and the Legislature examines all the laws, and if necessary, asks the Provincial Governments to undertake examination of all the laws and all the adaptations to be put together. It would be unthinkable after responsible Government in a free India to have laws irresponsible in themselves and most of which are out of date and at antediluvian and which do not suit the present-day needs of the people to co-exist and operate. In these circumstances, I plead with the Drafting Committee and also with the honourable Members of the Constituent Assembly to consider this important question.

An Honourable Member: The question may now be put.

Shri Rohini Kumar Chaudhuri: Sir, after listening to this debate carefully, I am inclined to support the view expressed by my honourable Friend, Pandit Thakur Das Bhargava. It seems rather preposterous that if a Legislature passes any provision which is inconsistent with the Constitution then any one aggrieved by that would be entitled to bring that fact to the notice of the Court and the Court will not be precluded from considering that question. Supposing any legislation was passed which was inconsistent with any of the Fundamental Rights of the Constitution, then it was up to anybody to move the Court to have that legislation declared illegal and void. It seems rather strange when a similar order or provision was made by the President by virtue of the power of his adaptation and modification--which was inconsistent with the Constitution, we could have no remedy in a court of law. I thought, Sir, there it was not necessary to abrogate this new provision because so long as the adaptation order was inconsistent with any provision of the Constitution, the lower court would have full jurisdiction. But my honourable Friend, Shri Alladi says that in a recent ruling the Federal Court has held that any suit brought to set aside or to declare an adaptation invalid would be out of court. Therefore, Sir, I consider it would be safe and in the interests of all concerned that an amendment of the nature which has been proposed by Pandit Thakur Das Bhargava should be accepted.

I would also like to say that the period of two years prescribed by this article is rather too long. If such a period is there, in some instances the President or his advisers may not taken steps as early as they should. In my opinion, immediate action would be necessary after the passing of the Constitution so far as administration of justice in the tribal areas is concerned. It will be within the recollection of the House that in paragraph 5 of Schedule VI, certain provisions have been laid down on the strength of which the Code of Civil Procedure and the Code of Criminal Procedure could be made enforceable in the tribal areas.

But honourable Members will be surprised to learn that even though there may be a litigation between persons who do not belong to the tribal community, in areas which are not inhabited by tribal people at all, but are within the jurisdiction of the hill area, the Code of Civil Procedure and the Code of Criminal Procedure are not in force. For instance, there any Assistant to Deputy Commissioner who may not have any legal academical qualifications is competent to punish an accused with any sentence up to seven years; and under the present rules if the sentence is more than three years then only an appeal can be field. Otherwise, there is no right of appeal. I regard to other matters also, the Civil Procedure Code or the Criminal Procedure Code is not in force. It has been laid down that the courts will be guided by the spirit of the Code of Civil Procedure or the spirit of the Code of Criminal Procedure. This spirit, Sir, it has been very difficult to find at all. Sometimes, the spirit of the Criminal Procedure Code is interpreted in not following the Criminal Procedure at all; sometimes it is interpreted in following the Criminal Procedure Code strictly. Even if my honourable Friend. Dr. Ambedkar or Alladi Krishnaswami Ayyar had been practising in these bills, they would have found it difficult to see where the spirit of the Civil Procedure Code or the spirit of the Criminal Procedure Code lay. Under this paragraph, it is within the competence of the Governor to declare that the Criminal Procedure Code will be enforced in respect of the trial of offences which involve a sentence of imprisonment of five years or more, or transportation or capital sentence. But, unless the law is adapted immediately, this provision of the Constitution will remain merely as a dead letter. This is a very small mercy. Just for a moment, fancy that anybody living in Delhi or Ajmer Merwara being tried, convicted and sentenced to death also without the Criminal Procedure Code being followed. I could have quite this law was applicable in those cases where the indigenous or the tribal people were the parties. But it is not so. Even if it is a case purely between non-tribals or between a tribal and a non-tribal the Criminal procedure Code is not applicable and in that case no legal procedure is followed; at any rate the right of appeal will not be allowed.

I submit that in order to bring the present law in line with those provisions which have given a small mercy in that the Governor may declare certain provisions of the Criminal Procedure Code to be enforced in a particular area in respect of certain cases, steps should be taken by an amendment or modification of that law so that that law may come into force at an early date. Therefore, I welcome this article which allows an alteration or modification of the existing law so as to bring it in line with the provisions of the Constitution. At the same time, we must be safeguarded against the application of these provisions for adaptation or modification in such a way as may interfere with the fundamental rights given by this Constitution. In such cases of interference, it should be made clear that we should have the right to go to the court, in order to have that adaptation declared invalid. Otherwise, if you leave it at that, in view of the ruling that has been cited, we shall be absolutely powerless to take any step when the President would be pleased to make such an adaptation as would be inconsistent with the provisions of the Constitution.

Mr. President: Closure has already been moved. The question is:

"That the question be now put."

The motion was adopted.

Shri T. T. Krishnamachari: Mr. President, let me, at the outset apologise to my honourable Friend, Mr. Kamath, who is not here I see, who took objection to a slip of the tongue on my part when I referred to those honourable Members who moved amendments as people who moved amendments.

The House may recollect that I had tried to anticipate the amendments that were being moved and answer those amendments in advance. The bulk of them, at any rate so far as the amendments moved by my honourable Friends, Mr. Kamath, Mr. Muniswami Pillai, and Prof. Shibban Lal Saksena, I have attempted to answer in advance. I think that so far as the wording of clause (2) as it now stands is concerned, It is so clear that no mischief can possibly arise out of the wording appearing at the end of that clause, namely, that such modifications and adaptations shall not be questioned in a court of law. Ample pro vision has been made by the opening words which specifically state that the that the adaptation should be made only for the purpose of bringing the provisions of the law in force in the territory of India into accord with the provisions of this Constitution.

It is only this group of amendments which were tabled by my honourable Friend, Pandit Thakur Das Bhargava which probably require some reply. In his amendment

No. 188, in which he seeks to substitute clause (2) by another clause, he has failed to understand the purport of clause (2). The purport of clause (2) is that in so far as it is possible, the machinery at the disposal of the Government would prepare the necessary amount of material for adaptations to be made which will, in all probability, be published as an Order by the Pressident immediately after the Constitution is promulgated. That would be necessary because there will be a number of details, minor in some cases, of a different character in certain other cases which will have to be dealt with in order to bring the laws in force in tune with the provisions of the Constitution.

In the amendment proposed by my honourable Friend, he suggests that a committee should be appointed and that that committee should report within a period of eight months, and that action should be taken later on. What is to happen in the period between the time of the promulgation of the Constitution and the eight months that will naturally elapse until the committee reports? It is obviously impossible that any such thing could possibly be done, if actually the laws that are in force are to be brought in tune with the provisions of this Constitution. As I said in my remarks at the time of moving these amendments, there is nothing to prevent the Government, to prevent the Parliament, from passing a resolution, or prevent the Government from taking the initiative in this matter and appointing a Committee to review the law structure in this country and modernise it and bring it in tune with the principles that are adumbrated in this Constitution. I think my honourable Friend, Pandit Thakur Das Bhargava must wait until the new Constitution is promulgated and either by means of a Bill or by means of a Resolution get the Government to move in the matter, on the lines that he has suggested.

So far as his amendment to clause (3) is concerned, the amendment is such that it takes away the guarantee that is provided in clause (3) of the amendment moved by me. What he has done is merely he has sought to incorporate in his suggested amendment to clause (3) what he had originally thought of moving as a separate article 307-A. The idea that he had when he framed the amendment that he wanted to move as a new article 307-A has been incorporated in clause (3), namely, that something must be done in regard to the fundamental rights, and the question of relating the laws of this country in tune with the fundamental rights.

I therefore feel that my honourable Friend, Pandit Thakur Das Bhargava who is known to this House as a lawyer of considerable eminence and who puts in a lot of hard work in helping this Constitution to be framed has, in this particular instance, allowed his enthusiasm to outrun his usual discretion and tabled an amendment which does not fit in with the particular amendment before the House. It may fit into something else; it may go in as an independent proposition, but it does not fit in this particular amendment. Because, his amendment No. 188, does not fulfil the purpose of clause (2) of the amendment that I have proposed and his amendment No. 189 does not fulfil the purpose of clause (3), that......

Pandit Thakur Das Bhargava: So far as the amendment relating to the proposed clause (3) is concerned, it is a separate thing altogether. It is not an amendment to clause (2).

Shri T. T. Krishnamachari: Actually, his amendment No. 189 says---

"That in amendment No.2 for the proposed clause (3) the following be substituted."

I feel that it is not a substitution because it bears no relation whatever to the provisions of clause (3) as I have moved it, and I think there is no mystery about it because the wording of clause (3) is very clear. The wording seeks to empower the President to make adaptations only for a period of two years.

Pandit Thakur Das Bhargaya: It is an amendment to the original article.

Shri T. T. Krishnamachari: Then I stand corrected. If my honourable Friend has brought an amendment at 9-35 A.M. today which is something apart from the amendment, which is on the Order Paper, I am afraid that I must withdraw all the remarks that I have made and merely plead that since the thing bears no relation to the amendment that I have moved, I am unable to furnish a reply and the proper authority probably to give a reply will have to be the Honourable Minister for Law of the Government of India or the Law Minister of the Government of India as it is to be after the 26th January. I feel that the article 307 as amended by the amendments proposed by me fulfils a definite purpose which has been amply justified by the learned arguments furnished by my honourable Friend and colleague, Mr. Alladi Krishnaswami Ayyar, and the House would therefore do well to accept his argument in support of this proposal and I would therefore request the House to accept my amendment and pass article 307 as amended by my amendment.

Shri Amiyo Kumar Ghosh (Bihar: General): I want a clarification of what is really intended to be meant by the words--

" and any such adaptation or modification shall not be questioned in any court of law."

Because if the President amends or modifies any existing law in accordance with what we have passed in the Constitution then his actions ire *intra vires* and no question of raising the matter in any court of law arises. But if the President does anything which is against the spirit of clause (2), *i.e.*, if he amends, modifies or repeals any existing law which is it variance with or repugnant to the provisions laid down in the Constitution then his action is *ultra vires* and certainly it can be questioned in a court of law. What class of cases are really contemplated to come within the limitation provided in the last two lines. Clearly, the cases in which the President acts precisely within his power conferred by this article do not come under those two lines mentioned above so there is only one class of cases that are likely to be governed by the said lines are in Which the President acts in contravention to what is laid down in this article because you have not laid down any procedure or rules for the President to act in matters of amending or modifying the existing laws and so no question of' irregular exercise of Power arises.

Shri T. T. Krishnamachari: My honourable friend his not followed perhaps my imperfect explanation of the provisions. I wanted him to consider the opening words. The opening words justify the interference by a court to see whether the adaptation has been made in accordance with the opening words *i.e.*, for the purpose of bringing the provisions of any law in force. If it is felt by a Court that it is not for that purpose, undoubtedly the adaptation will be *ultra vires.* If on the other hand it is a matter of merely a question of a different point of view in regard to wording of the adaptation, *etc.,* then it certainly is a matter which we feel ought not to be questioned in any court of law. In any event nothing would prevent any court from going into the question whether the adaptation was for the purpose intended by this clause *viz.*, for the purpose of bringing the provisions of any law in force. We cannot really state in a Constitution what particular matter is to be *ultra Vires or intra vires*. The purpose has been clearly indicated and I do not think we can go beyond the words contained in this clause.

Shri Amiyo Kumar Ghosh: If the cases of irregular exercise of jurisdiction and the cases in which the President's action is in accordance with this provision do not come under these two last lines, then certainly there is always a danger of interpreting it so as to include the cases in which the President acts without jurisdiction.

Mr. President: I will now put the amendments to vote.

The question is:

"That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307, after the words 'President may' the words 'in consultation with the Chief Justice of the Supreme Court and the Chief Justices of the High Courts of Bombay, Madras and Bengal' be inserted. "

The amendment was negatived.

Mr. President: No. 134.

The question is:

"That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307, for the words 'repeal or amendment' the words 'alteration or repeal or amendment' be substituted."

The amendment was negatived.

Mr. President: No. 135.

Shri V. 1. Muniswamy Pillay: Sir, I would ask for leave to withdraw my amendment.

The Amendment was by leave of the Assembly withdrawn.

Mr. President: 136. 1 will put the two parts separately.

The question is:

"That in amendment No. 2 of List I in the proposed clause (3) of article 307-

"(i) in sub-clause (a), for the words 'after the expiration of two years from the commencement of this Constitution the words 'after the constitution of the Ministries of the Government of India or of the States as the case may be, after the first general election under this Constitution' be substituted.' "

The amendment was negatived.

Mr. President: The question is:

"That in sub-clause (b), the words 'or other competent authority' be deleted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 2 of List I in sub-clause (b) of the proposed clause (3) of article 307 for the words 'repeal or amend' the words 'alter or repeal or amend' be substituted.

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 2 of List I in the proposed clause (2) of article 307, the word 'and any such adaptation or modification shall not be questioned in any court of law' be deleted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No.2 of List I (Second Week), the proposed clause (2) and (3) of article 307 be deleted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No.2 of List I (Second Week), the proposed clause (2) of article 307, the following be substituted:--

> "The President shall, as soon as may be after the commencement of this Constitution, by order, appoint a Committee of experts to examine all the laws in force in the territories of India by whichsoever authority enacted and to report to him within a period of 8 months if any or any portion of the laws in force is inconsistent with the provisions of this Constitution and what adaptations and modifications are necessary to bring into accord the inconsistent portions with the provisions of this Constitution and what adaptations and modifications are necessary to bring into accord the inconsistent portions with the provisions of this Constitution. The Government shall forthwith take steps to repeal or amend such laws or portions of them as are not in accord with the provisions of this Constitution and unless such laws or portions of laws are repealed or amended by being brought within a further period of one year and four months from the date of report in accord with the provisions of this Constitution, they shall cease to be in force unless they are repealed or amended earlier by any competent authority or declared void by the courts."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No.2 of List I (Second Week), the proposed clause (2) of article 307, the following be substituted:--

> (3) For the purpose of bringing the provisions of the laws in force in the territory of India relating to fundamental rights guaranteed by this constitution into accord with the provisions of this Constitution, the President

> shall, after the commencement of this constitution, appoint, as soon as may be, a Committee of experts to examine the laws in force in the territory of India with instructions to fundamental rights and what adaptations and modifications are necessary to bring such inconsistent laws or portions of laws in accord with the provision of this Constitution. The Government shall, on the receipt of the report forthwith take steps to avoid repeal or amend such laws or portions of them as are not in accord with the guaranteed fundamental rights Such laws or portions of them as are reported to be inconsistent and not in accord with the guaranteed fundamental right shall cease to be in force after one year of the commencement of this Constitution if they are not avoided, repealed or amended earlier."

The amendment was negatived

Mr. President: The question is:

"That in amendment No.2 of List I (Second Week), in the proposed clause (2) of article 307, for the words `made and any such adaptation or modification shall not be questioned in any court of law' the word `made' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 2 of List I (Second Week), in the proposed clause (2) of article 307, for the words `and any such adaptation or modification shall not be questioned in any court of law' the words `except in so far as they are inconsistent with the provisions of this Constitution' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 2 of List I (Second Week), in clause (2) of article 307, the words `except on the ground that the law so adapted or modified is not in accord with the provisions of this Constitution' be added at the end."

The amendment was negatived.

Mr. President: The question is:

"That for clause (2) of article 307, the following clauses be substituted:--

(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law.

(3) Nothing in clause (2) of this article shall be deemed-

> (a) to empower the President to make any adaption or modification of any law after the expiration of two years from the commencement of this Constitution; or
>
> (b) to prevent any competent legislature or other competent authority to repeal or amend any law adapted or modified by the President under the said

clause."

3. That in Explanation I to article 307, the words ` but shall not include an Ordnance promulgated under Section 88 of the Government of India Act, 1935' be added at the end.

4. That in Explanation 11 to article 307, for the word `has' the word `had' be substituted and after the words `continue to have' the word `such' be inserted.

5. That for Explanation III to article 307, the following be substituted:--

Explanation III.-- Nothing in this article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration, or the date on which it would have expired if this Constitution had not come into force."

The amendment was adopted.

Mr. President: The question is:

"That article 307, as amended, stand part of the Constitution."

The motion was adopted.

Article 307, as amended, was added to the Constitution.

Article 308

Mr. President: We go to article 308. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar Sir, I move:

"That for clause (3) of article 308 the following clause be substituted:--

'(3) Nothing in this Constitution shall operate to invalidate the exercise of jurisdiction by His Majesty in Council to dispose of appeals and petitions for, or in respect of, any judgment, decree or order of any court within the territory of India in so afar as the exercise of such jurisdiction is authorised by law, and any order of His Majesty in Council made on any such appeal or petition after the commencement of this Constitution shall for all purposes have effect us if it were an order or decree made by the Supreme Court in the exercise of the jurisdiction conferred on such court by this constitution.'"

Also:

"That after clause(3) of article 308, the following new clause be inserted:-

'(3a) On and from the date of commencement of this Constitution the jurisdiction of the authority functioning as the Privy Council in a State for the time being specified in Part III of the First Schedule to entertain and dispose of appeals and petitions from or in respect of any judgment, decree or order of any court within that State shall cease, and all appeals and other proceedings pending before the said authority on the said date shall be transferred to, and disposed of, by the Supreme Court.' "

Sir, the purpose of the first amendment is merely to continue the authority of the Privy Council to dispose of certain appeals which might be pending before it under the law which the Constituent Assembly very recently passed- section 4--in case they are not finally disposed of before the 26th January, assuming that to be the date on which this Constitution comes into existence. The important words are--"to dispose of the appeal". There is no power to entertain an appeal. And the other important words are--"such jurisdiction authorised by law", that is to say, references to the recent Act that was passed. The Privy Council will have no other jurisdiction no more jurisdiction than what we have conferred. It has been so arranged by consultation that in all probability, on the date on which this Constitution comes into existence the Privy Council would have disposed of all the cases which had been left to them for disposal under that particular enactment. But it might be that either a case remains part-heard, or case has been disposed of in the sense that the hearing has been closed, but the decree has not been drawn, and in that sense it is pending before them. It was felt that rather than to provide for a transfer of undisposed or part-heard cases to the Supreme Court which would cause a great deal of hardship to litigants, it was desirable, to make an exception to our general rule, that the jurisdiction of the Privy Council will end on the date on which the Constitution comes into existence. That is the main purpose of amendment No. 6.

With regard to amendment No. 7, it is well-known that in some of the India States there are Privy Councils which supervise the judgments of their High Courts, for the reason that they did not recognise the jurisdiction of the Privy Council or rather, the Privy Council of His Majesty in England. They, therefore, had their own Privy Council. Now it is felt that in view of the provision in the Constitution that there should be direct relationship between the Supreme Court and the High Courts in the different States, both in Part III and in Part I, this intermediary institution of a Privy Council of an Indian State in Part III should be statutorily put an end to, so that on the 26th January, all appeals in any State from a High Court in a State in Part III will automatically come up to be disposed of by the Supreme Court.

I am told that these Privy Councils are called by different names in the different States. If that is so, the Drafting Committee proposes to get over that difficulty by having a definition of Privy Council in our article 306 so as to cover the different nomenclature and variations of these institutions.

Mr. President: Amendments Nos. 138 and 139- Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: Mr. President, Sir, I need not move No. 138 because that means opposition to this clause. With regard to No. 139, it is an amendment of a verbal nature and I shall leave it to the discretion of the Drafting committee.

With regard to clause (3), empowering His Majesty in Council to dispose of appeals and petitions, even after the 26th January, 1950--the date when the Constitution comes into operation--it seem to be some to be somewhat startling. Only the other day we passed an Act in this House transferring all appeals and petitions pending before the Judicial Committee to the Federal Court. There were, however, however certain exceptions. One exception was petition for leave. It was provided that if there was any petition for leave, fixed for hearing during the Michaelmas term which begins form today, in the Privy Council, they may merely grant or refuse leave. So the effect of this was that if the Privy Council did not give any leave, the matter was absolutely concluded and final. But if any leave was given, the Privy Council would not be entitled to hear it further. The further hearing will be held in the Federal Court and later on in the Supreme Court when the Federal Court is converted into the Supreme Court. Then there are certain other matters which may also be taken into consideration by the

Privy Council, namely, appeals which have been heard, in which the Judicial Committee has pronounced its judgment, but its final] acceptance by His Majesty has not yet been communicated. In those cases His Majesty would be entitled to accept the recommendations of the Privy Council even after that date.

At the time when the Act was being considered in the House, we were given to understand that there was no appeal which would be pending before the Privy Council from India. The only pending matters would be applications for leave, and if the applications are granted, then of course, the matter will be further heard in India. The only petition pending relates to Godse appeals. No other petition is pending. With regard to appeals, there would be nothing pending, except the acceptance of the recommendations of the Judicial Committee by His Majesty himself. But this acceptance by His Majesty is automatic and is never delayed. So there is no need, for clause (C) which is expressed in a needlessly wide form. This House has repeatedly asserted that all appeals must henceforth be heard by the Federal Court, but still this old idea seems to linger on in one shape or other, and clause (3) perpetuates that old idea which has been definitely given up by the House. During the arguments Dr. Ambedkar has referred to Section 4 of the recently passed Act. Section 4 of the recently passed Act runs thus:

> "Nothing contained in Section 2 shall affect the jurisdiction of His Majesty in Council to dispose of--
>
> (a) any Indian appeal or petition on which the Judicial Committee of the Privy Council has before the appointed date delivered judgement, or as the case may be, reported to His Majesty, but which has not been determined by an order in Council of His Majesty;

The appointed day is today, *i.e.*, the 10th October. If any Judgement has been passed before today, *i.e.*, up to yesterday, but His Majesty has not signified his assent thereto the assent may be given. Then we come to clause (b):

> "any Indian appeal or petition on which the Judicial Committee has, after hearing he parties, reserved judgment or order,"

and (c).

> "any Indian appeal which has been entered before the appointed day in the list of business of the Judicial Committee for the Michaelmas sittings of the year 1949 and which after that day is not directed to be removed therefrom by or under the authority of the Judicial Committee."

So, if any appeal is pending for the present term in the Privy Council today this will be disposed of unless it is directed to be heard in India, but by virtue of the Act we have passed, the Privy Council will be bound to direct the transfer of these appeals to India. But it is well known that no Indian matters, other than the Godse matter, has been entered in the list. Then we come to clause (d).

> "any Indian petition which has been lodged before the appointed day in the Registry of the Privy Council."

That is, petition for leave and other things, will also be merely heard, and special leave may be given or refused. If it is refused, there is an end of the matter. If it is allowed, then also there is an end of the matter, because the matter returns to India.

I submit, therefore, that clause (3) is absolutely too wide and embraces imaginary cases which do not exist. We should have a precise knowledge of what cases are pending before their Lordships of the Privy Council, flow many there are, how many would be automatically transferred after the appointed day, the 10 October, that is, today and if any case would remain. We should have a clear picture of what matters there may possibly be which may be pending before them and which may be disposed of under clause (3) even after the 26th January, 1950, the provisional date on which this Constitution will come into operation. We should really have a clear picture of the existing state of affairs instead of enacting a broad section dealing with all sorts of imaginary and hypothetical cases. I think after the final Independence of India on the 26th January, for these powers to linger in the Judicial Committee would be somewhat extraordinary in view of the Constitution that we have so far adopted and in view of our shedding our Dominion status, and acquiring an Independent status. In these circumstances, Sir, I submit that clause (3) should be deleted and not accepted. The matter should be clearly analysed and the House should be informed as to what are the matters which really might fall within the purview of clause (3). I therefore oppose clause (3) until the matter is clarified.

Mr. President: Dr. Deshmukh:

Dr. P. S. Deshmukh: I am not moving my amendment, Sir.

Mr. President: Mr. Shibban Lal Saksena's amendment is for deleting it. You can speak on it after the other amendments have been moved.

Mr. Mahavir Tyagi.

Shri Mahavir Tyagi : I am not moving my amendment, Sir.

Mr. President: Mr. Shibban Lal Saksena, you can speak on it.

Prof. Sibban Lal Saksena: Sir, I beg to move:

"That in amendments, Nos. 6 and 7 of List I (Second Week), the proposed clause (3) be deleted, and the proposed new clause 3(a) be re-numbered as (3)."

Mr. President: It is not necessary to move it. You can speak on it.

Prof. Shibban Lal Saksena: This amendment is for the deletion of a clause only, not of an article. Sir, my objection to this clause (3) is that after the 26th January, I do not want that His Majesty in Council should have anything to do with this country. We shall become a completely free Republic on that day and the provision of this article which contemplates that His Majesty in Council shall be authorised to hear appeals pending on that day is, I think, derogatory to our independence. Objection may be raised that some appeals may be pending and that the litigants concerned will be put to great difficulty, but I want to draw the attention of this House to the footnote on page 153 of the Draft Constitution. In fact, the Drafting Committee themselves had originally under clause (3) of article 308 contemplated that the jurisdiction of the Privy Council shall cease on that date.

> "On and from the date of commencement of this Constitution the jurisdiction of His Majesty in Council to entertain and dispose of appeals and petitions

> from or in respect of any decree or order of any court within the territory of India including the jurisdiction in respect of criminal matters exercisable by His Majesty by virtue of His Majesty's prerogative shall cease, and all appeals and other proceedings pending before His Majesty in Council on the said date shall be transferred to, and disposed of, by the Supreme Court."

So in the original article they had themselves contemplated that the jurisdiction of the Privy Council shall cease on the date on which this Constitution will come into force. The footnote says--

> "The Committee thinks that all appeals and other proceedings pending before His Majesty in Council shall be finally disposed of by the time the Constitution comes into operation. If, however, some appeals or other proceedings remain pending before His Majesty in Council at the time of the commencement of the Constitution and any difficulty is experienced with regard to their transfer to, or disposal by the Supreme Court, the President may pass necessary orders under the 'removal of difficulties' (article 313)."

This is what the Drafting Committee have said in the footnote to the original article 308. I do not see that in view of the fact that we have passed article 313, there is any need for this new clause (3) which contemplates that the jurisdiction of the Privy Council may continue even after the 26th January when we will be a free and independent country. I think that we should not disfigure the Constitution by providing for the intervention of the Privy Council even after we have attained full independence. I think there has been some mistake here, because, article 313 is quite sufficient and there is no need for this clause (3) in article 308. Our Constitution should not be disfigured by this clause.

Mr. President: Dr. Ambedkar, would you like to say anything ?

The Honourable Dr. B. R. Ambedkar: Sir, I do not think that anything that has been urged in favour of the amendments that have been moved raises any matter of substance. It is a more a matter of sentiment, and I think from the point of view of convenience it is much better that we should have this clause and not feel in any way humiliated in doing it, because even if the Privy Council were to continue to exercise jurisdiction, within the limited terms mentioned in clause (3), it should not be forgotten, and I think my friends who have moved the amendments do seem to have forgotten the fact, that that jurisdiction is not the inherent jurisdiction of the Privy Council but the jurisdiction which this Assembly has conferred upon them. The Privy Council as a matter of fact would be acting as the agent of this Assembly to do a certain amount of necessary and important work. I, therefore, do not think there is any cause for feeling any humiliation or that we are really bartering away our independence.

With regard to the point raised by my Friend Prof. Saksena in which he referred to the footnote to article 308. I am quite free to confess that on a better consideration, it was found by the Drafting Committee that the removal of difficulties clause may not be properly used for this purpose. In order to remove all doubt, we thought it was better to have a separate clause like this to confer jurisdiction by the Constitution itself.

Mr. President: Then I will put the amendments to vote. There is only one moved by Prof. Shibban Lal Saksena No. 177. The question is :

"That in amendment Nos. 6 and 7 of List I (Second Week), the proposed clause (3) deleted and the proposed new clause (3a) be renumbered as (3)."

The amendment was negatived.

Mr. President : Then I put the amendment moved by Dr. Ambedkar. The question is:

"That for clause (3) of article 308, the following clause be substituted:-

'(3) Nothing in this Constitution shall operate to invalidate the exercise of jurisdiction by His Majesty in Council to dispose of appeals and petitions from, or in respect of; any judgment, decree or order of any court within the territory of India in so far as the exercise of such jurisdiction is authorised by law, and any order of His Majesty in Council made oil any such appeal or petition after the commencement of this Constitution shall for all purposes have effect as if it were an order or decree made by the Supreme Court in the exercise of the jurisdiction conferred on such court by this Constitution.'"

The amendment was adopted.

Mr. President: Then I put amendment No. 7. The question is:

"That after clause (3) of article 308, the following new clause be inserted:-

'(3a) On and from the date of commencement of this Constitution the jurisdiction of the authority functioning as the Privy Council in a State for the time being specified in Part III of the First Schedule to entertain and dispose of appeals and petitions from or in respect of any judgment, decree or order of any court within that State shall cease, and all appeals and other proceedings pending before the said authority on the said date shall be transferred to, and disposed of, by the Supreme Court."

The amendment was adopted.

Mr. President : The question is:

"That article 308, as amended stand part of the Constitution.'

The motion was adopted.

Article 308, as amended, was added to the Constitution.

Article 310

Honourable Dr. B. R. Ambedkar : Sir, I move:--

"That for article 310, the following be substituted:--

310.(1) Notwithstanding anything contained in clause (2) of article 193 of this Constitution, the judges of a High Court in any Province holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the judges of the High Court in the corresponding State, and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave and pensions as are provided for under article 197 of this Constitution in respect of the judges of such High Court.

(2) The judges of a High Court in any Indian State corresponding to any State for the time being specified in Part III of the First Schedule holding office immediately before the date of commencement of this Constitution shall. unless they have elected otherwise, become on that date the judges of the High Court in the State so specified and shall, notwithstanding anything contained in clauses (1) and (2) of article 193 of this Constitution but subject to the proviso to clause (1) of that article, continue to hold office until the expiration of such period as the President may by order determine.

(3) In this article the expression 'judge' does not include an acting judge or an additional judge."

this article is merely what we used to call a "carry over article" merely carrying over the incumbents to the new offices in the new High Courts if they choose to elect to be appointed.

Mr. President : Amendment No. 88.

Mr. Naziruddin Ahmad: I am not moving 88. I shall move 141.

Shri R. K. Sidhva: Mr. President, I move :

"That in amendment No. 87 above, in clause (1) of the proposed article 310, after the word and figure 'article 197' the words 'and Second Schedule' be inserted."

My amendment is a merely verbal one. My object in moving it is this. Reference has been made to article 197 in connection with the salary of the High Court Judges. The salary of the High Court Judges features in Second Schedule and I thought it advisable to mention it along with the article 197. Schedule is an important part of the Constitution, particularly in reference to this article wherein the salaries, allowances and other subjects relating to pensions will be mentioned. Therefore, in order to make it quite clear I have moved that the words "and Second Schedule" may be added to the words "article 197".

Mr. Naziruddin Ahmad: Sir, I move:

"That in amendment No. 8 of List I (Second Week), in clause (1) of the proposed article, 310, for the words 'as are provided for under article 197 of this Constitution in respect of the judges of such High Court' the words as they were entitled to immediately before the said commencement' be substituted."

Clause (1) of this article provides that the Judges of a High Court would on the date on which the Constitution comes into force (provisionally on the 26th of January 1950), shall continue to be Judges of the same High Court.

The Honourable Dr. B. R. Ambedkar : May I draw attention to the fact that this Amendment anticipates Schedule II ? This matter is to be dealt with under Schedule II and the proper time would be when Schedule II is before the House.

Mr. Naziruddin Ahmad: I have carefully considered that also, but the matter would not be fully covered. There the scale of salary of the Judges after the commencement of the Constitution will be provided, but here the matter is entirely different. My amendment says that the pay which they were receiving immediately before the commencement of this Constitution, *i.e.* on the 25th of January 1950,--they will receive the same pay and enjoy the same conditions from 26th January also. The Schedule deals with the new scale of pay. That is an entirely different matter.

I submit there is no need for clause (1). The only need for this clause so far as I can see, is to justify the reduction of the pay of the existing Judges in an indirect manner. In fact, on the 26th of January, it is clear that even apart from this clause (1) of article 310, those Judges will continue to be the Judges of the High Court because the same High Court continues. We have not provided for similar continuance in the case of other public servants. Every one who is a public servant on the 25th of January will certainly continue to be the same servant on the 26th of January unless he is meanwhile dismissed or has resigned or is discharged or is dead. The continuance of his service as a Judge of a High Court from the 25th to the 26th January is automatic and no authority was needed as it is attempted to be given under clause (1). I submit that clause (1) from that point of view is absolutely unnecessary. But it introduces another idea, namely, it is an indirect attempt to reduce the pay of the existing Judges. In fact, so far as the existing Judges are concerned, they have a fixed scale of pay under existing conditions. Even if there was not this clause, they would have been receiving the same pay on and from the 26th January. The real purpose of the clause is to reduce the pay of the existing Judges. I submit that their pay should not be reduced, because they are receiving a particular pay on a contract on which they were appointed. Judges of the High Court are appointed from very good lawyers who must be supposed to have been earning a very decent incomes. There were only two conditions attached to the appointment of the High Court Judges, namely, they were to continue in the usual course till they attained the age of sixty, and secondly, they would not be allowed thereafter to practise in the High Court in which they were Judges and courts subordinate thereto. But today we are enacting conditions that their pay would be reduced and, further, on the attainment of the sixtieth year every High Court Judge would be precluded from practising not only in the High Court to which he is attached, or the subordinate Courts thereto, but in all other Courts, even outside the purview of that High Court, namely in the High Courts of other States and also in the Supreme Court. This would be breach of contract with them in two respects.

Dr. Bakhshi Tek Chand (East Punjab: General): May I make a suggestion ? Will it not be proper to consider this matter when the Second Schedule is being considered ? Amendment No. 11 to the Second Schedule (which stands in the name of Dr. Ambedkar) covers the case of salaries of the Judges who were appointed on or before the 31st day of October 1948. Instead of dealing with this matter piecemeal, will it not be more convenient to deal with this, amendment when the Second Schedule is taken up? As will be seen from amendment No. 11, it does not deal merely with the salaries of Judges who will be appointed under the New Constitution but also has reference to the salary of judges who had been appointed before that date and will be working in the High Courts on the date of the commencement of this Constitution. If this amendment of Mr. Naziruddin Ahmad is lost, this might affect the amendments to the Schedule.

Mr. Naziruddin Ahmad: If it is proposed to consider this amendment along with amendments to Schedule IV I have no objection. But this is the proper time to raise the point. As to the contention that if this amendment is lost, the other amendment will also be considered as lost. I do not agree. This is an amendment to save the pay of existing Judges, irrespective of the fact that they were appointed before a certain date. But the loss of this amendment will not mean the loss of the other amendment. As to the suggestion of Dr. Bakhshi Tek Chand that I should move this as an amendment to amendment No. 11, I await your instructions in this matter.

Mr. President: I do not think that the passing of this clause as it is win in any way affect the Schedule. It will not come in the way of the Schedule. In any case, I shall not rule that out on that ground.

Mr. Naziruddin Ahmad: That amendment is that the pay of the Judges who were appointed before a certain date would be saved. But my point was that the pay of Judges as they were on the 25th of January 1950 should be saved. There is a slight difference between this and that amendment of Dr. Ambedkar. I submit that the amendment of Dr. Ambedkar has been sent in after my amendment was circulated. It is really an attempt to remedy the situation to a certain extent, but it does not go far enough, to the extent I wish it to go. Sir, I shall certainly abide by your ruling.

Mr. President : If you like you may table another amendment to cover the point which you have now raised. Does anyone wish to say anything about this ?

The Honourable Dr. B. R. Ambedkar : There is no question of principle here.

Mr. President : There is one amendment moved by Mr. Sidhva; that also is of a verbal character. Shall I put it to vote ?

Shri R. K. Sidhva: I leave it to the Drafting Committee.

Mr. President: The question is:

"That for article 310. the following be substituted;-

Provisions as to Judges of High Courts.	'310. (1) Notwithstanding anything contained in clause (2) of article 193 of this Constitution, the judgesof a High Court in any Province holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become ,on that date the judges of the High Court in the corresponding State, and shall thereupon be entitled to such salaries and allowances and to Such rights in respect of leave and pensions as are provided for under article 197 of this Constitution in respect of the judges of such High Court.

(2) The judges of a High Court in any Indian State corresponding to any State for the time being specified in Part III of the First Schedule holding office immediately before the date of commencement of this Constitution shall, 'unless they have elected otherwise, become on that date the judges of the High Court in the State so specified and shall notwithstanding anything contained in clauses (1) and (2) of article 193 of this Constitution but subject to the .proviso to clause (1) of that article, continue to hold office until the expiration of such period as the President may by order determine.

(3) In this article the expression 'judge' does not include an acting judge or an additional Judge."'

The motion was adopted.

Article 310 was added to the Constitution.

Article 311

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for article 31 1, the following article be substituted:-

Provisions as to provisional Parliament of the Union and the Speaker and Deputy Speaker thereof.

311. (1) Until both Houses of Parliament have been duly constituted and summoned to meet for the firstsession under the provisions of this Constitution, the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution shall exercise all the powers and perform all the duties conferred by the provisions of this Constitution on Parliament.

Explanation.--For the purposes of this clause, the Constituent Assembly of the Dominion India includes-

(i) the members chosen to represent any State or other territory for which representation is provided under clause (2) of this article, and

(ii) the members chosen to fill casual vacancies in the said Assembly.

(2)The President may by rules provide for--

(a) the representation in the provisional Parliament functioning under clause (1) of this article of any State or other territory which was not represented in the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution,

(b) the manner in which the representatives of such States or other territories in the provisional Parliament shall be chosen, and

(c) the qualifications to be possessed by such representatives.

(3) If a member of the Constituent Assembly of the Dominion of India was on the sixth day of October, 1949, also a member of a House of the Legislature of a Governor's Province or an Indian State, then, as from the date of commencement of this Constitution that person's seat in the said Assembly shall, unless he has ceased to be a member thereof earlier, become vacant, and every such vacancy shall be deemed to be a casual vacancy.

(4) Any person holding office immediately before the commencement of this Constitution as Speaker or Deputy Speaker of the Constituent Assembly when functioning as the Dominion Legislature under the Government of India Act, 1935, shall continue to be the Speaker or, as the case may be, the Deputy Speaker of the provisional Parliament functioning under clause (1) of this article.

Sir, I move:

"That in amendment No. 9 of List I (Second Week), for clause (3) of the proposed article 31 1, the following be substituted:--

(3) If a member of the Constituent Assembly of the Dominion of India was on the sixth day of October, 1949, or thereafter becomes at any time before the commencement of this Constitution a member of a House of the Legislature of a Governor's Province or an Indian State corresponding to any State for the time being specified in Part III of the First Schedule or a minister for any such State, then as from the date of commencement of this Constitution the scat of such member in the Constituent Assembly shall, unless he has ceased to be a member of that Assembly earlier, become vacant and every such vacancy shall be deemed to be a casual vacancy'."

Sir, I move:

"That in amendment No. 9 of List I (Second Week), after clause (3) of the proposed article 31 1, the following new clause be inserted:-

'(3a) Not withstanding that any such vacancy in the Constituent Assembly of the Dominion of India as is mentioned in clause (3) of this article has not occurred under that clause, steps may be taken before the commencement of this Constitution for the filling of such vacancy, but any person chosen before such commencement to fill the vacancy shall not be entitled to take his seat in the said Assembly until after the vacancy has so occurred'."

The object of this clause is that when constituting a provisional Parliament, It is proposed to dispense with what is called double membership.

The other provisions arc merely ancillary.

Shri H. V. Kamath: Sir, I move:

"That in amendment No. 9 of List I (Second Week), in clause (1) of the proposed article 311, after the word 'Until' the words 'such time' be inserted. '

Sir, I move:

"That in amendment No. 9 of List I (Second Week). in clause (1) of the proposed article 311, the words 'the body functioning as' be deleted."

Sir, I move :

"That in amendment No. 9 of List I (Second Week). in the proposed article 311, for the words 'Constituent Assembly of the Dominion of India' wherever they occur, the words Constituent Assembly of India' be substituted,"

Sir, I move:

"That in amendment No. 9 of List I (Second Week), in clause (1) of the proposed article 311, for the words 'immediately before the commencement of this Constitution shall' the words 'shall itself' be substituted."

I shall not move amendment No. 147.

Sir, I move:

"That in amendment No. 9 of List I (Second Week), in clause (2) of the proposed article 311, after the word 'rules' the words which shall as far as practicable, conform to those ,adopted by the Constituent Assembly' be inserted."

Sir, I move:

"That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, after the words 'an Indian State' the words 'or Union of States' be inserted."

Sir, I move:

"That in amendment No. 9 of List I (Second Week), in clause (4) of the proposed article 311, the words 'or Deputy Speaker' be deleted."

Sir, I move:

"That in amendment No. 9 of List I (Second Week), in clause (4) of the proposed article 311, the words 'or, as the case may be the Deputy Speaker' be deleted."

If the amendments to clause (1), which appear in List 3, Second Week, are acceptable to the House, then this clause would read as follows:

> "Until such time as both Houses of Parliament have been duly constituted and summoned to meet for the first session under the provisions of this Constitution', the Constituent Assembly of India shall itself exercise all the powers and perform all the duties conferred by the provisions of this Constitution on Parliament."

The first amendment is a purely verbal one, in that it introduces a change in the phraseology so as to be more in conformity with constitutional language. I feel it is better to say *"until such time* as both Houses are summoned" instead of saying "until". However, I leave that to the collective wisdom of the Drafting Committee to deal with at the proper stage.

With regard to amendment No. 143, this is partly substantial and partly verbal. I fail to see why this Assembly should be described in this cumbrous fashion--"the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution....." The draft of this article as it originally stood was much simpler. In regard to the words "the Constituent Assembly of the Dominion of India", I feel that even here the word "Dominion" could be usefully and rightly omitted. If my honourable Colleagues in this House would turn for a moment to the cover of this book--The Draft Constitution--they will see that the Assembly is described as the "Constituent Assembly *of India"* and not of the "Dominion of India". I do not know why some honourable Members are fond of using this word 'Dominion' in season and out of season. Where it is of course necessary in legislation it may be used. I have no quarrel with that. Where it can be omitted without detriment to the meaning of a clause or article, I fail to see why we should go on harping on this word Dominion, Dominion, Dominion. The Constituent Assembly, really speaking is that of a free country. Unfortunately or accidentally, circumstances have so conspired in our country that we had to convene a Constituent Assembly before India became completely free. Historically speaking it is only when a country his shaken itself free of foreign yoke that a Constituent Assembly is convened. We have ourselves in the rules made in this House--rules of procedure and standing orders-referred to the Constituent Assembly of India, and the very first rule says: "In these rules, unless the context otherwise requires, the Assembly means the Constituent Assembly *of India"*. So there is no justification or necessity for using the word "dominion" in this context and it may be very reasonably and wisely dropped entirely without detriment to the meaning that the clause is intended to convey.

Then, Sir, the next objection is to the cumbrous verbiage that appears in this clause : "body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution". I do not know why this has been introduced, changing the draft as it stood originally. If my honourable Colleagues turn to article 311, clause (1) as it stood originally, they will see that its description is "the Constituent Assembly of the Dominion of India". I have already stated that the word 'Dominion' should be dropped. Now, I say that this could be more simply described as the Constituent Assembly of India. If the Drafting Committee feels that just because a little more than a hundred seats are going to be declared vacant, this change in the description of the body is necessary, I feel that they are labouring under a misapprehension. So long as the body is not dissolved, it continues to be the Constituent Assembly of India. Even if a very large majority of the members resign from the Assembly and whether their places are filled up or not, it is the same old Assembly which has always been called the Constituent Assembly of India. So long as it is not dissolved, it continues to be called in constitutional parlance the Constituent Assembly of India. Therefore, if there is any misapprehension that on the score of the resignation of more than one hundred members, this body must be described in this fashion and not simply as the Constituent Assembly of India, that misapprehension is not at all justified, and we will not be describing the body wrongly if we refer to it merely as the Constituent Assembly of India. Whether a hundred members resign or even more do so, until the commencement of the Constitution, the body continues to be called the Constituent Assembly of India. Therefore by means of amendments 143, 144, and 145 which go together, I seek to simplify the wording and the expression employed in this article in clause (1), so that we will provide for the Constituent Assembly of India itself exercising all the powers and performing all the duties conferred by the provisions of this Constitution on Parliament. Once the Constitution comes into force, then, of course, under tile Constitution, this Assembly will be called the provisional Parliament. Till then, it is not necessary to say "the body functioning as such and such". It is enough for our purposes to say "the Constituent Assembly of India". I hope those members of the Drafting Committee who are fond of using the word "dominion". and of using more words than are necessary for our purpose, will see the force of these amendments of mine and simplify the wording of this clause.

Now, I come to clause (2). I do not propose to move amendment No. 147. 1 shall move only amendment 148:

> 'That in amendment No. 9 of List I (Second Week), in clause (2) of the proposed article 311, after the word 'rules' the words 'which shall, as far as practicable, conform to those adopted by the Constituent Assembly' be inserted."

Clause (2) refers to certain rules which the President may make for representation in this provisional Parliament, that is to say, when this Assembly is converted into or reconstituted into our provisional Parliament. This clause provides for the representation in the provisional Parliament, of those States or other territories of India so far not represented. The House is aware that the representative from Bhopal has not yet taken his seat in this Assembly though the firman has gone forth that he should come here as soon as possible. We hope that he or she will be with us during the Third Reading of the Constitution. Hyderabad is still not represented. We do not know whether the steps that have far been taken will fructify so as to enable us to welcome our friends from Hyderabad in this Assembly during the Third Reading. Of course, when this Assembly resolves itself or converts itself into the provisional Parliament, I am sure, the President by Rules will provide for the representation of Hyderabad also in this Assembly. So also, there is the Union of States called Vindhya Pradesh; still unrepresented in this Assembly. During the last session, you, Sir, were good enough to tell us that the Rajpramukh of Vindhya Pradesh and his Chief Minister or Regional Commissioner have been asked by the Secretariat of the Constituent Assembly to take necessary steps for the proper representation of Vindhya Pradesh in this Assembly. I do not know what progress that course of action has made so far as Vindhya Pradesh is concerned. We hope that they will be with us during the next session, the final session of this Assembly. At any rate, I am sure that they will take their places here when the provisional Parliament meets next year. So far, Sir, as regards the States not represented.

Now, this clause (2) provides for rule-making by the President. The House is very well aware that this Assembly has adopted certain rules with regard to the representation of States and other Units in this Assembly. refer to rule 51 of the Rules of this Assembly which we have adopted, I believe, some time last year. Under Rule 51, we have also adopted a Schedule. That Schedule provides or lays down certain rules in regard to representation of States in this Assembly. My amendment No. 148

refers to the rules made by us and incorporated in this little booklet which has been supplied to all Members by the Secretariat,--the Rules of Procedure and Standing Orders. There are certain rules which have been made, as I said, for the representation of States in this Assembly. My amendment seeks to lay down that as far as possible, as far as practicable, the President's rules shall conform to the rules that this Assembly has already adopted during the last year. It may be, certain circumstances may arise in certain States which may stand in the way of the President conforming to the rules already adopted. That is why I have introduced the phrase 'as far as practicable!' I hope the Dr. Ambedkar the Drafting Committee and my honourable Colleagues in this House will see their way to accept this amendment because, after all, it pertains to a matter which has already been decided by the House, and I see no reason why, where it is practicable, the President should depart from the Rules which this Assembly has already adopted.

I now come to No. 155 which is more or less a verbal amendment. I think the Drafting Committee has slightly overlooked this part of the subject. In clause (3) reference is made to a Governor's province or in Indian State. The House is aware that we have not merely Indian States but also what are called Union of States. I seek by this amendment of mine to introduce this phrase also so that it would read as follows:-

> "Legislature of a Governor's province or Indian State or Union of States."

Madhyabharat and Rajasthan are Unions of States, not merely Indian States. I feel that to be quite correct we must have in addition to 'Indian State' this phrase also 'the Union of States' as well.

Then as regards the draft which reached us this morning of this clause (3) I had no time to send in amendments, but I would like to draw attention of the Drafting Committee and the House to the point I raised the day before yesterday in connection with the description of Ministers. In an article which we adopted two days ago Ministers were referred to as Ministers for the Dominion of India. I thought it was an inaccurate and incorrect expression and following that very argument I feel it would be more correct to describe the Minister here as 'Minister of any Indian State' not 'for Indian State.'

Lastly, in the same clause I would suggest a very minor verbal amendment in the last but one line. The draft reads thus--

> "Unless he has ceased to be a member of that Assembly."

I think it would be sufficient to say 'the Assembly' instead of 'that Assembly'. That is purely verbal, and I leave it to the good sense of the Drafting Committee.

Then I come to the last amendments 161 and 162. If these were to be accepted by the House, clause (4) will read as follows:--

> "Any person holding office immediately before the commencement of this Constitution as Speaker of the Constituent Assembly when functioning as Dominion Legislature under the Government of India Act, 1935, shall continue to be the Speaker of the Provisional Parliament functioning under clause(1) of this article."

I seek to delete the reference to Deputy Speaker. I hope, Sir, that it will not be taken in a personal light or as a personal reflection upon any member of this House.

The other day when Dr. Ambedkar introduced new articles with regard to the State Legislatures, one of the clauses of those articles referred to only the Speaker of the Legislature. In that connection I had occasion to point out the omission of the Deputy Speaker. That article referred to merely the Speaker of the Assembly and the Chairman of the Upper House. I then pointed out the absence of any reference to Deputy Speaker of the Lower House and the Deputy Chairman of the Upper House though they are definitely mentioned in the Constitution in the Chapter relating to the State Legislature. Apart from that, even today in several provinces we have got a Deputy Speaker. That is why I sought to insert a reference to Deputy Speaker as well, but Dr. Ambedkar, perched on his high pedestal or in his ivory tower or perhaps because he had a closed mind on the subject--I do not know why--Dr. Ambedkar did not care even to reply to the point raised. But today I find that he has accepted the point raised by me and on the principle of better late than never, I would have gladly agreed to that but the difficulty today is that you have already passed an article two days ago where so far as the interim State Legislatures are concerned only the Speaker is mentioned but not the Deputy Speaker, and to-day an article regarding Parliament comes up and we have reference there in to both the Speaker and Deputy Speaker. If Dr. Ambedkar and the Drafting Committee undertake to revise the article regarding the transitional State Legislatures so as to mention the Deputy Speaker as well and for the continuance of the Deputy Speaker and the Deputy Chairman for the transitional period, then of course consistency demands that this article also should be passed as it is. But, Dr. Ambedkar is not always very particular about consistency, and he may say that so far as Parliament is concerned he would like to have the Deputy Speaker mentioned because perhaps lie is one of us. But so far as the State Legislature is concerned, 'out of sight out of mind' on that basis he may not be very particular about mentioning the Deputy Speaker of the State Legislature. Any how let us, as far as possible be consistent in whatever we do. If we have Deputy Speaker mentioned here let us mention him in the State Legislature as well and if we do not do so then delete him from this article also. Let us for God's sake, or at least for this House's sake-let us be consistent in these little things. We may not be, so in the bigger things of life. There is no difficulty in being consistent so far as little things are concerned, and therefore I hope that these amendments of mine will commend themselves to the House including Dr. Ambedkar.

The Assembly then adjourned till Ten of the clock on Tuesday, the 11th October 1949.

---

* [Translation of Hindustani speech.]*

** "124. That 'in amendment No. 1 of List I (Second Week), in the proposed new article 283A, the word 'expressly' be deleted.

125. That in amendment No. 1 of List I (Second Week), in the proposed new article 283A, in line 9, for the word 'and' the word 'or' be substituted.

126. That in amendment No. 1 of List I (Second Week), in the proposed new article 283A, for the words 'which he is from time to time serving' the words 'as the case may be' be substituted.

127. That in amendment No. 1 of List I (Second week), in the proposed new article 283A, for the words 'the same conditions' the word 'conditions' be substituted.

128. That in amendment No. 1 of List I (Second Week), in the proposed new article 283A, for the word 'remuneration' the word 'salary' be substituted.

129. That in amendment No. 1 of List I (Second Week), in the proposed new article 283A, for the words 'and the same rights' the words 'and rules' be substituted.

130. That in amendment No. 1 of List I (Second Week), in the proposed new article 283A, for the words 'as respects disciplinary matters of rights' the words 'or conduct and discipline' be substituted.

131. That in amendment No. 1 of List I (Second Week), in the proposed now article 283A, for the words 'as similar thereto as changed circumstances may permit as that person was entitled to immediately before such commencement' the words 'as similar, as changed circumstances may permit to what that person was entitled to immediately before such commencement' be substituted."

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME X

Tuesday, the 11th October 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

CONDOLENCE ON THE DEATH OF MR. AZIZ AHMAD KHAN

Mr. President: It is with great regret that I have to mention to the House the death of one of our Members--Mr. Aziz Ahmad Khan, of Bareilly. He was a Member of the U. P. Legislative Assembly for a long time, and then he came to this House. He had been ailing for some time and he expired a few days ago. Honourable Members will show their respect to his memory by rising in their places and permit me to convey to his family our deep sympathy.

(The Members stood up in silence.)

DRAFT CONSTITUTION- (Contd.)

Article 311-*(Contd.)*

Mr. President: We shall now proceed with the consideration of the article which we were considering yesterday--article 311. Mr. Naziruddin Ahmad can move his amendment No. 146.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I wish to move my amendment No. 146 .

"That in amendment No. 9 of List I (Second Week), in the Explanation to clause (1) of the proposed article 311,--

> (i) for the words 'the Constituent Assembly' the words 'membership of the Constituent Assembly' be substituted;
>
> (ii) for the word 'includes' the words 'shall include' be substituted."

With regard to my first amendment, it seems to be necessary on a Consideration of the context. The expression occurs in the Explanation. The Explanation says that "For the purpose of this clause, the Constituent Assembly of the Dominion of India includes the members from the States" and other things. The objection to which the context is open to is this. It is said that the "Constituent Assembly" includes certain "Members". I think that a Constituent Assembly is an abstract term. It is a mere legal conception.

The Constituent Assembly cannot include Members, but rather the "membership to the Constituent Assembly" shall consist of members. I will leave the matter to the Drafting Committee for consideration.

With regard to the second part of the amendment, it is also of a drafting nature, and consequential upon the first.

Speaking generally on the article, I agree with Mr. Kamath that the simple term "Constituent Assembly" has been expressed in a very verbose and round about manner, namely, "the body functioning as the Constituent Assembly of the Dominion of India immediately preceding before the commencement of this Constitution". For this long, expression, the mere term "Constituent Assembly" would have been enough. That is a well-defined and well understated expression and was brought into being by the Independence of India Act, and did not require further amplifications. But I do not quite agree with Mr. Kamath when he says that this provision is totally unnecessary. There is a provision in the Independence of India Act which says that the powers laid down under the Government of India Act as modified, shall be exercised by the Constituent Assembly, apart from its duty of framing the Constitution. That power is confined to carrying on all the duties under the Government of India Act as adapted by the Governor-General. But this article 311 empowers the Constituent Assembly. to carry on the powers "under this Constitution" as distinguished from being under the Government of India Act as so adapted. The Government of India Act and this Constitution are essentially different Acts, and an article like this is absolutely necessary in order to enable the present Constituent Assembly to function and do the work under "this Constitution" until the new Houses of Parliament are duly constituted after a general election.

There is the other amendment of mine, the one relating to clause (3). That is No. 158.

> "That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, the words 'within the meaning of the Rules of Procedure and Standing Orders of the Constituent Assembly' be added at the end."

This also seems to be necessary under the altered circumstances in which we would be placed after the Constitution is passed. Clause (3) says that those who were members of the Provincial Assemblies as well as of the Constituent Assembly shall cease to be members of the Constituent Assembly. And what is important, every such vacancy shall be deemed to be a casual vacancy. This expression--casual vacancy--has not been defined anywhere in this Constitution. The only reference to casual vacancy appears in the Rules of Procedure and Standing Orders of the Constituent Assembly--Rule 5, sub-rule (1). So far as the Rules of Business and Procedure and Conduct of Business in the Legislative side of the Constituent Assembly is concerned, so far as I can see, there is nothing like casual vacancy mentioned in those rules. They are mentioned, I believe, exclusively in our rules of the Constitution, section. If we say that they should be regarded as casual vacancies, we should really explain the expression 'Casual vacancy' with reference to the rules. Otherwise it will be difficult to find out what the casual vacancy means. We have nothing like it in the Constitution which we have passed so far, and immediately after the Constitution is passed, on the 26th January at any rate, this House sitting as the Constituent Assembly in the "Constitution" section will cease to exist. I fear that the Rules of Procedure and Standing Orders of the "Constitution" section would then inoperative and will not be applicable at all. So, the expression 'casual vacancy' will remain absolutely unrelated to any enactment or rule. With regard to casual vacancies which may occur after the general election it seems to me that they will be covered by rules framed under the Constitution; but at present there is nothing like this expression anywhere exempt in our present Rules. I should think that it should be made clear that it is a 'casual vacancy within the meaning of our present rules'. That would save from natural death. Our Rule 5 which alone would seem to be applicable in the circumstances of the case,

With regard to the Rules under the Constituent section and the Legislation section, there will be a clash as to which rule will apply. It would be far better to clear specify the enactment or the rule within the of which the words 'casual vacancies' will come. This amendment is of a drafting nature and may be considered by the Drafting Committee.

Shri V. I. Muniswamy Pillay (Madras: General) : Mr. President, Sir, I move :

"That in amendment No. 9 of List I (Second Week), in sub-clause (a) of clause (2) of the proposed article 311, for the words 'of any State or other territory' the words 'of a Governor's Province or Indian State' be substituted."

"That in amendment No. 9 of List I (Second Week), in sub-clause (a) of clause (2) of the proposed article 311, for the words 'not represented' the words not adequately represented be substituted."

"That in amendment No. 9 of List I (Second Week), in sub-clause (a) of clause (2) of the proposed article 311, after the words 'commencement of this Constitution' the words 'having due regard to the proper representation of the Scheduled Castes' be inserted."

"That in amendment No. 9 of List I (Second Week), in clause (2) of the proposed article 311, the following new sub-clause be inserted:--

'(d) the election of a Speaker or Deputy Speaker for the Parliament'."

Sir, when this article was introduced in this House by my honourable Friend, Dr. Ambedkar, he told the House that it dealt with double membership. Sir, on a perusal of the article I find that there are many other things therein which required the attention of this House and also of the President who will be the ultimate authority in deciding who ought to be the members that are to be chosen from the States or other territories to take part in the provisional Parliament. Also, in the explanation it is clearly stated in clause (2) that with regard to filling casual vacancies in the said Assembly, the President shall have power to make rules for the representation in the provincial Parliament functioning under clause (1).

Here I would bring to the notice of the House the grave injustice that has been done to a section of the community in India, *viz.*, the Scheduled Castes. Sir, according to the Statistics of Population that has been prepared and furnished to us, out of a population of 330 millions, the Scheduled Castes number about 50 millions in India. The total membership of the provisional Parliament his been accepted is 320. Out of this, the quota for the Scheduled Castes must be about 55 to 60. If this is so, the provisional Parliament must have at least 55 members of the Scheduled Castes. I do not find that it has been made clear in this explanation No. 2, whether the Scheduled Castes would have that much representation. It is with that object I have suggested in one of these amendments that the future authorities or President who will make rules for the representation of the various communities in the provisional Parliament should give due representation to the Scheduled Castes.

Sir, after the Constituent Assembly started functioning, several Indian, States and other territories have been brought under the purview of the Constituent Assembly for the purpose of representation. But, from a casual observation whether Scheduled Caste members had been chosen from those States we find that not a single member of the Scheduled Castes has been returned to the Constituent Assembly, except one from the State of Mysore. This I think is a very vital point in this article that requires the attention of the President and also the Members of this Constituent Assembly.

As far as the future Central Assembly and the provincial assemblies are concerned, we have already passed certain articles providing for the representation of the Scheduled Castes on the population basis. But I do not find any such formula for the representation of the Scheduled Castes in the provisional Parliament that will be set up after 26th January 1950 when this body ceases to function.

The other amendment of mine, No. 152 seeks to provide that the matters concerning the selection of the Speaker or the Deputy Speaker may be left to be decided by rules to be made by the President who will be functioning after 26th January 1950. The reason why I have moved this amendment is that in an earlier article we have provided for the Speakers of the Assemblies and the Presidents of the Legislative Councils, wherever there will be double chambers, to come into office just after the commencement of the Constitution. We have not said anything there about the Deputy Speakers or Deputy Presidents where they continue in office after 26th January 1950. So I feet that even the matter of election of the Speaker or Deputy Speaker for the provisional Parliament must be left in the hands of the President so that those elections may be regularised.

The other amendment that I have moved, No. 156, I find will not fit in with the new amendment No. 195 introduced by the Honourable Dr. B. R Ambedkar yesterday. But I would like to move my amendment to amendment No. 195, paragraph (3) as follows:

> "A member in two assemblies shall resign his membership in the legislature of a Governor's Province or an Indian State thirty days prior to this Constitution coming into effect."

Dr. Ambedkar argued yesterday that this article deals with double membership. Due to circumstances, though the Constituent Assembly came into existence for constitution-making, it has been decided that the Constituent Assembly can function as a legislative body also, but due to a convention, Sir, It was possible for members who are also members of provincial legislatures to stay back and take part in their own legislatures; thereby these members as a matter of fact were not functioning as members of the Central Legislature. It may be that at present both these functions are done by this body, but my view is that when this Constituent Assembly changes itself into the provisional Parliament, all members of the provincial legislatures who have been returned to this House also should be told that they cannot take part.

Further, Sir, if you accept this article, it does not give to members discretion either to choose functioning in the provisional Parliament or in their own Legislatures. We have already passed an article whereby this Constitution states in unequivocal terms that a member cannot be a member in the Central as well as the provincial legislature. So, I feel strongly that this matter must be left to the choice of the Members themselves, and I know that members having a sense of responsibility, will not choose to sit in both Houses. There are Members who have been chosen for this Constituent

Assembly who are able jurists and who have special knowledge of matters connected with the administration of this country. There may be many Members who may find it necessary to be in the provisional Parliament. We do not know how long this provisional Parliament will function.

Secondly, Sir, as far as the, matter of reservation for the Harijans was concerned, it was said that it would continue for ten years from the commencement of the Constitution. We do not know for how long this provisional Parliament will function. It has not been made clear in this article whether the reservation would start from the 26th January 1950 or from the commencement of this Constitution in right earnest after two or three years. Now, nobody knows whether the life of this provisional Parliament will be two years or ten years according to circumstances. So I feel honestly that this matter of deciding whether a Member likes to function in the Central Assembly or in the Provincial Assembly should be left to the Member concerned. With these few words, Sir, I am hopeful that the Drafting Committee will consider what I have said about these Amendments and do the necessary things so that Members may have discretion in deciding where they should work.

Mr. President : You are not moving amendment No. 150 ?

Shri V. 1. Muniswamy Pillay : I have already moved it, Sir.

Shri H. V. Pataskar (Bombay: General): Mr. President, Sir, I rise to move amendments Nos. 153 and 157 which stand in my name. I move:

"That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, for the words and figure 'sixth day of October 1949' the words 'date of commencement of this Constitution' be substituted. "

"That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, for the words beginning with 'as from the date of commencement' and ending 'casual vacancy', the following be substituted:

> 'at the expiration of one month from the date of the commencement of this Constitution, that member's seat in the legislature of a former Governor's Province or an Indian State shall become vacant unless he has previously resigned his seat in the Constituent Assembly'."

Now, so far as my amendment No. 157 is concerned, I have carefully looked into the matter and it can fit in also with the improved clause (3) as it is now moved by the Honourable Dr. Ambedkar. Sir, there is a vague impression that some how or other this double membership which have been a feature of this Constituent Assembly is a thing which ought to be dispensed with at the earliest possible moment, and I have no doubt that in no constitution of the world will you find double membership of this type. There is a usual provision in all Constitutions that if a person happens to be elected to both the legislatures, the higher and the lower one, or the Central and the provincial one, then he option is left to the member whether he will sit in the Central or the provincial legislature; and if he does not exercise his option, then that individual loses his seat in the Lower House and not in the Upper House. On that principle was based the present clause (2) of Section 68 of the Government of India Act of 1935.

Sir, there is a history to this double membership and I shall only take a short time of this House in telling them as to how it occurred. When our Constituent Assembly was first elected, there was a Central Legislature functioning under the old Act in this country. Naturally at that time the only purpose that Members of the Constituent

Assembly were expected to fulfill was that of framing the Constitution, but they were elected on a definite basis, *viz.*, that there was to be one representative for every ten lakhs of people. Compared with that, the Central Assembly that existed then was a less representative body, as it was elected under the old Act and even consisted of nominated members. Therefore, Sir, naturally the two bodies were expected to work in the beginning separately, but things moved very fast in the political field in the country and the British decided to partition the country and quit. Power had to be transferred to some authority. Naturally the old Central Assembly was found as compared with this Constituent Assembly, to be not as representative as this body was. At that time, the most representative body in the country was this Constituent Assembly. Therefore it was decided that power should be transferred to this Constituent Assembly, and then the Independence Act was passed. The Indian Independence Act made provision that while continuing their work of framing a Constitution for the country, this body should also function as a legislative body, and provision for this was made in Section 8 of the Independence Act. Section 8, clause (1) says:

> "In the case of each of the new Dominions, the powers of the Legislature of the Dominion shall, for the purpose of making provision as to the Constitution of the Dominion, be exercisable in the first instance by the Constituent Assembly of that Dominion, and references in this Act to the Legislature of the Dominion shall be construed accordingly."

Then we have a further provision in sub-clause (e) of clause (2). Sub-clause (e) of clause 2 of Section 8 of the Indian Independence Act says:

> "The powers of the Federal Legislature or Indian Legislature under that Act (that is the Government of India Act, 1935) as in force in relation to each Dominion, shall, in the first instance, be exercisable by the Constituent Assembly of the Dominion in addition to the powers, exercisable by that Assembly under sub-section (1) of this section."

It was under these circumstances that the Constituent Assembly came to be a body, not only for framing the Constitution but also to serve the purpose, of the Federal or Central Legislature. Our own Government thought that it was necessary, and therefore they passed the Provisional Constitution Order by which sub-clause (2) of section 68 of the Government of India Act was deleted, because if it existed, then naturally double membership could not have continued we would have been required to exercise any option and if we had not exercised that option we would have continued to be members of the Central legislature and we would have lost our seats in the provincial legislature. It was thought then that in the interest of the administration both at the Centre and in the provinces it was not desirable that members of the provincial legislature should take part here in the work of the Central Assembly at the cost of their work which they had primarily to do as members of the provincial Assembly. Hence our leader issued a sort of letter of convention by which members of the provincial legislatures were asked not to take part ordinarily in the working of the Central legislature and I must say, so far as I know (I do not hold any office in the Constituent Assembly) that letter of convention has been to a very large extent adhered to by members of the provincial legislatures, because they were all expected to be responsible people and I think they have acted in that manner.

While framing the constitution we passed article 82 and clause 1 (a) of that article reads:

> "(1a) No person shall be a member both of Parliament and of the Legislature of a State for the time being specified in Part I or Part III of the First Schedule and if a person is chosen a member both of Parliament and of the

Legislature of such a State then at the expiration of such period as may be specified in rules made by the President that person's seat in Parliament shall become vacant, unless he has previously resigned his seat in the Legislature of the State."

It is important to, note here that clause (1a) of article 82 closely follows clause (2) of the original section 68 in the Government of India Act, 1935 with this difference that while in the case of the provision contained in clause (2) of Section 68 if a person who happened to be elected to both Houses of Parliament did not exercise his option within the time decided by the Governor-General, as it was intended under, that Act, then he would automatically lose his seat in the lower House, whereas in article 82 (1a) somehow or other, for reasons best known to the Drafting Committee, they have chosen to follow a course different from the one which is usually followed, namely, that the member would automatically lose his seat in the Lower House and not in the Upper House. To me this is an abnormality: however we have already passed that article and I would not take up the time of the House over it and it is not proper to do it at this stage.

After having passed this article I fail to understand why there is any necessity for introducing an article of this nature, because under article 82(1a) already passed as soon as the Constitution comes into force the Members who are members of the provincial legislature would automatically cease to be Members of this House. Of course lie is given the option but if he does not exercise the option he loses his seat in the Constituent Assembly........ *(Interruption by the Honourable Shri K. Santhanam)* Shri Santhanam interrupting says that article 82 would not come into force with the commencement of the Constitution. If the Constitution comes into force on the 26th January, I do not understand why this provision should not come into force then. If it is thought that it would not come into force I would submit that in any case it is not desirable that there should have been a provision like this made in the Constitution itself for the interim period. On account of circumstances which I have already described this House came to be a body which had some members who were members of the provincial legislatures also and if it was once thought that the best interests of the country and the provinces would be served by issuing a letter of convention I do not understand why it is necessary at this stage, for the sake of one year (which is what is left before the next elections), to make an abnormal provision of this nature in the Constitution. If it is thought that instead of having such a letter of convention it is desirable once for all to solve this question even for this short period the best course would have been to treat these gentlemen in a manner better than what is being done now and to give them the option, which would not have made much difference. Because I want to make it clear that most of the Member of this House were elected on the Congress ticket and if option is given to them it means not an individual decision of an individual Member but it means an exercise of option by the Congress Party itself. All the same the very same result could have been achieved. Such an option would have literally and virtually meant an option given to the Congress Party and tip to this time they have acted according to the party decision.

Under the circumstances I fail to see why when we have been carrying on well all this time, during the transitory period they should have thought it fit to bring forward a special provision for a short period of one year. The provision has a sting in it, for a Member shall have no option to resign from either body after the 6th October. It shows that there is a suspicion regarding many of the Members of this House. We have been carrying on our work for a long time on account of circumstances beyond our control and there is an impression in the press and outside the House that we have been carrying on so long because we want to earn Rs. 45 per day. There have been so many newspaper cartoons and other references. In the circumstances this provision would give the impression that those who are also members of the provincial legislature would prefer rather to be here and earn Rs. 45 per day than observe the rules of the party or serve the best interests of the country, which is very very uncharitable.

So, I fail to understand why this should have been mentioned here at all. This provision should be deleted. There are many ways by which the same result could be achieved and they should be charitable to the members of the provincial legislatures, to say the least. I therefore oppose the provision, as there is no necessity for a provision of this nature. My amendment No. 157 means that the option should be given to the members to resign. I know the manner of exercising this option is inconsistent with article 82(1a) which we have already passed. But it is consistent with the Government of India Act. 1935, and with the principles which are followed all over the world. You take any constitution in the world. You Will find a provision that wherever a person happens to be an elected member of a higher and a Lower House if he does not exercise his option, then he automatically loses his seat in the Lower House and not the Upper House. It is on that principle that I have based this amendment of mine. There are ways and ways of achieving object we have in view.

My first submission is that the present arrangements should be carried on for one year more. In 1950-51 the elections are coming. It is therefore only a matter of one year. We have pulled on for so long and there is no reason why we cannot continue to do so for a year more. Even if it is not so, I think an option should be given to the Member. And an Option to a Member in this case means in a large measure option to the Congress Party, though there might be some who do not belong to this party. I do not think heavens are going to fall if this is not done. I regard this provision as a slur on the members of the provincial Assembly who happen to be returned here and to be double members, not because of their choice but because of circumstances beyond their control. That is why I resent this provision, particularly that we should be treated in this manner when we are reaching the end of our deliberations and that a provision should be made in the Constitution which suggests as if these people are likely for some ulterior reasons to persist in continuing here to the detriment of the administrations to which they primarily belong. It is for this reason I move my amendment. I hope honourable Members of the House will seriously take into consideration what I have said.

Shri Brajeshwar Prasad (Bihar: General) : Mr. President, Sir, I beg to move:

"That in amendment 9 of List I (Second Week), in clause (3) of the proposed article 311, for the words 'a House' the words 'the lower House' be substituted".

I also move:

"That in amendment 9 of List I (Second Week), after clause (3) of the proposed article 311, the following new clause be inserted:-

'(3a) If a member of the Constituent Assembly of the Dominion of India was on the twenty-sixth day of January, 1950, also a nominated member of the Legislative Council of a Governor's Province, then, as from the date of commencement of this Constitution that person's seat in the said Assembly shall, unless he has ceased to be a member there of earlier, become vacant and every such vacancy shall be deemed to be a casual vacancy.' "

Sir, the whole idea is to obviate the necessity of by-elections for more than hundred seats in the Constituent Assembly. If the Members are given the option to continue in the Constituent Assembly the result will be that many seats will fall vacant and a general by-election for more than a hundred seats will have to be conducted. I have got my own opinion as to how far that course is desirable. But at present in amendment No. 160 I am only suggesting that members of the Legislative Council should have the option: they should choose whether they want to sit here or in the Provincial Legislative Council. If they choose to remain here there will be no by-elections because they are nominated members. In the Provincial Legislative Councils the Congress Party has a majority everywhere and it will not be difficult for the Government to nominate any member whom they like. I cannot see any reason why this House and especially members of the Drafting Committee will not find it possible to accept this amendment of mine.

I have got nothing more to say as far as this amendment is concerned. But with your permission I would like to say a few general words on the articles that have been moved. I hold the opinion that Members of the House should have the option to remain here or to remain in the Provincial Assemblies. If there is no difficulty in having a general election in West Bengal. I do not see any reason why there should not be general by-elections for hundred seats more. I hold the opinion that events as they are shaping themselves will compel us to postpone the general elections under this Constitution for an indefinite period. Our relations with the Government of Pakistan, especially with reference to Kashmir, are deteriorating fast, and I hold the opinion that this transitional Parliament will continue for more than five or six years. After that period, whether it will be possible to implement the provisions of this Constitution, whether this Constitution will ever come into operation or not I am not clear in my own mind. Personally I am inclined to hold the view that the provisions of this Constitution, barring the transitional provisions, will never come into operation. With that background I feel that it will be beneficial if we hold general by-elections for these hundred seats, because to continue a House without going to the electorate for more than six or seven years is not desirable. There is already a growing discontent in this country that we want to continue. We want to take a snap-vote; we want to know whether we have the confidence of the electorate or not. Therefore it is desirable that a general by-election should be conducted in this country.

If my belief is correct that there is not going to be a general election under the Constitution it will be a violation of the letter and the spirit of the Constitution to provide reservation of seats for any community in this country except Harijans and the Adibasis. Therefore I oppose draft article 312F. It provides reservation of seats for all kinds of communities. In the Constitution we have made provision for reservation of seats for the Harijans and the Adibasis. With that provision I heartily concur, but for other communities there should not be any reservation because other communities must assimilate with the rest of the people of this country. If I had the slightest doubt in my mind that there will be general elections in the year 1950 or 1951, I would not have suggested the course which I am suggesting. But I am quite convinced in my own mind that there cannot be any general election during 1950 or 1951. Therefore why should we continue the legacy of the past? Why should we give reservation of seats to other communities ?

Prof. Shibban Lal Saksena (United Provinces: General) : Mr. President, Sir, I beg to move:

"That in amendment No. 9 of List I (Second Week), in clause (2) of the proposed article 311, for the words

'President may by rules' the words 'Parliament may by law' be substituted; and clause (4) of that article be deleted."

In this article we are providing for the Provisional Parliament and it is contemplated that this very Assembly should become the Parliament minus the Members who are also members of the various Provincial and State Assemblies. In this article in clause (2) provision is made for representation in the Federal Parliament, of States which are not at present represented in it. The only State that is not represented now is Hyderabad, so what is intended by clause (2) is that the President is given power to provide by rules representation for Hyderabad. Personally, I think that we will have the representatives of Hyderabad present here before this, Assembly dissolves. I have no objection whatsoever to representation being granted under rules but this Parliament should have the opportunity to discuss the representation which is given to Hyderabad. What is attempted by this clause is that whosoever is chosen to represent that State according to the rules made by the President, this Parliament will not have the power to discuss those rules. This I think is not proper. As a sovereign Parliament it should have the power to discuss who is being allowed to become its Member, who represents a particular territory and whether the rules made are what Parliament could approve of. I therefore think that it is not very happy that the President should be permitted by rules to provide for this representation and that this House should have no say whatsoever in the manner the rules are framed.

Then, who is this President ? It is said in article 312F which has not yet come up before the House but which is there before us that until 26th January, for you Sir, shall be the President and you are given the right to frame rules for securing the representation. After that the President of the Republic shall be empowered to do it, which means the Cabinet. I think that this House should have the power in both the cases of discussing the rules. When we framed rules for representation of Kashmir, this House had an opportunity of discussing those rules. The House has the right to have its say. But by this clause, by saying that the President shall do it by rules, you are depriving the Parliament of that right which is not proper and is wholly. undemocratic. I do demand that whatever is decided about Hyderabad and in whatever way it is given representation, this Parliament should be the final authority as regards the rules under which they come to this House.

The second part of my amendment is that clause (4) be deleted. In article 311A we have said that this Constituent Assembly shall elect a President. Why, then, should it not elect a Speaker also? I see no reason for making a difference. I am sure the same President and the same Speaker will be re-elected by this House, but still it would have been far more democratic if we had said that this House shall re-elect them. If we have agreed to elect the President. Why should we not elect the Speaker? There should be no difference between the Speaker and the President; although the Personalities chosen may be the same as heretofore--as we ourselves will elect them there is no reason why they should be different--still I do feel that any differentiation as between the President and the Speaker in this matter is not proper. It is a sort of a discrimination that the House shall re-elect the President and not the Speaker. The House shall re-elect the President as well as the Speaker. The Constitution must have the same provision for both of them. That is logically necessary.

Some friends have spoken about the provisions of clause (3). That clause has been objected to, saying, that choice should be given to Members who are also members of provincial legislatures to choose whether they would prefer to be members of Parliament or the Provincial Assembly. I agree with that point of view. This Parliament should become the Parliament of the future as it is and the vacancies should Dot be created in this House but the seats of such Members should have been declared vacant in the Provincial Assemblies and the people should have been required to re-elect Members in their places. One hundred seats in the whole country is not a large number and those re-elections would also have shown whether the country was with the Congress or not. Also it would have been a more democratic way of doing things. It would have given some indication of how the public feels. Though I have not tabled an amendment, I am in sympathy with those friends who think that this House should have remained as it is and the vacancies caused by those Members who have membership in the Provinces should have been filled by direct election.

Sir, I also support some of the amendments made by My Friend Mr. Kamath to clause (1). The wording chosen by him is better. I think these amendments should be considered by the Drafting Committee and incorporated to make the draft more concise and better.

Shri Mahavir Tyagi (United Provinces: General): Sir, have I your permission to discuss generally the whole article ?

Mr. President : You may first move your amendments

Shri Mahavir Tyagi : I beg to move:

"That in amendment No. 9 of List I (Second Week), in clause (1) of the proposed article 311, the following be added at the end:--

'and shall be known as the Parliament of the Union of India.'

I have other amendments, but now since Dr. Ambedkar has come out with his fresh amendments which cover many of my amendments, I do not intend to move the rest of my amendments.

In moving this amendment I have just one remark to make. Article 311 as proposed starts with the heading, "Provisions as to Provisional Parliament of the Union and the Speaker and the Deputy Speaker thereof." The words "Provisional Parliament" have been used for the first time in the heading alone. There is nothing in the body of the article to say as to what would be the provisional Parliament. Somewhere in the body of the article we should say that there shall be a provisional Parliament but this has not been stated. Only in the latest amendment of Dr. Ambedkar it is mentioned that after these casual vacancies are filled there will be a provisional Parliament. He has named it "Provisional Parliament" only casually. Therefore, in order to clarify this I wish to add in the very first clause the words--

"and it shall be known as the Parliament of the Union of India."

In this first clause he says-

"Until both Houses of Parliament have been duly constituted, and summoned to meet for the first session under the provisions of this Constitution, the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution shall exercise all the powers and perform all the duties conferred by the provisions of this Constitution on Parliament."

From this I construe the meaning that the Constituent Assembly of the Dominion of India will continue and that that body will carry out all the functions of the provisional Parliament. What a provisional Parliament is, has not been defined anywhere. I therefore submit that we may add, "and shall be known as the Parliament of the Union of India." I do not agree with the use of the word 'Provisional' either in the case of the Parliament or in the case of its officers or President or others. It must be "Parliament". With these remarks, I hope this amendment will be accepted.

Sir, speaking generally on the article, I am really sorry that. Dr. Ambedkar and the Drafting Committee had to come out with this proposal. I should have preferred a general election. The proposal to continue this Constituent Assembly and also to suggest that this Assembly shall function as the first Parliament is, to my mind, not very democratic. It would have been much better if we could have a direct election immediately before the commencement of the Constitution. We should have commenced with a new Parliament freshly elected through the general election. That would have been the proper course.

Shri L. Krishnaswami Bharathi (Madras: General): Under what franchise?

Shri Mahavir Tyagi : That would have been the proper course, because then, the Parliament would be in a position to know the trend of public thought and the people in power would be vested with the fullest confidence of the people when they would represent. Now, Sir, as it happens, we have come here through an indirect electorate, the legislative Assemblies of the Provinces, which were elected long ago in 1946 or so. It is long since we approached the electorate. From that point of view, this article, in my opinion, is the most reactionary type of an article that we are passing.

It seems there are difficulties in getting the electoral rolls ready as the franchise has become adult franchise and it would take time to get ready the electoral registers and therefore just to fill up the gap this article is being proposed. I also agree with my honourable Friend Mr. Santhanam when he suggests that a final date should be fixed by which time elections should be held. After all, there must be some limit within which these electoral rolls and all these formalities should be complete and the people, may really take over. If elections on adult franchise of general electorates were held, then alone, the Parliament could claim to be the representatives of the people. Since it is just to fill up the gap that this article has been proposed, I hope much time will not be lost in getting things ready for fresh general elections

Then, there is another amendment which Dr. Ambedkar has been pleased to move that such members of this Assembly who are also members of the provincial Assemblies or provincial legislatures would be deemed to have vacated their seats here on the date immediately before the commencement of the new Constitution. But, those seats, though they will not be vacated till the commencement of the new Constitution, will be re-filled by election before the Constitution comes into force. Although those seats would not be physically vacated until before the commencement of the Constitution, the filling up of these unvacated seats, according to this amendment, will be done by elections much earlier that the seats will be really vacated. This is something which I really do not understand. It would have been better if he had said that those seats of the local M. L. A.'s will be deemed to be vacated a fortnight before the commencement of the Constitution. Within that fortnight, through indirect election, we should get those seats filled up so that at the commencement of the Constitution, this Assembly could be fully complete. That would have been the proper course. I would still suggest that the Drafting Committee might just consider the possibility of adding a few words which will change the meaning so as to enable the Government to have an election, say fifteen days before the commencement of the Constitution and also get these seats vacated before they are re-filled. That would have been more consistent.

The draft of clause(3) as now proposed is complete to a greater extent. In the previous draft only such members were debarred from continuing as members as were members of the local legislatures on the 6th October 1949. All such persons who became members of the local legislatures after the 6th October 1949 were not disqualified. Now, this new proposal is complete from that point of view as it lays down that if a member of the Constitutent Assembly of the Dominion of India was on the: 6th October or thereafter becomes at any time before the commencement of the Constitution a member of a House of legislature of a Governor's province or an India State Corresponding to any State for the time being specified in Part III of the First Schedule or a Minister for any such State, then, as from the date of the commencement of this Constitution, the seats of such Members in the Constitutent Assembly shall, unless he has ceased to be a member of that Assembly earlier, become vacant and every such vacancy shall be deemed to be a casual vacancy. Now, Sir, although there will not be many cases, or there may be no case at all, this draft, however, covers the cases of only such Members as become members of the provincial legislatures during this period. What about those who are members of the provincial Assemblies and become members of this Assembly, in this period ? Strictly interpreted, under this latest draft of Dr. Ambedkar, those members who are Members of this House and who become members, either on the 6th of October or thereafter, of the House, of legislature of a province, meaning thereby, members of the local legislatures, then, those member's seats will be deemed to be. vacated-such Members only who are members of this House already and are also members, on the 6th of October or thereafter, of the provincial Assemblies. What about those who are not members of this House, but are members of the provincial Assemblies and become members of this house during this period? They will also get a double membership and their seats will not be deemed to be vacated.

Therefore, this article is still slightly incomplete. I would suggest that the cases of such Members should be also covered : persons who are not members of the Constituent Assembly today or who were not members of the Constitutent Assembly on the 6th or thereafter, but were on the 6th October members of, say, the U. P. provincial legislature, one or many of them--the number does not matter--being elected during this period as members of the Constitutent Assembly: their cases will not be controlled even by the latest proposed draft.

Shri L. Krishnaswami Bharathi : The word is intended to cover only such, cases as the honourable Member has in view.

Shri Mahavir Tyagi: He was already a member of the Provincial Assembly and he becomes a member here thereafter. The case of a gentleman who becomes a member here during this period is not, strictly speaking, legally covered but perhaps such cases may not arise.

Another point I would like to bring to your notice is that the Drafting Committee has also provided for the continuance of the Speaker and the Deputy Speaker of the Assembly. This again is bad in spirit. After all when about one hundred or so of

Members in the Assembly who enjoy the membership of the Provincial Assembly when their seats are declared vacant, their substitutes will be elected. Now, when one-third or so of the House is being changed, then why force the old Speaker and the Deputy Speaker on the House? We should have said only this much that till the first day of the meeting of the Parliament the Speaker or Deputy Speaker will continue. Thereafter, the Parliament must have the liberty to elect its Speaker or Deputy Speaker afresh. This has always been the custom whenever one Session of Parliament is over and the next comes after re-election. It is their first business to elect the Speaker and Deputy Speaker. Generally the old ones are re-elected, but then the formality is undergone afresh. I suggest this is bad, on principle that the present Speaker and the Deputy Speaker--without casting any aspersion on any persons; I hope they will be re-elected should be forced on the Parliament. The fact that we put it in the Constitution that they will continue does not speak well of that high office. Theirs is an office endowed with a complete command of confidence of the House. It is not fair that this House should come between the Parliament and its free choice of officers. We should not interfere with the working of the House of Parliament. It will in itself be competent to elect its own Speaker, and the Deputy Speaker when it meets for the first time after the general elections.

Mr. President : You have taken more time.

Shri Mahavir Tyagi : I have nothing more to say except putting a question. What will happen in the case of such Members of the Constituent Assembly from a province where the Provincial Assembly is dissolved and re-election takes place? Suppose in Bengal or U. P. general election takes place and their representatives are there in this Assembly. We have already provided for their continuance here, but will they continue even after the general elections are over, or will they be required to seek the confidence of the newly elected Legislative Assembly in their respective provinces ? This may also be clarified.

Shri Sita Ram S. Jajoo (Madhya Bharat): Sir, I beg to move:

> "That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, after the words 'an Indian State' the words 'or Union of States; or a member who holds any office of profit under any Government other than the ministerial office in the Union Government' be inserted."

My amendment is a very simple and short one. As a matter of fact the principles underlying this amendment have been already accepted by the Constituent Assembly in the Constitution in article 83 and I feel that this provision should be inserted in these transitional provisions to avoid any misunderstanding and ambiguity which may arise, matter these transitional provisions are accepted and passed. Although we have already adopted that double membership is to be abolished by the provisions of article 82 in the Constitution but to avoid ambiguity we are doing it here as well. So I hope, to avoid ambiguity regarding the other part as well, the Honourale Dr. Ambedkar will accept this amendment.

Mr. President: Mr. Karimuddin-absent.

Mr. Guruv Reddy-absent.

Mr. Sidhva-you had given notice of an amendment which I had promised might be taken along with this. I think it does not arise now.

Shri R. K. Sidhva (C. P. & Berar: General): Yes.

Mr. President : There is no other amendment. The amendments and the article are now open for discussion.

The Honourable Shri Satyanarayan Sinha (Bihar: General): I request that question may be now put.

Mr. President : Some of the Members may like to speak. I will only allow one or two speakers who have not spoken. Does any Member wish to say any thing who has not moved any amendment ?

Mr. Mohd. Tahir (Bihar : Muslim): Mr. President, I find some difficulty in this article which I wish to place before the House. Clause (1) in this article is admittedly a substantive portion of this article. It says that--

> "Until both Houses of Parliament have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution shall exercise all the powers and perform all the duties conferred by the provisions of this Constitution on Parliament."

This substantive portion of this article means that the body which is now functioning, which means that the body consisting of the Members now present in the Assembly, will be the body which will form the Parliament after the commencement of this Constitution.

Now, the substantive portion of the law means that it governs the following provisions of the article. That means that clause (1) which is the substantive portion of this article should govern the other provisions of this article, *i.e.* clauses (2) and (3). But here we find that the position is quite otherwise. It is topsy-turvy. Actually clause (3) governs the substantive portion of this article which in my opinion, is not legal, because clause (1) says that this body will function as the Dominion Parliament, whereas clause(3) dissolves this Constituent Assembly, not wholly but partly. In fact, clause(3) means the dissolution of this body in parts. Therefore I think clause(3) is redundant and should not be included or inserted in this article,

Now, the question will arise that after this House is converted into the Dominion Parliament, Members will find themselves in this position that some of them may be Members of this Dominion Parliament as well as of the Provincial Assemblies. For that, Sir, we have already adopted an article, and I refer the House to article 82 which, as has already been explained by one of my friends there, is the remedy for that, when Members are Members of this House as well as of the Provincial Legislatures. But to insert such a clause as has been done in the form of clause (3), It would say, really pollutes the whole Constitution. The insertion of such a clause as clause(3) is polluting the constitution and I hope this will be considered by my Friend Dr. Ambedkar, that the substantive portion of the law should not be governed by the sub-clauses which are being entered in the article.

With these words, Sir, I close my remarks.

Mr. President : Dr. Ambedkar, have you anything to say ?

The Honourable Dr. B. R. Ambedkar (Bombay : (General): Sir, before I begin, I would like your permission to omit the word "becomes" in clause (3) of amendment No. 195, occurring between "thereafter" and "at any time before..." The word is unnecessary.

Now, with regard to the various amendments, it seems to me that there are only three that call for some consideration. The first is the amendment of my Friend Mr. Kamath who said that in clause (4) of this article, there is a certain account of discrepancy between the provisions relating to the carry-over of the Deputy Speaker of the Centre and the absence of any such provision with regard to the carry-over of the Speaker in the Provinces. I myself, and the Drafting Committee were conscious of this difference between the two provisions, and we had intended to introduce subsequently an amendment to make good the lacuna. Mr. Kamath may, therefore, rest assured that the Drafting Committee will not allow this difference to continue, but will make good by an amendment.

The other point of some substance was the one raised by my Friend Mr. Muniswamy Pillay with regard to the representation of the Scheduled Castes in the Provisional Parliament. The position is this. There are at present 310 Members of this Assembly, and the Provisional Parliament will also continue to consist of 310 Members. On the basis of population which is the principle adopted for the representation of the Scheduled Castes in the future Parliament, on a purely population basis, they should get 45 seats out of this 310. They have, as a matter of fact, today only 28 seats. The article makes a definite provision that there shall be no diminution in the 28 seats they have now. But with regard to making good the difference between the 45 to which they are entitled on the basis of population and the 28 which they have got, I think we have left enough power in the hands of the President to adapt and modify the rules so as to make good the deficiency, as far as it would be practicable to do so under the provisions of new article 312F.

Now I come to the amendment of Mr. Pataskar. So far as I have been able to understand him, there is really no difference between the draft article and the amendment suggested by him, in principle. Both article 311 as I have moved and the amendment as moved by Mr. Pataskar agree that we ought to make a provision for the abolition of dual membership. The only question that remains is how it is to be done. According to the provisions contained in this article, what is stated is that the vacancy shall occur only from the commencement of the Constitution. He will continue sitting and functioning as a Member until that date, that is to say, 25th January 1950, assuming that the Constitution comes into existence on the 26th January. But elections to fill the seats which have so become vacant may be held at any time before the commencement of this Constitution so that when the Constituent Assembly meets as the provisional Parliament there may not be any sudden depletion in its membership. What my Friend Mr. Pataskar wants is, that the vacancy should come into effect from the commencement of the Constitution, and that the unseating should take place from one month thereafter. That is the only difference. It seems to me that it is really a matter of detail as to which date we should adopt for vacancy and which date we should adopt for unseating. There as on why we have adopted the 6th October 1949 as the date with reference to which the right of a Member to continue as such Member is to be determined is because it is the date on which we commenced this session of the Constituent Assembly. I do not wish to dogmatise that there is any particular virtue in the 6th October 1949, nor will Mr. Pataskar say that there is any virtue in the provision that he has moved by his amendment. As I said, there is no difference in principle, and we are all agreed that double membership should be avoided, and I, therefore, think that the amendment that I have moved..........

Shri H. V. Pataskar : My amendment gives the option to the Member.

The Honourable Dr. B. R. Ambedkar: That, I think, will create a lot of complication. If the Member is given the option, that will create complication, because it may be that the same evil which we want to do away with may be repeated. We must take precaution to see that the evil is not repeated. I, therefore, submit that the provisions contained in 311 should commend themselves to the House.

Shri Ram Sabai (Madhya Bharat): What about the amendment moved by Mr. Sita Ram Jajoo ?

The Honourable Dr. B. R. Ambedkar : We had anticipated the point raised by him, and we have modified my amendment 195 in which I have made provision for Indian States. The only thing I have not made provision for is for persons holding offices of profit.

Mr. President: I shall now put the amendments to vote one by one. The first ad of amendments to clause (1) are Nos. 142 to 145 of Mr. Kamath.

The question is:

"That in amendment No. 9 of List I (Second Week). in clause (1) of the proposed article 311, after the word 'Until' the words 'such time as' be inserted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 9 of List I (Second Week), in the proposed article 311, the words the body functioning as be deleted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 9 of List I (Second Week), in the proposed article 311, for the words 'Constituent Assembly of the Dominion of India' wherever they occur, the words 'Constituent Assembly of India' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 9 of List I (Second Week), in clause (1) of the proposed article 311, for the words 'immediately before the commencement of this Constitution shall the words shall itself be substituted."

The amendment was negatived.

Mr. Naziruddin Ahamd: I would leave my amendment No. 146 to the Drafting Committee, Sir.

Mr. President: Now I will put amendment No. 194 of Mr. Tyagi to vote. The question is:

"That is amendment No. 9 of List I (Second Week), in clause (1) of the proposed article 311, the following be added at the end:-

'and shall be known as the Parliament of the Union of India'."

The amendment was negatived.

Mr. President: These are all the amendments to clause (1). Now I will put the amendments to clause(2) one by one to vote. The question is:

"That in amendment No. 9 of List I (Second Week), in clause (2) of the proposed article 311, after the word 'rules' the words 'which shall as far as practicable, conform to those adopted by the constituent Assembly' be inserted."

The amendment was negatived.

Mr. President: Then we have a series of amendments moved by Mr. Muniswamy Pillay.

Shri V. I. Muniswamy Pillay: In view of the assurance given by the Honourable Dr. Ambedkar I do not press any of my amendments.

Shri H. J. Khandekar (C. P. & Berar: General) : I do not want that these amendments of which I have also given notice should be withdrawn.

Mr. President: They were moved by Mr. Muniswamy Pillay. I shall put them to vote.

The question is:

"That in amendment No. 9 of List I (Second Week), in sub-clause (a) of clause (2) of the proposed article 311, for the words 'of any State or other territory' the words 'of a Governor's Province or Indian State' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 9 of List I (Second Week), in sub clause (a) of clause (2) of the proposed article 311, for the words 'not represented' the words not adequately represented' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 9 of List I (Second Week), in sub-clause (a) of clause (2) of the proposed article 311, after the words 'commencement of this Constitution' the words 'having due regard to the proper representation of the Scheduled Castes' be inserted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 9 of List I (Second Week), in clause (2) of the proposed article 311, the following new sub-clause be inserted:-

'(d) the election of a Speaker or a Deputy Speaker for the Parliament."

The amendment was negatived.

Mr. President: Now I will put to vote the first part of the amendment (No. 178) of Prof. Shibban Lal Saksena to clause (2). The question is:

"That in amendment No. 9 of List I (Second Week), in clause (2) of the proposed article 311, for the words 'President may by rules' the words 'Parliament may by law' be substituted."

The amendment was negatived.

Mr. President : Now we come to the amendments to clause 3. Amendment No 155 of Mr. Kamath.

The question is:

"That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, after the words 'An Indian State' the words 'or Union of States' be inserted."

The amendment was negatived.

Mr. President: The question is:

"That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, the words 'within the meaning of the Rules of Procedure and Standing Orders of the Constituent Assembly' be added at the end."

The amendment was negatived.

Mr. President: The next amendment to be put to vote is that of Mr. Muniswamy Pillay (No. 156) to amendment No. 195 moved by him in a slightly modified form.

The question is:

"That in amendment No. 195 delete all the words beginning with 'and' in the last tin& and add the following:

'A member in two assemblies shall resign his membership in the legislature of a Governor's province or an

Indian State thirty days prior to this Constitution coming into effect.,"

The amendment was negatived.

Shri H. V. Pataskar: Sir, I beg leave to withdraw my amendments.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President: I shall now put the amendments of Shri Brajeshwar Prasad and Shri Sita Ram Jajoo to clause (3) to vote.

The question is:

"That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, for the words 'a House', the words 'the lower House' be substituted."

The amendment was negatived.

Mr. President: The question is :

"That in amendment No. 9 of List I (Second Week), after clause (3) of the proposed article 311, the following now clause be inserted:--

> '3(a) If a member of the Constituent Assembly of the Dominion of India was on the twenty-sixth day of January, 1950, also a nominated member of the Legislative Council of a Governor's province, then, as from the date of commencement of this Constitution that person's seat in the said Assembly shall, unless he has ceased to be a member thereof earlier, become vacant, and every such vacancy shall be deemed to be a casual vacancy.'"

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 9 of List I (Second Week), in clause (3) of the proposed article 311, after the words 'an Indian State' the words 'or Union of States; or a member who holds any office of profit under any Government other than the ministerial office in the Union Government' be inserted."

The amendment was negatived.

Mr.-President: Now I shall put the amendments to clause (4) to vote.

Shri H. V. Kamath (C. P. & Berar: General): Sir, in view of the assurance given by the Honourable Dr. Ambedkar that this discrepancy will be rectified I do not press my amendments Nos. 161 and 162.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President: Now I will put to vote the second part of the amendment moved by Prof. Shibban Lal Saksena No. 178.

The question is:

"That in amendment No. 9 of List I (Second Week), clause (4) of the proposed article 311 be deleted."

The amendment was negatived.

Mr. President: All the amendments to article 311 have been disposed of. I will now put the clauses of the article to vote first.

Shri Mahavir Tyagi: My amendment has not been put to vote.

Mr. President: I put it; nobody voted for it.

The question is:

"That clause (1) of article 311 stand part of the Constitution."

The motion was adopted.

Mr. President: The question is:

"That clause (2) of article 311 stand part of the Constitution."

The motion was adopted.

Mr. President : Amendment No. 195 has taken the place of clause (3) of amendment No. 9. In the second line of amendment No. 195 the word 'becomes' is deleted and the rest remains as it is.

The question is:

"That in amendment No. 9 of List I (Second Week), for clause (3) of the proposed article 311, the following be substituted :- '

> '3(a) If a member of the Constituent Assembly of the Dominion of India was on the sixth day of October, 1949, or thereafter at any time before the commencement of this Constitution a member of a House of the Legislature of a Governor's Province or an Indian State corresponding to any State for the time being specified in Part III of the First Schedule or a Minister for any such Stale, then as from the date of commencement of this Constitution the seat. of such member in the Constituent Assembly shall, unless he has ceased to be a member of that Assembly earlier, become vacant and every such vacancy shall be deemed to be a casual vacancy. "

The amendment was adopted.

Mr. President: The question is:

"That in amendment No. 9 of List I (Second Week), after clause (3) of the proposed article 311, the following new clause be inserted:- '

> '3(a) Notwithstanding that any such vacancy in the Constituent Assembly of the Dominion of India as is mentioned in clause (3) of this article has not occurred under that clause, steps may be taken before the commencement of this Constitution for the filling of such vacancy, but any person chosen before such commencement to fill the vacancy shall not be entitled to take his seat

in the said Assembly until after the vacancy has so occurred'

The amendment was adopted.

Mr. President: The question is:

"That clause (4) of article 311 stand part of the Constitution."

The motion was adopted.

Mr. President: The question is:

"That article 311, as amended, stand part of the Constitution."

The motion was adopted.

Article 311, as amended, was added to the Constitution.

Article 312 F

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That after article 312E, the following new article be inserted:--

Provisions as to this filing of casual vacancies in the provisional parliament and provisional legislatures of the State.

'312F. (1) Casual vacancies in the seats of members of the provisional Parliament functioning under clause (1) of article 311 of this Constitution [including vacancies referred to in clauses (3) and (3a) of that article] shall be filled, and all matters in connection with the filling of such vacancies (including the decision of doubts and disputes arising out of, or in connection with elections such vacancies shall) be regulated--

(a) in accordance with such rules as may be made in this behalf by the President, and

(b) until rules are so made, in accordance with the rules relating to the filling of casual vacancies in the Constituent Assembly of the Dominion of India and matters connected therewith in force at the time of the filling of such vacancies or immediately before the commencement of this Constitution, as the case may be, subject to such exceptions and modifications as may be made therein before such commencement by the President of that Assembly and thereafter by the President of the Union:

Provided that where any such seat as is mentioned in this article is, immediately before, it becomes vacant, held by a person belonging to the Scheduled Castes or to the Muslim or the Sikh community and representing a State for the time being specified in Part I of the First Schedule, the Person to fill such seat shall, unless the President of the Constituent Assembly or the President of the Union, as the case may be, considers it necessary or expedient to provide otherwise, be of. the same, community:

Provided further that at an election to fill any such vacancy in the seat of a member representing a State for the time being specified in Part I of the First Schedule, every member of the Legislative Assembly of that State shall be entitled to participate and vote. "

Then I am moving my amendment No. 205 to substitute a different explanation.

"That in amendment No. 164 of List III (Second Week), for the Explanation to clause (1) of the proposed new article 312F, the following Explanation be substituted:--

'Explanation.--For the purposes of this clause--

> (a) all such castes, races or tribes or parts of or groups within castes, races or tribes as are specified in the Government of India (Scheduled Castes) Order, 1936. to be Scheduled Castes in relation to any Province shall be deemed to be Scheduled Castes in relation to that Province or the corresponding State until a notification has been issued by the President under clause (1) of article 300A specifying the Scheduled Castes in relation to that corresponding State;
>
> (b) all the Scheduled" Castes in any Province or State shall be deemed to be a single community."

Then I come to sub-clause (2).

(2) Casual vacancies in the seats of members of a House of the provisional Legislature, of a State functioning under article 312 or article 312C of this Constitution shall be filled, and all matters in connection with the filling of such vacancies (including the decision of doubts and disputes arising out of or in connection with elections to fill such vacancies) shall be regulated in accordance with such provisions governing the filling of such vacancies and regulating Such matters as were in force immediately before the commencement of this Constitution subject to such exception and modifications as the President may by order by direct."

I do not think that any explanation is necessary. The provisions are quite clear. If any point is raised in the course of the debate, shall be quite prepared to offer such explanation as I could give.

Mr. President: There are four or five amendments to this. No. 179, Mr. Shibban Lal Saksena.

Prof. Shibban Lal Saksena: Mr. President, Sir, there is some mistake in the printing. I will move my amendment this way-

"That in amendment No. 164 of List III (Second Week), the first proviso to clause (1) of the proposed new article 312F be deleted-"

I also move:

"That in amendment No. 164 of List III (Second Week), in clause (2) of the proposed new article 312F, for the words 'as the President may by order direct' the words as the Parliament may by law provide, be substituted."

Sir, this article makes provision for the filling of casual vacancies, and this proviso to clause (1) wants that the vacancies of members in this Assembly should be filled by members of the same community. I want the deletion of this proviso. My main reason for the deletion of the proviso is this: We have provided in our Constitution by the agreement of all the minorities themselves that all reservations shall go, except for the Scheduled Castes. Now, according to this proviso, the Scheduled Castes do not stand to gain, because I see that the Scheduled Castes according to their population should have about forty-five seats, whereas they have only about twenty-eight seats in this Assembly. If this proviso is strictly adhered to justice would not be done to them.

Then, Sir, for the rest, we have already decided that there should be no reservation in the general elections. To imagine that members of the legislatures in the provinces will not be generous and fair to them is something which I cannot understand. If they can trust the illiterate people in the whole country to be fair enough to return the minorities in their proper proportion, they must surely trust the members of the provincial legislatures to be much more fair to them. They will be men of knowledge, much more responsible, who will weigh the issues and who will try to see that the minorities are given not only their proper quota but even more than that. As most of the members of the provincial assemblies will be Congressmen and the Congress Parliamentary Board will give the list of candidates to be elected, I am sure that they will take care to see that justice is done to all minorities. Therefore, Sir, I do not want that our Constitution should be disfigured by this proviso. The Muslims, the Sikhs and the other minorities will surely get much better treatment at the hands of the Parliamentary Board of the Congress and the provincial assemblies than they can expect by this proviso, which will only limit them to the number of seats they hold now. For the Scheduled Castes it will be a sad thing, because these members of the Scheduled Castes can be returned to this Assembly only when scheduled caste seats become vacant. This would really perpetuate the injustice done to them by the Cabinet Mission, which gave them seats according to proportional representation in the legislatures. Hence this proviso to clause (1) must go, for it will not serve the purpose for which it is intended. I do not think that the Muslims and Sikhs feel that they will not get a fair deal in regard to the Central legislature in the by elections. Even the Scheduled Castes themselves do not want the number of seats given but they want more. That can be achieved only if this provision is deleted.

By my amendment No. 180 I want to substitute "as the Parliament may by law provide" for the words "as the President may by order direct", in regard to casual vacancies. The reasons are the same as I have given regarding the previous amendment. I think in the matter of making rules for filling seats, the Parliament should be the final authority and not even the President should have absolute power in the matter. The same Parliament will continue which is making the Constitution and why should not they be permitted to approve the rules to fill casual vacancies ? I think that is fair and proper and in place of the President, Parliament should be substituted.

Shri V. I. Muniswamy Pillay : Sir, I beg to move:

"That in amendment No. 161 of List III (Second Week), in the first proviso to clause (1) of the proposed new article 312F, after the words 'the Scheduled Castes or' the words 'Schedule Tribes' be Inserted."

In the new amendment given by Dr. Ambedkar he has made it clear that he included all such castes, races, tribes or groups within castes. It would be more appropriate if Scheduled Tribes are also included after the words "Scheduled Castes" in the main article, so that what is said in the new amendment may be in consonance with the article itself. Speaking generally on this article I have made it clear, when we discussed article 311, as to the inadequacy of the representation of the Scheduled Castes in the new provisional Parliament and I am thankful to Dr. Ambedkar for making it clear that the President will consider the case of such inadequacy and allot the number of seats that is rightly due to the Scheduled Castes. I welcome the last sentence in the first proviso "unless the President of the Constituent Assembly or the President of the Union, as the case may be, considers it necessary or expedient to provide otherwise, be of the same community." Originally it was thought that since we were selecting only for 28 seats in the Constituent Assembly only 28 members will be taken to the provisional Parliament. Later it was thought if a member of a particular community vacated the seat that community will be returned and here was a lacuna. The question was whether it would be possible to increase the number of representatives of the Scheduled Castes. With this amendment or with the provision that has been made I feel certain that the number required for the Scheduled Castes will be assured. With these observations I support the amendment moved by Dr. Ambedkar.

Pandit Thakur Das Bhargava: (East Punjab : General): Sir I move:

"That in amendment No. 164 of List III (Second Week), in the first proviso to clause (1) of the proposed new article 312F, the words 'or to the Muslim or the Sikh community' be deleted, and for the words be of the same community' the words 'belong to the Scheduled Caste' be substituted."

So far as the filling of casual vacancies is concerned I wish that the basic principles which we have adopted in regard to the legislatures of the provinces and the Centre are observed. We have ruled so far that general electorates shall take the place of separate electorates and that there shall be no reservation of seats for the Muslims or the Sikhs and that there will be reservation of seats for the Scheduled Castes and they shall also have the right to contest the general seats. If this principle were given effect to, the amendment which I seek to make will be fully justified. I can understand the argument that since the old House is being continued in the coming Assembly therefore the representation of the various communities should continue as before. But this argument is certainly not valid and at the same time this principle has been departed from. In the first place, the present members from the various communities were elected on the basis of separate electorate and this is given the go-bye in the second proviso, because it clearly says that every member of the Legislative Assembly of a State shall be entitled to participate and vote, which means that for the purpose of filling casual vacancies we have adopted the principle of joint electorates in place of separate electorates. If the proviso remains as it is, it would mean that the Muslims and the Sikhs will also have the right to contest the general seats in case of casual vacancies. In this matter also this proviso departs from the original principle. When we have made departure from two basic principles--that of separate electorates as well as allowing the Sikhs and Muslims to contest general seats--it passes one's comprehension why the accepted principle of non-reservation for Sikhs and Muslims should not be given effect to. So far as reservation is concerned we know that in this House all right-minded Muslims and Sikhs themselves gave it up. It cannot be said that the Assembly coerced them to do so. There were two sets of persons among the Muslims. Such of them as preferred separate electorates moved their motions here and did not willingly give them up. There were others who came forward and said that they did not want reservation. These persons will be very much hurt with this provision. The same was the case with regard to the Sikhs. They voluntarily gave up reservation and it would not please the Sikhs to depart from this accepted principle. If this Constitution had been framed in 1947 I know that these reservations must have remained for Muslims and Sikhs also, but the experience of the last two years should not be lost upon us. It is absolutely wrong now to continue this and I for one would beg the House to accept the principle which they accepted with regard to the coming elections, that there shall be no reservation for the Sikhs and the Muslims. If our friends the Muslims and Sikhs want that the scats falling vacant should be filled by members of the respective community, namely either Sikhs or Muslims, let it be arranged by convention. I am not opposed to any scats being ,given to them but it would be wrong to disfigure the Constitution any more by reference to the principle of reservation of seats which the Sikhs and Muslims themselves have given up.

Shrimati Purnima Banerji (United Provinces: General): Mr. President, I move:

> "That in amendment No. 164 of List III (Second Week), in the first proviso to clause (1) of the proposed new article 312F, for the words 'Muslim or the Sikh Community' the words 'Muslim, Christian, Sikh community or by a woman' be substituted, and at the and of the said proviso the words 'or sex as the case may be' be added."

Sir, I am conscious of a spirit of diffidence in moving this amendment and sometimes feel that in doing so I may be opening myself to a certain amount of ridicule. But, even at that cost I feet I should state my case. The proviso which we are now discussing provides that in respect of the casual vacancies which are to be filled hereafter for the provisional Parliament, those belonging to the Sikh or the Muslim community will be represented by persons of that community. My amendment seeks just to stretch that same provision for women. I wish to make it quite clear that women do not want any reserved seats for themselves, but nevertheless, I suggest to the House that in respect of the number of women who are now occupying scats in the Assembly, if any of them should vacate their scats they should be filled up by women themselves. We have had casual vacancies in this House before this. Three women have retired so far. One was our late lamented Shrimati Sarojini Naidu, the second was Mrs. Vijayalakshmi Pandit and the third was Shrimati Malati Chaudhuri. Three women Members far various reasons have had to leave this House. Mrs. Naidu who could never be replaced both from among men and women, Mrs. Vijayalakshmi Pandit who is so very highly talented and our friend Shrimati Malati Chaudhuri--all these three women have been replaced by men Members. I do not speak in disparagement of the honourable Members who may have been returned in their places and I am sure they are worthy and fit Members of this House. But I do hold that women could have also filled those Places with equal merit and they should have been invited to do so. Since the entire basis of the State has changed and it is no longer a police state, certain social functions such as education and health now feature among the major items of the State's development. I feel, that not only is the association of women in the field of politics essential but it is indispensable, and therefore I feel that this indispensable section of the people should be amply represented in this House and therefore my amendment proposes that in the casual vacancies Which will occur women should at least be returned to the seats which they hold today, if not more. With these words, I move.

Mr. Presidet: The article and the amendments are now open for discussion

Shri H. V. Kamath : Mr. President, this article provides for the fining of casual vacancies in the provisional Parliament and in the provisional Legislatures of States. The provisions of this article are good as far as they go but I feet that they could be bettered. I would invite the attention of my honourable Colleagues to certain issues and doubts that have been raised in my Mira on a careful perusal of this draft article 312F. To start with I shall refer to sub-clause (b) of clause (1) of this article. This sub-clause (b) provides that the filling up of' casual vacancies shall be regulated by the President of the Union after the commencement of the Constitution in so far as the modifications and exceptions to the rules already passed by us are concerned. I can understand the President of the Assembly not laying those modifications and exceptions before this Assembly before the enforcement or commencement of the Constitution. But I fail to understand why, once the Constitution has been inaugurated or has commenced and the provisional Parliament has started to function, any rules made by the President of the Union after such commencement should not be laid before Parliament for consideration. This House will remember that when certain rules adopted by us a couple of years ago were sought to be amended and altered, those modifications were brought before this house and the house duly approved of them. So in this case, where the President of the Union is concerned, after the Parliament has started functioning it is necessary and advisable from the purely constitutional and also democratic point of view that the decrees or the rules made by the President of the Union should be laid before the provisional Parliament for consideration. Before the Constitution commences there may be difficulty as regards time-there may not be time enough for the President to lay the rules before the House. But once the Constitution has commenced the President of the Union must lay the modifications and exceptions that he might make with regard to the rules before the provisional Parliament for their consideration and formal approval. That is the first point.

The second point arises out of the first part of the explanation to this article. It says that "all the Scheduled Castes in any State shall be deemed to be a single community". I am rather reluctant to use the word "community" for the Scheduled Castes by themselves as a whole. I believe the House will agree with me when I say that we long ago decided that the Scheduled Castes are not a separate community by themselves but a part of the great Hindu community. This House has decided that point. This part of the explanation, I feel therefore, is a hang-over from the past. We have not been able to shake off this misconception about the Scheduled Castes as being a community. I think therefore that this explanation must be recast so as to delete the description of the Scheduled Castes as a community. Describe them as a sub-community, as a group of the Hindu community. On that I am sure all of us are agreed in this House. Therefore, I would request the Drafting Committee and also this House to amend this part of it suitably so as to describe the Scheduled Castes as a part of the Hindu community and not as a community by themselves.

Then there is the point raised by my Friend Pandit Thakur Das Bhargava. I feel there is much force in his contention that after the decisions we made recently with regard to the abolition of reservation for the Sikhs and the Muslims, it would not be in the fitness of things to retain this so far as the provisional Parliament is concerned. An adequate safeguard is there in this proviso to clause (1):

"........ unless the President of the Constituent Assembly or the President of the Union, as the case may be, considers it necessary or expedient to provide otherwise ...."

That safeguard is there. Of course he may provide in a particular case that the casual vacancy may be filled by a Member not belonging to that particular community, on the basis of joint electorates and non-reservation of seats for Sikhs and Muslims. But I hope this aspect of the matter will be borne in mind by the President of the Assembly and the President of the Union when occasions arise in the future for filling up of casual vacancies. We may, as a matter of fact, give more seats to deserving Muslims and deserving Sikhs than is warranted by their numbers in the population, but let us not perpetuate or let us not continue during this interim period this feature or this provision of reservation and separate electorates which we have already abolished. Therefore I would very much desire that the House would clearly express its mind today that so far as the casual vacancies in the filling of seats of Muslims and Sikhs are concerned there will not be any special consideration given with regard to the reservation on the basis of population or to separate electorate.

Shri Brajeshwar Prasad : There is no provision for separate electorates,,

Shri H. V. Kamath. Article 311 which we passed yesterday says the President may by rule provide for the representation in the Provisional Parliament of States not represented, and so on and so forth. The House will remember that this House itself was elected on the basis of separate electorates: General, Muslim and Sikh. if we do not clearly and categorically lay down in an article here that this will not be followed in the filling of casual vacancies, it may give room for doubt that even in future, so far as the filling of casual vacancies is concerned, the old system of the Cabinet Mission Plan might be followed. Therefore it is very essential that we should provide in this article or elsewhere that separate electorates will have no place and that all elections in the future as regards the filling of casual vacancies will be on the basis of joint electorates.

Then there is the point raised by my Friend Shrimati Purnima Banerji. Though she has not pleaded for her own sex on the basis of special reservation, yet I feet that that is a point which may be easily conceded by this House. She went so far as to say that the seat formerly occupied by the late Shrimati Sarojini Naidu cannot perhaps be filled from among the ranks of men. I know not what she implied but I would not pick a quarrel with her on that point. As a matter of fact I would not mind, I would be quite happy, if there are more women in this House than there are today, but I do not think she should make an issue of that so far as this article is concerned. So far as the work of Government is concerned, if I heard her aright, she said that women should be given a greater chance more scope, in affairs of administration and government than they are being given today. The most common and the strongest objection so far put forward by political philosophers in this connection, that is to say as regards the capability of women for government and administration is that woman is ruled more by the heart than by the head, and where the affairs of Government are concerned, where we have to be cold and calculating in dealing with various kinds of men, women would find it rather awkward and difficult to deal with such persons and that the head may not play the part that it must play in the affairs of government. If the heart were to rule and the head to take a secondary place then it is felt by many thinking men, and thinking women too, that the affairs of government might go somewhat awry, might not fare as well as we might want them to be. However, I do not wish to dwell on this point further. but I think the House will not quarrel with Shrimati Purnima Banerji on this point that where a seat held by a woman Member is vacated that seat should normally go to another woman.

Lastly, there is a point arising out, of explanation (2) to this article. That is with regard to the filling of casual vacancies in provisional Legislatures of the States. It is true enough that so far as the State Legislatures are concerned, the Constitution has made provisions with regard to elections to these Legislatures as well. But as far as the interim period is concerned, considering that so many changes have occurred in the States recently, in the Governor's Provinces too, what on account of integration and merger and similar other changes, I feel that so far as this matter is concerned, namely the filling of casual vacancies in the State Legislatures during the interim period, I think nothing would be lost but everything gained by the President taking the Governor of the State or the Province into consultation with him so far as this matter is concerned. The Governor being advised by this Council of Minister in the Provinces or the States would be well posted with the local developments, and being the man on the spot, he will be able to to tender advice to the President in this connection. I feel therefore, that the House will be acting wisely if we provide that the President of the Union will in this regard consult the Governor of the State in so far as the matter referred to in explanation (2) is concerned. I hope, Sir that the point I have raised will be earnestly considered by the Drafting Committee and the House for incorporation in this article at this stage or subsequently when the Constitution comes up for Third Reading.

Shri H. J. Khandekar: Mr. President, Sir, the new article 312F deals with the provisions as to the filling up of casual vacancies in the provisional Parliament and provincial legislatures of the States. I support this article with certain observations.

The article that we have passed just now, that is article 311, asks the double Members to quit this House. It is an unfortunate feature of this House that the real representatives of the masses are to go away on the 26th of January 1950 As regards the Scheduled Castes, the same mistake is being represented here in this Assembly. In the beginning, we wanted our quota to be represented in this Assembly according to our population. There was a convention that for every ten lakhs of the population of harijans, one member will be returned to this Assembly. In this Assembly, now, there are 28 Harijan Members out of whom two are Ministers. According to the population of Harijans, we ought to have been here not less than sixty. But, unfortunately, according to the last ariticle, 17 Harijan Members of this House out of these 28 are to go away. These Members are the tried leaders of the Harijans and the intelligentsia of the community. According to this article, these vacancies are to be filled in after the commencement of this Constitution. What I suggest is that when powers are given under this article to the President of the Union or the President of the Constituent Assembly for the filling up of casual vacancies. I propose certain things. My suggestion is that members cannot be found among the Harijan community because they are uneducated. You will not be able to get so many members to fill in these casual vacancies from amongst the Scheduled Castes. Therefore, my request is that it is necessary that the President, while considering the filling up of those casual vacancies, should consider the cases of those Members who are going out of this House being double members of this Assembly and the provincial Assembly to be re-relected. Because, as far as my province is concerned, I know that we shall not be able to get more suitable people-of course there arc people among the Harijans, but they are already members in the provincial legislatures. I think this will be the case in the other provinces also. Therefore. I earnestly suggest that the President of the Union or the President of the Constituent, Assembly should consider this matter very seriously and while making rules or the filling up of the casual vacancies. he should give some option to, the members of the Harijan community.

The other point is that this article says that as many members of the Harijans, or Muslims or Sikhs as are here and go out, will be filled up by new members of the same community. We are 28 here; 17 are going out. According to this clause, 17 will be coming in. That means, the position will be the same. No more representation is being given to the Harijans, and as I said the last mistake is being repeated again here. What I suggest is this. The population of the Harijans in the Indian States is about one crore. I am very sorry to inform this House that when members were sent from the Indian States, not a single member was a Harijan except one from Mysore. I request you to take this fact into consideration. I do not know whether the Members from the States are resigning or not. If at all they resign, I suggest that in their places, Harijans should be elected. Moreover, I shall give you one instance. In Madras, our quota last time was eight according to the convention; but only seven members were elected. This one seat is still vacant or it was given to a Caste Hindu. That seat should be given to the Harijans. From the Central Provinces and Berar, our quota was three. Three people were elected. Afterwards one Harijan member resigned.

Shri S. Nagappa (Madras: General): Was made to resign.

Shri H. J. Khandekar: In his place a caste Hindu was elected. Of course. Dr. Raghuvira, a friend of mine, who was elected in the place of the Harijan member from the Central Provinces served here for the purpose of language. I do not know whether he resigns or not because he is not a double Member. The seat of anybody who resigns from the Central Provinces as a double member should go to the Harijans. My request is that the President of the Union or the President of the Constituent Assembly, whichever the case may be, while making rules or making provisions for the filling up of the casual vacancies, the Harijans should be given the proper quota, that is sixty. The Constitution will come into force from 26th January 1950. We have adopted a provision in the Constitution that in the provisional Parliament the Scheduled Castes are to be given representation on their population basis. My request is that we must take into consideration this clause of the Constitution.

I support in full the explanation given in this article by my honourable Friend Dr. Ambedkar. It deals with the List of Scheduled Tribes and Scheduled Castes. As soon as this Constitution comes into force, the List of Scheduled Castes and Tribes given in the Act of 1935 goes away and for the interim period there is no list. According to the provisions of this Constitution, the President shall make the list and announce it. Of course he will do it with the consultation of the members of the Scheduled Castes or of the Parliament. That depends upon the President of the Union. But for the transitional period a list is required and as it has been covered by Dr. Ambedkar's Explanation. I fully support it.

Shri S. Nagappa: Mr. President, this article relates to the filling of casual vacancies that will be created when the double members vacate their seats. My honourable Friends Mr. Muniswamy Pillay and Mr. Khandekar made clear the position of Scheduled Castes. Now in this article it is said that the places vacated by the Scheduled Classes will be filled up by Scheduled Classes and the places vacated by Muslims will be filled up by Muslims and the places vacated by Sikhs will be filled up by Sikhs alone. In other words, the nonscheduled Caste Hindus will be returned intact. In that case, Scheduled classes have been done great injustice while filling up the vacancies in the beginning. That was explained by my friends, Mr. Muniswamy Pillay and Mr. Khandekar. But no doubt the President of the Union or the President of the Constituent Assembly empowered to do otherwise, *viz.* if he wants to bring, in the places of non- Sikhs and non-Muslims, any number of Scheduled Classes, he can do. But I want an assurance not only from the Chairman of the Drafting Committee but from the President of the Constituent Assembly who is here that the representation that was due to the Scheduled Classes on the population basis will be given and shall be given. No doubt what has happened has happened. Now the Provisional Parliament will be functioning from the 26th January. All these days so far as Harijans are concerned the representation was defective and I do not want that to be perpetuated in the new Republic also. It is brought to the notice of the country, the people and to the Government and I hope they will rectify it in order to justify the claims of the Scheduled Classes.

It is after all a fair demand-we are not going beyond our limits. We are asking for what is due to us. We do not want any weightage or anybody else seat, nor do we want to claim that we are non-Hindus. I agree with Mr. Kamath that the word 'community' should not be used. But I want that a class distinction must be there. You have treated us as a different class, though not as a community. Our political right should not be taken away simply because we merge with you simply because we join with you, simply because we are here with, you.

Mr. President: As I read this clause, it does not exclude Harijans being elected from other seats. It only assures that they will be elected surely from the seats, which they vacate. But it leaves open the question that they can be elected from. other seats also. You started by saying that seats of the other Hindus get also reserved. That is not the case.

Shri S. Nagappa: In other words it means that. Supposing four Scheduled Classes vacate, four will come.

Mr. President: Supposing you have 27, at least 27 will surely be returned, under this. But 27 may become 54 and there is nothing to prevent that.

Shri S. Nagappa: If you confine yourself to this, it goes without saying that non-Scheduled Class Hindus will come in the same number.

Mr. President: It does not say that. It assures that 27 Scheduled Caste members will be returned. It leaves open the question as to how many more may come.

Shri S. Nagappa: My point is that the due quota of Harijans should come-whether they are to come from Sikh seat or Muslim seat I do not care. I want my number should be intact. That should be brought about and the new Republic should not begin to function with such a defective representation.

Mr. T. T. Krishnamachari (Madras: Generally: Question be now put.

Mr. President: Closure has been moved.

The motion is:

"That the question be now put."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar: Sir, just one or two points that have been raised in the course of this debate. The first point that has been touched upon by Mr. Saksena and Pandit Bhargava was in relation to the continuance of the representation of the Muslims and the Sikhs during this interim period. They object to this carryover on the ground that the Muslims and Sikhs hove surrendered their right to special representation under the arrangements which have been entered into during the course of the proceedings of this Constituent Assembly. My submission on this point is this, that whatever arrangements have been made, those arrangements are made in respect of the permanent structure of Parliament which is to come, into operation under this Constitution. That being so, I think it would not be right nor justifiable to alter the structure of the Constituent Assembly which in the main we are carrying over and constituting it as a Provisional Parliament.

With regard to the amendment of Shrimati Purnima Banerjee, I do not think it is necessary to make a specific provision for the retention of women in this Constituent Assembly. I have no doubt about it that the President in the exercise of his powers of rule-making will bear this fact in mind and see that certain number of women members of the Constituent Assembly or of the various parties will be brought in as members of the Provisional Parliament.

With regard to Mr. Muniswamy Pillay's amendment, the new thing he seeks to introduce is the provision for the Scheduled Tribes. As a matter of fact there is no objection to making provision for the Scheduled Tribes but the point is this that at present there is no enumeration of Scheduled Tribes, because Scheduled Tribes as such has not been recognised under the Government of India Act, 1935. Whatever tribes are included for the purposes of representation under the Government of India Act are called backward tribes. Consequently, if my Friend Mr. Muniswamy Pillay were to leave this matter in the hands of the Drafting Committee, we shall probably make some suitable arrangement to give effect to his amendment.

Mr. President: I will put the amendment to vote now.

The question is:

"That in amendment No. 164 of List III, clause (1) of the proposed new article 312F be deleted."

The amendment was negatived.

Mr. President: No. 202.

Shri V. I. Muniswamy Pillay: I leave it to the Drafting Committee. I do not press it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That in amendment No. 164 of List III in clause (2) of the proposed new article 312F, for the words 'as the President may by order direct' the words 'as the Parliament may by law provide' be substituted."

The amendment was negatived.

Mr. President: Then I put amendment No. 203-that of Pandit Thakur Das Bhargava.

The question is:

"That in amendment No. 164 of List III (second Week), in the first proviso to clause (1) of the proposed now article 312F, the words 'or to the Muslim or the Sikh community' be elected and for the words 'be of the same community' the words 'belong to the Scheduled Caste' be substituted."

The amendment was negatived.

Mr. President: Then I come to amendment No. 204.

Shrimati Purnima Banerji: Sir, I beg leave to withdraw the amendment I have moved.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then I put the article as modified by the amendment No. 205. That is I put amendment No. 164, as amended by amendment No. 205 which amends the explanation.

The question is:

"That proposed article 312F, as amended stand part of the Constitution."

The motion was adopted.

Article 312F, as amended, was added to the Constitution.

Schedules III A and IV

Mr. President: Then we have to take up Schedule III A.

Shri T. T. Krishnamachari: Sir, Schedule III-A is not being moved. It can be taken out of the List. That is the idea.

Mr. President: So there is no question of amendments arising.

Shri Brajeshwar Prasad: But the proper procedure is that it must be moved. What is the idea? Is it to be held over?

Mr. President: It is not in the Draft Constitution. It was given only as amendment and when that amendment is not moved, there is no question of amendments to that amendment arising. So Schedule III-A goes, with all its amendments.

Then we take up Schedule IV.

Shri T. T. Krishnamachari: Sir, I move that Schedule IV be deleted.

Some Honourable Members: How can it be deleted?

Mr. President: So far as the Drafting Committee is concerned, they have been moving for deletion of particular articles. Now, there are amendment & to this Schedule IV. I think it will be better if Dr. Ambedkar were to explain the position as to why the Schedule is dropped, because Members have given notice of amendments. That will make the position clear.

The Honourable Dr. B. R. Ambedkar: Mr. Krishnamachari will explain.

Shri T. T. Krishnamachari: Sir, the Fourth Schedule was necessary because certain provisions were put in the Constitution in order to describe the relations of the president and the Governors *vis-a-vis* the Ministers. It his now been felt that the matter should be left entirely to convention rather than be put into the body of the Constitution as a Schedules in the shape of Instrument of Instructions, and, there is a fairly large volume of opinion which favours that idea. Therefore, we have decided to drop Schedule III B which we proposed as an amendment and also Schedule IV which finds a place in the Draft Constitution, because it is felt to be entirely unnecessary and superfluous, to give such direction in the Constitution which really should arise out of conventions that grow up form time to time, and the President and the Governors in their respective spheres will be guided by those conventions. As these schedules were felt to be superfluous I had moved that the second Schedule should be deleted.

Shri B. Das (Orissa: general): Sir, I am confused. I do not wish that the Schedule IV should be withdrawn bodily so soon. Let us pass all the Schedules dealing with the powers of the Governor-General and the governor, and if the Drafting Committee think it necessary to drop any of them, them they can do so at a later stage. But now, at the fag end of the day, a sudden surprise is sprung upon us with the motion that the Schedule IV be dropped. It is difficult for us to understand the position. I would like, for instance, to know what my Friend Pandit Thakur Das has to say on it. I am not a lawyer and so I would like to know what his opinion is. I think it would be better to take up the deletion of Schedules after we have passed all the articles that are left over. That is my submission.

Shri Rohini Kumar Chaudhuri (Assam: General): Mr. President, Sir, I have come here only to get one point clear. I do not understand why Schedule IV has been dropped altogether. Is it because it is thought that it would not be necessary to resort to any portion of that Schedule in future in the interval between now and the next general election. If that is so, I may point out that we are going to have general elections in West Bengal shortly and after that election is over, it will be necessary for the Governor to act under para. 2 of the Fourth Schedule. Para. 2 says:

> "In making appointments to his Council of Ministers. the Governor shall use his best endeavours to select his ministers in the following manner, that is to say, to appoint in consultation with the person who in his judgment is most likely to command a stable majority in the Legislature...... who will best be in a position collectively to command the confidence of the Legislature........"

So, as soon as the elections are over in West Bengal the Governor there will have to exercise the powers referred to in para. 2 of this Schedule. Therefore for the temporary period, such provisions should be made. so that these powers may be exercised when the need arises. That is the point I want to get clear.

The Honourable Dr. B. R. Ambedkar: Sir, with regard to the Instrument of Instructions, there are two points which have to be borne in mind. The purpose of the Instrument of Instructions as was originally devised in the British Constitution for the Government of the colonies was to give certain directions to the head of the States as to how they should exercise their discretionary powers that were vested in them. Now the Instrument of Instructions were effective in so far as the particular Governor or Viceroy to whom these instructions were given was subject to the authority of the Secretary of State. If in any particular matter which was of a serious character, the Governor for instance, persistently refused to carry out the instrument of Instructions issued to him, it was open to the Secretary of State to remove him, and appoint another and hereby secure the effective carrying out of the Instrument of Instructions. So far as our Constitution is concerned, there is no functionary created by it who can see that these instruments of Instructions is carried out faithfully by the Governor.

Secondly, the discretion which we are going to leave with the Governor under this Constitution is very very meagre. He has hardly any discretion at all. He has to act on the advice of the Prime Minister are the matter of the, selection of Members of the Cabinet. He has also to act on the advice of the Prime Minister and his Ministers of State with respect to any particular executive or legislative action that he takes. That being so, supposing the Prime Minister does, not propose, for any special reason or circumstances, to include in his Cabinet members of tile minority community, there is nothing which the Governor can do, notwithstanding the fact that we shall be charging him through this particular Instrument of to the fact that there is no discretion in the Governor and there is no functionary Instruction to Act in a particular manner. It is therefore felt, having regard under the Constitution who can enforce this, that no such directions should be given. They are useless and can serve no particular purpose. Therefore, it was felt in the circumstances it is not desirable to have such instrument of Instructions which really can be effective in a different set of circumstances which can by no stretch of imagination be deemed to exist after the new Constitution comes into existence. That is the principal reason why it is felt that this Instrument of Instructions is undesirable.

Mr. President: The question is:

"That the Fourth Schedule be deleted."

The motion was adopted.

The Fourth Schedule was deleted from the Constitution.

SECOND SCHEDULE

Mr. President: The House will now take up Schedule 11.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for Part I of the Second Schedule, the following be substituted:--

PART I

Provisions as to the President and the Governors of States for the time being specified in Part I of the First Schedule.

1.There shall be paid to the President and to the Governors of the States for the time being specified in Part I of the First Schedule the following emoluments per mensem, that is to say :-

The President--10,000 rupees.

The Governor of a State--5,500 rupees.

There shall also be paid to the President and to the Governors such allowances as were payable respectively to the Governor-General of the Dominion of India and to the Governors of the corresponding Provinces immediately before the commencement of this Constitution.

3.The President and the Governors throughout their respective terms of office shall be entitled to the same privileges to which the Governor-General and the Governors of the corresponding Provinces were respectively entitled immediately before the commencement of this Constitution.

4.While the Vice-President or any other person is discharging the functions of. or is acting as President, or any person is discharging the functions of the Governor, he shall be entitled to the same emoluments, allowances and privileges as the President or the Governor whole functions he discharges or for whom he acts, as the case may be."

PART II

"That in the heading in Part II, after the word and figure 'Part I' the words and figures ,or Part III' be inserted."

"That for paragraph 7, the following paragraph be substituted:--

7.There shall be paid to the ministers for any State for the time being specified in Part I or Part III of the First Schedule such salaries and allowances as were payable to such ministers for the corresponding Province or the corresponding Indian State, as the case may be, immediately before the commencement of this Constitution.'"

PART III

"That in paragraph 8, for the words 'respectively to the Deputy President of the Legislative Assembly and to the Deputy President of the Council of State immediately before the fifteenth day of August, 1947' the words 'to the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before Such commencement be substituted

PART IV

"That for Part IV of the Second Schedule, the. following be substituted:--

"PART IV

Provisions as to the Judges of the Supreme Court and of the High Courts of States in Part I of the First Schedule

10.(1) There shall be paid to the judges of the Supreme Court, in respect of time spent on actual service, salary at the following rates per mensem, that is to say:--

The Chief Justice-5,000 rupees:

Any other judge-4.000 rupees :

Provided that if a judge of the Supreme Court at the time of his appointment is in receipt of a Pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor, Governments or under the Government of a State or any of its predecessor Governments, his salary in respect of service in the Supreme Court shall be reduced by the amount of that pension.

(2) Every judge of the Supreme Court shall be entitled without payment of rent to the use of an official

residence.

(3) Nothing in sub-paragraph (2) of this paragraph shall apply to a judge who was appointed as 'a judge of the Federal Court before the thirty-first day of October, 1948, and has become on the date of the commencement of this Constitution a judge of the Supreme Court under clause (1) of article 308 of this Constitution, and every such judge shall in addition to the salary specified in sub-paragraph (1) of this paragraph be entitled to receive as special pay an amount equivalent to the difference between the salary so specified and the salary which was payable to him as a judge of the Federal Court immediately before such commencement.

(4) Every judge of the Supreme Court shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President may from time to time prescribe.

(5) The rights in respect of leave or absence (including leave allowances) and pension of the judges of the Supreme Court shall be governed by the provisions which, immediately before the commencement of this Constitution, were applicable to the judges of the Federal Court.

11.(1) There shall be paid to the judges of the High Court of each State for the time being specified in Part I of the First Schedule, in respect of time spent on actual service, salary at the following rates per mensem, that is to say:-

The Chief Justice-4,000 rupees

Any other judge 3,500 rupees

(2) Every person who was appointed permanently as a judge of a High Court in any Province before the thirty- first day of October, 1948, and has on the date of the commencement of I his Constitution become a judge of the High Court in the corresponding State under clause (1) of article 310 of this Constitution, and was immediately before such commencement drawing a salary at a rate higher than that specified in sub-paragraph (1) of this paragraph, shall be entitled to receive as special pay in amount equivalent to the difference between the salary so specified and the salary which was payable to him as a judge of the High Court immediately before such commencement.

(3) Every such judge shall receive such reasonable allowances to re-imburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President may from time to time prescribe.

(4) The rights in respect of leave of absence (including leave allowances) and pension of the judges of any such High Court shall be governed by the-provisions which, immediately before the commencement of this Constitution, were applicable to the judges of the High Court of the corresponding Province.

12. In this Part, unless the context otherwise requires,

(a) the expression "Chief Justice" includes an acting Chief Justice, and a "Judge" includes an *ad hoc* judge,

(b) "actual service" includes-

(i) time spent by a judge on duty as a judge or in the performance of such other functions as he may at the request of the President undertake to discharge;

(ii) vacations excluding any time during which the judge is absent on leave, and

(iii) joining time on transfer from a High Court to the Supreme Court or from one High Court to another."

PART V

"That in the heading of Part V, for the word 'Auditor- General' the words 'Comptroller and Auditor-General' be substituted.

'That for paragraph 14, the following paragraph be substituted:-

> '14. (1) There shall be paid to the Comptroller and Auditor-General of India a salary at the rate of four thousand rupees per mensem.
>
> (2) The person who was holding office immediately before the commencement of this Constitution as Auditor-General of India and has become on the date of such commencement the Comptroller and Auditor-General of India under article 310A of this Constitution shall in addition to the salary specified in sub-paragraph (1) of this paragraph be entitled to receive as special pay an amount equivalent to the difference between the salary so specified and the salary which was payable to him as Auditor-General of India immediately before such commencement. "

"That in paragraph 15, for the word 'Auditor-General' in the first place where it occurs, the words 'Comptroller and Auditor-General' be substituted."

With your permission, I will explain the provisions tomorrow.

Mr. President: The House stands adjourned till 10 O'clock tomorrow morning.

The Assembly then adjourned till Ten of the Clock on Wednesday, the 12th October 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME X

Wednesday, the 12th October 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION-*(Contd.)*

Second schedule-*(Contd.)*

The Honourable Dr. B. R. Ambedkar (Bombay: General): Mr. President, Sir, I would like to say a few words in explanation of the provisions contained in the Second Schedule, and I would like to begin with that part which deals with the salary of judges.

First of all, with regard to the Supreme Court, it will be seen that the salaries of the judges of the Supreme Court on the commencement of the Constitution will be for the Chief Justice Rs. 5,000 per month plus a free house, and the salary for a puisne judge will be Rs. 4,000 per month plus a free house. With regard to the Supreme Court, the position is this, that according to the Constitution, any Federal Court judge who chooses to become a judge of the Supreme Court will be appointed as a judge of the Supreme Court. If any judge of the Federal Court therefore chooses to become a judge of the Supreme Court, the question that arises is this: whether he should get the standard salary which has been fixed under the Constitution for the judges of the Supreme Court or whether any provision should be made for allowing him, to continue to draw the salary which be now gets as a judge of the Federal Court. the decision of the Drafting Committee has been that while the normal salaries of the Supreme Court Judges should be as stated in the Second Schedule. provision ought to be made to enable the Federal Court judges to draw the salary which they are drawing at present in case they choose to become judges of the Supreme Court. For this purpose, the judges of the Federal Court are divided into two categories--those who are appointed as permanent judges before the 31st October 1948 and those who are appointed after 31st October 1948. In the case of the first category, i.e., those who are appointed before the 31st October 1948, they will get a personal pay which would be equivalent to the difference between the salary which has been fixed by the Second Schedule and the salary that was payable to such a judge immediately before the commencement of the Constitution. With regard to those who are appointed after the 31st October 1948, they will get at the rates fixed in the Second Schedule,. so that the Chief Justice of the Supreme Court will get Rs. 2,000 more than the salary fixed for the Chief Justice under the Constitution, while the puisne judges of the Federal Court, if they go to the Supreme Court, will be getting Rs. 1,500 in excess of the normal salary which is fixed for the puisne judge of the Supreme Court.

Coming to the High Court, the normal salary fixed under the Constitution for the

Chief Justice is Rs. 4,000 and the normal salary for the puisne judges is Rs. 3,500. Here again, we have got a provision in the Constitution that any judge of a High Court, if he wishes to be appointed to the High Court, under the Constitution, the President is bound to appoint him and consequently the same problem which arises under, the Supreme Court also arises in the case of the High Court, because those judges who are now existing judges draw, in some cases, a higher salary than the salary that is fixed in the Second Schedule. In order, therefore, to remove any possible grievance, it has also been decided to follow the same procedure as has been followed in the case of the Federal Court, namely, to divide the judges into two categories-those appointed before the 31st October 1948 and those appointed thereafter. Thus, those in category one will get an additional pay as personal pay which will be equivalent to the difference between the salary fixed by the Constitution and the salary which they are drawing, and those who are in category two will get the salary as fixed by the Constitution.

Perhaps, it might be necessary to explain why we have adopted the 31st October 1948 as the dividing line. The answer is that the Government ,of India had notified to the various High Courts and the Federal Court that any judge who is appointed before the 31st October 1948 will continue to get the salaries which he was getting now but that the same assurance could not be given with respect to judges appointed after the 31st October 1948. It is in order to guarantee this assurance, so to say, that this dividing line has been introduced.

I would like to say a word or two with regard to the scale of salary fixed in Schedule 11 and the scale of salary obtaining in other countries. For instance, in the United States the Chief Justice gets Rs. 7,084 per month while the puisne judges get Rs. 6,958. In Canada the Chief Justice gets Rs. 4,584 and the puisne judges get Rs. 3,662. In Australia the Chief Justice of the High Court gets Rs. 3,750 and the puisne judge gets Rs. 3,333. And in South Africa the Chief Justice gets Rs. 3,892 and the puisne judges get Rs. 3,611. Any, one who compares the standard salary that we have fixed in Schedule II with the figures which I have given I think, will realise that our salaries if at all compare much better with the salaries that are fixed for similar functionaries in other countries except the U.S.A.

In fixing these salaries we have been as fair as we could be. For instance, it would have been perfectly open for the Drafting Committee to say, following the rule that those who have been appointed before the 31st October 1948, if .their salary is in excess of what is the normal salary fixed by the Constitution, we could have also made a provision that the Judges of the High Court of Nagpur shall get less than the normal salary, because their salary is less than the normal salary as at present existing. But we do not propose to perpetuate any such .grievance and therefore we have not introduced a countervailing provision which in strict justice to the case, the Drafting Committee would have been justified in doing. I therefore submit that so far as the salary of the judiciary is concerned there can hardly be any ground for complaint.

I come to the question of the President. The President of the Union is obviously a functionary who would replace the present Governor-General and in fixing the salary which we have. fixed, namely Rs. 10,000, we have to consider, in coming to a conclusion, as to whether it is less or more than the salary that the Governor-General has been drawing.

As every one knows, under the Government of India Act, 1935, the salary of the

Governor-General was fixed at Rs. 2,50,800 a year which came to Rs. 20,900 *per mensem.* This salary was of course subject to income-tax. Under the recent Act passed by the Legislative Assembly the salary of the Governor-General was fixed at Rs. 5,500 but that salary was free of income-tax. I am told that if the salary of the Governor-General was subject to income-tax it would come to somewhere about Rs. 14,000. In fixing the salary of the President at Rs. 10,000 we have taken into consideration two factors.

One factor is that the salary of the President should be subject to income-tax It was felt by the Drafting Committee as well as by a large body of Members of this House that no person who is a functionary under the Constitution or a civil servant under the Constitution should be immune from any liability imposed by any fiscal measure for the general people of this country. Consequently, we felt that it was desirable to increase the salary of the President if we were to make it subject to income-tax.

The other reason why we fixed the salary at Rs. 10,000 is to be found in the salary of the existing Chief Justice of the Supreme Court, which is Rs. 7,000. It was the feeling of the Drafting Committee that since the President was the highest functionary in the State there ought to be no individual who would be drawing a higher salary than the President and if the Chief Justice of the Supreme Court was drawing a salary of Rs. 7,000 it was absolutely essential, from that point of view, that the salary of the President should be somewhat above the salary of the Chief Justice. Taking all these factors into consideration we thought that the proper salary would be Rs. 10,000.

Then, the President's salary carries with it certain allowances. With regard to these allowances I might mention that when the Government of India Act, 1935, was passed the Act merely fixed the salary of the Governor-General. With regard to the allowances the Act says that His Majesty in Council shall fix the same by Order but unfortunately the provisions of Part II of the Government of India Act, 1935, were never brought into force and consequently no such Order was ever made by His Majesty in Council although a draft of such an Order was prepared in the year 1937. So far therefore as the Government of India Act is concerned, there is nothing stated with regard to the allowances and therefore that Act did not furnish the Drafting Committee any material basis for coming to any definite conclusion. Consequently the Drafting Committee has left the matter with the provision that the President shall continue to get the same allowances which the Governor-General got at the commencement of the Constitution. Later on the Parliament may change the salary and allowances of the President subject to this, that they shall not be changed during the tenure of the President concerned.

I should like to give the House some idea as to what are the allowances which the President would be entitled to get if the provision suggested by the Drafting Committee, that the allowances payable to the Governor-General at the commencement of the Constitution should operate.

I find from the budget estimates for 1949-50 the following figures were included in the budget under the heading "Allowances to the Governor-General":

1.Sumptuary allowance of Rs. 45,000 per annum.

2.Expenditure from contract allowance Rs. 4,65,000.

3.State conveyance: Motor cars: Rs. 73,000.

4.Tour expenses : Rs. 81,000.

Total allowances are Rs. 6,64,000 per annum, according to the budget estimate of 1949-50.

I need not say, as I said, anything about the allowances, because the allowances are liable to be changed by Parliament at any time. The important question is about the salary and I submit that the salary of the President as fixed at Rs. 10,000 seems to me as also to the Drafting Committee to be a very reasonable figure, having regard to the circumstances to which I have referred.

I need not say much about the salary of the Governors. That has been fixed by an Order made recently by the Governor-General, and they appear to me to be quite reasonable and it also observes the same principle that in the provinces where the highest paid official is the Chief Justice the Governor should get something more than the Chief Justice of the province. It is from that point of view that the figure for the salary of the Governors has been fixed.

The only other provision to which I would like to refer is that originally it was not proposed to make any provision with regard to the salary of the Comptroller and Auditor General. There again, the salary has been fixed at Rs. 4,000 by Schedule II, subject to the proviso that while the present incumbent continues to function as the Comptroller and Auditor General he will get as personal pay the difference between the salary fixed by Schedule II and the salary which he is at present getting. When that incumbent disappears and another is appointed be ,will get the salary that is fixed by the Schedule.

I hope that the figures suggested by the Drafting Committee as salaries for the various functionaries dealt with in this Schedule will commend themselves to the House.

Mr. President: I now come to the amendments. I shall take up the different parts separately and ask Members to move them as we come to them. The first amendment is to Part I, amendment No. 259, by Shri Mahavir Tyagi.

Shri Mahavir Tyagi (United Provinces: General): [Mr. President, Sir, I do not think that a salary of ten thousand rupees per month for the President and a salary of five thousand rupees for the Governor is to do much. After pondering over the problem for two days, I decided that I should freely express my opinion on this occasion. I feel that all the people in the civil services and Government officials should lead a good life and should command respect. India is a land of seers. Here dignity is not determined by money. *(Hear, hear)* In India sacrifice and penance have ever commanded respect. The Government officials who have taken upon themselves the burden of service permanently should have such salary as may enable them to lead a life of comfort and respect and to be free from want. But the political leaders among whom I count the President, the Governors and the Members of the Assembly also, who hold high Government offices through politics should discharge their duties in a spirit of selfless service. It has become customary in the world to provide high salaries for such functionaries and it appears that we also have no hesitation in providing high salaries. But I appeal to the Constituent Assembly that we should create a new precedent of sacrifice so that we may be able to set an example before the world and show to it a new path. We were able to achieve success and freedom, not because we were persons of wealth but because we were rich in renunciation. At present when there is moral degradation in the world, it is all the more necessary that India should show the correct path and should place before it the ideal of serving the nation through sacrifice. By our sacrifice and penance we would create an atmosphere of sacrifice not only in our own country but in the whole world A society comes into being only through sacrifice, and for its uplift too it is necessary to awaken and encourage the feelings of sacrifice.

I think that the President of a nation is the symbol of its dignity. It is wrong to think in India that we can have dignity only through money. (Hear, hear). A dignified position can be achieved here only through sacrifice. It would be wishful thinking among us if I want that the presidential post should be honorary, The State should bear his expenses. But the person who holds the highest post in the land should lead as simple a life as that of a sanyasi. This is a land of the poor and the money that is realised from them through taxes increases their poverty. I do not think that politicians should freely use that money for their personal use. Therefore, if no other change is possible at present I place for your acceptance the amendment that "the salary of the President shall not exceed ten thousand rupees". Instead of fixing the salary at ten thousand it would be better to state that it shall not exceed ten thousand and that the salary of the Governors shall not exceed five thousand, so that if the future Parliament wants to lead the politics of the country on the path of sacrifice and penance it may be possible for it to reduce these amounts. It will be a pious hope for me if I wished that the members of the legislature also should not get anything else besides food allowance and travelling allowance. I am ,confident that if we enforce such a scheme, simplicity and honesty will surely prevail in the country and thereby we would be able to put a stop to the moral ,degradation that we find in the world today.

I have no objection in regard to the salaries of permanent government officials. Their salaries should be increased according to the conditions obtaining in the country. But those, who have followed the ideal of Mahatma Gandhi and have won the confidence of the poor people, should lead the life of the poor. Even if we meet the Presidents of other great nations we should talk to them in a humble way, because by doing so we would only enhance our prestige. At the same time we should lead the politics of the country with pride and self-confidence. I have nothing more to say on this. I only place my amendment before the House and appeal to it that because ours is a poor nation, our President should lead the life of the poor, so that he may be able to pay more of his attention towards his poor countrymen.

I have to say one thing more. Whenever money and political power are centred together at one place there occur corruption and degradation. The people begin to feel the authority of the persons who holds the reins of politics and thus a stronghold of corruption and degradation is created around him. The guards of the stronghold do not permit that political authority to awaken and nor do they allow any reform because they fear that any kind of reform might be detrimental to their pleasure-seeking. This increases the tendency to degradation. We should place high ideals before our President. If we give him money only he would command no respect in the country. Therefore, I appeal to the House that our President should work in an honorary capacity and should lead the life of the poor. This alone is in the best interest of the country, and this alone can make our President acceptable to the poor. With these words I move my amendment which reads thus:

> "That in amendment No. 207 of List VI (Second Week), in paragraph I of the proposed Part I, before the figure '10,000' and before the figure '5,500', the words 'not more than' be inserted."]*

Prof. Shibban Lal Saksena (United Provinces: General): Mr. President, Sir. I beg to move:

> "That in amendment No.-207 of List VI (Second Week), in paragraph I of the proposed Part 1, for the figure and word '10,000 rupees' the figure and word 'I rupee' be substituted."

Sir, I am glad my honourable Friend, Mr. Tyagi has already delivered his speech on my amendment rather than on his own. I am glad that the sentiments which I wanted to express by my amendment are shared by him and also by many members of the House as is evident from the cheers that the House gave him. In fact when I gave this amendment, it was after considerable hesitation. I felt that what I felt I must express in my amendment. The President of the Republic in our Constitution is a substitute for the British King because we have modelled our Constitution on the British lines. Now, in our country the ideal of Kingship is illustrated by kings like Janaka who lived like sanyasis. Even in our own times our master, our father, Mahatma Gandhi put before us the same deal. I therefore think Sir, that by providing I rupee as the salary for the President, we shall only be doing something which is in consonance with our ancient civilization and culture. So, by accepting this amendment, we shall be placing before the world and before the country, the ideals of our ancient civilization and culture. This will also ensure that the post of the President will not be aspired for by greedy men, but the honours shall be bestowed on men who are intellectually, morally and spiritually fit for the job, and who do not want to take it for the salary attached to it but who want to serve the country in the spirit of King Janaka, of Mahatma Gandhi and other great kings of ancient India.

In our Constitution we have armed the President with very wide powers. Schedules 3 (a) and 4 of the original Draft containing Instruments of Instructions have been taken away from the Constitution. So that now the Constitution does not fetter his discretion in any manner. In our Constitution the President is authorised to do as he likes. We have given him very great powers. In fact throughout these discussions, on the Constitution, I have been opposing this pilling up of all power upon him, because actually he will exercise all the powers on the advice of the Cabinet, but if the President is a *sanyasi,* then I am sure no Prime Minister shall have the courage to deflect him from the right course and he will be able to carry out his duties in an impartial manner.

Sir, when I put this figure I was also influenced by the present salaries and allowances of the Governor-General. I am told by my honourable Friends oft the Finance Committee that the present budget of allowances etc. of the Governor General comes to about Rs. 20 lakhs per annum of which about Rs. 11 lakhs is spent on the repairs to the Government House alone and the remaining Rs.9 lakhs on sumptuary and other allowances of the Governor-General. I think, Sir, in a poor country like India whose leader Mahatma Gandhi put before us the ideals which should govern us, it should not cost this huge amount. I agree with my honourable Friend Mr. Tyagi that the entire cost of living of the Governor General should be borne by the State and I would permit him the allowances which he; needs for that purpose. I am sorry today the dignity of India is supposed to consist in the huge salaries we can provide for our

President and the huge buildings in which he should live. I think our ideals were different. The present Governor General when he was Premier of Madras lived in his own house and did not shift to the official residence of the Prime Minister in Madras, but here we have forced him to live in a building whose repairs alone cost about Rs. 11 lakhs. I think, Sir, that we must change these standards. We must live according to our own ideals, and our own culture and civilization. Sir, it is in that spirit that I have put forward this figure of one rupee.

Our Congress President, Sir, is an honorary person and today the Congress President has become one of the most important functionaries in the country. He devotes almost the whole of his time to the nation's service and he does not even get any allowance and yet I do not think that the work of the Congress has suffered in any manner. In fact the amount of work which our Congress President has to do is probably greater than that which would be required by the President of the Republic. I therefore think that in putting forward this figure of one rupee, I have only said what many other members also feel and which is in consonance with our ancient ideals and culture and our new aims and aspirations. I hope this amendment will be supported by the House and that the Drafting Committee will consider this measure.

Shri R. K. Sidhva (C. P. & Berar: General): Mr. President, my amendment reads thus:

"That in amendment No. 207 of List VI (Second Week), in paragraph I of the proposed Part I, the following be added after the figures relating to salaries of President and Governor, in parenthesis :-

"The salaries of the President and the Governor shall be subject to income-tax."

Sir, my reason in moving this amendment and specifically mentioning in the Constitution that the President and the Governor's salaries shall be subject to income-tax is this: Although the honourable the Mover, Dr. Ambedkar has stated that their salaries are subject to income-tax it is a common rule and practice that the income-tax has to be recovered from everyone. ever if it is not mentioned. It is very clear, I have no doubt about that; but despite that I am anxious that this should be mentioned for this reason. At present our Governor-General was drawing a salary which was not subject to income-tax. You know, Sir, when he was drawing Rs. 20,000 he was subject to income-tax and yet people did not know what he was actually drawing; in as much as in the Parliament when the subject came up for discussion then most of the Members did not know that his salary was subject to income-tax. This matter was discussed from one end of the country to the other and the people thought that our Governor-General was drawing in cash Rs 20,000 and putting it into his pocket, whereas actually he drew only Rs. 8,000 or 9,000. The Legislative Assembly subsequently resolved that his salary should be Rs. 5,500 without any tax. Now, if you raise it today to Rs. 10,000 and do not let the people know-the people do not generally go by the income-tax or that so much is deducted by so many other taxes, they will state that President's salary is increased from 5,500 to 10,000. People only go by the figure. They ask what is the Governor-General drawing, and the masses say that he draws Rs. 10,000. I therefore desire that this should be made very clear to the masses. Any time you may argue with the masses that the Governor-General and the Governor are subject to the payment of Income-tax. Sometimes, they hesitate to believe. When they hesitate to believe, if this is mentioned in the Constitution, they may be refuted with a definite reply. 1, therefore, feel, Sir, that, though it may be redundant, though it may not be necessary, to avoid unnecessary criticism that the

President and Governors draw fat salaries. the insertion of the words mentioned in my amendment is very essential.

Coming to the amount of the salary, my honourable Friends. Mr. Tyagi and Professor Shibban Lal Saksena stated that the Governor-General should be a Sanyasi. Probably they have been carried away by ideas with which we have been taught to serve humanity without receiving any remuneration. Several of us have done that in the past for the attainment of freedom and to serve humanity without receiving any amount of compensation or money. We have done free service to humanity. That is one thing. But, you should not mix up two things which are quite distinct. The Governor-General is the administrative head of the Government. He has been restricted by so many limitations in this Constitution. I ask whether the Presidents of the Indian National Congress of the Provincial Congress Committee are restricted by so many restrictions as are stated in this Constitution. Is not our President of the Indian National Congress at liberty to do what he likes and earn what he likes? Has not the President of the Provincial Congress Committee been earning? I know are have scarified and we sacrificing immensely. I am also one of them.

Shri Mahavir Tyagi: He is not entitled to use public money on himself.

Shri R. K. Sidhva: Kindly listen to me. You have had your say. I know the value of public money. I am not carried away by sentiments. I am a practical man and I believe in reality. What is the use of wasting public money? How do you feed your President, I want to know, when you have put in so many restrictions in the Constitution that he shall not do this, that he shall not do that, that he shall be so and so and all that? Have you not passed so many paragraphs in the Constitution binding him down? My honourable Friend Prof. Shah even wanted that whatever wealth he had should be shown before he is made the President. That was lost; but you know what the President ought to be. He should be above board. He should be a man of sterling character. Although not within the provisions of law, but morally, he is the custodian of the wealth of the country. He has to see how that wealth is being administered. For that purpose. a paltry as salary is necessary. I use the word paltry: compare the salary of 20,000 minus Income-tax which came to about Rs. 9,000 the Viceroy drew, with the net salary of about 5,000 to be drawn by the President. Is it not a great sacrifice that our people are making-one hundred per cent cut of the previous salary of the Governor-General and fifty per cent. of the previous Governors' salaries?

I have no quarrel or argument with those members, who lack in loose words as Sanyasi President. My honourable Friend Mr. Tyagi said that the President should be a sanyasi. Mr. Tyagi may be a sanyasi as he is a tyagi. He may become the President if he has to become President at any time. I have no arguments with him. I only ask, are we here in a Congress platform? Here we are preparing a Constitution. I have sacrificed not only by going to jail, but big monetary sacrifice. Several hundreds and thousands of people have scarified similarly. We should not be actuated by what we did to achieve our freedom. We have won freedom; we have served humanity, we have served the best interests of the country by sacrificing everything as our master taught us. I must say, I am not a prophet--even if our master was alive, he would have ridiculed the idea which my two Friends have put before the House, knowing him as I do very well, although several of my Friends may know him much more than me.

I therefore contend that the salary provided in the Constitution is a very reasonable one. I must say it is a great sacrifice. Is it not a sacrifice that our workers have made, who have become leaders, sacrificing large practice from the professional point of view, lawyers and doctors. I know of instances of people who were earning Rs. 20,000 and 30 000 serving at one time for Rs. 500 and today for Rs. 1,500. Is it fair to say that this is waste of public money ? We do not want to squander public money. We must be generous enough to appreciate the work of our leaders and ourselves and also be pround of what we have sacrificed and we are sacrificing today. Do not put in a proposition that would make us the laughing-stock of the whole world. If I do not get claps from the House I do not mind. If Mr. Tyagi got claps from the House because he proposed one Rupee of a little more as a salary, I do not mind. If I am opposed in this House, I do not mind because I feel that this is the right proposal. I feel that without salary, that would make us the laughing-stock before the whole world. We must realise the great sacrifice that has been made by the President and the Governors in accepting this salary. I will come to the allowances when the time comes. So far as salaries are concerned, I think this is reasonable. May I move the amendment regarding the allowances, Sir?

Mr. President: Yes; you may move that.

Shri R. K. Sidhva: Sir, my amendment No. 262 relates to the allowances in paragraphs 2 and 3. 1 move:

"That in amendment No. 207 of List VI (Second Week), for paragraphs 2 and 3 of the proposed Part 1, the following be substituted :-

'There shall be paid to the President and to the Governor the following allowance:

> The President shall draw a lump sum of Rs. 135,000 per annum which shall include the cost of renewal repair and maintenance of furniture and motor vehicles, also including sumptuary, contract and all other allowances.

The President shall also draw Rs. 10,000 per annum as touring expenses.

> The Governors shall draw a lump sum of Rs. 15,000 per annum which shall include the cost of renewal, repair and maintenance of furniture and motor vehicles, also including sumptuary, contract and ail other allowances.

The Governors shall also draw Rs. 7.000 per annum as touring expenses.'"

So far as the allowances of the Governor-General were concerned, I was myself hunting since yesterday the Orders made by His Majesty in Council for the Governor-General and I could not find any Chapter or Schedule except for the Governors. My honourable Friend Dr. Ambedkar made it very clear that the Schedule never came into existence. I thought it may be somewhere and that I was not able to lay my finger on it, I now learn that it never came into existence and that the Secretary of State fixed the allowances for the Governor-General. What was that, I do not know. But, Dr. Ambedkar gave us an illustration which I had also culled from the last budget as to what was provided for our Governor-General. He has given a figure, Rs. 6,64,000 for the various types of allowances for the Governor-General.

With your permission, Sir, I would like to correct Rs. 35,000 into Rs. 1,35,000. My reasons are these. When I went for the first time after the attainment of independence into the Government House in Delhi, so many of my friends must have also gone-my first impression was that the Government House was built only yesterday. My friends must have seen the tip-top way in which the building has been maintained. I can assure that the money which has been spent in the past is really well spent. The floor which has been used was shining like a mirror, the coiling, the golden colours and paintings and the various upholstery and the household requisites were as if only put in yesterday. The reason was good and open fact maintenance and up keep. Whether it was a woman housekeeper or man household I do not know; whoever it was deserves the greatest credit of the people of the country in keeping this historical place in such a condition as it is at present. It has been suggested that the building of the Government House should be turned into a hospital. I oppose that view. This is not meant for a hospital although it may be appealing to my friends Mr. Saksena or Mr. Tyagi. This should be used for a useful purpose. It is being used today for a nuseum and thousands of people are visiting it and have an opportunity to see the Government House.

Dr. P. S. Deshmukh (C. P. & Berar: General): What arc we discussing? is it Government House or allowances?

Shri R. K. Sidhva: Allowances. We must see that we are not miserly in that. I have therefore provided Rs. 1,35,000. The sum of 1,35,000 includes the Sumptuary allowance, contract allowance, and renewal of furniture. If you were to see the Order-in-Council providing allowance for Governors you Will find that even the Bombay Governor gets only 35,000 and the staff-Military Secretary etc. 1,36,000. 1 am not touching that. They may be paid far actual number of appointments. I am told that the Bombay, Madras and Bengal Governors who had bands have abolished them. The maximum given to Madras is Rs. 43,000. If he has a body guard he is paid Rs. 1,26,000. I am not mentioning that in my allowance. Then there is a Surgeon and his establishment-maximum is Rs. 36,000 for Madras and 33,600 for Bombay I am not touching that. Because these are services which have to be paid. Then comes the maintenance and repairs of furnishings of official residences. Maximum is 34,000 to Bengal Madras 21,500 and Bombay is 25,000 with a minimum of 4,000 to Assam, We have seen the Government Houses of Governors and they are also big enough. Our Governor-General was Governor of Bengal and he stated there were 134 rooms and he was not himself able to visit these rooms and for its maintenance Rs. 25,000 may be a somewhat , reasonable amount. Therefore after seeing the Government House in Delhi I Was actuated to increase this amount to Rs. 1,35,000.

For Contract Allowance, i.e., an allowance for miscellaneous expenses including maintenance of motor cars a sum of Rs. 1,08,000 is provided for Bombay; Madras comes next and Bengal comes third. Minimum is 11.500 for Orissa. Tour expenses are very heavy. 1,22,000 for Bengal, 1,13,000 for Madras and 65,000 for Bombay is provided. Previously the Governors used to visit for pleasure. They had no duty to perform. . Rather he was an administrative head and in that sense he was Executive head and probably lie had to travel about. Today our Governors will not have that executive Work. They will only visit whenever occasion arises. Therefore I have given for touring 10,000 to the President and 7,000 to Governors. I consider it a reasonable amount. he Governors are not expected to go away from their places and the President also. So I think a lump sum of 1,35,000 for the President and 15,000 for Governors would be reasonable, for repair and maintenance of furniture and motor vehicles also including sumptuary and other allowances, instead of the 35,000 1 had provided previously.

The Honourable Dr. Ambedkar stated that these may be left to Parliament to decide. This is a very big item. I am told now 18 to 20 lakhs is being spent for the Government House, Delhi, for various purposes. We have no definite figures but a very large sum is being spent. Therefore I do feel that a specific mention in a schedule should be made for the purpose of Allowances for the President and Governors. After all the salaries are for their own personal purposes and I do not want to be told by the people that the Governors have taken small salaries and they are indirectly getting some money from these allowances. We have to tell the public at the same time that from the heavy sum of 2 lakhs allowances we have come to a small sum which is really necessary for the upkeep of the Government Houses. If we are simply converting the structure of the living of the Governors and Presidents by asking them to become *Sanyasis,* then let me tell you that these Government Houses are not suitable. Then they have to take to some huts- perhaps the time may come I do not know when there may be; when our outlook and our system of living is changed. We do not want the articles in Government House to be destroyed or spoiled. We have to maintain them at the State expense and it is for the future generation really to see that these buildings are monuments. Of course some of these are rickety buildings. Even the Bombay Government House is very old. I do appeal to the Drafting Committee to provide allowances in the Constitution so that it may not be stated that from the allowance money is being squandered away and motives attached to Governors. With these words I move my amendment.

Shri H. V. Kamath (C. P. & Berar: General): Sir, will there be a general discussion on each part or on the whole article?

Mr. President: I will take the amendments on the whole article and then we can have the general discussion. No. 264.

Prof. Shibban Lal Saksena: Sir, I beg to move:-

"That with reference to amendment No. 210 of List VII (Second Week), for paragraph 8 of Part III, the following be substituted :

' 8. There shall be paid to the Speaker and the Deputy Speaker of the provisional Parliament, such salaries and allowances as were payable to the Speaker and the Deuty Speaker of the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution."

Sir, at present, Part III says-

"There shall be paid to the Speaker of the House of the People and the Chairman of the Council (if States such salaries and allowances as were payable to the Speaker of the Constitution Assembly of the Dominion of India immediately before the commencement of this Constitution."

Now, the position is, that for the interim period there is not to be a Speaker of the House of the People or a Chairman of the Council, of States. We are now making provisions only for the interim period, and later on the Parliament will decide the salaries. Therefore the present amendment does not fit in. Part III further states-

"........ and there shall be paid to the Deputy Speaker, of the House of the People and to the Deputy Chairman of the Council of States such salaries and allowances as were payable respectively to the Deputy President of the Legislative Assembly and to the Deputy President of the Council of State immediately before the 15th August 1947;"

In the amendment moved by Dr. Ambedkar he wants:-

"That for the words 'respectively to the Deputy President of the Legislative Assembly and to the Deputy President of the Council of State immediately before the fifteenth day of August, 1947. the words 'to the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before such commencement' be substituted.'

If this amendment is accepted, the paragraph will read--

",....... and there shall be paid to the Deputy Speaker of the House of the People and to the Deputy Chairman of the Council of States such salaries and allowances as were payable to the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before such commencement."

Now, this does not fit in with the present position There is obviously some mistake, and therefore my amendment has been given. This amendment of mine says that "there shall be paid to the Speaker and the Deputy Speaker of the provisional Parliament, such salaries and allowances as were payable to the Speaker and the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution. I am sure Dr. Ambedkar has made some mistake and the Drafting Committee has overlooked it. I will draw the attention of my Friend Shri T. T. Krishnamachari to this portion of Part III which is obviously a mistake. We shall not have, in the interim period any Speaker of the House of the People. I hope my amendment will be accepted by the Drafting Committee and the necessary correction made.

Mr. President: Then we come to Part IV. Amendments Nos. 165 and 265 are the same; Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: (West Bengal: Muslim): Sir, I have to move Nos. 265, 267 and 270. I have consolidated them again in the latest list.

Sir, I beg to move:

"That in amendment No. 211 of list VI (Second Week), in the proposed Part IV, in subparagraph (I.) of Paragraph 10, -

(i) for the figure '5,000' the figure '6,000' be substituted; and

(ii) for the figure '4,000' the figure '5,000' be substituted."

I also move:

"That in amendment No. 211 of List VI (Second Week), in the proposed Part IV, in subparagraph (3) of paragraph 10,-

(i) for the words and figures 'thirty-first day of October, 1948' the words 'commencement of this Constitution be substituted;

(ii) for the words 'the commencement of this Constitution' the words 'such commencement he substituted."

I do not move part (iii) of my amendment.

I also move:

"That in amendment No. 211 of List VI (Second Week), in the proposed Part IV, in sub,. paragraph (1) of paragraph 11--

(i) for the figure '4,000' the figure 5.000' be substituted; and

(ii) for the figure '5,000, the figure 4,000' be substituted."

I also move:

"That in amendment No. 211 of list VI (Second Week), in the proposed Part IV, in subparagraph (2) of paragraph 11,--

(i) for the words and figure 'thirty-first day of October. 1948' the words 'commencement of this Constitution' be substituted;

(ii) for the words 'the commencement of this Constitution' the words 'such commencement' be substituted."

Sir, with regard to the third part of this amendment, I wish to move it in a slightly altered form though the effect will be the same. The change will be merely verbal. I beg to move:

"That in Schedule Two Part IV. Paragraph 11, sub- paragraph (2), for the words 'shall be entitled' the words 'shall in addition to the salaries specified in sub- paragraph (1) of this paragraph be entitled' be substituted."

Sir, with regard to the general.

Mr. President: Shall in addition to what?

Mr. Naziruddin Ahmad: "In addition to the salary specified in sub-paragraph (1) of this paragraph." This phraseology exactly in this form appears in subparagraph (3) of paragraph 10, and it has been omitted in this sub-paragraph by inadvertence, and the amendment which I suggest is appropriate in the context.

Sir, with regard to the general purpose of my amendments, they are intended increase certain salaries of the Judges of the Supreme Court and the High 'Courts so as to confirm to existing standards.

Mr. President: You are not moving amendment No. 271 ?

Mr. Naziruddin Ahmad: I am afraid I have not got a copy of it with me. Sir, I also move:

"That in amendment No. 211 of List VI (Second Week), in the proposed Part IV, in item (ii) of sub-paragraph (b) of paragraph 12, the words 'excluding any time during which the judge is absent on leave' be deleted."

Sir, my object, as I have already submitted, is to restore the pay of the Judges of the High Courts and the Supreme Court to the old standard. Sir, with regard to judges, one fact must be clearly remembered. It is that the Judges are taken from very successful members of the Bar who earn very good and substantial incomes. If hi is not a good lawyer and does not earn much, it would not be worth while appointing him as a Judge. It is very necessary that the standard of our Judges should be adequate and should be maintained at a very high level. Judges, especially of the High Courts and of the Supreme Court, are eminent specialists and it is very necessary that they should be sufficiently and properly paid for the very high and eminent quality of their work. They must be treated as experts and must be paid on that basis. If we do not pay our Judges adequately, the result would be that in course of time very highly qualified lawyers would not be attracted to accept judgeships of the High Courts and of the Supreme Court.

With regard to the existing pay of the Judges, there was an amendment moved by Dr. Ambedkar that it should be paid only to the existing Judges. I had submitted an amendment a few days ago to article 3 10 to this effect, but I was then told that the proper place for it would be really this Schedule. I yielded but I do not agree that this is the proper place. Article 310 was the proper place because that article, so far as the High Court Judges are concerned, provides that on. the 26th January 1950, the existing Judges should also automatically be the Judges of the High Courts. Article 310 was perfectly unnecessary because every officer in whatever capacity he serves, automatically continues to serve although the new Constitution comes into force. For the purpose of continuance of their services article 310 was clearly redundant. Such a provision was not considered necessary in the case of any other services. The article had a deeper purpose. I think it was introduced to reduce quietly and imperceptibly the pay of the Judges by transferring the provisions as to their pay to the second schedule and thereby getting an excuse to reduce their pay in a most indirect manner. I should think that even apart from article 310 the Judges would have continued as every other public servant would continue.

With regard to the Supreme Court Judges, the matter is entirely different. On the date on which the Constitution comes info force, the Federal Court Judges convert themselves into Supreme Court Judges. An article to that effect was necessary, but no article like 310 was at all called for or necessary in respect of Judges of the High Court. Now, Sir, article 310 allows existing Judges of the High Court to automatically carry on as Judges of the High Court on and from ,the commencement of the Constitution, they would have received the same salary as they were receiving previously. The pay of the Judges cannot be reduced merely because we have passed this Constitution. So, as I have already submitted, I insist that article 310 is an astute device to quietly reduce their pay.

Then we come to the question of merit. It is a well- known fact that the Judges of the High Courts were receiving high salaries commensurate with the high quality of intellectual work they were accustomed to do. In fact, by accepting the position of a judgeship of the High Court, there has already been a very substantial financial sacrifice. We have here in this House two eminent ex-Judges of High Courts and they will bear testimony that the post of a Judge of a High Court is no sinecure job. It is a very laborious and extremely anxious post, and a Satisfactory discharge of their duties involves tremendous labour and heavy work. It is not anybody and everybody who can prove to be a very good High Court Judge. It is only a specialist of very high attainments who can do so. Only a man of high intellectual abilities and one capable of putting in much industry that can discharge the duties of a High Court Judge. The qualities of the Federal Court or of the Supreme Court Judges are to be still higher. I submit therefore that the pay of these Judges should not be reduced. The pay which they were getting should be continued, but the present suggestion of the Drafting Committee is to the effect that only those Judges who were appointed before the 1st

November 1948, should continue to get their previous salary, but a Judge appointed later on would be receiving much less. I do not see the justice for this distinction at all, bearing in mind that the value of the rupee has considerably depreciated apart from the present devaluation. The rupee at the most was worth, before devaluation, about four annas as compared with its prewar value. Now on account of the recent devaluation, the rupee has further depreciated, and therefore the Judge's salary is really not worth much. The salary which is at present prevailing has been going on for a very long series of years. Also the Judges will have to pay a high rate of income-tax. If you pay a high salary to a Judge, you do not pay him all the money. You will deduct about 20 per cent. out of their pay, and if the Judge has other incomes, the deduction will be much higher.

Dr. P. S. Deshmukh: Let him forego that income.

Mr. Naziruddin Ahmad: That is a high standard which is not practicable in our life. The honourable Member who interrupted me would not be willing to give up his own income. I submit that this income-tax will have to be taken into account. Minus the income-tax, the pay becomes very small, and then again on account of the depreciated value of the rupee, they get really much less. Considering the expert knowledge and high quality of work which is expected of them, they should continue to receive the old salary. Their life is not as boisterous or exciting as some of us take it to be. They are practically isolated from, society. They cannot have the luxury of taking part in politics. (Shri H. V. Kamath: they go to clubs.) If they go to clubs, they enjoy themselves in a more sober manner than some of us would be inclined to. Judges after retirement were permitted to practise outside their Provinces. But now they cannot practise in any part of India. In these circumstances, I submit that no case has been made out for a reduction of their pay.

Coming to the pay of Supreme Court Judges, we are going to have Independence from the 26th January. (A Member: We are independent already.) We are not yet independent. We are still attached to the apron of the Anglo American bloc. We have no real liberty, no real freedom. On the attainment of the so-called Independence, the Federal Court will be converted to the Supreme Court. The Supreme Court will exercise not only the functions of the Federal Court but also those of the Privy Council. It will be the highest Court of India and will really be supreme in the matter of law. The Supreme Court will have higher powers and a high status than the Federal Court.

But while we raise the status from the judgeship of a Federal Court to that of the Supreme Court, and enhance their status and power, we are reducing their salary. This is a piece of injustice. Nothing is more important for the working of a Democracy than that the efficiency and quality of the Supreme Court Judges should be kept intact. If their pay is reduced, then only men of lesser intellect than what the increased quality, authority and prestige and power of the Court demands will be attracted to these high posts. The result would be depreciation of the quality of the work of the judiciary. The Supreme Court deserves the highest consideration from this House and the country. They have to be recruited from the Judges of the High Court and have to come to the Indian Capital and have to maintain two establishments at home and at the capital.

Then I come to the other part of my amendment relating to the pay of existing Judges. According to the present proposal, the existing Judges who were appointed up to the 31st October 1948, would a love continue to get their old pay. I submit this date is arbitrary and not based on sound principle. The salary of those Judges who were appointed after that date and before the inauguration of the new Constitution should also be protected. There is no reason why they should get lea. Then there is a provision that a Judge of the Supreme Court could have an official residence; still that is confined to those Judges who will be appointed later on. Judges who were receiving high pay would be getting their pay but they would not be entitled to an official residence. I submit that the treatment of these two classes of Judges on two different bases is based on some sort of commercial instinct. I submit that all Judges of the Federal Court should have an official residence free of cost. Two of the amendments connected with this part of the subject are merely consequential and do not require any special mention.

Then I come to amendment 270, part (iii). This really fills a gap which has crept in due to an inadvertence on the part of the Drafting Committee. I draw attention to paragraph 10, sub-paragraph (3). There it is stated that an existing Judge should get the difference between the present pay and the new pay "in addition to the salary specified in sub-para (1) of this para". There the fact that the difference between the former pay and the new pay would be "in addition to" the salary which they would get is specifically mentioned in para. 10. But this condition is omitted in sub-para. (2) of para. 10. The effect is that a Judge who is now drawing Rs. 4,000 who should be drawing Rs. 3,500 on account of the new pay would get Rs. 500 more in addition to the Rs. 3,500 which is sanctioned; but as it is, it gives the impression that he gets only a special pay which amounts to the difference between Rs. 4,500 and Rs. 3,500 amounting only to 500. The fact that this would be "in addition" to the newly sanctioned pay is wanting in this sub-para. (2) of para. I 1. This is an inadvertent omission and I submit that my amendment should be accepted.

Coming to my last amendment, this is of a formal nature and I do not wish to take the time of the House in explaining it. I suggest that it should also be accepted.

Shri Brajeshwar Prasad (Bihar: General): Sir, I move:

"That in amendment No. 10 of List I (Second Week), in the proposed Part IV, in paragraph 10,-

(i) in sub-paragraph (1), for the figures '5,000' and '4,000', the figures '3,000' and '2,000' be substituted respectively; and

(ii) in sub-paragraph (2), for the word 'without' the word on' be substituted."

Sir, I have moved this amendment because I feel that we are providing too much to these judges. Dr. Ambedkar quoted the salaries of the judge of the Dominions. A false impression would be created in our minds unless we also bear in mind the average income of an Australian or Canadian. I would like to know what is the difference between the average income of an Indian and that of an Australian or Canadian.

Another argument which is usually advanced by those who stands for fat salaries for the judges is that they have got an important part to play in the Federal Constitution. It is said that the judges are the guardians of the liberties of the people and as such they are entitled to a higher salary. The question of dignity is also involved. These are some of the grounds on which a high salary is advocated. I would like to enter into a. detailed discussion of these basic concepts which to my mind appear to be without any foundation.

If this Constituent Assembly does not abide by this criterion, the criterion being the average income of an Indian, it will be weakening the foundations of' the State. Already people in this country believe that the Government of India have given all possible facilities to the Judges and Governors without taking into. consideration the facts of our life. They have given all kinds of allowances to a handful of persons who are placed in different capacities such as Governor-General, Prime Minister, Ministers, Comptroller and Auditor-General, etc. These officers of the State who draw fat salaries, may I humbly submit, are looked down upon by the average man in this country. I am not in favour of the proposition that no high salaries should be paid. I am in favour of the proposition that as far as Foreign experts or technicians are concerned they should be given as much as they want but that as far as people living in this country are concerned as far as the people who are in the Congress are concerned, they must make some sacrifices for the cause of the country.

Am I to understand that after we have won our liberty all those ideals for which we stood should be put in cold storage? Are those ideals to be derided, looked down upon and laughed at? Far-sighted statesmen, politicians and public workers must bear in mind the fact that the urge for economic equality is so strong and insistent in our minds that they cannot easily afford to ignore it. I know as much as any other Member of this House that all talk of economic equality at the present moment is Utopian but you cannot say that this is a concept which has no foundation in reality. You are going to provide Rs. 5,000 and 6,000 as salaries but what about the common man in the villages? You say it is a democratic government. Have you consulted the people? Do you intend to do that? With great fear and trepidation, I beg to submit that I do not share the opinion of those lawyers who say that the judiciary has got a Very important part to play in the politics of our country. Of course everybody likes to over-estimate his own importance in life. A lawyer is always prone to think that he performs a very useful work in society. I would like to ask those persons who have not read the work of Mahatma Gandhi (I refer to Hind Swaraj, the political bible of every congressman) to refer to that chapter where he has expressed his, own ideas about lawyers and judges.

I am of opinion that in this transition period through which we are passing it is neither the legislature nor the judiciary but the executive which has an important part to play. In the 19th century, especially in America, the judiciary did play a vital part, but circumstanced as we are today the judiciary has no future in this country. The judiciary plays an important part in a society where the spirit of legalism is prevalent, where the foundations of the State are strong and where there is no. revolutionary upheaval. In India the facts are otherwise. Our economic situation is deteriorating fast; the threat of internal revolution is growing and becoming insistent day by day and the danger of a freiogn war is also looming large on the horizon. I do not see how the judiciary will be the guardian of our constitution, how it will be able to protect the life and liberties of the people when people are bent upon making mischief and resorting to insurrectionary methods.

Another argument usually advanced is that you must give such salaries and allowances as will enable the judges to maintain their dignity. I am apposed to this idea of dignity.' The whole concept is sheer vulgarity. The ideal before the people of this country has been plain living and high thinking. Dignity has nothing to do with money. It is only in the West where this conception is prevalent. But our conceptions and ideas are looked down upon by wise people. Some of us who still abide by our old ideals and traditions would like to emphasise, even though we know full well that we will not be heard, that we stand and shall stand by the ancient ideals of plain living and high thinking.

I would in this connection make one observation which is not strictly relevant. People may ask what about the allowances of the Members of the Constituent Assembly. I am not in favour of Rs. 45 per day. I want that we should be provided with a free third class pass for Delhi so that we may come here to attend the Assembly. We want that the Government should provide a hovel for us to live in and function as legislators, We want that this Government should provide for us only jail diet and we do not want a single pice more than this..

Dr. P. S. Deshmukh: Are you taking jail diet?

Shri Brajeshwar Prasad: I am very keen on this point. I am sure this question is going to be raised either in this House or in the other House. It will not be strictly germane to the issue which is before the House at present if I digress more on this point.

Dr. P. S. Deshmukh: Are you eating in Jail?

Shri Brajeshwar Prasad: Dignity has no relation to the economic position of men. Men who have been honoured and respected most in this country have been saints and not millionaires. The dignity of a Judge Will depend on the work that he will do, provided he does it in a spirit of service and sacrifice. It will not depend upon the amount of salaries and allowances that we may confer upon him. We are people in favour of a fat salary for a Judge? They say that no good lawyer will condescend to become a Judge if you do not give him proper allowances and a proper salary. So, unless you tempt him with higher salaries he will not come and accept the post of a Judge. Sir, we do not like such. Judges who will not work unless they get proper salaries and allowances. They are undependable persons who are mercenaries. How can they be protectors of our liberty if they cannot work unless they are given Rs. 5,000 as salary? As far as lawyers are concerned, we must do something in order to prevent them from earning beyond a certain limit. We must pass some laws so that it may become impossible for them to earn more than Rs. 1,000 a month.

Shri Mahavir Tyagi: What is your amendment?

Shri Brajeswar Prasad: I am supporting my amendment that the salaries should be reduced and should be in consonance with the economic facts of our life. I would like to deal with this question to a greater extent and with more precision but I feel that the time at my disposal is short, I like to speak in general on the article itself. So, with your permission I shall make a few general observations on the other aspects of the article.

I refer to the schedule and to the salary of the President. I support the amendment moved by my Friend. Prof. Shibban Lal Saksena. I support this amendment because I feel that the first President will be the last President under this Constitution. It is with this background that I am making my observations. Had I known that this Constitution would last for some time to come, that not only Congressmen but non-Congressmen would also become Presidents of the Indian Union, probably I would not make the observations that I am going to make now. It is really a matter of surprise and wonder how a man like Raja gopalachari our trusted leader, how a man like Sardar Vallabhbhai Patel who has sacrificed everything, how a man like your august self can think in terms of money. I know that these eminent personalities will never think in terms of money. I know, Sir, that you are going to be the President or somebody else from Members of the Congress High Command.

Mr. President: You must not go into personalities.

Shri Brajeshwar Prasad: I am not making any personal reference. I am saying that some Members of the Congress High Command will become President.

Mr. President: You need not speculate either

Shri Mahavir Tyagi: Why not any of the low Command?

Shri Brajeshwar Prasad : I hold the opinion that a Member of the Congress High Command, who has worked throughout his life without salaries and allowances will very gladly work without any salary or allowances as President of the Union. I am, sorry, I am referring only to salary and not allowances. I feel that if we take this bold step it will rehabilitate the prestige of the Congress. It has a psychological value. The enemies of the Congress may not like this idea of mine. They may consider such an idea as impracticable. But what about Congressmen? We have no right to ask others to tighten their belts. We have no face to talk about non-violence and truth unless we reform our own conduct.

Mr. President: I think there is a lot of repetition going on. Other Members have made that point and so have you. I may remind the honourable Member that we have to finish this and the States question today.

Shri Brajeshwar Prasad: I wish to make two more observations. I would like to refer to the example of the great Khalifas of Islam. I want that our President should follow the footsteps of the great Shah Omar and Abu Bakr.

Gandhiji was fond of referring to them as examples. Are we going to bury these principles of Asia at the altar of some European concept? I would refer the House to that letter which Gandhiji wrote to Lord Irwin on bended knees: he prayed for bread and got stones instead.

Mr. President: Amendment No. 167 of Mr. Kamath has already been covered by the amendment moved. Mr. Kamath may move 168 and the others.

Shri H. V. Kamath: Sir, I move:

"That in amendment No. 10 of List I (Second Week), in the proposed Part IV. sub-paragraph (3)of paragraph 10 be deleted."

"That in amendment No. 10 of List I (Second Week), in the proposed Part IV, sub-paragraph (2) of paragraph I 1, be deleted."

"That in amendment No. 10 of List I (Second Week), in the proposed Part IV, in sub-paragraph (3) of paragraph II, for the words 'Every such judge' the words 'Every judge of a High Court' be substituted."

Amendment No. 168 seeks to delete sub-paragraph (3) of paragraph 10 of the proposed Part IV of this Schedule. Similarly amendment No. 171 seeks to delete sub-paragraph (2) of paragraph II of the proposed Part IV.

The last amendment is a more or less verbal one in connection with subparagraph (3) of paragraph II of this Part.

Amendment No. 167, seeking to delete the phrase or the clause "with regard to the non-payment of rent by Judges" has been covered as you, Sir, have observed, by the amendment moved by my honourable Friend, Mr. Brajeshwar Prasad.

Taking the last amendment first, that is amendment No. 173, because it is a short one, I invite the attention of the Drafting Committee to the unclear meaning of the phrase as it stands. In sub-paragraph (31 of paragraph II the phrase used is "Every such judge", while in sub-paragraph (4) of para. 10 of this Part, the phrase used is "Every judge of the Supreme Court". If this phrase "Every such judge" in sub-para. (3) of para. I I were to be accepted by the House, it might mean that it has reference only to persons referred to in sub-para. (2) of this paragraph 11. Moreover, I see no reason why this should not be on the same lines as the language of sub-paragraph (4) of para. 10, where a Judge of the Supreme Court is referred to. It is meet and proper that this phrase should be modified so as to refer to every judge of the High Court categorically and not merely to " every such judge". Otherwise it might be misunderstood as having reference only to those judges referred to in paragraph 2.

I hope Dr. Ambedkar will find nothing in this amendment of mine to stand against on consideration of mere prestige and that he will see his way to accepting this very verbal and formal amendment.

My first amendment, Sir, which has been covered by Mr. Brajeshwar Prasad's amendment seeks to delete the provision exempting the judges from paying rent for their residences. I wonder why Judges are being treated so very lavishly in our Constitution. If my honourable Colleagues were to look at this schedule as moved by Dr. Ambedkar, they will see that part IV relating to Judges covers nearly a page and half, while the others with regard to the President, the Governors, the Speaker, the Deputy Speaker are summed up in a paragraph or two. The House will also recollect that Dr. Ambedkar when speaking on this schedule, chose that part relating to judges first before he spoke about the President and the other dignitaries referred to in this schedule. Though I do not cavil at any member of the Drafting Committee-I feel it was perhaps inevitable that the Drafting Committee weighted as it is by lawyers should have a soft comer for Judges; and some malicious critics might also say that some of us want to put ourselves right with our Judges in the India that is to be, we want to put ourselves in the right side of Judges and ingratiate ourselves........

Mr. President: Please do not make any insinuations.

Shri H. V. Kamath: 1, for one, do not share that view, but I fear we. lay ourselves open to malicious criticism outside the House, and therefore, I felt that this provision regarding the non-payment of rent was undignified and detracts from the dignity of the Constitution. If the House will refer to article 48 of this Constitution which has been adopted already as well as article 135 of the Constitution also adopted by the

House, they will see that neither the President of the Republic nor the Governor of a State has been given a residence free of rent; I mean it is not specifically stated in the Constitution. The relevant articles relating to the Governors and the President state that the President or the Governor shall have an official residence. That is an that those articles state and there is no reference to the payment or non-payment of rent. I ask the House, is it not undignified of us to say that such a dignitary will not be liable to pay rent for his house? We have already accepted the salutary provision that no dignitary, however high-placed he may be, shall be exempt from the payment of income-tax, as the Governor-General has been heretofore. When even the poorest labourer pays a rent of a rupee or more for his little tenement, why. should not a judge pay a rent for his house? I am sure no judge will ask for this generous concession to him. I really fail to See why this provision as regards rent, so derogatory to the dignity of the House and of the Constitution, has been sought to be moved by Dr. Ambedkar in this House.

Next, coming to salaries, I do not wish to quarrel with him because the Chief Justice of the Supreme Court will receive Rs. 5,000 and the other judges Will receive Rs. 4,000 each, and as regards the judges of the High Court, the Chief Justice will receive Rs. 4,000 and puisne judges will receive Rs. 3,500. But what I fail to see is why the present incumbents of these offices of judges of the Federal Court and the judges of the High Courts shall be entitled to receive the same salary as they were getting before. The other day the Honourable Sardar Vallabhbhai Patel pleaded for the continuance of conditions of service, salary, pension and cognate privileges in respect of the services of the Secretary of State, the 1. C. S. and perhaps the Indian Police service and similar services. The House accepted, and rightly too, his plea and his appeal to the House to pass that particular article because there had been a guarantee given to these services by Government in August 1947. I do not know whether a similar guarantee has been given to the judges of High Courts and to the judges of the Federal Court and also to the Auditor-General to the effect that whensoever the Constitution will come into effect their salaries and other conditions of service will be secure. If that has been given by Government, I have nothing to say. We have got full confidence in Government, and we do not want the Government to go back on their lighted word, and if' they have given any such guarantee to the judges of the Federal Court or the High Courts as regards their salaries and conditions of service, it is a different matter. Otherwise I see no reason why we should introduce a special clause or a paragraph in the schedule to the effect that the present incumbents will continue to receive the same salaries as before. I am sure that if we consult most of the judges at present serving in the High Courts and in the Federal Court, most of them, patriots as they are, and willing to serve the country with all their might and main, will not ask for' this special concession. If one or two- even that I doubt,-ask for this special concession, I think the Constitution should not make a provision for a few individuals when no guarantee has been given by Government to these individuals. The Constitution deals with the whole country, its dignitaries, its people, its officers and public servants, etc., and not any particular individuals. If a few persons do not agree to serve the country under the Constitution we shall not and need not go out of our way to make provision for these few individuals. In the case of civilians it was rightly pleaded and accepted by the House because of the guarantee given by the Government to those civilians, but no guarantee so far as I know has been given by the Government to judges of the Federal Court or of the High Courts in respect of their salaries and conditions of service. That is why, Sir, I have sought to move the amendments Nos. 168 and 171 which have a bearing on the present incumbents of these offices of judges of the Federal Court and the High Courts.

One word, Sir, about these salaries. I agree wholeheartedly with my honourable Friend Mr. Tyagi that the highest dignitaries of the State, the President the judges and the ministers of the State ought to be genuine tyagis. He must be a real *Tyagi* in mind and spirit, in the spirit of the Gita which says:

It is not the actual amount of the salary that a person is drawing; but the test is whether he is or is not attached to that salary. If he is actuated by the spirit of *"Aparigraha"* and is willing to resign his job at any time for a higher cause, then he is a real *tyagi;* he is a real *sanyasi.* He must serve in this spirit. In this modern world, as in ages gone before, while I will not go the length of saying: I feel that every person, every human being, his mind and spirit, is conditioned by the limitations of his body which persists in his corporeal or embodied existence in this world. He has got to be placed above want; he has got to be placed above fear; he has got to be placed above insecurity. Therefore salaries are and should be provided.

Dr. Ambedkar pleaded for the acceptance of these salaries and quoted certain figures from U. S. A., Canada and other countries. My honourable Friend Mr. Brajeshwar Prasad raised the pertinent point as to what relation or ratio those salaries bear to the national income or the per capita income of those countries. I do not wish to go into that subject. Dr. Ambedkar might throw some light on this subject in his reply to the debate. What I would like to say is this. Rumour has it that our Ministers have accepted a voluntary cut of 15 per cent. in their salaries. It is a very laudable decision if it is true. Mr. Brajeshwar Prasad referred to our own allowances and salaries. I am also in favour of reduction in our allowances. But, I would also suggest that this matter of allowances.

Dr. P. S. Deshmukh: Provided all accept it.

Shri H. B. Kamath: That was what I was going to say: provided that all public servants accept a voluntary cut in their emoluments; I would suggest that this thorny question of the salaries of Members of Parliament-it is well known that Members of this House do not receive any salaries, but only allowances-be placed on a sounder footing as soon as the provisional Parliament meets or earlier, and the Members also might be given a salary, and a nominal allowance when they come here. That would be much better.

Dr. P. S. Deshmukh: And a much wiser course.

Shri H. V. Kamath: Yes, much wiser too. After all Members have to cam here from for distances unlike Ministers who stay in Delhi and de their work in Delhi.

Lastly, I would once again refer to my amendment which seeks to delete the provision for non-payment of rent. If this were to be included, I would also suggest that we might include therein a provision about a furnished house, and further as to how many bath rooms, how many bed rooms a Judges residence will have. Otherwise, this reference with regard to a free residence for a judge does not at all fit in with the dignity of the Constitution that we are considering, This must go, considering especially that the articles relating to the President and the Governors have no such provision exempting them from payment of rent.

Before, I close, I would earnestly request the Drafting Committee, and the House to see to it that whatever salaries may have been fixed in the past, we as a free

Republic, as free India which has got to take an eminent place, in the comity of nations, which has got to play a vital part in the battle for progress and liberty and welfare of mankind, let us at least attempt in an honest and humble way to transvalue the values that exist today, and give a now direction and a new light, if I may say so to a mankind that is groping in this war-torn, war-weary world for new values and new light.

Shri Prabhu Dayal Himatsingka (West Bengal: General): Mr. President, I had given notice of amendments 212 and 213 which are on the agenda paper on page 4:

> "That in amendment No. 10 of list I(second Week), in the proposed Part IV, in sub-para-graph (2) of paragraph 11, after the word and figure thirty-first day of October, 1948' the words or as Chief Justice before the tenth day of October. 1949' be inserted."

and certain other amendments have been suggested. After having heard Dr. Ambedkar explain the position that those persons who have been appointed after 31st day of October 1948 were given an indication that that salary would be subject to the decision of the Constituent Assembly, and if the Constituent Assembly decided to reduce their salary, they will have to agree to such cuts, I do not propose to move it in that amended form. I find that in clause (2) of paragraph II, there is a lacuna and evidently, it is due to the fact that it has not struck the Drafting Committee. It runs as follows: "Every person. who was appointed permanently as a judge of a High Court in any province before the thirty-first day of October, 1948 and has on the date of the commencement of this Constitution become a Judge of the High Court in the corresponding State under clause (1) of article 310 of this Constitution, and was immediately before such commencement drawing a salary at a rate higher than that specified in sub-paragraph (1) of this paragraph, shall be entitled to receive as special pay an amount equivalent to the difference between the salary so specified and the salary which was payable to him as a Judge of the High Court immediately before such commencement." This contemplates that any person who was appointed as a Judge before the 31st of October 1948, will continue to draw the higher salary that he has been drawing on the day of the commencement of the Constitution. But, if a person is appointed after the 31st of October, he will come within the clause, that is to say, the salary will be reduced and he will get Rs. 3,500. If such a Judge who was appointed before the 31st of October 1948 continues to be a Judge in the same province and his salary is increased in the meantime after October 1048, he will continue to draw the higher salary if he is in the same province. But, if such a Judge has agreed to go to another province and has undertaken an additional liability of having to run a second house in the new province, he will not get the benefit of the additional salary. If a Judge is transferred from Bengal to Nagpur, he will not be entitled to the benefit of this additional salary. I evidently feel that there must be some mistake in the drafting. Otherwise, it could never be the intention of the draftsmen that a person who continues in the same province should draw the higher salary or the difference, but if he is transferred, if he undertakes to go to another province, he will not get the higher salary. He continues to be a Judge; he was appointed as a Judge before October 1948. With your permission, therefore, I suggest:

> "That in amendment 21 1, of List VI (Second Week), in the proposed Part IV, in sub-paragraph (2) of paragraph II, for the words 'in the corresponding State' the words 'in a State for the time being specified in Part I of the First Schedule' be substituted."

Therefore the effect of this amendment will be-

> "That in para. 11 sub-para. (2) for the words 'corresponding State' occurring in the fourth line of the said para. the words 'in a State for the time being specified in Part I of the First Schedule' be substituted."

There is no reason why a Judge who has agreed to go to another province should be penalised, whereas a Judge who has continued to be in his own province and has not undergone the troubles of a transfer and additional expense should get more. I think if it is properly considered the Drafting Committee should have no objection to accept the amendment proposed by me. This will do away with the anomaly of persons of the same category-to and differentiation being made between two such persons. This is not an amendment in favour of any particular person. This will cover all the Judges who will come within this category. If there is a transfer from one province to another, they, will all be covered if they are drawing higher salaries. If there are no such cases, even then it will not affect anyone under the rules. Otherwise, there is this anomaly or omission or perhaps an unconscious injustice that might be done to any-person who may have undertaken to be a Judge in another province.

As regards scale, personally I would have been glad if the salary had continued to be, for all the Judges, the same that they have been drawing, as everybody knows the Judges should be above temptation and they should have no wants. After all, they do discharge very important duties and there are so many temptations Which come in their way and if they at all have any want, they may be tempted to go wrong. Of course money is not the only thing that might tempt a person. Character and other things are needed, but the Congress party having agreed to 3,500 being fixed for future Judges I do not quarrel with it, but I certainly oppose the amendments of Shri Brajeshwar Prasad and Mr. Kamath who want to reduce, the salary further to 3,000 and 2,000 and I hope the amendment I have moved will be accepted.

Shri R. K. Sidhva: There are some amendments in my name.

Mr. President: I shall see that.

266 and 269 are already covered. 272: Mr. Saksena.

Prof. Shibban Lal Saksena: Sir, my amendment which has been moved also by Mr. Kamath was intended to remove this provision for special pay. I am Opposed to it, on principle. We are, now framing a new Constitution and in this we are providing the salaries which the incumbents of the various offices should get in Free India. But we are here providing in the amendment moved by the Drafting Committee than Judges and the Auditor-General shall continue to get that portion of present salary which is in excess of the new salary as special pay. The reason given is that some guarantee was given to these officers that they will not have their salaries reduced in their period of office. I think the guarantee was for the Judges of the Federal Court and pot for the Judges of the Supreme Court or other Judges. I personally feel that if the future Chief Justice of the Supreme Court and Judges of the High Courts and the Auditor-General in the future will be content with the salaries provided here, I not see why Judges who will take up their places in the new set-up in the Supreme Court and High Courts and the Auditor-General should not be content to have their salaries as fixed for the new incumbents. At present the Chief Justice gets Rs. 7,000 and Judges get Rs. 5,500. According to the new provision the Chief Justice will get only Rs. 5,000. Suppose one of the Judges on the Bench is promoted to Chief Justice ship he will get only Rs. 5,000. There will be an anomaly again. As Judge he draws Rs. 5,500. As Chief Justice he will get Rs. 5,000. We cannot provide for all these anomalies. What I wanted was that the assurance given was to the existing Judges of the Federal Court and when we arc abolishing the Federal Court and are providing for a Supreme Court under the new Constitution, I do not think the guarantee has any meaning. Besides I think the officers also will not relish this special pay which only they will get and their successors will not get.

I do not for a moment consider that the Chief Justice and the Judges or the Auditor-General should not have proper salaries. In fact I feel that these officers should have handsome salaries because we have put down many conditions on them in the provisions concerning them. They must retire at 65 and 60. In the 'case of Supreme Court Judges also they will not be allowed to practice at the bar after retirement. All these are stringent conditions and I do fed that Judges of the High Court should be men who should be independent, who should not be afraid of giving rulings which may go counter to the wishes of the powers that be and for that purpose I think they must be above want, and should have no need to hanker after favours from the Executive. So the practice of giving them good salaries is quite wholesome and I also approve of the provisions. In fact I would very much like to settle the question of their pensions also. In England and America Judges of the Supreme Court have no age of retirement They go even up to ages of 80 and 90 and they have been very good judges even at these ages. We know that their pension is about three-fourths of their salaries, These arc very great advantages and that contributes to their independence in giving judgments. Therefore, I am not opposed to giving high salaries to Judges. Besides I also know that those people have got to maintain special standards of life. They have to be reserved and they are denied the privileges of mixing with people. They cannot have all the parties and entertainments which the Minister enjoy and so I do not grudge them the salary provided for them. But I do not think there should be any differentiation or distinction between the first incumbents and those who succeed them. Let them all have the same salary, and if you think the salaries given are not proper, you may raise the salaries, but let it not be that the present Chief Justice of the Supreme Court will get a higher salary and his successors will get less. This should not be done.

I have to say that the accounts of the Republic will not be safe unless the Auditor-General is a man of extraordinary independence and integrity. 1, therefore, think that his salary should be a handsome one and exactly on the same footing as that of the Chief Justice of the Supreme Court. I do not want that he should get a higher salary than his successors. I do not, therefore, want any difference between the salary of the present incumbent and his successors.

Mr. President: Mr. Sidhva. I have seen your amendment No. 94 and amendment No. 96. I do not think they arise now. They were to the original proposition which is embodied in amendment No. 92. That amendment has now been superseded by the amendment moved by Dr. Ambedkar, and these amendments do not fit ill there. I think these arc all the amendments. Shri Alladi Krishnaswami Ayyar.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. President, Sir, in supporting the article relating to the salaries as regards the Judges of the High court and of the Supreme court under the new Constitution, I should like to state a few words in support of the proposition as moved by the Honourable Dr. Ambedkar. The scale of salaries now proposed is practically the same as that proposed by the Drafting Committee in the Draft Constitution published in February last year, with slight alterations in regard to the Judges of the Supreme Court a free house being provided for, and a slight reduction in the salary of the Associate Judges. In fixing the salary of the Judges the committee was quite alive, to the importance of maintaining the dignity, the efficiency and the independence of the judiciary, especially in a Federal Constitution where the highest judiciary is called upon not merely to decide ordinary disputes between citizen and citizen, and the State and the citizen, but also to decide questions of great constitutional importance on which would depend the future development of the Constitution. They took into account the scale of salary obtaining in Canada, Australia, South Africa and the great continent of America, and the scale of salaries obtaining in India in the British regime, as also the need for some kind of retrechment, having regard to the general poverty of our country.

In any question of revision of salary, we cannot altogether ignore the administrative set-up with which we are starting. If we are starting over-night with a Constitution, with a fesh agency, with a fesh judicial or executive agency, we might have a carte blanche, and we might provide any salary we like, having regard to the economic and other conditions of our country. We have to remember we are building upon existing foundations, though in theory we are perfectly at liberty to frame any Constitution we like and we are in a position to provide any salary we like. These are the considerations which influenced the Drafting Committee in making the particular suggestion they have made. The slight alteration in regard to the rent-free quarters is due to the peculiar conditions in Delhi. It was felt that you must be in a position to provide free residence. Instead of the Judges having to wait some time for their lodging, it was thought it was much better to provide for an official residence for the Judges. That was the reason why a provision has been made in regard to the residence of the Judges.

The Drafting Committee, I might mention, was also quite alive, for example, to the system obtaining in the Continent where the salaries of Judges are much lower than those obtaining in England and in countries which are influenced or dominated by British jurisprudence. We have rightly adopted what may be called the British system of administration of justice. On the continent the Bench and the Bar are distinct institutions. Judges are not recruited at all from the bar, and in France the highest salary of the President of the Court of Cassation is about Rs. 1,300. Similarly the highest salary in the German Reich also was about Rs. 13,00. But then, they were really part of the civil service. We were anxious that the independence of the judiciary should be maintained, and we felt that such independence is best secured by the recruitment from the bar, and we have had regard to the fact that you cannot expect professional gentlemen to accept a place on the bench unless a decent remuneration is provided for. At the same time, we could not ignore the economic condition of the country, and we cannot treat the Judges as a separate caste, different altogether from the general cadre of services in the country. Taking all these factors into consideration, with an anxiety to maintain the independence of the judiciary, their honour and their prestige, the Drafting Committee, in consultation with other bodies finally has come forward with this scheme of salaries.

There are a few other points which have been adverted to, in the course of the debate. The first thing is, where is the need for any special provision in regard to the judges who are appointed before November last year? Now to far as the members of the Civil Service and the Judges who were appointed to their respective posts before the Indian Dominion Act are concerned, their salaries were safeguarded by a special provision in the Dominion Act, which was adverted to in the course of the debate on the Civil Services, the other day. In the ordinary course, the Judges, including the Chief Justice, continued to be appointed in the old scale of salaries, even after the Dominion Constitution came into force, and even after the publication of the Draft Constitution in February last year; and we are told, it is only after November last that the Cabinet made it known to the future appointees that they must be prepared to accept their posts subject to the new scales of pay that might be adopted by the Constituent Assembly. It is taking these factors into account that a special provision has been inserted safeguarding the emoluments of those who were appointed to their respective posts prior to November last year. It is advisedly that we put the difference is an allowance in regard to those judges who were appointed before November, because the general principle is that the particular scale of salary is applicable to all judges. Those who were appointed as judges before November entered on their ask on a certain understanding and therefore the Committee thought it proper that the differential pay must be considered as a special allowance. This is to emphasise the principle that the normal and accepted salary is that salary provided in the general provision of the Constitution. This has resulted no doubt in certain anomalies. They must be faced; they cannot be helped. For example, the Chief Justice of a High Court, if appointed later as a Judge of the Supreme Court, will get a lower salary than as Chief Justice of the High Court, though it may be he has a right to free residence in Delhi. Again, judges discharging the same or similar functions will get different salaries in the same Court, but these anomalies cannot in any way affect the main principle under lying this article. This is the one reason why the article as proposed deals with this differential, pay as I have already pointed out, as a special allowance. These are the points which I wanted to refer to so far as the judges are concerned.

Then, some point was made in the course of the debate that you must make a special provision in the Constitution that the President's salary is subject to Income-tax. Unless an immunity is given in the Constitution, it is an accepted principle of constitutional law that every officer; be he the President, the Chief Justice or a Judge of the High Court, or be he a Minister, will be subject to income- tax. If you make a special provision that the President's salary would be subject to income-tax, it will be open to the argument that, so far as the other officers or dignitaries are concerned, they are not subject to income- tax. That is not the principle of the Constitution. Therefore while increasing the salary of the the President to Rs. 10,000. advisedly no reference is made to the fact that he shall be subject to income-tax. Every officer, every dignitary, however high-placed lie may be, will be subject to income-tax unless the Constitution expressly exempts him from the operation of the income-tax law. That is the second point that I wanted to mention.

Then, so far the President's allowances are concerned, there is no need to go into the question of the allowances of the President, because Parliament is the supreme master of the situation. Instead of cumbering the Constitution with a detailed list of the allowances to which the President is entitled, reference is made to the fact that for the time being the President will be entitled to the allowances which the Governor-General was having. Later on, it win be open to Parliament to go into the whole question and revise the allowances as circumstances, the needs of the country and the dignity of the position of the President would require.

With these few words, Sir, I support the article as put forward by Dr. Ambedkar.

Pandit Hirday Nath Kunzru: (United Provinces: General): Mr. President, Sir, the Draft Constitution provided that the President should get a salary of Rs. 5,000 a month and the Governor of a State Rs. 4,500 a month. It was then proposed........

The Honourable Dr. B. R. Ambedkar: President Rs. 5,500 a month.

Pandit Hirday Nath Kunzru: I have got the Draft Constitution before me and I have read out the figures from it. It was therefore proposed that the salaries of the principal judicial functionaries should be lower than these salaries. It was provided that the Chief Justice of the Supreme Court should get Rs. 5,000 a month and any other judge of the Supreme Court Rs. 4,500 a month. It was also provided that the Chief Justice of a High Court should get Rs. 4,000 a month and any other Judge of a High Court Rs. 3,500 a month. So far as the High Courts are concerned, we all know that the salaries of the Judges in all provinces were not the same. In the C. P. and the provinces of Orissa and Assam, the salaries were lower. Assam gave the lowest salaries. It gave Rs. 4,000 to its Chief Justice and Rs. 3,500 to every other Judge. Now, this is the wale of salary that has been proposed for the Judges of all the High Courts in the Constitution.

In the amendment placed before us by Dr. Ambedkar the salaries of the President and the Governors have been raised. The salary of the President has been very nearly doubled, and that of the Governors has been increased by Rs. 1,000 a month, but the salaries of the Judges of the Supreme Court and of the High Courts have been retained at the figures mentioned in the Draft Constitution. Only one exception has been made and that is in the case of permanent judges of the provincial High Courts. The amendment says that any Person appointed permanently as a Judge of a High Court in any province before the 31st Day of October 1948 and becoming a Judge of the High Court at the commencement of this Constitution in the corresponding State under clause (1) of article 310 of this Constitution shall be entitled to the same condition of service as respects salary, leave and pension as he was entitled to before the commencement of this Constitution. An amendment has now been proposed, that the special provision made for persons appointed permanently before the 31st day of October 1948 should be deleted. I take it that an exception has been made in the case of persons who will be appointed permanently as judges of High Courts before 31st October 1948, broadly speaking, to brine the provision into line with Section 10 of the Independence Act, 1947. That Section entitled all persons appointed by the Secretary of State or the Secretary of State in Council to the civil services of the Crown in India and all permanent judges of the Supreme Court and the High Courts to the same conditions of service, and other rights as they could enjoy under the Government of India Act, 1935. Dr. Ambedkar's amendment, however, differs in certain respects from the provisions of Section 10 of the Independence Act. The In. dependence Act gave a guarantee only in respect of those persons who had been appointed as permanent judges before the 15th August 1947. Dr. Ambedkar's amendment extends this right to persons appointed up to the 31st October, 1948. The amendment thus goes beyond the provisions of Section 10 of the Independence Act. But in one respect it fails to carry out the provisions of that Section. That Section laid down. that a person appointed permanently as a judge of a High Court, whether in the same province in which he was serving as a temporary or additional judge or in any other province, would be entitled to the same conditions of service and privileges that he was entitled to before the 15th of August 1947. In respect of the persons appointed to the civil services by the Secretary of State or the Secretary of State in Council the obligations created by the Independence Act have been fully carried out but the guarantees relating to the judges of High Courts have not been respected in one respect which I have already dealt with.

I think therefore that the amendment moved by Mr. Prabhu Dayal Himatsingka deserves to be favourably considered. A man may have been appointed as a judge, say, of the U. P. High Court some time ago. But he may, before the 31st October 1948, become the Chief Justice of, say, the Patna High Court. He will not, in that case, be entitled to receive Rs. 5,000 per mensem as his salary. It seems that in accordance with Dr. Ambedkar's amendment, he will be entitled to receive only. Rs. 4,000, which is the same salary that he was entitled to receive before his transfer from the U. P. to Patna. This does not seem to me to be at all desirable. If you want to make an exception in the case of persons appointed as permanent judges before 31st October 1948, then carry out the guarantee that you mean to give not merely in the letter but also in the spirit. Once you have appointed a man permanently as a judge of a High Court, he can look forward to promotion of his work is satisfactory. Every judge of course cannot become a Chief Justice or a Judge of the Supreme Court, but some judges can and I see no reason why the judges who have been promoted because of their merit should be debarred from the benefit of the guarantee given under Section 10 of the Government of India Act.

As regards the future judges, Dr. Ambedkar referred to the salaries given in the United States, Australia, Canada and South Africa to the judges of the High Courts. He said, I believe, that with the exception of the United States, no country gave its judges more than India. If he said so, he must have for. gotten that in England the judges of the High Court receive a higher salary than the judges of any High Court in India. We may, broadly speaking, say that with the exception of the United States and England, none of the countries mentioned by Dr. Ambedkar gave its judges higher salaries than India did.

I do not know what the pensions of the judges in Canada, South Africa and Australia are. But we have to take these rights into consideration in determining the salaries of the judges. In the United States of America, the pension of a judge of the Supreme Court is, I understand, equal to his salary. In England, the pension of a judge of the High Court is 70 per cent. of his salary. Under the Government of India Act, 1935, roughly speaking, the pension of a judge who has served for twelve years will be about one-third of his annual salary. Whatever justification there may have been for this when the Government of India Act was passed it is obvious, that the judges of the High Courts should be given higher pensions now. I was not able to hear all that Dr. Ambedkar said but I did not hear him refer to this question at all in his speech. The memorandum sent by the judges of the Supreme Court and the Chief Justices of the various High Courts in India deprecates a reduction in the salaries and gives it as the opinion of the judges that, the age of retirement of the judges and their pensions should be raised. The salaries have been reduced and the age of retirement has not been raised, but the pensions can still be raised. The judges of the High Courts and of the Supreme Court will occupy very responsible positions; they will, so to say, be the guardians of the Constitution. It is necessary therefore that their salaries and conditions of service and their position should be such as to command the respect of the people and to enable them to discharge their duties without any anxiety with regard to the maintenance of themselves and their families. I am personally in favour of the amendments moved by Mr. Naziruddin Ahmad regarding the salaries of the judges of the Supreme Court and those of the High Courts. But whatever the decision of the House on that point may be I think that if the reduction in the salaries is to be justified from any point of view it is imperatively necessary that the pensions of the judges both of the Supreme Court and of the High Courts should be raised. I do not know what my honourable Friend Dr. Ambedkar feels on this point but I shall be surprised if even lie does not think that the present pensionary provisions require to be changed. I think that the judges of the Supreme Court and the High Courts should be allowed to draw, say, two-thirds of their salaries as pension.

Mr. President: So far as pension is concerned, may I point out that this is only an interim provision until the Parliament makes another provision? It is a matter left over for Parliament to consider.

Pandit Hirday Nath Kunzru: This is quite true but I should have liked my honourable Friend Dr. Ambedkar, when he explained his amendment, to refer to this matter too. I know that a law will have to be passed by Parliament fixing the pensions of the judges, but if responsible persons here- and no one is in a more responsible position than the Chairman of the Drafting Committee today-were to express the opinion that the, pensions ought to be increased and ought to be at least two-thirds of the salaries, I am sure this will carry weight with Parliament. But if the matter is left in the air, if no person to whose opinion Parliament may be expected to attach weight refers to it and leaves honourable Members to imagine that the present pensionary provisions require no change, it is very doubtful whether Parliament would be inclined to pass any law increasing the pensions.

This is my justification, Sir, for having referred to this question. I do not however wish to prolong this discussion any further. I do not think that there is the slightest chance of any amendment being accepted by the Drafting Committee. We all know the course that the discussions in this House have taken during the last two years. Broadly speaking no amendment, however reasonable, had a fair chance of being accepted by the Drafting Committee, but I do hope that even the Chairman of the Drafting Committee will not consider it inconsistent with his dignity to say that in his opinion the pensions of the judges of the Supreme Court and the High Courts should be raised.

Shri L. Krishnaswami Bharathi (Madras: General): Sir, the question be put.

Mr. President: The question is:

"That the question be now put."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar: Sir, all I wish to say is that there am three points which have been raised and which require some reply. Mr. Kamath attacked the provision in Schedule 11 allowing the judges of the Supreme Court a free house. This question of providing for a house in the Constitution for the judges of the Supreme Court was decided upon after careful consideration. It was felt that a large number of judges who would be appointed to the Supreme Court would be coming from the far ends of this country to the capital city and that it would not be proper to throw them on their own resources to find a house which would be in keeping with the dignity of their office. That was the principal reason why the Drafting Committee felt that the Government should have the obligation to provide a house.

With regard to the question of the house being free of rent, we thought that that was a sort of compensation for the reduction in the salaries of the Supreme Court judges, which we had proposed in comparison with the salaries of the judges of the Federal Court. Personally I was somewhat surprised at the derisive remarks made by my honourable Friend Mr. Kamath on this particular point, because if he is objecting to a free house to anybody I should have expected him to say something about the free house which we provide both for the President as well as for the Governor-General and I personally........

Shri H. V. Kamath : I did not refer to rent and I do not know whether it is a free house or not.

The Honourable Dr. B. R. Ambedkar : I do not think there is any substance in this particular point made by Mr. Kamath.

With regard to the question of the amount of salaries there have been a variety of views expressed in the House. My Friend Mr. Shibban Lal Saksena went to the length of saying that the President ought not to get more than one rupee. Well, I suppose, on that remuneration no one would be available to function as the President, except a wandering Sanyasi, and I have no doubt that a wandering Sanyasi would be the most unfit person to be the President of the Union, whatever may be his other virtues.

With regard to the judges' salary two questions have been raised. There are some here in this House who have said that the judges' salaries should be at a higher level than what is fixed in the Schedule. There are others who have said that the standard of salary we have fixed has no relation to the capacity of the country to pay. In my judgement, the slogan that anything that we could fix in this country should have relation to the income of the people is a good piece of political slogan, but I am not prepared to say that it is practical politics. Salaries in this country, as well as in every other country, most depend upon the law of supply and demand. Unfortunately or fortunately, there are any number of people who can be found suitable to function as Members of the Legislature, consequently we fix their salaries at a much lower level. Fortunately or unfortunately, the supply of persons who can function as judges is very limited. I do not propose to say that it is a rarity. But certainly it is a very difficult commodity to obtain and consequently we are required to pay the market price. I am sure that in my .judgment the salary fixed in this Schedule conforms to what might be called the market price. Therefore, I do not think that there can be any serious quarrel on the level of salary that we have fixed.

Then I come to the amendment moved by my friend, Mr. Himatsingka. I should like to say that he and I have the same case in mind and I have the greatest sympathy for the case he has in mind. But what he wants to do. is to ask me to accept a general proposition, that is to say, a proposition saying ..any judge appointed in any territory mentioned in Part I". I think it is not desirable to introduce in these clauses an amendment in general terms, for the simple reason that after the 31st October 1948, having regard to the provisions of our Constitution, there can be no distinction in the salary of judges on a provincial basis. All judges have been placed on the same basis irrespective of the High Court of the area within which that High Court is situated. Therefore, a general provision to remove any anomaly is not necessary because such an anomaly is not likely to recur. The anomaly exists . because in the Government of India Act certain provisions with regard to the salary of judges did make a distinction between province and province. What I would like to tell my Friend is this; that the Drafting Committee hopes that this particular case will be provided for in another manner. If that happened there would be no necessity of adopting this particular amendment and the individual affected thereby would also be benefited. But if the Drafting Committee finds that' that does not happen, then the Drafting Committee will reserve to itself the right of bringing in a specific amendment to remove the grievance of the specific individual we have in mind.

Before I close, I would like to ask your permission to introduce one or two phrases in the clause which have been inadvertently omitted. I refer to Part IV, paragraph I I sub-paragraph (2). 1 would like to introduce after the word "shall" in the seventh line the following words :

"In addition to the salaries specified in sub-paragraph (1) of this paragraph."

I have also another amendment in sub-paragraph 3 of paragraph II. I would omit the first "such" and after the word "judge" I would add:

"of the High Court."

Shri H. V. Kamath : That is my amendment.

The Honourable Dr. B. R. Ambedkar : I accept it, and I now House will accept the Schedule as amended.

Shri R. K. Sidhva : What about my amendment regarding the salaries and allowances of' the president and the Governor ?

The Honourable Dr. B. R. Ambedkar : That will be decided by Parliament.

Mr: President : I shall now put the amendments to the Schedule according to the Parts. We are now on Part I of the Schedule.

The question is :

"That in amendment ND. 207 of List VI (Second Week), in paragraph I of the Part, I, before the figure '10,000' and before the figure '5,500' the words 'not mom then be inserted.'.

The amendment was negatived.

Mr President : The question is :

"That in amendment No. 207 of List VI (Second Week), in paragraph I of the Pan I, for the figure and word '10,000 rupees' the figure and word '1 rupee be' substituted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 207 of List VI (Second Week), in paragraph 1 of the proposed Part I, the following be added after the figures relating to salaries of President and Governor, in parenthesis :-

'The salaries of the President and the Governor shall be subject to income-tax.'

The amendment was negatived.

Mr. President : The question is

'That in amendment No. 207 of List VI (Second Week), for paragraph 2 and 3 of the Part 1, the following be substituted :-

> 'There shall be paid to the President and to the Governor the following allowance :
>
> 'The President shall draw a lump sum of Rs. 135,000 per annum which shall include the cost of renewal, repair and maintenance of furniture and motor vehicles, also including sumptuary, contract and all other allowances.'
>
> "The President shall also draw Rs. 10,000 per annum as touring expenses.
>
> 'The Governor shall draw lump sum of Rs. 15,000, per annum which shall include the cost of renewal repair and maintenance of furniture and motor vehicles, also including sumptuary, contract and all other allowances.
>
> 'The Governors shall also draw Rs. 7,000 per annum as touring expenses."

The amendment was negatived.

Mr. President : There is no amendment to Part 11. I come to Part III amendment No. 264.

The question is

"That with reference to amendment No. 210 of list VI (Second Week), for paragraph 8 of Part III, the following be substituted :-

> '8. There shall be paid to the Speaker and the Deputy Speaker of the provisional Parliament, such salaries and allowances as were payable to the Speaker and the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution.' "

The amendment was negatived.

Mr. President : I now come to Part IV-amendment 265.

The question is :

"That in amendment No. 211 of List VI (Second Week), in the proposed Pad IV, in Paragraph (1) of Paragraph 10,-

> (i) for the figure '5,000' the figure '6,000' be substituted; and
>
> (ii) for the figure '4,000' the figure '5,000' be substituted. "

The amendment was negatived.

Mr. President : Part (iii) of amendment 267 was not moved. So I shall put the first two parts to the House.

The question is :

"That in amendment No. 211 of List VI (Second Week), in the proposed Part IV, in Ph (3) of paragraph 10.-

> (i) for the words and figure 'thirty-first day of October, 1948' the words 'commencement of this Constitution' .-be substituted;
>
> (ii) for the words 'the commencement of this Constitution' the words 'such commencement' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 211 of List VI (Second Week), in the proposed Part IV, in Ph 11,-

> (i) for the figure '4,000 the figure '5,000' be substituted; and
>
> (ii) for the figure '3,500 the figure '4,000' be substituted',

The amendment was negatived.

Mr. President: The question is :

That in amendment No. 211 of List VI (Second Week), in the proposed Part IV, in sub-paragraph (2) of paragraph 11,--

> (i) for the words and figure 'thirty-first day of October, 1948' the words 'comment of this Constitution' be substituted;
>
> (ii) for the words the commencement of this Constitution' the words 'such commencement' be substituted."

The amendment was negatived.

Mr. President : The third part to amendment 270 was the one accepted by Dr. Ambedkar. As it is, the third part reads :

"In sub paragraph (2) of paragraph 11 in proposed Part IV of the schedule, after the words specified in sub-paragraph 4 (1) of this paragraph, shall' add the words 'in addition to the salary specified in sub-paragraph (1) of this paragraph."

The Homourable Dr. B. R. Ambedkar : I would like to have my own words.

Mr. President : I think the wording is the same.

Pandit Hirday Nath Kunzru : Is Dr. Ambedkar entitled to move an amendment after the closure has been accepted ?

Mr. President : There is no difference between what Dr. Ambedkar has said and

Mr. Naziruddin Ahmad's wording.

Mr. President : The question is :

"That in amendment No. 211 of List VI (Second Week) in the proposed Part V. in sub-paragraph 2 of paragraph 11 in the seventh line after the word 'shall' the following be added :

"in addition to the salaries specified in sub-paragraph I of this paragraph.'

The amendment was adopted.

Mr. President : The question is :

"That in amendment No. 211 of List VI (Second Week), in the proposed Part IV, in item (ii) of sub-paragraph (b) of paragraph 12, the words 'excluding any time during which the judge is absent on leave' be deleted.'

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 10 of List I (Second Week), in the proposed Part IV, in Paragraph 10,-

(i) in sub-paragraph (1) , for the figures '5,000' and '4,000', the figures '3,000' and 2,000' be substituted respectively; and

(ii) in sub-paragraph (2) for the word 'without' the word 'on' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 10 of the List I (Second Week), in the proposed Part IV. subparagraph (3) of paragraph 10 be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 10 of List I (Second Week), in the proposed Part IV. subparagraph (2) of paragraph 11, be deleted."

The amendment was negatived.

The President : The question is :

"That in amendment No. 10 of List I (Second Week), in the proposed Part IV. in subparagraph (3) of paragraph I 1, for the words 'Every such judge' the words 'Every judge of a High Court' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That for Part I of the Second Schedule, the following be substituted:-

PART- I

PROVISIONS AS TO THE PRESIDENT AND THE GOVERNORS OF STATES FOR THE TIME BEING SPECIFIED IN PART I OF THE FIRST SCHEDULE

1.There shall be paid to the President and to the Governors of the States for the time being specified in Part I of the First Schedule the following emoluments *per mensem,* that is to my :-

The resident............. 10.000 rupees.

The Governor of a State.... 5,500 rupess.

2. There shall also be paid to the President and to the Governors such allowances as were payable respectively to the Governor-General of the Dominion of India and to the Governors of the corresponding Provinces immediately before the commencement of this constitution.

3.The President and the Governors throughout their respective terms of office shall be entitled to the same privileges to which the Governor-General and the Governors of the corresponding Provinces were respectively entitled immediately before the commencement of this Constitution.

4.While the Vice-President or any other person is discharging the functions of. or is acting as, President, or any person is discharging the functions of the Governor, he shall be entitled to the same emoluments, allowances and privileges as the President or the Governor whose functions he discharges or for whom he acts, as the case may be.' "

The amendment was adopted.

Mr. President : The question is :

"That in the heading in Part 11, after the word and figure 'Part I' the words and or Part III' be inserted."

The amendment was adopted.

Mr. President : The question is :

"That for paragraph 7, the following paragraph be substituted:--

> '7. There shall be paid to the ministers for any State for the time being specified in Part I or Part III of the First Schedule such salaries and allowances as were payable to such ministers for the corresponding Province or the corresponding Indian State, as the case may be, immediately before the commencement of this Constitution.' "

The amendment was adopted.

Mr. President : The question is :

"That in paragraph 8, for the words 'respectively to the Deputy President of the Legislative Assmelby and to the Deputy President of the Council of State immediately before the fifteenth day of August, 1947' the words 'to the Deputy Speaker of the Constituent Assembly of the Dominion of India immediately before such commencement be,

substituted."

The amendment was adopted.

Mr. President : The question is :

"That for Part IV of the Second Schedule, the following to substituted:-

PART IV

PROVISIONS AS TO THE JUDGES OF THE SUPREME COURT AND OF THE HIGH COURTS OF STATES IN PART I OF THE FIRST SCHEDULE

(1)There shall be paid to the judges of the Supreme Court, in respect of time spent on actual service, salary at the following rates *per mensem,* that is to say :-

The Chief Justice......................5,000 rupees.

Any other judge.........................4,000 rupees.

Provided that if a judge of the Supreme Court at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State or any of its predecessor Governments, his salary in respect of service in the Supreme Court shall be reduced by the amount of that pension.

(2) Every judge of the Supreme Court shall be entitled with out payment of rent to the so of an official residence.

(3) Nothing in sub-paragraph (2) of this paragraph shall apply to a judge who was appointed as a judge of the Federal Court before the thirty-first day of October, 1948, and has become on the date of the commencement of this Constitution a judge of the Supreme Court under clause (1) of article 308 of this Constitution, and every such judge shall in addition to the salary specified in sub-paragraph (1) of this paragraph be entitled to receive as special pay an amount equivalent to the difference between the salary so specified and the salary which was payable to him as a judge of the Federal Court immediately before such commencement.

(4) Every judge of the Supreme Court shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President may from time to time prescribe.

(5) The rights in respect of leave of absence (including leave allowances) and pension of the judges of the Supreme Court shall be governed by the provisions which, immediately before the commencement of this Constitution, were applicable to the judges of the Federal Court.

11.(1) 'Mere shall be paid to the judges of the High Court of each State for the time being specified in Part I of the First Schedule, in respect of time spent on actual service, at the following rates per *mensem,* that is to say :-

The Chief Justice.........................4,000 rupees.

Any other judge...........................3,500 rupees.

(2) Every person who was appointed permanently as a judge of a High Court in any Province before the thirty-first day of October, 1948, and has on the date of the com mencement of this Constitution become a judge of the High Court in the corresponding state under clause (1) of article 310 of this Constitution, and was immediately before such commencement drawing a salary at a rate higher than that specified in sub-paragarph (1) of this paragraph, shall in addition to the salary specified in sub-paragraph I of this paragraph be entitled to receive as special pay an amount equivalent to the difference between the salary a specified and the salary which was payable

to him as a judge of the High Court immediately before such commencement

(3) Every judge of the High Court shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President may from time to time prescribe.

(4)The rights in respect of leave of absence (including leave allowances) and pension of the judges of any such High Court shall be governed by the provisions which, immediately before the commencement of this Constitution, were applicable to the judges of the High of the corresponding Province.

12.In this Part unless the context otherwise requires,-

(a) the expression "Chief Justice" includes an acting Chief Justice, and a "Judge" includes an ad hoc judge;

(b) "actual service" includes-

(i) time spent by a judge on duty as a judge or in the performance of such other functions as he may at the request of the President undertake to discharge;

(ii) vacations, excluding any time during which the judge is absent on leave,; and

(iii) joining time on transfer from a High Court to the Supreme Court or from one High Court to another."'

The amendment was adopted.

Mr. President : The question is :

"That the Second-Schedule, as amended, stand part of the Constitution."

The motion was adopted.

The Second Schedule, as amended, was added to the Constitution.

Shri H. V. Kamath : Mr. President, will you be able to throw some light on the length of this session ?

Mr. President : It all depends upon you. I do not mean you particularly; I mean the House. So I think we have to meet again in the afternoon. We Shall sit at four o'clock. The House stands adjourned, up to 4 o'clock.

An Honourable Member : We shall meet from four to six o'clock.

Mr. President: That we shall see.

The Assembly then adjourned for Lunch till Four of the Clock in the afternoon.

The Assembly re-assembled after Lunch at Four of the Clock, Mr President (The

Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION-*(Contd.)*

Part VI-A

Mr. President : We shall now take up Part VI-A.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That after Part VI, the following new Part be inserted:-

PART VI-A

THE STATES IN PART III OF THE FIRST SCHEDULE

Application of provisions of Part VI to State in Part III of the First Schedule.

211A. The provision of Part VI of this Constitution shall apply in relation to the States for the time beingspecified in Part III of the First Schedule as they apply in relation to the. States for the time being specified in Part I of that Schedule subject to the following modifications and omissions, namely

(1) For the word "Governor" wherever it occurs in the said Part VI, except when it occurs for the second time in clause (b) of article 209, the word "Rajpramukh" shall be substituted.

(2) In article 128, for the word and figure "Part I" the word and figure "Part III,, be 'substituted.

(3) Articles 131, 132 and 134 shall be omitted.

(4) In article 135,-

(a) in clause (1), for the words, "be appointed" the word "becomes" shall be substituted;

(b) for clause (3). the following clause shall be substituted, namely

"(3) The Rajpramukh shall be entitled without payment of rent to the use of his residences, and there shall be paid to the Rajpramukh such allowances as the President may, by general or special order, determine.";

(c) in clause (4), the words emoluments and' shall be omitted.

(5) In article 136, after the words "senior-most judge of that court available" the words or in such other manner as may be prescribed in this behalf by the President' shall be inserted.

(6) In article 144, the Proviso to clause (1) shall be omitted.

(7) In article 148, for clause (1) the following clause shall be substituted, namely:-

"(I) For every State there shall be a Legislature which shall consist of the Rajpramukh and-

(a) in the State of Mysore, two Houses;

(b) in other States, one House."

(8) In article 163, for the words "as are specified in the Second Schedule" the as the Rajpramukh may determine" shall be substituted.

(9) In article 170 for the words "as were immediately before the date of commencement of this Constitution applicable in the case of members of the Provincial Legislative Assembly for that State" the words "as the Rajpramukh may determine" shall be substituted.

(10) In clause (3) of article 177-

(a) for sub-clause (a), the following sub- clause shall be substituted, namely "

> "(a) the allowances of the Rajpramukh and other expenditure relating to his office as determined by the President by general or special order;

(b) after sub-clause (c), the following sub- clause shall be inserted, namely :-

> "(ee) in the case of the State of Travancore-Cochin, a sum of fifty-one lakhs of rupees required to be paid annually to the Devaswom fund under the covenant entered into before the commencement of this Constitution by the Rulers of the Indian States of Travancere and Cochin for the formation of the United States of Travancore and Cochin;"

(11) In article 183, for clause (2), the following clause shall be substituted, namely:--

> "(2) Until rules are made under clause (1) of this article, the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature for the State or, where no House of the Legislature for the State existed, the rules of procedure and standing orders in force immediately before such commencement with respect to the Legislative Assembly of such Province, as may be specified in this behalf by the Rajpramukh of the State, shall have effect in relation to the Legislature of the State subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be."

(12) In clause (2) of article 191, for the word "Province" the words "Indian State' shall be substituted.

(13) For article 197, the following article shall be substituted, namely

`salaries, etc., of Judges.

197. The judges of each High Court shall be entitled to such salaries and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by the President after consultation with the Rajpramukh:

Provided that neither the salary of a judge nor his rights in respect of leave, of absence Or pension shall be varied to his disadvantage after his appointment.'"

I think I will move the other amendments afterwards.

As will be seen, the underlying idea of this Part is that Part VI of this Constitution which deals with the Constitution of the States will now automatically apply under the provisions of article 21]-A to States in Part Ill. But it is realized that in applying Part VI to the Indian States which will be in Part II] there are special circumstances for which it is necessary to make some provision and the purpose of this particular amendment 217 is to indicate those particular articles in which these amendments are necessary to be made in order to deal with the special circumstances of the States in Part III. Other. wise the States in Part III so far as their internal constitution is concerned will be on a par with the States in Part 1.

Mr. President : Shall we have the amendments ?

Shri K. M. Munshi (Bombay : General) : May I read the Statement ....

Mr. President : After the amendments are moved. Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Mr. President, I will move Nos. 237 and 238, but a consequential amendment in the body of the Constitution would be necessary and I have suggested that in amendment No. 254.1 beg to move :

"That in amendment No. 217 of List VII (Second Week), in the proposed new article 211-A. for the word 'modifications' the words 'adaptations, modifications' be substituted."

I also move:

"That in amendment No. 217 of List VII (Second Week),-

(i) in item (3) of the proposed article 211 A, for the words 'shall be omitted' the words `shall not apply to this part' be substituted;

(ii) in item (4) of the proposed article 21]A, in paragraph (a), after the words in clause(1) the words 'for the time being specified in the First Schedule' be omitted and be inserted"

I also move 254 as consequential amendment to the acceptance of Part II of amendment 238. I move :

"That in clause (1) of article 135, the words 'for the time being specified in the First Schedule be deleted."

Sir, with regard to the scheme of article 21 I-A, I submit that the Drafting Committee has resorted to a kind of short-cut. They have merely adapted the articles applying to the Provinces so as to suit them to the purposes of the Indian States. Instead of this process they should have re- written the articles absolutely anew. There are many provisions which are similar to the Provinces and the Centre. If the process of adaptation was carried on like this, many provincial articles might have been adapted by a single section like this. In this process, there is a danger of overlooking a large number of anomalies and it is difficult to say what anomaly remains even after the adaptation. I submit that if possible these articles as adapted should be re-written as different independent Part altogether. That is a suggestion which I hope the Drafting Committee will consider.

My first amendment relates to the body of article 211 A. It says that Part III of the First Schedule, viz., the provisions of Part VI shall be accepted subject to the following "modifications and omissions". I wanted to make it read adaptations, modifications and omissions'. The word 'adaptation' seems to me to be very appropriate. What we are doing is to adapt provisions applying to the Provinces to make them suitable for the Indian States. So these are really not mere modifications and omissions but really and essentially they am adaptations. That is why the word "adaptation" is particularly suitable in the context and should be accepted.

Then, Sir, as to the next amendment, it is also of a drafting nature. I shall merely indicate it and leave it to the Drafting Committee to consider the mater'. It is in item 3. It is said that "articles 131, 132 and 134 shall be omitted". Instead of that it would be better to say that these articles "shall ,not apply to this Part". That is to say, articles 131, 132 and 134 shall not apply to Part VI-A which is under consideration. This is of a drafting nature and I should leave it to the Drafting Committee to consider.

The next amendment, to my mind, is a matter of some importance. It relates to the adaptations of article 131, clause (1). It, I mean the original article, says that the Governor shall not be a member of either House of Parliament or of a House of the Legislature of any State for the time being specified in the First Schedule. We want to adapt it to apply to the Rajpramukhs. As so adapted, it would read that the Rajpramukh shall not be a member of either House of Parliament or a House of the Legislature of the State for the time being specified in the First Schedule. I submit that as the time when this original article was drafted, the picture of the Indian States was rather vague, and therefore, we concentrated ourselves on phraseology applicable to the Provinces, namely, "the States for the time being in the First Schedule". I submit that the Rajpramukh should not only be not a member of either House of Parliament or of the States for the time being specified in the First Schedule, but also not a member of the legislature of any State for the time being specified in the Third Schedule. What I mean to say is that the working should be such that............

The Honourable Shri K. Santhanam (Madras : General) : The honourable Member is confusing the Part I of the First Schedule with the First Schedule. The First Schedule includes all the States.

Mr. President : Specified in the First Schedule, and not Part I of the Schedule.

Mr. Naziruddin Ahmad : I am grateful to Mr. Santhanam for pointing it out. In that case, this amendment and amendment No. 254 would also be unnecessary.

Sir, these articles are coming in in absolutely huge numbers every morning and we have to consider them on the day they are received. With regard to the other amendments, they might be considered by the Drafting Committee.

(Amendment No. 239, List VIII, Second Week was not moved.)

Mr. President : Amendment No. 240-Mr. Sidhva.

Shri R. K. Sidhva : Sir, I move : "That in amendment No. 217 of List VII (Second

Week), in item (4) of the proposed article 211A, in paragraph (b), the words land such allowance shall be a charge on the revenues of the State' be added at the end of the proposed clause (3)."

And there is a similar amendment, No. 241.

Sir, I move :

"That in amendment No. 217 of List VII (Second Week), in item 10 of the proposed article 211A, in paragraph (a) the words land such expenditure shall be a charge on the revenues o the State' be added at the end of the proposed sub-clause (a)."

The Honourable Shri K. Santhanam : Para. (10) is a charging section. If you read it with article 177, it will be seen that these allowances will be a charge. That is what Mr. Sidhva wants.

Shri R. K. Sidhva : My point is that it should not be a charge on the Union. As the Privy Purse is chargeable to the Union, I want to know whether the allowances are to be charged to the Union or the State. If it is charged to the State, then my amendment is not necessary.

The Honourable Shri K. Santhanam : Article 177 refers only to the Rajpramukhs.

Shri K. M. Munshi : It is only chargeable on the States.

Mr. President : If you refer to paragraph (1) it is covered by that. It says-

"In clause (3) of article 177 for sub-clause (a),. the following sub-clause shall be substituted, namely -

> '(a) the allowances of the Rajpramukh and other expenditure relating to his office as determined by the President by general or special order : "

Shri R. K. Sidhva : It does not indicate that it will be chargeable to the State.

The Honourable Shri K. Santhanam : The whole article 177 deals with it.

Shri R. K. Sidhva : If it is now clear, I have no objection. If it is chargeable to the State, that is what I want.

Mr. President : Article 177 clause (3) covers it.

The Honourable Dr. B. R. Ambedkar : My amendment No. 10 covers it.

Shri R. K. Sidhva : I see it now. Then there is another amendment No. 246, relating to the new article 235A. Will that come up later on ?

Mr. President : Yes. We now come to amendment No. 242-Shri Brajeshwar Prasad.

Shri Brajeshawr Prasad: Sir, I beg to move:

"that in amendment No.217 of list VII (second week), in item (13) of the proposed article 211aA, the words 'after consulataion with the 'Rajpramukh' be deleted from article 197"

Sri, I am opposed to the statutory obligation on the part of the president to consult the Rajpramukh. I know in practice the president will always consult the Rajpramukh but if there is any statutory obligation it means that the sphere of the sphere of action of the proposition that advise tendered by the Rajpramukh therefore sir, I am in favour of the proposition that the authority of the president in this sphere should be unrestricted and unhampered sir there is another reason why I am against the Rajpramukh I want that all powers as for as possible, should be vested in the hands of the president, which means in the hands of the government of India, being fundamentally opposed to federalism and provincial autonomy and being an advocate of a unitary state, I feel that powers should be vested autonomy and being an advocate of a unitary state I feel that powers should be vested, as far as this topic is concerned, in the hands of the president and the president alone.

Mr. President : There are two more amendments, notice of one of which has been given by Kaka Bhagwant Roy.

Kaka Bhagwant Roy : (Patiala and East Punjab States Union) Mr. President, Sir, I move :

"That in amendment No. 217 of List VII '(Second Week), for paragraph (b) of item (4) of the proposed article 211A, the following be substituted :-

'(b) for clause (3), the following clause be substituted; namely-

(3) The Rajpramukh shall be entitled. without payment of rent to the use of his residences. and there shall be paid to the Rajpramukh such allowances as the President may, on consideration of the recommendation made by the Legislature of the State, by general or special order, determine.' "

Sir, the big allowances of the Rajpramukhs are to be a direct charge on the State revenues, and the State revenues 'are paid by the States people. So, the representatives of the people-I mean the State Legislatures should have the right to discuss the allowances which are to be paid to the Rajpramukhs. You remember, Sir, that when we were discussing Schedule VII, I put up a similar kind of amendment and I was assured by Dr. Ambedkar that, when we took up the States Chapter, we shall surely consider over it. I think Dr. Ambedkar would be kind enough to consider over this amendment and accept it.

Prof. Shibban Lal Saksena : Mr. President, Sir, I beg to move:

"That in amendment No. 217 of List VII (Second Week), in pargaraph (a) of item (10) of the proposed article 211 A, for the words 'the President by general or special order the words 'Parliament by law' be substituted."

Mr. President : The copy that I have, reads--

"That in amendment No. 278 of List X (Second Week), in clause (1) of the Proposed article 197, for the words

'President after consultation with the Rajpramukh' the Words ,parliament by law' be substituted."

Prof. Shibban Lal Saksena : The amendment that I am moving is 288 of List XII.

Mr. President : I have just received it. You can move it,

Shri T. T. Krishnamachari : But that has not been moved.

The Honourable Dr. B. R. Ambedkar : How can you move it'?

Prof. Shibban Lal Seksena : I am not moving the amendment which the President read out. I am moving No. 288 of List XII.

The Honourable Shri K. Santhanam : Before that there are amendments Nos. 276, 277 and 278 in List X.

Mr. President : We have not yet come to that. He may move that and then we shall take them up.

Prof. Shibban Lal Saksena : Here we are making provisions for allowances to be paid to the Rajpramukhs and we have said that these allowances shall be determined by the President by general or special order. Now, in the original article, the salary of the Governors is to be determined by Parliament, and I do not know why the allowances of the Rajpramukhs should not be determined by Parliament. In fact, the allowances should be fixed once for all and should not be varying. Therefore, I think that these allowances should be determined by Parliament and not by the President. They should not be liable to variation with every change of President. This is my amendment No. 288.

The Honourable Shri K. Santhanam : Mr. President, Sir, I move :

"That in amendment No. 217 of List VII (Second Week), in item (4) of the proposed article 211 A for paragraph (b) the following be submitted :-

> '(b) for clause (3) the following clause shall be substituted, namely -
>
> > (3) Unless he has his own residence in the Capital of his State, the Rajpramukh shall be entitled to the use of an official residence without payment of rent, and there shall be paid to the Rajpramukh such allowances as the President may, by general or special order, determine.'"

The point of this amendment is that in the clause as originally drafted, the provision is that the Rajpramukh shall be entitled without payment of rent to the use of his residences; if there are his residences, certainly we need not make a constitutional provision that he is entitled to use them. It is only when he has to use some residence which is not his by right, the question of payment of rent arises. That is why I want to make the provision that only when a Rajpramukh has not got his own residence in his Capital, he should be entitled to the use of an official residence without payment of rent, and my amendment has been tabled accordingly. Sir, I beg to move :

"That in amendment No. 217 of List VII (Second Week), in item (13) of the proposed article 211A for article

197, the following be substituted :-

"Salaries, etc. of Judges.

197. (1) There shall be paid to the judges of each High Court such salaries as may be determined by the President after consultation with the Rajpramukh.

(2) Every judge shall be entitled to such allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such allowances and rights as may be determined by the President in consultation with the Rajpramukh :

Provided that neither the allowance of a judges nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment. "

Sir, our attempt has been to bring the States as far into line with the provinces as possible. So far as salaries are concerned, it has been found necessary that the salaries of the High court Judges in the States should differ at least for the present from those of the High Courts in the provinces. Therefore the President has been given the right under article 193(7) . The Parliament has been given power to fix the other allowances, and rights in respect of leave of absence and pensions. There is no justification why Parliament or Parliamentary legislation should not apply to the judges in the States High Courts as well. Therefore so far as clause (2) and the proviso are concerned, I have adopted the same language as in article 197 with the difference that to start with the allowances may be fixed by the President. In clause (1) I have given the President the right to fix the salaries of judges so that the new article 197 will follow the old article 197 as closely as it is possible and necessary to do so-

Shri H. V. Kamath : On a point of clarification, may I ask my honourable Friend Mr. Santhanam whether, in view of the fact that Rajpramukhs have been specifically exempted from payment of rent for their official residence, the article relating to the Governors also will be suitably amended? That article does not exempt them specifically.

Mr. President : That question does not arise at this stage.

Shri H. V. Kamath : Governors and Rajpramukhs are on a par with each other.

Mr. President : That may be, but we are not dealing with Governors here.

The Honourable Shri K. Santhanam : I may add that the Rajpramukhs have generally their own residences in the capital and therefore no question of rent will arise.

Shri A. Thanu Pillai (Travancore & Cochin Union) : May I know from my honourable Friend, Mr. Santhanam, why he makes a distinction between salaries and allowances of High Court Judges?

The Honourable Shri K. Santhanam : Because article 197 has made the distinction. It has fixed salaries in the Schedule II and made it unalterable by Parliament. But clause (2) of 197 makes the allowances and other rights in respect of leave, pension, etc., subject to parliamentary legislation. Because under 197 we have made the distinction. I am only trying to preserve the same distinction with respect to the States.

Shri H.R. Guruv Reddy : (Mysore State) : Mr. President, Sir, I move :

"That in amendment No. 217 of List VII (Second Week), in item (1) of the proposed article 211A, for the word `Rajpraukh' the words `Maharaja, Nizam' or the Rajpramukh' be substituted."

Sir, it may be said that this matter would be explained elsewhere in the Constitution. But I feel that it is necessary..........

Shri T. T. Krishnamachari (Madras : General) : May I point out that it is the intention of the Drafting Committee that this definition should be included in the definition clause 303 to which we propose to make amendments and if the honourable Member would wait, he will probably get an opportunity of putting these words as he wants them as an amendment to our proposal.

Shri H.R. Guruv Reddy : In that case, I will have it postponed. I shall move 287, I move :

"That in amendment No. 217 of List VII (Second Week), in paragraph (b) of item (4) of the proposed article 211A, in the proposed clause (3), for the words `payment of rent' the words ` any obligation' be substituted."

The use of the word "rent" looks as though it is belittling the rulers of the States. Therefore, I suggest the word "obligation" be introduced. Nothing else.

Prof. Shibban Lal Saksena : Mr. President, Sir, I beg to move :

"That in amendment No. 278 of List X (Second Week), in clause (1) of the proposed article 197, for the words `President after consultation with the Rajpramukh' the words `Parliament by law' be substituted."

Amendment No. 278 was moved by my Friend, Mr. Santhanam. My object in moving this amendment is this. Already my honourable Friend from Travancore has raised the question, which Mr. Santhanam also answered. He said that he was trying to conform to article 207 in List 7 of amendments now under discussion. I think that is no reason. I feel that salaries must be fixed. They must not be variable and it must not be for the President to fix them from time to time after consultation with the Rajpramukh. Whatever the salary, it is only proper that it should be fixed by the Parliament. The Parliament should be the ultimate authority. I am prepared to concede that during the transition period you may keep this clause, but if you want it permanently in the Constitution, these salaries must be fixed by the Parliament by law.

Shri Raj Bahadur (United States of Matsya) : In view of the statement made by Shri K. Santhanam I do not move amendment No. 277.

Mr. President : These are all the amendments. The article as well as the amendments are open to discussion.

The Honourable Sardar Vallabhbhai J. Patel (Bombay : General) : Sir, I have prepared a speech which I thought I would not be able to deliver because of the strain that it would cause me and I have requested Mr. Munshi to read it on my behalf. It gives a general resume of the origin of the amendments which have been proposed by Dr. Ambedkar. There are a large number of them about which it is necessary to explain how they came to be introduced. It is also necessary to give a general idea of the background of all these things. Therefore, if you will permit, I shall ask Mr. Munshi to read it.

Mr. President : Yes, Mr. Munshi may read it.

The Honourable Sardar Vallabhbhai J. Patel : *Sir it has been may endeavour to keep the house fully informed of our policy and the developments in respect of the States. Apart from the statements I have made on the floor of the House from time to time, I laid before the house in July last year a White Paper on States in which was set out in detail not only the policy pursued by the Government of India towards the States but also the various agreements and Covenants entered into with the Rulers were reproduced. In March last I placed before the House another detailed report on the policy and the working of the Ministry of States. Now that the process of integration of the States has been completed I propose to place before the House next month another Sate Paper which will contain a comprehensive review of all the developments which have taken place in respect of the Indian States since this Government was called upon to face the problem of States.

The amendments which are now being proposed concerning the provisions of the Constitution applicable to the States, embody the results of the bloodless revolution which within a remarkably short period, has transformed the internal and external set up of the States. The fact that the new Constitution specifies only nine States in Part III of Schedule I is an index to the phenomenal progress made by the policy of integration pursued by the Government of India. By integrating 500 and odd States into sizeable units and by the complete elimination of centuries-old autocracies, the Indian democracy has won a great victory of which the Princes and the people of India alike should be proud. this is an achievement which should redound to the credit of any nation or and by the complete elimination of centuries-old autocracies, the Indian democracy has won a great victory of which the Princes and the people of India alike should be proud. This is an achievement which should redound to the credit of any nation or people at any phase of history.

As the House is aware, when the States entered the Constituent Assembly of India, it was thought that the Constitution of the States would not form part of the Constitution of India. It was also understood that unlike the Provinces the accession of the States to the Indian Union would not be automatic but would be by means of some process of ratification of the Constitution. In the context of those commitments and the conditions then obtaining certain provisions were incorporated in the Draft Constitution, which placed the States in certain important respects on a footing different from that of the Provinces.

As a result of the policy of integration and democratization of States pursued by the Government of India since December 1947 the process of what might important developments in this direction have been the extension have been the extension of the legislative authority of the the Dominion over the States and the federal financial integration of the States. The States had originally acceded in respect of the three subjects of Defence, Foreign Affairs and Communications only. With the formation of the Unions the legislative power of the Dominion Parliament was extended in respect of the Unions of States to all matters specified in the Federal and Concurrent Lists except those relating to taxation. The content of the accession of the State of Mysore was also likewise extended.

The gap in the financial field has now been filled by the arrangements which have been negotiated with the States on the basis of the recommendations made by the Indian States Finances Enquiry Committee. The fundamental basis of this scheme is that federal financial integration of the States is a necessary consequence of the basic conception underlying the new constitution of the Union of India - that of Provinces and States as equal partners. The scheme, therefore, is based upon complete equality between the Provinces and States in the following respects :-

1. The Central Government should perform the same functions and exercise the same powers in States as in Provinces ;

2. The Central should perform function through its own executive organizations in States as in Provinces ;

3. There should be uniformity and equality in the basis of contributions to Central resources from Provinces and States;

4. There should be equality of treatment as between Provinces and States in the matters of common services rendered by the Central Government, and as regards the sharing of divisible federal taxes, grants-in-aid, `subsidies', and all other forms of financial and technical assistance.

The fact that these far-reaching changes in our fiscal structure are being introduced with the full concurrence of the States is in itself a great tribute to the excellent work done by the Indian States Finances Enquiry Committee under the chairmanship of Sir V. T. Krishnamachari, who brought to bear on this important problem his vast experience in Indian States.

These important developments enabled us to review the position of the States under the new Constitution and to remove from it all vestiges of anomalies and disparities which found their way into the new Constitution as a legacy from the past.

When the Covenants establishing the various Unions of States were entered into, it was contemplated that the constitutions of the various Unions would be formed by their respective Constituent Assemblies within the framework of the covenants and the Constitution of India. These provisions were made in the covenants at a time when we were still working under the shadow of the theory, that the assumption, by the Constituent Assembly of India, of the constitution-making authority in respect of the States would constitute an infringement of the autonomy of the States. As however, the States came closer to the Centre, it was realised that the idea of separate Constitutions being framed for the different Constituent units of the Indian Union was a legacy from the Rulers' polity and that in a people's polity there was no scope for variegated constitutional patterns. We, therefore, discussed this matter with the Premiers of the various Unions and decided, with their concurrence, that the Constitution of the States should also form an integral part of the Constitution of

India. the readiness with which the legislatures of the three States in which such bodies are functioning at present, namely, Mysore, Travancore and Cochin Union and Saurashtra, have accepted this procedure, bears testimony of the wish of the people of the States to eschew the separatist trends of the past.

In view of these important developments it became necessary to recast a number of the provisions of the Constitution in so far as they related to the States. The amendments we are proposing have been examined by the Constitution-making bodies of Mysore, Saurashtra and Travancore and Cochin Union. Some of the modifications proposed by these bodies have been incorporated in the amendments tabled before the House. Others have been dropped as a result of the discussions I have had with the representatives of these Constituent Assemblies.

It is a matter of deep regret for me that it has not been possible for us to adopt a similar procedure for ascertaining the wishes of the people of the other States and Unions of States through their elected representatives. Unfortunately we have no properly constituted legislatures in the rest of the States; not will of India emerges in its final form. We have, therefore, no option but to make the Constitution operative in these States on the basis on the basis of its acceptance by the Ruler of the Rajpramukh, as the case may be, who will no doubt consult their Councils of Ministers. I am sure neither the honourable Members representing those States in this House nor the people of the States generally, would wish that the enforcement of the Constitution in these States generally, would wish that the enforcement of the Constitution in these States should be held over until legislatures of these States, when, constituted under the new Constitution, may propose amendments to the Constitution. I wish to assure the people of these States that any recommendations made by their first legislatures would receive our earnest consideration. In the meantime, I have no doubt, that the Constitution framed by this House, where all the States except one are duly represented, will be acceptable to them.

In view of the special problems with which the Government of Jammu and Kashmir is faced, we have made a special provision for the continuance of the constitutional relationship of the State with the Union on the existing basis. In the case of Hyderabad State the acceptance of the Constitution will be subject to ratification by the people of the State.

As the House will see, in several respects the Constitution as it now emerges, is different from the original draft. We have deleted such provisions, as articles 224 and 225 , which imposed limitations on the Union's legislative and executive authority in relation to States in the federal sphere. The entries in the legislative List, which differentiated between the States and Provinces have likewise been dropped. The legislative and executive authority of the Union in respect of the States will, therefore, be co-extensive with its similar authority in and over the provinces. Subject to certain adjustments during the transitional period, the fiscal relationship of the States with the Centre will also be the same as that between the Provinces and the Centre. The jurisdiction of the Supreme Court will now extend to the States to the same extent as in the case of the Provinces. The High Courts of the States are to be constituted and will function in the same manner as the Provincial High Courts. All the citizens of India, whether residing in States or Provinces, will enjoy the same fundamental rights and the same legal remedies to enforce them. In the matter of their constitutional relationship with the Centre and in their internal set-up the States will be on a par with the Provinces.

I am sure the House will note with gratification the important fact that unlike the scheme of 1935, `our new Constitution is not an alliance, between democracies and dynasties, but a really union of the union of the Indian people built on the basic concept of the sovereignty of the people. It removes all barriers between the people of the States, and the people of Provinces and achieves for the first time the objective of a strong democratic Indian built on the true foundation of a co-operative enterprise on the part of the people of the Provinces and States alike.

As the House is acquainted with trends of developments affecting the States it is not necessary for me to explain to the House the various amendments which have been tabled. There are two or three matters, however, about which I should like to make a few observations.

One of these is the proposed article 306-B. As the House is aware, the States, as we inherited them, were in varying stages of development. In most cases the advance had to be made from the starting point of pure autocracy. Having regard to the magnitude of the task, which confronted the Governments of the Unions in the transitional period, and to the fact that neither the Services inherited by them nor the political organizations, as they existed there, were in a position to assume, unaided, full responsibilities of the administration, we made a provision in some of the Covenants that till the new Constitution came into operation in these Unions, the Rajpramukh and the Council of Ministers shall, in the exercise of their functions, be under the general control of the Government of India and comply with the instructions issued by that Government from time to time. The stress of the transitional phase is likely to continue for some years. We are ourselves most anxious that the people of these States should shoulder their full responsibilities; however, we cannot ignore the fact that while the administrative organization and political institutions are to be found in most of the States in a relatively less developed state, the problems relating tot he integration of the States and the change-over from an autocratic to a democratic order are such, as to test the mettle of long-established administrations and experienced leaders of the people. We have therefore, found it necessary that in the interest of the growth of democratic efficiency, the Government of India should exercise general supervision over the Governments of the States till such time as it may be necessary.

It is natural that a provision of this nature which treats States in Part III differently from Part I States should cause some misgivings. I wish to assure the honourable Members representing these States, and through them the people of these States that the provision involves no censure of any Government. It merely provides for contingencies which, in view of the present conditions, are more likely to arise in Part III States that in the States of other categories. We do not wish to interfere with the day-to-day administration of any of the State. We are ourselves most anxious that the people of the States should learn by experience. This article is essentially in the nature of a safety-value to obviate recourse to drastic remedies such as the provisions for the breakdown of the constitutional machinery. It is quite obvious that in this matter the States, e.g., Mysore and Travancore and Cochin Union where democratic institutions have been functioning for a long time and where Governments responsible to legislatures are in office, have to be treated differently from the States not conforming to these standards. In all these cases our control will be exercised in varying degrees according to the requirements of each case. The proviso to the article gives us the necessary discretion to deal with each case on its merits.

I hope this statement which embodies our considered policy will allay any apprehension which the Governments of any of these States may have concerning this article.

Another matter about which I would like to remove misgivings is the proposed amendment to article 3. This amendment places the States in Part III on the same footing as the States in Part I in respect of territorial readjustments. The Constituent Assembly of Mysore recommended to us that the article as already adopted by this House, which provides for prior consent of the House, should remain unaltered. We have not found it possible to agree to the suggestion for the simple reason that in such matters there should be no differentiation between Part I and Part III States. I, however take this opportunity of assuring the representatives of Mysore State that whether the article provides for consultation or consent of the legislature of the affected State, the wishes of the people cannot be ignored either by the Central Government or legislature. After all, we are a democracy; the main sanction behind us is the will of the people and we cannot act in disregard of public opinion.

I now come to the proposed article 267-A in respect of which some explanation is necessary. The Government of India have guaranteed to the Rulers of merged and integrated States payment of privy purses as fixed under the terms of the various Covenants and Agreements of Merger. Article 267-A give constitutional recognition to these guarantees and provides for this expenditure being charged on the Central Revenues subject to such recoveries as may be made from time to time from the Provinces and States in respect of these payments.

I shall first deal with the financial aspect of these arrangements. In the past, in most of the States there was no distinction between the expenditure on the administration and the Ruler's privy purse. Even where the Ruler's privy purse had been fixed no effective steps was not, directly or indirectly, charged on the revenues of the State. Large amounts, therefore, were spent on the Rulers and on the members of the ruling families. This expenditure has been estimated to exceed twenty crores of rupees per year.

All the agreements of merger and covenants now provide for the fixation of the Ruler's privy purse which is intended to cover all the expenses of the Rulers and their families including the expenses of their residences, marriages and other ceremonies, etc. The privy purse guaranteed under these agreements in less than the percentage for the Deccan States under the award given by Dr. Rajendra Prasad, Shri Shankerrao Deo and Dr. Pattabhi Sitaramayya. It is calculated on the basis of 15 per cent, on the first lakh of average annual revenue of the State concerned ten per cent, on the next four lakhs and seven and a half per cent above five lakhs, subject to a maximum of ten lakhs. The maximum figure of ten lakhs has been exceeded only in the case of some of the major States, which had been recognised as viable and the amounts fixed in such cases are payable during their life-time only. The total annual privy purse commitments so far made amount to about Rs. four and a half crores. When the amounts guaranteed to certain Rulers during their life-time are subsequently refixed the total annual expenditure in respect of privy purses will amount to less than Rs. four crores.

Under the terms of the Covenants and the agreements entered into by the Rulers privy purses are payable to the Rulers, out of the revenues of the States concerned and payments have so far been made accordingly. During the course of the discussions with the Indian States Finances Enquiry Committee, it was urged by most of the States that the liability for paying purses of Rulers should be taken over by the Centre on the ground that-

a. privy purses have been fixed by the Centre;

b. privy purses are political in nature; and

c. similar payments are not made by the Provinces.

Apart from these considerations, the position has definitely changed since the execution of the Covenants. In the first place, so far as the merged States are concerned, with their total extinction under the new Constitution of India, as separate entities, the basis of liability for privy purse payments guaranteed to the Rulers of the States will undergo a change, in that the States, from the revenues of which privy purses are payable, would cease to exist. Secondly, the term "revenues of the State" has now to be viewed in the context of the federal financial integration of States. This integration involves a two-fold procession, of `functional' partition of the present composite State Governments, and the other of `merger' of the partitioned `federal' portions of the State Governments with the present Central Government. It follows, therefore, that when the federal financial integration becomes effective, the liability in respect of privy purse payments should strictly speaking be shared on an equitable basis by the functional successors to the Governments of merged and integrated States, that is, the Central Government, on the one hand, and the Governments of Provinces and States on the other. Having regard to all these factors, we have decided that the best course would be that these payments should constitute a charge on the Central revenues, but that, at the same time, provision should be made for the recovery of such contributions from the Governments of the States, during such transitional period and in such amounts as may be considered appropriate. These recoveries are to be made in accordance with the scheme for financial integration of the States.

I have already stated that the privy purse settlements made by us will reduce the burden of the expenditure on the Rulers to at least one-fourth of the previous figure. besides, the States have benefited very considerably form the process of integration in the form of cash balances inherited by them from the Rulers. Thus, for instance, the Rajpramukh of Madhya Bharat alone has made over to the Union large sums of money yielding interest sufficient to cover a major portion of the total privy purses of the Rulers, who have joined this Union. So far as the assumption of the part of the burden by the Centre is concerned, we must remember that this arrangement flows as a consequence of the financial integration of the States, which will have an effect of lasting character on the economy of this country. The fiscal unification of India will patch up the disruptive rents in the economy of India which rendered effective implementation of economic policies in the Provinces impossible. Thus, for instance, in the matter of income-tax evasion alone, which has been a serious matter in recent years the gains from federal financial integration will prove very substantial. From the financial point of view, therefore, the arrangements we have made are going to benefit very materially the economy of this country.

I shall now come to the political and moral aspect of these settlements. In order to view the payments guaranteed by us in their correct perspective, we have to remember that they are linked with the momentous developments affecting the most vital interests of this country. These guarantees form part of the historic settlements which enshrine in them the consummation of the great ideal of geographical, political and economic unification of India, an ideal which for centuries remained a distant dream and which appeared as remote and as difficult of attainment as ever even after the advent of Indian independence.

Human memory is proverbially short. Meeting in October, 1949, we are apt to forget the magnitude of the problem which confronted us in August, 1947. As the honourable Members are aware, the so-called lapse of paramountcy was a part of the Plan announced on June 3, 1947, which was accepted by the Congress. We agreed to this arrangement in the same manner as we agreed to the partition of India. We accepted it because we had not option to act otherwise. While there was recognition in the various announcements of the British Government of the fundamental fact that each State should link up its future with that Dominion with which it was geographically contiguous, the Indian Independence Act released the States from all their obligations to the British Crown. In their various authoritative pronouncements, the British spokesmen recognised that with the lapse of paramountcy, technically and legally the States would become independent. They even conceded that theoretically the States were free to link their future with whichever Dominion they liked although, in saying so, they referred to certain geographical compulsions, which could not be evaded. The situation was indeed fraught with immeasurable potentialities of disruption, for some of the Rulers did wish to exercise their technical right to declare independence and others to join the neighboring Dominion. If the Rulers had exercised their right in such an unpatriotic manner, they would have found considerable support from influential elements hostile to the interests of this country.

It was against this unpropitious background that the Government of India invited the Rulers of the Sates to acceded on three subjects of Defence, External Affairs and Communications. At the time the proposal was put forward to the Rulers, an assurance was given to them that they would retain the *status quo* except for accession on these subjects. It had been made clear to them that this accession did not also imply any financial liability on the part of the States and that there was no intention either to encroach on the internal autonomy or the sovereignty of the States or to fetter their discretion in respect of their acceptance of the new constitution of India. These commitments had to be borne in mind when the States Ministry approached the Rulers for the integration of their States. There was nothing to compel or induce the Rulers to merge the identity of their States. Any use of force would have not only been against our professed principles but would have also caused serious repercussions. If the Rulers had elected to stay our, they would have continued to draw the heavy civil lists which they were drawing before and in large number of cases they could have continued to enjoy unrestricted use of the State revenues. The minimum which we could offer to them as *quid pro quo* for parting with their ruling powers was to guaranteed to them privy purses and certain privileges on a reasonable and defined basis. the privy purse settlements are therefore in the nature of consideration for the surrender by the Rulers of all their ruling powers and also for the dissolution of the States as separate units. We would do well to remember that the British Government spent enormous amounts in respect of the Mahratta settlements alone. We are ourselves honouring the commitments of the British Government in respect of the pensions o those Rulers who helped them in consolidating their Empire. Need we cavil then at the small-purposely use the word-small-price we have paid for the bloodless revolution which has affected the destinies of millions of our people.

The capacity for mischief and trouble on the part of the Rulers if the settlement with them would not have been reached on a negotiated basis was for greater than could be imagined at this stage. Let us do justice to them; let us place ourselves in their position and then assess the value of their sacrifice. The Rulers have now discharged their part of the obligations by transferring all ruling powers and by agreeing to the integration of their States. The main part of our obligation under these agreements, is to ensure that the guarantees given by us in respect of privy purse are fully implemented. Our failure to do so would be a breach of faith and seriously prejudice the stabilisation of the new order.

In commending the various provisions concerning the States to the House I would ask the honourable Members to view them as a coordinated over-all settlement of a gigantic problem. A particular provision isolated from its context may give a wholly erroneous impression. Some of us might find fault with what might appear as relies of the previous autocratic set up. I wish to assure honourable Members that autocracy in the States has gone, and has gone for good. Let us not get impatient with any particular term which might remind us of the past. The form in which the Rulers find recognition in the new Constitution of India, in no way impairs the democratic set up of the States. The Rulers have made an honourable exist; it now remains for the people to fill the breach and to derive full benefit from the new order.

I take the liberty to remind the House that at the Haripura Session the Congress in 1938 defined its objective in respect of the States as follows :-

> "The Congress stands for the same political, social and economic freedom in the States as in the rest of India and considers the States as integral parts of India and considers the States as integral parts of India which cannot be separated. The Purna Swaraj or complete Independence, which is the objective of the Congress is for the whole of India, inclusive of the States, for the integrity and unity of India must be maintained in freedom as it has been maintained in subjection. The only kind of federation that can be acceptable to the Congress is one in which the States participate as free units, enjoying the same measure of democratic freedom as the rest of India."

I am sure the House will agree with me when I say that the provisions which we are now placing before the House embody in them full achievement of that objective. *(Cheers)*

Mr. President : We shall now proceed with the further discussion of amendment No. 217 which Dr. Ambedkar has moved and the various amendments which have been moved to that amendment. If any Member wishes to say anything he can do so now.

Dr. B. Pattabhi Sitaramayya (Madras : General) : Mr. President, Sir, on a previous occasion when I first spoke in this House I had stated that it was a sudden impulse that overtook me which draw me to the mike. I beg permission to repeat the same.

As I heard page after page, paragraph after paragraph, sentence after sentence of the masterly document that has been just now read to us. I felt exalted and transported to a new world of vision, a dream-land which we had in mind when we effected a compromise at Haripura, in terms of the resolution which, fortunately, has been recalled to your minds by being read verbatim. That was the result of a struggle between two sections, the more conservative and the more radical, which was ultimately brought about by the masterly intervention of the present Home Minister and the Prime Minister and our revered Mahatmaji. It was in 1936 that I began to take direct and active interest in the affairs of the States because I felt that they could not be kept apart from the provinces of India for any length of time and as I travelled from State to State and cleared thousands of miles by car, I felt that there was no natural partition between the States and the Provinces. They were not separated either by forests or jungles or deserts or rivers or mountain ranges but they were all of a piece with one another and only a toll bar represented by a rope was the dividing line between the two areas and if you travel through Kathiawar which is now called Saurashtra with its 417 States, you cannot pass any two miles without changing over from State to province and province to State. that was an impossible state of things. How it had come into being was unimaginable and there was no point in postponing the consideration of the amalgamation of the provinces and the States. That was how the Haripura Resolution was brought into existence and today we have the unique satisfaction that under the strategy and statesmanship of our Home Minister who is also the Minister for the States, it has been possible for him to bring about this unity in financial matters, in strategic matters, in matters of the army and above all, in matters of the Constitution.

All congratulations are due to the representatives of the States who are assembled here for the ready manner in which they have acceded to these suggestions. At first when we were engaged in the Negotiating Committee in February 1947, it looked to me as though it would be a miracle to bring the representatives of the various States into this House, but when these men who were not able to stand within a mile of the Palaces of the Princes were sitting side by side with them on equal terms, it was a pleasurable sight to witness, and from that day forward we have progressed from step to step and stage by stage until today we have about 92 of them represented in this House sitting on terms of equality and friendly comradeship with us all.

One point I would like to mention and that is the privy purse. When a palace is built especially in a clayey and slushy area which makes the foundations weak, more bricks are thrown into the foundations than are visible in the walls or on the façade. It is the façade that draws attention it is façade that I worked artistically, but the bricks are all thrown into the foundations never to be seen but always bearing the burden of the mighty edifice that is visible above. that was the foundation that we had laid in trying to bring the sixteen Deccan States into one Union and this is the second occasion upon which the Home Minister, who is the Minister for the States, has made a direct reference to the names of three of us in respect of the propriety of the measure of the privy purse that has been granted to the princes. We had to do the spade-work and we had to offer a bait to our princes, we had to draw them into the scheme of Union. All honour to those sixteen princes who had agreed to come into the scheme of Union. All honour to those sixteen princes who had agreed to come into the Union for the first time at a time when neither unification nor unionisation was visualized or conceived. All honour to the Rajas of Phaltan, of Sangli, of Bhor and of Aundh who had taken the initiative in this matter and made it possible; on foundations which had to be well and truly laid and therefore more money had to be spent upon them, we had to give privy purses on a much larger scale, we had to give privy purses on a much larger scale. It was the fortunate privilege of the Minister for the States to build upon those foundations and negotiate a much smaller privy purse and all honour to our

Minister of States for having made it almost the minimum.

Perhaps there is a feeling in the country and some friends who have no responsibility placed on them in regard to the administration of the State are fond of speaking somewhat disparagingly of the amount of privy purse that has been granted to our princes. Let it be made clear that there is no mistake made in granting these, which have been on the most moderate scale, and I am sure that as time passes perhaps the Princes themselves will feel that this kind of `maintenance' life ill suits them. It is not the Princes that are so much the burden on the administration as the Jagirdars. Hyderabad has 1,200 Jagirdars, Gwalior has 600. All these have to be liquidated and when you take into consideration the compensation that is due to all these people, you will find that in the proportion in which you have put an end to autocracy, you are also increasing your privy purse liability and maintenance liability. this is inevitable. But as has been very well pointed out in this document it makes for a saving of 20 crores which are the illegal allowances taken and of several crores which are legally saveable from the budges as they had obtained up to now. The privy purse after all is a small matter. It is the monetary equivalent of the moral surrender of the Princes. Moral surrender is what we want and all honour to the Princes that have readily agreed to such an arrangement. You can easily increase the resources of the country. You can easily decrease your expenditure by agreement. Therefore I must offer my congratulation to the Ministry upon the magnificent achievement for which they are responsible.

Finally, I should like to say that while much has been done, there is a little yet to be achieved. Madhya bharat comes next to Mysore and Travancore for the excellent traditions that it is building up and Rajasthan has still to build up such traditions. Saurashtra is not likely to be isolated for long, and then you have the problems in PEPSU and the Himachal States and last of all, Vindhyaprant. I am sure that that statesmanship and farsightedness, that acuteness of vision and that perspicacity which have been able to achieve these results will be able to follow them up by equally brilliant results in regard to these four problematical questions that still confront the States Ministry and the country.

When this is done, the whole of India will have been placed upon one common foundations and the achievements which are visualised in the Haripura Resolution will have been completed. I, therefore, offer my thanks and congratulations not merely as an individual but also as the Officiating President, as the Substitute-President and now as the President of the Indian National Congress. I welcome the settlement and congratulate the Honourable the States Minister upon this magnificent achievement for which there is no parallel in history. I can easily recall the Confederation of the German States being brought together after the Battle of Jena I 1871, when France was defeated and all the Confederacy was converted into a Federation. Even that does not make any approach to the unionization of the 562 Islands of autocracy, citadels of personal rule, which had been established by the British for their own purposes. The British had gone but when they had gone, they had left a blot upon their own good name by publishing the document of 12th May 1946 relating to paramountcy which they had not allowed to be published till 23rd May 1946, i. e, till we had given our reply tot he 16th May document round which all negotiations had centred. By one stroke of the pen they had released these 562 lions from their cages. And they let them loss upon the country. Fortunately, the States Ministry had been able to get hold of them and make them real citizens of usefulness; and we are sure that with their co-operation in the fields of diplomacy and industries-the two fields for which they are eminently fitted-they will help to exalt the good name of India in the comity of nations.

Mr. President : I do not mind allowing some more speakers to speak, but I suggest we finish this Part today.

Shri Ram Sahai (Madhya Bharat) :* [Mr. President, I believe there could be no occasion for greater satisfaction of the people of the Indian States than the present one when the people of those regions find themselves on the same level as the people of the Provinces. No one can doubt that the people of the States have been able to secure this privilege only because of the great interest that Sardar Patel has taken in the problems of the States. No one can, of course, doubt that the Resolution passed by the Haripura Session of the Indian National Congress with respect to the States and the agitation carried on by the All-India States Peoples Conference as a result of that resolution for the integration and uniform agitation have all combined to facilitate the task of the Sardar in this respect and we have enabled him to solve the problem of the States at the earliest possible moment. All the Regional Councils affiliated to the All-India States Peoples' Conference had laboured hard in this direction and as a result of their efforts and the leadership and guidance of Sardar Patel, you find today that the States have been able to get the same status under the Constitution which is enjoyed by the Provinces.

Only last year a convention of the representatives of the States in the Constituent Assembly was held in Delhi. The statement issued by that Convention also demanded that provisions should be made in the Constitution at an early date so as to put the States and the Provinces on the same level. It was as a result of that that a Committee to draw up a model constitution was appointed under the States Ministry and it drew up such a model constitution. But the conditions changed so quickly that we find that we have advances much beyond the model constitution and we find that the people of the states are getting the same rights as the people of the provinces and the responsibilities and the opportunities of work for both are the same under the constitution moreover a part relating to the states is being added to the constitution as recommended by the committee which had drawn up the model Constitution I may here point out that the people of the states had come to entertain many doubts about the implications of the article 306-B which has been inserted in the constitution some of us even went to see the Sardar in this connection the clarification that sardar patel gave to us of that article gave us very great satisfaction and all the doubts that we had in our mind were completely removed and we were convinced that in view of the conditions existing in different states such an article was really needed.

Formerly the States used to be under the control of the Political Department. Now I believe they will have to work under the guidance of the States Ministry. But I believe there would be a big difference between the former and the present system. Formerly the Ruler of the State used to act with a view to maintain the foreign rule in India. But now the work that we shall have to do under the guidance of the States Ministry would be mainly with a view to establish as early as possible an efficient and effective administrative system. We are being provided with all the rights and facilities which are being provided to the Provinces. I, therefore, believe that it is not desirable for us to entertain any doubt or suspicion in this respect, more particularly in view of the statement made by Sardar Patel in the House in which he has made matters very clear and has given the necessary assurances.

There is a Legislative Assembly in Madhya Bharat. In Gwalior, an Assembly of this type had been in existence for the last thirty years and in Indore also such an Assembly had been in existence for about fifteen to twenty years.

The Assembly that has come into existence after the merger of several States in the Madhya Bharat Union has no doubt been in existence for a short while only. But even that Assembly has got representatives of the people of all Constituent States and that Assembly has been conducting its business according to the constitution drawn up by itself. But I believe that now we shall be working almost in the same way as the Provincial Governments work under this Constitution which we are adopting.]*

Shri A. Thanu Pillai : Mr. President, Sir, I wish to add my humble quota of praise and thanks to the States Ministry and the great personality that is now in charge of that Ministry. Sir, the changes that have come about in the relations between the Indian States and the Government of India and the rapidity of those changes are really marvelous. I shall refer just to one fact. A few months ago it was considered necessary to appoint a committee to draft a model constitution for the States. That means that even then the idea was that the Indian States would have to frame their own separate constitutions. And we have now reached the stage at which we are able to frame the constitution for the whole of India, including the States, here, and that is an achievement certainly of which any administrator, any Ministry, can be justly proud; and coming from one of the Indian States, and I may say, one of the foremost of the Indian States, I am particularly glad that I have an opportunity of witnessing this change and taking part in framing the Constitution, and making the Constitution for the States, part of the whole Constitution of India.

This brilliant record of achievement should serve as an inspiration to all of us, including the people of the States. As was mentioned here, the States are in different stages of different degrees of development. I am glad that the provisions relating to the Provinces are made applicable to the States. The States that are foremost in the whole country owe that fact to their adopting the methods prevailing in the Provinces. I mean the administrative and legislative methods, early enough. If Mysore, Travancore and Cochin are now in the forefront of Indian States, that is largely due t the fact that we adopted early enough the administrative methods and the legislative methods that were obtaining in the Provinces. The North Indian States legged behind because they pursued their old methods, and the result is that today we find they are distinctly backward. Therefore, when we adopt the same system, when we adopt the same kind of provisions for all the States and the provinces we can naturally hope for rapid progress so far al these States are concerned. Let us hope that will be the result.

Now, Sir, I wish to refer to one or two matters to which reference has already been made here. As for article 306-B, I fully appreciate why that article is sought to be introduced. But I would like to mention the fact that some States are really on a par with the Indian provinces and there is certainly no necessity or justification to treat those States differently from the provinces. From the speech of Sardar Patel that was read out to us, we find that the aim of the States Ministry is as far as possible to introduce the same administrative and legislative methods in the States as in the provinces and deal with the States both in respect of administrative and legislative mattes and in regard to interference by the Centre in the same way as the provinces. If that is so, I would ask, why not except at least such of those States as deserve to be placed on a part with the provinces even at this stage and exclude them in the Constitution itself from control by the Central Government? I fully understand the spirit in which the provision now proposed in the draft Constitution is sought to be introduced, and every Member of this House who comes from the Sates must view it in that spirit. But we should not go beyond the necessities of the situation. There are not only the legal and constitutional aspects of the matter; there is also the question of sentiment and self-respect involved in this. Why treat Mysore and the Union of Travancore and Cochin differently from Madras or Bombay? That is the question that naturally arise. These States are as much advanced as any Indian province. Why should you treat them differently? Where is the necessity? The Drafting Committee may be good enough to consider this my suggestion and if the proposed control is considered necessary in the case of some States, a Schedule of such States may be included in the Constitution excluding advanced States like Mysore, Travancore and Cochin. To leave it to the President to exclude such States by executive order cannot justified.

Then, there is another minor matter raised by Mr. Santhanam which I wish to refer to. He suggested that even though the pay of the High Court Judges in States or States Unions could be fixed by the President in consultation with the Rajpramukh, their allowances and pensions should be dealt with differently and that they must be fixed by Parliament. I can understand the case in regard to pensions because pension of High Court Judges, are to be a charge on the consolidated Fund of India. If this is so, pensions may be fixed by Parliament. But if there is any justification to have the salaries of High Court Judges in the States fixed by the President in consultation with the Rajpramukh, there is justification also for having their allowances fixed in the same way. so, I would suggest that in Mr. Santhanam's proposed amendment this modification may be made, that is to say, that that amendment should be restricted to pensions only, leaving allowances to be treated on the same basis as the salaries.

Then, Sir, in regard tot he privy purse, I have nothing to say. I think the proposed provisions should be acceptable to the Members that come from the States.

Finally, I would like to make an appeal to the Government and to this House in regard to the financial position of the Indian States. It is a matter of common knowledge that because of the federal financial integration, the Sates stand to lose a good part of their financial resources. Provision is sought to be made for enabling States to run their administrations as they have hitherto been doing for some considerable period, and I hope effect will be given to this provision in a very liberal spirit by the Government of India. In fact, I must make an earnest appeal that the consideration of this problem should be in a very liberal and sympathetic attitude. Otherwise, the administrations of the States cannot go on. So far as Travancore and Cochin are concerned out a total revenue of 10 to 12 crores, we stand to lose three or four crores; unless amends are made, our administration cannot function and would come to a standstill. I hope this matter will receive the earnest consideration of the Central Government.

Provision is sought to be made for agreements being entered into between the Central Government and the States Unions in regard to the financial adjustments necessitated by federal financial integration. Provisions have to be made to meet all cases in regard to which agreements will have to be entered into. In regard to duties that are abolished in the States, provision is proposed for reimbursement being made by the Centre. Provision should also be made for agreements being entered into to give financial aid to the Indian States on account of loss of income tax and other sources of revenue. I hope al these necessary provisions will be made in the

Constitution.

With these observations, I support the article that is placed before the House.

Mr. President : It has been represented that many Members from the States would like to participate in the discussion in connection with these articles relating to the States. I think this is a very reasonable desire on their part, and I am prepared to accommodate them. So, I would not put the whole thing to the vote today. We may continue the discussion tomorrow but there is one suggestion which I would like to make. We would have in that case the other amendments placed before the House so that the whole things may be taken ultimately at one time when all the amendments are there before the House.

Mr. President : If you would finish within a short time, I am prepared to allow you to speak now.

Shrimati Annie Mascarene (Travancore & Cochin Union) : My President, Sir, after listening to the speech of the Sardar, I feel that all my difficulties with regard to the States have disappeared. Section 306B had been rather a disquieting one since I had come across it, and I had thought that in the making of democratic India, the States are going to be under a Roman-like tutelage for ages to come. Travancore, Cochin and Mysore, in fact the South Indian States, had been the territories in which democracy had been given its first advent. I am not flattering myself, but I should like to inform this House - I think they already know - that adult franchise was first introduced in India by Travancore, and democratic institutions were introduced in Travancore and Cochin before any other province could think of them. When article 2306B was introduced, we though, are we going to be dropped down with an inferiority complex by the Sates Ministry? The wisdom of the Bismark of India had been too deep for us to understand. He has so moulded the destiny of democratic India that States which are already quite advanced are on a part with the provinces, and the States which are to advance hereafter re given a safety valve so that they may develop without fear.

There is one point which strikes me as being of great importance and that is the centralization of power. No nation, no empire had survived in the world without a strong centralization of power. The confederation of Germany as moulded by Bismark today finds a place so difficult on the map of Europe that European administrators find it a problem to dismember them. The examples of Venezelos in Greece and Sun Yat Sen in China are enough to convince us that this Bismark of India is an administrator whose wisdom and experience are unequalled. The States people are very much obliged to the States Ministry for the work they have done during the last few months. They are able to feel now that they are no more going to be tyrannized by autocracies which under the British Administration repressed them. 40 per cent of the territory of India and 23 per cent of the population of India are now on a par with the provinces and provincial subjects, so much so the moulding of the destiny of democratic India is made easy and in a short time we shall be one of the foremost democracies that the world had ever seen. We should congratulate ourselves that this is the first occasion in the history of the world when four hundred millions of people have launched on the ocean of self-government and that is going to be the best example ever known in the history of the world. I thank the States Ministry once again and request the people of the States under development to rise equal to the occasion and come soon on a par with the provinces so that by next year we shall have no States but only provinces in a democratic India.

The Assembly then adjourned till Ten of the Clock on Thursday, the 13th October 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME X

Thursday, the 13th October, 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION-*(Contd.)*

Part VI-A-*(Contd.)*

Mr. President : I think it would be better to take the ot' her articles which are sought to be amended in connection with the States and take all the amendments, and then have the general discussion. I do not think it is necessary for Dr. Ambedkar to read the whole thing.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, I move.

"That article 224 be omitted."

"That article 225 be omitted."

"That after article 235, the following new article be inserted, namely:--

Armed forces in States in Part III of the First Schedule.

'235 A. (1) Notwithstanding anything contained in this Constitution, a State for the time being specifiedin Part III of the First Schedule having any armed force immediately before the commencement of this Constitution may, until Parliament by law otherwise provides, continue to maintain the said force after such commencement subject to such general or special orders as the President may from time to time issue in this behalf.

(2) Any such armed force as is referred to in clause (1) of this article shall form part of the forces of the Union.' "

"That for article 236, the following article be substituted, namely:-

Power of the Union to undertake executive, legislative or judicial functions in relation to any territory not being part of the territory of India.

'236. The Government of India may by agreement with the Government of any territory not being part of the territory of India undertake any executive, legislative or judicial functions vested in the Government of such territory, but every such agreement shall be subject to and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force.' "

"That article 237 be omitted."

"That after article 274 D, the following new articles be inserted, namely:-

Power of certain States in Part III of the First Schedule to impose restrictions on trade and commerce by the levy of certain taxes and duties on goods imported into or exported from such States.

'274 DD. Notwithstanding anything contained in the foregoing provisions of this Part the President may enter into an agreement with a State for the time being specified in Part III of the the First Schedule with respect to the levy and collection of any tax or duty leviable by the State on Goods imported into the state from other States or on goods exported from the State to other States, and any agreement entered into under this article shall continue in force for such period not exceeding ten years from the commencement of this Constitution as may be specified in the agreement :

Provided that the President may at any time after the expiration of five years from such commencement terminate or modify any such agreement if after consideration of the report of the Finance Commission constituted under article 260 of this Constitution he thinks it necessary to do so.

Effect of article 274A and 274C on existing laws.

'274 DDD. Nothing in articles 274A and 274C of this Constitution shall affect the provisions of any existing law except in so far as the President may by order otherwise provide.' "

'That after article 302, the following new article be inserted, namely :-

Rights and privileges of Rulers of Indian States.

'302A. In the exercise of the power of Parliament or of the Legislature of a State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in article 267A* of this Constitution with respect to the personal rights, privileges and dignities of the Ruler of an Indian State.'"

'That after article 306, the following new articles be inserted :-

Temporary provisions with respect to State in Part III of the First Schedule.

"306B. Notwithstanding anything contained in this Constitution, during a period of ten years from the commencement thereof, or during such longer or shorter period as Parliament may by law provide in respect of any State, the Government of every State for the time being specified in Part III of the First Schedule shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given by the President, and any failure to comply with such directions shall be deemed to be a failure to carry out the Government of the State in accordance with the provisions of this Constitution:

'Provided that the President may by order direct that the provisions of this article shall not apply to any State specified in the order.' "

"That for clause (1) of article 258, the following clause be substituted :-

'(1) Notwithstanding anything contained in this Chapter, the Government of India may, subject to the provisions of clause (2) of this article, enter into an agreement with the Government of a State for the time being specified in Part III of the First Schedule with respect to-

(a) the levy and collection of any tax or duty leviable by the Government of India in such State and for the distribution of the proceeds thereof otherwise than in accordance with the provisions of this Chapter;

(b) the grant of any financial assistance by the Government of India to such State in consequence of the loss of any revenue which that State used to derive from any tax or duty leviable under this constitution by the Government of India or from any other sources;

(c) the contribution by such State in respect of any payment made by the Government of India under clause (1) of article 267A of this Constitution,

and when an agreement is so entered into, the provisions of this Chapter shall in relation to such State have effect subject to the terms of such agreement.' "

"That in Chapter I of Part IX, after article 267, the following new article shall be inserted, namely :-

Privy purse sums of Rulers.

'267A. (1) Where under any covenant or agreement entered into by the Ruler of any Indian State before the commencement of this Constitution, the payment of any sums, free of tax, has been guaranteed or assured by the Government of the Dominion of India to any Ruler of such State as Privy Purse--

(a) such sums shall be charged on, and paid out of, the Consolidated Fund of India; and

(b) the sums so paid to any Ruler shall be exempt from all taxes on income.

(2) Where the territories of any such Indian State as aforesaid are comprised within a State specified in Part I or Part III of the First Schedule there shall be charged on, and paid out of, the Consolidated Fund of that State such contribution, if any, in respect of the payments made by the Government of India under clause (1) of this article and for such period as may, subject to any agreement entered into in that behalf under chase (1) of article 258 of this Constitution, be determined by order of the President.' "

"That after article 270, the following new article be inserted :--

'270A. (1) As from the commencement of this Constitution--

Succession to property assets, liabilities and obligations of Indian States.

(a) All assets relating to any of the matters enumerated in the Union Liste vested immediately before such commencement, in any Indian State corresponding to any State for the time being specified in Part III of the First Schedule shall be vested in the Government of India, and

(b) all liabilities relating to any of the said matters of the Government of any Indian State corresponding to any State for the time being specified in Part III of the First Schedule shall be the liabilities of the Government of India.

subject to any agreement entered into in that behalf by the Government of India with the Government of that State.

(2) As from the commencement of this Constitution the Government of each State for the time being specified in Part III of the first Schedule shall be the successor of the Government of the corresponding Indian State as regards all property, assets, liabilities in obligations other than the assets and liabilities referred to in clause (1) of this article.' "

Shri Brajeshwar Prasad (Bihar: General) : Sir, I would like to suggest that these two amendments No. 218 and 219 relating to articles 224 and 225 should be disposed of first, or the amendments standing in the name of honourable Members to these articles will also have to be moved.

Mr. President : They have to be deleted. It does not take any time to dispose of them.

The question is:

"That article 224 be omitted."

The motion was adopted.

Article 224 was deleted from the Constitution.

Mr. President : The question is:

"That article 225 be omitted."

The motion was adopted.

Article 225 was deleted from the Constitution.

Mr. President : Then we shall take up amendments to 220.

Shri Brajeshwar Prasad : Sir, I move :

"That in amendment No. 220 of List VII (Second Week), in clause (1), of the proposed new article 235A, for the words 'until Parliament by law otherwise provides' the words 'until the President by order otherwise provides' be substituted."

I am opposed to these words, because I hold that these words are inappropriate. There must be a clear distinction between executive orders and legislative authority. This is a subject which is purely of an executive character. The question as to when the armed forces of the State should be fully integrated with the Indian Army is not a legislative matter. It is a matter which can be decided by the executive authority. There should be no confusion between the executive and the legislative functions. Here no vital principle is involved. We have already accepted that the State Army is also a part of the Indian army. Even in the transitional period they are recognised as part and parcel of the Indian Army. Therefore, I want that these words should be deleted and substituted by the words that I have suggested in my amendment.

Sir, there is another reason why I am in favour of the President exercising this function in preference to the Parliament. If we want that the pace of integration should be accelerated, then the power must be vested in the hands of the President and not of the Parliament. Parliamentary action means delay.

Sir, I would like to move another amendment standing in my name, I refer to amendment No. 251. I move :

"That in amendment No. 225 of List VII (Second Week), in the proposed new article 306B,--

(i) the words 'during a period of ten years from the commencement thereof, or during such longer or shorter period as Parliament may by law provide in respect of any State', be deleted; and

(ii) the words 'for the time being specified in Part III of the First Schedule' be deleted."

This power of general control and supervision for a period of ten years is not adequate to meet the needs of the hour. I am quite convinced in my own mind that all the problems that confront the Indian States will not be solved within this short time. Sir, the maladies that have confronted us for the last two centuries cannot be solved by any stratagem within such a short time. Federalism tends towards unitary state. Whether we make this provision or not, the power of central supervision, direction and control will automatically apply one way or the other. Therefore, I feel that this power should not be a temporary power. This power should be vested for an indefinite period.

There is one other point to which I would like to draw your attention. Yesterday in the speech of the Deputy Prime Minister (which was read out by Mr. Munshi) the words used, as far as I can remember, were that "these provisions shall continue for such period as may be necessary". Now, here, the words used are that they shall not continue for a period longer than ten years. I would be quite satisfied if these words are taken out. I feel that this is a very unrealistic provision. It has got no meaning. We cannot arbitrarily lay down a period within which all problems in the native States must be solved because in the Constitution we have made a provision that our power shall not continue beyond a period of ten years.

There is another part of the amendment to which I would like to draw the attention of the House. I do not understand why this step-motherly treatment is being meted out to the provinces. We also want to benefit by the mature experience of the Centre. Why make this invidious distinction? I am dissatisfied--I am not talking here of any province in particular; let there be no illusion in the minds of anyone that I am dissatisfied with the administration of this province or that. I am talking here in general terms--I am dissatisfied with the system of provincial autonomy.

Mr. President : I do not think we need discuss that question once again here. We are concerned here with the States. The other question we have discussed *ad nauseam.*

Shri Brajeshwar Prasad : I am referring to the amendment wherein I want that the words "for the time being specified in Part III of the First Schedule" should be deleted. It means that this provision should be applicable to all the provinces as a whole. Probably I have not been able to explain the implications of this amendment.

Mr. President : Then it is out of order. As a matter of fact I have noted my paper that it is out of order. It is out of order because we are not discussing the question of the provinces here, but we are discussing the question of the States. So far as the provinces are concerned, we have dealt with the question already and finished with it.

Shri Brajeshwar Prasad : Sir, I bow down to your ruling.

Shri R. K. Sidhva (C. P. & Berar : General) : Mr. President, Sir, I beg to move :

"That in amendment No. 220 of List VII (Second Week), in clause (1) of the proposed new article 235A, for the words 'may until Parliament by law otherwise provides' , continue to maintain the said force after such commencement subject to such general or special orders as the President may from time to time issue in this behalf' the word 'shall merge into the armed forces of the Union and shall form part of the forces of the Union, be substituted."

Sir, with your permission I shall move amendment No. 252 also which reads thus (I am deleting the first part of the amendment relating to ten years and am moving only the second part) :

"That in amendment No. 225 of List VII (Second Week), in the proposed now article 306 B, the following be inserted at the end of the article but before the proviso :-

> 'During the period of ten years as stated therein all States shall introduce immediately laws for full-fledged elected local bodies within one year from the commencement of this Constitution."

As far as the first amendment is concerned, I find that the armed forces which at present exist in the States are to be under the control of the Commander-in-Chief of India : that is to say, they will be under the control of the Forces of India. But I do not understand why a special distinction should be made in the case of armed forces being retained in the States. We have in the provinces no armed forces. All the provinces today have got their police forces and there are also armed police forces, but there are no military armed forces in any province. There were none in the previous regime and there are none even now. Of course under the old regime the Indian States maintained armed forces for reasons which we know. But now when they have merged with provinces or have formed into separate units why should they have separate armed forces within the States? I wish, therefore, that all the armed forces should be removed from the States and be merged with the armed forces of India. Then they will be under the control of the Indian Union. I see no reason why the States should be given the special privilege of keeping separate armed forces. It might create many conflicts. The armed forces in India will be under the supervision of the Commander-in-Chief. If these separate armed forces are allowed to be kept in the States without any specific reasons, for what purpose will they be maintained? After all the police force is there. If any necessity arises, the armed forces will be available from the Indian Union. I therefore hope that the amendment moved by me would be considered by the Drafting Committee, that the armed forces of the States should be merged with those of the Indian Union and they should be under the control of the Commander-in-Chief of India.

As regards the second amendment I entirely agree with what was stated yesterday in the statement of the Honourable Sardar Vallabhbhai Patel, which was read out by Mr. Munshi. The conditions in Indian States in regard to political matters are not parallel to what exist in the provinces. We all know that very well. I do not come from the States, but I have extensively toured in the Indian States and Congress workers have taken me many times to Indian States for propaganda work. From what little I know of several Indian States, their condition is most miserable. There is no local body existing there. When I went to Cutch I did not find a printing press there and when I was addressing a meeting and was referring to the ballot box and the advantage of votes the public did not know what was the ballot box and what was secret voting. From this you can understand how the people of the States have been kept in darkness by the rulers in these States. In Cutch no printing press even was allowed. That is the condition in many of the States as I had occasion to visit.

I do not say that all the States are in this condition. As was stated yesterday by the Honourable the Deputy Prime Minister there are progressive States like Travancore, Mysore and Cochin and others for which of course we have admiration. They have worked very well even during the British regime and they have been really progressive. We do not bring them into the picture here. But there are really most retrograde States-a large number of them-and I therefore feel that it is perfectly correct to control their administration from the Centre for ten years. And what is the control? It is a preventive measure. They will be allowed to function as usual, but if extraordinary circumstances arise in their administration the Centre will certainly have a say in the matter. It is perfectly correct. We must admit that some of the States are in such a miserable state-I will use the word-and a good number of States. There are no administrations there, let me tell you. Excuse me if I have to say these things, but there is no municipality, there is no local body there. In a State where the public do not know what is a local body, what is a municipality and what are the powers of a municipality, you can understand how they can function and administer the State politically successfully. Therefore, we had achieved most marvellously in bringing one-third of our population in the Indian States into the Indian Union. We ought to be proud today that 10 crores of the population of the Indian States have been made free, who were actually slaves. When we took charge from the British Government they told us that there would be 10 crores of people in States for whom the question of freedom need not arise. The British Government thought they might bring peace or they may create disturbances; but our Deputy Prime Minister has shown like a magic lantern that he shall so see I hat all these feudal states be brought on a par with other parts of the country. When I was a boy, I had seen a drama of Alladin and his wonderful lamp; but what we have seen today is real Alladin magic lamp and we are all proud of it. Not only is the Deputy Prime Minister proud; he is, of course indeed proud, but we ought to be proud too and it is very unfair that the people sometimes while maligning the Government forget the greatest achievement that we have achieved of releasing 10 crores of people who were actually under subjugation and slavery. It is matter of pride for any nation that within a period if one and a half years we have liberated these people who were slaves. The British people when they went away did not consider what will happen to them and really like magic a change has been brought about and today they are free.

With all this when that first stage has been finished the second stage is a very important part and that is we have to administer these States efficiently. Personally my view is that some of the States which are on the border should be merged with the adjoining provinces; by merging into the adjoining provinces they will certainly come into the progressive parts of the provinces. This has been done in some cases, but not in many cases Eventually that should be the best course, but there are certain States which have to remain independent, as for as for instance Rajasthan. Rajasthan, as you know, is a scattered Rajputana State and I do feel that the Centre must keep their hold. I am myself proud to see Rajasthan become the biggest Rajasthan. but I am very sorry to say that the administration there is not quite good and when I was appointed as a member to investigate the wishes of the people of Bharatpur and Dholpur a member to investigate the wishes of the people of Bharatpur and Dholpur of course, my personal view is different- they wanted to join the Rajasthan. and the State Ministry resolved that they should be merged with Rajasthan. I do not find fault with the State of Rajasthan, because there are no proper people available for the administration of the States and it is not their fault. They were not trained. You can very well understand Sir, we in the provinces, those who have been in the local bodies, in the municipalities, had a good training. They knew the municipalities are the first training for a citizen to take charge of the basic administration and therefore, Sir, I have made a suggestion in my amendment that while the control shall be there, the "control" in the sense that has been explained by the Honourable Sardar Patel yesterday will, be only when the necessity arises. During that period, I desire that the local body should be immediately formed, a full-fledged local body should be immediately formed, laws should be passed and they should be put into operation within one year from the commencement of the Act, so that people may know really what is an administration, what are the franchise, what are the powers, what are the rights and what are the privileges in a small sphere, in their own town, in their own villages. When they come to know that really a local body is a thing where also a small city or a small town has to be governed by themselves, they will create for themselves good administrators for administering their own State. At the same time we shall have very good ministers to take charge of the administration and bring these States into life with the provinces. I hope my friends from the States will not misunderstand me when I support the proposition for control for 10 years. After all it does not look nice that they should be under the existing conditions when we are all free and when we want absolute control, there should he some control from the Centre. I do not share the view that there should not be any control on any free local bodies. Today all local bodies, municipalities, corporations are all governed by certain Acts and I can tell you, Sir, that even in a corporation like those in Bombay, Calcutta, Madras, the Provincial Governments have a control. At any time if they feel that the administration of the corporation is going wrong, they have the power to intervene. The whole position, therefore, is four the purpose of this Act to intervene in case of necessity just as in the Calcutta Corporation. The Calcutta Corporation's business was very Wrong and therefore, there was a provision in the Act that the Government can intervene in the event of the administration not functioning properly and the Government of Bengal took charge of the Calcutta Corporation, one of the biggest corporations. As you may know, Mr. President, the administration of Calcutta Corporation has been taken under the control of the Government. There is nothing wrong in it. After all it is our Government now. There was the stigma in pre-independence days and I myself was fighting when such a control was under the British Government. I said then that our opportunity should be given when they do not function properly, an opportunity should be given them a second time to improve. I do hold that view that even before the suppression of any local body opportunity should be given by the Government to improve. When they continuously go wrong, then the control should be taken by the Centre. Similarly, I am sure, Sir, that when an occasion arises when anything is going wrong in the States the Centre should give a warning to that State and if the State does not improve and continues in that condition, then the Centre will certainly have the right to intervene and in the interests of the whole country-not only in the interest of the State alone,-the Centre will be justified in taking possession of that State. I therefore say that those States which are very backward in those states municipal laws should be passed immediately so that they may have a first- class training. If they have three or five years term of office, they can very well advance *(Interruption).*

Therefore I contend Sir, what I have stated in amendment No. 252 the Drafting Committee will kindly consider in view of the control that has to be taken by the Centre in the event of any inefficiency in the State that may exist. With these words, Sir, I commend both the amendments Nos. 246 and 252 for the acceptance of the House.

Prof. Shibban Lal Saksena (United Provinces : General) : Sir, I beg to move :

"That in amendment No. 220 of List VII (Second Week), in clause (2) of the proposed new article 235A, the words 'and the Union shall bear the expenses thereof' be added at the end."

This amendment No. 220 says :

> "Notwithstanding anything contained in this Constitution, a State for the time being specified in Part III of the First Schedule having any armed force immediately before the commencement of this Constitution may, until Parliament by law otherwise provides, continue to maintain the said force after such commencement subject to such general or special orders as the President may from time to time issue in this behalf.
>
> (2) Any such armed force as is referred to in clause (1) of this article shall form part of the forces of the Union."

The question arises, who shall bear the costs? In the first part it is said that until Parliament otherwise decides, the armed force shall be maintained by the State itself. In part 2 it is said that armed force shall form part of the forces of the Union. There is some discrepancy between the two. I personally feel, Sir, that what is intended is that very soon we shall have all the forces under the control of the Union and until Parliament passes a law to that effect, they continue to remain as they are. I think as they become part of the forces of the Union, the expenses should be borne by the Union and they should be under the control and discipline of the Union as is intended by clause (2). In fact, many of the States may not be able to provide for the maintenance of these forces. I, therefore, think that even though it May take some time for the Parliament to pass a law taking over all these forces, still *de facto* the forces must come to the Union and the expenses thereof must also be borne by the Union.

I have also given notice of amendments 303, 304 and 305. Amendment No. 303 refers to article 274 DD and says :

> "That in amendment No. 223 of List VII (Second Week), in the proposed new article 274 DD, after the words 'the President' where they occur for the first time, the words subject to the approval of the Parliament be inserted."

Article 274 DD says : "Notwithstanding anything contained in the foregoing provisions of this part the President may enter into an agreement with a State.......... etc." What I want is that this power which is being given to the President to enter into financial agreements with the States, especially when agreements must be subject to the approval of Parliament. Therefore, I want to introduce these words.

Then Sir, article 274 DDD says : "Nothing in articles 274A and 274 C of this Constitution shall affect the provisions of any existing law except in so far as the President may by order otherwise provide." To this, my amendment is :

> "That in amendment No. 223 of List VII (Second Week), in the proposed new article 274 DDD, for the words 'President may by order' the words 'Parliament may by law' be substituted."

What I want is that here also for the words "the President may by order provide", the words "Parliament may by law provide", be substituted. My only argument is that I do not want that this power should be given to the President which means the Cabinet, but it should be given to Parliament especially in matters of such importance.

Then, Sir, there is an amendment to article 306B which has been commented upon so much and about which the Honourable Sardar Patel has made a statement. After his exposition, I think much of the criticism goes. But, still I think that Mr. Thanu Pillai's suggestion was a better one. We should have divided the States into Schedules and some of the States should be excluded from the operation of this article. I hope

States like Mysore and Travancore will not be subject to this provision, and that the President will from the beginning pass an order to that effect. My amendment in article 306A is:

> "That in amendment No. 225 of List VII (Second Week) in the proviso to the proposed new article 306 B, for the words 'President may by order' the words 'Parliament may by law' be substituted."

The proviso reads that the President may by order direct that the provisions of this article shall not apply to any State specified in the order. That means that when a State has to be taken out of this guardianship the President may issue an order. I want that Parliament alone should be able to do it by law. It is quite possible that some of the States may think that they are fit to be excluded from the operation of this article and they should be able to approach the Parliament and Parliament should be able to do it by law. Otherwise, they may have to hang on the President, and to be in his good books to get out of his control. I think if Parliament has that power, they will not have to be subservient to the States Ministry of the Government of India. This amendment will give Parliament the paramount power and I think this is desirable.

While I have given notice of amendments to this Chapter, I do want to join in the chorus of praise which has been showered on our leader, the Honourable Sardar Vallabhbhai Patel on this historic occasion. I think this is the biggest task that has been accomplished by our Government in the past two years. This one single achievement of Sardar Patel will entitle him to an immortal place among the builders of modern India. The British had created five hundred and odd States and he tried to divide our country into so many Pakistans. By the genius of the Honourable Sardar Patel and by the work of the officials of the States Ministry, we have been able to accomplish this great achievement. I join the House in congratulating Sardar Patel on this great achievement. Friends here have compared him to Bismarck. I consider Sardar Patel's achievement to be greater than that of Bismarck. For Sardar Patel accomplished this revolution without shedding a drop of blood. I pray to God that he may be spared long, and be soon restored to his normal health and vigour, so that he may lead the Nation to greater victories in the future.

(Amendments Nos. 247, 297 and 298 were not moved.)

Mr. President : Amendment No. 222 : Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : I have already moved that.

Shri S. V. Krishnamoorthi Rao (Mysore State) : In view of the Statement made by the Honourable Sardar Patel yesterday and the assurance given by him so far the Mysore State is concerned, I am not moving this amendment. (No. 249). I would like to participate in the debate.

(Amendment No. 250 was not moved.)

Mr. President : Amendment No. 279 : Sarangadhar Das.

Shri Sarangadhar Das (Orissa State) : Mr. President Sir......

Mr. President : This amendment is only for deletion. It need not be moved. You can speak about it later.

Shri H. R. Guruv Reddy (Mysore State) : I do not wish to move amendment 289 in view of the assurance given by Sardar Patel.

Mr. President : Prof. Shibban Lal Saksena, you have given notice of some amendments this morning.

Prof. Shibban Lal Saksena : Mr. President, Sir, notice has been given of amendments to the new articles 258, 267-A, 270-A and 264-A.

Mr. President : 264-A has not been moved.

Prof. Shibban Lal Saksena : I beg to move:

"That in amendment No. 299 of List XIII (Second Week), at the end of the proposed clause (1) of article 258 the following words be added:-

'after that agreement has been approved by Parliament.' "

My second amendment is :

"That in amendment No. 299 of List XIII (Second Week), sub-clauses (a), (b) and (c) of the proposed clause (1) of article 259 be re-lettered as sub-clauses (b), (c) and (d) of that clause and the following be inserted as sub-clause (a) :-

> '(a) questions arising from or connected with the resting in the Union of assets and liabilities of such states related to any of the matters enumerated in the Union List.' "

This second amendment is really an improvement on amendment 300 of Mr. Krishnamachari. Regarding the first amendment, I feel that when important agreements about financial matters are made with the States, it must be the Parliament which must be the final authority. Therefore I want to add "after that agreement has been approved by Parliament."

My amendment to article 267A is:

"That in amendment No. 301 of List XIII (Second Week), sub-clause (b) of clause (1) of the proposed new article 267A be deleted."

When the agreement provides for an allowance free of income-tax, there is no need for this clause. My next amendment to article 267A is--

"That in amendment No. 301 of List XIII (Second Week), in clause (2) of the proposed new article 267A, for the words 'by order of the President' the words by Parliament by law' be substituted."

Here also it should be the Parliament that should finally sanction the expenditure. Therefore, I have suggested this change.

Then my amendment to new article 270A is:

"That in amendment No. 302 of List XIII (second Week), in clause (1) of the proposed new article 207A, the words 'and approved by Parliament' be added at the end.'

This relates to the properties. Clause (1) says :-

"As from the commencement of this Constitution all assists relating to any of the matters enumerated in the Union List vested immediately before such commencement in any Indian State corresponding to any State for the time being specified in Part III of the First Schedule shall be vested in the Government of India."

To this I want to add at the end 'and approved by Parliament.'

I only desire by all these amendments to assert and maintain the final authority of Parliament and I hope these amendments will be accepted.

Mr. President : The article and the amendments are open for discussion. Mr. Sarangadhar Das.

Shri B. Das (Orissa : General) : Sir, I have tabled two amendments to article 267A. I move :

"That in amendment No.301 of List XIII (Second Week), after clause (2)of the proposed new article 267A the following new clause be added :-

> '(3) Where any sums are guaranteed or assured to any Ruler's family members or relations such sums be treated as part of privy purse and as free of tax.' "

Another amendment I have tabled is to the following effect :-

> "That in amendment No. 301 of list XIII (Second Week), in clause (1) of the proposed new article 267A. after the words 'to any Ruler' the words 'or his family relations' be inserted."

It is understood from article 267A that the money granted to any ruler should be free of taxes. When negotiations were going on, most of us understood that Ruler's mother and other family members and widows of former rulers who receive grants by those negotiations will not be taxed income-tax or any other tax. It was surprised last right to receive a visit from the Dowagar Maharani of Mayurbhanj who had been granted Rs. 3,000 p.m. as her allowance when negotiations took place. For April and May she received Rs. 3,000 per month and for these two months she was paid fully. Thereafter Rs. 707 p.m. is being deducted from April last as income-tax on the same. She is the wife of a Maharaja who is no more and the daughter of a Maharaja. How could she pay income-tax when income-tax did not exist in many States? It means that many of these relatives of rulers, such as the ruler's mother, his sister-in-law as in the case I cited and others, they will all be taxed, income-tax. Yesterday our revered leader, Sardar Vallabhbhai Patel, made an excellent speech whereby he guaranteed peace and tranquility for the citizens of the States. I think such peace and tranquility is guaranteed to the relatives of the rulers also. According to the draft article 267-A, the privy purse is to be free of income-tax. There are many States in India which never paid any income-tax. Particularly when we come to the lady members of the ruler's family-the ex-Raja's family--it is very hard on them they cannot understand why any income-tax should be deducted and in such large proportion as Rs. 707 out of Rs. 3,000 per month! It includes super-tax and other taxes also. Perhaps that State had no income-tax at all, and even if it had, it was not on such a high level as is prevalent in our provinces. Till last night I had not understood that the relations of the Princes and the Maharanis--the mother of the ex-Ruler, or wife of the late Ruler will be subjected to such deduction of income-tax. I think privy purse means money that is sanctioned to a ruler and his family members. Therefore, they must be exempt from any tax. If the ruler with a huge sum of Rs. 20 lakhs or 25 lakhs as allowances is not subjected to income-tax why should the relations of the rulers be taxed income-tax and that too at the maximum rates of income-tax assessment that is prevalent in India, and that has never been understood in the States ? Sir, this is a lacuna that has been left over and it must he corrected. It is no use harassing people who were enjoying great privileges in those States. If the rulers or the descendants of the rulers are to enjoy such, privileges in the future. I do not understand why the ruler's mother and the near cognate Maharani of the State should be taxed income-tax. I hope this wrong will be corrected and righted.

Mr. President : The whole thing is now for discussion. Mr. Sarangadhar Das.

Shri Sarangadhar Das : Mr. President, I had given an amendment to delete article 306B, but as deletion is not being moved, I want to say a few words about this article.

First of all, I want to say that I am second to none in recognising and praising the work that the Honourable Sardar Vallabhbhai Patel has done in reducing the number of States from five hundred and odd to seven. I happened in 1947, as a Member of the All-India States Peoples Conference, to know what the dangers were and what a gigantic task it was. I personally at that time did not believe that it could be done in such a short time. But it has been done, and for the consummation of this monumental work the whole credit must go to Sardar Vallabhbhai Patel and the States Ministry. I am also aware that when we had objected to the distinction made between the Provinces and the States in the new constitution, in certain fundamental matters last winter, he had given us an assurance that he was trying to bring the States on a par with the Provinces, and that he has done now.

But my objection now to article 306B is for this reason that we are trying to have democratic institutions all over; we have destroyed autocracy and introduced democracy; but in having this article 306B whereby the States Ministry, I mean the Government of India, will have control over these States Unions. It makes a distinction between the Provinces and the States, and to my mind it strikes at the root of democratic institutions. I am in a minority of one here. Because I know very well that many of the States Members who happen to be Ministers in their States Unions or States do not like this article, do not like this subordination to the Government of India, in respect of their day-to-day administration, and yet they, because of a certain mandate, cannot speak and they will not speak. My objection to the article is particularly on this ground that by having control and by sending directions from the Centre to the States, bureaucratic rule will completely prevail. There will be no real representative Government.

I can also say from my experience of the last one and a half years with regard to the Indian States that have been merged into the Provinces, that the officials who have been sent by the Provincial Governments as administrators into these States have acted in such a way that they are the successors of the Rajas, they are the successors of the rulers in their whimsical rule, and the general people in those States have that impression. Whatever nominated representatives there used to be last year in Orissa and C. P. States, they had no voice and the people soon found out that the so-called representatives who were nominated as Councillors by the Provincial Governments had no voice in the matter of administration. They were nobodies, and consequently the officials are ruling now as they were ruling in the Raja's regime. And it is very unfortunate that our officials from the Provinces who were trained in a certain administrative machinery in the provinces, when they come to there States where there is no democracy, where there is no voice of the people, they have acted as if they were the rulers themselves. Probably they think they have an opportunity to be the rajas for some time and they have done so.

I also know that in many of the big Unions that have been formed during the last year there are officials, the subordinate officials and the high ones, who act in that manner and the people have no say, no opportunity of airing their grievances. Consequently, when the States Ministry, or I should say the Government of India will give directions for the day-today administration, it will assure those officials that although the States Unions will have their legislatures and there will be representatives elected by the people, even those elected people might take some decisions which may be contrary to the decisions of the Government of India, and that the decision of the Government will have to be carried out by those officials, and that the representatives will have no other say but to keep quiet, and let the machine go on according to the desire of the Government of India. Everyone concerned will realize the supremacy of the officials. I quite appreciate, as some of the speakers have already stated, and Sardar Vallabhbhai himself has stated in his statement, that in the States the people do not have democratic traditions, there was no local board, no municipality. I know there were States where even a library could not be established, because the Raja and his Dewan were afraid that people by reading books would become rebels.

I appreciate that, but now that we are introducing democracy. I strongly protest that there should be one treatment for the provinces, where the ministries will be autonomous without any interference from outside and another treatment for States and that those States Unions or States like Mysore will have to take orders from the Central Government. I know that some of them will be exempted and they deserve that exemption. Even then, when Mysore gets the distinction of being fully autonomous, and Rajasthan becomes a subordinate body, I believe this House will realise what the feeling of the representatives of Rajasthan will be. My contention is that when the article takes any of these States or States Unions under a period of tutelage, it may be for ten years or Parliament might decide on a period of fifteen or twenty years, it deprives the administration of its representative character.

Now, it seems that exactly as the British Government wanted during the last fifty or sixty years to train us in democractic forms of Government, so also our own Government, our own leaders, who were condemning the policies of the British Government, are now introducing the same technique in the case of the States people, and I have a feeling that the Government at the Centre and also most of the Members from the provinces here have a step-motherly feeling towards the people of the States. This will be evident from what has happened about the merged States. Last January we passed here an amendment to the Government of India Act for completely merging some States into the provinces of Bombay, Madras, C. P. and Orissa. At that time we had hoped and we had some assurance from some quarters that there would be election under the restricted franchise of the 1935 Act, but there has been no election and I know definitely that in two of the provinces at least, members have been nominated by the provincial government through official machinery. It is an interesting thing to know that the nominations were not even made by Congress Committees. One would presume that Government being run by Congress, it would listen to the Congress Committees. In one province the recommendations of the Congress Committees were thrown out. In another the Congress Committees were not consulted at all. One would take it that as the government is run by the Congress Party it would consult its own machinery, but it was not done. In most cases officials have nominated the members. They are called people's representatives. To my mind it is an insult to the people of the States that some people who were unknown in public life or used to side with the Raja, have been nominated. From this I want the House to understand that now that autocracy has been destroyed and we have democracy all over India and the whole country is integrated into one whole, there is a tendency on the part of the Government at the Centre to keep the people of the States under tutelage.

Now, when it comes to the intelligence of the people of the States as voters, I would say--and I am very well acquainted with my province--that there is no difference between the intelligence, the awareness of the general electorate in the provinces and in the States. If you consider that the electorate's ignorance results in this kind of nominations and directions from the Centre, then I would say it was a mistake on our part to introduce adult franchise in our Constitution I would say that if we do not have any belief in the people, then let us have adult franchise gradually. Of course, personally I do not share that view. I say that as an argument only. I believe that once democracy is introduced, if people make any mistakes, they will immediately learn from those mistakes, and that is the way democracy can grow and that is why, speaking from my experience not only in my own province and in the States of Orissa but also in Rajasthan and parts of Madhya Bharat, this is a retrograde measure, this article 306B. Sardar Vallabhbhai has accomplished the integration of the whole country into one whole and has got rid of autocracy in such a short time. This retrograde article 306B will detract a great deal from the good that he and the States Ministry have done.

I said at the beginning that I am in a minority of one because I do not belong to the party that dominates this Assembly. I was in the party, I have come out lately; that is why I am speaking, I am free to speak. But I wish to give you this warning, to honourable Members of this House, and to the Government, that unless this step-motherly attitude towards the people of the States is removed and they are allowed to function just the same as the people of the provinces arc functioning or will function under the new Constitution in the future, unless the States people are given the same rights as the people in the Provinces are, I do not think this democracy will grow. Anything may happen in future. There may be troubles in these States Union Ministries, there may be a blow-up somewhere, at any rate democracy will not grow.

That is why I appeal to the Honourable Members of the House as well as to Sardar Vallabhbhai that if it is necessary to have this article 306B, it should not be put into action in any of the States. I feel that if the Government of any State breaks down, provision has been made in articles 275, 276 and others which will be applied to the Provinces and these might as well be applied to the States Unions. That is why I think 306B is not necessary and if it is passed, as have no doubt, it will be passed, my appeal to Sardar Vallabhbhi and the Government of India is that it should not be put into action. If there is anything wrong in any or the Union Governments it should be set right by persuasion.

Shri K. Chengalaraya Reddy (Mysore State) : Mr. President, Sir, it gives me great pleasure to make a few general observations in connection with the proposal that has now been placed before the House. The proposal is that Part VI of the Constitution which applies to the States enumerated in Part I of the First Schedule should also be made applicable to the States to be mentioned in Part III of that Schedule with Such modifications and omissions as may be called for in the circumstances in which the States are placed. It is a matter of supreme gratification to me that towards the concluding stages of the work of this august Assembly this decision is being taken.

When this Assembly started its work it was a matter of grave doubt whether a common Constitution would at all be possible for all the units comprised in the Dominion of India. It was assumed and admitted that so far as the Indian States are concerned the Constitution for those States should be framed by the respective Constituent Assemblies of those States. It was in pursuance of that decision that Constituent Assemblies came into existence in some of the States and those Constituent Assemblies started their task of framing constitutions which were necessary for their particular States. But let me here recall the attempts made by the representatives of the Mysore State as also the representatives of some other States to bring about a procedure by means of which a common Constitution could be adopted for these States also.

As early as August 1947 when the representatives of some of these States came to this august House as Members, a serious attempt was made to set up a Committee of this House to evolve a model constitution which would be applicable to the Indian States with a view to incorporate such a constitution in the body of the Indian Constitution itself. But at that time it was not found either feasible or practicable and we were called upon in our respective States to frame our own constitutions. Even then when we started our work, we were conscious of the supreme necessity that such separate constitutions should be in consonance with the Indian Constitution and should be in accordance with the Aims and Objectives Resolution of the Indian Constituent Assembly. Even, when we had been given the opportunity and freedom to frame our own constitutions that was the stand that we had taken. And it is because of that background that I say now that it is a matter for supreme gratification for the people of the Indian States--at any rate I can speak authoritatively for the people of Mysore that this decision is about to be taken in this august House.

Well, Sir, we are face to face with a situation which all the statesmanship that the country can muster in order to make the freedom that we have won secure and stable beyond any risk whatsoever. It has always beer? felt that any variegated patterns of constitutions in several units would bring about disunity and some amount of working in different, diverse directions. It has been conceded now that the constitution for the Indian States also should be more or less uniform and be on the same lines as the constitution for the Provinces. In this connection I want to pay my humble tribute and congratulations to the Ministry of States and to Sardar in particular for the dexterous way in which this complicated problem of the Indian States has been tackled ever since August 15, 1947. The situation with which we were faced at that time was one full of potentialities for mischief, full of opportunities for the disintegration of India, full of possibilities for making the freedom that had been won being diverted into wrong channels. But for the statesmanlike handing of this problem I am afraid the opportunities that had been given for fissiparous tendencies to manifest themselves would have strick a mortal blow at India in its very infancy of freedom. So, I join in the chorus of tributes and congratulations that have been extended to the Ministry of States and to the Sardar in particular from all over the world at the magnificent way in which this problem has been handled. It has been rightly claimed that what we have achieved today is a bloodless revolution, an achievement unparalleled in the history of any country at any time. Today we are proud of the fact that we are hammering out a Constitution which ensures for the first time in the history of India a united democratic and virile nation. Towards, this consummation as has already been pointed out the co-operative enterprise of the people of the States as well as of the people of the Provinces has been responsible, and for the first time in the history of India a people's polity based on the sovereignty of the people is coming into existence. So, I think there will be no difference of opinion anywhere in this country, in any State whatsoever, difference of opinion regarding the propriety or the desirability of having a common Constitution for all parts of this Union.

Having said that, Sir, I would like to refer to some details regarding the proposals that have been placed before this House. In the main, I am in agreement with the proposals that have been placed and most of the draft amendments that have been now put before the House should not be difficult of acceptance by all the representatives in this House, including the representatives of the Indian States. The general position is that so far as the various rights, powers and responsibilities that have been given to various authorities in Part VI of the Constitution are concerned, the same powers are to he given, to the corresponding authorities in the Indian States. There are some differences however, for which provision had to be made. It was never in doubt that so far as Fundamental Rights and citizenship rights are concerned, there would be no difference between unit and unit. But so far as the internal constitution is concerned it has become necessary to make some modifications. I would like to briefly touch upon them in order to clarify the position, because it has been asked by some honourable Members: "if you are for a common constitution, why do you want Cause modifications? Why do you want Part VIA at all?" it is not difficult for me to answer that question. But the lucid and comprehensive statement that has been made by Sardar Patel yesterday with regard to this matter is a convincing answer to such questions.

First, Sir, the one modification that has been found necessary is with relation to the constitutional head of the States concerned. In the provinces the constitutional head is to be the Government of that State. But, so far as the Indian States are concerned this cannot be the position, because the facts of history, the inexorable existing circumstances, necessitated a different arrangement to be made. It is because of that certain other provision has been made and a modification, an amendment, is placed before this House, so far as the Indian States are concerned, it will be the Rajpramukh that will be the constitutional head of those particular States. It should be clearly understood that so far as the powers of this Constitutional Head are concerned--by whatever name you may call him--they are absolutely identical with the powers that are conferred on the Governors in relation to the provinces. So, though a Rajpramukh is recognised as the constitutional head, the powers that he will be exercising will not be a bit more or a bit less than the powers that the Governor will exercise.

Regarding the definition of the word there is some difference of opinion. It has been urged that since the word 'Rajpramukh' means that he is a Pramukh amongst several other Rajas it may not be quite appropriate with regard to such States where there is only one ruler. This is sought to be got over by the definition of the word

"Rajpramukh" which will be duly placed before the House. The definition recognises the differences existing in various States and says that so far as Hyderabad is concerned "Rajpramukh" will mean the Nizam of Hyderabad. So far as Jammu and Kashmir and Mysore are concerned, it will mean the Maharaja, subject to the stipulation that they should be recognised as such by the President of the Union. There is nothing sur prising in this. There was a stipulation of recognition even under the old set-up when the British Paramount power was here and there is nothing of a very different nature that is proposed now. So, though a more appropriate word could have been found for the constitutional head of the States, in view of what has been embodied in the covenants that have been already entered into, where the word "Rajpramukh" has already been used, it is proposed to retain that word.

So far as legislative powers are concerned, there is no differentiation whatsoever. The field of legislation so far as the provines and Indian States are concerned, will be exactly identical and uniform and I need not advert to that aspect at any length.

Regarding the financial arrangements, Sir, I would like to say only one word. There also, the basis on which we are proceeding is that the relationship between the provinces and the Centre and the relationship between the Indian States and the Centre should be identical. When this principle is to be implemented, it will naturally mean certain dislocation in the finances of the Indian States. During the last few months attempts have been made in order to bring about some arrangement which will secure the implementation of the principle of uniformity and at the same time provide for the non-dislocation of the finances of the Indian States. The Federal Finance Integration Committee, presided over by Sir V. T. Krishnamachari, has gone into this question fully and almost all the States have provisionally signed the agreements in this behalf. In this connection, I want to urge one aspect. The arrangement that will be entered into by the States with the Centre is proposed for a period of ten years only. I want strongly to urge that this period of ten years may well be extended to a period of fifteen years in order to enable the Indian States to tide over the difficult situation that they will be faced with as a result of the Federal financial agreement. This proposal has already been mooted in the concerned quarters and I hope this suggestion of ours will receive the very earnest and sympathetic consideration of the authorities.

Then, Sir, regarding the redistribution of boundaries of States there has been some difference of opinion. Originally clause (3), as it was passed by this august House, provided for the ascertainment of the views of the Legislature so far as the provinces in Part I were concerned and the consent of the States in so far as the States in Part III were concerned. The Mysore Constituent Assembly was of the view that in so far as the Indian States are concerned, the previous consent of the States may be obtained before any redistribution of boundaries. I need not go into the reasons which actuated the Mysore Constituent Assembly to come to this decision and to make that recommendation. In view of the fact that so far as provinces are concerned the ascertainment of views only was sufficient, it has been put before us that even so far as States are concerned, such a procedure would be satisfactory and there need be no differentiation regarding this particular matter as between the provinces in Part I and the States in Part III. I do not want to pursue this point further, excepting to invite the attention of the House to the Statement made by Sardar Patel yesterday. He has definitely stated that whether it be the consent of the Legislature of the State or the views of the Legislature of the province, the wishes of the people will not be ignored whenever any redistribution of the territories has to come about. He has also stated that the wishes of the Legislature of a particular State will not be ignored either by the Government of India or by the Parliament. In view of that assurance I do not want to pursue this point any further.

I want to refer to one more important aspect before I conclude. The whole object of the proposal that is now placed before us is to secure uniformity in relation to the Provinces mentioned in Part I and States in Part III. It is against this background, Sir, that the Sardar has said that there has naturally been some misgiving in relation to the proposed draft article 306B. Different opinions have already been expressed on the floor of this House by hounourable Members. I must respectfully submit that *prima facie*, this article 306 B provides for a differentiation as between Provinces and States. So naturaly one is tempted to put the question "why this differentiation?" If the object is to treat the Provinces and States alike then why subject these States in Part III of the Schedule to the general control envisaged in article 306B, I will be failing in my duty if I did not point out that so far as the Mysore Constituent Assembly is concerned, it was of the unanimous opinion that so far at any rate as Mysore was concerned this article should not be made applicable to it.

Well, Sir, we the people of the States have always been urging and agitating for a common Constitution on the assumption that there would be no differentiation between the Provinces and the States. Now, seemingly this article 306B brings about a differentiation. At the same time, I want to say this namely, that in our approach to this problem we have always been actuated by the dominating desire that the security and stability of India should not be jeopardized to the smallest extent. We want to consider every proposal that may be placed before us from that fundamental point of view. If the Ministry of States feels that under the present circumstances some such power is necessary in order to stabilise the position, in order to make democracy firm, and in order to place it on a firm footing in any of the States, then I would not like to question the wisdom of the Ministry of States in that respect. But it has to be borne in mind that this clause cannot be made uniformity applicable to all the States enumerated In Part III.

I am speaking only for Mysore on this occasion. Mysore has been known to have an ordered administration since the last so many decades. Mysore is known to have a permanent service of which not only Mysore but even India may be proud. Mysore was the first among Indian States--and may I say among the Provinces as well--to have a democratic House so early as in 1881. In 1907 another House called the Legislative Council was ushered into existence. So through all these decades the people of Mysore have been used to the working of democratic institutions. It is a fact that so far as the executive is concerned, there was a Diwan and the Diwan was the sole executive authority. But it can not be gain said that Mysore during all these decades has had experience of democratic institutions.

In view of that it would not be proper and desirable to bring a State like Mysore under the provisions of article 306 B. The Sardar has been pleased to say in the statement that he made to the House yesterday that it is obvious that so far as Mysore, Travancore and Cochin are concerned, where democratic institutions have been in existence since a long time and where Ministers have been owing responsibility to the legislature they have to be-treated on a different footing. It is my fervent hope that even in relation to the other States mentioned in part III of the Schedule it would not be necessary to invoke the aid of the powers that are vested in the Centre by article 306 B. Sagacity and statesmanship on the part of our leaders as also the willing co-operation of the people of the Indian States have brought us to a stage when we can be proud of the achievements that we have secured so far. I hope that even in the future, though this article 306 B may go into the Constitution, it will not be necessary for the Centre to invoke the aid of this article either *suo motu* or because, of other considerations. I hope that this article will be more or less a dead letter in the Constitution. In any case I expect that 306 B will not be applied to the State of Mysore.

I do not want to take more time of this House. It has been said yesterday that the co-operative enterprise of both the people of the States and the Provinces has been responsible for this consummation. We are all proud of that; we all share in the joy of that. And I have already paid my humble tribute and congratulation to the States Ministry for this achievement. But a greater task still lies ahead of us. This co-operative enterprise has to be sustained in order to usher in what I may call Swarajya. Social and economic democracy has yet to be achieved and the political freedom that we have won and the Constitution that we are framing should be worked out in such a manner as would redound to the honour of India, and I have every confidence that the same enterprise, the same co-operation and the same steadfastness will be forthcoming in abundance in the future also in order to make this Constitution a great success in its actual implementation.

With these few observations I commend in general the amendments that have been placed before this House by the Drafting Committe and I would also appeal to the concerned authorities to be pleased always to consider the special conditions that may be existing in any State when applying the provisions of this Constitution as they are going to be passed very shortly in this House. Shri Jainarain Vyas (United State of Rajasthan Mr. President, Sir, we heared the masterly statement of Sardar Vallabhbhai Patel that was read out to us yesterday. We also heard the brilliant speech of' Dr. Pattabhi Sitaramayya, our Congress President, supporting the statement and Praising Sardar Patel for what he has done for the people of the Indian States. We have also heard some speeches from honourable Members of this House including that of Mr. Sidhva who characterized the people of the States as a backward class.

Shri R. K. Sidhva : I did not say that all States were backward class.

Shri Jainarain Vyas : I am very glad that he did not think us like that. We may be backward, but I may assure you Sir, and through you the Government of India, and specially the state Ministry, That we are grateful people also, and we are grateful to the Honourable Deputy Prime Minister, Sardar Vallabhbhai Patel for the changes he has brought in the country by diminishing, the number of states from 562 to seven.

I do not want to say much about the amendments, but I will restrict my remarks to article 306 B. On the face of it, as everybody has remarked, this article seems to be obnoxious and it looks as if it has been designed to put the people of the States--that is, the administration of the States--under surveillance for ten years. But after hearing the statement of Sardar Vallabhai Patel we have to desist from opposing it. He has referred to so many factors and I as one who has got some experience of the working of the States, and working for a short time in the administration of a State, know that inexperience on the part of administrators has played some part in the framing of this article. Then, there may be some faults, real or imaginary on the part of the administrators, but there are other factors also that have contributed to the framing of this action. In the States as Mr. Sidhva and others perhaps do not know, there are intrigues. We may not be able administrators but in the State there are intrigues such as those not seen in the provinces, intriguing, carrying on whispering campaigns and playing all dirty tactics. These people are there and if the Government of India safeguard the interest of the administration as a whole against those intrigues, well, I cannot blame them for that.

Then there is one thing which I want to refer to, and it is that the unification of the States has been brought about, so early that so many details have not yet been worked out. There ought to have been pre-planning but there was no time for pre-planning and as such the States are in the process of being formed they have not been totally formed and from that point of view also some supervision seems to be necessary. I was one of those, Sir, who agreed that this supervision should last in those States which have not got legislatures and should last till such period as the legislatures are formed and after the formation of the legislatures these restrictions or supervision or control of the Centre should go but the period has been extended to ten years. But as Mr. Reddy has just pointed out. I hope this period would not be utilised for controlling the State administration. As a matter of fact, we ourselves, who are in the States would see that this restriction, control or supervision is not applied to us.

The difficulty with the States was that the people of the States were not given in opportunity. One of the speakers pointed out that there were restrictions on opening libraries in the States. It is a fact, Sir, I go a step further and say that there were restrictions in opening schools, even boarding-houses; and for a people who have got restrictions to open schools, libraries, boarding houses, to read and conduct newspapers, it is very difficult to understand the ways of the world; but in spite of that, I may tell you that ever since, the States Peoples Conference was created in 1927, there is a great deal of awakening in the Indian States and the people are not as they used to be before 1927. Given an opportunity, I can assure you Sir, the people would not lag behind the people of the provinces; on the contrary, I am afraid after ten years or even before ten years, a time may come when the people of the States may say that some of the provinces are very backward and some restrictions may be imposed upon them and not upon us? That time may also come, Sir.

When people refer to general backwardness of the States, well, I feel a bit pained, There are States which may be backward and there are States which nave become backward on account of certain reasons, but then there are States which are more forward than even the provinces. Take for example the State of Mysore, the State of Travancore and cochin. I do not want to name the provinces near about or on the East or on the North or the South or the West but some of the States are better administered. If you see from a cultural point of view some of the States have better seats of culture, better buildings, better accommodation, better facilities for the people. In my own State, sir, no I am very sorry, in my own division, which is a part of the Rajasthan now, there were famines and famines and famines. We did not allow Jodhpur to be made Bengal. We saved the people; we spent a lot of money on them, not only thousands and lakhs, but crores and those who think we may not be very forward from a democratic point of view will realize that from a humanitarian point of view the States were far ahead of many provinces and I can assure you that given an opportunity we will retain that culture and that humanity which we retained when the provinces perhaps forgot these things.

There are one or two things which I want to point out and that is that in the States we have got feudal elements. In the Division in which I live now, 90 per cent. of land is under feudal landlords and some of them personally are very good people; but taken as a whole the feudalism in Rajputana may play a very nasty part in the future of the nation. I would request Sardar patel to take note of this fact and while controlling or supervising the administration of the States, he will see that these feudal elements are kept under proper control.

Another point which I want to refer to, Sir, is that the princes have been now given the right of citizenship and the right of rulership has perhaps been taken way from them in a way. This right of citizenship may also react against the people in some cases. I do not say that they should be refused human rights, but as restrictions have been placed upon the administration for ten years, I think restrictions should be placed upon the right of citizenship of the princes as well; otherwise given an opportunity to have a free play, they will use all the means at their disposal, all the weapons at their disposal to monopolise the administration of the States through other means. I hope, Sir, this point would also be taken into proper consideration when controlling and supervising the administrations.

I do not agree with Mr. Sidhva when he says that the States cannot find administrators. (Interruption.) Not in all States, I am glad to be told, but in some of the States. The difficulty as I pointed out was that the States could not have the legislatures and could not have the democratic traditions which the provinces had given that opportunity, I can assure Mr. Sidhva that the States, will give better administrators than the provinces have given to you. Can you forget Mahatma Gandhi? He was born in a State, mind that. We cannot forget Sheikh Abdullah. When the country was in difficulty and when the enemy was four miles away from Srinagar and when the army had gone away from Srinagar, he saved Srinagar, he saved the Hindus and he made a name. We cannot forget Sir S. Viswesvarayya, that famous administrator to whom a part of efficiency in the administration of Mysore is due. Well, the opportunity has not been given and we want that opportunity to be given. (Interruption). It shall be given because it is we who could take the opportunity. One thing which we have done is this: We have finished with the sovereignty of the rulers, and the second thing is that the rulers would not directly claim their salaries and their allowances also from the States now. Let them settle their accounts with the Centre. So the rulers have no power to interfere in the administration of the States, in the finances of the States, and that thing has been achieved. I also feet like others that we need a certain amount of control which has not been imposed upon the princes. I am sure when we create legislatures in our States, we will give you administrators and legislators and we would not give an opportunity to Sardar Patel to control or supervise in the way that article 306B is supposed to control us.

With these words, I generally support the amendments put forward and I offer my grateful thanks to the Honourable Sardar Patel for the statement which be made and which was, as I said, masterly and which leaves scope for the people of the States to improve their lot even before ten years. I thank once again the States' ministry and I thank you, Sir, for giving me this opportunity for expressing my views.

Kanwar Jaswant Singh (United State of Rajastan) : Mr. President, Sir, I am grateful to you for this opportunity that you have given me to express my views on Part VI-A. After the statement of the Honourable Sardar Patel yesterday, there is not much for the representatives of the States to say. Therefore, I will confine my remarks to the few essential things.

First of all, in article 211A clause (4) sub-clause (b), it is stated that the Rajpramukh shall be entitled without payment of rent to the use of his residences. I regard to this, I would submit, Sir, that practically in all the States the Rajpramukhs have got their own residences and therefore the question of the payment of rent does not arise. This point may therefore kindly be taken into consideration by the Drafting Committee when they finalise the thing.

In regard to clause 10(b), provision has been made in the case of the Sate of Travancore Cochin for a sum of Rs. 51 lakhs to be paid to the Devasom Fund as entered in the covenant from the exchequer of the union. There are other States also where such sums are spent on the Devasthan Department. I know for instance that in the Union of Rajasthan, a collateral letter has been sent to the Maharana of Udaipur where a large sum has been guaranteed for being spent on the Devasthan Department. This provision should, in my opinion, be included here when it has been done in the case of one State.

Then, Sir, coming to article 302A and article 267A about guarantee of Rights and privileges and Privy Purse Sums of Rulers of Indian States, this is a matter of great satisfaction. In view of the services of the Rulers and the patriotic manner in which they have accepted the advice of our venerable leader Sardar Patel their position should receive due recognition. They have parted with their power and kingdoms so gracefully and it is only in the fitness of things that these rights and privileges and privy purse without payment of Income-Tax should have been guaranteed in the Constitution.

Then comes the question of article 306B. With regard to this, Sir, though coming from a State, I welcome this provision. It is a very wholesome provision, so far as some of the States Unions are concerned. . It may be that for advanced States like Travancore and Mysore, such a provision may not be called for. So far as my province is concerned, that is Rajasthan, I feel that without such a provision, the security of the country may some time or other be jeopardised. The reason why I consider that so far as Rajasthan is concerned such a provision is essential is that, in the first instance, it is a border State on the border of Pakistan; and in view of the strained relations between the two Dominions, it is essential that there should be vigilance on the border and Central control is very necessary. Secondly, in view of the fact that a new Ministry has been installed there, who, though belonging to a political party, have very little experience and political background, and as stated by Sardar Patel in his statement yesterday, in view of the varying degrees of development of the political organisations in States, it is necessary that there should be such control.

Further, Sir, we have seen the working of the Ministry in Rajasthan for the last six months, and that is all the more reason why we feel that such a provision is absolutely called for. The Prime Minister and the other Ministers have been visiting the different places which were formerly the States. What they have been doing is this. They arrive and address public meetings; they abuse the rulers and abuse the jagirdars and do propaganda work. Beyond this, they do not do any substantial work. This is just in contrast of what our revered leader Sardar Patel does. He has missed no occasion to shower praises on the Rulers for the patriotic manner in which they have divested themselves so gracefully of their power and their kingdoms. But unfortunately, because of lack of experience and political wisdom, and large-heartedness our local leaders do not recognise the willing sacrifices of the Princes. They feel that the past bad relations should continue. They have false notion of their position. They feel that as in the case of Rulers in the past, they should also display pomp and power. They feel that by doing so they will be able to enhance their prestige and strengthen their position among the people.

My predecessor who came here, Pt. Jainaram Vyas, referred to the question of jagirdars. I assure the House that the jagirdars are, first and foremost, Indians. Unfortunately or fortunately, I happen to be one of the jagirdars. I may assure you if our question is tackled tactfully by some eminent leader as Sardar Patel, when the complicated question of the Princes could be solved so satisfactorily, the question of the jagirdars in Rajasthan or anywhere else could more easily be settled and there should be no difficulty whatsoever. The Princes and we who have been so closely associated with the Princes are as much loyal Indians as anybody in this country, and yield to none in our patriotism and if our patriotism is put to the test in case of need, we will not be found wanting in any way.

With these words, I resume my seat.

Shri P. Govinda Menon (United State of Travancore & Cochin) : Mr. President, Sir, I rise to support the motion for incorporating Part VI-A in the Constitution, dealing with the Indian States and in doing so, I wish to express before this House certain thoughts which come uppermost in my mind on this occasion.

I would, first of all, like to say this, that regarding the provisions in Part VI-A, regarding certain amendments that might be required in the provisions proposed to be included with respect to the States, much has been said on the floor of this House yesterday and today. But; before walking into that field I wish to point out to this House the big step that has been taken by this House in deciding to incorporate a provision like this. When this motion made by Dr. Ambedkar is accepted by this House, I submit, Sir, the House would have recorded and registered one of the most phenomenal events which have taken place in the political history of India in recent years. The House call be proud of the work it has done hitherto; but I request the House to consider what this Constitution would have been, had there been no part like Part VI-A.

When power was transferred to India, when this Constituent Assembly was called to assemble, there was in existence a Constitution for the provinces of India--the 1935 Act. We have mostly adapted the provisions of this Act far the future Constitution of India with certain additions regarding Fundamental Rights, Directive Principles, abolition of separate electorates, etc. But I do submit that the decision to incorporate Part VI-A is registering the most important event that took place, *viz.*, the complete integration of Indian States with the rest of India. Under the 1935 Act, a sort of hybrid Federation was thought of for India and protracted negotiations were carried on by the Crown Representative with the Princes in order to bring them into the Centre. These negotiations were finally dropped with the commencement of hostilities in 1939 and thereafter the old regime continued. In 1946 the Cabinet Mission came and later the Independence Act was enacted and that left the Indian States in a short of Independence.

It was in this context that this Constituent Assembly met late in 1946, and I wish to recall the fact that when the Constituent Assembly met for the first time the representatives of the Indian States did not find a place in this Assembly.

A Negotiating Committee was appointed by this Assembly. That was one of the first acts done by this Assembly. They negotiated with representatives of the Indian Princes to persuade the Indian Princes to send their representatives to the Constituent Assembly and while those negotiations were going on, parallel attempts were being made in certain quarters to sabotage the Constituent Assembly plan. But thanks to the vision of our leaders, thanks to the vision of certain statesmen in the Indian States, thanks to the aspirations of the Indian people to co-operate with India in the formation of an Indian Constitution for the whole of India, we found that a dozen members representing the Indian States sat in the Constituent Assembly in April 1947.

When that happened the situation with respect to Indian States was not defined. It was in a fluid state. Those of us who have got the printed text of the Indian Draft Constitution prepared for us would note, if we glance through the various articles there, that at that time it was thought that the Indian States will stand apart. You find so many references in the original draft Constitution to States in Part III, to States in Part V, various agreements under which alone States in Part III could join the Indian Union. That was the position in 1947. At that time, as was referred to by Shri K. C. Reddi Constituent Assemblies were brought into existence in several Indian States and the procedure which was followed in this Assembly was attempted to be repeated in the various Constituent Assemblies in the Indian States. Objectives Resolutions were passed, Minorities Committees were appointed and Drafting Committee were appointed, etc., etc.

But then with the grant of freedom to India or rather with the attainment of freedom by India, the situation that developed in India was a dynamic one--it was not a static one and the Indian leaders were really wise in not crystalising conditions as they obtained on the date of transfer of power in India. It was at this stage that a Committee was appointed--the Rau Committee--popularly known as the Model Constitution Committee. That Committee was appointed to suggest what shall be the form of Constitution for Indian States and in the membership of that Committee a majority was from the Indian States. The Report of that Committee was that the Constitution for Indian States should be as far as possible on a par with that for the provinces and it was further stated that the best way to effectuate this proposal will be to have a Chapter in the Indian Constitution showing the modification which must apply to the Chapter regarding provinces. It was in view of this suggestion that we are now proposing to incorporate Part VI-A in the Indian Constitution.

I must at this stage try to disabuse a notion which I find exists in the minds of certain people--not alone in the Indian States, but also in what are called the provinces. The notion is that this attempt or this idea to incorporate a part in the Indian Constitution to govern the Indian States has come from above, that it is an imposition from the Ministry of States, and that the people of the States are taking unwillingly what has been imposed upon them. I wish to declare here and now that that idea is wrong. The people of the Indian States have from the begining of the struggle for Indian independence joined hands with the people of the provinces and it is on account of the fact that the statements made by the Cabinet Mission in 1946 and the Indian Independence Act and the Constituent Assembly as planned by the Cabinet Mission did lay down a different procedure for the Indian States that Constituent Assemblies came into existence in the Indian states. I recall at this juncture a meeting which took place in Mysore in 1946 during the days of the Cabinet Mission, which was attended by representatives of Indian States People's movements in Travancore, Cochin, Pudukkottah and Mysore. In that meeting a unanimous Resolution was passed by the representatives of the people that the Constituent Assembly for India should frame the Constitution for Indian States as well. That is to say, long before this plan was thought of by the Ministry of States the representatives of the people of the South Indian States assembled in Mysore in May 1946 and decided that it is the Indian Constituent Assembly which should frame a constitution for the Indian States. Thereafter as I submitted earlier, the Rau Committee also, which consisted of a majority of representatives from the Indian States, reported that it is this Constituent Assembly, representing as it does the will of the people of India including Indian States, that should frame the Constitution for India.

I will at this stage refer to the Resolution passed by the Legislative Assembly of the Travancore-Cochin State--a Resolution which that body, elected on adult franchise, thought it fit to pass at this stage. The Resolution reads as follows :-

> "This Legislative Assembly of the United State of Travancore and Cochin, by virtue of its constituent powers hereby resolves:
>
> (1) that Travancore-Cochin State shall be one of the States in the Union of States, India, that is Bharat:
>
> (2) that a separate constitution for the Travancore-Cochin State is inconsistent with the aspirations of the people of the State and the status of the State as a Unit of the Indian Union;
>
> (3) that the provisions of the constitution for the governance of the State shall as far as possible be the same as those for the Units known as Provinces; and that the constitution of India framed by the Constituent Assembly of India shall be the Constitution which will apply to this State."

After all this, it will be idle to think that the desire of the people of the Indian States is anything other than this, that the Constituent Assembly of India should frame a common Constitution for Indian States and the Provinces as well. The desire of the people of Indian States has always been that India should be united, that the Government of India should be the government for the Indian States and the Provinces.

Once this fundamental proposition is accepted, when once it is known that this is the desire of the Indian people, then all that has been done by the Ministry of States during the last two or three years will be found to flow logically from that decision. The decision that the legislative and executive field of the Centre shall extend to Indian States, the decision that there shall be Federal financial integration, and the decision that the Constituent Assembly of India should frame the constitution for the States, all of them, logically follow out of this idea. But even in spite of that, I must inform this House that among certain people, not alone in the Indian States, but also in the Provinces, there is some misapprehension about this idea. They look upon the Government of India with memories--with bitter memories which have been there In the minds of the Indian people regarding the exercise of paramountcy. I wish to make it clear that the paramountcy of the Government of India during the days of the British is different from the paramountcy of the Union Government which it must have if it is to be a Union Government. The Government of India before the 15th August, 1947, so far as the Indian States were concerned, was a foreign government which represented the sovereignty of the British. Therefore, whatever the Government of India did during those days was really an interference from outside. But once this Constitution is passed, the nature of the Government of India changes. The people from the

Provinces should not think that it is a government of theirs only, and the people from the Indian States should not think that it is a government of somebody else. Whenever in the Constitution, and wherever in the Constitution, the words "Parliament". "President" and "the Government of India" are used, it must be remembered that these institutions denote or represent the sovereignty of the people of India, including the people of the Indian States. In other words, the Indian States and the Provinces are going to pool their sovereignty and to have a single undivided sovereignty in India.

By what happened on the 15th August 1947, every Indian States has got sovereignty and the Princes of the Indian States became Independent. By the result of the operations of the Ministry of States during the last two or three years, the sovereignty and the independence which the rulers of the Indian States got from the British have been transferred to the Indian people, to the people of the Indian States. That central fact must not be forgotten, and when during this debate one Member after another spoke about this defect and that defect in the programme of the Ministry of States, we forget that the Ministry of State has done a very important task during the last two and odd years, that is to say, to get transfer of power from the Rulers of the Indian States to the people of the Indian States.

I think, Sir, there is much in the contention that the benefit of the transfer of power should not be taken, without the conditions under which that transfer of power has been effected. Sardar Patel in his Statement yesterday, requested us to took at the picture as a whole, the scheme for the Indian States as a whole, and I think no reasonable man can take objection to that point of view. The people of Travancore have all along, and the people of other States have all along been advocating the sovereignty of the people of India, including the people of the Indian States.

Therefore, I feel extremely happy today. I enjoy the happiness of a man who has fulfilled a dream of his life, to note that by the introduction of this provision in the Constitution, we are going to have a united India where there will be practically no difference between the Indian States and the Provinces. There are differences in one or two respects, and they are well-known. Where we have Governors in the Provinces, we have got Rajpramukhs in the Indian States. There is some difference regarding their method of appointment. There is some difference regarding their emoluments. But beyond that, I for one do not see any difference between the Provinces and the Indian States under the scheme that has been placed before us.

Have stated so much about the general position, I would like to add one more point about my own State--Travancore-Cochin. Regarding some of the proposed amendments to be moved here, I endorse every one of the statements made by Sri K.C. Reddy, and I do not attempt to add anything, because I cannot do it better than he has done. Sardar Patel in his statement of yesterday did make a reference to Mysore, and Travancore-Cochin States and said that it is not intended that article 306B should apply to States which have got a degree of progress like the Travancore-Cochin State and the Mysore State. I am thankful to the Sardar for having made that statement. May I add, at this stage, that Travancore-Cochin have had representative institutions from very early times? If I am not wrong, even from 1860, there have been representative bodies in Travancore and from 1937 responsible government of a sort has been in existence in Cochin. Before any other State in India or any other province in India could introduce adult franchise, adult franchise was introduced in these two States, and exactly a year back election based on adult franchise took place in Cochin and about six months earlier an election took place in Travancore. I think I am right when I say that it is in Travancore and in Cochin that the Indian National Congress or its corresponding bodies had to face the electorate on adult franchise for the first time, and both Travancore and Cochin did bring credit to the Indian National Congress by securing huge majorities in the legislatures even when the elections were held on the basis of adult franchise.

It was a due recognition of the progress made by those States, when Sardar stated yesterday that a provision like article 306B is not intended to apply in the same degree to all the Indian States. That statement encourages me to hug the feeling or the consolation that, if all the Indian States in Part III of the Schedule were in the same degree of advancement, were in the same degree of progress as Mysore and Travancore and Cochin, probably 'there would have been no city to incorporate a provision like 306B.

I wish to add this and then I will have done. Conflicting emotions are there in the minds of the people from the Indian States with respect to article 306E. Coming from Travancore and Cochin States, we thought that it was unnecessary and in the Legislative Assembly we passed a resolution to that effect., but we are in possession of the conditions in Travancore and Cochin States only, while Sardar Patel and the Ministry of States have got in their possession the conditions in all the States and the provinces, and they think that a provision like this is necessary. If we accept what has been stated here, it is because that when opinions conflict, the man with the greater information and the longer experience should have the final say. As I said, at the same time we are grateful, indeed very grateful, that this difference in conditions in certain States has been recognised by the Minister in charge of the States. With these few words, Sir, I wholeheartedly support the amendments that have been tabled before the House. Thank you, Sir.

Shri Himmat Singh K. Maheshwari (Sikkim & Cooch-Behar States) : Mr President, Sir, with your permission I shall take only two or three minutes of the time of the House, and I shall confine my remarks only to the amendment moved by my honourable Friend, Mr. Das, regarding the liability of certain allowances to income-tax. The proposals before the House guarantee the Continuance of Rulers' privy purses and their exemption from all taxes. The same immunity however is not extended to other allowances. The persons mainly affected by this are Rajmatas, widows of former rulers, who will enjoy their allowances for their life-time only. They will be hit very hard when they have their allowances reduced on account of deductions for income-tax and Super- tax. In the case of Maharanis and Ranis whose husbands are happily alive, the allowances will be exempt from income-tax as part and parcel of the Rulers' privy purses, but should any of these ladies unfortunately become widows, their position, I believe, will still continue to be the same, *viz.*, that they will get their allowances from their sons and those allowances will be exempt from income-tax as part and parcel of the privy purses of the rulers. Therefore, there will be some sort of discrimination between the allowances enjoyed by Maharanis and Ranis whose husbands are alive, and the Maharanis and Ranis who lost their husbands before the present Covenants were entered into. In my opinion, Sir, the allowances of these royal ladies are not comparable to salaries. These are maintenance allowances. These ladies have lived in luxury and comfort in the past. They will now find their allowances reduced very radically on account of deductions of income-tax. The House is aware that even the allowances of the President. and the Governors and certain their dignitaries are going to be exempt from tax. Only their salaries are liable to tax, not the allowances.

I therefore wish to appeal to the Honourable the Deputy Prime Minister and to the House to take a chivalrous and generous view of this matter and not to make the lives of these few unfortunate ladies miserable for such short periods as are still left to them before they pass away. In some of the States. Sir, the position of these unfortunate ladies is already very unhappy. Their relations with their sons are strained. If their allowances are reduced substantially, they cannot expect any help from the present rulers. Their lot therefore will be extremely hard. I hope the House will take this into consideration in granting exemption at least to the widows in respect of income-tax and other taxes.

Mr. President : Mr. Gokul Lal Asawa.

Shri T. T. Krishnamachari : (Madras : (General) : The question may now be put.

Mr. President : I have already called him.

Shri Gokul Lal Asawa (United State of Rajasthan) : Mr. President, Sir, I wish to make one or two observations on this historic occasion destined to open a new chapter in the history of the people of the Indian States. After the frank, lucid and comprehensive statement of Sardar Saheb, I do not think there need be any difficulty or hesitation on our part in accepting the amendments put forward, particularly article 306B. I must confess here that I was one of those who opposed the incorporation of such a provision being made in the Covenant of the United State of Rajasthan, but today looking to the ways--and should I say irresponsible ways, to put it mildly in which the Governments of some of the Unions are behaving or working, finding that we are passing through a critical transitional period, realising that we are still not out of the woods-who can say definitely that there are no troublous times ahead? And above all keeping in mind the observations of Sardar Saheb with regard to the meaning and purpose of article 306B, I see no justification for us to oppose the introduction of such a provision in the Constitution. Further, while the provision in the Covenant requires that both the Rajpramukh and his Council of Ministers shall, in the exercise of their functions, be under the general control of the Government of India, here under the present article we find that only the Governments of the States are to remain under general control. Now, this to my mind marks an improvement in the position.

One observation more and I have done. If I understand a right the feelings of some of us inside this House or outside, I may be allowed to say that what worried us most in the past and what worries us today somewhat is not so much the introduction of this principle of general control but rather its application, the working thereof: the mechanism and the technique for the exercise of general control, I mean the method, the manner and the range thereof. I hope those responsible for the exercise of general control, etc., will bear this important fact in mind.

Shri T. T. Krishnamachari : Sir, I move that the question be now put.

Mr. President : I do not think there is any other speaker. Mr. Munshi, will you reply?

Shri K. M. Munshi (Bombay : General) : Mr. President, Sir, after the exhaustive and brilliant survey of the whole question by Sardar there is no need for any detailed reply. I would only mention one or two matters. In the first instance, I shall beg the permission of the House to keep back 274DD. Some technical flaw is suggested and the Drafting Committee would like to re-examine it. Then, as regards the amendments, I am quite prepared to accept the two amendments moved by my honourable Friend Mr. Santhanam, Nos. 276 and 278. Except these two amendmens I oppose the other amendments that have been moved. Explanations have been given about them and there is no need for this House to entertain those amendments.

There are one or two matters which I should like to mention. As Professor Asawa said just now, article 306B is a very useful measure and I am sure even those Members of the House who may have any compunctions about it will have been satisfied. The policy with regard to 306B has been authoritatively laid down in the statement of Sardar and I do not think that anything more need be said. It has already been stated in the statement and I am free to submit my personal opinion that so far as Mysore and the Union of Travancore-Cochin are concerned, whose affairs I know personally, I see no reason why they should attract article 306B, unless they fall from that steady and stable administration which they have inherited from the Dewans of the past, and I am glad to say that the present set-up there promises to maintain the tradition.

Only two remarks from my Friend Mr. Jainarain Vyas, I should like to refer to. One of his points was that feudalism in the States should be controlled. It cannot be controlled by mere authority. It cannot be controlled by rooting them out either by law or by force. So far as their power and prestige are concerned, they have shrunk on account of the democratic set-up that has been introduced in those States but you cannot eliminate those elements--people must learn to make them-the feudal elements--stable elements in the society. Before this change there was some point in saying, "Oh, the feudal elements should be eliminated", but those elements which have survived this revolution are as much ,citizens of the Republic as anybody else and it must be the duty of the other people, and particularly of the administration, to enforce the rule of law in such a manner that all the vestiges of feudalism disappear. It cannot be done at a stroke--any attempt to do so will only recoil upon the infant democracies in those States.

A second point which he made was that the Princes should be denied the right of citizenship. We must realise once for all that every person born in India is a citizen of India. In making what Sardar called the 'bloodless revolution', we did not propose to produce outlaws. In view of what the Princes have done in the past and what they did in bringing about the bloodless revolution, this kind of attitude will, I am afraid, come in the way of a satisfactory solution rather than accelerate it. The set-up in the Indian States now has been completely changed and the masses on the one side and those who have been rulers in the past have to adjust themselves in the new atmosphere. It is only in that way that we can make this revolution a complete success.

Sir, I agree with my Friend Mr. Govinda Menon that this is an historic occasion and it makes me as happy as it makes him. I remember the early days in 1947 when my Friend Mr. Govinda Menon was the only man representing the States in this House who was insistent that the whole thing should go and the States should be integrated. I can easily realise the joy that he feels in seeing that what he aimed at is now attained successfully.

This is no doubt a historic occasion. Thanks to the genius of Sardar and his statesmanship we have integrated the whole of India. *(Hear, hear)*. We have now an India which, even without Pakistan, is as large and much more integrated and harmonious and unified than ever before in history, and it is now for us, particularly the future Parliament and the future Government of India, so to consolidate all the different parts of the country that India may emerge a strong and compact nation. I feel happy also that the nightmare of the Indian States which have been a survival from Moghul and the British days is all gone and the sovereign people of India can now march forward from strength to strength and attain the cherished ideals which they have placed before the country in the Preamble to our Constitution.

Shri R. K. Sidhva : Sir, may I know what Mr. Munshi has to say about my amendment No. 246 about the armed forces to be merged in the Union?

Mr. President : Do you accept that amendment?

Shri K. M. Munshi : I do not accept that amendment. I said I would not accept any amendment other than those two moved by Mr. Santhanam.

Shri R. K. Sidhva : Cannot the armed forces of the States be merged in the Union Forces?

Shri K. M. Munshi : The section itself makes it clear that whatever forces are left in the States are part of the Union Forces. If honourable Members will see the Union List of the old Government of India Act of 1935, they will find that there was a separate heading called "The Armed Forces of the State" That entry has been omitted. There can only be one army now in India and that is the Army of the Union. By this article 246 these few contingents which are left in the States become integrated as part of the Union Army. But it will take some time to absorb them completely for organisational and other purposes. Till that time the whole thing has to be regulated by the President. At the same time, the article gives power to the Parliament to complete this process as early as Parliament thinks proper. Under the present conditions they could not be absorbed all at once and it must take time before they could be harmonised in every respect. That is the reason why article 246 has been drafted in this particular manner.

Mr. President : I will now put the various amendments that have been moved. The procedure which I propose to follow is this : I will take each amendment which has been moved by Dr. Ambedkar, take the vote on each separately and dispose it of. Then I shall put the whole part together.

Now, as regards amendment 217 article 211 A-there are several amendments. The first two are No. 237 and No. 238. These are the two amendments moved by Mr. Naziruddin Ahmed. They are more or less of a drafting nature, I wonder whether he wishes to have them put to vote. He is not here, so I will put them to vote.

Mr. President : The question is:

"That in amendment No. 217 of List VII (Second Week), in the proposed Now article 211A, for the word 'modifications' the words 'adaptations, modifications' be substituted".

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 217 of List VII (Second Week),--

> (i) in item (3) of the proposed article 211 A, for the words 'shall be omitted' the words shall not apply to this part' be substituted;
>
> (ii) in item (4) of the proposed article 211A in paragraph (a), after the words 'in clause (1)' the words 'for the time being specified in the First Schedule' be omitted and be inserted."

The amendment was negatived.

The Honourable Shri K. Santhanam (Madras : General) : In regard to my amendment No. 276 it has been suggested to me, Sir, that the words "Principal seat of Government" would be preferable to "Capital".

Shri K. M. Munshi : It is a verbal amendment which I am prepared to accept.

Mr. President : There is one slight change which has now been suggested that in place of the word "capital" we should use the word "principal seat of Government". I do not suppose there can be any objection to that. It is merely a verbal change. No. 276 has been accepted by Mr. Munshi.

The question is :

"That in amendment No. 217 of List VII (Second Week), in item (4) of the proposed article 211A for paragraph (b) the following be substituted :-

"(b) for clause (3) following clause shall be substituted, namely:--

> '(3) Unless he has his own residence in the principal seat of Government of his State, the Rajpramukh shall be entitled to the use of an official residence without payment of rent and there shall be paid to the Rajparamukh such allowances as the President may, by general or special order, determine.' "

The amendment was adopted.

Mr. President : We now come to the amendment No. 287 moved by Mr Guruv Reddy.

Shri H. R. Guruv Reddy : I do not want to press it, Sir. The amendment was, by leave of the Assembly, withdrawn.

Mr. President : We now come to No. 292.

Kaka Bhagwant Roy (Patiala & East Punjab States Union) : I would like to withdraw that amendment of mine, Sir.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is:

"That in amendment No. 217 of List VII (second Week), in paragraph (a) of item (10) of the proposed article 211A, for the words 'the President by general or special order', the words Parliament by law' be substituted."

The amendment was negatived.

Mr. President : In regard to amendment No. 278 there is an amendment (No. 293) moved by Professor Saksena. I shall first put that to vote.

The question is:

"That in amendment No. 278 of List X (Second Week), in clause (1) of the proposed article 197, for the words 'President after Consultation with the Rajpramukh' the words Parliament by law be substituted."

The amendment was negatived.

Mr. President : No. 278 has been accepted by Mr. Munshi.

The question is:

"That in amendment No. 217 of List VII (Second Week), in item (13) of the proposed article 211 A, for article 197, the following be substituted:-

"Salaries," etc., of judges. '197. (1) there shall be paid to the judges of each High Court such salaries as may be determined by the President after consultation with the Rajpramukh:

(2) Every judge shall be entitled to such allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament and, until so determined, to such allowances and rights as may be determined by the President in consultation with the Rajpramukh :

Provided that neither the allowances of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment".

The amendment was adopted.

Mr. President : The question is :

"That in amendment No. 220 of List VII (Second Week), in clause (1) of the proposed new article 235A, for the Words "until Parliament by law otherwise provides', the the words "until the President by order otherwise provides' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 217 of List VII (Second Week), in item (13) of the proposed article 211 A the words `after consultation with the Rajpramukh' be deleted from article 197."

The amendment was negatived.

Shri R. K. Sidhva : I beg to withdraw my amendment No. 246.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is:

"That in amendment No. 220 of List VII (Second Week), in clause (2) of the proposed new article 235A, the words 'and the Union shall bear the expenses thereof' be added at the end."

The amendment was negatived.

Mr. President : The question is:

"That article 237 be deleted."

The motion was adopted.

Article 237 was deleted from the Constitution.

Mr. President : The question is:

"That in amendment No. 223 of List VII (Second Week), in the proviso to the proposed new article 274 DDD, for the words 'President may by order' the words 'Parliament may by law' be substituted."

The amendment was negatived.

Shri T. T. Krishnamachari : Article 274 DD may be held over, Sir, to a subsequent day.

Mr. President : I shall put now article 302A to vote. The question is:

"That after article 302, the following new article be inserted, namely:-

Rights and privileges of rulers of Indian states

'302A. In the exercise of the power of Parliament or of the Legislature of a State to make laws or in the exercise of the executive power of the Union or of a State, due regard shall be had to the guarantee or assurance given under any such covenant or agreement as is referred to in article 267A of this Constitution with respect to the personal rights, privileges and dignities of the Ruler of an Indian State."

The motion was adopted.

Article 302A was added to the Constitution.

Mr. President: I shall now put the amendments to article 306-B. Part (ii) of No. 251 is disallowed as being out of order.

The question is:

"That in amendment No. 225 of List VII (Second Week), in the proposed new article 306B,--

the words "during a period of ten years from the commencement thereof, or during such longer or shorter period as parliament may by law provide in respect of any State", be deleted.

The amendment was negatived.

Shri R. K. Sidhva: I would like to withdraw my amendment No. 252.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: The question is:

"That in amendment No.225 of List VII (Second Week), in the proviso to the proposed new article 306 B, for the words 'President may by order' the words 'Parliament may by law' be substituted."

The amendment was negatived.

Mr. President: There are some amendments to amendment No. 299. I shall put the first amendment by Prof. Shibban Lal Saksena.

The question is:

"That in amendment No. 299 of List XIII (Second Week), at the end of the proposed clause (1) of article 258, the following words be added :-

'after that agreement has been approved by Parliament'."

The amendment was negatived.

Mr. President : I shall put the second amendment of Prof. Shibban Lal Saksena, which, I think, is the same as amendment No. 300 by Shri V. T. Krishnamachari.

The question is:

"That in amendment No. 229 of List XIII (Second Week), Sub-clauses (a), (b) and (c) of the proposed clause (1) of article 258, be relettered as sub-clauses (b), (c) and (d) of that clause and the following be inserted as sub-clause (a) :-

> '(a) questions arising from or connected with the vesting in the Union of assets and liabilities of such States related to any of the matters enumerated in the Union List'."

The amendment was negatived.

Mr. President : There are two amendments by Prof. Shibban Lal Saksena to the proposed new article 267-A. I shall put the first one to vote--it is really not an amendment but a deletion.

The question is:

"That in amendment No. 301 of List XIII (Second Week), sub-clause (b) of clause (1) of the proposed new article 267A be deleted."

The amendment was negatived.

Mr. President: I shall put the second one.

The question is:

"That in amendment No. 301 of List XIII (Second Week), in clause (2) of the proposed new article 267A, for the words 'by order of the President' the words by 'Parliament by law' be substituted."

The amendment was negatived.

Mr. President : I shall now put the amendments of Mr. B. Das.

The question is:

"That in amendment No. 301 of List XIII (Second Week), after clause (2) of the proposed new article 267A, the following new clause be added:-

'(3) Where any sums are guaranteed or assured to any Ruler's family members or relations, such sums be treated as part of privy purse and as free of tax'."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 301 of List XIII (Second Week), in clause (1) of the proposed new article 267A, after the words 'to any Ruler' the words 'or his family relations' be inserted."

The amendment was negatived.

Mr. President: I shall now put the amendment of Prof. Shibban Lal Saksena to the proposed new article 270-A.

The question is:

"That in amendment No. 302 of List XIII (Second Week), in clause (1) of the proposed new article 270A, the words 'and approved by Parliament' be added at the end."

The amendment was negatived.

Mr. President: I shall now put Part VI A as amended by the two amendments which have been accepted, namely Nos. 276 and 278.

The question is:

"That proposed Part VIA, as amended, stand part of the Constitution."

The motion was adopted.

Part VIA, as amended, was added to the Constitution.

Mr. President : I will put new article 235-A to vote.

The question is:

"That after article 235, the following new article be inserted, namely:--

Armed forces in States in Part III of the First Schedule.

'235A. (1) Notwithstanding anything contained in Constitution, a State for
time being specified in Part III of the First Schedule having any armed for
immediately before the commencement of this Constitution may, until Par
by law otherwise provides, continue to maintain the said force after such
commencement subject to such general or special orders as the President
from time to time issue in this behalf.

(2) Any such armed force as is referred to in clause (1) of this article shall form part of the forces of the Union'."

The motion was adopted.

Article 235-A was added to the Constitution.

Mr. President : The question is:

"That article 236, as amended, stand part of the Constitution."

The motion was adopted.

Article 236, as amended was added to the Constitution.

Mr. President : The question is:

"That new article 274 DDD stand part of the Constitution."

The motion was adopted.

Article 274 DDD was added to the Constitution.

Mr. President : I shall now put article 306-B.

The question is:

"That after article 306, the following new article be inserted:-

Temporary

'306B. Notwithstanding anything contained in this Constitution, during a period of provisions with respect to States in part III of the First Schedule.

from the commencement thereof, or during such longer or shorter period as Parliament may by law provide in respect of any State, the Government of every State for the time being specified in Part III of the First Schedule shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given by the President, and any failure to comply with such directions shall be deemed to be a failure to carry out the Government of the State in accordance with the provisions of this Constitution.

Provided that the President may by order direct that the provisions of this article shall not apply to any State specified in the order'."

The motion was adopted.

Article 360-B was added to the Constitution.

Mr. President : I shall put article 258 to vote.

The question is:

"That for clause (1) of article 258, the following clause be substituted:--

> (1) Notwithstanding anything contained in this Chapter, the Government of India may, subject to the provisions of clause (2) of this article, enter into an agreement with the Government of a State for the time being specified in Part III of the First Schedule with respect to--
>
> (a) the levy and collection of any tax or duty leviable by the Government of India in such State and for the distribution of the proceeds thereof otherwise than in accordance with the provisions of this Chapter;
>
> (b) the grant of any financial assistance by the Government of India to such State in consequence of the loss of any revenue which that State used to derive from any tax or duty leviable under this Constitution by the Government of India or from any other sources;
>
> (c) the contribution by such State in respect of any payment made by the Government of India under clause (1) of article 267-A of this Constitution,

and, when an agreement is so entered into, the provisions of this Chapter shall in relation to such State have effect subject to the terms of such agreement".

The motion was adopted.

Article 258 was added to the Constitution.

Mr. President : I shall put article 267-A.

The question is:

"That in Chapter I of Part IX, after article 267, the following new article shall be inserted, namely:-

Privy Purse sums of Rulers.

'267A. (1) Where under any covenant or agreement entered into by the Ruler of any Indian State before the commencement of this Constitution, the payment of any sums, free of tax, has been guaranteed or assured by the Government of the Dominion of India to any Ruler of such State as Privy Purse--

(a) such sums shall be charged on, and paid out of, the Consolidated Fund of India; and

(b) the sums so paid to any Ruler shall be exempt for all taxes on income.

(2) Where the territories of any such Indian State as aforesaid are comprised within a State specified in Part I or Part III of the First Schedule there shall be charged on, and paid out of, the Consolidated Fund of that State such contribution, if any, in respect of the payments made by the Government of India under clause (1) of this article and for such period as may, subject to any agreement entered into in that behalf under clause (1) of article 258 of this Constitution, be determined by order of the President."

The motion was adopted.

Article 267-A was added to the Constitution.

Mr. President : I shall put article 270-A.

The question is:

"That after article 270, the following new article be inserted:-

'270A. (1) As from the commencement of this Constitution--

Succession to property, assets liabilities and obligations of Indian States.

(a) all assets relating to any of the matters enumerated in the Union List vested
immediately before such commencement in any Indian State corresponding to a
State for the time being specified in Part III of the First Schedule shall be veste
Government of India, and
(b) all liabilities relating to any of the said matters of the Government of any In
State corresponding to any State for the time being specified in Part III of the F
Schedule shall be the liabilities of the Government of India,

subject to any agreement entered into in that behalf by the Government of India with the Government of that State.

(2) As from the commencement of this Constitution the Government of each State for the time being specified in Part III of the First Schedule shall be the successor of the Government of the corresponding Indian State as regards all property, assets, liabilities and obligations other than the assets and liabilities referred to in clause (1) of this article'."

The motion was adopted.

Article 2790-A was added to the Constitution.

The Assembly then adjourned for Lunch till Four of the Clock.

The Assembly re-assembled after Lunch at Four of the Clock, Mr. President (the Honourable Dr. Rajendra Prasad) in the Chair.

ARTICLE 3 (*reopened*)

Mr. President : We shall now take up those consequential amendments No. 226 etc.

The Honourable Dr. B. R. Ambedkar : I would ask Mr. T. T. Krishnamachari to move the amendments on my behalf.

Shri T. T. Krishnamachari : Mr. President, Sir, I think it has to be formally put to the House whether they would give permission to re-open all these articles covered by these amendements.

Mr. President : These are consequential amendments which arise out of the amendments which we have accepted today, but as these relate to articles which have already been passed, the sanction of the House is required for reopening those articles. Do I take it that the House gives leave to do so?

Honourable Members : Yes.

Shri T. T. Krishnamachari : Mr. President, Sir, I move the following consequential amendments to certain provisions of the Draft Constitution already agreed to by the Constituent Assembly, I move:

"That for clauses (a) and (b) of the proviso to article 3, the following be substituted:--

> 'where the proposal contained in the Bill affects the boundaries of any State or States for the time being specified in Part I or Part III of the First Schedule, or the name or names of any such State of States, the views of the Legislature of the State or, as the case may be, of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President'."

Amendment No. 227.

Mr. President : Shall we not take them one by one? There are three amendments to it.

(Amendment No. 253 was not moved)

Shri H. R. Guruv Reddy : In view of the statement already made by the Honourable Sardar Patel, I do not move amendment No. 290.

Mr. President : Mr. Pataskar amendment No. 291

Shri H. V. Pataskar (Bombay : General) : Sir, I would like to make it clear in the beginning that the amendment which I propose to move does not relate exactly to the matter which has been just now proposed to be introduced by the amendment just now moved. It is with respect to the whole article as it has been re-opened. I hope, as the article has been reopened, this amendment may be taken to be in order.

The Honourable Shri K. Santhanam : On a point of order, Sir, I think this is inconsistent with the provisions which we have made. A law will be passed by a majority of the House. 'There is no procedure for taking the votes of a small section of the House. This amendment is out of order.

Shri H. V. Pataskar : I do not admit it is out of order on that ground, because it is open to us to make a provision of the nature which I propose to make. The only point which struck me was that it is certainly beyond the scope of the official amendment which has been introduced just now. It will open to the House to amend the provision in the Article as it has been re-opened. It cannot be said to be out of order on that ground. As the whole article is re-opened, I would be entitle to put forward my amendment.

The Honourable Shri K. Santhanam : Some states may be clubbed together for representation in the House of the People. We may not be able to identify which member is representing which State. I would not be possible to operate this clause even if it is passed.

Shri H. V. Pataskar : That I would explain while moving my amendment, and give my reasons for it. I have made a provision that the subject matter of the Bill shall be decided by a majority of the votes of the persons representing those areas in the House of the People that are affected by the provision of the Bill. There is no objection on that ground.

Mr. President : Would it not be a very novel thing?

Shri H. V. Pataskar : Novel it would be.

Mr. President : Any kind of provision we can make in the Constitution to say that a particular question will be decided......

Shri H. V. Pataskar : I would like to make my submissions before I move my amendment. I think that is necessary.

Mr. President : You will state your case.

Shri H. V. Pataskar : So far as the amendment of the honourable Member just introduced is concerned, it is good so far as it goes. As article 3 originally stood, it was to be with the consent of the States in Part III of the First Schedule. That is omitted. We had made provision in article 3 that no Bill was to be introduced in either House of Parliament except on the recommendation of the President and unless previously thereto the President has ascertained the views of the legislatures of the States in Part I, and obtained the consent of the States in Part III if any of those States were to be affected. Now by the proposed official amendment we dispense with the consent of States in Part III and bring them on a level with States in Part I and in both cases only the views of these States are to be ascertained by the President. Now, Sir, this is good as far as it goes. But, my fear is that so far as the actual wording of the article and its object being successfully carried out is concerned, it is likely to be dead letter more or less in the Constitution. That is the view that I take. It is for this reason that I have proposed this amendment.

If we look to the history of a provision of this nature, you will first turn to the Government of India Act of 1919. There, for the first time, even a foreign Government realised that it was necessary to make certain adjustments in the boundaries of the Provinces and to regrant them and therefore a similar provision was made in the Act of 1919 for the purpose. Even then it was found that no action was taken between 1919 and 1935 for the simple reason that all these re-adjustments require some sort of interference with the day-to-day administration of Government with no Government of the day likes. Therefore, though there was this provision from 1919 to 1935 and there were not as many difficulties in the way of re-grouping as there would be now, and hereafter still more, they did not take any action because naturally the administration for the time being was engrossed with the day-to-day administration and they did not want to take this additional burden. Because, even if in a district some places were to be transferred from one district to another, there is always an amount of commotion and nobody in charge of the administration wants that there should be even this little interference with the day-to-day administration. It was for this reason that though there was such a provision in the Act of 1919, nothing was done.

Then came the Act of 1935. Probably realising that the same difficulties will arise even if a provision of this nature is merely made in the constitution when they wanted to remove the anomalies of Sind being linked with Bombay and Orissa being linked with Bihar, they naturally introduced two sections for the purpose in the Government of India Act 1935, and made provision for their being framed prior to the introduction of the Government of India Act of 1935. This is clear enough to my mind, that even hereafter merely by making a provision of this nature, nothing is going to happen. The present section lays down that Parliament may by law make such a change. It is only a minor portion of the whole country which is going to be affected by taking action as is contemplated in paragraph (1) of article 3. The rest will be represented by the majority of the representatives who are not likely to be interested in the matter. Therefore, unless the Government of day, in spite of the fact that it would increase the problems of day to day administration, think it necessary that this should be done, this article would be a dead letter and no action will ever be taken. Because only after crossing the hurdles mentioned in article 3 namely, ascertaining the views of the States concerned etc., and getting the permission of the President, the Bill has to be introduced in the Parliament and even then there will be difficulties. Suppose there is a question regarding a small area in the south with respect to which the boundaries are to be changed. The members representing other areas not likely to be keen about this, and if the government of the day is not interested in doing this, I am sure that the majority of members will be more inclined to go with the Government and say nothing should be done at present and no action is necessary and the Bill will not be passed. The article therefore will continue to be a dead letter hereafter, as it has continued even since 1919.

I therefore propose this amendment. I do not want that it should be decided only by a particular group. Suppose one province is to be separated from another or one area is to be taken out from one province and added to another. I want the matter to be decided not with the votes of persons representing one of them but with the votes of all persons who are going to be affected by the change. I insist that the matter should be decided with the votes of all of them. If you leave to votes of all the members of the House who are not affected by the changes and leave the article as wide as it stands now, I am sure that this article 3 will be a dead letter for all time to come, and no action will ever be taken under this provision which is similar to the provision contained in the old Act of 1919 and in the Act of 1935. If I may so, there will be more difficulties under the new Constitution and the provisions of article 3.

Mr. President : Well, Mr. Pataskar, it is conceivable that a case may arise where the members representing the State or States affected by the proposed law or opposed to the change, but the rest of the House wants it to be passed.

Shri H. V. Pataskar : That is not likely.

Mr. President : Likely or unlikely, I am putting it to you as a hypothetical question. Suppose a case arises, would you like the few members representing that particular State to defeat the rest of the House?

Shri H. V. Pataskar : In the very nature of things it is unlikely. What I expect is that the others are not likely to be much interested. Supposing they are interested, the matter should better be left to those who are concerned with the matter. Only the other day I learnt from the honourable Member Mr. Chaliha that there is a place called Dimapur in Assam and its inclusion in a particular are has started controversy; even for that there is such a terrible sort of agitation. Under such circumstances no administration is likely to make any change. So the hypothetical contingency is not likely to arise. In the next place even if such a contingency arises, it would be better that the matter should be decided with the votes of those that are going to be affected rather than otherwise.

Mr. President : The contingency is not very remote. Supposing that a proposal is that a certain portion be transferred to another and there is no question of creating separate linguistic provinces--that possibility is not remote. It is a possibility that should be considered.

Shri H. V. Pataskar : According to my amendment that should be decided by votes of both the States. However that is the object of my amendment and therefore I hope it is not out of order. Therefore my amendment is :

"That in amendment No. 226 of List VII (Second Week), after the proposed words in the proviso to article 3 the following Explanation be added :--

> *'Explanation.*---Any such law shall be deemed to have been passed if a majority of the members of the House of the People representing the State or States affected by the provision of such a Bill support the same'."

Honourable Mr. Santhanam raised the difficulty of ascertaining the representatives whose votes are to decide the matter. My submission is there Will be no difficulty as I have confined this matter to the votes of the members in the House of the People alone and not to Parliament generally or to the votes of the Upper House.

Mr. President : I think I will rule this out of order for various reasons. The first is that it is not germane to the amendment which has been moved and it does not fit in with that. The second reason is that the contingency that is contemplated raises very many questions and points which impinge upon many other articles of the Constitution which we have already passed. For example, the amendment wants that the vote of a majority of the Members of the House of People representing the State or States affected by the provision of such a Bill shall prevail. In the first place, it takes away the right of the other House to consider that question. In the second place, the difficulty will be experienced when instead of voting for the law, the majority of members mentioned here are opposed to the law and the majority of the House wants the law to be opposed. So, for these various reasons I think this is out of order.

Then there is no other amendment to this. Anybody wishes to speak?

Shri Brajeshwar Prasad : Sir, I rise to oppose this amendment. We gave our permission to reopen this article on the understanding that these are consequential amendments. This is not a consequential amendment to any article which has been passed. We are reopening the whole question once again. The whole attempt seems to me to water down the power of the Parliament. It will make the article practically null and void.

Mr. President : I thought it was increasing the power of the Parliament.

Shri Brajeshwar Prasad : If the Parliament is to function according to this article and if any such step is taken only after the views of the

Legislatures of the State or of each of the States with respect to the proposal to introduce the Bill are received, the article will never come into operation, it would make it utterly impossible. It was on the definite understanding that this is a consequential amendment that we gave permission to reopen this.

Mr. President : In provision (b) as it stands which has been accepted, the consent is required. Here it is only the consultation that is required. Consent is much more than consultation. It enhances the power of the Parliament, it does not reduce it.

Shri Brajeshwar Prasad : I agree with this interpretation of this Constitution, but I feel that we should not sail under false colours. Why should we say that we are reopening this because this is a consequential amendment?

Shri T. T. Krishnamachari : This is substantially the same as provision (a) in the original article.

Shri Brajeshwar Prasad : May be, but why did you say that this is a consequential amendment? The House gave the permission on the understanding that this is a consequential amendment.

Shri B. Das : Sir, the amendment moved by my Friend Mr. Pataskar and the objection made by my Friend Brajeshwar Prasad indicate that some of us are not satisfied with the old article 3 or the present draft article 3. It is not a new thing that my Friend Mr. Pataskar points out that it repeats the old Government of India Act provisions. Mr. Pataskar wanted that the areas affected which are to be transferred to another State should have their views preponderate over the view of the whole Assembly of that State. I had some experience in the establishment of the province of Orissa. We followed the old 1920 Government of India Act. We were then in Bihar and Orissa. The Bihar and Orissa Legislative Council unanimously passed that Orissa province should he separated. Then there was a similar resolution in the Assembly of Madras and the great leader of Bihar, Shri Sachchidananda Sinha moved a Resolution on the floor of the former Indian Legislative Assembly that Orissa should be made into a separate province. It is not the creation of a new state that agitates the feelings of the Members of this House or the public at large. It is the adjustment of boundaries that is the issue and that crops up here and there, whether it be Bengal and Bihar or Maharashtra and Gujarat or Andhra and Orissa. It always crops up. The leaders make responsible or irresponsible statements and the public at large get agitated. For myself, I am not very happy with this new article 3 or with Schedule-I that is coming, whereby two of my ancient Orissa States, namely Sareikella and Kharsuan once merged with Orissa and then re-merged into Bihar. We feel those Oriya people will lose their race identity. The whole of Midnapore, three-fourths of which are Oriyas, does not have an Oriya school. Now the people there pass off as Bengalees. Bengalees have raised similar trouble in Purulia District. These are problems and I am touching on the psychological aspect of those fears and apprehensions. Whatever our Drafting Committee legislates or lays down is not the issue. The hearts of the people speaking different languages, or having ancient ties with one another, are seriously affected and touched in this matter. I am not very happy at my Friend Prof. Ranga laying claim almost to the area in which my village stands. So, Sir, these responsible or irresponsible utterances of responsible leaders or irresponsible political agitators create such state of things, and I do not very much appreciate article 3 which does not give any chance to any people to be amalgamated with their own race by adjustment of boundaries. It will not give my friend Mr. Chaliha any chance to readjust certain boundaries. It will not give anybody any chance. I am only voicing the psychological fear, knowing the conditions, that many of us live in; but we do not know how to rectify it by provisions of article 3.

Shri Kuladhar Chaliha (Assam : General) : Mr. President, Sir, I am neither satisfied with the amendment, nor with the article enacted. In fact, if you know the history of the present position of the Eastern frontiers you would not pass an article like this. I should like the President to have absolute power to determine, to increase or decrease any State if he like to do so. At present the Eastern boundary of Assam, for instance the Mac Mahon line is quite nebulous. You do not know where the boundary is. You can push it further and further and nobody knows where it will end. If the permission of Parliament is to be got and on its recommendation the President is to act, that will take a long time. He has to fix the boundary immediately. Now, we do not know where the boundary lies, either in the Eastern or Northern frontier. There was RIMA, which was said to be last port of the British territory, but the Chinese took away the flag and a British column had to be sent to put the flag there again. That is said to be our boundary, but nobody knows if the boundary was ever fixed. Now, there should be some power or some provision which would empower the President to fix boundary is. Now, there is the Balipara frontier and nobody knows where its boundary exactly is. Nobody knows the Naga boundary and where the Burmese territory begins. As such, the article as it is, and also the amendment suggested, I am not satisfied with. The President must have some power to fix the boundaries and if possible, the Drafting Committee should make the necessary provisions whereby the boundaries could be fixed wherever they are nebulous, where you do not know the boundary, where the MacMohan line ends, where General Hertz's fort or HERTZ line is, and so on.

Mr. President : I may point out that this article has nothing to do with boundaries of foreign States. It relates to boundaries within India. Why bring in the Chinese and all that?

Shri Kuladhar Chaliha : All right, Sir.

Mr. President : Mr. Brajeshwar Prasad, there is no question of sailing under false colours. The whole substance of the amendment adopted this morning is that the States should be brought in line with the Provinces. Here there is one point where the Indian States in Part III are treated separately from the States in Part I and the amendment is to put them all together. So it is really in pursuance of that, and not a case of sailing under false colours.

Shri Brajeshwar Prasad : I am sorry, Sir, I had not understood the implications.

Mr. President : Does anyone wish to say anything?

Shri T. T. Krishnamachari : Not after your explanation.

Mr. President : Then I put 226 to vote.

The question is :

"That for clauses (a) and (b) of the proviso to article 3, the following be substituted:--

'where the proposal contained in the Bill affects the boundaries of any State or State for the time being specified in Part I or Part III of the First Schedule, or the name or names of any such State or States the views of the Legislature of the State or, as the case may be, of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President'."

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, I move:

"That for the Explanation to clause (2) of article 47, the following Explanation be substituted :--

> '*Explanation.*--For the purposes of this clause, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor or Rajpramukh or Uprajpramukh of any State or is a Minister either for the Union or for any State'."

Sir, this is a purely consequential amendment and the words introduced here are the words 'Rajpramukh' and 'Uprajpramukh'. I hope there will be no difficulty in passing this.

Shri K. Chengalaraya Reddy : I may point out that "Uprajpramukh" has not been defined yet.

Shri T. T. Krishnamachari : We have not yet tabled our definition of Rajpramukh yet. We will take the hint given by my friend and include the definition of Uprajpramukh.

Mr. President: Then I put it to vote.

The question is:

"That for the Explanation to clause (2) of article 47, the following Explanation be substituted:-

> *'Explanation,*--For the purposes of this clause, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor or Rajpramukh or Uprajpramukh of any State or is a Minister either for the Union or for any State'."

The amendment was adopted.

ARTICLE 55 *(reopened)*

Shri T. T. Krishnamachari : Sir, I move:

"That for the Explanation to clause (4) of article 55, the following Explanation be substituted:-

> *'Explanation.*--For the purposes of this clause, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice-President of the Union or the Governor or Rajpramukh or Uprajpramukh of any State or is a Minister either for the Union or for any State'."

Mr. President : Does anyone wish to say anything about it?

The Honourable Shri K. Santhanam : I think the word "President" may be left out, because you cannot expect the President to contest for the Vice-Presidentship.

Mr. President : Mr. Krishnamachari?

Shri T. T. Krishnamachari : Sir, I do not know. We will examine the matter.

Shri A. Thanu Pillai (United State of Travancore & Cochin) : A President in office can stand for re-election and therefore the term 'President' should be in the article.

Shri T. T. Krishnamachari : Sir, we will examine it. It can be put to vote now.

Mr. President: The question is:

"That for the Explanation to clause (4) of article 55, the following Explanation be substituted:-

> *'Explanation.*--For the purposes of this clause, a person shall not be deemed to hold any office of profit by reason only that he is the President or Vice President of the Union or the Governor or Rajpramukh or Uprajpramukh of any State or is a Minister either for the Union or for any State'."

The amendment was adopted.

ARTICLE 67 *(reopened)*

Shri T. T. Krishnamachari : Sir, I move:

"That clause (9) of article 67 be omitted."

This clause (9) reads as follows:-

"When States for the time being specified in Part III of the First Schedule are grouped together for the purpose of returning representatives to the Council of States, the entire group shall be deemed to be a single State for the purposes of this article."

Sir, this will no longer be necessary and a contingency like this will be adequately provided for in article 3-B because I think there will be no necessity for providing for small States in the present state of the Sates, which are in Part III. So clause (9) of article 67 may be omitted.

Mr. President : Does anyone wish to say anything about it?

The question is:

"That clause (9) of article 67 be omitted."

The amendment was adopted.

ARTICLE 83 (*reopened*)

Shri T. T. Krishnamachari : Sir, I move:

"That for sub-clauses (a) and (b) of clause (2) of article 83, the following be substituted:-

'he is a Minister either for the Union or for such State'."

Actually these sub-clauses (a) and (b) are fairly lengthy and this amendment, it is considered would serve the purpose.

Mr. President: Does anyone wish to say anything about it?

The question is:

"That for sub-clauses (a) and (b) of clause (2) of article 83, the following be substituted:-

'he is a Minister either for the Union or for such State'."

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, I move:

"That in paragraph (iii) of sub-clause (d) of clause (3) of article 92, for the words 'exercises or immediately' the words 'exercises jurisdiction within any area included in the territory of India or which at any time' be substituted."

Sir, this refers to article 92 which incidentally deals with the subject of the annual financial statement and here it is a matter which deals with pensions payable to judges and this amendment is considered necessary in view of the present circumstances. Therefore, Sir, I move.

Mr. President : The question is:

> "That in paragraph (iii) of sub-clause (d) of clause (3) of article 92, for the words 'exercises or immediately' the words 'exercises jurisdiction within any area included in the territory of India or which at any time' be substituted."

The amendment was adopted.

ARTICLE 100 (*reopened*)

Shri T. T. Krishnamachari : Sir, I move.

> "That clause (2) of article 100 be omitted."

Sir, article 100 deals with restrictions on discussion in Parliament and this particular clause (2) reads thus:

> "In this article the reference to a High Court shall be constructed as including a reference to any court in a State for the time being specified in Part III of the First Schedule which is a High Court for any of the purposes of Chapter IV of this Part."

This is no longer necessary in view of the action taken by this House this morning. Sir, I move.

Mr. President : The question is:

> "That clause (2) of article 100 be omitted."

The amendment was adopted.

ARTICLE 248-B *(reopened)*

Shri T. T. Krishnamachari : Sir, I move:

> "That in clause (2) of article 248-B, after the word 'Governor' or Rajpramukh of the State' be inserted."

An explanation for this is hardly necessary.

Mr. President: The question is:

> "That in clause (2) of article 248-B, after the word 'Governor' the words 'or Rajpramukh of the State' be inserted."

The amendment was adopted.

ARTICLE 263 *(reopened)*

Shri T. T. Krishnamachari : Sir, I move:

"That in clause (2) of article 263, after the word 'Governor' the words 'or Rajpramukh' be inserted."

This clause deals with the custody of the Consolidated Fund of the States, and this change is necessary in view of the House having passed Part VI-A.

Mr. President : The question is:

"That in clause (2) of article 263, after the word 'Governor' the words 'or Rajpramukh' be inserted."

The amendment was adopted.

SEVENTH SCHEDULE *(reopened)*

Shri T. T. Krishamachari : Sir, I move:

"That in List I of the Seventh Schedule, after entry 43, the following entry be inserted:-

'43-A. Courts of wards for the estates of Rulers of Indian States'."

Sir, in the present set-up of the States, and in view of the fact that there are a number of Rulers, who are no longer Rulers in the real sense but have only estates, imposes a particular liability on the Central Government in regard to the administration of those estates, should that be necessary by virtue of the minority of those who own the estates or some incapacity for one reason or another of such persons, and the provision that is now being put in, is analogous to entry 25 of List II by which the provinces hitherto have been exercising jurisdiction over estates of zamindars and owners of other big estates where minority or other factors had supervened. The same provision is now sought to be put in with regard to the estates of India Rulers. This power has necessarily to be exercised by the Government of India and it cannot be entrusted for various reasons to the Governments of the States concerned.

Mr. President : The question is:

"That in List I of the Seventh Schedule, after entry 43, the following entry be inserted:--

'43A. Courts of Wards for the estates or Rulers of Indian States'."

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, I move:

"That in List II of the Seventh Schedule, to entry 25 the following words and figures be added:-

'subject to the provisions of entry 43-A of List I'."

This is consequential as a result of the House accepting my previous amendment. This is necessary as it indicates precisely the powers of the States in regard to entry 25. Sir, I move.

Mr. President: The question is:

"That in List II of the Seventh Schedule, to entry 25 the following words and figures be added:-

'subject to the provisions of entry 43 A of List I'."

The amendment was adopted.

ARTICLE 270 (*reopened*)

Shri T. T. Krishnamachari : Sir, there are two other articles. One is 270 for which, I hope, the permission of the House will be given to reopen that article. There is another article of a non-controversial nature 67-A. I suggest that these two articles be taken up.

Mr. President : Let us take up 270 now.

Shri T. T. Krishnamachari : Sir, I move:

"That for article 270, the following article be substituted:-

Succession to property, assets, liabilities and obligations.	270. (a) All property and assets vested in His Majesty for the purposes of t Government of the Dominion of India and all property and assets vested in Majesty for the purposes of the Government of each Governor's Province sl from the commencement of this Constitution, vest respectively in the gove of India and the Government of each corresponding State, and

(b) all liabilities and obligations of the Government of the Dominion of India and of the Government of each Governor's province shall, as from the commencement of the Constitution, be the liabilities and obligations, respectively, of the Government of India and the Government of each corresponding State,

subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the provinces of West Bengal, West Punjab and East Punjab."

Mr. President : I think this is also an independent article which you wish to move.

Shri T. T. Krishnamachari : It forms part of the Chapter. I said that permission may be given for redrafting this also.

Mr. President : I had better ask for that permission. It is sought to amend article 270 which was adopted at a previous session of the Assembly. Do the Members give permission to amend that article?

Honourable Members : Yes.

Mr. President : It has been moved. You can proceed.

Shri T. T. Krishnamachari : The reason why this amendment is sought to be moved is merely because our legal advisers have told us that the article as it has been approved by the House originally is defective in character. Sir, the original article, if the House would permit me for purposes of clarification, reads thus:-

> "As from the commencement of this Constitution, the Government of India and the Government of each State for the time being specified in Part I of the First Schedule shall respectively be the successors of the Government of the Dominion of India and of the corresponding Governors' Provinces as regards all property, assets, liabilities and obligations subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the Provinces of West Bengal, East Bengal, West Punjab and East Punjab."

The reason for the suggested change is this : The technical term that was used in the past was that all properties and assets were vested in His Majesty both in regard to properties that were administered by the Government of India and by the Governments of the provinces. But in respect of the liabilities and obligations of the Governments concerned the language used is slightly different. It has been found that so far as this position is concerned it must be clarified. I should like to tell Honourable Members of this House, who I know react rather adversely to any reference to His Majesty, that it is a matter in which we have no escape. If formerly the legal phraseology was that all assets and property of the Governments, whether of the Centre or of the Provinces, were vested in His Majesty, we have to use the same words in order to re-vest those properties and assets in the Government of India to be and the Governments of the States that are to be created by reason of this Constitution. Honourable Members will therefore understand that this is a matter in which our legal advisers have been categorical and we have no other option except to amend the article in the manner suggested by me. I hope the honourable Members of the House will find no difficulty in accepting the article as amended by me as it will make the position crystal clear and above any legal defect which it was stated the original article 270 did suffer from.

Mr. President : Does any Member wish to say anything on this? Then I will put this new article 270 to vote.

The question is:

> "That for article 270, the following article be substituted:-

Succession to property, assets, liabilities and obligations.

> '270. (a) All property and assets vested in His Majesty for the purposes Government of the Dominion of India and all property and assets vested majesty for the purposes of the Government of each Governor's Provinc as from the commencement of this Constitution, vest respectively in the Government of India and the Government of each corresponding State,

> (b) all liabilities and obligations of the Government of Dominion of India and of the Government of each Governor's Province shall, as from the commencement of this Constitution, be the liabilities and obligations, respectively, of the Government of India and the Government of each corresponding State,

subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the provinces of West Bengal, East Bengal, West Punjab and East Punjab'."

The motion was adopted.

Article 270 was added to the Constitution.

NEW ARTICLE 67 A.

Shri T. T. Krishnamachari : May I move article 67 A, Sir,

The President : Yes.

Shri T. T. Krishnamachari : I move:

"That after article 67, the following article be inserted:-

Special representation to States in part II and territories other than States.

'67A. Notwithstanding anything contained in clause (5) of article 67 of this Constitution, Parliament may by law provide for the representation in the of the People of any State for the time being specified in Part II of the First Schedule or of any territories comprised within the territory of India but n included within any State on a basis or in a manner other than that provid that clause'."

I would ask honourable Members to look at the wording of clause (5) of article 67, sub-clauses (b) and (c), which imposes certain limits within which representation could be given in respect of territorial constituencies from which Members of the House of the People are to be elected. There is, however, a clause in article 67 clause (7), which reads thus:-

> "Parliament may, by law, provide for the representation in the House of the People of territories other than States."

Though it would not mean that while Parliament may by law provide for representation of these areas, it would certainly not mean that Parliament can depart from the scheme outlined in clause (5), sub-clauses (b) and (c).

The reason for proposing this amendment is that while Parliament might have to provide for representation in the House of the People of territories other than the States, it is also likely that in the case of Part

II States some of them may not satisfy the conditions laid down by sub-clause (b) and (c) of clause (5) of article 67. It may be argued that these areas coming under Part II of First Schedule could be grouped together for purposes of providing representation in the House of the People, but it may not be always possible. I have no desire to go into the details of the provocation for this amendment, but we do visualise that a contingency might occur where we might have to provide special representation for certain areas which might be either in Part II of First Schedule or be territories other than States, and the present set-up of article 67 would provide difficulties in the way of our providing these areas with representation in the House of the People. I therefore ask the House to accept--though it is a tall order--my word for it and accept the necessity for an amendment of this sort. I might anticipate some of the amendments that are sought to be moved, namely, that this concession should be extended to representation in the Council of States. I do not think that clause (4) which is the operative clause in article 67 bars entirely the liberty of Parliament in respect of provision of representation in the Council of States. I think that the matter is now being examined in the light of the set-up of Schedule 3 B which we propose to introduce in which the arithmetical proportions will be calculated and seats would be mentioned according to the various States as precisely as possible, that there will be some lee-way left therein for additional representation, should Parliament so decide. I therefore suggest to my honourable Friends in this House who want to bring in the Council of States to leave it at that. We are examining the position and if it is necessary we shall introduce a suitable amendment, but I do not think that it is necessary at this Stage. For that matter most of those areas, particularly those that are covered by Part II, have a greater desire to be adequately represented in the House of the People than in the Council of States, and I think that for the time being the contingencies which we envisage at the moment would be amply covered by a provision of the nature that I have now moved rather than any extension of this particular provision to the Council of States as well. I, therefore, request honourable Members not to press their amendments which seek to include the Council of States within the scope of the suggested article that is before the House.

Sir, I move.

Prof. Shibban Lal Saksena : I beg to move:

"That in amendment No. 306 of List XIII (Second Week), in the proposed new article 67 A, after the words 'House of the People' the words 'and the Council of States' be inserted."

Sir, the article as modified by my amendment would read thus:-

> "Notwithstanding anything contained in clause (5) of article 67 of this Constitution, Parliament may by law provide for the representation in the House of the People and the Council of States of any State for the time being specified in Part II of the First Schedule or of any territories comprised within the territory of India but not included within any State on a basis or in a manner other than that provided in that clause."

Sir, my Friend Mr. Krishnamachari has explained the purpose of this clause. In fact the House will remember when we were dealing with the question of Delhi Province, the Honourable the Prime Minister suggested that Delhi might, if it does not have a separate Legislature, be given additional representation in the House of Parliament. I think that it is only proper, if that pledge is to be honoured, then representation has to be provided not only in the House of the people but also in the Upper House. Besides Delhi, there are so many other Centrally administered areas. We are taking in more and more of the States under Central administration. Chandranagore will soon come into the Union; similarly we have got Tipperah and the other States on the Eastern border of India which are likely to integrate with the Union. If the idea is to give representation to those areas in the House of the people, there is no reason why they should not be represented in the Council of States. I would have much appreciated and it would have been much simpler if we had provided for a least one seat for each of the Centrally Administered areas in the Upper House as well.

Shri Brajeshwar Prasad : Mr. President, Sir, I rise to support the article as has been moved by my honourable Friend Shri T. T. Krishnamachari. My honourable Friend Professor Shibban Lal Saksena has perhaps completely misunderstood the meaning of representation in the Upper Chamber. Representation in the Upper Chamber is provided for a constituent unit-for those States which combine in order to form a federation. Here we are providing for representation for States in part II which are not, technically speaking, constituent units. Constituent units are those States which are mentioned in parts I and III of the Schedule. Article 67A provides for representations of those territories which have been placed in Part II territories like Andaman and Nicobar Islands, territories like Ajmer-Merwara, Coorg and panth Piploda. We cannot confer upon these territories the status of constituent units. Therefore, there can be no meaning in providing representation for these territories in the Upper Chamber of the Federal Parliament.

The Honourable Shri K. Santhanam : Mr. President, Sir, this matter was considered at the time of the Constitution of the House of the People and the omission of Part II was deliberate. We did not want to create small pocket constituencies for the House of the People.

So far as the Council of the States is concerned, article 67(4) provides that the representatives of the States for the time being specified in Part II of the First Schedule in the Council of States shall be chosen in such manner as Parliament may by law prescribe. Therefore, while provision was made for the representation of States in Part II in the Council of States, they were left out in the representation in the House of the People for the reason that either they have got enough population or not. If they have got enough population, they will get representation on their rights. But where they have not enough population, it was intended that they should be grouped in the near-by constituencies. There is no difficulty in grouping Ajmer-Merwara or Coorg with the neighbouring constituencies so that those people also will take part in the election of the House of the People. Though, for the sake of convenience, each State in Part I and Part III may be taken roughly for demarcation in the constituencies of the House of the People, there is no statutory obligation that every State should be divided into exclusive territorial constituencies for the House of the People. There may be border areas of two States in Part I and Part III grouped together in the constituencies of the people.

Therefore, we are unnecessarily marring the Constitution by bringing in an article by which representation will be given to small areas. It is possible that in the course of integration or for other reasons, we may have to create a large number of centrally Administered areas. Suppose in the reconstitution of the linguistic provinces many areas have to be left out as Centrally Administered areas, if we are to create a constituency for each of these areas, then we will be creating a large number of pocket constituencies for the House of the People. So, I think it is a wholly unnecessary provision. The purpose can be achieved constitutionally by other means and I do not think representation in the House of the People which is based on a scientific basis should be marred by a provision like this. I do not say that will be misused, but in a Constitution the test is whether a provision *can be* misused, not whether it *will be* misused and this is a provision which can be misused. So, I suggest it may be dropped.

Shri T. T. Krishnamachari : Mr. President, Sir, I quite agree with Mr. Santhanam that article 67 was very carefully worded and it was intended at that time that there should be no mitigation of the conditions which are covered by clause 5, sub-clauses (b) and (c). I did tell honourable Members of this House that we had a specific purpose in view in bringing this amendment and it would be very wise for me to go beyond telling them that the Drafting Committee and the Ministries concerned were fully satisfied that an amendment of this nature was necessary. Therefore, I would ask my honourable Friend to withdraw his objection. At the same time I dare say that he is in a better position to realise than myself that since the initiative in any matter like this would ordinarily come from Government, it is unlikely that the wishes of this august House in regard to fixing representation in the House of the People would not be rigidly adhered to and that Parliament would agree to needless mitigation of the stringent conditions imposed by article 67. Beyond that I am not able to tell my honourable Friend of the purpose of this amendment. I could give him this assurance that this matter has been very carefully considered and it is after that that we have decided to bring this additional article. I do hope that the House will have no objection to accepting the motion moved by me.

Mr. President : The question is :

"That in amendment No. 306 of List XIII (Second Week), in the proposed new article 67 A, after the word 'House of the people' the words 'and the Council of States' be inserted."

The amendment was negatived.

Mr. President : I shall now put article 67A. The question is :

"That after article 67, the following article be inserted :-

Special representation to States in Part II and territories other than States.

'67A. Notwithstanding anything contained in clause (5) of article 67 of this Constitution, Parliament may by law provide for the representation in the of the People of any State for the time being specified in Part II of the First Schedule or of any territories comprised within the territory of India but nc included within any State on a basis or in a manner other than that provid that clause.' "

The motion was adopted

Article 67-A was added to the Constitution.

PROGRAMME *re* THIRD READING

Shri T. T. Krishnamachari : May I suggest that article 264A, 296 and 299 be taken up tomorrow?

Mr. President : Those are controversial matters and we may better take them up tomorrow. We cannot take up any other article. So we shall rise now.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : With regard to the amendments which have been passed today, I confess with many others that we have not been able to follow the debate at all. These amendments were sent to us at half past ten last night. I had to be awakened from my sleep. And from morning we are working here with the result we have had no time to consider these amendments. I do not object to the procedure because some short-cut must be arrived at. I am only suggesting that the Drafting Committee should again consider them, and if there are any further changes to be made consequent upon the discovery of any irregularities I think those amendments should again come up.

Mr. President : Which amendments are you referring to?

Mr. Naziruddin Ahmad : The amendments which have been accepted. We have had no time to consider them.

Mr. President : But we have accepted so many amendments.

Mr. Naziruddin Ahmad : Yes. And I am suggesting that they may again be reconsidered by the Drafting Committee, and if there are further irregularities or inconsistencies they should be brought up at a later stage. We are being fed with amendments to satiety. It is impossible to proceed with them for anyone who would like to follow them and consider them.

Then with regard tomorrow's business we do not know what things are coming up. At nine or ten P.M. today we shall be given some new drafts and we will be expected to consider them tomorrow morning. I do not know what to do with such amendments. I therefore, respectfully ask you, Sir, to consider this and give us some idea as to whether new drafts are coming on and, if so, what time we would be given to send amendments to the new Drafts.

Mr. President : So far as tomorrow is concerned, I think there are these three articles, namely articles 264A, 296 and 299, which have been before the House--two of them for a long time and the third one also for a little while. Tomorrow if there is anything fresh coming, that will come after these three articles.

Shri T. T. Krishnamachari : May I mention that the Drafting Committee is engaged in going through the lacunae in the articles already passed and the consequential amendments that may have to be made, and it is likely that we might have to table some amendments tomorrow. My honourable Friend is so fully posted with all the details regarding the articles of the Constitution that he would not find it impossible to readjust himself and see that these amendments that we are likely to table tonight are necessary. They will be only consequential amendments. I would only offer my apology on behalf of the Drafting Committee for giving honourable Members such short notice, the only reason being that we are hard pressed for time and we would like this Union to close as early as possible.

Mr. President : Tomorrow we are going to take up these three articles first.

Shri T. T. Krishnamachari : And then other articles

Mr. President : So far as I know, there are only one or two matters now which we have to consider. There is first the Preamble which has not been dealt with--I am just mentioning the things which I have noted that have to be considered--then we have Schedule I which defines the States, then these three articles which have just been mentioned. There is also another article, I understand, which is going to be brought up--article 280A relating to financial emergency. And there is a third article which may come up relating to States, particularly relating to Kashmir article 306A. Then we have Schedule III-B which deals with the allocation of seats for the Council of States. Apart from these I think there may be consequently amendments. Are there any more?

Shri T. T. Krishnamachari : As I said before, there are some consequential amendments.

Mr. President : The others may be consequential which will arise out of the amendments we have already accepted.

Shri R. K. Sidhva : May I know whether Schedule I and the Preamble will be taken up in this session? There was some complication about it. So I want to know whether Schedule I will be taken up before some formalities are observed.

Mr. President : They have to come up during this session because we have to complete the Second Reading. If necessary we can amend it in the Third Reading, if there is any change in the Schedule.

Shri R. K. Sidhva : Schedule I is very important and it may take one or two days, Therefore, unless the Drafting committee is ready in pursuance of the Working Committee's resolution, there is no use our wasting time now and again spending time at the time of the Third Reading.

Mr. President : But then we cannot complete the Second Reading without having all the articles and Schedules.

Shri H. V. Kamath (C. P. & Berar : General) : Why not meet for the first two days during the next session and complete the Second Reading, and after an interval of one day start the Third Reading?

Mr. President : I might just mention to honourable Members that we were considering the procedure to be followed at the time of the Third Reading, and some amendments to the rules will be coming up before the House on Saturday. It has been said that apart from merely verbal amendments and renumbering and replacements of articles, it may be discovered in the course of the examination which is going to take place of each article, that some changes are required, and we shall have to amend particular articles to that extent. If we hold up the second reading for that purpose, then there will be difficulty in having the Third Reading in the next session--and we must have the Third Reading then. Therefore we are suggesting that such amendments as are more or less of a consequential nature but which are not merely verbal may be taken up at the Third Reading stage and, under certain restricted conditions, amendments to these amendments. When these amendments have been disposed of, we proceed to a general discussion of the Constitution as a whole and we pass it at the Third Reading. So we are taking powers under the rules to deal with such consequential changes which may be found to be necessary. It may be that we do not find any consequential changes necessary. That would be a very happy state of affairs. But it is possible that we may and therefore we are taking precaution in that way.

Shri H. V. Kamath : Are Members of the House, as distinct from the Members of the Drafting Committee, at liberty to send amendments at the time of the Third Reading?

Mr. President : No.

Mr. Naziruddin Ahmad : Our rules provide for that. If the Drafting Committee has got such enormous powers to make changes....................

Mr. President : They cannot make any changes unless they are accepted by the House.

Mr. Naziruddin Ahmad : Some formal changes may be necessary. It is definitely provided in the rules.

Mr. President : I do not think it will be possible to open the door very wide. If there are any suggestions which honourable Members have to make and which really affect the substance of the provisions. I have no doubt that the Drafting Committee will give due thought to those things and that they will be considered.

Mr. Naziruddin Ahmad : I am only suggesting that the final draft of the Drafting Committee should be circulated to us well in time for a thorough consideration.

Mr. President : I was thinking of the time table also. I do not think it would be possible to get the Constitution, as it is now passed at the Second Reading, ready for the press before the 31st of this month. The whole thing has to be very carefully considered. Every article--every word--has to be scrutinised. It takes time. And so the Drafting committee will not be in a position to get the thing ready, say, before the 31st of this month. Then it will take about a week to print. We shall try to circulate as soon as possible, say by the 4th or 5th but it would not be possible earlier, we are trying to cut down the time as much as possible, but there are physical difficulties.

Shri H. V. Kamath : When do you propose to summon the next session Sir?

Mr. President : I propose to summon the Assembly from the 14th of November to 25th or 26th, because the session of the Legislative Assembly begins on the 28th November and that has already been summoned. So we have to finish this Third Reading before that and it is proposed to give two or three days for consideration of all such matters and consequential amendments that may be found necessary. I hope it will not be necessary to give two days but we are keeping even three days for that purpose and we shall have eight or nine days for general discussion. These eight days. I propose to devote to the general discussion and the last day will be taken up in the formality of actually passing the whole thing. It is suggested that the Constitution that is finally passed should be signed by every Member of this House.

Honourable Members : Yes, Sir,

Mr. President : That will be a historical document and it is desirable that every Member who has been associated with the making of this Constitution puts down his name on the copy which would be kept on record and that might take a day. So I am reserving one day for that purpose, and the remaining six or seven days will be available for general discussion.

Prof. Shibban Lal Saksena : What about the Constitution in Hindi ?

Mr. President : The Constituent Assembly has passed a provision that all Bills not only in the Centre but also in the provinces must be passed in the English language for the next fifteen years and so we shall pass this and you have already authorised me to get an authorised translation in the various languages. So far as Hindi is concerned, you have put upon me the responsibility of certifying to its correctness; and as regards the translations in other major languages, they will also be prepared. I am taking steps already to get these translations ready. Hindi I propose to publish before the Commencement of the Constitution and the others also, but I am not so sure about the others.

Shri H. V. Kamath : Are we going to have a formal ceremony on the midnight of the 25th-26th of January ?

Mr. President : I have not thought of any formal ceremony at midnight or midday. But it has been suggested that we should all sign the copy of the Constitution. That is all that we have so far been thinking of.

Shri H. V. Kamath : January 26, I am thinking of that day, Sir.

Mr. President : We shall decide at the time when we meet next. There is one other matter which has not been discussed up to now, but I do not know, probably the Members may feel interested in that and that is the question of the National Anthem. The National Flag was adopted by the Constituent Assembly; it was not part of the Constitution but it was adopted by the Constituent Assembly. Similarly probably the National Anthem, also will have to be adopted by the Constitution Assembly, but by a Resolution; but we have not yet taken steps in that direction. The Government have already adopted a particular song as the National Anthem, but the Constituent Assembly has not yet accepted that. So we have not taken any steps in that direction yet; I do not know what to do, but we may have to consider that point also.

Shri H. V. Kamath : We may take that up in the Third Reading in the next session.

Mr. President : I do not know if the House as a whole will be able to fix upon the National Anthem. If all of us joined in singing here it will not be an Anthem (six); it will be something very different; any way, that has to be done by some expert committee and I have not yet decided what to do about it, but if the House so desires, we may think of a Committee for that purpose.

An honourable Member : Compose a new National Anthem

Shri Sures Chandra Majumdar (West Bengal : General) : Formerly it was agreed in one of the meetings of the Steering Committee that it would not form part of the Constitution but will be passed in the form of a Resolution just after the Third Reading.

Mr. President : This is what I said.

Shri Sures Chandra Majumdar : Now you are thinking of referring it to a Committee or something like a committee for the purpose of selecting what will be the National Anthem, and this House will consider the report of that Committee and adopt any of the two songs as the National Anthem; and that would be during the life-time of the Constituent Assembly, I suppose ?

Mr. President : During the Third Reading period, that is my idea.

Shri B. Das : Some of us do not like Jana Gana Mana. We would very much like that *Vande Mataram* should be the national song which has inspired us all for the last fifty or sixty years. In any case when the matter comes, we would like to express our views.

Mr. President : That is of course your opinion. I have said that I am thinking of having a Committee for the purpose of selecting the best song.

An honourable Member : Will the committee propose a new song ?

Mr. President : The Committee will be free to compose even a new one.

Prof. Shibban Lal Saksena : Is the Committee to be appointed quickly ?

Mr. President : It will have to be done now and as I said, I have not thought about it in concrete terms. Therefore, I am not in a position to make any announcement now.

The Honourable Shri K. Santhanam : Mr. President, Sir, my impression is that in other countries they generally do not adopt the National Anthem as part of the Constitution and they call upon expert musicians to create it and even offer prizes. Now that we have a provisional National Anthem. I wonder whether it will be wise or expedient to come to a definite decision now. I think it would be well if we leave it to Parliament to enact by law after taking all the necessary steps.

Mr. President : That is also one point of view. As I have said, I have not thought over the matter in concrete terms yet.

Shri Sita Ram S. Jajoo (Madhyabharat) : Will the Members from Vindhya Pradesh and Bhopal be present for the Third Reading ?

Mr. President : I hope so and we are trying to get them; and if they do not come, we cannot help it.

We shall adjourn till tomorrow ten o'clock.

The Assembly then adjourned till Ten of the Clock on Friday, the 14th October, 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME X

Friday, the 14th October 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION-*(Contd.)*

Article 296

Mr. President : We shall now take up article 296 ; amendment No. 15. We have got a large number of amendments. Some of the amendments are amendments to the amendment to be moved on behalf of the Drafting Committee. Some are amendments to other amendments which are to be moved by other Members. Many of them overlap. Therefore, I think Members will themselves exercise a certain amount of discretion in not insisting upon amendments which are only overlapping and which are covered by other amendments.

Shri H. V. Kamath (C. P. & Berar : General) : We shall abide by your ruling, Sir.

Mr. President : I do not want to give any ruling if I can help it.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, I move:

"That with reference to amendment No. 3163 of the List of amendments for article 296 the following article be substituted:-

Claims of Scheduled Castes and scheduled tribes to services and posts.	'296. The claims of the members of the Scheduled Castes and the scheduled tribes shall be taken into consideration consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the union or of a State'."

Sardar Bhopinder Singh Man (East Punjab : Sikh): On a point of order, Sir...

Mr. Naziruddin Ahmad (West Bengal : Muslim) : I had a point of order. I raised a point of order on this article. If you ask me.........

Mr. President : I shall hear both of you.

Sardar Bhopinder Singh Man : I submit, Mr. President, that unless a special resolution is moved, the present House is not competent to go back upon its own decisions. This very article has already been agreed to by this House.

Mr. President : This article 296?

Sardar Bhopinder Singh Man : The principle underlying this, the main principle on which this is based has been agreed to in very clear and emphatic terms. I shall make it clear. In the report submitted by the Honourable Sardar Patel as Chairman of the Advisory Committee on Minorities, Fundamental Rights, etc., presented to this House on 27th August 1947, clearly the minorities were defined on the one hand; and secondly, four points were discussed one by one distinctly, separately and quite clearly. The four points were : first, representation in the legislatures, joint *versus* separate electorate; secondly, reservation of seats for the minorities in the Cabinet; third, reservation for the minorities in the public services; and fourth administrative machinery to ensure the protection of minority rights.

This report was submitted to the House and was later agreed to by this House. In this appendix, as adopted by the Constituent Assembly during the August 1947 session, it was agreed in regard to representation of minorities in the Cabinet as well as recruitment to the services--it is paragraph 9--it is said that due share will be given to the minorities in the all India services and provincial services and the claims of the minorities shall be kept in view in making appointments to these services, consistently with the efficiency of administration. Not only that. They make it further clear in emphatic and clear terms. They say, appropriate provision shall be embodied in the Constitution or a schedule thereto to this effect.

Having agreed to that, actually the Drafting Committee moved a special article 299 in which the rights of all the minorities were granted. Not only that. A later report was submitted to this House by the Advisory Committee on the subject of political safeguards to minorities on May 11, 1949. In this report the earlier decisions were reiterated and confirmed and not denied. Only in so far as the first item was concerned, that is safeguards in the legislatures were concerned, they were abrogated. So far as the other rights were concerned, they were allowed to remain intact. What had been conceded or passed by this House is now being taken away. I submit Sir, that this is a substantial change and unless a special resolution is brought in this House, this House cannot go back upon its earlier decisions.

Shri R. K. Sidhva (C. P. & Berar : General) : Mr. President, Sir, I have not been able to follow the point of order raised by my honourable Friend.....

Mr. President : Will you please allow Mr. Naziruddin Ahmad also to state his point?

Mr. Naziruddin Ahmad : Mr. President, Sir, I raised this point of order some time ago when this clause was moved by Dr. Ambedkar. The point of order is this. I refer to the proceedings of this House dated 28th May last. It appears that there was a Minorities Advisory Committee which appointed a Special Sub-Committee to consider the question of the Minorities. I find that the members of the Special Sub-Committee were :

The Honourable Shri Jawaharlal Nehru,

The Honourable Dr. Rajendra Prasad,

Shri K. M. Munshi, and

The Honourable Dr. B. R. Ambedkar.

This Sub-Committee reported, amongst others, that there should be reservation of seats in the Legislatures for the minorities and also that so far as all-India and provincial services were concerned, there should be no reservation but the claims of all minorities shall be kept in view in making appointments to the services consistently with the considerations of efficiency and administration.

Now this was accepted by the House in its August Session 1947. This was later on partly reopened on the strength of a letter by Honourable Sardar Patel dated 11th May 1949 to reopen, not the consideration for the minorities about the services, but only the reservations in the Legislatures. I submit that Sardar Patel sent a report that the system of reservations for the minorities, other than Scheduled Castes, in the Legislatures be abolished. This Resolution was accepted by this House on the 26th May 1949 at the instance of Sardar Patel. That is also to the same effect. It is absolutely clear on a perusal of the original report, the letter of Sardar Patel, the Resolution moved by him and the speeches in the House--that they all attempted reconsideration only of the reservations for the minorities in the Legislatures. I may add that this was done with the fullest concurrence of the Muslim members of this House. I was one of those who thought that the reservation in the Legislatures would not be good for the minorities themselves; but with regard to the consideration of their cases in making appointments, subject to efficiency, that was not reopened. On the last occasion when I mentioned this, Dr. Ambedkar and a few others thought that I had completely misunderstood the situation. Mr. T. T. Krishnamachari went so far as to say (referring to me) that "if you cannot understand this thing in two days, you will never understand even in two months." This is the elevated style in which I was addressed. But I submit and I assert again that, whoever may be mistaken. I am not mistaken as to what was then done.

I respectfully ask you, Sir, being one of the distinguished members of the Sub Committee and being present in the House when this Resolution was accepted just to tell us whether this was one of the matters which was re-opened Sardar Patel with his genius for constitutionalism said in paragraph 8 of his letter that the Committee are fully alive to the fact that "decisions once taken should not be changed lightly". So a strong-minded man like him re-opened the matter with considerable amount of caution and cogent reasoning. I therefore submit that with regard to the consideration of services and the appointment of Special Officer, they were embodied in articles 296 and 299.

Shri L. Krishnaswami Bharathi (Madras : General) : Is the honourable Member raising a point of order or making a speech ?

Mr. President : He is raising a point of order and explaining it.

Mr. Naziruddin Ahmad : If it is not apparent to any Member, the point of order is this, that we have in accordance with the decisions of the Minorities Committee come to certain decisions. Those decisions were only partially modified at the instance of Sardar Patel. This modification did not in the least affect the paragraph relating to consideration in the services for the minorities. As the matter was partly re-opened with so much formality, it follows that the rest remains without any amendment or change. I ask the House and specially you, Sir, to consider whether this matter can be so summarily reopened in this manner. The decision remains and I do not know how to get rid of that Resolution. That is my point of order.

Mr. President : We have to keep two things apart--the question of the point or order and the merits of the question. For the moment, I am concerned only with the point of order and the point that has been made by the two honourable Members comes to this. This House on a previous occasion took certain decisions which are sought to be reversed by the proposition which is now going to be moved. The only rule which deals with reopening of decisions is Rule No. 32 of our Rules, and that lays down that no question which has once been decided by the Assembly shall be reopened except with the consent of at least one-fourth of the Members present and voting. So the only restriction on reopening the decision which has once been taken is that at least one-fourth of the Members present and voting should vote in favour of reopening the decision. I think I had better put that question to the House and then if one-fourth of the members present and voting are in favour of reopening, the reopening will be perfectly in order.

As regards the merits of the case I do not think I should express any opinion at this stage or at any stage. It is for the House to decide. We are concerned at the moment only with the point of order, and my ruling is if one-fourth of the Members present and voting are in favour of reopening, the question can be reopened.

Shri R. K. Sidhva : My Point was articles 299 and 296 were never passed in the House.

Mr. President : He is referring to previous decisions--not to 299 and 296. There was a previous decision once taken by the House on the Report of the Advisory Committee on Minorities.

Sardar Bhopinder Singh Man : Sir, I wanted your ruling on whether the present resolution means the reversal of the old decision.

Mr. President : If the House agrees to reverse the old decision, it will be a reversal; otherwise, the old decision will stand; but for the present I am concerned only with the question of whether we can take into consideration the question of reversing the old decision.

The Honourable Shri K. Santhanam (Madras: General) : Sir, the clause of a Bill is quite different from a Resolution.

Mr. President : You need not argue the point. I would like to know from the House what its opinion is. The question is :

"Is the House in favour of reopening the question ?"

Honourable Members : Yes.

The motion was adopted.

Mr. President : So there is no bar to the reopening of the whole question. Now this can be discussed on its merits. Dr. Ambedkar has moved it and there are several Amendments to this proposition. I shall take them one by one. No. 16- Sardar Hukam Singh.

Sardar Hukam Singh (East Punjab : Sikh) : Mr. President Sir, I beg to move :

"That with reference to amendment No. 3163 of the List of amendments, (Vol. II), for article 296, the following be substituted :-

> '296. Subject to the provisions of the next succeeding article the claims of all minority communities shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State for the time being specified in Parts I & III of the First Schedule.

Explanation.--Among others Muslims, Christians, Sikhs, Anglo-Indians and Parsees shall be recognized as minority communities'."

And then there is the alternative amendment as well, but I do not propose to move it. I leave it here.

Sir, as has already been pointed out, the original draft that was put before this House was different, and radically different I would say, from the one that is being proposed now. It read like this:

> "296. Subject to the provisions of the next succeeding article the claims of all minority communities shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State for the time being specified in Part I of the First Schedule."

My object is very clear. What I want is to restore the original proposal that had already been accepted by this House. I cannot understand why the Drafting Committee has thought it fit to bring about this change. So far as that article stood in its original form, it was considered as a safeguard for the minorities, and I must say that it was only a solemn affirmation of *bona fides* on behalf of the majority, and a mental satisfaction to the minority. Other wise it had not very much value. That right was not justiciable in any court of law and it could not be enforced anywhere else as well. It had no binding force. But in spite of that, it is being taken away now. I must, at the same time, make myself clear that so far as I can think out, it was no blot on, our secularism and it did not soil our nationalism as well. The minorities have always been advised to repose full confidence in the majority. Article 296 as originally framed, in my opinion, was that complete reposal of confidence by the minorities in the majority and nothing beyond that. The only thing that the members of the minority could do at any time, in cases of violation was that the attention of the majority could be drawn to the fact, that there was some pledge or an undertaking ; and that is also being removed.

Sir, before I proceed further, I must make an appeal to the honourable Members on two points here. It is very unfortunate that the Sikhs for the present cannot persuade themselves to have implicit faith in the party in power. They have reasons for that, for they think that the past is a record of repudiated promises and broken pledges. Suppose, for the sake of argument, that I am wrong, that this is incorrect, and that the present leaders can be trusted to do justice to everybody ; then is there any guarantee that the present leaders will continue for all time to come ? Are there not indications, even now apparent, that men with different ideals and aims might come to power very soon ? This House should take a detached view and not consider the fears of the minorities as necessarily a disparagement of the present party or of its leaders.

Then my second point is that the honourable Members should place themselves in the position of the minorities and then try to appreciate those fears that they have expressed from time to time.

Sir, I might be accused of communalism when I sound this discordant note. But I hold that this nationalism is an argument for vested interests. Even the aggressiveness of the majority would pass off as nationalism, while the helplessness of the minority might be dubbed as communalism. It is very easy for the majority to preach nationalism to the minorities ; but it is very difficult to act up to it. The original draft of articles 296 ad 299 was a result of the recommendations of the Minorities Committee, dated the 8th August 1947, as accepted by the Constituent Assembly on 27/28th August of that year, and there were four definite provisions, four definite clauses for those safeguards. The first was joint electorates with reservation of seats. This was embodied in 292. Then as regards Cabinet it was provided that there would be no reservation, but a Schedule would be provided as Instrument of instruction, that was schedule 4 ; and then the claims of minorities to be kept in view in appointments to services, that was section 296 ; and then a Commission for minorities, that was embodied in article 299.

As for the Sikhs, Sir, I must make a special mention, because I think they are very unfortunate in this respect. When the question of safeguards for minorities was decided in 1947, the question as regards the Sikhs was kept, pending as it was said that the result of the partition was not known very clearly then. I may say that before that date, the "Award" had been given. The Sikhs were leaving the West Punjab under circumstances which are well known to everybody here. They had willingly suffered themselves to be vivisected and they elected to remain with India. They were marching on foot, leaving behind everything that they loved. They were not coming alone. They had saved and brought seven districts to the Indian Dominion. The full significance of leaving open the question of Sikh minority on 28th August cannot fully be understood when we look at those events. If the Sikhs were not to be treated in some special way, where was the need for postponing the consideration of that question then ? If the Sikhs were to be given reservation on population basis, just as any other minority had been given, what was to be awaited after August ? What numbers migrated to India was not material at all. But it was considered that might be too great a blow at that time to bear for this unfortunate community. So the question was kept pending and the Sikhs thought that they would get special consideration on account of their sufferings.

Then came the next stage for the Minorities Sub-Committee to make a report and that is dated 23rd November 1948. That time was considered opportune for telling them that nothing special could be done for them, perhaps because more than a year had elapsed since that calamity came. But even then there was one satisfaction offered to the Sikhs. Though special safeguards were denied, pious platitudes were offered instead. The Sub-Committee observed:

> "It seems scarcely necessary for us to say that in dealing with this problem we are acutely aware of the tragic sufferings which the Sikh community suffered both before and after the Partition of the Punjab. The holocaust in

> West Punjab has deprived them of many valuable lives and great material wealth, Moreover while in this respect the Hindus suffered equally with the Sikhs, the special tragedy of the Sikhs was that they had to abandon many places particularly sacred to their religion. But while we fully understand the emotional and physical strain to which they have been subjected, we are clear in our mind that the question remitted to us for consideration must be settled on different grounds."

Then comes the third stage. The report is placed before the Minorities Committee and the resolution adopted is that the system of reservation for minorities other than Scheduled Castes in Legislatures be abolished.

I have to apologise to the members of the other minorities. They had their reservation. But, as soon as the Sikhs came in, they had to give up that as well. The Committee recommended that statutory reservation of seats should be abolished. I want to place more emphasis on that, because it is clearly the recommendation of the Sub-Committee as well as the resolution of Minorities Committee that the statutory reservation of seats in Legislatures should be abolished. There is nothing beyond it. This recommendation was accepted on 26th May 1949.

Now, the position was that there was reservation in legislatures under article 292. That has gone now. Article 292 stands amended in that sense.

Then there was the Fourth Schedule of Instrument of Instructions. That has also gone, as decided by us on 11th October. But the remaining two clauses embodied in articles 296 and 299 which we have just decided to reopen, reflect the decision of the Constituent Assembly. So far as I can see there is absolutely no reasons for that change that is intended to be brought about now.

The second point is that the Minorities Committee never recommended any change in these two articles. My third point is that the minorities themselves never agreed to give up these safeguards at any time. It was given out now and then that the safeguards would only be taken back if the minorities themselves thought and were convinced that it is to their own interests. But I submit here that so far as these two articles 296 and 299 are concerned the minorities themselves never agreed to give up these safeguards at any time. The Minorities Committee observed in their report that the Committee are fully alive to the fact that decisions once reached should not be changed lightly. Then I ask, why is this change being brought about so lightly and so casually ? So my prayer is that these amendments that have now been brought forward by Dr. Ambedkar must be rejected and my amendment may be accepted and the original safeguards restored.

There is one very important factor that has gained currency during the last three or four days. It concerns the Sikhs alone. It has been given out that the Sikh representatives on the Minorities Committee gave an undertaking in writing that they would not put forward any further demands for any safeguard in the Constitution if,--that was a very big if--their backward classes the Mazhabis, Ramdasis, Kabirpanthis and Sikligars were recognised and calculated as Scheduled Castes. That may be true. In May last, as I have said, the position was that these two articles 296 and 299 had been accepted by the Constituent Assembly. The reservation was there also, but they agreed on that date that they would give it up. The Instrument of Instructions is gone. So far as I have been able to ascertain from the proceedings of the Minorities Sub-Committee, I do not find any mention anywhere that 296 and 299 were referred to or that the minorities were asked to give up this as a whole. The Minorities Committee decided to abolish reservation only in the legislature. I must point out here that there is no reservation in articles 296 and 299. The Minorities Committee did not discuss anything else. Clauses (3) and (4) of the safeguards contained in articles 296 and 299 were never discussed. They had already been passed.

Now, Sir, I appeal to you to see how the representatives of the Sikhs know that they would be altered at the last moment ? If I do desire to retain those decisions, I am not asking for any further safeguards for the Sikh Community. I am only raising my voice against those safeguards being taken away from us, safeguards which had already been given. And, if any body is going back on the undertaking or on his word, then it is the Drafting power and not the Sikhs.

Then there is another point that is also very relevant so far as this question is concerned. Supposing for the sake of argument we grant that the Sikh representatives agreed to forego every safeguard, is it to be understood that they did so because they were very keen to have their backward classes included in the Scheduled Castes ? Is then their anxiety for that to be exploited and the opportunity utilised to get them to give up all other safeguards ? I do not believe it. But suppose that was also true, I do realise this also that there was much opposition from the Scheduled Castes against such inclusion and Sardar Patel had to secure this to the Sikhs with great difficulty. The Sikhs are thankful to him. But what has happened to that concession secured at the sacrifice of all other demands, as is alleged ? In the first places restriction was placed that this concession was confined to East Punjab only. It was not extended to the Patiala Union. How strange! Was there any justification for this discrimination on the basis of religion ? If reservation was denied to religious minorities, and the Scheduled Castes were to get it for their backwardness then is there any jurisdiction to deny this concession to similar backward sections suffering from identical disabilities simply because they profess the Sikh religion ? Would this be secularism ? This much-coveted demand secured at such a heavy price and given so grudgingly and reservedly has become uncertain. Schedule X which was to enumerate the Scheduled Castes is deleted and article 300A empowers the President after consultation with the Governor or the Ruler to specify the castes or races to be Scheduled Castes. Sir, it will be realised that again the Sikhs shall have to strive and strive hard to persuade the Governor to advise the President to include these castes in the list of Scheduled Castes. My anxiety is that the Sikhs are left with nothing now. They have no further safeguards. What shall they offer to the Governor to advise the President to secure these safeguards ? So, my submission is that even if there was any undertaking, that should be no consideration because what was secured in lieu of that has already gone.

The Sikhs are told, when they remind the congress of their past pledges in 1929, 1946 and again in 1947 that circumstances have changed. The Sikhs were recognised as one of the three main communities in the Cabinet Mission Plan of which this Constituent Assembly is the creature. The only changed circumstances is that the Muslims have got Pakistan. Does it stand to reason that because the Muslims have secured Pakistan, therefore the Sikhs have ceased to be a minority ? Is this a logical conclusion ? I will be failing in my duty if I do not point out what our feelings are. Pakistan resorted to crude and positive violence to eliminate their minorities. We are using a subtle, indirect and peaceful way of resolving the same question. True to our traditions, we are of course non-violent. I appeal to the House to go slow. I request the majority to win the confidence of the minorities by positive actions and not by mere slogans. This change in article 296 has caused consternation in the minds of the minorities affected thereby. I request that the whole draft be allowed to remain as in my amendment.

It has also been given out that our leaders consider that our original draft of 296 would disfigure the whole Constitution. Sir, I fail to understand that. If the mention of Anglo-Indian and Scheduled Castes or Schedule Tribes does not disfigure this Constitution to any extent, the mention of Sikhs surely would not further disfigure it. But if in spite of my appeals, this House is not inclined to accept any amendments for restoring the old draft, then my last appeal is for the acceptance of another amendment, which is No. 256.

"That with reference to amendment No. 23 of List II (Second Week), the following clauses added to article 296 :-

> (2) Nothing in this article or in article 10 of the Constitution shall prevent the State from making any provision for the reservation of appointments or posts in, favour of any minority community which, in the opinion of the State, is not adequately represented in the services under the State'."

The Centre may be aware of every detail of everything occurring in the States; yet some liberty shall have to be left to the man on the spot. If for the smooth working of the administration and for creating cordial relation between the different communities, the State decides on some adjustment in the services, then there should be no bar under the Constitution. Some dignitaries think that there is no such bar at present, but my fears are that article 10 would be a bar for any option or adjustment--when it says that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to office under the State. I might have understood that it would not bar such an option if such clause (3) of article 10 had not specifically provided that:-

> 'Nothing in this article shall prevent the State from making any provision for reservation of appointments or posts in favour of any backward class of citizens who, in the opinion of the State, are not adequately represented in the under the State."

My amendment No. 256 runs on the same lines as this clause (3). Why I did not move it at the time that article 10 was being considered here is that because 296 was already there, there was no need then, but now because 296 is going to be altered, therefore I feel that this option must be left and it should be made clear that if a State wants to make any adjustments so far as the different communities are concerned, it will be free to make that.

I have seen certain reports in the Press that the East Punjab Government have been advised by the legal advisers of the Government of India that they cannot consider the claims of any section in the services, and that has increased my fears, and I am now convinced that unless we leave some option or choice to the States, it would not be possible for them to make any adjustment even if they wanted to do. I make my appeal to the House again. I am not asking for any reservations in this Constitution. I am not disfiguring it. I claim only for an indication of the goodwill of the majority. If that is also denied, it may prove the last straw on the camel's back so far as the confidence of the minorities is concerned.

Mr. President : There are seven or eight amendments which purport to substitute their own proposals for this article. I would first take up those amendments which propose to make substitutions and then we can take up the other amendments. The next amendment which purports to substitute is No. 23 which stands in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : I do not propose to move it.

Mr. President : Then No. 24.

The Honourable Dr. B. R. Ambedkar : Not being moved.

Mr. President : Then No. 25 by Sardar Bhopinder Singh Man.

Sardar Bhopinder Singh Man : It is in relation to No. 23. Since 23 is not moved, I cannot move it.

Mr. President : It is practically the same with some slight change, allow it if you want to move it.

Sardar Bhopinder Singh Man : I am not moving it, Sir.

(Amendments Nos. 26 and 27 were not moved.)

Mr. President : No. 183 by Mr. Brajeshwar Prasad.

Shri R. K. Sidhva : What about the other amendments?

Mr. President : I will take them up later on.

Shri Brajeshwar Prasad : (Bihar : General): Sir, I move:

"That in amendment No. 15 (with your permission, Sir, I want to say No. 15 in stead of No. 23) of List II (Second Week), for the proposed article 296, the following be substituted:-

> '296. (1) The maintenance of efficiency of administration shall be the only consideration in the making of appointment to services and posts in connection with the affairs of the Union or of a State.
>
> (2) Parliament may by law prescribed the conditions under which the President may, if he deems necessary appoint members of the Scheduled Tribes and Scheduled Castes to services and posts in connection with the affairs of the Union or of a State.
>
> (3) The provisions of clause (2) of this article shall apply in relation to such other backward classes as the President may on receipt of the report of a Commission appointed under clause (1) of article 301 of this Constitution by order specify as they apply in relation to members of the Scheduled Castes and the Scheduled Tribes.
>
> (4) Parliament shall have the power to repeal, extend or modify any or all of the provisions of this article from time to time'."

The Honourable Shri K. Santhanam : (2) and (3) are inconsistent with (1).

Shri Brajeshwar Prasad : No. Let me explain how it is not inconsistent. If it is inconsistent, the Chair will give its ruling.

Mr. President : He has raised the point. I have to consider it.

Shri Brajeshwar Prasad : Let me first explain. If he has raised a point of Order, I will explain whether it is consistent or not. Clause (1) says that there shall be only one consideration before the Public Service Commission, namely, the efficiency of administration and the merit of the individual candidate. The Public Service Commission shall not take into consideration the claims of the minority communities. The Public Service Commission shall not be swayed by any other consideration at the time of making appointments. As a matter of political expediency. I have vested powers into the hands of the President and the President alone to appoint persons of the Scheduled Tribes and the Scheduled Castes. The Public Service Commission must be free from political entanglements. I do not know how (2) and (3) are inconsistent with (1). I await your ruling before I proceed with my speech.

Mr. President : The way in which it has been put is making it inconsistent. You can make it consistent by putting in the word "provided".

Shri Brajeshwar Prasad : Of course, I am not a draftsman, Sir, nor am I an able lawyer like Mr. Santhanam.

Mr President : However, I would not overrule your amendment.

Shri Brajeshwar Prasad : As far as clause (4) is concerned, the purpose is to make the whole article very flexible, so that with the growth of education and with the economic improvement in the standard of living, Parliament shall have the power to do away with this article at any time it likes. I am opposed to amendment No. 15 as it has been moved by the Drafting Committee, because I do not want that any other extraneous considerations should be brought in at the time of making appointments. I am afraid that if the claims of all these communities are taken into consideration, the whole fabric of the State will be jeopardized.

I am quite clear in my own mind that there are no minorities in this country, therefore the claims of no minorities can be taken into consideration. There are backward communities. There are people who have been suppressed and oppressed for centuries. It is their claims and their claims alone that, shall be taken into consideration. The burden of making such appointments must fall upon the shoulders of the President and the President alone, I feel that if we introduce, the provision that the claims of the communities like, tribals and Scheduled Castes should be taken into consideration, we shall be burdening the shoulders of the members of the Public Service Commission with a task for which they are not equal. What are the claims of the minority communities? What are the claims of the Scheduled Castes and Scheduled Tribes? Can any man endowed with ordinary intelligence and common sense reconcile the irreconcilable claims of these communities? The claim has been made that we demand parity. Another section demands that we should have representation in the services in proportion to our population. A third demand has also been made on the floor of this House that because we have been suppressed and oppressed for centuries, therefore the members of the Castes Hindu community must be made to make penance. If we are going to make penance for the sins that we have done against these people, then we shall have to hand over the entire machinery of the State into the hands of the Tribals and the Scheduled Castes. Are these claims going to be considered by the Public Service Commission? I think that it is wrong to blame any community for a historical wrong. History alone is responsible for all the wrongs that have been inflicted upon the Scheduled Castes and the Tribals. It is the Age--the Time spirit which alone can be held responsible.

Shri H. V. Kamath : Who makes history?

Shri Brajeshwar Prasad : Let me explain. History is made by the wrongdoer and the oppressed. It was wrong on the part of the wronged to submit to oppression. If objection is raised that they were not in a position to organise, we also will say that it was due to lack of political consciousness, due to lack or social sense that these things were perpetrated. It was the institution, it was society itself that was responsible. It was the time spirit and the time spirit alone that was responsible for the wrong done to the Scheduled Castes and the Tribals. The Castes Hindus are not responsible for any wrong. We have also suffered, because Caste Hindus have also been exploited by people living in this country and wrong have been committed and perpetrated upon us. For centuries, India was under foreign subjection. It was subject to foreign intervention and Foreign oppressions from times immemorial. The Castes Hindus have never flourished. It is wrongs, it is atrocious to throw all blame and responsibility on the Caste Hindus, they have been victims of circumstances. I cannot accept the proposition that the Caste Hindus have perpetrated any wrong on anybody.

I would like also to emphasise that this article ought to have been placed in the Directive Principles of the State policy. It is merely a pious declaration. If it is merely a pious declaration, it should have been placed in the Chapter relating to Directive Principles of the State policy.

I think there is another reason why I oppose this article. It is that we have done the utmost that we could do for raising the economic, moral and the material condition of these people. We have passed the Chapter relating to Fundamental Rights. We have passed article 110. We have made provision for reservation of seats in the Central and Provincial legislatures. We have laid down provision for adult franchise. We have made the basis of a secular State. What more do you want? Do you want to disintegrate the State ?

I am quite clear in my own mind that if we do not take a bold stand at this moment and clearly lay down the principle that the basis of a secular State shall not be allowed to be corrupted by any other consideration, the, future of this country is dark. I hold the opinion that those persons who are clamouring for these seats, for reservation, for consideration, represent a handful of people, constituting the cream of the Harijan society. They constitute the politically powerful group among the Tribals and the Scheduled Castes. I do not think that these claims and demands touch the broad classes of people within the Scheduled Castes and Tribals. Job-hunting does not affect the problems that confront us as far as the question of Scheduled Castes and Tribes is concerned. It is by as simulating ourselves and by integrating all the communities in one nation that there can be any peace and progress in this country. I do not want that the politics of the Muslim League should be re-enacted again on the political arena. The whole purpose of my amendment is to strengthen the foundations of the State. It has been the central theme of the speeches that have delivered here in this Assembly. I have moved my amendment so that the interests of the State may be protected.

(Amendments Nos. 280 and 309 were not moved.)

Mr. President: These are the amendments which seek to substitute the proposition moved by Dr. Ambedkar. I would like to dispose of these amendments first. One will be accepted and I will take the amendments on that and leave the rest out. As a matter of fact, only two have been moved--amendments Nos. 16 and 183. I will take Sardar Hukam Singh's amendment 256. Separately.

Shri Krishna Chandra Sharma : (United Provinces: General): Will there be any general discussion on the causes ?

Mr. President : I will have it, but I am clearing the ground for the amendment so that we may not get confused. There are a large number of amendment as a substitution to this article. I will put Sardar Hukam Singh's amendment No. 16 first to the House.

The question is:

"That with reference to amendment No. 3163 of the List of Amendments, (Volume II), for article 296, the following be substituted :-

Claims of minority communities to services and posts.

'296. Subject to the provisions of the next succeeding article the claims of all minority communities shall be taken into consideration consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of the State for the time being specified in Parts I & III of the First Schedule'."

'*Explanation.*--Among other Muslims, Christians, Sikhs, Anglo-Indians and Parsees shall be recognised as minority communities."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 23 of List II (Second Week), for the proposed article 296, the following be substituted:--

'296. (1) The maintenance of efficiency of administration shall be the only consideration in the making of appointment to services and posts in connection with the affairs of the Union or of a State.

(2) Parliament may by law prescribe the conditions under which the President may, if he deems necessary, appoint members of the Scheduled Tribes and the Scheduled Castes to services and posts in connection with the affairs of the Union or of a State.

(3) The provisions of clause (2) of this article shall apply in relation to such other backward classes as the President may on receipt of the report of a Commission appointed under clause (1) of article 301 of this Constitution by order specify as they apply in relation to members of the Scheduled Castes and the Scheduled Tribes.

(4) Parliament shall have the power to repeal, extend or modify any or all of the provisions of this article from time to time'."

The amendment was negatived.

Mr. President : We have now only amendment No. 15 and I will take the amendments to that amendment.

Shri Guptanath Singh : (Bihar : General): Sir, I move:

"That in amendment No. 15 above, in the proposed article 296, for the words 'The claims of the members of the Scheduled Castes and the Scheduled Tribes' the words `The claims of the members of the Scheduled Castes, the Scheduled Tribes and such other castes who are educationally and socially backward' be substituted."

Before making my observations on the amendment, I should like to make it clear at the very outset that I am dead against all sorts of mischievous methods of communalism, caste-ism and such other "isms".

Shri R. K. Sidhva: And yet you move an amendment for the backward classes?

Shri Guptanath Singh : Yes, Mr. Sidhva. But have patience. This communalism has proved to be a curse to the country. It has become a national nuisance. We have reaped the cruel consequences of this kind of thing. Still, we are going to continue such things. I want that this demon of distinction and differentiation between man and man should not be allowed to flourish further in free India. But the present structure of society is such that we have been forced and our leaders have been forced to accept the principle of protection and reservation. I know we have done it in no happy mood. We desire that these things should be abolished for ever. But some of the sections of Indian society--our Harijan friends, our Adibasi brethren--have been oppressed for centuries and they have been tyrannised for ages that is why they are demanding these reservations. That is well and good. They should get the reservations and as much reservation as may be possible to make them equal to other sections of society and bring them on the same level. Then and then alone these distinctions and differentiations between man and man can be demolished.

But there are other sections in the country, whose conditions are not better than the conditions of these friends, the Harijans and the Adibasis. In some parts of the country their conditions are worse than some of our Harijan and Adibasi Friends. I wish to bring to your notice that even among the Brahmins, who claim to belong to the highest rank of humanity, there are untouchables. You will be surprised to know that even among Brahmins there are untouchables and they are regarded inferior even to other non-Brahmins castes. What is the meaning of this? This is utter nonsense. Some men are regarded as superior and some are regarded to be inferior. In human society such distinction and discriminations should not be maintained. But our society is maintaining them. It is a matter of misfortune for our society. Therefore, some of these friends demand reservation, protection, safeguards and securities.

I know, Sir, and you also know that protection and control are sources of corruption. I will cite you two instances. The Central Government were pleased to award some scholarships to persons belonging to the Scheduled Castes and Scheduled Tribes as well as to socially and educationally backward people, and among those backward people one caste is called 'Kisans'. You see, the general meaning of the word 'kisan' is farmer, and a farmer maybe any man, whether he is a Brahmin or a Kayasth or somebody else. But this term has been used in the United Provinces in a restricted sense. A man belonging to a farming class and who is very backward is called a kisan. You will be surprised to know, Sir, that some of the students belonging to very advanced classes applied for scholarships on the ground that their forefathers were kisans and even today they are cultivators, and therefore they think they should get the scholarships.

Similarly, once some Brahmins applied to the Harijan fund for scholarship claiming themselves to be Harijans. Thus controls and reservations beget corruption and should not be encouraged. But as society is bigoted we must reap the consequences. The present structure of our society begets or creates these things and a kind of distrust, doubt and fear has been created in the minds of the oppressed classes. They fear that they will not get their share in the administrative services and therefore they are demanding it. Though they have been assured their rights in the Fundamental Rights and in the general directive principles, they are still persisting in demanding reservation.

I want to bring to your notice how the words "educationally and socially backward" came into the Constitution. Article 10, sub-clause (3) reads:

> "Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens who, in the opinion of the State are not adequately represented in tile services under the State."

So though we have granted them every thing, there is still distrust in the minds of the people.

I want to cite an instance. In a neighbouring province of Bihar a very brilliant student personally known to me, who had passed M. Com. from the Benares Hindu University, applied for a post. He appeared before the Public Service Commission in his province recently perhaps the members of the Public Service Commission did not know that the wretched fellow belonged to a very backward class. He had stood first throughout his career. A month after his appointment a letter came from the government of that province informing him that his services had been terminated. He wrote to the Government and his department to know the case and suggesting that if he was guilty he should be prosecuted and tried Government refused to give any information regarding his case. This should be a matter of shame for the Government of that province.

Similarly during the British regime in our glorious Bihar one gentleman belonging to a very backward farming or cultivating class was rejected as a deputy collector. Simply because he belonged to a very backward community.... (Interruption). Have patience and hear me Mr. Sidhva. You had your chance to speak. You will be glad to know that this gentleman is the principal of a first class degree college in Bihar. The selection committee rejected him as a deputy collector but he is a brilliant scholar and efficient educational administrator.

I want to bring to your notice one more instance.........

Mr. President : Is it any use giving instances of this kind ? They must be occurring all over.

Shri Guptanath Singh : All right Sir, I would not give. I want Sir, that those classes who are the backbone of Indian society agricultural, pastoral or artisan classes--though they are not counted as Scheduled Castes or Tribes should be given some opportunities to serve in government services. You have already accepted the proposal to appoint a commission to study and investigate their conditions. If you insert words to the effect that those wretched people will be given some chance it would be better for the country. They will prove to be most honest and efficient national servants.

When I tabled this amendment one day it was accepted by the drafting committee some days after--Dr. Ambedkar was pleased to include my suggested words in his own amendment No. 23. He realised the lacuna and accepted my amendment substantially. After that Mr. Munshi also accepted the principle contained in my amendment. But I do not know why they kept mum today when you asked them to move their subsequent amendments. They are masters and they can do is they please. I would appeal to them to consider the appropriateness of these words. They should include these words also in this article.

I hope they will consider the points I have raised and prove to the agricultural and pastoral classes, whose condition is worse than that of the Harijans and Adibasis, that they are going to to do something for them and assure them that they would get their opportunities to serve the country. I hope, the caravan of communalism will now be stopped, the cobra of casteism will be killed and immediate steps will be taken to make this glorious land of free India heaven for the humanity suffering from inequality for several centuries.

(Amendments Nos. 18 to 22, 28, 29, 30, 31 and 32 were not moved).

Shri H. V. Kamath : Mr. President, Sir, I move :-

"That in amendment No. 23 above, in the proposed article 296, for the words 'shall be taken into consideration, consistently with the maintenance of efficiency of administration,' the words 'shall, consistently with the maintenance of efficiency of administration, be taken into consideration' be substituted."

Sir, as you observed this is a purely formal amendment but I think that it is a more correct construction of the proposed sentence in the article and I would recommend it earnestly to the Drafting Committee for what it is worth. But, Sir, may I by your leave make some observations on the amendment moved today by Dr. Ambedkar ?

Mr. President : Yes.

Shri H. V. Kamath : Today, Sir, we have taken another step forward in the building of our common Indian nationhood. Over two years ago this Assembly resolved that so far as the legislatures of this country were concerned, the minority communities should have reservation so far as their seats in these bodies were concerned, but in view of the fact that great events, perhaps tragic in some respects but events fraught with destiny occurred soon thereafter. Sardar Vallabhabhai Patel, a little over two months ago moved in this House, and this House accepted his proposition, that so far as the Muslims and Sikhs were concerned, reservation in legislatures for them should go. That was a wise decision taking us one step forward in our march to nationhood. Today again we are taking another decision which marks another stride in our onward march, and that is that we propose to abolish reservation for the minority communities, the Muslims and Sikhs so far as reservation for them in the services of the State is concerned. The only exception that we made on that day, two months ago when Sardar Patel moved his proposition in the House is again the only exception that we make today, that is, with regard to the Scheduled Castes and

Tribes. Members and even friends outside may dispute the wisdom of this course, but practical politics and statesmanship is guided not always by absolute ideal considerations; our policy and our course are often guided by expediency and the exigencies of the prevailing situation. The situation today dictates to us this course.

My honourable Friend, Mr. Brajeshwar Prasad referred to the plight of the Scheduled Castes and Tribes and remarked in passing that history alone is responsible for the condition of the Harijans today, and that the Caste Hindus cannot be held responsible I for one do not propose to go into this intricate question as to who is responsible and who is not responsible. I do not want of apportion blame. After all if Mr. Brajeshwar Prasad says that history is responsible and later on said after examining further causes that the time spirit was responsible, I venture to suggest that the divine force or whatever supreme force operates in this universe was responsible; the clan vital or the evolutionary force as you may call it, is responsible for what is happening in the world. He said that Caste Hindus were oppressed by foreign exploiters, but we see that these foreign exploiters have been vanquished by another force and that force has been attacked by another third or fourth force. As some English cynic has said : "In this world there is one flea which is preyed upon by another bigger flea and that bigger flea is again preyed upon by a third flea". One is never quite sure about what is going on in this universe. Some grand process is unravelling itself and I do not propose to go into the vexed question of who oppressed whom and how it all came about.

I only wish to say this much, Sir, that with the passing of this article today the only class of people of this country who might be lightly, apprehensive will be as my honourable Friend Mr. Guptanath Singh observed, those who are called the backward class of citizens. I do not wish to say who is backward and who is not backward, who are pastoral classes and who are agricultural classes or which other class is backward, but we have used that very term in the Constitution--backward classes, socially and educationally backward classes. They perhaps will be somewhat apprehensive about their future, as to what their share will be as regards the services in the State, but I wish to dispel their misapprehension by referring to the Fundamental Rights in article 10 in Chapter 3 of the Constitution Clause (3) of article 10 provides :

> "Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens who, in the opinion of the State, are not adequately represented in the services under the State."

This is not a more directive principle of state policy; this is in Chapter III on Fundamental Rights. When this is guaranteed to them, no backward class of citizens need be apprehensive. If there is no representation for them in the services they can take the Government to task on that account. I think this would be an adequate safeguard for them so far as their share in the services is concerned. I hope that this article 10 guarantees that right to them, and so they need have no dispute or quarrel with the article before the House today.

Before I close. I only wish to express the hope that, before ten years have expired from the commencement of the Constitution, in this country of ours which has had an ancient history, this country of ours which is ancient, but ever young, there will be not merely no backward classes, socially and educationally backward classes left, but that all the classes will come up to a decent normal human level, and also that we shall do away with this stigma of any caste being scheduled. This was a creation of the British regime which happily has passed away. We have taken many strides forward in removing or doing away with the numerous evils that were associated with the British regime. This is one of the few that still remain. I hope, Sir, that were long, this stigma too will disappear from our body politic, and we shall all stand before the world as one single Indian community.

(Amendments 184, 255 and 257 were not moved.)

Mr. President : There is no other amendment that I can see.

Shri R. K. Sidhva : There is amendment No. 36.

Mr. President : That is for the deletion of clause (2). There is no clause (2) in this article at all.

Shri R. K. Sidhva : Mr. Guptanath Singh has in his amendment referred to backward classes.

Mr. President : In the proposition which is now before the House, there is no clause (2). Therefore this does not arise. Amendment No. 24 has not been moved.

Shri R. K. Sidbva : Amendment No. 24 has not been moved. But, Mr. Guptanath Singh has moved amendment No. 28.

Mr. President : This does not fit in with Mr. Guptanath's amendment.

Shri R. K. Sidhva : I have only to change the number from 24 to 28.

Mr. President : Where is clause (2) here?

Shri R. K. Sidhva : The Drafting Committee has abruptly this morning brought in a new amendment. I am glad that the clause (2) has been dropped. When an amendment has been brought in for bringing in the word 'backward classes', this should be allowed.

Mr. President : This amendment has been there from long before. If you want to speak on the article I shall give you an opportunity.

Shri R. K. Sidhva : May I say a few words, Sir ?

Mr. President : Yes, I shall first see if there is any other amendment. I do not think there is any other amendment. The amendments and the original proposition are now open to discussion.

Shri R. K. Sidhva : Sir, I am very glad that the Honourable Dr. Ambedkar has moved amendment No. 15 and the other amendments relating to backward classes have been dropped. My amendment, as just now stated, related to the deletion of the clause relating to backward classes.

Sir, I have been trying to understand what is the definition of backward classes. In article 301, we have stated that those who are socially and educationally backward would be known as backward classes. Today, in this country, 88 per cent. of the people are illiterate. They do not know even the A B C or the alphabet of their own mother tongue. Only 12 per cent. of the people are literate in this country. Socially also they are backward. Am I to understand that 88 per cent. of the people are backward ? Article 301, definitely states that those who are socially and educationally backward will come under that article. How can we then say that the whole country, 88 per cent. of the people are to be known as backward classes ? My honourable Friend, Mr. Guptanath Singh, went to the length of saying that the peasant belongs to the backward class. He mentioned the illustration of the Brahmin as backward class. I know of an illustration and I shall give it. This was all created for the purpose of getting position and power and nothing else. Some ten years ago, a person wanted to get into the services as a Subordinate judge. He belonged to Pushkar Brahmin community. He set up a theory that the Pushkar Brahmins belonged to the backward classes. He had merely to take the signatures of 500 persons and present it to the chief Judge. The Judge was guided by the signatures and as there was no Pushkar Brahmin in the service as Judge, he appointed him.

I may also tell the House that thirty years ago, the Parsees were considered as a backward class by the Bombay Government. You know Sir, that we are a far advanced community. Thirty years ago, 80 per cent. of us were educated; today 99 per cent. are educated. Still, thirty years ago, the Bombay Government declared that the Parsees were a backward class. It is only those people, who want to get into the services that use their influence and class themselves as a backward class. This is what was happening in the British regime. Some people who wanted to get into the services used their influence and classified themselves as backward classes, whereas really the masses of the people who are really the backbone of the country, they are not given any representation in the services. *(Interruption).*

Shri Guptanath Singh : You talk much but do not know the masses; I know the minds of the masses.

Shri R. K. Sidhva : I do not want to argue with you. What I was saying was that there has been injustice done to a small section of our own people. I know there has been favouritism going on and let me tell you favouritism will go on for ever unless a real Ram Rajya comes into being. Some sort of favouritism will prevail even in the best of Government. So far as the Scheduled Classes are concerned, I have never conceded that the Scheduled Castes are a community. I have considered them as a class of people whom really great injustice has been done in the past by the Hindu community. Therefore, we want to do something to see that they come up to standard of their own brethren. If they were to classify themselves into a separate community, I would oppose it. I do not consider them as separate. So far as the Scheduled Tribes are concerned, they are not untouchables. For instance. there are the Bhils; they are not untouchable. They are only backward. They have also been brought under Scheduled Tribes. These people require attention at the hands of the special officer that is to be appointed.

I do feel that our article 301 is a real stigma on our Constitution. I wish article 301 should go: I do not want backward classes at all to be mentioned in our Constitution. It is a slur upon our intelligence. For those who are educationally backward, we have provided in the Directive policy that within ten years every man, woman or child should be made literate. When educationally every person is advanced, who will call them backward ? There will be no backward classes. Socially, they become advanced.

If a man is educated, I have seen he improves his position in society and social affairs. Therefore, the fundamental thing is education and we have provided for that in the Directive Policy. I would have wished it to have come in the Fundamental Rights. Within ten years, there shall not be a single person who shall be illiterate. Of course, there are certain difficulties in the way. I am sure our present Government are going to see that every man is made literate within a period of ten years, and we shall be proud that every person can read in his own mother tongue.

I therefore, oppose the amendment proposed by Mr. Guptanath Singh. It has no meaning. It has meaning only when we want to favour some body and therefore we want to classify them as backward classes. The article as moved by Dr. Ambedkar is sufficient for our purposes. When a time limit is not mentioned, I am quite sure that within a short period these Scheduled Classes will go and they will come up to the level of the other people and we shall see that there is no mention of these Scheduled Classes in our Constitution hereafter. With these words, I strongly support the proposition and I oppose any kind of reservation or even the mention to reserve posts in services in the Constitution. We have done away with reservation in the legislatures. With what face shall we say that there should be reservation in the services ?

It looks so awkward. Our leader, Sardar Patel, made it very clear the other day when he brought the question of representation in the Legislatures, and today my Friend Sardar Hukam Singh has put in Parsees also that they want special rights. Sir, my community has never asked for special rights in any Legislature or in the services. They have come by merits and I can assure you whatever number they are in the Government of India--there are some Parsees in services of the Government of India-they have come by merit and not by favour. The majority community realise it and we leave it to them. We know they can appreciate it. Merit alone should count in our future Constitution and nothing else. I place great stress upon this. This method has been started by the British Government of favouring one community or the other. Sir, we have given our President the power to classify who are the backward classes. Mushroom association in the name of backward class will be formed and the President will be put in an awkward position; many communities will try to influence them. I am sorry that this clause is there but I only expect that article 301 Will remain a dead article in this Constitution and shall never be operated upon. With these words I strongly support the original proposition and oppose all amendments.

The Honourable Sardar Vallabhbhai J. Patel (Bombay : General) : Sir I had no intention to speak on this article, but when I heard that a definite insinuation was made in this House that because the Congress Party has a majority in this House, therefore it does not care for the promises given to the Sikhs and they are breaking the promises given them I have to speak. I am very sorry to hear this charge from the Sikhs or a representative of the Sikhs. Sardar Hukam Singh made this point. At another place on another occasion I had made it clear to him and yet he seems to have raised the same question. Now I wish only to answer that charge for the other things I do not think I need go into discussion or say anything about it. But when it is alleged that Congress is breaking its promises given to the Sikhs, one after another, I wish to understand the position.

We are--he alleges--breaking the promises--broke the promise given in 1929, one in 1946 and another in 1947. I do not know what promises he refers to. If he refers to 1929 and then again to the Partition of India and Pakistan, I wish to point out to him that there was not a single Sikh voice against the Partition; on the other hand they are probably in the forefront in demanding partition of the Punjab. After the butchery and the bloodshed that took place in Rawalpindi and Multan, the Sikhs were terribly upset and naturally distressed and they had considerable sympathy from the Congress. At that time there were other tragedies happening in other parts of the country and then came the conflagration in Lahore, Amritsar and other parts of the Punjab. It was at that time with the concurrence of the Sikhs,--unanimously, with one voice they agreed,--we agreed to the Partition of India. Now to turn round and charge us with a breach of faith is a charge which I cannot understand and it is not right for the Sikh community--a brave community like the Sikhs--to fling these charges at us. Who were we to agree to the Partition of India and partition of the Punjab if the Sikhs were opposed ? We could never have done that. Because they also said that it was best in, the interest of India that we should agree to partition on condition that the Punjab was partitioned--that we agreed to it. Now that is about 1929 promise.

Then again he says about 1946. If he refers to the Minorities Committee recommendations, I can understand it. I propose to explain it in detail as to what has taken place. But I do not know what he means by 1946 promise. If I can have any concrete expression of a promise given by Congress Leaders, I might, and if so I do not think there is any one Congressman who will go against that promise. I have not however understood the psychology of the Sikh leaders--some of them-who often charge everybody with breach of faith, and always complain of minorities being ill-treated.

Look at the army. Are they not very heavily over-weighted ? What have we done ? We are under their protection and we trust them and not a single army officer is disloyal to us. Why do you create this feeling for nothing? What is it that you want ?

When the Minorities Committee in the Advisory Committee passed its first decisions, I was appointed Chairman and I took all the minorities with me and the decisions of the Minorities Committee and the Advisory Committee were almost unaimous. This House appreciated the work of these Committees and congratulated me on that. Time went on and the minorities themselves began to feel that we should reconsider our decision and, headed by the great patriotic Christian leader, they brought in a Resolution that they want to give up the reservations. And what reservations?--Not this Petty reservation of minorities in the services-but the big reservations in the Assemblies, both in the Centre and in the provinces.

They agreed to have joint electorates and to have nothing to do with this communal separatism. When they desired that, I called a meeting of the minorities Committee and the Advisory Committee. At their instance decisions were taken. The Sikh stand has always been that "if all minorities agreed, we are also agreeable. Who do not want any special arrangement. We do not want any advantage. We are able to stand on our own legs". That was their stand throughout, in the Congress and outside the Congress.

When this resolution was brought, and this question was about to be considered, the Sikh representatives of the Punjab came to me and they said that so far as the Scheduled Caste Sikhs are concerned, they should be treated separately and given the same advantage that was being given to the Hindu Scheduled Castes. The Scheduled Castes objected to a man that these are not Scheduled Castes, and if they are Scheduled Castes, then they are not Sikhs. Therefore, they said, "you cannot give them separate treatment. There are forcible conversions being made from the

Scheduled Castes to the Sikhs for this purpose". That was their grievance. On the other side, the Sikhs said that they had converted so many and it was not by force. "They have come to our fold", they said, "and if you do not recognise these concessions, then they will all go back to the Scheduled Caste Hindus and we will lose".

Now, it was against our conviction to recognise a separate Sikh caste as untouchables or Scheduled Castes, because untouchability is not recognised in the Sikh religion. A Scheduled Caste Sikh community has never been in the past recognised. But as the Sikhs began to make a grievance continuously against the Congress and against us, I persuaded the Scheduled Caste people with great difficulty to agree to this for the sake of peace. I persuaded the other members of the Advisory Committee on the condition, which is in writing by the representatives of the Sikhs, that they will raise no other question hereafter.

Then in the Advisory Committee, when this question came, Sardar Ujjal Singh raised the question, "What about the Services" ? I said, "Your representatives have given in writing that no other question hereafter is to be raised" Giani Kartar Singh was also in the Advisory Committee, and he got up and said, "No, we will settle it in the Provinces. It is not to be raised here."

What is the use of charging the Congress with having broken promises ? Do not break the promises that you have given, and do not charge others with breach of promises. If you now say, as Sardar Hukam Singh says, that these people were anxious to serve an advantage for the Scheduled Caste Sikhs and they may have agreed to this, but it is a mistake, then if it is a mistake, reconsider your position, and I shall reconsider mine. Take away that concession and remove it, and you get your pound of flesh, if you want it.

What is it that you get in the Services? Even at present, what do the Sikhs do ? What do other communities do ? So far as the Services are concerned, for all major posts or all posts which go by competitive examinations there is no reservation on communal grounds. They go to the Public Service Commission. You are quarrelling or asking for the minor posts--Chaprasis and clerks. Is it the Sikh position now that we have not got enough Sikh Chaprasis and clerks ? Are you going to raise the community in that manner ? If that is so, tell me, and If you leave what you have got for the Scheduled Castes, I shall persuade the Constituent Assembly to give you what you want, but you will repent afterwards.

You say, in PEPSU it is not the arrangement. But this is not the House to hear that complaint. If there is any such complaint, send it to us. We shall consider about it. But do not go behind, your pledged words and charge people with breach of promises or pledges. We are not the people to pledges. Every sympathy and every consideration will be shown to the Sikh community because it is located in a particular area ; it is a small community, and yet it is brave, virile and it can stand on its own against anybody. Do not break that spirit by continuously saying, "We are injured, we are helpless, we are in a minority, we are hopeless, we cannot do anything."

That kind of psychology will injure the community itself and not others, and injuring the community means injuring the nation. It is not as a representative of the majority community that I give this advice, but as a well-wisher of the Sikh community, I advise you not to create this atmosphere by saying continually, "we are badly treated, badly treated". If you do, then it is the Sikh community that will be hurt.

When the Advisory Committee took this decision to give up reservation, we clearly understood the position and all communities clearly understood it. When the decision of the Advisory Committee came before this House for its acceptance, I made it clear that this Constitution of India, of free India, of a secular State will not hereafter be disfigured by any provision on a communal basis. It was accepted with acclamation.

It is said that if you make any arrangements in the Provinces, then the provisions of the Constituent Assembly with regard to fundamental rights will come in the way. Let me tell you, nothing comes in the way where arrangements are made by mutual agreement, and without mental reservations. That provision in the fundamental rights is provided for an individual who is injured. But if you make domestic arrangements in the Punjab between community and community for the small posts, then who is going to question that ? But first create an atmosphere for adjustment of such things in your Province. It is the continued atmosphere of quarrel between two communities that has created distrust among them, and that creates difficulties. You will have our support and sympathy continuously in that Province because that Province has suffered most. It is injured and the wounds have not yet healed. It is for us all, and for you particularly, to help us in healing the wounds. Therefore, let us make a united effort to raise the morale of that Province, the strength of that Province, which really is at the top of India, where the border is. Then you will have no complaint at all.

After all, what is the Sikh community backward in ? Is it backward in trade ? Is it backward in industry, or commerce or in anything ? Why do you consider yourselves to be backward ? Therefore, forget that psychology. If there is any injustice done, then come to us, we will see that no injustice is done.

Sardar Hukam Singh said, "We trust the present leaders. What about the future ?" I say, you must have the courage to trust the future and not the present leaders. What will happen when the present leaders are gone ? Will Sardar Hukam Singh be living here ? Why raise this issue ? We must trust that if the present leaders go, we will have better leaders in the future. If we have trust in the future of our country, we may trust that in the future our country will produce leaders who will make a name in the history of the world. We have shown it today. We will do it in the future. That is India. India produced a Mahatma in a State where slavery was rampant. He went to a country where people would not walk on the foot-path, where people could not travel even in the III class with safety, where we were all treated as untouchables even now we are treated as untouchables there. There he made a name and fame all over the world, and presented a new weapon to the world. Then he came here. Here he raised the Sikhs, the Muslims, the Hindus, Scheduled Castes, everybody. He gave us freedom. Do you think that we are going to raise the morale of our country or the reputation of our country or the fame of our country by breaking promises ? No. We have all agreed that we must trust each other.

I know that the atmosphere so far as the Muslims are concerned is not quite as happy as it should be. But there are reasons for that. The Congress is not responsible for this. If there had been no Partition, perhaps we would have been able to settle our differences. But there was Partition. This Partition by agreement brought about subsequent events. But, since Partition, whatever is being done on the other side is having a reaction here for which we have to struggle day and night.

You do not know the immense difficulties of a secular Slate being governed peacefully in such conditions. Now, the world is in such a condition that we cannot take any independent action of our own accord. Even though there is injustice done, we have to wait, pause, ponder and consider, because there is an Organisation known as the U.N.O., who day and night watch the situation all the world over and try to see how peace could be maintained. I do not wish to say anything about the work of the U.N.O., because I know nothing about it. But the other part of the country known as Pakistan misses no opportunity of defaming and blackmailing us all over the world, whether there is occasion for it or no occasion for it. So we have to be specially careful. They break promises and charge us with breach of faith and yet we cannot solve it without reference to the other countries or without any regard for its reaction in other countries.

Therefore we have to be very careful. Do not add to our difficulties by creating internal difficulties in which there will be disputes between the communities. Help us and it will be to your advantage and it will be to the advantage of the whole country. You will have no cause for regret if you drop the claims for minor provisions for small minorities in regard mainly to service questions. Fight over issues beneficial to the whole country. Let us do that. Let us prepare the ground for that. You have big interests involved in two provinces. Though the problems in Bengal are different, as in the Punjab they have also certain problems. These problems can be settled not by the Centre, but by the provinces themselves. So, for God's sake, those who are interested in the well-being of the country should create a different atmosphere and not an atmosphere of distrust and discord.

My only point in coming to reply here was to meet the charge that has bean levelled against the Congress. I am sorry to hear it. Neither I nor any congressman has done anything here in the Centre to give cause to the Sikh Community to distrust us. We shall never give cause for that in spite of what you may do. Therefore for the last time in this Constituent Assembly, as responsible members of Parliament, I appeal to you. By all means ask for what you want or what you like. But do not blame other people for your own faults, I desire now to give you this undertaking that if you still feel that the advantage that was taken from us is not worth it you throw it away and, if you think this is better, I will give It to you. You consider the matter amongst yourselves, amongst the Sikh community and decide. But do not try to have it both ways. One section first comes and gets certain advantages and gives promises to a certain section of the community and thereafter another section comes and charges us with not having given it certain other advantages which it is anxious to have. That is not the way to do things. You may unite and decide what you want. It is not our fault if you have not done, so. After all, what is it that you want ? You want an insignificant thing, but granting it would mean putting a blot on the Constitution. We agreed about certain things on that day and everybody was pleased with it. Therefore be satisfied with what you have done and there will be no cause for regret. *(Applause).*

Mr. president : Is it necessary to continue the discussion ?

Honourable Members : No, no.

Shri H. V. Pataskar (Bombay : General) : I move that the question be now put.

Sardar Hukam Singh : I want to submit to you most respectfully that I do not find anywhere in the Constitution anything that we have secured at so high a price.

Shri Mahavir Tyagi (United Provinces : General) : Sir, may I appeal to you that this general discussion on this important article has not been full. It is for you to see whether you should accept the closure motion or not.

Mr. President : I see that and I am prepared to accept it.

The Honourable Dr. B. R. Ambedkar : I have nothing to add to what has already been said.

Mr. President : I will now put amendment No. 17 of Shri Guptanath Singh to vote.

Shri Guptanath Singh : I beg leave to withdraw it. The amendment was, by leave of the Assembly, withdrawn.

Mr. President : Then we come to the amendment of Mr. Kamath.

Shri H. V. Kamath : Sir, I leave it to the good sense of the Drafting Committee.

Mr. President : It is a verbal amendment and it can be left to the Drafting Committee. Now I will put amendment No. 256 of Sardar Hukam Singh to vote.

The question is :

"That with reference to amendment No. 23 of List II (Second Week), the following clause be added to article 296 :-

> '(2) Nothing in this article or in article 10 of the Constitution shall prevent the State from making any provision for the reservation of appointments or posts in favour of any minority community which, in the opinion of the State, is not adequately represented in the services under the State'."

The amendment was negatived.

Mr. President : The question is :

"That with reference to amendment No. 3163 of the List of Amendments, for article 296 the following article be substituted :-

Claims of Scheduled castes Scheduled Tribes to services and Posts.	'296. The Claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration in the making of appointments to services and posts in connection with the affairs of the Union or of a State'."

The amendment was adopted.

Mr. President : The question is :

"That article 296, as amended, stand part of the Constitution."

The motion was adopted.

Article 296, as amended, was added to the Constitution.

Article 299

Shri K. M. Munshi (Bombay : General) : Sir, I move--

"That with reference to amendment No. 63 above, for article 299, the following be substituted :-

Special Officer for Scheduled Castes Scheduled Tribes, etc.

'299. (1) There shall be a Special Officer for the Scheduled Castes and the Scheduled Tribes to be appointed by the President.

(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution and report to the President upon the working of those safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament.

(3) In this article, the reference to the Scheduled Castes and Scheduled Tribes shall be construed as including the reference to such other backward classes as the President may on receipt of the report of a Commission appointed under clause (1) of article 301 of this Constitution by order specify and also to the Anglo-Indian community'."

I need not say anything more on this amendment. The Special Officer is intended to look after the political safeguards that have already been given by other articles in the Constitution. I therefore, move the amendment.

Mr. President : I will first take up the, amendments to this particular amendment which has been moved by Mr. Munshi.

(Amendment No. 78 was not moved.)

Shri R. K. Sidhva : Sir, I move :

"That in amendment No. 64 above, in clause (3) of the proposed article 299 the words 'to such other backward classes.............

Backward classes have gone. Mr. Munshi has put it only the Scheduled Castes and Scheduled Tribes. If this is so, I do not want to move my amendment.

Mr. President : Clause (3) of Mr. Munshi's amendment says--

"In this article, the reference to the Scheduled Castes and Scheduled Tribes shall be construed as including the reference to such other backward classes as the President may on receipt of the report, etc."

Shri R. K. Sidhva : Then I move my amendment, Sir.

......"as the President may on receipt of the report of a Commission appointed under clause (1) of article 301 of this Constitution by order specify and" be deleted.

Sir, I do not want to speak at length because I have touched upon this point in my previous amendment. I know there is the article 301 which specifies backward classes. I am not quite sure that it will be easy for the President to find out who are the backward classes. I do feel that this backward classes article will remain a dead article, because I know that people who will come in the name of the backward classes will come only for their own personal position and personal aggrandisement to insert themselves as backward classes to win their own personal ends I know people would come in the name of the backward classes only to get a few posts, leaving the poor masses of that community in the lurch. I am therefore strongly opposed to the inclusion of the term 'backward classes'. Article 301 says "investigate the conditions of socially and educationally backward classes". Now, What does that mean ? 80 per cent. of our people are illiterate. Are they all backward ? Sometimes people who are illiterate have a far better sense of argument than the literate people.

Therefore, Sir, I contend that there is no such class as a backward class. The Britishers wanted to dub many as backward classes and then play them up to the whole world and say that India consists of so many backward classes and so they do not deserve freedom. I do not want this term "backward classes" perpetuated in our Constitution. The sooner we do away with this, the better for our country, the better for our position in the world. Beyond the Scheduled Castes and the Scheduled Tribes, I do not want any kind of reservation for anybody. If there is any class which feels that their interests have not been justly represented in the services, they should go to the proper authorities and find the remedy. After hearing Sardar Patel, I do not think there will be any injustice to any class people who really deserve some kind of sympathy and justice. If there is any injustice,, then our leaders are there who will look after their interests. With these few words, I commend my amendment for the acceptance of the House.

(Amendments Nos. 80, 258 and 284 were not moved.)

Shri H. V. Kamath : What about amendment No. 65 ?

Mr. President : I was just coming to that. So far we have taken up the amendments to amendment No. 64 moved by Mr. Munshi, which is an amendment to No. 63 which again relates to No. 43. No. 43 was sought to be replaced by No. 63, which again is replaced by No. 64. Therefore I first took up the amendments to amendment No. 64. Now, if any Member is keen on moving any of the other amendments, I will see whether it fits in with No. 64 or not. If it fits in, I will allow that, otherwise not. I will just call the amendment numbers and if Members wish to move any of their amendments, they can say so.

No. 44, by Mr. Lakshminarayan Sahu and Mr. Chaliha.

Shri Kuladhar Chaliha (Assam : General) : Sir, I move.

"That in amendment No. 63, above at the end of clause (2) of the proposed article 299, the words 'for its approval, modification or addition' be added."

Mr. President : What amendment are you moving ?

Shri Kuladhar Chaliha : I am moving No. 71.

Mr. President : All right.

Shri Kuladhar Chaliha : Sir, the article merely says that such reports shall be laid before each House of the Parliament. We should positively mention there what the powers of the Parliament are in this regard. As such, these additional words will make the clause a little clearer than it is. My own experience is that many such reports are laid before the House, but very few people take care either to look into it or give effect to it. So in, order to be more specific, I have added these words. I trust the Drafting Committee and Dr. Ambedkar will see that it is changed. I commend my amendment to the acceptance of the House.

Mr. President : Does any Member wish to move any amendment ? Sardar Bhopindar Singh Man, you wanted to move some amendments.

Sardar Bhopinder Singh Man : Nos. 67 and 69 relate to the amendment that was to be moved by Mr. Munshi, No. 63.

Sir, I move :

"That in amendment No. 63 above in clause (1) of the proposed article 299, after the words 'by the President' the words 'and a Special Officer for minorities for each State for the time being specified in Parts I and II and Part III of the First Schedule who shall be appointed by the Governor or Rajpramukh of the State, as the case may be' be added."

"That in amendment No. 63 above, in clause (2) of the proposed article 299, after the words 'under this Constitution and' the words 'their representation in different legislatures and services of the country' be inserted."

"That in amendment No. 63 above, at the end of the Explanation to the proposed article 299, the words 'Muslim Christians, and Sikhs' be added."

My first amendment states that the Minority Officers as originally proposed to be appointed in the States should be permitted to continue, I feel that a Minority Officer appointed at the Centre will be at too distant a place to investigate and see the daily working of the Constitution. If Minority Officers are not there, this safeguard contained in article 299 will not be effective. After all, it is the daily life and daily administration and governance that count more than anything. I request that Minority Officers in the States should continue and there should not be merely one officer appointed at the Centre.

My other two amendments state that there should be Minority Officers to investigate, not only the safeguards contained in the Constitution, but also to look into matters pertaining to all minorities and see how they have fared so far as representation in legislatures is concerned or securing of services in the administrative machinery is concerned. There seems to be some confusion about minorities. Certain friends say that because the Minorities Advisory Committee resolved that there will be no political reservations in the legislatures, there will henceforward be no minorities in the country. I takes my breath away how a paper resolution can do away with minorities, and that too, in so short an interval as just a year or so.

The position of this Constituent Assembly, as I understand from its previous decisions, is that they agreed that this country has got minorities. They classified these minorities into three groups--Group A, Group B and Group C. Not only that. I hold here another pamphlet published by the Ministry of Information and Broadcasting. They corroborate the same view and say the basis of these minorities is their religion. They mention the Minorities in the Indian Union as the Muslims, the Sikhs, the Christians, the Parsis and the Anglo-Indians. Now, to argue basically against this contention is to go behind their own words.

A happy sort of atmosphere has been brought about and the minorities henceforward repose their confidence in the good sense of the majority--not that they are wiped out altogether from our country. We march forward in the hope that no injustice will be done, but from that it should not be argued that henceforward the minorities cease to exist. After all, safeguards are just the instruments of securing the due share of minorities in the governance and administrative machinery of the country. If we are assured that no injustice will be done so far as governance or administrative machinery is concerned, naturally we will not ask for any political safeguards in the Assemblies or elsewhere.

It is a very daring experiment. I wish it success wholeheartedly. I am quite sure that it will succeed. It should succeed. I shall be very happy indeed if the fears of the minority communities are ultimately proved to be false. But to enable the experiment to succeed, I say that the cases of all the minorities should be reviewed and Minority Officers should be appointed for all the Minorities. After all, you are not giving anything. You are not giving any quota or any share or reserving anything. You only say that these Minority Officers will be reviewing the case of these minorities and scheduled castes. I take your word.

You are taking a great responsibility upon your shoulders. You promise that you will give us no cause for anxiety. Then may I ask Dr. Ambedkar why he feels shy of reviewing the cases of all the minorities ? I am quite sure you will be very just, you will be very fair and that the minorities will get their due share. Then, where is the harm if all these cases are reviewed periodically and brought before the Assembly and the Parliament ? It would give us a constitutional opportunity of reviewing our position. I shudder to think of the alternative, which will be only to raise some sort of agitation and din it into your ears that an injustice has been done to us. Instead of resorting to certain unconstitutional methods, this provides a constitutional door. I believe there will be no injustice whatever, but that is no reason why these constitutional doors should be closed.

In all earnestness I plead before you--kindly do not abrogate these articles, kindly do not re-open what has already been conceded. I shall be failing in my duty if I do not represent to you that the abrogation of these articles 296 and last of all of 299 will have very widespread and serious repercussions so far as my community is concerned. You are taking away that mental assurance that you have all along given to us. You had said, "Do not worry, there will be somebody all the time observing the working of the Constitution". Now you take that away. You say, "Justice or Injustice, case or no case, your case will not be reviewed." I think it will be injurious to that psychological atmosphere and mental assurance that you had given. I think by taking away this machinery by which the working of the Constitution so far as minorities are concerned will be observed, you are taking away our last hope of securing a hearing and of approaching the Parliament in a constitutional manner and getting our cases periodically reviewed. I believe, Sir, it will not be disfiguring the Constitution, as the popular slogan goes.

In the end I must refer to a certain assurance which is said to have been given by some representatives of my community. It has created a certain impression, and I beg to differ from Sardar Patel and to say that it has created a false impression. Actually, so far as the assurance is concerned, (I do not controvert the facts) I have asked those representatives about the assurance and I have got a copy with me containing the assurance. I have to remove the misunderstanding because it is creating a false impression in my community and elsewhere and hence there is the charge that the Sikhs are going back upon the undertaking they had given. In view of the fact that articles 296 and 299 had been agreed to by the House as recommended by the Advisory Committee, and the draft wording of which has been the same for the last one year and in addition to that they have agreed that Scheduled Castes will be included, the Sikh representatives said that henceforward they were not asking for any further assurances. But having got that assurance, if you now turn back and reopen the case in this House and thereby recede on articles 296 and 299, certainly our pledges cannot be thrown at our face to the effect that we are going back on them! Let me read the actual wording of the agreement. If there is anything else that should be in it, let that be produced, so that all this false impression can be removed. It runs :

> "We, the Sikh Members of the East Punjab Assembly, beg to refer to there port of the Sub-Committee of the Minorities Advisory Committee and to say that in so far as this relates to the problems of the Sikh community, the following points should be conceded in addition to the recommendations made in the said report....."

You agreed to certain recommendations made by Minorities Advisory Committee, which are clear and emphatic and so far as the sharing in the services is concerned, it is said that it will be conceded and a specific article relating to it will be incorporated in the draft Constitution. You also say that a Minority Officer for all the Minority Communities will be appointed. You conceded it and we gave the assurance that we will not be asking any further safeguards in addition to what already had been conceded.

Shri R. K. Sidhva : What order ? What was conceded ?

Sardar Bhopinder Singh Man : What you conceded and you have not yet abrogated. You conceded it in August 1947.

Shri R. K. Sidhva : There were subsequent developments.

Sardar Bhopinder Singh Man : I shall refer to that too. After this there was another report of the Advisory Committee dated 11th May 1949. If my friend were to read it carefully, not a single reference is there so far as these two resolutions are concerned. So far as the reservation in the Assembly is concerned, that has been taken away. So far as the other decisions, as regards the services and the Minority Officer for reviewing the cases of the minority communities are concerned, they stand and here I request my friend to produce a single sentence or line in the subsequent report submitted by the Advisory Committee and as approved by this House to show that in any case article 296 and article 299 have been abrogated.

Shri R. K. Sidhva : I have been a Member of the Minorities Committee from the very inception and I have no recollection of this question having come up so prominently as my friend relates it now.

Sardar Bhopinder Singh Man : It is not my fault if my friend misses the point. But unfortunately, it is there incorporated in black and white. For me it is a very important point. You ....

Mr. President : What is the document you have been reading from ? You referred to some sort of pledge.

Sardar Bhopinder Singh Man : I was referring to certain assurances which were said to have been given by Sikh Members that henceforward they would not be opening any case and would not be bringing forward any matter or any other safeguards and I say this, in spite of Sardar Patel's speech. As a matter of fact this has gone into the press as if there was some such assurance to give up all the minority rights.

Mr. President : Have you got that document with you ?

Sardar Bhopinder Singh Man : I have.

Mr. President : Than read it out.

Sardar Bhopinder Singh Man : I have read it.

Mr. President : I did not quite follow. If you read out that whole document to which Sardar Patel was referring...

Sardar Bhopinder Singh Man : I have this copy with me. If there is any other document, then I stand corrected with regard to what I have read.

Mr. President : I think you had better read it out so that Sardar Patel or anyone else can have a chance of finding out whether this is the document.

Sardar Bhopinder Singh Man : I have said I have no direct knowledge of that document. With regard to the document that those Sikh representatives gave, I have ascertained from them that this is the document containing the assurances that they gave.

Mr. President : Let us have the document.

Sardar Bhopinder Singh Man : Yes, the document reads as follows:

"We, the Sikh Members of the East Punjab Assembly, beg to refer to the report of the sub-Committee of the Minorities Advisory Committee and to say that in so far as this relates to the problems of the Sikh community, the following points should be conceded in addition to the recommendations made in the said report :-

1. The Sikh Backward Classes, namely, Mazhbis, Kabirpanthis, Ramdasias, Bawrias, Sareras and Sikligars,

should be placed at par with the Scheduled Castes in the matter of their political rights. This can be done by--

> (a) including these classes in the Scheduled Castes enumerated in the Draft Constitution; or
>
> (b) by abolishing the reservation of seats for all minorities including the Scheduled Castes in East Punjab; or
>
> (c) reserving seats for the said Sikh Backward Classes out of the quota of seats reserved for Sikhs. The estimated population strength of these classes among the Sikhs is roughly ten per cent ; these classes would get ten per cent. of the quota of Sikh seats.

2. In the matter of language, script and culture, either zonal arrangement should be provided in the Constitution, or, settled immediately by executive action.

3. Sikh minorities outside East Punjab should receive similar treatment as has been or might be granted to other minorities in the matter of political rights.

We would, respectfully suggest that for the elucidation of our case we should be given a hearing before the final decision is taken. We may and that we have no other communal safeguards to ask for so far as provision in the Constitution is concerned and that satisfaction along the lines suggested will go a long way to win over the Sikh masses for the national Cause."

Shri R. K. Sidhva : Who has signed it ?

Sardar Bhopinder Singh Man : The Sikh members and Sikh representatives signed it. The question is that we have to win over the confidence of the minorities. I do repeat here that it is going back upon certain things which you conceded yourself.

Shri R. K. Sidhva : There is nothing in the, article to say that we are going back.

Mr. President : Let me have a copy of the document. I shall have it ascertained from Sardar Patel whether it is the representatives' document or whether there is any other document and then I shall communicate it to you.

Sardar Bhopinder Singh Man : Mr. Sidhva knows perfectly well that in the light of the President's decision today that it is a reopening of the case....

Mr. President : So far as the question of reopening is concerned the case was put on the basis that a decision has already been taken and I said that even if decision has been taken it can be reopened. By reopening I did not mean going back on anything that has been done. Reopening only meant that objection was taken on the ground that a certain decision had been taken and this decision which we are going to take now would be inconsistent with that; and I held that even if it was so, it can be taken up, if 25 per cent. of the Members were in favour of reconsidering the question.

Shri H. V. Kamath : Sir, I move:

"That in amendment No. 63, at the end of clause (2) of the proposed article 299, the words 'for such action as Parliament may deem necessary' be inserted."

It is likely that when the report is presented to the President by the Special Officer appointed under this article, Parliament may consider it necessary or even essential that in view of the advance or the progress registered by the Scheduled Castes and Tribes it would be in the best interests of the country to abolish totally the distinction called Scheduled Castes or Tribes and there will be one big unified Hindu community. If this action were to be necessary, it cannot be left to the President alone. It is Parliament which has been invested with power in this Constitution to take the decision. Constitutional safeguards have been guaranteed to the Scheduled Castes and Tribes under this Constitution and it is only Parliament that can take a fundamental decision of this nature. Therefore, I desire that the report presented to Parliament should not be taken up for action by the President but the action taken shall be by the Parliament and not the President.--

There is another amendment No. 75 which was in respect of amendment No. 63. But unfortunately that amendment has been substituted by amendment No. 64 just moved by Mr. Munshi. But my amendment would apply in a modified form to this amendment as well. In that amendment (No. 63) with regard to the explanation in that article......

Mr. President : There is no explanation in amendment No. 63.

Shri H. V. Kamath : Instead of explanation we have got clause (3) in amendment No. 64. That amendment proposes reservation to the Anglo-Indian community as such. A specific reference to the Anglo-Indian Community is, in my humble judgment out of place. We have provided safeguards for the Scheduled Castes and Tribes........

Mr. President : As, a matter of fact I think that the substance of No. 75 has been taken in clause (3). Clause (3) of amendment No. 64 does not include the Anglo-Indian community now.

Shri H. V. Kamath : It does, Sir. The last words are "the Anglo-Indian community" and I want that to be deleted.

Mr. President : Yes, I see.

Shri H. V. Kamath : The reference to Scheduled Castes and Tribes is construed as meaning also such backward classes as the President may by order specify after receiving the report of the Commission. The Anglo-Indian community is neither a backward class nor a Scheduled Caste. I do not know how it can be lumped together with these two classes- Scheduled Castes and backward communities. The only safeguard that will be provided to the Anglo-Indian community is representation in the House of the People and State Legislatures through nomination, in case the President or the Governor thinks that that community is not adequately represented in those legislatures, and that too for a period of ten years, After that the safeguard automatically lapses.

As regards the safeguard given to the Anglo-Indian community regarding reservation in the services, the Anglo-Indian community, not being a backward community at all, is even today, over-represented in some services, far in excess of its proportion to the population. Therefore I feel that in this clause (3) reference to the Anglo-Indian community is absolutely unnecessary. The Anglo-Indian community is not at all a religious community: it is at best, or at worst, a racial community and it has a racial basis. I think we should not give encouragement to racial communities in this country. If at all they want to join any minority they should join the Christian community in India. They have no right to exist as a separate Anglo-Indian community. I hope that necessary changes will be made in clause (3) of this article.

Shri Brajeshwar Prasad : Sir, I move:

"That in amendment No. 63 of List II (Second Week), for the proposed article 299. the following be substituted :--

> '299. (1) There shall be special officer for the Scheduled Castes and the Scheduled Tribes to be appointed by the President.
>
> (2) The special officer in consultation with the President may appoint a special officer for each State who shall work exclusively under his superintendence, direction and control.
>
> (3) The special officer appointed either for the Union or for a State shall not be a member either of the Scheduled Tribes, the Scheduled Castes or of such other backward classes as the President may on receipt of the report of a commission appointed under clause (1) of Article 301 of this Constitution by order specify.
>
> (4) The salaries, allowances and pensions payable to the special officer for the Union and to the special officer for each State shall be expenditure charged on the revenues of India.
>
> (5) It shall be the duty of the special officer for the Union to make annual recommendations as to the steps that should be taken by the Union and by each State to improve the economic, educational and cultural level of the Scheduled Tribes, the Scheduled Castes or of such other backward classes as the President may on receipt of the report of a commission appointed under clause (1) of Article 301 of this Constitution by order specify and as to the sums that should be separately allotted in the annual budget of the Union Government and of each State Government for the purpose; and the President shall cause all such recommendations to be laid before Parliament.
>
> (6) Parliament shall have the power to reject or accept in whole or in parts any of the recommendations contained in the Report.
>
> (7) All State Governments shall be bound to make annual allotment in their budgets of such sums as Parliament may deem to be necessary for the purpose of giving effect to the recommendations contained in the Report of the special Officer for the Union.
>
> (8) Until the appointment of the commission and consideration of its Report by the President under clause (1) of Article 301 of the Constitution the backward classes shall consist of such castes and communities as may be determined by the President.
>
> (9) The President may delegate the power to the special officer for the Union to supervise and give effect to all or any recommendations made by the commission appointed under Article 301 and accepted by the President.
>
> (10) All appointments to be made under clauses (1) and (2) of this Article shall be made from the following category of persons
>
> (a) Doctors
>
> (b) Scientists
>
> (c) Sociologists and

> (d) Anthropologists
>
> (11) Parliament shall have the power to repeal or amend any or all of the Provisions of this Article."

Sardar Hukam Shigh : Sir, I move....

Shri R. K. Sidhva : Sir, this amendment was lost on a previous occasion. The inclusion of Christians, Sikhs and Parsees has been turned down.

Mr. President : This amendment relates to article 299. How could it have been lost, as article 299 has not been considered at all ? A similar amendment has been lost with reference to article 296 and not 299.

Shri R. K. Sidhva : Here the Christians, the Sikhs and Parsees are mentioned. The principle has been rejected by the House in a previous article.

Sardar Hukam Singh : Mr. President, Sir, I beg to move :-

> "That in amendment No. 63 above, in the explanation to clause (2) of the proposed article 299, after the word 'means' the words 'the Muslims, the Christians, the Sikhs, the Parsees, the Anglo-Indians' be inserted."

Sir, I would not go over the ground that has already been covered....

Shri K. M. Munshi : May I rise to point of Order? The words of my amendment No. 64 only refer to "all matters relating to the safeguards", that is only where safeguards are provided by the Constitution. No safeguards have been provided for the Muslims, Christians, Sikhs and Parsees. The only safeguards in the Constitution so far accepted are with regard to Anglo-Indians and the Scheduled Castes and Scheduled Tribes. Therefore, Sir, my submission is that there are no safeguards for the other communities and this amendment is out of order.

Sardar Hukam Singh : Under the Constitution there are safeguards.

Shri K. M. Munshi : There are no safeguards for these communities.

Sardar Hukam Singh : Under article 23 there are safeguards for minorities. That is also included in the Constitution.

Shri K. M. Munshi : Article 23 is fundamental, cultural right for which the safeguard is the Supreme Court and not the Special Officer.

Mr. President : The Special Officer may be called upon to report as to how that has worked. You can go to the Federal Court or to the Supreme Court and get its decision whether a particular article of the Constitution has been broken, but then the officer may also report whether a particular article in the Constitution has been given effect to and so that is what Sardar Hukam Singh wants.

Shri K. M. Munshi : Sir, that is not a safeguard. It is not, with great respect, a safeguard. 'Safeguard' means a political safeguard for a community which has been provided, but fundamental right belongs to every citizen and if his right is infringed the only remedy that he has is to go to the Supreme Court. Supposing an officer is invested with the power to investigate into it, it has no value.

Mr. President : It has a certain value for administration purposes and the, Government can take note of the report of an officer that a particular right which has been conferred is not being observed or is not being respected. The Administration can take note of that and can deal with that.

Sardar Hukam Singh : If the violation is not taken to the Federal Court, then, would it not be the duty of the Government to see whether the minorities are being fairly treated or not or whether they are getting the justice or not ?

I am not afraid of the answer. I cannot go over the ground already covered and I would submit only one or two things. Even if my request and my amendment under 296 has been rejected, then it is all the more necessary that under 299 the Special Officer should be invested with the powers and authority to go into details of the safeguards and rights of all minorities and it should not be restricted to these Scheduled Castes and Scheduled Tribes alone. We have been told here that we should trust our leaders and we should trust the future. This is all right and everything conceded. Granting that everybody is honest the Government wants to do justice to every community, what then unless the Government know whether anything amiss has been done, whether any unfair treatment has been meted out, whether any pledges have been violated or whether fair treatment is being meted out to everybody ? Unless the Government has some source of knowing it, how will it be in a position to redress the wrongs ? Therefore, my submission is that even if it was considered that it was not necessary to include these minorities and to specify them under 296, it is very essential that the officer if he is to be appointed ought to go into these things to find out and report on the working of the Constitution so far as all the minorities are concerned, and it should not be restricted to one or two- classes only.

I take this opportunity of answering one thing that has already been said I put a question, but that has nor been answered. I request the Honourable Mr. Munshi to answer that. I was told by the Honourable Sardar that if the Sikhs are sorry, then they can return what they have got and they can have the safeguards if they want. That was my complaint. I should like to know what they have got. We are told that four backward classes have been included. Where are they included in any Schedule ? That is, what I want to know. There was a schedule and we had to sacrifice everything for getting those four backward classes included in that Schedule. This Schedule is absolutely gone now. Under article 300A, it is left to the President to consult the Governor and then to specify who would be the Scheduled Castes. I have paid the price, as I am told I have sacrificed everything that I had, but I have got nothing in the Constitution. This is my complaint and that shall be answered.

(Amendment No. 80 was not moved.)

Mr. President : These are all the amendments we have got. Does any Member wish to say anything ?

Honourable Members : No, Sir.

Shri K. M. Munshi : Sir, I have very few words to say in reply. As regards the amendment of my honourable Friend, Mr. Chaliha, he will see that the Special Officer's report is a kind of expert's report which comes before the, Parliament. The Parliament certainly will gave a right to discuss it. Any member can raise a debate on it, but surely a report of an expert, who has collected facts, cannot be modified or added to by a legislature. It only contains the materials placed before the Parliament for its decision and therefore, I submit, Sir, that amendment No. 71 is really inappropriate.

With regard to amendment No. 80 of honourable Mr. Kamath, I am really surprised that he wants the deletion of the words "and also to the Anglo-Indian community". By sections 297 and 298 the Constitution has given specific safeguards to the Anglo-Indian community and the whole object of this article 299 is to see that the working of such of the political safeguards given to some of the communities as have been accepted by the Constitution should be properly investigated into and placed before the Parliament. If the Anglo-Indian community has certain safeguards, then it is the function of this officer to scrutinize their working.

Then as regards amendment No. 74 where the honourable Sardar Hukam Singh wants to introduce the Muslims, the Christians, the Sikhs and the Parsees in addition to Anglo-Indians, I am of opinion, Sir, with great respect that the safeguards contemplated by article 299 are not fundamental rights which are attached to very citizen. They are only 'safeguards', safeguards meaning political safeguards for the protection of certain well defined sections of the citizens. Otherwise, it would involve the special officer going into the working of all the fundamental rights given by the Constitution. So far as I understand my amendment, it only means that the Scheduled Castes, the Scheduled Tribes, the Anglo-Indian community and the backward classes who are under the fundamental right article 10, given specific safeguards, and the officer should examine whether they have been properly worked or not. That being this thing, it is not possible for me to accept the words "Muslims, Christians, Sikhs" etc. mentioned in amendment No. 74.

Sir, I have only one word more to say with regard to Sardar Bhopinder Singh Man's amendment No. 67.

Shri H. V. Kamath : What about amendment 72 ?

Shri K. M. Munshi : As regards amendment No. 72, it is not necessary to put in the words suggested, *viz.*, "for such action as Parliament may deem necessary". Once the report is before the Parliament, as I stated already, a debate can be raised on it and a resolution can be moved. It is implied; it is not necessary to add these words.

Sardar Bhopinder Singh Man by his amendment No. 67, wants that there should be a special officer in each State. Well, if the special officer envisaged in this article requires assistance of other officers, they will be appointed. But there is no need for appointing a separate officer for each State. That would only complicate matters. The object is to see whether the whole thing is worked on one principle throughout the country. We do not want separate officers in each State as permanent guardians. The honourable the Mover of the amendment has also introduced the word 'minorities' in it. We have removed the word 'minorities' from Article 296 and it is entirely inappropriate in 299. In passing, he tried to reply to what Sardar Patel had already said on the safeguards for Sikhs. I do not want to repeat what Sardar Patel said. I shall deal with only one point to which he referred and which I think I should refer. I was a member of the Committee appointed for the purpose of looking into the Sikh question. From the beginning of the Advisory Committee and the Minorities Committee, I had something or other to do with all the stages of the negotiations. I can assure the House that at the time when the Advisory Committee met on the last occasion, there was no question of providing safeguards for any religious minority. The negotiations proceeded on the footing that except the backward classes who are economically and socially backward, and the Scheduled Castes and Tribes who have a special claim of their own, no other minority should be recognised in the Constitution. The honourable Member read some statements made by certain Sikhs. Unfortunately, in the short time. at my disposal. I have not been able to reclaim the different documents; but of one thing I can assure the House. When the matter came up before the Advisory Committee, the Sikh members withdrew every sort of claim for any safeguards whatever in consideration of the Sikh scheduled classes being placed among the Scheduled Castes and given the privileges, which the latter were entitled to. Any cry raised now that they did not do so is an after- thought.

I do not want to say anything more about it and the kind of allegations which have been made are entirely unwarranted. Even with regard to the Muslim community, the debate centered round the question of representation. But it was understood that even so far as they were concerned also, the claims as regards service were given up. They were not expressly mentioned in the report. The basis of that decision was that we should not recognize in the Constitution any religious minority of this nature. That was the basis. I submit it is too late to go back upon this.

Sardar Hukam Singh : My question has not been answered. Have these four Sikh classes been included in the Scheduled Castes ?

The Honourable Dr. B. R. Ambedkar : Of course, they will be.

Shri K. M. Munshi : The President is empowered to issue, under article 300-A, a list of Scheduled Castes. In that. these Scheduled Castes will find a place.

Sardar Hukam Singh : Where is the guarantee that the President will include these people in that list ? We have given up all safeguards to secure this in the Constitution. That has not been done.

Shri K. M. Munshi : The President has that power. The President is sure to keep to the pledge which has been given. This decision finds a place in the Advisory Committee's Report that the Sikh Scheduled Castes will form part of the Scheduled Castes and provided with the safeguards under article 296 which we have already passed. There is no question of going back upon that pledge, you may take it from me. I repeat the Sikh Scheduled Castes will be included in the list of Scheduled Castes and Scheduled Tribes in the Punjab.

Mr. President: I will now put the amendments to vote, one by one. Although these amendments have been moved with reference to amendment No. 63, they would fit in with amendment No. 64 and therefore they have been allowed to be moved. If any one is accepted, we shall put it in the right place.

The question is:

"That in amendment No. 63 above, in clause (1) of the proposed article 299, after the words 'by the President' the words 'and a special Officer for minorities for each State for the time being specified in Parts I and II and Part III of the First Schedule who shall be appointed by the Governor or Rajpramukh of the State, as the case may be be added."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 63, above, in clause (2) of the proposed article 299, after the words 'under this constitution and' the words 'their representation in different legislatures and services of the country, be inserted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 63 above, at the end of clause (2) of the proposed article 299, the words 'for its approval, modification or addition' be added."

The amendment was negatived.

President : The question is:

"That in amendment No. 63 above, at the end of clause (2) of the proposed article 299, the words 'for such action as Parliament may deem necessary' be inserted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 63 above, in the Explanation to clause (2) of the proposed article 299, after the word 'means' the words 'the Muslim, the Christians, the Sikhs, the Parsees, the Anglo-Indians' be inserted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 63 above, in the Explanation to the proposed article 299, for the words 'and includes the Anglo- Indian community' the words 'and includes such community or communities as the President may then specify' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 63 above, at the end of the Explanation to the proposed article 299, the words 'Muslim, Christians, and Sikhs' be added."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 64 above, in clause (3) of the proposed article 299, the words 'to such other backward classes as the President may on receipt of the report of a Commission appointed under clause (1) of article 301 of this Constitution by order specify and' be deleted."

The amendment was negatived.

Mr. President: Amendment No. 80. It was not moved by Mr. Munavalli. I think it is covered by the other amendment. I had better put it to vote.

The question is:

"That in amendment No. 64 above, in clause (3) of the proposed article 299, the words 'and also to the Anglo-Indian community' be deleted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 63 of List II (Second Week), for the proposed article 299, the following be substituted :-

> '299. (1) There shall be a special officer for the Scheduled Castes and the Scheduled Tribes to be appointed by the President.
>
> (2) The special officer in consultation with the President may appoint a special officer for each State who shall work exclusively under his superintendence, direction and control.
>
> (3) The special officer appointed either for the Union or for a State shall not be a member either of the Scheduled Tribes, the Scheduled Castes or of such other backward classes as the President may on receipt of the report of a commission appointed under clause (1) of Article 301 of this Constitution by order specify.
>
> (4) The salaries, allowances and pensions payable to the special officer for the Union and to the special officer for each State shall be expenditure charged on the revenues of India.
>
> (5) It shall be the duty of the special officer for the Union to make annual recommendations as to the steps that should be taken by the Union and by each State to improve the economic, educational and cultural level of the Scheduled Tribes, the Scheduled Castes or of such other backward classes as the President way on receipt of the report of a commission appointed tinder clause (1) of Article 301 of this Constitution by order specify and as to the sums that should be separately allotted in the annual budget of the Union Government and of each State Government for he purpose; and the President shall cause all such recommendations to be laid before Parliament.
>
> (6) Parliament shall have the power to reject or accept in whole or in parts any of the recommendations contained in the Report.
>
> (7) All State Governments shall be bound to make annual allotment in their budgets of such sums as Parliament may deem to be necessary for the purpose of giving effect to the recommendations contained in the Report of the special officer for the Union.
>
> (8) Until the appointment of the commission and consideration of its Report by the President under clause (1) of Article 301 of the Constitution the backward classes shall consist of such castes and communities as may be determined by the President.

(9) The President may delegate the power to the special officer for the Union to supervise and give effect to all or any recommendations made by the commission appointed under Article 301 and accepted by the President.

(10) All appointments to be made under clauses (1) and (2) of this Article shall be made from the following category of persons:--

(a) Doctors

(b) Scientists

(c) Sociologists and

(d) Anthropologists

(11) Parliament shall have the power to repeal or amend any or all of the provisions of this Article'."

The amendment was negatived.

Mr. President : I think these are all the amendments. I put article 299 (amendment No. 64), as moved by Mr. Munshi.

The question is:

"That with reference to amendment No 63 above, for article 299, the following be substituted:--

Special Officer for Scheduled Castes, Scheduled Tribes etc.

'299. (1) There shall be a Special Officer for the Scheduled Castes and the Scheduled Tribes to be appointed by the President.

(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution and report to the President upon the working of those safeguard, at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament.

(3) In this article, the reference to the Scheduled Castes and Scheduled Tribes shall be construed as including the reference to such other backward classes as the President may on receipt of the report of a Commission appointed under clause (1) of article 301 of this Constitution by order specify and also to the Anglo-Indian community'."

The motion was adopted.

Article 299, as amended, was added to the Constitution.

Mr. President : We shall adjourn now. We sit again at four o'clock

The Assembly then adjourned for Lunch till Four of the Clock.

The Assembly met after Lunch at Four of the Clock. Mr. President

(The Honourable Dr. Rajendra Prasad) in the Chair.

STATEMENT RE: REPORT OF MINORITIES ADVISORY COMMITTEE.

Mr. President : Before we take up the other articles which are on the Order paper today I desire to make one statement. When articles 296 and 299 were under discussion this morning, the Honourable Sardar Patel referred to a written document. One honourable Member, Sardar Bhopinder Singh Man, read out portions of a document which he thought was the document to which reference was being made by the Honourable Sardar Patel. As I had some doubts, I thought it would not be right to let only a part of the document go on the record and I requested the honourable Member to read out the whole of the document which he had in his hand which he kindly did. Since then I have made enquiries and I find that that is not the document to which the Honourable Sardar Patel referred in his speech. I desire to read out the document which Sardar Patel had in mind so that the other document having gone on record, this might also go on record and any misunderstanding which might have been created on account of that document may be cleared.

Sardar Sochet Singh (Patiala & East Punjab States Union) : Is it possible to circulate copies of this Document ?

Mr. President : Of course, but I shall read it now. This document is dated the 10th May 1949. The Advisory Committee meeting was held on the 11th May and evidently the decision that was taken in the Advisory Committee was in pursuance of this document. It is signed by three. Members, the honourable Sardar Ujjal Singh, the honourable Sardar Jogindar Singh Mann and Sardar Gurbachan Singh Bajwa. I will now read out the whole document.

"A meeting of the Sikh Members of the East Punjab Legislative Assembly and of the Constituent Assembly was held in Delhi on the 10th May. The following members attended:-

1. Sardar Kapoor Singh
2. Gyani Kartar Singh
3. Sardar Swaran Singh
4. Sardar Ishar Singh Majhail
5. Sardar Ujjal Singh
6. Sardar Joginder Singh Mann
7. Bhai Piara Singh
8. Sardar Inder Singh
9. Sardar Gurbachan Singh Bajwa
10. Sardar Dalip Singh Kang
11. Sardar Ajit Singh

12. Sardar Shiv Saran Singh

13. Sardar Narottam Singh

14. Sant Narinder Singh

15. Sardar Hukam Singh

16. Sardar Tara Singh

17. Sardar Rattan Singh Moga

18. Sardar Rattan Singh Logarh

19. Sardar Gurbachan Singh, Ferozepore

20. Sardar Sajan Singh Mirjandpuri

21. Sardar Jagjit Singh Mann

22. Sardar Sardul Singh.

Sardar Kapoor Singh, Speaker, East Punjab Legislative Assembly, presided. The following proposals were unanimously adopted in regard to the safeguards for Sikh Minorities to be provided in the Constitution. These proposals have also the support of almost all the Members who could not be present at the meeting.

1. The Sikh Backward Classes, *viz.*, Mazhabis, Kabirpanthis, Ramdasias, Baurias, Sikligars etc. should be given the same privileges in regard to representation in the Legislatures and other Political concessions in the East Punjab and PEPSU as may be provided for the Scheduled Castes. For this purpose, either these Classes may be included in the Schedule Of Scheduled Castes enumerated in the Draft Constitution or seats may be reserved for them on population basis out of the quota reserved for Sikhs.

2. In the East Punjab, seats should be reserved for Sikhs according to their population with right to contest additional seats.

3. In Provinces other than the East Punjab and the Centre, the Sikh Minorities where they are entitled to representation on the strength of their numbers should have seats reserved for them and when adequate numbers are not returned by election, their strength should he made good by nomination.

4. The Sikhs will be prepared to give up reservation in the East Punjab if Sikh and Hindu Scheduled Castes are lumped together and seats reserved for them on the strength of their population.

In case these proposals are not accepted, the whole question of safeguards for Sikh Minorities may be referred to arbitration in accordance with the assurances given by the Congress.

(Sd.) Ujjal Singh

(Sd.) Joginder Singh Mann

(Sd.) Gurbachan Singh Bajwa.

Dated the 10th May 1949.

I do not desire to make any comment. If both the documents are read together, Members will be able to draw their own inferences.

Article 48

Mr. President : We shall now take up the various articles which are mentioned in the Order paper today beginning with article 48. These are all in the nature of amendments to articles which have already been accepted. Wherever necessary, I suppose the formal permission of the House will be taken altering the decisions previously taken. Article 48.

Shri T. T. Krisnamachari (Madras : General) : Mr. President, Sir, from Article 48 till practically the end of article 303 of the First Schedule, all of them, excepting 273A and 302 AA. require reopening of articles that have been passed already and I therefore submit that the permission of the House for reopening these articles might be taken, if the Chair so wishes.

Mr. President : The question is:

> "That the House give leave for reopening these decisions.

The motion was adopted.

Shri T. T. Krishnamachari : Mr. President, I move--

> "That in clause (3) of article 48, for the words 'The President shall have an official residence' the words 'The President shall be entitled without payment of rent to the use of his official residences' be substituted."

Sir, I see that my Friend Mr. Sidhva has an amendment to my amendment. But I would invite his attention to the amendment this House has accepted yesterday in respect of Part VIA--the amendment moved by any friend the Honourable Santhanam--which reads like this :

> "Unless he has his own residence in the capital of his State, the Rajpramukh shall be entitled to the use of an official residence without payment of rent, and there shall be paid to the Rajpramukh such allowances.....etc."

Subsequently the article relating to the Governors had to be brought into line with this provision. This was accepted by the House yesterday. That is my reason for bringing forward this amendment. I do hope Mr. Sidhva will not, therefore, press his amendment, in view of the fact that we are merely following the line indicated by the House in accepting the Honourable Mr. Santhanam's amendment of yesterday, in respect of Part VIA.

Shri R. K. Sidhra : Sir, the Honourable Shri Santhanam's amendment related to Rajpramukhs; but my amendment says that as far as the President is concerned he will be entitled to use the Government House as his official residence without any rent. So I do not know how Mr. Santhanam's amendment will meet this purpose.

Shri T. T. Krishnamachari : I would ask my Friend Mr. Sidhva to read the amendment once again. It says--

> "The President shall be entitled without payment of rent to the use of his official residences."

Actually Mr. Sidhva has missed the point. The words used are "official residences." The President may have more than one official residence. The Governor-General has a residence--in Delhi and another in Simla. Therefore, these words are used and the expert-advice is that this will fill in the bill completely, and so I feel no change is required. I would therefore, request Mr. Sidhva not to press his amendment.

Prof. Shibban Lal Saksena (United Provinces: General): Sir, Mr. Sidhva wants to say that the Government House will be used only for the residence of the President. But the future Parliament may like to put it to some other use also.

Shri R. K. Sidhva : I thought I need not press my amendment, but from what Prof. Shibban Lal has said. I feel that I must press it. He suggested that the Government House may be utilised for some other purpose. It may be utilised by a wandering Sanyasi as Prof. Shibban Lal desires. I do not want any doubt to be left, and so I want the words "Government House" to be specifically mentioned, as I have done in my amendment. It may be utilised for other purposes also, as we have used it for the exhibition. But it should be laid down that the Government House should be utilised for the residence of the President.

Mr. President : But Government House is not excluded for the residence of the President, by Mr. Krishnamachari's amendment. Need we have any discussion about this matter?

Shri H. V. Kamath : Mr. President, Sir, the other day I opposed the provision regarding residences without payment of rent for Supreme Court Judges, but Dr. Ambedkar in reply pointed out that articles already passed by this House have provided residences for the Governors and the President without payment of rent, and his answer to me was that at that time I did not object to the provision of residences to the Governors and President without payment of rent. Now it seems some doubt has arisen in his mind whether those earlier articles would be open to any other interpretation, that they may be interpreted as meaning residence on payment of rent, and not without payment of rent. His argument the other day was that as regards judges, those who come from places far off from the capital should not be put to the trouble of searching for houses in Delhi. That was the point that he made out the other day. On the same argument, I would suggest to him that it would not be improper or unwise to provide the Ministers also with residences without payment of rent. After all, when you provide the supreme judiciary with rent-free residences, and the Executive Head also a similar rent-free residence, I think it would be a wise and reasonable course to provide these other dignitaries with like residence--I mean the Ministers as well. I hope the House will agree with me that there must be this constitutional provision.

Mr. President : That question does not arise in connection with the amendment before the House.

Shri H. V. Kamath : Dr. Ambedkar was quite clear when he gave his answer to me the other day, but now he seems to have dome doubt in his own mind, and he has come now with an amendment seeking to provide residences to Governors and the

President, without payment of rent. We should, proceeding logically, provide rent-free accommodation to Ministers also.

The Honourable Dr. B. R. Ambedkar : Sir, if I may say a word. This amendment is merely consequential or analogous to the provision we have made with regard to the Rajpramukhs. In the clauses that were moved the other day with regard to the residences of Rajpramukhs, we have definitely stated that they will be rent-free. On comparing the similar clauses relating to the Governors, we found that somehow there was a slip and we did not mention rent-free houses. It is to make good that lacuna, and to bring the cases of the Governors and the President on the same footing as the Rajpramukhs that this amendment is needed.

With regard to the question of Ministers, that will be regulated by law made by Parliament. Whether Parliament will be prepared to give them salary with house, and if with house, whether it will be free of rent or with rent, are all matters that will be regulated by Parliament, because the offices of Ministers are political offices dependent upon the goodwill and the confidence of the House, and it seems to me that Mr. Kamath will very easily understand that it would be not proper to remove the Ministers from the purview and jurisdiction of Parliament.

Mr. President: I would like to put it to vote.

The question is:

"That in clause (3) of article 48, for the Words 'The President shall have an official residence, the words 'The President shall be entitled to the use of the Government House without payment of rent' be substituted."

The amendment was negatived.

Mr. President : Then I put the amendment moved by Shri T. T. Krishnamachari.

The question is:

"That in clause (3) of article 48, for the words 'The President shall have an official residence' the words 'The President shall be entitled without payment of rent to the use of his official residences' be substituted."

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, I move amendment No. 360.

"That clause (5a) of article 62 be omitted."

The reason for this is, as I told the House the other day on behalf of Dr. Ambedkar, that we do not propose to move Schedule III A and also the Schedule which deals with Instructions to Governors. The clause in question reads thus: "(5a) In the choice of his ministers and in the exercise of his other functions under this constitution, the President shall be generally guided by Instructions set out in Schedule III A." Actually, since Schedule III A is not moved, this clause becomes superfluous. Therefore I have moved for its omission.

Shri H. V. Kamath: Sir, you might remember that some months ago you raised the important point whether the President would always be bound to accept the advice of his Council of Ministers. Our Constitution is silent on that point. It only says that there shall be a Council of Ministers to aid and advise the President. Dr. Ambedkar at that time undertook to insert some provision somewhere in the Constitution in order to make this point clear.

That is my recollection. The President will kindly say whether I am right or wrong. Nowhere in the Draft Constitution has this point been clarified I hope Dr. Ambedkar will do so, and not leave it vague as at present.

The Honourable Dr. B. R. Ambedkar : Sir, I wish I had notice of this, so that I could give the necessary quotations. But I can make a general statement The point whether there is anything contained in the Constitution which would compel the President to accept the advice of the Ministry is really a very small one as compared with the general question. I propose to say something about the general question.

Every Constitution, so far as it relates to what we call parliament democracy, requires three different organs of the State, the executive, the judiciary and the legislature. I have not anywhere found in any Constitution a provision saying that the executive shall obey the legislature, nor have I found anywhere in any Constitution a provision that the executive shall obey the judiciary. Nowhere is such a provision to be found. That is because it is generally understood that the provisions of the Constitution are binding upon the different organs of the State. Consequently, it is to be presumed that those who work the Constitution, those who compose the Legislature and those who compose the executive and the judiciary know their functions, their limitations and their duties. It is therefore to be expected that if the executive is honest in working the Constitution, then the executive is bound to obey the Legislature without any kind of compulsory obligation laid down in the Constitution.

Similarly, if the executive is honest in working the Constitution, it must act in accordance with the judicial decisions given by the Supreme Court. Therefore my submission is that this is a matter of one organ of the State acting within its own limitations and obeying the supremacy of the other organs of the State. In so far as the Constitution gives a supremacy to that is a matter of constitutional obligation which is implicit in the Constitution itself.

I remember, Sir, that you raised this question and I looked it up and I had with me two decisions of the King's Bench Division which I wanted one day to bring here and refer in the House so as to make the point quite clear. But I am sorry I had no notice today of this point being raised. But this is the answer to the question that has been raised.

No constitutional Government can function in any country unless any particular constitutional authority remembers the fact that its authority is limited by the Constitution and that if there is any authority created by the Constitution which has to decide between that particular authority and any other authority, then the decision of that authority shall be binding upon any other organ. That is the sanction which this Constitution gives in order to see that the President shall follow the advice of his

Ministers, that the executive shall not exceed in its executive authority the law made by Parliament and that the executive shall not give its own interpretation of the law which is in conflict with the interpretation of the judicial organ created by the Constitution.

Shri H. V. Kamath : If in any particular case the President does not act upon the advice of his Council of Ministers, will that be tentamount to a violation of the Constitution and will he be liable to impeachment ?

The Honourable Dr. B. R. Ambedkar : There is not the slightest doubt about it.

The Honourable Shri K. Santhanam (Madras: General): I may add to Dr. Ambedkar's statement, and point out that there are certain marginal cases in which the President may not accept the advice of the Ministers. When a Ministry wants dissolution it will be open to the President to say that he will instal another Ministry which has the confidence of the majority and continue to run the administration. There are some marginal cases where he may have in the interests of responsible government itself to over-ride the advice of his responsible Ministers.

The Honourable Dr. B. R. Ambedkar : I would only like to say one thing in reply. That was once the position. It has been defined very clearly in Macaulay's History of England what the King can do. But I say that these are matters of convention. In Canada this question arose when Mr. Mackenzie King wanted dissolution. The question was whether the Governor-General was bound to give a decision or whether he was free to call the leader of the Opposition to form an alternative Ministry. On the advice of the British Government, the Governor-General accepted the advice of Mr. Mackenzie King and dissolved the Parliament.

Shri H. V. Kamath : Instead of Dr. Ambedkar's *obiter dictum* why not have a Constitutional provision?

The Honourable Dr. B. R. Ambedkar : We cannot discuss this question in this way.

Mr. Naziruddin Ahmad : We have now opened up a very debatable proposition, namely, whether the Ministry and the President would be bound to follow the decision of Parliament. The ruling on the British Constitution on this point will not really be relevant. The British Constitution has long-established conventions. There is no statutory enactment. The powers of the King and of the Executive are well-known through the centuries. But ours is going to be a statutory constitution. So I think we should have some provision to make the point clear. Otherwise it may one day lead to an impasse. The precedent of the British Parliament in the King's Bench Division will not at all help us. So far as the Canadian precedent is concerned, that is also is based upon conventions and understandings established for a long services of years. So far we have established no precedent at all to fall back upon. But as this is reopen a dead subject I do not think we need proceed further with this discussion. But we cannot take the opinion of Dr. Ambedkar as binding.

Shri Alladi Krishnaswami Ayyar (Madras: General): Sir, I did not want to interpose in the debate, but I find that the point raised as to the necessity of a provision is entirely without substance. We have provided in article 61(3) that the Council of Ministers shall be collectively responsible to the House of the People. If a

President stands in the way of the Council of Ministers discharging that responsibility to the House he will be guilty of violation of the Constitution and he will be even liable to impeachment. Therefore it is merely a euphemistic way of saying that the President shall be guided by the advice of his Ministers in the exercise of his functions. This Council of Ministers will be collectively responsible to the House of the People, and the House of the People must meet all situations in regard to the budget, in regard to legislation, in regard to every matter connected with the administration of the country. Therefore, if the Council of Ministers is to discharge their responsibility, it will be the duty of the President to see that the Constitution is obeyed and therefore article 61 along with clause (3) of article 62 make quite clear all the incidence of responsible government. Otherwise we will have a detailed list of all the incidence of responsibility; that the Prime Minister is responsible when dissolution of the Parliament is to be effected, what exactly the advice or the occasions when the advice tendered by the Council should be followed by the President, etc. Some such attempt was made in Ireland on account of the distrust of the Crown in those days. In the earlier Irish Constitution, some provisions were inserted stating in detail what are the incidence of responsibility. Now, if you just look at Canada, or Australia, or any other Constitution in which responsible government obtains or some semblance of responsible government obtains, there are no detailed provisions. The German pandits who framed the German Constitution attempted some kind of definition but that resulted in failure as we know as soon as a conflict between the powers of the President and of the Ministry arose, and that led to the collapse of the German Reich. Therefore, under those circumstances, I venture to submit that there is absolutely no necessity for setting out in detail what are the functions and the incidence of responsible government in an article of the Constitution.

Prof. Shibban Lal Saksena : Mr. President, Sir, we have framed a Constitution in which we have provided- for even very small details. Our Constitution differs from the Constitution of England in that the English Constitution is based on conventions. Here in a vital matter like this, we have not stated anywhere that the President is bound to call the Leader of the majority party to form the Cabinet and that he is bound to accept the advice of the Ministry. The Schedule providing for an Instrument of Instructions has also been taken away. Dr. Ambedkar has just now explained to us that conventions on this question have developed in other countries. I had hoped when Schedule IV was being deleted, provisions will be made in the Constitution to cover these points. In fact, at one time Dr. Ambedkar told me that we should frame all these details because we were just commencing a big experiment in democracy. Now that we are providing even for small details in the Constitution, I do feel that these fundamental things, that the President shall be bound to call the leader of the majority party to form the Cabinet, and that he will be bound to accept the advice of the Cabinet, should be incorporated in some instrument of instructions or in some articles of the Constitutional.

Mr. President : I think we have discussed this matter enough. Mr. Krishnamachari, do you want to say anything ?

Shri T. T. Krishnamachari : No. Sir, Dr. Ambedkar has replied.

Shri H. V. Kamath : What is your own reaction to the debate. Sir ? The issue was originally raised by you.

Mr. President : It is not a question of my reaction. It is for the House to decide.

Mr. Naziruddin Ahmad : Permission may be given to reopen the matter.

The Honourable Shri K. Santhanam : This is purely consequential.

Mr. President : I have to put this amendment to the vote. That is all my reaction.

The question is

"That clause (5a) of article 62 be omitted."

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, I move :

"That clause (6) of article 67 be omitted."

This is a very important clause and I can appreciate the vigilance of my honourable Friend Mr. Shibban Lal Saksena in moving a negative amendment to this amendment. I would at once tell the House that this important clause which deals with election to the House of the People on the basis of adult franchise is not being omitted in any lighthearted manner. I would like to ask the House to refer to article 289-B which reads thus:-

> "The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult franchise; that is to say, every citizen, who is not less than twenty one years of age on such date as may be fixed in this behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or I illegal practice, shall be entitled, to be registered as a voter at any such election."

Substantially the whole of clause (6) of article 67 has been produced in 289-B which the Drafting Committee felt was the proper place for putting in the qualifications of voters. Therefore, Sir, clause (6) of article 67 is no longer necessary and that is the provocation for my moving this amendment.

(Prof. Shibban Lal Saksena did not move his amendment.)

Mr. President : The question is :

"That clause (6) of article 67 be omitted.'

The amendment was. adopted.

Shri T. T. Krishnamachari : Sir, I move :

"That for clause (7) of article 67, the following clause be substituted:-

> '(7) The representation in the House of the People of the territories comprised within the territory of India but not included within any State shall be such as Parliament may by law provide'."

Sir, the original clause (7) reads thus:

> "Parliament may, by law, provide for the representation in the House of the People of territories other than States."

The House will remember that we passed yesterday a new article 67-A which is more or less an enabling article. It does not wholly take away the need for a clause like clause (7) and it was felt that this clause must be amplified in there manner suggested in my amendment.

Mr. President : There is no amendment to this. The question is:

"That for clause (7) of article 67, the following clause be substituted :--

> '(7) The representation in the House of the People of the territories comprised within the territory of India but not included within any State shall be such as Parliament may by law provide'."

The amendment was adopted.

Shri T. T. Krishnamachari : Mr. President, I move

"That for the proviso to article 109 the following proviso be substituted:--

'Provided that the said jurisdiction shall not extend to--

> (i) a dispute to which a State for the time being specified in Part III of the First Schedule is a party, if the dispute arises out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which was entered into or executed before the date of commencement of this Constitution and has, or has been continued in operation after that date;
>
> (ii) a dispute to which any State is a party, if the dispute arises out of any provision of treaty, agreement, covenant, engagement, *sanad,* or other similar instrument which provides that the said jurisdiction shall not extend to such dispute'."

I would request honourable Members to refer to, the Draft Constitution before this article was passed by the House. They will find these two provisos reproduced there word for word. It was felt at the time we moved this Draft Article 109 that in the circumstances in which we were then placed we could not ask the House to pass a proviso like proviso (1) and hence there is no proviso in the article as accepted-by the House covering the case of States in para III as we had for its omission and only the incorporation of proviso (2) in the terms in which it has been then accepted by the House. But now circumstances have, changed and we find that a proviso similar to proviso (1) of the original draft has to find a place and therefore I have moved this amendment. I hope the House will accept it.

Mr. President : The question is:

"That for the proviso to article 109 the following proviso be substituted:

'Provided that the said jurisdiction shall not extend to--

> (i) a dispute to which a State for the time being specified in Part III of the First Schedule is a party, if the dispute arises out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which was entered into or executed before the date of commencement of this Constitution and has, or has been, continued in operation after that date;
>
> (ii) a dispute to which any State is a party, if the dispute arises out of any provision of a treaty, agreement, covenant, engagement, *sanad,* or other similar instrument, which provides that the said jurisdiction shall not extend to such dispute'."

The amendment was adopted.

Article 112

Shri T. T. Krishnamachari : May I request you to hold over this article till tomorrow ? There are certain Members in this House who have represented that they would like to examine this article a little further, and if it is not inconvenient, I would request the chair to hold it over till tomorrow.

Mr. President : It is held over. We will take up amendment No. 365. Article 119.

Shri T. T. Krishnamachari : In moving amendment No. 365, I would like you to permit me to incorporate in this amendment, amendment No. 388 which I have tabled today. Sir, I move :

"That article 119 be renumbered as clause (1) of article 119, and to the said article as so renumbered the following clause be added.

> (2) The President may, notwithstanding anything contained in clause (1) of proviso to article 109 of this Constitution, refer a dispute of the kind mentioned in the said clause to the Supreme Court for opinion and the Supreme Court may, after such hearing as it thinks fit, report to the President its opinion thereon."

This again happens to be part of article 119 as it originally appeared in the Draft Constitution. Practically word for word, except for the minor variations, I have introduced in my subsequent amendment with regard to the last three lines of this amendment, it appeared in the original article 119. We have now felt that it ought to be restored, though it was not originally put in 119 as it was passed by the House. The intention is more or less self-explanatory. It is a question of empowering the President to refer a matter like the one mentioned in the amendment to the Supreme Court for its opinion and for the Supreme Court to report to the President its opinion thereon and it varies vitally from the provision of article 119 as it stands now. It is found necessary in circumstances now present in view of the enlargement of the scope of the Constitution by the additions that have since been made.

Mr. President : The question is:

"That article 119 be renumbered as clause (1) of article 119, and to the said article as so renumbered the following clause be added:-

> '(2) The President may notwithstanding anything contained in clause (i) of the proviso to article 109 of this Constitution, refer a dispute of the kind mentioned in the said clause to the Supreme Court for opinion and the Supreme Court may' after such hearing as it thinks fit, report to the President its opinion thereon'."

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, I move :

"That in clause (3) of article 135, for the words 'shall have an official residence' the words 'shall be entitled without payment of rent to the use of his official residences' be substituted."

This refers to the Governor. The amendment to article 48 referred to the President and it has been accepted by the House.

Shri H. V. Kamath : In my humble judgment there is a little discrepancy here. We have provided rent-free residences to the President and the Judges of the Supreme Court at the Centre. Similarly, on the same reasoning, should we not provide rent-free residences to the Governor and the High Court Judges? Why do we provide it for the Governor only?

The Honourable Dr. B. R. Ambedkar : Logic cannot be employed to make a proposition absurd.

Mr. President : The question does not arise here. The question is:

"That in clause (3) of article 135, for the words 'shall have an official residence' the words 'shall be entitled without payment of rent to the use of his official residences' be substituted."

The amendment was adopted.

Shri T. T. Krishnamachari : Mr. President, Sir, I move

"That in clause (3) of article 135, for the words 'the Legislature of the State the word 'Parliament' be substituted."

The appointment of the Governor is now being made by the President. It is therefore felt that it would not be proper to leave-his emoluments to be decided by the legislature of the State as it originally was when we had intended that the Governor should be elected. This should have been amended earlier, but we found that we could do it only at the last stage. Therefore, I am moving that the emoluments of the Governor shall be determined by Parliament by law.

Prof. Shibban Lal Saksena : I am glad that the change is being made. I would only like to know who will pay the salary of the Governor--will it come out of the provincial exchequer or the Central exchequer ?

Mr. President : It will be a charge on the provincial revenues.

The question is :

"That in clause (3) of article 135 for the words 'Legislature of the State' the word Parliament be substituted."

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, I move:

"That clause (4) of article 144 be omitted."

Sir, clause (4) is similar to article 62(5) (a) which has been omitted and the reason for moving this is that this House has decided that there should be no Fourth Schedule to this Constitution, and as this clause is entirely dependent on the fact that there should be such a Schedule, it is no longer necessary.

Mr. President : The question is:

"That clause (4) of article 144 be omitted."

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, I move:

"That clause (2) of article 149 be omitted."

Clause (2) of article 149 is much the same as the previous article which the House has accepted, in regard to the House of the People. This clause (2) as it now stands provides for election on the basis of adult suffrage and so on and we find that this has been transposed. Now article 289-B deals with elections to Parliament and with elections to the Legislature of a State. Therefore this clause is not necessary.

Prof. Shibban Lal Saksena : I am not moving my typed amendment which reads:

"That amendment 369 of List IV (Second week) be deleted."

Mr. Naziruddin Ahmad : Some of the Members including my humble self find it difficult to follow these changes of mind. When clause (2) of article 149 was there, then article 289-B should not have been passed : we should have passed immediately another amendment just to remove mere duplication. So far as the present amendments are concerned they have been circulated to us only today. The Members have had no time to consider them. The result of these hurried and rapid amendments might be that there might be other anomalies requiring further clarifications and corrections. It is difficult to follow them and the way we have been amending our old decisions on the ground of anomalies and duplications shows the danger of adopting them without real consideration.

Mr. President : I think all these articles were introduced under a separate part dealing with elections, and so it was considered necessary to remove all those which dealt with elections to this one place.

Mr. Naziruddin Ahmad : Why were they not thought of at the time of those amendments ?

Shri T. T. Krishnamachari : The explanation that the Chair has given is perfectly right. Actually we thought of a complete chapter and at the time that the chapter was introduced and accepted by the House we did not move for the deletion of this article because it was thought that it could be done at the end of debate in the Second Reading. We felt that various other things would arise and an amendment could be made to deal with these articles at the end. That is why we have brought it up now.

Mr. President : The question is:

"That clause (2) of article 149 be omitted."

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, I move

"That in clause (4) of article 149 for the words 'Legislature of the State' the word 'Parliament' be substituted."

The reason is this: that the powers that are given to the Legislature of a State under clause (2) have now been given under article 290 to Parliament. It was a question of delimitation of other things and therefore this alteration is necessary. I am sure that my honourable Friend, Mr. Naziruddin Ahmad, would not find fault with us for not having at that time moved for a deletion of these words in substitution for the word "Parliament" because we felt that we could do it later on and therefore we had left it out at that time. It was not that we were unaware of the fact that we were doing something contrary to clause (1) of article 149.

Shri H. V. Kamath : There is a little verbal slip committed by the Drafting Committee in this connection. The word "Parliament" ought to substitute the phrase "the Legislature of the State" otherwise if the amendment is accepted as it is, the clause would read as follows:

"With effect from such date as the Parliament may by law determine." The Parliament' is obviously incorrect.

Shri T. T. Krishnamachari : I am very grateful to my honourable Friend for drawing our attention to it. May I ask you to treat the amendment that has been moved by me as:

"the Legislature of the State?"

I am very grateful to my honourable Friend.

Shri H. V. Kamath : Why not treat it as your amendment further amended by me ?

Prof. Shibban Lal Saksena : This is an important amendment. Here it is said:

"Upon the completion of each census, the representation of the several territorial constituencies in the Legislative Assembly of each State shall subject to the provisions of article 289 of this Constitution, be readjusted by such authority, in such manner and with effect from such date as the Legislature of the State may by law determine........"

The intention was that when the new census is completed and the constituencies have been readjusted, then the Legislature of the State shall be the proper authority to readjust them. Now the powers have been given to Parliament. I welcome this from the point of view that it shall be somewhat uniform. But I want to know what is the machinery by which this will be done because the population of a province may increase and how with the new Constituencies be readjusted ? I am sure every province would like to be heard before such readjustment and as such there should be some provisions by which Parliament, before making such an amendment, should be able to know the views of the Legislature of the State concerned. Take my own province: the population is six crores and we may have 500 seats. But suppose the population, increases--then the constituencies may have to be changed. Or take another province where the population is small and it increases : will they be able to increase the constituencies according to the population ? We have to provide how the Legislature of a State can be heard before the Parliament takes its decisions.

Mr. Naziruddin Ahmad : I would submit only one word in reply to what has been said by Mr. T. T. Krishnamachari. For one of my remarks in the previous amendment, Mr. Krishnamachari says that I am finding fault with them. I am not really finding fault with him but I just explained my difficulty which is shared by a number of Members in the House. Mr. T. T. Krishnamachari is on the other hand finding fault with Members.

Shri T. T. krishnamachari : Sir, if I caused any annoyance to my friend I would like to apologise. In regard to my honourable Friend Prof. Shibban Lal Saksena's remarks I would ask him once again to read article 290. So far as the machinery is concerned the intention was that the machinery should be created and probably would be created. But at the moment we cannot say anything more than what is said in article 290 read with clause (4) of article 149.

Mr. President : The question is:

"That in clause (4) of article 149 for the words 'the Legislature of the State' the word 'Parliament' be

substituted."

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, may I request you to hold over amendment No. 371 as it is analogous to amendment No. 364 regarding which you were good enough to accede to my request to hold it over till tomorrow. Sir, I move :

"That to article 230 the following words be added at the end:--

'or any decision made at any international conference, association or other body'."

I think my honourable Friend Mr. Kamath would certainly appreciate this amendment, particularly in view of the fact that he was so keen to elaborate the provisions of the relative entries in List I of Schedule VII. The article as amended would, read :

"Notwithstanding anything in the foregoing provisions of this Chapter, Parliament his power to make any law for any State or part thereof for implementing any treaty, agreement of convention with any other country or countries or any decision made at any international conference, association or other body."

I think this makes it perfect and meets with all contingencies that might occur in which Parliament will have to make legislation for implementing international agreements and decisions of international conferences to which this country is or will be a party.

Shri H. V. Kamath : I am quite satisfied with the statement made by my Friend Mr. Krishnamachari.

Mr. President : The question is:

"That to article 230, the following words be added at the end:--

'or any decision made at any international conference, association or other body'."

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, in respect to amendment No. 373 I would ask your permission to hold this over till tomorrow.

Shri R. K. Sidhva : I can understand changing one's mind after some days but this was presented to the House yesterday and so soon the honourable Member has changed his mind.

Shri T. T. Krishnamachari : Sir, I move:

Mr. Naziruddin Ahmad : Sir, on a point of order, this is supposed to be a very important clause and it was circulated to us only this morning. We have many other things to do besides attending this House and we require time to consider the amendments. We cannot just now deal with them on the spur of the moment.

Mr. President : Very well, the amendment may be held over.

Shri T. T. Krishnamachari : Sir, I move:

"That sub-clause (c) of clause (1) of article 303 be omitted."

Before I move article 303 I would like, Sir, to have your permission to move an item in clause 303(1) (b) which has been held over. Items (b) and (c) of clause (1) of article 303 were held over and my amendment No. 375 is to ask permission of the House to delete item (c). Item (b) will have to be moved and if you will give me permission I will move it. There is no amendment to this. It relates to the definition of Anglo-Indians. Sir, I move :

"That item (b) of clause 1 of article 303 as it originally stood in the Draft Constitution be adopted."

Shri H. V. Kamath : Sir, what will happen to those persons whose progenitors in the male line were of Australian or American descent ? "Anglo" refers to England and not Europe. This is somewhat badly drafted. What about those of American, Australian or Canadian descent ? I do not know how this difficulty will be overcome.

Shri T. T. Krisnamachari : This is the definition is the Government of India Act and we have only borrowed it.

Shri H. V. Kamath : Can we not rectify a mistake in the Government of India Act ?

The Honourable Shri K. Santhanam : The words "European descent" will include persons of Australian and American descent also.

Shri H. V. Kamath : Sir, are you satisfied with this draft ? I wonder.

Mr. President : Do not put me personal questions. I am satisfied with whatever the House adopts. Item (b) of clause (1) of article 303 was held over on the 16th September......

Mr. Naziruddin Ahmad : We are reminded of it only when the honourable Member read the revised draft form. It was not on the agenda. It shows gross carelessness.

Mr. President : Article 303 is on the agenda and no omissions or corrections in that article are now coming before us. I do not think it is any use holding over any further. I have looked over the amendments in the second printed list and I do not find any substantial amendment to this.

The question is :

"That item (b) of clause (1) of article 303 as it originally stood in the Draft Constitution be adopted."

The motion was adopted.

Shri T. T. Krishnamaphari : Sir, I move :

"That sub-clause (c) of clause (1) of article 303 be omitted."

This refers to the Indian Christians and there is no reference in the Constitution to Indian Christian as such because the rights that were originally given to them have now been abrogated by the amendments that have been moved. Therefore, Sir, this definition is no longer necessary.

Mr. Naziruddin Ahmad : What is this amendment, Sir ?

Mr. President : The definition of the word 'Christian' that is given in clause (c) in article 303(1) is to be omitted, because the word 'Christian' does not occur anywhere in the constitution.

That is the amendment.

The question is:

"That sub-clause (c) of clause (1) of article 303 be omitted."

The amendment was adopted.

Shri T. T. Krishnamachari : Mr. President, Sir, I move:--

"That for sub-clause (111) of clause (1) of article 303 the following sub-clause be substituted:--

> '(111) Indian State' means any territory which the Government of the Dominion of India recognised as such a State'."

The reference is to page 157 of the Draft Constitution and it has reference to an item that has already been passed. In the original as we have passed already this (111) is split up into two and deals with a definition as respects the period before the commencement of the Constitution and as respects the period after the commencement of the Constitution. That has now been found to be unnecessary and therefore, this definition has been substituted.

Shri H. V. Kamath : Sir, is it very necessary to say "the Government of the Dominion of India ?" Is it not enough to say "the Government of India?"

Mr. President : There is a confusion. The Government of India means. also the Government of India under the new Constitution, but the Government of the Dominion of India means the Government which was in power before the commencement of the

Constitution. I think it is to avoid that confusion that this amendment is brought in.

Mr. Naziruddin Ahmad : It seems to me, Sir, that the word 'Dominion' has been used in reference to the future.

The Honourable Shri K. Santhanam : I think that instead of the words "such a State" occurring at the end, the words "an Indian State" would be better.

Shri T. T. Krishnamachari : I am advised that if the amendment proposed by Mr Santhanam is accepted the meaning will not be clear. The real fact is this that there is no need for the definition of an Indian State in so far as the Constitution after it comes into operation is concerned. It only has to refer to those States before the commencement of the Constitution. Therefore, it is not necessary to relate the 'Indian State' to the Constitution as such after it comes into operation and that is why we have shortened the definition that was originally accepted by the House into one, instead of two alternatives, and I am advised that the phrase "as such" exactly suits the purpose for which it is intended.

The Honourable Shri K. Santhanam : Even in the new Constitution the words 'Indian State' have occurred and will have to be interpreted for the purpose of assets and liabilities. Therefore, we have to say that 'Indian State' means any territory which was recognized as an 'Indian State' by the Dominion of India. This is purely a verbal amendment.

Shri T. T. Krishnamachari : In the new Constitution wherever reference is made to an 'Indian State' it is made as a State and its relation to what existed previously is to the corresponding Indian State and the corresponding province. There is no place where the 'Indian State' occurs for the purpose of interpretation as things would exist after the Constitution comes into operation.

Mr. Naziruddin Ahmad : May I ask a question as to where in this Constitution the expression 'Indian States' have been used ? We must have an idea of the context in which this term is used in order to define it.

Mr. President : Mr. T. T. Krishnamachari has just mentioned two instances.

Shri T. T. Krishnamachari : If my honourable Friend wants a ready reference, I would ask him to refer to article 273-A which has now been held over and to 267-A which has been passed. There are a number of other articles as well of this nature.

The Honourable Shri K. Santhanam : At least the article 'a' occurring in the words 'such a State' may be dropped.

Mr. President : Is there any harm in saying 'recognized as an Indian State' ?

Shri T. T. Krishnamachari : That would not be correct, Sir. If we put the words 'Indian State', it must be as 'an Indian State', and it cannot be stated merely as 'Indian State'. Whether we retain the word 'State', or 'Indian State', the article will be necessary whether it is 'a' or 'an'. May I, Sir, read the definition in the Government of India Act?

"Indian State means any territory not being part of British India which His Majesty's Government recognized as being such a State, whether described as a State, an estate, jagir or otherwise."

Mr. President : I do not suppose there will be any difficulty about the meaning. It is question of English.

Shri T. T. Krishnamachari : We have more or less followed the precedent of the Government of India Act in these matters.

Mr. President : The question is :

"That for sub-clause (111) of clause (1) of article 303 the following sub-clause be substituted:-

> '(111) 'Indian State' means any territory which the Government of the Dominion of India record as such a State'."

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, I move:

"That for sub-clause (nn) of clause (1) of article 303, the following sub-clauses be substituted:--

> '(nn) 'Rajpramukh' means--
>
> (i) in relation to the State of Hyderabad, the person who for the time being is recognised by the President as the Nizam of Hyderabad;
>
> (ii) in relation to the State of Jammu and Kashmir or the State of Mysore, the person who for the time being is recognised by the President as the Maharaja of that State; and
>
> (iii) in relation to any other State for the time being specified in Part III of the First Schedule, the person who for the time being is recognised by the President as the Rajpramukh of that State,

and includes in relation to any of the said States any person for the time being recognised by the President as competent to exercise the powers of the Rajpramukh in relation to that State'."

Sir, the original definition which this amendment seeks to replace referred only to Ruler, I propose to follow upto his amendment with a definition of 'Ruler', which is as follows:

"(nn) 'Ruler' in relation to an Indian State means the Prince, Chief or other person by whom any such covenant or agreement as is referred to in clause (1) of Article 267A of this Constitution was entered into and who for the time being is recognised by the President as the Ruler of the State, and includes any person who for the time being is recognised by the President as the successor or such Ruler."

As I said earlier, this splits up the original sub-clause (nn) in article 303 (1). It dearly states who is a Rajpramukh and in so referring to Rajpramukh, also permits the use of the word Nizam for the Ruler of Hyderabad and Maharaja for the Rulers of Jammu and Kashmir and Mysore. It also makes the distinction between Rajpramukh and Ruler clear, in that the Ruler will be a person who will not be a Rajpramukh, but will be a person who had entered into an agreement with the Government of India as is referred to in article 267-A, which was passed by the House yesterday even though he does not happen to have ruling powers. It has been provided that he must be a person who has been recognised by the President as a Ruler. Provision has also been made that the President should also recognise his successor as such Ruler.

Shri H. V. Kamath : Unfortunately, Sir, there are two lacunae in this amendment It omits to define, firstly, Up-Rajpramukh and also Maharajpramukh. I am told that there is one person, the Maharana of Udaipur who is known as the Maharajpramukh. These are not defined in this amendment. These omissions must be filled before it can be good.

Mr. President : There is notice of an amendment bringing in the definition of Up-Rajpramukh. That is coming up later. The word Maharajpramukh has never been used.

An Honourable Member : He has no powers.

The Honourable Shri K. Santhanam : About the definition of Ruler, Sir, the last sentence says, "and includes any person who for the time being is recognised by the President as the successor of such Ruler." If he is the successor of such Ruler, he will automatically be the Ruler. We cannot have a Ruler and a successor at the same time. I think the last portion would lead to confusion. It might suggest that at a time, there can be a Ruler and successor recognised for the same State. I think that is an impossibility. If he is the real successor, he becomes automatically the Ruler. At one time, there can be only one Ruler or successor. There cannot be both.

Shri T. T. Krishnamachari : The difficulty in my honourable Friend's Process of thinking is that there is no such thing as automatic succession. Succession has got to be recognised by the President.

The Honourable Shri K. Santhanam : What I meant is as soon as somebody is recognised as the successor, he will be the Ruler. Otherwise, there is no meaning in recognising a successor.

Shri T. T. Krishnamachari : There is a certain amount of confusion because we shall have Rulers without a State. Only the Rajpramukh is related to a State. The other Rulers will be more or less connected with the estates that they held in the past. The idea really is that the person who succeeds to the estate must be recognised by the President. If he does not recognise him, be does not become the Ruler. There is nothing automatic about it. If the President recognises one person as a Ruler, until there is a vacancy, it is unlikely that he will recognise another as a successor. There must be a vacancy before the successor could be recognised. I see no difficulty in the wording as it is.

The Honourable Shri K. Santhanam : May I enquire whether a person who has lost his State by merger in a province continues to be a Ruler or he has become successor ?

Shri T. T. Krishnamachari : The whole difficulty is, this is rather intricate. It is baffling. I admit that a person who has lost his State is nevertheless a Ruler, under the definition in (nn), and also for the purpose of Article 267-A.

The Honourable Shri K. Santhanam : Why not his son also be Ruler ?

Shri T. T. Krishnamachari : Might be.

The Honourable Dr. B. R. Ambedkar : If I may say so, this definition of Ruler is intended only for the limited purpose of making payments out of the privy purse. It has no other reference at all.

The Honourable Shri K. Santhanam : My point is whether it will be so construed as to mean two people at the same time entitled to the allowances. I want to ensure that at a time there will be only one person who will be entitled under the covenant to receive payment.

Mr. President : I think that is just secured by this, because the person recognised as the Ruler alone will be entitled to the payment.

The Honourable Dr. B. R. Ambedkar : That would be governed by the provisions regarding recognition. I am sure the President is not going to recognise two or three or four persons. This expression is deliberately used in order to give the power to the President.

The Honourable Shri K. Santhanam : He might be called the Ruler or successor.

Mr. President : Mr. Santhanam, I think that is quite clear. The idea is to preserve those privileges which have been conferred on the Rulers to those who are recognised as their successors. That is to say, if a person is recognised as the Ruler, only that person who is recognised as his successor will inherit those privileges and not other successors.

I do not suppose any further discussion is necessary. I shall put it to vote.

The question is :

"That for sub-clause (nn) of clause(1) of article 303, the following sub-clauses be substituted:--

'(nn) 'Rajpramukh' means--

> (i) in relation to the State of Hyderabad, the person who for the time being is recognised by the President as the Nizam of Hyderabad;
>
> (ii) in relation to the State of Jammu and Kashmir or the State of Mysore, the person who for the time being is recognised by the President as the Maharaja of that State; and
>
> (iii) in relation to any other state for the time being specified in part III of the First Schedule, the person who for the time being is recognised by the president as the Rajpramukh of that state,
>
> and includes in relation to any of the said States any person for the time being recognised by the President as competent to exercise the powers of the Rajpramukh in relation to that State'."
>
> (nnn) 'Ruler' in relation to an Indian State means the Prince, Chief or other person by whom any such covenant or agreement as is referred to in clause (1) of article 267-A of this Constitution was entered into and who for the time being is recognised by the President as the Ruler of the State, and includes any person who for the time being is recognised by the President as the

successor of such Ruler.

The amendment was adopted.

Shri T. T. Krishnamachari : Mr. President, I move:

"That for sub-clause (r) of clause (1) of article 303, the following sub-clause be substituted:--

'(r) 'railway' does not include--

(a) a tramway wholly within a municipal area, or

(b) any other line of communication wholly situate in one State and declared by Parliament by law not to be a railway'."

Sir, the original definition stood thus:

"A railway does not include a tramway whether wholly within a municipal area or not."

It has now been found that there are railways in certain States which are not railways in the sense that they are accepted to be railways, but they are something in between a railway and a tramway. The definition is so altered as to permit the Parliament by law to recognise what is not to be a railway. This has been necessary because since we framed the original definition, certain things have transpired, in that most of the Indian States have or are about to transfer their railways to the Government of India and the conditions existing in those States have to be taken into account and provided for. That is why this amendment is being introduced.

Shri R. K. Sidhva : Sir, tramways are never known as railways. I think it is redundant to say tramway within a municipal area. A tramway is a tramway. Who has brought into the brain of the Drafting Committee that tramway is a railway ? It looks so awkward. I therefore feel, Sir, that sub-paragraph (a) is redundant.

The Honourable Shri K. Santhanam : I am afraid my honourable Friend is wrong. Even at the time when the original definition was under discussion, I pointed out that it was wrong to say that a railway does not include a tramway. Because mechanically, there is no difference whatsoever between a railway and a tramway, except it may be that the latter has only one carriage or two carriages. Therefore this amendment is necessary. Otherwise in many places, many lines may be called tramways and there may be disputes. We do not want to have any kind of dispute. Therefore, the present definition is the proper definition to be adopted.

Mr. Naziruddin Ahmad : With regard to paragraph (b) I have some difficulty. it was stated by Mr. Krishnamachari in this argument......

Shri T. T. Krishnamachari : May I suggest to the honourable Member to accept the argument of the expert who spoke before me in support of this amendment and ignore anything that I said before.

Mr. Naziruddin Ahmad : It is now clear that Mr. T. T. Krishnamachari is merely a conduit pipe. After all, he has taken the responsibility of explaining the matter. He has explained that the word State really means an Indian State and does not mean a province. In the new state of affairs, a State also includes a province. What is meant probably is a State mentioned in Part III of the first schedule. If that is so, it should be specifically stated. Because otherwise if there are small railways in any Indian province in Part I, they would also be excluded. If it is the intention to exclude Indian States on the ground that they have not come to terms up to this time, we should specifically state that.

Shri T. T. Krishnamachari : Right through the Constitution we have used only one word 'State'. Where we wanted to differentiate, we have mentioned them as States in Part I or Part II and so on. So I fail to see the force of Mr. Naziruddin Ahmad's speech.

Mr. President : Mr. Krishnamachari did not base his argument on the use of the word State. He did not say that either.

Mr. Naziruddin Ahmad : During the argument he mentioned the case of an Indian State. That had misled me.

Mr. President : The question is :

"That for sub-clause (r) of clause (1) of article 303, the following sub-clause be substituted:--

> (r) 'railway' does not include--
>
> (a) a tramway wholly within a municipal area, or
>
> (b) any other line of communication wholly situate in one State and declared by Parliament by law not to be a railway'."

The amendment was adopted.

Shri. T. T. Krishnamachari : May I request you to permit me to move an amendment which has been tabled and has just been circulated. It has not been numbered and it refers to Up- Rajpramukh. I move:-

"That to clause (1) of article 303, the following sub-clause be added:

> '(y) 'Up-Rajpramukh' in relation to any State means the person who for the time being is recognised by the President as the Up-Rajpramukh of that State'."

Sir, I am indebted to my honourable Friend the Prime Minister of Mysore for drawing my attention to this defect.

As regards the question raised by Mr. Kamath about Maharajpramukh, I would only like to say that there is no mention in this Constitution of Maharajpramukh although one such person exists. We have not constitutionally recognised the existence of such a person. This definition arises out of the fact that we had to make mention of the name Up-Rajpramukh in two places in the amendments that were moved yesterday in regard to removal of disqualifications for office. I hope the House will accept my amendment.

Shri. H. V. Kamath : There is some little difficulty in this connection. In accordance with the Sanskrit and Hindi philology as well as etymology, the proper spelling should be Up-Rajpramukh; otherwise I have heard British and Other foreign journalists pronouncing it as Aprajpramukh.

Mr. President : The spelling will be corrected but I do not think that will prevent the ignorant people from mispronouncing it.

Shri Jainarain Vyas (United State of Rajasthan): Sir, I do not agree with the position of Maharajpramukh. He presides over the meetings of the Princes and if he is not recognised as the Constitutional Maharajpramukh, then all the meetings over which he presides will be null and void.

Mr. President : Is there anything like the meeting of the Princes as it used to be of the Chamber of Princes ?

Shri Gokulbhai Daulatram Bhatt (Bombay States) : *[Sir, there is an article in the Covenant of Rajasthan which says: "If any meeting of the princes is held, it would be presided over by the Maharana of Udaipur as Maharajpramukh, if he be present in the meeting." It has been clearly mentioned therein. It is plain that this implies a question of his dignity. No other administrative power has been vested in him. But to that extent it is there and it deserves consideration. Hence it should be reconsidered.]

Shri T. T. Krishnamachari : We have not put in any provision of that nature in Part VI A.

Mr. President : Is there any provision for a meeting of the Princes in our Constitution ?

Shri Gokulbhai Daulatram Bhatt : Meeting of the Princes of the States that have been merged to form the Rajasthan Union is at present provided for.

An Honourable Member : There is a provision in the Covenant.

Mr. President : Not in the Constitution.

Shri Gokulbbai Daulatram Bhatt : The terms Rajpramukh and Uprajpramukh are there in the Covenant.

Mr. Naziruddin Abmad : Covenants are part of the Constitution. They have joined as under the covenants. So we should recognise them. This requires careful consideration.

Shri H. J. Khandekar (C. P. & Berar : General) : I think this would be held over.

The Honourable Shri K. Santhanam : Here it is only the question of definition.

We do not want a definition unless it is to be used in the Constitution.

Shri T. T. Krishnamachari : Sir, this will have to be accepted because an amendment in which this word occurs has already been accepted. If it is a definition of a term which has not found a place in the Constitution, that is a different matter, but my friend's contention is not a bar to the acceptance of this amendment.

Mr. President : So there is no question about Up-Rajpramukh. We leave the question of Maharajpramukh for future consideration.

Shri Gokulbhai Daulatram Bhatt : I would like it to be made clear lest it way be held that, just as Rajpramukh and Up- rajpramukh are mentioned, so also he should have been specifically mentioned.

Mr. President : In our Constitution we have only used the term Uprajpramukh. The qualifying word may not create any difficulty.

Shri T. T. Krishnamachari : I have been informed that the allowance of the Maharajpramukh of Udaipur is not as Maharajpramukh but as a Ruler who gets his privy purse under articles 267-A and therefore there is no need for a special title to be mentioned in the Constitution.

Mr. President : I am putting this to vote now.

Shri H. J Khandekar : What will be the position if the Up-Rajpramukh is a lady? What will be the name ?

Mr. President : In that way we have got women Chairman of Committees. That does not create any difficulty so far as English is concerned.

The question is :

"That to clause (1) of article 303, the following sub-clause be added:--

> '(y) 'Up-Rajpramukh' in relation to any State means the person who for the time being is recognised by the President as the Up-Rajpramukh of that state'."

The amendment was adopted.

Mr. President : We then go to the Schedule.

Shri Yudhishthir Mishra (Orissa States) : Sir, I suggest that the consideration of the First Schedule may please be held over for tomorrow.

Shri Brajeshwar Prasad: Yes, Sir. It may be held over. We got the list at 8 o'clock this morning only.

Mr. President : It may be moved, and we will take up the amendments tomorrow morning.

FIRST SCHEDULE

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for the First Schedule the following be substituted:--

"FIRST SCHEDULE

(Articles 1 and 4)

The States and the territories of India

PART I.

Name of States.	Names of corresponding Provinces.
1. Assam	Assam
2. Bengal	West Bengal
3. Bihar	Bihar
4. Bombay	Bombay
5. Koshal-Vidarbh	Central Provinces and Berar
6. Madras	Madras
7. Orissa	Orissa
8. Punjab	East Punjab
9. United Provinces.	United Provinces.

Territories of States

The territory of the State of Assam shall comprise the territories which immediately before the commencement of this Constitution were comprised in the Province of Assam, and Khasi States and the Assam Tribal Areas.

The territory of the State of Bengal shall comprise the territory which immediately before the commencement of this Constitution was comprised in the Province of West Bengal."

Shri B. Das (Orissa : General) : We wanted utkal to be the name of ORISSA.

The Honourable Dr. B. R. Ambedkar : You may move an amendment.

"The territory of the State of Bombay shall comprise the territory which immediately before the commencement of this Constitution was comprised in the Province of Bombay and the territories which by virtue of an order made under section 290A of the Government of India Act, 1935, were immediately before such commencement being administered as if they formed part of that Province or which immediately before such commencement were bring administered by the Government of that Province under the provisions of the Extra- Provincial Jurisdiction Act, 1947.

The territory of each of the other States shall comprise the territories which immediately before the commencement of this Constitution were comprised in the corresponding Province and the territories which, by virtue of an order made under section 290A of the Government of of India Act, 1935, were immediately before such commencement being administered as if they formed part of that Province.

PART II.

Names of States.

1. Ajmer
2. Bhopal
3. Bilaspur
4. Coorg
5. Cooch-Behar
6. Delhi
7. Himachal Pradesh
8. Kutch
9. Manipur
10. Rampur
11. Tripura

Territories of States

The territory of the State of Ajmer shall comprise the territories which immediately before the commencement of this Constitution won comprised in the Chief Commissioner's Provinces of Ajmer-Merwara and Panth Piploda.

The territory of each of the States of Coorg and Delhi shall comprise the territory which immediately before the commencement of this Constitution was comprised in The Chief Commissioner's Province of the same name.

The territory of each of the other States shall comprise the territories which, by virtue of an order made under section 290A of the Government of India Act, 1935, were immediately, before the commencement of this Constitution administered as if they were Chief Commissioner's Province of the same name.

PART III.

Names of States.

1. Hyderabad
2. Jammu and Kashmir
3. Madhya Bharat
4. Mysore
5. Patiala & East Punjab States Union
6. Rajasthan
7. Saurashtra

8. Travancore-Cochin

9. Vindhya Pradesh

Territories of States

The territory of the State of Rajasthan shall comprise the territories which immediately before the commencement of this Constitution were comprised in the United State of Rajasthan and the territories which immediately before such commencement were being administered by the Government of that State under the provisions of the Extra-Provincial Jurisdiction Act, 1947.

The territory of the State of Saurashtra shall comprise the territories which immediately before the commencement of this Constitution were comprised in the United States of Kathiawar (Saurashtra) and the territories which immediately before such commencement were being administered by the Government of that State under the provisions of the Extra-Provincial Jurisdiction Act, 1947.

The territory of each of the other States shall comprise the territory which immediately before the commencement of this Constitution was comprised in the corresponding Indian state.

PART IV.

The Andaman and Nicobar Islands."

Sir, I do not think the amendment which I have moved calls for any explanation.

Shri Jainarain Vyas : I would like to know if Sirohi State has been put in anywhere.

The Honourable Dr. B. R. Ambedkar : Sirohi, I understand is administered under the Extra-Provincial Jurisdiction Act, 1947, partly by Bombay and partly by Rajasthan. That is the reason why it has not been separately mentioned.

Shri Jainarain Vyas : But it is neither in Bombay, nor in Rajasthan, at the moment.

Mr. Naziruddin Ahmad : I have one or two suggestions to make. With regard to the expression "under section 290-A of the Government of India Act, 1935". I submit an explanation should be added to say that it is the Act, as adapted. And the second suggestion is that in Part II, the names are arranged in the alphabetical order, but I find items 4 and 5 are in an irregular order, and item 4 should come after item 5. That will make it absolutely alphabetical.

Mr. President : You mean Coorg and Cooch-Behar, yes, I think so.

Shri T. T. Krishnamachari : So far as the first point raised by Mr. Naziruddin Ahmad is concerned, I may point out that it was stated on a previous occasion that the short title of the Government of India Act as adapted, is the Government of India Act, 1935.

Mr. President : I think we shall rise now. We shall meet again at ten o'clock tomorrow morning when the amendments will be taken up.

Shri R. K. Sidhva : Is the Preamble also to be taken up tomorrow ?

Mr. President : Yes, if possible, we shall try to finish it.

Shri R. K. Sidhva : Is there any further article or amendment coming up ?

Mr. President: There are one or two articles we have left over.

Seth Govind Das (C. P. & Berar : General): Will the Preamble be the last thing to be considered ?

Mr. President: Yes, that is the usual thing, I suppose. There is another article 264 A on the agenda--which has not been reached.

Shri R. K. Sidhva: Sir, everyday new articles are brought in and new amendments and we send in our amendments, but as the original amendments are not moved, our amendments also are not to be moved and they are stopped.

Mr. President: I have never stopped amendments in that way. So far as technical difficulties are concerned, I have never allowed them to come in the way of any amendment.

The House now stand adjourned to ten o'clock tomorrow morning.

The Assembly then adjourned till ten of the clock on Saturday the 15th October, 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME X

***Saturday, the 15th October* 1949**

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

An honourable Member : May I know when his session is expected to break ?

Mr. President : I think there is at least work for one day more and so we shall have to sit on Monday or Sunday. We shall at the end of the day decide on which day the House should sit. All that I can now say is that we shall have to sit for one day more. It may be tomorrow or the day after just as the House likes.

Seth Govind Das (C.P. & Berar: General): I propose that we sit tomorrow and not on Monday.

Mr. President : I shall ascertain the wishes of the Members.

Shrimati Annie Mascarene (United State of Travancore & Cochin): We Christians desire to have Sunday free.

Mr. President : There is objection on the part of Christian Members to sitting on Sunday.

Honourable Members : We did sit on a Sunday once.

Mr. President : But that does not take away the right of Christian members to object to sitting on Sundays. I shall consult the wishes of the House at the end of the day in this matter.

Shri K. M. Munshi (Bombay: General): Sir, with regard to the First Schedule may I submit.......

Mr. President : First we shall dispose of the motion for the substitution of rule 38-R standing in the name of Shrimati G. Durgabai.

CONSTITUENT ASSEMBLY RULES (AMENDMENT)

New Rules 38-R and 38-RR.

Shrimati G. Durgabai (Madras: General): Mr. President, Sir, I move:

"That for rule 38-R of the Constituent Assembly Rules, the following rules be substituted:--

Revision of the Constitution by the Drafting Committee and the consideration of the amendment recommended by them.

'38 R. (1) When a motion that the Constitution be taken into consideration has been carried and the amendments to the Constitution moved have been considered, the President shall refer the Constitution as amended to the Drafting Committee referred to in sub-rule (1) of rule 38-L with instructions to carry out such re-numbering of the clauses such revision of punctuation and such revision and completion of the marginal notes thereof as may be necessary, and to recommend such formal or consequential or other necessary amendments to the Constitution as may be required.

(2) After the Constitution has been referred to the Drafting Committee, the report of the Committee shall be presented to the Assembly by the Chairman or any other member of the Drafting Committee and thereafter the Chairman or other member of the Committee may move that the amendments recommended by the Committee in the Constitution so referred to them be taken into consideration :

Provided that no such motion shall be made until after the report of the Drafting Committee together with the copies of the Constitution as revised by them has been made available for the use of members and that any member may object to any such motion being made unless the report and the copies of the Constitution as so revised have been made available three clear days before the date on which the motion is made, and such objection shall prevail unless the President in his discretion allows the motion to be made.

(3) While making any motion referred to in sub- rule (2), the mover shall confine himself to an explanatory statement and at this stage there shall be no debate, and the President may, after such statement has been made, put the question.

(4) After the motion referred to in sub-rule (2) has been carried, any member may move an amendment which is either formal or consequential upon an amendment recommended in any provision of the Constitution by the Drafting Committee after the Constitution was referred to them under sub-rule (1) but shall not be allowed to move any other amendment.

(5) If notice of a proposed amendment has not been given two clear days before the day on which the motion referred to in sub-rule (2) is to be taken up for consideration, any member may object to the moving of the amendment, and such objection shall prevail unless the President in his discretion allows the amendment to be moved.

(6) Notwithstanding anything in these rules, all the amendments recommended by the Drafting Committee, after the Constitution was referred to them under sub-rule (1), shall be deemed to have been moved, and it shall not be necessary for the President to put each of those amendments separately to vote.

(7) The provisions of sub-rules (2) and (3) of rule 38-P shall apply to every amendment of which notice has been given under sub-rule (5), and notwithstanding anything in these rules it shall be in the discretion of the President to disallow any amendment of which notice has been so given.

(8) The President shall allot not more than two days for the consideration by the Assembly of all amendments after the motion referred to in sub- rule, (2) has been carried and shall, at the time appointed by him for the close of the sitting of the Assembly on the last of the allotted days, forthwith put every question necessary to dispose of all the outstanding matters in connection with those amendments, and in the case of amendments recommended by the Drafting Committee as such, he shall put only the question that the amendments so recommended be made or that the amendments so

recommended as modified by any amendment or amendments adopted by the Assembly be made, as the case may be.

(9) For the purpose of bringing to a conclusion any proceedings relating to such amendments on the last of the allotted days, the President shall have power to select the amendments to be proposed'."

Sir, with your permission, I will move 38-RR also.

Passing of the Constitution.

"38-RR. (1) When the amendments to the Constitution referred to the Drafting Committee under sub-rule (1) of rule 38-R have been considered, any member may move that the Constitution as settled by the Assembly be passed, and to a motion so made no further amendment shall be allowed to be moved.

(2) The President may fix a time-limit for speeches during the debate on a motion made under sub-rule (1).

(3) The President may in relation to any proceedings in connection with the passing of the Constitution under rule 38 R or this rule relax or suspend any of these rules."

Mr. President, Sir, honourable Members are aware that we have happily come to a stage when we have very nearly completed the Second Reading of this Draft Constitution. Now, we will be soon passing to the stage when we have got to take up the Draft Constitution for the Third Reading, and it will be in all probability in the coming month. Therefore the necessity arises for laying down a procedure for completing the Third Reading of the Draft Constitution and passing the Constitution.

Sir, the main features of these rules, I expect Members would have noted, are that the procedure laid down in these rules enables the drafting Committee to make formal or consequential or necessary amendments to the draft at the time of the Third Reading . Another main feature of these rules is that it would enable the Members of the House to make only formal or consequential amendment to the amendments proposed by the Drafting Committee at the Third Reading stage. Sir, it also gives powers to the President to allow any amendment at his discretion and also to fix a time limit for speeches and some such other powers.

Sir, I have seen a number of amendments, about fifteen to twenty, given notice of by honourable Members of this House. Sir, some of those amendments, when they will be moved, I would deal with them, but the object of those amendments is for the deletion of the clause which would enable the President to fix a time limit for speeches and also to waive the notice of two days and to substitute instead seven days or five days' notice. Sir, we are all aware that we have taken two full years and ten months to make this Constitution. We all know that it has been a great strain on the financial resources of this India and therefore we should not allow any more time to be taken in either making speeches or delaying the passing of this Constitution. With this object of expediting the passing of the Constitution, these rules have enabled the President to take certain powers.

Therefore, Sir, I would appeal to the Members to withdraw their amendments or not to press them, and allow the smooth working of our passing this Constitution. With these observations, I would commend my motion for the acceptance of this House.

Sir, I move.

Mr. President : There are several amendments to this. Mr. Naziruddin Ahmed.

Mr. Naziruddin Ahmad (West Bengal : Muslim): Mr. President, Sir, I have unfortunately some amendments to propose to these rules. I tried much to reduce the number of my amendments, but I failed to find any way of doing it. Sir, I bed to move:

"That in the proposed new Rules 38-R and 38-RR for the word 'Constitution' wherever it occurs, the words 'Draft Constitution' be substituted."

This is merely formal. I also move:--

"That in sub-rule (1) of the proposed rule 38-R,--

> (i) for the words 'considered' the words 'considered and disposed of' be substituted;
>
> (ii) for the word 'amended' the words 'amended by the Assembly' be substituted;
>
> (iii) for the word 'clauses' the words 'articles, clauses and sub-clauses' be substituted; and
>
> (iv) for the words 'to recommend' the words 'to submit a report recommending' be substituted."

"That after sub-rule (1) of the proposed rule 38-R, the following new sub-rule be inserted:--

> '(1a) The Draft Constitution as revised by the Drafting Committee under sub-rule (1), shall indicate by suitable typographical arrangements the changes and omissions made by the Committee'."

"That in sub-rule (2) of the proposed rule 38-R, for the words 'After the Constitution has been referred to the Drafting Committee the report of the Committee' the words 'The report of the Drafting Committee' be substituted. "

"That in sub-rule (2) of the proposed rule 38-R for the words 'in the Constitution' the words 'to the Constitution' be substituted."

"That in the proviso to sub-rule (2) of the proposed rule 38-R, for the words 'three days' the words 'seven clear days' be substituted."

Sir, I would like to explain the object of my amendments. The first amendment, as I have already submitted, is merely formal. I think it should be accepted on drafting grounds.

With regard to the other amendments, the difficulty is that the official amendments were given to us yesterday and our amendments had to be handed over to the Office before 5 o'clock yesterday and they have been printed and circulated only this morning. I do not therefore think that either the members of the Drafting Committee or the honourable the Lady Member who has proposed these Rules had any real time to go through these amendments and see the object of them. However, I shall do my best to draw their attention to certain aspects of my amendments.

With regard to amendment No. 2, the purpose of the first part of it is to insert the words "and disposed of" after the word "considered". The passage, with my amendment, will read thus:-

> ".....the amendments to the Constitution moved have been considered *and disposed of."*

In fact, we are concerned in sub-rule (1) with a stage when the amendments during the Second Reading have not only been considered but actually disposed of. Only after they are disposed of, the draft Constitution goes back to the Drafting Committee. So, this amendment is necessary.

The next amendment is to the effect that after the word "amended" the words "by the Assembly" be inserted. There are two authorities here between which there may be a confusion. The amendments made by the House and the amendments suggested by the Drafting Committee afterwards should be distinguished and that is the object of inserting these words so as to make the text read--

> "........the Constitution as amended *by the Assembly"*

in order to distinguish it from the amendments suggested by the Drafting Committee.

A little later on we are going to authorise the Drafting Committee to renumber the "clauses". I submit that the word "clauses," although it appears in the old Rule, would be inapplicable to this Constitution. We have not been describing our articles as clauses but we have been describing them as articles. The expression "clauses", so far as we have been using it, means clauses to the articles. But here the word "clauses" apparently refers to the articles. So I have suggested this amendment so as to make the text read:

> " ......re-numbering of the articles, clauses and such- clauses."

That would be grammatical and legally more accurate.

The next amendment--the fourth part of the second amendment--is to insert the words "to submit a report recommending," instead of the words "to recommended". This amendments is very necessary because we have used the word "report" at two places in sub-rule (2). That report is the final report to be made by the Drafting Committee but we have not provision in sub-rule (1) for the submission of any report. We have merely said :

> "........ to recommend such formal or consequential or other necessary amendments."

I want to re-word it so as to read:

> "........ to submit a report re-commending such formal or consequential or other necessary amendments."

In fact the word "report" must occur here in order to give the full import of the word "report" in two places in sub- rule (2).

Then, Sir, my next amendment is for the insertion of another sub-rule 1(a), to the effect that:

> "The Draft Constitution as revised by the Drafting Committee under sub-rule (1), shall indicate by suitable typographical arrangements the changes and omissions made by the Committees."

This seems to be very necessary. We are after all to consider the Draft Constitution as revised by the Drafting Committee and then to suggest our own amendments. In order to make up our minds as to what amendments are to be made, we should really know what amendments have actually been suggested by the Drafting Committee. We are familiar with the practice of the Drafting Committee in this House that instead of indicating the actual amendments to the Draft Constitution they have been giving us entirely re-written texts of article and it has been extremely difficult for Members to follow what exact changes are introduced. That involves the Members individually into an unnecessarily laborious and meticulous comparison of the articles proposed in the House with the articles in the Draft Constitution. Therefore, it seems to me that the Draft Constitution as prepared finally by the Drafting Committee should indicate the exact changes so as to enable the Members to reivet their attention on those changes and to suggest consequential or formal amendments, if any, thereto. It would make their task easier. It would be very easy to arrange it, namely the changes to be shown by italics or by underlining-side--lining may not be helpful. An omission may be shown by asterisks. These things, will be very simple and will be very useful to Members who may easily see the changes and then submit amendments.

With regard to clause (2), the opening words seem to be absolutely unnecessary and also to a certain extent misleading. It says:

> "....After the Constitution has been referred to the Drafting Committee, the report of the Committee shall be presented to the Assembly."

An important step is omitted here--after the Constitution has been referred to the Drafting Committee there is a report of the Drafting Committee. So we should make it clear that after the report of the Drafting Committee is received the report of the Committee should be presented to the Assembly. Therefore I have suggested the omission of the opening words. Then sub-rule (2) would read like this : "The report of the Drafting Committee shall be presented to the Assembly" and so forth. I have already suggested that the word 'report' should be incorporated in sub-rule (1) in my amendment No. 2 Part (iv).

Then, Sir, I come to the proviso. Here I have a serious complaint to make that the proviso attempts to provide that the Draft constitution as revised by the Drafting committee will be made available to the Members within three clear days' before the date when the Constitution will be taken upon for consideration. Sir, I feel that it will be utterly impracticable for any honourable Member to read the revised Draft Constitution and submit amendments within the extremely short time available. You will be pleased to consider, Sir, that only three clear days have been given within which the Draft Constitution will be made available to the Members, while sub-rule (5) provides that two clear days' notice should be given for our amendments.

Supposing we begin the consideration, of the Constitution on the 14th of

November. The Draft Constitution must be made available on the 10th of November with three clear days notice and we have to submit our amendments on the 11th of November, giving a margin of two clear days. It will thus be clear that we will have only one clear day to read the report prepare amendments and send the same to the Notice Office in course of a single day. This will lead to so many practical absurdities that I submit that this rule in this form cannot be accepted. You will be pleased to consider that for us to attend the Assembly on the 14th, we have to leave our places on the 10th of November and on the 10th of November it is proposed to circulate the Draft Constitution as redrafted by the Drafting Committee. On the 10th of November we will all be on our journey by rail, road or air towards New Delhi. I fail to see how on the 10th of November the copy of the Draft Constitution as revised, will reach us. If they are sent to our home address, we would have left our home by that time and the Members and the revised Draft Constitution will cross each other. If it is to be delivered at our Delhi address on the 10th or 11th, it will be too late for us to prepare amendments and hand them over to the Notice Office with two clear days' notice to office to consider them.

While I sympathise with the Drafting Committee for the high pressure at which they are working, I must at the same time point out that there is a feeling in this House that the Committee is behind time table--hopelessly behind time table from beginning to end. All this congestion of work is due to frequent changes of mind by the Drafting Committee who may certainly have their own reasons to justify the delay. But I wish so submit that the victim of all these unfortunate circumstances should not be the Members. How, I ask the House and particularly you, Sir, is a member to receive copy of the finalised draft on the 10th and to submit their amendments on the 11th ? I therefore suggest that seven days' time be given to us to study the revised Constitution and submit amendments. May I further suggest that along with the final draft of the constitution, we may beforehand be given a comparative list of amendments proposed to each article so that we can study them and get ready to consider them.

I also suggest that before the Draft Constitution is sent to the press, a cyclostyled copy may be prepared and sent to those Members who are anxious to have it. I believe there would be only half a dozen Members who would be interested in it. But I do not mean to say that the privilege need be confined only to those members only. The cyclostyled copies may be sent to all those Members who ask for it. If that is done, I think we can work according to schedule. Otherwise, it will be extremely difficult for Members to get ready and submit amendments within time. In fact, it seems to me absolutely impracticable to do all this within the scheduled time. The main question would be the place and time of delivery of the finalised Constitution, in order to enable Members to play their part in time. I submit that these things should be taken into consideration while accepting these rules.

A further difficulty has been placed by the Drafting Committee on the Members in that they have selected a lady Member to propose all these difficult rules.

Shri H. V. Kamath : (C. P. & Berar: General): How is it relevant, Sir?

Mr. President : She was not particularly selected; she her self wanted to move them.

Mr. Naziruddin Ahmad : The difficulty is that we cannot he hard upon her. After all some kind of gracefulness is necessary in dealing with a lady Member. The fact is that the Drafting Committee have put forward a lady to fight their cause.

Shrimati G. Durgabai : The honourable Member should note that I have moved the motion on my own accord.

Mr. Naziruddin Ahmad : I am not prepared to enter into a controversy with the honourable Mover. The amendments are for the benefit of the Drafting Committee. The method followed by the Drafting Committee is like that of the Communists who fight with ladies at the front, so as to make it impossible for the other party to strike.

Shri H. V. Kamath : Mr. President, Sir, I am at one with my honourable Friend Shrimati Durgabai that the passage of this Constitution should be expedited. But I would like to join issue with her on one point and that is this. She stated that this constitution-making has been a huge drain upon our financial resources. I know we have spent some money. The House will remember that the Legislative Assembly in 1946 or early in 1947 budgeted one crore of rupees for the Constituent Assembly. Some time during the last session it was suggested in this House or outside that over two crores of rupees had been spent. After I heard this statement, I worked out the figures myself and came to the conclusion that only about sixty to seventy lakhs had been spent so far by this Assembly in constitution-making. I am not referring to the legislative work at all. If you include the sessions of the Legislative Assembly as well then perhaps we have spent more; but that is not part of the budgeted amount for constitution-making; and it is wrong in my humble judgement to lay the blame at the door of the Members of this House, even if a large amount has been spent.

The House will recollect that during the two years from January 1947 to October 1948 this House met only for 35 or 40 days at the most. For some reason or other the Drafting Committee was not ready, and we could not meet at all for more than 40 days in 22 months; if we had worked longer and met at more frequent intervals, we could have seen the Constitution through much earlier. Any way, even today the way expedite the Constitution is not to apply the axe ruthlessly to debates in the House, but to apply it reasonably. The way is to work longer hours, if necessary. We have realised this only too late in the day. Had we worked longer hours in 1947 or 1948, we would by now have seen this Constitution through. I have always favoured a night session; if we work morning, noon and night, I am sure we can finish it in another week or so. It is too late to make this suggestion at the fag-end of the Constitution, when a few more days remain for the Third Reading. I wanted to suggest to my honourable Friend Shrimati Durgabai it was wrong on her part to suggest that this House has been guilty of a huge drain upon our financial resources. This House has not been guilty of it: there are various reasons and circumstances which conspired to bring about this financial expenditure. I would not call it a huge drain at all; we have not exceeded the budgeted amount for Constitution making.

Sir, now I come to the amendments that stand in my name. I have, Sir, six amendments to my credit. Sir, I move:

"That is sub-rule (4) of the proposed rule 38-R, for the words 'which is either formal or consequential upon' the word 'to' be substituted."

If this amendment were accepted by the House, it would read as follows:

"After the motion referred to in sub-rule (2) has been carried, any member may move an amendment to an amendment recommended in any provision of the Constitution by the Drafting Committee after the Constitution was referred to them under sub-rule (1) but shall not be allowed to move an) amendment."

The point in this amendment is this, that according to the scheme which has been presented to the House by Shrimati Durgabai, the Drafting Committee will take care of the Constitution after the Second Reading and will come before the House for the Third Reading. whenever it may be. I suppose three days is the minimum period so far as the interval between the time when the Draft Constitution would reach the Members and this motion here for the Third Reading is concerned. The Drafting Committee, I freely admit are a team of wise men, experts in their own field and very knowledgeable experts at that, but certainly the House will agree that they are not able, and even they either due to want of time or pressure of other work, even they might overlook certain matters or certain clauses or articles in the Constitution. Therefore certain omissions may remain to be filled, and certain lacunae may remain to be made good; and if Members who concentrate on a particular chapter of the Constitution, if they after a very careful reading of the particular chapter or sub-chapter have discovered some defect, some lacuna, some omission, is it not fair to give an opportunity to them to suggest or modify an amendment, whatever it may be, in the House ?

It may be argued by my honourable Friend Shrimati Durgabai that those Members are at liberty to contact the Drafting Committee before the latter brings up those amendments in the House for the Third Reading, but suppose they are not able to, suppose they arrive the previous day or in the morning of the day when the Constitution comes up in the Assembly for the Third Reading and they have no time to contact the Drafting Committee and to explain their point of view; it is no use sending it by post because one cannot always explain one's point of view on paper, unless one discusses the matter with the Drafting Committee personally. Supposing they were not able to do so, is their case to go by default ? That is why, Sir, I have moved this amendment before the House so as to afford an opportunity to Members who may have discovered, after a careful study, any errors or omissions in any part of the Constitution; and they must be at liberty to move their amendments in the House. You are always here, Sir, to disallow any vexatious or unnecessary amendment, and the House has got the fullest confidence in your judgment and if any Member tries to move an amendment which is not necessary, which is irrelevant, vexatious or frivolous, the Member will as the House knows, always abide by your ruling. There is no point in encroaching upon your rights, your prerogatives, your privileges or your powers. You. Sir, can always disallow any amendment in your discretion and in your judgment. Therefore, there is no need, no necessity for this sub-rule (4) to Rule 38-R.

The next amendment of mine is 8 in this list : I move:

"That in sub-rule (6) of the proposed rule 38-R the words 'and it shall not be necessary for the President to put each of those amendments separately to vote' be deleted."

This arises directly out of the amendment I have just now moved. The sub-rule, as moved by Shrimati Durgabai, provides that all the amendments moved by the Drafting Committee can be put before the House *en bloc* all together to the vote. Now, Sir, if as I have suggested in my first amendment Members are given the right to move their amendments and in the light of that amendment the House decides that a particular amendment recommended by the Drafting Committee must be modified, then a difficulty will arise: all the amendments, if they are not amended by the House, can be put *en bloc.*, or *en masse* to the vote of the House. But suppose, certain amendments have been modified by the House. How is it possible, then, not to put them separately ? Some of the amendments might have been modified in the light of amendments moved by honourable Members and accepted by the House.

Shri T. T. Krishnamachari : (Madras : General): May I explain the procedure to my honourable Friend ? The procedure will be like this: in the same way as a Select Committee's report is taken into consideration by the House. The report of the Select Committee will be kept intact and treated as a whole. If Members move an amendment that amendment is carried, then that amendment will be incorporated. Otherwise, the Select Committee's report goes through intact. The procedure envisaged here is the same.

Shri H. V. Kamath: I fear this sub-rule does not provide for that contingency. If I have understood the sub-rule a right, it does not provide for that contingency which might arise out of Honourable Members' amendments being accepted by the House and in the light of that, the Drafting Committee's amendments being modified. Sub-rule (6) says that an the amendments recommended by the Drafting Committee shall be deemed to have been moved, and it shall not be necessary for the President to put each of those amendments separately to vote. I do not know if my honourable Friend was in the House when I moved my first amendment and explained my point of view before the House. I therein suggested that every Members must be given the right to move amendments of whatever nature, consequential or formal or otherwise necessary to any of the recommendations of the Drafting Committee and if the Drafting Committee's amendments are modified in the light of the acceptance of honourable Members' amendments, then it will be impossible to put the Drafting Committee's amendments *en masse* or *en bloc* to vote. They will have to be taken up group by group, and certain amendments will have to be put separately to the vote those which have been modified by the House. That is the purport of amendment No. 8.

Coming to amendment No. 9. It reads as follows:

"That in sub-rule (8) of the proposed rule 38 R, the words 'shall allot not more than two days for the consideration by the Assembly of all amendments after the motion referred to in sub-rule (2) has been carried and' be deleted."

If this amendment were accepted by the House, this sub-rule will read as follows:

"The President shall, at the time appointed by him for the close of the sitting of the Assembly etc., etc.,"

I fear, Sir, I feel rather, that this sub-rule, the first part of it imposing a time limit for consideration by the Assembly of all amendments, is an undue, unwarranted encroachment upon your powers. I am wholeheartedly in favour of cutting short unnecessary discussion and debate and expediting the passage of the Constitution, as I have already stated. But, is it not part of your inherent powers, Sir, and is the House or any part of the House going to usurp your power in this field ? It is your undisputed power to fix any time limit for any debate. Why then make a specific mention in this rule that the President shall allot not more than two days-by the way, 'may' would have been more graceful and dignified? Is not the President supreme so far as the conduct of the business of the House is concerned ? It is up to him to regulate and conduct the business of the House. Why fetter his judgment by saying that he shall not allot more than two days or three days? Leave it to his discretion. He call certainly allot, if he thinks necessary, more than three or four days. During the First Reading of the Constitution in November 1948, you will remember, Sir, before you fell ill, that you original intended to allot only two days for the First Reading of the Constitution, for the discussion of the motion by Dr. Ambedkar. Later on, you found that the House was keen on considering it further, and so you were good enough to allot another two days for the consideration of that motion. It may be quite probable, the sense of the House might be to ask for some more time. Here you are, Sir, with all powers vested in you to regulate the business. Why make this rule. here and fetter your discretion and judgment and abrogate or at least reduce the powers inherent in the President ? That is so far as the third amendment is concerned. I want to leave the matter to The President as to how many days should be alloted for the consideration and disposal of the amendments. We need not curtail the powers of the President so far as this matter is concerned.

I come to amendment No. 10 which reads as follows :

"That sub-rule (2) of the proposed new rule 38-RR be deleted."

That sub-rule relates to the time limit for speeches during the debate on a motion made under sub-rule (1), of Rule 38-RR. I would invite the attention Of Mrs. Durgabai and the House to rule 34 of the Rules already adopted by the House. Rule 34 of the Rules of the Assembly reads as follows : "In all matters relating to procedure or conduct of business of the Assembly, the decision of the Chairman shall be final" I ask, is this not adequate for our purposes ? Is it necessary to frame or pass another rule, sub-rule (2) here ? This rule 34 of our Rules of the Assembly vests sufficient power in the President to regulate the conduct of the business of the House in whatever way he may choose, and his decision in the matter is always final. Why bring in this minutiae in the rules, that he shall fix a time limit ? This is his inherent power. Why bring in this trifle ? It is mere piffle. That is part of the manner in which he conducts the business of the House. You, Sir, have done it on many occasions, and you will do it again in the interests of expeditious disposal of business. There is no need at all for this sub-rule (2). It has appeared, I fear, by force of habit of some Members of the Drafting Committee or others who want to introduce all sorts of minute details, who want to cumber our rules and our Constitution with all sorts of unnecessary details. I therefore feel that this sub-rule should be deleted.

Coming to amendment No. 11, it reads as follows :

"That sub-rule (3) of the proposed new rule 38RR be deleted."

This amendment has got two aspects. The first aspect I have already touched. This sub-rule, the House will see, reads as follows :

The President may in relation to any proceedings in connection with the passing of the Constitution under Rule 38 R of this rule relax or suspend any of these rules." This is a laughable, and a most unnecessary rule. I have already stated, Sir, that you have got inherent powers to conduct the business of the House, and you can certainly regulate this matter as well. The second aspect is this. We seek to provide for various matters, and then suddenly at the end we come to the last provision and say that notwithstanding any of these rules anything may happen. We have provided for various matters in 38 and 38 RR and at the very end we say that the President may relax or suspend any of these. Why frame these rules and then say the President may relax these ? Can the President not exercise his discretion ? It is absolutely unnecessary and should be deleted.

My amendment No. 12 is partly consequential upon the amendments I have just now moved--Nos. 10 and 11. I move :

> "That sub-rule (1) of the proposed new rule 38RR be added to Rule 38R as sub-rule (1)."

Sub-rule (1) of 38 RR refers to the Third Reading of the Constitution and Provides that any Member may move that the Constitution as settled by the Assembly be passed, and to a motion so made no further amendment shall be allowed to be moved. That is a formal provision and I do not think there is any necessity for embodying it in a new rule 38 RR. It flows from the rules that have been embodied in rule 38 R and it does not merit or deserve a separate place or separate entity as rule 38 RR. All these rules relate to the final passing of the Constitution, and one set of rules to cover all these matters is sufficient. There is no need for two sets of rules.

In the end I shall only say that nobody will dispute the assertion of Shrimati Durgabai that the Constitution must be expedited; but it is wholly wrong to foist the blame for the delay upon the Members of this House. The Members of this House have always been willing and very eager to work for the expeditions disposal of this Constitution. At no time have the members grudged extra hours that they may have been called upon to put in for the discussion of the Constitution. If there be any blame, if there be any guilt, it lies elsewhere and not upon the Members of this House. I do not want to say who the guilty men are but certainly it is erroneous and unjustified to say that any members of this House have been guilty of any inordinate delay in the passage of the Constitution so as to result in a heavy drain upon our financial resources. We have all co-operated to the best of our ability for the speedy passage of this Constitution, and we shall all be happy when shortly we come to the end of our labours.

Mr. President : All the amendments have been moved.

Prof. Shibban Lal Saksena (United Provinces: General): I have given notice of an amendment.

Mr. President: I have not got any notice.

Prof. Shibban Lal Saksena : I gave it this morning.

Sir, I beg to move :

> "In the proposed new Rule 38R, in clause (1) the following words be added at the end:--
>
>> "But the President shall have power to allow any other amendments to be moved according to his discretion."

In the first rule we have said :

>> "When a motion that the Constitution be taken into consideration has been carried and the amendments to the Constitution moved have been

> considered, the President shall refer the Constitution as amended to the Drafting Committee referred to in sub-rule (1) of rule 38-L with instructions to carry out such re-numbering of the clauses, such revision of punctuation and such revision and completion of the marginal notes thereof as may be necessary, and to recommend such formal or consequential or other necessary amendments to the Constitution as may be required."

Sir, we are still leaving many things in Appendix I which might be completely changed by the time we meet in the Third Reading. It is quite possible that many of the provinces might become two or three provinces. Madras might become Andhra and Tamil Nad and there might also be Karnatak and other provinces and, if that is done, then it will be necessary for the Drafting Committee to move further amendments and Members also should have an opportunity to discuss them. Therefore, it is necessary that the President should have the power to allow any other amendments to be moved in his discretion. We have full confidence in you, Sir, that you will allow only those amendments which are considered necessary because of the changes made between now and the next session. I, therefore, consider that this is a very important amendment and unless it is there, it will not be possible for the President to allow Members even to discuss the redistribution of provinces which may be effected by that time. I, therefore, think that my sister Shrimati Durgabai will accept this amendment and let Members have a right to discuss the new provinces which will be created.

My second amendment is:

"In the proviso to sub-rule (2) of Rule 38R, for the words 'three clear days' the words 'five clear days' be substituted."

My Friend Mr. Naziruddin suggested seven clear days. Three days seems to be almost absurd. You have said that at least two clear days notice should be given for any amendment. Now if we get the new Constitution only three days before the session, then there is only one day during which we have to go through it and table amendments. That is impossible. There must be at least three clear days. It would be much better if we have seven days, but I know the difficulty about time and so I do not want to press for seven days but I do want that at least five days should be given.

You have said, Sir, that the final draft Constitution will go for print by the end of the this month and will be ready in five or six days, so that by the 5th or 6th November the printed copies will be ready and these should be able to reach Members in two or three days time. Probably if they are sent to our Delhi addresses they may come the same day but those who want it at their home address will get in three days. At least they will get three or four clear days. I therefore, think that five days should be mentioned here instead of three days.

I then move:

"In sub-rule (3) of the proposed rule 38R for the words beginning with 'and at this stage' to the end of the sub-rule, the following be substituted :--

> 'and at this stage the debates shall be controlled by the President according to his discretion'."

The present provision is most unfair. When the Drafting Committee move any amendment the Members should have a right to have a say in the matter. We have given the President the power to allow Members in his discretion to have their say. If there is some amendment of substance suggested by a member it should be permissible for the President to allow it to be moved. I hope Shrimati Durgabai will accept this amendment.

Then my next amendment is :

In sub-rule (b) of the proposed rule 38R, the words 'and it shall not be necessary for the president to put each of those amendments separately to vote' be deleted.

This has already been moved. I only wish to support it.

It is only proper that we should do so. It will not take much time.

And then I beg to move:

> "That at the end of sub-rule (4) of the proposed Rule 38R, the following be added:--
>
> 'except by the President according to his discretion'."

As proposed, sub-rule (4) says:

"After the motion referred to in sub-rule (2) has been carried, any member may move an amendment which is either formal or consequential upon an amendment recommended in any provision of the Constitution by the Drafting Committee after the Constitution was referred to them under sub-rule (1) but shall not be allowed to move any other amendment."

And I suggest the addition of the words--" except by the President according to his discretion." This will allow amendments of substance also, but according to the President's discretion. The amendments may be not only consequential and formal, but there may be amendments of substance also, and therefore the President should be given the power to admit them also. I am not giving the Members any right, but only arming the President with the power to exercise his discretion. I hope this amendment will not be objected to.

And then to the proposed rule 38RR. I have two amendments. It is proposed in sub-rule (2)-" The President may fix a time-limit for speeches during the debate on a motion made under sub-rule (1)". That means when all the amendments are disposed of, then when the Third Reading comes a time limit will be imposed. I would very much have liked that no time limit is fixed, but that is not possible. Therefore I have in my amendment suggested:

"That in the proposed rule 38RR, for sub-rule (2) the following be substituted:--

> '(2) Members desirous of participating in the debate on a motion made under sub-rule (1) shall notify their names to the President at least 36 hours before the motion is made and the President may fix a time, limit on the duration of speeches on the motion after receiving all such names, but the time limit shall not be less than 40 minutes. The President shall have power to give longer time to any speaker in exceptional circumstances, and he may also order a speaker to cut short his speech according to his discretion'."

Sir, I only want that members who want to participate in the debate should be able to have an opportunity to do so. They should be permitted to give their names 36 hours before the motion. You may then, Sir, know the names of the Members who want to participate, and I suggest a minimum time of 40 minutes should be given to each speaker, because he has to make remarks on the whole Constitution. You may, according to your discretion, increase this duration or decrease it, if you find that a particular Member is making an important point or is wasting the time of the House, but everyone who wants to participate in the debate, must be given an opportunity to do so, and if the suggestion that I have made is adopted, then nobody will have any grievance. You will know the number of speakers and you will allot time accordingly and we will have a fairly good debate.

And then I also say in clause (2a):

> "The President shall have power to extend the duration of the daily sittings of the Assembly."

Now, we are sitting only for three hours in the morning and two hours in the afternoon, because we have our party meetings and other meetings, but they will all be over by the time we come to the final Third Reading, and there is no reason why we should not sit for longer hours. The House of Commons, as we all know, Sir, sits for nine to ten hours and if we want to finish our Constitution in the time prescribed, then we should extend our sittings, if necessary to eight or even ten hours so that everyone who wants to speak may have an opportunity to do so. I want to arm you with this power to extend the duration of sittings. You will have the number of speakers and then you will be able to calculate the time required, and you may extend the sittings accordingly. I would have wished that the Legislative Assembly Session was held on the 14th and the final reading of the Constitution came up later so that we might have had more time to go through it carefully and seen to omissions and punctuations and other formalities But I hope the Drafting Committee will get busy and do the work for all of us.

Sir, I was not happy at the argument given by Shrimati Durgabai, that we have already wasted a lot of money on this. I think this Constitution is one of the biggest achievements of ours during the last three years. We have solved so many knotty problems, and tile amount of time and money spent I think, is not disproportionate to the achievement. Mr. Kamath told us that we have spent about Rs. 60 to 70 lakhs over this Constitution, and that is not a big amount in three years. It is for the first time in the history of our country that we are giving a free democratic Constitution to ourselves and have integrated all the different parts of the country into one single whole. Therefore, I think the time and money spent on it is not time and money wasted. It is not as if all the work has been done in these sittings. A lot of work has been done in this committee sittings, behind, the scenes, by the Drafting Committee. And I do not want that at the fag-end, we should hustle anything and be open to the charge by people who are opposed to us that we have hustled the Constitution through. So my amendments are necessary and I hope Shrimati Durgabai will accept them.

Dr. B. Pattabhi Sitaramayya (Madras : General): Mr. President Sir, we have come to the last stage of our journey. When the railway train goes along the well-laid track, its journey is well regulated. It goes at the maximum speed and then comes to a stop. When coming to the railway station, it is confronted with zig-zag lines, with lines on either side of the alignment, and every junction has to be carefully mapped out in the Station Superintendent's room so that he may be able to regulate the train from the cabin. It is thus that we have to pay particular attention to changes in the rules which may appear superfluous or unnecessary or formal, but at the same time deserve the attention of every Member of the House towards the last stage.

I this view, I have examined the wording, and coming to paragraph (1), I feel that there is a little change necessary.

It says--

"..........and such revision and completion of the marginal notes thereof as may be necessary and to recommend such formal or consequential or other necessary amendments to the Constitution as may be required."

The presence of both the words "other" and "necessary" gives me a little difficulty. The word "necessary" is deliberately put there. If it is meant to have a plenary meaning, then the word "other" attenuates that meaning. Therefore, I would suggest that if you mean "or necessary amendments", then that necessity must be defined, because it may be ample or it may be circumscribed. If it is suggested that the necessity comprises *all those conditions which might have come into existence since the reference of the Draft to the Drafting Committee*, then, of course, it will have a plenary and ample meaning, and in that view, it is not merely formal or consequential; but the word "other" comes in the way of our giving this amplified meaning to the word "necessary". Therefore, Sir, I would like the President or some Member with authority to explain to us what the word "necessary" means, and if the meaning that I have attached to it is the meaning, well and good; and if that is not the meaning that word is unnecessary; but if that is the meaning, then the word "other" may kindly be dropped.

Of course, I have not given notice of any formal amendment, but this being of a verbal nature, though it has got much significance, I trust that the good lady who has moved the rules will accept it.

Shri T. T. Krishnamachari : Mr. President, Sir, in supporting the motion made by my honourable Friend Shrimati Durgabai, I would like to answer one or two criticisms made by my honourable Friend. Mr. Naziruddin Ahmad, who I see is not in the House.

Sir, the idea of the Steering Committee in introducing this amendment to the rule is that the work of this House, in so far as the Third Reading stage is concerned, should be facilitated and expedited, without at the same time putting any unnecessary restriction on the freedom of the debate. Sir, time is a very important factor in the Third Reading stage. As we expect that you will ultimately decide, perhaps, that we meet again on 14th November, we have necessarily to finish by 26th November the third reading of the Constitution, because this House will have to meet elsewhere on 28th November. All these factors have been taken into consideration in trying to fix a programme for the Third Reading stage. The days therefore that are allowed for preliminary work in the nature of approving of formal amendments made by the Drafting Committee, which will be entrusted with the work of revising the Constitution and of making a fair copy of the same, have necessarily to be limited. That is the limitation that is sought to be imposed by the amendment to rule 38R.

I am afraid, in a matter like this, ultimately the decision must remain with you, even though we put it in the rules that only so many days should be allowed, and you have the final discretion in the matter, that discretion is only reinforced by the addition of rule 38 RR and it is for you to decide whether the period will be limited to the extent mentioned in the rule or to extend it. There is no question of fettering your discretion. But I think we must work to a programme and a plan. The plan that at the moment suggests itself to us is that we should limit the number of days for discussion of the preliminary stage of changes suggested by the Drafting Committee in making a fair copy of the Constitution, and then proceed to what is perhaps very important in the opinion of many Members of the House, namely, the Third Reading speeches.

I have no doubt that this House will be fully represented in the Third Reading stage when this work, which is perhaps the work which I hope will remain permanent for many generations to come, and on which those honourable Members who have been fortunate enough to be associated would like to say something, will be praised. No doubt we have ourselves had in the course of our discussions pointed out the difficulties and have as it were blazed the trail for those who would work the Constitution in the future. Therefore it is very important that as many days as could possibly be provided for will have to be left for discussion at the Third Reading stage. If the number of days allotted for the preliminary stage is extended, it will to that extent impinge on the freedom of discussion at the Third Reading stage in which honourable Members would like to participate. So, my honourable Friends Mr. Kamath and Prof. Shibban Lal should remember this point when they want to extend the number of days for discussion of the preliminary stage.

One point made by Mr. Kamath, in spite of the fact that with your permission I intervened and explained when he was speaking, I am still unable to comprehend. As I told him, what we contemplate here is that, if you are good enough to commit the whole thing to the Drafting Committee to make a fair copy and make the necessary consequential amendments and also the other necessary amendments, we expect to bring out in book form the Constitution and the amendments and append to it a report which will seek to give an explanation, either in the body of the report or in the appendix, of all the changes made, minor or otherwise, so that the House could straightaway put its finger on the amendments made. If they feel that these amendments are such that they cannot accept them or some of them, they can move amendments, provided however that you feel that they are necessary, that they are not merely of a drafting nature or of an alternative nature, where the amendments suggested by the Drafting Committee would be enough for the purpose. It will be for you to allow the amendments to be moved.

But the procedure that we have envisaged is that the whole thing will be taken up together as a whole as the Draft Constitution has been taken up, and Members will be perfectly entitled to move amendments subject to the exercise of your discretion. Then if those amendments are accepted or rejected, the consequences will follow. If no amendments are moved, the suggestion of the Drafting Committee will go through without any amendment. In such a case, if Members of this House consider that particular changes suggested by the Drafting Committee and incorporated in the fair copy of the Constitution should be accepted and do not move any amendment to the contrary, naturally there is no use multiplying the procedure by making every change made by the Drafting Committee the subject-matter of a vote and a decision by the House.

Sir, in regard to the matter mentioned by our respected leader Dr. Pattabhi Sitaramayya I must apologise to the House, as a Member who took part in the drafting of this particular amendment, that we have not fully examined the consequences of the word 'other'. I must say that I feel that the Doctor's interpretation is a correct interpretation. The idea that we had in mind in putting in the words 'necessary amendments' was to enable you to permit 'necessary amendments' should you consider them necessary in the fair copy that the Drafting Committee will be presenting to the House. I would earnestly suggest to you and to the House to accept the proposal made by my honourable Friend Dr. Pattabhi Sitaramayya and omit the word 'other' before the words 'necessary amendments' in clause (1) of Rule 38R.

So far as the other amendments moved are concerned, I do not propose to enter into their merits. I think hey will be dealt with by my honourable Friend Shrimati Durgabai. But I may say that excepting so far as perhaps amendment No. 2 of Mr. Naziruddin Ahmad is concerned where my Friend has amplified the word 'clause' to mean articles, clauses and sub-clauses, nothing else need be accepted. This amendment does improve the wording. The other amendment suggested by Dr. Pattabhi Sitaramayya may also be accepted. There does not seem to be need for accepting the other amendments suggested by Mr. Naziruddin Ahmad, by Mr. Kamath and by Professor Saksena. But it is for the mover to accept or reject the suggestion I have made. I do feel that the House will recognise the necessity for providing a blue-print for getting through with our Third Reading stage in which we will have to provide for the maximum freedom possible for Members to suggest amendments necessary and also to make their own contribution to the debate in this House at the final stage so that the largest possible number of members could participate. The whole scheme of this rule has been framed with that view.

Now I would like to say a word in regard to certain implied powers which the President has and which we have categorically stated, particularly in rule 38RR. My honourable Friend Mr. Kamath objected to clauses (2) and (3) on the ground that the powers are implied and need not be categorically stated. If that is so, there is nothing wrong in stating them categorically. And the mere fact that the powers have been categorically stated would perhaps help us over the difficulties that arose on previous occasions, particularly during the last session. We had a little difficulty because of the inflexibility of the rules and the president did not want to take advantage of the very wide powers that are normally vested in him without any express sanction for that purpose. I feel, Sir, that at the Third Reading stage it will be necessary to arm the President with specific and categorical powers of that nature.

Shri H. V. Kamath : What exactly is the confusion arising out of the word "other" which my honourable Friend, Dr. Pattabhi Sitaramayya asks to delete ?

Shri T. T. Krishnamachari : The conclusion will be what was originally intended that there will be formal and consequential amendments. If any amendment of a different category becomes necessary in regard to what has happened between now and the 14th November perhaps, and the President considers they are necessary modifications--honourable Members should bear in mind that the authority to consider what is a necessary amendment happens to be the President--they will go through.

Shri H. V. Kamath : What about the word 'other'?

Shri T. T. Krishnamachari : Our revered Leader Dr. Pattabhi Sitaramayya felt that the word "other" qualifies the necessary amendments unduly and that it refers more to the words occurring prior to that word "formal or consequential" rather than to the word "necessary", and I agree with the interpretation of Dr. Pattabhi Sitaramayya. If the President agrees, he might put it to the House to decide on the matter.

Mr. Naziruddin Ahmad : The President has got full powers with regard to unnecessary and useless amendments.

Shri T. T. Krishnamachari : It has always been borne in mind. This Constituent Assembly, being a sovereign Body, the President has got absolute powers and that is not affected by mere rules. Nevertheless, we felt that it would be much better to precisely state why and how he would exercise those powers within the limits which is possible for us to envisage in our rules.

Mr. Naziruddin Ahmed : Supposing the Drafting Committee commits an obvious mistake indulges in a palpable error........

Shri T. T. Krishnamachari : We depend upon Mr. Naziruddin Ahmad to fill up any lacuna.

Shri Kala Venkata Rao (Madras : General) : I would like to have this point answered. There is the question of linguistic provinces which have not been settled, and roughly the proposal seems to be to amend the Schedule if need be at the Third Reading stage. How will these rules affect that? How can we form new linguistic provinces through an amendment at the Third Reading stage and what is the provision in this blueprint of procedure which Shrimati Durgabai has presented before the House and which Mr. Krishnamachari has clarified ? I want satisfaction on this point, Sir, whether it would be possible to move an amendment for the addition of certain States in Schedule. I would like to make consequential amendments in the whole Act I would like that some provision should be clearly made under these rules to make that possible That is my request.

Shri T. T. Krishnamachari : I do not want to anticipate the statement that the Honourable the President is likely to make with regard to Schedule I, but I would say that that and other factors that might arise would undoubtedly be covered by the words "necessary amendments". It would be made clear if the House adopts the amendment suggested by Dr. Pattabhi Sitaramayya. Thereafter the amendments moved may be consequential or they may be necessary.

Shri R. K. Sidhva (C. P. & Berar : General) : Does my honourable Friend know that under the rules of the Legislative Assembly there is no time limit for speeches on the First Reading and Third Reading stages ? If that is so, why should we deny to any Member the privilege of speaking at the Third Reading for any length of time?

Shri T. T. Krishnamachari : My Friend is ignorant on this point. The present rules of the Legislative Assembly do fix a time-limit even for a Bill like the Finance Bill.

Shri R. K. Sidhva : I do not know whether any fresh rules have been made by the Speaker, but those rules have not been placed before the House. So far as I know, there is no time limit. No doubt the inherent right of the Speaker is always there for checking a member if he is going out of the way or repeating arguments or unnecessarily taking up the time of the House.

Mr. President : May I just say a few words before I put this to the vote. As has been explained by Mr. Krishnamachari, the whole situation has to be taken into consideration before we launch upon the Third Reading stage. We have two limits which it is not possible for us to cross. One is on this side and the other is on the other side. That is to say, it is not possible to begin before the 14th November and we cannot prolong our discussion beyond the 25th or the 26th at the latest, because the Constituent Assembly (Legislative) will meet from the 28th.

Shri R. K. Sidhva : We can have night sittings even after that.

Mr. President : Within those 12 days if we sit on Saturdays also or if you like to sit on Sundays 13 days-we shall have to complete the whole of the Third Reading stage. This is the time table envisaged by this amendment of the rules and these are the limitations which we have to observe. If we have more time on this side in connection with the amendments, we shall proportionately get less time for general discussion. If we allow more time to one speaker, we shall have proportionately to cut down the number of speakers. I was just considering how the thing will work in actual practice. If we give three days for the disposal of the amendments--two days are suggested but if one day more is given in view of the importance of the amendments that will be coming up--then we shall have nine days left. The last day I want to keep for other formalities So, we shall have eight days. At the rate of forty minutes we can give a chance to sixty speakers.

Shri H. V. Kamath : How many hours daily?

Mr. President : Five hours.

Shri R. K. Sidhva : We can sit for ten hours.

Mr. President : Ten hours; that means 120 speakers.

Mr. Naziruddin Ahmad : We do not mind sitting for ten hours.

Mr. President : It will depend upon you. You may sit as long as you like I shall not object.

Shri H. V. Kamath : We may sit for eight hours.

Mr. President : At that time, we will see. I am not fixing the number of hours now. I am only making certain arithmetical calculations. It will be for the House to say for how many hours it will sit. I shall not stand in the way. That I will promise. There will of course be the question of quorum, (Laughter) and it will not be in my power to compel Members to attend.

Shri Mahavir Tyagi (United Provinces : General) : I just want a ruling from you on a particular point, either your ruling or a reply from the honourable the I Mower of the motion. There are amendments coming for changing the name of U. P. I want to know if you will permit them to be considered in the 3rd leading?

Mr. President : I can say this, that if there is general agreement about the change of name, I shall not stand in the way. If it involves discussion and if there are different suggestions made, then I shall stick to the name which is given here.

Shri Mahavir Tyagi : If the House leaves it to the U. P. Members ?

Mr. President : I do not mind, but I would not like to interfere with the name of U. P.

Shri R. K. Sidhva : The question of altering the name is very important and I would suggest it is not proper to leave it to the Members of this House It should be left open both to the Government of that Province and to the Legislature of that Province. We cannot change the name of a Province by discussing it here. This matter should not be treated lightly.

Mr. President : I think you are right. I said if there is general agreement by all parties concerned then I will not oppose its discussion.

Shri Mahavir Tyagi : The word of the Premier of the Province should be considered enough.

Mr. President : But at this stage I do not think we should insist on any commitments from me or from any Member. We should take things as they arise and we shall decide them when the question arises.

Now, it was mentioned by Mr. Naziruddin Ahmad and I believe by some other Members also, that the time that is allowed for giving notice of amendments is very short. It is now only three days. I would suggest it would be good if Mr. Shibban Lal Saksena's amendment could be accepted extending it to five days. But it all depends upon the resources of the Press. So far as it is possible we shall try our best, but if you like and if the office thinks we could give five days, I personally would not object to five days being given.

Shri H. V. Kamath : Sir, you were telling the House, when Mr. Tyagi cut you short, about the length of 'sittings, and I think there is something left unsaid.

Mr. President : It will depend upon the House as to how many hours it wishes to sit but we could not go beyond the 26th in any case; that is fixed.

Prof. Shibban Lal Saksena : Would you not accept my suggestion that all Members who want to participate should give their names beforehand ?

Mr. President : It is not necessary to introduce it in the Rules. Supposing a Member fails to send his name I do not know if you would like we to disallow him. Shrimati Durgabai will reply now.

Shrimati G. Durgabai : Mr. President, Sir, before dealing with the amendments moved by my honourable Friends, I would clear up two points made by some of the Movers of the amendments. I will be very brief in my reply and not take much of the time of this House.

I have heard one honourable Member making this charge against the Drafting Committee that they have set up some lady to move these Rules. I may straightaway tell the House that it is not the business of the Drafting Committee. These Rules came up before the Steering Committee, and were approved by them and I have now moved them in this House. Another Member has made a suggestion that a lady has been put up to defend the action of the Drafting Committee. Sir, I am very sorry to find some of the honourable Members of the House-male Members-still conscious of this sex business though the women Members have completely forgotten it. I very much wish that there should be no longer any talk of this question of men and women.

As regards the amendments moved, honourable Members are aware that some were moved by Mr. Naziruddin Ahmad. I may straightaway tell the House that I have pleasure in accepting his amendment 2 (iii) which reads thus :

"for the word' clauses' the words 'articles, clauses and sub-clauses' be substituted."

Though it is strictly a matter for the Drafting Committee. I will have no hesitation in accepting this amendment.

I would also be willing to accept amendment No. 2 of the list of amendments moved by Mr. Shibban Lal Saksena. The Honourable the President also has suggested that five clear days' notice would be required and therefore this amendment would be accepted.

With regard to all the other amendments particularly those of Mr. Naziruddin Ahmad, I would say that they are all matters for the draftsmen to set right because they are either verbal or grammatical or relating to punctuation. So they might be safely left to the Drafting Committee or the draftsmen. His amendment No. 6 about the three clear days' notice has already been covered by accepting Mr. Saksena's amendment about five clear days' notice being substituted for three days.

With regard to Mr. Kamath's amendments, Mr. Kamath wants to move substantial amendments by deleting the words "which is either formal or consequential upon". Our experience has shown that some thousands or substantial amendments have already been moved during the second stage of the consideration of the Draft Constitution. Now the Honourable the President has got the power to suggest any substantial amendment to be moved by the Drafting Committee. Therefore, it will not be necessary to enable Members to make substantial amendments and independent amendments at that stage.

Mr Kamath had also questioned the power of the President to fix a time-limit to the speeches and also the power to relax or suspend the Rules.

Shri H. V. Kamath : I did not question his power, I said he had inherent powers.

Shrimati G. Durgabai : To that my submission would be that no doubt the President has got over-all power in all these matters. He has got power either for fixing the time-limit or for disallowing any amendment at his discretion. But I wanted these Rules that I have moved to day to be self-contained and independent, a complete procedure to be laid down for the Third Reading stage of this Draft Constitution and its passing. Therefore, there will be nothing objectionable in making a complete, self-contained procedure for this purpose.

Shri H. V. Kamath : No necessity, though there is no objection.

Shrimati G. Durgabai : Mr. Sidhva raised an objection that in the Legislative Rules of Procedure there is no provision for time-limit, that the President could not fix a time-limit, but I would simply refer Mr. Sidhva to Rule 46, sub-clause (iv) of the Legislative Assembly Rules.

Shri R. K. Sidhva : They have not been passed by the House. They were not placed before the House.

Shrimati G. Durgabai : We are following those Rules in that House. Therefore, I would simply refer him to those Rules under which the President has got the power to fix a time-limit. We are all aware that the President most necessarily have these powers, unless we want still further to delay and are not anxious to expedite the passing of this Constitution. Some Members have taken objection to my saying that it is a financial drain on the revenues of the country. In the name of the common man about whom we are always speaking here and everywhere. I will appeal to my Friends in the House. I appeal in the name of the common man, who is not interested in these long procedural questions but who is only looking forward to the day of receiving the benefits accruing from this Constitution, to expedite this work. Let us enable the President to exercise more drastic powers to expedite the work of this Constitution.

Shri H. V. Kamath : In the name of the common man, who has been guilty of delay here ?

Shrimati G. Durgabai : With regard to the point raised by Dr. Pattabhi Sitaramayya, my Friend Mr. Krishnamachari has already clarified the position. I would unhesitatingly accept the suggestion made by him, that is, the deletion of the word "other" before the word "necessary".

He also, I think, asked for the clarification of the word "necessary"' amendments. Necessary amendments are those which have become necessary due to the changes in the country, which the President may allow the Drafting Committee to move, if he considers them necessary. After the clarification of the different points raised here, I have no hesitation in saying that the House will accept the motion that I have made.

Mr. President : I will now put the amendments to vote. The question is:

"That in the proposed now Rules 38R and 38RR, for the word 'Constitution' wherever it occurs the words Draft Constitution' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in sub-rule (1) of the proposed rule 38R,--

(i) for the word 'considered' the words 'considered and disposed of' be substituted,--

The amendment was negatived.

Mr. President : The question is:

"That in sub-rule (1) of the proposed rule 38 R,--

(ii) for the word 'amended' the words '(amended by the Assembly)' be substituted,--

The amendment was negatived.

Mr. President : Part (iii) has been accepted, I understand. The question

"That in sub-rule (1) of the proposed rule 38R,--

> (iii) for the word 'clauses' the words 'articles, clauses and sub-clauses' be substituted;--

The amendment was adopted.

Mr. President : The question is:

"That in sub-rule (1) of the proposed rule 38R,--

(iv) for the words 'to recommend' the words 'to submit a report recommending' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That after sub-rule (1) of the proposed rule 38R, the following new sub-rule be inserted:-

> '(1a) The Draft Constitution as revised by the Drafting Committee under sub-rule (1), shall indicate by suitable typographical arrangements the changes and omissions made by the Committee."

The amendment was negatived.

Mr. President : The question is:

"That in sub-rule (2) of the proposed rule 38R, for the words 'After the Constitution has been referred to the Drafting Committee, the report of the Committee, the words. 'The report of the Drafting Committee' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in sub-rule (2) of the proposed rule 38R, for the words 'in the Constitution' the words 'to the Constitution' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in the proviso to sub-rule (2) of the proposed rule 38R, for the words 'three clear days' the words 'seven clear days' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in sub-rule (4) of the proposed rule 38R, for the words 'which is either formal or consequential upon' the word 'to' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in sub-rule (6) of the proposed rule 38R, the words 'and it shall not be necessary the President to put each of those amendments separately to vote' be deleted."

The amendment was negatived.

Mr. President : The question is:

"That in sub-rule (8) of the proposed rule 38R, the words 'shall allot not more than two days for the consideration by the Assembly of all amendments after the motion referred to in sub-rule (2) has been carried and' be deleted."

The amendment was negatived.

Mr. President : The question is:

"That sub-rule (2) of the proposed new rule 38RR be deleted."

The amendment was negatived.

Mr. President : The question is:

"That sub-rule (3) of the proposed new rule 38RR be deleted."

The amendment was negatived.

Shri T. T. Krishnamachari : No. 122 need not be put, Sir. It is only a consequential one.

Mr. President : Let me put that also. The question is:

"That sub-rule (1) of the proposed new rule 38RR be added to Rule 38R as sub-rule (10)."

The amendment was negatived.

Mr. President : I shall now take up Mr. Shibban Lal Saksena's amendments. As they have not been circulated, I shall read them. The questions is:

"In the proposed new Rule 38R, in clause (1) the following words be added at the end :-

> "But the President shall have power to allow any other amendments to be moved according to his discretion."

The amendment was negatived.

Mr. President : The question is:

"In the proviso to sub-rule (2) of Rule 38R, for the words three clear days' the words 'five clear days' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That in sub-rule (3) of the proposed rule 38R, for the words beginning with 'and at this stage' to the end of the sub-rule the following be substituted:--

> "and at this stage the debates shall be controlled by the President according to his discretion'."

The amendment was negatived.

Mr. President : The question is:

"That in sub-rule (6) of the proposed rule 38R, the words 'and it shall not be necessary for the President to put each of those amendments separately to vote' be deleted."

The amendment was negatived.

Mr. President : The question is:

"That at the end of sub-rule (4) of the proposed rule 38R, the following be added:--

> "except by the President according to his discretion'."

The amendment was negatived.

Mr. President : The question is:

"That in the proposed rule 38RR, for sub-rule (2), the following be inserted:--

> (2) Members desirous of participating in the debate on a motion made under sub-rule (1) shall notify their names to the President at least 36 hours before the motion is made and the President may fix a time limit on the duration of speeches on the motion after receiving all such names, but the time limit shall not be less than 30 minutes. The President shall have power to give longer time to any speaker in exceptional circumstances, and he may also order a speaker to cut short his speech according to his discretion.

(2a) The President shall have power to extend the duration of the daily sittings of the Assembly.

The amendment was negatived.

Mr. President : There is an amendment suggested by Dr. Pattabhi Sitaramayya that "the word" other, occurring in the last but one line be omitted. The question is:

"That the word 'other' occurring in the last but one line of article 38-R (1) be deleted."

The amendment was adopted.

Mr. President : I shall now put the motion moved by Shrimati Durgabai, as amended, to vote. The question is:

"That for rule 38-R of the Constituent Assembly Rules, the following rules be substituted:--

Revision of the Constitution by the Drafting Committee and the consideration of the amendments recommended by them.

'38 R. (1) When a motion that the Constitution be taken into consideration has been carried and the amendments to the Constitution moved have been considered, the President shall refer the Constitution as amended to the Drafting Committee referred to in sub-rule (1) of rule 38-L with instructions to carry out such re-numbering of the articles, clauses and sub-clauses, such revision of punctuation and such revision and completion of the marginal notes thereof as may be necessary, and to recommend such formal or consequential or necessary amendments to the Constitution as may be required.

(2) After the Constitution has been referred to the Drafting Committee, the report of the Committee shall be presented to the Assembly by the Chairman or any other members of the Drafting Committee and thereafter the Chairman or other member of the Committee may move that the amendments recommended by the Committee in the Constitution so referred to them be taken into consideration.

Provided that no such motion shall be made until after the report of the Drafting Committee together with the copies of the Constitution as revised by them has been made available for the use of members and that any member may object to any such motion being made unless the report and the copies of the Constitution as so revised have been made available five clear days before the date on which the motion is made, and such objection shall prevail unless the President in his discretion allows the motion to be made.

(3) While making any motion referred to in sub-rule (2), the mover shall confine himself to an explanatory statement and at this stage there shall be no debate, and the President may, after such statement has been made, put the question.

(4) After the motion referred to in sub-rule (2) has been carried, any member may move an amendment which is either formal or consequential upon an amendment recommended in any provision of the Constitution by the Drafting Committee after the Constitution was referred to them under sub-rule (1) but shall not be allowed to move any other amendment.

(5) If notice of a proposed amendment has not been given two clear days before- the day on which the motion referred to in sub-rule (2) is to be taken up for consideration, any member may object to the moving of the amendment, and such objection shall prevail unless the President in his discretion allows the amendment to be moved.

(6) Notwithstanding anything in these rules, all the amendments recommended by the Drafting Committee, after the Constitution was referred

to them under sub-rule (1), shall be deemed to have been moved, and it shall not be necessary for the President to put each of those amendments separately to vote.

(7) The provisions of sub-rules (2) and (3) of rule 38-P shall apply to every amendment of which notice has been given under sub-rule (5), and notwithstanding anything in these rules it shall be in the discretion of the President to disallow any amendment of which notice has been so given.

(8) The President shall allot not more than two days for the consideration by the Assembly of all amendments after the motion referred to in sub-rule (2), has been carried and shall, at the time appointed by him for the close of the sitting of the Assembly on the last of the allotted days, forthwith put every question necessary to dispose of all the outstanding matters in connection with those amendments, and in the case of amendments recommended by the Drafting Committee as such, he shall put only the question that the amendments so recommended be made or that the amendments so recommended as modified by any amendment or amendments adopted by the Assembly be made as the case may be.

(9) For the purpose of bringing to a conclusion any proceedings relating to such amendments on the last of the allotted days, the President shall have power to select the amendments to be proposed.

Passing of the Constitution.

38-RR. (1) When the amendments to the Constitution referred to the Drafting Committee under sub-rule (1) of rule 38-R have been considered, any member may move that the Constitution as settled by the Assembly be passed, and to a motion so made no further amendment shall be allowed to be moved.

(2) The President may fix a time-limit for speeches during the debate on a motion made under sub-rule (1).

(3) The President may in relation to any proceedings in connection with the passing of the Constitution under rule 38-R or this rule relax or suspend any of these rules'."

The motion was adopted.

DRAFT CONSTITUTION *(Contd.)*

First Schedule.--(Contd.)

Mr. President : We shall now take up the First Schedule. With regard to the First Schedule, there are a large number of amendments of which notice has been given. Some of those amendments relate to the Schedule as it was in the original draft; some others relate to the proposition as it was moved by Dr. Ambedkar yesterday. I find in respect to several of these amendments one difficulty--both in regard to the amendments relating to the original draft as also, some of the amendments relating to the proposition moved yesterday. The difficulty is that they do not actually represent facts as they ate today: For example, the effect of some of these amendments is today down names of provinces which are not in existence today and about which we do not know whether they will come into existence at all. We shall experience, in fact, insuperable difficulties if this Constitution is passed containing names of provinces which are not in existence and omitting names of provinces which are in existence today. I do not know how the Constitution will work after it comes into force with names of provinces which are not in existence and omitting names of provinces which are in existence today. The whole structure of the constitution as it is framed, will be difficult of operation. For example, we do not know what the Assembly will be: whether it will be the Assembly of Madras, or whether it will be the Assembly of Andhradesha or of Tamilnad. Similar difficulties will arise with regard to numerous other provinces in the Constitution.

I would therefore suggest to honourable Members that at this stage when the question with regard to, the creation of new provinces has not actually been decided it may not be wise to include in the Constitution names of Provinces which we hope or propose to create but which have not been created. Similarly, there may be other difficulties also arising in connection with those other Provinces which are in existence and with regard to which some changes are sought to be introduced by some other amendments.

There are some amendments relating to the transfer of certain areas from one Province to which they are attached today to another province. If we pass the Constitution as it is, the transfer of those areas does not automatically take place and similar difficulties will be experienced if we include in the territories given in the Constitution areas which are not included in the territories of the provinces which are named.

I would, therefore, suggest to honourable Members not to bring any amendments at this stage, which will create difficulties in the actual operation of the Constitution when it is passed. I have no doubt that there are certain Members, in fact there are many Members in this House who are keen on certain matters with regard to the creation of new Provinces or even with regard to the change of the boundaries of Provinces, but those things should be first brought about before they can be incorporated in the Constitution; and I would therefore, suggest to those honourable Members who have given notice of such amendments to bring about the change which they want in the actual situation and then ask the Constituent Assembly to incorporate these changes in the Constitution. We have made provision in the rules which we have just passed in the form of rules for introducing amendments which will conform to facts as they will exist at the time when the Third Reading takes place and if any changes are brought about within this time the Drafting Committee will certainly take note of these changes and it will certainly bring them up before the House. I hope that this statement of mine will enable honourable Members to consider the question from this point of view and if they agree, we might also incidentally save some time of the House by not having to consider those amendments, and ultimately it may be that many of them not be accepted.

Shri H. V. Kamath : As regards the re-naming of existing provinces, I would request you to see to it that in every case the matter of re-naming of the province is left to the Provincial Government, the legislature, the P.C.C. and the representatives of that province in this House.

Mr. President : So far as this is concerned, I think there is change in the name of only one province, I believe. There is no other.

Shri H. V. Kamath : There is C. P. and Berar.

Shri Mahavir Tyagi : There are amendments to change the name of U.P. also.

Mr. President : There are amendments for the change of the name from Orissa to Utkal.

Shri T. T. Krishnamachari : So far as the adoption of any change in the name of a State is concerned, in the draft that is before the House, we have been following one principle, namely, if there is a substantial number of Members wanting a change and that change has been approved by the Premier of the province, we have put it in one amended schedule and that is the reason why the name, so far as C. P. is concerned has been changed. We have received a representation from a number of Members belonging to Orissa and the matter will have to be referred back to the Premier of the Orissa Province and if he agrees and if you, Sir, and the House permit, we might probably introduce an appropriate change in the revised fair-copy to be taken into consideration at the next session, changing the name from Orissa to Utkal; but that is the principle that we have followed in accepting an amendment for a change where they have been more or less approved or ratified by the Premiers of the Provinces concerned ....

Shri R. K. Sidhva : I take strong exception to the suggestion made by my honourable Friend, Mr. T. T. Krishnamachari...............

Mr. President : He has only explained the position.

Shri R. K. Sidhva : We had experience on the question of the Second Chamber being left to the Members of this House and there has been subsequently clamour that nobody was consulted in the province and many of the people in the province felt that it was improper to have retained the Second House without consulting them. Therefore on matter of greater importance than that, i.e., changing the name of the province, as I suggested earlier not only the Premier but the whole Cabinet of that province and also the members of the Legislative Assembly may be given an opportunity to express their point. This matter is not a small one and anybody can make a suggestion in this House or even the Premier. With due respect to the Premier, it is just possible......

Mr. President : May I suggest one way out of this difficulty. On behalf of the Constituent Assembly. I propose to send, to the various provinces whose names are sought to be changed, to the Governments of those provinces to express their opinion on them and when we have got their opinion. If necessary, we may introduce the changes even at the Third Reading stage.

Honourable Members : All right, Sir.

Shri H. J. Khandekar : (C. P. & Berar : General) : I am very glad that you are giving instructions to the Provincial Governments suggesting the names of the provinces. I also suggest........

Mr. President : You have misunderstood me, I am not giving instructions. If any proposals have come here, I will send those proposals to the Provincial Governments for their opinion.

Shri H. J. Khandekar : I suggest, Sir, that the opinion of the Members of the province should be taken into consideration as they have been done in the case of the Upper House, I mean the M.C.A.s.

Mr. President : The Members are present here.

Shri J. H. Khandekar : I mean the same, Sir, that the opinion of the Members of the Constituent Assembly of the Province the name of which is to be changed.

Mr. President : They will be present here and they will be able to express their views.

Shri H. J. Khandekar : Thank you Sir.

Shri H. V. Kamath : Do you want specific proposals, Sir, in this regard ?

Mr. President : No. There are so many amendments and I will take note of those amendments which have already come.

Shri Kuladhar Chaliha : (Assam : General) : I have an amendment and I want to change the spelling of the word Assam only because it is anglicised. Instead of the word "Assam" I want the word "Asom".

Mr. President : In that also I shall consult the Provincial Government. What shall we do now ? Shall I now take up the amendments ?

Honourable Member : Yes, Sir.

Shri Gokulbhai Bhatt (Rajathan) : *[Mr. President, on a point of clarification, Sir, the schedule which has been placed before us excludes a part of India, about which nothing has been decided as yet and that part is Sirohi. It would be better if any member of the Drafting Committee clarifies it.]

Mr. President : There is an amendment with regard to that; but I do not know the exact position myself.

Shri K. M. Munshi : May I say, Sir, with regard to what my honourable Friend Mr. Gokulbhai Bhatt said, I ascertained the position from the Deputy Prime Minister. So far as Sirohi is concerned, it has not yet been finally settled as regards the province in which it is to be placed. At present, it is being administered by the Government of Bombay under the Extra-Provincial Jurisdiction Act.

Shri Jainarain Vyas (Rajasthan) : Mr. President, I want to draw the attention of the House to the note under Part I where the province of Bombay has been defined. The last four lines of that note state : "any territory which immediately before such commencement was being administered by the Government of that province under the provisions of the Extra-Provincial Jurisdiction Act, 1947." This note makes it clear that the territory which was administered by that particular province before the commencement of the Constitution would be included in the province of Bombay. This means that Sirohi would go to Bombay even without a covenant being signed by the Boy Ruler of Sirohi or the mother of the Ruler, or the Ruler whose case is pending in

Bombay. In that case, I would request Mr. Munshi to see that these lines which say "which immediately before such commencement were being administered by the Government of that province under the provisions of the Extra-Provincial Jurisdiction Act, 1947" are deleted so that there may be no apprehension in the minds of the people of Sirohi that Sirohi has merged.

Mr. President : This does not apply only to Sirohi. It applies to other areas also.

Shri Jainarain Vyas : That would apply to Sirohi also and Sirohi would be considered to have merged even without a covenant being signed. That I want to point out.

Mr. President : We can make an exception in that case.

Shri K. M. Munshi : My honourable Friend Mr. Vyas must realise that the whole of this Schedule has been drafted on the basis of what is existing today. We do not want to disturb the existing conditions. Nor is it suggested that no changes should be introduced in this matter. As has already been pointed by the Honourable the President, if circumstances change hereafter, when we come to the Third Reading, those changes will be duly incorporated. At the present moment what is stated in the schedule is quite clear and therefore the reference to Sirohi is irrelevant at the present moment.

Shri H. V. Pataskar : (Bombay : General): There is one question which I would like to ask. So far as Sirohi is concerned is it part of Bombay or is it a separate State?

Shri K. M. Munshi : I do not know, I am not in a position to make any authoritative statement on that question. So far as I know, it has been transferred to the Centre and the Centre has given it to the Bombay Government for purposes of administration under the Act. I speak subject to correction. That is my impression.

Shri Shankarrao Deo : (Bombay : General) : Is it not necessary, Sir, that the House should know the exact position? Some Members are interested in the matter and want to know whether Sirohi forms part of Bombay or has been transferred to Bombay for administration. Will you please request the States Ministry to make a statement on this ?

Shri K. M. Munshi : Yes, I will.

The Honourable Shri K. Santhanam : (Madras : General) : Up to the 26th of January, is it not open to the States Ministry to make adjustments ?

Shri K. M. Munshi : Mr. Santhanam is correct. Up to the 26th of January, it is perfectly open to the Government of India to transfer any part of a State to any Province. That is the position in law. So far as the present Schedule is concerned, it applies on and after the 26th of January. Whatever portion of a State on that date, has been transferred to Bombay. What has been transferred to some other province will be in that province. Mr. Shankarrao Deo asked what is the present position of Sirohi. That is how I have understood it.

Shri Shankarrao Deo : I would like to know what will be the status after the 26th of January.

Shri K. M. Munshi : That will be decided on or about the 26th of January.

Shri Shankarrao Deo : We would request you to convey the desire of some Members here to the States Ministry that they would like to know what is exactly their mind and scheme for Sirohi.

Shri K. M. Munshi : I shall convey the request to the proper quarters.

Shri Sarangdhar Das : (Orissa States): Sir, I have got a certain amendment which does not come in the category of amendments that you have said should not be moved. I wish to move them when an opportunity is given to me.

Mr. President : I am going to call every amendment and every Member is free to move whichever amendment he likes. The first amendment is No. 404, Mr. Kuladhar Chaliha--Do You want to move this ?

Shri Kuladhar Chaliha : Yes, Sir.

Mr. President : It was suggested that these may be referred to the provincial Governments.

Shri H. V. Kamath : They may be formally moved and then referred to the Provincial Governments.

Shri R. K. Sidhva : You may take the sense of the House on this question, Sir.

Mr. President : I have only made a suggestion. But, if Members insist on moving their amendments, I cannot prevent it.

Shri Kuladhar Chaliha : Sir, I move:

"That in amendment No. 380 of List XV (Second Week), for item 1 of Part I, the following be substituted:--

"1. Asom."

Mr. President : If it is once moved I shall have to dispose it of in some way. It will have to be put to the vote.

Shri M. Thirumala Rao : (Madras: General) : The proper spelling of Assam is Assam. He has given his remedy to spell it Asom. 'Asam' can be pronounced as 'Asom' if he likes.

Mr. President : Amendment No. 405.

The Honourable Shri K. Santhanam : Each amendment may be disposed of separately and may be put to the vote.

Mr. President : I shall take each amendment separately. Mr. Chaliha if you want to move your amendment, then I shall have to put it to the vote.

Shri Kuladhar Chaliha : I only want it to be referred to the Government, Sir.

Mr. President : Amendment No. 405. Mr. Brajeshwar Prasad do you want to move it ?

Shri Brajeshwar Prasad : (Bihar : General) : Yes, Sir.

Shri R. K. Sidhva : Once it is moved, it becomes the property of the House.

Shri Brajeshwar Prasad : Yes, Sir, I know. You may reject it. I know you will reject it.

Mr. President : If you want, you may reject it. He takes the risk.

Shri Brajeshwar Prasad : There are seven amendments standing in my so far as the first Schedule is concerned. I refer to amendments 335, 340, 348, 356, 357, 358 in List XIV Second Week. In List XVII, there are two amendments 405 and 411. With your permission, Sir, I move amendment No. 358, There is a technical difficulty.

Mr. President : As I have said if your amendment is carried, it will create a situation in which it will be impossible to work the Constitution. It means lumping together all the Hindi speaking areas. How will they be described in the Constitution and what will be the Legislature and who will be the Governor ? There are five Governors in the 5 States and provinces now. Which will be the Legislature that will function in that State which you wish to create by this amendment of yours ? That is the difficulty which I have been pointing out.

Shri Brajeshwar Prasad : I thought your observations referred to linguistic provinces only.

Mr. President : No. I have made this suggestions out of courtesy to the Members of this House, I am entitled to rule them out of order.

Shri Brajeshwar Prasad : I will bow down to your observations.

Shri H. V. Kamath : May I know whether all these amendments with regard to renaming of provinces will be referred by your Secretariat to the provinces concerned ?

Mr. President : Yes, all amendments relating to names.

Shri Mahavir Tyagi : Have all these been ruled out of order ?

Mr. President : Yes. All those amendments which want to create new provinces either by lumping together provinces or carving out parts of one province and by mixing together areas of one province with other provinces, are ruled out of order. Wherever any amendment impinges the boundary of one particular province today is ruled out, because it does not correspond with existing facts.

Pandit Balkrishna Sharma : (United Provinces : General) : There was an amendment from a Member from Madhya Bharat. It was said at that time that Dr. Ambedkar was prepared to accept that.

Mr. President : Let that change be made in fact; then we shall take it.

Prof. Shibban Lal Saxena : May I move 406 proposing that the U.P. be named Brahmvart, Aryavart, Hind or Brij Sakait ?

Mr. President : All amendments relating to names will be referred to Provincial Governments for their opinion. So it is not necessary to move your amendment. I do not think there is any other amendment now which remains with regard to this after all these amendments altering the territories have been disposed of.

Shri Sarangdhar Das : May I have your ruling, Sir, about my amendment ?

Mr. President : I have ruled it out of order because it seeks to transfer certain territories from one province to another.

Shri Sarangdhar Das : It is not transfer Sir. It provides for determining the wishes of the people and according to such wishes a certain area may go from one province to another or may not. I will give you my argument for it.

Mr. President : This cannot be a part of a Constitution. This is a Resolution for the Assembly. You can move that in the Assembly, and if you succeed there and you get this change made, it will become part of the Constitution.

Shri A. Thanu Pillai : (United State of Travancore & Cochin) : Article 3 provides for such cases.

Mr. President : Yes, I am grateful to you for pointing that out.

Shri Yudhisthir Misra : (Orissa States) : Some of the amendments which have been given notice of contemplate the change of boundaries of different provinces; but so far as the States are concerned, I think you will remember that last January we had amended the Government of India Act, 1935, and passed a new Section 290 A and it is according to that provision that these States have been given to certain neighbouring provinces for the sake of administration. I submit they do not legally form part of those provinces but they have been given to those provinces for administration. Therefore my amendment No. 390 cannot be ruled out.

Mr. President : My ruling is based upon one thing, viz., that we cannot by any amendment of the Schedule introduce any change in the existing state of affairs and in the Constitution we are providing only for those things which are today in existence and not for what we wish or what may come into existance later. Therefore, I say that these amendments which contemplate changes are ruled out.

Shri Sarangdhar Das : What about Seraikella ?

Mr. President : It is open to them to have a change in the decision before 26th January.

Shri Sarangdhar Das : Mr. Munshi in reply to the problem of Sirohi, as posed by Mr. Jainarayan Vyas, stated what the Deputy Prime Minister intended to do. So, I wish that there should be some statement on my amendment, because I maintain that these two States had been integrated into Bihar against the wishes of the people as well as the Rulers. It goes aganist the Preamble of the Agreement that the Rulers entered into with the Government of India. Also when they were integrated into Bihar last May, the Ruler of Seraikella replied to the Officer appointed by the States Ministry, that Seraikella was integrated temporarily for purposes of administration; but that before the Constitution is finally adopted the wishes of the people and the rulers have to be ascertained. That is why I introduced this provision, and if the States Ministry would make a statement as to whether these States have been merged permanently in Bihar or the matter will be considered by a Boundary Commission or some other way will be found to determine the wishes of the people. I would be satisfied and withdraw my amendment.

Mr. President : I believe the State Ministry issued a communique the other day saying that they stick to the decision which they have taken previously. I think they have issued such a communique and it was published the other day.

Shri Yudhisthir Misra : So far as we the representatives of the merged States are concerned, we are here to represent their case in the Constituent Assembly. Now you are going to make certain provisions in the Constitution, so far as the merged States are concerned, and if we, the representatives of the merged States, are not to have our say here, then what are we here for? I submit it would not proper to shut out discussion of this question.

Mr. President : I do not think, I can go back upon the ruling which I have given.

Prof. Shibban Lal Saxena : Sir, I have to say something about Part III.

Mr. President : What about Part III.

Prof. Shibban Lal Saxena : Sir, here we have defined the territories Rajasthan and Saurashtra and said that Saurashtra shall comprise the territories which immediately before the commencement of this Constitution were comprised in United State of Kathiawar and the territories which immediately before such commencement were being administered by the Government of that State under the provisions of the Extra-Provincial Jurisdiction, Act, 1947. And in the Names of States, we have put in Jammu and Kashmir also. I want to clarify the position. I want it to be stated here that the State of Jammu and Kashmir shall comprise the territory as it was immediately before the 15th August, 1947 and which were being administered by the Maharaja of Jammu and Kashmir on that date. This, Sir, is necessary, because at present, as we all know there is the Cease-fire Line and part of the area is in the possession of the raiders.

Mr. President : It is a purely political question and we cannot decide it by a resolution of this House.

Prof. Shibban Lal Saxena : Then what will be the position of Jammu Kashmir ? What will be its area ?

Mr. President : Well, whatever we have, got now we have got, and if we get more, we shall have more.

I think there is no other amendment. If any Member wishes to say anything about the amendments he can do so.

The Honourable Shri N. V. Gadgil : (Bombay : General) : Sir, I thought some of us belonging to Maharashtra have a duty on this occasion to make, at any rate, our position clear. The recent resolution of the Working Committee, although very helpful, does not give sufficient lead, because at this time, when the Federal Constitution is being framed, certain principles which should govern the delimitation of the constituent units should have been laid down. At the same time, I realise that this is not a very propitious time. As I have always expressed, this is a question which can and must be solved with understanding, with agreement and in an atmosphere of goodwill. I also realise this, and speaking before the committee that was appointed by you, I pleaded that this question should be postponed for a period of five years. It is not that I am stating this for the first time. I am cognisant of the difficulties and therefore, I am repeating it, not merely in connection with the formation of Samyukt Maharashtra, but it connection with other provinces also; and I am encouraged because I find that the present clause (3) as amended has really facilitated matters. As it stood originally it was a very laborious and long winding process, but now a Bill can be brought in for the delimitation of any province, and such a Bill will not be considered as a Bill amending the Constitution. Now the position as it has developed in this, that we have a machinery in the Constitution itself, and therefore, all questions about the formation of provinces need not be raked up now, and the Schedule, as suggested by Dr. Ambedkar should be accepted. That is the point I wanted to make out.

There is one little suggestion I want to make. If you want to have the Hindi Karan of the names, do not confine it merely to a few, such as Koshal Vidarbh etc. You can call Bombay "Paschim Bharat".......... and Madras...... "Dakshin Desh", etc. If you want to do it, do it completely, but not by parts. This suggestion of mine may please be kept In mind by the Drafting Committee. Otherwise all sorts of implications are likely to come out and instead of doing any good, such a thing is bound to do more mischief than is contemplated by those who have inserted these exceptions alone. I would, therefore urge upon the Members of the Drafting Committee that this may be kept in mind.

I think any discussion with respect to delimitation or correction of boundaries would be more properly and more successfully taken up when the new Constitution comes into operation, and when the electorate gives, I should say, a mandate, and those who are today of the view that a particular solution is the only feasible solution, well, they have got to be persuaded and they have got to be convinced that an alternative solution, and a much better one in the larger interests of the country is available. So taking all these factors into consideration. I state that the whole question should be postponed and that the Schedule as proposed, with the suggestion that I have made, about the change of the names, may be accepted.

Shri Jainarain Vyas : Mr. President, Sir, I bow to your decision, but I want to make two simple submissions regarding Sirohi. One is that at present Sirohi is constitutionally a "no man's land". It is a territory not covered by Part I of Scheduled One, or Part II or Part III. and I understand that my learned Friend Mr. Munshi is going to request the state Ministry to make a declaration on this point. I hope that that declaration will be forthcoming. The Second submission is that in the amendment which has been officially put up by Dr. Ambedkar, Bombay Presidency has been defined in a way to incorporate Sirohi. The application of the Extra-Provincial Jurisdiction Act, 1947, to Bombay means no territory except Sirohi. So while making that declaration, I hope the States Ministry will clarify this position in regard to the definition of Bombay. Otherwise the people in Sirohi as well as in Rajaputana and in the country as a whole, will have every right to apprehend that Sirohi is silently being merged into Bombay without proper formalities being performed.

This is all that I wanted to say.

Shri Yudhisthir Misra : Sir according to the amendment moved by Dr. Ambedkar, the States the rulers of which have ceded their jurisdiction and powers over the same, to the Central Government, have been included in the provinces. In January last, the Government of India Act of 1935 was amended and power was vested with the Central Government to hand over those States to any province for the sake of administration. According to the provisions of 290A, therefore, although there has been an administrative merger, still by legal fiction, the constitutional entities of the States have been maintained. Therefore I want a clarification of the point from the Drafting Committee whether the same position has been maintained in this draft or not.

Sir, when Sardar Patel visited Cuttack on 14th December 1948 and the rulers of the Orissa States entered into an agreement with the Government of India, these rulers had specifically mentioned in the preamble of that agreement that their States should be handed over to the provinces of Orissa for administration. I will read the relevant portion of that agreement by the Raja of Seraikella "whereas in the immediate interests of the State and its people the Raja of Seraikella is desirous that the Administration of the State should be integrated as early as possible with that of the province of Orissa in such manner as the Government of the Dominion of India may think fit...." Now by providing for the amendment which has been moved by the Drafting Committee, the agreement has been violated. I would request the Drafting Committee to consider this point.

Sir, I represent the Orissa States along with Shri Sarangdhar Das and have therefore a special responsibility in this matter. As far as these two States of Seraikella and Kharswan are concerned, they have elected us as their representatives. I think it is but proper that their wishes should be Placed before this House as briefly as possible. From time immemorial the people of these two States have social and cultural contact and relationship with the people of the Orissa province and they have linguistic and racial affinity with them. These two States were and are still under the Utkal University having its headquarters at Cuttack. Oriya is the court language of these two States and in the primary schools there till recently, education was being imparted through Oriya. For administrative political purposes also these two States were included in the Orissa group of States previous to 1948. It is unnecessary for me to relate that the movement for the integration of the Orissa States including Seraikella and Kharswan started in Orissa under the leadership of the leaders from Orissa.

Shri Brajeshwar Prasad : This matter has been finally disposed of by the States Ministry and according to the circular which has been issued, re-distribution of provinces has been made. Now to take off one territory and add on to another could not be done. I think the honourable Member is going beyond his jurisdiction.

Shri Yudhisthir Misra : As far as this House is concerned, it has nothing to do with the States Ministry. It has nothing to do with any order passed by the States Ministry. Therefore I am entitled to express my views in this House. If you, Sir, say that I have no right, I will resume my seat.

Mr. President : I wish to point out that these views of yours expressed here will have no effect anywhere. This House cannot change the boundaries of Orissa.

Shri Yudhisthir Misra : Let me at least have the satisfaction that I have placed the views of the people, as their representative, before this House. It is for this purpose that I took your permission to participate in this debate.

Sir, it was in the Orissa States that the question of merger of the small States with the provinces was first mooted and it was there that the ideal of the merger of States with the provinces took its real shape. When the Honourable Sardar Patel was in Cuttack, he took the step of entering into an agreement with the rulers of the States as a result of the wishes of the people expressed to him through the All India States People's Conference, through the regional council and also through the various Praja Mandals. As you are aware, these two States in January 1948 were handed over to the province of Orissa; but, owing to certain unfortunate incidents, there was firing and these two States, in consequence were handed over to Bihar. There was a great tussle before that between Orissa and Bihar over this question and the Government of India announced the appointment of a Judicial Tribunal presided over by an eminent judge of the Bombay High Court to ascertain the wishes of the people regarding the language and culture and the administrative convenience as far as these two States are concerned. There was expectation of a fair and impartial solution of the problem through this Judicial Tribunal. But, to the great surprise of the people of the States, they were placed under the Government of Bihar and thus debarred from exercising their right of self-determination. It was then understood that the Raja of Seraikella wanted temporarily that his State should be placed under the Bihar Government for administration till a new Constitution was framed and adopted.

Sir, to a question of mine in 1948 in the Constituent Assembly (Legislative)......

Shri Brajeshwar Prasad : I will have no time to reply to the honourable Member. I have met the Maharaja of Seraikella and he told me that he wants the merger of Seraikella with Bihar.

Shri Yudhisthir Misra : Let the honourable Member go through the representation that the Maharaja of Seraikella has made recently to the States Ministry. In 1948, Sardar Patel was pleased to give me the reply that the handing over of Seraikella and for Kharswan administration to Bihar was only a temporary affair. I find, Sir, that in last August these States were transferred permanently to Bihar under section 290A of the Government of India Act. The wishes of the people of the States were not consulted.

Shri Brajeshwar Prasad : Wrong statement.

Shri Yudhisthir Misra : As far as the people were concerned, they were left out of the picture completely. If it is wrong, as is suggested by my Friend, Mr. Brajeshwar Prasad, then I challenge him to accept a referendum to ascertain the wishes of the people of these States. If he accepts it, I will not press for what I am submitting in this House.

Shri Brajeshwar Prasad : Let the honourable Member write to Sardar Patel and ask him to reopen this question.

Shri Yudhisthir Misra : My Friend is side-tracking the question.

Mr. President : I do not want challenges thrown and accepted here.

Shri Yudhisthir Misra : The only ground which was put forward by the States Ministry as to why these States were transferred to Bihar was that if these States were transferred to Orissa, there would be certain administrative in convenience. Now, Sir, when the State of Mayurbhanj was merged with Orissa that difficulty was removed, and the only ground that was put forward by the States Ministery for handing over these States to Bihar falls to the ground.

I want to resume my seat with a few more remarks. The steps that have been taken in regard to these two States are not proper, or just or legal or valid. I want a change in their position by a change in the First Schedule. I submit that these observations of mine should be taken into consideration and the future fate of these two States should be decided in accordance with the wishes of the people.

(Shri Jadubans Sahay rose to speak.)

Shri H. V. Pataskar : I will finish within a few minutes. I am going away tomorrow.

Mr. President : Are we sitting tomorrow ?

The Honourable Shri Satyanarayan Sinha (Bihar : General) : Not in the afternoon today anyhow, Sir.

Mr. President : (To Shri Jadubans Sahay)-Do not take much time.

Shri Jadubans Sahay (Bihar : General) : Sir, I would not have taken part in the general discussion but for the remarks made by the honourable Friend from Orissa just how. I would not go into details, but I would only tell my Orissa friends and other friends that the matter has been already settled finally. There ought to be some finality in everything. If the Orissa and Bihar friends go on wrangling over this issue which has been finally decided by the Minister for States and which has been taken for granted, then there will be no end to the ill-will prevailing between the two provinces. We in Bihar expect that this matter having been finally settled would restore the goodwill and good feeling and mutual understanding which exist between these two provinces and ought to exist not only in the general interests of these two provinces but in the general interests of the country as a whole. I therefore, Sir, this question which has been sought to be raised in this House by the observations made by Mr. Yudhisthir Misra should not have been raised.

The whole question is whether the merger of Seraikella and Kharswan with Bihar should be reopened again. The Honourable Sardar Patel went to Cuttack, he saw everything, he appointed the officer, he looked into the Covenant entered into by the Raja or Seraikella and after considering all these things, the States Ministry under the able guidance of Sardar Patel has given out that the final decision is that these two States of Seraikella and Kharswan should remain finally merged with Bihar. Where is the question of reopening the question now ? Because the reopening of this question will not do any good to either of these two provinces. I would simply appeal to my Orissa friends that this will not redound to the credit of these two provinces.

Apart from this, under the encouragement of Orissa, the Maharaja of Seraikella who is a disgruntled man, for reasons not within the control of the Government of Bihar, has distributed a pamphlet among the Members of the Constituent Assembly, but we thought that saner elements in Orissa would prevail; but instead of that, if the statesman of Orissa lend a hand to such agitation, then, Sir, it would not do good either to the province of Orissa or to Bihar. Let them give us time to do some constructive work to ameliorate the conditions of the aboriginals and the non-aboriginals who are living in the States of Seraikella and Kharswan. The Bihar Government is doing its best to raise the economic condition and the educational condition of the people of these two States. If this wrangling goes on, it will prove a very bad thing so far as these States of Seraikella and Kharswan are concerned. I will therefore not try to reply to Mr. Yudhisthir Misra, but I will simply appeal again to the friends from Orissa to help us in restoring goodwill between the two provinces and not try to rake up this matter which has been finally decided by the Minister for States.

Shri H. V. Pataskar : Mr. President, Sir I had a number of amendments standing in my name to this Schedule, but I thought and thought rightly that no purpose would be served by moving them. I have also a amendment No. 324 for the insertion of article 3 A for the formation of a new State of Maharashtra, but for practical considerations I did not move it also, because I knew there was no chance for it. What I want to make quite clear is that we have postponed consideration of this question because of a resolution of the Working Committee by which it will be possible to form some of the provinces in respect of which an enquiry was ordered by you, Sir, some time ago by the appointment of a Commission.

So far as Maharashtra was concerned, that resolution of the Working Committee says, that subject to the conditions mentioned in the report of the three man committee known as the JVP Committee, the State of Maharashtra should be formed. That report lays down that under no circumstances will Bombay city be included in the State of Maharashtra. I do not want to create any discussion or controversy at this stage. I would only like to make it clear that so far as Maharashtra is concerned a State of Maharashtra without the city of Bombay will never be acceptable to them. It is from that practical point of view that I refrained from moving my amendment No. 324. We would prefer to wait for the time being when those who are at present inclined for various reasons and out of distrust and suspicion to take Bombay out of Maharashtra will by mutual agreement and co-operation, be willing to concede the natural thing i.e., allow Bombay to remain where it is that is in Maharashtra. We do not want Maharashtra in the interests of the Maharashtrians alone; but we want it in the interests of the nation as a whole. There is absolutely no idea of any provincialism in it. Therefore so far as the question of Maharashtra is concerned, I would like to make it quite clear that I do not move my amendment No. 324 for the very simple reason that I find that in the present circumstance is not possible to have any province of Maharashtra.

The Honourable Shri Satyanarayan Sinha : Sir, the question may now be put.

Mr. President : The question is:

"That the question be now put."

The motion was adopted.

Mr. President : Would Dr. Ambedkar like to speak ?

The Honourable Dr. B. R. Ambedkar (Bombay : General) : I have nothing to say.

Mr. President : Then I will put the whole schedule to vote as there is no amendment later on.

Shri H. V. Kamath : Subject to the names of provinces being amended.

Mr. President : There is no question of it being "subject to." As I have the matter will be referred to the Provinces and if we get any reply which necessitates any change we shall consider that at the time of the Third Reading.

The question is :

"That the First Schedule stand part of the Constitution."

The motion was adopted.

The First Schedule was added to the Constitution.

Mr. President : Before we rise, we have to fix the time table. It was suggested in the morning by some Members that we should meet tomorrow. *(cries of "No". and " Yes").*

Shrimati Annie Mascarene : Sir, are we to be impose upon by the tyranny of the majority party ?

Mr. President : I do not think the Honourable Member is justified in saying that. There is no question of tyranny by any majority. The only question is that of fixing a time-table and surely the time-table for going to the church can be adjusted to the time-table of the House. There is no difficulty in that. If the Members do not want to sit on a Sunday then it is a different matter.

Shri R. K. Sidhva : If we are to finish the business in one day then I do not see why we should not sit tomorrow, Sunday.

Mr. President : We are not likely to finish in one day. Even if we sit tomorrow we may have to sit on Monday; and if we do not sit tomorrow, we may have to sit on Tuesday. Therefore, if the Members wish we can sit tomorrow. *(some Honourable Members : "No, no").* Then I shall take a vote on this.

The question is :

"That the Assembly do meet tomorrow, Sunday."

The Assembly divided by show of hands : Ayes ; 41, Noes :35.

The motion was adopted.

Mr. President : So we shall sit tomorrow.

The Assembly then adjourned till Ten of the Clock on Sunday, the 16th October 1949.

[Translation of Hindustan speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME X

***Sunday, the 16th October* 1949**

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION-*(Contd.)*

Mr. President : We have got a number of articles on the agenda, Some of them are of a controversial nature and are of great importance. They will probably take a little time in discussion, while the others are more or less of a formal nature. I would like to take up the difficult and controversial articles first, so that we might dispose them of and then we can deal with those which are only consequential amendments and things of that sort. Shall we begin with 264A. Dr. Ambedkar ? Will it suit you ?

Mr. Naziruddin Ahmad (West Bengal : Muslim) : May I point out that these amendments were received by us at quarter past nine this morning and I had to read them on my way to the Assembly.

Mr. President : Quarter past nine ? They were circulated last night.

Some Honourable Members : We got them at 9 A.M.

Shri Mahavir Tyagi (United Provinces : General) : My proposal is that this article may be taken up in the afternoon, Sir.

Mr. President : We may not have a session in the afternoon. In this way I do not know what to do.

Mr. Naziruddin Ahmad : These are very intricate matters and they are reopening decisions of the House already taken.

Mr. President : Article 264A has been there for several days, article 274DD has been there for several days; so also article 302AA.

Mr. Naziruddin Ahmad : I am speaking generally of the agenda today. Most of them reopen matters already decided by the House. It is difficult for anyone, even the fastest brain, to follow these changes. No indication is given as to what changes are to be made.

Mr. President : No doubt article 280A, I understand, is a new article which has come up today; but the others have been there on the agenda for many days.

Shri H. J. Khandekar (C. P. & Berar: General) : 264A is a new article altogether and we got notice of it at about 9 A.M. today. It is impossible to send any amendment to that article. Therefore, I request that it may be taken up in the afternoon or tomorrow.

Mr. President : It means that we shall have to prolong the session for two or three days. I do not think that will be right. Let us take up article 264A.

Article 264A

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, I move amendment No. 425.

"That in amendment No. 307 of List XIII (Second Week), for the proposed article 264A, the following be substituted-

Restriction as to imposition of tax on sale or purchase of goods.

'264A. (1) No law of state shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place--

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of the territory of India.

Explanation.--For the purposes of sub-clause (a) of this clause a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State.

(2) Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase at any goods where such sale or purchase takes place in the course of inter-State trade or commerce :

Provided that the President may order by direct that any tax on the sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the commencement of this Constitution shall, notwithstanding that the imposition of such tax is contrary to the provisions of this clause, continue to be levied until the thirty-first day of March, 1951.

(3) No law made by the Legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent'."

Sir, as everyone knows, the sales tax has created a great deal of difficulty throughout India in the matter of freedom of trade and commerce. It has been found that the very many sales taxes which are levied by the various Provincial Governments either cut into goods which are the subject matter of imports or exports, or cut into what is called inter-State trade or commerce. It is agreed that this kind of chaos ought not to be allowed and that while the provinces may be free to levy the sales tax there ought to be some regulations whereby the sales tax levied by the provinces would be confined within the legitimate limits which are intended to be covered by the sales tax. It is, therefore, felt that there ought to be some specific provisions laying down certain limitations on the power of the provinces to levy sales tax.

The first thing that I would like to point out to the House is that there are certain provisions in this article 264A which are merely reproductions of the different parts of the Constitution. For instance, in sub-clause (1) of article 264A as proposed by me, sub-clause (b) is merely a reproduction of the article contained in the Constitution, the entry in the Legislative List that taxation of imports and exports shall be the exclusive province of the Central Government. Consequently so far as sub-clause (1) (b) is concerned there cannot be any dispute that this is in any sense an invasion of the right of provinces to levy as sales-tax.

Similarly, sub-clause (2) is merely a reproduction of Part XA which we recently passed dealing with provisions regarding inter-State trade and commerce. Therefore so far as sub-clause (2) is concerned there is really nothing new in it. It merely says that if any sales tax is imposed it shall not be in conflict with the provisions of Part XA.

With regard to sub-clause (3) it has also been agreed that there are certain commodities which are so essential for the life of the community throughout India that they should not be subject to sales tax by the province in which they are to be found. Therefore it was felt that if there was any such article which was essential for the life of the community throughout India, then it is necessary that, before the province concerned levies any tax upon such a commodity, the law made by the province should have the assent of the President, so that it would be possible for the President and the Central Government to see that no hardship is created by the particular levy proposed by a particular province.

The proviso to sub-clause (2) is also important and the attention of the House might be drawn to it. It is quite true that some of the sales taxes which have been levied by the provinces do not quite conform to the provisions contained in article 264A. They probably go beyond the provisions. It is therefore felt that when the rule of law as embodied in the Constitution comes into force all laws which are inconsistent with the provisions of the Constitution shall stand abrogated. On the date of the inauguration of the Constitution this might create a certain amount of financial difficulty or embarrassment to the different provinces which have got such taxes and on the proceeds of which their finances to a large extent are based. It is therefore proposed as an explanation to the general provisions of the Constitution that notwithstanding the inconsistently or any sales tax imposed by any province with the provisions of article 264A, such a law will continue in operation until the 31st day of March 1951, that is to say, we practically propose to give the provinces a few months more to make such adjustments as they can and must in order to bring their law into conformity with the provisions of this article.

I do not think any further explanation is necessary so far as my amendment is concerned but if any point is raised I shall be very glad to say something in reply to it when I reply to the debate.

(Amendments Nos. 426 and 427 were not moved).

Prof. Shibban Lal Saxena (United Provinces : General) : Sir, I move:

"That in amendment No. 425, in the Explanation to clause (1) of the proposed article 264A, the words 'for the purpose of consumption in that State' be deleted, and the following new clause be added at the end :--

> '(4) The Union Parliament shall have power to amend the laws in respect of taxes on sale or purchase of goods with a view to bring uniformity in the laws made by the various States of the Union or in the interests of the Union as a whole, provided that no Bill for such amendment shall be moved in Parliament without the prior permission of the President, and the President before giving such permission shall obtain the views of the Governments of the various States concerned'."

Sir, this amendment No. 425 is in modification of the original amendment No. 307. It is a bit more comprehensive and tries to deal with some of the objections which had been raised against that article. But I feel that the article even as moved by Dr. Ambedkar is very defective and will have the effect of reducing the income of several provinces by some crores of rupees. In fact I am told that the Central Provinces Government will lose about 1 crore and the Bihar Government about 2 crores. Probably the same will happen to other provinces also.

The principles that Dr. Ambedkar has placed before us are simple. First, on imports and exports to sales tax will be levied; secondly, on inter-State trade no sales tax will be levied; and thirdly, on essential articles of life no sales tax will be levied without the approval of the President. But in clause (1) restrictions are to be put on the power of the States to impose sales tax on articles meant for import and export even to the extent of one pice per maund or other small amounts. The result will be that many of the provinces will lose huge amounts of revenue. For example, the Premier of the Central Provinces was telling me that they export manganese and other mineral products from their State. Bihar exports mica and such other things. They impose a small amount like one or two pice per maund as sales tax. That brings to the coffers of the province a crore or so of rupees.

Now we have said that if these goods are meant for consumption in the State then alone this tax can be imposed, otherwise not; and this will result in the depletion of the finances of the provinces to very dangerous extent. I therefore think that these words "for the purpose of consumption in that State" should be removed and to make up for this depletion, I am suggesting, a new clause, which I read just now and which says : "The Union Parliament shall have power to amend the laws in respect of taxes on sale or purchase of goods with a view to bring uniformity in the laws made by the various States of the Union or in the interests of the Union as a whole." It may be argued that if this power is not kept here then many States shall levy taxes which would really amount to an excise tax or production tax in a way. What I want is only this, that when there are any such taxes which injure the Centre or which are injurious to trade, then this overall power given in clause (4) shall come into play and I also say that the President shall have the final power, so that the Centre will have the power to intervene, if necessary.

At the same time I do not want that this article 264A should cripple the provinces to such an extent that they will not be able to carry on their nation building activities such as Education etc. Therefore, this amendment of mine that is, removing the words "for the purpose of consumption in that State" and adding clause(4) will not injure the

Centre in any away and will also let the State have some income. In fact in our discussions on the financial provisions States like Assam told us that they produce mineral oil, petroleum etc., but that they do not get anything. It was agreed in the Conference of Prime Ministers also that they can impose sales tax up to one pice and thus, they can have some revenue with which they can run their administration. It is only fair that province which produces an article should have at least some portion of that revenue. In fact, in my province, we produce sugar and although sugar is not taxed, we put a cess on sugar-cane and that brings to the province about a crore of rupees.

I do not think that such restrictions will help the Centre. But they will injure their main source of revenue. In fact in some provinces the revenues are much greater. I therefore, think that this article is an important article and it must be suitably amended, and I do not think that the provinces should be treated in such an unjust way as has been done by this article. If my amendment is accepted the Centre and the provinces will both benefit, and by deleting the words "for the purpose of consumption in that State" the Centre will not lose any money in import and export duties. I think that it is never the intention of any Provincial Government to usurp that function, and besides clause (4) will enable the Union Parliament to put limits on the amounts of sales tax they put and that will not affect the imports or exports and if a small tax it levied the Provinces will be able to benefit and it will be so good for them.

It is also unfair to the provinces that produce the main products such as petroleum or tea not to permit them any income there from. Now if Assam is allowed to have a small sales tax at the very beginning of one pice or two pice per maund, it will be able to have a large amount of money for their own province. Similarly, provinces like Bombay will have some money from the sales tax on the things produced therein and if these are uniform all over the country, the provinces will also gain and there will be no difficulty in inter-State trade and export and import. I think my amendments are very fair and something should be done to make provisions for these matters.

Shri Mahavir Tyagi : Sir, I beg to move:

"That in amendment No. 425 of List XVIII after clause (1) of article 264A, the following new proviso be inserted :

'Provided that the sale tax shall not exceed Rs. 3/2 per cent of the sale price'."

Sir, while moving this amendment, I wish to appeal to the sense of justice of this House in the name of the people whose representatives we are. This article from one point of view is extremely important. I deem this Constitution to be a contract between the State and the people. This contract has been given for drafting to the arbitration of the representatives of the people. We should therefore not be guided, biased or prejudiced by the administrative difficulties, as may be pointed out by the honourable ministers, in various provinces; but we should take notice of the difficulties of the citizens at large. Constitution is a contract between the Citizen and the State; the main terms are, that the citizen shall pay such and such taxes whenever they be required by law to do so. This is the biggest liability which the citizens agree to take on themselves. On the one side, there are the citizens of India and on the other is Dr. Ambedkar, acting on behalf of the second contracting party, the State. He is already representing the State and puts the State's Point of view. The state, through this Constitution takes over the responsibility of maintaining peace and enhancing the prosperity of the people. People being absent, I must appeal to the good sense of the representatives of those people, to be loyal to their clients and safeguard their interests in this supreme court of the nation. We are deciding their fate in their absence in this House.

When we allow the Provincial Governments to pick a pie from the private pocket of an individual citizen, we should see to it that it is obtained only willingly, and that every pie that we drawn from the pocket of a private individual must ultimately go back to him either in the shape of services rendered to that individual or in the shape of an enhanced sum returned to him. Today in India hundreds of taxes are being realised, and the people do not really get any substantial benefit out of these taxes, either in the shape of additional 'prosperity' which they are told to expect from Government or any other kind of service. Whatever little service the State renders here in India is a further charge on the people. For instance, there are the railways which is an amenity given to people, but then it is run on a commercial basis and people are to pay for it. The telegraphs, the Post Office, the canals and everything else which go as services, we make extra charges for them. The State renders no free service to the people except a few dozes of quinine mixtures mixed with water that the State gives free to some poor people. Otherwise even doctors charge their fees and treat the people on payment. So we see that the State is not actually rendering any free service except that we are giving our citizens a psychological satisfaction to enjoy in their belief that they are a free people. They do not know what is the value of freedom. State justifies taxation on the plea that it defends the borders against wars. Wars never come alone, and when a war comes, it brings an extra tax along.

Now I submit that the taxes we get from the private individuals do not go back to them. If the Provincial Governments are permitted to realize sales tax, it is for them to see that they also enhance the prospects of commerce and bring about general prosperity among those people who are engaged in commerce. Now, what service do they render to the shop-keepers and those persons who either purchase or sell ? They render no service to them. Have they created any new markets or given any facilities ? What for is this tax ? When various taxes were enumerated in the list of provincial subjects, it was considered that the sales tax was a sort of minor help to the provinces, for their revenues were static and there was no chance for raising them. The provinces mostly depended on their land revenue which is more or less fixed for a number of years. Therefore, with the increased activities of the provincial Governments it was thought better to give them some margin of extra revenue to balance their budgets.

Now, Sir, they got a little margin in the shape of this sales tax. As I see things, within a few years, the situation is totally changed. The sales tax is becoming a major source of revenue, even bigger than what their main sources of revenue used to be. In my province, previous to the war, the total revenue was hardly 13 crores or so; now, it is nearing 55 crores. These other taxes which the provinces have levied, over and above their main source of revenue are also taxes from the same people.

Now, Sir, the incidence of taxation is the heaviest in India. India had never faced even in times of war, such an incidence of taxation as it is bearing today. And, the Governments are rendering the least service in exchange for these taxes This House is the highest authority vested with all powers of Sovereignty; we are sitting as the Supreme Court to decide whether we can permit the provincial Governments to go on taxing the people without any ceiling limits, Because there is no ceiling limit on this sales tax, they can go on raising the tax and ultimately there may come a time when the people may not be in a position to give much, and our taxes in the Centre would consequently be adversely affected. If the provincial Governments go on raising their taxes at the present speed, the result would be that total paying capacity of the people would be exploited by provincial Governments and the Central Government would thereby suffer. My point is that if we do not fix a limit, the provincial Governments would go on taxing, and we would be doing sheer injustice to the people who are at our mercy and who will have no right to protest or withhold these taxes. They would only have to draw solace from the fact that they were after all being taxed by the persons for whom they had voted. This is "ballot box democracy," which will tell in that manner on the people. I therefore, submit, Sir, that a limit of six pies per Rupee which comes to Rs. 3-2-0 per cent. should be fixed so that the provinces may not enhance the rate of this tax.

Again, I want to fix a limit also from another point of view. What I say is that in spite of the budgets of the various provinces having been inflated too much they are not rendering more service to the people than what the old Governments used to do. The result is that though they are freely inflating their budgets with the help of this liberty of raising taxes, they are doing nothing to reduce their expenditure, there is no tendency in any province to reduce the expenditure. The expenses today are more than what they used to be during the times of war. I say war was an emergency and they had temporarily to raise the taxes. Sir, it was foreign rule then. But now it is the people's government. Even though war is finished, the provincial governments have not begun to reduce their expenditure. Most of their income is going towards revenue expenditure and no portion of it is devoted towards the capital expenditure which is meant to enrich the people. If the money was spent in capital investments, I could have understood. Very little of the revenue expenditure is going towards capital expenditure. Whenever any money is invested in capital expenditure, it is obtained by borrowing.

Therefore, Sir, they are not only depleting the resources of the provinces, but also encumbering the citizens. I therefore, submit if in this manner, the provinces are given full opportunity to go ,on encumbering the position of the citizens in the provinces, it will tell upon the prosperity of the country as a whole Therefore, while we are deciding between the citizens and the States, we must also define the limits to which the taxation of the provinces can go. With these words, I appeal, without any consideration to our party tables and prejudices, to the provincial Governments, that we, sitting as the judges of the nation, must do justice unimpaired, unprejudiced, fair and balanced to the citizens who are not here. They must be given full justice.

There are so many defects in the present system of sales tax. Now, in Delhi, there is no sales tax; in the United Provinces, there is a sales tax on motor cars, radios, on bicycles and other things. Whenever any citizen in Meerut wants a motor car or a bicycle, he does not go to the local shop there. The local agency suffers. He comes to Delhi. I see Dr. Ambedkar beckoning me to keep quite; he is using undue influence.

The Honourable Dr. B. R. Ambedkar : I have followed the point.

Shri Mahavir Tyagi : Have you followed it ? Have you also appreciated it ? Are you prepared to accommodate me ? You have got the delegates of the People behind you. Dr. Ambedkar, I can assure you, if you are just, if you recognise justice, you might become later on the Supreme Judge of India in your life, if you do justice to the citizen. I submit, Sir, this is the manner in which this tax is being levied. In one State there is a tax of two annas per Rupee; in another State there is a tax of two pies per Rupee. In one State in the sale is taken at one point only; in another State it is taken at so many points wherever there is a sale. Like the gamblers' den, whoever is playing, he has something to pay to the gamblers' pool. In this manner, the provinces are running after every sale. This is something which is tending to become a blind law.

I submit that this is a very serious matter. It would be better if Dr. Ambedkar would reconsider the whole article and make it a 'uniform tax' and put it in the hands of the Central Government. The best thing would have been for the Central Government to enact a law so that the provinces would have a uniform pattern of taxation and the tax would be realised at one single point and in relation to one single commodity. A commodity should not be taxed at every point whenever it is put up for sale. With these words, Sir, I hope the House, not caring for the mandates or labels that they might have received from their houses, will please do justice and speak freely and vote freely in the matter and guard the rights of the citizens.

Mr. President : There are some more amendments which relate to the article as it was originally proposed. I do not know if all the amendments arise; but there is one which certainly can be moved. Amendment No. 385, Mr. Ajit Prasad Jain.

Shri Amiyo Kumar Ghosh : (Bihar : General): I have got amendment No. 383, standing in my name.

Mr. President : Let me see first amendment No. 385.

(Amendment 385 was not moved).

Mr. President : Do you want to move amendment No. 383 ?

Shri Amiyo Kumar Ghosh : Yes, Sir.

Mr. President : Just show how it fits in with this now.

Shri Amiyo Kumar Ghosh : Mr. President, Sir, of course my amendment No. 383 was tabled against amendment No. 307, that is to say, to article 264-A as it originally stood but today another amendment to that amendment has been moved which does not change the original position in the least except that an explanation has been added to the previous article, to clear certain minor points. So it fits in with the amendment moved just now by Dr. Ambedkar. So I move my amendment:

"That in amendment No. 307 of List XIII (Second Week) clause (2) of the proposed new article 264A be deleted."

What I want by this amendment is this, that clause (2) which deals with inter-State trade and commerce and gives an exemption to such transactions from sales tax, should be deleted. As a matter of fact, my clear impression is that this Constitution though in form is Federal, is in essence a Unitary Constitution. In this Constitution all powers and all sources of finance have been taken away by the Centre and the provinces have been left without any resources of their own. As a matter of fact the Union has been so much over-loaded that it may break at its own weight. It is said that we have got provincial autonomy, I assert that the provincial autonomy we have under this Constitution is worse than what it was in 1935 Act. Coming to the question the only source of taxation which the provinces have in this Constitution is the sales tax. But that power has been taken away by this new article 264A to a great extent.

Now I will particularly speak with reference to the province of Bihar because I am not acquainted with the sales tax position prevailing in other provinces. So far as Bihar is concerned, I must emphatically assert that if this new article 264A is allowed to stand, the Province will lose immediately an income of more than 2 croes of rupees. In Bihar the income *per capita* and consequently its expenditure *per capita* is the lowest in the whole of India the reason being that hitherto its financial resources were inelastic. It has got fixed income in land revenue. In other provinces like U. P, Madras and Bombay the land revenue is a progressive one but in Bihar, due to Permanent Settlement, the income from this land is rigid, being something less than 2 crores.

Then there is another source of income from excise, but if prohibition is to be carried out, the province in going to lose $5^1/2$ crores out of its present revenue and there is no other source of revenue left to Bihar except sales tax to implement the loss that the province will sustain by the introduction of prohibition. This sales tax was the only elastic taxation left in the hands of the States to increase their revenue but that too is now taken away. Bihar has great resources but in spite of her holding rich position, she is one of the poorest province in India. Today 75 percent. of the coal and iron consumption of India is supplied by Bihar. Besides these, there are other commodities like sugar, cement, chillies, tobacco etc. which go out of Bihar; but if this provision is allowed to stand, the result will be that Bihar will not be entitled to any tax on these commodities at all, and will not derive any benefit from her own wealth. This article also closes the door of future implementation of the income for all times.

It is therefore only fair that Bihar which produced iron, coal etc. with the labour of the province and has to spend lots of money over maintaining law and order in those industrial areas--should be allowed to have an income out of them. It is understandable if some such clause is put in to the effect that a uniform taxation will be levied on all such commodities that go out of any province and a position of such taxation will go to the province which produce them and the balance to the province where it is consumed. Under the present article 264A all the coal, iron and other commodities will leave the boundaries of Bihar, the Province will have no hand to tax them at all a position which is very unfair to the Province. This will tell very heavily upon the financial resources of the province.

The State Governments are primarily responsible to the people and morally obliged to carry out so many social welfare programmes. They are to maintain law and order which requires huge expenditure. They are to eradicate want, ignorance, disease and unemployment. How to discharge these obligations? All these works require spending and doing. But where from to spend if there is no income ?

So, I submit that this is a clause which falls very heavily upon all provinces, particularly Bihar, and I would request the Drafting Committee to reconsider the subject over again. Everyday Provinces are being saddled with new responsibilities and if they have to discharge them, it will require large money more money. The situation in the country is such that expenses on police and other administrative matters are mounting. Wherefrom can these be met if we have no financial resources of our own ?

So, I oppose this Article 264A and I submit that so far as inter-State trade and commerce are concerned, they should not be exempted from sales tax and altogether deprive a province from such an important source of income. The benefit of this article goes wholly to the big businessmen who always evade paying taxes but is of no relief to the petty-businessmen and the consumers. If the power of imposing sales tax is abrogated in such a manner then it is better to liquidate the States altogether. If you want to maintain the States, you should not reduce them to the position of orphans with a begging bowl in hand approaching the Union Government for money and help. They must be given to stand on their own legs and must be allowed some resources wherefrom they can implement their various plans into action. A healthy State means a strong Union.

Then, Sir, in this new article, it is said--

> "No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place--
>
> (b) in the course of the import of the goods into, or export of the goods out of the territory of India.

Now, this gives a great loop-hole to the businessmen to escape taxation. In all cases of export, there are various transactions before the, commodity is actually exported from the country. But under this clause, all these transactions--the intermediate transactions which take place--are exempted from sales-tax. I could have understood the position if it was that at the point of export, that is to say, the last transaction, where from it is actually exported, the sales-tax will not be realisable at that point. But this clause as it stands means that all transactions that take place in the course of sending, the goods outside the territory of India will be exempted from sales-tax. Now, how can you check the nature of these transactions ? A buys a commodity saying that he will export it. But he does not export it, but, sells to B, and B purchases it saying that he will export it, and in this manner the commodity passes on from one hand to other and from one province to another without payment of any tax, and it may be that in the end it is not exported at all. How can you check up this process ? There will be a lot of difficulty and confusion, if this clause is passed as it stands. So my humble submission is that there, export and import should be clearly defined, and we must say that export means the last transaction and import means the first transaction, and only at the point of these two transactions commodities will be exempted from sales tax, and at no other point.

With these words, Sir, I commend my amendment for the acceptance of the House.

Mr. President : Dr. Kunzru, do you want to move an amendment to this article ?

Pandit Hirday Nath Kunzru (United Provinces : General) Yes, Sir; but my amendment is being typed and I hope it will be ready very soon. I hope you will kindly give me a little time to........

Mr. President : Well, you may move it later and in the meantime we may have some discussion.

Shri Jagat Narain Lal.

Shri Jagat Narain Lal : (Bihar : General) : Sir, I have tabled no amendment, nor do I purpose to press for the support of any amendment that has been moved here. But all the same, I do want to make a suggestion to the Mover of this article 264A, to take into consideration certain views which are strongly held and which are being felt by a fairly large section of the House, for reasons many of which have already been expressed here.

There is no disagreement on the question of not allowing the States to tax imports or exports as such. But it has been already said by the some previous Members, and I have got to repeat it, that unless the words are properly clarified, the words "in the course of" which occur in sub-clause (b) of clause (1) are bound to create a good deal of confusion. It has been pointed out that the Supreme Court of the U.S.A. had arrived at certain decisions with regard to this question which have clarified the position. We want for various reasons that these words should go. I would suggest that they be replaced by the words "at the initial stage of import into" and "at the ultimate stage of export out of India". I suggest that these words that I have suggested may be kept, for the simple reason, firstly, that that will eliminate confusion, and secondly, the difficulties which would be felt in taxing the goods which pass from hand to hand until a part of them is exported out of this country, would be eliminated. Otherwise, there will be a good deal of confusion and a good deal of difficulty.

Some of the previous speakers have already pointed out the difficulties which will be felt by Provinces like Bihar, and C.P. if the words "for the purpose of consumption in that State" in sub-clause (1) are retained, and I do not want to repeat those arguments. But I do want to point out that in the absence of certain very important sources of revenue which we do want, on account of the programmes which the Congress has chalked out-say for prohibition and so on-and sales tax is a very important source of revenue and an expanding source of revenue. While the Centre is in no way hit and is in no way affected, there is no point in saying that the Provinces where big manufactures go on, and very large-scale production goes on, like iron, sugar, coal, cement and so on should not tax the sale of those commodities in or outside the province. So I want that the words "for the purpose of consumption in that State" should go out. Otherwise, the proviso which has been provided to sub-clause (2) where it is said that they may continue to be levied for one year, should go, and they should continue to be levied as before.

These are the few suggestions which I want to make to the Mover of this article. I do not want it to be pressed in the form of an amendment, but I leave it to the good sense of the Mover. There is neither the desire that the Centre should be crippled, that the Federal Government should be crippled by being deprived of taxes or the power to tax, nor should there be any desire on the part of the Federal Government--and I hope there is none--that the States should be crippled. Both should work harmoniously. Both are inter-related, as on the safety and welfare of the Federal Government and of the States, the safety and welfare of the entire country rests. Therefore, Sir, I appeal to the Mover of this article to take into consideration these two suggestions and to make such alterations or modifications as may be acceptable to the entire House and there may be no feeling of resentment or the feeling that the difficulties of the States have not been fully taken into consideration. I do not want to add more to what has already been said.

Pandit Hirday Nath Kunzru : Mr. President, Sir, I beg to move:--

"That after clause (1) of article 264A, the following new clauses be inserted:--

> '(1a). No law of a State shall impose or authorise the imposition of a tax on the sale or purchase of goods within a State except where such sale or purchase is made to or by a consumer.
>
> (1b) Parliament may by law fix the maximum rate at which a sale tax may be levied by a State on the sale or purchase of goods'."

Sir, the amendment placed before the House by Dr. Ambedkar prevents a State from levying sales taxes on imports and exports. It thus protects the interests of the Central Government. The amendment also prevents the State from imposing sales taxes on goods bought or purchased in the course of inter-State trading. It thus protects also the interests of the State in which the goods are ultimately to be sold. But except in a limited way, it does not protect the interests of the consumers. Clause (3) of the amendment moved by Dr. Ambedkar says, that no tax on the sale or purchase of any essential goods declared by the Central Government to be essential for the life of the community, shall be levied by a Legislature, unless the law imposing the tax has been reserved for the consideration of the President and has received his assent.

This amendment protects the interests of the consumers too, but only in respect of those articles that are declared by the Central Government to be essential to the life of the community. It will depend on the Central Government what goods it will include in this category from time to time. It is therefore desirable that something more should be done to protect the interests of the consumer.

In many provinces, Sir, the sales taxes are levied only when the goods pass to the consumer. But it is not so in all provinces, nor is there a limit to the rate of the tax. I think it is desirable in the interests of the public at large that the Constitution should take account of these points.

The first part of my amendment requires that a tax on the sale or purchase of goods should be levied only when the sale or purchase is made to or by a consumer. The second part of my amendment authorises Parliament to fix the maximum rate at which such a tax may be levied. It may be said that the general economic condition of the people will impose a limit on the power of the Government of any State to fix the rate of the sales tax. It is very difficult in the first place to determine what the economic rate should be. In the second place, if the rate is to be determined only by experience, that is by following the method of trial and error, the proceeds of a tax may be large in the case of a particular commodity, but, on the other hand the sale of some other commodity might go down. The matter cannot therefore be left to be judged entirely by the Finance Minister of a State. It is important enough to require to be dealt with at this stage.

In some of the countries, there are multiple-point sales taxes. Perhaps the economic condition of those countries permits of the imposition of such taxes. But, in India, particularly at the present time when prices are high, obviously it is undesirable that each of the processes that has to be gone through before the manufactured goods reach the hands of a consumer should be subjected to the payment of a tax on the sale or purchase of goods. I think it will be generally agreed that it is desirable that some restriction should be placed on the power of a State in this respect. And even where such a restriction has been imposed, it is desirable that the Parliament should have the power to prescribe the upper limit of the tax.

Several speakers have complained of the burdensome character of the sales taxes that have to be paid at present. That shows that the Governments concerned have not been able to adjust the rates in such a way as to create a sense of contentment among the consumers. Something more is, therefore, obviously required to be done. All that need be done in this connection is that Parliament should be given the power of fixing the upper limit where this may be necessary. It may not do so in every case. It may not do so in the case of luxury goods; but it may have to do so in the case of goods which, though not absolutely necessary for the satisfaction of our primary needs, are nevertheless in such general demand that it will be a hardship to the people to go without them.

Sir, I think that what I have said sufficiently explains the purpose of my amendment and shows that the amendment is such as to meet with the approval of the House. As I have already said, the amendment placed by Dr. Ambedkar before the House fully protects the interests of the Central Government and the interests of the State in which the goods purchased in another State are to be sold. But it only protects partially the interests of the consumer. My amendment seeks only to give as full protection to the consumer as Dr. Ambedkar's amendment has given to the interests of the Central Government and those of the State in which the goods purchased are ultimately to be sold.

Shri B. M. Gupte (Bombay : General) : Mr. President, Sir, I am sorry I have to express my dissatisfaction at clause (2) as it stands just now. My grievance is that it does not take into adequate account the difficulties of the provincial governments. Ours is a welfare State and it is bound to be more and more so as time rolls on, but most of the welfare work falls to the share of the provinces and the local bodies. The lower we go down the units of administration, the closer they come into contact with the daily needs of the people, and even today the Provincial Governments are hard put to it to meet their responsibilities with regard to what are called nation- building activities. And in the case of some of the provinces their difficulties are accentuated by the merger of States.

Take, for instance, the case of the province to which I have the honour to belong, *viz.*, Bombay. Today Bombay is facing the prospect of heavy deficits in its budgets for some years to come at least; and at such a time, instead of affording more sources of revenue to them we are clamping restrictions on the sources already available to them. Now, the sales tax is the most important and perhaps the most elastic source of revenue, and if we affect the income from that source, how will they meet their deficits ? The provincial governments proposed that the provinces and the Centre should sit round a table, take stock of the whole situation and arrive at some arrangement for a more equitable distribution of the financial resources of the country and if there was not enough to go round, for a more equitable sharing of the financial difficulties.

The report of the Expert Finance Committee appointed by you, Sir, was an admirable opportunity for that purpose; but the Drafting Committee shelved the consideration of that report, maintained the *status quo* and provided for the appointment of a Finance Commission within two years of the commencement of the

Constitution. There may be very good reason for that. I do not challenge that, but my point is that those good reasons should apply equally to the imposition of these restrictions. If the financial adjustment could wait, then certainly the imposition of these restrictions also could wait. After all, the question is not whether these restrictions are proper--they may be proper--but whether we are justified in imposing these restrictions without making any compensatory sources available to the provinces. In the absence of such sources of revenue, what will the provinces do ? They will always look to the Centre for grants and we will be making the provincial Finance Ministers a crowd of unfortunate beggars on the doorsteps of the Central Finance Minister. I do not think this is a very desirable position.

I am glad one concession is made in the provision. That concession is that the present arrangement might continue up to the 31st March 1951. My point is that it would have been better if this period had been extended up to the time when the First Finance Commission will have made the necessary adjustments in the financial relations between the provinces and the Centre. We could certainly have waited till then. That would be only three years instead of one and a half years, which is a very small matter. Otherwise, I feet that there is bound to be a dislocation in the financial structure of the provinces. It must be remembered that the Centre cannot remain unaffected by the effects of that dislocation.

After all the Centre and the Provinces are parts of one integrated whole. Take, for instance, the case of sugar at present. The Central Government passed a freezing order at Delhi, but the looting and shooting took place in Calcutta and Bombay. Let us therefore remember that any discontent arising out of the financial difficulties of the provinces would ultimately detract from the strength of the Centre, however strong that Centre may be. And as I have once said, a strong Centre cannot be sustained on weak units.

Shri Prabhu Dayal Himatsingka (West Bengal : General) : Sir, I beg to support the amendment moved by Dr. Ambedkar for the incorporation of article 264A. The article is framed to meet a number of difficulties and in the circumstances appears to be the best. I personally would have liked if the Centre had been authorised to impose the tax, collect it at the source,--at the import or the production centres,--and distribute the collections to the provinces. That would have reduced the number of points where expenditure has to be incurred in keeping books of account, but as the provincial governments did not agree to the Centre imposing the tax and then distributing it, the article as now proposed is the best. It seeks to do away with certain anomalies, which exist in the legislation of certain provinces where tax is imposed on sale, even though the article is delivered or consumed in another province. Similarly, it will do away with the tax on certain articles which are produced in one province but are sent to other provinces, that is to say in the course of inter-State transactions. At the present moment, Sir, I know of two cases where taxes have been imposed in Bengal to the extent of 25 lakhs of rupees on a mill which is situated in Orissa. Even though the goods were sold in provinces other than Bengal, still Bengal imposed an amount of twenty-five lakhs of rupees as taxes, simply because the company's head quarters happens, to be in Bengal. The present section will do away and remove such taxes being levied in such cases where the sales take place outside the province.

So far as the suggestion made by Pandit Hirday Nath Kunzru is concerned Bengal has met the difficulty already because it has introduced what is called registered dealers. When a sale takes place between two registered dealers, no sales tax is realised. When a sale takes place to a person who is not a registered dealer, then and then only is the tax realised; and therefore it is presumed that a man who is not a registered dealer is taking it for purposes of consumption. So, Bengal has met this difficulty by making registration necessary in the cage of those Who do not want to pay any taxes on their purchases.

I support the article as moved by Dr. Ambedkar. Certain apprehensions have been expressed by different provinces, but I do not see that there is any justification for the same. They ought to Know that they will be safe because there are a number of articles produced in each province which are exported for consumption in other provinces. Similarly, they ought to know that there are a number of things which come to the different provinces for consumption. Take, for instance, the case of cloth from Bombay. When cloth goes out from Bombay, they are prevented from imposing any sales tax, and Bihar which is importing a lot of cloth from Bombay will be able to realise the tax from such cloth. Therefore, ultimately, they will adjust in such a manner that all the provinces will practically get what they have been getting now. The thing will adjust itself in the course of a year or two, and none of the provinces will stand to lose anything but at the same time, the whole procedure will be simplified. I therefore support the article as moved by Dr. Ambedkar.

Shri Gopal Narain (United Provinces : General) : Mr. President, Sir, I have risen to support the amendment of my Friend Shri Mahavir Tyagi. He has struck the right note. In levying a tax or in introducing a measure of taxation the first consideration should be whether it is in the interests of the people. We have to see when we introduce a tax that it will be spent in the interests of the people, the masses. It is argued that we have introduced prohibition and so this new tax is required to make up the deficit in that direction. In my own Province only in eight districts we have introduced prohibition and that too is not successful. This is not prohibition in any sense.

Why do we need such taxation ? I may say, Sir, that it is due to the top-heavy Expenditure that we are introducing new measures of taxation. We are not economising in that direction in the Centre and in the Provinces. We find that Economy Committees have been established and have submitted their reports. In my own Province they have submitted a report that we should lessen our expenditure by Rs. 6 crores, and out of that six crores I found that four crores are from the capital expenditure for roads and buildings and two crores from other directions. This is not sufficient. Before levying this new taxation we should have an economy drive in the Centre and in the Provinces. We are not doing any good to the masses but are burdening them with taxation. My Friend Mr. Tyagi has drawn the attention of the House in this very direction. He has said that we must see if this taxation will do any good to the people at large. I think they are being burdened unnecessarily on account of the huge expenditure in the administration of the Government. We should curtail it first and then we should think of introducing this taxation.

I will say one thing more. As for the amendment of Dr. Ambedkar, there is some discrimination in it. Some provinces will suffer by that. The U.P., Bihar and the C.P. will be the greatest sufferers by that amendment. I think there should be no discrimination as between Province and Province. All the Provinces, if they have to suffer, should suffer equally. It may not be beneficial to one Province while the other Province have to suffer. I would appeal to Dr. Ambedkar to accept the amendment of

Mr. Tyagi.

With these few words, I support the amendment moved by Shri Mahavir Tyagi.

Shri Yudhisthir Misra (Orissa States) : Sir, the question be now put.

Several Honourable Members : No, no.

Shri Mahavir Tyagi : You kindly exercise your discretion, Sir, the matter is very important.

Mr. President : You have already spoken and you will have, no chance again. I have to put the closure motion to vote.

The question is:

"That the question be now put."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar : Sir, there are three amendments before the House. The first is the amendment of my Friend Prof. Shibban Lal Saxena. According to his amendment, what he proposes is that the power practically to levy sales tax should be with the Parliament. There are two fundamental objections to this proposal. In the first place, this matter was canvassed at various times between the Provincial Premiers and the Finance Department of the Government of India in which the proposal was made that in order to remove the difficulties that arise in the levy of the sales tax it would be better if the tax was levied and collected by the Centre and distributed among the Provinces either according to some accepted principles or on the basis of a report made by some Commission. Fortunately or unfortunately, the Provincial Premiers were to a man opposed to this principle and I think, Sir, that their decision was right from my point of view.

Although I am prepared to say that the financial system which has been laid down in the scheme of the Draft Constitution is better than any other financial system that I know of. I think it must be said that it suffers from one defect. That defect is that the Provinces are very largely dependent for their resources upon the grants made to them by the Centre. As well as know, one of the methods by which a responsible Government works in the power vested in the Legislature to throw out a Money Bill. Under the scheme that we have proposed; a Money Bill in the Province must be of a very meagre sort. The taxes that they could directly levy are of a very minor character and the Legislature may not be in a position to use this usual method of recording its "no confidence" in the Government by refusing taxes. I think, therefore, that while a large number of resources on which the Provinces depend have been concentrated in the Centre, it is from the point of view of constitutional government desirable at least to leave one important source of revenue with the Provinces. Therefore, I think that the proposal to leave the sales tax in the hands of the Provinces, from that point of view, is a very Justifiable thing. That being so, I think the amendment of my Friend Prof. Shibban Lal Saxena falls to the ground.

With regard to the amendment of my Friend Mr. Tyagi, I would like to say that I am in great sympathy with what he has said. There is no doubt about it that the sales tax when it began in 1937 was an insignificant source of revenue I have examined the figures so far as Bombay and Madras are concerned. The tax in the year 1937 in Madras was somewhere about Rs. 2.35 crores. Today it is very nearly Rs. 14 crores. With regard to Bombay the same is the situation, namely, that the tax about Rs. 3.5 crores in 1937 and today it is somewhere in the neighbourhood of Rs. 14 crores. This must be admitted as a very enormous increase and I do not think that it is desirable to play with the sales tax for the purpose of raising revenue for the simple reason that a taxation system can be altered on the basis, so far as I know, of two principles. One is the largest equity between the different classes. If one class is taxed more than another class it is justifiable to employ the taxation system to equalise the burden.

The second important principle which, I think, is accepted all over the world is that no taxation system should be so manipulated as to lower the standard of living of the people, and I have not the slightest doubt in my mind that the sales tax has a very intimate connection with the standard of living of the people of the province. But, with all the sympathy that I have with my friend, I again find that if his amendment was accepted it would mean that the power of the provinces to levy the sales tax would not be free and unfettered. It would be subject to a ceiling fixed by Parliament. It seems to me that if we permit the sales tax to be levied by the provinces, then the provinces must be free to adjust the rate of the sales tax to the changing situation of the province, and, therefore, a ceiling from the Centre would be a great handicap in the working of the sales tax. I have no doubt that my Friend Mr. Tyagi, if he goes into the Provincial Legislature, will carry his ideas through by telling the Provincial Governments that the sales tax has an important effect on the standard of living of the people, and therefore, they ought to be very careful as to where they fix the pitch.

Sri Mahavir Tyagi : Have I become so inconvenient to you?

The Honourable Dr. B. R. Ambedkar : Not at all. If I were a Premier, I would have taken the same attitude as you have taken.

Now, coming to the amendment of my honourable Friend Pandit Kunzru, I am inclined to think that the purpose of his amendment is practically carried out in the explanation to sub-clause (1) where also we have emphasised the fact that the sales tax in its fundamental character must be a tax on consumption and I do not think that his amendment is going to improve matters very much.

There is only one point, I think, about which I should like to say a word. There after I know, some friends who do not like the phraseology in sub-clause (1), in so far as it applies, "in the course of export and in the course of import". Now, the Drafting Committee has spent a great deal of time in order to choose the exact phraseology., So far as they are concerned, they are satisfied that the phraseology is as good as could be invented. But I am prepared to say that the Drafting Committee will further examine this particular phraseology in order to see whether some other phraseology could not be substituted, so as to remove the point of criticism which has been levelled against this part of the article. Sir, I hope the House will now accept the amendment.

Mr. President : Before putting the proposition moved by Dr. Ambedkar to vote, I desire to say a few words, particularly because I see in front of me the Honourable the Finance Minister. I do not wish to say anything either in support of or in opposition to the article which has been moved, but I desire to point out that there is a considerable feeling in the provinces that their sources of revenue have been curtailed a great deal, and also, particularly among the provinces. which are poor, that the distribution of the income-tax is not such as to give them satisfaction. I desire to ask the Finance Minister to bear this in mind when he comes to consider the question of the distribution of the income-tax, so that it may not be said that the policy of the Government of India is such as to give more to those who have much and to take away the little from those who have little.

I shall now put the various amendments to vote.

The question is:

"That in amendment No. 307 of List XIII (Second Week), clause (2) of the proposed new article 264A be deleted".

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 425, in the Explanation to clause (1) of the proposed article 264A, the words 'for the purpose of consumption in that State' be deleted, and the following new clause be added at the end :--

> '(4) The Union Parliament shall have power to amend the laws in respect of taxes on sale or purchase of goods with a view to bring uniformity in the laws made by the various States of the Union or in the interests of the Union as a whole, provided that no Bill for such amendment shall be moved in Parliament without the prior permission of the President, and the President before giving such permission shall obtain the views of the Governments of the various States concerned'."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 425 of List XVIII after clause (1) of article 264A, the following new proviso be inserted --

'Provided that the sales tax shall not exceed Rs. 3/2/- per cent of the sale price.' "

The amendment was negatived.

Mr. President : The question is:

"That after clause (1) of article 264, the following new clauses be inserted :--

> '(1a) No law of a State shall impose or authorise the imposition of a tax on the sale or purchase of goods within a State except where such sale or purchase is made to or by a consumer.
>
> (1b) Parliament may, by law, fix the maximum rate at which a sale tax may be levied by a State on the sale or purchase of goods.' "

The amendment was negatived.

Mr. President : Then I put the original proposition moved by Dr. Ambedkar. The question is:

"That in amendment No. 307 of List XIII (Second Week), for the proposed article 264A, the following be substituted--

Restrictions as to imposition of tax on the sale of purchase of goods.

'264-A. (1) No law of a State shall impose or authorise the imposition of, a tax on the sale or purchaseof goods where such sale or purchase takes place--

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

Explanation.--For the purposes of sub-clause (a) of this clause a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State.

(2) Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise, the imposition of, a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce.

Provided that the President may by order direct that any tax on the sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the commencement of this Constitution shall, notwithstanding that the imposition of such tax is contrary to the provisions of this clause, continue to be levied until the thirty-first day of March, 1951.

(3) No law made by the Legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent.' "

The amendment was adopted.

Article 264-A, as amended, was added to the Constitution.

The Honourable Dr. B. R. Ambedkar : I would like you to take up article 280-A.

Pandit Hirday Nath Kunzru : I strongly object to that article being taken tip today. I received the amendment only this morning. The matter with which it deals is a very important one and we should be allowed some time to consider it and to put forward amendments, if we want to do so.

Mr. Naziruddin Ahmad : In addition, this article proposes to introduce a new kind of emergency unknown in any system.

The Honourable Dr. B. R. Ambedkar : Sir, I hope you will not allow these technicalities to stand in the way of the business of the House. Now, even if the honourable Member got the amendment at nine o'clock, from nine to twelve he had time. I do not think there is anything obscure in this amendment. A man of much less intelligence than my honourable Friend Pandit Kunzru could understand it on first reading. I have no doubt about it.

Pandit Hirday Nath Kunzru : Sir, it is a very important matter and Dr. Ambedkar's impatience and rudeness should not be allowed to override the rights of the Members-rights which they clearly enjoy under the rules. I demand, Sir, that we should be given more time to consider this amendment. notwithstanding the obvious desire of Dr. Ambedkar to rush the amendment through the House.

Mr. President : I would suggest that we go in the order in which it is on the agenda and take up article 274DD.

The Honourable Dr. B. R. Ambedkar : I am prepared to do that, Sir, but I must say that we are so much pressed for time that I do not think that these technicalities ought to be given more importance than they deserve.

Pandit Hirday Nath Kunzru : It is a pity that the Chairman of the Drafting Committee, who by virtue of his position may be' supposed to appreciate the rights of others, makes light of them.

Article 274-DD

The Honourable Dr. B. R. Ambedkar : Sir, I move

"That with reference to amendment No. 400 of List XVII (Second Week), after article 274D, the following article be inserted :--

Power of certain States in Part III of the First schedule in impose restrictions on trade and commerce by the levy of certain taxes and duties on the import of goods into or the export of goods from such States.

'274DD. Notwithstanding anything contained in the foregoing provisions of this Part or in any other provisions of this Constitution, any State which before the commencement of this Constitution was levying any tax or duty on the import of goods into the State from other States or on the export of goods from the State to other States may, if an agreement in that behalf has been entered into between the Government of India and the Government of that State, continue to levy and collect such tax or duty subject to the terms of such agreement and for such period not exceeding ten years from the commencement of this Constitution as may be specified in the agreement :

Provided that the President may at any time after the expiration of five years from such commencement terminate or modify any such agreement if, after consideration of the report of the Finance Commission constituted under article 260 of this Constitution, he thinks it necessary to do so.

Sir, this new article is a mere consequential amendment to article 258, which the House has already accepted, whereby the power is given to the Government of India to enter into agreement with States in Part III for the purposes of making certain financial adjustments during a temporary period.

Prof. Shibban Lal Saksena : Sir, I move:

That in amendment No. 428, in the proviso to the proposed article 274DD, for the word 'President', the word 'Parliament' be substituted, and for the words 'he thinks', the words 'it thinks' he substituted."

I only want that in matters of financial agreement with the States the Parliament should be the authority and not the President.

Shri T. T. Krishnamachari : (Madras: General): Sir, with regard to the only objection that has been put forward by Prof. Shibban Lal Saksena I would like to say that we have followed the scheme of article 258 already passed by the House, where it is the President that enters into an agreement and not the Parliament. Actually if we bring in Parliament for the purpose of making an agreement with the ruler of a State or the executive of a State, we are diminishing the status of Parliament which has supremacy over the States. Parliament cannot be a party to an agreement with the States: it is a matter of executive arrangement and the arrangement follows the scheme recommended by the V. T. Krishnamanhari Committee Report. That Committee's Report in its scheme for financial integration has practically done away with the system of land customs levied in various States, Only two exceptions have been made and one Singular exception happens to be Rajasthan where on an examination of the internal financial structure of the Union they have found that the Government of India will have to pay an enormous amount by way of subvention or a large amount of money by way of a grant if the State is to balance its budget. Therefore, they have for a period of five ears to start with--perhaps it may be ten years in the ultimate--allowed them to levy land customs. This is a matter between one executive authority and another and if Mr. Saksena's amendment is accepted it will be taking away from the supreme position that the Parliament would enjoy in relation not merely to the executive at the Centre but also in relation to the executive of the States as well. This is a transitory provision and follows the scheme that has been recommended by a Committee which has gone thoroughly into the scheme of State finances and has prescribed ways and means by which complete integration can be secured at the earliest possible moment. I do feel that no possible objection can be taken which can be sustained with respect to the article in question.

The Honourable Shri K. Santhanam (Madras: General): Sir, I am glad that the draft of this article has been considerably improved and I certainly approve of the principle and the objective of the article. But there is one point which has to be examined in connection with this. It says: "any State which before the commencement of this Constitution was levying any tax or duty on the import of goods into the State from other States or on the export of goods from the State to other States". Suppose some articles come to Bombay port and go straight to Rajasthan and there they are liable to land customs. Will it come under the definition of import of goods from other States into Rajasthan? It will be from outside India into Rajasthan. I think the present agreements include land customs even on such articles. Therefore I do not know if the words "to other States" and similarly "from other States" are necessary. They seem to be wholly unnecessary. We are only concerned with land customs on goods coming into the State or going out of the State. Where they go or where they come from, I do not think, are matters of importance so far as this particular object is concerned and as every thing is defined meticulously in the actual agreement I do not think we should put in words which are likely to give merchants room for evasion. Because things come from Bombay they will argue that they do not come from any State in India and that they come from outside and therefore they ought not to be assessable to land customs under the agreement. I want the Drafting Committee to look into the point and see they do no give any loophole for evasion. I hope I have made myself clear. My objection is to the words "from other States" and "to other States", which are wholly unnecessary for the purpose of this clause and may be deleted and thereby close one loophole for litigation and evasion.

Shri T. T. Krishnamachari : It takes into account existing States where they do levy customs duty on goods that come into the States, whether they are goods from outside or inside and it is merely........

The Honourable Shri K. Santhanam : This clause will mean that if applies to goods coming from some State of India into another State and if the goods come from outside and enter a State this clause will not apply and therefore the State concerned will not be able to levy land customs on them. It is not intended to prevent the State from levying land customs and therefore this point may be looked into.

Shri T. T. Krishnamachari : After all it is only an enabling agreement.

The Honourable Shri K. Santhanam : It is limited by the clause of the Constitution. If the clause prevents the imposition of a duty then no agreement can prevail against the clause. That is why I suggest that we should widen the clause and leave the agreement to operate.

The Honourable Dr. B. R. Ambedkar : We will look into it.

Shri Raj Bahadur (United State of Matsya): I have sought this opportunity, to take a few minutes of this House while this article is under consideration to give vent to the feeling of the common people in the States' Unions about these customs, duties and taxation. As a matter of fact, ever since political awakening dawned upon the people of the Indian States customs taxes have been a particular target of political opposition. It was not without reason that the people of the Indian States and their movements were set against the imposition of customs duties on both imports and exports. It was because of a particular feeling amongst the people that this opposition was there. We have felt all through that all our trade, our industries have been crippled because of these Customs Duties. Even today we are not going to be benefited by it. Somehow or other, because these States were not viable units and they had to balance their budget, the customs taxation was resorted to. Apart from that it was also supposed to be a part of the sovereign rights of the States. But so far as the interests of the people were concerned, they were not served by the imposition of these customs duties.

Even when this article is being retained here in this Constitution. I may at once give expression to my feeling and to the feeling of the large majority of the people in the Indian States that they are 'not at all happy about these customs duties being imposed in their States. As a matter of fact even the exports of buffaloes, bullocks, camels and donkeys are not being spared from these customs duties. In Rajasthan if you want to export a donkey, you will have to pay Rs. 7 per donkey. If you want to export a bullock you will have to pay Rs. 15 and in the case of a camel Rs. 25. The extra or surplus cattle that we have got we cannot easily export. Even the donkeys that we have got cannot be exported unless something is paid as customs duty on them. As far as cottage and, other industries and trades are concerned, they are crippled by the imposition of these customs duties.

I would, therefore, urge, while this article is under discussion that the Centre should come to our help. We do not want these customs duties to continue, In view of the fact that our province is a deficit province and the standards are very low, the sooner these customs duties and the Customs Department are done away with, the better for us. Even today the inter-State commerce and trade is being affected by such restrictions. Our trade with other provinces is obviously much more affected. The price of the ordinary consumer goods that we want in our province is higher than if obtains in other provinces on account of the customs duties levied on such goods. All these considerations are there and the common man in the street or in the villages feels the pinch of this tax in his every day life. With these words, Sir, I would request the leaders and the Central Government to consider this point and come to the aid of our new Union, so that we may be rid of this scourge as early as practicable.

Mr. President : The question is:

"That in amendment No. 428, in the proviso to the proposed article 274DD, for the word 'President', the word 'Parliament' be substituted, and for the words 'he thinks'. the words 'it thinks' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That with reference to amendment No. 400 of List XVII (Second Week), after article 274D, the following article be inserted:--

Power of certain States in Part III of the First Schedule to impose restrictions on trade and commerce by the levy of certain taxes and duties on the import of goods into or the export of goods from such States.

274DD. Notwithstanding anything contained in the foregoing provision of this Part or in any other provisions of this Constitution, any State which before the commencement of this Constitution was levying any tax or duty on the import of goods into the State from other States or on the export goods from the State to other States may if an agreement in that behalf has been entered into between the Government of India and the Government of that State, continue to levy and collect such tax or duty subject to the terms of such agreement and for such period not exceeding ten years from the commencement of this Constitution as may be specified in the agreement:

Provided that the President may at any time after the expiration of five years from such commencement terminate or modify any such agreement if, after consideration of the report of the Finance Commission constituted under article 260 of this Constitution, he thinks it necessary to do so.' "

The amendment was adopted.

Mr. President : The question is:

That proposed article 274DD stand part of the Constitution."

The motion was adopted.

Article 274DD was added to the Constitution.

The Honourable Dr. B. R. Ambedkar : If my honourable Friend Pandit Kunzru has now no objection we may proceed with the new article 280A. He has had another half an hour.

Mr. President : I think we had better take it up a little later.

Article 302AA

Shri T. T. Krishnamachari : Sir, I move:

"That after article 302A, the following article be inserted:--

"Bar of jurisdiction of courts with respect to certain treaties, agreements, etc.

302-AA. (1) Notwithstanding anything contained in this Constitution and subject to the provisions of article 119 thereof, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which was entered into by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after the date of commencement of this Constitution, or in any dispute in respect of any right accruing under any of the provisions of this Constitution relating to any such treaty, agreement, covenant engagement, *sanad* or other similar instrument.

(2) In this article--

(a) 'Indian State' means any territory recognised by His Majesty or the Government of the Dominion of India as being such a State; and

(b) 'Ruler' includes, the Prince, Chief or other person recognised by His Majesty or the Government of the Dominion of India as the Ruler of any Indian State.' "

Sir, so far as the article itself is concerned, it is self- explanatory. The idea is to bar the jurisdiction of the courts including the Supreme Court in regard to adjudicating in respect of any disputes that might arise out of any treaty agreement, covenant, engagement, *sanad* or other similar instruments that might have been entered into by the Government of the Dominion of India or by any predecessor Government........

An Honourable Member : Who will decide?

Shri T. T. Krishnamachari : The idea is that the court shall not decide in this particular matter. It is subject only to the provisions of article 119 by which the President may refer the matter to the Supreme Court and ask for its opinion and the Supreme Court would be bound to communicate its opinion to the President on any matter so referred by him. The House will also remember that there are a few articles in the Constitution specifically, 302A and 267A where there are references to these agreements, covenants, *sanads,* etc. and even these are precluded from adjudication by any court. The House will recognize that it is very necessary that matters like these should not be made a matter of dispute that goes before a court and one which would well nigh probably upset certain arrangements that have been recommended and agreed to by the Government of India in determining the relation between the rulers of States and the Government of India in the transitory period. After the Constitution is passed, the position will be clear. Practically all the States have come within the scope of Part VIA and they will be governed by the provisions of this Constitution and, excepting so far as certain commitments are positively mentioned in the Constitution, and as I said the two articles 267A and 302A, the covenants will by and large not affect the working of the Constitution; and it is therefore necessary in view of the vast powers that have been conceded in this Constitution to the judiciary that anything that has occurred before the passing of this Constitution and which might incidentally be operateable after the passing of the Constitution must not be a subject-matter of a dispute in a court of law. I think that Members of this House will understand that it is a very necessary provision so as to save unnecessary disputes by people who might feel that they have been affected or injured and who would rush to a court to make the court recognize such rights and other similar matters which have been practically extinguished by the provisions of this Constitution excepting in so far as certain articles of the Constitution preserve them. Sir, I hope the House will pass the article without any demur.

(Amendment 403 was not moved.)

Mr. President : There is no amendment to this. Does any Member wish to say anything about this article? I will put this straightaway to vote.

The question is :

"That after article 302A, the following article be inserted:--

Bar of jurisdiction of Courts with respect to certain treaties, agreements, etc.

'302AA. (1) Notwithstanding anything contained in this Constitution and subject to the provisions of article 119 thereof, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which was entered into by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after the date of commencement of this Constitution, or in any dispute in respect of any right accruing under any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, *sanad* or other similar instrument.

(2) In this article--

(a) "Indian State" means any territory recognised by His Majesty or the Government of the Dominion of India as being such a State; and

(b) "Ruler" includes the Prince, Chief or other person recognised by His Majesty or the Government of the Dominion of India as the Ruler of any India State.' "

The motion was adopted.

Article 302AA was added to the Constitution.

Schedule III

Mr. President : We might take up the other articles and Schedule III. They are minor things.

Shri T. T. Krishnamachari : Schedule III and the other articles involve reopening of articles and schedule already passed. We have to take the permission of the House.

Mr. President : You will ask for leave reopen.

Shri T. T. Krishnamachari : Mr. President, in the Order Paper today, beginning from item 1, article 13 to the Third Schedule, with the exception of the items relating to article 264-A, 274DD, 302AA which have been passed and 280A which has been held over, all the other items are for re-opening the articles or Schedules that have been passed. I would therefore request that you put to the House the proposition whether they are willing to allow these articles to be re-opened.

Mr. President : I take it that the House gives leave to re-open these articles.

The Honourable Members : Yes.

Mr. President : We shall take up Schedule III.

Shri H. V. Kamath (C. P. & Berar: General): What about article.

Mr. President : Let us finish first this Schedule.

Shri T. T. Krishnamachari : Sir, I move amendments 401 and 402 together:

"That in item IV of the Form of Oath, in the Third Schedule, after the words 'judges of the Supreme Court'. the words 'and the Comptroller and Auditor-General of India' be inserted."

"That in item IV of the Form of Oath, in the Third Schedule, after the words 'Supreme Court of India', the brackets and words '(or Comptroller and Auditor-General of India)' be inserted."

This is merely an omission which we seek now to rectify. The form of oath that has been prescribed for the Judges of the Supreme Court will be prescribed, if it is accepted by the House to the Comptroller and Auditor-General of India.

Mr. President : There is no amendment to this amendment to the Schedule.

The question is:

"That in item IV of the Form of Oath, in the Third Schedule, after the words 'judges of the Supreme Court', the words 'and the Comptroller and Auditor-General of India' be inserted."

"That in item IV of the Form of Oath, in the Third Schedule, after the words 'Supreme Court of India', the brackets and words '(or Comptroller and Auditor-General of India)' be inserted."

The amendments were adopted.

Article 13

Mr. President : Let us take up article 13.

Shri T. T. Krishnamachari : May I request, Sir,.............

Shri H. V. Kamath : With regard to this amendment, Sir,.........

Shri T. T. Krishnamachari : May I request, Sir, that you take up the first item afterwards, at the end?

Mr. President : We shall take up item 1 later. Let us begin with article 16.

Article 16

Shri T. T. Krishnamachari : Sir, I move amendment No. 393 Which reads thus:

"That article 16 be omitted."

The reason is that we have taken article 16 from the Fundamental Rights Chapter and put it in Part XA, in the Chapter entitled Trade, Commerce and Intercourse within the territory of India. The article now finds place in a different form under article 274-A which reads thus:

"Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free."

The difference between this and the article as it appears in article 16 is only in the phraseology of the articles which says that subject to the powers of Parliament, trade,. commerce and intercourse etc. shall be free. Having taken it over to Part X-A, there is no meaning in keeping article 16 in the Fundamental Rights, and that is why I have moved this amendment.

May I also explain, Sir, to the Members of this House, who, I believe, are aware of the substance of my explanation, that the original idea of putting the article which confers a very restricted right under fundamental rights has got a history behind it. That was because at the time when we framed the Fundamental Rights we felt that the picture of the Constitution would be different, Even so, the right that is conferred is limited by any law made by Parliament, The appropriate place, therefore, for an article of this nature, which is in reality not a fundamental right, in the sense that other, articles, are fundamental rights, is in the chapter relating to trade and commerce. I think the House will have no objection to deleting what is now more or less a surplus article in the articles on fundamental rights.

(Amendment No. 416 was not moved.)

Pandit Thakur Das Bhargava (East Punjab: General) : May I ask a question of Mr. T. T. Krishnamachari? According to him, article 274A now takes the place of article 16. May I just know if article 25 shall apply to article 274A?

Shri T. T. Krishnamachari : My honourable Friend, if he waits for some time, will find that I shall be bringing forward another amendment to indicate that article 25 shall not apply to article 274-A and for eliminating its application to article 16. The normal processes of law, the normal powers that are conferred under this Constitution on the Supreme Court to see that every provision of this Constitution is observed will operate so far as all the articles 274-A to 274-E are concerned. Any special provision that might have operated will be very restricted in so far as article 16, as it now stands, permits. If Parliament had abridged that right by law, what could article 25 do by way of conferring any special right because what could be taken to the Supreme Court under article 16 could be only what Parliament chooses to allow people to take to the Supreme Court?

Shri B. Das (Orissa : General): Sir, as I understood article 16, it confers freedom of trade and commerce and intercourse throughout the territory of India. I listened most attentively to my honourable Friend Mr. T. T. Krishnamachari and I feel that though we have given certain powers under article 274-A or any other article I do not very much understand the idea that the articles on Fundamental Rights which we had discussed so thoroughly in this House on two or three occasions should be tinkered with. Supposing by article 274-A you have conferred equal freedom as is contemplated by article 16, let article 16 also remain. Of course, I heard Mr. T. T. Krishnamachari's argument that there is no need for going to the Supreme Court and to argue that the Fundamental Rights have not been interfered with. But, I am not clear in my mind, whether the subsequent articles do complete justice as was contemplated in article 16. I do not wish at the fag-end of our Constitution-making stage to tinker with the Fundamental Rights that we passed after so much thought, consideration and deliberation.

Shri Brajeshwar Prasad (Bihar: General): Mr. President, I would like to say a word or two.

I am really sorry, Sir, that this article has been deleted from the Fundamental Rights. I hold the opinion that there should be complete freedom of trade and commerce and that neither the provincial Legislatures nor the Parliament should have the right to curtail this fundamental right. I am really sorry that this article has been partly incorporated in article 274-A. I wish that the members of the Drafting Committee had given an amendment deleting article 274-A and not article 16.

Pandit Thakur Das Bhargava : Sir, article 16 constitutes one of the provisions which are under the purview of article 25 and this was a very important Fundamental Right possessed by the citizens that intercourse throughout the territory of India shall be free. It ensures that provincial boundaries shall not hamper any kind of movement and every person shall be able to enjoy the full fruits of the citizenship of the Republic of India. But now since we have passed certain provisions contained in part 10-A, it is true that to a certain extent this freedom has been curtailed and I had occasion to say when these articles were being considered how this right was being taken away, but all the same article 16 was allowed to remain where it was. We value this right because it is one of those right's which could be enforced under article 25 by the Supreme Court by appropriate proceedings though we have not decided how these proceedings will be worked out because the Fundamental Rights constitute new provisions, but all the same we were under the impression that some method will be found by virtue of which we will be able to see that the citizens of this Republic get cheap and easy relief under article 25.

Now this article is being taken away from the Fundamental Rights and 274-A takes its place. My apprehension is that we are being deprived in an unjust manner of the cheap remedies which were secured to us by article 16. This is not the only section, in which attempt is being made in this House at the fag-end of the Session to take away rights or remedies. We have an amendment to article 13 also. We have also seen how under article 307 all the rights are being taken by the Government under the garb of adaptation and modification and sought to be moulded in such manner as the Government considers proper.

I am sorry that I do not agree that article 16 should be taken away from this place of Fundamental Right because after all the appropriate proceedings secured by the Supreme Court may be easier and cheaper in the manner of implementation. I would like that this article 16 is not deleted.

The Honourable Shri K. Santhanam : Mr. President, I am afraid my Friend Pandit Thakur Das Bhargava is mistaken in his defence of article 16 as against 274-A because if he looks up article 304 relating to amendment of the Constitution, he will find that the process of amendment of 16 is the same as the process of amendment of 274-A. While on the one hand 274-A can be tempered with by Parliament ordinarily, article 16 gives Parliament the power to make any law limiting the freedom of commerce and intercourse throughout the territory of India. At least 274-A ensures the freedom of commerce subject to amendment of the Constitution, while 16 gives the Parliament freedom. You cannot have 16 and 274-A together as they are inconsistent. One of the other must go. Therefore he must choose whether 274-A must go or 16 must go.

Pandit Thakur Das Bhargava : 274-A is a pious declaration. A declaration decree may not be executable. The remedy under article 25 is cheaper and easier.

The Honourable Shri K. Santhanam : 274-A says it shall be free and there is the usual remedy. Anyone is entitled to go to the Supreme Court for enforcing any article of the Constitution, not only the Fundamental Rights. The Supreme Court is the guardian of every article of the Constitution. While 16 is a mere pious declaration leaving to Parliament all powers article 274-A says subject to amendment of the Constitution, trade shall be free, and the only limitations will be those specifically provided the following clauses. Therefore, it is necessary in the interest of consistency and for the freedom of the trade that article 16 should go.

Shri Kuladhar Chaliha (Assam: General): Sir, I have heard Mr. Santhanam with great care, but I find difficulty in following him or accepting his views. It is necessary that rights of intercourse throughout the territory shall be free. Such rights should always be incorporated in the Statute and if we take it away, probably we will be depriving ourselves of a great right which afterwards will be tinkered with or whittled down somehow or other and wiped out in the process of amendment. We have seen how it has been tinkered slowly and gradually by one section, then by another and then by the third. We have seen that process. If it is taken away, probably we will not be able to talk even here that we have such a right. Therefore these Fundamental Rights should be incorporated in some way, I, therefore, protest against the deletion of it.

Mr. Naziruddin Ahmad : Mr. President, with great respect I would also submit that I could not follow the reasoning of Mr. Santhanam in this regard. Article 16 was inserted as a part of Fundamental Right, that trade shall be free. Then somehow or other it struck the Drafting Committee to introduce an identical provision, article 274-A perhaps absolutely forgetting the existence of article 16. If they knew of it or remembered it then of course article 16 should have been repealed at the time when 274-A was passed. But subsequently they found that there is an overlapping between 274-A and 16. I submit it is now a question of whether article 16 or 274-A should go. Personally speaking, article 274-A must go because 16 is more favourably situated in the Constitution than article 274-A, Article 16 is subject to the provisions of article 25 making this right justiciable. What justification is there to remove it from the justiciable part of the rights to article 274-A is a thing which is not made quite clear. I therefore, submit that it is not clear as to whether article 274-A should be justiciable. It is very doubtful and it will perhaps tax the intelligence of many constitutional lawyers and the Supreme Court to say whether it is justiciable or not. If this is justiciable there is no reason to remove article 16 and enact it here. I submit that article 274-A must go and 16 must remain in order to make it clearly and obviously justiciable.

Pandit Thakur Das Bhargava : It will be justiciable by appropriate proceedings and not necessarily by a declaratory suit.

Shri Alladi Krishnaswami Ayyar (Madras : General): Mr. President, the objection to the amendment moved by my Friend Mr. Krishnamachari proceeds on an entire misapprehension. As has already been pointed out by Mr. Santhanam the mere fact that a provision finds a place in the Chapter on Fundamental Rights does not carry with it any particular sanctity or any special sanction regard being had to the saving in article 16 itself--"subject to any law made by Parliament".

Article 16 as it found place in the Fundamental Rights ran in these terms:

> "Subject to any law made by Parliament, trade, commerce and intercourse throughout the territory of India shall be free".

The article therefore gave a *carte blanche* to Parliament though the subject matter dealt with is styled a Fundamental Right. It is a right which can be invaded and encroached upon by Parliament in any manner it likes. That is the effect of article 16 of the Constitution as it stood.

The idea of transposing this provision to the Chapter relating to inter-State trade requires explanation. When the Constituent Assembly started its work in pursuance of the Cabinet Mission proposals, it was felt that unless we were in a position to bring inter-State provision as a Fundamental Right there was no scope for even freedom of trade. In the circumstances in which we were then placed it was thought desirable to put the freedom of trade clause in the Chapter on Fundamental Rights having regard to the circumscribed scope of the powers of the Constituent Assembly at the time when the Constituent Assembly started on its work. That is how the provision came to find a place in the Chapter on Fundamental Rights.

The House will remember that the Fundamental Rights Committee was constituted before the later developments in regard to the position of India and to the wider range of the powers of the Constituent Assembly. There is no question now of the Constituent Assembly being in any way restricted in the exercise of its functions and we are in a position to frame any constitution we like for a free and independent India. It is in this setting that the new articles relating to the freedom of trade beginning from article 274-A have been framed. We have, provided in article 274-A that trade and commerce throughout the territory of India shall be free subject to the other provisions in that part. Therefore, any legislation by Parliament affecting freedom of trade will be subject to the inhibitions contained in that Chapter.

The mere fact that a provision in regard to freedom of trade finds a place either in one part of the Constitution or in another part of the Constitution does not alter or affect the nature of the right. Articles 274B, 274C and 274D contain the necessary exception and limitations to freedom of trade. There is one other thing also which you may notice in this connection. Article 274-C, far from abridging or restricting the scope of the right to freedom of trade, enlarges the scope of the Fundamental Right.

It says--

> "Notwithstanding anything contained in article 274-B of the Constitution, neither Parliament nor the Legislature of a State shall have the power to make any law giving or authorising the giving of preference to one State over another or making any discrimination or authorising the making of any discrimination........."

This provision by restricting the power of the State Government and the Central Government enlarges the scope of the Fundamental Right, if you choose to call freedom of trade a fundamental right within the meaning of the Constitution.

Whether a particular provision is called a fundamental right or not, in regard to the point as to justiciability raised by my Friend Pandit Bhargava, it does not depend upon a particular provision finding a place in the Chapter on Fundamental Right or in other parts of the Constitution. So far as the jurisdiction of the Supreme Court is concerned, it has plenary jurisdiction with regard to the interpretation of the Constitution. The Supreme Court can be called upon to decide in every case whether a particular Statute or any law is in conformity with the terms of the Constitution or not.

I, therefore, submit there is no particular virtue in the article finding a place in the Chapter on Fundamental Rights. I think, when article 274 was before the House, my Friend Dr. Ambedkar pointed out the advantages of all the provisions relating to trade and commerce finding a place in a single chapter. On these grounds I submit there is absolutely no force in the objection to the proposition as moved by my Friend Mr. T. T. Krishnamachari.

Mr. President : Does Mr. Krishnamachari want to say anything?

Shri T. T. Krishnamachari : No, Sir. Mr. Krishnaswami Ayyar has answered all the points.

Mr. President : I shall then put it to vote. I mean amendment No. 393 asking for the deletion of article 16. The question is:

"That article 16 be omitted."

The motion was adopted.

Article 16 was deleted from the Constitution.

Article 27

Mr. President : Then we take amendment No. 417.

Shri T. T. Krishnamachari : Sir, I would like to move amendments Nos. 394 and 417 together, because they both relate to article 27. I will first move No. 394:

That in clause (a) of article 27, the word and figures 'article 16' be omitted."

This is a consequence of the acceptance by the House of the previous amendment 393 to delete article 16.

Mr. President : Let us dispose of it now.

Shri T. T. Krishnamachari : Yes, Sir.

Mr. President : This amendment follows upon the decision which has just been taken. The question is:

"That in clause (a) of article 27, the word and figures 'article 16' be omitted."

The amendment was adopted.

Shri T. T. Krishnamachari : Mr. President, Sir, I move my amendment No. 417 which reads thus:

"That in the proviso to article 27, after the words 'subject to the terms thereof' the word 'and to any adaptations and modifications that may be made therein under article 307 of this Constitution' be inserted."

Sir, this has become necessary because of the wording of article 307(2) which we have passed in which we have given power to the President to adapt and modify existing laws so as to fit them in with the provisions of the Constitution, as also the Fundamental Rights that we have passed.

Mr. President : There is no amendment to this. Does anyone wish to say anything about it?

Mr. Naziruddin Ahmad : There is no time for amendments at all.

Mr. President : Well, this has been there from the 15th inst.

Prof. Shibban Lal Saksena : No, we got it this morning.

Mr. Naziruddin Ahmad : At nine o'clock.

Mr. President : I think it is more or less a consequential amendment.

Mr. Naziruddin Ahmad : The effect of this amendment it is impossible to measure, unless one has the genius of Dr. Ambedkar.

Mr. President : I will put it to vote. The question is:

"That in the proviso to article 27, after the words 'subject to the terms thereof' the words 'to any adaptations and modifications that may be made therein under article 307 of this Constitution' be inserted."

The amendment was adopted.

Article 42

Shri T. T. Krishnamachari : Mr. President, Sir, I beg to move:

"That in clause (1) of article 42, for the words 'may be exercised by him' the words 'shall be exercised by him either directly or through officers subordinate to him' be substituted."

Sir, clause (1) of article 42, as amended, would read thus :

"The executive power of the union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution and the law."

Sir, this has been found necessary, and it does not involve any serious variation. It is fairly......

The Honourable Shri K. Santhanam : Sir, does it mean that a Bill passed by a Legislature could be signed by an officer subordinate to the President?

Shri T. T. Krishnamachari : The clause says, "in accordance with the Constitution and the law." If the Constitution and the law permit that Bills could be authenticated by somebody else, appointed by the President, well, that will be possible.

The Honourable Shri K. Santhanam : The amendment permits such a thing. You are making the Constitution permitting the President to discharge his function through officers- subordinate to him.

Mr. President : It relates to the executive powers and not the legislative powers. Signing of Bills, I suppose comes under legislative Powers.

Shri T. T. Krishnamachari : Yes, this relates to executive powers. I am grateful to you, Sir.

The Honourable Shri K. Santhanam : If you want another instance, there is the question of the declaration of war. Can it be done by the Commander-in-Chief? Can this power be delegated? I do not think that in the absence of this amendment the executive head loses the power to do certain things through his officers. I do not think this is necessary. I do not think in any other Constitution a similar provision is to be found.

Mr. President : Mr. Kamath has given notice of an amendment to that effect.

Shri H. V. Kamath : I move:

> "That in the proposed clause (1) of article 42 in amendment No. 418 of List XVIII, the 'either directly or through officers subordinate to him' be deleted."

I have no quarrel with the change of the word 'may' to shall'. It is necessary and right. (An Honourable Member: What is the number of your amendment ?) My amendment has no number, because I gave notice only this morning. I got List XVIII only last night and so could give notice of my amendment to it only this morning.

Sir, while this article was under discussion, it was made clear that the President would not exercise his executive power personally or directly, but certainly only in accordance with the Constitution. The President is only the symbol of executive authority. It does not mean that he will sit in Delhi and order the arrest of so and so and things like that. The Ministers or officers working with him or under him will exercise the executive power in accordance with the Constitution and the law. I fail to see why my honourable Friends Dr. Ambedkar and Shri T. T. Krishnamachari, with the acumen that they possess, still feel it necessary to bring in an amendment of this nature. This is redundant and I submit to the House that the words beginning with "either" and ending with "him" may be deleted, so that the article will read as follows:--

> "The executive power of the Union shall be vested in the President and shall be exercised by him in accordance with the Constitution and the law."

That is sufficient for our purpose.

Mr. Naziruddin Ahmad : I submit that this amendment is not only hasty, but absolutely purposeless also. It has been introduced without enough consideration. I will draw the attention of the House to article 130(1) where the executive power of the State is vested in the Governor and may be exercised by him in accordance with the Constitution and the law. While we make a change here in article 42 we forget to make the same change in article 130(1).

Mr. President : There is an amendment to that effect lower down the Order Paper.

Mr. Naziruddin Ahmed : All right, Sir. It should be obvious that the executive power of the Union, when it vests in the President, may be exercised by him in accordance with the Constitution. This obviously means that he way exercise that power in accordance with the Constitution, i.e., with the help of agents. In fact there are a large number of departments of the Governments for the purpose such as the Courts, the Police, the Jails and so on. Is it to be supposed that unless we make it clear that the President shall exercise his powers through agents he has to act on his own initiative and personally? It is absurd to suppose so. This attempt to clarify things is grossly exaggerating the idea of going into details. I submit that when we vest the power in the Governors or the President, we allow his executive to work in his name. It shows that the President and the Governors are merely legal entities and ornamental figureheads. Everything is done in the name of the President. This is the purport of article 42(1) that the executive power may be exercised by the President in accordance, with the Constitution. That is the obvious significance. Then what is the object of changing the word 'may' into shall? The use of the word 'may' is very apt.

Shri H. V. Kamath : I think the word 'shall' refers to the constitutional exercise of that power.

Mr. Naziruddin Ahmad : The word 'may' is enough for the purpose. The exercise of this power is optional, and if it is exercised it must be in accordance with the Constitution. The President may not exercise it at all; and if he exercises it he shall do so in accordance with the Constitution. The word 'may' is enough for the purpose. It is difficult on the spur of the moment to see the weakness of this last-minute amendment. I ask, when is the Drafting Committee to finish its labours in order to give us some amount of rest and contentment? We want to go home as early as possible. But the Drafting Committee will not let us do so. As I have repeatedly submitted, they should make tip their minds and give to the House a complete picture of their drafts and not come here every day with fresh amendments of this sort. It is extremely tiresome and irksome for Members to work under these conditions.

Mr. President : I was going to call upon Sir Alladi Krishnaswami Ayyar to explain the position. But before doing so, I want to put him one question which strikes me also. It is said, 'through officers subordinate to him'. Does it mean that it is contemplated that the President will have officers in the provinces on behalf of the Union, or does it mean that there will be only provincial officers who will act as subordinates to the President? Is it contemplated, as in America, to have two separate sets of officers, one belonging to the Union and the other belonging to the provinces?

Shri Alladi Krishnaswami Ayyar : In regard to purely federal Subjects you can have purely federal official agency; but in regard to concurrent subjects you can utilise the provincial agencies. If the Federal Government is not satisfied with the provincial agencies, the Constitution provides that the Federal Government may have its own agency in regard to concurrent subjects. It is only in regard to provincial subjects that the entire provincial agency is entrusted with the task. There you use the officers subordinate to you, though they may not be directly subordinate. There is power of intervention even when the provincial agency is utilised. Inasmuch as it is for the enforcement of the Federal subjects, he will have the right to utilise the provincial agency.

I want to say something later about the general point raised.

Shri Brajeshwar Prasad : Mr. President, Sir, I rise to oppose the amendment which has been moved by my Friend, Mr. T. T. Krishnamachari. I hold the opinion that the amendment is not merely thoughtless as my Friend, Mr. Naziruddin Ahmad characterised it, but it is dangerous. The executive power of the President must vest in his hands and in his hands alone, because he has to perform under the Constitution certain functions; he has to use certain powers. I do not think unlike my Friend, Mr. Naziruddin Ahmad, that the President is merely an ornamental head. Had he been so, I would have no difficulty in accepting the amendment moved by Mr. T. T. Krishnamachari, but my reading of the Constitution is that the President has very large powers. I therefore hold the opinion, Sir, that it is dangerous, it is risky--it is in my opinion not merely thoughtless--to empower the President to delegate his powers under the Constitution into the hands of executive officers.

Pandit Thakur Das Bhargava : Mr. President Sir, with reference to this amendment, I am not satisfied whether this amendment is necessary. As a matter of fact, when we speak of the exercise of the powers of the President under article 42 And the use of the words "may be exercised by him," we understand that these powers are being exercised by the President in an almost impersonal manner. So far as the executive power of the Union is concerned, it is exercised by the President or by the Governor or by the Prime Minister or by many other officials. It is not that the President must exercise it in a personal manner. There are certain rules and regulations by virtue of which many officials have to exercise the executive power of the Union. If these words are there, it would give rise to the argument that the powers should either be personally exercised by him or by officers subordinate to him. When these officers so exercise these powers, in many cases the President does not even know that these powers are being exercised in his name. Therefore, my submission is that the words "by him" do mean that either the President himself could exercise them or he could delegate those powers.

The second question may arise that the powers delegated by him can be exercised only by people to whom they are delegated because of a certain maxim that delegated powers cannot be delegated further. It would raise many other difficulties if we regard that the exercise by him of these powers is either personal or it is only through officers subordinate to him. Therefore my submission is that the words as they stand are quite sufficient and do not give rise to any sort of ambiguity. Moreover, Sir, I do not agree that the use of the word "shall" is necessary. In a particular context this word "may" does mean "shall".

So far as the question raised by Mr. Kamath is concerned that the powers shall be exercised in accordance with the Constitution and the law, the word "may" does not relate in any manner to the words "in accordance with the Constitution and the law". My submission is that the words that we have passed already are enough and they answer all the purposes they are intended to answer and no change need be made.

Prof. Shibban Lal Saksena : Sir, the question is, if this amendment is not made, what harm would accrue? If I see it from that point of view, I think that this amendment is not only redundant, but it is positively injurious. In fact, nobody thought so far that this article 42 was incomplete. It says that the executive power of the Union shall be vested in the President and may be exercised by him in accordance with the Constitution and the law. Now the amendment says that that power shall be exercised by him either directly or through officers subordinate to him. Is it necessary? Does not the Constitution and the law say that the President shall use officers provided for him for carrying out his purpose. In fact, the clause says "in accordance with the Constitution and the law". As the Constitution and the law prescribe how the President shall exercise his powers either himself or through officers, I think these words are absolutely unnecessary. I do not think any amendment is necessary.

The Honourable Shri N. Gopalaswami Ayyangar (Madras: General): Sir, I feel some difficulty in appreciating the objection which has been raised to this particular amendment. Article 42 says that the executive power of the Union shall be vested in the President. We all know or lots of powers which are vested in the President but actually he does not exercise those powers. He simply exercise them at the dictation of other people who are responsible to the legislature. That is point number One which I should like the House to appreciate.

The Second thing is that the Constitution itself contemplates that executive action, which is really the exercise of executive power cannot as a matter of fact be done by the President directly. Look at article 64(1). It says:

> "All executive action of the Government of India shall be expressed to be taken in the name of the President."

So, the actualities of the case require that in innumerable matters the Constitution or the law vests the power in the President, but the actual exercise of it is to be left to other people who are held to be responsible to him. No doubt, he takes the responsibility for action taken by these officers. It is impossible as a matter of practical administration for the President to exercise all the powers that are vested in him by the Constitution. Take, for instance, even the powers which relate to the exercise of his functions in relation to legislation. On a number of matters, for instance, the power of summoning the Assembly, dissolving the Assembly and so on, he takes action, but the exercise of that power is on the advice of his constitutional advisers. And in the ordinary course he cannot really exercise all the powers that are vested in him. What is the objection to his asking officers subordinate to him, who owe responsibility to him, to exercise such powers? As it is absolutely unnecessary for him even to look at them before those orders issue, we ought to give him the latitude to select such officers in whom he can have confidence and who may be trusted to exercise this power.

I have no doubt noticed the objection: what is he to do in regard to giving assent to Bills when passed by the Legislature? True, ordinarily we expect the President to sign those Bills in token of his assent, to express his assent on them. Naturally in a case of that sort he would not ordinarily ask other officers to sign for him, but assuming that circumstances arise in which he is unable to append his signature to an assent of that sort, it may be necessary for him to ask that somebody else should sign the assent in his name. I do not see anything which is legally improper, or even from a constitutional point of view improper, for somebody to sign even an assent to a Bill passed by the Legislature if the President is unable to do so or thinks in particular circumstances other people might sign in his name. I think that in order to obviate difficulties which would actually arise, the addition of these words is very necessary.

Shri H. V. Kamath : Is not the purpose that my Friend Mr. Gopalaswami Ayyangar has in view sufficiently met by the phrase "in accordance with the Constitution and the law?" Whatever is delegated to other persons or agents will be done by the President in accordance with the Constitution and the Law.

The Honourable Shri N. Gopalaswami Ayyangar : In that case we shall have to go to Parliament for a law in every case he wants to authorise an officer to do so. But if Parliament can authorise it, why not the Constitution do so ?

Shri Alladi Krishnaswami Ayyar : Sir, some of the points I wanted to urge have been anticipated by my Friend Mr. Gopalaswami Ayyangar. There is nothing novel in trying to bring the present provision in line with Section 7 of the Government of India Act, 1935. Though Mr. Naziruddin Ahmad, in the plenitude of his literary wisdom, has chastised the Drafting Committee as being careless, I would invite his attention to the language used by the Parlimentary draftsmen in Section 7 of the Government of India Act. I am reading the Section:--

> "Subject to the provisions of this Act, the executive authority of the Federation shall be exercised on behalf of His Majesty by the Governor either directly or through officers sub-ordinate to him........"

Therefore, there is nothing novel or fantastic in making an express provision to the effect that the executive authority can be exercised through official agencies.

So far as the general executive power is concerned, it is vested in the President. So far as the responsibility for carrying on the executive administration is concerned it is vested in the Ministers. So far as the question of utilisation of official agencies is concerned, it is implicit in the very foundation of the Constitution. I should think that even under a provision as it stands without the amendment, it would be perfectly competent for the President to institute any official agency, though the ultimate responsibility for the acts of any official agency, would be that of the President advised by his Cabinet. As a matter of fact, when the original article was drafted it was the lines of article 12 of the Irish Constitution. That article runs thus:--

> "There shall be a President..................... who shall exercise and perform the powers and functions conferred on the President by this Constitution and by law."

Shri H. V. Kamath : That is an argument against your view.

Shri Alladi Krishnaswami Ayyar : The present amendment says that the President may exercise the power either directly or through officers subordinate to him.

Shri H. V. Kamath : I have got a copy of the Irish Constitution with me here. Officers are not at all mentioned there.

Shri Alladi Krishnaswami Ayyar : If only you have the courtesy to listen to me you would not have raised the objection. I pointed out that even without an express provision like that it would be competent for the President to have or to institute any official agency, and there are Constitutions in which express provision is not made, and I referred to article 12 of the Irish Constitution which to some extent will support Mr. Kamath's point of view. There are some counsel who, even when the opposite side makes a concession in favour at one's contention, would oppose the opposite side. That seems to be the attitude of my Friend Mr. Kamath. What I pointed out was that it is merely a question of drafting and making the provision clear. The Parliamentary draftsmen in Section 7 of the Government of India Act made express reference to officials. In the Irish Constitution there is no reference to officials. Even without a reference to officials it would be perfectly competent for the President to utilise official agency for the purposes of carrying on executive function, though ultimately the responsibility will rest upon the President and the executive in regard to the discharge of any function vested in the executive whether under any statute or whether under the general principles of the Constitution in regard to the functions of the executive.

Therefore, I submit, Sir, that in making quite clear what is implicit, there is nothing wrong. "Official" is the word used there. Whatever objection you may have in regard to the Government of India Act of 1935, generally, there can be no objection to adopting this wording here. I would also go further and urge the necessity for such a provision from a constitutional point of view. The question as to the exact extent to which the President can delegate his function has been debated in America. If, for example a power is vested in the President, questions might arise as to whether it is possible at all to delegate his authority or whether in every case issue should come up before the President. We are told that in fact nearly 2,000 signatures have to be obtained form the President almost every day so far as the presidential system is concerned. That has been pointed out recently in a book published in regard to the American Constitution as to the necessity of Presidential signature in regard to very many Acts of which he may know nothing.

Therefore, we have to divorce these two questions: the question of the ultimate responsibility and the question of the particular agency which may be employed in the working of any governmental institution or any structure. Therefore, a statute might provide that a particular agency may carry out orders. Even there it does not mean that the Government of the country is not responsible for the proper functioning of the statutory agency. The agency may be a statutory agency or it may be an administrative agency. In all these cases there is nothing to prevent the executive from employing any particular official agency; by putting in the word "officers" all the theory of delegation which has loomed large in the American Constitution will be set at rest.

It is possible that having regard to the fact that our system is founded mainly on British ideas, even without such a provision an official agency might be employed. In the other Dominion Constitutions, a general provision is incorporated to the effect that the power is vested in the Queen. The Australian and the Canadian Constitutions say so. It is merely the employment of a particular language and I see absolutely no objection to that: The average layman need not go into the question as to the American law or Constitution or to the provisions of Dominion Constitutions. To make it clear to the laymen in this country that an official agency can be employed, this provision is a salutary one.

Shri H. V. Kamath : On a point of clarification, Sir, may I ask my Friend Mr. Alladi Krishnaswami whether any other Constitution in the world makes such a reference to subordinate officers of the executive head of the State in this context.

Mr. President : He read out a Section from the Government of India Act.

Shri H. V. Kamath : The Government of India Act is no Constitution of a free State.

Shri Alladi Krishnaswami Ayyar : This question has nothing to do with freedom.

Shri H. V. Kamath : It is a stupid provision.

Mr. President : I will put this to vote. Mr. Kamath's amendment is really a negative of this.

Shri H. V. Kamath : No, Sir.

Mr. President : Very well, I will put yours to vote first. The question is :

"That in amendment No. 418, in the proposed clause 1 of article 42, the words 'either directly or through officers subordinate to him' be deleted."

The amendment was negatived.

Mr. President : Then, I will put the proposition moved by Mr. Krishnamachari. The question is:

"That in clause (1) of article 42, for the words 'may be exercised by him' the words 'shall be exercised by him either directly or through officers subordinate to him' be substituted."

The amendment was adopted.

Mr. President : I think it is one o'clock now and we shall adjourn. I desire to point out to Members that we shall take up the other articles, of which notice is given in today's agenda at 4.30 this afternoon.

Pandit Hirday Nath Kunzru : When we agreed to a session being held today it was, I think, understood that the session would be held only in the morning. I do not think anybody was prepared for an afternoon session. I should earnestly request you, therefore, to hold another session tomorrow morning. We have engagements this afternoon which were made because in the normal course the Assembly does not meet in the afternoons.

Mr. President : I did not understand, at any rate, that we would not sit in the afternoon today. It was left open and it is for us to decide now whether we shall sit in the afternoon or not. In view of the fact that many Members are anxious to complete the Second Reading stage and many of them are anxious to, go away on account of Dipawali, I think we should sit in the afternoon today. If we do not sit this afternoon, it may be that we may not be able to finish even tomorrow.

The Honourable Shri N. Gopalaswami Ayyangar : As a matter of fact Sir, we and several others have accepted invitations to a party at the Government House at 5 P.M. today. If we start at 4.30, I do not think we can do any business.

The Honourable Dr. B. R. Ambedkar : In that case we may meet at 4.

Mr. President : This House has the first claim upon its Members. I therefore fix 4.30 this evening. The House stands adjourned till 4.30 p.m.

The Assembly then adjourned for Lunch till Half past Four of the Clock.

The Assembly re-assembled after Lunch at Half Past Four of the Clock Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Article 280A

Honourable Dr. B. R. Ambedkar : Sir, I move:

"That after article 280, the following new article be inserted :

Provisions as to financial emergency.

'280-A. (1) If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a proclamation make a declaration to that effect.

(2) The provisions of clause (2) of article 275 of this Constitution shall apply in relation to a proclamation issued under clause (1) of this article as they apply in relation to a Proclamation of Emergency issued under clause (1) of the said article 275.

(3) During the period any such proclamation as is mentioned in clause (1) of this article is in operation, the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose.

(4) Notwithstanding anything contained in this Constitution--

(a) any such direction may include--

(i) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State;

(ii) a provision requiring all Money Bills or other Bills to which the provisions of article 182 of this Constitution apply to be reserved for the consideration of the President after they are passed by the Legislature of the state;

(b) it shall be competent for the President during the period any proclamation issued under clause (1) of this article is in operation to issue directions fog the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the judges of the Supreme Court and the High Courts.

(5) Any failure to comply with any directions given under clause (3) of this article shall be deemed to be a failure to carry on the Government of the State in accordance with the provisions of this Constitution.' "

Sir, having regard to the present economic and financial situation in this country there can hardly be any Member of this Assembly who would dispute the necessity of some such provision as is embodied in this new article 280A and I therefore, do not propose to spend any time in giving any justification for the inclusion of this article In our Draft Constitution. All that I propose to say is this, that this article more or less follows the pattern of what is called the National Recovery Act of the United States passed in the year 1930 or thereabouts, which gave the power to the President to make similar provisions in order to remove the difficulties, both economic and financial, that had overtaken the American people as a result of the great depression from which they wore suffering. The reason why, for instance, we have thought it necessary to include such a provision in the Constitution is because we know that under the American Constitution within a very short time the legislation passed by the President was challenged in the Supreme Court and the Supreme Court declared the whole of that legislation to be unconstitutional, with the result that after that declaration of the Supreme Court, the President can hardly do anything which he wanted to do under the provisions of the National Recovery Act. A similar fate perhaps might overwhelm our President if he were to grapple with a similar financial and economic emergency. In order to prevent any such difficulty we thought it was much better to make an express provision in the Constitution itself and that is the reason why this article has been brought forth.

Prof. Shibban Lal Saksena : Sir, I beg to move:--

"That in amendment No. 429 of List XVIII (Second Week), in clause (1) of the proposed new article 280A, for the words 'has arisen' the words 'is imminent' be substituted."

The article if my amendment is accepted will read thus:

"If the President is satisfied that a situation is imminent whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a proclamation make a declaration to that effect."

My reason for this amendment is this that after the situation has arisen, it might lead to much disturbance and people might lose confidence in the country's credit. The article says that if a situation has already arisen and there is chaos, people will lose confidence in the credit of the State. I want instead of the words "has arisen", the words, "is imminent" to be substituted.

My second amendment is No. 441 which reads as follows:--

"That in amendment No. 429 of List XVIII (Second Week), in clause (3) of the proposed now article 280A, after the word 'operation' the words 'Parliament shall have power to make laws in respect of subjects contained in the State List as if they were subjects in the Concurrent list, and' be inserted."

If my amendment is accepted, the article will read as under:--

"During the period any such proclamation as is mentioned in clause (1) of this article is in operation Parliament shall have power to make laws in respect of subjects contained in the State List as if they were Subjects in the Concurrent List, and the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose."

Sir, these amendments of mine are only intended to cover two lacunae in the article. Although the article is an extraordinary one and provides for financial emergency, in the present state of our country, I think it is necessary that the power should be with the executive. I have only tried to compare it with article 275. What I wanted is this: First of all, by changing the words "has arisen" into "is imminent" in clause (1), we would be able to take measures before the situation becomes grave. Therefore as soon as a financial emergency is imminent, we can take the necessary measures if we substitute the words "is imminent' for the words "has arisen".

Then the President should have the power to treat all State Subjects as if they were subjects in the Concurrent List and Parliament should be able to legislate about them. It is quite possible that the State may be forced by some legislation of their own, by their own laws to act in a particular manner and may not have the legal authority to carry out the directions of the President. What I want is that the Parliament should have power to alter those laws of the States and therefore I want that during that period Parliament shall have power to pass laws even on subjects contained in List No. 2 as if they were in the Concurrent List, so that the necessary financial measures will be taken in order to meet the emergency. I think that unless that is done, a mere order will not enable the President to pass orders or to have them carried out because they may conflict with the laws of the States and it may not be possible for the President to got those laws changed. Further the Provinces may not be agreeable to them. So what I want is that Parliament should be given this power that in those matters laws may be made by Parliament.

I think, Sir, that these amendments are necessary. We want this power. May I also say that this article does not take away any powers of the legislatures also and I think it is necessary in the interests of the State especially when we are in the midst of financial distress.

Shri H. V. Kamath : Sir, may I ask your permission for a verbal change in this amendment No. 438? I propose to use the word "breakdown" instead of the word "chaos".

Mr. President : Yes. (Interruption.)

Shri H. V. Kamath : I have got the President's permission to change the word "chaos" to "breakdown". Sir I move amendments Nos. 438, 442 and 444 of List No. XIX. Amendment No. 438 is to the effect.

> "That in clause (1) of the proposed new article 280A, for the words 'whereby the financial stability or credit of India or of any part of the territory thereof is threatened, the words 'which threatens India or any part thereof with financial breakdown or economic disaster,' be substituted."

Amendment No. 442 is to the effect:

> "That in amendment No. 429 of the same List, clause (4) of the proposed new article 280A be deleted."

Amendment No. 444 is to the effect:

> "That in amendment No. 429 of the same List, clause (5) of the proposed new article 280A be deleted."

This new article 280-A invests the President of the Union with further emergency powers, powers in excess of what have been conferred on him by the Constitution under articles 275, 276 and subsequent articles upto 280. This article envisages a contingency or a situation where the financial stability or credit of India or any part thereof may be threatened. I feel that this contingency or danger to economic stability or credit of India or any part thereof ought not to be regarded as an adequate ground for the proclamation of an emergency. An emergency proclamation can be justified only under more dire circumstances, that is, only in the event of or only when there is danger of a financial breakdown or economic disaster. To invest the President with such wide powers in the event of the financial stability or the credit of India or of a province or State thereof, being threatened is going much too far.

This morning, you rightly observed, Sir that many provinces are complaining about or have already complained about the ill distribution of the Income-tax proceeds, and that a new inroad upon their revenues was made this morning, as some honourable Members felt, by the article on Salas Tax adopted by this House. Some provinces like Madras, and partially the Central Provinces too, have inaugurated prohibition. That has eaten into the revenues of the provinces, and has further put them to extra expenditure on prohibition staff and ancillary paraphernalia.

Suppose, under these circumstances, the situation in future worsens. The world economic situation may worsen may aggravate. We shall try our best to see that our economic conditions improve, but what with devaluation all over the world including the devaluation of our own Rupee, no one would be Such a rash prophet as to say that we will be better off in the near future. Suppose, if the worst comes to the worst, the economic situation worsens further and the provinces, on account of the loss in revenue on account of prohibition and on account of other factors besides, cannot put into effect the constructive schemes which they have in mind, and suppose they are hard put even to make both ends meet, and their budgets are deficit budgets, imagine, it is not an improbable situations series of deficit budgets--may not be large deficits even small deficits every year--such a situation may be construed by the President as one where the financial stability or credit of the particular province or State is threatened. May I ask, will that be adequate ground for the President to assume to himself the powers which will be his once a proclamation of emergency is made? I say, Sir, if we really want to implement the scheme of provincial autonomy, in spirit as well as letter, this is not the way to treat our constituent units, Certainly see to it that financially, economically, we are sound. But, on the slightest pretext of the administration not being able to put through their schemes, and not being able to produce surplus budgets, on these pretexts, it will--I will not use any strong words--it will not be wise for the President to proclaim an emergency and assume to himself all the extraordinary powers that will accrue to him once such proclamation is made.

I agree, I admit freely, that this course must be adopted if there is imminent danger of a financial breakdown,--that is certainly a much worse situations potentially a much more dangerous situation than economic instability. Economic stability may mean nothing to anybody or all things to all men. If there is any danger of financial breakdown or economic disaster, then certainly I can agree to vest certain emergency powers in the President, but not otherwise; not on the mere threat to economic stability or financial stability of a province. That may mean, as I said, many things. I cannot agree to vest emergency powers in the President for this reason of any threat to economic stability. My submission to House is that if there is danger of a breakdown or a disaster, then only the President may be invested with emergency powers.

I am afraid, looking to the paucity of attendance in the House today, that we are very likely to pass this article without mature care and attention being bestowed on it. It Is an unfortunate circumstance that Depawali is so close. Honourable Friends are more keen on illuminating their homes during Diwali than on illuminating the darkness that seems to have overtaken the House at the fag-end. I hope, in spite of the paucity of attendance, those Members who are Present here will carefully consider this matter as to whether it would be necessary to invest the President with such powers when the financial stability or credit is merely threatened.

I come now to amendments 442 and 444 which seek to delete clauses 4 (a)--it ought to be 4(a); It has been wrongly typed here; I sent amendment No. 442 as referring to clause 4(a) of the proposed new clause, not the whole of clause (4)--and clause 5 of the proposed new article. The House will see that clause (3) gives the President ample powers in the event of a Proclamation of Emergency under these circumstances. The last part of clause (3) reads thus: "and to the giving of such other directions as the President may deem necessary and adequate for the purpose." This omnibus provision enables him to do practically what he likes so long as when he passes the order he says, "I am satisfied that it is necessary and adequate for the purpose." He can do whatever he likes and nobody can question his acts or decrees or ordinances in a court of law or anywhere else on earth. In the face of this, I personally feel that there is no necessity for incorporating clause 4(a) in this article, because clause 4(a) refers to the reduction of salaries and allowances and some provisions about Money Bills which are matters which could come within the scope of the provision embodied in the second part of clause (3). So, this can be safely deleted without any detraction from the meaning that is attached to clause (a) and without derogating from any of the powers that this clause confers on the President in the event of a financial emergency.

Clause (5) is a mere consequential provision. Why it is put in here at all. I do not understand. I fail to see any *raisen d' etre* for this clause. If the House will turn to article 277A and 278 which this House adopted a few months ago my honourable Colleagues will see that this contingency when the Government of any State cannot be carried on in accordance with the provisions of this Constitution is clearly, unambiguously visualized in these articles 277A and 278. Now, Sir, the Governor of the State must decide as to whether the Government of that State can or cannot be carried on in accordance with the provisions of this Constitution and the Governor makes a report. The first clause of 278 says--

> "If the President, on receipt of a proclamation issued by the Governor of a State under article 188 of this Constitution, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, he may by proclamation etc. etc."

This is very clear. After the issue of directions by the President under this new article 280A when he visualizes a financial emergency in India or any part thereof, what is the need for this clause (5)? The Governor is on the spot and he can and will, if he is a conscientious and diligent Governor, he is bound to report to the President from time to time as to how these directions are being implemented. What are we doing here by incorporating all shorts of jumble--I would not use stronger words--and absolutely unnecessary verbiage? We have adopted articles where we have provided for emergency powers, and if the Governor feels and is satisfied that the Government of the State cannot be carried on in accordance with the Constitution, he will report to the President, Why should we say 'Any failure to comply with the directions given etc.?' Who will judge? That is the crux of the matter referred to in clause (5). Who will judge will it be the President or Governor or some other authority? Make it clear and do not leave it vague. If the President is satisfied it is a failure, then make it clear that if the President is satisfied that it is a failure, then it means the State Government has failed. Otherwise say that the Governor of the State will report to the President about the failure or otherwise.

But clause (5) in the first place is unnecessary, redundant, and secondly, it is very vague. The authority or the person to judge where there is a failure or not is nowhere defined and it is dangerous to leave it so vague as this. Make it clear beyond any shadow of doubt that the President will judge as to whether it is a failure or not. If it is left vague, it will reflect on our own wisdom. I hope that Dr. Ambedkar's learning is not so completely divorced from good sense and wisdom that he cannot see the force of my contention. He is learned I agree, but I hope his learning is not completely divorced from other components of human wisdom; and I hope he will bestow sufficient attention upon the amendments I have moved. I commend them with all my heart to the House for the consideration.

Shri Brajeshwar Prasad : Mr. President, Sir I move amendments 439, 440 and 443. They read as follows:

"That in amendment No. 429 of List XVIII (Second Week), in clause (1) of the proposed new article 280A after the words "threatened" the words 'or is likely to be threatened' be inserted."

"That in amendment No. 429 of List XVIII (Second Week). for clause (2) of the proposed new article 280A, the following be substituted:--

> '(2) The proclamation issued under clause (1) of this article shall continue till such time it is revoked by the President.' "

"That in amendment No. 429 of List XVIII (Second Week), for paragraph (ii) of sub-clause (a) of clause (4) of the proposed new article 280A, the following be substituted:--

> '(ii) a provision requiring all Bills to be reserved for the consideration of the President after they are passed by the Legislature of the State;' "

I would make a few comments in connection with the amendments which I have moved. Sir, I am of opinion that when there is a period of financial crisis, provincial autonomy must completely be suspended till such time as the emergency lasts. There should be no hesitation, there should be no qualms of conscience on this account. I am of opinion that the period of emergency should last till such time as the President in his discretion may consider to be necessary. This proclamation should last till the emergency lasts. There is no sense in going to Parliament and seeking its approval whether the period should be extended or not. The President and the President alone is the best person to judge whether the emergency is over or not. Do not distrust the President--he is the first citizen of the State. He represents the people of India in a more true sense than any member of Parliament. He is elected by the representatives of the Legislatures of the Centre and the Provinces. He is not elected by a particular constituency. Therefore it is in the fitness of things that power should be vested in the hands of the President alone.

I am of opinion that by doing so we will not be violating any Constitutional convention because the essence of Federal Constitution is the separation of powers. Under the new Constitution our Parliament is not going to be a sovereign body. I cite the case of the American President. He has a large number of powers. Nobody can say that he is a dictator or autocrat or that by vesting powers there has been any violation of the principle of federalism. Therefore, I am of opinion that power must be vested in his hands to deal with any situation that may arise in the future as a result of financial instability or crisis.

We have achieved our freedom only a few years ago. Is it right or proper that we should jeopardise our freedom at the altar of some newfangled notion or concept? Our State has become free at a time when the political horizon is full of anxiety. The political and economic situation not only of this country, but of all parts of the world is on the brink of disaster.

Therefore, our Constitution must take these factors into account.

Sir, there is another factor which must be borne in mind. This institution of Parliamentary Government is quite alien to the genius of our people. Our ancient law givers were Saints and Seers and not Parliamentarians. Therefore, I have more faith in a President than in a Parliament elected on the basis of adult franchise in a country where there is no literacy, where the standard of living is very low and where the people are the victims of communal passions. Therefore, I am of opinion that we must not jeopardise the interest of the State at the altar of Parliamentarism or of any ideology. Ideologies are mere concepts. They may be cloudy, hazy and nebulous. But the State is a solid reality, and we cannot jeopardise the interests, of the State at the altar of some newfangled notions. In the words of the German philosopher Hegal-"The State is God on earth". I am, therefore, of opinion that if vital questions are left to be decided by Parliament, it will mean the end of the State. It is only in a very highly developed community that Parliament plays an effective part. In a country like India it is bound to occupy a secondary role. For a long time to come, the executive and the executive alone will play a dominant part in our national life. If our Constitution does not recognise this fact, it will break down and plunge the country into chaos and anarchy.

Mr. President : Did you move amendment No. 443?

Shri Brajeshwar Prasad : Yes, Sir, all the three amendments.

Mr. President : All the amendments are moved and the article are now open for discussion.

Shri R. K. Sidhva (C. P. & Berar: General): Mr. president, Sir, yesterday, when my Friend Mr. Krishnamachari told me that a clause regarding financial emergency was to come up, I felt that probably there was going to be some another cut upon the right and previleges of the legislature. But when I received this article last night, I must admit that I found that this article is justified; and under the conditions that exist now, and that may exist, I do feel that if this article had not been there, our Constitution would not have been complete. I give credit to the Drafting Committee for even at this last moment, to have realised that such a situation might arise, and therefore, the President must be empowered with these extraordinary powers. My Friend Mr. Kamath has been having unnecessary apprehensions of the President misusing these powers. Mr. Kamath said that even if there is a deficit budget, the President might declare that there is an emergency in the financial stability of the country. If we have a President who really declares, because of a deficit budget that there is financial emergency, then I must say that that President is not worthy of occupying the high place that he would occupy, and I may add that it is the House and the persons who will be electing the President who would be responsible for it. But I am quite confident that both Houses will elect a really able and eminent, just and right type of person who will exercise his powers rightly and who will judiciously interpret the provisions of this article. I have no apprehensions on that, whosoever may be the President of the Indian Union.

Sir, what does the clause say ? It says--

"If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a proclamation make a declaration to that effect."

Now, we know from our experience of our two and a half years of independence, that the political freedom that we are enjoying is absolute, but as far as our economic conditions is concerned, we have to depend upon other countries finances: as, we have not stabilised our finances yet. I do not mean, therefore, that there is an emergency now. I can only say, here is the economic picture before us; and whatever may have been the reasons that have led to it, they are not of our making. But the circumstances under which we were living and were governed, and the world situation, have led to the present economic condition. This is not an emergency. But a real emergency might arise whereby the financial stability may be affected, and we will be perfectly justified if we have an article like this, and I have no doubt at all in my mind that this article then would be very helpful.

Mr. Kamath made capital out of clause (4), but I welcome that article. What does it say? It says that the President shall have the power to reduce the salaries and allowances of the staff when necessary.

Shri H. V. Kamath : My only difficulty was that this power was not vested under clause (3).

Shri R. K. Sidhva : But clause (4) says--

"Notwithstanding anything contained in this Constitution--

'any such direction may include (i) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State.' "

Today we know very well how our staff is not only heavily paid but how they are excessive in numbers. But that apart, this is a very happy provision, and we should all welcome that the President is vested with this power, because we know that in the Constitution, we have provided for the salary of the Judges and that it may not be reduced in times of emergency. We have been clamouring over the high salaries of the Judges, and when the Drafting Committee comes with a provision that in the event of a financial instability. The President win have the right even to cut down the salary, we say that it is not proper. I am very sorry to hear this. I must, an the other hand, give credit to the Drafting Committee. I am a man to give credit where credit is due, though I give a bit of my mind where that is necessary. About the judges also, in (b) we have said that the President can reduce the salaries of the judges of the Supreme Court and the High Courts. I welcome this article. It did not strike me at all that such a provision is necessary, but after reading it, and after seeing what is surrounding us, and what is going to happen, I feel that it is very necessary. Let us foresee things. We must also foresee what may happen in future. We cannot always be content with confining our ideas to the. present. A Statesman is he who foresees things. A politician is he who foresees what is going to happen.

We know we have achieved our political freedom, but unless our economies are fully stabilised, then the political freedom which we have won will always be in such a position that we will not be able to render the service to humanity as we would like to.

'Today we know we passed so many laws and I know there was a little fear in the minds of several Members in connection with the article relating to the Sales Tax. And I do feel that they were justified in feeling that they would have to cut down their finances and so would not be able to introduce so many of their development schemes. But still I supported the article, because it is in the greater interests of the country. And at any time when there is a question of cutting down the powers of the Legislature or of the President comes up, we should look at the merits of it, and looking at the merits of the present question. I feel the article is perfectly justified and I am confident that the President, whosoever he may be, he will exercise his power rightly, and interpret this article in the right sense and in the right manner and for the benefit of the country and the benefit of the people of this country. With these words, I support the amendment that has been moved by Dr. Ambedkar, article 280A.

I do not want to say anything more. But if you were to look at the article and at the provisions of sub-clause (ii) of clause (4), you will see that it relates to even money Bills. Power is given to the President to see that if he feels that the provisions of article 174 combined with those of 182 are likely to jeopardise the financial stability of the country, he will certainly use his power, and apply the brakes in applying this article 280A. But as the preamble of the article states, it comes up only when there is an emergent situation as far as the financial stability is concerned. I have no apprehension that this article will be misused by the President, and with these words, I commend it to the House.

Pandit Hirday Nath Kunzru : Mr. President, the Mover of the amendment excused himself for not justifying the amendment by saying that it was certain that every Member understood its need. That was a very easy way for him of getting rid of his responsibility. He made a show of defending the amendment by referring to the American National Recovery Act. Now, the American National Recovery Act was meant to enable the American nation to tide over the great economic depression that had overcome the United States of America along with the other countries of the world in the thirties. Is there anything in this amendment that will enable the Government of India to deal with an economic depression when it comes in the same way in which President Roosevelt tried to deal with it? The whole object of the amendment seems to be to reduce expenditure and to prevent the provincial Governments from giving up any of their existing sources of revenue. Can an amendment with this purpose be said by any stretch of language to resemble even remotely the National Recovery Act of the United States?

Sir, every Member of this House I am sure will admit that the power that is being conferred on the Central Government is a drastic power. It is necessary therefore for us to understand why article 280A is proposed to be inserted in the Constitution at the fag-end of the debate on the Second Reading of the Constitution. This matter, if it is of cardinal importance, could have been dealt with along with the other financial provisions contained in the Constitution. But the fact that this was not done shows that there was no general need felt at the time the financial articles were considered for enabling the Central Government to exercise complete budgetary control over the provinces. What has occurred since then to justify this amendment? Sir, clause (4) of the amendment refers to certain matters that may be included in the directions given by the President when a Proclamation has been issued declaring that the financial stability or credit of India or of any part of it is threatened. The President will have the power to direct any state to observe such 'canons of financial propriety' as may be specified in the directions given by him. Clause (4) is illustrative of the directions that the President may issue. Sub-clause (a) of this clause empowers the President to require a State to reduce the salaries and allowances of all or any class of public servants. Sir, we had to go through a serious economic crisis not many years ago. It affected not merely the Central Government, but also the provinces. Were the provinces backward then in reducing their expenditure? Did they show any reluctance to reduce the salaries of their public servants or were they only too glad to follow the example of the Central Government and reduce the salaries of all classes of public functionaries? Why has it been necessary, with this experience before us, to propose such an amendment to this House? Is there any reason why, disregarding all past experience, we should show complete distrust of the provinces and treat them is though they were children and the President a village school master?

Sir, item (ii) of sub-clause (a) lays down that the President may require that all Money Bills or other Bills to which the provisions of article 182 of the Constitution apply shall be reserved for his consideration after they are passed by the Legislature of the State.

The House knows what the definition of a Money Bill is. A Money Bill is any Bill that provides among other things for the imposition, abolition, remission, alteration or regulation of any tax. I think these words give us a clue to the significance of the amendment that has been placed before us. A Province can by itself hardly do anything that would jeopardise the financial stability or credit of India. It can at the most injure itself. But if we turn to the provincial sources of revenue that are enumerated in the Provincial List, we shall find that there is hardly any source the use of which can be a danger to the financial stability of the Centre or of a province. Even if a province by its foolishness places itself in a difficult financial position, why should it not be allowed to learn by its mistakes ?

Perhaps, Sir, it will interest the House if I enumerate the chief sources of provincial income. They are chiefly land revenue, stamp duties other than those mentioned in the Union List, estate and succession duties on agricultural land, income-tax on agricultural income, excise duties on alcoholic liquors, opium, etc., sales taxes including taxes on the consumption of electricity and taxes on luxuries including taxes on entertainments and amusements.

Shri T. T. Krishnamachari : What about vehicles tax?

Pandit Hirday Nath Kunzru : I have not mentioned it because vehicles tax, etc. are generally used for the benefit of local bodies. Now, which of these source of revenue can be misused by the provinces? If the policy that has been followed by certain provinces with the approval of the Centre is followed by other provinces, land revenue is bound to go down, and its reduction cannot be a grievance to the Central Government. The provincial governments have so far shown no reluctance to increase the rates of stamp duties, or to make as much use as they can of sales taxes or taxes on agricultural income. The only tax in respect of which a serious difference of opinion has arisen between the Central Government and some of the provincial governments is the excise duty on alcoholic liquors and certain narcotics. Some provinces, notwithstanding, I understand, the advice repeatedly given to them by the Government of India, have persisted in following a policy of prohibition, which will lead in course of time to a complete abolition of the revenue from excise duties. The advice given by the Central Government may be perfectly right. The present situation may well in the opinion of students of Indian finance require that the provinces should proceed slowly in respect of the introduction of measures leading to complete prohibition. The Centre and the provinces alike are faced with financial difficulties, and it does not seem to be right that at a time like this any province should try to forego any large source of revenue. It may in theory be desirable to bring about a complete cessation of the use of alcoholic liquors and narcotics, but we cannot have all the good things of the world at once. It will therefore be necessary for the provinces to exercise self-restraint and wait for better times to bring about this reform.

But if they do not listen to the Central Government, is this any reason why so drastic a power as article 280A will confer on the Government of India should be taken so that the provinces may be able to do nothing contrary to the wishes of the Central Government once the President has proclaimed that the financial stability not merely of the whole of India but of any part of it is threatened? Whenever there is serious disagreement between a province and the Central Government, the President can always be persuaded to say that the financial stability or credit of the province is in danger, and then the consequences envisaged by article 280A will follow. The Centre will acquire complete control over the budget of the province and will be able to dictate both to the provincial government and to the provincial legislature what financial policies they should adopt.

This is not a measure for bringing about a better distribution of the resources of India between the Centre and the provinces. This is not meant to enable the Central Government to deal with unemployment relief, or public works, or any of those problems whose solution would lead to economic contentment and add to the wealth of India. The object of this measure is totally different. As the Mover of the amendment has prudently abstained from giving any reasons justifying the amendment, we have to think for ourselves and find out as best we may what may have induced the Central Government to agree to the insertion of such an article into the Constitution. Thinking over the recent financial history of these provinces, I can discover no reason for the anxiety of the Central Government to have the power to exercise financial control over the provinces except the one that I have given.

It is for the House to determine whether the Constitution which our Prime Minister stated in his address before the American House of Representatives and the Senate the other day, followed the principle of federalism which had been borrowed from the American Constitution, should for all practical purposes be converted into a unitary Constitution. Even if the Constitution were unitary, would it be wise for the Central Government to try to curb the financial discretion of the provinces even if their measures were likely to injure them ? How is democracy to be established in the provinces, how is a sense of responsibility to be created among the legislators, how are the Ministers to learn by experience unless they are left to face the consequences of their mistakes? If the Centre wants to step in at every turn, if it wants that it should be able to exercise such complete control that nothing that was harmful to the interests of any province or of India might be allotted to be done, then we must say goodbye to democracy The Centre will certainly be glad to exercise even greater control than is given to it by this Constitution, if we may judge from the facts that we have before us, if we may judge from past experience. But this will not put it right and I venture to say that the mover has not made out the slightest justification for the acceptance of his amendment.

Shri K. M. Munsi (Bombay: General): Mr. President, Sir, I can easily appreciate the feelings of my honourable Friend, Pandit Kunzru, in opposing this 28A but he will also realise the grave situation to which reference has already been made by my Friend, Dr. Ambedkar. The debate in the Parliament, in the other part of the House, a fortnight ago, clearly showed that the country is on the brink of a precipice, and I do not think that the crisis which we are facing now is in any way less important than what faced France in 1937 when it passed the law of June 1937 or a similar measure passed by the United States of America in 1933. If I may read the preamble of the N.R.A. which America adopted:

> "A national emergency productive of widespread employment and disorganization to industry which burdens the State and foreign commerce and affects the public welfare and under mines the standard of living of the American people is hereby said to exist."

If my honourable Friend, Pandit Kunzru reads the speeches made by the Members of this House and the Finance Minister on the devaluation debate, I am sure he will feel convinced that a situation like the one which is before the country may require wider powers in the Centre of the nature of those that are contained in article 280A. His fears that there, will be multiplication of functionaries is not real because the Centre, when it acts under this article 280A, will act through the functionaries of the State itself. It is not going to employ its own machinery in place of the provincial machinery. The other argument that the provinces can do nothing without the permission of the Centre is also not quite correct. In normal circumstances, when the finances of the country are stable, so long as the credit of the country stands, there is no chance of this article being brought into force. It is only when there is a financial emergency that it has to be brought into force and till then the provinces are completely free to do what they like. The attitude is not "school masterly" as Suggested. The attitude is that the Centre will step in at the time when there is a breakdown in the financial structure of the country.

This article in the Constitution is the realization of one supreme fact that the economic structure of the country is one and indivisible. If a province breaks financially, it will affect the finances of the Centre: if the Centre suffers, all the provinces will break. Therefore the inter-dependence of the provinces and the Centre is so great that the whole financial integrity of the country is one and a time might arise when unitary control may be absolutely necessary.

Sir, I may mention that the different articles which this House has passed so far provide that in an emergency, and even in ordinary times, there be a certain amount of integration between the Centre and the provinces. I will only refer to article 226 under which a vote of the Upper House can rule that an item in the State List should be transferred to the Centre. We have the nominated Governors, whom we accepted in place of elected Governors. We have also the emergency sections in articles 275 and 278; when the constitutional structure of a province breaks down the Centre can interfere. When, for instance, internal disturbance threatens any part of the country, the Centre can interfere by emergency legislation. But is it suggested that if there is a financial breakdown of the whole country the Centre must sit idle and do nothing? I submit, therefore, that we have not go far departed from the fabric which we have raised.

Only one word more and I have done, my Friend, Pandit Kunzru, has said that the mover of the article. Dr. Ambedkar, has not explained the object of the measure. I think the object of the measure is patent on the face of it. It is not merely the desire of this Government that they should interfere in the provinces but it should be the desire of every Government in India to see that the financial stability of India is maintained at any cost and under all circumstances. This is the primary consideration before any Government, either this or any, other.

We have in the preamble, which will come before the House tomorrow, said that the sovereign people of India make this Constitution. The sovereign people are not all the people but the sovereign people of India as one unit acting through its supreme organ, the Constituent Assembly, which is creating the Constitution for the country as a whole. There is no provincial-autonomy, there is no federation by or for itself: these are not sacrosanct words. Every Government must satisfy the needs of the sovereign people of India. In a financial emergency there cannot be a greater privilege than that all financial affairs shall be controlled and directed from the Centre, as put forward in 280A. That is the object, and I submit it is an object without which the Constitution would remain incomplete and I invite the House to carry this article unanimously.

Mr. President : Have you anything to say?

The Honourable Dr. B. R. Ambedkar : If you think it is necessary, I will speak.

Mr. President : No, no. I do not say so. Then I will put the amendment to the vote.

Shri H. V. Kamath : I suggest that Dr. Ambedkar might consider the change of the wording from "threatened" to "gravely threatened".

Mr. President : You did make your suggestion. He will consider whether it is worth considering. I do not think I should allow you to make a second speech in the form of a suggestion to Dr. Ambedkar.

Srijut Rohini Kumar Chaudhuri (Assam : General): I wanted to make my only speech.

Mr. President : But I have already closed the debate.

The question is:

"That in amendment No. 429 of List XVIII (Second Week), in clause (1) of the proposed new article 280A, for the words 'has arisen' the words 'is imminent' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 429 of List XVIII (Second Week), in clause (1) of the proposed new article 280-A, for the words 'whereby the financial stability or credit of India or of any part of the territory thereof is threatened', the words which threatens India or any part thereof with financial break down or economic disaster', be substituted.

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 429 of List XVIII (Second Week), in clause (1) of the proposed new article 280-A.

after the word 'threatened' the words 'or is likely to be threatened' be inserted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 429 of List XVIII (Second Week), for clause (2) of the proposed new article 280-A, the following be substituted:--

> '(2)The proclamation issued under clause (1) of this article shall continue till such time it is revoked by the President.' "

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 429 of List XVIII (Second Week), in clause (3) of the proposed new article 280-A, after the words 'operation' the word 'Parliament shall have Power to make laws in respect of subjects contained in the State List as if they were subjects in the Concurrent List, and' be inserted."

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 429 of List XVIII (Second Week), clause (4) of the proposed new article 280-A be deleted.,"

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 429 of List XVIII (Second Week), for paragraph (ii) of sub-clause (a) of clause (4) of the proposed new article 280-A, the following be substituted:--

> '(ii) a provision requiring all Bills to be reserved for the consideration of the President after they are passed by the Legislature of the State.' "

The amendment was negatived.

Mr. President : The question is:

"That in amendment No. 429 of List XVIII (Second Week), clause (5) of the proposed new article 280-A be deleted."

The amendment was negatived.

Mr. President : I shall now put the original amendment of Dr. Ambedkar. The question is:

"That after article 280, the following new article be inserted:--

Provisions as to financial emergency.

'280A. (1) If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of

> the territory there of is threatened, he may by a proclamation make a declaration to that effect.

(2) The provisions of clause (2) of article 275 of this Constitution shall apply in relation to a proclamation issued under clause (1) of this article as they apply in relation to a Proclamation of Emergency issued under clause (1) of the said article 275.

(3) During the period any such proclamation as is mentioned in clause (1) of this article is in operation, the executive authority of the Union shall extend to the giving of directions to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose.

(4) Notwithstanding anything contained in this Constitution--

> (a) any such direction may include--
>
> (i) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State;
>
> (ii) a provision requiring all Money Bills or other Bills to which the provisions of article 182 of this Constitution apply to be reserved for the consideration of the President after they are passed by the Legislature of the State;
>
> (b) it shall be competent for the President during the period any proclamation issued under clause (1) of this article is in operation to issue directions for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the judges of the Supreme Court and the High Courts.

(5) Any failure to comply with any directions given under clause (3) of this article shall be deemed to be a failure to carry on the Government of the State in accordance with the provisions of this Constitution.' "

The motion was adopted.

Article 280A was added to the Constitution.

Article 85

Mr. President : We shall now take up the other items.

Shri T. T. Krishnamachari: Sir, I move:

"That for clause (3) of article 85, the following clause be substituted:--

> '(3) In other respects, the privileges, immunities and powers of each House of Parliament and of the members and the Committees of each House shall be such as may from time to time be defined by Parliament by law, and until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees at the commencement

of this Constitution.

The reason for making this change is that the scope of the sub-clause has to be extended as the original clause merely referred to the privileges and immunities of Members only. All that the present clause seeks to do is to apply it to the two Houses to all the Members and to the Committees of each House. This has been necessitated by the reason of the fact that we have provided in entry 69, List I, Schedule VII the legislative power to Parliament in 69A. The legislative power reads:

> "The privileges, immunities and powers of each House of Parliament and of the Members and Committee of each House."

In order to bring sub-clause (3) of article 85 in line with that entry, this amendment has been moved. Honourable Members of the House will please see that it merely seeks to expand the privileges, immunities and powers from the members to the Houses and also to the Committees and it is a matter which will not invoke controversy as it is consequential on the House accepting 69A, List I, Schedule VII.

The Honourable Shri K. Santhanam : Clause (4) also provides the same Privileges to Committees as to the Members.

Mr. President : This refers to the House also, not only to the Members.

There is one amendment of which notice has been given by Shri Brajeshwar Prasad. But that is covered by another amendment--No. 397. Therefore this does not arise.

Shri Brajeshwar Prasad : But there are two parts (a) and (b) on the next page.

Mr. President : Yes, there is 3(b). But is this a matter for the Constitution? That the President shall issue a White Paper is not matter for the Constitution The President shall issue a White Paper if it is suggested to him or if a resolution is passed in the Assembly.

Shri Brajeshwar Prasad : The whole purpose is to know what are the powers and privileges of the members of the House of Commons.

Mr. President : You may ask the President to issue that White Paper but it cannot form part of the Constitution.

Shri Brajeshwar Prasad : I can make a verbal change in this amendment.

Mr. President : I think we had better leave it alone.

Shri R. K. Sidhva : Sir, when this article was discussed last time we were not certain what were the privileges of the Members of the Commons. I tried to find it out from May's Parliamentary Procedure but I cold not. So, let us know something as to what are the privileges of the Members of the House of Commons. Otherwise a conflict may arise in Parliament. Until two or three years after the formation of Parliament these privileges may not be framed because I know that no act of privileges have so far been framed till now although under the Government of India Act, 1935 there is a provision that Members' Privileges may be framed; they have not been framed either in the Centre or in the provinces except in two Provinces.

The Honourable Dr. B. R. Ambedkar : Sir, I might with your permission inform my Friend Sidhva that since the time when the discussion took place I made a little research and I find that the South African Parliament has passed an Act defining the immunities and privileges. I have got a copy; if he wants, I can transmit it for his study. It might be possible later on for our own Parliament to embody the privileges.

Shri Brajeshwar Prasad : Sir, in amendment No. 419 the words "Provincial Parliament" occur. This is a printing mistake. The word is not "Provincial", but "Provisional". This is a separate amendment which has not been moved by anybody else. May I move it?

Mr. President : I suppose the Provisional Parliament has got all the powers and privileges of the Parliament which will be of a permanent nature. So this does not arise really.

Shri Mahavir Tyagi : Could we not leave this power to the Parliament itself to decide?

Mr. President : That is exactly what the article says. The Parliament will define the powers and privileges, but until the Parliament has undertaken the legislation and passes it the privileges and powers of the House of Commons will apply. So, it is only a temporary affair. Of course the Parliament may never legislate on that point and it is therefore for the Members to be vigilant.

Shri H. V. Kamath : Will it be open to the Provisional Parliament to define these powers ?

Mr. President : Certainly, it will be open to it, if it chooses to do it.

Shri B. Das : Sir, in this amendment No. 419, is it the "*Provincial* Parliament" or the *"Provisional* Parliament"?

Mr. President : It is a mistake. It ought to be "Provisional Parliament". When Mr. Brajeshwar Prasad pointed it out I did not follow him. It is a mistake in printing. So, the Provisional Parliament has the same right as the permanent Parliament. Is any discussion necessary? So, I will put this amendment to vote.

The question is:

"That for clause (3) of article 85, the following clause be substituted:--

> '(3) In other respects, the privileges, immunities and powers of each House of Parliament and of the members and the committees of each House shall be such as may from time to time be defined by Parliament by law, and until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees at the commencement of this Constitution.' "

The amendment was adopted.

Article 111

Shri T. T. Krishnamachari : Mr. President, Sir I move:

"That for the proviso to clause (1) of article 111, the following proviso be substituted:--

> 'Provided that no appeal shall lie to the Supreme Court from the judgment, decree or final order of one judge of a High Court."

This, in effect, simplifies the position as it now is. The present proviso is a longish one. The present proviso which the amendment seeks to supplant reads thus:--

> "Provided that no appeal shall lie to the Supreme Court from the judgement, decree or order of one judge of a High Court or of one judge of a Division Court thereof, or of two or more judges of a High Court, or of a Division Court constituted by two or more judges of a High Court, where such judges are equally divided in opinion and do not amount in number to a majority of the whole of the judges of the High Court at the time being."

It is felt that this is not necessary by reason of the fact that this was borrowed from the original Letters Patent, which was amended in 1928. The amended Letters Patent, as it is applied to our courts is simpler than this longish proviso and the purport of it was more or less analogous to the provision that we are now seeking to introduce as a proviso to article 111, instead of the original proviso. I do not think there is any scope for discussion in this particular matter, because what is done by this amendment is to simplify and restrict the limitation that is put in regard to appeals to the Supreme Court. If honourable Members are satisfied with this explanation it can go through. If, on the other hand, they want an elaborate explanation of the whole question of how the powers of benches in the high courts were affected by the Letters Patent, and how much we have borrowed therefrom. I think my honourable Colleague Mr. Alladi Krishnaswami Ayyar is prepared to satisfy Members on this particular point.

Sir, I move.

Mr. President : The question is:

"That for the proviso to clause (1) of article 111, the following proviso be substituted :--

> 'Provided that no appeal shall lie to the Supreme Court from the judgement, decree or final order of one judge of a High Court.' "

The amendment was adopted.

Article 112

Shri T. T. Krishnamachari : Sir, I move:

"That with reference to amendment No. 364 of List XV (Second Week), for article 112, the following article be substituted:--

Special leave to appeal by the Supreme Court.

'112. (1) The Supreme court may, in its discretion, grant special leave to appeal from any judgement, decree, determination sentence or order in any cause or matter passed or made by any Court or tribunal in the territory of India.

(2) Nothing in clause (1) of this article shall apply to any judgement, determination, sentence or order passed or made by any court of tribunal constituted by or under any law relating to the Armed Forces.' "

The amendment to clause (1) of article 112 as it now stands is a very simple one. The words "final order" in the original article are sought to be removed and revised by the insertion of the words "determination, sentence or order" So far as clause (2) is concerned, the amendment must be perfectly clear to honourable Members. It seeks to exclude from the jurisdiction of the Supreme Court (the omnibus jurisdiction which article 112 confers on it) any decision of a court-martial covering matters which relate to the armed forces and matters which are governed by the Army Act. I understand that this follows the practice that now obtains in the U.K. where courts do not interfere with the decisions of the court-martial. I would at once confess that this matter, which escaped our attention at the time this article was framed and put before the House, has now been brought to our notice by the Defence Department, who have convinced us that a provision or this nature which obtains currency in other countries should also find a place in our Constitution.

Sir, if you would permit me I would like to move also another amendment which relates to the same subject, so that discussion on the whole matter might be taken up together.

Sir, I move:

"That to article 203, the following clause be added, namely:--

'(4) Nothing in this article shall be deemed to extend the powers of superintendence of a High Court over any court or tribunal constituted by or under any law relating to the Armed Forces.' "

Clause (4) of article 203 and clause (2) of article 112 deal with the same subject. In the case of article 203 it seeks to prohibit the jurisdiction of the High Courts extending to courts-martial, whereas a similar restriction in regard to the Supreme Court is contemplated under article 112. The reason for introducing these two new amendments is the view expressed by the Defence Ministry that such protection is necessary in respect of the decisions of courts-martial which deal with the Armed Forces and the analogy of what obtains in other countries was brought before us. We therefore felt that there was a case for putting in a provision of this nature in articles 112 and 203.

Prof. Shibban Lal Saksena : Sir, I move:

"That in amendment No. 421 of List XVIII (Second Week), clause (2) of the proposed article 112 be deleted."

I wish to bring a charge of breach of faith against Dr. Ambedkar in this matter. Sometime ago I had tabled an amendment to article 112A in which I had specially desired that provision should be made that persons sentenced to death by courts-martial should be able to appeal to the Supreme Court. Dr. Ambedkar assured me that such persons are covered by article 112 and the Supreme Court can take notice of such persons under its powers under article 112. Probably a report of the discussion in the House appeared in the papers and the Defence Department has tried to strengthen itself against the protection given by this article to persons condemned by courts-martial. And therefore Dr. Ambedkar has been asked to table this amendment. Mr. T. T. Krishnamachari just now said that this was necessary because the Defence Department wants so. Probably they have read the report of the discussion and that is why they have asked for this provision.

I therefore, think, Sir, that this is not fair. I had withdrawn my amendment that day on the assurance that this will be covered by this article and now just the reverse provision is being made and it is going to be accepted. I have seen and heard many Judge-Advocates who deal with these military courts-martial and they say that they are the persons who prepare the prosecution and they are also the persons who hear the cases and then give the judgement and if any Judge-Advocate made frequent decisions against cases prepared by himself, then he is also dismissed by the military authorities. They do not like that these cases should be dismissed. I think, Sir, this is a grave matter. Recently after the War in Britain also a Commission was appointed to study the administration of these military courts-martial and they also recommended that the procedure should be made more civilized and in the name of discipline the people should not be butchered. I have seen that the present procedure of Judge-Advocates is something against all the laws of jurisprudence and I think that at least persons convicted of death should have the right of appeal to the Supreme Court after their judgements. I consider that this provision is not only unfair but is also against the promise given to me by Dr. Ambedkar on a previous occasion.

Shri R. K. Sidhva : Mr. President, Sir, I have my doubts about this clause. I am in entire agreement regarding protection to be given to Armed forces and with the decision that martial law should not be subject to the revision by the Supreme Court. To that extent I am agreeable, but I can show a number of cases where a number of armed forces are involved with a number of the civil population. Sir, there have been many cases of military motor drivers who have met with accidents and killed a number of civilians and those cases are tried by court-martial and in 90 per cent of the cases the civilians, poor fellows, had to suffer. They do not get any compensation and no justice not is the military driver punished in any way or sentenced. My point, therefore, is that the Drafting Committee in the interests of the civilian population will kindly bear this matter in mind and make some arrangement or provision here that the civilian population who suffer from these accidents should be protected. They should not be tried by martial law. I can state a number of cases and if these cases are tried by the civil courts, there would have been fair trial. In the civil and criminal courts they get compensation and also subject to punishment. On account of this lacuna many of the drivers are so rash that they drive rash and kill many civilians. I draw the attention of the Honourable Dr. Ambedkar to this matter. Probably this matter did not come to his notice before, but this is a very important matter and while we want the armed forces to be protected' and their appeal should not come to the Supreme Court, the civilians ought equally to be protected.

Shri B. Das : I wish Dr. Ambedkar should make it clear whether the tribunal in the territory of India applies to the Income-tax tribunal or the different Railway tribunals that we have. If the power is extended, then the Income-tax tribunal must be dissolved at once. We have got the Income-tax tribunal which is the final authority.

The Honourable Dr. B. R. Ambedkar : Are they relevant to this discussion? How does the Income-tax tribunal come here?

Shri B. Das : In this article it is stated:--

"The Supreme Court may, in its discretion, grant special leave to appeal from any judgement, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India."

I only wish to be assured by you that the 'tribunal' does not mean the Income-tax tribunal.

The Honourable Dr. B. R. Ambedkar : You said other personnel also. So far as my memory goes, this has been amended to make provision for income-tax cases also to be taken up in the Supreme Court. I know that it has been amended.

Pandit Thakur Das Bhargava : Sir, in my humble opinion clause (2) seems to be very wide and unnecessary. It reads as follows:

"Nothing in clause (1) of this article shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces."

So far as offences relating to the military personnel and military offences are concerned, they may be immune from the jurisdiction of the Supreme Court; but there are many laws relating to the Amend Forces which countenance the judgments etc. by courts constituted under those Acts and the accused in those cases are the civilian population or military personnel accused of civil offences. In regard to say, the Cantonment Act or in regard to the Territorial Forces Act, there are some offences in which the members of the civil population are accused and there is no reason whatsoever why such sentences should not be subject to the jurisdiction of the Supreme Court. I therefore think that this clause is too widely worded and needs amendment.

The Honourable Dr. B. R. Ambedkar : Mr. President Sir, in view of the observations made by my honourable Friend, Prof. Shibban Lal Saksena, it has become Incumbent upon me to say something in relation to the proposed article moved by my honourable Friend, Mr. T. T. Krishnamachari. It is quite true that on the occasion when we considered article 112 and the amendment moved by my honourable Friend, Prof. Shibban Lal Saksena. I did say that under article 112 there would be jurisdiction in the Supreme Court to entertain an appeal against any order made by a Court-martial. Theoretically that proposition is style correct and there is no doubt about if in my mind. But what I forgot to say is this: That according to the rulings of our High Courts as well as the rulings of the British courts including those of the Privy Council, it has been a well recognized principle that civil courts, although they have jurisdiction under the statute will not exercise that jurisdiction in order to disturb any finding or decision given or order made by the Court-martial. I do not wish to go into the reason why the civil courts of superior authority, which notwithstanding the fact that they have this jurisdiction have said that they will not exercise that jurisdiction but the fact is there and I should have thought that if our courts in India follow the same decision which has been given by British courts--the House of Lords, the King's Bench Division as well as the Privy Council and if I may say so also the decision given by our Federal Court in two or three cases which were adjudicated upon by them--there would be no necessity for clause (2); but unfortunately the Defence Ministry feels that such an important matter ought not be left in a condition of doubt and that there should be a statutory provision declaring that none of the superior civil courts whether it is a High Court or the Supreme Court shall exercise such jurisdiction as against a court or tribunal constituted under any law relating to the Armed Forces.

This question is not merely a theoretical question but is a question of great practical moment because it involves the discipline of the Armed Forces. If there is anything with regard to the armed forces, it is the necessity of maintaining discipline. The Defence Ministry feel that if a member of the armed forces can look up either to the Supreme Court or to the High Court for redress against any decision which has been taken by a court or tribunal constituted for the purpose of maintaining discipline in the armed forces, discipline would vanish. I must say that that is an argument against which there is no reply. That is why clause (2) has been added in article 112 by this particular amendment and a similar provision is made in the provisions relating to the powers of superintendence of the High Courts. That is my justification why it is now proposed to put in clause (2) of article 112.

I should, however, like to say this that clause (2) does not altogether take away the powers of the Supreme Court or the High Court. The law does not leave a member of the armed forces entirely to the mercy of the tribunal constituted under the particular law. For, notwithstanding clause (2) of article 112, it would still be open to the Supreme Court or to the High Court to exercise jurisdiction, if the court martial has exceeded the jurisdiction which has been given to it or the power conferred upon it by the law relating to armed forces. It will be open to the Supreme Court as well as to the High Court to examine the question whether the exercise of jurisdiction is within the ambit of the law which creates and constitutes this court or tribunal. Secondly, if the court-martial were to give a finding without any evidence, then, again, it will be open to the Supreme Court as well as the High Court to entertain an appeal in order to find out whether there is evidence. Of course, it would not be open to the High Court or the Supreme Court to consider whether there has been enough evidence. That is a matter which is outside the jurisdiction of either of these Courts. Whether there is evidence or not, that is a matter which they could entertain. Similarly, if I may say so, it would be open for a member of the armed forces to appeal to the courts for the purpose of issuing prerogative writs in order to examine whether the proceedings of the court martial against him are carried on under any particular law made by Parliament or whether they were arbitrary in character. Therefore, in my opinion, this article, having regard to the difficulties raised by the Defence Ministry, is a necessary article. It really does not do anything more but give a statutory recognition to a rule that is already prevalent and which is recognised by all superior courts.

I am told that some people feel some difficulty with regard to the law relating to the armed forces. It is said that there are many persons in the armed forces who are really not what are called men of the line, men behind the line. It seems to me quite impossible to make distinction between persons who are actually bearing arms and others who are enrolled under the Army Act, because the necessity of discipline in the armed forces is as great as the necessity of maintaining discipline among those who are not included among the armed forces.

My honourable Friend Mr. Sidhva raised the question that sometimes when a member of the armed forces commits a certain crime, kills somebody by rash driving or any such act, he is generally tried by court-martial, and there is nothing done so as to bring him to book before the ordinary courts of criminal law. Well, I do not know; but I have no doubt in my mind that so far as a member of the armed forces is concerned, he is subject to double jurisdiction. He is no doubt subject to the jurisdiction of the court which is created under the military law. At the same time, he is not exempt from the ordinary law of the land. If a man, for instance, commits an offence which is an offence under the Indian Penal Code and also under the Army Act, he will be liable to prosecuted under both the Acts. If a member of the army has escaped any such prosecution, it is because people have not pursued the matter. The general theory of the law is that because a man becomes a member of the armed forces, he does not cease to be liable to the ordinary law of the land. He continues to be liable, but in addition to that liability, he takes a further liability under the Act under which he is enrolled.

Shri Mahavir Tyagi : Can he have two punishments for one crime?

The Honourable Dr. B. R. Ambedkar : Oh, yes.

Shri R. K. Sidhva : Why not make it clear?

The Honourable Dr. B. R. Ambedkar : It is quite clear. Section 2 of the Indian Penal Code says: "Every person". "Every person" means high or low, armed or unarmed.

Mr. President : Mr. T. T. Krishnamachari, would you like to say anything after this?

Shri T. T. Krishnamachari : No, Sir.

Mr. President : I shall put the amendments to vote.

The question is:

"That in amendment No. 421 of List XVIII (Second Week), clause (2) of the proposed article 112 be deleted."

The amendment was negatived.

Mr. President : I shall put article 112 as proposed in amendment No. 421.

The question is:

"That with reference to amendment No. 364 of List XV (Second Week), for article 112, the following article be substituted:--

Special leave to appeal by the Supreme Court.

'112. (1) The Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

(2) Nothing in clause (1) of this article shall apply to any judgment,

> determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.' "

The motion was adopted.

Article 112, as amended, was added to the Constitution.

Article 203

Mr. President : The question is:

"That to article 203, the following clause be added, namely:--

> '(4) Nothing in this article shall be deemed to extend the powers of superintendence of a High Court over any court or tribunal constituted by or under any law relating to the Armed Forces.' "

The amendment was adopted.

Article 122

Shri T. T. Krishnamachari : Mr. President, Sir, I move:

"That in article 122A, after the words 'In this Chapter', the words and figures land in Chapter VII of Part VI of this Constitution' be inserted."

This deals with a very simple matter. Article 122A deals with interpretation of the Constitution in so far as the Supreme Court is concerned. What is now sought to be done is that this clause in so far as it refers to interpretation of the constitution in reference to any substantial question of law shall apply to the Chapter relating to High Courts as well. It is a lacuna that was not noticed at the time this article was passed and is not a matter which really involves any substantial change. It is only filling up a lacuna which exists.

Mr. President : The question is:

"That in article 122A, after the words 'In this Chapter, the words and figures 'and in Chapter VII of Part VI of this Constitution' be inserted."

The amendment was adopted.

Article 130

Mr. President : We proceed to article 130.

Shri T. T. Krishnamachari : Sir, I move:

"That in clause (1) of article 130, for the words may be exercised by him', the words 'shall be exercised by him either directly or through officers subordinate to him, be substituted."

Sir, the House to day passed after some discussion a similar-amendment in respect of article 42 which relates to the President. We have been seeking to import the same wording in respect of the executive powers of the Governor.

Mr. President : There was an amendment by Mr. Kamath to the other article. Probably there is similar amendment to this. is it necessary to have a discussion on this ?

Shri H. V. Kamath : My views, are that they are simply repeating the mistake I do not move my amendment.

Mr. President : The question is:

"That in clause (1) of article 130, for the words 'may be exercised by him' the words 'shall be exercised by him either directly or through officers, subordinate to him' be substituted".

The amendment was adopted.

Article 169

Mr. President : We take up article 169.

Shri T. T. Krishnamachari : Sir, I move:

"That for clause (3) of article 169, the following clause be substituted:--

> '(3) In other respects, privileges, immunities and powers of a House of the Legislature of a State and of the members and the committees of a House of such Legislature shall be such as may from time to time be defined by the Legislature by law, and until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees at the commencement of this Constitution. ' "

This follows the line of similar amendment moved to clause (3) of article 85 and the House has accepted it and this merely seeks to put in the same set of provisions in respect of powers of the Houses of Legislature, the powers and privileges and immunities of members of the Committees of Houses of Legislatures.

Mr. President : We have just passed a similar provision with regard to Parliament. This relates to the Legislatures of the States.

The question is:

"That for clause (3) of article 162, the following clause be substituted:--

> '(3) in other respects, privileges, immunities, and powers of a House of the Legislature of a State and of the members and the committees of a House of such Legislature shall be such as may from time to time be defined by the

> Legislature by law, and until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees at the commencement of this Constitution. ' "

The amendment was adopted.

Article 213-A

Mr. President : We go to article 213-A.

Shri T. T. Krishnamachari : I move:

"That in clause (1) of article 213A for the words 'for the purpose of this Constitution' the words 'for all or any of the purposes of this Constitution' be substituted."

This amendment relates to High Courts in State in Part II of the First Schedule and the words are merely an amplification of the original phraseology and there can be no objection to such amplification. I am advised that this is necessary by our legal advisers and that is why this amendment is being moved.

The Honourable Shri K. Santhanam : I am afraid we are going in for too many superfluous amendments.

Mr. President : Does anyone wish to say anything ? Mr. Santhanam thinks it is unnecessary and so does Pandit Bhargava. Mr. Krishnamachari, do you wish to say anything ?

Shri T. T. Krishnamachari : In this matter I am afraid we have to be guided by our Advisers.

The Honourable Shri K. Santhanam : Even if they have committed any mistake in the original draft, unless it is indispensable no amendment should be brought before us now.

Shri. T. T. Krishnamachari : I am afraid we have committed another mistake in another article if I should accept the argument of my honourable Friend Mr. Santhanam. We have committed the mistake in 303 clause (1) item (II) sub-item (2). It says in the definition:--

> **"any other court in the territory of India which may be declared by Parliament by law to be a High Court for all or any of the purposes of this Constitution."**

If we have a definition of the High Court using these words, however, unnecessary it might appeal to some honourable Members of this House, I thought that it is best to bring it into line with the definition which will really be the governing factor in the interpretation of the article of this House.

An Honourable Member : If these are absolutely necessary, they can be brought in the Third Reading.

Mr. President : I do not think there is any real opposition to this but some Members consider it unnecessary.

The question is:

"That in clause (1) of article 213-A for the words 'for the purposes of this Constitution', the words 'for all or any of the purposes of this Constitution' be substituted."

The amendment was adopted.

Article 215-A

Mr. President : We go to 215-A.

Shri T. T. Krishnamachari : I move:

"That article 215A be deleted."

This article refers to the Scheduled and Tribal Areas. It reads thus:--

> "In this Constitution the expression 'scheduled areas' means the areas specified in Parts I to VII of the Table appended to paragraph 18 of the Fifth Schedule in relation to the States to which those parts respectively relate subject to any order made under sub-paragraph (2) of that paragraph."

Then again there is definition of tribal areas.

Sir, the House has passed the Fifth and Sixth Schedule which completely cover all that is contained in these two clauses of article 215A. It is therefore considered unnecessary.

Mr. President : The question is:

"That article 215A be deleted."

The amendment was adopted.

Shri T. T. Krishnamachari : There is one item to be dealt with before going to the Preamble.

Maulana Hasrat Mohani : (United Provinces : Muslim) : Sir, I object to putting here the Preamble at this fag-end of the day.

Shri T. T. Krishnamachari : We have not moved the Preamble. I suggest that article 13 be held over till tomorrow.

Shri R. K. Sidhva : Sir, you have not put 445.

Mr. President : That is not in today's agenda. I think this covers all the articles, except article 13, which are in today's agenda. It is suggested that we might take up article 13 tomorrow as some Members have given notice of amendments and would like to have a little more time for consideration. Mr. Sidhva--did you refer to 302AA ? It is coming up tomorrow. Shall we take up the Preamble tomorrow ?

Honourable Members : Tomorrow.

Mr. President : The paper which has been circulated today also has some other articles. All this we shall have to dispose of tomorrow including the Preamble.

The Honourable Shri K. Santhanam : The Drafting Committee may consider whether any of them are indispensable; otherwise they may come in the Third Reading as consequential amendments. We need not spend much time on consequential amendments.

Mr. President : There is not much there with regard to amendments to clauses which have been passed. The others are substantial propositions. Ofcourse the Drafting Committee will naturally consider whether it is worth while pressing those amendments.

Shri. R. K. Sidhva : Do we understand that tomorrow by evening we end the session ?

Mr. President : It all, depends upon you. The Drafting Committee is not apart from you. It includes everybody in the House.

Then we shall adjourn now till, what time tomorrow ? When do we meet tomorrow?

The Honourable Members : Nine o'clock, tomorrow morning.

Mr. President : Very well, if that is the wish of the House, I have no objection. We may meet at 9 o'clock so that we may have four hours to finish all this.

The House stands adjourned till nine o'clock tomorrow morning.

The Assembly then adjourned till Nine of the Clock on Monday. the 17th October 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME X

Monday, the 17th October, 1949

The Constituent Assembly of India meet in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

MOTION-RE ALLOWANCES OF MEMBERS

Mr. President : We shall first take up the motion standing in the name of Shri Muniswamy Pillay.

Mr. V.I. Muniswamy Pillay : (Madras : General) : Mr. President, with your permission, I beg to move :

"That the following amendments be made in the Rules governing the allowances of Members of the Constituent Assembly of India :-

1. That in rule (D), relating to daily allowances, in paragraph 4 of the Handbook for Members, and in paragraph 8 (Relating to allowances admissible to Members residing at the place where the Assembly meets) of the said Hand-book, for the figure, brackets and words `Rs. 45 (Rupees forty five)', the figure, brackets and words `Rs. 40 (Rupees forty)' be substituted.
2. That exception (c) to Note 1 under rule (A) in paragraph 4 of the Handbook for members, be deleted."

Sir, this motion has been brought before the House for certain reasons. Everyone of the members of this august Assembly knows the present general economic condition in India and also the prevailing financial stringency. There has been a cry throughout this country that some savings must be made here and there to help the Government. This motion I have moved shows that the Members who are entitled to Rs.45 per day by way of daily allowance shall forego 11 per cent of it which makes it Rs.40. I know as a matter of fact that this is a small sacrifice. This august Body has go give a lead to the country to improve the economic conditions that prevail today.

Sir, this sum of Rs.40 to which we propose to reduce our daily allowance does not represent our salary. This matter was before the Staff and Finance Committee and the Members thereof felt that this should be placed before the Constituent Assembly. The Members are offering to cut down their daily allowance by 11 per cent. Voluntarily. I contacted many Members of this August Assembly and found that they are all unanimously of the opinion that a five rupee cut in the daily allowance will not be a hardship. In the circumstances I hope the House will give its consent to reduce the daily allowance of Members from Rs.45 to Rs.40.

The second part of my amendment is that exception (c) to Note 1 under rule (A) in paragraph 4 of the Handbook for Members be deleted. As one coming from Madras I know as a matter of fact that there is arrangement for running a restaurant car from Delhi to Balharshah and also from Balharshah to Delhi in the train service. This arrangement gives some convenience to Members for their meals and other things. At one time there was a feeling that this restaurant car was not meeting the demands mostly of the western style. But the present arrangement which is mostly of the Indian type caters both to vegetarians and non-vegetarians. The arrangements made in this respect from Delhi to Madras and back are in my opinion satisfactory. Of course, from Balharshah to Madras, the arrangement is not completely satisfactory, because the restaurant car is detached at Balharshah. But there are first class refreshment rooms and there are caterers who wait on the passengers at every important station and take orders and supply dinner and other things either in the train itself or at the halting places.

These two changes in the rules are therefore necessary and I hope the Members will vote unanimously for this motion.

Mr. President:There is notice of an amendment to this motion by Shri Shankarrao Deo.

Shri Shankerrao Deo (Bombay : General) : I am not moving my amendment, Sir.

Shri H.J. Khandekar (C.P. & Berar : General) *[Mr. President, Sir, I beg to move : my amendment which I have tabled in respect of the motion under discussion which has been moved by Shri Muniswamy Pillay proposing that the present amount of daily allowances to the Members of the Constituent Assembly should be reduced from rupees forty-five to forty only.

The amendment reads :

"That in the amendments to Rule (D), and to paragraph figure, brackets and words Rs.40 (Rupees forty) the figure, brackets and words Rs.20 (Rupees twenty) be substituted."

In my amendment I propose that Members should draw only rupees twenty for their daily allowance. There is a reason, Sir, for my suggesting this amendment and it is this. While we were fighting for freedom, every one of us, and I may say millions of our countrymen made every possible sacrifice that was needed to make our country free. After the country had made a lot of sacrifices through the efforts and kindness of Mahatmaji we achieved Swarajaya and made our country free. But after independence, I am sorry to say, Sir, such an atmosphere has grown in the country that everyone who took part in the freedom struggle wants now to earn more and to lead a pleasant and prosperous life. We are, no doubt, free now; but to retain out freedom it is necessary for every one of our countrymen to make sacrifices, for if we do not make sacrifice for the security of our freedom, and the conditions that are obtaining at present in the country continue further, I am afraid, we may be overtaken by chaos and our freedom may turn out to be a short-lived one. The financial position of the Government of the country is getting worse and worse and we should, therefore, make all possible sacrifices to improve it.

From the very start ours has been an organization of selfless people. There was an amendment in the name of Shri Shankarrao Deo which he has not moved ; I wish he had moved his amendment. The amendment he has sent in is not befitting a person of his standing who in his renunciating spirit has discarded even Kurta and Topi and does not put on Dhoti of the usual length of nine cubits. An amendment from him should have said that the Members should not take even a pie for their allowance.

He is a bachelor, I mean to say he is unmarried. Secondly, he has no family; and thirdly, his dress is much simpler than ours. I say he is a great and selfless person, nay I should say he is a sage or *sanyasin*. It was not proper for a great and selfless sage like him to have sent in an amendment like the one he has tabled.

Shri M. Satyanarayana (Madras : General) : May I ask if it is proper for us to speak in this strain about any person ?

Shri H.J. Khandekar : I am not speaking anything against hi, rather I am expressing admiration for him; I consider him a selfless persons and a sage and this is what I have said about him. I do not think that there can be any objection against the terms. I have used about him. I only means to say that an amendment from a leader like him should have been to the effect that the Members should not take even a pie as allowance.

Sir, I am a family man ; I have my family and children, whom I have to provide for. I require clothes and house for them. It is, therefore, natural that I may taken some amount as allowance. But at the same time I do wish to make some sacrifice. So, maintaining a balance between our requirements and the sense of sacrifice, I have moved my amendment and every Member of the House who is at least of my status and not thjat of Shri Shankarrao Deo, should accept a minimum allowance of rupees twenty a day. My amendment, Sir, is quite reasonable. Every Member who has so far been making sacrifices should continue to make sacrifice in future also. I believe for a selfless person, my amendment alone is right and every selfless person should accept it.

Outside this House we hear every one exhorting for sacrifice. We hear talks for making sacrifice from the Members of this House and from the Congress platform. Out leaders are also making constant requests to all to make all possible sacrifice for the country. If we, therefore, accept the amendment of Shri Muniswamy Pillay which lays down a nominal sacrifice of rupees five only, it would not be decent and proper for the honourable Members of this House. This sacrifice is not in conformity with the dignity of the Members of the House. If you go to villages and say that you have sacrificed rupees five a day from your income, the people will laugh at you.

Shri Shankarrao Deo : Is there any discussion necessary on this point?

Shri H.J. Khandekar : I am about to conclude my observations now. So in view of what I have said, Sir, my amendment is very proper and I hope the House will accept it.}

(Shri R.K. Sidhva rose to speak)

Mr. President : Is there any discussion necessary ?

Honourable Members : The question may now be put.

Shri R.K. Sidhva : (C.P. & Berar : General) : Sir, I wholeheartedly support the motion move by .

Mr. President : What is the use of this discussion ?

Shri R.K. Sidhva : Sir, the only point that I want to make is that the cut should be voluntary. the Ministers are also having a cut voluntarily. We can unanimously make a declaration in the House that we shall also forego Rs. 5 a day. That will be more graceful than amending the rules and making it compulsory. Nothing else.

Mr. President : Mr. Sidhva's point is that instead of amending the rules, let it be in the form of a resolution which every Member will undertake to follow. His point is that instead of making it compulsory by an amendment of the rules, let it be in the form of a resolution which every Member will accept.

Shri V.I. Muniswamy Pillay : May I say a few words about the amendment moved by Mr. Khandekar. So far as Mr. Sidhva's point is concerned, a resolution practically comes to the same thing.

Mr. President : How will the office prepare the bills ?

Shri R.K. Sidhva : On the basis of the resolution.

Mr. President : No, the office cannot prepare the bills on the basis of a voluntary resolution, unless the Member concerned gives it in writing. Can you do that for every Member here ? Every Member will have to do it individually.

Shri R.K. Sidhva : The salary of the Ministers is regulated by an Act. The act is not amended. Yet the cut has been only voluntary. In this case also similar procedure should be adopted.

Mr. President : The Ministers are so few in numbers and all of them can give it in writing. But we are here more than three hundred. All of us are not present here.

Seth Govind Dass (C.P. Berar : Geeneral) : For one thing, most of our Members are not here. Therefore, let the Assembly decide this question.

Shri V.I. Muniswamy Pillay : Sir, these rules were made by this Assembly and I think it is only proper that a motion should be moved and carried. Mr. Khandekar was referring to the question whether Members were having any extra expenses. I do think that is relevant. When we accepted the original motion in this house, no personalities were concerned or mentioned. There were some members here having their families and servants. Thus having two establishments entailing heavy expenses. At the time the rules were made the Assembly came to the unanimous conclusion by fixing the allowances at Rs. 45. Now, this motion seeks to reduce it by Rs. 5 and make it Rs. 40 and instead of the *circutous* route *via* Bombay and paying more money from the Government, we are providing for the shortest route and paying the amount which is actually due.

Mr. President : I will first put Mr. Khandekar's amendment to the vote. The question is :-

"That in the amendments to Rule (D) and to paragraph 8, for the proposed figure, brackets and words Rs. 40 (Rupees forty) the figure, brackets and words Rs. 20 (Rupees twenty) be substituted."

Mr. President : The question is :-

"That the following amendments be made in the Rules governing the allowances of Members of the Constituent Assembly of India :-

1. That in rule (D), relating to daily allowance, in paragraph 4 of Handbook for Members, and in paragraph 8 (relating to allowances admissible to Members resident at the place where the Assembly meets) of the said Handbook for the figure, brackets and words Rs. 45 (rupees forty five) the figure, brackets and words Rs. 40 (rupees forty) be substituted.
2. That exception (c) to Note 1 under rule (A) in paragraph 4 of the Handbook for Members, be deleted."

The motion was adopted

DRAFT CONSTITUTION (contd.)

Article 59

Mr. President : Then we will take up the consideration of the articles on the Order Paper. Article 59, amendment No. 445.

The Honourable Shri K. Santhanam (Madras : General) : May I suggest that we take up the articles for which amendments were circulated earlier. These amendments were given to us only this morning.

Mr. President : They were distributed to Members yesterday evening when we were sitting in the House.

Shri T.T. Krishnamachari : (Madras : General) : Mr. President, Sir, the amendments to articles 59, 62, 141, 175 and 13 would mean reopening the articles already passed. May I suggest that the permission of the House be taken ?

Mr. President : Does the House give leave to reopen these articles ?

Honourable Members : Yes.

Shri T.T. Krishnamachari : Sir, I move

"That for sub-clause (b) of clause (1) of article 59, the following sub-clause be substituted :-

> (b) in all cases where the punishment or sentence is for an offence under any law relating to a matter to which the executive power of the Union extends"

Sub-clause (b) of the original article 59, which relates to the powers of the President to grant pardons, reads thus :-

> "(b) in all cases where the punishment or sentence is for an offence under any law relating to a matter with respect to which Parliament has, and the Legislature of the State in which the offence is committed has not, power to

make laws."

This means that the concurrent field would be left in a very nebulous position. In article 60 it is provided that in matters where Parliament so decides the executive power of the Union will extend to the States in respect of subjects falling within the concurrent field. This position will be left nebulous. Therefore the amendment seeks to remedy that defect, making the power of the President to grant pardon to extend to all matters to which the executive power of the Union extends.

There will have to be a consequential amendment in regard to article 141 where the power of pardon is given to the President, which I shall move presently if this amendment is approved by the House.

The Honourable Shri K. Santhanam : Sir, I have tabled an amendment to this. I could not send it earlier.

I move :

"That in amendment No. 445 of List XX in the proposed sub-clause (b) of clause (1) of article 59, after the words `offence under any law' the words 'made by Parliament' be inserted."

I understand the purpose of amendment No. 445, but it goes much wider tan its intention, because the executive power of the Union extends not only to laws made by Parliament but also to some of the laws made by the legislature of a State. For instance, in articles 234 and 234A which deal with the giving of directions, the executive power of the Union extends to some laws made by the Legislature of a State. Yesterday, in the matter of financial emergency, we have provided that the executive power of the Union extends to matters relating to money Bills and financial matters. We do not want that in the case of offence under laws made by a State Legislature the right of pardon should accrue to the President. Therefore I want to limit it to offences under any law by Parliament. The point is when Parliament makes any law under the concurrent List and gives executive power to the Union Executive then the power of pardon should be with the President. But we do not want to give the power of pardon to the President even when the executive power extends t laws made by a State Legislature. Therefore, I think the amendment is too wide and I want to limit it to laws made by Parliament.

I am afraid the Drafting Committee who are naturally very tired are trying to introduce amendments drafted in haste. They have had time to scrutinise them and we have had no time either to scrutinise them.

Shri T. T. Krishnamachari : May I on a point of order say that the honourable Member is perfectly right to speak about himself. If he has had no time, we agree. But I do not think he ought to cast any aspersions on the Drafting Committee as not having had any time to scrutinise them. I would like to say that we have scrutinised every amendment. If we did not have the time to scrutinise these amendments we would not have tabled them.

Shri B. M. Gupte : (Bombay : General) : Saying that they had no time is not casting any aspersions on the Drafting Committee.

The Honourable Shri K. Santhanam : I am not disputing their intention or ability, but I am saying that they are hurried which is a matter of fact.

Mr. President : Now we are at the fag end of the clauses and over four or five clauses we need not quarrel.

The Honourable Shri K. Santhanam : But some of the amendments tabled are matters of substance which, I think, will have to be debated at length. I leave it to you, Sir, but so far as this is concerned I think the words " made by Parliament" are absolutely essential to make the meaning precise and clear.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, the amendment moved by my Friend Mr. Santhanam is quite unnecessary. It has been brought in by him because he has forgotten to take account of the provisions contained in article 60. Article 60 says that the executive power of the Union shall extend to all matters and respect to which Parliament has power to make laws, provided that it shall not so extend, unless the Parliament, law so provides, to matters with respect to which the Legislature of the States has also power to make laws that is, matters in the Concurrent List. Therefore, the amendment moved by my Friend Mr. Krishnamachari in sub-clause (b) of clause (1) of article 59 cannot go beyond the power of Parliament to make laws.

The Honourable Shri K. Santhanam : The article does not limit it only to those laws; it can also extend further.

The Honourable Dr. B. R. Ambedkar : No, it cannot extend further. The necessity for bringing an amendment in sub-clause (b) is this: the executive power of the centre extends not only to matters enumerated in List I but may also extend to matters enumerated in List III. And the position of the Drafting Committee is this, that whenever a law is made by Parliament, in respect of any matter contained in List III if the law confers executive power on the Centre, the power of the President to grant reprieve must extend to that law. Therefore, these words are necessary. Mr. Santhanam's amendment is absolutely unnecessary and out of place because article 60 covers the point.

Mr. President : The question is :

"That in amendment No. 445 of List XX, in the proposed sub-clause (b) of clause (1) of article 59, after the words `offence under any law' the words `made by Parliament' be inserted."

The amendment was negatived

Mr. President : The question is :

"That for sub-clause (b) of clause (1) of article 59, the following sub-clause be substituted :-

> (b) in all cases where the punishment or sentence is for an offence under any law relating to mater to which the executive power of the4 Union extends;"

The Amendment was adopted.

Article 62

Shri T. T. Krishnamachari : Sir, I move :

"That in clause (5) of article 62, for the words `who from the date of his appointment is, for a period of six consecutive months, not a member', the words `who for any period of six consecutive months is not a member' be substituted."

This is a purely verbal alteration in regard to the qualification, or rather the disqualification, of Ministers. If my memory is correct, I think this wording was pointed out to us as being more suitable by my honourable Friend Mr. Gupte at the time we passed this article. And I think Dr. Ambedkar had in mind examining the position. We feel this is the more appropriate wording and therefore we have suggested this amendment.

Incidentally I might mention that there is an amendment tabled by my honourable Friend Mr. Santhanam which may be quite correct, but it is only a matter of variation again of the language. Really the amendment is not a matter of substance but putting the thing in the precise form so as to avoid any mistaken interpretation that may arise in the future.

The Honourable Shri K. Santhanam : It is quite correct as my Friend Mr. Krishnamachari has said that my amendment is only to make matters clear because, as the official amendment stands, there is no clear indication where to begin the period of six months and how to count it. It may also be construed – though it may not appear a very correct interpretation – that the period may be counted even before he became a Minister, because it may be said that if a person is not a member of Parliament he cannot be appointed a Minister. Our object is that a person who is not a member of Parliament may be appointed Minister, but after that appointment he must become a member within six months and must continue to be a member afterwards. Therefore my amendment is :

"That in amendment No. 446 of List XX, in clause (5) of article 62, for the proposed words 'who for any period of six consecutive months is not a member' the words 'who after the date of his appointment, is for any period of six consecutive months not a member', be substituted."

When we changed from the wording of the Government of India Act 1935, I remember this was discussed by us and we put the words "from the date of appointment" as the beginning of the period. But in interpretation it may mean that afterwards he may cease to be a member after six months and such a case may not be covered. So I agree that the amendment is desirable. But if the words "after the date of appointment" are put in it will become much more precise.

Shri H. V. Kamath : (C. P. & Berar : General) : May I suggest that for the word "after" which Mr. Santhanam suggests, the word "from" would be more appropriate? "After" is not correct.

The Honourable Shri K. Santhanam : "From" may mean that for the first six months he should be member and afterwards if he ceases to be member he may continue to be minister. That is the lacuna which we are trying to fill up.

Shri T. T. Krishnamachari : There is only one point I would like to mention in respect of Mr. Santhanam's amendment. His amendment is practically the same, except for a minor difference, namely, in a position where a person is a Minister who after having been elected duly and later on during four or five months after the original election some irregularity is found in the election and the election is set aside. Mr. Santhanam's amendment would not cover such a case. So I would suggest that we should err on the safe side and that the House should accept the amendment moved by me.

The Honourable Shri K. Santhanam : I do not press my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : Then I put No 446. The question is :

"That in clause (5) of article 62, for the words 'who from the date of his appointment is, for a period of six consecutive months, not a member' the words who for any period of six consecutive months is not a member be substituted."

The amendment was adopted.

Article 147

Shri T. T. Krishnamachari : I move No. 447, which reads thus :

"That in article 141, for the words 'with respect to which the Legislature of the State has power to make laws' the words 'to which the executive power of the State extends' be substituted."

I have already explained the position while moving amendment No. 445 which the House was good enough to accept. This merely seeks to remedy the position so far as the Governor's powers of granting pardon are concerned.

Mr. President : The question is :

"That in article 141, for the words 'with respect to which the Legislature of the State has power to make laws' the words 'to which the executive power of the State extends' be substituted."

The motion was adopted.

Article 175

Shri T. T. Krishnamachari : Sir, I move :

"That to article 175, the following proviso be added :-

> 'Provided further that the Governor shall not assent to, but shall reserve for consideration of the President any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that court is by this Constitution designed to fill'."

The reason why we have to bring in this amendment at this stage is this. An amendment had been tabled by Dr. Ambedkar – No. 3406 of Volume II of amendments to amendments – seeking to recast the 4th Schedule, which the House has now decided to drop, and therefore Dr. Ambedkar could not move it. In that amendment, in clause (7) provision had been made in regard to the substance of the proviso which I have now moved. If the 4th Schedule had been there, this amendment would not have been necessary. At the time we considered article 175 we were not quite sure whether the 4th Schedule will be a part of the Constitution or not. That is my explanation for bringing forward this amendment.

On the merits, the house will recognise that the high courts happen to be, so far as appointment had jurisdiction and all that is concerned, a mater exclusively of Central competence. But there are matters in which the Provinces also can interfere and this proviso is intended to protect any hasty action by a province in regard to the powers of the High Court and it directs that the Governor should reserve such Bills for the assent of the President. The matter is by itself very simple and follows a principle accepted in the body of the Constitution. I think there can be no serious objection to this amendment.

Shri H. V. Kamath : Mr. President, I would request my Friend Mr. Krishnamachari to throw some light on an obscure aspect of the matter, obscure to me. I do not follow his argument when he says that some measures or Bills might be introduced which might endanger the position. First of all, of such Bills were going to be introduced would it not be *ultra vires* of the legislature at its very inception, *ab initio*? Will not the introduction of the Bill be prevented by the Constitution ? Then again, I have some objection to the language used in the last portion of this amendment. It is very cumbrous. It could be simplified with advantage to all concerned. Instead of saying, "as to endanger the position ... and all that, will it not be enough to say " so derogate from the powers of the High Court conferred upon it by (or under) the Constitution"? That would bring out the meaning of the article clearly. I do not see any necessity for this cumbrous verbiage towards the end of the amendment.

The Honourable Dr. B. R. Ambedkar : The clause moved by my friend Mr. Krishnamachari is of old standing. It occurs in the instrument of instructions issued to the governor of the provinces under the Government of India Act, 1935.

Paragraph 17 of the Instrument of Instructions says :

"Without prejudice to the generality of his powers as to reservation of Bills our Governor shall not assent in our name to, but shall reserve for the consideration of our Governor-General any Bill or any of the clauses herein specified, *i.e.*

> '(b) any Bill which in his opinion would, if it became law so derogate from the powers of the High Court as to endanger the position that that Court is, by the Act, designed to fulfil.'"

This clause is the old Instrument of Instructions the Drafting Committee had bodily copied in the Fourth Schedule which they had proposed to introduce and it will be found in Vol. II of the amendments at pages 368-369. In view of the fact that the House on my recommendation came to the conclusion that for the reasons which I then stated it was unnecessary to have any such schedule containing instructions to the Governors of the States in Part I, it is felt by the Drafting Committee that, at any rate, that particular part of the proposed Instrument of Instructions, paragraph 17, should be incorporated in the Constitution itself. Now, Sir, the reasons for doing this are these :

The High Court are placed under the Centre as well as the Provinces. So far as the organisation and the territorial jurisdiction of the High Court are concerned, they are undoubtedly under the Centre and the Province have no power either to alter the organisation of the High Court or the territorial jurisdiction of the High Court. But with regard to pecuniary jurisdiction and the jurisdiction with regard to any matters that are mentioned in List II, the power rests under the new Constitution with the States. It is perfectly possible, for instance, for a State Legislature to pass a Bill to reduce the pecuniary jurisdiction of the High Court by raising the value of the suit that may be entertained by the High Court. That would be one way whereby the State would be in a position to diminish the authority of the High Court.

Secondly, in enacting any measure under any of the Entries contained in List II, for instance, debt cancellation or any such matter it would be open for the Provinces to say that the decree made by any such Court or Board shall be final and conclusive, and that the High Court should have no jurisdiction in that matter at all.

It seems to me that any such Act would amount to a derogation from the authority of the High Court which this Constitution intends to confer upon it. Therefore, it is felt necessary that before such law becomes final, the President should have the opportunity to examine whether such a law should be permitted to take effect or whether such a law was so much in derogation of the authority of the High Court that the High Court merely remained a shell without any life in it.

I, therefore, submit that in view of the fact that the High Court is such an important institution intended by the Constitution to adjudicate between the Legislature and the Executive and between citizen and citizen such a power given to the President is a very necessary power to maintain an important institution which has been created by the Constitution. That is the purpose for which this amendment is being introduced.

Shri H. V. Kamath : What about my suggestion to simplify the language?

The Honourable Dr. B. R. Ambedkar : I cannot at this stage consider any drafting amendments.

Shri H. V. Kamath : All right : Do it later on.

Mr. President : I will now put it to vote.

The question is :

"That to article 175 the following proviso be added :

> 'Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that court, is by this Constitution designed to fill.'"

The amendment was adopted.

Article 13

Mr. President : There is a previous amendment of which notice has been given – amendment No. 415.

Shri T. T. Krishnamachari : I do not propose to move it.

Sir, I move.

"That in clause (2) of article 13, after the word 'defamation' the word 'contempt of court' be inserted."

Sir, the House will recognise that amendment No. 415 was originally tabled, as we had been advised by our legal advisers that there will be certain difficulties in regard to the exception in sub-clause (2) of article 13 in so far as the operation of sub-clause (a) of clause (1) of article 13 is concerned. But, Sir, a number of honourable Members of this House spoke about this amendment to Members of the Drafting Committee and they felt that it is not an amendment merely seeking to remedy a lacuna but altering the character of the clause in its entirety. They objected to two words public order being included. The idea, at any rate, of a part of that amendment was to cover one category of what might be called lapses in the exercise of freedom of speech and expression, namely, a person might be speaking on a matter which is *sub judice* and thereby interfere with the administration of justice. That is a category of offences which is not covered by the exceptions mentioned in clause (2) or article 13, so far as the right of freedom of speech and expression is concerned. Honourable Members of this house will realize that it was not our intention to allow contempt of court to take place without any let or hindrance, and it is not our idea that sub-clause (a) of clause (1) of article 13 should be used for this purpose.

We, therefore, felt, Sir, that we would restrict ourselves to merely remedying a lacuna rather than extending the scope of the exceptions mentioned in clause (2) and that is why we have decided to drop the original amendment 415 and we have tabled amendment No. 449 in which contempt of court will figure on a par with libels, slander, defamation or any mater which offends against decency or morality, or which undermines the security of, or tends to overthrow, the State. Actually, contempt of court will figure with the first three and it is a very necessary protection so far as our law courts are concerned, and I hope the House will have no objection to accepting this amendment.

Mr. President : There is an amendment by Prof. Saksena. I do not understand it. Will he explain it ?

Prof. Shibban Lal Saksena : (United Provinces : General) For "contempt of court" read "or contempt of court". That has been omitted by inadvertence.

Shri T. T. Krishnamachari : `Contempt of court or any matter' : That comes later. Technically, Sir, there ought to be a comma after "defamation."

Pandit Thakur Das Bhargava : (East Punjab : General) Mr. President, with your permission I propose to move my amendment No. 435 which was intended to amend No. 415 but this amendment has not been moved. My amendment seeks to substitute for the words 'any law' the words 'any reasonable law'. That was the old amendment in respect of amendment No. 415. Now instead of 415 Mr. T. T. Krishnamachari has moved an amendment adding the words 'contempt of court' after the word 'defamation' instead of the words "morality, public order or the administration of justice" and when I gave the amendment it was in view of the words 'public order or the administration of justice'. All the same my amendment does not lose it value in so far as I wanted that the article 13 should be amended. The change in the amendment of Mr. Krishnamachari makes no difference to me. So with your permission I beg to move :

> "That for the words 'any law' the words 'any reasonable law' be substituted."

An Honourable Member : Law is always reasonable.

Pandit Thakur Das Bhargava : The law has been defined only as a measure which is passed by the legislature. The law can be both reasonable as well as unreasonable. The law that all blue eyed persons be killed will be a good law though an unreasonable one. We are competent to pass any law which is reasonable or otherwise. We certainly pass laws through ignorance, passion, panic and prejudice which look reasonable to some and unreasonable to others. Therefore, the courts have been given the power to see whether the laws are reasonable or otherwise. You have already passed under article 13 certain amendments to the original article 13 which when amended said that the courts are empowered to see whether any restrictions are reasonable or not. The legislature is competent to pass any kind of law and the courts are therefore empowered in certain matters to see that the powers exercised by the legislature are reasonable. So far as the fundamental aspect is concerned. I do not think any person shall doubt that the courts can be armed with a power like this because we have already armed the courts with these powers.

Now coming to the amendment of Mr. T. T. Krishnamachari he wants that the words "contempt of court" be added after the word "defamation" in article 13(2) and the clause would read thus :

> "Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law, relating to libel, slander, defamation, contempt of court, or any other matter which offends against decency or morality or tends to overthrow the State."

In regard to this contempt of court, my contention is this, that these words need not be added to article 13, because as a matter of fact contempt of law as we understand it consists of a certain piece of conduct not necessarily with freedom of speech, because when you read the law relating to contempt of court, you will find in section 480 of the Criminal Procedure Code that usually the contempt of the ordinary courts of law consists in the infringement of sections 175, 178 and 179 and sections 180 and 288 of the Indian Penal Code. All these sections relate to certain pieces of conduct of the individual. For instance section 175 relates to non-taking of the summons from a court peon, omission to produce document; sections 178, 179 and 180 relate to the refusal to reply to question put by the Court or refusal to take any oath; and similarly section 288 applies when there is an interruption of any judicial proceedings or when there is any insult offered to the court; insult can be offered in many ways and not necessarily by way of speech.

Therefore my submission is that the essence of any of these sections is that a wrong motion or wrong conduct or attitude is penalized and not speech by itself. The courts are empowered to take cognizance of the act of contempt and there and then deal with these offences. My first contention, therefore, is that these sections 175, 178, 180 and 288 which are the subject-matter of contempt as envisaged in section 480 do not relate to the freedom of speech at all and therefore, this amendment is not germane to the subject of the freedom of speech and expression.

Moreover, Sir, we have already passed article 118 in this Constitution. It relates to the powers of the Supreme Court and in so far as the contempt of the Supreme Court is concerned it is already covered by law and the Supreme Court is perfectly entitle to deal with cases of contempt. In regard to other courts, Sir, the law is generally contained either in the law of defamation or in Act 12 of 1926. Apart from visible contempt committed in the view of the courts as envisaged in section 480. Criminal Procedure Code. Comments of judicial acts of courts and magistrates are in the nature of technical contempt, and if you want to change the law, relating to such contempt, if you want to take away the powers of freedom of speech, you must enact that f the legislature passes and such law, it must be subject to the scrutiny of the courts.

As far 'defamation', under which such contempt usually comes it is covered by the provisions in the Penal Code. This question of defamation is a very intricate one. In so far as civil defamation is concerned truth is absolute defamation but so far as the criminal defamation is concerned the greater the truth the greater the defamation. When you arm the legislature with such plenary powers to make any law and that law is not subject to the scrutiny by the courts, it means that the legislature is given a very free hand and the freedom of speech will be reduced to a mere farce. We had lately an Act which was enacted by the previous Government in so far as they armed the courts to punish persons who made comments in respect of certain judgments. It was called the Judicial Officers' Protection Act and the provisions of that Act were very wide and sweeping. It may be that the contempt of courts may include cases of such contempt also. In regard to such contempt cases, which are technically contempt cases and which are not committed in the view of the court, there and then, they may come within the purview of the contempt law and as such should be controlled and their interpretation should be made amendable to the jurisdiction of the court. If we do not do that, my fear is that the liberty of freedom of speech and expression will practically become a nullity.

If you kindly see the six clauses of article 13, you will find the words "reasonable restrictions". But in clause (2) there are no such words "reasonable restrictions", which means that a legislature has been given full powers to place any kind of restriction, reasonable or unreasonable. When the subject matter of clause (2) was only confined to certain matters, I could understand that the word "reasonable" might have been omitted. Even then so far as the question of "sedition" was concerned when the original article was before us we amended this law and we saw that the word "sedition" did not cover cases which it ought not to have dealt with. Therefore we changed the words thus: "which undermines the security of or tends to overthrow the State", and because these words were changed, the word, "reasonable" was not put in clause (2). Now clause (2) will not only deal with ordinary matters but the question of freedom of speech in regard to the executive authority of the courts is being introduced in it.

Therefore, since we are enlarging the scope of clause (2) it stands to reason that we may also enlarge the scope of the restriction upon the power of the legislature in so far as, if we introduce the word "reasonable" before the word 'law' then we will attain our object and we will also attain this object of restricting the scope of the legislature in defining defamation, libel, slander, etc. or any other matter which offends again decency or morality. All these matter will be rationalized to a certain extent and instead of reducing the rights and privileges of the citizens of the Republic it would be better if we enlarge their liberties and I therefore suggest that instead of the words 'any law' the words 'any reasonable law' may be substituted. In case we do not agree to amend it further by the addition of these words, my fear is that again we will be going forward in the process which we are unfortunately after, viz. whatever has been given in article 13 may be taken away in some form or other. We have already done this by enacting article 24, articles 244, 278, 307 and other articles.

Therefore, my humble submission is that in regard to this most important matter relating to freedom of speech and expression we should so arrange matters that what has been given is not taken away and whatever powers we have given to the legislatures, they may be curtailed to this extent that they may be subject to the scrutiny of the courts. After all, the courts are as much the creatures of the Government as the legislature. Therefore, there is no point in having suspicion against the authority of the courts when you yourself are giving the legislature the power of arming the courts to hold persons guilty of contempt or proceeding against them in regard to contempt of court, in executive manner. You are by the amendment giving the power to the courts to see whether the law enacted in respect of contempt of court is good or not. As a matter of fact, you are helping the courts in one way and enlarging the authority of the courts in another way. Therefore, I submit that this amendment of mine should be accepted by the House.

Shri R. K. Sidhva : Mr. President, Sir, this amendment relates to article 13 clause (1) (a). Clause (1) (a) says, All citizens shall have the right to freedom of speech and expression. Clause (2) imposes a restriction on making speeches and using any words which may be libel, slander or defamation. My honourable Friend Mr. T. T.

Krishnamachari wants that the words "contempt of court" should be inserted after the word 'defamation.'

First of all, let me state that this is not a consequential amendment. This is a fundamental proposition that is being brought before this House. We know, Sir, about this contempt of court, how the Judges have been exercising their powers in the past, as if they are infallible, as if they do not commit any mistakes. Even third class magistrates, first class magistrates and sub-judges have been passing such strictures which even High Court Judges themselves sit as the prosecutors. They themselves want the judiciary and executive functions to be separated. In cases of contempt of court, the High Court Judges is the prosecutor and he himself sits and decides cases in which he himself has felt that contempt of court has been committed. We have many cases before us. I will quote the illustration of two cases, Mr. B. G. Horniman, the Editor of "Sentinel" and Mr. Devadas Gandhi, Editor of the "Hindustan Times". the Allahabad High Court passed strictures against the very reasonable comments made by these two persons. They preferred to go to the jail and went to jail rather than submit to the *ex parte* decision of the High Court. I cannot understand why my lawyer friends there are very lenient to the judges. After all, Judges have not got two horns; they are also human beings. They are, liable to commit mistakes. Why should we show so much leniency to them? We must safeguard the interest of the public. If a citizen by way of making a speech condemns the action of a third class magistrate or a fourth class magistrate who has passed strictures upon the public, is he not entitled to make a speech and comment upon it ?

It is unfair that in the matter of contempt of court, this clause is to be added. I strongly resent it. It is very unfair that the citizen after having been given some rights, and having been restricted by so many clauses, you want to further restrict it by inserting "contempt of court". In contempt of court, we know when certain extraordinary things happen, High Court judges have some sort of power. Here, you have the power right down from the magistrate up to the High Court judges. Even there, I say the High Court judges are not infallible ; they have also committed so many mistakes. They do not want any comment to be made against a High Court judge when comment was necessary in the interest of the public life.

With these words, Sir, I feel that at this juncture the Drafting Committee may drop these words "contempt of court" which has always been a bone of contention both on the part of the newspapers and the public. I want to know in what constitution contempt of court is being inserted. My honourable Friend Mr. Alladi Krishnaswami Ayyar will guide whether in any constitution in the world contempt of court is included. That power already exists with the judges. Why do you want to put that in the Constitution and make the Judge above everybody? You want to make him a Super God.

Mr. President : This has nothing to do with courts. If you read the article you will see that it says that nothing in sub-clause (a) shall effect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to contempt.

Shri R. K. Sidhva : It relates to the citizens. The citizens shall have the right to freedom of speech and expression provided they do not make a speech which ma be libel, slander, defamation or contempt of court. A judgment may have been passed by a court......

Mr. President : A law may be passed which will prevent defamation of a private individual; but a law may not be passed which will prevent defamation or libel of a court; that is what your argument comes to.

Shri R. K. Sidhva : I do not want any law to be made in respect of contempt of court. I am very clear on this point because in my past experience about contempt of court, from the lowest to the highest court judges have not been impartial. Therefore I am opposed to this amendment.

Mr. Naziruddin Ahmad : (West Bengal : Muslim) : Mr. President, Sir, a warm controversy hangs round Contempt of Court. I submit that the High Court should have the power to punish for contempt in a summary manner. The reason is that the trial in a case must be conducted in an atmosphere of calm without any prejudice, on the evidence alone. If there is no power to proceed for Contempt of Court, any one may start a newspaper trial of a case pending in a Court or it may be that he indulges in public harangues about the merits of a case and thereby seriously prejudice the fair and impartial trial of a case. It is for this reason that contempt of Court has found a place in our statute book. There is an act of 1926 namely the Contempt of Courts Act. There are some contempts which can be punished by event he smallest magistrates. Mr. Sidhva described him as the Fourth Class Magistrate; there is no such thing at all. If there is a man who interrupts the proceedings of a Court, he should be punished summarily by any Court. There are may other serious kinds of contempt which could be punished only the High Court.

It is said that the High Court becomes the complainant or the prosecutor. I do not think so. Really, the dignity of the Court is impaired or its impartiality is challenged and the High Court alone should have the power to punish for contempt. To quote an example, if we show contempt to the President, the President alone should have the summarily power to deal with it. It is by way of analogy that Contempt of Court should be a part of the law. It is already a part of the law, Pandit Thakur Das Bhargava pointed out that we have already provided for Contempt of Court to be dealt with by the Courts in another place and his only objection to this amendment is whether it should find a place in clause (2) of article 13. It is very difficult on the spur of the moment to find out what is the effect of the provision we have already made. We are changing our mind so often and introducing new amendments of a scrappy character so often that it is often impossible to find out what an amendment means. It would, at the most, be overlapping. If there is overlapping that would not be very much of a fault in this Constitution as there is plenty of overlapping in other places. I submit, therefore, that the amendment should rather be accepted.

With regard to Pandit Thakur Das Bhargava's amendment that the words 'any law' should be substituted by the words 'any reasonable law', it would be useless in practice. If any law is to be passed, it is to be passed by the Legislature. It has always to be assumed that the Legislature passes a law which is, or at least it considers to be reasonable and not unreasonable. After all, a Legislature is absolutely free. The Legislature cannot contravene any constitutional limitation. But the word 'reasonable' cannot be a condition. That condition must be assumed in their very power, and the fact that elected men will make laws necessarily implies that the laws made are reasonable. But supposing we introduce this expression and make it "reasonable law" it will have no binding force on the Legislature. The word 'reasonable' would not in the least curtail their power or in the least fetter their discretion. In these circumstances, the word 'reasonable' would be absolutely unnecessary and quite meaningless in practice, and so the amendment should not be accepted; and so far as the Contempt of Court amendment is concerned, for the time being it should be accepted, subject of course to further consideration by the Drafting Committee that there is no overlapping in two places.

Shri B. Dass : (Orissa : General) Sir, I seek your protection from the tyranny of the Drafting Committee. The Fundamental Rights were passed by us with great solemnity – I am not a lawyer, but being a common man I understand the Fundamental Rights given to us after great consideration in so many Committees and after serious consideration by this House. What has happened for the last two or three days that we are suffering from the tyranny of the Drafting Committee ? On the 15th we received amendments to article 13 by the same two gentlemen – the Honourable Dr. Ambedkar and Mr. T. T. Krishnamachari – and today Mr. Krishnamachari has moved another amendment. Last night we got the present amendment which the House is concerned. Fundamental Rights cannot suddenly be changed. If today was not the last day of this house to consider further amendments, article 304 would have applied to any changes in the Constitution; for any changes to the Constitution. it says :

> "An amendment of the Constitution may be initiated by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting etc."

When Dr. Ambedkar himself as Chairman had provided in Part XVI – Amendment of the Constitution – with such solemnity, how does the change taken place overnight ?

I am not one who thinks very high of the judges particularly as they are trained under the British tradition and they have misapplied justice and kept us down. I have not read in any place of public utterances that the High Court Judges or other court Judges or Magistrates in India have changed since August 1947 and have a better realization of their function and duties. If Dr. Ambedkar, ten years hence on his retirement, writes a book on the vagaries of Courts, about contempt of court, he will see his particular partially overnight to give certain more powers to these magistrates and judges were not called for. It will be a very wonderful book where many penniless lawyers became judges and regulated and controlled the affairs and rule of the allien Raj by the world 'contempt of court' and the chicken-hearted lawyers got frightened at them.

Mr. President : So far as High Courts are concerned, all parties and all people in this country have always held them in high esteem and it is no use casting as persons on them generally. There may have been individual Judges who may have erred, but we should not cast aspersions on the judiciary as a whole.

Shri B. Das : Sir, I bow to your ruling. I wish my heart becomes pure and I respect the Judges in India for their eminent position and for their due discharge of their duties. However, I seek your protection. If I have my personal view, I will oppose any tempering with any articles in the Fundamental Rights to the Third Reading of this

Constitution. We must have some sanctity over change of Fundamental Rights. If it were such a mistake, how is it that it was not spotted on the 15th of this month? It is spotted only yesterday. Dr. Ambedkar has been described as the Manu of this century. Do Manus change overnight ? In that case everyone of us will be Manu and not Dr. Ambedkar alone. I think no harm will be done if this amendment to article 13 does not take place. Let Parliament meet, let Dr. Ambedkar himself bring out a Bill and we will examine it on its merits. But why tamper with Fundamental Rights? That is my submission and I do hope, Sir, as our President, you will be pleased to give a ruling over such matters as amendments to Fundamental Rights.

Shri Krishna Chandra Sharma : (United Provinces : General) : Mr. President, I am jealous for the dignity and respect of the Judges. I hold that in democracy judges should be respected by all classes of people and there should be dignity attached to the person and their functions. But one thing I object to is that this contempt of court addition is unnecessary because the article has the words 'existing law' and there is a provision in Cr. P.C. Section 480, which deals with contempt of Court during the proceedings when the Court itself has the power to punish the man committing the contempt. There is another contempt of court Act which empowers the High Court to take cognizance of any contempt of court anywhere. Therefore in view of the existing provisions – and I think they are sufficient to deal with the situation – no more protection is necessary. This addition is therefore unnecessary and undesirable.

The Honourable Shri K. Santhanam : Sir, I do not think the argument of the last speaker is correct because article 13 will modify the existing law. Therefore provision for contempt of court is necessary but my difficulty is that under article 13(2) every State Legislature is given the power to enact a law relating to contempt of court. If dozen legislatures enact dozen different laws relating to contempt of court. I think the position, especially of newspapers will become very difficult.

For instance, if the Madras Legislature makes a law relating to contempt of court, it will apply, of course, according to its jurisdiction, only to the papers published in Madras. But it will not apply to all papers coming from anywhere in India and circulating in Madras, and that will happen in every province. So far as defamation, slander, etc. are concerned, they are actionable wrongs which are put in the Concurrent List. When there is any confusion, Parliament can step in and bring about uniformity. But in the case of contempt of court, I do not think it is open to Parliament to bring about uniformity. Therefore, if they want to put it in article 13 there must be a separate item in the Concurrent List so that at any time Parliament can step in and bring about some uniformity of law. Otherwise, the insertion of the words "contempt of court" here, I suggest under clause (2) of article 13 will result in different laws of contempt of court and cause confusion throughout the country. I suggest that steps may be taken to at least reserve powers to Parliament either to make laws for contempt of court, or to see that laws relating to contempt of court are brought into some kind of uniformity. It may be put in the Concurrent List, if the words "contempt of court" are inserted in clause (2) of article 13.

Mr. President : Would you like to reply, Dr. Ambedkar ?

The Honourable Dr. B. R. Ambedkar : Sir, this article is to be read along with article 8.

Article 8 says –

"All laws in force immediately before the commencement of this Constitution in the territory of India, in so far as they are inconsistent with the provision of this Part, shall, to the extent of such inconsistency be void."

And all that this article says is this, that all laws, which relate to libels, slander, defamation or any other matter which offends against decency or morality or undermines the security of the State shall not be affected by article 8. That is to say, they shall continue to operate. If the words "contempt of court" were not there, then to any law relating to contempt of court article 8 would apply, and it would stand abrogated. It is prevent that kind of situation that the words "contempt of court" are introduced, and there is, therefore, no difficulty in this amendment being accepted.

Now with regard to the point made by my Friend Mr. Santhanam, it is quite true that so far as fundamental rights are concerned, the word "State" is used in a double sense, including the Centre as well as the Provinces. But I think he will bear in mind that notwithstanding this fact, a State may make a law as well as the Centre may make a law, some of the heads mentioned here such as libel, slander, defamation, security of Sate, etc., are matters placed in the Concurrent list so that if there was any very great variation among the laws made, relating to these subjects, it will be open to the Centre to enter upon the field and introduce such uniformity as the Centre thinks it necessary for this purpose.

The Honourable Shri K. Santhanam : But contempt of court is not included in the Concurrent List or any other list.

The Honourable Dr. B. R. Ambedkar : Well, that may be brought in.

Mr. President : Then I will put these two amendments to vote. As a matter of fact, Pandit Thakur Das Bhargava's amendment is not an amendment to Mr. Krishnamachari's amendment, it is independent altogether. I will up them separately. First I put Mr. Krishnamachari's amendment to vote.

The question is :

"That in clause (2) of article 13, after the word 'defamation' the words 'contempt of court' be inserted."

The amendment was adopted.

Mr. President : Then I will put the amendment of Pandit Thakur Das Bhargava.

The question is :

"That at the end of the amendment No. 415 of List XVIII (Second Week), the following be added :

'That for the words 'any law' the words 'any reasonable law' be substituted."

The amendment was negatived.

Mr. President : Then we take up the new article 302AAA, *i.e.*, amendment No. 450. Mr. Santhanam has made a suggestion that in order to complete the amendment which has just been passed. "Contempt of Court" must be included in the Concurrent List, and I think it is consequential and we had better take that thing.

The Honourable Dr. B. R. Ambedkar : I will move an amendment straightaway, Sir, I move :

"That after entry 15 in the Concurrent List, the following entry be added :

'15A. Contempt of Court."

Mr. President : I do not think there can be any objection to that.

Mr. Nazirudin Ahmad : There may be many more such things.

Mr. President : May be, but they will come up in time.

So, I will put this to vote.

The question is :

"That after entry 15 in the Concurrent List, the following entry be added :-

'15A, Contempt of Court."

The amendment was adopted.

Entry 15A was added to the Concurrent List.

New Article 302AAA

Mr. President : Then we take up Amendment No. 450.

Shri T. T. Krishnamachari : Sir, I beg to move :

"That after article 302AA, the following new article be inserted :-

'Special provisions as to major ports and aerodromes,

"302AAA. (1) Notwithstanding anything contained in this Constitution, the President may by public notification direct that as from such date as may be specified in the notification:-

(a) any law made by Parliament or by the Legislature of a State shall not apply to any major port or aerodrome or shall apply thereto subject to such exceptions or modifications as may be specified in the notification, or

(b) any existing law shall cease to have effect in any major port or aerodrome except as respects things done or omitted to be done before the said date or shall in its application to such port or aerodrome have effect subject to such exceptions or modifications as may be specified in the notification.

(2) In this article :-

(a) 'major port' means a port declared to be a major port by or under any law made by Parliament or any existing law and includes all areas for the time being included within the limits of such port ;

(b) 'aerodrome' means aerodrome as defined for the purposes of the enactments relating to airways, aircraft and air navigation'."

Sir, the reason for moving this article is that certain difficulties have been experienced in regard to what are called international aerodromes, in trying to fit in transit passengers internationals who come in there, but who may not ordinarily for the time, being, come within the scope of the particular laws of the province in which the aerodrome is situation. The idea, I understand is that Santa Cruz Aerodrome in Bombay and Dum Dum in Calcutta are now to be treated as international aerodromes. It is possible that other aerodromes will also be treated as coming under the same category, before long. For instance, if there is absolute prohibition law in regard to liquor in any province, the moment the passenger lands and if he has some liquor with him, he would be coming within the scope of this law of the province, whereas it is only proper that he should come within the scope of the law of the State only when he goes out of the aerodrome into the area covered by the State. Again, there are certain specified security regulations that may be necessary in the aerodromes, but which may not fit in with the scheme of security regulation current in the State. For instances, in military aerodromes the security regulations are very strict because the entire aerodrome is under military control. In the case of civil aerodromes the position is a little different. The Central Government which controls them will have to depend largely on local laws so far as security arrangements and other similar mattes are concerned and it may be necessary not merely to have a preventive staff whom the Central Government is empowered to have by fiscal legislation but also have a special police with special powers for the purpose of dealing with international traffic and those who interfere with it.

The same contingency will apply to major ports, also particularly to new ports that come into being in areas which were formerly called Indian States. There are some difficulties in future. This is merely enabling provisions to permit the President the limited power to get over the difficulties that might arise which would not necessitate the provinces to alter their laws to suit the special circumstances of a port or aerodrome. It will help the provinces to make a law irrespective of the fact that there is a major port or aerodrome situated in the State and it helps the Centre to control those areas if it desires to do so by passing laws in addition to those existing in the provinces or modifying those laws to suit the special circumstances of the case. Instances might be quoted against the utility of an article of this nature but their validity is limited. There are possibilities of more instances of a different nature arising in the future. I repeat that this is an enabling provision which does not seek to interfere with the powers of the provinces at all. Major ports and aerodromes are admittedly under Central control for all purposes and the Centre is also empowered to have additional legislative control by means of Presidential action.

The purpose of the amendment is simple one and I am told which is very necessary in regard to the administration o the aerodromes and major ports concerned with international traffic. I hope the House will accept it.

Mr. Naziruddin Ahmad : Will there be no changes necessary in the Seventh Schedule ?

Shri T. T. Krishnamachari: No Major ports and aerodromes are Central subjects.

Mr. President : Prof. Shibbanlal Saksena has given notice of an amendment. He is not in his place and therefore it is not moved.

Shri. R. K. Sidhva : Sir, I cannot understand how this article is described as a simple one and merely a consequential change is sought to be made.

Shri R. K. Sidhva : The Mover said that it is simple article concerned with international traffic and should be approved by the House.

Sir, the preamble does not state why the President should be empowered with extraordinary powers and over rule any law which Parliament may make regarding aerodromes and major ports. These come within the Union List, I do not see why clause (a) provides an law made by Parliament or by the Legislature of a State. I do not think any State is empowered to make laws regarding aerodromes and major ports.

Sir, if this article is meant for emergencies such as was and so on. I can understand it. During the last two World Wars, entry to the aerodromes and major ports was prohibited to the public and many restrictions were imposed regarding traffic therein. I can understand that. But I cannot understand why when Parliament in the ordinary course make laws, such laws should be superseded by the President. What are the reasons for empowering the President to do so ? No case has been made out for this. Today, in the international airports if any passenger comes from foreign countries he is subjected to search. His luggage and even his person are searched. There are both men and women inspectors at the Custom House for this purpose. All these restrictions are there now and so I do not think there is any need to give the President this power. As I said, I can understand the need for this power in an emergency. But, why when laws enacted by Parliament are there for the purpose ordinarily, should the President have power to overrule those laws? In emergencies the position will be different, I agree, I have personal experience of it. Even relatives of persons embarking or disembarking at ports are not allowed access. Such restrictions are there and have been there is times of emergencies. I do not see any necessity for vesting this power in the President. Instead of this, however, I would suggest the following provision : - "Notwithstanding anything contained in this Constitution, the President may by public notification direct as from such date as may be specified any law may be made in the event of an emergency or war." If these lines are added this article would get a different meaning and may be necessary. Otherwise it will mean you want to deprive Parliament of the power of making laws. I want an explanation as to why the words "Legislature of State" are put in. Has any State power to make laws concerning aerodromes ?

The Honourable Dr. B. R. Ambedkar : Sir, I think my Friend Mr. Sidhva has entirely misunderstood the position. If he will refer to List II, in Schedule Seven, items 30 and 35 which relate to the matters covered by the amendment moved by my Friend Shri T. T. Krishnamachari, he will see that the power of legislation given to the Centre under items 30 and 35 is of a very limited character. The power given under item 30 is for the purpose of regulation and organization of air traffic. The power given under 35 is for the purpose delimitation of the Constitution and the powers of port authorities. He will very readily see that, so far as the territory covered by aerodromes or air ports and ports is concerned it is part of the territory of the province and consequently any law made by the State is applicable to the area covered by the aerodrome or the port. These entries 30 and 35 do not give the Centre power to legislate for all matters which lie within the purview of the Central Government under the entries. The powers are limited. therefore, the proposal in this article is this that while it retains the areas covered by the aerodromes and by the ports as part of the area of the provinces it does not exclude them it retains the power of the States to make laws under any of the items contained in List II so as to be applicable to the areas covered by the aerodromes and the areas covered by the ports. What the amendment says is that if the Central Government think that for any particular reason such as for instance sanitation, quarantine, etc, a law is made by the State within whose jurisdiction a particular aerodrome or port is located, then it will be open for the President to say that this particular law of the State shall apply to the aerodrome or to the port subject to this, that or the other notification. Beyond that, there is not invasion on the part of the Centre over the dominion of the States in respect of framing laws relating to entries contained in List II, so far as aerodromes and ports are concerned. I hope my Friend, Mr. Sidhva, will now withdraw his objection.

Mr. President : I shall now put amendment No. 450 to the vote. The question is :

"That after article 302AA, the following new article be inserted:

Special provisions as to major ports and aerodromes

"302AAA (1) Notwithstanding anything contained in this Constitution, the President may by public notification direct that as from such date as may be specified in the notification –

(a) any law made by Parliament or by the Legislature of a State shall not apply to any major port or aerodrome or shall apply thereto subject to such exceptions or modifications as may be specified in the notification, or

(b) any existing law shall cease to have effect in any major port or aerodrome except as respects things done or omitted to be done before the said date, or shall in its application to such port or aerodrome have effect subject to such exceptions or modifications as may be specified in the notification.

(2) In this article :-

(a) 'major port means a port declared to be a major port by or under any law made by Parliament or any existing law and includes all areas for the time being included within the limits of such port ;

(b) 'aerodrome' means aerodrome as defined for the purposes of the enactments relating to airways, aircraft and air navigation."

The motion was adopted.

Article 302AAA was added to the Constitution.

Mr. President : Then we go to the next item, article 306A.

Shri T. T. Krishnamachari : May I suggest that we pass over the next item for the time being and take up Schedule III-A ?

Mr. President : Yes we may take that up.

Schedule III-A

Shri T. T. Krishnamachari : Mr. President, Sir, I move :

That after Schedule III, the following Schedule be inserted :

"SCHEDULE III-A

[ARTICLES 4(1) & 67(1a)]

ALLOCATION OF SEATS IN THE COUNCIL OF STATES

To each Sate or Sates specified in the first column of the table of seats appended to this Schedule there shall be allotted the number of seats specified in the second column of the said table opposite to that State or States, as the case may be.

TABLE OF SEATS

THE COUNCIL OF STATES

REPRESENTATIVES OF STATES FOR THE TIME BEING SPECIFIED IN PART I OF THE FIRST SCHEDULE

	States	Total Seats
	1	2
1	Assam	6
2	Bengali	14
3	Bihar	21
4	Bombay	17
5	Koshal-Vidarbh	12
6	Madras	27
7	Orissa	9
8	Punjab	8
9	United Provinces	30
	Total	144

REPRESENTATIVES OF STATES FOR THE TIME BEING SPECIFIED IN PART II OF THE FIRST SCHEDULE

	States and Groups of States	Total Seats
	1	2
1	Ajmer	1
2	Coorg	
3	Bhopal	1
4	Bilaspur	1
5	Himachal Pradesh	
6	Cooch-Bihar	1
7	Delhi	1
8	Kutch	1
9	Manipur	1
10	Tripura	
11	Rampur	1
	TOTAL	8

REPRESENTATIVES OF STATES FOR THE TIME BEING SPECIFIED IN PART III OF THE FIRST SCHEDULE

	States	Total Seats
	1	2
1	Hyderabad	11
2	Jammu & Kashmir	4
3	Madhya Bharat	6
4	Mysore	6
5	Patiala & East Punjab States Union	3
6	Rajasthan	9
7	Saurashtra	4

8	Travancore-Cochin	6
9	Vindhya Pradesh	4
	TOTAL	53
	TOTAL OF ALL SEATS ..	205

Sir, these are three tables, one relating to the States specified in Part I, the second relates to States specified in Part II and the third relates to States specified in Part III, and the total number of seats allotted happens to be 205. I would explain, Sir, that the relative article in the Constitution happens to be 67, clauses (1), (2), (3) and (4), and, as honourable members will realise, that under clause (1) the maximum has been fixed at 250, out of which twelve members, shall be nominated by the President and the rest will be representatives of the States. The basis of the scheme envisaged in these tables is the decision of the Union Constitution Committee at a meeting held on the 1st December, 1948 at which the following Members of this House were present :

The Honourable Shri Jawaharlal Nehru.

The Honourable Shir Jagjivan Ram.

The Honourable Dr. B. R. Ambedkar.

Shri K. M. Munshi.

Prof. K. T. Shah.

Shri T. T. Krishnamachari, and

Mr. B. H. Zaidi.

If I may be permitted, I will read the relevant portion of the Committee's report.

> "The Committee did not go into the details of the revised scheme of allocation of seats in the Council of States prepared by office, as owing to mergers of various types the position of the Indian States is still unsettled. They were of the view that it was advisable to postpone consideration of the detailed allocation of seats to a later date. The Committee while reiterating their previous decision that the representation of units in the Council of States shall be on the scale of one representative for every million of the population up to five millions of the population plus one representative for every additional two millions of the population there-after, considered it unnecessary to adhere to the other decision that the maximum number of representatives from anyone unit shall be limited to twenty-five. It was found that only two States, namely Madras and United Provinces would be affected by the imposition of such a limitation and that an abrogation of this limit while securing uniformity would involve only an increase by seven seats in the total number of seats which would be well within the overall maximum of 250 members provided for in article 67(1) of the Draft Constitution. "

Sir, it is on the basis of this report made by the Union Constitution Committee that one seat should be allotted to every million up to five millions and thereafter one seat for every additional two millions, that this total has been worked out, and, as honourable Members will see, the total number comes to 205 plus twelve to be nominated by the President, *i.e.* 217. We still have thirty-three seats in hand before reaching the maximum number mentioned in article 67(1).

I would like to say why this is necessary because we could have adopted a different scheme even though it may be in contravention of the recommendations of the Union Constitution Committee. It may be, as honourable Members of the House will understand, that there is a further splitting up of the Units in Part I. If that will be the case, the number will naturally be increased because by every splitting up of the Units, the commitments will increase by at least five. These reallocations by reason of action taken by future Governments under article 3 of this Constitution may necessitate the raising of this number 217 to a still higher figure, and therefore provision has been made by following the system indicated by the Union Constitution Committee's report, *viz.* one seat for every millions up to five million and one seat for every additional two millions thereafter, which, I think, is a very fair arrangement and will also freedom of action so far as the future is concerned. I would not claim any infallibility so far as these, figures are concerned. May be that the thing might be arranged in some other manner. For instance, regrouping in regard to States in Part II may be taken exception to. It is a matter of opinion.

I think on the whole the scheme is fair, but should honourable Members of this House or people outside have any objection, of course those objections will be examined and those objections will be placed before you and if you will permit me, the necessary amendments will be moved at a later stage, but I do not think that in the face of the arrangement placed before the House any serious alteration would become necessary between now and the Third Reading stage.

I would like to mention another factor that by reason of making this amendment, I would also have to make three consequential amendments, because of certain variations that have occurred. For one thing, article 67(1a) refers to Schedule III-B. An amendment will be necessary in regard to this particular sub-clause in the article. An amendment would also be necessary in article 4 because while taking into consideration article 4 we had omitted to mention along with the First Schedule the Schedule relating to the Table of Seats in the Council of States. Article 4 reads thus:

> "Any law referred to in article 2 or article 3 of this Constitution shall contain such provisions for the amendment of the First Schedule as may be necessary to give effect to the provisions of the law and may also contain such incidental and consequential provisions as Parliament may deem necessary."

Any alteration of the First Schedule will entail the alteration of Schedule III. The first Schedule and the Third Schedule have got to be taken together. I will move an amendment later for putting in Schedule III-A in article 4. These amendments will moved subsequently if the amendment that I have now moved for the incorporation of Schedule III-A containing the Tables of Seats in the Council of States is accepted by the House.

Shri H. V. Kamath : I do not know why my esteemed friend once again referred to my honourable Colleagues as "people inside the House".

Mr. President : He said "honourable Members and people outside".

The question is :

> "That after Schedule III, the following Schedule be inserted :

SCHEDULE III-A

[ARTICLES 4 (1) & 67 (1a)]

ALLOCATION OF SEATS IN THE COUNCIL OF STATES

To each state or states specified in the first column of the table of seats appended to this schedule there shall be allotted the number of seats specified in the second column of the said table opposite to that state or states as the case may be.

TABLE OF SEATS

THE COUNCIL OF STATES

REPRESENTATIVES OF STATES FOR THE TIME BEING SPECIFIED IN PART I OF THE FIRST SCHEDULE

1 states	2 Total seats
1 Assam	6
2 Bengal	14
3 Bihar	21
4 Bombay	17
5 Koshal-Vidarbh	12
6 Madars	27
7 Orissa	9
8 Punjab	8
9 United provinces	30
TOTAL	144

REPRESENTATIVES OF STATES FOR THE BEING SPECIFIED IN PART II OF THE FIRST SCHEDULE

1 States and Groups of states	2 Total Seats
1 Ajmer	1
2 Coorg	
3 Bhopal	1
4 Bilaspur	
5 Himachal Pradesh	1

6 Cooch-Behar	1
7 Delhi	1
8 Kutch	1
9 Manipur	1
10 Tripura	
11 Rampur	1
TOTAL	8

REPRESENTATIVES OF STATES FOR THE TIME BEING SPECIFIED IN PART III OF THE FIRST SCHEDULE

1	2
States	Total seats
1 Hyderabad	11
2 Jammu & Kashmir	4
3 Madhya Bharat	6
4 Mysore	6
5 Patiala & East Punjab States Union	3
6 Rajasthan	9
7 Saurashtra	4
8 Travancore Cochin	6
9 Vindhya Pradesh	4
TOTAL	53
TOTAL OF ALL STATES	205.'"

The motion was adopted.

Schedule III-A was added to the constitution.

Shri T. T. Krishnamachari : Sir, I move :

"That in clause (1a) of article 67, for the word, figure and letter 'Schedule III-B the word, figure and letter 'Schedule III-A' be substituted."

I have also explained the need for this amendment. I hope the House will accept the amendment.

Mr. President : This is also consequential. The question is :

"That in clause (1a) of article 67, for the word, figure and letter 'Schedule III-B the word, figure and letter 'Schedule III-A' be substituted."

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, I move :

"That in clause (1) of article 4, after the words 'First Schedule' the words figure and letter ' and schedule III-A' be inserted."

I have also explained the need for this amendment. I hope the House will accept the amendment.

Mr. President : This is also consequential. The question is :

"That in clause (1a) of article 67, for the word, figure and letter 'Schedule III-B the word, figure and letter 'Schedule III-A' be substituted."

The amendment was adopted.

Shri T. T. Krishnamachari : Mr. President, I move :

"That in clause (1) of article, 4, for the words 'incidental and consequential provisions' the words and brackets 'supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States to be affected by such law) be substituted."

This is a modification of the words which we now seek to supplant. There is nothing intrinsic in this amendment which seeks to vary a principle which has been incorporated in article 4.

Mr. Naziruddin Ahmad : Does it enlarge the scope of the original text ?

Shri T. T. Krishnamachari : Only to the extent that article 4 is an operative clause/ in regard to article 3, and the enlargement is restricted only to the extent that is absolutely necessary.

Mr. President : The question is :

"That in clause (1) of article 4, for the words 'incidental and consequential provisions' the words and brackets 'supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the legislature or Legislatures of the State or States to be affected by such law)' be substituted."

The amendment was adopted.

Part XVIII.

Shri T. T. Krishnamachari : Mr. President, Sir, I move :

"That for Part XVIII, the following Part be substituted :

'PART XVIII

SHORT TITLE, COMMENCEMENT AND REPEALS

Short title. 313A. This Constitution may be called the Constitution of India".

Shri B. Das : You have to say "of India, that is Bharat".

Shri T. T. Krishnamachari : We have used the word India as we have used it in other placed in the Constitution.

Commencement.

"314. This article and articles 5, 5A , 5AA, 5B, 303, 311, 331A and 312F of this Constitution shall come into force at once, and the remaining provisions thereof shall come into force on the twenty-sixth day of January, 1950, which date is referred to in this Constitution as the date of commencement of this Constitution.

Repeals.

315. The Indian Independence Act, 1947, in so far as its provisions are repugnant to this Constitution and the Government of India Act, 1935, including the India (Central Government and Legislature) Act, 1946 and, all other enactments amending or supplementing the Government of India Act, 1935, shall cease to have effect:

Provided that nothing in this article shall affect the provisions of the Abolition of Privy Council Jurisdiction Act, 1949."

Sir, the first clause 313A is a formal one. The second clause relates to clause 314 which in the draft Constitution has been left more or less blank after the words "This Constitution shall come into force on......". This clause puts in articles 5, 5A, 5AA and 5B relating to Citizenship, article 303 (Definitions) and articles 311, 311A and 312A and 312F which are transitory provisions. 311 relates to the election of the provisional Parliament, 311A to the provisional President, and 312F relations to the provisional Parliament so as to determine the method to be followed for the by-elections and the rules to be followed for that purpose. These have been put in as the articles will have to come into force immediately. The remaining articles will come into force on the appointed day, which is the 26th of January 1950.

So far as 315 is concerned, this more or less follows the scheme in the draft Constitution with this exception that we have found it necessary to provide that the operation of the Privy Council Jurisdiction Act passed by this House shall not be affected by this repeal. I do not think there is any need to explain the purport of these articles as they are self-explanatory.

The Honourable Shri K. Santhanam : What about the appointment of a Commission for the delimitation of constituencies ?

Shri T. T. Krishnamachari : That we have not put in, I would like to add this. There may be, for instance, the question of delimitation of constituencies under article 290. This must be preceded by a legislation by the provisional Parliament. I do not think anything could be done in that regard between now and the 26th of January 1950. I will mention here another matter, if I may do so with your permission. These are the articles that to us now appear as being necessary to be put in article 314. The position will be examined at greater length. Actually, I understand the Law Ministry attached to the Government of India is going through the whole matter and is carefully scanning the provisions of the Constitution that will have to come into force before the appointed date. Should we feel that anything should be added to these articles we shall seek your permission and the permission of the House to incorporate them at a later stage. At the moment these are the only articles affected as far as we can see by going through the articles and scrutinising the meaning of those articles. But other consequential matters might arise, and if they should arise on a scrutiny and examination of the articles by us we shall certainly bring fresh proposals before the House with your permission.

Mr. President : There are certain amendments relating to the original article, I shall take them up if the Members want them, and if they fit in with the amendment as now put in. There are three here. One is by Dr. Deshmukh. He is not here; so it is not moved. the next one is by Mr. Brajeshwar Prasad. He too is not here. So it is also not moved. Then there is again an amendment relating to 315 by Dr. Deshmukh. So, it is not also moved. Are there any others?

Shri H. V. Kamath : I have certain amendments in Vol. II of the printed list.

Mr. President : You may move them, but I think we may take these form the beginning. First 314. There are certain amendments. One is by Mr. N. Ahmad regarding numbering of the Chapter. It is verbal and need not be moved. Mr. Prakasam is not here. Mr. Lari is no longer a member. There is no other amendment to 314. To 315 there is one by Mr. Kamath - 3325. He may move it.

Shri H. V. Kamath : Mr. President, I refer to amendments 3325 and 3327 of Printed List, Vol. II. I do not propose to move 3325 because the article as now moved by my honourable Friend Mr. Krishnamachari has made an alteration in 314 regarding the date on which the Constitution will come into force. My amendment which refers to the date of commencement of the Constitution has therefore no validity now. Amendment 3327 is a verbal or formal one. The House will see that the marginal heading of article 315 is "Repeals" and in conformity with that, I thought it would be more correct to state at the end of this article instead of the words "shall cease to have effect" - "shall stand repealed". Of Course, I am not a lawyer or an authority on matters of constitutional terminology and phraseology. I shall be content with leaving this matter to the collective wisdom of the Drafting Committee.

But, Sir, I would like to make a few observations in regard to the amendment just now moved by my honourable Friend Mr. Krishnamachari, No. 463. The first point is with regard to article 315 as moved by him. This refers to the Indian Independence Act, 1947. If the House will compare this with the original draft of this article, they will see that the words "insofar as its provisions are repugnant to this Constitution" are a fresh insertion. The original draft was silent on this point. I would like to know what exactly is the significance of these words. Do we not state categorically, clearly and unambiguously that with effect from the date of commencement of this Constitution the Indian Independence Act stands repealed, and of course the Government of India Act and what not? When this Constitution comes into force, then all other laws that were in force till that date automatically become null and void. Therefore, these words "insofar as its provisions are repugnant to this Constitution" are wholly unnecessary and should be deleted. I am sorry I had no time to give notice of an amendment.

As regards article 314, it refers to the date of commencement of this Constitution. Certain articles have got - and quite rightly so, - to come into force at once. I have nothing to say on that point. But about the second part of this article which says that the rest of the Constitution shall come into force on the 26th January 1950. I made a suggestion some time ago that, granting with all my heart that the 26th of January has got a sanctity all its own in our national calendar, we might still have another day, and it might very aptly and in the fitness of things signify, the advent of our complete freedom and republican status. We may christen it the "Republic Day". The 26th January would still be regarded as "Independence Day", the day on which we took the famous pledge of independence. But in all humility I suggest that we might have a "Republic Day' which we may observe like other days in our national calendar. I have no objection if the "Independence Day" and the "Republic Day" syn-chronise, but I think it would add more importance to our national calendar if we had "Independence Day" on the 26th January and another day in January or December as "Republic Day". As a matter of fact, if it were possible, we might have December 9th, 1949, as the Republic Day, because we began this historic Assembly on the 9th December. But perhaps it is not quite possible to get all these things ready by then, so I would suggest a day in January and have it as "Republic Day" to be celebrated like "Independence Day" or "Gandhi Jayanti" or other national days. I would request the House to consider this little submission of mine to the effect that we might as well state that the remaining provisions of this article shall come into force on the midnight of the 25/26th January 1950. Just as in August 1947 we celebrated or we welcomed the advent of freedom on the night of 14/15th August 1947, it would be in the fitness of things if we state here definitely that the remaining provisions thereof shall come into force on the midnight of 25/26th January 1950, and if that were adopted today, it would have the way for the celebration of another historic ceremony.

I do not know what the astrologers will have to say about this matter, because last time when they were consulted, there was a conflict of opinion about the auspiciousness of the date.

Mr. President : They offered their opinion without being consulted.

Shri H. V. Kamath : They were consulted by friends outside and they were not quite agreed whether it was wholly auspicious. I do not think we are always bound by the opinions of astrologers, but other things being equal, we might as well celebrate it on the midnight of 25/26th January 1950.

I hope Mr. T. T. Krishnamachari has been listening to me and that he will try his best to answer the suggestions that I have made.

Mr. Naziruddin Ahmad : I am not moving my amendment, but with regard to the amendment that has been moved by Mr. T. T. Krishnamachari, I have some difficulty about the proposed article 315. Article 315 tries to state that the Indian Independence Act, insofar as it is repugnant to this constitution, shall cease to have effect. I however think that this should be covered by the old article 307. I do not know what has become of it; whether it is proposed to move it or not. But article 307 in the Draft Constitution............

Mr. T. T. Krishnamachari : Another article 307 has been moved and accepted and is part of the Constitution.

Mr. Nazirudding Ahmad : This article 307 would cover 315. I am referring to the old article, and I suppose that the new article 307 is substantially of the same effect.

Shri T. T. Krishnamachari : Except clause (2).

Mr. Naziruddin Ahmad : Clause (1) says : "Subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until.........."

So, "all laws in force in the territory of India" would also include the Indian Independence Act 1947.

Shri T. T. Krishnamachari : It is expressly mentioned.

Mr. Naziruddin Ahmad: It is not necessary: otherwise you should mention all the other existing Acts which would be covered. The Indian Independence Act is completely in the hands of the Indian Legislature. That Act states that from the appointed date, all laws relating to the Indian administration and all British laws applicable to India, should no longer be affected or modified or dealt with in any way by the British Parliament but this should be dealt with specifically by the Indian Legislature. If that is so, I fail to see how the Indian Independence Act is an Act which requires a special mention. That is certainly within our competence. The British Parliament has no longer any jurisdiction over that. They have enacted a self-denying ordinance and that is certainly a law in force in the territory of India. Those laws which are now existing will have to be adopted under article 307. I do not know how far the office has proceeded with it, because on the 26th January we expect a complete Adaptation Order, fully ready, to be applicable on that date. On and from that date all laws, inconsistent with the present Constitution should be clearly adapted to suit the Constitution.

I think the word "Repeal" in the marginal note is inapplicable because we are not repealing the Independence Act: we are merely trying to say that insofar as it is inconsistent with the present Constitution it shall cease to have effect. We really modify the Act or adapt it to suit the present Constitution and that purpose would certainly be served by article 307. I, therefore, oppose article 315. All that we want is not the repeal but really an adaptation.

With regard to article 314, there is one expression which is coming up before the House repeatedly, namely, "the date of the commencement of this Constitution". Sometimes we say, "the commencement of the Constitution". On other occasions we say "the date of the commencement of this Constitution." I think the words 'the date of' are absolutely unnecessary and tautological. We mention here the "26th day of January 1950". which date is referred to in this article as the "date of" the commencement of this Constitution. The 26th day of January 1950 is certainly a 'date of' and if that is referred to as the commencement of this Constitution the words 'date of' are absolute unnecessary. The use of this expression has been rather indiscriminate in many places that they occur, and in any places they do not occur. I should think these words should be deleted by the drafting Committee so as to make the expression absolutely neat and clear and yet complete.

I would like to know what progress has been made in the adaptation of the existing laws because this is extremely important and things should be ready on the 26th January. This will affect courts, offices and various other persons. We should have a completely adapted series of Acts, as was done in the case of the government of India Act, all the Acts were adapted and an Adaptation Order was printed and circulated before time so as to be ready on the date that the Constitution came into effect, that is, on the 1st April, 1937.

I should like to know what progress has been made already, because if that is not taken in hand, there may be an impasse and confusion. So this requires clarification and if we have taken that in hand, then article 315 will be absolutely unnecessary.

The Honourable Shri K. Santhanam : Sir, I have just two points to make with reference to amendment No. 463. I think before any other article is brought into operation, it is desirable to have at least the Preamble and article 1 also to be brought into operation because all the other clauses refer to India and so before article 1 comes into operation, I do not think it is quite right that other articles should be brought into operation. I suggest that the Preamble and article 1 also may be added. These articles should be brought into immediate operation while the rest may come into operation on the 26th of January.

Mr. Naziruddin Ahamd : The difficulty would be that the Preamble has not yet been accepted by the House.

The Honourable Shri K. Santhanam : It will have to be accepted before the Constitution is complete. I am only suggesting this.

Shri R. K. Sidhva : May I know why you want the Preamble to be made applicable immediately ?

The Honourable Shri K. Santhanam : Preliminary to bringing the whole Constitution into force, we are bringing some provisions of the Constitution into force and the object of the Constitution and the name of the country must be there before any part of the Constitution can be brought into force. You may consider that suggestion for what it is worth.

In proposed article 315 there are provisions what are hardly consistent with the dignity of the new Constitution. It says : "The Indian Independence Act, 1947, insofar as its provisions are repugnant to this Constitution and the Government of India Act, 1935, including the India (Central Government and Legislature) act, 1946, and all other enactment amending or supplementing the Government of India Act, 1935, shall cease to have effect." The Independence Act to the extent it is not repugnant to the provisions will continue in existence and be in force. I think the entire Independence Act must be repealed. The only fundamental law must be the Constitution. The validity of all other laws must be derived from the Constitution. When the Government of India Act, 1935 was passed, all the previous Acts were completely repealed. I do not think we should leave the Indian Independence Act as if it is continued together with the Constitution as a fundamental law of the country so that it can be argued in the Supreme Court that a certain provision of the Indian Independence Act, because it is not repugnant to the provisions of the Constitution will continue in force. Our Supreme Court should not derive any authority from the Indian Independence Act; it should derive its authority only from the Constitution. I think this is an elementary principle which is necessary for the dignity of the whole Constitution. We should not say that our Constitution consists of the Constitutions which we have enacted and the Indian Independence Act to the extent it is not repugnant to the provisions of the Constitution. So I think this is a matter of importance and I suggest that Mr. Alladi and others should put their heads together and see that we do not enact a clause which is likely to be detrimental to the dignity of the Constitution we are making.

Shri B. Das : Mr. President, Sir, in article 314 it says : "This article 311 will come into force at once." when the article 311 was passed I understood that those members of provincial legislatures that are Members of this House will continue till the 26th of January, 1950. I wish it should be made clear that all members of provincial legislatures, that our comrades and colleagues here will remain with us until the 26th of January, 1950 when the Republic will be declared. I hope no mistake will be made on that quarter if we accept the present article 314 (Interruption). I respectfully request you to examine article 311 and I want to know whether our colleagues here from the provincial legislatures will continue to remain with us till the 26th January, 1950 when the Republic will be declared. Otherwise if that is not contemplated, I oppose the inclusion of article 311 here.

Shri R. K. Sidhva : It is clear.

Shri Alladi Krishnaswami Ayyar (Madras : General) : Mr. President, I just want to say a word or two in regard to the first objection of my honourable Friend Mr. Santhanam. I might point out that in the Draft Constitution, article 315, there is no reference to the retention of any revision of the Dominion Act after our Constitution comes into force. I would read the language of the said original article. "The Indian Independence Act, 1947 and the Government of India Act, 1935, including the India (Central Government and Legislature) Act, 1946 and all other enactments amending or supplementing the Government of India Act, 1935, shall cease to have effect." On a careful consideration I am inclined to agree with Mr. Santhanam, namely, that there is no question of the retention of any of the provisions of the earlier Act after our new Constitution comes into force. No doubt we might give a fresh lease of life to certain laws which were passed under the old Constitution and adopt them, so to speak, as the law under our Constitution. That is necessary and that provision has been made. I might also point out we were particularly anxious that the Constitution which we are making or passing must not be traceable to section 7 of the Independence Act and we took the view that there is no necessity of even the Governor General's assent being required for the new Constitution. The new Constitution will not be a constitution passed under or in pursuance of the wide and comprehensive powers given under section 7 or 8 of the Indian Independence Act. Therefore, when once we pass a Constitution, use our own free will, independent of and without reference to any earlier Act, there is no need of mentioning that the independence Act will continue to be in force to any extent whatever. I might mention that even when an Act like the government of India Act of 1935 was passed it was in pursuance of an Act of Parliament and the earlier Government of India Act was treated as repealed, excepting in so far as the provisions of the earlier government of India Act were in terms adopted and continued by particular sections of the Government of India Act. Under those circumstances there is force in the suggestion of Mr. Santhanam, but they are in the nature of a drafting amendment. If permission is given that might be dropped at a later stage. The reason why I am mentioning this is that having emerged from the Drafting Committee, it is only fair that it should be amended again by the Drafting Committee. There will be no difficulty whatever in regard to that point.

Then some technical point was raised by my honourable Friend, Mr. Kamath, with regard to the words 'cease to have effect''; for the very reason for which he has been fighting we advisedly put in the express words "cease to have effect". On the point as to repeal, we are to remember we are an independent body. The Independence Act emanated from another Parliament. There is no question of our repealing another Act. That is why advisedly the draft Constitution contained the express provision "cease to have effect". Therefore, consistent with the ideas of my honourable Friend Mr. Kamath, who always stands for the independence of this country, for the Constitution not having reference to anything emanating from the British Parliament, it is appropriate and fitting that the expression 'cease' should be there instead of the word 'repealed'.

Then, Sir, lastly the point mentioned by Mr. Santhanam : one regarding the coming into force of the Preamble and secondly, that India shall be a Union. I think, if I may say with respect to my honourable Friend who is always careful about his points, there is no force in that objection. So far as the Preamble is concerned, though in an ordinary statute we do not attach any importance to the Preamble, all importance has to be attached to the Preamble in a Constitutional statute, there is no such thing as the Preamble immediately coming into force. The Preamble will come into force in all its plentitude when the Constitution comes into force. There is no reason to say that the Preamble will come into force earlier than when the Constitution comes into force.

Secondly, I do not think we can bring into force the article that India shall be a Union because India does not immediately become a Union of States as it is understood throughout the Constitution. A Union must be understood with the entire constitutional mechanism that has been created under the Constitution which we are passing. We cannot conceive of a body or soul without limbs. If the limbs do not begin to operate how can a Union come into existence. So far as that point is concerned, even Homer nods and there is no force in the objection raised by Mr. Santhanam that the article must come into force immediately.

Mr. President : There was one point raised by Mr. Das with regard to article 311.

Shri T. T. Krishnamachari : That is very clear, Sir.

Shri Alladi Krishnaswami Ayyar : I have not caught the point.

Shri Kuladhar Chaliha (Assam : General) : Sir, I want to understand from the Drafting Committee how you can reconcile article 311(3) with article 314. Article 314 says that it shall it come into force at once. These Members will have to vacate immediately I think. I want to have an answer from Mr. Krishnamachacri. If that is the consequence, we cannot support this.

The Honourable Shri K. Santhanam : This will come into effect when the Third Reading is passed.

Mr. President : That is exactly the point raised by Mr. B. Das also.

Shri T. T. Krishnamachari : Sir, in regard to the point raised by Mr. B. Das and Mr. Kuladhar Chaliha, I would like to say this. Article 311(3) says:

> "If a member of the Constituent Assembly of the Dominion of India was on the sixth day of October 1949, or thereafter becomes at any time before the commencement of this Constitution a member of a House of the legislature of a Governor's province then, as from the date of commencement of this Constitution the seat of such member shall, unless he has ceased to be a member of that Assembly earlier, become vacant."

Here, article 314 says that the date of the commencement of the Constitution is 26th of January 1950. Even though these articles are to come into force immediately, the date of the commencement of the Constitution will be the operating factor. I do not think there is any doubt about that. I can tell honourable Members this. The idea is that Members who have double membership remain Members until the 25th of January. (Interruption). Honourable Members will please hear me patiently. We will have to examine the position again if instead of the words 'date of commencement of the Constitution' 'the words 'appointed date' would suit better. Because, the appointed day happens to be the 26th of January. The position will be examined by Dr. Ambedkar and the Drafting Committee and if it is felt that the position of the Members will in any way be prejudicially affected, I will give this assurance to this House, that we will try to safeguard it by a suitable amendment and I think honourable Members need have no fear in that matter.

Dr. B. Pattabhi Sitaramayya (Madras : General) : I should like to know what was the object with which this was included. The date of commencement of the Constitution being evident and the tenure continuing till that date, what was the object of including this article mentioning the articles which are immediately coming into force? Probably it is to bring the elections into operation. If so, can you have an implied purpose and a declared purpose which are different from each other. This must be re-examined.

Shri T. T. Krishnamachari : The honourable Doctor has really put his finger on the point. The point is that, notwithstanding the fact that the vacancies have not occurred until the 25th of January, elections will have to be held so that the new Members will be enabled to take their seats on the 26th of January, on which date the vacancies will definitely occur. The idea is to enable the President of the Constituent

Assembly to hold these elections notwithstanding the fact the actual vacancies will occur later. The wording of article 311 is clear. Both articles 311 and 312F permit the President of the Constituent Assembly to make appropriate rules for the purpose of enabling elections to be held on the supposition that the seats will become vacant on the 25th of January. The position as the doctor has understood is correct and the position is also perfectly clear I do not think any Member will be prejudicially affected by the fact that these articles are being brought into effect immediately from the time the Constitution is finally passed, or the Third Reading has been passed. If we do not do it, the President of the Constituent Assembly will not be empowered to take any action under articles 311 and 312 F.

With regard to the wording of article 315, I must bow to the superior wisdom of my honourable Colleague Mr. Alladi Krishnaswami Ayyar. If he now feels that the wording is not as it should be, I suppose the matter has definitely to be reconsidered. I would only say this, When experts differ, the layman is literally at sea. The reason why we made this change in the draft article is because of the advice that has been given to us by the Constitutional Adviser of this honourable House which is in these terms. "--This article provides without any qualification that the Indian Independence Act, 1947 and certain other Parliamentary enactments shall cease to have effect. There are, however, certain provisions of the Indian Independence Act which would not cease to have effect. For example, there is no reason why the provision of that Act stating that His Majesty's Government in the United Kingdom have no longer any responsibility as respects the government of any of the territories which immediately before August 1947 were included in British India, that the suzerainty of His Majesty over the Indian States lapses, etc., should not continue to remain in force. There is nothing in this provision that is repugnant to the new Constitution. hence the proposed amendment.' My honourable Friend Mr. Alladi Krishnaswami Ayyar holds the view that as this Constitution is completely independent in character, it acts on its own volition and therefore all the other enactments that preceded it must automatically cease to have effect. I quite agree. But, this is the opinion that was given to us by the Constitutional Adviser and it is only on the lines of this opinion that we put in these words "in so far as its provisions are repugnant to this Constitution".

I had originally thought of suggesting that we might, in order to make the meaning of this particular article clear, split it up into two and call it 315 (1) with the following words : "The Indian Independence Act, 1947, in so far as its provisions are repugnant to this Constitution", Then put the figure (2) and put the following words after it. "The Government of India Act, 1935 including the India (Central Government and Legislature) Act, 1946, and all other enactments amending or supplementing the Government of India Act", And thereafter, put these words below, which shall apply to both (1) and (2) : shall cease to have effect". In view of the position taken up by my honourable Friend Mr. Alladi Krishnaswami Ayyar, I would suggest with your permission that the House do pass this article in this form and we will have the position re-examined.

My honourable Colleague, the Chairman of the Drafting Committee is not here. We shall have the position re-examined and if necessary, at the Third Reading Stage, when we are convinced that these words "in so far as its provisions are repugnant to this Constitution" should be eliminated, we shall eliminate them at the Third Reading Stage.

I therefore suggest that we shall pass this article in the present form and if any change is necessary, we shall take adequate legal advice and the eminent lawyer members of the Drafting committee will examine it. We will put my honourable colleague Mr. Alladi Krishnaswami Ayyar against Dr. Ambedkar and Mr. Munshi and we will probably be able to arrive at a settlement so far as the wording is concerned. I do hope that..........

The Honourable Shri K. Santhanam : Would it not be better that the opposite course is adopted ?

Shri T. T. Krishnamachari : I have suggested one course. My honourable Friend Mr. Santhanam takes the opposite view. It is for the House to decide whether my view is proper or the opposite view. I would also suggest that before we finalise the wording of the article, we shall have the benefit of the views of Sir B. N. Rau about this matter. We shall immediately write to him about this matter and ask him if he would revise his view in the light of the expression of opposite views in the House. Therefore, I suggest that this article be accepted by the House in its present form, subject to this condition that the whole thing will be re-examined and if on examination we find that the objections mentioned by my honourable Friend Mr. Santhanam and supported by my honourable Colleague have any validity, the article will come before the House in a revised form.

So far as the objection to the wording "cease to have effect" is concerned, which my honourable Friend Mr. Kamath wants to be supplanted by the word "repealed", I think my honourable Colleague Mr. Alladi Krishnaswami Ayyar has answered him adequately. The House need, therefore, have no qualms in accepting the wording 'cease to have effect'.

Shri H. V. Kamath : What about the two suggestion that I made in regard to a separate Republic day and also about the midnight ceremony ?

Shri T. T. Krishnamachari : That is a matter for the appropriate authorities and not for the Drafting Committee.

Mr. Naziruddin Ahmed : Is it proper to accept this subject to reconsideration? If these controversial matters are left over for the Third Reading, other matters will have no time. I suggest it should be dropped. It is included in 307.

Mr. President: That again is a controversial matter. In some form it has to be passed today so that the Second Reading may be completed. If any question arises for revision, that may be done at the Third Reading stage, and as Mr. Krishnamachari said they will have the matter re-examined and if we find that any amendment is necessary, we shall take that up at that stage. If we leave it also, then we could not bring anything new at that stage.

The Honourable Shri K. Santhanam: If the words 'In so far as its provisions are repugnant to this Constitution, are omitted, it will have unanimous acceptance and there is nothing to prevent them in re-introducing those words if they are found essential. Now we are asked to take it in a form which we dislike and it is said that they will consider it later. There is no difficulty for the Drafting Committee to re-introduce the words if it is considered essential.

Mr. President: It is really a matter for the House to decide. I will put the two views separately.

The question is :

"That for Part XVIII, the following Part be substituted :

PART XVIII

SHORT TITLE, COMMENCEMENT AND REPEALS

'313. This Constitution may be called the Constitution of India'. "

The amendment was adopted.

Mr. President: The question is :

"This article and articles 5, 5A, 5AA, 5B, 303, 311, 311A and 312F of this Constitution shall come into force at once, and the remaining provisions thereof shall come into force on the twenty-sixth day of January, 1950, which date is referred to in this Constitution as the date of commencement of this Constitution."

The amendment was adopted.

Article 315

Mr. President : The question is :

"That in proposed article 315 the words 'in so far as its provisions are repugnant to this Constitution be deleted."

The amendment was adopted.

Mr. President : Of course it is understood that it subject to re-examination.

TheHonourable Shri K. Santhanam : Yes, It is appreciated.

Shri H. V. Kamath: I leave my amendment in the printed list to the wisdom of the Drafting Committee. That need not be put to vote.

Mr. President : The question is :

"That proposed article 315, as a amended, stand part of the Constitution."

The motion was adopted.

Article 315, as amended, was added to the Constitution.

Article 306A

Mr. President : We go to 306A.

It is suggested that we had better begin the Preamble. It may be moved.

Shri T. T. Krishnamachari : It is not necessary to move it. The Preamble may be taken into consideration.

Mr. President : The Preamble is moved. I shall have to take up the various amendments to the Preamble now. I have a large number of amendments - many of them printed in the printed list.

Maulana Hasrat Mohani (United Provinces : Muslim) : I understand that you have already decided that the Preamble will be taken up last. How is it that there are some articles remaining undiscussed and you pass to the Preamble?

Mr. President : Not many articles left.

Maulana Hasrat Mohani : Even one article - unless you finish the articles, you cannot take up the Preamble.

Mr. President : Very well, let us take up 306A.

The Honourable Shri Satyanarayan Sinha (Bihar : General): Sir, are you taking up the Preamble ?

Mr. President : No, Maulana hasrat Mohani objects to the Preamble being taken up before all the other articles are finished.

There is one more article of which notice was given and it has been standing over, amendment No. 472 by Mr. Naziruddin Ahmad. And I understand it is the same as another article of which notice was given by Pandi Thakur Das Bhargava.

Pandit Thakur Das Bhargava: Sir, it was held over on the 3rd June, by your order.

Mr. President : Then shall we take it up now? Which of them shall we take up. Mr. Nazirudding Ahmad's or that of Pandit Thakur Das Bhargava ?

Pandit Thakur Das Bhargava : Sir, I beg to move that..............

Shri R. K. Sidhva : Sir, there are other articles also of which notice has been given by other Members.

Mr. President : There is no other amendment by the Drafting Committee.

Shri R. K. Sidhva : But there may be other Members who may have amendments besides these two.

Mr. President : Amendments for the addition of new articles ?

Shri R. K. Sidhva : Yes.

Mr. President : I do not think they will arise now.

Pandit Thakur Das Bhargava : Sir, I understand Shri Gopalaswami Ayyangar has just come and so I may be allowed to move, after he has done.

Mr. President : There are so many articles of which notice was given and which are dropped now. We have dealt with the whole Constitution from every point of view and we cannot begin now taking up new articles. I know Pandit Thakur Das Bhargava's amendment was held over, but it has been covered by other amendments.

Pandit Thakur Das Bhargava : It is not covered, Sir.

Mr. President : Very well. We take up article 306A now. Mr. Gopalaswami Ayyangar.

The Honourable Shri N. Gopalaswami Ayyangar : (Madras : General) : Sir, before I read out the motion. I would request your permission, Sir, not to move item 379, but to move item 451 instead.

Sir, I move:

"That with reference to Amendment no.379 of List XV (Second Week), after article 306, the following new article be inserted:

'306A. (1) Notwithstanding anything contained in this Constitution,

(a) the provisions of article 211A of this Constitution shall not apply in relation to the State of Jammu and Kashmir;

> (b) the power of Parliament to make laws for the State shall be limited to
>
> > (i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for the State; and
> >
> > (ii) such other matters in the said List as, with the concurrence of the Government of the State, the President may by order specify;
> >
> > *Explanation.* - For the purposes of this article, the Government of the State means the person for the time being recognised by the Union as the Maharaja of Jammu and Kashmir, acting on the advice of the Council of Ministers..."

I am making, Sir, with your permission, a change here. Instead of the word "appointed" I am substituting the words, "for the time being in office" - "under the Maharaja's Proclamation, dated the fifth day of March, 1948."

Pandit Hirday Nath Kunzru : We could not hear the honourable member correctly.

The Honourable Shri N. Gopalaswami Ayyangar :

> "*Explanation.* - For the purposes of this article, the Government of the State means the person for the time being recognised by the Union as the Maharaja of Jammu and Kashmir, acting on the advice of the council of Ministers, for the time being in office, under the Maharaja's Proclamation, dated the fifth day of March, 1948."

I have there substituted the words "or the time being in office," for the word "appointed".

> "(c) the provisions of article 1 of this Constitution shall apply in relation to the State.
>
> (d) such of the other provisions of this Constitution and subject to such exceptions and modifications shall apply in relation to the State as the President may by order specify;
>
> Provided that no such order which relates to the matters specified in the Instrument of Accession of the State aforesaid shall be issued except in consultation with the Government of the State;
>
> Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.
>
> (2) If the concurrence of the Government of the State referred to in sub-clause (b) (ii) or in the second proviso to sub-clause (d) of clause (1) was given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.
>
> (3) Notwithstanding anything in the preceding clauses of this article, the President may, by public notification, declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify:

Provided that the recommendation of the Constituent Assembly of the State shall be necessary before the President issues such a notification."

Sir, this matter, the matter of this particular motion, relates to the Jammu and

Kashmir State. The House is fully aware of the fact that the State has acceded to the Dominion of India. The history of this accession is also well know. The accession took place on the 26th October, 1947. Since then, the State has had a chequered history. Conditions are not yet normal in the State. The meaning of this accession is that at present that State is a unit of a federal State, namely, the Dominion of India. This Dominion is getting transformed into a Republic, which will be inaugurated on the 26th January, 1950. The Jammu and Kashmir State, therefore, has to become a unit of the new Republic of India.

As the House is aware, accession to the Dominion always took place by means of an instrument which had to be signed by the Ruler of the State and which had to be accepted by the Governor-General of India. That has taken place in this case. As the House is also aware, Instruments of Accession will be a thing of past in the new Constitution. The States have been integrated with the Federal Republic in such a manner that they do not have to accede or execute a document of Accession for the purpose of becoming units of the Republic, but they are mentioned in the Constitution itself; and, in the case of practically all States other than the State of Jammu and Kashmir, their constitutions also have been embodied in the Constitution for the whole of India. All those other States have agreed to integrate themselves in that way and accept the Constitution provided.

Maulana Hasrat Mohani : Why this discrimination, please?

The Honourable Shri N. Gopalaswami Ayyangar : The discrimination is due to the special conditions of Kashmir. That particular State is not yet ripe for this kind of integration. It is the hope of everybody here that in due course even Jammu and Kashmir will become ripe for the same sort of integration as has taken place in the case of other States. *(Cheers)* At present it is not possible to achieve that integration. There are various reasons why this is not possible now, I shall refer again to this a little later.

In the case of the other Indian States or Unions of States there are two or three points which have got to be remembered. They have all accepted the Constitution framed for States in Part I of the new Constitution and those provisions have been adapted so as to suit conditions of Indian States and Unions of States. Secondly, the Centre, that is the Republican Federal Centre will have power to make laws applying in every such State or Union to all Union Concurrent Subjects. Thirdly, a uniformity of relationship has been established between those States and Unions and the Centre. Kashmir's conditions are, as I have said, special and require special treatment.

I do not want to take much of the time of the House, but I shall briefly indicate what the special conditions are. In the first place, there has been a war going on within the limits of Jammu and Kashmir State.

There was a cease-fire agreed to at the beginning of this year and that cease-fire is still on. But the conditions in the State are still unusual and abnormal. They have not settled down. It is therefore necessary that the administration of the State should be geared to these unusual conditions until normal life is restored as in the case of the other States.

Part of the State is still in the hands of rebels and enemies.

We are entangled with the United Nations in regard to Jammu and Kashmir and it is not possible to say now when we shall be free from this entanglement. That can take place only when the Kashmir problem is satisfactorily settled.

Again, the Government of India have committed themselves to the people of Kashmir in certain respects. They have committed themselves to the position that an opportunity would be given to the people of the State to decide for themselves whether they will remain with the Republic or wish to go out of it. We are also committed to ascertaining this will of the people by means of a plebiscite provided that peaceful and normal conditions are restored and the impartiality of the plebiscite could be guaranteed. We have also agreed that the will of the people, through the instrument of a constituent assembly, will determine the constitution of the State as well as the sphere of Union jurisdiction over the State.

At present, the legislature which was known as the Praja Sabha in the State is dead. Neither that legislature nor a constituent assembly can be convoked or can function until complete peace comes to prevail in that State. We have therefore to deal with the Government of the State which, as represented in its Council of Ministers, reflects the opinion of the largest political party in the State. Till a constituent assembly comes into being, only an interim arrangement is possible and not an arrangement which could at once be brought into line with the arrangement that exists in the case of the other States.

Now, if you remember the viewpoints that I have mentioned, it is an inevitable conclusion that, at the present moment, we could establish only an interim system. Article 306A is an attempt to establish such a system.

I shall now proceed to take the House through the provisions of this article. As honourable Members will remember, the constitution of Indian States is mainly governed by article 211A of this Constitution which applies the Constitution to Indian States, subject to the modifications contained in Part VI-A read with the Schedule. So far as that provision in concerned, I have already indicated to you that the provisions regarding the Constitution of other States could not at present be applied to Jammu and Kashmir. Therefore, clause (1) (a) of this article says that the provisions of article 211A of this Constitution shall not apply to the State of Jammu and Kashmir.

The Second portion of this article relates to the legislative authority of Parliament over the Jammu and Kashmir State. This governed primarily by the Instrument of Accession. Broadly speaking, that legislative power is confined to the three subjects of defence, foreign affairs and communications, but as a matter of fact these broad categories include a number of items which are listed in the Instrument of Accession. I believe they number some twenty to twenty-five. Now, these items have undergone a change in description, in numbering, in arrangement, as amongst themselves, in List I and List III of the new Constitution. It is therefore necessary that the items mentioned in the Instrument of Accession should be brought into line with the changed designations of entries in Lists I and III of the new Constitution. So, clause (1) (b) of article 306A says that this listing of the items as per the terms of the new Constitution should be done by the President in consultation with the government of the Sate.

Clause (b) (ii) refers to possible additions to the List in the Instrument of Accession, and these additions could be made according to the provisions of this article with the concurrence of the government of the Sate. The idea is that even before the Constituent Assembly meets, it may be necessary in the interests of both the Centre and the State that certain items which are not included in the Instrument of Accession would be appropriately added to the List in that Instrument so that administration, legislation and executive action might be furthered, and as this may happen before the Constituent Assembly meets, the only authority from whom we can get consent for the addition is the Government of the State. That is provided for.

Then, there is the Explanation, which defines what the Government of the State means. The Government of the State is defined both in the Constitution which is now supposed to be in force in the Jammu and Kashmir State as well as in the Proclamation which the Maharaja issued on the 5th March, 1948. The terms of the Proclamation, to the extent that they are inconsistent with the provisions of the Constitution Act of the State, will prevail over that Constitution Act, and therefore it is that in this Explanation it is the Proclamation which is referred to. Under the terms of that Proclamation the Maharaja constituted an interim popular Government, and he said: -

"I hereby ordain as follows :-

> (1) My Council of Ministers shall consist of the Prime Minister and such other Ministers as may be appointed on the advice of the Prime Minister. I have by Royal Warrant appointed, Sheikh Mohd. Abdullah as the Prime Minister with effect from the 1st day of March 1948.

He proceeds -

> "The Prime Minister and other Ministers would function as a Cabinet and act on the principle of joint responsibility."

Then there was no Legislature functioning, and so he instituted a kind of responsible Government with a Prime Minister and colleagues who would own collective responsibility for their acts and regard themselves as jointly responsible for all the acts of the Government. Now, that is brought out in this Explanation.

The Honourable Shri K. Santhanam : The Explanation says that the Maharaja will be recognised by the Union instead of by the President.

The Honourable Shri N. Gopalaswami Ayyangar : Perhaps we may leave it to the Third Reading. As you know the scheme of the Constitution Act is that the Rajpramukh must be recognised by the President. So, this also says that the Maharaja of Jammu and Kashmir should be a persons recognised for the time being by the Union.

As regards the Council of Ministers, this Proclamation set up a system under which this Council was to be established, *viz.*, that the Maharaja first finds the Prime minister and then on his advice appoints his colleagues, and the Explanation as now amended by me says that whatever Council of Ministers is in being at the time will, along with the Maharaja to whom they are responsible give their concurrence or give their advice on such matters as are referred to them under this article.

Clauses (c) and (d) refer to the provisions of the Constitution other than the matters listed in Lists I and III. These various provisions have been divided into certain categories. The first according to this draft is that article 1 of the Constitution will automatically apply. As you know, it describes the territory of India, and includes amongst these territories all the States mentioned in Part III, and Jammu and Kashmir is one of the States mentioned in Part III. With regard to the other provisions in the Constitution, these will apply to the Jammu and Kashmir State with such exceptions and modifications as may be decided on when the President issues an order to that effect. That Order can be issued in regard to subjects mentioned in the Instrument of Accession only after consultation with the Government of the State. In regard to other matters, the concurrence of that Government has to be taken.

Now, it is not the case, nor is it the intention of the members of the kashmir Government whom I took the opportunity of consulting before this draft was finalised - it is not their intention that the other provisions of the Constitution are not to apply. Their particular point of view is that these provision should apply only in cases where they can suitably apply the only subject to such modifications or exceptions as the particular conditions of the Jammu and Kashmir State may require. I wish to say no more about that particular point at the present moment.

Then we come to clause (2). You will remember that several of these clauses provide for the concurrence of the Government of Jammu and Kashmir State. Now, these relate particularly to matters which are not mentioned in the Instrument of Accession, and it is one of our commitments to the people and Government of Kashmir that no such additions should be made except with the consent of the Constituent Assembly which may be called in the State for the purpose of framing its Constitution. In other words, what we are committed to is that these additions are matters for the determination of the Constituent Assembly of the State.

Now, you will recall that in some of the clauses of this article we have provided for the concurrence of the Government of the State. The government of the State feel that in view of the commitments already entered into between the State and the Centre, they cannot be regarded as final authorities for the giving of this concurrence, though they are prepared to give it in the interim periods but if they do give this concurrence, this clause provides that that concurrence should be placed before the Constituent Assembly when it meets and the Constituent Assembly may take whatever decisions it likes on those matters.

The last clause refers to what may happen later on. We have said article 211A will not apply to the Jammu and Kashmir State. But that cannot be a permanent feature of the Constitution of the State, and hope it will not be. So the provision is made that when the Constituent Assembly of the state has met and taken its decision both on the Constitution for the State and on the range of federal jurisdiction over the State, the President may on the recommendation of that Constituent Assembly issue an order that this article 306A shall either cease to be operative, or shall be operative only subject to such exceptions and modifications as may be specified by him. But before he issues any order of that kind the recommendation of the Constituent Assembly will be a condition precedent. That explains the whole of this article.

The effect of this article is that the Jammu and Kashmir State which is now a part of India will continue to be a part of India, will be a unit of the future Federal Republic of India and the Union Legislature will get jurisdiction to enact laws on matters specified either in the Instrument of Accession or by later addition with the concurrence of the Government of the State. And steps have to be taken for the purpose of convening a Constituent Assembly in due course which will go into the matters I have already referred to. When it has come to a decision on the different matters it will make a recommendation to the President who will either abrogate article 306A or direct that it shall apply with such modifications and exceptions as the Constituent Assembly may recommend. That, Sir, is briefly a description of the effect of this article, and I hope the House will carry it.

(Amendment Nos. 459, 460 and 461 were not moved)

Shri Mahavir Tyagi : (United Provinces : General) I am not in concurrence with the wording of the clauses, but I do not wish to move the amendments.

(Amendment No. 462 was not moved)

Mr. President : There is one more amendment of which notice was received this morning. That is by Shri Mahavir Tyagi to the effect 'that in amendment No.451 of List XX (Second Week), in the proviso to clause (3) of the proposed new article 306A" for the word "recommendation" the word "consultation" be substituted.

Shri Mahavir Tyagi : I am not moving that too.

Mr. President : The article is now open to discussion.

Maulana Hasrat Mohani : Sir, I want to make it clear at the very outset that I am neither opposed to all these concessions being granted to my Friend Sheikh Abdullah, not am I opposed to the acceptance of the Maharaja as the ruler of Kashmir. And if the Maharaja of Kashmir gets further powers and concessions I will be very glad. But what I object to is this. Why do you make this discrimination about this Ruler ? My. Ayyangar has himself admitted here that the administration of Kashmir State is not on a very good basis ....

The Honourable Shri N. Gopalaswami Ayyangar : That is a wrong statement. I never said so.

Maulana Hasrat Mohani : That it will assume independence afterwards. But may I ask a question? when you make all these concessions for Kashmir I most strongly object to your arbitrary act of compelling the Baroda State to be merged in Bombay. The administration of Baroda state is better than the administration of many other Indian P*rovinces. It is scandalous that you should compel the Maharaja of Baroda to have his raj* merged in Bombay and himself pensioned off. Some people say that he himself Voluntarily accepted this meger. I Know it is an open secret that he was brought form England and compelled against his will.........

Mr. President : Maulana, we are not concerned with the maharaja of Baroda here.

Maulana Hasrat Mohani : Well, I would not go into any detail. But I say that I object to this sort of thing. If you grant these concessions to the Maharaja of Kashmir you should also withdraw your decision about the merger of Baroda into Baroda into Bombay and allow all these concessions and many More concessions to the Baroda ruler also.

Mr. President: The question is :

"That with reference to Amendment No.379 of List XV (Second Week), after article 306, the following new article be inserted : -

'306A. (1) Not withstanding anything contained in this Constitution.

(a) the provisions of article 211A of this Constitution shall not apply in relation to the State of Jammu and Kashmir.

(b) the power of Parliament to make laws for the State shall be limited to

(i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India are the matters with respect to which the Dominion Legislature may make laws for the State; and

(ii) such other matters in the said Lists as, with the concurrence of the Government of the State, the President may by order specify;

Explanation :- For the purposes of this article, the government of the State means the person for the time being recognised by the union as the maharaja of Jammu and Kashmir, acting on the advice of the Council of Ministers, for the time being in office, under the Maharaja's Proclamation, dated the fifth day of March, 1948.

(c) the provisions of article 1 of this Constitution shall apply in relation to the State;

(d) such of the other provision of this Constitution and subject to such exceptions and modifications shall apply in relation to the State as the President may by order specify:

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State aforesaid shall be issued except in consultation with the Government of the State:

Provided further that no such order which relates to matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

(2) If the concurrence of the Government of the State referred to in sub-clause (b) (ii) or in the second proviso to sub-clause (d) of clause (1) was given before the Constituent Assembly for the purpose of framing the Constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon.

(3) Notwithstanding anything in the preceding clause of this article, the President may, by public notification declare that this article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he may specify:

Provided that the recommendation of the Constituent Assembly of the State shall be necessary before the President issues such a notification'."

The motion was adopted.

Article 306A was added to the Constitution.

Mr. President : These are all the amendments that we have had from the Drafting Committee. There are certain amendments printed in the List of Amendments and probably some others in some one or other of the numerous lists subsequently circulated. The question is whether we take up any of those amendments. We have gone through the whole Constitution article by article and clause by clause at great length and I do not think we can re-open any of those things at this stage by bringing in fresh amendments. There is one amendment by Pandit Thakur Das Bhargava, No.472, on which Mr. Naziruddin Ahmad has given notice of an amendment, and this was included in List I of Fifth Week. It was not by itself an amendment. It was a long article and it related only to one paragraph of that article. I think this very point has been covered by article 109, which we have passed. Article 109 confers original jurisdiction on the Supreme Court and Article 121 lays down that the Supreme Court will have its own rules of procedure, while article 25 deals with the remedies given to a party to have Fundamental Rights enforced in court. I think these three articles between themselves cover everything contained in the amendments of Mr. Naziruddin Ahmad and Pandit Bhargava. I therefore rule out of Pandit Bhargava's amendment

We shall now take up the Preamble.

Preamble

An Honourable Member : May I suggest that the Preamble be taken up when we meet again in November for the Third Reading ? By that time, the Drafting Committee will also have submitted its final report to this House.

Maulana Hasrat Mohani : I object to that, because unless you get the Preamble passed today, how could you produce any report on the Second Reading?

Shri K. M. Munshi : Once in my life I support the Maulana Saheb !

Mr. President : I think we should get the Preamble also passed today. The Constitution as a whole has to be passed in its Second Reading and the Preamble forms part of the Constitution. Therefore, the Preamble cannot be postponed.

If necessary, we shall sit in the afternoon and dispose of it, unless we can do it within fifteen minutes that remain before one o'clock.

I find there are quite a good number of amendments to the Preamble in Vol. I of the Printed List Many of them bring in certain matters really not germane to the Preamble but by way of introduction of the Preamble. But I find that Maulana Hasrat Mohani's amendment is one of substance and seeks to bring in altogether new ideas. Therefore, I would ask him if he wishes to move his amendment first.

Maulana Hasrat Mohani : I have three amendments. I want to move them separately, not in one bundle.

Mr. President : Which one do you want to move first ?

That for amendment No.8 of the List of Amendments (Volume I), the following be substituted :-

That in the Preamble, for the words "We, the People of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic" the following be substituted :-

> We, the People of India having solemnly resolved to constitute India into a Sovereign Federal Republic.

or alternatively

"We, the people of India, having solemnly resolved to constitute India into a Sovereign Independent Republic."

I shall just now give my reasons for proposing these amendments. In view of the proverbial shortness of public memory, I want first to remind the Members about a very fundamental fact that has been brought into the present Constitution and in the Draft prepared by Dr. Ambedkar. I refer to Volume IV No.6 of the official report of the proceedings of this Assembly - list 738, Part I: Federal territory and jurisdiction. Under "name of territory and federation" it is said that the Federation hereby established shall be a sovereign independent republic known as India. So it is clearly laid down that we will have only a Federation and it will be a federation of Indian republics. But my friend, Dr. Ambedkar has cleverly, I suppose, dropped the word "Federal" altogether and the word "independent" also has been dropped and he has aid "democratic State". I objected to that when I spoke the other day.

Shri Deshbandhu Gupta : (Delhi): On a point of order : the effect of these amendments if passed would be that the whole Constitution will have to be recast.

Maulana Hasrat Mohani : Who will be responsible for that ?

Shri Deshbandhu Gupta : To move such an amendment at this stage is out of order and it should therefore be disallowed.

Maulana Hasrat Mohani : I should submit that I tried my best in the very beginning to stop you. I said that when you are going to decide the fate of India you should first make up your mind to find out and declare what kind of constitution you are going to frame. But I was ruled out. Of course I said if you do not accept my suggestion then you should not grumble, when the Preamble is presented; should I not raise any objection? Then I will not listen to you if you say because we have passed such and such a thing ....

Shri Deshbandhu Gupta : May I have your ruling?

Maulana Hasrat Mohani : I say that you are responsible for preventing me from getting this thing discussed in the very beginning and therefore if you have to redraft the whole Constitution it does not matter. I shall insist on it. I have every right to propose any amendment in the Preamble, and if you find you have already passed something quite different, let me tell you that the Preamble will not be subject to your erroneous decisions and you will have to correct those decisions and it may take a year or two. But it does not matter. But unless and until you conform to the accepted principles prevalent all over the world, I think it will be ridiculous to pass this so perfunctorily.

Shri Deshbandbu Gupta : May I draw the attention of the Chair to the point of order moved by me? I am serious about it.

Mr. President : He is moving amendment No. 453 which runs thus:

"That in the Preamble for the words 'We, the people of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic' the following be substituted: -

> 'We, the people of India, having solemnly resolved to constituted India into a Sovereign Federal Republic'. "
>
> Or
>
> 'We, the people of India having solemnly resolved to constitute India into a Sovereign Independent Republic'. "

So far as this amendment is concerned, I do not see anything in it that is out of order.

You are taking only this one, Maulana Sahib ?

Maulana Hasrat Mohani : No, no. I will propose the other one when the time comes.

Mr. President : At present you are moving this one?

Maulana Hasrat Mohani : Yes. But I am not giving up the other amendment.

Mr. President : You are not taking up any other at the present moment. You have moved amendment No. 453.

Maulana Hasrat Mohani : Yes - this and the other one.

Mr. President : Which other one ? We have only one amendment.

Maulana Hasrat Mohani : The alternative !

Mr. President : That does not make any difference.

Dr. B. Pattabhi Sitaramayya : You said before that if there are alternative amendments and one of them is moved, the other one would be blocked.

Mr. President : I do not see much difference between the two amendments. They are more or less the same. Therefore whether the one or the other is accepted does not matter.

Dr. B. Pattabhi Sitaramayya : So, if they are the same, only one can be accepted.

Mr. President : Whichever he moves. that I will put to the House.

Maulana Hasrat Mohani : So I halve read out the official report. I refer to volume IV...............

Mr. President: The object of putting the Preamble last was that the Preamble may be in conformity with the Bill as accepted.

Maulana Hasrat Mohani: When I wanted the Preamble discussed at the very beginning you said we will not allow you to discuss it. I, therefore, pointed out that I was suspicious that when you had passed all the other articles according to your wishes, if any one else proposed anything about the Preamble you would say that it was not possible to go back on what we had passed it is now a settled fact and you will then rule me out of order. You gave me a promise that you would not do that and I have that in the printed report.

Dr. B. Pattabbi Sitaramayya: Well, you have been good enough to disallow the point of order but he admits the point of order and therefore he must be ruled out now.

Maulana Hasrat Mohani: What is the point of order?

Mr. President: Maulana Sahib, you are referring to something that I promised. I just want to have that.

Maulana Hasrat Mohani: I will read out to you what you said on a previous occasion. I have here also an admission on the part of Dr. Ambedkar himself. I refer you to the printed report, volume 7, no. 6, page 418 where he says that he will not object to any amendment being proposed at this stage.

With regard to yourself, I refer you to volume 4, No. 6 on page 733. That was the occasion when the report on the proposed Union Constitution was presented by Pandit Jawaharlal Nehru. I raised an objection at that time and you said that "you need not obstruct him just now". You said I could raise this objection afterwards. "As I understand it, the Maulana's point is that I should give him a promise at this stage that his amendment will not be ruled out of order". Then you said "More than this I cannot say anything at this stage". "I have given some sort of promise that Maulana wanted. I take it that the House wishes that we should proceed with the consideration of this report". I objected and said that I would not allow this report to be considered and then you said that I can raise my objection afterwards and for the present I may, allow Pandit Jawaharlal Nehru to proceed with; this report and it was on that understanding that I refrained from saying all these things at that time.

Mr. President: Far from giving a promise I definitely refused to give a promise. I read the relevant portion of the debate: "As I understand it, the Maulana's point is that I should give him a promise at this stage that his amendment will not be ruled out of order. Obviously I cannot give any promise to any member before the matter actually comes up. But you may all have noticed that I am very liberal in the matter of allowing amendments to be moved even if they come out of time. Unless there is any technical ground, I do not see any reason why his amendment may be ruled out of order. More than this I cannot say anything at this stage".

Maulana Hasrat Mohani: I have been given some sort of promise. Very well, Sir. According to that report the Committee appointed for framing the constitution was given a clear directive that the Constitution should be framed in accordance with the Objectives Resolution passed by this Assembly. It is quite strange that instead of following the Objectives Resolution, Dr. Ambedkar is passing anything he likes. He wants the Objectives Resolution to be in conformity with his erroneous decision. He has reversed the order and this is what I object to most because it has changed the character of the Constitution. As I pointed out here, what was the object of the Objectives Resolution and the Report. They said that it will be a Federation of sovereign Independent Republics. Mark this plural form "Republics". Now he has reversed the whole thing. He has dropped the word 'Federation'; he has dropped the word Republic and he has dropped also the word, 'independent' for some ulterior motive which I am not going to disclose at this moment. I reserve it for a future occasion when I will throw it in his face when the time comes. For the present I say that according to the Objectives Resolution and according to the instructions given by Pandit Jawaharlal Nehru they should at least change this article in this way, that the spirit of what he suggested may be included in the article proposed by Dr. Ambedkar. He in fact, accepted this thing; he drops the word 'independent'. For the word 'independent' I want to put the word 'Federal' that is, a sovereign federal Republic; it does not matter if it is not a Republic. When I say a Sovereign Federal Republic, it means a Republic and the State units of that will also be Republics or it will be a Federation. I say 'No'. He takes that word only because it implies also a sort of a unitary system, and whatever he wants he has reversed and changed the whole character of this Constitution. We mean and the Objectives Resolution means that India will be made a Federation of Independent Republics and he now says "No". India will be transformed and in the place of the British Empire you will create an Indian Empire which will consist only of States which will have got no power and in the States you have also included and brought down the Provinces also. Formerly, I thought that the States will get the benefit of this inclusion but you have brought down the provinces also and you have deprived them of everything and even the sort of provincial autonomy has been taken away and in fact you have allowed nothing for the Provinces. You decided that you will have elected governors for the provinces. I objected to the word 'governors' in the very beginning and when Pandit Jawaharlal

Nehru said "I cannot satisfy the Maulana; he is a very deep man. He is afraid of this word 'Governor', I suggested that instead of the word 'Governor' we may put the word "president" also in regard to the provinces. They said that they need not do that. I did not press that matter to the provinces. They said that they need not do that. I did not press that matter at that time but now I find on hearing the explanations given by Dr. Ambedkar that he has reversed the whole picture and he has let the cat out of the bag. He has clearly said: "What will be India that is Bharat? It will be a Union of States". What does this mean? You have discarded the word 'Republic'; you have discarded the word "Federation"; you have discarded the word "Independent", and my honourable friend, Dr. Ambedkar says: "Well, what does it matter? It does not matter when we say Republic. It is immaterial whether you call it independent or not". I say if this is immaterial why is he so anxious to change that word 'independent' into 'democratic'? There is something secretly going behind the scenes and I pointed out on a previous occasion that when Pandit Jawaharlal Nehru changed his mind and went to England to have some sort of connection with the British Commonwealth, then he thought that we will have a Republic and also 'independent'. So he wanted to create a loophole for himself because he can now say: "We are already a Republic". We are not an independent Republic. What sort of a Republic are we? Some sort of Republic that these European countries, these imperialists, who are past-masters in this jugglery of words, have coined new phrases; and what are these new phrases? Holland has invented a phrase a Republican Dominion' and France has coined a new word for Vietnam which says that it will be a colonial Republic. We admit that Vietnam is a Republic and Holland says that they have accepted Indonesia as a Republic but it says it is a Republican Dominion. Instead of the Dominion it will be included in an imperial regime and that fraud was brought about by Holland and by France and do you propose that you will also bring about the same fraud to be enacted here?

You said that we have got the word Republic. You have dropped the word Federation. You will also say that of course Pandit Jawaharlal Nehru has agreed to remain in the British Commonwealth because they accept we are independent. But, what sort of independence? It will be a republican dominion. Because if it is a real republic and not a republican dominion, you should have nothing to do with any king or Emperor directly or indirectly in any manner. When once Pandit Jawaharlal Nehru has agreed to remain in the British Commonwealth, I think he has forfeited his right to call India as a Republic. It is not a republic. If it is a republic, it is a republican dominion, as I said just now.

So, my alternative proposal is this. Either introduce the word 'Federal' instead of the word "Democratic". It will make something clear. If you do not want to introduce this word 'federation', if you are afraid of it, I will grant a concession to Dr. Ambedkar and you stick to the original wording of the Objectives Resolution which is given here. It will be "Independent Sovereign Republic". I say, drop this word 'democratic' and keep to the actual words used in the Objectives Resolution. If you use the words "independent Republic" my object will be served. I come forward and say that whatever has been done by Pandit Jawaharlal Nehru is absolutely a false policy.

Mr. President: Does any one else wish to say anything about this amendment? I will put it to the vote. First alternative.

The question is:

"That in the Preamble for the words, 'We, the people of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic' the following be substituted:-

> 'We, the people of India, having solemnly resolved to constitute India into a Sovereign Federal Republic'."

The amendment was negatived.

Mr. President: I shall put the second alternative.

The question is:

"That in the Preamble, for the words, 'We, the people of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic' the following be substituted:-

> 'We, the people of India, having solemnly resoled to constitute India into a Sovereign independent Republic'".

The amendment was negatived.

Mr. President: We shall take up the other things when we meet at six o'clock.

The Assembly then adjourned for lunch till six p.m.

The Assembly reassembled after lunch at 6 p.m., Mr. President (The honourable Dr. Rajendra Prasad) in the Chair.

Mr. President: We have to take up the other amendment now. There is one in the name of Maulana Hasrat Mohani, No. 9.

Maulana Hasrat Mohani: Mr. President, I move:

"That in the preamble, for the words 'We, the People of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic' the words 'We, The People of India, having solemnly resolved to constitute India into a Union of Indian Socialistic Republics to be called U. I. S.R. on the lines of U. S. S. R.' be substituted".

Shri Deshbandhu Gupta: May I now raise the point of order again and submit that it is out of order because it goes counter to the Constitution we have passed?

Mr. President: A point of order has been raised that the whole Constitution that has been framed and accepted by this house is inconsistent with this amendment of the preamble and therefore it should be ruled out of order.

Maulana Hasrat Mohani: It was for this very point I requested you to save me from this sort of maneuvering. I am not going to repeat the same things. The other day I proposed this very thing in connection with article I. What I am going to propose today is on a different basis. If you find me repeating the same argument, you can declare me out of order but if I say something quite new which has nothing to do with my amendment to the First article of the Constitution, I think I am entitled to some indulgence on your part. As I showed in my statement earlier, you gave a sort of promise that you will not rule me out abruptly or without any consideration. Of course if you still think that I have nothing new to say and you find me repeating, you can rule me out; but if it is something quite different from what I said in connection with article 1, then of course I do not see any reason why my amendment should be ruled out of order.

Dr. B. Pattabhi Sitaramayya: May I know whether the vote that was taken this morning was a vote to reject Maulana's amendment? There was no positive vote on the wording of the preamble?

Mr. President: I did not take any.

Dr. B. Pattabbi Sitaramayya: Therefore all that was done was to reject this amendment to substitute 'independent' or 'Federal' for the word 'Democratic'.

Mr. President: Maulana: what I have to decide is not whether you are going to repeat or not. The point is whether this is in order or not. The objection is that it is inconsistent with the whole Constitution we have passed. What have you to say about that?

Maulana Hasrat Mohani: I do not know how it is inconsistent. Because the words in the preamble are 'Sovereign Democratic Republic'. I say that instead of these you can say 'Union of independent Republics'. Where is the inconsistency? I do not find any inconsistency in that.

Mr. President: Do you really suggest that the Constitution we have passed is on the lines of U.S.S.R.?

Maulana Hasrat Mohani: I am not going to say anything of the kind. I do not say we should go and merge in the U. S. S. R. or that you should adopt the same Constitution; but what I want to say is that we should work out our Constitution along the lines and on the pattern of Soviet Russia. It is a special pattern and also republican pattern and also it is of a centrifugal pattern.

Shri Jai Narain Vyas (Rajasthan): May I enquire if the honourable Member is making a speech or replying to the point of order?

Mr. President: He is replying to the point of order.

Maulana Hasrat Mohani: When I propose this that we are not going to merge ourselves with Russia or we are not going to adopt the Constitution of U. S. S. R. I am only suggesting that the Constitution and the Preamble we are adopting here in this

Second reading must be on the same lines, of the same pattern as the U.S.S.R. plan and I do not think there is any thing inconsistent in that. What are those considerations? What are the fundamental principles of the U.S.S.R.? They are three. First that it will be federal constitution. Secondly that it will be a centrifugal federation, and at the same time, the Centre, after getting some central powers, it again delegated those powers to their constituent units, declaring that they......

Mr. President: I think it will save time if I allowed Maulana Sahib to move his amendment, without giving any ruling. So you had better finish your speech.

Maulana Hasrat Mohani: Some of my friends here, whenever they hear the word "Soviet", say, "He is an agent of the Soviet Government, and he is in the pay of the Soviet Government." I do not think anybody in this world can accuse me of that kind of thing.

Mr. President: Nobody has said that in this house.

Maulana Hasrat Mohani: They are the henchmen of the Soviet, they carry out the orders they receive from the Soviet Government. I have no connection with them. I have got no connection with the Communist party of India even, because I refused to join them on the ground that once they made the mistake of saying that we have got a common ground with England because we are both fighting Nazism. I said then, and I say it now, "Anybody who helps any foreign Government, especially the British Government, under any terms or for any motive, I say that he is wrong".

Mr. President: Maulana Sahib, let me remind you that we are not concerned with biographical details. You will please speak on your amendment.

Maulana Hasrat Mohani: I am not going to say anything to which anyone can take objection. I have nothing to do with the Soviet Government or the Soviet Constitution. I want only our Constitution and our Preamble to follow the lines adopted by the Soviet Government, and those are the three lines which I have mentioned. That is to say, our Constitution must be federal, and also along with being federal, it must be centrifugal, that the Constituent States or Republics should willingly hand over certain central powers to the Centre. And after that, to obtain the goodwill of the constituent units, they again, I mean the Soviet Government again, gave freedom to their constituent units or republics. They said, "If you find at any time that the Centre is deciding something against your interest, you are at liberty to differ from the Centre". And therefore, they gave them the simultaneous right, and if they found anything going wrong, any proposal of the Centre, they could at once go out and they said that even when the war was raging. They said to all those Muslim republics of the U.S.S.R., "If you like, you can go and fight on whichever side you want. If you do not like to fight for us, we do not press you. What was the result? The U.S.S.R. took them into its confidence and the result was not a single Muslim went against the Soviet Republic. Everyone fought, whole heartedly with the Soviet Government. What was the reason for this? They did so, because they found they had been taken into the confidence of the U.S.S.R. They were not made to leave the Soviet group. Why should they leave them? They were also cautious. They would never propose anything which might obviously go against the interest of their Constituent units.

So by adopting this conciliatory attitude they have attained that kind of from and that kind of freedom and that kind of success that has never been known in the world before. I say, Sir, that we should also follow the same policy, and we should also adopt the same attitude. We should also take out minorities into our confidence. Instead of doing that, you are going to outcaste them altogether. You are passing anything you like, without the slightest consideration for the interests of even your political minorities. You do not care a fig about us. You see, your Bengal Government and your Madras Government have declared the Communist Party to be unlawful, on the ground that the Communists have adopted some unlawful means, that they are fighting, killing, murdering and looting. Well, I say that the same thing can be said by the Communists. They can say, "You do not allow us any scope, you do not allow us to take an independent and constitutional attitude, and you.........

Mr. President: May I remind you, that we are not in the Legislative Assembly, but we are here in the Constituent Assembly, and we are not concerned with what is happening in the country at the present moment.

Maulana Hasrat Mohani: Very well, Sir, I have only a few sentences more to speak in this connection and I am not going to take very long over them.

Supposing you say that the Communists can fight a free election in the next election, with joint electorates and all that, and without any restriction. But how are they going to do that? Supposing the Communist party wants to adopt this constitutional means, will you allow them to issue their manifesto, which must certainly be against your principles? Will you allow them to have their agents for the elections? Will you allow them to have their own workers who will approach every voter? You will not do anything of that kind. Once they issue their manifesto, you will at once send them to the prison. So it is a question of whether the hen came first or the egg came first. You imprison them because they adopt violent means, and they say, "We are forced to resort to violent means because you do not leave us any scope for constitutional means".

Mr. President: Maulana Sahib, you are not speaking on your amendment.

Maulana Hasrat Mohani: Very well. I have only to request Dr. Ambedkar and this house to adopt the same conciliatory attitude to all political minorities and to adopt the same principles as have been adopted by the Soviet Union. I am not going to ask you to join the Soviet Union or to adopt their Constitution. With these few words, I propose my amendment and request Dr. Ambedkar to accept it.

Mr. President: Does anyone wish to say anything about this amendment?

Honourable Members: No.

Mr. President: Then I will put it to vote.

The question is:

"That in the Preamble for the words 'We, the People of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic' the words 'We The people of India, having solemnly resolved to constitute India into a union of Indian Socialistic Republics to be called U.I.S.R. on the lines of U.S.S.R. be substituted".

The amendment was negatived.

Mr. President: Now we have got a large number of amendments of which notice is given by other Members. Some of these amendments relate to two things. In some of them the name of God is brought in some form or other in this preamble. In some others, the name of Mahatma Gandhi 'is brought in some form or other. Then there are some in which some amendments are suggested to the wording. But those are rather minor things, and the main amendments are really those in which the name of God is brought in, or the name of Mahatma Gandhi is brought in, or both together. Now, I would like to know from Members if they insist upon these amendments being moved, because I cannot prevent them from moving them; but I would suggest that neither God nor mahatma Gandhi admits of a discussion in this House. *(Hear, hear).*

Shri H. V. Kamath: Mr. President, may I move my amendment No. 430?.

Mr. President: If it is moved it may have to be voted upon.

Shri Deshbandhu Gupta: Sir, before Mr. Kamath moves his amendment, may I draw the attention of the house to the fact that when the Assembly passed the Objectives Resolution solemnly, all Members standing, the Prime Minister at that time had made an appeal in these words:

yet,

"It is a Resolution and it is something much more than a Resolution. It is a declaration. It is a firm resolve. It is a pledge and an undertaking and it is for all of us I hope a dedication....... and I wish this house if I may say so respectfully, should consider this Resolution not in a spirit of narrow legal wording, but rather look at the spirit behind that Resolution".

The Preamble is no less important and the Prime Minister's remarks are equally applicable to same. I, therefore, appeal to Mr. Kamath that this may be borne in mind.

Mr. President: May I just point out to Mr. Kamath one thing? In the Schedule III which we have passed an oath or affirmation is prescribed for Ministers and others who have to take office. We have put the thing in the alternative form, such as 'Swear in the name of God' or, ''Solemnly affirm' so as to give freedom of choice to the believers and the non-believers to take the oath or the affirmation. Now here, would you like this thing also to be in the alternative form?

Shri H. V. Kamath: Here we are not individuals. Here we are all the people of India. There is much difference between the two.

Mr. President: The people of India includes individuals. If you insist upon moving your amendment I cannot prevent you. But I would suggest to you not to insist upon it.

Shri H. V. Kamath: Mr. President, I move………

Shrimati Purnima Banerji (United Provinces: General). Mr. President, I would beg of you to see that the matter of God is not made the subject of discussion between a majority and a minority. It is most embarrassing. To most of us, believers and non-believers, it will be difficult to affirm or deny God. Let us not try to invoke his name in vain. It should not be brought up in this form and the members compelled to vote one way or the other. The name of God is invoked by every nation upon earth and god is an Impartial Entity and he should be allowed to remain so. With these words, I appeal to Mr. Kamath not to put us to the embarrassment of having to vote upon God.

Shri H. V. Kamath: I regret I cannot accept the appeal. I shall move amendment No. 430 standing in my name. Sir, I move:

"That in amendment no. 2 of the list of Amendments (Volume I), the following be substituted for the proposed preamble:-

'In the name of God,

We, the people of India,

having solemnly resolved to constitute India into a Sovereign democratic republic, and to secure to all her citizen

Justice, social, economic and political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and of opportunity; and to promote among them all;

Fraternity, assuring the dignity of the individual and the unity of the nation;

In our Constituent Assembly do hereby adopt, enact and give to ourselves this Constitution".

Dr. B. Pattabhi Sitaramayya: The amendment is only in the first line, you see, Sir?

Mr. President: It is exactly the same as the Preamble except that it begins with 'In the name of God'.

Honourable Members: No speech, please.

The Honourable Shri K. Santhanam: I rise to a point of order. The amendment moved must have a meaning.

Mr. President: It is not a point of order really.

Shri H. V. Kamath: I can reply to Mr. Santhanam. My amendment means, in the name of God we do this and that. No long speech is needed to commend this motion. Besides invoking the name of God, I have taken a little liberty with only one word, and that is, I have changed the word 'its' citizens to 'her' citizens.

Shri A. Thanu Pillai: (Travancore and Cochin State): may I rise to a point of order, Sir? If Mr. Kamath's amendment is accepted, - of course I am a believer in God-would not that amount to compulsion in the matter of faith? Is it not out of order to move a motion like that? It affects the fundamental right of freedom of faith. A man has a right to believe in God or not, according to the Constitution. In that view this amendment should be ruled out, though I am myself a staunch believer in God.

Shri H. V. Kamath: My reply to Mr. Thanu Pillai is that we are passing this in the name and on behalf of the people of India. All that we have done here in this Assembly has been in the name and on behalf of the people of India.

Shri Rohini Kumar Chaudhuri (Assam: General): May I move an amendment to that of Shri Kamath that, instead of 'In the name of God', would he be pleased to accept 'In the name of Goddess'? *(laughter).*

Shri H. V. Kamath: Mr. President, all that we have done in this House has been done on behalf of and for the people of India, and all decisions have been taken here by the vote of the House. Weather this becomes a matter for the vote of the House or not, I am sure in their heart of hearts the people of India for whom we have been working and toiling here for the last three years would endorse this amendment in *toto.* That is so far as the point raised by Mr. Pillai is concerned.

I have taken only a slight liberty with the text of the Preamble. As I have pointed out, I am sticking to the wording of the Objectives Resolution moved by Pandit Jawaharlal Nehru in December, 1946. In the first part of it, the future with reference to the governance of the country the words used are "*her* future governance", *her* being apt for the motherland. That being so, we should say 'her' and not 'its' citizens in the preamble. I would leave this however to the Drafting Committee.

As regards the substance of the motion I do not propose to make a long speech. In this august House, the first Constituent Assembly of India, of our Bharata Varsha, in this land, ancient but ever young, which has through the ages renewed itself at the Divine Fountain, let us consecrate this Constitution by a Solemn dedication to God in the spirit of the Gita.

Yatkaroshi yadashnasi

Yajjuhoshi dadasi yat

Yattapasyasi kaunteya

Tatkurushwa madarpanam.

Whatever our shortcomings, whatever the defects and errors of this Constitution let us pray that God will give us strength, courage and wisdom to transmute our baser metal into gold, through hard work, suffering and sacrifice for India and for her people. This has been the voice of our ancient civilisation, has been the voice through all these centuries, a voice distinctive, vital and creative, and if we, the people of India, heed that voice, all will be well with us.

Shri V. I. Muniswamy Pillay (Madras: General): I strongly support the motion moved by Mr. Kamath.

(Prof. Shibban Lal Saksena rose to speak).

Mr. President: Do you want to move any amendment?

Prof. Shibban Lal Saksena: Yes, Sir; No. 3.

Mr. President: Does anyone wish to speak on this amendment which has been moved by Mr. Kamath?

Shri M. Thirumala Rao (Madras: General): Are you allowing Mr. Saksena to move his amendment? I want to speak a few words on Mr. Kamath's amendment.

Mr. President: We are now on Mr. Kamath's amendment.

Shri Mahavir Tyagi: May I remind Dr. Ambedkar of the promise he made to me on another occasion. May I read a few line, Sir? Sir, on the 15th November, 1948 when the question was discussed, Dr. Ambedkar had asked me to remind him about this question of sovereignty, I said-

> "I hope........that his draft means that it (sovereignty) vests with the people, and his explanation may well go down into the records for future reference".

He replied-

> "Beyond doubt it vests with the people. I might also tell my friend that I shall not have the least objection if this matter was raised again when we are discussing the Preamble".

Mr. President: That is not the point. At the present moment we are on Mr. Kamath's amendment, not on that. We are not dealing with that question now.

Shri Mr. Thirumala Rao: It is unfortunate that Mr. Kamath has not seen his way not to press his amendment to a vote. This is a thing of such vital importance and affects the life of the whole nation, that it should not be subjected to the vote of a House of three hundred people whether India wants God or not. We have accepted that God should be there in the Oath, but for those who do not believe in God, there is an alternative there, but there is no possibility of a compromise which can provide for both the things in the Preamble. Therefore, I think it would be better that Mr. Kamath withdraws his amendment and does not subject God about whom he spoke in such reverent terms to the vote of the House, and if it comes to the vote, it will not be fair to ourselves and to the nation.

Dr. B. Pattabhi Sitaramayya: May I request that that amendment may be disposed of first before we take up anything else?

Pandit Hirday Nath Kunzru: It is a matter of the deepest regret that a matter that concerns our innermost and most sacred feelings should have been brought into the arena of discussion. It would have been far more consistent with our belief in the highest truths and our determination to adhere firmly to them that we should not seek to impose our own belief on others. I recognise the sincerity of Mr. Kamath and of those who agree with him, but I do not see why in a matter that vitally concerns every man individually, the collective view should be forced on anybody. Such a course of action is inconsistent with the Preamble which promises liberty to thought, expression, belief, faith and worship to everyone. How can we deal with this question in a narrow spirit? We invoke the name of God, but I make bold to say that while we do so, we are showing a narrow, sectarian spirit, which is contrary to the spirit of the Constitution and which we should try to forget at this time when we have reached the end of a very important stage of our labours.

Shri Rohini Kumar Chaudhuri: Sir, I am at one with my friend, Pandit Kunzru, in objecting to the amendment which has been moved by my friend Mr. Kamath. Sir, I have great admiration for my friend, Mr. Kamath. I am one who has unbounded confidence in him so far as political affairs are concerned. I must confess that I am very sadly disappointed in him this evening. By this amendment, he shocked the feelings of many when he stoutly refused to accept the amendment which I proposed. Sir, it is not a matter of laughter with me. I believe in a Goddess. I belong to Kamrup where the Goddess Kamakhya is worshipped.

An Honourable Member: God includes Goddess.

Mr. President: It is bad as it is that we have brought in the name of God in our discussion. We should not become flippant about it.

Shri Rohini Kumar Chaudhuri: We should remember that when we started our political movement, we started it with the singing of Bande Mataram. What does Bande Mataram mean? It means an invocation to a Goddess. It means belief in a Goddess. Sir, we who belong to the Sakthi cult, protest against invoking the name of God alone, completely ignoring the Goddess. That is my submission. If we bring in the name of God at all, we should bring in the name of the Goddess also. As I said, this amendment should not have been brought. But as it has been brought, this is my point of view.

The Honourable Shri Satyanarayan Sinha (Bihar: General): Sir, the question may now be put.

Pandit Govind Malaviya (United Provinces: General): Sir, I wish to say a few words.

Mr. President: There are so many others who are wanting to speak. But it has now been suggested that the matter be closed.

Pandit Govind Malaviya: It has been said that we should not impose our will on any section. I hope the other section of the House also will not do that. I wish, with your permission to say a few words on this matter.

Mr. President: But closure has been moved. I shall put the closure motion to vote.

The question is:

"That the question be now put".

The motion was adopted.

Mr. President: Now I have to put the amendment moved by Mr. Kamath to vote. There is no alternative left to me.

The Honourable Dr. B. R. Ambedkar: He may be asked to withdraw it.

Mr. President: I suggested to him not to move it. It rests with him to withdraw it.

Shri H. V. Kamath: I am not withdrawing it.

Mr. President: He says he does not withdraw it.

The question is:

"That in amendment No. 2 of the List of Amendments (Volume 1), the following be substituted for the proposed preamble:-

'In the name of God,

We, the people of India,

having solemnly resolved to constitute India into a Sovereign democratic republic, and to secure to all her citizens,

Justice, social economic and political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and of opportunity; and to promote among them all;

Fraternity, assuring the dignity of the individual and the unity of the nation;

in our Constituent Assembly do hereby adopt, enact and give to ourselves the Constitution'".

Shri H. V. Kamath: I claim a division.

Pandit Govind Malaviya: I want a division on this question.

Maulana Hasrat Mohani: I also want a division on this question.

Pandit Govind Malaviya: I want a division because I feel that we are doing an injustice to this country and to its people and I want to know who says what on this matter.

The Assembly divided by show of hands.

Ayes: 41

Noes: 68.

The amendment was negatived.

Shri H. V. Kamath: This, Sir, is a black day in our annals. God save India.

Pandit Govind Malaviya: Sir, it is so vital a matter and I again beg of you that we might have a division on this matter.

Mr. President: I have had the division now.

Shri A. Thanu Pillai: Sir, Mr. Kamath should not have made that statement, and he should withdraw it.

Mr. President: I may tell Pandit Govind Malaviya this. I have got here in our Rules the following:

> "A matter requiring the decision of the Assembly shall be brought forward by means of a question put by the Chairman.
>
> In all matters requiring to be decided by the members of the Assembly, the Chairman shall exercise a vote only in the case of an equality of votes.
>
> Votes may be taken by voices or division and shall be taken by division if any member so desires".

Here I have taken the voices and then I have adopted the particular method of division by asking members to raise their hands, instead of asking them to rise in their places. I think I have substantially fulfilled the requirement of the Rules.

Shri Mahavir Tyagi: On a point of order, sir, the President has already once laid down, by means of a Standing Order, as to what will be the method of Division. I have not got the Order with me because it was issued separately. In that Standing Order it is mentioned in so many words that when a Member calls a Division the President shall get all the doors closed and say "Ayes to the Right. Noes to the Left". And then the Members will file past by the side of the Tellers. That Standing Order was issued during the session and the requirement of that Standing Order has not been fulfilled.

Mr. President: You have not read the rule rightly. Paragraph (4) of rule 30 says: "The Chairman shall determine the method of taking vote by division". I have followed that.

Shri Mahavir Tyagi: My point is once the standing order was issued, it cannot be changed verbally.

Mr. President: Is it suggested that paragraph (4) of Rule 30 is superseded?

Shri H. V. Kamath: That has been amplified and clarified in your office circular.

Mr. President: It does not require any clarification. It is very clear. The Chairman shall determine the method of taking voice by division:

> "If in the opinion of the person presiding a division is claimed unnecessarily (that is to say, when he is satisfied in any particular case that there is a clear preponderance of opinion in support of his declaration and against the challengers) he may not follow the ordinary method of having votes recorded in the division lobbies but may have the vote of the House by asking the Members who are for 'Aye' and for 'No' respectively to rise in their places and thereupon as he thinks fit, may either declare the determination of the House immediately or may order a division to be held. When the Chairman there and then declares the determination of the House, the names of voters will not ordinarily be recorded".

An Honourable Member: The word "division" has got a particular meaning in point of phraseology. Claiming of division means that names will have to be recorded. It is not mere counting of hands. That is the practice followed in the Legislative Assembly.

Mr. President: We are not concerned with the procedure in other places,. Our procedure is governed by our own rules and I have taken the division in the sense intended by that order. That is my final ruling.

Pandit Govind Malaviya: I have no doubt about the rules. They are quite clear. It is for the Chair to decide the manner in which the views of the House should be obtained. I did not have any doubt in my mind when I made the request to you. But since it is so important a matter about which many of us feel so very keenly, I leave it to you to decide whether anything more should be done. If you are satisfied that what has been done is not enough then in view of our request and our feeling, if you could consider it feasible to have some other method for a division adopted, we shall be very grateful.

Mr. President: I am perfectly satisfied that I have got the view of the House correctly and that is all I am concerned with. We shall go to the next item.

Pandit Govind Malaviya: There was an amendment in my name on this point.

You have decided that only Mr. Kamath's amendment will be moved, but my amendment is quite different. It does not bring in the name of God and it is possible that it may not be offensive to anybody.

Mr. President: I am now going to take the amendments as they are on the Order Paper. I will see what is to be done about your amendment when we come to it. Prof. Shah is not here; so his amendment is not moved. Then Mr. Saksena's amendment.

Prof. Shibban Lal Saksena: Sir, I beg to move:

"That for the Preamble, the following be substituted:-

> 'In the name of God the Almighty, under whose inspiration and guidance, the Father of our Nation, Mahatma Gandhi, led the Nation from slavery into Freedom, by unique adherence to the eternal principles of Satya and Ahimsa, and who sustained the millions of our countrymen and the martyrs of the Nation in their heroic and unremitting struggle to regain the Complete Independence of our Motherland,
>
> We, the People of Bharat, having solemnly resolved to constitute Bharat into a Sovereign, Independent, Democratic, Socialist Republic, and to secure to all its citizens:

JUSTICE, social, economic and political,

LIBERTY of though, expression, belief, faith and worship,

EQUALITY of status and of opportunity; and to promote among them all;

FRATERNITY assuring the dignity and freedom of the individual and the unity of the country and the Nation:

> In our Constituent Assembly this;........day of Vikrami Samvat 2006 (the 26th day of January, 1950 A.D.) do hereby enact, adopt and give to ourselves this Constitution'".

I have been very much pained to see the attitude of some of our friends regarding the introduction of the holy name of God and the Father of the Nation at the beginning of our Constitution. While they have a right to have their say, other people also have a full right to have their say. This country has always prided on its discoveries in the realm of the spirit and we are now afraid even to put in God's name at the commencement of our Constitution. I am one of those who think that we have produced a great piece of work by preparing this Constitution. There may be some defects in it. But I am sure we have done some very great things. It is only meet and proper that the name of God and the name of the Father of the Nation should be put at the beginning of our Constitution. I am sorry that some people should have thought that we are forcing it on them. There are other Constitutions in the world –the Irish Constitution, for instance-wherein in the very beginning in the Preamble God has been mentioned and homage has been paid to the martyrs who won their freedom. I have therefore been very much pained to feel that some Members merely at the mention of the name of God or the Father of the Nation feel that something is sought to be forced upon somebody. If they feel that way, they are at liberty to have their opinion, but why force others who feel intensely in the matter to eliminate God's name? I greatly regret the attitude of my friends. I hope they will reconsider it. This Constitution will probably build our country on a new pattern and on the basis of the ideals set by the Father of the Nation. It is therefore meet and proper that we should humble ourselves before God and pay homage to the Father of the Nation by incorporating their names in the very beginning of the Constitution.

Shri Brajeshwar Prasad (Bihar: General): Mr. President, I rise to oppose the amendment moved by my friend Prof. Shibban Lal Saksena. I do not want that the name of Mahatma Gandhi should be incorporated in this Constitution, because it is not a Gandhian Constitution. The foundation stones of this Constitution are the decisions of the American Supreme Court. It is the Government of India Act, 1935, repeated again. If we had a Gandhian Constitution, I would have been the first to offer my support. I do not want that the name of Mahatma Gandhi should be dragged in the rotten Constitution.

Mr. President: I will now put this amendment to vote.

Acharya J. B. Kripalani (United Provinces: General): May I request the Mover of the amendment to withdraw it? It is not behoving us to vote on this amendment. We must be very sparing of the use of the name of the Father of the Nation. My friend Shibban Lal knows that I yield to nobody in my love and respect for Gandhiji. I think it will be consistent with that respect if we do not bring him into this Constitution that may be changed and reshaped at any time.

Prof. Shibban Lal Saksena: Sir, in response to the appeal of Acharya Kriplani, I beg to withdraw my amendment.

The amendment was, by leave of the Assembly withdrawn.

(Amendment No. 4 was not moved).

Pandit Govind Malaviya: The amendment of which I had given notice ran thus:

"That in the Preamble, for the words 'We the people of India' the following be substituted:-

'By the grace of Parameshwar, the Supreme Being, Lord of the Universe (called by different names by different peoples of the world).

From whom emanates all that is good and wise, and who is the Prime Source of all Authority,

We the people of Bharata (India),

Humbly acknowledging our devotion to Him,

And gratefully remembering our great leader Mahatma Mohandas Karamchand Gandhi and the innumerable sons and daughters of this land who have laboured, struggled and suffered for our freedom, and".

Dr. P. S. Deshmukh: I rise to a point of order. The essence of this amendment is in two respects. It introduces the name of God and it brings in the name of Mahatma Gandhi. Both of these issues have been decided by this House. In one case there has been some debate and voting; in the other case the honourable Gentleman has withdrawn the motion. I therefore urge that this amendment should be ruled out of order since the main ingredients in that amendment have been already decided by the House.

Pandit Govind Malaviya: If the words which I had been noted, it would have been seen that I had said that I was reading the amendment which I had intended to move. I had said that "it ran thus and thus". If the House had borne with me for a moment, I was going to say, Sir, that this was the amendment of which I had given notice, but in view of the discussion which had just taken place what I wished to move now was:

I would delete the last portions referring to Mahatma Gandhi and others, and would also delete the word Parameshwara at the beginning. That was what I was going to say to meet the point of view which has been expressed.

The Honourable Dr. B. R. Ambedkar: They have been disposed of!

Pandit Govind Malaviya: Then the amendment would read:

"By the Grace of the Supreme Being, Lord of the Universe, called by different names..........".

Maulana Hasrat Mohani: Is he proposing some new amendment? I rise to a point of order. He is out of order. He is proposing something new.

Pandit Govind Malaviya: Then it will satisfy even the unreasonable point of view which has been expressed here. We will not be referring to 'God' as such or to anybody's particular God because my amendment says "called by different names by different peoples of the world" and yet we would be able to put into our Preamble something which has been the most distinctive and permanent feature of the thought and belief, of the tradition, of the culture and of the history of the entire life of the people of this country from time immemorial. I submit, Sir, that we have come here as representatives of the people of India. Honesty demands that we should record here what may be their view. In this Preamble, Sir.......

Mr. President: I shall decide the point of order. The first point is whether it is covered by the amendment which has been defeated. I think it is covered.

Pandit Govind Malaviya: Even after the deletions, if you think so, I shall take my seat.

Mr. President: By simply omitting the word Parameshwar you do not take out of the amendment which has been defeated.

Pandit Govind Malaviya: I thought the objection of some of our friends was to the word "God". I shall obey your Ruling, Sir.

Shri Mahavir Tyagi: I do not want to move my amendment No. 11 but I want to ask Dr. Ambedkar if he is going to keep to the promise he had made.

Mr. President: That is a different matter.

Shri Mahavir Tyagi: He told me to remind him at the time when the Preamble was being discussed.

Mr. Naziruddin Ahmad: If there is a breach of promise, then my friend should go to Court!

Shri Mahavir Tyagi: It is not a question of promise. I was assured according to the proceedings, by what Dr. Ambedkar had stated about the investment of sovereignty. I had moved an amendment and he had replied that the meaning was "vested in the people" but it was not defined in so many words I had insisted that it be ascertained. Dr. Ambedkar said: "You doubt that it vests with the people. I might tell my friend that I shall not have the least objection".

Mr. President: Is there any amendment?

Shri Mahavir Tyagi: But this is for the Drafting Committee to do it.

Shri Satish Chandra (United Provinces: general): There is an amendment No. 452 in list XXI to the same effect, standing jointly in the names of Shrimati purnima Banerji and myself.

Shri Mahavir Tyagi: If you permit me they might accommodate it in the Drafting Committee.

Mr. President: I understand there is an amendment to that effect. We shall have to take it up when we come to it.

Amendment No. 14: There are several amendments with regard to the name. Those do not arise now.

Does any Member who has given notice of the amendments printed in the first volume wish to move his amendment?

Honourable Members: No.

Mr. President: I shall go to the supplementary list. There are amendments in the supplementary printed list and I take it that no Member wants to move any of those amendments either.

Honurable Members: No, no.

(At this stage Shrimati. Purnima Banerji rose to speak).

Mr. President: Yours is one of these recent amendments, but I am now thinking of the old printed list.

Then we come to amendment No. 452.

Shri Brajeshwar Prasad: There is amendment No. 313 previous to that in List XIII second page.

Mr. President: Yes, you can move it.

Shri Brajeshwar Prasad: Mr. President, Sir, there are eight amendments standing in my name. I refer to amendments Nos. 313,314,316 and 317,318,319,320 and 323. Sir, I would like to move only one amendment.

I refer to amendment No. 313. Mr. President, Sir, I move:

"That for amendment No. 1 of the List of amendments (Vol. 1), the following be substituted:-

'That for the Preamble the following be substituted:-

"WE THE PEOPLE OF INDIA, having resolved to constitute India into a CO-OPERATIVE COMMONWEALTH to establish SOCIALIST ORDER and to secure to all its citizens-

1.an adequate means of LIVELIHOOD

2.FREE ND COMPULSORY EDUCATION

3. FREE MEDICAL AID

4. COMPULSORY MILITARY TRAINING

do hereby ordain and establish this Constitution for India".

Dr. P. S. Deshmukh: What about a camel and motor cycle?

Shri Brajeshwar Prasad: It is for you to suggest those things. Sir, this word secular has not found any place in our Constitution. This is the word on which the greatest stress has been laid by our national leaders. I do submit that this word ought to be incorporated in our Preamble because it will tone up the morale of the minorities and it will check the spirit of loaferism that is rampant in politics. I have laid stress on another word. I refer to the word 'Socialist'. I believe that the future of India is in Socialism. I believe in a Socialist order. When I say that I believe in a socialist order. I do not mean that I accept the Marxian interpretation of History. I do not believe in class war nor in the materialist Philosophy which is so widely prevalent among the socialist circles. By socialism I mean an equalitarian social order. Equality of opportunity without equality of income is a mere shibboleth. I believe that in India we have to evolve a new type of socialism consistent with the tradition and history of this land. The theory of materialism is a well-knit dogma. I think that we people in India have not to learn anything from Germany on philosophical speculation.

Now I come to some other words which have found place in the Preamble. There seems to be a confusion of thought. I hold the opinion that the word 'liberty' and 'equality' do not go together. They are incompatibles. They are the enemies of one another, the one can only triumph at the expense of the other. With your kind permission, I would quote a small passage of a few lines from a booklet. I refer to the book entitled "Liberty *versus* equality" by Muriel Jaeger:

"It is becoming more and more widely accepted that ownership is one of those liberties that infringe the liberty of others and so must be abolished, or drastically restricted. And at this point what one may call the "paradox of liberty" becomes acute. If every liberty that does, or may do, harm to one's fellow-men where taken away, there would be no liberty left. The abolition or restriction of private wealth implies some kind of public control. Public control means public planning, for the general good is the whole object of taking wealth out of private hands. This is well-worn platitude; but it is the details that interest us-the effect that the application of these platitudes will have upon our lives from day to day, from year to year, and from generation to generation."

"Public planning means that enterprise, labour, distribution must be strictly regulated. It means, therefore that that one's chance to choose one's occupation must be reduced, since the plan cannot possibly be worked unless enough labour is directed into the occupation where it is needed, regardless of whether enough people want to do that kind of work or not".

Sir, I would crave your indulgence for a few minutes.

Mr. President: Are you going to read the whole book?

Shri Brajeshwar Prasad: No, Sir.

Mr. President: I thought you said you would read one sentence, but at least you have read one paragraph.

Shri Brajeshwar Prasad: I have read a few lines; I wanted to finish one paragraph consisting of 12 lines.

I will just urge another point. I hold that liberty and equality are not merely incompatibles but they can be reconciled only in a class less society and here, I would again refer to another paragraph and I would like with your permission to read a few lines:

"As for the final goal, the Marxists, who are so severe with "Utopians", have always been rather pathetically vague. But so far as one can discover, they foreseen a state in which everyone will work cheerfully for the common good, any help himself to whatever he wants from the common stock, which will then be so ample that there will be no danger of any rivalry or clashing of interests. They think that this will be the natural result of a society 'without force and without subordination' and that good social habits will grow of themselves in a classless society, so that special state apparatus will become gradually superfluous. It appears from this that the ultimate Communist idea is complete Liberty combined with complete equality".

I do not want to place impossible ideals before the nation. Sir, it is only in a class-less society that we can achieve a reconciliation of the two, concepts of liberty and equality.

I have suggested that instead of these ideals laid down in the preamble we should have some pragmation ideals before us. If we succeed in providing an adequate means of livelihood, free and compulsory education, free medical aid and compulsory military training I would think that our efforts have borne fruit. I do not want to place impossible ideals before the nation which we know well that neither in our life-time nor in the life-time of our children or our grand children we will not be able to achieve. I would like to refer to another point before I conclude. I object to the word 'sovereignty' in this Preamble. I hold the opinion that the whole concept of Austrian sovereignty has been exploded. A legal concept must have some relation with real facts. If it is not so, it has got no value.

Sir, it is not right to say that the Government of Nepal is a sovereign State. It has got the right: it is sovereign and it can declare war against the U.S.A. The Government of the U.S.S.R. is free to liquidate the Communist Party of Russia. We know that both in the external and internal affairs the State is circumscribed by numerous factors. If the Govt. of Nepal declares war against America or the U.S.S.R. tries to liquidate the Communist Party. We know what the result would be. Therefore, I hold the opinion that we should not place any undue emphasis upon this word "sovereignty". I hold the opinion that this ideal is neither necessary nor desirable because sovereignty leads to war; sovereignty leads to imperialism. (Clapping and interruption).

Mr. President: I hope the honourable Member will take the hint.

Shri Brajeshwar Prasad: I have a right to demand protection from you. I can never be hood-winked in this way….. I will have my say and let honourable Members clap their hands, I will go on speaking and unless you ask me to close my speech, I will go on speaking. I cannot allow, Sir, without raising my voice of protest………

Shri Mahavir Tyagi: On a point of order, I hope you as the custodian of the rights of Honourable Members will see that Members are not shouted down like that.

Mr. President: There is no attempt at shouting him down. They only want to cheer him down. The honourable Member had better finish.

Shri Brajeshwar Prasad: Sir, I will now deal with only one aspect of the question. The word 'sovereign' has found a place in this Preamble. I am rather thick-skinned. I will never resume my seat. I will speak and then take my seat. I feel that this word 'sovereign' is entirely misplaced. A State consists of individuals. Are individuals sovereign in any sense of the term? If individuals are not sovereign, how can a State which consists of individuals be sovereign. It is a very well-known fact that man has no free will of his own, that he is circumscribed by factors of heredity and environment. Both qualitatively and quantitatively he holds a very insignificant place in the universe. If man is so insignificant, if man is a non-entity in the world how can a State which consists of individuals be a sovereign State? Therefore, Sir, I am opposed to this idea of sovereignty.

We are sovereign. We are a sovereign State to the extent it is possible for a modern State to be sovereign. We do not aspire to rise to those Austinian heights because, as I have already stated, it is a frivolous concept, it is a mischievous concept. The deletion of the word 'sovereign will not in any way deter us from exercising the functions of sovereignty which are vested in the Government of India. It will not detract one iota of sovereignty. But by the retention of this word 'sovereign', we are placing a false ideal, a mischievous ideal before the nation. Therefore, I am opposed to this Preamble. Let us have some pragmatic ideals, ideals which we may be capable of achieving in our own life time and in the life time of our children.

Mr. President: Does any one wish to say anything about the amendment? I shall put this amendment to vote.

The question is:

That the amendment No. 1 of the List of Amendments (Vol. 1), the following be substituted:-

That for the Preamble, the following be substituted:-

"WE THE PEOPLE OF INIDIA-having resolved to constitute India into a SECuLAR CO-OPERATIVE COMMONWEALTH to establish SOCIALIST ORDER and to secure to all its citizens-

1. an adequate means of LIVELIHOOD
2. FREE AND COMPULSORY EDUCATION
3. FREE MEDICAL AID
4. COMPULSORY MILITARY TRAINING

do hereby ordain and establish this Constitution for India".

The amendment was negatived.

Mr. President: We shall take up the amendment of which notice has been given by Shrimati Purnima Banerji, amendment No. 452.

Shri H. V. Kamath: On a point of order, may I submit, Sir, that I have not moved my amendment No. 2? This is with reference to my amendment. Therefore, it cannot arise.

Shri Mahavir Tyagi: On the point of order, may I submit, Sir.

Mr. President: The point of order has been raised. I am considering it. Let me find out what he has moved and what he has not moved.

Shri Mahavir Tyagi: On the point of order raised by my honourable friend Mr. Kamath. I beg to submit that on previous occasions, such amendments have been permitted in the House. When there was no occasion to give amendments because they were time-barred, many of us took the opportunity of just hinging our amendments or connecting them with previous ones. If those Members did not move, it is not the fault of the other honourable Members who have come with their ideas and their amendments. Because there is no other chance of making the amendments relevant, with in the time, the only course left to them was just to relate their amendments to previous ones already given notice of. I would therefore submit, Sir, that at this fag end of the debate, you might kindly not give a ruling which will debar the moving of this amendment.

Mr. Naziruddin Ahmed: May I point out Sir, that this is not an amendment to another amendment, in which case it would have been barred by the rules, but an amendment "with reference to" some other amendment. Therefore, the amendment is in order.

Mr. President: I have as a matter of fact allowed amendments of this nature to be moved. So, I cannot rule this out.

Shrimati Purnima Banerji: Sir, I move:

"That in amendment No. 2 of the List of Amendments (Volume 1), for the first paragraph in the proposed preamble, the following be substituted:-

> "We on behalf of the people of India from whom is derived all power and authority of the Independent India.......

With your permission, Sir, I would like to drop the word "sovereign" here.

> "its constituent parts and organs of Government, having solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to all its citizens:-

Sir, my honourable friend Mr. Tyagi has given point to my amendment and further strengthened my hands. I feel that the Preamble that we are now dealing with forms one of the most important parts of the Constitution and to persons like us who are not of a legalistic bent of mind, it stands as a charter of our freedom and as a measure of our success or our failure. It lays down the goal to which we are going and therefore at this moment if members of this House will allow us to express what we feel on this subject with a little more patience, then, I personally will be very grateful.

Sir, I feel that the Constitution which we have drawn up has invested the President and Parliament with wide powers. At this moment, I do not think we should be content with considering the masses of our people as the sovereign authority from whom all power is derived and in whom all sovereign authority rests by merely believing that because they once to to the polls once in five years their sovereignty is secured. Therefore, I feel that, in the Preamble, mention of that sovereignty should be made. I have not gone beyond what the House has already passed. The wording which I have quoted here is taken almost verbatim from the Objectives Resolution which was first passed in this House in January 1947. As I said before, the three parts of the Constitution or rather three incidents in the Constitution, one, the Objectives Resolution, second the statement of Objectives of State policy and the Preamble are supposed not to have any legal binding upon the Constitution. But they, in fact, constitute the very life-breath of the Constitution which we have here framed. I do not wish to take more of your time. I would strengthen my argument with the speech quoted by my honourable friend Mr. Tyagi From the speech made by Dr. Ambedkar when he moved the Preamble. At that moment, I was not present in the House. But that has borns my contention out that the sovereignty of the people should be mentioned somewhere in the Constitution. With these words, I move my amendment.

Shri Mahavir Tyagi: Sir, in supporting the amendment of my honourable Friend, Shrimati Banerji, I have to remind the House of the proceedings of 15th November, 1948, when a similar amendment was moved by me. It was worded like this that the sovereignty will vest in the whole body of people. It was discussed thread-bare and I was assured that the article to which I was moving that amendment was not the proper place for that amendment and I was promised that this amendment would be considered when the Preamble was discussed. Now is the occasion when I beg to remind the House of the promise the Chairman of the Drafting Committee gave me. I am keen that the residence of the sovereignty should be defined. I am more keen about it because up till today the sovereignty vests in His Majesty the King of England. There is an Englishman in whom we have vested the sovereignty for a century past. So if we do not say in so many word, as to where the sovereignty would vest in future it will go on vesting in an Englishman. We want to break it away from him. Therefore, we must definitely say that there is no more sovereignty attached to the King of England.

Then, I also do not want to let remain any doubt or danger of any Government, this or future, to bargain or barter away the sovereignty of the country in the name of Commonwealth or common brotherhood or common citizenship or whatever it be. So the sovereignty must be vested in so many words in the people as a whole. In China in their Constitution they have put it that the sovereignty vests in the whole people of China. Whether the Communists take China or not, the people will remain. People will not be animals if they become communists or if they adopt any party label. People will remain in India as well and the sovereignty will vest in the people of India. It must be defined so that the Government might not misuse it. It does not vest even in the Government. Government only represents the people. Because Dr. Ambedkar has agreed to put it in the Constitution, I do not want to dilate upon it and I hope he will kindly accommodate these words and make it clear once for all that the sovereignty vests in the people and not in any foreigner as it does today, nor in the state even though it has the title of being a "sovereign state".

Acharya J. B. Kriplalani: Mr. President, Sir, it was not my intention to speak but some friends wanted that at this last moment when practically we are finishing our Constitution I should speak a few words. Some of my friends said that I began, by a formal speech, the proceedings of this House and that I should, at this time of its Second Reading which is for all practical purposes the final reading, finish the proceedings.

Sir, you like a good host, have reserved the choicest wine for the last. This Preamble should have come in the beginning of the Constitution even as it is given in the beginning of the Constitution. There was a reason for that because it would have been before us in every detailed provision that we made in the Constitution. It would have cautioned us that we were not deviating from the basic principles which we have laid down in the Preamble. As I have sat in this House from day to day, I have seen that very often we have deviated from the basic principle laid down in the preamble only recently we want against the great principle of democracy. This unfortunate land is divided into many castes and economic classes. There are innumerable divisions. I think it was the first time in the history of World's Constitutions that a new caste of administrators was created, and it was placed in a privileged position. It was placed in the position where even the chosen representatives of the people could not touch its special privileges as against the people. This, I submit, was going against the first basic principles of our Constitution.

Sir, I want, at this solemn hour to remind the House that what we have stated in this Preamble are not legal and political principles only. They are also great moral and spiritual principles and if I May say so, they are mystic principles. In fact these were not first legal and constitutional principles, but they were really spiritual and moral principles. If we look at history, we shall find that because the lawyers and politician made their principles into legal and constitutional form that their life and vitality was lost and is being lost even today. Take democracy. What is it? It implies the equality of man, it implies fraternity. Above all it implies the great principle of non-violence. How can there be democracy where there is violence? Even the ordinary definition of democracy is that instead of breaking heads, we count heads. This non-violence then there is at the root of democracy. And I submit that the principle of non-violence, is a moral principle. It is a spiritual principle. It is a mystic principle. It is a principle which says that life is one, that you cannot divide it, that it is the same life pulsating through us all. As the Bible puts it, "we are one of another," or as Vendanta puts it, that all this is One. If we want to use democracy as only a legal, constitutional and formal device, I submit, we shall fail. As we have put democracy at the basis of your Constitution, I wish Sir, that the whole country should understand the moral, the spiritual and the mystic implication of the word "democracy". If we have not done that, we shall fail as they have failed in other countries. Democracy will be made into autocracy and it will be made into imperialism, and it will be made into fascism. But as a moral principle, it must be lived in life. If it is not lived in life, and the whole of it in all its departments, it becomes only a formal and a legal principal. We have got to see that we live this democracy in our life. It would be inconsistent with democracy to have it only in the legal and political field. Politically, we are a democratic people but economically we are divided into such classes that that the barriers cannot be crossed. If we have got to be democratic we have got to be economically so too.

I also say democracy is inconsistent with caste system. That is social aristocracy. We must do away with castes and classes, otherwise we cannot swear by democracy. And we must remember that economic democracy does not merely mean that there should be no classes, that there should be no rich and poor; but the State itself should live in a manner that is consistent with the life of the poor, if people happen to be poor. It is not economic equality if for pomp and pageant, we spend thousands and lakhs of rupees. It is again not democracy if at every corner of the Government House human beings are made to stand statue like and unmoving. Such things are against the dignity of the individuals. If we establish democracy, we have to establish it in the whole of our life, in all its departments, whether it be in administration, or in society or in the economic field. This we must know and understand.

Then we have said that we will have liberty of thought, expression, belief, faith and worship. We must understand the implications of this also. All these freedoms can only be guaranteed on the basis of non-violence. If there is violence, you cannot have liberty of thought, you cannot have liberty of expression, you cannot have liberty of faith or liberty of faith or liberty of worship. And this non-violence should go so far as to make us not only what is popularly called tolerant of other people, but to a certain extent, we should accept their ideas as good for them. Mere tolerance will not carry us far. Many people are merely tolerant. Why? Because they are indifferent. They say "this man's worship is different from ours. It is wrong. The man is sure to go to hell; but let him, it is none of my business". That is not tolerance. That is intolerance, if violence is not used physically, it is because it is not possible always to use violence, but there is mental violence. We have to respect each other's faith. We have to respect it as having an element of truth. No religion in the world is perfect, and yet there is no faith without some element of God's truth.

Then we have said that there should be equality of status and opportunity. This implies that in our public affairs, we should be absolutely above board that there should be no nepotism, there should be no favouritism, there should be no "mine" and 'not mine'. This can be done. We can give equality of opportunity and equality of status only when what is considered as "Ours" is put behind and what is considered as "Not Ours" is put before. Unless we do these things, we will not be able to fulfil the aims of our Constitution.

Again I come to the great doctrine of fraternity which is allied with democracy. It means that we are all sons of the same God, as the religious would say, but as the mystic would say, that there is one life pulsating through us all, or as the Bible says. "We are one of another". There can be no fraternity without this. So I want this House to remember that what we have enunciated are not merely legal, constitutional and formal principles, but moral principles; and moral principles have got to be lived in life. They have to be lived whether it is private life or it is public life, whether it is commercial life, political life or the life of an administrator. They have to be lived throughout. These things, we have to remember if our Constitution is to succeed.

Sir, one word more and I have done. I think the amendment proposed by Shrimati Purnima Banerji should be accepted, because it really describes the true position and as such it should be enunciated in the Preamble. On formal occasion, on great occasions, on important occasions, we have to remind our selves that we are here as the representatives of the people. More than that. We have to remind ourselves that we are the servants of the people. We often forget that we are here as the representatives capacity. We often forget that we are the servants of the people. It always happens that our language, because of our thoughts and actions, gives little countenance to this basic idea. A Minister says "Our Government" not "The People's Government". The Prime Minister says "My Government" not "The People's Government". Therefore, on this solemn occasion, it is necessary to lay down clearly and distinctly, that sovereignty resides in and flows from the people. (*Cheers*) I hope therefore, this House will carry Shrimati Purnima Banerji's amendment.

Mr. President: Are there some other people who want to speak?

Mr. Naziruddin Ahmad: Mr. President, Sir, the eloquent words of Acharya Kripalani require one explanation. He seems to think–and I speak with great respect- that the success of a democracy depends upon the introduction of some sweet and palatable words in the Constitution. I however, submit that the success of a democracy depends on how it is practically worked. It has nothing to do whatever with what we may state in the Preamble or in the Constitution. On the actual working of democracy its success depends.

Honourable Members: Closure, closure.

Mr. President: I take it that closure is accepted. I shall now ask Dr. Ambedkar to reply.

The Honourable Dr. B. R. Ambedkar: Mr. President, Sir, the point in the amendment which makes it, or is supposed to make it, different from the Preamble drafted by the Drafting Committee lies in the addition of the words "from whom is derived all power and authority". The question therefore is whether the Preamble as drafted, conveys any other meaning than what is the general intention of the House, *viz*. that this Constitution should emanate from the people and should recognise that the sovereignty to make this Constitution vests in the people. I do not think that there is any other matter that is a matter of dispute. My contention is that what is suggested in this amendment is already contained in the draft Preamble.

Maulana Hasrat Mohani: Then why don't you accept it?

The Honourable Dr. B. R. Ambedkar: I propose to show now, by a detailed examination, that my contention is true.

Sir, this amendment, if one were to analyse it, falls into three distinct parts. There is one part which is declaratory. The second part is descriptive. The third part is objective and obligatory, if I may say so. Now, the declaratory part consists of the following phrase: We the people of India, in our Constituent Assembly, day, this month……. do hereby adopt, enact and give to ourselves this Constitution'. Those Members of the House who are worried as to whether this Preamble does or does not state that this Constitution and the power and authority and sovereignty to make this Constitution vest in the people should separate the other parts of the amendment from the part which I have read out, namely the opening words 'We the people of India in our Constituent Assembly, his day, do hereby adopt, enact and give to ourselves this Constitution' Reading it in that fashion………

Shri Mahavir Tyagi: Where do the people come in? It is the Constituent Assembly Members that come in.

The Honourable Dr. B. R. Ambedkar: That is a different matter. I am for the moment discussing this narrow point: Does this Constitution say or does this Constitution not say that the Constitution is ordained, adopted and enacted by the people. I think anybody who reads its plain language, not dissociating it from the other parts, namely the descriptive and the objective cannot have any doubt that that is what the Preamble means.

Now my friend Mr. Tyagi said that this Constitution is being passed by a body of people who have been elected on a narrow franchise. It is quite true that it is not a Constituent Assembly in the sense that it includes every adult male and female in this country. But if my Friend Mr. Tyagi wants that this Constitution should not become operative unless it has been referred to the people in the form of a referendum, that is quite a different question which has nothing to do with the point which we are debating whether this Constitution should have validity if it was passed by this Constituent Assembly or whether it will have validity only, when it is passed on a referendum. That is quite a different matter altogether. It has nothing to do with the point under debate.

The point under debate is this: Does this Constitution or does it not acknowledge, recognise and proclaim that it emanates from the people? I say it does.

I would like honourable Members to consider also the Preamble of the Constitution of the United States. I shall read a portion of it. It says: "we the people of the United States"-I am not reading the other parts--"We the people of the United States do ordain and establish this Constitution for the United States of America". As most Members know, that Constitution was drafted by a very small body. I forget now the exact details and the number of the States that were represented in that small body which met a Philadelphia to draw up the Constitution. (Honourable Members There were 13 States). There were 13 States. Therefore, if the representatives of 13 States assembled in a small conference in Philadelphia could pass a Constitution and say that what they did was in the name of the people, on their authority, basing on it their sovereignty. I personally myself, do not understand, unless a man was an absolute pedant, that a body of people 292 in number, representing this vast continent, in their representative capacity, could not say that they are acting in the name of the people of this country. *('Hear, hear').*

Maulana Hasrat Mohani: I do not think. It is only a community.

The Honourable Dr. B. R. Ambedkar: That is a different matter, Maulana. I cannot deal with that. Therefore, so far as that contention is concerned, I submit that there need be no ground for any kind of fear or apprehension. No person in this House desires that there should be anything in this Constitution which has the remotest semblance of its having been derived from the sovereignty of the British Parliament. Nobody has the slightest desire for that. In fact we wish to delete every vestige of the sovereignty of the British Parliament such as it existed before the operation of this Constitution. There is no difference of opinion between any Member of this House and any Member of the Drafting Committee so far as that is concerned.

Some Members, I suppose, have a certain amount of fear or apprehension that, on account of the fact that earlier this year the Constituent Assembly joined in making a declaration that this country will be associated with the British Commonwealth, that association has in some way derogated from the sovereignty of the people. Sir, I do not think that that is a right view to take Every independent country must have some kind of a treaty with some other country. Because one sovereign country makes a treaty with another sovereign country, that country does not become less sovereign on that account. *(Interruption)*. I am taking the worst example. I know that some people have that sort of fear. *(Interruption).*

Shrimati Purnima Banerji: May I Sir.........

Mr. President: Let Dr. Ambedkar proceed. He has not insinuated anything.

The Honourable Dr. B. R. Ambedkar: I say that this Preamble embodies what is the desire of every Member of the House that this Constitution should have its root, its authority, its sovereignty, from the people. That it has.

Therefore, I am not prepared to accept the amendment. I do not want to say anything about the text of the amendment. Probably the amendment is somewhat worded, if I may say so with all respect, in a form which would not fit in the Preamble as we have drafted, and therefore on both these ground I think there is no justification for altering the language which has been used by the Drafting Committee.

Mr. President: The question is:

"That in amendment No. 2 of the List of Amendments (Volume 1), for the first paragraph in the proposed Preamble, the following be substituted:-

'We, on behalf of the people of India from whom is derived all power and authority of the Independent India, its constituent parts and organs of government, having solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to all its citizens".

The amendment was negatived.

Mr. President: There is no other amendment. The Preamble, as it is now open to discussion, if any Member wishes to say anything.

Honourable Members: The question may now be put.

Mr. President: If nobody is willing to speak, I shall put the Preamble to the vote. The question is:

"That the Preamble stand part of the Constitution".

The motion was adopted.

The Preamble was added to the Constitution.

Mr. President: We are now coming to the close of this session. Before I actually adjourn the House, there are certain things which have to be settled at this stage. One of the questions which have to be decided is the next session for the Third Reading of the Constitution, and on previous occasions the House gave me permission to all it at any time I thought necessary, and this time also I suppose the House would give me that permission, but I would ask Mr. Satyanarayan Sinha to move a formal resolution to that effect.

The Honourable Shri Satyanarayan Singha: Sir, I move:

"That the Assembly do adjourn until such day in November 1949 as the President may fix".

Mr. President: The question is:

"That the Assembly do adjourn until such day in November 1949 as the President may fix".

The motion was adopted.

Mr. President: I think we have done with all the amendments, of which we had notice, and I need not say anything more about them. Now that we have concluded the Second Reading of the Constitution, by virtue of the powers vested in me under Rule 38-R as recently passed by this House, I shall refer the Draft Constitution with the amendments to the Drafting Committee in order to carry out such redraft of the articles, revision of punctuations, revision and completion of the marginal notes, and for recommending such formal or consequential or necessary amendments of the constitution as may be required. This has to be done to complete the work and I do that by virtue of the authority which you have given me with this, we now adjourn till such date as I may announce.

The Constituent Assembly then adjourned to a date in November 1949 to be fixed by the President.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME XI

***Monday, the 14th November* 1949**

The Constituent Assembly of India met in the Constitution Hall, New Delhi at Eleven of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

Mr. President : I understand that there are two Members who have to take the Pledge and sign the Register.

The following Member took the pledge and signed the register:--

Shri M. R. Masani (Bombay General).

Mr. President : We have now to take up the consideration of the Draft Constitution.

Shri R. K. Sidhva (C.P. & Berar : General) : Mr. President I wish to draw your attention to the Resolution I have given notice of in connection with the sending of a message by the Constituent Assembly to the people of Indonesia for their having achieved their freedom after a great struggle. I think the proper body to send such a message is the Constituent Assembly of India who have achieved freedom and are preparing the Constitution. The Indonesian people are also preparing their Constitution. Sir, if my Resolution is not to taken up here, I request you as President to send a telegram of congratulation and felicitation.

Mr. President : I propose to place the notice of that Resolution before a meeting of the Steering Committee and take such steps as we are adviced by that Committee.

We have now to take up the consideration of the Report or the Drafting Committee together with the amendments made by the Drafting Committee and other amendments of which we have received notice. I propose to explain the procedure which I wish to follow in this connection. After the motion for the consideration of the Report has been passed, the amendments will be taken up. Those amendments of which notice has been given by the Drafting Committee will be taken as moved and there will be no formal motion with regard to the amendments included in the Report of the Drafting Committee.

As regards the amendments of the Drafting Committee, they are of two kinds. Many amendments have been incorporated in the Report and printed in italics in the copy of the Constitution which is now in the hands of the honourable Members. There are certain other amendments of which we have received notice from the Drafting Committee but which are not included in the Report or printed in the Draft Constitution. So far as those amendments are concerned which are included in the Report and indicated in italics, the Members have had an opportunity to send in amendments and they have given notice of amendments to them. But so far as these new amendments of which the Drafting Committee has given notice now are concerned, the Members have had no notice and no opportunity of giving notice of amendments. I would allow amendments to those amendments which are now included in the Second List of Amendments till we start work tomorrow morning. Honourable Members will thus have time to consider these new amendments and give notice of amendments, if they wish, till tomorrow morning. As regards the procedure to be followed in considering the amendments, under the rules which were adopted in the last session, I think no amendment which does not arise out of any amendment which is moved on behalf of the Drafting Committee will be in order. So I propose not to take those amendments unless in the case of any particular amendment I find that there is any special reason to make an exception. The rules have given me that discretion and I shall consider any particular amendment which does not come under the rules but which I consider to be reasonable and necessary and permit it to be moved. At present I must say that I do not feel it advisable to admit any of those amendments which are outside the rules. But I am open to consider the matter further and if any honourable Member draws my attention--not in the House but in writing--to any particular amendments to which he attaches special importance, I shall consider that amendment specially and allow that to be moved or not as I deem fit.

When an amendment to an amendment is moved, I do not know whether Members would like to discuss each separately, but then we have a limited time at our disposal and all this process of disposing of all the amendments must be finished by one o'clock day after tomorrow. Under the rules I could give only two days for this business, but I have stretched the point in favour of the Members by fixing the time up to one o'clock on Wednesday. I have done this because I feel that the previous consideration of the motion might take a little time today and it would not be fair to the Members to give them less than two days for considering all the amendments. Therefore I would suggest that if any Member wishes to speak about any amendment of his own, he will confine his remarks to the barest minimum possible, so that we may have more time for other Members.

I hope all the amendments to the amendments of the Drafting Committee, except those contained in List II, will be moved in the course of this day and tomorrow we may take up the amendments to List II of Amendments. We may have a discussion of all the amendments tomorrow. I must put them all to vote day after tomorrow, say by about twelve of the clock, and finish the voting by one of the clock day after tomorrow. This is the procedure which I propose to follow. I trust this will give an opportunity for all important amendments to be discussed and also for expediting the work.

Shri R. K. Sidhva : I want to know whether we will have two sittings today.

Mr. President : We shall sit every day from tomorrow from 10 o'clock to 1 o'clock and from 3 o'clock to 5 o'clock.

Shri R. K. Sidhva : Why not today also.

Mr. President : Yes, today also.

Shri H. V. Kamath (C. P. & Berar : General) : With regard to the time fixed for the consideration of the amendments to the Draft Constitution as revised, under the rules adopted in the Assembly last time you have powers to relax or suspend any of the rules.

Mr. President : I am not inclined to extend the time beyond 1 o'clock day after tomorrow. Within that time I shall be prepared to relax any of the rules which I consider need relaxation.

Shri Mahavir Tyagi (United Provinces : General) : Sir, are you going to take the amendments in italics article by article ? If you do, it will be difficult for us to finish the work within the prescribed time. Moreover, in certain cases, the changes are such that they are absolutely new and which we have not discussed before. Some changes have been introduced which were not discussed in the House at all. In such cases Members may like to oppose those amendments.

Mr. President : Members may depend upon my discretion to decide such cases.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : I have a point of order.

Pandit Lakshmi Kanta Maitra (West Bengal : General) : How can a point of order be raised on the observations of the Chair ?

Mr. Naziruddin Ahmad : I have nothing to say against the observations of the Chair.

Shri R. K. Sidhva : How can a point of order be raised when there is nothing before the House ?

Mr. President : I think the honourable Member only wants to make some observations as some other Members have done.

Mr. Naziruddin Ahmad : I do not want to obstruct the proceedings. Sir, you have kindly observed that the amendments put before the House today during this session should be relevant to the amendments made by the Drafting Committee. That I submit, should apply not only to out amendments but also to the amendments proposed by the Drafting Committee. If any amendment of ours is outside the scope of being relevant to the amendments already suggested by the Drafting Committee, it should go. I quite agree; but along with it, I think, must also go the amendments proposed by the Drafting Committee which were circulated last night. Amendments to amendments again must be governed by the same rules. Our rules do not make any distinction between further amendments to be moved by the Drafting Committee and the amendments to be moved by the Members. So they should either sink or swim together. I ask you whether you would consider the later amendments suggested by the Drafting Committee on the same basis as our amendments.

So far as the amendments suggested by the Drafting Committee in the revised draft are concerned, in some cases the changes have not been indicated in the text. In some cases they have been shown in italics, In some cases important changes have not been indicated at all. So, it would be extremely difficult for you and for the office to find out whether our amendments are relevant amendments to the amendments made. This is a very difficult matter. I ask you to consider all these.

Then I should like to make a suggestion that amendments which may be strictly outside the scope of the rules may be considered by the draftsmen. I would like the draftsmen to consider them and in case they are agreeable, I submit that those amendments, although they are strictly outside the rules, may be allowed to be moved. I submit that they may improve the text and they should not be allowed to be ruled out on mere technical grounds. I think these things should be carefully considered.

Mr. President : As regards the first point raised by Mr. Naziruddin Ahmad with regard to the amendments of which notice has been given by the Drafting Committee now and which are contained in List II, I think the discretion given to me under the rules is intended to cover such cases and I shall use my discretion in regard to those amendments and also in regard to other amendments too, but naturally the amendments of which notice has been given by the Drafting Committee have a certain value which does not attach to every amendment of which notice has been given by every private member. Subject to that, I shall consider those amendments also and use my discretion. If I find that any amendment really does not arise, I will rule that out.

Mr. Naziruddin Ahmad : What about my other point, Sir, that the draftsmen should consider all formal amendments and if they are acceptable to them they should be allowed ?

Mr. President : As regards those amendments, I expect that the Drafting Committee has been considering all these amendments and if they have not done so up till now, they will do that. It is for that reason that I do not wish to put any amendment to the vote now but put them to the vote only day after tomorrow so that in the meantime the Drafting Committee may have time to consider those amendments on their merits. If it is inclined to accept any of them, they may be accepted, or if the Drafting Committee is inclined to accept any of the amendments which do not come under the first class of amendments but are amendments to amendments, they can do so. I shall take up on Wednesday all these amendments at one time. For this reason I think I would not put to the vote any amendment at this stage, in order to give time to everybody to consider the amendments so that we may have the best consideration given to each amendment.

Now, as regards the time for moving any amendment, I would not like to give more than five minutes. If on the other hand, as has been pointed out by Mr. Mahavir Tyagi, there is any amendment which is a substantial amendment and which goes beyond the decision of the Constituent Assembly in its previous session, probably I might give a little more time for discussion. I might allow some speeches on those amendments.

The Honourable Shri K. Santhanam (Madras : General) : Members should not make speeches on merely formal amendments.

Mr. President : I hope that Members will not insist on delivering speeches because they will remember, as I have already said, that we have got to finish by 1 o'clock day after tomorrow. If they insist on making speeches on amendments which are of an inconsequential or unnecessary nature, they will be only taking up the time of the House which should actually be reserved for discussion of the more important ones.

Pandit Thakur Das Bhargava (East Punjab : General) : Sir, the amendments of the Drafting Committee leave one rather cold in respect of some matters. The Drafting Committee has gone beyond its powers in putting forth amendments which are against the considered verdict of the House. The House defeated some amendments but those amendments have been re- incorporated. My humble submission is that in the third reading it is beyond the powers of the Drafting Committee so to arrange matters that the previous amendments which were carried by the House are tampered with. My humble submission is that those amendments which were defeated before and which were the subject matter of discussion in the House should not be touched in the third reading at all.

The Drafting Committee were only allowed to make formal and consequential amendments and such amendments which were absolutely necessary. Necessary amendment does not mean that they sit as a revising body over the considered verdict of the House, and therefore my humble submission is that so far as these amendments are concerned, they ought to be ruled out as inadmissible. When the amendments come, it must be decided on merits whether those amendments should be allowed or not.

Mr. President : As I have said, I shall consider each amendment on its merits and Mr. Thakur Das Bhargava has not said anything which requires any further reconsideration. What he has said is covered by what I have said already.

Shri H V. Kamath : Is Wednesday 1 o'clock absolutely final ?

Mr. President : Yes, it is final.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Mr. President, Sir, I have to present the report of the Drafting Committee together with the Draft Constitution of India as revised by the Committee under rule 38-R or the Constituent Assembly rules. Sir, I move--

"That the amendments recommended by the Drafting Committee in the Draft Constitution of India be taken into consideration."

Sir, I do not propose to make any very long statement on the report or on the recommendations made by the Drafting Committee for the purpose of revising or altering the articles as they were passed at the last session of this Assembly. The only thing that I wish to say is that I would not like to apologise to the House for the long list of corrigenda which has been placed before the House or the supplementary list of amendments included in List II. In my judgment it would have been much better if the Drafting Committee had been able to avoid this long list of corrigenda and the supplementary list of amendments contained in List II, but the House will realise the Stress Of time under which the Drafting Committee had been working. It is within the knowledge of all the Members of the House that the last session of the Constituent

Assembly ended on the 17th of October. Today is the 14th of November. Obviously, there was not even one full month available for the Drafting Committee to carry out this huge task of examining not less than 395 articles which are now part of the Constitution. As I said, the Drafting Committee had not even one month, but that even is not a correct statement, because according to Rule 38-R and other rules, the Drafting Committee was required to circulate the Draft. Constitution as revised by them five days before this session of the House. As a matter of fact the Constitution was circulated on the 6th of November, practically eight days before the commencement of this session. Consequently the time available for the Drafting Committee was shorter by eight days. Again, must be taken into consideration that in order to enable the Drafting Committee to send out the Draft Constitution in time, they had to hand over the draft they had prepared to the printer some days in advance to be able to obtain the copies some time before they were actually despatched. The draft was handed over to the printer on the 4th of November. It will be seen that the printer had only one day practically to carry out the alterations and the amendments suggested by the Drafting Committee. It is impossible either for the printer or for the Drafting Committee or the gentleman in charge of proof corrections to produce a correct copy of such a huge document containing 395 articles with in one day.

That, in my judgment, is a sufficient justification for the long corrigenda which the Drafting- Committee had to issue in order to draw attention to the omissions and the mistakes which had been left uncorrected in the copy as was presented to them by the printer on the 5th. Deducting all these days, it will be noticed that the Drafting Committee had barely ten days left to them to carry out this huge task. It is this shortness of time, practically ten days, which in my judgment justifies the issue of the second list of amendment now embodied in List II. If the Drafting Committee had a longer time to consider this matter they would have been undoubtedly in a position to avoid either the issue of the corrigenda or the Supplementary List of Amendments, and I hope that the House will forgive such trouble as is likely to be caused to them by having to refer to the corrigenda and to the Second List of Amendments for which the Drafting Committee is responsible.

Sir, it is unnecessary for me to discuss at this stage the nature of the amendments and changes proposed by the Drafting Committee in the Draft Constitution. The nature of the changes have been indicated in paragraph 2 of the Report. It will be seen that there are really three classes of changes which the Drafting Committee has made. The first change is merely remembering of articles, clauses, sub-clauses and the revision of punctuation. This has been done largely because it was felt that the articles as they emerge from the last session of the Constituent Assembly were scattered in different places and could not be grouped together under one head of subject-matter. It was therefore held by the Drafting Committee that in order to give the reader and the Members of the House a complete idea as to what the articles relating to any particular subject-matter are, it was necessary to transpose certain articles from one Part to another Part, from one Chapter to another Chapter so that they may be conveniently ground together and assembled for a better understanding and a better presentation of the subject-matter of the Constitution.

The second set of changes as are described in the report are purely formal and consequential, such as the omission of the words "of this Constitution" which occurs in the draft articles at various places. Sometimes capital letters had been printed in small type and that correction had to be made. Other alterations such is reference to Ruler and Rajpramukh had to be made because these changes were made towards the end when we were discussing the clauses relating to definition. The other change may be compendiously called 'necessary alterations.' Now those necessary alterations fall into two classes, alterations which do not involve a substantial change in the article itself. These are alterations which are necessary because it was found that in terms of the language used when the articles were passed in the last session, the meaning of some articles was not clear. or there was some lacuna left which had to be made good. That, the Drafting Committee has endeavored to do without making any substantial change in the content of the articles affected by those changes. There are, however, other articles where also necessary changes have been made, but those necessary changes are changes which to some extent involve substantial change. The Drafting Committee felt that it was necessary to make these changes although they were substantial, because if much substantial changes mere not made there would remain in the article as passed in the last session various defects and various omissions which it was undesirable to allow to continue, and the Drafting Committee has therefore taken upon itself the responsibility of suggesting such changes which are referred to in sub-clause (d) of paragraph2, and I hope that this House will find it agreeable to accept those changes. As to the substantial alterations that have been made, in regard to some of them sufficient explanation has been given in paragraph 4 and I need not repeat what has been said in the report in justification of those charges.

Sir, I do not think it is necessary for me to add anything to the report of the Drafting Committee and I hope that the House will be able to accept the report as well as the changes recommended by the Drafting Committee both in the report as well as in List II which has already been circulated to the Members of the House.

Amendments of Articles

Mr. President : Dr. Ambedkar has presented the report and the motion now before the House is that the amendments recommended by the Drafting Committee, and the Draft Constitution be taken into consideration..........

Shri H. V. Kamath : I have got an amendment, Sir.

Mr. President : I think it is only a verbal amendment.

Shri H. V. Kamath : This is with reference to Rule 38-R and I shall take only half a minute.

Mr. President : I shall be looking at the clock; take half a minute.

Shri H. V. Kamath : Sir, I shall not read the amendment* to the House. While moving this amendment. I would only endorse the remarks made by my honourable Friend Pandit Thakur Das Bhargava and state before the House that so far as the amendments suggested by the Drafting Committee are concerned, they have more or less acted like, may I say, chartered liberties. I would therefore request you, Sir, to be so good as to exercise your discretion generously so far as the amendments suggested by us other than to those recommended by the Drafting Committee are concerned. That is my only submission.

Mr. President : You have not spoken anything about your amendment to this motion. Well........

Mr. Naziruddin Ahmad : May I know, Sir, whether the amendments include also the huge number of corrigenda and whether they have also to be read as part of the Constitution ?

Mr. President : Corrigenda are corrigenda and they are included.

Since Mr. Kamath has insisted upon moving his amendment, I would put his amendment first to the vote.

Shri H. V. Kamath : Since it is more or less of a drafting nature, I do not press it.

Mr. President : I put the motion moved by Dr. Ambedkar.

The question is :

"That the amendments recommended by the Drafting Committee in the Draft Constitution of India be taken into consideration."

The motion was adopted.

Mr. President : We shall now take up the amendments. Preamble. There is no amendment by the Drafting Committee to the Preamble and I cannot take up any amendments to the Preamble. Then, we go to article 1. There is an amendment by Mr. Naziruddin Ahmad and by Mr. Kamath*. Mr. Kamath, do you wish to move and do you require to make any speech ?

Mr. Naziruddin Ahmad : Sir, so far as my punctuation amendments are concerned, I should rather leave them all to the draftsmen.

Mr. President : *(To Shri H. V. Kamath)* It is only a punctuation here also. You will remember that you are taking the time of more important amendments.

Shri H. V. Kamath : I should like to know whether the Drafting Committee is accepting it.

Mr. President : Nobody is accepting or rejecting any amendment.

Shri H. V. Kamath : Sir, the Draft as passed by the House reads, "India, that is, Bharat.....". The revised draft presented to the House says, "India, that is Bharat.....". That I do not think is what was intended by the House when we accepted article 1. What was meant was, India, that is to say. Bharat. That is why two commas were inserted and the phrase was interposed. I does not mean, "India, that is Bharat,". This is wrong English, so far as the meaning intended is concerned. I think the original was perfectly correct and it was absolutely wrong on the part of the Drafting Committee to change the wording.

Mr. Naziruddin Ahmad : Sir, I should rather suggest that some of my formal amendments may be put to the draftsmen and if they agree to accept, shall move them; otherwise, I am not moving.

Mr. President : Let them consider and if they are inclined to accept, they will accept them even without being moved.

We now pass on to article 5. There is no amendment by the Drafting Committee and these amendments do not arise.

Shri B. Das (Orissa : General) : I am not moving the amendment. (Amendment No. 15).

Mr. President : It is covered by article 9.

Article 13 : Sri Raj Bahadur, amendment No. 33.

Shri Raj Bahadur : (United State of Matsya) : Sir, I move:

> "That in sub-clause (a) of clause (3) of article 13.
>
> (i) after the word 'having' the words 'the force of law' be inserted;
>
> (ii) after the word 'India' the words 'or any part thereof' be inserted ; and
>
> (iii) the words 'the force of law' be deleted."

It is obviously for the purpose of making the object of the article clearer that I beg to move this amendment.

Mr. President : We pass on to article 14 : Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Sir, I do not wish to move it formally; I only wish to point out one or two things for the consideration of the draftsman. So far as the definition of a State is concerned, in article 12 as well as in article 36 the word 'State' has been defined as "the State". That binds the two words in a rather tight union. As a result of this, we have to use the expressions, the State has this right, the State has that and so forth. Remembering that the expression "the State" as defined in articles 12 and 36 includes not only the Government of India, but also the Government of the Provinces, the Government of the States, District Boards and Municipalities, Local Boards, and Union Boards and others, there will be hundreds of thousands of similar institutions which would be comprehended within the expression "the State." As we have defined the expression used in Part IV beginning with article 37 up to article 50, we have always used the expression. "The State shall, etc."

The word "the State" would be really appropriate if there was only one State to which we refer. But in view of the multiplicity of States which would be meant and in order to enable us to use freely the expression, 'this State', 'that State', 'any State', 'every State' and so forth, in order to give us full latitude to use any article or word that may suit the context, the word 'the' should be separated from the definition. The words 'the', 'any' or 'every' must depend on the context and should not be prejudiced by the definition. I do not want to move the amendment but, as I have suggested, this is a matter of drafting and can be more profitably left over to the Drafting Committee for consideration, and if they agree, then these things can be taken as moved.

Mr. President : Amendments Nos. 35 and 36 are not moved. We pass to article 18.

I think No. 54 is covered by what you said just now, Mr. Naziruddin Ahmad ?

Mr. Naziruddin Ahmad : Yes.

(Amendment No. 55 was not moved.)

Mr. President : We pass on to article 22. Mr. Shibban Lal Saksena.

Prof. Shibban Lal Saksena (United Provinces : General) : Sir, in clause (4) and clause (7) I have some amendments. I beg to move :

"That in clause (4) of article 22, for the words 'No law providing for preventive detention, the words, brackets. letters and figure 'Nothing in sub-clause (b) of clause (3)' be substituted; and at the end of sub-clause (b) of clause(4),the following be added:--

'authorising such longer detention."

My other amendment is :

"That in clause (7) of article 22, the words 'for a period longer than than months' be deleted."

I only want that the phraseology of clause (4) should be improved and in clause, (7) I want that the words 'for a period longer than three months' should be deleted. Parliament must have the power to make laws for shorter as well as longer detention periods.

Mr. President : Mr. Saksena, as regards No. 82, does it not go against a previous decision?

Prof. Shibban Lal Saksena : That means Parliament can make law for less than three months or more than three months. I do not want to restrict the power of Parliament only to periods above three months. I do not want the Executive to use the power.

Mr. President : How will it stand if it is read along with clause (4) ?

Prof. Shibban Lal Saksena : It will read--

"Parliament may be law prescribe the circumstances under which and the class or clause of cases in which a person may be detained under any law providing for preventive detention etc."

What I want is that Parliament should have power to legislate authorising Government to detain persons either for less than three months or more than three months. According to this Parliament will not have power to make laws for less than three months.

(Amendments Nos. 83 and 84 were not moved.)

Mr. President : We proceed to article 31.

(Amendment No. 115 was not moved.)

Mr. Naziruddin Ahmad : Sir, in connection with my amendment No. 116, I wish to draw the attention of the House, the Drafting Committee and especially the draftsman to the use of the word 'Government of India'. In fact this is to distinguish this expression from 'Dominion of India'. I would submit that the word 'Dominion of India' really covers the period from 15th August 1947 up to the 25th January, 1950. Before that we had the expression 'Government of India', the expression 'Government of India' should be confined to Government before the 'Dominion' stage came in. After the Dominion stage is over, I submit that the expression 'Union Government' or the 'Government of the Union' should be used. This would be in accord with what we have done. We have already used 'The Union of India' in article 300 clause (i) and in other places. Then we have used in some articles the expression 'Affairs of the Union.' We have also used in other places the expression 'the Union'. So we have already described the Government of India as the Union. So I submit that instead of using the expression 'Government of India', which would also include the Government before the Dominion stage, there should be some distinctive expression which may be fittingly described as the Union Government or the Government of the Indian Union. We have already in article 1, said that India shall be a 'Union' of States. So in the new set-up-things instead of the expression 'Government of India', the expression Union Government or 'The Government of Indian Union', or similar expression should be used. I have suggested some amendments, only desire that this may be considered by the drafting Committee.

Mr. President : No. 117--Mr. Sidhva.

Shri R. K. Sidhva : I understand that the word 'otherwise' as suggested by the Drafting Committee covers the contention of my amendment. Therefore I do not propose to move the amendment.

Mr. President : Then I come to amendment No. 118, standing in the name Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Sir, with regard to amendment No. 118, it is merely a drafting amendment, and I should leave it to the draftsman.

Mr. President : Then I come to article 34 which is a new article, and we have a number of amendments to it. Mr. Das. That is for deletion.

Shri B. Das : Sir, I do not move it.

Prof. Shibban Lal Saksena Sir, I want to move it.

Mr. President : You want to move for its deletion ?

Prof. Shibban Lal Saksena : Yes, Sir, this article 34 is a new article. It says that when martial law is declared, then Parliament will have the power to indemnify the officers. I think that this new article should be ruled out of order. It was never passed by the Assembly before. Secondly, I think the provision of this article will encourage officers working in the martial law area to commit excesses and hope for indemnification by an Act of Parliament. Therefore, I say it is not proper. Martial law whenever proclaimed, should be proclaimed according to the law about it. It should not be permitted to go beyond the law. So I think this article is not necessary and it should be removed from the Constitution, and also as I said, it is out of order. I move :

"That article 34 be deleted."

Shri. Brajeshwar Prasad (Bihar : General) : May I speak on this amendment, Sir.

Mr. President : We shall have all the amendments first, and then Members can speak.

Amendment No. 122, Mr. Kamath.

Shri H. V. Kamath : May I know move all the three amendments together ?

Mr. President : Yes.

Shri H. V. Kamath : Mr. President, Sir, I move amendments Nos. 122, 123 and 124.

"That in article 34, the words 'or any other person' be deleted."

"That in article 34, for the word 'order' the words 'public order' be substituted."

And the last one is No. 124 which says--

"That in article 34, for the words 'done under martial law' the words 'done by such person under martial law' be substituted."

Sir, at the very outset, let me make it clear that I would welcome the deletion of any reference to martial law in the Constitution, as suggested by my Friend Prof. Shibban Lal Saksena. There are sufficient provisions in the Constitution for the maintenance of public order and peace and tranquility in the country. We have also adopted Chapter I dealing with emergency provisions in the Constitution. But once we accept, or assume that a situation may arise when martial law will have to be proclaimed, then certain consequences follow. There are certain acts done during the administration of martial law. We are all very well aware of the operation of marital law, and there are acts done by persons in charge, or in authority which strictly under the law of the Constitution may be illegal, and so those persons may have to be indemnified later on so as to safeguard their position against any undue penalty or punishment for acts done by them. It is with a view to this that I submit these amendments to the House.

Article 34, as moved by the Drafting Committee, seeks to indemnify any person in the service of the Union or of a State, and any other person also. I do not desire that we should go so far as to indemnify any person, whoever he may be. We may make an exception of persons who are in the service of the Union or of a State. But the change proposed is to insert a provision with regard to all persons. Such a change is far too sweeping, and must not be allowed to find a place in the Constitution. Therefore, I have moved this amendment, that the words "or any other person" be deleted. If we indemnify at all, we should indemnify only those persons who are in the service of the Union or of a State during the administration of martial law in any area.

The other two amendments are, more or less, formal ones. The first one seeks to bring article 34 in conformity with the phraseology of article 33, where the words used are "public order" and therefore, I have suggested that this article also may be on the same lines as article 33 and the word "order" be replaced by the words "public order".

The last amendment follows from the wording of the first part of article 34. When we refer to acts done by any person in the service of the Union or of a State, it is necessary to make it specifically clear in the latter part of the article as well, when we refer to the acts of such persons. Therefore, the word "such" in my judgment, is necessary so as to avoid any confusion with regard to acts done by any person other than the public servants referred to in the first part of the article.

Sir I move amendments Nos. 122, 123 and 124 and I commend them to the House for its earnest consideration.

Mr. President : As this is a new article altogether, the question arises whether I should allow it to be moved by way of an amendment. I think in all Constitutions, either written or unwritten, I do not know, but my idea is that all Constitutions allow such indemnity Acts to be passed after martial law has been in force; and difficulty might arise if there was no specific provision in our Constitution for indemnifying acts done during the period of martial law, if we do not have a specific provision here. And therefore, I allow this amendment of the Drafting Committee.

As regards the other amendments which have been moved, they are now for discussion. Members, if they wish, can speak now on this article as well as on the amendments which have been moved.

Shri Brajeshwar Prasad : Mr. President, Sir, I rise to support this new article. I will not traverse the ground already covered, or repeat the arguments in favour of it, as you have, Sir, already admitted this article. The Drafting Committee had the power to suggest the necessary amendments. Therefore, I think that they have not gone out of the scope of their jurisdiction. I think, that when a revolutionary situation has arisen in the country, then the Government may be forced to resort to martial law. And extraordinary situations cannot be tackled by the ordinary law of the land. It is only when a revolutionary situation has arisen that martial law is enforced. Revolutionary situations can only be tackled by revolutionary methods. The danger that all officers will escape scot-free is not a real danger or a serious danger at all. I say this because Parliament has got the power to review such cases. If an officer has acted without jurisdiction, if he has exceeded the requirements of the martial law, then Parliament will not indemnify those officers. Parliament has got the full right to review the conduct of these officers who have acted in an arbitrary manner. But it is only in an arbitrary manner that you can tackle the situation which has arisen in the country when martial law has been enforced. I support this provision not merely on the ground that similar provisions exist in other Constitutions of the world but also because it is a necessary and desirable, provision. Having due regard to the facts of our political life, I heartily support this article.

Mr. President : Any other Member wishes to say anything about this ?

Mr. Naziruddin Ahmad : No.

Mr. President : We shall now pass on to the next article. I think Dr. Ambedkar will reply to this at the end.

We come to article 35, and Mr. Kamath's amendment. But that, I think, is only a verbal amendment?

Shri H. V. Kamath : Yes, Sir I leave it to the discretion of the Drafting Committee.

Mr. President : Then we have to pass on now to article 47. Mr. Kamath and Mr. Naziruddin Ahmad have their amendment No. 140 to this article.

Shri H. V. Kamath : As far as I am concerned, I shall leave it to the Drafting Committee.

Mr. President : So that is left over.

Prof. Shibban Lal Saksena : Sir, I beg to move:

> "That in article 48, for the words 'improving the breeds of milch and draught cattle including cows and calves and for prohibiting their slaughter' the words 'preserving and improving the breeds of cattle and prohibit the slaughter of cows and other useful cattle, especially milch and draught cattle and their young stock' be substituted."

Here again there is a substantial alteration in the original article as passed by this House. Sir, the original article stated:

> "The State shall endeavour to organise agricultural and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds of cattle and prohibit the slaughter of cows and other useful cattle specially milch and draught cattle and their young stock."

So the original article is that "the State shall prohibit the slaughter of cows". The present article has been watered down. It says:

> "The State shall endeavour to organise agricultural and animal husbandry on modern and scientific lines and shall, in particular, take steps for improving the breeds of milch and draught cattle including cows and calves and for prohibiting their slaughter."

So it does not say "That the State shall prohibit the slaughter of cows." Here it says "It shall take steps to improve the breeds of milch and draught cattle including cows and for prohibiting their slaughter." Here it is said that it shall prohibit the slaughter of cows and other useful cattle, especially milch and draught cattle. This is a very substantial alteration and I do not think the Drafting Committee was authorised to make such an alteration on such a fundamental thing on which there were strong discussions and it was agreed to after a very prolonged debate. I do not think anyone has the authority to change things in this manner and to substitute the original. I appeal that the original should be kept. It is out of order because the Drafting Committee was not permitted to make any such alteration as in this article.

Mr. President : Pandit Bhargava, is not your amendment more or less covered by the amendment of Prof. Shibban Lal Saksena?

Pandit Thakur Das Bhargava : It is partly covered but there are other things. With your permission, as my amendment No. 142 is not exactly the same as Prof. Saksena's, I beg to move:

"That in article 48, for the words milch and draught cattle including cows and calves and for prohibiting their slaughter' the words 'cattle and prohibit the slaughter of cows and other useful cattle, especially milch and draught cattle and their young stock' be substituted."

With your permission I also beg to move:

"That in article 48, for the words 'for prohibiting their slaughter', the words 'prohibit the slaughter of such cattle' be substituted."

or, alternatively,

"That in article 48, for the words 'and for prohibiting their slaughter, the words 'and prohibit their slaughter' be substituted"

In dealing with this article I would first of all beg to remind the House that this article was fairly hotly debated in this House. This article has the sanction of the whole House and of the largest party in the Assembly. Moreover, Sir, this article, if I am not encroaching upon any privilege, I may say, is one which was approved by the Chairman of the Drafting Committee. The original wording was quite different but we took good care to see that the drafting was done by such hands that no one could possibly take exception to it. Previously it was a much stronger one, but ultimately it was drafted in this form. When it was debated by the House, full reasons were given why these words were selected. My submission is that in a matter of this kind, when a particular article has been passed, after being supported or opposed, there is no reason why the Drafting Committee should tamper with the wording of such a section like this. Moreover, if the House will remember, there were many other amendments moved in this House to this article. Seth Govind Das moved an amendment from the religious point of view, but it was not accepted. My submission is that every word in this article is to my mind a sacred one, in this sense that it has got the imprint of the whole House. Secondly, I submit that on the basis of this article, some of the Provincial Governments have taken action. They have gone further and prohibited the slaughter of cows. Therefore, when this article has practically been acted upon by some of the provinces, it is not fair now to tamper with it.

Coming to the article which is sought to be amended as it is now before us I would beg of you to consider it. Now the article runs:

"The State shall endeavour to organise agricultural and animal husbandry on modern and scientific lines and shall, in particular take steps for improving the breeds of milch and draught cattle including cows and calves......."

The original words were: ".. for preserving and improving the breeds of cattle..."

May I submit that "improving the breeds of cattle" is different from "preserving and improving the breeds of cattle....". It may be said that no breed can be improved unless it is preserved but I think it is wrong to think so.

It may happen that a breed has to be practically destroyed for the purposes of improvement. It may be argued by some that cattle of a certain breed should be destroyed so that there might be subsequent improvement in regard to others. Now this is a matter of very delicate importance.

Shri Brajeshwar Prasad : What about "prohibiting" ? It means preservation!

Pandit Thakur Das Bhargava : In times of famine it is the duty of the Government to preserve certain breeds though it may not be improving them. Therefore, these words have a special meaning and they should not be tampered with.

Now to turn to the point of Mr. Brajeshwar Prasad to which he has drawn my attention. He says that the word "prohibiting" is there and therefore it would include "preservation". If he reads into the section he will find that this "prohibition" has been tampered with in this way, the words now being:

> "....... the breeds of milch and draught cattle including cows and calves and for prohibiting their slaughter."

If this "their" refers to cows and calves, then what about bulls and bullocks and buffaloes and he-buffaloes? If it refers to milch and draught cattle, then the question will have to be gone into as to what is a milch cattle. Then again "dry" cattle is not milch cattle. Then what is draught cattle? There are bound to be difficulties about all this. In my humble submission, a fair reading of article 38-A would mean that so far as cows and young stock are concerned, there is absolute prohibition. The words are "and shall prohibit the slaughter of cows." This usefulness of the cattle relates to drought cattle. The useful cattle should not be slaughtered. Now the question is what is a useful cattle? In the amendment the word "useful" does not appear. The House remembers that the Government appointed a Committee and the report of the Committee was accepted by the Government. The Government is now committed to the preservation and the prohibition of slaughter of useful cattle. There are Bills pending before the Legislative Assembly in regard to these kinds of cattle.

If you compare the wordings, it would appear that in the original article it was:--

> ".... take steps for preserving and improving, the breeds of cattle and prohibit the slaughter of cows and other useful cattle, specialty milch........."

Now these words shall go away and be replaced by :--

"........ for prohibiting their slaughter". My humble submission is that though there may not be a violent difference between the two, all the same the emphasis on the word "shall" which made this directive principle almost as an imperative article in the Constitution disappears. I beg of You not to tamper with it but allow it to remain in its present form. The first thought which Dr. Ambedkar gave to this provision was a right one and now if he wants to improve the wording. I submit the meanings also are altered. In view of this, I would beg of the House not to tamper with this article. It is a very delicate matter. We have practically substituted this article for the article which other Members wanted from a religious point of view. It is now simply a utilitarian measures but still a measure in which the religious sentiments of crores of people are involved.

I would submit one word more in regard to amendment No. 144. The words "and their slaughter" are capable of more than one meaning. They might refer only to cows and calves, they might refer to milch and draught cattle. whether they refer to one or both meanings, it is objectionable in both ways. I would beg of you to consider the more extensive meaning of the original section 38A which includes both these meanings. No doubt if falls for short of the expectations of the general populace but it was a measure on which the House was agreed as a compromise. This compromise ought not to be interfered with.

Mr. President : Mr. Naziruddin.

Mr. Naziruddin Ahmad : I am not moving my amendment.

Mr. President : Does anyone wish to say anything about this article or the amendments?

Then we shall pass on to article 53. Amendment No. 151, Mr. Kamath.

Shri H. V. Kamath : Mr. President, I move, Sir, amendments Nos. 151 and 152.

151 to the effect--

"That in clause (i) of article 53, for words 'this Constitution' the words 'the Constitution' be substituted."

Then amendment No. 152 to the effect--

"That in clause (i) of article 53, after the words 'Constitution' the words 'and the law' be added."

If the amendments moved by me were accepted by the House, this clause (i) of article 53 would read as follows:--

"The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with *the* Constitution *and the law."*

This was the form in which we adopted this "article during the last session of the Assembly. I see no reason why the changes that are being sought to be made by the Drafting Committee should be at all made in this clause of the article. I see no point whatever in the changes that have been suggested by the Drafting Committee. Let us examine it a little more closely. If the reference in this clause had been only to the President of the Union, then perhaps there is some force in not referring to the law of the land, because so far as the President is concerned he is bound to act under the Constitution, and we have also a provision for impeachment of the President for any violation of the Constitution. But during the last session these words were specifically added--suggested by the Drafting Committee and accepted by the House. What were those words?

"President......... either directly or through officers subordinate to him".

We fought against those words, we suggested that these words were absolutely unnecessary, but the Drafting Committee had its own mind and carried its point through and inserted these words which even now I feel are unnecessary. But this phrase "through officers subordinate to him" has been accepted by the House and if that addition stands then I for one feel that the law must be specifically mentioned. The House will see that in clause (2) also of the same article there is a reference to the supreme command of the Defence Forces by the President and the exercise of the command shall be regulated by law. In the Constitution itself we have left so many things to the law-making power of Parliament. Our Constitution has not decided everything; so many things are left to Parliament to be regulated by law, and therefore it is absolutely necessary to say, when you refer to exercise of power through officers subordinate, that it will be regulated by the Constitution and the law.

The first amendment is merely a verbal one, because I feel that whenever the Constitution is referred to we need not specifically say "this Constitution" every time; "the Constitution" means the Constitution of India. I do not know why the Drafting Committee has tripped in this fashion about this clause. I commend amendments 151 and 152 to the House for its earnest consideration.

(Amendment No. 153 was not moved)

Mr. President : Does anyone wish to say anything about the amendments which have been moved by Mr. Kamath?

Then we pass on to the next article No. 57.

Mr. President : Amendment No. 156*, Mr. Kamath.

Shri H. V. Kamath : That is merely formal, Sir, I leave it to the good sense of the Drafting Committee.

Mr. President : Very well. Then we go to article 69. Amendments Nos. 188 and 189, Mr. Kamath.

Shri H. V. Kamath : Sir, I move amendments Nos. 188 and 189. 188 is to the effect--

"That in the form of oath or affirmation in article 69, the words "as by law established" be deleted."

And No. 189--

"That in the form of oath or affirmation in article 69, for the words 'the duty upon which I am about to enter' the words the duties of 'the office upon which I am about to enter' be substituted."

Taking the article as suggested by the Drafting Committee, I think the changes suggested by me are very necessary. Taking the first amendment first, the oath as suggested by the Drafting Committee refers to the "Constitution of India as by law established". It is wholly redundant to say that the Constitution is established by law. As a matter of fact the law flows from the Constitution and not *vice versa.* We adopt the Constitution and whatever laws we may make flow from the Constitution subsequently. This is a supreme, sovereign Assembly and certainly this not necessary for us to say that the Constitution that we have enacted here has been established by law.

The Honourable Shri K. Santhanam : May I point out to the honourable Member that the Third Schedule uses this phrase?

Shri H. V. Kamath : May I point out to Mr. Santhanam that the article about the oath of the President does not mention "the Constitution by law established" ?

The Honourable Shri K. Santhanam : It is different altogether.

Shri H. V. Kamath : It is quite the same, in my judgment. Mr. Santhanam may differ but if he refers to the oath for the President in article 60, he will find this reference to "the Constitution by law established" is not there. The Constitution is not established by law. The Constitution is there for what it is worth. If Mr. Santhanam does not see this fine point, I am sorry for him. In article 60, the oath for the President reads:--

> "I....... will faithfully execute the office of President...... and will to the best of my ability preserve, protect and defend the Constitution *and the law*."

"And the law" is a different matter, but the Constitution is not established by law. That is my point.

The Drafting Committee may look into the amendment and I hope they will see their way to accepting amendment No. 188, because there is a distinction between "the Constitution established by law" and "the Constitution as framed by a sovereign Assembly." It is redundant to say that it is established by law.

As regards my second amendment I am sorry for the bad English used by the Drafting Committee. The Committee is composed of several experts, legal, constitutional and linguistic. I fail to understand why that Committee made such a mistake, so far as the English language is concerned. The House will see that a person enters upon "the duties of his office." He does not enter upon his duty. It is the "duties of the office" that should be referred to. If the House will turn to article 71 clause (2) the English used there is correct "duties of the office of President or Vice- President". I will just refer to another previous article, article 68, last part of clause (2) where the words used are "from the date on which he enters upon his office". The correct English is the "duties of the office upon which he enters" and I think all sensible persons will agree that that is correct English. If my amendment is accepted by the House the form of oath or affirmation will read as follows:

"I, A.B., do swear in the name of God that I will bear true faith and allegiance to the

----

solemnly affirm

Constitution and that I will faithfully discharge the duties of the office upon which I am about to enter."

I move the amendments, and commend them to the acceptance of the House.

Mr. President : As Mr. Santhanam has pointed out, the same expression occurs in Schedule III.

Shri H. V. Kamath : That will have to be changed consequentially.

Mr. Naziruddin Ahmad : Sir, I beg to move:

"That in clause (2) of article 71, for the words 'the date of the decision', the words the time of the decision' be substituted."

Sir, this amendment deals with the termination of the tenure of' office of the President by reason of the setting aside of his election by the Supreme Court. The question is whether the tenure of office ends with the date of the decision or the time of the decision. If the decision is given at twelve o'clock, it should be in accord reason and logic that the President should function up to 12 o'clock and cease to be the President after that hour. If we allow the language to remain as it is, it would mean that if the decision is passed at twelve o'clock then the President ceases to function with effect from the previous midnight. The effect of that would be to invalidate all acts done by the President from the midnight of the previous night up to twelve o'clock.

The Honourable Shri K. Santhanam : There is already an amendment to that effect (No. 448).

Mr. Naziruddin Ahmad : The difficulty with these amendments is that most of these amendments have been practically taken from the amendments of Members. I am of course interested in the correction, but there has been wholesale 'lifting' of amendments of Members and their being passed on as those of the Drafting Committee. I do not grudge them this distinction. This is not the first time that this has happened. I have been hinting it all through the second reading stage. They will not openly accept our amendments, but move them as their own.

Mr. President : I do not think the Drafting Committee will grudge any credit to other Members for their amendments.

Prof. Sibban Lal Saksena : Sir, I beg to move:

"That clause (3) of article 77, be deleted."

This again is a new provision, which is an infringement on the responsibility of the Ministers and should not be allowed to be there. This is either redundant or mischievous and should not be there.

Shri R. K. Sidhva : Mr. President, Sir, I beg to move:

"That in clause (3) of article 77, for the word 'President' the words 'Prime Minister' be substituted."

Sir, this article relates to the conduct of Government business and Government business means the functions of Ministries. The Head of the Ministries is the Prime

Minister, and while I know that all orders are made in the name of the President, this particular article has nothing to do with the President. It is the internal affairs of the Ministry for which the Prime Minister, in consultation with the Ministry, itself, is responsible. Therefore, the word "President" should be substituted by the words "Prime Minister".

I do not dispute the fact that under law all the orders are made in the name of the President. But I do make a difference in this for the reason that this has nothing to do absolutely with the rules relating to the internal working of the Ministry and therefore Parliament has no voice in this. Of course Parliament can criticise it. But this is an internal matter for which the Minister is responsible and therefore, the Prime Minister should make rules, in consultation with the Ministry and not the President. The Prime Minister should be the signatory to that.

Shri H. V. Kamath : Mr. President, Sir, I move amendments No. 203 and 204.

"That in clause (3) of article 77, for the word 'shall' the word 'may', be substituted."

"That in clause (3) of article 77, for the words 'more convenient' the words 'efficient and convenient' be substituted".

or, alternatively,

"That in clause (3) of article 77, the word 'more' be deleted."

I do not agree with my Friend Professor Saksena that there is no need for a provision of this kind. It is necessary so far as the transaction of the business of the Cabinet is concerned that there should be certain rules. And who is to make these rules? The question is whether Parliament should make it or the President. The Rules of Business should be left to the President, acting upon the advice, as the Constitution has laid it down, of the Ministers. Therefore, there is no force in Professor Saksena's amendment, because when the word "President" is mentioned, it always means President acting on the advice of his Council of Ministers.

Prof. Shibban Lal Saksena : But there is nothing to that effect in the Constitution.

Shri H. V. Kamath : That point was raised by me in the last session, and Dr. Ambedkar and Shri Alladi Krishnaswami Ayyar assured us that there was no necessity for a specific provision of that kind.

As regards the amendment moved by me for substituting 'may' for 'shall' the reason is that 'shall' is somewhat inapt there. As we have 'may' in several other articles, we may have it here also. It has often the force of 'shall'. 'May' is more appropriate here and conveys the sense of the article much better.

My second amendment. No. 204, seeks to change "more convenient" into efficient and convenient". I believe this clause has been bodily lifted from the Government of India Act which fortunately or unfortunately has served as a guide and beacon to the wise members of the Drafting Committee on almost all occasions. They have told us that such and such is the language used in the Government of India Act and asked us whether we dare sit in judgment upon the English used by Sir Samuel Hoare and his cohorts: and who are we, mere Indians, to find fault with their English? It is now, however, admitted all over the world that Indians are better linguists than Englishmen. There is a story that a certain eminent person in England once said that there were only two persons in the world who spoke perfect English, and they were Indians. This was said some years ago. (Shri R. K. Sidhava: Who are they?) As Mr. Sidhva seems to be inquisitive about their names, I may say that the reference was to the late Srinivasa Shashtri and Sarojini Naidu. When this is the case, if Indians speak perfect English, why should we swear by the English of the Government of India Act and take it as one hundred per cent. correct? It would be wiser to correct the English found there and it would be more sensible if we say instead of "more convenient", "efficient and convenient". It is admitted on all hands that there has lately been some deterioration in efficiency. Let us therefore resolve that we will not merely arrange for convenient transaction of business, but also for efficient transaction of business. With these words I move these two amendments and commend them to the House.

Mr. President : We will now pass on to article 90, Amendment No. 215.

Mr. Naziruddin Ahmad : I wish to move amendment No. 214.

Mr. President : That does not really arise.

Mr. Naziruddin Ahmad : Sir, I am not moving amendment No. 214. I want merely to explain an anomaly. I only wish to point out that the word 'the' has been misused in a large number of cases. In many cases where we speak of the Deputy Chairman, the Chairman or the Speaker and so on, we have not uniformly used the word 'the'. I have tabled amendments to make them uniform. That may be taken into account.

I am not moving amendment No. 215.

Mr. President : We will now take up article 96.

Shri H. V. Kamath : Sir, I move:

"That in clause (2) of article 96, for the words 'and shall, notwithstanding anything in article 100, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of equality of votes', the words 'but, notwithstanding anything in article 100, shall not be entitled to vote at all on such resolution or on any other matter during such proceedings' be substituted."

My next amendment which I move reads thus :

"That in clause (2) of article 96, for the words and figure anything in article 100' the words and figure 'anything contained in article 100' be substituted."

My second amendment is merely verbal and I leave it to the good sense of the Drafting Committee to deal with it as they deem fit or necessary. But the first amendment (227) is a consequential and substantial amendment. Clause (2) suggested by the Drafting Committee is new. There has been some distinction made between the procedure for the removal of the Speaker of the House of the People and the procedure for the removal of the Chairman of the Council of States. The Chairman of the Drafting Committee has made no speech before the House today why this distinction has been sought to be made.

If the House will turn to article 292 (2), honourable Members will find that so far as the procedure for the removal of the Chairman of the Council of States is concerned, he is not entitled to vote at all on a resolution for the purpose.

The Honourable Shri K. Santhanam : May I point out that the Chairman is not a member of the Upper House? He is the Vice-President.

Shri H. V. Kamath : The Vice-President of the Union is Chairman. On merits also I do not see why when there is a vote of censure or no-confidence, or other resolution seeking to remove him from office, he should be given the right to vote at all.

Shri T. T. Krishnamachari (Madras : General): His vote is not being taken away.

Shri H. V. Kamath : Mr. Krishnamachari may reply to the debate later on. He need not interrupt me unnecessarily.

When there is a resolution in the House for the removal of the Speaker, the Speaker can be present in the House, he can take part in the proceedings, he can defend himself but when it comes to the matter of voting it is absolutely against all canons of propriety and justice that he should vote. Certainly he can defend himself, but to allow him to vote is very unfair. The Drafting Committee may know better, but so far as I know, a Speaker who is sought to be removed from his office must not be given the right to vote. Supposing there is a close tie in the first instance, 55 and 56, the Speaker may by his vote re-instal himself in office, which is certainly not intended by the article. If the House is divided in that fashion, the Speaker by his single vote, by his own vote in the first instance, can re-instal himself in office, which certainly the House does not want to happen. Therefore I ask, Sir, that the Speaker should be divested of his vote during the proceedings for his removal from office. I move my amendment and commend it to the House for its serious consideration.

(Amendment No. 229 was not moved.)

Shri R. K. Sidhva : Mr. President, Sir, this article refers to the discussion of the conduct of the Speaker in Parliament. Therefore, the new clause (2) is perfectly correct. Ordinarily the Speaker has no right to speak or take part in the proceedings of the House, but when his own conduct is being discussed, it is only fair that he should be given an opportunity to clear his own conduct, and therefore clause (2) is correct. I only want, Sir, a small change in the third line. I want to see that the convention that the Speaker in other cases shall not speak and shall not take part in the proceedings of the House be maintained. The clause says "shall have the right to speak in, and otherwise to take part in the proceedings of, the House of the People while any resolution for his removal, etc." I want that the words "only when" should be substituted for the word "while". I want to make it more emphatic. It is a very healthy convention that the Speaker shall not speak and shall not take part in the proceedings of the House except when his own conduct is under discussion.

Mr. President : It means that as it is.

Shri R. K. Sidhva : If that is so then it is all right. As regards voting, Mr. Kamath said that the Speaker should not have the right of voting. I think he must have the right of voting. After all, he is a member of the House and he should be allowed to vote in the first instance, but on the second voting he should not exercise his vote. He must have one vote.

Mr. President : We pass on to article 100. Amendment No. 231.

Shri T. T. Krishnamachari : In view of the Drafting Committee's amendment No. 452 in the Second List, honourable Members may please consider whether it is necessary to move their amendments.

Mr. President : As regards the amendments of which Mr. Kamath has given notice with reference to article 100, Mr. Krishnamachari has pointed out that there are certain amendments with regard to it which are sought to be moved by the Drafting Committee. They are in the Second List No. 452, and in view of those amendments perhaps it may be unnecessary for you to move yours.

Shri T. T. Krishnamachari : Many of them can be fitted into that except the one negative amendment.

Mr. President : Mr. Kamath, if you wish to move yours, you are at perfect liberty to move them. It is only pointed out that it might not be necessary for you to move them. All right, move them. I think it will save time if you move them.

Shri H. V. Kamath : Sir, I move amendments Nos. 231, 234, 235 and 238 of this List.

" That in clause (1) of article 100, for the words 'other than the Speaker' the words 'other than the Chairman or Speaker' be substituted."

"That in the second para of clause (1) of article 100, for the words 'acting as such,' the words 'acting as Chairman or Speaker' be substituted."

"That in the second para of clause (1) of article 100, for the words 'in the case of' the words 'in case of' be substituted."

"That in clause (3) of article 100, for the words 'until Parliament by law otherwise provides. The quorum shall, be one-tenth of the total number of members of the House.' The following be substituted as second para of that clause:--

> 'Until Parliament by law otherwise provides, the quorum shall be one-tenth of the total number of members of the House.' "

Amendment No. 235 is merely verbal with regard to the article "the". I leave it to the consideration of the Drafting Committee to be dealt with at the proper stage. Amendments Nos. 231 and 234 go together. They are similar and if the House will compare the draft agreed to in the second reading with the draft now presented, they will see the difference. I do not know whether it is a printer's devil or something else or whether it is deliberate. Clause (1) of this article 100 as now presented to the House, in the last part thereof, refers to "other than the Speaker or person acting as the Chairman or Speaker."

The Honourable Shri K. Santhanam : He is not a member and so he is not given the vote.

Shri H. V. Kamath : Is it the position that when the Vice- President acts as the Chairman of the Council of States, he has no vote at all ?

Shri L. Krishnaswami Bharathi (Madras: General): Except the casting vote as Chairman.

Shri H. V. Kamath : Then it is all right.

I come to amendment No. 238. Mr. T. T. Krishnamachari has just now told us that the Drafting Committee has also thought over the matter and after bestowing due consideration on this clause they have suggested an amendment on the same lines. I have no desire to withhold from them the credit that is their due for the hard labour they have put in, and if they want the credit let them take it, but as the amendment stands in my name, I move it formally and commend it for the acceptance of the House.

Mr. President : The wording is somewhat different, but the substance is the same. However, I take it as moved. No. 232 standing in the name of Mr. Naziruddin Ahmad is a formal amendment.

(Amendment No. 232 was not moved.)

Mr. Naziruddin Ahmad : Sir, with regard to amendment No. 233, I wish to make this observation that article 100 has four different paragraphs. The first paragraph is marked as clause (1), the second paragraph does not bear any number at all, the third paragraph is No. 2 and the fourth paragraph is No. 3. I submit that paragraph 2 which is unnumbered is a very unusual thing in a legislative enactment. All paragraphs are either marked as articles or clauses or in the case of ordinary Acts as sections and sub-sections. It has never happened in my experience that a complete paragraph remains without any number. The object of numbering them is to identify them. Unless we number the second paragraph as No. 2, it will be difficult to refer to that paragraph in any judgment or any book or argument. One will have to say 'paragraph following clause (1)'; in order to obviate that I have suggested that paragraph 2 should be marked as clause (2) and the other paragraphs are re-numbered accordingly. This has also occurred in article 189. Sir, I formally move the amendment.

"That in article 100, the second para of clause (1) be numbered as clause (2) and clauses (2) and (3) be renumbered as clauses (3) and (4) respectively."

Shri Raj Bahadur : My amendment No. 236 is covered by amendment No. 452 of the Drafting Committee. Let the credit for it be entirely theirs, but the pleasure is mine.

(Amendments No. 237 and 239 were not moved).

Shri R. K. Sidhva : Sir, my amendment reads thus:--

"That in clause (3) of article 100, for the word 'one-tenth' the word one-sixth' be substituted."

Sir, I am referring to clause (3) in respect of quorum. We had discussed this matter threadbare in the last session and after mature consideration the House came to the decision that there should be one-sixth as the quorum in either House of Parliament. Now, Sir the Drafting Committee suggests one-tenth. My point is that in the provisional Parliament with a House of 300 one-tenth would mean 30 members only and 50 members in a House of 500 thereafter. I ask in all humility, do the members of the Drafting Committee want, in the name of 35 crores of people, laws to be made by 30 people ? This is most unfair. It may be that in the House of Commons there is a very small number compared with the 600 members of the House of Commons. That may be so, Sir. Some good laws of the House of Commons we have imitated and copied, but if there is a bad law, I do not want to copy it. On the contrary, you are telling the Members that they may remain idle, they may come here or they may not come and the House will manage with 50 or 30 Members. I do not want to cast any reflection upon any Member but I think it is most unfair that we should lay down such a small number for the conduct of business. On the ,contrary, there must be such a provision that Members should be asked to realize their duty and attend all the sessions, particularly when laws are made, and I, therefore, contend that we should not be a party for putting in the Constitution a clause that there should be only 50 members in a House of 500 to make laws. That is not correct.

Dr. B. Pattabhi Sitaramayya (Madras: General): The rule does not say that there should be only 50 members.

Shri R. K. Sidhva : It comes to that. We have our own experience also. I do not say that it says so. Many times we have seen this happening ourselves. May I ask how many members are present today ? My honourable Friend, Dr. Pattabhi Sitaramayya, knows it very well. When the Members are not there, we know the difficulty of having to hunt for them.

Dr. B. Pattabhi Sitaramayya : We do not want to put a premium on idleness and inertia.

Shri R. K. Sidhva : The Members should also realize their duty and attend all the sessions. I do not think there should be a clause necessary to make them idle or not to attend the session. They have to discharge their responsibilities for they are elected by the people. They must also feel a sense of responsibility. I, therefore, contend that we should have a reasonable number for conducting the business of the House. I do not want 600 members to be present ; I do not want 500 members to be present; I do not want 250 members to be present. I only want a reasonable number, i.e., 80 members to be present. Is that not fair ? I will ask my honourable Friend, Dr. Pattabhi Sitaramayya, whether he will be satisfied with 50 members. I know he is not the only member. I ask him-out of 500 members is 30 a sufficient number ? It is no use quoting the House of Commons. This means 50 members in the permanent Parliament, but 30 members in the provisional Parliament and we have 300 and odd in the Provisional Parliament at least. The next year will be a year of great events and we shall provide in the Constitution that 30 members in the provisional Parliament will make laws. I express my feeling very strongly on this matter and if there is going to be a disqualification on the members for not attending session let it be there. Let there be a clause that those who do not attend regularly will be disqualified. If the Drafting Committee feels that there should be such a thing, we could appeal to them to attend.

Let the members also show a sense of duty. After having been elected they should not be so careless or negligent of their duty that is imposed upon them by the people in the constituency from which they are returned. I, therefore, feel, Sir, that the amendment that I have moved is an amendment, which was discussed and passed in the last session. It may be that because we feel there is the difficulty in getting a sufficient number in the House, a small number is suggested. I say on the contrary it is the greater reason, and one or two adjournments will bring their lack of responsibility to the notice of the public. They cannot remain absent for all time. They have to explain to the people and if once or twice the House is adjourned, wisdom will dawn upon them and they will attend the House more regularly for conducting the business for which purpose they are returned. I commend my amendment for acceptance of the House.

Shri Brajeshwar Prasad : Sir, I was just thinking what will happen if there is a walk-out from the House. We have not visualized all the political possibilities in the country. In case of a walk-out, the Constitution will come to an end. In order to have a smooth sailing, it is necessary that a low quorum should be fixed. It does not prevent the Members of the House from coming and attending. We are not passing any law to the effect that only 30 members should attend the meeting of the Legislature. We are merely fixing the quorum. If we want that there should be no deadlock, we should have a low quorum.

Dr. P. S. Deshmukh (C. P. & Berar : General): Mr. President, Sir, I support the suggestion made by my honourable Friend, Mr. Naziruddin Ahmad, that all the paragraphs should be numbered.

There is one more suggestion I want to make and that is that the last portion of this article that "the quorum shall be one-tenth of the total number of members of the House" should precede clause (3), because in clause (3) we are determining what would be the consequences of want of quorum. As the article stands what is to be the quorum follows this. I think that is putting it in a wrong way. We should determine the quorum first and then the consequences should be stated. I think this is a small suggestion which should be acceptable.

Mr. President: That has been adopted in amender No. 452.

Dr. P. S. Deshmukh : Secondly, I would support my honourable Friend, Mr. Sidhva, in his contention that the quorum should be one-sixth and not one-tenth.

Mr. President : The House will adjourn now; we sit again at 3 o'clock.

The Assembly then adjourned for Lunch till 3 p.m.

The Assembly re-assembled after Lunch at 3 P.M., Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Mr. President : We shall now take up the amendments to the remaining articles. Article 128.

Shri Jaspat Roy Kapoor (United Provinces: General): My I speak a word on article 100?

Mr. President : Yes.

Shri Jaspat Roy Kapoor : Mr. President, I am tempted to speak on the amendment relating to the fixation of the quorum by the timely warning which the ringing of the bell has just given us proclaiming that there was no quorum in the House and inviting people to rush to the House to make up the quorum. I have also been provoked to speak on this subject by the vehemence with which my honourable Friend, Mr. Sidhva, has spoken on the subject desiring that the quorum should not be reduced from one-sixth to one-tenth. The heat and vehemence with which he made his speech would make one feel as if an attempt was being made to reduce the powers and privileges and rights of the Members of this House, which is not a fact. The suggestion contained in the amendment that the quorum should be reduced is a very wise, necessary and a useful suggestion which must be accepted. It is based on our past experience not only in this House but also in the other House when we sit as the Dominion Parliament. It appears to me that all this experience has been wasted on my honourable Friend, Mr. Sidhva.

Shri R. K. Sidhva : Is that a creditable experience ?

Shri Jaspat Roy Kapoor : That is an experience which should make us wiser and I do not think there is anything detestable in it either for the members or to the House. I think members should not be expected to come and be in attendance here all the time when the Parliament is sitting, whether they are interested or not in the particular subject that is being discussed on a particular day or time. It would be sheer waste of time of those Members and would be also unnecessarily taxing the tax-payer. I think that Members should be expected to attend this House only when they feel interested in the particular subject which is being discussed and otherwise they might profitably employ their time elsewhere in more profitable and useful engagements--not necessarily personal engagements--but engagements for the benefit of the country. Why after all is it expected that all the 500 Members should keep on sitting here from morning to noon and noon to eve all the year round or for a major part of the year ? For I think, during the next two years at least and may be even thereafter, if we have many Members of the views of Mr. Sidhva--for Mr. Sidhva has been frequently pressing that Parliament should be sitting for much longer days or period--then for eight to ten months in the year Parliament would be sitting; and to expect 500 Members to be spending all the time here whether they are interested or not in the various subjects that come up for discussion, is to ask them to neglect the more important duties.

Members who come here as representatives of the people will be all responsible persons who will have duties to perform, not only here in Parliament, but outside also, in the political sphere, in the country, and I should have thought that we would expect them to devote as much time as possible to constructive work in the country, to look after as many public institutions in the country as possible, rather than come here and wait here and merely be silent spectators of things in which they may not be interested. This amendment which suggests that the quorum should be reduced to one-tenth does not encroach on the rights and privileges of the Members. Mr. Sidhva and any other member who wishes to occupy, as much time of the House as he likes, can very safely do so. Any member who wants to inflict as many speeches as possible, or put as many questions as possible or bring in as many amendments as possible, or make speeches of any length or of any quality--good, bad and indifferent--will always be at perfect liberty to do so. But why should any one expect that when he is addressing or occupying the time of the House, he should always have a very full House ? While he may enjoy that privilege, he cannot always have the satisfaction of having a crowded House, and I say that it is very necessary, both from the point of view of the Government, from the point of view of the tax-payer and from the point of view of the Members too, and from the point of view of solid substantial work for the country, that the quorum should be fixed at as low a figure as possible. It is so from the point of view of the Government, because it will be very embarrassing if any legislation is delayed for want of quorum. It is so from the point of view of the tax-payer, because if all the Members keep on attending all these sessions, it will mean a heavy expenditure in the shape of daily allowance, and also from the point of view of the Members, as I have already said, they should do as much constructive work outside the Assembly as possible, coming to the Assembly only when they are interested in particular subjects which may be before the House.

Dr. P. S. Deshmukh : Or go to Chandni Chowk. *(Laughter.)*

Shri R. K. Sidhva : Hear, hear.

Shri Jaspat Roy Kapoor : Dr. Deshmukh can go to Chandni Chowk or to any other more interesting place where his attractions lie; but then, why should all members be in Delhi all the time ? They may keep themselves busy in their respective places, and do more substantial, constructive, political economic and social work, rather than waste their time here. Therefore, I submit that the suggestion made to reduce the quorum from one-sixth to one-tenth is a very wise and very useful suggestion and must be accepted.

(Some Members rose.)

Mr. President : I do not think this simple amendment deserves so many speeches. Members know all about it, and they can either vote it down or vote for it. So we now go to article 128, and Pandit Thakur Das Bhargava's amendment No. 288.

(Amendment No. 288 was not moved).

Mr. President : Then amendment No. 289 of Mr. Kamath.

Shri H. V. Kamath : Mr. President, I move:

"That article 128 for the words 'the President may by order' the words 'Parliament may by law' be substituted."

If my amendment is accepted, the article would read as follows :

"Notwithstanding anything in this Chapter, the Chief Justice of India may at any time, with the previous consent of the President, request any person who has held the office of a Judge of the Supreme Court or of the Federal Court, to sit and act as the Judge of the Supreme Court, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as Parliament may by law determine.......... etc., etc."

The article corresponding to this in the Draft Constitution as agreed to by the Assembly at the consideration stage is article 107, and the interpolation now made consists of the words--"be entitled to such allowances as the President may by order determine." If the House will turn to article 125, clause (2). my honourable Colleagues will see that that clause lays down that Parliament may by law determine the privileges, allowances and rights in respect of leave of absence, pension etc. which a Judge of the Supreme Court shall be entitled to. But here--of course this is a temporary measure, I realise that--but here the matter is left to the President of the Union to regulate. I do not see why this matter also could not be left in the hands of Parliament, to be determined by law. Parliament may provide that when Judges of the Supreme Court or the Federal Court, or retired judges--the articles deals with retired judges--when such persons are asked to or requested to sit and act as Judges. of the Supreme Court, though they may not be deemed Judges of the Supreme Court, still Parliament may determine what allowance they will be entitled to. There will be no difficulty for Parliament to legislate in this matter. It can legislate generally as to what allowances the Judges shall be entitled to receive. Instead of the President doing it, Parliament may do so. With these words, Sir, I commend my amendment to the House.

Pandit Balkrishna Sharma (United Provinces: General): Sir, if Mr. Krishnamachari would be good enough to enlighten us on the point, it would help us. My point is that we are told that in the future Constitution, we have abolished the office of additional Judges or temporary judges. Then how does this, article 128 correspond with that decision of ours, or that intention, if that intention be in the Constitution that additional judges should be abolished? In that case, how will this article stand.

Mr. President : It is not a case of additional Judges at all. A retired Judge may, for a temporary period, be requested to act for a particular period or for a particular case. It is a retired Judge and not an additional Judge at all. A person who has acted and held the post of Judge of the Supreme Court or Federal Court, a person like that, may be requested to attend.

(Amendment No. 290 was not moved.)

(Prof. Shibban Lal Saksena rose.)

Mr. President : We have to finish all the amendments in List I, and those that are not moved, may have to be left over altogether.

An Honourable Member : Will they lapse ?

Mr. President : Yes. All these amendments which are in List I should be moved in the course of the day, and therefore I have been suggesting from the very beginning to Members to be as short as possible and not to insist on speaking or even moving amendments which are not of substance.

Prof. Shibban Lal Saksena : I wanted this thing to be deleted because it the President is permitted to fix the allowances of the Judges, it means they are subservient to the President and to the Executive. This is most undesirable. If Parliament does it, it is a different matter.

Sir, I then move:

"That sub-clause (c) of clause (1) of article 145 be deleted and before clause (1) of article 145, the following be inserted:--

'The Supreme Court shall make rules for regulating the practice and procedure of the appropriate proceeding relating to the enforcement of rights conferred under Part III.' and the subsequent clauses be renumbered accordingly."

Part III deals with fundamental rights. According to you, the rules and the procedure of the Court will be made by the President. I want that the Fundamental Rights should be within the purview of the Supreme Court. I have therefore put that this clause (c) should be deleted and that it should be quite independent and should come before it. This is most important. Fundamental Rights should not be within the power of the President to approve or disapprove.

Mr. President : But your amendment goes against the previous decision.

Prof. Shibban lal Saksena : No. It is absolutely new. This is clause (c) of article 145.

Mr. President : No. It is clause (b) of the article.

Prof. Shibban Lal Saksena : This is clause (c) on page 58.

Mr. President : I see: you are referring to (c).

Pandit Thakur Das Bhargava: Amendments 308 and 309 are practically the same. I wish to speak on them. Originally I sent in an amendment to the Constitution, which appeared to the last of amendments as 109A, the first part of which ran as follows:--

"The Supreme Court shall have, in respect of the enforcement of Fundamental Rights guaranteed by the Constitution jurisdiction and powers to determine and regulate the manner and method of the appropriate proceedings mentioned in section 25 of the Constitution."

At the time this was moved, I requested you to hold it back and it was unfortunate that this amendment was ruled out by you on the last day of the second reading. I am glad that the Drafting Committee has been pleased to accept the principle which I wanted to embody in the second reading of the Bill. Though I am thankful to them for this rule (c), I must say that it is in its present form soulless. It is a mere shelf. If you kindly see the whole scheme of this Constitution, it will appear that these fundamental rights are of such a nature that they curtail the rights of the Executive as well as the Legislature. The Legislature as well as the Executive cannot temper with these rights, and in these rights, in my own humble opinion, resides the sovereignty of the common man. As long as these rights are enforced, every man is safe from every kind of tyranny. Therefore, I attach the greatest value to these Fundamental Rights. But now that these new provisions are there, we do not know how these rights will be worked. It is true that the Supreme Court has been invested with the jurisdiction to enforce these rights. Yet we have not yet determined how and in what manner the Supreme Court shall give effect to these rights. These rights are of a very peculiar and a very imperative character, and I do not know in regard to the jurisdiction of the other courts whether in regard to stamps or writs, etc., what course will be adopted by the Supreme Court. But the Supreme Court has been given power under article 25 to enforce these rights. As a matter of fact, what is given as an absolute right here is being taken away in the shape of power being given to frame rules. The Supreme Court alone should have the power to frame these rules. If this power is vested in the Legislature or the approval of the President is made indispensable, I am afraid that it is fundamental to tampering with these Fundamental Rights.

Now, Sir, we know that an attempt has been made by the Drafting Committee in the later stages to tamper with these Fundamental Rights. Right 16 has been taken away. Right 15 has been truncated and in regard to adaptation, power is taken which takes away from the efficacy of these Rights. What is important is, when the provisions relating to these rights have been passed, in the third reading we do not want to have such a drastic provision. These rights should be maintained in their original purity and in the Supreme Court there should be no other power which can take away these rights. There the House will see that what I wanted in my original amendment, 109A, is now given to us. I want that the Supreme Court alone should have the power to make these rules for regulating the method and manner of the enforcement of these rights and therefore I seek to take away sub-clause (c) from clause (1) and add another separate clause (2), so that the Supreme Court alone in regard to the matters referred to in Part I. may have the power to regulate the practice and procedure of the appropriate proceedings mentioned in article 25 which guarantees these fundamental rights.

Mr. President : Does any one wish to say anything on this article? Then we shall pass on to article 148. Amendment No. 312, Mr. B. Das.

Shri B. Das : I am not moving it.

Shri Raj Bahadur : I am also not moving it.

Mr. President : Shrimati Durgabai. She is not present. Then amendment No. 313, Mr. B. Das.

Shri B. Das : Sir, I move this joint amendment which stands in my name and in the name of my Friend, Mr. Raj Bahadur. I beg to move :

> "That in clause (5) of article 148, for the words 'persons serving in the office' the words 'members of the staff' be substituted."

This is not my own amendment, this is what the House did pass after great deal of discussion and which the Drafting Committee, by some inadvertence perhaps, wanted to reduce to the present position. My grounds are the same as my Friend, Pandit Thakur Das Bhargava, has just now advanced about the status and dignity of the Supreme Court Judges. If we have to maintain the sovereign Government of India, we have to see that the Supreme Court, the Auditor-General and the Federal Public Service Commission are not interfered with in any shape or manner by the permanent executive. The House took considerable time in discussing these articles--old articles 124 and 125, which have now become Nos. 148 and 149. The House determined that the Auditor General should maintain the highest dignity of financial integrity by audit control and that there should be no interference by the permanent executive in any shape or manner in exercising the authority of the Auditor-General regarding the audit control of public finances of the Government of India.

We businessmen who are accustomed to business finance sometimes find that Boards of Directors of companies try to exercise influence over the auditors and sometimes wrong reports are published. That practice should not come into vogue in the Government of India. Unfortunately, under foreign rule, that practice was in vogue from 1921 up to 1947--only two years ago. The Auditor-General became almost a nonentity. There was no audit of public finances. The former British rulers even decided that unless the Auditor-General or members of his staff like the Accountant-General or the Director of Audit, agree with the spending authority such as the Secretary of the Department or the executive head of the department, the financial irregularity would not be reported to the Public Accounts Committee or Parliament. This thing happened some time in 1927 and that practice was very much in evidence during the second war. In order that a similar practice may not continue we wanted that the high status and dignity of the Auditor-General should be maintained. Therefore we do desire the House to pass this amendment substituting the words "members of the staff" in article 148(5) whereby every Accountant-General, every first class Accounts Officer is not subjected, for his promotion, to the sweet will of any departmental head or executive head of a spending department. I have been assured by the Drafting Committee that they will accept the amendment which I have just moved. Sir, I do not wish to speak any further on this issue.

Mr. President : Shrimati G. Durgabai, amendment No. 314 She is not here. No. 315, Mr. Das.

Shri B. Das : I am not moving it.

Mr. President : No. 316.

Shri Raj Bahadur : Sir, I am not moving it. But I want to speak on amendment No. 313.

It is obvious that by the very nature of the duties and office of the Auditor-General, this officer must be quite independent of the executive. As a matter of fact, his position is somewhat analogous to the position of the Chief Justice of the Supreme Court. He is the custodian, if I may say so, the *chowkidar* of our finances. He stands between the executive and the taxpayer. It is he who can successfully prevent our finances from getting into any sort of corruption or debacle.

Sir, I would simply add this much to the observations made by the previous speaker that it has been a painful experience to those of us who have happened to be on the Public Accounts Committee that during the course of 1945 and 1946 or, should I say, prior to partition and independence there have been such serious defects and irregularities in the accounts of the country that we have come to the conclusion that in the best interest of the nation this officer must be completely independent of the executive. I would, in all humility suggest that he should be absolutely free from the control of the executive. I had tabled an amendment, No. 312, that even his "allowances" apart from his salary should be decided not by the President or by the Government but by Parliament. We find that in the case of the judges of the Supreme Court, their salaries and allowances are not in the gift or the Government but are constitutional matters. I would like to go a step further and say that it should not have been left to the discretion of even the Parliament, and the Constitution itself should have provided for it, because it would be in the interests or the nation if this officer is made completely independent. At any rate, there should be no wall or screen between the Legislature and this officer.

In case he has to function effectively and properly, his staff also should be under him. If the members of his staff are placed under the control of the Cabinet or the executive and have got to look for their promotions and for their careers towards the Ministers. it is obvious that the Auditor-General would not be able to exercise an effective control over the members of his staff. It was therefore a sort of an unpleasant surprise when we found in the revised draft that the words "members of the staff" had been changed to "persons serving in his office", thereby restricting and limiting the control of the Auditor-General upon those persons who happen to serve at a given time in his Department as a whole. It was thought proper that the original words which were approved of by this Assembly during the previous stages should be retained. Hence this amendment.

Another point on which I want to lay some stress is that because the Auditor-General happens to be one of the highest officials who hold a sacred trust of the people, it has been made incumbent on him that after having served his term of office he cannot be absorbed or employed on any other job in the Government. When that office has been placed so high, it is only meet and proper that the staff also is entirely controlled by the same office. With these words I commend this amendment for the acceptance of the House.

Mr. President : Article No. 154, Mr. Kamath.

Shri H. V. Kamath : Sir, these amendments are identical with the amendments moved earlier in the morning and I leave them along with the morning ones for the consideration of the Drafting Committee.

Mr. President : So, I, take both 320 and 321 as not moved.

Then article 162, amendment No. 324 is a similar amendment.

Mr. Naziruddin Ahmad : Yes, Sir.

Mr. President : Then amendments Nos. 328 and 329, Mr. Kamath--article 164. Amendment No. 328 does not arise. Mr. Kamath You may move amendment No. 329.

Shri H. V. Kamath : Sir, I move.

"That in the proviso to clause (1) of article 164 for the words 'Koshal Vidarbh' the words 'Madhya Pradesh' be substituted."

Shri T. T. Krishnamachari : May I suggest to the honourable Member that he may move this when we come to the Schedule ? And when we accept that amendment, the consequential change may be made here as well.

Shri H. V. Kamath : Very well.

Mr. President : There are three amendments of which notice has been given by

Shri A. V. Thakkar, namely amendments 329A, 330 and 331. The honourable Member is not here; so we may go to Article 166. (Amendment No. 332).

Prof. Shibban Lal Saksena : My amendment *(No. 332) may be taken as formally moved.

Mr. President : In regard to *333, *334 and *335, similar amendments have been moved in regard to the Central Government. I shall, therefore, take them as formally moved. It is hardly worthwhile moving 336 to 339. Let us, therefore, take up 340 and 341 of Mr. Kamath.

Shri H. V. Kamath : Sir, I move:

"That in clause (1) of article 172, after the words 'no longer' a comma be inserted."

"That in clause (2) of article 172, for the word 'possible' the word 'practicable' be substituted."

As regards the first, as far as my meagre knowledge of English tells me, according to the rules or syntax, a comma is indicated after the word "longer."

As regards the second amendment (No. 341), I feel that the word "practicable" is more appropriate in this context than the word "possible." I think, in the former draft as agreed to by the Assembly at the consideration stage, the word used was "may be." But as between "possible", and "practicable" there is a fine distinction which will not escape the notice of the honourable Members of this House. Suppose, for instance, there are 32 members in the Legislative Council of a State. "As nearly as practicable one-third" will definitely mean eleven. On the other hand "possible" will admit of some ambiguity, because there is nothing that is not possible. For that matter everything can be made possible in this world, while "practicable" will have some relation to reality. We are here dealing with realities, and the word "practicable" will 'be preferable to the word "possible" for conveying the precise sense of this clause of the article.

Mr. President : Amendments *343, *344, *345 and *346, I shall take as moved. Let us now take up Article 189 (amendment 347).

Shri H. V. Kamath : In regard to *347, I would like to make one observation. Sir, it is understandable that for a big assembly like Parliament a quorum of one-tenth of its strength may be fixed. But if this is extended to the States, it may at times lead to ridiculous results. There are at present States where the lower House consists of perhaps one hundred or one-hundred and twenty members, and these are to continue till the New Constitution commences and they are reconstituted after the General Elections. For instance, the C. P. and Berar Assembly now consists of about 120 members. If the quorum is fixed at one tenth of its strength, it would mean that twelve members would be sufficient to pass any legislation. The argument has been trotted out that the quorum of the House of Commons is only one-fifteenth. It is understandable because the House has a strength of six-hundred members. But in the case of the Mysore Assembly, for instance, which will have a strength of, say, 70 members, the quorum would be seven: we are of course providing that if shall not be less than ten. Rather than take it to such a farcical extent, let us say, 'finis' to democracy and go home.

Sir, I personally feel that for legislatures which have a small strength of, say 60 to 120 members, we should fix the quorum at one-fifth or one-sixth, and not make ourselves the laughing stock of the world.

Shri R. K. Sidhva : Sir, my amendment to article 189 reads thus:

"That in clause 3 of article 189 for the word 'ten' and 'one-tenth' the words 'twenty' and 'one-eighth' be substituted respectively."

My arguments in support of this are the same as those I put forward in connection with the question of quorum for the Union Parliament. I am not at all in favour of the arguments put forward by my Friend, Mr. Kapoor. On the contrary, it has to be remembered that the future Parliament will have to sit for at least nine months in the year. If members have other work to do, let them attend to it and not monopolise the seats in the Assembly and imperfectly do the work entrusted to them by the people. I, therefore, feel that after the next elections to Parliament, the Members who come here must confine themselves to their parliamentary work only. If they really want to do other work, they may do so, but let them not monopolise the parliamentary membership and also other political activities. It is high time that we decide this. At this juncture when we have an opportunity to frame the Constitution, especially this Part. As my friend said, I do not want 500 members to be present all the time. I am saying that at least one-eighth should be present, which would mean only 20.

Shri Mahavir Tyagi : Then the House will be composed of unemployed men only.

Shri R. K. Sidhva : I am saying twenty. Do they not want twenty for the quorum? When the question of voting comes, the House should see that the Drafting committee's proposition is voted down and what the House decided on the last occasion is accepted.

I then move my next amendment, viz.

"That at the end of clause (1) of article 222, the following words be added:

'only when urgency arises'."

A judge should be transferred only when urgency arises.

Shri H. V. Kamath : Sir, I move.

"That clause (2) of article 222 be deleted."

This clause empowers the President to fix compensatory allowance for a judge of a High Court on his transfer from one State to another. I think it will be a wise rule for us to lay down that we shall not deviate from the provisions we have already made in the Constitution with regard to salaries and allowances of High Court Judges. There should be absolute uniformity in regard to this matter throughout the whole of India. That will conduce, though in a very small way, to the development of a united national sense throughout the country. If we make invidious distinctions between the salaries and allowances of a High court Judge in one State and those of a High Court Judge in another State it will lead to somewhat vicious results which I for one would not countenance or encourage. A High Court Judge whether in Madras or Bombay or the United Provinces should draw the same salary and allowances fixed for him in the Constitution or by Parliament. There is no need, in my view, to give him any compensatory allowance when a four figure salary is fixed for him in the Schedule. I do not see any reason why when he is transferred he should get compensatory allowance in addition to his Rs. 3,000 or 4,000. The judges and all our public servants are going to be good patriots and will no claim any sort of allowances when they are, in the public interest, transferred from one State to another. The salaries and allowances already drawn by them ought to suffice. I commend my amendment to the House.

Dr. P. S. Deshmukh : I support with as much strength as I can command, the arguments advanced by my Friend, Mr. Kamath, but on a different and an additional ground in favour of the deletion of this sub-clause. In our desire to protect the interests of the Judges I am afraid we are overdoing things. We have already made detailed provisions with regard to their right to leave, allowances, pensions and other things. We should not overburden our Constitution with so many and such details. If there is any necessity of granting any more allowances I do not think there is any constitutional difficulty in the way of the President granting the same or Parliament sanctioning it in the case of the Judges. I think this provision is absolutely unnecessary and should be deleted.

Pandit Thakur Das Bhargava : Sir, I am not moving my amendment No. 355 to article 224.

Shri H. V. Kamath : I have already moved an amendment similar to amendment No. 356 I am not, therefore, moving amendment No. 356.

Pandit Thakur Das Bhargava : I am not moving amendment No. 377. I wish to move amendment No. 383 to article 302.

I beg to move:

> "That in article 302, for the words 'as may be required in the public interest' the words 'as may be required in the general public interest' be substituted."

or, alternatively

> "That in article 302, after the words 'may by law' the words 'enacted by virtue of power conferred by the Constitution' be inserted."

If you will kindly look at article 302, you will be pleased to find that after the words "Parliament may by law" there are some dots and these dots represent in the second reading the following words :

> 'enacted by virtue of the power conferred by the Constitution.'

Now, this article 302 and the other articles 301, 303, etc. relate to trade, commerce and intercourse within the territory of India. As a matter of fact originally there was a section in the Fundamental Rights which said that trade, commerce and intercourse shall be free in the whole of India. That article has been taken away and some other provisions had been enacted. These articles 303, etc. also existed in the original provisions but we understood that they were subject to article 16. Now, it so appears that article 302 seeks to give power to Parliament to impose restrictions on the freedom of trade, etc. Now, if you will kindly see article 19 (g) which we have already dealt with, it says--

> "All citizens shall have the right to practise any profession or to carry on any occupation trade or business."

And the restrictions which could be imposed are given in clause (6). It says--

> "Nothing in sub-clause (g) of the said clause shall effect the operation of any existing law in so far as it imposes or prevents the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by this section....."

My submission is that those fundamental rights as a matter of' fact constitute the minimum and fundamentally characteristic rights of any person living in India. Every inhabitant of India has got the right to trade in any part of India as an incident of his citizenship. This is only restricted by clause (6), whereas according to article 302 if the public interests require--and not the general public interests--then also restrictions could be put by Parliament. This is the difference between the two. What is quite clear in article 19 and what has been given there as Fundamental Rights is being taken away by article 302 when these words "in the public interests" are substituted. I do not want to take the time of the House in explaining the difference. The words used are "public interest" and not "General public interest". Public interests may be sectional interests inherent in State subjects but general public interest denotes the interests of the whole general interests of Indians as such.

The Honourable Shri K. Santhanam : This particular amendment does not arise from any amendment moved by the Drafting Committee, and cannot be admitted under our rules.

Mr. President : I think you are right.

Pandit Thakur Das Bhargava : You may kindly hear me before deciding the matter. There are two amendments contained in No. 383, either add the words "enacted by virtue of the powers conferred by the Constitution" as this power is conferred by article 19(6) or you put in the words "in the general public interest". These amendments are as a matter of fact the same. There is no difference between the two. If these words are there, it means that this is subject to article 19. Therefore, I submit that either these words "enacted by virtue of the powers conferred by the Constitution" may be restored in their original form or the words " general public interest" may be put in. I should think that when we have passed article 19, there can be no other article which is in abrogation of the article which we have already passed. There is an inconsistency between the two and I beg the Drafting Committee and the House to consider this inconsistency and remove it.

Mr. President : Your argument is that the word "general" represents the same thing as the words which have been omitted. Either add the word "general" or restore the words which have been omitted.

Amendment No. 384.

Shri H. V. Kamath : Sir, I move :

"That in the proviso to article 309 the words "or such person as he may direct", wherever they occur, be deleted."

The House will see that the proviso to article 309 empowers the President in the case of the Union services and the Governor or the Rajpramukh in the case of the States services to make rules regarding their recruitment, their conditions of service and similar matters pending provision by Parliament or the State legislature, whichever may be the case, in this regard. I see no point in the amendment recommended by the Drafting Committee. The amendment is to the effect that not the President or the Governor or the Rajpramukh alone is competent but also such person as he may direct. This amendment to my mind is simply puerile. This morning when we considered an article with regard to the executive authority, we found that the executive power of the Union shall be exercised by the President either directly or through officers subordinate to him. It follows that even if it is not exercised by him directly, it can be exercised by officers subordinate to him. In this regard also, the rule-making powers can be exercised by him or by persons authorised by him. I do not know why the Drafting Committee thinks that it is necessary to specify that it can be exercised by him or by such person as he may direct. Throughout the Constitution we have made it clear that whenever the President acts, he does not act on his own but acts on the advice of his Cabinet, and may also delegate his authority to somebody else. These words are absolutely redundant, unnecessary and pointless, without any purpose, and therefore I suggest that these words ought to be inserted "or such person as he may direct" in the case of the President as well as in the case of the Governor and the Rajpramukh should be deleted, because it is clear beyond any shadow of doubt that wherever the Governor or the Rajpramukh or the President is mentioned, he is not mentioned in his personal capacity but as a symbol of the executive authority of the Union or the State. Therefore I commend my amendment No. 384 to the House for its serious consideration.

Dr. P. S. Deshmukh : Mr. President, Sir, I once again find myself in complete agreement with the argument advanced by my honourable Friend, Mr. Kamath, we either give this power to the President or we do not. If we think that he will not be in a position to cope with the responsibilities in this respect because they are too detailed or too insignificant and it would be necessary for him to delegate these powers to somebody else, let us put, that somebody else here rather than put the President and then allow him to delegate this authority to somebody else. In fact, Sir, I totally disagree that the importance that has all along been attached to the protection of the interests of the services in the Constitution. I for one consider it a reflection of the days of the Secretary of State when he was the father of all the covenanted services serving in any part of the world. I think this is also a reflection of the idea that the services are such an important part of the country that it is necessary that nobody else except the President shall interfere with their terms of appointment, etc. Sir, I think that either the power may be kept with the President--although I would much rather that it should be delegated to somebody else; or the government of that particular State, whether of the Union or the State should be competent to do so or the President should be taken out altogether; but if we want to make of a President a sort of a Secretary of State in our Constitution, then, let the President remain without stating that we would have the power of delegation of this authority to any one. In fact the President does not mean that in every case he acts himself and personally. In most cases he will be acting through someone else. There will be notifications that the President is pleased to order so and so but actually it will probably be one of his under-graduate stenographers who will draft the notification in the name of the President. *(Laughter).*

(Amendment No. 387 was not moved.)

Shri H. V. Kamath : Sir, I move:

"That in clause (3) of article 311 for the words "reasonably practicable to give to any person an opportunity' the words 'practicable to give any person a reasonable opportunity' be substituted."

If my honourable Colleagues will turn for a moment to clause (2) of this article they will see that the language employed in that clause is about "reasonable opportunity" being given to the person as aforesaid, etc., that is to say, that unless a person is give a reasonable opportunity to show cause, no action can be taken against him but clause (3) introduces a slight change and we find here the opportunity is no longer "reasonable" but the practicability is made reasonable. That will, in my humble judgment, make a very appreciable difference to the means of the clause If the House accepts my amendment then the opportunity to be given will have to be a reasonable opportunity. My honourable Friend, Pandit Thakur Das Bhargava, who emphasized the meaning of the word "reasonable" so very forcibly and vigorously with regard to the old article 13 will agree with me about the word 'reasonable' in this connection because it may be held that where the opportunity is not sought to be given by the person taking action against an officer concerned, if was not reasonably practicable. 'Practicable' means absolutely practicable. That is what I believe Dr. Ambedkar had in view when he moved this article at the consideration stage, and it means that when the officer is not to be found or his whereabouts are not known it is not possible, to give him any opportunity to show cause and only in that eventuality, in that contingency can an opportunity be denied to the officer concerned. Now what we seek to do in this amendment sought to be moved by the Drafting Committee is that if the officer holds that it is not reasonably practicable to give an opportunity that means to say it may be practicable, but it may not be reasonably practicable. Therein, lies the difference which my honourable Colleagues, I am sure, will understand and appreciate. We must definitely lay down that only when it is not practicable to give to the officer concerned a reasonable opportunity, the superior officer's decision shall be final in this regard. I feel that the Drafting Committee has taken uncalled-for liberties with the draft as approved by the Assembly in the last session and I feel that we must modify it so as to convey the sense of this clause exactly and completely. I commend my amendment No. 388 to the House for its consideration.

Mr. President : Amendment No. 389.

Shri H. V. Kamath : Sir, I move:

"That in the proviso to clause (1) of article 316, for the words 'under an Indian State' the word 'in an Indian State' be substituted."

I do not presume to be a master, an expert or authority on the English language and I move it for what it is worth. I hope the Member of the Drafting Committee who are far wiser than myself in this matter will have due regard to the meaning that they seek to convey in this proviso and in the phrase, 'held office under an Indian state'. Of course 'held office under the crown' is a constitutional term, but I have not heard this phrase 'held office under an Indian State'. It should be either "under the Government of an Indian State" or "in an Indian State".

Shri T. T. Krishnamachari : May I tell my honourable Friend that it is contemplated to change, with the permission of the House, the words to 'under the Government of an Indian State'.

Shri H. V. Kamath : I am glad that my honourable Friend Mr. T. T. Krishnamachari, has seen his way to accepting this suggestion of mine and so I do not propose to press this amendment, Sir.

Mr. President : I do not think amendment No. 392 arises at all.

Shri T. T. Krishnamachari : May I suggest to the honourable Member to see if it finds a place in the corrigenda? The two commas are there.

An Honourable Member : The Drafting Committee have stolen the amendment.

Shri H. V. Kamath : The word 'stolen' may be unparliamentary; they have plagiarised the amendment. Amendment No. 392 is also mere punctuation and I leave it to the punctuating sense of the Drafting Committee.

Sir, I move:

> "That in clause (c) of article 319, for the words 'other than a Joint Commission' the words 'or as the Chairman of a Joint Commission' be substituted."

This article 319 refers to prohibition as to the holding of office by members of the Public Service Commission on their ceasing to be such members, that is members of the Commission. Certain restrictions have been laid down in this article with regard to members of the Public Service Commission when they cease to hold office either as Chairman or as member of a particular Public Service Commission. Clause (c) of this article refers to the restrictions laid upon a member other than the Chairman of the Union Public Service Commission. This goes on to say: "such a member on ceasing to hold office shall be eligible for appointment as the Chairman of a State Public Service Commission other than a Joint Commission." I see no reason why this taboo should be there, with regard to a Joint Commission. A person has ceased to be a member of the Union Commission. Just as there is no prohibition with regard to a State Commission, so it follows logically, at any rate to my mind, that there should be no prohibition with regard to his appointment as a member of a Joint Commission. The only prohibitions should be with regard to his membership of the Union Public Service Commission or Chairmanship of the Union Commission; but neither with regard to the State Commission nor with regard to a Joint Commission should there be any prohibition. I therefore move amendment No. 393.

Mr. President : We proceed to article 320.

Shri H. V. Kamath : This amendment, Mr. T. T. Krishnamachari tells us, has been accepted by the Drafting Committee.

Shri T. T. Krishnamachari : If my honourable Friend will move amendments 394 and 395, first alternative, that more or less finds a repetition here--we will accept his amendments.

Shri H. V. Kamath : I am happy; I move amendments 394 and 395, first alternative.

"That in sub-clause (d) of clause (3) of article 320, for the words 'Under an Indian the State' the words 'under the Government of an Indian State' be substituted."

"That in sub-clause (e) of Clause (3) of article 320, for the words 'under an Indian State', words 'under the Government of an Indian State' be substituted."

Pandit Thakur Das Bhargava : Sir, I move:

"That in clause (4) of article 320, the words "the members of the Scheduled Castes or Scheduled Tribes or' be deleted."

If you will kindly refer to article 320, clause (4) it would appeal that it says :

"Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which appointments and posts are to be reserved in favour of the members of the Scheduled Castes or Scheduled Tribes or any backward class of citizens in the Union or States". These words "members of the Scheduled Castes or Scheduled Tribes or" have been added newly. Previously, these words did not exist. Now, so far as reservation is concerned, we find mention of this reservation in article 16, where it is said in clause (1) "There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State," and in clause (4) "Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the Services under the States." A perusal of these two sections would establish that as a matter of fact, there is only provision for this reservation in respect of the backward class of citizens which in the opinion of the State is not adequately represented in the services of the State. There is absolutely no provision for reservation so far as members of the Scheduled Castes and Scheduled Tribes are concerned. The safeguard given by law to this class is contained in articles 335 which says: "The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State." Therefore, one thing is absolutely clear, that no reservation was meant to be made for the members of the Scheduled Castes or Scheduled Tribes as such. I remember that in the Sub-Committee of the Minorities Committee, this matter came up and then we decided that there should be no reservation at all. Now, as if by the back-door, by smuggling, this reservation for the Scheduled Castes and Scheduled Tribes is being inserted in clause (4) of article 320. My submission is when there is a positive command of the Constitution to the members of the Public Service Commission which they must obey that he claims of the members of the Scheduled Castes and Scheduled Tribes must be considered consistently with the maintenance of efficiency of administration, this provision would be useless, and also, in a manner, I should say, this takes away the effect of article 335 to an extent. I am therefore, anxious that so far as the Scheduled Castes and Scheduled Tribes are concerned, their claims must he considered with regard to all appointments and not only with regard to reserved appointments. Because, if they are reserved, it means that the claims of other people for these appointments will not be considered, and their claims only will be considered. The likelihood is that their claims will be confined only to the reserved posts and in regard to other posts, their claims will not be considered.

Now, as the House knows, the provision contained in article 16 clause (4) is a sort of a negative provision to counterpoise the equality of opportunity for all citizens, some of whom are very much developed and others not so developed, and provision is made that the State is not prevented from making any provision for the reservation of appointments or posts. I do not know whether the State is going to reserve any posts. Supposing no posts are reserved, this provision will neither benefit the backward classes nor any other class. When reservation of posts has not been decided by this House, I do not think we are justified in having in this clause (4) a contingency for which reservation could be made. When the House has decided once for all that no reservation is to be made, then these words would give rise to the impression that reservation is possible.

I am anxious that whatever rights have been given by the Constitution they should be enjoyed by the members of the Scheduled Castes and Scheduled Tribes and no more or no less. In regard to article 335, I beg to submit that this is a very positive and extensive provision. If I were a member of the Public Service Commission, I would like to give every post to the members of the Scheduled Castes and Scheduled Tribes consistently with the maintenance of efficiency of administration for at least five or ten years so that they may have been.

Shri T. T. Krishnamachari : Will the honourable Member please say how article 335 could be implemented?

Pandit Thakur Das Bhargava : Can it only be implemented by reservation? If that is so, why did we not so decide? We decided against that; we were against that. The 'Drafting Committee is smuggling in some provision which is against the verdict of the Assembly. Why was this point not raised before? I think reservation is entirely a wrong thing. Under article 335, their claims can certainly be considered. After all, a Commission is to be appointed and welfare officers are going to be appointed. The President has to see whether the rights of these communities are safeguarded. We are all here to see that the rights of these communities will be safeguarded. I have no reason to believe that article 335 will not be implemented. It must be implemented; but this is not the way to implement it.

Shri V. I. Muniswamy Pillay : (Madras: General): Mr. President Sir, I think it is an irony of fate that hurdles of this sort are sought to be placed even in regard to the meagre facilities that have been adopted in this House. I do not agree with my honourable Friend Pandit Thakur Das Bhargava's amendment since the implementation of article 335, which was formely article 296, is sought in this clause (4) of article 320. Sir, if I were to tell him, the backward communities which lie referred to is not a comprehensive term or adopted by all the provincial Governments in India. In Madras, backward communities refer to certain sections of the people and the Scheduled Castes and Scheduled Tribes form a separate class from the backward communities. If it is the idea of my enlightened friend that the backward classes alone must remain in this Constitution for any reservation, the Scheduled Castes and Scheduled Tribes will not find reservation for appointments either in Madras or in some other provinces. So, I feel what the Drafting Committee has done for implementing and also making it clear what obtains in article 335 in clause (4) of article 320 is correct. My friend was saying that no reservation was made: but if he studies article 335, there is reservation services for Scheduled Tribes and Scheduled Castes. This clause (4) gives power of consultation with the Public Service Commission which is ultimately the authority that will be advising the Governors and the President of the Union on what basis the members of Scheduled Castes or Tribes are to be taken in service. So I feel very strongly that if my honourable Friend's amendment is accepted, it will mean that the Scheduled Castes or Tribes will not count for reservation in the services. So I oppose this amendment.

Shri Mahavir Tyagi : Sir, I propose that this may be held over. It is very controversial.

Mr. President : I would allow discussion of this. Those who wish to speak may speak now. Voting will be taken at the end, of course.

Dr. P. S. Deshmukh : I am glad the importance of this article is being appreciated by many honourable Members. It is certainly very very important. I for one do not oppose the changes made by the Drafting Committee in this article, but I would appeal to the Members and to the representatives of Scheduled Castes and Tribes that they should not also object to the insertion of the words "backward classes" in article 335. It was very unjustly and unfairly omitted from that article and it was no gain to anybody, especially to Members representing the Scheduled Castes or Tribes. Just as in this article 320 we propose to add the words 'the Members of the Scheduled Castes and Scheduled Tribes and retain the words, 'Backward classes of citizens', similarly the words 'backward classes' should be added to article 335. That will be entirely fair and consistent and if that is accepted, I would strongly oppose the amendment that has been just moved. If, for the purpose of even carrying greater assurance to Members of Scheduled Classes, it is necessary to mention certain safeguards specifically, I do not think we should fight shy of it. We are trying too much to ask people to have faith in our liberal, intentions and generous motives but in many respects it is better to come down to practical politics and embody what we mean in a concrete shape, understandable by the ordinary citizen. If for that purpose the Drafting Committee has suggested the addition of the two classes of Communities in article 320, I for one would not quarrel with it. But I would appeal to the House and to everybody that the words "backward classes" should be added to article 335. There is a little history so far as this article is concerned and the omission is, I believe, as accidental as some other things that have happened in regard to the provisions in the Constitution. Backward classes were omitted from article 335 in this way. The omission was never contemplated. Mr. Munshi had attempted amendments of the proposed article several times, but in none of them "backward classes" was omitted. But suddenly at a very late stage, when unfortunately I happened to be out of Delhi, I discovered that these words happen to be omitted. The best solution which is acceptable to everybody is that the proposed addition to article 320 should stay and honourable Members of this House should insist that the words 'backward classes' should be added to article 335 and the *status quo* maintained which was deliberate, intentional and which was really the demand of everybody, especially of Members representing the backward classes and also, if I may say so, of the representatives of the Scheduled Castes and Tribes. There has never been any conflict of interests between the various groups of communities and I hope the Scheduled Classes and the Scheduled Tribes will not bring about this conflict which will be of evil consequences to the whole nation. I would, therefore, appeal that whatever has been embodied in article 320 should now stay and in article 335 the word 'backward ...

Mr. President : There is no amendment for 335.

Dr. P. S. Deshmukh : I have given an amendment to that effect somewhat late. I was away from home and I was not able to table it in time but as soon as I got it, I sent the amendment in. I would beg of you that this amendment of mine may be permitted. It is No. 530. I have said "that in article 335 after the word 'members, the words backward classes' be inserted."

Shri H. J. Khandekar (C. P. & Berar: General): Mr. president, Sir, I stand here to oppose the amendment moved by my Friend, Mr. Thakur Das Bhargava. The draft that has been put forward by the Drafting Committee is with certain reasons. Because this House has adopted article 335 last time as article 296 and in order to give effect to that article, this article 324 has been submitted to the House. According to article 335 the seats have been reserved for members of the Scheduled Castes in services and posts, but that article does not give power to the Public Service Commission or the Federal Public Service Commission. We had to bring that article into effect and for this purpose this amendment has been moved by the Drafting Committee and then only the F.P.S.C or P.S.C. of the States will Consider the claims of the Scheduled Caste. I am very sorry to say that such amendments as have been moved by Shri Bhargava regarding the Scheduled Castes are being moved at this stage to bury down the Harijans. There are certain people in the country from the caste Hindus--I am not of course criticising them--but I would like to tell certain facts that they do not want to give facilities to us certain members of the Hindu society will only be satisfied when the Scheduled Castes and Scheduled Tribes are buried. I think, Sir, these amendments are brought with these motives. I, therefore, feel very sorry and pity for such caste Hindu friends. With these words, I oppose the amendment moved by my Friend, Mr. Bhargava.

Shri R. K. Sidhva : Mr. President, all along during the discussions and start of this Constitution I have held the view that if anybody deserves protection of special rights or privileges, it is the Scheduled Castes only and I hold today the same view that none but the Scheduled Castes should have a special right for the reasons that I frequently stated that we have done certain injustice to that class and for the purpose of undoing that injustice, we specially gave them this protection. I have all along extended my support to this on this ground. I am not in favour of giving any protection to the so-called backward classes. Backward classes were introduced by the British Government, and I do not want that blot to be continued in this Constitution. Backward classes exist in all communities, and in the directive policy and the fundamental policy we have decided that within ten years everybody shall be made literate, and with literacy nobody will remain backward. I would like to know what is the meaning of "backward class".

An Honourable Member : Those not in service.

Shri R. K. Sidhva : With education such service also will automatically come in. When proper education has been provided for, automatically their rights to entry into the services will also come in. Therefore, I do not approve of my Friend Dr.

Deshmukh's proposal to introduce the words "backward class" in article 313 which we have after full consideration decided should not be there. Therefore, I say that the amendment of the Drafting Committee is a perfectly correct one and that is the only amendment which we should support, without any other amendment. I do not think any one in this House would take away the powers or the rights which we have given to the Scheduled Castes. My Friend, Pandit Thakur Das Bhargava, said--I do not think he means it--that the word should be deleted. I strongly oppose it. Why should it be deleted when we have fundamentally accepted it in our Constitution. Therefore, I support the amendment of the Drafting Committee and I oppose any kind of amendment. Although the words " Backward class" are there, I am obliged to reluctantly accept it, and if I had my way, I would have said that there shall be no such thing as "backward classes". Within the next five years, I would make them all literate, so that they may be able to occupy any place in our society. We have to undo what has been done during the past 150 years, and we have to undo it as early as possible. Sir, with these words I strongly support the Drafting Committee's amendment.

Shri Mahavir Tyagi : Sir, I do not know whether I am really right in interpreting the procedure of the third reading of such Bills. As far as I know, in the Legislative Assembly of the Province, the third reading is only...........

Shri R. K. Sidney : This is not a third reading.

Shri Mahavir Tyagi : What reading is it then? The second reading has been finished and only such amendments as are of a consequential nature or as accrue from our past decisions are to come at this stage. If, however, matters which were closed after protracted deliberations and heated discussions, were to be raked up again at this stage, I am afraid, your time limit for the discussion and decision will be rather very unfair. Sir, my submission is that all such matters, which were once discussed and closed here, and which were also discussed among Members mutually, either in the shape of different parties or groups, and particularly such matters which were as a result of compromise resolved as unanimous decisions, were to be reopened for discussion, I assure you, Sir, that it will take a very long time and it will not be possible for you with due fairness, to finish the discussions according to the schedule which you have kindly prescribed. I submit that the amendment under discussion was neither consequential nor was there any necessity for introducing the question. of reservation of offices or posts for Scheduled Castes, here. Sir, the House has expressed itself a number of times in the past that our people do not want any reservations for anybody. And particularly in the case of the Scheduled Castes, the House had agreed, after heated discussions and passed article 335, as it is at present numbered, to the effect that "the claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration in the making of appointments to services and posts in connection with the affairs of the Union or a State. That was quite enough and that was the last word unanimously agreed upon by the House. And the Members of the Scheduled Castes were also satisfied with this article. Why introduce the same communal virus into another article? Is not one enough? To bring it here again means raking up the old controversy again. That representation of Scheduled Castes shall be so and so, the manner of giving it shall be such and such, that the rules of giving this representation in the services or posts to the Scheduled Castes shall not be made in consultation with the Public Services and so on. All this I say is absolutely unnecessary and surely it does not benefit the Scheduled Castes people at all. Even, article 335 was a matter of controversy, and it was opposed. Some of us felt that the special reservation was forced against their wishes. But then we were told that it was only a directive article, and that it directs the policy of future Governments. The House agreed to have it only as a directive. And now you want to bring it in another article. The Constitution is in your hands and you can introduce controversial matters in any article and it will be discussed here as a basic proposal and then amendments will come in. Sir, I submit that you might kindly rule such matters as out of order. Matters once, twice and thrice discussed cannot be brought in again. How long can the House go on discussing these matters?

Shri Jaipal Singh (Bihar General): Mr. President, Sir, I feel I must come forward to congratulate the Drafting Committee for having made a point more clear than it might have been had they not introduced the amendment in clause (4) of article 320, I must confess that I have been very much surprised by the amendment that my honourable Friend, Pandit Thakur Das Bhargava, has been pleased to place before the House. My memory is not very weak. Not many months ago, he was the one who congratulated himself and the House for atoning for what had not been done for centuries; but, now, some-how or other, he swallows his words and tries to accuse the Drafting Committee and the Scheduled Castes and the Scheduled Tribes and any other backward classes of aligning ourselves as a communal group. The hint has already been made by my predecessor just now. Sir, we are not asking for this from any communal angle. We do not want anything. If you do not want to give it, do not give it. We are not asking for it. Do not give with your right hand and take away with your left. I have said every time that it has been my privilege to come and plead for the most backward group in our country, and made it quite emphatic and quite clear that I am not here with a beggar's bowl. If you give it, give it without any mental reservations.

As far as I can see, all that the Drafting Committee has done is to elucidate what were the intentions in the Fundamental Rights and the directive principles of the Constitution. Beyond that they have not gone. My friends will be the first to admit that the Scheduled Castes and the Scheduled Tribes are among the backward classes. Well, they have already accepted in their previous speeches and the previous consideration stage that the Backward Classes have to be brought up to the general level. How else can you do it unless there is some way of implementing that intention? We have had enough or words. We have had them for centuries and centuries. In this Constitution we are providing the wherewithals for materialising those intentions. You have appealed to us not to talk at length. I have no desire to do so: all that I say is--be generous and mean it.

The Honourable Shri K. Santhanam : I am afraid the scope of this particular clause has been widely exaggerated by almost every speaker. It does not prescribe by itself any kind of reservation or any privilege which has not been given by the other articles of the Constitution, What all it attempts to do is to decide whether the Public Service Commissions shall have anything to do with either the reservation of the Backward Class or of the Scheduled Tribes. If by the application of article 335 such reservation becomes necessary. No one will contend that in attempting to apply 335, in considering the claims of scheduled castes, no reservations will be made. If any one comes to that conclusion that no reservation shall be made, I believe that 335 cannot be implemented to any extent. But whether in any particular service the Scheduled Castes should be represented and to what extent--all that may be a matter of argument, consideration and discretion. But to say that at no point whatsoever any reservations shall be made, is, I think, wholly inconsistent with either the letter or spirit of article 335.

Assuming that in some matters some kind of reservation will have to be made, the question here is whether it shall be done by the rules of the Public Service Commissions or by the Government directly. That is the short issue of this particular clause. It is our policy that the Public Service Commissions should be kept out of all these communal and other considerations.

Pandit Thakur Das Bhargava : May I know if the provisions of 335 are not binding upon the Public Service Commissions? They must take it into consideration.

The Honourable Shri K. Santhanam : Here the point is whether the rules to be made should be by the Public Service Commissions or by the Government. We do not want the Public Service Commissions to be brought into these matters, It only says that "nothing in clause 3 shall require the Public Services to be consulted."

Shri Mahavir Tyagi : Why not make it clear. Was it incumbent on the Government to consult the Public Services Commission, that you want to have an exemption?

The Honourable Shri K. Santhanam : My honourable Friend, Mr. Tyagi, is altogether wrong in thinking that this is a new insertion. This is purely consequential to article 335.

Shri Mahavir Tyagi : I want to put one question. Is there any compulsion on us that we must approach the Public Service Commissions for rules?

The Honourable Shri K. Santhanam : If he reads clause (3), he will find that for all these matters, the Public Service Commissions should be consulted. Therefore, if clause (4) were not there, then the Public Service Commissions would be involved in the controversy regarding the manner in which reservations should be carried out. We do not want our Public Service Commissions to be brought in. If any reservations are to be made, that should be done purely at the discretion and judgment of either the Central or Local Government. It is only to prevent the Public Service Commissions from being brought into the controversy that clause (4) is brought in. Without it, if at any time reservations become necessary, consultation with the Commission is also necessary and the public will begin to blame the Public Service Commissions either for the manner or the extent Of the reservations. It is only to preserve the purity of the Public Service Commissions that this is inserted, and so whatever objections one may have to reservation is quite a different matter. One may contend that no Government should interpret 335 as getting them reservations. That is a matter for the Supreme Court and for anyone to argue out. It is not possible for the Drafting Committee or for this Assembly to assume that no reservations can be made under article 335 and, therefore, this preservation of the purity of the Public Service Commissions need not be undertaken. As a matter of fact, if the Drafting Committee had not put this forward they would have failed in their duty.

Pandit Hirday Nath Kunzru (United Provinces: General): Mr. President, the question before us has been discussed by those who have favoured the amendment made in clause (4) of article 320 by the Drafting Committee with reference to Article 335. I think, Sir, that we should refer to clause (4) of article 16 before we refer to any other article. It says: "Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State is not adequately represented in the services under the State." Under this clause, it is not necessary for the Central Government or the Government of a State to consult the Public Service Commissions with regard to the reservation of posts for any or all of the Backward Classes. The question then before us reduces itself to the proposition whether the Scheduled Castes and the Scheduled Tribes should be included among the Backward Classes or not. Now it may be said that these classes have been specially mentioned in various parts of the Constitution and that, therefore, they should not be included among the Backward Classes. It is hard for me to accept any such interpretation. The Scheduled Caste and the Scheduled Tribes have been specifically mentioned in several places because they are believed to the more backward than the classes called backward according to the official terminology of the Provincial Governments. That is the only reason, I believe, why they have been selected for special mention in several articles. It seems to me, therefore, that even if clause (4) of article 320 were not amended in the manner that it has been by the Drafting Committee, a State would not be under any compulsion to consult the Public Service Commissions with regard to the reservation of posts for the Scheduled Castes or the Scheduled Tribes. Article 335 has been referred to but that is of limited application. All that it says is that.........

Pandit Balkrishna Sharma : May I draw the attention of the Honourable Member to one point? He says the Government is not in duty bound to consult the Public Service Commission. but if he would only refer to article 320(3)(a) there he will find that the Public Service Commission should be consulted on all matters relating to the methods of recruitment to civil service and for civil posts, and this might be interpreted as involving the Public Service Commission in a sort of a controversy regarding the reservation of seats for Scheduled Castes, Scheduled Tribes and other Backward Classes. In order to avoid that contingency, "that amendment has been brought in"

Pandit Hirday Nath Kunzru : I am aware of the provisions of clause (3) but what I meant to say was that the provisions of clause (3) must be regarded as subject to the provisions of clause (4) of article 16 which embodies a fundamental 16.

The Honourable Shri K. Santhanam : It is really supplementary.

Pandit Hirday Nath Kunzru : In any case what I have tried to say is that the amendment made in clause (4) of article 320 does not confer any power on the State with regard to the reservation of posts for any Backward Class that it did not have before.

Sir, I was referring to article 335. It merely says that the claims of the members of the Scheduled Classes and the Scheduled Tribes shall be taken into consideration consistently with the maintenance of efficiency of administration, etc. It may be found on examination that it is not possible to take the claims of the members of these classes into consideration without reserving a certain proportion of posts for them. Therefore, in my opinion, the more important article that we should consider in this connection is article 16. Article 335 seems to me to be of more limited application than article 16. We may draw an inference from article 335 that the State has the power to reserve posts for the Scheduled Castes and the Backward Tribes but I think that clause (4) of article 16 lays down very clearly and in express terms that the State has the power to make reservations of appointments or posts in favour of any backward class of citizens. Even if it be held that the amendment of clause (4) of article 320 is unnecessary, it is clear that it is in accord with or that it is consequential to the power given to the State by article 16.

Mr. President : We shall continue the discussion tomorrow.

I said at one stage of the proceeding this afternoon that I would like to finish all the amendments. but since this particular article has taken more time than we anticipated I would like to extend the time for moving the other amendments.

Pandit Balkrishna Sharma : Sir, in List I there are certain amendments which ire also connected with the amendments that have been received in List II therefore, I believe if the amendments are not reached during the time available you will kindly allow these amendments from List I.........

Mr. President : We shall consider that.

The Assembly then adjourned till 10 A.M. on Tuesday, the 15th November, 1949.

---

*That in the motion, for the words "the amendments recommended by the Drafting Committee in the Draft Constitution of India," the words "the amendments to the Draft Constitution of India, as recommended by the Drafting Committee under sub-rule (1) of Rule 38-R of the Constitutional Assembly Rules," be substituted.

*That in clause (1) of article 1, after the words 'that is' a comma be inserted and the comma after the word "Bharat" be deleted.

*That in article 57, the words 'subject to the other provisions of this Constitution', be deleted.

*332. "That clause (3) of article 166, be deleted."

*333. "That in clause (3) of article 166, for the word 'Governor' where it occurs for the first time, the word 'Premier' be substituted."

*334. "That in clause (3) or article 166, for the words 'more convenient' the word 'efficient' be substituted."

*335. "That in clause (3) of article 166, the words 'in so far as it is not business with respect to which the Governor is by or under this Constitution required to action his discretion' be deleted."

*343. "That in clause (2) of article 181 for the words 'and shall, notwithstanding anything in article 189, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of equality of votes' the words 'but, notwithstanding anything in article 189, shall not be entitled to vote on such resolution or on any matter during such proceedings be substituted."

*344. "That in clause (2) of article 181, for the words and figure 'anything in article 189' the words and figure 'anything contained in article 189' be substituted."

*345. "That in clause (2) of article 185, for the words 'and shall, notwithstanding anything in article 189, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of equality of votes' the words 'but, notwithstanding anything in article 189, shall not be entitled to vote on such resolution or on any matter during such proceedings' be substituted".

*346. "That in clause (2) of article 185, for the words and figure 'anything in article 189' the words and figure 'anything contained in article 189' be substituted."

*347. "That in the second paragraph of clause (3) of article 189, for the words. 'The quorum shall, until the Legislature of the State by law otherwise provides' the words 'Until the Legislature of the State by law otherwise provides, the quorum shall' be substituted."

[Translation of Hindustani speech.]

***Tuesday, the 15th November* 1949**

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the Pledge and Signed the Register:

Thakur Lal Singh (Bhopal State).

DRAFT CONSTITUTION--*(Contd.)*

Mr. President : We shall now continue the discussion we were having yesterday.

Shri H. V. Kamath (C.P. & Berar: General): Sir, before we proceed to the business of the day, may I request you to be so good as to tell the House what progress has been made with regard to the election of representatives from Vindhya Pradesh and Hyderabad to the Constituent Assembly?

Mr. President : As regards Hyderabad, I am not in a position to give any information. But as regards Vindhya Pradesh, an attempt was made to form an electoral college which could elect the representatives to this House. But unfortunately, that has not found favour with the political parties there and therefore ultimately I have been compelled to agree to Members being nominated from there. They will be nominated and will be coming.

Shri H. V. Kamath : Will they take their seats here during this final session ?

Mr. President : I hope so. I have asked them to send them before the 20th.

Shri H. V. Kamath : What about Hyderabad?

Mr. President : As I said before, I am not in a position to say anything about Hyderabad.

We shall continue the discussion.

Amendments to articles--(*Contd.*)

Shri T. T. Krishnamachari (Madras: General): May I mention, Sir, that the Drafting Committee met some of the Members who had tabled the amendments to article 320 yesterday and also others who were interested in it and a new amendment has been tabled to article 320 which finds a place in today's list? Its number is 559. If the House will defer discussion on this particular article and take it up when that amendment is moved, perhaps it might be more beneficial and will save time.

Mr. President : Do I understand that this form was acceptable to other Members?

Shri T. T. Krishnamachari : It was acceptable to the Members who moved the amendments and spoke yesterday. In any case, this article can be discussed when we take up that particular amendment.

Mr. President : Then we shall take it up later. We pass on to the other amendments, to article 325. Mr. Kamath may move amendment No. 397.

Shri H. V. Kamath : Mr. President, I move:

"That in article 325, for the words 'shall be ineligible for inclusion in any such roll or claim to be included in' the words 'shall be excluded from or claim to be included in be substituted."

This is moved partly with a view to simplification of language of the article and partly to amend the substance of the clause as well. The amendment suggested by the Drafting Committee refers to a special electoral roll for the territorial constituency. The article as it stood in the Draft is accepted by the Assembly at the consideration stage had no reference to any special roll in any particular territorial constituency. But in this amendment this reference has been inserted. It says that no person shall be ineligible for inclusion in any general roll or claim to be included in any special electoral roll on the ground of caste, etc. The first part of it refers to inclusion in any general electoral roll for the territorial constituency and the second part refers to any special electoral roll on grounds only or religion. etc. My amendment No. 397 tries to comprise both, the ineligibility for inclusion and the claim for inclusion in simplified phraseology. The other aspect of the matter in this: We have brought in here reference to a special electoral roll which was not there in the draft of the article. In the light of this I have given notice of amendment No. 399 which with your permission, Sir, I shall move now, It runs:

"That in article 325, after the words 'caste', the word 'class' be inserted."

This is necessary because there is reference in the article to a special electoral roll. Now, the special roll can include people belonging to different religions or races or castes or sex and may also include people belonging to different classes. Today, our society consists of some classes, though we are trying to create a classless society. So long as these classes are there, we have to recognise realities and make reference to classes as well. We have for instance the Zamindar class which fortunately is fast disappearing, and we have other classes also which are wellknown to the House. Therefore when we refer to special rolls, we should make the provision comprehensive and make reference to classes as well, so as to obviate any loopholes of whatever kind. I commend my amendments for the earnest consideration of the House.

(Pandit Thakur Das Bhargava did not move amendment No. 398).

Mr. President : Mr. Kamath may move this amendment No. 400 to article 333.

Shri H. V. Kamath : My amendment No. 400 is a verbal amendment. I leave it to the consideration of the Drafting Committee.

Mr. President : The next amendment is No. 401 of Mr. Kamath to article 344.

Shri H. V. Kamath : Sir, I move:

"That in clause (3) of article 344, for the words 'persons belonging to the non-Hindi speaking areas' the words 'that non-Hindi speaking sections of the population' be substituted."

The House will see that this article 344 deals with the Commission and Committee of Parliament on official language which the President shall at the expiration of five years from the commencement of this Constitution and thereafter at the expiration of ten years from the commencement of this Constitution constitute. The Commission will be asked to report on various matters connected with the progress of the development of the official language in the Union and in the States as well. Clause (3) as it was accepted by the House at the consideration stage says: "In making their recommendation under clause (2) of' this article the Commission shall have due regard to the industrial, cultural and scientific advancement of India and the just claims and interests of the non-Hindi speaking areas in regard to public services." The amendment that has been moved by the Drafting Committee substitutes the words "non-Hindi speaking areas" by the words "persons belonging to the non-Hindi speaking areas". But, Sir, a new article 347 has been inserted by the Drafting Committee, and that refers to a special provision relating to the language spoken by sections of the population of a State. Now, this clause (3) of article 344 relates to the interests of persons belonging to the non-Hindi speaking areas in regard to public services. Now, Sir, it is easy to say which is a Hindi speaking area and which is a non-Hindi speaking area. For instance, Bihar, the United Provinces, Delhi are definitely Hindi speaking areas, also the northern part of C. P., i.e., Mahakoshal. If we leave this article as it is, that is to say, make reference only to persons belonging to those areas, I think the interests of the non-Hindi speaking sections of the population will not be adequately safeguarded, because within the Hindi speaking areas there may be people who do not speak the Hindi language, whose mother-tongue is not Hindi,--may be a linguistic minority. Everywhere, all over India, we have linguistic minorities in every province and this, as the House is very well aware, is given as an argument against the creation of linguistic provinces, because even after the creation of linguistic provinces, there will be linguistic minorities in every province. Therefore my point is that it is not adequate to say that this article should safeguard the interests of the persons belonging to non-Hindi speaking areas. What is intended is to safeguard the interests of the non-Hindi speaking sections of the population as a whole, wherever they may be found. There are a number of Madrasis in Delhi today and some of them did voice their apprehensions that if Hindi was adopted as the official language within five years or even earlier, their interests with regard to the services might be affected. Though they live in Delhi, thought they live in a Hindi speaking area, they are non-Hindi speaking sections of the population. That is the distinction I want to make. Therefore if we want to say what we mean, we must make it clear, that what is sought to be safeguard in this clause is not the interests of persons belonging to non-Hindi speaking areas but the interests of the non-Hindi speaking sections of the people. Therefore, I move amendment No. 401 and command it to the House for its consideration.

Shri Mahavir Tyagi (United Provinces: General): Sir, I do not want to take much time of the House on the issue but I want only to remind the House that this language question was one of the most controversial ones and that every time it came before the House, it entailed prolonged discussions and controversies and it was at the long end that we arrived at a compromise and unanimously passed these articles about language. Now, Sir, it is highly objectionable in my opinion to add a word to or take a word from what was agreed upon by the whole House unanimously. I can understand if there were any consequential amendments introduced by the Drafting Committee but to put a new idea altogether and change the meaning of what was agreed upon is something which I would request you kindly to look into the rule out of order. This amendment of the Drafting Committee is not in consonance with the unanimous decision of the House. Previously this was 301-E. Now, according to 301-E the President was authorised only to direct that the language spoken in certain parts of a State by..........

Mr. President : Mr. Tyagi, there is an amendment to restore the original so far as 301-E is concerned.

Shri Mahavir Tyagi : An official amendment?

Mr. President : Yes.

Shri Mahavir Tyagi : I need not say anything then. I thank the Drafting Committee for this. It is very good, Sir.

(Amendments Nos. 402, 403, 404, 405 were not moved.)

Mr. President : Article 365. Amendment No. 408 by Pandit Thakur Das Bhargva.

Pandit Hirday Nath Kunzru (United Provinces: General): On a point of order, Sir, Article 365 has been justified by the Drafting committee in the report appended to the Draft Constitution as revised by it on certain grounds. It is stated there that certain articles taken together justify the language of article 365. The articles that have been referred to are 256, 257, 353, 360 and 371. I should like to refer first to articles 256 and 257.

Shri L. Krishnaswami Bharathi (Madras: General): What is the point of order?

Pandit Hirday Nath Kunzru : The point of order is that there is nothing in these articles that is as wide as article 365. Article 365, as honourable Members will see, enables the President to declare that a situation has arisen in which the Government of the State cannot be carried on, in accordance with the provisions of this Constitution, if the Government of a State does not give effect to any directions given by the Central Executive in the exercise of any of the powers conferred on it by this constitution. This is, Sir, a question of policy. The Drafting Committee treats it as if it were a question of fact. But a reference to articles 256 and 257 will show that while the Central Executive has been empowered to issue instructions to the Provincial Executive in certain cases, yet if there is any failure on the part of the Provincial Executive to carry out the directions of the Central Executive, that will not amount to a failure to carry on the Government of a State in accordance with the provisions of this constitution. These questions were thoroughly considered when the various provisions of the Draft Constitution were discussed. Articles 353, 360 and 371 relate to the powers that might be exercised by the Central Executive or by Parliament in certain emergencies. They do not, therefore, bear on the question that I have raised. We are principally concerned here with articles 256 and 257 and what we have to see is whether the scope of articles 256 and 257 is the same as the scope of article 365. Is there anything in articles 256 and 257 that can enable the President to declare that the Government of a State cannot be carried on in accordance with the provisions of this Constitution, if a State Executive fails to carry out the instructions of the Central Executive? Difference of opinion may arise from time to time between the Central Government and the Provincial Governments and the Central Government may lawfully issue instructions to the Provincial Governments to act in a certain manner. It will be the duty then of the Provincial Governments to carry out those instructions, but it is going too far to say that if the Provincial Executive fails to carry out in every respect the instructions of the Central Executive or if the Central Executive feels that its instructions have not been fully cannot be carried on in accordance with the provisions of this Constitution and may then assume to himself all the powers of Government or take such other measures as he can under this Constitution. Some honourable Members may be of opinion that this should be done but the time for making such a change has gone. The Drafting Committee has been authorised by Rule 38-R of the Rules of the Assembly................

Shri Brajeshwar Prasad (Bihar: General): Is the honourable Member raising a point of order or delivering a speech?

Mr. President : It is a point of order. I have followed the point of order.

Pandit Hirday Nath Kunzru : To make such changes as are complementary or consequential or necessary and what we have to discuss is what the word 'necessary' means. Does it mean that if the Drafting Committee feels that the House gave a wrong decision on a question of policy then it should substitute its own judgment for that of the House or does it mean that the Drafting Committee should make such changes as are implied in certain decisions arrived at by the House but not actually provided for? I think that in this particular case, Sir, the draft of article 365 can be approved only on the supposition that the Drafting Committee can override the judgment of this House and substitute its own judgment for it. We are not concerned with seeing whether it is desirable as a question of policy or not that the Central Executive should enjoy certain powers that have not been given to it by this Constitution. All that we are concerned with at the present time is that the decision arrived at by the House on this point is carried out in a proper way.

Mr. President : As I understand the point of order which you are raising Pandit Kunzru, it is this, that this article as it is now proposed goes beyond the decisions of this House and it is not a necessary consequence of any decision which has been taken.

The Honourable Dr. B. R. Ambedkar (Bombay: General): The only question on this point of order that could arise is whether the change proposed by the Drafting Committee in article 365 is a consequential change. It is quite clear in the judgment of the Drafting Committee that this is not only necessary but consequential, for the simple reason that, once there is power given to the given to the Union Government to issue directions to the States that in certain matters they must act in a certain way, it seems to me that not to give the Centre the power to take action when there is future to carry out those directions is practically negativing the directions which the Constitution proposes to give to the Centre. Every right must be followed by a remedy. If there is no remedy then obviously the right is purely a paper right, a nugatory right which has no meaning, no sense and no substance. That is the reason why the Drafting Committee regarded that such an article was necessary on the ground that it was a consequential article.

But, Sir, I propose to say something more which will show that the Drafting Committee has really not travelled beyond the provisions as they were passed at the last session of the Constituent Assembly. I would ask my honourable Friend Pandit Kunzru to refer to article 280-A, clause (5), and article 306-B. Article 280-A, clause(5), and the provisions contained in the concluding portion of the main part of 306-B are now embodied in article 365. To that extent, article 365 cannot be regarded as a new article interpolated by the Drafting Committee, If my honourable Friend.........

Pandit Hirday Nath Kunzru : May I interrupt my honourable Friend? Article 306-B relates only to the power of the Central Executive over the Governments of the States included in Part B of the first Schedule. My honourable Friend has extended that power of the Central Executive over all State Governments.

The Honourable Dr. B. R. Ambedkar : If my honourable Friend would allow me to complete, I would like to read article 280-A, not of the present draft, but of the old, as was passed at the second reading. These are financial provisions. Clause (5) of article 280-A says: "Any failure to comply with any directions given under clause (3) of this article shall be deemed to be a failure to carry on the Government of the State in accordance with the provisions of this Constitution." Therefore, article 365 merely seeks to incorporate this clause (5) of article 280-A. My honourable Friend, if he refers again to article 306-B..............

Pandit Hirday Nath Kunzru : Will my honourable Friend allow me to interrupt him again?

The Honourable Dr. B. R. Ambedkar : I think it would be better if he speaks after I have completed my argument. If he refers to article 306-B which deals again with the power to issue instructions and directions to States in Part III which are now States in Part B of the First Schedule, he will see that the last portion says: "any failure to comply with such directions shall be deemed to be a failure to carry on the Government of the State in accordance with the provisions of this Constitution." Therefore my contention is that article 365 does not introduce any new principle at all. it merely gathers together or assembles the different sections in which the power to issue directions is given and states in general terms that wherever power is given to issue directions and there is a failure, it would be open to the President to deem that a situation has arisen in which there has been a failure to carry out the provisions of this Constitution. The only article in which such a power to deem that there has been a failure to carry on the Government in accordance with the provisions of the Constitution was not specifically mentioned were articles 256 and 257. It merely said that the Centre had the power to give directions. Therefore, if there is at all any extension of the principle embodied in articles 280-A(5) and 306-B in the new article 365 it is with regard to some of the articles in which this fact was not positively stated. My submission is that when the Constitution does say that with respect to certain articles where the power to issue directions is given, the President shall be entitled or it shall be lawful for the President to deem that there has been a failure to carry on the Government in accordance with the provisions of the Constitution, it seems difficult to justify that certain other articles in which also the power to issue directions has been given should have been omitted from the purview of article 365. The object of article 365 is to make the thing complete and to extend the express provision contained in article 280-A and article 306-B which have been passed by the House already. Therefore, I submit that there is no innovation of any kind at all. It merely makes good the omission which had taken place with regard to some of the articles which are, I submit, on the same footing as articles 280-A clause (5) and 306-B.

Pandit Hirday Nath Kunzru : May I point out that the reference by Dr. Ambedkar to articles 280-A and 306-B in the Draft Constitution as amended by the Constituent Assembly is not to the point? Article 280-A refers only to financial emergencies. The power conferred on the President under that article can be exercised only when he has declared that the financial stability or credit of India or any part thereof is threatened. The scope of that article therefore is very limited. There is another article in the Constitution which enables the president to issue a proclamation of emergency. Such a proclamation can be issued only when India is threatened by war or internal disturbances. But, these articles do not justify the extension of the power that the Central Executive may exercise in certain emergencies to all cases. Article 306-B is definitely limited to the case of states mentioned in Part B of the First Schedule. Such a provision was not made in the Constitution in reference to States mentioned in Part A of the First Schedule. Dr. Ambedkar has himself admitted that he has extended the provisions of article 306-B and article 280-A. He has generalised them and brought even the States mentioned in Part A of the First Schedule under the wider exercise of the powers of the Central Executive referred to in articles 306-B and 280-A. I submit, Sir, that the analogy is unjustified and in any case, incomplete. Whatever the Assembly may have done in the case of States mentioned in Part B of the First Schedule, it does not follow from this that the same provisions must be extended to the States mentioned in Part A of the First Schedule. I submit, therefore, that the language of article 365 goes beyond the express decisions of the Constituent Assembly. A certain difference has to be maintained between the States mentioned in Part A of the First Schedule and Part B of the First Schedule. The difference cannot be obliterated simply because the Drafting Committee desires that they should be removed.

Pandit Balkrishna Sharma (United Provinces: General): May I offer some remarks?

Mr. President : On the point of order?

Pandit Balkrishna Sharma : Yes, Sir.

Mr. President : Dr. Ambedkar has already replied.

The Honourable Dr. B. R. Ambedkar : I would like to draw your attention that even in the present Government of India Act there is a provision to the same effect contained in section 126, which empowers the Governor-General to give directions to the provinces and if it appears to the Governor-General that effect has not been given to any such directions he can in his discretion issue orders to the Governor who was to act in his discretion in the matter of carryin go out the directions given by the Governor-General. This provision, if I may say so, is very necessary because we all know--those of us who were Ministers during the time of the war-how these mere powers of giving directions turned out to be infructuous when the Punjab Government would not carry out the food policy of the Government of India. The whole Government can be brought to a standstill by a province not carrying out the directions and the Government of India not having any power to enforce those directions. This is a very important matter and I submit that the change made is not only consequential but very necessary for the very stability of the Government.

Pandit Hirday Nath Kunzru : The provisions of the Government of India Act, 1935, were before us when the Constitution was drafted and was considered by this Assembly. We have copied certain provisions from that Act, but we have deliberately omitted certain other provisions. We have for instance included in the Draft Constitution a provision relating to the breakdown of the Government of a State. We have copied that provision from the Government of India Act, 1935. We have done so deliberately and after a great deal of discussion. Yet we have omitted to enact certain other provisions of the Government of India Act, 1935, in the Draft Constitution and article 126 is one of those articles in that Act that has not been copied in the Draft Constitution. The reference therefore to section 126 of the Government of India Act, 1935 does not in any way justify the language of article 365 which is now before us.

Mr. President : The limited question which I have to decide at the present moment is whether this new article 365 goes beyond the decisions which were taken and whether it is not necessary in view of all the other articles which we have adopted. Now it seems to me that if we turn to article 280-A and also to article 257, the wording is exactly the same so far as it refers to the power of the Union. In article 257 we find--

> "The executive power of the Union shall also extend to the giving of directions to a State as to such and such matters."

and in article 280-A, clause (2)--

> "The executive authority of the Union shall extend to giving of directions to any State such and such matters."

So in both the cases the power of the Union is exactly the same and expressed in exactly the same words. Therefore the necessary consequence which is given in clause (5) of article 280-A is attracted to article 257 also, and from that point of view I think it is not a question of order. Of course it is a matter on which the House may hold a different view and it may throw it out on merits but I think this proposal is in order and you may discuss it. Pandit Bhargava has really given notice for deleting this clause. Now it is for the House whether to accept it or not.

Prof. N. G. Ranga (Madras: General): Has it been moved?

Pandit Thakur Das Bhargava (East Punjab : General): Sir, I beg to move:

> "That article 365 be deleted."

In making this motion I do really think that as a matter of fact the Drafting Committee has rather "tended the scope of its jurisdiction by enacting this provision which is one of the most important sections in this Constitution and bringing it at this last stage. Since you have been pleased to give your ruling on the point of order, I will not advert to this aspect of the case and will confine myself to the question whether in the circumstances this article 365 should be allowed to stand in the Constitution. Now as you have been pleased to observe, articles 256, 257 as also 280-A and 306-B have great relevancy when we are considering this question. In regard to article 280-A, there is no doubt that we have passed that if a situation should arise in which certain directions of the Government of India are not obeyed in regard to financial matters, the Government can hold that there is a failure to carry on the Government in accordance with the provisions of this Constitution. If you will kindly refer to article 356, you will observe that the basic provision says--

> "If the president on receipt of a report from the Governor or Rajpramukh of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by proclamation....."

So the ultimate situation in which these powers should be exercised by the President is described in these words:--

> "If a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution."

If on account of the failure to comply with any directions given in 256 or 257 or 280-A or 306-B such a situation arises, then the President has got absolute power, even if there is no report from Governor, to make an order or declare an emergency or issue a proclamation. This is a question of fact. Without such a situation arising in fact a fictitious situation can be conjured up under articles 280-A and 306-B from which this provision has now been omitted. We are now out for allowing such fiction to be raised under article 365 by virtue of which the President will be able to hold without its being actually a fact that the Government cannot be carried on in accordance with the provisions of the Constitution. On any disobedience to a particular direction, however insignificant, a situation can be held to have arisen in the words of article 365. The question now is whether we are justified in arming the Government of India with these powers, that however insignificant the direction may be, however innocent the situation may be, yet it may be authorised to hold that such a situation has arisen which can attract the provision of 365. This is the real question. To me it appears that the question resolves itself into this, whether on account of the failure to comply with any direction, such a penalty can be imposed upon a Provincial Government, because it may be that so far as the provisions of the Constitution are concerned, so far as the orderly government of the State is concerned, it may be carried on with as much smoothness as before; but there may be a failure in respect of an insignificant direction.

We have also to consider the effect of articles 256 and 257. In my humble opinion, Sir, article 256 is clothed in such general words that we cannot say that a particular dereliction of duty alone can attract this drastic provision. Article 256 runs as follows:

> "The executive power of every State shall be so exercised as to ensure compliance with the laws made by parliament and any existing laws which apply in that State and the executive power of the Union shall extend to the giving of such directions a to State as may appear to the Government of India to be necessary for that purpose."

We will come to the same situation in the case of article 257 also, because these words occur there in article 257 also, and they are very extensive, very vague, and very general, Sir, I do not visualise that our Central Government as at present constituted will ever exercise such absolute or arbitrary powers. But I should think that no Government of the day should exercise powers in an arbitrary manner. I know that the present Ministers of the Government of India are persons in whom people have confidence, and they will not abuse their powers. But we have to think of all future governments. We have to see if any Government of India manned by persons in some of whom the people may not have confidence, will not be able to abuse such provisions. That is the question at issue . My humble submission is that any Government of India consisting of twenty ministers exercising jurisdiction over various matters can give directions to a Provincial Government under the Factories Act, or under the Child Marriage Act, or under the Rehabilitation Act, or any other executive matter, and even a lawful or reasonable non-compliance can be taken advantage of capriciously to declare that a situation has arisen which has not really arisen.

Mr. President : But Mr. Bhargava, is not that an argument which cuts both ways? Suppose a Provincial Government were to ride rough-shod on a very important provision of the Gonstitution, or of law, and the Government of India were to issue instructions to carry on the Government in accordance with that provision, the the Provincial Government refuses, then how would the Government of India be able to enforce its orders?

Pandit Thakur Das Bhargava : I will just explain, Sir.

I am one of those who want that the Centre should be strong, quite strong and absolutely strong to control every provincial government. And I also can see that a situation can arise when very important directions of the Government of India may not be complied with. And therefore, I submit whenever such a situation arises, article 356 is there and the words used there are, I say, such as will certainly meet the needs of any case. The point is not that the Government cannot be carried on. The only question is if the President is satisfied that a situation has arisen when such a step is necessary, then the President can declare in any given set of circumstances, such a situation has actually arisen. My humble submission is that even if there is only the fear of such a situation arising, even then it may be said that such a situation has arisen. Sir, there are two aspects of the case, as you have been pleased to point out. Such a situation need not have actually arisen, but even then, the President may say that a situation has arisen when action under article 256 or 356 should be taken, that the Government of the State cannot be carried on in accordance with the provisions of the Constitution.

Mr. President : The point is that a situation has arisen in which the government cannot be carried on, as distinct from the fact that the government is not being carried on. Supposing the Government of the State is not carrying on the administration in accordance with the Constitution, is that covered by that?

Pandit Thakur Das Bhargava : It is more than covered. It envisages a situation in which the government is not carried on. If it is not carried on then the question does not arise. There are the powers conferred under article 352 dealing with the security of India, when there is external or internal disturbance.

Mr. President : There is no question of external or internal disturbance but it is simply a case of government not being carried on. Government can be carried on, but it is not being carried on. Is that covered by article 356?

Pandit Thakur Das Bhargava : I think the Government of India must be alive to the situation every moment, and if the government cannot be carried on, the Government of India has got the power to act. The provision envisages even the prospect of danger, not to speak of existing danger. In article 280-A more than necessary power has been vouchsafed to the Central Government as financial matters are emergent and call for peremptory action. To article 306-B we agreed, because we know that certain States are not fully developed and therefore their general control is to be tightened for ten years at least. It may be that the financial position in a State may not be so bad, yet because it is an emergent matter, more than necessary power has been given. The provinces of A class are not under the general control. Under 306-B which deals with B class provinces, the Honourable Sadar Patel has been good enough to point out why this drastic power has been given in the hands of the Government. Now this 365 has broken down the difference between A and B States. The provisions of article 256 deal with executive power and laws made by Parliament which are very fluid in nature. Thus, practically speaking, A class provinces have been brought to the level of B class States. Article 365 viewed as a penal provision creates a psychological difficulty also. Now, if we were to hold that with regard to every offence of the Indian Penal Code, from every crime omitted, the accused could be hanged, or sentenced to prison for twenty years, or to one year or only fined or even admonished, then the result will be that people will be encouraged to commit graver offences. This is the second law of Bentham's theory about punishments. I am sure that these powers under 365 are not going to be used in the smaller or lesser cases. I also know that with regard to food and rehabilitation, the provincial governments are not fully complying with the orders of the Central Government, and very grave difficulties have arisen in the country because of this. These powers under section 365 are not going to be used in the ordinary cases, and therefore there will be the tendency of the Provincial Government to defy the Government on more important matters or commit much worse offences as the consequences of big or small failures can be the same. Therefore it is necessary to apportion consequences in a proportionate measure to failures, assigning ordinary consequences to ordinary failures and serious consequences to serious failures. My submission is that the existence of this power is likely to conduce to greater difficulties.

Pandit Balkrishna Sharma : May I interrupt the honourable speaker for a minute? Provision 365 says that the President may hold that a situation has arisen in which the Government of the State can not be carried on in accordance with the provisions of the Constitution. It is not incumbent on him that on every trifling transgression by the Provisional Government he should..........

Pandit Thakur Das Bhargava : I know that, if he were to do so in every case then the carrying on of the Government of India would be impossible. But what does it mean? It means that every provincial government shall be constantly trembling before the Prime Minister. The Prime Minister of India will become not only the Grand Moghul, but he will be like a lion and the Provincial Governments will be like lambs. The Provincial Government will be in constant fear and will constantly tremble before him. Such a provision invests the Central Government with absolutely arbitrary power and I maintain in arbitrary powers should not be given to any person. Ministries and Provincial Governments will have no security or stability and will change at the whim or caprice of the Prime Minister.

In practice such a power will not be used and its non-user will encourage bigger defaults and the tendency for disintegration will increase. This drastic power is not necessary and whatever is necessary is already there in 356.

Mr. President : You have not taken note of the distinction between an actual disobedience of the order of the Government of India--which order is justified under some provision or other of the Constitution--and a state of things arising which makes it impossible for the provincial government to be carried on. There is that distinction--a case of physical impossibility of the government being carried on and a case of actual disobedience on the part of a provincial government to carry out the orders of the Government of India. This article is based upon that distinction.

Pandit Thakur Das Bhargava : Supposing there is a failure of the provincial government to comply with any of the directions given by the Government of India, will it not be declared that the future Government of the State can not be carried on in accordance with the provisions of the Constitution, if the failure is such as really brings about the situation envisaged ? In case you postulate that the Government of a State cannot be carried on according to the provisions of the clause, the Government of India can take action under article 356. If the article is to be construed that only in case of prospective failure, when the situation is likely to arise, this 356 can be applied, then certainly your objection is perfectly valid. But, Sir, if you hold that in a given set of circumstances, when the government is not being carried on in accordance with the provisions of article 356, then article 356 applies to both the contingencies then there is no occasion for enacting a measure like this, which is very arbitrary and despotic in character.

The Honourable Shri K. Santhanam (Madras: General): Sir I want to point out that this amendment is not quite appropriate. We cannot delete article 365 without leaving articles 360 and 371, as originally passed, truncated. The clauses there empowering the President to hold that there has been a failure of the Constitution have been taken out and incorporated in article 365. A wholesale deletion will go against the decisions which the House has already taken. It is only because they have brought article 365 that they have deleted the clauses in 360 and 371. A deletion therefore will not be in order but an attempt to restrict the application of article 365 to those articles will be in order. Otherwise we will be practically nullifying the original articles 360 and 371.

Shri H. V. Kamath : Sir , I move:

"That in article 365, after the word where the words 'the President is satisfied that' be inserted."

During the second reading of the Constitution I made certain observations with regard to this article in the chapter on Emergency Provisions and I tried to mellow the harshness of some of the provisions and to tone down the drastic nature of some of them. I do not at this stage, therefore, propose to say anything, on the merits of the proposition, as the House has accepted the articles dealing with the emergency provisions in the Constitution. Once they have been accepted I suppose there will be room for this article as well. The only point in my amendment is that we must make it clear in the first part of the article as to what the *modus operandi* should be before the President holds that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution. If the House will turn for a moment to article 356, there it is laid down that the President cannot act unless and until he receives a report from the Governor or Rajpramukh and he is satisfied. Of course the words "or otherwise" are also there. If the House will turn to article 360 dealing with a financial crisis or emergency there also it is made clear that the President should be satisfied that a situation has arisen whereby the financial stability or credit of India is threatened. In both these articles dealing with emergencies it is specifically and clearly provided that the President must be satisfied, in the first instance, on the report of the Governor or Rajpramukh or otherwise, in whatever way he thinks fit or necessary. In both cases, my honourable Colleges will see that unless the President is satisfied the rest of the article cannot become operative. Therefore I seek through my amendment to make a similar change in this article in conformity with the two articles to which I have just now referred and I would plead with the House that they accept my amendment, so that the article will be quite clear on this point, that once the President is satisfied that a State has failed to comply with or give effect to any directions of the Government of India, then he may hold that a situation has arisen where his special powers will have to be invoked. I, therefore, commend my amendment for the acceptance of the House.

Shri R. K. Sidhva (C. P. & Bearer: General): Sir, I move:

"That in article 365, after the words 'under any of the provisions of this Constitution' the words which is in direct contravention of the declared policy of the Union' be inserted."

Sir, I do not want to discuss this article at length, as you have very lucidly and rightly answered the arguments advanced by Pandit Kunzru and Pandit Thakur Das Bhargava. I only want to remind my honourable Friends who are opposed to this article that when we were discussing the Objectives Resolution in the very first session of the Assembly, very great stress was laid by every Member who spoke on the occasion that the Centre should be made strong and very strong. I wanted to know whether there was any Member at that time who stated that the Centre should not be made strong and everybody pleaded that the Centre should be made strong. From that point of view brought to bear on the Objectives Resolution, the Drafting Committee have borne that point in mind and amended the Constitution accordingly. While I do not want that the Provincial Government should be made a skeleton Government, still I do feel that under the conditions that are prevailing it is very necessary that the Centre should have some power in the event of the provinces going wrong. Do we for a moment think that any one believes that the Centre will exercise its power if the Provinces are functioning correctly? My amendment says that it is only "against the declared policy." I want to make that clear. Let it not be understood by Provincial Governments that in any ordinary matter the Centre is going to issue a fiat that "since you are not behaving well, your, powers are suspended". I say when the Government is able to convince the people and also the province that they have gone against the declared policy and against the Constitution and that they are going wrong, then certainly the centre should have the right to intervene. If the Centre has no right to intervene this Constitution will be a scrap of paper, and if one province goes one way and another some other way against the decision of the Centre, there will be chaos. Do we not know that so many situations are arising over price-control and finance and in so many things where we have given power under the Concurrent List and the Provincial List to the provinces? So if they squander away the money and go on controlling food and other articles as they like against the declared decision of the Government of India which voices the feelings of the people as a whole--it is they who look to the interests of the people--it will result in the provinces looking to their own provincial interests. I have seen in so many provincial matters that some of the Members look to the interests of their province alone at the cost of the people as a whole. I have seen that and therefore the Government of India is justified if they interfere, as they represent the people of the country, they are the masters of the Provincial Governments. I would use that word. If the master's orders are not obeyed, then they would be called upon the behave properly; if they do not improve, that administration should be taken over by the Central Government. The necessity of this article has been very rightly and lucidly explained to the House. It is not in contravention of what we have decided. I have tried to read into the arguments advanced by Pandit Hirday Nath Kunzru and Pandit thakur Das Bhargava. Undoubtedly, there is a change in the wording but the intention is till there: the object is there. Therefore, I contend that this article should remain and the amendment that I have moved is commended for the acceptance of the House.

Shri Brajeshwar Prasad : I rise to support article 365 as moved by the Drafting Committee. Unfortunately, Sir, I have not been able to see eye to eye with Dr. Ambedkar on most of the fundamentals of this Constitution. But here is one article, which to my mind, seems to be a very important article and with which I am in perfect concurrence.

Sir, my Friend, Pandit Thakur Das Bhargava, made an observation during the course of his speech that he is not in favour of arbitrary powers being vested in any authority in the Government of India or in the provinces. I feel that our notions about power must be revised. We have not got the proper appreciation of the difficulties of the problem of power. Power must have some relation with the facts and with the political situation prevailing in a country. The facts of Indian life cannot be ignored. In India the danger is not of arbitrary power being vested in the Centre : the danger is, as Indian history will bear ample testimony to it, that fissiparous tendencies may gather momentum and as in the past they have led to the downfall of empires and kingdoms, may lead us to same fate. I feel that if Indian unity is to be attained, if the danger of innumerable Pakistans being set up in this country is to be averted, this power must be in the hands of the President. I do not care if this article is in consonance with the other articles: I am indifferent to the argument that the drafting Committee has overstepped the limits of its authority. I know this article bears the stamp of a realistic approach. If this power is not vested in the hands of the Centre, the provincial Governments will go on acting without caring for the authority of the Central Government.

Dr. Ambedkar has referred to the case of the food situation in Punjab. He referred to the case where the Punjab Government refused to fall in line with the food policy of the Government of India. Why go so far. Even today it has been brought to our notice--birds whisper in our ears that there are recalcitrant Prime ministers today who refuse to conform to the directions issued by the Government of India. This tendency must be checked, or else Indian nationalism has no future. Today, Sir, the situation prevailing in East Punjab, the situation prevailing in West Bengal, the situation prevailing to a more or less similar extent in other provinces as well are of a dangerious character and if this power is not vested in the hands of the Government of India, there is no future for this country.

Shri B. Das (Orissa: General): I speak with sorrow and misgivings. I listened to my Friend Mr. Santhanam. But I do not think there was any necessity of article 365. Pakistan Government retained section 93 in their Government of Pakistan Act and we abolished section 93 from the Government of India Act. We know the meaning of democratic Provincial Governments-democracy in the sense of a qualified democracy--from the position of Provincial Governments under the British rule. Today we have not only introduced article 371, but the Drafting Committee suddenly in their wisdom, during the recess of a fortnight saw to it that article 365, which is nothing but section 93 of the Government of India Act, 1935, in all its nakedness and horror, had been introduced. I do not see eye to eye with my Friend Mr. Santhanam that this is necessary. I thought article 371 was enough. It gives the Government of India general powers to tighten the control over the States which are no more autonomous today, and which were never autonomous and never will be autonomous under this Constitution. Why is it that we want to look into the horrors of revolt of the States? That means failure of the President and the Cabinet. If the States get out of control and try to revolt, then it would mean that there is not that cordial relation between the Government of the Union and the States, and any body who is not a lawyer--even a layman like myself--when he reads this Constitution which we are shaping, will see that it does not leave the Provinces any power. The provinces are today glorified municipalities and corporations. If that be so, why go to the horrors of article 365? We are not going to evolve a Fascists democracy. We are going to evolve democracy. Why this fear? Why this suspicion? The President has got enough emergency powers and article 371 is ample. Do you mean to say that this Constitution denies the right to the President and the Cabinet to take over control without the introduction of this article 365? I do not think so. I think the President and the Central Cabinet have got ample reserve power to meet an emergency of the type that Pakistan Government met in taking over the Government of the West Punjab. I do not like at the fag end, when we are nearing the end and giving the fishing touches to this Constitution, to harbour the feeling in my mind that we are legislating as autocrats. I do not wish to raise the cry that we must vote down article 365. But how is it and why is it that the Drafting Committee gets all the odium of Fascism in the Fortnight's recess that we had? When we separated we felt, in spite of many shortcomings in this Constitution, that at least we have evolved a democratic Constitution. Article 365 introduces the horror of the Section 93 by which most of us suffered for many many years. I am glad that Dr. Ambedkar is present. I want him to justify his wisdom in having recourse to this new article 365.

Shri K. Hanumanthaiya (Mysore State): Mr. President, Sir, every time the question of the Centre comes up, people say that they should make the Centre strong, because the provinces misbehave and that we must always keep a vigilant eye on them. Not that I am in favour of the view of making the Centre weak, but people who have fought for democracy, people who are framing a democratic constitution, forget that if the provincial governments misbehave there are provincial legislatures to set them right. It is a sad commentary upon the psychology of most of us that we completely ignore the provincial legislatures and the people in the provinces, and attribute all virtues to the Centre and to the Government that exists in Delhi. If we scrutinise for a moment the way in which the Governments are run in the provinces and the Centre, I for one do not find that the Government at the Centre is being run on very much more efficient or honest lines than the Governments are being run in the provinces. It is far better that we take note of the facts as they are. Can we say that the Secretariat here in Delhi is being run more honestly or more efficiently than the Secretariats are being run in the provinces? It is a sad commentary, as I said before, on us that forgetting these facts we decry the regimes in the provinces and the provincial legislatures every time and praise the Government here to the skies. That is a psychology which will ultimately work to uproot democracy in this country. As a friend of mine suggested a little while ago, we are investing the Central Government with powers which it will not be able effectively to exercise or honestly make use of.

Having said this, I would like to point out that when we were fighting for freedom one of the principles on which we concentrated our mind upon in constitution-making was decentralisation of power. In this vast country, centralisation will ultimately work to the detriment of what we call "unity" itself. It is impossible for any human being or any Government to control effectively all the administration from Cape Comorin to the Himalayas. Decentralisation is a necessity. It was also the principle on which Mahatma Gandhi wanted to construct this Constitution. Of course, we have given up his ideas in many respects, and I am not quoting him for the purpose of winning sympathy for that cause. Anyway, I make this observation with all the sense of responsibility that I have certain classes and interests and communities have taken hold of the Government in the Centre and they think they will be able to carry on the Government and enjoy all the privileges that could be enjoyed by taking as much power as possible for the Centre. This is the psychology.

Shri M. Thirumala Rao (Madras: General): What do you mean by "communities"?

Shri K. Hanumanthaiya : You know it and I know it. Therefore, why question ? They think they will be able to get all power and all privileges. This is the underlying psychology and that will be the rock on which this Indian unity will break ultimately, if people do not mend their ways.

Now Sir, it is not as if I am not in favour of this article. It is the logical culmination of the kind of

Constitution-making we have been doing. We have given to the Centre-financial, executive and legislative powers--in varying degrees, to the detriment of the provinces and the units. Article 365 is merely the "operative portion" of the powers we have given. Once having conceded so many powers to the Centre, it would be illogical if we do not entrust it with the power to operate them as well. It is this, what article 365 seeks to do. But in supporting this article, I wish to sound a note of warning. Let those people who think that they are making hay while the sun shines take note of the future also. If this article is worked, as we apprehend, in the interests of the classes or the communities that have taken hold of the Government of India, people will not keep quiet. That will be the starting of trouble to break the much sought-after Indian unity and Indian nationalism.

Shri Mahavir Tyagi : Sir, I am in favour of the newly proposed article 365. I feel there is no violation of the scheme of decentralisation according to this article to this article. This article establishes links with the rest of the units. To talk of decentralisation does not mean, if I may use the word, "circumsferising" the whole State. If we want to link all the States together in a circumference, we must have a Centre. A circle cannot exist without a Centre. This article merely provides the tender links and the lines of the circumference. This rights are being given not to Ministers or States or Governments alone. Here in this Constitution, the rights of the people are being defined. When the Constitution is violated and the rights of the people denied to them in a province or State, the people will have no other course except to appeal to Parliament to their representatives though these representatives after taking the oath as representative have in actual practice nothing to do with the people except to tax them and govern them. Therefore, the people who are thus governed must have a forum or making their appeals for the redress of their grievances. This article is the security for the people that the provincial Governments will govern them properly. If they do not govern them according to the articles of this Constitution, the people must have the right to go to the Centre and appeal. The Centre alone can take a dispassionate view of things. here in the Centre there will be so many representatives from the States sitting together. They will always take a dispassionate view of things and surely, whatever action the President takes will always be considered by Parliament. Parliament is the Supreme Court of the land and therefore it must have the right to enforce the rights of the people in the various States. It is not a question of centralisation at all. This is neither centralisation nor what I could call circumferisation. The real position is that there should not be disintegration. These are the tender guarantees for the consolidation of the State. I must congratulate the Drafting Committee for introducing this provision. Although some might object to it, I support it. It is a great security of the rights of the people that the President should have the authority to intervene whenever he finds that the State Governments are not working according to the article of this Constitution.

Mr. President : I desire to point out to the Members that we are really running a race against time. As this is an important article, I have allowed so much discussion on it. But if any other Member wishes to speak on this article he will have to bear this in mind. There are other articles also to be discussed. However, tomorrow by one o' clock we have to finish all the amendments.

Shri Kuladhar Chaliha (Assam: General): This is a very important article.

Mr. President : Therefore we, have discussed it for more than an hour and a half.

Pandit Hirday Nath Kunzru : Mr. President, many honourable Members have justified the language of article 365 on the ground that everybody recognises the need for a strong Centre in the present circumstances. Sir, I am at one with all those Members who wish that the Centre should have adequate power to discharge its responsibilities. But we cannot use the need for a strong Centre as an excuse for giving any bias we like to our Constitution.

My honourable Friend Dr. Ambedkar, in defending the draft of article 365, said that it was obviously necessary, when articles 256 and 257 authorised the Central executive to issue instructions in certain cases to the State executives, that a general remedy should be provided against a failure of the State executives to carry out the instructions of the Central executive. But Dr. Ambedkar has not been quite consistent in this matter. When he was asked some time ago whether any limitation had been placed on the power of the President, that is, whether there was any provision in the Constitution requiring the President to act in accordance with the advice received by him from the Ministry, he said that the Constitution proceeded on the assumption that every authority would be prepared to play the part assigned to it in the Constitution. It could not assume that every authority would try to violate the Constitution under which it was brought into existence. But, today he has taken almost an opposite view and he wants that the power of the Centre over the provinces should be made absolute. He wants that its instructions should not be allowed to be disregarded by the provinces in any circumstances.

However, that may be, Sir, I am quite prepared to consider this question on its merits. Let us see whether there are any provisions in the Constitution, apart from article 365, that enable the Central Government to take action when a provincial Government fails to discharge its responsibilities. If, Sir, the action of a provincial Government is of such a character as to lead to misgovernment and to create the possibility of disturbances occurring in the State, it will be open to the President under article 352 to issue a Proclamation of Emergency and, when such a Proclamation has been made, he will have adequate powers to compel the provincial Government concerned to carry out the instructions of the Central Government. There may be other cases in which there may be maladministration and misgovernment in various directions, but the peace of the province may not be endangered thereby. If such misgovernment goes so far as to make either the Governor or the Rajpramukh or the President himself feel that the Government of a State cannot be carried on in accordance with the provisions of this Constitution, the President will again be able to provide the necessary corrective under article 356. But articles 352 and 356 assume a little patience on the part of the Central Executive. They can be brought into play only when the Provincial Governments show persistent disregard of their responsibilities. If the Central Government is wise, it will not dream of compelling the provincial Government to carry out its wishes in every case. Its legal power may be there; yet experience of the world and the necessity for carrying the public and the provincial governments with it will tell it that it must occasionally wink at their negligence and allow the provincial electorates and the provincial assemblies to bring about a healthy change in the situation. If, however, the provincial electorates and the provincial assemblies fail to fulfil their responsibilities and the provincial governments continue to disregard the views of the Central Government, then the Central Government will have adequate powers under this Constitution, even if article 365 is deleted, to see that the government of the country is carried on in accordance with this Constitution.

I should like, Sir, to refer to one more point before I sit down. The Drafting Committee has referred to a number of articles in this Constitution in justification of the language of article 365. Now, one of the articles so referred to is article 371 which corresponds to the old article 306B. Had that article been omitted, then there might have been some justification for article 365, but article 306B has not been omitted from this Constitution. It figures as article 371 but I have not been able to compare the languages of article 371 in the Constitution as revised by the Drafting Committee and article 306B in the Constitution as amended by the Constituent Assembly last month. If their language is the same--somebody says it is the same,--then I do not see how the Drafting Committee could refer to this article as a justification for bringing in article 365. The reference to article 371 is wholly irrelevant. There are two other articles referred to by the Drafting Committee to which I would like to refer, and they are article 353 and article 360. Article 353 deals with...........

The Honourable Dr. B. R. Ambedkar : Before my honourable Friend proceeds further. I would like to point out that the words "and any failure to comply with such directions shall be deemed to be a failure to carry on the Government of the State in accordance with the provisions of this Constitution" have been omitted from article 371 which corresponds to the original article 306B.

Pandit Hirday Nath Kunzru : Then I stand corrected in that respect. If article 365 is deleted as proposed by my honourable Friend, Pandit Thakur Das Bhargava, then the Drafting Committee can revert to the old draft of article 306 B. Apart from this, Sir, since this question has been referred to by Dr. Ambedkar, I should like to point out that article 306 B in the Constitution as amended by the Constituent Assembly, which corresponds to article 371 in the present Draft of the Constitution that we are discussing now, is of limited duration. It will remain in operation for ten years only, and this provision cannot be referred to as a justification for introducing a new provision in the Constitution that will be permanent.

Sir, I was referring to article 353 and 360 when my honourable Friend, Dr. Ambedkar, pointed out to me the change that had been made in the draft of article 306B.

Shri H. V. Kamath : May I point out that article 371 provides for a period longer than ten years also?

The Honourable Dr. B. R. Ambedkar : "Notwithstanding anything in this Constitution during a period of ten years from the commencement thereof, or during such longer or shorter period as Parliament may by law provide......"etc.

Pandit Hirday Nath Kunzru : Sir, article 353 refers only to the powers that can be exercised by the central executive and the parliament after a Proclamation of Emergency has been issued. Obviously, emergencies will last for a short time. This power therefore is not general; it has to be used only in certain circumstances of a special character. Again, article 360 refers to a situation in which the President is satisfied that the financial stability or credit of India or any part of it is threatened. In such cases, instructions can be issued to the provincial government regarding the canons of financial propriety that they should follow. This provision too can be used only in special circumstances. It is clear that it can be used only in an exceptional situation. As I pointed out, Sir, when this article was under consideration, this article was brought in towards the end of our discussions simply in order to enable the Central Government to order the Provincial Governments to give up the policy of prohibition. For all practical purposes that was the sole object of this article. (Shri T. T. Krishnamachari: 'Question'). The language is certainly wide: but I feel morally convinced that had the Provincial Governments not persisted in giving up their Excise revenue in disregard of the advice given by the Central Government article 360 would have found no place in this Constitution.

I have shown, Sir, that the Drafting Committee has justified the new article 365 by referring to many articles the operation of which will be of a limited character. None of those articles justifies the extension of the power of the Central Government to such an extent as to make it permanent and applicable in all circumstances. I think, Sir, that if my honourable Friend, Pandit Thakur Das Bhargava's amendment is accepted, no difficulty will arise. We can be go back to the position that existed before the Drafting Committee, eager to introduce as many changes as it could, suggested the insertion of the new article 365 in the Constitution. I, therefore, heartily support Pandit Thakur Das Bhargava's amendment.

Mr. President : I think we had better close this discussion on this article now.

Honourable Members : Yes, Sir.

Mr. President : We have had enough discussion and all the view points have been placed very clearly before the House. It is now for the Members to decide. We shall now go to article 372.

Shri H. V. Kamath : We have article 366 and there is my amendment No. 411. Mine is a new definition.

Shri T. T. Krishnamachari : There is no new item, Sir, referring to the Constitution.

Shri H. V. Kamath : The article as a whole has been amended by the Drafting Committee. I have got an amendment to the article, and it is consequential upon the amendments made by the Drafting Committee.

Mr. President : It is quite clear that the 'Constitution' only means 'the Constitution of India'; it cannot mean any other Constitution. I think you had better leave it to them.

(Amendment No. 412 was not moved).

Shri R. K. Sidhva : Mr. President, Sir, my amendment says:

"That article 373 be deleted."

This article relates to article 22. It says that after the commencement with in one year the President shall have power until the Parliament makes the law for article 22. I feel, Sir, that article 22 is very important. Parliament will make law within three months after the commencement of this Constitution and therefore in my opinion..........

Shri T. T. Krishnamachari : It would not do because something has to b done under clause (4) of article 22 which nobody will be able to do on the 26th of January. If we do not have this provision, the whole thing will become inoperative.

Shri R. K. Sidhva : I see the importance of it. I thought that the Ministry would be able to bring in a Bill in the Parliament within three months. If it is humanly not possible, I do not want to press.

Prof. Shibban Lal Saksena (United Provinces : General): Mr. president, Sir, I beg to move:

"That in article 373, for the words 'one year' the words 'three months' be substituted."

Sir, this article 373 is intended to give the President power as a sort of substitute for Parliament under article 22 especially clauses (4) and (7). If the new clause of Dr. Ambedkar, i.e., amendments 545 and 546 be taken as the final form in which article 22 will be in the Constitution then after the amendment is made, it will read like this :

"(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless--

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention :

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by order made by President under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of order made by President under sub-clauses (a) and (b) of clause (7)."

And clause (7) will read as follows:

"(7) The President may by order prescribe--

> (a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);
>
> (b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for such detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4)".

Thus, Sir, the powers given to Parliament in the final form of article 22 are taken by the President for one year. I think, Sir, that this is something drastic. I can understand that immediately on the 26th of January we may not be ready with the new legislation. But I should certainly think that before the budget session is over, that is by April, we should have the new law passed. I am , therefore, suggesting, not the deletion of the article as my honourable friend Mr. Sidhva has suggested, but the substitution of three months for one year. It is, of course, obvious that the present session of the Assembly will be over by the 22nd of December and it may not be possible to meet again and pass the law before the 26th of January. But, I think before the budget session ends, the new law should be passed and we should not have to wait for one year to make this law, that is till the next December or January. I personally feel that the use of the words "one year" shows to some extent the respect that the Drafting Committee pays to the liberties of the subject. This question deals with the taking away of the liberty of the subject and keeping him in detention. We do not want to leave this matter pending for one year. I think the period of three months given in my amendment is quite enough, and I think before the end of three months we should be able to provide in what circumstances the Government can detain a person for a longer period than three months. Clause (7) of article 22 gives the power to Parliament to make law prescribing and circumstances under which and the class or classes in which a person may be detained for a period longer than three months as also the maximum period for which any person may be detained. This must be decided by the Parliament and should not be left to the Executive itself. The fact of the matter is that this power is given to the Executive and we want to place some restrictions on the Executive. If we leave it to the Executive to frame the rules for a period of one year, there will be no restriction on the power of the Executive and there will be a denial of democracy and freedom. This article shows a great disrespect for the liberty of the subject. I therefore think that three months should be substituted for one year.

Shri B. Das : I am not moving amendment No. 415, Sir.

Mr. President : Amendment 418 : Mr. Kamath.

Pandit Balkrishna Sharma : I have an amendment No. 416, Sir.

Mr. President : That does not arise out of any amendment of the Drafting Committee.

Pandit Balkrishna Sharma : There is one in the subsequent List.

Mr. President : There is amendment No. 503. When we take up amendment No. 503, this will come in as an amendment to that.

Shri H. V. Kamath : Mr. President, I move. Sir, amendments 418 and 419:

"That in clause (5) of article 379, for the words 'after such commencement' the words 'on such commencement' be substituted."

I find from List IV, Sir, circulated last night, the Drafting Committee has thought better and they have accepted this amendment.

"That in clause (5) of article 379, for the words 'as the case may be, the Deputy Speaker' the words ' the Deputy Speaker, as the case may be' be substituted."

This is more or less formal amendment and if you will please, Sir, a verbal one, and I leave it to the sober judgment of the Drafting Committee.

Mr. President : Article 387, amendment No. 420.

Shri H. V. Kamath : Sir I move:

"That in article 387, the words 'and different provisions may be made for different States and for different purposes by such order' be deleted."

Sir, this article 387 deals with special provisions as to the determination of population for the purposes of certain elections. My recollection is that in the last session of the Assembly, under the corresponding original article, more power was sought to be given to the President than visualised in the present article *minus* the italicised portion. There was a full dress debate in this House and the article was later on amended so as to refer only to the determination of the population of India or any part thereof. The other matters were stated to be important enough to be left to regulation by Parliament and I believe you too intervened in the debate and assured the House, that what was contemplated was merely the determination of the population figures for the country or any part of it. The italicised portion of the new article deals with matters which are in my humble judgment, so important that they should not be left to the discretion or judgment of the President and the Executive. This portion refers to different purposes also. I do know which are the purposes that are intended here. I think this should not be left to the initiative of the President and the Executive. I move amendment number 420 and commend it to the House for its earnest consideration.

Amendment 421, I leave to the Drafting Committee. Amendment 422 : this is also a verbal amendment and I leave to the sober judgment of the Drafting Committee.

Mr. President : Article 391: amendment No. 424.

Shri H. V. Kamath : There is an amendment by Shri Thakkar bapa, No. 423, Sir.

Mr. President : There is no amendment of the Drafting Committee; you proceed with article 391, amendment No. 424.

Shri H. V. Kamath : Sir, I move :

"That in clause (1) of article 391, for the words 'amendment in' wherever they occur, the words 'amendment to' be substituted."

This amendment is also on a par with amendment 424 and I leave it to whatever fate may overtake it at the hands of the Drafting Committee.

Shri R. K. Sidhva : Mr. President, Sir, I move :

"That at the end of article 391, the following new clause be added:--

'(3) Such an amendment or amendments shall be placed within two months of the passing of such on order before Parliament for its approval.' "

Sir, this article is a very important one.

Shri T. T. Krishnamachari : May I interrupt my honourable Friend and point out to him that the President will merely be putting into the provisions of the Constitution what would be a matter of fact and that would not admit of any approval by Parliament or of even placing before Parliament because on the 26th of January, these changes must become part of the Constitution. Otherwise, these States to which these changes refer will be hanging in the balance.

Shri R. K. Sidhva : My point is this. I will just read the article as it is :

> "If at any time between the passing of this Constitution and its commencement any action is taken under the provisions of the Government of India Act, 1935, which in the opinion of the President requires any amendment in the First Schedule and the Fourth Schedule, the President may, notwithstanding anything in this Constitution, by order, make such amendments in the said Schedules as may be necessary to give effect to the action so taken and any such order may contain such supplemental, incidental and consequential provisions, as the President may deem necessary."

I refer to the First Schedule. I do not want to give any power to the President for First Schedule, which is a most contentious subject; during the last session we discussed it and postponed it for the consideration of this House. The first Schedule relates to addition or subtraction relating to the States and also the names of the States. If any additional name is to be made, could it be left to the President? Supposing Madras is to be divided, may I know if merely the President will have a power to add Andhra into this list or Maharashtra to be added to it and also to change the names of the States?

Shri T. T. Krishnamachari : Action would have been taken under the Government of India Act already before the promulgation of the Constitution.

Shri R. K. Sidhva : I feel that the change in the name of States should be in the absolute power of this Assembly. With due respect to you, I feel that this is an important matter on which the House must have a voice. Already we have received a suggestion from U.P. to change the name of the State and there is a great deal of opposition from the Members except the U.P. Members. Then again about the new provinces that are to be created, may I know whether our voices are to be stifled down, and that it should be confined to Members of the province concerned ? We should have a voice in deciding whether there should be additional provinces or separation of provinces and in the renaming of the provinces. Therefore I have formally moved this amendment. My intention is that the President should not be empowered. On the contrary it embarrasses the position of President by giving him the power on this vital matter where there is a great deal of opposition in the House and various Members.

I therefore contend that this article should be re-drafted or if the addition is to be made by tomorrow, we might make it. Or we might, by common consent, hold it over and before we disperse, just before the passing of the third reading, we might consider this subject and decide it here but it would be unfair, in my opinion, to take away my right--I express my view-on the question of naming of States and also the creation of new States. I therefore submit and request you--this is a personal appeal to you, Sir, that..........

Mr. President : This article contemplates action taken under the provisions of the Government of India Act. If a new province is created under the Government of India Act, the President may take note of that fact and act under this article. It has nothing to do with the naming of existing provinces.

Shri R. K. Sidhva : May I know whether the President will not change the name under this Constitution ?

Mr. President : Not of existing provinces but of course, if a new province is created, it will have a name. If the action has to be taken under the provisions of the Government of India Act, 1935 i.e., a province will have been created by the 26th January, under the Government of India Act, 1935, and when that province is created, the President has simply to take note of that fact and to incorporate in the Schedule.

Shri R. K. Sidhva : Parliament will have a voice in it ?

Mr. President : It is the Governor-General who acts under section 290 for creating a new province and the President has to take note of that fact and to mention that particular new province in the Schedule.

Shri R. K. Sidhva : Parliament will have a voice in it ?

Mr. President : It is the Governor-General who acts under section 290 for creating a new province and the President has to take note of that fact and to mention that particular new province in the schedule.

Shri R. K. Sidhva : That would mean under that clause the Governor-General, at the instance of Ministers, would act?

Mr. President : Of course it is entirely the Governor-General who will act on the Ministers' advice. The Governor-General is not likely to act without ascertaining the views of the Legislature or of the provinces.

Shri R. K. Sidhva : May I know whether the Governor-General will have a right to rename the provinces under that Act?

Mr. President : Not to change the names of the existing provinces but to create new provinces. If a new province is created, then the President is expected to take note of that fact and to incorporate that in the Schedule.

Shri R. K. Sidhva : That means we are precluded from expressing our views.

Mr. President : Otherwise the creation of provinces has to be held over till after the new Constitution comes into force. It comes to that. This new article has been brought in to enable new provinces to be created if conditions are created in which such action becomes possible but that would take away the right of the Governor-General to act under section 290 before even 26th January. You cannot take away the powers given to him under the Government of India Act before 26th January. That power is there under the Act.

Shri R. K. Sidhva : Before we disperse on the 26th November, could not we know ?

Mr. President : It is more than I can say.

Shri M. Thirumala Rao : That is a matter for the Legislative Assembly. We are drafting the Constitution for the future. Mr. Sidhva's amendments is entirely irrelevant because it is a matter for Parliament.

Shri R. K. Sidhva : I am particular about expressing my view.

Mr. President : What ever the Governor-General can do under the Act of 1935., he can do upto 26th January and you may take any remedy under the Act.

Shri R. K. Sidhva : There is no remedy.

Mr. President : It can come up as an amendment of the Act.

Shri R. K. Sidhva : There is no time.

Mr. President : That is why it has been introduced here to meet that particular emergency.

Shri R. K. Sidhva : I hope you will bear this in mind. This subject was before the House and the right of this House is being taken away by this clause.

Mr. President : There is no right of the House being taken away. It only enables the President to take note of the fact which has taken place in accordance with the Government of India Act of 1935.

Shri R. K. Sidhva : The right is this : In the last session we discussed this First Schedule and the question of creating new provinces. Then the matter was held over.

Mr. President : What was held over--whether the province was to be created or not? Now that is held over.

Shri Mahavir Tyagi : Sir, I hope President means the President of the Constituent Assembly, and not the 'Governmental President'.

Mr. President : There is no other President except the President of the Union.

The Honourable Dr. B. R. Ambedkar : I purpose to explain this matter in my reply. Mr. Sidhva may conclude his remarks.

(Amendment No. 427 to article 392 was not moved.)

Mr. President : Amendment No. 428--Mr. Kamath. But I think it has been accepted?

Shri H. V. Kamath : No. Sir, it is not accepted.

Mr. President, Sir, I move my amendment No. 428. But I find that this proposed clause (3) of article 392 has been re-drafted, and List IV received last night gives us the amended or revised clause. So may I relate my amendment to that, Sir ?

Mr. President : Yes.

Shri H. V. Kamath : Sir, I move:

"That in amendment No. 505 of List II to the proposed clause (3)--(now it will be No. 572 of List IV)--for the word 'before' the word 'until' be substituted."

or alternatively,

"In amendment No. 572 of List IV, in clause(3) of article 392, for the word 'before' the words 'until immediately before' be substituted."

I find, Sir, the word "before" here is not quite accurate and does not convey the exact sense of this clause. What is meant is that until the new Constitution commences--may be at sun-rise on the 26th January, that this clause means that until that very second, before 6 o'clock or sun-rise on the 26th January, the Governor-General will have these powers and exercise these powers conferred by this article. The word "before" is somewhat vague, especially when used in a Constitution, and I feel it is not quite happy. I therefore suggest that it may be substituted by the word "until". It conveys the sense better than the word "before". "Before" can mean any time before the commencement; there is no precision about it. I do not like the word "before". But I am open to correction and I am prepared to give place to men of better knowledge of the language, to more competent men, in this matter. But left to myself, I would choose the word "until" Or if the word "before should be there, I would have "until immediately before" the commencement of the Constitution. But as I said. I would leave it to the wisdom of the House and of the Drafting Committee to deal with this amendment as they like.

Then I come to the next amendment-431.

"That in item 5 of Part A of the First Schedule for the name 'Koshal Vidarbh' the name 'Madhya Pradesh' be substituted."

Sir the House will remember that when this schedule was adopted during the last session, you, Sir, told us that whatever changes might be made or sought to be made in the names of the States in Part A of the First Schedule, they will be considered during this session and the amendments that had been tabled during the last session were referred under your instructions, to the Provincial Governments.

Mr. President : It might cut short discussion if I say that I understand that the C.P. Government have recommended the name Madhya Pradesh. So perhaps no further discussion is necessary on this amendment.

Shri H. V. Kamath : Sir, there was some controversy in the papers; but if that name has been accepted, I agree there will be no necessity for further discussion. I heard that the Drafting Committee had referred it back to the Provincial Government.

Shri R. K. Sidhva : Sir, on a point of information, may I know whether the recommendation of the Provincial Government will be automatically accepted?

Mr. President : Nothing is automatically accepted. I am only saying that this is now practically an amendment of the Drafting Committee, and it will be subject to the vote. Mr. Kamath need not now press his amendment.

Pandit Balkrishna Sharma : Sir, in view of what you have said, may I know whether the recommendation sent up by the United Provinces will also automatically become the amendment of the Drafting Committee?

Shri R. K. Sidhva : Sir, that was exactly the point to which I drew your attention, whether the decision of the Drafting Committee ? I do not think it is so Sir.

Mr. President : Very well, if that is your view, we shall take it in that way.

Shri Mahavir Tyagi : We decided the other day that the names should be accepted when they come from the Provincial Government.

Mr. President : names have been recieved, but if some Members object, it is open to the House to take any name that it choses, irrespective of what the Provincial Government has sent.

Shri R. K. Sidhva : Sir, you also said that the Drafting Committee will consider the names received.

Mr. President : Very well. We now go to amendment No. 432.

Shri H. V. Kamath : Regarding my amendment No. 431, I am happy the Provincial Government has also sent up the name "Madhya Pradesh". I think it is a far happier name than "Koshal Vidarbh", and I have no doubt that the House will accept it.

As regards No. 432. I move:

"That in item 9 of Part A of the First Schedule for the name 'The United Provinces' the name 'Gangavarta' be substituted."

Shri Mahavir Tyagi : "Gangaputra." ?

Shri H. V. Kamath : No, "Gangavarta."

Shri R. K. Sidhva : May I submit that this may be held over till we know the opinion of the Drafting Committee ? You, Sir, said last time that the Drafting committee will place its proposals.

Mr. President : The proposals are there, and we shall know the opinion of the Drafting Committee before the vote is taken.

Shri H. V. Kamath : Sir, while I do feel that the name Aryavarta will be a dignified Sanskrit name,--perhaps it occurs in the Vedas too,-but at the present day, I am sure nobody will differ from me when I say that the name "Aryavarta" is applied more to the whole of India than to a particular part of it, *(hear hear)*, and I do not think at this time of day we should name any particular province on a racial basis, and the name Aryavarta has a racial odour about it.

Pandit Balkrishna Sharma : It has nothing, except a cultural odour about it.

Shri H. V. Kamath : Even if it is only cultural odour, I would not subscribe to that name, because the culture of the whole of India is one, whether you call it Aryan, or Indian or Bhartiya, it is all one. To call a particular province by the name "Aryavarta"--this is, the *home* of the Aryans, or whatever else it may mean--it will cast a reflection upon the inhabitants of the rest of India and it will, I feel, be resented by them. We should not name a particular province "Aryavarta" when the whole of India is known as Aryavarta. In one of the Vedas, I believe when the Aryans first came to India and settled down in a particular part of Northern India, they called that part Aryavarta. When they went down South the name was intended to comprise the whole of India, as we know it today. Therefore, I feel that the name Aryavarta is not very appropriate as the name of one province or State of India.

As regards the name "Gangavarta" I have it on very reliable authority--I have not read the Vedas myself but I am told--that one of the Vedas, either the Rig Veda or Sama Veda--refers to the part where the early Aryans had settled down as Gangavarta. Perhaps more often the name 'Aryavarta' is used but this name 'Gangavarta' also appears occasionally; and it has no racial or cultural bias or odour attached to it. The Ganga is the biggest and most sacred river in India, and in the estimation of all Indians it is one of the biggest and holiest rivers in the world. There is an ancient tradition about the Ganga. I would request my honourable Colleagues from the U.P. to think deeply over this name and decide whether it would not be wiser and more appropriate to call their province Gangavarta instead of Aryavarta. In our Indian tradition and history, the Ganga has played a very prominent part, and even in our philosophy, our Vedas and Puranas and our scriptures. I for one would feel proud if the U.P. is named Gangavarta and not Aryavarta, as latter applies to the whole of India.

Prof. Shibban Lal Saksena : Sir, I move:

"That in item 9 of Part A of the First Schedule, for the name 'The United Provinces' the name 'Aryavarta' be substituted."

My honourable Friend Mr. Kamath has proposed the name of Gangavarta and opposed Aryavarta, which our province wants to keep for itself. His main reason is that Aryavarta is the name of the whole of India. If he would only turn to article 1 of the Constitution he will find that the whole country is named Bharat and the name Aryavarta has been discarded. So his saying that the name Aryavarta applies to the whole of India is not correct. If our province had appropriated the name of Bharat then his argument would have been of some value but when we call ourselves Aryavarta his argument has no validity.

The whole of India was never called Aryavarta. Only Northern India, particularly the Punjab, the U.P. and Bihar were called Aryavarta. Mr. Kamath has suggested the name Gangavarta but the Ganga also goes through Bihar and Bengal besides U.P. The same argument will have to apply there. It is not an argument to say that we are trying to a appropriate name which applies to the whole country............

Shri B. Das : You force your language on me and you steal our common country's name and also for your province.

Prof. Shibban Lal Saksena : The word 'Aryavarta' has been suggested not by myself alone but by our Provincial Congress Committee consisting of 650, members who met and discussed the matter. This was their unanimous verdict that Aryavarta should be the name adopted for the province. Our provincial government have also recommended the name. I do not think this House should deny us the privilege of calling ourselves by a name which is our ancient name. If any province like the Punjab or Bihar is jealous and wants to call itself Aryavarta, that is another matter: but no other province has claimed that name and there is no reason why we should not call ourselves by that name. I hope there will be no objection raised against our province taking the name, which has been decided both by the Congress Committee and the provincial cabinet.

There was one argument advanced that if we call ourselves Aryavarta, it implies that we alone are Aryans and others are not. That is not the meaning of it. Merely because in the whole country one province wants to call itself Aryavarta, my friend says that there is something racial about it. There is no racialism about the word Aryavarta. It is an ancient name of Northern India and our province is the heart of it. I do not think this House should impose on us any name other than what we want. I hope the House will support us.

Shri T. T. Krishnamachari : Sir, this matter might be discussed tomorrow, because there is a possibility of the Drafting Committee being in a position to put in an amendment, which will probably meet with the wishes of a large body of Members of this House.

Mr. President : Yes, we shall discuss the question of names tomorrow.

Shri H. V. Kamath : Sir, I move amendments Nos. 434 to 437.

"That in sub-paragraph (3) of paragraph 9, the words beginning with 'during the period' and ending 'before such commencement' be deleted."

"That sub-para (2) of paragraph 10 be deleted,"

"That in sub-paragraph (4) of paragraph 10, for the words 'for any State' the words 'of any State' be substituted."

"That in sub-paragraph (3) of paragraph 12, for the word 'and' occurring in line 1, a comma be substituted."

Taking the last one it is purely a matter of punctuation and I leave it to the punctuating sense of the Drafting Committee.

Since I understand that a corrigendum has been issued with regard to this, I shall not press it. Coming to amendments No. 434 and 435 : these deal with salaries of Judges who might after the commencement of the Constitution be appointed judges of High Courts or of the Supreme Court. There is some distinction made between the appointment of new judges and the appointment of the old incumbents as judges of the Courts concerned. These clauses which I seek to amend by deletion of particular portions thereof, refer to the payment of the difference between the pay which they used to obtain before they were appointed judges under this Constitution and the salary of judges is laid down in the Schedule to this Constitution. I think that this distinction should not be made between judges who are newly appointed, and those who were formerly judges of the High Courts or the Federal Court but now are appointed to the High Court or the Supreme Court. This refers to a few individuals and we have already fixed the salary of our judges at four figures. On top of that if we seek to give them the difference that obtains between the old and new salaries. I think the Indian people will feel, and rightly so, that we are unduly pampering our judges. If the old incumbents do not wish to serve on the new salaries, I think that the best course would be I am loth to believe that they would refuse to serve; they are patriots as much as we are, and I think they would very willingly agree to serve on the salaries as fixed in this new schedule--but if some, owing to sheer perversity or cussedness refuse to serve in the High Courts or in the Supreme Court--the Government of the new Indian Republic should ask them to quit and make way for judges, whom I think we can find in a, fairly large number among the able members of the Bar in India--men who are willing to serve our country and people on the salaries fixed in this new schedule. Once again I say that it would be wrong on our part to pamper a few individuals who were judges before the commencement of the Constitution and whom we seek to appoint as judges of the High Courts and Supreme Court. The Constitution is meant for the whole people, and not for a few individuals that might be affected by the provisions of the Constitution. I therefore commend my two amendments to the acceptance of the House.

Mr. President : Amendment 438 has already been moved. Amendment 439--Seventh Schedule.

Shri H. V. Kamath : Sir, I move:

"That in entry 1 of List I of the Seventh Schedule, after the word 'preparation' the words 'and operation' be inserted."

The words in italics comprise the amendment of the Drafting Committee and they have sought to insert the portion relating to preparation for defence. I think, Sir, so far as military science and the art of warfare is concerned, it comprises not merely preparation but operation too, and the point of my amendment is to make this quite comprehensive and not leave any loophole for doubt, of whatever nature it may be. I therefore move that my amendment seeking to insert the word "operation" after "preparation" be accepted. The new entry would read thus: 'Defence of India and every part thereof including preparation and operation for defence...." I hope the Drafting Committee and the House will accept this amendment.

Sir, I also move:

"That in entry 65 of List I of the Seventh Schedule, before the word 'police' the words 'administrative or' be inserted."

The new entry which has been inserted here refers to Union agencies and institutions for professional, vocational or technical training, including the training of police officers. After the recruitment to the old I.C.S. was stopped, our Government inaugurated a new service called the Indian Administrative Service and the members of that service used to be trained in a school, in Delhi--and I believe they are still trained here in this school, or may be, anywhere else in India. But the fact is that there is a training school not merely for police officers but for administrative officers as well. I do not know why you want to single out police officers alone. Either mention all civil officers : or if you mention the police then the other key service, that is, the administrative service, must find a place, like the old I.C.S., and I.P. the present I.A.S. and the I.P. must be included in this entry. I therefore commend my amendment to the acceptance of the House.

Mr. President : Mr. Sidhva, which is the entry you want transferred.

Shri R. K. Sidhva : Sir, I move :

"The entry 34 of List III be transferred to List I."

Entry 34 relates to price control and it is most appropriate that this item should go to List I. Control of most of the items is from the Centre and price should be regulated from the Centre. At times there have been different kinds of prices prevailing and Provincial Governments have fixed prices without consideration, and you very well know the state of prices today. If price control is to be effective, it should be regulated through the Centre in the interests of all, and the provinces should have no voice in it. Take sugar, some provinces have fixed prices which are most incommensurate with the prices that are prevailing in other provinces, bearing in mind the railway freight and other charges. I therefore feel, if it is left to the Centre they will regulate it properly. They will see to the interests of the people and there will be no kind of bickering or bitterness among the people. You need price control, because prices is the factor which has brought about great discontent among the people and the Government of India is being blamed sometimes for no fault of their own. Well the Provincial Governments are responsible. This control item should be exclusively put in List I. I am sure the Provincial Governments will welcome it because it avoids all bickering and discontent, and if left to the Centre there everything well be regulated properly. I commend it to the acceptance of the House.

The Assembly then adjourned for Lunch till Three P.M.

The Assembly re-assembled after Lunch at Three P.M., Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the pledge and signed the Register.

Mr. Hyder Husain (United Provinces : Muslim).

Shri H. V. Kamath : Mr. President, before we proceed to the second list may I point out that there is an amendment of mine, No. 156* in the first list, to article 57 of the Constitution, which has escaped your notice?

---

*56. That in article 57, the words "subject to the other provisions of this constitution", be deleted.

Mr. President : We shall take it as moved.

Shri H. V. Kamath : I have an amendment No. 138 to article 41. I think the particular word used is patently inaccurate,--"Public assistance". It ought to be "State assistance."

Mr. President : You may leave it to the Drafting Committee to consider. We shall now take up the second list.

Shri T. T. Krishnamachari : Sir, I beg to move:

"That in article 9, after the word and figure 'article 5' the words 'or be deemed to be a citizen of India by virtue of' be inserted."

Actually, this amendment merely amplifies the wording of the article and does not need any comment.

Mr. President : Then we come to article 22.

Shri T. T. Krishnamachari : I will move the latter amendment in list IV. The number is 545. Sir, I beg to move :

"That for clause (4) of article 22, the following clause be substituted:--

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless--

> (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention :

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (7); or

> (b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7)'."

Mr. President : I move :

"That for clause (7) of article 22, the following clause be substituted:--

'(7) Parliament may be law prescribe--

> (a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4) ;
>
> (b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for such detention; and
>
> (c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4)'."

The House will understand that this is merely a restatement or clauses (4) and (7) of article 22 incorporating therein the amendment originally tabled by the Drafting Committee, No. 443, which sought to provide that Parliament may by law indicate the maximum period or prescribe the maximum period during which any person can be detained. This was a lacuna in clause (4) as it stood when the House passed it on the last occasion. The House will agree that it is a wholesome amendment in that, as clause 4(a) stood is the House passed it, there is no maximum period prescribed or could possibly be prescribed by Parliament or any authority for the period of detention of any person whom the Advisory Board considers to be a person who should be detained. The original amendment No. 443 was tabled for that purpose, but subsequently it was found that this has to be closely inter-related to clause (7) which is the operative clause under which Parliament might act. Thereafter it was found that it is better to split up the original clause (7) into three parts and clearly indicate that there will be a maximum period for which any person or any class or classes of persons can be detained by any law providing for such detention. The matter does not involve any controversy and I believe, quite a number of Members of this House who were consulted in this matter were in agreement that this provision was necessary. This is the only provision that would really make any indefinite detention impossible. I hope the House will accept the amendments.

Mr. President : There were several amendments moved yesterday such as Nos. 78, 82 and 83. Does the present amendment No. 546 cover all those points ?

Shri T. T. Krishnamachari : I may mention, Sir, that in drafting this amendment in the present form, we took the advice of those Members who moved the amendments previously referred to. While I am not in a position to commit them, it appears to me that they are satisfied that this amendment will cover all possible contingencies they had in mind.

Prof. Shibban Lal Saksena : We will withdraw our amendments.

Mr. President : You withdraw both your amendments?

Prof. Shibban Lal Saxena : Yes, Sir.

Mr. President : Then there are certain amendments to amendment No. 545 of which notice has been given. Mr. Kamath may move his amendments.

Shri H. V. Kamath : Mr. president, I beg to move amendments Nos. 579, 581 and 583.

"That in amendment No. 545 of List IV, the proviso to sub-clause (a) of the proposed clause (4) of article 22 be deleted."

"That in amendment No. 545 of List IV in sub-clause (a) of the proposed clause 22, for the word 'or' occurring at the end the word 'and' be substituted."

"That in amendment No. 546 of List IV, in sub-clause (a) of the proposed clause (7) of article 22 the words 'without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4)' be deleted."

Taking the first of these amendment first, I need not expatiate at great length thereon. I shall only point out that in clause (7) we have merely provided that Parliament may by law prescribe the maximum period for which any person or any class or classes of persons may be detained under any law providing for such preventive detention. After having said that Parliament alone will regulate this matter, no one dare say that any authority in the State will be able to override the law promulgated by Parliament. Therefore in my judgment this proviso to clause (4) is superfluous and redundant. I have no objection to 'it in principle but I think it is unnecessary. We have laid down clearly that Parliament alone is empowered to regulate the maximum period of detention under this article.

Sir, coming now to my next amendment, 581, I may say that this brief monosyllabic amendment seeks to substitute the word 'or' by the word 'and'. In this amendment I wish to make a last attempt towards safeguarding the liberty of the individual. Of course this liberty cannot be safeguarded absolutely, because there is no absolute individual liberty nor is there any absolute safeguard against the violation of such liberty by the executive. I only wish to safeguard it in so far as it does not jeopardise the security of the State. If the article stands as it is, then it would mean that if Parliament lays down in a class of cases the maximum period of preventive detention, then, even without recourse to the machinery of the Advisory Board, a person can be detained upto the maximum period to two or three years--whatever period Parliament may prescribe. Clause (4) refers to two classes of cases; in one category fall those whose cases have been referred to the Advisory Board and who have been detained for more than three months; and, in the other cases of those who have been detained in accordance with the provisions of any law made by Parliament under clause (7).

Under clause (7) Parliament can legislate with regard to the maximum period of preventive detention. I want, Sir, that in every case of preventive detention. the detenu's case must be referred to the Advisory Board,--in all cases. If the State, if the Government, wants to detain him for a longer period than three months, his case must be referred to the Advisory Board, whatever the class of case it may be; but as the clause stands, the word "or" complicates and vitiates the whole situation. Therefore I propose to substitute the words "or" by the word "and", so that every person must be detained under the law of preventive detention and that person's case must be referred to the Advisory Board in case of detention for a longer period than three months. These are the conditions which must be satisfied before the person can be detained for a period longer than three months. Therefore I suggest that the word "or" in clause (4) may be replaced by the word "and". My amendment No. 581 seeks to do that.

By amendment No. 583 I seek to delete the words "without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4)". This flows logically from the amendment which I have just moved, No. 581. This amendment No. 581 visualises the reference of all detention cases, irrespective of their category or class or circumstance, to the Advisory Board in cases of detention prolonged beyond the period of three months, and therefore the distinction sought to be made in clause (7) between the class of cases which should be referred to the Advisory Board and the other class where persons are detained without reference to the Advisory Board, goes. Therefore when all cases have to be referred to the Advisory Board in the event of a longer period than three months, the words which I have sought to delete in clause (7) are not necessary. I therefore move amendment No. 583.

The only fundamental Right which this article 22 which we discussed at such great length in the last session confers is the right to detain without trial. I do not know what sort of right it is, but whatever it may be, let us mitigate the harshness and the injustice that might result from the abuse of power. I make this last attempt to safeguard the liberty of the individual, in so far as it is not inconsistent with or does not jeopardise the security of the State. I move my amendments Nos. 579, 581 and 583 and commend them for the acceptance of the House.

Shri Ajit Prasad Jain (United Provinces : General) : Sir, I move:

"That in amendment No. 443 of List II, for the proposed proviso to clause (4) of article 22, the following be substituted:

'Provided that nothing in this clause shall authorise the detention of any person beyond the maximum period prescribed by any law under the authority conferred by Parliament under clause (7)'

I find that the redrafted clause (7) does not authorise the Parliament to make any law providing for preventive detention. On the contrary it authorises Parliament to prescribe the circumstances and the classes of cases in which persons may be detained for a period longer than three months. It will be seen that in the opening part of clause (4), ordinarily it will be open to a State Legislature or the Parliament to pass laws for preventive detention for a period upto three months, but two exceptions have been provided: one is sub-clause (a) where the case goes to an Advisory Board consisting of persons qualified to be appointed as judges of the High Court and two is sub-clause (b) when Parliament prescribes the circumstances or the class of cases where a larger period of detention may be provided. It is apparent that in many cases the law will have to be made by the State Legislature as preventive detention falls in the concurrent list. The amendment which I have given takes into account the fact that the law will have to be made by the Legislature of the State but the authority for making that law which prescribes for detention for longer than three months will be made by Parliament. That point is not clear from the amendment of the Drafting Committee and it is to make that point clear that I have moved this amendment.

Sir, I also move :

"That with reference to amendment No. 545 of List IV, for sub-clause (b) of the proposed clause (4) of article 22, the following be substituted:--

'(b) such person is detained in accordance with the provisions of any law made by a State under the authority conferred by Parliament under clause(7).'

or alternatively,

"That with reference to amendment No. 545 of List IV, for sub clause (b) of clause (4) of article 22, the following be substituted:--

'(b) such person is detained in accordance with the provisions of any law made under the authority conferred by Parliament under clause (7).' "

This amendment is connected with amendment No. 580. Here I have given two alternative drafts for the substitution of sub-clause (b) of clause (4). Sub-clause (b) at present says "such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7)." Clause (7) does not provide for the detention of any person but only prescribes the circumstances and the class or classes of cases in which a longer period may be prescribed. It is to bring clause (4) and clause (7) into line with each other that I have given notice of this amendment, but in fact I must confess that the new amendments which Mr. Krishnamachari has moved just now were not with me and I have not been able to follow exactly the implications of the amendments moved by him. If the points which I have raised in the two amendments Nos. 580 and 582 are covered by his amendments, then of course there is no force in my moving my amendments. As I was not clear I have taken the opportunity of moving these two amendments.

Shri T. T. Krishnamachari : Sir, I move:

"That in the Explanation to article 58, for the words 'For the purposes of this clause', the words "for the purposes of this article', be substituted."

"That for clause (3) of article 59, the following clause be substituted :--

"(3) The President shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provisions in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule."

"That in clause (3) of article 65, for the words 'privileges, emoluments and allowances', in the two places where they occur, the words 'emoluments, allowances and Privileges' be substituted."

"That in clause (2) of article 71, for the words 'before the date' the words 'on or before the date' be substituted."

Mr. President : There is an amendment to this, No. 584 by Mr. Naziruddin Ahmad. I am sorry there is an amendment left out by mistake, No. 617 by Mrs. Purnima Banerji.

Shrimati Purnima Banerji (United Provinces : General): Mr. President, Sir, I move :

"That in amendment No. 546 of List IV, the proposed clause (7) of article 22 be deleted."

And the Draft as it stands in Draft Constitution may stand. I mean the original one as circulated by the Drafting Committee and given in the new draft under italics--that should remain. Sir, most of us will agree with the new change made in article 22 by amendment No. 545 providing the proviso that the Advisory Board would not be able to detain a person in spite of a revision of his case for more than the period prescribed by law, but however a change is now sought to be made in clause(7). It raises a certain doubt in our minds. None of us at any stage believed that the Advisory Board would at any stage take the place of Parliament; it was only suggested that in the absence of any law if a person were to be detained for more than three months, then the matter would go before a judicial body which would look into the case and allow further detention if need be in the absence of any law prescribing detention for more than three months. The doubt we have in our minds today is that under this new amendment proposed by the Drafting Committee where it says in clause (7) that Parliament may prescribe the circumstances of detention "without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4)" makes us feel that suppose if Parliament has got the power--and we do not content that it has not--of laying down a law by which a man can be detained for more than three months, even so, if any person came under the jurisdiction of that law, would it mean that the case of that person would not go for a judicial review before an Advisory Board? Could the Parliament dispense with the constitution of Advisory Board itself ? Sir I suggest that that should not be and the process of review before an Advisory Board should be kept intact even if it may be perfectly legal for Parliament to enact a general law providing for detention beyond a period of three months. If in the Constitution you have statutorily provided for the detention of a man without trial for a period of three months you have taken away a part of the sting of that measure by providing an Advisory Board which would look into the matter and give a judicial review of the case and decide whether further detention was justifiable or not. If this is not done the man would be dealt with in accordance with the law of the land which Parliament may enact. In the new draft you have specifically said that the Advisory Board need not be consulted. If it means that in the making of the legislation that Board need not be consulted, we are in full agreement and possibly there can be no objection to it. But if it is meant that if a general law provides for the detention of persons for more than three months, and if after the general law has come into force a man innocently has got under the clutches of that law, it seems as the clause now reads in the Constitution that a detenu's case need not go to an Advisory Board at all. Parliament may be empowered not to constitute an Advisory Board at all for even the judicial review of individual cases and that you are going to leave the formation of such a Board to any future law that Parliament may make. I therefore, suggest that the wording of clause (7) of article 22 should remain as it was stated by the Drafting Committee and this particular reference of not consulting the Advisory Board which raises that legitimate doubt in our minds be removed. At no stage we though that the Advisory Board was to take the place of Parliament or was to be a law giving authoritative body. It was meant to be a judicial committee on which people of the stature of judges of the High Court would be sitting and would be a substitute for the ordinary channels of law denied to a detenu and therefore I would suggest in the drafting of this clause, the provision that such a Committee would be constituted in any case wherever a man is detained. That should be explicitly stated here and should not be left to an ambiguous interpretation. With these words, I move my amendment.

Mr. Naziruddin Ahmad : Sir, I move:

"That with reference to amendment No. 448 of List II, clause (2) of article 71 be deleted."

or alternatively,

"That with reference to amendment No. 448 of List III in clause (2) of article 71, for he words 'before the date of the decision' the words 'up to the time when the decision is communicated to him' be substituted."

The official amendment says that if the election of the President or Vice-President is set aside by the Supreme Court, then according to the amendment, the President or the Vice President will function on or before the date of the decision of the Supreme Court. I submit, Sir, that this would lead to absurdities. If the decision of the Supreme Court is passed, say, at 12 o'clock on a certain day, then according to the amendment the President or the Vice-President will function for the whole of the day on which the judgment is passed. He will function even after he ceases to have office. Although his election is set aside at 12 o'clock, yet he will be able, according to this clause, to function after 12 o'clock for the remainder of the day. My amendment would try first, to eliminate that article because the normal law would be that as soon as the judgment is passed, the President or the Vice-President loses his job and, therefore, he ceases to function altogether and therefore, a clause of this nature is not at all necessary. Even if it is necessary, it should be, I submit as in my amendment, the second part of amendment No. 584. It is to the effect that as soon as the judgment of the Supreme Court is communicated to him, he ceases to function at once and from that very moment. That is a sensible way of looking at it and the judgment should be effective as soon as it is communicated to him. Unless we are very precise as to the moment when the President or Vice-President ceases to have any office, very glaring constitutional anomalies may follow. In fact the President or the Vice-President may have to perform very important constitutional acts and the legality or propriety of the act will be very much jeopardized or be open to question if we are not very precise as to the moment when he ceased to function because anything done after that will be *ultra vires* and anything done upto that moment would be *intra vires.* In this view of the matter. I think, that the precise moment when the judgment is communicated to him should be the real operative moment from which he ceases to function. That is the reason why I have submitted this amendment.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in sub-clause (b) of clause (1) of article 72, for the words 'offence under any law' the words 'offence against law' be substituted."

Mr. Naziruddin Ahmad : Sir, I beg to move:

"That amendment No. 449 of List II be deleted."

The amendment is to the effect that the words "offence against any law" be substituted. The question is whether there can be any offence 'against' any law. The text refers to offences under any law. You may offend *against* certain moral principles, *against* society, and so forth; but you cannot offend *against* the Penal Code or any penal enactment. There is an offence under a panel law. The original text as it was, was very good. But, in our attempt to improve it. I think matters have become worse. The way at which the Drafting Committee is proceeding to change its mind makes it obligatory on our Part to agree to the Constitution being passed at once. That would have the immediate effect of stopping the activity of the Drafting Committee. Now, the danger to the Constitution is not likely to come from Members like Mr. Kamath and my humble self, because the amendments will all be rejected, but the real danger to the Constitution is likely to come from the Drafting Committee itself. In order to prevent change of mind up to the last moment. I think, the best way would be to stop all amendments and to pass the Constitution as quickly as possible. It is from this point of view that I regard this attempt to alter matters.

Mr. President : Very well. Amendment 586. That also stands on the same footing.

Amendment No. 450 :

"That in the proviso to clause (1) of article 73, after the words 'any State' the words and letter 'specified in Part A and Part B of the First Schedule' be inserted."

Mr. Naziruddin Ahmad : Sir, I move :

"That amendment No. 450 of List II be deleted."

In fact, Sir, I really oppose the amendment. The original clause (2) of article 73 dealt with the authority of Parliament to extend to any State, that in States in Parts, A, B, C, and D. But by the amendment, it is now sought to be restricted to a State specified in Part A or Part B of the First Schedule, I do not know why Parliament will cease to have any authority.......

Mr. President : Because the others are directly under Parliament.

Mr. Naziruddin Ahmad : If that is so, what is the need for specifying it here, I fail to see. In fact, it is difficult to follow the exact implications of this and the result, if any, if this is not passed. At any rate, these difficult constitutional principles are being showered upon the heads of Members with incredible speed and I do not think, I am quite sure, that this amendment is needed. In fact, if we try to introduce last-minute amendments, we do not know what anomalies we would be creating. In order to cure a malady, possibly we are introducing more maladies into the Constitution.

Mr. President : Article 81, Amendment No. 451 by the Drafting Committee. There is no amendment to this.

"That in sub-clause (a) of clause (1) article 1, for the words and figures 'article 331' the words and figures 'articles 82 and 331' be substituted."

Mr. President : Article 100. Amendment No. 452 by the Drafting Committee.

"That for clause (3) of article 100, the following clauses be substituted:--

'(3) Until Parliament by law otherwise provides, the quorum to constitute a meeting of either House of Parliament shall be one tenth of the total number of members of the House.

(4) If at any time 'during a meeting of a House, there is no quorum, it shall be the duty of the Chairman or Speaker, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum.' "

There are two or three amendments to this : No 587, Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Sir, I move :

"That in amendment No. 452 of List II, in the proposed clause (3) of article 100, for the words 'Until Parliament by law otherwise provides, the quorum' the words 'The quorum' be substituted."

Sir, the text of the amendment will make it that the quorum which will be fixed by the Constitution may again be interfered with by Parliament. I should submit that quorum is a fundamental principle and it should not be allowed to be altered by Parliament. The result would be that quorum will depend upon the mood of the Parliament for the time being. That has to be fixed on fundamental principles and on considerations of a fundamental nature. Once we lay down the quorum in the Constitution, it should be kept absolutely free from interference or alteration, by Parliament. If it is necessary to make any change, that change should be in the Constitution itself with the necessary safeguards attaching to an amendment of the Constitution itself. It is an important principle and should not be made to fluctuate with the temper of the House for the time being. In the Government of India Act, the quorum was fixed and it was not liable to be changed by Parliament. It has to be fixed in the Constitution.

Mr. President : Amendment No. 588 : Mr. Sidhva. Your amendment is that the quorum should be one-sixth and not one-tenth. That is covered by an amendment which you have already moved. I will take it along with this also.

Shri R. K. Sidhva : All right, Sir, It runs :

"That in amendment No. 452 of List II in the proposed clause (3) of article 100, for the word 'one-tenth' the word 'one-sixth' be substituted."

Mr. President : The next amendment is 589, to suspend the meeting for half an hour. Do you need a speech for that ?

Shri R. K. Sidhva : I do not want to make a speech, Sir, I formally move amendment 589:

"That in amendment No. 452 of List II, in the proposed clause (4) of article 100, after the words 'suspend the meeting' the words, 'for half an hour' be inserted."

My point is that the article as amended states that the meeting shall stand adjourned.............

Mr. President : Either adjourn the House or suspend the meeting.

Shri R. K. Sidhva : Up to what time, Sir ? Supposing there is no quorum...........

Mr. President : Until there is a quorum.

Shri R. K. Sidhva : That means for the whole day and the other Members will have to wait in the House without doing any business. That is the point. I feel this is not correct. After all, fix one hour if half an hour is not sufficient. Some time limit should be fixed.

Mr. President : That would, I think be provided in the Rules of Business, Anyhow, you have moved the amendment.

Shri R. K. Sidhva : I state, Sir, that a time limit should be there. The quorum is always provided in the Constitution and not in the Rules. We are actually providing for the number of the quorum. Therefore, the time limit should also be there in the Constitution.

Mr. President : Amendment No. 453 by the Drafting Committee. I take that as moved.

"That in article 104, for the words 'the Government of India' the words 'the Union' be substituted."

Amendment No. 454 in article 105. There is no amendment to this. I take that also as moved.

"That in clause (1) of article 105, for the words "Subject to the rules and standing orders' the words 'Subject to the provisions of this Constitution and to the rules and standing orders' be substituted."

Article 114. Amendment No. 455

"That in clause (2) of article 114 for the words 'the amendments which are admissible' the words 'whether an amendment is inadmissible' be substituted."

There is an amendment to this : No. 590 : Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Sir, I beg to move :

"That in amendment No. 455 of List II, in clause (2) of article 114, for the words 'whether an amendment is inadmissible' (*proposed to be substituted*) the words 'as to the admissibility of the amendment' be substituted."

It is practically a drafting amendment; but I submit that the draft that I am suggesting would be better in clause (2) of article 114 as it would be amended by the amendment of the Drafting Committee, the text would be that 'the decision of the person presiding as to amendments being inadmissible under this clause shall be final'. I want to make it clear that the decision of the person presiding as to the admissibility of the amendments under this clause shall be final. In fact the official amendment is that the decision of the person presiding as to whether the amendment is 'inadmissible' is final. I should submit the ruling or the decision of the person presiding as to whether it is 'admissible' or inadmissible', both, should be final and therefore it should be expressed rather more generally that the decision 'as to the admissibility of the amendment' shall be final. It will mean that his decision that the amendment is 'admissible' is final, as also his decision that it is 'inadmissible' is also final.

Mr. President : We go to article 124.

Shri T. T. Krishnamahari : if I am permitted to explain the reasons for my amendment to 124, my honourable Friend will probably be satisfied. I move :

"That in clause (1) of article 124, for the words 'seven other Judges' the words 'not more than seven other Judges' be substituted."

As it now stands 124 (1) runs thus--

"There shall be a Supreme Court of India consisting of a Chief Justice of India and until Parliament by law prescribes a larger number, of seven other Judges."

It means that immediately on the 26th January when the Constitution is promulgated, the number will have to be raised to that figure whether or not there is enough work. So the alteration has been made prescribing the maximum and leaving it to Government of the day to go on increasing the number or approach Parliament if necessary to go beyond the number 7, so that action need not be taken on 26th January when Constitution is promulgated.

Mr. President : Do you wish to move your amendment?

Mr. Naziruddin Ahmad : I beg to move:

"That amendment No. 456 of List II be deleted."

I find this is again a last minute change of mind on the part of the Drafting Committee. In the clause in question we have fixed the number as '7 other Judges' apart from the Chief Justice. The amendment would reduce the number by substituting the words 'not more than 7 other Judges'? In fact under the amendment it would be possible to appoint less than 7 judges. I do not know on what basis the original article was conceived and passed by the House. If there was not enough work, then that was the time to introduce suitable amendments in the text. The House has not been given any indication as to the exact amount of work which the Federal Court has or the Supreme Court will have on and from the 26th January next. In fact these changes should be based upon actual figures or actual estimates or work which would be in the hands of the Judges. I believe that the removal of the Jurisdiction of the Privy Council and also giving the Supreme Court the right over criminal matters, general superintendence and various other matters connected with the Constitution, there would be enough work for the Supreme Court on and from the 26th January. So this over-caution in respect of the number of Judges being placed in the discretion of the Government would be wrong. We should proceed on the basis of actual or estimated amount of work which the Court will have on and from 26th January. It is for this reason that I have asked for deletion of this amendment.

Mr. President : Article 133. There is amendment to this by the Drafting Committee--*457 and *457A. There is an amendment by Mr. Naziruddin Ahmad to 457A.

Mr. Naziruddin Ahmad : I move:

"That in amendment No. 457A of List II, in the proposed new clause (3) of article 133, for the words 'notwithstanding anything in this article, no appeal' the words 'No appeal' be substituted."

This House has been made too familiar with the expression 'Notwithstanding anything in this article or this Constitution'.

There are so many 'Notwithstandings' scattered throughout the Constitution that one ought to be extremely doubtful about how to interpret a particular clause. In fact the Drafting of the Constitution has been progressing on a hand-to-mouth basis from day to day. It is for this reason that this familiar device of 'notwithstanding anything' has been freely introduced here. The more satisfactory way would have been to draft it without these clauses so as to make them not at all necessary. I do not know why this 'notwithstanding' has been used in the context. The matter should require clarification.

Mr. President : We go to article 135. There amendment No. *458 by the Drafting Committee. There is no amendment to that. Similarly there is *459 to article 136 by the Drafting Committee. No amendment to that. Then there is article 145--there is an amendment No. *460 by the Drafting Committee. There is no amendment to that, but there were certain amendments which were moved yesterday--308 and 309. I do not know if they are covered.

Shri H. V. Kamath : My amendment No. 550, Sir.

Mr. President, I move, Sir:

"That for amendment No. 460, of List II, the following be substituted:--

"That in sub-clause (c) of clause (1) of article 145, for the words 'rights conferred by Part III' the words 'right guaranteed by article 32(1) of the Constitution' be substituted."

---

*That the proviso to clause (1) of article 133 be omitted, and for the colon at the end of the said clause a 'full stop' be substituted.

After clause (2) of article 133, the following clause be added:--

> '(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.'

*458. That in article 135, for the words, "not being a matter referred to in any of the foregoing provisions of this Chapter" the words "to which the provisions of article 133 or article 134 do not apply" be substituted.

*459. That in clause (1) of article 136, for the words "The supreme court" the words "Notwithstanding anything in this Chapter, the Supreme Court" be substituted.

*460. That in sub-clause (c) of clause (1) of article 145, for the words "enforcement of the rights" the words "enforcement of any of the rights" be substituted.

As amended, the article would read:

> "145 (c) rules as to the proceedings in the Court for the enforcement of the right guaranteed by article 32 (1) of the Constitution."

If the House will turn to article 32, as adopted by the House, my honourable Colleagues will see that clause (1) of article 32 provides that the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed. Sir, I am happy to see that in List IV of of amendments, this article has been suitably amended. The word "Rights" which occurs there in clause (4) has been suitably amended, and altered to the word "right" because under clause (1) of this article, there is only one right that is guaranteed by this article. So "right" is the right word and not "rights", as it stands in clause (4) as it is today.

Once that has been disposed of, I turn to this relevant clause of article 145. I think a reference to clause (1) of articles 32 will be adequate so far as the framing of rules as to proceedings in the Court under this article 145 is concerned. The right guaranteed under article 32, clause (1) is with reference to the enforcement of the rights conferred by the Part. Therefore, if recourse is had to this article 32, then it is obvious that what is meant is the enforcement of any of the rights conferred by the Part; and the right to enforce any of the rights conferred by Part III, is guaranteed under this article. Therefore, it will be more appropriate to say that the proceedings with regard to the enforcement of that right are referred to in this sub-clause (c) of article 145, clause (1). I therefore move amendment No. 550 of List IV and commend it to the House for its earnest consideration.

Mr. President : Amendment No. 461 by the Drafting Committee.

"That for clause (3) of article 158, the following clause be substituted:--

> '(3) The Government shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule."

There is no amendment to it.

Amendment No. 462 by the Drafting Committee, to which also there is no amendment.

"That in the proviso to article 162, for the words 'the Government of India' the words 'the Union' be substituted."

Amendment No. 463.

"That for Sub-clause (a) of clause (1) of article 168, the following sub-clause be substituted:--

'(a) in the States Bengal, Bihar, Bombay, Madras, Punjab and the United Provinces, two Houses.' "

To this there is the amendment No. 594 by Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Sir, I beg to move formally amendment No. 594

"That in amendment No. 463 of List II for the semi-colon at the end of the proposed sub clause (a) of clause(1) of article 163, a comma be substituted."

It is a drafting amendment and I leave it to the Draftsmen to consider the matter.

Mr. President : Then we come to article 181, and there are amendments Nos. 464 and 465 to it. These amendments have no amendments.

"That in clause (1) of article 181, the words 'of a State' be omitted."

"That in clause (2) of article 181, for the word 'House' the word 'Assembly' be substituted."

Then we come to article 185 and the Drafting Committee's amendment No. 466.

"That in clause (2) of article 181, the words 'of a State' be omitted."

To that amendment there is an amendment of Mr. Naziruddin Ahmad--No. 595.

Mr. Naziruddin Ahmad : Sir, I move:

"That amendment No. 466 of List II be deleted."

Clause (1) of article 185 as it stands, says: "At any sitting of the Legislative Council of a State............etc., etc." The words "of a State" are attempted to be deleted by the Drafting Committee. I submit that this expression "the Legislative Council of a State" has been used in various other contexts, and this amendment is a last-minute amendment. I would draw the attention of the House to article 182, where you have the words. "The Legislative Council of every State having such Council........" In fact there are similar expressions in........

Mr. President : Only a State having such a Council.

Mr. Naziruddin Ahmad : "The Legislative Council of a State" is not improper. I cannot find out a similar passage at a moment's notice. But if it is to be amended like this, there should be a clean sweep of all such expressions throughout the Draft Constitution in a systematic manner.

Mr. President : Article 189 and amendment No. 467 of the Drafting Committee.

"That for clause (3) of article 189, the following clauses be substituted:--

'(3) Until the Legislature of the State by Law otherwise provides, the quorum to constitute a meeting of a House of the Legislature of a State shall be ten members or one-tenth of the total number of members of the House, whichever is greater.

(4) If at any time during a meeting of the Legislative Assembly or the Legislative Council of a State there is no quorum, it shall be the duty of the Speaker or Chairman, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum.' "

There are three amendments to this, Nos. 596, 597 and 598.

Mr. Naziruddin Ahmad : Sir, I move:

"That in amendment No. 467 of List II, in the proposed clause (3) of article 189, for the words 'until the legislature of the State by law otherwise provides, the quorum' the words 'The quorum' be substituted."

I have already explained my reasons for moving this amendment.

Shri R. K. Sidhva : Sir, I formally move amendments Nos. 597 and 598.

"That in amendment No. 467 of List II, in the proposed clause (3) of article 189, for the words 'ten members or one tenth' the words 'twenty members or one-sixth' be substituted."

"That in amendment No. 467 of List II, in the proposed new clause (4) of article 189, after the words 'suspend the meeting' the words 'for half an hour' be inserted."

Mr. President : Article 191--amendments 468 and 469 of the Drafting Committee.

There are no amendments to them.

"That in sub-clause (e) of clause (1) of article 191, for the words 'the Legislature of the State' the word 'Parliament' be substituted."

"That in clause (2) or article 191, for the words 'either for India or for any such State' the words 'either for the Union or for such State' be substituted."

Article 193--amendment No. 470 of Drafting Committee, which also has no amendments.

"That in article 193, for the words 'The Legislature of the State' the words 'Parliament or the Legislature of the State' be substituted."

Article 194--amendment No. 471 of the Drafting Committee.

"That in clause (1) of article 104, for the words 'Subject to the rules and standing orders' the words 'Subject to the provisions of this Constitution and to the rules and standing orders' be substituted.' "

Shri H. V. Kamath : Sir, I have an amendment to article 194--my amendment No. 554.

Mr. President : All right.

Shri H. V. Kamath : Mr. President, Sir, I move:

"That in amendment No. 471 of List II, in clause (1) of article 194, the proposed words 'the provisions of this Constitution and to' be deleted."

Sir, my amendment seeks to restore the *status quo*, that is to say, leaves the clause as it is. I fail to see why this change is sought to be made in this clause at this late stage. As far as the Legislature is concerned, the freedom of speech of Members of the Legislature is subject to the Rules and Standing Orders of the Legislature itself. Neither Dr. Ambedkar, nor Mr. Krishnamachari has told the House why this right is sought to be restricted by the provisions of this Constitution. What exactly is meant by.

Shri T. T. Krishnamachari : I may point out to my honourable Friend that if he reads article 211 he will find that it is necessary to add these words.

Mr. President : Discussion on the conduct of Judges is ruled out.

Shri H. V. Kamath : I hope it does not refer to provisions of article 19 regarding freedom of speech. If it does, it will mean the end of freedom of speech, no freedom of speech at all, taking away by one hand what is given by the other. Well, I shall not move my amendment, as adequate light has been thrown on the matter by Mr. Krishnamachari now.

Mr. President : Then we come to article 204 and amendment No. 472 of the Drafting Committee :

"That in clause (2) of article 204, for the words 'the amendments which are admissible' the words 'whether an amendment is inadmissible' be

substituted."

There is an amendment to this, No. 599 of Mr. Naziruddin Ahmad. But it is the same as was already moved and I shall take it as having been moved.

"That in amendment No. 472 of List II, in clause (2) of article 204, for the words 'whether an amendment is inadmissible' (proposed to be substituted) the words 'as to the admissibility of the amendment' be substituted."

Then we come to article 217 and amendment No. 473 of the Drafting Committee.

"That for clause (c) of the proviso to clause (1) of article 217, the following clause be substituted:

'(c) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.' "

There is no amendment to this.

Now we come to articles 230 and 231 and amendments Nos. 474 and 475 of the Drafting Committee.

"That in article 230, after the words 'any State' 'specified in the First Schedule' be inserted."

"That in article 232, after the words 'more than one State' the words 'specified in the First Schedule' be inserted."

Mr. Naziruddin Ahmad : Sir, I formally move amendment No. 600 :

"That amendment No. 474 of List II be deleted."

The Original article had reference to "any State" but the amendment has tried to clarify "any State specified in the first schedule". I think that "any State" means a State in the First Schedule. All States are mentioned in the First Schedule in four different classes. If we refer to any State it certainly refers to the First Schedule and it seems to me that the clarification is unnecessary. Sir, I also move:

"That amendment No. 475 of List II be deleted."

The same principle is involved as in the previous amendment.

Mr. President : Amendment No. 476.

"That in article 234 after the word 'Governor' the words 'of the State' be inserted, and after the words 'High Court' the words 'exercising jurisdiction in relation to such State' be inserted."

Mr. Naziruddin Ahmad : Sir, I move:

"That amendment No. 476 of list II be deleted."

There is reference in the original article 234 to the Governor. The expression "Governor" is attempted to be clarified by the adjectival phrase "Governor of the State." "The Governor" certainly means Governor of a State in Part A of the First Schedule. There can be no Governor, except a Governor of such a State. If we say "the Governor".............

Shri T. T. Krishnamachari : My honourable Friend need not labour the question of the Governor. He might confine himself to the latter part of the amendment. Because of the qualification put on "High Court", the adjectival phrase has been added after "Governor".

Mr. President : It is better for the honourable Member to leave it there.

Mr. Naziruddin Ahmad : I shall then leave it there, Sir.

Shri T. T. Krishnamachari : Sir, I do not propose to move amendments Nos. 478 and 479. Amendment No. 556 will cover both, which I move:

"That for the Explanation to clause (1) of article 288, the following be substituted:

'Explanation.--The expression 'law of a State in force' in this clause shall include a law of a State passed or made before the commencement of this Constitution and not previously of a State passed or made before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas."

(Shri Ajit Prasad Jain did not move his amendment No. 603.)

[*The following amendment was taken as moved :

*"That in clause (2) of article 289, for the words "any property used or occupied for the purposes thereof, or any income accruing or arising therefrom" the words "any property used or occupied for the purposes of such trade or business, or any income accruing or arising in connection therewith" be substituted."]

Mr. President : Amendment 481.

"That for article 294, the following article be substituted:--

As from the commencement of this Constitution,

Succession to property, assets, rights, liabilities and obligations in certain cases.	(a) all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of the Dominion of India and all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of each Governor's Province shall vest respectively in the Union and the corresponding State and

(b) all rights, liabilities and obligations of the Government of the Dominion of India and of the Government of each Governor's Province, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations respectively of the Government of India and the Government of each corresponding State.

subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the Provinces of West Bengal, East Bengal, West Punjab and East Punjab.' "

Mr. Naziruddin Ahmad : Sir, I move:

"That in amendment No. 481 of List II in the proposed article 294

(a) comma be inserted after the word 'Constitution' in line 1,

(b) a comma be inserted after the word 'Constitution' in line 23."

These are punctuation amendments that would have to be accepted if the Drafting Committee is in a favourable mood.

[*The following amendments were taken as moved :

*"That in sub-clause (a) of clause (1) of article 295, for the words 'the Commencement of this Constitution' the words 'such commencement' be substituted."

"That in sub-clause (a) of clause (1) of article 295, for the words 'the Government of India' the words 'the Union' be substituted."

"That in article 296, after the words 'His Majesty', in the first place where they occur the words 'or, as the case may be, to the Ruler of an Indian State' be inserted."

"That in the proviso to article 296, after the words 'His Majesty' the words 'or to the Ruler of an Indian State' be inserted."

"That to article 296, the following Explanation be added:--

> "*Explanation.*--In this article the expressions 'Ruler' and 'Indian State' have the same meanings as in article 363."

"That in the proviso to clause (1) of article 316, for the words 'under an Indian state' the words under the Government of an Indian State' be substituted."

Shri T. T. Krishnamachari : Sir, I move amendments No. 557 and 558 in place of amendments No. 488, 489 and 490 :

"That in clause (c) of article 319, for the words 'as the Chairman of a State Public Service Commission other than a Joint Commission' the words 'as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission' be substituted."

"That in clause (d), for the words 'as the Chairman of any other State Public Service Commission' the words 'as the the Chairman of that or any other State Public Service Commission' be substituted."

Shri H. V. Kamath : Sir, I move:

"That in amendment No. 557, in clause (c) of article 319 for the words 'as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission (proposed to be substituted)' the words 'as the Chairman of a State Public Service Commission or as the Chairman of joint commission' be substituted."

"That in amendment No. 558 in clause (d) of article 319 for the words 'as the Chairman of that or any other State Public Service Commission' the words 'as the Chairman of any other State public Service Commission' be substituted."

These amendments of the Drafting Committee are to my mind an instance of the amazing fickleness of mind that they have displayed on his subject........

Mr. Naziruddin Ahmad : It is no longer amazing: it has been a day to day affair.

Shri H. V. Kamath : Within two days they have changed their mind twice and revised their draft. These two lists represent the fruit of their ceaseless labours. I do not know whether they would again change their mind, if you would be so good as to extend the time for amendments beyond tomorrow.......

Mr. President : You need not entertain any such fears.

Shri H. V. Kamath : But as it is I feel that the new amendments that they have suggested constitute a radical departure from the revised draft presented to us yesterday morning.

My amendments are in conformity with the amendment on article 319 which I moved yesterday. I do not see any point in the changes suggested by the Drafting Committee twice within the last few days.

Mr. President : They are only going back to the original proposition passed in the Second Reading.

Shri T. T. Krishnamachari : Going back to the Draft as approved by the House.

Shri H. V. Kamath : I do no know why they should have changed their mind about the revised draft.

Shri T. T. Krishnamahri : Because the honourable Mr. Kamath wills it otherwise!

Shri H. V. Kamath : I did not hear what he said! Anyway, I would prefer that, instead of the Chairmanship of the Union Public Service Commission or the Chairmanship of the State Public Service Commission as suggested by the Drafting Committee, the person who vacates office under clause (c)--that is to say a member other than a Chairman of the Union Public Service Commission, should be eligible for the Chairmanship of the State public Service Commission or the Chairmanship of the Joint Commission. The Drafting Committee Visualises the possibility of such a person being appointed to the Chairmanship of the Union Public Service Commission. I do not think it is quite a healthy precedent to set up that a Member of the Public Service Commission on ceasing to hold office as Member should be eligible for appointment as Chairman of the same Commission the membership of which he has vacated. He may be eligible for the Chairmanship of the State public Service Commission or the Joint Commission.

As regards the second amendment, that refers to clause (d) of article 319. It deals with the prohibition of holding office by a member other than a Chairman of a State Public Service Commission on his ceasing to hold office. My amendment seeks to make him eligible for the Chairmanship of any other State Public Service Commission but not of that particular State Public Service Commission. The Drafting Committee's new amendment makes him eligible for the Chairmanship of that or of any other State Public Service Commission. The revised draft had omitted "that State Public Service Commission". But now they are restoring the *Status quo*. It would be healthier if he were not eligible for the Chairmanship of that State Commission from which he has resigned but only for that of any Commission other than that of which he was a Member.

Sir, I move.

Mr. President : There is an amendment 491 to article 320 and there is a further amendment No. 559. I think that is an addition.

Shri T. T. Krishnamachari : Amendment 559 is an addition. It meets the objections raised in regard to that particular article.

Mr. President : We shall take that up later.

Shri T. T. Krishnamachari : That may be taken up now.

Mr. President : I take it as moved.

Amendment moved :

"That for clause (4) of article 320, the following clause be substituted:--

'(4) Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of article 16 may be made or as respects the manner in which effect may be given to the provisions of article 335'."

Shri T. T. Krishnamachari : Amendment 491 may not be necessary because Kamath has moved amendments 394 and 395--practically the same amendment.

Mr. President : Very well. Then we come to article 351--amendment No. 492.

Dr. P. S. Deshmukh : What have you done with amendment 559 to article 320, Sir ?

Mr. President : I have taken it as moved. You are referring to amendment No. 559. Do you want to speak, Dr. Deshmukh?

Dr. P. S. Deshmukh : Yes, Sir. I am sorry to say that this new amendment does not appear to be at all satisfactory. First of all, Sir, it is very circuitous in its drafting. It is like a definition known as circular. The amendment reads:

"Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of article 16 may be made or as respects the manner in which effect may be given to the provisions of article 335."

If this amendment is considered satisfactory by the representatives of the Scheduled Castes and Scheduled Tribes I would at least beg of them that my amendment to 335 may be accepted. If that is done, then the whole thing would be clearer; otherwise it will restrict the scope of this article so far as the backward classes are concerned if not have the effect of excluding them; because, from 335 already the word backward class has been by a mistake omitted and that was the reason why I proposed that the word should be added to 335.

Mr. President : You are referring to amendment 530.

Dr. P. S. Deshmukh : Yes, Sir. So if we have the amendment now, moved by Mr. T. T. Krishnamachari I would at least request my Friend Mr. T. T. Krishnamachari whether he would accept my amendment which seeks to add backward classes to 335. If this is done then of course I would have no objection because this will bring the whole matter on all fours with the other articles on the subject : otherwise it will be very curious because in article 16(4) we have the word "backward class" whereas in 335 there is no mention of backward class, and we have only two groups--the Scheduled Castes and the Scheduled Tribes. It would be absolutely incongruent and inconsistent. If my Friend, Mr. T. T. Krishnamachari would like this amendment to be accepted, I would be prepared to accept his provided he has no objection to the inclusion of backward class in 335: otherwise we would be saying one thing with respect to one provision but we would be including only the word backward class without mentioning Scheduled Castes or Scheduled Tribes. If this amendment is accepted it would mean that there is no mention or the Scheduled Castes or Scheduled Tribes either in 16(4) or in 320. But in article 335 there is nothing else but Scheduled Castes and Scheduled Tribes, and no mention of backward class.

I would like in the alternative, if my Friend is not prepared to accept my amendment, that this matter may be postponed because we may probably discuss the question this evening.

Shri T. T. Krishanamachari : I may mention that 16(4) is an enabling provision in regard to special representation for backward classes. 335 is an enabling provision in regard to taking into consideration the claims of Scheduled Tribes and Scheduled Castes. These two enabling provisions are brought together in this particular clause. It has merely been made permissible for the Governments not to consult the respective Public Service Commissions in these cases because of the mandatory character of the provision in clause (3) which requires the Public Service Commission to be consulted on every matter. So there is no question of any injustice being done either to the Scheduled Castes and Scheduled Tribes or to the backward classes or any preference being given to one over the other. I do not think my honourable Friend need have any fear that the rights of the backward classes have been taken away or anything has been done to their detriment.

Dr. P. S. Deshmukh : I do not feel at all convinced by my Friend's explanation. Article 16(4) reads:

"Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class......"

Backward class has been used as a general term as will be evident from the speech made by Dr. Ambedkar when the House was considering article 16. It includes not only Scheduled Castes and Scheduled Tribes but also other educationally and economically backward communities. Now, my honourable Friend curiously enough wants to play between 16(4) and 335. His contention is absolutely astounding. He does not want to give the same privileges which have been given to the Scheduled Castes and Scheduled Tribes so far as reference to the Public Service Commission is concerned, although according to article 16(4) these three groups of people are supposed to get the benefit of this protection. If the reservation is made and the phrase "appointment and posts" is present in article 16(4), I think it is absolutely wrong to take the view which he is taking. I know the point of view from which my Friend is looking at the whole thing. I think he will be doing a real disservice to the backward classes and in a sort of underhand way harming their interests, because when 16(4) was provided it was for backward classes as a whole without any reference to a particular group or groups. From that point of view I request that this matter be left over for the present. It would be very wrong not to add the word "backward classes" to 335.

Pandit Thakur Das Bhargava : May I put one question to my honourable Friend? How is it wrong if the Scheduled Castes and Scheduled Tribes are given more rights than the "backward classes"? They should be given more rights. Are they not more backward?

Dr. P. S. Deshmukh : I do not claim to get more rights or less rights than the backward classes. All I want is equal rights. If "backward classes" was to include not only Scheduled Tribes and Scheduled Castes as well as the economically and educationally backward other castes, and if you are now going to drive them to that situation I do not think it will be good for the nation or for you. So I should very much like that the intention to include the backward classes as additional and apart from the Scheduled Castes and Scheduled Tribes should not be given up in this way. Originally, there was no intention of even specifying these two groups and my honourable Friend who interrupted just now was the best and most vehement exponent that the word should be "backward classes" only--the other groups should not be separately and specifically referred to.

Shrimati G. Durgabai : (Madras : General): On a point of order, the Drafting Committee has not made any change in article 335. Therefore, I do not think any amendment would arise.

Mr. President : Let him finish.

Dr. P. S. Deshmukh : So my friend is really speaking against his own contention.

Pandit Thakur Das Bhargava : It is the decision of the House I want that all the amenities may be extended to all backward classes but the decision of the House is against my friend's present contention.

Dr. P. S. Deshmukh : If he is prepared to admit that it is in spite of himself, I can understand; but when he wants to lend support to the fact that it is not necessary to retain "backward classes", he is arguing against himself.

Mr. President : We have had enough discussion on this article yesterday also and today.

Now I pass on to 351. There is no amendment to 492? Then 352. There is no amendment to this either, 353--there is no amendment. 357--there is none. Then 365--amendment 496. It is being substituted by 561. Then we come to 366. There are three amendments 497, 498 and 499.

There is an amendment by Mr. Naziruddin Ahmad No. 606.

Mr. Naziruddin Ahmad : Sir, I beg to move:

"That in amendment No. 499 of List II, in the proposed new clause (18) of article 366, the following be added at the end:

'end the succeeding clauses be remembered accordingly.' "

Mr. President : It does not arise. Then we come to 367. There is an amendment No. 500. To this there is an amendment No. 607 by Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : I do not move 607, Sir.

Shri T. T. Krishnamachari : 500 will not be moved, Sir. Instead 562-A is the amendment which will be moved:

"562A. That in article 367, the following clause be added :

'(3) For the purposes of this Constitution 'foreign State' means any country which is outside the territorial jurisdiction of the Union :

Provided that, subject to the provisions of any law made by Parliament, the President may by order declare any country not to be a foreign country for such purposes as may be specified in the order.' "

"492. That in article 351, the words 'so specified' be added."

"493. That in clause(2) of article 352, the brackets and words '(in this Constitution referred to as a 'Proclamation of Emergency)' be omitted."

"494. That in clause (b) of article 353, for the words 'the Government of India or officers and authorities of the Government of India' the words 'the Union or officers and authorities of the Union' be substituted."

"495. That in sub-clause (b) of clause (1) of article, 357, for the words 'the Government of India or officers and authorities of that Government' the words 'The Union or officers and authorities thereof be substituted."

"561. That in article 365, for the words 'the President may hold' the words 'it shall be lawful for the President to hold' be substituted."

"497. That clause (12) of article 366 be omitted."

"498. That clause (13), (14), (15), (16), (17) and (18) of article 366, be renumbered as clauses (12), (13), (14), (15), (16) and (17) respectively."

"499. That after clause (17) as so renumbered, the following clause be inserted:

'(18) Proclamation of Emergency' means a Proclamation issued under clause (1) of article 352.' "

Shri H. V. Kamath : Mr. President, I move:

"That in amendment No. (with your permission, Sir, I shall substitute 562-A for 500) 562-A of List IV, the proviso to the proposed new clause (3) of article 367 be deleted."

Again, the Drafting Committee has revised the draft which they submitted to the House yesterday and today they have come out with a new draft of the article. It is a happy augury for the future of our country that the Constitution is being drafted by a team of wise men whose minds, are continually open to the light of truth, but my very limited vision does not enable me to grasp the scope of this proviso. To my mind, all States that are not within the territorial jurisdiction of the Indian Union must be regarded as foreign states. So long as we are not One World, I suppose these separate sovereign states will continue to exist and all states outside our jurisdiction should be regarded as foreign States. Of course if we want to treat any particular State on a special footing, then Parliament can legislate with regard to that State. We used to have what was called Imperial Preference, now Commonwealth preferences. Most favoured Nation clause in treaties and the like. I do not see why we should have a proviso here that the President may declare that such and such a State is not a foreign State. We may lay down generally that all States not within the jurisdiction of India are foreign States. It is not at all necessary, in my humble judgment that a proviso of this sort should be there in a delightfully vague form.

Shri R. K. Sidhva : I have given notice of an amendment to this article No. 608. I support the arguments of Mr. Kamath. I want clarification from the Drafting Committee as to why this proviso has been made. We have definitely stated yesterday that those who accept foreign citizenship their own citizenship will be affected. Those who accept citizenship of a foreign country shall not be entitled to any rights or privileges of the citizens of the Republic of India. I want to know why this power has been vested in the President to make an exception and declare any country not to be a foreign country. What is the idea behind it? We must have some information in the matter from Dr. Ambedkar. We are rather perplexed about this.

The Honourable Shri K. Santhanam : Sir, I am afraid amendment No. 562-A as drafted is defective. In the first part of it 'foreign State' is defined. In the proviso the President is authorised to declare a foreign country as such. There fore the word 'country' or State' should be used in both places. You cannot define a foreign State and allow the President to declare a foreign country. There is confusion.

Shri R. K. Sidhva : That does not solve the objection I have raised.

Mr. President : It was not said in reply to your objection.

Shri R. K. Sidhva : If we get an answer to my doubts it will be helpful.

The Honourable Dr. B. R. Ambedkar : Sir, if my friend Mr. Sidhva were to refer to clause (12) of article 366 in the draft as revised by the Drafting Committee, he will notice that there is really nothing new in sub-clause (3) of article 367 which is the subject, matter of amendment No. 562-A. Article 366 is a definition article and clause (12) there attempts to define what a foreign State is within the meaning of the Constitution. It was felt that clause (12) of article 366 as passed by the Assembly was rather cryptic and too succinct and that it was desirable to give it a more elaborate shape and form. Consequently the Drafting Committee thought that the best way would be to delete clause (12) of article 366. This is done by amendment No. 497 and it is sought to be replaced now by the present amendment No. 562-A. In the draft as presented to the House with the report the main provision was that it was open to the President to declare by an order that a certain country was not a foreign State so far was India was concerned. The main part of clause(3) of article 367 is just the same. The only thing that has been added is that Parliament may legislate on this subject and, while legislating, endow the President with power to proclaim by an order what country is a foreign State and what country is not a foreign State. It was further felt by the Drafting Committee that it was not desirable to confer this power in such rigid terms as would follow from the proviso if the words "for such purposes as may be specified in the order" were not there. The President and Parliament may then be confronted with two inescapable alternatives, either to say that a foreign country was a foreign State or to say that a certain country was not a foreign State with the result that the subjects of the country which is declared not to be a foreign State would become automatically citizens of India and be entitled to all the rights which the citizens of India are entitled to under this Constitution. It may be in the interests of this country that, while it might be desirable to recognise a certain foreign country as not a foreign State, it should be limited to such purposes as may be specified in the order, so that while making the order the President would have his position made perfectly elastic enabling him to say that while we declare that a certain country is not a foreign State the subjects of that foreign State will be entitled only to certain rights and privileges which are conferred upon the citizens of India and not to all. It is for that purpose and in order to make a provision for those other maters that we thought it desirable to transpose clause(12) of article 366 and bring it as clause(3) of article 367.

Mr. President : Article 368, amendment No. 609, Mr. Naziruddin Ahmad.

Shri T. T. Krishnamachari : No, Sir. We are not moving amendment 501 to article 368.

Sir, I move:

"That in clause (2) of article 370, for the words, brackets, letters and figure 'in paragraph (ii) of sub-clause (b) or in the second proviso to sub-clause (d) of clause (1)',the words, brackets, letters and figure 'in paragraph (ii) of sub-clause (b) of clause (1) or in the second proviso to sub-clause (d) of that clause' be substituted."

Sir, I also move :

"That in clause (1) of article 379, for the words 'shall exercise' the words 'shall be the provisional Parliament and shall exercise' be substituted."

Mr. President : There is an amendment to this, No. 610 by Mr. Sidhva.

Shri R. K. Sidhva : Sir, I move:

"That amendment No. 503 of List II be deleted."

The word that I object to is the word "Provisional" before Parliament. In that last session we had discussed this matter and we said that the word "provisional" was not dignified both for the President and also for the Parliament. After all, by an Act the Parliament comes into being from the 26th January. It may be in a sense provisional but it is a Parliament duly authorised under this Constitution, and therefore the word "provisional" does not look proper. I feel that the word "provisional" should be deleted which is now sought to be inserted.

With these words, I commend my amendment to the acceptance of the House.

Mr. President : Mr. Balkrishna Sharma, your amendments Nos. 416 and 417 relating to this article 379, do you want to move them ? You can move them if you want.

Pandit Balkrishna Sharma : Mr President. Sir, I move:

"That in clause (1) of article 379, for the words 'the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution' the words 'the Constituent Assembly of India' be substituted; and in the subsequent clauses and articles for the words 'the Constituent Assembly of the Dominion of India' wherever they occur, the words 'the Constituent Assembly of India' be substituted."

If this amendment of mine is accepted by the house, then the article will read:

"Until both Houses of Parliament have been duly constituted and summoned to meet for the first session under the provisions of this Constitution.

and from here those words should be deleted.

"The Constituent Assembly of India shall exercise all the powers and perform all the duties conferred by the provisions of this constitution on Parliament."

My reasons for proposing this amendment are that I somehow do not relish the idea of bringing in this Constitution the words "the Constituent Assembly of the Dominion of India." I think that even though those words find a place in the Government of India Act, 1935, as adapted, i.e. our Independence Act, yet in our Constitution it will be better if we avoid that phraseology. You will see Sir, that in the Preamble where we have resolved to give unto ourselves this constitution, we have done so in our right, and the Constituent Assembly there is the sole authority to give this Constitution of ourselves. Now, if we bring in these words "the Constituent Assembly of the Dominion of India", we shall be perpetuating a situation which somehow historical circumstances have forced upon us, and we do not want that that name should be there. For this reason, I have proposed that his amendment of mine should be accepted by the House so that the only words which will be used will be the Constituent Assembly of India and not the Constituent Assembly of the Dominion of India.

My second amendment is No. 417. I move :

"That in clause (2) of article 379, for the words 'the provisional Parliament' wherever they occur, the words 'the Constituent Assembly of India' be substituted."

My reason for placing this amendment before the House is that it is as the Constituent Assembly and not in any other capacity that we have taken up the supreme authority of governing the country under the Adaptation Act, and so long as a duly constituted Parliament does not come into existence, it will not be proper for us to give up the ghost. Why should we commit harakiri before time? After the Constitution comes into force, we shall disappear, but I do not see any reason why this name "the Constituent Assembly of India" should be changed to Provisional Parliament at this time; because if we retain the name, then certain functions which are being performed at present by the Constituent Assembly will continue to be performed, but it we change our name, then the interpretation might be put that we as the Provisional Parliament are quite a different body from the one which exists at present, and that, therefore, those functions which we are performing through one Secretariat should automatically come to an end. Therefore I submit that it is not the Provisional Parliament that should function in future but that the Constituent Assembly of India should continue to function in future.

The Honourable Shri K. Santhanam : Not with all the present powers.

Pandit Balkrishna Sharma : My friend Mr. Santhanam says that the Constituent Assembly loses all powers on the 26th of January. But permit me to say, Sir, that on the 26th January we cannot lose all the powers for the simple reason that,--and Mr. Santhanam will see--article 379 definitely states that until the new Parliament comes into existence, this Constituent Assembly of India shall exercise all the powers and perform all the duties conferred by the provisions of this Constitution on Parliament, and because this Constituent Assembly has to perform the functions which the future Parliament will perform, it can not be said that we shall cease to function on the 26th January. It was said that after the 26th January the Constitution making part of us will disappear. There is no doubt about it. It will disappear, but the legislative powers which we have been exercising even during this period shall continue to be vested in us and, therefore, I think we should not change the name "Constituent Assembly of India" to "Provisional Parliament" nor should we keep the name 'Constituent Assembly of the Dominion of India'. I take it that perhaps this "Dominion of India" was inserted in order to distinguish our Constituent Assembly from the Constituent Assembly of the Dominion of Pakistan, but I see no reason why we should stick to it. I have said that in our Preamble we have definitely and solemnly resolved as the Supreme Body to give this Constitution of the country. Why should we call ourselves as the Constituent Assembly of the Dominion of India? With these words, Sir, I commend these two amendments to the acceptance of the House.

Shri H. V. Kamath : Mr. President, I move, Sir, amendment No. 563 of List IV which is more or less identical with the one moved by my honourable Friend Pandit Balkrishna Sharma. I agree with him so far as the expression "the Dominion of India" is concerned; it is an unhappy expression and it should be quite adequate for our purposes to simply state "the Constituent Assembly of India". As regards the other point which my Friend Pandit Balkrishna Sharma made out, that the Constituent Assembly shall and ought to continue in existence even after the Constitution commences and the Republic is inaugurated, I feel I cannot agree with him on that issue. *(Pandit Balkrishna Sharma:* In France it was so). I do not know what the position in France was, but to my mind and so far as my reading of history goes, in all countries once the Constitution is inaugurated the Constituent Assembly has become *functus officio.* The Constitution will come into force on the 26th of January 1950 and once that happens, the functions of this Assembly in its capacity as the Constitution-making body cease, and this Constituent Assembly will only continue to function in a legislative capacity, pending elections under the new Constitution. Therefore it is correct to say that the Assembly will be the provisional Parliament, because it is only saying the same thing in other words. Today, the Assembly is called the Constituent Assembly of India (Legislative) when it engages in the functions of legislation, but under the new Constitution we want to confer on this body all the powers of Parliament and unless we call it the Provisional Parliament, the body cannot assume to itself all the powers that the Constitution seeks to confer on Parliament. Therefore, I do not think that the second point which my honourable Friend, Pandit Balkrishna Sharma made out is correct. I therefore move amendment No. 563 of List IV and commend it to the House for its acceptance though on somewhat different grounds than the one suggested by Pandit Balkrishna Sharma.

I move:

"That with reference to amendment No. 503 of List II, in clause (1) of article 379, for the words 'the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution' the words 'the Constituent Assembly of India' be substituted."

Mr. President : There are two other amendments in List IV.

Shri T. T. Krishnamachari : May I suggest that in considering article 379 amendment No. 564 might also be taken.

Mr. President : Yes. I take it as moved:

"That in clause(5) of article 379, for the words 'after such commencement' the words 'on such commencement be substituted."

There are articles 385, 388 and 392 and there are no other amendments to the amendments of the Drafting Committee.

"565. That in article, 385, for the words 'such commencement' the words 'the commencement of this Constitution' be substituted."

"566. That in clause (1) of article 388, for the words 'The President of the Union', in the two places where they occur, the words 'The President of India' be substituted."

"504, That in clause (2) article 388, for the words 'the provisional Legislature' the words 'the Legislature' be substituted."

"571. That in article 390, for the words 'out of such fund' the words 'out of either of such Funds' be substituted."

Shri H. V. Kamath : There is amendment No. 611.

Shri T. T. Krishnamachari : We are considering amendments that appear in List IV and not those appearing in List II.

Shri H. V. Kamath : My amendment relates to List VI.

Mr. President : I am now taking List IV. I am taking the amendments to article 388.

Shri T. T. Krishnamachari : I am not moving 392 as it appears in List II and amendment No. 505 is not being moved and instead of that 572 is being moved.

"572. That for clause (3) of article 392, the following clause be substituted :

'(3) The powers conferred on the President by this article, by article 324, by clause (3) of article 367 and by article 391 shall, before the commencement of this Constitution, be exercisable by the Governor General of the Dominion of India.' "

Mr. President : So I take it that this 505 is replaced by 572.

Shri T. T. Krishnamachari : Yes, Sir.

Mr. President : There is an amendment to 572 standing in the name of Mr. Kamath, Amendment No. 573.

Shri Mahavir Tyagi : Sir, I could not follow Mr. Krishnamachari's reply.

Mr. President : He only suggested that instead of 505 the Drafting Committee would move 572 and notice is given of that. He is only substituting it.

Shri H. V. Kamath : My amendment No. 573 is only a verbal amendment.

Mr. President : These are all the amendments in List IV. I shall take up the remaining amendments in List IV and there are certain other amendments which have come in later and we shall take them up tomorrow. I have received requests from two honourable Members--one from Shri A. V. Thakkar and another from Prof. Shibban Lal Saksena. Shri Thakkar wants an amendment to clause (6) of article 238 regarding the appointment of a Minister for Tribal welfare in Madhya Bharat, Rajasthan, Travancore-Cochin and Vindhya Pradesh etc. This is a new amendment altogether which would not ordinarily be taken but if the Drafting Committee has no objection, I can permit that, but it depends upon the Drafting Committee. I understand that the Drafting Committee would like to consult the states Ministry before they can agree to anything like this. So we can do it tomorrow if by that time you have made up your mind.

The Honourable Shri K. Santhanam : In that case it must be brought in by the Drafting Committee and not by an individual Member.

Mr. President : If they agree, they might.

Pandit Hirday Nath Kunzru : What has the agreement of the Drafting Committee got to do with the matter. It may or may not accept my honourable Friend's amendment, but it is for you, Sir, to decide whether it should be moved.

Mr. Presiden t: We have so far taken only amendments which are amendments to amendments of the Drafting Committee. This is not an amendment to any amendment moved by the Drafting Committee and so ordinarily under that rule I would have to rule it out, but I am making a point in favour of the amendment of Mr. Thakkar especially if the Drafting Committee after consulting the States Ministry finds that it can accept it at that stage we can take it.

Prof. Shibban Lal Saksena : It is at your discretion.

Pandit Hirday Nath Kunzru : Do you permit Mr. Thakkar to move his amendment whatever the view of the Drafting Committee may be ? It may reject that amendment, but let Mr. Thakkar place that amendment before the House.

Mr. President : I have not allowed any amendment which does not arise out of the amendments of the Drafting Committee so far.

Shri T. T. Krishnamachari : The amendment may be accepted, but we will have to ask our advisers whether it would fit in and probably if we get their reply in time we shall finally decide that tomorrow.

Mr. President : Prof. Shibban Lal Saksena wants to move an amendment which came in rather late. So, that is out of time. But, otherwise, it is a valid amendment. It says that it refers to one of the clauses relating to language which clause was adopted as a matter of compromise and that some change has been introduced by the Drafting Committee at this state and that he would like to move that amendment.

The Honourable Shri K. Santhanam : The provisions in the rules give you no option, Sir. They are absolutely mandatory. It is said that no other amendment shall be moved.

Mr. President : This is an amendment to an amendment; it was given late.

The Honourable Shri K. Santhanam : I am only referring to the other amendment.

Mr. President : I said, then I should have to rule it out unless the Drafting Committee is prepared to accept it.

Shri Mahavir Tyagi : The amendment is important from the point of view that it pertains to an agreement and therefore the Drafting Committee might reconsider it. I would appeal to you also, Sir. After all, the Drafting Committee's amendments have come as a surprise on us all; especially on matters of compromise and agreements, no amendment should have been allowed. This is an important matter and I would therefore request you to kindly consider.....

Mr. President : Which is your amendment, Mr. Shibban Lal Saksena? What is the number of the amendment?

Prof. Shibban Lal Saksena : It is not printed here. I gave it yesterday; but if was ruled out because it was late. It is not in the List. My amendment is "that for clause (3) of article 348, the original clause (3) be substituted."

Mr. President : He wants to substitute the original article as it was passed in the Second Reading stage.

Prof. Shibban Lal Saksena : Not the whole article; clause (3) only, Sir.

Shri Mahavir Tyagi : Many of the Members agree with Prof. Shibban Lal Saksena.

Mr. President : The amendment is that clause (3) of article 348, be restored in the form in which it was passed in the Second Reading stage. We shall consider this tomorrow.

The Honourable Shri Purushottam das Tandon (United Provinces: General): May I have a word, Sir, before you rise?

Mr. President : Yes.

The Honourable Shri Purushottam Das Tandon : So far as this amendment of Prof. Shibban Lal Saksena is concerned, I desire to point out that even in case it is not permitted technically as an amendment--because it was not delivered to the office in time, even then I submit that the whole proposition, a new proposition, brought in by the Drafting Committee can be opposed. I was thinking of opposing it. I did not move any amendment; but I reserved to myself the right of opposing anything moved in this House. That right cannot be taken away from me and I think that I could oppose the Drafting Committee's amendment.

Mr. President : That of course is clear. Every amendment of the Drafting Committee or of any other Member may be opposed and voted down.

The Honourable Shri Purushottam Das Tandon : Then, it comes to the same thing. If my opposition succeeds, the result would be that the original proposition would be restored. If you accept Prof. Saksena's amendment for procedural purposes, we can discuss that amendment because that also desire the restoration of the original clause.

Mr. President : What the effect of that Opposition will be, will also be a matter for consideration, if it succeeds.

The House will now stand adjourned till ten o' clock tomorrow.

Shri R. K. Sidhva : Will you apply the guillotine, Sir, tomorrow?

Mr. President : Yes, at 11.30 I shall apply the guillotine and allow Dr. Ambedkar to reply and then there will be voting.

The Assembly then adjourned till Ten of the Clock on Wednesday, the 16th of November, 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME XI

***Wednesday, the 16th November* 1949**

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION--*(Contd.)*

Mr. President : We shall now take up......

Mr. Naziruddin Ahmad (West Bengal : Muslim): I have a point of order. After the revised Draft Constitution was available to us, a large number of corrections in the shape of list of corrigenda was supplied--that is List No. 1, and as I understand the Constitution as it was accepted by the House for preliminary purposes, the revised draft was accepted subjected to corrections in List No. I. After that, on the same day, i.e., the 14th of this month another list was supplied i.e., List II. Then yesterday another big list was supplied--i.e., List III. The total number of changes sought to be introduced by these lists well exceed 200. I would like to know whether the decision of the House that the revised Draft Constitution must be taken into consideration subject to these correction lists, does also apply to corrigenda Nos. II and III. They came to us after our decision to accept the Draft subject to corrigenda list No. I. In other words, whether corrigenda II and III have any retrospective effect. If they are to be given retrospective effect, this will open up a great deal of difficulties. Some amendments are not merely formal but substantial. That would affect the rights of Members to give notices of amendments with reference to these. They have been delivered day before yesterday and yesterday after the decision was taken. What is more, some of my amendments which I did not move have been stolen and incorporated in these final corrigenda lists.

Mr. President : Do you object even to those corrections which have been stolen from your amendments?

Mr. Naziruddin Ahmad : No. I am extremely grateful to the Drafting Committee for doing me this honour.

Mr. President : As I understand, the corrections are only corrections, that is to say, they represent what was there, and which was not in the printed thing because of printer's mistake. I understand the correction is only to that and nothing more. Therefore all the corrections must be taken as part of the Constitution, as reported by the Drafting Committee.

Amendment of Article-*(Contd.)*

Mr. President : I will now go through the other amendments quickly, of which we have got notice here. I shall take up now List IV.

There is amendment No. 548 to article 32, and that is by the Drafting Committee.

An Honourable Member : List No. IV?

Mr. President : Yes. We finished List II yesterday, and I am now going to take up amendments in List IV.

Dr. P. S. Deshmukh (C.P. & Berar : General): What about List III?

Mr. President : List III I am not taking up, because it came out of time.

Dr. P. S. Deshmukh : But List III is only a small list, Sir.

Mr. President : But List III came after time.

Dr. P. S. Deshmukh : Sir, there was only a slight delay, and in view of the fact that we are considering most of the amendments, that also may please be considered.

Mr. President : As I said, I would allow any particular amendment if any Member insisted upon it, on its merits, but the List, as a list, I would not take.

Dr. P. S. Deshmukh : Sir, I mean only amendment No. 530 of List III.

Mr. President : That we discussed yesterday.

Dr. P. S. Deshmukh : Shall we take it as having been moved?

Mr. President : Yes, I take now, List IV and amendment No. 548 to article 32. That is by the Drafting Committee. I do not see there is any amendment to that amendment. So I take it as moved:

"That in clause (4) of article 32, for the word 'rights' the word 'right' be substituted."

Then article 48, and amendment No. 549. Now, this is an amendment which covers the amendment which has been moved by Professor Shibban Lal Saksena.

Prof. Shibban Lal Saksena (United Provinces: General): I withdraw that amendment.

Mr. President : You withdraw that amendment, and we accept this in place of that No. 549 reads:

"That in article 48, for the words 'for improving the breeds of milch and draught cattle including cows and calves and for prohibiting their slaughter' the words 'for preserving and improving the breeds and prohibition the slaughter of cows and calves and other milch and draught cattle' be substituted"

Shri T. T. Krishnamachari (Madras: General): May I suggest that article 106 and amendment to that in List VII may be taken up?

Mr. President : In place of this?

Shri T. T. Krishnamachari : No, it is an independent one.

Mr. President : I will be coming to that later.

Article 148, amendment No. 551. There is an amendment to that, No. 618. I think that is the latest amendment of the Drafting Committee?

Shri T. T. Krishnamachari : Yes, Sir.

Mr. President : Which shall I take? Shall I take No. 618?

Shri T. T. Krishnamachari : No. 618 is the final amendment.

Mr. President : There are three amendments to article 148 i.e. 551, 552 and 553.

Shri T. T. krishnamachari : But we have dropped all that and amendment No. 618 is the final one.

Mr. President : There is only one amendment?

Shri T. T. Krishnamachari : Yes.

Mr. President : And we leave the other clauses as they are?

Shri T. T. Krishnamachari : Yes, Sir.

Mr. President : Amendment No. 618 of List VI:

"That for clause (5) of article 148, the following clause be substituted:

'(5) Subject to the provisions of this Constitution and of any law made by Parliament, the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor-General shall be such as may be prescribed by rules made by the President after consultation with the comptroller and Auditor General.' "

Mr. President : There is amendment No. 593 to this, of Shri Raj Bahadur.

Shri T. T. Krishnamachari : No. 593 will drop out Sir, because of this amendment. That will no longer be applicable because of this amendment.

Shri Raj Bahadur (United State of Matsya): I do not want to move it.

Mr. President : Then I come to article 222, and amendment No. 555 of the Drafting Committee. There is no amendment to that, by any Member.

"That in clause (1) of article 222, after the words 'The President may' the words 'after consultation with the Chief Justice of India,' be inserted."

Mr. President : Then article 288--amendment No. 556. That is also by the Drafting

Committee. It was moved yesterday.

Article 319, amendment 557.

Shri T. T. Krishnamachari : That was also moved yesterday.

Mr. President : No. 558 was moved yesterday, also 559. Then we come to article 347 and amendment No. 560.

Shri R. K. Sidhva (C.P. & Berar : General): What about Nos. 557 and 558 ?

Mr. President : They were moved yesterday. We now come to article 347. Amendment 560.

"That for article 347, the following article be substituted:

> '347. *Special provision relating to language spoken by a section of the population of a State.*--On a demand being made in that behalf, the President may, if he is satisfied that a substantial proportion of the population of a State desire the use of any language spoken by them to be recognised by that State, direct that such language shall also be officially recognised throughout that State or any part thereof for such purpose as he may specify.' "

Dr. P. S. Deshmukh : Sir, before you proceed further, may I request you to allow me to move amendment No. 531 which is consequential to No. 530 ? I will only formally move it from List III. It is a consequential amendment, and if this is accepted, that will be necessary.

Mr. President : I will take that as moved. When it comes to voting, remind me. I take it as moved.

Dr. P. S. Deshmukh : It is about an additional article 340A.

"That after article 340, the following new article be inserted:--

> '340A. (1) The President may after consultation with the Governor or Rajpramukh of a State, by public notification, specify the castes, communities or parts of, or groups within castes or communities which shall, for the purposes of this Constitution, be deemed to be 'Backward Classes' in relation to that State.
>
> (2) The Parliament may, by law, include in or exclude from the list of Backward Classes, specified in a notification, issued under clause (1) any caste or community or part of or group within any caste or community but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.' "

The Honourable Shri K. Santhanam (Madras: General): Sir, it is not an amendment, but only a reversion to the original article. Amendment No. 531 is not really an amendment, because it only seeks to retain the original article.

Mr. President : That is not exactly the case, there are some changes; though there is no change in the substance there is a slight change in the wording.

Well then, we come to amendment No. 605, and that is in the name of Mr. Naziruddin

Ahmad.

Mr. Naziruddin Ahmad : I do not wish to move it, Sir.

Mr. President : Article 379.

Shri T. T. Krishnamachari : Sir, we are accepting amendment No. 418 and so No. 564 need not be moved.

Dr. P. S. Deshmukh : Sir, as a last request I would submit that there is only one amendment I am rather keen on moving and that is No. 535 to article 379.

Mr. President : No, I do not think I can allow that amendment to be moved. It is altogether a new article and it involves a complete reversal of what is contained in those articles. I cannot allow that, I am sorry.

Then we come to article 388, and there is amendment No. 566. Mr. Krishnamachari ?

Shri T. T. Krishnamachari Yes, all those amendments, Nos. 566 to 570 are moved.

"That in clause (1) of article 388, for the words "the President of the Union", in the two places where they occur, the words "the President of India" be substituted."

"That in the first proviso to clause (1) of article 388, for the words "mentioned in this article" the words "mentioned in this clause" be substituted.'

'That in the first proviso to clause (1) of article 388, for the words "representing a State" the words "representing a Province or. as the case may be, a State" be substituted.'

'That in the second proviso to clause (1) of article 388, for the words "representing a State" the words "representing a Province or a State" be substituted.'

'That in the second proviso to clause (1) of article 388, for the words "Legislative Assembly of that State" the words "Legislative Assembly of that Province or of the corresponding State or of that State, as the case may be," be substituted.'

Mr. President : Article 388, amendments Nos. 611 and 621.

(Amendment No. 611 was not moved.)

Shri H. V. Kamath (C.P. and Berar: General): Sir, I would like to move amendments Nos. 621, 622 and 623.

Mr. President : Yes.

Shri H. V. Kamath : Mr. President, I move:

'That with reference to amendment No. 568 of List IV, in the second proviso to clause (1) of article 388, the words and letter "Part A of" be deleted.'

'That with reference to amendment No. 569 of List IV, in the second proviso to clause (1) of article 388, the words and letter "Part A of" be deleted.'

'That with reference to amendment No. 570 of List IV, in the second proviso to clause (1) of article 388, for the words "The Legislative Assembly of that State" the words "the Legislative Assembly of that Province or of the Corresponding State or of that State, wherever such Assembly has been constituted" be substituted.'

These amendments, Sir, arise out of the proviso to clause (1) of article 388. That proviso refers to the filling of seats caused by vacancies on account of persons belonging to the Scheduled Caste, Muslim or Sikh community leaving the Assembly.

The difficulty that presents itself to me is this. Under the Cabinet Mission scheme the mode of election to the Constituent Assembly was through and electoral college, consisting of the Members of the provincial legislatures and there were separate electorates also consisting of the General, Sikh and Muslim communities. I could have understood if the reference in this proviso to clause (1) of article 388 was to the General, Sikh and Muslim communities, as adumbrated in the Cabinet Mission scheme under which this Assembly was elected. But, Sir, this proviso mentions the Scheduled Caste Muslims, and Sikhs, but there is no reference to the general community. The Scheduled Castes have been brought in.

Therefore, I feel that we have, to some extent, set aside in this regard the scheme of the Cabinet Mission of 1946 under which this Assembly was constituted. I see no reason why the States specified in Part A of the First Schedule alone should be mentioned here. If you turn to the First Schedule, you find there are three parts: Part A, Part B and Part C. The three units of Part C, namely Ajmer-Merwara, Coorg and Delhi were envisaged in the Cabinet Mission Scheme of 1946. So, whatever was applicable to the States in Part A of the First Schedule must be made applicable to these three States at least of Part C. But in view of this change of the language from General to Scheduled Castes, I think that this article 388 must be made applicable to all the States of the First Schedule, namely States in Part A, States in Part B and States in Part C. It is with this end in view that I have tabled the first two amendments (Nos. 621 and 622), that is, that whatever seat is rendered vacant on account of a member of the Scheduled Castes, or Sikh or Muslim community leaving the Assembly, must be filled, as far as practicable, by a member belonging to that community. This should not be confined only to the States of Part A of the First Schedule, because the States mentioned in Part B, many of them have got legislatures--at least a good number of them. Mysore has got a legislature functioning: Travancore- Cochin have a legislature functioning: Madhya Bharat also has a legislature, I believe. The provision applicable to the States in Part A should, therefore, be made applicable to these States as well.

My last amendment No. 623 also has a bearing on the subject matter I have just referred to. The amendment suggested by the Drafting Committee says that instead of the words "the Legislative Assembly of that State", the words "Legislative Assembly of that province or the corresponding State or of that State as the case may be" be substituted. This is all right, because the Drafting Committee visualises the application of this article only to the States in Part A of the First Schedule. But my amendment goes further. It makes it more comprehensive; it makes it applicable to all the States in the First Schedule, that is States in Part A, Part B and Part C. We are all aware that in some of the States there is no Legislature functioning. My amendment suggests that wherever there is an Assembly or Legislature functioning in any of the States mentioned in Part A, B or C of the First Schedule, this article must be brought into operation, and not merely in the case of States mentioned in Part A of the First Schedule.

Sir, I move amendments 621, 622 and 623 and commend them to the House for its earnest consideration.

Mr. President : There is an amendment of the Drafting Committee (No. 574) to article 394.

Shri T. T. Krishnamachari : Sir, I move:

"That in article 394 after the figure '60' the figure '324' be inserted, and after the figure '388' the figure '391' be inserted."

Shri Jaspat Roy Kapoor (United Provinces: General): May I have your permission to say a word about amendment No. 572? I would like to invite the attention of the Drafting Committee and ask them whether they have not considered it necessary to include 366 also in sub-clause (3) of article 392, because article 366 is also to be operative immediately after we pass this Constitution. Article 366 relates to definitions but under the same article the President is also expected to perform certain functions and therefore it must be made permissible for the Governor-General to perform those functions from the date of the commencement of this Constitution on the 26th January.

Mr. President : But article 366 deals with definitions.

Shri Jaspat Roy Kapoor : Under the proposed clause to article 392 it is suggested that the powers conferred on the President by this article, by article 324, by clause (3) of article 367 and by article 391, shall before the commencement of this Constitution be exercisable by the Governor-General of the Dominion of India. It does not refer to article 366. What I submit is that it is perhaps necessary that the powers exercisable by the President under article 366 may also be permitted to be exercised by the Governor-General of India under clause (3) of article 392.

Mr. President : There is no power to be exercised under 366--it deals only with definitions.

Shri Jaspat Roy Kapoor : There are powers there, Sir. May I refer you to clauses (12), (21), (22) and (30) thereof ? These are the various clauses under which the President is expected to perform certain functions.

Shri T. T. Krishnamachari : Mr. President, Sir, under article 394, article 366 will come into operation the moment this Constitution is passed. But it is not necessary to vest the Governor-General with the powers of the President in regard to this particular article because, as you have yourself mentioned, there is no function for the Governor- General to exercise contemplated by this article in the mean time. The particular reference to clause (12) of this article no longer applies because clause (12) has been taken away from the interpretation clause and put separately. So far as clauses (21), (22) and (30) are concerned they are powers which will not be exercisable by the Governor-General and there will be no occasion for him to exercise these powers in the interim period until the new Constitution comes into being when the President will take over. I do not think there is any point in the suggestion made by my honourable Friend though I am very grateful to him for pointing out this matter.

The Honourable Shri K. Santhanam : Sir, in amendment No. 572, article 324 is included but it is not brought in to operation by article 394. So there is a mistake here.

Mr. President : There is amendment No. 574 which covers the point you have raised.

Then amendments to the First Schedule.

Shri T. T. Krishnamachari : Sir, I move:

"That in Part A of the First Schedule under the sub-heading 'Territories of States', the paragraph commencing with the words "The territory of the State of Bombay................' and ending with the words and figure 'Extra-Provincial Jurisdiction Act, 1947' be omitted."

Mr. President : There is amendment No. 613 of Mr. Sidhva to one of these amendments.

Shri R. K. Sidhva : My amendment is:

"That amendment No. 575 be deleted."

As we see from the First Schedule there are territories of States mentioned. The first clause refers to State of Assam that is retained. The State of Bengal is retained. But the third clause containing reference to the State of Bombay is going to be omitted. Provision is made regarding other States also. I fail to understand why Bombay has been particularly mentioned in this amendment to be deleted. Nothing is being substituted in its place and I am rather perplexed as to what is the idea in not mentioning the territory of the State of Bombay. I therefore thought that it should not be deleted unless there is specific reason and some provision for a substitution is made. I have already moved my amendment but I would like to understand from the Drafting Committee as to what is their object in seeking to delete this clause. I cannot give my comments on it before I know what is the object in its deletion. I can only state that it should be retained.

Shri K. M. Munshi (Bombay : General): Mr. President, Sir, Mr. Sidhva referred to amendment No. 575. The reason for the deletion is this, that it is no longer necessary because appropriate orders have been passed by the Government of India whereby parts of Sirohi will be covered by the subsequent portion of the Schedule. It will be included in the four lines on top of page 182.

"The territory of each of the other States *in this Part* shall comprise the territories which immediately before the commencement of this Constitution were comprised in the corresponding and the territories which, by virtue of an order made under section 290A of the Government of India Act, 1935, were immediately before such commencement being administered as if they formed part of that Province".

A part of Sirohi will fall under this part of the Schedule and another part of it will fall under the last paragraph on page 183. So it is no longer necessary to have the last lines of this paragraph.

Shri Jainarain Vyas (United State of Rajasthan): On a point of information, Sir. Has a Covenant been signed by the Ruler of Sirohi or by anybody to divide Sirohi into two parts and to merge one part with Bombay and the other with Rajasthan ?

Shri K. M. Munshi : I do not think that question is appropriate here. I am only explaining the constitutional position and why we have omitted this. Any question as to what has been done should be addressed to the proper quarters.

Shri Jainarain Vyas : Constitutionally it is not in order to divide a State into two parts, unless the people desire to have it. I object to it.

Shri K. M. Munshi : As I said it is a matter of the policy of the Government of India and the honourable Member should address himself to the Honourable the Deputy Prime Minister or the proper authority. It is not for me to explain the matter here.

Shri R. K. Sidhva : My Friend Mr. Munshi quoted from pages 181 and 182 of the Constitution but he was not very explicit in what he said and I could not understand him.

Mr. President : The State now falls under one or other of the two categories mentioned in the para. Part of the State falls under the first category and the other part falls under the second category.

Shri R. K. Sidhva : The new territories of Assam and Bengal are mentioned but Punjab is also a new territory, which has been created by Partition and it should have been there. Otherwise only the last clause should remain.

Mr. President : The question which Mr. Sidhva has raised is why Bengal is mentioned and not Punjab, as both have been created on account of partition. I understand that Punjab as it stands new comprises some portions of the States and therefore it will come under this last para; whereas in the case of Bengal no State has been incorporated with Bengal and therefore Bengal is mentioned specially.

Shri Jainarain Vyas : Sir, I understand that some orders have been passed regarding Sirohi. Whatever the orders are, I do not want to bother myself with them. But in Schedule I, I want to point out that there are three parts. Part I includes those areas which are called provinces, part II incorporates those areas which are centrally governed and part III incorporates those areas which are now Unions or States. I do not find the name of Sirohi in all these three parts. Now the mere statement that such and such a thing has happened behind a curtain cannot solve the question. Sirohi is no-man's land today. it is not in India according to the Constitution which has been placed before us. It is neither in part I, nor II nor III. Had you retained the words ending with "Extra-Provincial Jurisdiction Act, 1947," Sirohi would have been incorporated in Bombay. But by taking out those words you have taken out Sirohi from Bombay, but you have not put it in either part I, or II or III. So a lacuna has been left in the constitution, and I hope Mr. Munshi or some member of the Drafting Committee would please explain the point, so that I may proceed further.

Mr. President : As far as I understand, Sirohi is not mentioned anywhere and there are so many other States also which are not mentioned anywhere, because they have become integrated with some province or other. Those States which have become integrated with provinces now form part of those provinces. Those which have not become integrated are mentioned separately in Part B. Part of Sirohi has become incorporated in Bombay and part in another province and it is not necessary now to mention it anywhere. Therefore, the last portion of the third para does not now apply. It is not now being governed by the Extra-Provincial Jurisdiction Act. That is as I understand the position.

Shri Jainarain Vyas : I understand what you say, Sir, but I am not very much satisfied with the position.

Mr. President : That is a different matter.

Shri Jainarain Vyas : Now Sir, Sirohi has been divided. Rajasthan as it stands does not incorporate Sirohi. I know it. To divide Sirohi without the consent of the people is doing injustice to the people of Sirohi and Rajasthan and perhaps to justice itself. I raise a mild or strong protest against the action of the government behind the curtain in interfering with the Constitution at a time when the Constitution of India is in the making and when the ruler of Sirohi is not in a position to make his say and when the people of Sirohi have already protested against their being incorporated in Bombay. If Shri Gokulbhai who represents Bombay and who once represented Sirohi is satisfied with the position then I will have no objection.

Kanwar Jaswant Singh (United State of Rajasthan): Sir, in regard to Sirohi a very serious situation has arisen, so far as Rajasthan is concerned. In regard to other Indian States the position is that their Rulers have agreed in a Covenant to incorporate their States either in Provinces or State Unions. So far as Sirohi is concerned the Ruler is an infant and therefore no Covenant has been entered into with that State and as such it cannot be divided or incorporated either with a States Union or a Province. Therefore in this way to divide the State of Sirohi without a proper procedure or any Covenant is most irregular and great injustice is being done to Rajasthan.

Shri Gokulbhai Daulatram Bhatt (Bombay States): *[Mr. President, The question of Sirohi has no doubt, been rather difficult of solution. What I know about this question is this that about a year ago the President of the Regency Council, the Rajmata of Sirohi handed over the administration of the State to the Central Government. She had also requested the Central Government in writing to carry on in its discretion the administration of the State. Since then the administration of the State is being carried as by the Government of Bombay on behalf of the Central Government. Now the question has come up as to the future of Sirohi. It was decided here that some portion of Sirohi should go to Bombay and some to Rajasthan. I was not present here when this decision was taken. It has not yet been finally decided as to what part should go to Bombay and what part to Rajasthan. Nothing has been decided about Mount Abu also. So far as I know no final decision has been taken with regard to these matters. But I know that proper decision will be taken in regard to this matter by Sardar Patel and others in consultation.

Mr. President : What Mr. Gokulbhai is saying has already been said by Mr. Munshi that orders have been already issued and until such notifications it would remain as it is. That (previous) orders will cease to have any effect after the other notification is available to cancel it.

Shri Gokulbhai Daulatram Bhatt : One thing, however, has now become clear with regard to this matter. During the last sitting there was a doubt in our minds that the whole of the Sirohi State would go to Bombay. Now it has become clear that only a portion and not the whole of Sirohi would go to Bombay and that a major portion of it is going to be merged with Rajasthan. As I am not aware of all the facts, I cannot say anything more. We the people of Sirohi have thought it in this way that whatever decision is taken by Sardar Patel will be taken with due consideration to the view point of the people of Sirohi and Rajasthan, and that shall be acceptable to us.]

Shri Raj Bahadur (United State of Matsya): May I speak a few words, Sir ?

Mr. President : But honourable Members must remember that we have to close the discussion at half past eleven.

Shri Raj Bahadur : Sir, I take this opportunity simply to express myself on this point which has been for a long time agitating the minds of the people of Rajasthan. Ever since Sirohi was taken under the administration of' Bombay as a Centrally administered area, the Provincial Congress Committee and the other Congress committees in Rajputana have been passing resolutions that it should not be taken away from Rajasthan and should be placed under the administration of Rajasthan Government. Yesterday it was in the air that Sirohi has been vivisected, part of it going to Rajasthan and part of it to Bombay. As a matter of fact the people's desire in this case has been that the hill station of Mount Abu is not in any case taken away from them. Mount Abu is the most beautiful spot and the only hill station in that area, which fascinates the attention and attraction of all the people living there. This has been the only health resort and sanatorium for the people of Rajasthan, who want to go to one. Mount Abu therefore happens to be the apple of discord in this case. It is, therefore, a painful surprise for those who live in Rajasthan that it has been taken away from them. It is, however, not yet clear whether Mount Abu remains with Rajasthan or forms part of Bombay. It would have been much better that if any part of Sirohi were to be partitioned off then this House should have been informed about it in good time and the people told what part goes to Rajasthan and what part to Bombay. At present everything is almost in the dark. We are all in the dark about it and it is really surprising that without even taking the people into confidence and without even consulting the local congress committee this division has been gone through. It is claimed that this Constitution would bear the stamp of the free will and consent of the people of India and of its component parts. I do not think it will be in consonance with this principle that we have accepted if Sirohi is divided into parts without even ascertaining the wishes of the people. We have the utmost respect and admiration for our leader Sardar Vallabhbhai Patel. I implore him that in this case he may kindly note our feelings. If any orders have been passed already I wish that such orders are reconsidered and revised before this constitution is finalised. The State of Sirohi including Mount Abu should go to the province to which it rightly belongs, and to the people who have made of Mount Abu what it is today.

Mr. President : I do not think any further discussion is necessary. I will ask Mr. Munshi to let the House know the notification under which Sirohi has been divided so that the misgivings of the Members may be removed.

Shri K. M. Munshi : There is no such notification.

Mr. President : If there is no Such notification, how can you take notice of it in the Constitution? I understood from you that there was a notification.

The Honourable Sardar Vallabhbhai J. Patel (Bombay : General): Mr. Munshi will not be able to explain it. I shall explain it.

Some people of Rajasthan who have come here on behalf of the Congress consider this Mount Abu to be a beautiful spot and therefore say that Rajasthan has a claim on it. There are many beautiful spots in India and that is no justification for claiming Mount Abu. The Rajasthan Congress Committee was told from the very beginning that Sirohi is a part of Gujarat and will go with Bombay. The Congress committee took cudgels with the Ministry and started this cry. Before that, when the annual session of the Congress was held in Rajasthan, Shri Gokulbhai Bhatt, who was the Chief Minister of Sirohi, was also the President of the Rajasthan Congress Committee. Shri Gokulbhai also comes from Gujarat. I asked them whether they wanted Gokulbhai because he was President of the Rajasthan Congress

Committee or whether they wanted Sirohi. Really what they wanted was that Gokulbhai, who was elected to the Reception Committee as its Chairman, should continue as the President of the Rajasthan Congress Committee as well. It was difficult for them to keep him there unless Sirohi was in it while our decision was that Sirohi should go to Bombay. Therefore, to accommodate them, we said we would take Sirohi to the Centre for the present but it was to be administered by the Bombay Government. Thus it eventually went to the Bombay Government. There are people in one or two portions of Rajasthan still who want to go to Bombay such is Dungarpur, etc. They are Gujarati people. When this decision was taken after the Congress session was over, the Congress came into Conflict with the Ministry there and as a consequence with the States Ministry also. The Rajasthan representatives who have come here on behalf of the Congress have started this cry that Sirohi should go into Rajasthan. They have removed Shri Gokulbhai Bhatt from the Presidentship of the Congress and have also passed I vote of no-confidence against the Ministry.

Shri Jainarain Vyas : More resolutions to place Sirohi in Rajasthan were passed during Shri Gokulbhai's Presidentship than afterwards.

The Honourable Sardar Vallabhbhai J. Patel : I do not want to be interrupted. I want to explain what the position is.

Therefore eventually, in order to accommodate them we sent a special officer to make enquiries. His report was to the effect that a certain portion of Sirohi Should go to Bombay inasmuch as a large majority of the people there asked for it. Sirohi people are divided among themselves except the portion that has to be separated.

Now, if the Rajasthan people want that a portion of Sirohi including the City Should be given to them we are willing to accommodate them. But if they claim the whole of Sirohi, it is impossible to accommodate them.

Then the question is whether they want a division or not. If they do not want a division, then the whole of Sirohi will go to the Bombay province. If they want a division, then a portion of it would go to the Bombay province. A map has been prepared and orders are to be passed before the Constitution comes into force. The map can be shown to them, they can come and see it in the office even now. The gentleman who spoke just now is not from Sirohi. He comes from Bharatpur. He says Abu is a delightful place. Bharatpur is all equally delightful place. Therefore it cannot be claimed by somebody else. It may be that they may not like it, but the fact is that orders have already been passed. They have only been kept over because of the decision of these people. We want still to accommodate them if they can agree to reason. If they do not, then the whole of Sirohi will go, but whatever orders are to be passed will be passed before the Constitution comes into force. But Sirohi by itself as a separate entity will not remain. Either the whole of it will go to Bombay or one portion will go to Rajasthan and one portion will go to Bombay. That is the position. If Sirohi is to be split up, it has to be split up with their consent. Then that will go into two parts. If they do not want separation, then the whole of it will go to Bombay.

Mr. President : I am not concerned at the present moment, Sardar, with the merits of the question whether Sirohi....

The Honourable Sardar Vallabhbhai J. Patel : But the merits were discussed.

Mr. President : But only with orders.

The Honourable Sardar Vallabhbhai J. Patel : But the division orders are there already.

Mr. President : I am not concerned with the merits but I am concerned only with orders. Orders have been passed, so that the amendment which is now proposed represents a state of fact which has been accepted by the States Ministry.

The Honourable Sardar Vallabhbhai J. Patel : Yes.

Mr. President : If that is so, then the amendment can come in, but if it is to come into force in the future, the amendment cannot come in.

The Honourable Sardar Vallabhbhai J. Patel : The orders are there but the orders could be modified before the Constitution comes into force if they want.

Mr. President : In that case, we cannot take it in the form of an amendment. If we take the order as the final order, then it can come in in the form it has come. Otherwise, if the order is not there, we cannot take it. So, I take it from you that the orders have already been passed......

The Honourable Sardar Vallabhbhai J. Patel : Yes.

Mr. President : And Sirohi has been divided into two parts, one part going to Bombay and one part to Rajasthan.

The Honourable Sardar Vallabhbhai J. Patel : It is only to accommodate these people it is not published. The order is there.

Shri Mahavir Tyagi (United Provinces: General). The arguments advanced by our honourable Friend Sardar Vallabhabhai Patel are in my humble opinion not very weighty. That Sirohi......

Mr. President : That is a different matter. I am afraid we are not concerned here with the merits of the question.

Shri Mahavir Tyagi : May I know what language the Sirohi people speak?

Mr. President : That I do not know but there are so many States which have been merged in some provinces or the other and in those cases we have accepted the fact of the merger and we have incorporated it in the Constitution. If Sirohi stands on the same footing as the other States, *i.e.*, if Sirohi has been merged with some State or other, then we can accept this amendment. As I understood from Sardar Patel, orders have been passed Sirohi into two parts, one part going to Bombay and the other going to Rajasthan. Then we accept the amendment. Otherwise not. We are not concerned in this House with the merits of the case, whether it has been rightly done or wrongly done.

Kanwar Jaswant Singh : The Deputy Prime Minister only said that orders are on the file. So long as orders are not issued, they cannot take effect. Therefore, in my opinion, this question cannot be taken up in the Constituent Assembly at this stage. The question of Sirohi has to be deferred to a future date, by when wish of the people of Rajasthan should be obtained.

Mr. President : They have been passed, as I understood from Sardar Patel.

Then we pass on to the other amendments.

Shri T. T. Krishnamachari : Sir, I move:

"That in Part B of the First Schedule, for the paragraph under the sub-heading 'Territories of States', the following paragraph be substituted:--

'The territory of each of the States in this Part shall comprise the territory which immediately before the commencement of this Constitution was comprised in the corresponding Indian State, and--

> (a) in the case of each of the States of Rajasthan and Saurashtra, shall also comprise the territories which immediately before such commencement were being administered by the Government of the corresponding State, whether under the provisions of the Extra-Provincial Jurisdiction Act, 1947, or otherwise; and
>
> (b) in the case of the State of Madhya Bharat, shall also comprise the territory which immediately before such commencement was comprised in the Chief Commissioner's Province of Panth Piploda.'

"That in Part C of the First Schedule, for the first two paragraphs under the sub-heading 'Territories of States' the following paragraph be substituted:--

'The territory of each of the States of Ajmer, Coorg and Delhi shall comprise the territory which immediately before the commencement of this Constitution was comprised in the Chief Commissioner's Province of Ajmer-Merwara, Coorg and Delhi, respectively.' "

"That in List of the Seventh Schedule, for entry 8, of the following entry be substituted:--

"8. Central Bureau of Intelligence and Investigation."

Mr. President : Amendment No. 542. I do not think I can take that. It is too late.

Shri T. T. Krishnamachari : Sir, I move:

'Sixth Schedule

"That clause (g) of sub-paragraph (1) of paragraph 3 be omitted, and the remaining clauses '(b), (i), (j) and (k)' be relettered as (g), (h), (i) and (j)' respectively."

"That to paragraph 4, the following sub-paragraph be added:--

'(4) The Regional Council or the District Council, as the case may be, may with the previous approval of the Governor make rules regulating--

> (a) the constitution of village councils and courts and the powers to be exercised by them under this paragraph;
>
> (b) the procedure to be followed by village councils or courts in the trial of suits and

cases under sub-paragraph (1) of this paragraph;

(c) the procedure to be followed by the District or Regional Council or courts constituted by such Council in appeals and other proceedings under sub-paragraph (2) of this paragraph;

(d) the enforcement of decisions and orders of such councils and courts;

(e) all other ancillary matters for the carrying out of the provisions of subparagraphs (1) and (2) of this paragraph.' "

"That in sub-paragraph (3) of paragraph (5), for the words 'and the Governor may by rules prescribe the procedure to be followed at such trial' the words and figure 'to which the provisions of this paragraph or paragraph 4 apply' be substituted."

"That in the proviso to sub-paragraph (2) of paragraph 20, for the words, brackets and letters 'clauses (e), (f) and (g)' the words, brackets and letters 'clauses (e) and (f)' be substituted.' "

Mr. President : This completes list VI. Then there are three amendments in List VIII.

Shri T. T. Krishnamachari : Sir, I move:

"That in article 106, for the words 'Constituent Assembly of India' the words 'Constituent Assembly of the Dominion of India' be substituted."

"That in clause (3) of article 348, for the words 'shall for the purposes of the said clause be deemed to be the authoritative text thereof' the words 'shall be deemed to be the authoritative text thereof in the English language under this article,' be substituted."

Mr. President : I take amendments.* Nos. 615 and 616 as moved. No. 630 by Mr. Chaliha.

Shri Kuladhar Chaliha (Assam: General): Mr. President, Sir, I move:

"That in amendment No. 621 of List VI, for the first three lines of the proposed subparagraph (4) of the Sixth Schedule, the following be substituted:--

'(4) That the Governor shall make rules regulating--' "

My whole object is that in primitive societies for which these Schedules have been prepared, we should be a little more careful in granting powers to make rules to these Regional and District Councils. In some places like the Khasi Hills we have got educated people but in places like the Naga Hills, the people are not literate. In these areas there is not even a single man who can read or write. The British rule when they were here was autocratic. Somehow or other before they departed, they have given these people the idea that they are a very democratic people, that they can frame their rules. They have given them all these nice ideas before they left, and we have been caught in the trap, and we think that they are very democratic, they are autonomous, that they can frame their rules, etc., but it is not so. The Drafting Committee says that they shall frame rules with the previous approval of the Governor. Why this? Why cannot the Governor make the rules? These people are not capable of doing that. They do not know how to do it. As such I have always thought that in this Sixth Schedule the Governor should have more and more powers. We have given power to the Regional Council or the District Council to make rules with the approval of the Governor. Instead of that why not allow the Governor to make the rules so that it may be easy for simple people there to follow what has been laid down by the Governor? Instead of sending the rules, we find they are to frame the rules and have the Governor's approval. First of all, the Governor will be in a delicate position and once the rules are framed, he is bound by those rules to a certain extent but if you leave it to the Governor, he has his legal advisers, political advisers and he will have the advantage of their advice. So that he will frame the rules better. My humble amendment is to allow the Governor to make the rules and nothing else and to eliminate the trouble of the primitive people from framing rules for these very cumbrous and complex things and as such I should like to request the Drafting Committee to accept the amendment and simplify the whole thing. This is the whole object of the amendment, Sir.

We start with a very wrong background that the primitive people are very democratic but if we read anthropological or sociological books, we find that there is nothing like democracy in a primitive society except in a few places such as Hawai and South America and excepting those parts nowhere in the world there is any democratic society among the primitive tribes, and as such my submission is that we should not burden them with framing the rules, and we must allow the Governor to make the rules for them, and I commend this amendment for the acceptance of the House.

---

*615. That in entry 75 of List I of the Seventh Schedule, after the words "Emoluments, allowances," the word "privileges", be inserted.

616. That in entry 46 of List III of the Seventh Schedule, for the words "other then the Supreme Court" the words "except the Supreme Court" be substituted.

The Honourable Rev. J. J. M. Nichols Roy (Assam : General) : Sir, I support the amendment made by the Drafting Committee. I oppose the amendment made by Mr. Chaliha. I have not seen the amendment of Mr. Chaliha. Is it printed?

Mr. President : The amendment only says that in place of the Regional or District Council as the case may be we give the power to the Governor to make the rules.

The Honourable Rev. J. J. M. Nichols Roy : Mr. Chaliha has stated that in those areas which will be governed by the District Councils there are no people who will run this administration or will be able to make rules. I think he is mistaken altogether because these District Councils are only with six hill districts. The position of these hill districts is quite different from the other tribal areas which are outside the District Council. These District Councils will be run by the people who are intelligent there. They are enough intelligent people in these areas who will run these administrations and will also be able to make rules. The North Cachar Hills and Mikir Hills which are not well-advanced will be supervised by District Officers who will be the Chairmen of the District Councils, but in the other areas we can find people who will carry on the administration. Therefore, I oppose the amendment moved by Mr. Chaliha and I support the amendment moved by the Drafting Committee.

Shri Brajeshwar Prasad (Bihar: General): Sir, I would like to add one word....

Mr. President : I do not think we need have any more discussion on this point. Both the points of view have been placed and we are hard pressed for time. Now there are three amendments left to be moved or otherwise disposed of.

Shri H. V. Kamath : Has 616 been disposed of, Sir?

Mr. President : I have taken both as moved because they are all amendments.

Shri H. V. Kamath : I had an amendment to that. I gave notice of it this morning. I do not want to say much, but only....

Mr. President : Which is your amendment?

Shri H. V. Kamath : I handed it in this morning, Sir.

Mr. President : I will take that as moved. As I was saying there are three sets of amendments which somehow or other will have to be disposed of. One set of amendments relate to the name of Bengal. I have taken List VII also and I have taken them as moved.

Shri H. V. Kamath : With reference to amendment 628, may I ask why the Drafting Committee has fallen in love with the word "Dominion" and go on repeating it *ad nauseam?*

Mr. President : Anyhow you may throw it out if you like. There are three amendments which are connected and which come to this that the name of Bengal as in the Drafting Constitution should be 'West Bengal'. That is one amendment. Then there is the second amendment, which I mentioned yesterday, of Prof. Shibban Lal Saksena relating to article 348 clause (3). Do you wish to move that?

Prof. Shibban Lal Saksena (United Provinces: General): I have already moved it.

Mr. President : I will take that as moved.

Shri T. T. Krishnamachari : It is covered by 629, Sir.

Mr. President : It is covered. Very well. Then it need not be moved. Then there was an amendment by Shri A. V. Thakkar. What is the position of the Drafting Committee with regard to that?

Shri P. T. Chacko (United State of Travancore and Cochin): I rise to a point of order if the amendment is allowed to be moved. This is almost a surprise on us who represent the States which are mentioned therein Moreover the mover is introducing a substantial matter neither necessary nor consequential..........

Mr. President : He is seeking to move only with regard to Madhya Bharat and so you are not touched.

Shri P. T. Chacko : Then I do not press my point.

Shri A. V. Thakkar (Saurashtra): At the time when the provinces were named, the tribal of which will have the benefit of a special Minister to be in charge of that portfolio, i.e. in the year 1947 the States were not in the picture at all. They have been admitted in the Union afterwards; they have been assimilated or they have been joined on in the various sections of Schedule I; and among those States which had a large number of tribal these are the four Unions--Madhya Bharat, Rajasthan, Travancore-Cochin and Vindhya Pradesh but the States

Ministry agrees that it should be adopted for Madhya Bharat only as a covenant has already been contracted with them and they have accepted that. So I propose that the State of Madhya Bharat should be added to article 164, Sir.

Mr. President : There is another amendment; Mr. Krishnamachari.

Shri T. T. Krishnamachari : Sir, I move:

"That in Part XVI of the Constitution, for the word minorities wherever it occurs, the words 'certain classes' be substituted."

Sir, objection has been taken by several honourable Members to the use of the word 'minorities' even in the heading of this Part and also the consequential use of this word elsewhere. It has therefore been decided to drop this word and to suggest the use of the word "certain classes" in the place of 'minorities.'

I have also another amendment to suggest.

"That in entry 67 of List I of the Seventh Schedule, after the word 'record' the words 'and archaeological sites and remains' be inserted."

This finds mention in the Concurrent List. But so far as the Centre is empowered to declare any archaeological sites and remains and ancient monuments by law to be vested in the Centre, this is an omission which is now sought to be rectified. Therefore, I trust that you will give permission for this amendment to be moved and the House will accept that.

Mr. President, Sir, I would like to apologise to you and to the House for venturing to make this amendment at this late hour. I would like to draw the attention of the honourable Members to amendment No. 562A in regard to article 367 which was moved yesterday. The first part of this amendment relating to sub-clause (3) of article 367 reads thus.

"For the purposes of this Constitution 'foreign State' means any country which is outside the territorial jurisdiction of the Union."

Certain honourable Members at that time, particularly, my honourable Friend Mr. Santhanam, pointed out that the wording was not very happy. The matter has been further examined and our legal adviser suggests that the words "which is outside the territorial jurisdiction of the Union" may be omitted and the following words substituted: "other than India." The operative part of the clause will read like this, if the amendment is accepted:

"(3) For the purposes of this Constitution, 'foreign State' means any State other the India."

In the proviso also, the objection of my honourable Friend Mr. Santhanam has been accepted and the word 'country' will be changed into 'State' in the two places. For the benefit of the honourable Members, I shall read the clause as amended.

Dr. Bakhshi Tek Chand (East Punjab: General): These amendments have not been circulated; we are not also able to hear the honourable Member.

Shri. T. T. Krishnamachari : This is merely a verbal change. I will read it again:

"(3)For the purposes of this Constitution, 'foreign State' means any State other than India:

Provided that, subject to the provisions of any law made by parliament, the President may by order declare any State not to be a foreign State for such purposes as may be specified in the order."

There is another matter which needs to be mentioned, Sir. In amendment No. 463 to article 168, a consequential change will have to be made because an amendment has been moved to change the name of Bengal to West Bengal. That amendment would be made subject to the approval of the House.

Mr. President : You have moved the amendment to entry No. 67?

Shri T. T. Krishnamachari : Yes, I have moved.

Shri H. V. Kamath : Sir, I have an amendment relating to the re-arrangement of several Chapters of the Constitution, amendment No. 430 in List I. That may be taken as moved; I do not want to take the time of the House.

Mr. President : I think this will involve a re-arrangement of the whole thing.

Shri H. V. Kamath : Numbering only, Sir.

Mr. President : Not only numbering, but a re-arrangement.

Shri H. V. Kamath : You may take it as moved or rule it out of order. I would request you, Sir, to be so good as to permit me to formally move two amendments 207 and 197 of List I. One refers to the name of the Upper Chamber of the Central Parliament: to substitute the name "Chamber of States" instead of "Council of States". I shall only formally move them.

Mr. President : That does not arise out of any amendment.

Shri H. V. Kamath : I want your special permission, Sir.

Mr. President : No I will not permit this as also 430.

Shri H. V. Kamath : Amendment 197, Sir, regarding joint and several responsibility of Ministers and not merely collective responsibility.

Mr. President : That also does not arise out of any of the amendments. I will not allow any of these.

Shri Jaspat Roy Kapoor : Mr. President, one important amendment remains yet undecided in the sense that it seems that the Members are not agreed with regard to the name that may be given to the United Provinces. In that view, may I have your permission to move formally an amendment to the following effect, so that there may be no difficulty in taking a decision with regard to the name of the United Provinces and possibly Bengal also, because Bengal Members also want a change in the name of their province before the 26th of January. If I have your permission, Sir, I may move like this:

"That a new article be inserted :

'Notwithstanding any thing in article 3, the Constituent Assembly of India, before the commencement of this Constitution, may be resolution alter the name of any State.' "

I understand, Sir, honourable Members are anxious that no name of a State may be changed except with their consent and therefore I am specifying in this amendment that any change in name may be done by a resolution of the Constituent Assembly before this Constitution comes into force. I understand we are not only meeting up to the 26th of November, but we shall have to meet some time in January also for the election of the President and perhaps for some other business also. If between now and then an agreement is arrived at between the Members with regard to this subject, by a resolution which may be accepted by the House, the name may be changed. Otherwise, the name can only be changed by the cumbersome process mentioned in article 3. If I have your permission, It may be taken as moved.

There is one little amendment which will also have to be made in article 394 to the effect that after the figure 392, the figure 392A be inserted which would mean that the amendment which I have just mentioned may also be enforced from the very day on which this Constitution is passed.

Shri Prabhu Dayal Himatsingka : (West Bengal : General): Article 391 covers the point raised by my friend. If there is agreement, the President merely passes an order and that can be done before the commencement.

Shri Jaspat Roy Kapoor : I have consulted legal experts on this question and they advise that under 891 it could not be done. If it could be done, then there is no need for my amendment, but I am advised that 391 relates to amendment of the Government of India Act which of course is a cumbersome process.

Mr. President : If Your amendment is accepted it will mean that the Constitution as it will be adopted here at the Third Reading stage may be amended so far as name is concerned simply by a resolution of this House.

The Honourable Shri K. Santhanam : It will involve a session after the Third Reading. I do not think it should be allowed.

Shri Mohan Lal Gautam (United Provinces : General) : The real question before the House is that the name of the United Provinces is to be changed and we have not yet been able to come to a decision and we want that the name should be changed before the commencement of the Constitution, i.e., before the 26th January. That is the issue before the House. My suggestion is that, instead of asking the Assembly again to meet and pass a resolution to change the name which is a cumbersome process and, therefore, in my opinion, not advisable, on the recommendation of the Provincial Government the President may be given the power to change the name of the united Provinces. This is a very simple question. The name could have been changed even long ago. If the Provincial Government had changed its name by now, it would have been a settled fact and nobody might have raised any objection to it but now that it has come before us and now that U.P. is still the name of the province, the question is being discussed by us. Therefore, my submission is that on the recommendation of the province, i.e., the provincial Government, the President may accept it and the House may not be required to go through the whole process and may not be required to meet for this purpose. If it is accepted, then the Drafting Committee may propose suitable amendment to that effect.

Pandit Thakur Das Bhargava : I think there is ample time before the There Reading is passed--between now and the end of the Third Reading the question may be decided.

Mr. President : Pandit Bhargava has suggested that there is still time between now and the 25th for the Members to come to an agreement on this question. If it is agreed to by them, that can be done.

The Honourable Dr. B. R. Ambedkar (Bombay : General): I think the difficulty could be easily got over if this Assembly before it closes its session on the 26th November could pass an act amending the Government of India Act 1935, section 290, permitting the Governor-General among other things which he is empowered to do to change also the name of a Province so that the President can act under article 391 and amend the schedule in order to carry out the action that has been taken by the Governor-General under the Government of India Act, as proposed. This matter cannot take more than a few minutes. It would be possible for the Drafting Committee or the Home Department to bring before this Assembly a Bill to amend the Government of India Act 1935, section 290. Such a Bill could be passed before the 26th January.

The Honourable Shri K. Santhanam : Our difficulty is not objection to changing the name but only to 'Aryavarta', Similarly we cannot allow the Governor-General also to change the name to 'Aryavarta'.

The Honourable Dr. B. R. Ambedkar : It cannot be Aryavarta as the party has given its verdict on that. I am sure Babu Purushotam Das Tandon has taken note of that.

The Honourable Pandit Govind Ballabh Pant (United Provinces : General) : What you have rejected will not be put forward by the U.P. Government nor accepted by the Governor-General. That we all accept.

Mr. President : Then nothing has to be done at present.

The Honourable Pandit Govind Ballabh Pant : On the understanding that an amending Bill of the nature suggested by Dr. Ambedkar will be passed before we disperse.

Mr. President : That is for Dr. Ambedkar to do.

Shri A. Thanu Pillai (United State of Travancore and Cochin) : It is for this House to decide. The people of the Province may like to call it *'Bharata Hriday'*. We will not accept that. It is a matter of importance for the whole of India as to what parts of it are called by what names.

Mr. President : You may oppose the amending Bill when it comes up. Nothing has to be done at this stage.

Shri Mahavir Tyagi : There is yet, I am afraid, a very serious lacuna left. Article 394 says that articles 5, 6, 7 etc. will come into force at once. Among these, article 379 is also included, which pertains to such members as are also Members of the Provincial Assemblies and therein it is mentioned that their membership here will cease on the commencement of this

Constitution. Now, if in accordance with Article 394, immediate effect is to be given to article 379, the double membership will cease at once. But the article sought to be given effect to immediately lays down that the double membership would cease at the commencement of this Constitution which means on January 26th, 1950. The wordings are : "from the commencement of this Constitution the seat of such member in the Constituent Assembly shall, unless he has ceased to be a member of that Assembly earlier, become vacant and every such vacancy shall be deemed to be a casual vacancy". Both the articles stand parallel to each other without being related to each other by the word "notwithstanding" and they are contradictory to each other in meaning. I want to know whether the membership ceases immediately or on the 26th January.

Mr. President : I do not think that interpretation can be given to it. Membership does not cease before the 26th January.

Shri B. Das (Orissa : General) : I would like to know, Sir, if amendment No. 618 of the Drafting Committee has been moved.

Mr. President : Yes, it has been moved.

Now, we have finished all the amendments, and there is no time for any further general discussion. But as a matter of fact, we have discussed everything which came up and which required discussion. So I would request Dr. Ambedkar to reply to the debate on the various amendments.

Shri Raj Bahadur : Sir, I want to refer to only one point. May I request that the order about Sirohi be placed before the House so that we may know what its contents are, and whether this Assembly can ratify or endorse it, or in any way take note of it or not.

Mr. President : I do not think that is a matter which comes before this House. It is a matter for the other House, not for this House, Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. President, Sir, in my reply I propose to take certain article which have been subjected to stronger criticism by the Members of the Assembly. It is, of course, impossible for me to touch upon every article to which reference has been made by the Members in the course of their observations. I therefore, propose to confine myself to the more important ones against which serious objections were raised.

I begin with article 22. Listening to the debate, I found that this article 22 and its provisions as amended by the Drafting Committee's amendments, have not been completely understood, and I should therefore like to state in some precise manner exactly what the article as amended by the Drafting Committee's amendments proposes to do. The provisions of article 22, as amended by the Drafting Committee, contain the following important points.

First, every case of preventive detention must be authorised by law. It cannot be at the will of the executive.

Secondly, every case of preventive detention for a period longer than three months must be placed before a judicial board, unless it is one of those cases in which Parliament, acting under clause (7), sub-clause (a) has, by law, prescribed that it need not be placed before a judicial board for authority to detain beyond three months.

Thirdly, in every case, whether it is a case which is required to be placed before the judicial board or not, Parliament shall prescribe the maximum period of detention so that no person who is detained under any law relating to preventive detention can be detained indefinitely. There shall always be a maximum period of detention which Parliament is required to prescribe by law.

Fourthly, in cases which are required by article 22 to go before the Judicial Board, the procedure to be followed by the Board shall be laid down by Parliament. I would like Members to consider the provisions of this new article 22 as amended by the Drafting Committee, with the original article 15A. It will be seen that the original article 15A was open to two criticisms. One was that (4) (a) did not appear to be subject to maximum period of detention prescribed under clause (7). Clause (4) (a) appeared to stand by itself, independent of clause (7). The second defect was that the requirements as to the communications of the grounds of detention did not apply to persons detained under (4) (a). It will now be seen that the present (4) of article 22 removes these two defects is they existed in the original draft of 15A.

Notwithstanding the improvement made by article 22, I find from the observations of Mrs. Purnima Banerji that she has still some complaint against the article. In the course of a speech yesterday, she said that preventive detention can take place without the authority of law, and secondly, that there are still cases which need not go to the Judicial Board. With regard to her first comment, I should like to say respectfully that she is very much mistaken. Although preventive detention is different from detention under ordinary law, nonetheless, preventive detention must take place under law. It cannot be at the will of the executive. That point is perfectly clear. With regard to the second comment which she has made, that the new article 22 excepts certain cases from the purview of the Judicial Board, I admit that that statement is correct. But I also say that it is necessary to make such a distinction, because there may be cases of detention where the circumstances are so severe and the consequences so dangerous that it would not even be desirable to permit the members of the Judicial Board to know the facts regarding the detention of any particular individual. It might be too dangerous, the disclosure of such facts, to the very existence of the State. No doubt, she will realise that there are two mitigating circumstances even in regard to the last category of persons who are to be detained beyond three months, without the intervention of the Judicial Board. The first is this, that such cases will be defined by Parliament. They are not to be arbitrarily decided by the executive. It is only when Parliament lays down in what cases the matter need not go to the Judicial Board, it is only in those cases that the Government will be entitled to detain a person beyond a period of three months. But what is more important to realise is that in every case, whether it is a case which is required to go before the Judicial Board or whether it is a case which is not required to go before the Judicial Board, there shall be a maximum period of detention prescribed by law.

I think, having regard to these amendments, which have been suggested by the Drafting Committee in article 22, there is a great deal of improvement in the original harshness of the provisions embodied in article 15A. Sir, having said what I think is necessary to say about article 22, I will next proceed to take article 373, because that article is intimately connected with article 22.

There has been a great deal of criticism against article 373 and some Members have even challenged the legitimacy or propriety of including such an article in the Constitution. But, in reply, I would like to invite the attention of the Members to this question. What would happen if this article did not find a place in the Constitution ? I think it is quite clear that what would happen if this article 373 did not find a place in the Constitution is this, that all persons detained under preventive detention would have to be released forthwith on the 26th of

January 1950, if by that date they have undergone the three months detention permitted by article 22 and if Parliament is not able to pass a law under clause (7) of article 22 permitting a longer period of detention. The question is this : is this a desirable consequence ? Is it desirable to allow all persons who are detained under the present law to be released on the 26th of January, simply because Parliament is not in a position to make a law on the 26th of January, 1950 permitting a further period of detention. It seems to me that that would be a very disastrous consequence. Consequently, it is necessary, in view of the fact that it is quite impossible for Parliament immediately or before the 26th of January to meet and to pass a law which will take effect from that date, to empower some authority under the Constitution to do the work which Parliament is expected to do in order to give full effect to the provisions of article 22. Who is such an authority under the Constitution ? Obviously the President. The President is the only authority who will be in existence on or before the 26th of January and who could expeditiously make a law stepping into the shoes of Parliament and giving effect to the provisions of a article 22 permitting a longer period of detention. It is, therefore, absolutely essential to provide for a break-down of the law relating to preventive detention, to have an article such as 373 empowering the President to enact a law which is within the power of Parliament to enact. Sir, I should further like to add that there is nothing very novel in the provisions contained in article 373, because we have given power by other articles to the President to adapt existing laws in order that they may be brought in conformity with the provisions of the Constitution. Such modification can only be made by Parliament, but we also realise that it would not be possible for Parliament immediately on the 26th of January to adapt so many voluminous laws enacted by the Indian Legislature to bring them in conformity with the Constitution. That power has, therefore, been given to the President. Similarly, by another article we have given to the President the power to amend temporarily this very Constitution for the purpose of removing difficulties. I, therefore, submit that there is nothing novel, there is nothing sinister in this article 373. On the other hand, it is a very necessary complementary article to prevent the breakdown of any law relating to preventive detention.

Now, Sir, I come to article 34 which relates to martial law. This article, too, has been subjected to some strong criticism. I am sorry to say that Members who spoke against article 34 did not quite realise what article 20, clause (1) and article 21 of the Constitution propose to do. Sir, I would like to read article 20, clause (a) and also article 21, because without a proper realisation of the provisions contained in these two articles it would not be possible for any Member to realise the desirability of--I would even go further and say the necessity for--article 34. Article 20, clause (1) says :

> "No person shall be convicted of any except offence for violation of a law in force at the time of the commission of the act charged as an offence."

Article 21 says :

> "No person shall be deprived of his life or personal liberty except according to procedure established by law."

Now, it is obvious that when there is a riot, insurrection or rebellion, or the overthrow of the authority of the State in any particular territory martial law is introduced. The officer in charge of martial law does two things. He declares by his order that certain acts shall be offences against his authority, and, secondly, he prescribes his own procedure for the trial of persons who offend against the acts notified by him as offence, is quite clear that any act notified by the military commander in charge of the disturbed area is not an offence enacted by law in force, because the Commander of the area is not a law-making person. He has no authority to declare that a certain act is an offence, and secondly the violation of any order made by him would not a be an offence within the meaning of the phrase "law in force", because "law in force" can only mean law made by a law-making authority. Moreover, the procedure that the Commander-in-Chief or the military commander prescribes is also not procedure according to law, because he is not entitled to make a law. These are orders which he has made for the purpose of carrying out his functions, namely, of restoring law and order. Obviously, if article 20 clause (1) and article 21 remain as they are, without any such qualification as is mentioned in article 34, martial law would be impossible in the country, and it would be impossible for the State to restore order quickly in an area which has become rebellious.

It is therefore necessary to make a positive statement or positive provisions to permit that notwithstanding anything contained in article 20 or article 21, any act proclaimed by the Commander-in-Chief as an offence against his order shall be an offence. Similarly, the procedure prescribed by him shall be procedure deemed to be established by law. I hope it will be clear that if article 34 was not in our Constitution, the administration of martial law would be quite impossible and the restoration of peace may become one of the impossibilities of the situation. I therefore submit, Sir, that article 34 is a very necessary article in order to mitigate the severity of articles 20(1) and 21.

Shri H. V. Kamath : May I ask why the indemnification of persons other than public servants is visualised in this article ?

The Honourable Dr. B. R. Ambedkar : Because my friend probably knows if he is a lawyer........

Shri H. V. Kamath : I am not.

The Honourable Dr. B. R. Ambedkar : ....That when martial law is there it is not merely the duty of the Commander-in- Chief to punish people, it is the duty of every individual citizen of the State to take the responsibility on his own shoulder and come to the help of the Commander-in-Chief. Consequently if it was found that any person who was an ordinary citizen and did not belong to the Commander-in- Chief's entourage, so to say, does any act it is absolutely essential that he also ought to be indemnified because whatever act he does he does it in the maintenance of the peace of the State and there is a no reason why a distinction should be made for a military officer and a civilian who comes to the rescue of the State to establish peace.

Now, Sir, I come to article 48 which relates to cow slaughter. I need not say anything about it because the Drafting Committee has put in an agreed amendment which is No. 549 in List IV. I hope that that would satisfy those who were rather dissatisfied with the new draft of article 48 as proposed by the Drafting Committee.

Then I come to article 77 which deals with rules of business. In the course of the debate on this article, some Members could not understand why this article was at all necessary. Some Members said that if at all this article was necessary the authority to make rules of business should be vested in the Prime Minister. Others said that if this article was at all necessary it was necessary for the purpose of the efficient transaction of business and consequently the word "efficient" ought to be introduced in this clause. Now, Sir, I am sorry to say that not many Members who participated in the debate on article 77 have understood the fundamental basis of this article. With regard to the point that the authority to make rules of business should be vested in the Prime Minister, I think it has not been understood properly that in effect that will be so for the simple reason that although the article speaks of the

President, the President is also bound to accept the advice of the Prime Minister. Consequently, the rules that will be issued by the President under article 77 will in fact be issued by the Prime Minister and on his advice.

Now, Sir, in order to understand the exact necessity of article 77, the first thing which is necessary to realise is that article 77 is closely related to article 53. In fact, article 77 merely follows on to article 53. Article 53 makes a very necessary provision. According to the general provisions of the Constitution all executive authority of the Union is to be exercised by the President. It might be contended that, under that general provision, that the executive authority of the Union is to be exercised by the President, such authority as the President is authorised and permitted to exercise shall be exercised by him personally. In order to negative any such contention, article 53 was introduced which specifically says that the executive authority of the Union may be exercised by the President either directly or indirectly through others. In other words, article 53 permits delegation by the President to others to carry out the authority which is vested in him by the Constitution. Now, Sir, this specific provision contained in article 53 permitting the President to exercise his authority through others and not by himself must also be given effect to. Otherwise article 53 will be nugatory. The question may arise as to why it is necessary to make a statutory provision as is proposed to be done in article 77 requiring the President to make rules of business. Why not leave it to the President to do so or not to do so as he likes ? The necessity for making a statutory provision in terms of article 77 is therefore necessary to be explained.

There are two things which must be borne in mind in criticising article 77. The first is that if the President wants to delegate his authority to some other officer or some other authority, there must be some evidence that he has made the delegation. It is not possible for persons who may have to raise such a question in a court of law to prove that the President has delegated the authority. Secondly, if the President by his delegation proposes to give authority to any particular individual to act in his name or in the name of the Government, then also that particular person or that particular officer must be specifically defined. Otherwise a large litigation may arise in a court of law in which the questions as to the delegation by President, the question as to the authority of any particular individual exercising the powers vested in the Union President may become matters of litigation. Those who have been familiar with litigation in our courts will remember that famous case of Shibnath Banerjee *vs.* Government of Bengal. Under the Defence of India Act, the Governor had made certain rules authorising certain persons to arrest certain individuals who committed offences against the Defence of India Act. The question was raised as to whether the particular individual who ordered the arrest under that particular law had the authority to act and in order to satisfy itself the Calcutta High Court called upon the Government of Bengal to prove to its satisfaction that the particular individual who was authorised to arrest was the individual meant by the Government of Bengal. The Government of Bengal had to produce its rules of business for the inspection of the Court before the Court was satisfied that the person who exercised the authority was the person meant by the rules of business.

It is in order to avoid this kind of litigation as to delegation of authority for acts that we thought it was necessary to introduce a provision like article 77. This article of course does not take away the power of the Parliament to make a law permitting other persons to have delegated authority as to permit them to act in the name of the Government of India. But while Parliament does make such a provision it is necessary that the President shall so act as to avoid any kind of litigation that may arise otherwise.

With regard to article 100 which relates to the question of quorum I do not know whether it is necessary for me to say anything in reply. All that I would say is that there is a fear having regard to the comparative figures relating to quorum prescribed in other legislative bodies in other countries that the quorum originally fixed was probably too high and we therefore suggested that the quorum should be reduced. The Drafting Committee's proposal is not an absolute proposal, because it is made subject to law made by Parliament. If Parliament after a certain amount of experience as to quorum comes to the conclusion that it is possible to carry on the business of Parliament with a higher quorum there is nothing to prevent Parliament from altering this provision as contained in article 100. The provision therefore is very elastic and permits the existing situation to be taken into account and permits also the future experience to become the guide of Parliament in altering the provision.

Something was said with regard to article 128. It was contended that we ought not to pamper our judges too much. All that I would say is that the question with regard to the salaries of judges is not now subject to scrutiny. The House has already passed a certain scale of salary for existing judges and a certain scale of salary for future judges. The only question that we are called upon to consider is when a person is appointed as a judge of a High Court of a particular State, should it be permissible for the Government to transfer him from that Court to a High Court in any other State ? If so, should this transfer be accompanied by some kind of pecuniary allowance which would compensate him for the monetary loss that he might have to sustain by reason of the transfer ? The Drafting Committee felt that since all the High Courts so far as the appointment of judges is concerned form now a central subject, it was desirable to treat all the judges of the High Courts throughout India as forming one single cadre like the I.C.S. and that they should be liable to be transferred from one High Court to another. If such power was not reserved to the Centre the administration of justice might become a very difficult matter. It might be necessary that one judge may be transferred from one High Court to another in order to strengthen the High Court elsewhere by importing better talent which may not be locally available. Secondly, it might be desirable to import a new Chief Justice to a High Court because it might be desirable to have a man who is unaffected by local politics and local jealousies. We thought therefore that the power to transfer should be placed in the hands of the Central Government.

We also took into account the fact that this power of transfer of judges from one High Court to another may be abused. A Provincial Government might like to transfer a particular judge from its High Court because that judge had become very inconvenient to the Provincial Government by the particular attitude that he had taken with regard to certain judicial matters, or that he had made a nuisance of himself by giving decisions which the Provincial Government did not like. We have taken care that in effecting these transfers no such considerations ought to prevail. Transfers ought to take place only on the ground of convenience of the general administration. Consequently, we have introduced a provision that such transfers shall take place in consultation with the Chief Justice of India who can be trusted to advise the Government in a manner which is not affected by local or personal prejudices.

The only question, therefore, that remained was whether such transfer should be made so obligatory as not to involve any provision for compensation for loss incurred. We felt that that would be a severe hardship. A judge is generally appointed to the High Court from the local bar. He may have a household there. He may have a house and other things in which he will be personally interested and which form his belongings. If he is transferred from one High Court to another obviously lie cannot transfer all his household. He will have to maintain a household in the original Province in which he worked and he will have to establish a new household in the new Province to which he is transferred. The Drafting Committee felt therefore justified in making provision that where such transfer is made it would be permissible for Parliament to allow a personal allowance to be given to a judge so transferred.

I contend that there is nothing wrong in the amendment proposed by the Drafting Committee.

With regard to article 148 I need say nothing at this stage for the simple reason that the amendment moved by my friend Mr. T. T. Krishnamachari (No. 618) is one which has found itself agreeable to all those who had taken interest in this particular article.

Similarly article 320, over which there was so much controversy (if I may say so, without offence, utterly futile controversy) all controversy has now been set at rest by the revised amendment No. 558, which removes the objectionable parts which Members at one stage did not like.

With regard to article 365 there has been already considerable amount of debate and discussion. I also participated in that debate and stated my point of view. I am sure that after taking all that I said into consideration Members will find that article 365 is a necessary article and does not in any sense override the decisions taken by the House at an earlier stage.

I come to article 378. It was contended that this article should contain a provision of a uniform character for determining the population for election purposes. I am sorry to say that I am not in a position to accept this proposal of a uniform rule. It is quite impossible to have a uniform rule in the changing circumstances of the different Provinces. The Centre therefore must retain to itself the liberty to apply different tests to different Provinces for the purpose of determining the population. If any grave departure is made by reason of applying different rules to different Provinces, the matter is still open for the future Parliament to determine, because all matters which have relevance to constituencies will undoubtedly be placed before the Parliament and Parliament will then be in a position to see for itself whether the population as ascertained by the Central Government is proper, or below or above. Now, Sir, I come to article 391.

Pandit Balkrishna Sharma : Article 379 ?

The Honourable Dr. B. R. Ambedkar : About article 379 I can quite appreciate the objection of my honourable Friend Mr Sharma. He objects to the words principally "Dominion of India". I tried yesterday with the help of Mr Mukerjee, the Chief Draftsman, my hand to redraft the article with the object of eliminating those words 'Dominion of India'. But I confess that I failed. I would therefore request Mr. Sharma to allow the article to stand as it is. It is unfortunate, but there is not remedy to it that I can see within the short time that was left to us.

Now coming to article 391, the position is this: The Constitution contains two sets of provisions for the creation of new provinces. Provinces can be created after the commencement of the Constitution. New Provinces can be created between 26th November and 26th January. With regard to the creation of Provinces after the commencement of the Constitution, the articles that would become operative are articles 3 and 4. They give power to Parliament to make such changes in the existing boundaries of the provinces in order to create new Provinces. Those articles are so clear that I do not think any further commentary from me is necessary.

With regard to the creation of new Provinces between now and the 26th of January, the article that would be operative would be section 290 of the Government of India Act of 1935 and article 391 of the present Constitution. Sir, article 391 says that if between now and the 26th of January the authority empowered to take action tinder the Government of India Act, 1935 does take action, then the President, under article 391 is empowered to give effect to that order made under the Government of India Act Section 290. 'Notwithstanding the fact'--this is an important thing--"notwithstanding the fact that on the 25th January the Government of India Act, 1935, would stand repealed, the action would stand. The President is empowered under article 391 to carry over that action taken under the Government of India Act, 1935 and to give effect to it by an order amending the First Schedule and consequentially the Fourth Schedule which deals with representation in the Council of States.

An Honourable Member : He can only act after 26th January.

The Honourable Dr. B. R. Ambedkar : He can act at any time. The Constituent Assembly will not be able to take notice of it, because it will not be in existence for this purpose after the 26th November. The point is this that the Government of India Act, 1935 will continue in operation after the 25th November, So long as that Act continues, the Governor-General's right to act under it also continues. He may take action at any time that he likes.

My friend Mr. Sidhva raised one question, namely that any action that may be taken between now and the 25th January should be subject to the scrutiny of Parliament. I think what he intends is that it should not be merely the act of the executive. My friend Mr. Sidhva will remember that our Constitution will come into operation on the 26th of January. Till the 25th of January, the Constitution which will be operative in India will be the Constitution embodied in the Government of India Act, 1935, as adapted on 15th August 1947. Therefore, between now and the 25th of January, the Constitution is not the Constitution that we shall be passing, but the Constitution embodied in the Government of India Act 1935. Therefore in replying to his question whether the Parliament should have the right or the Indian legislature should have the right to be consulted in this matter, must be determined by the terms contained in section 290 of the Government of India Act, 1935.

If my friend Mr. Sidhva were to turn to section 290 of the Government of India Act, he will see that the Governor-General is not required to ascertain the views of the Provincial legislature nor is he required to ascertain the views of the Indian Legislature. All that lie is required to do is to ascertain the views of the Government of any Province affected by the order. Therefore, so far as the operation of section 290 is concerned--and it is the only section which can be invoked so far as any action with regard to reconstitution of provinces between now and the 25th January is concerned--this has placed both the Provincial Legislature and the Indian Legislature outside the purview of any consultation that the Governor-General may make for acting under section 290. Therefore with the best wishes in the world it is not possible to carry out the wishes of my friend Mr. Sidhva. He must therefore remain content with such provisions as we have got under section 290. Sir, I do not think any other article calls for a reply. I would therefore close with the hope that the House will be in a position to accept the amendments proposed by the Drafting Committee. *(Cheers)*

Mr. President : I will now put the amendments one by one to vote. Members have noticed that there are many amendments which arise on some amendment or other of the Drafting Committee. It may be that some of the amendments which have been moved by members may be acceptable to the Drafting Committee and it may be that some Members are willing to withdraw the amendments which they have moved.

Shri T. T. Krishnamachari : May I mention the amendments which we are prepared to accept ?

Mr. President : I was just coming to that. If an indication is given on behalf of the Drafting Committee as to which of the amendments are acceptable to them, we can avoid putting them to the vote, and if on the other hand, private Members are also able to express as to which of the amendments they would not like to press, we would leave them alone, so that the number of amendments which will have to be put to the vote may be reduced.

Shri T. T. Krishnamachari : Mr. President, Sir, honourable Members of this House will please note that some of the amendments suggested by the Drafting Committee which appear in Lists IV, V, VI and VII, are the result of the discussions with some of the Members who moved amendments which find a place in List I and as a result of the compromise which has been arrived at between them and the Drafting Committee some of these amendments have been moved which, we think, the House will accept. The honourable Members who have moved the original amendments which find a place in List I will, I think, not persist in putting forward these amendments but withdraw them in view of the action taker by the Drafting Committee by introducing fresh amendments to suit the purpose they had in mind. Barring these amendments, there are a few amendment which we will accept and which find a place in List 1. All these amendments happen to be in the name of my honourable Friend, Mr. H. V. Kamath. They are amendments No. 329 to article 164 for changing the name from "Koshal Vidarbh" to "Madhya Pradesh", the first alternative in the two amendments Nos. 394 and 395 to article 320. The Drafting Committee had an amendment to similar effect, but in view of the fact that my honourable Friend has moved this amendment, we are wining to accept it--amendment No. 418 to article 379, and amendment No. 431 to the First Schedule which is a consequence of the acceptance of amendment No. 329. *viz.*, change of name from "Koshal Vidarbh" to "Madhya Pradesh". These amendments we are willing to accept. So far as the other amendments are concerned, the more important ones among them have been accepted by the Drafting Committee themselves tabling amendments to suit the purpose that honourable Members had in mind when they tabled those amendments because we found that the amendments had to be put in a different form to suit legal technicalities. I do hope that honourable Members will help the House by not pressing their amendments.

Shri H. V. Kamath : What about my amendment to article 41 which I discussed with my honourable Friend and which he was willing to accept ?

Mr. President : We shall take it up when we come to that.

Shri T. T. Krishnamachari : I may mention, Sir, that he did mention to me that the words in article 41 should be "State assistance" instead of "public assistance". If the amendment is tabled, you may kindly permit the amendment being moved. I have no objection to the amendment as such but I see that no amendment has been tabled.

Shri H. V. Kamath : My amendment is there, No. 138* in List I.

Shri T. T. Krishnamachari : I will accept that.

Mr. President : You mentioned that this morning. I will now take up me amendments as they have been moved. First, amendment No. 6 by Mr. Kamath.

---

*138. That in article 41, for the words 'public assistance' the words 'State assistance' be substituited.

Shri B. Das : Sir, you need not read the amendments in List I. We all agree that all our amendments can be withdrawn, because the Drafting Committee have introduced the very amendments in another form. Take for instance my amendment No. 313. It is covered by No. 618. There is no need for your reading out the amendments. We will take it that all the amendments in List I stand withdrawn.

Mr. President : There are other amendments which honourable Members may not like to withdraw. I think I had better put all the amendments to the vote. The question is:

"That in clause (1) of article 1, after the words 'that is' a comma be inserted and the comma after the word 'Bharat' be deleted."

The amendment was negatived.

Mr. President : The question is:

"That in sub-clause (a) of clause (3) of article 13

(i) after the word 'having' the words 'the force of law' be inserted;

(ii) after the word 'India' the words 'or any part thereof' be inserted; and

(iii) the words 'the force of law' be deleted."

The amendment was negatived.

Mr. President : If I leave out any amendment by mistake, honourable Members will draw my attention to it. Amendment No. 83 to article 22 which has been considerably altered.

Mr. Naziruddin Ahmad : I would like to have leave to withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is:

"That article 34 be deleted."

The amendment was negatived.

Mr. President : There are some other amendments to this article, No. 122.

Shri H. V. Kamath : I withdraw Nos. 122 and 123 but not 124.

Amendment Nos. 122 and 123 were, by leave of the Assembly, withdrawn.

Mr. President : The question is:

"That in article 34, for the words 'done under martial law' the words 'done by such person under martial law' be substituted."

The amendment was negatived.

Shri H. V. Kamath : What about my amendment No. 138 to which I referred just now?

Mr. President : Yes. The question is:

"That in article 41, for the words 'public assistance' the words 'State assistance' be substituted"

The amendment was negatived.

Mr. President : We then go to article 48.

Prof. Shibban Lal Saksena : I beg to withdraw my amendment No. 141.

The amendment was, by leave of the Assembly, withdrawn.

Pandit Thakur Das Bhargava : I beg to withdraw all my amendments (142 and 144) relating to article 48.

The amendments Were, by leave of the Assembly, withdrawn.

Mr. President : I take it that 549 will take its place. I shall therefore put 549 straightaway to vote.

The question is:

"That in article 48, for the words 'for improving the breeds of milch and draught cattle including cows and calves and for prohibiting their slaughter' the words preserving and improving the breeds and prohibiting the slaughter of cows and calves and other milch and draught cattle' be substituted."

The amendment was adopted.

Mr. President : Then we go to article 53.

Shri H. V. Kamath : I beg to withdraw my amendment No. 151.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is:

"That in clause (1) of article 53, after the word 'Constitution' the words 'and the law be added."

'The amendment was negatived.

Mr. President : Then we go to article 57.

The question is:

"That in article 57, the words 'subject to the other provisions of this Constitution', be deleted."

The amendment was negatived.

Mr. President : The question is:

"That in the form of oath or affirmation in article 69, the words 'as by law established' be deleted."

The amendment was negatived.

Mr. President : The question is:

"That in the form of oath or affirmation in article 69, for the words 'the duty upon Which I am about to enter' the words 'the duties of the office upon which I am about to enter' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in clause (2) of article 71, for the words 'the date of the decision', the words 'the time of the decision' be substituted."

The amendment was negatived.

(Mr. Naziruddin Ahmad did not press his amendment No. 584.)

Mr. President : The question is:

"That in clause (2) of article 71, for the words 'before the date' the words 'on or before the date' be substituted."

The amendment was adopted.

Prof. Shibban Lal Saksena : I beg to withdraw my amendment No. 201.

The amendment was, by leave of the Assembly, withdrawn.

Shri R. K. Sidhva : I beg to withdraw my amendment No. 202.

The amendment was, by leave of the Assembly, withdrawn.

Shri H. V. Kamath : Sir, I beg to withdraw my amendment No. 203.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is:

"That in clause (3) of article 77, for the words 'more convenient' the words 'efficient and convenient' be substituted.

or alternatively

That in clause (3) of article 77, the word 'more' be deleted."

The amendment was negatived.

Mr. President : The question is:

"That in clause (2) of article 96, for the words 'and shall, notwithstanding anything in article 100, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of equality of votes' the words 'but, notwithstanding anything in article 100, shall not be entitled to vote at all on such resolution or on any other matter during such proceedings' he substituted."

The amendment was negatived.

Shri H. V. Kamath : I withdraw, my amendment No. 228.

The amendment was, by leave of the Assembly, withdrawn.

(Mr. H. V. Kamath did not press his amendments Nos. 231, 234 and 235.)

Mr. President : There is amendment No. 233 to article 100. I think I had not better put it to vote just now, I think it is a renumbering of paragraphs.

Amendment No. 238 stands in the name of Mr. Kamath and Prof. Shibban Lal Saksena. I forgot who moved it.

Prof. Shibban Lal Saksena : That has been accepted.

Shri T. T. Krishnamachari : That is covered by amendment No. 452.

Mr. President : I take it that amendment No. 238 is withdrawn.

Prof. Shibban Lal Saksena : Yes, Sir.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : As for amendment No. 452, I had better leave that for the present.

The question is:

"That in clause (3) of article 100, for the word 'one-tenth' the word 'one-sixth' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in article 128, for the words 'the President may by order' the words 'Parliament may by law' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That sub-clause (3) of clause (1) article 145 be deleted and before clause (1) of article 145, the following be inserted:--

> "The Supreme Court shall make rules for regulating the practice and procedure of the appropriate proceeding relating to the enforcement of rights conferred under Part III;
>
> and the subsequent clauses be renumbered accordingly."

The amendment was negatived.

Mr. President : The question is:

"That sub-clause (c) of clause (1) of article 145 be deleted; and after clause (1) of the said article, the following new clause be and consequential changes be made:--

> '(2) The Supreme Court shall make rules for regulating the practice and procedure of the appropriate proceedings relating to the enforcement of rights conferred under Part III."

The amendment was negatived.

Mr. President : Amendment No. 313. There is another amendment. It is covered by amendment 618 of the Drafting Committee.

Shri B. Das : I beg leave to withdraw this, Sir.

The amendment was, by leave of the Assembly, withdrawn.

Shri H. V. Kamath : I beg leave to withdraw No. 320.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

"That in clause (1) of article 154, after the word 'Constitution' the words 'and the law' be added."

The amendment was negatived.

Mr. President : The question is :

"That in the proviso to clause (1) of article 164, for the words 'Koshal Vidarbh' the words 'Madhya Pradesh' be substituted."

The amendment was adopted.

Prof. Shibban Lal Saksena : I beg leave to withdraw No. 332.

Shri R. K. Sidhva : And No. 333, Sir.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President : The question is :

"That in clause (3) of article 166, for the words 'more convenient' the word 'efficient' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in clause (3) of article 166, the words 'in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion' be deleted."

The amendment was negatived.

Shri H. V. Kamath : I beg leave to withdraw No. 340.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

"That in clause (2) of article 172, for the word 'possible' the word 'practicable' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in clause (2) of article 181, for the words 'and shall, notwithstanding anything in article 189, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of equality of votes' the words 'but not with standing anything in article 189, shall not be entitled to vote on such resolution or on any matter during such proceedings' be substituted."

The amendment was negatived.

Shri H. V. Kamath : I beg leave to withdraw No. 344.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President : The question is :

"That in clause (2) of article 185, for the words 'and shall, notwithstanding anything in article 189, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of equality of votes' the words 'but, notwithstanding anything in article 189, shall not be entitled to vote on such resolution or on any matter during such proceedings' be substituted."

The amendment was negatived.

Shri H. V. Kamath : I beg leave to withdraw 346.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

"That in the second paragraph of clause (3) of article 189, for the words 'The quorum shall, until the legislature of the State by law otherwise provides,' the words 'Until the legislature of the State by law otherwise provides, the quorum shall' be substituted."

The amendment was negatived.

Shri H. V. Kamath : Is that not covered by an amendment of the Drafting Committee?

Mr. President : It has a different wording. If it is covered by any other amendment, it will be taken up.

The question is :

That in clause (3) of article 189. for the words 'ten' and 'one-tenth' the words 'twenty' and 'one-eighth' be substituted."

The amendment was negatived.

Shri R. K. Sidhva : Sir, I withdraw No. 353.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

"The Clause (2) of article 222 be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in article 224, for the words 'the President may by order' the words 'Parliament may by law' be substituted."

The amendment was negatived.

Pandit Thakur Das Bhargava : I beg leave to withdraw No. 383.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

"That in the proviso to article 309, the words 'or such person as he may direct, wherever they occur, be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in clause (3) of article 311, for the words 'reasonably practicable to give to any person an opportunity' the words 'practicable to give to any person a reasonable opportunity' be substituted.' "

The amendment was negatived

Shri H. V. Kamath : I beg to withdraw No. 389.

The amendment was, by leave of the Assembly withdrawn.

Mr. President : The question is :

"That in clause (c) of article 319, for the words 'other than a Joint Commission' the words 'or as the Chairman of a joint Commission' be substituted:'

The amendment was negatived.

Mr. President : Amendment No. 394.

Shri H. V. Kamath : Nos. 394 and 395 have been accepted, Sir, the first alternative.

Shri T. T. Krishnamachari : They may be put together; they are practically the same.

Mr. President : The question is :

"That in sub-clause (d) of clause (3) of article, 320, for the words 'under an Indian State' the words 'under the Government of an Indian State' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That in sub-clause (e) of clause (3) of article 320, for the words 'under an Indian State' the words 'under the Government of an Indian State' be substituted."

The amendment was adopted.

Pandit Thakur Das Bhargava : I withdraw No. 396.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

"That in article 325, for the words 'shall be ineligible for inclusion in any such roll or claim to be included in' the words 'shall be excluded from or claim to be included in' be substituted."

The amendment was negatived.

Mr. President : Article 333.

Shri H. V. Kamath : There is my amendment No. 399, Sir.

Mr. President : I do not know if it arises; however, I shall put it to vote.

The question is :

"That in article 325, after the word caste, the word 'class' be inserted."

The amendment was negatived.

Mr. President : The question is :

"That in clause (3) of article 344, for the words 'persons belonging to the non-Hindi speaking areas' the words 'the non-Hindi speaking sections of the population' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That article 365 be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in article 365, after the word 'Where' the words 'The President is satisfied that' be inserted."

The amendment was negatived.

Mr. President : The question is :

"That in article 365, after the words 'under any of the provisions of this Constitution' the words 'which is in direct contravention of the declared policy of the Union' be inserted.

The amendment was negatived.

Mr. President : The question is :

"That article 373 be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in article 373, for the words 'one year' the words 'three months' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in clause (5) of article 379, for the words 'after such commencement' the words 'on commencement' be substituted."

The amendment was adopted.

Pandit Balkrishna Sharma : Amendment No. 416 has been left out.

Mr. President : I will take it along with amendment No. 503. The question is :

"That in article 387 the words 'and different provisions may be made for different States and for different purposes by such order' be substituted."

The amendment was negatived.

Shri H. V. Kamath : I withdraw Nos. 424 and 425.

Shri R. k. Sidhva : Also No. 426.

The amendments were, by leave of the Assembly, withdrawn.

Mr. President : The question is :

"That in clause (3) of article 392 for the word 'before' the word 'until' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in clause (3) of article 392 for the word 'before' the words 'until immediately before' be substituted "

The amendment was negatived.

Mr. President : The question is :

"That in item 5 of Part A of the First Schedule for the name 'Koshal Vidarbh' the name 'Madhya Pradesh' be substituted."

The amendment was adopted.

Shri H. V. Kamath : I withdraw No. 432.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

"That in item 9 of Part A of the First Schedule, for the name 'The United Provinces' the name 'Aryavarta' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in sub-paragraph (3) of paragraph 9 the words beginning with 'during the period' and ending 'before such commencement' be deleted."

The amendment was negatived.

Mr. President : The question is:

"That sub-paragraph (2) of paragraph 10 be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in sub-paragraph (4) of paragraph 10, for the words 'for any State' the words 'of any State' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in sub-paragraph (3) of paragraph 12, for the word 'and' occurring in line 1, a comma be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in the Fourth Schedule in Column I, for the name 'Koshal Vidarbh' the name 'Madhya Pradesh' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That in entry 1 of List I of the Seventh Schedule, after the word 'preparation' the words 'and operation' be inserted."

The amendment was negatived.

Mr. President : The question is :

"That in entry 65 of List I of the Seventh Schedule, before the word 'police' the words 'Administrative or' be inserted."

The amendment was negatived.

Mr. President : The question is :

"That in entry 34 of List III be transferred to List I."

The amendment was negatived.

Mr. President : The question is :

"That in article 9 after the word and figure 'article' the words 'or be deemed to be a citizen of India by virtue of' be inserted."

The amendment was adopted.

Shri T. T. Krishnamachari : Sir, I withdraw No. 443.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

"That in the Explanation to article 58, for the words 'For the purposes of this clause' the words 'For the purposes of this article' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That for clause (3) of article 59 the following clause be substituted:

> '(3) The President shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances, and privileges as are specified in the Second Schedule.' "

The amendment was adopted.

Mr. President : The question is :

"That in clause (3) of article 65 for the words 'privileges, emoluments and allowances' in the two places where they occur, the words 'emoluments, allowances and privileges' be substituted."

The amendment was adopted.

Mr. President : 447.

Dr. P. S. Deshmukh : All the Drafting Committee's amendments may be put together.

The Honourable Shri K. Santhanam : Some of them might not have been moved.

Mr. President : Then I will go as it is one by one.

The question is :

"That in the Explanation to article 66 for the words 'For the purposes of this clause' the words 'For the purposes of this article' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That amendment No. 449 of List 11 be deleted."

The amendment was negatived.

Mr. President : The question is :

"That in sub-clause (b) of clause (1) of article 72 for the words 'offence under any law' the words 'offence against any law' be substituted."

The amendment was adopted.

(Mr. Naziruddin Ahmad did not press his amendment No. 586)

Mr. President : The question is :

"That in the proviso to clause (1) of article 73 after the words 'any State' the words and letters 'specified in Part A or Part B of the First Schedule' be inserted."

The amendment was adopted.

Mr. president : The question is :

"That in sub-clause (a) of clause (1) of article 81, for the word and figures 'article 331' the words and figures 'articles 82 and 331' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That in amendment No. 452 of List II, in the proposed clause (3) of article 100, for the words 'until Parliament by law otherwise provides, the quorum' the words 'The quorum' be substituted."

The amendment was negatived.

Mr. President : The question is :

"That in amendment No. 452 of List II in the proposed clause (3), of article 100 for the word 'one-tenth' the word 'one-sixth' be substituted."

The amendment was negatived.

Shri R. K. Sidhva : I withdraw No. 589.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is :

'That for clause (3) of article 100 the following clauses be substituted:

> (3) Until Parliament by law otherwise provides, the quorum to constitute a meeting of either House of Parliament shall be one-tenth of the total number the House.
>
> (4) If at any time during a meeting of a House there is no quorum, it shall be the duty of the Chairman or Speaker or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum."

The amendment was adopted.

Mr. President : The question is :

"That in article 104 for the words 'the Government of India' the words 'the Union' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That in clause (1) of article 105 for the words 'Subject to the rules and standing orders' the words 'Subject to the provisions of this Constitution and to the rules and standing orders' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That in amendment No. 455 of List II in clause (2) of article 114, for the words 'whether an amendment is inadmissible' (proposed to be substituted) the words 'as to the admissibility of the amendment' be substituted."

The amendment was negatived.

Mr. President : Then I put amendment No. 455 to vote.

The question is :

"That in clause (2) of article 114, for the words 'the amendments which are admissible' the words 'whether an amendment is inadmissible' be substituted."

The amendment was adopted.

(Mr. Naziruddin Ahmad did not press his amendment No. 591)

Mr. President : The question is :

"That in clause (1) of article 124, for the words 'seven other Judges' the words 'not more than seven other Judges' be

substituted."

The amendment was adopted.

Mr. President : That the proviso to clause (1) of article 133 be omitted and for the colon at the end of the said clause a 'full stop' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That after clause (2) of article 133, the following clause be added:--

> '3. Notwithstanding anything in this article. No appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.' "

The amendment was adopted.

Mr. President : Then article 135, and amendment No. 458.

The question is:

"That in article 135, for the words 'not being a matter referred to in any of the foregoing provisions of this Chapter' the words 'to which the provisions of article 133 or article 134 do not apply' be substituted."

The amendment was adopted.

Mr. President : Amendment No. 459.

The question is

"That in clause (1) of article 136, for the words 'The Supreme Court' the words 'Notwithstanding anything in this Chapter, the Supreme Court' be substituted."

The amendment was adopted.

Mr. President : Then we come to article 145. There is amendment No. 460 of the Drafting Committee and there is also No. 550 of Mr. Kamath.

Shri H. V. Kamath : Sir, I withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : Then I put amendment No. 460.

The question is :

"That in sub-clause (c) of clause (1) of article 145, for the words 'enforcement of the rights' the words 'enforcement of any of the rights' be substituted."

The amendment was adopted.

Mr. President : Article 158, and amendment No. 461.

The question is :

'That for clause (3) of article 158, the following clause be substituted:--

> '(3) The Governor shall be entitled without payment of rent to the use of his official residences and shall be also entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule.' "

The amendment was adopted.

Mr. President : No. 462.

The question is:

"That in the proviso to article 162, for the words 'the Government of India' 'the words 'the Union' be substituted."

The amendment was adopted.

Mr. President : No. 463. And to that there is the amendment No. 594 by Mr. Naziruddin Ahmad.

Shri T. T. Krishnamachari : There is another amendment to article 168 that I have moved, that 'Bengal' may be changed to 'West Bengal'. So it may be put as amended.

Mr. President : Yes, we take that amendment which has been moved today with regard to the name of Bengal, along with this, and all the consequential changes with regard to the name "Bengal", "West Bengal" will be put in place of "Bengal".

The question is:

"That for sub-clause (a) of clause (1) of article 168, the following sub-clause be substituted:--

> '(a) in the States of West Bengal, Bihar, Bombay, Madras, Punjab and the United Provinces, two Houses.' "

The amendment was adopted.

Mr. President : Article 181, amendment No. 464.

The question is :

"That in clause (1) of article 181, the words 'of a State' omitted."

The amendment was adopted.

Mr. President : Article 181, amendment No. 465.

The question is :

"That in clause (2) of article 181, for the word 'House' the word 'Assembly' be substituted."

The amendment was adopted.

Mr. President : Amendment No. 466, and there is No. 595 to this.

Shri T. T. Krishnamachari : No. 595 is a negative amendment.

Mr. President : Well then. The question is:

"That in clause (1) of article 185, the words 'of a State' be omitted."

The amendment was adopted.

Mr. President : Article 189 and amendment No. 467. There are several amendments to this. There is No. 596 of Mr. Naziruddin Ahmad.

Shri T. T. Krishnamachari : It is the same as No. 100. Probably the honourable Member will be willing to withdraw it.

Mr. Naziruddin Ahmad : I beg leave to withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : Then there is No. 597 of Mr. Sidhva. Do you press it? It is about "ten members or one-tenth" and "twenty members or one-sixth".

Shri R. K. Sidhva : Yes, Sir.

Mr. President : Well then. The question is:

"That in amendment No. 467 of List II, in the proposed clause (3) of article 189, for the words 'ten members or one-tenth' the words 'twenty members or one-sixth' be substituted."

The amendment was negatived.

Mr. President : Then No. 598. You withdraw it, I suppose?

Shri R. K. Sidhva : I withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : Amendment No. 467. The question is:

"That for clause (3) of article 189, the following clauses be substituted:--

> '(3) Until the Legislature of the State by law otherwise provides, the quorum to constitute a meeting of a House of the Legislature of a State shall be ten members or one-tenth of the total number of members of the House, whichever is greater.
>
> (4) If at any time during the meeting of the Legislative Assembly or the legislative Council of a State there is no quorum, it shall be the duty of the Speaker or Chairman, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum.' "

The amendment was adopted.

Mr. President : No. 468. The question is:

"That in sub-clause (e) of clause (1) of article 191, for the words 'the Legislature of the State' the word 'Parliament' be substituted."

The amendment was adopted.

Mr. President : No. 469. The question is:

"That in clause (2) of article 191, for the words 'either for India or for any such State' the words 'either for the Union or for such State' be substituted."

The amendment was adopted.

Mr. President : No. 470. The question is:

"That in article 193 for the words 'the Legislature of the State' the words 'Parliament or the Legislature of the State' be substituted."

The amendment was adopted.

Mr. President : Then No. 471. There is an amendment to this--No. 554 of Mr. Kamath.

Shri H. V. Kamath : Sir, I withdraw that amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : Then the question is:

"That in clause (1) of article 194, for the words 'Subject to the rules and standing orders' the words 'Subject to the provisions of this Constitution and to the rules and standing orders' be substituted."

The amendment was adopted.

Mr. President : No. 472. The question is:

"That in clause (2) of article 204, for the words 'the amendments which are admissible' the words 'whether an amendment is inadmissible' be substituted."

The amendment was adopted.

Mr. President : No. 473. The question is:

"That for clause (c) of the proviso to clause (1) of article 217, the following clause be substituted:--

> (c) the office of a Judge shall be vacated by his being appointed by the President to be a Judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.

The amendment was adopted.

(Mr. Naziruddin Ahmad did not press his amendments Nos. 599, 600 and 601.)

Mr. President : No. 474. The question is:

"That in article 230, after the words 'any State' the words 'specified in the First Schedule' be inserted."

The amendment was adopted.

Mr. President : No. 475. The question is:

"That in article 232 after the words 'more than one State' the words 'specified in the First Schedule' be inserted."

The amendment was adopted.

Mr. President : No. 476. The question is:

"That in article 234, after the word 'Governor' the words 'of the State' be inserted, and after the words 'High Court' the words 'exercising jurisdiction in relation to such State' be inserted."

The amendment was adopted.

Mr. President : No. 477. The question is:

"That in item (4) of article 238, in the proposed clause (3) of article 158, for the words 'entitled to the use of an official residence without payment of rent' and there shall be paid to the Rajpramukh such allowances' the words 'entitled without payment of rent to the use of an official residence and shall be also entitled to such allowances and privileges' be substituted."

The amendment was adopted.

Mr. President : No. 478. That is withdrawn, as it is covered by No. 556. No. 479 is also withdrawn.

No. 480. The question is:

"That in clause (2) of article 289 for the words 'any property used or occupied for the purposes thereof, or any income accruing or arising therefrom' the words 'any property used or occupied for the purposes of such trade or business, or any income accruing or arising, in connection therewith be substituted."

The amendment was adopted.

Mr. President : No. 481. The question is:

"That for article 294, the following article be substituted:--

'294. *Succession to property, assets, rights, liabilities and obligations in certain cases.*--As from the commencement of this Constitution--

> (a) all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of the Dominion of India and all property and assets which immediately before such commencement were vested in His Majesty for the purposes of the Government of each Governor's Province shall vest respectively in the Union and the corresponding State, and
>
> (b) All rights, liabilities, and obligations of the Government of the Dominion of India and of the Government of each Governor's Province, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations respectively of the Government of India and the Government of each corresponding State,

subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the Provinces of West Bengal, East Bengal, West Punjab and East Punjab.' "

The amendment was adopted.

(Mr. Naziruddin Ahmad did not press his amendments Nos. 604 and 606 to articles 294 and 366 respectively)

Mr. President : No. 482. The question is:

'That in sub-clause (a) of clause (1) of article 295, for the words 'the commencement of this Constitution' the words 'such commencement' be substituted."

The amendment was adopted.

Mr. President : No. 483. The question is:

"That in sub-clause (a) of clause (1) of article 295, for the words 'the Government of India' the words 'the Union' be substituted."

The amendment was adopted.

Mr. President : No. 484. The question is:

'That in article 296, after the words 'His Majesty' in the first place where they occur. the words 'or, as the case may be, to the Ruler of an Indian State' be inserted."

The amendment was adopted.

Mr. President : No. 485. The question is:

"That in the proviso to article 296, after the words 'His Majesty' the words 'or to the Ruler of an Indian State' be inserted."

The amendment was adopted.

Mr. President : No. 486. The question is:

"That to article 296, the following Explanation be added:--

"Explanation.--In this article, the expressions 'Ruler' and 'Indian State' have the same meanings as in article 363. "

The amendment was adopted.

Mr. President : No. 487. The question is:

"That in the proviso to clause (1) of article 316, for the words 'under an Indian State' the words 'under the Government of an Indian State' be substituted."

The amendment was adopted.

Mr. President : Then article 319. Amendments 488, 489 and 490. There is some substitution for these. These are, therefore, withdrawn, I take it. Then article 320. Amendment No. 491. But amendment No. 559 covers it, and so I take it that No. 491 is withdrawn.

Then article 351 and amendment No. 492.

The question is :

"That in article 351, the words 'so specified' be deleted."

The amendment was adopted.

Mr. President : No. 493. The question is:

"That in clause (2) of article 352, the brackets and words '(in this Constitution referred to as a "Proclamation of Emergency")' be omitted."

The amendment was adopted.

Mr. President : No. 494. The question is:

"That in clause (b) of article 353, for the words 'the Government of India or officers and authorities of the Government of India' the words 'the Union or officers and authorities of the Union' be substituted."

The amendment was adopted.

Mr. President : No. 495. The question is:

"That in sub-clause (b) of clause (1) of article 357, for the words 'the Government of India or officers and authorities of that Government' the words 'the Union or officers and authorities thereof' be substituted."

The amendment was adopted.

Mr. President : Article 365: Amendment No. 496. But we have amendment No. 561 which has taken the place of amendment No. 496, and so it is withdrawn.

Article 366. The question is :

"That clause (12) of article 366 be omitted."

The amendment was adopted.

Mr. President : The question is:

"That clauses. (13), (14), (15), (16), (17) and (18) of article 366 be renumbered as classes (12), (13), (14), (15), (16) and (17) respectively."

The amendment was adopted.

Mr. President : The question is:

"That after clause (17) as so renumbered, the following clause be inserted:--

> "(18) 'Proclamation of Emergency' means a Proclamation issued under clause (1) of article 352;' "

The amendment was adopted.

Mr. President : Then we come to amendment No. 500.

Shri T. T. Krishnamachari : Sir, it has been replaced by amendment No. 562.

Mr. President : I shall, therefore, treat it as withdrawn. I am told 501 was not moved. Let us therefore go to 502.

The question is:

"That in clause (2) of article 370, for the words, brackets, letters and figures 'in paragraph (ii) of sub-clause (b) or in the second proviso to sub-clause (d) of clause (1)' the words, brackets, letters and figure 'in paragraph (ii) of sub-clause (b) of clause (1) or in the second proviso to sub-clause (d) of that clause' be substituted."

The amendment was adopted.

Mr. President : I find there are several amendments to 503.

Pandit Balkrishna Sharma : Sir, I withdraw Nos. 416 and 417.

The amendment was, by leave of the Assembly, withdrawn

Mr. President : The question is:

"That with reference to amendment No. 503 of List II, in clause (1) of article 379, for the words 'the body functioning as the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution' the words 'the Constituent Assembly of India' be substituted."

The amendment was negatived.

Mr. President : No. 564 is withdrawn. The question is:

"That in clause (1) of article 379, for the words 'shall exercise' the words 'shall be the provisional Parliament and shall exercise' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That in clause (2) of article 388, for the words 'the provisional legislature' the words 'the Legislature' be substituted."

The amendment was adopted.

Mr. President : There is one amendment (No. 530) which I allowed Dr. Deshmukh to move to article 335 that after the word "members" the words "the Backward classes" be inserted.

The question is:

"That in article 335, after the word 'members' the words 'the Backward Classes' be inserted."

The amendment was negatived.

Mr. President : Then we come to amendment No. 545. There are several amendments to this. The question is:

"That in amendment No. 545 of List IV, the proviso to sub-clause (a) of the proposed clause (4) of article 22 be deleted."

The amendment was negatived.

Mr. President : Mr. Ajit Prasad Jain's amendment No. 580 does not arise. I shall put 581 to vote. The question is:

"That in amendment No. 545 of List IV, in sub-clause (a) of the proposed clause (4) of article 22, for the word 'or' occurring at the end the word 'and' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That with reference to amendment No. 545 of List IV, for sub-clause (b) of the proposed clause (4) of article 22, the following be substituted:--

> '(b) such person is detained in accordance with the provisions of any law made by a State under the authority conferred by Parliament under clause (7).' "

The amendment was negatived.

Mr. President : The question is:

"That with reference to amendment No. 545 of List IV, for sub-clause (b) of clause (4) of article 22, the following be substituted:--

> '(b) such person is detained in accordance with the provisions of any law made under the authority conferred by Parliament under clause (7).' "

The amendment was negatived.

Mr. President : The question is:

"That with reference to amendment No. 545 of List IV, for sub-clause (b) of clause (4) of article 22, the following be substituted:--

> '(b) such person is detained in accordance with the provisions of any law made under the authority conferred by Parliament under clause (7).' "

The amendment was negatived.

Mr. President : The question is:

"That for clause (4) of article 22, the following clause be substituted:--

> '(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless--
>
> (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:
>
> Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or
>
> (b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clause (a) and (b) of clause (7).' "

The amendment was adopted.

Mr. President : I find there are two amendments to amendment 546. Let me put Mr. Kamath's amendment to vote first.

The question is:

"That in amendment No. 546 of List IV, in sub-clause (a) of the proposed clause (7) of article 22, the words 'without obtaining the opinion of an advisory Board in accordance with the provisions of sub-clause (a) of clause (4)' be deleted."

The amendment was negatived.

Shrimati Purnima Banerji : Sir, I withdraw my amendment No. 617.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President : The question is:

"That for clause (7) of article 22, the following clause be substituted:--

'(7) Parliament may by law prescribe--

> (a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);
>
> (b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and
>
> (c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4)."

The amendment was adopted.

Mr. President : The question is:

"That in clause (4) of article 32, for the word 'rights' the word 'right' be substituted."

The amendment was adopted.

Amendments Nos. 551, 552 and 553 were, by leave of the Assembly, withdrawn.

Mr. President : The question is:

"That in clause (1) of article 222, after the words 'The President may' the words 'after consultation with the Chief Justice of India' be inserted."

The amendment was adopted.

Mr. President : The question is:

"That for the Explanation to clause (1) of article 288, the following be substituted:--

> '*Explanation.*--The expression 'law of a State in force' in this clause shall include a law of a State passed or made before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas.' "

The amendment was adopted.

Mr. President : The question is:

"That in clause (c) of article 319, for the words 'as the Chairman of a State Public Service Commission other than a Joint Commission' the words 'as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission' be substituted."

The amendment was adopted.

Mr. President : The question is :

"That in clause (d) of article 319, for the words 'as the Chairman of any other State Public Service Commission' the words 'as the Chairman of that or any other State Public Service Commission' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That for clause (4) of article 320, the following clause be substituted:--

> '(4) Nothing in clause (3) shall require a Public Service Commission to be consulted as respects the manner in which any provision referred to in clause (4) of article 16 may be made or as respects the manner in which effect may be given to the provisions of article 335.' "

The amendment was adopted.

Mr. President : The question is:

"That for article 347, the following article be substituted:--

'347. *Special provision relating to language spoken by a section of the population of a State*.--On a demand being made in that behalf, the President may, if he is satisfied that a substantial proportion of the population of a State desire the use of any language spoken by them to be recognised by that State, direct that such language shall also be officially recognised throughout that State or any part thereof for such purpose as he may specify.' "

The motion was adopted.

Mr. President : The question is:

"That in article 365, for the words 'the President may hold' the words 'it shall be lawful for the President to hold' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That in amendment No. 500 of List II, the proviso to the proposed new clause (3) of article 367 be deleted."

The amendment was negatived.

Mr. President : Amendment No. 562A.

Shri T. T. Krishnamachari : With the change as suggested by me.

Mr. President : Yes. It will now read as follows and I will put it to vote.

The question is:

"That in article 367, the following clause be added:--

> '(3) For the purposes of this Constitution 'foreign State' means any State other than India:

Provided that, subject to the provisions of any law made by Parliament, the President may by order declare any State not to be a foreign State for such purposes as may be specified in the order."

The amendment was adopted.

Mr. President : The question is:

"That in article 385, for the words 'such commencement' the words 'the commencement of this Constitution' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That in clause (1) of article 388, for the words 'the President of the Union' in the two places where they occur, the words 'the President of India' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That in the first proviso to clause (1) of article 388, for the words mentioned in this article' the words 'mentioned in this clause' be substituted."

The amendment was adopted.

Mr. President : Amendment No. 568. There is an amendment, No. 621, to this amendment by Mr. Kamath. I will put it first. The question is:

"That with reference to amendment No. 568 of List IV, in the first proviso to clause (1) of article 388, the words and letter 'Part A of' be deleted."

The amendment was negatived.

Mr. President : Then I will put No. 568.

The question is:

"That in the first proviso to clause (1) of article 388, for the words 'representing a State' the words 'representing a

Province or, as the case may be, a State' be substituted."

The amendment was adopted.

Mr. President : Amendment No. 569. There is amendment No. 622 to this amendment. I will put No. 622 first.

The question is:

"That with reference to amendment No. 569 of List IV, in the second proviso to clause (1) of article 388, the words and letter 'Part A of' be deleted."

The amendment was negatived.

Mr. President : The question is:

"That in the second proviso to clause (1) of article 388, for the words 'representing a State' the words 'representing a Province or a State' be substituted."

The amendment was adopted.

Mr. President Amendment No. 570. There is an amendment to this, No. 623 which I will put first.

The question is:

"That with reference to amendment No. 570 of List IV, in the second proviso to clause (1) of article 388, for the words 'the Legislative Assembly of that State' the words 'the Legislative Assembly of that Province or of the corresponding State or of that State, wherever such Assembly has been constituted' be substituted."

The amendment was negatived.

Mr. President : The question is:

"That in the second proviso to clause (1) of article 388, for the words 'Legislative Assembly of that State' the words 'Legislative Assembly of that Province or of the corresponding state or of that State, as the case may be', be substituted."

The amendment was adopted.

Mr. President : The question is:

"That in article 390, for the words 'out of such Fund' the words 'out of either of such Funds' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That for clause (3) of article 392, the following clause be substituted:--

> '(3) The powers conferred on the President by this article, by article 324, by clause (3) of article 367 and by article 391 shall, before the commencement of this Constitution,

> be exercisable by the Governor-General of the Dominion of India.' "

The amendment was adopted.

Mr. President : The question is:

"That in article 394, after the figure '60', the figure '324', be inserted, and after the figure '388' the figure '391', be inserted."

The amendment was adopted.

Mr. President : The question is:

"That in Part A of the First Schedule under the sub-heading 'Territories of States', the paragraph commencing with the words 'The territory of the State of Bombay.............' and ending with the words and figure 'Extra-Provincial Jurisdiction Act, 1947' be omitted."

The amendment was adopted.

Mr. President : The question is:

"That in Part B of the First Schedule, for the paragraph under the sub-heading 'Territories of States', the following paragraph be substituted."

'The territory of each of the States in this Part shall comprise the territory which immediately before the commencement of this Constitution was comprised in the corresponding Indian State, and--

> (a) in the case of each of the States of Rajasthan and Saurashtra, shall also comprise the territories which immediately before such commencement were being administered by the Government of the corresponding Indian State, whether under the provisions of the Extra-Provincial Jurisdiction Act, 1947, or otherwise; and
>
> (b) in the case of the State of Madhya Bharat, shall also comprise the territory which immediately before such commencement was comprised in the Chief Commissioner's Province of Panth Piploda.' "

The amendment was adopted.

Mr. President : The question is :

"That in Part C of the First Schedule, for the first two paragraphs under the sub-heading. 'Territories of States' the following paragraph be substituted:--

> 'The territory of each of the States of Ajmer, Coorg and Delhi shall comprise the territory which immediately before the commencement of this Constitution was comprised in the Chief Commissioner's Province of Ajmer-Marwara, Coorg and Delhi, respectively.' "

The amendment was adopted.

Mr. President : The question is:

"That in List I of the Seventh Schedule, for entry 8, the following entry be substituted:--

'8. Central Bureau of Intelligence and Investigation.' "

The amendment was adopted.

Mr. President : Then we come to List V. Amendment No. 614 has not been moved. I will put 615 to the House.

The question is:

"That in entry 75 of List I of the Seventh Schedule, after the words 'Emoluments allowances', the word 'privileges,' be inserted."

The amendment was adopted.

Shri H. V. Kamath : Sir, I have an amendment to amendment No. 616 which I handed in this morning. It was taken as moved.

Mr. President : Yes. I will put it to vote.

The question is:

"That for the word 'except' the words 'other than' be substituted and the two commit in entry 46 of List III, Seventh Schedule, be deleted."

The amendment was negatived.

Shri H. V. Kamath : Bad punctuation, Sir.

Mr. President : The question is:

"That in entry 46 of List III of the Seventh Schedule, for the words 'Other than the Supreme Court' the words 'except the Supreme Court' be substituted."

The amendment was adopted.

Mr. President : Now we come to List VI. Amendment No. 618.

The question is:

"That for clause (5) of article 148, the following clause be substituted:--

> '(5) Subject to the provisions of this Constitution and of any law made by Parliament, the conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the Comptroller and Auditor-General that be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor-General.' "

The amendment was adopted.

Mr. President : The question is:

"That clause (g) of sub-paragraph (1) of paragraph 3 be omitted, and the remaining clauses, '(h), (i), (j) and (k)' be re-lettered as '(g), (h), (i) and (j)' respectively.' "

The amendment was adopted.

Mr. President : Amendment No. 625. There is an amendment to this by Mr. Chaliha, No. 630. I will put it to vote.

The question is:

"That in amendment No. 621 of List VI, for the first three lines of the proposed sub-paragraph (4) of paragraph 4 of the Sixth Schedule, the following be substituted:--

'(4) That the Governor shall make rules regulating--.

The amendment was negatived.

Mr. President : The question is:

"That to paragraph 4, the following sub-paragraph be added:--

> '(4) The Regional Council or the District Council, as the case may be, may with the previous approval of the Governor make rules regulating--
>
> (a) the constitution of village Councils and courts and the powers to be exercised by them under this paragraph;
>
> (b) the procedure to be followed by village Councils or courts in the trial of suits and cases under sub-paragraph (1) of this paragraph;
>
> (c) the procedure to be followed by the District or Regional Council or courts constituted by such Council in appeals and other proceedings under sub-paragraph (2) of this paragraph ;
>
> (d) the enforcement of decisions and orders of such Councils and courts;
>
> (e) all other ancillary matters for the carrying out of the provisions of sub-paragraphs (1) and (2) of this paragraph.' "

The amendment was adopted.

Mr. President : The question is:

"That in sub-paragraph (3) of paragraph 5, for the words 'and the Governor may by rules prescribed the procedure to be followed at such trial' the words and figure 'to which the provisions of this paragraph or paragraph 4 apply' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That in the proviso to sub-paragraph (2) of paragraph 20, for the words, brackets and letters 'clauses (e), (f) and (g)' the words brackets and letters 'clauses (e) and (f)' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That in article 106, for the words 'Constituent Assembly of India' the words 'Constituent Assembly of the Dominion of India' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That in clause (3) of article 348 for the words 'shall for the purposes of the said clause be deemed to be the authoritative text thereof' the words 'shall be deemed to be the authoritative text thereof in the English language under this article be substituted."

The amendment was adopted.

Mr. President : I shall now put to the House Mr. T. T. Krishnamachari's amendment.

The question is:

"For the word 'minorities' in Part XVI the words 'certain classes' be substituted."

The amendment was adopted.

Mr. President : The question is:

"That in entry 67 of List I of the Seventh Schedule after the word 'records' the words 'and logical sites and remains' be inserted."

The amendment was adopted.

Mr. President : There is a consequential amendment.

The question is:

"That in entry 40 of List III, Schedule VII after the words 'and remains' the words 'other than those declared by Parliament by law to be of national importance' be added."

The amendment was adopted.

Mr. President : I take it that the amendment relating to the name of Bengal which is substituted by West Bengal has been accepted. There is an amendment by Thakkar Bapa which I shall put to the House.

The question is:

"That in article 164 in the proviso shall be inserted 'Provided that in the State of Madhya Bharat there shall be a minister in charge of tribal welfare, who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.' "

The amendment was adopted.

Mr. President : Before we adjourn for the day we shall make some arrangement regarding the time table as to what we propose to do. I take it that we do not sit this afternoon. I want to know from Members how many of them would like to speak, so that I might fix an order as also the time. As regards sitting on Saturday next it is not possible for me to decide now. I shall decide it on Friday as to whether we shall sit on Saturday or not. As regards the sessions from day to day, what is the wish of the House?

Several Honourable Members : Five hours a day.

Prof. N. G. Ranga (Madras: General): One sitting from 2-30 to 6-30 P.M., so that we shall come only once.

Mr. President : What is the time limit for each speaker?

Shri K. M. Munshi : I suggest 15 minutes and five hours a day so that Members might get a few days between this and the next session.

Several Honourable Members : Half an hour.

Mr. President : As a compromise the time limit will be 20 minutes for each speaker.

The Honourable Dr. B. R. Ambedkar : All that we can do now is to decide whether we should sit tomorrow. In the meantime it would be desirable if you could invite Members who desire to speak to send in their names to you. After ascertaining the number of speakers who desire to take part in the general debate it will be possible for you to determine whether we should have two sessions a day and also as to the time limit for every speaker. At the moment nobody is in a position to know how many Members wish to speak. If the number of speakers are not too many it will be possible to increase the time for each Member and it will also be possible to have one session a day. I therefore suggest that you should only fix the meeting for tomorrow and in the meantime ask Members to indicate their wishes to you, so that you may have a list of speakers and then we can come to a decision as to other points, such as the time limit for each speaker and the number of the daily sessions, whether it should be one or two.

Mr. President : I think that is a practical suggestion.

Shri T. T. Krishnamachari : May I say, Sir, that we sit tomorrow as usual from ten to one and from three to five ?

Mr. President : For the present I decide that we meet tomorrow as usual at Ten of the Clock and I expect Members to send to the office by this evening their names if they wish to take part in the debate. That information will enable me to decide the hours of sitting, etc. I may say that it would be open to a Member not to. participate in the debate even though he has given his name.

The House stands adjourned till Ten of the Clock tomorrow.

The Assembly then adjourned till Ten of the Clock on Thursday, the 17th November, 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME XI

***Thursday, the 17th November* 1949**

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honorable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION--*(Contd.)*

(Third reading)

Mr. President : We shall now take up the third reading of the Constitution. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Mr. President, Sir, I move :

" That the Constitution as settled by the Assembly be passed."

(Cheers)

Shri Mahavir Tyagi (United Provinces : General) : Congratulations.

Shri H. V. Kamath (C. P. & Berar : General): Let Dr. Ambedkar kindly speak.

The Honourable Dr. B. R. Ambedkar : I propose to speak at the end. It is not the usual thing to speak now.

The Honourable Shri N. V. Gadgil (Bombay : General) : This question be now put. *(Laughter).*

Shri Mahavir Tyagi : What is the opinion of Dr. Ambedkar about this Constitution we are passing ?

Mr. President : I think we must now proceed with the business. Dr. Ambedkar has moved that the Constitution as settled by the Assembly be passed. The Motion is now open for discussion. Yesterday we were discussing the time that we would take for this Third Reading and I requested Members to give me names. Till yesterday evening I had received 71 names of Members who want to speak, and some additional names have come this morning; but even as it is, it seems to me that if we take about twenty minutes each and if we sit three days this week and five days next week, we shall have twenty-four hours, and twenty minutes for each speaker will give seventy-two speakers. So far as the time is concerned, I think we can very well manage within this time giving opportunities to every speaker who has expressed a desire to speak. So, it is not necessary to sit longer.

Shri H. V. Kamath : Let us sit for four hours.

Mr. President : At this rate we shall not require to sit, four hours.

Shri H. V. Kamath : If we sit four hours, we will be able to finish the session by next Thursday instead of Friday. If we finish earlier, we will have a longer interval before the session of the Legislature.

Dr. P. S. Deshmukh (C. P. & Berar : General) : Some honourable Members may come here later and give their names hereafter.

Mr. President : They may come. We have got some other work also to attend to. Today and tomorrow at any rate or till the end of this week, we sit only for three hours, and if necessary and if we find that sufficient progress is not made, we may have a second session next week.

Shri L. Krishnaswami Bharathi (Madras : General) : Is it from ten to one?

Mr. President : Yes.

Shri L. Krishnaswami Bharathi : We are quite agreeable.

Mr. President : Now, I do not know in what order I should call Members. I suppose I must follow the usual practice. If Members stand in their places, I shall select one of them.

Shri H. J. Khandekar (C. P. & Berar : General) : They should be called alphabetically.

Mr. President : I think that would be too mechanical. I shall follow the usual procedure and I hope there will be no difficulty in that. Shri Muniswamy Pillay.

Shri V. I. Muniswamy Pillay (Madras : General): Mr. President, Sir, I stand before this august Assembly to support the Motion moved by my honourable Friend, Dr. Ambedkar. Sir, I will be failing in my duty if I do not refer to the magnanimous way in which you have conducted the proceedings of this august Assembly in preparing the Constitution of this great land of ours. Sir, as one of the signatories of the epoch-making Poona Pact, you will be happy today that we have opened a new chapter in the history of India by giving equal opportunities to all classes and sections of the people who inhabit India. Sir, Mahatma Gandhi laid the seed for the amelioration of the condition of the Depressed Classes and that took shape in a formidable way and today we find ourselves in the company of men who have thought it necessary to afford facilities for the common man in our great country.

Sir, I proceed now to appreciate the great services that have been rendered by the Drafting Committee whose services are so valuable to us; they have not spared days and nights in coming to decisions on important articles. I must say a word of praise to the caliber and capacity of the Chairman of the Drafting Committee--Dr. B. R. Ambedkar. *(Loud cheers.)* Coming as I do from a community that has produced Dr. Ambedkar, I feel proud that his capacity has now been recognized, not only by the Harijans but by all communities that inhabit India. The Scheduled Castes have produced a great Nandanar a great devotee, a Tirupazanalwar a great Vaishnaivite saint, and above all a Tiruvalluvar, the great philosopher whose name and fame is not only known throughout the length and breadth of India but of the whole word.

To that galaxy of great men of Harijans now we have to add Dr. Ambedkar who as a man has been able to show to the world that, the Scheduled Castes are no less important but they can rise to heights and give to the world their great services. I know, Sir, that he has served the community of the Harijans and also of India by his great service and sacrifice in preparing a Constitution which will be the order of the day from the 26th of January 1950 and I also feel, Sir, of the Chief Draftsman and of the staff that have worked in preparing the Constitution cannot be littled; they equally receive our praise.

Now coming to the Constitution itself, Sir, I feel proud that our countrymen have thought it necessary that the Fundamental Rights should give no discrimination, to any man who is considered to be lower in the rank and file of the nation. Articles 15 and 16 go to give no discrimination; at the same time they give equal opportunities of employment. I specially welcome these provisions.

The great thing that this Constitution brings to notice, not only to this country but to the whole world is the abolition of untouchability. The fair name of India was a slur and a blot by having untouchability, Great *avathars* and great saints tried their level best to abolish untouchability but it is given to this august Assembly and the new Constitution to say in loud terms that no more untouchability shall stay in our country.

Again, article 29 gives power to the would be Government throwing open all Hindu religious institutions to all classes and sections of Hindus. At one time dogs and swine might enter the sacred precincts of temples but the shadow of an untouchable was considered a great abomination. I feel proud, Sir, that by this article that slur has been removed away. Due to this discrimination of not allowing a certain section of Hindus, my people have been converted to various faiths and thereby our population has dwindled as also their merit, but today I am proud that under article 29 not only all Hindu religious institutions have been thrown open to all classes and sections of Hindus but all educational institutions maintained by the State or are receiving aid from Government will be thrown open to all the sections of the people.

Another thing, Sir, is that Mahatma Gandhi has told in unequivocal terms that prohibition must be the order of the day. We declare that if he were to be a dictator for even one day he would have proclaimed prohibition for the whole of India. Article 47 rightly puts in the Constitution that there shall be prohibition through the length and breadth of India. Article 46 gives the Scheduled Castes and Scheduled Tribes a very important place and I welcome that. Another article, 48, deals with the preservation of much cow and prohibition of cow slaughter. As a Hindu I feel that the great value of a cow is felt in India and it is a religious sentiment that the cow must be preserved and I feel happy that an article has been brought in this Constitution. Under article 343 we have been able to agree for a common official language for the whole of India. Fifteen years has been set as the target period by which India must get into the common language, but coming as I do from a non-Hindi area, my community especially have not the occasion or the opportunity to train themselves in the language of Hindi. Whatever it may be, the future Government that will come to stay will think over this matter and see that, if a great section of the non-Hindi area or population have not developed to that state to take up Hindi, they will see that some more time is given.

Coming to article 74 which allows the choice of ministers, I am one of those, Sir, who believe in the political rights of a community. During the past years when the Act of 1935 was in force there was a convention that the unrepresented communities must be given a choice to be ministers but that has been taken away from here but I am sure the people who will be in charge in Future will see that the unrepresented communities in the ministries are given a chance so that the backwardness of such communities may be removed and they may keep an equal status with others. Coming to article 81 I find that in the composition of the Peoples Assembly no reservation has been given. When I questioned this matter in this august Assembly, the Chairman of the Drafting Committee told us that the Minorities Advisory Committee have not made any special recommendation as to this matter, but I am sure the President who will be responsible for getting the composition of the provisional Parliament will find ways and means later whereby a certain reservation may be got for these people.

Sir, I am proud that the Drafting Committee have understood the views of the members of the Scheduled Castes and others and have brought in articles 320 and 335 which deal with the representation of Scheduled Castes in the services. I feel it very important that a community that was at the outskirts of the society for centuries must be given a place and I think these articles go a long way to protect the interests of the Scheduled Castes in the matter of representation in the services.

Another important factor in the Draft Constitution is the giving of adult franchise in India. This will open the door to all the adults in this country, especially to the Scheduled Castes, who form one-sixth of the population of India, to equal opportunity to send proper representatives to the various assemblies. My only fear is, whether these people who have not yet been duly educated will be able to exercise their vote intelligently and send proper representatives. But, I am sure that with the help and assistance of the various communities in India, they will be able to send their proper representatives in the various assemblies.

Sir, in the matter of reservation of seats for the Scheduled Castes in the provincial assemblies, it was necessary to put a time limit of ten years. Though I pleaded before the Advisory Committee that there should be no time limit, due to the most crucial times and due to, the demise of Mahatma Gandhi, the whole country was not in a mood to give any reservation to any section. It is due to this and to the generosity of Sardar Patel: who so ably conducted the meetings of the Minorities Advisory Committee that we have agreed to a time limit of ten years and also to the appointment of a Special Officer to see to the needs of the Harijan community and the Scheduled Tribes. If in that period we have developed properly, we will not hesitate to remove the time limit; but if it is found that these people have not risen up to the level of the other communities, it is my humble belief that the future parliamentarians and the Government will see that the time limit is extended.

Sir, another important thing is that a definition has been given of Scheduled Castes and scheduled Tribes. Before the Provincial Parliament comes into effect, it is said that the President by a declaration will say which are the communities that come under the category of Scheduled Castes and Scheduled Tribes. It has come to my knowledge and of other members of my community that some people have been playing to eliminate some of the communities that really come under the category of Scheduled Castes. I think, Sir, proper care will be taken to see that no community that comes under the category of Scheduled Castes is eliminated.

The great thing in this Constitution, that is before the House, is that the word 'minorities' has been removed. I know, as a matter of fact, it is not the desire of myself or of my community to be ever called a minority or Scheduled Castes, we want to merge with the thirty crores of people in this country. But, as Mahatma Gandhi rightly said, it is the change of heart that is required. If the caste Hindus and those people who predominate in this country only show that change of heart, it will be time, Sir, that we ourselves merge into the great community of Indians and I do not want to perpetuate this seclusion for ever.

In conclusion, I may, on behalf of the members of the Harijans that are present in this House and of Harijans outside, assure you and the august Assembly and the Government that we Harijans..........

Shri K. Hanumanthaiya (Mysore State) : Do we not represent the Harijans ?

Shri V. I. Muniswamy Pillay : We come under the special label of Harijans. On behalf of the Harijans, I may assure you and the future Government of India that the Harijans to the last man will uphold the Constitution that has been passed by the Constituent Assembly and work it to the very letter and spirit.

I thank you, Sir.

Seth Govind Das (C. P. & Berar : General) : *[Mr. President, I am very happy today on seeing that the third reading of the Constitution, completed by us in about three years, has now begun. On this occasion, I would at first like to congratulate Dr. Ambedkar who has laboured hard to put this Constitution into proper shape. Today he has moved the Motion that the Constitution as settled by the Assembly be passed. It has been said about Dr. Ambedkar that he is the Manu of the present age. Whatever be the truth of that statement, I can say that Dr. Ambedkar was quite equal to the task of constitution making that had been entrusted to him

I feel, Sir, that another person who deserves our sincere thanks and gratitude in this connection is our Prime Minister, Pandit Jawaharlal Nehru. It was he who for the first time brought forward before this Constituent Assembly that Objectives Resolution which can be said to be the foundation stone of this Constitution.]

Shri Rohini Kumar Chaudhuri (Assam : General) : On a point of information; in describing Dr. Ambedkar as Manu, was the honourable Member referring to the Hindu Code ?

Seth Govind Das : *[No, Sir, that statement did not have any reference to the Hindu Code, I believe that the House is aware that I am opposed to many of the provisions of the Hindu Code.

So I may remind the House of that Resolution which was moved in this Assembly by Pandit Jawaharlal Nehru in the beginning and, which as I have just said, is the foundation stone of our present Constitution.

The third honourable Member who deserves our congratulations is Sardar Vallabhbhai Patel, who has merged together into unions the numerous States, which had kept our country divided into many fragments.

Thus while supporting this Motion today, I congratulate these three honourable Members.

Our country is one of the six oldest countries of the world, which are India, China, Egypt, Greece, Babylon and Mesopotamia. In so far as Babylon and Mesopotamia are concerned, they do not occupy today any position of importance in the world. If we look at Greece, we find that the ancient Greece can be seen only in its ruins. The culture and civilisation of ancient Greece is not accepted in the Greece of the present day. Christian Culture and civilisation is now dominant there. In so far as Egypt is concerned, its ancient culture and civilisation is found only in its Pyramids. If one goes to Egypt today, he would hardly find there the ancient culture and civilisation of Egypt. Today the Muslim culture and civilisation are there. In so far as China is concerned we can see a little of the Culture and civilisation of India of the Buddhist age combined it its after effects. But there too we find mostly the effect of the modern age. In this way in five out of those six ancient countries, we do not find their ancient cultures. Only India is one of those six ancient countries where the tradition of its ancient culture and civilisation can be seen in a very field of life.

If there be any one here who desires that the India of Rigveda should exist again today in our country, such a one cherishes but a forlorn hope, a hope which can never be fulfilled. Nor do I consider it proper that such a hope should be entertained. I do not think any one of us can transform the India of today into the India of Rigvedic times; but while I hold this view, I would like to make it clear at the same time that the civilisation and culture, which is the heritage of our early history and the continuity and vitality of which are visible in all spheres of our society and life and for the maintenance of which in our age Mahatma Gandhi--the Father of our Nation--sought to promote in many a way, should not be rejected by us. We should adopt all that the modem world has to give to us to fulfill our needs, as also all the inventions of the modern science. We need not have contempt for things European or American. We should be ready to assimilate all the new ideas which are useful to our country. Modern India should be so built up that we may be able to retain our culture and civilisation as well as also the advantages of the modern age. If we look at our Constitution from this view point, we would discover many shortcomings in it. Many people think that the present Constitution is an enlarged volume of the Government of India Act, 1935. From the view-point I have already placed before you, we may find some shortcomings but I am not prepared to accept that it is an enlarged edition of the Government of India Act, 1935. It was necessary that some sections of the Government of India Act should be kept in it. We find many articles of the Constitutions of other countries *e.g.*, Ireland, Canada, and America also to have been drawn upon. And then, it is not a fact that this Constitution does not possess any originality. There is enough of originality in this Constitution. Of course, I am prepared to accept that this Constitution is not entirely satisfactory. Some people hold that this Constitution has become too bulky, it contains too many articles as also many details which could well have been left out. But I differ from them. If the Constitution is lengthy and if somethings have been given in detail that fact by itself should not make us dissatisfied with it, as these details will guide our Parliament in many a way. I feel that on the contrary we should be satisfied that this Constitution contains many articles and many details.

One thing that troubles me, however, and which I am afraid would continue to cause uneasiness to me, is that the Constitution of this ancient country has been framed in a foreign language even after the attainment of independence. I have always been drawing your attention to this shortcoming. You had assured us, not once, but more than once, that you also desired that our Constitution should be in our national language. In my opinion we would have definitely succeeded in this task if we had made an attempt. We have been sitting here for three years to pass this English draft. I think it would not have been either impossible or even inconvenient to have set for one month more and passed the Hindi constitution. I wish to say that our passing the Constitution in a foreign language after the end of our slavery and attainment of independence would for ever remain a blot on us. This is a badge of slavery a sign of slavery. You may publish the translation by the 26th January, still, I would say frankly that a translation will after all remain a translation. The translation cannot replace the original and whenever any constitutional difficulty arises, whenever any constitutional point arises before our Supreme Court, High Court or any other Court, we would have before us a Constitution in a foreign language and therefore I feel the domination of that foreign language. This will always hurt us and I am thinking of the day, dreaming of the day when our country will form another Constituent Assembly and that Constituent Assembly will place our original Constitution before us in our national language.

Now, if we look at our Constitution our attention is attracted towards the Adi Vakya, called Preamble in English. As I have just said Pandit Jawaharlal Nehru's motion, is the foundation stone of the Constitution similarly the preamble, the Adi Vakya contains the whole gist of the Constitution.

In this preamble we have made it clear that we will have a democratic government in our country. There were only two ways open to us. Either we could frame a democratic constitution or advance towards despotism and frame a type of constitution which would have in essence meant the establishment of despotism in this country. We have made it clear in this preamble, in this Adi Vakya, that our Government would be a democratic one. Further, I would also invite your attention to the four points in this preamble, which are justice, liberty, equality and fraternity. Justice has been quite rightly given the first place. In our country justice has always been given the first place. If we look at our past history, the traditions of that history we would come to know that justice has always got the first place in this country. It has been said:

Swasti Prajabhyah Paripalayantam

Nyayana Margana Mahim Mahishah.

That is, 'the ruler should protect, nourish and cherish his subjects in accordance with justice.' So, it is quite proper that justice has been given the first place in the Preamble after the declaration of democracy. After that the next place has been given to liberty. All is of no worth without liberty. If our liberty is gone, every thing is gone. We have gained every thing by attaining liberty. Goswami Tulsidas has said in Ramayan:

Pradhin Sapanaihu Sukh Nahi

(one who is dependent on others cannot be happy even in dreams.)

This sentence of the Goswami will always retain its importance even though it has become so common. Thus the second place given to liberty in this preamble is quite proper. After this the third place has been given to equality. No country can be happy wherein on the one hand, one per cent, of the people live in big palaces eat a variety of dishes, put on covers like Pashmina in winter and the finest raiment in summer, while on the other 99 per cent of the people do not even get tents to live in, do not get even dry bread to eat, do not get clothes, so much so that their womenfolk do not get clothes to cover their body, that country must inevitably face a revolution. Hence 'equality' must rightly get a place in this preamble. The fourth place has been given to fraternity. No social structure can beget happiness without mutual love. So I hope that our country would be ruled according to the Preamble of this Constitution.'

So far as the various articles of this Constitution are concerned, I would make a few remarks regarding only three of them. One is regarding the name of the country. In this Constitution, our country has been named 'India that is Bharat'. It is a matter of gratification that the name Bharat has been adopted, but the way in which this has been put there has not given us full satisfaction. 'India that is Bharat' is a strange name. The second article, which I wish to refer to, is regarding cow protection. It is a matter of satisfaction that an article regarding 'cow protection' has been added in this Constitution. But just as we have provided in the Fundamental Rights, that 'untouchability is a crime'. similarly we should have said, 'cow killing is a crime'. This we could not see our way to do. The third article concerns our language. We are not fully satisfied with this article too. English will prevail in this country for another fifteen years, and the Nagri script has also been disfigured by introduction of English numerals in it. The Hindi-speaking people are very much disgusted at this.

So I would say that we are not fully satisfied with the three things which I have been emphasising from the very beginning. But the fact that these three things have found place in this Constitution is a matter of gratification.

In conclusion, I again congratulate Doctor Ambedkar, Pandit Jawaharlal Nehru, Sardar Vallabhbhai Patel, other members of the Drafting Committee, and you, Mr. President along with the whole Constituent Assembly, on having framed a Constitution of free India, a Constitution of which we and the whole country can feel proud.]

Shri Lakshminarayan Sahu (Orissa : General) : *[Mr. President, now that the Draft Constitution is under final review I must take the opportunity of making a few observations. Firstly, I feel that in framing the Constitution, we have deviated from the ideals we had sat for it. The ideals on which this Draft Constitution is framed have no manifest relation to the fundamental spirit of India. This is what I think my Friend Seth Govind Das also made clear in his speech. It is the opinion of many people that we should not have drawn upon so heavily on the Government of India Act for preparing the draft of this Constitution. I feel that this Constitution has become a queer and unwholesome amalgam on account of the varied provisions it has borrowed from the Government of India Act and the other Constitutions of the world, things that cannot be compounded to form a harmonious whole.

It may be that this mixture may be to the taste of such people as are found of such mixed drinks as cocktails or such mixed food as Khichri. But while such mixtures may be enjoyable on occasions I can assure you that this cannot become staple food of any one and this Constitution made as it is for regulating our daily life, would not prove suitable and would break down soon after being brought into operation.

When at first we had started the work of framing the Constitution, our idea was to make India a Federal State with provinces as autonomous units. But gradually we gave up that line and as is evident from the present Draft Constitution the units have been practically robbed of all powers. This document, I would say, appears to be based on a lack of faith in the Provinces.

Confidence begets confidence, but contrary to this maxim Constitution does not place any confidence in the units. The provinces have been so tightly chained to the centre that none of them can have the least feeling of freedom. I am afraid that the provinces may on this Constitution coming into force feel that they have been put under a new kind of slavery.

Even though I sincerely compliment and congratulate Dr. Ambedkar for the hard labour he has put in this connection, yet I am afraid I cannot compliment him for this unnatural product of this labour which under constant changes has almost become shapeless and ludicrous. I know fully well and I believe that he is likely to say in reply that it is not entirely his handiwork. He had to frame the Constitution in accordance with the wishes of the majority party in the country. But be it as it may, I can predict that after two or three years a fresh

Constitution will have to be framed again. During the early sittings of the Assembly when the objectives Resolution was placed before the House, the Hon'ble Pandit Jawaharlal Nehru had most spiritedly spoken of our 'Sovereign Independent Republic', but later on a new term 'Democratic Republic' crept in its place. Formerly Pandit Nehru had said that to remain in Commonwealth would be a disgrace to us and that as soon as we were free we would get out of the Commonwealth. But I find that even today we are clinging to the apron strings of the Commonwealth. All this appears to me as if we were seeking to put our ship into motion without lifting its anchor. I may however point out that the ship does not move and shall never move. I fail to see any logic or significance in this course of action. It can not be pretended that it is a policy full of daring. It may be that our hearts have not the courage nor our minds the vision which alone could enable to frame a Constitution suited to our genius and needs. It appears to me that our eyes have been turned towards the West for finding out the ways the world manages its affairs in order that we may copy their methods. Even now Pt. Jawaharlal Nehru often declares that the Constitution we adopt would be such as to make the whole world look to us for Constitutional wisdom, and as would draw the world very near to us. But I often wonder why this should be so and why the world should look to India for guidance. What special appeal after all, does India possess? Besides what does this Constitution as shall compel attention on the part of the world to its provisions ? Even the spinning wheel which stood for the basic ideals of the Indian people and which was the object of such deep care for Mahatma Gandhi has been discarded by you and has been replaced by chakra. Formerly it had been decided that the Constitution would contain some provisions regarding our National anthem-Bande Mataram or Jan Man Gan. But we find that no provision relating to National anthem has been included in it. After all what is there in the Constitution to be proud of ? My honourable Friend Seth Govind Das had suggested that cow slaughter should be abolished. It must be abolished at once. But you have provided for gradual abolition.

The article which states that this work will be done gradually does not state in clear words that cow-slaughter is being prohibited with immediate effect. Why is it not being prohibited ? Are we afraid of anything in this connection ? How can we then give place to any other social order, such as the socialistic order, in this constitution ? On the one hand we give opportunity for private profit and on the other say that the resources of the Government are limited. That is why prohibition is not introduced and the people drink. The people will go on drinking so long as we do not make up our minds regarding our future course of action. So long as were not prepared internally to follow our ideals, how can we make others follow them ? Therefore we should give full thought to these matters. Are we not going to introduce the charkha which is the 'reflection' of India ?]

Shri H. V. Kamath : *[Symbol.]

Shri Lakshminarayan Sahu : *[Symbol. Yes 'symbol' is the right word. Moreover we have not decided anything in regard to our national song and our national flag. After all what is all this ? Where has everything disappeared ? Regarding Prohibition it is said that it should be introduced gradually. But what about the principles of Mahatma Gandhi? A friend has remarked just now that if he were a dictator even for a day, he would introduce complete prohibition. We say that we should proceed gradually and that we should forsake the habit of drinking too gradually. Green Bars and Blue Bars have been opened in our province of Orissa. When prohibition is going to be introduced, why are these bars opened ? Recently Blue Bars and Green Bars were opened in Cuttack. Moreover, I would like to say that we should again consider whether we should stay in the commonwealth and whether we should not establish a socialistic order. The position at present is that special privileges are being granted to the Anglo Indians. I do not understand why special privileges are granted to people. The Anglo-

Indian community has been enjoying such privileges in the railways and elsewhere as cannot be granted to others even though they may be equally efficient. That is the reason, I would like to point out, why we do not have the necessary facilities in the railways. Our country was first named Bharat. Then it was thought that 'Bharat' would not be understood by other countries of the world and the words 'India that is Bharat' were included. What is this ? There is no mention of the national language. On the contrary it has been written that Hindi would be the official language and English would also continue. The position would be reviewed after five years and then after fifteen years. This is the form which our constitution has assumed. I think that it is altogether useless and worthless. I do not see anything substantial in it. Mr. Kamath has quietly introduced in it God too. Some people hold that there is no God. The people of India do not want 'God'. We should be clear about this that we shall accept the majority decisions. I see that we step forward hesitatingly and that is why this constitution has assumed a shape which does not reflect a clear picture of India. This Constitution could have been corrected and made more explicit. However, this is not the occasion for it and I know that all this will never be done. Just see what has been done in the case of civil liberties. They have been so much fettered that even the civil liberties enjoyed by the people during the British regime would be available to them no more. Many people are confined in Jails for years. We have got such civil liberties.]

Shri R. K. Sidhva (C. P. & Berar : General) : *[What civil liberties we had during the British regime ?]

Shri Lakshminarayan Sahu : *[Many more. You will see that on the enforcement of this Constitution very few civil liberties will remain. India is a country of villages. In complete disregard of the villages we have turned into citizens and ask for rights of citizenship. I would say that we should have 'village-zen-ship' rights also. I do not see 'village--zen-ship' rights anywhere in this Constitution. What is the step that we should take at the present moment ? We should revive the cottage industries. But the idea never occurs to us. When a few people make a hue and cry about a thing it is said that it may also be included. When we say that we want to shape a new world and that India will be a non-violent country and an ideal for others to follow, why do we say in the same breath that we cannot take up the question of capital punishment. I cannot understand what is in our minds. After all what is the reason for this inaction. We speak fluently but do not bother ourselves about practice at all. We imitate the turns and twists of the other countries of the world. All this has caused me great sorrow. What is after all this Constitution about ? What has become of the proposed elected Governors ? We had decided that we would have elected Governors, the question was reopened and provision was made for appointed Governors. All this is being done in the strength of the so-called majority. We are seeing that our country is becoming as lifeless as stone. There is no talk of decentralisation now. We had set before us the object of decentralising India and of setting everything in order. But there has been so much centralisation that there is only one centre now and the Units have been reduced to the position of Municipalities and District Boards. A weak Unit has no other prospect than of perishing. The powerful Units will receive encouragement from the Centre and make progress. The bigger Units like that of Bombay, Madras and U. P. will get facilities and money too and will make progress. It is no doubt true that there is a provision that every Unit which has deficit will receive capital allotment from the consolidated fund. But who will grant it ? The persons from greater States like Madras and Bombay, who would be in charge of the consolidated fund would consider so many things and then grant it. They will throttle Assam and Utkal. We would become slaves. I have seen for the last two or three years what facilities have been granted to Utkal. That is why I say that this Constitution is not to our liking.]

Shri K. Hanumanthaiya : Mr. President, Sir, it is now nearly three years since this

Assembly first met for hammering out a Constitution. We are nearly at the end of our labours. This is a day on which the Assembly in general and the Drafting Committee in particular deserve congratulations on having completed the task entrusted to them under very difficult circumstances.

Today after having had a full picture of the Constitution. I for one feet that I cannot make up my mind wholly to appreciate and welcome this Constitution. There are very good points in it--the principles of liberty, equality and fraternity are embodied in this Constitution no doubt, and that is a matter for congratulation. But, Sir, there are other features of the Constitution that may not come up to the expectation of many people. It resolves itself into a question as to who is responsible for this constitutional set-up.

When I look into the list of members of the Drafting Committee, and see their names, I must say that many of them are very respected names. Many of them are very able men. But only some of them were in sympathy with the freedom movement. Most of them, if I scrutinize the names of members of the Drafting Committee, I find were the people who were not with the freedom movement in the sense in which many of our leaders were. They naturally brought their outlook and knowledge of things into the constitution making. That was not the kind of psychology or the knowledge that the Congress, for instance, or the country needed. I submit with all humility, they were no doubt very learned in the several laws and rules that were framed before we got independence. They were very well versed in case law and code law. But that was not sufficient for the purpose of hammering out a Constitution for a great country like India and its future. It is, something like this: we wanted the music of *Veena or Sitar,* but here we have the music of an English band. That was because our constitution makers were educated that way. I do not blame them rather, I would blame those people, or those of us, who entrusted them with this kind of work.

Look at the way the structure of the Constitution is built up. We were during the days of freedom struggle, wedded to certain principles and ideologies as taught to us and as propounded to us by Mahatma Gandhi. The first and foremost advice which he gave in his picturesque language was that the constitutional structure of this country ought to be broad-based and pyramid-like. It should be built from the bottom and should taper right up to the top. What has been done is just the reverse. The pyramid has been reversed. The initiative from the Provinces and States and from the people has been taken away and all power has been concentrated in the Centre. That is exactly the kind of Constitution Mahatma Gandhi did not want and did not envisage. Whether or not we are, right in having discarded our faith in this kind of democratic constitution, whether or not we are right in having discarded Gandhiji's idea of constitution making, it is too soon for us to judge. The future will judge for itself.

Sir, there are some very interesting contradictions in this Constitution. Here we have a Republic with a King above and Rajpramukhs below. Here is a Constitution which we say is a Federal Constitution but which in essence is almost a unitary Constitution. Here is a Constitution which we call Democratic, but democracy is centered in Delhi and it is not allowed to work in the same sense and spirit in the rest of the country. It is like the famous Hindu view of things that if you are to go to Heaven then you should have to go and have a dip in the river Ganges, especially at Benares. Nowhere else is the country so fit and so sacred as to send people to Heaven. Some thing of the kind has taken place in this Constitution-making. If you are to find democracy congenial to the soil, or if democracy is to be worked, it is in Delhi and nowhere else. That is the spirit with which this Constitution is framed. Again the people who have had a hand in Constitution-framing here have not only looked at the people in the Provinces and States with a certain amount of suspicion but they have also looked at the future with suspicion. They have made all sorts of provisions for preventing, what they probably think is the misbehaviour on the part of the people for generations to come. That was not the intention with which we started Constitution-making. Anyway, inevitably the tendency has been allowed to develop that way.

There is again this language question on which some of my predecessors have spoken. We no doubt wanted the Constitution to be in our own language but we are compelled to keep the foreign language in use. That is again another interesting contradiction. These contradictions in my view are not of a very serious nature. The King above and the Rajpramukhs below will not be able to harm the Republic that we have set up. They are almost powerless in the set-up we are now adopting.

Though our constitution-makers have not adopted the course of decentralisation, still I have faith in the people of India. They will be able to assert themselves in times to come and make this democracy work equitably from Cape Comorin to the Himalayas. Whatever may be the set of rules, whatever may be the set of articles that we might draw up, human mind and human energy are greater factors in life and I have got full faith that they will be able to rectify matters in times to come.

Some of my friends naturally feel aggrieved that the Constitution has not been drafted in Hindi and that the national language his not been straightaway adopted. That again is due to the limitation of the circumstances and the times that we are living in. If some of us have not been educated in Hindi ever since our childhood, it is not our fault. It is the fault of the situation that existed then. We learnt English, therefore we are fond of English. A day will come when people will learn Hindi and they will be equally fond of Hindi. All that is required is a certain amount of patience, certain amount of charity, a certain amount of tolerance, and I am glad to say that people who are wedded very fanatically to Hindi are prepared to give that amount of tolerance and charity.

I happen to come from a State and I would be doing an injustice to myself If I do not express my innermost thoughts. Whatever may be the reason for including article 371 in the Constitution, I am not very happy about it.

I almost feel that we are treated in a way that is not in keeping with our self respect and I feel that generations to come will wonder why we the people of the States at all accepted or were willing parties to this article 371. It may be, that no doubt certain Governments or certain political leaders in the States have not come up to the expectations of our great leaders, and that has to be taken into consideration as well. But I would far rather stand by the principle that democracy is its own corrective. If democracy goes wrong in any particular area in the country it is not safe or wise that somebody from outside should always have the responsibility to rectify matters. That will not work. It may be that so long as our great leader Sardar Patel is there he may be able to rectify matters. But here we are framing a constitution not for a generation, not even for a century but for centuries unnumbered, and can we guarantee that there will always be at the head of affairs a man of the calibre of Sardar Patel to go on rectifying matters ? And mind, you, it is not the constitutional authority with which Sardar is now endowed that will rectify matters but it is his personal prestige. Personal prestige cannot be given as a gift by constitutional rules or precedents. Therefore, I would have appreciated. I would have thanked this House and those responsible for this article if they had believed in the principle that democracy is its own corrective, and left it to the people of the area to pull up any Ministry or any Legislature or any particular Minister if they misbehaved. Not only is this article 371 against the canons of true democratic principles but ultimately it may be the cause of friction and many constitutional fights as well. There is a relieving feature that its duration is only ten years. But even for those ten years we are under the shadow of what is called "misbehaviour". That is a matter that has gone into the marrow of our bones. I hope that occasions will not arise when this article has to be exercised. If I may say so, it is also the responsibility of the people of the States to conduct themselves in such a manner that article 371 will ultimately prove a superfluity.

Sir, the Constitution that we have drafted is of a peculiar type. We students of Constitutional history and law were familiar with two types of constitutions; the federal one and the unitary one. Here is a Constitution which cannot be strictly classed under either of these two heads. It is almost of a new type and I may call it instead of a federal Constitution or a unitary constitution, a "Union Constitution". It bids to be a new phraseology that is contributed to constitutional thought by this Assembly. Whether this kind of constitution will prove as much of a success as federal constitutions, it is for the future to judge. But this is a new type of Constitution altogether and we have to work it with that spirit. After all, people say whatever the rules or the articles, the success of them depends not upon themselves but upon the people who work them. It is that faith that is sustaining us, not the faith that is generated by this Constitution. It is my hope that the people of India and their representatives will be able to work this Constitution with all its disadvantages and drawbacks to the best interests of the country.

Prof. K. T. Shah (Bihar : General) : Mr. President, Sir, at this stage of the debate on the Constitution. I feel it necessary to point out certain defects of commissions and omissions, on which, at the appropriate stage. I had tried to suggest amendments; but as those amendments, almost every one of them, found no favour in the eyes of the draftsmen, I feel, at this last stage, when we have an opportunity of pointing them out, that I should voice them in appropriate form.

Sir, as the House would recollect, my amendments had not been of the nature of verbal alterations, or suggesting points of mere formal controversies. This is not to say that I do not recognise the beauty of form, or the value of precision in expression. In fact I am bound to say that the labours of Friends, like Mr. Naziruddin Ahmad, who has striven hard to bring out the appropriate, the exact, expression, and proper punctuation; and make in all respects as correct a form as we could present, have not met with the appreciation that they deserved. While saying this I would not like it to be understood that I, on my side, do not appreciate the hard work, the deep learning, and all the careful attention they could possibly give that the Drafting Committee with its Chairman leading and some other members of that Body have rendered in this case. While judged as a piece of art in drafting, I am afraid I cannot regard this draft as a gem of its kind, I am willing to admit that, within the circumstances and under the conditions under which they had to work, the Drafting Committee have shown, and the Chairman particularly of that Committee, an erudition, a knowledge and ability to adapt himself to changing circumstances, and new conditions, and present as good a draft as, under the circumstances they could. For that they deserve every appreciation this House and the Government can show.

Having admitted this, I feel myself at liberty to point out still the defects, both of form and of principle, which, in my opinion, mar this Constitution and do not make it what we had hoped it would be. As already stated, I have tried to make my amendments and suggestions of principle and of root, rather than of mere superficial alterations. Now, confining myself only to those, I would like to point out, for instance, that the promise held out in the Preamble,--the promise held out in the very first Resolution of this House, has not been fulfilled to the degree and in the manner we had a right to expect. We claim, for instance, to be a sovereign, independent Republic. While, however, we continue to be Members of the British Commonwealth. I am afraid it would be impossible for us to exercise that sovereign independence which we fancied we were acquiring and enshrining- in this Constitution.

It may be that the Constitution is, in intent and form, democratic. But the ideal of Democracy in the shape of the Government of the *people,* by the *people* and for the *people,* is far from being realised if one scrutinises carefully the various Articles of this Constitution.

Several suggestions had been brought forward at the proper movement regarding, for instance, the right to consult the people by means of a Referendum, or the power of the people to initiate radical legislation to make the Constitution really democratic. But they have been all negatived. The excuse has been given that we are not yet ready for such methods of working democracy in all its fullness. We would need, we were told, greater experience, better education, and more wide-spread consciousness of political power in the masses as well as its responsibilities, to be able to work with success such radical forms of democratic government. I am afraid, Sir, I cannot quite accept and endorse such a view of our people's capacity, or of a working democracy in this country. The ability to work a democracy comes by having the responsibility to do so, and not by paper professions in its name, and practical negation of its forms. Had we agreed to such arguments in the past, had we accepted the suggestion of the British that the people of India were not educated enough and aware enough of their rights and obligations to be able to work a democratic Government of their own, we should never even now have obtained our independence, and the right to self-government which is now our proud possession.

Because you are still unable to trust in full the people; because you arc still unable to realise that it is only by working a democracy that democracy will really be established in this country, you have not accepted those suggestions and those amendments of mine which wanted such weapons, such instruments and devices to be introduced in the Constitution, whereby the right action by the will of the people for the benefit of the people and through the representatives of the people could have been asserted.

It is not only that you are lacking in a proper faith in the people as a whole. It is perhaps even more true to say that you are lacking in faith in your own leadership. For, if your leadership is really popular; if your leadership is really the open expression of the subconscious feeling the hopes And aspirations of the people, then you need not doubt at all that the leaders' guidance in crucial moments will be accepted; and the device I have suggested will be fruitful rather than mischievous.

I hold, therefore, that this Constitution is not, in the fullness of the sense, a real, working, effective democracy that the people of India had been led to expect they have achieved.

Take, again, the instance in which those of us who had entertained ideals of freedom have felt themselves disappointed by the actual wording in this Constitution. I mean the Chapters like those dealing with the Fundamental Rights and Civil Liberties, or the Directives of Social Policy, are not what they well might have been. I am afraid the wording of those articles gives much more verbal promise, than holds out any hope for actual performance. Almost in every case, in every article, in every clause, and in every sentence of each clause, the Right is given conferred or declared either restricted, conditioned, or made dependent upon certain contingencies that may or may not happen. There is nothing to show in the entire Constitution that efforts will be made to see that those Rights and Liberties are not merely paper rights, but that they will be made real, actual, living possession and enjoyment of the people.

Take these illustrations, Sir, The Right to free and compulsory education, the Right to full employment, or the Right to personal freedom, are in almost every instance made subject to restrictions and conditions that I had hoped will not occur in a Constitution we are claiming to be democratic, claiming to be popular, and claiming to be made by the chosen representatives and trusted leaders of the people of India. It is a pity, Sir, it is a great pity, that even such a simple right as the right to personal freedom has been made, under the Emergency provisions,- wholly illusory. Excuses can also be found for seeking to detain a person without trial for three months. It is therefore, not a right to personal freedom, so much as it is a right to remain under detention without trial, without any proper judicial proceedings for a period of three months.

There may be plenty of excuses. But I hold that those excuses are obstacles to overcome, and not reasons to take shelter under and deny or circumvent or restrict the Fundamental Rights as you call them, or the Civil Liberties of the people. There is in my opinion no Chapter more painful to read, no Chapter more disappointing in this Constitution, than that dealing with the Fundamental Rights and the Civil Liberties of the people.

And, corresponding to that naturally there is no suggestion at all about enunciating any set of Obligations or Duties which might make the people also realise that there is in consideration of the rights they enjoy also certain obligations of democratic citizenship that the citizens can learn to appreciate. You are not giving those rights in full because you have fears of democracy becoming mobocracy. You have, therefore, restricted the Chapter on obligations of the citizens.

Take, again, another instance in which in my opinion the working democracy of this country has yet to be realised, and certainly not in this Constitution. I mean the question of the formation and functions of the various organs of the State. Again and again I had tried to put in amendments suggesting, if not a complete separation of the powers and functions and organisation between the principle organs of the State. There must be at least such a measure of mutual independence, at least such a degree of mutual freedom as would ensure the operation of each within its own sphere to the fullness that such power is given to that body under the Constitution without interference from outside or other organs of the State. I am afraid that, if we scrutinise the chapter relating to the legislatures, to the judiciary and to the executive, we cannot but come to the conclusion that the freedom or independence of these institutions, the real sovereignty of these institutions, is hardly likely to operate in actual practice. Constitutional *pandits* are not wanting in this House who declare that the doctrine of the division of powers stands exploded. I am afraid I am not one of those who can share that opinion. Even those who have found it necessary to keep and maintain close links and mutual influences between the various organs of the State, even they could have wished to introduce those safeguards, those provisions which might have enabled each of these bodies to function with a degree of independence, with a degree of sureness about their own work. But those safeguards have not been provided. I am not going, Sir, to go over in great detail--there is not the time for it--each of the provisions that would in my judgment imply this aspect of the Constitution.

I cannot help pointing out that the attempts, made again and again, to ensure a degree of purity, a degree of selflessness in the rulers of the country, did not meet with the success that I had hoped that such transparent devices to make the administration proof against charges of corruption would have met with in this House. Time and again, Sir, I suggested amendments whereby the Head of the State, the great governing authorities of the State, would be free from party politics and influences, by divesting themselves of interests which might conceivably lead them to misinterpret their duties and abuse their powers. But again and again, Sir the excuse was held out that this was too idealistic to be practicable in a working word of mere mortals. I am afraid this excuse, without claiming to be nothing more than a mere mortal, does not sound good from those who claim to follow in the footsteps of Mahatma Gandhi who cherish the ideals that he held, and who claim to follow the principles advocated by the Father of the Nation.

These are some of the illustrations. Many more I can give you which would show that the actual doctrine of a working democracy is anything but fulfilled in this Constitution that we are now passing. The mutual relation, for instance, of the several bodies, the formation of the several organs and even the scope for local self-Government I mean, are extremely limited. If you scrutinise the schedules relating to the functions of the Centre--the subjects they are called--and of the local units, you will see that the local units are made utterly powerless. They have neither power nor funds to do their duties effectively. A previous speaker actually mentioned that real self-government, real democracy, can only be in the unit. In the Centre you should have only representatives of the representatives of the representatives; you see there only delegated power from the units. Now that alone would be real responsible popular government. It may be that the overwhelming majority of a single party and the position of its leader may help you at the moment to obscure the actual fact that in the Constitution as it stands there is room rather for the development of Fascism, than for the development of a working, real democracy. And that danger is much greater at the Centre than in the units. The Concentration of powers that you have in the Constitution in the head of the State,--who will really be a nominal figure-head but in whose, name the Prime Minister functions,--is such that, if he was so minded, the Prime Minister for the time being may become an actual dictator; and his colleagues in the Cabinet and the Parliament even as a whole may become nothing but the registry office of such a dictator.

I shudder to think of the possibilities that are inherent. I hope that these possibilities will not be accomplished in the manner I fear that they may be. But even so I cannot but utter this word of disappointment that provisions have found their place in this Constitution which may make of the President or, in his name, of the Prime Minister, a possible, potential, a dangerous dictator.

There are other aspects too, Sir, in this Constitution, which make one think that the hope of a working democracy free from any entanglements, free from any dependency or influence from outside, equal to all and accepting no privileged classes as such, is illusory. We had hoped, Sir, that the sovereignty of the people will be so asserted as to secure at least the absolute ownership by the State of all forms and all sources of primary production. To the attempt by me to introduce such an amendment which would secure to the State the ownership of all minerals, flowing waters and, other primary possessions which can be utilised for the betterment of the lot of man, to that attempt the blank answer was it is not practicable.

These and many more instances, Sir, could be given to show that the Constitution we are passing has failed in material respects, in essential particulars, to carry out the ideals which we had hoped we would carry out. Even so, at this stage I am not prepared to say that this Constitution with all its defects, all its shortcomings, all its weakness should be rejected. I am willing to say that with all its defects, with all its shortcomings, let us work it in the spirit at any rate which we hope and which we think ought to be the guiding spirit, the directing influence of this Constitution. If there are shortcomings, if there are defects, if there are omissions or sins of commission, working experience will reveal them to us. And if we work it with the right spirit, if we are intellectually honest, if we have nothing but the good of the people at heart, then I for one feel sure that, notwithstanding defects, notwithstanding shortcomings, this Constitution can be worked in such a manner that real democracy may in a short time be established, and if not in the immediate future, within five years or ten years, the people of this country may become the real rulers of this country.

Shri R. K. Sidhva : Mr. President, with the greatest joy and pleasure, I stand here to second the motion that has been moved by my honourable Friend, Dr. Ambedkar to pass the Third Reading of this Constitution. At the outset, Sir, with your permission let me make a personal reference. You know, Sir, that I was born in Sind; the prime of my life, thirty two years, I spent in the public service to serve my Sind people to the best of my ability and in my humble way. When the British Mission declared that there should be a Constituent Assembly to frame a Constitution, Sind was allotted one seat, and I had a desire to serve in the Constituent Assembly, but my Friend, Mr. Jairamdas Daulatram was nominated. Sir, I am greatly indebted to my leaders, the Honourable Sardar Vallabhbhai Patel and the Honourable Maulana Abdul Kalam Azad who encouraged me to sit in this Constituent Assembly. They found out a Constituency for me and they suggested C.P. and Berar. The Maulana Sahib gave me a letter to my esteemed Friend. Seth Govind Das and he and Pandit Ravi Shankar Shukla included me and got me elected unanimously to this Assembly from C.P. and Berar. I take this opportunity of thanking Seth Govind Das and Pandit Ravi Shankar Shukla and, members of the C. P. Assembly for giving me an opportunity to come here and serve in this Constituent Assembly. Sir, thus, it has given me an opportunity to play my little part in framing this Constitution and thus acquire the citizenship of India which I always cherished and what shall be always proud to retain. There was a little effort made in this House after the partition that I should be unseated because I came from Sind. You, Sir, very rightly interpreted the law and said that I was returned from C. P. despite that I have been residing in Sind, although I am not today so. (Dr. P. S. Deshmukh : I hope that will be the last time). You rightly interpreted the law that I am legally returned and you announced that in this House. I am thankful to you, Sir; it was not a favour but you did the right thing.

Now coming to the Constitution, on the 6th of December 1946 before entering this House, this memorable hall which has been renovated particularly for framing of this Constitution which will be remembered in the history of India, some of us, friends were informally discussing what will be the type of Constitution and how much time would it take. One of the well-known Members of this House, who has subsequently resigned, stated to me, Sir, that the Britishers are not going to leave India and this Constitution will be a second Nehru Report. Another honourable Friend Seth Govind Das told me that it will take six months: I said it will take the least two years. (Shri Mahavir Tyagi : You were right). From experience we have seen that today is exactly three years, or rather to be more accurate 15 days less than three years, when we have completed this Constitution. On the 1st of February 1948 after our deliberations from the 9th December 1946 to 1947 a draft Constitution was presented to us. It included 313 articles in the Constitution. Today we have now presented to this House 395 articles, that is to say 82 new articles were inserted. Then there were nearly 220 old articles which were simply scrapped off and in the case of nearly 120 articles the phraseology is materially changed. Accepting the preamble without a change or single comma or punctuation, several articles have been changed and I am very glad--and the House is also glad that we have by experience thought it desirable that it was not in a hurry that we should prepare a Constitution. We are therefore right in taking this long time and preparing a Constitution for which we shall all be proud. There have been criticisms outside this hall that we have taken a long time and wasted some money. I give no countenance to that. It was also stated that some of us were sending amendments for the purpose of sending amendments and making speeches. We did not countenance or listen to their arguments. We were fighting our battles in this Constitution Hall, to put our views and we have fought our battle very well, and I am glad that the Drafting Committee have taken our battles in the right spirit. We have done our duty. Proceedings in the matter of record are there for future generations to see and the historians will have to judge whether we have wasted the time or we have done our duty to the people of this country and framed a Constitution, for which all of us are proud and I am very proud too.

Now in this Constitution, the redeeming feature is that of citizenship. It was a very ticklish question after the partition as to how to define the citizenship, and the Drafting Committee and others who have given their attention, they deserve credit. Those displaced persons have been straightaway told that even if their parents are born in India they will be automatically recognized as citizens of India.

Then coming to the Fundamental Rights there have been many criticisms, but ,on the whole I do think, and I have stated it repeatedly, that the freedom of speech or freedom of expression of views does not mean that a person should have license to speak any thing that will be detrimental to our freedom. This is known in all democratic countries. My honourable Friend Prof. Shah was just now criticising 'democracy'. Let me state that democracy does not mean that every person has got his independence to choose and do as he likes. Therefore if there are certain restrictions that have been imposed in certain articles of the Fundamental Rights, it has necessitated us to do so, although we may not like it. I do not like some of them I would like to be an absolutely free man as I like but I have also to work under certain limitations and therefore, the Fundamental Rights are the rights of which we can stand today before anybody and state that these are our rights and if anybody desires at any stage to trample our right, on a mere application to the Supreme Court a man can get his justice there. What more do you want in this Constitution ?

Another redeeming feature is the adult franchise. The adult franchise is the greatest risk which the Constituent Assembly has taken. I may tell the House it is the greatest risk for this reason that 85 per cent. of our population is illiterate and it is even now doubted whether the adult franchise will be successful . Whatever it may be, Sir, successful or not successful, we have taken the risk rightly. We had to take the risk and we have taken the risk. A democracy without adult franchise would have no meaning and, therefore. I am very glad and the House is proud that we have in this Constitution put in 'Adult Franchise'. There have been critics outside this Hall, they have been criticising our work that we have been monopolising and we want to stay here for ever. If that was the desire of this Constituent Assembly we could have framed this franchise in a different manner, but we felt that whatever it may be 'adult franchise' is there as the Congress has been proclaiming for the last fifty years that whenever they attain freedom they shall see that every man and woman of the age of 18 or 21 shall have the right of a vote and that I consider is the greatest right. *(Interruption).* It is 21. I would have personally preferred 18 but it is 21, and this is the thing that the future people have now to rightly exercise. It has to be seen how they exercise their right in returning the members to the various legislatures. It is stated that the illiterate people will dominate the future legislatures. Well, I do not mind if illiterate people come from the remotest parts of the Indian Union. I have seen that sometimes illiterate people have a power of originality and they argue much more ably than some of us, literate persons. Therefore, I am not at all frightened and we have taken the right course and if there is a risk, I know there is a risk and we have taken it in the right direction.

I am really sorry that as far as the local bodies are concerned, this Constitution has been simply silent, silent in the sense that they are not given the due share which we all aspire to see that every village and every villager should become prosperous and self-sufficient. The ideal of our great leader, Mahatma Gandhi was the "Rural Swaraj" that every village should be self-sufficient and self-supporting. I am sorry to state, Sir, that part has not been fulfilled in this Constitution despite the amendments that I have been able to move and which I am sorry to say the Drafting Committee were unable to accept.

As I said the other day, in the earlier stages, when we were discussing the Objectives Resolution, the House was unanimously of the view that the Centre should be strong and therefore the Drafting Committee had that point in view--I do not say that the provinces are mere skeletons, they have been given many powers--and the Centre has been made strong. I am for it; but that does not mean that the villages should not also be made strong and the villages should not be left to themselves. I am indeed glad that the various provincial Governments have passed Panchayat legislation : the Bombay Government has passed the Bombay Panchayat Act; the Madhya Pradesh Government have passed the Janapada Act; the United Provinces Government has passed the Gaon Panchayat Act and the Bihar Government has enacted the Village Panchayat Raj Act. All these are there. But, if you do not give them the required money, what can they do ? My regret is that the legitimate share of the finances due to the villages is not given to them, for village administration and village self-sufficiency. The provinces do not give the villages their due share. The local bodies today are a sham, I should say, in this country. I hope, whatever the Constitution, the provincial Governments will make efforts to see that the villages are made self-sufficient and unless we have village self-sufficiency, there will not be happiness, and prosperity for the common man in this country, for whom we have the greatest regard.

Sir, the other redeeming feature in this Constitution is that we have abolished communalism. At the earlier stages, frightened by the remark that we would be called ungenerous to the minorities, we enacted in the old Draft Constitution presented to the House on the 1st February 1948, communal representation I come from a minority community. I have held during my whole life that this minority was a canker and a poison in our political life. Subsequently, it has been realised by this House that the various communal representations must go and they have gone. It was the happiest day when, through the efforts of the Chairman of the Minorities Committee, Sardar Patel, we have been able to erase that communal representation which had been introduced into the Constitution. Today, this Constitution which we are presenting to the country and to the world will not show any kind of communalism in any of the articles. As far as the Scheduled Castes and Scheduled Tribes are concerned, I have expressed my views. I do not consider them as a communal body. I consider them as a class of people from the Hindu community to whom our great revered leader Mahatma Gandhi felt, and rightly felt, that a great deal of injustice has been done. Although a Parsi, I have had the privilege and honour of working as the Secretary of the Harijan Sevak Sangh in my province and I can claim to say that really a great injustice has been done to them. It is but right that we have provided for them special privileges. I am confident that within the ten years after the commencement of the Constitution, this class of people will also have come up to the level and standard of the other people and these Scheduled Castes will automatically go away after ten years.

Sir, every effort has been made in this Constitution to see that the Judiciary is put above any kind of influence of the Executive. What more do you want, I ask ? We have taken pains to see that howsoever great influence the Executive have, it should have nothing to do with the Judiciary, so that the rights and privileges of the citizens should be fully secured and protected. I have only to remark that sometimes the Judges are also puffed up. While we have given them all possible supremacy, they must also bear in mind that they should not be puffed up. If any criticisms are made of their judgments, they take action for contempt of court, bring a prosecution and themselves sit in judgment in such matters. I brought forward an amendment; I am sorry to say that it was lost. The Judges have no business, when they say that the Executive and Judiciary should be separated, to order that such and such newspaper or such and such person has committed contempt of court and to order that he should be prosecuted, and again, himself to sit on the Bench and decide the Issue. This is a very unheard of procedure. I leave it to the good sense of the future, Judges, right from the Supreme Court down to the lower courts, and hope that the Supreme Court will give a lead to the other High Courts that in the matter of contempt of court, they should not behave as they have been behaving in the past.

On the question of language, how proud are we? Some state that we should not have a language and that English should continue. A country without, a language of its own, could never be a democratic country. This was a ticklish question and there were those days when there was a hectic fight going on over this. But, with one voice, the House decided that we should have the Hindi Language and we are proud of it. We have not forgotten, at the same time, that the regional languages should be retained and we have retained them.

History will judge this Constitution. It is certainly not perfect; there may be defects; I know there are defects. I told you that I fought my battles in this hall by moving my amendments and I lost them. But, it is my duty to say to the people that this is the best Constitution and I expect every Member of the Constituent Assembly to say, despite any difference of opinion, that this is a Constitution of which we are proud and we must proclaim to the world and the world will realise that this is a document worthy of Preference by various ,countries in the world. Therefore I feel proud of this Constitution when it becomes law on the 26th day of January 1950, the historic day on which we shall inaugurate the Democratic Sovereign State. The various articles of the Constitution have been given a great deal of publicity, and rightly publicised, and today every man is conscious what is this Constitution and what is this article. Two years ago when we started the work, people were not conscious of what the Constitution was. But, by the prolongation of the sittings and the sessions of the Constituent Assembly, people are taking great interest in discussing the various articles after reading them in the newspapers, although the newspapers give a scanty report--they cannot give a *verbatim* report. People are today taking a great interest in what this Constitution is and what these articles are, which give to the people their rights and their obligations.

Lastly, Sir, I would say, there is an article in the Constitution that the privileges and rights of the members shall be preserved, as those prevalent in the House of Commons. I got up half a dozen times to know from the Drafting Committee what were the privileges in the House of Commons; but none of the Members knew it; nor have they enlightened me. The Honourable Dr. Ambedkar, the Chairman of the Drafting Committee when he was confronted with my question repeatedly, said, "I have got some South African Parliaments privileges; you come to me; I will show you." I have written a letter to him to send me the same; but I have not received a reply, nor have the privileges been shown to me. I do not know whether it is in existence in his office; but I have not been supplied with a copy. I am really anxious to know what those privileges are. It is really vague to put in the Constitution that the members will enjoy the rights and privileges which are prevalent in the House of Commons which the Drafting Committee is ignorant of, of which they have no knowledge. It was not proper to have put such a thing in the Constitution. Whatever it may be, it is there and I hope that in the first session of the Parliament, efforts will be made to see that the members' rights are well protected and secured.

In the end, I will only state that it was under the inspiration of our great leader whose picture hangs over your head, Sir, that we were all the time discussing these articles, and I am quite confident that although his body is not there, his spirit will guide us rightly after this Constitution becomes law and that we shall act faithfully and loyally and follow the teachings that he has all along his life taught us, faithfully and honestly.

Prof. N. G. Ranga (Madras : General) : Mr. President, Sir I am very glad to say that this is one of the memorable days that this House has come to witness, during its career of more than two years. There were times when this House was very much inspired by the speeches made by our Prime Minister and Deputy Prime Minister and many, other leaders of our own. This is also, a memorable day in the same sense because today we have begun our mutual fencitations over the great task that we have all performed in fashioning out, a Constitution for the future of this country, for the free India of out dreams, which has now come to be a reality. It is also in another sense a memorable day because with the blessings of this House and with your own personal blessings and the strength, support and inspiration of our two great national leaders--Panditji and Sardarji-- a new province is being brought into existence as a result of the deliberations and the work of this Constituent Assembly. I am fortunate in being an Andhra and in being able to do my own little bit by the side of our two veteran leaders, the Kesari, Mr. Prakasam and our Rashtrapathi Dr. Pattabhi, in trying to bring into existence the Andhra Province, and we have the good news today that the Congress Working Committee as agreed to request our Government to bring into existence this Andhra Province for which the Andhras as well as others have been fighting for the last 35 or 36 years. My only regret is that the founder of this movement, once the Acting President of the Indian National Congress, one of our great martyrs in this country. Desabhakta Konda Venkatapayya, is no longer alive to see this day and to hear this great news. I sincerely hope that the Government as well as yourself as our President, will do their best to take the necessary steps under Section 290 of the Government of India Act and later on under the appropriate section of our own Constitution, for the creation of this province and help it in every possible manner to make its debut in the realm of our own States in this Country and enable it to make its own contribution to the progress of an Independent India.

Coming to the Constitution that is before us, I am glad to say that in several respects this Constituent Assembly has been able to set an example to the rest of the world. We have read only to-day that Mr. Truman, President of America, is trying to persuade his own countrymen to confer civil rights upon the Negro peoples of that country who form 10 per cent of their population. But according to our own Constitution we have sought to confer all those, civic rights upon our own Harijans, other Scheduled Classes and backward peoples and backward Tribes. We have banished untouchability first of all from our minds and from our social matrix. We have agreed that there should be no untouchability at all and anyone who observes it should be taken to task. We have also agreed that our Scheduled Castes should be Protected. My Friend Muniswamy Pillay was rather afraid that it might not be possible for them to make such progress within the next ten years that it would be possible for the whole of the country to say good-bye to these reservations at the end of the ten years, but I am more optimistic and what is more, I am anxious also that our Indian democracy should play its role so well and perform its duty by our Scheduled Castes so satisfactorily that at the end of ten years our own Scheduled Caste friends would be willing to join hands with all others in saying good-bye to these reservations.

Then, Sir this Constitution has set another example to the Imperialist Nations of the World and also to the tribal people especially of Africa, by that Chapter we have included in the Constitution for the protection of tribal peoples of our country. Ours, as everyone knows, is an ancient country and therefore there is such a lot of debris of the past which has got to be cleared. We cannot clear it in a rough-and-ready fashion. We have to take constructive steps and our Constitution seeks to take those constructive steps by agreeing to create autonomous tribal republics in those far distant lands of Assam and providing a chance for the tribal people to live not only their own social and tribal life but political life, in a manner which would be conducive to their rapid progress. We have set an example to all other peoples because, as we all know, the British, the Belgian, the French and other Imperialists who were having their control over the peoples of Africa are today hard put to it to find a way by which they could possibly help the tribal people in those countries to make the necessary progress and as we all know that the tribal people of those countries themselves are in need of means-political means-by which they can make their own rapid progress, not only towards complete independence as we have achieved, but also towards social progress and I feel that the way for their progress lies in the manner in which we have ourselves prepared this Chapter and shown the way to our own tribal people.

Sir, in order to achieve religious harmony many countries have had to undergo a tortuous history. In Canada, in England and in France where there was conflict between two different denominations of Christianity itself, it took so many years to come to a harmonious solution as to how their various denominations should be allowed to be taught, preached and propagated for their progress as well as for their social life. In our country we had to harmonise the interests as well as the proselytising proclivities of some of our own religions--and we have many more religions I am afraid that many other countries--and yet we have struck upon, a solution which, I am sure, will be considered not only by Constitutionalists but also by Sociologists all over the world to be highly progressive, to be harmonising and to be useful. There is also this difficulty of bilingual areas in regard to which also, the League of Nations of old and the present U. N. O. and several peoples of various countries have had to wrestle with their own minorities, their interests and their conflicts. We too in our country have come to a solution which is progressive, which would bring about harmonious relations between different people speaking different languages, or living within the same area or within particular areas of different provinces. And I am glad, Sir, that power has been given to the Central Government to see to it that the peoples living in these bilingual areas are able to enjoy the privilege of getting their children educated in their own languages, while at the same time, enjoying the privilege of getting into the services, and the legislatures and also the political life of the regions of the Province or the State in which they happen to live.

It is also good, Sir, as you yourself so ably put it, that we have come to take a decision with regard to our common language. It is going to be one of the biggest constructive efforts that this country would be making, in order to weld all our different people into one strong, solid and harmonious nation; and I sincerely hope that it would be possible for our children and their children not only to learn this language, but also to enrich it with all the genius that we have been able to develop, and our ancestors have been able to develop through their ,own languages, in this vast country.

We are very greatful to our Sardarji, whom we all love and respect, for the manner in which he has consolidated our country and integrated province with province, State with State, and all of them together into this great whole, this united India; and for achieving a social revolution of which any country or any nation can be proud of, a revolution achieved in such a non-violent manner and in such a short time a record time, indeed.

Sir, we are laying the foundations for our democracy. I am satisfied for the time being, Sir with these foundations. We have these Fundamental rights. We have not contributed very much to these, beyond what we have been able to gain from the experience of the rest of the world. But at the same time, I am glad to say, we have tried to draw as many lessons as possible, for our own adoption and for our own practice, in the formulation of these Fundamental Rights. In one respect I think we have gone a little forward, and rightly so, and that is in detailing those rights which we can establish in a court of law, if any executive authority were to try to violate any one of them.

I am also glad that we have taken sufficient care to prevent the kind of experience that the

United States of America has had for several number of years, ,over the conflicts that arose between different States on the one side and also States and the Federal Government on the other, and we have taken a lesson from their experience and made sufficient and necessary provisions in our Constitution in order to prevent any conflict between one State and another, and we have also established harmonious relations in the development of their own inter provincial irrigation, flood control and various other subjects, and also to see that in the economic development of our country no one State would be able to prevent the general development of the country or the progress of its neighbouring States.

I am also glad that we have had the courage, the moral courage, to place certain restrictions upon the kind of liberty or kind of license that any one group of people, a few individuals or many, would like to enjoy in this country and exercise. It needed moral courage because so many of us have been to jail and suffered from the detention and all the rest of it, and therefore, We know the pangs of it, and we have been inveighing against this aspect of executive authority for so many years. And therefore, we had to realise its necessity, and it is not easy for erstwhile revolutionaries to realise so soon after the achievement of their immediate objective, namely, independence, that if the country is to grow in strength and in stability, and if we are to have social progress at all in the country, then we must be prepared to restrain such of those groups, parties or individuals as would like to stake their all and sacrifice the good of everybody for the benefit of their own particular isms, their own communalisms, their own ,castes, creed or class or their own politics. Therefore, I do not think that any Member of this House need have to be apologetic to anybody who might come forward and say, "Oh, you have put all these restraints upon such and such fundamental rights, and so on." We have also taken care to fix certain limits to the exercise of executive authority even in this direction.

We have also displayed our moral courage in another direction, and that is, in accepting the need for a strong, stable, loyal and patriotic public service. There were days when I was a young man, in the university, when Mr. Lloyd George began to speak about the "steel frame" in India, and I felt very unhappy. I used to be very angry, and I thought "Why this steel frame" ? But now within the period of three years, we have been able to realise how necessary it is for us, if we are to achieve cooperative progress or Gandhian Socialism, how necessary it is to have a Civil Service, and if we are to have a Civil Service, how necessary it is to trust them, and to be trusted by them, to stand by them and to be served by them in a loyal fashion. So I am in agreement with the provisions made in this Constitution for the protection of the salaries and emoluments of our public servants. But this does not mean that we are giving a *carte blanche* to our public servants. We are providing these privileges to the Civil Service with the hope and with the object of seeing that they do serve the country loyally and efficiently.

Sir, with regard to one aspect of our Constitution I am a little unhappy, and that is, the degree of centralisation that we have provided for in this Constitution. Not that I do not want a strong Central Government. All of us want it. But just contemplate for a moment what is likely to happen if another Hitler were to arise and take charge of the Central Government, or to play the same pranks and tricks that the earlier Hitler had played in Germany, by dismissing socialist provincial governments or one or two liberal provincial governments. We have given certain powers to the Central Government here which would empower them to dismiss certain of our Provincial Governments. Whether this is a good thing, whether it is a progressive thing, that is yet to be seen. But that power we have agreed to give to our Central Government in the hope that our people would see to it that the Central Government of the future would always be democratic, that it would not be allowed to degenerate either into a

Communist totalitarianism or a Fascist totalitarianism.

Sir, with regard to our own Provincial Governments too, and their constitution, we have taken care to provide for them a democratic basis. It is very necessary for our own people to see to it that this basis is respected and strengthened. The success or failure of any constitution depends upon the people who have got to use that Constitution, who have got to help to grow the various conventions, conventions over conventions, growing from precedent to precedent. Are our people going to take their responsibilities seriously? I have every confidence that they will. I have every confidence that people who accepted the leadership of Mahatma Gandhi and followed it over all those troublous years and fought imperialism and achieved freedom for this country would also have the necessary wisdom and statesmanship to help us to grow from this Constitution into a higher and higher conception as well as experience and practice of democracy. I look forward to the day when it would be possible for us to achieve a Cooperative Commonwealth; as Bapu was good enough to call it through the Kisan-Mazdoor-Buddhijeevi-Kalakar raj-that is the Raj of the toilers of the country, not the Raj of the idlers or exploiters, but the Raj of the people who lived by their own toil, who made their contribution to the society in an honest and progressive manner, the Raj of the people who lived, worked and died for democracy and democracy alone and never countenanced dictatorship.

Mr. Naziruddin Ahmad (Wes Bengal : Muslim) : Mr. President, Sir, once upon a time a man went on a sea voyage and returned to his village after a long time and people asked him what was the greatest wonder that he had seen. He said the greatest wonder that he had experienced was that he had returned home. So far as this Constitution is concerned, the greatest wonder is that we have finished it. One of the other wonders and possibly a most exclusive wonder in the world was the invention of a "second reading" which we concluded yesterday.

An Honourable Member : Second and a half reading.

Mr. Naziruddin Ahmad : May be. This kind of reading has never been known in any constitutional or legislative history in any part of the world; and somehow or other, I was an unconscious instrument in creating this mischievous state of affairs. I had suggested at a very early stage the idea of the Drafting Committee revising the work of the second reading. I had a suspicion that the way in which we were proceeding would lead to many mistakes. I therefore suggested a rule that the Constitution as settled at the second reading be sent to the Drafting Committee for revision. It was then strenuously opposed by Dr. Ambedkar, but ultimately he agreed and we can now see the practical value of the rule. The unfortunate result of that procedure was that whatever was intricate or difficult or anomalous began to be made over to the care of the Drafting Committee. There was however a condition that the Drafting Committee should make changes only of a formal nature and further amendments by members should be limited to those amendments. The power given to the Committee was similar to that given to the Secretary in the Legislatures. An unforeseen result of the rule was that a large number of anomalies could not be considered by the House and were shut out at the second reading. This was due to another rule introduced at the instance of Shrimati Durga Bai. Punctuation, grammatical and other formal amendments were passed over as if these were nothing. They have never been considered by the Drafting Committee and the House was absolutely debarred from considering them. This reading may, to my mind, be fittingly described as the fourth reading. It is something of a new precedents for the world.

The rule that formal, grammatical and punctuation amendments should be left over was supposed to be based on the English practice, but in England there are no such drafting mistakes as we are accustomed to here. Drafting mistakes there are absolutely out of the question, impossible and a thing never to be thought of. But here we have taken considerable liberties with the English grammar including punctuation and the wording of the Constitution. This led to entire ignoring of grammatical and formal errors and this led to errors and anomalies with which the world has never been familiar.

I submit these rules have in practice led to a serious state of affairs. There are a number of errors, anomalies, redundancies and repetitions. I shall refer to only one repetition of a glaring nature. Article 89, clause (1) says: " The Vice-President of India shall be an *ex-officio* Chairman of the Council of States." Exactly the same provision, in the same identical words also occur in article 64 where it says: "The Vice-President of India shall be an *ex-officio* Chairman of the Council of States". One of these provisions should have been deleted. I ventured to attempt it, but I was ruled out on the ground that such glaring repetitions would be looked over by the Drafting Committee. The Drafting Committee have simply ignored it and the repetition remains. (*Interruption*).

Shri R. K. Sidhva : What is the mistake?

Mr. Naziruddin Ahmad : The same provision in identical words appears in two places in the Constitution. But it has been passed over. It is no use holding a *post mortem* examination of this defect.

Shri Mahavir Tyagi : But we want to follow your argument.

Shri R. K. Sidhva : Where does the mistake occur?

Mr. Naziruddin Ahmad : I have no time to be cross-examined by Members.

Mr. President : I would ask honourable Members to let the speaker proceed in his own way.

Mr. Naziruddin Ahmad : There are a large number of anomalies and mistakes with which the Constitution abounds. I will not tire the House with a catalogue of them. Some of the amendments moved in the House have not been accepted by the Drafting Committee in the House not because they were not considered necessary, but because of a kind of bashfulness or nervousness that acceptance of those things would imply some amount of inferiority. I should have thought that that was not a correct attitude to take. Many amendments have been quietly accepted at the revision stage without any acknowledgment. I shall cite one or two typical cases. One is, there were in the Constitution expressions like "article such and such of *this Constitution",* "Clause such and such *of this article*". The repetition of the words "of this Constitution", "of this article" in more than one hundred places is against all principles of drafting. I repeatedly pointed out these redundancies. But they were not then accepted. But at the revision stage they have been quietly a without acknowledgement. I do not grudge the Drafting Committee the credit, because it has effected some improvement. Then there was the expression "Notwithstanding anything contained in this Constitution". The word "contained" according to modern principles of drafting is redundant. This word to which I objected has been removed in all places, also without acknowledgment. Then I referred to expressions "date of commencement of this Constitution" and pointed out that the word "date" should be omitted because that is clearly implied. This has also been done by the Drafting Committee, but again without acknowledgment. Then, I said that Judges should be spelt with capital letters. This has been done. Ministers also, I said should be capitalised. This has also been done. All these have been corrected in hundred places without, acknowledgment.

An Honourable Member : It is a great change indeed.

Mr. Naziruddin Ahmad : We should be grateful even for these small improvements. But so far as Courts are concerned, they have, on my suggestions used capitals in respect of the Federal Court and High Court, but smaller Courts have been looked down upon by the Drafting Committee and they are in small letters. Their acceptance of this is half-hearted.

Shri H. J. Khandekar : May I draw the attention of the honourable Member to the Clock !

Mr. Naziruddin Ahmad : Such words are usually capitalized in all our statutes. Such expressions as Magistrates, District Judges, Assistant Magistrates and a large number of similar names have been written with small letters contrary to established practice.

The greatest defect with the Drafting Committee, however, was that their minds were continually changing. In fact these changes were so apparent and so persistent and almost of such daily occurrence, that it does not requite to be mentioned specifically. These have resulted in many anomalies.

Then, Sir, one other defect mentioned in the course of the debates was that the Drafting Committee was increasingly encroaching upon the Provincial sphere and succeeded in denuding the Provinces of all responsibility and power and in concentrating power in the Central sphere. The result of this would be that the Provinces would have responsibility without powers. That would produce irresponsibility. This happened in the case of the Dyarchy which miserably failed.

Another defect is that the word "State" has been grossly misused. "State" means no less than several different kinds of institutions in the Constitution, and a reader will have to take careful note of the special definitions of the word "State" in each Part in order to know what is really meant, and even then he cannot be sure. This is due to the fact that the Drafting Committee failed to use specific names to distinguish between the Central State, the Provinces, the Indian States, the District Boards, the Municipalities, the Local Boards and the Union Boards. They have all been called "States". The anomalous result is that provisions which should apply only to the Centre have been made applicable to Municipalities, District Boards, Local Boards and even Union Boards. There are passages to the effect that "the States shall promote international peace and security" and "maintain just and honourable relations between nations". "foster respect for international law and treaty obligations between nations" "and encourage settlements of international disputes by arbitrations"--as if the Municipalities, District Boards and other local self-governing bodies will try to do this! What is meant is the Centre. Only confusion has resulted from this needlessly comprehensive definition. The reason for this is the passion of the Drafting Committee to use an expression of a sonorous and catching nature. It is this passion for grandiose terminology that has induced them to do so. But the English language was rich enough to have given them different words to express these ideas correctly in the context and expressions like the "self-governing bodies" or "local bodies" might have been used in special contexts only where necessary. I submit this has created considerable confusion.

Then the Drafting Committee has interlocked the word "the" with the "State". The State has been defined as "the State". It is an unheard of procedure and Dr. Ambedkar could only cite an example from Australia in support. Whenever in difficulty, just as Mr. Sidhva has pointed out, he cites the example of South Africa or Australia. But when asked to show the authority, he declines to accede. I submit, Sir, that these words should not have been interlocked. The word "State", without being well-locked with "the" should have been used for the definition. The word "the" is a definite article but it has to be used in different places with indefinite effect. The result has been that we have always said "the" State, meaning also the Municipalities. District Boards, Local Boards, Union Boards and other similar bodies. Had there been only one State in India the word "the" State would have been proper. It cannot be used in indefinite connotation. There would be, according to the definition of "the State", several lakhs of States including the District Boards, the Municipalities, the Local Boards, the Union Boards, etc. So when we say "the State" at various places, we really mean several lakhs of States! The word "the" is out of the question in the contexts. We should say "this" State, or "that" State, or "a" State, "any" State, or "every" State according to the context. The adjectival adjunct should depend on the context. The result of this inter-locking is to put the draftsman into a straight jacket rendering freedom impossible.

Shri Mahabir Tyagi : Have you been a school master?

Mr. Naziruddin Ahmad : Then, Sir, there is something like a passion for the use of the expression "Dominion" of India. In fact it is just like a bird which has lived in a cage for all its life when released it wants to go back to the cage. It is a jail bird, who if released, commits a crime again and goes back to jail. Although We have been released from the bondage of a Dominion, we still want to go back into it. Instead of using a very simple expression, the "Constituent Assembly of India", the Drafting Committee has unnecessarily introduced the expression the Constituent Assembly of the "Dominion" of India. This is perfectly unnecessary but Dr. Ambedkar told us that he was unable to find a way out. The way out was simple: it was simply to mention the Constituent Assembly of India--that would have been sufficiently expressive and we have used it so often that it would not have created any anomaly.

As. Mr. Sidhva has pointed out, no one knows what are the privileges of the House. I pointed out during the second reading, that the privileges of the Members of the House of Commons were unknown and scattered in different English rules and in text books. They should have been collected. This work should not have been shirked by a vague reference to the privileges of the Members of the House of Commons. The privileges should have been worked out and incorporated in the Constitution. But the Drafting Committee had neither the time nor the inclination to do so.

Then, Sir, with regard to the pay of High Court and Supreme Court Judges. It has been reduced most unjustly and unnecessarily and in some cases there was an attempt to reduce it with immediate effect even with respect to present Judges. That would have gone against the contract on which they were appointed. On my objection there was a concession that Judges appointed up to 31st October 1948 should get their old pay. But that has again been grudgingly removed and the pay of existing Judges has been retained.

I shall refer to another anomaly as to the transfer of cases--small cases involving an interpretation of this Constitution. Some how or other the question of law involving the interpretation of this Constitution has a fascination for the Drafting Committee. In small cases--petty cases-in the districts, if any question of the interpretation of the Constitution is involved, the result will be that it will be obligatory on the part of the High Court to withdraw the cases and to dispose of these at once or to determine the issue. In fact, I submit that often this question of interpretation of the Constitution will depend upon facts. The High Court will have to be over-flooded with a large number of petty cases and a veteran litigant will take the objection that a question of interpretation of the Constitution is involved: the case will have to be withdrawn and an expensive litigation will follow in which a poor man will be at a disadvantage. So this will be used to the disadvantage of the people at large making the administration of the law more costly and dilatory.

Then, Sir, I find one individual who has been given a place in the Constitution with out any function, that is the Uprajpramukh in article 366, clause (30). He has been given no functions. The Uprajpramukh is just like Euclid's point which has existence but no magnitude. This Uprajpramukh has been given a status but no one knows what it is. He has been given no function. No indication is given in the Constitution as to whether he should function in addition to the Rajpramukh, or whether he would be merely supplementary functionary. I should submit, as Mr. T. T. Krishnamachari, in a different capacity once said, that the Constitution is so badly drafted that it will be a, lawyer's paradise. Of course on his elevation to that elevated body, the Drafting Committee, he has changed his opinion.

I suppose I must come to a close. I owe some apology to this House for criticising the Drafting Committee in this manner, but thanks are also due to the Drafting Committee for the troubles they have been put to. It must be acknowledged in all fairness that the Drafting Committee did their best; they worked very hard but worked without any definite, settled or fixed plan. They began to change their plans every day and that is why so many anomalies have resulted. They were however in many cases forced by the Party in power. There is another anomalous position. Part VI deals with the Provinces. In order to adapt this to the States, Part VII was introduced with some adapting sentences. These sentences are in a most perfunctory condition and they could and should have been incorporated in Part VI. It would have been very easy to say that wherever there is the word "Governor" the words "or Rajpramukh" be added. That would have been quite simple. I gave notice of an amendment No. 364 to this effect. I did as well as possible and the only thing for the Drafting Committee was to accept the same with modifications if they desired. That would have made the thing sensible and a continuous whole. The provisions relating to the Provinces and the States have been combined in all other places except this. But I believe the Drafting Committee was tired and they must have been absolutely overworked and were unable to go further, though this improvement was desirable. My amendment was ready-made and only a little revision would have done.

In closing my brief remarks which for want of time are of a sketchy nature, I cannot but mention the deep debt of gratitude which we owe to you, Sir, personally. Whatever has been done in the House, you were the guardian of Members who found it their duty to speak against the Drafting Committee and you did your work so wisely, so liberally and so well that the House owes a deep debt of gratitude to you. You have been extremely watchful of the proceedings--not that you did not follow the anomalies which the Drafting Committee was committing, but it was not in your province to interfere on the merits--and you gave the greatest latitude to the Members who found it an unpleasant duty of speaking against the Drafting Committee.

Sir, with all these and many other faults, I submit that the Draft Constitution should be accepted. It is not the drafting that matters. The drafting is very bad, it will lead to innumerable cases, as Mr. T. T. Krishnamachari in a different capacity suggested, on which lawyers will delight, but I believe that the success of the Constitution depends upon the spirit in which it is worked. If it is worked well, this bad Constitution, lame as it may be, will give encouraging results and will make the people of India freer and freer politically and economically with the passage of time.

Shri B. Das (Orissa : General): Sir, at the conclusion of the three years' hard work, however inadequate may be my own contribution in the shaping of this Constitution, I have reached the conclusion that we have done our task well. There must be differences of opinion because if all of us will be of one mind it will be fascism or autocracy, it cannot be democracy. Therefore, there might have been and there may be differences now and hereafter, but the fact stands out foremost that we have got our Constitution, a democratic Constitution.

For that my heart goes to you for your wise guidance in bringing the ship safely to the port. My thanks are also due to the Drafting Committee. However much I might have disagreed or may still disagree with them on certain articles, they have discharged their duties well.

Sir, the feeling that has been left in my mind all the time, though the Drafting Committee worked very hard to bring this Constitution to this finish was that it was a pity that the Constitution did not reflect the spirit of the Congress. How it happened that the Drafting Committee had its majority in non-Congressmen it is not for me to analyse at present, but that feeling persisted in my heart all the time, and I think many of my comrades here will agree with me, that the spirit of Congress is lacking in this Constitution which will be our *Magna Carta* for some time to come.

Before I proceed, I must bow in reverence to the Father of the Nation who fought the battle of freedom and independence of the Indian people, who made us come to this stage and whereby we have framed this Constitution. He is no more with us though he is watching us, but in all humility, in all gratitude I remember him this moment. Whatever we have achieved, in spite of that Commonwealth link which I do not like nor many of us like here, it is an due to the Father of the Nation.

I have heard charges outside by those who profess to call themselves Socialists that this Constitution will be a dead letter. I remember a few months ago the Socialists produced a book, "A Draft Constitution". If the Socialists have the hardihood, if their leader Sjt. Jaiprakash Narayan has the hardihood to speak out that this Constitution would be a dead letter, I challenge them, I challenge him and I challenge the Socialist Party. If they are to inherit the Kingdom of Heaven, the Government of this country, from the Congress.......

Shri H. V. Kamath : We want the Kingdom of the Earth.

Shri B. Das : Kingdom of the Earth, I apologise, I accept. If they are to inherit this administration from us the Congress Party, they must be realist and practical. The very small minority they are, they should not talk of this Constitution being scrapped. What alternative have they? I have some respect for Sjt. Jaiprakash Narayan but I ask him from the forum of this House to be realistic. If they think they can administer better than the Congress Government, let them produce a Constitution and let us see what fundamental differences there exist between this Constitution and the Constitution that they imagine to produce.

Before I go to the points I wish to comment, I will also thank the Secretariat of the Constituent Assembly and all those who are not with us at present but have gone on work of State outside. I remember Sjt. B. N. Rau who, as our honorary Adviser, rendered us great advice in the light of his wide knowledge and experiences. There are others who have gone on foreign service, to our Embassies and the like. To them all our thanks are due. I hope my colleagues will agree with me in offering our thanks to them for the services they rendered to the Members of this House in giving them proper advice at proper times.

Sir, are we a Republic or are we still suffering from the sin of being associated with the Commonwealth countries? The Preamble says that we should render justice, economic, social and political. Can we render economic justice as long as we are tied down to the apron-strings of the sterling areas? The suffering of the Indian masses on account of the high prices prevailing in India today is all due to our subjection to the Commonwealth and to the foreign country, the United Kingdom. The United Kingdom is responsible today for all our economic distresses. After seven of years of high prices, the index prices in the United Kingdom have gone up only by 60 per cent. while in our poor country the prices have gone up to 400 per cent. In the United States of America the prices have risen only to 220 per cent. And yet we were allies during the war! Sir, I was no ally of the United Kingdom or the United States of America. I was only, a slave with the halter put around my neck. I was exploited. I was bled white. All the wealth and 'the economic resources of India passed into the hands of the United Kingdom. And yet Mr. Churchill and one or two Labour Members of Parliament had the audacity, had the ignominy to say that India must pay for the defence of India during the last war. The perfidy of the politicians and statesmen of the United Kingdom still persists. I have no love for the United Kingdom. On the 26th January 1950, when the Republic of India is declared--I will declare for cutting as under from any association with the Commonwealth countries, particularly the United Kingdom.

Sir, the Drafting Committee has given us a Constitution of 395 articles. It is a Maha Bharata in Constitution and in History. The Constitution which the British Parliament framed had 321 sections while the Constitution we have made has 395 articles. Well, the circumstances over which the Drafting committee bad no controlled them to increase the number of articles in the constitution. Perhaps it was like the soldiers running amuck. Therefore they must stiffen and stiffen and amplify so that the Constitution will be understood by everybody. If I may say so, they have done away with the work of the legal interpreters. This Constitution of 395 articles does not need, any *Bhashyakars* or commentators.

Sir, the machinery that this Constitution envisages places at the top a cabinet with joint responsibility, though it is qualified by certain emergency powers given to the President as the head of the Government, Sir, I never liked these emergency powers, but they have come in. But the administrative machinery that they have introduced by which the Cabinet will rule over the vast masses of the country is controlled by three instruments of Government such as the administration of justice by an impartial judiciary in the shape of the Supreme Court, the Auditor-General who will test and check all expenditure of public moneys and the Federal Public Service Commission whose selection of officers for the services the administration will accept. It is for our Home Minister to see that any advice given by the Commission is respected by the Ministries. This has not been so in the past, not even during the last two and a half years since we attained our independence.

Sir, the Auditor-General must maintain the financial integrity of the country. He must not allow officials to over-spend or to spend without proper sanction of Parliament. No Parliament worth its name should allow the officialdom to exceed the sanctioned amount of grants and play ducks and drakes with public finance. That has been the practice in the days of the foreign rule. Most of our official, however much they have changed their hearts and are working under a democratic system of Government tuning their policies to the policy of the Congress Government and of the Cabinet, still labour under the old-fashioned idea that an auditor should not challenge their financial irregularities. This must be safeguarded.

Sir, the economic distress which this nation is facing, must be remedied by the Cabinet with the help of the Administrative Heads and the people at large including this House. But how can there be economic self-sufficiency when we have got a Cabinet of 20 or 21 Ministers?

Nobody can expect retrenchment or reduction in expenditure in the circumstances. And Ministries will continue to be extravagant. If their number could be reduced, some economy can be effected. The British rulers ruled India with seven secretaries. Today we have got nineteen secretaries. When this is so, retrenchment must come from the top. Attempts are made by our Cabinet to remove the present economic distress by compulsory savings or compulsory cuts in salaries of Cabinet Ministers and by our compulsory acceptance of a reduction in our daily allowance. But these will not solve our economic problem unless we establish a Government suited to our national economy and national genius. We have borrowed a foreign system of Government. We are carrying on with the old-fashioned British system of government and the ex-British officials are now our trusted advisers. That mentality must change. I hope and I pray God that from 26th January 1950 the indigenous spirit of administration, will come into existence in India.

Sir, I wanted to talk a word or two about adult franchise. It is a welcome democratic principle. But it is a western idea. We have borrowed it. I have accepted it. But I wonder if it can be brought into practice here and if our Ministers can devise means to hold elections under adult franchise by January 1951. Borrowed ideas are not suited to Indian genius. So perhaps five or ten years hence we may have to change our ideology when we find that adult franchise is not practicable in India.

Sir, I take this opportunity to congratulate my friends from the Andhra province for finalising the creation of the Andhra province. They are my next door neighbours and I have been intimately associated with that province for years and years, and I do wish that the Constitution should have empowered the Government to bring this province into being on the 26th January 1950, but I believe it will take some time.

If I look at the provisions of the Constitution I do not like some of them. I do not like article 22 on detention. I do not like article 34 on the martial law provision, nor do I like article 128 whereby High Court Judges could be shunted from one part of the country to another, as my honourable Friend Dr. Ambedkar put it yesterday, for the convenience of administration. It has already been remarked this morning that the separation of the judiciary from the ordinary civil administration is not necessary at present. What was a point of serious complaint, a serious difference of opinion, in the days of foreign rule, is not a grievance today. If all officials are honest, there is no necessity to separate the judiciary from the general administration which would otherwise increase the cost of administration of every province. I am glad my honourable Friend. Mr. Bardoloi, is present today. Assam is in very serious economic. distress. Under this Constitution, if it is economic distress today, tomorrow it will be severe distress, and therefore there are certain things in which we must go slow.

Speaking of article, 322, the Federal, Public Service Commission, the advice tendered by them should not be overruled by a Secretary or a Deputy Secretary.

We came to some agreement on article 148 and whatever the difficulties, whatever the desire of the administration, the Auditor-General must be the highest authority in audit control of expenditure. If that is not there, there will be chaos as there has been since 1938-39.

I must conclude by saying that certain omissions must be corrected before the 25th or 26th of this month. The National Anthem must be settled, and if I may be permitted to suggest, we must specify also the national dress. I hate to see official still moving about in ties and collars. Our association with the Commonwealth does not entitle anybody to put on foreign dress. They should be debarred from doing it. Parliament should debar by legislation.

Nobody in the employment of the State should wear foreign dress.

Another point is the financial reallocation between the Centre and the provinces. Dr. Ambedkar twice declared on the floor of this House that an *ad hoc* Committee on Income-tax reallocation will be announced. I hope, Sir, that you will compel the Government of India to come forward and appoint that Committee on income-tax reallocation which may give real relief to my Friend, Mr. Bardoloi from Assam and will certainly bring some relief to Orissa. Sir, I support the motion.

Mr. President :. The House will now stand adjourned till ten o'clock tomorrow morning.

The Assembly then adjourned till Ten of the Clock on Friday, the 18th November 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME XI

Friday, the 18th November, 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION- *(Contd.)*

Shri Ramnarayan Singh (Bihar: General): * [Mr. President, Sir, I have got today the first opportunity of speaking on the Constitution. I thank you and consider myself fortunate for getting this opportunity.

Sir, in ancient times there was a king in our country named Bharthari. He has given the description of the work in a shloka of which the last line I remember, He says:

'Na jane samsarah kimmrithamayah kim bishamayah'

No one can say whether the world is full of nectar or full of poison. That is what I want to say. We spent a lot of time, money and energy in framing this constitution and it is nearing completion now. It will now be adopted in full. Some people say that it is very good and have gone to the length of giving Dr. Ambedkar the title of Manu of Kaliyug. A section of the people has this opinion and other says that it is very bad and worthless. When I begin to think on the lines of Bharthari the idea occurs to me that some time back the British were the masters of this country but now they have departed and the Indians are framing a Constitution for the future administration of their country. The idea is very pleasing but when I go deeper into the Constitution I am pained to see all that has been accepted for shaping the future administration of the country I know it is a fact that we were slaves for a long time but there was a time when we too ruled the country and had an empire also. At some places the democratic system of government was also followed. But if you look into this Constitution it would be difficult for you to find anything Indian. I would go so far as to say that those of our future generations who might be unfamiliar with the History of this constitution, would say that it was framed not at Delhi but at London. At least the people will have this suspicion. Some of them would have the suspicion also whether the representatives of the people of India framed this Constitution or whether the British of the While House in London were pleased to frame it. Such a suspicion can arise in regard to this Constitution. Every one can see that it has been framed in English. As I have asked what is Indian in it ? It is a fact Sir, that the British have departed but I regret to say that our countrymen have not forsaken the ways of their former masters and that they are ingrained in their minds. I am of the opinion, and this is shared by other people also, that we would experience much more difficulty in bidding good-bye to the ways of the British than we experienced in bidding good-bye to the British themselves.

Sir, on a perusal of the Constitution it appears that some portions of the British Constitution and some of the American Constitution have been included in it. It is a curious admixture and to use an English expression it appears to be a "fantastic mixture of the various Constitutions obtaining in the world ". It is my humble submission Sir, that we have first to realise that the British have now departed and that we are framing a Constitution for ourselves and we have to decide as to which type of Government we shall include in the Constitution and whether that Government will serve the country or govern it. If it is to govern the country, I would like to say that the time has now come when the world does not want to be governed and needs no government. There is no need of a Government, Mahatma Gandhi, our leader, characterised the previous government, the British Government as a Satanic Government. Sir, I think that there is no government in the world at present which cannot be characterised as Satanic. It appears that at present government means Satan. Therefore our country and our society does not need a government. I move some amendments in this connection in the beginning but they were not accepted. We need in our country Sevak Mandals, Societies of Servants and not a government. They will defend our country in the true sense. The member of the present government also claim that they are public servants but their work, that comes to our notice, has nothing to do with service. It is the work of the masters. I want to say it in plain words that the country does not now need rulers but servants. It does not need government. It needs service. I want to add that this principle has been accepted all the world over that no man has the right to govern another man. Hitler said that no person other than him could rule the world. But he went down with the whole of his society. In the past too there were Rajas and Maharajas who said that they had the divine right of kings. All these ideologies have now met their doom. Even now there are people who say that they are public servants but act as 'public masters'.

I take up one matter more. We have accepted that some of the public servants of this country will be granted salaries of five thousand rupees, six thousand rupees and ten thousand rupees. Sir, you were present in the Karachi Congress as also many of my friends. I was also present there. We accepted there that the highest salary in our country should be five hundred rupees and no more. The British had fixed the salaries here. But they were here not for service but for loot. The people whom they took with them were made co-sharers in the loot. It is a matter of regret that we, the representatives of the people of India, assembled here, violating our principles and decisions and that of the Congress, pass the resolution that one person may be given five thousand rupees another six thousand rupees and yet another ten thousand rupees. It should be remembered that this is no service. This is government. I want to enquire of you Sir, and of all the honourable Members of the House whether they are aware of the conditions obtaining in the country. Has the situation changed since we passed the resolution that no salary should be higher than five hundred rupees ? Has the income of the people increased considerably? It is an accepted law in the world that the salary of a public servant should be in tune with the average standard of living of the people. Ninety per cent. of the people of our country know not what two meals a day are! They somehow manage to pass their lives. Excepting a few people no one gets sufficient food to pull him through. If you provide for salaries of four to five thousand rupees while the people are starving they will ask whether this is the salary of a public servant or of a dacoit of the British brand. I hope I shall be excused for these remarks but I can not help making them as I am deeply pained at what I see all around me. Even after giving full thought I fail to understand, and the people also tell me, how it can be justified that these people are public servants. Does a servant want that he should have more income than his master, that he should have better food and better residence than his master? The people of India, who are the masters of the country, live in huts but their servants will get salaries of four to five thousand rupees and live in palaces. Is this not a fraud? It should be said in plain words that when the administration of the British ended, we took over the reins and that we now govern the people. The people stand where they were. We are not servants but rulers. We may frame the Constitution as we like and fix whatever salaries we like but it should not be said that we are public servants. It should rather be said that we are 'public masters'. I would like to tell my friends here that such a proposal regarding salaries and so many of our actions mean that we are paving the way for the Communists. It will be no use taking recourse to repression. By putting the members of the Communist party behind the bars we would not uplift our country. We can not stave off a revolution by such means. If you want that there should be peace in the country you should remove these disparities. The first thing that I would like to point out to you is that it is not yet too late to fix the highest salary at five hundred rupees. Otherwise you will have to declare in plain words to the world that a few Indians, who were in the front ranks, got an opportunity and began to rule the country like the British . All this does not mean self-government to India. I appeal to you to consider this matter.

I have heard the bell Sir, but I have to say a few things more. Therefore, I may be given half a minute more.

The parliamentary system of government or the party-system of government has been provided for in this Constitution. I would like to say that it does not suit India. Unfortunately there are already too many parties in our country. There have been parties on the basis of the caste-system for a long time. Now if you introduce a new party-system what will be the outcome? If under the party-system you grant franchise to everyone, the result will be that some scoundrels and capitalists will combine and manage to monopolise all the votes. I know that they would not lack associates. Democracy can not function in such a way. The way affairs are managed in western countries has something of democracy in it but there too there is no real democracy. I hold that the government based on party-system strikes at the very roots of democracy. Under that system only a few persons rule. A few scoundrels and a few capitalists will combine and rule. It is right that in democracy everyone should have a vote and it is also right that an issue should be decided by the vote of the majority. But it should not be necessary that every person should belong to some party or other for arriving at decisions. The party decisions or the directions of a leader should not influence voting. Everyone should be free to vote and should do so honestly. The decision arrived at in this way will be a democratic decision and the country will benefit by it. Otherwise a party leader will give directions and others will vote accordingly. The decision arrived at in this way will not be a democratic decision. It will not be the decision of Panchayat. It is a common saying in our country that Panch is God. He is not a God who has a number of smaller goods under him. It is understood in regard to God that those who sit in His presence are free and dependent to none and that they do not decided any issue and vote on it by looking up to anyone.

Sir, my time is over and therefore I would not say anything more except one thing. As other honourable Members have already said, cow slaughter should be altogether banned by the Constitution of our country. You have only to look at the plight of the cultivators who have to leave cultivation because of lack of oxen.

Regarding Hindi language I want to say that although our South Indian friends have accepted the resolution in connection with Hindi but they entertain the feeling that we want to impose our language on them. I think that this country is my country and all of its languages are my own languages. If I do not know Tamil and Telugu it means that I lack something. In learning these languages I would not be putting anyone under any obligation to me. I shall only be increasing my knowledge. Therefore we should accept that all the languages of the country are our own languages. We had to select one language as the national language. Since Hindi has been selected as the national language it should be accepted as our own language and introduced in that spirit. Some of us think that they became learned by learning English. As often as they speak in English, we are reminded of our slavery to the British. We learnt English only for the sake of British. Therefore we should give it up as soon as possible and should replace it by our national language. To introduce the national language after fifteen years means evasion of the issue. We should do our best to develop the national language as early as possible so that we may not need the English language at all.

Sir, I want to say only one thing more. In all the Constitutions of the world the right of keeping arms is included among the Fundamental rights. I would like to say that the Constitution which does not provide for this natural right, the divine right of a man to keep as many arms as he likes, is not worth anything. You know that the government has taken upon itself the burden of defence but it cannot defend every person and every home. It can at least allow every person and every family to keep as many arms as may be necessary for its defence. Therefore, I submit that a provision to this effect may be included in the Constitution so as to grant the right of keeping arms to every citizen of India. I am pained at the conditions obtaining in the country at present and I hope the Government will take early steps to improve them.

I have taken a little more time and I beg to be excused for the same. I have already said and I repeat it again that these three or four matters should soon be decided. All the sin and evil that is being committed should end. With these words I conclude.

Shri Kuladhar Chaliha (Assam: General): Mr. President, Sir, at the outset it is necessary to appreciate the work of the Drafting Committee and more so of Dr. Ambedkar in producing a wonderful Constitution in spite of the difficulties with which they were faced. We must also appreciate the members of the Drafting Committee and especially Mr. Munshi who, though he was busy in many matters, always tried to bring about compromise formulae and we appreciate his work greatly and all those silent workers and staff who contributed greatly to the success of this Constitution. Sir, it is necessary to say that, though we may not have produced the best Constitution, at the same time we must say that it is one of the best that we can produce under the conditions prevail. They faced facts and produced one that was necessary. It is said that members of the Drafting Committee were not in the forefront of the battle for liberty but I think that is an advantage because they could look into it dispassionately and produce the one that was necessary. At the beginning of the discussion of the Third Reading we heard from Mr. Muniswamy Pillay that 60 million people of Untouchables were satisfied with this Constitution. That is a great contribution really and if we have satisfied those untouchables whom we have neglected I think we have done a wonderful work. Therefore, my appreciation is due entirely to the Drafting Committee and to those members of the staff who worked hard without having any voice in it and produced the book that is before us.

Sir, I submit, therefore that we have produced a Constitution which, in spite of the fact that it does not come up to those standard which some of us wanted, yet, I think under the Directive Principles we have enough of those conditions that should satisfy every one of us. If he is a socialist, there is the Right to Equality to give effect to his ideas. If he is an untouchable, we have the protections to guard his interests. If he is a "Backward" we have also the provisions in respect of his interests. So in whatever way we may look upon it, we find that we could not have produced a better Constitution than the one that we have produced.

Sir, in the definition of citizen, of course it has been conceived in the, best of spirits, but there is a subtle loop-hole where we may run around ourselves. If a man comes six months before the 19th July and is registered by the officers appointed by the Government of India, he can be a citizen. But when you apply this to a province like Assam, you will find great difficulty. You would be heading towards disintegration. Therefore, when this is applied, we have to be very careful and we should see that we are not led away by the high principles which have been laid down in this Constitution. Therefore, in spite of the fact that the definition of citizenship has been very well framed, yet, there is a little danger in its application, if you want to apply it in the way we would have it here. We have been receiving telegrams from Assam that we are heading towards ruin. Probably every member here has received them from Assam, saying that we should apply this principle with a little reservation, that this definition of citizenship should be applied with a little reservation in Assam, and that this Constitution should take note of this.

As regards the Directive Principles, we find that there is a Directive that prevents the concentration of wealth to the detriment of the common man. There is no bar to changing the distribution of wealth, the only bar being that we should, do to it constitutionally. So we have as much as possible in the Constitution and we know that if utilised properly, we can evolve a really democratic government.

Sir, our Constitution is really an amalgam of the American and English Constitutions, with Canada in between. From the American Constitution we have the authority in the President, that he can have the executive to himself, and can appoint his own men to administer the Government. But there is a defect in it as well. And we have the English Constitution in which the leader of the majority party only will be called upon. In the American Constitution the Ministers have nothing to do with the congress. The Ministers are responsible to the President only, and not to the House. But we have it in our Constitution that our Prime Minister must be responsible to the House. There is also a little defect in that. He can nominate about twelve members. He can also choose his cabinet from among them, there is nothing to prevent him from doing that, from choosing the members from nominated members having special knowledge in science, art and literature and social service. The premier can do that. But in these days we need not have such an anachronism as "nominated members". We could have had the different societies representing the arts, literature etc. to elect members from among them. But if you allow the President to thus select his Prime Minister and the Cabinet, then we can have an almost entirely nominated set of Ministers. Of course, with the present leaders, there is no such danger. But we have to make a Constitution which is not only fool-proof, but also knave-proof. Some time latter, there may be some people who may be knaves, and we should see that our Constitution is knave-proof also. We may have to change this within the next ten years. At present there is no such danger and the President, so far as we can see for the next twenty years, will be such that he will not misuse his powers. Therefore we should keep guard and see that the Constitution is not worked in such a way that the Cabinet contains only nominated members.

Sir, there is another defect in the Constitution and it is this. It has been said that a Minister is to be a member of the House. He can be a nominated member also. It is not necessary that he should be an elected member. That word "elected" has been, omitted, and if it is intentional, then it is a dangerous thing and a flagrant outrage on democracy. I think we should change it to "elected member" and not "Member of the House" as it is worded now. That Member may be nominated by the President and he may be a Minister of the Cabinet too. So I submit that this lacuna has also in future, to be remedied and we should not allow this to go on for a long time.

Then we find that we have been very excessively anxious about the pay and salary of the judiciary. I do not know why we have been so very anxious, as if we were afraid that their Lordships would be annoyed if we gave them less salary or did not provide them houses and so on. I feel Babu Ramnarayan Singh has spoken properly about this anxiety for higher salaries of officers. Of course, we started with the ideal of Rs. 500, but we have seen that changes have come about now and in the present set- up, probably it is not possible to come down to the level which we had put up before our eyes in the beginning. But still, we find that the salaries fixed are so high that sooner or later we shall have, I think, to revise those scales.

There is also another thing. We have provided for the removal of the judiciary by impeachment. But it, is not a very safe proposition. I think the best course would be to select, say, three Judges of the Supreme Court to decide whether a Judge has been guilty of misbehaviour or misconduct or bribery. Otherwise, if we allow this impeachment of a Judge, the whole country would be rather in a ferment, and people will take sides, and in the long run, the guilty man may escape and the honest man be convicted, because of the prevailing passions and prejudices. So I think we should have a tribunal for judging the guilt or otherwise of a Judge, a tribunal formed by the Chief Justice of the Supreme Court. That would have been a better provision.

Then I find that in the State Legislatures Upper House are provided for in many of the Provinces. This is rather an anachronism, in these days when everyone is trying to abolish such Upper Houses. We need not have been enamoured with such Upper Houses. These superannuated bodies will not be contributing anything to the discussions. And we also find that in the House of Lords there are very few people who are really bringing in any new thing. As such, my submission is that we should, sooner or later, abolish all these Upper Houses. Even the House of Lords, we know, is almost powerless, and I do not know why at this late hour we should be so anxious to establish these Upper Houses. So my submission is that in the next revision of the Constitution, we should take note of this and try to revise this provision.

There is another little relic of the royalty here, in that when a Bill has been passed by both Houses, the President can send it back with his message for reconsideration. This is really a relic of royalty, and I fail to see why the President should be given so much power or that we should presume him to be so wise as to send back Bills even after they have passed both Houses. This power is excessive, and I think it ought to be taken away from the Constitution, sooner or later.

As I have said long before, I have a great grievance about the Sixth Schedule which has been enacted in this Constitution. This has been framed from a wrong background, that the Tribes think that we are their enemies. The British gave them this idea. They kept the Tribes away and did not let them be assimilated. The British when they left, told them, "The Indians - the Hindus- are your enemies. We are your friends".

They are their friends, because both of them eat beef. They conquered the country from the hill Tribes and as they leave, the sovereignty lapsed back into the hands of the Tribes. The Regional Councils and District Councils have become super-parliaments. That has been a little remedied by Mr. Munshi. But as such I think we are heading to a difficult situation, and if the Tribes cause disturbance to us we have to thank ourselves. But there is one redeeming feature and that is paragraph 21 of the Sixth Schedule which reads :

> "(1) Parliament may from time to time by law amend by way of addition, 'variation or repeal any of the provisions of this Schedule and when the Schedule is so amended, any reference to this Schedule this Constitution shall be construed as a reference to such Schedule as so amended.
>
> (2) No such law is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this constitution for the purpose of article 368."

Therefore we should be very careful and it should be amended at the first sitting of the Parliament; otherwise we will be heading towards ruin and there will be so many pockets, so many Ulsters where there will be trouble.

Then, Sir, as regards the name of Assam, I understand from the Honourable the Prime Minister of Assam, Shri Gopinath Bardoloi, that they have agreed to the change of the name and that it was agreed to in the Cabinet. He sent a telegram to the Drafting committee, I think, on the 12th . But it was not received by them. I trust under section 391 the President, after the inauguration of the Constitution, will amend the First Schedule, changing the name of 'Assam'. There is another point which I want to mention and that is about the language. The word used at present is 'Assamese'. Mr. Sahu had given notice of an amendment to the effect that it should be called 'Assamia'. I hope these slight defects will be remedied in due course.

I must again thank the Members who have contributed to the discussion on the framing of the Constitution which is so well conceived. I should however point out that Members who are finding fault now agreed to the provisions at the Party meeting as well as here and to find fault now agreed to the provisos of the Party meeting as well as here and to find fault now does not come in as good grace.

Shrimati Annie Mascarene(Tranvancore State): Mr. President, Sir, I deem it a privilege to speak on this occasion when the House is sitting to pass its final judgment over the Constitution. We are, Sir, on the eve of an historic occasion, when this ancient sub-continent of ours, which had been a laboratory of political experiments of nations in the world, which had been a caravanserai, where nation after nation and sultan after sultan came and went their way, is going to solemnly declare by the sovereign will of its people, a Sovereign Democratic Republic, to secure justice, liberty, equality and fraternity for all its citizens. Never in the history of the world, Sir, has a nation of such magnitude and population, with a history and tradition of non-violence, culture and sacrifice, fought and defeated the mightiest Empire in the world, with a galaxy of distinguished leadership that stands before time like beacon lights, has declared its sovereign will to Jay down a democratic constitution. When passion is high after the end of two world wars in history when reason and common sense are at a discount and principles of liberty, equality and fraternity are resounding such intoxicating music in our ears, it is at this time. Sir, that we, the greatest nation in the world, have decided to frame our Constitution.

Revolutions have come into this world and constitutions have been swept away by the tide of emotions generated by the times, like that in Germany, like that in France, like that in Russia, and like that in China. But we are a singular race that has stood foreign domination and struggled for centuries and survived by dint of soul-stirring sacrifice without subverting the substructure of national solidarity, we have built a beautiful edifice of democratic structure that will stand before the world colossal.

With experience and wisdom of ages behind us, we have consummated a political experiment which can be traced back to ancient Greece and Rome. It is not for me, Sir, to stand before this House and sing the glory of our achievements. Let us leave it to the judgment of posterity and to the verdict of historians. This is the first instance when heterogeneous interests in a continent State like India have united themselves to form a homogeneous unit in order to lay down rules and regulations that should lead us or guide us in future to live a national life. Like other nations of the world we have peculiar characteristics. We have differences of caste, community and creed, there is the question of untouchability, the emancipation of the Depressed Classes, provisions for the Tribes, for religious and linguistic minorities like Muslims, Sikhs and Christians, their safeguards and protection; then there is the existence of princes and zamindars and the question of their safeguards and protection; then the rights of women-these had to be considered and reconciled and incorporated into the Constitution. It must be said to the credit of the Drafting Committee, with its leadership of erudite scholarship in political science and constitutional law, and thanks to the amendment moved by the Honourable Members that an honest attempt has been made successfully to incorporate these rights into the Constitution. Our Constitution is today ushered into the world with a declaration of Fundamental Rights, which can be traced back to the Magna Carta, the Petition of Rights, and the Bill of Rights - rights which have been secured for humanity by the political philosophers of the 18th century and incorporated into constitutions that have come into existence since then. These rights are also incorporated in our Constitution for all the world to see. Thus freedom of the individual, freedom of opinion, freedom of religion and expression, security of life, liberty and property and pursuit of happiness, have been ensured and secured to every individual in the framework of our Constitution. It is a constitution based on democracy with all the experience and wisdom of ages gone by; only I have to pass a few remarks with regard to the peculiarities of our Constitution.

The framework of our Constitution is modelled after the American Constitution, that is a federal constitution in which power is distributed between the Centre and the local governments. It is not new to us. It is based on the Swiss constitution which had been adopted by America, followed by Australia and Canada and today tried and adopted by the greatest democratic nation in the world. But the similarity ends there. Our Constitution that has got the shape of the American constitution differs from it in regard to the executive powers of the President. Unlike the American President we have our own President advised by a Council of Minister with cabinet rank, parliamentary responsibility and ministerial obligations; so much so our Constitution is a composite constitution with the rigidity of a written constitution but with the conventional adjustments of the British Constitution. Side by side with rigidity we have also incorporated the separation of powers which is as rigid as it is in any other constitution based on democratic principles. Our judiciary with its original and appellate jurisdiction and with the right of interpretation of the constitution differs from that of America, where the judiciary has the right of judicial review of executive and legislative activities.

Many an imperfection has been ascribed to our Constitution by some of my learned friends. They say that it falls short of our ideals and principles. May I invite their attention to the constitutions that had been framed hitherto by democratic countries in the world? Look at the American constitution. Look at the time it took to frame it in its final shape. Had it not to undergo a series of changes and then take its final shape after the Declaration of Independence, eleven years after the Declaration of Independence at the Convention of Philadelphia? Had not the constitution of Canada to go through so many changes, before it was finally settled at the Quebec Convention ? And since then has it not been undergoing changes till today? Look at the Constitution of Australia. Had it not to go through many changes and wait till the Convention at Sydney? It had to be shaped and reshaped, modelled and remodelled in the cauldron of public opinion at Sydney. There was the Constitution of South Africa, a constitution meant only for the White race discriminating against the natives. Even that constitution had to wait till 1943 to take its final shape. If you have a cursory glance at the constitutions of other democratic countries before us, you will find that France started its constitution with the storming of the Bastille and it had to wait for 100 years before it could frame its constitution; meanwhile it swung between dictatorship and republicanism. Is there any other nation in the world today which deliberately elected a Constituent Assembly which sat for three years continuously and framed its constitution? May I invite the attention of my honourable friends to the fact that we have evolved a model constitution based on democracy and that constitution will stand the stress and strain of times like the American constitution till it proves to the world that a continental country like India can have a democratic constitution and work it too to the glory of all the world.

I come now to the next point, that we have too much of centralisation which ignores the powers of the States. We are at the advent of democracy. Democracy has got a tendency to let loose fickle emotions and disruptive forces. In the circumstances without a strong Centre I do not think we can have a successful democracy. We are at the beginning of nation-building. We have to survive as a nation. The question is the survival of a nation in a world of international conflicts. If that is so, we have to decided in favour of a strong Centre. If a party is to have a leader, should not the nation have a strong central government ? America decided to have a strong central government. Canada decided to have a strong central government. Mr. Macdonald, the leader of the constitution, said that all the centrifugal forces should be controlled and therefore a strong centre was necessary. If at the beginning of a state a nation is faced with so many political, economic and social problems there should be a strong Centre, so that power could radiate through all the parts. The Centre should not be so strong as to kill the autonomy of the local governments. But we have not got any such power concentrated in the Centre to kill the autonomy in the States. Therefore, this allegation that the Constitution is more centralised has no foundation. Of course , articles like 365, 371, and 324 look dictatorial, but when you look at the gust of emotions and the centrifugal forces set adrift by the advent of democracy, you will find that for the sake of political welfare and security of law and order, there must be a strong Centre, so that the nation can survive. There are provisions in the Constitution to amend it and if the Centre is too strong we need not fear because when the nation has attained full stature and we can stand on our own legs, we can amend the

Constitution and distribute powers equally.

With these words, I thank my friends for giving me a patient hearing. Let us all wish success to this Constitution and let us go home with a feeling that we have done our duty to our country and to the people.

Shri Gokulbhai Daulatram Bhatt(Bombay State): *[Mr. President, if we say, something about the Constitution which has been prepared by us and which is going to be accepted by us, it would mean two things. One is that we are praising our own work. And if we start pointing out the defects in this Constitution we might produce an impression that the Constitution must be worth nothing since even we who had made it were discovering defects in it. We have devoted a very considerable time and spent quite an appreciable amount of our energy and money for the perfection of this Constitution. The learned members of the Drafting Committee laboured hard -and they are men of learning as is clear from the manner my learned Friend Shri Kamath applies to them the epithet 'learned' every time he makes a reference to them, and I may add that I must rely on his judgment since he cannot but be very learned indeed when he starts calling others as his learned friends - and so as I was saying the learned members of the Drafting Committee have laboured hard in the preparation and for the passage of this Constitution. I must also thank you Sir, for the patience and the skill with which you have presided over the deliberations of this House and particularly the patience shown by you in the face of the lack of Quorum in the House. I also congratulate our Constitutional Adviser Shri B. N. Rao for his valuable advice given by him. The members of our Secretariat had also to work under difficulties and strain that were not in significant and they also deserve our thanks. It is as a result of collective labours of all that this Constitution has come before us in the form that it possesses today. It would be unbecoming for us if we now start criticising or condemning it. In a way those who drafted it had no other way but to follow the models that existed elsewhere. They have tried to prepare for us a very attractive cake which has been properly and thoroughly baked. There is in it an admixture of a number of elements -of wheat, of gram, of barley and of other cereals. The cake we have now got we are out to praise and we are engaged in that task at the present time.

Shri S. Nagappa (Madras General) *[We will now begin to eat the cake.]*

Shri Gokulbhai Daulatram Bhatt: I am not going to institute any comparison between the cake that we have prepared and the biscuit and the cakes of the other countries that is to say I am not prepared to examine as to how far our Constitution stands a favourable comparison to the Constitutions of other countries. The fact is that no judgment can be passed on this question unless we have begun to eat the cake and digest it. Until that is done we can not definitely say as to what substance this Constitution contains. I therefore submit that it would be much better if we abstain from passing any final opinion about the Constitution until that time and it is precisely for this reason that I would not indulge either in a praise or a criticism of this Constitution in the House today.

When the Draft Constitution was brought before the House for the first time I observed that it was like a bunch of flowers that had been put together after having been brought from different places. I had proceeded to observe that it contained paper flowers and in some parts roses and also a rare jasmine flower. Thus it contained flowers of different kinds and characters. The bunch that is now before us is one which we had put together ourselves, and I can dare say that some of the flowers that we have put into it have fine and pleasing smell. But we all know that in this world we need all types of things because if it was full of all roses alone and no thorns man would lose his mind because he cannot bear so much good in his life at one time. I therefore believe that to reduce the excess of the smell of the flowers in this bunch other articles have been put into it.

If any friend, however, feels that the Constitution has become too bulky as it contains 395 articles and that it should have been much smaller and should not have contained more than 100 articles, I would say that that may well have been but for the fact that our friends here are scholars and men of learning. On the one side scholars like Pandit Naziruddin as also my friend Pandit Kamath who have been puzzling their heads to improve this Constitution.

Shri H. V. Kamath (C. P. & Berar: General):*[I am not a pandit]*

Shri Gokulbhai Daulatram Bhatt: That may be. But I as you are very fond of Geeta and worship God, therefore, I am referring you as a Pandit. So, these pandits were seeking to tell us always that the Constitution is full of lacunae. But for their criticism we could have made this Constitution quite flexible so that we could have adapted it to the changed conditions. But no one here was willing to permit us to frame a flexible Constitution because none had a confidence in the framers and everybody was trying to point out that a particular word could also be construed to have some different meanings than what was thought to be its meaning by the Drafting Committee. It was urged that this was a matter for the interpretation by the courts and by the lawyers and the Constitution will be interpreted by those authorities. Therefore we were compelled to frame this Constitution in such details and at such length in order that our people may not have to suffer from lacunae in it.

As I was observing we have framed this Constitution after unrevealing very difficult and intricate problems. There were occasions when all of us were afraid that violent differences may not develop among the members in regard to certain matters that had to be provided for. Thus there was the question of the name of the country, the official language of the Union and the conditions under which the Union or the States can acquire immovable property. These questions as also similar other questions had to be tackled by us and I believe had been wisely tackled problems under the leadership of our leaders. We disposed of all the points of difference by means of following rule of the golden mean and the path of compromise. I precisely use the word disposed of because I know that many of those who had any interest in the language question and who were insistent that a particular policy should be adopted could not have felt fully satisfied by what we decided. I mean such of my friends as Honourable Tandon Ji must have been feeling that all that was desired had not been done. But I would humbly submit that nothing in this world is perfect though all of us are trying to reach perfection. But once we have reached the goal we would ourselves have become so perfect that we would require nothing more for ourselves. Such is the view that Upanishads have advanced. But I do not want to press this point any further. I would however like to repeat and reiterate that it was quite in the fitness of things that we sat together and solved all our questions by means of compromise. If we had failed to solve these questions even after having devoted so much time I am sure the world would have laughed, mocked and jeered at us. If I could I would have certainly liked that the name of Mahatma Gandhi and of the martyrs under whose grace we have been able to achieve what we have actually done should have been included in the

Preamble. But our leader Pt. Jawaharlal Nehru and our elder statesman Sardar Patel advised us not to insist upon this and we quite acted on their advice. But even though the name of Mahatma Gandhi and of the martyrs whose sacrifices have enabled us to see this day and secure our independence does not occur in this Constitution yet I pay my homage to them and praise their services as a result of which we are enjoying the life in this atmosphere of independence and freedom.

When I examine this constitution from the point of view as to how far the ideology of Mahatma Gandhi finds place in it, I begin to feel that it would have been much better if we had provided for our work being done mostly by Panchayats. I give very great importance to this aspect of the problem, and whenever I have in occasion to speak here or elsewhere I have urged the acceptance of the institution of Panchayats. I know that we had tried to secure the right of adult franchise and had struggled to secure it and had demanded that all the elections should be held on this basis. At one time however we had said that our President would be elected on the basis of adult franchise and we had as a matter of fact accepted in principle that proposal. But later on we began to feel that this is not possible because on the one side Prime Minister would be elected by means of adult franchise while on the other the President would also be so elected and if any difference of opinion occurred in these two officials who had been elected by the same body of people it would be difficult to overcome those differences. Therefore, we felt that reality and practical considerations demanded that we should give up our insistence on the direct election of the President and agreed for his being elected in some other way. We agree to this because we felt that our representatives at the Centre and in the Provinces would be elected on the basis of adult franchise. But I have my difference even in regard to this matter for I am not sure as to how far we will be able to put this in practice. Even then I do not mind this being put to experiment once at least, so that we may learn its lessons. We can if we so feel make change after we have once had an experience of adult franchise. But it is my belief that we would have to reach the conclusion after experience that our electorate should consist of the village panchayats and that persons elected by them should be considered to be populate representatives. I do not want however to go into more details with regard to this question because I have to say that I have to in a few minutes that are now at my disposal.

The question of language had been raised here. Seth Govind Das Ji observed that no harm would have been done if this House had passed the Constitution in Hindi even if that meant that this House would have had to sit for a year more. I am just giving the substance of what he had said. It is possible that that may be his belief, and I do not also question that it would have been in the fitness of things if our Constitution had been drafted in Hindi. But I am not prepared to accept that it would have been wise for us to wait for a year more before our Constitution came into operation. It is my belief that the conditions under which we are living today are reflected in this Constitution, and also think that it could not have been better than what it is under these conditions. If we had taken more time we might have given our critics the opportunity to assert that we were simply wasting time and money and delaying the matter in order to pocket as much money of the public as we could. They might have urged that we were simply reducing this Body into a mockery while sitting here in the name of democracy. I believe that we were not ready to invite this criticism and I think it is quite in the fitness of things that we are now passing this Constitution in this quick manner.

I have an observation to make in regard to the language question, in so far as it involves the question of regional languages. I was not present on the day when the language question had come for consideration before the House. But my elders and my other friends advised me not to raise this question later on in this House. But I cannot refrain from observing that if Gujerati, Marathi and such other languages can all be considered regional languages there is no reason why Rajasthani which is similar to them and is spoken by one and a half crore of people could not be considered as a regional language. I know that it has several dialects. But all the same no one can say that its history begins in recent times. As a matter of fact Rajasthani had been in use of several centuries. I am also aware that the Rulers have been using this language and that when they correspond with their fief holders, they use it as a medium of correspondence. All these reasons favour its being accepted as a language by itself. It is therefore my humble submission that a place also should be provided to Rajasthani as a regional language and I am sure my friends here would consider this question whenever it that this language deserves to be recognized as a language by itself. I do not want to create ascertain because that would mean giving long citations but I do insist that this language should be given a place along with other regional languages.

Several friends have stated here that practically all powers have been surrendered to the Centre. I however, believe that the conditions prevailing today are such that unless we vest almost all the powers in the Centre for at least ten or fifteen years it would not be possible for us to undertake any constructive activities. The reconstruction that we want to put in can be carried on only if we remain under the control and direction of a common Centre. This I submit is a historic necessity and any other course would be to walk in the clouds that would carry us nowhere. We must keep our eyes fixed to the solid earth. We must also examine the nature of the ground and give due consideration whether it has rocks or land in which trees can be planted. We must plan all our activities according to the kind of resources that we have today. That is to say the type of land that we have, the seeds we have to sow and the water that is available to us for irrigation. My submission is that in view of the totality of the conditions that exist today it appears to me very necessary that we must remain under a common Centre. My Friend Mr. Hanumanthaiya had asserted yesterday that it was only during the discussions that the proposal was introduced that the States Union must be under the control of the Centre for a period of at least 10 years. I do not want to go into the history of this proposal. I can say that when the Rajasthan Union had been formed my friends including myself had agreed, during the negotiations that were being conducted between the States Ministry and ourselves, that we shall be remaining under the control of the Centre. The circumstances prevailing in Rajasthan are rather peculiar and in view of these peculiar circumstances we felt it right that the Centre should continue to control us. I believe that the same reasons apply to the other states also and it is on account of that that a provision has been made with regard to the States in the Constitution. It is laid down in that provision that the State and the State Union shall be subject to the control and the supervision of the Centre. The President however has been authorised to abolish this control if he considers that the same is not necessary in the case of any particular State. I therefore submit that there is nothing in this provision to which we can take objection or as a result of which we should lose our nerves. I on the contrary welcome it and I can say that I had been responsible for its formulation and acceptance. Shri K. T. Shah had observed yesterday that there are too many restrictions in regard to the citizen's rights. I would have asked if he had been present today - but there he is - so may I ask him as to the country in which no restrictions have been imposed on popular rights in public interest and for maintaining morality. I would like to know whether there is any country in this world in which there is no restriction whatever on popular rights. So far as I know in every country restrictions of one type or the other have been considered to be necessary. For Example it is everywhere necessary that one should exercise considerable restraint in the exercise of his freedom of speech in order that public order may not be disturbed. If we examine in this light the provisions in our Constitution relating to popular rights we find that the rights which the people would be interested in using and enjoying can be secured through law courts. So far as I am concerned I believe that the rights granted are quite extensive and general and that every one of us should feel contented with what has been provided. But if we go a little further than this - I would have now to hurry up as I have very little time at my disposal, we would find that a peculiar gift that we have secured is that the rulers of Indian States who had acceded to the Union in regard to three subjects alone have now gradually completely joined us. Credit for all this goes to our elder statesman Sardar Saheb who with his skill succeeded in persuading these rulers to join us and now they are with us. Notwithstanding that we have our is brought again before this House. I submit with all the force at my command own constituent assemblies and our separate States Unions, we have now decided that the Constitution of all the different State unions would be of the same pattern, and it is with this view that we have introduced a number of provisions in part seven which would be applicable to all the Indian States Unions. I would like to say that this is no mean achievement. But I do not think that it is necessary for me to say anything further in regard to this question. I however, know that the whole world will have to accept one day that what could not be brought above within 100 or 200 years that was achieved by our leaders within a very short space of time. The 600 and odd states which had their own separate existence have all become one. I do not know in what words I should express my feeling with regard to Sardar Saheb who has been responsible for all this. All of us of course praise him. He has acted with great foresight and skill in the matter of solving the problem of the States. I may add that he had solved the problem of Rajasthan also with great tact. The problem of Sarohi had been brought before us the day before yesterday and I had placed before the House what the people of Rajasthan and Sarohi demanded. I have constantly reiterated at places that Sarohi should be included in Rajasthan. But I also believe in another course of action and it was that the whole matter should be left to Sardar Patel to be decided by him in his discretion after we have acquainted him with all the circumstances. I think that would be a wiser and a more practicable course as the statesman of ours, our Sardar has solved many a problem which nobody else could have solved. It appears to me to be proper that the problem of Sarohi should also be solved by him, and I believe that all our friends from Rajasthan would put the entire case before Sardar Patel. There had been a time when Sarohi had been merged in Bombay. We felt at the time that we should see Sardar Patel in connection with the portion that was being merged in Bombay and should acquaint him with our feelings, with the feelings of Rajasthan and with the feelings of Sarohi with regard to this matter, and that we should entreat him, to favourably solve this matter. I am confident that his solution would give satisfaction to every person for he had always been able to give complete satisfaction to all concerned and I hope he will be able to do so in regard to this question as well.

I would not like to say anything further in regard to the other aspects of the Constitution because I have no time to do so. This Constitution as I have already stated has been framed in such a way as will permit the President to make adaptations and modifications in it. And we also would be in a position to bring forward its amendments for registering any particular change. Our Constitution thus contains the type of provision I have suggested. It is my fervent hope that our people should very quickly move forward for the reconstruction of the country and for the use of the new Constitution. It is only then that our country would be following the proper course in the matter of reconstruction. Before I conclude I would like to reiterate my thanks to the Members of the Drafting Committee and to the other Members who have put in such labour.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Mr. President, Sir, I must frankly admit that, if I speak today, it is not because I have any contribution to make; for one thing this is not the stage to make any contribution to the debate or to any of the articles; for another, I am not in a mood to do so. But, Sir, I could not but fall an easy victim to the human weakness viz., to join my voice today, one of the most memorable days in the history of modern India. As an humble servant of this country, who has devoted a goodly portion of his life to activities in the parliamentary or legislative sphere, I consider it one of the proudest days of my life to be standing here today and to be able to associate myself with the motion for passing this Constitution of free India. Mr. President, it seldom falls to the lot of any man in any country to have this opportunity in his lifetime. In India at any rate I cannot visualize a thousand years back from now when such an occasion every arose. It is a memorable occasion, a momentous occasion, a solemn occasion. Sir, as I rise to speak today, memories, bitter and poignant, come crowding to my mind. Two generations of men before us fought and bled for the freedom of this country. Many of our illustrious sons in the parliamentary sphere ploughed the barren sands fondly hoping, by tinkering with this measure or that to bring about some from of amelioration from the hands of those who controlled the destinies of this country. They are dead and gone. They could not see the full fruition of the work they began. Their mantle fell on us. Not only in the legislative or the parliamentary sphere but in every other important sphere our men carried on relentless activities for the freedom of the country. Some of us have survived to see the materialisation of our dreams. Others have passed. I believe, not into oblivion, and a grateful nation should always remember on an occasion like this that but for them it would not have been possible for us to have anything to do like the framing of a constitution today *(Hear, hear)* Mr. President, I consider it my first duty today to pay my humble tribute to the memories of the great and patriotic sons........

An Honourable Member : Daughters also.

Pandit Lakshmi Kanta Maitra: Sons include daughters - sons, daughters, mothers, fathers, brothers and sisters, all who have contributed their mite to the building up of this independent nation. Today I gladly join the chorus of approbation of the services rendered by the Drafting Committee in which we have some of our most intimate and tried friends. I congratulate them on their achievement. I also want to record my appreciation of the work done by the Joint Secretary, Mr. Mukerji and the other members of the staff who have collaborated with us and made it possible for us to have this Constitution. Let us not in our admiration for the people in the limelight forget them. "They also serve who stand and wait." Above all, Mr. President may I strike a personal note and I believe that the statement that I will make will find a responsive echo in the heart of every honourable Member here, that the whole House if not the whole nation, is beholden to you, Mr. President, for the very admirable way in which you have regulated and guided the proceedings of this August Assembly. Many of us felt, not I, many of us had the feeling that with very little experience in the field in which you were suddenly called upon to serve you were an uncertain entity. I wonder, Mr. President,- it is no flattery to you when I say I wonder- how you could so admirably, with so much tact control the deliberations of this August Assembly. You have given no cause to anybody to grouse; you have never stifled discussion, you have allowed everybody full latitude, free scope to those who had an exuberance of steam about themselves, to let the steam off; to those who have particular delight in chattering, You gave them chances to their hearts' content. I know and many a Member knows that sitting silently on the seat you have been witness to many things in this House which you perhaps did not like, but yet you held your hand back. We appreciate that and what I as an humble Parliamentarian can appreciate most is that though sitting in the Chair, there have been occasions when you felt yourself called upon to intervene; when you found that the House was taking a wrong an erratic step, you stayed its hands, you asked it not to rush on but to go slow and ponder and I know that on every such occasion real benefit has come out of your advice. This is an aspect which the House will not do to forget. It is perhaps worth mentioning that the Members of the Constituent Assembly also have their share of credit; they also deserve recognition in the country. Members have been called out to Delhi, where they have had to stay for months on and into difficult circumstances in total disregard of their private business. Sir, this is not in deference to an empty convention that I say all this; I sincerely believe that but for this joint enterprise, this collective enterprise of all concerned with you, Sir, at the top, it would not have been possible for us to achieve success in this stupendous undertaking.

I will now refer to one or two points regarding the Constitution. There has been a constant criticism here and elsewhere that this Constitution has been a hotch-potch of all manner of institutions prevailing in other countries. Yes. Speaking theoretically it is correct. There has been an amount of eclecticism there is no doubt about that; we could not help that. Who could have helped that in this country? Who in this country had had the experience, the traditions of a free country or the taste of freedom? We had not breathed, we could not breathe, the free air of freedom. We could not develop our own national and political traditions and for our ancient traditions we had to fall back on our ancient *shastras* and ancient lore. Therefore, we acted properly in my opinion in not rejecting the lessons of history recorded in the Constitutions of other countries. We had to pursue the policy of 'pick and choose' to see which would suit us best, which would suit the genius of the nation best and I am sure we will not have to regret this choice.

Another criticism about this Constitution is that it is a huge document. Enormous amount of extraneous matter, unnecessary matter has been pressed into it. Perhaps there is some truth in it also; but is it realized that you have drawn up a Constitution for 340 millions of people? Look at the magnitude or the size of your State and its people. Has it any parallel in the world? Has any other country, and other State in the world got such a municipality of problems, of such complexity and diversity as we have got. Therefore in the nature of things, this was inevitable and I make no apology for it. I do not say that this Constitution embodies the height of wisdom, political wisdom; I do not say that, I do not claim, you do not claim, nobody claims, neither the Drafting Committee nor any Member of this House, that this Constitution is perfect for the simple reason that it is not for human beings to be perfect and that a human Institution must of necessity be imperfect; but the society is not a static one. We are passing through a dynamic age, dynamics forces are at work. What we have provided today may have to be scrapped a couple of years hence, nobody can say. Hence, let us subject it to the test of time. let us see how this Constitution works. It will be perfectly open to the future legislators, to the future generation, to those who come after us to make any changes that would be justified by the needs of their time.

It has been said that this Constitution has been cumbered with restrictive provisions, that the Fundamental Rights that have been conceded with one hand have been taken away by the other. In our zeal for criticism of the Constitution, which is our own handiwork is it realized how much we have achieved? Let us ponder over what we have provided in the Constitution as Fundamental rights. Many of them are justiciable. Let us not forget that. We have provided, among others, for liberty of speech, thought, action, association and all that is necessary for intelligent and civilized intercourse in this world. No doubt these have to be hedged round by certain restrictions, otherwise the very liberty would degenerate into licence; it will not be liberty at all. Remember the famous line of the great poet: "To me (the unfettered) the unchartered liberty tires". To some others chartered liberty tires. But in the interests of the very security of the State, as also for the greater and fuller enjoyment of liberty, civil liberty, these restrictions are necessary; however paradoxical it might seem, it is true.

Sir, we have completely banished from this land the curse of untouchability. We have by Statutory provisions broken as under the barriers that divided man and man, let me hope for all time. Is it a mean achievement? We have completely destroyed separatism from this country. Separate electorates we have removed. Reservations except for the genuinely backward classes, which is essential at the present stage, we have removed. We have tried to place equal opportunities for development and expansion, for the flowering of man into manhood. We have done all that. Is it a mean achievement? We have secured for the country the right of protection of the language, the script, the culture and everything which a particular part of the community wants to preserve for itself. These are some of our solid achievements. On top of all, the hitherto neglected underdog has been given a dominant voice in the governance of this country by the grant of adult suffrage. I find my honourable Friend Mr. Kamath smiling: I do not know if he is smiling assent or dissent to my observation.

Shri H. V. Kamath: I was not smiling at your remark: I agree with you.

Pandit Lakshmi Kanta Maitra: I thank you; at least on one occasion, my honourable friend has agreed with me. Mr. President, I was asking the House and through it the whole country to consider what a revolutionary change we have introduced in this country. I ask them to understand the implications of full adult suffrage in this land. These are our solid achievements.

But, our detractors would say, you have destroyed civil liberties. Yes, we have destroyed all chances as far as is humanly speaking possible, for degrading liberty into licence. that is true. These restrictions, at any rate for the period of transition, are necessary in my humble opinion. After the sudden withdrawal of the British power, in this country, his vision should be purblind who does not see the things that are shaping, the mounting violence and lawlessness everywhere. Who is going to use these powers? Not an alien force; but your own chosen representatives, representatives of the people, who would be chosen by the common man. That is a fact well worth considering. Let me fervently hope,- not only hope, it is my firm conviction - that these exceptional reserve powers will not have to be used too often. They will perhaps remain in cold storage. I earnestly hope that the weapons that we have forged for the protection of our hard-won freedom will go rusty and dusty in our armoury and will fall into desuetude, if only we realise our responsibility. I do not understand a democracy which simply means all rights and privileges for the people and no corresponding obligations to the State. I find it commonly believed that for the common man in the street it is only to receive and not to give. This misconception of democracy or, should I say, this prostitution of the sacred phrase, should be guarded against and unless that is done, unless those who are in charge of putting this democracy in action, could fully make the people understand it and act up to it, this Constitution will be little worse than useless. For, after all, I do not believe that the virtue or merit of a Constitution lies merely in its wonderful draftsmanship or in the provisions that you embody in it. No doubt, they are important in their own way. But the success of democracy in a country depends upon the joint, collective endeavour of all concerned. In the first place, the provisions that you have embodied in the Constitution must be implemented in letter and in spirit, more in spirit than in the letter. No draftsmen in the world can draft a Constitution in so perfect a way that all the social and political ills to which a man is subject, would be abolished in a day. No cobbler in the world can make a pair of shoes which would enable a lame man to walk well and fast. No optician in the world can prepare an eye glass which can make the blind or the purblind see clearly. No tailor can make an ugly person look handsome and beautiful. So, I say the success or failure of this Constitution would lie in the hands of the people who work it, and it is on them that its success or failure in the ultimate analysis depends. Therefore, it is that this is an occasion, which I said was a memorable occasion, an occasion for exultation, perhaps of exaltation but certainly of exhortation This is an occasion for self analysis, for self examination. We have to see that if we want to implement whatever we have provided in this Constitution, if all that we want to achieve is to be achieved, then we must start here and from now to create an atmosphere for it; we must without delay bring about the conditions necessary for the proper evolution of a secular democracy in this country. You have given adult suffrage to your people. If you do not set about with all earnestness to completely remove illiteracy from the people, then, this grant of adult suffrage instead of being a boon would be a boomerang.

All the nation building departments should be attended to immediately and no excuse of shortage of funds or any other cause should be allowed to stand in their way, if the democracy as envisaged in the Constitution is to succeed. If this gigantic experiment is to succeed, I would appeal in particular to the servicemen to take note of the times. In this House when the constitutional guarantees were embodied for a class of the servicemen, there was a considerable section inside the House and outside who grumbled and groused. This has created considerable heart burning among those sections of the services for which no guarantee was provided. I do not object to guarantees being given; I do not regret that the fate of these servicemen has been given some security in the Constitution. The services constitute the back-bone of every Government but we in return must expect that all the servicemen who have been guaranteed a secure tenure should at least give us a moral guarantee that they would rise equal to the occasion, and that they on their part would act in a spirit of service, service to their country, service to their fellow human beings who are their own kith and kin and who are their ultimate masters; and not merely service to self. There should be no jockeying for positions inside the Secretariat or in other spheres. Let us be assured that all services will co-operate in the fulfilment of the great undertaking we are about to enter upon and in this, may I say, Sir, that everyone of us has a responsibility to discharge . The future legislators, the future Parliamentarians, the future Ministers, the people who would be called upon to operate this Constitution, to administer the Government of this land,- they should be the first to set an example to the rest of the country by their selfless devotion, by their hard and earnest endeavour to implement the spirit of the provisions of this Constitution. If that is done, I have every reason to hope that we shall be able to make this country worthy of its great past. We who have been inheritors of ancient renown, could then stand up before the country, before the bar of history and say, we have done our part in our humble way,- with all our faults and failings; the future belongs to those who come after us.

Mr. President, before I conclude I would like to impress on the House the spirit of the Preamble with which we being our Constitution. I think it is the most solemn and the most magnificent piece of declaration that can be found in any Constitution. Let me draw the attention of the House to it before I close. I will not read the whole of it but I was listening to the critical speeches of my honourable friends, I was reminded of its noble message:-

> "We, the people of India, having solemnly resolved to constitute India into a sovereign Democratic Republic and to secure to all its citizens:
>
> Justice, social, economic and political;
>
> Liberty of thought, expression, belief, faith and worship;
>
> Equality of status and of opportunity; and to promote among them all;
>
> Fraternity assuring the dignity of the individual and the unity of the Nation".

Great words these, solemn words these -let us take it as our Manthram and with these two Manthrams , this Preamble and Vande Mataram - go ahead.

The Honourable Shri N. V. Gadgil (Bombay: General): Mr. President, I remember that nearly three years ago we started the deliberations of this Constituent Assembly. In the course of these three years many things have happened and one great thing that may be noted about the Constitution that is now about to be passed is that the experience gained in the course of these three years has been written in the clauses of this Constitution. That will only show that those who were responsible for drafting of the same have not been mere academicians or mere lawyers working in an atmosphere of the cloister. As has been well said that so much has been accomplished and so well in such a short time that compared with the attainments of other nations in Constitution drafting, there is nothing in this of which one can be sorry but there are many things about which we can be reasonably proud. The Third Reading is hardly an occasion to subject the provisions of the Constitution to a critical or constructive analysis. But in as much as the Constitution has been criticised here as well as outside this House by a number of persons and parties, I am rather inclined to review the main provisions which are incorporated in this Constitution.

For this purpose I have singled out two parties in the country-the Socialists and the Hindu Mahasabha. Both the parties have put down in writing their ideas about the Constitution for this great country. One is published under the title- 'Drafting Constitution of Indian Republic' and it is red in colour which is rather the monopoly of the communists with something different by way of an emblem. The other party - the Hindu Mahasabha - has also published a book called the "Constitution of the Hindustan Free State". I went carefully through both these documents and I find that there is agreement on the main features of the Constitution that ought to prevail in this country. Lord Bryce has defined "Constitution as the form of political society organized through and by law, that is to say, one in which law has established permanent institutions with recognized functions and defined rights. It may be mere collection of general principles according to which the powers of the Constitution, the rights of the governed and the relations between the two are adjusted ". It is therefore to be seen what permanent institutions in the sense in which any political institution can be permanent, are embodied in this Constitution. A modern constitution can be tested from five points of view :

1. The nature of the State for which the Constitution is provided
2. The nature of the Constitution itself;
3. The nature of the Legislature,
4. The nature of the Executive;
5. The nature of the Judiciary.

Now in this Constitution the nature of the State is Federal. I doubt whether there is a single individual either here or outside or a party here or outside which has stood or even stands for a completely Unitary State.

It is impossible to govern a country so big, with so many traditions and with such a variety of cultures with about two hundred and twenty different languages and to bring them in one administrative unit in the sense that there would be one unitary State, one legislature and one executive. After all, Sir, every Constitution represents the accumulated wisdom of the past and also embodies some elements of experiment in the constitutional sphere. It was not possible, as well said by my predecessor just now, to write on a clean slate. In the course of the last hundred and fifty years, and more particularly in the course of the last forty years, this country has been accustomed to certain political institutions, and it was not possible to depart violently or substantially from the political trends and tendencies already prevalent in this country. It was, therefore, clear that the nature of the State would be federal--a point on which there is perfect agreement between all the parties in this country. The difference, only comes here, whether in this Federal State the Centre should be strong or should it be weak. Now, even in this, both the parties, the Socialists as well as the Hindu Mahasabha, are agreed that the Federal State, or the Centre must be strong. I think, therefore, that there is nothing to be ashamed of the provisions- even taking into consideration the latest addition- are such that in the light of experience gained during these three years, it could not be said that the Centre has been made unnecessarily strong. It has been the experience of history that when the unifying influence of nationalism is felt, the emphasis is in the first instance on independence, and secondly on democracy. As I have already stated, in view of the difference in outlook, in culture, in language, and in history, we have yet to go a long way before we can say that the Indian State is a perfect unit in the sense that it is one solid and well integrated State. There are still fissiparous tendencies, there are still tendencies , both individual and provincial, to get out when something unpleasant is done, and the necessary loyalty still lacks that measure of intensity which we find in other Federal States. In fact, when we started three years ago, our greatest problem was how to bring in the several states which suddenly became free and sovereign also. But gradually the unity of this country has been built up and in order to see that it is perfectly consolidated, that it is placed beyond the danger of any fissiparous tendencies or disintegration, I still think the necessity for a strong Centre is there, for at least ten years to come. From that point of view, some provisions which enable the Central Government to supervise or control or direct certain affairs or certain spheres of administration in the provinces are all to the good.

Now, Sir, the second test, as I have said, is the nature of the Constitution itself. Here again, we can not leave much to convention, and hence the approach has all along been to embody, not mereby general principles- a step which has been taken in many other countries- but to incorporate many things and not to leave at the initial stage of our journey towards freedom, important matters to convention. The accusation has been levelled against this Constitution to the effect that it embodies too many details, that much of this could have been avoided. This is a point on which many will agree. But at the same time, the experience gained in the course of the last few years dictated that this was rather a dangerous affair, to leave many things to mere convention, and hence the necessity of the new provisions that have been embodied in the Constitution.

The great objection against written constitutions is that it is very difficult to change them. In this respect I think the provisions that have been finally adopted are neither so elaborate as are in the Australian constitution or the Constitution of the United States of America, nor as easy as those in the English Constitution. There must be some distinction in amending an ordinary law and an organic law. Undoubtedly this law of Constitution as the very name suggests, is an organic law and any change in it must not be done with the same facility or shall I say, the same light heartedness as any change in the ordinary law. Even a prudent owner of a house would think ten times before effecting what the engineer calls structural repairs, but would not mind having current repairs frequently. Similarly, there are certain fundamental of this Constitution which cannot be changed light-heartedly, or as simply as we may effect a change in any ordinary law. Suppose we want to abolish the post of the President, or to make it hereditary. Can we do it by the simple process of moving a Bill and getting it passed by a simple majority? That would be dangerous. Similarly, those provisions or those institutions which constitute the foundations of this Constitution, can not be light-heartedly dealt with. Therefore, the provisions that have been made , as I said, are not too complicated on the one hand and not too easy on the other.

Those who have been criticising the Constitution on the score that it has been framed by one party, and is exactly the instrument fashioned for the purpose of inaugurating Fascism, I would ask them to study those provisions, particularly those relating to the amendability of the Constitution, and they will find that if they want to change it, and if they can carry the public with them, through the representatives of the public to the extent of two- thirds, then they can unmake the whole Constitution, it they so desire. My Friend Prof. K. T. Shah can see that in this Constitution there is sufficient power for him to tax out of existence his old friends and new enemies, namely the industrialists. There is nothing in this Constitution which cannot be equated with a full measure of sovereignty. The nature of the legislature is such that there are restrictions only so far as the procedure is concerned. But in substance there is no restriction, no limitation on the sovereignty of the legislature or Parliament. As was said by the French writer about the English Constitution, "Parliament can do everything except turn a man to a woman". I think the same can be said of this Constitution and I feel that all that the future legislature can not do is to turn an idiot into a genius.

Now, as regards the nature of the Executive, all the parties are agreed that it must be Parliamentary as opposed to presidential. It must be responsible to Parliament. To what extent that experiment will be successful, depends upon certain conditions under which it will normally work. If there are two parties and two parties only, I have not the slightest doubt that this experiment will succeed to a substantial extent. But if there are more than two parties the life of the Cabinet will become very precarious. As one of my friends said the other day about the Ministry of a certain province, the Minister would not pay the *lorry-wala* because he thought he might require it the next day to take back his luggage from the ministerial bungalow. It may be, as is the experience of the French Cabinets, that the average life of a Cabinet may be even less than six months.

In that case what is required, what is very essential is, as has been referred to by my honourable friend Pandit Lakshmi Kanta Maitra, a strong efficient honest and industrious Civil Service. The Ministers may come and go; the Cabinets may come and go; but the actual Government, the administration will be run by the civil servants. From that point of view it is my personal opinion that although the provisions made in this Constitution are good, yet they are not sufficient. For on the Civil services will depend the good government of this country: on the Cabinet and on the parliamentary leaders will depend whether the Government is popular or otherwise. What the common man in a free country desires and is anxious about is good government, because having secured self government the emphasis has naturally shifted from self-government to good government. The Parliamentary Executive which has been envisaged in this Constitution requires, I shall say men of a very high caliber and under this Constitution the whole burden, the whole responsibility, is virtually thrown not on the President, as has been suggested by some honourable Members, but will devolve on the Prime Minster - on his personality, on his initiative, on his capacity to make statements, on his capacity to respond to public opinion and above all, his capacity to do the right thing against the popular thing- on that quality or moral courage will depend the success or otherwise of this experiment.

As regards the legislature, we have adopted bicameralism and I have no objection to it, and in as much as the electorate is to be based on adult franchise, I think the amount of prestige that each legislature will carry will be considerably greater than what it is today. But with that comes the great responsibility of educating our masters. Unless the electorate is sufficiently educated in a general way, capable of weighing not the details of a big problem, but its broad outlines, unless they have some capacity to distinguish between men and men- the democracy that we are contemplating will not be successful. It has been said by Professor Laski, that in the ultimate analysis, it is not the programme *versus* programme that is put before the electorate, although it is done objectively, but the individual equation of leadership. Who leads that party? Who leads that party? That is what weighs with the common man. Personalities do count--more so in the case of this country where hero worship is normal and where devotion is, so to say, the creed of one's life. The necessity of educating the electorate is therefore the greatest. I should, therefore, like to lay emphasis on this aspect that those who have taken part in framing this constitution should spend the rest of the time from, now till the election in explaining the provisions of this Constitution to their respective electorates.

As regards the Judiciary, Sir, we have secured their independence and I do not think that there is anything in which we have departed from the normal provisions that one finds in the Constitution of other countries. After all the Constitution is merely an instrument, and the main test is whether it is good enough to secure those economic and social ends which we have in view. If it is not then it must be rejected, whether it is drafted by the greatest constitutionalists or greatest lawyers or jurists in this country, whether they have taken part in the struggle or not makes no difference. The main point is whether this is an instrument which is of such a nature as to secure those social and economic ends which have been very beautifully worded and embodied in the Preamble of this Constitution. In fact, I compare the Preamble of this Constitution with the *nandi* of our ancient drama. It is stated in the ancient book in drama that *nandi* must be such that it must contain some suggestions which will show what the plot is going to be . That is exactly what is done in this Constitution. I remember a certain line of criticism to the effect that no economic equality is guaranteed in this Constitution. I would ask them simply to read the words " justice, social economic and political". I can not contemplate in the context of modern circumstances that social justice is possible with private enterprise left free and unchecked. But things are bound to move if those who are in charge of the Government are anxious to secure social justice and when with that end they will act they will have to socialise means of production. Only social ownership will bring in social justice. There is no escape from it. It may come gradually with certain persons in power; it may come quickly if other persons are in power. But the point that I want to make out is that this Constitution does contemplate that social justice will be secured by organising the community with the ownership, control and regulation of means of production, resting in the hands of the leaders of the society; in other words in the hands of the State.

Sir, the Constitution is an instrument and not an end in itself. In the hands of a good workman, it is a good tool to work with. In the hands of a determined workman it will enable him to get what he wants. In the hands of a reluctant workman there is enough for him to complain. This Constitution is in my humble opinion, in spite of its defects (defects there are and I am not indiscriminate in my admiration although I do not unlike others, want to repudiate like Vishvamitra), calculated to secure those social and economic aims for which the Preamble stands. With a far-sighted President, with a Prime Minister full of vigour and vision, with genial legislators and a responsible opposition, I think there is nothing to prevent us, under this Constitution, to achieve those aims for which every one of us stands.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, the Constitution has had its final touches and this is the occasion for a review of our labours. No doubt we started making this Constitution three years ago. The time that has been spent is not a long one and it is time well spent. When we started under the Cabinet Mission Scheme the Centre was expected to embrace and have a Constitution for the whole of the Indian Union including Pakistan. It was envisaged then that the Centre should be weak with powers only over defence, communications and external affairs. If we had accepted the scheme the 565 States in the country would not have come easily into the picture. For no fault of ours the Muslim League did not come in and for one full year we had to wait expecting them to come in from- November or December 1946 to the 15th of August 1947, when the country was partitioned. After 15th August 1947 for a long period we were faced with difficulties like those created by the Partition, the refugees, the murder of Mahatma Gandhi, the Hyderabad tangle, the Kashmir war which all took a lot of our time. We settled down later and calculating the number of days on which we sat we have not spent more than five months during this long period. On account of causes beyond our control we were not able to push these matters through. Considering the various problems and their magnitude and the various interests that have to be reconciled, any other country with a vast population like ours, I am sure, would have taken not three but many more years to frame its constitution. Therefore it is a matter for pride to us that we have ended our labours at last at the end of three years.

Let us see what we did during this period, which is apparently long but is really short in time. We have achieved many wonderful things. We have brought about the unification of India and it is not a mere paper achievement. As we went on during this period framing the various articles of the Constitution, we went on implementing them at the same time. In fact we settled many problems and then embodied them in the Constitution. The integration of the 565 and odd States in the Indian Union could not have been achieved in any other country without a bloody revolution. A bloodless revolution has brought about this achievement and it must be a wonder to our erstwhile British masters that we have brought about this event without shedding a single drop of blood and so easily that people have reconciled themselves to it. The Maharajas and Princes have gladly come into the Union and are prepared to work it.

The next achievements is with regard to the Constitution of the States. First, the States were unwilling to come into line, and when they were also called along with the Provinces they have adopted the model constitution framed for the States. That also has been achieved without much trouble or protest. The persons in charge have managed it successfully and almost every State has come into the Union.

The Minority problem could not have been solved easily but thanks to the integrity of the various religious and other minorities, the separate electorates through which the British Government divided one community from another in this country and ruled it, were given up. They gave up at the outset separate electorates for joint electorates with reservation of seats but laterly they have given up even the reservation. Thanks to their farsightedness it marks one more step in the unification of this country and I am sure this will be worked in the spirit in which the minorities have acceded to it. It is now left to the majority community to show that whatever religion an individual may belong to, it is only his talents and spirit of service that will country and not his community and persons belonging to the minority communities will not be discriminated against merely because they belong to particular minority communities. I am sure the majority community will accept the hand that has been stretched out by the minorities, who have gladly given up their reservations.

Another vexed question was the division of powers between the units and the Centre. A committee was appointed and the premiers of provinces who came before it gladly yielded wherever it was found necessary and thus strengthened the Centre. Even in the field of industry and commerce wherever Parliament found it necessary that in the public interests of India as a whole a particular industry should be regulated by the central legislature it was granted as a concession in the interests of the county as a whole.

The allocation of financial powers as between the Centre and the States and Provinces loomed very large and at one stage it appeared almost insoluble. The sales tax over which a battle royal was fought was ultimately solved harmoniously. Acquisition of property also was no easy matter. Take for instance compensation for the taking over of zamindaris. In other countries the liquidation of feudal tenures would have taken a long time and wars would have been fought on that question. In various provinces zamindari legislation has been set on foot. Regarding compensation though it appeared at one time that this issue would even break up the whole constitution, ultimately the Nation found a solution in this sphere also.

Then there is the question of language, over which we though there will be much controversy at one stage. Three or four times we met outside this House and also inside and ultimately we have resolved the question harmoniously. Hindi has been accepted as the *lingua franca* or the official language of India. These are all matters each one of which for its solution would have taken many months, if not years. We have resolved them all in the short period of time at our disposal.

I shall try to answer some of the critics who say that we have spent nearly a lakh of rupees every day or something of that kind. It is all wrong. People from the outside who do not assess things in the proper perspective are carried away by the number of days. The fact is we have not spent much. On the other hand, we have been carrying on in spite of hurdles and have now brought the Constitution successfully to its conclusion.

Let us find out exactly what is the kind of Constitution that we have given to ourselves. I claim that this Constitution is an absolutely democratic constitution. It vests the sovereignty in the people and enables them to continue to exercise that sovereignty in full. Besides political sovereignty, there is social justice also given in this Constitution. There is no discrimination between one individual and another. All can exercise equal rights without discrimination, so long as a person is not opposed to morality or public conscience. Untouchability has been removed once and for all. In the economic field also, although we have not said so in so many words, we have ushered in a socialistic democracy, which I would have very much liked to have been stated specifically. Equal opportunities have been given to all persons to acquire property.

One criticism levelled against this Constitution is that this is a mere copy of the 1935 Government of India Act and that it does not reflect the genius of our nation. There is some truth in that remark, but it is not wholly true. There are two ideologies today in the political field, which are working in conflict with one another. One is the capitalistic democracy and the other is the socialist dictatorship. Socialist dictatorship prevails in Russia and Capitalistic democracy in USA and UK. The world is today in need of democracy both in the political and the economic fields. It is no use telling a man that he must satisfy himself with political democracy without equal opportunities for property, the means of production being cornered by a few individuals. In a capitalistic democracy, there is political freedom but there is economic dictatorship. In a socialist dictatorship, there is no political freedom, but there is economic democracy. These two forces are fighting and ere long a war may come about. I thought that we must follow the golden mean and frame a Constitution which will usher in socialistic democracy, both the economic and the political fields being democratic and there being no cornering of power or wealth by a few individuals. One, namely, political democracy has been ushered in. Every man, woman without discrimination of race, colour or creed is entitled to hold the sovereignty of this country and bring into existence the form of government which he or she wants and change it from time to time. Normally speaking, literacy or some kind of education is insisted upon as a qualification, but here we have provided that any human being above the age of 21 years is entitled to take part in the formation of the particular kind of government he likes. But in regard to the economic field, I would have very much liked that we should have started with an enunciation of the principle that we are trying to usher in a Democratic Socialistic Republic. But unfortunately we have not been able to carry the rest of the people with us. Even the word "socialism" was reprehensible. But later on, by various clauses in the Directive Principles we have remedied the rigours of capitalism. In Parliament in the enunciation of the industrial policy it was said that we shall follow a mixed economy, that is to say, the State will run the enterprises in certain fields and the others will be left to private enterprise. Though we have not said so in words, there is ample provision in this Constitution which if worked well will ere long usher in a Socialist Democratic Republic in this country.

Then, Sir, it is said that by articles 93 and 371 too much power has been vested in the Centre and that is likely to lead to Fascist tendencies in this country. I say that it might not lead to any such dictatorship at all. More than 14 per cent are not literate in our country and it will take long to make them literate. I have therefore my own doubts as to whether adult suffrage will work in this country. Left to myself, I would have preferred that the village ought to have been made the unit, and panchayats must have been formed on adult suffrage with local councils etc., and elections must have been indirect. But we have chosen, in keeping with the times, adult suffrage for this country. I am sure that with the growth of adult education for which we have provided in the Directive Principles, namely, that education must be free and compulsory upto the 14th year for every boy and girl, the unique experiment that we are making in adult suffrage in this country will succeed ere long. Even on the score, we need not have any apprehensions. Until the time everybody becomes literate, a provision like the one made in article 93 and 371 will be necessary. It is a safeguard which all lovers of freedom in this country must welcome.

Thus, I consider that if these various provisions are worked in the spirit in which they have been framed, peace and harmony will prevail in this country. Members of this House and everyone outside, men and women, should feel that this Constitution is their own. There is no difference made. There is no doubt about it that this is a representative assembly. All communities have taken part in the framing of this Constitution-Hindus, Muslims, Sikhs, Parsis, Scheduled Castes and representatives from the Scheduled Tribes. All political interests have been represented here. Leaders of all schools of thought are here. Even Dr. Ambedkar, who merely came to watch has taken a leading part in the framing of this Constitution and he is one of the architects of the Constitution we are now passing. The very person who came to doubt and to criticise has ultimately taken charge of this Constitution and framed it. I congratulate him and I congratulate ourselves for the goodwill shown to him and the manner in which he has reciprocated it. After all, by closer contact we can easily understand one another's viewpoint. So long as we are at a great distance, we make much of the small angularities we have. If this Constitution is worked in the spirit in which it has been framed, I am sure we will be one of the foremost nations of the world.

There are also amongst us a number of eminent jurists like Mr. Alladi Krishnaswami Ayyar, whom we cannot easily forget. In spite of his weak and poor health both inside the Assembly and outside in the Communities, has been rendering yeoman service. We have amongst us also administrators like our Friend Mr. Gopalaswami Ayyangar. He has had great experience as a civil servant, and then as Dewan in the States and later in the Council of State. Though latterly he has gone out of the picture and has not been much in evidence in the Assembly here in the matter of the Constitution after, Dr. Ambedkar has taken it over, I am sure we will not forget the enormous services that he has rendered. Every section of the Assembly has done its best. Some of our friends who have been very energetic in tabling amendments-Mr. Kamath, Mr. Shibban Lal Saksena, Mr. Sidhva and latterly Dr. Punjabrao Deshmukh who has added himself to this list-have all contributed their mite. Though we have not been able to accept many of the amendments tabled by our Friend, Prof. K. T. Shah, for whose learning, intelligence and capacity I have a good deal of admiration, he has confessed to me outside the House when I talked to him that though we were not going to accept his amendments, he tabled them because he wanted to lay his point of view before us. He has accepted the defeats in a spirit of good sportsmanship. Therefore I feel that this Constitution has been framed by every one of us doing his bit gladly. If there has been defeats to some, those defeats have been accepted in the spirit of a minority having to submit to the majority view in the hope of converting the majority view in their favour at some future date.

Lately, Sir, we have not tried to make this country greater in extent. We have no territorial ambitions. We do not want the territory of others. In the international as well as in the domestic field we want peace and harmony. With respect to that we have added a clause in the Constitution stating that in setting disputes between nations, arbitration ought to be the rule and not war. I am sure that, to the best of our ability, we will try to avoid war between nations and act as mediators for the settlement of international disputes by peaceful methods.

Sir, I will be doing an injustice to myself if on this occasion I do not pay my humble tribute to the Father of the Nation-Mahatma Gandhi, the embodiment of love and peace in the world. *(Cheers)*. I had tabled an amendment to the Preamble to the effect that we must start with an invocation for his long and continued blessing to our country and our Constitution. I find that there is a similar provision in the Constitution of Eire beginning with the words 'With the grace of the Almighty...................'I thought we should similarly start with the words 'With the grace and benediction of Mahatma Gandhi the Father of the Nation'. But my amendment was not allowed. Now, Sir, whether his name appears in the Preamble in writing or not, nobody can erase the peaceful and solemn voice of Mahatma Gandhi from our hearts. With him as our model, let us march on, work from peace to peace until peace and prosperity reign supreme in the world. May God bless us.

The Honourable Shri B. G. Kher (Bombay: General): Mr. President, Sir, I cannot let this occasion pass without expressing my gratification at the completion of a task which, it is very difficult to realise, we began quite three years ago. I remember our first meeting was held on 9th December 1946 and, in these three years were crowded events which would normally have taken possibly three decades for us to accomplish. Our Constitution also has undergone modifications as events outside took place. My first impulse therefore is to congratulate this House on having completed a very difficult, gigantic and monumental task and given a Constitution to free India. Every one will agree that it was a difficult task. Even as the manner in which India attained her independence was unique, so was the Constitution of this very Constituent Assembly. I do not think anywhere else a Constituent Assembly has gone on working as the Constitution making body and as the Parliament of the country for such a long period as nearly three years. After three years labour we have built up a Constitution of which we have every reason to be proud.

As I said, our draft Constitution has undergone many changes on account of events which took place after we first met. Remember, Sir, that it was only in May 1946 that the Cabinet Mission offered to us a very weak Centre-a federation no doubt but with a very weak Centre. With nearly 556 States and fifteen provinces we were to have formed a Union with only Defence, Foreign Relations and Communications as the uniting factor for all the federating Units. Now look at the Federation that we have given our country! The Federation is formed with a view to have powerful uniting factors for a strong Centre.

We have solved a number of problems which, at the start, seemed insoluble. There was the question of the separate electorates, the franchise problem and the question of the minorities. These, by a spirit of goodwill and accommodation, we have now solved in satisfactory way. We have solved all these knotty problems including the very troublesome question of our language and the script. It is not necessary for me to go over the whole ground which has been covered by the 395 odd articles of our Constitution. A number of friends have already referred to many of the points to which I would have liked to refer.

Sir, one feature that distinguishes our Federation is that, unlike the other countries which have a federation, it is not the fear of any aggression or any outside agency that has inspired us to federate. It is not fear that has inspired our federation. Out federation is the natural outcome of our unique struggle for freedom for years and years. In the Indian National Congress we used to pass a resolution that we must have a Constituent Assembly which should frame our Constitution of free India, instead of being dictated to by any outside agency or by any sentiment of fear. Our Constitution has been evolved as the natural outcome of a process unique in its nature, even as our attainment of freedom has been unique. We are now a sovereign, democratic republic completely free to determine our foreign relations as also to mould our destiny in any way we like.

Turning now to the provisions in the Constitution, I do not agree with Professor Shah that we have hemmed in our Fundamental Rights with a number of restrictions which have rendered those rights almost nugatory. A number of speakers have referred to this matter. I believe, Sir, that these are very valuable rights which we have assured to our citizens. We have made them justifiable. They can be made the basis of judicial scrutiny. Article 13 provides that the laws in force in India, in so far as they are inconsistent with the Chapter on Fundamental Rights, will straightaway be void. In future also, any of the laws that offend against those Rights will be considered void. Therefore I believe that this Chapter provides very valuable rights to our citizens. For the first time in history, as a friend observed just now, they have been assured to all our citizens.

We have abolished untouchability, the curse of our public life. We have attempted to ameliorate the condition of the very large number of neglected people-the tribals. We must congratulate ourselves that we have provided Fundamental Rights as also the means of enforcing or attaining perfect equality, social, economic and political both to the untouchables as also to the tribals and the other down-trodden people-equality with the other sections of the public. In part III which deals with these rights, we have an article which deals with the compulsory acquisition of property. I remember very well that it was an article which caused the gravest concern to property holders. It gave rise to a bitter controversy-and at one time if looked as if our disputes were going to cause our ship to founder on the rocks, but ultimately good sense prevailed and negotiations and discussions have given us this article, and I believe, Sir, we have arrived at a solution which need not cause any unnecessary apprehensions but on the contrary should inspire confidence in the minds of property holders. I believe I am not entitled to speak on their behalf-owning no property myself-but it is obvious that State like ours must, professing the principles that it does of attaining equality and social justice, have certain rights, to acquire property in the public interest and so long as we do not expropriate property owners, so long as we give them a remedy for determining whether the compensation that the state gives is fair or not, I do not think they have any reason to be apprehensive.

Then, Sir, we have the Directive Principles, and I am very glad that one of the Directive Principles is that it is the duty of the State to raise the level of nutrition and endeavour to bring about the prohibition of the consumption, except for medicinal purpose, of intoxicating drinks and drugs which are injurious to health. We all know how it was an article of great concern with Mahatma Gandhi. In my own province I am aware that we are being criticised for being too hasty and for having undertaken reforms which other countries have not been able to succeed in introducing; but, Sir, I am very happy to see that the Directive Principles embody this very important, necessary Directive that in order that the health and happiness of the vast numbers of people in this country may be looked after by the State, it will be their duty to prohibit the consumption of this poison. It is futile to say that we are too hasty and I submit that the pace must be determined by circumstances. Speaking of my own province, we first introduced prohibition in 1938. A part of our province was under prohibition. This time again we have given four years so that the unnecessary criticism which people with vested interests or with bad habits which they are unable to give up, level against us and against this part of the Constitution has really no justification.

Then, Sir, it has been said that we have only adopted the Act of 1935 as our model, for framing this Constitution. While I do not see why it should not have been adopted as a model, I want to point out that it was not a model designated for an independent, sovereign State. That model provided for an association of heterogeneous elements which lacked equality in political, economic, social and cultural status. And instead of 556 States, with a population ranging from one hundred to several crores, thanks to the way in which we have handled the States problem the number of what may be called the vestiges of Indian States is now reduced to nine, and all this has been done within this short period of eighteen months. This First Schedule of our Draft Constitution which is divided into four parts and which is called the States and the Territories of India contains only thirty units as against fifteen provinces and five hundred and fifty six Indian States set out in the Schedule to the Government of India Act of 1935 so that, while it is true that we have adopted it as a guide to see that no important questions, no important problems, no important items are lost sight of in framing such an important document, surely there is no similarity between the 1935 Act and this Constitution of a sovereign Republic that we have been able to build up in the four hundred odd articles that we have framed after such careful scrutiny, deliberation and forethought. We have adopted no doubt three lists as the 1935 Act has got, but we have taken into account the practical needs of the present times. I am aware that there is a good deal of dissatisfaction as to the relative position of the items put in the Lists, but it is a matter for the Union and the Provinces to evolve a way of smooth working whereby the strength of the Centre is not imparted, while the progress of the province is also maintained.

The financial relations between the Centre and the States, Sir, are naturally a matter of great anxiety but I am very glad that good sense has prevailed and we have now evolved formulae which has met with a very generous measure of approval both in the provinces and at the Centre. Let us hope for the best.

Another matter on which we pride ourselves is the way in which we have handled the problem of the minorities. That was a great stumbling block in our way. Part XVI of our Constitution is witness to our constructive genius. We are very thankful to the minorities also for the way in which they have responded to the attempts that we made to abolish separate electorates and at the same time to inspire them with confidence that their legitimate interests will not be neglected.

The question of a national language which has been referred to here and discussed at great length gave rise to very bitter controversies. I hope, Sir, attempts will be made to evolve a really national language. We need not quarrel about names. We have a script which I believe, is very rich and very scientific and although those who do not know it may find a little difficulty in learning it, once they do learn it. I think they will be able to realise that our decision for adopting that script for the national language is a very wise one.

Then, Sir, I do not propose to say much about the question of the judiciary excepting that we need not be led away by mere slogans. The thought seems to be entertained by a large number of people that the executive is always made up of people who want to crush people's liberties and that the judiciary is there like the knight-errant to rescue the liberties of the public from the clutches of the executive. I think, Sir, that this is a very wrong notion and I am very glad that our Constitution has taken a common-sense view of the affair. We have assured the rights of the judiciary and also provided for powers of the executive. How can you accept this principle that, while the executive is composed of people who are wicked and who are anxious only to crush the liberties of the people, the judiciary consists only of saints who are above all ideas- I will not say-of power but who will not be led away by the same sentiments as those by which the other people are bound to be led away? I know that we have a very difficult task in composing the judiciary. If the members of the bar, when invited to become a Judge, do not consider it as a call to duty which ought not to be disregarded, because a Judge cannot earn on the Bench as much as a practitioner can at the bar, I am afraid we are not likely to secure good judges from the Bar, and the higher posts may have to be filled by promotion from the ranks of the lower judiciary. I am really afraid of the prospect. In my opinion the bench and the bar-I am not speaking in ignorance of the situation, because I have been connected with the legal profession very nearly for 40 years, from 1909-and in my opinion the bench and the bar both are in need of being reminded that they do not cease to be citizens and must be prepared to share the sufferings of the other sections of the people. I agree that it is necessary to have safeguards that the executive does not override the rights of the people. We have agreed to the separation of the executive and the judiciary, but after all the great concern of a young democracy is the security of the State. I am afraid Security is of the very highest value, particularly in a nascent democracy like ours, where new ideas, new principles, notions of new rights and of equality of status are being imbibed by the people none too slowly. So that those people who only raise slogans of civil liberties in danger and the oppression of the executive will do well to remember that they can raise these slogans and they can protect their civil liberties only so long as anarchy is prevented and the executive functions efficiently, justly and properly *(Hear, hear).*

Sir, I must before I conclude congratulate the House-and I have been here through, well, quite a good portion of these three years-on the monumental work which we have been able to achieve. Some of us are nervous as to the effects of introducing Adult Franchise in our elections. We have taken a very bold step. The only safeguard I can think of is accelerating the pace of social education. The other safeguard is the Upper House. A friend said that the Upper House ought to be abolished. I am afraid I do not share his view. The upper House is quite absolutely necessary at least for the first ten years and I am very glad we have taken decisions which do not make the existence of the Upper House impossible. In our anxiety to achieve our dreams of equality, of liberty and fraternity and social justice it us not lose sight of the fact that even the attainment of these great things is possible if we do not collapse in the beginning of our new life and the whole machine is not wrecked either through ignorance or through wickedness. There are political parties who are anxious to create a chaos in the country because they believe that in that way alone and through violence alone they can achieve the fulfilment of their dreams. The Father of our nation thought otherwise and taught otherwise and we walked in his foot-step and we have achieved very happy results and the very fact that we were able to frame this Constitution so early-I call it "early"-and in this peaceful manner, is due to the fact that we accepted him as our guide and leader. Anyway, Sir, it is a glorious risk that we have taken, trusting our fate to the common man for whose happiness and advancement this Constitution is intended and framed.

I once again congratulate the House and I have no doubt that we have done a piece of work which will ensure for India that social justice, peace, progress and prosperity which it has been our aim to achieve *(Loud cheers).*

Mr. President: Before I adjourn the House, I desire to inform Members that the calculation on which I proceeded yesterday has turned out to be wrong. I proceeded on the basis that there will be 72 speakers whose names I had received till yesterday morning. Since then the list has swollen to 125 and probably by Friday week when we propose to close, it may come up to the total number of Members of this House. In that view, it is not possible to sit only three hours a day nor is it possible to give 20 minutes to each Speaker. I, therefore, propose to sit both morning and afternoon, ten to one and three to five, from today onwards and I would expect Speakers to come down to 15 minutes, at any rate, during this week and it may come down to 10 minutes the next week. From today afternoon the time will be 15 minutes for each Speaker and we shall sit from ten to one and three to five every day.

The House stands adjourned till three o'clock.

The Assembly then adjourned for Lunch till 3 P.M.

The Assembly reassembled after Lunch at Three 3 P.M. Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Mr. President: We shall take up the discussion now.

Shri Prabhu Dayal Himatsingka (West Bengal: General): Mr. President, Sir, various honourable Members have spoken and pointed out the good points and the bad points according to their view in the Draft Constitution. The Honourable Mr. Ananthasayanam Ayyangar and the Honourable Mr. Gadgil have analysed the provisions very thoroughly and shown to the House what have been our achievements in this Constitution during the period that this Constituent Assembly had been working on this Constitution. There may be difference of opinion as to certain provisions. Some may regard certain provisions as salutary while others may regard the same provisions as objectionable. But, Sir, much will depend on how the provisions are worked and also on the vigilance of the people. If we all alert, whatever may be in the provision of the Constitution, things will move all right. There are persons who object to the powers that have been provided for the Centre in provisions like Article 257, 358, 365 and so on. People object to article 371 which gives power to Centre of supervision and giving directions over States. But those who know the conditions of States will certainly welcome much wider powers to be given to the Centre. What is happening in Rajasthan? People are being kidnapped from their houses and ransom is being realized. Unless the authorities of Rajasthan are able to pull up or take steps, it will certainly be in their own interest that the Centre gives directions and those directions are carried out and if not carried out, the Centre takes over and makes arrangements. In some places it has become impossible for people to move about after 6 P.M. and they prefer to live indoors. If such things happen you cannot imagine what assistance or intervention may be necessary. All the powers, after all, will be exercised only in case of emergency and it will be wrong on our part to assume that the Centre will exercise these powers unless it be absolutely necessary to do so. It is not an irresponsible executive or irremovable executive that will be exercising the powers. If they exercise wrongly, the members of the Assembly will be in a position to remove them and I do not think we can compare things now with what the things were before India became free when the Executive was irremovable and the Assembly had no power to remove them. There are certain provisions about which there are misgivings. Some sections of the people say that this adult suffrage is a welcome thing-it gives 16 annas democracy to everyone and everyone will be able to exercise his or her influence on Government. Others feel that this 100 per cent. democracy with 90 per cent. illiteracy will be dangerous experiment and that we should have proceeded with caution. One shudders to think what might happen if the persons who are illiterate and who do not understand yet the value of votes, if they vote wrongly. But there it is, having advocated adult suffrage, it has become impossible for the leaders to say that they do not like it. I know many do not relish the provisions of adult suffrage but they dare not say so.

The powers of the Centre became necessary also on account of the present position of things in many provinces. Those who are to defend the actions of Provincial Governments and the Centre are the persons who are the greatest calumniators of the Governments. One group of Congressmen is fighting with another group of Congressmen-those who are out of Government trying to detract the Government in power simply because they belong to another group. This is happening in almost all the provinces and if you open the newspapers any day you find this. It is a question of personal jealousy and quarrel. Even when there is nothing to oppose, because we are not in power and because others are in power, we complain and try to find fault where there is none. That is how the Congress Governments are being brought into contempt in the eyes of the general public and that is why the rot must stop if we really want to improve the position of Congress and Congressmen; but I do not see any signs yet and in most of the provinces this sorry tale is being made and witnessed. It is necessary therefore that there should be some sort of provisions which may be utilized when there is a tendency to break off. Even now you find that when Ministers in the Centre say something, some of the provincial Ministers make statements which go just absolutely contrary to the policy of the Centre. The Government at the Centre say "we want cotton to be grown"- a Minister in Bombay says "we will not do that until the Central Government comes forward to assure us of food supplies" as if food is not being supplied by the Centre and without that assurance being given, food will not be supplied. There must be co-operation between the Central Government and the Provincial Governments. Otherwise it will be almost impossible to carry on the administration and the task will become very difficult.

Sir, a lot will depend on how the Constitution is worked and the person who works it. If you put X in charge of a thing he may do it very successfully but if you place another person, in spite of the fact that he has the same resources available to him, he may make a muddle of the whole thing. A lot will depend on how it works, who works it and the manner in which it is worked. People will always be able to find fault but on the whole it has been a very satisfactory Constitution and if properly worked and supported properly by those who can do it, I think the whole thing should proceed in a satisfactory manner. Some say that some of the Fundamental rights ought to have been wider. I wish along with fundamental rights there were certain fundamental duties also. If we think more of our duties than of our rights, a lot of our difficulties will be over and the rights will take care of themselves and there will be no occasion to feel any difficulty for want of those rights.

Shri H. V. Pataskar (Bombay: General): Mr. President, it is at the end of nearly three years that we are coming to the end of our deliberations. Before I go on to discuss some of the aspects of the present Constitution, I would like to survey very briefly in the process through which we have already gone. When we first commenced our task, we were only a Constitution-making body and India has then undivided and was a whole. When we first met here, there was a section of the Members elected to this House who were not co-operating with us. At that time, just on the fifth day of our meeting for the first time, the Objectives Resolution which has been rightly described as India's Charter of Freedom was moved. That Resolution was moved on the 13th December, 1946 and was unanimously passed on the 22nd January, 1947. I would like to draw the attention of the House to three things that that Resolution contained. It first laid down that India shall be an Independent, Sovereign Republic. Secondly, that India was to be constituted into a Union or Federation and that the Federation was to consist of territories with their present boundaries or with such others as may be determined by the Constituent Assembly, and they were to be more or less autonomous units with residuary powers, and those units were to exercise all powers and functions of government and administration, save and except those that are assigned or going to be assigned to the Union. That Sir, clearly shows that what we then intended was clearly a sort of federation of so many territories or parts of territories of India which were going to be constituted into autonomous or semi-autonomous units. After the passing of the Resolution, several committees were formed and one of the most important committees was the Union Powers Committee which published its report on the 4th July 1947. That report was ready in May 1947. In that report, Sir, you will find that the very first clause of it says that the federation shall be one independent republic known as India. That means that the idea still was the same, that India shall be a federation of these units. As I have said already, at that time, the unanimous opinion was that what we wanted to frame was a complete unadulterated federation of several States. But several events happened in the meantime. Power came to be transferred to the people of India on the 15th August, 1947. And at the same time India also came to be divided. This was after we had started our work and passed that Resolution, called the Charter of Indian Freedom. Then, Sir, as we all know, partition was followed by many tragic events and a heavy responsibility was thrown, not only on our leaders, but also on the Constituent Assembly which began to function both as a constitution-making body and also as the Central Parliament under the Indian Independence Act. If these events had not happened probably we would have stuck to our original plan of having a scientific, systematic, complete federation of Units. But these events were combined with the task of framing the Constitution and this largely affected our outlook, which was till then consistent, and also affected many of the aspects of our task. The suddenness of the intervening events blurred, to some extent, our vision. A strong Central Government suddenly became a matter of urgent necessity. I yield to none, including the last speaker in saying that a centrally strong Government certainly is a necessity. But what that means has to be seen. In view of the problem of the States which were left in an unnatural state by the departing British authorities, our task was still further complicated. And the creation of Pakistan itself created many difficulties. The Frankenstein of Pakistan which arose out of the very body of India, tore it into three pieces, and it was responsible for the pilling of innocent blood, unparalleled in human history and this made us shudder at the very thought that the rest of India should even consist of even any parts. That changed our outlook with respect to the problem with which we were faced. If we look at what we had been thinking all the time, we would see that we were first consistent in trying to frame a federal Constitution, in the true sense of the term. But these intervening events, the tragedy of partition and the events that followed, led us into altering our first Charter of Freedom and diverting ourselves from the goal which we had set before ourselves. And the whole things has been due to the fact that we became obsessed with the idea of having a Centre which was going to be strong. In that connection, I would like here to say that everybody wants that in the context of world events as they are now, we do want a strong government in this country. But what is the meaning of a government being "strong"? power was transferred on the 15th August 1947 to the people who differed among themselves in many respects. At least till the 15th August we thought that the suitable form of administration could only be a federal one, consisting of suitable units formed and caved out of these vast masses of people. But as I said, the events that had happened had brought about a change in our outlook. How are we to construct this new strong structure? We have to form the people into separate homogenous strong units. Or is it possible to suddenly change the central administration in the form in which such a central Government could be imposed by a foreign Government like the British Government? We have to build up these units, and in the building of a strong Centre we must so build the units so that they may themselves be strong. Unless the units are strong, the Federation can never be strong. But it appears that what happened as I said, rather affected the course of events. I find at the time of the first reading, or rather at the stage when the reports of the various committees were considered, the substance of federation was still there. But at the time of the second reading, we developed a fear complex, if I may say so, May be that it was justified by events that happened in our own country and also by events outside. But the fact has to be noted that it did affect the course of events. Adult franchise was differently looked upon, on account of the illiteracy of the people. But this illiteracy is already known to all. It is also known that this illiteracy can not be removed within a short time, though we may want to. Therefore adult franchise came to be looked upon not only with grave suspicion, but as a matter of grave danger. The result was that the autonomy of the States, or their semi-autonomy came to be looked upon as a matter of national danger. We kept the form of the federation, but changed the substance or contents of that federation. It was with the idea of having a federation that we began changing the names of the provinces into States. If the present idea had existed throughout we never would have made that change. But while the name of "State" is there, the power of the State is so curtailed that it is a misnomer to call it a "State" any longer. It would have been much better to have a unitary type of Government, if we so wanted. Then the whole structure would have been differently built.

As the result of a fear of these things, I notice that the following changes have taken place in the framing of the Constitution. The elected Governor came to be replaced by a Governor appointed by the President. Residuary powers which naturally remain with States, if the Constitution was to be really a federal one, have been transferred to the Union. This is wrong in its very conception. I can understand that in a unitary type of Government naturally the residuary powers will be with the Union, because the powers emanate from the Union. But in a federal structure, the powers really emanate from the units and the residuary powers can only remain there. Then, Sir, a curious thing happened. In the First Reading stage we decided that a simple matter like elections in the States should be controlled by the States themselves. But we have now made a provision that they should be controlled also from the Centre (Article 324). Then power was given to the Centre even to legislate for subjects which were assigned to the States List. Financially also, the States will be more or less at the mercy of the Centre. They will derive most of their income from the Centre and they have been provided with very meagre resources of their own. The Governor is no longer merely a Constitutional Head, but has been given powers to interfere in the work of the Ministries. I would only mention in this connection article 167. With the idea of having a strong centre, as if we were continuing under the old Act, many of the problems that urgently needed to be resolved have been kept back.

I know that there are many difficulties. Ours is a land of regions in various stages of development; ours is a land of many languages. We have also many handicaps as a result of being dependency of the British Empire for over a century. The present conditions in the country are such as to cause grave anxiety and the conditions outside in the world are not less alarming. The East is rising from its slumber and state of suppression. But granting all this we cannot frame a proper democratic constitution which at least in some parts discloses a distrust of the people in general and the common man who alone can be the foundation of a democratic state. That Sir, is my objection to a strong Centre of this type. We can of course give all power to make the Centre strong. But this Centre is not like the centre of the old where the power flowed from outside, from the British. But the power of the Centre must flow from the States, which, in the first place, must be made strong and powerful. Unless the units are strong how can you have a Federation which is going to be strong.

Sir, many things have happened between the starting of our work of framing the Constitution and the completion thereof which has unnecessarily blurred our vision, with the result that we are running away with the idea of a strong centre and launching ourselves probably unconsciously, unknowingly and irresistibly on a line which may not be successful. If we have clearly grasped the implication of our line of thought and action it means that it is our opinion that the people as a whole, the common man, is not capable of exercising properly his rights as a citizen of a democratic federation. In that case, the best course would have been to give up entirely the idea of a Federation, and frame a unitary type of constitution. I could have understood that. We could then have said: "No, we are not in favour of a Federation; we want for this country a unitary type of Government." But that is not what we have done. Again, if we thought that for a few more years our people would be illiterate and that illiteracy which is a curse of democracy would disappear but that time then we could have said: "Well, our people will be ripe for a Federal type of Government after fifteen or twenty years." In that case we should have been content with framing an interim Constitution and left the task of framing the final constitution to those who may come after us. But the present Constitution though called a Union-the word Federation has disappeared, and "Union" has taken its place-is not federal in substance. It is not unitary, for it was never framed as a unitary constitution. The whole things, as a result of circumstances and events, some of which at any rate are beyond our control. I do not want to blame any party or group of persons-is a queer combination of disjointed parts of both Federal and unitary type of constitutions. I want to make it clear that in saying what I do, I do not want to throw any blame on the Drafting Committee. I am just trying to explain the reasons that have led to this result.

Then, Sir, there is another aspect of the Constitution. I know that we were not writing on a clean slate, that there was our former association with the British Empire and that we were a dependency of that Empire for over a hundred years. We were ruled by them and there was the Government of India Act of 1935. Well, what was the Government of India Act! It was merely an adaptation of some of the principles of the unwritten constitution of Great Britain, adapted and made suitable for a dependency as India then was. Naturally that could not form a very proper basis for the Constitution of a free India. Naturally, everything in it was not bad. But what has happened is that our Constitution has become so voluminous because we more or less based our present Constitution on that Act. The Government of India Act contained 328 Sections and eight schedules; the present Constitution consists of 395 articles and eight schedules. We have closely followed the provisions made in the Act of 1935. It is no good trying to conceal the fact that we have based our Constitution on the unwritten constitution of Great Britain adapted to a dependency like India, as it was in 1935. It is not desirable that the constitution should have been so voluminous. We have tried to put into the Constitution what should have formed part of the legislation of the country, present or future. The whole chapter on elections is based on an Act of the Canadian Parliament which does not form part of their constitution. So this should have found its place in the present or future legislation of the country. Unfortunately all this has been tried to be put into the Constitution because we have not been able to keep clear in our mind the distinction between an act of the legislature and the provisions of a constitution.

Our Fundamental Rights are very good exclusive but I am not happy about one change which has been made with respect to personal liberty. So far as I am concerned I have not been able to understand why for one simple phraseology which we wanted to avoid we had to introduce articles 21 and 22. To avoid a well known expression "due process of law" we introduced in article 21 the phraseology "procedure established by law". To get out of that difficulty we introduced article 22. However it will not serve the purpose for which it has been introduced.

The other day Dr. Ambedkar told us that provision has been made in clause (4) by which advisory boards will be appointed before which these matters could be taken. The advisory boards will be more or less the creation of the executive, and taking a long range view, we may or may not be here and others may occupy our seats, the fact remains that the advisory boards will be the creation of the executive of the day and therefore they cannot be expected to be as independent as the judiciary. I learn that we are not probably satisfied with the present judiciary but we can change it but in a constitution which is to last for all time to take away such wide powers from the hands of the judiciary and leave them in the hands of an advisory body to be appointed by the executive is a thing which might recoil upon ourselves in future and I shall not be surprised if it happens.

In spite of the shortcomings we have made a very good provision in the 'Constitution, namely, the article by which it can be amended when occasion arises. A constitution is a living growth and I hope in course of time this provision will be made use of by those who come after us and according to changed circumstances change the constitution in any manner they like.

Shri B. A. Mandloi (C. P. & Berar: General): Mr. President, Sir, we are reaching the end of our journey and within a few days this Assembly would be finishing its task and presenting to the Nation a Constitution for a free and independent India.

Last time the Constituent Assembly laid down certain principles and entrusted the task of framing a constitution to the Drafting Committee and the Drafting Committee presented a draft Constitution of India. We have to see whether we have effected in the Constitution any improvements and what modifications we have made in the Constitution and whether those modifications are really in the best interests of the country.

Most important of all is that the princely order in India has completely disappeared and the 560 and odd Indian States have either merged in the neighbouring provinces, or formed themselves into unions or are put under the administration of the Central Government. The people of princely India who had not even the elementary right of working municipalities and district boards are now free and would be as of right entitled to undertake the administration of their States and the States are put on a par with other provinces of the Indian Union.

According to the Cabinet Mission plan the States had to accede with the Centre only for limited subjects, namely with respect to Defence, Foreign Affairs and Communications. But we now find that the Constitution for these Indian States is going to be identical with that of the provinces. Only a period of five years has been provided to bring the States into line with the provinces.

After the Draft Constitution was presented to this Assembly the safeguards which this Constituent Assembly had provided for the so-called minorities have been voluntarily surrendered by them. These provisions, viz., joint elections and no reservation, could have been imposed on the minorities at the very beginning but we found that after the partition of India the minorities were satisfied that our government is going to be a secular one, that there would be no differential treatment on account of religion or other causes, the minorities being fully satisfied came forward and their leaders frankly and openly proclaimed that they did not want any safeguards. This change of heart is a great achievement and we are going to have joint electorates hereafter. Of course provision has been made with respect to the scheduled castes, that for a particular number of years they would enjoy reservation of seats but after that this safeguard also would disappear. This means that the minorities feel confident that in the Indian Union they will have equal rights, equal privileges and equal opportunities as provided in the Constitution. So it is not an imposition by the majority on the minorities but it is voluntary surrender on account ,of the confidence which the minorities feel.

The other important thing which the Constituent Assembly has achieved is the provision of one official language *viz.*, Hindi in the Devanagri script for the whole of the Union. If we look to the past history of our country we find that at no time there was any common language in India spoken and written throughout the length and breadth of the country. The Constituent Assembly has laid the foundation of one common language and script for the entire country and it has been achieved with the unanimous consent of all the Members hailing from different provinces and speaking different languages. There was no heart burning over the selection of Hindi as the official language although there was some initial tussle over minor details but in the end we came to a happy decision that for a great country like India we should have one common language and that common language should be Hindi written in the

Devanagri Script.

While providing one common language for the whole country, we have been careful to see that the provincial languages are not harmed in any way. There is full scope for the development of provincial languages which possess their own rich literature.

Taking into account our ancient civilisation, culture and traditions, we have adopted a suitable name for our country, namely, Bharat. That has also been done with the common consent of all.

The other achievement is the provision of uniform system of administration of justice in the whole of the Union. We have provided for a Supreme Court in the Centre and High Courts in the different States. The High Courts would be under the control of the Centre. Thus, both in the advanced and in the backward States, there would be a uniform system of justice. We have also provided in the Directive Principles that within a few years we shall have separation of the judiciary from the executive.

Successful attempt has been made to make the Centre strong. Although it was urged by some advocates of provincial autonomy, that their should not be any encroachment on the autonomy of provinces, it was realised by us that we have to develop the backward areas and also make the Indian Union strong and powerful and therefore we conceded that the Centre should have adequate powers. At the same time, care has been taken not to weaken the provincial administrations. Sufficient scope has been given to the provinces for the development of provincial affairs and the administration of the subjects which have been entrusted to the provinces, so that the real work may be done in the provinces with the help of the Centre.

The last thing, which was also a thing of a very controversial nature, was the formula that we have adopted for acquisition of property for purposes of the State and the Union. A common formula was evolved, whether it be for abolition of zamindaris or for taking over industrial concerns or for nationalising industry. According to that formula, we find that the legislatures have been given plenary powers to make the laws for the acquisition of property for public purposes. This is a great achievement indeed.

These are some of the important things which have been incorporated in the present Draft which has been submitted to the House for its final acceptance.

We find two very important things in our Constitution. One of them is the Preamble which is an enunciation of Objectives of the Constitution. We have indicated in the Objective Principles; the nature and scope of our Constitution based on Justice, Liberty, Equality and Fraternity. Not only that, we have provided a chapter on Fundamental Rights. In the articles on Fundamental Rights we have provided the liberty of speech, of association, liberty to follow one's own religion etc. Then there is a chapter about the Directive Principles in which we have laid down the fundamental principles which should guide the States or the Units, what should the State do, to achieve the objects laid down in the Preamble. Thus, if the Objectives Resolution, the Fundamental Rights and the Directive Principles are kept in mind by the persons who are responsible for running the administration at the Centre and in the States, I have no doubt that our country will in course of time become happy, prosperous, strong and powerful.

Some criticisms were made about the Constitution, one of which was that the Administration is top-heavy. The Congress before achieving Swaraj has been telling people, proclaiming to the world that in a poverty-stricken country like ours where the majority of the people do not even have two square meals no person should receive pay running to four and five digits, still we have in our Constitution provided big salaries for some important offices. There is some truth in this criticism. The people expected and would have liked that the Constituent Assembly could have fulfilled those pledges given to the people by the Congress from time to time, and reduced the big salaries taking into consideration the tax-paying capacity of the people. Unfortunately, we have not done so. But there is still a ray of hope. Provision has been made that during the transitory period, and so long as Parliament does not take the matter in hand and by legislation fix salaries for the high offices, the salaries provided in the various schedules of the Constitution would be paid to the respective personages. I hope that our future Parliament which would be constituted on adult franchise would realise this responsibility and radically revise the scales of pay, so that the burden would be proportionate to the paying capacity of the poor people of this country.

The second criticism that has been made is that the Centre has been made too strong at the cost of units. My submission is that this criticism has no force. The strength of the Centre is the strength of the units and the strength of the units is the strength of the Centre. The units are part and parcel of the body corporated *viz.*, the Centre. We have to take into consideration, the great responsibilities of the Centre, nature and composition of the various units. It is therefore necessary that the Centre should be made strong.

In conclusion, I would be failing in my duty, Sir, if I do not say a word about the Drafting Committee. It is well known that the Committee had an arduous and very important task. The Members of the Committee under the chairmanship of Dr. Ambedkar did their job willingly and splendidly and presented us with a draft Constitution. I know that during many controversial debates in this House the Chairman of the Drafting Committee put forward his point of view very ably and succeeded in bringing the controversy to a satisfactory conclusion. This House appreciates the services of the Drafting Committee and I congratulate Dr. Ambedkar, Chairman of the Committee for successfully piloting the Constitution of free and independent India. This Constitution has been prepared within a record period of three years -in fact we should eliminate from these three years the period during which we had troubles of unprevented matters and unsettled conditions. This is a great achievement. Sir, it is not enough to have a good Constitution on paper but it is the willingness of the people the sincerity of the people and the earnest desire of the people to work it that is important. If the Constitution is worked in that spirit I feel sure that our country will have a bright future. We visualise a bright future for our country and we wish her to be one of the foremost countries in the world. If we work the Constitution in the spirit in which we have made it, I feel sure there is a bright future for the country. With these words I support the motion.

Shri Krishna Chandra Sharma (United Provinces: General): Mr. President, Sir, it is a great day that we are passing the Constitution for a free country in a free atmosphere.

Thirty years ago, when I was just a young man, I was made to sing, 'Long Live the King.' Later on, an insignia of that King caused me many an uneasy night. I dreamt, I cherished and I struggled and suffered for this day. I feel happy that this day has come. Centuries ago a man kin his enthusiasm in the United States of America, when they framed their free Constitution, cried 'Oh, God, by your grace, we are become a nation'......... So with God's grace, we are become a nation, a nation with the power to think good, a nation with the power to will, a nation with the power to execute; to make its dream a reality and realise the possibilities of her growth. It is up to you to fulfil the cherished desire of those who have gone away, the desire of those who are striving along with us and for the good of those who come after us.

Sir, a Constitution, like any other thing resulting from human striving, is a child of its age and so is this Constitution. It will be a good Constitution or a bad Constitution in relation to the circumstances that have brought it about. Years ago, in the Nehru Report of 1928, certain objectives were laid down and a certain structure was given to the Constitution. Though this Constitution does not reflect the Nehru Report in so many words and phrases, in so many clauses and articles, the spirit of that Report is introduced. Then we had the Sapru Report and the various resolutions on the objectives of the Congress and we had also the Government of India Act of 1935. For the ideas that you find embodied in this Constitution you have to go back to the various documents that were available such as the conclusions of the Round Table Conferences. Most important of all the factors we have the economic pressure, the social forces, the political developments and our relations and connections and associations with the world outside to give shape to our Constitution. No written Constitution in the world can have an isolated existence and can fail to be influenced by the economic pressure, by the connections with foreign powers or the foreign policy of the country. If you look at the American Constitution, you will find that it bears the imprint of the eighteenth Century working and development of British Constitution; and the French Constitution of the days of Bonaparte, has to a very large extent influenced the European Constitutions of nineteenth Century. No Constitution can have an isolated existence. It is but right that we should gain from the experience of others and from the British Constitution and the American Constitution. Those nations have long experience of working democratic and representative institutions. We have benefited by the experience of other parts of the world. Taking that view, we have to analyse a Constitution, as Marshal put it in 1816, and see if it provides for three great departments the executive, the legislature and the judiciary. The function of the legislature is to pass two laws subject to the maintenance of the sovereignty of the people. Our Constitution, like all democratic Constitutions, upholds the sovereignty of the people. Like the American Constitution, our Constitution in its Preamble begins with the expressive words : "We , the people of India, having .... ". We have universal suffrage. We can be sure that every man who can think will have the right to vote and contribute his share in the building of this great country. A broad-based legislature elected on adult franchise can express the will of the people and carry it out. Such legislature would make law in the real sense of the term because through the long evolution of the judicial process, we have come to the conclusion that law means the will of the people. In the olden days law meant the will of one man, later it came to be meant the will of the few, but now law really means the will of the people. Because we have adult suffrage, our legislature will express the will of the nation as a whole.

Then comes the executive. The executive that we have got is a strong executive with the President and the Prime Minister to aid and advise the President. Now, if you look at the American picture, the judiciary there has supreme power, and so is the position of the legislature in the British Constitution. Now, what happens in the British Constitution is that the legislature may pass any law for socialising property, but the services writ not carry it out. There is a split therefore between the legislature and the services. The legislature may pass any law, but it is open to the services to refuse to carry them out, and the legislature cannot dismiss the services. So the mere power to pass laws does not mean power to carry them out. In the American Constitution, the Congress may pass any law, but the Supreme Court will nullify it. There has been a rift there between the legislature and the judiciary and between the President and the Congress. The result was that from 1933 to 1936 there was a bitter struggle between the President and the Supreme Court, and between the President and the Congress and the President began appointing judges of his choice. There has been a conflict even over the removal of a Governor. There have been many cases for impeachment and removal of Supreme Court judges. Our Constitution has taken note of all these difficulties. We have got an executive with the President and the Prime Minister and that executive is responsible through the Prime Minister to the legislature. Then we have got a judiciary more efficient than the American Constitution provides for. In the American Constitution, what happens is that the President appoints judges and the complaint is that some of the judges are moral wrecks and absolutely worthless people have been appointed as District Judges. Some of the Supreme Court judges are not lawyer judges. They have not been appointed from the bar. They know not much of the law. Many of the appointments have been from the political viewpoint. As I said, inefficiency breeds arrogance and arrogance results in irresponsibility and irresponsibility gives rise to corruption and bribery. Our Constitution is really an improvement over the British and the American Constitutions because in all the three fundamental departments, *i.e.*, in the legislature which makes the law we have provided for the expression of the will of the people. We have provided for a strong executive with responsibility to the people. In the judiciary we have provided for independent, honest and efficient judges, and while the Supreme Court of America can nullify the will of the people, no such thing is possible in our Constitution. At the same time, no irresponsible action is possible by the executive or the legislature because in the Fundamental Rights, article 19, we have put in "Reasonable restrictions." If ever the executive or the legislature go beyond the reasonable sphere, then it is open to the Supreme Court to question the validity of the law. Much has been said that in the fundamental rights there have been too many restrictions put and that very little freedom left to the individual. I beg to submit, as I said in the beginning, that a Constitution is a child of the age. If you look to modern Constitutions, every modern Constitution has the impose of the economic and social conditions and the foreign policy of the land and of the thinkers and writers of modern age. The writers and thinkers that have moulded the modern age: The influence of Law and controversialists, of Rousseau and the idea of general will, of Bentham and the principle of utility, of Hegel, Owen and Marx. We have had for our guidance our own background, political, social and economic. Ours is not so much a case of freedom as a case of building up a State. The necessity of the present is to build a strong and united and prosperous nation. So taking that viewpoint, I find that there is only one thing lacking in our Constitution. We have got Fundamental Rights, a good number of them, but we have not got corresponding obligations of the citizens. Take the case of Norway, take the case of Russia, in all these Constitutions you find along with the Fundamental Rights, the fundamental obligations of the citizens. I wish very much that there had been a chapter in our Constitution on the fundamental obligations of the citizens. But all the same, I think that if we work and work hard, we can make our land strong and prosperous.

Shri Khandubhai K. Desai (Bombay: General): Sir, we are the Third Reading state of our Constitution and within the next few days we would have adopted this Constitution and presented it to ourselves and to the country. Naturally this is an occasion for mutual thanks giving and mutual gratification at the picture that we have been able to evolve after three years.

I must very frankly state before this House that quite a large number of us who have been returned to this Constitution Assembly to frame the Constitution had only got a few hazy notions about constitutions and we have got certain slogans, certain ideas, certain theoretical conceptions of what a constitution should be for a free Republic and, therefore, as far as I am concerned- I cannot say for others-this House has been a sort of school for me. I have learnt how constitutions can be framed so as to take into consideration the realistic situation. I am no constitutional lawyer and neither am I a technical lawyer and so I do not know whether the Constitution that we are presenting to ourselves will carry out the intentions with which we begin framing the Constitution but, Sir, there is one hope and it is this-that we have nearly, taken three years and when we have taken three years they were not the years of a static society. The society, the Indian community had been dynamic; changes were taken place and we have to incorporate those changes also in our Constitution and we were advised at the top by two of our greatest leaders who were really gifts to us by Mahatma Gandhi. They have learnt their lessons of both practical working and idealism at the feet of their great master and so during the last three years we have always got their guidance, their advice and invariably I should say we accepted their advice, when we were in difficulties. It has been stated on the floor of this House during the last two days by some that this Constitution is unitary and some say federal. I think it is none of the kind; it is neither unitary nor federal. It is something which suits our requirements. Why should we go by theories? It is something that suits our requirements. What are our requirements? Our requirements are to have a political structure which while keeping sufficient powers for the Centre in order to see that there is on economic or political collapse, at the same time it leaves initiative to the units. As to whether that intention has been carried out, I Sir, humbly feel that that intention has really been carried out. Somebody would ask me: "Why do you assert that? To that I would say: I do not assert that, but we have got fortunately in the making of this Constitution the Prime Ministers from the different Provinces who have taken full share in forging this Constitution. They at times quarrel with the Centre and the Centre sometimes quarrels with them and ultimately those people who were for centralization and those people who were for de-centralization came to some happy conclusions and we, as I said in the beginning, most of us do not claim to be either administrative experts or constitutional experts, and therefore, when these people have come to the conclusion that what they have agreed upon do suit their needs, we must accept that it is quite true. Moreover we have also to consider that we have gathered together here to frame a Constitution for one of the biggest Republics in the world and that also after the achievement of Independence through a unique process of non-violent democratic revolution. It is really a matter of gratification that we have been enabled to frame this Constitution in a peaceful and democratic atmosphere.

I was saying that we have been called upon to frame this Constitution as a result of one of the most unique incidents in the history of the world, that is the result of a democratic non-violent revolution and, as I said, we are really grateful that we have been permitted to frame our Constitution in the last three years without any obstacles, without any difficulties which faced other countries when they framed their Constitutions. We are therefore proud, Sir, that we have been able to frame a Constitution in a democratic and peaceful way so as to give to this country a Constitution which will bring democracy and an evolution through democracy which will suit the requirements of our country. This Constitution has to be pledged whether it will achieve our purpose or it will not achieve our purpose from this point of view.

After all what is this Constitution? This Constitution is a mechanism suited to our needs which we created to suit us and to implement whatever we have said in the Preamble, the Fundamental Rights and the Directives given to the Legislature. It has been stated that those things would not be achieved because some among us unfortunately still feel that adult franchise is a very big experiment. I do not understand why it is an experiment. If you do not want to give adult franchise then you would have to bring in all sorts of representations, you would have to bring the representation of labour, you would have to bring the representation of commerce, you would have to bring the representation of women, the representation of industry and also the representation of land-holding classes and what not. You cannot go in the old way of having different compartments, an adult franchise which is not something which is a sort of an experiments and in my opinion it is an essential part of the Constitution. Take away the adult franchise and you will have a Constitution which will be something which you would not like to look at. It is generally stated that there should not be adult franchise because there is no literacy. May I say, as one who is associated with the so-called illiterate people for the last generation, that the so-called illiterates have got a far better common sense of judging things than the so-called literates. That has been my experience throughout. Let us forget for all time now that those of us who have been fortunate enough to get our University education or secondary education are any way better than those who have not been able to get any literary education.

Dr. P. S. Deshmukh (C. P. & Berar: Genral): If anything, it has spoiled us.

Shri Khandubhai K. Desai: Then, Sir, what is literacy after all? Literacy is nothing but a little mechanism; common sense is there; the development is there; the literature is there. The experiment that has been tried in the province of Bombay in the matter of adult education is really succeeding. If you want to give them literacy, you can do so within three or four months. You need not teach them history; you need not teach them geography; you need not teach them the so-called moral and spiritual codes, because they know these things much better than you and I. After all, for whom are we working this democracy? Are we working this democracy for the two or three per cent. of the people who have been fortunate to get English education? We are really working this democracy for the remaining 97 per cent. and we must work this democracy according to their needs and requirements and not according to what you and I may have studied in the books. As I said when I came to this Constituent Assembly, I had very hazy notions of constitution making; but then who has framed this Constitution, I think it is not the constitutional lawyers though I must say that they have given us some education as good professors and teachers. How can we forget the almost teacherly attitude which Shri Alladi Krishnaswami Ayyar took while teaching us what is good and what is bad? How can we forget the most learned speeches which Dr. Ambedkar made before us? However, ultimately what has happened? After they have placed before us their brilliant exposition of their knowledge, it is the realists who came in the field, the administrators in the provinces, the administrators in the Centre, and forged our Constitution. The realists ultimately framed our articles. Therefore, what I say is that the Constitution which we have been able to frame today is really a good and workable constitution. There is nothing eternal. You have in the Constitution a clause making provision for amending the Constitution. If the future generations feel that there is some flaw, some shortcoming in the Constitution, there is a need felt for a change, they can surely change it. What is wrong there?

Sir, after I have said all these things about the good side of the Constitution, there is one thing about which I must say a word. Though according to my humble view this Constitution has more or less been framed on a realistic approach of the problems in our country, there is one matter in which all of us have failed to discharge our duty to the country. We have taken every realistic aspect of the country into consideration; but we have forgotten one realistic aspect, and that is the national wealth of our country. We have provided in the Constitution certain salaries and they have been guaranteed by the Constitution. I think the high salaries which have been guaranteed under the Constitution are unrealistic as compared to the national wealth of our country. The salaries and emoluments of the Government servants and the high national dignitaries should have some bearing to the national wealth of the country, because it is these salaries and emoluments which are going to set the standards for us, during the transition period, for the earnings and salaries or private persons and industry. I think we have lost this opportunity of setting down a proper standard. There is, as you know, nothing sacrosanct about the Rs. 4,000 or Rs.5,000 or 10,000 or 15,000. If a standard is laid down by the Constitution, and if we as the sovereign Body give a Constitution to the country laying down a standard, that in this country nobody shall get more than Rs.1,500 or Rs.1,000 then, everybody will be satisfied. The industrial magnates have to bring down their earnings; the commercial people would have to bring down their earnings and there will be no bickerings, no jealousy and no envy. If my Friend Shri Kanhyalal Munshi earns Rs. 40,000 or 50,000 or even a lakh of Rupees, he does not consume the whole of it. He wants a lakh of Rupees because there are some merchants who earn two or three lakhs. If once for all it is said that nobody would get more than Rs. 1,200 or 1,500, then these personal envy and jealously will go. Because, after all, you must understand that if you give Rs. 10,000 to your President, or Rs. 5,500 to your Governor or Rs. 5,000 to your Chief Justice of the Supreme Court, where is that money to come from? It is a sort of a cheque drawn on the national wealth and to that extent if it is not available from the national funds, somebody is to be deprived of that portion. Therefore, as I said, so far as this schedule of salaries in our Constitution is concerned, I think we have failed in our duty, But, the question may be asked, it could be changed by the future generations, it could be changed by the new legislature. Sir, it is very difficult particularly in the matter of these personal emoluments and other things which affect the high dignitaries who will be practically the fountain head of our State. Even the future generations, even the future legislature, if they want to change, they would have to think; not only would they have to think, but the President may feel awkward. Therefore, we have lost this opportunity. I want to express my resentment against this. The question was raised at another place; it was discussed, but we adhered to old set-up. This sort of mentality one cannot understand. We want to give away everything English; everything which we have inherited from the English was taboo; but one thing we must have; that is, the English standard of our salaries must be maintained. I think we would have done better to our constituents if we had left the things without deciding them. Future Parliament should have been left free to decide according to requirements.

Then, Sir, there is only one point and I would have done. Much has been said about civil liberty. Of course, our friend Professor Shah has his usual grouse against anything which theoretically does not suit this own mental makeup But when the question of civil liberty comes in, people talk of the individual civil liberty of those who want to take away the civil liberties of all men. Is it proper to allow somebody, as it is happening in Calcutta, or in some of the places in Andhra, in the sacred name of civil liberty, to exercise their individual civil liberty in order to take away the Civil liberties of millions of people and create fear among them? I think that is not civil liberty.

An Honourable Member: Criminal liberty.

Shri Khandubhai K. Desai: Under these circumstances, I feel that the provision that has been made in this Constitution for safeguarding the civil liberties of a substantial number of the people in this country is the proper direction in which our State should function.

With these words, I support the Third Reading.

Pandit Thakur Das Bhargava: (East Punjab: General): *[Mr. President, my heart is still with surpassing joy today when we have after centuries of slavery, this opportunity of giving the Third Reading to our Draft Constitution. I render thanks, Sir, to the Almighty God on this day loaded with destiny for having granted to us in His infinite mercy this opportunity of completing our work of giving a Constitution to our people. Next to the Almighty I feel, Sir, I must render thanks unto you for the inimitable manner in which you have conducted the proceedings of this House with dignity, impartiality, gravity and firmness. I feel, Sir, that this could have been done only by you and you alone. I do not doubt, in any case it is my ardent desire-that the day would come when the prophecy of the Pandit who had been called by your parents for performing the sacred ceremony of giving a name to you would be completely fulfilled. It is my hope, Sir, that the time is soon to come when the position, that your name suggests you should have, would be occupied by you. You are Rajendra that is to say the Lord of the Rulers, and you shall be, I hope, the President of the Republic for that office alone would make you the Lord of the Rulers and the Governors. I have no doubt in mind that this desire of us all shall be fulfilled soon. You will be Sir, in future the President of our country just as you have been the President of this Assembly, charged with the duty of giving a Constitution to this country, and I hope that you will be presiding over the enforcement and implementation of this Constitution with the same grace with which you have presided over its passage in this Assembly.

I would like, Sir, on this occasion to thank the other friends also who have helped us in drafting this Constitution. I would like particularly to mention Dr. H. C. Mukerjee who had presided over the proceedings of this House with great ability and tact at the time when you were lying sick and I offer my thanks to him. I do not know, Sir, the terms in which I should thank the Drafting Committee, particularly words fail to convey the gratitude that all of us feel for the legal acumen, the untiring industry, the consummate skill and the firmness, tempered with moderation, with which the chairman of the Drafting Committee has piloted this Constitution through this House and has solved all the knotty questions arising in connection with it. In view of the great public spirit manifested by him, I would appeal to Dr. Ambedkar-I regret he is not in the House today-who has so far considered himself the leader of the Scheduled Castes alone to join the Congress. He has made for himself a high position in our hearts and I do hope that he shall thereby be able to enter the circle of Congress High Command-a position which is much more significant and important than the narrow one he is occupying today, I must also render thanks to Shri Gopalaswami Ayyangar who is his own silent way came to our rescue and solved the knottiest problems which we have had to face from time to time in this House. The fact is that there are no adequate words in which I can express the debt we owe to him for the great work he has done on the Drafting Committee. I offer my thanks to Shri Munshi whose unique learning and comprehensive imagination has been our refuge on such knotty problems as the language question. Sri Alladi Krishnaswami Ayyar who is a distinguished jurist of our country has laid us under a debt beyond description by his learned contributions on points of law, and I can say that his complete mastery of constitutional law of all countries has proved a great asset to us all. I find no terms in which to praise the work done by our Constitutional Advisory Sir B. N. Rau, who is today in the U. N. O. but who even there is anxiously watching the progress of our work, in putting this Constitution into a proper shape. Again I do not know how I can fully thank our Friend Shri T. T. Krishnamachari, whose manners are so charming and who has, like Dr. Ambedkar laboured hard to give a proper shape to the Constitution, and who has exhibited a legal acumen which even lawyers which he himself is not, may envy. We have a feeling of deep gratitude for all the other members of the Drafting Committee who have made this Constitution whether small or great in the shaping of this Constitution.

I also express my thanks to the gentlemen who are occupying the chairs just below the dais, for the great pains that they have always taken in rendering every help to us. Mr. Mukherjee, who always came to us smiling, deserves our thanks for his sincerity, labour and learning with which he always helped us in framing the most complicated drafts that came before the Drafting Committee. Similarly we owe thanks to Mr. Jugal Kishore Khanna and others whom I do not know by name.

The Draft Constitution, for the Third Reading of which we have assembled here, is not, like other Bills, an ordinary document. It is a very important document. This document is not prepared by a country many a time and God forbid we may not have to draft it afresh in the near future. I would also like to extend my thanks, on behalf of the House, to the Press Reporters and the members of the staff who have in any way contributed in framing this Constitution. There are many honourable Members in the House whose untiring zeal and labour come to my mind on this occasion and I cannot pass on without expressing my thanks to them. In this connection, my friends Shri Kamath and Shri Shibban Lal Saksena deserve particular mention. The amendments that were so often moved by my Friend Shri Brajeshwar Prasad for unitary system, exhibited a perseverance and strength of conviction for which we shall ever remember him. We are grateful to our Socialist Philosopher Shri K. T. Shah who with his deep learning and with his exposition of a number of Philosophies has immensely enriched our knowledge. I must express my thanks also to Shri Sidhva, the famous advocate of the public causes, and the veteran grammarian Shri Naziruddin Ahmad, and Dr. Deshmukh who took great parts in the task of framing the Constitution.

It is quite possible the Exchequer had to incur a bigger expenditure on account of these Members. But, but for the labour they put in, our Constitution could not have been what it is today. One fails to understand why newspapers have adversely commented about them. But despite all they have said, it must be admitted that all these Members did their duties well so far as the work of Constitution making was concerned.

Now I would like, with your permission, Sir, to pay my homage to one of our senior-most statesmen, I have no words to express my devotion to him. From the speeches made by me in support of various amendments, the House as well you, Sir, must have become sure of the fact that I am not one who loves flattery. But what I am going to say is the truth and I express it because the feelings surging in my heart demand an outlet. It is impossible for me not to render my thanks publicly to Sardar

Vallabhbhai Patel. He has not sent in a single amendment but the fact remains that he has been the architect of our country all the same. He has solved all the problems so beautifully and skillfully that I think it will not be wrong to call him the architect of India. The House has, on occasions eulogised him for what he has done with regard to the problems of States. But I may be permitted to submit, Sir that there was another question equally important if not more, as the States questions, is with which the country was faced and Sardar Patel, the superb magician, solved with an ingenuity which would have appeared to us a fantasy but for it being a hard fact I am referring to the question of minorities. The British had left many cancers within our Polity. One of this was the cancer of minorities and separate electorates. It ultimately led to creation of Pakistan. The depressed classes complained that the Caste Hindus were depriving them of their right and demanded separate representation. All these problems relating to minorities have been solved by Sardar Patel with great skill, sagacity and ability. This is an achievement which, in my opinion, has no parallel in history. At the time when the Minorities Sub-Committee was formed, I could not even dimly see how we would be able to solve the numerous and complicated problems connected with minorities. But Sardar Patel filled the Minorities Committee with the persons belonging to minorities. You cannot but feel amazed as to how it was that the minorities Committee which was composed of a very large number of the representatives of the minorities and this would be evident even by a cursory glance at the long list of its members- could arrive at the unanimous decision that no separate electorate or reservation was needed by the minorities. There the Sikhs declared that they did not require separate electorates and reservations. The Members of the depressed classes also said that they wanted reservation only for ten years.

I may be permitted to submit, Sir, that it is only because of the work of Sardar Patel that we are able to hold our heads high and say that in our land of three hundred million people we will have adult franchise with one electorate. This is in itself a great achievement and great blessing for us. I must take the opportunity to offer congratulations not only personal but on behalf of the House to Sardar Patel who has achieved all this for us.

Sir, I am afraid, much of my time is over. I would now like to invite your attention to the most important matter that is to the Preamble of the Constitution. The Preamble is the most precious part of the Constitution. It is the soul of the Constitution. It is a key to the Constitution. It is a proper yardstick with which one can measure the worth of the Constitution. All the 395 articles of the Constitution have to be measured with the yardstick of the Preamble and such provisions as stand the test of the Preamble are good and others should be taken as worthless. The fact is, Sir, that our Jawaharlal is to us, what this name, suggests, a precious jewel. It is no surprise therefore that the Preamble which was drafted by him is also a jewel set in the Constitution. It is a superb prose poem, nay, it is perfection in itself. It is why my honourable Friend Kamath failed to introduce his God into it, for in a perfect thing there is no scope for addition or alteration.

Sir, I would like that we examine all the provisions of the Constitution by this touchstone of the Preamble and thus decide whether the Constitution is good or not. I submit, Sir, that the Constitution that we have been able to produce after the labours spread over three years, is certainly one of which we can well I be proud, which can claim to be quite a good one. I do not deny that the Constitution has certain lacuna to remove which we have all along been struggling, but I have no hesitation in saying that the Constitution as a whole is quite good and that it can be ranked among the best Constitutions of the world. It is true, as has been observed by an Englishman, that a people get the type of government they deserve. This saying applies also to the Constitution we have given to ourselves. The Constitution provides us free scope for progress. This Constitution, however, cannot be taken as an ideal one and we would most certainly have occasions to improve it.

Now, Sir, before I bring to your notice the defects of the Constitution, I would like to draw your attention to one thing. The English people had put in our minds the idea that we should have purely a federal type of government for our country. At the time of the Round Table Conference the question arose as to the type of the government we should have for our country and the conference decided to have the federal system. I remember the day in 1927 when during the sitting of the All Parties Conference our respected old leader Shri Vijay Raghavacharya insisted that we should have a unitary system of government for India. He is no more with us but his vivid figure is still fresh in my memory and I am glad that this Constitution would have given him immense pleasure if he could have seen it. This unitary-cum-federal system of government provided in the Constitution, must have satisfied him. I admit it is not purely a unitary Constitution. We have, no doubt, taken in it many of the provisions of the Government of India Act. We did so far we have to work on the lines of various provisions of the Government of India Act. We did so far we have to work on the lines of various provisions of the Government of India Act in our present circumstances. But the Constitution that we have prepared as a solution to out problems cannot be said to be based on the Government of India Act. Our Constitution is unitary-cum-federal and the country needed this type of Constitution. I am really very glad that we have been able to prepare such a splendid Constitution with unanimity. It has given the Centre very wide powers- powers that were in fact needed by it. Though we have made the centre strong and overstrong but yet I may be permitted to submit Sir, that the logical conclusion of this course has not been given any application in other provisions of the Constitution. It is so, because we have had the experience of the conditions obtaining in the previous Government and their memory is still haunting our minds. No doubt there are provisions in the Constitution under which the Centre may, if it so likes, suppress the provinces in various ways. I consider that a merit of this Constitution. Some of my friends have said that fundamental rights imply corresponding duties. Applying the same reason if they argue the duties of the Centre would also be as numerous as its powers, I have no doubt that it would be the duty of the Centre under this Constitution to prevent external aggression and internal disturbances. But in exercising its powers under article 356 it would not by itself be sufficient for the Centre to issue directions to the Provinces. It would also have to see that the arrangement proposed in the directions is one which is to the liking of the government or the Legislature of the provinces concerned, In my opinion there should be a Minister in the Centre who is charged with the exclusive duty of watching over the government and the administration of the provinces. In my opinion this would may be assigned to the Prime Minister, but if it is not possible to do so a Ministery without Portfolio maybe appointed for that. And then we should have at Centre an exclusive Minister to look after the work of social reforms also. Many other similar arrangement have to be made to provide for all these requirements.

Now I would like to draw your attention, Sir, to a few minor things embodied in the Constitution. India has, no doubt, recovered herself; we have got our ancient India now. As regards the name of the country the term India that is Bharat" has been laid down in the Constitution and some of my friends objected to this term. As for me, I have no serious objection to it. It is a fact that we cannot live in isolation from the rest of the world; We have centuries old connections with England and the rest of the world. The world will always know us by the name of India. But so far as we are concerned, in our hearts and souls our country shall always remain as Bharat. So the term India and Bharat have been bracketed in order to meet the need of our countrymen as well as of the outsiders. The world will call us as India and we ourselves will call us as Bharat. Thus there will be blending of the East and the West.

Our provisions relating to citizenship are very generous and they extend citizenship not only to persons having domicile in India but also to five or six millions of persons who having been uprooted from Pakistan have migrated to India. Even the persons who had migrated to Pakistan but have again returned back to India under a permit for resettlement, have been made citizens of India. No doubt in their case, legally we should have waited for five years but In think it matters little that they had left India, and if they want to resettle here we can given them the citizenship of our State, for originally they had their domicile in India. As far as the Fundamental Rights are concerned, the House knows it well that I have always been fighting for them. The House, by accepting my amendment regarding the addition of the word "reasonable" in article 19 has made it justifiable. The Fundamental Rights and the Directive Principles-both these are the soul of the Constitution. We can no doubt establish the Ramraj advocated by Mahatmaji unless we make the Fundamental Rights and Directive Principles our guiding State and work according to them. The decision, that the House has adopted them is certainly a milestone to our progress. We have achieved our ideals to an extent through Fundamental Rights and the rest is to be achieved through Directive Principles. We have not got the Fundamental Rights in full. Though the Constitution has accepted the right to equality and has also abolished untouchability but still it has not conferred on us the Fundamental Rights in full.

With reference to the Preamble again, I may submit, Sir, that the most important thing that it contains is the ideal of "the dignity of the Individual and Unity of the Nation." In this high ideal, Sir, there is no room for narrow provincialism and communalism. Right to equality before law , has been embodied in Fundamental Rights and our Preamble contains the lesson that the dignity of the individual and the unity of Nation must be held high. No difference, whatsoever, on grounds of religion, caste and region has been recognised in the Constitution. The Fundamental Rights are general rights and every citizen is equally entitled to them. No discrimination can be made in respect of these rights. We shall expand these rights further in due course. I fought had for it in the party. I know these are not as comprehensive as they ought to have been. However, I need not be sad on that account. The words "reasonable restrictions" are there in article 19 and they imply that these can only be curtailed by due process of law. Neither the Government nor the legislature can with hold the rights granted under article 19 and the rights of the people are safe under this article. I am really thankful to the Chairman of the Drafting Committee, Hon'ble Dr.Ambedkar, that he agreed to my amendment regarding the insertion of the word "reasonable" in article 19. So also we have gone a long way in regard to the rights granted under article 21 and 22. There is no doubt that sufficient rights have been given to the people under Fundamental Rights but at the same time this also cannot be denied that we could not have as many rights as we wanted to have. No such rights were given under the Government of India Act. In England Fundamental Rights have not been incorporated in the Constitution and this only can be possible here. only when the people develop the mentality that is found in other free countries. But with Fundamental rights we have certain duties also as citizens. I hope we know, our India and our culture and there is no doubt in my mind that we are going to make progress in future and nothing but progress; I hope, Sir, that our sacred country will never fall again. Our country is going to make rapid progress in future and every citizen is sure to have his full rights.

I may now make a brief reference to the Directive Principles. I would like to submit, Sir, that they are a source of immense pleasure to me. My friend Hon'ble Shri Lakshminarayan while criticising the Directive Principles for their restricted sense, stated yesterday that there is no provision for charkha for cottage industry and for prohibition in them. May I suggest to my friend Mr. Sahu to read article 36 to 51 of the Directive Principles? He will find that provision for all that he wants is there. Provision for prohibition is there, provision of cottage industry is there. I may submit Sir, that the Directive Principles contain all that is needed to raise the dignity of the individual and bring about the unity of the Nation. The amendment relating to cow protection that came in the last session was an agreed amendment and the whole country was in favour of that and shall always stand for that. This is not the only question underlying that amendment that the Hindus and the Muslims both regard the cow to be very useful and that they have always been of that view it contains mainly the view-point of the Drafting Committee and I am glad that the House ultimately removed the lacuna that was in the original article.

Now I may be permitted, Sir, to come to the other salient feature of the Constitution. Our Constitution has given to the Supreme Court not only such rights as our former High Courts enjoyed but I claim that the Supreme Court has been given wider powers. The Supreme Court would have more unrestricted powers with regard to the safeguarding of the public rights than any former court had. I would submit that under the Constitution the Supreme Court has been given the same criminal jurisdiction that the Privy Council has at present. The Supreme Court has been granted full powers and it may widen them daily by case law. There is no doubt in my mind that the civil liberties that have been given under the Constitution are in no way less than what other countries have. Sir Alladi Krishnaswamy wanted that the principle of due process should not be applied in this sphere. But I am glad that more than 75 per cent. of the principles has already been accepted. Our Constitution provides for the institution of an independent Comptroller and Auditor General and therefore the accounts of the Union will be audited and examined in a more independent manner and no money will be allowed to be spent without due authority. Similarly provision has been made in the Constitution for the establishment of Public Service Commission and various States Commission, that will work under the supervision of the Public Service Commission. I am glad that all these institutions have been given more independence under the Constitution than what they formerly enjoyed. In respect of every matter we have provided for a Central body and have also provided for a corresponding body in provinces. The Constitution has provided for Legislatures and a responsible government in States. So far as the Governors are concerned they will be nominated once, for in unitary system elected Governors do do not fit in. So we find that the mistakes we had made in providing for elected Governors in the original Draft has been rectified in the Constitution as it stands today.

No doubt the time of three years taken by Assembly in preparing the Constitution is a long one but we have made great achievements during this period which I am afraid are not properly assessed by many people. If we had passed the Constitution soon after the Assembly sat in 1946, most of the ills that we had inherited from the British Government as legacy-for example, separate electorate, the existence of 562 independent States-would have remained embodied in the Constitution.

I do not agree with those who subscribe to the view that our standard has fallen down. Rather I feel that our standard of living is much more higher than what it was formerly. Today we are able to witness this glorious occasion. What I mean to convey is this that our Constitution embodies every such provision as it needed by us. While we have embodied in the Constitution provisions for taxation, we have also provided for the appointment of a Fiscal Commission in future to examine the finances of our Union and I hope the Fiscal Commission is going to be appointed shortly. In fact I do not find anything for which no proper provision has been made in the Constitution.

I do not want to take much time of the House, Sir, therefore I am now going to conclude my observations with the remark that Constitutions are only a piece of paper and they by themselves cannot enable us to achieve our ideals. It is the spirit with which the Constitutions are framed and with which they are worked that enables a nation to achieve the objective underlying its constitution. Therefore, on this occasion, Sir, when we are going to pass our Constitution, I would like to impress upon the minds the Members who will be appending their signatures to this document on the 26th of January, 1950, that their task is not over by simply preparing the constitution-but their real task is ahead. It is for them to work the Constitution in such a manner as may enable the people to have real freedom, happiness and prosperity.

Now, with your permission, Sir I would like to refer to only one more matter. It is very dear to me. We have given much to Scheduled Castes. We have provided reservation for them. We have embodied in the Constitution article 335 wherein assurance has been given to them in regard to services; we have provided facility for reservation for them in services under article 16. But I hope we will have not to see the day when the Government reserves posts for them. If we really want to establish here the classless society of Mahatma Gandhi, every one of us who signs the document of the Constitution must do so with the determination rather the pledge, that he must bring the depressed classes at par with him within ten years. He will be false to himself who signs the Constitution but does not work according to its principles.

I offer my thanks to you, Sir, and to the members of the staff of this Secretariat who have contributed in the preparation of this Constitution as also to the Members of the Assembly. May God grant us the sense and courage to serve our country on the lines the Father of the Nation and our other respected leaders have laid down.

Mr. President: Before we adjourn I want to draw the attention of honourable Members to something which happened a little while ago when an honourable Member wanted to draw my attention to a certain fact. I wish honourable Members will take note of that fact. I expect that Members are interested in the speeches of others more than in their own. They should at least sympathise with me who has to listen only to other speeches and never to his own and if for nothing else at least I hope they will be able to be here throughout the session, so that we may not have any such complaint again.

The Assembly then adjourned till Ten of the Clock on Saturday, the 19th November, 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME XI

Saturday, the 19th November 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION-*(Contd.)*

Mr. President: We shall now continue the discussion. Mr. Kamath.

Shri H. V. Kamath: (C. P. & Berar: General); Mr. President, I rise to extend my limited and qualified support to the motion moved by Dr. Ambedkar. We, Sir, the people of India have come to the end of a long journey which is, however, the beginning of a longer, a more arduous and a more hazardous one. Through several decades of struggle we have reached the goal of freedom. During those decades we passed through many vicissitudes of fortune and were guided by leaders many of whom are not among us today. True to the Indian genius our struggle, our awakening, began with a spiritual renaissance which was pioneered by Ramakrishna Paramahansa, Swami Vivekananda and Swami Diyananda. In the wake of those spiritual leaders came the political renaissance and the cultural renaissance of which the torchbearers, the leaders, the guides were Lokamanya Tilak, Aurobindo and Mahatma Gandhi and, last but not the last, Netaji Subhash Chandra Bose. Thanks to Providence, leaders of those days, leaders like you, Sir, and Pandit Nehru and Sardar Patel, are still with us to lead us to the goal which Mahatma Gandhi had in view. The goal that Mahatma Gandhi had in view has not been reached and to lead India to that goal is the mission, is the task of this Assembly and of the people of India today.

The whole of India took part in that glorious struggle for freedom. In the extreme North, in Kashmir, my honourable Friend, Sheikh Abdullah took part, and a valiant part, in that conflict. In the North-West of India, which unfortunately has been severed from us today, Khan Abdul Ghaffar Khan and his brother Dr. Khan Sahib were in the forefront of the national struggle. That part of India is no longer with us, but our hope and our faith is that whatever the differences between the part that has gone from us and the part that still remains to us, those differences will be removed, will be smoothened and our relations will become happier day by day, and Pakistan and India will live on the most cordial terms as years roll by.

It is unfortunate that this Assembly is still not a complete Assembly. Two of the units of our country, Vindhya Pradesh and Hyderabad, are still unrepresented in this Assembly. I hope that the Members from those two units, Hyderabad and Vindhya Pradesh, will take their seats in our midst before this Assembly winds itself up in January.

The Constitution that has been settled by the Assembly, I may describe as a centralised federation with a facade of parliamentary democracy. We have drawn up a very elaborate Preamble, but without the invocation of God, to me, Sir, it is like sounding brass and tinkling cymbal. We have proclaimed the immutable principles of justice, liberty, equality and fraternity in the Preamble but if we turn inside, if we go through the Constitution we will find to our chagrin, to our sorrow that these principles have been watered down to a considerable extent. Many of my friends here tried to improve the Constitution according to their best lights and some of us did succeed in some degree. God did ultimately find a place in the Constitution though only in the form of the oath to be taken by the various dignitaries of State. My friends whom I would like to particularly mention today, Prof. Shibban Lal Saksena, Dr. P. S. Deshmukh, Shri R. K. Sidhva, Shri Mahavir Tyagi, Pandit Thakur Das Bhargava, Mr. Naziruddin Ahmad, Prof. K. T. Shah, Pandit Hirday Nath Kunzru and Shri Brajeshwar Prasad and lastly, my humble self, all tried in our own way to make the Constitution conform to the Preamble; but I found that the horoscope of the Drafting Committee was strong. I found, Sir, besides the nine planets and also the tenth Dasamagraha there were two in one which obviated the malefic influences of the other planets and those planets were Pandit Nehru and Sardar Patel. There is an astrological sutra which runs Kim Kurvanti grahah sarve yasya kendre Brihaspati. On account of the presence of Brihaspati in the 'Kendra', the effect of the other planets came to very little, It did not amount to much.

Pandit Balkrishna Sharma (United Provinces: General): Who were the Rahu and the Ketu?

Shri H. V. Kamath: I leave it to Pandit Balkrishna Sharma to decide who they were.

I was saying that this Constitution is a Federal Constitution with a facade of Parliamentary democracy. Mahatma Gandhi wanted India to be a decentralised democracy. He told Louis Fischer, the eminent American publicist some years ago that "there are seven hundred thousand villages in India each of which would be organised according to the will of the citizens, all of them voting. Then there would be seven hundred thousand votes and not four hundred million votes. Each village in other words, would have one vote. The villages would elect the district administration; the district administrations would elect the provincial administration and these in turn would elect the President who is the head of the executive. Louis Fischer. to whom he propounded this plan, interjected": 'That is very much like the Soviet system'. And Gandhiji replied: ' I did not know that. I do not mind.'

Sir, for good or for ill,-I hope for good-we have deviated from his plan and we have evolved a different plan, partly because we are passing through a difficult transition period. A time will arrive when India is stabilized and strong, and I hope we will then go back to the old plan of the Panchayat Raj or decentralised democracy, with village units self-sufficient in food, clothing and shelter and interdependent as regards other matters. I hope we will later go back to that Panchayat Raj Sir, to my mind the only system that will save India and the world is what I may call spiritual communism; I have in mind not the communism of the materialist brand. I have in mind spiritual communism. That is what Gandhiji had in mind when he based his conception of the future form of Government on the spirit of Divinity controlling human affairs. This meant spiritual communism. That alone will save the world. Today, in the conflict between the atom bomb and the *atman* it is only *atmashakti*" that will prevail.

Now to go back to the preamble and the Constitution, I find that so far as justice is concerned, the Constitution amply provides for those who adorn the seats of justice. They are better provided for than those who will resort to the Temples of justice. The Drafting Committee had a soft corner for those eminent dignitaries who will preside in those Temples of justice and not to the humble votaries in the temple. As the Constitution was drafted by lawyers, perhaps it was inevitable that it should be so, as in the Sanskrit sloka Nalikagatamapi kutilam na bhavati saralam shunah prichham. The lawyers' bias could not be avoided and therefore it is that in the Constitution the judges have been unduly pampered.

Again we and the emergency provisions and article 22-I do not know how the latter found a place in the Fundamental Rights,-the right of a person to be detained without trial for three months or more. These provisions water down the principle embodied in the Preamble regarding individual liberty. They have fettered individual liberty. Let me make it clear that I am not a champion of absolute individual liberty. I want individual liberty only in so far as it does not jeopardise the security of the State. With that end in view I moved several amendments. They were not accepted. Then as regards equality, we find that there are some provisions which confer the same equality as we find between a cat and a mouse, of a horse and an ass. As regards fraternity, I feet that we have shown fraternal love and regard for the permanent services, especially the higher services as well as the high dignitaries of State to whom I have ,already referred. I do not think I am exaggerating when I say that we set out with good intentions to make a vinayaka, but it turned out to be a vanara as in the Sanskrit proverb:

Vinayakam prakurvano rachayamasa vanaram. The Vinayaka that we have made resembles the image of a monkey more than the image of God Ganesh.

With all that, there are some very good features in the Constitution. That is why I welcome it partially.

The provisions regarding the integration of States for which the credit goes entirely to Sardar Patel, and the provisions regarding minorities which are there mainly due to his efforts are all very welcome. Then there is the provision regarding property. We have not made it absolutely justiciable. That is again another good feature of the Constitution. We have guaranteed religious freedom. This is another important thing. We have settled the language question satisfactorily. Then, as referred to by me already, there is the question of the oath. God has been invoked in the oath to be taken by the dignitaries of the State. Then there is provision for village panchayats in the directives of State policy. Though Dr. Ambedkar at first stigmatised the villages as senks of superstition and ignorance or something like that, it is good that we embodied in the Directive Principles the salutary provision for village panchayats. These are all good features and I welcome them wholeheartedly. Then we have abolished titles,-those vulgar distinctions. Untouchability which has been a canker on Hindu society has been abolished. But other features are there which mar the harmony and the beauty of the Constitution. As I said, we are going to have parliamentary democracy in this country. I hope it will work. Unfortunately we have several handicaps in our country; our fissiparous social system with divisions based on caste and sub-caste, creed and religion and notions of superiority and inferiority and strong antipathies and jealousies which form an integral part of our psychological set-up. These impede the cultivation of a democratic outlook, and permeate the very air we breath. These factors operate sub-consciously rather than consciously. Again, Sir, of the innumerable points of contact between the citizen and the State, each a battle-ground of democracy, only a microscopic proportion will fall within the jurisdiction of the courts, though vastly extended in the Draft Constitution. They, to my mind do not furnish the complete mechanics of democracy. They do not solve the problem of taming power, I hope, Sir, that the democratic spirit of the people who work the Constitution will be adequate to the task. The Constitution itself is only dry bones. After all, it is we, the people of India, who will have to infuse life into these dry bones of the Constitution. I hope it will be worked in a spirit of co-operation, in the spirit of making India, a great nation, making it great beacon light to the whole world, under which will gather all the nations of the world to learn the ancient yet ever new gospel of India, the gospel of peace, harmony and love, bathed in the refulgent light of a Himalayan dawn. I would like to make a suggestion about the ceremony we are going to have on the 26th January 1950. I would suggest, Sir, that the Republic should be proclaimed not at midnight as was done in August 1947, but just before sunrise as is the custom in our Indian tradition, sometime during the first prahar before sunrise which is called Brahm Muhurta. Between three and six that morning we should proclaim the Republic and inaugurate the Constitution. If we do it just before sunrise, I think it will augur well for the future of our country.

I would only say one thing more, Sir and that is this: that we the people of India, will not forget our spiritual genius and our ancient traditions. It was Swami Vivekananda who said that the day India forgets God, the day she discards spirituality, that day she will die, that day she will cease to be a force in tee world. I hope we will keep alive our traditions in spite of the fact that we lightheartedly forgot to invoke the name of God in the Preamble. Yea, let us work this Constitution in the spirit of divine guidance, under divine grace and blessing. It was Mahatma Gandhi who all in his prayers prayed.-

'Sabko sanmati de Bhagawan'

Swami Vivekananda exhorted India to rise and chanted the Vedantic Mantram.

Uttishthata jagrata prapya varanmibodhata

Awake, Arise and Stop Not Till the Goal is Reached

We have reached our goal. Yet we have got to reach a higher goal, and let us address ourselves to that task and bend our energies to the attainment of that goal, so that in this ancient land of ours the common man-after all a Constitution is only for the good of the common man that is its touch stone,-the ordinary man may have his life and have it more abundantly. It does not matter how many Ministers you have, how many Governors you have, who you win have as President. These do not matter ultimately. A Constitution will live or die in so far as it caters to or hinders the happiness, the life and the liberty of the ordinary man, the common man. It is in his name that we have framed this Constitution; it is in his name that we have struggled for freedom, achieved it and assembled here. Let us work this Constitution in his name,. let us go ahead in his name under the blessings of the Almighty and under His guidance, and with the full cooperation of the people of India. Let us strive to reach the goal envisaged by Mahatma Gandhi and all our prophets, sages and seers, the goal .I would not call it, of Sadhunam-Rajyam or the Kingdom of God on earth; I would simply call it Panchayat Raj. We who are assembled here, let us resolve that we shall not rest till we have achieved that goal which has animated the whole nation for the last sixty years or more, and which I hope will continue to inspire us during the difficult days to come. Jai Hind.

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, May I know if there is any chance of any of the points raised in the speeches of different honourable Members being accepted and introduced into the Constitution now? if there is no chance, then the whole thing is a farce and I do not find any use, at all of this general discussion.

Mr. President: I may inform the Maulana that under the rules there is no room for any further amendments at this stage. I shall have to put the motion at the end to the vote.

Shri Mohan Lal Gautam (United Provinces: General): May I know whether the Maulana is a party to this farce or not?

Maulana Hasrat Mohani: I am not. I have not given notice of any amendment on this occasion. I shall simply oppose the whole thing.

Mr. President: I thought you were not going to speak.

Dr. P. S. Deshmukh (C. P. & Berar: General): May I draw your attention to the word used by the hohourable Member and request you to ask him to withdraw the word he has used.

Mr. President: He said he was not moving any amendment. Did he say anything else?

Shri S. Nagappa (Madras: General) : The word "farce" that he used is objectionable.

Mr. President: Maulana, that word is objectionable, Members object to it. This is not a farce anyway.

Maulana Hasrat Mohani: Very well, I withdraw the word.

Seth Damodar Swarup (United Provinces: General): *[Mr. President, the Second Reading of the Drift Constitution has ended and the Third Reading is going on which will also conclude in three or four days. After that the inauguration of this Constitution will be held over till the historic day of the 26th January. All this is good and for that the Honourable Dr. Ambedkar and his other colleagues of the Drafting Committee deserve the congratulations of the whole House, because they have drafted this Constitution with great skin and labour.

Sir, ordinarily it would be expected of me who is a Member of this House that I should have a feeling of satisfaction for the successful completion of our labours. But Sir, permit me to say that at this moment when I am speaking on this Constitution in this House, far from having any sense of satisfaction I am feeling extremely depressed. The fact is that it appears to me as if my heart were sinking at this moment and a slow palsy is overtaking me. This is due to my realisation that in spite of the fact that the British rule ended more than two years ago, the misfortune of the country and its people is that they have not yet perceived in the least any improvement in their conditions as a result of this change. I am afraid that the masses instead of finding any improvement in their lot are beginning to suspect that their lot is becoming worse as a result of this political change. They are unable to perceive as to where all this will end. The fact is that the general public, in whose name this Constitution has been framed and would be passed, sees only despair and darkness around them.

Mr. President, some of our friends thought that so far no change has been apparent in the condition of the general masses, because so far the Constitution and the laws framed by the British Government are in force. They believed that when our Indian constitution is ready, the masses would definitely feel that they are on the way to progress.

But, Mr. President, I wish to be excused for placing the hard reality before you. The people of this country would not at all be satisfied or happy even after this Constitution is completed and enforced. Because what is there for them, in this Constitution, as it has evolved now, and is soon going to be enforced? You may go through it from the beginning to the end, you will not find anywhere in it any provision for bread for the poor, starving, naked and oppressed people of India. What attempt has been made in this constitution for solving their day to day problems ? Besides this, it does not contain any guarantee of work, or employment for them. Far from ensuring to them wages according to their work, there is no guarantee in it even for a living wage even for a minimum wage and payment for subsistence.

In these circumstances, Mr. President, even though this Constitution may be the biggest and bulkiest constitution in the world, may even be the most detailed one, it may be heaven for the lawyers, and may even be the *Magna Charta* for the capitalists of India, but so far as the poor and the tens of millions of toiling,, starving and naked masses of India are concerned, there is nothing in it for them. For them it is a bulky volume, nothing more than waste paper. It is a different matter whether we accept this fact Or not, but we would have to admit that even if we ignore the views of the public, we would have to pay attention to the opinion of the great people.

I wish to invite your attention to the opinion of the honourable the Speaker of our Indian Parliament. He says that constitution that has been framed does not at all contain any shade of Indian genius, and is quite contrary to that. If I am not mistaken the General Secretary of the Congress, Shri Shankarrao Deo has also expressed his views about this Constitution in this House. He says that this Constitution is bound to be rejected if a referendum is taken. So even he leaving aside the views of the general public about this Constitution and only taking into consideration the views of such respectable people how can we claim, that the public will be satisfied with it?

Mr. President the reason is clear. This Constitution has been framed by the people who are not the true representatives of the general masses. I have stated previously that the framers of this Constitution at best represent 14 per cent. of the Indian masses. This is a bitter fact. We, who are here in this House as the representatives of the public have failed to fulfill our duty for which we had assembled here due to various reasons and causes such as party politics. It is for this reason that the people of India are particularly faced with disappointment again, as they had seen after the change of Government. Then, we have to consider, what is in store for us? There is no doubt that the Indian masses will never accept this Constitution in the words of respected Shri Shankarrao Deo. This Constitution cannot work permanently in this country.

We have seen that there are some good things too in this Constitution and some nice principles have been enunciated in this, e.g. there is a mention of general franchise and joint electorate, abolition of untouchability. But so far as the principles are concerned, they may be, quite all right. But how far they would be enforced in practice, will be seen when they are put into practice. We see that the mention of Fundamental Rights in the Constitution is a significant matter. But Mr. President, have we really got some Fundamental Rights through this Constitution? I can say emphatically that the grant of Fundamental Rights is a mere farce. They have been given by one hand and taken away by the other. We have been told in plain words that this guarantee about the fundamental rights will not apply in the case of the Acts at present in force, and in respect of libel slander, or contempt of court and the Government is authorised to enact such laws even in future. Besides this, so far as the right of association or the right to go from one place to another is concerned, the Government will have the right to enact any law to take away these rights in the name of public interest so the grant of Fundamental Rights is a farce.

Then, Mr. President, we see that the law regarding property is identical with that contained in the Government of India Act of 1935. The result would be that it would be impossible to nationalise property and there would be many obstacles in effecting such economic reforms as may be in the interest of the public.

Mr. President, it is a matter of surprise, of pain indeed, that while speaking on the Objective Resolution our Prime Minister had said emphatically that he was a socialist. He had also expressed the hope that the Constitution would be of a socialist republic. We listened to all his speech, but when the amendment seeking to add the word 'socialist' with the word 'republic' was moved in the House, it was rejected.

Mr. President, on the one hand we desire that today's social structure should be maintained without any alteration, and on the other hand we also wish that poverty and unemployment should vanish from this country. Both these things cannot go hand in hand. While in America our Prime Minister said that socialism and capitalism cannot go hand in hand; it is surprising as to how it can be expected to maintain *status quo*, to maintain capitalism and also to remove the poverty and unemployment of the masses. Both these things are quite incompatible. It is felt therefore that starving, naked and oppressed people of India would perhaps continue to be in the same misery as they are today. Besides this even viewing this from other points of view too we do not arrive at any happy conclusion. Nowadays there is a lot of talk about co-operative commonwealth in our country. But what is the actual fact? It is no direction to say in the Directive Principles that the Governments would establish any such thing. To give directives in round about words is different from giving clear directive for establishing such a order. Still the Congress President wants us to cherish the hope that a classless society will be established in this country within five years. A layman like me is however unable to understand as to how to reconcile the two statements, the one that we hate socialism and want to maintain the *status quo* the other that we wish to establish a classless society in our country while preserving the exploiting group. I cannot see how these two objects which are mutually opposite can be realised. Besides this there are several minor things which could be accomplished but have not been done.

The demand for the separation of the executive and the judiciary is a very old one- perhaps as old as the Indian National Congress is believed to be. But this Constitution does not contain any definite plan, any adequate provision to separate the executive and the judiciary as soon as possible.

Looking at States, I can say that no decision has yet been taken to end the Jagirdari system. The result would be that millions of peasants of the States would continue to be slaves of the Jagirdars. Besides this, the farm labourers would continue to be the slaves of the money lenders. Along with this we see that this Constitution contains so many things which are far more reactionary and backward than the provisions of the Government of India Act of 1935. It was provided in the first draft of this Constitution that the Governor would be elected direct by the voters. Later on another proposal was made saying that the Government would be appointed by a panel. But now the President has been given the right to select the Governors and also to fix their tenure of office himself. It is right that the President will as far as possible use his right properly, but this may lead to a tug of war between the provincial government and the Governor. It is just possible that the provincial Government may have a different ideology from that the Central Government and that conflict in ideologies may lead to conflict between the provincial government and the Governor. Besides this the discretionary powers of the Governor are even more reactionary than those contained in the 1935 Act. The Act of 1935 gave the powers of individual judgment to the Governor but it was essential for him to consult the cabinet. But now the Governor need not consult the cabinet regarding the discretionary powers. So, we see that in respect of Governors and three powers too we have gone backward instead of advancing forward.

Again the President has been given greater powers than necessary in the name of emergency powers, and the centre too has been given greater powers to interfere in the provincial affairs more than necessary. Our Constitutional structure is federal in name, but so far as the administrative sphere is concerned , it has become completely unitary structure. We do realise that centralisation is to some extent essential, but over-centralisation means more corruption in the country. Mahatma Gandhi advocated decentralisation throughout his life. It is surprising that we have forgotten that lesson as soon after his departure, and are now giving undue powers to the President and the Central Government .

Mr. President, the structure of a modern State is generally based on division of powers, between two compartments- Provinces and the Centre. This system is already over-centralised. If we wish to end corruption, bribery and nepotism, the system of two compartments does not seem to be appropriate. For this we needed a four - compartment system. As I had once proposed, there should have been separate village republics, separate city republics and separate provincial republics and they should be federated into a central republic, that would have given us a really democratic federal structure. But as I have just said we have framed a unitary constitution in the name of a federation. This would essentially result in over centralisation , and our Government which ought to have been the Government of the people, would become a fascist Government. So from this point of view as well, Mr.Persident, we arrive at the conclusion that the Constitution framed for our country will neither lead to the welfare of our country nor to the protection of those principles on the basis of which we have ostensibly proceeded. This seems to be the reason why the socialist party of India has declared that if and when they happen to capture power, the first things they would do will be to set up a new Constitution Assembly on the basis of general franchise and that constituent Assembly either change this whole constitution totally or would make necessary amendments in it. Mr. President, I would therefore not take any more time of the House and would only say that from the point of view of the interest of the people, high constitutional principles, this Constitution does not deserve to be passed. We should reject this Constitution. But Mr. President we may do it or not, I would submit, and fully believe in what my respected Friend Shri Shankarrao Deo has said, that even though we may accept this Constitution, the people of the country will never accept this. For them this Constitution would not for of greater value than other ordinary law books. The hopes of the people for the Constitution would remain unfulfilled just as they had remained fulfilled by the change of Government. If, therefore, we wish to retain the confidence of the people, there is still a change to do so, but if we do not succeed in this task, I am sure, Mr. President, the masses of India and the posterity too will not remember us by any good or respectable name.]*

Shri T. Prakasam (Madras: General) : Mr. president, Sir, this is not the Constitution which I expected for the people of our country, the Constitution which I was expecting along with many others who have been labouring for attaining the freedom of this country, the constitution planned out by Mahatma Gandhi, not only planned out, but also endeavoured to be put into practice Panchayat Raj was the one which he planned out and recommended to the nation. Before his advent and before his programme was placed before the country nobody ever dreamt that the people, divided as they were in every respect, would come together under our leadership, under one banner, and carry out the orders given by him and the Congress. He was the one man who should have been framing constitution, a simple Constitution for the people of this country that would give relief to all, to the millions. His plan was to educate the millions and to make the fight carried on by them to attain freedom ever since he set his foot on this country after coming from South Africa. You know more about Mahatma Gandhi than myself or than anybody else in this country and you, Sir, were good enough to send a reply while the drafting of the Constitution was in progress, to a letter written to you by one ardent constructive worker, an advocate, an educated man who has spent his time in the villages for a good time. In that letter he suggested about this Panchayat organisation of Mahatma Gandhi and you replied to him in detail and you were impressed by that because you were one of the foremost followers of Mahatma Gandhi and a copy of that letter was given to me by that friend and that letter was referred by you to Shri B. N. Rau, the Constitutional Adviser. I raised that point elsewhere when we were discussing and everybody was impressed there, but I myself found it difficult to introduce the Panchayat Constitution-the framework of that-into the Constitution that had made considerable progress. So, we dropped it and the leadership then suggested that there would be the directive principles introduced into the Constitution. We have got that here now. Therefore, the Constitution which I was longing to have was that Constitution. It is only that Constitution that would give really food and cloth and all the necessaries of life to the millions. The millions were ignored during the British Raj and they were ignored in our country even after the British left and we also ignored them and we are proceeding with this Constitution.

The Constitution is a great document and the friends who have been in charge of this framing of this --Dr. Ambedkar is a great lawyer, is a very able man. He has shown by the work he has done here, how he would be competent to be a King's Counsel of Great Britain, to be perhaps competent to sit on the Woolsack only; but this is not a Constitution that we, the people of this country wanted. Mahatma Gandhi when he took up the organization of this country in the name of the Congress at once saw how this country could be helped and how the millions could be helped. Therefore he decided that the whole country should be divided on linguistic basis so that the people of each area would be competent to develop themselves. He not only laid that down as a rule for preaching purposes but he put it into force, carved out the whole country into 21 linguistic areas and he made the people work under that Constitution. As a matter of fact after he had been taken away from us and after we have been enabled to send away the English people from our country to their own country, we should not have discarded the basis on which this country had been educated by him, not only educated but the people of each area had been enabled to carry out the work. What about the Congress work which had been carried out under his direction and under the direction of the Congress and under your leadership and other leadership? The whole thing, how to make their own cloth, their own food and carry out all the items of constructive programme- that had been carried out for 26 years - it is nowhere now. Therefore, I have been sitting here with a painful thought that we had been drifting, avoiding the soul of it as it were.

The Constitution is very carefully drawn up. I have been a student of Constitutional law for a very long time, for over 40 years or 45 years. I have understood the principles of the Constitutions of the various countries of this world. The legal expert here and the Chairman of the Drafting Committee were referring us so often to the American Constitution. What is there in the American Constitution? We can see the essence of it-how 13 different colonies or units came together and were determined to carry on the war against the British, carried on the war and after completing the war, evolved their own Constitution. When such was the case, what was the fear in the minds of the Chairman of the Drafting Committee and also of the legal expert-who has been a learned man and who has been on the top of the legal profession? Their mind was not there as they were not in it. Therefore, this Constitution started on the basis of the English Constitution. The Act of 1935 became the basis of this Constitution. We embodied many provisions bodily as it were. They are not of a very extraordinary character, they are not new inventions for the first time by Great Britain. Why should we have been ready to say that we adopt this Constitution of Great Britain of 1935?

Therefore, Sir, I am submitting to the honourable Members of this House who are all persons who have made great sacrifices to achieve the freedom of our country, that whenever it was pointed out that Mahatma Gandhi's scheme was the proper scheme, the whole House rose in one voice as it were, and they demanded Panchayat Raj system. But because it was too late it could not be introduced into this Constitution that we were making; but every one was of that, and every one is referring to the same thing in heir speeches during the last two days also, just as they have been doing in that past. Therefore, the Constitution that I was expecting, and the organisation that I was expecting for this country was the division on the linguistic basis, which was chalked out by Mahatma Gandhi, which was not only chalked out, for the mere adoption as a principle or any such thing, but actually worked out, for the past 26 years, now 30 years. Even now that system is continuing. Why should we have abandoned that and come to this ?

I may say Sir, one word in this connection. People like myself, Dr. Pattabhi Sitaramayya, Prof. Ranga and others who have come from our province, and who have been agitating for separation of Andhra Province, and have been fighting for it for over 36 years could not succeed until now. At last the Congress Working Committee has been good enough to adopt Andhra separation. I thank the Working Committee Dr. Pattabhi Sitaramayya, the Honourable Pandit Jawaharlal Nehru, the Prime Minister and also Honourable Sardar Vallabhbhai Patel and the other members of the Working Committee for having accepted this. They have accepted it so that it might be started immediately and the whole thing might be worked out. There was a dispute over the city of Madras which could not be solved. There was the Dhar Commission appointed by you, Sir, and that Commission went into the whole question and toured the whole country and arrived at certain conclusions in their report. Relying upon those findings, we demanded Andhra Province, Sir, without claiming the city of Madras, although there was a demand for a separation and for a division and for constituting it into a separate province. This is a question upon which the Working Committee was not able to arrive at any decision. But they were good enough to put it in such a form that that question was left open. And a boundary commission also has to be appointed. I therefore, thank the Government and all those who were responsible for doing this much.

I also feel that what has been done with regard to Andhra should also have been done with regard to others also who have been agitating for being constituted into linguistic areas. This would not have taken a long time. But there seems to be some fear in the minds of the leadership which prevented them from thinking of separation on linguistic basis. It is not an impossible thing. It is that work and it is that united feeling of all the people, it is that division that has brought this freedom, and the country together. Why we should try to avoid it, I have not been able to understand. But the two leaders were too strongly opposed to division on a linguistic basis, at this juncture, and there is no one in this House or even outside who has been taking an opposite view to these leaders, particularly so, when we see how these two leaders had been struggling here ever since they took charge of the administration of this country, under the most difficult circumstances. Take for instance Sardar Vallabhbhai Patel who has brought together all the States into one Union, as it were, who has made the whole of India into one United Union. There was only one man in the history of the world, similarly great man, and that was Bismarck. But Vallabhbhai Patel has out-Bismarcked or out-distanced Bismarck, out-shone him. I am not given to flattery or saying good words at the proper time. But you know Sardar Vallabhabhai Patel was described in the British press, in one of the most conservative presses, as super-Bismarck. Therefore, we are all proud of Sardar Vallabhbhai Patel's work and the labours and the troubles which he has been facing, troubles not only from outside and from inside regarding the constitution of the country, but also physical troubles. We know he has been fighting these physical troubles as he has been fighting other troubles involving or relating to the country.

Take again, Sir, Honourable Shri Jawaharlal Nehru. He has just now returned from America. What has he done now ? There in his tour he has carried the message of peace, not to our villages or to our districts or to our provinces, but to the whole country and to the whole of America and all the other nations, as it were. And he brought back an answer, as it were, that they were all inclined towards peace today and not towards war. Even the representative of Russia showed this by his recent proposal before the United Nations Organisation. Of course, he was very much distrusted by others, they would not take his words at their face value. But I believe he was quite sincere in asking for peace, and when it comes from Stalin's country, one should accept it and make it a complete success.

And so, India following Mahatma Gandhi's principles and with this Prime Minister of India - with whom I would be quarrelling sometimes for not doing things as I wanted - this Prime Minister carried this message of peace to them, and brought back a reply as it were, I mean the principle of peace to the whole world, and lie has justified himself as the disciple of Mahatma Gandhi as far as non-violence, truth and peace are concerned.

Therefore, when these two leaders have been striving here, people could not resist them and press them to understand that the division of this country on a linguistic basis would bring unity and not disunity. It would not create trouble. On the other hand it would give strength and create the power to resist those forces that are raging themselves against our government or any government in this country. Take for instance the American States. Thirteen States united together and carried on a war, and after the war they made their constitution, but not in the manner in which we are doing it, Sir.

I feel very strongly that we have constituted the Constituent Assembly and carried on the work of framing our Constitution, under the direction of the Secretary of State for India and the Cabinet in Britain. Look at the Independence of India Act of 1947. It is under that Act that we do all this. Of course they had to pass that Act. I do not dispute it, because they wanted to declare publicity through their Parliament that they had severed their connection with India, that they would not be responsible under those sections in the latter part of that Act-(the Act consists of only 20 sections)-they declared. "We have handed over India to the Indians and we shall not be responsible from this date for anything that may be done by the Indian Government, by the Indians, who take our place. They must also take these responsibilities". If that be the case, they should have asked us to frame our own Constitution after forming our own Constituent Assembly. But instead of that, they wanted to keep it to the very last minute, as it were, under Parliament and so got it under the name of Indian Independence Act. What is it that they have done ? Previously they appointed a Governor-General. The Governor-General would be vacating his place when the president is appointed here, and when we pass this Constitution. But he is the Governor General of King George, and not the Governor-General appointed by us. He has been put there to watch the interests of Britain. Of course, I do not............

An Honourable Member : Nothing of the kind.

Shri T. Prakasam: No use saying, " Nothing of the kind." I am talking of the Constitution. What has been done here? He has been there carrying on whatever he has to do, as any other Governor-General was carrying on before the British left. So, I say, Sir, I am pointing out the weakness in this Constitution which is being drafted under the auspices of Britain in pursuance of the provisions of the Indian Independence Act. I am pointing out how Britain was interested in keeping a hold over this country even until the day the Indian Independence Act was passed. In section 17 of that Act they say that the Secretary of State should not be made liable for anything that had been done while the English People were carrying on the Government. It was also stated there that the British Exchequer should not be made liable for anything that might have been done by them when they were in office. I have been at this point for the last two or three years. I have been anxious to point out that Britain had done the greatest wrong to the people of this country when it contracted certain loans under Section 315 of Government of India Act, 1935 and these loans were contracted by the issue of currency notes without any metallic backing. The total amount in circulation before the war started was Rs. 714 crores or so. By the time the war ended when we came to 1948, the total amount came to Rs. 1, 214 crores of currency notes. I say, I have been saying, and I said in my budget speech in Parliament the other day that these currency notes that were issued by them during the period of war without having any metallic security, are not worth the paper upon which the currency notes were printed, and the people of this country who accepted the currency notes and paid the cash into the hands of the British Government should not be made liable. That is my point and it is a point which I wanted to raise. I am not taking you by surprise. Dr. Ambedkar, is the Chairman of the Drafting Committee and the legal adviser of this Constitution -making body, - I wrote to him and gave him notice of a resolution two years back. In that note I pointed out the whole of this business and asked them to have that resolution tabled and placed before the House. I got no notice of it and I could not attend for some time. Afterwards a note issued from Shri Satyanarayan Sinha saying that those who were sitting there should not come here. I have come here on a special /requisition made to Pandit Jawaharlal Nehru. This is the notice of the resolution given by me on 14th August 1949.

"I beg to give notice to move the following resolution on an urgent matter of public interest for consideration and decision before the sovereign body of the Constituent Assembly can proceed to further consideration and further drafting of the Union Constitution".

The Resolution reads :

"This Assembly hereby declares that the huge unconscionable burden thrown upon the people of India by Great Britain by its currency law and currency policy and the resultant so called public debt and liability of crores of rupees created by the issue and expansion of paper currency without any metallic security to be *ultra vires* and further that all such currency notes, so issued are of no value whatever as against the people of India in view of long and protracted struggle by the people of India for their political and economic freedom".

Well, sir, when this notice was given, can the President of the Drafting Committee, or can the Legal Adviser, or can anybody say that this matter was not before them? I brought it to their notice: I also said that this matter must be considered before the Constitution Act of this Constituent Assembly was proceeded with. Therefore, I am submitting that in drafting this Constitution we have been drifting, drifting and drifting, without knowing exactly where we were going. This Rs. 1,214 crores of currency notes were printed by Britain just before they went out of this country, making a provision in the Indian Independence Act that they should not be made liable for all that they have done. Would that be *intra vires*? I have been considering that it is *ultra vires*. If they had contracted it on the eve of their departure they are liable for it. Even after this Constitution is passed they will stand liable for this. What has been the effect of this? I am requesting you and the Honourable Members of this House to consider a while. This printing of Rs.1,214 crores of currency notes without metallic security, making the people of this country liable has brought about inflation and has been responsible for the increase of prices in this country. Experts have been saying that they will decrease the prices and that they will do this and that, without touching upon this point- without cutting away this Rs. 1,244 crores of liability cast upon the people. It is a matter of life and death for the people. That is what happened.

I would like to point out in what a difficult position we have been while we have been going through the completion of this Constitution and we have come to the last stages. Now, I have been waiting here to tell the House and to tell you, Sir, how we have been omitting to do certain things which will seriously effect ourselves. What is the good of framing a Constitution which will not take a matter of this importance into account and do something to relieve all this burden? Who else can relieve the curse of inflation that has brought this increase of prices, which in turn has brought about all kinds of troubles? This Government has been taking ever so many other steps to get rid of this inflation. How can they get rid of this inflation if they do not touch the bottom rock of that Rs. 1,.214 crores. All these English people, while they were ruling they introduced these currency policies. They introduced this inflation and also devaluation. So many currency commissions have been held and at the end of each Commission they have invariably passed orders to suit the convenience of the British people.

When currency notes to the tune of one thousand two hundred and fourteen crores of rupees were printed unauthorisedly, there should be some arrangement for their withdrawal. In fact, this has been done in some countries. But nothing to that end has been done here and that is why I am apprehensive that we are in for trouble. How has this devaluation come upon us, Sir?

Mr. President: I do not wish to interrupt the honourable Member. But I am afraid that he is speaking on points which are not germane to the Constitution we are discussing today. These are points which could very well be raised, for Government to take up (and Government) might be blamed, or whatever else the House would like to do it could do to the Government) in another place, but not here.

Shri T. Prakasam: Sir, I do not want to wander about and want to confine myself to the scope of the discussion on the Constitution. the point which I was referring to just now arises in this way. The Constitution which we have drawn up ought to have removed the anomaly of continuing the exchange ratio of the rupee at Is. 6d., adopted by the Indian Government a long time back. That has, unfortunately, not been done. 'that is how the point I was making is germane to the discussion.

Now, Sir, I come to another point regarding the provision on freedom of person that we have adopted. We made a provision after such consideration and discussion that for three months a person could be detained without trial. It shocked me and it shocks me now that we should have made such a provision. We cannot justify our position in the face of the world. It is strange that we who had been trained and disciplined for over thirty years by one person, the great leader who had given peace not only to this country but also to the rest of the world, should make such a provision. Why should it be, Sir, that for three months a person could be detained without trial? I am sorry that we have adopted it.

One great service that this Constitution has done is by way of removing untouchability and making Harijans and Scheduled Castes feel that they are brought on an equal footing with the rest of the population. For that we do deserve some credit.

I am also glad about the introduction of the village panchayat system in the directive principles. The execution or the fulfilment of it depends upon you and others who would be in charge of this country and the Government. I understood that in the United Provinces, Pandit Govind Ballabh Pant's administration has set up panchayats and Assam had established them even before that. If this example is followed by the provinces of India the day of redemption of the millions of India would not be very far off.

Then another matter, Sir, about which I should like to say a few words is about adult franchise. I am glad that out of any fear or suspicion adult franchise has not been modified in any way. When we started framing this Constitution, it was the idea that the Governor would be elected. I felt glad about it. But unfortunately this provision has undergone a thorough modification. People may agree with me or may not agree with me. Unless you trust your own people and take them into your confidence they will not be able to deliver the goods. In fact, our country has stood firm now for three years since the work of drafting this Constitution began and even before that they have been honest, straight and loyal to the Government. We would not, therefore, do anything which would lead them to think that we are not trusting them.

I should then like to refer to the introduction of the new article 365 by the Chairman of the Drafting Committee. According to that article if any province is not ready to obey and carry out the orders of the Government here that province may be declared as not fit to be within the Constitution. This is only an adaptation of section 93 of the Government of India Act under which the administration of a province could be taken over by the Governor. This is no good for us. This is not a provision that we should introduce after we have fought for the freedom of this country in the clearest possible manner. This is not the way in which we should develop democracy in this country. Whatever defects there may be in provinces, you must allow them to be corrected by themselves.

You must not interfere for this and that and fall upon them and ask them finally to get out because they are not willing to obey. That is not the way in which democratic constitutions can be built up or worked nor the people's position sustained in the country. If we wish to carry the people with us, give them freedom. I am one of the sufferers with regard to this provincial autonomy also, but I do not complain that for the sake of that you must take away the right of carrying on the administration in their own way. It is a retrograde step which we should have avoided altogether.

Another point which I should not fail to point out on this occasion is centralisation. Government was anxious, and this Constitution-making body was also anxious to make everything central, to give every power to the Centre. What happens to the units? What happened to the units in the United States? Fifty three or fifty-four units were separate and they declared themselves sovereign powers and carried on the war; they established their own constitutions. Similarly in Switzerland you have got 22 cantons. Switzerland is one of the most model countries in the world. During the last two world economic distresses Switzerland was the only country which had not been affected. It was a country which was divided into 22 units each one having sovereign power, carrying on the administration in a perfect manner, in a most admirable manner for the defence of the country and for the betterment of that country. It is a flawless country today. Similarly is the United States for which our Prime Minister had so much to say. He gave a warning to us that America is a perfect country, that it can defend itself against anything. At the same time he said that you must not go on merely repeating the slogans about America but must adapt yourself. In the same sentence he pointed out,as a contract to it, the Gandhian technique. He is a person who could take the Gandhian principles, who could take the other principles, combine them, go to America and give them the peace message and to the other countries also, and do his best to give them the peace message and to the other countries also, and do his best to bring about peace. But he has not been able to give attention to the Gandhian technique of the constructive programme and of the Organisation of the country or a division of the whole country on a linguistic basis.

Thank you, Sir.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. President, Sir, this is an historic occasion in India's history when this August Assembly is about to conclude its labours. Free India will now have its first free constitution after unknown centuries. India is an ancient land and its history goes back to time immemorial. There is much ancient literature extent. But I do not know of any written constitution framed in ancient India providing for the governance of the whole country available today. We know of the codes of Mannu and all other great law givers of ancient India, still no elaborate democratic constitution providing for the governance of the entire sub-continent from Cape Commorin in the South to Gilgit in the North and from Ledo in the east to Peshawar in the West was probably ever made. There were great Emperors of India whose empire comprised the entire sub-continent as, for example, Asoka. We have details of certain departments of his Government, but we do not possess the written constitution of the country in those days. So after, a lapse of innumerable centuries and probably for the first time in known history, chosen representatives from every part of the country have assembled together in a Constituent Assembly and given themselves a Constitution.

But we cannot forget that this Constitution is a constitution for the partitioned India which comprises only about 4/5th of territories comprised in our motherland known as Bharat about which Gurudev Rabindra Nath Tagore sang:

Jan-gana mana-adhinayaka, jaya he Bharat-bhagya-vidhata
Punjaba-sindhu-Gujrata-Maratha-Dravida-Utkala-Vanga
Vindhya-Himachala-Yamuna-Ganga uchchala-jaladhi-taranga

The partition of the country is the greatest tragedy that has occurred in India in recent times. It was the price that we had to pay for our freedom. The British did not leave our country because of any sudden love that they had developed for us by a change of heart; they were compelled to leave by the force of circumstances by world forces combined with the strength of the national movement and its marvellous leadership under Mahatma Gandhi. What followed is well known. That most unnatural division was forced upon the country.

I am convinced that so long as this division lasts, neither India nor Pakistan can be at peace. In the re-union of the two parts of Bharat into one single Sovereign Democratic Republic lies the ultimate salvation of both the parts. The dream of free India which I dreamt during the last 30 years will only be realised when this Constitution becomes the constitution, not only of partitioned India but of the whole of India prior to partition. That I believe, is the natural destiny of our motherland.

My thoughts go today to the millions of my countrymen, those unknown heroes and martyrs in our freedom struggle during the last 92 years since the first war of India's independence was fought in 1857. It is because of the sacrifices of these millions of our countrymen that this day has dawned. Among those heroes and martyrs, we cannot forget those great patriots who have been now left in areas known as Pakistan. My heart is heavy when I remember the figure of Khan Abdul Ghaffar Khan and his thousands of Khudai Khidmatgars who spilled their blood for India's freedom and who are today languishing in the jails of Pakistan. I was one of the staunchest opponents of partition and I feel we are guilty of betrayal of the Khan Brothers and millions of Khudai Khidmatgars, whom we left in the lurch by agreeing to partition. We cannot also forget the millions of our countrymen in Eastern Bengal, the home of Bengal revolutionaries who first lit the fire of freedom in our country. India shall not be truly free until those parts which have been cut as under are reunited. Here also we must not forget the millions of refugees, who either died or lost their all and became destitute as a result of the partition which we accepted as the price of our liberty. They are certainly martyrs of our freedom. Above all, we cannot forget on this occasion the Father of our Nation. Mahatma Gandhi, who lighted in most of us the torch of freedom and who did not live to see the fruition of his labours. I cannot also forget today other great leaders like Lokmanya Tilak, Lala Lajpat Rai, Deshbandhu Chittranjan Das, Pt. Madan Mohan Malviya, Hakim Ajmal Khan, Pandit Motilal Nehru and others who lighted our path. I particularly wish to remember Netaji Subhash Chandra Bose who fondly hope is still alive somewhere and whose Indian National Army and its glorious exploits in South East Asia fired the Indian Army and the Indian Navy and the Indian Air Force with patriotic and national sentiments and drew the day of freedom nearer. I wish to pay my homage to to all these patriots, heroes and martyrs of the nation on this momentous and historic occasion.

I am very sorry that the House did not agree to accept my amendment by which I had wished to pay homage to the heroes and martyrs of our freedom struggle and to the Father of the Nation in the preamble at the very commencement of this Constitution. I feel that the House was not wise in doing so.

Coming now to the Constitution, I just say at the outset that it is a compromise and has all the defects of a compromise. It is a compromise between men of various views, both conservative and radical, inside the Congress Party. In the transitional period from slavery of a thousand years into newly won freedom, it was probably natural that we should go through this present stage which is reflected in this Constitution. I cannot call it the constitution of the free India of my dreams. I can, therefore, support the motion of Dr. Ambedkar for its adoption only in this spirit. I am convinced that very soon when the period of transition is over, representatives of the Indian people, elected by a conscious electorate on the basis of adult suffrage, will recast this Constitution and frame a constitution which will realise our dreams. I would have wished that my amendment for an automatic revision of the Constitution by simple majority once at the end of ten years from the commencement of the Constitution had been accepted by the House under the limitation of the prevailing circumstances, I am sure, that a better Constitution could not have been made. For this achievement, therefore, I congratulate all those responsible for it, particularly the members of those committees, who under the chairmanship of our leaders evolved the principles of the Constitution in the reports submitted by them of the union Powers Committee, the Provincial Constitution Committee, the Minorities Committee and numerous other Committees. The principles enunciated by these committees were accepted by the Assembly during the First Reading and the Drafting Committee then put them into legal shape. I would have very much wished that this Draft Constitution had been discussed by the House by going into the Committee stage, so that all amendments could have been discussed threadbare and decision could have been taken by a majority of the whole House and not only by the majority of the Congress Party.

Under the procedure adopted, the Drafting Committee could not get the advantage of the free opinion of the whole House and decisions of the Congress Party alone became binding upon it. I personally feel that the constitution has very much suffered on this account. Out of about 10,000 amendments which appeared on the order paper from time to time during the course of the last one year, I think this House had opportunity for discussing hardly a few hundreds. The rest were all guillotined inside the Congress Party and were not moved in this House because the Party did not accept them. Congress Party meetings became meetings of the real Constituent Assembly, and this real Assembly became the mock Assembly where decisions arrived at the Congress Party meetings were registered. But by their very nature these Congress Party meetings could never be a substitute for meetings of this whole House going into the committee stage and coming to free conclusions on the various amendments tabled.

There has been some criticism of the length of time taken by this Assembly to prepare the Constitution. I think the criticism is most unfair and unjustified. So far this Assembly had only 11 sessions, the duration of all of which was about 200 days. During these sessions, the Assembly usually sat only five days in the week. So the working days shad been only about 120 in all. The expenses incurred on the Constitution during the last three years are less than a crore of rupees. I do not think either that this time is too long or this expense is too great for framing the Constitution of Free India. I personally feel that parts of the constitution have been hustled through and due attention could not be paid to them. If, in spite of this, we have been able to produce a tolerably good constitution, I think the credit must go to the wisdom, the ability and the untiring efforts of the Drafting Committee and its learned Chairman. Credit is no less due to Shri S. N. Mukherjee and his able staff. I think India must be proud of the able draftsmanship and the capacity for infinite labour of Mr. S. N. Mukherjee. We have really discovered him during the framing of this Constitution.

Coming now to the provisions of the Constitution, I regard the provision of adult suffrage to be its greatest merit. The common man in India will now be the maker of his own destiny. I cannot understand the apprehensions of those who fear adult suffrage. We must have confidence in the common man. Adult suffrage has been one of the main demands of the Congress throughout the period of its struggle. We must, therefore, be proud at the dawn of this day when that dream has been realised. After adult suffrage I give importance to the Fundamental Rights. In the Fundamental Rights, equality between man and man has certainly been ensured in our Constitution. There shall now be no untouchability recognised by law. The abolition of untouchability has been compared to the abolition of slavery in America, but I think untouchability is a greater curse than slavery. Equality before the law of every man has also been guaranteed. But liberty has been a casualty in our Constitution. I think Sections 21 and 22 are the darkest blot on this Constitution. I could never have conceived that in the Constitution of free India, detention without trial will be permitted under the fundamental rights of the people. Having been convicted to total penal servitude for some 31 years in six trials on six different occasions during the Freedom struggle and having passed 10 years of my young life in prison dungeons and condemned cells in the days of our slavery under the British rule, both as a detenue and as a convict, I know the tortures which detention without trial means and I can never reconcile myself to it. An equally great blot on the Constitution are sections 358 and 359 which provide for the suspension of the Fundamental Rights and the methods of their enforcement during an emergency. This is, I think, a mockery of Fundamental Rights. I also regard Article 31 about property as the charter of capitalism in this country. I am sure, the representatives of the people elected on the basis of adult suffrage will change this Article which makes all socialisation of the means of production for the community impossible. The Directive Principles of State policy which have been so beautifully described in Part IV cannot be realised so long as Article 31 forms part of this Constitution. I would have wished that these Directive Principles had been incorporated as Fundamental Rights in the Constitution. I know it was not possible to give effect to them from today but we could have said that at the end of 10 years the Directive Principles would automatically become Fundamental Rights. I had sought to achieve this by my amendment No. 559 in Volume I of the List of Amendments, with regard to the four rights of Economic freedom which are guaranteed to citizens in the Soviet Union. I wish within 10 years India should be in a position to guarantee these same fundamental rights to its citizens. By my amendment no.773, I had wished to provide for obligations of citizens. These obligations are contained in the Soviet Constitution. At present our constitution does not provide any such obligation and I think, this is one of its weaknesses.

Another Article on Fundamental Rights which I consider to be most unfair to the people is Article 28, where it has been said that no religious instruction shall be provided in any educational institution wholly maintained out of State Funds. I consider religious instruction, by which I mean instruction in true religion and its eternal principles, to be the most important part of a child's education. Ban on religious instructions in State schools may result in the Prohibition even of the teaching of books like the Gita and Ramayana in schools. I am sure peoples' representatives will not tolerate this ban and the article will soon have to be amended. This is an instance where secularity has gone too far.

The chapter on Directive Principles is, I think, the most hopeful chapter in the Constitution. I fondly hope that the principles enunciated in it as the ideals to be striven for in free India will be given effect to, and incorporated in the laws of the country at no distant date. Prohibition of cow slaughter throughout the country can by itself fire the imagination of the common man in India. I wish the ban on the slaughter of cow, which is the Kama Dhenu the mother of plenty, had been made absolute, and given a place in the Fundamental Rights.

With regard to the machinery of administration, I would have very much preferred the President of the Republic to be directly elected. I would have also liked single chamber legislatures. I have also opposed throughout every interference with the powers and the independence of the Supreme Court and the Auditor-General. I regard the Supreme Court as the guardian of the liberties of the people and the Auditor-General as the watchdog of the finances of the State, I have also opposed through the arbitrary powers of the President which means the Executive and I would have desired ultimate authority in such matters to vest in Parliament. I also do not like the powers given to the President to issue Ordinances. I only hope that when the Constitution is recast all these undemocratic features of the Constitution will be removed.

My criticism of the Constitution does not mean that I am blind to the achievements which we have made during these three years. I consider, this framing of the Constitution has by itself been the greatest single achievement of ours during the last three years. The barriers to the dawn of freedom which the British Government had erected by the artificial creation of the problem of minorities, the problem of Princes in the Indian States and the Heaven-born Civil Service, have all been wiped of as if by magic in the short space of the last 2 years. The delay in the framing of the constitution has enabled us to incorporate in this Constitution similar provisions for the administration of the 566 Indian States which have now been transformed and integrated into nine provinces and put on a par with the other units of the Union. This single achievement will be regarded as the greatest task ever accomplished in any country. Our beloved leader, Sardar Vallabhbhai Patel has earned the gratitude of the future generations by this momentous achievement through a bloodless revolution.

Here I cannot hide my disappointment at the attitude of Kashmir Government which has insisted on a separate constitution under Article 370. But Kashmir is not Sardar Patel's responsibility. Sardar Patel's second greatest achievement has been his solution of the problem of minorities in his capacity as Chairman of the Minorities Committee. I cannot here forget to mention the name of Shri H. C. Mookerjee, the great Indian Christian leader, who can be regarded as mainly responsible for the happy solution of the minorities problem. He infected all the minorities with his sturdy spirit of nationalism and the nation shall never forget the debt it owes to him. Another great achievement of the Constitution is the solution of the language problem. I am not at all happy at the compromise arrived at and I consider the period of 15 years fixed for the full fledged adoption of the Hindi language as the national language of the country far too long, but I do hope that in actual practice, the people will force the pace and the present love of English and everything English will soon become a thing of the past.

I am also sorry that the authorised version of the Constitution should not have been passed in the national language. I would have very much wished that the Hindi translation which you will send out under your authority as the certified translation were passed by this Assembly as the authoritative version of the Constitution. I am afraid when the supremacy of English from this country is gone, our countrymen will be put to difficulty in interpreting this English original of our Constitution. I am almost certain that very soon the newly elected representatives of the people will insist on passing the authoritative version of the Constitution in the national language.

Lastly Sir, I cannot forget to voice my bitter disappointment at our decision to maintain our link with the British Commonwealth of Nations. This I consider to be derogatory to our Sovereignty. I do not believe that the leopard can change its spots over-night, and I feel our association with the British Commonwealth can never be of any real use to us. Disastrous devaluation of our currency is the first dividend we have reaped from it. I hope very soon we shall have shaken off our slave mentality and this infatuation of everything British will then be a thing of the past, and we shall stand in the world as a completely independent nation holding our head high and ranking amongst the greatest nations of the world.

In the end, Sir, I wish to join in the tribute that many speakers have paid to your patience, skill and independence in guiding the deliberations of this august and historic Assembly. We have all felt that you have given us the fullest liberty to express our view-point on every aspect of the Constitution. We have also appreciated your sturdy independence in our rulings on the various points which arose during the discussions, from time to time. I cannot forget your ruling when you permitted me to move my amendment to the resolution for joining the Commonwealth. This was vehemently objected to by no less a person than the Prime Minister. But in a very serene and unconcerned manner, you gave the Ruling. "The Rules of the House allow it." To posterity and future generations, the example set by you will remain a beacon light for guidance and emulation. Sir, I thank you for the opportunity you have given me to express my views on this momentous occasion.

The Honourable Rev. J. J. M. Nichols Roy (Assam: General): Mr. President, Sir, I am very glad to come here to give my hearty support to the motion moved by Dr. Ambedkar that the Constitution as settled by the Assembly be passed. I consider that this Constitution is the best that could be produced in the present circumstances in India and in the world. Though there are defects no doubt, though we would have liked to have had some provisions in another form, yet, Sir, I believe that this is the best that could be done under the present circumstances. I am glad, Sir, that I have had a part in the framing of this Constitution, though it may be in a very small way. The whole country has had a part in the framing of this Constitution either by way of criticism or by way of suggestions. The Draft Constitution was placed before the country over two years ago, and everyone of us had a chance either to criticise or to send suggestions, and everyone of us here in this Constitution Assembly has had a part in the framing of this Constitution. Therefore we can say that this is a Constitution for the whole country and by the whole country. While I am speaking about this Constitution to be a satisfactory constitution under the present circumstances of India, I cannot forget the conditions that existed at the time when we first assembled here about three years ago. At that time we were under the shadow of the British Cabinet Mission. We were given the award by the Cabinet Mission that India would form into Groups. There were three Groups to be formed. Assam was to be grouped with Bengal, the North West Frontier Province, the Punjab and Sind were to form into one group, and the other provinces of India were to be formed into another group. At that time we members from Assam were afraid that this group system would be forced upon us, but everybody else there seemed to be willing to come under that group system though in spite of their wish. We were laughed at for being against the group system. We felt that it would affect the very life of the people of Assam if we were grouped with Bengal. Our reasons were known to the members of this Assembly. We were afraid that we were going to lose. In reality our fight was for life and death. We felt that we could in no circumstances be grouped with Bengal. We were in such great difficulty at that time that the Premier of Assam, Mr. Gopinath Bardoloi, had to approach the Working Committee which practically declined to listen to Assam request, and he had to appeal to Mahatma Gandhi and ask him to save us from this calamity, and it was Mahatma Gandhi who saved us from that situation. We must not forget those days and the members of Assam were almost ridiculed by some people that we were only thinking of Assam, and that we were not thinking of the whole of India. We had to fight for our very life. I am glad to say that it was Mahatma Gandhi who saved us from that situation, when he said to Mr. Bardoloi thus, "if you do not want to be under this group, nobody on earth can force you to be in it." Think of what would have been the condition of India today, what would have been the Constitution we would be having today, if we had accepted that group system. India would have been a different country altogether. The powers that we possess now would have been different. My friend, Mr. Brajeshwar Prasad, has always pleaded for centralisation, but we would not have had the Constitution that we have now with quite an amount of centralisation but for the fact that we fought against that group system.. Whether our fight was good or bad, we had to fight in order to save ourselves from what we considered to be a bad way for the people of Assam and for the whole country. Sir, Assam is a frontier province. If that province had not been saved, if that province had gone into the hands of somebody who is not in favour of the whole of India, if Assam were in the hands of an adverse power, the whole of India would have gone too.

Now, Sir, we are very glad for the Constitution that we have today, a Constitution which will unify the whole of India. Though we have suffered a loss of a portion of the country, though by partition we have suffered a great deal, especially the border areas round Pakistan, yet though unwillingly we have had to choose the lesser evil. I consider that what we have today is the lesser evil than what we would have had if we had not fought against the Cabinet Mission plan. I was one of those who spoke in this House and also in the Party meetings that the Cabinet Mission plan was only a recommendation of a friendly Labour Government, and that we could go contrary to that recommendation, that we could pursue our own course and that we could declare ourselves as the sovereign Constituent Assembly of India that could frame our own Constitution. I am glad that we have done that, that we have had the privilege of framing our own Constitution in our own way. Sir, that opposition has resulted in the division of India, has brought Assam especially under very great distress. Some parts of our province have had to suffer on account of the attitude of the Pakistan friends towards our areas. They are taking a very strong attitude in regard to commerce and trade between the border areas. We have had to suffer on account of that. We look to the Government of India to help these border areas which are today in great distress in view of the fact that the Pakistan people will not purchase the agricultural produce which come from the borders of Assam, which are hill districts, and also some parts of the plains districts, and this has caused a great deal of trouble to our people in these border areas. We are hoping that the Government of India would do something to relieve the people of this distress.

Now, Sir, I want to speak regarding the financial position, the relation between the States and the Central Government. We were of the opinion that there should be a definite percentage mentioned in the Constitution for the allotment of finance to the States especially the Producing States, from the revenues derived from the excise and export duties on tea on petrol and on jute by the Central Government, but we were not successful in our attempt in this direction. The States have been placed in the position that they are at the mercy of the Centre. The Centre shall now have to help the States, at least some of the States which are financially deficit, especially the provinces of Assam and Orissa. On account of this financial distribution, we in Assam shall be in great difficulty indeed. When the 26th of January comes, India will be declared a Sovereign Democratic Republic but what will be the condition of our poor province Assam? Unless the Central Government comes to our rescue it will be impossible for Assam to carry on. Even now, Sir, Assam is in deficit. By over 2 crores of rupees we shall be in deficit and unless the Central Government comes to our help and utilise the power which has been given to them by this Constitution, to come to the help of our Province which is in financial difficulty, it will be impossible for Assam to carry on and there is going to be a financial collapse altogether. It is very important, therefore, that the Government of India should attend to this immediately. I know that I am speaking to this Constituent Assembly which is making the Constitution, but not to the Parliament, but, Sir, there are many here who are Members of Parliament, who will no doubt be interested in the Province of Assam and in those provinces which are in financial distress. When we have made the Venture strong, we have made the President powerful to act in an emergency, it will not be to the credit of the Central Government or to India to leave this one Province to collapse. I trust, Sir, that Parliament as well as the Central Government will attend to this immediately; otherwise Assam will collapse financially. There must be some way by which our Province should be helped in these difficult times. I am speaking of this here because I feel distressed on account of this. Had it not been for the fight Assam had had at the commencement of this Assembly we would have not been able to get the Constitution as we have got today. After Assam had been the cause to turning the course of events in India, and this Constituent Assembly has had the freedom of making this Constitution as it is today, I believe this country will not leave Assam in a state of financial collapse. India must come to our rescue immediately.

The next point I wish to speak about, Sir, is regarding citizenship. In the matter of citizenship we have made man and woman equal. A man who marries an alien still holds the citizenship and a woman who may marry an alien also must have her own citizenship kept. There should be no difference at all. If there is no difference between man and woman in all other aspects, why should there be any distinction between man and woman in respect of citizenship? Sir, Parliament is given the power to make laws regarding this; it must take this into consideration and must not allow a woman to be differentiated from a man in this matter. I believe that our women-in the whole of India would agree to this, and would rise up and fight for their right. There is a country which I know that does not make woman lose her citizenship by marrying an alien. India must not fall below such a standard.

Shri Brajeshwar Prasad (Bihar: General): What about the children?

The Honourable Rev. J. J. M. Nichols Roy: The Children will be citizens of that country where they are born.

Sir, we have had great difficulties to overcome in making this Constitution. We have had the problem of minorities and I am glad that this problem has been solved. I must congratulate our Christian leader. Dr. H. C. Mukerji for a move that there should be no reservation on the basis of religion. I also was in favour of this abolition of reservation. For Assam, Sir, I said there should be no separate constituency for the Christians and afterwards all the Christian representatives in this Constituent Assembly agreed to the same proposition, for we felt that no one should be differentiated from another on the basis of religion. Religion must not be the basis for making a difference between one man and another man. We are glad for that, that this reservation of seats for any community on the basis of religion has been abolished. The difficulties in regard to the Indian States have been wonderfully solved. The credit goes to the Ministry of States which has done wonders in this respect.

Now, Sir, I want to speak about another thing and this is regarding the Sixth Schedule. I myself am personally indebted to Mr. S. N. Mukerji, the Draftsman, Sir. B. N. Rau and Dr. Ambedkar for giving special attention to the drafting of this Sixth Schedule. I am also indebted to the members of the Drafting Committee who gave us a chance to speak before them. Also I am indebted to our own Premier of Assam who has had a very sympathetic feeling towards the Hill-people of Assam. The Sixth Schedule concerns the hill-districts of Assam in which the hill men in Assam live by themselves in their own territories, who have their own language and their culture and the Constituent Assembly ha rightly agreed to the recommendation of the Sub-Committee of the Advisory Committee in which my honourable Friend, Mr. A. V. Thakkar also was a member. The Sub-Committee agreed that there should be councils for these different districts in order to enable the people who live in those areas to develop themselves according to their genius and culture. I am glad also. Sir, that the Khasi States have been incorporated in the Sixth Schedule, for that will enable the same people of the district of Khasi-Jaintia Hills and the Khasi States to have one administration. I am very thankful to all those who have helped us in this matter. I must speak a word in regard to the criticism of my honourable Friend. Mr. Chaliha who has twice in this House criticised the powers given to the District Councils under the Sixth Schedule. I think he is mistaken in doing so. If he thinks that the people who live in the hill districts of Assam are not capable of running their administration and utilising the power given to them by the provisions in the Sixth Schedule, he should come and help them, as a brother to help his own brothers in the Hill areas and in this way contribute his intelligence to them in order to enable them to carry on according to their own ways, and that is the thing that will give them satisfaction and help them to remain peaceful. The people of the Hill areas are afraid of exploitation and that is the reason why they demand that there should be District Councils by which they can make their own laws to some extent and also develop themselves according to their own genius and culture. I am very glad that there are many Members here who have realised the desirability of such an administration and I am very thankful to the Constituent Assembly for not opposing this Sixth Schedule which contains very good provisions for the people of these Hill areas. I am sure if those friends who live in Assam who are interested in the progress of these Hill areas which are really the frontiers of India, will help them, there will be no difficulty in having an administration there which will be very good to the people and might in some way be a model for panchayats in other parts of India. There are today, Sir, financial difficulties and distress in these areas which are in the frontiers of India. The Government of India's help is immediately necessary.

Just one more word before I sit down and that is with regard to article 48 in the Directive Principles. Here is a provision regarding the prohibition of cow slaughter. I was wondering whether this provision would mean the prohibition of cow slaughter at all times and of every kind of cows and cattle. I thought in my own mind that that was not the meaning. If that be the meaning of this provision which I do not think it is, it would place a terrible burden on the State. Think of the millions of cows that will float round the country without any fodder, and sickly, and the amount of money that will be spent on them and the terrible burden it would be on any country. Hundreds of them will die in the fields without being taken care of. It will not be economic at all for any State to prevent the slaughter of cows under all circumstances. I consider that this article would only prevent the slaughter of cows which are milch cows and draught cattle, which will be of benefit to people. If it be otherwise, I consider that that would be a blot in this Constitution and an oppression also to some of the people, especially to the Hill people of Assam, who eat bee and who keep cattle for the sake of eating. It would also be an oppression to the people who slaughter cows in sacrifices like the Moslems: even the Hindu Gurkhas of Assam sacrifice buffaloes at the time of the Durga Puja. There would be a great deal of disturbance and unrest if this article would be interpreted to mean that all cattle should be prevented from being slaughtered at all times and under all circumstances. This would act against the fundamental rights. I think that this is not the meaning of this article.

I thank you, Sir, and all the honourable members who have contributed to the making of this Constitution and I congratulate you, Sir, for the way in which you have conducted this Assembly. I also congratulate the Drafting Committee for the laborious work that they have done and also all the officers who have had a share in its drafting and the taking down of speeches of members. I was very gladly surprised to see the efficiency of the reporters in taking down the speeches. They have done very well indeed. I thank you, Sir. May God's blessings be upon our country in working this Constitution.

Dr. Raghu Vira (C. P. & Berar: General): *[Mr. President, we the people of this country have secured our independence and freedom - We are going to have a Republic of our own as also a Democratic State. We have been assured that during our present life we shall be provided with economic prosperity and social progress. But, Sir, a question yet remains still unsolved. I do not find in this Constitution any reference to the position of our ancient culture. Whenever any nation, such as British in India sought to consolidate their rule by striking deeper the roots of their domination into the heart of the subject nation, struck at the very cultural bonds of that nation and thereby enfeebled it altogether. They take three steps to reach this objective-an attach on the language, an attack on the religion and an attack on the historic ideals of the subject nation. This was what England also did with us. It brought our religion into contempt. But I need not go here into the question of how it was done. But it is sufficient to say that they gave no place to religion in the sphere of the State. Moreover this significant word of the Sanskrit language was equated by them the Englishmen and their camp bearers to religion which is much narrower and restricted than the former. The fact is that *Dharma* never meant and can never mean religion. I think the word Panthe may properly be translated as Religion but I do not think that Religion can ever be taken to connote Dharma. But the Englishmen made a deliberate use of this for their own ulterior purposes.

The Englishmen imposed their language on us in place of our language. In order that our language be restored its due place and the constitution be framed in it we felt necessary that all the things which the English people had deliberately destroyed in order to consolidate their rule here should be restored, so that our country may recover its soul again. But I say with regret that the word 'Dharma' does not find any mention in this Constitution. When I raised this point with a friend here he replied that the Constitution was a law and it could contain only those matters which could be subjects of interpretation in law courts. But, Sir, my submission is that this country is not eager to have new laws alone, it wants earnestly to rise to higher planes than that of the laws.

There was a time, Sir, when our country had glorious place of its own and had a Dharma of its own. At that time Sir, we were high in the scale of nations- as a matter of fact we were the teachers of the world. But the Englishmen reduced that glory of ours to dust and ashes. The Englishmen, specially the English members of the Indian Civil Service wrote histories of India in which they shoed our countrymen to have been primitive and insignificant, to have always been victims of division and dissension and to have always been defeated in battle. It was all the more necessary, that we should have made some effort to provide avenues for the expression and development of genius in the sphere of culture. But this has not been done. I think, Sir, that it was absolutely necessary for us to have put this glorious word in our Preamble. We have the phrase the glorious triplet of words-Liberty, Equality and Fraternity from the political slogans of the French Revolution, but it is my submission, Sir, that these words have or never had a revolutionary appeal in this country, and so far I can judge these words would not be able to promote a revolution in this country. I do not suggest that we should not take anything from other countries. We can borrow from other countries but only those things which are likely to prove of use for our country. But when we could give a place to these three words in our Constitution, could we not have given a place also to some of the ancient words of our own country. Could we not for example use the expression Ram Rajiya in this Constitution-an expression which even our children in villages understand and appreciate. Again we have in our literature the expression 'Matsa Nyaya' which suggests that the bigger fish should not swallow a smaller fish. It was a duty laid on the King that the rich should not be permitted to exploit the poor-that is to say there should not be exploitation of the people, nor the exploitation of the poor by the rich nor even the exploitation of the weak by the strong. But this significant word Matsya Nyaya-this ancient word which has come down to us since thousand of years-which connotes all these has not found a place in our Constituion. I may refer here to a suggestion which I made during the course of my conversation with the President of the League of Nations which I visited to in the year 1931. I told him that the motto of the League of Nations should be *'Ma Gradhat'* (do not covet) which is to be found in the Ishopanished and the Yajur-Veda. But such expressions and others which stand for ideals regarding the conduct and spiritual upliftment of men and which satisfy their physical and spiritual needs do not find and place in this Constitution. This country was the originator of the Republican system of government. Again it was this country which spread this system to the other parts of the world. Besides it had the biggest democratic organisation which was-engaged in a system propagation of a new ideal. Its principal mottos were 'Dharma Sharnam Gacchaimi' (I submit to the commands of Dharma) and 'Sangham Sharnam Gachami' (I surrender myself to the Samgha or Order). These in effect that I dedicate myself to my duty and that I shall not and cannot run away from it. I ask 'should not such a motto have been included in the Constitution of this country?" It is my submission that this motto is to be found in our country from the Rigvedic time down to the present age. I feel that we have suffered from the malady of division and dissensions-the malady of internecine conflicts. I think that it is regrettable that in view of this malady the ideal of San Gachaodhwam 'Sam Baddivam San Vo Manausi Jantam' march together bound together are consciousness of *Jantam* has not been placed before us here. Another ideals we find in the assertion of King Ashwapati. He said.

namaste no janpade nakadaryo namadyapah nana hitagni no vidwanah

which means that there is not thief or robber, no coward, and no drunkard nor any ignorant person in my State. But these ideals do not find any place in our Constitution. I therefore ask you, Sir, whether the mere fact that a statement is made in Hindi or in our language robes it of dignity and gravity, when we say in Hindi that two plus two are equal to four we lose their mathematical significance and we can retain the mathematical significance by expressing this idea in English. If not I fail to see why we could not have expressed in our language the ideals which we have put in this constitution in terms of English language, of an alien history and a foreign syntax.

There was another ideal, Sir, which was also followed in our country. It is contained in the verse which says:

karshayanang bhaved dandeyo yatranyah prakrito janah
tatra shriman bhaved dandaya sahasramiti dharana

It meant that where a common person could be fined for an offence one hundred Rupees a king or a rich person should be fined for the same offence one thousand Rupees. The offence committed by a rich man was thus decided by a fine which may be a hundred times or even one thousand times than that awarded on a common man. But I do not find any such thing in this Constitution. If the facts I place before you from the history of our country are not to your tastes you may not accept them. But I do ask that if Sir B. N. Rau our constitutional adviser could go to Ireland, Switzerland or America to find out how the people of those countries are running their governmental system, could you not find a single person in this who was well read in the political lore of this country who could have told you that this country has also something to contribute, that there was a political philosophy in this country which had permeated the entire being of the people of this country and which could be used beneficially in preparing a constitution for India. It is a matter of deep regret to me that this aspect of thought was not considered at all by us.

My time is running short and I would therefore conclude my speech after making three points. I am very glad that in the matter of language which always is the repository of civilisation a decision has been taken in favour of Hindi. All the friends here and all the provinces have voted for its adoption. I am very glad that some one of our languages has been adopted as the official language of the Union. I, however, feel sorry that even in accepting it, it has been provided that it will become the official language only after fifteen years. It is not only I who had felt sorry for this but also several other friends also have felt the same. My sorrow and humiliation, however, folded hundred times when I come to have a talk with a few foreign ambassadors and diplomatic representatives in our country. They twitted me by remarking that for many years the Imperial sway of English will continue in your country. I would appeal, therefore, friends here not to forget that Englishmen are still having their hold in this country. I know that not a single diplomatic representative of any other country liked this decision of ours for they know well the deep inter-relationship between language and Politics. The decision with regard to nationalities in Europe is always on the basis of language, and therefore they are well aware of the political significance of a language in the life of a country. When you give a place to English in your country you come logically to be bound up with the English People. Some French Friends, who came to this country, often asked my why there was no arrangement for teaching French or Spanish in the Universities of this country. I am sure that if there had been arrangement for the teaching of French and Russian in our Universities that would have given considerable satisfaction to our French and Russian friends because then they could have been sure that you would study their literature and value their friendship. I, therefore submit Sir, that it has not been desirable for us to have retained English for another fifteen years. The fact is that Hindi had been kept so far away out of fear that it may not enter the seat of government. As against this English has been given a position in our Constitution which it did not have even during the British regime so much that not only the rule to be made by the Parliament would be in English but even a rule made by the Delhi Electric power Authority to the effect that their tram service would function from 5 A.M. to 11 P.M. that would also have to be made in English under the provisions of this Constitution. This injustice to Hindi was not considered sufficient in itself. Even the alien form of numerals has been imposed on it. The fact is that we are being treated even worse than children. We are told that the form used that the form used in Roman is the international form of the Indian numerals. This is in fact adding insult to injury. I am sure that if Gandhiji had been alive he would never have accepted the retention of English by a provision in our Constitution for another fifteen years.

Besides I find that real masters of this country still continue to be the Bureaucrats who should as a matter of policy be its servants only. Nor have we made any effort to eliminate litigation from this country. I am afraid that in the next fifteen years the roots of English influence in this country would have become twice as strong as the English people were able to make in their rule extending over a period of hundred and fifty years. The effect of all this is that the reins of power would remain in the hands of the English knowing classes. I am however hoping that after elections on the basis of adult franchise many people who do not know English would be returned to the Parliament and they would certainly dethrone English from its ruling position. I am convinced that that boycott of English is absolutely necessary for the progress of the country.

I would also like to say a few words about the boundaries of India. We have absorbed and assimilated the Indian States of the country. But we had permitted the division of our country and I do not find any limit in this Constitution that this country would become one again. Those who have been students of the culture and history of

India know fully well that the natural boundaries of our country were on the Vakshu which in greek is termed Dkhum and which the Englishmen termed as the Oxus. But that boundary has now received back to the Ravi. Even in the days of Moghuls Afghanistan was a part of India. Besides a big slice has been cut from our heart-I refer to East Bengal being cut off from the midst of Bengal and Assam. I ask you, Sir, could we not strive to unite these again. I do not know how this unity would be brought about-whether by means of war or by peaceful means. Future will reveal the means to be adopted. But I am afraid this is not an objective today. We do not dream that India that is now partitioned and fragmented would become one again, and that it shall not be further divided.

I feel that our indifference to our duty to the nation has been much greater in the matter of Kashmir. The Maharaja of Kashmir offered to accede to India. The people of Kashmir also desire to accede to India. More particularly the people of Jammu Province of that state want to accede to India unconditionally. Again the people of Ladakh desire that they should be permitted to accede to India irrespective of the decision taken with regard to Kashmir. But in spite of all this we find that in this Constitution our Parliament still have no power to make any laws for that State. Our soldiers went to Kashmir to drive the invaders from there. They have shed their blood there and have undergone untold sufferings and hardships. Even then the flag of India does not fly in Kashmir. Side by side with it and their flag has to be kept flying there. But I fail to see the reason for flying another flag there. It is a matter of deep regret to me that even after having spent so much money and shed so much blood we have not yet succeeded in making Kashmir our own. Even today in our politics Englishmen continue to wield great influence. We have no doubt sent the Englishmen away from our country but they continue to rule over our minds even now. I am reminded Sir, of the famous words of Lord Macaulay which he had recorded when the education began to be imparted in English. He had said that as a result of western education a race of persons would arise in India who would be English in every thing except their skin. Alas the proof of the truth of the prophecy is before our eyes today. It is only foreign ideals that have been incorporated in this Constitution. It has nothing Indian about it. I however, hope that some years hence this Constitution would not remain in the form in which it has been passed and that it will come to acquire a genuine Indian character, and would fulfil the basic and fundamental requirements of the people of this country.]*

Shrimati Renuka Ray (West Bengal: General): Mr. President, Sir, we are at last reaching the final stages of our Constitution-making, in three years. Three years, naturally, may appear to be a long time to frame a Constitution. But it must be borne in mind that since this Constituent Assembly first came into existence, swift-riding changes came in our country. With the partition of the country, the territorial orbit of the constitution makers was circumscribed, while with the transfer of power, this House became a Sovereign Body, drawing up the constitution of a free country, and acting also in the dual role of Parliament. Thus the first seven months of its labour were largely wasted as changes had to be made. Much of the time of the Constituent Assembly was also spent in dealing with emergency situations and the day to day problems of Parliament. Again, Sir, with the integration of the Indian States, even changes which were not contemplated a year ago had to be made. Sir, when this country was partitioned and provinces like my own province and the Punjab were dismembered, those who were not our friends thought and expected that the further Balkanisation of India was imminent. Who could have thought at that time, which of us conceived, that in two short years, all the Indian States, including Hyderabad, would be come a composite parts of the co-ordinated whole, and that for the States and the Provinces in a common measure, we would be drawing up a constitution for the entire Indian Union? Sir, living as we do in close proximity to these events that have taken place, it is difficult for us to realise the full significance of the bloodless revolution that has taken place and which stands as an eloquent testimony to the genius of Sardar Patel. I feel that it is only posterity that can given due appreciation to these events.

Sir, turning now to the Constitution, I must say that it is a very voluminous constitution that we have drawn up. It is perhaps the most voluminous in the world today. I was one of those who had believed that it would have been better not to have entered into such a welter of details, but to have drawn up a constitution on more general lines. Sir, a written constitution, however, elastic, must, to a very large extent, be a rigid constitution. It would have been better, I think, to have eliminated as far as possible rigidity, by not going into too many details. But the argument that held with this house was that we were concerned with numerous complex problems, that living conditions in this country differed so much and so widely that much detail was necessary. But for the life of me, I cannot understand why we had to go to such details as to put in the salaries of high dignitaries of the State, like the President and the salaries of Judges, in the Constitution. Why should the Constitution thus usurp what are really the normal duties of Parliament? Apart from any question of the amounts of salaries that have been put in, I should like to point out that in the modern world, where money is always changing in value, a sum of Rs. 5,000 today may tomorrow be worth only 500 or 5. So in the Constitution what purpose can be served by prescribing the exact amount of the salaries?

Sir, turning to the Constitution as it stands, in broad outline, though there may be many flaws, and one very major transgression against the very objectives of our Preamble, I feel on the whole this Constitution can fulfil the objectives for which we have drawn it up.

It has after all been drawn up by men and women who represent this country but who belong to very diverse cultures, different outlooks, with varying ideas on many subjects and thus the constitution had to be drawn up in common agreement and as a matter of compromise: and therefore it may be said-though each of us individually may have much to say on a great many of the clauses-on the whole we have been able to achieve a measure of common agreement.

So far as the fundamental rights of this Constitution are concerned, I think in the case of the majority of them, if they are properly explained to our people there is nothing that will not win their approbation and the approval of all. I should like in particular to refer to one fundamental right which makes a tremendous difference and really does bring in equality: "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.........". This right is a justiciable fundamental right today enforceable through courts of law, and if there are any laws, social and which remain as a contradiction to this principle of a justiciable right, those laws will have to be overridden.

It is very unfortunate that although the political rights are in these fundamental principles, the economic rights of citizens have not been able to be put in as justiciable rights today. Conditions in our country are such that it has not been possible for us at the present moment to have them as fundamental rights which are enforceable through courts of law. They have been put in as, directives of State policy. Sir, it is also all the more unfortunate that among these directives of State policy are some to the most vital rights of citizens and along with them are lumped many matters of much lesser moment. At the same time, I do not think there is anything to despair because it is possible for the parliament and the Government of the future to bring these rights which are now directives as economic rights, and as fundamental right, in the near future.

Sir, the content of democracy is not political democracy alone, and although it is quite true that we have laid down a Constitution which with adult suffrage has brought political democracy to this country, it is equally true that this constitution has not been able to provide as effectively as possible for the economic rights of the citizens, although there is no bar in attaining them.

I said a little while ago, that there is one great flaw, one great transgression, in the Fundamental Rights which is a blot on this very Constitution. While every other economic right is in directives of States policy, the right to hold and acquire private property alone remains as the fundamental justiciable right. Not only is it there in article 13(f) but it is further entrenched because of article 31 of the Fundamental Rights. It is entrenched in such a manner that the Parliament of the day has not the final authority to even determine the amount and value of the compensation that has to be paid when property is acquired in the national interest.

Sir, the very exemptions that have been made in article 31 show how firmly these rights are entrenched. These exemptions are in regard to zamindari property in certain provinces and even for these there is a time-limit. So that in the case of all other forms of property as well as in the case of zamindari property which cannot be legislated for in the prescribed time-limit, parliament will have little voice. There was a great deal of confusion on this matter, I feel. There were many who seemed to think that if it was parliament who had the final right to lay down the manner of compensation it may so happen that no compensation at all would be paid. Sir, I am sure you will agree with me, and the House also will agree with me, that no constitutional authority could ever have laid down any such principles in which no compensation whatsoever was paid. Therefore, I consider that there was a great confusion of issues when this point was raised and I feel, and I would humbly submit, that many of us did not quite realize what we were doing when we allowed this clause in the present form to be included in the Constitution.

Posterity may well say of us that here, we did try to lay down the economic structure of future times, for all time, perhaps there is only one compensation, one consolation that we can by amendment of the Constitution change this, and I am sure Sir, that very shortly it will be necessary to bring in such an amendment.

After all a Constitution is but a paper document. It is the way in which it is worked that will determine its success or its failure. We are the framers of this Constitution and in our humble way, as a compromise amongst so many, we have done the best that we could have perhaps, although we must consider that there are many flaws left. But it is the architects who will actually implement this Constitution, who will give it life and breath, who will really determine what manner it will be worked. It will be to them to make of it something worthy and worthwhile and also it may be that they can mar it, distort it, maim it and make those very fundamental principles and rights which are meant for the security of citizens be used in such a way as to bring about the detriment of the citizen. It is really the architects of this generation and the next we are going to put this Constitution into working, on whom will depend a great deal, its success or its failure. It is not for us to say whether we have come our job well or badly. It is only posterity that can really judge of us. There will be, as I have said, need for amendments which some of us feel must come in the near future. In the light of the experience of the working of this Constitution, there will be need for many other adaptations to bring it into conformity with and adapted to the needs of the genius of our race.

Sir, before I conclude, I should like to join with those who have expressed their gratitude to you for the fortitude and the patience and the sweet tolerance that you have shown to the Members of this House.

I would also like to express my thanks to the able members of the Drafting Committee and its Chairman, and particularly I should like to say a word about Mr. T. T. Krishnamachari who has put in as much effort and as much energy as this galaxy of brilliant lawyers amongst whom he has on more than one occasion brought to bear a humanising touch. Our deep gratitude is also due to Sir. B. N. Rau, the Constitutional Adviser who without prejudice, explained legal intricacies to us an made them clear.

Sir, finally I would like to say that may it be given to us to be able to work this Constitution in this generation and in the generations to come, in such a manner, that the lofty ideas that the Father of our Nation laid down, may indeed become a living reality for the people of this land. May Gandhian socialism be a practical contribution of this country to the world of man.

The Honourable Shri K. Santhanam (Madras: General): Mr. President, Sir, on many an occasion during the last three years I was feeling impatient at the slow process of our constitution-making. I was apprehensive lest something should happen to delay indefinitely our Constitution. It would have been an irretrievable disaster. We all know what happened in China when constitution-making was unduly delayed and when finally attempts were made to implement that Constitution it broke down. It is, therefore, fortunate that we have concluded our labours.

Looking back, I feel that these three years have not been too long. In fact, it has enabled us to draft a better constitution than it would have been possible if we were able to finish it a year ago. Many criticisms have been made about this Constitution. My honourable Friend Mr. Naziruddin Ahmad has complained about drafting. But reading it as a whole, if we apply the criteria of clarity and precision, I think we have made a very good constitution indeed.

Sir, my honourable Friend Mr. Pataskar, with some justice, criticised the inroads into Provincial Autonomy that have been made. I agree that in some matters unnecessary provisions have been introduced, making it appear as if the Provincial Autonomy under this Constitution is much less than that even under the Government of India Act of 1935. But, again, I would suggest that we should see things in a proper perspective. I do not think that the quantum of Provincial Autonomy under this Constitution has been diminished and this quantum is justiciable. It is protected by the Constitution and the courts have been even strengthened in the process. In fact, the drifting of power from the original draft to the final draft has been from the Executive to Parliament and from Parliament to the Judiciary. I am not sure that it has been wise, but that has been the drift and as a result we have got a Constitution which is federal in character and the federalism of it is so well protected by the Judiciary that it cannot be broken except by a change of the Constitution. Therefore, I do not think that Provincial Autonomy as such has suffered materially.

Sir, the one great thing that we should appreciate in our Constitution and which forms its bedrock is that the entire Constitution rests upon the will of the people of India as a whole. It is the Union aspect that is very important in the light of our past history. Sir, if we made the residuary powers rest with the provinces, then it may mean that the sovereignty rests more on sections of the Indian people, not on the Indian people as a whole. Today it is the Indian people as a whole whose will has been embodied in this Constitution.

In this connection, we have to realise that the Constitution, so far as the Indian States are concerned does not rest upon the Covenants. The Covenants have value only to the extent they have been embodied or recognised in the Constitution. The integrity of India does not depend upon the covenants which have been agreed to by the States Ministry with the other States. They were only preliminaries to persuade them to come into the Constituent Assembly. When once the Constitution comes into existence, all these covenants derive their authority only from the Constitution. It is the Constitution that is the supreme and fundamental law. There is no provision whatsoever for any kind of severance of any part of India as defined in the Schedule except through the process of amending the Constitution itself. Therefore, only the people of India as a whole can allow any part of India which has been included in the Schedule to go out of India. Without that, no part by its own will can ask for any kind of severance or separation. That is a great thing.

Shri K. Hanumanthaiya (Mysore State): Nobody has claimed that right.

The Honourable Shri K. Santhanam: I do not want the representatives of Indian States to claim any right as accruing from the covenants.

Sir, I was rather surprised to find my honourable Friend Seth Damodar Swarup complaining that this Constitution will not be accepted by the people of India, and that it does not give them what they want. I would like to know what he wants. This Constitution enables the people of India to do anything they like. If I understand him correctly he complains that this Constitution prevents the people of India from doing something. It does not impose upon the people of India anything. There is nothing in this Constitution which prevents the people of India from enforcing a fully socialist republic. But he wants that we should prevent the people of India from exercising their free will be imposing, upon them something from outside. Sir, this Constitution is meant to make the will of the people prevail and there is nothing in this Constitution which will in any way prevent that.

Sir, I do not want to go into the merits of the Constitution. I think we are assured of the fullest democracy that my Constitution can give. How that democracy will work, to what extent it will be utilised to convert it into not only political democracy, but into industrial democracy, into social democracy, that depends upon those who will work that Constitution; upon the general will of the people of India and the leaders who will be produced by the people of India. No Constitution can provide such things. All that a Constitution can provide is that the will of the people shall prevail and I think this Constitution has done it to the fullest extent. Therefore, Sir, it is necessary that, instead of indulging in carping criticism, we should from now develop the idea of the sanctity of this Constitution. It is only by making the people believe that through this

Constitution they can achieve all that they want that it will become sacred, that no one, neither military power nor any other power will dare to break the Constitution through force or fraud. That is the great thing that is necessary. The imperfections of the Constitution can be amended in course of time by suitable amendments. I think the amendments which will be required will be very few. No amendments may be required at all for many decades to come. The present Constitution gives as many and as full powers as the people are likely to require in the near future. Therefore, I would like that steps are taken to popularise the Constitution. I would like to make a suggestion, Sir, that every Member of this Assembly should get your autographed copy of the Constitution which he may hand over as heirloom to posterity.

Shri R. K. Sidhva: That is not an original suggestion: the President has already made an announcement to that effect.

Mr. President: To what announcement does Mr. Sidhva refer?

Shri R. K. Sidhva: Sir, the announcement to the effect that the Constitution after completion will be presented to the Members with their autographed signatures.

Mr. President: I did not make any such announcement; but that might happen.

The Honourable Shri K. Santhanam: I have the suggestion to make that a properly bound Constitution autographed by the President should be given to each Member to be kept as a heirloom for future generations. I would also suggest that such copies should be sent to all public institutions. The Universities should also be asked to make the Constitution a compulsory subject for some decades to come and every graduate should pass a test in this Constitution so that the provisions of the Constitution may become universally familiar.

Sir, I would also suggest that as you have already promised early elections should be held and the Constitution should be fully implemented as soon as possible. If there is much delay between the commencement of the Constitution and its full implementation by Parliament, the value of the Constitution may be diminished and it may not gather sufficient influence with the people. Therefore, it is necessary that the elections should be held as early as possible-early in 1951 at the latest. I hope this will be done.

Finally, the work of the Drafting Committee is, to my mind, beyond all praise. Especially during the last few months they have been so hurried, so much pressed for time that it is remarkable how they did their work. I should also mention that it was not only on the open floor of the House that the Constitution mention that it was not only on the open floor of the House that the Constitution has been scrutinised, but much more severely within the Congress Party meetings. I do not want to mention names, but a group of people in the Party took the greatest pains to scruitinise every clause and very article and a great deal of improvement was made in those meetings. But for their scrutiny the Constitution would not have been so good as it is. On the whole we have done a good job and hope this Constitution will go down to future generations as the greatest work done in the present generation.

Mr. President: Before we rise, I would like to know from the House if they would like to sit in the afternoon .(*Cries of "no, Sir", and "One hour in the afternoon"*). The suggestion had been to me that, today being Saturday, Members have other engagements and therefore we may not meet in the afternoon. If that meets the wishes of the House, I have no objection. Do you not wish to meet today at all?

Several Honourable Members: No afternoon session, Sir.

Mr. President: It seems Members do not want to have a session in the afternoon. If that is the wish of the House- I think the majority are of that view as I can gather now -then we shall meet at 10 A.M. on Monday.

The Assembly then adjourned till 10 of the Clock on Monday the 21st November, 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME XI

Monday, the21st November 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at ten of the clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION--(Contd.)

Mr. President: We shall now resume further discussion of the Constitution. Sardar Bhopinder SinghMan may speak.

Shri H.V. Kamath: (C.P. & Berar: General): Sir, before we proceed with the discussion of the Constitution, permit me to invite your attention to the fact that I have given notice of a motion that the Assembly do take into consideration the question of a National Anthem for India. Will you be so good as to tell the House whether the House will debate this question and, if so, when?

Mr. President: We held a meeting of the Steering Committee on Saturday last, but unfortunately this motion was not before us at the time. So we did not consult the Steering Committee on this question I shall again call a meeting of the Steering Committee for considering this matter.

Shri H.V. Kamath: Will this question be taken up in this session or in the January Session?

Mr. President: I shall have to place it before the Steering Committee before I could say when we can have a discussion of it in the Assembly.

Sardar Bhopinder Singh Man (East Punjab: Sikh): Sir, the various aspects of this Constitution, so far as the general trends are concerned, have already been discussed by the previous speakers. I do not think I will be able to improve upon their comments. In a general way, however, I would refer to the over-concentration of power at the Central which has almost reduced the States and the different constituent units to mere glorified corporations. I feel, Sir, that it will leave very little scope for the different constituent units to develop. Their progress is bound to be very restricted, and the very essential things for the proper growth of democracy which are actually to be found from below will not have a fair play; but the argument has been advanced that in the present state of affairs when we are a new State, probably it is essential that we should have more power at the Centre. They very nature of this argument leads us to conclude that this is a just temporary phase and I feel that eventually we shall have to bring in amendments, let me hope, very soon, which will leave more autonomy, more power, to the constituent units. In this respect, I feel that Kashmir has escaped with a very enviable position in the Union and I feel jealous of it.

Another aspect to which certain speakers have referred, and they have actually objected to it is that prohibition has not been incorporated as an immediate task before the country. I am glad, Sir, that it has only been incorporated as a policy to be pursued by the different units and as the realities of the situation demand. Many of the far-reaching reforms, constructive projects, are being held up simply because we are short of funds. There is the question of inflation too, and I feel that when we talk of prohibition and about its being brought about immediately in the country, I feel it is just a mental luxury that we are going to have. Otherwise, so far as practical things go, I am afraid that many of my friends who are bent upon killing recreation and pleasure wherever possible shall have to wait for some time. I am reminded that in the Punjab this prohibition as elsewhere has to be enforced by officers who do not themselves believe in prohibition. In the villages, when they go to check illicit distillation, the orders were to destroy the jars used for the distillation of illicit liquor, but the village policy who went there, instead of destroying the jars, drank the whole of the liquor, and then questioned, they said that the order given to them was "that the people who distilled the liquor should be dispossessed of it and we have done it. Instead of spilling such a nice thing in the dust, we made a better use of it and we drank the whole of it." When such is the case, I am afraid that we must first bring about an atmosphere of acceptance of prohibition, and then only we should try this wholesale prohibition.

Thirdly, my main and primary object in coming forward to speak is that I am surprised that not many speakers who have proceeded me have referred to the minorities aspect of this Constitution, except perhaps for one speaker, Rev. Nichols-Roy, who said that he was very glad that the concessions given to the minorities have been done away with. I am reminded of how Rev. Nichols-Roy day after day was fighting for tribal concessions, tribal safeguards, and got these tribal safeguards. I may remind him that tribal feeling is as good are as bad as any communal feeling and, when he has escaped with those nice things, to come and advise us that communal feeling is bad is just out of place. When we started to frame this Constitution, there was anxiety in the minds of the framers of this Constitution to give full satisfaction to the minorities. As the days passed by, the atmosphere was cleared, trust was given and received, and confidence was reposed in each other and many knotty problems were solved by mutual consent. Now, Sir, the impression has gone round and I can say this so far as my own community is concerned, that towards the latter days of the framing of this Constitution, the minority question which was such a sacred trust with the majority, was brushed aside and lightly brushed aside and that without the consent and wishes of the representatives of the minority communities. I feel that is a deviation from the earlier trends which evinced anxiety to give full satisfaction to the different minority groups.

Sir, as the House is constituted today, we are expected to give the reactions of the various sections that we represent. The fact remains that we here represent different sectional and communal interests. I will be failing in my duty if I do not give you the reactions of my own community, the Sikhs of the East Punjab, so far as this Constitution goes. Their feeling is that they cannot give unstinted support or full approval to this Constitution. They remember how in the beginning, so far as the minorities were concerned, it was agreed originally that all the minority groups will be given due representation in the Service Compatible with the Centre and in the provinces to watch the working of the Constitution so far as these minorities are concerned. They feel that towards the latter days of the framing of this Constitution, that attitude was changed and different articles were incorporated in the Constitution brushing aside all minorities except the Scheduled Castes. We feel that this change was very lightly brought about in spite of the advice of Sardar Patel who said in the Draft Report that the decisions arrived at should not be lightly changed. In spite of that, it was lightly changed - I can say at least so far as the Sikhs are concerned-without their wish.

We are quite emphatic about it that this is a deviation and contrary to the earlier practice that whenever any change was sought to be made, the representatives of the particular community concerned were consulted on that. In this case, however, it was not done. Everyday, Sir, we are receiving telegrams, resolutions of protest in the Sikh Press which has been hotly agitated over this. This has left a bitter taste and they are surprised as to how decisions earlier arrived at were changed towards the closing days of this Constitution making. Much has been said that the Sikh Press which has been hotly agitated over this. This has left a bitter with the Hindu Scheduled Classes and they will be treated on a part with the other Depressed Classes; but Sir, if it had been done in the spirit of conceding a just demand and not in the spirit of sacrifice, or concessions, much of the bickering would have been avoided. We find, Sir, this very decision too that to treat the Sikh Scheduled Classes as well as the Hindu Scheduled Classes has been diluted in such orders that have been issued and the Sikh Scheduled Classes will not be treated alike or on a part or will not be included in the Schedule in the Patiala State or anywhere else in the whole of India. Sir, it passes my imagination how a Sikh Depressed Class who is considered to be economically suppressed and submerged is not to be considered so because he was only a few miles away in Patiala while he is considered to be quite backward only in East Punjab. So far as the United Provinces are concerned, I am quite sure that the Sikh Depressed Classes invariably come from the lowest strata of society and there they are not to be given any concessions which are to be given to their counterparts, I mean their Hindu brethren. Such dilution have spoiled the grace of this concession too. Now the power has been given to the President to include all the depressed classes in the Scheduled Class. At this time of the day, Sir, I request and repeat my request that the suppressed, backward Sikh scheduled Classes should be given the same concessions, should be treated alike everywhere in the whole of India, equal to their counterparts.

I might explain a situation. It has not been explained so often and sometimes there seems to be some misunderstanding. Because of the social and economic close-knit ties in East Punjab and a sort of spiritual affinity between the two, invariably one brother is a Hindu Scheduled Caste and the other brother grows long hairs and he is a Sikh, but so far as the job or profession is concerned, it is absolutely similar. Both are treated alike. He may be a Sikh, but he is not allowed to draw water out of the wells. His real brother, born of the same parents, one is a Hindu and the other is a Sikh; he is mending the shoes and the other is also mending the shoes; the one is cleaning the latrines and the other is also cleaning the latrines and simply because one happens to grow long hairs, he should not be given the same opportunities which the other, his real brother is getting. I feel it is a recognition of certain facts which exist today and not a concession.

However, I feel that it is not the lifeless structure of a Constitution or the written word that ultimately counts. As time passes there are bound to grow certain conventions which are more akin and near to realities, which are more dynamic in character and I feel, Sir, that ultimately it will be the inherent good sense of the people that will count and not the letter but the spirit which shall prevail, and people here in the country will have equal opportunities of justice in every sphere, the sphere of administration and economic structure of the society.

Kazi Syed Karimuddin (C.P. & Berar: Muslim): Mr. President, I congratulate the Drafting Committee for the stupendous work they have done and I have also to congratulate Mr. Naziruddin Ahmad for the arduous work he had undertaken for which he did not receive a word of thanks from the Drafting Committee. I particularly thank Dr. Ambedkar and congratulate him for his brilliant advocacy and the task he had undertaken in drafting this Constitution. I know that he had great handicaps and one of the instances of that handicap is the amendment that I had moved regarding the illegal searches-searches of houses and persons-which he had accepted and which was carried by the House and which was defeated after a week's time after its postponement.

Sir, there is no doubt that this is a very solemn and historic occasion. This is the happiest day in the life of the nation that we are framing our own constitution after centuries of bondage and foreign domination and that today we are the masters of our destiny and that the Constitution that we are framing is ours. We may disagree or agree with it. Sir we are liberated, but the Constitution does not guarantee economic freedom to all classes. In this Constitution there is no flexibility. The amendment that had stood in the name of the Prime Minister, the Honourable Pandit Jawaharlal Nehru that the provisions could be changed within five years by a simple majority has not been moved. So today if it is framed by a majority is secured. So we have not only framed this Constitution for us but we have inflicted it on the next posterity. I say it was our duty to keep flexibility in the Constitution and this we have not done.

Sir, I am very proud that India is proclaimed to be a secular State. The provisions in article 9 to 30 do not make any discrimination on grounds of religion, race or caste and there is equality of opportunity in public employment and in holding and disposing of the property.

Sir, the communal bitterness or the communal discord that is existing in India today must be done away with. The Constitution must be worked out in the spirit in which it is enacted. My earnest appeal is that we should live up to the ideals and it should not be said that we do not practice what we profess. Sir, today I find that the policies of the Defence and the Railway Departments are moving us towards economic annihilation and I submit that if these provisions regarding the equality of opportunity of employment have been accepted in the true spirit then the unsecular activities existing in these departments must be put a stop to and it should not be disqualification to be a Muslim in India. I am sure that the majority community will create trust and confidence in the minds of Muslims in order that they may regard this country as theirs.

Another problem to which my honourable Friend, Mr. Man has referred to is the minority problem. Sir, I take pride that I was the first man to move for the abolition of the reservation of seats at the time of the second reading of this Constitution, but I had pleaded that there should be proportional representation. Proportional representation was not given and the abolition of the reservation of seats was granted. Now it is very clear that the privileges and rights which we had enjoyed for the last 60 years exist no more and we depend on the good sense of the majority in this country for our privileges, I have only to say:

"Tamashai ahle Karamdekhte hain".

We look to the generosity of the majority in this country, for our future. We accepted this because it was the wish and will of the majority. Those who have accepted in this House have no representative character. I maintain. Myself, or Mr. Tajamul Hussain or Begum Aizaz Rasul after the dissolution of the League Party have no representative character. Therefore, my submission is that we are embarking upon an experiment of a very huge magnitude. Whether the Muslims, without any safeguards, in view of the Muslims, without any safeguards, in view of the communal bitterness in the country, would succeed in the next elections: whether they would be taken in the services, is a doubtful proposition. I hope and trust that the top leaders of the Congress, particularly those who are responsible for this abolition of this separate representation, will see that in the future a spirit of co-operation will prevail and the Muslims will get their full share in public life. I really thank Mr. Kapoor from Agra who had made a reference in this speech while moving an amendment that the majority community should realize the great responsibility which is place on them by abolishing the system of representation.

Another thing, Sir, to which I seriously objected and to which even today I object is the emergency powers given to the President. It is an admitted fact that the President is not elected on adult franchise. He will be a creature of the majority party. His actions will be in keeping with the wishes of the majority party. The opposition parties are not likely to get a fair deal. If the majority party wants that the Constitution should be suspended, for the reasons given in the sections, it can be suspended. Provincial autonomy, in my opinion, is only a sham institution. If the opposition party is elected in some of the provinces and the Centre does not want them to continue, under any pretext, under any of the provisions of the law, the Constitution can be suspended. Therefore, my submission is that the Centre should see that in matters of policy the Constitution should not be suspended. It is only when there is domestic violence, or when there is a rebellion or when it is impossible to carry on the Constitution in the provinces that the Constitution should be suspended. As has been said in one of the recent cases in America, "The Constitution of the United States is a law for rulers and people equally in war and peace and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the exigencies of the Government. Such a doctrine leads directly to anarchy and despotism: I hope and trust that after giving trial to these provisions, within five or ten years, they will be repealed and perfect freedom will be given to the provinces by the Centre.

Another objection to the Constitution is the absence of the words 'without due process of law' in article 15 and the limitations on article 13. Without these words, and with the limitations on article 13, I maintain even today very seriously that there is no scope for full civil liberties in India. When there is an invasion of the Fundamental Rights by the Legislature, when these words 'without due process of law' are not there, then if the procedure laid down by law is complied with, a man can be hanged, under a law which is unjust. My submission is this. We have been framing the Constitution at a time when there was disorder in India. It may be that in view of the exigencies of the situation we have framed the Constitution. I hope and trust that as soon as peace is restored in India, the fundamental rights conferred in article 13 will be without any limitations and that due process of law, which is the only guarantee for individual liberty, as in America and other countries will be introduced even in this Constitution. If this is not done, if the special powers of the President are not taken away, the result will be chaos and anarchy. Too much centralization is bound to create conflict between the Centre and the Provinces. Today we do not find that because the same party is ruling in the Centre and in the Provinces. Suppose different parties are elected to the provincial legislatures and if there is a conflict between the Centre and the provinces, there will be military rule all over, the Constitution will be suspended and India will be vast prison with the President as the Superintendent of Jails and the Ministers as visitors. Therefore, my submission is that there is very serious objection to these two provisions. In my opinion, the Constitution is neither federal, nor unitary, neither Parliament nor non-Parliamentary, that is neither here nor there. With these words, Sir, I give my qualified support to this Constitution.

Shri Arun Chandra Guha (West Bengal: General): Mr. President, Sir, this is a glorious day for the people of India. After centuries of slavery, indigenous and foreign, the people of India for the first time have got the power to frame a Constitution for free India. I say, the people of India, because it is not within living memory of history that the people of India had any say in the framing of the Constitution of the Government they would be living under.

This Constituent Assembly is the child of a revolution. We are passing through the revolution and the Constitution that we are going to frame or that we have framed here must be suited to revolutionary conditions. If the present Constitution that we have framed here takes the social forces for granted as in a stablised society and if we have framed a constitution only to suit such a society, then, I am afraid, this Constitution will not serve the purposes of the people.

Through years of struggle, we have roused forces among the people, we have roused aspirations in the minds of the people and we must take cognizance of those forces and those aspirations so that those aspirations may be reflected in this Constitution. Otherwise, Sir, this Constitution will have little utility for the people and I am afraid it will have little stability also. But, at the same time, I know that just after the transference of power, all sorts of fissiparous tendencies in society get an impetus to raise their heads. Just as after the Russian revolution in 1917, about a score of political parties and groups big and small were all aspiring to seize power, here also regional, political and economic parties, classes and groups have similar aspirations. That reality of course, we should take into consideration in framing the Constitution. Moreover, we have started with legacy. Unlike other revolutions, we have not been able to begin on a clean slate. We have inherited a machinery and a social order which hangs rather heavy on us, and that also has to be recognized and has to be considered. So, the present constitution by the very nature of things must be something like a stop-gap arrangement and something like a hybrid product.

It has been said, and I think it has been rightly said, that this Constitution has no character of its own. The Russian Constitution clearly stipulates that socialism forms the economic backbone of the State that it has set up and the Soviet in every stratum forms the repository of all social authority. Here, in our Constitution, we have not mentioned anything like that and I think, in that respect, we have failed to reflect the aspirations of the masses and to reflect the ideology of the revolution which we have been conducting and of which this Constituent Assembly is the product. Decentralized economy based on village panchayats should have been distinctly mentioned as the fundamental principle and basis of new state.

Yet, Sir, this Constitution has embodied some very significant achievements of the National Government during the last two years. First I should mention the abolition of untouchability. Untouchability was the greatest blot, the greatest slur on the Indian civilization and culture. That has been made a thing of the past at least according to the statute of this Constitution. Then, I should mention that the communal electorates and all sorts of separatism have been abolished. That was a thing which was created by the British Government to divide the nation into so many segments psychological and regional. That has also been abolished. I must thank here the Members who represent those communities which have so long been known a minorities that they have rightly responded to the needs of the times and I thank them for coming up to the occasion. In that connection, I should also particularly mention the names of Sardar Patel and Dr. H.C. Mookerjee. But for the determined efforts of these two gentlemen, I think it would have been difficult to achieve this.

The third achievement of significance is the abolition of the States. Six hundred and odd States were something like plague spots on the body politics of India. They also have been liquidated, mainly due to the vigour and energy of Sardar Patel.

The Fourth significant point is the secular character of this Constitution. When communal passion was raging throughout the whole country, the framers of this Constitution refused to yield to the passion of the moment and they insisted that the State that they are going to set up must be secular and democratic- based on adult franchise. Every citizen irrespective of religion should have the same opportunities and the same rights. That is an achievement particularly significant in the present set up of the country as we used to know it before 1947-and it should be particularly commended.

In spite of all that may be said against this Constitution, Fundamental Rights, Directive Principles and the Preamble, these three have embodied very noble sentiments and ideas; and the right to work, right to education, and the right to minimum living wages-all these have been embodied in the Constitution. Freedom of speech and association has also been conceded. I know these rights have been hedged in with some overriding clauses; but as I have stated before, just after the transference of power, I think some such restrictions are to be imposed. Until the society has been stabilized, until the Government can feel sure of its position, some such restrictions ought to be imposed. John Stuart Mill who is the apostle of individual liberty and freedom has also admitted the necessity of individual freedom being restricted by social obligations to other citizens and to the State. Such obligations and such restrictions must have been incorporated in every Constitution-in the form of restrictions to individual liberty and to suit the realities of the situation.

India is a big country with many federating, units and it is not impossible that some political party or some other mischievous group may seize power in any of the federating units either through ballot-box or through some political strategy and subterfuge. In such a case the State should have authority to control that unit so that-that political party or group may not use the federating unit, which they have taken possession of, as a jumping-off ground for future expansion. So far all these reasons, I do not mind that the Centre has been given some overriding power over the federating units. Yet I feel the power vested in the hands of the President is too much. It has a dangerous potentiality; it smacks something like the power of the German President which helped the rise of Hitler in 1933.

This Constitution is something like a hybrid Constitution. It is a Federal Constitution but it has started from the top, not from the bottom, as all Federations should start. It is the Centre that is delegating some of its powers to the federating units-not that the federating units who are enjoying sovereign powers are surrendering some of their sovereign powers to the Centre as was the case in the U.S.A. So naturally the Centre which lis devolving some powers must be stingy in this devolution of power. And in the present context it is in the fitness of things that the federating units have not their full privileges that in a Federation they ought to have. Yet the financial provisions might have been a bit more liberal so that each federating unit may have opportunity to devlop according to themselves without always looking to the Centre for any paltry sum.

This Constitution is a product of a revolutionary movement and it must reflect the aspirations of the revolutionary masses. We have been conducting a revolution and we are in the midst of it and we have not come to the end of our journey. But during the course of our struggle we have been given some revolutionary and economic ideas which, I am afraid have not been correctly represented, except two niggardly concessions to the ideology of Gandhiji in articles 40 and 43, .e.g, regarding village Panchayats and cottage industries. Even retaining the authority for the Centre, even retaining some provisions for stabilizing the society, this is a thing which could have been conceded and provided for in this Constitution. So this Constitution can not satisfy the needs of the revolution. But I do not feel frustrated. I know history is a developing process. No country has its constitution stabilized through one constitution only. The U.S.S.R. has got it through four Constitutions, first in 1918, then in 1923, then in 1923, then in 1936 and then in 1944. The U.S.A. has got several amendments to its Constitution and I think this Constitution of ours is only a stop-gap arrangements. We have to proceed further so that the revolutionary aspirations of the masses may be correctly represented in the Constitution that will be framed. There is warning from China; that should be taken note of. It is not enough that the Congress has achieved the independence. The masses should and will look towards the future. If we cannot build up a state taking the potentiality of the future into consideration, I am afraid the Congress Party may have the same fate as the Kuominatang in China and I hope the leaders of the Party will take note of it and will frame the future Constitution with a correct perspective so that the aspirations of the masses maybe correctly reflected. Another point in this Constitution on which I have been repeatedly asked by many friends to speak, that is, on the power to detain without trial. Sir, I have passed about a quarter of a century in detention without trial and I know the stings of it, particularly what it means to the relatives of the prisoner. But as I have stated, in this period, just after the transference of power, the Government ought to have such provision; and I say this spite of the fact that I know the sting and I have suffered it to the fullest.

At the Jaipur Congress, a resolution was passed which stated that the liberty which has been achieved, the freedom attained in the political field, should be extended to the social and economic spheres also. I, however, think that this Constitution will not be of any help to the extension of liberty in the social and economic fields. That is the ideal which Gandhiji gave us, and that is the ideal for which we have been struggling, and that is the ideal which I hope, the nation has not forgotten. I do not feel frustrated or dejected that this Constitution has not come up to our expectation. We shall have to rise to the occasion and follow the lead which Gandhiji has given us. A mad fanatic has killed his frail physical frame, but his spirit is still pervading, and in the words of the poet Tagore, I would say, that old man whom we have rejected in our pettiness, and whom we have killed in our anger, will in the future, guide us and lead us to the birth of the new world and the new man.

"Vandemataram."

Shri Shankarrao Deo (Bombay: General): Mr. President, Sir, after more than two years of patient work, we are in the stage of finalising the Constitution of a democratic Republic, for a nation which is 350 million strong. In spite of the partition, the Bharat of today, thanks to those who have worked for that consummation, is bigger than ever before. It is said that we are approaching the end of our task. But there is nothing like an end in human history. An organic thing has to grow, or disintegrate. It can not remain what it is, a static thing. This nation which has attained its freedom after centuries, has to grow according to its genius; and if this Constitution is to help in its growth, then this Constitution must also grow, which means that it must have in it seeds of growth. After centuries of imperial domination, when a country of this dimension, a nation so numerous and so varied in its culture, seeks to build an instrument of its governance, it is indeed a grand endeavour-an endeavour which requires the most intense sympathy, to reflect the aspirations of the people and the boldest imagination to interpret the current of history.

As constitutions are made, they also grow. The makers of the constitution, therefore, must have a complete knowledge of the constitutional theories and practice of different ages and climes. If we look at this grand documents, which in a few days time will be the Constitution of the Democratic Republic of India, it embodies the philosophy of the exponents of the revolutions which have gone before. If we look at its size, perhaps it is the bulkiest volume, and no other Constitution can stand comparison to it. But that in itself may prove to a shortcoming or a drawback. It seems as if we have not left anything to the future; we have tried to create a straight jacket in which this nation must grow. Many things ought to have been left to conventions, to future events, aspirations and growth. A Constitution which is so big, is bound to lack in elasticity, and therefore, there is a possibility-a fear of its proving an impediment to the growth of the people. Still we must admit that it embodies the philosophy of the exponents of the revolutions which have gone before. It is strengthened by the political institutions which man in his experiment in democracy has so far evolved. The Preamble of the Constitution recognizees the sovereignty of the people and is in complete accord with the philosophy of Rausseau's Social Contract. It is consistent with the theory of Separation of Powers of Montesquieu. Its secular character is in conformity with the spirit of the Renaissance. It has taken the federal institution, first adumbrated as a measure for practical politics at the time of the American Independence. The distribution of powers in the Indian Federations has been fashioned after the Wrimar Constitution of Germany in 1918. The Chief Executive of the Indian Republic is neither fully American nor completely French. He will not govern as much as the American President, nor will be like the French President, an automatic machine for collection of autographs of responsible Ministers. And yet, as under the Weimar Constitution of Germany, he has the potentiality of being a virtual dictator. Our long association with the Commonwealth has imported the cabinet form of government, along with the presidential type. Part III of the Constitution-the Fundamental Rights, and Part IV-the

Directive Principles of the State-put forward in unmistakable terms the awareness of the makers of the Constitution of the principle of Rule of Law which is the bulwark of British liberty, as well as the impact of the Marxist philosophy on the life and society of man. Indeed the Constitution embodies eclecticism *par excellence*.

While appointing the draftsman of our constitution, we were eager to have the knowledge of the constitutional pandits, and the precision of the constitutional lawyers and we have got them in full measure. Dr. Ambedkar and his associates or his colleagues of the Drafting Committee deserve our gratitude, and I think they could stand comparison to any of the constitution makers and draftsmen of any constitution in any country in the world. But we did not choose to have the wisdom of the statesmen whose main asset is mother wit and commonsense, nor did we choose to fashion our Constitution in the spirit of our Revolution, because none of the makers of this present Constitution can claim to have passed the test of the revolutionary struggle which preceded the year 1946 when the Constituent Assembly met. In fact, the Constitution can hardly be called the "child" of the Indian Revolution. Look at the Constitutions of the world which are the products of revolutions. They have a stamp of their own, by which even a man who runs can read them as the British, the American or the Russian. The Constitution which would rule the Indian people has got every institution which guarantees liberty to man, every principle which promotes progress peace and fraternity, but at the same time we must admit that the Constitution has not made provision for adequate and effective machinery for the implementation of any definite principle of progress inspiring our Revolution. But I know this is no fault of any single individual. Though we say that we have made a Revolution and we have come to power on the crest of a non-violent Revolution led by Mahatma Gandhi, still we must admit that the principles on which that Revolution was based have not gone deep into the body politic or in the Indian society. We followed Mahatma Gandhi. We did what he asked us to do, because he promised us that he would give us independence. But we must admit that, though we followed him, we did not accept his entire conception of life. It was a political Revolution which has give us power-political- which we have tried to embody in this Constitution.

But as far as social or economic conceptions of Mahatma Gandhi's ideology of life are concerned, we must admit that we have to travel for before we can say that we are anything near to them. How often has our Prime Minister, in his American tour, emphasized that the world is looking to India with an expectant eye; and that expectancy is for finding a way out of the present crisis that the world is facing. We must regretfully admit that there is very little in our Constitution which they can feel as something new, which if they copy will enable them to tide over the present crisis. We have drawn very liberally from the Constitutions of different countries like America, England, Australia, Canada, Ireland, Germany and so on. But there is very little that is in our Constitution which they can, in their turn, accept. Mr. President, Sir, it has been a one-way traffic practically. I am afraid, but as I said, it is no fault of any individual. If it is a fault, it is the fault of us all, because we have not faithfully followed our Master. I would not say that we have consciously tried to betray or deceive him. I would not say that we have consciously tried to betray or deceive him. It was our shortcoming, it was our weakness that has disabled us from accepting what he gave us as the philosophy of a non-violent, peaceful life.

Still, there are many things in our Constitution of which we and future generations can legitimately be proud. The first thing which attracts the eye is the unity of this nation as it has been embodied in the present Constitution. We have once for all done away with that poisonous creed which destroyed our unity-political, social, cultural and moral-namely separate electorates and reservation of seats for minorities. I know that our friends, the Scheduled Castes, have insisted on having at least some kind of reservation. We have allowed it to continue for ten years. But if we all work and try to remove this blot of untouchability, not from the Constitution but from our hearts, if we destroy it not in law but in spirit, then I am sure this last blot or the sign of it will also go. This unity has also another feature.

We are proud, especially those who had the privilege to serve the Congress, that while passing this Constitution of Free India, we have fulfilled our pledges to our fellow brothers in the so-called Indian States. In our Haripura Congress we promised that the freedom or independence for which the Congress was struggling was also for the independence of the States. Today we can say that the Indian States are free and independent to the extent or to the measure the so-called provinces in the Indian Union are. In that way, I can say without any fear or contradiction that India was never so united or so great as she is today.

Also there is another feature. Our Constitution, we can assert, has given political freedom and democracy in full measure, because it is based on the principle of adult franchise. I know that there are people who fear the consequences of this privilege or right given to the masses. But I am sure this fear is due to the lack of faith in the people. If we have imbibed the teachings of Mahatma Gandhi, then we can go ahead with full faith in our people, and if today there is any guarantee against the fissiparous or disruptive forces and tendencies in this country, then in my humble opinion, it is this principle of adult franchise. This guarantees us, as far as it is possible for a Constitution to guarantee, that the progress of this country will be on peaceful and democratic lines.

But as I have said before, we must admit that as far as our own Revolution is concerned, there is very little which is reflected in this Constitution.

We have often repeated that the building of a non-violent, decentralised society is the solution of the present crisis-social as well as moral-which the world is facing today.

I know that in this Constitution there is a definite bias towards centralisation of power. But today this a world tendency. Because we are planning the economic order keeping the possibility of war in view. And to win the war you cannot but centralise power and production. The command order must go from one centralised authority. Unless we decide to build society on nonviolent principles you can neither and exploitation nor outlaw war. I would like to remind my honourable Friends who find fault with the Constitution and who want decentralization of power and production, they must be prepared for a non-violent society. It is a question of fundamentals. It is a fundamental issue which you and the rest of the world has to solve. But we must regretfully admit that as far as we are concerned we are not in a position today to hold up the pattern of Constitution which can give us and the rest of the world a non-violent social order. Except section 44 on Gram Panchayat which runs four lines in this document of 395 articles and 8 schedules and a bare mention of cottage industries, there is no room for the Gandhian way under which the pyramid-like constitutional frame-work would be broad-based on the million panchayats vital with the initiatives and creative energy of the common man. Sir Charles Metcalfe in his memorandum before the Select Committee of the House of Commons in 1832 has well brought out how these panchayats kept the even tenor of our life and culture when dynasties toppled down like ninepins and revolutions succeeded revolutions. In the centralised society of today one bomb on the power plant is enough to extinguish all light and there is no single lamp left to light up darkness. But where many lamps burn with little oil in the tiny mud pots, there may not be the flood light that dazzles but there will never be darkness.

I am afraid in this highly centralised Constitution of Indian Republic there is possibility of there being apoplexy of the heart and paralysis on the ends.

And it is no wonder, because what happened on August 15, 1947 was a mere transfer of power. The British quitted but physically; they left behind many things that they had created during their long rule. As the Constitution is the mirror of society and as the society is practically the same, the Constitution naturally reflects the *status quo*. People expect, alas perhaps wrongly, what they do not deserve. They expect that the constitution which has been made by the apostles of the great Martyr will breathe his breath. But should we not be rational and must not be moved by sentiment. Reason demands that we must be realistic. There is no scope in this world of stern reality for building a Utopia. Reality demands that the society, before being recast must be stablised. But how often have the exponents of real politic and statecraft been enmeshed in their own nets? How often has the reality been a mere passing phase? We must stabilise but at the same time should we forget that what we stabilise today will grow like a Leviathan and cast its shadow. In the progress of history and the affairs of man, there is no resting place. It has never happened in the history of man that he has built in a hurry and changed in leisure without demolishing what he has built. If we build to day on the foundation of this Constitution of centralization par excellence we cannot any day reorient our life and society. It is true that in the context of today we cannot have a constitution under which the Government will govern the least. There is bound to be a progressive realization of the ideal, but, as I have stated earlier, constitutions are not only made but they also grow. I may say in conclusion that this Constitution gives us sufficient scope, if we remain true to our aspirations and to our ideals, to slowly bring about a social change, a vital and fundamental change without any violent change in the Constitution. This will enable us to realise our ideal which is a non-violent and non-exploiting society where all men will be equal and will have equal opportunity for their self-development. Then only will we be in a position to show the third alternative to the world.

Syed Muhammad Sa'adulla (Assam: General): Sir, it is said that sometimes silence is golden while speech is silver. In my humble opinion this should have been one of those occasions when silence would have benefitted this August Assembly. We have already passed all the amendments to the Draft Constitution in the second reading. Any criticism of the provisions thereof in the third reading is in the nature of a post-mortem examination. But when I heard from you, Sir, that as many as 125 Members of this August House, that is more than 40 per cent of its total strength, desired to speak on this occasion I had to revise my opinion and I thought that this large number must have seen the utility of these discussions, the necessity of criticism being recorded for future guidance. Hence my stand before you today. Moreover, there is a Persian saying:

"Marg-e-ambuh jashane dared"

which means even death en masse is a festivity in itself.Therefore, I have joined this death squad.

I can not stand here today without showing my dual personality, that is being a Member of this August Assembly as well as being a Member of the Drafting Committee. To all those friends who have been kind enough to appreciate the hard and dreary labour that members of the Drafting Committee had to undertake throughout the last two years both on behalf of myself as well as on behalf of my colleagues of the Drafting Committee I bow my head in grateful thanks. I am not unmindful of conveying our thanks even to those critics who in their superior wisdom had thought fit to criticise the shortcomings of the members of the Drafting Committee. But I am constrained to say that they have looked into this matter from a perspective that is faulty, from an outlook that is wrong and from a focus that is out of alignment.

Sir, the Drafting Committee was not a free agency. They were handicapped by various methods and circumstances from the very start. We were only asked to dress the baby and the baby was nothing but the Objectives Resolution which this Constituent Assembly passed. We were told that the Constitution must confirm and remain within the four corners of that Objective Resolution. Moreover, Sir, whatever we did had to be considered and accepted by this House. how dare any Member of the Drafting Committee be so arrogant as to thrust the opinion of seven members against a total number of 308 in this House?

Sir, it is an acknowledged principle of psychology that man is a creature of environments. The Draft Constitution which the members of the Drafting committee were privileged to place before this House could not evade this universal principle. They had to take the environment and the circumstances prevailing in the country into consideration and many of the provisions which jar against the sense of democracy, even of the members of the Drafting Committee, had to be embodied here on account of forces which were superior to that of the Drafting Committee.

So I remember that many sections of our Draft Constitution had to be recast as many as seven times. A draft section is prepared according to the best in each of the members of the Drafting Committee. It is scrutinized by the particular Ministerial department of the Government. They criticise it and a fresh draft is made to meet their criticism or requirements. Then it is considered by the biggest bloc, the majority party in the House-I refer to the Congress Parliamentary Party, who alone can give the *imprimatur* of adoption in the House; and sometimes we found that they made their own recommendations which had to be put into the proper legal and constitutional shape by the members of the Drafting

Committee.

Sir, no human-made constitution or document is perfect and it is a trite saying that the actual always falls short of the ideal. Even though I am a member of the Drafting Committee, I have very great objection to many of the principles that have been embodied in this Constitution. It does not lie in my mouth to criticize individual provisions of the Draft Constitution, as I am as much responsible as any other member of the Drafting Committee for the incorporation in our Constitution, but yet I am sorely tempted to draw your attention to only two or three things in this Constitution which are entirely repugnant to a free democratic constitution.

First, Sir, the over-centralization in the Centre and the emergency powers given to the President secondly, the limitations on the provisions of civil liberties and the hemming in of our Fundamental Rights by very many objectionable features; thirdly, the want of any provision of financial help to the provinces, although in the previous regime we were apt to say that the then provinces although in the previous regime we were apt to say that the then British masters of ours were not administering the country, but they were simply exploiting it. I often herd that the then Government was not doing any *shasan* but they were doing *shosan*. But the limitation of our Fundamental Rights was argued by the superior authorities as essentially necessary on account of the forces of disturbance and destruction that is now raging in the country. They said that the liberty of the individual must be subordinated to the liberty of the country. It is quite true, Sir that at no time liberty can be allowed to degenerate into licentiousness, and the forces of freedom must be superior to the forces of the transgressors of peace and security. Therefore, though it went against the grain of free democracy, the Drafting Committee had to put in all those limitations to the Fundamental Rights.

As regards over-centralisation, I need only point out to the emergency powers in Part 18: article 352 refers to the proclamation of an emergency by the President of the Union. Well this proclamation can be had, according to article 356, for failure of the constitutional machinery in a Province: according to article 360 for financial instability, and according to article, 365 for failure to comply with directions issued by the Union. It was very well said by my Friend, Kazi Karimuddin this morning that this will lead to a conflict often times between the Centre and the Provinces, and instead of breathing an atmosphere of independence, freedom and liberty, we will be subject to the utmost interference from the Centre and the president which is bound to go against the very peace, tranquillity and contentment of the people.

Sir, the absence of my provision for financial help to the poorer and needy provinces brings me to the question of the province from which I come namely Assam. Honourable friends will remember that early this year, I had taken seventy minutes of your time to explain to you the position of financial collapse to which the province has been subjected to unless timely aid comes from the Centre she cannot exist as a unit of the federation. Assam's position is that of a sentinel on the east and north east boundaries of the vast continent of India where dark and menacing clouds of communism are rising and collecting to the panic and charging of all the civilised world. It is very well said that the strength of a unit is the measure of the strength of the federation and, no doubt we have tried to make the Centre strong in the draft of the Federal Constitution for India. Just as the strength of a chain lies in the strength of its weakest link, Assam must be kept upto the standard of a civilised Government; her people must be kept happy and contented as otherwise there is a fear of Assam becoming the favorite hunting-ground of Communism.

I had pointed out both in the local Legislature as well as on the floor of this House that deficit to the tune of 2 1/2 crores out of a total income of 5 ½ crores is no matter of unconcern. The Ministry of Assam was strenuous in opposing my notions and deduction from their own budget estimates. But I am glad that I was corroborated day before yesterday by one of the Ministers of the Assam Government, I mean the Rev. Nichols-Roy who said that the deficit in the current year will come to about two crores. On an earlier occasion, even the deficit of Assam will go upto 3 or four cores. Sir honestly beseech this House and through this House the authorities at the Centre to look to this woeful state of affairs in Assam and come to its aid liberally and timely. They need not give anything from their own coffers; for, as I have pointed out earlier, two or three months ago, that as much as ten crores of rupees are being derived in various shapes from Assam as revenues of the Central Government. So, if one-fourth or one-third of this sum is given to Assam, it would not be a gift or any special concession, but only rendering unto Caeser what belongs to Caeser.

Sir, within the province of Assam, there is the District of Khasi and Jaintia Hills. The capital of Assam is located there. Most honourable Members will be surprised to know that the border of Pakistan is only 50 miles from the town of Shillong. The people on the southern slope of the Khai Hills used to get their foodgrains and means of livelihood from the district of Sylhet which now forms part of eastern Pakistan. On account of customs barriers between India and Pakistan, the free flow of trade has ceased and no wonder my Friend Rev. Nichols-Roy was accusing Pakistan for this state of affairs. But, Sir, my idea is simply to point out to you that unless foodgrains can be made available in sufficient quantities in that area, as also in other areas of the District those people may ultimately look up to Pakistan as their saviors. But the pity of Assam is that in spite of the fact that it is a surplus province so far as foodgrains are concerned, and though during the three years of my tenure as Prime Minister from 1943-46 Assam could declare a surplus of two hundred thousand tons of rice and had actually supplied to the Central Government that surplus as will be borne out by the records in New Delhi, we supplied on an average fifty lakhs maunds of rice, annually. Assam has become a deficit area and you will be surprised to hear that in the town of Shillong where rice is rationed my own household, the household of an ex-Premier and leader of the Opposition and a man who has been there from 1924, had to go without rice for three days recently.

Sir, the Khasi Hills have been relegated to the Sixth Schedule for which Rev. Nichols-Roy is very thankful, but there is a constitutional anomaly. Although the Constituent Assembly is not to find a remedy for that, yet I must sound a note of warning that this small district of Khasi Hills embraced 25 Native States most of which had treaty rights with the Suzerain power in Delhi. They were asked to join the Indian Dominion in 1947. Instruments of Accession accompanied by an agreement were executed by these Chiefs and they were accepted by the Central Government. But though even this area has been included in the Sixth Schedule, up till now no agreement or settlement has been arrived at between the Constituent Assembly of the Federation of the Khasi States and the Assam Government or the Government of India. I do not know what will happen to these areas or people after 26th January 1950. A deputation headed by the President of the Federation of Khasi States came early this month to Delhi to press their grievances before the States Ministry as well as the Drafting Committee. The Drafting Committee met them and they had two simple requests to make. They are the most democratic of all democratic people. Their native chiefs are elected by all the people in their territory by adult franchise. The chiefs could be removed as well by the people. They want that that system should continue. The second thing which is in the heart of all people in that part of the world is that these chiefs are only territorial chiefs. They have no right over the ownership of land in the territories of their chiefs they want to preserve, but they are afraid that section 3 of the Sixth Schedule gives a loophole for doing away with that right. They want a simple provision that these two rights may not be disturbed by the District Autonomous Councils.

Some may say that the District Autonomous Councils will consider their own representatives, but membership is limited to twenty-four and three-fourths of it only is to be elected, and the rest one-fourth has been felt in the air. I do not know whether these seats will be filled up and by what process, whether by nomination and if by nomination by whom, or by any other form of indirect election. I know that these Khasi people are late in the day and nothing can continue to be Members of the Constituent Assembly even after the 26th January 1950 to see that this wrong of the Khasi people is righted in no time, for the contentment and peace of this area will greatly conduce to the safety and preservation of the boundaries of the Indian Dominion.

Sir, after two centuries of subjugation and humiliation, we have drafted our own Constitution. They very idea of it is thrilling to my mind, that very thought sends our hearts bumping and racing, but yet we cannot say with our hands on our hearts that we feel jubilation and joy over the present Draft Constitution to that extent. This Constitution which will be passed and come into law with in a couple of months is a compromise Constitution. Many honourable Members have said that this is but a transitory Constitution. I do hope, Sir that future legislators will try to make it as perfect as possible. The test of the pudding is in the eating. Similarly nobody can say that this Constitution is to be commended or condemned. The working of the Constitution alone will show whether it is a workable Constitution of whether it is unsuited to the necessities of the times and the requirement of our people or to the genius of our nation, but if we work it in the spirit of the Preamble, we must say that we have a Constitution which can be made an ideal Constitution by working it in the proper spirit.

In the end, Sir, I would like to invoke the blessings of the Maker of the Universe and I will recite only two invocations in Sanskrit.

asato ma sadgamaya

tamaso ma jyotirgamaya

In the Arabic we have a saying:

As sayyo minni, al itmaneo minul atiah

The enedavour is man's, but the ultimate result is in the hands of God or alah. Let us all in all humility try to work this Constitution which has been drafted by people who gave their best to it, and if we work it in the spirit of equality and fraternity, we can turn even this dreary Constitution into a garden of paradise.

Shri H.J. Khandekar (C.P. & Berar:General): Mr. President, Sir, I stand here to support the motion moved by my Friend Honourable Dr. Ambedkar. Before saying anything about the Constitution, Sir, I would like to congratulate you first for the able work that you have done in this Assembly for the last three years, and while doing that, Sir, you never made any differences, and any discrimination between Members and Members and you were so liberal in giving chances to every member to participate in the debate and the most important thing that you have done as the President of this House is the best rulings that you have given on the points of order raised in this House.

Secondly, I congratulate the Drafting Committee for the work that it has done to frame this Constitution. Sir, I also congratulate my Friend, Pandit H.V. Kamath, a devotee of G.G. for taking keen interest in the work of this Constitution-making. I am very much proud of him as he comes from my own province of C.P. Sir, I would call him a Pandit, because he is a Pandit in this way__

Matrivatparadareshu Paradraveshu chu Loshtawat, Aatmawat Sarva

Bhuleshu yah Pashyati sah - panditah.

Pandit Kamath is a man of these qualities as long as he is a bachelor. I cannot say whether there will be any change in him if he gets married.

Sir, no section of the Indian people will welcome this Constitution more enthusiastically than the members of the Scheduled Castes of this country for the reason that this Constitution has made a provision of the abolition of untouchability and thereby enabled the Harijans to live like human beings in the country. Sir, I being a member of the Scheduled Castes welcome this Constitution whole-heartedly. Sir, you also know that untouchability is a curse on the Hindu society, and seven crores of the people of this country have been treated or are being treated like dogs and cats by their caste Hindu brethren. they have seen segregated for the last so many centuries. When the agitation for India's independence intensified, leaders like Pandit Motilal Nehru, Lala Lajpat Rai, Lokmanya Tilak, Sardar Vallabhbhai Patel, Pandit Jawaharlal Nehru, Babu Subhas Chandra Bose, Mahatma Gandhi, Babu Rajendra Prasad, Rajaji and others found that there can be no freedom for India without removing untouchability from the Hindu society. When India became formally independent on the 15th August 1947, I remember, Sir, that Sardar Vallabhbhai Patel who in my judgement is the greatest custodian of that independence who deserves the unstilted gratitude of this house and of the country for the most magnificent work he did in bring all the States into the Indian Union, said on some occasion that India's hard-won independence cannot be preserved if untouchability is continued. So also I remember that our veteran Leader Pandit Jawaharlal Nehru, the Prime Minister of India, said on an important occasion that the foreign countries blamed India only because it observes untouchability. Sir, the social workers and the religious workers and even the political workers of this country worked very hard for removing this untouchability but they could not succeed. So also the social and political workers, leaders amongst the Scheduled Castes like Rao Bahadur Srinivasan, Virratna Devidasji Jatas Sant Chockamela, Bhakta Ravi Das, P.N. Bhatkar, Kishan Fagoo Bansode, G.A. Gavai, Mahatma Kalicharan Nandagaoli, Umaji Gujaba Khandekar, Dr. B.R. Ambedkar, Muniswamy Pillay, E. Kannan, B.C. Mandal, Narayan Dhanaji Bhosle, Mrs. Venubai Bhatkar Sambhaji Godghate, R.B. Matte, Antooji Bhagat, Diwan Bhadur M.C. Rajah, my humble self and many others in the countryworked hard for years together to get rid of untouchability, but it is not removed. But we could only succeed to the extent to make the Harijans feel that they too are human beings. This country was being governed for ages together by the law of Manu and you know, Sir, what are the effects of this law on this country. Varnas were crated, castes within castes were formed and even one caste could not see the face of other caste. The untouchables according to the law of Manu were to go and settle outside a village or a town and that too in the east? Even today, Sir, if you minutely see the situation of villages and towns, the houses of untouchables will be found in the east. What of that? We untouchables, at the time called Sudras Smriti there is a sloka: "Mangalam rahmanasya syat Kshatriasya Balanvitam vaishyasya Dhansaiyukte shudrasya Too jugupsitam". If we Sudras, today's Harijans, were to name our children according to our wishes we were not alloed to name them like Jawaharlal Brahmadatta and so on but we could use only Manu. Now today, Sir, we are enacting a law of Independent India under the genius of Dr. Ambedkar, the President of the Drafting Committee. If I may do so, Sir, I call this Constitution the Mahar law because Dr. Ambedkar is a Mahar and now when we inaugurate this constitution on the 26th of January 1950 we shall have the law of Manu replaced by the law of Mahar and I hope that unlike the law of Manu under which there was never a property in the country the Mahar law will make India virtually a paradise. Well Sir, even the social, political and religious reformers in the country like Gautama Buddha, Ramanuja, Kabir, Sant Tukaram, Raja Ram Mohan Roy, Swami Dayanand Saraswati, Paramahansa, Mahatma Joti Rao Fulley, Vithal Ramji Shinde, Thakkar Bapa and last but not the least, Mahatma Gandhi, found it very difficult to get rid of this ghost of untouchability. They agitated in the country but they did not succeed. Now, Sir, we have embodied an article No. 17 in this Constitution to remove untouchability and I am sure that untouchability will be removed, but I have seen Act for removing untouchability in the Provinces, the Temple Entry Act and the Removal of disabilities Acts passed by the different Provinces in this country. What is the effect of these laws? Not an inch of untouchability has been removed by these laws and, therefore, if this law of removing untouchability remains in the book of Constitution itself, I do not think that untouchability will be removed. If at all the ghost of untouchability or the stigma of untouchability from India should go the minds of these crores and crores of Hindu folks should be changed and unless their hearts are changed, I do not hope. Sir, that untouchability will be removed. It is now upto the Hindu society not to observe untouchability in any shape or form. My honourable Friend, Mr. Ranga in his speech the other day said that he is an optimist and he is sure that untouchability and even the name Scheduled Caste will be removed from India within ten years' time. Well, he may be an optimist. I am not. But I am a practical man. Being an untouchable I know the difficulties of untouchables. I am an untouchable

(Interruption); I have got into practical knowledge of untouchability and I can say that it cannot be removed within ten years if the Hindu community is not sincere. It will take, in my opinion, very many years because the hearts of the Hindu society are not changed. I have got so many instances, but I have very little time at my disposal and therefore, I do not want to go into details but I can only say that it cannot be removed within ten years if he Hindu community is not sincere. It will take, in my opinion, very many years because the hearts of the hindu society are not changed. I have got so many instances, but I have very little time at my disposal and therefore I do not want to go into details but I can only say to my honourable Friend, Prof. Ranga that making speeches in the Assembly will not remove untouchability. He should go in the country from corner to corner and preach to the Hindu society and change the minds of that society to his views and then and then only untouchability has a chance to be removed. Mr. Ranga also said in his speech the other day that he is fortunate in having got the Andhra Province but I am unfortunate for not having got the separate province for the Marathi speaking people of Maharashtra.

The other thing, Sir, is the Government of India, the Provincial Governments, the Congress and other political bodies will also have to do their best to remove untouchability. For this untouchability the civilized countries in the world were looking upon India with contempt so far and now, Sir, I would ask those countries to judge us by the Constitution that we are now passing. No wise harijan or reasonable Harijan would like to be an untouchable or a Scheduled Caste for ever. We all wish that we should be merged immediately into the Hindu Society because we also being the children of this country want that India's head should be high in the whole world.

Sir, I now come to the article which deals with the reservation of seats for the Scheduled Castes and Scheduled Tribes. I am glad that seats have been reserved for these two classes in the legislature on their population basis. But, the time limit given is only ten years. There were amendments to this article from the beginning, I mean in the Minorities Committee of the Advisory Committee and even in the Constituent Assembly itself. But, unfortunately, they were not adopted. I think this ten years time is to sufficient to make the Harijan society to come to the level of the Caste Hindus. I am sure that if a harijan contests the election after ten years, when there is no reservation of seats with a Hindu, no Caste Hindu will vote for him and it may even lead to forfeiting his deposit. This is the condition in the country. Therefore, ten years' time is not sufficient for the political emancipation of the Scheduled Castes.

The other point is about the claims of the Scheduled Castes and Scheduled Tribes in the services and posts. Sir, a few minutes before, I heard the speech of a friend of mine who belongs to the Sikh community. I was astonished to hear him saying that there are Scheduled Castes in the Sikh community. I remember when Dr. Ambedkar wanted to denounce the Hindu religion. Sikh friends and Sikh leaders came to Dr. Ambedkar and said so many times and on so many occasions even in the public that there was no untouchability in the Sikh community and they invited Dr. Ambedkar and his party to embrace Sikhism. But, today, I hear from this platform a Sikh friend of mine saying that there are untouchables in the Sikh community. On these grounds the seats of the Scheduled Castes in the East Punjab have been taken by my Sikh friends. If at all they wanted to take their share in the name of untouchability, they ought to have taken it from the general seats. But, these seats have been taken from the equally backward community whom they call Ramdasias in their opinion who are the most backward people of this country. However, I am glad that we people have secured reservation of seats in the Legislatures for our community and from that quota, the Sikh community has taken a share on the pretext that some of them are also untouchables. It is not their ordinary political game. They have got included some Sikh communities in the list of Scheduled Castes with the object of contesting all the reserved Harijan seats in East Punjab, thus to encroach upon the rights of the real Harijans. About the services and posts, that Sikh friends of mine was grumbling. He wanted the posts and services also as have been given to the Scheduled Castes people among the Sikhs. If I may tell this House, that the Scheduled Castes have been appointed to the services until now by the Government but not to the extent of the percentage that has been given to us by the Government of India, I mean 12 ½ per cent in upper class services and 16 ½ per cent in the lower class services. Their percentage has not been fulfilled. Still, I may tell you, Sir, that notices have been given to the persons belonging to the Scheduled Castes by the different departments of the Government of India for retrenchment. Hundreds of Harijan people are going out of their services in this month or the next month. I hope the Home Ministry of the Government of India will exempt the Harijan Government Servants from retrenchment. Here under this article 335 our claims are to be considered for appointment in posts and services while in the Government of India in this month, when we are going to adopt this Constitution, retrenchment of Harijan employees is being made by the different departments. Therefore, I would like to say this clause will not serve the purpose of the Scheduled Castes unless the Government of India and the different provincial Government being this clause into effect and give them the chance in services and posts according to their percentage. I do not want more; give them the same percentage that comes to them according to their population.

The next thing that I would like to say is about the Federal Public Service Commission and the Provincial Public Service Commissions. In these Commissions, unfortunately, there is no provision in the Constitution for having a Harijan member or a Scheduled Caste member. I can only say that the fate of these communities, I mean the Scheduled Castes and Scheduled Tribes, is now in the hands of these Commissions in which there will be no Harijan members. It is for the Government of India and the Provincial Governments to give instructions to these Commissions to look to the claims of the Scheduled Castes. That much, I can say about these Commissions and their work about these communities.

We have been demanding for the last so many years that there should be reservation for the Scheduled Castes in the Cabinets of the provinces and in the Government of India. These provisions are not found in this Constitution. There is only a convention now. I hope the leader of the party in the Government of India and the leaders of the parties in the different provinces should note this thing and that seats in the Cabinets should be given to the members of the Scheduled Castes more liberally. You will say, there are seats today; but they are not adequate. I would like to say a word or two more. There is not a single Harijan in this country who has been appointed as a Governor or Ambassador or Deputy Minister. Of course, I am saying this for the information of the Government and the congress High Command and hope that they will consider this question seriously.

In this Constitution, Sir, powers have been given to the President. I hope the President will make the best use of his powers as regards the Scheduled Castes and Scheduled Tribes. I would like to bring one thing to your kind notice. In this House there are 308 members out of whom there are 73 members from the States. But I am sorry to say that our of these 73 members from the States. But I am sorry to say that out of these 73 that have come from the States, there is only one Harijan member. I hope, Sir, you as the President of this Constituent Assembly, are going to fill up casual vacancies within a few months and I hope you will keep this thing in mind and bring more Harijans to this House from the States so also from the provinces. We are only 27 in this House whereas according to our population we ought to be sixty. It is also upto the Congress High Command and to you, Sir, to see that our quota in this House is fulfilled. I also suggest that some Harijan members who are the spokesmen should be allowed to continue in this House (Legislative) and resign their seats in their provincial Legislatures.

We have been given according to this Constitution freedom of speech and freedom of movement and so. But there is no freedom of movement for one crore of unfortunate people in this country. That is, the Criminal Tribes. Nothing is said about them in this Constitution. Will the Government repeal the Criminal Tribes Act and give every freedom to the Criminal Tribes?

Shri .V. Kamath: So called Criminal Tribes!

Shri H.J. Khandekar: Yes, so-called Criminal Tribes. Article 19 deals with protection of certain rights regarding freedom of speech etc. with provisos. I hope this article may not be used as a weapon against the rival political parties and labour leaders I am glad to see in the Constitution that begar and forced labour are abolished and the curse on untouchables from whom the begar and forced labour were taken has gone.

I am personally not in favour of Sales Tax because it is an indirect tax on poor masses but the Article on this is adopted in this House. I can only say about this article that it has brought C.P. and Bihar provinces to a loss.I would like to say a word about adult franchise.

Adult franchise has been given and I hope now the dream of Kisan and Mazdoor Raj will be fulfilled. Kisans and Mazdoors in the majority will be the voters of this country and they will elect persons of their choice and form their own Government. In the last elections the Congress had in its election manifesto said that it will start Kisan Mazdoor Raj in the country. By incorporating the article of adult franchise the Congress has fulfilled its promise.

I am very glad, Sir, that Hindi has become the national language; but that should not be the Hindi as I read it in today's agenda. I could not understand the word 'Parit' there. If such words are being used in Hindi, that will be a misfortune of the country. Let us have that Hindi which everyman of this country understands (Hear, hear)

The other thing is that there should be a National Anthem. I am very much thankful to this House for adopting the name "Madhya Pradesh" for my province-C.P. & Berar

Shri R.K. Sidhva: May I know which word be referred in the agenda?

Shri H.J. Khandekar: I referred to-'Parit' in the Hindi copy of today's agenda circulated to us by the office of this Assembly. It is this:- is parishad dwara nischit kiye gaye roop mein vidhan parit kiya jaye. I know Hindi well but I cannot understand what 'parit' means.

I was talking about 'Madhya Pradesh'. This amendment was moved by my honourable Friend Mr. H.V. Kamath and myself and it is accepted by this House. I also congratulate the Premier of C.P. Pandit Ravi Shankar Shukla and his Cabinet for recommending the name 'Madhya Pradesh' and this House for adopting the same.

(At this stage Mr. President rang the bell).

Shri H.J. Khandekar: Sir, I have to speak on behalf of a certain community.

Mr. President: There are other speakers also who have spoken and who will speak.

Shri H.J. Khandekar: I will say a word about my Friend Damodar Swarup. He says in his speech that this constitution will have to be changed or amended if the Socialist Party comes into power. I only draw his attention to articles 37 to 47 and ask him what more he wants according to his socialist programme and views. I know that there is a directive principle. These are obligatory on the Government and I hope the Government will carry them out. I also tell my Friend Seth Damodar Swarup that if at all socialism is wanted by some body in this country it is the Scheduled Castes and not to the Capitalists, Malgujars Zamindars and mill owners. But today I see that the sons of these capitalists are the workers and agitators in the socialist party. I do not know what is the object behind it.

I congratulated Dr. Ambedkar in the beginning of my speech. I and Dr. Ambedkar had differences for the last 18 years on the question of separate electorates versus joint electorates. We were not prepared to see face to face and not only worked but given up the idea of separate electorates and he voted for the joint electorates in the meeting of the advisory Sub-Committee. Therefore, I do not have any fundamental difference with him and for the greatest service that he has done to this country within the period of these three years in framing this Constitution he deserves congratulation. Now only one suggestion that I have to make to him, I.e., he should now join the congress and make good to his own people. I hope if he joins the congress, I am sure, the Scheduled castes of his country will be more benefited. So also, I would like to make a suggestion to the other friend of mine-Honourable Mr. Jagjivan Ram who is a member of the Congress Working Committee and a Minister in the Government of India. When Dr. Ambedkar was doing the greatest service to this country in these three years, my honourable Friend Shri Jagjivan Ram was doing the greatest harm to the Nation.

Honourable Members: Question.

Shri H.J. Khandekar: That is by splitting up the Scheduled Castes into Chamars and non-

Chamars.

Shri Brajeshwar Prasad: (Bihar:General): We protest against this remark.

Shri H.J. Khandekar: This is only a suggestion. I hope he will not divide the community in this way.

Mr. President: This is not a suggestion, it is an allegation. You had better stop. You have taken more than thirty minutes-Mr. Khandekar.

Shri H.J. Kamath: I would like to know what he meant by 'G.G.'.

Shri H.J. Khandekar: 'GG' means the devote of God and Goddess. With these words I commend to the House this Constitution for adoption.

Mr. Mahboob Ali Baig Sahib (Madras: Muslim): Mr. President, Sir, it is not mrere formal or customary expression of appreciation if I express my deep sense of gratitude to you, for the manner in which you conducted the proceedings which left no ground for complaint and if I also congratulate Dr. Ambedkar for the outstanding ability with which he piloted the Draft Constitution. Some of us who did not belong to the dominant party which decided question outside the Hosue before hand, either confirming or modifying the views of the Drafting Committee and as it were, acted as the final arbiter such of us who did not belong to this party would have been helpless if you had not come to our rescue and allowed us to have our say in the matter, for which fairness on your part. I heartily thank you. Dr. Ambedkar was unique in his clarity of expression and thought, and his mastery over the Constitutional problems including those of finance has been marvelous, unique, singular and complete. But, Sir, unlike you, he was not a free agent. So the evils or the defects in the Constitution as it is placed before us today are inherent in the situation in which he was placed and he cannot therefore be personally responsible for them.

Now, let us examine the causes that led us to shape the Constitution as it is before us. There are three causes according to me. The first is, most of us including those on the Drafting Committee were brought up and nurtured in an atmosphere of British Imperialism and this British Imperialism in its last stages became repressive, especially when the freedom movement began and in the name of safety and stability of the State, deprived the subjects of their civic rights and their personal liberties. Although most of the persons who suffered protested vehemently against this rule of repression when they were called upon to frame their own Constitution after they attained freedom, they could not shake off that frame of mind which was engendered by notions of stability and security of State inculcated by the British Imperialism.

The second reason, Sir, is this, that it is very unfortunate that when this Constitution was before the Drafting Committee, and subsequently before the Congress Members of this Assembly, and also finally before this Assembly itself, conditions in the country were far from peaceful. And the third reason is that one political party became the successor of the British imperialism and has been enjoying power. I am, therefore, led to believe that these three factors were responsible for the fashioning of this Constitution which is before us, and which, according to me, is very, very disappointing, conservative and reactionary. To illustrate my point and to substantiate it, I would invite the attention of this August House through you, Sir, to the contrast between the decisions which this Assembly had taken in the year 1947, and also those that have emerged now after the Consideration stage.

Sir, memories of the repression were very green in our minds in the year 1947. The disturbances in the country were not in great evidence at that time, and the political party which is now enjoying power, was not in exclusive authority at that time. Therefore it was, Sir, when the Modern constitution was placed before us, it was the Honourable Sardar Patel who moved that those provisos curtailing civil liberties should be deleted, and it was he who again moved that as far as personal liberties are concerned, they should be decided by a judicial inquiry. And as far as provinces are concerned, autonomy was contemplated. With power vested in one political party, and the memories of repression fast fading away, and also with disturbances in the country raising their ugly head, the whole face changed, and changed for the worse. Civil liberties have been curtailed. Personal liberties have been hedged in, and centralisation of power has been increased. It is claimed by some that there is justification for curtailment of the civil liberties, in view of the conditions prevailing in the country.

I submit, Sir, that we have to consider two points in this connection. The first point is whether we are making this Constitution for all time to come and for normal times, or whether it is for meeting the exigencies of the present day. That is the first question. And the second question is: what are the safeguards which you give to the individual in the Constitution, which is moelled on what is called Parliamentary democracy, that is, government by a political party. These are the two questions to be considered and we must ponder over them. As far as the first question is concerned, my humble submission is there is ample provision in part XVIII which deals with emergency powers, there is also one article No. 358, I suppose which gives power to the State to suspend the rights which are given under article 19. What more do you want? Why are you disfiguring this Constitution by curtailing Fundamental Rights, curtailing civil liberties, in view of the present circumstances? There is no justification at all for that. You have got the emergency powers. The Centre has got power, the President has got powers, and the State has the power, whenever an emergency is declared, to take away the rights. So my point is that there is no real justification for doing this.

The second point is, what about the safeguards for the citizens in a Constitution which is going to be what is called Parliamentary democracy. Two provisions are absolutely necessary in such a Constitution. One is that the Fundamental Rights must be real and these Fundamental Rights must not be subjected to the jurisdiction of the Legislature, which under such a parliamentary democracy, is bound to be a partisan government. So these Fundamental Rights must be taken out of the jurisdiction of the Legislature. That is the first requirement. The second requisite is that these rights must be enforceable at the instance of the aggrieved citizen, by a court of law. These are the two tests of a good Constitution, and let us see whether the Constitution satisfies these two tests. I am afraid, our Constitution falls too short of these two requirements. With all the goodwill of Dr. Ambedkar and also with the commendable championship of friends like Mr. Bhargava and Mr. Jaswant Roy Kapoor and others, they were not able to pursuade the House or the drafting Committee to place these Fundamental Rights out of the reach, out of the Jurisdiction of the Legislature which necessarily is bound to be a party legislature. Even today after so much of so-called improvement in article 22, the State Legislature can still detain a man, without trial for three months, and Parliament can detain him for any period it may decide. That is the position as far as the Fundamental Rights are concerned.

Now, it is very unfortunate that throughout in the provisions of this Constitution, there runs some kind of suspicion of or lack of confidence in the judiciary. This is very unfortunately, Sir. In a democracy where parliamentary system of government is contemplated, the most important thing that we have to look to is whether the fundamental rights provided for in the Constitution are real and are enunciated and defined, and whether courts are empowered to enforce these Fundamental Rights without jeopardizing the safety of the State. That is the only way in which the rights of citizens in a parliamentary democracy can be safeguarded. Otherwise, Sir, I am afraid it will result in-I am afraid to say it-in fascism, autocracy and dictatorship.

Centralization of power in the Centre is another instance of the tendency in the Constitution towards a totalitarian and unitary form of government. Even the little autonomy which the provinces had before, even that has been taken away, all in the name of emergency. As during the time of the Britisher in the name of stability and the safety of the State, people have been deprived of their liberties, in the same way we find in this Constitution so many provisions which in the name of emergency deprived citizens of their liberties and strengthening the Centre, deprive States of their powers.

May I again invite the attention of this House to the first article in the Emergency Chapter 18? There you have made provision to meet conditions of war, outside aggression and internal disturbance. The whole chapter is there. You can utilize it in the case of a real emergency. There is danger if Fundamental right themselves are curtailed. In the hands of an unscrupulous executive, articles 22 and 19 will be taken advantage of to oppress the persons. That is what this Constitution has laid down. For some reason or another, the persons who were responsible for drafting this Constitution have taken in into their heads to urge their points of view, making emergency more important than normal conditions. It is said that the price of democracy is vigilance. hope the people will be vigilant enough to change the

Constitution, and if necessary, change the Government which would, taking advantage of these provisions of this Constitution, rule in an arbitrary way. I hope India will rise to the level of self-consciousness and enthrone democratic principles and individual rights and instal a Government which will uphold the rights of individuals as well.

Shri S.M. Ghose (West Bengla: General): Mr. President, Sir,first of all, I express my gratitude to the Arabindo who first gave us the call for the struggle of Indian independence. We are practically at the end of our journey which was commenced by the Indian sepoys in 1857 and subsequently countless martyrs and great leaders have joined in that journey and led us through these difficult periods of our struggle to the fulfillment and realization of our great dream, the independence of the Indian people. I will be failing in my duty if I do not mention some of the names of those great leaders, and martyrs-I mean, Tilak, Lajpat Rai, Pandit Moti Lal Nehru, Pandit Madan Mohan Malaviya, Chittaranjan Das, J.M. Sen Gupta, Subhash Chandra Bose, Srinivas Iyengar, Satyamurthi, Dr. Ansari and the matryrs like Kanyalal, Satyen Bose, Jatin Mukherjee, Jatin Das, Surjya Sen and Many others who have falled during the struggle. In the present generation, we have worked under the leadership of Mahatma Gandhi, the Father of the Indian nation, Panditji, Sardarji and yourself, Sir. We express our gratitude to all.

There is a tendency to think that Russia has spoken the last word so far as human progress is concerned, and Russia is the last milestone in the revolutionary struggle of humanity. I would like to say most emphatically that Indian people and India shall have to go much beyond that. I believe the Indian people have got that strength, that courage and that genius to fulfill the great task.

I have heard in this Assembly something about Manu which I consider is not a proper understanding of what Manu stands for or what Manu really means. Speaking about Dr. Ambedkar an honourable Member was pleased to say that he was not a Manu but a Mahar giving us law. But there is no knowing whether many belonged to the Brahmin or to the Mahar Caste. But Manu represents a conception of Indian people, an ideal of law given for humanity. In that sense Dr. Ambdkar was rightly called the Manu of the present age. It is not that anybody who is in charge of making law really makes anything, but he simplifies and codifies the law as seen by rishidrishti, i.e., seen by intuition. In that sense, whether a man comes from Mahar community or Brahmin community or any other community, if he has that intuition, if he could see and codify things not only for his community, not as his community views things, but for the whole of humanity, he will be rightly called Manu.

Coming to the Constitution, I know many of us are not really satisfied with it, for in it India is linked up with the British Commonwealth. At the same time I would like to remind my honourable Friend that it is not so much the constitution but the will of the people which will determine the future destiny of the country. Whatever there may be in the written Constitution, we have to see whether it will come in the way of our doing anything for the good of the Indian people as we would like to do. In that sense I am confident that there is nothing in the Constitution which will prevent us from doing anything for the good of the Indian people at large. Even if there is anything, I am also confident that much will depend on the conventions which we will create.

Sir, I lay more stress on the provision of panchayats. I am aware that the provision is not the one which we wanted it to be; yet I am confident that if we put our strength and soul into it and work the constitution which has provided the basis for the panchayats, God willing we shall succeed.

With these few words I support the motion.

Shri P.T.Chacko (United State of Travancore and Cochin): Sir, much has already been said about the merits of the Constitution. I must say that I can view this Constitution only from the point of view of a representative of an Indian State. From that point of view I must say that in this Constitution the Centre is remaining supremely predominant just like a mother-in-law, who is jealous, young, widowed, mischievous and also autocratic placing all sorts of restrictions and obstructions in the way of the movements of a young married couple. I am not against having strong Centre in India. In the background of our history I know that we should have a strong Central Government. At one time every adventure, who came from any quarter of the globe could easily find a fortune in India. Therefore we want a strong Centre. I am also conscious of the tendencies of our people. This is a time when political parties are using violence for the attainment of their aims everywhere, and at lest in some places in India. Even Congress volunteers who have gone at least once to the prison are thinking in terms of becoming a ministers. Every Dick, Tom, and Harry thinks he can become a Minister either in the Centre or in the Provinces. So look at the tendencies of our people and also at the background of our history I know that we should have a strong Centre. But we should not forget what India is. It is a continent with people differing from one another in language, race, religion and mentality who are often jealous of one another's manner and customs. There are various cultural, religious, communal, racial and linguistic minorities and accordingly we have decided in favour of a federation. But I doubt whether we are having a federation at all in our new Constitution. Though in form it may be said that this is a federation. I am of opinion that in substance it is a unitary constitution. Take for example the legislative powers of the Centre. Specified power are given to the States and the residuary powers are given to the Centre unlike the Constitution of U.S.A. or the commonwealth of Australia.

Then again looking at the Concurrent List and also the Union List on which the Union can legislate one can see that any subject of any vital importance to the community comes under these Lists. Even in ordinary times the Centre can legislate on any subject of any importance to the community. Again by involving the special provisions in article 249, 250, 253 and also 369 the Parliament can legislate on any subject in the national interest, or in an emergency or to implement certain agreements or on certain subjects temporarily for a period of five years. From this we can see that all power is given to the Parliament at the Centre and practically no power is given to the legislatures in the States. Thus India becomes in substance almost a unitary State.

As regards the executive also extraordinary powers are vested in the Centre. Besides emergency powers, directions under articles 256 and 257 can be given by the Centre to the Constituent States. They have to be obeyed under penalty under article 365. It appears to me that these provisions strongly emphasise the unitary character of the Constitution. To enumerate them again:-

1. The residuary powers vest in the Centre; 2. There is no subject on which the Parliament cannot legislate even ordinarily; 3. Special powers to legislate on subjects in the State list; 4. States cannot alter their constitution of their own free will; 5. The law of the Parliament over-rides the law of the States; and 6. Extraordinary executive authority is vested in the Centre.

Now I come to the position of the Indian States in the Constitution. The Indian States are placed under the control of the Centre under article 371 for a period of ten years. Article 371 read with article 365 makes Indian States almost complete vassals. For a moment I am constrained to think of the long struggle for freedom in which the peoples of the Indian States took no little part. There are people in the States who have given up even their lives in the freedom struggle. There are many of us who have made smaller sacrifices also. What is the final out-come of all these struggles? In the place of the foreign imperialism, we are now having an Indian Imperialism. It is true that Sardar Patel, as if by the wielding of a magic wand, has obliterated even the last vestiges of a certain sort of autocracy in the States. But Sir, now we find that we are placed under the guardianship of the Centre and we are considered almost as minors. I ask, where is the autonomy of which we spoke so much in 1937? Where is the autonomy for which we wanted assurances from Governors in 1937 when the Congress was about to accept office?

It is a well known principle of constitutional law that there should not be any preference for or discrimination against any of the Constituent States. In the Australian Constitution, as regards commerce and trading, section 99 lays down the Commonwealth shall not by any law or regulation of trade or commerce or revenue give preference to one State or parts thereof, over another State or any parts there. And again in the Constitution of the Commonwealth of Australia section 51(2) prohibits any discriminatory treatment in the matter of taxation. In the United States, equality of constitutional right and power is a condition of the States of the Union. Even in cases where new States were admitted into the Union, it was held by the Supreme Court of the United States that no conditions creating inequality can be imposed by the Congress. Coyle-*vs*-Smith is a case to this point, wherein the Supreme Court held that even a condition agreed to by a State, at the time of its incorporation, becomes void, if the condition prevents the State from being an equal with other States. All constituent States in the Union are equal in power and in rights. In our Constitution we see that there is a discrimination made between States who were once knows as Indian States because of mere historical accidents, and the States which are known as the Provinces. Why, Sir, for a period of ten years should these States, which were known as Indian States, be under the complete control and management of the Centre? Is it the case that the Provinces are more progressive than the Indian States in India? I cannot agree to it. As all the speakers at the time of the discussion on article 371, said, many of the States are more advanced than Provinces. Therefore, I do not think there is a case that has been made out for including this article 371 and also article 365 in the Constitution as regards the Indian States. These provisions give a preferential treatment to the provinces as compared with the States.

Shri R.K. Sidhva: It is not applicable to the progressive States.

Shri P.T. Chacko : Yes, Sir. It is said it will not be applicable. I cannot understand the meaning of that. Once it is laid down in the Constitution that for some time the States should be under the control of the Centre, there is no meaning in saying something against it. Of course I attach great weight to the assurance given by Sardarji. But I am now discussing the constitutional provisions. It would have been so easy for this Assembly to decide to exempt the States which are progressive in the Constitution itself.

Shri Mohan Lal Gupta (United Provinces : General) : There is a proviso that the President can exempt.

Shri P.T. Chacko : Of course there is a proviso. It may do good in future. But this Assembly could have exempted the States in the Constitution itself, which we have not done. Therefore as regards States, I must say that in the Constitution preference is given and discrimination is made between the States and the Provinces.

Shri Mohanlal Gautam : The proviso is in the Constitution.

Shri P.T. Chacko: It is for the future, Sir. But we could have provided otherwise. It would have been so easy. We will see from the Constitution that in some cases we have provided for exemption for certain purposes and for certain States. We could have done so, in the Constitution itself. When we apply article 365 and article 371, I would like to ask one question about the position of the Legislatures in the States. It is well known maxim of constitutional law that a power conferred upon Legislature shall not be delegated to any other authority. (Panama refining Co-*vs*-Ryan). It is also another well accepted principle that a delegated authority cannot delegate its own authority to another body or person. In the case of the United States of America, after the Constitution was drafted, it was sent to all the States for their ratification. In Australia also they did the same thing. Even in South Africa the colonies had to ratify the Constitution before it was finally passed in the Parliament. So also we sent the Draft Constitution to the Indian States, to be ratified by the States Legislatures. We have three States which have Legislatures - Travancore-Cochin, Madhya Bharat and Mysore. The Draft Constitution was sent to these States for ratification. All these States unanimously recommended certain amendments but none of those amendments were even considered in this Constituent Assembly at the time of the consideration of the Constitution. Therefore I ask : Was ratification necessary? In America they believe that the power of the Legislature cannot be delegated to another body and the delegated authority can not delegate its own authority to another body. So they got ratification by the Constituent States. If the States legislatures could not delegate their power to their representatives here, it was necessary that the Constitution should be ratified by the States Legislature. If that be the case, in ratifying the Constitution they have suggested amendments and some of the amendments were suggested from all the States. It was a qualified acceptance. I regret to say that at the consideration stage not even one of those amendments were even considered in the Constituent Assembly. Hence the question remains whether the States have validly ratified the Constitution.

In future, when article 365 and article 371 are applied, what will be the position of the Legislatures of these States? The Central Government can give a direction to the Government of the State to act something, because the Government of the State is completely under the control of the Centre. Suppose the State Legislature, who gets the authority from the people - as for example in Travancore-Cochin State Legislature which is elected already on adult franchise and which gets its authority from the people - refuses to enact certain provisions in a piece of legislation according to the direction of the certain provisions in a piece of legislation according to the direction of the Centre! What happens? The Centre will under article 365 say that the country is not being governed as per the provisions of the Constitution. The administration may be taken up by the Centre. That means that for disobeying the directions from the Centre, the State will have to pay the penalty. Thereafter the Legislature of the State will not have the authority which they got from the people. Thereafter the State will not have the authority which they are given in the Constitution itself. I do not know whether it is right to terminate the authority of the Legislature which is derived from the people. So, I say at least for a period of ten years - the period can be extended also by the Parliament - clearly preference is given to the States which were known as Province and a discrimination made against what are known as Indian States.

There are the Directive Principles in the Constitution. Excepting in the rish Constitution and also perhaps in the Weimar Constitution, no other Constitution in the world contains such Directive Principles which cannot be enforced by any body constituted under the Constitution. It looks like a party programme. What is the use of incorporating such a political treatise in the Constitution, which cannot be enforced by any body constituted under the Constitution? There are some similarities between the German Weimar Constitution and our Constitution, according to me. In the Weimar Constitution alone we find that Parliament is given extraordinary powers, even though therein residuary powers are vested in the States. Extraordinary powers are given to the Central executive also. In the Weimar Constitution, also, some Directive Principles were included which were not enforceable. It is that Constitution which produced a Hitler in its working afterwards. So, Sir, I must say that we from the States at least regret very much that, the representatives of the people of India are giving to themselves a Constitution which in some respects is similar to a Constitution which gave birth to a Hitler and which may, in future, if the powers come into the hands of an unscrupulous person make him a second Hitler.

I know that the success of a constitutional experiment depends more on the character of the people and on the conditions of the times than on the provisions contained in the Constitution itself. Hence, granting these defects, I know it is our duty now to make an honest endeavor to successfully work it. Let us believe that the darkness will be over soon and that in the morning to come we will be able to amend the Constitution and to treat all States alike, and to give some powers to the Constituent States also. Knowing its drawbacks let us try to successfully work it.

The Assembly then adjourned for Lunch till 3 P.M.

The Assembly re-assembled after Lunch at Three P.M., Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Sardar Hukam Singh (East Punjab : Sikh) Mr. President, Sir, I must start with paying my earnest and sincere tribute to our worthy President whose patience, forbearance and sense of justice have guided us throughout these proceeding and have contributed mostly to our successfully going through all these stages.

I join my other friends in congratulating the Drafting Committee and particularly its leader for cheerfully carrying through this heavy strain during these months. It was gigantic task and they must be feeling relieved after it.

Of course we have produced the bulkiest Constitution in the world. The Constitution of other countries are much simpler. I am not happy at all over this achievement.

The glamour of our present leaders, I am afraid, has dimmed the vision of our experts. We should have looked beyond the present. We have presumed that the Union will be equally blessed with such heroes in the future as well.

In this Constitution, no particular pattern has been followed. A Constitution moulded out of different types will not endure, because it is neither indigenous nor a complete copy of any other single type. It is neither federal nor unitary. It is an enigmatic production, with every part stranger to the other.

The English make of Indian frame was already there as the Government of India Act 1935. We have substituted an American head in the form of a President, replaced the old limbs by an English parliamentary system, poured Australian flexibility in bones and flesh, infused Canadian look of a single judiciary and added an Irish appendix of Directive Principles and thus brought out a hybrid which we have been pleased to name the Indian Constitution. How it develops and what it bears is not known to everybody. I submit, Sir, we have overdone ourselves in certain respects and particularly in the Preamble. Besides justice, liberty and equality we have resolved to secure fraternity which is impossible of enforcement at this state. Then again we have assured liberty of thought, which is funny. Thought is an inner working of the mind and the individual does not come into contact with another or with the State until be expressed himself. Such moral virtues are impossible of achievement particularly in a secular State. Further equality of status is an empty boaster under the present Constitution. It could only be claimed in a Communist State.

Then I come to Fundamental Principles. On a first glance it would appear that the safeguarding of the Fundamental Rights set forth in Part III of the Constitution is complete. The charter is very exhaustive in description and ostensibly guaranteed.

But on closer examination it would be found that these Rights and particularly the Rights to Freedom in article 19 are hedged round with exceptions and reservations that make them ineffective in those situations when their impairment and ordinarily be apprehended. Like other Constitution, ours also has assigned separate spheres to Government and liberty, but in doing so it has allowed so much latitude to the Legislature in the matter of defining inalienable rights as to make them exceedingly precarious, and robbed them of the guarantee which could make them secure.

In his opening speech moving for the introduction of the Constitution on 4th of November 1948 Dr. Ambedkar had observed:

"Democracy in India is only a top-dressing on Indian Soil, which is essentially undemocratic."

"In these circumstances", he said, "it is wiser not to trust the legislature to prescribe the forms of administration."

I wish that conviction had guided our decisions. But I find that the pervading spirit all through is the greater trust and confidence in the Legislature rather than in the Judiciary.

In my view this is an incorrect and wrong foundation on which this structure has been built. The Judiciary can be more safely entrusted with the holding of the balance between the individual and the State.

Practically all the rights in article 19 are based on one fundamental provision, namely, that the various rights are subject to the existing restrictive law or laws which may be made hereafter. What change that a citizen would feel by the commencement of this Constitution? We were told that even in U.S.A. the rights are not unqualified, and for every limitation enacted in article 19 it was said that the least one ruling of the Supreme Court could be quoted in support of that. What a funny logic? If in an extreme case, under particular circumstances, the Supreme Court declared any limitation, does it stand to reason that the same limitation ought to have been made a provision of the Constitution to be enforced at all times whenever it suited the Legislature so to do? The crucial difference is that in U.S.A. the Supreme Court is the final judge of the circumstances when any restriction is to be imposed, while in our Constitution it is the Legislature that would be the final one. We could choose either of the two methods, one in which constitutional safeguards are wholly lacking just as in U.K. and the other in which such safeguards are as complete as human ingenuity could make them, as in U.S.A. In our Constitution a compromise has been effected which is impossible. We have imposed prohibitions on the Legislature, thus conceding that there is danger from that side, and then proceeded to permit the legislature itself to restrict the liberty. The feared robber is made the judgte and the possible tresspasser the sole arbiter. This is a clear deception.

Then again there are emergency provisions. As soon as there is a declaration under 358 on the report of a Governor or Rajpramukh, all liberties worth the name come to an end. The mere Proclamation of Emergency ought not to have been allowed to abrogate civil liberties. Civil liberty should come to an end only when civil authority comes to an end. These rights are incomplete without a right to work. Can you imagine of any liberty being enjoyed by a citizen who goes about hungry for want of employment, who is haunted by the fear that his family would be without food as he has not got work? Have we made any provision for such an individual? Can such a man have any interest in the administration except to blow it up? Unless material insecurity is eliminated personal freedoms are paper safeguards and worth nothing.

So far as the Directive Principles are concerned, I have already referred to this Part as a useless Appendix. (An honourable Member : Is it appendix or appendicitis?) It is 'appendix'; I accept that I am wrong; after all it grows on the appendix and therefore it is called appendicitis. I believe rights are no rights unless enforceable. It was admitted in the beginning that it was not proper to insert them in the midst of the Constitution but the mistake has been persisted. The perusal of these principles in Part IV leads one to believe that ours is going to be a Socialist State. But there is nothing in the rest of the Constitution in support of these pious platitudes.

Then we come to the President, Part V. He is to be the executive head of the Union. In the introductory speech the President was described to occupy a position similar to the King of England; the head of the State but not of the Executive; to represent the nation and not to rule it as the symbol of the nation. His place in the administration was stated as that of a ceremonial device on the seal. But under the Constitution now settled he has been given enormous powers. Elected by the Members of the Legislatures under article 54 he would most probably be the choice of the majority party. He can only be impeached for breach of the Constitution under article 61 and not for any other misbehaviour. That in my opinion is a grave defect in the Constitution.

My second objection is about article 68(2). This can be misused. The President might, in the interest of the Party which placed him in power resign his office a few months before the expiry of his term, and may get himself re-elected for another full term of five years, though the party might be defeated in the impending elections.

Then again under article 75 the President is authorized to appoint the Prime Minister. It is not clearly laid down that he must necessarily be the leader of the majority or even be an elected member of the House of the People. Strictly according to the provision a non-member may be appointed. In a written Constitution it should not have been left to conventions which are still to grow in our country.

There are other provisions under articles 123, 358, 75(2) and others which may provide an ambitious politician an opportunity to assume dictatorial powers while professedly acting within the strict letter of the settled Constitution which can be interpreted by its plain words and not expressed. The possibility of a virtuous dictator being corrupted by power may be remote in the case of our present leaders, but these immortals of history cannot be immortals of physical bodies as well, and the Constitution has not taken that fact into account. We have been misled by the present. We should have realised that the Constitution would survive our present leaders. We have not guarded against the emergence of dictators. I have grave misgivings against investing a single individual with such wide powers, however great he might be.

Then I come to the special provisions relating to the minorities. It would be interesting to know how an ordinary Sikh mind is working in these days. If the sacrifices for freedom were to be looked back upon, the Sikhs can feel well proud of their contributions. In 1872 in the well-known Kuka rebellion more than 68 Sikhs were blown off with cannons. In 1907 S. Ajit Singh, Kishen Singh and others played a very important part in the movement. During 1912-16 the Ghadar movement got considerable momentum by the advent of revolutionaries brought in by Kamagata Maru and other ships. Most of them were Sikhs who died cheerfully on the gallows for the love of their country. During Martial Law Regime in 1919 the Sikhs raised a bold and open revolt against the British and underwent many hardships. The Gurdwara movement, though directly organised for religious reform in Gurdwaras had its political aspect no less important, as by the huge sufferings and strict restraint the Sikhs lowered the prestige of the rulers.

In 1937 the Akali Dal formed an alliance with the Congress and succeeded in elections on national programme against the Unionist alliance with the bureaucracy. That union must have grown closer and had been further cemented but for the Congress wooing the Muslim League in order to put up a concerted fight. The Sikhs grew apprehensive that the Congress, in their anxiety to win freedom, otherwise very commendable, might hand over their home-land to the Muslims and they might be subjugated for ever. These fears led a section of the Sikh community to chalk out an independent line of action. But, even after that, preserving their individual identity, the small community supported the Congress very faithfully in the negotiations during 1942, 1945 and 1946.

The Cabinet Mission Plan was unjust and unfair for the Sikhs and it was so acknowledged by the Congress Working Committee in their resolution dated 25th June 1946. The Sikhs got indignant and the Panthic Prathinidhi Board boycotted the Constituent Assembly by their resolution dated 5th July 1946 when the Muslim League had accepted it. The Congress Working Committee in their meeting of 10th August 1946 appealed to the Sikhs to reconsider their decision and participate in the Constituent Assembly. The Working Committee assures the Sikhs that the "Congress will give them all possible support in removing their legitimate grievances and in securing adequate safeguards for the protection of their just interests". Immediately, the Sikhs, on this assurance, reversed their decision, and directed their Sikh representatives to raise the question of safeguards in the Assembly at the proper time in the hope that the Congress would support the Sikh demands in accordance with the assurances dated 10th August 1946 and their premises earlier in 1929. Since that day, the Sikhs made common cause with the Congress and stood firmly by it. Then again on 6th January 1947, the Congress, in accepting the interpretation put forward by the British Government on the Cabinet Mission Plan, made it clear that the right of the Sikhs in the Punjab should not be jeopardised. Later, on 8th March 1947, the Working Committee assured the Sikhs that "they would keep in close touch with the representatives of the Sikhs and other groups with a view to co-operating with them in the steps that may have to be taken and in safeguarding their interests".

The Congress was announcing again and again that all minorities hall have proper safeguards. The Muslims refused to be contented with any safeguards, but insisted on having a home for themselves. They got Pakistan, and can have no further grievance. The Anglo-Indian community has been sufficiently protected. They can have no grouse. The Parsees and the Christians are far more advanced educationally and economically and have declared that they do not want any safeguards. It is only the Sikh Community that earnestly desired, repeatedly requested that constantly cried for safeguards but have been denied any consideration. They fail to understand why they have met this treatment. The majority can oppress, it can even suppress the minority; but it cannot infuse contentment or satisfaction by these methods.

Separate electorates have been done away with; the Sikhs submitted to it cheerfully. The reservation on population basis in the legislatures was abolished. Their representatives fell in line with the others. But the economic safeguards about services were never voluntarily given up. On scrutiny, it appears to be a very trivial thing. But it was a test case where the majority was on trial. It was said that it was a blot to acknowledge any religious minority; but the Anglo-Indians have been given safeguards in the Constitution. They are a religious as well as a racial minority according to Government's own publication. The entry about consideration of claims of Sikh community similar entry about the Scheduled Castes and Scheduled Tribes and the Anglo-Indians does not impair its beauty. The whole economy of the Sikh community depended upon agriculture and army service. Lands have been left in Pakistan and their proportion in the army since the partition has been greatly reduced and is being reduced every day.

Their demands were very simple. They wanted a Punjabi speaking province. That has been denied. It was not a communal demand, but a territorial one. But the majority community in the province went so far as to disown their mother tongue. That language is in danger on account of aggressive communalism of the majority. Andhra province is a settled fact; other cases are to be looked into; but North India cannot even be considered for it. The next was this consideration for services. That has also been denied.

Mr. Khandekar today referred that there was no untouchability among the Sikhs, and that seats had been taken out of the Scheduled Castes seats. I may briefly refer to these observations of his. Certainly according to the Sikh religion, there is no untouchability. But does it stand to reason that if there are two sons of one father and they are untouchables and one embraces the Sikh religion, he should be neglected simply because he professes that religion different from the one which he originally professed? Would that not have been discrimination on account of religion? I think that injustice has been removed and the Scheduled Castes should have no complaint about it. Then again, he made a remark that Sikhs have been given seats out of the Scheduled Castes quota. That was what I could not comprehend, because reservation for the Scheduled Castes and Scheduled Tribes is to be made on the basis of population. If certain castes have been included in the Scheduled Castes, then, certainly they would bring in their population and their seats will be increased. It does not stand to reason that the Sikhs have taken away any part of their quota which the Scheduled Castes possess.

Naturally, under these circumstances, as I have stated, the Sikhs feel utterly disappointed and frustrated. They feel that they have been discriminated against. Let it not be misunderstood that the Sikh community has agreed to this Constitution. I wish to record an emphatic protest here. My community cannot subscribe its assent to this historic document.

I now come to centralisation of powers. For the last thirty years, the policy had been progressing towards provincial autonomy. There were valid reasons for it. The vastness of the country, its multifarious population organised in units having different languages, varied social systems, uneven economic development, made it impossible to have uniformity everywhere. Even in old regions whenever centralisation was attempted in India, the system cracked under its own weight. Independent units with greater responsibility and willing co-operation would have lent greater strength. In our Constitution, each article tends to sap the local autonomy and makes the provinces irresponsible.

To sum up, our Constitution does not give anything substantial or concrete to the individual. It only gives solemn promises and pious platitudes. The Fundamental Rights are worthless as they have so many restrictions and are left at the mercy of the legislature. The right to work is not guaranteed. There is no assurance for old age maintenance or provision during sickness or loss of capacity. Even free primary education has not been provided for. The minorities and particularly the Sikhs have been ignored and completely neglected. The Provincial units have been reduced to Municipal boards. The common man has been squeezed out of politics and the President has been enthroned as the Great Moghul to rule from Delhi with enough splendor and grandeur. Any ambitious President would discover a rich find in this Constitution to declare himself as a dictator and yet apparently be acting within this Constitution. The discontent and dissatisfaction is sure to grow without any economic solution of difficulties of the masses. This shall consequently facilitate the development of administration into a fascist State for which there is enough provision in our Constitution. May we be saved from such contingencies!

Shri S. Nagappa (Madras : General) : Mr. President, Sir, very many speakers that spoke before me have congratulated the Drafting Committee and its Chairman. I join them, Sir, I do so.

From the point of view of the Scheduled Classes, their point was achieved on the day on which Dr. Ambedkar was elected as Chairman of the Drafting Committee. He had been one of the stoutest champions of the cause of the Scheduled Classes. He was elected as the Chairman. Even since he was elected, the other members of the Scheduled Classes were very reluctant to cooperate; not because they did not want to co-operate, but because they knew Dr. Ambedkar who was a champion of their cause was there to watch and provide such articles that will be safeguarding the interests of the Scheduled Classes. Well, Sir, this has proved to what heights Dr. Ambedkar, though he is a member of the Scheduled Classes, if an opportunity was given, can rise. He has proved this by his efficiency and the stable way in which he has drafted and piloted this Constitution. Now I think this stigma of inefficiency attached to the Scheduled Classes will be washed away and will not be attached hereafter. Only if opportunities are given, they will prove better than anybody else. Now for having played such a great part, on behalf of the Scheduled Classes I congratulate Dr. Ambedkar. It is not the strength of the Scheduled Classes that made him the President of the Drafting Committee but it is the generosity of the majority party and I am very much thankful to them for the same.

Now I call this a Constitution for the benefit and betterment of the common man. It can be called a Common man's Constitution. This assures the right of common people more than that of the landed aristocracy or of industrialists and capitalists. This will go a long way for the betterment of the common people of this country. It is so because though Dr. Ambedkar happens to be a man of high status in society, yet he has been drawn from the lot of common people. He has not forgotten the interest of the common people and he has been good enough to do all that is possible for their betterment. Articles 14 to 17 go a long way for the betterment of Scheduled Classes, Article 14 assures equality before law particularly to everyone. This is the most important one. There was no equality before law all these days. Article 15 forbids discrimination on the ground of race, religion, caste or community. The country was in need of such a Constitution. Article 16 gives equal opportunity to everyone. No doubt opportunities were not much these days. I hope in days to come, though they are equal from my point of view and from the point of view of the Constitution, I feel that the Scheduled Classes will get better opportunities than others.

I am very much thankful to the majority community for their large-heartedness, for having acceded to our - I do not say demand - requests that we should be given reservations for some years to come. We too would have been glad to forego our reservations if we had the status of other minorities, the economic status, the social status and the educational status which the other minorities are enjoying today. Unfortunately we were not only lagging behind in all these respect but there was also a stigma attached to us namely the untouchability. I am thankful to the majority community for having recognized what wrong they have done to us all these centuries. They have now been good enough to abolish this untouchability by a statutory provision. We are abolishing untouchability today, but I would request the framers of this Constitution and those who are going to work this Constitution from the 26th January 1950 to see that in every bit of it, every letter and word and spirit this untouchability is removed from this country. The responsibility lies more on your shoulders, as you have taken the pledge that you should bring us upto your level within 10 years' time. I hope with this goodwill, with your generosity, we will be able to come to that level. We will also endeavour on our part to come to that level at the earliest opportunity that is possible.

Now, Sir, another unique feature of this Constitution is that you have been good enough to abolish forced labour. That was one of the features under which these poor classes were suffering all these ages. You have now abolished it under Article 23. I do not agree with article 31 which gives the right of property for those who are propertied. I do not say that all the people of this country should be poor, but when you want to take away some of the properties for the betterment of the State as a whole, you should not have given them any compensation. If you want to give them compensation, there should have been a limit. There is no such limit at all according to this article. If there is a capitalist Government in power, they can give any amount - even more than the real cost of the property which you are going to acquire. It is said 'just compensation'. What is fair and just from your point of view may not be really fair from other point of view. I know under this Constitution there is no scope for a Capitalist Government to come into existence. As you have been good enough to extend the adult suffrage, the common people are found to capture power - if not today, some other day. They are bound to be at the helm of affairs. Anyhow during the interim period there is every scope for a capitalist Government to be at the helm of affairs. Under the Directive Principles you have been good enough to direct the country and the provincial Governments to see that the wage-earner is given his minimum wages. He is protected from the exploitation of industrialists, capitalists or agricultural capitalists. I think the country will be benefited by this.

Again this country consists of illiterates but this Constitution provides by article 45 that everyone who is below 14 years of age is made literate. They are given education before 14 years of age at the cost of Government. That will be free and compulsory education. That is a good point for labour and poor people This Constitution has given protection not only by giving reservation of seats to Scheduled Castes but it has given other kinds of protection. It has given reservation in service and their appointment in services will be considered and they will be given their due share in services provided sufficient number of qualified people are coming forward. I hope this article will go a long way to help the Scheduled Castes economically and this will be translated into action - to the very spirit of it, to the letter of it and to the word of it. This depends more on those who have framed this Constitution to see that it is properly worked. A constitution if it is not worked with all the spirit with which it has been enacted, will become a dead letter and only a paper constitution but not a practical Constitution. To make it practical it depends more on the people that work it.

Coming to elections of Governors, before we entered into this Constituent Assembly there was a rumour that Governors should be elected. Then I though if the Governors are to be elected, there was a very poor chance of a Scheduled Class member being elected as Governor because he is to be elected by the whole province. No doubt even if a large part of the country were in favour of them, some may be against them, not because they did not like Scheduled Classes, but in their own interest to become Governors themselves they would have opposed them. Now the President have given the power of appointing. That itself assures that there would be some Governors from the Scheduled Classes.

Again, on the question of Service Commission, I am not generally in agreement with this article especially on the age question. If they can serve in the Commission up to 65 years, it is too long a period for any public servant to be in service. I say so especially to the Federal Public Service Commission where if they are retained till 65 years, the work will suffer a lot. Even now, people are being interviewed for a job and then they have got to wait for four or even six months for a reply. They are made to wait and wait. That is because there are old people on the Commission. They cannot understand the country and they can not move as quickly as they are required and so the result is stagnation of work. So I am not in agreement with this article which allows the members of the Commission to be there up to sixty years of age. And then they should have served ten years under the Government. But I may point out when you fill up the Provincial Commission or the Central Commission, you very rarely get members of the Scheduled Castes with this qualification. It would have been better if you had made some such provision which might have enabled the representatives of the poor people to be in the Commissions, Provincial and Federal.

Sir, as regards the bifurcation of the judiciary from the executive, the principle has been accepted in this Constitution. Under this, especially the poor people were suffering a lot, because the persons in whom these two powers were combined were misusing, more often than using them for the betterment of the people. I say so, Sir, because that has been my experience. This Constitution has recognised this principle. This was the slogan of the Congress too and the Congress was agitating for the separation of the judiciary from the executive. I am proud that province of Madras has already begun this bifurcation and it is going ahead with it. The U.P. also has started, and I hope this will be followed by the remaining provinces also and they will see that this bifurcation is effected as soon as possible, in the interest of the poor man who is expecting justice from this government.

Sir, I then come to article 335 where the claims of the Scheduled Castes, especially in regard to the services, have been considered. It is said that these claims will be taken into consideration. It should not be always in the consideration state, but the claims should be recognised and fulfilled, and that is the most important part of the Constitution.

Under article 391, I am glad to say there is provision to make separate provinces on linguistic basis and it provides that any time separate provinces can be created. I am glad the Congress High Command has accepted the creation of the Andhra Province, and I hope you will be good enough to see that province is brought into existence as early as possible. Sir, when the Dhar Commission was appointed by you, that Commission made it clear that there was apart in

Andhra called the Rayalseema and there was a pact or agreement between the Sircarians and the people of Rayalseema that representation should be given to the latter, not on the basis of population, but on territorial basis, that every district should get equal share of representation. But now it has been accepted on population basis, and that has gone against the people of Rayalseema. But even now it is open to the people of the Sircars to be large-hearted and say that representation for themselves will be as one for one lakh of the population and for the Rayalseema at the rate of one for every seventy-five thousand of the population. If this is done, it will go a long way to help the people of the Rayalseema. No doubt, the House did not agree with our point of view, although there was a pact between the people concerned, the Sircarians and the Rayalseema people. But we are prepared to accept the present decision of the Drafting Committee. They did not agree to our view because they never wanted to give any representation, on the ground that a particular area was backward. But when they have given reservation for particular sections of the people, because they were backward I do not see why they could not agree to give the same thing because a particular area is backward. But anyhow we have agreed to this decision, though I would point out that this works very hard on the people of the Rayalseema. Now we have to depend on the Sircar people, but I hope they will be generous enough to recognise our rights and do us justice.

Article 120A relating to the language question was one of the most difficult problems that this House had to solve. My friends from the U.P. were very stiff and very particular that Hindi should be accepted and Hindi should be made the language of the country, the very day on which the Constitution is brought into force. But, Sir, after great difficulty, the people coming from the South were able to convince them and we were able to carry them with us, and they were good enough to grant us at least fifteen years time. Even this period of fifteen years is not enough. I do not think within this time our people will be able to come up and learn Hindi in the Devnagari script. No doubt, I have no quarrel with the script. But whether people of my part will be in a position to come up to the level that the U.P. are expecting them to do, within fifteen years, that remains to be seen. Anyhow, they have been good enough to concede that time limit. And then the question of numerals was there and that was very important. It took three days' debate and then it was decided. Although the numerals were called "international numerals" we had to convince them that they were really Indian numerals first, and they have conceded after all. It is a great achievement from the point of view of people from South India. I hope my friends from North India will not mistake me, when I say that the difficulty is ours, because we have to learn the language and not they.

Sir, I am glad we have come to the last stage of this Constitution. It is about to begin, on the 26th January, and I once again make an appeal to the Members that we should make it a point - because most of them will be the people who will work this Constitution to see that it is worked in the spirit in which it is enacted. Only then can we realise the dreams with which the people have enacted this Constitution. Establishing of gram panchayats and cottage industries, introduction of prohibition, - all these things will go a long way to help the poor people.

A unique feature of this Constitution is that the rights of the agricultural labourers have been recognised by this Constitution. Though the agricultural labour forms the bulk of the population, though he produces the maximum wealth of this country, his claims were ignored simply because he could not organise, he could not come forward, he could not strike, though he could stand for the property of the country. When I moved the amendment asking for agricultural labour to be included in labour, the Drafting Committee were kind enough to accept it. I leave it to the honourable Members, while working out this Constitution, to see that the just claims of the agricultural labour are recognised. I support this Constitution, not as my honourable Friend Mr. Kamath did with limited support. I support this Constitution without any reservation, either mental or physical.

Shri Jaspat Roy Kapoor (United Provinces : General) : Mr. President, Sir, the discussion on the Third Reading of this Constitution has been going on now for the last several days and every little article of this Constitution has been under discussion for the last about three years now. That being so, one can hardly add anything which is new. If even then I venture to address this House, it is not because I would aim at anything original, but because on an occasion like this when the heart is full of happiness, gratitude and reverence, there is a natural urge for one to pour out his feelings. These speeches on the Third Reading, I do not think, are in the nature of a post-mortem examination as honourable Friend, Shri Saadula stated this morning, for we are not analysing or dissecting anything which is dead and gone. But we are here on this occasion to give our blessings to something which is newly born, something which we wish would work successfully and live long and prosper and cast happiness all round.

The uppermost feeling on this occasion is that we should pay our homage to Mahatma Gandhi, the Father of the Nation, under whose guidance and because of whose great sacrifices we have been able to break the shackles of slavery and to secure freedom for this country. On this occasion our thoughts also go out in grateful reference to the departed patriots like Dadabhai Naoroji, Surendranath Banerji, Gokhale, Tilak, Motilal Nehru, Malaviyaji and others, and to many a martyr, known and unknown, who has has lost his life in freedom's battle. But the latest sacrifices that have been made in the cause of our country's freedom are those our refugee brethren, who have been displaced from Western Pakistan and also from Eastern Pakistan. Their sacrifices have been the latest and it will be sheer ingratitude on our part if we were to ignore them. Not only must we not ignore them, but we must see to it that we do everything that is possible on our part to remove their misery. Providence will not forgive us if we neglect their cause. So long as we are not in a position to rehabilitate them, I think we shall not be able to create an atmosphere in the country which is necessary for putting this Constitution on a sound footing. I feel that our position is very much like that of a peacock who, enchanted by the beauty of its feathers dances in joy, but when he looks at his feet begins to weep and shed tears. That is exactly how I think we feel today. While we are happy at the freedom that we have attained, when we think of the partition of the country and the more so when we think of the misery of our displaced brethren, we certainly feel that we cannot fully enjoy the fruits of freedom. I submit therefore that we must do everything possible to recognise the great sacrifices that our displaced brethren have had to undergo for the sake of securing the freedom of the country, and the problem of their rehabilitation must be given top priority.

Dr. Ambedkar and his colleagues have rightly deserved the praise which has been showered on them by almost every speaker. I had started with a prejudice against Dr. Ambedkar, for I had felt very sore many years ago when Mahatma Gandhi was undergoing fast against grant of separate electorates to the Scheduled Castes and I had read in the papers the news that when he had been invited to see Mahatma Gandhi to discuss that question, he once said that for a day or two he was not free because he had to attend to some professional engagements. I felt very sorry then. I do not know how far it is correct. But even if it was so, the great work that he has done during these three years has washed away that particular sin or any other sins which he may have committed. I have developed an admiration and also affection Dr. Ambedkar for the very useful work and the very patriotic work which he has done. His very first speech in this Assembly had dispelled all my doubts and fears in relation to him and today I can say that I consider him to be one of the best patriots of this country. I have always found him to bring to bear upon the subject a very constructive approach. On many an occasion when there seemed to be a deadlock, he came forward with suggestions which resolved those deadlocks. I always found him rise to the occasion except, unfortunately, on one occasion and that was when he did not agree to give up reservation of seats for the Scheduled Castes. Every other minority gave up reservation of seats, but unfortunately Dr. Ambedkar would not agree to it. I wish he could have also agreed to it and I could have then been in a position today to say that he rose equal to every occasion, but unfortunately I cannot say it today. Be that as it may, the great work he has done except this must be recognised in very grateful terms.

I must also express my gratitude to Shri B.N. Rau, Mr. Mukherjee and his loyal lieutenants for the very good and efficient work that they have all done. Shri B.N. Rau kept on flooding on us precedents after precedents of Constitutions as they are in the different parts of the world and they have been very helpful to us.

And so now we have come to the close of our labours. We have done our job well with mutual accommodation, understanding and common consent. We are proud of our achievement. But this has been made possible only under your wise guidance, Mr. President. You have shown a tremendous and marvellous patience. You have extended to us unfailing courtesy. You have given to us the fullest freedom for expressing our views. You have not merely regulated the proceedings here but you have stepped in whenever you thought that the decisions which we were going to take were not rights, and almost on every occasion when you intervened things were set right. It is, therefore, that we have been able to prepare a Constitution which is worthy of us and deserves the support of every one of us here and outside in the country.

The one great thing about this Constitution is that almost every clause of it has been adopted with unanimity and in agreement with those who were affected. Some might differ with a clause here or others might differ with a clause elsewhere but on the whole the Constitution represents the greatest common measure of agreement among all sections of this House. I do not ignore the fact that there are some irreconcilable like Seth Damodar Swarup, Prof. Shah and Shri Lakshminarayan Sahu. They are some who for reasons of their own can never be convinced for nothing can convince those who are bent upon not being convinced, and we should not therefore take a very serious note of their opposition. So far as Seth Damodar Swarup is concerned he contended that we are not a representative body, not having been elected on adult suffrage. While we may not agree with him in his view, so far as he himself is concerned admittedly according to his own confession he is not representative of anybody, and fortified by that conviction that he is here not to represent anybody, I believe he has allowed himself to indulge in irresponsible attack, because perhaps he feels that he can safely talk anything not being here in a representative capacity.

Though the number of such hostile critics is not many I must confess that it has been a matter of regret and surprise to me, as I believe it must be so to many others, that the latest recruit to the ranks of hostile critics is a person who less than Sri Sampurnanand, Education Minister of U.P. Last Saturday while addressing the students at the University Convocation at Agra he condemned the Constitution and decried it outright. While I was listening to his speech sitting not far from him I was wondering whether that was the sort of speech that should have been delivered to students who should be told what their duties are when they are entering the threshold of the world. He ridiculed the Constitution outright and perhaps expected the new alumni of the Agra University to also similarly ridicule the Constitution. One would have expected a distinguished and responsible person like him to call upon the students to work the Constitution and make it a success. It was an occasion when wholesome advise should have been given to the new graduates. But it was otherwise. It was ill-conceived, ill-timed and ill-delivered.

With your permission, Sir, I would like to refer to three or four things that he said. He said:

"It is my conviction that this Constitution is not really worthy of us".

Further he says that "it is a large tome". He considered it so weighty that even his stout shoulders could not carry its weight. He has of course not given us the exact weight of this "tome" or how much his shoulders could carry. Later he says:

"A Constitution is something of a sacred character which inspires future generations. It is in the case of important States the embodiment of a living, faith, the philosophy of life of those who framed it. You have only to look at the Soviet Constitution to realise this."

Here we have an inkling into his mind and we find which way his sympathy lies. Then he goes on to say:

"Judged by this criterion, our Constitution is a miserable failure. The spirit of Indian culture has not breathed on it; the Gandhism by which we swear to vehemently at home and abroad, does not inspire it. It is just s piece of legislation like, say, the Motor Vehicles Act."

What contemptuous and unworthy description of this sacred document! Ultimately, as if this was not enough, he says:

"There are other serious defects. I shall refer only to one. The attempt at centralisation of all power is hardly veiled and provincial governments have been sought to be reduced to the position of agents of the Centre. This is bad. Centralisation has been tried before in this country. The results of the experiments are not unknown to students of history."

I do not know which history he has studied. The history of centralisation that we know of is not the history which he seems to have studied. History rather undoubtedly proves that whenever there has been no centralisation in this country it has been over-run by foreigners. It seems that the history which Sri Sampurananand has read is one of which none of us is aware.

One of the criticisms against this Constitution is that it is not inspired by Gandhism, as Sri Sampurnanand has said and some other friends also have said it, though their number is small. But nothing is farther from truth than this. The chapter on Fundamental Rights and that on Directive Principles give a direct lie to such criticism. What is it that Mahatma Gandhi stood for? The thing nearest to his heart was the removal of untouchability. Have we not laid down in definite and specific terms in this Constitution that hereafter there shall be no untouchability and if it is practised it shall be an offense punishable under the law?

The second thing that Gandhiji wanted was that power should be in the hands of the masses, the peasants and labourers. Have we not really provided for that also? What does adult suffrage mean? We have taken a bold step in providing adult suffrage. It is a risky experiment which we are going to make. In deference to the wishes of Mahatmaji we are going to take that risk and I hope and trust that we shall not be sorry over this experiment.

Thirdly, Gandhiji wanted a secular State, that religion should be a personal affair and that the State should have nothing to do with it, that persons professing any religion must have absolute freedom and should be equal in law and in the eyes of the State.

That is what we have provided for in this Constitution. While absolute religious freedom has been granted, we have made several provisions in the Act laying it down specifically that religion shall not be compulsorily taught even in educational institutions which receive any aid from the Government.

What Mahatma Gandhi was particularly anxious about was that there should be village panchayats and that they should enjoy a certain amount of autonomy. That is exactly what we have provided for in article 50 of our Constitution. This is what it says:

"The State shall take steps to organise village panchayats and endow them with such powers of authority as may be necessary to enable them to function as units of self-government."

So, this is what we have specifically provided for in the Constitution. Those who talk of centralization of Government would do well to look at article 40 in the Constitution. True, it is in the Directive Principles, but where else could it be, and what more could you do at this state? You could not have established village panchayats by one stroke of the pen or by merely waving a magic wand. All that you could do was to set forth your firm determination to proceed in that direction and that is what we have done.

Sir, there is another thing which Mahatma Gandhi was anxious for and that was the spread of cottage industries. For that we have made a specific provision in the Constitution in article 43.

Then, again, Sir, prohibition was very important plank in Mahatma Gandhi's programme. We have made a definite provision in that direction also under article 47, which finds a place in the chapter of Directive Principles.

Those who say that this Constitution is merely a copy of other Constitutions - would they please point out to us whether in any other Constitution of the World there is any mention of prohibition or cottage industries in the directive principles and policy of the State? And yet they say that our Constitution does not bear the mark of Gandhism.

There are two more things that I would refer to and they are the question of the national language and the question as to what the policy of the State is going to be in international matters. So far as international matters are concerned we have laid it down in article 51 as Mahatma Gandhi would have wished us to do, and that is that the State shall endeavour to promote international peace and security, maintain just and honourable relations between nations, foster a respect for international law and treaty obligations in the dealings of organized peoples with one another and lastly, encourage the settlement of international disputes by arbitration, and not by having recourse to force or war. This is to be our policy in the international sphere, a policy which is in complete accord with the principles of truth and non-violence of which Mahatma Gandhi was to ardent an advocate.

Lastly, with regard to the question of one common national language : we have proceeded on the same lines on which Mahatma Gandhi would have wished that existed on this question. But then ultimately when we passed the article in regard to this language question, we passed it in a manner that appears to me to be just what Mahatma Gandhi would have wished for except in one or two minor details. We have adopted Hindi as the national language, a language which is to be composed of all the languages and which has to make its shape from all the different languages of the country. Of course, Mahatma Gandhi did not want domination of English and in that respect I must confess. Sir, that we must plead guilty to the charge that we have not met his wishes in full. Those friends of ours, those honourable Members and responsible members here, who mention Mahatma Gandhi's name in season and out of season, would not let us throw away English and in that respect I must confess. Sir, that we must plead guilty to the charge that we have not met his wishes in full. Those friends of ours, those honourable Members and responsible members would not let us throw away English within a short period : they insisted that English must continue to dominate for full 15 years. About this, Sir, I have no doubt in my mind, and I am sure none of us would have any honest doubt in our minds, that Mahatma Gandhi would never have relished the domination of English for 15 years and the idea of having English numerals. But then those who preach to others to follow Mahatma Gandhi's principles and policies and theories in toto were the loudest in insisting that we must have English for 15 long years and also English numerals. Well they have had it to their satisfaction. We have kept the English numerals.

Shri L. Krishnaswami Bharathi : They are absolutely Indian numerals.

Shri Jaspat Roy Kapoor : My honourable Friend says they are Indian numerals. I know, of course, that one fine morning this wisdom dawned on Mr. Bharathi, and some others also felt that they would be wiser if they would accept what Mr. Bharathi had discovered, namely, that these numerals were not English numerals but were Indian numerals, and we had then the funny description of Indian numerals in international form. Well, I would not care to refer to that story any more. It is a sorry story of self-deception. I have referred too it only in relation to the objections raised by Sri Sampurnanad and those of his way of thinking that our Constitution does not bear the impress of Gandhism.

Then, Sir, Sampurnanandji and some other like Seth Damodar Swarup said that the Socialistic principles did not find any place in this Constitution. In answer to that, I would refer them only to articles 39 and 41 of this Constitution which provide for public ownership of material resources of the country and equitable distribution of wealth. One of the articles lays down that there shall be equal pay for equal work.

These and other cognate articles would go to show that we have fully adopted socialistic principles. Of course we could lay them down only in the Directive Principles and could do nothing much beyond that.

The two fundamental things about this Constitution are the unity of the country and a strong Central Government, and surely none need be sorry for either reason. It is absolutely necessary that we must have a strong Centre. But we have a strong Centre only so far as it has been consistent with necessary and reasonable provincial autonomy. We have not stopped there but, as I have already submitted, we have gone beyond that and we have provided for the creation of village panchayats which have to be given a very substantial amount of self-governing powers. So, though we have a strong Centre, it is not inconsistent with provincial autonomy and reasonable village autonomy even. So far as unity of the country is concerned, we have been wise enough to incorporate in the Constitution certain definite principles and I think nobody should be sorry for it excepting one who would like to bring about confusion and chaos in this country because his sympathies may be lying somewhere else outside the borders of this country.

We have provided that any person born in India and residing anywhere in the State shall be employed in any part of the country. That I consider to be a very wise article which we have dropped. I hope and trust that the power which has been given to Parliament to enact a law which may lay down that the residential qualification may be necessary in the case of certain appointments, would only be exercised with care and caution and not extensively at all.

Then we are going to have a uniform Civil Code for the whole country. That is a very good thing. It will be a great unifying factor. Then, above all, we have provided in the Constitution that all Indian States shall have the same Constitution as the portions which hitherto used to be called provinces. Two years ago we could not have visualised that Princely India would disappear and that it would be integrated with the rest of India and that the whole country will have the same sort of Constitution. But today it is an accomplished fact. This is something of which we are proud and happy. I only wish that Kashmir should also have been brought in on the same level as other States but, unfortunately, much to our dissatisfaction and chargrin, if I may say so, this would not be done. This is a delicate subject and I will not say anything more on it.

One very good thing which I have found mentioned 25(2) at the late stage is a very good addition. This includes the Buddhists also among the Hindus. This is a new incorporation. This is a provision of which I feel particularly happy.

The President's bell has been rung and, my time is up. I would not, therefore, refer to two or three points about which I had something to say. But it is well that the time is up now, because this prevents me from referring to any defect in the Constitution for the time for pointing out the defects and offering hostile criticism is now over. It is time now that we create in the country a feeling of sanctity for this Constitution. It must be, as my honourable Friend Shri Santhanam point out, our endeavour now to make the people wholly understand the various provisions of the Constitution. We must create an atmosphere of respect and reverence for the Constitution so that every one may do his best to work it and make it a grand success. That only will bring us peace and plenty, prosperity and happiness. Our motto and slogan hereafter should be "Bharat Samvidhan ki Jayaho, Bharat Mata ki Jayaho".

Shri Algu Raj Shastri (United Provinces) : *[Mr. President we are in the last lap of the journey of our Constitution making which we had undertaken after achieving our Independence. I consider, Sir, that the representatives of people who are in this House may congratulate themselves for their great good fortune for having seen the day when they could shape their own constitutional destiny after having smashed the chains of their slavery. The parallel for the present day that comes to my mind is the Coronation Ceremony of Ram. When he returned from his great triumph over Ravana to his Ajodhya his forest followers who have been described mythologically as monkeys and bears also accompanied him. On his ascending the throne of Ajodhya Rama gave them each a diamond necklace as a gift. I feel that the common people of India who had sacrificed and dedicated their all to the Congress and who by marching behind the great leaders whose efforts and courage has brought us the sweet fruit of freedom and as a result of whose efforts we are sitting here making the Constitution of our free India-These common people who give their firm support to our leaders in achieving Independence just as the forest followers of Ram had supported him in recovering Sita from Ravan are now getting this reward of this diamond necklace of this great and big Constitution of free India from the hands of this Constituent Assembly composed of followers and statesmen. Sir, this Constitution really appears to me to be like a necklace of diamonds. I believe, Sir, that even if this Constitution were examined with a very critical eye or even with a hostile eye yet it would be very clear without any possibility of contradiction that the Unity it has established in a country which was divided into many states and which was practically going to pieces as a result of internecine differences is unrivalled and unparallel in the history of the world. I should say it is a unique achievement and we have been able to do so only through great daring, great industry and great goodwill. Each section of these sacrifices and compromises we have now this Constitution.

When the British quitted this country they granted complete Independence to all the princely potentates of this land. They declared that the treaties which had been entered into with the princes would lapse on their departure and that the princes would become completely sovereign and free. These princes then had before them a great temptation of sticking of their privileges and rights. If that had happened there would have been so many rulers in the country and the struggle for power and political conflict would have been on so many fronts that it would have been impossible to resolve them successfully. But our princes had wisdom not to do so and through the surpassing ability of our great leader Sardar Vallabhbhai Patel and the far sightedness and skill of our leaders we have been able to bind India together into a common whole and thereby establish a greater India than there was during the British regime. Not only was there the princely question but linguistic question of our country was no less complex as ours is a multilingual country so much so that we have a saying that the taste of water changes after every ten bighas and so also does change the language of the people It is therefore nothing short of a marvel in such a vast country, that there could have been accepted one language and one script as the official language of the whole State. I should say, Sir, that this has all been due to the great liberalism of all the component units of this great land who have in this matter sacrificed their individual interests for the sake of the common and the collective good. I believe, Sir, that in this achievement we owe a duty to praise and honour the leaders and our friends of different provinces who by skill or spirit of accommodation have made this decision possible. If we view it in this manner we find that we have been able to constitute a new nation. We have been able to constitute a national language and we have been able to gather in an organic whole the scattered fragments into which our country was divided as a result of the existence of many States. All this unique achievement is reflected in the Constitution and I may say, Sir, that we have been able to secure it only through hard and toilsome labour. It is also because of these achievements that I consider this Constitution to be a diamond necklace which is being presented by the destiny makers of our nation to the people of India. In this connection, however, Sir, I find a difference between the parallel to which I had referred only a while ago. Is the diamond necklace given to Hanuman by Ramchandra was put to pieces by the former and he began to examine each piece to find whether it had on it the name of Ram or not, and he threw away all the jewel pieces on finding that they did not contain the name of Ram on or within them. But I do not think Sir, that this will be the case with this Constitution. I believe on the other hand that the people of this country would feel greatly pleased on getting this garland or necklace of the Constitution and would render thanks to the Lord at the moment when it puts it round its neck. I know, Sir, that those among the people who like Hanuman are lovers of the Lord and those who on examining the jewels and diamonds of this necklace of this Constitution find that it does not have on it or in it the name of the Lord would feel a little hesitation in accepting it. But what are the defects which can make these people hesitant to accept it. I think that it is my duty to point out these to the House today. It is my feeling Sir, that we have used very beautiful and sweet language in the preamble. But in spite of the fact that the language is sweet people like Hanuman who are lovers of Lord feel that there is not within it the name of the Lord himself. Moreover, Sir, we do not find the least reference in this Constitution to the great heroes and martyrs whose sacrifices alone made it possible for us to have a Constitution for an Independent and free India. I really, Sir, do not know if there would be any occasion when there would be record that in this Constitution there is no reference at all to the Father of our Nation nor to the martyrs of our country. We have, Sir, proudly, declared in the preamble arising out of a sense of pride and vanity. I submit, Sir, that we should not do anything in pride as saying is 'pride goes before a fall'. My submission is, Sir, that we should have referred to God in its opening sentences even though the reference would have consisted of a few words only. We should also have made a reference to the brave spirits whose constant striving and continuous sacrifices have brought us this day. And we should have paid, our homage in all respect to the Father of our Nation, Mahatma Gandhi under whose beneficence and blessings we are able to witness this glorious day. My submission is, Sir that if it had contained a reference to Mahatma Gandhi it would have become as beautiful as would have been the diamond necklace for Hanuman if it had contained the name of Ram. But since it is not there those of us who are devotees of the country, of the State and a God feel a sense of void in certain aspects of this Constitution. Next Sir, when we proceed further from the preamble we come across the chapter relating to the name of the country in which it is stated that India shall be a Union. It is, Sir, a matter of deep sorrow and deep regret for me that we in this country did not rise above the slave mentality and we did not say frankly what would be the name of our country. I think, Sir, there is no single country of the world which has such a clumsy name as we have given to our land that is 'India, that is Bharat.' The fact, Sir, is it is no name at all and we have failed very badly in giving it a proper name. My feeling is, Sir, that having a beautiful type of its own this Constitution has lost much of its sweet flavour on account of this short-coming on account of the absence of the name of Ram and would not be acceptable to many Hanumans. Next, Sir, we find the clauses relating to citizenship. It is stated therein, Sir, that people who have migrated from Pakistan to India before a particular date shall be the citizens of India. The fact is, Sir, that we should have said plainly that the Hindus and the Sikhs who may not have acquired voluntarily the citizenship of a foreign state would be the citizens of this country whenever they may decide to come to this country. Had that been done there would not have been the right of acquisition of citizenship as is contained in the provision relating to a particular date on which persons could become citizens of India. As against this there should have been a severe limitation of the right of those who had left this country after partition but who have returned for reasons which may not be known to this country again but I find that in that matter that strictness has not been observed. Naturally those of us who have been ruled so long as by patriotic sentiments do not feel satisfied in regard to this matter. Next, Sir, is the chapter relating to fundamental rights. That chapter carries liberty and security to every individual and every citizen has been afforded the amplest rights and a pledge has also been given that their rights would be duly protected. But, Sir, even there we have failed to consider sufficiently the responsibility of the citizens of the State and their duty to make their country strong and powerful. We appear to provide safeguards to persons who are usually termed as minorities. I, however, submit Sir, that we should provide safeguards to those who need them. But at the same time I submit that these minorities should realise their duties towards the country and should understand the ways in which they can truly serve the country and the way in which they can keep off from their hearts loyalty to alien elements and they should not begin to have attachment to other countries of the world. For if they did so that would prove fatal to our own country. I find, Sir, however, that sufficient and adequate provisions have not been kept in the Constitution to realise the objective. Further, Sir, we have prohibited the religious education being imparted in schools particularly in schools which are being run by Government aid. I feel, however, Sir that this has not been wisely done. Mahatma Gandhi used to recite 'raghupati raghav raja ram pateet pavan seeta ram'. Mahatma Gandhi used to study Geeta and Ramayana practically every day. If these and other religion I do not understand how we will be able to maintain a moral code. My feeling is that our fundamental rights have this fundamental defect. When we proceed further, Sir, we find that the so called directive principles wherein the ideal of our country and the rights of the people are given that though the language is quite attractive, find and dignified yet it is nowhere said that the State takes the responsibility to feed, to clothe and to provide the other basic needs of human life to its citizens. It is no doubt true that we have said that we shall strive to provide as far as possible all these things. But, Sir, while we have very proudly referred in the preamble to our giving this Constitution to ourselves we have suddenly become very meak and humble in a place where we should have very emphatically and loudly declared that since we were assuming sovereignty to ourselves we would be making provision for the bread, the clothes, housing and the other basic needs of man in the chapter relating to fundamental rights. In our ancient polity it was the precept that the raisond'etre of the State was to provide the basic needs of life to every one of its citizens. But Sir, in this matter we in this Constitution have become extremely modest and we qualify our promise in this respect as far as possible and as far as it lies within the economic capacity of the State, and in this way have shirked our real duty to our people. The fact is, therefore, that there is not the least hint of a promise of this type in the chapter of fundamental rights, and the people who were expecting to see some such thing in the body of this Constitution are today greatly disappointed. In our country, Sir, there are many a beggar who are lame or lepers or otherwise disabled have to pass their days in dire distress on the road sides and who pester the pedestrians by begging them for pice. I do not find any provision in this Constitution for the stoppage of that practice. The fact is that the State has not taken upon itself the responsibility of looking after them. In this connection we talk of our economic capacity and I consider it a great defect in this Constitution. Again Sir, it is my belief that there should have been a clear provision for prohibition of cow slaughter and the slaughter of other animals. It is for years that we have been trying to stop the slaughter of animals and particularly of cows. The people of this country had been chanting the words which enjoins the protection of the cows and even of the animals and even prohibit the sacrifices of any of them. But unfortunately in this Constitution we have made no reference to it. And we have not said that the slaughter of animals will be considered like the slaughter of a man. This again, Sir, is something which appears to me to be a short-coming.

With regard to the structure of the Union Government its executive, legislature and judiciary I know that there is nothing new than what they are in the other parts of the world. Besides the provisions relating to them are more or less a copy of the Government of India Act 1935. These matters had caused disappointment to the patriotic and religious-minded for which I would like to say a few words today. The first question that comes to my mind is what relation we still continue to have with the Karachi Resolution. In that resolution it had been provided that with a view to bring the people and the administration together. Similarly the executive, legislature and the judiciary, accounting system and the public services of the Provinces have the same form and outline as they had under the Government of India Act 1935. Rs. 500 should be the maximum salary permissible to any person. But Sir, you will not find even the least mention to the maximum limit of Rs. 500/- throughout this Constitution. The Government expenditure is going up. Formerly we used to question the utility of the two houses of a legislature. We could not understand why there should be one house to check the other. We felt that there was absolutely no necessity of two storeyed house consisting of an upper chamber and a lower chamber when one storeyed house of one chamber could alone do. But we actually find that under this Constitution almost every province has two houses. The expenses have thus been increased extremely. But there is no provision to increase production . We have as a matter of fact not done anything to decrease the expenditure of the Government. We have not left many powers in the hands of the elected representatives of the people for we have no felt it safe to pur ourselves entirely in their hands. Besides we have increased the number of representatives considerably and the financial burden of that would fall heavily on the shoulders of the producers. We have referred to the salaries, the allowances and the other privileges and facilities to be provided to the officials under this Constitution. But we have forgotten while doing so that the entire burden would fall on the back of the poor people of this country. We have as a matter of fact failed to keep in our view the weak skeleton framework on which this splendid building is being raised . We have entirely ignored the standard of life our people. Today we look more to the comforts and facilities of the Government officials whom we praise in and out of day. It is no doubt true that the government officials are our kith and kin and not aliens. But when they are praised, when their facilities are provided for and when their salaries are compared to those of the foreign employers and on the basis of their responsibility, it is asked whether Congressmen could do otherwise I feel somewhat disappointed. The fact is, Sir, that the Congressmen are not after government jobs. Their ideal has been and is one of sacrifice and service. They had always dedicated their lives to reinforce the foundations of the temple of the nation. In this connection a poem composed by me comes to my mind.

desh jati hita novan ke hum kankar hove
aasuri samyatti nari ke kata kankan sohe

That is, we may be the pebbles of the foundation of the building of welfare of our country and nation. We should not be the pebbles of gold for shining in the bangles of handsome and prosperous ladies and conquettes.

Any Congressman who has been striving hard for the Congress since 1920, would not like to shine as the frontal stone of any building. He would consider it his duty to dedicate his life in the service of the nation. When the mention of salaries etc. in respect of the services in made, it is only because we took up the question of services, but we ignored the masses who have been suffering and who have been exploited for so many years. I wish to draw your attention to their hardships. We have ignored those unfortunate people, and have failed to pay sufficient attention to them. If sufficient attention is not paid to them, I can say definitely that they would feel it and think they have been transferred from the white bureaucracy to a brown bureaucracy, that their standard of life cannot be raised, while we are worried about raising the standard of life cannot be raised, while we are worried about raising the standard of life of their servants. None worries about the masses who are the earners, whose earnings are sustaining this whole structure. We do not worry about production, about raising the standard of life of the masses, our attention has been attracted towards those who are comparateively more prosperous, happier, and we think of them day and night so that they may not get annoyed. How can they do so? We have not monopolised patriotism, their hearts also thump with patriotism.

Sir, your own life has been that of dedication, Pandit Jawaharlal's life has been such and Sardar Patel's life has been one of dedication, you have not led a royal life. You have not taken up power for the sake of ruling or collecting wealth, you have come here for the producer, for the masses. The nation cannot take on itself the responsibility of those people who enjoy like parasites at the cost of the poor. We should take upon ourselves the responsibility for raising the standard of life of the masses, and such a thing is absent in this Constitution.

I wish to conclude my talk, after inviting your attention to one or two things more. This I say only because such are the causes which afford an opportunity to the opponents to criticise, and these things pain the patriotic section. I would say one thing, and that is this, that in the structure that we have framed, much power has been vested in the Centre. The Secretary of State exercised control over us formerly, now the States who have acceded will be under our control. If such a control continues, the initiative will be gone. If our Central Government becomes weak, our units will also become weak, and our nation will perish. But if the Centre become so strong, that it begins to reprimand all its units, as if its children, like Aurangzeb, there would none to take upon himself the responsibility about the people. Hence there should be harmony between these two. There must be a control over the defence, - we should see that there is no infiltration from the side of Kashmir, that none infiltrates from the side of Assam, that the enemy does not enter from any side. In this matter we would try to control the units, but ordinarily the Centre would not check the fullest development of its units by putting restrictions. Look at the farmer, he guards his cultivated fields, protects them from stray cattle and wild animals, but after sowing the seeds, he does not unearth them every now and then to see whether they have sprouted. If, therefore, there is interference in even minor matters, that would make the Centre as well as the units weak. I have noted one thing, recently the U.P. Government decided and suggested the name 'Aryavarta' for itself. The people at the Centre felt that this name is absurd. I gave this instance of naming merely as an instance, if we adopt this name Aryavarta, then, how does it imply that rest of the country became non-Aryan? Now, just see, Pakistan has named itself Pakistan (the land of the pure), does it mean India has become a land of the impure? Is all the land other than Pakistan, a land of the impure? Our leaders have by agreement accepted the name of Pakistan. Similarly Aryavarta could be adopted and that would not have rendered all other Provinces non-Aryavarta. This is only an instance, you did not like it, so we will change it, but if such things continue to happen, then where would liberty exist, where would local initiative exist? Today our units should have the power of developing themselves, but would that exist in face of such interference? In this way the units that you have created would also vanish. The Centre should therefore interfere with units to the minimum. In this connection I am naturally reminded of the English saying, viz. 'that Government is the best Government which governs the least'. This great saying is completely applicable to this matter, and points out that the Centre should not have extraordinary control. Safeguards and suggestions may be made by the Centre. There should not be interference at every step, so that the local initiative may be retained. I would invite your attention to this.

I appreciate Shri Shankar Rao Deo's views that the Indian Constitution does not seem to bear the Gandhian outlook. But I would tell him and other friends sharing this view that, whatever be the position, though Dr. Ambedkar might have previously made a fun of the Panchayats, yet they find a place in this Constitution. Village industries have also been given a place here and there is also a mention of prohibition. Its greatness lies in the fact that the problem of untouchables has been solved and the general masses have been given the right of adult franchise, a right to vote. All these things are its great peculiarities and in view of them, we should take it, that the soul of the father of nation, Gandhiji, will be happy at this.

I would conclude after saying one more thing owing to which this Constitution is not dear to the Indian people. The people have to judge whether this Constitution is the necklace of jewels, or of artificial stones, of emeralds dug out from the mines, of diamonds of Golkunda or simply that of glass marbles. The language in which this Constitution has been framed is not the language of the people, the language of the people is that in which the poetry of Sur, and the great epic poetry of Tulsi was composed, in Northern India. Today my sister Durgabai cited a piece of verse from Telegu, which I would not commit to memory, but I would read it out, it is in Telugu:

mandar-makand-madhuryamana delu madhuyagmu poane madanayuleka

nirmal mandakini boyikal jhag rayajcha chanena kurjayuleka

ambujodar divya padaravinda chintanayuta bhartayatta meriti

nitarambu cheranetsu vinuta gunasheela yathal veinal?

I look at those words, if you too look at them, you would not find in Hindi of north or east any word which is so directly connected in its origin with Sanskrit as the words of this Telugu verse are. These are all Hindi words. Compare these Telugu songs with these couplets of Tulsi:

manas salil sudha pratipalo

jiryad ki lavan payodhi maralo

nava rasala vana biharanasheela

soi ki kokila vipin karila

You would thus see how this language is spoken right from Himalayas to the Cape Comorin. Bandemataram is a song in simple Sanskrit and it has been our national song too. The famous song, namely,

vaishnava jana to tene kahiye

jin peed parai janire

appears to be a Sanskrit verse and Gandhiji loved it more than his life. This Constitution has not been framed in the language universally current in the whole country. Sir, under your Presidentship, you were pleased to say that the Constitution of our nation would be in our language. Today the Constitution which this Constituent Assembly is adopting is not in our language. Shri Santhanam says that we should propagate this Constitution and carry it to the general masses. But how to carry it?

Lord Buddha did not propagate his religion through Sanskrit. He had adopted Pali language which was the language of the masses. When Gandhiji converted the Congress platform into public platform, he discarded English and began delivering his speeches in simple Hindi. The things can happen this way, only if the Constitution is adopted in our own language. Only a Constitution in our own language can reach the people can become popular. It cannot become popular unless it is in people's language.

I would make one more submission and then take my seat. I hope the Hindi translation would be ready till the time this House reassembles for two or three days in January, and if we do not consider every article thereof, we can discuss it for two or three days at least and thus impress it with the authority of the House. Sir, you are the crown of this House. If the constitution is authenticated by you, it would have the same authenticity. But if it is discussed and authenticated in the House, we would be able to go to the people and say that our great leaders, who relieved us from the centuries old bondage, who are the founders of our nation, have given us this treasure, which any people can secure by good luck only and which they have got after breaking the shackles of slavery.

With these words, I faithfully bow to you for affording me this opportunity to speak, which is a very significant moment in my political life, the most significant indeed of all the moments. After passing through the war of independence in 1920 and through many sufferings, this occasion of declaring our independence has arrived, and I have got this opportunity to speak on this occasion by your kindness. For this I am very grateful to you.]

Shri Amiyo Kumar Ghosh (Bihar : General) : Mr. President, Sir, at the very outset, I offer my grateful thanks to you for conducting the deliberations of this House with dignity, justice and patience. I also thank the members of the Drafting Committee for the great work done by them.

Sir, there is no such thing as unmixed good. Everything has got its merits, and demerits, and this Constitution of ours is no exception to it. I personally feel that the present Constitution has ignored time and history and has followed the old track, the track which was despised and criticised by us in the past. The reason is obvious, this Constitution of ours is not a creation of our own. It is a borrowed thing. It has been borrowed from several constitutions of the world. If we had shut our eyes to other Constitutions, sat together and decided what should be our economic structure, what should be our rights, and what type of Government we should have and put our decision in our own words, then perhaps we could have produced a much better constitution than what we are discussing today. Another misfortune is that this Constitution has been framed not from people's point of view but from the Government's view point, and so lacks in revolutionary fervour. It is said that the country is faced with various troubles, problems and difficulties now and during such times, it is not proper to have a liberal constitution. But I submit that constitutions are always framed in abnormal times and circumstances and so it is no answer.

The first thing that I like to say is that this Constitution of ours is a voluminous document. We have incorporated in it so many minor matters and have gone into so many details which are no part of a constitution proper. The reason is probably, that the many responsible for the Constitution, and the members of the Drafting Committee could not place faith or trust in the future Parliament. The Constitution should have only laid down our rights, and privileges, our economic structure and the type of Government wanted and the rest should have been left to the future Parliament to do according to the needs and demands of the country. But, Sir, here we have given no such scope to the future Parliament. Things which ought to have been left fluid and flexible have been made rigid by putting them in the Constitution. This Constitution lacks flexibility which itself a great defect in my opinion.

If we examine the Constitution critically, the unitary nature of the Constitution becomes patent. We have given a good-bye to the Panchayat system. So much so, that in the name of co-ordination and better administration, we have reduced the States to the position of merely order carriers. All finances, all powers are with the Centre. The States have been so much impoverished in the matter of finance, that it will become difficult for the States to carry on the administration and discharge its various obligations. The result of this over centralisation would be that either the Centre will crash under its own weight or there will be constant friction between the Union and the States, endangering the whole structure of the Constitution. I hope that this position should be revised soon and more powers and finances would be placed at the disposal of the States. In this Constitution, no definite financial aid to the States has been guaranteed. The only power or taxation which the States had, namely the Sales Tax, has also been restricted to a great extent. The distribution of the subsidy from the Income Tax has been very unfair hitherto. The great inequality in a fair level. So far as the finances of the provinces are concerned, I would like to draw the attention of this House that the financial position of Bihar is not very satisfactory and with implementation of prohibition the Province may collapse financially. Hitherto, Bihar had not got its proper quota from the Income-tax income. I therefore stress that this position has to be revised as quickly as possible and in deciding the quota of such subsidies, it must be seen that the province gets its full share in the Income-Tax income levied on the profit earned from the products of that province.

Now, Sir coming to the articles dealing with the Fundamental Rights, personal liberty and acquisition of property, I feel they are very disappointing. So far as fundamental rights and liberties are concerned, the restrictions are more prominent than the actual liberty and freedom. As a matter of fact freedom and liberties are lost in the restrictions. Enough power has been given to the executive to detain any person whenever it likes and there is every chance of this power being widely misused. I wish that these articles should soon be revised by the future Parliament specially the provisions dealing with personal liberty and "due process of law" will find its proper place in the Constitution. So far as acquisition of property is concerned, my feeling is that the Union and the States should have been given wider powers to acquire property. The question of payment of non-payment of compensation should have been left to be determined by the future Parliament according to the needs and demands of the time. That was the proper thing. The present article 31 has debarred the States or the Union at all times from acquiring any property without paying compensation. I do not know what view the Supreme Court will take regarding this article but the fact remains that this Article is charged with clumsiness. My honest view is that this Article will act as a great impediment towards our social progress, and national development.

Then, another matter to which I would like to draw the attention of this House is the wide emergency powers given to the President. Virtually the President may set himself a dictator by exercising these emergency powers and deprive the people from the benefit of a democratic Government. I submit that this may bring disaster to the country. I hope that the emergency powers will never be taken recourse to in spite of the fact that it has been put in the Constitution. Except in cases of grave national danger and a convention to that effect should be established.

Sir, these are also very good articles in the Constitution and some of them require special mention. The removal of untouchability has removed a strong barrier to our social and economic progress and I think the future Government will try to implement this with a strong hand. Abolition of separate electorates which has brought so many miseries to the country is another redeeming feature of this Constitution. Adult franchise is another bold step in our Constitution; but it is not free from danger. We know that our country is not so educated as to understand the real implications of adult franchise. Now, the responsibility is with us to go to the people and tell them the real implications of this right so that this right may not be misused, and the people may not be misguided.

Then, Sir, the integration of the States within this Union and giving them a place in this Constitution is another remarkable performance for which all credit is due to our revered Deputy Prime Minister.

Sir, in the end, I would like again to impress this House regarding the financial position of the province of Bihar. I have already stated and I repeat it that if the Province is not given its proper share of subsidy from Income-tax, and other subsidies the financial position of the Provinces may become precarious and the Province may not be able to march towards its progress.

In conclusion I must say that it is momentous achievement and in spite of its defects and short comings its colossal nature cannot be denied. I wish the document a happy sail.

With these words, I thank you, Sir, giving me this opportunity to express my views in short.

Mr. President: The House stands adjourned to 10'clock tomorrow morning.

The Assembly then adjourned till Ten of the Clock on Tuesday, the 22nd November, 1949.

---

*[ ] Translation of Hindustani speech

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME XI

Tuesday, the 22nd November 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

DRAFT CONSTITUTION-(Contd.)

Shri H.V. Kamath (C.P. & Berar : General) : Mr. President, a few days ago you were good enough to tell the House that the election of Members from Vindhya Pradesh to the Constituent Assembly would take place about the 20th of this month. Will you kindly tell us whether the election has taken place and whether the Members will take their seats here during this session?

Mr. President : Well I am expecting them to come; but it is not by way of election. As a informed the House the other day, an attempt has been made to constitute an electoral college but for some reason or other, that has not been found possible. So ultimately I was asked to agree to nomination, and I did. So I am expecting the nominated Members to come.

Shri Jainarain Vyas (United State of Rajasthan) : I understand that two Members have already come here.

Mr. President : If they have come, they will come here.

Shri Jainarain Vyas : But they have not got the credentials from the Rajpramukh and that is why they are waiting.

Shri H.J. Khandekar (C.P. & Berar : General) : I read in yesterday's paper that four persons have been nominated by you to this House from the Vindhya Pradesh.

Mr. President : No, not by me.

Shri H.J. Khandekar : No, I am sorry : By the Rajparamukh. May I know on a point of information whether there is a Harijan among them?

Mr. President : Well, the names that we have received are these, and I do not know if any of them is a Harijan or not. The names are :

(1) Captain Awadhesh Pratap Singh,

(2) Shri Shambhunath Shukla,

(3) Pandit ram Sahai Tewari, and

(4) Shri Mannulalji Dwivedi.

No, I do not think there is any Harijan there.

Shri H.J. Khandekar : From the surnames also I can made out that there is not Harijan.

Shri H.V. Kamath : Is any attempt being made, or will any attempt be made, to get the Hyderabad State into the Constituent Assembly by the next session ?

Mr. President : I do not know. I cannot make any attempt so long as Hyderabad does not accede to India and agree to send its representatives to this Assembly.

Shri H.V. Kamath : There was a rumour in the Press that Hyderabad was shortly going to accede.

Mr. President : I have no information.

May I suggest to honourable Members to confine themselves to ten minutes each, because there is a very large number of speakers and many of the points have already been covered by one speaker or the other. So, the speeches now will be more or less a repetition. I would, therefore, suggest to honourable Members to confine their remarks to ten minutes, if possible.

Begum Aizaz Rasul (United Provinces : Muslim) : Mr. President, Sir, this is indeed a very solemn and auspicious occasion that this Constituent Assembly has finished its mighty task of drafting a Constitution for free India-a Constitution which embodies in itself the hopes and aspirations of the Indian people. If a constitution can be judged by its phraseology, or by the provisions it contains, then, certainly, our Constitution deserves a very high place in the constitutions of the world and I think we are justified in feeling proud of it. I would like to congratulate Dr. Ambedkar and members of the Drafting Committee on their wonderful work and to thank you, Mr. President, for the patient and efficient manner in which you have conducted the proceedings of this House. The Secretariat staff of the Constituent Assembly also deserve our thanks for their hard work and incessant labours.

Sir, the most outstanding feature of the Constitution is the fact that India is to be a purely secular State. The sanctity of the Constitution lies essentially in its affirmation of secularity and we are proud of it. I have full faith that this secularity will always be kept guarded and unsullied, as upon it depends that complete unity of the peoples of India without which all hopes of progress would be in vain.

Then, Sir, being a Democratic Republic, the Constitution provides for all citizens, individually and collectively, the best fruits of democracy and ensures to them those basic conditions and freedoms which alone made life secure, significant and productive. Even though these Fundamental Rights are hedged in by various conditions and provisos, yet to my mind, Sir, they guarantee to the citizen that meassure of liberty which is necessary for a free and full development of his total personality. These are also justiciable which is an essential corollary to the theory of Fundamental Rights which are incorporated in a constitution to ensure the principle that man has certain rights independently of the Government under which he lives and a court of justice is there to see that these rights are not infringed by any of the governmental bodies-the Legislature or the Executive.

Article 14 to 28 ensure to the individual social, economic and political equality, irrespective of caste, creed or sex, religious freedom and equality of opportunity. Articles 29 and 30 ensure to the minorities the preservation of their language, script and culture. I hope that article 29 will be so applied as to be effective, and primary education of children will be imparted in their mother tongue wherever such demand is reasonably made.

But, Sir, I regret to say that article 31 relating to the right of property has been very unfairly and unjustly embodied in the Constitution. Like builders of cities, the makers of the Constitution frame a constitution for all times, embodying principles of universal applicability. The Constitution should not favour one party or one group or one province. It is regrettable that the provisions of article 31 do not pass this test and have been made to facilitate party programme in some provinces. It discriminates against zamindari abolition in provinces other than the U.P., Bihar and Madras, and also discriminates between agricultural and industrial property. It takes away the rights of justifiability from agricultural property in these province. This is a strange provision and makes an ugly boot on an otherwise beautiful picture.

Sir, the introduction of adult franchise in the country means a great step forward, but with the large masses of uneducated people this system would only succeed if effective measures are taken immediately to educate the people of India for citizenship.

Sir, the women of India are happy to step into their rightful heritage of complete equality with men in all spheres of life and activity. I say so because I am convinced that this is no new concept which has been postulated for the purposes of this Constitution, but is an ideal that has long been cherished by India, though social conditions for some time had tragically debased it in practice. This Constitution affirms that ideal and gives the solemn assurance that the rights of women in law will be wholly honoured in the Indian Republic.

Then, Sir, one of the most important and historic features of the Constitution is the abolition of reservation of seats for minorities. I am in the happy position to remind the House that right from the very beginning I have consistently supported the thesis for the abolition of these seats, as I made clear in my speech at the time of the First Reading of this Constitution. The part that I have played in the removal of these reservations and which I did with the greatest sense of responsibility, was inspired by the conviction that it was absolutely suicidal for a religious minority to keep alive the spirit of separatism by demanding reservation on communal lines. As a matter of fact nothing can protect a minority or group less than a barrier that divides it from the majority. It makes it a permanently isolated group and prevents it from moving closer to the other groups in the country. I hope that by doing away with reservations we have also swept away those difficulties and misunderstandings with so unfortunately marred our public and political life in the past few years. I look forward, Sir, to the day when individuals will cease to regard themselves as members of religious minorities. But this, Mr. President, can only be done if and when the majority also cease to be conscious of their majority and members of all communities, big or small, sincerely and simultaneously begin to consider themselves and one another as full and equal citizens of a Secular State.

Another interesting aspect of our Constitution is the fact that it is now applicable to the whole of India, including the erstwhile Indian States. This has been made possible by the remarkable genius of Sardar Vallabhbhai Patel who has achieved in a miraculously short period of time, in a completely non-violent manner, the unification of our country in spite of the intransigence and obduracy of such States as Hyderabad and Bhopal. We look forward to welcoming very shortly in our midst the chosen representatives of Hyderabad.

May I say, Sir, what a thrill of pride we felt on reading that the Prime Minister had referred to a quoted from the Constitution of India when he addressed the Parliament of the mighties democracy of the modern world. By this gesture of his we feel that the seal of authenticity has been placed on the democratic nature of our Constitution, Sir, a constitution is judged by the spirit in which it is worked : it is judged by the manner and method of its implementation. Then, again, the ultimate aim of all constitutions is to increase human happiness, human well-being and weld together the various elements in a country into one nation. Ours is a great country with a great destiny stretching before her. I hope and pray that the implementation of this Constitution will be such as to enhance the prestige of our motherland and make her a dynamic force that will bring together all nations of the world within the orbit of a enduring peace. Sir, I support Dr. Ambedkar's motion.

Dr. P.S. Deshmukh (C.P. & Berar : General) : Mr. President, at the very outset I would like to endorse all that has been said in praise of you and the tributes paid to you. I refer especially to the tributes paid by Mr. Maitra, Mr. Naziruddin Ahmad and Pandit Thakur Das Bhargava. I do not propose to spend more time in offering congratulations to various Members of this House who have taken such keen part and have spent all their intelligence ....

An Honourable Member : All their intelligence ?

Dr. P.S. Deshmukh : Not all, but so much of their intelligence and have worked so hard in seeing that the Constitution was framed as far as possible to their own satisfaction.

In this Constitution we have decided to have a parliamentary democracy. It is a parliamentary democracy modelled on the British constitution and although we have not parliamentary sovereignty and although we have decided to encroach on the sovereignty of our Parliament in various ways by incorporating Fundamental Rights and many other matters of like nature, including decisions as to what salary shall be paid to such and such individual, etc. We have gone on the model of the British constitution more than the American constitution. So far as similarity between ours and the American constitution is concerned it is more in the form or the nomenclature than in the essential powers that we have conferred on the various office-bearers or dignitaries in the Constitution.

One great merit of this Constitution I consider is that the people of this country are not going to have a Constitution very much different from what they are familiar with during the last ten or twelve years. With the exception of responsibility at the Centre it is essentially the Act of 1935. I do not mean this, for the moment at any rate, as a sort of condemnation. I am prepared to regard it as a merit and not a demerit, because the people will not have much difficulty in understanding the Constitution. The Governors are there, the name of the Governor-General has been altered to the President, but essentially the whole superstructure of the constitution of 1935 remains intact. There is one important change which will bring about, I hope, a radical change in the social and political status and composition of the people in the country and that is adult franchise. Excepting for this there is very little in the Constitution to enthuse over. But that, namely adult franchise, is one factor which I think will make a tremendous difference to the nature of representation in the various legislative bodies. Although the superstructure will remain the same I have no doubt that the underdog or the common man in India will have greater power in his hands and he will be able to wield it to the benefit of the whole country. I look at the Constitution from two distinct points of view and I consider it unsatisfactory from those points of view. Firstly, if we look at it from the point of view of building a strong nation we have certainly discountenanced many binding forces which should have been useful and which are useful to all societies and all nations : I mean for instance the binding force of religion. At the present day I do not think in the whole world there is any other country which is so definitely irreligious as India is and on the excuse or on the fundamental principle of making our Constitution secular we have seen to it that there is not even a shadow of our religion reflected in our Constitution. I am not a very religious man myself but I think religion has and can certainly have a definite place in the life of every society and in the administrations of many States. I would not have minded if we had given some place to the noblest religion on earth, namely the Hindu religion, and even if we wanted that the Constitution should remain secular, even if we had declared that this shall be a Hindu State, I have not the slightest doubt that the Constitution would have remained as secular as we wanted it to be, because there is no religion on earth which is more secular in character than Hinduism (*Hear, hear*) I for one would have utilised, especially in a country like ours, the religion of India which our forefathers and ancestors have left us for the further unification and building up of the future Indian nation.

There is also another point of view from which I find the Constitution defective. This parliamentary democracy is essentially meant for maintaining the *status quo*. It is not meant to bring about a radical change from the existing sate of affairs. We are going to keep the various institutions intact. We want to keep the various layers of society where they were and from that point of view I would not be surprised if this Constitution does not last long, because it does not answer the aspirations of the man in the street at the present time. We have praised, many of my honourable Friends have extolled, the principles of equality, liberty and fraternity. Sir, after a period of more than two hundred years, I think most of these very high sounding words have lost their significance. Under these phrases it has been possible for various countries to maintain the upper layers where they were and to exploit the lower ranks to their hearts' content. And I think that if the present Constitution is worked in the right spirit, if the adult franchise makes a difference and we get the right people from the common and average men as their representatives, then alone will it be possible for the people to receive that benefit which they are aspiring for. Otherwise, what was good after the French revolution cannot be good in the year 1949 and there will have to be some sort of a rebellion or a revolution in order that the superstructure should not remain as it is perpetually and the proletariat coming into its own will have the powers of authority and the will-being of the country in their own hands.

From that point of view, Sir, having a parliamentary democracy is not answering the requirements of the present age. Unless the adult franchise itself is going to make a difference, unless the vested interests which will try to maintain the *status quo* find themselves powerless to maintain their own present hold under the altered circumstances of the future, then alone is this constitution likely to work. Otherwise the Constitution required under the percentage is entirely different, at least as different as Mahatmaji himself wanted it. After all, we have worked this very Constitution during the last three years and it is quite easy to see from this experience that there is not going to be much material difference between the way in which we have administered the country for the last three years and what we may do hereafter. And if we look back at it we will find that we have not been able to answer or to

satisfy the aspirations of the people. It is no exaggeration to say that there is, however imperceptible, a conflict arising between the Government on the one hand and the people on the other. It is no use consoling ourselves by saying that the discontent is not able to focus its attention or to organise itself in one single party so as to damage the administration of the present day. But that may very easily come about because the signs and the seeds are there. The people are thinking that this is not our administration because they have got so many grievances, so many items of discontent. So, from that point of view I am doubtful whether this Constitution really answers or satisfies either the genius of the Indian people or the requirements of the present age.
Sir, apart from that we have undoubtedly achieved very many things for which we ourselves deserve congratulations and the person who deserves the highest congratulation is the Iron man of India, Sardar Vallabhbhai Patel. It was he who brought about homogeneity in the sub-continent of India by liquidation of all the Sates. Then, the minorities and the various other impediments in the working of a proper democracy have also been removed largely by his wisdom, by his prudence and by his tactful handling than that of anybody else. So, from that point of view we have achieved a great deal. In giving adult franchise, in abolishing all special interests and representations, in abolishing the States and in also liquidating many of the vested interests, we have certainly advanced a great deal. But in discouraging or denouncing certain of the vested interests we have also strengthened some others. In times to come it must be our endeavour to see that these vested interests also do not remain as impregnable fortresses of conservatism and old-age philosophies and in that connection I would certainly like to express that the people of India should cultivate a sort of respect for this Constitution. If and when they find it wanting, it may then be time for them to change it. But there is no doubt that we have done our best to incorporate the essentials of a democratic Government in it.

Some people have objected that the President has been given too much power. I too agree that in some cases the President's powers are extensive but really speaking these are not the President's powers, they are the powers of the executive and the Prime Minister. I do not think the President will be able to act in any other way except as a constitutional monarch. He will have no initiative, he will have very little power to act arbitrarily; it is the Central Government which is clothed with more executive power. Sir, I had proposed that we should have a unitary form of government, but I have the satisfaction that although we have not incorporated a full-fledged and full-blooded unitary form of government, our Constitution is more unitary than federal and from that point of view I think it is a much greater improvement from the time we set about this task.

I have one or two complaints to make, but I do not think this is the opportunity when we should resort to any fault-finding. It is enough to say that the people who are known as the backward communities of India, have not been treated as fairly as I would have liked them to be. There would have been no harm if my suggestion in this respect were accepted, but if it was not found acceptable for incorporation in the Constitution. I hope the sympathetic attitude which many people have towards them will be reflected in the legislation that we may pass hereafter or the policies we may pursue. After all, the whole of India is economically and educationally backward. There are only very insignificant proportions of our people who have got either the wealth or the education or the various good things in life. The generality of the people are destitute, are ill-fed, their health is very little cared for. Therefore, the handicaps and the sufferings of the people like the Scheduled Castes and Scheduled Tribes are also, in a large measure, shared by vast communities which are in the Hindu fold itself. That being so, I would say that it would be very desirable that the sympathy which we show towards the Scheduled Castes and Scheduled Tribes should also, in a measure, be extended to these people who have yet to see any benefits accruing from the freedom that we have achieved, and the more sympathy we show, the better will it be for the homogeneity of the Indian society.

Sir, I again thank you for the lattitude you gave us from time to time and the way in which you have conducted the proceedings of this House. It has given immense pleassure and every satisfaction to every Member of the House and I for one would like to pay you this tribute once over again.

Shri Sita Ram S. Jajoo (Madhya Bharat) : Mr. President, Sir, it is a matter of great pride that

I stand here to support the motion of the Honourable Dr. Ambedkar. I have no desire of entering into the history of the idea of the Constituent Assembly, but so far as I am concerned, as a representative from an Indian State, I feel gratified at the development and evolution of the association of the Indian States people in the present Constituent Assembly. We the people in the Indian States, under the Presidentship of the present Prime Minister of India, the Honourable Pandit Jawaharlal Nehru, and later on Dr. Pattabhi Sitaramayya and Sheikh Abdullah, have tried and agitated for the association of the Indian States people with the Indian Union. We have wanted that there should be no distinction of any kind between the representatives of the people of Indian States and those of the then British India. We thought that racially, culturally, ethnologically and in every other respect we were the same people, we were the same race and we had all common interests with the rest of the country. Fortunately for us, Mahatma Gandhi, Father of our Nation and other national leaders realised it and with their blessings we achieved success and marched from one milestone to another and ultimately we have been associated in this Assembly under your very able guidance. Mr. President, Sir, you started the negotiations with the Princes which ultimately resulted in that there are now only a few handful of people who were their nominees and that the rest are all the elected representatives of the Indian people. As a matter of fact we fell that by a single stroke of the pen we have wiped off the history of 200 or more years during which period the foreign Government created various interests here with a view to perpetuating their imperialistic interests and their strangle hold on this country.
Sir, in this Constitution as regards the chapter on Indian States we felt that the control of the Centre over the Indian States was wrong; I was strongly of the opinion that such control was an insult to the people of the Indian States. With that view I with other friends of mine particularly Shri Balwant Singh Mehta, brought that matter to the notice of the Drafting Committee, its Chairman, Dr. Ambedkar, Shri T.T. Krishnamachari and others. It was very kind of them that they did hear us and told us that the circumstances in the Indian Sates were such that they could not take any different attitude. We reluctantly agreed with them, but still believed that there was no necessity of making this distinction in the Constitution. Later on we heard and we see it provided in the Constitution that the provinces also get the same treatment. That is a consolation for us, as the proverb goes 'that misery still delights in its resemblance with another's case'. But still we feel that we should not be treated like that.

Sir, there has been a change since the Partition in the political ideology of the country from provincial autonomy to the strengthening of the Centre and the desire to grab as much power to the Centre as possible is there. I am not going to criticise this change in the ideology, because that is perhaps the view of our leaders. They want to strengthen the country. After the Partition, other things have also developed. Those developments are not our own creation. We feel, however, that on the whole whatever has been done in the States is a grand achievement and further we have the assurance given by the Deputy Prime Minister who is also Minister for the States that there will be least interference with the administration of the States. I hope we will not be treated like Harijans.
Our greatest achievement is that the people in the States who were being treated as sub-humans with no civil rights or civil liberties are now granted these rights and have been brought on par with the rest of the people residing in this country. The old system has been obliterated and the systems of forced labour and other inhuman customs are not to be perpetuated any more. But it remains to be seen how far we will succeed in implementing the provisions in the Constitution. I have no doubt that under the able guidance of our Prime Minister and the Deputy Prime Minister we will see that our aspirations are fulfilled fully well.

Another thing we have achieved, concerns the minorities. Separate electorates had been the cause of discontent in the country and also the cause of partition of the country. We have now wiped them off. But there is one thing about which I would like to warn my co-religionists who are in a majority here. We have done away with reservation of seats and separate electorates except in the case of Harijans and that too only for 10 years. Now we have to remember that the treatment we met out to the minorities during the next ten years and the goodwill we show them should be such that at the end of this period we should be able to wipe off the reservations for the Scheduled Castes also. If we fail in this respect in this test, our failure will remain to our lasting discredit. We have to prove by our action that we are men of goodwill. This is the time for action. No provision in the Constitution will be equal to that. Not professions but actions are needed, and I hope we shall not fail.

Another point I wish to dwell upon relates to the financial integration of our country. I feel that by having financial integration we are strengthening the Centre. But we have to see that the Indian States which contribute much to our coffers are treated fairly. You are taking many things from them and do not become financial wrecks. in Madhya Bharat and other States particularly in Rajasthan, you have taken Bikaner, Jodhpur and Udaipur railways. In case they do not get a fair help and subsidy from the Centre, financially they will be only wrecks. You have to see that they get a fair chance to govern and manage their affairs well.

Administratively we have been hearing from our administrators that the Indian States people have been dubbed incompetent. I refute such statements about the Indian States. There are probably more glaring cases of maladministration in the provinces. We all know what is happening in certain provinces now. If everybody says that the Indian States are not sufficiently advanced for handing over power, I ask what has been happening in Madras Province, in West Bengal and in the East Punjab ?

Shri L. Krishnaswami Bharati (Madras : General) : What do you know of Madras ?

Shri Sita Ram S. Jajoo : If I do not know anything about Madras, I challenge those who come from the Provinces to say what they know of Indian States. There is no reason why you should dub the hundreds of Indian States as backward. We may be backward and yet we may get representation here. But there is one thing you should remember. We are human beings with the same aspirations and ambitions as others. We have all been slaves with you and fortunately for all of us we have been redeemed from that slavery. Thanks to Bapu. I do not see how you are superior to us. I will never concede that. So far as the administration is concerned, as it is under the able guidance of the Deputy Prime Minister, all the administrative services have been integrated and we feel we should have a fair chance and representation. One request of mine in this connection is that the people of the Indian State should not be given the cold shoulder.

Another thing is that people have been saying 'I am not going to defend this Constitution. There are more competent gentlemen like Dr. Ambedkar and Shri T.T. Krishnamachari for that'. I do not agree with them. They say that this Constitution does not go far enough. I do not agree with them also. This Constitution according to me, is suited to Indian conditions. I do not think in the present circumstances anybody could improve it. Everywhere we find that all man-made things are faulty and there is always room for improvement. And in the present circumstances we could not make a better Constitution than this. But I am confident that had the Father of the Nation been alive today he would have certainly approved of it, though he might have not entirely agreed with it. There are provisions in the Constitution which show that we have whole-heartedly followed the Gandhian philosophy. The Constitution contains the seeds of all that Gandhiji had taught us and these seeds would flower if the Constitution is worked properly.

Under the Constitution we have drown up we can fulfil all our election manifestoes and promises to the electorate provided we work it in the spirit in which it is conceived. It is not the letter of the law or the articles that we should look to for guidance. We should be guided by the spirit in which we have framed the Constitution. As for example, Sir, though it is not provided in the Constitution we have the assurance of our Prime Minister that so long as he is Prime Minister salt tax is not going to be reimposed in the country.
Another change is that this is a voluminous constitution, for that I have to draw your attention to the fact that there are certain things which, if you leave provisions relating to them as you find them in the Constitution, the result will be jugglery of the lawyers and the judiciary will interpret many of them in such a way that the people will be the sufferer.

Sir, now I will refer to tte question of property rights. It is provided in this Constitution, Sir, that the zamindaris, will be abolished only in provinces where Bills to that effect are introduced before the 26th January, 1950. This abolition should come into force throughout India on a uniform basis. Everywhere zamindaris should be abolished by the 26th January next. In the feudal or vested interests. The opportunity is there and we have full faith in our leaders Pandit Nehru and Sardar Patel that they will achieve this and lead the country forward taking one milestone after another. Our ambition to make a Constitution for ourselves has been fulfilled. Here we have ended one part of our journey to take up the greater task of fulfilling and implementing the aspirations underlying this Constitution. Now it has to be judged how we are going to put it into practice and fulfil our promises to the electorates. We who have been swearing in the name of Mahatma Gandhi on every available opportunity have to show in actual practice that our actions will not be inconsistent with his principles. Particularly on Congressmen falls the duty of seeing that we are true to the Mahatma's ideals and do not fall victims to communalists or vested interests.

We should take a practical view of the whole thing and see to it that people are not victimised by vested interests.

We have to see that we get out of the clutches of the vested interests. We approve of the Constitution as worthy of the objectives and worthy of the (Objectives) Resolution that we have passed here. With these works, Sir, I support the motion which has been moved by the Honourable Dr. B.R. ambedkar.

Mr. President : Pandit Hirday Nath Kunzru.

Shri Lokanath Misra (Orissa : General) : I hope, those who gave their names on the first day will have their chance.

Mr. president : I am not calling the names in the order in which they came.

Shri Loknath Misra : None the less, I hope those who gave their names ought to have their chance.

Pandit Hirday Nath Kunzru (United Provinces : General) : Mr. president, no one who considers the Constitution as a whole can but approach it with a full sense of responsibility. It may not be what everyone of us would have desired it to be but I think that the wholesale condemnation of what is contained in it, which has been indulged in by some people here and outside is out of place. In this connection, Sir, we must all in fairness pay a tribute to the Drafting Committee for the efficiency and thoroughness with which it dealt with its task. Its members have had to work hard individually and collectively, and while it is impossible for anyone to say that all their recommendations are of such a character as to win the approval of all sections of the House, it must be admitted that they approached their duties, in so far as they were free to give effect to their wishes, with a desire to enlarge the bounds of freedom. In this connection, Sir, I should like to pay a tribute to the officers and staff of the Constituent Assembly whose duty it was to help the Drafting Committee in placing its recommendations before the House and honourable Members in obtaining information and understanding the various provisions of the Constitution. Perhaps I have proved more troublesome to them than any other Member of this House.

Shri H.V. Kamath (C.P. & Berar : General) : There are some others also.

Pandit Hirday Nath Kunzru : I should therefore, like on this occasion to pay my acknowledgments for not merely their efficiency but the splendid spirit in which they worked. I do not think that anything can exceed their sense of duty or their enthusiasm for the work with which they were concerned.

Shri T.T. Krishnamachari (Madras : General) : Hear, hear.

Pandit Hirday Nath Kunzru : I sincerely think we should place our sense of gratitude to them on record.
Sir, there are many points of view from which we can look at the Constitution but I think that the more distinctive features of the Constitution are those that relate to individual liberty and the relations that will prevail in future between the Centre and the component units. The main article dealing with the first point is article 22. I recognise that that article places certain restrictions on the power of the provincial Governments and the Central Government that did not exist before. For instance, under the public Safety Acts, many provincial governments had accepted the responsibility of supplying information to the detenus with regard to the charges on which they had been detained only if they were asked for it. Again, it has been found in several cases that there was undue delay in supplying the information. Another defective feature of the provincial Public Safety Acts was that they did not provide for the reference of the cases of detenus to an Advisory Board, so that even if no judicial examination of the charges was possible the public might feel that some impartial body had considered the

charges and judged whether the detention was justifiable or not. Under article 22 the case of every detenus will go before an Advisory Board composed of persons who have been judges of a High Court or are qualified to be appointed as Judges. Again Sir, the government concerned will be under an obligation to inform detention. It is further provided that no man unless he has been detained in accordance with the law passed by Parliament shall be kept in detention for a longer period than that prescribed by Parliament by law. article 22, therefore, removes some the defects that existed formerly. Nevertheless sour experience of the existing restrictive laws shows that scope is so narrow that it can not deal with some of the difficulties that have arisen in various provinces.

Sir, although the Public Safety Acts have given full power to the Provincial Governments to detain persons who in their opinion have committed or are about to commit acts prejudicial to the public safety, nevertheless the High Courts had intervened in some cases and ordered the release of detenus on the ground that the charges against them were vague, indefinite or incomplete and did not contain sufficient information to enable them to make the representations contemplated by the Acts. Some of the Governments following the leader of the Central Provinces Government amended their laws so as to prevent the High Courts from releasing anybody on these grounds. The Madras Government has recently amended its law in this sense and the Minister of law stated in the Madras Assembly that the change had been introduced at the instance of the Government of India. Dr. Ambedkar has placed before us an article that would impose restrictions on the powers of the Provincial Governments, but his Government, possibly his own Ministry, has advised the Provincial Governments to choose an indirect way of ousting the jurisdiction of the High Courts. Another illustration will also show how narrow the scope of article 22 is . In a case that came before the Central provinces High Court a few months ago the High Court found that the charges were groundless. The facts and the evidence placed before it by the detenus concerned showed that there was no ground for the apprehension entertained by the Provincial Government and that the facts mentioned by it and the grounds for arrest communicated by it to the detenus had no basis in fact. I suppose that the Central Provinces Government communicated definite charges to the detenus because it feared that the High Court might otherwise hold that the detention was not justified, but article 22, as placed before us and as passed by the Assembly, would afford scarcely any relief in such a case. Neither the Central Government nor the Provincial Governments would be under an obligation to communicate definite charges to the detenus and consequently the High Courts would be unable to exercise even the little supervision that they have so far been able to do.

Sir, there is one other feature of the Constitution...............

Shri T.T. Krishnamachari : May I point out to my honourable Friend that clause (1) of article 22 might probably cover the case he has in mind ?

Pandit Hirday Nath Kunzru : Clause (1) of article 22 does not relate to cases of persons who are detained under any preventive law. I am speaking of persons arrested under the Public Safety Acts and not of people arrested under the ordinary law. I do not, therefore, think that clause (1) of article 22 will apply to the cases of persons to whom I have been referring.

Sir, there is one other feature of the Constitution that I should like to refer to in this connection. The administration of a law is a matter of no less importance than its provisions. It is necessary, therefore, that the position of the judiciary should be strengthened and that every step should be taken to devise a machinery that would ensure that impartial justice was meted out to everybody, but I fear that the constitution will not promote what is necessary for this purpose, *viz*., the separation of the Judiciary from the executive. The form in which the recommendation on this subject was placed before us required that this reform should be carried out in three years, but the reference to this period was deleted when the recommendation was discussed by the House. Consequently the recommendation is only of a general character now. I know that in madras at least the scheme for the separation of Judiciary from the Executive has been put into effect in one or two districts and that in one or two other provinces schemes for carrying out this purpose are under consideration. But, the Constitution as it is, does not enable us to exercise any pressure on the provincial Governments to effect this reform as speedily as possible.

Again, take the position of the High Courts. It will be more than ever necessary in the future that the highest legal talent should be attracted to the High Courts and that they should enjoy a high degree of prestige. I fear, however, Sir, that provisions relating to the salaries and pensions of the Judges taken in conjunction with the prohibition of private practice will not induce men with the highest legal qualifications to take up judgeships in the High Courts. It is still open to us to revise the law regarding the payment of pensions to the High Court Judges so that there may be at least one law that would induce really able men to accept Judgeships. I do not want to go into the details of this subject; but in my opinion, what is necessary is that the pension of a Judge taken from the Bar should not depend on the length of his service and that the pension given to such a Judge and perhaps even to other Judges should be as high as it is, for instance in England. At the present pension on their retirement. I think that the pension should in the future not be less than two-thirds of the salary.

Another way of strengthening the prestige of the High Courts and of creating confidence in the minds of the public in the efficiency and purity of judicial administration, would be to allow the High Courts to appoint and transfer District Judges. It was at first contemplated that our Constitution should confer such an authority on the High Court. But, unfortunately, the article that was placed before the House was revised so as to take away this power from them. This is a weakness of our Constitution which is deeply to be regretted. All these features taken together show that the Drafting Committee and perhaps the Central Government have not realised the importance of the provisions relating to the future judicial administration of the country.

Now, Sir, I shall deal only with one more point before I sit down. In judging the character of the provisions relating to the distribution of powers between the Centre and the Provinces, I shall not be guided by any theory. There is no uniform definition of federalism. Federal constitutions are of various kinds. What we have to see is whether the relations that would prevail between the centre and the component units will be such as to promote the growth of democracy and a due sense of responsibility among the provincial Governments. The experience of federal Governments in various parts of the world has shown that it is necessary to endow the Central Government with the power to deal with certain important matters which certain Constitutions have placed within the jurisdiction of the component units. Experience has also shown that it is desirable in view of the conditions prevailing now that the Central Government should have considerable power in the economic sphere, so as to be in a position to raise the standard of living of the masses and to bring about an increase in the production of wealth in the country. We know how important the economic factor has proved to be in various countries. The power conferred on the Union Government by this Constitution in regard to economic matters is then at once to be welcome.

Again, it is a welcome feature of the Constitution that the Central Government will be in a position to implement the treaties to which it is a party, or any convertions that it has agreed to. in my opinion and in the opinion of Indians in general, it was a serious defect in the Government of India Act, 1935 that the Central Government did not possess this power. Again, Sir, it is necessary that the Central Government which is responsible for the security of the country should be able to intervene effectively when the national security is threatened by external or internal causes. But there are certain powers given to the Central Government that in my opinion are not required either by experience in other countries or by the developments that have taken place in the world since the end of the last war.

Sir, the provisions that I have in view are those relating to the annulment of the financial relations between the Centre and the constituent units in an emergency and the control to be exercised by the Central Government over provincial budgets when the President is of opinion that a financial emergency has arisen there. I do not think that these provisions are called for. I have had opportunities of discussing these questions at length and I shall not therefore dilate on them now, but these two articles and the article No. 365 show that our Constitution is over-centralized. Even in the circumstances prevailing in India, it is not necessary that the Central Government should regard the Provincial Governments as its perpetual wards. Under the Government of India Act, 1935, the governor, I believe, was responsible among other things for the maintenance of the financial stability and credit of his province. Tthe Central Government under this Constitution will taken the place of the Governor. We have not been content with the re-introduction of Section 93 into our constitution in a slightly changed form but have also borrowed from that Act in respect of the control to be exercised over democratic provincial governments in regard to their finances. Article 365 in my opinion shows that the provisions of the Constitution relating to the distribution of powers between the Central and

State Governments are based on a complete distrust of the provinces. We are trying to usher in an era of full democratic government and yet we begin by distrusting the States on which it will ultimately depend whether democracy succeeds in this country or not. I fear that the Central Government has taken too much responsibility on itself and that the Constitution may, instead of making the State governments realize their responsibility, will discourage them in the performance of their task and make them feel that they are no more than agents of the Central Government. Such a feeling cannot promote the development of a full sense of responsibility nor can it stimulate the provincial electorates and the legislatures to exercise the supervision that they should in a self-governing country.

Sir, while speaking of the future Constitution of the States I hope you will allow me to say a word about adult franchise on the basis of which members of the Provincial Assemblies will be elected. There is no doubt that property is not a satisfactory basis of franchise. If a man does not pay a tax or does not live in house of a particular rental value, he does not thereby cease to be a citizen. On the contrary perhaps the neglect from which men like him have suffered for generations is a reason why he should enjoy the power to vote and to bring pressure on those on whom the improvement of his condition depends. But we have to consider whether the sudden expansion of the franchise that will be brought about by adult franchise will be helpful to the development of democratic ideas and that sense of discrimination and restraint on which the successful exercise of democracy depends. In the provinces I believe not more than 18 per cent. of the adult population is enfranchised at the present time. In the States the adult population is enfranchised at the present time. In the States mentioned in Part B of the Constitution there is hardly any franchise. In many of them there are hardly any local bodies. It seems to me therefore that to go at one bound from a greatly restricted to universal franchise is not the part of wisdom. Had we graduated the lowering of the franchise so as to bring about adult franchise within a definite period of time-say 15 years-and been content immediately with say, the enfranchisement of between 40 to 50 per cent. of the people, we should probably have allowed less room for demagogy and made it easier both for political parties and individual candidates to meet the electors and educate them; but under the conditions that will prevail under this Constitution, I fear that the education of the electorates will be a needlessly difficult task. All those that have had experience of the ignorance of the electors under the present Constitution will, I hope, agree with me in the view that I have taken of the sudden expansion of the franchise. As, however, it is not possible to change anything in the Constitution before us, let us hope that the political parties in the country and public men ardently desirous of enabling every person to become a responsible citizen will take all possible measures to enable the electorate to understand the duties that it will be called upon to perform and to provide the conditions that will make it possible for the elector to become a self-respecting citizen capable of thinking out, at any rate, the ordinary issues for himself.

Sir, the Constitution, judged from the point of view that I have placed before the House, one cannot but be received with mixed feelings. There are undoubtedly some features of the Constitution that deserve every praise. The Chapter on Fundamental Rights, though some of the provisions in it are open to serious criticism, confers substantial rights on the people of the country, and particularly on the oppressed minorities. It also gives assurances to the minorities that are of the greatest value. Take again the provisions relating to the manner in which the public servants are to be recruited in future. It is upon their honesty and efficiency that the future of the country will depend to no small extent. I think we can feel sure that in so far as the law can provide for it, this Constitution ensures that no man shall be appointed to a public post except on the ground of merit. That is undoubtedly a great achievement and our gratitude is due to the Members of the Drafting Committee and to the House for this feature of the Constitution. But there are several features of it to which one can not give one's full-hearted support. But support we must, the Constitution at this juncture. I do not think any one of us can cast his vote against it. But some of us at least will regret. Some of the important features of this Constitution and wish that it had been possible in accordance with the suggestion made by the Prime Minister some months back, to amend the Constitution for a few years, as if it were an ordinary law. (*Cheers.*)

Shri Syamanandan Sahaya (Bihar : General) : Mr. President, Sir, the present is a unique occasion in many respects; but above all, it is an occasion for prayerful thanks-giving to the Creator of us all, for the fulfilment of the ambitions and aspirations of our leaders who fought valiantly, now for over half a century, and never considered any sacrifice too great for the achievement of the objectives the fruits of which we are here now to enjoy. How much we wish we had some of them amongst us today to bless us and to guide us in our onward march. I wish also that some spiritual background would have found place as an important feature of this Constitution. This would not have made this Constitution any the different from others, because we find such references in other Constitution also. In our case, however, this matter assumes greater importance because for once in the history of religion and politics, it was the great Mahatma who brought them together, and not only showed the place of religion in politics, but also laid truthful but also the means employed to achieve the end if the end is to be of any permanent good. Some of us, Sir, feel that it is not right to mix up politics with spiritualism. That in my opinion, is not the need of the hour. While speaking here, or even in other countries, do not our leaders express the importance of the spiritual background of this country ? And would it do, I ask, any credit to us, if we do not give expression to this background in the very first act of this Nation ? However, even if this does not find a place in the written constitution of this country, I trust that in carrying out the purpose of this Constitution, our countrymen and our leaders will keep God in front of them, and in their hearts, and then alone the Constitution will be really successfully worked.

This day Sir, is again a day for expression of gratitude to the Rishis of old who laid the foundations of this country, spiritual, economic, social and religious, on such firm grounds. The Grand old man of India, Dr. Sachchidananda Singh, while presiding at the preliminary stages of this Assembly, in concluding his speech, quoted the famous verse of the great Indian poet Iqbal-

Unan o Misr Roman sab
mit gaye jahan se,
Baqi abhi talak hai
Hindustan hamara,
kuchh bat hai ki
hasti mitti nahin hamari,
sadion raha hai dushman
daure zaman hamara.

The poet says there must be something inherent in us, that we are still existing. What is that inherent thing obtaining in this country as compared to others ? I submit, Sir, it is the spiritual background all through.

As I said before, the present is a unique occasion, and it is unique in many respects. It is unique in the annals of history, which depicts the past. If we look back to our history, it will be conceded that although we have had at one time milk and honey, flowing in this country under able rulers, and although we had what we are still striving for, *viz.*, Ram Rajya; but it was all the rule of a benevolent ruler, and not a law given unto ourselves by the representatives of the people. I therefore say, Sir, that this is a unique occasion even if you compare the present with our hoary past. Even the future, I submit, will have nothing to equal it. We may have reforms in this Constitution, and we may have better things in the future, but the originality that this Constitution will claim, would not possibly be available to any other.

It is unique, Sir, because we have been able to incorporate in this Constitution not only what was called British India but also the States which were under the administration of hereditary rulers. We can now visualise India as such with one type of administration from Cape Comorin to the Himalayas.

While thinking of this one cannot fail to have a feeling of remorse at the separation of the two wings of this country. Let us hope, however, that good sense will prevail on our countrymen wherever they may be and that we shall have India as we all considered India to be from times long gone by.

The entire credit for this unity that has been brought about must go, Sir, to that firm old man of India, Sardar Vallabbbbai Patel. We had read of a Latin saying : "vidi vini vici", and now we have seen it translated into action; because that is what the Sardar has done in the matter of the merger of the States. He went, he saw and he conquered. May he be spared long to serve his country is the prayerful wish uppermost in the minds of all his countrymen.

The present, Sir, is unique again from another consideration, because it ushers in independence to this country brought about by a method unknown in the past, the method of non-violent non-cooperation or *satyagraha*. The non-violent method of meeting your opponent without any ill-will towards him has already achieved wonders and will remain an abiding article of faith for the whole world. What a tragedy, what an agonising decision of fate that the man through whose *tapasya* alone this was secured is no more amongst us ! India needed him ever so much more today. The effect of that tapasya is seen by the results we have achieved in so short a time. But what really pleasantly surprising is that all that some of us talked about in the past regarding safeguards and reservations finds a very small place in this Constitution. What a pleasure that those who were enthusiats of such safeguards have willingly surrendered all that in the larger interests of the Nation and they deserve our best congratulation for this.
Last, though not the least, this Constitution is unique in another respect. Mahatmaji's methods once again proved how with goodwill towards opponents, one could win over and conquer the worst of critics and we now see a practical example of a high ideal translated into action, namely that the achievement of independence would go to the credit of Mahatmaji, and its codification to one of Mahatmaji's worst critics, viz., the great architect of our great Constitution Dr. Ambedkar. Dr. Ambedkar, Sir, deserves the gratitude not only of this Assembly but of this Nation. He and his colleagues on the committee have laboured to find out the best things almost all over the world and to suit them to the needs of this country. The masterly way in which they prepared the draft and the masterly way in which Dr. Ambedkar piloted it will ever be remembered not only by us but by the posterity with gratitude. many a defect has been pointed out in this Constitution. I do not think the framers of this Constitution claim any perfection for it, but it can not be denied that there has been a sincere and a genuine effort to bring about as large a measure of perfection as it was possible under present conditions. Some friends and critics have compared it with constitutions framed on a tennis court as in France, or with constitutions framed by thirty-nine almost self-elected representatives in America. Administrative problems and principles have gone far ahead since 1797 and it would not do for any nation or any set of people framing a constitution to ignore the onward march and the progress made during the last one and three quarters of a century.

This constitution, Sir, envisages a kind of Federo-Unitary system of Government, leaning largely towards the unitary system. The long list of concurrent and Central subjects in the field of legislation and taxation, the powers to take over the administration of states under certain conditions, the powers to issue directives to states even in executive matters, certainly make it more unitary than federal. I do not contend that there was no justification for it. But I have no doubt a feeling in my mind that it would have been as well that we had started with greater confidence in the people and the States than what we have betrayed in that part of the Constitution where we deal with the States and the Provinces.

In the matter of fundamental Rights again, Sir, my feeling is that it has been hedged in by too many conditions and that although we provide for all the liberties in the constitution, in the very following paragraphs we laid down conditions by which such liberty could be seriously restricted. In fact we have not even given a time-limit to such legislations which restrict the liberty of the citizen. As you may be aware, Sir, in the past every such legislation had a definite life but under this Constitution we have laid down that legislations could be introduced and passed without giving a time-limit to the restrictions they impose on the liberty of the citizen. Perhaps in the present conditions it may be considered as a safety measure; but I will contend again that it would have been better had we started with a little more confidence in our people and left it to the judiciary to punish those who wanted to convert their liberty into licence. After all what is it that the man in the street or the common man desires independence for ? He wants to find in the newly-won independence of the country something exhilarating, something new about his status, so that he may be able to start about without fear of the loss of his liberty. That feeling, I submit, will be found wanting. If we refer to clauses (2) to (6) of article 19 of part III it will be quite clear even to a causal reader that we have tried to place too many restrictions on the common man and too much powers in the hands of the administration. However, much will depend upon the manner in which this Constitution is implemented and I have no doubt, knowing as we do our leaders, that there will not be many occasions to exercise the powers vested in the Government.

In the matter of financial adjustments between Provinces and the centre I think that the

Provinces have not been treated as well as they should be. In fact I have a feeling that in this matter the Provinces are worse off than in the days of the 1935 Act. The responsibilities of the Provinces, their commitments and their sphere for introducing ameliorative measures for the people are for greater than even those of the Centre and as such they should have been given sufficient scope in the field of taxation. As you are aware, Sir, in Bihar alone although we have the biggest steel factory not only in this country but at one time it was supposed to be the second biggest in the Empire, although our coal resources supply coal to the entire country, although our mica is perhaps the best exporting material, yet because the head offices of all these concerns happen to be either in Bombay or Calcutta the province itself gets very little out of them even by way of income tax. The other day we heard an Assam representative putting forth the same grievance. Considering what we are up against in the matter of our financial resources it would be necessary that this matter must form the subject of serious consideration between representatives of the Centre, the Provinces and the States.

I feel that in the matter of framing the constitution we have superimposed a Constitution from above and have not made a real effort to start from village life. This matter, as you will remember, formed the subject of an important discussion in this House and I must admit that for once and for the first time I thought that Dr. Ambedkar was not only in the wrong but very much in the wrong. His idea of the village life in this country appeared to be highly inaccurate. It is the countryside that provides all tat we need in the towns. Whether you look at the military, the civil administration or the production of food, it is the village and the villager that supply the needs and it will not do to say that they are past redemption. After all they form the bulk of the population of this country. If they have not been up to the expectation of some people, who are to blame ? The Centre in the past did not given them the attention that they deserved. Do we propose to do the same ? If we do so I submit we shall do so at our peril. Unfortunately we have kept the 1935 Act very much in the forefront and hence the other aspects necessary for the uplift of this country have not been properly thought out and have not got the attention that they deserve.

Further we have made a written constitution but we know of countries which have not written constitution and yet they are functioning as well as if not better than many countries which have a written constitution. It therefore depends very largely on how the constitution is worked. There is no dearth of able men in the country and if a real attempt is made to harness their services without any consideration for their particular affiliations I have no doubt that we shall soon be able to show the real worth of the people and this Constitution.

Before I conclude, I must express the feelings which I and other members have with regard to the very able manner in which the proceedings of this House have been conducted by you, Sir, As far as I know you have never been a member of legislature before but the manner in which you have conducted the debates and upheld the best traditions of a legislature will do credit to some of the best parliamentarians that the world has produced. It is therefore, a matter of gratification for all of us.

I do not think I should conclude without saying a word about the great leaders of the opposition in the House-Messrs. Kamath, Sidhva, Naziruddin Ahmed and last but not least the veteran constitutionalist from Bihar M. Brajeshwar Preasad. The large number of amendments that the Drafting Committee had ultimately to propose does show that there was a great deal of substance in the proposals that these gallant Members were making from time to time. Prof. Shah, a valiant fighter, also gave way at the end when the battalion was joined by Mr. Brajeshwar Prasad and with the full enthusiasm of a neo-convert he carried on the fight to the best of his ability. In fact but for these men we might have been accused of hustling the constitution and to them is due our individual thanks for the way they have carried on the debates now for full three years.

Our Leader have secured the independence of the country, we have now given to ourselves a constitution but this is not the end of our troubles. It is, if I may say so, the beginning of our troubles. Let us keep before our eyes therefore the wise saying that "Eternal vigilance is the price of liberty" and let us behave in such a manner that it might not ever be said of us that :

Khola kafas to taqate parwz hi nahin
Bulbul tere nasib ko sayyad kya kare.

Shri Rohini Kumar Chaudhuri (Assam : General) : Mr. President, Sir, I am surprised that some of my honourable Friends have even at this state of the proceedings chose to deliver serious and sombre speeches. To me it is a week of joy and rejoicing. Before this week is out, we shall have passed a Constitution which, in my humble opinion, will not only be the pride of India but also a wonder of the world. Sir, under your able guidance, under your distinguished guidance, we will have passed a Constitution which has avoided world and at the same time has culled the best principles of those Constitutions and embodied them in one single Constitution for free India. It has not only satisfied the aspirations of the liberty-loving young men and women of India, but it has also added to the past glory of India. It fills our heart of India, but it has also added to the past glory of India. It fills our heart with joy when we consider that once more this ancient land which was hitherto known as India only will be known as Bharat. It fills our heart with pride when we remember that Hindi is going to be the official language of this newly-liberated country. It fills us with pride when we see that Devanagri has been taken as the script for the entire country. Sir, I feel beholden to my Muslim brethren in this House who have unhesitatingly and in one single voice supported us in fulfilling this desire of India.

Thanks are due to many in this House for this Constitution, I would not like to repeat their names, but I can not help feeling that you, Sir, have laid us under a deep debt of obligation and gratitude throughout the proceedings. You have been a monument of patience for men like me and others. I take this opportunity of thanking you on behalf of Mr. Naziruddin Ahmad, Mr. Sidhva, Mr. Kamath and myself. I should have liked to add the name of Prof. K.T. Shah in this list but I refrain from doing so advisedly. He has been reticent, entirely reticent, for the last two sessions. It seems that while in the case of Mr. Naziruddin Ahmad the thieves have only taken away the copies of his amendments, in the case of Prof. Shah the entire original copies have been taken away, and it is for this reason that in the last session we did not have his speeches nor any amendments from him excepting a few.

Sir, I remember vividly the words which were uttered by that gallant gentleman, Dr. Sachchidananda Sinha who opened the proceedings of this House and who congratulated you on your election. He said that throughout the course of your life you had never stood second. You had stood first in the Calcutta University the territory of which had extended from the Punjab to the remote Assam. He also expressed the feeling that you had seriously disappointed him by refusing to become a High Court Judge. Sir, I say today, and I think the house will agree with me, that you stand first in piloting this Constitution of this country. you have enabled a subject nation- we were still a subject nation when we started making this Constitution-to become an independent nation in the course of the proceedings. I hope that though you have once disappointed Bihar, you will not disappoint the rest of India by refusing the position of honour and distinction which is justly your due under the new Constitution.

I had referred to the serious and sombre speeches which were made by some of my honourable Friends. But how is it that two important points had escaped their attention ? These points relate, according to me, firstly to protection against cows. We have in this Constitution cow protection to some extent but there is no provision at all for protection against cows. There is also no provision in this Constitution for protection against women. I should say protection against women is very essential. You have made some provision in the Directive Principles for protection of women and children, but you have entirely failed to take into consideration one very important fact, protection which is needed against women. I hope this House unanimously accepts the point which I am making now and regrets equally with me that there has been no provision in the Constitution for protection against women, and if there is any dissentient voice, if there is even any dissentient golden voice, let her come out and protest against this expression of opinion on my part.

An Honourable Member : Are you oppressed by women so that you ask for protection against them ?

Shri Rohini Kumar Chaudhuri : I would like to develop that point. It is not a new idea with me.

Honourable Members who had the courtesy to listen to my honourable Friend Mr. Nichols-Roy from Assam must have heard what he said about these cows in Assam. He said that unless the uneconomical cows at least are allowed to be slaughtered, they will be a great source of danger. I can amplify his idea and say that there is really such a danger in Assam because the habit of cow-keeping is not prevalent in that Province. Cows are brought to the homes only

after they calve; they calve sometimes in the streets and sometimes in the fields but never in the house of any human being. These cows who roam about freely for nine or ten months in the year and breed the calves become very dangerous; they are in a semi-wild condition and they begin to attack and gore any person who approaches them. Therefore, it is necessary to have some protection against them. There are also a number of weedy bulls in the Province of Assam as a result of which the breeds of cows are stunted. If you allow all this cattle to live as they like without any human care and attention then really the cows will be a sources of danger and it will be necessary to protect ourselves against them.
The idea of protection against women also is not my own idea. My honourable Friend Dr. Deshmukh had tabled an amendment for removal of the cursed system of prostitution, but he did not move it. I think Dr. deshmukh felt shy in the presence of all the ladies here to actually move that amendment, but I think that was a mistake. We really need protection against women because in every sphere of life they are now trying to elbow us out. In the offices, in the legislatures, in the embassies, in everything they try to elbow us out. They succeed for two reasons : one, our exaggerated sense of courtesy, and then because of their having some influence in the ear of those persons who have authority. One good thing there is about this Constitution for which I would like to congratulate Dr. Ambedkar and that is that he was not insistent on giving special seats for women. That is at least something saved, some achievement made. Now, even after seats for women have been abolished, if the feelings of man are such that he should push them forward. I would very much regret it. It is not Dr. Ambedkar who is responsible for it. It is the foolish man who wishes to give them votes and send them to the legislatures and thus create troubles like the trouble which they have created in the matter of the Hindu Code.

Now, Sir, I would like to refer to the speech of my Friend Shri L.N. Sahu. Hearing him one would think that there is nothing in this Constitution worth looking at. He repeated the language of those who said, and rightly said in regard to the Government of India Act, that it should not be touched with a pair of tongs even. That seems to be the idea of my Friend Shri L.N. Sahu. But may I ask him to push his memory back to the first week of December 1946 ? What was our position then ? The Muslim League had boycotted the elections and tried to boycott this Constituent Assembly. It was said that unless the grouping system was agreed to, the Constituent Assembly will not sit. When the Muslim League stood out in a body boycotting the Constituent Assembly, there seemed to be no use proceeding with this Assembly. There was, I remember, a voice even among the Members of the Constituent Assembly who did not belong to the Muslim League which said that we should better postpone the Objectives Resolution, allow the Muslim League Members to come to the House and then proceed with our work or postpone the sitting of the Constituent Assembly altogether. That was a very critical moment. If at that moment our leaders had hesitated and faltered, if our leaders Pandit Nehru and Sardar Patel had faltered, the hope of acquiring independence at early date would have completely disappeared. If on the other hand we took our seats as Members of the Constituent Assembly, if once the Constituent Assembly which is a sovereign body assembled in session, there was no power on earth which could obstruct the gaining of independence. In fact it has proved so. Pandit Nehru, with absolute determination, said "Let whatever happen, let grouping come or not, let the Constituent Assembly sit and decide the question." When once it sat the way to independence was clear and open, because whatever Constitution was made by the Constituent Assembly would be the constitution that will be enforced. So, Sir, victory in the fight for independence was achieved from the moment the Constituent Assembly sat. And today we must give all credit to those statesmen who somehow or other brought about the first meeting of the Constituent Assembly. Sir, when you remember those days, you remember also Mahatma Gandhi who had smashed the grouping system. Unfortunately, even the Congress Working Committee was not in a clear mood on that point. But for Mahatma Gandhi, and our Premier of Assam, the major provinces of Bengal and the Punjab and a large area of Assam would have become part of Pakistan. So, may I ask my honourable Friend Mr. Sahu to ponder over this and see what we have gained by carrying out the plan for the Constituent Assembly and the Constitution ? What is the position today under the Constitution and what was the position the other day wen he was in December 1946 ?

Sir, I had not the honour of listening fully to the speech delivered by my honourable Friend Mr. Kamath. I think he did not give his whole-hearted support to the Constitution. I am really very much touched by the recent activities of my Friend Mr. Kamath. I had undertaken certain responsibilities on his behalf after completing the work connected with Constitution-making I am referring to my personal relations with him and his personal life. I am disappointed with him and I do not know if I will proceed with the work in connection with which I had given him an assurance. He has of late taken to saffron-colour robes. You have seen how he is going about in his saffron colour robes. He has been referring to God at all times. He wants the Assembly to commence its work with a prayer to God. All those ideas of his have stupefied me. I am afraid that a time will come, when he is in the spirit in which he gave up the Indian Civil Service for doing service to the country. It seems that he will give up worldly life even for the furtherance of his ideas.

Shri A.V. Thakkar (Saurashtra) : May I ask how this is relevant to the Constitution ?

Shri Rohini Kumar Chaudhuri : Sir, the relevancy is this : We have framed a Constitution for ourselves over which we must rejoice. We have done enough serious work. We must feel happy about this Constitution and when we are happy we should not be gloomy and brooding. I would say in the words of Byron : 'What is writ is writ. Would it we are wiser'. You can not undo what you have done, by making many serious speeches. But for the advice of my honourable Friend Thakkar Bapa I would now be saying something more serious than what serious-minded people could say. After all, Sir, it will not do to be grave and formal always as in the saying 'Can man the solemn owl despise ?' So, I say what is writ is writ. We have drafted this Constitution after considerable pain and anxiety, and that is there. I certainly admit that this Constitution is more detailed than any other Constitution. There is no doubt about that. It is perhaps because that we Indians who have been subject to slavery for so many centuries have faith only in written things and not in oral expressions. Therefore, our Constitution is unlike the English Constitution which is an unwritten constitution, but they too change it whenever there is occasion to do so. In our Constitution we have been more cautious, and put into our Constitution greater details which we could have afforded to leave to the collective experience of our countrymen. Instead of that we have utilised our own collective experience and put in more details into it instead of leaving anything to the future.
But it need not be supposed for that matter that I have nothing to complain against in the Constitution. My bitter complaint is that the Constitution is silent about death sentence. The world is civilised to such an extent now that the continuance of the death sentence is an act of barbarity. The civilised world does not want death sentence. The death sentence has no deterrent effect. I wish we had put in the Constitution that there should be no death sentence. There is no death sentence as far as I know in the Scandinavian countries of Norway and Sweden and in some of the States of America. The death sentence was abolished in Italy but was restored by the Fascist Leader Signor Mussolini and it is only the Fascist tendency in us which still want us to have death sentence in this country. Whatever has been done there is a liberal provision in the Constitution which enables us to revise the Constitution whenever we consider it fit to do so.

Mr. President : Mr. Chaudhuri, you are becoming serious.

Shri Rohini Kumar Chaudhuri : I am always serious, Sir, but others take me lightly. For myself, I am always serious, Sir, but I am always misunderstood. Those who have been in prison will bear me out when I say that transportation for life or detention for life is a much greater punishment than the death sentence. Death sentence gives glory to the recipient of that death sentence after the execution of that sentence. That glory should not be given to a criminal. Death sentence whether in non-political cases or political cases gives a sort of added affection from his relatives to the man who has been an ordinary villain, who might not have been remembered because of his villainy, who might have been hated by his family, when he is executed. The relations of the man might feel otherwise that the man has been rightly punished, but the moment the death sentence is executed, the sympathy of his family and friends goes to that criminal. Do you think that crime will be deterred by this sort of punishment ? By this sort of punishment only the praise, the commendation and sympathy of the family goes o the person who has been executed. After all, we are followers of mahatma Gandhi, who had adopted to some extent the teachings of Jesus Christ. You must not take eye for an eye. You must not take a tooth for a tooth. You must not take a life for a life. That should be the feeling of modern India; that should be the feeling of Gandhian India. I think we have made a mistake-which we might correct afterwards-in not abolishing the death sentence by our constitution.

I would refer to another matter about which I feel strongly. It is about the Arms Act. The Arms Act against which we fought for so many years under the British regime still remains on the Statue Book. Why ? Is it because there have been a multiplicity of crimes, you are not going to have this Arms Act repealed. Do not consider for one moment that those who want to committee violence and crime will be deterred for a single moment by your Arms Act. I is only those who want to protect themselves against robbers and criminals who will be deterred. It is only these honest men who are prevented from possessing arms under your Arms Act, and the criminal, the robber and the murderer would never feel handicapped by your Act, and therefore, Sir, I feel that it could have been better if we had abolished the Arms Act under this Constitution.

Then, Sir, there is another matter I would now like to refer to and to which I have been compelled to refer by the speech delivered by my honourable Friend Mr. Kher from Bombay, that is with reference to the separation of the executive and the judiciary ......We have been long crying for the separation of the judiciary and the executive, but we have made no provision for it in the Constitution, but I would not complain so much against that because there is nothing in the Constitution to prevent us from separating the executive and the judiciary, but I was surprised to find that a distinguished leader, a man who is responsible for the administration of a major province, *viz.* Bombay, saying the judiciary are not knight errants and the executive are not all so many fools or criminals and therefore the separation of the judiciary and the executive need not be made. It may be that in the executive today we have got some excellent men who would not tamper with the judiciary, but how can you guarantee for the future ? As a matter of fact, I consider, Sir, that when adult franchise is introduced, we must have some sort of protection and that protection can only be given by an independent judiciary and therefore the judiciary should be made independent as quickly as possible.

I regret also Sir, in this connection that provision should have been made in the Constitution for the transfer of the Judges of the High Courts from one High Court to another. In some cases, these cases may be penal transfers. For instance, if a High Court Judge from Bombay is transferred to Assam, he would sooner prefer Port Blair. He would never like the transfer from Bombay to Assam, or even a transfer from U.P. to Assam. He would consider it a sentence of transportation for life for almost an uncertain period. What he would do is that he would try to please the Governor or oblige the President in a way that would prevent his trasfer to a penal province like Assam or Orissa. There would also be Judges in Assam or Orissa who would be very glad to pay anything if they can secure a transfer from Assam or Orissa to the U.P. or Bombay. Now this method of patronage has been given in this Constitution to the President and the Governor. This is a new patronage, a new avenue of patronage, a new method by which even the High Court judges could be brought and by this way transferred. The old Constitution did not allow such a transfer. The new Constitution in allowing this transfer is, in my opinion, making a formidable mistake and it should be our duty to correct that mistake as early as possible.

(At this stage the President's bell began to ring)

Sir, I was the third person to give my slip here and the old rule applies to me and not new rules. The old rule is for 20 minutes and the new rules are for 15 minutes. The old rules apply to me.

Mr. President : Both together.

Shri Rohini Kumar Chaudhuri : Sir, I wish to join my voice with my honourable Friend Mr. Sa'adull in bringing to this House, to the pointed attention of this House the financial condition of our Province. If the situation is allowed to remain as it is, if there is no change immediately made about it, the administration of that Province will be impossible. I have heard that already a collapse is imminent and before the year is out, you will hear that the machinery which is running the Government in Assam will cease to work if for nothing else but for want of funds.
Sir, the other point which I wish to draw the attention of the House is the method of administration of justice in the Excluded Areas. What is the method ? The Civil Procedure Code, the Criminal Procedure Code and all the laws which are applicable to the other Provinces of India will not be enforced in the Excluded Areas. I would not have troubled over

it if I had known that all the people living in the Excluded Area were as simple as some of the Tribes are. But some people are most forward and in these hills where people coming from the rest of India lived and in places like Dimapur and Shillong if these people are to be treated as Tribals in the matter of administrate of justice, it would be a great misfortune. I would submit Sir, that there is a provision in the Constitution that the Governor can make rules for the administration of justice, he can lay down the law himself. 320 persons are required to frame an Indian Penal Code or amend an Indian Penal Code or the Criminal procedure Code or Civil Procedure Code but one single Governor will lay down the law for administration of justice which will not only be applicable to the tribal people but will be applicable to the most civilised people of the Punjab or Bomaby or Bengal. Is it not a misfortune, Sir ? Would it not have been better to say that all laws should be applicable there subject to such modifications as could be made by existing conditions. So, Sir, with these words I close. if I have not thanked anybody, it is not that I have forgotten them but the heartiest thanks are due to that dear Doctor of human ailments as well as of Political malady, *viz.,* Dr. Pattabhi Sitaramayya, who has practically forged this Constitution in our party behind the screen.

Shrimati Hansa Mehta (Bombay : General) : Mr. president, Sir, it is with a sigh of relief that we have come to our journey's end. I wish we had taken less time to cover this journey. Time is of the essence of things and once the psychological moment is past, the thing however good loses interest and so it has become with the Constitution. On the floor of this House and even outside questions have been asked whether the Constitution is good and how long it is going to last. It is very difficult to reply to this question. The goodness or badness of a Constitution depends on how it is going to work. If it works in the interests of the people, it will be a good Constitution; if it works otherwise, it will be a bad Constitution. It is for the future electors to elect the right kind of persons, who will work the Constitution in the interests of the people. The responsibility, therefore, lies with the people. One thing, however, I would like to observe and that is in the circumstances in which we were placed, we could not have produced anything better. With such divergent views in the Assembly, it is indeed a miracle that we have achieved this measure of agreement. At one extreme we had Seth Govind Das, the champion of the underdog, and in-between we had many variations; the last speaker would supply a good example.

In spite of all that and in spite of all the many complicated problems that we had to tackle, I feel that we have not done badly. The most difficult problem that we had to tackle was the problem of Minorities. Nowhere in the Constitution we have defined 'Minorities'. We accepted the definition that was given to us by the last Rulers. They created religious minorities, communal minorities in order to help their policy of divide and rule and that policy has culminated in the partition of this country. We do not want any more partions. What do the minorities what ? What can be their claims ? The Constitution guarantees equal protection of law, equality of status, equality of opportunity; the Constitution guarantees religious rights. What more can the Minorities ask for ? If they want privileges, that is not in the spirit of democracy. They cannot ask for privileges. The only exception, however, I would like to make is in the case of the Scheduled Castes. They have suffered and suffered long at the hands of the Hindu society and any exception in their case would be making amends to what they have suffered. In this connection, the abolition of untouchability is the greatest thing that we have done and posterity will be very proud of this.

While discussing this question in the Fundamental Rights Committee, we also raised another point. We were anxious to consider the abolition of purdah. It is an inhuman custom which still exists in parts of India. Unfortunately we were told that raising this question will hurt the religious susceptibilities of some people. As for as the Hindu religion is concerned, it does not enjoin purdah. Islam does. But, I feel that Islam will be better rid of this evil. Any evil practised in the name of religion cannot be guaranteed by the Constitution and I hope that our Muslim friends will remember that if now, later on, this question is bound to come up before the legislatures.

While the chapter on Fundamental Rights is a most important chapter, the chapter that follows, the chapter on Directive Principles of States policy is, also to mind a very important chapter. In this chapter, I would like to draw the attention of this House to two items. The first is prohibition. A reference was made the other day by the Premier of Bombay that what they are doing is according to the Constitution. I would like to draw a distinction here. Gandhi's name has been associated with the policy of prohibition. But, what Gandhiji desired was that the State should not manufacture liquor, nor should the State sell it and that public bars should also be closed so that there may be no temptation for those who are susceptible to drinking. But, I do not think that Gandhihji ever desired that we should raise an army of police. Gandhiji never desired that we should spend good money on police. We are prepared to forego the tainted income; but is there any reason why lakhs and lakhs of good money should be spent on excise police ? It will only add one more source of corruption, and we have enough of corruption in this country. Another thing, it will perpetuate the sales tax and people who are already burdened with taxes are groaning under the sales tax. I therefore wish to make this distinction that while endorsing the prohibition policy in this Constitution, it does not mean that we agree with the method of introducing prohibition in the various provinces today.

The other item to which I wish to draw the attention of the House is the Common civil Code. To my mind this is much more important than even the national language. We have too many personal laws in this country and these personal laws are dividing the nation today. It is therefore very essential if we want to build up one nation to have one Civil Code. It must, however, be remembered that the Civil Code that we wish to have must be on a par with, or in advance of, the most progressive of the personal laws in the country. Otherwise, it will be a retrograde step and it will not be acceptable to all.

The world would have thought very little of the men if they had asked for protection against women in this Constitution; I am very happy to see that the Constitution does not include that provision. Otherwise men would have had to hide their faces before the world.

Sir, I have felt it a very great privilege to have been associated with he making of the Constitution of free India. I hope and pray that the Constitution fulfils the expectations raised by the Resolution moved in this House by our Prime Minister three years ago and passed, and which forms now the body of the preamble. It is only in the fulfilment of that promise that this country will rise to its pristine glory.

Shri Lokanath Misra: Mr. President, Sir, it is a regret for me that my contribution to this Constitution has been so small that even our President who has been fair and good to everybody does not know my name.

Mr. President: I am sorry.

Shri Lokanath Misra: That really indicates that I have not proved my worth. I am sorry for it and I do blame my President. But, then, Sir, I must say, as a matter of duty what are my reactions to this Constitution which we are going to give to the country for unborn generations to come.

It is my view and so it may be that this, our Constitution Act will go as a great civilized document of the modern world. But I would not like to indulge in any kind of self-praise, praise either for the Drafting Committee or for the honourable Members or for our honourable President or for anybody else. The reasons is, we have only done our duty, as best as we could and it is for the people to judge our labours. In fact, the test of the pudding is in the eating and when people will be eating it, they will know how it is tasting. Even, if it tastes, well, there will still be ground for complaint if it does not give us health and gives only good taste. Therefore, without eulogising ourselves, without praising ourselves, I must say that it has apparently begun with lofty words, but vial ideal, it promises to give us justice, liberty, equality and fraternity, securing the dignity of the individual and the units of the nation. But the individual ! the Nation!

Friends have already said that due to the magic wand of Sardar Patel, India has now become united politically and perhaps geographically. But, I do not find anywhere in this Constitution what is that nation, what is the individual, what is the individuality of the Indian nation that makes India India, that we are going to nurse. I do not find anywhere in this Constitution the individuality of India that makes it different from the other nations. I do not anywhere see in this Constitution what is the individual, his destiny and his purushartha for which he nation will be striving, for which the individual, the family, the country would be striving.

When we go to the Fundamental Rights, we find one thing; whatever they may be professing in practice they will not give the desired result. They promise liberty, equality. I should say when we think in terms of equality of sex and its liberty one thing comes to my mind. If unfortunately on the emergence of the new woman, women claim freedom and equality in all respects with men and thereby becomes competitors and rivals to men, I am sure there will be an end of our civilisation on which we have been living all these years. I beg to say that India certainly has an individuality of its own. Gandhiji was saying that India has a mission for the world and it is for the fulfilment of that mission that he was living. If India forsakes that mission, my place will not be here. Now, I put to this House what is that individuality of the Indian Nation that we are going to build and give to the world, a message that will be our gift to the world civilisation. I beg to say that we have simply followed suit. Instead of calling this an Indian Constitution, I would call it an Anglo American Constitution Act for India. That is the proper name.

We have given adult suffrage - that sounds well but this sudden and direct application of adult suffrage is to harm to those very people who are going to exercise that suffrage. For instance, there will be about 20 crores of people voting at the general elections. At present they do not know what they are going to vote for, and they will simply be having their right. There will be different parties, rivals in the elections, who will be going to people and saying ' we will give this or that do not vote for them and vote for us'. That will simply engender in them a sense of right without a sense of duty and they will vote and be voting for a certain party which will never be in a position to deliver all the goods . Their appetites will only be whipped up. It can lead only to chaos and to no healthy growth. I therefore say that our adoption of the Party Government of England can do more harm than good as at present. But let us hope that our statesmen and our leaders will be responsible enough to educate the people in such a manner that best use may be made of this great leap.

I think as many friends especially the honourable Mr. Prakasam said, our Constitution could have been genuine only if we had built it on the solid foundation of panchayat raj which is still in our veins and still favoured by our people. That would have given us little democracies and enabled people who will be democrates to exercise their rights with a responsibility and with zeal and also with joy. But now under this Constitution, there will be two classes, a new ruling class at the helm of affairs and at the bottom there will be the common man exercising a vote once in five years. In the middle the middle classes will be crushed entirely and I would say if the middle class is crushed, the entire intelligentsia of the country will be crushed and then we will not known what is the future of the country.

Let us take another article of Fundamental Rights - article 31 relating to properties. Now in the whole Constitution this is perhaps the most absurd article. *Prima facie* this article says what is not justiciable upto 26th January 1950 will be justiciable afterwards. Supposing for instance the U.P. Bill now pending or the Bihar Bill now pending before the commencement of this Constitution Act is passed after the Constitution is passed, the provisions of that Act, under this Article will not be justiciable but if that same Bill or most of the clauses of it are incorporated in a Bill before the Legislative Assembly of Orissa, after the commencement of this Constitution and if that is passed, that might be justiciable . I do not understand how what is the justiciable now can be justiciable afterwards. And then again look at sub-clause (6). Whatever has been passed within 18 months before the commencement of this Constitution will not be justiciable and whatever was passed beyond 18 months will be justiciable. This discriminative provision is quite out of place in a Constitution, particularly on the Chapter of Fundamental Rights. Then again we do not say here what is the definition of property, what is possession and acquisition and what is 'public purpose'. For instance in Orissa our Land Revenue and Land Tenure Committee has come to the conclusion that abolition of zamindari does not involve any taking of possession or acquisition for public purposes. The reason is, every zamindar has two rights - the right to collect rent and the right to cultivate his own private lands. Suppose we leave his private lands to him and take away the right to collect rent, what property is he going to lose for which he will be recompensed? And suppose we abolish entirely feudalism, we abolish land revenue and instead we raise some tax, what is there to say that there is some property which is being confiscated or expropriated for which there will be compensation? These are anomalies we have chosen to bring in for nothing. It would have been enough if we had only article 31 clause (1) and nothing else. These will bring unnecessary conflicts and I think I am not blaming anybody a spirit of undue compromise has been responsible for enacting this article and this gives a clue to the very mind that has been actuating all things in framing this Constitution.

I, therefore, submit that this Constitution has been framed to please as many as possible but it has been a medley of ideas and ideologies and I think there is no coherent, genuine substance behind it which can hold us on. The reason is simply this. We have been so much imbued with modern ideas - ideas with which we have been spoon-fed for years, that we have forgotten ourselves. Is there nothing genuine in this land which could be the solid foundation for our future Constitution? If you want to go in for a civilization which has not been tested in our land, and which is still on its trial, I think we are going to undo everything real and I do not know what the future will bring us to. Now, Sir, we have given adult suffrage. Well and good. After having done that, it is my submission that we should have raised the age of people who would be seeking election. In my view for the lower House it should have been not less than 30 and for the Upper House not less than 35. In that case we have somehow brought control over these matters and brought sense to our people.

Then again we should have given high rigid qualification for people who would be coming to Legislatures. We know what is in store for us. We know that this Constitution is founded on a Parliamentary System and any parliamentary system is founded on the members who will form the Parliament. If those members are not sober, honest, wise and able, I think the whole system of Parliamentary democracy will go down. But as I see, this Parliamentary system will go wrong for the simple reason that we have not given a rigid qualification for those people who will be taking this great responsibility. We should have advised rigid qualification for members, honest people, people not exploiting people, not encouraging black-markets and people who command confidence and selfless devotion. But shall we immediately see clash of interests, competition and no corporate existence? The result would then be that in the name of Parliamentary democracy, there will be chaos.

Now, Sir, a word about centralisation. We have, now in the name of a strong State, so centralised power, that I am afraid, due to its very weight, the Centre is likely to break. However good Pandit Jawaharlal Nehru may be, and however good Sardar Vallabhbahi Patel may be, they are more distant from me than is my home in Puri from Delhi. It is not possible for me to talk to them as my own man. In actual life, in fact, it is my family, my village, my district and my province, thus we go. And now think in terms of India in a great leap is simply absurd. In certain spheres, it might be good to centralise. But we have so empowered the Centre, and we have made the Provinces so powerless that in fact, I am afraid, there will be no initiative in the provincial legislatures or even in the provincial Ministers. In fact, this Constitution really tends to make the people irresponsible, and simply remain content with voting once in five years, and caring only for the Centre and cajoling the people in power at the Centre for this and that advantage. In this way, we have made this irresponsible Constitution in the hope of giving responsible government to our people.

With these words, Sir, I say that with great honesty and great labour and with the best of intentions, we have passed this Constitution, and it is for us now to see what shape it will take in practical working and it will be our bounden duty to maintain this Constitution, and to educate the people in the lines of this Constitution. That is a great task and I hope our country will be equal to that task, and that our leaders at the Centre will be equal to that task, because if they go wrong, the Centre is so strong that the nation will go wrong, and to me it seems there is more chance of going wrong than of going right. Jai Hind.

Mr. President: The House stands adjourned till three o'clock.

The Assembly then adjourned for Lunch till Three P. M.

....

The Assembly reassembled at Three P. M. after Lunch, Mr. President(The Honourable Dr. Rajendra Prasad) in the Chair.

....

Shri Jadubans Sahay (Bihar. General): Sir, much has been said regarding the different aspects of this Constitution. I for myself do not agree with those who have shown a spirit of despair and disappointment over this Constitution as a whole. I think, Sir, we have nothing to grieve over what we have done. It is only an exhaustion of spirit which has been shown by some of the Members when they have criticised this Draft Constitution out and out.

The fact is that we are a nation born new and we have to learn the arts of democracy. The lessons of democracy are not taught in any book, but they have got to be developed. It all depends upon the character of a nation, the integrity, the honesty, our love for democratic principles and our zeal to pursue and follow them which can make or mar a constitution. The Constitution of a country does not depend upon the cold letters, however, beautifully or brilliantly printed in a book. It depends for its growth and development upon the character of a nation. It is the soil - the character of a nation - upon which the seeds of Constitution have got to germinate. If the soil is rocky or barren, then certainly howsoever good the Constitution might be and in howsoever grand language it may be worded, it is sure that the Constitution can not lead us to our goal. But I have faith, Sir, in the innate genius of our country. I have faith also in the coming generation of tomorrow and we have nothing to despair over what we have done. I think that no amount go guarantees in the Constitution or the filling up of the omissions mentioned will carry us to the goal. It depends upon those who work the Constitution. It depends on how we develop the spirit of tolerance and not on the constitution or the letter of the law. It depends on the spirit of love towards those that are down-trodden and those who call themselves minorities. We may enact in the Constitution that untouchability is abolished in every hearth and home but that carries us nowhere. You should have love and sympathy for what we call the have nots. It does not depend on he Constitution or its articles. It depends upon our own character, our own vitality as a nation.

It am not one of those who share a feeling of disappointment and so I shall approach the Constitution with a dispassionate mind and touch on one or two points and no more.

We had our struggle for freedom and we have won the independence of the country. But it is political independence or political freedom. The predominant slogan for 25 or 30 years from the lips of every patriot, every soldier of freedom was the elimination of British rule. The economic slogan was not there. British rule has been eliminated and political sovereignty has been won. Therefore, in the Preamble of the Constitution we are going to declare that India is an Independent Sovereign Republic. Even though we are going to declare it on the 26th January we are already recognised by the nations of the world as such. During the last 30 years the struggle for economic democracy was not in the forefront and the result is that even in the Constitution we have glimpses of the challenge to the economic structure of society. The economic structure of society as it existed hitherto will exist hereafter and there comes the clash. There is today a crisis in our country. There is crisis in agricultural production, there is crisis in the production of industrial goods and we have not been able to solve it. We are taking all the measures we can and yet they are not bringing results as speedily as we want. What is the cause ? The cause is something which challenges the economic basis of our society and demands a radical change.

There is the property clause No. 31 in the revised Constitution. You will excuse me if I say that it is a hesitant, vacillating and insipid approach to the vast problem facing us. On one side in China, Burma and other countries' subversive forces, alien to the genius of this country, are knocking at our doors and coming like an avalanche. Communism will flourish and it will flourish in Burma. How are we going to tackle it? We are out to abolish the zamindari system. In article 31 we find that the advantage which we have reluctantly given to provinces like Bihar, U.P. and Madras can not be shared by Bengal, possibly Assam and Orissa also. These provinces have not been able to bring a bill in their assemblies till now. Do we think that we can challenge Communism in this way? Communism can not be crushed by bullets, neither by our military nor police. It has to be tackled in a different way. The root cause has to be diagnosed. The disease lies in the discontent of the oppressed and hungry millions of the country. We hear of bombs, bullets, acid bulbs and the burning of tramcars in Bengal. The Bengal Government is for the time being engaged in her domestic problems. They have not been able to bring any Bill for the abolition of feudalism in their province. After the 26th January they will be deprived of the benefit which we have given in clauses (4) and (6) of article 33 of the Constitution. Not only in Calcutta and other big towns but we find communist influence growing in the rural areas also. It is there among the Sanathals, the aborigines and the kisans. They are all becoming victims to the Communist slogans and propaganda. You can not stop it by sending the police to the villages. In the very nature of things it is impossible. In the Constitution we have tried to approach this problem in an insipid manner. There is a clash of ideology. There are two schools of thought clashing with each other, one trying to maintain the old economic structure of society and stabilise it and the other trying to destroy it and reshape society on a new economic basis. I would invite attention to article 31 which is a compromise formula born out of the tug-of-war between the two schools of thought. We have not been able to touch other interests than agricultural interest. Even the zamindari or feudal interest has been touched in a very lukewarm manner. The economic structure of a country is responsible for its political development. On one side we are going to give adult franchise to the vast millions of our countrymen. We are going to clothe them with political power - those who do not have two square meals a day and those who are almost beggars in the streets, and those who remain unemployed for nine months in a year; on the other hand you are going to stabilise the present economic structure of society. You want to maintain the status quo. Here is a problem which won political freedom and which shaped to a very great extent the Constitution of the country, if we run away from the problem, the problem is not going to run away from us and it will pass into the hands of others for solution. It will be solved by those who will bring in foreign slogans and a foreign sphere of influence into the country. Are we going to leave the solution of that problem, to them? It is a challenge which we have not been able to answer in this Constitution.

But I will not harp on this point because the Preamble is enough guarantee if we want to work the Constitution honestly, vigorously and with integrity. It is enough guarantee for those who are down-trodden, for the kisans, for the labourers and for the mazdoors. If we do not work it in the proper spirit, then what is meant by economic justice ? What is economic justice to a man who has not enough food to eat, who has not an anna in his pocket? You will say he has got the right to stand for Parliament. Is that economic justice? It is a farce. You will say that your schools and colleges shall be open to all the sons of Kisans and mazdoors. Is it giving them education? How many sons of kisans and labourers are there in the science colleges of the different Universities ? Very few. So, it is a farce. Let us not in this age, when practical problems demand solution at our hands, run away from the realities of life. Times are changing and we have got to adapt ourselves. The greatest virtue of the Congress was this' and it was the greatest virtue of the Father of the Nation also, that he used to adapt himself or rather he used to keep his fingers on the pulse of the time and when he found that we were fit for such and such a thing he used to dictate the remedies to us. But what are we doing today? We are in an economic deadlock with devaluation, export and import questions and the problem of Produce more or perish' facing us. We are appealing to the industrial magnates for their generosity and charity in connection with the sugar scandal.

I would have been glad if we had incorporated in the Constitution at least the hope of a classless society for the people of this country. it is not a socialistic thing, it is not born out of the philosophy of Marx. They were the very words said by Mahatma Gandhi. If he had been alive today he would have practised and brought it to reality. Sir, some people run away from the idea of this classless society and say that it is a thing which the Socialists and the Communists proclaim and that therefore we should not touch it. But no, it is rather the voice of those who have got vested interests in this country. It is the voice of those who want to keep down the millions of this country. Mahatma Gandhi who was the greatest lover of the down-trodden not only in India but over the whole world had clearly said that India wanted a classless society. But what are we doing today? What to say of a classless society, even the words nationalisation of property are not there either in the Fundamental Rights or in the Directive Principles. What does are there for the millions in this country? The only hope is that our leadership in this country certainly is very sound and is sensitive to public opinion and I have every hope that if we try, under this Constitution we can do all those things, we can bring about a classless society, we can bring hope to the doors of the teeming millions, we can bring solace to their huts and homes. All this we can do out of this Constitution if we proceed honestly, if we proceed with the knowledge that democracy does not mean anything if it does not mean economic democracy. Democracy of the few, of the few edcuated persons, who live in the houses of Delhi and who come from the various Provinces, is no democracy at all. Real democracy means that we are the servants of the people, the real representatives of the people. Let us say that this is the greatest experiment in the history of India because this type of democracy did not exist before however much you quote the Shastras and the Puranas. This greatest experiment will fail not because of this Constitution but because those of us who have been charged by destiny to represent those who are not here, those who are hundreds of miles away from us do not really represent them.

With these words, Sir, I will again say that the success of a constitution depends upon not only those who work the constitution but also upon those for whom it is worked. This Constitution is a real of our national character and I hope that we will do nothing to hang our heads down in shame.

A lot has been said about civil liberties and such like things. I am not concerned with those things. Civil liberty in the abstract sense does not appeal to me. If the country does not exist, where is the civil liberty? What we find today is a handful of persons trying to misguide people. We call them communists and we call them by other names but they try to misguide a large number of the people of this couantry. Fighting for civil liberties at this stage will be endangering the very life of the state. We have got various problems knocking at our doors, some from Pakistan, others from the Western world. At this stage civil liberties of the type envisaged by jurists and written in the books which we have read in the colleges will not do for this country. If the educated people want to have civil liberties of the best type, they will have them in spite of the hedges grown around by this Constitution. The sedition law was there but it was changed in course of time. A few words said twenty-five years agao used to come under the sedition Act, but in 1942 even the Quit India slogans and all the other criticisms were nto consdered seditious. So, it does not depend upon the cold letters of a book, it depends on the growth of a nation, upon its ability to grow and overcome all these diseases. So, I am not very much apprehensive about the civil liberties about which so much has been said.

I have only one more thing to say and it is about the Provinces. It is all right to have the political power in the Centre, but the Provinces, at least those agriculturally backward Provinces like Bihar, C.P., Assam and Orissa where the seeds of Communism can grow at any time, have been robbed I will say you will excuse me for saying so, Sir, of a very large portion of the income which they used to have at least from the sales tax. We find in the Constitution guaranteeing the freedom of trade, freedom of commerce and other things in order to sanctify and perpetuate the existing economic structure of society. In matters of sales tax we find that the Province have been deprived of their due share of collection. The benefit has not gone to the Centre but given to the middle class who try to purchase a things and sell it at another place. Take the case of Bihar. We will lose more than Rs. 2 crores by this amendment relating to sales tax. You want to have a welfare State, not a police State because police states will not do in these days. If you want to have a welfare State, if you want to have schools and colleges and education for the children of the mazdoors and kisans and the down-trodden, hospitals and medicines for them where will the money come from? You will have to run to the Provinces for that. But their budgetary position will be uncertain, the budgets of these Provinces can not be framed with any amount of certainty. These financial difficulties for the provinces should not have been created. They should be allowed to be economically free, free to raise money at least from sales tax so that they can function as a welfare state.

Sir, with these words, I again commend this Constitution for the acceptance of the House.

Shri Gopal Narain (United Provinces: General): Mr. President, Sir, during the last three years when the Constitution was on the anvil I remained a calm and silent observer except twice when I broke the monotony. But at this final and Third Reading stage I wish to record my views plainly, openly and courageously.

At the outset I congratulate Dr. Ambedkar, the Chairman of the Drafting Committee and the members thereof for producing such a voluminous Constitution in which nothing has been left out. Even the price control has been included in it. I venture to think that if they had the tine they would have even prescribed a code of life in this Constitution. A word more for Dr. Ambedkar, Sir. There is no doubt he is lucidity and clarity personified. He has made a name for himself.

Some months back the Honourable Shri Sampurnanand, who came here in connection with a conference asked for my opinion about this Constitution. I had told him plainly that it was more or less based on the Government of India Act, 1935 with certain additions taken from the Constitutions of America, Canada, etc. Taking that cue, he has described this Constitution in his convocation Address to the Agra University as a Scissors and paste affair. I fully agre with him. But I do not agree with my Friend Seth Damodar Swarup who has called this Constitution as a Constitution for jagirdas and capitalists. My opinion of this Constitution is that it does not come up to our standard. It does not even touch the mark. Those Congressmen who ahve been fighting the battle of freedom for the last thirty years.

Shri Jaspat Roy Rapoor (United Provinces: General) We wish you had given us a timely warning.

Shri Gopal Naraian: I was calmly listening when Shri Jaspat Roy Kapoor was delivering his speech. I never interrupted him. I hope he too will not interrupt me. I know more of the Congress than Shri Kapoor. I was saying that this Constitution does not come up tothe mark. Those Congressmen who have been fighting the battle of freedom for the last thirty years had a different picture in their minds. They envisaged something different. It has not come up to their expectation.

There is no doubt there are some good points in it. There is bound to be some good points in a voluminous text. I shall refer to them presently. Certainly they have done away with separate electorates. They have included adult franchise. They have also included prohibition. These are very good points no doubt. Also certain amenities have been provided for the backward classes. Their status has been raised. I congratulate the members of the Drafting Committee for providing these good things. These are very good points in the Constitution. But there are certain bad points also.

Articles 21 and 31 are instances of bad points. Article 21 which concerns the life of a man has been made non justiciable while the right to private property has been made justiciable. These are very bad points that have been included in the Constitution.

One more point I want to emphasise. There has been over-centralisation. The local legislatures have been reduced to the status of local bodies, municipalities, local boards and the like and, as a necessary corollary, the provincial legislatures will turn the local boards and municipalities to nullity. Though Panchayats have been given some powers, I fear they will not have any scope for working. This, in my opinion is not good.

One more point I wish to stress. There is no room in this Constitution for amalgamation at some future date of this divided India. The doors have been barred and baged against such a possibioity by the adoption of Hindi as the official language. This bangs the door against Western Pakistan amalgamating with our country. Though this has been done, let us hope that Hindi will be much that it will have some room for this amalgamation at some future date. Otherwise there is no room in this Constitution for the amalgamation of the two countries. This is a very bad aspect of this Constitution.

In conclusion, Sir, I congratulate you for so ably conducting the proceedings of this Assembly. You have been very accommodative . You have not given any Member a chance to say a word against you. I conclude.

Shri Ajit Prasad Jain (United Provinces: General): Mr. President, Sir, it is but once in life that a nation decides to give a Constitution unto itself, and we who have participated in framing this Constitution have a good reason to be proud of our lot. In the history of India there have been periods of greatness and glory, there have been periods of great empires and expansion and of benevolent and good kings, but never did we have Constitution framed by the people for the people. Before proceeding further it is necessary that we offer our thanks to Dr. Ambedkar and the Drafting Committee who have sat day after they incessantly and worked hard.

About three years ago this Constituent Assembly started to function under very different conditions than those of today. India was then undivided, but the Muslim League which was then a rival political party of the Congress had refused to participate in constitution making. Everybody was asking, "Could we frame a Constitution with the Muslims absent almost *en bloc* ?" Then came the Partition which we had to accept with a heavy heart. None among us can be happy with a partition of the country, but nevertheless it must be admitted that this has smoothened our work of constitution making. In particular the question of minorities which had been our headache and which thwarted all our efforts for the solution of national problems has ceased to be a live issue. Maybe that we have not so far succeeded in establishing a fully united and harmonious society, but much of the old rancour has disappeared and we are on the path of achieving a real national unity.

The Constitution which we have framed cannot be, on the political or economic side, said to be a revolutionary measure. It has not only accepted the general framework of the Government of India Act of 1935 and repeated its phraseology, but it has continued the old laws and institutions. All the laws in force immediately before the commencement of this Constitution except those which come in conflict with the Fundamental Rights enumerated in Chapter III, shall continue to be laws under the new Constitution. The Federal Court will function under the new name of Supreme Court with some additional jurisdiction which had hitherto vested the Privy Council. The Judges of the Federal Court will become the Judges of the Supreme Court and the provincial High Courts and their judges of the Supreme Court and the Provincial High Courts and theri judges will be the High Court and High Court Judges in the corresponding States. The Advocate General, the Comptroller and Auditor General shall perform the same functions and be the same persons as were discharging those functions before the new Constitution. The Federatl and the State Public Service Commissions will have the same personnel and essentially the same constitution. The services appointed by the Secretary of the State or the Secretary of State in Council under the Government of India Act shall under section 314 " be entitled to receive from the Government of India and the Government of the State, which they are from time to time serving, the same rights as respects disciplinary matters or rights as similar thereto as changed circumstances may permit as that person was entitled to immediately before such commencement". Thus, it will be seen that it is not even the case of pouring old wine into new bottles, but of old wine and old bottles. Both the laws and the administrative machinery, under the new dispensation will not be much different than the old.

Economically one has to look to article 31 of the Fundamental Rights. It says, " No person shall be deprived of his property save the authority of law and that no movable or immovable property......................shall be taken possession of or acquired for public purposes..........under the law provided for compensation for property taken possession of or acquired". Except for the exception provided in the case of zamindari rights in certain provinces and a few other comparatively minor changes this article reproduces section 299 of the Government of India Act. It maintains the capitalistic structure of society with its inequalities of wealth and income. Perhaps under the existing state of our economic plight much of it is inevitable but in the ultimate analysis this state of affairs cannot continue for long. As the Honourable Mr. Gadgil said the other day, we shall have to make a fundamental change in the Constitution of our society. We shall have to nationalise many industries which today are held by private enterprise. Without that, there cannot be any solution of our economic problems of national well-being.

Sir, the Britishers had left us in a highly precarious condition. Overnight on the 15th August 1947 mroe than five hundred Indian Princes, big and small, became their Majesties. Travancore and Bhopal were showing truculence. Junagadh had acceded against the wishes of the people with Pakistan and Hyderabad adopted an attitude which might well be termed hostile towards us. Under these condition, the spectre of disunity which has beean a remarkable feature of our history, as also the history of many other Asian countries, was staring us in the face. It is no small achievement that within the breif space of less than two and a half years we ahve attained complete geographical unity, the Indian States disappearing as political units. A glance at Part B of the First Schedule will show that what was formerly known as Indian India, and divided into more than 500 States, has been transformed into nine States, Chapter VII, in my opinion, is the brightest feature of this Constitution as it places the States constituted of the old Princely India *pari passu* with the States in Part A which represents the Indian provinces. Nevertheless, we should not forget that what we seem to have achieved thereby appears more on paper.

I have said that mostly the new Constitution is not much of a departure from the existing Constitution, but in some respects it has inaugurated what may be rightly called a revolutionary era. In future every adult,, man and woman, who has attained the age of twenty-one shall enjoy full and equal franchise. Our political institutions, Parliament and Legislatures of States, will be elected on the basis of adult franchise. This indeed is revolutionary. We are going to have the brightest electorate in the world, bigger than than of the USA, and USSR . Such an experiment can not be free from danger but let us hope that with the intimitable leadership which India possesses, we shall stear clear the ship of the State.

In Part II, which defines citizenship, all persons born in India or who are *bona fide* residents of India or who have migrated from Pakistan and made India theri home ahve been given equal recognition as citizens without distinction of religion, race, caste or class. Citizenship constitutes the rock foundation of our Constitution. All the rights in the Constitution are equally guaranteed to all citizens. Every citizen of India shall have the right to freedom of speech and expression to assemble peacefully and without arms to form associations and unions, to move, settle and acquire property in any part of India and to practise any profession or trade or business. It must be admitted that these rights to freedom are fundamentally restricted by certain clauses that follow. For instance, the right to assemble peacefully and without arms is restricted by that infamous section 144 of the Criminal Procedure Code. It is bad but perhaps not too bad to have this kind of restrictions until we the citizens of India have learnt the virtues of self-control which flow fromt he exericse of true freedom. Nevertheless our success will be judged not by the frequent use of these restrictions but by the infrequency with whichw e make use of these section.

Every person has also been given a guarantee of equality before the law. No person shall be deprived of his life and property except according to the procedure laid down by law. There is a provision for preventive detention, perhaps it is a necessary evil under the present conditions, but I must repeat again that our success will be judged by the infrequency with which we use this provision for preventive detention.

Our Constitution provides that there shall be no discrimination against any citizen on the ground of sex. Women have been given equal rights with men to get services and offices under the State and no one shall be debarred from employment or office on the ground of religion, race, sex, or descent. It is one of Directive Principles of State Policy to secure equal pay for equal work for both men and women. In our history there have been women who have attained glory and greatness, sometimes, outshining men, but there was never a formal recognition of the equality between men and women in the sense that this Constitution has established. Untouchability, which has disfigured the entire history of thousands of years of this country, has been abolished and its practice in any form has been forbidden. It has been declared a penal offence. Everybody has been guaranteed equal rights of access to shops, public restaurants, places of public entertainments and to the use of tanks, bathing ghats, and places of public resort. We have already achieved reasonable success in removing untouchability under the inspiring leadership of the Father of the Nation and these provisions in the Fundamental Rights will accelerate that process. But untouchability is essentially an economic disease. In order that those who have been left behind in social and economic matters, more perhaps on account of the oppression by others, may come up to the general level, the Scheduled Classes, Scheduled Tribes, and other backward classes, Scheduled Tribes, and other backward classes have been given reservation of seats in Parliament and Legislatures of States and Services until they attain a status equal to others. This protection will in the first instance extend to ten years.

The question of minorities has been another difficult and perplexing question for us. In future no minorities shall be recognised either for reservation of seats in the Legislature of Services excpet the Scheduled Classes. Scheduled Tribes and other backward classes, which again is not a concession bases on religion or caste but on the comparative backwardness of those people. The minorities have been guaranteed freedom of religion and freedom to develop their culture, language and script, but in matters of political rights, there is no discrimination either in their favour or against them,. The minorities therefore should have nothing to fear or be apprehensive about their future. It is in that sense that we have established what is popularly known as a secular State.

The Fundamental Rights guaranteed in the Constitution are mostly justifiable, that is, any person who feels aggrieved can have resort to a Court of Law. But it is not always easy to go to law courts, and I am not sure whether the spirit which has inspired the Britishers to preserve the rights and privileges secured under Magna Carta, actually informs our people. External vigilance is price of liberty which nations as well as individuals have to pay. And, therefore, the responsibility of the State is even greater in our case. It must in practise secure for our citizens rights conferred upon them by law.

A great achievement of this Constitution is the agreement on the question of language. India has for ages been a multi-lingual country with 13 or 14 major languages and numerous minor ones, some having the scripts and others none. Under the British rule our languages had been neglected and English was forced upon us. In free India English could have no place, but to come to a common agreement about one language and one script all at once was not an easy matter. Fortunately for ourselves, we have arrived at what may be termed to be a happy compromise. Hindi and Devanagari script shall be theState language of India but for the first fifteen years English shall enjoy a privileged place and be the State language for official purposes of the Union for which it was being used immediately before the commencement of the Constitution. Power has, however, been given to the President to authorise the use of Hindi language in addition to English language for any official purpose of the Union even before the expiry of fifteen years. Article 351 provides that " it shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite cutlure of India and to secure its enrichment for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions uised in Hindustani and in the other languages of India specified in the Eighth Schedule ". The law about language thus laid down is elastic and it will depend upon our efforts as to how soon or how late within these fifteeen years English is repalced by Hindi. But now that we have taken a decision to substitute Hindi for English the sooner we do it the better. Yet we must be cautious that those who speak languages other than the languages of Sanskritic origin should have no feeling of oppression or depression, for Hindi will thereby suffer more at the hands of its supporters than others. Hindi has come by the goodwill of all and with goodwill on all sides, let us hope that Hindi will soon become the medium of expression not only for the Union and for the purposes of communication between the Union and the States and in between the States, but also the medium of culture and higher education and training.

Permit me to say a few words about the general make-up and drafting of the Constitution. It has been a general complaint that we have taken too much time and have made the Constitution too cumbrous. I share that opinion and many things which could have been provided for by ordinary laws made by Parliament and rules and regulations have found a place in the Constitution. May be that the Drafting Committee was too much obsessed with the idea of giving too much and too many safeguards, but let us not forget that paper safeguards would come to nothing unless the future generation is preapred to respect them. I have yet to come across a Constitution of a free country which provides safeguards for the services as we have done. I do not mean that we should break any of the guarantees that we have given to the services but surely Constitution is not the place where those guarantees should be provided. We could as well have left law making on the comparatively less important matters to the good sense of the generations to come and I am sure that none would have been the worse for it. But at this late stage it will not serve any useful purpose to lay too much stress on that aspect of the question.

Finally, there is nothing novel or striking about this Constitution. It has freely drawn upon the experience of others, and whatever my other friends might think, in my opinion it is essentially bad to be conservative in the matter of constitution making provided the Constitution does nto bar or block the passage to progress and new departures. I think there is ample scope for development in this constitution as will be seen from the various articles giving Parliament the power to make laws even against some express provisions of the Constitution without amending the Constitution. In fact there are parts of the country, particularly the States representing the Indian States, where the constitutional and political progress and the adminsitrative machinery have not attained a stage fully in conformity with the conditions laid down in the Constitution. I am told on good authority that great efforts will be needed before those parts are ready for the first general election. Naturally, therefore in a constitution mad for units in the various stages of progress, some justification exists for a halting manner of approach. Then there is nothing to stop us from doing that.

Before, I conclude, I must thank you, Sir, for the patience and forbearance with which you have conducted the business of this Hosue even when things became dull and listless. But for your vigilance and guidance the progress of this Constitution may have been slower. Yet you have given no opportunity or occasion to anybody to feel that he has not been given the fullest opportunity to express himself. With these words, Sir, I conclude.

Shri S. V. Krishnamoorthy Rao (Mysore State): Mr. President, Sir, I deem it a great privilege to have had an opportunity of being associated in the framing of this Constitution under your able guidance and I stand before you to add my humble need of praise to the Chairman and members of the Drafting Committee for making an excellent job of the work that was entrusted to them. Sir, I submit that under the heavy stress and strain of time and circumstacnes under which they had to undertake this task, no other committee or no other body would have given us a better Constitution.

Many are the charges that are levellwed against this Constitution I would like to enumerate some of these charges. One of them is that the Constituent Assembly has taken too long a time nearly three years. Let us not forget that the American Constituent Assembly took nine years to frame the Constitution. Australia and Canada and Africa took more than two years. Another objection is that it is too lengthy, that it is three times the length of the Soveit Constitution and nine time the length of the American Constitution. Some members said that the civil liberties embodied in this Constitution are a farce, that this Constitution is a jumble of the various sections from various other Constitutions of the world, that the Centre is too strong and the States have been crippled, that adult franchine that we have embarked on in this Constitution is a great risk under the circumstances prevailing in the country that the Gandhian ideals have been given the go-by, that this is a capitalist constitution and that the socialist principles have been sacrificed. Some constitutional pandits have objected that the Directive Principles embodied in this Constitution like prevention of cow slaughter, encouragement of village industries, establishment of gram panchayats, abolition of untouchability, separation of the judiciary from the executive, these are all administrative matters and need not have been burdened in a Constitution like this. Objection has also been taken that no provision for referendum and initiation has been included in this Constitution.

As against this, what are the things that we have provided for in this Constitution? For the first time, after a dependence of more than 1,000 years India, Bharat has emerged as a Sovereign Democratic Republic. We have embodied justiciable Fundamental Rights which any citizen, when they are violated, can take up the Supreme Court and have his grievance redressed. We have embarked upon the great experiment of adult franchise and nearly sixteen to eighteen crores of the population of India will be going to the polls when we hold a general election. We have adopted parliamentary democracy. Take any section we find that the supremacy of the Parliament has been embodied in the Constitution. For the first time in the history of India, there is integration, political integration, financial integration, economic integration and judicial integration and also defence integration. Today, under this Constitution, there will be no more petty armies; we had a bit of that army in Hyderabad. Under this Constitution, there will be only one army and that will be under the command of the President of India. As regards political and economic integration. I would only quote from the London Times. In a leading articles on 7th Februrary, 1949, the London Times wrote:

"The operations by which Bismarck unified the German Reich were on a much smaller scale than those by which the Government of India in a short time has transformed the patchwork of State jurisdictions that made the political map of India a crazy quilt. The transformation has been profound but peaceful."

Sardar Patel can look back with pride and satisfaction at the achievements of his Ministry and the nation pays its homage to the great leader. We, have done away with differentiation between the States and Provinces, today, under the Constitution all are States. I am glad, Sir, that much of the sting that was contained in the original article 306-B, which is now article 372 has been taken away and article 365 is made applicable to all the States. Nobody likes this article 365, much less do I. But, I hope that this article will remain a dead letter and there will be no occasion to make use of the provisions of this article. Under this Constitution, the words minority and untouchables have been abolished. Separate electorates have been abolished. Untouchability has been made an offence. The fundamentals of socialism have been embodied in the Directive Principles of the governance of the State and all titles have been abolished.

As regards the discretionary powers, Sir, I have gone through the Constitution as carefully as

I can and I hardly find any discretionary power vested in the Governors except when he had to make a report to the President regarding the proclamation of an emergency or under Schedules V and VI regarding Scheduled Tribes and Scheduled Areas. As regards the emergency powers these emergency powers are subject to parliamentary control and the least period possible, namely, two months has been prescribed during which this emergency can last and it has got to be brought before Parliament at its earliest session. Even these emergency powers can be exercised only under very limited circumstances when there is a threat of war or when there is external aggression or interanal disturbance, or when the Governor or Rajpramukh reports that the Government cannot be carried on according to the Constitution, or when the financial stability on credit of a State is, in the opinion of the President, in jeopardy. Even then, Sir, these emergency legislations have no come under the review of Parliament and if the Parliament passes a resolution that the emergency should cease, the proclamation becomes void.

Under this Constitution inter-state trade and commerce is free. Special provisions have been embodied in the Constitution for the independence of the judiciary, for the independence of the Auditor General and ot the offices of the legislatures. Elections are placed above executive interference. We have all India Commissions like the Finance Commission, Inter-state Council, the Public Service Commission and the Election Commission which can function without any interference from the Executive. I submit, Sir, that these provisions which have been embodied in the Constitution are no mean achievement.

I submitted that the Drafting Committee had to work under very great stress and strain. If we can find any parallel at all, we have to go back to the history of Constitution making in Amercia. I would like to quote a passage from a book called the Great Reherarsal by Carl Van Doren. In his book he has stated:

".......State loyalties were deeply entrenched in the hearts of the people of Amercia of those days. Loyalty to a new central authority was not easy to create. Many compromises were necessary and many political gadgets had to be invented before a general measure of agreement could be reached, among the delegates to the convention in regard to the shape of the new constitution. With the return of peace, the States had drifted apart. Many of these States could hardly resist the temptations to read the path of narrow self interest. If the financial interest before the country was grave, the chaos which had evertaken it in the domain of commerce was graver still."

Mr. Justife Bengamin Cardozo observed:

"that the people of the several States must sink or swin together and that in the long run prosperity and salvation are in Union and not in division"-

Washington, in 1786 had written-

"There are combustible materials in every State which a spark might set fire to".

Carl Van Doren opens his book with the Chapter, "Commander and Philosopher". The Commander was George Washington who ahd led his country to victory. The Philosopher was Benjamin Franklin whose signal services to the nation had made him a legend in his own time. He says :

"That dignity and poise of the Commander, the broad humanity and mellowed wisdom, of the philosopher contributed in no small measure to the success of the convention."

Speaking of the two great leaders, Carl Van Doren says :

"They had borne the two heaviest buirdens of the revolution . Washington at home, and Franklin abroad, each of them too honest to feel suspicion,, too great to feel envy."

I submit that these remarks of the author apply to India with hundred times greater force. The two great leaders who have been piloting the affairs of the State have borne a very burden and this Constituent Assembly has also functioned as a Parliament during this interim period.

We have crossed many hurdles these two years and under the stress and strain of the stupendous problems that the country had to face, I submit the time that we have taken is too small and in other Assembly placed under similar circumstances could have taken lesser time.

As regards the limitations that have been placed on the Fundamental Rights, I would only submit against the charge that we have borrowed freely from other Constitutions. After all no written Constitution is final in this world. We have to borrow from the experience of other nations. If we take either the pre-war period or the port-war period or the period during the war, and study the working of Federal Constitutions we find the trend towards a strong Centre in every Constitution. The Centre is being made strong today because we are in an atomic age. Let alone a drought in Gujarat or a flood in Andhra Pradesh to day if there is a drought in Canada or a bumper crop in Australia the economic set up of the world is upset and we hear the distant echoes even in our country and when we had to face thewe stupendous problems would submit, nothing but the height of folly. If these provisions were embodied, it is by way of an abundant caution. I do not think even the Members of the Drafting Commtitee like these provisions. I am sure though no occasion will arisewhen these limitations int he Fundamental Rights of the Emergency Powers will be used in working this Constitution,.

Then there was a charge that Gandhian principles have been sacrificed. I already submitted that we have embodied provisions for removal of untoucability for national language, for communal harmony and for goodwill and gurantees to minorities, encouragement of Gram Panchayats and village industries and for protection of mulch cattle. These are the planks on which Gandhism flourished in this country and it created a non violent revolution in this country. If these principles have been embodied in the Constitution, I want to ask how Gandhism has been sacrificed in this Constitution. I submit that enough provision has been made for the carrying out of the programme that was enunciated by the Father of the Nation. This Constitution is a harmonious blending of the best Indian traditions - the political and constitutional experience of other countries and the Gandhism ideals. A great sense of reality pervades the whole structure the Constitution. Given the goodwill and the will to serve the country and the spirit of self-sacrifice that prevailed in us when we struggled for independence, this Constitution can bring happiness to this country. It is time that we settle down to constructive work and I hope under this Constitution if we have the sense of goodwill that has prevailed in this Assembly in solving many problems like the language problem, minority problem the citizenship problem, compensation clause etc., I am sure this Constitution will usher a new era in this country.

Regarding the language question, I may bring to the notice of this Assembly that we are already implementing the Resolution that was adopted in this Assembly. I am glad to inform the House that the Government of Mysore has passed an order making Hindi compulsory in all High Schools in the State but I am sorry to find a similar response is lacking from some of our Hindi friends. The Hindi Sahitya Sammelan has criticised the agreed resolution that was passed in this Assembly. I appeal to our Hindi friends to work in the same spirit of give and take and to take us with them so far as the language question is concerned. Given the goodwill I submit once again that this Constitution will pave the way for the happiness and contentment of this ancient land of ours.

Shri Upendranath Barman (West Bengal : General): Mr. President, this Constitution has been criticised by many Members on account of this defect or that I shall not enter into any controversy over the arguments advanced by them. As I judge it from the point of view of a common man, I find that this Assembly has given enough for the common man to develop and to rise out of the present hopeless state of affairs. There is no doubt that most of the articles in this Constitution have been taken from the 1935 Act but there is one fundametnal change that has been made by this Assembly and that it the adult franchise. It is this right that has changed the whole outlook of the 1935 Act, in this sense that the real democracy will today, tomorrow or the day after come into power. Today the under-privileged class of our country, in spite of all the provisions made in the Government of India Act, 1935, can not have any power in their hands becuase of the fact that many of them have not got franchise. They have really no voice in the administration of the country but when this Constitution will come into operation and first election held under this Constitution, I dare say that the whole aspect will change. The 1935 Act gives power to the masses only to a certain extent but because our masses are ignorant, even that part of it cannot exercise it because of class domination and domination by those who are propertied, or who are now in the upper strata of intelligence. But tomorrow when this Constitution will come intop play and throughout the length the breath of this country the masses of the country who form 85 per cent of the population of India will have the final say or a greater say in electing our legislatures and ultimately in the constitutional heads, the cabinets in the Provinces and also in the Centre. I dare say that their voices will be heard. Otherwise they can choose the next time their own friends. So there is that fundamental difference which has been introduced by which, though the provisions difference which has been introduced by which, though the provisions of the Constitution might by in many parts borrowed from the Constitution of 1935, the conditions will be entirely different.

Now, Sir, it has been said that we have taken too long a time in framing this Constitution. I do not know, but my honourable Friend who has just spoken said that the American constitution making had taken nine years. May I ask the honourable Members who have criticised this Constitution to remember one thing. What was the condition of the country before the commencement of the work of framing of this Constitution ? What were the pledges that were before the framers of this Constitution those who had guided the destinies of this country, and what were the problems that they had to tackle? I should like to mention two things. First of all there were five hundred and sixty two native States, and when the British Government had been withdrawn, they were really besides the provinces, five hundred and sixty two parts of India.. If this Constitution had been framed in a hurry, would the Constitution have been the same as we have it now? We can very easily realsise that our Constitution would have been quite different from what it is now, and we owe gratitude to the Honourable Sardar Vallabhbai Patel and to other leaders of our country for the way they have tackled this problem of the State. They have tackled it in such a way that in spite of the fact that India was left by the British in such cahos, they have merged India into one within the course of this short period, and for the whole of India we have got one Constitution. There is some little difference here and there, but we must remember the success that we have achieved by this time, and when we do that, we are left in no doubt that these differences also will soon disappear.

The second point, that I may mention is that within our body politic, whoever may have been responsible for it, our country was divided into several communal divisions, and when the British left India, so far as my impression goes, the British before transferring power, took solemn words from our eladers that all the privileges of the minorities would be honoured by them. Our leaders have honourse those pledges and in spite of that, we find that our Constitution today is free from many of the evil things that existed at that time. it is not that the majority has, by the simplified this matter, and removed those evil things from this Constitution, but it is the minorities themselves who have willingly consented to it, when they found that there is really no cause for any apprehension and that for the good of India they should give them up. As regards my own community, I confess that we thought that at least for some time to come, we should be given some privileges, and I with gratitude thank the Members of this Constituent Assemnbly and also the leaders for conceding those privileges for a certain period. Now, I would ask, if our Constitution had been framed hastily, do you think this Constitution could have come out in its present state? Therefore, though there has been some delay but as I have said, I do not admit it-yet this delay has been all for the good of the country as a whole.

Coming to the point of view of the common man, as I observed at the very beginning I find that the common man, or the masses of this country, will be having a great voice in the future administration of our country. After all we are wedded to democracy and there are no two opinions that we should have adopted any other system of Government. Having accepted that the only system of democracy that we find successfully working in the world is the parliamentary system of democracy. We have, therefore, necessarily to look into the constitutions of those democracies which are working successfully and in my opinion, the genius of India has accepted the best parts that it could gather from all parts of the world wherever the parliamentary system of democracy works. In this very system, I would stress again, the regeneration of the masses, the down-trodden part of humanity, lies. According to parliamentary system as we have accepted it here, the country is to be governed by an elected House, and though there are two parts, two Houses at the Centre, it is the House of the People wthat has the final say in matters of money Bills, in matters of expenditure and in matters of ways and means Budget, which concern the masses of the country vitally. They are the economic ills that really lie at the bottom of all ills of the masses of this country. In the proper working of this Constitution that we have framed, the masses must be alert, and if they are alert enough or wise enough, they will choose the right leaders who will riase the masses, and they will be masters in this House of the People and also in the legislative assemblies in the Provinces. It is for them to devise in what way the conditions of the masses could be bettered. What more cna be done under the parliamentary system of democracy I can not imagine. If there is any defect in the Constitution, as many honourable Members have already indicated, there is enough scope within the Constitution itself to amend any of the provisions that required to be amended.

Coming next to the actual structural part of the Government, that will be set up in the near future, I would only ask the honourable Members of this Hosue to take notie of one Directive principle that has been inserted in this Constitution. I mean the Village Panchayat Organisation; and alongwith that the directive principles of educating our children up to the age of Fourteen by giving them free and compulsory education. If these two directives are properly observed by our future Government, then I think the condition of this country will be bettered in the near future and that will be to the good of the whole country. A centralised system of Government in a country like India with thirty-five crores of people and with a vast areas which is perhaps more than Europe will be no remedy for these evils. No centralised Government, with an adminsitrative machinery more especially the one that has been handed over to us by the British will be able to remove these evils that are now eating into the vitals of the rural areas and of the under-privileged. When we have given adult-franchise when we have trusted each and every adult citizen int he country to be the masters in the forming of the Government, it would be a folly if we delay even for a single day the constitution of these panchayats. When you have trusted them to the extent of giving them a voice in the composition of the Government, it is but natural that you should trust them with some responsibility. Once you do this, that will relieve us of a lot of burden of adminsitrative responsibility, at least in regard to day to day affairs. So long as you expect the Government servants to take charge of the masses, the masses will remain irresponsible and will go on complaining against the Government. But once you entrust them with certain responsibilities for local administration, they will be keen on taking charge of their affairs.

Of course criticisms have been made that the village panchayats cannot work, because our villagers are ignorant, and that there will be scramble for power. But a glance at the daily papers will convince us that in most of the provinces there is a scramble for power even on the part of the provincial leaders. So, it would be an absolutely silly argument to say that the masses are not yet fit to govern even in their local adminsitration and the interests that concern them the most. My only submission is that as soon as possible we should form these village panchayats and transfer the bulk of the powers that concern the villages to these village panchayats, so that many of the problems of governing this country will be solved.

Last of all, I have to pay my homage to the great Mahatma whom I remember with gratitude. It was in the year 1938 that I had the privilege of meeting him at Calcutta and of discussing with him several problems about the under privileged scheduled castes. Amongst many other points, I agreed with him that so long as the British were in power they (the scheduled castes) could not expect any privilege by going against them. The Mahatma replied that when the Congress come to power, they would give the Scheduled Castes the privilege they require. After a decade I find that the words of that votary of truth and non violence have come true. India has become independent now and I with devotion remember those words of the Mahatma. I am also grateful to all Members of this August House for the privileges that they have extended to the scheduled castes of India. I bow down with respect to that great soul who had always the interests of the Scheduled Castes at heart.

Shri P. Kakkan (Madras. General): Mr. president, Sir, I stand here to support the motion moved by Honourable Dr. Ambedkar. I also want to express my heartfelt thanks to you and the Drafting Committee for giving all kinds of help to the Harijans by this Constitution. As you know, Sir, Gandhiji, the Father of the nation, changed the mind of the Caste Hindus and showed a way to abolish untoucability by joint electorate system. Now we have achieved our goal by the joint electorate system.

I believe, Sir, that the Congress Party is the only party which is working for the uplift of the Harijans; not any other party. So from , this August Assembly, I appeal to the Harijans of the

Union to join the Congress and work for the uplift of the Harijans. In this connection, I would also appeal to Dr. Ambedkar to join the Congress and work for the uplift fo the Harijans, within the ten years.

I am very glad, Sir, that the Panchayat system has got a place in this Constitution.

I hope that the Government of India will take necessary steps to bring the panchayat system into every nook and corner of this vast country and develop grama swaraj according to the wishes of Mahatmaji without any distinction of caste, creed and colour.

Lastly, Sir, we have given power to the villagers by the introduction of the adult franchise system. I hope the voters in future will not misuse their voting power. I also believe Sir, the people of India will not foreget Gandhism which is not only for India but for the whole world. I would pay my trubute especially to the Honourable Mr.Gopalaswami Ayyangar, Shri Alladi Krishnaswami Ayyar and Mr. T. T. Krishnamachari who have come from Madras Province because they have done a great service to this country as members of the Drafting Committee.

Shri M. Thirumala Rao (Madras: General): Sir, I feel it is a matter of personal privilege to add my voice in the chorus of tribute that has been paid to the labours of all the people that have given their time and energy in drafting this Constitution. Therefore, I do not stand here merely to derive the satisfaction of speaking something but, with a human frailty that I am also one of those that has played his little part in evolving the Constitution, to say my last word during the last stages.

One can not but remember with gratitude the great personality that has moulded this nation out of mere clay, enthused it with the idea of freedom fired it with a dertermination for action and saw during his lifetime that the ideal has been realised. It may be said that the visualisation of an ideal is something different from actualisation. The enchantment of distance to an ideal which inspired us in those days has gone today, because we have reached our ideal and we are now in a practical position to see what the difficulties are in the actual situation.

I thought that the framers of this Constitution and the leaders that have inspired the draftsmen would have incorporated with gratitude the name of Mahatma Gandhi as one of the founders of our nation, the real father of Modern India, who had given a new message to the whole world, I do not know what influenced them not to include his name in the Draft Constitution which would have been in keeping with our traditions, with the traditions of ancient India, for we ahve always humbly and with gratitude remembered our ancestors from morn till evening on every auspicious occasion. It would have been in the fitness of things if we had incorporated in the articles of our Constitution the name of Mahatma Gandhi but our leaders willed otherwise.

We are on the even of epoch-making events. The West has been in a turmoil. It has had its days of freedom for some years and the Eastern nations are now falling one after another for new ideas. India today is the crossroads between the East and the West and we are now being planted on the road to future self government in the shape of this Constitution.

I want to say a few words with regrd to the merits of this Constitution, because it is a thing to get away from the realities of the situation. In the beginning when this Constituent Assembly was addressed by Pandit Nehru he said that our aim should be to draft a constitutionn which will give us an independent sovereign republic. The word independent has been given the go-by and in its place the word democracy has crept in. This has enabled us to remain within the Empire and not to snap the link with the British Commonwealth. It ist he result of the momentum of events and it is the logical inevitability of 150 years of British rule. India has to stay in the British Commonwealth for some more time until we are in a psoition to discard all sorts of shackles including the Commonwealth. True, the logic of events has compelled us to remain. From a debtor nation we have turned out to be a creditor nation to whom our erstwhile masters now owe to the tune of 1200 crores. Until we are able to recover the amount from Great Britain, until we are able to shed all our previous commitments in the way of the British connection, it will not be in the interests of the country to snap the British connection. That is the only consideration I think that has influenced our leaders and that is the only consideration that has influenced this House to agree to remain within the British commonwealth for the minimum period that is required.

With regard to the Constitution itself it is a piece of achievement of which our leaders may be justly proud. The British had established their hold firmly on this country by having a strong unitary government and at the same time dividing the country into compartments in which the people had no control. They had created 630 native states called Ulsters, kept them in a most backward condition and they always dominated their policies from the Centre. They had created vested interests in the Muslim community and given them separate electorates. They had allowed them to join hands against Indian nationalism. They had created an all India administration whose loyalty was purchased at every turn, at the cost of India freedom which many of us know to our costs. With these three weapons in their armoury the British had founded a unified centrally controlled government in this country which they thought would last as long as their empire. It was perhaps Lord Morley who said that within the purview of human ken he could never imagine the day when the British Empire would be dissolved. The British statesmen have carried on but they never though that between them and their destiny rose a humble man in this country (who was derisively called the 'Naked Fakir" by the prince of imperialists Mr. Churchill) to upset all their plans and dissolve the empire with the breath of his Satyagraha. With the legacy of a divided India left to us it is the practical wisdom of Sardar patel which saw through the game and he rose on the occasion and met it with an equally powerful strategy. The British had left and therefore we have to act exactly as the British had acted in dealing with the situation. When the British left they thought that the States would rise against the Congress government. But Sardar Patel and his advisers rose to the occasion with the strength of the Congress and the country behind them. He has worked the miracle of dissolving all the States and given them a new shape by incorporating them with provinces or creating unions,. My friends from the Native States need not feel any inferiority complex that they are being treated as inferior brothers. Not at all. History tells us that the native States have been the happy hunting ground of reaction, oppression and backwardness. To overcome all these difficulties in a year or two is not an easy task, but the Constitution has ensured once for all that their status is not inferior to those of the British Indian Provinces that have had experience of the political leadership under the Congress for the last 70 years. Therefore, the Native States have been brought on a par with the Provinces.

With regard to separate electorates Sardar Patel had again played a notable part by being the Chairman of the Minorities Committee. With the able assistance of a genuine patriot, a selfless patriot like Dr. H. C. Mookerjee who has been our Vice President and has filled the place with equal worth as you yourself, Sir, with his assistance and selfless devotion to the united nationalism of this country, Sardar patel has been able to abolish the separate electorates for all the minorities and once for all erased from the pages of the Constitution the last canker of British imperialism.

With regard to another item for bringing about the unity of the country, we have been able to integrate the whole of the army into one single Army. Also, we have maintained the tradition of an all-India service in the Indian Administrative Service which will be avle to uphold certain standards of conduct, rectitude and incorruptibility so that this country may carry on its policies through this efficient service. By these three agencies which have been created under the able guidance of Sardar Patel, this country has been unified and all those questions dealing with these matters have been incorporated in this Constitution.

The Indian National Congress has been responsible for winning freedom and it has been responsible mainly, if not chiefly, for drafting this Constitution. The Constitution has got the indelible impress of the Congress ideology on this. Many friends have complimented you, Sir, that you have risen to the occasion of parliamentary practice by presiding over these deliberations. Perhaps they were not in the Congress, perhaps they have not had the personal experience of your leadership, being the President of the Congress twice and conducting m,ore boisterous meetings of the All India Congress Committee several times. The efficiency, the capacity, the patriotism and the parliamentary calibre of the All India Congress Committee is reflected in this House, and, Sir, when you were the President of the Congress, we need not specially compliment you because it is no new task for you in conducting this Body efficiently as its President. Nor are our statesmen new to the task of Government because our Prime

Minister and our Deputy Prime Minister and several other Congress Ministers have more than justified their existence as Ministers owing to their experience as public men and leaders of public opinion.

Sir, I want to say one or two things with regard to the Andhra Province for which I should like to express my gratitude. I want to draw the attention of the House to this fact. When we went in deputation to the Congress Working Committee in 1938 when Babu Subhas Bose was the President, led by the late lamented Deshabhakta Konda Venkatappayya Pantulu, the deputation consisting of some other Congress leaders, the Congress Working Committee solemnly assured the Andrhas that they will get the Andhra Province as soon as the question of Indian independence was solved. We have not hitched our wagon to the star of reactionarism. The Andhras have always implicity trusted Mahatma Gandhi's leadership and the Congress leadership. They had not flirted with the Simon Commission, they incurred the greatest displeasure of Lord Simon for having boycotted him at every stage of their stay and the British Government though that we were severely punished by not creating the Province. But we have always trusted Congress and Congress leadership and we are grateful today for having received fulfilment of the promise made by the Congress Working Committee in 1938 in their resolution. Do not understand that the question of the Andhra Province is any 'depressed class' or any subsidiary movement. It is an essential movement of our nationalism. They say the administration should be carried on in the mother tongue or in the regional language, but in Madras the administration has to be carried on in English because the province consists of four different linguistic areas. If every Province in India were to develop fully and our democracy is to work effectively, then you must remove this artificial importance of the English speaking man between the so-called man in the street, the real taxpayer and the Government.

With regard to adult franchise, I am not very enthusiastic about it. I am afraid it is a weapon whichcuts both ways; but fortunately or unfortunately our leaders were committed to it in their earlier stages of agitation asking for a Constituent Assembly based on adult franchise. Adult franchise enfranchises nearly 17 crores of our people and all of them have to be put on the rolls. Without proper education, without the proper development of patriortism in this country, I am afraid this is a dangerous weapon. The Gandhian satyagraha movement has not really permeated the masses. It has touched the fringe of the villages. After all, only four to five lakhs of people have gone to jail, that is the intelligentsia and the intellectual middle class have been the mainstay of the Gandhian movement and with that experience we must see how far the sense of patrioritsm has gone down. You saw the spirit of narrowness in one of my honourable friends, a member of this House when he stated that his vision does not go far beyond Orissa. He loves his home, his village, his district and then his Province. His vision does not go far enough to assess the real worth of the leadership of Pandit Jawaharlal Nehru or Sardar Patel. If an enlgihtened Member of this House has not got a patriortic vision extending beyond the frontiers of his Province, what about the uneducated millions who are led to think by interested politicians in the name of their communities and sub-communities? During the last District Board elections the leaders of our Provinces had come out with statements that sub-communal feelings have been exploited in the elections and peoplel must be careful about it. As a matter of fact, when these constituencies are being divided, interested leaders are already scanning the constituencies are being divided, interested leaders are already scanning the constituencies to see whether a particular constituency contains the majority of the voters of his own community or not, whether a political adventurer will be able to come out and succeed in that particular constituency by raising slogans against the interests of the country. That is my genuine feeling about the adult franchise. Not that I am less enthusiastic than any of our friends here who are swearing by adult franchise. By all means have it, have it within the next four or five years or within the next ten years on a graded basis. Today the total voting strength is about 3 ½ crores; make it ten crores by the next elections and 17 crores in the elections after that. But when you are playing with this so called democratic weapon it presumes two sides to the question. It is not merely the question of the electorate, it is not merely the question of the members of the legislature that are returned on that adult franchise, but it is also a question of leadership. The country must be able to provide leaders of sufficient calibre experience patriotism and disinterestedness in carrying out the real principle of this Constitution.

Situated as we are, we wanted to have a federal Constitution but we have produced a

Constitution that is mostly unitary. We have delegated all the residuary powers to the Central government and we are trying to make it as strong as possible. No doubt, with all the States, with a cancer like Hyderabad in the stomach of this country - recently eliminated, with a danger zone on our frontiers in Kashmir, with the Communists trying to grab power by any means and all means at their disposal and with the RSS people with a popular slogan of Indian culture and Hindudom on their lips trying to capture political power, it is a dangerous thing to trifle with the Central government. Seeing all these things, our leaders with a foresight born of experience of the past and a proper appraisement of the future, have said that the residuary powers of this nation shoudl rest with a Government which is strong in the Centre. Not only that, there is another personal element on which the whole effectiveness of this Constitution rests, namely, the prime Minister of this country is amde all powerful. You have given every power to the leader of the majority group in the Central Legislature to work this Constitution, to work this democratic Constitution whuch you have prepared and it all depends on the personality of the Prime Minister exercising enormous powers. The Congress, though it obtained independence for this country, though it is the majority party running the Government of this country, it was not mean or had the intriguing nature to incorporate in the Constitution any provision that would perpetuate its power for some time to come. They have divested themselves of such selfish motives and created an instrument in which any party that has got the largest support in the country can take power and run the administration of the country and fashion it as it likes. But still we believe that the personality of our Prime Minister and our Deputy Prime Minister are indelibly impressed in the Constitution and it is the fond hope of millions of people that they will be spared to us for many years to come to see that the power that is gained by your Nation is consolidated in the best interests of the poorest man in the street whose protection this Constitution envisages.

With regard to Fundamental Rights I need not say much, since every right is not an absolute right. Every right wherever it is enjoyed is always hemmed in by considerations of public policy and public conduct and also by the safety of the State. If every man wants to exercise his right and take advantage of it without taking any responsibility for the welfare of the State, he must be shown the place to which he should rightly go. That is the only exception. Where with regard to Fundamental Rights has this Constitution not made full provision? This Constitution enables all loyal citizens to carry on their avocations and professions peacefully and gives them a guarantee against the meddlesome elements in the country who want to exercise undue absolutely rights at the expesne of others.

In this connection one happening has to be mentioned. I was surprised sometime ago to find a reputed ex-Judge of the Patna High Court presiding over a Civil Liberties Conference held in Madras and attacking all the Congress Governments from the Centre down to the provinces. He almost ran amuck in his attack of the Governments in the name of civil liberty. His speech was full of abuse of constituted Governments and it was quoted by communists. Even the communists would not have indulged in civil liberty in a more extreme manner than that ex-judge of the Patna High Court. That is not civil liberty.. Every citizen must have some sense of responsibility for maintaining tranquillity in the country. That alone will enable the people of the country to enjoy the fruits of freedom. Under the cloak of civil liberty, you should nto allowe even these champions of civil liberty who retire after a lifetime of service under a foreign slave-master and now come in full glory and vigour in support of civil liberties to speak as they like. It must be pointed out to them that they have a responsibility to the State.

Sir, I do not want to take much of the time of the House, though I want to say one other things. Situated as we are, we are in possession of a Constitution which can be turned to best account by the persons that work it by the legislators and by the Ministers that these legislators would choose. I, say that it depends mostly on the Prime Ministers for the next few years of this country to see that the greatest benefit is derived from this Constitution. We have rightly selected, Sir, the Chakra as our emblem, as the historic reminiscence of the period of Asoka. Describing the meaning of this Chakra, Rhys David the famous orientalist has said that this Chakra is intended to send rolling the Royal Chariot wheel of universal empire of truth and righteousness. If any country which departs from the essential moral principles on which it professes to stand it has no future. But this country in keeping with the ancient traditions and ideals has rightly chosen that Chakra which is called the Dharma Chakra of Asoka and Mahatma Gandhi has blessed this Chakra. With his spirit hovering over this nation and with this emblem on our flag, it is the duty of this House and the leaders of the future to uphold the Congress principles and fulfil the destiny of this Nation.

The Assembly then adjourned till Ten of the Clock on Wednesday, the 23rd November 1949.

CONSTITUENT ASSEMBLY DEBATES (PROCEEDINGS) - VOLUME XI

Wednesday, the 23rd November 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the chair.

DRAFT CONSTITUTION---(Contd.)

Shri Ari Bahadur Gurung (West Bengal : General) : Mr. President, Sir, I associate myself with my colleagues in congratulating the Chairman of the Drafting Committee for having brought this stupendous task to a successful conclusion. I have only a few observations to make. Firstly, the criticism of the Constitution that it does not provide for the establishment of Socialism is as irrelevant as the complaint that it is likely to open the way to dictatorship is futile. The real test of democracy is to give the right to the people to decide for themselves the nature of the Government they would like to have. The question of dictatorship or Totalitarian Communism will depend entirely upon the manner in which the people will work the Constitution. The Constitution will be subject to a continuous series of modifications according to the will of the people. Such are the provisions already provided in the Constitution. Sir, I personally feel that a Constitution is something of sacred character which inspires future generations. It is the embodiment of the living faith and philosophy of life of those who framed it. To judge this, one has only to look the reflection of the supreme will of the people as to the form of the government they want. Although the Constitution will become the law of the land, there will be nothing sacrosanct about it because it will be subject to modifications as I said before. For all intents and purposes, under the existing circumstances, this Constitution is a model one to suit the various needs of the people living in India.

I would now like to refer to article 5 relating to Citizenship. The community to whom I belong consider this of vital importance, and I feel it is my duty to mention here that one-third of the total population of Gurkhas have come and settled down in India. According to census figures, out of one crore, about 67.5 lakhs are in Nepal and the rest have settled down in India and the Gurkhas remaining here are most of them descendants of those soldiers who fought in many battles in India. We claim the same right of citizenship under article 5, provided we fulfil all the obligations laid down therein. Sometime ago in the beginning of the year when I spoke about the Gurkhas, I said that they have been a special provision for the backward classes of people with regard to the service, but unfortunately under the Constitution such privileges are given only to the Scheduled Castes, the Tribals and Anglo-Indians, even though article 16, para (4), provides that "Nothing in this article shall prevent the State from making any provision for the reservation of appointments of posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State". In other words, it gives by one hand and takes away by another. This is the greatest injustice done to people who are very backward, though they do not have the privilege of being classed as Scheduled Castes or Tribals. I sincerely hope that the future Parliament, whose members will be elected on adult franchise will amend this omission. About ninety per cent, of the total population of India are backward and these people in future, through their representatives, will see how his Constitution works.

There have been strong criticisms about the Constitution providing a strong Centre. I feel that under the existing circumstances there is no other alternative than to have a strong Centre.

With regard to article 3 and 4 read with article 391 of this Constitution, I have some observations to make on West Bengal. As you know, Sir, after the Radcliffe Award the two Districts of Darjeeling and Jalpaiguri have been entirely cut off from West Bengal. In view of the defence of the northern frontier of India, this is a matter taht calls for immediate attention of the Government of India. With the imminent fall of the Kuomintang Government in China, Tibet, the next-door neighbour of India, is according to reports, becoming the scene of Communist intrigues. The State of Sikhism and the District of Darjeeling connect Tibet with the Indian Union, and Assam, the eastern-most frontier of the Indian Union, is linked with the rest of India by a narrow strip of land consisting of portions of Darjeeling district and Jalpaiguri. These areas as also the State of Cooch Bihar, in view of their strategic importance need to be strengthened and consolidated.

The Districts of Darjeeling and Jalpaiguri which are the northern-most districts of West Bengal have no contiguity with the rest of West Bengal, East Pakistan having come in between. This circumstances gives rise to many administrative inconveniences in ordinary times and more so during a period of emergency. Being a Frontier region such inconveniences if allowed to continue longer are fraught with grave dangers. My object in making this observation with regard to these two districts of West Bengal is this that if we look at the map of India, we find that there is only a narrow strip of land, connecting Bihar with Assam, that is the districts of Darjeeling and Jalpaiguri. Pakistan points like a sword towards the heart of India. If there is to be any trouble, unfortunately, God forbid, especially between Pakistan and India, Assam can be isolated within a very short period, the northern parts of Himalayas being inaccessible; and these are the territories that need the immediate attention of the Government.

Shri K. Hanumanthaiya (Mysore State) : Air travel is available.

Shri Ari Bahadur Gurung : Thank you very much for your suggestion but that all depends on the strength we have. As a matter of fact in modern warfare the air has played a very important part in bombardment. The last battle has been fought and won on the land. If you read the history of all wars, especially the first war and the last war, it was actually the infantry which decide the whole fate. In the last war it might be the atomic bomb on Hiroshima that decided the fate but that was a cruel thing and if a war has to be fought, it must be fought on the land. I feel Sir, that should an emergency arise the Commission that is likely to be appointed should look into these matters stated above, because these two districts of Darjeeling and Jalpaiguri have been completely isolated from the rest of West Bengal. Now sending goods to Darjeeling from Calcutta one has to send through Bihar. Due to devaluation another difficulty has arisen, namely the fare (1st Class). From Calcutta to Siliguri is about Rs.50 but from Siliguri to Calcutta one has to pay Rs.72 and there is lot of difficulty in the transport of goods from Siliguri down to Calcutta. Within the same province we have such difficulties, I, therefore, suggest that something has got to be done with these two districts; either they have got to be linked with the rest of West Bengal or some separate arrangement has got to be made. These are the observations that I have to make. Thank you very much, Sir.

Giani Gurmukh Singh Musafir (East Punjab : Sikh) : *[Mr. President, I endorse the views of my friends without any reserve and hesitation that this Constitution of our free India is undoubtedly a grand document. To me it is an ocean and I believe that it is difficult for every driver to bring out valuable pearls from its depth and to know their intrinsic value. Taking into consideration the circumstances under which this document has been formulated, it is necessary to point out that it was very difficult to frame such a fine Constitution. Many questions had cropped up and it was very hard to solve them. For instance Minorities' problem was of utmost importance. Under the conditions prevailing in the country the solution of this problem was an uphill task. But in the manner in which it has been decided is certainly praiseworthy. Separate electorate was a curse which had blocked the path of our country's progress. Whenever the solution of this question was taken into consideration, it created an embarrassing situation and each effort for solution made the problem more and more complex. The disease increased with treatment.

Doctor Iqbal, the well known poet of our Punjab has said:-

Mazhab nahin Sikhata apas main bair rakhna

Hindi hain ham watan hai Hindustan hamara

It means : "Religion does not teach to quarrel among ourselves. We are Indians and India is our motherland".

But the principle of separate electorate shattered the dream of the poet. Nay even those who opposed it were forced by the circumstances which the principle of separate electorate had engineered in the country--to support the schemes of separatism. In this concluding lines the poet (Dr. Iqbql) being confused and confounded gives an opportunity to the Britishers. He says:-

Nishan-i-barg-u-gul tak bhi na choar is bag main gulchin

uri qismat sai razim araiyan hain baghanum main.

It means: "O'flower-picker, what to speak of the flowers of our garden, do not leave even a single leaf because you are so lucky that we gardeners are ourselves flying at each other's throat. Therefore you have got an opportunity to make our garden desolate and rob it all its leaves and flowers". In our country, separate electorate had always been the source of disruption and religious feuds. Now separate electorate has been removed with great courage and to my mind it is one of the fundamental virtues of this Constitution. Separate electorate has been withdrawn from the Constitution and no reservation has been given on religious basis. I think that these steps will help us in making our ideal loftier. I have no hesitation in saying that the solution of this problem appeared to be perflexing because the minorities were suspicious and obviously the solution of this problem appeared to be very difficult. Yet it was solved because of the personal influences and decisiveness of our Prime Minister, Pandit Jawaharlal Nehru, our Deputy Prime Minister, Sardar Patel and Shri Rajendra Prasad, President of our Assembly. Moreover it is the result of the influence of our Maulana Abul Kalam Azad and all those leader and this is the result of their joint efforts in solving this problem. The curse of separate electorate has been removed from our Constitution. Moreover the problem of reservation has also been solved. Sardar Patel was Chairman of the Advisory Committee which was appointed for the solution of minorities problem. Sardarji's influence; his hold; his statesmanship; his firm resolution got the upper hand and the problem of separate electorate was solved. I repeat that this is one of the greatest virtues of this Constitution. It has made our Constitution much more brighter.

I would like to add a few words more regarding this Constitution.

It is the Constitution of free India and as such it is connected with the people. Therefore this should not be considered as a mere Constitution; Because we have also to raise the morale of our people through the Articles of this Constitution; hence the difference between this Constitution and the constitutions of other types is necessary. Englishmen had their way of dealing with such problems. If they did not like to confer a right on the people then in that case, they used to give from one hand and take away from another after making verbal changes here and there. At the end of substantial Articles they used to add such proviso and conditions which rendered them ineffective. If there is any such defect in our Constitution, then it should be removed. Some Members have criticised the Fundamental Rights and their provisos. I think, perhaps due to official reasons certain provisos were considered unavoidable. But I would like to say that such provisos should not find place in the Constitution. For instance the right of acquiring, holding and disposing of property has been conferred in the main clause but according to the condition which has been laid down in article 5, it shall not affect the operation of any existing law. Whether this clause affects any province or not, but it does affect our Punjab. Land alienation Act is prevalent in the Punjab since a very long time. According to this Act if a man actually tills the soil but does not belong to the zamindar class, he can not acquire lands. It was proper that this restriction should have been removed. But this has not been done. The proviso attached to this Article have created confusion and it is not clear whether this restriction has been removed. On this point clarification is necessary. Punjab and the zamindars of Punjab have been very much affected by this clause; for those who have money cannot acquire land due to this restriction. The result is that those who want to dispose of their properties do not get reasonable price. Punjab is the home of middle class zamindars. Due to this law there is possibility that small zamindars will become smaller and big zamindars will become bigger. I can not dilate on this point, because the time at my disposal is short. All that I can say is that this state of affairs is unnatural, and this restriction should have been removed.

There is yet another point. In article 22, clause (3), sub-clause (B), which relates to Fundamental Rights, system of detention has been retained. To my mind, in the Constitution of free India as has been pointed out by Pandit Hirday Nath Kunzru--the system of detention should not be retained. We want to inspire the people with confidence. We want them to feel that the Constitution of free India is quite different. But such steps shall not inspire them with the beliefs that now situation is altered. They shall not believe that they are free and that a Constitution of free India is being framed. To my mind none should be detained unless he has been tried in a court of law. Now, I would like to say something regarding Directive Principles. These are great principles and they are consistent with the high principles of our Congress Government. The pledges which we had been giving to the people, have been incorporated in this Constitution. But in Article 37 they have not been made enforceable in a court of law. If owing to the expediencies of State, retention of Article 37 is essential, then it is better not to include the chapter on Directive Principles in the Constitution. If it is not possible, then I would like to say with all the emphasis at my command that these Directive Principles should be inserted under the Chapter on Fundamental Rights. I would like to say one word regarding education. The provision for "free and compulsory education for all children until they complete the age of fourteen years" given in the Directive Principles should form the part of Fundamental Rights. There is yet another provision in which children of tender age for whom avocations are unsuited to their strength are protected. This is important and should be inserted under the Chapter of Fundamental Rights.

Lastly I would like to say something relating to language. The language question was held over for long. I am glad that at last it was settled and we succeeded in taking a decision. I do not think after this decision, it is proper to retain English for 15 years. To my mind it is the manifestation of our slave mentality. We have achieved our freedom; but we are like that bird which has lost its sense of freedom due to its long confinement in a cage. Now the cage has been torn into pieces, but as we have lost our sense of freedom, we are still under impression that we are in prison. I am not opposed to English because it is a bad language. I am opposed to it, because it does not look nice that we should retain this emblem of slavery in our country for long. After we have decided to have one national language, retention of English for such a long time would mean, paying a very high price for the consent of those countrymen of ours who have accepted one national language being compelled by persuasion, reasoning and love. Hindi has already been declared as our national language and duration of 15 years can be regarded as the life of a generation. I agree with Seth Govind Das that our Constitution should be in our national language and it should be regarded as authentic. In this connection Babu Ram Narain Singh has asked a pertinent question "Is this Constitution being framed in India or in England?". To my mind, the Constitution should be framed in our own national language. We should use this language from now and if it is not possible to do so, then the maximum period for its adoption should be reduced to 5 years. Such a course shall be source of consolation for us and it will help us in getting rid of our slave mentality quickly and it will enable us to do everything through the medium of our national language.

I would like to add one word more. Sardar Hukam Singh and some other friends have said that deletion of the provision relating to reservation in services has created dissatisfaction among the Sikhs. As I have said, the minorities have given their common consent to the abolition of separate electorates but I must confess that the Sikhs and other minorities in some places are dissatisfied because reservation in services has been removed. But to incorporate such a thing in the Constitution would have been contradictory to other articles. Now when the reservation has been abolished, every man shall be appointed on his merit and thus everybody will be inspired with the desire to make himself accomplished. This step has placed a responsibility on the shoulders of the Majority Community, and minority communities also shall have to feel the necessity of acquiring capability and capacity.

One word more and I have finished. In preparing the draft, Dr. Ambedkar and members of the Drafting Committee have worked very hard. They deserve our congratulations for preparing this Draft within such a short time and under adverse circumstances. We shall be failing in our duty, if we do not pay our debt of gratitude to our leaders and comrades. I mean our greatest leader Mahatma Gandhi and those innumerable unknown warriors who have made sacrifices for the freedom of this country---those who have left behind their wealth, their homes and their all in Pakistan and thus did their best for the freedom of this land. I agree with Shri Jaspat Rai Kapoor that attention should also be paid to the refugee problem, the services rendered by them for the cause of the country is praiseworthy. We cannot succeed in enforcing this Constitution unless they are satisfied. With these words, I support this Constitution and I think it will be acceptable to all. In the circumstances it was not possible to frame a better Constitution.]

Shri R.V. Dhulekar (United Provinces : General) : Mr. President, Sir I am here to support the Resolution that has been placed before this House by Dr. Ambedkar. The Constitution has been discussed at very great length in these three years and therefore, it is now too late to point out all the defects and the great points that are in the Constitution. I am satisfied that the Constitution on the whole is a very good one. Everybody knows that milk contains more than 75 per cent of water and if the balance is good, it maintains our body and strengthens it. It gives a longer life. Therefore I shall not try to dilate upon the defects. They may be more than 75 per cent---I do not mind---but I only mind that if the balance left is on the credit side and if the Constitution that we have prepared contains all the substances that are necessary for the living being, that is India, then I believe that it is good Constitution. I shall, therefore, give attention to the different points that are in favour of the Constitution and I lay on record that these points that I am going to submit before you are sufficient to guarantee to this country a long life of prosperity and happiness in this world.

The first point is this, that we have cleared the ground for establishing a Secular state. I believe that religion as followed in India has always been secular. It may seem contradictory but I shall say that in India we have never followed any Book. We have never followed any cult; we have never believed in any 'ism'. The Vedas and Upanishads all declare that never follow any single person or a Book. Even in the Vedas wherever we find Manthras, holy scripts, we find that any person who has ever visualized any great truth--that manthra goes by his name. We have never been bigots in this country and we have never been fanatics. I may say that people say that Buddhism was turned out of India. I say no-Buddhism as an 'ism' only walked out of India but all the good points in Buddhism remain. Animal sacrifice to a great extent had crept in Hinduism. The influence that Buddha left was that animal sacrifice and bigotry disappeared from India. I hope, Sir, that with the march of time, Islam will also walk out of India in the sense that no fanaticm will remain in India, and bigotry will disappear from amongst the Muslims of this country, and so I am happy at the thought that we have laid down the principle that this country will not be governed by any person, religion or cult or any ism at all.

The second point which is a very great achievement is adult suffrage. Every person who is twenty-one years of age, who does not possess any of the disqualifications enumerated in the Constitution, has an opportunity of rising to the Presidentship, the highest honour that this country can give. And that is a great thing. A man walking in the street can rise to the greatest height that India can give him.

The third point is that we are going to have village panchayats, which is an extension of democracy to the lowest ground. For some years we had democracy in India, but the common man never felt that he possessed any democracy. As we extend our democracy to the villages and establish the village panchayats, and ask the common man to govern himself, I believe that India will be far better than England or America.

The fourth point that I am going to say in favour of the Constitution is the introduction of joint electorate. The minorities question has been washed away. There are no separate electorates. Every human-being living in India, who is born in India, is born equal, and because he professes a particular religion or cult, he cannot claim any favouritism from the State. I am happy at the thought that the great blemish, the blasphemy left by the British has been washed away.

Then the fifth point is that the Indian States have been washed away. I am happy that the princes, the ruling princes, have been magnanimous enough, and have been great enough to sacrifice themselves. I know that but for that sacrifice, our Honourable Patel would not have been so successful, and therefore, I say that when I praise the sagacity and firmness of Sardar Patel, I also praise those sons of India, the rulers, the princes, who sacrificed themselves and came into line with the common man of this country.

Then, Sir, the sixth point is international peace. We pray for international peace. We have always believed in it, and I am proud of it when I say that India has never invaded any country outside its own boundaries, and I am happy at that thought. Like Alexander the Great or the great robber, no king of India marched on another land. Like Nadirshah or Mahmud

Ghazni or Mohammad Ghori, no king of India stepped out of this country for any conquest or territory. I am happy at that thought. Therefore, when we lay it down that international peace is our ultimate aim, I may say that the whole world must believe us. When England or America says that they want peace, they are not believed. Everybody is suspicious of them, because these people have never proved in their life that what they said was true. England and other countries have gone out of their countries and invaded other countries raided them and robbed them. Therefore, when they say today in the U.N.O. that they love peace, they are not believed. I say, Sir, that India will be believed. I say, Sir, that India will be believed and every man in the world will believe when we say that we want international peace. When Pandit Jawaharlal Nehru went to America, why was he given such a great ovation? Whey did people throng in thousands and lakhs to greet him? It was because he had a great history behind him. They knew that he was coming from a country where Yagyavalkas, where Mahatma Gandhi, Ramkrishna Paramhansa and where Swami Vivekananda and Sir Rabindranath Tagore were born. These men went outside India with the mission, not of the sword, but with that of peace. And therefore, when Pandit Jawaharlal Nehru went to America, and he said that we stand for peace, he was believed.

Now the seventh point in favour of the Constitution is that the residuary powers will now rest in the Centre. That is a very good thing. In the beginning, there were the words "India shall be a Union". I say that the word "Union" is not a happy word. Union always means and connotes that there was previous disunion, and therefore we are going to unite now. I say that it is not a happy word. But when we came to the residuary powers, and our good-sense prevailed, we put that the residuary powers should be concentrated in the Centre. This means that we will have a strong centre and India will always remain undivided and strong.

Then, Sir, the eighth point is the adoption of Hindi language as the national language of India. Some people may say that for fifteen years English language is going to rule. Others say, that there has been injustice, because Hindi language has not been introduced from today. But I say that the resolution that has been passed by us, is a great triumph. The British walked away from India although they had remained in India for over two hundred years. Similarly, I can assure all my friends, the lovers of Hindi, that the English language will also walk away from India within one or two years, and after five years it will be very difficult to find a letter read in the mufassils or in the districts written in the English language. I am quite sanguine about it and therefore, I feel that whatever restrictions have been placed, they are not such that Hindi will not rise to its rightful height.

The ninth point that I urge is that some people say that there are no points in favour of socialism or communism. I tell you, Sir, that any 'Ism' however good it may be, creates fanaticism. Every 'Ism' is only a synonym for fanaticism and bigotry. If our Constitution had placed that socialism was our aim, if our Constitution had placed the communism was our goal, I assure you, Sir, that within four or five years, thousands of fanatics would be going about the country and saying that anybody who oppose this Constitution will be killed and murdered. Why do not you go to Russia and see? Anybody who opposes Communism stand condemned and he could be killed by anybody. So by not placing any ''ism'' in our Constitutional aim, we have done a very wise thing; India is no believer in any "ism". Therefore, I am happy that we have walked clear of these "isms". We do not believe in any "isms". We believe in our personal wisdom, in our combined wisdom, in our nation's wisdom, on our world's wisdom. We always feel that if we 20, 50 or 100 people sit together, we shall create something which will be better than any "ism"--it may be future, past or present.

The tenth point is this. This Constitution gives a full play for democracy. What is democracy? I define it, in one word. Democracy is accommodation. Any person who does not understand this small definition of democracy, can not be a democrat at all. Any person who feels dissatisfied after going out of a Committee and harps upon the fact that he was not heard and and keeps a grievance going on, I say that he is not democratic. When 10 persons sit together and apply their mind, they either agree or disagree. If they come to a certain conclusion, I think and believe that it is a democratic resolution and it must be obeyed. . Therefore, I say, when we 300 and more persons sat together, applied our mind and produced a Constitution--I may not have had my resolution passed and other people may feel that their resolution has not been passed, that is not the point at issue-it is then the result of combined attention and as such it must be obeyed. It is sacred.

Then there is the post of the President. This is a very great thing. In our olden days also and in our religious books we always find that whenever we perform any religious ceremony, we first of all always invoke Ganapati, the Mighty Lord of the Universe and ask him to sit down and watch our functions, guide our deliberations and our religious ceremony. Then we perform the ceremony and in the end we say:

gachha gachha sarashrestha
ishta karya prasidridooyartha punaragamanayacha.

Translated it means : You have performed the desired work, kindly go, but come again.

So following the holy tradition, I say, Sir, that you, Mr. President, have guided our deliberations and you have given us this Constitution and now I pray, Sir, that as the President of the Constituent Assembly you go, but as the President of this Constitution, you please come.

I believe what the whole House is with me that you will be re-elected to this high post.

Mr. President : You had better not to refer to such matters.

Shri. R.V. Dhulekar : In the end, I have to place my heartfelt thanks on record to you, Sir, the President and Dr. Ambedkar. The work that was before us was a very great risk. Dr. Ambedkar has performed a very great work. I would not say Herculean because that is a very small word. He has performed a task worthy of the great Pandava Bhim and worthy of the name that he has-Bhim Rao Ambedkar-. He has certainly justified his name-Bhim Rao and he has performed the task with clarity of vision, clarity of thought and clarity of language. Throughout, he was very clear. He always tried to understand the opponent's view and he always tried to accommodate him, and he always tried to put his own views in the most clear language. We are very grateful to him.

I am also very grateful to our Congress President - for some time our Mr. Kripalani and later on our Honourable Pattabhi Sitaramayya. As a Congress party man behind the scenes he had to conduct so many meetings and he conducted them so well that the Congress people could come together and produce a constitution for the acceptance of the whole of this House in such a beautiful manner. Therefore, I am personally beholden to our Congress President, Pattabhi Sitaramayya, and our grateful thanks are also now due to all the Members who have co-operated with us.

In the end, Sir, I wish to place my obeisance to the great Mahatma Gandhi, the Father of the Nation. With these words I shall finish:

Om shantih, Om Shantih, Om Shantih!

Dr. P.K. Sen : (Bihar : General) : I feel that I owe it to myself and to this August Assembly to offer a few humble observations at this momentous stage when we are ushering forth the Constitution to the nation and to the world at large.

Up to now, the Constitution has been a paper document and it will remain so until the 26th January, 1950. Then will be the moment when it shall spring into life, for it is not the Constitution on paper that will rule and regulate the lives of the nation, individually and collectively, but it will be the spirit of the people behind it that will really regulate, that will really bring about the democracy which we are all trying to attain.

A great many things have occurred on the floor of this House which may seem to indicate that there has been a departure from that spirit of union, which alone can lead to success in democracy. I beg to differ. The bitter controversies that have taken place on the floor of the House, the great disputes which have arisen from time to time, only show that there are differences of outlook, of views and opinions, but they do also point to the fact that all have united together in a spirit of mutual understanding "compromise" if you like so to call it and they have evolved together in a spirit of harmony, this Constitution of 395 articles. When it springs to life, when it starts operating, it shall become a live being and therefore, as all living organisms are, it shall be subject to growth and development. Let us hope that it shall never be subject to decay, but that this growth and this development will go alongside of the growth and development of the people. The people and the people alone can make good this Constitution, can make it really applicable to the needs and requirements of the people.

A great many things have been said here in connection with this Constitution. But I do feel that at the back of all that, one can find that there is more or less accord and not discord. It has been called a "compromise" Constitution. Well, "compromise" is really the essence of wisdom. If you can see things from the opposite point of view also along with your own point of view, it is only then that you can possibly unite not only to frame the Constitution but to regulate the lives of the nation. Therefore, if it is a compromise Constitution, I regard that as a matter of pride. You feel that there so many things that have been done which are entirely of a revolutionary character. You feel that you are on new ground altogether and if you have been able to agree on those fundamental points, then the journey will be a triumphant march.

First of all, we have abolished untouchability by law.

Then comes the disappearance of the Princely Order and the wonderful work of integration of all these States.

Then comes the abolition of special electorates, the abolition of reservation of seats and the wonderful phenomenon of the willing surrender of the rights of certain minorities with a view to abolish reservation of seats. The reservation of seats, no doubt, has been maintained in certain specific cases and for a limited period, but that is understood and accepted by all of us unanimously as a just and good provision.

Then comes the adjustment of the relations between the Centre and the different units or provinces or States, and we find that there again, there is a triumph, although there may be differences of view-point; some people are inclined to think that the Centre has been given too much power, and that it might really end in dictatorial supremacy; some on the other hand are inclined to think that more power should have been given to the Centre.

But we have, as I understand it and as I submit earnestly, arrived at a point when, again, it is the working of the thing which will really justify the content of the Constitution. One after another, honourable Members have come forward on the floor of the House to testify to their belief and faith in that proposition, namely, that it is not the Constitution alone that can possibly justify itself, but it is the Constitution and the people acting and reacting upon each other that will lead to its ultimate justification or condemnation.

Then, Sir, I shall draw special attention to the determination of this House, notwithstanding certain points of difference, unanimously to adopt a common language for the whole of India, may be with due regard to mother tongues, may be with due regard to other languages prevailing in certain particular tracts of the country; but the determination to have a common language and a common medium of expression for the whole of India is absolutely unanimous.

We come next to adult franchise, and before we launch our bark on the uncharted ocean of adult franchise, we have to be careful as to how to proceed. After all, ours is an infant democracy and we have yet to know the shoals and sand banks and all the risks and perils of the voyage. We have yet to know how to find out our coastline when we are in danger and therefore, it is extremely necessary that there should be on the part of the Members of the Constituents Assembly and also of all others a desire to work in such a manner that this Constitution, based upon adult franchise, may really not only turn out a success but may be an example to all the world.

Reference has been made more than once to the fact that the Panchayat system should have been the basis, that the old idea which the Father of the Nation had expressed very explicitly, namely, that there should be the panchayat at the bottom and therefore the democracy broadbased in panchayats should rise to a cone and that cone will be the perfection of democracy, that this idea should have been followed. I do not see any reason why that should be barred even now. Adult franchise is a thing, as I have said, uncharted and it is by proper navigation that we have got to find out where the haven of safety lies. Gradually, it is this panchayat system which I doubt not will come, in order that it may be the basis of the democracy that we are going to usher forth.

Lastly, there are several things, a great many details, that come up to my mind, but I know the time is valuable and I shall try to be as brief as possible. What, after all, should be our guiding maximum? What should be the armour of safety with which we shall fight the world on this basis of democracy? There again, the Father of the Nation has more than once, throughout his whole life, in fact in every act, in every word that he uttered has laid down the lines- Truth and Freedom. We cannot be true to ourselves if we are not true to others. We can not be freely individually unless every individual regards and respects the freedom of his neighbour. If we realise truly the essence of wisdom in this maxim of truth and freedom, it is only then that we shall succeed, it is only then we shall be able to make this Constitution a live Constitution. As reference has been made to it, I cannot help repeating that there are trained soldiers in truth and freedom amongst us. There are men who have sacrificed their all who can be our guides, our pilots, who can therefore steer us to the right haven of safety. I do not exclude from these those who in name belong to a different party as it were -- there is no party here. I include in this band of soldiers the Drafting Committee headed by Dr. Ambedkar. These honourable Members have worked unstintedly and have in every possible way served the Constituent Assembly in a manner which entitles them to our utmost gratitude and I cannot help expressing those sentiments at the present moment. Thanks are also due, Sir, to you, as have been expressed every time by every Member --- it may sound a repetition, nevertheless it is unavoidable. The manner in which you have given perfect freedom frankness and opportunity for every man who wishes to contribute to the debate, entitles you to our sincere gratitude.

There is one thing with which I shall conclude. It has often been referred to here as a blot on the Constitution, namely that all contact with God or religion has been as it were abandoned by it, as if it is a godless Constitution, as if by calling it a Secular Democratic Republic it has actually become secular or godless. I beg to submit that this is a misconception. We have not banished religion by which I mean the innermost faith of man in a Providence that shapes our ends and our personal relationship between us and our Maker. It has not banished religion in that sense. I has banished religions, that is to say the conflict between one religion and another. But if once it is believed, once it is truly appreciated that all religions are true, that not only is there an essence of truth in all religions but that all religions are divinely sent and dispensations of God, can there be any difficulty whatsoever, can there be any conflict whatsoever between one religion and another? And if that comes to pass, when the nation realises that, the word "secular" may in due course even be removed from the Constitution. For then it will be no longer necessary in the exigencies of the case in order to imply, in order to proclaim that there shall be no preference given to any religion, any faith, any belief, any form of worship, it has been found necessary to call it secular. But I truly believe that the Providence that shapes our ends is over us and will guide the destinies of the nation through this very Constitution which is called secular only in name. If there is the sense of mutual understanding, of compromise, if you please so to call it, of mutual accommodation, we shall go together. If there is difference in fundamentals, it were better that there should be conflict between the two parties-without that perhaps there can be no good coming out of it. And if there be conflict unavoidable on fundamentals, on essentials, on unavoidables, if there be conflict we need not worry for even between the fight of the gods and demons, as we call them Suras and Asuras, even out of that fight came up ambrosia and nectar and the poison that came out was sucked up by Nilakantha in order that he might make his creation poison-free. Do we not believe that today when we are on the point of ushering forth this Constitution the same Providence which is hovering over us is present here, and if there be any danger, if there be anything untoward, there is He to take up the poison, to make this poison-free.

Shri B.P. Jhunjhunwala (Bihar : General) : Mr. President, Sir, there have been various criticisms of this Constitution and one of the criticisms levelled against the Drafting Committee is that they have done nothing more than adopt the Government of India Act of 1935. If this criticism can be levelled against the Drafting Committee, I should say it is most uncharitable. On the other hand, I would say that before adopting any article the Drafting Committee has taken great pains to go through all the Constitutions of the world and looked into all the amendments with great care both from the point of view of theory as well as from the point of view of their practical application. If they have not accepted any theories it is not because these were not in the Government of India Act of 1935, through those theories were applicable and right, but because they could not be practically applied here under the present condition. I have heard people talk that nothing will come out from the administration under this Constitution because it is nothing but the Government of India Act of 1935, such a conception is due to their wrong approach, very wrong approach. Why should we give them up if there are good things in anything the British Government had done? They might have had different objects, but whatever they did, outwardly, there was nothing much to be said against it. We have simply to change our approach and object and then work the Constitution and we shall find that all that is provided in our Preamble will be attained, but if we proceed with some sort of prejudice then it will be difficult. Sir, the Drafting Committee has taken great pains in going through, as I have said, all the Constitutions of the world and have presented to us a Constitution under which we can carry on most conveniently as we are accustomed to.

The other point that is being discussed and criticised is that much more power has been given to the Centre than necessary and that all talk of provincial autonomy has been forgotten and power has been taken away from the provinces. This is also very wrong. Under the existing conditions and circumstances of the country and the world forces which are working at present it was very necessary that this much power should have been taken by the Centre. Sir, behind the framing of the Constitution we had our leaders who had effaced themselves and who never thought that in this life they will realise their dream of independence and see that the people of India gained what was necessary for their happiness and future prosperity. Sir, such people are now at the helm of affairs. If they have decided to give more power to the centre it is not because of their love for power. They have kept only one thing in view and that is the good of the country and the happiness of the people. Sir, it is not the form of Government that matters. The thing that matters is as to how the country is administered. When we have got such people at the helm of affairs who, as I said before, had effaced themselves, had never thought that in this life of theirs they will have any power or that they will see their country in this prosperous condition, we should have no apprehension that anything will be done by the Centre which will be against the interests of our country. History shows that even under the monarchical form of Government we had monarchs who respected the feelings and liberties of the people. Therefore, there is no reason why we should have any apprehension that anywhere in the provinces or in the Centre our liberties will be curtailed. If any restriction is imposed on our liberty at any item I have no doubt that will be for the good of the people that it will be so imposed and not for mere satisfaction of exercising power.

Sir, I do not believe in the theory propounded here that that everything should be centralised and that the whole country should be governed from the Centre. But I agree that powers should be given to the Centre so that in times of emergency they can be utilised for the benefit of the people. Sir, the Centre should have only such power as is necessary and cannot be exercised by its component governing parts, for the preservation of the unity and integration of the whole of India. Every other power should be, as much as possible, decentralised and given to the unit of a village or groups of villages what to say to Provinces. With that purpose in view, I had given notice of an amendment to the Preamble that 'after the word "Republic" the words "to be worked on the basis of autonomous village units or groups of villages organised on the principle of self-sufficiency as far as practicable" be added. The other thing I had said in the Preamble was that the noble idea of self-restraint, simplicity and selfless work inculcated by the Father of the Nation, Mahatma Gandhi, should be introduced by means of an amendment to the Preamble. The object of the amendment was that when we are going to have a democratic form of Government we should have as real democracy as possible by giving as much power to as small as unit as practicable so that the individuals composing the unit have easy and ready remedy which is possible under village republic. By other amendment I wanted to introduce in the Constitution, guiding principles and forms of gratifications for our people to cultivate and possess, in the absence of which gratifications the other objective given in the preamble of the Constitution cannot be achieved. But this was not accepted.

Sir, regarding the village republic, I want to draw the attention of the House to one matter. I do not know whether it is the opinion of the Honourable Dr. Ambedkar or of the Drafting Committee as a whole that Dr. Ambedkar voiced while introducing the Draft Constitution for second reading:

Another criticism against the draft Constitution is that not part of it represents the ancient polity of India. It is said that the new Constitution should have been drafted on the ancient Hindu model of a State and that, instead of incorporating western theories, the new Constitution should have been raised and built up on village panchayats and district panchayats. There are others who have taken a more extreme view. They do not want any Central or Provincial Governments. They just want India to contain so many village governments. The love of the intellectual Indian for the village community is of course infinite if not pathetic". Then Dr. Ambedkar has given a quotation.

"It is largely due to the fulsome praise bestowed upon it by Metcalfe who described them as little republics having nearly everything that they want within themselves, and almost independent of any foreign relations. The existence of these village communities each one forming a separate little State in itself has according to Metcalfe contributed more than any other cause to the preservation of the people of India through all the revolutions and changes which they have suffered, and is in a high degree conducive to their happiness and to the enjoyment of a great portion of the freedom and independence. No doubt the village communities have lasted where nothing else lasts. But those who take pride in the village communities do no care to consider what little part they have played in the affairs and destiny of the country; and why? Their part in the destiny of the country has been well described by Metcalfe himself who says:"

Then further on, Dr. Ambedkar says:

"Such is the part the village communities have played in the history of their country. Knowing this, what pride can one feel in them? They have survived through all vicissitudes may be a fact. But mere survival has no value. the question is on what plane they have survived. Surely on low, on a selfish level. I hold that these village republics have been the ruination of India. I am therefore surprised that those who condemn Provincialism and communalism should come forward as champions of the village. What is the village but a sink of localism, a den of ignorance, narrow-mindedness and communalism? I am glad that the Draft Constitution has discarded the village and adopted the individual as its unit."

Sir, I only say that nothing can be more uncharitable and unjust to the villagers than what Dr. Ambedkar has said. Sir, it is not only uncharitable but it is not based on facts. Dr. Ambedkar himself admits that they have survived and they have kept the independence of India. He says that mere survival is not enough, mere survival has no value. What is the position today? We have to go about begging even for our food-stuffs. We would have been nowhere even with this Independence, but for preservation of village economy at least in matters of food, and it is only by introduction of village units in matters of economy that we shall be able to keep up our independence in real sense of the term and survive. It is because of the preservation of the villages that we survived and lived happily. This has been admitted by Dr. Ambedkar. Today we can not produce what we want. Whatever wealth in the villages there was has been either taken away or whatever wealth in the form of land or in the form of cattle was there has deteriorated and vanished. The land which was there has become barren. Why? Whatever manure was there, the land, was being exported because of the foreign trade. All the bones and all the dead animals, whatever was there, used to be left in the fields and used to decompose very slowly and keep up the organic value of the land and the fertility of the soil. Regarding cattle, when Lord Linlithgow came, he started at campaign for bullocks breeding, i.e. for good breeding. This lasted for about a year or so, but what happened during the war was that all the best cattle of the country were slaughtered for the military, for the preservation of the British empire. When Dr. Ambekdar says that the villagers and the village republics did not take part in the preservation of the country, I would enquire of him as to whether he has read the history of the non-cooperation movement. If he has read, he will know that the villagers responded very well to the call of our able leaders who effaced themselves and who sent to the villages thinking that is the villages who will bring independence to the country The villagers played the most important part in the freedom struggle. It is most uncharitable to say that the villagers and the village republics have done nothing and that they have brought about the ruination of the country. It is not the village republics who have brought about the ruination of the country, but is the other way about. It is the centre under the British rule which brought about the ruination of the villages which comprise 90 per cent. of the population of the whole of India; and has reduced the whole of India to a beggar's condition for their requirements. At that time of course at the Centre were not there. There were other people. They had some other purpose to serve. Now the people of the country are at the helm of affairs and things should be different now. Sir, I would say that the if we have to improve the economy of the country, if we have to see that the people are happy, we have, not only from the pint of ideology but as a practical proposition, to organise the villages on the ancient basis. The village panchayats should be organised on the basis on which they used to work in the past. The economy of the country should be decentralised as soon as possible. The sooner we do it, the sooner we give attention to this, the better it will be for us. Sir, though it is not mentioned in the main part of the Constitution and the Constitution is not based on village republics as units of the Centre: in the directive principles. It is provided that village panchayats should be organsied with us much powers as possible, and I would request our leaders that this thing should be given effect to as soon as possible in a way as if it were incorporated in the Constitution itself. It is only then, Sir, that we shall be able to realise our real independence. With these words, I support the motion.

Shri Alladi Krishnaswami Ayyar : (Madras : General) : Sir, in supporting the motion of the Honourable Dr. Ambedkar for the adoption of the Constitution, I crave the indulgence of the House for a short while. This Constitution has been settled by the Constituent Assembly in the light of the recommendations of the various committees appointed by this House and the draft as originally submitted by the Drafting Committee and as revised later. In the course of my remarks, I should like to draw the attention of the House to what I consider to be salient features of the Constitution by some of the members. The Constitution as it has finally emerged, I submit, truly reflects the spirit of the Objectives Resolution with which this Assembly started its work and the Preamble of the Constitution which is mainly founded on the Objectives Resolution.

Firstly, in spite of the ignorance and illiteracy of the large mass of the Indian people, the Assembly has adopted the principle of adult franchise with an abundant faith in the common man and the ultimate success of democratic rule and in the full belief that the introduction of democratic government on the basis of adult suffrage will bring enlightenment and promote the well-being, the standard of life, the comfort and the decent living of the common man. The principle of adult suffrage was adopted in no lighthearted mood but with the full realisations of its implications. If democracy is to be broad based and the system of governments that is to function is to have the ultimate sanction of the people as a whole, in a country where the large mass of the people are illiterate and the people owning property are so few, the introduction of any property or educational qualifications for the exercise of the franchise would be a negation of the principles of democracy. If any such qualifications were introduced, that would have disfranchised a large number of the labouring classes and a large number of women-folk. It can not after all be assumed that a person with a poor elementary education and with a knowledge of the three Rs. is in a better position to exercise the franchise than a labourer, a cultivator or a tenant who may be expected to know what his interests are and to choose his representatives. Possibly a large-scale universal suffrage may also have the effect of rooting out corruption what may turn out incidental to democratic election. This Assembly deserves to be congratulated on adopting the principle of adult suffrage and it may be stated that never before in the history of the world has such an experiment been so boldly undertaken. The only alternative to adult suffrage was some kind of indirect election based upon village community or local bodies and by constituting them into electoral colleges, the electoral colleges being elected on the basis of adult suffrage. That was not found feasible.

Realising in full that the communal electorate and democracy can not co-exist and that communal electorate was a device adopted by the British Imperialists to prevent the free growth of democracy on a healthy and sound basis, this Assembly under the able leadership of our Prime Minister and Sardar Patel, has done away with communal electorates while making some special provisions to Scheduled Castes and Scheduled Tribes on the basis of joint electorates for a temporary period. As Sardarji has rightly pointed out in his memorable speech on the occasion, we have to demonstrate to the world, to the class of people who have flourished and who have been nurtured on communal claims, our genuine faith in the fundamental principles of democracy and in the establishment of a secular state without distinction of caste, creed or class.

Closely allied with the principles underlying the articles of the Constitution dispensing with communal electorates are the provisions in the Chapter on fundamental rights that every citizen shall have equality of opportunity in matters relating to employment or appointment to any office under the State, that no citizen shall on grounds of religion, race, castes, sex, descent, place of birth etc. be ineligible for or discriminated against in respect of any employment or office under the State. I am leaving them out of account the special provision in favour of backward classes of citizens. In this connection it may be interesting to note that there is no such declaration in similar terms even in the Constitution of the U.S.A. The Fourteenth Amendment in the United States Constitution which was intended to remove the disability of the Negroes, has not, as experience has shown, served the purpose in the United States and the Fifteenth amendment deals only with the right to vote. Therefore, we may well claim that our Constitution is much more, democratic, much more rooted in the principles of democracy than even the advanced Constitution of America. The abolition of untouchability is another notable step taken by this Assembly.

The liquidation of a large number of Indian States scattered like islands over the length and breadth of this land, their merger with the neighbouring provinces, has been effected under the able leadership of Sardar Patel. In the result the States have been considerably reduced in number and either as individual States or as comprising groups of States they have been brought into the orbit of the Indian Union. Their Constitutions have been brought into line with the Constitutions of States in Part I and they have become units of the Indian Union on the same terms as the States in Part I and they have become units of the Indian Union on the same terms as the States in Part I so that we are in a position to say that all the units of the Union occupy the same position in regard to it excepting for certain specific transitional provisions. The Constitution does not permit the States which have acceded to the Union to secede from it. Their association with the Union is inseparable and they have become an integral part of the Indian Union. There is no going back. The magnitude of this achievement can not be overestimated when we remember that the existence of a large number of such States has been put forward always as an excuse by the British Imperialists for the withholding of freedom from India. The Act of 1935 far from abolishing this distinction served to perpetuate the distinction.

After weighing the pros and cons of the Presidential System as obtaining in America and the Cabinet system of Government obtaining in England and the Dominions, taking into account also the working of responsible Government in the Indian Provinces for some years and the difficulty of providing for a purely presidential type of Government in the States in Part II, (now part IB) this Assembly has deliberately adopted the principle of responsible Government both in the States and in the Centre. At the same time the Assembly was quite alive to the fact that a good number of States in Part IB were unaccustomed to any democratic or responsible Government and with a view of ensure its success and efficient working the early states of the Union Government is entrusted with the power of intervention while there is a failure or deadlock in the working of democratic machinery.

My honourable Friend Prof. K.T. Shah in expatiating upon the merits of the Constitutional system based upon the principle of separation, did not fully realize the inevitable conflict and deadlock which such a system might result in a country circumstanced as India is. The breakdown provisions in the Constitution are not intended in any way to hamper the free working of democratic institutions or responsible Government in the different units, but only to ensure the smooth working of the Government when actual difficulties arise in the working of the Constitution. There is no analogy between the authority exercised by the Governor or the Governor-General under the authority of the British Parliament in the Constitution of 1935 and the power vested in the Central Government under the new Constitution. The Central Government in India in future will be responsible to the Indian Parliament in which are represented the people of the different units elected on adult franchise and are responsible to Parliament for any act of theirs. In one sense the breakdown provision is merely the assumption of responsibility by the Parliament at Delhi when there is an impasse or breakdown in the administration in the Units.

In regard to citizenship, the Constitution deliberately adopts the principle of single citizenship for the whole of India and departs from a dual citizenship, a common feature of may Federations. In this respect the Indian Constitution is in advance of some of the Federal Constitutions. It is hoped that that will lead to the consolidation of the Indian Union. The

Constitution does not purport to enact a detailed law as to citizenship, but leaves it for the future Parliament of India to frame such a law.

The Constitution has accorded the proper place to the Judiciary as it should in a written and especially in a Federal Constitution. In the language of the Federalist, in America the complete independence of the court of justice is particularly essential to the proper working of a Federal Constitution. The limitation on the different organs of the State can be preserved in no other way than through the medium of courts and according to President Wilson, the courts are the balance-wheel of the Constitution. The Supreme Court in India under the Indian Constitution, as this House is aware, has wider powers than the highest courts in any other known Federation including that of the U.S.A. where the Supreme Court is not a general court of appeal. The Supreme Court is a court of appeal in all civil cases from every High court including the High Courts in the States in part IV. It is the ultimate arbiter in all matters involving the interpretation of the Constitution. It has a very wide revisory jurisdiction over all tribunals even if they be not courts in the strict sense of the term. Unlike the United States Supreme Court, it has an advisory jurisdiction similar to that exercised by the Supreme Court of Canada under the Canadian Supreme Court. It has original jurisdiction to issue prerogative writs throughout the length and breadth of India. It is an interstatal court competent to decide questions *inter se* as between States. Even in regard to criminal matters, the Supreme Court is in a position to grant special leave and can also exercise criminal appellate jurisdiction in certain specific classes of cases. The criticism, if at all, can only be, not that the powers of the Supreme Court are not wide enough, but that they are too wide.

The provision relating to the High Courts are in the main modelled on the existing provisions except for the fact that certain inhibitions on the jurisdiction have been removed. They have henceforward jurisdiction to issue prerogative writs throughout the areas subject to their appellate jurisdiction. The anomaly of the High Courts not having any jurisdiction in matters relating to revenue has also been removed, and the powers of superintendence over subordinate courts and tribunals have been restored. Care has been taken to see that in the matter of selection to the highest court, the President has the benefit of the advice of those most competent to advise him on the subject. With a view to keep the High Court outside the range of provincial politics, the High Courts have in important respects been brought under the jurisdiction of the National Government. While there can be no two opinions on the need of the maintenance of judicial independence, both for safeguarding of individual liberty and the proper working of the Constitution, it is also necessary to keep in view one important principle. The doctrine of independence is not to be raised to the level of a dogma so as to enable the judiciary to function as a kind of super-legislature or super-executive. The judiciary is there to interpret the Constitution or adjudicate upon the rights between the parties concerned. As has been pointed out recently in a leading decision of the Supreme Court, the Judiciary as much as the Congress and the Executive, are depending for its efficient and proper functioning, upon the co-operation of the other two.

The criticism in regard to Fundamental Rights has been that the exceptions strike at the very foundation of the rights. This criticism is entirely without foundation. The exceptions and qualifications introduced into the articles reproduce in statutory form the well-recognised exceptions and limitations on the Fundamentals Rights dealt with in the article. Similar restrictions have been read by the Supreme Court in the United States Constitution which in general terms provides for these rights. Our Constitution instead of leaving it to the courts to read the necessary limitations and exceptions, seeks to express in a compendious form the limitations and exceptions. It is common knowledge that freedom of speech and of the Press has been interpreted by the Supreme Court of the United States as not to prevent legislation prohibiting intimidation by speech or writing or preventing the publication of indecent matter, or prevent the enactment of laws in the exercise of the police power of the State if the State can find a sufficient social interest for so doing. Similarly, religious liberty has been held not to protect the citizen against unsocial acts. The privilege of Assembly and public meeting does not stand in the way of the United States or the individual States exercising social control of assemblage of people in the interests of the common good. In the final form in which the article has emerged, this Assembly kept in view the need for drawing a line between personal liberty and the need for social control. While not departing from the principle that a person is not to be deprived of his property without compensation, the Constitution has invested the Parliament with the power to formulate the principles in regard to compensation with due regard to the nature, history and incidents of the property concerned. Being fully alive to the need for urgent agrarian reform affecting a large mass of tenantry, this Assembly, after due deliberation, has inserted certain special provisions to prevent the legality of the measures undertaken being questioned from court to court while at the same time providing the necessary safeguards for protecting the interests of the parties affected.

In the chapter on Fundamental Rights, there is one other matter which requires more then a passing notice. Clause (4) of article 22 has been animadverted upon as if it were a charter to the Executive to detain a person for three months. There is no such thing. The whole of article 22 is designed to secure against any abuse of the provisions of article 21 which says in general terms that "No person shall be deprived of his life or personal liberty except according to procedure established by law". If article 21 stood by itself, it may authorise an indefinite detention if only it conforms to the procedure established by law. Article 22 has been put in to prevent any such indefinite detention. The Constituent Assembly which was quite alive to the dangers confronting the new State could not rule out detention altogether.

The Directive principles of State policy, I should think, are also an important feature of the Constitution. Having regard to the wide nature of the subjects dealt with in these articles and the obvious difficulty in making the subjects dealt with by these articles justiciable, they have been classed as directive principles of state policy. The principles of Social policy have their basis in the preamble to the Constitution and the Objectives Resolution. Article 37 in express terms lays down that the principles laid down therein are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. No ministry responsible to the people can afford lightheartedly to ignore the provisions in Part 5 of the Constitution.

In regard to the distribution and allocation of legislative power, this Assembly has taken into account the political and economic conditions obtaining in the country at present and has not proceeded on any a *priori* theories as to the principles of distribution in the constitution of a Federal Government. In regard to distribution, the Center is invested with residuary power, specific subjects of national and all-India importance being expressly mentioned. A large list of subjects has been included in the Concurrent List to enable the Centre to intervene wherever there is necessity to intervene and override State legislation, though normally when the coast is clear, it would be open to the State legislatures to legislate. The existence of a large list of Concurrent subjects is calculated to promote harmony between the Centre and the units, and avoid the necessity of the courts having to resolve the conflict if there is to be only a two fold division of subjects. In order to meet unforeseen national emergencies and economic situations, special provisions have been inserted providing for Central intervention. In this connection, it has to be remembered that the whole concept of federalism in the modern world is undergoing a transformation. As a result of the impact of social and economic forces, rapid means of communication and the necessarily close relation between the different units in matters of trade and industry, federal ideas themselves are undergoing a transformation in the modern world. The Rowell Score Commission in Canada and the Royal Commission appointed to report on the working of the Australian Constitution suggested various remedies to get over the difficulties in the working of a federal Government. The problem is one to be faced by each country according to the peculiar conditions obtaining there, according to the particular exigencies of the particular country, not according to *a priori* or theoretical considerations.

In dealing with a matter like this, we cannot proceed on the footing that federalism must necessarily be of a defined or a standard type. Even in regard to the Constitution of Canada, two such authorities as Lord Haldane and Lord Watson were sharply divided, the former holding that the Constitution is not federal and the latter expressly laying down the opposite view. The crucial question to consider, shorn of all theories, is, "Are the National and the State Governments related to one another as Principal and Delegate?" So long as they can exercise full authority within the orbit of their established jurisdiction, there is no reason to deny the federal character of the Constitution.

I do not subscribe to the view that the Centre has been made too strong at the expense of the Union. In the legislative sphere there has been not much change in the list of subjects allotted to the units. The units have unrestricted executive power in the provincial field. Even in regard to the Concurrent subjects, the executive power continue to be vested in the units though there is a power of central intervention when the exigencies of the State demand it.

The emergency powers vested in the Union can not by their very nature be of normal or ordinary occurrence.

In regard to the taxing power, while the final allocation is open to further examination as the result of the report of the Statutory Commission to be appointed under the terms of the Constitution, the articles in the Constitution relating to the taxing power taken into account the general economic condition and financial position of the different units and the tendency prevailing in most modern Federations of the Central Government acting as the sole taxing agency in the interest of the country while provision is made for the division or the distribution of the proceeds to the different units, as also for the grant of subsidies.

The Constituent Assembly has spent considerable time and attention over the subject of inter-state trade relations. The Assembly while adhering to the principle that freedom of trade between the different units is indispensable to the proper functioning of the Union, has made the inter-State relations much more elastic and flexible in our Constitution than in some of the known Federal Constitutions, to suit the exigencies and economic conditions of a vast continent like India.

The Constituent Assembly being thoroughly alive to the importance of a State language for the whole of India with a view to consolidate and unify the nation and recognizing the importance of regional languages in so vast a country, has evolved a plan for Hindi becoming the State language of India as early as possible. At the same time the Constitution has not lost sight of the need of English for legal purposes for some time and for scientific and international purposes in the world as constituted today.

The criticism that the Constitution as it has emerged is far too detailed and elaborate does not merit serious consideration. If as in other Constitutions the constitution and powers of the High Court and of the Supreme Court have been left for normal ordinary parliamentary legislation, if the provisions, for electoral machinery are dropped out, if the guarantees provided in the matter of salaries to judges and civil services were omitted, if the existing administrative machinery which has been working is ignored, if no special provision is to be made for Scheduled Areas and Scheduled Tribes, there would be absolutely no difficulty in cutting down the provisions of the Constitution and reducing the number of articles. But for the smooth and efficient working of a democratic machinery, it was felt that unless these provisions were contained in the Constitution itself, an infant democracy might find itself in difficulties and the smooth and efficient working of the Constitution might be jeopardised. There has been insistence on the part of various interests and sufficient safeguards must be inserted in the Constitution itself and even some of the members of this Assembly who, as a matter of abstract principle, are willing to subscribe to the principle of a few main provisions alone being inserted in the Constitution, not a little contributed to the detailed provisions.

In the course of the discussion during the Third Reading, there has been some reference to the subject of India's position as a member of the Commonwealth. On this subject I have already stated my views when the matter came up for discussion before this Assembly. It is unnecessary to remind the House that there is no article in the Constitution referring to this matter. The membership of the Commonwealth depends on the willing co-operation and consent of the two countries, independent in every respect of each other.

Mr. President, I have omitted one point while I was on the subject of Fundamental Rights and I should like to refer to it. While religious freedom is guaranteed to every individual and every religious persuasion, the State does not identify or ally itself with any particular religion or religious belief. There is no such thing as State Religion in India.

Altogether it may be claimed that the Constitution gives sufficient scope for the achievement by the Indian Republic of all those great objects which are contained in the Preamble to the Constitution. The Constitution contains within itself the necessary elements of growth, flexibility and expansion. While it is not committed to any particular economic reorganisation of society, the people are free to adjust and mould the economic conditions for their betterment in any manner they choose. To a large extent any Constitution depends upon the people who work it. It is the human element that after all is the most important in the working of any institution. It is common knowledge that when the final Constitution of America was adopted there was very little enthusiasm for it and several communications had to be addressed in the 'Federalist' to commend the Constitution to the American people. And yet at the present day the Constitution is looked upon with the same spirit and reverence as the Ark of the Covenant in the Bible. Similar is the experience in Canada and in Australia. The experience of other countries has shown that Constitution which have been hailed with universal acclamation have proved utter failures. Our Constitution is much more flexible than many written and Federal Constitutions. An easy and flexible method of amendment has been provided for. But that does not mean that amendment must be undertaken lightheartedly. The people will then have no other work to do but mending and amending, the Constitution.

Before I conclude, I would be failing in my duty if I do not express my high appreciation of the skill and ability with which my friend the Honourable Dr. Ambedkar has piloted this Constitution and his untiring work as the Chairman of the Drafting Committee. Latterly I know he was ably assisted by my friend Mr. T.T. Krishnamachari. I would also be failing in my duty if I do not give my tributes to the services of Sir B.N. Rau and to the untiring energy, patience, ability and industry of the Joint Secretary, Mr. Mukherjee and his lieutenants.

In the end, you will pardon me, Sir, if I make some reference to your work in this Assembly as it may savour of flattery. You have given your whole life to the service of this country and this is the crowning act. There is none who is held in greater esteem and in love than yourself and you have showed yourself to be the worthy President of the Assembly. I am particularly grateful to you because on account of my state of health you have been pleased to permit me to address from my seat and I am also thankful to the Members of this House for the indulgence they have extended to me in that respect. It is some consolation to me that I might have been of some little use in the work of the various committees and in the work of this Assembly. (Cheers).

Mr. Hyder Husein (United Provinces : Muslim): Mr. President, Sir, I rise to lend my shoulder to the great wheel of progress which is depicted on the National Flag empanelled all round this Hall and which is reflected in this monumental work which is to adorn the Statute Book of free India in a few days' time. It is a landmark in the Indian renaissance, and a symbol of progress in political thought. The French slogan of liberty, equality and fraternity, brought about a revolution in human minds and carried the torch of freedom far and wide. That great nation laid the foundation of modern democracy in their own country and supported it in other freedom- loving countries. Their magnificent gift of the statue of liberty, presented to the American nation bears testimony to their love of freedom. The Americans, with their characteristic thoroughness, have treasures it and installed it on one of the islands on the south of New York, and it has become the object of great attraction to the visitor. The world can not remain static, and with the development of the human mind, there is the evolution of political ideals as well. We have gone beyond the French conception of democracy and added justice to their trio, and given it the first place in the Preamble to our Constitution. The preamble is the key to the meaning and the scope of a statute and we find the spirit of the preamble pervading all the provisions that claim our Constitution to be an improvement on the existing constitutions of the world, consistently with our indigenous requirements. The mass of literature collected and circulated amongst the Members bears testimony to the wide field of investigation into the Constitutions of the countries spread all over the globe. The proceedings of this House constitute an eloquent record of the full use of those materials by the Drafting Committee and the honourable Members of the House. My esteemed and learned Friend Shri. Alladi Krishnaswami Ayyar has just before me given further proof of it in his masterly resume of the entire Constitution, and it will be presumptuous on my part to repeat the process again before this House.

It is true that a good deal of criticism has been levelled against the Constitution and I consider it only right that it should have been so. These criticisms and long discussions have resulted in a great improvement on the original draft. Such differences as still exist in the minds of some of us have to be consigned to the cold storage, at least for the time being. We much realise that the time for criticism is over, and the time for implementation has arrived. It is our duty to make a united effort to give effect to it, both in letter and in spirit. It is then and then only, that our country can march forward with long strides.

Our Constitution is fairly flexible and I am certain that it could be worked with any known ideology before the Government. Constitutions are not made for any particular party or any fixed programme. A written Constitution is a reflection of the aspirations of a nation, and a message to the world as to what we are about. Our Constitution has given us the base, and we have to build an edifice which would be worthy of our ancient heritage. Let us all join in this great task. The country demands the services of every man, woman and child who calls himself an Indian. It is then and then only that the dream of some of us can be realised, the dream of the great Architect of New India who is, alas, no more with us, but whose portrait sheds light on our proceedings.

We have reached this stage after tremendous sacrifices. We should not while away in Scholastic discussions and parliamentary debates. Our struggle has been long and tedious. The honourable Member from Bengal, Mr. Maitra mentioned that period to be two generations. He is right in a way. But I would like to take it further backward to the middle of the last century. At that time it took the form of a revolt after a century of exploitation by the foreign bureaucrats. It was a part of the great nationalist movement of the nineteenth century. It failed and was followed by such repression that it took a generation for the Indian genius to re-assert itself. This time it took a more systematic and organised shape under the name of the Indian National Congress. This was the beginning of the era to which Mr. Maitra referred. The struggle was fraught with difficulties and the path was full of pitfalls and the task hazardous. But our great leaders followed it resolutely and courageously. The pace was considerably accelerated by the new turn that the Father of our Nation gave to the Indian Politics. Blessed be his name. Within the short space of a generation we reached the stage of acquiring freedom even before it was granted by the foreigner. This Constituent Assembly was formed in 1946 to frame a Constitution for the undivided India. Enormous changes took place during this period. With a view to the early recognition of our freedom, our leaders went the length of agreeing even to a partition of the country. But no one at that time realised that this would be a signal for man to turn a wolf to brother man, as the great English philosopher Hobbes said two hundred years ago--*Homo Hominis Lupus*. This is not the place to describe those horrible atrocities, but the misfortune is that some of its baneful effects still persist and affect even our daily life. The country has succeeded in solving much more complicated problems and I am sure it will rise to the occasion and get over this hurdle which stand in the way of national advancement.

This is not the stage, nor the time for criticising the various provisions of this Constitution. There has been a good deal of it, both inside and outside this hall. My answer is that this is the best that the available talent in the country could produce, and if we expect anything more, we have to produce men of greater intellect and scholarship in the land, if that is possible in the near future. I am however, bound to say that the product is one of which any nation can be proud. Let us then, pledge ourselves to give it our unstinted support, without any mental reservations whatsoever. We have attained political freedom, and the need of the day is the economic uplift of the country, as for this alone freedom was worth fighting for. This requires greater labour, greater work and greater sacrifice than even the fight for freedom. It is not so difficult to destroy a thing as it to construct it. With the termination of foreign domination in the land, we have full opportunity for constructive work. Let us then strive to build our India which will be worthy of its past and a pride for the future.

In these days of internationalism we cannot isolate our country from the rest of the world. We have to march forward in keeping with every other nation on the globe and then only our country can occupy its rightful and honoured place in the comity of nations.

Unfortunately my own contribution to the framing of the Constitution has been practically nil. I came in at a stage when nothing substantial could be done. It is my luck to be associated with the Indian Constitutional advancement only at the stage of the Third Reading. I happened to be in England on my way back from the United States of America when the Indian Independence Act was before the House of Commons and there also I could attend only the last stages of the Bill. The Bill was passed in my presence and I got the thrill a few hours before my countrymen got it here. I have been treasuring it as a memorable day of my life. Likewise it so happens that I am associated with the framing of the Constitution also in its final stages. I am here on the bidding of one who is held in universal love and affection in my province, and one who forms the most stable government in the largest province of the country. I am grateful to him for making the suggestion and I consider it a great privilege and honour, indeed, to be a Member of this August Body even at this late stage.

The time-limit and the occasion do not permit me to say more. So I have the honour to support the resolution placed by our Law Minister.

Shri B.M. Gupte (Bombay : General) : Mr. President, Sir, this Constitution, made up as it is of a series of compromise decisions, contains certain features of which we may well be proud and others also which many of us would have liked very much to avoid. Because of this attempt at unanimity, the Constitution has perhaps lost something in consistency and coherence, but it has gained in strength and stability. I am sure this Constitution would have been more progressive but the extraordinary times in which it was framed. The world is out of joint and India cannot escape sharing that fate. The unrest, the unsettlement, the turmoil around us, both in this country and abroad- have materially influenced the framing of the Constitution. Nevertheless, it is a fully democratic Constitution and establishes social equality.

Many critics basing their objection on the emergency provisions, have denounced this Constitution as dictatorial and Fascist. But these detractors forget that even under an emergency, the House of the People, elected on the widest possible franchise, remains in control of the situation. I do not see how this can be compatible with dictatorship or with Fascism. I know that Provincial Assemblies can be suspended but the franchise of the Provincial Assemblies is just the same as that of the House of the People, and therefore, the Provincial Assemblies cannot claim a more representative character. Of course, our Parliament is not as sovereign as the House of Commons in England. It cannot be because in a Federal State it is the Constitution that is Sovereign and not any one organ of the State.

The Fundamental Rights and the small field of provincial subjects impose certain limitations on the sovereignty of the House of the People, but those limitations are not of the dictatorial or Fascist character. Naturally, therefore, the proposition that even in an emergency the Constitution remains fully democratic is, I think, amply justified.

Then the social equality. No discrimination between man and man on any ground is either permitted, or tolerated and untouchability is declared an offence. It is a matter for great sorrow that the Father of the Nation is not alive to witness the inauguration of the new Constitution, but it is some consolation that he lived to see the triumphant constitutional fulfillment of a mission that was dearest to his heart, namely, the removal of untouchability. Another highlight of the Constitution is the abolition of communal representation, a canker that was eating into the very vitals of our body politic.

We have taken nearly three years to complete our task. Some people wrongly believe that this was an unduly long period. But I invite their attention to this consideration that a hastily improvised Constitution in a rapidly changing situation would have ultimately caused greater trouble and cost. Suppose we had finished the work within one or two years: then communal representation would have remained and at least the first elections would have been held on that principle. I, therefore, think that the delay, if at all it is a delay, is well justified because we have thereby avoided this undesirable thing.

Then coming to the economic side, I must confess that it is not as progressive as it is on the political or on the social side. The Constitution is certainly not socialistic but there are unmistakable leanings towards socialism; and what is more important there is no bar no impediment to the establishment of socialism if the electorate really wants it.

Some of our critics have said that this Assembly is not representative, because it is not directly elected on the adult franchise, and therefore, the Constitution is not as socialist as it otherwise would have been. I contest this proposition. Theoretically it may be correct but I am sure that if at the time when this Assembly was constituted the elections were held on the adult franchise, the Congress would have swept the polls and therefore, there would have been hardly any difference in the character of this Assembly. I, therefore, submit that this Assembly is adequately representative and this Constitution substantially reflects the public opinion of the time when it was framed.

Coming to certain defects--of course I can mention only certain defects--I can point out that I do not like the provisions about relations between the Units and the Centre. Speaking on an earlier occasion, I had described that our State was not a Federal State but a decentralized Unitary State. Subsequent provisions, namely article 365 and article 371 have vindicated any description. As far as States in Part B, C and D are concerned, avowedly and admittedly the powers of superintendence and control are vested in the Centre and therefore to that extent the State becomes unitary. The only question of doubt or dispute is with regard to States in Part A. At the time that I spoke on this point, I mentioned a number of marks of subordination to the Centre. I need not repeat them. The domination of the Centre is there. But my grievance is that it is secured by indirect means. I would not have minded it if it was done avowedly, openly and in a straightforward manner. The units are kept completely dependent in financial matters on the good graces of the Centre and it is this kind of semblance of independence with complete dependence upon the Centre for finances that is in my opinion the most objectionable feature.

Then I had also voiced my grievance that the same 'State' was quite anomalous. The inequality in the powers and functions of the units is one of the unique features of this Constitution. This anomaly about the name is another such feature. The first one was of course due to historical causes and we could not have avoided it. The first one was of course due to historical causes and we could not have avoided it; there were already different kinds of units like Provinces, States, Chief Commissoners' provinces and so on. But this uniform name of 'State' we could have avoided. As I had shown on that occasion it is anomalous, because there is no residuary power in any of the units. The States in Part B, C and D are definitely subordinate to the Centre and yet we have given to all the units the glorified name of 'State'. This may result in giving them a very inflated idea of their prestige. Because of this glorified name, they may think they have some independence, but their hopes are bound to be dashed to the ground. This name has laid us open to the charge that our label is not according to the contents or that the contents are not according to the label. In my opinion, this anomalous name should have been dropped.

This brings me to the defects of drafting. I certainly think that drafting could have been improved, although as far as verbal improvements are concerned I do not wish to blame the Drafting Committee. We were always running a race against time, setting before us one deadline date after another. The hustled Drafting Committee had no item to look to this aspect. I also do not share the opinion expressed on so many occasions by so many critics that this Constitution is a paradise for lawyers. This is not a novel feature of our Constitution. It is a feature of all modern Constitution and for that matter of every piece of legislation. The world has become so complex that a perfect draft is impossible, and the ingenuity of the lawyer will always outpace the assiduity of the draftsman. Moreover in this Constitution owing to detailed provisions comparatively much less is left for interpretation or convention and nobody can therefore say that the lawyer members of the Drafting Committee, because of partiality to their profession, had created paradise for lawyers in this Constitution.

My objection to the drafting is, however, more fundamental. In my opinion there is a very important defect about the convention of responsible government. We have in this matter copied the Irish Constitution though similar provision is not found in the Canadian or Australian Constitutions. In the Constitution of Ireland there is provision that the Ministry shall be responsible to the legislature; we have taken this but at the same time, we have not copied what is provided in it, namely, that the President is bound to accept the advice of the Ministry. We have left that out. I really do not know why. It has given rise to great misunderstanding and many people think that the President is likely to be a dictator. According to convention, he would certainly be a Constitutional head only. This was provided for in the Instrument of Instructions. But later on we dropped that instrument also and it has clouded the position in respect to this matter.

Then again, with regard to the President we do not mention any discretionary powers, but with regard to the Governor the discretionary power is mentioned. I do not see why there should be this difference. Of course, there are conventions and the strength of democracy lies in the character of the people and their representatives. If our representatives are strong enough, they will see to it that inspite of the doubtful nature of the provision, the convention shall be observed. But what I say is that I do not like that this important matter should have been lacking in clarity.

After all, a Constitution cannot be judged merely from its text or on paper. The Canadian and Australian Constitutions contain a number of provisions giving powers to the Governor-General, but in practice those powers have never been exercised. The Weimar Constitution was said to be a model democratic Constitution, of the time but it was soon wrecked by Hitler and out of its ashes arose a terrible dictatorship which plunged the world into a devastating war. So it is not the Constitution that matters nor the people who make it, but it is the men who work the Constitution and the spirit in which they work it. Any Constitution may be good on paper, but its success depends upon the manner in which it is worked.

In this connection many people have apprehensions about the adult franchise. Their apprehensions are partly justified, but we must have faith in our principles and faith in the common man. Like other infants, our infant democracy will of course have teething troubles and its adolescence may be marked by mischievous pranks; but in spite of the initial trouble and occasional lapses, I hope generally and ultimately the commonsense of the common man will triumph. It was for us only to fashion the instrument. It is for others to work it. As far as I can see, we can certainly make the claim that we have fashioned it to the best of our abilities and according to the best of our lights. It is an instrument fairly workable and fairly flexible. It ensures security and stability. If we study the provisions of this Constitution, we find that the one dominating concern of the Drafting Committee was the security of the new State. Therefore, this Constitution ensures security and stability without impeding progress. It promotes collective good without stifling the development of individual personality. But in my opinion, the real test of the Constitution would be whether it is able to bring about any speedy improvement in the miserable lot under which the common man has been suffering for generations past. If this Constitution brings him some solace I shall certainly feel very proud of my association in the framing of it.

Shri Balwant Sinha Mehta (United State of Rajasthan) : *[Mr. President, I consider it a great privilege that I have got this opportunity to speak in this Assembly. It is the first time I am going to speak here but it is at a time when the free Constitution of free India is going to have an existence of its own after having been adopted by this assembly. It is a matter of great pleasure for me to be able to stay a few words of my own at such an suspicious moments as the present one.

Several friends have already given us their analysis of this Constitution. While some have praised it others have adversely criticised it. But so far as I understand it appears to me that their sense of modesty has made the critics adopt this course. Our people are modest by nature. Besides it has been almost a bit with us that we usually underrate ourselves while foreigners by praising us enable us to realise our achievements at their proper worth. I could give several instances to prove my point but I do not think it is really necessary to do so.

The fact is that the Constitution drawn up by us is not only quite detailed but also quite good. I am quite sure that the foreigners would be wornderstruck when they would see how good a Constitution we have been able to give to ourselves. All the Members of this august Body and the members of the Drafting Committee and more particularly Dr. Ambedkar, T.T. Krishnamachari, Shri Alladi Krishnaswami and others have laboured hard for giving a proper shape to this Constitution. I believe these gentlemen deserve all the praise we can bestow upon them. We must also offer our homage to Pandit Jawaharlal Nehru, Sardar Patel and the other Congress Leaders and martyrs. It is due to them that we are today in a position to frame a Constitution for free India. They have also guided us directly or indirectly in framing our Constitution. We owe deep gratitude to you, Sir, for having guided the proceedings of the House with great impartiality and having enabled all shades of opinion to find full expression in this House. The representatives of the nation in this august Body who have devoted their energy and time for giving the fullest consideration, to the Draft Constitution. Those who have criticised this Constitution have used rather hard and bitter words. It is the opinion of some of them that while too many powers have been vested in the President and the Centre, quite a good number of limitations have imposed on the freedom and fundamental rights of the citizens. That is no doubt true and I do not think anyone can deny the truth contained in that statement. But, it is my submission that we were obliged to do so by the existing circumstances, by the conditions prevailing in the country today. Besides it appears to me that in view of the circumstances in which we drafted this Constitution it was but proper that such restrictions should have been imposed. As a free people we are still in an infancy. The national sentiment was also not taken as yet in this country. Both these considerations compel us to accept these restrictions and limitations. You are well aware, Sir, that only some time back there existed too many petty states, too many Rajas and Maharajas and many a regional loyalties in our country. All these events had made their abode in our country and it was necessary to strengthen the Central Government in order to eradicate them. it is my firm opinion. Sir, that this Constitution is fully democratic in character. It provides for liberty and at the same time it secures equality as well.

Moreover, Sir, the provision for adult franchise which we have included in this Constitution is so important and significant that even if there had not been any other provision in it, it would have yet retained fully a democratic character. That fact is, Sir, that even at considerable risk to ourselves we have included this provision for adult suffrage, and thereby maintained the democratic character of our State.

There are some others who allege that we have not maintained any link with our ancient and historic institutions. But I would urge such critics to remember that today we have only a very dim and incomplete picture of our ancient polity That fact is that we cannot discern it even in its outlines. But even then we have included quite a number of the element of our historic institutions whereby our culture would be adequately protected.

But I concede that there is one thingwhich appears to be a serious defect in it. If this Constitution had embodied the ideal of Gandhiji in this respect as well, if it had embodied Gandhism, in the full sense of the term, it would have been an ideal one-one which would have been an example and a message to the peoples and nations of the world. The world today, Sir, is in a state of turmoil and discord. It is to our Bharat that the nations of the world are looking for securing salvation from this sad state. I, therefore, submit, Sir, that it would have been far better for all concerned if our Constitution had emboided Gandhism and more particularly his economic plan and social ideals. But while I regret this omission I realise that a Constitution also changes as the nation goes on marching forward. We can today feel a legitimate pride in three features of this Constitution, that is to say the guarantee it gives of Fundamental Rights the provision for Adult Suffrage and the elimination of communalism and sectionalism. We can raise our head high for the ideals of which this Constitution is a concrete manifestation. The Constitution of a country is never static and it shall always be open to amendments. The Father of our Nation had secured for us our political independence and I think that that also he did in a unique way. Yet despite the attainment of political indepedence we have yet to attain economic democracy. Whenever the representatives of the nation feel the necessity of the same. But as it is an instrument which we can use effectively for ensuring the continued progress of our country.

This Constitution, above, all, has come as a message of joy and cheer to the people of the Indian states. The great change that has come over the face of the country today is the total disappearance of the 562 petty states and feudal estates which had been so far tyranising other large tracts of our country. These have now yielded place toadministrations which would have the same political pattern as our Provinces have. It is our achievement which even the greatest constitutional experts cannot but praise. You are obliged for all this to Sardar Patel. In this connection I would draw attention to the fact that we have yet the system of Jagirdari. This system is responsible for the many calamities, pillage and murders which are causing considerable anxiety and terror to the people. I hope, however, that by the time this Constitution comes into force these disorders would have been not only brought under control but also completely eliminated.

Another great achievement in my opinion has been, Sir, our decision with regard to our State Language. This is the only thing that can and will keep our country united. It is a very great achievement, but we have now to convert our official language into our national language. The responsibility for this falls specially on the shoulders of those people whose language is Hindi and the other people can co-operate to make this language so simple and easy that it may become prevalent in the whole of the country as a national language.

It is a matter of regret that our language, Rajasthani has not found a place in the schedule of regional languages. This is a language spoken by 15 million of people and possesses a rich literature and finds a very high place in the ancient and chivalrous literature of Hidni. It is a matter of great regret that such a language has not been included in that Schedule. I think our leaders would be able to secure a place for it in the schedule of regional languages through the Parliament at some future date.

One thing that has pained and offended our people in the States and particularly the

Rajasthanis is the division of Sirohi by our States Ministry. Sirohi has an important place in Rajasthan. In rajasthani language the word 'Sirohi means a sword and it is Rajasthan's sword indeed. Our respected leader Sardar Patel has realised Maharana Pratap's dream of United Rajasthan, but if that sword is broken, I think every Rajasthan would be pained. Sirohi has ll along been connected with Rajasthan. It is connected with Rajasthan linguistically, geographically, as well as historically. At least a thousand years history would testify to the fact that Sirohi is an integral part of Rajasthan. Maharana Kumbha of Abu had constructed the fort of Achalgarh to defend Rajasthan from attacks of Gujarat, and the remains of that fort are still there. Even today the rich capitalists of Rajasthan have made investments running into hundreds of thousands in that state which is our part and parcel historically, traditionally, geographically and in every way. Its division is very painful for the people in Rajasthan. I think all the people of our Indian States would be pained at this. This is a division which was neither demanded by the people nor the Raja of that State. Neither the local Congress Committee had made a demand for it, nor the public there had made any such demand. Ever since its incorporation in Bombay, the residents there have been demanding its merger with Rajasthan and identifying themselves with the people of Rajasthan. But the sudden and secret way in which this division has been effected has surprised everybody. When the announcement was made here in the Assembly, I learn, Pandit Nehru our leader was fortunately present here and he as also other members were listening with surprise to that statement about the decision to divide Sirohi from immediate effect. We do not know why the partition has been effected, but so far as we can guess, it has been made in view the tower of Abu. Abu has been an important part of Sirohi as well as Rajasthan. It has always been a part of Rajasthan and was like a capital under British rule. Its connection with Rajasthan dates back to thousand years. The people there speak Hindiand Rajasthani. there are only a few people speaking Gujarati. They are hardly 3 or 4 per cent. There was no demand for partition from the public nor had the Raja expressed the lease desire for it. So many convenants have been entered into so far, but is the first case of partitioning a region without consulting either the Raja or the people. So I think this is a thing which would cause a deeppain to the people of Rajasthan. I hope this error would soon be rectified.

Another great achievement of our Constitution is that the great blot of untouchability has been removed for good in our Constitution. This is specially a matter of great pride and pleasure. The credit for this goes to our leaders particularly Thakar Bapa. The whole of his life has been dedicated to the service of aboriginals and Harijans. We have been able to remove this blot as a result of Thakar Bapa's service and Mahatma Gandhi's efforts and renunciation. You must be aware that there are crores of aboriginals in India who live in wild forests. It is our respected Thakar Bapa who has made them politically conscious. He goes to them and inspires them even at this age. I pay my homage to him on this occasion for causing this national awakening. There are aboriginals and Harijans in Rajasthan in great number, and I request that we should have a minister for the welfare in Rajasthan just as Madhya Bharat has a minister for them. Our Premier of Rajasthan is present here, and I appeal to him to make such a provision. These people number 30 lakhs and their condition is very pitiable and nothin ghas been done for them so far. If these people have to be elevated to our level, we and all of you should fully co-operate in the matter.

We have made this Constitution as good as we could. It is now our duty to go to our constituencies and explain this Constitution to the people of our countryside, which is our real sphere of work. Sometimes misgivings get currency in the masses due to lack of education and propaganda. For the general masses, independence and Constitution can have the least significance only if they can provide him with food, reiment, shelter and education. But though there is nothing like this clearly embodied in the Constitution, yet we can by our action work the Constitution in such a way as to provide these things for them, and all their difficulties be soon removed. But this will happen, only when we fellow the ideals of Mahatma Gandhi which have been embodied in this. For this we will have to reduce our expenditure too. We will have to level down the standard of living of the people at the top and to raise that of the people at the bottom. Our administration is becoming more and more costly. I think it is the effect of the British rule. Our constitutional machinery would also be quite expensive jsut because the present set up is so costly. If any attention had been paid to this reform, it would have been better. Now too this is for the administration to give it such a shape as to benefit the poor most.

With these words, I support Dr. Ambedkar's motion to pass this Constitution, and pay my homage to Mahatma Gandhi, owing to whose sacrifice and efforts we have seen this day, when we have completed our Constituion after attaining our independence.

The Assembly then adjourned for Lunch till Three of the Clock.

The Assembly re-assembled after Lunch at Three of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Shri Nandkishore Das (Orissa: General): Mr. President, Sir, having had absolutely no opportunity of participating in the discussion of this Constitution in its clause to clause consideration stage, I avail myself of this last opportunity to make a few general observations on the Constitution as it has emerged in final shape out of our deliberations over the last nearly three years.

I recall to my mind the state of things that prevailed in the country in December 1946 when we met for the first time in the Constituent Assembly. The political firmament in India was at that time full of dark clouds and ominous forebodings and there was considerable doubt and anxiety in our minds as to whether the heterogenous elements and divergent groups that constituted the then Constituent Assembly would be able to evoelve an agreed and satisfactory Constitution acceptable to the country as a whole.

The events that followed in quick succession the initial stages of the Constituent Assembly sittings culminating in the transfer of power and the partition of the country removed the uncertainties to a great extent. The disappearance of the recalcitrant elements from the House paved the way for the Constituent Assembly to set about its business under happier auspices and in a a more congenial atmosphere. But even then the framing of a Constitution for a country having so many diverse elements and a multiplicity of interests was a task of such stupendous magnitude that there was doubts naturally felt by even the most optimistically minded among us as to the ultimate success of our endeavours.

It is therefore a matter of supreme satisfaction that thanks to the accommodating spirit displayed by our leaders and constitution-makers, the labours of this Constituent Assembly have at last been crowned with success and we have now before us a Constitution which can rank as one among the best Constitutions of the world both in respect of its size and the inherent worth of its contents. While presenting the Draft Constitution to the House more than a year ago, Dr. Ambedkar had stated that this Constitution with 313 articles was the bulkiest constitution in the world and with the number of articles now increased to 395 the Constitution has become bulkier still. Our hearty congratulations go to our leaders and constitution-makers who in the midst of their other preoccupations have collaborated in this obviously up-hill task. What can be said as the flesh and blood of this constitutional organism has of course been contributed by our present day leaders and by a long line of distinguished revolutionaries that preceded them but its bones and muscles in other words the actual framework of the Constitution is the fruit of the labours of the Drafting Committee headed by Dr. Ambedkar, who alone of all persons has carried on his shoulders this tremendous burden with conspicuous ability.

There are good many admirable features of thisConstitution to which attention has already been drawn by so many honourable Members and I do not think it necessary to refer to all of them. The enfranchisement of the entire adult population of the country is the biggest democratic step adopted int he Constitution. It may interest honourable Members of the House to be told that the number of people which this Constitution has enfranchised is almost equal to, if not more than, the entire population of Soviet Russia. This adul-franchise undoubtedly represents the fulfilment of our long cherished and often declared intentions but its success in the context of present day unsettled state of things in the countryside is a matter which causes some doubt and anxiety. Fundamental rights constitute another glorious chapter in the Constitution. That these rights have been hedged in by many healthy restrictions does not at all undermine their efficacy; on the other hand they make the rights all the more precious. Care has been taken to see that the rights guaranteed to the citizens do not degenerate into license to do anything one likes in the name of liberty of action miscalled 'civil liberty'. Some friends have complained of the inadequacy of our fundamental rights. My honourable Friend Shri Lakshminarayan Sahu has even gone to the length of saying that civil rights enjoyed by people in the British regime have been curtailed by the present Constitution. I present to my friend Shri Sahuji and to others of his way of thinking a P.T.I. news item published in today's Hindustan Times under the caption "Students belaboured Railway official."

"Armed with daggers, iron rods and hockey stiks. 40 students of a local English High School dragged out a travelling ticket examiner from aguard van at Ghusia Kalau railway station near here and belaboured him. The ticket examiner had charged some students for travelling without tickets in class I.

He was admitted to the Sada hospital to be treated for his serious injuries."

If the conception of civil liberty of my honourable Friend Mr. Sahu included unsocial and anti-national activities like these, I am really sorry for it.

Rights must be co-related to some duties. It would have been better if along with enumeration of fundamental rights. The Cosntitution had contained specific references to duties to be performed by the citizens in order to be eligible for their rights.

The abolition of untouchability, enforcement of disability in any shape or form arising out of untouchability to be treated as a punishable offence in law, the substitution of joint electorate in place of communal electorate are among the other happy features of the Constitution. Articles 36 to 51, contained in part IV of the Constitution, otherwise known as Directive Principles of State Policy represent the quintessence of all that is the best and the noblest in any code of social, political, cultural or economic ethics that prevail in any part of the world. I wonder how in the face of all these distinctive provisions, the Constitution has been cried down in certain quarters as reactionary and retrograde. May I humbly ask these unkind and ungenerous critics to put their heads together and produce an alternative Constitution which must be a workable Constitution suited to the requirements of the country and not one meant for an Utopian society?

It has got to be admitted however that the Constitution in spite of being one of the best paper Constitutions in the world has failed to evoke sufficient enthusiasm in that country and a suspicion lurks in the minds of even the most ardent admirers of the Constitution that something is wrong somewhere and things are not proceedings in the way they should. Some friends have complained that the Constituion is not Gandhian in conception and they have felt bitterly disappointed onthat score. d Speaking about myself personally, I do not at all feel disappointed that this Constitution is not moulded odn Gandhian ideal, inasmuch as I least expected a Gandhian Constitution from our constitution-makers. We all swear by the the Father of the Nation, but how many of us have been able to assimilate his teachings in our personal activities of the day to day life? How many of us have that undying faith in the refashioning of our society on the old village self-sufficiency model? A Gandhian Constitution is not to be produced by a mere mechanical process but must grow out of deepest convictions and a determination to shape our society strictly and meticulously in conformity with his ideals. This determination is to be found almost nowhere in the country. Hence evolving of a Gandhian Constitution out of non-Gandhian brains and minds is quite out of the question. Gandhiji throughout his life laid repeated emphasis on decentralisation of powers but our Constitution has proceeded on the reverse line, namely, over-centralisation. Our leaders think and think rightly that without a strong Centre this infant democracy would be in danger of being destroyed by disintegrating forces from all sides. The events happening in the country ever since the coming of independence provide sufficient justification for the type of Constitution that we now have. Therefore, lack of enthusiasm for the Constitution if properly diagnosed will have found to be due not to any inherent defect of the Constituion but rather to the deplorable and gradually drifting situation which has overtaken this unhappy land during the two and odd years of post-Independence period. Under the circumstances no useful purpose will be served by decrying the Constitution for this or that real or fancied defect and the best and the most patriotic course for all sections of people is to unite in order to give the new republican Constitution a fair trial and thereby paying undivided allegiance to the leaders of the nation in their efforts to consolidate the newly earned freedom.

Sir, before I conclude, I think it my duty to give you my humble tribute of respect and admiration for the fair and impartial manner in which you have conducted the proceedings of this House and thereby contributing in no small measure to the succcess of this undertaking.

Sardar Sochet Singh (Patiala & Punjab States Union): Mr. President, Sir, I rise to complement this House on the fruition of its three years' labour and the emergence of the country's constitution in its present final shape. The country should be rightly grateful to its great leaders, eminent jurists, legal luminaries, linguists, grammarians, and men of letters who have all toiled incessantly and worked vigilantly in presenting to their mother land what they in their wisdom and honesty have thought and felt to be gest in the interests of the millions of men, women and children who inhabit this great sub-continent and in whom sovereignty and ultimate mastery over the affairs of the country henceforward vests.

Sir, much has been said about the pattern to which the constitutional structure should conform and the direction to which it leans or does not lean. We did not start with any prejudice in favour of or against any particular pattern. We were ndot wedded to a federal, unitary or any other type of structure. We had the advantage of having the text and experience of so many constitutions of other advanced countries before us. We have tried to pick and choose the best that was more suited to our own conditions and special requirements, our traditions and experience of governmental institutions during the last half a entury. Coupled with the historical generalities of the situation we have had the additidonal benefit of practical experience of the governance of the country during the past twenty-seven months and the due and realistic appraisal of our domestic problems and social trneds in the context of international and world problems and trends, and it is in this setting and background that the merits of our Constitution should be judge and appreciated.

Sir, I am one of those who feel and believe that the interests, consolidation and permanence of our newly won freedom demand a strong Centre consistent with due and free functioning of provincial and local autonomy. We cannot afford the luxury of over-decentralisation simply in order to satisfy mere slogans and catchwords. While a unitary form of Government is unsuitable and impracticable in a vast country with 340 millions of people, having varied local and regional needs and problems a completely decentalised scheme of Government jis sure to let loose fissiparous tendencies resulting in the ultimate disruption of the country, particularly in view of the regrettable existence in our midst of the hydra-headed monster of provincialism, communalism, lingualism and social and economic imbalance.

Some friends have tried to make a fetish of civil liberty which they say should end only when civil authority comes to an end. Such an assertion is simply amusing, if not ridiculous. It is as if one should consent to the destruction of a deity, but object to the obstruction in prayers to the same deity. Healthy restraints and restrictions against abuse of liberty must be provided for if we have to prevent the break-up of odur country and the break-down of its Governmental machinery.

Some friends have wailed that the right to work has not been provided for in our Constitution. Article 19 clause (g) reads as follows: "All citizens shall have the right to practise any profession or to carry on occupation, trade or business."

If it is not the right to work, I wonder what other language could convey the conept of work more appropriately or unambiguously.

My two Sikh friends from the East Punjab have had occasion to say so much with regard to their reactions to teh provisions concerned with minorities. I may point out that the word 'minority' whether religious or racial does not figure anywhere in our Constitution. But the word 'community' which is the root of the ugly outlook called communalism has been allowed to be incorporated in relation to teh Anglo-Indians. I admit that the Anglo-Indians are not a religious group, but they are a racial community so much advanced socially, educationally and economically that there is no justification for according them any special or preferential treatment. Surely, there must be something other than their backwardness which has entitled them to disfigure our Constitution by the provision of unmerited and unwaranted favouritism. The safeguards provided for the existing services could have been deemed ample to protect their interests; but any discrimination in their favour for future recruitment can be rightly resented and objected to by other communities. Beyond opposing the concession bestoweed upon the Anglo-Indian community, the Sikhs are not justified in demanding any undue discrimination in their own favour. The question of Sikhs is not of sentiment, but of substance. The fundamental question is whether the Sikhs are a backward community either socially, educationally or economically or even in any other sphere. I maintain they are not. Socially, they are respected and economically they are prosperous because they are enterprising and hard-working. It was revealed at the Sikh Education Conference at patiala last month that according to the last Census, the standard of literacy among Muslims of the Punjab was 9 per cent. Hindus 16 per cent and Sikhs 17 &frac12; per cent.

During the current eyar the East Punjab Public Service Commission compiled a list of successful candidates for Provincial services according to a tentatively agreed ration of 40 per cent for Sikhs and 60 per cent for others. The Premier of East Punjab, Shri Bhim Sen Sachar, referred the list back to the Public Service Commission witht eh recommandation that the list should be drawn up strictly on the basis of merit and it resulted in the selection of Sikh candidates in excess of 40 per cent. May I enquire from Sardar Hukam Singh and Sardar Bhopinder Singh Man and otehrs of their way of thinking and feling whetehr our backwarness and necessity for safeguards lie in our higher literac y and greater efficiencyd? Besides, the success of Sikh candidates at the two competitive examinations for the I.A.S. during the past two years has not fallen below our proportion in the population of the country. It is to be remembered that both these competitive examinatisons were held at a difficult time when a large and opulent part of the silk sommunity was suffering from the hardships and rigour of partition and its aftermath and necessary conditions and atmosphere for a first class preparation for higher examinations were not available to displaced candidates. I have every hope and confidence that after the resettlement of displaced persons, our young men would show and achieve much better results in getting opportunities for the service of the country.

Sardar hukam Singh has stated an economic truth in saying that the two main avocations of Sikhs are agriculture and army. He has nothing to c omplain about any discrimination as far as agriculture jis concerned which absorbs 85 per cent of our population. The special position inthe Army is sure to subsist as far as our moral and physicalqualities and geographical situation continue as they are. No country can afford to keep bravery and stamina out of its army and the position of East Punjab as a border province is sure to oblige the Government of the country to take steps and measures to impart military training to the populace and equip them fully to meet the menace from the other side and provide a permanent reserve from which the regular army would have to draw its requirements from time to time. I think it is time we stop harping on our inferior position ad nauseum and insult the intelligence and fitness of our new entrants to Government services and the efficiency of those who are already in. An over-emphasis on inferiority and helplessness, when they are not there, will impair the self-respect and dignity of our able officers if not their mateiral prospects. As regards services, our case is not on all fours swith that of the Scheduled Castes and Scheduled Tribes and it is no use our creating artificial smokescreens to hide or distort truth.

Another attempt is made to manufacture an artificial grievance when it is alleged that the decision of the Minorities Advisory Committee to bring the backward classes among the Sikhs into the category of Scheduled classes has been lightly change to exclude PEPSU from the opération of this decision. I declare that nothing is farther from the truth. As far as any one can see the position has been considerably improved in the direction contrary to what has been attempted to be made out by Sardar Bhopinder Singh Man. The relevant portion in the report of the Honourable Sardar Vallabhbhai Patel. Chairman of the Advisory Committee on Minorities and Fundamental Rights dated 11thd May 1949 reads as follows:

"The Committee also accepted the unanimous proposal made by the Sikh representatives that the following classes in East Punjab, namely, Mazhabis, Ramdasis, Kabirpanthis and Sikligars, who suffer the same disabilities as other members of the Scheduled Castes should be included in the list of Scheduled Castes so that they would get the benefit of representation given to the Scheduled Castes.

At that time, thestatus of Indian States was intended to be kept different from that of the Provinces. But, subsequently, the decision to bring both to the same level and status has culminated in the form which article 341 has now taken Article 341 reads-

"The President may, after consultation with the Governor or Rajpramukh of a State, by public notification, specify the castes, races or tribes or parts of groups within castes, races or triges, which shall, for the purpose of this Constitution be deemed to be Scheduled Castes in relation to that State."

It appears from this that there is no distinction as between East Punjab and the PEPSU. Article 15 clause (1) provides-

"The State shall not discridminate against any citizen on grounds only of religion, race place of birth or any of them."

In the face of this how can our Constituion or the Government of the country or any State in the country based on this Constitution afford to make discrimination as between East Punjab and PEPSU? I am afraid the fears expressed by my co-religionists are extra-logical and without référence to the appropriate provisions of the Constitution.

The objection with regard to the jurisdiction and function of the Backward Classes Commission is equally groundless. The Commission to be appointed under article 340 shall investigate th conditions of socially and educationally backwrd classes within the territory of India and the difficulties under which they labour and make recommendations to remove such difficulties etc. etc. The backward classes among Sikhs are ndot excluded from the purview of the Commission. The Sikh Community on the whole is not at all a backward community and its spokesmen in the House have no business ro justification to insist on its being classed as a backward section of the population. The is neither a fact nor is it believed by the majority of Sikhs or their minent leaders. The Maharaja of Patiala, the Rajpramukh of PEPSU, Sardar Baldev Singh, the Defence Minister of India, Jathedar Udham Singh Nagoke, the President of the highest religious institution, the Shiromani Gurdwara Prabhandhak Committee, Sardar Partap Singh Kairon, Member of the Congress Working Committee, Giani Gurmukh Singh Musafir, President of the E.P.P.C.C. all the past and present Sikh Ministers of East Punjab and all Legisltors of the East Punjab do not share the views and sentiments of Sardar Hukam Singh and Sardar Bhopinder Singh Man that the entire Sikh community deserves to be included among and accorded the teatment of backward classes. For myself, I belong to a majority of India-a majority of kisans who make up 85 per cent of its population.

Unfortunately the trouble with some of our leaders is that they have never throughout their public career had experience of working in any secular institution and they have always built their leadership and power on slogans of 'religion or community in danger' and they find it difficult to give up old habits and propaganda or to strike upon new outlook or programme. I can hjope that had Master Tara Singh ever worked as a Municipal Commissioner in Amritsar and seen in actual practice that Hindu and Sikh Commissioners were equally anxious and keen for sanitation and the health of all citizens living in the municipal town, he could have overcome much of the idmaginary fears and suspicions against the majority that are haunting him today. In one breath he declares that Hindus and Sikhs are comrades in life as welld as death and in the next that they cannot live under one another's domination. This is strange logic but our friends in the House have to echo whatever views or sentiments their leader expresses outside.

I appealjto my co-religionists to cry halt to this campaign of mutual distrust and hostility. Love begets love and hatred breeds hatred. If we sow trust we reap confidence. Having allowed ourselves to indulge in militant communal ideas and slogans we cannot, in fairness, grumble about the aggressive communalism fo the majority community in the East Punjab which is now suppressing even the Punjabi language. What we need is a change of atmosphere where justice, liberty, equality and fraternity prevail to the good of all and the glory of the country. Our Constitution may be blamed for not showing undue favouritism to any section excepting one, but it does not lie in any one's mouth to say that any discrimination against any section or interest is intended or provided for.

Our Constitution carreis in it the impress of the high-souled nobility of the president-Dr. Rajendra Prasad, the universal vision of Pandit Jawaharlal Nehru, the unfailing judgment and strength the Sardar Vallabhbhai patel the scintillating and penetrating intellectuality of Dr. Pattabhi Sitaramayya, the erudition and labours of Dr. Ambedkar and above all the patriarchal blessings and divine inspiration of the Father of the Nation-our revered Mahatma Gandhi. It is my hope and prayer that such a monumental Charter of Freedom of millions of my countrymen will not fail to bring about peace, prosperity and happiness not only for this country, but for the whole world.(Cheers.)

Mr. T.J.M. Wilson (Madras:General): Mr. President, Sir, I also join in thanking you, the

Rashtrapathi and the Chairman and members of the Drafting Committee for this Constitution. The Constitution is criticised by many on the ground that it has borrowed from foreign Constitutions and from foreign ideas. It arises otu of a misconception that our country is entirely independent of and different from other countries and therefore our nation had nothing to do with the ideas and achievements of other nations. But the truth is that the whole humanity is marching forward as a single whole-of course with different progress for different countries of the world on account of the different material conditions, but all the same is marching towards the same goal and in the same direction and the heritage that manking has so far won, either of the fundamental principles of equality, and liberty, and fraternity or of the Constitution tiself, is the common heritage and common property of all the nations and each nation would draw upon and ought to draw upon that common heritage and march forward further addingto that heritage by its own experiences and by its own struggles. If to-day each nation talks of equality, it has come to us long long ago-when Christianity had offered this conception of equality to humanity at the time of the greatest crisis for human society-on the fall of the Greek City States, when the conception of equality was absolutely foreign and unknown to those Greek City States and when the society had no foundation-no basis to rest upon; and if to-day everybody talks of liberty, this liberty has been won for us by centuries of struggles and revolutions and experience, and therefore the criticism that we have borrowed from foreign Constitutions or from foreign nations, is absolutely wrong.

But how far has humanity progressed till to-day and how far does our Constitution reflect this progress of humanity? Whatever the difference in approach or of method the whole human thought at present whether it is literature or science or art or philosophy-is centred upon one fundamental factor and that is the common man and his amelioration. His position is so much established that even his enemies swear by him. Therefore it is to-day that everybody talks of democracy though this unfortunate word has had to pass through so much strain and stress. But what is this democracy? The most elementary requisite of democracy is the right of every citizen to vote and we have provided for it in our Constitution. But even this was questioned by some of our friends on the ground that they are not sufficiently educated to carry on the Government of the country. Their contention is that only intellect is necessary for the Government of the country. But the conditions and also the philosophy have changed. Government also has changed-the Government is not something meta-physical or something mytic. Government has to deal to-day with the actual conditions of people and the needs of people, whether they are of food and cloth or of health and education and how can anybody else claim to know these needs of people better than the people themselves? Thought is, of course necessary and intellect is really essential; but unless it is united with action, unless it is based upon the experience of the people, it will not achieve much. Therefore, the purpose of adult suffrage, the right of every person to vote is to bridge this gulf between action and thought. But is this right to vote once in five years enough? The essence of democracy is not so much the existence of what are called political parties, etc., but the essence of democracy is the effetive participation of the individual in the actual government of the country. The greater and more effective the participation of the individual in the government, the greater is the democracy, because democracy is still only an ideal which has yet to be reached by humanity. Decentralisation would have done something in that direction, if we had provided for it in our Constitution. But even the federal character of the Constitution has been extremely narrowed down, and even that feeble and narrow federalism disappears some times and converts itself into the unitary system. Référence is made by some to the Village Panchayats, those ancient self-sufficient Indian communities where agriculture and handweaving industry were combined and which have survived centuries of inasion and conquent, and which were uprooted and destroyed by British imperialism of whose glorious achievement the Governor-General in 1834 reported "The bones of hand-weavers are bleaching the plains of India". I am not one of those who look upon these Panchayats as perfect or eternal. But what I say is that this Assembly should have taken the one from that inherent, native aspect of the Indian society and should have provided for some such machinery, which would have neabled the individual to participate effectively in the government of the country and the authority to flow not from top but from bottom to top. I plead for this participation of the individual, not only because it is essential in the interest of democracy, but also because it alone makes for the strength and efficiency of the Centre, though many people mistakenly think that strength lies in centralisation and a strong Centre. d I repeat that democracy of conscious effective citizens is much stronger and more efficient, fromd any point of view than any other form of government, and the usual talk of weakness of democracy is absolute nonsense.

There has been provision made in the Constitution for the freedom of several languages and cultures, providing at the same time, for a national language. That should have logically resulted in more autonomy and more freedom of the States, making for one powerful nation. The several languages and cultures would have been guaranteed and made more effective if it had been buttressed by a provision for such independent states and their distribution on a cultural and lingustic basis. I am, however, grateful that Andhra province has been conceded and will be provided for in the Constitution. The greatest achievement, however, of our Constitution is its secular character, and the secular State that emerges therefrom. We have achieved this secular character of the State and we have provided for it in the Constitution. But the clouds are gathering and are threatening to darken the secular character of the State and obliterate it. I only pray and trust that the progressive forces of this country, under the guidance and leadership of our great and beloved Prime Minister will clear away those clouds and shall not allowe our country to pass once again through that destruction and misery which most of the nations of Europe and Asia had to pass before they could accomplish this great achievement of a secular State.

I may mention also one thing which may not have been realised by many Members of my own community. By giving up the reservations, whatever we might have lost we have gained tremendously, because that has mainly contributed to the estalishment of and the making it a fact, the secular character of the State on which depends our very existence as a minority or community. I may here raise my voice for an unfortunate section of my community-the Harijan Christians. They are untouchables. Sir, and they are treated so, not only by the caste-Hidnus with whom they have to deal every minute of their lives, but I am ashamed to confess it, they are trated so even by their Christian brethren, and the parents of these children come to us with tears in their eyes to tell us that their children have been driven out of the schools and deprived of their education because scholarships had been stopped for them, while the children of their brothers and sisters who are non-converts are continuing their studies. I do not need to plead the fundamental right that no discrimination should be made against them on the basis of religion, but I only beg of the Drafting Committee and the Government to take pity on them and not on remove that taste of education from their mouths.

I now come to the criticism that is levelled against the constitution that it has not provided for or conferred anything on the common man, that it has not provided for social and economic justice. That, I submit, Sir, is an erroneous contention, because it is based on an erroneous conception of the scope of the Constitution. A Constitution has a limited scope. Its main function is to provide for a machinery of Governmetn, and this Constitution has provided for a machinery of the government, whatever its character. And whatever the privileges or rights put in certain chapters are only those rights that are achieved. That is the basic conception which I want to emphasise, because otherwise, if we had embodied certain rights int he Constitution which we have not achieved so far, that would have given a distorted, dishonest and hypocritical picture of the country as a whole, and what is more, the Constitution would have been simply unworkable. Therefore, the Constitution has a limited purpose, and in spite of certain ugly features of the Constitution, for example the provision for the protection of property as a fundamental right, it would not and shall not prevent the country, as Mr. Santhanam has pointed out, from achieveing socialism.

Much has been said of liberty and freedom. Let us strive and march forward to that liberty which is not only negative, which is not, only the absence of any restraint, but to that liberty which is positive, which is the creation of those conditions which would give the necesary opportunity to every man and woman of this country to develop his or her full personality,free from any want or fear. And I may also say this that the price of liberty is not vigilance, but work and more work, and more production so that humanity may march forward and achive its goal of happiness and freedom and democracy.

Shri H.Siddaveerappa (Mysore State): Mr. President, it is with very great pleasure that I associate myself with the chorus of tributes paid to the Drafting Committee in general and to its Chairman in particular. Sir, for the last several days, the merits and demerits of this Constitution have been discussed so threadbare that it is not possible to cover any new points. Almost all the points have been covered.

One outstanding point that comes to my mind when I see this Constitution is that from the first time that this Constituent Assembly met, it will be seen that several changes have been introduced into it, much of which having been influenced by what is called compulsion of events. It can be seen that right from the beginning the very tenor of this Constitution is to have a strong unified Centre, and it is well that, situated as we are we could not think of any other form of Constitution, though, of course, in name it is a Federation. It can also be seen that the powers have been so much centralized that this Constitution is more in the nature of a unitary Constitution than a Federal Constitution. The only question is whether the Centre has been made so strong, that there is what is called over-centralization. Now in the opinion of some the Centre is made so powerful and strong that very little incentive is left for the component parts and I am also prone to believe in that opinion. The Chairman of the Drafting Committee himself, when he made his introductory speech on 4th November, 1948 with regard to the Centre being so strong, said:

"It cannot chew more than it can digest. Its strength must be commensurate with its weight. It would be folly to make it so strong that it may fall by its own weight".

In the opinion of some the Centre has taken almost all the powers and that the Units are left with little or no incentive. That is with regard to the character of this Constitution, whether it is Federal or Unitary.

Coming as I do from an Indian State, I cannot help making a special reference to the nature of the Constituion with regard to the States. It can be seen that in this country nearly one-third of its territory, with 27 per cent of its population, was covered by 562 Indian States having a population of 80,880,434. These States had varying degrees of political progress and economic advancement,d some comparing very favourably, if not better than some of the advanced provinces in this country, and some being very backward. The question of these Indian States was one of the baffling problems for this infant independent country. Even during the time of the Britishers they took several decades to consolidate the States and to bring them to a certain form. With regard to the States the Butler Committee report stated:

"Politically there are two India's - British India governed by the Crown according to the Statutes of parliament and enactments of the Indian Legislature, and the Indian States under the suzeraintly of the Crown and still for the most part under the personal rule of the Princes. Geographically, India is one and indivisible made up of pink and yellow. The problem of statesmanship is to hold the two together."

Even the Cabinet Mission's plan as announced on 15th May, 1946 envisages two vital changes with regard to the States, namely, that after the attainment of independence paramountcy would lapse and that the States would retain all other other subjects except those covered by Defence, Communications and Foreign Affairs.

It will be seen after the Britishers left this country, technically, of course these 562 States were as free as any other part of India. It is under this period of stress and strain in some quarters, though of course very few, that some fissiparous tendencies raised their ugly heads and they claimed that they were independent, though that tendency was nipped in the bud. It is in this period that the States Ministry of the Government of India was formed on 5th July, 1949, when Sardar Patel observed:

"The States have accepted the basic principle that for foreign affairs, defence and communications, they would come into the Indian Union. We ask no more than accession of those subjects in which the common interest of the country is involved. In other words, we would scrupulously respect their autonomous existence."

It is a very fascinating and interesting study because history is being written before our eyes. It is not possible to perceive how within these two years, not only all these three subjects, but in all vital matters, this whole country from Cape Comorin to the Himalayas has been brought under one administration and Government and certainly, Sir, the credit must go to that great leader, Sardar Patel, who has brought about this change-a very bloodless revolution. No one could have believed that such a change was possible within an incredulously short period of two years: Not only that, in some advanced States Constituent Assemblies had ben started and they were going on with their work. In defence to the wishes of the States Ministry, those

Constituent Assemblies had to postpone their work just because it was thought desirable that there should be one single Constitution for the whole of India, whether they are provinces or whether they are Indian States. Under those circumstances it was found possible to have a Constitution of the so-called Indian States which are very few in number now, as one can see from Part B of the First Schedule. There is a single constitution for the whole of this country governding their relationship and it may not be far wrong if I say now that this change would not have ben so easy, had it not been for the unstinted support given to them by the Princes and the subjects of the Indian States. It has been acknowledged in wholesome measure by Sardar Patel himself on occassions more than once, that the patriotic feelings of the subjects and Princes were also responsible for bringing about this bloodless revodlution within so short a period of time.

It can be seen that in the case of some advanced States, due to financial integration, they have been subject to some losses of revenue, particularly in Mysore where due to financial integration they have lost a considerable portion of their revenue. Still, the people have cheerfully borne all these temporary inconveniences and in some cases permanent also, in the larger interests of this country. When all this is said, I want to know what justification is there for bringing about discrimination by way of article 371. Besides when the peoples of the States have made considerable sacrifices and without any resistance they have fallen in line with the whole of India, was there any necessity for an article like 391-just a kind of good-behaviour clause, wherein there is general supervision and control for a period of ten years with regard to all the States? Perhaps I am not able to find out the reasons. There may be weighty reasons, but the feeling in the minds of several people in the States is: What is it that we have done to be reduced to this level? Is this the reward for the sacrifices made by the people of the States for falling in line with the rest of the country? Anyhow so far as Mysore and Travancore and Cochin are concerned, there is a promise that they will be exempted, thought the people in those States would have been far happier if it was statutorily recognised that there is no need for a provision like that. Let me sincerely hope that this article 371 will remain a dead letter.

Lastly, I also join the chorus of tributes paid to you, Sir, for the very worthy manner in which you have conducted the deliberations of this House.

Shri Kamlapati Tiwari (United Provinces: General): *[Mr. President, Sir, during the Third Reading of the Constitution we have had a discussion for the last six days. The Constitution has been fully discussed and no aspect of it remains on which the honourable Members have not said something or the other. Its merits and demerits have been fully discussed. Everything has been said in regard to its merits and its specialities and I find that everything has been said in regard to its demerits and its shortcomings too. I admit that after a discussion of six days I can not say anything new in regard to its merits or demerits. Even then Sir, I have gathered courage to take some time of the House because this is an important and historic occasion and its very idea is inspiring to us. It has special significance for soldiers like us who took the pledge of serving the country and the nation twentyfive to thirty years back sitting at the feet of revered leaders like you who initiated us into that service. We shall possibly never have such an occasion again. Therefore I too could not resist the temptation of saying something on this occasion again. Therefore I too could not resist the temptation of saying something on this occasion. I am grateful to you for having given me an opportunity of saying a few words. Sir, many of us have had a dream picture of our nation and of the future of our country for the last thirty years. We nourished an idea in regard to our country and its future. Our dream and our idea was that a day would come when we would ourselves be able to shape our destiny without interference from any quarter whatsoever. This dream and this idea inspired us for the last thirty years and gave us strength to advance forward in our struggle for freedom according to our intelligence and our power. After a period of thirty years it appears that our dream is coming out to be true to some extent and our idea appears to be materialising. We saw our country achieving freedom and our idea of being able one day to shape our destiny without outside interference is going to materialise. We can think ourselves fotunate and blessed because the Constitution of our nation and of our free country is being moved for acceptance in our presence. So far as the relation of the merits and demerits of the Constitution is concerned, I would like humbly to submit, Sir, that I was not satisfied with the trend of the discussion which took place during its course. I saw that one honourable Member after another rose to eulogise the merits of the

Constitution and to congratulate and praise each other. I could not understand this mutual praise and mutual congratulations. The Constitution is the result of the collective effort of all. It is not worthy of us to praise each other and to congratulate our own selves. We are Indians and we take pride in our culture. We can be worthy of our culture only if we abstain now by not praising our merits and by not taking pride in the good things that we might have done. After all what have we done so as to deserve this selfpraise and mutual congratulations. How has the necessity arisen of patting each other? The people of our country confided in us and returned us to this House with the hope and faith that we would chalk out such a line for shaping their lives and their future which would not only enhance their prestige but would also uplift them. When the country returned us and gave us the charge of shaping its destiny, it did hope that we would frame a constitution which would be noteworthy for its merits and specialities. You you have indeed framed a constitution which has many good features and specialities. Whom should we congratulate and what for? The country gave us the authority for shaping its destiny. If we have successfully fulfilled our responsibility and done our duty, we should not praise each other for it. We only discharged the responsibilities that we had taken upon ourselves. Instead of ourselves praising each other we should have left this task for the country. The nation will judge whether this Constitution has any merits and whether we deserve any praise for it. We shall have reason for self gratification only when the nation praises us. Therefore without taking recourse to self-praise like my other friends I straightaway want to put before the House a short analysis of the constitution itself. When I think of the most noteworthy feature of the Constitution and its greatest merit, three things present themselves before my mind. Those of my friends who have only eulogised the Constitution have only repeated these things. It has been said that the untouchability has been abolished by the Constitution. The third thing which is being taken pride of, is that separate electorates have been abolished and provision has been made for joint electorates in the Constitution. These are the three specialities of the Constitution which have been emphasised by the speakers and it is for these that they have been congratulating each other.

Sir Alladi too, who is a great scholar of jurisprudence, repeated in the course of his speech this morning only these three features of the Constitution. Sir, I humbly submit that these are not such specialities as my justify our taking pride in them and feeling elated about them and taking recourse to mutual congratulations. When the country returned you and sent you here for framing the Constitution, if you had not included these broead features in the Constitution, what else would you have included in it? The principle of adult franchise is a well known principle and its usefulness has already been demonstrated elsewhere. Therefore there is not much sense in taking pride for having forwarded it. If this great democracy, which you are going to establish, is not based on the rights of the people that is to say on adult franchise, on what else will it be based? Adult franchise is gaining ground everywhere in the world and it is now being recognised that the structure of democracy can be raised on this basis alone. Besides, we have always been declaring that we have to establish true democracy alone in India. Have we not declared that we would establish peoples' democratic government in India and have we not been returned on that basis? If we had not provided adult franchise what else could we have provided for? We have not done such a thing as may justify our self-praise. We accepted a well recognised principle and have done but our elementary duty. Any person or any other party on being returned to this House and on taking upon itself the task of bringing about a democratic order, would have been compelled to provide for at least adult franchise. It was after a successful revolt that we came here. We led that revolt. Then, if we have provided for adult franchise, what novel thing have we done? I would say that if in our place had been the sycophants and diehards of the old order or even the capitalists engaged in the task of framing the constitution, they too would have at least granted adudlt franchise. So much for adult franchise.

I shall now take up the other speciality of the Constitution which has been constantly referred to and for which we have resorted to self-praise and mutual congratulations. It is the abolition of untouchability. We very proudly say that through this Constitution we have totally effaced untouchability. Sir, it is a surprise to me that we take pride on the abolition of untouchability. Sir, it is a surprise to me that we take pride on the abolition of untouchability. Sir, it is we consider it a great success. I want to ask whether we have abilished untouchability only today? By declaring untouchability as illegal in the Constitution have we done anything as can bring great credit to us? Have we done any great and novel thing? Untouchability was abolished long ago when Bapu raised his voice against it and revolted against it thirty years back. When Bapu began to play a role in our lives, he revolted against untouchability and said that it was a blot on India and that it should be removed. That powerful and explicit voice ended untouchability years ago. Today we say that we have abolished untouchability through this Constitution. I ask had we not done what Bapu had asked us to do and what had met general approval, how would we have kept face with our people? Therefore it does not appear proper to me to say that we have done a great and unique thing. I think that it is altogether unnecessary for us to take pride in the abolition of untouchability, in the provision for adult franchise and in a third thing which has also been characterised as great achievement.

I think Sir, that we have nothing to be proud of in the abolition of separate electorates either. Separate electorates were responsible for the ruin of the country. Our history of the last one hundred and fifty years bears testimony to the fact that no other problem has been so much responsible for ruining the country as that of separate electorates. Separate electorates alone gave birth to communalism. Separate electorates alone gave birth to two-nation theory. Separate electorates alone gave birth to the idea of dividing the country which ultimately culminated in the partition and mutilation of the country. All this was brought about by separate electorates alone. Would we have provided for separate electorates even now? We have not done anything great by giving no place to that system in our Constitution and we need not praise it for that. I think Sir, that it is futile to eulogise our achievements and the merits of this Constitution and to take recourse to self-praise and mutual congratulations. Instead of taking recourse to this practice we should rather consider at this occasion what we have been able to do and what we have not been able to do, so that the country may have a knowledge of what remains to be done and at a suitable time we may be able to correct our mistakes. We should acknowledge our mistakes and should apprise the future generations of the shortcomings and defects of the Constitution which need rectification. We should pay particular attention towards this. I think that a person or a nation can progress only when it pays attention towards its shortcomings. Gandhiji taught us to pay attention towards our shortcomings and weak points and to turn our eyes away from our merits. He asked us to see our defects to admit them and to make effort to remove them. He said that for the development and welfare of a person or a nation it was necessary that an error should be accepted without any hesitation and that to see an error one should look at himself. Therefore to enable the country to make progress it is necessary to see the defects of the Constitution so that they may be removed. It is also necessary to see whether we have not left out such things as were greatly needed by the country. Sir, I humbly submit that when I examine this Constitution from this point of view I find that though we ourselves are responsible for framing it, it does not satisfy us, nor does it fulfil our necessities. It may be that I am saying things which I am not authorised to say but at present everyone should give primary importance to the interests of the country and should express his views accordingly. This sentiment alone has given me courage to refer to these matters. I realise that the conditions obtaining in the country have influenced us. We were influenced by fears and doubts and these have been reflected in the Constitution. This fact may be responsible for its shortcomings. But whatever may be responsible for them, we have to see them and point them out. Our scriptures say:

'Shatrorapi guna vachya dosha vachya gurorapi'

'Speak of the merits of the enemy also and surely point out the defects that may be in your teachers.' Therefore if we discuss this matter from this point of view, it should not be understood that we are showing disrespect to any teacher. No particular person or committee can be held responsible for the shortcomings. We are all equally responsible for the shortcomings. Therefore Sir, I want to draw your attention to some fundamental defects which have been left over in this Constitution. Many petty mistakes too can be pointed out but I would not refer to them. I have not the time to discuss in detail in my own humble way all the clauses and sub-clauses to which I object. I shall only point out the fundamental defects in the short time, that you have kindly permitted me to speak. The first fundamental defect of the constitution appears to be that it is terribly centre-ridden. It appears to me that the polity we have provided for in the Constitution will necessitate the centralisation of all power and authority. I consider this Type of centralisation to be defective and dangerous. I think that centralisation will necessarily give rise to tendencies which may prove to be dangerous. Moreover, the leader whose foot-steps we have been fortunately following for the last thirty years, gave us a viewpoint, an idea and an ideology. Our Bapu was all light and he told us that centralisation, whether in political field or economic field necessarily deprives the masses of their political and economic independence. This was the new idea and new ideology that he handed over to us. He said that true democracy rose not from the top but from the bottom. Power and authority should not be centred at the top but should be distributed among the people at the base of society. Then alone can true democracy be established and then alone can people enjoy freedom. The order that we are going to establish has its head downwards. A tree is being planted with its roots above and its branches spreading downwards. There may be a spiritual tree with its roots upwards and branches spreading downwards but in the political field any other with its base upwards and its top downwards cannot be instrumental in the establishment of true democracy. Centralisation is a terrible curse of the present times. It was the centralisation of production which gave birth to capitalism which in its turn put an end to economic freedom in the world. In the political field the order that came into being on the conclusion of the French Revolution disappeard with the establishment of centralised forms of government and with the centralisation of power and authority. If you look at the present day Russia you will see that although Russia claims to have established the great democracy but actually it has not been able to respect democracy. The reason behind it is that a terrible demon is the form of centralised power dominates the people and crushes their individuality and their freedom. You should remember that if you bring about centralisation in India it would lead to the maintenance of rights from a centre and necessarily that in its turn would involve that power be more and more vested in the centre. Everyone knows that effective power in the hands of the centre can only be based on military strength and the concentration of military power is the sure road leading to the complete destruction of popular rights. This is an historic truth. Our Constitution obviously presents this danger. The circumstances may have compelled us to provide for a centralised form of government but the danger is there and it is necessary to take notice of it. It was with this realisation that Gandhiji had taught us to oppose centalisation. He told us that for the establishment of true democracy the means of production should be decentalised and its form too should be of a decentralised nature. The society which is formed on such foundations should also be of a decentralised nature and the Government of this society should also be of a decentralised form. The rights should be in a gradation from below upwards and the government should enjoy only those rights as are bestowed upon it by the people. We have been told that this is a people's constitution and a common man's constitution. I humbly submit that it appears to me that this is in the least a common man's constitution. Power has been centralised in it at the top although it may have well been said in it that power is vested in the people. You should pay attention to it.

Moreover, I find that there is nothing Indian in the Constitution. It appears that the Constitution has been framed only to meet the exigencies of the times. We were influenced by the conditions obtaining int he country and were obsessed by the fear that some people might spread anarchy and emergency may arise at anytime and our freedom might be endangered. We were all along influenced by this thought and we framed our Constitution accordingly. No doubt we are confronted with this situation in the present transitional period. When an old order crashed, when an established system collapses it sends vibrations and quivers even into the earth. It is but natural that at such a time of political earthquake fear and anxiety should grip the minds of men. Before our eyes has collapsed a great and mighty empire. It is not surprising. Sir, that there should be at such a time fear and anxiety in our hearts, but I do deeply regret that there should have been reflected in the provisions of our Constitution.

My other regret is, Sir, that we have drawn inspriation mainly from foreign Constitutions alone. We have drawn upon the Constitution of Australia. We may have even borrowed from the Constitution of Canada and we may have even influenced by the unwritten Constitution of Great Britain. We have also been discussing rather warmly whether the Constitution under consideration is federal or unitary in character. But, Sir, we have not cared to cast even a glance to the historic spirit and culture of India nor have we taken into consideration the Indian approach to life. While passing this Constitution we did not in the least pay attention to the political philosophy and situation of this ancient country-the oldest among the nations of the world-and which has occupied a prominent place on the stage of History. History is, Sir as witness to the great and glorious experiments made by our country in the sphere of politics. But, Sir, we turned a blind eye to all these facts of our History. It does no credit to any one here to say that majority rule did not exist in our country. History is a witness, Sir, to the fact that ours was the first country in the world in which was established the system of majority rule if not of pure Democracy. The entire north west region of our country the land of the Panchabs-was studded with Republics in the historic epoch noted for Alexander's invasion of our country. The state of Kapilvastu, where Lord Budha was born, was also a republic. Again there was the great Republic with which Lord Budha had very intimate contacts. The glory of these republics continued for thousands of years in this country. Even in the Vedas, Upinishads and the Brahmanas we find fully developed concepts of such politics as the samrajve, virajye and Arayke, Rajiye. I, therefore, fail to see how any one here can say that the concepts of republics, Majority rule and democracy are entirely foreign to us. I submit, Sir, that there has been a whole body of political traditions in this country. If you looked into the Mahabharat and gave thought to what the great Vyas has put into the mouth of Bhishma in that great epic you would find that there is contained a constitution polity complete in itself and a political philosophy ripe in wisdom. But the question I ask, Sir, is 'Have we cared to give even a passing thought to all wisdom?' Principles and provisions of alien origin are to be found in this Constitution. What is worse, Sir, I can safely assert notwithstanding the loud protests of some friends here that the dark shadow of the Government of India Act is to be found lying heavily on this Constitutin. No one can deny here that the dark shadow of that Act which we had denounced so much, is to be found in every page of this Constitution. We have committed Sir, a fundamental error in keeping this Constitution quite unrelated to the historic culture, traditions, the national genius, the national sentiments and self of our country. I would urge you to remember that this cultural divorce between the Constitution and the country has not only made entirely alien but also lifeless in character.

This third basic shortcoming of this Constitution is the limitations and restrictions it imposes on Fundamental Rights, credit is being taken, Sir, for the provision with regard to the abolition of untouchability. The critics are sought to be confounded by the naive question "Have we not guaranteed the Fundamental Rights. Is it not also true that there are many clauses in this Cosntitution which infringe and encroach upon the Fundamental Rights of the citizens. How could we do all these unless we drew an inspiration from the Government of India Act. It was the policy of the British Government to break to the heart which they promised to the ear-and I believe we have followed in their footsteps. I may concede that all that was probably necessary for the security of that State. My Complaint, however, that while doing all this you should not acknowledge it. Gandhiji had taught us that the security of the State cannot be ensured by the arms and denial of rights of the people. Bhishma had also advised Yudhishtra to remember that the people should be fully protected and kept free from the danger of starvation and nakedness and other types of sufferings and wants. The state that we should establish should be like the same which while it takes the price of food also gives it back eightfold for the benefit of the people of this earth. Such a state would not need arms for its security, nor would it need an army to defend it. Bapu had also taught us that any state which seeks to retain its existence by the use of force alone would not be able to maintain itself for even its own arms would turn against it. I repeat Sir, that if we would establish a state which relies on force alone for its continued existence it would not be stable or durable. Any state which rests on a denial of the basic rights of the people can not last for long. If a State gathers power by depriving people of their rights, it sooner or later finds that it has bargained for a frankenstein for itself. As the proverb runs-Nothing corrupts like fouls-and this is but natural to man. It is no doubt true that the reins of power are today in the hands of leaders whose life has been passed in the service of the country. None need entertain any fears about their acting improperly. But it may well be that this power may fall into the hands of people who misuse it. That is the danger.

The great defect of this Constitution is that it secures nothing to the poor and have votes of this country. Even the little assurance contained in the Directive Principles is not adequate. Even there it is said that the State would do all this within the limits of its economic capacity. It does not in the least guarantee that there would be no poverty in the country and we would not have a single person begging on the streets. As there is no guarantee against unemployment nor do I find a duty being laid on the State to provide work to its citizens. No doubt we have guaranteed a salary of Rs.10,000 for the President of India. We have also charged the salary of the Accountant-General, and former services on the consolidated fund of India by means of this bulky Cosntitution. But we have not made the least provision as regards the pay to be given to the peons nor have we made, any provision with regard to the minimum salary that can be given by the State to its employees. For example why is it that we have not laid down that every employee in this country would be paid a salary of not less than Rs.75. If we had done any such thing we would have won the heart of the people of this country. But you have paid attention only to the people at the top and not to them who are at the bottom. It is for this reason that this Constitution appears to be quite futile and lifeless. The fact is that it is not inspired by any substantial ideas.

We accepted that there should be one official language for this country but at the same time we have taken care to see that the language which is going to be our national language may not become the official language at an early date. Sir, my submission is that we paid attention to the question as to what would happen to the seervices if Hindi became the official language in less fifteen years but we remained blind to the consideration as to the integral relation of language with the consciousness and sentiments of the people. Language is the vehicle of our sentiment and beliefs. It is, therefore, the basic element of culture-and culture as is well known, is the drawing power behind the progress and rise of a country. Such a deep relation exists between culture and language, that there can not be any foundation for any creative activity in its absence. But we paid no heed to this fundamental truth and are still fondly longing a foreign language to our bosom. What is the language that you have employed for drawing up your Constitution? Whatever else may or may not have been possessed by our country it is a fact that it never backed a well developed language and script. History is a witness to the fact that all the Asiatic countries designed their scripts on the basis of our script. The literature of our country is so great that the entire world pays its respect to it, what a shame it is that the Constitution of our Country is being drawn and passed in a foreign language.

These are defects to which we should attend to. If felt that I owe a duty to my country to my leaders, to this Constituent Assembly that I should place my sentiments before you so that we may acknowledge that though our Constitution may be desirable yet it is not free from blemishes.

Sir, I have briefly placed my sentiment before. But I would like it to be understood that I have despair in my heart or I want to abate in any way the work that has been accomplished so far. I have talked of our failings only in order that we may be able to say to our people that our work, whether good or full of defects, was before it. I felt that we should frankly accept that our work may be full of defects and failings. We should make it clear that we are aware of those defects. We must say that we know what are defects but we also know the direction towards which we are moving and that when circumstances would permit we would remove those defects and overcome these failings. Sir, even though there are defects we should express our satisfaction at what we have some fondness for this Constitution because we have ourselves framed it in all good faith and moved by the love of the country. We are happy at what we are today. I feel that in comparison to the day when thirty years ago we started on our adventure on rocks and shoas to reach the temple of freedom, the present day is very beatiful for us. We have been witnessing to the humiliation of our great and ancient country lying under the hand of foreigners. That was our epoch in the life of this country when humanity was grasping for life, when our mother our country was lying despoiled, trampled and outraged before our very eyes. That was the age when despair darkened our hearts and we had lost all hopes for our future. Suddenly we perceived an angel descending into our life. We felt the magic of his words and life and hope came back singing back even to the ashes and bones of this country. His fire and faith breathed into our dead souls a new life. We heard the thunder of revolution in his sweet voice, and the call for battle and sacrifice in his mild words. He gave us a new message and a new and novel technique of struggle and revolution. His was a unique motto of war-the war of Dharma of Truth, of humanity and light against the forces of untruth, injustice, animality and darkness. There came the day when we saw that the mightiest empire crumbled into dust and nothing under the blows of that man. We saw the miracle of nature that went to step in one night awakening to find the sun of independence and freedom already smiling in its life. All great man that we have been able to frame this Constitution today. It is but natural that we should have tender feelings for this product of our labours. A great event in our history comes before my eyes today. Twenty five hundred years ago another Constitution had been drawn up for our country. That was the age when Chandragupta Maurya had thrown out the Greek conquerors from this country, re-established its glory and self-respect, and established the empire which remained a glory of country for generations. It was in that age that Kautilya had drawn up a Constitution which has remained a brant product of the Indian mind during all these centuries. It is after that long period of twenty-five hundred years that we are engaged again in this task of Constitution making. It may well be that this effort of ours may be full of faults, or may be it has its merits. But we feel it a duty to dedicate it to the memory of the Father of our Nation. We do so in the hope and faith that a day will come when we shall have succeeded in establishing such a pattern of life as will be a message of hope and cheer to the entire mankind.]

Shri Dharanidhar basu Matari (Assam: General): Mr. President, Sir, I feel I can not leave the Constituent Assembly to return to my province, Assam, without adding my own tribute to Dr. Ambedkar and the Drafting Committee for their great achievement in producing this Constitution. I think I am right in saying that everyone has some or the other criticism or grievance to air. The Constitution does not, and cannot satisfy every section from all points of view, but, taking everything from an All-India point of view, the Constitution is not disappointing and, in fact, the best that could have been framed under the difficult circumstances after Partition. It is not what has been put down in cold print in the Constitution, in the Articles, in the Schedules, that will matter. It will surely be the spirit in which the purpose of the Constitution is executed. If all sections co-operative honestly and unselfishly, I am certain India will progress along right lines.

Talking of progress, let me make it quite clear that no real progress is possible if large parts of our nation are deliberately kept behind and backward. The advanced communities will have to make special efforts, particular sacrifices if the backward classes are to come up. I am not one who believes that the backward classes can be brought to the general level in ten years. That is impossible and it is unfortunate that ten years as a limit have been incorporated in the Constitution. But, much can be done in the ten years also, if undivided attention and adequate funds are earmarked for the advancement of the backward classes.

Assam Tribals have much to be thankful for in the Constitution. One has to admit that there is much scope for tribal development for the so-called autonomous districts where there will be tribal councils and so forth. But I am not happy about tribals in Assam who are in the plains and the tea gardens. There are millions of them outside the autonomous districts. What will be their fate? Do they not need any protective and special treatment? I am none too happy about the tribals in the Assam plains. I know only too well how they have been neglected and exploited in the past and, to my mind, they will continue to be suppressed, unless there is special arrangement made for their advancement. The truth is that tribals have to be helped against themselves. As things are, they cannot complete with the other elements of the plains.

The tempo of advancement will have to be faster. Take the question of appointments. It is no good saying that so many tribals have been recruited as forest rangers. Tribals must be recruited to all branches of service, from the lowest to the highest, not only in the provinces but also at the Centre. not only should there be a minimum quota fixed for their appointments, but their promotion must equally be seen to, so that they do not stick where they begin. For this to happen, the advanced classes must make a sacrifice. They must recede and tribals must come forward. When the advanced communities here say they want the tribals must come to their standard, do they really mean that they are willing to make way for the educated tribals? On the basis of competition, there will be no improvement. The sections that have captured the services will see to it that their superiority is never threatened or endangered. Arguments about efficiency of administration are, to my mind, just dodges to perpetuate class or territorial interests. During the British regime, certain people were the favoured lot and they got the jobs, the contacts and the privileges; there was a distinction between martial and non-martial races. d In Free India, there is no room for such invidious distinctions. I know the Constitution does not satisy peoploe who have been used to preferential treatment. To such people democracy means something different.

Sir, the overall picture is not without hope. I do believe the Constitution can be worked in a democratic way, if the leaders respect the rights of others more than theri own. Tribals will certainly do their best to contribute their part in the working of the Cosntitution and I hope others will not stand in their way.

All of us know, Sir, our Father of the Nation, Mahatma Gandhi wanted to establish a Ramrajya and to me, it appears that he wanted a world where there can be no discrimination between the poor and the rich, the wretched and happy, and we are proud to be his disciples.

Shri Ari Bahadur Gurung: Mr. President, Sir, I associate myself with my colleagues in congratulating the Chairman and other members of the Drafting Committee for having brought this stupendous task to a successful conclusion. I have only a few observations to make. Firstly, the criticism of the Constitutin that it does not provide for the establishement of socialism is as irrelevant as the complaint that it is likely to open the way to dictatorship is futile. The real test of democracy is to give the right to people to decide for themselves the nature of the Government they would like to have. The question of dictatorship or totalitarian communism will depend entirely upon the manner in which the people will work the Constitutin. The Constitution will be subject to a continuous series of modifications according to the will of the people. Such provisions have been provided already in the Constitution. Sir, I personally feel that a Constitution is something of a sacred character which inspires future generations. It is the embodiment of the living faith and philosophy. Therefore we must not forget his gospel. To end with, Sir, I thank you for giving me an opportunity to express my humble views on the Constitution. Jai Hind.

Shri Dip Narayan Sinha (Bihar: General) : *[Mr. President, at this occasion when we are going to accept a Constitution for India, I most humbly want to pay my homage to the Father of the Nation, Mahatma Gandhi, whose hard penance and extraordinary skill relieved us of our bondage. At the same time to payd my homage to those innumerable men and women who joined hands with us in our struggle for freedom, underwent many sufferings and made great sacrifices from time to time. The Constitution which we are going to accept is an unparalleled thing in the history of our country. Our national life will form itself on the basis of the provisions of this Constitution. Therefore I attach great sanctity and significance to this Constitution. I wish that every Indian should have the same feeling about it. I know that it has its shortcomings and there is much room for improvement. But it has its beauties too and any country can take pride in them. Now we should with all sincerity strive to work this Constitution and to put it to the greatest advantage for the country. If we sincerely strive to work this Constitution, we would be able to remove its shortcomings and whenever it would be necessary to make an improvement we would be able to do so easily. I now want to say a few words on this Constitution from a common man's point of view. When a common man from the countryside would turn over the pages of this Constitution he would not like to see the beauties of this Constitution or to go very deep into it. He would like to see whether things to meet his necessities have been provided in the Constitution or not. He would like to see whether this Constitution guarantees to him nutritious food, cloth, health and proper education. I would like to point out that the people of the villages and common men would be unable to find such a guarantee in this Constitution. No doubt it has been laid in the Constitution that during ten years such arrangements will be made for education as to enable all children reaching the age of fourteen to get educated. There is no provision for people of a higher age. Moreover, there is no guarantee for food, cloth and health in the Constitution. I know it and everyone knows it that India is a country of villages and our people live in villages. I can say that extensive countries of the world today have a preponderance of cities but my country is a country of villages. Our culture and civilization is one of villages and whatever remains of it has been saved by the grace of villages alone. Let alone giving a dominating position to the villages in the Constitution, they have been given no place whatsoever. No doubt I have seen that in a small article mention has been made of village panchayats. But it is nothing more than a reference. Our Constitution is silent about the shape that our villages will assume and the place they will occupy in future. The picture of the administratidon and of the society drawn in the Constitution has no place for the villages. I wanted that in administration and other maters the villages should have been given a preominant place dbut this has not been done in our Constitution. I consider it a great shortcoming. I think that this is due to the fact that much thought was not given to it. But no doubt it is a basic shortcoming. If we want that our country should make great progress, happiness and peace should soon reign supreme in this land, we will have to give a predominant place to the vidllages in all matters. We will have to frame all the administrative and other schemes on the basis of the village. d If we do not do so we will only add new chapters to our painful history of the past. I want that w should pay attention to this short-coming in working our Constitution and should formulate all nation-building schemes on the basis of the village.

There is one thing more which looks very improper to me. When the struggle for Swaraj was launched, we were told that we could achieve freedom only with the weapon of non-violence and truth. Marching forward on the path of truth and non-violence we triumphed and attracted the attention of the whole world towards us. Now when our Prime Minister or our representatives go to foreign countries they are shown the highest respect. I accept that the persons who go abroad have such capacities as to command the respect of others. But I think that the chief reason for this respect is that we have broken as under the shackles of slavery with non-violence and have achieved Swaraj and with non-violence alone have banished the greatest foreign power from our country. However, that non-violence finds no mention in this Constitution. It would have been only proper if the whole constitution had been based on non-violence. Then alone could we have acted with success in future in accordance with our sentiments and thoughts. When we were engaged in the struggle for freedom and had to very often change our front, we were reminded of the unfailing strength of non-violence. Every resolution, every scheme and every election manifesto had the stamp of non-violence on it. But this voluminous book which will shape the future of our country, makes no mention of truth and non-violence. It would have been proper to give a full chapter to non-violence so that the future generations and those on whom the burden of working this Constitution would fall, could have illumined their path with it and gone ahead to build their nation. However, the Constitution has now been framed and will be accepted in two or three days' time. I now appeal to our leaders and to the nation that although the Constitution makes no mention of non-violence but in bringing it into force non-violence must be the basis. If we forsake non-violence we would not only harm ourselves but would hurt the other people fo the world also who are looking up to us with the hope that after some time we would be able to establish peace in this violence-torn world. Therefore, I request once more the leaders and the people of this country not to be unmindful of Truth and Non-Violence in working the Constitution.]

Mr. President: We shall adjourn till 10 0' clock tomorrow.

The Assembly then adjourned till Ten of the Clock on Thursday the 24th November, 1949.

---

* [Translation of Hindustani speech.

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME XI

Thursday, the 24th November, 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair

---

TAKING THE PLEDGE AND SIGNING THE REGISTER

Mr. President: I understand some new Members have come--Members from Vindhya Pradesh. They have to take the pledge now and sign the register.

The following Members took the Pledge and Signed the Register:-

1. Captain Awadesh Pratap Singh	
2. Shri Shambu Nath shukla	United State of
3. Pandit Ram Sahai Tewari	Vindhya Pradesh
4. Shri Mannulalji Dwivedi	

DRAFT CONSTITUTION-*(Contd.)*

Mr. President: We are now to resume discussion of the Draft Constitution. I desire to point out to honourable Members that although 77 Members have so far spoken on the motion of Dr. Ambedkar, I have got 54 names still on the list and we have only this day and perhaps one hour tomorrow for this purpose. So all these Members cannot possibly be accommodated within these six hours or 6 ½ hours if they speak at the rate other Members have spoken and I leave it to them either to take as much time as they like and deprive others of the opportunity of speaking or simply to come forward, speak a few words so that their names may also go down on record and let as many of others as possible get an opportunity of joining in this.

Shri Guptanath Singh (Bihar: General): Sir, I want to make a suggestion. It seems a large number of Members are eager to speak. I, therefore, suggest that Members who are desirous of speaking here should be asked to submit their written speeches and those speeches be taken as read, as so many Members have read out their speeches.

Mr. President: There is no provision in our rules for taking speeches as read because they are all supposed to be delivered even when they are read. So I can only ask Members to think of others also and not to think only of themselves. As soon as a Member has spoken for five minutes, I shall ring the bell.

Chaudhri Ranbir Singh (East Punjab: General): *[Mr. President, Sir, before expressing my views on the constitution, I would pay my homage to the Father of the Nation, Mahatma Gandhi, Netaji Subhash Chandra Bose and other patriots who sacrificed their lives on the altar of the country and suffered in various ways.

Mr. President, today many of our brethren complain that we have taken too much time to frame the Constitution, but none can deny that at the time this Assembly was formed, India was under foreign rule and was divided into more than 600 units. There were many types of people and parties who wanted to divide the country. The changes that have taken place in this country during the last three years are unparalleled. During this period, our country was partitioned but despite this no one can deny that for the first time in History and under your Presidentship we are going to establish a single State of India, bigger and more firmly than ever.

Some friends may say that India was a comparatively bigger State under British rule, but none can deny that at the time there were 562 States in India, with their own systems of Government. No one can deny the fact that before 1857, the Britishers had attempted to establish a strong State by merging the States, but they had succeeded in merging only a few States, when there was a revolution in the country and the Britishers had to give up that idea. But under your Presidentship, under the leadership of our leaders like Pandit Jawaharlal Nehru and Sardar Patel and by following the path shown by Mahatma Gandhi, we have succeeded in persuading all these States to be parts of the Indian Union and our country which was divided into 600 units when this Assembly began to function, would now be having about 27 provinces. I think within a short time there would be only 15 or 20 units in this country. In this way we have laid the foundation of a strong union by reducing the number of component units. None can deny that it has entailed delay but sufficient work has been accomplished during this period. I think, if we had completed the Constitution within a year at our first meeting it would certainly have contained provisions for communal reservations. That dispute or rather disease has been cured and this could be achieved only on account of the tact of our leaders.

Mr. President, I wish to say a few words on some articles of this Constitution about which I hold very pronounced opinions. By providing for adult franchise in this Constitution we have liberated every Indian politically, and similarly by abolishing *begar* under article 17 and outlawing untouchability under article 23, we have liberated every section of the country socially. Further in regard to economic freedom, we have by accepting article 31 (4) created conditions under which I hope the Zamindari system in India which is like a burden and stood like an obstacle in the progress of the country would be abolished within the next year, and thus we have solved this problem as we solved the problem of 562 Indian States under the leadership of Pandit Jawaharlal Nehru and Vallabhbhai Patel. I think that in my home province-Punjab too, which contains 10 percent big landlords as otherwise it is generally a region of small land holders this problem will be solved peacefully and thus we would also be able to liberate the landless peasants by virtue of this article. Similarly we would also be able to liberate the farm labourers as well as the factory labourers with the help of this Constitution. But, Mr. President, the interests that I represent here, that is, the landed peasantry has been, I am sorry, given a set back under this Constitution. The peasant could obtain economic independence only if the principle could be accepted that he should not be forced to sell his produce below cost. Had we accepted this in this Constitution and made such a provision in this, we could have saved him from economic exploitation. But we have unfortunately accepted 19(f) which would have a bad effect on my province. We have Land Alienation Act in our Province. I do admit that it suffers from certain shortcomings, but none can deny that lakhs of farmers who toil day and night have benefited from it to an extent that they have been able to retain their lands. I hope and trust that you would be the President of independent India and I believe this is the desire of a very large number of people. I hope, you will not reject my request as this Constitution authorises the President by an article to amend or repeal the law which may not be quite consistent with this Constitution. I therefore particularly appeal to you that even if you amend this Act which deals with lakhs of farmers, we have no objection if you permit Harijans who labour on the land to purchase land, but I request you not to create conditions under which a person who has not been connected with the land may be able to acquire it. If that happens, there would, undoubtedly, be looting and robberies, and the advantages accruing from zamindari abolition would be nullified.

One thing which none in the House has mentioned and about which I feel most, is about the delimitation of Constituencies under article 327. I hold that the villages in India are very much backward, and if they are joined with the urban Constituencies, it will be very unjust for the rural areas. We could not accept Hindi as the National Language so early, because some people felt that they would lost their jobs thereby, but if you mix up the rural as well as urban Constituencies, you would be perpetrating serious injustice against those people who can neither express themselves, nor have any press or leadership. Under this Constitution they can be kept separate or mixed up. I hope that later on the Commission which would be set up for the purpose will keep the rural and urban areas separate.

I wanted to express my views on two or three topics further, but I do not want to take away the time of my other colleagues, and thus I conclude here.]*

Shri Manikya Lal Varma (United States of Rajasthan): *[Mr. President, I thank you, for the opportunity that you have kindly given me to express my views but I am sorry for the time restriction that you have imposed upon me. While I have never so far taken any opportunity to speak here, my Friends Shri Brajeshwar Prasad and Shri Kamath were allowed on many occasions to express their views in this House. I would request the Chair to kindly excuse me if exceed the time limit by a minute or two.

First of all I take this opportunity to offer my thanks to the Honourable Dr. Ambedkar and the Members of this House. Now I come to some salient features of the Constitution. We have really taken a very wise step by providing adult franchise in the Constitution. Now we shall be giving this experiment a trial. Mahatmaji wanted that the village Panchayats should elect District Panchayats and the District Panchayats in turn should elect Provincial Legislatures and so on, for he thought that the Legislatures formed in this manner will be composed of persons who are capable of taking a correct view about our national problems. If the experiment of adult franchise proves successful it will be well and good for us. We raised the slogan of adult franchise and it will be a tragedy if we fail to work it out successfully. Mahatmaji also wanted that there should be adult franchise in India and we must act upon his wish.

Now I would take the opportunity to express my thanks to our respected leader Thakkar Bapa for the progressive steps taken by him for the upliftment of Harijans whose cause he has been serving for fairly a long, long time. I extend my thanks to the Draftsmen of the Constitution for the honourable place, they have provided to the Harijans in the Constitution. The provision regarding the separation of the executive from the judiciary is a novel experiment and future alone can decide whether we succeed or fail in it. It is the dawn of our freedom and I hope our experiment will be successful. We owe our deep gratitude to our veteran and respected leader Sardar Vallabhbhai Patel for having absorbed the 584 independent States in the general set up of the Indian Union. It is really the States people who have had the worst experience of the tyranny of feudal lords and it is the States people who are feeling today the real glow of freedom-Swaraj. We the States people alone can feel the real worth of Swarajya. But I would like to say one thing in this connection. Sir, no doubt by eliminating these States, the cancer has been removed from the body of India but small boils in the shape of principalities or feudal estates still exist and we hope, Sardar Patel will remove them also at the earliest possible opportunity.

I say so because the conditions are horrible where feudalism obtains today. In Rajasthan where from I have come, there are two classes of jagirdars. One class thinks that the abolition of Jagirdari is now certain and it has already taken to agriculture and some other occupations. The other class of the jagirdars want to influence the Government of India by creating terrors. They have already started threatening the States Ministry of the Government of India and spreading terrors with the belief that by adopting these means they would be able to save their jagirs. Influenced by this belief they have started committing dacoities. I beg to draw your attention, Sir, to this men my feature and hope that they will be suppressed at the earliest possible moment. Now Sir, I would draw the attention of the Government of India as well as the Chair to the income, of the unit which I represent here. The Railways of Bikaner, Jodhpur and Udaipur are going to be taken over by the Central Government in April but for this no compensation is to be paid to the unit concerned. It will not receive any share from the income of these railways. The customs duty is going to be abolished in my unit and this will entail a loss of six to seven crores of rupees to its Revenue. The United States is a newly constituted union and as such it should receive every help, support, and co-operation from the Centre.

I would like to draw your attention to one other matter also. In Rajasthan there are many large towns such as Bharatpur, Alwar, Bikaner, Udaipur, Dungarpur, Banswara in Kishengarh which were seats of the States' Administration where a number of persons, poets, pandits and men of letters and arts used to work under the direct patronage of the rulers of the merged States. Thousands of these workers have lost their jobs as a result of which the business in the States has come to a standstill. All possible steps should be taken to shift to these places some of the offices of the Government of India that are being shifted from Delhi, so that their economic condition may not deteriorate. The big plans and projects that are going to be formulated in India must be given effect to in the States also as the financial position of the States is not such as to permit them to launch these big projects particularly when the income from customs and Railways will be taken by the Central Government. The scheme of opening training camps and launching Dam projects must be given effect to in the States also.

Now I would like to say a few words about the Rajasthan language which is spoken by fifteen million people. I shall place before the House a few specimens of this language just to show, how heroic Rajasthani is. When Maharana Pratap was at war with Akbar, Prithviraj of Bikaner learnt from some source that the Maharana being tired was going to submit to Akbar, he wrote him a letter in such poetry:

Nakhoo mooddan paan, kon patank nija tana karadah dojey likh dee vaan, indon mohalee baat eke

(Should I now uphold my prestige or allow my body to be smashed to pieces? Please give me either of these two directions).

The Maharana sent him the following reply:

rihaya rakhasi aan, in tana soon iklingah aangey jaanri agason, prachee beech patang

(Let God Shiva always guard my honour. The sun will always rise in the east as it has every been rising).

This is a specimen of Rajasthani language which is full of heroism. By learning this language we spread the spirit of patriotism throughout the country. I would, therefore, submit, Sir, that this glorious language must find a place in the Constitution.

Lastly I would say a few words bout one thing which is causing me great pain. Under the Constitution Sirohi has been divided and a part of its territory, Abu has been merged with Bombay. The Government of India has the power to do so and we cannot question its competence to merge Abu in Gujarat, particularly we Congressmen cannot raise any question with regard to this action for we are under Congress discipline and have to bow to the decision of the Congress. But I would like to utter a note of warning in this connection today. Abu has been merged in Gujarat and tomorrow the same thing will happen with Banswara, Dungarpur, Udaipur and other places. The slogan of "Greater Gujarat", that has been raised by the people of Gujaratis sure to spread its poison throughout the country. This tendency is very wrong and will weaken the State. If you want to do justice in this case, you should appoint a commission consisting of members from the Punjab, Bengal and Maharashtra to give a decision on the question whether Abu belongs to Rajasthan or Gujarat. On the basis of decision of the Commission the Government of India may do any thing it likes and we will have no objection to that. We are prepared to accept any decision on the question of Abu if it is taken on the basis of justice. There is some whispering here that Rajasthan and Gujarat should be united into one unit. The argument that is advanced in support of the proposition is that of fifteen million people above cannot successfully function as a State. We shall welcome this proposition provided it is worked but on an all India basis. Politically and economically small contiguous units may be united into bigger units. Instead of having units of fifteen million population we may form units with a population of thirty or forty millions. But whatever decision is taken with regard to this question, that must be on the lines comprise. It should not be an unjust and arbitrary decision. With these words I appeal to you Sir, that justice should be done to Rajasthan.]*

Shri Brajeshwar Prasad (Bihar: General) Mr. President, Sir, I rise to offer my limited and qualified support to this Constitution. But for the adoption of Hindi language and the abolition of untouchability, I would not have seen my way to support this Constitution. I support this Constitution to the extent it is unitary. I am opposed to Federalism, Provincial Autonomy, Parliamentarianism, Adult Franchise and Fundamental Rights.

There is no element of idealism in this Constitution. It is a Constitution foreign to the culture and genius of this land. It is a lawyers' Constitution. It is a Constitution meant to stabilise the interests-both economic and political of the bourgeoisie and the capitalist classes. Article 24 has banged the door to all progress. Without the liquidation of private property as the means of production, there is no bright future for India.

An Honourable Member: May I request the Honourable Member to read his speech slowly, so that we may follow him? He is going like the Toofan Express.

Shri Brajeshwar Prasad: I am speaking quite distinctly. I would go slow if the honourable President would give me time. But he would not.

The provision relating to compensation incorporated in article 24 stands as a stumbling bloc in the way of progress. The present Government of India Act with suitable modifications would have amply served the needs of the hour. We are passing through a transitional period. Revolution is knocking at our door. We are not in a position to sense the needs of the coming century.

There is decadence all round.

There was no necessity for drafting a Constitution at the present moment. We do not know which way India will choose to go in the near future. There are three courses left open to her. She may follow the road that leas to Moscow or she may fall in line with England and America. There is a third of alternative which to my mind appears to be the best course for her to follow. If there is any inner vitality left in her blood and veins, India will remain loyal to her genius and culture and maintain her separate individuality as the leader of a third Bloc in world politics.

This Constitution stands as a stumbling block in the way of Indo-Russian entente. By incorporating article 24 we have given a fresh lease of life to the capitalists. There cannot be any sincere and loyal co-operation between a capitalist State and Soviet Russia.

If India is to remain loyal to her ancient traditions she must discard the basic foundations of this Constitution. Dharma was the basis of all Governments in ancient India. If the will of ignorant and hungry people were ever to become the basis of government in India, it will mean the complete liquidation of all that is good and noble in Indian life. The common man has got no will of his own. He is a bundle of instincts and a creature of environment and heredity. His will can never be the basis of modern Governments in any part of the world and especially in India where he suffers from innumerable handicaps. The concept of Dharma incorporates all that is good and noble in Parliamentarianism and rejects the evils that have crept into it. A State based on Dharma will never tolerate economic inequality or social injustice. But it will never accord recognition to popular will as the basis of Government. For the will of man is nasty, brutish and short. Dharma is in consonance with the fundamental principles of Democracy. The will to will the general will is the core of democracy. The essence of Democracy is the representation of the real will of the people as opposed to and distinct from the actual will. The actual will is surcharged with passion and prejudice. The actual will changes from moment to moment, from hour to hour and from day to day. It contains within itself all that is mean, stupid and foolish in human life. it can never be the basis of Government. The real will on the other hand is in consonance with the teachings of the great leaders of thought in human history. It is in consonance with morality.

I am opposed to Parliamentarianism because it has no future in the modern age. The average individual is not in a position to understand the highly complicated problems of our industrial society. It is an age of Experts.

This Constitution will amply suit India if it is to fall in line with Anglo-American powers. I hold the opinion that if India decides to fall in line with England and America, she will be committing a first class mistake.

The hungry and starving millions of this country will never tolerate a government which chose to fall in line with the anglo-American powers. If I were to choose between Washington and Moscow I would choose Moscow and not Washington and New York. I love equality more than liberty.

The essence of the theory of decentralization is utter distrust of the State. Bakunin and Prince Kropotkin advocated the theory that the state is an evil. It was based on violence and therefore inimical to all that is good and noble in human life. The best state is that which is least governed. May I ask the Members of this House are they going to build up their State on the basis of these assumptions?

The emphasis in the doctrine of Philosophical Anarchism is upon the individual and not the State. The individual should be the sole reservoir of all powers. When we talk of decentralization of powers, our sole aim is to wrench power from the hands of the Centre and to vest it in the hands of the Provincial Governments. I hold the opinion that if further encroachments are made upon the power of the Centre, it will reduce the Government of India to the status of the League of Nations. If the social purposes of the age are to be fulfilled, more powers ought to be vested in the Centre. The theory of decentralization runs counter to the concept of a unitary state. A unitary state is the need of the hour. If the menace of Provincialism and Communalism are to be combated we cannot afford to think in terms of political decentralization.

The great Mahatma was an advocate of decentralization. His doctrine of decentralization had an integral relation with the concept of Ram Raja.

(At this stage, Mr. President rang the bell).

It is only in a non-violent society where all the elements of violence have been liquidated that we can achieve the goal of decentralization. As long as there are warring Nation states we cannot think in terms of decentralization. As long as there is economic inequality, the goal of decentralization will elude our grasp. It is only with the need of the Togetherness that we can usher in a decentralized society. As long as there is militarism it is not possible to decentralise powers to any extent whatsoever.

(At this stage, Mr. President again rang the bell).

May I take one or two minutes more, Sir?

Mr. president : No you had better hand over your speech.

Shri Brajeshwar prasad: It should be taken as read, Sir.

Mr. President : No You hand it over.

Mr. Mohammad Tahir (Bihar: Muslim): *[Mr. President, before I begin I congratulate you from the core of my heart that the Constitution of free India has been completed under the Presidentship. It was predestined to be so because it was an urge-an inner voice which sprang from the soil of Bihar and it is Bihar which has completed it.

Now I would like to express my views regarding the Constitution. I shall try to put before you its both sides-good and bad-in a few words as I have understood them from this Constitution. I shall put forth the good side so that people might take lesson from it, and I shall expose the bad side so that in future if the Congress or some other party which comes in power considers these evils as evils, then it might be possible for them to remedy these ills.

Its good side is the administrative factor. Our Constitution presents to the words the best type of administration. I hope if the authorities of our country act up to it sincerely then it is certain that our country would make rapid progress in a short time and the world would be proud of our country.

In so far as the question of its bad side is concerned I am sorry to feel that it might offend my friends and so I apologise for that and I hope they would give me a patient hearing. Its evil is inherent in its policy. Our Constitution presents to the world the proof of a worst type of policy. Our Constitution ought to have been a mirror, so that if any one in the world would have looked into it he would have seen the true and clear condition of the country. But he can see only this much that this country is inhabited by Christians, Anglo Indians, Tribals, Hindus, Scheduled Castes Hindus, etc., etc., If anybody ask: Do Sikhs inhabit this country?, the reply would be in the negative. If he asks: "Do Muslims inhabit?", the reply would be in the negative. It is due to the narrow minded police of the Constitution. The general political and cultural rights of the Muslims, who are a permanent minority, have been trodden down. It seems as if in this Constitution the Muslims as a community have no place in politics.

Those who asserted that the majority community of India would destroy the politics, culture and the language of the Muslims, will get the sold proof of their allegations in this Constitution. Now the Muslims have neither their culture, nor their politics, nor their language, although for other minorities every thing has been provided in the Constitution. In the same way the political rights of the Sikhs have been put to an end. It is now for the world to decide if this was the duty of free India which she has performed through her Constitution. However, I have no complaint against the present form of the Constitution. I have simply pointed out the defects. If in this Constitution any injustice has been done to the Muslims or they have been punished, then it would make the position of the Muslims all the more advantageous, because due to this shortcoming the responsibility of the people and Government of India would become greater towards the Muslims. If this responsibility would be realized with sincerity then the Muslims would not be the losers. Sir, in this connection, I would like to point out that after the 26th of January the Muslims of India will start a movement, which will be a very mild one and their deputation will wait upon the President of India and this will be the last test to know whether in India Muslims could really get some privileges or not.

Lastly I would like to submit that it is a matter of shame that our Constitution could not fix a name for our country. This is a proof of the intelligence of Dr. Ambedkar that he suggested a hotch-potch sort of name and got it accepted. Well, if somebody would have asked Doctor Saheb about his home land, he could have replied with pride that he belonged to Bharat or India or Hindustan. But now the Honourable Dr. will have to reply in these words: "I belong to India that is Bharat". Now, Sir, it is for you to see what a beautiful reply it is.

Lastly, I would like to request you and the honourable Members to excuse me if my observations have, in any way, offended them.]*

Shrimati Purnima Banerji (United Provinces: General): Sir, at the cost of a little repetition, I would at the outset like to associate myself with my colleagues in their expression of thanks to the Members of the Drafting Committee, to you and to all others who played such an important and necessary role in the various stages of this Constitution. Without being open to the charge of making any invidious distinction, I would like to add a special word of thanks to you on behalf of the back-benchers of this House. For, at various stages of the Constitution, when we were rightly or wrongly exercised by certain doubts in regard to certain clauses of the Constitution, you used your good influence on our behalf with the Drafting Committee to clear these doubts.

Sir, the Constitution of a country always is a very important and precious document, because it gives us an idea of how the great people of a country fashion their institutions, how they want to live, what are the political arrangements under which they exercise their judgment and what are the hopes and aspirations which they entertain for the future. Sir, when we are considering the present Constitution, our minds involuntarily go back to the olden times and contemplates the stages through which India has passed and recalls those periods, the recent periods in the history of our political subjection, when we were told that we were hardly a nation, that we were divided among ourselves in mutually hostile groups, that democratic institutions were congenitally not suited to Indian conditions, etc. We were told in patronising and high sounding phrases that the goal of this country will be the increasing association of Indians in the governance of the country with a view to the gradual realisation of responsible self-government. There was a time when in any concessions in the form of liberty which were granted to us, words such as 'Our subjects or whatever race, creed or colour will be impartially admitted to office and service', or 'No native of India will in future be debarred from employment by reason of birth, descent or colour', or 'We shall respect the right and the dignity and honour of the native princes as our own' were used. These phrases, in short, summed up the conception that was before those who were in charge of our destiny, meant for the future of the country. From such a conception of things we know with what gesture of impatience of country turned away and took, in historical words, the Independence Pledge which other countries have also taken whenever freedom was denied to them. We pledged that: "We believe that it is the inalienable right of the people of India to get liberty and freedom." With these words we entered upon a new career and worked for the independence of this country. And today we find that in this Constitution are embodied those historical words which were again raised in some other corner of the world and have since then been making a circle round the world and will continue to circulate till it becomes a reality. These words are the call of Equality, Liberty and Fraternity which today find a place in our Constitution.

Judging from those days to this day it seems, that although we may not have arrived at a stage of our fulfillment and completion, we have progressed and surely at least the immediate requirements of a normal society have been today provided. We can no longer be told that we are a race apart and that we are unable to govern ourselves.

I feel, Sir, that in the debate that has been taking place in this House during the last few days it is amply proven that this Constitution has received a very mixed reception. Perhaps the Constitution fully deserves a varied interpretation. The main foundation of the Constitution however rests on our common nationality and no Democracy. In our Constitution we say that no matter in which part of the country we may reside we are integral parts of a common Motherland, that we shall, wherever we may be, unite in working for the greatness of this country, that there shall be no distinction of caste, creed or colour or province and that no separatist tendencies will divide us and that whoever is an adult and fulfils the minimum qualifications laid down for candidature can aspire to the highest office in this land. Therefore at least one milestone we have reached and we have reached the stage when we no longer feel that the tallest amongst us must bow before any foreign ruler.

But, Sir, I still think that great as the change is, all these things provide only the minimum requirements of a society. We ourselves during our freedom movement said that it was not for the loaves and fishes of office that we were fighting but rather that we might have the political power in our hands with which we could fashion and remould and change the whole structure of society in such a manner that the grinding poverty of the masses may be removed, the living conditions of the people may improve and we could establish a society of equals in this great country of ours. To apply that test to this Constitution, Sir, I feel that it does provide those minimum necessities with which we can change things, and for this I take my clue from the Directive Principles of State Policy. We could not merely rest content with negative democracy, i.e., the right to cast votes, the right to form a government and the right to change it. In passing I would pause and say that important as these rights are in themselves, I consider that Fundamental Rights that we have provided are absolutely necessary for the working of democracy. If we want to established a democracy which should answer the needs of the growing pattern of society, we should place the means at the disposal of the people by which Governments can be establish, which in its turn can be done by the right of free association and free expression of opinion, with the exercise of which institutions can be changed. I feel, Sir, that the clauses restricting these Fundamental Rights should not have been in the Constitution and the impression should have been well founded so that one may change the Government of this country to the best interests of the people by peaceful means.

Sir, in the Directive Principles of State Policy we have said that although they may not be enforceable in a court of law, they are nevertheless fundamental for the governance of this country and we have in articles 38 and 39 stated that the economic policy of the country will be worked in such a manner as would subserve the common good. To quote the exact words, we have said 'that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.' These vital principles shall not be enforceable in a court of law but nevertheless they are fundamental in the governance of the country and all the future laws of this country shall have to take not of this. By the inclusion of these clauses I personally feel that this Constitution has provided us with the means for changing the structure of society. It will all depend on us whether we are able to establish that sovereign democratic republic, not for the hollow benefit of registering one's vote and passing legislation, not a democracy which will simply maintain the status quo or which will take upon itself the policy of laissez faire, but a democracy which will combine with it the healthy principle that the government governs best which governs least, with the principle that it should encourage the active citizenship of the country. The two articles that I have read out are the cornerstone of this Constitution. If you want the people to meet peacefully and without resorting to violence, then we much give them the free exercise of their right to meet.

At least in one aspect of this Constitution, I most categorically hold that the Fundamental Rights of meeting and forming associations should under no circumstances have been circumscribed or limited by any provisos. I would rather take my inspiration from the American Constitution in this respect where they prescribe the Fundamental Rights boldly, and merely state that they will be subject to laws made by Parliament. I do not hold the fantastic theory that all rights are always absolute. They are relative, but when it comes to stating the rights, I should think, Sir, that they should not be burdened by giving the circumstances in which those rights cannot be exercised. If these circumscribing clauses had not been stated in this Constitution the difference would have been Psychologically great- the difference would be that the laws which circumscribe the right of free speech and impose other restrictions would have been repealed when the necessity for them was no longer there; they would not have been statutorily fixed by the Constitution. The complaint already is that this is a written Constitution and a bulky Constitution, and the more a Constitution is written, the more rigid it becomes. Considering this, Sir, I feel more so that in the Fundamental Rights these restrictive provisos to freedom should not have been there.

Sir, article 21 guarantees personal liberty and article 22 provides for preventive detention. In article 21, I would have like to include the safety of the person, his dwelling and his personal property from being searched or confiscated, because the powers of search and detention by Governments have played a disastrous part in our own political history, and we would not like these powers to hamper the growth of healthy political movements in future.

Then, Sir, in the Directive Principles of State Policy, under article 39 we have provided that while we may change the whole structure of society in such a way as will susbserve the general good of the country, there is no categorical statement that any industry might be taken over by the State should that be necessary for the general good. In the Karachi Resolution of the Congress where most of these Fundamental Rights were incorporated for the first time in a political document, there was a provision that key industries and all the mineral resources of the country shall be state-controlled. That, I think, should have found a specific place in the Directive Principles of State Policy.

If the powers of government for protecting the State against foreign aggression are considered necessary, then I hold that key industries and mineral resources of the country should have been taken over from the hands of private enterprise, and these should also be exempt from justifiability or property compensation which we have dealt with elsewhere.

Another thing which I would like to mention and I think I will be voicing the views of most of my colleagues in this, is on the subject of salt. Salt has a big history in this country like the Boston tea of the Americans. Even though, I understand that the intention of the Government is not to levy and duty on salt, I feel that it should have been a gift of free India to the people of this country and Constitution should have specifically provided that salt manufactured in India would be free of duty. That also finds a place in our Karachi Resolution on Fundamental Rights.

In the Preamble, Sir, I find the absence of the word which was dear to us and therefore should have found a place there, and that word is "Purna Swaraj". I would have wished that the Drafting Committee had said that "We, the people of India, having attained Purna Swaraj, now constitute ourselves into a democratic republic". That, I think, would have been a happy thing.

There is another point regarding the services. Many friends have dealt with that subject. I personally think that even from the point of maintaining a healthy spirit of permanency in services, I do not think they should have been statutorily safeguarded thereby bringing in another difference between themselves and the people. The services are usually guided in respect of the manner in which a man should be engaged and the manner in which a man should be dismissed by Service Manuals providing these rules and if that is good enough for the rest of the services of the country, it should be good enough for the higher services of this land.

With your permission I would add another point. We have in this Constitution some references to women. I would beg my colleagues in this House particularly Rohini Babu not to deal with the subject with any levity or any lightness of spirit because we have to realize that women also as the rest of India are standing upon a new threshold of life. As between the purdah-system and the new life which awaits the development of her personality, she is finding a new place in her home and her country and it is difficult enough. The part she has played in the building up of her home where she has been described as *Sahahdharmini* has to be extended and she has to receive that recognition in the nation sphere also. She is also man's equal Partner and help-mate and in the nation building activities of the country she has much to do. That position still is to come into being, and therefore I would request my honourable Friend Mr. Rohini Kumar Chaudhuri and others who are present here to look upon this problem with the gravest possible thoughts and to give it their best help and assistance. I hope that as in the freedom of the country the women of India did not fail this land so in the preservation of this freedom she shall not fail.

Sir, with these words I would conclude with the words employed on the 14th of August by Pandit Jawaharlal Nehru when moving here a resolution, he said that it may not be given to all of us to fulfil the ambition of the greatest man of our age which was to wipe every tear from every eye but till the poverty of the masses has not been relieved and suffering remains, we pledge ourselves to the service of this country. I hope that in the short span which is allotted to us, you and I as colleagues and comrades will work hand in hand for the greatness of our country.

Shri V. S. Sarwate (Madhya Bharat): Mr. President, it may be admitted on all hands that one of the greatest achievements of this Constitution which we are enacting is that it equally applies to all the Indian States within the borders of India. This is a great and glorious consummation, unique in the history of India, and the country owes a debt of gratitude to Sardar Patel for it. But let us not forget at the same time those who have contributed as efficiently to this consummation, I mean, the peoples of those States. This House knows fully well the sacrifices and services of Sheikh Abdulla, but there were Sheikh Abdullah's in several Indian States of whom probably many in this House to not know. They were there in Travancore, in Mysore, in Baroda, in Kolhapur, in Saurashtra, in Central India, even in Rajasthan, in the Sigh States in the North and the Orissa States in the East. These people had organised strong Praja Mandals in their States and their demand for responsible Government could hardly be suppressed by the rulers concerned even with the help of the British power. When that power was gone the rulers were left without any outside support. It may be magnanimous to say that the rulers readily agreed in a spirit of self-sacrifice when the covenants of either merger or accession were presented to them by the Government of India. But that is not a historical truth. It was because of the efforts of these people in the States that the rulers full well knew that they had no alternative; that if they did not agree to the Covenant of Accession they would have had to meet with a worse fate from their people, and it is this emergency, this necessity of circumstances, which made them yield. I trust, therefore, that this House would not grudge recording its appreciation of the sacrifice and service, of the sufferings and trials of the great fight which these people put up and continued in their several States for the consolidation of India.

Coming to the Constitution itself I may say that every man residing in Indian State would have been happy if the Rajpramukh had not been linked with the Governor and the President. I am reminded of a jibe at Panini, the Sanskrit Grammarian and in one of the aphorisms he had said:

Shwa yuvam dyonah (original in Devanagari)

He applied the same rule to a dog, to a young man and to God Indra. Something like this has happened in this Constitution. I would refer to article 361. The section says: "No criminal proceedings whatsoever shall be instituted or continued against the President or the Governor or Rajpramukh of a State in any court during his term of office". It was quite all right as far as the President or the Governor was concerned; but the clause does not fit in with the Rajpramukh, whose office terminates only with his life. Take a worse case. Supposing a Rajpramukh commits a murder. There is absolutely no remedy against this in this Constitution.

Shri T. T. Krishnamachari (Madras: General): May I point to my honourable Friend that the Rajpramukh will hold his office only subject to the President allowing him to do so and if he commits a murder, he will be removed from the office?

Shri V. S. Sarwate: I would again say that the Rajpramukh does not hold office during the pleasure of the President. He holds it by virtue of the covenants which have been agreed to and which could not be set aside.

Shri T. T. Krishnamachari: I am afraid my honourable Friend is completely misinformed.

Shri V. S. Sarwate: All right. I shall be happy to be wrong. All the same........

Pandit Thakur Das Bhargava (East Punjab: General): The Constitution is the sole authority now and overrides all Covenants, etc.

Shri V. S. Sarwate: I may be allowed to have my own views and I think that no process for the arrest or imprisonment of the President or the Governor or Rajpramukh of the State, shall issue from any court during his term of office.

Now I shall refer to article 238 which lays down that certain provisions of Part VI would not apply to Indian States. This section, for instance, says that articles 155, 156 and 157 shall be omitted from Part VI, i.e., they will not apply to Indian States. Article 155 lays down: "The Governor of a State shall be appointed by the President by warrant under his hand and seal." Article 156 says: "The Governor shall hold office during the pleasure of the President." But it has been specifically said in article 238 that article 156 shall not apply to the Indian States. That supports me in saying that the Rajpramukh does not hold office during the pleasure of the President. Further, it is curious that article 157 also does not apply. Article 157 says: "No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty-five years." This article does not apply to the Rajpramukh. A Rajpramukh, even if he is 21 years of age, l will be able, according to this Constitution, to carry on his duties as Rajpramukh. It is anomalous that in the case of Provinces which are said to be better administered and which are said to have a better form of Government, the Governor should have completed the age of thirty-five years whereas in the case of Indian States which are said to be less efficiently administered, the Rajpramukh who has to discharge the same duties should be allowed to be of a younger age than thirty-five. I do not know why article 157 should not have been made applicable as far as the age is concerned to the Rajpramukhs. I know there are difficulties in the way of the Covenants. The Covenants lay down that the Rajpramukhs will be governed by the rules of succession in their State and further they would be Rajpramukhs for their life. I would have been happy, and probably everybody would have been happy if the constitutional pandits could have devised some means by which the Governors and the Rajpramukhs would have been separated in the case of Indian States. The Rajpramukhs could have been given some titular office and the office of the Governor should have been newly created. It may be too late to say this at this stage; but this is a defect in the Constitution which would have to be taken into account later on when the time comes for amendment.

I wish to refer to one or two points which seem to me to require some comments. I find there is an article for the appointment of a Financial Commission, namely article 280. In this article, it is laid down, I am referring to clause (c) "the continuance or modification of the terms of any agreement entered into by the Government of any State specified in Part B of the First Schedule, (that is, the Indian States) under clause I of article 278 or under article 306." The words 'under clause (i) to article 306' are new and they have been inserted after the Second Reading. I am sorry and I regret very much that, being ill, I could not send in my amendment to this. This ought to be considered by the House or by the Drafting Committee or by whosoever be in charge, whether it would not have been better and in the interests of all concerned that the whole financial integration between the Indian States and the Government of India had been entrusted to the Finance Commission. There would have been an independent tribunal as it were which would have judged and decided taking into account all conditions. The present condition is this. The Government of India which is a party to the financial integration is to give the final ruling. That Government being the dominant partner, and the Indian State being the subservient partner, the balance of benefit is always likely to be on the side of the dominant partner. Therefore I say that it would have been much better if the financial integration had been left to the Finance Commission. The clause I referred to above is a new addition, which has been inserted after the Second Reading. This clause restricts reference to the Finance Commission to certain agreements only. I am afraid the attention of the House has not been drawn to this particular new clause. I would very humbly request the President and the authorities concerned to reconsider of financial integration between the Government of India and the Indian States is entrusted to the Finance Commission. This is a very important point; much more so, because, as one of the previous speakers said, some of the States are losing a very big portion of the income which they derive, e.g., from customs and railways. In such a State of things, it behoves the Government of India to take into account the loss which they are suffering and to take upon itself the burden of the privy purse at least. By the abolition of the States, the Government of India on the whole derives much more benefit than the particular State concerned. I am sure that after a few years, every Indian State would in any case have had responsible Government. The popular movement was so strong that in a few years time, they could not have remained rulers and probably the position as far as the rulers were concerned would have been much worse.

I shall finish in a minute or two. I have only to mention one of two points. I may be allowed to state that in certain cases the privy purses now settled by the covenants are more than what the rulers used to get before. I know a particular case whether the Ruler was getting less whereas he is getting more under the covenant as privy purse. This was done because the interests of India as a whole required it to bring about this consolidation. Therefore, it behoves the Government of India, it is moral duty of the Government of India to take upon itself this burden of the privy purse. At present, what is done is that the Government of India pays in the first instance and then takes the same money from the State concerned. That should not be the case. The Government of India should pay from its own Consolidated Funds.

I want only to refer to one more article, article 295. This, I am afraid, is also a new section; probably some words are added after the Second Reading. This article lays down that the ownership of all property in the States which relates to the Union subject shall vest in the first instance in the Government of India, and then, may be made subject to any agreement which may be made in that respect. I should have thought it should have been the reverse. All property should have in the first instance belonged to the State concerned; and subject to any agreement, it should have gone to the government of India. In any case, this question of the ownership of the property in the Indian States relating to the Union subjects should be decided by the Finance Commission. It should be a subject of investigation by the Finance Commission. At present, agreements are reached, I am afraid, not so much on the financial principles as on the particular circumstances of each State concerned.

Lastly, I should say a word about article 371, relating to the general control over the States. There are States and States. I admit, and one would have to recognise the fact, that there are States which may require outside control. But there are States also which are in no degree less efficient than the British Provinces. So it is a slur on them which cannot but be felt very seriously by anybody who has any self-respect that all Indian States as a rule should be placed as if under a Court of Wards. There is, no doubt, a provision here which is some solace. As long as there is this control by the states Ministry all ministers in the States for solving their internal dissentions, instead of looking to their Legislature would run to Delhi, for advice from the States Ministry. Instead of pleasing their constituencies, they would rather please Delhi. This is inevitable under the circumstances and therefore it is neither beneficial to States concerned nor to India as a whole in the long run. I would therefore appeal to the future President that he gives full latitude to the proviso to this article, namely, "that the President may by order direct that the provisions of this Article shall not apply to any State specified in the order." To tell a man to be self-dependent, the best way is to take away his support: he may totter for some time but then he will regain his balance. So I appeal to the President that with the power given to him under this proviso, he excludes from the operation of this clause all those States whose administration justifies such exclusion. With these words I support the Constitution.

Shri Basanta Kumar Das (West Bengal: General): Mr. President, Sir, there are mainly three factors which have given our Constitution the present shape. I like to call them the three legs of this Constitution, *viz.*

(1) The experience gained through the working of Government of India Act of 1935.

(2) The needs and aspirations of the people who have become free, and

(3) The impact of events occurring in the country and abroad and of those that may be expected during at least the coming 10 years.

Sir, the Government of India Act, 1935, is an almost perfect mechanism for the smooth running of a Police State and is worded in a very suitably legalistic language standing the test of time. The Constitution has therefore, done well to draw largely from that document so far as its administrative side is concerned.

But with freedom achieved, the State has to pass from a 'Police State' to a 'Welfare State' and along with the peace and security of the country the full growth of the people is to be assured. A copy of that Act cannot therefore be possible, nor would it be proper to do so. To effect a balance between those two very potent factors was therefore a necessity but that work has been much hampered by the third factor viz., the political situation particularly arising out of the division of the country, the fissiparous tendencies that always attend a newly achieved freedom and the cultural and ideological crisis through which this country as well as the other countries of the world are passing. In this very difficult task of making a compromise between these factors, the wisdom, knowledge and experience of our leaders have been put to a severe test. On the one side of the picture we have been given a central authority with almost dictatorial powers to ensure security, law and order and to deal with all disruptive forces with a very strong hand. On the other side we have the provisions of Fundamental Rights and the Directive Principles which is observed and worked out in a right spirit, will go a great way to fulfil the aspirations of the people who have been impatiently looking forward for happy and prosperous days after the shackles of foreign yoke have been cut as under.

But if the principles embodied in the Constitution fail to bring about the anticipated results, that failure must be attributed to the lack of skill to handle the machine and not to the machine itself. A weak, inefficient, tactless administration is incapable of delivering the goods even with the best form of constitution on earth. This Constitution has at its background an administration guided by the great leaders of the country and to my mind, it is an experiment for at least 10 years.

I must, however, say that the Directive Principles which aim at the paramount task of nation-building and which are a sort of instrument of instruction from the nation's representatives to the administrators of the country might have been put in a more obligatory form. In its entirety the nation-building scheme envisaged in this Constitution is not as definite and comprehensive as it might well have been. To take for instance, I may mention the provisions regarding education-which place no compulsion on the administration to attain a certain level and standard within a definite period of time-although 'educate' and 'educate' should be the motto of the State in order that democracy may be a success in this country. The same may also be said about the economic pattern of the society as set forth in the Constitution.

But if the task of effecting a balance, I have referred to before, has not been property performed and our leaders have been led more by the exigencies of the situation than by hopeful liberalism, the ultimate appeal will lie with the ballot-box which is the greatest boon that the Constitution has conferred on the people.

I do not deny that the ballot box has many vices and it has been criticised by some as unsuited to the Indian soil. But the pattern of the Constitution we have set forth before us leaves us no escape from the ballot box. It is upto us to rid it of its vices and to learn and teach to use it as a sacred trust. Only if the ballot box remains incorruptible, we have nothing to be afraid of any arbitrary power that may have been conferred on the executive who shall have to serve the masters who hold the box. Criticism has been offered that the proposed system of ballot-box might well have been replaced by basing the Government on the village Panchayat as its unit with a view to ensure a truer and more real form of democracy. I must confess that we have not been able to bring about that revolutionary change for a decentralised government. In spite of the teachings of the great apostle of non-violence and truth, we have not been able to spiritualise our life and thought and politics in a way adequate to conform to a system of decentralised government. But the revolution has yet to come and come when it will, we must have to change this Constitution. But today let us welcome this great achievement and work it in a spirit of faith and hope extending all co-operation to our leaders whose handiwork it is and who may be considered fit to wield it to make the nation strong, prosperous and secure.

Sir, I support the motion for acceptance of the Constitution.

Shrimati G. Durgabai (Madras: General: Mr. President, Sir, the speakers who have preceded me have placed before you in a highly learned way an exhaustive analysis of the Constitutional set up which this country is going to have. Sir, I have no intention to repeat them, firstly because I do not claim to have that legal or constitutional wisdom to say anything by way of throwing further light on the points already placed before this House. I also think that at this stage it is better to look forward than look backward and dissect this Constitution in a theoretical way to find out either the merits or the defects of it. Sir, there is only one standard by which we have got to judge this Constitution. The purpose of a democratic constitution is to find a device and to establish a machinery to find out the general will of the people and also to give scope for the general will to prevail. Does this Constitution fulfil this object? That is the point to be considered. Sir, with the franchise extended to all the adults, and with the ample checks provided to control the executive and the Fundamental Rights solemnly guaranteed by this Constitution, I do not think any fair-minded person would say that this Constitution does not fulfil that democratic purpose, that it does not establish the scope and opportunity for the will of the people to dominate in the administration of their affairs. May I say, Sir, that it is not or should not be the purpose of the makers of the Constitution to give the colour of a particular political ideology to the Constitution, and it is well that it is left to the people and the people should be left alone, and they should be the masters to shape the destiny of this country and also to mould their machinery as they like, as long as they hold the field. It would have been wrong on the part of the makers of the Constitution to have given that kind of colour or to put a kind of interpretation of a particular brand of political philosophy to tile provisions that are embodied in this Constitution. What the Constitution should do is to give the people sufficient and free scope to canvass their own particular brand of ideology and give them the means to make their own opinions prevail as long as they have got a voice in the administration of the country.

Sir, it is possible for a socialist to complain that the principles of his own party do not find a place in this Constitution. But ours is a Constitution which is neither a socialist Constitution, or a communist Constitution, or even for the matter of that, a Panchayat Raj Constitution. It is a people's Constitution and a Constitution which gives free and ample scope to the people of India to make experiments in socialism or any other ism in which they believe would make this country prosperous and happy. It would have been wrong on the part of the makers of the Constitution to have introduced their own political philosophy, and they have done well in making this Constitution, as I say, a cent per cent. people's Constitution, and leaving it at that.

In their own wild disappointment, some unkind critics have described this

Constitution as no better than "the Motor Vehicles Taxation Act". That, Sir, is very cheap criticism, I should say. Does this Constitution which for the first time gives adult franchise, for the first time guarantees the Fundamental Rights, and which has amazingly succeeded in blotting out the hundreds of patches of this country and made it a strong and united country, does this Constitution stand on a part with the Motor Vehicles Taxation act? Certainly, as I have said that is a way of criticising this Constitution which is a very cheap way.

Sir, I will not deal with the various constitutional safeguards provided in this Constitution for a democratic government. It is a subject on which many learned disquisition have been made. As I said we should now look forward and see to shape the future of things, by means of this Constitution. Many have dealt with the pros and cons of adult franchise. It is a very good thing, provided it is exercised in the interest of this country. What should we do to bring about this happy consummation? It is said that adult franchise unleashes vast forces which may not work in the interest of national good, but which may work in sectional interests. Sir, it depends upon the leaders who are going to take charge of the destinies of our country and of the new set up to create sufficient safeguards against such an abuse. I do not imagine the problem is so difficult as we think it to be, if we only make, in the first instance, membership of this house the membership of Parliament, not a position of unusual prestige or of position and power, but a post of duty and of heavy responsibility, a post of duty and very hard and efficient work. It is only then that many of the defects of parliamentary democracy will be automatically solved. Can we not devise a method by which the elected representatives would be looked upon, not as belonging to a privileged class, but as persons discharging a heavy responsibility and duties over and above, and in addition to talking which is what we are doing now. As long as we maintain the status quo with regard to the position of the representatives of the people there will be that scramble for seats in Parliament and the consequent scramble for power. Only when we are convinced and make others also relies that the position of an elected representative is not merely a position of luck or prestige, but a place of duty and hard and efficient work, only then will there be the necessary restraint in the matter of the choice of the representatives.

Sir, I will not take up much of the time of the House but will only mention one feature which appears to me to distinguish the Constitution from the American type of constitution, and that is with regard to the judiciary. Although this Constitution is of the federal type there is not a double chain of courts created in this country, that is, one set to administer the federal laws and another set to administer the laws made by the State. All the courts form a single hierarchy, at the head of which is the Supreme

Court. Immediate below the Supreme Court there are the various State High Courts and below them the subordinate Courts of the States. But every court of the chain, subject to the usual pecuniary and other local limits, will administer the laws of the country, whether made by Parliament or the Legislature of the State.

Sir, there are several other kinds of criticisms made against this Constitution, but I have not got time because I have to accommodate other colleagues of mine, as the President has already said.

Sir, I would just mention one or two points. It is said that there is nothing Gandhian in this Constitution. Look at the Chapter on Fundamental Rights. It has always been criticised in the House and some of the attacks have been bitter, that the Fundamental Rights are not worth the paper on which they are written. It is supposed that because the Fundamental Rights are hedged in by certain restrictions they are absolute trash? These restrictions on the Fundamental Rights are completely in consonance and in accord with well recognised restrictions in the whole jurisprudence not only of this country but of the whole world and the constitutions of various countries. The rights should not be absolute.

I have also heard the criticism that this Constitution has not laid down the duties of the citizen. It has laid down only the rights. I do not want to say much on the restrictions which have been placed on the Fundamental Rights. While claiming his rights under the Constitution the citizen should as well remember that he has got an obligation and a duty to the State, from which he expects his rights or his protection.

Look at the Chapter on Directive Principles of State Policy. It is said that they are just merely principles which are not enforceable through the courts of law. Constitutional declarations of social and economic policies of the State are becoming a common practice and it is not even unknown to ancient India. Artha Shastra mentions an injunction to the King in these terms:

> "The king shall provide the orphan, he dying, the infirm, the afflicted, the helpless with maintenance He shall also provide subsistence to the helpless and the expectant mothers and to the children they give birth to."

This is basic injunction of the Artha Shastra, which the King has no option but to obey and it could form the guiding principle of our Government both at the Centre and in the States.

I do not want to deal with the criticism that this Constitution which is a republican Constitution cannot work well within the Commonwealth, which we have chosen to be part of. From many sources we have heard this criticism. I do not want to deal with it at length but would only say a word. I do not think it is an insurmountable difficulty. I would mention again that it is not unknown in ancient India, because the republic of Licchavis is mentioned as having a form of membership or partnership with the empire of Chandragupta. These two names are inscribed on the imperial coins. Berriedale that in the commonwealth if there was no room for the republics to work then the enduring character of the Commonwealth itself was of a doubtful nature. Therefore it would be well that we recognised certain authorities for this purpose of working together. Therefore, it need not be thought that this would constitute any difficulty.

Last but not least I want to say that I have just read the decision of the Government of India this morning in the papers that they have created facilities to bring about the Andhra Province at an early date. They have done well in leaving the details to be worked out by a Partition Council and that the Centre would not interfere with them. I am very glad about it and I hope that the Partition Council which might be created will not do anything that is injurious to the peaceful and quiet life which the people are enjoying hitherto.

Dr. V. Subramaniam (Madras: General): Mr. President, in the Draft Constitution of India which we are going to adopt within a few days, we have only peg-marked the path for the construction of the road through which the ship of State should sail. The ship will be steered by the new Prime Minister of India on which there will be about 500 MPs as sailors. It is the duty of the President of the Republic of India to guide us all to the destination. The destination is contained in the Preamble. With the Preamble as our goal we are fixing 395 articles as peg-marks. The regular road is to be constructed by the future parliamentarians. By the wisdom and foresight of our leaders and with the help and co-operation of the honourable Members we were able to trace out a plan foreseeing the difficulties ahead and utilising the experience of other nations. Let us pray to the Almighty to give us sufficient strength and wisdom to steer the ship away from all the invisible obstacles.

We are to begin our journey on the 26th January 1950 when we will resolve ourselves to carry out the Constitution in letter and spirit for the good of the people. Equally so the people must also realise their duty to the State and work shoulder to shoulder with the State. The provisions contained in the Fundamental Rights and Directive Principles of State Policy are ample evidences for the guarantee to the people.

Our old structure of society, as enunciated by the seers of our land was based on the varna and Dharma or duty that each varna must do. Now that all varnas have gone out of the work allotted for them, owing to the powerful cause of Time, "Kal", society wants a change in its structure so that people can select their own professions according to their tastes and get equal opportunities in the social, economic and political life. Further, modern society wants to make no distinction between man and man by births or status. These changes we were not able to bring about for the last many centuries. Now that alien rule has been eliminated, we give this Constitution to ourselves.

Constitutions of countries were generally framed immediately after revolutions or wars. We in India were fortunate to frame our Constitution almost in a normal atmosphere except for some troubles created as a result of the partition of the country. At this juncture, I bow my head in reverence to the Father of the Nation for his unique leadership, through whose ideals we were able to reach this stage. I think our Constitution will work well in due course. It is not wise to criticise it at the start itself.

The one thing that the future State should concentrate on, if they want to build an ideal India, is upon the building up of the individual in the State. If the individual is perfect then the State also become perfect. It will take a long time. A government conducted by an individual or group of individuals who are perfect both in thought and deed is Ram Rajya, a Rajya dreamt of by Mahatmaji.

In this Constitution I find a lacuna. There is no provision for creating a new era just like "Salivahana Sakapatha". Now it is Salivahana year 1872 and Kali 5051. So my desire is that soon after the birth of this Constitution for all State purposes we must open the Gandhian era as the first year, the date being the date of day when Mahatmaji was assassinated. Either Gandhiji's date of birth or death must deserve a new era.

The predominant feature of the Gandhian era would be the importance of the individual as against the State. Gandhi in all his writings and speeches emphasised the need to create conditions for the development of the personality of the individuals who constituted the State. This he visualised as possible only under conditions of complete decentralisation of power-political as well as economic. I cannot but share the views of some of my colleagues here that this Constitution has not aimed at bringing about such conditions in our country. Political power has been so much centralised as to endanger the prospects of economic decentralisation so necessary for the development of the human personality of our people.

With these observations, I support the motion before us.

Shri K. M. Jedhe (Bombay: General): Mr. President, Sir, I stand here to congratulate Dr. Ambedkar and his colleagues for having taken great pains in framing India's new Constitution. We have spent nearly three years and now we are completing our great work. Some Members while congratulating Dr. Ambedkar have called him the present Manu. I am certain that he would not like this appellation. I know he hates Manu who has created four castes, the lowest of which is the untouchable class. I remember that he has publicly burnt Manu Smrithi in the huge meeting of the untouchables at Mohad in 1929. He is the great leader of the Harijans and is greatly extolled by them as their champion and is worshipped as an idol. They are very proud of him. They call him Bhim and make it known to the public that he has framed Bhim Smrithi. I also call it Bhim Smrithi though I belong to the Sprasya Class. Dr. Ambedkar is a great lawyer and a man of great ability and intellect; nobody will doubt that. Untouchability has been removed by law and while framing the Constitution, Dr. Ambedkar was very keen and earnest in safeguarding the interests of the Harijans. All Harijans must be grateful to him. At the same time, we must also be grateful to our country's Father, Mahatma Gandhi, who gave us independence. He was a great soul who made, great efforts during his life time to remove untouchability. His great wish was to bring the Harijans to the level of touchable. He is not among us to see his great wish fulfilled and bless us, because he fell a victim to a cruel and villainous plot.

I must also congratulate Sardar Vallabhbhai Patel for having achieved the unification of India. He is strong and resolute, strict and stern, while administering public justice. he has brought low to level ground the Indian princes who were a great impediment to India's swaraj movement at the time of the British Government, but now they are crestfallen. Now India is one and the whole credit goes to Sardar Patel. Here I must express my great respect and reverence for him.

The Constitution which is nearly complete has made the Centre too strong and much of the owners of the Provinces has been curtailed. The centre has become the great king and the provinces its dependencies. We get adult franchise and for this we must congratulate ourselves. Many have shed tears for having extended the franchise to all men and women above the age of 21. Their whole argument, which is selfish, is that the people of this country are ignorant and uneducated, but the whole blame goes to the upper class, because they have kept the people ignorant for the selfish ends. No one will be deprived of his right of franchise if we want democracy, the rule of the people. We are told that democracy is embodied in the new Constitution. The Constitution has vested great powers in the hands of the

President and I am under great apprehension that there will be a dictatorial rule instead of democracy and that the Fascist mentality will grow as the Centre is made strong. However, we are to see how our new Constitution works and satisfies the people.

We cherished great hopes that along with the Andhra Province, Samyuktha Maharashtra would come into existence with the beginning of the new Constitution, but in this we Maharashtrians were greatly disappointed. Andhra Members got their province separate and for this we must congratulate and praise them for their united efforts. We Maharashtrians were asking for separate Marathi-speaking province-Samyuktha Maharashtra including Bombay-but we did not get it because we were not one. Some C. P. Members were for Maha Vidarbh and Bombay Provincial Congress Committee was for Bombay to be a separate unit. Sir, we do not want Maharashtra to be divided. We are willing to remain in the Bombay Presidency for some years more. We still hope that Samyuktha Maharashtra will be created along with Bombay city. We have patience to wait and we hope that we will get Maharashtra as we demand. In this I will be supported by Shankarrao Deo and Kakasaheb Gadgil.

Sir, I have done.

Shri Satis Chandra Samanta (West Bengal: General): Mr. President, Sir, before I begin my speech, I want to tender my heartfelt offering of homage to those who sacrificed their lives, liberties and all the pleasures of their lives for the country, as a result of which we have become independent. Soon after independence we started framing the Constitution and we are now at its completion. This Constitution which we are going to present to ourselves is based on democracy. The world is after democracy and we are also following the same path. According to Abraham Lincoln, democracy means the Government of the people, by the people, for the people. We have framed our Constitution according to that principle. We have been selected to come here in a democratic way and we have framed this Constitution according to the best of our knowledge. In spite of personal points of difference, we have accepted the verdict of the majority; if we now go into the merits or demerits of the Constitution, nothing will be gained.

Now, as regards the Constitution, I may refer to the fact that on 29th July 1934, the Congress demanded the constitution of a Constituent Assembly. The then British rulers did not grant our demand. Now, through our sacrifices and efforts, we have constituted our own Constituent Assembly. This Constitution we are going to give to ourselves is a thing which is for us to adopt and work in a true spirit. We the people of India have framed it and if there be any defect in it, we should accept it and not grumble about it; because the people of India and their representatives who have framed it are what they are, it will go on.

So we having nothing to grumble. My friends have gone into the merits and demerits of the Constitution. I admit there are demerits, but now we cannot escape those demerits. I am one of those who can express joy over the framing of this Constitution, as a Member of this Constituent Assembly, because the fundamental things which we want are there in this Constitution. In spite of the defects that this Constitution contains, we who are the framers of this Constitution should try to execute the articles thereof in the proper spirit for the welfare of the country. If we do not take that trouble and that responsibility, we will not be doing our duty. So, whatever defects the Constitution may have, much will depend upon the way in which it is worked. I would therefore urge upon the framers of this Constitution, the Members of this Assembly to explain its provisions in their constituencies with in one year from now, before the next general elections and educate the electorate to be worthy citizens of India so that the right men may be elected by them for properly working this Constitution. Unless the electorate has the education to choose real representatives. However good the Constitution may be, it will bring so good to us. I repeat this request to the present Government also to educate the electorate by introducing compulsory adult education within the next year so that this Constitution may bring about the desired effect.

Sir, I want to say a word about adult franchise. As one who is a villager and a common man, I know the defects of the villagers. Unless we give them opportunities to know what they are, they will never rise. There have been good men and there are still good men in the villages. If real responsibility is given to them, every one of them will prove his worth and this Constitution can be worked successfully.

Sir, I moved an amendment seeking to bring the village panchayats under the Fundamental Rights. They have, however, been brought under the Directive Principles. If the village panchayats are properly constituted as provided in the Directive Principles, the wishes of Mahatma Gandhi could be fulfilled. There are many articles in this Constitution which fulfil the ideals of the Father of the Nation, Mahatma Gandhi. Those ideals should be fulfilled.

Lastly, I would request one and all not to criticise the Constitution, but to give effect to its provisions with a spirit of service so that the wishes of the Father of the Nation may be fulfilled. With these words I conclude:

Kaka Bhagwant Roy (Patiala and East Punjab State Union): *[Mr. President, a large number of my honourable Friends have expressed different views regarding the very Constitution which they have themselves framed. This has confused me and has also given me pleasure. So far as I am concerned, I foresee the basis of revolution in this Constitution. After years of political struggle and unparalleled sacrifices, India attained independence and the Constituent Assembly of free India was constituted. A wave of enthusiasm overtook India. But the people of the States only looked towards this great Assembly with hopes in their eyes. As the time marched, the map of India's beautiful future became clearer to Indian people. The States subjects got rid of the despotic rule. Small States were dissolved and went into Unions. In a big country like India they were given equal share. The Indian people were given the right to constitute their own government by their own votes. In truth it can be said that for the future the reins of the Government have been entrusted to the Indian people. It appears to me that in the history of this ancient country this is the first revolution of its kind when power has been snatched from the hands of Rajas, Maharajas and their courtiers and has been placed in the hands of the people and when rulers' birth right to rule has been nullified. Now it is the duty of the people to consolidate this change and to infuse life by their good actions in this Constitution which is based on beautiful ideas. I am aware of the responsibilities of the people and their leaders. Our countrymen are innocent and illiterate. Different people and different bodies will play with their sentiments by their own tactics. But its duration will be short. I am fear-stricken. With the enforcement of this Constitution the ignored people of the country will raise their heads with the help of natural force and will acquire the rights of which they were deprived for centuries together and that great revolution which lies implicit in the Constitution and looks like a dream, will reveal itself in its true colour. That map which our beloved leader (Respected Gandhiji) kept in mind while engaged in the political struggle will be in its prime of youth. And those very stories which we have been hearing and reading of our country's knowledge, civilization, culture, wealth and prosperity will become a reality and will give to the world the message of happiness, love and beauty. In the Constitution, reference has been made regarding the Harijans. Whenever we debated on this subject in this House and whenever its necessity was felt, I hanged my head with shame. I would like to say that those who called themselves of higher castes have perpetrated brutalities on this community and by giving them bad names based on the nature of their professions throughout the centuries. I cannot understand how those who have praised India and Indians have done so? That country is very low and mean in which discrimination has been made and is being made between man and man. For centuries together the untouchables and the Harijans of India have been so badly downtrodden that they cannot be compensated even if the reins of Indian Government are handed over to them. In this age of progress a day will dawn when the future generations will read about untouchability and the needs of our forefathers will make them hang their heads in shame. In this connection I would like to say that the centuries old communalism which had dominated the Indian mind in some shape or the other, and everything was measured in accordance with this maxim, so much so that even water was given a Hindu as well as a Muslim name. This ancient land was partitioned and two years ago Hindus, Sikhs and Muslims became the victims of this communalism and the creation of God was sacrificed at its alter. By putting an end to this communalism once for all, politics and religion have been divorced from each other. So far as the Provinces and the Centre are concerned, it has been seen that Centre has been made very strong and powerful. It is but proper that the Central Government of such a big country must be very strong as history shows, whenever the Centre was weak the Governors of the Provinces rose in rebellion, and unfurled their own flags. I cannot help saying that the Englishmen, for the first time united the country and ushered in a strong Central Government and brought home to every Indian the feeling that he was an India. But we have been bred in such a narrow atmosphere for centuries that even today I feel that we think in terms of provinces and communities and not in terms of India as a whole. I admit that, hand in hand with the Centre all the parts of the country must be strong. Because until and unless all the parts of the body are not strong mentally, physically and spiritually, the body as a whole, can never be strong. But in order to take work from all parts there should be a brain in the centre which should handle all the parts properly and justly and afford opportunities to all for proper development. This should be the shape of our Centre and the Provinces.

Lastly, as a representative of the State, I am indebted to the beloved President of this Assembly, Dr. Rajendra Prasad, as the States have been given equal share in the Constitution and that the position of the States have been placed at par with other Provinces. Now I must thank our beloved leader Sardar Patel who with a strong hand and in an appreciable way has snatched the power from the Rajas and has entrusted it to the people. Having spelt the doom of centuries old system, the Princes and the people have been brought in one line. Sir, I see in this Constitution that the despotic rule has come to an end for ever and the day of popular rule has dawned.]*

Shri Jaipal Singh (Bihar: General): Mr. President, Sir, may I venture to ignore your counsel against repetition and add my own tribute, unqualified tribute, for the tremendous work Dr. Ambedkar and his hard-worked team have put in the making of the new Constitution and also, Sir, may I humbly add, for the inexhaustible patience you yourself have shown in guiding our deliberations. While I record my own thanks to you, Sir, and, to the members of the Drafting Committee, I am not oblivious of the enormous amount of work, seen and unseen, that has been put in by the Constituent Assembly Secretariat. I think the whole House owes a great deal the highest and to the lowest members of the staff of the Constituent Assembly Secretariat. I know we, M. C. A. s., by virtue of the position we hold in this House, are exacting persons, but they have been diligent and loyal in their services to us and I think we should acknowledge our recognition of the services, willingness and diligence they have shown throughout the time that we have been here. I do hope that the sanctity of the Constitution will, in no way, be lessened by the unemployment of any member of the staff of the Constituent Assembly Secretariat. Personally I would like to see, that, somehow or other, everyone, who has worked with us in the making of the Constitution, is absorbed elsewhere if he cannot be absorbed in the future Secretariat from next year. I do not think, Sir, it is necessary for me to single out any particular section of the Secretariat. We all know how prompt services have been given to us whether they related to the making of accounts or to the supply of petrol or to the providing of suitable accommodation and furniture in our houses or anything like that. Whatever we have asked for has been willingly given us and that also promptly. I feel I must record my own recognition because, as a Member of the Staff and Finance Committee, I know the amount of work they have put in and in recording this recognition I am thinking more of the people whose work is unseen, people who happen to work in the upper stories of the Council House and not merely the people whose faces we are accustomed to see every day.

Sir, I do not think it is necessary for me to say anything about the Constitution. The constitution has been made by us. I know that some sections individually are not fully satisfied. That is as it should be. No Constitution can please all the different sections of any country, let alone a country like India, but, the overall picture, to my mind, is very satisfactory and not disappointing . I have great faith that this man-made Constitution will succeed if men will be genuine and generous enough in the working of the Constitution. After all, the various potential facets of this Constitution may be disturbing at this stage. There is potentiality for the new Constitution being democratic. There is also the other aspect, rather disconcerting, of the Constitution being converted into a totalitarian administration. Everything is there. It is for us men to make this what we want it to be. There is that flexibility. It is not the written word that matters. It is the life that we put into that written word that will count in the long run.

I know there are many things regarding Adibasis that are not writ in the Constitution. For example, we do not know yet, Sir, how the President is going to treat the question of scheduling of the areas. We do not know, for example, what kind of inventory of the various Scheduled Tribes, will be made. We do not Know yet as to whether there will be co-ordinated administration from the Centre so that the work in the various provinces, where we have Scheduled Tribes, will be regulated and directed. None of these things are mentioned and yet I have faith enough to say that I am looking forward to a great future for the Scheduled Tribes, as well as for others, because, it would be for us to make or mar the future of our country, to make or mar the Constitution. Sir, it is in that great faith I give my unqualified support to the Constitution.

Shri A. Thanu Pillai (Travancore State): Mr. President, Sir, we are now coming to the close of a very important task. We are adopting finally the Constitution for a very great country with an unbroken past, which few other countries can claim and that devoutedly-wished for future which is to satisfy the aspirations embodied in the Chapters on Fundamental Rights and the Directive Principles of State Policy.

Sir, the articles have all been discussed at full length at the second reading stage and the criticisms have been fully answered by no less an advocate than Dr. Ambedkar and we have come to the end of our labours. I think, Sir, that Adult Franchise, in spite of the objections that may be raised against it, is really the core of our Constitution and it is but just and right that we have adopted it. I am really surprised that even today objections are raised to Adult Franchise. Not only from the stand-point of democratic principles but from the facts of the situation in the country, it is clearly indispensable. We must look at the temper of the nation today. Will anything other than adult franchise satisfy the people? I am definitely of the view that nothing short of it could have formed the basis of our Constitution.

Now, Sir, I have very little time allowed to me and I am now chiefly interested only in pointing out a few things which should be kept in view in implementing the Constitution. I fully agree with Mr. Santhanam who said that the contents of the Constitution should be made familiar to the entire country and elections should be held as early as possible. Sir, various defects have been pointed out but I agree with the general view that the control of affairs of our nation is now sought to be placed in the hands of the people themselves. But that should be done as early as possible. Any delay may be even dangerous and in regard to elections, Sir, there are various difficulties. I know from personal experience what an election on the basis of adult franchise is, but I must point out one fact to this House; there is no question of my being misunderstood-an election on the basis of adult franchise should be a real election; it should be a free election and everything should be done by all parties concerned, political leaders, leaders of parties, those that are in Governments today to see that the elections on adult franchise basis are really free. Sir, I know that even under Congress

Governments, elections are not free today. We have got the legacy of misconduct on the part of officers of Governments in the past. The previous Governments in some parts of the country, at any rate, indulged in all manner of vagaries and unfair means in bringing about results favourable to candidates whom they liked in elections and in some places even now in elections, conducted by Congress Governments, I am very sorry to have to point out that the same policy is pursued. It is the duty of whoever is in power to see-and the Central Government should particularly see that elections are free. I am very glad that under the new Constitution power placed in the hands of the Centre to see to this; that is to say, the Election Commission is to be appointed by the Central Government and the full control of elections, the preparation of rolls, the way in which election disputes are dealt with,-all this has to be attended to by that Commission appointed by the Centre. However, much I may differ from the general view that has been adopted in framing the Constitution that the powers of the Centre should be, as extensive and those of the units as restricted as possible,-I agree in this that provision should be made to ensure that the elections are free.

Now there are various complaints against the Congress Governments that the Governments are not doing anything for the people, that the Governments are not above corruption and so on. The effective answer to these complaints will be to place power in the hands of the people themselves and do it an effective and proper way. Then the responsibility will be on the people themselves. This result can be really achieved only if the elections are free. Government power and the advantages accruing to a party from being in power should not in any way, be made use of for securing favourable results in elections. If this principle is ignored, the result will be negation of democracy. The present Government, not being the result of elections on the basis of adult franchise cannot be said to be a people's government in the full sense of the term, but we should have such a Government as early as possible.

Now, Sir, I wish to refer to one or two other matters. In regard to the formation of provinces on a linguistic basis, my view is-it may be taken for what is worth-that language is made too much of in the formation of provinces. No doubt, language has a part to play in administration but it is not everything. There are other equally vital and important considerations to be taken into account in forming new provinces. For instance in regard to the proposal by some that Cochin and Travancore along Malabar should be formed into a Kerala Province, I ask people responsible for it to examine the matter as to how far that area by itself would form an economically sound unit. Look at the economic aspect of the matter also and see whether it is that kind of province with inadequate resources that we should form in the future or whether, if a change in the present set up is necessary, that area should be merged with the other districts of the Madras province so that a compact strong and resourceful South Indian State may emerge. I place this for the consideration of all those who are interested in this question. Sir, it is now said that the Tamils do not want the Malayalees in their province and the Malayalees cannot get on with the Tamils. If that is the view people take how is the Union of India to be maintained? As a result of the idea of linguistic provinces a situation has arisen in which people say they cannot get on with others who speak languages different from their own. I fail to see any reason is this. In my own State there are Tamils and Malayalees and we are getting on well together. This loud cry of linguistic province now begins to create difficulties. I want those that are responsible to take a sober view of the mater and look at the real issues involved.

Now, Sir, in regard to the question of language itself I have got a few suggestions to make. I am very glad that in the Constitution a provision has been made that Hindi may be adopted as the official language of any State. My point is this. I want to place great emphasis on that provision and to suggest that even though a province is not a Hindi-speaking province, for governmental purposes at the higher levels of administrative work Hindi should be adopted. Hindi should be given the place that English occupies today, in our national political life. I know my opinion may not be generally accepted in non Hindi-speaking provinces and States. I find before me eminent persons who are in control of educational affairs who have taken the view that the regional languages must be adopted as the official language in the States and Provinces. I take a different view, Sir. I want Hindi to be enthroned in the place English occupies today when English is to go. We must no forget the fact that whatever our differences with Englishmen, they have conferred on us a great blessing. How are we here today? How am I able to be understood by you and how can I understand you? It is because of the common language; it is not because it is english, it is because of the commonness of that language so far as our country today is concerned. I am thinking of having an Indian language and that language can only be Hindi today and, therefore Hindi should be given that place. Sir, you just consider how many common matters we shall have to deal with in the future. If a man from Travancore or Tamilnad wishes to come here to transact business, he must know Hindi. It may be a research institute, it may be an all India Conference; if one wants to take part in any of these, one must know Hindi. There are one-thousand and one other things of common interest. The legislature here must be composed of Hindi knowing men. What about the legislature in the Tamilnad? Why not everybody try to know Hindi? Hindi must be made a compulsory subject of study throughout the country. At any rate, Hindi should be given the place that English occupies today. Not that I want that English should be banished. Our children are capable of learning three languages : Hindi, English and the mother tongue. Anyway, this is my view. Some people say that unless you carry on the administration in Tamiland in Tamil, the villagers will not understand you and the administration of Madras will become impossible. I differ from this view. So far as the villagers are concerned, you can issue instructions, you can issue orders, in the language known to him. So far as the higher levels of administrative work are concerned, in the provincial secretariat, you must have Hindi. Otherwise, the whole country will find itself at a great disadvantage and will experience great difficulty and the administration will be practically impossible. I would have taken more time of the House on this question but I do not want to go against your directions.

There is one other matter which I would like to touch upon. The Centre is given immense power. Personally, I feel that the Centre has been given too much power. There must have been a conviction in the minds of those that are responsible for the shaping of these provisions that the centre will always be unerring and infallible and the province are likely to err. It is on this basis that the whole superstructure is built. I differ from this view. The Provinces are as capable of taking care of themselves as the Centre and that fact must be recognised.

I would only mention one or two points. Take legislation. In all important matters, Central legislation must prevail whether the subject is in the Concurrent List or in the Central List. I must bring to the notice of this House and of those that are responsible for future legislation that in some parts of India progress has been made in some directions which has not been made throughout the country or in the major provinces. I may refer to the abolition of the death penalty in Travancore. That is a matter for serious consideration. On the 26th of January 1950, a Travancore culprit who is guilty of murder stands the chance of being hanged. Till then, he is free from that. Not that I want to help the murderer; it is a humane law that we have adopted, and there is very strong opinion in favour of that. Are we to go back? Can we do otherwise than going back to the hangman? We have to go back to the hangman on the 26th of January. What I want you to remember is that you should patiently consider the progress made even in small parts of the country and no legislation should have the effect of undoing the good that has already been done. Uniformity should not lead to retrogression. The higher standards reached in any parts of the country should adopted in respect of the whole country. I may also mention one other thing. This is particularly relevant now because the Hindu Code Bill is before the legislature. In our place, among the Marumakathayees, the personal law, the family law, the law of marriage and so forth is such.........

Shri L. krishnaswami Bharathi (Madras : General): We are not now discussing the Hindi Code Bill here.

Shri A. Thanu Pillai : I am not discussing that; I am only referring to that Bill to illustrate a point and I think I am perfectly within my rights in doing that. What I wanted to say is, our law is more progressive from the point of view of modern conceptions of life, and if we are to go back to the ancient Hindu Law with its narrow religious basis, the result will be unfortunate. If you wish to provide for a common civil code for India, that must be in consonance with modern advanced conceptions of life. Our women are free; our marriage laws are in consonance with the up-to-date concepts of social existence. Have we go to back to conceptions unacceptable in the modern world? I want only the future legislature to consider these aspects of the matter. Not that I want to discuss the Hindu Code Bill here; I have experience enough not to discuss it here. Mr. Bharathi may understand that.

In regard to interference on the part of the Centre, I may just refer to one more point. The Centre should be strong, I agree. But the strength of the Centre does not consist in the number of subjects to be handled by the Centre, but more in the willing co-operation and willing acquiescence of the Provinces and States in what the Centre is doing. That willing co-operation and willing acquiescence, is not to be achieved by tightening the ropes round the necks of the Provinces and units, but by giving ample scope to the units to develop. I am afraid we have made a mistake even with regard to the appointment of the Governor. The Governor is practically a nominal entity; he could have been left to the Provinces to elect.

I do not want to take up more of the time of the House. I hope, any way that all the provisions will be so implemented that there will be as little friction as possible and the Provinces will feel that they have come their own, that they are given freedom to develop themselves and that the Centre will take care to see that feeling is engendered and fostered.

The duty of the Centre is immense. Today I read in the papers that as far as public health is concerned, to combat tuberculosis alone, the Honourable Rajkumari Amrit Kaur wants 400 crores to start with and an annual recurring diseases, of 100 crores. There are, besides, malaria and a hundred other diseases. from the point of view of public health. Take education. You complain against adult franchise. We must educate all our children. How many crores would we require for it? The financial resources of the units are curtailed to the limit. Even a fresh tax they cannot impose; that the Centre alone can do. Under these circumstances, it is the duty of the Centre to see that the country develops. This Constituent Assembly has placed upon the

Centre a burden that it will find difficult to bear. That is the result of the provisions of the Constitution. When the financial resources of the States are so restricted, when everything that may be newly tapped has been left to the Centre, how can you ask the States to develop industries, agriculture, education, public health and improve labour conditions? All the resources are concentrated in the hands of the Centre. The Centre has therefore the duty to find funds for national development in all directions. I hope the Centre, will be equal to the task and our country will proceed from progress to progress and Constitution that we are now enacting will pave the way for the glorious India that we have in view.

One more word, Sir. It is said that this Constitution is inelastic. It is not. No doubt, certain provisions could have been better framed. Even in regard to personal liberty, what I find is that article 22 gives the power to formulate the in that regard to the legislature, that means, that means, the representatives of the entire people. You may pass any law that you like. I do not overlook the fact that the amendment of the Constitution in regard to certain matters require the consent of a two-thirds majority and of a majority of the legislatures of the States. How these provisions will be worked, how they would avoid friction, how they will be allowed to function smoothly, all that will largely depend upon the spirit of co-operation between the Centre and the units.

In conclusion, Sir, from what I have been able to see of the procedure of this Assembly, I must tell you I am amazed at the patience you have been showing. Even if it be a question of our communication with the Moon, if the rules permitted it, you were prepared to put it to the vote. (2) This was the extent of patience that we witnessed here on your part. I must also be permitted to add one word of thankfulness to all those concerned, for the ability of Dr. Ambedkar and Mr. Alladi Krishnaswami Ayyar, for the extreme interest that Mr. T. T. Krishnamachari and Mr. Santhanam and others took in the framing of the Constitution - when I mention a few of these names, it does not mean that there are other names to be mentioned. Everybody concerned has functioned well. Let us hope that this occasion will be recorded in the annals of our history as the occasion when the Constitution was framed which led to the fame and glory of the country, to plenty and prosperity, to contentment and peace. Let us always remember with gratitude the great man who, though not with us in body, is really now guiding our destinies by his writings and speeches, and by the inspiration that he was able to spread by is life throughout the land and throughout the world. Let ours be the country which will spread peace and good-will among the nations of the world.

Thank you, Sir.

Shri O. V. Alagesan (Madras : General) : Mr. President, Sir, the Drafting Committee and all those that have been connected with its labour have been rightly congratulated and we are sure to miss the stentorian voice of Dr. Ambedkar explaining in a crystal clear manner the provisions of the Constitution and also the shrill voice of my Friend Mr. T. T. Krishnamachari whose contribution to the making of this Constitution everybody acknowledges.

Sir, one of the criticisms against the Constitution is its lengthiness. In having precedents there is advantage as well as disadvantage. It is advantageous because it show one way. It is disadvantageous because it binds us down to a certain extent and our initiative is to that extent restricted. The Government of India Act was no doubt the precedent in this connection and it will not be wrong to say that our Constitution has been a glorified edition of the Government of India Act - of course, with this difference that under that Act the power rested with the British people whereas here the Indian people are the sole masters. In our country we are used to the long epics, Ramayana and Mahabharatha, and so it is in keeping with the traditions of this country that we are having this epic of a Constitution. If I may be permitted to say so, the Drafting Committee to a certain extent is responsible for the lengthiness of this document. They in their wisdom wanted to provide for everything and they did not want to leave anything for posterity. They tried to provide against every difficulty that may arise in the future. Like an artist who draws and re-draws to make a perfect picture, the Drafting Committee went on adding, amending and omitting to make a perfect Constitution emboldened by the indulgence shown to them by this House. As a result, we are having a lengthy document which is full of details which can very well have been left to the future Parliament.

Again there is the criticism that we took too much time for making this Constitution. It is not right to say that. If we calculate the number of days of that this House actually sat, then it will be found that there had been no waste of time. If anybody has still doubts, we have only to remember Pakistan. They also started Constitution-making with us, though a little later. They have still not made any progress whereas we have finished our Constitution and we are going to put it into effect. That apart there is a more important reason why this period should be considered the minimum period for the making of this Constitution. As one speaker pointed out during this period of three years, time was not standing still. Revolutionary changes or dynamic changes-as the Prime Minister is found of putting - have been taking place. Indian when it was handed over to us was heterogeneous politically. Then the mighty task of welding this country into one homogeneous political whole, the integrating it economically and financially began and it is still going on and our leaders deserve every credit and congratulations for this achievement of theirs.

When you take all these into consideration, nobody will say that we took more time than is necessary. Not only that: a constitution is expected to embody and preserve the revolution that has preceded its making. In our case, the present Constitution has not only embodied and preserved the revolution that has preceded it but has also crystallised the revolutionary changes that were taking shape simultaneously with its making. Our Constitution is unique in this respect. So we can very well be proud of this Constitution.

At this time when all India rejoices at having got this Constitution, I would request the House to remember the foreign pockets in this country which still disfigure the political map of this land. Sir, they are our kith and kin, brothers and sisters and - when the whole country rejoices, they are unable to share in the general rejoicing. They have been separated from us by an unnatural wall. If I am asked to wait for another six months so that those possessions may be brought within the ambit of this Constitution. I shall very gladly do so and it will not be time wasted. But that is not to be. We have to wait yet. At present, we can only hope that our leaders who have so much achievement to their credit will also take up this question without delay and solve it to our satisfaction and see to the disappearance of the wall that separates Indians from Indians.

Another very serious criticism was that under this Constitution democracy will degenerate into a dictatorship. I do not see any warrant for this assumption. Our own experience given the lie direct to such a fear. We see both in this House and in the provincial legislatures only one party, that is, the Congress Party, that is predominating. The opposition inside the legislatures is unorganized - it is not worth the name of opposition. The opposition parties outside the country function in an irresponsible way. One party that is wedded to violence and sabotage wants to create chaos in the country so that it can somehow capture power. There is another party, though it is not wedded to violence, which being sure that it will not be called upon in the near future to shoulder the burdens of office, is mouthing all sorts of impractical slogans and platitudes and trying to mislead the people. Under these circumstances the temptation for the Congress to behave as a one party dictatorship is very great. But, what do we see? Does the Congress party behave in a dictatorial manner? No. It can be said without any fear of contradiction that if there is one party which, having so much power in its hands, took all the other points of view into consideration and even accommodated them, it is the Congress Party. Our leaders are having a devotional following in this country. No other leaders had such a backing and such a following in any other country. Our leaders could very well have converted their rule into a dictatorship and there would not have been much objection had they done so. They did not do any such thing. They behaved as perfect democratic leaders. I say, this augurs well for this Constitution and democracy in this country. Democracy will not be endangered under this Constitution and we will not have any dictatorship and there is absolutely no warrant for such a fear. After all nobody can say that democracy can be protected by the written word of the Constitution. Let us take only one example. In the past we had democratic elections both in British India and in French India. Here it was possible for the party in opposition to the government of the day to come in a majority through the ballot-box. In French India also the ballot-box was the arbiter. But there it was never possible for the party which was not backed by the government of the day to capture even a single seat. So it is not as if democracy is protected by what we write in the Constitution. It is more in the working, in the spirit in which it is worked that democracy will be safe rather than by any written safeguards in the Constitution. Looked at that way, we can boldly claim that there will be no room for endangering democracy under this Constitution, and it will work perfectly well. Of course nobody can say that this Constitution is infallible. No Constitution can be perfect - I will go even to the extent of saying that no Constitution need be perfect. Everything lies in the working of the Constitution. The proof of the pudding is in the eating.

There is another criticism that the village as a political unit has not been recognized. I fear that behind the back of this criticism is distrust of adult franchise. What was conceived under the village unit system was that the village voters would be called upon to elect the Panchayats and only the members of the Panchayats were to take part in the elections to the various assemblies, Provincial and Central. But now, it is the village voter himself who will be called upon to weigh the issues before the country and elect his representative, and so he will directly participate in the election. I claim this to be a more progressive arrangement than having village units which elect the electorate indirectly Not only that; it has been said that the genius of this country does not find expression in this Constitution. I do not understand what is concretely meant by this charge. If the genius of this country is to be taken, then we all along had only monarchy. Only the monarchical system was prevalent in this country. But nobody would seriously suggest that we should now go back to the monarchical system. In fact, we are removing the relics of monarchy at present. So, this charge that the genius of the country does not find a place in the Constitution is a meaningless one or rather it is more sentimental than substantial. No country can claim to have invented all the ideas in the religious and philosophical spheres as well as in the political and social spheres. After all, every country is great in its own way, and one country has to take anything that is good from other countries. Just as the Western countries have to take from us the philosophical and religious thoughts of our ancient wise men, we have to take the political and social institutions from other lands, and there is nothing wrong in it.

Sir, another charge is that this Constitution is full of checks and safeguards, and it curtails freedom of the individual and restricts State autonomy. I do not take it in that light. These safeguards are there only as fences intended to protect the infant freedom and democracy from stray cattle. A tiger cannot say, for instance, that it should be free to kill the lambs and take them away. This is my reply when the cry that civil liberty as in danger is raised and all these provisions are thrown in our face. Though for me and for many others who have known what detention is, the article relating to preventive detention is a bitter pill to swallow, we may expect that that weapon will be very sparingly used and there will be no necessity to use it, unless under very grave emergency, when the stability of the entire society is threatened by subversive elements.

Sir, under this Constitution, the foundations of a secular democracy have been well and truly laid, and if we are true to ourselves and to our traditions, and our leader Mahatma Gandhi, we can safety hope that we will march from progress to progress and convert this Constitution into a blessing for this ancient land.

Mr. President: Before adjourning the House, I desire to give to the House an idea of the programme. This afternoon we shall sit for two hours, and I expect all those Members who have not had a chance to speak, to be present here to take their chance then. Tomorrow, in the afternoon, say from three or half-past three, Dr. Ambedkar would speak, and before that one other Member of the Drafting Committee would like to take a little time in dealing with the points which have been raised in the course of the discussion. The rest of the time will be given to other Members to speak, and I hope that between this afternoon and whatever time we can spare tomorrow, I shall be permitted to accommodate everybody who has given his name to me. That can be done if Members prove as reasonable as they have been today.

Then on Saturday morning, I propose to put the motion to vote; and after the motion has been carried, I would authenticate the Constitution here in the presence of this House. But before I put the motion to vote, if the

Members permit me I would like to say a few words.

The House now stands adjourned to........

Shri Lakshmi Kanta Maitra (West Bengal : General) : Authentication means the signature of all the Members?

Mr. President. : Not the signature of all the Members. I might just explain. There are certain articles in the Constitution which come into force immediately. The bulk of the Constitution comes into force on the 26th January; so, for enabling work to be done under these articles which come into force immediately, I shall have to authenticate the Constitution day after tomorrow, and I will do that.

It is proposed to have another session of the Assembly, say on the 24th or 25th January and on that day, we shall have the election of the President and I would ask all the Members to sign the Constitution. It is proposed to have by that time, the Constitution ready in a form in which the signature could be taken from the all the members. There was a suggestion that we should have a hand-written copy of the Constitution made. It was pressed upon me by several Members that that should be done, and we are arranging with some calligraphists to have a complete copy by then. And there will also be a printed copy ready, and Members may sign either both or any of the two, whichever they like. It will not be possible to supply to Members a copy with all the signatures them; but we might consider later on, if it is not very expensive affairs, whether we should not be able to supply to each Member a copy of the Constitution bearing all the signatures so that.....

Shri B. L. Sondhi (East Punjab : General) : Cannot be the Members pay for it, if they like?

Mr. President: We shall bear that also in mind, and if Members are willing to pay, probably the question of cost may not arise.

Some Honourable Members: Yes, Sir.

Shri L. Krishnaswami Bharathi : What about the suggestion of Mr. Santhanam that all the Members may be supplied with copies of the Constitution signed by you?

Mr. President: Well, I do not mind signing about three hundred copies, it does not make much difference, we can do that. But apart from that I was thinking of the copies which would bear the signatures or photographic copy of the signatures of all the Members, which they may preserve as a memento, if they like.

This is what is arranged at present, and I hope we shall be able to keep to the time-table as also to those proposals which I have just indicated.

The Hose stands adjourned till three o'clock, this afternoon.

The Assembly then adjourned for Lunch till 3 P.M.

The Assembly reassembled after lunch at three P.M. Mr. President (the Honourable Dr. Rajendra Prasad) in the chair.

Shri L. Krishnaswami Bharathi: Sir, no period in the history of India has contributed more memorable events than the short space of the past three years. Looking back upon the past three years since we commenced the stupendous task of framing this Constitution, one is bound to be struck by the kaleidoscopic changes that have happened in the history of our country.

Five memorable events of great magnitude and significance marked out this eventful period. To state them *seriatim*, they are: 1. the partition of our country, 2. the achievement of independence, 3. the passing away of Mahatma Gandhi, the Father of the Nation, 4. the integration of what are known as Indian States, and last but not least 5. the setting of the Constitution of Free India.

I do not propose to deal in detail with these matters. A great number of Members have spoken on this Constitution. Some have criticized it and some have praised it. No one has condemned it wholesale, nor has anyone accepted it in full. It is of course not possible to get the unanimous approval of the whole House, constituted as it is. But, Sir, I think we can claim that this Constitution represents the greatest measure of agreement amongst the Members.

This Constitution contains some special and redeeming features, but if it is to be judged from the fundamental basis of Gandhian ideology, I must confess that it falls for short of it. It is perhaps wrong to say that it has totally ignored Gandhiji's ideology, but I am clearly of the view that the approach of this Constitution to the basic and fundamental principle of Gandhism is half-hearted, halting and hesitant.

Time forbids me to go into detail. Let me, however, mention a few illustrations. The removal of the charkha from the National Flag is one such. I know that Mahatma Gandhi did not reconcile himself to the change till his death. Secondly, Gandhiji's idea of decentralisation of democracy has not been given effect to. The Gandhian ideal of economic self-sufficiency in regard to the prime necessities of life - food and cloth - at the village level has not been incorporated nor emphasised. Thirdly, the high salary of officials is totally opposed to the Gandhian viewpoint. Fourthly, salt duty has not been prohibited constitutionally. Last but not least, Gandhiji's wishes in regard to the State language have been ignored. I do not proposed to go into these matters in detail.

I would, however, like to say a few words in regard to the language question. Although I am glad that the Assembly has unanimously accepted it, the resolution in regard to State language is - to use the Shakespearean double superlative - "the most unkindest cut of all". I very much regret that we have not been able to accept the guidance of Mahatma Gandhi in this regard. Gandhiji's definition of State language was, that it should be a language "commonly spoken and easily understood by the masses in North India", which is neither over-Sanskritized nor over-Persianised, that is to say, Hindi-*plus* -Urdu-Hindustani. I do not know how for this idea is getting implemented by the protagonists of Hindi. My own view is that they are not doing it and are probably going in the opposite direction. I happened to read a very interesting book, which contained much useful information. Grearson, the greatest expert on languages, in his monumental work "Linguistic Survey of India" has made certain very useful and important observations. He is of the view that the language must be developed in terms of the masses. Any attempt at Sanskritization will bring about a rift between the learned and the ordinary people, - a view which was very strongly held by Mahatma Gandhi. He quotes a very old Sanskrit Professor of Benares "Whenever a Hindi author takes pen in hand, he ceases to be sober and is Sanskrit-drunk.". I do not know how for that is correct, but my own personal experience is that the love for Hindi in some of its protagonists is so much that sometimes they overstep the bounds of sobriety. I do not know if we are to congratulate our friends, the protagonists of Hindi and accepting the present name of the State language I owe it to the great linguistic Grearson again for the information that "Hindi" is a Persian word. This may perhaps demonstrate that the protagonists of Hindi are after all not so anti-Urdu or anti-Persian as they are painted to be.

The article on language is the result of serious thought and careful consideration. We have accepted it and we in the South assure you that we will stand by it. India as a nation must have a State language, and of the languages in India, Hindi as defined by Mahatmaji has to that language. There cannot be and should not be two opinions on that matter. But the more important thing is the whole approach to the matter. We in South India are at a disadvantage. It is easy for people in North India to adopt Hindi as the official language, because it happens to be their mother tongue. There is a movement in South resisting the introduction of Hindi, but we must go an explain the people there that this is not going to displace their mother tongue. Mr. Pattam Thanu Pillai referred to the question this morning. I do not know what is happening in Trivandrum, but so far as my part of the country is concerned, I am glad that we have incorporated it in the Constitution that the idea of Hindi and the necessity for its introduction is not to work to the detriment of the regional languages. The regional languages will have full play. We require a common State language only for all-India purposes, and this language can only be Hindi. But this morning Mr. Pattam Thanu Pillai said that they could have Hindi in their own respective spheres. By all means, they can have it in Trivandrum or the United States of Cochin and Travancore.

Shri P. T. Chacko: The same is the feeling there also; make no mistake

Shri L. Krishnaswami Bharathi : I am glad to be told so. It is but correct and all we can ask for is that whereas Provinces can have their own language, they must function in terms of the whole nation; other languages should not work to be detriment of the interests of the national language. The correspondence for India can only be in Hindi. It cannot be in any other language. Those responsible for administration in Tamilnad, in Andhra Desha etc. can only deal with it in Hindi. Therefore, we will go and tell the people that there is nothing wrong in the adoption of Hindi. By all means, they can develop their own regional languages and work in them, but they must have a national language. There is not going to be a question of imposition. That is the most important thing which my friends from North India have to understand and explain. This is a difficult task. We can explain to the people that there is nothing wrong about it. But the speech of Members like Mr. Pattam Thanu Pillai will give a very wrong impression. We have got to tell them that it is his individual opinion. Another Member from Travancore also says that the feeling in Travancore is the same as I have expressed. I am very clear in my mind that it is not our object to work to the detriment of the mother-tongue nor of the State language.

Shri A. Thanu Pillai : I wish to inform my friend that he has misunderstood me, if he took it that I meant to say that Hindi should work against the interests of the mother- tongue. what I said with that in the higher levels fo the administrative work Hindi should be adopted. that is not what he understood.

Shri L. Krishnaswami Bharathi: My own impression is that whenever it is a State language it may work to the detriment though it may not be the intention, of the mother tongue. When English was the State language, it worked to the great detriment of the other languages of India, and in other spheres also it was injurious to the mother tongue. It is only in that sense I said that the effect of introducing Hindi in the administration of the provinces will be detrimental to the mother tongue of the provinces. The idea of the creation of linguistic provinces is to foster the mother tongue of the provinces. Some people think that this is anti-national. I believe on the other hand that this is perfectly consistent with national interests. We work in different areas in the interests of the Congress and we appeal to the people only in the regional languages. The administration must be carried on in the language of the people so that there may be identity of interest and feeling between the Government and the governed. It is in that light I said that we must have regional languages. That is the very basis of the linguistic provinces. This does not mean disintegration or working in provincial or parochial interests.

Then there is the question of the numerals. The solution on this question is one of which we ought to be proud. My honourable Friend Mr. Jaspat Roy Kapoor said that these are English numerals and I interrupted him saying that that it is wrong to call them English numerals any more. They are really Indian numerals. The original of these numerals was Indian. In support of my contention I would refer to the fact that 2,000 years ago, in the Asoka Pillar, in the Nanaghat Inscriptions and in the Nasik caves all these numerals appear. Numerals one, four and six appear in the Asoka Pillar, two, four and seven are found in the Nanaghat Inscriptions and the rest are there cut out in the Nasik caves of the first and second century. All these forms bear considerable resemblance to the present forms of these numerals. To say that they are English is not therefore correct. Mr. Kapoor said that the Members who supported these numerals discovered this fact only after the debate regarding them started. Sir, it may perhaps be of interest to honourable Members to know that our Prime Minister Pandit Jawaharlal Nehru, writing some years ago, has referred to this aspect of the matter. It is very interests. He called the numerals 'Our Indian numerals'. Sir, at page 248....

Mr. President: May I remind the honourable Members that if he goes on at this rate it will be very difficult to find time for other Members to have their say.

Shri L. Krishnaswami Bharathi: Sir, I will soon finish. The observation of Pandit Nehru in this connection is very interesting. Panditji has said: "The clumsy method of using and counting frame, and the use of Roman and such like numerals, had long retarded progress when the ten Indian numerals, including the zero sign, liberated the human mind from these restrictions and threw a flood of light on the behaviour of numbers. These number symbols were unique and entirely different from all other symbols that had been in use in other countries. They are common enough today and we take them for granted." Sir, I will take only a few minutes more.

One of the redeeming features of this Constitution is the abolition of the separate electorates. I am glad that this has been made possible with the willing consent of the representative Members of the respective communities. I must particularly congratulate the Members of the Muslim community for agreeing to give up special representation in the legislature. It is no small matter and it is not keeping with the spirit of the times. The question naturally arises how far and to what extent the leaders are our people will give effect to it when the actual working comes. Are we sure that the majority community has shed its communalism so that the candidates belonging to the other communities may be elected without reference to their religion? Future alone can give the answer. I am anxious that the majority community must play the game fair. At the same time there is a heavy responsibility cast on the members of the minority communities to conduct themselves in such a way as to deserve the confidence of the other communities. This is possible only if they merge politically with the rest of the population and not perpetuate communalism by having communal political organisations. I think the time has come for the Muslim League to close down as a political organisation and work on the non-political plane. The organisation must give up its political role. I am sorry that Pakistan is making it difficult for us to create that atmosphere. But, as Mahatma Gandhi has said: Let us not copy them in their bad manners. I hope that the necessary atmosphere will be created so that there will be no political communal organisation to rouse once again communal bitterness. I remember, Sir, that our Government have passed a Resolution to that effect immediately after the death of Mahatma Gandhi. I hope they will implement it and that the people outside will make it impossible for any communal organisation to work on the political plane.

Sir, the question of adult franchise is another redeeming feature of the Constitution. I welcome it. In a country where a large percentage of the people are illiterate, doubts are entertained whether we can trust them to do the right thing. My own experience is that the masses have the instinctive power or habit and intelligence of choosing the right person or the right party. But one is clear that if democracy is to function, it certainly must have a large number of its population literate. Thus only the mind of the masses will be reflected in the Government. But Sir, the elections are not as they ought to be. I have been a candidate at some of the hotly contested elections to the Legislative Assembly and I have won. I have noticed that it is unfortunate that a large number of people give false votes. False presentation is not rare. A man impersonates 15 to 20 others and thus multiplies the votes. An honourable Member told me about a lady voter that she impersonated 13 lady voters. I have myself heard people saying that they voted in the name of more than a dozen others. That is a very sorry state of affairs. Unless this evil practice is checked, democracy will become meaningless. Such a practice will increase the number of votes any candidate gets, but it will not reflect the true wish and will of the people.

(At this stage, Mr. President rang the bell)

I am finishing, Sir.

Mr. President: You have taken more than twenty-five minutes.

Shri L. Krishnaswami Bharathi: I am sorry. I will finish soon. I am therefore anxious that polling should be made fool-proof if that is possible. I think it is possible and my suggestion therefore is this : The voters must be given what are known as identification cards, preferably with photos. Well, people may raise all sorts of objections but there is no time for me to touch upon this important matter. If identification cards are given beforehand, no voter can vote for somebody else.

Another suggestion that I would like to make is this. When a voter comes to exercise his vote, immediately after he votes, his fingers should be marked with an indelible mark, which cannot be erased for a day or two. This will show that he has already exercised his vote. These suggestions may be considered.

In conclusion, I feel we could have produced a better Constitution based on Gandhian ideology. Perhaps one must seek solace in the statement that a nation gets what it deserves. I hope, trust and pray, Sir, that the objectives of the Constitution contained in the Preamble will get fully implemented in the working of the Constitution so that peace, prosperity and plenty may rule in this land.

Shri Ratan Lal Malviya (C. P. & Berar States) : *[Mr. President, Sir, many speeches have been made on the Constitution and it is not necessary for me to repeat the points already made. I will, therefore, try to throw light on those aspects of the Constitution which have not been touched as yet.

I am a representative of Chhatisgarh States and as far as the States are concerned I may say with some pride that these States opened a new chapter in the history of the States. On the 14th and 15th December, 1947 these states were the first among Indian States to merge in India. After that the changes which have taken place in the States during the last two years are known to all. All the five hundred and sixty-two states have been brought to one level.. Either they have been merged or have become Centrally administered areas or have united to form different Unions of States. This has been a great step for the unification of the country. Sir, as regards those states which are Centrally administered, the Centre has taken full responsibility upon itself for their administration and as regards the states which have combined to form unions, there is a provision for them and according to article 371 the responsibility goes to the President himself who will look after them for ten years. Our friends from Mysore and Travancore have criticised this article. It may be that there criticism might have some substance, for before 1947 or before the Constitution of the union, the States of Travancore and Mysore were more advanced than the Provinces. They are educationally and industrially more advanced. They were therefore believed to be more advanced than even the Provinces. Just as my Friend Shri Thanu Pillai has said that under article 371 of the Constitution, the influence of the Central Government in the administration of the Unions might have an adverse effect and instead of raising the cultural and political level of the states to that of the Provinces it might entirely retard the progress of the states. But I would like to point out that this article was very necessary. Excluding the States of Travancore and Mysore, the other states are so under-developed and backward that unless their affairs are controlled by the Central Government for another 10 years, they cannot be expected to make any progress. Hence for the backward states article 371 is salutary and its inclusion is very necessary.

As regards the Merged states, their administration has been handed over to the Provinces under section 290 of the Government of India Act as adopted. Just as article 371 applies to the Unions, so also I would have preferred that for a period of 10 years the same article may have been applied to the Merged states, so that the Central Government could have maintained contact with the conditions of the subjects of those states and also to enable the President to see to their progress.

Sir, I would like to point it out that when I say that the Central Government must keep an eye over the Merged states, I do not mean to censure the Provincial Governments of Bihar, Orissa and C. P. This is in no way a vote of no-confidence against our leaders who are holding the reins of administration there. They are recognized leaders and we have all respect for them, but it is essential that these states should be looked after properly for the present. Whatever has happened during the two years is not consoling and therefore it appears necessary that for some period say for five or ten years to come, if article 371 cannot be applied to them, at least the President himself should keep an eye over the affairs of the Merged States.

Now I would like to throw light on the States of C. P. particularly as I come from C. P. As regards the States of C. P., Sir, their population is nearly 28 lakhs out of which fourteen and a half lakhs are Adibasis. According to Schedule VI, responsibility of the welfare of these Adibasis would be on the President. I submit that even though these have been merged in this way and even though we can count upon the full sympathy of the Provincial administration as provided for under section 290, the responsibility of the Central administration would also continue to remain. I want to make it clear by giving you an example.

Mr. President: *[Perhaps you mean Schedule V.]*

Shri Ratan Lal Malviya: *[Yes Sir. By an instance I would like to explain that before article 290 was adopted, we tried hard that our representatives should go to the Provincial Legislatures, but till that article was adopted our representatives could not be taken in the C. P. Assembly. Later on the representatives were nominated to the Provincial Assemblies. It was left necessary to appoint at least one of states' representatives as a minister. From the newspapers I came to know that in Orissa three Ministers were to be appointed. About the C. P. though such news did appear in newspapers, but I am not aware of any steps being taken to appoint one of the representatives of the States of the C. P. as a Minister. I would like to make it clear that whatever I have said here is not a vote of censure against the C. P. Government. Of course. I wanted to say that the present Ministers of the C. P. have not direct relation with the states and in the absence of a direct relation, the difficulties of the states can be attended to after considerable lapse of time. The people of the backward states cannot find seats in the cabinet as they do not have proper representation. Thus it becomes necessary that there must be a Minister from the States of the C. P.

One thing more I would like to point out about the Adibasis. I have already said that there are more than 50 per cent. Adibasis in the C. P. Under the supervision of Shri Thakkar Bapa and through his kind attempts a special scheme has been formulated for them and that scheme has been implemented. But that scheme would prove a success only when, a Minister from the states is taken in the Cabinet and is put in charge of the scheme. I thank Shri Thakkar Bapa for all this.

I want to bring to your notice a fact which is quite fresh, and that is about Vindhya Pradesh. Vindhya Pradesh adjoins Chhattisgarh, and the boundary of Vindhya Pradesh is about four miles from the place where I live. I am more or less connected with the politics of Vindhya Pradesh of which I have got a good knowledge. Whatever is published about it in the newspapers is known to me. I also know how the political affairs of that state have deteriorated. The area and population of Vindhya Pradesh are so small that it cannot make any progress as a free state. So its merger is essential. So far I know about the people of that place, there are two groups. One is against the merger and their number is very great, the other is in favour of merger and their number is very small. As I have already said, Vindhya Pradesh should be merged. But I learn from the newspapers that Vindhya Pradesh is to be divided. A part of it would go to the U. P. and the rest of the C. P. As far as I can think this is not a good thing. This would create disrespect in them and at the same time restlessness may also prevail there. Hence it would be better to merge Vindhya Pradesh, of course, but such states, which are pocketed states, should be merged in U. P. and the rest of the States should be merged in C. P.

Before I conclude, Sir, my small speech, I consider it my duty to thank you. I cannot also conclude my speech without offering tributes to respected Bapu. It was the result of the co-operation of all of us and it was the result of the blessings of our Bapu that we got freedom and are completing our Constitution. We hope that following his advice our country shall go on progressing and will continue to flourish.]*

Shri Har Govind Pant (United provinces : General) : * [Mr. President, I have come here to support the motion of Pandit Ambedkar. I am deliberately using this epithet 'Pandit.' Everyone knows what scholarship Dr. Ambedkar evinced in preparing the draft of the Constitution and in making a logical exposition of its provisions in this House. It can therefore be said that he is worthy of this title. Influenced by his scholarship some of the honourable Members have been pleased to confer on him the title of Manu Bhagwan. We are passing through the *Vaivashwat Manwantar.* A *Manwantar* consists of seventy-two four-yug cycle. We are passing through the twenty-eight cycle of Vaivashwat, the Seventh Manu. To bring in a new Manu in this chain may perhaps create a difficulty. Therefore I think that the title of Up-Manu and not of Manu can be conferred on him. It should also be considered that in framing this Constitution eight 'Manus' have made their contribution and therefore it would not be improper to call them eight 'Up-Manus'.

I believe in the older order and according to it a Manwantar, *i.e.,* the time of one Manu covers a very long period. A *Manwantar* ends when seventy-two four-*yug* cycles are complete. During the period of one Creation there are fourteen Manus. *Kaliyug* alone covers four lakh, thirty-two thousand years. *Duapar* consists of eight lakh, sixty-four thousand years. *Treta* has a double number of years, *i.e.,* seventeen lakh, twenty-eight thousand years. *Satyug* runs for thirty-four lakh, fifty-six thousand years. Thus the total number of years in one cycle of four-*yugs* is sixty-four lakh, eighty thousand. On the completion of seventy-two four-*yug* cycles, there will be only one *Manwantar.* This is the idea in India of the period of present Creation. This is the time-chart handed over to us by ancient India. It is possible that this correctness may be confirmed by science as it progresses. Eternal though Time is, I do hope that the present Constitution has been framed on the basis of mutual agreement. As I have said, I have come here to support the motion that is before the House at present. Therefore I do not consider it necessary to comment upon it.

As I have said, this Constitution has been prepared on the basis of agreement and we should sincerely strive for its success. According to the ancient order the primary aim of human life is the achievement of four Vargas. I need not say what place has been given to Dharma in our Constitution. When Dharma itself occupies a dubious place, it is all the more unnecessary to speak of *Moksha.* As for the remaining to *Vargas, i.e. Artha* and *Kama,* they have been properly provided for in the Constitution and everyone has been granted an equal right of their achievement. Ancient India accepted that man can achieve his good in both the worlds only through *Dharma.* Shri Vyas Deva says:

'madhvarvahu viroumyevah nahi kashshat chunotimam
dharmadiyarshcha kamashcha sa dharmahkinnasevyate'

(with raised arm I declare it, but no one listen to me, that *Dharma, Artha and Kama* can be achieved through *Dharma.* Why not follow it?)

The happiness of all and the interests of society can be promoted only by following the path of *Dharma.* If we foresake it and go our own way, we cannot make the nation or the individual happy. The extent to which cow-slaughter has been prohibited in the Constitution is only proper. In ancient times the Brahamans had no possessions and considered it unnecessary to secure protection for themselves. They did not consider it their duty to secure safeguards for themselves. Therefore the Constitution provided for their protection. In the present Constitution safeguards have been provided for Scheduled Castes and Tribes for some time. Their protection was necessary because they cannot protect themselves. Therefore we see that there is some similarity in the old Manu Smriti and the present Smriti. The only difference is that in place of 'go brahmana hitaya cha' (For the good of the cow and the Brahman), there is now ' go pariganita hitaya cha' (For the good of the cow and the Scheduled Castes). Therefore the demonstrations against Manu Smriti were out of place. Anyway, I do not want to say anything more about this matter and want to only emphasis that we should extend full protection to the Constitution which has been framed with the consent of all. We have done a fine thing by including adult franchise in it. A second wealth we have received in the form of Fundamental Rights and a third in the form of abandonment of the system of separate electorates. A fourth wealth we have got in the form of Hindi which has been accepted as the National language. The achievement of these four types of wealths, we can characterise as the achievement of four *Vargas.* We have, no doubt, achieved them but we can utilise them only when we sincerely strive to carry out the decision arrived at by the consent of all. I accept that the South Indians will experience some difficulty in learning Hindi but manliness is proved only by overcoming difficulties. Therefore I wish that all the honourable Members and in fact all of my countrymen should consider it their duty to make all the decisions arrived at this House a great success. Then alone will our country benefit. I would like to add in this connection that it is a matter of pride to us that even though our Constitution is the most voluminous of all the constitutions of the world but never was a division called for at the time of voting on any article whatsoever and no list in connection with division was prepared. I need not mention the names of those who were responsible for its unique feature of this House. I have reverence for them in my heart but if I express it its importance will go. Therefore I would not mention the name of any person in this connection.

We have a unique history of the non-violent struggle for the achievement of our country's freedom. We all know whose efforts have enabled us to witness this occasion. An unparalleled event in the history of the world occurred in this country. Whenever I entered this House I first caught sight of the picture of Mahatma Gandhi. Although this oil painting has been fixed at a particular place but his soul pervades the whole country and the hearts of all of us. All this is due to his penance alone. While looking up to that picture today it appears that it is pointing out that the country because of the greed for small profit has forgotten the Great Dandi March. I regret that we could not come to any clear decision regarding the salt-tax. But I hope that in future the nation will never need to tax salt. There are a number of complains regarding the arrangements for securing salt from Sambar lake. If salt is taxed its prices will increase in far off places.

I have been working with the Congress since 1905. Ever since I entertained the belief that the soul of the Indian nation is awake. When I was a student I read in the papers the accounts of Khudi Ram Bose, Kanhai Lal Datt and other patriots and began to have faith in the immortality of our nation. I am confident that, when in this age to, great men like Mahatma Gandhi can be born among us, the soul of India, the soul of our nation indeed awake and there is no ground for pessimism. Only we have to work with sincerity. If we are ready to lend our united co-operation to carry out the decision we have arrived at, we are bound to meet success and thereby we shall enhance the prestige of India much more than what it was in ancient times. Just now it was being said that propaganda should be made among the people to explain to them the implications of some special provisions of the Constitution. I would like to say that those who desire to work in this connection have already started the work. I have also done a little work in this direction. I am confronted with one difficulty in this matter. I belong to the Himalaya region which abounds in beautiful sites and sacred placed. The people of other areas very seldom go there. For purposes of pilgrimage also very few people go there and the inhabitants of my area have very little contact with other people. Therefore the country has not been able to understand the importance of my area from the national point of view. Therefore, it is solely our responsibility that we should awaken out people to their duties towards their country. I want to assure you that in spite of the difficulties peculiar to may area we are doing our duty and will continue to do so. You might have learnt from press reports that the Imperialists of China have begun to look greedily at Tibet. Our area is adjacent to Tibet. It is possible that very soon an occasion may arise when we might have to do our duty by our country and when we might be able to show that we are ready to serve our country with our blood and with our money. In the end I would only say that I am fortunate in having got at this age an opportunity of participating in the framing of the Constitution. I thank you for kindly giving me the opportunity of saying a few words. I hope immortal India will ever remain immortal and will do great deeds to promote the welfare of the world.]*

Shri Sarangdhar Das (Orissa States) : Mr. President, Sir, I cannot completely agree with this Constitution because it is not a revolutionary document. The social and economic structure of the country as it is now is to remain. Nevertheless, there are certain glaring defects which I wish to point out, particularly in the Fundamental Rights. Although certain very essential rights have been conceded, in a later article viz., article 22 - preventive detention clause - some of these have been taken away; and so it is not proper to say that Fundamental Rights have been fully conceded.

Then I have to mention the clause with regard to acquisition of property. The compensation that is to be paid for the acquisition of property is framed on the basis of the present structure, and it is wrong for us to say that by this Constitution we are introducing an era of plenty and prosperity for the people. It is my view that the natural resources of the country and the means of production are the property of the community. There is nothing radical about it, when you consider that in many countries, especially in the

U.S. where they had "sanctity of property" in the beginning. But, during the 19th and early 20th Century that changed. And I believe our Constitution should have taken the lesson from that and declared that the natural resources of the country and the means of production and distribution are the property of the community, and as far as paying compensation for such property is concerned, in as much as the holders or the trustees of these properties have enjoyed the benefits there-from for hundreds of years and have gained profits from it I do not see why there should be any compensation paid to them now. I do not want to go into the details but that is a point that should have been taken into consideration. I know there was some opposition to the compensation clause but by sheer majority it was passed.

Again I am reminded of the speeches of several of the honourable Members who have talked about Gandhiji's plan of democracy. They have regretted that nothing of Gandhiji's principles have been incorporated into the Constitution. I for one do not wish to dwell on the point, but, we talk in one breath of forming a society in which there would be neither high nor low people. That is to say, their incomes would be as far as possible equal and yet in the Constitution itself we have incorporated those abnormally high salaries for high official beginning from the President downwards. While the pay of the Government servants in the lowest grate is 30/- a month, to give the President Rs. 10,000 a month is absolutely absurd. In this respect as far as I knew when I was in the U.S., I remember this that even 25 years ago the difference between the low-paid servant and the highest-paid in certain localities was not so much as in this case. If we continue to look at the services of highly-placed people in this manner, I do not see how we can say that we are introducing a Constitution which would result in bringing forward a society where everyone will be equal both socially and economically.

Then I wish to say something about the national language. The article as it has been passed and on which this morning Mr. Thanu Pillai spoke , I am in full agreement with him except that he has missed a very big point which unfortunately he cannot distinguish viz., Mahatma Gandhi's original ideas as well as of those who know the ways of the world *re*. language was that Hindustani should be the national language. The article as it has been framed no doubt implies that it will be Hindustani but it is wrong to call it 'Hindi'. I believe because Hindi had been advocated by certain Members of two or three provinces who always talk about introducing original Sanskrit words, that it has evoked a lot of opposition in South India, in Bengal and I believe in parts of Bombay province. Hindustani is really the language that the people speak and also in non-Hindustani speaking provinces e.g., in Orissa although we do not speak Hindustani, we can understand a person speaking Hindustani better than one who speaks pure Hindi. Because pure

Hindi is advocated by our U. P. and C. P. friends has a lot of Sanskrit words which are unintelligible to the ordinary mass of people. as they are not learned in Sanskrit. If the framers of the Constitution have yielded to the pressure of these orthodox Hindi friends of ours, I think it has been a great mistake. After the language article was passed, I have had the chance to travel in South India, and also in Bengal and I have found a good deal of opposition which has no basis at all except that the people in those parts think North India is imposing this language on them, and they rightly resent such imposition. Consequently when the time comes to implement this article, the Government of the day should see to it that such a language as Hindustani is introduced as is being introduced by the Hindustani Prachar Sabha in many parts of the country and then when Hindustani will be accepted by the people all over India, I believe all this misapprehension will go within a few years.

With regard to the States, some of my friends, also from the States areas have supported that article which provides for the tutelage of State Unions or of individual States like Mysore or the Travancore-Cochin Union for ten years, I had opposed it while the article was under consideration. I disagree with those friends. No matter how backward some of these States may be, I think it is wrong to take away democratic rights from the people and their representatives and spoon-feed them. So that is a very reactionary measure after the States - some six hundred and odd of them - had been immolated. It is a reactionary measure to bring certain parts of those areas under Central control for ten years. And then again, I wish to say in this connection that although the States have gone, and although we say that the rulers have gone, I do not believe that they have gone. They have their privy purses and other emoluments. In as much as they are set down in the Constitution, they remain for good. That is really a gain for the rulers because now they do not have the burden of responsibility for administering their areas. Still they enjoy these privy purses which are again rather unnatural, because they have been based on the wartime inflated incomes. So my contention is that the rulers remain in our society in another form, not as rulers with powers to govern their areas, but as a new type of vested interests which is not desirable and which is not conducive to the kind of society that the Constitution claims to introduce.

It is also objectionable that too many powers have been vested in the Centre. I remember, in 1947 when the principles of the Constitution were decided, at that time, the Centre was not to have so many powers. I do realise that after partition of the country, the situation has changed; nevertheless, the giving of so many powers to the Centre, the power to nominate this official and that official, the Governors and so forth will afford the opportunity to the party in power to perpetuate itself. Further, with regard to the nomination of Governors for the Provinces, I am afraid, if any party other than the present ruling party comes into power in certain provinces, and a Governor of the party in power is nominated for such province, there will be clashes between the Government and the Governor, i.e., between the ministry and the Governor, and that will not be conducive to smooth working. From this point of view, I believe the concentration of too many powers in the Centre will gradually result in the introduction of a sort of dictatorship of a single party.

There is also another objectionable feature that I wish to mention, which goes against the principles of democracy, and that is, that in the Council of States, certain number of members will be nominated by the President, and out of them one or more may be taken in as Ministers in the Central Cabinet. On the one side, we speak about democracy and on the other side we take recourse to measures which go against the principles of democracy.

Just at present within the short time allotted to me, I can think of these defects which I have detailed. But at the same time, I must speak of the good points also in the Constitution.

I disagree with most of my friends, particularly the Hindu friends who expatiate on the existence of the republican system of government, i.e., republics in our old Hindu polity. I disagree with them. My contention is that our lower classes, the lower castes of our society, whom we call Harijans, have all along been kept in a depressed condition. Consequently, there was no democracy. If there was democracy, if there was a republic, it was amongst the higher classes, what we call the higher castes. If you look at the Constitution from that point of view. I think the removal of untouchability and the introduction of adult franchise are two of the very best elements that have been introduced in this Constitution. I may remind you, Sir, that in the American Constitution, the franchise was given only to free, white citizens, because in those days, there were also white people who were slaves, working, as slaves in the West Indies and the Caribbean Islands. They were debarred from the franchise. The black people, the Negroes, were nowhere. They were denied the vote. They came only in the time of Abraham Lincoln, when they were enfranchised. So, I say, in our Constitution, the conceding of adult franchise, of equality of women and of the removal of untouchability, these three things are the best in the Constitution.

There is also another good point in it, and that is the setting up of the secular State. There is no doubt everything has been done to make the State secular, although quite a number of criticisms have been made of it, on the basis that it is not Indian, meaning that it is not based on the Hindu religion. In that connection I would say that no religious instruction whether Hindu or Christian or Islam, should be given in any school. There is such provision in some of the clauses that in certain circumstances religious instruction is permissible, I think that should go.

Although I have pointed out a few of the very great defects, in as much as adult franchise has been conceded by this Constitution, I have no doubt, that the mass of people who will exercise the franchise in the future, can change the entire Constitution, if they so desire, and they will desire. So I do not condemn, nor disapprove, of the Constitution, as some of my friends have said that nobody has condemned it. It is no use condemning it. When adult franchise is there, by exercising that right, we can change the Constitution according to the needs of our society in the future.

With these few words, Sir, I also thank the Drafting Committee, and you, Mr. president, for all the labour that you have put into this and for doing everything to satisfy all sections of this House.

Shrimati Ammu Swaminathan (Madras : General) : Sir, the passing of this Constitution for an Independent India can be called without exaggeration the realisation of a great dream of four hundred million people. For so many years the people of this country had been working for this realisation and today we have actually got what we had been working for.

The first picture which really comes into my mind when I stand here this afternoon is the picture of the great man, Mahatma Gandhi, who by years and years of untiring work made it possible for us today to be an independent country. I think if we are to deserve this Constitution we have to make up our minds to work it, into something alive and something that will be of benefit to every citizen of this country. I know that the Constitution gives us in the Fundamental Rights, equal status, adult franchise and has also provided for the removal of untouchability and things of that kind for which India had been fighting all these years. But all these things appearing on paper is not enough if we are to make this country happy and prosperous. We have to see that these ideas and ideals which are on paper in the Constitution are implemented by the people of this country.

Sir, I would also like to pay my tribute to you and join with other Members who had congratulated you and shown their gratitude to you. All Members of this Assembly will always remember you with great affection and esteem and we will always remember the kindness and consideration you have shown towards every Member of this House.

We have also to pay our tribute to Dr. Ambedkar and the members of the

Drafting Committee and the Secretariat of the Constituent Assembly for the very hard work that they had put in for so many weeks and months. I know their task has not been as easy one but they have overcome all difficulties and thus we are today on the every of passing this great Constitution of our country.

I feel that the Constitution actually rests on two pillars - Fundamental Rights and the Directive Principles of State Policy. The fundamental rights of the people of India are guaranteed in such matters as freedom of speech, association and worship. The last is a very vital question to the people of this country. The Hindus have always been known to be tolerant towards all religions and we have put that down in our Constitution so that there will be no mistake about it and nobody can say that our Constitution did not include freedom of worship to every citizen of this country.

Now it is for us to see that this Constitution is worked properly so as to bring about the democratic State in India for which we had been working and hoping for and when we bring this about we must see that not only the rights are assured to every citizen but that he knows his duties and responsibilities towards the State. His freedom should be so used as to be of benefit to this country. Freedom is not to be used for doing anything that anyone likes. As it is so often said, freedom does not mean license. Let us hope that in the years to come this Constitution will be considered as something worthy or our country. Though there are many who find fault with a great number of clauses in it I hope they will remember that when we were going on with this work of constitution-making India was passing through difficult times, very unhappy times and our task was a very difficult one. I feel that it has been a great achievement to have been able to bring all the divergent opinions together and frame a Constitution of this kind which has been agreed to by a very large majority, though perhaps not by all.

A great many Members of this House have been praising this Constitution and there has been a certain amount of criticism also. There is one criticism which I would like to make and that is that this Constitution is to my mind a very long and a very bulky volume. I always imagined a constitution and still believe, to be a small volume which one could carry in ones purse or pocket and not a huge big volume. There was no necessity to go into so many details as has been done here. All the details, I think, should have been left to the Government and the legislatures. After all they are going to function according to the policy laid down by the Constitution and was it necessary, I would ask, to load the Constitution with all this? I know very little about constitution-making, not do I pretend to be an expert. But I do feel as one of the citizens of India and as one of those who have been a member of a legislature for two or three years that it was not necessary to have so much details in the Constitution. However, as it is I do think that it is a great piece of work and I would like to say that it has been a great joy and happiness to me to have been here as a Member of this Assembly when framing the Constitution of India and I hope that some of us will live to see that the Constitution becomes a real stronghold for human rights and it will be worked towards establishing a real democracy, so that there will be happiness and prosperity for every one in India.

Equal rights is a great thing and it is only fitting that it has been included in the Constitution. People outside have been saying that India did not give equal rights to her women. Now we can say that when the Indian people themselves framed their Constitution they have given rights to women equal with every other citizen of the country. That in itself is a great achievement and it is going to help our women not only to realise their responsibilities but to come forward and fully shoulder their responsibilities to make India a great country that she had been.

With these few words, Sir, I strongly support that the Constitution may be passed

Shri L. S. Bhatkar (C. P. & Berar : General) : *[Mr. President, I congratulate Dr. Ambedkar and other members of the Drafting Committee for preparing this Draft Constitution with so much labour and industry after our country had achieved its freedom. But many shortcomings still remain in it. The rights granted to the people under article 19 of the Fundamental Rights are a farce, because whatever has been given under that article has been taken away by the proviso of that article. Article 17 provides for the abolition of untouchability for which I congratulate the Drafting Committee. Every Province has been passed legislation for the abolition of untouchability, but that is only on paper, it is not followed anywhere. Only a few people are trying to eradicate untouchability which has entered. If I may say so, the blood and bones of caste Hindus on account of its existence for thousands of years. But before any law can be of any help, the caste Hindus should effect a change of heart. Untouchability can be abolished only in this way. It is your responsibility to study the lesson taught by the Father of the Nation, Mahatma Gandhi in this respect and to come out successful in the test.

Again in the Constitution that has been passed not much importance has been given to the peasants and the workers. The provisions of this Constitution reveal that behind them was a great eagerness to provide for high salaries to the Government officials, and not the least thought seems to have been given to the peasants and the workers who labour with the sweat of their brow to take the nation on the road to progress and prosperity, and who had given their blood in profession for the sake of achieving Independence for this country. This is being adopted for the protection of the rich. The Zamindars have robbed the peasants of thousands of bighas of their land by various methods. No attempt has been made anywhere in this Constitution to restore the land of peasants back to them. The nation cannot progress until industries have been nationalised. Provinces are enacting laws to abolish Zamindari while the land of the peasants is being looted by other methods. That land has now to be acquired by the peasants on payments. This means that the Zamindars are being strengthened more and more. This Constitution should have provided that the peasants would get the land gratis. Mahatmaji told us that this nation can be deemed to be free only when freedom is found to be beneficial to the peasants and workers. This Constitution does not seem to contain anything beneficial for them. An attempt has been made in this Constitution for the protection of the minorities. Article 338 refers to justice for the Scheduled Castes. Mr. President, I wish to tell you that the position of Harijans in the services hitherto is as follows:

C. P. & Berar

Caste	Population (1931 Census)	Gazetted posts
(1)	(2)	(3)
Brahmans	5,42,556	448
Marathas & others	18,82,654	17
Scheduled Castes	30,51,413	3
Muslims	783,697	99
Sikhs	14,996	13
		580

Honourable Shri B. G. Kher gave the following figures in reply to a question in Bombay Legislative Assembly by Shri R. M. Nalwade :-

Community	Population in 1931	No. of Gazetted officers	No. of non-Gazetted officers i.e. clerks
(1)	(2)	(3)	(4)
Deprepssed classes	18,55,148	14	8,201
Marathas & others	42,07,159	606	43,360
Brahmans	9,18,120	1,370	21,448
Muslims	19,20,368	201	13,797
Others		886	18,658

This demonstrates clearly the necessity of making some provisions assuring that such injustice will not continue any more, and there would be speedy action to end it. I request the Government of India and the provincial Government to apply article 338 for our welfare and recruit Harijans in the services according to their population.

Secondly, this Assembly should contain 60 Harijan Members on the basis of our population, but today we are only 27. I hope, Mr. President, you will make up our quota by filling the casual vacancies in the light of this suggestion.]*

Shri Ram Chandra Upodhyaya (United State of Rajasthan) : *[Mr. President, Sir, while speaking on the Constitution today we should keep in mind what our country thought about its future three years back and what hopes it entertained regarding its Constitution. I remember it well that when the interim government was functioning here the people of the States were behind the bars and all their efforts were directed towards the achievement of responsible government. Two years back we entertained the hope that we would get responsible government and that we would frame separate constitution for the States. Time is passing very swiftly and perhaps we are not able to keep pace with it. Even within the short time of two years so many separate States united together and formed into Unions. What we could not even think of an year ago, we have achieved already. I remember that one year back during the session of Matsya Congress Committee a resolution was moved to the effect that a Constituent Assembly should be formed for the Matsya Union which should frame a constitution of its own. I was present there at the time and I said that it was a reactionary step because when a constitution was being framed for the whole country, it was not proper to demand separate constitutions for different Unions. Everything has been made possible even within an year. If we take into consideration that a Constitution has been framed for the whole country and that too speedily, we can will be proud of our achievement. We see that our neighbouring country, Pakistan, which was previously a part of our country, is far behind us in framing a Constitution. Not only that it has yet been able to frame a constitution for itself but it has not been able to solve the problem of its four or five States too. It has not been able to integrate them properly so far. When we look at the country and also take into consideration the period of two years, we can well take great pride in what we have achieved. Many people in India blame us for having taken too much time in framing the Constitution. No doubt we took some time but in view of the difficulties with which we were confronted, we did not take much time. If we had finished our labours six months back, we would not have been able to produce the Constitution that we have framed today. I feel that it would have been better if we had taken six months in the final reading of the Constitution. In the meanwhile we could have prepared and got printed the lists of voters and determined the constituencies. We should have done so. I think that if we had finished our labours six months hence, our Constitution would have been more complete than what it is. However, I am pleased to note that there is provision in the Constitution to make changes in it whenever such necessity arises. I think it is not very proper for us to speak of the merits or demerits of the Constitution because it has been framed by us. We took stock of the whole situation and produced the best thing we could. It can be left for the future generations and for the historians to judge whether we arrived at a correct decision in the atmosphere and situation we were placed in.

A number of people are saying that we have provided many things in this Constitution which are against democratic principles and that we have nullified the right of citizenship. I would ask you not to look at this Constitution from the point of view that the Constitution of America and other western countries are far more advanced than ours. If the country judges it from that point of view it would not be doing justice to us. The people should ask themselves whether they have the same love for the country, for democracy and for the rights and duties as the people of those countries have for theirs. The answer is in the negative. Then why should we make a comparison today with those countries? When our freedom and democracy will be firmly rooted we will be able to make whatever changes we like in our Constitution and to go ahead with it and then alone will it be proper for us to compare our Constitution with those of other countries.

We should see that it is after remaining in bondage for thousands of years that we have achieved freedom. Just now the people have not even learnt to love their country and their nation. The conditions obtaining in the country at present are so bad that we begin to doubt whether we would be able to maintain our freedom and our democracy by even following the Constitution. We see that the Rajas still retain their old position. I know that Sardar Patel and our Government have put an end to the States. But we should not be under a delusion and shut our eyes to realities. The truth is that although the States have been finished but the Rajas are still there. With the fall of the States and Rajas have not fallen. They have great power and wealth. They still dream that they would have their way when the Central Government weakens. We have not forgotten that an year and half back our Maharajas dreamt that as they were very near to Delhi, they would, getting an opportunity, fly aloft their flag on the Red Fort. They had purchased aeroplanes for the purpose and had kept their army in readiness. They have an eye on Delhi and are waiting for an opportunity. There are others also for whom their community is their country. They want that their community should come into power whether the country lives or perishes. The Rajputs want that they should take over the reins of administration of India. Some dream of a Jat Raj. Some want to establish an Ahir Raj. Such are the ideas of some people about their future. I ask whether these ideas are not dangerous for our country? Moreover there are some people who want to serve their ends by bringing about anarchy in the country. Some think that their province alone should govern the whole of India. Some dream of a Maharashtrian Kingdom and some of something else. We should take into consideration these factors which threaten the security of our country and then take up the task of examining this Constitution. There is no doubt that if we had been placed in a better position, we would have incorporated in it better things. It is not that we have no love for freedom and citizenship. We also want that no person should be imprisoned until he is proved guilty of a crime against law and that every person should enjoy full liberty. In view of the present situation the rights that have been provided are adequate. In view of the present situation the Constitution should be considered as an arrangement for ten years. If we are able to retain our freedom for ten years, which I am sure we would be able to do, and the foots our democracy are strengthened, we would be able to make changes in it and to make it progressive. Then alone would it be proper to strike a comparison.

Considering the present situation I find two or three redeeming features in the Constitution which can be characterised as healthy seeds of democracy. Getting good ground and atmosphere these seeds will give forth good sprouts and the sprouts will grow into trees. The Parliament will be formed on the basis of adult franchise and will enjoy full power. We shall thereby be able to protect our democracy and shall have no fear in regard to our future. Besides, people are raising a hue and cry in the name of religion. They quote scriptures and mislead the people. Pakistan was established on the basis of religion and on that basis it has driven out the Hindus and non-Muslims with the result that the people have begun to blame the Congressmen. At such a time we have shown courage in establishing a secular State and faced all sorts of comments. Even today propaganda is being made against us and the Congress in the name of religion and we have to face a lot of criticism. We have given equal rights of citizenship to all. We have given equal right to women although Britain and America were able to grant such rights at a very late stage. We have given full freedom for propagating religion. We can well be proud of these things.

We have indeed taken a great step in regard to States. Even the foreigners wonder at our achievement. No doubt I feel that we could have done a few things in a better way. I admit that the people of the States are a little backward in comparison to the people of the Provinces but to lay down the condition for them that for ten years they would be under the control of the Centre smacks of a little high handedness. This will make it difficult and is already making it difficult to pave the way for democracy. We feel that we are going to have a dual Government. The Civil Services men of the Centre carry on the administration according to their views and our Ministers according to their own views. The result is terrible. They try to blame each other with the result that the administration deteriorates considerably. Honourable Sardar Patel assured us that this arrangement will be enforced when it will be absolutely necessary and that is why we accepted this provision. But such an arrangement should be rarely but in practice and if possible it should not be used at all. The country will benefit by it.

Secondly, we have vested too many powers and special powers in the Centre. The Provinces have been rendered powerless. This is a great defect. It would mean a set-back to our democracy. The exigencies of the times necessitated such a provision and we accepted it. But I hope that the Central Government will make as little use of its special powers as it is possible for it because that would advance the cause of our democracy.

In conclusion I would like to say that an injustice has been done to my area taking shelter under this Constitution. I feel that I should say something in regard to this matter. Sirohi has been arbitrarily divided and one part of it has been integrated with the province of Bombay. It is unjust to take this step without consulting the people. It would be dangerous to carry on democratic administration in such a way. Sirohi is an insignificant area and its division does not mean that Rajasthan is going to perish but the question is one of sentiment and the method of action. To divide it without consulting the people is improper. It could have been integrated with Gujarat or Rajasthan for the time being. It would not have made any difference. After two or four years the people could have been consulted and it could have been accordingly integrated with any area whatsoever. Efforts should be made to make amends for this as early as possible. By going against the wishes of the people, democracy gets a set-back and the people get discontented.

In the end I would like to say that at least some time to come our Constitution will prove to be very good and if we continue to march forward on the path shown by it we will safeguard our freedom and democracy and make our country great in a very short time. Therefore we should accept it.

Shri Ram Chandra Gupta (United Provinces : General) : Sir, I am very thankful to you for giving me this opportunity of speaking for a few minutes on this motion.

The present Constitution will go down, in the annals of this nation, as a great ''CHARTER OF FREEDOM', which our people have today achieved after a long and ceaseless struggle and much suffering. We have therefore every reason to be proud of it; and I have no manner of doubt posterity will continue to remember January 26th, 1950 as the sacred day when real freedom dawned in this country.

This Constitution which consists of nearly 400 clauses is the result of 3 year-long hard labour, anxious thought, and much compromise. The country will no doubt feel grateful to all those who have had a hand in the shaping of this Constitution. Our thanks are due to all members of the Drafting Committee - particularly to Dr. Ambedkar, and to you, Sir. Both of you have demonstrated how accommodating you can be to others.

The Constitution as it stands today, is the result of heated discussion and long debates carried over thousands of amendments moved by the honourable Members of this House. In fact there is not a single word in the Constitution which has not received the notice of some Member or the other. I can go to the length of stating that even punctuations, viz., comma, semicolon, and full stops, have received due notice from our vigilant friend, Mr. Naziruddin Ahmad. It is true that unanimity could not be achieved on every matter, but there is no doubt that all clauses passed by the House always had the support of a very large majority. Almost all the important controversial questions were postponed many times for fuller consideration and the achievement of unanimity, if possible.

In one word, I can say that the present Constitution is the result of many happy compromises effected as a consequence of the spirit of 'give and take' so liberally manifested by the Members of this House. In such circumstances you cannot expect that all the Members will have the same degree of satisfaction on all matters incorporated in the Constitution. This really explains the mixed reaction accorded to the Constitution by the various speakers. While I myself do not agree with every thing incorporated in the Constitution. I can say without the slightest fear of contradiction, that it has the substantial support of a very substantial section of this House.

It is no doubt true that the Constitution as originally drafted has undergone a radical change. Such a change was inevitable under the altered conditions of the country. When we began in December, 1946, the country was not divided and the then conditions did require a Constitution of a different type. By the partition of the country very many questions which were then important lost all significance. Prior to the partition of the country it was thought that all the provinces should be practically independent of the Centre except in certain matters - defence, communication etc.; - the residuary powers to vest in the units; but the partition did demand, and rightly demanded that the Centre should be made as strong as possible. The Constitution has effected this change, and I believe that this change is for the better. I am not satisfied by the criticism that there should have been less of centralisation, and more decentralisation. I may perhaps agree to this criticism only in a small measure and not more. *A strong Central Government is the need of the hour*; and I prophesy that the future will tell you that this centralisation was a blessing. All along the ages, and our history bears ample testimony to this fact, the overmastering problem before India has been one of integration, and consolidation and unification. A unitary and highly centralised form of Government is suited to the needs of this country. However, in future if our experience shows that in certain matters some more powers should be given to the units, I feel there would be no difficulty in getting the change effected by the amendment of the Constitution as provided for in Sec. 368.

The other material change effected in the Constitution was due to the regrouping and consolidation of the 600 and odd princely States. Can any body say that this change has not been for the better? For effecting this merger all credit goes to our beloved Deputy Prime Minister, Sardar Patel, who performed this miracle in such a short time. The ruling chiefs of those states who voluntarily abdicated their authority in the interest of their motherland also deserve our sincere thanks.

We can now feel proud that ours is one country, one language, and one Constitution, to govern all - low or high, Scheduled Castes or high Castes, minorities or majorities. Our Constitution does not make any distinction whatsoever. In fact it has removed all traces of untouchability from the country. The Constitution has been hailed by all the Members of the Scheduled Castes in this House, and we can safely say that it is quite satisfactory from their point of view. The Constitution has, as a precautionary measure, given special rights to the Scheduled Castes, Anglo-Indians for a short time only.

The Constitution has placed women on absolute equal footing with the menfolk; and we can say that ours is the only Constitution giving these rights to women without any reserve or restrictions.

Another criticism levelled against this Constitution is that it is too lengthy. This also seems to be unjustified. Ours is a peculiar country where you have to provide for so many contingencies and conflicting interests. It is but natural, therefore, that the Constitution should be a detailed one. This codification of numerous details, which are likely to arise every day, must occupy considerable space in any constitution. Besides this, we have benefited by the comparative study of our own old Acts, including the Government of India Act of 1935. We have also utilised the good points of the American, British, Australian, and other Constitutions and at the same time tried to save ourselves from many pitfalls of other Constitutions. Some honourable Members have termed it as a "Patch-work". This is not so. Our Constitution really consists of all that is best in other constitutions, modified to suit our peculiar needs.

Another good feature of the Constitution is that it has done away with the system of separate electorate and reservation of seats (except for a short duration in some cases).

This Constitution, for the first time, has provided for appeal against sentence of death to the Supreme Court under certain circumstances. It does not go far enough in so far as it fails to provide appeals in all cases where death penalty is imposed or confirmed by a High Court. I would have, however, preferred total abolition of death sentences.

The question of Zamindari abolition has been agitating the country for a long time. The payment of compensation at the market rate was beyond the means of the units concerned. This Constitution, while awarding equitable compensation, has provided in article 31 that the compensation shall be determined in accordance with certain principles. This enactment has made it possible to abolish the Zamindari system, root and branch.

Article 21 of the Constitution relating to protection of life and personal liberty of an individual is a clause which has attracted the attention of a large section of the public, specially lawyers and judges. Their contention is that the clause, as enacted, will not safeguard the rights of the individual sufficiently. Their fear is unjustified because no Government in the country can pass any legislation and then enforce it in a wanton or irresponsible manner. Sanction of the legislature is essential under the clause. There is no doubt the clause is wide enough to confer very wide powers on the legislatures of the country and I am sure that a resort to such extraordinary powers would be had only when the exigencies of the time would require them.

In the end, I shall request the Members of this house, and through them my countrymen outside this House, to work this Constitution in the spirit of devotees. If we work this Constitution and co-operate with each other, even the seemingly glaring shortcomings of this Constitution, which appear so great today, will gradually peter out. Let us swear by this Constitution and pledge ourselves "to protect, preserve, and defend" this Constitution - no matter what the price we may have to pay in so doing.

Mr. President: The House now stands adjourned till ten o'clock tomorrow morning.

The Assembly then adjourned till Ten of the Clock on Friday, the 25th November, 1949.

[Translation of Hindustani speech]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME XI

Friday, the 25th November, 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

GOVERNMENT OF INDIA ACT (AMENDMENT) BILL

Mr. President: The first thing today is to take up the Bill of which notice has been given by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, I move for leave to introduce a Bill further to amend the government of India Act, 1935.

Mr. President: The question is:

"That leave be given to introduce a Bill further to amend the Government of India Act, 1935."

The motion was adopted.

The Honourable Dr. B. R. Ambedkar: Sir, I introduce the Bill.

Mr. President: The Bill is introduced.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That the Bill further to amend the Government of India Act, 1935, be taken into consideration by the Assembly at once."

Mr. President: Motion moved:

"That the Bill further to amend the Government of India Act, 1935, be taken into consideration by the Assembly at once."

Shri Lokanath Misra (Orissa: General): Sir, I welcome this amending Bill but I wish to make a few observations.

The statement of objects and reasons says that on demand from certain Provinces to alter their names, this Bill has come before the House. I beg to submit that instead of changing the names of certain Provinces, the Government or the Governor General should take steps to change the names of all the, Provinces as far as possible to fit in with our name Bharatvarsha. For instance, I have got a call from my own Province that the name may be changed from Orissa to Utkal. There are various cogent grounds for changing that name. Our University is called the Utkal University. You know, Sir, the Congress calls it the Utkal Province. Then again, our revered Rabindranath Tagore in his Jana Gana Mana also describes our Province as Utkal. Utkal is an ennobling word. It means high art and high apprehension. I therefore, submit, if my words could reach the Governor General, steps should be taken to change the name of my Province Orissa to Utkal.

Shri R. K. Sidhva (C. P. & Berar: General): Mr. President, unfortunately, this Bill has been brought in this session for want of time. This subject really speaking, relates to this Constituent Assembly and it should have been brought earlier. But, it is neither your fault, Sir nor the fault of the Drafting Committee nor the fault of the House, because we are working against time.

Therefore, the second best method is sought to be adopted by the Drafting Committee. Therefore, certainly I do not find fault with them.

However, I feel, Sir, that the matter of changing names of the Provinces is such an important matter that I do not desire that only the provincial Governments or even the Congress Committees should decide amongst themselves and send it to the Governor General, and the Governor General should ditto it. We have a little sad experience here. We desired in the last session when we dispersed that this subject being of very great importance, if the Provincial Congress Committees and Provincial Governments come to a decision, this House will take a favourable consideration. But what has happened? The U. P. Government and U. P. Assembly decided that the name should be changed into Aryavarta. That was seriously objected to by this House on the ground that Aryavarta relates to the whole of India. The U. P. friends are always very anxious to monopolise to themselves the name of India and therefore it was by an overwhelming majority of this House that the motion of my Friend Mr. Shibban lal Saksena was rejected and that is on record in this House. In the year 1938 when the Indian National Congress held its session in Cawnpore in the All-India Congress Committee my friends from U. P. brought a resolution that the name of the U. P. Congress Committee should be changed into Hindustan Congress Committee. The A. I. C. C. rejected it My friends being so enthusiastic brought it in the Open Congress and I had to oppose it and the Congress threw it out. It was in '1938 under the Presidentship of Pandit Jawaharlal Nehru and I was the person who strongly opposed it in the open Congress and I was glad that the Open Congress seeing the force of the argument stated that U. P. cannot usurp to themselves the name of Hindustan and it was rejected. My fear is therefore again after Aryavarta has been rejected they may suggest Hindustan. As the previous speaker stated, Orissa should be called Utkal just as C. P. has been called Madhya Pradesh. Why not U. P. be called Samyukt Pradesh ? If that is not acceptable there are other very fine names like Avadh, Ayodhya, Ganga, etc. Why should they usurp the name of the whole of India and tell us they are the people who are the only custodians of India ? I strongly resent their monopolising the name of India. Therefore I feel that it is very risky to give the power to the Governor-General. I have an amendment to that effect and when the time comes. I shall move that. Therefore while I give my qualified support to this, I do desire that this power should not be entrusted to the Governor-General as it is the right of this House and if this House has no time to decide this, then Parliament should ultimately decide not the Governor-General.

Shri Mohan Lal Gautam (United Provinces : General) : Mr. President, I am not one of those who enter into these controversies which are in my opinion very small if not petty. People always choose their names and if their names are changed, they will create a row in this House. If the name of our Province U. P. was changed two years back when we achieved independence, I assure you that this House would not have come in the way and it would have been swallowed by all of us.

Honourable Members: Question.

Shri Mohan Lal Gautam: You may question me. You may call it Utkal or Kerala or Malabar or Kannada-nobody bothers about it but when this question came up here, people are raising these objections. My friend Mr. Sidhva said that U. P. is always in the habit of monopolising the name of the whole of India. I assure you that U. P. has a gift and it is perhaps the only province in the country which can claim that it has no provincialism.

Honourable Members : Question.

Shri Mohan Lal Gautam: You may question but I give you a challenge hen and now that in all the Provinces you are so provincial.

Honourable Members: No.

Shri Mohan Lal Gautam : That you will not tolerate other people. I give a challenge to all the other provinces to give me examples where you have elected people who do not belong to your province to the Constituent Assembly. I give you a challenge where you can quote me since 1919 how many Ministers you have taken into your Ministries who did not belong to your province.

Mr. President: I would request the honourable Member not to go into matters which are not strictly germane to the motion under discussion. It is a simple proposition which is before the House and he should confine his remarks to that.

Shri Mohan Lal Gautam: I bow to your ruling but I assure you that U. P. does not want any name that you object to. This function of Brahmins--of giving names ought to have some background. You say why not give it the name of Avadh. Avadh is one of the very important parts of U. P. but it is only a part. Avadh has a tradition of Nawabs and feudal lords which we do not want.

Mr. President: Let us not discuss the names because the names are before the House.

Shri Deshbandhu Gupta (Delhi) : U. P. is also part of Aryavarta and not the whole.

Shri Mohan Lal Gautam: I am conscious of it that U. P. is only a part of Aryavarta.

Mr. President : I think you had better confine yourself to the provisions of the Bill.

Shri Mohan Lal Gautam : The justification of this Bill is that it is not very easy for this House without knowing the history of the Province, without understanding them, it is not possible for one or two Members to stand up and propose the names. Another difficulty arises that if You had given any name to this Province yourself we might have accepted it or we might have tolerated it, but you referred the matter to the provincial Government and the Provincial Government consulted the Provincial Congress Committee and in consultation they suggested some name which is not acceptable to you. (interruption) I am not prepared to answer any question of Mr. Sidhva because, the Chair has ruled that the names are not to be discussed so Mr. Sidhva need not take the trouble of suggesting some names here and now without understanding the implication of those names. Therefore the difficulty is that the name that was suggested is not acceptable to this House and no new name can be suggested on the spur of the moment. Therefore I am grateful to -the Drafting Committee and the President of the Drafting Committee. Dr. Ambedkar-to find a via media in suggesting this amendment to the, Government of India Act, 1935. This will solve the difficulty. The solution is that the Provinces must be consulted and it must be acceptable to all-India authority and the all-India authority is the President and the President means the President and the Cabinet. Cabinet means if the Cabinet is responsible to the Party in power, they can consult you therefore the power really is transferred from this house to the Congress Party in the Parliament. If you do not want it, you may suggest some via media but to reject it would be something absolutely different. Therefore I am thankful to the Drafting Committee and I whole-heartedly support this amendment, because it is a *via media* and I would request Members of the House not to insist on their opposition.

Mr. President: Do you want to speak, Mr. Pataskar ?

Shri H. V. Pataskar (Bombay: General) : No, I do not want to oppose the motion, but would like to offer some remarks.

Mr. President : You can do so when we take up the clauses. Well, I then put this motion.

The question is:

"That the Bill further to amendment Lao Government of India Act, 1935, be taken into consideration by the Assembly at once."

The motion was adopted.

Mr. President: Then we take up the clauses of the Bill.

Clause 1; there is one amendment by Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I beg to move:

"That in sub-clause (1) of clause 1, for the words 'Fourth Amendment' the words Third Amendment' be substituted."

Mr. President: Or, alternatively ?

Mr. Naziruddin Ahmad: No, Sir, I do not wish to move the alternative

amendment.

Sir, I wish to point out what seems to be a glaring anomaly. We have already passed four Acts in this Constituent Assembly relating to the amendment of the Government of India Act. Though we have passed four Acts, yet the numbering is absolutely erratic. We have Act No. I Then we have Act No. II. Then we have Act No. III and then, by a big jump we have Act No. V, but it seems there is no Act No. IV. Sir, the usual or rather the accepted way of numbering Acts is serial. After Act III, we must have Act IV, and not Act No. V. There is thus, a gap in Act No. IV. I do not know whether this is the fact, but this is what I have understood as having happened here. So far as the amendments are concerned, of the four amendments, the first is called the Government of India Amendment Act, 1949. The second is called the Government of India Amendment Act Second, 1949, and the third Act is not numbered at all. So I submit that this Act should be called the Third Amendment. So, so far as the numbering of the Act is concerned, I do not know what will be the number of the present Act if it is passed.

Mr. President: I understand the Third Amendment Act related to evacuee property.

Mr. Naziruddin Ahmad: That may be, but that is another matter.

Mr. President: And so this is the Fourth.

Mr. Naziruddin Ahmad: But the point is absolutely different. My point is that in numbering the Acts, they must be consecutive. The numbering of the Acts should be consecutive, irrespective of the subject dealt with. Each Act passed by the Constituent Assembly must be numbered serially, as one, two, three, four and so on. The fourth Act has really been numbered Act No. V. This is the place to consider whether Act V should be considered as Act IV and whether this present Bill should be given retrospective effect, and be numbered IV, though it is passed after the fifth, or whether it will remain as it is, with a gap left in between. Should that gap be allowed to remain or should it be corrected at this stage ? These are the considerations which seem to me to be very important. There is some sort of lapse somewhere, and I beg to point this out so that it may be corrected by this House.

The Honourable Dr. B. R. Ambedkar: Sir, I am sure that there is some confusion in the mind of my friend Mr. Naziruddin Ahmad, as I find by reference to the various Acts that are passed by the Constituent Assembly the proposal in the Bill that it should be called the Fourth Amendment Act is the proper wording. The first Act that was passed by the Constituent Assembly is called the Government of India (Amendment) Act, 1949. The second one is called the Government of India (Second Amendment) Act, 1949, which deals with the removal of prisoners from one unit to another unit. The third Amendment Act, 1949, deals with evacuee property, and the Bengal election.

Mr. Naziruddin Ahmad: It is not called an Amendment Act at all, it has got a different name.

The Honourable Dr. B. R. Ambedkar: If you look at Clause 1, there you will see, "This Act may be called the Government of India (Second Amendment) Act, 1949." The next one is called the Third Amendment Act, 1949, which deals with the custody management and disposal of evacuee property and the election in West Bengal.

The confusion, I think, has arisen from the fact that we have passed two other Acts in the Constituent Assembly, one relating to the Abolition of Privy Council Jurisdiction and another amending the Central Government and Legislature Act, 1946. Those Acts are not amendments of the Government of India Act, at all. Although those Acts may have indirect effect on the Government of India. Act, they are not amendments to the Government of India Act. We are, therefore, entitled to class this as the Fourth Amendment, because, so far as direct amendment of the Government of India Act, 1935 is concerned, this Assembly has passed only three Acts and no other.

Mr. Naziruddin Ahmad : But there, is. no Third Amendment Act, at all.

The Honourable Dr. B. R. Ambedkar: Of course there is. The third Act deals with the custody, management and disposal of evacuee property. I have got the Act here before me.

Mr. President: There seems to be a little confusion about this matter. Fourth is not the number of the Act. What is described here is the fourth amendment of the Act. That is not the number of the Act itself. The number of the Act is separate.

The Honourable Dr. B. R. Ambedkar: It is a description of the present Act. It is a short title.

Mr. President: It is only a description. The number will be Act No. 6 of 1949.

The Honourable Dr. B. R. Ambedkar: That is so. This is a short title.

Mr. President: The Constituent Assembly has passed five Acts up to now, in 1949 and this will be the sixth. But so far as amendments are concerned it is the fourth amendment to the Government of India Act, and therefore it is called the Fourth amendment.

Pandit Hirday Nath Kunzru (United Provinces: General): If out of the five Acts that we have already passed......

Mr. President: This is the sixth.

The Honourable Dr. B. R. Ambedkar: We have passed in this Assembly five Acts. Out of them two have nothing to do with any amendment of the Government of India Act, 1935.

Pandit Hirday Nath Kunzru: Why were they placed before the Constituent Assembly if they were not of a constitutional character ?

The Honourable Dr. B. R. Ambedkar: The short title is quite different from the purport of the Act.

Pandit Hirday Nath Kunzru : The question is whether the right of a litigant to appeal to the Privy Council could have been taken away without an amendment to the

Government of India Act, 1935.

The Honourable Dr. B. R. Ambedkar: The short title of the next Act was the Central Government and Legislature Amendment Act, 1949. That Act' sought to amend the India (Central Government and Legislature) Act, 1946 which is an Act of Parliament and not the Government of India Act, 1935. The other Act was the abolition of Privy Council Jurisdiction Act, 1949.

Pandit Hirday Nath Kunzru: But the earlier Act to which my honourable Friend has referred, namely, the Amendment to the Central Legislature Act was itself an amendment of the Government of India Act.

The Honourable Dr. B. R. Ambedkar: No, no. That is not. There was a separate Act passed by Parliament called the India (Central Government and Legislature) Act 1946. This amendment was an amendment to that Act. That Act was outside the Government of India Act, 1935.

Shri R. K. Sidhva: Perhaps Dr. Ambedkar will remember that the amendment to the Act from Cotton Seeds to Cotton was really an amendment to the Government of India Act, to which he has made no mention.

The Honourable Dr. B. R. Ambedkar: This would mean a sixth Act no doubt but the short title is something quite different to the number of the Act. We are discussing the short titles.

Shri T. T. Krishnamachari (Madras : General) : This is a matter of nomenclature and in fact in the previous Acts amended by Parliament, they have given different names for Acts which in purport amended the Government of India Act, such as the India-Burma Emergency Powers Act, 1942. The matter of nomenclature need not be pursued to its logical and bitter end. I suggest the House to proceed with the consideration of the Bill.

Mr. Naziruddin Ahmad : Is there any Act No. IV?

Mr. President : There seems to be

The Honourable Dr. B. R. Ambedkar: There is.

Mr. Naziruddin Ahmad : I have not got it.

The Honourable Dr. B. R. Ambedkar: If you have not a copy, what can we do ?

Mr. President: After all, nothing will turn upon the title!

The Honourable Dr. B. R. Ambedkar: I can give him the number also, if he wants it.

Act No. I of 1949 is called by the short title of "The Government of India (Amendment) Act 1949."

Act No. II of 1949 is called "The Government of India (Second Amendment) Act, 1949."

Act No. III of 1949 is called "The India (Central Government and Legislature) Amendment Act, 1949."

Act No. IV of 1949 is called "The Government of India (Third Amendment) Act 1949."

Act No. V of 1949 is called "The Abolition of Privy Council Jurisdiction Act, 1949."

Acts III and V have nothing to do with the Government of India Act, 1935 and that is why we call this the Fourth Amendment of the Government of India Act.

Mr. President: The question is:

"That in sub-clause (1) of clause 1, for the words 'Fourth Amendment' the words Third Amendment' be substituted."

The amendment was negatived.

Mr. President: The question is:

"That Clause 1 do stand part of the Bill."

The motion was adopted.

Clause 1 was added to the Bill.

Clause 2

Mr. Naziruddin Ahmad : Sir, I beg to move :

"That clause 2 be deleted."

Sir, I also beg to move :

"That in clause 2, the following statute reference be appended :

'52 & 53 Vict., C.63.' "

These amendments are of a formal character. So far as the last amendment is concerned, I move it because unlike the ordinary powers of the Secretary.....in ordinary legislation, we have in our rules no power given to the Secretary to make any changes in the Bill after it is passed. This statute reference is necessary and it should be given.

So far as my earlier amendment is concerned, namely, the deletion of Clause 2, it arises in this way. When the last Act was passed, namely, Constituent Assembly Act No. V. at that time there was no such thing as Clause 2 in that Bill. Clause 2 is to the effect "that the interpretation Act 1889 applies for the interpretation of this Act as it applies to the interpretation of an Act of Parliament." In the earlier Acts this clause appears but not in the Bill which really culminated in Act No. V. At that time I suggested that a clause like this would be necessary but Dr. Ambedkar told the House at the time that this clause was; not at all necessary. It was not necessary in the case of Act No. V, I suppose it would not be necessary in the case of this Bill too. There should, after all, be some kind of uniformity. In the earlier Acts we have this clause but not in the last. We should adopt a definite and settled policy as to drafting. It should not depend on the mood of the moment. I would therefore ask Dr. Ambedkar to consider whether he should link himself with the drafting of Act No. V or really go back to the earlier Acts so as to retain this clause ?

The Honourable Dr. B. R. Ambedkar : All that I can say is that this is the uniform clause that has been passed by this Assembly in the other Acts amending the Government of India Act. Therefore, in order to keep up the uniformity and to provide for the interpretation of this particular Act, Clause 2 is a very necessary part of the Bill.

With regard to the suggestion of my friend all that it means is that there should be a marginal note giving the chapter number of the Interpretation Act of 1889. That is a matter for the Draftsman to consider, and if he thinks such a marginal note is necessary, he will no doubt consider the matter. But this marginal note is not added against the clause of the other Acts which amend the Government of India Act of 1935.

Mr. Naziruddin Ahmad : Although Dr. Ambedkar says that in all the previous Acts this clause appears, yet I beg to point out that in Act No. V, there is no such clause. I pointed out the omission but I was over-ruled.

The Honourable Dr. B. R. Ambedkar : That was a self-contained Act. It required no reference to the Interpretation Act at all.

Mr. President : The question is :

(a) "That clause 2 be deleted."

(b) "That in clause 2, the following statute reference be appended :

'52 & 53 Vict. C.63.'"

The amendments were negatived.

Mr. President : The question is :

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3

Mr. Naziruddin Ahmad : This is only a punctuation amendment which, I think, the Drafting Committee would accept, though not openly, at least secretly.

Shri H. V. Pataskar : Sir, I move :

> "That in clause 3, after the words 'alter the name of any Province' the words 'after ascertaining the opinion of the members of the Legislature of the Province whose name is proposed to be changed' be added."

Now, Sir, my reasons for moving this amendment are these. From the Statement of objects and reasons it appears that the present Bill has been brought in this House for three reasons : the first is that certain Provincial Governments have expressed their desire to alter the name of the province – that is exactly what is mentioned in the statement of objects and reasons. The second reason for bringing this Bill is that these provincial Governments have further desired that these names should be altered before the commencement of this Constitution, that is, before the 26th of January 1950. The third reason is that there is no provision for doing that in the present Government of India Act, 1935.

Now, Sir, it is true that there is no provision in the Government of India Act, 1935, for changing the name of a province. So far as the principle of my amendment is concerned, it is this that any change in the name should be effected after ascertaining the views of the legislature of the province whose name is proposed to be altered. I would like to draw your attention to article 3 which we have already passed. Article 3 makes provision for the alteration of the name of any state, which the provinces are going to be called hereafter. The proviso to article 3 reads :

> "Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the boundaries of any State or States specified in Part A or Part B of the First Schedule or the name or names of any such State or States, the views of the Legislature of the State or, as the case may be, of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President."

Therefore, we have already provided for such a change; if it is to be made after the 26th of January it can be made only by the introduction of a Bill, and such a Bill can be allowed to be introduced only after ascertaining the wishes of the Legislatures of the States concerned.

Now, it may be argued that the Provincial Government have already expressed their desire. I do not know which Provincial Governments have expressed their desire, because from the nature of the discussions over the name "Aryavarta", and the heat which it generated I do not think, changing the name of a province is going to be such an easy thing as it is sought to be made out.

It may again be argued that it is because of the Provincial Governments' desire that the names are going to be changed and therefore it practically amounts to ascertaining the views of the Legislature. I would here like to point out that the views of the Legislatures and the views of the Provincial Governments do not always coincide. It is one thing to ascertain the views of the Legislature which is composed of the representatives of the people, and another thing to consult the Provincial Governments which are concerned with the day to day administrative problems of the provinces. The principle that we have laid down in article 3 is a highly sound one inasmuch as it is a better method of ascertaining the views of the people in general, because the legislatures are expected to reflect the views of the people of the province.

Now, Sir, without going into details I can easily show how anomalies are bound to arise. Take the case of West Bengal. At one time they were in favour of changing the name from West Bengal to Bengal. Subsequently, there was a change of mind and they wanted to retain it as West Bengal itself. In fact, in our final draft we have mentioned it as West Bengal. At the Third Reading Stage we again reverted back to the word "West Bengal". All these clearly show that even if a name is to be changed, we should ordinarily follow the sound principle which we have enunciated in article 3 that it should not be by the wishes of the Government which may be changing from time to time, but by the wishes of the Legislature which are likely to be more formal and firm.

Then, Sir, take the name of Koushal Vidharbh. In our first draft we mentioned it as Koushal Vidharbh which must have been after consultation with the Provincial government. Subsequently they changed their mind and wanted to have it as Madhya Pradesh. Would it not be better, therefore to follow the sound principle laid down in article 3? Governments change their views with changing circumstances and Governments are not really representative of the people in the sense in which Legislatures of the provinces are.

Mr. President : I do not think that this is a proposition which requires so much of argument.

Shri H. V. Pataskar : Another point that I want to make is this. In the Constitution we have laid down the principle which is enunciated in article 3. Today, just one day prior to the passing of the constitution, we want to go back on that principle, because some people seem to be in hurry to change the names of provinces. After all changing the name does not make much difference. As the poet said, a rose will smell as sweet if called by any other name. Therefore, why not stick to the principle enunciated in article 3? Why flout it at this stage? Well, Sir, I would strongly urge that it is a bad precedent, showing scanty regard for the principles which we have so solemnly laid down for those who come after us to follow.

I would, therefore, request that this simple amendment of mine will be accepted by the Members of this House. The only argument against it would be that it would involve some time. Most of the names of the provinces, are names given by foreigners. It is much better that the changes in their names are made after ascertaining the views of the different legislatures and in a more calm atmosphere rather than hastily as is tried to be done by the introduction of this Bill.

Shri R. K. Sidhva : Mr. President, my amendment reads thus :

> "That at the end of the proviso to sub-section (1) of section 290 of the Government of India Act, 1935, the following shall be added, namely :-
>
> 'and any such Order made by the Governor-General shall be placed before the Parliament within three days of its making, and the Parliament shall have the right to either accept or reject the name contained in that Order.' "

Sir, section 290 is in such a limited form that it is very difficult for any honourable member to move a comprehensive amendment to avoid any discrepancy or any suggestion which may not be found acceptable to the House or to the country; therefore within the limit within which the section is confined, namely to change the name of the Province, I had no other alternative but to move this amendment in order to safeguard the right of parliament and the people of this country in not allowing any province to change the name according to its whim and fancy. While I have every regard for any province which wants to change its name quite historically or quite suitably otherwise, the necessity for my amendment has been substantiated by the arguments advanced by my friend Mr. Mohan Lal Gautam. He came in a challenging mood and said his province was the supermost compared to all the other provinces. (*Interruption*.) My point is that if there are some Provinces with that kind of mentality, this House has a right to see that such a mentality does not prevail. I am glad, Sir, that among their own provincial Members there was difference of opinion in naming the province as Aryavarta.

Mr. President : Please do not bring in any particular name. You go on the merits of the case.

Shri R. K. Sidhva : Well, Sir, what is the remedy? My friend Mr. Pataskar rightly apprehended the position and said there is no other alternative but to consult the legislature. The purpose of consulting the legislature also will not be served because the majority of the Members there would say, "Have it Aryavarta or Hindustan". Supposing they change it to Hindustan, what will be the remedy if the Provincial Legislature also says that U. P. will be known as Hindustan? India in future will be called Bharat but that does not mean that we discard the name Hindustan. Therefore you must tell me Sir how to safeguard the interests of the country in setting that this word Hindustan is not adopted by the U. P. as they did make a venture in the past unofficially to introduce it in the Congress Committee but in which they failed? Therefore, I want a little guidance in this matter either from the Chairman or from you, Sir, as to what safeguard we have. It is not a Province which can change the name, it is the Governor-General who does it.

Pandit Balkrishna Sharma : (United Provinces : General) : If it will satisfy my honourable friends, I may say I hate the word 'Hindustan'.

Shri R. K. Sidhva : That is all right, but you did suggest for your Provincial Congress Committee the name of 'Hindustan Congress Committee' in 1939.

Shri Mahavir Tyagi : (United Provinces : General) : You tell us those names which you do not want.

Mr. President : We are simply wasting time over a matter which does not require any interruption at all. The honourable Member may confine himself to his amendment.

Shri R. K. Sidhva : I only want to safeguard the interests of the country, in the event of the Governor-General subscribing to the views of the Provincial Government or whosoever it may be, because it naturally seems that the Governor-General will adopt whatever suggestion a Province may make. In that event, if we feel that name which has been adopted is not proper in the interests of India, then my amendment seeks that parliament should have a right – because that will be the only body after the dissolution of this Constituent Assembly – to consider that subject. That is the only remedy I find. I do not find proper the remedy which you suggest that the Governor-General is himself the safeguard because according to me Parliament is the proper body in such an important matter. My friend Mr. Pataskar has rightly stated that we are doing this in a hurry. Why should we unnecessarily hurry about this matter? Why cannot we do it after 26th January ? Let us decide in a calm mood. Let us consult everybody. You decided on one or two names and as Mr. Pataskar pointed out you had to change in this very Assembly two names within a short period.

I have no other suggestions to make for safeguarding the proper method of avoiding any name which may be detrimental to the interests of the country. Therefore, I suggest this method. I hope my friend Dr. Ambedkar will kindly bear in mind my suggestion which I make with the best of intentions. If he has any suggestions let me know them I am prepared to accept them. My U. P. friends are unnecessarily annoyed. My suggestion is put forward with the best of intention as my experience has shown in the past. I hope my amendment will be accepted or alternatively any other suggestion may be put forward to safeguard the interests of the country.

Mr. President : Shri Jaspat Roy Kapoor, I request the honourable Member not to go into the merits of any particular names or any particular action which may have been taken by somebody in the past. He may confine himself to the proposition before the House.

Shri Jaspat Roy Kapoor : (United Provinces : General) : Mr. President, Sir, I am opposed to both the amendments, the one moved by Mr. Pataskar and the other by Mr. Sidhva. The question of naming of a Province has assumed very great importance, greater importance than honourable Members would like to attach even to the question of creation of a new Province or increasing or diminishing the area of any Province, for Shri Pataskar's amendment suggests that if the Governor-General passes an order changing the name of a Province only he must consult the Provincial Legislature before passing the order, and Shri Sidhva's amendment seeks that even after the Order is passed, by the Governor-General changing the name of a Province it should be placed before the Parliament and the Parliament should have the right to accept or reject the order previously made by the Governor-General. In the case of any other order passed by the Governor-General under section 290, creating a new Province, changing the boundaries of an existing Province, may be quietly accepted by the country as a whole with neither the legislature of that Province being consulted nor the Parliament having the right of say in the matter. It appears to me rather fantastic that the question of change of name should be considered so vitally important whereas the more vitally important question relating to the creation of a Province should not attract any attention of honourable Members at all. I must submit that the manner in which the United Provinces has been dragged in in this controversy hurts us because we of the United Provinces had always thought that we have been throughout acting in a manner which would receive the approbation of the rest of the country. As my honourable Friend Mr. Mohan Lal Gautam had said, there is absolutely no provincialism in our Province and we had therefore thought that some credit would be given to us by Members of other Provinces and they would give us at least the freedom of giving a suitable name to our province.

Mr. President : Your Province does not come in here.

Shri Jaspat Roy Kapoor : I was mentioning it just incidentally, Sir. I would not pursue it in view of the shortness of time.

My objection is to Mr. Pataskar's amendment, firstly on the ground that it simply does not fit in with section 290, and then that if it is accepted as it is worded it would simply set the legislature against the Government of the province and the Government against the Legislature, for Mr. Pataskar does not want to make any amendment to the proviso to section 290 of the Government of India Act which says that before an order under that section is passed by the Governor-General the Provincial Government should be consulted. According to the proviso the views of the Government of the province should be ascertained. Now what Mr. Pataskar suggests is that the views of the legislature should also be ascertained. Therefore it comes to this that firstly the views of the legislature should be ascertained and thereafter under the proviso, the views of the Government should be also ascertained. If it is presumed that the views of the Government and those of the legislature will not be different the amendment of Mr. Pataskar will be unnecessary and redundant. If their views are going to be different......

Shri H. V. Pataskar : There are instances in which those views have been different.

Shri Jaspat Roy Kapoor : Well, if there are such instances, we sitting here in the Constituent Assembly should not give encouragement for such differences of opinion. Our object should be to bring about conciliation between the legislature and the Government and not to create further occasions for such differences of opinion. Therefore I submit that the amendment simply does not fit in here.

As regards the amendment moved by Mr. Sidhva, I would say that Mr. Sidhva has a very fertile brain and he can conceive of all sorts of amendments. But I never thought that even he is capable of conceiving an amendment of this kind which is almost meaningless. He suggests that the order of the Governor-General should be placed before Parliament and that Parliament should have the right either to accept it or reject it. Of course it would not have any power to amend the order. It can only either accept the name which has been approved by the Governor-General or reject it. Now, what will happen if the name proposed in the order is rejected by Parliament? That will create a lacuna. Therefore I suggest that Mr. Sidhva's amendment is almost meaningless. Then again, this amendment of Mr. Sidhva is that it should be added to existing proviso. It means that the amendment of Mr. Sidhva would apply to all the orders which would be passed by the Governor-General under section 290 such as those relating to the creation of a new province, changing the boundaries of a province, etc. I do not think it is the intention of Mr. Sidhva that his amendment should be of such an all-embracing nature. But, as it has been worded, it would be applicable to all the orders passed by the Governor-General under section 290. I think Mr. Sidhva has not given careful consideration to his amendment. On reconsideration I am sure he will not press it. For these reasons I oppose both these amendments.

Shri M. Thirumala Rao : (Madras : General) : May I say a word, Sir?

Mr. President : I cannot stop any Member from speaking. But Members will remember that we have still several Members desirous of speaking on the Constitution.

Shri M. Thirumala Rao : I assure you, Sir, that I am not standing up merely to join in the debate. I have one point to make in connection with this Bill.

Mr. President : All that I can say is that the honourable member is taking away the time of others who want to speak, but have not been allowed an opportunity to do so. The honourable Member has had his say already on the Constitution.

Honourable Members : 'Closure'.

Mr. President : I would draw the attention of the honourable member to the demand for closure of the debate.

Shri M. Thirumala Rao : Is it fair, Sir, that I should be asked to sit down because closure has just now been moved ?

Sir, I have only a simple proposition to make. I do not mind whether the House accepts or rejects my proposition. I do not know why, when the Government bring in a measure before the House, the House should be deprived of an opportunity of judging whether the proposition is right or wrong. But this can be brought up after January 26. Nothing is going to happen if this proposition is brought before the House under article 3 of the Constitution. The Government can very well, in view of the discussion that has been raised here, withdraw the Bill now.

Shri Rohini Kumar Chaudhuri : (Assam : General) : Sir, may I.

Mr. President : No further discussion please.

Shri Rohini Kumar Chaudhuri : I want to say that when a provincial Government agrees to change the name of its province, as in the case of Assam which wanted to change the spelling of the name of the Province from 'Assam' to 'Assam', and the Prime Minister.........

Mr. President : The question does not arise in connection with this Bill.

Shri Rohini Kumar Chaudhuri : An amendment to bring about this change was not allowed to be moved. But I understand from the Premier of Assam that the Government have agreed..........

Mr. President : You may raise this question at the appropriate time, but not in this connection.

Shri Rohini Kumar Chaudhuri : But, Sir, I have ....

Mr. President : I have ruled that the question does not arise now.

The Honourable Dr. B. R. Ambedkar : Sir, dealing first with the amendment of Mr. Pataskar, I am afraid I must point out that it would not fit in within the framework of section 290. My friend does not seem to have noticed that to the various sub-clauses of clause (1) of section 290 there is a general proviso which applies to all the sub-clauses (a), (b), (c) and (d). If he refers to that proviso he will find that his amendment would introduce double conditions for the operation of the new clause, namely sub-clause (e). Sub-clause (e) would be subject to the condition he wants to lay down in his amendment, namely, 'after ascertaining the opinion of the members of the legislature of the province whose name is proposed to be changed'. In addition to that, sub-clause (e) would also be governed by the proviso, namely that the Governor-General shall ascertain the views of the Government of the province. In view of this there would arise a very difficult condition. According to his amendment, the Governor-General will be bound to ascertain the wishes of the legislature. According to the proviso to section 290, he will be bound to ascertain the views of the Government of the province. He will therefore put himself in a double difficulty by reason of the fact that the Governor-General will have to consult two different bodies. That is not going to be a very easy matter. Secondly, he would realise that it is not quite justifiable that sub-clause (a) to (d) should be governed by a single proviso, while the new sub-clause (e) should be governed by two provisos.

Shri H. V. Pataskar : That is not so.

The Honourable Dr. B. R. Ambedkar : That is what I say. How do you know? Therefore it seems to me that he is putting himself and the Governor-General in a somewhat difficult position by making such a suggestion. I do not therefore think that at this stage it would be logical to accept it, whatever be the merits of the suggestion.

Coming to the amendment of my friend, Mr. Sidhva, he seems to me to have completely confused the intention of this article and the provisions contained in the new Constitution. He speaks of Parliament and requires that the Order made by the Governor-General be placed within three days of its making before Parliament. Mr. Sidhva has evidently forgotten that, when he speaks of the Parliament, he speaks of the Legislature which comes into being on the 26th January 1950. On that date the Governor-General disappears, and this section 290 as well as the sub-clause (e) which I am trying to introduce by this measure will also disappear. On the 26th January what will be on the Statute Book and operative would be the provisions contained in article 3 of the new Constitution. He has, I am sorry to say, not paid sufficient attention to the point that I have sought to make.

Shri R. K. Sidhva : What the Governor-General does will be binding upon the President.

The Honourable Dr. B. R. Ambedkar : It seems to me that both these suggestions are impracticable. As to the general proposition whether Parliament should be brought in or not, we have to deal with two matters. One is that there is a general desire on the part of some of the provinces that the names by which they have been called under the Government of India Act 1935 do not smell sweet according to them, and they would like to begin with the names which they think are good enough for them on the date on which the Constitution commences. The Constituent Assembly felt at the time when the matter was discussed last time that this desire of some of the provinces whose names are not good enough in their own opinion has a good case and therefore a provision ought to be made for the Governor-General before the commencement of this Constitution to take such action as he thinks necessary to carry out the desires of the Provinces. Therefore it seems to me that such a provision is necessary.

A certain amount of fear has been expressed that some provinces might suggest to the Governor-General names which may not be possible in the opinion of the other provinces, and consequently names which have been rejected by this House or disapproved by this House may be given to the new provinces without the knowledge of this Constituent Assembly or without the consent of the provincial legislatures concerned. It seems to me that that sort of suggestion is reading too much into section 290 as amended by this Bill, because under section 290 the Governor-General has absolute discretion in this matter and is not bound to act upon the suggestion made either by the Provincial Government or, if I accept the amendmen t of Mr. Pataskar, the opinion of the legislature. He is free to act and the only authority who is to advise him to act is the Cabinet at the Centre. All that is required under section 290 is to ascertain the views of the Government of the Province. That does not mean that the Governor-General is bound to accept any name that has been suggested. I am quite certain in my own mind that the discussion that has taken place in this House, the opinions expressed by this House on the suggestion made by Professor Saksena in regard to the name of the United Provinces will be taken into consideration by the Central Executive and by the Governor-General before he decides to take any action under the proposed amendment to article 290.

Mr. President : I will now put the amendments to the vote. Mr. Naziruddin Ahmad, do you want your amendment to be put to the vote? It is only a matter of punctuation?

Mr. Naziruddin Ahmad : It may be left to the Drafting Committee.

The Honourable Dr. B. R. Ambedkar : It is a wrong amendment.

Mr. Naziruddin Ahmad : If it is openly put to the vote, it will be rejected. Otherwise, they might accept it.

Mr. President : The question is :

"That in clause 3, after the words 'alter the name of any Province' the words 'after ascertaining the opinion of the members of the Legislature of the Province whose name is proposed to be changed' be added."

The amendment was negatived.

Mr. President : The question is :

"That at the end of the proviso to sub-section (1) of section 290 of the Government of India Act, 1935, the following be added, namely: -

'and any such Order made by the Governor-General shall be placed before the Parliament within three days of its making, and the Parliament shall have the right to either accept or reject the name contained in that Order."

The amendment was negatived.

Mr. President : The question is :

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 wad added to the Bill.

Mr. President : The question is :

"That the Preamble stand part of the Bill."

The motion was adopted.

The preamble was added to the Bill.

Mr. President : The question is :

"That the title stand part of the Bill."

The motion was adopted.

The title was added to the Bill.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

"That the Bill further to amend the Government of India Act, 1935, as settled by the Assembly, be passed."

Mr. Tajamul Husain (Bihar : Muslim) : Mr. President, Sir, we have, got before us a Bill to amend the Government of India Act of 1935 the repeal of which is to take effect from the 26the January 1950. Therefore, Sir, we want this Bill only for two months. Why this hurry? Under the Government of India Act there is no provision for altering the names of provinces. We want to alter the name of one province or more than one province. Therefore we have this Bill. I am absolutely unable to understand the necessity of this Bill at all. I have come here to oppose this Bill entirely. I feel we can very well wait for two months more. We want that this Bill should take effect from the 26th November, that is from tomorrow, instead of waiting for two months more. The whole of the Government of India Act will itself be repealed by our passing this Constitution. We have mentioned there that the Government of India Act 1935 will stand repealed from the 26th January 1950. Then why this hurry for the change in the names of Provinces? You can very well do it after two months. You can decide now that you want to change the name of the U. P. or any other province and then that can take effect from the 26th January. I have very strong objection to this. We are spending on this Constituent Assembly Rs.30,000 a day. We work for five hours a day.

That means that we are spending Rs.6,000 per hour. How we have been talking on this Bill which I consider to be absolutely unnecessary for an hour and twenty minutes, and by the time I finish, it will be an hour and a half. It means that Rs.9,000 will be wasted, because I think this is an absolute waste of time. With these words, Sir, I want to oppose this. I think it should not be pressed and should be withdrawn. With these words, Sir, I oppose the Bill entirely.

Mr. President : The question is :

"That the Bill further to amend the Government of India Act, 1935, as settled by the Assembly, be passed."

The motion was adopted.

DRAFT CONSTITUTION – *(Contd.)*

Mr. President : Then we take up the discussion of the Draft Constitution. I am afraid I had thought that this Bill would take about a quarter of an hour, but instead it has taken six quarters of an hour and naturally as many speakers as could have been accommodated if we had started say at quarter past Ten cannot be accommodated now. Even in the list I have, I have got about 20 names still there. I thought of accommodating at least fifteen today but now I do not think I can accommodate anything like that number. I will leave it to the Members who will speak to take as little time as possible so that as many of them as wish to take part in the debate may be accommodated. I may assure them that. I have been all through the debate from the beginning; I have not missed a single word or a single sentence of any Member; there is nothing new that can be said by any Member and the only object in speaking at this stage is not to add anything to the knowledge or to the information which has been given to the House to enable it to decide about the merits of the Constitution but to enable Members to have their names recorded, so that when the reports are published, they may know that they also participated in the final discussions of the Bill and that can be done with one sentence. I assure them that their names will go down on the record even if they support the Bill with one single sentence and with this suggestion I now ask the honourable Members to take up the discussion.

Mr. Frank Anthony : (C. P. & Berar : General) Mr. President, Sir, first of all I wish to thank you for the unfailingly courteous and gracious manner in which you have invariably presided over the deliberations of this House. Deserving tribute has already been paid to the Drafting Committee for the way in which it has performed its arduous and responsible duties. I would like very briefly to pay a particular tribute to my honourable Friend, who is sitting on my right, Dr. Ambedkar. I do not believe that any one of us can really gauge the volume of work and the intensity of concentration that must have been involved in the production of this voluminous and by no means easy document. And while, on occasions, I may not have agreed with him, it always gave me the very greatest pleasure to listen to his tremendous grasp not only of fundamentals but of details, of the clarity with which he invariably presented his case. It has been said that this Constitution has received a mixed reception. It is inevitable that its reception should have been mixed because, inevitably, it is a mixed constitution. It is composite in character. I believe that it is a blend and a proper blend between idealism on the one side and realism on the other. I know that some of my ardently idealistic friends have criticized it. They would like to have seen instead of this blend something in the nature of a decalogue or the Ten Commandments, something which was so wholly idealistic that it would have wilted and died under the first impact of administrative realities and political difficulties.

As I have said, I believe that we have borrowed enough from idealism to make the Constitution a fairly attractive and an aspiring document and on the other hand we have not based it entirely on material, from mundane considerations so as to retard or in any way to take away from this the inspiring elements. I realize, sir, that it is not a perfect document, but at the same time I feel that in hammering it out, we have traversed all the processes of the democratic manufactory, that we have ranged through the whole gamut of democratic factors; there has been careful thought; there has been close analysis; there has been argument and counter-argument; there has been fierce controversy and at one time I thought that the controversy was so fierce that we might reach the stage of what the Romans called *Argumentum ad baculum* that is, settling it by actual physical force. But in the final analysis has pervaded a real sense of accommodation and a real feeling of forbearance.

So far as the minority provisions are concerned, Sir, I cannot speak on behalf of any other minority but I do claim to speak on behalf of the Anglo-Indian Community. I have paid repeated tributes to the generous and understanding way in which the Anglo-Indian Community has been dealt with under this Constitution. All I feel I need say at this moment is to reiterate my own gratitude and appreciation for the very generous way in which the Anglo-Indian community has been treated.

Now I shall deal very briefly with certain aspects of the Constitution. I agree with my honourable Friend, Pandit Hirday Nath Kunzru when he says that it might have been wiser for us not to have extended the franchise at one bound to universal suffrage. I recall the experience in Britain and the precedent of Britain. I am aware that the precedents and experience in other countries are not sacrosanct for us. But what happened in Britain in this matter of franchise? Representative parliamentary Government was introduced in Britain in the 19th Century but it was not till as recently as 1928 that universal franchise or adult suffrage was introduced. Though some of us are in the habit of talking about democracy without understanding its real purpose and its real content, to my mind a mere counting of heads has never constituted democracy. Democracy has always carried the postulate, the implication that at least the exercise of the franchise would be made, if not on an essentially rationalistic basis, would be made at least on a common-sense basis. And my own feeling is, Sir, that if we had pursued the path of wisdom – more than that – of statesmanship, that we would have been justified to hasten slowly in this matter, that we would have not at one bound adopted the device of adult franchise but will have proceeded progressively not necessarily gradually but progressively. As it is I am one of those who can only express the very sincere hope that when the next elections are fought or the elections after that and with an electorate which will be predominantly illiterate, with an electorate which will be predominantly unaware of exercising the franchise on a basis of being able to analyse political issues in a rational way, that this electorate will not be stampeded by empty slogans by meretricious shibboleths into chasing political chimeras which will not only lead to chaos but to the very destruction of the democracy which we have chosen to give them.

And, Sir, I feel that there has been unjustified criticism of what has been stigmatized as over-centralization. I will say quite frankly that I was very happy, I was jubilant at every provision that tended to place more and more power into the hands of the Centre. Here again, we tend to mouth slogans about democracy but in the final analysis, in its actual spirit and content, what does democracy imply? It does imply the greatest good of the greatest number I say it with regret, I say it without pointing a finger, what is the increasing evidence which rises every day before our eyes, evidence with regard to most of the Provincial administrations? Do we not see that there is an increasing evidence every day, of increasing maladministration, of an increasing negation of the fundamental principles of democracy? Quite frankly, in the transition stage I would have been one of those who would have supported our going the whole hog that we should have avowedly and without any qualification accepted a unitary form of Government. We might have administered the provinces either through Governors or Rajpramukhs supported by a permanent civil service. At any rate, Sir, I feel that I ought to place on record my disappointment that certain vital subjects like Education, Health and Police should have been left entirely within the ambit of provincial autonomy. We have given a head to provincial regimes in the matter of education, and today, I regret to say, within a very short time, they have taken the bit between their teeth and are running wild. What is happening in the Central Provinces? When I say this, I say advisedly, that the educational policy of the central Provinces represents a deliberate negation of democracy, represents a travesty of the provisions of secular democracy. The linguistic minorities in the Central provinces only look forward to educational and linguistic death. That is what is happening. They have no regard for the linguistic minorities. Overnight they are pursuing an intolerant, parochial, aggressive linguistic policy which, as I said, is an absolute negation of every provision we have embodied in the fundamental rights. Not only that. You have given a head to these provinces and they are running amock. National progress, the larger interests of the country mean nothing to them. My own conviction is that a few years will be sufficient to make the leaders of the country realise the great blunder that we have committed in allowing education to remain entirely in the provincial sphere. You will see balkanisation of the country will take place so quickly, because through this powerful lever which you have left in the hands of the provinces they will split this country up into linguistic enclaves, seal one from the other, so that the idea of a common nationality will recede more and more into the background. I feel very strongly about this. I do not know how the damage that is going to be done can be undone, unless some radical steps are taken in the not distant future.

Another matter which I would have liked to have brought at least in the Concurrent List is Health. May is say, Sir, in some provinces, it is all right. Bombay is fortunate in having a person of the stature of Kherji. The country would have been more fortunate to have transported outstanding men from the provinces to the Centre to administer the country on a unitary basis. As I said, about health, we have left it in the hands of the provincial Governments and inevitably this greatest nation building subject will be dealt with in a feeble, halting manner, according to the different capacities of the different provincial regimes.

Last but not least, I should like to have seen police made central subject. Police in a province like Bombay have a deservedly good reputation. But, let us be honest. What kind of reputation or lack of reputation do the police administrations in many of the provinces enjoy? What does the man in the street think of the police regimes in many of the provinces? I know what he thinks you know what he thinks. The police have fallen into disrepute in many of the provinces. They are not regarded as guardians of law and order but as agencies of corruption and oppression. I should like very much to have been the Police administration at least brought on to the Concurrent List.

May I say a word about the Directive Principles? I know my honourable Friend Mr. Kher will not agree with what I say and my views will be regarded as heterodox and as perhaps striking a discordant note. I would not like to have seen prohibition put in the Directive Principles. I am not advocating the cause of drunkards or drunkenness. Far from it. I think prohibition as an ideal is a very good ideal. But, what I am afraid of is this : having put this into the Directive Principles, once again, you are giving a head to certain provinces which, without considering the realities, may rush ahead with this scheme. I am one of those who regard it probably from a rationalistic point of view or from the point of view of a psychologist. I regard this question of prohibition fundamentally as a psychological problem. I believe that there is a fundamental similarity in human nature everywhere, and that an Indian is no different in certain fundamentals from an European. I believe that essentially legislation in this matter has tended to be resented and regarded as an entrenchment on the domain of private life and private liberty. As I was trying to explain to my honourable Friend Mr. Kher will you be able to legislate for morality? Can you create morality through legislation? You can ever do it; it has never been possible. I agree you may be able to wean certain people from drinking provided your process and programme of prohibition was so graduated and you accompanied it *pari passu* with measures of social reform. As long as you have your *chawals* for workers in the urban areas, and you cannot even provide them with a semblance of decent living conditions, what is the good of trying to make them moral or weaning them from drunkenness by legislation? As an ideal, I have nothing against it. What I am against is this. While the Prime Minister keeps on asking us to let first things come first, we have fallen into the unfortunate habit of making last things come first. What should be the first priority in any administration? What are the most urgent nation-building activities on which we should concentrate? Surely, health and education. But, today, ask your average provincial Government what it is doing in these matters. It pleads poverty on the one hand in the matter of the most urgent nation-building subjects which should have received top priority, and on the other hand chases these idealistic chimeras. We are throwing away crores and crores of Rupees. That is my main objection to the precipitate introduction of a measure like prohibition. Not that I have any radical objection against it; as an ideal it is a very good thing and if we succeed, it will be a great boon to many families.

While on the matter of Directive Principles, I would like to refer to this provision regarding cow slaughter. I know, again, here, that I will be treading on difficult ground. But, I want to make my position clear. What I resent in this Directive Principle is the insidious way in which this provision with regard to the banning of cow slaughter has been brought in. It was not there before. I cannot help saying that those fanatics and extremists who could not bring in this provision through the front door have succeeded in bringing it through the back-door. Sir, I am not a beef eater; I am not holding a brief for beef eaters. I say, you may ban co-slaughter, but we should have done it honestly without our tongues in our cheeks, without resorting to methods which may give rise to the accusation of subterfuge. I ask my Hindu friends, does cow-slaughter offend your religious susceptibilities.

Shri K. Hanumanthaiya : (Mysore State) : Yes; it does.

Mr. Frank Anthony : All right; I am glad you have said so. I you had said that, I would have sponsored a provision that a ban on cow-slaughter should have been introduced in the Fundamental Rights and that cow-slaughter should be made a cognisable offence. But, there were not people who were prepared to do that. Why bring in this provision in an indirect way? If it offends your religious susceptibilities, just as much as I expect you to respect my religious susceptibilities. I am prepared to respect yours. As I said, why bring it in, in this indirect way, as an afterthought into the Directive Principles? Look at the way you have brought it in. The clause reads :

> "for the purpose of protecting the cattle wealth of India, for the purpose of protecting cattle, milch and draught cattle, a ban on cattle slaughter may be imposed."

Shri K. Hanumanthaiya : On a point of order, Sir, is it right for the honourable Member to attribute motives, subterfuge and all that? I draw your kind attention to it. The honourable Member is saying that we have introduced a provision by way of a subterfuge. He has attributed motives in regard to the way we have put in this provision in the Directive Principles. Whether attributing motives is right, I leave it to you, Sir to Judge.

Mr. Frank Anthony : I apologise to you and to the House if what I may have said even remotely raises the suggestion of unparliamentary language. I was not attributing motives. I am merely stating objectively what had happened. As I have said, what has happened raises the accusation that perhaps motives may have been there to bring in this provision in an indirect way; I will not say it tantamounts to subterfuge. As I have said, I repeat, if this gives you offence, I would have been the first person to suggest that it should have formed part of the Fundamental Rights. In the way it has been done, it has been attached to a clause purporting to protect the cattle wealth of this country. Any child knows that in this country, in proportion to the population, we have more cattle than in any other country in the world. Any intelligent child also knows that in spite of this huge cattle population, our output for milch and draught purposes is the lowest per capita in the world. The preservation of cattle-wealth and the preservation of the best interests of the country would have required not the banning of cattle slaughtering but the slaughtering of over half of your present cattle population in this country. That is why I say, it should not have been done in this particular way. I only draw your attention to it and I leave it at that.

Finally I wish, to say a word about article 21. As a lawyer I will say quite clearly that this article 21 which says that a person may not be deprived of his life or liberty except by procedure of law as established, gave me cause for considerable misgivings. I am afraid, that in this form article 21, if the Executive and Government of the day choose to, can be abused and made a handle for totalitarian oppression. The Executive can make it a handle for superseding rule of law they can make it a handle for depriving citizens of the elementary principles of natural justice, and of jurisprudence. But the reason why it was disposed not to oppose this particular article, the reason why we are prepared to suffer an abatement of what I regard as a Fundamental human right – was because we are in a period of transition – and it may be necessary to give Governments and administrators extraordinary powers, not to be abused but in order to prevent any drift towards chaos and towards anarchy. And with that warning I sincerely hope that there will be no tendency on the part of any Provincial Government or on the part of Central Government to misuse or abuse the tremendous powers which we have given them under article 21. If they choose to, all that is required is that the procedure of law should be observed. We hope that the procedure of law which will be prescribed by provincial or Central Government will not be such as to represent the negation of the principle of natural justice.

May I end on this note – I believe that by and large we have hammered out a good Constitution. It will be fallible and it will be necessarily imperfect as it is the product of imperfect human beings. But I believe we have done a good job of work and I believe that this Constitution deserves not only our good wishes but our blessings. But in sending it out on its mission with these blessings, I feel that the paramount consideration which should be before us permanently is not that we have framed a voluminous and important document – not that we have sought to give careful and elaborate guarantees to minorities, but that ultimately the final test by which this Constitution will be judged and by which it will stand or fall, the final test will be the intention and the spirit with which the provisions of this Constitution are worked.

Dr. B. Pattabhi Sitaramayya : (Madras : General) : Mr. President, Sir, it is rather hard lines for one who is garrulous to be limited to stated time, the more so, when he is called upon to speak at the fag end of the deliberations of this Assembly. On the eve of our concluding our deliberations it is not without some trepidation that I come to speak and it is aggravated by the fact that I am to speak for a very short time. I had intended to review the whole position but this is not the opportunity for it. You very well remember how we had lisped, - we hesitated to talk in full and in clear language, the words "Constituent Assembly " in 1927; then we renewed our talks in 1934, soon after the failure of our Second Salt' Satyagrahic campaign and then we thought we were covering our retreat with bluff. Finally we came to a stage – all unawares –when this Constituent Assembly of a sort was thrust upon us with its *sections* and *groups* which we fortunately got rid of by paying a very heavy price for it and when we began our deliberations on the 9th December 1946 we were anxious to finish them and some of us had even hoped to finish our deliberations within six months. If we had finished our Constitution in 1946 it would have been a mess, if we had finished it in 1948 it would have been a medley. Fortunately this delay that has occurred has enabled us to see things in their true perspective and it has enabled us to develop administrative changes *pari passu* political developments. Supposing we had finished this before 15th August 1947, what would have been the nature of the Constitution? It would have been quite different. This delay has enabled the legacy which we had inherited from the British to be set right. Many people have considered that this Constitution is a base or bare imitation of the 1935 Act – that the Constitution is not a 'revolutionary document' and that we have merely imitated where we should have originated. These are all half-truths. A 'revolutionary document' is a contradiction of terms. Revolutions do not yield documents nor documents beget revolutions. We have imitated the 1935 Act because through a fortunate or unfortunate chance, it turned out that it was not through a bloody revolution that we have worked out our emancipation. It was by an imperceptible transition from the stage of bureaucracy and dependence to the stage of a *republic* and *cooperative commonwealth* that we have wrought these transformations. Accordingly we have never faced martial law, we have never hanged people at street-corners or on tree tops, we have never shot down people for their crimes and we have never shed a drop of blood either our own or of our enemies and therefore we have been obliged to pass from a civil government where tranquility prevailed unaffected by the perturbations of the moment into another kind of civil government which was our own and which was also a popular government. This delay has enabled us and our new administrators to piece together the 562 States which were detached and altogether unconnected with one another. Thus it is that while we were developing the Constitution or making efforts in the process of developing this Constitution, we were also taking up administrative measures in order to consolidate this country which we had inherited from the British in a very disorganized condition.

What is it that we inherited ? We inherited a country that was divided longitudinally into Provinces and States, horizontally into communities, transversely into rural and urban areas and obliquely into Scheduled and non-Scheduled Tribes. All these have been pieced together – the Provinces must be there for purposes of administration convenience, but the States have been assimilated in their forms of Government into those of the Provinces. Thus we have one homogeneous country under one Central Government with one federal Structure. Then we have disestablished the separate electorates which the Britishers had brought into existence assiduously from 1906 onwards dividing one community from another, first the Muslims from Hindus, later the Sikhs from the Hindus and finally the Harijans from Hindus. All these groups have been pieced together into one joint electorate and this is not a small achievement.

And next, you have also been able to remove untouchability which had divided one section of Hindus from the rest. Mahatmaji began his fast unto death on the 20th September 1932 and worked a miracle in the space of six days. Now we have removed untouchability not merely in name, not merely in word and spirit, but also in law, so that nobody can hereafter say that so-and-so is an untouchable, for he would be punished with fine and imprisonment. We have also assimilated the tribes in our frontiers in the north-west and north-east and in other places as far as possible to progressive forms of Government, and we have built up tribal republics. In this manner we have implemented in developing our Constitution, those principles which have been advocated by Mahatmaji. You may remember in his tours of 1921, he was always mentioning only three sentences in each village and taking away three to thirty thousands of rupees from there. These related to Khaddar, Untouchability and Hindu-Muslim Unity. Khaddar we have perpetuated as the fore-runner of village industries and we have emphasised the development of cottage handicrafts in the development of the country. Untouchability we have removed by law. Hindu-Muslim unity we have carved out by joint electorates.

An Honourable Member : Prohibition?

Dr. B. Pattabhi Sitaramayya : Prohibition is a thing which has been left to the Provinces to be worked out. We have included it as one of the Directives in our Constitution. It will be great moral reform, the monetary equivalent of which may mean loss to the government of the province, but the moral equivalent of it would be a great asset to the nation in future years. *(Cheers)*

And, finally, we have extended the franchise which gave us three and a half crores of voters at the time when the British left this country, to seventeen crores of voters who will adorn the electoral rolls immediately next year.

It is thus that we have converted a dependency into a cooperative commonwealth. Who dares to say that this not an achievement worthy of our labours, and worthy of this great country, and all in the space of three years? When Canada was emancipated, her people assembled in 1842 when Lord Durham, the Lord High Commissioner was dubbed by the *London Times* as the "Lord High Seditioner," and the Canadian Constitution was only finalised in 25 years thereafter, *i.e.* in 1867, whereas we have taken three years in order to complete this Constitution.

I wish to draw attention only to two points with regard to the contents of our

Constitution, the one dealing with the Fundamental Rights and the other dealing with the Comptroller and Auditor-General.

The Fundamental Rights chapter is of great interest to me since we had laid down the foundations of it at my house at Masulipatam through the labours of a committee which was appointed in Karachi in April 1931. Then we wanted to speak of not merely fundamental rights but also fundamental duties. But it did not look as if these were capable of being tabulated, because in the first instance every right implies and includes a duty. What is my right is my neighbour's duty to me. The right of the wife to equality with the husband is the duty of the husband towards the wife in respect of the matter of equality. The right of the people to rebel against a government is also the duty of the government to hang the people for the rebellion. These go together. They are opposites, rather they are the obverse and the reverse of the coin, and the criticism that has been levelled by some friends in this House that the duties were not mentioned, is not quite correct because every right implies and includes a duty.

The second point on which I wish to say something is about the Comptroller and the Auditor-General, and in that we have done a great thing, in respect of the position that we have assigned to the Comptroller and the Auditor-General. No matter how perfect your Constitution may be, no matter how numerous may be the checks and the balances and safeguards for the right conduct of business of the future, it is money that counts, and we have to deal with about three hundred and seventy crores at the Centre and as much money in the provinces, and if all this money is not spent aright, and if the people deliver cheap gibes at men like me who count rupees, annas and pies, and to whom every rupee means sixteen annas and every anna means twelve pies, then there is no government at all worth mentioning, it is anarchy, it is chaos. It is loot. It is dacoity. And who is to control this? Is it to be a man who is appointed by the Ministry that should control this? No. The Comptroller and the Auditor-General must be as supreme and independent as the Judges of the Supreme Court perhaps even more so. He is not merely an Accountant-General, but he represents a judicial authority with a judicial frame of mind, and his acts must be acts of justice between what he considers to be right and what is actually done by the executive. At times he is called upon to criticise the executive and to expose it even to contempt. He should not therefore, come under the ire of the government or of any party or of the treasury or of the Finance Department. Till 1806 in England the Auditor-General was not independent, and till 1921 in this country we never thought of the independence of the Auditor-General. Later on we have built up this kind of independence, step by step and stage by stage, so that today, we have installed him as the supreme master, who has his own judgment to look to and who has no frowns or favours to be guided by from outside. Even so this is not yet perfect. The Auditors' Act is yet to be passed in this country, as in other self-governing countries and when this is done, we shall have placed the Auditor-General and the Comptroller as the supreme arbiter of India's finances, and then alone our Swaraj will be a proper Swaraj.

Finally let me ask you :- "What after all is a constitution?" It is a grammar of politics, if you like, it is a compass to the political mariner. However good it may be, by itself it is inanimate, it is insensitive, and it cannot work by itself. It is of use to us only in the measure in which we are able to use it, because it has tremendous reserve force, and everything depends upon the manner in which we approach it, whether we observe the letter and ignore the spirit or whether we observe both the letter and the spirit in equal measure. The words of the lexicon are the same, but they give rise to different styles of composition with different authors. The tunes and the notes are the same, but they give rise to different music with different singers. The colours and the brushes are the same, but they are rendered into different pictures by different painters. So it is with a Constitution. It depends upon how we work it. I shall take only one simple example – the joint electorate. We have established the joint electorate. Have we discharged our duty? Shall we leave the electorate to do what it pleases? The Muslims are some thirty-five millions in this country, less than about 8 to 7 per cent. of the whole population. Is it possible for them in the joint electorate to win a single seat by their own unaided strength, without our co-operation? It is a gentleman's agreement that we have entered into, a terrible responsibility that we have taken upon our shoulders, when we asked them to give up their reservations and their separate electorates. We have to find as many representatives from the Muslim community through the medium of the joint electorate as would have been their legitimate share, if they had their separate electorates. Even so with the Indian Christians and others. And the way to all this was pointed by our women. I admire the women who in the Provincial Model Constitution Committee and in the Central Constitution Committee came forward and said, "No separate electorate for women, no reservation for women". Of course, they stand to gain now. But it required courage and imagination to say so then. They showed the way to the Muslims. The Christians had all along been fighting against reservation and separate electorates. But they had been compartmentalized. All the electorates were made not only water-tight, and air-tight but vote-tight; nobody from this compartment could cast his vote to one in the other.

The majority community has to see to it that this implied gentlemen's agreement is honoured in letter and in spirit and that we give our friends more seats that their population entitles them to receive. If we are not able to do that we shall not be able to justify the great concessions that they have made.

Then again, there is the question of non-violence. Have we been true to Gandhiji's teachings? Yes. We have been. We have carried out his wishes to the last. If at all, Gandhiji was not able to get his wishes carried out, it was only during his own life-time that he failed; for he had set his face against partition yet ultimately he had to yield to it. Otherwise, the cardinal principles, like the four-pronged attack against the British and also the mission of reconstruction in the country, we have incorporated in our Constitution and therefore with a clean conscience we can say that we have carried out his wishes.

So far as non-violence is concerned, it is not a thing that can be worked into the laws of the country through a non-violent state. It is an attitude and an approach, a direction and not a destination. It is an attempt, not an attainment. Therefore, so long as we are working towards the direction of non-violence, so long our labours are bound to bear fruit. The only example I can cite on this point is the great achievement of our Prime Minister in his recent tour of America where he won laurels as the key man of the age and possibly as the first Prime Minister of a World-State. He has been able to impress the westerners with this philosophy of ours. There is no doubt that we are saturated and surcharged with the spirit of non-violence, no matter if we still employ the police on the one hand and the military on the other, or even if we be prepared to wage wars in anticipation of wars in which we may be involved.

When all is said and done, we must realize how much we owe to the half a dozen men that have fashioned this constitution and given it a shape and form. Our friend, Dr. Ambedkar, has gone away, else I should have liked to tell him what a steam-roller intellect he brought to bear upon this magnificent and tremendous task : irresistible, indomitable, unconquerable levelling down tall palms and short poppies : whatever he felt to be right he stood by, regardless of consequences.

Then there was Sir Alladi, with his oceanic depths of learning, and a whole knowledge of the Constitutional Law of the world on his finger tips. He has made great contributions towards the drawing up of this Constitution. He only has to perfect it all by writing a commentary upon it. That was the latest request of Mr. Santhanam to him and I hope he will fulfil it.

Then we have Mr. Gopalaswami Ayyangar : copy as a maiden and unobtrusive, but rising to the full heights of the necessities of the occasion, combining always the real with the ideal, and bringing a soft and kindly judgment on to a severe issue.

Next you have Mr. Munshi, the like of whom we cannot see for his resiliency and receptivity; his wide and varied knowledge, his sharp intellect and his ready resourcefulness have been a tremendous aid to us.

Mr. Madhava Rao is not here now. He was a Diwan of Mysore. He had laboured hard in our Committee. He had vast experience from that of an Assistant Commissioner, Mysore, when I was still in my medical studies, until he became Diwan. He too has done his good bit in this work.

Then there is a man, who is almost unnoticed, and whose name has not been mentioned by any of my friends, to whom I would like to refer, the sweet and subdued Sa'adulla, who has brought a rich experience to bear upon the deliberations of this House.

Finally, comes the slim, tall man, who sits opposite to me, with his ready and rapier thrusts of repartee and rejoinder, whose (sharp-pointed) intellect always punctures or lacerates the opposition. But he is always able to cover up the injury with his plastic surgery and recuperative powers : and that is Mr. T. T. Krishnamachari.

We have all had the help of these people, but, Sir, the work of all these friends would have been of no use but for the sweetness, the gentleness, with which you turned towards a person when you wanted him to stop in his further speaking : the patience with which you waited in order to catch his eye, - not he to catch your eye, - and the very gentle manner in which you cast the hint that he should now wind up; and when some of us were rebellious, disorderly and chaotic, you simply smiled in order to choke that attitude.

It is a great thing I tell you that we have achieved. It is not right to under-estimate what we have achieved. Much has been done behind the curtains and but for the discipline and drilling of the majority party in this House, these deliberations would not have come to this happy end.

I thank you all for the great task that you have achieved and I congratulate you on it.

All that remains for me to say is that this Constitution is a good enough Constitution for us to begin with. Work it, work upon it : work at it : work it out for all that you are worth and as the great Parliamentarian said in the seventies of the 19th Century when the franchise was developed, in the British House of Commons, say to yourselves. "Let us educate our Masters."

Shri Jagat Narain Lal : (Bihar : General) : Sir, following the speech of Dr. Sitaramayya made in his lofty style, there is hardly very much left for me to say. But I want to add a few words about this Constitution. It has been attacked and criticized by various friends and supported by various others. I consider this Constitution to be both Federal and Unitary. It is a Federal Constitution, yet it is Unitary. It is a Unitary Constitution yet it is Federal. Neither is it based entirely on the American model, nor on the British model. It combines both these models and has added something of its own to suit our Indian conditions. The powers of control which have been given to the Centre, are, I consider very necessary. The one crying need of our country has been the maintenance of solidarity. Time after time in its history, we have found this solidarity being broken and India falling at the feet of foreign Conquerors. Therefore, Sir, at a time when all foreign rule has been eliminated, the one crying need of the hour is the maintenance of solidarity and unity in this country. Following upon that, I would further add that any distribution of provinces on a linguistic basis must be completely avoided. We have strongly held the view that if a redistribution of provinces is to take place, it should be carried out on an administrative basis. Sir, the formation of an Andhra province is to be welcomed from that point of view. In our deliberations and enquiries we found that if there was a strong case, there could not be a stronger and a riper case than for the formation or an Andhra Province on administrative grounds. We also came to the conclusion that there was necessity of a redistribution of provinces on administrative grounds in the case of certain other provinces too. If and when the necessary-conditions are there, and an opportune time comes, that redistribution may also take place.

I have found that even the incorporation of directive principles in our Constitution has been attacked by some people inside and outside too. But, these directive principles are very necessary. They contain the principles on which our State has to act and those principles are both Gandhian and socialistic, a mixture of both in their character. Article 45 of the Irish Constitution also contains those directive principles.

Now, Sir, I come to some of the drawbacks, or, I might say, some of those omissions which I regret. For example, Sir, I would have liked the name 'Bharat' to come before India. It is a fact that 'Bharat' and India have come in, but I would have liked 'Bharat' to come before India.

I am sorry, Sir, that there has been an undue anxiety in our minds about the avoidance of the name of God. Looking to the foreign constitutions, Constitutions of other countries, I find that there is at least one constitution, the Constitution of South Africa which in its very first article says : "The people of the Union acknowledges the sovereignty and guidance of Almighty God." In our country, Sir, which has always remained religious and has retained its spiritual character and which has produced one of the greatest spiritual personalities in the world in modern times too, I would have liked that the name of God should have been introduced. Again, the words "Secular State" should not have come into the Constitution. It would have been enough if it had been said that the State should not interfere with any religion. Or, we could have said that the State should have a spiritual and moral outlook, instead of saying that it should be secular. The introduction of these words has created a lot of misunderstanding.

Many of us do not like the introduction or the acceptance of international forms of numerals. But, I have all along held the view that we should not force our views on others and whatever has been achieved by unanimity is welcome. I hope that when the time comes, we shall be able to see one another's point of view.

I also dislike reservation in the case of Anglo-Indians. Anglo-Indians are a cultured and enlightened community and they do not need any reservation. They should be able to come on their merits.

So far as the question of the banning of Cow-slaughter is concerned, I agree with the previous speaker that it should have been brought in a clear and direct manner into our Constitution. Banning of cow killing should not have been introduced in the way it has been done. The majority of the people of this country hold the cow sacred. They hold very strong views on this question and the cow represents, as Mahatma Gandhi said the entire animal kingdom. There was a time in this country when not only the killing of the cows but also of any other animal was prohibited.

I do not want to take more time of the House. With these few reservations, I support the Constitution. I hope and trust the dawn of a new era is near at hand which will lead the country to a brighter future and which will make the state stronger, more solid, more prosperous and more stable.

In the end, I wish to pay my high tributes both to the Chair, or President, and to the Members of the Drafting Committee, particularly, to Dr. Ambedkar, Mr. Munshi and Mr. Krishnamachari amongst many others.

Mr. President : I might inform the House that Dr. Ambedkar will take up one hour in the afternoon; Mr. Krishnamachari will take the rest of the time from now up to one o'clock. So we have an hour in the afternoon and I shall try to accommodate as many Members as possible.

May I have the permission of the House – because it is not provided in the rules – to accept the written speeches of Members ?

Some Honourable Members : No. Sir.

Mr. President : I take it, it is not the wish of the House. But within that one hour in the afternoon, I shall try to accommodate as many Members as possible.

Shri T. T. Krishnamachari : Mr. President, Sir, at the outset I would like to express the thanks of the Drafting Committee to the Members of this Honourable House, who, whatever their views might be on certain provisions of this Constitution, have, practically, one and all, paid tributes, to the work of the Drafting Committee – and, Sir, not the least of them all to my septuagenarian leader who in such kind terms singled out every member of the Drafting Committee for recognition of his services, which I think we would all cherish to the end of our lives.

Sir, so far as the criticism that has been levelled against the Constitution or some provisions thereof are concerned, it would not be possible for me to cover the entire ground and perhaps it is not necessary. But at this stage it is likely that the public and those for whose purpose this Constitution has been framed are likely to get an erroneous view of the provisions of this Constitution if certain criticisms voiced by certain Members of this House which in my view arise out of certain misconceptions, about or out of an imperfect understanding of the provisions of the Constitution are not controverted. In the time at my disposal and with the permission o the House and your goodself, I propose to deal with some of these criticisms.

Sir, if I am to catalogue the various criticisms, it might take the entire time at my disposal. But I would like to tell the House that they form a bewildering complexity, one criticism contradicting the other. I might read out a few of the criticisms that I have jotted down. One of the basic defects of this Constitution is supposed to be that it is not a federal constitution, but a unitary one. There are other Members who feel that it is a constitution midway between the two –whatever that might mean. A third class of persons said it is a decentralised unitary state – I think it is Mr. Gupte who said it. And then again Mr. Gupte took objection to our using the word "state", as statehood is not conferred on the units of this Federation. The general complaint has been that there is too much centralisation in the Constitution which deprives the units of any initiative. One complaint which has been common to the criticisms voiced by most of the people claiming to speak for the Provinces is that the Provinces have been left in a bad way financially. Another complaint has been that we have merely copied the provisions from other Constitutions. Reference has also been made that we would have been wiser to have modelled the Constitution on the United States Constitution or the Soviet Constitution. Mr. K. T. Shah, Who is not here, has said that we have not provided for a working democracy.

Another set of complaints – mostly coming from speakers whose speeches I was not able to understand in their entirety, because of my own particular defect of not being able to understand the language in which they spoke was that it is entirely un-Indian in outlook and does not bear the stamp of Indian culture. Yet another complaint was that it does not have any economic guarantees. This was the complaint voiced by Mr. Damodar Swarup who, therefore, wanted the rejection of this Constitution.

Then the complaint was made that it is too long and goes into unnecessary details and thus stifles growth. A Member from Travancore State (I think somebody also repeated that criticism) that the Weimar Constitution produced a Hitler and this Constitution might very well be the means of producing another Hitler. Of course, the complaint generally has been about Fundamental Rights particularly about those provisions which deal with individual liberty and about the emergency provisions. Article 360 and 365 have come in for a lot of criticism.

Some of the Members from the Indian States have complained that the States have been treated badly. On the other hand, some Members from the Indian States have said that the States should not have been treated on the same footing as the Provinces. Separation of powers is another theoretical consideration that has been urged and the speakers said that that has not been recognised and provided for in this Constitution. There have been honourable Members who have said that this Constitution makes the President an autocrat. Others have said that the Prime Minister has been made an autocrat in this Constitution. Yet another point which is perhaps of fundamental character is that there is no mention that the President is a constitutional head of the State. There are other matters like the suggestion that the language provisions are halting and that the Constitution must have been framed in Hindi. Of course the cow has figured largely in the debates for these last seven days. The cry has been that socialism is not possible under this Constitution and more or less tacked on to it has been the complaint of some honourable Members that property rights have been safeguarded beyond necessity. Yet again, there was my honourable Friend Begum Aizaz Rasul who made the complaint that property rights have not been adequately safeguarded. So honourable Members will please note that there have been contradictory criticisms, one cancelling the other, and perhaps if the whole lot of criticisms are put together it might be that we might feel, - the Drafting Committee and the Members of this House might feel, - that we have not done a bad job after all.

Sir, I would like to go into a few fundamental objections because as I said it would not be right for us to leave these criticisms uncontroverted. Let me take up a matter which is perhaps partly theoretical but one which has a validity so far as the average man in this country is concerned. Are we framing a unitary Constitution? Is this Constitution centralising power in Delhi? Is there any way provided by means of which the position of people in various areas could be safeguarded, their voices heard in regard to matters of their local administration? I think it is a very big charge to make that this Constitution is not a federal Constitution, and that it is a unitary one. We should not forget that this question that the Indian Constitution should be a federal one has been settled by our Leader who is no more with us, in the Round Table Conference in London eighteen years back. I suppose his stand had to some extent shaped the provisions of the Government of India Act, though the question of Provincial autonomy had been decided largely because of the likes or dislikes of the Muslim members of the Round Table Conference. Now, what is a federation? I am glad that my honourable Friend Pandit Hirday Nath Kunzru is here because he alone of all Members of this House warned us against going into details in regard to what is a federation. It is not a definite concept, it has not got any stable meaning. It is a concept the definition of which has been changing from time to time. Leaving alone political theories of the ages before Christ and in the middle ages, in modern times or in relatively modern times, the first time that people who have exercised their minds about a federal constitution were the people of the thirteen American colonies and we find a reference to it in the writings of those who have framed the American Constitution, who produced several articles which were brought together in a book called the "Federalist". It does happen that the connotation which is now current so far as the theoretical circles are concerned has been given to it by the Federalists in America in the 18th century but even between that connotation and the modern one there is a considerable amount of difference. Students of politics will know that Hamilton did not think the same way as Jefferson or as Madison did. Though the issues between them were comparatively narrow and dictated by considerations that obtained at the time they framed the American Constitution, they were nevertheless wide enough in so far as they affected the interpretation of the Constitution subsequently. In fact, honourable Members who are familiar with the American Constitution will realise that Marshall who gave more or less a tone to the Status of the national Government in America has been taking the view that Hamilton did and whatever he did by way of strengthening the national Government's power was more or less neutralized by his successors, particularly Chief Justice Taney who was an out and out Jeffersonian. Sir, I do not want to go into the details of the American Constitution and its progress, but the one fact which we have to realise is that whatever might have been the intention of the frames of that Constitution and their own particular connotation of what federalism should be, the whole thing changed after the American Civil War and from that day right to today there has been a progressive increase in the power of the National Government by a series of interpretations of the provisions of the Constitution, excepting for a very short period somewhere in 1919-20 when there was reversion to Jeffersonian ideas. I am laying stress on this particular point even though it might appear theoretical, to cover a number of criticisms against this Constitution. I would also like honourable Members to note these points merely because that would answer partly the charge that the Constitution is very long.

Many honourable Members have said that we should have copied the American Constitution. Some very worthy leaders outside who have the reputation of being students of constitutional law occupying high positions, have stated that we should have copied the American Constitution and that this long Constitutional document is worthless, or that we should have had a Constitution outlining only a few general provisions which would have allowed for growth. But I would ask those gentlemen outside and honourable Members here just to look at the decisions that are today an integral part of the American Constitution and they will then find that to understand the American Constitution it will be necessary to take into account not only the bare text but also the decisions of the supreme court over these hundred and fifty years. From 1862 onwards the powers of the national Government have been steadily augmented by various devices. For instance, even Marshall said there were implied powers. Subsequent judicial pronouncements have said there are inherent and express powers assigned to the national Government. Then again, judicial decision have granted powers to the national Government because they were necessary for the exercise of the main functions of the Government. Again the Federal legislatures have enlarged their scope because they were incidental and necessary for their function. Sometimes some of these powers have been called resulting powers mainly because of the action of the exercise of the powers that have been enumerated. The treaty-making power of the national Government that finds mention in the American constitution has been considerably enlarged. In fact, sometimes the Centre has made inroads into the provincial power as a result of this power. The legislative power for the grant of judicial power has also made inroads into the State power but not the least of them all are the three powers which have had a wide implication one was the general welfare power which finds mention in the Preamble and in article (1), Section 8, then the Commerce clause and the taxing power. In fact my honourable friend Mr. Alladi Krishnaswami Ayyar had made mention of these in his speech. Again, the taxing power has been further stretched by using the appropriate spending power of the Centre so that in America today there is a central federal public health service, there are various other bureaus which administer directly their own departments in the various States.

I have gone into these details merely to tell the honourable Members of this House that if we should frame a Constitution on the American model we should perhaps have gone into greater detail, than what we have done and we should perhaps have given the Centre greater powers than we have given in this Constitution.

Sir, it is rather difficult to say what the present position of Federalism is in so far as the American Constitution is concerned. But, in the latest book on the American Constitution written by Laski, practically in its closing paragraphs, he says "that if people want to understand the American Constitution, let them look at the position of the President. The significant increase in the powers and the Status of the President has been the greatest charge in the Federal system in America." He thinks that the classic theory of federalism would become obsolete in its historic form before long.

Are we, Sir, in framing our Constitution, merely to take only those features that are obsolete, only those features which have only historical value in the American Constitution and really leave the operative portion of that Constitution in order to please the aesthetic susceptibilities of certain honourable Gentlemen here or elsewhere who feel that we should have a Constitution that would be short like a Prayer Book capable of being put in the Ladies handbag and taken along wherever one wanted. A Constitution should give the average man an idea as to what it really means. He should not be left in such a position as to make him dependent on judicial decisions and the advice of expert lawyers to expound it to him.

I would in this connection deal with a point raised regarding the vesting of the residuary powers. I think more than one honourable Member mentioned that the fact that the residuary power is vested in the Centre in our Constitution makes it a unitary Constitution. It was, I think, further emphasised by my honourable Friend Mr. Gupte in the course of his speech. He said : "The test is there. The residuary power is vested in the Centre'. I am taking my friend Mr. Gupte quite seriously, because he appears to be a careful student who has called out this particular point from some text book on federalism. I would like to tell honourable Members that it is not a very important matter in assessing whether a particular Constitution is based on a federal system from the point of view whether the residuary power is vested in the States or in the Central Government. Mr. K. C. Where who has written recently a book on Federalism has dealt with this point. But he has dismissed it as of no account. But even at the risk of going into some detail, I would like to mention that it is the German political philosophers who evolved the peculiar theory called the Competence – Competence theory. This theory is whether the national Government or the State is allowed to appropriate competences which have been formally left to one or the other or had come into being at a later date. Only when the State is left with this competence such a Constitution would, be a Federation. In actual practice such states had never come into being. 'If so happens that a component State has to concede the power categorically to the Central Government it would not be a Federation. It would be a Confederation. It has been pointed out that definitions attaching such conditions are futile for the reason that the change sought to be made can be achieved by the amending power. And so far as the amending power is concerned, the initiative is always with the Centre.

I am glad that Mr. Pataskar in a very devastating but superficial criticism of the Constitution was able to concede that the best point in this Constitution was the amending power. I agree that the best point is the amending power and observe that in regard to most of the matters covered by the Constitution the amending power rests with the Centre. Applying the logic of the unitary this fact alone makes it a Federal Constitution.

Shri H. V. Pataskar : I did not say it was the only satisfactory provision but said that it was a satisfactory provision.

Shri T. T. Krishnamachari : I am quite prepared to accept my honourable Friend's emendation of his speech. These factors do not go to constitute whether a Constitution is a federation or not. If you look into detailed provisions of any Federal Constitution you will find that so long as there is a National Government there is a sector in that Constitution which has a unitary character. But that does not mean that the Constitution becomes a Unitary Constitution merely because of the fact that whenever there is a National Government there are certain powers given to it whether by enumeration or otherwise. When those powers are exercised it would not merely by reason of this fact alone become a Unitary Constitution.

I would ask my honourable Friend to apply a very simple test so far as this Constitution is concerned to find out whether it is federal or not. The simple definition I have got from the German school of political philosophy is that the first criterion is that the State must exercise compulsive power in the enforcement of a given political order, the second is that these powers must be regularly exercised over all the inhabitants of a given territory, and the third is the most important and that is that the activity of the State must not be completely circumscribed by orders handed down for execution by the superior unit. The important words are 'must not be completely circumscribed', which envisages some powers of the State are bound to be circumscribed by the exercise of federal authority. Having all these factors in view, I will urge that our Constitution is a Federal Constitution. I urge that our Constitution is one in which we have given power to the Units which are both substantial and significant in the legislative sphere and in the executive sphere.

Now if you ask me why we have really kept the residuary power with the Centre and whether it means anything at all, I will say that it is because we have gone to such absolute length to enumerate the powers of the Centre and of the States and also the powers that are to be exercised by both of them in the concurrent field. In fact, to quote Professor Where again, who has made a superficial survey of the Government of India Act, the best point in the Government of India Act is the complete and exhaustive enumeration of powers in Schedule VII. To my mind there seems to be the possibility of only one power that has not been enumerated, which might be exercised in the future by means of the use of the residuary power, namely the capital levy on agricultural land. This power has not been assigned either to the Centre or to the Units. It may be that following the scheme of Estate Duty and succession duty on urban and agricultural property, even if the Centre has to take over this power under the residuary power after some time, it would assign the proceeds of this levy to the provinces, because all things that are supposed to be associated with agriculture are assigned to the provinces. I think the vesting of the residuary power is only a matter of academic significance today. To say that because residuary power is vested in the Centre and not in the provinces this is not a Federation would not be correct.

Let me draw the attention of my honourable Friends to one or two good things we have done in regard to this question of the relationship between the Centre and the Provinces. We have dealt very carefully with the possibility of a vacuum in Governmental power. There will be no chance of a defect of power so far as the enumeration of powers is concerned even without going to the residuary power, which would leave a vacuum in the field of governmental action. We have avoided to the extent possible the possibility of matters being taken to court on the ground that there is overlapping of federal and units powers which are mutually exclusive. This is one of the defects of the Canadian Constitution. The powers enumerated under Section 91 and section 92 of the Canadian Constitution are supposed to be mutually exclusive that it has resulted in a lot of overlapping or to use a legal term in the creation of "a twilight zone" between the Central field and the provincial field, and has also resulted in a large number of judicial decisions. We have taken care, while copying these federal constitutions to avoid the pitfalls into which the Canadian Constitution has fallen.

Again, so far as the concurrent field is concerned, we have made a considerable improvement both on the Government of India Act and the Australian Constitution the only other Constitution where concurrent powers are specifically mentioned. So far as the Australian Constitution is concerned, its concurrent field has given rise to a lot of conflict. There is no clear demarcation of division of jurisdiction in the field of executive action. This has given rise to a lot of conflict. We have tried to avoid these defects which were copied in the Government of India Act, by the wording of article 73. Though that particular article was the subject of a lot of discussion in this House, I still feel that that is one of the wisest decisions which have been taken by this House. In this we have avoided the ambiguity of section126 of the Government of India Act. Here under the new Constitution, whenever the Centre interferes in the concurrent field, in matters of legislation, if it wants to have the executive power, it must take it explicitly. I am laying emphasis on this point because of the charge made here by honourable Members that the provincial governments are left without any responsibility. I would like to say even if it savours of boasting that in the Drafting Committee I have been rather keen to seen that there is no blurring of responsibility. Some Members in this House have been very keen that the responsibility of the Governments concerned should be clear; and I think this article avoids blurring of responsibility.

Another question that I would like to deal with is the question of the fiscal power, the sharing of fiscal powers between the units and the Centre. The charge has been very generally made in this House that the provinces have been left without any resources, and the Centre has taken away everything. I am afraid I must join issue with this statement that is either made merely because it has got a propagandist value or is made from a superfluous examination of the position as is revealed by the Constitution. What happens today in the provinces is – here I do not want to enter into any controversy with provincial Finance Ministers – that the provincial Finance Minister in order to support their own financial policies have been saying, "we have no money; the Centre would not give us any money; the Centre has got all sources of taxation." I have heard recently one or two provincial Finance Ministers making the statement that after the introduction of the new Constitution, the provinces will have no financial power whatsoever. I am laying particular emphasis on this criticism because I think it is wholly wrong, wholly inaccurate, and even mischievous. In fact, this Constitution has not made any fundamental change so far as the apportionment of the finances is concerned between the Centre and the units, from the scheme of the Government of India Act. As honourable Members of this House know, we have not been able to have a complete and comprehensive examination of the question. There has been no taxation inquiry in recent times. You, Sir, appointed an expert Committee. It had naturally very limited terms of reference and their report was made in a perfunctory sort of way. Therefore we had to adopt the scheme of the Government of India Act more or less. Now I would like to mention that in a conference between the Finance Ministers and Premiers of the Provinces and the States and some of the Ministers of the Central Government and the Drafting Committee, I put forward the suggestion that the difference between agricultural and on-agricultural property so far as direct taxes are concerned may be done away with, so that it would help in putting more money in the poor : and that, the entire income from income-tax on agricultural income can be handed over to the provinces. A few provincial Ministers did appreciate this suggestion, but the tallest amongst them said that they were not yet ready for the change. So it happens that conditions have more or less forced us to incorporate the provisions of the Government of India Act so far as finances of the Centre and the Units are concerned. It may be that in one or two matters certain restrictions have been placed upon the financial power of the provinces, for example in the matter of the levy of sales tax, but that does not mean that the Centre gets any benefit whatever thereby. It is merely to benefit the economy of this country rather than to benefit the Centre that such restrictions were placed on the levy of sales tax. I cannot understand the basis of the complaints made during the last seven days that this Constitution has deprived the provinces of the initiative because they would have no finances, that the Centre has all the financial resources in its hands, and therefore the Constitution is a unitary one. I would beg honourable Members of this House, most of whom are going to be Members of Parliament in the future, to examine this matter in all seriousness, and here I would like to recall the words of Dr. John Mathai when he appeared before us or rather on the only occasion in which he appeared before us, when he categorically stated that there was really no rivalry between the Centre and the units so far as the financial power is concerned. In reality the Centre's needs are covered largely by defence, administrative expenses and so on, and the Centre has no territory so to speak in which it has any special interest and on which it might want to spend money.

Here I think I had better take note of the complaint made by honourable Members from Assam. I agree that Assam may be in a very bad way, partly because of the exigencies of circumstances, and partly because of the acts of its Government. Whatever it may be, it would be the duty of the Centre and the responsibility of the future national governments to see that no province, no frontier province, no province which is economically weak, is allowed to go under for want of finances. As I told the House before, there is really no rivalry between the Centre and the units in this matter. The provisions that we have made so far as finances are concerned are article 268 under which there will be Central levy and State collection of certain duties, particularly on medicinal and toilet preparations, the proceeds being earmarked for the States. Under 269 there will be Central levy and Central collection for the benefit of the States of the proceeds of succession duties, estate duties and so on. Article 270 is the one which deals with income-tax. Honourable Members know that income-tax pure and simple goes into the pool to be divided between the States and the Centre, Article 271 gives power to the Centre to levy a surcharge on income-tax and other taxes for the benefit of the Centre. Article 272 gives the Union the power to levy excise duties, the proceeds of the whole or part of which may be distributed among the States. Article 273 covers export duty on jute and jute products, which for a period of ten years will be distributed among certain States. Article 280 deals with the Finance Commission which will advise the Centre on the distribution of the proceeds of taxes between the Centre and the units and the determination of the criteria that will govern grants made available from the Centre to the provinces. That is the best that we could possibly do in the Constitution in the light of the facts before us. I agree that what we want is that the total amount of financial resources available both for the Centre and the units has to be augmented and it has to be augmented if the ultimate purpose of this Constitution, namely, the economic betterment of the common man is to be undertaken; but the remedy does not lie in throwing stones at the Centre or at the Constitution and merely trying to shirk responsibility, so far as Provincial Ministries are concerned by saying that the Centre has got all the taxing power and we have none. Let me tell my honourable Friends in the House that the drift of taxing power in all Constitution has been towards the Centre and merely because of circumstances that have now come into being that the States have become, where it is federal or unitary, welfare states from being Police States and the ultimate responsibility as for the economic well-being of the country has become the paramount responsibility of the Centre. Switzerland has handed over Income-tax to the Centre. By the sixteenth amendment the U.S.A. Constitution hands over the entire income-tax to the national Government without any burden or any obligation to be distributed to the States by the Centre. Australia by means of a compact has taken over income-tax from the

States and the Rowell-Sirvois report so far as the dominion-provincial relations in Canada are concerned has recommended the complete obliteration of any power to levy income-tax on the part of the provinces, while it has also laid down certain duties and obligations has to be assumed by the Centre. It has not been recognised that there is no natural coincidence between the ability of a Government to handle a set of functions and its ability to collect revenues, and if today we hand over the excise duties to the units, what will happen? What happens in so far as the sales tax is concerned, would be repeated in a much worse form. There would not be any uniformity; there will be a large field open for evasion and in the result the economy of the whole country will suffer. If the money that the Centre will collect, which will be surplus to its requirements is intended for the States *i.e.*, the units and we have made a provision so far as the distribution of this surplus is concerned, I think the charge that the Centre has taken over all the financial powers and along with all the money that goes with it is completely baseless.

There is only one point which I would like to make before going to the next subject, though I have made a note of a number of points on this subject with which I cannot possibly deal with now, and it is the intricate question which my honourable Friend Mr. Gupte raised and I think it was also raised in this House on previous occasions also, though not explicitly. It has been mentioned that one of the chief defects of this Constitution is that we have not anywhere mentioned that the President is a Constitutional head and the future of the President's powers is, therefore, doubtful. I am referring to this point merely because it has a certain amount of validity in that in certain dominions attached to the British Empire this problem has been raised because of the peculiar circumstances In which the Governor-General of that particular dominion has been acting in the past. Chief Justice Evatt, as he then was, Mr. Evatt the Minister for External Affairs in Australia, has written a book in which he wanted specific provisions to be made in regard to the exercise of power by the Governor-General as the Constitutional head of the Dominion and incidentally mentions therein that even in the case of the king of England it would be better if it is laid down that he should exercise this power in a certain manner and on certain occasions by means of a statute. This is a matter which has been examined by the Drafting Committee to some extent. The position of the President in a responsible Government is not the same as the position of a president in a representative Government like America and that is a mistake that a number of people in the House have been making, when they said that the President will be an autocrat, and no one appears to realize that the President has to act on the advice of the Prime Minister. There might be some truth in the charge made that the Prime Minister might be an autocrat. Yes, the Prime Minister would be an autocrat if the party that elects him as leader and the Parliament to which he is responsible are both inactive because the tenure of office of a Prime Minister is perhaps only that amount of time that is necessary to pass a vote of no confidence on him. How a Prime Minister can be an autocrat when his tenure of office is so limited, unless there are other reasons which gives him the pull both over the Parliament and his party, is difficult for me to understand. So far as the relationship of the President with the Cabinet is concerned. I must say that we have so to say completely copied the system of responsible Government that is functioning in Britain today; we have made no deviation from it and the deviations that we, have made are only such as are necessary because our Constitution is federal in structure. Otherwise, that is the scheme of responsible Government that is envisaged both in the Centre and in the units. So far as the units are concerned the responsibility of the ministers has perhaps been in a very small measure curtailed only to the extent that it is absolutely necessary and has been expressly laid down in the Constitution. Honourable Members will please note that in article 163 we have said that the Governor should take the advice of the ministers excepting where he has been expressly asked to act in his discretion. An honourable Member asked me today what that meant. That was necessary because of Schedule VI, paragraphs 9 and 18 referring to Assam, which is the only matter in which the Governor has to use his discretion; in paragraph 9 of the Sixth Schedule which is a matter of arbitration and in paragraph 18 of the Sixth Schedule he has to report to the President; otherwise, there is no discretionary power at all vested in the Governor and we want the Governor to act in a manner which would mean that he will be taking the advice of his ministers in all matters. It has been expressly laid down in regard to assent of bills which he had to reserve for the assent of the President by reason of the fact that it falls in the concurrent field or that it is a matter which relates to the High Courts. But the position of the President in not the same as the King of England because he has no prerogatives such as the King of England possesses. His part in the assent to Bill is a matter which has been defined. All the powers that are left to him are perhaps those in which there will be a marginal use of discretion, perhaps when there happens to be a question of dissolution of the Parliament that is the dissolution of the House of the People, the question of calling upon any particular person to form the Ministry and the question of dismissing the Ministry. Sir, the time at my disposal is very short but I would like to assure my honourable Friends that in all these points, the conventions that have grown round the powers of the King of England in so far as his relationship with his Cabinet is concerned today are sufficiently strong for us to rest content with the there will be no misuse of these marginal powers by the President. The power of the Prime Minister in England has been progressively increasing, and instances in which probably the King had to use his discretion, namely in 1924 when he agreed with the suggestion of Prime Minister MacDonald to dissolve the House and then again in 1931 when he called upon MacDonald to form the Government in spite of the fact that the party to which he belonged had gone over to the opposition, these were matters where the discretion were more or less of a marginal nature. There were subsequent instances, notably the instance where the Prime Minister felt that even the King should not remain on the throne because of certain things that he was going to do, his abdication and subsequently in matter in which he had to take the advice of the Prime Minister, in setting up of a temporary commission by counsellors to act in his stead. These and other things in England have more or less established that the Prime Minister's advice is paramount, paramount in so far as the King cannot even call any people for consultation unless it be the Leader of the Opposition, and even then he has to tell the Prime Minister what transpired between them. The conventions are sufficiently strong and well established but a marginal instance might come into being and therefore, we cannot put in the Constitution precisely where the President must do this and what the Prime Minister can ask him to do and where he can use his judgment between two matters which are rather difficult to decide. Of course there may be an error or misassessment of facts or an error of judgement or it happens to be *bona fide* and it cannot be helped. We have considered this matter and on balance of considerations we felt that we ought to leave it to conventions and to such conventions that have been established in other countries following a system of responsible Government.

May I ask for 15 minutes in the afternoon, Sir?

Mr. President : Yes, Then we adjourn to three o' clock.

The Assembly then adjourned for Lunch till Three P.M.

The Assembly re-assembled after Lunch at Three P.M., Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Shri T. T. Krishnamachari : Mr. President, Sir, I would like to deal with the points raised by honourable Members in regard to the Fundamental Rights. With many of the provisions in that Part, honourable Members have been in agreement. But the attack has been focussed on two sets of provisions, one dealing with the liberty of the individual citizen, and the other dealing with property. Sir, it is a moot question whether in a country with a Parliament elected on the basis of adult suffrage, where the common man is supposed to have a preponderant voice in the administration of the country and the making of the laws, it is necessary to have a set of fundamental rights incorporated in the Constitution. My honourable Friend Shrimati Purnima Banergi mentioned that she would have preferred that the fundamental rights were left without any subtraction therefrom in the same manner as is found in the American Constitution. Again, I have to mention that those friends who wanted a set of fundamental rights, particularly those dealing with individual liberty and so on, copied from the American Constitution, forgot the historical background of the incorporation of such fundamental rights in the American Constitution. These were incorporated merely because of the fear of a group of people who framed the Constitution, who felt that the newly-created Centre would develop to be a monster and would make inroads not merely into the rights of the States, but also into the rights of the individual-the natural abhorrence of those people of the same type of mind as Jefferson who were responsible for the incorporation of the fundamental rights in the American Constitution to a powerful national Government was the main cause. But, it would not be right to incorporate those provisions without any variations, or any amendment or subtraction in a Constitution that we are framing in 1949.

Let me take the provision in regard to economic matters, particularly, article 31. As I said at the outset, my honourable Friend Begum Aizaz Rasul said that they did not go far enough. I agree; I think she is perfectly right. Fundamental rights are intended only for the people who represent a certain class of persons usually called the vested interests. It is the vested interests that are afraid of the future Parliament elected on adult suffrage which might want to democratize, socialise and equalise the wealth and opportunities in the country. It is the vested interests that have to be afraid of the future. It is perfectly correct, though it may not be on merits proper to concede, for Begum Aizaz Rasul to make the complaint that the Fundamental Rights in regard to property do not go far enough.

On the other hand, a number of my friends here, including my honourable Friend Shrimati Renuka Ray, felt that the rights conceded to property owners in article 31 went far.

An Honourable Member : Too far.

Shri T. T. Krishnamachari : The position of these people who took up that attitude should be that fundamental rights are not necessary to be safeguarded in a constitution where adult suffrage is the order of the day, where Parliament will be elected by every adult citizen in the country. That is the natural corollary. On the merits of the question, I have a little more to say.

I do want the House to understand that there are two conflicting moods in the minds of the people while approaching the fundamental rights : those that feel that the fundamental rights have gone too far, and those that feel that the fundamental rights have not gone far enough. Let me take up the position of my honourable Friends Pandit Kunzru and Pandit Thakur Das Bhargava whose objections to articles 19, 21 and 22 and even to some other ones, were that there has been a subtraction of the rights conceded to the individual. Well, I must say that on pure merits, and in the light of what is happening now about us and what has happened in the past my sympathies are entirely with them. All of us who came into politics as a result of a desire for freedom and dislike of the British rule, have done so because we were attracted by libertarian traditions attached to the rights of the individual. We wanted those rights to be safeguarded at a time when a foreign ruler was ruling over us. But today, if there is to be any subtraction of those rights, it would be effected by Parliament and by the legislatures of the States; in fact, Parliament will have the ultimate say, because most of the subjects which cover personal liberty are in the Concurrent List and Parliamentary enactments will predominate. If objection is taken to Parliament passing any act, it means that there is a certain amount of lack of confidence in the Parliament which would be elected on adult suffrage. It might appear to be an ingenious argument; but that is a grim fact. My honourable Friends might choose between the two. Yes; what we have done is merely to state the proposition, and we have stated that if Parliament so wills, it can subtract from the propositions (a), (b), (c), (d) and (e), the rights conferred to the extent stated. If Parliament does not want it, it need not, and the fundamental rights stated will be there without any diminution therefrom, Any subtraction can only be done by a positive Act by Parliament enacting laws in regard to every particular right. That is the point I want honourable Members to understand. I also want those people who criticise the Constitution on the basis that the fundamental rights conceded are worthless because they have been subtracted from to understand the point that the subtraction can only be affected by Parliament, and if they have any confidence in Parliament, Parliament will not do it unless it is absolutely necessary. I agree that the present circumstances colour our vision make us look at them in a way which distorts the picture. I have not been in charge of law and order in any province; I have not been in power; so it is fairly easy for me to sympathise with my friends who feel that notwithstanding the fact that the British have gone, the hangover is still there both ways. It affects us citizens who criticise the Government. It affects those in Government because they have imbibed the traditions of our former rulers. I do not for one moment question the validity of the objections raised by my honourable Friend Pandit Thakur Das Bhargava or Pandit Kunzru on the ground that at the present moment there has been a certain amount of what appears to be miss-use of authority or rather extra use of authority. But I do not think that is a matter which would exist for all times. At any rate if the Parliament of the future is not going to safeguard the liberty of the individual, I do not think that anything we put in this Constitution can possibly safeguard it. Therefore any insistence on putting into the Constitution Fundamental Rights, completely unabridged and in a manner that was done somewhere about 160 years back by a country which had different ideals and different hopes is. I think, an argument which is besides the point and out of place altogether.

In regard to the economic provisions I should like to say a few more words. I perfectly agree with the tenability of the objections raised by friends like Shrimati Renuka Ray and others. In fact I have a lot of sympathy with these objections though I have always felt that the provisions as they now stand – the provisions which were originally the provisions of Section 299 of the Government of India Act did not permit any legislation undertaken by Parliament or the Legislature of a State relating to the principle of compensation to be taken to a court of law and to be decided thereafter. But why I feel that my honourable Friends who have criticized the provisions are right is because I see – in spite of my holding that view that view-in spite of the fact that my earned colleague Alladi Krishnaswamy Ayyar held the opposite view about a year and a half ago and now holds the view that those principles are not justiciable – the possibility of the matter being taken to Court is there and I feel that in this country we can not afford to have matters which are of great economic moment and importance to the average man in the country to be taken to court and for a period of uncertainty to ensue.

But I am coming to the most vital portion of the manner in which the structure of the Constitution was undertaken. Honourable Members must realize that this Constitution as it has been mentioned by other members-before me is a result of compromise. 296 people who have assembled here hold different views on economic matters and we cannot frame a Constitution in which if I say that I am not going to allow a particular thing to be done and other people must follow that, then there will be no agreement. The whole constitution practically – very important parts of this Constitution have been a matter of final agreement among the parties concerned and if anybody now objects to a single proposition after having agreed to most of the propositions. I am afraid they are doing something which is not proper. This Constitution has been completed as a result of agreement amongst most of us. I feel that in that particular matter we have exposed the common man to become the subject of litigation which might probably take years before a final decision is reached and might retard our economic progress. I have done so because there are a number of points in this Constitution which have been agreed to by friends who hold different views. Sir, I have no desire to stand in the way of honourable Friends who might like to speak for a few minutes.

Shri P. T. Chacko (Travancore State) : May I know one thing? In part VII there is no provision for the appointment of Rajparamukh. Under Section 155 there is provision for the appointment of Governor which is deleted in Part VII and in some States there is no right of succession to Rajpramukhs. I would like to know whether a provision for the appointment of Rajpramukh is not necessary in such cases where there is no right for succession.

Shri T. T. Krishnamachari : I would ask my honourable Friend to look into article 366 clause (21) which provides the answer. I did want to deal with this aspect but I do not think I have got time. Mr. Sarwate raised the point in regard to the position of a Rajpramukh who misbehave against which he felt there was no provision, whereas we have a provision against possible misbehaviour by a Governor. I think that particular clause which is there [*i.e.* article 366 clause (21)] is adequate for all purposes in regard to keeping Rajpramukhs in proper behaviour. In fact there is another point that was raised by an honourable Friend who spoke to me also about it in regard to article 371 and in particular in regard to the position of High Court Judges in the States. Article 371, as it has been conceded by other friends here-Mr. Malaviya who spoke yesterday wanted it-is a purely transitory provision and you must leave it to the government of the day to see that it is not put into operation against States which are advanced and so far as salaries of High Court Judges in the States are concerned, well, so long as the salary of a High Court Judge in States in Part A is high, if we impose the same standard on the States – the States will become bankrupt. Certain anomalies are bound to arise because we have put the Indian States and the provinces together; but without putting them together we will have created a

Constitution which would be something which will not be uniform. Actually that point has been raised by some of our honourable Friends but the limitations are there and we have aimed at uniformity subject to those limitations.

Before I close I would like to mention one matter which I think, the House will agree with me, is to be regretted. My honourable Friend and Colleague Shri K. M. Munshi was eager to participate in the debate at the final stages. In fact I think he has something constructive to say as well in regard to the criticisms made particularly about separation of powers, the nature of the Constitution and so on but unfortunately he has developed a temperature and has sore throat which keeps him more or less bedridden. I have no doubt the Members of this House who like him as much as I do would wish for his speedy recovery and regret that he is not with us today when we are finalising the work that we have carried on for over three years in which Shri K. M. Munshi had played a very important part.

Lastly, may I, Sir, mention the debts that we as Drafting Committee have to discharge particularly to the Ministries of the Government of India. The Ministry of Finance, the Ministry of External Affairs and the Home Ministry have been very good to us and have assisted us considerably. With regard to the States Ministry, we owe to Mr. V.P. Menon and his assistants this task of integrating the States into this Constitution and they have been very accommodating and helpful. So far as the Law Ministry is concerned, I should like to mention by name two persons –the Secretary and Joint Secretary –Mr. Sundaram and Mr. Bhandarkar – who have been of very great use to us insofar as ultimately the Constitution is to be handed over to them it is only right that they should do so but I think that I would be failing in my duty if I do not mention by name the great services they have rendered to us. I would also like to endorse what members of this House have said in regard to the services of Mr. B. N. Rau. His help we missed during the last stages but while missing his help we were aware of the enormous amount of assistance we had received from him during the earlier part of this work and particularly he was so progressive in his views, so sympathetic and so quick as to be able to evolve a formula whenever we had a difficulty. Sir, I should also be failing in my duty if I do not mention that very happy circumstance about which honourable Friends have also made mention – of the fact that we were able to find a Joint Secretary and Draftsman of the calibre of Shri S. N. Mukherjee. It is no exaggeration to say that he was a real find. Not only is his ability as a draftsman so profound, but more than that, his willingness to work was even greater. (*Cheers*) And the House will also like to be told that practically everybody from Mr. Khanna downwards, to the clerks, superintendents and the reporters, have had to work very hard. For the last eight to ten months having been closely associated with the work of the Drafting committee, and having voluntarily undertaken some portion of its mechanical work, I was in a position to see that these young people were working on most days till ten o'clock in the night, all because they were so enthusiastic : and the last one month has been a month of very severe strain to them; and I do hope that the House will recognise the work done by them in framing this Constitution which is of a very vital and important nature.

Sir, it would be out of place for me not to mention the services of the two great leaders, and it is a pity that they are not here today to say a few words. But the Prime Minister, Pandit Jawaharlal Nehru has been a source of great strength and help to us. In fact, he has followed the constitution and its various articles right from the beginning, and in many instances, we have had his very great abilities as a draftsman and writer to touch up particular articles put before this House. It was no doubt, unfortunate that during the early portion of our work, the Honourable Sardar Patel, was not in a position to be with us because of his illness; but during the last three or four months, we had to go to him on several occasions for advice which he so willingly and cheerfully gave us. After all, they are the real architects of the Constitution.

I know it is very embarrassing, very embarrassing to me and to you, to speak of the person who has been in charge of the destinies of the Constitution of this country. I feel myself fortunate in having been associated with the Drafting Committee – a fact which I owe primarily to another friend about whom I have to mention – Dr. H. C. Mookerjee – who during the short time that you were away, functioned so effectively and so well as the presiding officer and it would be improper not to mention his name. But, Sir, the fact that I was in the Drafting Committee had been a matter of good fortune to me primarily in that I have been able to see you at close quarters. I have no doubt that it has been a matter of intense personal profit to me, and a matter of great pleasure. Members in this House have already mentioned about the work that you have done and there is hardly any need for me to repeat it. But the House knows that the President has been in close touch with the Drafting Committee and has practically had some say in most of the work that we have done, and his advice and guidance have been of great help to us.

There is only one final word and that..........

Shri Mahavir Tyagi : Let others also have some time, please.

Shri T. T. Krishnamachari : On final word before I sit down and it is this. Let honourable Members realise that even those of us in the Drafting Committee had notions of our own, had bias of our own; but we approached this work purely without any bias, and the result is what is before the House. It may be good in parts like the Curate's egg, or it may be very good taken as a whole, but I would only say this in conclusion that people worked on this Constitution only for the purpose of giving the common man of this country a Constitution which will make his life worth living, and I would suggest that this Constitution be dedicated to him, and in that dedication lies the hope of the future good of this country and the efficient and orderly working of this Constitution.

Thank you very much.

Mr. President : Dr. Subbarayan. I would request you not to take more than five minutes.

Dr. P. Subbarayan (Madras: General): Sir, I must thank you for giving me this opportunity, and I shall confine myself to the five minutes.

There are only two points which I would like to touch upon in this Constitution. There are two things that the British have left behind for us; one is the efficiency of the civil services and the other is the rule of law. And I think both these points have been carried out and incorporated in this Constitution, because without an efficient civil service, it will be impossible for the government to be carried on and for the continuity of policy to be kept. The importance of governmental administration, according to me, lies in the fact that there is continuity, and unless there is continuity there is bound to be chaos, and I think the Drafting Committee have been very careful to provide for this, and the Deputy Prime Minister himself made a plea for the services and made a right plea, because I feel in the contentment of the services really lies the safety of a country.

The second point I wish to touch upon is the rule of law which I think is a peculiar part of the English legal system. If there is anything which I would like to cling to in the future of this country, it is this rule of law. Professor Dicey in his law of the Constitution has explained this position fully and I think we have provided in the Constitution, in the powers vested both in the Supreme Court and the High Courts of this country for any citizen to have his right established as against the government of the day, whether Central or Provincial, so that there is no question of encroachment of rights, and the judiciary has been left independent enough to fulfil this task. My friend Mr. Alladi Krishnaswami Ayyar pointed out, and rightly so, that the judiciary should not place itself as an *imperium in imperio*, and I feel satisfied that the provisions that have been made in this Constitution will not make the judiciary an *imperium in imperio*. Of course, there is always that danger also. When people talk of separation of power, this separation of power may be made in such a way that the judiciary may be invested with immense power that it might eventually lead to the break-down of the government of the day, which I think, is not the case in our Constitution.

One word more, sir, and I am done. Some people seem to have fears about adult franchise. It must not be forgotten that even today most of the voters under the franchise that obtains today are themselves illiterate. But the Indian humanity is such that they have enough common-sense, enough horse-sense, if I may say so, which will make it possible for them to chose their rulers with discrimination, and to choose the people whom they think would be able to carry on the administration in a manner which will be for the benefit of the common man, of whom we have talked so much in this House. I am sure, Sir, we are forgoing ourselves a Constitution which will stand the test of time and it will lead this country to take her proper place in the comity of nations.

I am done. Thank you, Sir.

Mr. President : Mr. Mahavir Tyagi, you will please take only four minutes.

Shri Mahavir Tyagi : Sir, I am grateful to you for giving me this opportunity.

Sir, I assure you these four or five minutes granted by you are the most precious of my life, past, present and future, and they are the most thrilling movements. I stand today face to face with the picture of my old, old dreams and the fruits of my strenuous labours of thirty years. I concrete picture is before us. Dr. Ambedkar who was the main artist has laid aside his brush and unveiled the picture for the public to see and comment upon. The House has already liberally commented on it. It is a picture drawn by us all and I do not want to enter into a further commentary about it. I am in support of whatever has been said in favour of this picture, and I fully support it. After all, in all sincerity and humility we must bequeath to our posterity whatever is best in us. we have put in our best labour and given our best thought to it, and after a lot discussions and deliberations we have arrived at this picture. We must now wholeheartedly bequeath it to posterity in the hope that they will forgive our shortcomings if any, and will make up these shortcomings with their wisdom. From the corner of my eye as I see it, and as also the world will see, the picture is also fraught with dangers and those dangers I want to bring on record.

We are experimenting with an experiment which has failed in the world. We are evolving a democracy; a democracy has not succeeded, in doing, any real good of the people and of the masses, wherever it was tried. We are making the same experiment but in an improved form. Our democracy is an improvement on both the Parliamentary democracy of England and the Republican democracy of America. It is perhaps a mixture of both. Let us see if this democracy succeeds here.

Yet there is another danger. Adult franchise has been supported by many friends. I am personally very glad, because when supporters of this Constitution could not get very many arguments, they harped on the few points which I and a few friends of my way of thinking had insisted on being put into the Constitution – I mean the village republics', the cottage industries' and prohibition.' These points were resisted by many responsible persons in the past. But now I see that those very persons are banking on these arguments to support this Constitution.

Another big argument they repeat in support of this Constitution is the great experiment of adult suffrage. My fears are that it is a monstrous experiment that we are going to make and this might work as a python. I do not know where it would lead us, but the experiment will have to be made. I hope the future generation will be responsible enough to come out successful from these experiments.

Although I have every respect and praise for this Constitution, yet there is one thing which I am most afraid of, and it is that this Constitution is tendenalous to create a class – a class that democracy has created everywhere – of professional politicians.' All democracies are run by professional politicians' and I am afraid that is the main cause of their failures, because such people begin to live on democracies. It becomes with them a profession, the Statecraft', becomes their only source of living. That is the bane of democracy and I want to make the future generations aware of this. It creates professional politicians' – those whose earning depend on politics, with the result that they cut themselves adrift from all creative professions. If this democracy is also to be run by such persons who will have nothing else to fall back upon, and who live on Ministries or on the memberships of the Parliament, then this democracy is doomed, I am sure.

Such is the danger. I therefore want the coming generations not to play into the hands of persons who are professional'. This Constitution should rather be run by political professionals' – persons who have their won professions to live upon, but who come here to run the State voluntarily or on small pays because along with their own personal professions they had an interest in politics and had a will to serve the country. This is how I would like this picture to work. But the picture from the villagers' point of view is dull and dead. I cannot give argument to convince the villager that from 26th January 1950 his lot will be better. Nor is there anything tangible through which he can better understand this Constitution; because we give the villager nothing but the vote, which we will take from him after two years. That is the only thing we give him. So, I submit that it is only when those who till the soiled are enabled to run this Constitution, that they would appreciate it to be their charter of rights and freedom. Otherwise the Constitution is dull. There must be a leader. I hope our Indian earth is not so sterile that it will not give birth to a leader who will whisper life into this mould of the Constitution so that it could speak. It would speak if only we had the courage of our conviction, and I tell you that the chanting of a Maha Mantr is necessary, and I am sorry that there is no one in India today who can whisper that Maha Mantr which could make the whole of our Nation dance about this little book. And may I hint what it is? I know at this stage the House cannot accept anything, but future generations may. Only one thing will make this Constitution attractive. If the whole of this Constitution were provided with one supreme provision or safeguard, then I think the whole thing will be all right. It is this : if we could add a proviso to it as follows :

"Notwithstanding anything contained in this Constitution, no citizen of India shall draw for his personal use either from the public exchequer or from private enterprise a pay, profit or allowance which exceeds the rings of an average wage earner."

If that were there the whole of India will at once come round this Constitution. So long as this is not there, India will not appreciate it because this Constitution will only safeguard the bread of those whose hands are full of bread and not of those whose hands are empty.

Shri Suresh Chandra Majumdar : (West Bengal : General) : Mr. President, Sir, as the Constitution for a free, sovereign India is being finalised, may I be permitted by this august House to strike a personal note and recall the memory of a painful shock felt by a school boy's heart on a night nearly half a century back? On that night I was reading my school text book of Indian history and had arrived at the beginning of the so-called "British Period". Of course, it required no reading of history books to make one aware of the country's subjection to foreign rule – even a child could feel it. What shocked my young heart and filled it with anguish was to learn how the British Power, continuously fed on our internecine quarrels, raised itself on the ruins of Sivaji's dream that had almost come true. The failure of the Mahrattas struck me as the greatest of tragedies and the adolescent, who was already dreaming of a free Indian again, felt depressed and wondered whether we could ever triumph over our own past and emerge as a free united nation. Today I recall those bitter reflections and am all the more happy and proud of what the nation has achieved.

I shall not dilate on the events of the intervening years. Today I remember vividly the time when Sri Aurobindo came to Bengal from Baroda and inaugurated a renaissance movement and a new era of fearless, vibrant nationalism. He inspired an activist revolutionary organization and I had the privilege of becoming an humble camp-follower through my guru, the late Jatindra Nath Mukherji. Then followed the wonderful days of the Swadeshi and the Revolutionary movements with their trials and tribulations – people struggling on against the foreign domination with blood, sweat and tears. Then suddenly came the first World War and with it also came the mighty engine of oppression – the Defence of India Act. And under its wheels the whole freedom movement was mercilessly crushed – as if never to rise again. The whole country was plunged into impenetrable darkness; - not a speck of light was to be seen anywhere. But it was only a temporary phase. That is how I felt it then. With the end of the first World War there appeared on the Indian scene the refulgent figure of Gandhi – new India's man of destiny, the Father of the Nation, under whose incomparable leadership the Congress of the country remoulded itself into a mighty instrument of struggle of national freedom. The darkness began to melt away. Through a series of struggles the nation was led by him until he brought it to the goal – a free and sovereign India. One feels it was supreme privilege to have been an humble participant in this historical process as well as to be associated with my leaders and elders and colleagues in the making of a Constitution for the free Republic of India.

The Constitution – the fruit of so much labour and thought – is being discussed throughout the country. It has been praised to the skies and also abused in the harshest possible language. There are others – I think the majority – who see in it a mixture of things good and bad but on the whole practical and acceptable. How do I feel about this Constitution? There is on feeling in my mind which dominates every other – the feeling that this Constitution is wholly of our own, 100 percent. Indian making. It may be good, bad or anything but it is we, Indians, who have framed it. It has not been imposed upon us from outside nor by any alien authority. As we have made it, so we can amend it in the future if we want to. It is our very own with its good features and bad, if any. The making of this Constitution has been itself a supremely free act, a supreme expression of national freedom and I hail it as such. This gives me an immediate feeling of freedom and I would offer this personal testimony to that section of my countrymen who under a frenzied delusion are crying. *"Ye Azadi Jhutha Hai".* I think that cry is contradicted not only by my feeling but by that of all Indians barring a handful.

It is a commonplace but it would bear repetition, namely, that the success of a Constitution, even of the most meticulously written Constitutions, will depend not so much on its language as on the spirit in which it is worked. It depends on us, the people, to make it or mar it. I, therefore, humbly appeal to all my countrymen to approach the Constitution in a spirit of co-operation and to bring to its working all the patriotism and selfless devotion of which the nation is capable of and if they do so, I have no doubt that this Constitution will prove to be an instrument for the enlargement of our freedom, prosperity and happiness.

Sir, one other thing which I cannot help mentioning in connection with the making of this Constitution is this. When the Constituent Assembly was convened it was given the task of framing a constitution for the whole of India. But since then the country has been partitioned into two and necessarily the present Constitution covers one part only. Future alone knows whether it would again be possible to have a Constitutional covering the country as a whole.

In conclusion may I offer my respectful congratulations to Dr. Ambedkar and to my elders and colleagues in this House on the successful performance of a great, arduous and historic task? And I am sure I am echoing the sentiment of every one here when I thank you Mr. President, for the calm, patient, courteous and altogether exemplary manner in which you have guided the deliberations in this House.

Jai Hind!

Vande Mataram ! !

Shri Deshbandhu Gupta : *[Mr. President. I thank you that in spite of little time at your disposal you have been kind enough to give me a few minutes. Now is the time for rejoicing as we are closing the last chapter of the great work which we had started three years ago. This is the time of offering greetings and thanks and not criticism. For three years we have worked together and now we have given it a final shape. Now that we have framed the constitution bitter criticism is not proper but I would like to remind my honourable Friends that the constitution which we, in Delhi have been making and which now has come before the country and the world, does to inspire enthusiasm in the hearts of the citizens of Delhi. I am not complaining because I am sure that the Members of this Assembly have every sympathy for the demand of the citizens of Delhi. If hey could they must have made such alteration in the Constitution which might have provided an occasion for rejoicing for the people of Delhi, and verily with the enforcement of this Constitution on the 26th of January, a better day must have dawned on Delhi. I know that the Members of the Constituent Assembly have their personal attachments towards Delhi and have also some idea regarding its hardships. But due to the misfortune of Delhi we have been facing some such problems which have put obstacles in our way. that is why there is no provision for Delhi in this Constitution. Today when the whole country has achieved freedom and peoples' Raj has been established, twenty lakh citizens of this province are under the impression that no change has taken place in the administrative system of Delhi – Delhi which fought the battle of freedom in 1857 and for six months her people faced the enemy cannons in the face of starvation, that Delhi every particle of which reflects the History of India. The set up which was here before August 1947 will continue. You can imagine the despondency of the citizens of Delhi.

There is however one ray of hope. It is the assurance given by our Prime Minister that before 26th January Parliament could make a provision which would enable the citizens of Delhi to have an appropriate share in its administration. I hope that when such a bill comes before the Parliament no Member of this Constitution Assembly will forget the assurance given by the Prime Minister and let the proverb "Nearer the church farther from Heaven" to be applied to Delhi. I hope that you will keep in mind the citizens of Delhi. The Citizens of Delhi are not putting forward a big demand, they only want to have a place in this beautiful boquet and in this beautiful picture that you have drawn.

There is yet another point to which I would like to draw the attention of the House, under the chapter of Fundamental Rights, there is no article regarding the Freedom of Press. We have drawn much in this Constitution from different constitutions of the world. We have copied many things from the Constitution of Ireland, America and other countries. But we have not derived any benefit from them regarding Press which is called Fourth State. In our Constitution there is no mention of it.

Mr. Jefferson, a great American Constitutionalist said : "Were it left to me to decide whether we should have Government without newspapers or newspapers without Government I should not hesitate a moment to prefer the latter. But I should mean that every man should receive these papers and be capable of reading them". After the American Constitution was framed the article regarding the Freedom of Press was inserted in the Constitution as an amendment. I want that there should be a mention of the Freedom of Press in our Constitution also in specific terms. I am sure that time will come when the Members of our Parliament will also consider this issue and will not hesitate in inserting an amendment regarding this and our Press will also acquire the status which it deserves in our Constitution.

With these words I thank you once again and pray that may this Constitution be crowned with success.]*

Pandit Balkrishna Sharma : Mr. President, Sir, as I sat listening throughout this debate to the various speeches for and against this Constitution, I was reminded of

Victor Hugo's famous book, "The Ninety-three". In that book Hugo writes about the convention, and he says "now we approach the convention. Now we approach the Himalayas" and he proceeds further on saying perhaps we are not in a position to realize the fullest importance of this occasion because we are too near it. He is right. Look at the mountain from a distance and to a certain extent you are able to realize the grandeur thereof, but if you be too near it is not possible for you to realize that grandeur.

I think, Sir, those of my friends – the critics and the supporters – who have spoken at this third reading stage of our Constitution, appear to me not to have had that vision, that breadth of mind, that capacity to appreciate the historic importance of this occasion. We have come here and criticized our own Constitution. Yes, it is very likely that there be flaws in it, it is very likely that there may be people whose views do not tally *in toto* with all the provisions of this Constitution, but then it does not lie in our mouth to come here and address this august Assembly in the spirit of carping criticism. Who, after all is responsible if there are defects in the Constitution? Is it not we who have been at it for the last three years that should be held responsible for it? I can understand a man like my friend Seth Damodar Swarup standing up and saying this is a Constitution which the people of this country will not accept, but I can tell him that we here for the last three years have been sitting in the capacity of the representatives of the people. We are the will of the people, what the Russians call, "Narodnia Volia". We are the will of the people and in that capacity we have sat here for the last three years and I can tell you each and every clause of this Constitution is acceptable to the people in this country. Let there be no doubt about that.

There are four or five points about which this Constitution has been criticised. Firstly, it has been said that we have leaned too much on the side of centralization. Secondly, the objection has been raised that the Fundamental Rights have been hedged round by so many obstacles. The third objection has been that it is un-Indian in spirit and the fourth objection has been that it is more or less a copy of the Government of India Act. Fifthly, it has been said that this Constitution does not give any occasion for the country to feel that glow of that economic freedom which we all wish the country to enjoy.

These are the five points on which the Constitution has been criticised. Let us take into consideration each and every objection and try to bring to bear upon it the light of reason. When we say that we have erred too much on the side of centralisation and when we criticise our Constitution on this account, do we not lose sight of that historical tendency of drifting apart in our history, in our traditions? This country has been afflicted with that fissiparous tendency which has been the bane of its progress. And, remember, India has been able to raise her head in history only when there has been a strong Central Government established. Otherwise, there has been nothing like Indian history, nothing like the glory that was Indian. Therefore, we should not forget that when we have to counter that tendency, that fissiparous tendency, that centripetal tendency, let us not forget that it is very necessary that the Centre must be made strong.

The second objection has been that the Fundamental Rights have been given by one hand but have been taken away by the other. I have never been able to appreciate that argument. Does civil liberty, in the words of Mahatma Gandhi, mean criminal licence? Civil liberty does not mean criminal licence. If there is freedom of speech, it does not mean I should be free to go on abusing any and everybody that I dislike, and it is this sort of subtractions that have been introduced in our Constitution, and therefore this argument seems to me to be very hollow and I have never been able to appreciate it.

With regard to the third argument that it is a copy of the government of India Act and that it is un-Indian, all I can say is that it is to the credit of the Drafting Committee and Dr. Ambedkar and all those who have been associated with him, that they were not inspired by any spirit of narrowness. Here, after all, we are framing a Constitution and the modern tendencies, the modern difficulties, the modern problems that are facing us are there and we have to provide for them all in our Constitution, and if we have leaned on the Government of India Act for that matter, then I do not think that we have at all committed any sin.

As for the criticism that it is un-Indian in spirit, all that I can say is that we Indians have sat here, we have framed a Constitution. The phraseology of course is un-Indian, but then there are so many problems facing us today which are un-Indian in nature and therefore I say even though the phraseology is there even though the English phraseology is there what of it? Let it be there, but is it un-Indian for that matter? Our difficulties are there in this Constitution and all those problems that we have to solve have been given in this Constitution and a certain line of conduct for the governance of this country has been laid down in the Constitution. Therefore, I say it is not un-Indian.

My friend Mr. T. T. Krishnamachari was rather apologetic about this centralisation business and about the Fundamental Rights. He said, "Yes, yes. looking to our past history, we are very sure on that point". I am not at all apologetic about it. Whatever you have decided, Mr. Krishnamachari, in your wisdom, whatever the Drafting Committee and Dr. Ambedkar have done, is just the right thing for us and it is the only thing which can save us from anarchy. Therefore, I say that those who criticise this point in this spirit are not justified in doing so.

Where is the spirit of this Constitution? The point is who is to work this Constitution? Will it be a clean, honest, pure, well-integrated political party or will it be a rabble that will administer this Constitution? Today I am seeing before my very eyes the great national organisation which the Father of the Nation created, in a disintegrating process. The question is who shall come today and take the torch and unite once again this great organisation which made one of the most wonderful Revolutions in human history, the freedom of the country, by non-violent means, of course under the inspiration of a superman, of course under the inspiration of a man who comes only once every two thousand years. But then what does the future hold for us? If the Congress is permitted to disintegrate, if the Congress is permitted to be spoiled by the self-seeks, then I tell you, even a better Constitution will not be able to work its way here in this country. Therefore, today somehow I feel that there is only one way to work this Constitution and that one way is that our great Prime Minister should resign from his office, should come back and accept the Presidentship of the Indian National Congress and thereby inspire a new confidence in the people and thereby create a thereby create a situation in which it would be easy to work the Constitution.

(Mr. Tajamul Husain rose to speak)

Mr. President : We shall go on with the discussion for another seven minutes during which I want to give an opportunity to speak to three or four Members.

Shri Raj Bahadur (Rajasthan) : Mr. President, Sir, I am grateful to you for giving me this me opportunity to associate myself with the high and well-deserved tributes that have been showered upon your good self, upon the Drafting Committee and the members of the staff of the Constituent Assembly. This is an occasion of the greatest historical significance. I say of the greatest significance because it is for the first time in our history that the chosen representatives of the nation have gathered together and framed a Constitution for the country. It is doubly so because the great and worthy leaders who brought freedom to our country have been the architects of our Constitution. Again for the first time in our history, Fundamental Rights, fundamental human rights, are being guaranteed and secured to the common citizen. I call the occasion great on account of these reasons. Sir, it is impossible in any human adventure of this type, namely that of framing a Constitution, to arrive at any degree of absolute unanimity. Unanimity may be possible perhaps only in a society of fools. So, if there are differences of opinion, it is only a sign of our intelligence, a sign that we are a thinking and thoughtful nation. It is impossible for all of us to agree on everything and on all points. The wonder is not that we have not been able to produce a better Constitution. The wonder is that we have been able to achieve and arrive at a degree of agreement that is incorporated in the Constitution. I would submit most respectfully that so far as the people of the Indian States are concerned, it is a matter of the highest gratification for all us. When we entered the portals of this great House we had lurking fears in our minds that the States would have to summon their own Constituent Assemblies as provided in the various covenants. Fortunately all such fears have proved unfounded. When the Constitution is now being finalized, when this stupendous task is coming to an end, it is a matter of deepest satisfaction to us that the same Constitution, which would be the symbol of our unity and the symbol of our national oneness and solidarity, shall apply to the States also. That does not, however mean that I have got no regrets altogether about the provisions of this Constitution. I regret certain provisions which relate to the States. I regret that because of the control of the centre that is sought to be imposed on the administration of these States for a period of ten years under article 371, a sort of double standard of democracy for the country is going to be provided for the various units. There is one type of democracy being provided for the States in Part A and another type of democracy for the States mentioned in Part B. Here I may give expression to the experience we have had in these States and State Unions. We have seen how in the States Unions the Ministries have been chosen by the States Ministry, the advisers and secretaries are appointed by the States Ministry, the day to day policies and programmes are controlled by the same Ministry,...........

The President rang the bell at this stage.

and yet the blame from the people is borne by Congress man of the local Congress organisation. I would simply add at the end that whatever be the merits or the demerits of this Constitution, every thing depends upon the working of it. As Bryce has said, "it is easy to transplant a Constitution but it is not easy to transplant the temperament that is needed for the working of it." So, let us in all humility remind ourselves of the words of the great American statesman Benjamin Franklin, which I would humbly commend to all inside and outside this House – "Let us prick the bubble of our vanity. Let us doubt our own infallibility." None of us is infaliable. This Constitution, whatever be its merit or demerit, is, without the least shadow of a doubt a workable constitution. The limitations of this Constitution are the limitations of our peculiar circumstances, its achievements are the achievements of this generation – the generation that led the country from the slavery unto freedom. I therefore hail it as a great achievement for our leaders. If we work the Constitution in the spirit of the preamble, I am sure this country of ours will have a great future.

Mr. Tajamul Husain (Bihar : Muslim) : Mr. President, Sir, we have been criticised for taking a long time for the framing of this Constitution. I would like to remind my critics that two Dominions started at or about the same time to frame their Constitution. We have finished, and the other has hardly yet begun.

Now, Sir, nothing in this world is perfect. Nobody says that we have got a perfect Constitution but it is the best that could possible be produced. I doubt if anyone else could have produced a better one. In may own opinion, this is a model Constitution. The judiciary will be independent; we shall have liberty, equality and fraternity; we have now a united India; the Princely order has gone; the minority question has been solved; there is no reservation of seats; not separate electorates; untouchability has been abolished. The credit for producing such a wonderful Constitution goes, Sir, to all of us in general because we, the Members of this House, extended our fullest co-operation to you, Sir. We were short in our speeches. We never tried to obstruct. We followed the procedure laid down by you. But I would like to mention the names of those who were mainly responsible for producing this Constitution in such a short time. First and foremost, I will mention your name. You guided and conducted the proceedings of this House in a most remarkable and effective manner. You tactfully handled difficult situations. You were a model of integrity and trustworthiness and your manner towards us was sympathetic....

Mr. President : Better leave that alone.

Mr. Tajamul Husain : You were kind and gentle in the extreme. You are the fittest person to occupy this exalted Chair. In your absence, Dr. Mookerjee occupied the Chair and conducted the proceedings in a dignified manner. The credit for framing this Constitution goes to the Law Minister. He is a genius. He knows everything about all the Laws and Constitutions of the world. What he does not know is not worth knowing. He has worked very hard room the beginning to end in s spite of his indifferent health. Due to his ceaseless labour, this remarkable Constitution has been framed. We owe a debt of gratitude to our Leader, the Prime Minister. He has raised the prestige of India. His charming personality is irresistible wherever he goes. He has on many occasions come to our rescue when we were confronted with difficult and knotty problems, our Deputy Prime Minister has proved himself to be a strong and able administrator. He has been able to do things which nobody else could have done. He has obliterated the Princely order. He has done away with separate electorates. New we can truly say that there is equality, fraternity and liberty in India. Last but not least is your staff, Sir, the spade work has been done by them; they have worked much harder than many of us; they have worked from early in the morning till midnight. In spite of some defects it is a unique and a remarkable Constitution and we should be proud of it. I shall now deal with a few defects. I have got only two.

(At this stage the President's bell rang.)

I will speak of at least one, Sir,

(The Bell was rung again).

I have been ordered by the Honourable the President to close my speech. I shall say no more but still I say that it is the best Constitution. There are two defects but they are worth mentioning and I do not want to mention it.

Shri Kamalashwari Prasad Yadav (Bihar : General) : *[Mr. President, many honourable Members here have expressed their great disappointment with this Constitution and have remarked that it is nothing but a fantastic mixture of the different Constitutions of the World. But, Sir, I am not aware of any constitution nor of any country which has not made use of the good provisions of the other constitutions. Perhaps no country will ignore to do so. We too have therefore taken some such selected provisions, as appeared to us to be useful, from other constitutions of the World. Our Constitution contains many note worth features. It lays down that India shall be a Union of States and that there will be one official language for the whole of the Union; it provides for the abolition of untouchability – a great sin – that has been tarnishing the name of our country. We are proud to have embodied such provisions in our constitution. The provision regarding adult franchise surpasses those of Australia, Canada and other countries. The same thing applies in case of the provisions regarding citizenship. Under the able leadership of Pandit Jawaharlal Nehru, we have made our Sate a secular one and have thereby maintained a very high ideal. There was a time, Sir, when the whole of Asia was looking to Japan but today the eyes of the whole of Asia are fixed towards India. They are watching if we are making any discrimination or not in our treatment to the citizens on the ground of religion, caste, language and race; they are keenly watching the progress we are making towards achieving our ideals.

Now coming to the shortcoming in the Constitution, the omission of a reference to the Father of the Nation – Respected Bapu – strikes me the most. It was Bapu who showed us the way, taught us to walk, moulded us to give the lesson of truth and non-violence. He taught us to make sacrifices. It is because of him that we have achieved our freedom; have been able to form this Assembly and to prepare the Constitution that we are going to adopt and enforce throughout the country. Really it is a very pity that we have not made any mention of him in the Constitution.

There should be no Legislative Councils in the small Provinces that have little income. I fail to understand why provision for Legislative Councils, has been made for these small Provinces. In the Legislative Assembly of Bihar a unanimous resolution was adopted to the effect that there should be no Legislative Council in Bihar. But that unanimous decision has been reversed there. We could have made some other provision to carry out our idea that experts and learned people must be brought into the Legislatures. We could have provided for their inclusion in the Legislature for a limited period of time by the way of nomination with powers to express their views and to participate in the debate but not to vote. The words "the State shall endeavour to" or "the State shall take steps" have been used in all articles from 40 to 51 under the Directive Principles. So far the body of these articles is concerned they appear very attractive indeed but there is no life in them. Whenever one is unwilling to do something or wants to evade it, he just says "I shall try". The very motive seems to me to be behind the words "the State shall endeavour to" used in the articles under reference. The same thing can be said in regard to the provisions relating to prohibition. We have not put a complete stop to the slaughter of cows. The appointment of a Commission provided in article 340 to investigate the conditions of the backward classes, must be made within six months of the commencement of the Constitution for the problem is a serious one and unless they are brought at par with the advanced classes, the country can make no progress.

Lastly I would draw your attention, Sir, to the growing spirit of provincialism in the country. The bigger and more advanced Provinces want to devour the smaller and less advanced ones. For instance I may mention the case of Bihar. All the profit in respect of the mineral products of the Province is being drained away to Calcutta and Bombay. Something should be done to put a stop to it.]*

The Honourable Dr. B. R. Ambedkar : Sir, looking back on the work of the Constituent Assembly it will now be two years, eleven months and seventeen days since it first met on the 9th of December 1946. During this period the Constituent Assembly has altogether held eleven sessions. Out of these eleven sessions the first six were spent in passing the Objectives Resolution and the consideration of the Reports of Committees on Fundamental Rights, on Union Constitution, on Union Powers, on Provincial Constitution, on Minorities and on the Scheduled Areas and Scheduled Tribes. The seventh, eighth, ninth, tenth and the eleventh sessions were devoted to the consideration of the Draft Constitution. These eleven sessions of the Constituent Assembly have consumed 165 days. Out of these, the Assembly spent 114 days for the consideration of the Draft Constitution.

Coming to the Drafting Committee, it was elected by the Constituent Assembly on 29th August 1947. It held its first meeting on 30th August. Since August 30th it sat for 141 days during which it was engaged in the preparation of the Draft Constitution. The Draft Constitution as prepared by the Constitutional Adviser as a text for the Drafting Committee to work upon, consisted of 243 articles and 13 Schedules. The first Draft Constitution as presented by the Drafting Committee to the Constituent Assembly contained 315 articles and 8 Schedules. At the end of the consideration stage, the number of articles in the Draft Constitution increased to 386. In its final form, the Draft Constitution contains 395 articles and 8 Schedules. The total number of amendments to the Draft Constitution tabled was approximately 7,635. Of them, the total number of amendments actually moved in the House were 2,473.

I mention these facts because at one stage it was being said that the Assembly had taken too long a time to finish its work, that it was going on leisurely and wasting public money. It was said to be a case of Nero fiddling while Rome was burning. Is there any justification for this complaint? Let us note the time consumed by Constituent Assemblies in other countries appointed for framing their Constitutions. To take a few illustrations, the American Convention met on May 25th, 1787 and completed its work on September 17, 1787 *i.e.*, within four months. The Constitutional Convention of Canada met on the 10th October 1864 and the Constitution was passed into law in March 1867 involving a period of two years and five months. The Australian Constitutional Convention assembled in March 1891 and the Constitution became law on the 9th July 1900, consuming a period of nine years. The South African Convention met in October, 1908 and the Constitution became law on the 20th September 1909 involving one years labour. It is true that we have taken more time than what the American or South African Conventions did. But we have not taken more time than the Canadian Convention and much less than the Australian Convention. In making comparisons on the basis of time consumed, two things must be remembered. One is that the Constitutions of America, Canada, South Africa and Australia are much smaller than ours. Our Constitution as I said contains 395 articles while the American has just seven articles, the first four of which are divided into sections which total up to 21, the Canadian has 147, Australian 128 and South African 153 sections. The second thing to be remembered is that the makers of the Constitutions of America, Canada, Australia and South Africa did not have to face the problem of amendments. They were passed as moved. On the other hand, this Constituent Assembly had to deal with as many as 2,473 amendments. Having regard to these facts the charge of dilatoriness seems to me quite unfounded and this Assembly may well congratulate itself for having accomplished so formidable a task in so short a time.

Turning to the quality of the work done by the Drafting Committee, Mr. Naziruddin Ahmed felt it his duty to condemn it outright. In his opinion, the work done by the Drafting Committee is not only not worthy of commendation, but is positively below par. Everybody has a right to have his opinion about the work done by the Drafting Committee and Mr. Naziruddin is welcome to have his own. Mr. Naziruddin Ahmed thinks he is a man of greater talents than any member of the Drafting Committee. The Drafting Committee does not wish to challenge his claim. On the other hand. The Drafting Committee would have welcomed him in their midst if the Assembly had thought him worthy of being appointed to it. If he had no place in the making of the Constitution it is certainly not the fault of the Drafting Committee.

Mr. Naziruddin Ahmed has coined a new name for the Drafting Committee evidently to show his contempt for it. He calls it a Drafting committee. Mr. Naziruddin must no doubt be pleased with his hit. But he evidently does not know that there is a difference between drift without mastery and drift with mastery. If the Drafting Committee was drifting, it was never without mastery over the situation. It was not merely angling with the off chance of catching a fish. It was searching in known waters to find the fish it was after. To be in search of something better is not the same as drifting. Although Mr. Naziruddin Ahmed did not mean it as a compliment to the Drafting committee. I take it as a compliment to the Drafting Committee. The Drafting Committee would have been guilty of gross dereliction of duty and of a false sense of dignity if had not shown the honesty and the courage to withdraw the amendments which it thought faulty and substitute what it thought was better. If it is a mistake, I am glad the Drafting Committee did not fight shy of admitting such mistakes and coming forward to correct them.

I am glad to find that with the exception of a solitary member, there is a general consensus of appreciation from the members of the Constituent Assembly of the work done by the Drafting Committee. I am sure the Drafting Committee feels happy to find this spontaneous recognition of its labours expressed in such generous terms. As to the compliments that have been showered upon me both by the members of the Assembly as well as by my colleagues of the Drafting Committee I feel so overwhelmed that I cannot find adequate words to express fully my gratitude to them. I came into the Constituent Assembly with no greater aspiration than to safeguard the interests of he Scheduled Castes. I had not the remotest idea that I would be called upon to undertake more responsible functions. I was therefore greatly surprised when the Assembly elected me to the Drafting Committee. I was more than surprised when the Drafting Committee elected me to be its Chairman. There were in the Drafting Committee men bigger, better and more competent than myself such as my friend Sir Alladi Krishnaswami Ayyar. I am grateful to the Constituent Assembly and the Drafting Committee for reposing in me so much trust and confidence and to have chosen me as their instrument and given me this opportunity of serving the country. (*Cheers*)

The credit that is given to me does not really belong to me. It belongs partly to Sir B. N. Rau, the Constitutional Adviser to the Constituent Assembly who prepared a rough draft of the Constitution for the consideration of the Drafting Committee. A part of the credit must go to the members of the Drafting Committee who, as I have said, have sat for 141 days and without whose ingenuity of devise new formulae and capacity to tolerate and to accommodate different points of view, the task of framing the Constitution could not have come to so successful a conclusion. Much greater, share of the credit must go to Mr. S. N. Mukherjee, the Chief Draftsman of the Constitution. His ability to put the most intricate proposals in the simplest and clearest legal form can rarely be equalled, nor his capacity for hard work. He has been as acquisition tot he Assembly. Without his help, this Assembly would have taken many more years to finalise the Constitution. I must not omit to mention the members of the staff working under Mr. Mukherjee. For, I know how hard they have worked and how long they have toiled sometimes even beyond midnight. I want to thank them all for their effort and their co-operation. (*Cheers*)

The task of the Drafting Committee would have been a very difficult one if this Constituent Assembly has been merely a motley crowd, a tasseleted pavement without cement, a black stone here and a white stone there is which each member or each group was a law unto itself. There would have been nothing but chaos. This possibility of chaos was reduced to nil by the existence of the Congress Party inside the Assembly which brought into its proceedings a sense of order and discipline. It is because of the discipline of the Congress Party that the Drafting Committee was able to pilot the Constitution in the Assembly with the sure knowledge as to the fate of each article and each amendment. The Congress Party is, therefore, entitled to all the credit for the smooth sailing of the Draft Constitution in the Assembly.

The proceedings of this Constituent Assembly would have been very dull if all members had yielded to the rule of party discipline. Party discipline, in all its rigidity, would have converted this Assembly into a gathering of yes' men. Fortunately, there were rebels. They were Mr. Kamath, Dr. P. S. Deshmukh, Mr. Sidhva, Prof sexena and Pandit Thakur Das Bhargava. Alongwith them I must mention Prof. K. T. Shah and Pandit Hirday Nath Kunzru. The points they raised were mostly ideological. That I was not prepared to accept their suggestions, does not diminish the value of their suggestions nor lessen the service they have rendered to the Assembly in enlivening its proceedings. I am grateful to them. But for them, I would not have had the opportunity which I got for expounding the principles underlying the Constitution which was more important than the mere mechanical work of passing the Constitution.

Finally, I must thank you Mr. President for the way in which you have conducted the proceedings of this Assembly. The courtesy and the consideration which you have shown to the Members of the Assembly can never be forgotten by those who have taken part in the proceedings of this Assembly. There were occasions when the amendments of the Drafting Committee were sought to be barred on grounds purely technical in their nature. Those were very anxious moments for me. I am, therefore, specially grateful to you for not permitting legalism to defeat the work of Constitution making.

As much defence as could be offered to the constitution has been offered by my friends Sir Alladi Krishnaswami Ayyar and Mr.. T. T. Krishnamachari. I shall not therefore enter into the merits of the Constitution. Because I feel, however good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot. The working of a Constitution does not depend wholly upon the nature of the Constitution. The Constitution can provide only the organs of State such as the Legislature, the Executive and the Judiciary. The factors on which the working of those organs of the State depend are the people and the political parties they will set up as their instruments to carry out their wishes and their politics. Who can say how the people of India and their purposes or will they prefer revolutionary methods of achieving them? If they adopt the prophet to say that it will fail. It is, therefore, futile to pass any judgment upon the Constitution without reference to the part which the people and their parties are likely to pay.

The condemnation of the Constitution largely comes from two quarters, the Communist Party and the Socialist Party. Why do they condemn the Constitution? Is it because it is really a bad Constitution? I venture to say no'. The Communist Party want a Constitution based upon the principle of the Dictatorship of the Proletariat. They condemn the Constitution because it is based upon parliamentary democracy. The Socialists want two things. The first thing they want is that if they come in power, the Constitution must give them the freedom to nationalize or socialize all private property without payment of compensation. The second thing that the Socialists want is that the Fundamental Rights mentioned in the Constitution must be absolute and without any limitations so that if their Party fails to come into power, they would have the unfettered freedom not merely to criticize, but also to overthrow the State.

These are the main grounds on which the Constitution is being condemned. I do not say that the principle of parliamentary democracy is the only ideal form of political democracy. I do not say that the principle of no acquisition of private property without compensation is so sacrosanct that there can be no departure from it. I do not say that Fundamental Rights can never be absolute and the limitations set upon them can never be lifted. What I do say is that the principles embodied in the Constitution are the views of the present generation or if you think this to be an over-statement, I say they are the views of the members of the Constituent Assembly. Why blame the Drafting Committee for embodying them in the Constitution? I say why blame even the Members of the Constituent Assembly? Jefferson, the great American statesman who played so great a part in the making of the American constitution, has expressed some very weighty views which makers of Constitution, can never afford to ignore. In one place he has said:-

> "We may consider each generation as a distinct nation, with a right, by the will of the majority, to bind themselves, but none to bind the succeeding generation, more than the inhabitants of another country."

In another place, he has said :

> "The idea that institutions established for the use of the national cannot be

> touched or modified, even to make them answer their end, because of rights gratuitously supposed in those employed to manage them in the trust for the public, may perhaps be a salutary provision against the abuses of a monarch, but is most absurd against the nation itself. Yet our lawyers and priests generally inculcate this doctrine, and suppose that preceding generations held the earth more freely than we do; had a right to impose laws on us, unalterable by ourselves, and that we, in the like manner, can make laws and impose burdens on future generations, which they will have no right to alter; in fine, that the earth belongs to the dead and not the living;"

I admit that what Jefferson has said is not merely true, but is absolutely true. There can be no question about it. Had the Constituent Assembly departed from this principle laid down by Jefferson it would certainly be liable to blame, even to condemnation. But I ask, has it? Quite the contrary. One has only to examine the provision relating to the amendment of the Constitution. The Assembly has not only refrained from putting a seal of finality and infallibility upon this Constitution by denying to the people the right to amend the constitution as in Canada or by making the amendment of the Constitution subject tot he fulfilment of extraordinary terms and conditions as in America or Australia, but has provided a most facile procedure for amending the Constitution. I challenge any of the critics of the Constitution to prove that any Constituent Assembly anywhere in the world has, in the circumstances in which this country finds itself, provided such a facile procedure for the amendment of the Constitution. If those who are dissatisfied with the Constitution have only to obtain a 2/3 majority and if they cannot obtain even a two-thirds majority in the parliament elected on adult franchise in their favour, their dissatisfaction with the Constitution cannot be deemed to be shared by the general public.

There is only one point of constitutional import to which I propose to make a reference. A serious complaint is made on the ground that there is too much of centralization and that the States have been reduced to Municipalities. It is clear that this view is not only an exaggeration, but is also founded on a misunderstanding of what exactly the Constitution contrives to do. As to the relation between the Centre and the States, it is necessary to bear in mind the fundamental principle on which it rests. The basic principle of Federalism is that the Legislative and Executive authority is partitioned between the Centre and the States not by any law to be made by the Centre but by the Constitution itself. This is what Constitution does. The States under our Constitution are in no way dependent upon the Centre for their legislative or executive authority. The Centre and the States are co-equal in this matter. It is difficult to see how such a Constitution can be called centralism. It may be that the Constitution assigns to the Centre too large field for the operation of its legislative and executive authority than is to be found in any other federal Constitution. It may be that the residuary powers are given to the Centre and not to the States. But these features do not form the essence of federalism. The chief mark of federalism as I said lies in the partition of the legislative and executive authority between the Centre and the Units by the Constitution. This is the principle embodied in our constitution. There can be no mistake about it. It is, therefore, wrong to say that the States have been placed under the Centre. Centre cannot by its own will alter the boundary of that partition. Nor can the Judiciary. For as has been well said:

> "Courts may modify, they cannot replace. They can revise earlier interpretations as new arguments, new points of view are presented, they can shift the dividing line in marginal cases, but there are barriers they cannot pass, definite assignments of power they cannot reallocate. They can give a broadening construction of existing powers, but they cannot assign to one authority powers explicitly granted to another."

The first charge of centralization defeating federalism must therefore fall.

The second charge is that the Centre has been given the power to override the States. This charge must be admitted. But before condemning the Constitution for containing such overriding powers, certain considerations must be borne in mind. The first is that these overriding powers do not form the normal feature of the constitution. Their use and operation are expressly confined to emergencies only. The second consideration is : Could we avoid giving overriding powers to the Centre when an emergency has arisen? Those who do not admit the justification for such overriding powers to the Centre even in an emergency, do not seem to have a clear idea of the problem which lies at the root of the matter. The problem is so clearly set out by a writer in that well-known magazine "The Round Table" in its issue of December 1935 that I offer no apology for quoting the following extract from it. Says the writer :

> "Political systems are a complex of rights and duties resting ultimately on the question, to whom, or to what authority, does the citizen owe allegiance. In normal affairs the question is not present, for the law works smoothly, and a man, goes about his business obeying one authority in this set of matters and another authority in that. But in a moment of crisis, a conflict of claims may arise, and it is then apparent that ultimate allegiance cannot be divided. The issue of allegiance cannot be determined in the last resort by a juristic interpretation of statutes. The law must conform to the facts or so much the worse for the law. When all formalism is stripped away, the bare question is, what authority commands the residual loyalty of the citizen. Is it the Centre or the Constituent State ?"

The solution of this problem depends upon one's answer to this question which is the crux of the problem. There can be no doubt that in the opinion of the vast majority of the people, the residual loyalty of the citizen in an emergency must be to the Centre and not to the Constituent States. For it is only the Centre which can work for a common end and for the general interests of the country as a whole. Herein lies the justification for giving to all Centre certain overriding powers to be used in an emergency. And after all what is the obligation imposed upon the Constituent States by these emergency powers? No more than this – that in an emergency, they should take into consideration alongside their own local interests, the opinions and interests of the nation as a whole. Only those who have not understood the problem, can complain against it.

Here I could have ended. But my mind is so full of the future of our country that I feel I ought to take this occasion to give expression to some of my reflections thereon. On 26th January 1950, India will be an independent country (*Cheers*). What would happen to her independence? Will she maintain her independence or will she lose it again? This is the first thought that comes to my mind. It is not that India was never an independent country. The point is that she once lost the independence she had. Will she lost it a second time? It is this thought which makes me most anxious for the future. What perturbs me greatly is the fact that not only India has once before lost her independence, but she lost it by the infidelity and treachery of some of her own people. In the invasion of Sind by Mahommed-Bin-Kasim, the military commanders of King Dahar accepted bribes from the agents of Mahommed-Bin-Kasim and refused to fight on the side of their King. It was Jaichand who invited Mahommed Gohri to invade India and fight against Prithvi Raj and promised him the help of himself and the Solanki Kings. When Shivaji was fighting for the liberation of Hindus, the other Maratha noblemen and the Rajput Kings were fighting the battle on the side of Moghul Emperors. When the British were trying to destroy the Sikh Rulers, Gulab Singh, their principal commander sat silent and did not help to save the Sikh Kingdom. In 1857, when a large part of India had declared a war of independence against the British, the Sikhs stood and watched the event as silent spectators.

Will history repeat itself? It is this thought which fills me with anxiety. This anxiety is deepened by the realization of the fact that in addition to our old enemies in the form of castes and creeds we are going to have many political parties with diverse and opposing political creeds. Will Indian place the country above their creed or will they place creed above country? I do not know. But this much is certain that if the parties place creed above country, our independence will be put in jeopardy a second time and probably be lost for ever. This eventuality we must all resolutely guard against. We must be determined to defend our independence with the last drop of our blood. (*Cheers*)

On the 26th of January 1950, India would be a democratic country in the sense that India from that day would have a government of the people, by the people and for the people. The same thought comes to my mind. What would happen to her democratic Constitution? Will she be able to maintain it or will she lose it again. This is the second thought that comes to my mind and makes me as anxious as the first.

It is not that India did not know what is Democracy. There was a time when India was studded with republics, and even where there were monarchies, they were either elected or limited. They were never absolute. It is not that India did not know Parliaments or Parliamentary Procedure. A study of the Buddhist Bhikshu Sanghas discloses that not only there were Parliaments-for the Sanghas were nothing but Parliaments – but the Sanghas knew and observed all the rules of Parliamentary Procedure known to modern times. They had rules regarding seating arrangements, rules regarding Motions, Resolutions, Quorum, Whip, Counting of Votes, Voting by Ballot, Censure Motion, Regularization, *Res Judicata*, etc. Although these rules of Parliamentary Procedure were applied by the Buddha to the meetings of the Sanghas, he must have borrowed them from the rules of the Political Assemblies functioning in the country in his time.

This democratic system India lost. Will she lost it a second time? I do not know. But it is quite possible in a country like India – where democracy from its long disuse must be regarded as something quite new – there is danger of democracy giving place to dictatorship. It is quite possible for this new born democracy to retain its form but give place to dictatorship in fact. If there is a landslide, the danger of the second possibility becoming actuality is much greater.

If we wish to maintain democracy not merely in form, but also in fact, what must we do? The first thing in my judgment we must do is to hold fast to constitutional methods of achieving our social and economic objectives. It means we must abandon the bloody methods of revolution. It means that we must abandon the method of civil disobedience, non-cooperation and satyagraha. When there was no way left for constitutional methods for achieving economic and social objectives, there was a great deal of justification for unconstitutional methods. But where constitutional methods are open, there can be no justification for these unconstitutional methods. These methods are nothing but the Grammar of Anarchy and the sooner they are abandoned, the better for us.

The second thing we must do is to observe the caution which John Stuart Mill has given to all who are interested in the maintenance of democracy, namely, not "to lay their liberties at the feet of even a great man, or to trust him with powers which enable him to subvert their institutions". There is nothing wrong in being grateful to great men who have rendered life-long services to the country. But there are limits to gratefulness. As has been well said by the Irish Patriot Daniel O'Connel, no man can be grateful at the cost of his honour, no woman can be grateful at the cost of her chastity and no nation can be grateful at the cost of its liberty. This caution is far more necessary in the case of India than in the case of any other country. For in India, Bhakti or what may be called the path of devotion or hero-worship, plays a part in its politics unequalled in magnitude by the part it plays in the politics of any other country in the world. Bhakti in religion may be a road to the salvation of the soul. But in politics, Bhakti or hero-worship is a sure road to degradation and to eventual dictatorship.

The third thing we must do is not to be content with mere political democracy. We must make our political democracy a social democracy as well. Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean? It means a way of life which recognizes liberty, equality and fraternity as the principles of life. These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty equality could not become a natural course of things. It would require a constable to enforce them. We must begin by acknowledging the fact that there is complete absence of two things in Indian Society. One of these is equality. On the social plane, we have in India a society based on the principle of graded inequality which elevation for some and degradation for others. On the economic plane, we have a society in which there are some who have immense wealth as against many who live in abject poverty. On the 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which is Assembly has to laboriously built up.

The second thing we are wanting in is recognition of the principle of fraternity. what does fraternity mean? Fraternity means a sense of common brotherhood of all Indians-if Indians being one people. It is the principle which gives unity and solidarity to social life. It is a difficult thing to achieve. How difficult it is, can be realized from the story related by James Bryce in his volume on American Commonwealth about the United States of America.

The story is- I propose to recount it in the words of Bryce himself- that-

> "Some years ago the American Protestant Episcopal Church was occupied at its triennial Convention in revising its liturgy. It was thought desirable to introduce among the short sentence prayers a prayer for the whole people, and an eminent New England divine proposed the words `O Lord, bless our nation'. Accepted one afternoon, on the spur of the moment, the sentence was brought up next day for reconsideration, when so many objections were raised by the laity to the word nation' as importing too definite a recognition of national unity, that it was dropped,

and instead there were adopted the words `O Lord, bless these United States."

There was so little solidarity in the U.S.A. at the time when this incident occurred that the people of America did not think that they were a nation. If the people of the United States could not feel that they were a nation, how difficult it is for Indians to think that they are a nation. I remember the days when politically-minded Indians, resented the expression "the people of India". They preferred the expression "the Indian nation." I am of opinion that in believing that we are a nation, we are cherishing a great delusion. How can people divided into several thousands of castes be a nation? The sooner we realize that we are not as yet a nation in the social and psychological sense of the world, the better for us. For then only we shall realize the necessity of becoming a nation and seriously think of ways and means of realizing the goal. The realization of this goal is going to be very difficult – far more difficult than it has been in the United States. The United States has no caste problem. In India there are castes. The castes are anti-national. In the first place because they bring about separation in social life. They are antinational also because they generate jealousy and antipathy between caste and caste. But we must overcome all these difficulties if we wish to become a nation in reality. For fraternity can be a fact only when there is a nation. Without fraternity equality and liberty will be no deeper than coats of paint.

These are my reflections about the tasks that lie ahead of us. They may not be very pleasant to some. But there can be no gainsaying that political power in this country has too long been the monopoly of a few and the many are only beasts of burden, but also beasts of prey. This monopoly has not merely deprived them of their chance of betterment, it has sapped them of what may be called the significance of life. These down-trodden classes are tired of being governed. They are impatient to govern themselves. This urge for self-realization in the down-trodden classes must no be allowed to devolve into a class struggle or class war. It would lead to a division of the House. That would indeed be a day of disaster. For, as has been well said by Abraham Lincoln, a House divided against itself cannot stand very long. Therefore the sooner room is made for the realization of their aspiration, the better for the few, the better for the country, the better for the maintenance for its independence and the better for the continuance of its democratic structure. This can only be done by the establishment of equality and fraternity in all spheres of life. That is why I have laid so much stresses on them.

I do not wish to weary the House any further. Independence is no doubt a matter of joy. But let us not forget that this independence has thrown on us great responsibilities. By independence, we have lost the excuse of blaming the British for anything going wrong. If hereafter things go wrong, we will have nobody to blame except ourselves. There is great danger of things going wrong. Times are fast changing. People including our own are being moved by new ideologies. They are getting tired of Government by the people. They are prepared to have Governments for the people and are indifferent whether it is Government of the people and by the people. If we wish to preserve the Constitution in which we have sought to enshrine the principle of Government of the people, for the people and by the people, let us resolve not to be tardy in the recognition of the evils that lie across our path and which induce people to prefer Government for the people to Government by the people, nor to be weak in our initiative to remove them. That is the only way to serve the country. I know of no better.

Mr. President : The House will adjourn till Ten of the clock tomorrow morning when we shall take up the voting on the motion which was moved by Dr. Ambedkar.

The Assembly then adjourned till Ten of the Clock on Saturday, the 26th November 1949.

[Translation of Hindustani speech.]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME XI

Saturday, the 26th November,1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

ANNOUNCEMENT RE. STATES

Mr. President: I understand that Sardar Patel has to make some announcement regarding the position of the States. Before putting the motion formally to vote I would ask him to make the statement.

The Honourable Sardar Vallabhbhai J. Patel (Bombay: General): Sir, I have a short announcement to make. As honourable Members will recall, in the course of the detailed statement I made before this house on the 12th October on the position of the States under the new Constitution, I appraised honourable Members of the procedure we contemplated regarding the acceptance of the Constitution by the States. I am glad to inform the House that all the nine States specified in Part B of the First Schedule of the Constitution, including the State of Hyderabad, have signified, in the manner indicated in my statement made on October 12th, their acceptance of the Constitution which the House is now going to adopt.

DRAFT CONSTITUTION-*(Contd.)*

Shri B. Das (Orissa: General): Sir, I would like to know if you are going to make a pronouncement as to whether *Vandemataram* should be the national song and what should be our national anthem.

Mr. President: I am not going to make any announcement now. That matter will be considered later on, if necessary, by the Assembly when we meet in January.

I have received two messages from two gentlemen, one of them who was a Member and the other who still continues to be a Member of the Assembly.

The first Message is from His excellency Shri Sri Prakasa:

> "Offer hearty respectful felicitations solemns auspicious occasion putting the Presidential seal confirming Nation's self-wrought Charter of liberty. Earnestly pray we prove worthy of freedom and loyal to Constitution spontaneously availing ourselves of opportunities afforded for country's devoted service -Shri Prakasa".

The second Message is from Dr. Sachchidananda Sinha:

> "If permissible kindly convey Assembly my message. Though privileged to inaugurate as First President its proceedings in December, 1946 but not to take part in their closing tomorrow, due to continued ill-health. I have, with keenest interest and deepest

sympathy followed the work of constitution making and remembering that nothing in this world is or can be perfect or please all and also the patent facts that the area to be covered was tremendous the population multitudinous of hundreds of millions with multiplicity of languages and conflicts of vast and varied interests, it is not at all surprising that there are several problems unsolved. But, to me, it is marvellous that so much unity and integrity should have been evolved in almost all matters reflecting thereby highest credit on the good sense of the Assembly. And no less redounding to you as highly tactful President. As the seniormost Member of the Assembly, I invoke Divine Mercy that your labours may be crowned with fullest success and that the ancient historic land of Bharat may again stand forth great and glorious in the scale of Nations – Sachchidananda Sinha".

Shri Algu Rai Shastri (United Provinces: General): *[Mr. President, before you resume the day's work. I would like to know from you as to when and in which form the Hindi Translation of this Constitution would appear. I had suggested the other day that when we meet before the 26th January, we should give two or three days for general discussion of that translation and authenticate it. Are you going to consider this humble request of mine? You would recollect that you had yourself declared that the Constitution of our Nation would be framed in our own National Language but you have not yet made any definite announcement on this question. I would request that some announcement should be made in this respect. We can sit for two or three days and adopt the Constitution in our National Language. We should pass our Constitution in the language of the country. This language (English) is not the language of the people, it is not the language of the common man. I, therefore, request you in the name of Indian nationalism and in the name of Indian people to make a definite announcement in this respect.]

Mr. President: *[You would be aware that some articles have been adopted in the Constitution wherein it has been decided which would be the language for official use. Therein it has also been decided that for the next 15 years all official work at the Centre would be carried in English. And if it is considered necessary and expedient, Hindi may also find some place therein. At present perhaps it will not be possible to place the Constitution in Hindi before this House and to get it adopted. Besides this, the Constituent Assembly has itself passed a resolution directing me to publish the Hindi translation of the Constitution by the 26th of January. I am making arrangements for that and the translation would be published by the 26th of January.

I would also, as soon as possible, get it translated and published in other languages. It is therefore not opportune to get the Constitution prepared in Hindi, discuss it and to adopt it here.]

Shri R. V. Dhulekar (United Provinces: General): *[Will it be possible to get it signed by us, when the Constituent Assembly adopts it here?]

Mr. President: *[I do not know whether all the Members of the Assembly would be prepared to accept the translation. It can be done after full consideration of every word and every phrase. This may perhaps take as much time as had been taken by the English version. So it does not seem to be possible. But the translation will be ready.]

Shri R. V. Dhulekar: *[My request is not that the translation should be adopted by the Assembly on the 26th January, but it should be decided that it would come into force from that day.]

Mr. President: *[That translation will be published on my behalf. The people would judge it for what it is worth.]*

Before I formally put the motion which was moved by Dr. Ambedkar, I desire to say a few words.

I desire to congratulate the Assembly on accomplishing a task of such tremendous magnitude. It is not my purpose to appraise the value of the work that the Assembly has done or the merits or demerits of the Constitution which it has framed. I am content to leave that to others and to posterity. I shall attempt only to point out some of its salient features and the method which we have pursued in framing the Constitution.

Before I do that, I would like to mention some facts which will show the tremendousness of the task which we undertook some three years ago. If you consider the population with which the Assembly has had to deal, you will find that it is more than the population of the whole of Europe minus Russia, being 319 millions as against 317 millions. The countries of Europe have never been able to join together or coalesce even in a Confederacy, much less under one unitary Government. Here, in spite of the size of the population and the country, we have succeeded in framing a Constitution which covers the whole of it. Apart from the size, there were other difficulties which were inherent in the problem itself. We have got many communities living in this country. We have got many languages prevalent in different parts of it. We have got other kinds of differences dividing the people in the different parts from one another. We had to make provision not only for areas which are advanced educationally and economically; we had also to make provision for backward people like the Tribes and for backward areas like the Tribal areas. The communal problem had been one of the knottiest problems which the country has had before it for a pretty long time. The Second Round Table Conference which was attended by Mahatma Gandhi failed because the communal problem could not be solved. The subsequent history of the country is too recent to require narration here; but we know this that as a result, the country has had to be divided and we have lost two big portions in the north-east and north-west.

Another problem of great magnitude was the problem of the Indian States. When the British came to India, they did not conquer the country as a whole or at one stroke. They got bits of it from time to time. The bits which came into their direct possession and control came to be known as British India; but a considerable portion remained under the rule and control of the Indian Princes. The British thought at the time that it was not necessary or profitable for them to take direct control of those territories, and they allowed the old Rulers to continue subject to their suzerainty. But they entered into various kinds of treaties and engagements with them. We had something near six hundred States covering more than one-third of the territory of India and one-fourth of the population of the country. They varied in size from small tiny principalities to big States like Mysore, Hyderabad, Kashmir, etc. When the British decided to leave this country, they transferred power to us; but at the same time, they also declared that all the treaties and engagements they had with the Princes had lapsed. The paramountcy which they had so long exercised and by which they could keep the Princes in order also lapsed. The Indian Government was them faced with the problem of tackling these States which had different traditions of rule, some of them having some form of popular representation in Assemblies and some having no semblance of anything like that, and governing completely autocratically.

As a result of the declaration that the treaties with the Princes and Paramountcy had lapsed, it became open to any Prince or any combination of Princes to assume independence and even to enter into negotiations with any foreign power and thus become islands of independent territory within the country. There were undoubtedly geographical and other compulsions which made it physically impossible for most of them to go against the Government of India but constitutionally it had become possible. The Constituent Assembly therefore had at the very beginning of its labours, to enter into negotiations with them to bring their representatives into the Assembly so that a constitution might be framed in consultation with them. The first efforts were successful and some of them did join this Assembly at an early stage but others hesitated. It is not necessary to pry into the secrets of what was happening in those days behind the scenes. It will be sufficient to state that by August 1947 when the Indian Independence Act came into force, almost all of them with two notable exceptions, Kashmir in the north and Hyderabad in the South, had acceded to India. Kashmir soon after followed the example of others and acceded. There were standstill agreements with all of them including Hyderabad which continued the *status quo*. As time passed, it became apparent that it was not possible at any rate for the smaller States to maintain their separate independence existence and then a process of integration with India started. In course of time not only have all the smaller States coalesced and become integrated with some province or other of India but some of the larger ones also have joined. Many of the States have formed Unions of their own and such Unions have become part of the Indian Union. It must be said to the credit of the Princes and the people of the States no less than to the credit of the States Ministry under the wise and far-sighted guidance of Sardar Vallabhbhai Patel that by the time we have been able to pass this Constitution, the States are now more or less in the same position as the Provinces and it has become possible to describe all of them including the Indian States and the Provinces as States in the Constitution. The announcement which has been made just now by Sardar Vallabhbhai Patel makes the position very clear, and now there is no difference between the States, as understood before, and the provinces in the New Constitution.

It has undoubtedly taken us three years to complete this work, but when we consider the work that has been accomplished and the number of days that we have spent in framing this Constitution, the details of which were given by the Honourable Dr. B. R. Ambedkar, yesterday, we have no reason to be sorry for the time spent.

It has enabled the apparently intractable problem of the States and the communal problem to be solved. What had proved insoluble at the Round Table Conference and had resulted in the division of the country has been solved with the consent of all parties concerned, and again under the wise guidance of Honourable Sardar Vallabhbhai Patel.

At first we were able to get rid of separate electorates which had poisoned our political life for so many years, but reservation of seats for the communities which enjoyed separate electorates before had to be conceded, although on the basis of their population and not as had been done in the Act of 1919 and the Act of 1935 of giving additional representation on account of the so-called historical and other superiority claimed by some of the communities. It has become possible only because the Constitution was not passed earlier that even reservation of seats has been given up by the communities concerned and so our Constitution does not provide for reservation of seats on communal basis, but for reservation only in favour of two classes of people in our population, namely, the depressed classes who are Hindus and the tribal people, on account of their backwardness in education and in other respects. I therefore see no reason to be apologetic about the delay.

The cost too which the Assembly has had to incur during its three year's existence is not too high when you take into consideration the factors going to constitute it. I understand that the expenses up to the 22nd of November come to Rs. 63,96,729/-.

The method which the Constituent Assembly adopted in connection with the Constitution was first to lay down its 'terms of reference' as it were in the form of an Objective Resolution which was moved by Pandit Jawaharlal Nehru in as inspiring speech and which constitutes now the Preamble to our Constitution. It then proceeded to appoint a number of committees to deal with different aspects of the Constitutional problem. Dr. Ambedkar mentioned the names of these Committees. Several of these had as their Chairman either Pandit Jawaharlal Nehru or Sardar Patel to whom thus goes the credit for the fundamentals of our Constitution. I have only to add that they all worked in a business-like manner and produced reports which were considered by the Assembly and their recommendations were adopted as the basis on which the draft of the Constitution had to be prepared. This was done by Mr. B. N. Rau, who brought to bear on his task a detailed knowledge of Constitutions of other countries and an extensive knowledge of the conditions of this country as well as his own administrative experience. The Assembly then appointed the Drafting Committee which worked on the original draft prepared by Mr. B. N. Rau and produced the Draft Constitution which was considered by the Assembly at great length at the second reading stage. As Dr. Ambedkar pointed out, there were not less than 7,635 amendments of which 2,473 amendments were moved. I am mentioning this only to show that it was not only the Members of the Drafting Committee who were giving their close attention to the Constitution, but other Members were vigilant and scrutinizing the

Draft in all its details. No wonder, that we had to consider not only each article in the Draft, but practically every sentence and sometimes, every word in every article. It may interest honourable members to know that the public were taking great interest in its proceedings and I have discovered that no less than 53,000visitors were admitted to the Visitors gallery during the period when the Constitution has been under consideration. In the result, the Draft Constitution has increased in size, and by the time it has been passed, it has come to have 395 articles and 8 schedules, instead of the 243 articles and 13 schedules of the original Draft of Mr. B. N. Rau. I do not attach much importance to the complaint which is sometimes made that it has become too bulky. If the provisions have been well thought out, the bulk need not disturb the equanimity of our mind.

We have now to consider the salient features of the Constitution. The first question which arises and which has been mooted is as to the category to which this Constitution belongs. Personally, I do not attach any importance to the label which may be attached to it – whether you call it Federal Constitution or Unitary Constitution or by any other name. It makes no difference so long as the Constitution serves our purpose. We are not bound to have a constitution which completely and fully falls in line with known categories of constitutions in the world. We have to take certain facts of history in our own country and the Constitution has not to an inconsiderable extent been influenced by such realities as facts of history.

You are all aware that until the Round Table conference of 1930, India was completely a Unitary Government, and the provinces derived whatever power they possessed from the Government of India. It was there for the first time that the question of Federation in a practical form arose which would include not only the provinces but also the many States that were in existence. The Constitution of 1935 provided for a Federation in which both the provinces of India and the States were asked to join. But the federal part of it could not be brought into operation, because terms on which the Princes could agree to join it could not be in settled in spite of prolonged negotiation. And, when the war broke out, that part of the Constitution had practically to be abrogated.

In the present Constitution it has been possible not only to bring in practically all the States which fell within our geographical limits, but to integrate the largest majority of them in India, and the Constitution as it stands practically makes no difference so far as the administration and the distribution of powers among the various organs of the State are concerned between what were the Provinces and what were Indian States before. They are all now more or less on the same footing and, as time passes, whatever little distinction still exists is bound to disappear. Therefore, so far as labelling is concerned, we need not be troubled by it.

Well, the first and the most obvious fact which will attract any observer is the fact that we are going to have a Republic. India knew republics in the past olden days, but that was 2,000 years ago or more and those republics were small republics. We never had anything like the Republic which we are going to have now, although there were empires in those days as well as during the Mughal period which covered very large parts of the country. The President of the Republic will be an elected President. We never have had an elected Head of the State which covered such a large area of India. And it is for the first time that it becomes open to the humblest and the lowliest citizens of the country to deserve and become the President or the Head of this big State which counts among the biggest States of the world today. This is not a small matter. But because we have an elected President, some of the problems which are of a very difficult nature have arisen. We have provided for the election of the President. We have provided for an elected legislature which is going to have supreme authority. In America, the legislature and the President are both elected and, there both have more or less equal powers – each in its or his own sphere, the President in the executive sphere and the legislature in the legislative sphere.

We considered whether we should adopt the American model or the British model where we have a hereditary king who is the fountain of all honour and power, but who does not actually enjoy any power. All the power rests in the Legislature to which the Ministers are responsible. We have had to reconcile the position of an elected President with an elected Legislature and, in doing so, we have adopted more or less the position of the British Monarch for the President. This may or may not be satisfactory. Some people think too much power has been given to the President; others think that the President, being an elected President, should have even more powers than are given to him.

If you look at it from the point of view of the electorate which elects the Parliament and which elects the President, you will find that practically the entire adult population of the country joins in electing this Parliament and it is not only the Members of the Parliament of India but also the Members of the Legislative Assemblies of the States who join in electing the President. It thus comes about that, while the Parliament and Legislative Assemblies are elected by the adult population of the country as a whole, the President is elected by representatives who represent the entire population twice over, once as representatives of the States and again as their representatives in the Central Parliament of the country. But although the President is elected by the same electorate as the Central and State Legislatures, it is as well that his position is that of a Constitutional President.

Then we come to the Ministers. They are of course responsible to the Legislature and tender advice to the President who is bound to act according to that advice. Although there are no specific provisions, so far as I know, in the Constitution itself making it binding on the President to accept the advice of his Ministers, it is hoped that the convention under which in England the King acts always on the advice of his Ministers will be established in this country also and, the president, not so much on account of the written word in the Constitution, but as the result of this very healthy convention, will become a Constitutional President in all matters.

The Central Legislature consists of two Houses known as the House of People and the Council of States which both together constitute the Parliament of India. In the Provinces, or States as they are now called, we shall have a Legislative Assembly in all of them except those which are mentioned in Parts C and D of Schedule I, but every one of them will not have a Second Chamber. Some of the provinces, whose representatives felt that a Second Chamber is required for them, have been provided with a Second Chamber. But there is a provision in the Constitution that if a province does not want such a Second Chamber to continue or if a province which has not got one wants to establish one, the wish has to be expressed through the Legislature by a majority of two-thirds of the Members voting and by a majority of the total number of Members in the Legislative Assembly. So, even while providing some of the States with Second Chambers, we have provided also for their easy removal or for their easy establishment by making this kind of amendment of the Constitution not a Constitutional Amendment, but a matter of ordinary parliamentary legislation.

We have provided for adult suffrage by which the legislative assemblies in the provinces and the House of the People in the Centre will be elected. It is a very big step that we have taken. It is big not only because our present electorate is a very much smaller electorate and based very largely on property qualification, but it is also big because it involves tremendous numbers. Our population now is something like 320 millions if not more and we have found from experience gained during the enrolment of voters that has been going on in the provinces that 50 per cent. roughly representing the adult population. And on that basis we shall have not less than 160 million voters on our rolls. The work of organising election by such vast numbers is of tremendous magnitude and there is no other country where election on such a large scale has ever yet been held.

I will just mention to you some facts in this connection. The legislative assemblies in the provinces, it is roughly calculated, will have more than 3,800 members who will have to be elected in as many constituencies or perhaps a few less. Then there will be something like 500 members for the House of the People and about 220 Members for the Council of States. We shall thus have to provide for the election of more than 4,500 members and the country will have to be divided into something like 4,000 constituencies or so. I was the other day, as a matter of amusement, calculating what our electoral roll will look like. If you print 40 names on a page of foolscap size, we shall require something like 20 lakhs of sheets of foolscap size to print all the names of the voters, and if you combine the whole thing in one volume, the thickness of the volume will be something like 200 yards. That alone gives us some idea of the vastness of the task and the work involved in finalising the rolls, delimiting Constituencies, fixing polling stations and making other arrangements which will have to be done between now and the winter of 1950-51 when it is hoped the elections may be held.

Some people have doubted the wisdom of adult franchise. Personally, although I look upon it as an experiment the result of which no one will be able to forecast today, I am not dismayed by it. I am a man of the village and although I have had to live in cities for a pretty long time, on account of my work, my roots are still there. I, therefore, know the village people who will constitute the bulk of this vast electorate. In my opinion, our people possess intelligence and commonsense. They also have a culture which the sophisticated people of today many not appreciate, but which is solid. They are not literate and do not possess the mechanical skill of reading and writing. But, I have no doubt in my mind that they are able to take measure of their own interest and also of the interests of the country at large if things are explained to them. In fact, in some respects, I consider them to be even more intelligent than many a worker in a factory, who loses his individuality and becomes more or less a part of the machine which he has to work. I have, therefore, no doubt in my mind that if things are explained to them, they will not only be able to pick up the technique of election, but will be able to cast their votes in an intelligent manner and I have, therefore, no misgivings about the future, on their account. I cannot say the same thing about the other people who may try to influence them by slogans and by placing before them beautiful pictures of impracticable programmes. Nevertheless, I think their sturdy commonsense will enable them to see things in the right perspective. We can, therefore, reasonably hope that we shall have legislatures composed of members who shall have their feet on the ground and who will take a realistic view of things.

Although provision has been made for a second chamber in the Parliament and for second chambers in some of the States, it is the popular House which is supreme. In all financial and money matters, the supremacy of the popular House is laid down in so many words. But even in regard to other matters where the Upper Chamber may be said to have equal powers for initiating and passing laws, the supremacy of the popular House is assured. So far as Parliament is concerned, if a difference arises between the two Chambers, a joint session may be held; but the Constitution provides that the number of Members of the Council of States shall not be more than 50 percent. of the Members of the House of the People. Therefore, even in the case of a joint session, the supremacy of the House of the People is maintained, unless the majority in that very House is a small one which will be just a case in which its supremacy should not prevail. In the case of provincial legislatures, the decision of the Lower House, prevails if it is taken a second time. The Upper Chamber therefore can only delay the passage of Bills for a time, but cannot prevent it. The President or the Governor, as the case may be, will have to give his assent to any legislation, but that will be only on the advice of his Ministry which is responsible ultimately to the popular House. Thus, it is the will of the people as expressed by their representatives in the popular Chamber that will finally determine all matters. The second Chamber and the President or the Governor can only direct reconsideration and can only cause some delay; but if the popular Chamber is determined, it will have its way under the Constitution. The Government therefore of the country as a whole, both in the Centre and in the Provinces, will rest on the will of the people which will be expressed from day to day through their representatives in the legislatures and, occasionally directly by them at the time of the general elections.

We have provided in the Constitution for a judiciary which will be independent. It is difficult to suggest anything more to make the Supreme Court and the High Courts independent of the influence of the Executive. There is an attempt made in the Constitution to make even the lower judiciary independent of any outside or extraneous influence. One of our articles makes it easy for the State Governments to introduce separation of Executive from Judicial functions and placing the magistracy which deals with criminal cases on similar footing as Civil Courts. I can only express the hope that this long overdue reform will soon be introduced in the States.

Our Constitution has devised certain independent agencies to deal with particular matters. Thus, it has provided for Public Service Commission both for the Union and for the States and placed such Commission on an independent footing so that they may discharge their duties without being influenced by the Executive. One of the things against which we have to guard is that there should be no room as far as it is humanly possible for jobbery, nepotism and favouritism. I think the provisions which we have introduced into our Constitution will be very helpful in this direction.

Another independent authority is the Comptroller and Auditor-General who will watch our finances and see to it that no part of the revenues of India or of any of the States is used for purposes and on items without due authority and whose duty it will be otherwise to keep our accounts in order. When we consider that our Governments will have to deal with hundreds of crores, it becomes clear how important and vital this Department will be. We have provided another important authority, i.e., the Election Commissioner whose function it will be to conduct and supervise the elections to the Legislatures and to take all other necessary action and connection with them. One of the dangers which we have to face arises out of any corruption which parties, candidates or the Government in power may practise. We have had no experience of democratic elections for a long time except during the last few years and now that we have got real power, the danger of corruption is not only imaginary. It is therefore as well that our Constitution guards against this danger and makes provision for an honest and straightforward election by the voters. In the case of the Legislature, the High Courts, the Public Services Commission, the Comptroller and Auditor-General and the Election Commissioner, the Staff which will assist them in their work has also been placed under their control and in most of these cases their appointment, promotion and discipline vest in the particular institution to which they belong thus giving additional safeguards about their independence.

The Constitution has given in two Schedules, namely Schedules V and VI, special provisions for administration and control of Scheduled Areas and Scheduled Tribes. In the case of the Tribes and Tribal Areas in States other than Assam, the Tribes will be able to influence the administration through the Tribes Advisory Council. In the case of the Tribes and Tribal Areas in Assam, they are given larger powers through their district Councils and Autonomous Regional Councils. There is, further provision for a Minister in the State Ministries to be in charge of the welfare of the Tribes and the Scheduled Castes and a Commission will also report about the way in which the areas are administered. It was necessary to make this provision on account of the backwardness of the Tribes which require protection and also because their own way of solving their own problems and carrying on their Tribal life. These provisions have given them considerable satisfaction as the provision for the welfare and protection of the Scheduled Castes has given satisfaction to them.

The Constitution has gone into great details regarding the distribution o power and functions between the Union and the States in all aspects of their administrative and other activities. It has been said by some that the powers given to the Centre are too many and too extensive and the States have been deprived of power which should really belong to them in their own fields. I do not wish to pass any judgment on this criticism and can only say that we cannot be too cautious about our future, particularly when we remember the history of this country extending over many centuries. But such powers as have been given to the Centre to act within the sphere of the States relate only to emergencies, whether political or financial and economic, and I do not anticipate that there will be any tendency on the part of the Centre to grab more power than is necessary for good administration of the country as a whole. In any case the Central Legislature consists of representatives from the

States and unless they are convinced of their over-riding necessity, they are not likely to consent to the use of any such powers by the Central executive as against the States whose people they represent. I do not attach much importance to the complaint that residuary powers have been vested in the Union. Powers have been very meticulously and elaborately defined and demarcated in the three lists of Schedule Seven, and the residue whatever it may be, is not likely to cover any large field, and, therefore, the vesting of such residuary powers does not mean any very serious derogation in fact from the power which ought to belong to the States.

One of the problems which the Constituent Assembly took considerable time in solving relates to the language for official purposes of the country. There is a natural desire that the we should have our own language, and in spite the difficulties on account of the multiplicity of languages prevalent in the country, we have been able to adopt Hindi which is the language that is understood by the largest number of people in the country as our official language. I look upon this as a decision of very great importance when we consider that in a small country like Switzerland they have no less than three official languages and in South Africa two official languages. It shows a spirit of accommodation and a determination to organize the country as one nation that those whose language is not Hindi have voluntarily accepted it as the official language. (Cheers). There is no question of imposition now. English during the period of British rule, Persian during the period of the Muslim Empire were Court and official languages. Although people have studies them and have acquired proficiency in them, nobody can claim that they were voluntarily adopted by the people of the country at large. Now for the first time in our history we have accepted one language which will be the language to be used all over the country for all official purposes, and let me hope that it will develop into a national language in which all will feel equal pride while each area will be not only free, but also encouraged to develop its own peculiar language in which its culture and its traditions are enshrined. The use of English during the period of transition was considered inevitable for practical reasons and no one need be despondent over this decision, which has been dictated purely by practical considerations. It is the duty of the country as a whole now and especially of those whose language is Hindi to so shape and develop it as to make it the language in which the composite culture of India can find its expression adequately and nobly.

Another important feature of our Constitution is that it enables amendments to be made without much difficulty. Even the constitutional amendments are not as difficult as in the case of some other countries, but many of the provisions in the Constitution are capable of being amended by the Parliament by ordinary acts and do not require the procedure laid down for constitutional amendments to be followed. There was a provision at one time which proposed that amendments should be made easy for the first five years after the Constitution comes into force, but such a provision has become unnecessary on account of the numerous exceptions which have been made in the Constitution itself for amendments without the procedure laid down for constitutional amendments. On the whole, therefore, we have been able to draft a Constitution which I trust will serve the country well.

There is a special provision in our Directive Principles to which I attach great importance. We have not provided for the good of our people only but have laid down in our directive principles that our State shall endeavour to promote material peace and security, maintain just and honourable relations between nations, foster respects for international law and treaty obligations and encourage settlement of international disputes by arbitration. In a world torn with conflicts, in a world which even after the devastation of two world wars is still depending on armaments to establish peace and goodwill, we are destined to play a great part, if we prove true to the teachings of the Father of the Nation and give effect to this directive principle in our Constitution. Would to God that he would give us the wisdom and the strength to pursuance this path in spite of the difficulties which beset us and the atmosphere which may well choke us. Let us have faith in ourselves and in the teachings of the Master whose portrait hangs over my head and we shall fulfil the hopes and prove true to the best interests of not only our country but of the world at large.

I do not propose to deal with the criticism which relate mostly to the articles in the part dealing with Fundamental Rights by which absolute rights are curtailed and the articles dealing with Emergency Powers. Other Members have dealt with these objections at great length. All that I need state at this stage is that the present conditions of the country and tendencies which are apparent have necessitated these provisions which are also based on the experience of other countries which have had to enforce them through judicial decisions, even when they were not provided for in the Constitution.

There are only two regrets which I must share with the honourable Members I would have liked to have some qualifications laid down for members of the Legislatures. It is anomalous that we should insist upon high qualifications for those who administer or help in administering the law but none for those who made it except that they are elected. A law giver requires intellectual equipment but even more than that capacity to take a balanced view of things to act independently and above all to be true to those fundamental things of life – in one word – to have character *(Hear, hear).* It is not possible to devise any yardstick for measuring the moral qualities of a man and so long as that is not possible, our Constitution will remain defective. The other regret is that we have not been able to draw up our first Constitution of a free Bharat in an Indian language. The difficulties in both cases were practical and proved insurmountable. But that does not make the regret any the less poignant.

We have prepared a democratic Constitution. But successful working of democratic institutions requires in those who have to work them willingness to respect the view points of others, capacity for compromise and accommodation. Many things which cannot be written in a Constitution are done by conventions. Let me hope that we shall show those capacities and develop those conventions. The way in which we have been able to draw this Constitution without taking recourse to voting and to divisions in Lobbies strengthens that hope.

Whatever the Constitution may or may not provide, the welfare of the country will depend upon the way in which the country is administered. That will depend upon the men who administer it. It is a trite saying that a country can have only the Government it deserves. Our Constitution has provision in it which appear to some to be objectionable from one point or another. We must admit that the defects are inherent in the situation in the country and the people at large. If the people who are elected are capable and men of character and integrity, they would be able to make the best even of a defective Constitution. If they are lacking in these, the Constitution cannot help the country. After all, a Constitution like a machine is a lifeless thing. It acquires life because of the men who control it and operate it, and India needs today nothing more than a set of honest men who will have the interest of the country before them. There is a fissiparous tendency arising out of various elements in our life. We have communal differences, caste differences, language differences, provincial differences and so forth. It requires men of strong character, men of vision, men who will not sacrifice the interests of the country at large for the sake of smaller groups and areas and who will rise over the prejudices which are born of these differences. We can only hope that the country will throw up such men in abundance. I can say this from the experience of the struggle that we have had during the period of the freedom movement that new occasions throw up new men; not once but almost on every occasion when all leading men in the Congress were clapped into prison suddenly without having the time to leave instructions to others and even to make plans for carrying on their campaigns, people arose from amongst the masses who were able to continue and conduct the campaigns with intelligence, with initiative, with capacity for organization which nobody suspected they possessed. I have no doubt that when the country needs men of character, they will be coming up and the masses will throw them up. Let not those who have served in the past therefore rest on their oars, saying that they have done their part and now has come the time for them to enjoy the fruits of their labours. No such time comes to anyone who is really earnest about his work. In India today I feel that the work that confronts us is even more difficult than the work which we had when we were engaged in the struggle. We did not have then any conflicting claims to reconcile, no loaves and fishes to distribute, no powers to share. We have all these now, and the temptations are really great. Would to God that we shall have the wisdom and the strength to rise above them, and to serve the country which we have succeeded in liberating.

Mahatma Gandhi laid stress on the purity of the methods which had to be pursued for attaining our ends. Let us not forget that this teaching has eternal value and was not intended only for the period of stress and struggle but has as much authority and value today as it ever had before. We have a tendency to blame others for everything that goes wrong and not to introspect and try to see if we have any share in it or not. It is very much easier to scan one's own actions and motives if one is inclined to do so than to appraise correctly the actions and motives of others. I shall only hope that all those whose good fortune it may be to work this Constitution in future will remember that it was a unique victory which we achieved by the unique method taught to us by the Father of the Nation, and it is up to us to preserve and protect the independence that we have won and to make it really bear fruit for the man in the street. Let us launch on this new enterprise of running our Independent Republic with confidence, with truth and non-violence and above all with heart within and God over head.

Before I close, I must express my thanks to all the Members of this august Assembly from whom I have received not only courtesy but, if I may say so, also their respect and affection. Sitting in the Chair and watching the proceedings from day to day. I have realised as nobody else could have, with what zeal and devotion the members of the Drafting Committee and especially its Chairman, Dr. Ambedkar in spite of his indifferent health, have worked. (Cheers). We could never make a decision which was or could be ever so right as when we put him on the Drafting Committee and made him its Chairman. He has not only justified his selection but has added luster to the work which he has done. In this connection, it would be invidious to make any distinction as among the other members of the Committee. I know they have all worked with the same zeal and devotion as its Chairman, and they deserve the thanks of the country.

I must convey, if you will permit me, my own thanks as well as the thanks of the house to our Constitutional Adviser, Shri B. N. Rau, who worked honorarily all the time that he was here, assisting the Assembly not only with his knowledge and erudition but also enabled the other Members to perform their duties with thoroughness and intelligence by supplying them with the material on which they could work. In this he was assisted by his band and research workers and other members of the staff who worked with zeal and devotion. Tribute has been paid justly to Shri S. N. Mukerjee who has proved of such invaluable help to the Drafting Committee.

Coming to the staff of the Secretariat of the Constituent Assembly I must first mention and thank the Secretary, Mr. H. V. R. Yengar, who organised the Secretariat as an efficient working body. Although latterly when the work began to proceed with more or less clock-work regularity, it was possible for us to relieve him of part of his duties to take up other work, but he has never lost touch with our Secretariat or with the work of the Constituent Assembly.

The members of the staff have worked with efficiency and with devotion under our Deputy Secretary Shri Jugal Kishore Khanna. It is not always possible to see their work which is done removed from the gaze of the Members of this Assembly but I am sure the tribute which Member after Members has paid to their efficiency and devotion to work is thoroughly deserved. Our Reports have done their work in a way which will give credit to them and which has helped in the preservation of a record of the proceedings of the Assembly which have been long and taxing. I must mention the translators as also the Translation Committee under the Chairmanship of Honourable Shir G. S. Gupta who have had a hard job in finding Hindi equivalents for English terms used in the Constitution. They are just now engaged in helping a Committee of Linguistic Experts in evolving a vocabulary which will be acceptable to all other languages as equivalents to English words used in the Constitution and in law. The Watch and Ward officers, and the Police and last though not least the Marshall have all performed their duties to our satisfaction. (Cheers). I should not forget the peons and even the humbler people. They have all done their best. It is necessary for me to say all this because with the completion of the work of Constitution-framing, most of them who have been working on a temporary basis, will be out of employment unless they could be absorbed in other Departments and Ministries. I do hope that it will be possible to absorb them (hear, hear) as they have considerable experience and are willing and efficient set of workers. All deserve my thanks as I have received courtesy, co-operation and loyal service from all *(Prolonged Cheers.)*

It now remains to put the motion which was moved by Dr. Ambedkar, to the vote of the House. The question is :

"That the Constitution as settled by the Assembly be passed."

The motion was adopted, (Prolonged Cheers).

Mr. President : I have now formally to sign the Bill which has now become an Act, by way of its authentication so that it may get authority and come into force immediately.

Dr. Raghuvira (C. P. & Berar : General) : * [Will you sign in Hindi ?]

Mr. President : * [Why do you ask that question?]

Mr. President then authenticated the Constitution.

Mr. President : Before the House adjourns, there is one formal matter to be gone through, and that is to give me authority to call another session of the Assembly in January.

Shri Satyanarayan Sinha (Bihar : General) : Sir, I move :

"Resolved that the Constituent Assembly do adjourn till such date before the 26th of January 1950 as the President may fix."

Mr. President : The question is :

"Resolved that the Constituent Assembly do adjourn till such date before the 26th of January, 1950 as the President may. "

The motion was adopted

Mr. President : Before we adjourn, I would like to go round and shake hands with all the Members as I did when you first elected me to this place.

The Honourable Pandit Jawaharlal Nehru (United Provinces : General) : We shall come there and shake hands one by one, sir.

(The honourable Members then shook hands with Mr. President one by one.)

Mr. President : The House is adjourned *sine die*.

The Assembly then adjourned until a date before the 26th of January 1950, to be fixed by the President.

[Translation of Hindustani speech]

CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME XII

Tuesday, the 24th January 1950

The Constituent Assembly met in the Constitution Hall, New Delhi, at Eleven of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad), in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Members took the Pledge and signed the Register :-

Shri Ratnappa Bharmappa Kurnbhar (Bombay States).

Dr. Y. S. Parmar (Himachal Pradesh).

STATEMENT *RE:* NATIONAL ANTHEM

Mr. President: There is one matter which has been pending for discussion, namely the question of the National Anthem. At one time it was thought that the matter might be brought up before the House and a decision taken by the House by way of a resolution. But it has been felt that, instead of taking a formal decision by means of a resolution, it is better if I make a statement with regard to the National Anthem. Accordingly I make this statement.

The composition consisting of the words and music known as Jana Gana Mana is the National Anthem of India, subject to such alterations in the words as the Government may authorise as occasion arises; and the song Vande Mataram, which has played a historic part in the struggle for Indian freedom, shall be honoured equally with Jana Gana Mana and shall have equal status with it. *(Applause).* I hope this will satisfy the Members.

ELECTION OF NEW MEMBERS

Shri B. Das (Orissa : General) : Sir, before we dispersed on the last occasion, we gave full power to you, the Honourable President of the Constituent Assembly of India, to direct the provincial Governments and the Government of India about the way in which elections Will take place for the seats vacated by the displaced persons, who will not be Members of this place any more. Further, we read in the papers that the Honourable the Prime Minister made a statement that more women should be elected to the Parliament. We saw certain statement issued by Rashtrapati Dr. Pattabhi Sitaramayya in connection with election of more women Members.

An Honourable Member: On a point of order, Sir.

Shri B. Das : There is no occasion for any point of order now. The present position, I may say, is that the United Provinces has sent two lady Members in place of three now displaced. The Orissa province has not sent any lady Member. No other Province has made any extra effort to send in lady Members. Women are about 50 per cent of the population. I do not want that they should give battle at the time of the next elections on this ground. I do not want a pitched battle between Man and Woman.

Mr. President: I think if you only put a question I may answer it.

Shri H. V. Kamath (C. P. & Berar: General) : May I request you, Sir, to be so good as to tell the House whether any steps were taken to secure the representation of Hyderabad in this Assembly, and if so, at what stage, the matter stands today ? That is the only State that has not so far sent any Member to this Assembly.

Mr. President: I shall answer the questions one by one. So far as filling the vacancies which arose on account of the elimination of Members who were also members of the provincial legislatures is concerned, the rules were amended and elections have been held in accordance with those rules. According to the decision of the House and according to those rules there are no seats reserved for women. It was left to the electorate to elect women. Such persons as have been elected will come to this House and we could not compel any electorate to send in women only.

As regards the other question, I am not in a position to say as to what steps have been or have not been taken. That is really a matter for the Government.

Shri H. V. Kamath: May I know if any instructions were issued from your office ?

Mr. President: We had asked all those who are entitled to send Members to this House to send their representatives. That has been done and nothing further has happened after that.

Shri H. J. Khandekar (C. P. & Berar: General) : May I know whether any instructions were issued by you or by your office to fill the seats vacated by Scheduled Castes by Members from the aboriginal tribes ?

Mr. President: I do not think there were any such instructions issued.

Shri H. J. Khundekar: But there were some instructions issued to some Provinces that the Harijan seats should be filled by the aboriginal tribes.

Mr. President : I do not know.

Shri H. J. Khandekar: Were such instructions issued in Orissa?

Mr. President: I do not know.

Prof. Shibban Lal Saksena (United Provinces: General) : May I know whether any Hindi translation of the Constitution has been prepared ?

Mr. President: Yes, it is ready.

Shri H. J. Khandekar: May I request you to enquire into the matter as regards Orissa where from a member of the aboriginal-tribe is elected to this House in place of a Harijan ?

Mr. President : If I continue in this place I will enquire about it.

ELECTION OF PRESIDENT OF INDIA

Mr. President: The next item is the announcement of the result of the elections. I call upon Shri H. V. R. Iengar, the Returning Officer and the Secretary of the Constituent Assembly to make the announcement.

Shri H. V. R. Iengar (Returning Officer and Secretary, Constitutent Assembly) Mr. President, I have to inform honourable Members that only one nomination paper has been received for the office of the President of India. The name of that candidate is Dr. Rajendra Prasad. *(Loud and prolonged cheers.)* His nomination has been proposed by Pandit Jawaharlal Nehru *(Renewed Cheers)* and seconded by Sardar Vallabhbhai Patel (*Continued Cheers*), Under sub-rule (1) of rule 8 of the Rules for the election of the President, I hereby declare Dr. Rajendra Prasad to be duly elected to the Office of President of India. *(Prolonged Cheers).*

The Honourable Shri Jawaharlal Nehru (United Provinces. General) : Mr. President, may I, Sir, on my own behalf and on behalf of every Member of this honourable House offer you respectful congratulations on this high honour that has been conferred upon you ? It is more than three years since we began the work of this Constituent Assembly under your leadership, and during these three years much has happened in this country which has changed the face of this country. We have aced turmoil and crisis repeatedly but we have gone on with the work of making a Constitution for the public of India, and now we have accomplished that task. That chapter is closed. Fresh labours await us and another chapter begins in a day or two. Not only have we had experience of your able leadership during these three years of great difficulty but many of us have known you for three and thirty years or so as a soldier of India, ever in the forefront of the battle for freedom. *(Cheers).* So, we welcome you Sir, as our leader, as the Head of the Republic of India, and as a comrade who has faced without flinching all the crisis and troubles that have confronted this country during the past generation. One task is accomplished today in this Assembly an this Assembly will cease to be, having done its work or rather it will suffer a sea change and emerge as the Parliament of the Republic of India. One task is accomplished that we, set for us long ago. Other tasks now confront us. One dream that we dreamt for years past has been realised, but we confront again other dreams and other tasks, perhaps more arduous than the one we have already accomplished. It is a comfort for us ail to know that in these future tasks and struggles, we shall have you as the Head of this Republic of India, and may 1, Sir, pledge my loyalty and fealty to this Republic of which you will be the honoured President. *(Prolonged Cheers).*

The Honourable Sardar Vallabhbhai J. Patel (Bombay: General) : Mr. President and Friends, I crave, your permission, Sir, to join in the chorus of congratulations showered on you on this sacred occasion when you have been elected as the Head of the State by the unanimous will of the representatives of the nation. *(cheers).* I endorse every word that has fallen from the lips of the Honourable the Prime Minister and I beg to congratulate you on the great honour that has been conferred on you. For three years you have been working as the President of the Constituent Assembly and Members have watched the way in which the proceedings of the Assembly have been conducted by you. At one time we were anxious and nervous because of your failing health due to the strain put upon you, but Providence has been merciful enough to restore you to your normal health and enable all of us to have the good fortune of seeing you elected as the first President and the, Head of the State of the Republic of India. This is a red letter day in the history of India, and we have no manner of doubt that under your wise judgment, your unruffled and cool temperament and your method of dealing with men and things, the honour and prestige of the country will rise as days go by and under your distinguished leadership the country will attain the status which it deserves among the nations of the world. I pray God may give us all the good sense to give you unreserved loyalty and complete co-operation in the heavy task which God has put upon you. We all of us have to swan together in the stormy seas that we have to cross in the future. You have by your affectionate temperament and by your goodness of heart won the affection of every section of not only this House but every section of the people of the country at large. You richly deserve the honour that has been conferred upon you. *(Cheers).*

Shri B. Das: Mr. President

Mr. President: Before Mr. Das speaks, may I just remind Members that on an occasion like this it is embarrassing for me to be sitting here and to listening to speeches which will contain sentiments hardly deserved by me, and I would therefore request Members, if they insist upon speaking, to confine their remarks to just as few sentences as possible.

Shri B. Das (Orissa: General) : Mr. President, Sir, my heart goes in thankfulness to God that you are the first President of the Republic of India. Two thousand five hundred years ago, your province gave birth to Gautam Buddha who carried the message of peace all over Asia. In our own century Mahatma Gandhi, the Father of the Nation, preached the gospel of universal peace through non-violence. You are a great disciple of his and I sincerely hope--I have known you for so many years--that you will carry that message and uphold the doctrines of Mahatma Gandhi not only in your rule over us in India but throughout the universe. People are everywhere suffering from the greed of men and India stands in no less need of upliftment. It is God's will that you should guide our destinies through non-violence to peace and to a higher and nobler status of humanity. I hope that under your leadership India will be able to bring about world peace and human happiness.

Dr. H. C. Mookerjee (West Bengal: General) : Sir, even I belong to a particular political organization. The fact that you have been elected fill your very high position unanimously is the clearest possible proof that you are not the choice of a particular dominant political party, but the choice of the whole nation. This choice of the whole nation, you have won on account of your sterling-honesty, on account of your past record of unselfish service, and the country has given you the highest possible position it can give anybody. It is only in deference to your wishes that I shall not make any long speech. I have to say one thing and it is, I pray to God that as you do your duty, you may win the approval of your own conscience, you may win the approval of the nation which has elected you and that you will win the approval of the Father of our Nation, who must be pleased when he sees what is happening, and finally, the approval of God. May God bless you in all that you do.

Mr. Hussain Imam (Bihar: Muslim) : Mr. President, it is a day of happiness for all especially for us Biharis, as it is after centuries that a Bihari has been able to give its services to India in the manner and in the personality of your goodself. We, Sir, in this House, have known your goodness and known all your qualities of head and heart, and we could not but be happy at the choice which has been made. We all of us without any distinction of caste, creed or community congratulate you from the bottom of our heart and hope that you will fulfil this place with honour, dignity and benefit to the people of India.

Mr. President: For once after three years, I hope the House will permit me to stop further discussion.

Shri V. I. Muniswamy Pillay (Madras: General) : Sir, coming as I do from the southern-most Province of India, the Tamil Nad, I take this opportunity, Sir, of extending our whole- hearted congratulation to you, Sir, for being unanimously elected to the greatest office of India, under whose destiny is going to be the future of India. Sir, Mahatma Gandhi in whose footsteps you have been following and observing his noble example of extending your whole-hearted support to the down-trodden masses of India, I pray, Sir, that the Almighty may give you long life, so that you may continue that noble work and elevate the down-trodden, the oppressed, the untouchable and all those people who have been removed away from the statute as no longer untouchables.

Mr. President: I have had co-operation from the Members all these years. I hope it will not be denied to me today, *i.e.*, on the last day. So I would beg honourable Members now to stop further discussion and not embarrass me more.

(Seth Govind Das cam to the mike, to speak).

(Interruption.)

Mr. President: I am sure I have the House with me on this occasion as on all occasions, and so, I would request Members who are anxious to speak to desist from doing so.

I recognize the solemnity of this occasion. We, have after a long struggle reached one stage, and now another stage begins. It has been your kindness to place on me a very heavy responsibility. I have always held that the time, for congratulation is not when a man is appointed to an office, but when he retires, and I would like, to wait until the moment comes when I have to lay down the office which you have conferred on me to see whether I have deserved the confidence and the goodwill which have been showered on me from all sides and by all friends alike. When I sit listening to laudatory speeches--and although I have, tried to cut that down to some extent, here also I have had to submit to it to a certain extent,--I am reminded of a story in the Maha Bharat, which is so full of piquant situations, and the solution that was found by Shree Krishna, who solved all those difficult and apparently insoluble problems which arose was this. One of those days, Arjun took a vow that he would perform a certain thing before the sun set on that day and that if he did not succeed, he would bum himself on a pyre. He unfortunately, did not succeed. And then the problem arose as to what was to be done. In fulfilment of that vow, he would have to bum himself. This, of course, was unthinkable so far as the Pandavas were concerned. But Arjuna, was adament in his resolve. Shri Krishna solved this problem by saying, "if you sit and praise yourself or listen to praise by others, that would be equivalent to committing suicide and burning yourself; So you had better submit to that and your vow will be fulfilled." Very often I have listened to such speeches in that spirit. Because, I have felt that there, are many things which I am not able to fulfil, which I am not able to accomplish, and the only way in which I can fulfil these things is to commit that kind of suicide. But, here, I am in a somewhat different situation. When our prime Minister and our Deputy Prime Minister speak with emotion about me, I cannot but reciprocate that kind of emotion. We have lived and worked together for mare than quarter of a century and in the closest association we have fought. We have never faltered; we have jointly succeeded also. And now that I am placed in one chair and they are occupying other chairs side by side, and there are other friends whose association I value equally well who will be sitting by their side to help and assist me and when I know that I have the good will of all the members of this House and of a very large circle of friends outside this House. I feel confident that the duties which have been imposed upon me will be discharged to their satisfaction: not because I can do that, but because the joint efforts of all will enable the duties to be so performed.

The country today is facing very many problems and my feeling is that the kind of work which we have now to do is different from that which we used to do two years ago. It requires greater devotion, greater care, greater application and greater sacrifice. I can only hope that the country will throw up men and ,women who will be able to take up the burden and fulfil the highest aspirations of our people. May God give us strength to do that.

SIGNING OF THE HINDI TRANSLATION OF THE CONSTITUTION

Mr. President: Now there are two things more which remain to be done. One is the authentication or rather the certification of the Hindi Translation of the Constitution. Honourable Members will recollect that this House authorised me by a resolution to get the Hindi translation prepared, and printed and published before the 26th of January. That has been done. The House also authorised me to get translations in other languages prepared, printed and published. That work has not yet been completed; it has been taken up.

I will ask Shri Ghanshyam Singh Gupta to let me have the Hindi Translation so that I may formally place it before, the House and certify it.

(The Honourable Shri Ghanshyam Singh Gupta handed over to Mr. President copies of the Hindi Translation of the Constitution. Mr. President then signed them.)

SIGNING OF THE CONSTITUTION

Mr. President: The only thing that now remains is the signing of the copy of the Constitution by the Members. There are three copies ready. One is in English completely hand-written and illuminated by artists. The second copy is in print in English. The third copy is also hand-written in Hindi. All the three copies are laid on the table and Members will be requested one by one to come and sign the copies. The idea is to call them in the order in which they are sitting in the House now. But, as the Honourable the Prime Minister has to go on public duty, I will request him first to sign them.

(The Honourable Shri Jawaharlal Nehru then signed the copies of the Constitution.)

Shri Algu Rai Shastri (U. P. : General) : *[Mr. President, I want to submit that since the Constituent Assembly has accomplished its task, its office will now be closed. I wish that the services of the staff working in this office should continue in some form or other. It should not be that on the 26th of January, when the whole country will be engaged in festivities, these officials may not feel like participating in them, although they deserve their share. This is all that I want to submit.)

Mr. President: *[I would like to say in this connection that I have paid attention to this question and have corresponded with the Legislative Department and other departments of the Government for accommodating so far as possible, the persons working in our office. Efforts are being made for it. I hope that most of the people, if not all, will find employment. Efforts will be made to find employment for those also who are left out.]*

The Members will now come from the right side, from Madras side, as they are, and sign one by one.

(The Members then signed the copies of the Constitution.)

Mr. President: I would suggest to honourable Members just to take their places, and sign as the names are called. That would, I think, be better; it will certainly look nicer. Mr. Khanna will call out the names of the Members, one after another.

(The remaining Members present then signed the copies of the Constitution after which Mr. President signed the copies.)

Mr. President : Is there any Member who has not yet signed? If any, he may sign later on in the office.

Honourable Members: Bande Mataram.

Sri M. Ananthasayanam Ayyangar (Madras: General): All of us will sing, with Your permission, Sir, "Jana Gana Mana".

Mr. President: Yes.

(Shrimati Purnima Banerji with other Members sang "Jana Gana Mana" all standing.)

Mr. President: "Bande Mataram".

(Pandit Lakshmi Kanta Maitra, with other Members then sang "Bande Mataram", all standing.)

Mr. President: The House will. stand adjourned now, sine die.

The Constituent Assembly then adjourned, *sine die.*

[Translation of Hindustani speech.]